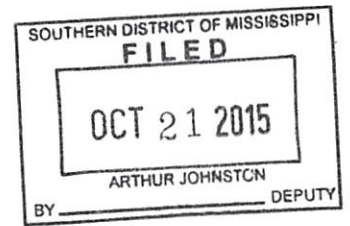


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



QUMOTRIA KENNEDY; RICHARD TILLERY;
on Behalf of Themselves and All Others Similarly
Situating; JOSEPH ANDERSON,

Plaintiffs,

v.

THE CITY OF BILOXI, MISSISSIPPI;
JOHN MILLER, in his official capacity as Chief of
Police of the City of Biloxi; JUDGE JAMES
STEELE, in his individual capacity; JUDICIAL
CORRECTION SERVICES, INCORPORATED,

Defendants.

Case No.: 1:15cv348HSO-JCG

CLASS ACTION
COMPLAINT

(Violation of
Fourth and Fourteenth
Amendment Rights)

JURY TRIAL
REQUESTED

INTRODUCTION

1. Defendant City of Biloxi ("the City" or "Biloxi") operates a modern-day debtors' prison. The City routinely arrests and jails impoverished people in a scheme to generate municipal revenue through the collection of unpaid fines, fees, and court costs imposed in traffic and other misdemeanor cases. As a result, each year, hundreds of poor residents of the City and surrounding areas, including individuals with disabilities and homeless people, are deprived of their liberty in the Harrison County Adult Detention Center for days to weeks at a time for no reason other than their poverty and in violation of their most basic constitutional rights.

2. Plaintiffs Qumotria Kennedy, Joseph Anderson, and Richard Tillery are victims of this illegal revenue generation scheme. Each is indigent and was arrested and

jailed by Biloxi police pursuant to a warrant charging them with failure to pay fines and court costs they could not afford pay. Plaintiff Kennedy was arrested during a traffic stop and jailed for five nights for unpaid traffic fines. Plaintiff Anderson, a man known by the City to have a disability, was arrested by a police officer, who came to his home, and jailed for eight nights for an unpaid speeding fine. Plaintiff Tillery, a man known by the City to be homeless, was arrested and jailed on three separate occasions in 2014 for periods ranging from two to twenty-two days for nonpayment of fines for misdemeanor offenses.

3. The Plaintiffs' arrest and jailing were anything but isolated incidents. The City has chosen to rely increasingly on the collection of fines and fees imposed by the Biloxi Municipal Court ("BMC") as a critical source of municipal General Fund revenue. It has set ambitious collection targets despite the fact that the percentage of the City's population living under the federal poverty level *more than doubled* from 13.3% in 2009 to 27.5% in 2013. Under pressure to meet these goals, the City has sustained two policies and practices to coerce fine and fee payments by the indigent.

4. The first policy and practice is the **Arrest and Jailing Policy**, which is implemented by the Biloxi Municipal Court, the Biloxi Police Department, and for-profit companies enlisted by the City to collect debts from the poor, including Judicial Corrections Services, Incorporated ("JCS"). The Biloxi Municipal Court places defendants, who cannot afford to pay fines on or before sentencing, on probation with a for-profit company, so the company can collect the City's money and its own \$40 monthly fee. From 2010 to 2014, when poor probationers could not pay in the time or

amount required by the Biloxi Municipal Court, JCS employees routinely threatened them with arrest and jail, and petitioned the Court for arrest warrants. In response, the Biloxi Municipal Court issued warrants instructing police officers to arrest and immediately jail debtors for failure to pay. Although the City no longer uses JCS, the Biloxi Municipal Court continues to issue failure-to-pay warrants when notified by a for-profit probation company, private debt collector, or court clerk that a debtor is delinquent. Biloxi police officers, under the supervision and direction of Biloxi Police Chief John Miller (“Miller”), execute these warrants during traffic and pedestrian stops and at debtors’ homes, by arresting, booking, and immediately jailing debtors in the Harrison County Adult Detention Center—unless the debtor can raise enough cash to pay off her debt in full.

5. The second policy and practice is the **Prolonged Incarceration Policy**, which is implemented by the Biloxi Municipal Court and Biloxi Police Department when they discover that a debtor is already incarcerated in the Harrison County Adult Detention Center. After learning that a debtor is in jail for a different offense or by order of a different court, the Biloxi Municipal Court issues a warrant instructing police officers to arrest and immediately jail the debtor for failure to pay fines and court costs owed to Biloxi. Biloxi police officers, under the supervision and direction of Chief Miller, execute these failure-to-pay warrants by completing arrest and booking reports that purport to shift the basis for the debtor’s detention to the Biloxi failure-to-pay warrant—unless the debtor can raise enough cash to pay off her debt in full.

6. The Arrest and Jailing Policy and the Prolonged Incarceration Policy are the City's standard operating procedure. As a result, indigent people are routinely incarcerated for nonpayment of debts owed to Biloxi without being given pre-jail ability-to-pay hearings, court-appointed attorneys to defend them against unjustified incarceration, or even information about the charges against them or their right to request counsel. Nor are they informed when they will be released from jail or brought before the Biloxi Municipal Court. When indigent debtors are finally brought to court for in-jail hearings, they lack representation by counsel and their unlawful incarceration is often further extended by judges, who fail to consider ability to pay, efforts to secure resources, and alternatives to incarceration.

7. Pursuant to policy, practice, and custom, the City has elected to use failure-to-pay warrants to coerce payments rather than providing debtors notice of failure-to-pay charges (for example, through probation violation charges), summoning them to court for ability-to-pay hearings, notifying them of their right to request an attorney, and affording court-appointed counsel to represent those for whom there is prima facie evidence of indigence, including evidence of homelessness and receipt of needs-based public assistance. The City's own website advertises that "[f]ines are due in full on the day of assessment," "that release on a payment plan is a privilege afforded by the Court," and that "*a violation of the payment order will result in your immediate arrest*" (emphasis supplied).

8. Biloxi's use of arrest and jailing to elicit fine and fee payments has instilled fear and panic amongst the poorest residents of the City and the surrounding region.

Indigent people who owe money to Biloxi, including people who are homeless or disabled, feel pressured to divert funds for basic necessities—food, medication, utilities, and transportation—to avoid jail and the devastating impact of incarceration on their families, loved ones, jobs, and housing.

9. The Plaintiffs' incarceration pursuant to the Arrest and Jailing Policy and the Prolonged Incarceration Policy violated rights that are clearly established by the U.S. Constitution. The Fourteenth Amendment prohibits jailing a debtor for nonpayment of fines, fees, court costs, or restitution without first holding a court hearing on ability to pay and alternatives to incarceration, and affording indigent debtors the assistance of court-appointed counsel against possible incarceration for failure to pay. The Fourth Amendment prohibits arrests based on warrants unsupported by probable cause that the person has committed an offense or violated probation. None of the Plaintiffs were provided any hearing or informed of their right to an attorney before being arrested, jailed, or subjected to prolonged incarceration for failure to pay pursuant to warrants based solely on the nonpayment of debts owed to Biloxi, despite prima facie evidence of their indigence.

10. The Defendants have persisted in using arrest, jailing, and prolonged incarceration to generate municipal revenue despite their awareness of the widespread and pervasive deprivation of the rights of debtors, including the indigent.

11. As a result, Plaintiff Kennedy, who remains indigent and continues to owe debts to Biloxi, and Plaintiff Tillery, a homeless and indigent man at high risk of future arrest and fines for misdemeanor offenses related to his homelessness, face not only a

reasonable likelihood, but a substantial threat, that they will again be arrested, jailed, or subjected to prolonged incarceration for nonpayment of fines, fees, court costs, or restitution in violation of their Fourth and Fourteenth Amendment rights. By and through their attorneys, and on behalf of classes of similarly situated debtors and impoverished people, Plaintiffs Kennedy and Tillery bring this action under 42 U.S.C. § 1983 to vindicate their rights and to seek declaratory and injunctive relief.

12. The actions, policies, practices, and customs of the City, Police Chief Miller, and JCS directly and proximately caused the deprivation of Plaintiffs' liberty, violated their Fourth and Fourteenth Amendment rights, and caused them to suffer humiliation, anxiety, stress, emotional distress, sleeplessness, disturbed sleep, hunger, and other irreparable injury from being incarcerated in unsanitary and cold jail conditions and separated from their families and loved ones. Plaintiff Kennedy additionally suffered the loss of her part-time employment while incarcerated. The named Plaintiffs bring this action under 42 U.S.C. § 1983 to vindicate their rights and to seek damages for the violations they suffered.

PARTIES¹

13. Plaintiff Qumotria Kennedy is a 36-year-old, indigent woman who resides in D'Iberville, Mississippi and is the mother and sole provider of two teenagers.

¹ Plaintiffs make the allegations in this Complaint based on personal knowledge as to matters in which they have had personal involvement and on information and belief as to all other matters.

14. Plaintiff Joseph Anderson is a 52-year-old, indigent man who resides in Biloxi, Mississippi. Mr. Anderson developed a physical disability following heart attacks and a stroke, and currently lives on disability benefits from the Social Security Administration of less than \$800 per month. Mr. Anderson receives Supplemental Security Income, a federal benefit for poor individuals who cannot work because of disability.

15. Plaintiff Richard Tillery is a 51-year-old, indigent, homeless man who resides in Biloxi, Mississippi.

16. Defendant the City of Biloxi, Mississippi is a municipal governmental entity whose policies, practices, and customs were the moving force behind the constitutional violations described in this Complaint. Biloxi sets ambitious targets for municipal revenue generation through the collection of fines, fees and court costs imposed by the Biloxi Municipal Court, and has acquiesced to the longstanding, well settled, and widespread use of arrest, jailing, and prolonged incarceration of indigent debtors to generate municipal revenue through the collection of unpaid fines, fees and court costs. Biloxi is sued for damages and declaratory and injunctive relief.

17. Defendant John Miller is the Chief of the Biloxi Police Department. He resides in this District and this Division. Defendant Miller is the chief law enforcement officer for the City and the chief executive officer of the Biloxi Municipal Court pursuant to Mississippi law. *See* Miss. Code Ann. §§ 21-21-1, 21-23-13. Defendant Miller is the final policymaker for the City of Biloxi with respect to the participation of Biloxi police officers in implementing the policies, practices, and customs challenged in this

Complaint. He is sued in his official capacity for damages and declaratory and injunctive relief.

18. Defendant Judge James Steele is a part-time judge of the Biloxi Municipal Court. Judge Steele is a Biloxi employee and was appointed by the Mayor of Biloxi and confirmed by the Biloxi City Council on October 7, 2014. His administrative and executive responsibilities include establishing policies and practices concerning Biloxi Municipal Court probation and the collection of fines, fees, court costs, and restitution from traffic and misdemeanor offenders. Judge Steele issues arrest warrants against people who are reported to have failed to pay debts owed to the City. He adjudicates civil contempt proceedings arising from such charges, and routinely fails to inform debtors of their right to request counsel, fails to appoint counsel to represent indigent debtors charged with failure to pay, and fails to ensure that any waivers of the right to counsel are knowing, voluntary, intelligent. He is sued in his individual capacity for prospective, declaratory relief.

19. Defendant Judicial Correction Services, Incorporated, is a Delaware corporation that was registered as a foreign corporation doing business in the State of Mississippi, this District, and this Division from 2010 to 2014. JCS contracted with numerous Mississippi municipalities to provide misdemeanor probation services, conducted business in Mississippi, and filed annual reports with the Mississippi Secretary of State from 2011 to 2014. During that time, JCS performed a public function that was traditionally the exclusive prerogative of the State—the supervision of people on probation for traffic and misdemeanor offenses. Mississippi law empowers Biloxi

Municipal Court judges to authorize companies like JCS to perform that public function. *See* Miss. Code Ann. § 21-23-7(5). In 2014, JCS appointed the Secretary of the State of Mississippi as its agent for service of process in any proceeding based upon any cause of action arising from the time it was authorized to transact business in Mississippi. JCS conspired and willfully participated with the City, Biloxi Municipal Court judges, and Defendant Miller to deprive Plaintiffs of their constitutional rights. JCS employees acted within the scope of their authority and with the purpose of serving JCS at all times relevant to the allegations in the Complaint. JCS is a person acting under the color of state law and is liable under 42 U.S.C. § 1983.

20. Defendants undertook all of the acts set forth herein under color of state law and all acts can be fairly attributed to Biloxi. Each Defendant is a “policymaker” with respect to the policies, practices, and customs challenged in this lawsuit.

JURISDICTION AND VENUE

21. This is a Complaint for damages and declaratory and injunctive relief based upon past civil rights violations committed by Defendants Biloxi, Miller, and JCS, and ongoing civil rights violations committed by Defendants Biloxi, Miller, and Steele, in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution.

