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

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| NATHAN WRIGHT, CAMESE BEDFORD, ASHLEY GILDEHAUS, and LISA MANCINI, on behalf of themselves and others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>FAMILY SUPPORT DIVISION of the Missouri Department of Social Services; MICHAEL PARSON, in his official capacity as Governor of Missouri; JENNIFER TIDBALL, in her official capacity as Acting Director of the Department of Social Services; REGINALD MCELHANNON, in his Official capacity as Interim Director of the Family Support Division; KENNETH ZELLERS, in his official capacity as Acting Director of the Department of Revenue; JOSEPH PLAGGENBERG, in his official capacity as Director of the Motor Vehicle and Driver Licensing Division,<br><br>Defendants. | Case. No. 4:19-cv-0398 RWS<br><br>CLASS ACTION<br>JURY DEMANDED<br><br>**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** |

Pursuant to Fed. R. Civ. P. 65(a), Plaintiffs Camese Bedford, Ashley Gildehaus, and Lisa Mancini hereby respectfully move this Court to issue a Preliminary Injunction terminating Plaintiffs' driver's license suspensions for unpaid child support and enjoining Defendants from ordering, issuing, or enforcing driver's license suspensions for unpaid child support unless and until Defendants adopt policies and enact regulations to ensure: (1) that no Missouri parent will be subject to driver's license suspension for unpaid support or arrears when he or she is financially

unable to pay; (2) that all parents facing suspension will receive proper notice and hearing that include protections for inability to pay and non-willful nonpayment; and (3) that parents who are unable to pay will have the option of very low payment plans scaled to ability to pay or, for those who are completely unable to pay, non-monetary alternatives to driver's license suspensions (such as participation in workforce development training, community service, or $0 payment plans with consistent check-ins by FSD). Such policies and regulations must include standardized guidelines under which child support specialists ("CSSs") are required to make ability-to-pay determinations in setting reduced payment agreement amounts for the purpose of avoiding license suspension.[1] Standardized guidelines in the setting of payment plan amounts and in determining fault in pre-suspension hearings must include consideration of:

- The noncustodial parent's adjusted gross income (AGI) absent any imputed income that the parent does not actually receive;
- Other child support orders for which the noncustodial parent is responsible;
- Other court-ordered financial obligations for which the noncustodial parent is responsible;
- The noncustodial parent's actual housing costs, or if not available, housing costs calculated pursuant to the most recent fiscal year Fair Market Rents (FMRs) calculated by the U.S. Department of Housing and Urban Development, taking into account both the noncustodial parent and any dependents they have;
- Utility costs for the noncustodial parent and any dependents, including electricity, water, heat, and reasonable telephone service;
- Child care costs for any custodial children of the noncustodial parent, if applicable;
- Food costs for the noncustodial parent and any dependents, calculated pursuant to the most recent USDA Low-Cost Food Plan;
- Transportation costs for the noncustodial parent and any dependents, as alleged and supported by the noncustodial parent, including the costs public transportation in the relevant locality and the costs of maintaining and operating a car;
- Health care costs for the noncustodial parent and any dependents, as alleged and supported by the noncustodial parent;

[1] Plaintiffs are not challenging in this litigation their child support orders or the amounts that they owe in arrears. The payment amounts referenced in this Motion and in the Memorandum are amounts that parents agree to pay monthly *for the purpose of avoiding driver's license suspension*. Parents who agree to make reduced payments or no payments (with an attendant agreement to check in regularly) still owe their full child support and still accrue arrears.

- Other necessary costs such as clothing, school supplies, telecommunication, and taxes for the noncustodial parent and any dependents, as alleged and supported by the noncustodial parent;
- Any miscellaneous or extraordinary costs as alleged and supported by the noncustodial parent, calculated at a reasonable amount.

Adequate policies to prevent erroneous license suspensions for parents whose failure to pay is non-willful must include*:*

- For parents whose reasonable expenses exceed their actual income, the CSS must enter the noncustodial parent into a plan for a reasonable non-monetary alternative to avoid license suspension;
- The CSS must not enter a payment agreement for any payment amount that would result in manifest hardship to the parent or the parent's dependents;
- For parents whose income is at or below 125% of the Federal Poverty Guidelines, the CSS must agree to a non-monetary alternative to avoid license suspension;
- For parents who receive needs-based, means-tested public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or veterans' disability benefits, the CSS must agree to a non-monetary alternative to avoid license suspension;
- For parents who are homeless or residing in a mental health facility, the CSS must agree to a non-monetary alternative to avoid license suspension.

In support of this Motion, Plaintiffs rely upon the enclosed Memorandum. Plaintiffs' Memorandum adheres to the page limitations set forth in the Court's order (ECF 41) and the Parties' Joint Agreement (ECF 40).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 1, 2020, 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/ Marissa K. Hatton*
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT**
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## I. Introduction

This case is about the Family Support Division ("FSD") perpetuating a cycle of poverty by suspending the driver's licenses of parents who are unable to pay child support. Suspensions are enforced without notice or an opportunity to be heard on whether an individual's failure to pay is willful or *non*-willful due to poverty. License suspensions cannot coerce payment from those unable to pay, but FSD's suspension scheme affords indigent parents no opportunity to effectively contest license suspension. Driver's license suspensions harm the interests of the children who are ostensibly meant to benefit from child support enforcement by making it difficult for non-custodial parents to play a meaningful role in their children's lives and to earn the money that they would gladly use to support their children if they were not trapped by FSD's unfair system.

## II. Statement of Facts

### A. FSD Suspended Plaintiffs' Drivers Licenses Because They Could Not Afford Their Full Child Support Payments

FSD issues orders suspending the driver's licenses of noncustodial parents who fall behind in child support by $2,500 or three months of arrears, whichever is less. *See* Mo. Rev. Stat. § 454.1003. This law does not provide an indigence exception. Plaintiffs' licenses were suspended because they could not afford to pay their full amounts of child support.

