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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

CINDY MENDOZA; GLORIA BERMUDEZ; CEKAIS TONI GANUELAS; REBECCA HEATH; and KARL WADE ROBERTS, on behalf of themselves and all others similarly situated, Plaintiffs, v. MATTHEW GARRETT, in his official capacity as Director of the Oregon Department of Transportation; TAMMY BANEY, in her official capacity as Chair of the Oregon Transportation Commission; SEAN	Case No. 3:18-cv-01634 **PLAINTIFFS' MOTION FOR CERTIFICATION OF A CLASS (Pursuant to Fed. R. Civ. P. 23)** **REQUEST FOR ORAL ARGUMENT**

O'HOLLAREN, in his official capacity as Member of the Oregon Transportation Commission; BOB VAN BROCKLIN, in his official capacity as Member of the Oregon Transportation Commission; MARTIN CALLERY, in his official capacity as Member of the Oregon Transportation Commission; and TOM MCCLELLAN, in his official capacity as Administrator of Driver and Motor Vehicles Division, Oregon Department of Transportation,

Defendants.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

CONSTITUTIONAL PROVISIONS

LR 7-1 CERTIFICATION

The undersigned counsel certifies that Plaintiffs made a good faith effort through telephone conversation with opposing counsel on August 31, 2018 to resolve this motion and have been unable to do so.

MOTION

Pursuant to Fed. R. Civ. P. 23, plaintiffs move this Court for an order certifying a class, defined as follows: plaintiffs and all other similarly situated Oregonians, whose Oregon driver's

licenses are or will be suspended by the DMV for failure to pay court fines, costs, and fees arising from minor traffic violations ("traffic debt"), and who, at the time of suspension or subsequently, could not or cannot afford to pay their traffic debt or the fees required to reinstate their licenses.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs challenge the practice of the Oregon Department of Transportation, the Oregon Transportation Commission, and the Oregon Department of Motor Vehicles (collectively referred to as "DMV" hereafter) of suspending the driver's licenses of individuals who have not paid fines and fees for minor traffic violations ("traffic debt") without, at any time, inquiring into the debtors' ability to pay such traffic debt. As set forth more fully in plaintiffs' Motion for a Preliminary Injunction, ORS § 809.416, the statute governing the DMV's suspension of licenses for failure to pay traffic debt, is unconstitutional because it does not contain a provision for evaluating an individual's ability to pay her traffic debt or an exemption from suspension for individuals who cannot pay. The absence of an ability-to-pay determination wreaks havoc on the lives of low-income Oregonians like plaintiffs, who face an impossible choice between not driving, rendering them unable to meet the basic requirements of self-sufficiency, or driving with a suspended license, exposing themselves to further traffic citations and ever-increasing debt they cannot pay.

Cindy Mendoza, Gloria Bermudez, Cekais Toni Ganuelas, Rebecca Heath, and Karl Wade Roberts have sued the DMV to stop this practice. Plaintiffs seek to represent a class of

individuals whose Oregon driver's licenses have been or will be suspended by the DMV for failure to pay traffic debt, and who, at the time of suspension or subsequently, could not or cannot afford to pay their traffic debt. They seek only injunctive and declaratory relief.: an order requiring the DMV to lift all driver's license suspensions imposed for failure to pay traffic debt under ORS § 809.416, waive the reinstatement and issuance fees for those Oregonians whose driver's licenses were suspended for failure to pay traffic debt, and stop suspending driver's licenses for nonpayment of traffic debt unless and until the DMV provides a process for evaluating an individual's ability pay traffic debt, and a declaration that § 809.416 is unconstitutional because it lacks an indigency exemption.

The motion and the proposed class satisfy each of the requirements for class certification pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), in that:

1. The proposed class is numerous;
2. The members of the proposed class share the common question of whether the DMV's practice of suspending the driver's licenses of individuals who fail to pay traffic debt, without determining that they are able to pay, violates the United States Constitution;
3. The claims of the individual plaintiffs are typical of the claims of the members of the proposed class, each of whom suffers from the DMV's practice of suspending driver's licenses for failure to pay traffic debt without at any time considering an individual's ability to pay;
4. There are no conflicts of interest between the individual plaintiffs and the members of the proposed class; each of the individual plaintiffs intends to

litigate the case vigorously; and the plaintiffs have retained experienced and competent counsel to represent their interests and the interests of the class; and

5. The DMV's practice of suspending driver's licenses for failure to pay traffic debt is generally applicable to the individual plaintiffs and to all other members of the proposed class, such that the final injunctive and declaratory relief sought by the plaintiffs is appropriate for the class as a whole.

