

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SETI JOHNSON and MARIE  
BONHOMME-DICKS, on behalf of  
themselves and those similarly situated,  
and SHAREE SMOOT and NICHELLE  
YARBOROUGH, on behalf of themselves  
and those similarly situated,

Plaintiffs,

No. 1:18-cv-467

v.

TORRE JESSUP, in his official capacity  
as Commissioner of the North Carolina  
Division of Motor Vehicles,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR  
PRELIMINARY APPROVAL OF PROPOSED CLASS SETTLEMENT**

Pursuant to Fed. R. Civ. P. 23(e), Defendant Torre Jessup, Commissioner of the North Carolina Division of Motor Vehicles (“DMV”), and Plaintiff Class Representatives Seti Johnson, Marie Bonhomme-Dicks, and Nichelle Yarborough<sup>1</sup> (“Class Representatives”) respectfully submit this memorandum of law in support of their Joint Motion to approve their proposed class settlement agreement (Exhibit A) to resolve all remaining claims in this action.

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<sup>1</sup> With the Court’s approval, Plaintiffs’ counsel have withdrawn from representation of Plaintiff Sharee Smoot, who now proceeds *pro se* in this suit, *see* Doc. 83, and therefore seek preliminary approval of this settlement on behalf of Plaintiffs Johnson, Bonhomme-Dicks, and Yarborough only.

## BACKGROUND

On May 30, 2018, Named Plaintiffs and Class Representatives Johnson and Sharee Smoot filed this action against Defendant challenging the constitutionality of N.C.G.S. § 20-24.1 and the DMV's revocation of drivers' licenses under that statute based on drivers' nonpayment of fines, penalties, and costs associated with traffic violations. The Complaint alleged that the statute and revocations violated the Fourteenth Amendment to the U.S. Constitution by mandating revocation of driver's licenses without first determining willful failure to pay, in contravention of *Bearden v. Georgia*, 461 U.S. 660 (1983) (Count I); by failing to provide a pre-deprivation hearing before revoking a license for non-payment (Count II); and by failing to provide adequate notice of all options under Section 20-24.1(b) to prevent or lift a revocation (Count III). Doc. 1.

In addition to declaratory relief, the Complaint requested that the Court preliminarily and permanently:

1. enjoin N.C.G.S. §§ 20-24.1(a)(2) and (b)(3)-(4);
2. prohibit the DMV from revoking drivers' licenses for non-payment under N.C.G.S. § 20-24.1(a)(2); and
3. mandate that the DMV lift current license revocations entered pursuant to N.C.G.S. § 20-24.1(a)(2), reinstate licenses without charging a reinstatement fee if there is no other reason to continue the revocation, and provide notice to the license-holders of this change.

Doc. 1 at 34.

On August 7, 2018, Plaintiffs amended their complaint to add Named Plaintiffs and Class Representatives Yarborough and Bonhomme-Dicks, Doc. and filed second motions for class certification and a preliminary injunction on all claims, Docs. 36, 38. On August 28, 2018, Defendant moved for judgment on the pleadings on all claims. Doc. 46.

On March 31, 2019, following a hearing, the Court granted in part Defendant's motion for judgment on the pleadings as to Count I only, and denied Plaintiffs' motion for preliminary injunction as to Counts II and III. Doc. 65 at 53. In that same Order, the Court granted Plaintiffs' motion for class certification, certifying two classes:

All individuals whose driver's licenses were revoked by the DMV on or after May 30, 2015, due to their failure to pay fines, penalties, or court costs assessed by a court for a traffic offense, and whose driver's licenses remain so revoked ("Revoked Class"); and

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

*Id.* at 54.

Plaintiffs have appealed the ruling partially granting Defendant's motion for judgment on the pleadings and denying their motion for preliminary injunction. Doc. 69. The appeal was originally scheduled for oral argument on March 17, 2020, but that date was continued several times because of the ongoing COVID-19 pandemic.