#### i. Camese Bedford

Camese Bedford is an unemployed veteran who is currently homeless and owes over $3,626 in child support arrears. Ex. 1, Bedford Depo. at 15:25; Ex. 2, Defs.' Resp. to 3rd Interrogatories at 14. Mr. Bedford driver's license was suspended on February 25, 2017, because he had failed to pay child support for his six-year-old daughter. Ex. 3, Bedford Driver Record. Mr. Bedford never received any pre-suspension notice regarding his driver's license, and no one ever spoke to him about an intent to suspend his license. Ex. 1 at 50:10–23. Upon learning of his

suspension, Mr. Bedford "immediately" contacted FSD to "ask[] them what [his] options were," and he was told "get rid of your arrearages, you got to pay it all the way down to zero." *Id.* at 55:18–25. Mr. Bedford was not offered a payment plan within his financial means in order to reinstate his license; discussing a payment agreement "wasn't an option" for Mr. Bedford, and he "didn't have any discussions about alternative payments or arrearages or payment agreement or anything" when he contacted FSD. *Id.* at 56:7–16. Mr. Bedford is without income and cannot afford to pay off his arrears in the amount requested by FSD. *Id.* at 69:13–18. Mr. Bedford knows of job opportunities available to him, but they require a driver's license. *Id.* at 100:4–23. He wants to support his daughter and would willingly do so if he had the money. *Id.* at 101:1–6.

**ii. Lisa Mancini**

Lisa Mancini is a single mother of four residing in Joplin, Missouri. Ex. 4, Mancini Decl., at ¶¶ 1, 3. Her driver's license was suspended on March 16, 2018, because of over $11,511 in unpaid child support arrears for her oldest son who is now twenty years old. *See* Ex. 2. Ms. Mancini is indigent and the sole provider for her four youngest children. Ex. 4, at ¶ 3.

In the spring of 2018, Ms. Mancini received a notice that her driver's license would be suspended unless she paid her child support. *Id.* at ¶ 15. Ms. Mancini contacted FSD immediately, but was only offered payment plan amounts that were impossible for her to pay. Ex. 5, Mancini Depo. at 102:21–103:10. Ms. Mancini was not offered any non-monetary alternatives for avoiding suspension, and even after making a payment, she received a letter that her license had been suspended that took her by surprise. *Id.* at 105:20–25. Ms. Mancini contacted the state and was told there was nothing she could do. *Id.* at 106:3–8. Ms. Mancini's wages have been garnished due to child support, and she lives at $13,000 below the Federal Poverty line, leaving her with $532 a month to support her four custodial children. *Id.* at 113:4–15. Ms. Mancini's license is still suspended, and it would be a "struggle to make any kind of payment at all in [her] situation."

*Id.* at 109:3–9. Ms. Mancini's family lives in a rural area with no reliable public transportation; the farthest of her children's schools is about eight miles from home, the grocery store is eight miles away, and the children's doctors are about 12 to 15 miles away. Ex. 4 at ¶ 24. Getting pulled over while driving on a suspended license is a constant fear for Ms. Mancini, who worries about getting fined or even going to jail, leaving no one to care for her children. *Id.* at ¶ 25.

**iii. Ashley Gildehaus**

Ashley Gildehaus is a resident of Salem, Missouri, who currently owes over $14,446 in child support arrears, a debt he has no hope of paying off. Ex. 2 at 15. His driver's license was suspended on April 7, 2018, because of unpaid child support. Ex. 6, Gildehaus Driver Record. Mr. Gildehaus lost his commercial driver's license ("CDL") because of his suspension and misses out on high-paying jobs as well as supplemental income opportunities as a result. Ex. 7, Gildehaus Decl. at ¶¶ 14–16. In 2017, a mediator retroactively increased Mr. Gildehaus' arrears payments even though he had been laid off in 2015. Ex. 8, Gildehaus Depo. at 70:4–24. After "fighting for months" with FSD, Mr. Gildehaus got his arrearage payment plan lowered from $800 a month to $680 a month, which is still not an affordable amount for him. *Id.* at 64:10–12; Ex. 7 at ¶¶ 1–2. Mr. Gildehaus has tried to stay on top of arrears payments, but he has defaulted numerous times due to periods of unemployment and homelessness. Ex. 8 at 68:3–18; 79:23–80:2. Because failure to make even a single payment results in re-suspension, Mr. Gildehaus has been through the process of getting a stay on his driver's license suspension approximately six times because he often cannot afford to make the monthly $680 payment. *Id.* at 64:1–4; Ex. 7 at ¶¶ 11–13.

Mr. Gildehaus has to drive for his work, which is in St. Clair, over 70 miles from his home in Salem. Ex. 7 at ¶ 18. Every day he goes to work to provide for his family, and he worries that he might not be coming home because he is driving on a suspended license and could go to jail. Ex. 8 at 116:19–117:17; 119:8–120:6. Mr. Gildehaus struggles to support his wife and their two

small children, and the family is in imminent danger of losing their house. *Id.* at ¶¶ 20–23; Ex. 8 at 83:20–23; 119:8–120:6.

### B. FSD Enforces Driver's License Suspensions Without Notice or an Opportunity to Be Heard for Individuals Unable to Pay Their Child Support

While (i) consideration of financial resources is an integral component of Missouri's child support system, current mechanisms do not provide adequate procedural due process during license suspension because (ii) initial child support orders and modifications play no role in the license suspension process and (iii) license suspension stays are difficult to obtain and occur only after parents have already been deprived of their licenses. During the relevant time of license suspension, (iv) parents receive no notice or opportunity to be heard on the issue of inability to pay prior to license deprivation for failure to pay arrears.

#### i. Consideration of Financial Resources Is an Integral Component of Missouri's Child Support System

Consideration of a noncustodial parent's financial resources is crucial to the state's administration of child support. Ability to pay is embedded in Missouri's child support scheme because it is considered when support is initially calculated and when individuals seek modification of their child support orders. Initial support is calculated using Form 14, and although Form 14 is not designed to calculate a child support amount that is categorically affordable, it is designed to consider financial resources and adjust based on the paying parent's ability to pay. *See* Ex. 9, Form 14 Instructions. Modification of child support orders is also conducted pursuant to a noncustodial parent's financial resources. *See* Mo. Code Regs. Ann. tit. 13, § 30-5.020(2)(E)(3) (2019) (allowing parent to seek review of support amount based on a "change in income"). Missouri's child support statutory scheme indicates that coercive or punitive measures should not be used for those unable to pay child support because "[i]nability to provide support for good cause shall be an affirmative defense" to "the offense of nonsupport" in Missouri. Mo. Rev. Stat. §

568.040(3). This non-punishment principle based on indigence applies to the administrative penalty of driver's license suspension for failure to pay child support; official FSD guidance directs child support enforcement staff to suspend licenses "only if an obligor *has the ability to pay* his/her child support and fails to pay." Ex. 10, Suspension Memo, p. 2.[1] (emphasis in original).