22. This Court has subject matter jurisdiction over Plaintiffs’ claims, which are brought under 42 U.S.C. § 1983, pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

23. An actual controversy exists within this Court's jurisdiction. This Court is therefore authorized to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), (c) and (d) because this judicial district is where a substantial part of the events or omissions giving rise to the claim occurred and where Defendants Biloxi, Miller, and Steele reside.

FACTUAL ALLEGATIONS

A. The City's Reliance on Court Fines and Fees for Municipal Revenue

25. Since 2009, the City of Biloxi has increasingly relied on the collection of court fines and fees to generate needed municipal revenue.

26. The City has set ambitious annual targets for General Fund revenue from the collection of Fines and Forfeits, which consist almost entirely of fines and fees collected by the Biloxi Municipal Court in cases involving traffic and misdemeanor criminal violations within Biloxi city limits.

27. The City has increasingly relied on Fine and Forfeits for municipal General Fund revenue despite rising poverty in the City and the region. The City increased the portion of General Fund revenue derived from Fines and Forfeits by 26% from fiscal year 2008-2009 to fiscal year 2015-2016, even though the percentage of Biloxi's population living below the federal poverty level *more than doubled* from 13.3% in 2009 to 27.5% in 2013.

28. According to the 2015-2016 Biloxi budget, the City seeks to generate \$1.45 million in Fines in Forfeits revenue to help pay for the Mayor's Office, public works, and other general municipal expenses.

29. Many of Biloxi's poor struggle with disabilities that prevent them from working. According to 2011-2013 American Community Survey 3-Year Estimate, nearly 14% of people of working age living in Biloxi have disabilities—significantly higher than the national rate of 10.5%. Only 33% of these disabled Biloxi residents are employed, and nearly 34% of them live below the federal poverty line.

30. The City's Legal Department oversees the Biloxi Municipal Court. The Legal Department, in turn, reports to the Mayor and the City Council.

31. Judges of the Biloxi Municipal Court are City employees who are appointed by the Mayor and confirmed by the City Council.

B. The City's Policy and Practice of Arresting and Jailing the Indigent to Coerce Payments Toward Fines and Fees

32. Since at least 2009, the City has sought to maximize municipal revenue generation by authorizing for-profit companies to collect fines and fees through the administration of probation.

33. Mississippi law authorizes municipal court judges "to establish and operate a probation program" as an exercise of their administrative authority. Miss. Code Ann. § 21-23-7(5). Upon information and belief, Biloxi Municipal Court Judge Eugene Henry established such a program in or around 2010 and elected to refer probation cases to Judicial Correction Services, Incorporated.

34. In 2014, JCS stopped doing business in Biloxi. Upon information and belief, Judge Henry authorized Court Programs, Incorporated (“CPI”) to administer misdemeanor probation services for the City following JCS’s withdrawal.

35. In 2014, the City also contracted with Pioneer Credit Recovery, Incorporated (“Pioneer”) to collect past due court fines and fees in certain cases. Pursuant to the terms of their contract, the Mayor of Biloxi and his designees, including BMC judges, “choose the appropriate accounts for collection” by Pioneer. Debtors placed in collection with Pioneer must pay according to the company’s terms.

36. By policy and practice, traffic and misdemeanor defendants who cannot afford to pay their fines on, or before, sentencing day in the Biloxi Municipal Court are placed on probation with a for-profit company so that the company can collect their money. Probationers are required to report to the company and to pay it a monthly fee of around \$40 for collecting their debt. Monthly service fees paid by probationers, including poor people placed on probation for debt collection, form the sole source of company revenue because neither the City nor the Biloxi Municipal Court pays for-profit probation companies for their services.

37. From 2010 to 2014, JCS employees routinely threatened poor probationers with arrest and jail when they reported for probation “supervision” without money to pay toward their debt or with less than the amount of money required to meet the payment schedule set by the Biloxi Municipal Court. When an impoverished person missed a payment or paid less than ordered, JCS probation officers petitioned the Biloxi Municipal Court for the issuance of an arrest warrant charging the person with failure to pay.

38. JCS employees acted within the scope of their employment, as probation officers tasked with municipal debt collection, when seeking to elicit payments toward debts owed to Biloxi and service fees for JCS by threatening to jail poor probationers and petitioning the Biloxi Municipal Court for arrest warrants. Because JCS's sole source of revenue consisted of monthly service fee payments, JCS probation officers faced a powerful profit incentive to coerce payments even from those too poor to pay.

39. JCS probation officers conspired and willfully participated with the City, Biloxi Municipal Court judges, and Biloxi police to deprive poor probationers of their constitutional rights when threatening to arrest and jail them and when petitioning the Court for arrest warrants.

40. Upon information and belief, since JCS's withdrawal from Biloxi in 2014, CPI probation officers and Pioneer employees have engaged in the same conduct as JCS probation officers to elicit payments toward debts owed to Biloxi, including petitioning the Biloxi Municipal Court for warrants to arrest debtors who have not paid in the time and manner required by the Court or Pioneer.

41. Seeking to meet municipal revenue targets, the Biloxi Municipal Court, pursuant to notification from JCS, CPI, or Pioneer, or on its own accord, routinely issues arrest warrants against debtors who have not paid in the time or manner set by the Court. The warrants are often called "capias pro finem" or "capias" warrants. They charge debtors with contempt of court for failure to pay, and instruct law enforcement officers to arrest and immediately jail debtors in the Harrison County Adult Detention Center pending the next session of the Biloxi Municipal Court, unless the debtor can pay in cash

the full amount of the debt owed. The warrants, however, lack legal authority and are not based on probable cause that a debtor has committed a crime or violated the terms of probation.

42. Pursuant to this policy and practice, from 2009 (if not earlier) to July 30, 2015, Judge Henry routinely issued failure-to-pay warrants, including *capias pro finem* and *capias* warrants, against indigent debtors for nonpayment of debts owed to the City, on his own or pursuant to notification from JCS, CPI, or Pioneer that a debtor had not paid in the time or manner required by court order. Since he replaced Judge Henry, Judge Tisdale has continued to carry out this policy and practice. Since October 2014, Defendant Judge Steele has also continued to carry out this policy and practice.

43. Biloxi Municipal Court records show that the Court issued 2,681 arrest warrants, including *capias pro finem* and *capias* warrants, during the nine-month period between September 1, 2014 and June 11, 2015, against 1,520 different people charged with failure to pay fines, fees, court costs, or restitution.

44. Pursuant to policy and practice, BMC judges have elected to use failure-to-pay warrants (e.g., *capias* and *capias pro finem* warrants), which result in the arrest and jailing of debtors to coerce payments toward unpaid fines, fees, court costs, and restitution rather than providing debtors notice of failure-to-pay charges (for example, through probation violation charges), summoning them to court for ability-to-pay hearings, notifying them of their right to request an attorney, and affording court-appointed counsel to those for whom there is *prima facie* evidence of indigence, including evidence of homelessness and receipt of needs-based public assistance.

45. As a matter of policy and practice, Biloxi police officers under the supervision and direction of Defendant Miller execute these failure-to-pay warrants by arresting, booking, and immediately jailing debtors in the Harrison County Adult Detention Center, unless the debtor can raise enough cash to pay off the full amount of the debt owed, including by making telephone calls from jail.

46. Prior to being jailed, debtors are not brought to court for a hearing on ability to pay, efforts to secure resources, or the adequacy of alternatives to incarceration. Nor are they informed of their right to request counsel or the right of the indigent to representation by court-appointed counsel against charges of failure to pay. Jailed debtors are not even informed how long they will be jailed or when they will finally be brought before the Biloxi Municipal Court for a hearing.

47. Debtors are only brought to court for a post-jail hearing at which there is no judicial inquiry into, or findings on, their ability to pay, efforts to secure resources or the adequacy of alternatives to incarceration. Debtors are either sentenced to time served or released to pay and placed on probation for debt collection.

48. Public records released by the Harrison County Adult Detention Center demonstrate that between September 1, 2014 and March 26, 2015, at least 415 people were jailed on *capias*, *capias pro finem*, or contempt warrants issued by the Biloxi Municipal Court charging them with failure to pay debts owed to Biloxi. None of these people were able to pay any money toward their debt in order to avoid jail.

49. The Biloxi City Code explicitly sets forth the City's Arrest and Jailing Policy as applied to people sentenced to fines for City ordinance violations. Section 16-

2-5 of the Code provides: “If any person is sentenced to pay a fine for the violation of any of the ordinances of the city, such person shall stand committed to the city prison until such fine and all costs, including prison fees, are paid, and, in case the fine, costs and prison fees, if any, are not promptly paid, the person so convicted shall remain in custody until he shall work out the amount thereof in the manner provided by the ordinances of the city.”

50. The City’s own website discloses its policy and practice of using arrest to coerce the indigent to pay fines and fees they cannot afford. The City’s website offers a page on the Biloxi Municipal Court that addresses the “Payment of Fines.” It emphasizes: “Fines are due in full on the day of assessment.” The City asserts that payment plans are available “only after an initial payment is made,” and that “the initial payment is \$50 or \$100 and is due on the date of assessment.” The City also threatens: “Remember that release on a payment plan is a privilege afforded by the Court and *a violation of the payment order will result in your immediate arrest*” (emphasis supplied).

51. Nowhere does the City inform the public, including the indigent, that a person who cannot afford to pay fines, fees, court costs, or restitution for traffic or misdemeanor offenses, including City ordinance violations, have the following rights: (1) a Fourteenth Amendment right to a pre-jail ability-to-pay hearing, (2) a Fourth Amendment right to protection from an arrest based on a warrant unsupported by probable cause that they have committed a crime or probation violation, and (3) a Fourteenth Amendment right to request the appointment of counsel when charged with failure to pay.

52. The policy and practice described in the preceding paragraphs constitutes City policy because the arrest and immediate jailing of debtors for failure to pay fines, fees, court costs, or restitution, without any predeprivation ability-to-pay hearing is persistent, widespread, longstanding, and so common and well settled as to constitute a custom that fairly represents municipal policy.

53. The policy and practice described in the preceding paragraphs also constitutes City policy because the City has delegated to Defendant Miller final policymaking authority concerning arrests and detentions, pursuant to his role as the chief law enforcement officer for Biloxi, and final policymaking authority concerning the collection of fines, fees, court costs, and restitution, pursuant to his role as executive officer of the Biloxi Municipal Court. Defendant Miller knew, or should have known, of the City's longstanding policy, practice, and custom of arresting and immediately jailing indigent debtors charged with failure to pay, and that police officers under his command carry out these illegal arrests and detentions unless debtors can pay in cash the full amount of the debts owed. He caused, authorized, condoned, ratified, approved, participated in, and/or knowingly acquiesced in these illegal policies, practices, and customs. Defendant Miller also failed to supervise and train his subordinate officers to execute failure-to-pay warrants with respect for the clearly established Fourth and Fourteenth Amendment rights of debtors and the indigent. His actions and inactions were deliberately indifferent to these clearly established constitutional rights.

C. The City's Policy and Practice of Prolonging the Incarceration of Jailed Indigent Debtors to Coerce Payments Toward Fines and Fees

54. Since at least 2009, the City has also sustained a policy and practice of prolonging the jailing of indigent people to coerce payments toward fines and fees imposed in traffic and misdemeanor cases.

55. As a matter of policy and practice, after learning that a debtor who has not paid in the time or manner required by the Biloxi Municipal Court is incarcerated in the Harrison County Adult Detention Center for an unrelated offense (e.g., pursuant to a warrantless arrest or by order of a different court), the Biloxi Municipal Court issues an arrest warrant charging the debtor with failure to pay fines and court costs owed to the City. The warrants are often called "capias pro finem" or "capias" warrants. They instruct police officers to arrest and immediately jail the debtor in the Harrison County Adult Detention Center pending the next session of the Biloxi Municipal Court, unless the debtor can pay in cash the full amount of the debt owed. The warrants, however, are not based on probable cause that a debtor has committed a crime or probation violation.

56. From 2009 (if not earlier) to July 30, 2015, Judge Henry routinely issued failure-to-pay warrants to prolong the incarceration of indigent debtors pursuant to this policy and practice. Since he replaced Judge Henry, Judge Tisdale has continued to carry out this policy and practice. Since October 2014, Defendant Judge Steele has also continued to carry out this policy and practice.

57. As a matter of policy and practice, Biloxi police officers, under the supervision and direction of Defendant Miller, execute these failure-to-pay warrants by

completing arrest and booking forms that purport to shift the basis for a debtor's detention to the failure-to-pay warrant. Debtors are not informed that the basis for their detention has shifted, how long they will be jailed, or when they will finally be brought before the Biloxi Municipal Court for a hearing. They are detained for days before being presented to the Biloxi Municipal Court for an in-jail hearing on the charge of failure to pay.