In the meantime, the parties engaged in fruitful settlement negotiations. In light of these settlement negotiations, the U.S. Court of Appeals for the Fourth Circuit granted several joint requests by the parties to postpone oral argument to allow the parties time to

come to agreement and referred the case to the Circuit's mediator. The Parties' final agreement on all terms mooted the need for mediation, and mediation is now canceled.

The attached proposed settlement agreement (Exhibit A) is the product of the parties' extensive arms' length negotiations and would resolve all remaining claims in this action. Under the proposed settlement, Defendant agrees to:

- Provide funds in the amount of \$30,000 to a third-party North Carolina legal advocacy organization that is experienced in driver's license restoration advocacy in North Carolina for the purpose of creating, monitoring, and administering a help and resources website (the "Website") where the Future Revocation and Revoked Classes can access informational videos, written explanatories and forms, and other best practices materials on how to prevent or remove a license suspension for non-payment from their record, as well as pro bono resources that may be able to provide representation to the public to help prevent or remove suspensions for non-payment from their record. The funds will be remitted to one of the Class Counsel attorney organizations, which will promptly disburse the funds to the third-party organization. The third-party organization's staff will administer, manage, and staff the Website.
- Cease using the current version of the DMV's official driver's license revocation notice, and revise that notice to create and issue to the Future Revocation Class a new official notice, referred to in the settlement and in this Brief as the "Revised Notice." The form and contents of the Revised

Notice (Attachment A) will provide members of the Future Revocation Class with complete information about their rights and the procedures to seek a hearing to demonstrate their inability to pay fines and costs to prevent the revocation of their license or to restore their license under N.C.G.S. § 20-24. The Revised Notice will also reference, and include a link to, the Website for an 18-month period. Defendant will mail the Revised Notice via U.S. Mail and also email a general version of the Revised Notice (Attachment A-1) to the Future Revocation Class Members whose email addresses Defendant has in its record keeping system or that is provided to the DMV by Class Members or their counsel through date of the execution of the Settlement Agreement. The emailed version of the Revised Notice will attach the Motion for Relief from Fines, Fees and Other Monetary Obligations, AOC-CR-415 (the “Motion for Relief”) issued by the North Carolina Administrative Office of the Courts, to assist drivers seeking waiver or modification of their fines, penalties, and costs.

- Provide a notice, referred to as a “Special Notice” in the settlement agreement and this brief, to all members of the Revoked Class (Attachment B), including those drivers whose licenses were revoked for other reasons in addition to failure to pay, informing them of their rights and the procedures to seek a hearing to demonstrate their inability to pay fines and costs to prevent the revocation of their license or to restore their license under N.C.G.S. § 20-24. The Revised Notice will also reference, and include a link

to, the Website for an 18-month period. Defendant will mail the Special Notice via U.S. Mail and also email a general version of the Special Notice (Attachment B-1) to the Revoked Class Members whose email addresses Defendant has in its record keeping system or that is provided to the DMV by Class Members or their counsel through date of the execution of the Settlement Agreement. The emailed version of the Special Notice will attach the Motion for Relief to assist drivers seeking waiver or modification of their fines, penalties, and costs.

- Publicize the final settlement agreement and the contents of the Revised and Special notices via a joint press release, the DMV website and driver's license offices throughout the state. Defendant further agrees to add information about inability to pay to the North Carolina driver handbook, distribute such information throughout other DMV fora, and issue a letter to the North Carolina Administrative Office of the Courts and the North Carolina Judicial System, to ensure that DMV, judicial and court, and other officials throughout the DMV and the North Carolina court system are made aware of the terms of this settlement and the potential for an increase in the number of drivers seeking ability-to-pay hearings and to prevent or lift the indefinite revocations of their licenses.
- Train DMV staff on the implementation and enforcement of the settlement.