**ii. Initial Child Support Orders and Child Support Modifications Play No Role in the License Suspension Process**

Although financial resources are considered when support is initially calculated and when individuals seek modification, these mechanisms play no role in the license suspension process for unpaid arears. In addition, they are flawed and often lead to unaffordable child support amounts. A parent can only seek to have their support amount reviewed if they meet stringent requirements: they must demonstrate that they have experienced an income reduction of *at least* fifty percent; they must demonstrate that their reduction of at least fifty percent has "existed for at least three (3) months"; and they must demonstrate that their income reduction of at least fifty percent will last for "another six (6) months or longer." *See* Mo. Code Regs. Ann. tit. 13, § 30-5.020(2)(E)(3) (2019). This means that for parents whose income is substantially reduced, but not by more than fifty percent, there is no relief from the full amount of their support order. Parents that experience an income reduction of more than fifty percent (including up to a total loss of income) must wait three months before they can seek review while child support arrears are accruing; thus eligibility for license suspension may arise before a parent even has the chance to seek a modification.

[1] The Division of Child Support Enforcement (DSCE) "distinguishes between suspending a **driver's** license and suspending a **hunting/fishing** license" because "[s]uspension of a driver's license may hinder a person's ability to pay child support and affect his/her subsistence" and it "prevents him/her from looking for employment, getting to and from work and possibly visiting his/her child(ren)." Ex. 10 (emphasis in original). While DSCE required staff to take into account "ability to pay" and willfulness in nonpayment when suspending driver's licenses, by contrast, "CSE staff will issue a license suspension order to the Department of Conservation without regard to the obligor's ability to pay." *Id.*

### iii. License Suspension Stays Are Difficult to Obtain and Can Only Occur After License Deprivations

A stay on a license suspension can only be issued *after* a license has been suspended, and they are difficult to obtain. For Plaintiffs to have their licenses actually reinstated, FSD or a court must determine that the arrearage was paid in full. Mo. Rev. Stat. § 454.1013. A parent's only means of terminating the suspension is to pay her arrears in full (unless the child support case is closed). Ex. 17, FSD 30(b)(6) Depo. 208:12–209:6. This is likely the reason that over 65% of the 41,903 parents whose driver's licenses are currently suspended for past-due support (as of June 10, 2019) have had those suspensions for more than three years. Ex. 27, Defs.' Resp. to 2nd Interrogatories at 4–5. Over 8% have had their suspensions for more than ten years. *Id.*

FSD only offers stays on license suspensions if parents begin making timely payments in accordance with their current child support order and toward their arrears. Ex. 13, Ginwright Depo. at 58:13–18. FSD is statutorily prohibited from issuing stays based solely upon hardship; only a court may provide a stay for hardship. Mo. Rev. Stat. § 454.1010.3. Notice sent by FSD do not contain any mention of the stay option "because your license isn't suspended yet." Ex. 13, Ginwright Depo. at 131:22–132:2. The only way for parents to find out that FSD's stay option is available is "by contacting [the] agency." Ex. 17, FSD 30(b)(6) Depo. at 208:7–9. "The process of getting a stay is long and difficult," leaving parents unable to drive legally in the meantime. Ex. 7, Gildehaus Decl. at ¶¶ 11–13 ("One time, the process . . . took three months . . . . Another time, it took six months."); *see also* Ex. 4, Mancini Decl. at ¶¶ 18–20 ("I then called FSD to ask about the status of my stay. . . . I made another payment, and still I heard nothing about the stay."); Ex. 11, Lummus Decl. at ¶ 6. As soon as a parent misses a single payment, FSD terminates the stay, and the process begins anew. Ex. 7, Gildehaus Decl. at ¶¶ 12–13.

### iv. There is No Notice or Opportunity to Be Heard on the Issue of Non-Willful Failure to Pay During the License Suspension Process

For parents more than three months or $2,500 behind in their child support payments, FSD does not provide any notice or opportunity to be heard regarding willfulness (i.e., fault) in nonpayment before suspending a license. FSD is authorized to send a Notice of Intent letter before suspension, which only give parents in default three options; a parent can avoid suspension if he or she "(1) Pays the entire arrearage stated in the notice; (2) Enters into and complies with a payment plan approved by the court or the division; or (3) Requests a hearing before the court or the director." Ex. 18, Notice of Intent; *see also* Mo. Rev. Stat. § 454.1003.3. Paying the entire arrearage amount in full is not a viable option for parents who cannot afford their arrears in the first place. The second and third options do not address fault because (a) letters from FSD provide no notice to parents on how to avoid license suspension if their failure to pay is *non*-willful, (b) the payment plans offered by FSD are unaffordable and inconsistent, and (c) parents are not allowed to raise inability to pay or non-willful nonpayment at pre-suspension hearings.

**a. Letters from FSD Provide No Meaningful Notice to Struggling Parents Facing License Suspension Based for Inability to Pay**

FSD's Notice of Intent does not provide notice that any of the options listed will take into account a person's fault in nonpayment, and there is no notice indicating that a parent can be entered into a payment plan that they actually can afford. FSD's Child Support Program Manager testified that "[t]he notice . . . only gives the past due amount. It doesn't give any other details about why the support's not paid or what their — what they could afford under a payment agreement." Ex. 12, Kissinger Depo., 163:1–9. Based on the Notice of Intent form, Program Manager Kissinger testified that parents would not "have any clue as to what payment plan amounts are available to them." *Id.* at 163:18–64:8. He testified that there is no "indication on this notice that someone will have payment agreement plans set at a rate that they can afford." *Id.* He testified that there is not even an "indication on this notice that someone will have a payment

agreement plan that is reasonable" and there is "no wording to that effect" anywhere on the notice. *Id.* Similarly, FSD Deputy Director John Ginwright testified that based on the Letter of Intent, there was no "indication that someone could have their financial hardship taken into account to avoid the license suspension." Ex. 13, Ginwright Depo., 131:1–25. He testified that there was not "anything in this notice that would put someone on notice that they can have their inability to pay taken into account to avoid license suspension." *Id.* Mr. Ginwright testified that the notice does not "mention nonmonetary alternatives to license suspension," "reduced payment plans," or "any inability-to-pay protections" for parents facing license suspension due to failure to pay. *Id.*

**b. Payment Plans Offered by FSD Are Not Guided by Consistent Policy and Can Be Unattainable**

FSD's payment plans are not guided by any consistent policy and often can be unattainable. On its face, the payment plan policy discourages low payment amounts and does not provide clear guidance to parents or FSD staff. In practice, the payment plan policy is entirely discretionary and puts parents at the mercy of Child Support Specialists ("Specialists") who follow no standardized guidelines when setting payment plan amounts.