For those reasons, plaintiffs respectfully request that the Court certify the class described above and appoint their chosen attorneys as counsel.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. How Oregonians Incur Traffic Debt

In Oregon, the penalty for a minor traffic violation is a fine. ORS § 153.018(1). Fines are set according to the violation's statutory classification. *See id.* §§ 153.012, 153.018-153.021. A uniform schedule sets the presumptive, maximum, and minimum fine for each classification. *Id.* § 153.800(4); Oregon Judicial Department, 2018 "Schedule of Fines" on Violations (SOF-18), *available at* https://www.courts.oregon.gov/schedules/ScheduleOfFinesViolations18.pdf. When an individual is charged with a traffic violation, she is issued a citation with the presumptive fine. ORS § 153.019. (*See, e.g.*, Bermudez Decl., Ex. 1 (citation); Mendoza Decl., Ex. 3 (citation).) For example, driving 5 miles per hour over the posted speed limit is generally a Class D traffic violation, subject to a presumptive fine of $115. *See id.* §§ 811.109(1)(a), 153.019(1)(d). Unless the law or the court requires the defendant to appear, the defendant may

resolve the matter by paying the fine, either in person or by mail. *See id.* § 153.061. Alternatively, the defendant may opt to go to court, where the judge may "defer, waive, suspend or otherwise reduce the fine," but not below the statutory minimum.[1] *See id.* § 153.021(1). The minimum fine for a Class D traffic violation is $65. *Id.* § 153.021(d). People who can afford traffic violation fines can simply pay them, and the traffic violation is fully resolved. The whole process is, at worst, a minor inconvenience.

People who are too poor to pay the traffic violation fine cannot simply pay. Instead, they are forced onto a path that leads to license suspension and plunges them into a cycle of ever-deepening debt. If a person cited with a traffic violation does not pay the traffic violation fine in full before the date listed on her summons, the court enters a money judgment against her. Once the judgment is entered, the traffic debtor generally has 35 days to pay the fine or fee. In most cases, if payment is not made within 35 days, the clerk of court considers the account delinquent, and issues a "failure to comply" license sanction on the traffic debtor's account. *Id.* § 809.210; (S*ee also* Samuelson Decl. ¶ 6, Ex. 4 (OJD Financial Case Processing Manual) at 5.) Once a traffic debtor's account is delinquent, the court adds between $50 and $200 to the debt pursuant to ORS § 1.202(1) and Chief Justice Order No. 11-027 (June 30, 2011), to cover collection costs. Courts may add these additional fees without any obligation to consider the individual's ability to pay them.

Oregon's circuit courts are permitted, but not required, to offer payment plans for traffic debt. But those payment plans carry additional fees, and monthly minimum payment amounts

[1] This rule is subject to one exception, which permits the court to "conditionally suspend all or part" of a fine pertaining to a boating violation. ORS § 153.096.

are based on the amount of money owed, not the traffic debtor's financial circumstances. (Samuelson Decl., Ex. 3 (OJD Accounts Receivable Policy) at 10-11.) *See also* ORS § 1.202. Municipal courts may or may not offer payment plans. Municipal courts may, or may not, offer any payment plan at all. (Mendoza Decl. ¶ 9.) No Oregon statute or rule gives traffic debtors in any court a right to have their indigency taken into consideration in establishing a payment plan for traffic debt.

After the court designates a traffic debtor's account delinquent, the debt collection process begins. Some courts send the debt to private collections agencies, or to the Oregon Department of Revenue, resulting in even more costs and fees to the traffic debtor. ORS §§ 1.102(2), 293.231, 697.105.

Finally, when a traffic debtor "fails *or* refuses to pay" traffic debt, the court has two choices. *Id.* § 809.210 (1) (emphasis added). First, the court may order the debtor's driving privileges restricted. Alternatively, the court may refer the matter to the DMV by issuing "a notice of suspension to the Department of Transportation that directs the department to implement procedures under ORS § 809.416." *Id.* Delinquent payment plans usually result in this notice automatically being sent to the DMV (Samuelson Decl., Ex. 4 (OJD Financial Case Processing Manual) at 48), which triggers yet another fee. ORS § 809.267. A traffic debtor has no opportunity to avoid a notice of suspension by arguing that his failure to pay traffic debt is not willful, but rather a result of his poverty and consequential inability to pay.

B. The DMV's License Suspension Process

Pursuant to ORS § 809.416 (2)-(3), the DMV suspends a traffic debtor's driver's license upon receipt of a notice of suspension and issuance of a 60-day warning to the traffic debtor. To avoid or end the suspension, the traffic debtor must present the DMV with a notice of reinstatement issued by the court showing that she "(A) [i]s making payments, has paid the fine[,] or has obeyed the order of the court; or (B) [h]as enrolled in a preapprenticeship program . . . or is a registered apprentice." ORS § 809.416 (2)(a). Otherwise, "[t]he suspension shall continue until . . . 20 years from the date the traffic offense occurred." *Id.* § 809.415 (4)(a)(B). Indigency is not a ground for avoiding a license suspension under § 809.416.