- On a quarterly basis, provide data on implementation of the settlement to permit monitoring by class counsel. This data will include the number of indefinite revocations the DMV has lifted or prevented.
- Defendant agrees to stay the indefinite revocation of Named Plaintiff and Future Revocation Class Representative Seti Johnson's driver's license for non-payment under Section 20-24.1 until the Parties' execution of the Settlement Agreement.

The proposed term of the settlement agreement is five years following final approval by the Court. In consideration for Defendant's agreement to these terms, Named Plaintiffs will dismiss their lawsuit and the pending appeal. The dismissal would be contingent on this Court's grant of the parties' request that it retain jurisdiction during the five-year term to enforce the settlement.

### **ARGUMENT**

The claims of a certified class can be settled only with the Court's approval. Fed. R. Civ. P. 23(e). To merit court approval, a class settlement must be "fair, adequate, and reasonable" given the relative strength of the parties' claims and the projected length and expense of continued litigation. *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999) (citation and quotation marks omitted); *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975), *cert. denied*, 424 U.S. 967 (1976). The Court should "be guided by the general principle that settlements are encouraged." *North Carolina*, 180 F.3d at 581 (internal citation omitted).

The proposed settlement satisfies this standard, and the Court should grant preliminary approval.

**I. The Proposed Settlement Is Fair.**

To determine whether a settlement agreement is fair, courts consider (1) the posture of the action at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the relevant experience of counsel. *See Berry v. Schulman*, 807 F.3d 600, 614 (4th Cir. 2015) (citation omitted). As part of the fairness analysis, courts also evaluate whether the settlement treats class members equitably relative to one another. *See Reynolds v. Fidelity Invs. Inst. Ops. Co.*, No. 18-cv-423, 2020 WL 91874, at \*4 (M.D.N.C. Jan. 8, 2020) (citation omitted). The fairness analysis is “intended primarily to ensure that a settlement [is] reached as a result of good-faith bargaining at arm’s length, without collusion.” *Berry*, 807 F.3d at 614 (quotation omitted). Nonetheless, there is a “strong presumption in favor of finding a settlement fair that must be kept in mind in considering the various factors.” *U.S. Airline Pilots Ass’n v. Velez*, No. 3:14-cv-577, 2016 WL 4698540, at \*3 (W.D.N.C. Sep. 7, 2016) (citation omitted).

**A. *The posture of this action supports a finding of fairness.***

A settlement is fair in light of a case’s posture where “Plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation.” *Reynolds*, 2020 WL 91874, at \*4 (citation and quotations omitted) (finding fairness factor met where the parties had fully briefed class certification and other motions). Here, Named Plaintiffs engaged in pre-litigation



investigation, and both parties briefed and argued motions for class certification, preliminary injunction, and judgment on the pleadings that were supported by documentary evidence; stipulated to a joint statement of material facts; and briefed the appeal of the Court's denial of preliminary injunction and partial grant of judgment on the pleadings. *See* Doc. 1, Docs. 4-6, Doc. 35-41, Docs. 45-51, Doc. 55; *see also* Docket, *Johnson v. Jessup*, Appeal No. 19-1421, Doc. 25, Doc. 48, Doc. 50, Doc. 60. The parties engaged in several rounds of settlement negotiations in late 2018; resumed settlement discussions in September 2020; ultimately reached an agreement in principle on most terms in late October 2020; and after further negotiation in the intervening months, reached full agreement on all settlement terms in early May 2021. Although discovery has not begun because of the pending appeal, Doc. 72 ¶¶ 6-7, 9; Doc. 73, the record developed through Plaintiffs' fact investigation prior to the preliminary injunction hearing, as well as updated information discussed between the parties during settlement negotiations, adequately equips Plaintiffs with the information they need to determine that the benefits of the proposed settlement agreement outweigh the potential benefits of continued litigation.

