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Attorney for plaintiff class

Andreana Kavadas, Alisha : SUPERIOR COURT OF NEW JERSEY
Grabowski, LaQuay Dansby, Paulo : CHANCERY DIVISION
Arede, individually and on : MERCER COUNTY
behalf of all persons similarly : DOCKET NO.
situated, :

Plaintiffs :

Civil Action

vs. :

Raymond P. Martinez, in his :
official capacity as Chief :
Administrator of the New Jersey :
Motor Vehicle Commission, and :
The New Jersey Motor Vehicle :
Commission, :

John Jay Hoffman, Esq., in his :
official capacity as Acting :
Attorney General of the State :
of New Jersey, and The State of :
New Jersey, :

Natasha Johnson, in her :
official capacity as Director :
of the Department of Human :
Services, Division of Family :
Development, Office of Child :
Support Services, and :
Department of Human Services, :
Division of Family Development, :
Office of Child Support :
Services, :

Defendants

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION

| | | |
|------------|--|----|
| Point II: | THE SUSPENSION OF LICENSES EFFECTIVE AS OF THE DATE OF THE ISSUANCE OF A "BRING TO COURT" WARRANT VIOLATES PLAINTIFFS' STATUTORY RIGHTS AS ESTABLISHED BY <u>N.J.S.A. 2A:17-56.44</u> | 46 |
| Point III. | THE CURRENT LICENSE SUSPENSION PROCEDURES VIOLATE PLAINTIFFS' RIGHT TO FUNDAMENTAL FAIRNESS VIA THE FAILURE TO APPOINT COUNSEL FOR INDIGENT LITIGANTS FACING THIS CONSEQUENCE OF MAGNITUDE | 48 |
| Point IV. | THIS MATTER IS COGNIZABLE PURSUANT TO 42 <u>U.S.C.</u> § 1983 AND THE NEW JERSEY CIVIL RIGHTS ACT | 40 |
| A. | Defendants are the proper parties and are not immune from injunctive relief | 49 |
| B. | Plaintiffs have established a right to relief pursuant to the New Jersey Civil Rights Act and 42 <u>U.S.C.</u> §1983 | 51 |
| Point V: | THE COURT SHOULD ENTER A PRELIMINARY INJUNCTION GRANTING THE RELIEF SOUGHT BY PLAINTIFFS . . | 53 |
| A. | There exists a reasonable probability of eventual success on the merits | 54 |
| B. | Irreparable injury would result if the injunction is not granted | 55 |
| C. | A weighing of the equities favors the entrance of the injunction | 56 |

Additionally, these provisions of the statute are a denial of equal protection in that only those who are not in poverty can obtain relief otherwise available under the statute, and there is no rational basis to support this distinction.

It is respectfully submitted that these provisions survive no level of scrutiny. The Attorney General should be enjoined from its further enforcement.

Point II: THE SUSPENSION OF LICENSES EFFECTIVE AS OF THE
DATE OF THE ISSUANCE OF A "BRING TO COURT"
WARRANT VIOLATES PLAINTIFFS' STATUTORY RIGHTS AS
ESTABLISHED BY N.J.S.A. 2A:17-56.44. 22

The Motor Vehicle Commission openly disregards specific due process protections set forth in N.J.S.A. 2A:17-56.44, which apply to any and all support-related license suspensions. The law requires, in relevant part:

The Probation Division shall provide the licensing authority with a copy of the order requiring the suspension or revocation of a license. Upon receipt of an order requiring the suspension or revocation of a license, **the licensing authority shall immediately notify the licensee of the effective date of the suspension or revocation, which shall be 20 days after the postmark of the notice...** (emphasis added).

The Motor Vehicle Commission does not comply with this requirement. Instead, it suspends licenses effective the date of the court's order (Exhibit K at page 11, Exhibit M at page 2 of certification, Exhibit N at page 16). The standard suspension notice provides that the suspension is effective as of the date of the entry of the "bring to court" warrant, not "20 days after

the postmark of the notice" as required by law. As the issuance of a warrant for an obligor subject to a "two week warrant status" order requires no notice (Exhibit A page 3-4), obligors are notified days or weeks after the fact that their license has been suspended. As named plaintiff LaQuay Dansby testifies, (Exhibit M at ¶8) on more than one occasion he only learned that he was suspended when subjected to a traffic stop.

If properly notified (as mandated by the explicit text of the statute), an obligor has the opportunity to have a pending suspension terminated by surrendering on the warrant and attending an Ability to Comply hearing:

If a child support-related warrant for the obligor exists, the . . . license revocation or suspension shall be terminated if the obligor . . . surrenders to the county sheriff or the Probation Division. N.J.S.A. 2A:17-56.41.

The suspension of licenses in violation of the "safety valve" contained in the statute has deprived obligors of procedural due process protections bestowed on them via N.J.S.A. 2A:17-56.44.

