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**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

MICHAEL DiFRANCESCO and)
ASHLEY DAVIS, on behalf of themselves)
and others similarly situated,)

Plaintiffs,)

v.)

TIM FOX, in his official capacity as)
Attorney General of Montana;)
SARAH GARCIA, in her official capacity)
as Administrator of the Motor Vehicle)
Division; and)
MICHELE SNOWBERGER, in her)
official capacity as Bureau Chief of the)

Case No. CV-17-66-BU-SEH
CLASS ACTION

**AMENDED COMPLAINT
JURY DEMANDED**

Driver Services Bureau,)
)
Defendants.)
_____)

Introduction

1. This case is about the Motor Vehicle Division of the Montana Department of Justice (“the MVD”) running a wealth-based driver’s license suspension scheme that traps some of the state’s poorest residents in a cycle of poverty. The MVD automatically and indefinitely suspends the driver’s licenses of people who owe court-ordered fines, costs, and restitution even if they simply cannot afford to pay. Without driver’s licenses, people already facing the harsh realities of owing court debt while living in poverty face additional hurdles of being unable to drive to and from work, get their children to daycare, keep medical appointments, and care for their family members.

2. Although Montana’s automatic suspension of driver’s licenses is designed to coerce payment, for people who are *unable* to pay, the state’s practice will never accomplish its intended goal; no incentive or punishment will increase the likelihood of a person paying a debt if he or she does not have the money. Penalizing people for being unable to pay court debts violates the Equal Protection Clause of the Fourteenth Amendment, the Due Process guarantee of fundamental fairness, Plaintiffs’ right to travel, and longstanding Supreme Court precedent. Defendants

have trapped Plaintiffs Michael DiFrancesco and Ashley Davis in an inescapable cycle of poverty by suspending their licenses.

3. The MVD indefinitely suspends the driver's licenses of people who fail to pay court-ordered fines, costs, and restitution, even where nonpayment is solely due to indigence and thus not willful. Mont. Code Ann. § 61-5-214(1)(b). A person whose license has been suspended for non-payment of fines or fees must pay \$100 to the MVD before his or her license can be reinstated unless a court found the person indigent for the purposes of assigning a public defender. Mont. Code Ann. § 61-5-218.

4. Anyone convicted of driving during a suspension period faces a jail sentence of up to six months or a fine of up to \$500. Mont. Code Ann. § 61-5-212(1)(b)(ii). A conviction also carries a mandatory one-year extension of the suspension. Mont. Code Ann. § 61-5-212(2)(a).

5. These suspensions deprive some of Montana's poorest residents of their only reliable means of transportation to and from work, further diminishing their ability to meet their court-ordered financial obligations.

6. By and through their attorneys, on behalf of themselves and others similarly situated, Plaintiffs Michael DiFrancesco and Ashley Davis seek declaratory and injunctive relief against Defendants in their official capacities to end

this unconstitutional wealth-based suspension scheme because it violates the Due Process and Equal Protection Clauses of the United States Constitution.

Nature of the Action

7. The Montana MVD automatically suspends the driver's licenses of people who fail to pay court-ordered fines, costs, and restitution, even if they are unable to pay the debts. Plaintiffs seek declaratory and injunctive relief prohibiting this wealth-based suspension scheme.

8. The MVD is violating Plaintiffs' equal protection and substantive due process rights, and those of people similarly situated, because suspending people's driver's licenses solely because they are too poor to pay their court debts is wealth discrimination.

9. The MVD is violating Plaintiffs' substantive due process rights, and those of people similarly situated, because Montana citizens, regardless of wealth, have a fundamental right to intrastate travel in addition to the constitutional guarantee of interstate travel. Because there is no meaningful alternative to driving in Montana, the lack of a valid license necessarily impedes those rights without being narrowly tailored to a compelling government interest.

10. The MVD is violating Plaintiffs' equal protection rights, and those of people similarly situated, because the state's suspension scheme lacks any rational basis. Suspending the driver's licenses of people too poor to pay court debt inhibits

a person's ability to pay court debts, thus directly undermining the supposed governmental interest in obtaining payment.

11. The MVD is violating Plaintiffs' equal protection rights, and those of people similarly situated, because automatic driver's license suspensions constitute an extraordinary collection effort.

12. The MVD is violating Plaintiffs' procedural due process rights, and those of people similarly situated, because individuals have property interests in their driver's licenses that cannot be denied without notice and a hearing.

Jurisdiction and Venue

13. This is a civil rights action arising under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, *et seq.*, and the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

14. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

Parties

15. Plaintiff Michael DiFrancesco is a 23-year-old resident of Bozeman, Montana, who has recently experienced homelessness. Ex. 1, DiFrancesco Decl. Mr. DiFrancesco's troubles began when he was fined \$185 for a civil infraction he committed when he was only 14 years old. Since then, his court debt has ballooned to nearly \$4,000 due solely to his inability to drive legally. Mr. DiFrancesco cannot afford to pay this debt. *Id.*

16. Plaintiff Ashley Davis is a 31-year-old single mother who lives in Missoula. Although she managed to pay off earlier debt and obtain a license in December of 2016, her license was suspended again in 2017 when she was unable to pay fines for insurance infractions. Ex. 2, Davis Decl. Ms. Davis currently is scraping by supporting her son and unable to pay all her bills, let alone her court debt. *Id.*

17. Defendant Tim Fox is the Attorney General of Montana. As Attorney General, Mr. Fox is the head of the Montana Department of Justice, the state's top law enforcement and legal agency. Additionally, because the Montana MVD is a division of the Department of Justice, Mr. Fox oversees and is ultimately responsible for all actions of the MVD. Mr. Fox is sued in his official capacity as Attorney General.