**B. *The parties' familiarity with the key facts of this case supports a finding of fairness.***

Discovery conducted weighs in favor of fairness where, even if discovery is incomplete, the parties are "are well aware of the important facts and strength of their cases." *Velez*, 2016 WL 4698540, at \*3. Here, although discovery has not yet begun, the parties are well-informed of the important facts in this action. Before the preliminary injunction hearing, the parties prepared and submitted a stipulated joint statement of

material facts in the case, Doc. 55, which significantly narrowed the issues on which any discovery might be required. Most of the key facts are undisputed and have formed the basis of the parties' productive settlement negotiations. The parties have also extensively briefed several substantive motions and an appeal in this case, giving them an opportunity to examine and assess the strengths and weaknesses of their positions and legal theories on a continuing basis.

**C. *The circumstances surrounding negotiations support a finding of fairness.***

The circumstances surrounding negotiation support a finding of fairness where “there is no evidence of coercion or collusion” in those negotiations. *Reynolds*, 2020 WL 91874, at \*5. Where negotiations were adversarial and at arm’s length, those circumstances weigh in favor of fairness. *See* Fed. R. Civ. P. 23(e)(2)(B); *see also, e.g., Sims v. BB&T Corp.*, 15-CV-732, 2019 WL 1995314, at \*4 (M.D.N.C. May 6, 2019) (finding fairness partly because “[t]here is no evidence or indication that [the parties’] negotiations were anything but adversarial and arm’s length”). “Absent evidence to the contrary, the court may presume that settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion.” *League of Women Voters of Va. v. Va. State Bd. of Elecs.*, 458 F. Supp. 3d 442, 456 (W.D. Va. 2020) (citations omitted).

Here, the proposed settlement agreement is the product of several rounds of “good-faith bargaining at arm’s length, without collusion.” *Berry*, 807 F.3d at 614 (citation omitted). The parties first broached the subject of settlement in 2018, months before the preliminary injunction hearing, and then again during the pendency of the appeal in

September 2020, and ultimately reached an agreement in principle on most terms in late October 2020 and after further negotiations, full agreement in 0. At each step, when an acceptable agreement could not be reached, the parties continued to pursue their claim and defenses in active and contested litigation.

The proposed settlement agreement is the product of several videoconferences between opposing counsel and multiple rounds of iterative drafting, editing, and compromise. During this period of negotiations, the Class Representatives adequately represented the class by holding the class members' interests apart from and equal to their own in negotiating class relief, which this Court found them capable of doing when it appointed them to represent the classes. Doc 65 at 21-22 (citing Docs. 4, 5, 40, 41); *see also* Fed. R. Civ. P. 23(e)(2)(A). The relief proposed in the settlement is also equitable and broad, providing beneficial notice to both certified classes, as well as the creation of an online help and resources Website (the "Website") that will aid the classes in seeking relief from driver's license suspensions. *See* Fed. R. Civ. P. 23(e)(2)(D). The parties' negotiations were therefore adversarial and held at arm's length, with no evidence of coercion or collusion, supporting a finding of fairness.

**D. *Counsel's experience supports a finding of fairness.***

Counsel for all parties each have several years to more than a decade of experience practicing complex civil rights litigation in federal court, including trial and settlements in class action litigation. *See West v. Continental Auto., Inc.*, No. 3:16-cv-00502-FDW-DSC, 2018 WL 1146642, at \*5 (W.D.N.C. Feb. 5, 2018) (finding settlement fair where counsel had between approximately two and twenty-five years of relevant practice experience).

Early in this litigation, the Court weighed documentary evidence on the experience of the proposed class counsel and found them adequate to represent the class under Rule 23(g), taking into account such factors as their experience litigating multi-plaintiff civil rights cases and their specialized expertise in rapidly evolving constitutional issues. Doc. 65 at 21-22; *see also* Doc. 6 ¶¶ 3–23. Similarly, counsel for Defendant are attorneys in the North Carolina Attorney General’s Office and frequently litigate and settle actions of this nature on behalf of government agencies. Counsel for both sides thus have appropriate experience to evaluate the proposed settlement agreement against further litigation and decide which course is in the best interest of their clients. *See Seaman v. Duke Univ.*, No. 1:15-cv-462, 2018 WL 718961, \*2 (M.D.N.C. Jan. 4, 2018) (unpublished) (approving settlement where experienced counsel “concluded that the Settlement is in the best interests of the Settlement Class, an opinion based upon counsel’s analysis of the evidence, case law, and risks and benefits of trial”).

