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16 **SUPERIOR COURT OF CALIFORNIA**
17 **COUNTY OF ALAMEDA**

18 GUILLERMO HERNANDEZ,
19 ELOISABETH BACA CAZARES,
20 EMMANUEL JOHNSON, and
21 BEVERLY TUCKER,

22 Petitioners/Plaintiffs,

23 v.

24 CALIFORNIA DEPARTMENT OF MOTOR
VEHICLES;
25 JEAN SHIOMOTO, in her official capacity as
26 Director of the CALIFORNIA DEPARTMENT
OF MOTOR VEHICLES;
27 and BRIAN KELLY, in his official capacity as
28 Secretary of the California State Transportation
Agency.

Respondents/Defendants.

CASE NO.: **RG16836460**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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INTRODUCTION

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2 1. This lawsuit seeks to stop the California Department of Motor Vehicles (DMV) from
3 illegally suspending the driver's licenses of hundreds of thousands of Californians. As described
4 below, the DMV has legal authority to suspend driver's licenses of people who fail to pay traffic
5 tickets or fail to appear in court to contest traffic tickets only if such persons *willfully* failed to pay the
6 traffic fine, or *willfully* failed to appear on the traffic ticket. In fact, the DMV has a practice of
7 suspending the driver's licenses of people who did not willfully fail to pay or appear—many thousands
8 of whom have lost driving privileges simply because they were too poor to pay the fines. The DMV's
9 practices exceed its authority under the California Vehicle Code, violate the due process and equal
10 protection rights of traffic defendants, and cause serious harm to hundreds of thousands of low-income
11 Californians.

12 2. As both the United States and the California Supreme Court have recognized, a driver's
13 license is not a luxury; for many it is essential to their pursuit of livelihood. *See Bell v. Burson*, 402
14 U.S. 535, 539 (1971); *Rios v. Cozens*, 7 Cal.3d 792, 796 (1972). Many low wage jobs require a license.
15 Driving is often necessary in order to work, to take children to school or to medical appointments, or to
16 care for ill or disabled family members.

17 3. By its express terms, Vehicle Code Section 13365 authorizes the DMV to suspend a
18 driver's license of a person who fails to pay a traffic ticket or appear to contest the ticket *only* upon
19 notification by the traffic court that the person has violated Vehicle Code Sections 40508(a) or (b). In
20 turn, a violation of Section 40508(a) or (b) exists only where a defendant "willfully" failed to appear or
21 "willfully" failed to pay a fine.

22 4. The DMV's current suspension process operates outside of this statutory authorization.
23 Instead of following the statutory requirements of Sections 13365 and 40508, the DMV places "holds"
24 or suspensions on drivers' licenses even without a judicial finding of a willful failure to appear or pay.

25 5. Because a driver's license is an important and fundamental property interest, the
26 California and United States constitutional due process clauses, together with the statutory
27 requirements of Sections 13365 and 40508, prohibit the DMV from suspending a license unless the
28 traffic court first provided the person with notice and a meaningful opportunity to be heard regarding

1 whether a failure to appear or failure to pay was willful—including whether any such failure was due
2 to an inability to pay. Although it is not the obligation of the DMV to provide notice and opportunity
3 to be heard under Section 13665, the DMV's suspensions of licenses based on referrals from courts
4 that do not provide these procedural protections are unlawful and violate due process.

5 6. The DMV's scheme of imposing holds and suspensions also impermissibly classifies
6 and punishes similarly situated persons differently on the basis of wealth, in violation of the federal
7 and state equal protection clauses. People who can afford to pay traffic fines typically pay them; for
8 those who cannot afford the fines, the resulting suspension of their license constitutes nothing less than
9 a harsh sanction solely for being poor—a punishment that paradoxically further impairs a person's
10 ability to meet her financial obligations to the courts.

11 7. Petitioners are taxpayers and low-income Californians whose driver's licenses have
12 been improperly suspended by the DMV under Vehicle Code Section 13365, even though they had no
13 ability to pay the traffic fines and/or had good cause for failing to appear to contest the fines. Hundreds
14 of thousands of other Californians are in the same predicament: currently, the DMV is maintaining
15 holds or suspensions on more than 600,000 driver's licenses for failure to pay traffic fines or contest
16 traffic tickets under Vehicle Code Section 13365.

17 8. By this lawsuit, Petitioners seek to halt the DMV's illegal driver's license suspension
18 practices by prohibiting further suspensions and lifting current holds/suspensions unless the process
19 complies with both the California Vehicle Code and constitutional protections.

20 **JURISDICTION AND VENUE**

21 9. This Court has jurisdiction over Petitioners' request for a Writ of Mandate under Code
22 of Civil Procedure § 1085. The Court has jurisdiction over Petitioners' claims for declaratory and
23 injunctive relief under Article VI, Section 10, of the California Constitution and Code of Civil
24 Procedure §§ 410.10, 526, 526a, and 1060.

25 10. Venue in Alameda County is proper under Code of Civil Procedure § 401(1) because
26 the DMV is a state agency that may be sued in any county in California in which the Attorney General
27 has an office, and the Attorney General maintains an office in Alameda County.

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PARTIES

A. Petitioners/Plaintiffs

Guillermo Hernandez

11. Petitioner/Plaintiff Guillermo Hernandez is a Contra Costa County resident whose driver's license was unlawfully suspended by the DMV for failing to pay a traffic ticket.

