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Linda Myhre Enlow
Thurston County Clerk

The Honorable Mary Sue Wilson
EX PARTE

20-2-02149-34
OR 63
Order
11203752



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR COUNTY OF THURSTON

DANIELLE PIERCE, AMANDA
GLADSTONE, JANIE COMACK, and
LACY SPICER,

Plaintiff,

v.

DEPARTMENT OF LICENSING, a
Washington state agency, and TERESA
BERNTSEN, in her official capacity as
Director of the Department of Licensing,

Defendants.

NO. 20-2-02149-34

~~PROPOSED~~

**FIRST AMENDED STIPULATED
ORDER ENJOINING DEFENDANTS
FROM SUSPENDING CERTAIN
DRIVERS LICENSES AND REQUIRING
RESCISSION OF CERTAIN DRIVERS
LICENSES SUSPENSIONS**

EX PARTE

This matter came before the Court on the Parties' Ex Parte Joint Motion to Amend the June 1, 2021 Order Enjoining Defendants from Suspending Certain Drivers Licenses and Requiring Rescission of Certain Drivers Licenses Suspensions, in order to clarify an ambiguity therein. Prior to the June 1, 2021 Order, this Court entered an Order on April 30, 2021, Granting Plaintiff's Motion for Summary Judgment on grounds that driver license suspensions imposed under RCW 46.20.289 for non-criminal moving violations violated procedural due process as applied to indigent drivers, and Denying Defendants' Cross-Motion for Summary Judgment. The Parties then submitted an Ex Parte Joint Motion for Entry of a Proposed Order, which this Court

**FIRST AMENDED ORDER ENJOINING
SUSPENSION
OF CERTAIN DRIVER'S LICENSES - 1**

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1 entered on June 1, 2021. This First Amended Order replaces and supersedes the Court's June 1,
2 2021 Order.

3 The parties agree that the Court's order applies to those indigent individuals who
4 committed non-criminal moving violations and who failed to pay their monetary obligations
5 related to those violations, as well as those who failed to appear at their hearing to adjudicate
6 their violations, because these individuals did not have available a mandatory process to
7 determine their ability to pay that was clearly communicated to them. The Department of
8 Licensing and Director Teresa Berntsen (DOL) cannot determine from existing DOL records
9 who among these individuals failed to pay or appear due to indigency. Therefore, it is necessary
10 to rescind all suspensions, imposed under RCW 46.20.289 for failure to pay and failure to appear
11 (collectively "FTA suspensions"), for non-criminal moving violations, in order to ensure that
12 those who were indigent do not experience a continuing suspension that violates their due process
13 rights.

14 The parties further agree that the FTA suspensions that DOL will rescind do not include
15 suspensions for habitual offenders or any other kind of suspensions besides those exclusively in
16 place under RCW 46.20.289.

17 The parties further agree that DOL will inform municipal and district courts and
18 prosecutors that DOL will not process notices of suspension for FTA suspensions going forward
19 during the term of this injunction as provided below.

20 The parties further agree that those eligible to have the \$75 reissue fee imposed by RCW
21 46.20.311(3)(a) waived include drivers who had a failure to appear (FTA) suspension related to
22 a driving while license suspended third degree (DWLS3) criminal citation that was either
23 dismissed or adjudicated as a non-criminal offense.

24 Accordingly, after fully considering the pleadings and declarations on file herein, this
25 Court hereby

26 **FIRST AMENDED ORDER ENJOINING**
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1 **ORDERS** that beginning June 8, 2021, DOL is enjoined from suspending driver's
2 licenses resulting from a driver's failure to pay or failure to appear for non-criminal moving
3 violations. Beginning on June 8, 2021, if DOL receives a notice of FTA from the courts, DOL
4 will not suspend licenses based upon the notices during the term of this injunction;

