

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION

Jonathan Wayne-Payson	)	
Macomber, Ehab Yahia	)	
Zahran, and on behalf of	)	NOTICE OF REMOVAL
those similarly situated,	)	
	)	C.A. No. _____
Plaintiffs,	)	
	)	
vs.	)	
	)	[C.A. No. 2021-CP-42-02505]
State Transport Police, a	)	[Spartanburg County Court of Common Pleas]
division of the S.C.	)	
Department of Public Safety,	)	
	)	
Defendant.	)	

Defendant files this Notice of Removal of this action from the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, (Case Number 2021-CP-42-02505) to the United States District Court for the District of South Carolina, pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446. Defendant presents the following in support of removal:

1. In the above-entitled action the Plaintiffs seek to recover from Defendant judgment as reflected in the First Cause of Action in the Complaint for alleged deprivations of their Fifth and Sixth Amendment rights, and pursuant to 42 U.S.C. § 1983. *See*, Complaint; ¶ 5-34.

2. Upon information and belief, at the time of the commencement of this action and at all times since then, the Plaintiffs are citizens and residents of the State of South Carolina or North Carolina.

3. Pursuant to United States Code Ann. 28 U.S.C. § 1331, the District Courts have original jurisdiction in all civil actions arising under the Constitution, laws, or treaties of the United States. This action alleges federal questions and/or claims which come within the original jurisdiction of the United States District Court.

4. Upon information and belief, said action was commenced by service of the Summons and Complaint upon Defendant on August 6, 2021. Copies of the Summons and Complaint are attached hereto. To the best of Defendant's knowledge, these are the only documents filed in the State Court's record as of the date of this Notice of Removal. This Notice of Removal is filed pursuant to 28 U.S.C. § 1446 within thirty (30) days of the receipt by this Defendant of the initial pleading setting forth the demand upon which relief is claimed.

5. In compliance with 28 U.S.C. § 1446(d), Defendant has filed this Notice of Removal with the Spartanburg County Clerk of Court's Office and has served the Notice on the Plaintiffs through the e-filing system with the Spartanburg County Court of Common Pleas.

WHEREFORE, Defendant respectfully requests that this Court accept this Notice of Removal which is being filed and that this Court take jurisdiction of the above-entitled cause and all further proceedings in said cause in the Court of Common Pleas, County of Spartanburg, State of South Carolina, bearing Civil Action Number 2021-CP-42-02505 be stayed. Defendant reserves the right to assert all defenses, including but not limited to, defenses concerning personal jurisdiction and insufficient service of process.

HOLCOMBE BOMAR, P.A.

By: /s/ William U. Gunn

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Attorneys for Defendant State Transport  
Police, a division of the S.C. Department  
of Public Safety

Spartanburg, SC  
August 30, 2021

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE SEVENTH JUDICIAL CIRCUIT  
COUNTY OF SPARTANBURG ) CASE NO.: 2021-CP-42-\_\_\_\_\_

Jonathan Wayne-Payson )  
Macomber, Ehab Yahia )  
Zahran, and on behalf of )  
those similarly situated, )

SUMMONS

Plaintiffs, )

vs. )

State Transport Police, )  
a division of the S.C. )  
Department of Public )  
Safety, )

Defendant. )

TO: STATE TRANSPORT POLICE, A DIVISION OF THE S.C. DEPARTMENT OF  
PUBLIC SAFETY, DEFENDANT

YOU ARE HEREBY SUMMONED and required to answer the  
Complaint in this action, a copy of which is herewith served upon  
you, and to serve a copy of your Answer to the Complaint on the  
undersigned at his office located at P.O. Box 5159, 250 Magnolia  
Street, Spartanburg, S.C. 29304, within thirty (30) days after  
the service hereof, exclusive of the day of such service, unless  
you received your copy by certified mail, in which case you must  
serve a copy of your answer on the subscriber within thirty-five  
(35) days after the service hereof, exclusive of the day of such  
service, and if you fail to answer the Complaint within the time  
aforesaid, the Plaintiff in this action will apply to the Court  
for the relief demanded in the Complaint.

DATED at Spartanburg, South Carolina, on the 3<sup>rd</sup> day of  
August, 2021.

PATRICK E. KNIE, P.A.

*/s/ Patrick E. Knie*

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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE SEVENTH JUDICIAL CIRCUIT  
COUNTY OF SPARTANBURG ) CASE NO.: 2021-CP-42-\_\_\_\_\_

Jonathan Wayne-Payson )  
Macomber, Ehab Yahia )  
Zahran, and on behalf of )  
those similarly situated,)

Plaintiffs, )

CLASS ACTION COMPLAINT

vs. )

State Transport Police, )  
a division of the S.C. )  
Department of Public )  
Safety, )

Defendant. )

The above-named Plaintiff, individually and on behalf of those similarly situated, complaining of the above-named Defendant, alleges and states as follows:

**STATEMENT OF THE PARTIES**

1. The Plaintiff, Jonathan Wayne-Payson Macomber, is a citizen of the County of Harnett, State of North Carolina.

2. The Plaintiff, Ehab Yahia Zahran, is a citizen and resident of the County of Oconee, State of South Carolina.

3. Defendant, State Transport Police, a division of the S.C. Department of Public Safety, is an agency of the State of South Carolina.