12. In March 2013, Mr. Hernandez received a traffic citation for failing to update his address on his driver's license and not having valid registration.

13. Mr. Hernandez went to court twice to try to resolve this ticket but each time court staff told him that the ticket was not in "the system."

14. Although the base fine for Mr. Hernandez's violations were approximately \$500, after additional fees, and civil assessments for failing to appear and pay the ticket, the total amount became more than \$900. In July 2015 Mr. Hernandez made a payment of \$200 toward his balance, but he still owed more than \$700, which he could not afford to pay.

15. When it was time to renew his license, Mr. Hernandez went to the DMV. The DMV staff informed him that he could not renew his license because it had been suspended for failing to appear and failing to pay his 2013 traffic ticket.

16. Upon information and belief, the DMV suspended Mr. Hernandez's license under Vehicle Code Section 13365 despite the absence of any opportunity to show good cause for failure to pay and despite the absence of any valid finding by the court that he had willfully failed to pay or willfully failed to appear, as required by Vehicle Code Section 40508.

17. Mr. Hernandez was never informed that he had a right to ask the court for an "ability to pay" determination, nor did the court ever conduct such a hearing or assess whether Mr. Hernandez's failure to pay was willful.

18. Mr. Hernandez cannot afford to pay the entire amount of the fines. He lives with his wife and two children. He has not had stable work since approximately 2013, when his small business was forced to close its doors.

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1 ***Eloisabeth Baca Cazares***

2 19. Petitioner/Plaintiff Eloisabeth Baca Cazares is a San Mateo County resident whose
3 license was unlawfully suspended by the DMV when she did not appear or pay a 2015 traffic ticket.

4 20. In April 2015 Ms. Baca Cazares received a traffic citation in San Mateo County for
5 allegedly driving straight from a turn lane and failing to show proof of insurance.

6 21. At that time Ms. Baca Cazares did have insurance. However she was working two jobs
7 as a Certified Nursing Assistant (CNA) and was unable to take time off from work to appear in court to
8 show proof of insurance.

9 22. In late 2015, Ms. Baca Cazares received a notice from San Mateo Superior Court about
10 the outstanding ticket. The notice did not contain any information about the right to an “ability to pay”
11 determination. When Ms. Baca Cazares went to the court to try to resolve her ticket, the court clerk
12 told her that she was required to pay the ticket in full—a total of \$1625. Ms. Baca Cazares informed
13 the clerk she could not afford the entire amount, and that she needed to drive in order to work. The
14 clerk did not tell Ms. Baca Cazares about her right to an ability to pay determination, or about the
15 availability of an affordable payment plan: her only option was to pay the full amount, which Ms. Baca
16 Cazares could not afford.

17 23. Upon information and belief, the DMV suspended Ms. Baca Cazares’ license under
18 Vehicle Code Section 13365 despite the absence of any valid finding by the court that she had willfully
19 failed to pay or willfully failed to appear, as required by Vehicle Code Section 40508.

20 24. On or about August or September of 2016, Ms. Baca Cazares lost her wallet and went
21 to the DMV to get a new license. It was then that Ms. Baca Cazares learned that her license had been
22 suspended as a result of the unpaid traffic ticket.

23 25. In October 2016, Ms. Baca Cazares went to the San Mateo County Superior Court to
24 ask the court to consider her ability to pay. Ms. Baca Cazares’ currently works full-time as a CNA,
25 earning approximately \$14 per hour. She devotes her entire income to basic living expenses such as
26 housing, food, and medical care; she has no disposable income from which to pay the \$1625 fine.

27 26. The San Mateo Superior Court did not offer Ms. Baca Cazares the opportunity to
28 present her financial circumstances to the court, or to seek a reduction in the fine on the basis of

1 financial hardship. Instead, the court put Ms. Baca Cazares on a payment plan that requires her to remit
2 \$120 per month—an amount far too high given Ms. Baca Cazares' financial circumstances. By
3 agreeing to the payment plan, Ms. Baca Cazares was able to regain her driver's license. However,
4 given her financial circumstances Ms. Baca Cazares is at significant risk of falling behind on her
5 payments and again losing her driver's license simply because she cannot afford the court fines and
6 fees.

7 ***Emmanuel Johnson***

8 27. Petitioner/Plaintiff Emmanuel Johnson is a Contra Costa County resident whose
9 driver's license was unlawfully suspended by the DMV for failure to pay traffic fines.

10 28. In March 2014, Mr. Johnson received a speeding ticket.

11 29. He received a second speeding ticket in April 2014. He was also cited for failing to
12 provide proof of insurance.

13 30. Mr. Johnson wished to contest the tickets, including by demonstrating that he was in
14 fact insured. He therefore entered "not guilty" pleas on the March and April tickets. He was given two
15 court dates, August 19, 2014, and October 17, 2014. On August 18, 2014, Mr. Johnson was arrested
16 and incarcerated; as a result, he was unable to appear in court on either August 19 or October 17, 2014.

17 31. After Mr. Johnson was released from custody in February 2015, he went to the
18 courthouse to try to resolve the tickets. A court clerk told him it was too late to see the judge or to have
19 the fines reduced.

20 32. Mr. Johnson did not—and still does not—have enough money to pay the full amount of
21 the traffic fines, which are more than \$2000.