A traffic debtor can request administrative review of her suspension. *Id.* § 809.415 (4)(b). However, once again, there is no evaluation of ability to pay. Administrative review is narrowly constrained to "prompt and careful review . . . of the documents upon which" the suspension is based to determine whether the suspension (1) was imposed for an offense not involving a motor vehicle; (2) rests on an out-of-state conviction "not comparable to an offense under Oregon law"; or (3) is based on documents that "identify the wrong person." *Id.* § 809.440(2)(b).

Suspension of a driver's license often leads to subsequent traffic violations and fees. Because most Oregonians lack access to a public transit system, they have no reasonable transportation alternative when they lose their license. In 32 of Oregon's 34 counties, at least 40% of residents do not live within a .25-mile radius of a stop operated by any transit agency.[2]

[2] *See* the Ford Family Foundation, *Oregon by the Numbers*, 2018 edition, at 130, *available at* http://www.tfff.org/sites/default/files/OregonByTheNumbers2018.pdf.

In 28 of Oregon's 34 counties, the percentage is more than 50%. Access is worst in rural areas. In Umatilla County, where Ms. Heath and Ms. Ganuelas live, more than 64% of residents lack access to public transit; in Baker County, where Mr. Roberts lives, the percentage is higher than 75%. (*Id.*)

Even in Portland, a strong majority of workers commute by car; in Ms. Heath's home town, Pendleton, approximately 90% of workers commute by car, truck, or van. (Samuelson Decl. ¶¶ 9-10, Exs. 7 & 8 (American Community Survey results)). The problem is particularly acute for indigent traffic debtors, who cannot pay for taxis, Uber, or Lyft, even in areas where those options are available. (Mendoza Decl. ¶ 20; Heath Decl. ¶ 10.). For most people in this state, driving is essential to basic activities of self-sufficiency such as getting and keeping a job, accessing healthcare, purchasing food, and transporting one's children. Indigent traffic debtors thus face an impossible choice: they can stop driving and lose the ability to provide what they and their family need to survive, or they can continue to drive and risk further traffic violations and debt. Most damaging, a traffic debtor whose license is suspended for failure to pay traffic debt may be cited for driving with a suspended driver's license. That is an additional, new traffic violation per ORS § 811.175, with a presumptive fine of $440 according to ORS § 153.019 (1)(a), subject to the same debt collection and license suspension procedures described above.

Indigent traffic debtors who manage to pay down their traffic debt within the 20-year suspension period face a final economic barrier. To reinstate one's driving privileges, the individual must pay a $75 reinstatement fee, and issuance fees between $26.50 and $68, depending on whether the debtor's license has expired with the passage of time. ORS § 807.370 (5), (25), (33). Fee waivers are available, but—once again—not on the basis of inability to pay.

See ORS § 809.380 (6)(a)-(L), (7)(a)-(b) (enumerating bases for waiver of the reinstatement fee). These reinstatement and issuance fees on their own can constitute an insurmountable barrier. (*See* Mendoza Decl. ¶15; Heath Decl. ¶14.). In 2017 alone, there were 2,433 Oregonians who did not pay reinstatement and issuances fees despite being eligible for license reinstatement after a traffic debt-related suspension. (Samuelson Decl. ¶ 3, Ex. 1 (DMV Charts) at 19.).

In sum**,** people with traffic violations who can afford to pay the associated fines may simply pay them upon receiving a citation, and the traffic violation is settled. But traffic debtors who are living in poverty and cannot afford to pay the initial fine lose their right to drive a car, and are swept into a downward spiral of debt that locks them into further poverty and puts regaining their driver's license increasingly out of reach.

C. Plaintiffs' Request for Class Relief

Plaintiffs bring this lawsuit to compel the DMV to stop suspending driver's licenses for failure to pay traffic debt unless and until the agency ensures there is a process for determining the traffic debtor's ability to pay and exempts from suspension those who cannot pay. They seek certification of a putative class of individuals whose driver's licenses were suspended for failure to pay traffic debt and who could not or cannot afford to pay that debt. As a result of the DMV's suspension of driver's licenses under ORS § 809.416, putative class members face tremendous barriers to getting and maintaining employment, accessing necessary medical care, transporting their children, and obtaining necessities like food. Plaintiffs face barriers in getting to far away food pantries to access food for their families (Mendoza Decl. ¶18), and to transporting enough groceries to feed a family of five. (Bermudez Decl. ¶ 22.) Plaintiffs in this case have been fired

from jobs because they don't have a valid driver's license, or are forced to pay for a costly taxi to show up for their low paying job. (Ganuelas Decl. ¶¶ 7, 10.) Plaintiffs in this case have missed important events in their families' lives, such as award ceremonies for children, visits to children out of state, and funerals, because their licenses are suspended. (Ganuelas Decl. ¶ 14; Roberts Decl. ¶ 14; Heath Decl. ¶ 11.) The only way plaintiffs and all class members can avoid these barriers or avoid missing critical opportunities is to drive with a suspended license, risking a citation that will extend the suspension and plunge them further into debt.