**E. *Equity among class members supports a finding of fairness.***

Courts scrutinize the fairness of settlements that lead to disparate treatment of class members, but where “different claims or greater damages may justify disparate treatment of some class members,” a settlement can treat class members differently and remain fair. *Reynolds*, 2020 WL 91874, at \*6 (citation omitted).

The proposed settlement agreement treats members of each class equitably to each other, and the two classes equitably relative to their situations. *See* Fed. R. Civ. P. 23(e)(2)(D). Members of the Future Revocation Class will receive improved notice regarding a pending indefinite license revocation before it occurs, which will include notice

of the option to seek a waiver or reduction of the amount owed due to inability to pay. Members of the Revoked Class will receive a Special Notice detailing how they may lift the indefinite revocation of their drivers' licenses for non-payment. Both notices will reference and refer to the help and resources Website, funded by the DMV's provision of funds as part of this settlement, that will provide information, best practices, trainings, and other resource materials focused on increasing class members' ability to: complete, submit, and obtain waiver/remittance relief using the Motion for Relief, and thereafter resolve "failure to pay" suspensions and reinstate their driving privileges with the DMV. Expanded awareness among the DMV's and court staff throughout the State and the broader public of the proper role of ability-to-pay considerations in license revocations will benefit members of both classes and the larger public interest.

The parties acknowledge the relief that members of both classes would receive under the proposed settlement agreement is comparatively less than the relief they would receive if their claims were ultimately successful. Specifically, Plaintiffs sought reinstatement of driver's licenses for all members of the Revoked Class without a reinstatement fee and an order prohibiting Defendant from revoking any Future Revocation Class member's license for nonpayment under § 20-24.1(a)(2), as well as a declaration that § 20-24.1 is unconstitutional under the Fourteenth Amendment of the U.S. Constitution. However, the parties have weighed the posture of the case, the strength of their opposing claims, the forward-looking nature of the Future Revocation Class claim, the restitutive nature of the Revoked Class claim, and the extent of relief contemplated by this proposed settlement agreement. With that balance of equities in mind, the parties agree that the

expanded notice provided for both classes in the proposed settlement agreement is fair on the whole and represents a substantial improvement in the process afforded to class members. *See Sims*, 2019 WL 1995314, at \*4-5 (approving a settlement where it “takes into account the strengths and weaknesses of plaintiffs’ case,” “includes non-monetary terms beneficial to the class that might not be included in any recovery at trial,” and, on balance, “treats class members equitably relative to each other”).

## **II. The Proposed Settlement Is Adequate and Reasonable.**

To determine whether a settlement agreement is adequate and reasonable, courts consider five factors:

(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.

*Sharp Farms v. Speaks*, 917 F.3d 276, 299 (4th Cir. 2019) (quoting *In re Jiffy Lube*, 927 F.2d at 159). In this case, Plaintiffs sought injunctive and declaratory relief (and not damages) against a state agency defendant; thus, the fourth factor—likelihood of recovery on the litigated judgment— is inapplicable.

Courts consider the fifth factor—class member objections to settlement—only after any objections are received by counsel or the Court. *See Fed. R. Civ. P. 23(e)(5)*. Thus, the Court need not consider it as part of its preliminary approval analysis.

The first two factors in this analysis, often considered together, are the most important. *See Reynolds*, 2020 WL 91874, at \*5 (citation omitted).