58. By policy and practice, in-jail hearings on failure-to-pay charges are proceedings that last only several minutes. In these hearings, the Biloxi Municipal Court judge fails to inform debtors of their right to request counsel and fails to appoint counsel even where there is prima facie evidence that a debtor is indigent, such as evidence of homelessness or the receipt of need-based public assistance. Judges resolve the charges without considering, or making factual findings on, the debtor's ability to pay and efforts to secure resources, or the adequacy of alternatives to incarceration to further the City's interest in punishment and deterrence, such as community service or a reduction or waiver of fines, fees and court costs. Nor do judges consider a debtor's disability status or homelessness in evaluating their ability to pay or whether they made sufficient efforts to acquire resources to pay.

59. By policy and practice, these procedurally deficient hearings often result in a sentence of incarceration or the issuance of a "pay-or-stay" sentence, which requires the debtor to pay her debt in full or to sit the fine out in jail at a rate of \$25 per day. The U.S. Court of Appeals for the Fifth Circuit outlawed "pay-or-stay" sentences more than forty years ago. *See Frazier v Jordan*, 457 F.2d 726, 728 (1971).

60. The policy and practice described in the preceding paragraphs constitutes the policy of the City of Biloxi because the prolonged incarceration of indigent debtors based on their failure to pay fines, fees, court costs, or restitution is persistent, widespread, longstanding, and so common and well-settled as to constitute a custom that fairly represents municipal policy.

61. The policy and practice described in the preceding paragraphs also constitutes City policy because the City has delegated to Defendant Miller final policymaking authority concerning arrests and detentions, pursuant to his role as the chief law enforcement officer for Biloxi, and final policymaking authority concerning the collection of fines, fees, court costs, and restitution, pursuant to his role as executive officer of the Biloxi Municipal Court. Defendant Miller knew, or should have known, of the City's longstanding policy, practice, and custom of issuing failure-to-pay warrants against incarcerated indigent debtors to prolong their incarceration, absent cash payment of the full amount of the debts owed. Defendant Miller knew, or should have known, that police officers under his command notify the Biloxi Municipal Court of the incarceration of indigent debtors in the Harrison County Adult Detention Center, and that they execute failure-to-pay warrants by completing arrest and booking reports that purport to shift the basis for the debtor's detention to the failure-to-pay warrant. He caused, authorized, condoned, ratified, approved, participated in, and/or knowingly acquiesced in these illegal policies, practices, and customs. Defendant Miller also failed to supervise and train his subordinate officers to execute failure-to-pay warrants with respect for the clearly established Fourth and Fourteenth Amendment rights of debtors and the indigent.

His actions and inactions were deliberately indifferent to these clearly established constitutional rights.

D. Application of Defendants' Policies to the Named Plaintiffs

a. Qumotria Kennedy

62. Qumotria Kennedy is a 36-year old mother and the sole caregiver and provider for her two teenage children.

63. Ms. Kennedy lives in poverty. She works whenever she can find employment, most often in cleaning motels and homes. Ms. Kennedy struggles to earn enough money to pay for food, clothing, shelter, transportation, and the other basic necessities of life.

64. While living in Los Angeles, Ms. Kennedy's driver's license was suspended.

65. In 2008, Ms. Kennedy moved with her children to Mississippi in order to help care for her ill father.

66. Despite her best efforts to find steady work, since 2011, Ms. Kennedy has earned less than \$9,000 each year. Although Ms. Kennedy has been the sole provider for herself and her two children, her annual income has been far below \$20,090—the 2015 federal poverty guideline for a three-person household.

67. In May 2013, Biloxi police ticketed Ms. Kennedy for driving without insurance and with a suspended driver's license, and for failure to obey a stop sign. She was assessed fines, fees, and court costs.

68. Because Ms. Kennedy could not afford to pay at sentencing, Judge Henry placed her on pay-only probation with JCS for twelve months. The judge ordered her to report to JCS and to pay \$140 per month toward her fines, fees, and court costs, which included JCS's \$40 monthly fee and a file set up charge of \$10.

69. Ms. Kennedy reported to her JCS probation officer and explained that she could not afford to make a payment because she had recently been laid off from her job cleaning rooms at a motel. The JCS probation officer told Ms. Kennedy that she would be jailed if she did not find a job and pay.

70. The JCS officer did not ask Ms. Kennedy about her income, assets, or efforts to find work or borrow money to pay.

71. Ms. Kennedy tried to earn the money to pay, but she was not able to do so. She remained indigent, supporting herself and her children on food assistance through the Supplemental Nutrition Assistance Program ("SNAP").

72. Upon information and belief, JCS notified the Biloxi Municipal Court that Ms. Kennedy had not paid in the manner required by the Court, and petitioned for a warrant for her arrest.

73. Without Ms. Kennedy's knowledge, on August 23, 2013, Judge Henry issued *capias pro finem* warrants ordering the arrest and immediate jailing of Ms. Kennedy for nonpayment of fines and court costs related to her tickets for driving without insurance and on a suspended driver's license. The warrants instructed law enforcement to keep Ms. Kennedy jailed from the date of arrest until the next session of the Biloxi Municipal Court, at which time she would be given a post-jail "show cause hearing for

contempt of court,” unless she paid the “cash fine” specified for her traffic offenses and a \$50 “court cost” for each warrant.

74. Ms. Kennedy was not notified of the charges that she had failed to pay, or that the only way to avoid jail was to pay her debts in full and in cash.

75. Almost two years later, on July 30, 2015, Ms. Kennedy was a passenger in a car that Biloxi police pulled over for allegedly running a stop sign. The officer checked Ms. Kennedy’s name for warrants and discovered the August 23, 2013 *capias pro finem* warrants.

76. The officer handcuffed Ms. Kennedy, took her to the Biloxi Police Station, and booked her for jail pursuant to the August 23, 2013 *capias pro finem* warrants.

77. After she was booked for jail, police searched Ms. Kennedy, found a marijuana cigarette in her purse, and also charged her with misdemeanor marijuana possession.

78. The Biloxi police took Ms. Kennedy to the Harrison County Adult Detention Center, where she was informed that she could avoid jail only by paying \$1000 in cash to cover the full amount of her unpaid traffic fines, fees, and court costs. Ms. Kennedy did not have the money and had no friends or family who could lend or give it to her.

79. As a result of her inability to pay fines, fees, and court costs, Ms. Kennedy was jailed for five nights. Her jailing was not attributable to the marijuana possession charge.

80. Ms. Kennedy was devastated to be jailed. She was extremely distressed that her teenage daughter did not know where she was or that she had been arrested and jailed. Ms. Kennedy cried for much of the time she was incarcerated out of concern for her daughter. She also feared that she would lose her part-time job at a cleaning company for missing work due to incarceration.

81. At no point while Ms. Kennedy was incarcerated did anyone inform her when she would be released or brought before a judge.

82. Ms. Kennedy's jail cell was very cold and smelled of urine because of a clogged toilet. Ms. Kennedy did not have enough food to eat in jail, and was only provided one thin sheet despite the very low temperature.

83. Ms. Kennedy suffered humiliation, anxiety, stress, emotional distress, disturbed sleep and other irreparable injury from being handcuffed, arrested, jailed, separated from her daughter and loved ones, and incarcerated for five nights in unsanitary and cold jail conditions without enough food to eat.

84. After five nights in jail, Ms. Kennedy was finally brought before Judge Steele of the Biloxi Municipal Court for an in-jail hearing on August 4, 2015. The hearing lasted only several minutes. Judge Steele failed to conduct any inquiry into, or make any findings on, Ms. Kennedy's ability to pay the 2013 traffic fines, fees, and court costs for which she had been jailed, her efforts to secure resources to pay, or the adequacy of available alternatives to incarceration. Instead, the judge informed Ms. Kennedy that she was charged with contempt of court and asked for her plea.

Unrepresented, Ms. Kennedy pled guilty. The judge ordered her to pay \$1000 in unpaid fines, fees, and court costs.

85. Judge Steele also informed Ms. Kennedy that she was charged with marijuana possession and accepted her guilty plea. The judge ordered her to pay \$351 for the marijuana possession offense, with a \$150 credit for time served.

86. Judge Steele issued two orders placing Ms. Kennedy on twelve months of probation with CPI. The judge required her to pay \$140 per month toward the unpaid traffic penalties and \$115 per month toward the marijuana possession fine. As a result, Ms. Kennedy currently is required to pay \$255 each month to CPI.

87. At no point before or during the hearing did anyone, including Judge Steele, inform Ms. Kennedy that she had a right to request counsel and a right to representation by court-appointed counsel, as an indigent person charged with failure to pay fines, fees, and court costs. Nor did anyone advise her of the risk of proceeding without counsel. There was no public defender in the courtroom during Ms. Kennedy's hearing.

88. The probation officer at court instructed Ms. Kennedy to sign underneath the following statement on each probation order issued by Judge Steele: "I have counsel or have waived my right to counsel for all proceedings to this date and have received a copy of this Order." Ms. Kennedy did not knowingly, voluntarily, or intelligently waive her right to counsel. Nor did Judge Steele engage in any colloquy to determine whether Ms. Kennedy waived her right to counsel knowingly, voluntarily, or intelligently.

89. After her release from jail, Ms. Kennedy learned that she had been fired from her part-time job cleaning local baseball fields because she had missed work while incarcerated.

90. Ms. Kennedy has reported to CPI for probation “supervision” meetings at least four times since being released from jail. She has explained to CPI probation officers that she cannot afford to make any payments toward her debts, much less the required monthly payment of \$255, because she lost her job while incarcerated and is struggling to find paid work. Ms. Kennedy asked for assistance in requesting that her monetary penalties be converted to community service. CPI probation officers have told her that community service is not available until she has been on probation for at least three months.

91. On or around September 16, 2015, CPI employee LeAnne Womble told Ms. Kennedy that she would have to pay \$20 during each probation visit in order to pay CPI for its services, even if her fines, fees, and court costs were converted to community service. Ms. Womble emphasized that Ms. Kennedy already owed the company \$80 in fees for the months of August and September. When Ms. Kennedy asked for assistance in requesting that her monetary penalties be converted to community service, Ms. Womble threatened to perform a drug test on Ms. Kennedy.

92. Ms. Kennedy is diligently searching for work. Aside from odd jobs and one or two days of cleaning work each week, she has been unable to find paid work since her release from jail. Because she was let go from a part-time cleaning job due to her

incarceration, Ms. Kennedy lost several hundred dollars in income that she could have earned and badly needed.

93. Ms. Kennedy continues to receive public housing and SNAP assistance. She is Medicaid eligible and is the sole provider for her children.

94. Because Ms. Kennedy currently owes at least \$1251 in fines, fees, and court costs to Biloxi, but has been unable to pay for two consecutive months, she faces not only a reasonable likelihood, but a substantial threat, that she will again be arrested and immediately jailed pursuant to the City, Chief Miller, and Judge Steele's policies, practices, and customs.

b. Joseph Anderson

95. Joseph Anderson is a 52-year old man who is indigent and disabled.

96. Mr. Anderson lives in poverty. He struggles to pay for food, clothing, shelter, and other basic necessities of life because he suffers from a physical disability and is unable to work.

97. In 2011, Mr. Anderson suffered three heart attacks and a stroke within a one-week period. The stroke paralyzed the left side of Mr. Anderson's body and face. When released from the hospital, Mr. Anderson faced extreme difficulty walking and required the assistance of a walker.

98. Several months later, Mr. Anderson suffered a fourth heart attack, which weakened him even further. He became physically disabled, could no longer work, and continued to face significant difficulty walking.

99. For around a year following his fourth heart attack, Mr. Anderson could not walk without the assistance of a walker or a cane.

100. Since 2012, Mr. Anderson has struggled to survive on a limited and fixed income of Social Security Disability Insurance, Supplemental Security Income, and SNAP food assistance. In 2012, his annual income was less than \$9500—far below the 2012 federal poverty guideline of \$11,170 for a one-person household. Each year since then, his income has remained far below the federal poverty guideline.

101. In May 2012, Biloxi police ticketed Mr. Anderson for speeding. He was assessed \$170 in fines and fees.

102. Because Mr. Anderson could not pay in full on or before sentencing day, the Biloxi Municipal Court sentenced him to twelve months of probation with JCS and ordered him to pay \$90 per month, which included a \$40 monthly fee for JCS and a \$10 file set up charge.

103. Mr. Anderson reported to JCS on at least three occasions and paid what he could each time, usually around \$20. He explained to JCS probation officers that he could not afford to pay the full \$90 each month due to his limited income from disability benefits and because he could not work due to his disability. During one meeting, the JCS probation officer told Mr. Anderson, “You are going to have to come with a little more or I’m going to have to turn it back over to the judge.”