Plaintiffs do not seek relief from or re-adjudication of their traffic violation or a reduction in or waiver of the resultant traffic debt. The relief they seek is narrow: an injunction requiring the DMV to lift the suspensions on licenses for nonpayment of traffic debt; waive all reinstatement and reissuance fees connected to such suspensions; and to stop suspending licenses for nonpayment of traffic debt, unless and until the DMV ensures that traffic debtors have an opportunity to avoid such suspension by establishing their indigency. This relief is required because the DMV's current system of suspending licenses for traffic debt punishes people for being poor, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

Their complaint seeks declaratory and injunctive relief based on three claims:

1). That the DMV's actions violate the Fourteenth Amendment to the U.S. Constitution (Equal Protection and Due Process) and 42 U.S.C. § 1983 by depriving indigent traffic debtors of their Oregon driver's licenses after incurring traffic debt, while allowing non-indigent traffic debtors to continue to drive because they can pay their traffic debt;

2). That the DMV's actions violate the Fourteenth Amendment to the U.S. Constitution (Equal Protection) and 42 U.S.C. § 1983 by singling out indigent traffic debtors and subjecting them to significantly harsher collection and enforcement practices than are imposed upon other kinds of indigent debtors; and

3). That the DMV's actions violate the Fourteenth Amendment to the U.S. Constitution (Procedural Due Process) and 42 U.S.C. § 1983 by depriving traffic debtors of adequate notice and opportunity for a hearing on the issue of their ability to pay the traffic debt, and whether the consequence of suspending their driver's license is appropriate.

Plaintiffs seek a declaration that ORS § 809.416, and Defendants' acts and omissions under that and related statutes, violated and continue to violate the Fourteenth Amendment to the U.S. Constitution as to the class. They also seek an injunction requiring the DMV to: (a) lift all current suspensions of driver's licenses for nonpayment of traffic debt, and waive all reinstatement and issuance fees connected to those traffic debt license suspensions, and provide appropriate notice, and (b) cease engaging in further suspensions for nonpayment of traffic debt unless and until the driver has had an opportunity to demonstrate her inability to pay, entitling her to be exempted from suspension, through a procedure that comports with due process.

III. ARGUMENT

Plaintiffs seek certification of a class consisting of all indigent Oregonians who have had or will have their driver's licenses suspended for failure to pay traffic debt without any determination of their ability to pay that debt. In order for certification of this class to be appropriate, the action first must meet the four threshold requirements of Federal Rule of Civil

Procedure 23(a):

(1) the class is so numerous that joinder is impracticable (numerosity);

(2) there are questions of law or fact common to the class (commonality);

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and

(4) the representative parties will fairly and adequately protect the interests of the class (adequacy of representation).

In addition, a proposed class action must fall within one of the categories of Fed. R. Civ. P. 23 (b). *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1022 (9th Cir. 1998). Here, the individual plaintiffs seek certification pursuant to Fed. R. Civ. P. 23(b)(2), which requires that Defendants must have "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 . . . ."

The Court must determine whether to certify this case as a class action "[a]t an early practicable time . . . ." Fed. R. Civ. P. 23 (c)(1)(A). When considering a motion for class certification, the Court must perform "a rigorous analysis [to ensure] that the prerequisites of Rule 23 (a) have been satisfied[.]" *Lane v. Kitzhaber*, 283 F.R.D. 587, 589 (D. Or. 2012), *citing Ellis v. Costco Wholesale Corp*.,657 F.3d 970, 980 (9th Cir 2011), *quoting Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011). In recognition of plaintiffs' limited access to proof at early stages of a proceeding, however, the Ninth Circuit has cautioned that the "rigorous analysis" requirement does not mean that the court should conduct a "mini-trial", and that the proof

presented in support of class certification need not be admissible evidence. *See Sali v. Corona Reg'l Med. Ctr.*, 889 F.3d 623, 631 (9th Cir. 2018). In evaluating plaintiff's motion for class certification, this court need only consider the complaint and "material sufficient to form a reasonable judgment on each [Rule 23(a)] requirement . . . ." *Blackie v Barrack*, 524 F.2d 891, 901 (9th Cir 1975). Holding plaintiffs to the evidentiary standards that will apply at trial risks terminating important class actions before a putative class may gather crucial admissible evidence. *Sali*, 889 F.3d at 633.