FSD's Temporary Payment Plan policy discourages low payments, and by some accounts, it would be almost impossible to get an affordable payment plan. FSD's Temporary Payment Plan requires that "as a general rule," payment plan amounts "should not be less than 50% of the current support amount," and that a departure from 50% of more is allowed only under "extreme circumstances." *See* Ex. 16, FSD Temporary Payment Plan. However, Program Manager Kissinger maintains that extreme circumstances would be "something like life changing," such as a "person's house just burned down" or "maybe somebody builds homes, for example, and he's employed by a contractor and he loses his right arm. That would be extreme." Ex. 17, FSD 30(b)(6) Depo. at 177:23–78:4. At best, there is no discernible standard within FSD as to what

constitutes "extreme circumstances" meriting a payment plan of less than 50% of current support.[2] Specialist Hibbler testified that in his office, extreme circumstances could include having "multiple child support cases." Ex. 15, Hibber Depo., 61:1–16. When asked if she takes into account extreme circumstances when determining a payment plan amount, Specialist Richards testified she "wouldn't even know what the extreme circumstances are." Ex. 14, Richards Depo., 91:8–12. FSD's Deputy Director John Ginwright maintains that "extreme circumstances would be the circumstances that the other party has told us that are extreme or they believe to be extreme." Ex. 13 at 67: 1–9.

There are no standards for determining the appropriate payment plan amount for noncustodial parents. FSD Deputy Director Ginwright testified that he knew of no "standard set of criteria that child support specialists should be taking into account when they're determining a payment amount." Ex. 13, Ginwright Depo. at 40:21–25. Mr. Ginwright testified that there are no "standardized guidelines to help child support specialists make determinations about payment plan amounts." *Id.* at 51:16–20. FSD's Child Support Program Manager Steven Kissinger testified that "there isn't anything standardized" that Specialists use to determine payment plan amounts, and that there are no "standardized ability-to-pay guidelines when determining payment plan amounts." Ex. 12, Kissinger Depo., 124:5–9. Specialist Lajuana Richards testified that there is no "formal set of factors that [she is] supposed to take into consideration when creating an installment payment plan" for parents seeking to avoid license suspension. Ex. 14, Richards

[2] Even the use of 50% as a starting benchmark for payment plans is inconsistent. Program Manager Kissinger testified that the policy is "written strongly for a reason, to let the person, the child support specialist know that you really need to have a good reason for going less than 50 percent," Ex. 12, Kissinger Depo., 147:25–148:3. However, Specialist Richards testified that she'll "throw out 25 percent" as her starting mark for payment plans, Ex. 14, at 92:21–93:5. Specialist Hibbler testified that when he "first start[s] to come up with a payment plan for someone," there is no "default number or percentage that [he] use[s] as a starting point." Ex. 15, at 62:24–63:3.

Depo., 69:18–70:4. Ms. Richards testified that there is no "written guidance at all as to what [she] should take into consideration when creating an installment payment plan." *Id.* Specialist Rashad Hibbler also testified that there is not "a set of standardized guidelines to help [him] determine how much to set the arrears payments at." Ex. 15, Hibbler Depo., 53:6–9.

Payment plan amounts are left up to the discretion of whichever Child Support Specialist happens to answer a parent's call. According to FSD's Deputy Director, Specialists are given "[v]ery little training on using discretion." Ex. 13, Ginwright Depo., 41–42: 20–3. Program Manager Kissinger testified he is "not aware" of any "guidance on the concept of ability to pay" in the FSD training or procedural manual. Ex. 12 at 136: 9–17. Specialist Hibbler testified "I can't say I was trained on inability to pay." Ex. 15 at 33:2–18. Even the use of license suspension as an enforcement tool is discretionary. Ex. 13, Ginwright Depo. at 19:21–24; Ex. 15, Hibbler Depo. at 94:12–15. This results in different outcomes for parents dealing with different Specialists around the state: Specialist Hibbler testified that he does not suspend licenses (Ex. 15 at 88:18–20), whereas Specialist Richards testified that license suspensions are the second "most common form of enforcement" that she uses against noncustodial parents, accounting for "about 25 percent" of her work (Ex. 14 at 18:12–20).

**c. Parents Have No Opportunity to Be Heard on Inability to Pay at Pre-Suspension Hearings**

Parents have no opportunity to raise or argue their inability to pay in the pre-suspension hearings offered by FSD. The FSD Notice of Intent states that "[i]f FSD is seeking to suspend your license(s) because you owe past-due support, the *only* issues that may be determined in a hearing are: [w]hether you are the correct person; [w]hether the amount of your past-due support is greater than or equal to three months of support payments or $2,500, whichever is less, by the date of service of this notice; [w]hether you entered into a payment agreement." *See* Ex. 18, Notice

of Intent (emphasis added). These hearings do not provide an opportunity to explain whether failure to pay is willful or non-willful. Indeed, Specialist Richards testified, "if someone is not paying on their payment plan, there's not necessarily any intermediary steps to determine why they're not paying before it goes through enforcement." Ex. 14, Richards Depo., 88:6–10.

## III. This Court Should Preliminarily Enjoin FSD From Enforcing Driver's License Suspensions Without Adequate Procedural Protections for Parents Who Cannot Afford to Pay

A preliminary injunction should issue because (A) Plaintiffs are highly likely to succeed on the merits of their procedural due process claim because FSD's license suspension scheme does not provide meaningful pre-suspension notice or an opportunity to be heard on the issue of fault, (B) Plaintiffs will continue to suffer irreparable harm if an injunction does not issue, (C) Defendants will not be harmed if an injunction issues, and (D) an injunction is in the public interest.

### A. Plaintiffs Are Highly Likely to Succeed on the Merits of Their Procedural Due Process Claim Because FSD's License Suspension Scheme Does Not Provide Meaningful Pre-Suspension Notice or Opportunity to Be Heard

Defendants' license suspension scheme lacks the "fundamental requirement of due process [that is] the opportunity to be heard at a meaningful time and in a meaningful manner." *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). A preliminary injunction requiring procedural safeguards for impoverished parents in Missouri prior to driver's license suspension is appropriate because (i) Missourians have a significant private interest in their driver's licenses, (ii) license suspensions based on *non*-willful failure to pay are erroneous deprivations, and procedural safeguards are necessary to determine fault prior to suspension, and (iii) the government's interest in failing to provide pre-deprivation procedure is minimal, and additional procedures pose little to no administrative burden. *See id.* at 335 (outlining procedural due process inquiry).