**A. *The relative uncertainty of further litigation supports a finding of adequacy.***

Where plaintiffs' likelihood of success at trial is uncertain, courts weigh this first factor as supportive of finding the settlement agreement adequate. *See Berry*, 807 F.3d at 615 (finding adequacy in part due to the uncertain nature of Plaintiffs' chances of success). Similarly, courts find that the existence of difficulties of proof or strong defenses weighs in favor of adequacy where the plaintiffs would face evidentiary issues or colorable counterarguments by the defendants if the case proceeded to trial. *See, e.g., Sims*, 2019 WL 1995314, at \*5 (finding adequacy where, despite that several of plaintiffs' claims survived summary judgment and "there was substantial evidence to support the plaintiffs' claims . . . [,] there were several obstacles, both legal and factual, to ultimate recovery").

Both of these factors support finding the proposed settlement agreement adequate. While Plaintiffs believe the merits of their claims remain strong, they acknowledge that this Court granted Defendants' motion for judgment on the pleadings as to Claim I, and denied Plaintiffs' motion for preliminary injunction as to Claims II and III, finding they had not shown likelihood of success on the merits at that stage of the litigation. Despite their belief in the strength of their claims, Plaintiffs also acknowledge uncertainty that they will prevail in their pending appeal and at trial, including overcoming a deferential appellate standard of review. *See U.S. Airline Pilots Assoc. v. Velez*, No. 14-cv-577, 2016 WL 1615408, at \*4 (W.D.N.C. Apr. 22, 2016) (finding these two factors to support adequacy because "[r]egardless of the strength of a claim on the merits, one can never

ensure a finding of liability in complex litigation,” and “all parties to this litigation face significant difficulties and risks in establishing liability and defending against the claims”).

The proposed settlement agreement reasonably takes these considerations into account and is fair to both parties against the context of the uncertainties of litigation.

**B. *The cost and time required for discovery, motion practice, trial, and possible appeal support a finding of adequacy.***

The duration and expense of additional litigation also weigh in favor of finding the proposed settlement agreement adequate. This factor supports finding a settlement agreement adequate where a settlement would obviate the need to pursue trial and possible appeal. *See id.* at \*5 (concluding that a settlement was adequate partly because it would enable the parties to avoid a costly, two-week-long trial); *Phillips v. Triad Guaranty Inc.*, No. 1:09-cv-71, 2016 WL 1175152, at \*4 (M.D.N.C. Mar. 23, 2016) (citation omitted) (finding adequacy where, by settling, the parties would avoid spending “[s]ubstantial resources” on continued litigation).

Further, with an ongoing COVID-19 pandemic that has already complicated the timeline of this litigation, Plaintiffs are aware that continuing to litigate will mean the Classes they represent will have to continue to wait for relief. The consequences of waiting will be felt more acutely by many plaintiff class members, as they are overwhelmingly low-wage workers who are likely to have been adversely affected by the pandemic and whose employment prospects are most threatened by ongoing lack of access to drivers’ licenses due to inability to pay.



Here, the proposed settlement agreement would resolve all remaining claims in this litigation. If it were approved, there would be no need for the parties to expend substantial resources and months, if not years, on discovery, further motion practice, trial, and possible appeal.

**C. *The proposed settlement agreement is reasonable.***

In view of the foregoing, the proposed settlement agreement is reasonable because it will provide all members of both classes with meaningfully improved notices informing them of their right to be heard before they are deprived of their driver's licenses. This will allow many to keep their licenses if they are unable to pay court debt.

Defendant has agreed to: (1) (a) revise the DMV revocation notice sent to anyone facing an indefinite revocation of their driver's license in the future and (b) issue that Revised DMV Notice to those individuals via mail and email, as well as: (2) issue a Special Notice via mail and email to all people whose driver's licenses were revoked for non-payment up to three years before the filing of this suit until the date the DMV begins to use and issue the Revised Notices. Both the Revised and Special notices have been developed through extensive discussions between the parties, as well as through review and consultation by Ideas42, a non-profit design and consulting firm that uses behavioral science insights to provide effective messaging for the public about important and often complicated concepts in the criminal legal system.<sup>2</sup>

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<sup>2</sup> See ideas42, <https://www.ideas42.org/services/> (last accessed February 11,2021).