As shown below, the proposed class here satisfies all of the requirements of both Federal R.Civ. P. 23 (a) and 23(b)(2) and the class certification motion should be granted.

A. Plaintiffs Meet the Standards for Numerosity, Certification Under Rule 23(a).

1. Numerosity

Federal Rule of Civil Procedure 23 (a)(1) requires a showing that the class is so numerous that joinder of all members is impracticable. The Supreme Court explained that the numerosity requirement does not require a specific number of class members. *See Gen. Tel. Co. v. EEOC*, 446 U.S. 318, 329 (1980) ("The numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations."). "Plaintiffs need not be able to identify all Class Members, so long as there are enough to make joinder impracticable." *Freedman v. Louisiana-Pacific Corp.*, 922 F. Supp. 377, 398 (D. Or. 1996). Most courts, including those in the Ninth Circuit, presume numerosity where the plaintiff class contains forty or more members. *See, e.g., In re Cooper Co. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009); *see also Jordan v. Cty. of Los Angeles*, 669 F.2d 1311, 1319-20 (9th Cir. 1982), *vacated*

on other grounds, 459 U.S. 810 (1982); *See* 1 *Newberg on Class Actions*, § 3:12 (5th ed. 2011) (As a general guideline a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone.); 5 James Wm. Moore et al., Moore's Federal Practice § 23.22[1][b] (3d ed. 2004). The District of Oregon has held that approximately forty members is generally regarded as making joinder impracticable. *See, e.g.*, *Oregon Laborers-Employers Health & Welfare Trust Fund v. Philip Morris, Inc.*, 188 F.R.D. 365, 372 (D. Or. 1998).

Plaintiffs here do not need to identify a precise number of class members in order to be granted class certification. "Where a plaintiff seeks 'only injunctive and declaratory relief, the numerosity requirement is relaxed and plaintiffs may rely on reasonable inferences arising from plaintiffs' other evidence that the number of unknown and future members is sufficient to make joinder impracticable.'" *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1203 (N.D. Cal. 2017), *quoting Civil Rights Educ. & Enf't Ctr. v. Hosp. Props. Tr.*, 317 F.R.D. 91, 100 (N.D. Cal. 2016), *aff'd*, 867 F.3d 1093 (9th Cir. 2017). Similarly, "a court may draw a reasonable inference of class size from the facts before it." *Lynch v. Rank*, 604 F. Supp. 30, 36 (N.D. Cal. 1984), *aff'd*, 747 F.2d 528 (9th Cir. 1984), *opinion amended on reh'g*, 763 F.2d 1098 (9th Cir. 1985).

In this case, the proposed class definition has two parts. In order to determine numerosity, it is necessary to ask (1) how many Oregonians have been subject to license suspension for failure to pay traffic debt and (2) how many of that group are unable to pay because of their indigency?

Defendants' own data demonstrates that since 2008, the DMV issued approximately 334,338 suspensions for nonpayment of traffic debt under ORS § 809.416. (Samuelson Decl. ¶

2, Ex. 1 (DMV Charts) at 7.) Between 2012 and 2017, the DMV issued an average of 33,482 suspensions each year because of failure to pay traffic debt. (*Id.*) Based on this data, it is reasonable to assume, at a minimum, that the § 809.416 suspension scheme affects thousands of Oregonians each year. The number of Oregonians eligible for license reinstatement after a traffic debt-related suspension further bolsters this assumption. In 2017 alone, there were 2,433 Oregonians in this category who did not pay the reinstatement and issuance fees that would have restored their licenses. (Samuelson Decl. ¶ 3, Ex. 1 (DMV Charts) at 19.)

The next question is how many of those thousands of Oregonians are too poor to pay their traffic debt. Approximately 536,146 Oregonians (or 13 percent of the state's total population) live below the federal poverty level.[3] The DMV reports that there are 3.1 million licensed drivers in Oregon.[4] A rough assumption that 13 percent of those 3.1 million licensed drivers live in poverty leads to the conclusion that there could be as many as 390,000 indigent licensed drivers in Oregon. Additionally, nearly 7 percent of Oregonians live on half the amount of the federal poverty level.[5] This would mean that there are approximately 37,000 Oregonian drivers who live in deep poverty, defined as earning less than 50% of the federal poverty level. Given the heavy penalty (suspension of a driver's license and subsequent inability to legally

[3] "Oregon 2017," Talk Poverty, *available at* https://talkpoverty.org/state-year-report/oregon-2017-report.