5 **ORDERS** that DOL will rescind all existing FTA suspensions, including those of the
6 Plaintiffs, for non-criminal moving violations imposed pursuant to RCW 46.20.289; waive RCW
7 46.20.311(3)(a)'s \$75 reissue fee; and reinstate drivers licenses upon rescission of the suspension
8 if the driver is otherwise eligible for reinstatement and has paid any generally applicable DOL
9 licensing fees, other than the reissue fee. DOL will rescind existing suspensions for Plaintiffs on
10 May 27, 2021, and for the remaining drivers on or before June 16, 2021, and provide written
11 notice to drivers at their address on file with DOL of the rescissions on or before August 1, 2021.
12 DOL will publish on its website starting June 17, 2021, a notice informing drivers that had a FTA
13 suspension for a non-criminal moving violation that those suspensions have been rescinded and
14 information for how to contact DOL if an individual wants more information regarding their
15 current license status.

16 **ORDERS** that the Department of Licensing (Department) must waive the \$75 reissue fee
17 imposed by RCW 46.20.311(3)(a) where:

18 (1) the driver committed a non-criminal moving violation, received an FTA suspension
19 arising from that violation followed by a DWLS3 citation as a result of the FTA suspension, after
20 which the driver received a subsequent FTA suspension related to this DWLS3 citation; and

21 (2) the FTA suspension for the DWLS3 was subsequently lifted because (a) the DWLS3
22 citation was reduced to a non-criminal offense, (b) the DWLS3 citation was dismissed, or (c) the
23 driver was found not guilty of DWLS3; and

24 **ORDERS** that the Department must inform drivers through the license reinstatement
25 portions of its website and at its physical office locations that drivers may be eligible for waiver

1 of the \$75 fee in the circumstances set forth in the preceding paragraph. The Department must
2 make reasonable efforts to provide waiver information in such a manner that all drivers are likely
3 to see it in the course of reinstating their license. If a driver indicates their DWLS3 FTA may
4 have been dismissed or reduced, or otherwise requests the fee to be waived, the Department must
5 review the Department's driving history records, applicable electronic court records if available,
6 and/or records provided by the driver to confirm that the driver qualifies, and take appropriate
7 action within a reasonable timeframe to waive the fee; and

8 **ORDERS** that where a driver receives an FTA suspension related to a DWLS3 citation
9 and the driver is convicted of DWLS3, the \$75 reinstatement fee will be imposed pursuant to
10 RCW 46.20.311(3)(a).


11 **ORDERS** that Defendants shall: 1) make written reports in August 2021, November
12 2021, May 2022, and November 2022, to the Court regarding DOL's compliance with the
13 deadlines and other provisions of this Order, as well as all efforts to plan and prepare for the
14 implementation of SB 5226 regarding ability to pay determinations; 2) upon request, confer with
15 Plaintiffs in good faith regarding any comments, concerns, questions, and suggestions Plaintiffs
16 present based on any of these reports; and 3) make a report to the Court three months after the
17 effective date of SB 5226 regarding how ability to pay determinations have been implemented
18 and the type, number, and originating jurisdiction of license suspensions pursuant to that statute;
19 and further

20 **ORDERS** that enforcement of this injunction shall terminate and be lifted as of the
21 effective date of SB 5226, except that the Court retains jurisdiction to accept the implementation
22 report referenced in the previous paragraph. Nothing in this order represents a ruling by this Court
23 or a concession by Plaintiffs that SB 5226 as written or as implemented complies with procedural
24 due process or any other protections afforded by the federal or Washington Constitutions. Each
25 party reserves its right to seek modification of this order as appropriate should future
26

1 circumstances change.

2 The parties bear their own attorney's fees and costs associated with this action.

3 SIGNED this 14 day of October, 2021.

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5 HONORABLE MARY SUE WILSON
6 THURSTON COUNTY SUPERIOR COURT JUDGE

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8 Presented by:

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10 AMERICAN CIVIL LIBERTIES
11 UNION OF WASHINGTON
12 FOUNDATION

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