Since the year 2000, acting on orders from the Superior Court, the Motor Vehicle Commission has erroneously suspended a total of 5,686 child support obligors – an average of over 400 per year. (See Exhibit F, Response from MVC to Open Public Records Act request C93813). This has happened to 39 obligors this year alone as of April 22, 2015. Ibid. An erroneous suspension means that the license was not held by the obligor,

the order at issue had been vacated, an obligor had in fact appeared to answer a warrant, or some other error occurred in the system. Although these suspensions were eventually removed, the obligors would not have had to incur the time and inconvenience involved in doing so had the statute been complied with.

This court should act to address this violation by granting the relief set forth below.

Point III. THE CURRENT LICENSE SUSPENSION PROCEDURES
VIOLATE PLAINTIFFS' RIGHT TO FUNDAMENTAL
FAIRNESS VIA THE FAILURE TO APPOINT COUNSEL
FOR INDIGENT LITIGANTS FACING THIS
CONSEQUENCE OF MAGNITUDE.

It is well established that, as a matter of fundamental fairness, a litigant is entitled to counsel whenever faced with a "potential consequence of magnitude" at a court proceeding. See, e.g., Pasqua v. Council, 186 N.J. 127 (2006); N.J. Div. of Youth & Family Servs v. B.R., 192 N.J. 301, 306-07, (2007); Doe v. Poritz, 142 N.J. 1, 31 (1995); In re S.L., 94 N.J. 128, 142 (1983); Rodriguez v. Rosenblatt, 58 N.J. 281 (1971).

It is equally well settled that the suspension of a driver's license is a "consequence of magnitude" triggering this right to counsel. State v. Moran, 202 N.J. 311 (2010); Guidelines for Determination of Consequence of Magnitude, Pressler, Current N.J. Court Rules, Appendix to Part VII to R. 7:3-2 at 2309 (2015 Edition); State v. Hamm, 121 N.J. 109, 124 (1990), Rule 7:3-2(b), Rule 5:3-4.

With the exception of LaQuay Dansby, who was found to be



Motor Vehicle Commission

STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
225 EAST STATE STREET
TRENTON, NEW JERSEY 08666
(609) 292-7500

CONFIRMATION OF SUSPENSION BY COURT

ANDREANA KAVADAS

D.L. NUMBER [REDACTED]



Your New Jersey driving privilege is suspended
as of 02/10/2015 indefinitely.

This suspension is in addition to other
suspensions outstanding effective 08/09/2008.

Motor Vehicle Commission confirms that, pursuant to statutory law N.J.S.A.

2a:17-56.41, your New Jersey driving privilege was suspended on the
above date when the following superior court issued a child support-related
warrant against you:

CT NAME: CAPE MAY CO COURT
COURT HOUSE

CITY: CAPE MAY

ST: NJ ZIP: 08210

If you have not surrendered your current New Jersey driver license to the
above court, you must surrender it to the Motor Vehicle Commission immediately.
You may not operate any motor vehicle until you receive written notice
of restoration from the Chief Administrator. If you continue to drive while
suspended, you could face up to five years in jail.

(Continued on other side)

WREMT (R 5/10)

Please visit us at www.njmvc.gov

Raymond P. Martinez, Chief Administrator

Detach And Return This Part

ANDREANA KAVADAS

D.L. [REDACTED]

E96 0 FPCS

Restoration Fee Due: \$100.00

Return this part with your restoration fee check or money order, made
payable to N.J. Motor Vehicle Commission, using the enclosed envelope.

VF/K090304200627940000000001000015041EDHFP AIDEDH00089150430000005

Kavadas et al v. Martinez et al

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B96 0 FPCS

00051 008592

DATE PREPARED

12/12/10



Motor Vehicle Commission

STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
225 EAST STATE STREET
TRENTON, NEW JERSEY 08666
(609)292-7500

CONFIRMATION OF SUSPENSION BY COURT

PAULO

AREDE

D.L. NUMBER



Your New Jersey driving privilege is suspended
as of 12/09/2010 indefinitely.

This suspension is in addition to other
suspensions outstanding effective 07/13/2010.

Motor Vehicle Commission confirms that, pursuant to statutory law N.J.S.A.
2a:17-56.41, your New Jersey driving privilege was suspended on the
above date when the following superior court issued a child support-related
warrant against you:

CT NAME: BERGEN COUNTY CT
COURT HOUSE

CITY: HACKENSACK

ST: NJ ZIP: 07601

If you have not surrendered your current New Jersey driver license to the
above court, you must surrender it to the Motor Vehicle Commission immediately.
You may not operate any motor vehicle until you receive written notice
of restoration from the Chief Administrator. If you continue to drive while
suspended, you could face up to five years in jail.

(Continued on other side)

WREMT (R 5/10)

Please visit us at www.njmvc.gov

Raymond P. Martinez, Chief Administrator

Detach And Return This Part

PAULO

AREDE

D.L.

Restoration Fee Due: \$100.00

Return this part with your restoration fee check or money order, made
payable to N.J. Motor Vehicle Commission, using the enclosed envelope.

B96 0 FPCS