#### i. Parents Have a Significant Interest in Maintaining Their Driver's Licenses for the Safety and Wellbeing of Their Families

Plaintiffs have a protected property interest in their continued possession of a driver's license. *See Bell v. Burson*, 402 U.S. 535, 539 (1971) ("Once [driver's] licenses are issued, . . . their continued possession may become essential in the pursuit of a livelihood . . . [and they] are not to be taken away without that procedural due process required by the Fourteenth Amendment.") (citation omitted); *Dixon v. Love*, 431 U.S. 105, 112 (1977); *Mackey v. Montrym*, 443 U.S. 1, 10 (1979). Suspension of a driver's license makes it difficult to maintain employment, to see noncustodial children, and to engage in meaningful activities like attending sports games or driving kids to school. Ex. 19, Hahn Report, p. 16 at ¶ 75 ("[S]uspending the driver's licenses of parents who cannot afford to pay child support has a negative impact on parents' ability to pay child support and on their ability to maintain meaningful relationships with their children.").

In many areas of Missouri, driving may be the only means of getting to work, making it a critical component of maintaining a livelihood. Robert Puentes, Senior Fellow at the Brookings Institute and CEO of the Eno Center for Transportation, found that "[n]early all of Missouri, including Missouri's rural and suburban areas, has limited or nonexistent public transportation infrastructure. . . . [M]any metropolitan areas simply do not have any alternatives to driving to work. . . . Over 82% of Missourians travel to work by car; only 1.3% travel to work by public transportation." Ex. 20, Puentes Report at ¶¶ 13, 26–27. Dr. Steven Peterson confirmed these statistics, finding that "[i]ndividuals without valid driver's licenses are limited by their ability to reliably reach workplaces that are not within walking distance or near public transportation. . . . [O]ver 90% of Missourians commute to work by car, with about 82% commuting alone and 8% commuting in carpools." Ex. 21, Peterson Report, p. 5 at ¶ 14. Driving is critical to maintaining a livelihood, and the Supreme Court has "frequently recognized the severity of depriving a person of the means of livelihood." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543 (1985).

Plaintiffs have an extremely important property interest in their driver's licenses, especially because driving makes them better able to subsist and provide financial support for their children.

**ii. Any License Suspension Based on Inability as Opposed to Unwillingness to Pay is an Erroneous Deprivation, and Additional Procedural Safeguards Are Necessary**

Due process requires that parents facing a non-safety-related license suspension must be afforded a pre-deprivation hearing on their ability to pay. "Generally, where deprivations of property are authorized by an established state procedure, due process is held to require pre-deprivation notice and hearing in order to serve as a check on the possibility that a wrongful deprivation would occur." *Mathews*, 434 U.S. at 333. Even though (a) a license deprivation for *non*-willful nonpayment would be an erroneous deprivation, (b) there is no meaningful pre-suspension notice to indebted parents regarding inability to pay, (c) there is no meaningful pre-suspension opportunity to be heard on this issue of non-willful nonpayment, and (d) additional procedures are necessary to protect parents from poverty-based license deprivations.

**a. License Deprivations for Parents Who Cannot Afford to Pay Their Arrears Are Erroneous Deprivations**

A license suspension for non-willful non-payment (as opposed to for willful non-payment) is an erroneous deprivation. Consideration of a noncustodial parent's financial resources is crucial to the state's administration of child support, and license deprivation as a tool of coercion is misplaced when used against parents whose failure to pay is *non*-willful. Indeed, the Supreme Court has expressly recognized that some mechanisms for enforcing child support require consideration of ability to pay. *Turner v. Rogers*, 564 U.S. 431, 448 (2011) (noting that a parent cannot be incarcerated for civil contempt for failure to pay child support absent "an express finding by the court that the defendant has the ability to pay").

Financial resources are integral to awarding and enforcing child support in Missouri, and therefore ability to pay is "appropriate to the nature of the case" and must be considered *prior* to suspending a driver's license for outstanding arrears. *See Bell v. Burson*, 402 U.S. 535, 542 (1971) ("[E]xcept in emergency situations (and this is not one) due process requires that when a State seeks to terminate an interest [in a driver's license], it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective."); *see Fowler v. Benson*, 924 F.3d 247, 269–70 (6th Cir. 2019) (Donald, J., dissenting). Ability to pay is embedded in Missouri's child support scheme because it is considered when support is initially calculated and when individuals seek modification of their child support orders. *See* Ex. 9, Form 14 Instructions; Mo. Code Regs. Ann. tit. 13, § 30-5.020(2)(E)(3) (2019) (allowing parent to seek review of support amount based on a "change in income"). In addition, "[i]nability to provide support for good cause shall be an affirmative defense" to "the offense of nonsupport" in Missouri. Mo. Rev. Stat. § 568.040(3). Even if the state contends that fault and liability are "irrelevant to the [state's] statutory scheme," the specific "nature of the case" in child support enforcement dictates that the state must consider willfulness. *Fowler*, 924 F.3d at 269–70 (Donald, J., dissenting); *see also Bell*, 402 U.S. at 541. Missouri uses license suspension as a means of child support enforcement; if someone is *unable* to pay their arrears, the fact that their nonpayment is non-willful directly bears on the nature of their enforcement case. Because license suspension is a means of child support enforcement only if an obligor has the ability to pay, any license deprivation of someone *unable* to pay is an erroneous deprivation.

**b. There Is No Meaningful Pre-Suspension Notice Regarding Non-Willful Failure to Pay**

The FSD Notice of Intent form does not provide notice of options available to contest a driver's license suspension if an individual is *unable* to pay their arears. FSD's pre-suspension

letters do not indicate that any of the options listed on the notice will take into account a person's ability to pay. The form also does not indicate whether a parent has a chance of being entered into a payment plan that they can afford, or whether they will have an opportunity to be heard on the willfulness of their failure to pay. *See* Section II.B.iv.a. Pre-deprivation notice "does not comport with constitutional requirements where it does not advise the [individual] of the availability of a procedure for protesting a proposed termination . . . as unjustified." *Memphis Light, Gas and Water Div. v. Craft*, 436 U.S. 1, 15 (1978). Because license suspension is meant to deter willful nonpayment and coerce payment, a license suspension is unjustified where failure to pay is *non*-willful and where payment simply cannot be coerced because of inability to pay. Yet the pre-suspension form sent by FSD does not provide notice to parents that they may contest the proposed termination of their license as unjustified on the basis of ability to pay. *See* Ex. 18, Notice of Intent. The form fails to give any indication that a parent can raise the issue of fault in a hearing. The form fails to put parents on notice that they can enter into a payment plan that is within their financial means. Without notice that non-willful failure to pay can be taken into account, the form sent by FSD does not provide meaningful notice to parents living in poverty and seeking to find a way to avoid an unjustified license suspension. *See Turner v. Rogers*, 564 U.S. 431, 449 (2011) (finding child support proceedings violated due process where the plaintiff "did not receive clear notice that his ability to pay would constitute the critical question in his civil contempt proceeding" and there was no process to "elicit information about his financial circumstances.").