[4] Oregon DMV Facts & Statistics, *available at* https://www.oregon.gov/ODOT/DMV/Pages/News/factsstats.aspx

[5] U.S. Census Bureau, 2012-2016 American Community Survey 5-year Estimates, Oregon, *available at* https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_S1703&prodType=table

drive), it is reasonable to conclude that most, if not all, of the thousands of Oregonians whose licenses are suspended for failure to pay traffic debt would have paid that debt if they could. If even a small fraction of the thousands of Oregonians whose licenses were suspended, in 2017 alone, for failure to pay traffic debt failed to pay due to their indigence, the requirements for class numerosity would be met. Therefore, this court can make a common sense assumption that more than 40 of the thousands of Oregonians who have their licenses suspended for failure to pay traffic debt meet the proposed class definition, therefore satisfying numerosity. Likewise, this Court should make a common sense assumption that it would be impracticable to join every individual low income Oregonian traffic debtor with a suspended license to this case. *See Moeller v. Taco Bell Corp*., 220 F.R.D. 604, 608 (N.D. Cal. 2004) ("[T]he fact that a class is geographically dispersed, and that class members are difficult to identify, supports class certification.").

2. Commonality

Rule 23 (a)(2) of the Federal Rules of Civil Procedure requires that the proposed class have at least one common factual or legal issue, the resolution of which will affect all or a significant number of putative class members. The requirements of Rule 23(a)(2) have "been construed permissively," and all questions of fact and law need not be common to satisfy the rule." *Ellis v. Costco*, 657 F.3d 970, 980 (9th Circuit, 2011), quoting *Hanlon v. Chrysler*, 150 F.3d 1011, 1020 (9th Cir 1998). As long as there is a single common question, a proposed class can satisfy the commonality requirement in Rule 23(a)(2). *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014), citing *Wang v. Chinese Daily News*, 737 F.3d 538 (9th Cir. 2013), quoting *Wal-Mart*, 564 U.S. at 338; *see also Mazza v. Am. Honda Motor Co*., Inc., 666 F.3d 581, 589 (9th Cir.

2012) (noting that commonality only requires a single significant question of law or fact).

To satisfy the commonality requirement, a class plaintiff must demonstrate that class members suffered "the same injury" and that the plaintiffs' claims depend on a common contention "of such a nature that it is capable or classwide resolution – which means 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." *Wal-Mart*, 564 U.S. at 350 (certification depends on "the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation"). Only where there is not a single common question of fact or law should class certification be denied for lack of commonality. *Id* at 359.

The commonality requirement in 23(a)(2) has been is construed "permissively" by courts in the Ninth Circuit. *See Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) (citing *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1019 (9th Cir. 1998)). Although the facts and specific circumstances of plaintiffs may vary, if they share the basic legal issue or ultimate question of law, they share commonality as a class. "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon,* 150 F.3d at 1019. The requirement of commonality will be satisfied where "the lawsuit challenges a system-wide practice or policy that affects all of the putative members." *Dominguez v. Schwarzenegger*, 270 F.R.D. 477, 485 (N.D. Cal. 2010). For example, in a case of Oregonians with developmental disabilities who were not provided a full range of community based services, the Court nonetheless found a core of commonality, despite the fact that their disabilities and needs for community based services varied from person to person. *Staley v. Kitzhaber*, No. 3:00-cv-00078-ST, Doc. 31, Order of Oct. 30, 2000, at 5.

This is a case that perfectly fits the definition of commonality. Plaintiffs seek redress for a common injury facing every indigent Oregonian whose license has been suspended for failure to pay traffic debt – the DMV's suspension of driver's licenses without any consideration, at any time, of the individual's ability to pay their traffic debt, and without any process by which a person can challenge the license suspension based on their inability to pay. Variation in the ancillary details of the class members' cases is insufficient to defeat certification as long as "[i]t is unlikely that differences in the factual background of each claim will affect the outcome of the legal issue." *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979). That is precisely the case here.

The claims of all the plaintiffs in this case share at least two central questions: (1) whether Oregon can suspend a driver's license for failure to pay traffic debt without the opportunity to establish that the debtor is entitled to an exception based on his or her poverty; and (2) whether indigent Oregonians unable to pay traffic debt are due some minimum procedures before having their driver's license suspended. The variations in the circumstances of the underlying traffic debt and the personal financial situations of the plaintiffs are irrelevant to the constitutional rights that the plaintiffs assert in this case. Each plaintiff and putative class member is subjected to exactly the same procedural scheme and pattern of action by the state - license suspension without any determination of the traffic debtor's ability to pay the fines and therefore avoid license suspension. Indeed, the conduct challenged in this case is set by statute and DMV rules applicable in every jurisdiction in Oregon. Although the impact of a suspended driver's license varies depending on the plaintiff, the basic injury here – license suspension – is common throughout the proposed class, as are the questions of law and fact underlying that injury, the commonality requirement of Rule 23 (a) is met.