104. Upon information and belief, JCS notified the Biloxi Municipal Court that Mr. Anderson had not paid according to the time and amount required by the Court, and petitioned for a warrant for his arrest.

105. Without Mr. Anderson's knowledge, on September 21, 2012, Judge Henry issued a *capias pro finem* warrant ordering the arrest and jailing of Mr. Anderson for nonpayment of fines and fees related to his speeding ticket. The warrant instructed law enforcement to keep Mr. Anderson jailed from the date of arrest until the next session of the Biloxi Municipal Court, at which time he would be given a post-jail "show cause hearing for contempt of court," unless he paid in cash a \$170 fine and a \$50 court cost.

106. On December 27, 2012, a Biloxi police officer knocked on Mr. Anderson's front door and asked to speak with him. After Mr. Anderson opened the door, the officer reached into the apartment, and handcuffed Mr. Anderson in front of his girlfriend and her son. Because the left side of Mr. Anderson's body was still affected by the stroke, it was painful and difficult to be handcuffed. As the officer walked Mr. Anderson out to the patrol car, he stated that he had a warrant to arrest Mr. Anderson for nonpayment of a fine.

107. Mr. Anderson was booked in the Biloxi Police station. The City of Biloxi Uniform Arrest/Booking report indicates that Biloxi police arrested Mr. Anderson pursuant to the September 21, 2012 *capias pro finem* warrant, and were aware that Mr. Anderson was "Disabled."

108. Biloxi police took Mr. Anderson to the Harrison County Adult Detention Center, where he was informed that he could secure his release only by paying in cash \$220—the full amount of his debt. Mr. Anderson did not have the money and did not have any family or friends who could give or lend it to him.

109. Mr. Anderson was jailed for seven nights. At no point while Mr. Anderson was incarcerated did anyone inform him when he would be released or brought before a judge.

110. While incarcerated, Mr. Anderson was extremely distressed that his loved ones did not know where he was or that he had been arrested and jailed, particularly because he was jailed over the New Year holiday. Mr. Anderson was unable to spend the holiday with his family and loved ones or even to speak with them on the phone.

111. Mr. Anderson's jail cell was cold and unsanitary, and he was not given enough food to eat.

112. During his first day in jail, Mr. Anderson did not have access to medication needed to treat his heart condition and other medical conditions from which he suffers.

113. Mr. Anderson suffered humiliation, anxiety, stress, emotional distress, disturbed sleep, sleeplessness, and other irreparable injury from being handcuffed and arrested in his own home, in front of his girlfriend and her teenage son, jailed, separated from his loved ones, and incarcerated for seven nights in unsanitary and cold jail conditions without enough food to eat and without knowing when his incarceration would end or when he would be presented in front of a judge.

114. After seven nights in jail, Mr. Anderson was finally brought before Judge Henry for an in-jail hearing on January 3, 2013. At no point before or during the hearing did anyone, including Judge Henry, inform Mr. Anderson that he had a right to request the assistance of counsel. Nor did anyone inform him that he had a right to

representation by court-appointed counsel at no cost, as an indigent debtor charged with failure to pay fines, court costs, and fees.

115. Judge Henry held a hearing that lasted only several minutes in which he did not conduct any inquiry into, or make any findings on, Mr. Anderson's ability to pay the fines, fees, and court costs for which he had been jailed, his efforts to secure resources, or the adequacy of available alternatives to incarceration. Instead, the judge asked Mr. Anderson how long he had been in jail. After Mr. Anderson informed the judge that he had been in jail for seven nights, Judge Henry closed the case for time served.

116. As a result of his incarceration, Mr. Anderson suffered physically and emotionally during his time in jail and after.

c. Richard Tillery

117. Richard Tillery is a 51-year-old, indigent, unemployed, and homeless man who lives on the streets and beaches of Biloxi and Gulfport, Mississippi.

118. Mr. Tillery became homeless around 2009. Since then, he has been desperately poor.

119. There is no homeless shelter in Biloxi or Gulfport where Mr. Tillery can sleep at night.

120. Since becoming homeless, Mr. Tillery has faced constant harassment by Biloxi police. Biloxi patrol officers know Mr. Tillery by name and appearance, and where on the City's streets and beaches Mr. Tillery sleeps and seeks shelter because he has nowhere else to go.

121. Biloxi police have charged Mr. Tillery with at least 89 misdemeanor offenses since 2010. The vast majority of these charges target conduct related to Mr. Tillery's poverty and homelessness. They include sixteen charges of trespassing and forty-three charges of public drunkenness, as well as charges for littering and loitering.

122. Biloxi police's frequent ticketing of Mr. Tillery for misdemeanor offenses results in the assessment of fines, fees, court costs, or restitution that Mr. Tillery simply cannot afford to pay. When Mr. Tillery does not pay, the Biloxi Municipal Court issues *capias* or *capias pro finem* warrants charging him with failure to pay and ordering his arrest and immediate jailing. Biloxi police arrest and jail Mr. Tillery for nonpayment of fines, fees, and court costs based on these warrants without any predeprivation court hearing on Mr. Tillery's ability to pay, efforts to secure resources, or the availability and adequacy of alternatives to incarceration. Nor is Mr. Tillery informed of his right to representation by court-appointed counsel prior to being arrested and jailed on charges of failure to pay.

123. These policies, practices and customs have ensnared Mr. Tillery in a cycle of ticketing for misdemeanor offenses and imprisonment for debt because he is homeless and desperately poor.

124. One such cycle began on April 4, 2014, when Biloxi police charged Mr. Tillery with public drunkenness and resisting arrest. He pled guilty and was assessed a fine and court costs totaling \$450. Mr. Tillery could not afford to pay.

125. Upon information and belief, JCS reported the nonpayment to the Biloxi Municipal Court.

126. Without Mr. Tillery's knowledge, on June 26, 2014, Judge Henry issued a capias warrant that ordered Mr. Tillery's arrest and jailing unless he could pay \$450 in cash.

127. On July 1, 2014, Biloxi police arrested Mr. Tillery pursuant to the June 26, 2014 capias warrant. Biloxi police indicated on the City of Biloxi Uniform Arrest/Booking report that Mr. Tillery was homeless. Mr. Tillery was taken to the Harrison County Adult Detention Center, where he was informed that he would not be released unless he paid \$450 in cash.

128. Mr. Tillery was jailed in the Harrison County Adult Detention Center for three days. During his incarceration, no one informed him when he would be released or brought before a judge.

129. Mr. Tillery was finally brought before Judge Henry for an in-jailing hearing before the Biloxi Municipal Court on July 3, 2014. Judge Henry asked Mr. Tillery if he could pay \$450 that day. When Mr. Tillery responded that he could not, the judge sentenced him to pay \$450 or spend 18 days in jail. Judge Henry did not inquire, or make any findings on, Mr. Tillery's ability to pay, his efforts to secure resources, or the availability or adequacy of alternatives to incarceration. Nor did Judge Henry inform Mr. Tillery of his right to request counsel, afford him court-appointed representation as an indigent debtor charged with failure to pay, or determine whether any oral or written waiver of the right to counsel was knowing, voluntary, and intelligent.

130. Homeless and unemployed, Mr. Tillery had no money or choice. He remained locked up in the Harrison County Adult Detention Center for another sixteen days (until July 18, 2014) because he could not afford to pay \$450.

131. The City has also used capias warrants charging Mr. Tillery with failure to pay fines, fees, or court costs to impermissibly prolong his detention following warrantless arrests for unrelated misdemeanor offenses.

132. Following Biloxi police's April 4, 2014 warrantless arrest of Mr. Tillery for public drunkenness and resisting arrest, Mr. Tillery was immediately jailed in the Harrison County Adult Detention Center. The Biloxi Municipal Court scheduled an April 8, 2014 hearing on those charges, which was subsequently reset to April 11, 2014.

133. On April 11, 2014, the Biloxi Municipal Court issued a capias warrant directing law enforcement to arrest and jail Mr. Tillery for failure to pay fines and fees stemming from an October 9, 2013 trespassing charge for which Mr. Tillery had been assessed fines, fees, and court costs of \$610 that he could not afford to pay. Upon information and belief, JCS had reported Mr. Tillery's nonpayment to the Biloxi Municipal Court for the purpose of securing a warrant.

134. It was not until April 15, 2014—after he had already been jailed for eleven days—that Mr. Tillery was finally brought before the Biloxi Municipal Court for a probable cause determination relating to the April 4, 2014 public drunkenness and resisting arrest charges and for a post-jail hearing on the capias warrant charging him with failure to pay fines stemming from the October 9, 2013 trespassing offense. As a result, Mr. Tillery was jailed for nine days beyond the generally permissible 48-hours of

detention that may follow a warrantless arrest prior to a probable cause determination. He was also jailed for four days on a failure-to-pay charge without any predeprivation ability-to-pay hearing or representation by court-appointed counsel.

135. The April 15, 2014 hearing before the Biloxi Municipal Court was a proceeding that lasted only several minutes. The court did not inform Mr. Tillery of his right to request counsel, appoint counsel to represent Mr. Tillery against failure-to-pay charges, and did not inquire into, or make any findings on, Mr. Tillery's ability to pay, efforts to secure resources, or the adequacy of available alternatives to incarceration. The Biloxi Municipal Court nevertheless sentenced Mr. Tillery to thirty days in jail on the April 11, 2014 capias warrant charging him for failure to pay. Mr. Tillery was jailed until May 3, 2014. He was incarcerated for twenty-two days after issuance of the April 11, 2014 capias warrant.

136. Similarly, between September 3 and September 11, 2014, Mr. Tillery was incarcerated in the Harrison County Adult Detention Center for eight days pursuant to two capias warrants charging him with failure to pay fines, fees, and court costs without being informed of his right to request counsel and his right to representation by court-appointed counsel on charges of failure to pay, and without being afforded a predeprivation hearing on ability to pay, efforts to secure resources, and the adequacy of available alternatives to incarceration.

137. This illegal jailing began on September 3, 2014—three days after Mr. Tillery was jailed in the Harrison County Adult Detention Center on a warrantless arrest for another misdemeanor offense. That day, Judge Henry issued two capias warrants

instructing law enforcement to arrest and jail Mr. Tillery for nonpayment of fines. One was a *second* warrant charging him with nonpayment of fines and court costs related to the April 4, 2014 charges for public drunkenness and resisting arrest—monetary penalties that Mr. Tillery had already discharged by being incarcerated from July 1, 2014 through July 18, 2014. Another warrant charged Mr. Tillery with nonpayment of fines stemming from July 25, 2014 charges for public drunkenness and disorderly conduct. Both warrants instructed law enforcement to arrest and jail Mr. Tillery until “the next regular session of the Municipal Court of the City of Biloxi, at which time” he would be granted a show cause hearing for contempt of court, unless Mr. Tillery could pay in cash the entire debt owed. The first warrant permitted him to avoid jail if he paid \$50 in court costs in cash. The second warrant required him to pay \$205 in cash for fines and court costs, in order to avoid jail. Both warrants instructed: “*HOLD UNTIL SEES JUDGE*.”

138. When the warrants were issued, Mr. Tillery was already incarcerated for an unrelated, minor offense.

139. During his September 4, 2014 in-jail court hearing, Judge Henry ordered that the case be reviewed on September 11, 2014 and that Mr. Tillery be returned on the same bond, but did not resolve the charges of failure to pay. After being jailed for an additional seven days, Mr. Tillery ultimately was released on September 11, 2014.

140. During each of the periods of jailing described above, Mr. Tillery was jailed in cold and unsanitary jail cells and was not given enough food to eat.

141. Mr. Tillery suffered humiliation, anxiety, stress, emotional distress, sleeplessness, disturbed sleep, and other irreparable injury from being jailed, deprived of

his liberty, and incarcerated for periods of time ranging from two to twenty-two days in unsanitary and cold jail conditions without enough food to eat and without knowing when his incarceration would end or when he would be presented to court.

142. Mr. Tillery continues to owe fines, fees, and costs to Biloxi that were assessed in misdemeanor cases handled by the Biloxi Municipal Court since 2010. Because he is destitute, unemployed, and homeless, Mr. Tillery is not able to make any payments toward any of these monetary penalties, and therefore faces not only a reasonable likelihood, but a substantial threat, that he will again be arrested, jailed, and subjected to prolonged incarceration pursuant to failure-to-pay warrants.

143. Mr. Tillery is currently incarcerated in the Harrison County Adult Detention Center. Upon release, Mr. Tillery will return to Biloxi, but will have nowhere to live but the streets and the beach.

144. In February and March 2015, Judge Henry issued at least three orders banning Mr. Tillery from locations in Biloxi, including the beach and the restricted zone from Gill Avenue to Bean River and Porter Street Pier.