18. Defendant Sarah Garcia is the Administrator of the Motor Vehicle Division of Montana. The MVD is a division of the Department of Justice and is responsible for "licensing, registering, and regulating the motoring activities of the public." Ex. 3, DOJMT.gov – Motor Vehicle Division. Ms. Garcia is sued in her official capacity as MVD Administrator.

19. Defendant Michele Snowberger is the Bureau Chief of the Driver Services Bureau of the Motor Vehicle Division. The Driver Services Bureau

administers all driver license records and actions, including suspensions. Ms. Snowberger is sued in her official capacity as Bureau Chief.

20. At all times relevant to the events, acts, and/or omissions alleged in this Complaint, Defendants have acted under color of state law, pursuant to their authority and responsibilities as officials of the State of Montana.

Factual Allegations

I. Introduction

21. The MVD suspends the driver's licenses of people who fail to comply with a sentence — including payment of court-ordered fines, fees, and restitution — upon receipt of a report from a court. Mont. Code Ann. § 61-5-214(1)(b).

22. The MVD imposes suspensions under MCA 61-5-214(1)(b) for failure to pay regardless of the reason for nonpayment and without consideration of whether the person has the financial means to pay. *Id.*; *see also* Ex. 4, Rutzke Aff.

23. Suspensions for failure to pay fines are indefinite and continue until the court notifies the Department that the person has complied with the sentence, “including payment of any assessed fines, costs, or restitution.” Mont. Code Ann. § 61-5-214(2)(a); *see also* Ex. 5, DOJMT.gov – Driver License Sanctions.

24. A valid driver's license is essential for people to secure and maintain employment, and the loss of a license often results in further financial hardship for individuals and their families. *See* Ex. 4, Rutzke Aff.

25. An estimated 19,667 Montana drivers currently have license suspensions because of failure to pay court debts. Pl.’s Resp. Supp. Class Cert. Brief, ECF No. 30 at 6.

26. Suspended licenses can trap people who are poor in an impossible situation: they cannot afford to reinstate their licenses without steady employment, but they are unable to work without licenses. *See* Ex. 4, Rutzke Aff.

27. Paying off court debt is particularly difficult for the 14 percent of Montana residents who live below the federal poverty line. Ex. 6, Talk Poverty – Mont. 2016.

28. Suspending licenses as a means of debt collection also draws resources away from public safety, because law enforcement officers must devote resources to stopping and investigating suspended drivers who do not present a danger behind the wheel instead of pursuing individuals who do.

II. Plaintiffs’ Debts

A. Michael DiFrancesco

29. Named Plaintiff Michael DiFrancesco is a resident of Bozeman, Montana. Ex. 1, DiFrancesco Decl.

30. In 2008, when Mr. DiFrancesco was 14 years old, he was convicted of violating Montana’s “minor in possession” (MIP) law, a civil infraction. *Id.*; *see*

also Ex. 7, DiFrancesco Bozeman Mun. Ct. Summary; Mont. Code Ann. § 45-5-624.

31. As penalty for his civil infraction, he was fined \$185 and ordered to pay for and complete a community-based substance abuse information course. Ex. 7, DiFrancesco Bozeman Mun. Ct. Summary; *see also* Ex. 1, DiFrancesco Decl.

32. At the time, Mr. DiFrancesco could not afford to pay the fine or the fee for the course. *Id.*

33. Because he could not afford to comply with the sanction, Mr. DiFrancesco received a notice from the MVD on January 14, 2009 “that pursuant to MCA 61-5-214, [his] driver’s license and/or driving privilege [was] suspended indefinitely . . . based upon notification that [he] failed to appear or pay fines, cost, and/or restitution as required by law from a court in Bozeman.” Ex. 8, DiFrancesco Suspension Notice 2009.

34. The MVD further informed Mr. DiFrancesco that he would need to satisfy all his court debts and “pay a \$100 non-refundable reinstatement fee directly to the department as required by MCA 61-5-218(1)” before his license could be reinstated. *Id.*

35. Thus, Mr. DiFrancesco was not able to obtain a learner’s permit or provisional driver’s license while he was under the age of 18, nor was he able to take

a driving test and obtain a full Montana driver's license once he turned 18, as he still had outstanding court debt from his MIP. Ex. 1, DiFrancesco Decl.

36. Mr. DiFrancesco has since paid the fine and completed the community service for his MIP. Ex. 1, DiFrancesco Decl.; *see also* Ex. 7, DiFrancesco Bozeman Mun. Ct. Summary. But he has not been able to pay off the many large fines he has been ordered to pay for driving without a valid license. Ex. 1, DiFrancesco Decl.; *see also* Ex. 7, DiFrancesco Bozeman Mun. Ct. Summary; Ex. 9, DiFrancesco Driver Record.

37. Mr. DiFrancesco is a construction worker and is unable to work consistently without being able to drive. Ex. 1, DiFrancesco Decl.