**NATURE OF THE ACTION**

4. This case involves Plaintiff's citation issued by Defendant resulting in a loss or threatening a loss of constitutional rights, including those under the Fifth and Sixth

Amendments of the United States Constitution, as well as the corresponding constitutional provisions in Article I, Section 14 of the South Carolina Constitution which involve the right to trial by jury and the right not to plead guilty.

**FACTUAL ALLEGATIONS**

5. As part of its mission, the Defendant is responsible for inspecting commercial vehicles regarding weight restrictions, maintenance issues, as well as driving violations.

6. In carrying out its mission, it routinely issues to drivers of those commercial vehicles citations when alleged violations are detected.

7. The standard citation used by the Defendant is entitled "Uniform Size, Weight, Idling, and Safety Citation and Notice," as more specifically delineated in S.C. Code 56-5-4160.

8. The citation has a standard description of how fines are to be paid.

9. If a fine is paid within twenty-eight (28) calendar days of issuance of the citation, the amount to be remitted is designated on the citation, and the alleged violator is directed to pay directly to the S.C. Department of Public Safety Office in Blythewood, South Carolina. See S.C. Code 56-5-4160 (E) & (F).

10. If after twenty-eight (28) days from issuance, the alleged violator chooses to pay his or her fine, the amount essentially doubles.

11. The procedure outlined in paragraphs nine (9) and ten (10) is unique and different from the standard procedure used by law enforcement officers in the State under S.C. Code 56-7-10 which is likewise available to the State Transport Police.

12. In essence, the citation financially "rewards" those alleged violators who pay within twenty-eight (28) days, and likewise, penalizes those who are unable to pay within the stated amount of time, including those who choose to exercise their constitutional right to request a jury trial and plead not guilty.

13. The fines can be substantial and at times well exceed One Thousand (\$1,000.00) Dollars.

14. By conditioning the lesser fine on in essence waiving one's right to a jury trial and instead pleading guilty, needlessly chills the exercise of basic constitutional rights.

15. As a direct result, any alleged violator must make the difficult decision as to whether to give up his or her constitutional right of trial by jury and right to plead not guilty to avoid the potential penalty of more than doubling his or her fine.

16. The use by the Defendant of S.C. Code 56-5-4160 results in a direct financial benefit to the Defendant in that all fines are directly payable to the Defendant.

17. In contrast, the statutory scheme for all other fines resulting from uniform traffic tickets results in payment

of the funds collected to either the county treasurer or the municipality treasurer in such cases. The funds never go directly to the law enforcement agency making the charges.

18. The foregoing distinction is noteworthy in that the whole ticketing process of the Defendant is distorted by the prospect of institutional gain in that the more revenues it raises, the more revenues it can spend. The United States Supreme Court has recognized such statutory schemes to be invalid because of the financial benefit directly to a particular judicial officer or agency.

19. As a result, Plaintiff has been damaged financially and by the potential forfeiture of an important constitutional right.

**CLASS ACTION ALLEGATIONS**

20. Pursuant to Rule 23, SCRPC, Plaintiff brings this action on behalf of himself and the plaintiff class, initially defined as:

All alleged violators of S.C. statutory law and/or the Department of Public Service Regulations who have been cited by the Defendant with the two pronged fine options under S.C. Code 56-5-4160.

Excluded from the plaintiff class are:

- a. Defendant and any entities in which Defendant has controlling interest;
- b. Any entities in which Defendant's officers, directors, or employees are employed, and any of Defendant's legal representatives, heirs, successors, or assigns;



- c. The judge, magistrate, and any special master to whom this case is assigned, and any member of their immediate families;
- d. To the extent the class certification order permits exclusion, all class person who timely submit proper requests for exclusion from the plaintiff class; and
- e. Any attorneys representing Plaintiff or the class.

21. Plaintiff reserves the right to modify or amend the class definition if discovery and further investigation reveals that the class should be expanded, divided into subclasses, or modified in any way.

22. Upon information and belief, the plaintiff class consists of several thousand CDL drivers, making individual joinder impracticable in satisfaction of Rule 23(a)(1), SCRPC. The disposition of the claims of the class members in a single class action will provide substantial benefits to all parties and to the Court.

23. There are questions of law and fact common to Plaintiff and the class, thereby satisfying Rule 23(a)(2). These questions include, but are not limited to, the following:

- a. Whether Defendant issued an unconstitutional citation materially chilling the rights of the class to a jury trial and the right to plead not guilty;
- b. Whether the Plaintiff and the class will or have suffered financial damages.