145. Because Mr. Tillery is homeless and unemployed and Biloxi police know and target him, there is not only a reasonable likelihood, but a substantial threat, that Biloxi police will arrest Mr. Tillery for violating Judge Henry's banishment orders or will otherwise charge him with trespassing, public drunkenness and other misdemeanor crimes related to his poverty and homelessness. Such charges will more than likely lead to the assessment of monetary penalties (e.g., fines, fees, costs, restitution) that Mr. Tillery cannot afford to pay. Consequently, there is not only a reasonable likelihood, but

a real and substantial threat, that Mr. Tillery will be arrested and immediately jailed for nonpayment in the future without being afforded a predeprivation ability-to-pay hearing or representation by counsel, pursuant to the policies, practices, and customs of Biloxi, Defendant Miller, Biloxi police, the Biloxi Municipal Court, and Judge Steele.

146. Mr. Tillery also faces not only a reasonable likelihood, but a real and substantial threat, that he will be arrested, jailed, and subjected to prolonged incarceration pursuant to capias warrants charging him with contempt of court for the nonpayment of fines, fees, court costs, and/or restitution that he has already discharged through jail time, as was the case on September 3, 2014.

E. Failure to Train Biloxi Police, Probation Officers, and Private Debt Collectors on Indigent Debtors' Rights

147. Biloxi, Chief Miller, and JCS established a policy, practice, and custom of failing to train, direct, guide, and supervise Biloxi police and JCS employees on how to operate Biloxi's program of generating revenue from fine and fee collection in a manner consistent with federal law. This failure demonstrated deliberate indifference to: debtors' Fourteenth Amendment right to ability-to-pay hearings that satisfy the requirements of *Bearden v. Georgia*, 461 U.S. 660 (1983), prior to jailing for failure to pay; debtors' Fourth Amendment right to freedom from unreasonable seizures based on warrants lacking probable cause to believe the debtor has committed an offense or probation violation; debtors' Fourteenth Amendment right to request counsel when charged with failure to pay; and indigent debtors' Fourteenth Amendment right to court-appointed counsel in proceedings concerning failure-to-pay charges.

148. Biloxi, Chief Miller, and JCS have failed—and Biloxi and Chief Miller continue to fail—to provide any training, direction, guidance, or supervision to for-profit company probation officers, private debt collectors, and Biloxi police officers on the procedures for handling debtors who cannot afford to make fine and fee payments. They have not provided any training, direction, guidance, or supervision on: (1) debtors’ right to an ability-to-pay hearing prior to being jailed for failure to pay; (2) debtors’ right to request court-appointed counsel in proceedings concerning failure-to-pay charges, whether the proceedings concern charges of probation revocation or civil contempt; (3) indigent debtors’ right to court-appointed counsel in proceedings concerning failure-to-pay charges; (4) the requirement that any waiver of indigent debtors’ right to counsel must be knowing, intelligent, and voluntary; and (5) debtors’ right to be free from unreasonable seizures based on warrants lacking probable cause.

149. The response by Biloxi and the Biloxi Municipal Court to a December 3, 2014 request under the Mississippi Public Records Act of 1983, Miss. Code Ann. § 25-61-1 (“Public Records Act”), confirms that the City has failed to train and supervise probation and police officers on the rights of debtors and the indigent. The December 3, 2014 Request sought “[a]ll records setting forth directions, policies, procedures, regulations, forms, or guidelines . . . concerning the placement of individuals on misdemeanor probation and the revocation of probation for failure to pay or to appear in court.” It also sought “[a]ny training materials used to instruct employees of the Biloxi Municipal Court, JCS, Court Programs, and Harrison County Jail on how to determine the indigence status of individuals charged with probation violation for the nonpayment

of legal financial obligations.” No documents were disclosed in response to these requests.

F. Defendants’ Knowledge of Widespread Rights Violations and Failure to Correct

150. At the time that Plaintiffs were arrested and jailed for nonpayment of debts owed to Biloxi, Defendants were on notice that indigent debtors were routinely arrested and jailed by Biloxi police for failure to pay without representation by counsel or predeprivation ability-to-pay hearings in violation of their Fourth and Fourteenth Amendment rights.

151. Defendants were also on notice that JCS employees routinely and customarily notified Biloxi Municipal Court judges when debtors failed to pay in the time and manner required by the Court, and petitioned the Court for warrants for their arrest.

152. Defendants were also on notice that BMC judges, including Judge Steele, sought to obtain, and did obtain, written waivers of the right to counsel from indigent debtors charged with failure to pay on standard forms without adequately informing debtors of their rights or engaging in any colloquy to determine whether any waivers were knowing, voluntary, or intelligent.

153. In 2005, years before the Plaintiffs were improperly and illegally jailed for failure to pay debts owed to Biloxi, the Southern Center for Human Rights filed a federal lawsuit against Gulfport, Mississippi for running a debtors’ prison in the Harrison County Adult Detention Center. Local media reported extensively on the lawsuit, which challenged the jailing of indigent debtors in violation of their right to counsel and to

predeprivation ability-to-pay hearings. Local media also reported extensively on the policy reforms adopted by Gulfport in response to the lawsuit, which led to the voluntary dismissal of the suit.

154. Because Biloxi is located next to Gulfport and uses the same jail, the City and Chief Miller were aware of the allegations against Gulfport and the subsequent policy reforms.

155. In February 2014, before Ms. Kennedy and Mr. Tillery were improperly and illegally jailed for failure to pay, Human Rights Watch issued a report, Profiting from Probation: America's "Offender-Funded" Probation Industry ("HRW Report"). The HRW Report described threats of jail by for-profit probation company officers, including officers employed by JCS, to elicit payments from the poor for unpaid traffic fines and fees. It also reported on Mississippi courts' failure to afford counsel and predeprivation ability-to-pay hearings to indigent debtors charged with nonpayment of fines, fees, court costs, or restitution in violation of their rights. Local and national media reported extensively on the HRW Report, including the following news outlets: The Atlanta Journal-Constitution, The Augusta Chronicle, The Atlantic, The Guardian, The Nation, National Public Radio, NBC News, and Salon.com.

156. Biloxi and Chief Miller were aware of the HRW Report and its allegations.

G. Class Action Allegations

157. Plaintiffs Kennedy and Tillery bring this class action on behalf of themselves, and all others similarly situated, for the purpose of asserting the declaratory and injunctive claims alleged in this Complaint on a common basis.

158. A class action is a superior means, and the only practicable means, by which Plaintiffs Kennedy and Tillery and unknown class members can challenge the Defendants' continued implementation of an unlawful revenue generation and debt-collection scheme.

159. This action is brought and may properly be maintained as a class action pursuant to Rule 23(a)(1)-(4) and Rule 23(b)(2), of the Federal Rules of Civil Procedure.

160. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of those provisions.

161. The Plaintiffs propose a Main Class and a Subclass called the "Indigent Class."

162. The Main Class is defined as: "All people who currently owe, or in the future will owe, fines, fees, court costs, or restitution in Biloxi Municipal Court cases."

163. The Indigent Class is defined as: "All indigent people who currently owe, or in the future will owe, fines, fees, court costs, or restitution in Biloxi Municipal Court cases."

a. Rule 23(a)

i. Numerosity

164. The proposed Main Class and Indigent Class are both so numerous that joinder of all members is impracticable.

165. Thousands of people each year are subjected to the policies, practices, and customs discussed in this Complaint. Pursuant to the Defendants' policy, practice, and custom, all people who do not make fine, fee, court costs, or restitution payments in the

amount or frequency required by the Biloxi Municipal Court face a real and substantial threat of being arrested and immediately jailed, without notice or process, pursuant to failure-to-pay warrants issued by the Biloxi Municipal Court. Similarly, all indigent people who do not make fine, fee, court costs, or restitution payments in the amount or frequency required by the Biloxi Municipal Court face a real and substantial threat of being incarcerated without representation by court-appointed counsel against failure-to-pay charges.

166. In response to a June 11, 2015 request made under the Public Records Act, Biloxi and the Biloxi Municipal Court disclosed records showing that 2,681 arrest warrants, including *capias pro finem* and *capias* warrants, were issued during the nine-month period between September 1, 2014 and June 11, 2015 charging at least 1,520 different people with failure to pay fines, fees, costs, and/or restitution. Many, if not the majority, of these people are indigent.

167. The Defendants have jailed hundreds of people, including the indigent, for nonpayment of debts owed to Biloxi over the past several years. In response to a request under the Public Records Act for booking reports for people jailed in the Harrison County Adult Detention Center, the Harrison County Sheriff's Office disclosed records showing that at least 415 different people were booked in jail during the seven-month period between September 1, 2014 and March 26, 2015, pursuant to *capias*, *capias pro finem*, or contempt warrants charging people for failure to pay debts owed to Biloxi. Many, if not the majority, of these people are indigent.

168. The names, case numbers, and dates of imprisonment of those who currently owe fines, fees, court costs, or restitution in cases handled by the Biloxi Municipal Court are available by consulting records maintained by the Defendants.

169. The Defendants followed, and continue to follow, the same revenue generation and debt-collection policies, practices, procedures, and customs to accomplish the arrest and immediate jailing of Plaintiffs Kennedy and Tillery, and the proposed Class members. For example, pursuant to policy, practice and custom, the Biloxi Municipal Court continues to issue arrest warrants—whether on its own accord or pursuant to notification by CPI or Pioneer—commanding law enforcement officers to arrest and immediately jail debtors who are unable to make any payments toward their debts, or who cannot pay in the time or amounts required by the Biloxi Municipal Court or Pioneer. The Biloxi police continue to execute such warrants when conducting warrant checks at traffic and pedestrian stops, and at debtors' homes. Pursuant to policy, practice and custom, the warrants are executed with the result that debtors are arrested and immediately jailed for days, unless cash payment of the full amount of the fines, fees, court costs, and/or restitution owed is paid at the jail. Pursuant to the Defendants' policy and practice, those arrested and jailed for nonpayment by the Defendants' scheme do not receive the notice or process required by law—a predeprivation inquiry into their ability to pay, efforts to secure resources, and alternatives to incarceration—or the appointment of counsel to help defend them against charges of failure to pay, or even information concerning their basic right to request counsel, as required by the Fourteenth Amendment.

170. People who still owe Biloxi debt payments, including the indigent, will be subjected to the same ongoing policies, practices, and customs absent the relief sought in this Complaint.

ii. Commonality

171. The relief sought is common to all members of the proposed Main Class and Indigent Class, and common questions of law and fact exist as to all members of each class/subclass. The Plaintiffs seek relief concerning whether the Defendants' policies, practices, and customs violated their constitutional rights and requiring the Defendants to change their policies, practices, and customs so that the Plaintiffs' rights will be protected in the future.

172. Among the most important, but not only, common questions of fact concerning the Main Class are:

- Whether the City of Biloxi has a policy, practice, and custom of issuing arrest warrants against debtors, including the indigent, for nonpayment of fines, fees, court costs, or restitution during the time and in the manner required by the Biloxi Municipal Court or Pioneer Credit Recovery and without probable cause that any offense or probation violation has been committed.
- Whether JCS probation officers had a policy, practice, and custom of threatening debtors, including the indigent, with incarceration for failure to pay fines, fees, court costs, or restitution in the time and manner required by the Biloxi Municipal Court without informing them of their constitutional rights.
- Whether CPI probation officers and Pioneer Credit Recovery employees have a policy, practice, and custom of threatening debtors, including the indigent, with incarceration for failure to pay fines, fees, court costs, or restitution in the time and manner required by the Biloxi Municipal Court without informing them of their constitutional rights.

- Whether JCS probation officers had a policy, practice, and custom of petitioning the Biloxi Municipal Court for warrants to arrest debtors, including the indigent, solely for failure to pay fines, fees, court costs, or restitution in the time and manner required by the Biloxi Municipal Court.
- Whether CPI and Pioneer Credit Recovery employees have a policy, practice, and custom of petitioning the Biloxi Municipal Court for warrants to arrest debtors, including the indigent, solely for failure to pay fines, fees, court costs, or restitution in the time and manner required by the Biloxi Municipal Court.
- Whether Biloxi police arrest and imprison people, including the indigent, pursuant to failure-to-pay warrants, which include capias pro finem and capias warrants, that are based solely on nonpayment of fines, fees, court costs, or restitution.
- Whether Biloxi police execute failure-to-pay warrants by arresting and jailing debtors, including indigent debtors, in the Harrison County Adult Detention Center without any pre-jail court hearing.
- Whether Biloxi police execute failure-to-pay warrants by arresting and jailing debtors, including indigent debtors, in the Harrison County Adult Detention Center without providing them notice of their right to request counsel prior to incarceration on such charges.
- Whether the Defendants delay post-jail hearings in the Biloxi Municipal Court concerning charges of failure to pay with the result that debtors, including the indigent, are detained for days prior to being presented to court.
- Whether the Defendants provide notice to debtors, including the indigent, that their ability to pay will be a relevant issue at any hearings held on their charges of failure to pay.
- Whether the Defendants ensure that findings are made concerning ability to pay, efforts to secure resources, and alternatives to incarceration in any post-jail hearings on failure-to-pay charges.