38. Lacking a valid license has caused Mr. DiFrancesco to become unemployed.

39. Lacking a valid license has caused Mr. DiFrancesco to become homeless.

40. Because he must work to earn money, he has been convicted of driving without a license five times in the past three years. *Id.*; *see also* Ex. 9, DiFrancesco Driver Record.

41. Each conviction of driving without a valid license resulted in six points being added to Mr. DiFrancesco's driving record, and he thus accrued 30 points within a three-year period. Ex. 10, DiFrancesco Habitual Traffic Offender Decl.

42. On October 5, 2016, the MVD declared Mr. DiFrancesco a “Habitual Traffic Offender” due to the 30 points he had accrued for his many convictions for driving without a license and imposed a revocation of his driver’s license for a period of three years, effective from the date of the letter. *Id.*; *see also* Mont. Code Ann. § 61-11-203(1)(b).

43. Mr. DiFrancesco has never been charged with a moving traffic violation or any violation related to road safety. Ex. 1, DiFrancesco Decl.; *see also* Ex. 9, DiFrancesco Driver Record.

44. Mr. DiFrancesco’s inability to drive legally stems solely from his poverty; if he had had the money to pay his court-ordered debt in 2008 — or at any point thereafter until January of 2016 — he would have been able to restore his driving rights, and he would have avoided the convictions that led to the MVD declaring him a “habitual traffic offender.” Ex. 1, DiFrancesco Decl.; *see also* Ex. 9, DiFrancesco Driver Record.

45. Mr. DiFrancesco still owes nearly \$4,000 in unpaid fines for his “driving without a license” convictions. Ex. 1, DiFrancesco Decl.

46. Mr. DiFrancesco has also spent a total of about five months in jail for driving without a license. *Id.*

47. Because he has no driver’s license, he has not had a job in about a year. *Id.*

48. As of this filing, he is not working and has no regular income. *Id.*

49. Because he is unable to work and has no regular income, Mr. DiFrancesco does not have stable housing. *Id.*

B. Ashley Davis

50. Named Plaintiff Ashley Davis is a resident of Missoula, Montana. Ex. 2, Davis Decl. She is a 31-year-old single mother and the sole supporter of her 12-year-old son. *Id.*

51. Ms. Davis has two active suspensions on her license, both for failure to pay fines for insurance violations she received in 2016. *Id.*; *see also* Ex. 11, Davis Driver Record.¹

52. Ms. Davis was and is unable to pay the two fines. Ex. 2, Davis Decl.

53. As of this filing, Ms. Davis owes \$466.46 in court debt, which she must pay before the MVD will reinstate her license. Ex. 2, Davis Decl.; *see also* Ex. 12, Davis Missoula Mun. Ct. History; Ex. 13, Davis Missoula Co. Justice History.

54. Ms. Davis earns \$14.00 per hour working at BretzRV & Marine in Missoula. Ex. 2, Davis Decl.

¹ Ms. Davis's Declaration (Ex. 2) and Driver Record (Ex. 11) provide details on a number of past suspensions that are no longer active. Ms. Davis's license was fully restored on December 23, 2016. This Complaint includes only those suspensions which form the basis of her claims: the two active 2017 failure-to-pay suspensions.

55. Ms. Davis loses about 25% of her limited income to wage garnishment, mainly for an emergency surgery she had to have in 2016. *Id.*

56. Ms. Davis works through her lunch break and takes as much overtime as she can, but after garnishment, her monthly income is only XXX. *Id.*

57. Even before garnishment, Ms. Davis's monthly expenses exceed her income. *Id.* She pays \$630 per month in rent for a low-income apartment, the lowest rent she has been able to find in Missoula. *Id.* She also must pay for all the utilities for the apartment, food for herself and her son, and she must continue to make payments on her car even though she cannot drive it. *Id.*

58. Ms. Davis's gross income is not quite low enough to qualify her for public assistance — her wage garnishment is not accounted for in her eligibility calculation. *Id.* She does not receive food stamps or even free school lunch for her son.

59. She has to pick and choose which bills to pay each month. She is barely scraping by, and her refrigerator is often empty. *Id.*

60. On top of her financial burdens, Ms. Davis is unable to drive. She must rely on friends to drive her to work. *Id.*

61. Ms. Davis needs her driver's license to care for her young son. He has health conditions that require regular appointments across town from where they

live, and he often needs to be picked up from after-school activities in the evening when the school bus is not an option. *Id.*

III. Montana’s Wealth-Based Driver’s License Suspension Scheme Traps Poor Residents in a Cycle of Poverty

A. Defendants Suspend the Licenses of All People Who Fail to Pay Their Court Debts, Even Those Who Are Too Poor to Pay

62. When a person does not pay a fine, court cost, or restitution, the MVD imposes a mandatory, indefinite suspension on the person’s license. Mont. Code Ann. § 61-5-214(1)(b).

63. Although a “person must be given written notice that the failure to appear on a criminal charge or comply with a criminal sentence may result in the suspension of the person’s driver’s license or driving privilege . . . followed by a written warning from the court . . . advising the person that a license suspension is imminent,” Mont. Code Ann. § 61-5-214(3), there is no mention of any exception for those who can demonstrate that they are too poor to pay.

64. The court is not statutorily required to make any inquiry into the reason for nonpayment or a person’s financial status before informing the MVD that the person has failed to pay court debts. In fact, courts do not make any such inquiry.