22 33. Upon information and belief, the DMV suspended Mr. Johnson's license under Vehicle
23 Code Section 13365 despite the absence of any valid finding by the court that he had willfully failed to
24 pay or willfully failed to appear, as required by Vehicle Code Section 40508.

25 34. In or around April 2015, Mr. Johnson was pulled over by a police officer, who told Mr.
26 Johnson that his driver's license had been suspended and confiscated the license.

27 35. In March 2016, Mr. Johnson filed a *pro se* motion to vacate his traffic fines, and
28 attached proof of his incarceration and proof of insurance. The Contra Costa Superior Court sent Mr.

1 Johnson a letter stating that the motion was denied, but did not provide any explanation of the grounds
2 for denial.

3 36. The Contra Costa Superior Court never informed Mr. Johnson that he has a right to an
4 "ability to pay" determination, nor did the court ever conduct such a hearing or assess whether Mr.
5 Johnson's failures to pay or failures to appear were willful.

6 37. The license suspension has impacted Mr. Johnson's ability to find higher paying
7 employment. He currently works in a warehouse earning \$15 per hour. His supervisor offered him a
8 higher-paying position as a driver, but he was unable to accept the promotion due to his license
9 suspension.

10 38. Mr. Johnson has a son who was born in May 2016. Mr. Johnson's suspended license
11 means he cannot drive his son to medical appointments.

12 **Beverly Tucker**

13 39. Taxpayer Petitioner/Plaintiff Beverly Tucker is a resident of Alameda County. She pays
14 property and other state and local income taxes.

15 **B. Respondents/Defendants**

16 40. Respondent/Defendant California Department of Motor Vehicles is a California State
17 agency and is responsible for imposing and maintaining driver's license suspensions under Vehicle
18 Code Section 13365. It expends state taxpayer funds in carrying out these duties.

19 41. Respondent/Defendant Jean Shiimoto is the Director of the California Department of
20 Motor Vehicles, and is charged with administering and enforcing all provisions of the California
21 Vehicle Code relating to the California Department of Motor Vehicles. *See Veh. Code § 1650.* She is
22 sued in her in her official capacity.

23 42. Respondent/Defendant Brian Kelly is the Secretary of the California State
24 Transportation Agency, and has the authority to develop and coordinate the policies and programs of
25 the state's transportation entities including the Department of Motor Vehicles. *See Veh. Code § 1505;*
26 <http://www.calsta.ca.gov/AboutUs.aspx>. He is sued in his official capacity.

27 43. Respondents/Defendants California Department of Motor Vehicles, Shiimoto and Kelly
28 (collectively referred to as "DMV") expend state taxpayer dollars in performing these functions.

FACTS

A. Driver's License Suspensions Under California Vehicle Code Section 13365.

44. California Vehicle Code Section 13365 governs when the DMV can suspend the driver's license of a person who has failed to pay a traffic ticket or failed to appear in court to contest it. Specifically, Vehicle Code Section 13365(a) permits suspension only "[u]pon receipt of notification [by a court to DMV] of a violation of subdivision (a) or (b) of Section 40508." Section 13365 further provides that the "suspension shall continue until the suspended person's driving record does not contain any notification of a violation of subdivision (a) or (b) of Section 40508."

45. In turn, Vehicle Code Section 40508 defines the misdemeanor offense of "willfully violating" a promise to appear or "willfully failing" to pay fines or bail. *Id.* at (a)–(b).

46. Accordingly, the DMV may only exercise its authority to suspend a person's driver's license under Section 13365 if a court has found that the person has "willfully" failed to pay or "willfully" failed to appear.

47. The term "willfully" implies a "purpose or willingness to commit the act, or make the omission[.]" Pen. Code § 7; *see also* Veh. Code § 38392 ("'Willfully', as used in this section, has the same meaning as the meaning of that word prescribed in Section 7 of the Penal Code.").

48. A failure to pay cannot be willful if the person did not in fact have the ability to pay. *See, e.g.,* Cal. Pen. Code § 7; *see also* Black's Law Dictionary (9th ed. 2009) ("willful" defined as "voluntary or intentional").

49. A failure to appear cannot be willful if the person involuntarily missed a court date, including, for example, because of family emergencies, medical emergencies, lack of transportation, or other good cause.

B. The DMV's Driver's License Holds and Suspensions Exceed Its Statutory Authority.

50. On information and belief, the DMV oversees a system wherein traffic courts notify the DMV that a person has allegedly failed to appear or failed to pay a traffic fine without making the required finding that the person violated 40508, and in some cases without even charging the person under Section 40508.

1 51. On information and belief, when the DMV receives a notification that a person has been
2 charged with a failure to appear or pay a traffic fine, the DMV places a "hold" on the driver's licenses.

3 52. The DMV is not statutorily authorized to enter a driver's license "hold" based on a
4 charge of allegedly failing to appear or failing to pay a traffic fine.

5 53. On information and belief, these DMV driver's license "holds" have the same or similar
6 effect as driver's license suspensions, in that they ultimately result in a person not being able legally to
7 drive.

8 54. On information and belief, the DMV converts a driver's license hold to a suspension if
9 a person fails to respond to the DMV's notice regarding the hold.