The notices will clearly inform members of both the Revoked Class and the Future Revocation Class of their right to a hearing to demonstrate their inability to pay fines and costs to prevent the revocation of their licenses or to restore their licenses under Section 20-24.1(b). The Special Notice will also instruct members of the Revoked Class that they can contact the DMV Help Desk to request the DMV mail a physical copy of the Motion for Relief to their mailing address. The DMV must mail the Motion for Relief to the Revoked Class Members within a seven-day period, free of charge. For a nine-month period after the DMV issues the Revised Notices to the Future Revocation Class via mail and email, the Revised Notice will provide the same instruction to Future Revocation Class members to request a copy of the Motion for Relief be mailed to them, and the DMV will mail physical copies of the Motion for Relief to Future Revocation Class within a seven-day period. Finally, emailed versions of the Revised and Special Notices will attach the Motion for Relief.

The DMV has also agreed to provide funds in the amount of \$30,000 to a third-party North Carolina legal advocacy organization that is experienced in driver's license restoration advocacy in North Carolina for the purpose of creating, monitoring, and administering the Website with informational videos, written explanatories and forms, and other best practices materials on how Future Revocation and Revoked Classes can seek to prevent or remove a license suspension for non-payment from their driving record.<sup>3</sup> The Website will also link pro bono resources that may be able to provide representation to the

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<sup>3</sup> The funds will be remitted to one of the Class Counsel attorney organizations, which will promptly disburse the funds to the third-party organization.

Future Revocation and Revoked Classes to help prevent or remove suspensions for non-payment from their record. In particular, the Website will prominently display, provide easy electronic access to, and trainings and instructions on how to complete and submit the latest version of North Carolina form AOC-CR-415 to obtain waiver/remittance relief of Class Members' court debt and to thereafter resolve "failure to pay" suspensions and reinstate their driving privileges with the DMV. The DMV will reference, and include a link to, the Website in the Special and Revised Notices for 18 months from the date the DMV begins to issue the Revised and Special Notices.

The improved notices and public awareness campaign will help prevent Future Revocation Class members from having their driver's licenses revoked for non-payment of fines, penalties, and costs that they cannot afford, and provide Revoked Class members a path to restoration by equipping them with the information they need to seek waiver or modification of those obligations. Defendant's agreement to stay the indefinite revocation of Named Plaintiff and Future Revocation Class Representative Seti Johnson's driver's license for non-payment under Section 20-24.1 until the Parties' execution of the Settlement Agreement will also enable Plaintiff Johnson to locate the resources to prevent the indefinite revocation of his license.

The proposed settlement agreement fully complies with established law, and the agreement is supported by good and valuable consideration: in return for issuance of the Revised and Special notices, payment of the funds for the creation and administration of the website, and other actions by Defendant to publicize, and train staff on, the terms of the settlement, Plaintiffs agree to dismiss their appeal and relinquish their class claims for

injunctive and declaratory relief, subject only to the Court's retention of jurisdiction to enforce the settlement agreement for five years.

Informed by the extensive briefing and motion practice conducted in this action, counsel for all parties agree that the proposed settlement agreement is reasonable, adequate, and provides Class Members with a fair resolution of their claims.

**III. The Proposed Notice of Settlement and Notice Plan Is Sufficient to Inform Class Members of the Proposed Settlement and Provide an Opportunity for Comment.**

If the Court approves the proposed settlement agreement, it must direct notice "in a reasonable manner" to class members who will be bound by the agreement. Fed. R. Civ. P. 23(e)(1)(B). The parties' proposed Rule 23 Notice of Settlement ("Rule 23 notice") is attached as Exhibit B. The parties' proposed plan for Rule 23 notice provides effective notice and opportunity to comment to class members prior to approval, while making class members aware of the benefits that will be provided by the settlement once it is finally approved.