65. The MVD does not make any inquiry into the reason for nonpayment or a person’s financial status before immediately suspending the license of the person.

66. No MVD official ascertains the reason for nonpayment or a person's financial status after suspending the license of the person.

67. A person may file a petition within 30 days after suspension for a hearing in the district court in the county where the person resides. Mont. Code Ann. § 61-5-211. But the suspension notice contains no mention of this right to a hearing, *see* Ex. 8, DiFrancesco Suspension Notice 2009, so there is no guarantee that an individual whose license has been suspended will even be aware of this right. Moreover, the court in such a hearing is tasked with “tak[ing] testimony and examin[ing] the facts of the case and determin[ing] whether the petitioner is entitled to a driver's license,” with no mention of hearing evidence on ability to pay or making a determination of indigence. Mont. Code Ann. § 61-5-211.

68. People whose licenses are suspended because of failure to comply with a sentence, including payment of fines, costs, or restitution, are not eligible to receive provisional, restricted, or probationary licenses. Mont. Code Ann. § 61-5-215.

B. Defendants Will Not Reinstate a License Suspended for Nonpayment of Court Debts Until the Person Has Paid a \$100 Fee in Addition to All Court Debts Owed

69. Suspensions for failure to pay court debts are indefinite; they continue until the court notifies the MVD that the person has complied with the sentence, “including payment of any assessed fines, costs, or restitution.” Mont. Code Ann. §§ 61-5-214(2)(a) and 61-5-216.

70. A driver whose license has been suspended must pay a reinstatement fee of \$100 to the MVD before it can be restored. Mont. Code Ann. § 61-5-218(1).

71. The MVD waives the reinstatement fee if a court has determined the person qualifies for a public defender. Mont. Code Ann. §§ 47-1-111; 61-5-218(2)(c). But most fines are imposed for civil infractions, such as traffic tickets, which do not trigger appointment of counsel.

C. A Person Who Drives While His or Her License Is Suspended Faces Imprisonment, Fines, and an Additional Period of Suspension

72. A person convicted of driving without a valid license faces imprisonment for up to six months or a fine of up to \$500. Mont. Code Ann. § 61-5-212(1)(b)(ii).

73. A conviction of driving while one's license is suspended also carries a mandatory one-year extension of the period of suspension. Mont. Code Ann. § 61-5-212(2)(a).

74. Driving while one's license is suspended is an absolute liability offense in Montana, and people are frequently convicted of the offense even when they never received notification that their license had been suspended. Ex. 4, Rutzke Aff.

75. A conviction for driving while one's license is suspended results in six points being added to one's driving record. Mont. Code Ann. § 61-11-203(2)(e).

76. A person who accumulates 30 points on his or her driving record within a three-year period is declared a “Habitual Traffic Offender” and faces a mandatory three-year license revocation. Mont. Code Ann. §§ 61-11-203(1)(b) and 61-11-211.

D. License Suspensions Drive People Further into Poverty and Invite Further Infractions

77. Montana’s wealth-based suspension scheme imposes significant hardship on debtors and their families, often forcing them to choose between paying for food, shelter, health care, and clothing, or paying their court costs and fines.

78. Because they cannot pay fines, poor drivers are over-represented in the pool of suspended drivers when compared to the general population of licensed drivers.

79. People whose licenses are suspended because of failure to comply with a sentence, including payment of fines, costs, or restitution, are not eligible to receive provisional, restricted, or probationary licenses. Mont. Code Ann. § 61-5-215.

80. Not having a valid driver’s license bars people from employment opportunities. “Not all jobs require a driver’s license, particularly those that pay very low wages. But having one is a very common requirement for the sorts of job that can actually lift people out of poverty.” Ex. 14, Alana Semuels, *No Driver’s License, No Job*, The Atlantic (June 15, 2016).

81. Indeed, a rigorous study of New Jersey drivers found that 42% of drivers lost their jobs after their driver's licenses were suspended. Ex. 15, Driver's License Suspensions, Impacts and Fairness Study, at 56.

82. Of those drivers, 45% were unable to find new employment. *Id.*

83. Of those that were able to find another job, 88% reported a decrease in income. *Id.*

84. In many cases, Montana's wealth-based suspension scheme forces suspended drivers to choose between driving illegally and losing their jobs. *See* Ex. 4, Rutzke Aff.

85. In Montana, driving on a suspended license is a criminal offense, with a violation resulting in a prison sentence of up to six months or a fine of up to \$500. Mont. Code. Ann. § 61-5-212(1)(b)(ii).

86. Thus, Montana's wealth-based suspension scheme creates a downward spiral from poverty to criminal culpability: an unpaid civil infraction ticket triggers automatic suspension, which often leads to the offense of driving without a valid license.

87. The high cost of losing a driver's license inevitably results in an impossible choice: drive — and risk being charged with driving while suspended, which itself can lead to additional costs, fines, and periods of incarceration — or refrain from driving and lose access to gainful employment and medical care.

E. Montana’s Vast Rural Landscape Exacerbates the Hardships of Living Without a License

88. At 145,545 square miles, Montana is the fourth-largest state in the United States. Ex. 16, U.S. Census Bureau QuickFacts – Montana at 2. With only 6.8 people per square mile, it is one of the most sparsely-populated states — ranking 48th in population density. *Id.*

89. Without the ability to drive, most jobs are inaccessible to people living in Montana. Even in cities where some public transportation options are available, getting to and from work without the ability to drive is extremely challenging and time-consuming, if it is possible at all. *See* Ex. 4, Rutzke Aff.