10 55. On information and belief, the DMV's practice of imposing driver's license holds and
11 suspensions does not satisfy the statutory requirements of Vehicle Code Sections 13365 and 40508,
12 because:

13 a. the traffic court has not found that the person violated Vehicle Code Section
14 40508(a) or (b); and/or

15 b. the traffic court has not made a proper judicial finding that the person's failure to
16 appear or failure to pay was willful.

17 **C. The DMV Suspends the Driver's Licenses of People Whose Failures to Pay or Appear**
18 **Were Not Willful.**

19 56. The DMV places holds on driver's licenses and/or suspends driver's licenses under
20 Vehicle Code Section 13365 even where the individual traffic defendant did not willfully fail to pay a
21 traffic fine or appear to contest the ticket.

22 57. A failure to pay a traffic fine is not willful if the traffic defendant cannot afford to pay
23 the fine.

24 58. Most traffic courts do not provide traffic defendants with notice and an opportunity to
25 be heard regarding their ability to pay traffic fines.

26 59. Based on responses from public records acts requests sent out on February, March,
27 May, June, and July 2016, more than three-quarters of all superior courts in the state have failed to
28

1 notify traffic defendants that they have the right to be heard regarding their ability to pay outstanding
2 traffic fines and fees.

3 60. Based on those responses, those courts therefore have failed to provide traffic
4 defendants with adequate notice and/or a meaningful opportunity to be heard regarding the willfulness
5 of the violation.

6 61. On information and belief, courts lacking these procedural protections nonetheless have
7 referred and continue to refer traffic defendants to the DMV for driver's license holds or suspensions.

8 62. On information and belief, upon receiving the referrals from these courts, the DMV has
9 and continues to place holds or to suspend driver's licenses notwithstanding the absence of an adequate
10 determination that the person's failure to pay was "willful."

11 63. Although some courts have recently revised their notices and/or procedures, or are in
12 the process of doing so, on information and belief, many courts throughout California have failed, and
13 continue to fail, to conduct meaningful ability to pay determinations.

14 64. On information and belief, courts lacking these procedural protections nonetheless have
15 referred and continue to refer persons to the DMV for license holds or suspensions for willful failure to
16 pay traffic fines and fees.

17 65. On information and belief, upon receiving such notices from these courts, the DMV has
18 placed holds on or suspended, and continues to place holds on or suspend driver's licenses even where
19 there was no determination that the person's failure to pay was "willful."

20 66. Holds and suspensions for failure to pay originating from courts that have not provided
21 adequate notice and an opportunity to be heard on willfulness are invalid because there has been no
22 proper determination of the "willfulness" of the person's failure to pay.

23 67. A failure to appear is not willful if the traffic defendant has good cause for failing to
24 come to court.

25 68. Based on responses from public records acts requests sent out on February, March,
26 May, June, and July 2016, more than one-third of California's superior courts have unjustifiably
27 restricted the reasons that a person's failure to appear in court will be excused as non-willful. Those
28

1 courts identify an exclusive list of reasons for which non-appearance will be excused, and on
2 information and belief, refuse to consider any other reasons.

3 69. Upon information and belief, those courts refuse to consider numerous valid reasons
4 why a person's failure to appear may be non-willful, including, for example, medical necessity not
5 resulting in hospitalization, family emergency, homelessness or lack of transportation. Holds and
6 suspensions for failure to appear originating from courts that have unduly restricted the bases for
7 which such a failure may be excused are invalid because there has been no proper determination of the
8 "willfulness" of the person's failure to appear in court.

9 70. Because Vehicle Code Section 13365 only permits the DMV to suspend licenses for
10 willful failures to pay or appear, license holds or suspensions that resulted from the deficient court
11 procedures described above exceed the DMV's statutory authority under Section 13365 and are
12 therefore invalid.

13 71. A driver's license is a fundamental property interest that the U.S. Supreme Court has
14 found to be essential in the pursuit of a livelihood. *Bell v. Burson*, 402 U.S. 535, 539 (1971); *see also*
15 *Rios v. Cozens*, 7 Cal.3d 792, 796 (1972).

16 72. Because a driver's license is a fundamental property interest, it is protected by the
17 California and United States constitutional due process clauses, and license holds or suspensions that
18 result from the deficient court procedures described above violate the constitutional rights of traffic
19 defendants.

20 **D. The DMV's Practices Unfairly Discriminate Against Low Income Californians.**

21 73. The DMV's license holds and suspensions under Section 13365 punish individuals
22 unequally based on their wealth, in violation of the equal protection clauses of the California and
23 United States Constitutions.

24 74. Drivers who can afford to resolve their traffic citations by paying the required fines and
25 fees generally do so. In contrast, low-income and indigent drivers cited with the same traffic
26 violations, but who cannot afford to pay the fines, also face the additional penalty of a license
27 suspension solely because of their inability to pay.

1 75. In recent years, the overall cost of a traffic citation in California has skyrocketed, due to
2 the large number of fees and assessments added by the Legislature to the base fine of each ticket.
3 These staggering fees, imposed on even the most minor of traffic violations, are the result of the
4 State's attempt to alleviate budget shortfalls and fund basic government operations, including trial
5 court operations and construction.

6 76. California currently imposes a state penalty assessment of \$10 for every \$10 of the base
7 fine, a state criminal surcharge of 20% on the base fine, a court operations assessment of \$40 fee per
8 fine, a court construction fee of \$5 for every \$10 of the base fine, a county fund charge of \$7 for every
9 \$40 of base fine and a DNA fund assessment of \$5 for every \$10 of base fine, among others. *See* Pen.
10 Code §§ 1464, 1465.7, 1465.8; Gov. Code §§ 70372, 76000, 76104.6, 76104.7.