**c. There Is No Meaningful Pre-Suspension Opportunity to Be Heard Regarding Non-Willful Failure to Pay**

Currently, neither payment plans nor pre-deprivation hearings provide a meaningful opportunity to be heard on the issue of inability to pay. Entering into a payment plan or attending a pre-suspension hearing operate as the only safeguards for parents during the license suspension

process. Ex. 18, Notice of Intent. But payment plans do not provide a meaningful opportunity to address non-willful failure to pay arrears, and hearings do not provide an opportunity to be heard on fault or indigence whatsoever. Payment plans and hearings — which do not inquire into financial resources and do not provide an opportunity for parents to address the willfulness of their nonpayment — are procedurally inadequate; for "[g]iven the importance of the interest at stake, it is obviously important to ensure accurate decisionmaking in respect to the key 'ability to pay' question." *See Turner*, 564 U.S. at 445.

Temporary payment plans do not provide meaningful procedural protections for indigent parents facing license suspension. Temporary Payment Plan installment amounts start at 50% of someone's current support order, even if they are unemployed and unable to pay their support. *See* Ex. 16, Temporary Payment Plan (noting the plan is for parents who are "*unable to pay* [their] current child support obligation; and are self-employed *or unemployed*," but also mandating that "as a general rule, [the plan] should not be less than 50 percent of the current support amount."). FSD's policy is that payment plan amounts must be fifty percent or higher of the current support order absent "extreme circumstances." *Id.* For an *unemployed* parent unable to pay support, a payment plan of 50% of their full support amount is not a meaningful protection from license deprivation, and FSD does not consider "ordinary job loss" to be an extreme circumstance. Ex. 17, FSD 30(b)(6) Depo. at 178:10–14. It is unreasonable to require someone with no income to pay 50 percent of a support order that was calculated when they had income.

There is no guidance within FSD as to what an "extreme circumstance" is. *See supra*, Section II.B.iv. By some accounts, an extreme circumstance meriting a departure from the 50% rule could only be one that is "life changing," such as a "person's house just burned down" or someone "loses his right arm." Ex. 17, FSD 30(b)(6) Depo. at 177:23–78:4. A system that requires

someone to lose an arm in order to get an affordable payment plan is woefully inadequate to protect indigent parents from imminent license suspension.

In addition, the payment plan amounts offered by FSD are entirely discretionary and do not use any standardized guidelines to determine payment plan amounts, resulting in wildly inconsistent payment plans that may not be affordable. Specialists do not have any guidelines for what they should consider when setting a payment plan amount, and they are not trained on the concept of inability to pay. *See supra*, Section II.B.iv. FSD's inconsistent payment plan option leaves some indigent parents without the opportunity to be heard on a payment plan at all (Ex. 1, Bedford Depo. at 56:7–16) or without the opportunity to be heard on whether the payment plan is affordable (Ex. 5, Mancini Depo. at 102:21–103:10). Sometimes parents are told that paying their full amount is the only option under a payment plan. *See* Ex. 7, Gildehaus Decl. at ¶ 11; Ex. 1, Bedford Depo. at 56:7–16. When payment plan determinations are discretionary and do not require ability-to-pay considerations, they may be entirely unaffordable or no different from the full support amount. FSD's payment plan "option" then becomes meaningless as a procedural mechanism for indigent parents seeking to prevent license deprivation. FSD's discretionary payment plan process does not provide adequate protections for non-willful nonpayment or the opportunity to be entered into a meaningful payment plan.

The only other pre-deprivation process for parents is FSD's pre-suspension hearing option, which completely bars any opportunity to be heard on the issues of ability to pay or non-willfulness in nonpayment. Mo. Rev. Stat. § 454.1005.4; *see also* Ex. 18, Notice of Intent. The only issues considered in these hearings are the whether the parent's identity is correct, whether the amount of arears is correct, and whether the parent has entered into a payment plan. *Id.*

Because Defendants suspend parents' driver's licenses due to failure to pay, a meaningful hearing in this context is one that determines whether nonpayment was willful. To comport with due process, parents must be afforded hearings that determine the willfulness of their nonpayment before their licenses are suspended as a consequence for nonpayment. *See Bell*, 402 U.S. at 536–37 ("[T]he State's statutory scheme, in failing before suspending the licenses to afford [the motorist] a hearing on the question of his fault or liability, denied him due process"); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543, (1985) ("[S]ome opportunity for the [person] to present his side of the case is recurringly of obvious value in reaching an accurate decision"). Prior to driver's license suspension for failure to pay arrears, parents must also be provided with an opportunity to raise inability to pay in these hearings. *See Turner v. Rogers*, 564 U.S. 431, 447–48 (2011) (finding that child support contempt proceeding lacked adequate procedural protections in part because "[t]he court did not find that Turner was able to pay his arrearage"). Without hearings that provide an opportunity to be heard on non-willfulness in one's failure to pay, FSD's enforcement scheme risks erroneous license deprivations for indigent parents.

The earlier processes available to parents (initial support setting and modification) and later processes (suspension stays) do not occur at a meaningful time in the license suspension process, and they are nevertheless flawed. *See infra,* Section III.A.ii.d.