Critically, the answers to the common contentions in this case will resolve the entire case for all class members. Specifically, if the DMV's practice of suspending driver's licenses for failure to pay traffic debt without any consideration of the debtor's ability to pay, and without any process by which the debtor can request relief from license suspension due to indigency, is unconstitutional and illegal, all class members will be entitled to identical declaratory and injunctive relief. The common relief would be a declaration that Defendants' acts and omissions violated and continue to violate the Fourteenth Amendment to the U. S. Constitution, and an injunction requiring the DMV (a) to lift the suspension on the driver's licenses of all persons currently suspended for nonpayment of traffic debt, waive all reinstatement and issuance fees connected to those suspensions, and provide appropriate notice, and (b) to enjoin defendants from engaging in further suspensions for nonpayment of traffic debt unless and until the driver has had an opportunity to demonstrate her inability to pay, entitling her to be exempted from suspension, through a procedure that comports with due process.

3. Typicality

The claims of the plaintiffs who represent the class must be typical of the class claims. Fed. R. Civ. P. 23(a)(3). The typicality standard is also "permissive" in that the claims of the individual plaintiffs are "typical" if "they are reasonably co-extensive with those of absent class members; [the claims] need not be substantially identical." *Hanlon*, 150 F.3d at 1020. "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the individual plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation marks omitted); *see also Rodriguez*, 591 F.3d at

1124 (9th Cir. 2010) (typicality satisfied because, "though Petitioner and some of the other members of the proposed class are detained under different statutes and are at different points in the remand process . . . they . . . raise similar constitutionally-based arguments and are alleged victims of the same practice of prolonged detention while in immigration proceedings"); *Staley*, No. 3:00-cv-00078-ST, Doc. 31, at 7 (plaintiffs alleging systemic violations of the Social Security Act, ADA, Rehabilitation Act, and Due Process Clause of the United State Constitution "easily" met the typicality requirement by showing that they had all been denied needed Medicaid services).

The typicality requirement ensures that the interests of the class representatives are so aligned with the interests of the class members that the class representative advocates for the interests of the class members by pursuing her own interests. In this case, plaintiffs are indigent Oregonians who incurred fines from minor traffic violations, were unable to pay those fines, (either at the time of the citation or at some later time before the debt was fully repaid), and had their driver's licenses suspended for their failure to pay their traffic debt. Plaintiffs' claims arise from the DMV's statutorily prescribed practice of suspending driver's licenses when a person fails to pay traffic debt, without consideration of the person's ability to pay. The course of conduct that gives rise to plaintiffs' claims is the exact same course of conduct applied by the DMV to every class member. Therefore, the claims of the individual plaintiffs in this case are substantially identical to those of the proposed class members. Although plaintiffs' underlying economic situations and the details of their original traffic debt are unique, they nevertheless are typical as class members because they have faced and received suspensions for nonpayment of traffic debt that they are unable to pay. The named plaintiffs in this case have been subject to the

exact same process for driver's license suspension as all other low income Oregonians who were unable to pay traffic debt

Some variation in the specific circumstances leading to their driver's license suspension exist between plaintiffs. For example, one plaintiff originally committed a traffic violation of speeding 5 miles above the speed limit, while another was cited for having a tail light out on her car. However, plaintiffs' are typical because of what happened after they were unable to pay the fine for their traffic violation—the DMV suspended their driver's license without any assessment of their ability to pay the traffic debt. Additionally, some plaintiffs (and likely some putative class members) were on a payment plan and made various amounts of payment to address their traffic debt. This variation does not threaten typicality because all class members, regardless of whether they at one point participated in a payment plan, failed to pay their traffic debt and had their driver's licenses suspended without regard to the reason they did not pay. The consistency of the claims and injury of all plaintiffs and class members in this case satisfies the requirements of Rule 23(a)(3) for typicality.

4. Adequacy of Representation

Rule 23(a)(4) requires a determination that the proposed class representatives will adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). Rule 23(a)(4) is met if: (1) the named representatives appear able to prosecute the action vigorously through qualified counsel; and (2) the representatives do not have antagonistic or conflicting interests with the unnamed members of the class. *See Lerwill v Inflight Motion Pictures, Inc*., 582 F.2d 507, 512 (9th Cir. 1978). The burden is on the defendant to demonstrate that the representation will be inadequate. *See Smallwood v. Peral Brewing Co*., 489 F.2d 579, 592 n.15 (5th Cir. 1974)

(analyzing adequacy of representation in the context of derivative actions under Fed. R. Civ. P. 23.1); *G.A. Enterprises, Inc. v. Leisure Living Communities, Inc*., 517 F.2d 24, 26 n.3 (1st Cir. 1975) (standards for assessing adequacy of representation under Rule 23(a)(4) and Rule 23.1 are "essentially the same").