11 77. Thus, a \$100 ticket for failure to carry evidence of financial responsibility now costs
12 \$490. *See* Judicial Council of California, Uniform Bail & Penalty Schedules (2016) at 16, *available at*
13 <http://www.courts.ca.gov/documents/2016-JC-BAIL.pdf>. A \$35 ticket for failing to signal before
14 changing lanes becomes \$238. *Id.* at 25. A \$20 ticket for using a hand-held cell phone while driving
15 becomes \$162. *Id.* at 31. If an individual misses the deadline to pay or appear, a civil assessment of
16 \$300 is often added, bringing the total for that \$100 ticket to \$815, the \$35 ticket to \$538 and the \$20
17 ticket to \$462. *Id.*; Pen. Code § 1214.1.

18 78. These add-on fines and license suspension procedures are used even for violations that
19 are wholly unrelated to driving a car, meaning for example that a person who cannot afford to pay
20 \$197 for a jaywalking citation can lose their driver's license. *See* Judicial Council of California,
21 Uniform Bail & Penalty Schedules (2016) at 24 (violation of Vehicle Code Section 21995
22 (jaywalking) has base fine of \$25 and total "bail" of \$197).

23 79. The burden of the increasing costs of traffic citations falls particularly hard on the more
24 than 6 million people who are living in poverty in California, as well as for those on public assistance,
25 who attempt to survive on as little as a few hundred dollars per month. For example, the average
26 CalWORKs welfare grant is \$491.59 a month. The maximum grant for a single Californian receiving
27 Supplemental Security Income (SSI), the program for low-income elderly or disabled persons, is
28 \$889.40. Many of these households do not have enough income to cover even the basic necessities—

1 housing, food, clothing, and transportation—and they simply cannot pay hundreds of dollars for a
2 traffic ticket.

3 80. Yet as explained above, the DMV suspends driver’s licenses under Section 13365 even
4 for defendants who never received notice or a meaningful opportunity to be heard by the traffic court
5 as to whether the failure to appear or failure to pay traffic fines was willful, including whether they
6 could afford the fines and fees.

7 81. The result is that the DMV suspends the licenses of people who did not pay solely
8 because they could not afford to pay.

9 82. There is no rational, much less a compelling, basis for suspending driver’s licenses of
10 people who cannot afford to pay their fines.

11 83. There are other methods for holding persons responsible for having violated traffic
12 laws, including community service or installment plans tailored to a person’s individual circumstances.

13 84. The DMV’s suspensions and/or holds of driver’s licenses for failure to pay traffic fines
14 or to appear to contest traffic tickets are not justified by a public safety rationale. The Vehicle Code
15 provides—under statutes not challenged here—other mechanisms to suspend the driver’s licenses of
16 individuals who pose a risk to public safety. *See, e.g.*, Veh. Code § 13200 (permitting suspension for
17 speeding or reckless driving); § 13203 (permitting suspension for driver who commits “road rage”);
18 § 13382 (requiring confiscation and suspension of license for driving under the influence); § 12810.5
19 (permitting suspension for receiving four “points” in a 12 month period and being designated as a
20 “negligent operator”). In many instances, a suspension for risky driving is *shorter* than the suspensions
21 for a simple failure to pay a fine or appear in court. *See, e.g.*, Veh. Code §§ 22348 and 13200
22 (suspension for excessive speeding or reckless driving can be as short as 30 days); §13353.3 (driving
23 under influence suspension can be as short as 3 or 4 month); § 13201 (court may suspend for “not
24 more than 6 months” for failing to stop after an accident, reckless driving that causes bodily injury, or
25 evading a peace officer).

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1 **E. Injunction, Writ and Declaratory Relief Are Appropriate And Necessary.**

2 85. For all of the above violations, Petitioners have no adequate remedy at law because the
3 denial of these fundamental constitutional and statutory rights cannot be remedied fully and adequately
4 through legal relief.

5 86. Unless Respondents are ordered to comply with their aforementioned duties, Petitioners
6 and other similarly situated individuals whose licenses will be or have been suspended due to alleged
7 failures to appear or pay will be irreparably harmed, including by loss of employment or employment
8 opportunities, inability to obtain medical care, inability to bring children to school, and other harms
9 that flow from the loss of a driver's license.

10 87. Respondents' wrongful conduct also harms the public interest by, among other things,
11 negatively affecting individuals' abilities to work or improve their employment opportunities, and
12 interfering with individuals' and their family members' access to education and medical care, thereby
13 further burdening public agencies responsible for providing safety net support.

14 88. Unless enjoined by this Court, Respondents will continue to refuse to perform their
15 duties. As a result, Petitioners and similarly situated individuals whose licenses have been or will be
16 suspended will be injured.

17 89. Although written demand was made upon the Respondents to perform their duties, they
18 have failed and refused to perform them.

19 90. Individual Petitioners Guillermo Hernandez, Eloisabeth Baca Cazares, and Emmanuel
20 Johnson and are beneficially interested in having Respondents comply with all applicable provisions of
21 law and their legal duties, as set forth herein.

22 91. At all times relevant to this action, Respondents have had and continue to have the legal
23 ability to perform their duties but despite demand have failed and refused to do so.