24. Resolution of these common questions in a single action will eliminate the risk of inconsistent and varying

adjudications, and it will allow class members to present their claims efficiently and share the costs of litigation, experts, and discovery.

25. Plaintiff's claims are typical of the claims of the class members, thereby satisfying Rule 23(a)(3), SCRCF. Plaintiff's claims arise from the same nucleus of operative facts and are intended to correct the same improper conduct that has been imposed identically upon Plaintiff and class members.

26. Plaintiff will fairly and adequately represent and protect the interests of the class as required by Rule 23(a)(4), SCRCF. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of plaintiff class, and they have the financial resources and intellectual wherewithal to do so. Neither Plaintiff nor his counsel have any interests adverse to those of the plaintiff class.

27. Plaintiff and the class members have each suffered damages that exceed \$100.00 per person as required by Rule 23(a)(5), SCRCF.

**FOR A FIRST CAUSE OF ACTION**  
**DENIAL OF CONSTITUTIONAL RIGHTS OF TRIAL BY JURY**

28. The Plaintiff repeats and realleges all of the allegations contained in the previous paragraphs as if they were repeated verbatim herein.

29. Article 1, Section 14 of the South Carolina Constitution dictates "the right of trial by jury shall be preserved inviolate" and "to be fully informed of the nature and

cause of the accusation; to be confronted with the witnesses against him,...and to be fully heard in his defense by himself or by his counsel or by both." The Fifth and Sixth Amendments to the U.S. Constitution respectfully provide for both as well.

30. In creating a two tiered payment choice on its citations, the Defendant has violated plaintiff's class rights to a jury trial "inviolate" and right to plead not guilty.

31. The requirement to pay within twenty-eight (28) days of the date of issuance the lower fine amount clearly is designed to financially punish those who choose to stand trial by jury by pleading not guilty.

32. Plaintiff class is informed and believes that the portion of its class who chose to plead guilty within the twenty-eight (28) day period was unconstitutionally denied his/her right to a jury trial and to plead not guilty.

33. The portion of plaintiff's class who chose to exercise its right to a jury trial and plead not guilty has been financially punished by the additional fines and assessments to be imposed.

34. As a result, plaintiff's class has suffered actual damages, the costs of this action, and attorney's fees.

**FOR A SECOND CAUSE OF ACTION**  
**UNJUST ENRICHMENT**

35. The Plaintiff repeats and realleges all of the allegations contained in the previous paragraphs as if they were repeated verbatim herein.

36. The Plaintiff and the class members who chose not to pay within the twenty-eight (28) day period conferred a non-gratuitous benefit on Defendant in the form of additional fines and other assessments.

37. The Defendant realized the value from the benefits plaintiff class conferred.

38. It would be unjust for Defendant to retain the benefits plaintiff class conferred on it.

39. The retention by the Defendant of the wrongfully obtained additional fines and assessments would violate the fundamental principles of justice, equity, and good conscience.

40. The plaintiff class seeks a judgment against the Defendant for the fair value of the benefits the plaintiff class conferred on the Defendant, namely the fines and assessments.

**FOR A THIRD CAUSE OF ACTION**  
**TEMPORARY AND PERMANENT INJUNCTION**

41. The Plaintiff repeats and realleges all of the allegations contained in the previous paragraphs as if they were repeated verbatim herein.

42. There are hundreds of pending jury trial requests regarding citations issued by the Defendant for alleged violations of CDL drivers.

43. If forced to proceed to a jury trial, this portion of plaintiff class will suffer the potential damage by the imposition of fines and assessments which are more than double the original fine.

44. Plaintiff class has no other remedy to prevent this violation of its constitutional rights as guaranteed by the South Carolina Constitution and to avoid the unjust enrichment in favor of the Defendant.

**JURY TRIAL DEMAND AND PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, demands a jury trial and prays that the Court enter judgment against Defendant and award the following relief:

- a. Certification of the proposed class under Rule 23, SCRCF;
- b. Appointment of Plaintiff as class representative;
- c. Appointment of the undersigned attorneys as class counsel;
- d. Granting Plaintiff and each class member a judgment for all damages allowed by law and equity;
- e. Granting the undersigned attorney reasonable attorney's fees pursuant to SC Code 15-77-300 and costs;
- f. Ordering the establishment of a "common fund" out of which the aforementioned damages and attorneys' fees shall be paid;
- g. For a temporary and permanent injunction enjoining the Defendant of the acts complained of herein;

h. Such other and further judiciary determinations and relief as may be appropriate in this proceeding.

PATRICK E. KNIE, P.A.

*/s/ Patrick E. Knie*

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ATTORNEYS FOR PLAINTIFF

August 3, 2021

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges South Carolina Commercial Vehicle Fine System 'Penalizes' Those Unable to Pay or Requesting Trial](#)

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