173. Among the most important common questions of law for the Main Class

are:

- Whether JCS probation officers conspired with the Mayor, City Council, Biloxi Municipal Court judges, and/or Biloxi police to arrest and jail debtors charged with nonpayment of debts owed to Biloxi and/or JCS fees.
- Whether JCS probation officers acted within the scope of their employment and with a purpose to serve JCS and Biloxi when threatening to arrest and jail debtors who did not pay in the time or manner required by the Biloxi Municipal Court.
- Whether JCS probation officers acted within the scope of their employment and with a purpose to serve JCS and Biloxi when petitioning the Biloxi Municipal Court to arrest and jail debtors who did not pay in the time or manner required by the Court.
- Whether it is lawful for the Biloxi Municipal Court to issue arrest warrants solely for non-payment of fines, fees, court costs, or restitution without any predeprivation inquiry into, and factual findings on, debtors' ability to pay and efforts to secure resources, and the adequacy of available alternatives to incarceration.
- Whether it is lawful for the Biloxi Municipal Court to issue arrest warrants solely for nonpayment of fines, fees, and/or court costs in light of the actual knowledge of the Court, JCS, or the Biloxi police that a debtor is indigent and unable to pay.
- Whether failure-to-pay warrants issued by the Biloxi Municipal Court can be used to deprive debtors of their liberty without notice and opportunity to be heard.
- Whether the Fourteenth Amendment permits a person to be jailed following arrest for nonpayment of fines, fees, costs, or restitution, unless they can pay in full the entire amount of any amounts owed.
- Whether due process is violated by proceedings conducted without notice to debtors that their ability to pay will be a relevant issue at the hearings and without findings made concerning ability to pay, efforts to secure resources, and the availability and adequacy of alternatives to incarceration.
- Whether due process is violated by proceedings concerning failure-to-pay charges conducted without informing debtors of their right to

request counsel and without informing indigent debtors of their right to court-appointed counsel against charges of failure to pay fines, fees, costs, and/or restitution.

174. These common legal and factual questions arise from one central scheme and set of policies and practices: the Defendants' unconstitutional scheme of debt-collection through the Arrest and Jailing Policy and the Prolonged Incarceration Policy. The Defendants operate this scheme openly and in materially the same manner every day. The material components of the scheme do not vary between members of the Main Class, and the resolution of these legal and factual issues will determine whether members of the Main Class are entitled to the constitutional relief they seek.

175. The questions of fact common to the Main Class are also common to the Subclass. Additional common questions of fact concerning the Indigent Class are:

- Whether Defendants afford indigent people court-appointed counsel to represent them against charges of failure to pay before incarcerating them on such charges.
- What procedural mechanisms, if any, Defendants use as a matter of policy and practice to determine indigence before jailing people on failure-to-pay warrants.
- What procedural mechanisms, if any, Defendants use as a matter of policy and practice to determine indigence at any post-jail hearings concerning charges that a debtor has failed to pay.

176. The questions of law common to the Main Class are also common to the Indigent Class. Additional common questions of law concerning the Indigent Class are:

- Whether due process is violated by the failure to appoint counsel to represent debtors charged with failure to pay fines, fees, court costs, or restitution prior to their incarceration when there is prima facie evidence

of indigence, including evidence of homelessness and income limitations due to disability status.

177. The legal and factual questions common to the Indigent Class arise from one central scheme and set of policies and practices: the Defendants' unconstitutional scheme of debt collection through the Arrest and Jailing Policy and the Prolonged Incarceration Policy. The Defendants operate this scheme openly and in materially the same manner every day. The material components of the scheme do not vary between members of the Indigent Class, and the resolution of these legal and factual issues will determine whether members of the Indigent Class are entitled to the constitutional relief they seek.

iii. Typicality

178. The policies, practices, and customs challenged in this action apply with equal force to Plaintiffs Kennedy and Tillery and all members of the Main Class and Indigent Class so that the claims of Plaintiffs Kennedy and Tillery are typical of those of the proposed Main Class and Indigent Class.

179. Ms. Kennedy and Mr. Tillery are indigent people who cannot afford to pay fines, fees, costs, or restitution that they currently owe, or which they face a real, substantial likelihood of owing in the future, to the City of Biloxi for traffic or misdemeanor offenses adjudicated in the Biloxi Municipal Court. Each of them suffered injuries because of their arrest and immediate jailing for failure to pay debts owed to Biloxi without representation by counsel and without predeprivation judicial inquiry into, and factual findings on, their ability to pay, efforts to secure resources, and the adequacy

of alternatives to incarceration. They both currently face a real and substantial threat of being arrested and jailed in the future for nonpayment of fines, fees, costs, and restitution according to the terms required by the Biloxi Municipal Court without representation by counsel and without any predeprivation ability-to-pay hearing.

180. If Plaintiffs Kennedy and Tillery succeed in their claims that the Defendants' policies and practices concerning debt collection for fines, fees, court costs, and restitution violate the law in the ways alleged in this Complaint, that ruling will likewise benefit every other member of the Main Class and Indigent Class.

iv. Adequacy

181. Plaintiffs and their attorneys will fairly and adequately protect the interests of members of the Main Class and Indigent Class.

182. Plaintiffs Kennedy and Tillery possess the requisite personal interest in the subject matter of the lawsuit and possess no interests adverse to other members of the Main Class or Indigent Class.

183. Plaintiffs are represented by attorneys at the American Civil Liberties Union Foundation ("ACLU"), the American Civil Liberties Union Foundation of Mississippi ("ACLU-MS"), and the law firm of Simon & Teeuwissen PLLC. The ACLU, ACLU-MS, and Simon & Teeuwissen PLLC are organizations with extensive experience in complex class action litigation and knowledge of the relevant constitutional and statutory law.

184. Plaintiffs' counsel also have extensive knowledge of the details of Defendants' scheme as a result of a months-long investigation involving court

observation, review of thousands of pages of records procured through public records requests, and numerous interviews with witnesses, jail inmates, and families. Plaintiffs' counsel have studied Biloxi budget documents, City Council resolutions, Biloxi Municipal Court records, Biloxi Police arrest and booking forms, and Harrison County Adult Detention Center inmate listing reports in order to understand Defendants' policies, practices, and customs as they relate to federal constitutional requirements.

185. Plaintiffs' counsel at the ACLU have also served as lead counsel in a similar federal lawsuit bringing constitutional challenges to unlawful municipal debt-collection schemes. *See Thompson v. DeKalb County*, No. 1:15 cv 280 (N.D. Ga. 2015). Plaintiffs' counsel at the ACLU currently serve as counsel in a lawsuit in Washington state bringing similar constitutional challenges to unlawful municipal debt-collection schemes. *See Fuentes v. Benton County*, No. 15-2-02976-1, (Wash. Yakima Superior Court Oct. 7, 2015) (motion for class certification pending).

b. Rule 23(b)(2)

186. Plaintiffs meet the requirements of Rule 23(b)(2) in that the Defendants acted or refused to act on grounds that apply generally to each class, so that final injunctive relief or corresponding declaratory relief is appropriate as to each class as a whole.

187. All of the following declarations will apply equally to all members of the Main Class:

- A declaration that the City of Biloxi and Chief Miller violate Plaintiff Kennedy and Plaintiff Tillery's Fourteenth Amendment due process and equal protection rights by arresting and imprisoning them for nonpayment of fines, fees, court costs, or restitution without providing a predeprivation judicial inquiry into, and findings of fact on, ability to pay, efforts to secure resources, and the adequacy of available alternatives to incarceration.
- A declaration that the City of Biloxi and Chief Miller violate Plaintiff Kennedy and Plaintiff Tillery's Fourth Amendment rights by arresting and imprisoning them for nonpayment of fines, fees, court costs, or restitution without probable cause that they have committed an offense or probation violation and without notice or a hearing prior to the deprivation of their liberty.
- A declaration that the City of Biloxi, Chief Miller and Judge Steele violate Plaintiff Kennedy and Plaintiff Tillery's Fourteenth Amendment due process rights by arresting and imprisoning them for nonpayment of fines, fees, court costs, or restitution without informing them of their right to request counsel to represent them against failure-to-pay charges.

188. The following declaration will apply equally to all members of the Indigent

Class:

- A declaration that the City of Biloxi, Chief Miller, and Judge Steele violate Plaintiff Kennedy and Plaintiff Tillery's Fourteenth Amendment due process rights as indigent debtors by arresting and imprisoning them for nonpayment of fines, fees, court costs, or restitution without the appointment of counsel to represent them against failure-to-pay charges.

189. Injunctive relief compelling the City of Biloxi and Chief Miller to comply with these constitutional rights will similarly protect each member of the Main Class and Indigent Class from being subjected to the Defendants' unlawful policies, practices, and customs with respect to the debts they currently owe, or in the future will owe.

DEMAND FOR JURY TRIAL

190. Plaintiffs request a trial by jury.

CLAIM ONE
FOR DECLARATORY AND INJUNCTIVE RELIEF
Confinement in Jail Without Predeprivation Ability-to-Pay Hearing

in violation of the Due Process and Equal Protection Clauses of the
Fourteenth Amendment to the U.S. Constitution, and 42 U.S.C. § 1983
Against Defendants Biloxi and Chief Miller

191. Plaintiffs incorporate by reference the allegations in paragraphs 13 to 156.

192. This claim is brought by Plaintiff Kennedy and Plaintiff Tillery on behalf of themselves and the members of the proposed Main Class.

193. The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution have long prohibited the imprisonment of people for the failure to pay court-imposed fines or restitution without a predeprivation inquiry by a judge into the person's ability to pay, efforts to secure resources to pay, and, if the person is found to lack the ability to pay despite having made reasonable efforts to acquire resources, the adequacy of any alternatives to incarceration. Courts are prohibited from jailing people for failure to pay without conducting such an inquiry and making at least one of the following findings: (1) the debtor's failure to pay was willful; (2) the debtor failed to make sufficient efforts to acquire the resources to pay; and/or (3) the individual was unable to pay, despite having made sufficient efforts to acquire resources, but alternative methods of achieving punishment or deterrence are not adequate.

194. Plaintiff Kennedy and Plaintiff Tillery suffered violations of their clearly established right to a predeprivation ability-to-pay hearing when Biloxi police arrested and immediately jailed them, and conditioned their release upon cash payment of the full amount of their debts to Biloxi. As a result, Plaintiff Kennedy was incarcerated from

July 30, 2015 to August 4, 2015, and Plaintiff Tillery was incarcerated from July 1, 2014 to July 3, 2014. Plaintiff Tillery also suffered a deprivation of his right to a predeprivation ability-to-pay hearing when his incarceration was prolonged on three separate occasions in 2014—from April 11 to April 15, from July 3 to 18, and September 3 to 11—because he could not afford to pay in cash the full amount of his debts to Biloxi. Prior to each period of incarceration, neither plaintiff was afforded any predeprivation judicial inquiry into, and findings of fact on, ability to pay, efforts to secure resources, and the adequacy of available alternatives to incarceration.

195. For all relevant purposes, all individuals processed for commitment to jail for unpaid fines, costs, fees, or restitution are similarly situated with respect to their right to due process of law. There exists no legitimate governmental reason to jail individuals who are financially unable to pay in cash the full amount of outstanding monetary penalties for traffic or misdemeanor offenses, while permitting individuals who have the financial means to pay such fines and costs to avoid being jailed for the same offenses.

196. Defendants Biloxi and Miller's policies, practices, and customs directly and proximately caused, and continue to cause, the violations of Plaintiff Kennedy and Plaintiff Tillery's right to a predeprivation ability-to-pay hearing.

197. The City has acquiesced to the well-settled, longstanding, and widespread arrest, jailing, and prolonged incarceration of indigent debtors without predeprivation ability-to-pay hearings. The Arrest and Jailing Policy and the Prolonged Incarceration Policy have therefore become policy, practice, and custom with the force of law, and

reflect deliberate indifference to the due process and equal protection rights of debtors and the indigent.

198. Defendant Miller also directly and proximately caused the violation of, and continues to violate, Plaintiff Kennedy and Plaintiff Tillery's right to a predeprivation ability-to-pay hearing in his role as the City's chief law enforcement officer and final policymaker on carrying out arrests and booking people in jail, as well as the collection of fines, fees, court costs, and restitution from indigent debtors. By supervising, controlling, and directing Biloxi Police Department officers and administrative staff who arrest, process, book, and ultimately confine individuals in the Harrison County Adult Detention Center for nonpayment of fines, fees, costs, or restitution without necessary ability-to-pay determinations, Defendant Miller directly and proximately caused the violation of, and continues to violate, Plaintiff Kennedy and Plaintiff Tillery's rights to due process and equal protection of the law. Defendant Miller also failed to train and to supervise Biloxi police officers under his command to ensure that they execute failure-to-pay arrest warrants in compliance with debtors' clearly established right to predeprivation ability-to-pay hearings. His actions and inactions were deliberately indifferent to the clearly established constitutional rights of Plaintiffs.