24 92. An actual controversy has arisen and presently exists between Petitioners and
25 Respondents. Petitioners contend that Respondents are obligated by law to cease the suspension of
26 licenses, and release current suspensions imposed pursuant to Vehicle Code Section 13365 unless: (a)
27 the DMV receives lawful notifications from traffic courts that drivers have violated Section 40508; and
28 (b) drivers are provided with timely and meaningful notice and opportunity to be heard regarding

1 willfulness and ability to pay; and (c) traffic courts properly make willfulness findings and ability to
2 pay determinations prior to license suspensions based on Vehicle Code Sections 13365 and 40508, and
3 other sections as described above.

4 93. A judicial declaration is necessary and appropriate at this time in order that Petitioners
5 may ascertain and enforce their rights and duties as set forth above.

6 **First Cause of Action**
7 **Violation of California Vehicle Code § 13365**
8 **All Petitioners/Plaintiffs Against All Respondents/Defendants**

9 94. Petitioners incorporate by reference all of the above allegations as though fully set forth
10 herein.

11 95. Under Vehicle Code Section 13365(a), the DMV may suspend a person's driving
12 privileges for failure to appear or pay only "[u]pon receipt of notification of a violation of subdivision
13 (a) or (b) of Section 40508." The DMV may maintain the suspension only so long as the driving record
14 contains a "notification of a violation of subdivision (a) or (b) of Section 40508." Veh. Code
15 § 13365(b).

16 96. To violate Section 40508(a), a person must "willfully" violate his or her written
17 promise to appear. To violate Section 40508(b), a person must "willfully" fail to pay bail or a lawfully
18 imposed fine.

19 97. Respondents violate Vehicle Code Section 13365 and exceed their authority under the
20 Vehicle Code by suspending, or placing a hold on, driving privileges based on notifications from
21 courts that do not state that the driver violated Section 40508(a) or (b), or alternatively where the court
22 providing notification has not properly determined that the traffic defendant has violated Section
23 40508 (a) or (b).

24 98. Respondents further violate Vehicle Code Section 13365 and exceed their authority
25 under the Vehicle Code by maintaining driver's licenses suspensions even where there is no
26 notification of a violation of Section 40508(a) or (b), or alternatively where the court providing
27 notification has not properly determined that the traffic defendant has violated Section 40508 (a) or
28 (b).

1 99. Respondents have a present, ministerial duty to comply with Vehicle Code Section
2 13365.

3 **Second Cause of Action**
4 **Violation of California Constitution, Article I, §§ 7, 15—Due Process**
5 **All Petitioners/Plaintiffs Against All Respondents/Defendants**

6 100. Petitioners incorporate by reference all of the above allegations as though fully set forth
7 herein.

8 101. Article I, Sections 7 and 15 of the California Constitution prohibit the government from
9 depriving any person of life, liberty, or property without due process of law.

10 102. A driver's license is an important and fundamental property interest.

11 103. Respondents' suspensions of, or holds on, driver's licenses pursuant to Vehicle Code
12 Section 13365 where the traffic defendants have not received notice that they have a right to a
13 determination that their failure to appear or failure to pay a fine was willful, including whether they
14 had the ability to pay their fine, violates the due process clause of the California Constitution.

15 104. Respondents' suspension of, or holds on, driver's licenses pursuant to Section 13365
16 where the traffic defendants have not received a meaningful determination that their failure to pay or
17 appear was willful, violates the due process clause of the California Constitution.

18 105. Respondents have a present, ministerial duty to comply with the due process clause of
19 the California Constitution.

20 **Third Cause of Action**
21 **Violation of the United States Constitution, Amendment 14 – Due Process**
22 **All Petitioners/Plaintiffs Against All Respondents/Defendants**

23 106. Petitioners incorporate by reference all of the above allegations as though fully set forth
24 herein.

25 107. The Fourteenth Amendment prohibits the states from depriving any person of life,
26 liberty, or property without due process of law.

27 108. A driver's license is an important and fundamental property interest.

28 109. Respondents' suspension of, or holds on, driver's licenses pursuant to Vehicle Code
Section 13365 where the traffic defendants have not received notice that they have a right to a

1 determination that their failure to appear or failure to pay a fine was willful, including whether they
2 had the ability to pay their fine, violates the due process clause of the United States Constitution.

3 110. Respondents' suspension of, or holds on, driver's licenses pursuant to Vehicle Code
4 Section 13365 where the traffic defendants have not received a meaningful determination that their
5 failure to pay or appear was willful, violates the due process clause of the United States Constitution.

6 111. Respondents have a present, ministerial duty to comply with the due process clause of
7 the United States Constitution.

8 **Fourth Cause of Action**
Violation of California Constitution, Article I, § 7—Equal Protection
All Petitioners/Plaintiffs Against All Respondents/Defendants

9 112. Petitioners incorporate by reference all of the above allegations as though fully set forth
10 herein.

11 113. Respondents suspend, or place holds on, driver's licenses pursuant to Vehicle Code
12 Section 13365 where the court failed to make any determination of whether an individual's conduct
13 was willful, including whether an individual had the ability to pay.

14 114. Respondents' practice of suspending licenses pursuant to Vehicle Code Section 13365
15 regardless of a person's actual financial circumstances constitutes a system that impermissibly
16 classifies and punishes similarly situated persons on the basis of wealth with respect to an interest
17 protected by due process, in violation of the Equal Protection Clause of the California Constitution.