90. In fact, the Census Bureau estimates that three-quarters of Montana commuters drive themselves to work, while only 5.7 percent walk, and a scant 0.7 percent use public transit. Ex. 17, Mont. Commuter Transportation.

IV. Montana’s Wealth-Based Suspension Scheme Violates Plaintiffs’ Equal Protection and Due Process Rights

91. Defendants’ indefinite suspension of Plaintiffs’ driver’s licenses because of their inability to pay court debts violates their constitutional rights under the Equal Protection and Due Process Clauses.

A. Defendants’ Suspension Scheme Violates Equal Protection and Due Process Because It Constitutes Wealth Discrimination

92. Suspending Plaintiffs’ licenses for failing to pay court debts that they cannot afford is wealth discrimination. *See, e.g., Bearden v. Georgia*, 461 U.S. 660,

660 (1983) (holding that it discriminates on the basis of wealth to revoke probation because a probationer is unable to pay fines and restitution); *see also Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (holding that it discriminates on the basis of wealth to deny access to an appeal solely because of inability to pay court costs); *Tate v. Short*, 401 U.S. 395, 395 (1971) (holding that it discriminates on the basis of wealth to jail a person for inability to pay a fine); *Williams v. Illinois*, 399 U.S. 235, 240–41 (1970) (holding that it discriminates on the basis of wealth to imprison a person beyond the maximum period fixed by statute solely because he cannot pay fines or court costs).

93. Montana suspends driver’s licenses without first determining whether the nonpayment was willful or whether the person was simply too poor to pay.

94. The MVD enforces Montana’s wealth-based suspension scheme without considering the debtor’s ability to pay or offering any alternatives.

95. Thus, Montana’s wealth-based suspension scheme inevitably results in individuals being punished for their inability to pay.

96. By converting a relatively modest penalty (*e.g.*, a \$185 civil infraction fine) into a serious deprivation (an indefinitely suspended driver’s license), Montana unfairly penalizes people who are poor simply for being poor.

97. Punishing a person solely for his or her inability to pay constitutes wealth discrimination in violation of equal protection and due process.

B. Defendants' Wealth-Based Suspension Scheme Violates Due Process Because It Infringes on Plaintiffs' Fundamental Right to Travel

98. Plaintiffs have a fundamental due process right to intrastate travel. *See, e.g., Johnson v. City of Cincinnati*, 310 F.3d 484, 495 (6th Cir. 2002); *see also In re Marriage of Guffin*, 209 P.3d 225, 228 (Mont. 2009) (holding “that the right to travel guaranteed by the United States Constitution includes the right to travel within Montana”).

99. Plaintiffs live in a large, sparsely-populated, rural state where public transportation is extremely limited.

100. Plaintiffs cannot afford to pay for taxis or other car services for daily commuting and living.

101. Due to Montana's weather conditions, non-motorized modes of transport, such as walking or biking, are not feasible alternatives during the winter.

102. Thus, Plaintiffs' only reliable form of transportation is to drive their personal vehicles.

103. Defendants have suspended Plaintiffs' licenses simply because they are unable to pay their debts and therefore have impeded their fundamental right to intrastate travel.

104. Because it implicates a fundamental liberty interest, Defendants' suspension scheme must be narrowly tailored to achieve compelling state objectives.

105. Defendants' suspension scheme is not limited in scope; it is a broad prohibition on all driving in all locations at all times in all circumstances for an indefinite period.

106. While the collection of court-ordered debt is a significant state interest, suspending the driver's licenses of those who cannot pay is not narrowly tailored to collection. Indeed, it is counterproductive because it hampers Plaintiffs' ability to make a living and pay their essential expenses, thus decreasing their ability to pay court debts.

107. Accordingly, Defendants' wealth-based suspension scheme violates the Due Process Clause.

C. Defendants' Wealth-Based Suspension Scheme Violates Equal Protection Because It Discriminates Against Poor People Without a Rational Connection to a Legitimate State Purpose

108. Montana's wealth-based suspension scheme is not rationally related to any legitimate government objective because suspending driver's licenses impedes lower-income workers from obtaining or maintaining employment in order to meet their financial obligations to the court.

109. Driver's licenses are often essential in the pursuit of a livelihood, and their suspension threatens important interests of the people who hold them.

110. The purpose of licensing drivers is to promote safety by keeping dangerous drivers off Montana's roads.

111. License suspension as a debt-collection method is unrelated to public safety and is counterproductive to Montana's interests in collecting debt from indigent residents because it prevents such residents from working.

112. For poor debtors, avoiding driver's license suspension does not operate as an incentive to pay when they must choose between paying the court and paying rent, buying medication, feeding their families, and other necessary expenses.

113. Indeed, for people who cannot pay court debt, coercing payment by license suspension is irrational and counterproductive; suspension makes it less likely — rather than more likely — that people will be able to pay court debt.

114. The loss of a license often means the loss of reliable transportation to and from work, which makes debtors less able to meet their financial obligations to the court.

115. Suspending driver's licenses — especially for people who are poor — causes unemployment and homelessness and thus exacerbates a cycle of poverty.