199. Plaintiff Kennedy is indigent, owes debts to Biloxi, and is unable to make the monthly payments required by the Biloxi Municipal Court since being released from jail on August 4, 2015. Plaintiff Tillery is indigent, homeless, and incarcerated. He remains in constant and substantial risk of being subjected to prolonged incarceration on charges of failure to pay debts to Biloxi that he has already discharged. He also remains

in constant and substantial risk of being ticketed by Biloxi police after his release from jail for crimes related to his homelessness and assessed fines he cannot afford to pay.

200. Defendant Biloxi and Miller's policies, practices, customs, acts, and omissions place Plaintiffs Kennedy and Tillery at continuing and foreseeable risk of being arrested, jailed, and subjected to prolonged detention for non-payment of fines, fees, costs, or restitution despite their inability to pay these financial obligations. Plaintiff Kennedy and Plaintiff Tillery seek prospective declaratory and injunctive relief because they have no plain, adequate, or complete remedy at law to prevent future injury caused by confinement in jail in violation of their constitutional rights.

201. Defendants Biloxi and Miller's actions in violating Plaintiff Kennedy and Tillery's rights also constituted a violation of 42 U.S.C. § 1983. Defendants act under color of state law when their actions, policies, practices, customs, and omissions create a real, imminent, and substantial threat that Plaintiffs Kennedy and Tillery will be arrested and jailed in violation of their due process and equal protection rights, and their acts and omissions can be fairly attributed to the City.

CLAIM TWO
FOR DECLARATORY AND INJUNCTIVE RELIEF
Failure to Afford Counsel

in violation of the Due Process Clause of the
Fourteenth Amendment to the U.S. Constitution, and 42 U.S.C. § 1983
Against Defendants Biloxi, Judge Steele, and Chief Miller

202. Plaintiffs incorporate by reference the allegations in paragraphs 13 to 156.

203. This claim is brought on behalf of Plaintiff Kennedy, Plaintiff Tillery, and the members of the proposed Main Class and Indigent Class.

204. The Fourteenth Amendment to the U.S. Constitution affords all people facing imprisonment on charges of failure to pay fines, fees, court costs, or restitution a due process right to request court-appointed counsel in hearings concerning that charge, whether they arise in the civil contempt or probation revocation context. The Fourteenth Amendment also affords indigent debtors a due process right to court-appointed counsel at no cost when facing failure-to-pay charges, whether in civil contempt or probation revocation proceedings.

205. Plaintiff Kennedy and Plaintiff Tillery suffered violations of their clearly established right to counsel when Biloxi police arrested and immediately jailed them for nonpayment of debts owed to Biloxi without informing them of their right to request counsel or ensuring that they were afforded counsel, as indigent debtors charged with failure to pay fines and court costs, despite prima facie evidence of their indigence. Plaintiff Tillery also suffered a deprivation of his right to counsel when Biloxi police prolonged his incarceration on three separate occasions in 2014—from April 11 to April 15, July 3 to 18, and September 3 to 11—without informing him of his right to request counsel or his right, as an indigent debtor, to court-appointed counsel to represent him against failure-to-pay charges.

206. Judge Steele directly and proximately caused Plaintiff Kennedy to suffer a deprivation of her right to counsel when he afforded her a post-jail hearing on the charge that she had failed to pay 2013 traffic fines and court costs in which he did not inform her

of her right to request counsel and did not appoint counsel to represent her at no cost, despite prima facie evidence of her indigence. The judge did not inform Ms. Kennedy of the risk of proceeding without counsel or engage in any colloquy to ensure that her signature underneath the following statement on probation orders issued by him constituted a knowing, voluntary, and intelligent waiver of her right to counsel: "I have counsel or have waived my right to counsel for all proceedings to this date and have received a copy of this Order."

207. The City's policies, practices, and customs directly and proximately caused the violations of Plaintiff Kennedy and Plaintiff Tillery's right to counsel. The City has acquiesced to the well settled, longstanding and widespread arrest, jailing, and prolonged incarceration of debtors without informing them of their right to request counsel or affording indigent debtors counsel to represent them against failure-to-pay charges. The Arrest and Jailing Policy and the Prolonged Incarceration Policy have therefore become policy, practice, and custom with the force of law, and reflect deliberate indifference to debtors' and indigent debtors' due process right to counsel.

208. Defendant Miller also directly and proximately caused the violation of Plaintiff Kennedy and Plaintiff Tillery's right to counsel. The City delegated to Defendant Miller, in his roles as the chief law enforcement officer for Biloxi and chief executive officer of the Biloxi Municipal Court, final policymaking authority to carry out arrests, to book people in jail, and to collect fines, fees, court costs, and restitution from indigent debtors. Defendant Miller knew, or should have known, of the City's longstanding policy, practice, and custom of arresting and immediately jailing indigent

debtors charged with failure to pay and of prolonging the incarceration of indigent debtors already in jail. He also knew, or should have known, that police officers under his command carried out these arrests and detentions without informing indigent debtors of their right to request counsel or affording them counsel to defend against incarceration for failure to pay fines or court costs. Defendant Miller also failed to train and to supervise Biloxi police officers under his command to ensure that they executed failure-to-pay arrest warrants in compliance with debtors' and indigent debtors' clearly established right to counsel. His actions and inactions were deliberately indifferent to the clearly established constitutional rights of Plaintiffs.

209. Defendants Biloxi, Steele, and Miller's policies, practices, customs, acts, and omissions place Plaintiffs Kennedy and Tillery at continuing and foreseeable risk of being arrested and committed to the Harrison County Adult Detention Center, and of experiencing an extension of incarceration, for nonpayment of fines, fees, costs, or restitution without the benefit of representation by court-appointed counsel. Plaintiffs Kennedy and Tillery seek prospective declaratory and injunctive relief because they have no plain, adequate, or complete remedy at law to prevent future injury caused by confinement in jail in violation of their constitutional rights.

210. Plaintiffs Kennedy and Tillery seek declaratory relief only against Defendant Steele. They seek declaratory and injunctive relief against Defendants Biloxi and Miller.

211. Defendants Biloxi, Steele, and Miller's actions in violating Plaintiff Kennedy's and Tillery's rights also constitute a violation of 42 U.S.C. § 1983.

Defendants act under color of state law when their actions, policies, practices, customs, and omissions create a real, imminent, and substantial threat that Plaintiffs Kennedy and Tillery will be arrested and jailed in violation of their due process and equal protection rights, and their acts and omissions can be fairly attributed to the City.

CLAIM THREE
FOR DECLARATORY AND INJUNCTIVE RELIEF
Unconstitutional Seizure

in violation of the Fourth Amendment
to the U.S. Constitution, and 42 U.S.C. § 1983
Against Defendants Biloxi and Chief Miller

212. Plaintiffs incorporate by reference the allegations in paragraphs 13 to 156.

213. This claim is brought on behalf of Plaintiff Kennedy, Plaintiff Tillery, and the members of the proposed Main Class.

214. The Fourth Amendment prohibits unreasonable seizures, including arrest and jailing without probable cause or legal authority.

215. The arrest and jailing of Plaintiff Kennedy from July 30, 2014 to August 4, 2014 was an unreasonable seizure. It was carried out pursuant to arrest warrants based on nonpayment of fines and court costs, which were unsupported by probable cause that Plaintiff Kennedy had committed an offense or probation violation. Plaintiff Kennedy was not arrested and jailed following a probation revocation hearing at which she was afforded notice or an opportunity to be heard before being deprived of her liberty.

216. Plaintiff Tillery's numerous arrests and jailings in 2014 were also unreasonable seizures because they were carried out pursuant to capias warrants based on

his nonpayment of fines, fees, court costs, or restitution, which were unsupported by probable cause that he had committed an offense or probation violation.

217. The arrests that led to the incarceration of Plaintiff Kennedy and Plaintiff Tillery were arrests for which probable cause was required.

218. The City's policies, practices, and customs directly and proximately caused the violations of Plaintiff Kennedy's and Plaintiff Tillery's right to freedom from unreasonable seizures. The City has acquiesced to the well-settled, longstanding, and widespread arrest, jailing, and prolonged incarceration of indigent debtors pursuant to warrants, including *capias pro finem* and *capias* warrants, that are based on debtors' nonpayment of debts and are unsupported by probable cause that the debtor has committed a crime or probation violation. The Arrest and Jailing Policy and the Prolonged Incarceration Policy have therefore become policy, practice, and custom with the force of law, and reflect deliberate indifference to debtors' Fourth Amendment right to protection from unreasonable seizure.

219. Defendant Miller also directly and proximately caused the violation of Plaintiff Kennedy and Plaintiff Tillery's right to freedom from unreasonable seizure. The City delegated to Defendant Miller final policymaking authority to carry out arrests and detentions. Defendant Miller knew, or should have known, of the City's longstanding policy, practice, and custom of arresting, jailing, and prolonging the incarceration of debtors pursuant to failure-to-pay warrants that are unsupported by probable cause. Defendant Miller also knew, or should have known, that police officers under his command execute these warrants by arresting and jailing debtors unless they can pay in

cash the full amount of their debt. Defendant Miller failed to train and to supervise Biloxi police officers under his command to ensure that they execute failure-to-pay arrest warrants in compliance with debtors' clearly established right to freedom from unreasonable seizure. His actions and inactions were deliberately indifferent to Plaintiff Kennedy and Plaintiff Tillery's clearly established constitutional rights.

220. Defendants Biloxi and Miller's policies, practices, customs, acts, and omissions place Plaintiffs Kennedy and Tillery at continuing and foreseeable risk of being arrested and jailed in the Harrison County Adult Detention Center pursuant to warrants lacking legal authority or probable cause. Plaintiffs Kennedy and Tillery seek prospective declaratory and injunctive relief because they have no plain, adequate, or complete remedy at law to prevent future injury caused by confinement in jail in violation of their constitutional rights.

CLAIM FOUR
FOR DAMAGES ON BEHALF OF NAMED PLAINTIFFS
Confinement in Jail Without Predeprivation Ability-to-Pay Hearing

in violation of the Due Process and Equal Protection Clauses of the
Fourteenth Amendment to the U.S. Constitution, and 42 U.S.C. § 1983
Against Defendants Biloxi, Chief Miller, and JCS

221. Plaintiffs incorporate by reference the allegations in paragraphs 13 to 156.

222. The Due Process and Equal Protection Clauses of the Fourteenth Amendment prohibit the incarceration of debtors for failure to pay fines without a predeprivation judicial inquiry into, and factual findings on, the willfulness of their

failure to pay, the adequacy of their efforts to acquire resources, and the adequacy of alternatives to incarceration, such as a reduction or waiver of the amount to be paid, an extension of time to pay, or community service.

223. Plaintiffs Kennedy, Anderson, and Tillery suffered violations of this clearly established right when Biloxi police officers arrested and immediately jailed them in the Harrison County Adult Detention Center, unless they could pay in cash the entire amount of their debts to Biloxi, without any kind of predeprivation hearing.

224. Plaintiff Tillery also suffered a violation of his clearly established right to a predeprivation ability-to-pay hearing when the City of Biloxi prolonged his detention on two separate occasions in 2014—from April 11 to April 15, and September 3 to September 11—by keeping him jailed pursuant to newly issued failure-to-pay warrants and without any predeprivation hearing.

225. Plaintiff Tillery also suffered violations of his clearly established right to a predeprivation ability-to-pay hearing when he was jailed for eighteen days following an April 15, 2014 hearing, and sixteen days following a July 3, 2014 hearing. These hearings lasted only several minutes. Although they concerned failure-to-pay charges, neither hearing afforded any judicial inquiry into, or findings on, Mr. Tillery's ability to pay or efforts to secure resources, or the adequacy of alternatives to incarceration.

226. For all relevant purposes, all individuals processed for commitment to jail for unpaid fines, costs, fees, and/or restitution owed to Biloxi are similarly situated with respect to their right to due process of law. There exists no legitimate governmental reason to jail individuals who are financially unable to pay in cash the full amount of

outstanding monetary penalties for traffic or misdemeanor offenses, while permitting individuals who have the financial means to pay such fines and costs to avoid being jailed for the same offenses.