18 115. Suspending the driver's license of an indigent person or a person who is unable to pay
19 the high costs of a traffic ticket serves no rational, much less a compelling, governmental interest.

20 116. Respondents have a present, ministerial duty to comply with the Equal Protection
21 Clause of the California Constitution.

22 **Fifth Cause of Action**
Violation of United States Constitution, Amendment 14 – Equal Protection
All Petitioners/Plaintiffs Against All Respondents/Defendants

23 117. Petitioners incorporate by reference all of the above allegations as though fully set forth
24 herein.
25
26
27
28

118. The United States Supreme Court has repeatedly endorsed the principle that punishing a person solely for his or her poverty, rather than for willful refusal to pay or make *bona fide* efforts to acquire the resources to pay, violates principles of fundamental fairness embedded in the Fifth and Fourteenth Amendments of the United States Constitution.

119. Respondents suspend, or place holds on, driver's licenses pursuant to Vehicle Code Section 13365 where the court failed to make any determination of whether an individual's conduct was willful, including whether the individual had the ability to pay.

120. Respondents' practice of suspending licenses pursuant to Vehicle Code Section 13365 regardless of a person's actual financial circumstances constitutes a system that impermissibly classifies and punishes similarly situated persons on the basis of wealth in violation of the Equal Protection Clause of the United States Constitution.

121. Suspending the driver's license of an indigent person or a person who is unable to pay the high costs of a traffic ticket serves no rational, much less a compelling governmental interest.

122. Respondents have a present, ministerial duty to comply with the Equal Protection Clause of the United States Constitution.

Sixth Cause of Action
Taxpayer Action under Code Civ. Pro. § 526a to Prevent Illegal Expenditure of Funds
Petitioner/Plaintiff Beverly Tucker Against All Respondents/Defendants

123. Petitioner Beverly Tucker incorporates by reference all of the above allegations as though fully set forth herein.

124. Respondents are illegally expending public funds by performing their duties in violation of the statutory and constitutional provisions described above.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court:

1. Issue a declaration that:

- 1 a. Any hold on or suspension of a driver's license by Respondents for a driver's failure
2 to appear or failure to pay where the traffic court did not notify the DMV of a
3 violation of Vehicle Code 40508(a) or (b), or did not find a violation of Vehicle Code
4 Section 40508, exceeds Respondents' statutory authority and is unlawful;
- 5 b. Any hold on or suspension of a driver's license by Respondents for failure to appear
6 or failure to pay where the traffic court did not make a proper determination that a
7 traffic defendant's failure to appear or pay was "willful" violates the due process
8 clauses of the California and United States Constitutions;
- 9 c. Any hold on or suspension of a driver's license by Respondents for failure to appear
10 or failure to pay where the traffic court did not make a proper determination that a
11 traffic defendant's failure to pay or appear was "willful" violates the equal protection
12 clauses of the California and United States constitutions;
- 13 d. Respondents' continued holds on or suspension of Petitioners Hernandez's, Baca
14 Cazares', and Johnson's driver's licenses violates Vehicle Code Section 13365, as
15 well as the due process and equal protection clauses of the California and United
16 States Constitutions.
- 17 e. Respondents' continued hold on or suspension of any driver's license based on the
18 deficient processes and procedures described herein violates Vehicle Code Section
19 13365, as well as the due process and equal protection clauses of the California and
20 United States Constitutions.
- 21 2. Issue a Writ of Mandate pursuant to California Code of Civil Procedures Section 1085 as
22 follows:
- 23 a. Requiring Respondents to stop placing holds or suspending driver's licenses, and
24 to cease maintaining any current hold or suspension, for a driver's failure to
25 appear or failure to pay where the traffic court did not notify the DMV of a
26 violation of Vehicle Code 40508(a) or (b), or did not find a violation of Vehicle
27 Code Section 40508;
- 28

1 b. Requiring Respondents to stop placing holds or suspending driver's licenses, and
2 to cease maintaining any current hold or suspension, for a driver's failure to
3 appear or failure to pay originating from a court where there has not been a lawful
4 judicial determination, preceded by adequate notice and a meaningful opportunity
5 to be heard, that the non-payment or non-appearance was willful and violated
6 Vehicle Code Section 40508 (a) or (b);

7 c. Requiring Respondents to lift any holds or suspensions of the driver's licenses of
8 Petitioners Hernandez, Baca Cazares, and Johnson for failure to appear or failure
9 to pay; and

10 d. Requiring Respondents to take the above actions in subpart a through c without
11 collecting or attempting to collect, directly or through their agents, any
12 outstanding fees or civil assessments related to any failure to pay or appear on
13 traffic citations, including but not limited to any fees for reinstatement of the
14 driver's licenses.