**d. Additional Procedures Are Necessary to Provide Meaningful Due Process to Parents Who Face License Suspension Because They Are Too Poor to Afford Their Full Support Amounts**

Current procedures surrounding child support are inadequate; they do not offer any notice or opportunity to be heard on the issue of ability to pay at the time of license suspension. Initial child support calculations and modifications do not amount to sufficient procedural protections because they do not occur at a meaningful time in the license suspension process. Assessments made when child support is first ordered or when it is reviewed do not occur when a license

suspension is pending (i.e., in the time after a parent passes the arrearage threshold for suspension eligibility, but before the license is actually suspended). Instead, the initial support calculation and modification proceedings[3] occur before license suspension is contemplated, at a time when the parent may not be "aware of unforeseen circumstances that might make him unable to satisfy debt when it is due." *See Stinnie v. Holcomb*, 355 F. Supp. 3d 514, 530 (W.D. Va. 2018). In addition, according to Dr. Heather Hahn, Senior Fellow at the Urban Institute, "[p]rocesses for modifying child support orders do not readily accommodate the frequent changes in financial circumstances that are typical among people working low-wage jobs. Research shows that child support orders are rarely adjusted, even when parents' financial situations change significantly." Ex. 19, Hahn Report at ¶ 26. Specifically, Dr. Hahn notes that "Missouri allows for reviews of child support orders only every three years unless special circumstances apply, and then only upon request. . . . [B]ased on my research involving income volatility, Missouri's restrictions on child support modifications ensure that parents will often be unable to afford their child support because of changes in their financial circumstances." *Id.*; *see also* Mo. Code Regs. Ann. tit. 13, § 30-5.020(2)(E)(3) (2019). Modifications are not procedurally adequate, and in any event, they do not occur at a meaningful time for parents facing license suspension.

[3] Modification proceedings can happen before or after a license suspension; however, modifications have no bearing on the license suspension process or the fact of the suspension itself. Moreover, parents can only seek modifications when they have experienced an income reduction of at least fifty percent for at least three months and can somehow prove the reduction will last another six months. Mo. Code Regs. Ann. tit. 13, § 30-5.020(2)(E)(3) (2019). This means than a parent can experience job loss and immediately be unable to pay support (thus becoming eligible for license suspension) all before they become eligible to even apply for a modification. While someone may eventually be able to prove the narrow set of requirements needed to modify child support, that modification will not undo the arrears that accrued in the meantime and that form the basis of the license suspension. A parent whose income is reduced substantially — even up to a 49% reduction in income — cannot receive any relief through modification.

Initial support orders and modifications are procedurally inadequate because they only "address the underlying . . . assessment of costs, not the license suspension." *See Stinnie*, 355 F. Supp. 3d at 530; *see also* Ex. 10, Form 14 Instructions; Mo. Code Regs. Ann. tit. 13, § 30-5.020(2)(E)(3) (2019). The amount of the underlying monthly child support order is not the same as the outstanding arrearage amount qualifying someone for license suspension. Because initial orders and modifications do not occur at the time of suspension (and they do not address the suspension at all), they are not tailored "to the capacities and circumstances of those who are to be heard" on the issue of their license suspension, nor do they ensure that licensees are "given a meaningful opportunity to present their case" prior to license suspension. *Stinnie*, 355 F. Supp. 3d at 530; *see also* Mo. Code Regs. Ann. tit. 13, § 30-5.020(2)(E)(3) (2019) (only allowing applications for modifications every three years unless a parent meets stringent requirements after a three-month waiting period). Lastly, that parents can apply for a stay *after* their license has already been suspended does not provide meaningful *pre*-deprivation notice and opportunity to be heard. *Bell*, 402 U.S. at 542; *see also* Ex. 13, Ginwright Depo. at 131:22–132:2.

The purpose of FSD's suspension scheme is to coerce payment; there is no urgent safety need calling for immediate suspension, and Plaintiffs are entitled to have their culpability for nonpayment and their ability to pay taken into account in pre-deprivation hearings. *Bell*, 402 U.S. at 542 ("except in emergency situations (and this is not one)[,] due process requires that when a State seeks to terminate an interest such as that here involved, it must afford notice and opportunity for hearing appropriate to the nature of the case *before* the termination becomes effective."). There are pre-deprivation procedural safeguards that, "if employed together, can significantly reduce the risk of erroneous deprivation" in a child support proceeding: these include "notice to the defendant that his 'ability to pay' is a critical issue"; elicitation of "relevant financial information"; "an

opportunity at the hearing for the defendant to respond to statements and questions about his financial status"; and "an express finding by the court that the defendant has the ability to pay." *Turner v. Rogers*, 564 U.S. 431, 447–48 (2011). Missouri's system of license deprivations for outstanding arrears includes none of these procedural safeguards.

### iii. The Government Has No Interest in Depriving Parents of Meaningful Ability-to-Pay Procedures Prior to License Suspension, and Additional Procedural Protections Pose Little to No Burden

The third *Mathews* factor is straightforward in this case, for "the government's interests in suspending driver's licenses without a pre-deprivation hearing are minimal." *Fowler v. Benson*, 924 F.3d 247, 269 (6th Cir. 2019) (Donald, J., dissenting). Unlike some traffic-related license suspensions enforced by the state, there is no time-sensitive government interest in enforcing arrearage-based suspensions without procedural protections prior to license deprivation. Plaintiffs seek meaningful notice and the opportunity to be heard on the issue of their inability to pay prior to license deprivation, which fit squarely within the administrative capabilities and budgets of FSD that are already in place. FSD already undertakes the administrative burden of sending pre-deprivation letters; they simply lack adequate notice of ability-to-pay protections. *See* Ex. 18, Notice of Intent. Similarly, FSD already holds pre-deprivation hearings; they simply lack an inquiry into whether non-payment was willful or non-willful. *See id.*

Additional ability-to-pay notice and opportunity to be heard will not cause undue administrative burden or cost. First, Defendants will not be burdened by additional language added to pre-deprivation notices to inform parents that they can have their inability to pay taken into account. FSD itself concedes that such additional notice would not pose an administrative burden and that FSD is willing to make changes to its pre-deprivation form. FSD's Deputy Director John Ginwright, testified that "the ability for [FSD] to change a form if it's within federal and state statutes is very easy" and that the same is true for "chang[ing] [FSD's] administrative policies."

Ex. 13, Ginwright Depo. 62:24–63:5. Particularly with respect to sufficient notice prior to license deprivation, Deputy Director Ginwright admitted that FSD's pre-suspension form does *not* give a parent notice that they "could have payment plans set at a rate that they can afford," but that "this form is not rooted or is not anything that we can't change. . . . [W]e're open to all changes. So this is not anything that, you know, if it needs to read better we can make it read better." *Id.* at 129:1–15. Indeed, just a few small changes to the Notice of Intent could cure the procedural defaults in FSD's current notice provision and they would be easy to print on future letters. *See* Ex. 22, Sample Notice. Second, it would not cause FSD undue burden to consider ability to pay during hearings, because Defendants already provide pre-deprivation hearings on the identity of the parent in arrears and the total amount of arrearage. The burden of considering willful versus non-willful nonpayment during the hearing is minimal.