116. By increasing unemployment, homelessness, and the cycle of poverty, Montana's scheme is directly contrary to its own interest because it undermines people's ability to repay court debt. By decreasing the state's chances of recouping court debt, Montana's scheme is counterproductive and therefore irrational.

117. Montana’s wealth-based suspension scheme violates equal protection because it causes substantial hardship to poor drivers and bears no rational relationship to any legitimate government objective.

D. Defendants’ Wealth-Based Suspension Scheme Violates Equal Protection Because It Constitutes Extraordinary Collection

118. When governments seek to recoup the costs of prosecution from indigent defendants, they may not use unduly harsh methods of debt collection solely because the debt is owed to the government and not to a private creditor. *See James v. Strange*, 407 U.S. 128 (1972); *see also State v. Ellis*, 167 P.3d 896, 899–900 (Mont. 2007) (suggesting that a recoupment scheme may implicate equal protection if there is no consideration of whether the debtor is able to pay and if the debtor has no opportunity to petition the court for remission of payment of debts “on grounds that it will impose manifest hardship”).

119. Fines penalize unlawful behavior; similarly, restitution compensates a victim. By contrast, court costs subsidize court operations and thus are ordinary private consumer debts incurred for services rendered.

120. When a private creditor seeks to enforce a judgment against a debtor via garnishment or lien, the law provides procedural and substantive protections for poor debtors against deprivation of certain basic necessities and the ability to maintain a livelihood.

121. The private creditor may coerce payment only to the extent permitted by those protections.

122. Montana's wealth-based suspension scheme does not treat indigent defendants, to the extent that they owe court costs, like other judgment debtors.

123. Montana's wealth-based suspension scheme provides for suspension of the debtor's driver's license and the possibility of imprisonment.

124. When the State of Montana, through Defendants' actions, takes advantage of the machinery of government to strip debtors of their driver's licenses, it coerces payment in a way that is unavailable to private creditors for debts unrelated to driving. Thus, it denies debtors who owe court costs the procedural and substantive statutory protections that other Montana debtors may invoke against a private creditor in ordinary debt collection proceedings.

125. Montana's wealth-based suspension scheme fails to offer poor debtors the substantive and procedural protections that prevent private creditors from denying debtors the ability to maintain their livelihoods and meet their basic needs.

126. The State of Montana's severe and coercive collection policies and practices discriminate against poor debtors and violate the fundamental principle of equal protection of the laws embedded in the United States Constitution.

E. Defendants' Wealth-Based Suspension Scheme Violates Procedural Due Process Because It Does Not Guarantee an Ability-to-Pay Hearing or Provide Notice of Such a Hearing

127. A person's driver's license is recognized as a property interest that may not be taken away without due process of law. *Bell v. Burson*, 402 U.S. 535 (1971); *see also Alaska Airlines, Inc. v. City of Long Beach*, 951 F.2d 977, 986 (9th Cir. 1991); *State ex rel. Majerus v. Carter*, 693 P.2d 501, 503–504 (Mont. 1984).

128. Due process requires the State of Montana to conduct ability-to-pay inquiries at each stage in a case, including the point at which it proposes to take coercive action to punish nonpayment.

129. The state's wealth-based suspension scheme imposes mandatory costs without consideration of ability to pay. Instead, Defendants suspend a person's driver's license upon receiving a notice a court that that person has failed to pay court debts. Mont. Code Ann. § 61-5-214(1)(b).

130. Prior to suspending a debtor's driver's license, the MVD does not inform the debtor of any right to an ability-to-pay hearing.

131. Moreover, Defendants do not independently review the debtor's ability to pay before or after enforcing the harsh punishment of suspension.

132. The purpose of the state's wealth-based suspension scheme is to coerce payment, not to protect public safety on the roads. Therefore, Plaintiffs and others similarly situated are entitled to an ability-to-pay hearing prior to license suspension and proper notice of such a hearing.

133. There is currently no hearing required under Montana law for those facing driver's license suspension for unpaid court debt, creating a high risk that indigent debtors will be deprived of their driver's licenses for reasons directly attributable to their poverty.

134. The high risk of deprivation created by Defendants' automatic, one-size-fits-all driver's license suspension system violates due process.

Class Action Allegations

135. The named Plaintiffs bring this action, on behalf of themselves and all others similarly situated, to assert the claims alleged in this Amended Complaint on a common basis.

136. A class action is a superior means, and the only practicable means, by which named Plaintiffs and unknown Class Members can challenge Defendants' unlawful wealth-based suspension scheme.

137. This action is brought and may properly be maintained as a Class action pursuant to Rule 23(a)(1)–(4) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.

138. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of those provisions.

139. Plaintiffs propose a declaratory and injunctive class defined as: All individuals whose Montana driver's licenses are, or will be, suspended for

nonpayment of a fine, cost, or restitution under Mont. Code Ann. § 61-5-214(1)(b) and who were, or will be, unable to afford to pay the fine, cost, or restitution at the time of suspension.

140. In the alternative, Plaintiffs propose two declaratory and injunctive subclasses defined as:

- (1) Current Class Members, who will be members of the class as of the date of certification: All individuals whose Montana driver's licenses are currently suspended for nonpayment of a fine, cost, or restitution under Mont. Code Ann. § 61-5-214(1)(b) and who were unable to afford to pay the fine, cost, or restitution at the time of suspension; and
- (2) Future Class Members, who will be added to the class when their claims become ripe: All individuals whose Montana driver's licenses will be suspended for nonpayment of a fine, cost, or restitution under Mont. Code Ann. § 61-5-214(1)(b) and who are unable to afford to pay the fine, cost, or restitution at the time of suspension.