Here, each individual plaintiff has stated under oath that she or he will vigorously prosecute this action for the benefit of themselves, and the class as a whole. (Mendoza Decl.¶ 24; Bermudez Decl. ¶ 26; Ganuelas Decl. ¶ 31; Heath Decl. ¶ 18; Roberts Decl. ¶ 22.) Counsel are adequate if they are "qualified, experienced, and generally able to conduct the litigation[.]" *Freedman v. Louisiana-Pacific Corp*., 922 F. Supp 377, 399 (D. Or. 1996); 1 *Newberg on Class Actions* § 3:72 at 394-95 (5th ed. 2011). The individual plaintiffs have retained counsel competent in complex class action and civil rights litigation, especially that pertaining to the rights of indigent Oregonians. (See Englander Decl. ¶¶ 1-15.)

There are no conflicts between named plaintiffs and other class members in this case. All indigent Oregon traffic debtors, like the individual plaintiffs, experience the exact same harsh consequence (a driver's license suspension) for the exact same reason (inability to pay traffic violation debts) due to the exact same absence of an exemption for indigency or any process by which their ability to pay traffic debt is determined. The relief sought by the individual plaintiffs is generally applicable to the class as a whole.

Plaintiffs' counsel will pursue this action vigorously on behalf of the class, and therefore the individual plaintiffs and their Counsel satisfy the requirements of Fed. R. Civ. P. 23(a)(4).

B. Plaintiffs Meet the Standard for Certification Under Rule 23 (b)(2).

In addition to the prerequisites of Rule 23(a), plaintiffs must also satisfy one section of Rule 23(b) to obtain class certification. Plaintiffs assert that they meet the requirements in Rule 23(b)(2), because the declaratory and injunctive relief they seek would provide final relief to each member of the class. The Supreme Court describes the requirements of 23(b)(2) as:

> 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. In other words, Rule 23(b)(2) applies only when a single injunction or declaratory judgement would provide relief to each member of the class.

Wal-Mart, 564 U.S. at 360 (internal quotation marks omitted); *accord Parsons v. Ryan*, 754 F.3d 657, 687-88 (9th Cir. 2014). Rule 23(b)(2) class actions "involve classes which are difficult to enumerate but which involve allegations that a defendant's conduct affected all class members in the same way." *See* 2 *Newberg on Class Actions,* §4:40 at 168-69 (5th ed. 2011). For this reason, Rule 23(b)(2) certification is a critical route to certification classes in civil rights actions like this one. *See Parsons*, 754 F.3d at 686 (9th Cir. 2014) ("Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples [of Rule 23(b)(2) class actions].") (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614 (1997)); *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998) ("[Rule] 23(b)(2) was adopted in order to permit the prosecution of civil rights actions."); *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 63 (3d Cir. 1994) ("The writers of Rule 23 intended that subsection (b)(2) foster institutional reform by facilitating suits that challenge widespread rights violations of people who are individually unable to vindicate their own rights.").

This Court has recognized that Rule 23(b)(2) is the correct vehicle for classes such as this, where defendants are alleged to have acted on grounds applicable to all class members. *See, e.g.*, *Lane*, 283 F.R.D. at 600-02 (Rule 23(b)(2) certification appropriate because class claims could be "resolved in one stroke" through injunction requiring the state to provide supported employment services to intellectual and developmental disabilities); *Sorenson v. Concannon,* 893 F. Supp 1469, 1479 (D. Or. 1994) (plaintiffs satisfied 23(b)(2) because they alleged "the use of statewide . . . disability determination procedures which violate" federal law); *Staley*, No. 3:00-cv-00078-ST, Doc. 31 at 9 (certifying a class under 23(b)(3) in a class involving alleged "failure to provide needed Medicaid services" because "[t]he systemic nature of the defendants' inactions is readily evident, even though not every class member has yet sought Medicaid benefits, or experienced the same degree of harm").

Here, plaintiffs seek declaratory and injunctive remedies that would provide uniform relief to each member of the class. Each plaintiff and each member of the proposed class seeks declaratory and injunctive relief putting an end to the Defendants' practice of punishing indigent traffic debtors unable to pay their debt with suspension of their driver's license, without consideration of whether or not the debtor has the ability to pay. Defendant's violations have equal and general application to all class members, as all class members have had their driver's licenses suspended due to their inability to pay traffic violation fines. This case therefore satisfies the requirements of Rule 23(b)(2).

IV. CONCLUSION

For the reasons set forth above, plaintiffs respectfully request that the Court certify this case as a class action, that their attorneys be designated class counsel, and that the individual plaintiffs be designated representatives of the following class: All individuals whose Oregon driver's licenses are or will be suspended by the DMV for failure to pay traffic debt, and who, at the time of suspension or subsequently, could not or cannot afford to pay their traffic debt.

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