Defendant will send the Rule 23 notice of the proposed settlement to all viable current and former customer email addresses that the DMV possesses or can otherwise access. Defendant will also prominently post the Rule 23 notice of the proposed settlement on the DMV website and in conspicuous areas of DMV offices.

Additionally, Plaintiffs' counsel will create and host a settlement website that will prominently display the Rule 23 notice and provide any other information about the proposed settlement and how to raise objections to it. The web address for this website shall be set forth in the Rule 23 notice, and Defendant and other North Carolina-based

Plaintiff class counsel (the ACLU of North Carolina and the Southern Coalition for Social Justice) will provide a link to that SPLC-hosted settlement website in statements publicizing the proposed settlement on their respective organizational websites.

Plaintiffs' counsel shall also promote links to the Rule 23 notice, and to other information about the proposed settlement on the settlement website, on social media via advertisements that will target individuals in at least 5 North Carolina counties with the highest rates of driver's license revocations for failure to pay, annual incomes below \$50,000 or who are unemployed, and who are between the ages of 18 and 75.

To allow adequate time for class members to review the Rule 23 notice and respond with their objections or other comments, the parties propose to distribute the Rule 23 notice of proposed settlement according to the means described above starting no later than 30 days after the Court preliminarily approves the proposed settlement. The parties propose that the notice period run up to 60 days after the Court's preliminary approval order, which will ensure that notice has been distributed at least 30 days before the end of the notice period. As outlined in the proposed Rule 23 notice (Exhibit B), class members may respond and raised objections via the email address, website, or U.S. mailing address designated in the Rule 23 notice. Class member responses sent by email or postmarked via U.S. mail received by the end of the notice period (60 days after the Court's entry of the preliminary approval order) shall be considered timely, and shall be gathered by the parties and presented to the Court in conjunction with a motion for the Court to finally approve the settlement agreement (or other appropriate filing).

Because the parties propose to post notice widely and prominently in locations where it is reasonably calculated to reach members of the two classes, with adequate time to respond and multiple methods of response provided, the Court should approve the parties' proposed Rule 23 notice of a settlement and plan for distribution of notice as set forth in the parties' settlement agreement and in accordance with the deadlines specified herein.

**IV. The Parties Request a Hearing on the Fairness, Adequacy, and Reasonableness of the Proposed Settlement Agreement.**

Because the proposed settlement agreement would bind all members of the Plaintiff Classes, "the Court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). For the reasons explained earlier in this brief, the Court should find that the proposed settlement agreement is fair, reasonable, and adequate. The parties respectfully request a Rule 23(e) hearing at a time agreeable to the Court following the class notice period, which the parties have proposed should conclude no sooner than 60 days after this Court enters an order preliminarily approving the proposed settlement.

**CONCLUSION**

For the foregoing reasons, the parties respectfully request that the Court (1) preliminarily approve their negotiated proposed settlement agreement, attached as Exhibit A, to resolve all remaining claims in this action, (2) approve their proposed form of Rule 23 notice of the proposed settlement to all members of the two classes, attached as Exhibit B, and (3) set a date for hearing on the fairness, adequacy, and reasonableness of the

proposed settlement agreement on or after the completion of the notice period for class members.

Respectfully submitted this 1st day of July 2021,

/s/ Emily C.R. Early

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**CERTIFICATE OF WORD COUNT**

I certify that the foregoing does not exceed 6,250 words, as calculated by word processing software, in compliance with Local Civil Rule 7.3(d).

This 1st day of July 2021,

/s/ Emily C.R. Early  
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**CERTIFICATE OF SERVICE**

I certify that this day I served the foregoing to Defendant by filing it with the CM/ECF system, which has provided notice to all counsel of record for Defendant, as well as to Plaintiff Sharee A. Smoot, who is proceeding *pro se*, via U.S. Mail.

This 1st day of July 2021.

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