I. Numerosity — Fed. R. Civ. P. 23(a)(1)

141. Plaintiffs estimate that the MVD issues an average of 7,500 suspensions for failure to pay each year, based on the average number of failure-to-comply suspensions issued each year from 2014 to 2017 multiplied by the percentage (75

percent) of failure-to-comply suspensions Plaintiffs estimate to be failures to pay. Pl.'s Supp. Class Cert. Brief, ECF No. 28 at 5.

142. While many of the Montana licenses suspended for failure to comply (including failure to pay) are eventually restored, a significant percentage remain suspended for years.

143. Of the 29,714 DI Code 601 nonpayment suspensions issued between 1987 and 2009, a total of 2,513 remain active in 2018. Pl.'s Supp. Class Cert. Brief, ECF No. 28 at 7. That is, over 2,500 DI Code 601 suspensions remain active even nine years after the MVD discontinued its use of that code, making each of those 2,513 nonpayment suspensions at least nine years old.

144. And of the 40,050 DI Code 605 failure-to-pay suspensions issued between 1997 and 2013, a total of 8,990 remain active in 2018. *Id.* That is, nearly 9,000 DI Code 605 suspensions remain active five years after the MVD discontinued its use of that code, meaning each of those 8,990 failure-to-pay suspensions is at least five years old.

145. Between January 1, 2014, and January 19, 2018, the MVD issued 40,581 failure-to-comply suspensions to 20,710 individuals (many people have multiple suspensions). *Id.* at 7–8. Of those 20,710 individuals, 11,013 still do not have their licenses restored (22,033 suspensions remain active). *Id.* at 8. That means

that over half of the people who received failure-to-comply suspensions in the last four years have not yet gotten their licenses restored.

146. Plaintiffs estimate that 19,667 Montana drivers currently have active license suspensions because of failure to pay court debts. Pl.'s Resp. Supp. Class Cert. Brief, ECF No. 30 at 6.

147. The estimate of 19,667 people who currently have suspensions for failure to pay excludes individuals who have had their licenses restored, so it is likely that a large percentage — perhaps even a majority — of the 19,667 are people who cannot afford to pay.

148. The number of people who have *received* suspensions for failure to pay is considerably higher than 19,667; Plaintiffs estimate that approximately 80,483 individuals have received failure-to-pay suspensions since 1987. *Id.* at 6–7.

II. Commonality — Fed. R. Civ. P. 23(a)(2)

149. The relief sought is common to all Class Members, and common questions of law and fact exist as to all Class Members. Named Plaintiffs seek relief concerning whether the automatic suspension scheme violates the rights of the Class Members and relief mandating that Defendants end the scheme so that the constitutional rights of the Class Members will be protected in the future.

150. These common legal and factual questions arise from one scheme: Defendants' automatic suspensions based on inability to pay court debts. The

material requirements of the suspension 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.

151. Among the most important, but not the only, common questions of fact are:

- Whether Montana has a policy and practice of using license suspension to punish poor people more harshly than wealthy people simply because poor people cannot afford to pay court-ordered fines, costs, and restitution;
- Whether Montana, acting by and through Defendants, 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;
- Whether Montana drivers receive adequate notice of their opportunity to assert their inability to pay in order to avoid suspension; and
- Whether Montana, acting by and through Defendants, exploits its governmental status to avail itself of forms of enforcement in the collection of court debts not available to most private civil creditors.

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

- Whether suspending a person's driver's license solely because she or he cannot afford to pay court costs and fines previously imposed is lawful;
- Whether a person is entitled to a meaningful inquiry into his or her present ability to pay court costs and fines before Defendants suspend his or her license for nonpayment;
- Whether license suspension in the state of Montana implicates a person's constitutional right to travel; and
- Whether depriving persons encumbered with court debt of the protections afforded other Montana debtors when taking the harsh action of suspending their driver's licenses for nonpayment violates the Equal Protection Clause.

III. Typicality — Fed. R. Civ. P. 23(a)(3)

153. 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. Each Class Member has had or will have his or her driver's license suspended due to an inability to pay court debts. The answer to whether Defendants' wealth-based suspension scheme is unconstitutional will determine the claims of Named Plaintiffs and every other Class Member.

154. If Named Plaintiffs succeed in the claim that the MVD's policies and practices concerning wealth-based suspension violate their constitutional rights, that ruling will likewise benefit every other Class Member.

IV. Adequacy — Fed. R. Civ. P. 23(a)(4)

155. Named Plaintiffs are adequate representatives of the Class because their interests in the vindication of the legal claims that they raise are entirely aligned with the interests of the other Class Members, who each have the same basic constitutional claims. They are members of the Class, and their interests coincide with, and are not antagonistic to, those of the other Class Members.

156. There are no known conflicts of interest among Class Members, all of whom have a similar interest in vindicating their constitutional rights in the face of Defendants' wealth-based suspension scheme.

157. Plaintiffs are represented by attorneys from Equal Justice Under Law and Morrison, Sherwood, Wilson & Deola, PLLP, who have experience in litigating complex civil rights matters in federal court and extensive knowledge of both the details of Defendants' scheme and the relevant constitutional and statutory law.