227. The City of Biloxi, Police Chief Miller, and JCS directly and proximately caused the violation of Plaintiffs' right to a predeprivation ability-to-pay hearing by developing and maintaining policies, practices, and customs that demonstrated deliberate indifference to this right and the liberty interests of indigent people who owe fines, fees, court costs, or restitution to the Biloxi Municipal Court. These policies, practices, and customs include: (1) the widespread and routine request by JCS employees that Biloxi Municipal Court judges issue failure-to-pay warrants against debtors who have not paid in the time or manner required by the Court; (2) Biloxi Municipal Court judges' widespread and routine issuance of failure-to-pay warrants, including *capias pro finem* and *capias* warrants, in response to JCS employees' request, or upon other notification that a debtor has been unable to pay; (3) Biloxi police officers' widespread and routine execution of these warrants to arrest and jail debtors following traffic and pedestrian stops and visits to debtors' homes, if debtors cannot pay their debts in cash and in full at jail; (4) the routine issuance of warrants charging indigent debtors with failure to pay fines when the Biloxi Municipal Court discovers that they are already incarcerated on unrelated charges in order to prolong their detention; and (5) the execution of such warrants to purport to shift the basis of a jailed debtors' incarceration to the failure-to-pay warrant.

228. JCS probation officers willfully participated in a conspiracy with Biloxi officials, including the Mayor, City Council, Biloxi Municipal Court judges, and Biloxi police, to generate municipal revenue and payments toward JCS service fees. In furtherance of this conspiracy, JCS probation officers threatened poor probationers with arrest and jail and petitioned the Biloxi Municipal Court for arrest warrants for probationers who could not pay in the time or manner required by the Court.

229. Through policy, practice, and custom, the City of Biloxi, Police Chief Miller, and JCS persisted in the arrest, immediate jailing, and prolonged incarceration of debtors despite their awareness that such practices violated debtors' right to a predeprivation ability-to-pay hearing and that the violation of this right has become longstanding and pervasive.

230. Through policy, practice, and custom, the City of Biloxi, Police Chief Miller, and JCS acted with actual malice and reckless indifference to Plaintiffs' clearly established right to a meaningful ability-to-pay hearing prior to being jailed for failure to pay fines, court costs, State assessments, and JCS fees.

231. Defendants Biloxi, Miller and JCS's actions in violating Plaintiffs' rights also constituted a violation of 42 U.S.C. § 1983. Defendants were acting under color of law when their actions, policies, practices, and customs caused Plaintiffs' incarceration, and their acts and omissions are fairly attributable to the City.

232. Plaintiffs seek damages from Defendants Biloxi, Chief Miller, in his official capacity, and JCS for the humiliation, anxiety, stress, emotional distress, hunger, sleeplessness, disturbed sleep, and other irreparable injury they suffered as a result of

being handcuffed and taken to jail, forcibly separated from family and loved ones, and detained for periods of time ranging from two to twenty-two days in unsanitary and cold jail conditions without enough food to eat.

CLAIM FIVE
FOR DAMAGES ON BEHALF OF NAMED PLAINTIFFS
Failure to Afford Counsel

in violation of the Due Process Clause of the
Fourteenth Amendment to the U.S. Constitution, and 42 U.S.C. § 1983
Against Defendants Biloxi, Miller, and JCS

233. Plaintiffs incorporate by reference the allegations in paragraphs 13 to 156.

234. The Fourteenth Amendment affords all people facing imprisonment on a failure-to-pay charge a due process right to request court-appointed counsel in hearings concerning that charge, whether they are in civil contempt or probation revocation hearings. The Fourteenth Amendment also affords indigent debtors a due process right to court-appointed counsel at no cost in any civil contempt or probation revocation proceedings concerning failure-to-pay charges.

235. Plaintiffs Kennedy, Anderson, and Tillery suffered a violation of their due process right to counsel when Biloxi police officers arrested and immediately jailed them or subjected them to prolonged incarceration without informing them of their right to request court-appointed counsel, and without affording them court-appointed counsel to defend against possible incarceration for nonpayment of fines, fees, court costs, or

restitution, despite prima facie evidence of their indigence, including evidence of homelessness.

236. Each plaintiff further suffered a violation of this right when the Biloxi Municipal Court held post-jail civil contempt proceedings concerning the failure-to-pay charges against them without informing them of their right to request counsel or affording them, as indigent people, court-appointed counsel to assist in their defense. None of the plaintiffs knowingly, voluntarily, or intelligently waived their rights to counsel either orally or in writing. Nor did any Biloxi Municipal Court judge conduct a colloquy to determine whether any plaintiff knowingly, intelligently, and voluntarily waived the right to counsel.

237. Biloxi, Chief Miller, and JCS directly and proximately caused the violation of Plaintiffs' due process right to counsel by developing and maintaining policies, practices, and customs that demonstrated deliberate indifference to this right. These policies, practices, and customs include: (1) the widespread and routine arrest, jailing, and prolonged incarceration of indigent people by Biloxi police pursuant to failure-to-pay warrants without predeprivation notice of the right to request counsel to help defend against incarceration for failure to pay, and without actual appointment of counsel for indigent debtors; (2) failure to train, direct, guide, and supervise JCS employees and Biloxi police on debtors' right to request court-appointed counsel and indigent debtors' right to court-appointed counsel in proceedings concerning failure-to-pay charges.

238. JCS probation officers willfully participated in a conspiracy with Biloxi officials, including the Mayor, City Council, Biloxi Municipal Court judges, and Biloxi

police, to generate municipal revenue and payments toward JCS service fees. In furtherance of this conspiracy, JCS probation officers: (1) threatened poor probationers with arrest and jail, (2) petitioned the Biloxi Municipal Court for arrest warrants for probationers who could not pay in the time or manner required, and (3) failed to inform poor probationers of debtors' right to request the assistance of counsel when charged with failure to pay and indigent debtors' right to the appointment of counsel when facing such charges.

239. Through policy, practice, and custom, Biloxi, Chief Miller, and JCS directly and proximately caused the violation of Plaintiffs' right to counsel through their acquiescence to the routine and customary failure to inform debtors, including the indigent, of their rights concerning counsel, and to the routine and customary failure of BMC judges, including Judges Henry, Tisdale and Steele, to ensure that any written or oral waiver of the right to counsel was knowing, voluntary, and intelligent. Defendants were aware that these practices, actions, customs, and failures had become so longstanding and pervasive as to constitute the standard operating procedure of Biloxi and the Biloxi Municipal Court.

240. Through policy, practice, and custom, Biloxi, Police Chief Miller, and JCS acted with actual malice and reckless indifference to Plaintiffs' clearly established right to counsel as indigent people charged with contempt of court for failure to pay fines and court costs.

241. Defendants' actions in violating Plaintiffs' due process right to counsel also constitute a violation of 42 U.S.C. § 1983. Defendants were acting under color of law

when their policies, practices, and customs violated Plaintiffs' right to counsel, and their acts and omissions can be fairly attributed to Biloxi.

242. Plaintiffs seek damages from Defendants Biloxi, Chief Miller (in his official capacity), and JCS for the humiliation, anxiety, stress, emotional distress, hunger, sleeplessness, disturbed sleep, and other irreparable injury they suffered for being jailed, forcibly separated from their family and loved ones, and detained in unsanitary and cold jail conditions without enough food to eat for periods ranging from two to twenty-two days.

CLAIM SIX
FOR DAMAGES ON BEHALF OF NAMED PLAINTIFFS
Unconstitutional Seizure

in violation of the Fourth Amendment to the U.S. Constitution, and 42 U.S.C. § 1983
Against Defendants Biloxi, Miller and JCS

243. Plaintiffs incorporate by reference the allegations in paragraphs 13 to 156.

244. Without probable cause or legal authority, Defendants caused poor debtors to be arrested, jailed, and subject to prolonged detention in the Harrison County Adult Detention Center when they were unable to make immediate cash payments of the entire amount of the debts owed.

245. Defendants Biloxi, Miller, and JCS had no particularized and objective basis to believe that any of the Plaintiffs they had seized had committed any criminal offense or probation violation.

246. The detentions of Plaintiffs were unreasonable seizures under the Fourth Amendment.

247. The seizures of Plaintiffs were excessive and unreasonable in their duration and scope.

248. The seizures of Plaintiffs constituted arrests for which probable cause was required. The arrest of the Plaintiffs was unreasonable.

249. It was clearly established before the dates of Plaintiffs' detentions that seizing and detaining Plaintiffs simply because they did not have money would violate the Plaintiffs' clearly established rights. Defendants Biloxi, Miller, and JCS had fair warning that their conduct would violate the Constitution and no reasonable officer could have believed that the seizures or incarceration of Plaintiffs was reasonable.

250. Defendants Biloxi, Miller, and JCS directly and proximately caused the violation of Plaintiffs' right to freedom from unreasonable seizure by developing and maintaining policies, practices, and customs that demonstrated deliberate indifference to this right. These policies, practices, and customs include: (1) the widespread and routine arrest and jailing of indigent people by Biloxi police pursuant to *capias pro finem* or *capias* warrants charging them with failure to pay, without probable cause that they had committed an offense or a probation violation; and (2) failure to train, direct, guide, and supervise JCS employees and Biloxi police on debtors' right to freedom from unreasonable seizures.

251. JCS probation officers willfully participated in a conspiracy with Biloxi officials, including the Mayor, City Council, Biloxi Municipal Court judges, and Biloxi

police, to elicit payments toward debts owed to Biloxi and JCS monthly fees, by seeking and securing warrants to arrest debtors because of their inability to pay, in violation of debtors' Fourth Amendment rights.

252. Plaintiffs seek damages from the City of Biloxi, Chief Miller (in his official capacity), and JCS for the humiliation, anxiety, stress, emotional distress, hunger, sleeplessness, disturbed sleep, and other irreparable injury they suffered for being jailed, forcibly separated from their family and loved ones, detained in unsanitary and cold jail conditions without enough food to eat for periods ranging from two to twenty-two days.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

- Assume jurisdiction over this action;
- Determine by Order pursuant to Rule 23 of the Federal Rules of Civil Procedure that this action be maintained as a class action;
- Award Plaintiffs Kennedy and Tillery, on behalf of themselves and the Main Class, the following relief:

A declaration that the City of Biloxi and Chief John Miller violate Plaintiff Kennedy and Plaintiff Tillery's Fourteenth Amendment due process and equal protection rights by ordering or effecting their arrest and imprisonment, or prolonging their incarceration, for nonpayment of fines, fees, court costs, or restitution without providing a predeprivation judicial inquiry into, and findings of fact on, ability to pay, efforts to secure resources, and the adequacy of available alternatives to incarceration.

A declaration that the City of Biloxi, Judge Steele, and Chief Miller violate Plaintiff Kennedy and Plaintiff Tillery's Fourteenth Amendment due process rights by ordering or effecting their arrest and imprisonment, or prolonging their incarceration, for nonpayment of

finest, fees, court costs, or restitution without informing them of their right to request the appointment of counsel to represent them against failure-to-pay charges and without ensuring that any waiver of this right is knowing, voluntary, and intelligent.

A declaration that the City of Biloxi and Chief Miller violate Plaintiff Kennedy and Tillery's Fourth Amendment right by ordering or effecting their arrest and imprisonment, or prolonging their incarceration, pursuant to warrants based on nonpayment of fines, fees, court costs, or restitution and without probable cause that they have committed an offense or probation violation.

Award Plaintiff Kennedy and Plaintiff Tillery, on behalf of themselves and the Main Class, an order and judgment permanently enjoining the City of Biloxi and Chief John Miller from enforcing the above-described unconstitutional policies and practices.

- Award Plaintiffs Kennedy and Tillery, on behalf of themselves and the Indigent Class, the following relief:

A declaration that the City of Biloxi, Judge Steele, and Chief Miller violate Plaintiff Kennedy and Plaintiff Tillery's Fourteenth Amendment due process right by ordering or effecting their arrest and imprisonment, or prolonging their incarceration, for nonpayment of fines, fees, court costs, or restitution without ensuring the appointment of counsel to represent them against failure-to-pay charges and that any waiver of this right is knowing, voluntary, and intelligent.

Award Plaintiff Kennedy and Plaintiff Tillery, on behalf of themselves and the Indigent Class, an order and judgment permanently enjoining the City of Biloxi and Police Chief Miller from enforcing the above-described unconstitutional policies and practices.

- Award the named Plaintiffs compensatory damages in an amount to be determined at trial, including damages for deprivation of liberty, mental anguish, emotional distress, hunger, sleeplessness, disturbed sleep, and loss of income;
- Award the named Plaintiffs punitive damages in an amount to be determined by trial, and to the extent permitted by law;
- Award Plaintiffs attorneys' fees, costs, and expenses of all litigation, pursuant to 42 U.S.C. § 1988;

- Afford any such other and further relief as the Court may deem just and proper.

DATED this October 20, 2015.

Respectfully submitted by,



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(subject to pro hac admission)

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