### B. Plaintiffs Will Continue to Suffer Irreparable Harm if the Preliminary Injunction Does Not Issue

Without intervention from this Court, Plaintiffs' driver's licenses will remain suspended indefinitely and they will suffer the continuing cycle of poverty caused by Defendants' suspension scheme. Mr. Bedford is struggling with homelessness and unable to apply for available jobs that require a license. Ex. 1, Bedford Depo at 15:25; 100:4–23. License suspension has severely impacted his ability to be a parent to his six-year-old daughter, whom he now rarely sees. Ex. 23, Bedford Decl. at ¶¶ 19, 23–27. Each day that Mr. Bedford goes without seeing his daughter, he misses parts of her childhood that he cannot get back. Mr. Gildehaus lost his commercial driver's license as a result of his suspension, which severely hinders his ability to provide for his two younger children and his ability to pay child support for his older son. Ex. 7, Gildehaus Decl. at ¶¶ 11, 14–16, 20–22. Ms. Mancini lost her most recent full-time job because of her license suspension and is forced to risk further fines and possible incarceration every day as she drives in

the course of caring for her four youngest children. Ex. 4, Mancini Decl. at ¶¶ 19–21, 24–25. License suspension affects every aspect of a parent's life, including their ability to get to work and to provide for their children both financially and emotionally. Plaintiffs suffer irreparable familial and financial harms each additional day that their licenses are suspended.

**C. Defendants Will Not Be Harmed if the Preliminary Injunction Issues**

Defendants will not suffer any harm under a preliminary injunction. The administrative burden of adding ability-to-pay measures to pre-suspension notices and hearings is negligible, because FSD already expends the resources to send such notices and conduct such hearings. Because the putative class includes only those who are *unable* to pay their child support, FSD will not suffer the loss of uncollected child support for their custodial parents if this Court orders Defendants to refrain from poverty-based suspensions; no punishment or incentive can force a person to pay a debt that she cannot pay. For parents who are truly unable to pay their arrears or payment plans, no amount of coercion will make them magically able to pay. *Cf. Bearden v. Georgia*, 461 U.S. 660, 670 (1983) (Revoking the probation of someone who *through no fault of his own is unable* to make restitution will not make restitution suddenly forthcoming.") (emphasis added); *Tate v. Short*, 401 U.S. 395, 399 (1971) ("[Punishment here] is imposed to augment the State's revenues but obviously does not serve that purpose; the defendant cannot pay because he is indigent"). License suspension for indigent parents does not increase their likelihood of paying child support. Because of the connection between driving and employment, suspensions make it *less* likely that suspended parents will be able to provide some amount of support to their children, and suspensions make government lose out on revenue that comes from increased employability.

Additional procedures to prevent erroneous deprivations of licenses are desirable, and fewer poverty-based suspensions are in Defendants' interests. FSD readily concedes that it's goal is ultimately *not to suspend licenses.* Ex. 10, Suspension Memo, p. 2 ("[S]taff must remember the

intent of license suspension is to convince parents to enter into payment agreements and pay their support; the intent is not to suspend licenses." FSD's Deputy Director Ginwright explained, "the actual driver's license suspension is not effective at all. What is effective is the process until we get to the suspension. That's the effective part. The effective part is not suspending. The effective part is doing that notice of intent, trying to open up communications, trying to get the payment." Ex. 13 at 113:10–22. FSD does not have an interest in suspending licenses, but rather in processes that yield more payment. By putting parents on notice that they can enter into a payment plan based on a realistic assessment of their ability to pay, the state will not be harmed, but rather helped in collecting payments from noncustodial parents. *See* Ex. 19, Hahn Report at p. 8, ¶ 31 and p. 11, ¶ 47 ("Research shows that most low-income noncustodial fathers care deeply about their roles as fathers, want to support their children, and are eager to contribute to their children's material needs . . . [but] when child support orders exceed a parent's ability to pay, they are less likely to comply with the order"). And by refraining from suspending the licenses of impoverished parents, there is a greater chance those parents will be able to earn more money and contribute more in child support. Ex. 21, Peterson Report, p. 2 at ¶ 7 ("[T]o the extent a failure to pay child support is the result of an inability to pay, a suspension will, on average, make the debtor's financial position worse and reduce ability to pay.").

If an injunction issues, FSD will still be able to use license suspensions as an enforcement tool, and suspensions will actually be more effective. By enacting procedures to determine whose nonpayment is willful and whose is not, FSD can still use driver's license suspensions to enforce child support against parents whose nonpayment is willful. On the other hand, refraining from suspending the licenses of indigent parents will have no bearing on the effectiveness of child support enforcement, for as the Defendants' *own expert* says; "[i]f a person is truly indigent and

cannot afford to pay his or her child support obligation, then suspension of his or her license will not coerce them into paying child support." Ex. 24, Smith Report at p. 9.

### D. An Injunction Will Serve the Public Interest by Adding Crucial Procedural Protections to Protect Vulnerable Families from Future Harm

A preliminary injunction will serve the public interest because it will enable parents to get to and from work, making it *more* likely that they are able to financially contribute to their noncustodial children. *See* Ex. 19, Hahn Report at ¶¶ 31, 56, 75; Ex. 20, Puentes Report at ¶ 44. For impoverished parents who have both custodial and noncustodial children to support, a driver's license suspension is a financial hardship that ends up affecting both sets of children; such suspensions are not in the interest of families. *See* Ex. 25, Pearce Report at p. 4 ("[W]hen child support is set at amounts that cause noncustodial parents to fall below the Self-Sufficiency Standard for themselves — and especially for the children to whom they are custodial parents — it is unaffordable. . . . The solution in such cases is not to further impoverish one family to help another."). Moreover, non-diving related suspensions needlessly waste government resources without increasing safety or economic wellbeing. Indeed, carefully limited enforcement of driver's license suspensions increases public safety because "with limited enforcement resources (police, courts, prosecutors, motor vehicle agency administrators), unfocused enforcement efforts are diluted between dangerous drivers and drivers who pose far less a safety hazard. . . . [W]ith unfocused enforcement, unlicensed driving is perceived to be less dangerous, which encourages unlicensed driving by all suspended drivers." Ex. 26, Eger Report at ¶ 19.

## IV. Conclusion

For the reasons above, Plaintiffs respectfully request that this Court issue a Preliminary Injunction to ensure adequate procedural protections for Missourian parents facing license deprivations for non-willful nonpayment.

Respectfully submitted,

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