158. The combined efforts of Class counsel have so far included extensive investigation into Defendants' suspension scheme, including conducting discovery into the suspension data maintained by the MVD, interviewing attorneys in the region, statewide experts in the functioning of state and local courts, and national experts in constitutional law, law enforcement, judicial procedures, and criminal law.

159. Class counsel have a detailed understanding of local law and practices as they relate to federal constitutional requirements.

160. As a result, counsel have devoted enormous time and resources to becoming intimately familiar with Defendants' scheme and with the relevant state and federal laws. The interests of the Class Members will be fairly and adequately protected by Named Plaintiffs and their attorneys.

V. Rule 23(b)(2)

161. Class action status is appropriate because Defendants have acted or will act in the same unconstitutional manner with respect to all Class Members. Defendants enforce a wealth-based suspension scheme: wealthy Montana residents

who are ordered to pay costs, fees, fines, and restitution by the courts are able to retain their driver's licenses, while the poorest residents are further forced into a cycle of poverty.

162. The Class therefore seeks declaratory and injunctive relief to enjoin Defendants from enforcing the automatic suspensions and reinstatement fees. Because the putative Class challenges Defendants' scheme as unconstitutional through declaratory and injunctive relief that would apply the same relief to every Class Member, Rule 23(b)(2) certification is appropriate and necessary.

163. Injunctive relief compelling Defendants to comply with these constitutional rights will similarly protect each Class Member from being subjected to Defendants' unlawful policies and practices. A declaration and injunction stating that Defendants cannot suspend driver's licenses as a punishment for being poor would provide relief to every Class Member. Therefore, declaratory and injunctive relief with respect to the Class as a whole is appropriate.

Claims for Relief

Count One: Defendants' Suspension Scheme Violates Equal Protection and Due Process Because It Discriminates on the Basis of Wealth

164. Plaintiffs incorporate by reference each and all of the previous allegations in this Complaint.

165. The Fourteenth Amendment's Due Process Clause requires that Montana maintain a standard of fundamental fairness in its justice system.

Defendants' automatic suspensions for failure to pay court debts punishes people simply for being too poor to pay, which violates the principles of equal protection and due process because it discriminates on the basis of wealth.

Count Two: Defendants' Wealth-Based Suspension Scheme Violates Due Process Because It Infringes on Plaintiffs' Fundamental Right to Intrastate Travel

166. Plaintiffs incorporate by reference each and all of the previous allegations in this Complaint.

167. Plaintiffs and others similarly situated have a fundamental right to travel. Because they have no viable alternative to driving, Defendants' suspension of their licenses implicates their rights to interstate and intrastate travel, and this suspension is not narrowly tailored to meet the state objective of debt collection.

Count Three: Defendants' Wealth-Based Suspension Scheme Violates Equal Protection Because It Discriminates Against Poor People Without a Rational Connection to a Legitimate State Purpose

168. Plaintiffs incorporate by reference each and all of the previous allegations in this Complaint.

169. Defendants' counterproductive collection method of suspending people's licenses when they are unable to pay court debts is not rationally related to a legitimate state interest and is therefore unconstitutional.

Count Four: Defendants' Wealth-Based Suspension Scheme Violates Equal Protection Because It Constitutes Extraordinary Collection

170. Plaintiffs incorporate by reference each and all of the previous allegations in this Complaint.

171. Plaintiffs' equal protection rights are implicated when the State of Montana uses its unique position as a government to use debt collection methods that are not available to private creditors. By irrationally stripping Plaintiffs and others similarly situated of their driver's licenses as a means of collection, Defendants are violating their constitutional rights under equal protection.

Count Five: Defendants' Wealth-Based Suspension Scheme Violates Procedural Due Process Because It Does Not Guarantee an Ability-to-Pay Hearing

172. Plaintiffs incorporate by reference each and all of the previous allegations in this Complaint.

173. Plaintiffs and others similarly situated have protected property and liberty interests in their driver's licenses and their ability to drive legally. Defendants violate procedural due process rights under the United States Constitution and the Montana Constitution by suspending licenses without providing an opportunity to assert inability to pay and without providing adequate notice of such opportunity.

Requested Relief

WHEREFORE, Plaintiffs request that the Court issue the following relief:

- a. A declaratory judgment that Defendants' policies, practices, acts, and/or omissions as described herein are unlawful and violate

Plaintiffs' and Class Members' rights under the Constitution and laws of the United States;

- b. An order and judgment preliminarily and permanently enjoining Defendants, their subordinates, agents, employees, representatives, and all others acting or purporting to act in concert with them or on their behalf from issuing or processing orders of driver's license suspensions for unpaid court debt against Plaintiffs and Class Members until such time as the State of Montana implements a system that complies with the United States Constitution;
- c. An order and judgment preliminarily and permanently ordering Defendants to reinstate Plaintiffs' and Class Members' driver's licenses (insofar as they are suspended based on unpaid court debt and/or on driving on licenses suspended due to unpaid court debt) and enjoining Defendants from requiring Plaintiffs and Class Members to pay the reinstatement fees as a condition of such reinstatement;
- d. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and any other relief this Court deems proper.

Respectfully submitted,

/s/ Phil Telfeyan

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2018, 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