15 3. Issue a preliminary and/or permanent injunction as follows:

16 a. Prohibiting Respondents from placing holds on or suspending driver's licenses, or
17 maintaining any license holds or suspensions, pursuant to Vehicle Code Section
18 13365 where the traffic court did not notify the DMV of a violation of Vehicle
19 Code 40508(a) or (b), or did not find a violation of Vehicle Code Section 40508;

20 b. Prohibiting Respondents from placing holds on or suspending driver's licenses, or
21 maintaining any license holds or suspensions, pursuant to Vehicle Code Section
22 13365 originating from a court where there has not been a lawful judicial
23 determination, preceded by adequate notice and a meaningful opportunity to be
24 heard, that the non-payment or non-appearance was willful and violated Vehicle
25 Code Section 40508 (a) or (b);

26 c. Prohibiting Respondents from maintaining any holds or suspensions of the
27 driver's licenses of Petitioners Hernandez, Baca Cazares, and Johnson; and
28

1 d. Prohibiting Respondents from collecting or attempting to collect, directly or
2 through their agents, any outstanding fees or civil assessments related to any
3 failure to pay or appear on traffic citations by the individual Petitioners, including
4 but not limited to any fees for reinstatement of their driver's licenses.

5 4. To the extent that Petitioners Hernandez, Baca Cazares, and Johnson are able to obtain
6 reinstatement of their driver's licenses during the pendency of this suit, order
7 Respondents to reimburse Petitioners Hernandez, Baca Cazares, and Johnson any court or
8 DMV fees incurred in obtaining such reinstatement;

9 5. Order Respondents to pay Petitioners' attorneys' fees and costs; and

10 6. Grant Petitioners such further relief as the Court deems just and proper.

11 DATED: October 25, 2016

Respectfully submitted,

12 By: 

13 REBEKAH EVENSON
14 REBECCA CARR MILLER
15 CLAIRE JOHNSON RABA
16 BAY AREA LEGAL AID

17 *Attorneys for Petitioners/Plaintiffs Hernandez,*
18 *Baca Cazares, and Johnson*

19 CHRISTINE P. SUN
20 KATHERINE LIN
21 AMERICAN CIVIL LIBERTIES UNION
22 FOUNDATION OF NORTHERN CALIFORNIA

23 CLARE PASTORE
24 USC GOULD SCHOOL OF LAW

25 ELISA DELLA-PIANA
26 LAWYERS' COMMITTEE FOR CIVIL RIGHTS

27 RICHARD ROTHSCHILD
28 ANTIONETTE DOZIER
WESTERN CENTER ON LAW & POVERTY

THOMAS V. LORAN III
ANDREW D. BLUTH
DARCY L. MUILENBURG
PILLSBURY WINTHROP SHAW PITTMAN LLP

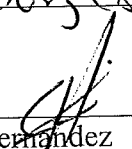
SARAH CROWLEY
THERESA ZHEN
EAST BAY COMMUNITY LAW CENTER
Attorneys for All Petitioners/Plaintiffs

VERIFICATION

I, Guillermo Hernandez, am one of the petitioners in the above-entitled action. I am aware of the nature of the Verified Petition for Writ of Mandate and Complaint for declaratory and injunctive relief being filed on my behalf, the legal bases for the Petition, and the relief being sought. To the extent that the Petition is based upon facts known to me, including the facts stated under my name in section entitled "Parties," I verify them to be true, and otherwise, I am informed and believe that all facts herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

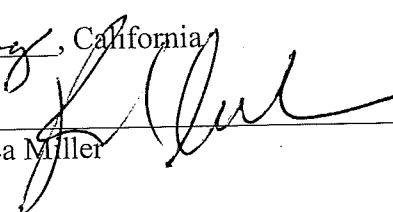
Executed on October 23, 2016, in Pittsburg, California



Guillermo Hernandez
Petitioner and Plaintiff

I, Rebecca Miller, hereby declare under penalty of perjury that I am proficient in both Spanish and English, and have read the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in its entirety to the declarant in Spanish. I have also read the foregoing Verification to the declarant who has affirmed to me that its contents are both true and correct.

Executed on October 23, 2016, in Pittsburg, California



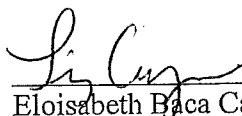
Rebecca Miller

VERIFICATION

I, Eloisabeth Baca Cazares, am one of the petitioners in the above-entitled action. I am aware of the nature of the Verified Petition for Writ of Mandate and Complaint for declaratory and injunctive relief being filed on my behalf, the legal bases for the Petition, and the relief being sought. To the extent that the Petition is based upon facts known to me, including the facts stated under my name in section entitled "Parties," I verify them to be true, and otherwise, I am informed and believe that all facts herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 19, 2016, in Redwood City, California



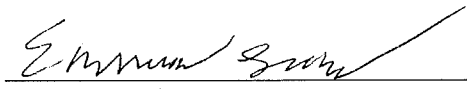
Eloisabeth Baca Cazares
Petitioner and Plaintiff

VERIFICATION

I, Emanuel Johnson, am one of the petitioners in the above-entitled action. I am aware of the nature of the Verified Petition for Writ of Mandate and Complaint for declaratory and injunctive relief being filed on my behalf, the legal bases for the Petition, and the relief being sought. To the extent that the Petition is based upon facts known to me, including the facts stated under my name in section entitled "Parties," I verify them to be true, and otherwise, I am informed and believe that all facts herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 19, 2016, in CONCORD, California



Emanuel Johnson
Petitioner and Plaintiff

VERIFICATION

I, Beverly Tucker, am the taxpayer petitioner-plaintiff. I have read this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the matter of *Guillermo Hernandez Martinez, et al., v. California Department of Motor Vehicle et al.* I am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: October 24, 2016

By: 
Beverly Tucker