

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

SHARNALLE MITCHELL, LORENZO)
BROWN, TITO WILLIAMS,)
COURTNEY TUBBS, TEQUILA)
BALLARD, WILLIE WILLIAMS,)
THOMAS ELLIS, GAVIN)
BULLOCK, KENDRICK MAULL,)
TAMARA TUDLEY, JERMAINE)
TYLER, JANET EDWARDS,)
RISKO McDANIEL, DEMETRI)
COLVIN, CARL WILLIAMS, and)
RAYSHONE WILLIAMS,)

Plaintiffs,)

v.)

CITY OF MONTGOMERY,)
HONORABLE LES HAYES, III,)
HONORABLE MILTON WESTRY,)
HONORABLE DARRON HENDLEY,)
and HONORABLE LLORIA JAMES,)

Defendants.)

CIVIL ACTION NO.
2:14cv186-MHT
(WO)

JUDGMENT GRANTING FINAL
DECLARATORY AND INJUNCTIVE RELIEF

Based on the representation of the parties before the
court, it is ORDERED that:

(1) The parties' joint motion for entry of final
declaratory and injunctive relief (doc. no. 47) is granted.

(2) The parties to the agreement to settle declaratory and injunctive claims ("settlement agreement"), which is attached to this judgment, are to comply with its terms for the periods set out therein.

(3) The plaintiffs' request for declaratory and injunctive relief is resolved in full subject only to the further jurisdiction of this court to enforce the settlement agreement for the periods set out therein.

(4) The plaintiffs are to notify this court of any material breaches of the settlement agreement after making full attempts to resolve the dispute with the parties as set out in the settlement agreement.

The clerk of the court is DIRECTED to enter this document on the civil docket as a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

This case is not closed.

DONE, this the 17th day of November, 2014.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**SHARNALLE MITCHELL, LORENZO)
BROWN, TITO WILLIAMS, COURTNEY)
TUBBS, TEQUILA BALLARD, WILLIE)
WILLIAMS, THOMAS ELLIS, GAVIN)
BULLOCK, KENDRICK MAUL, TAMARA)
DUDLEY, JERMAINE TYLER, JANET)
EDWARDS, RISKO MCDANIEL, DEMETRI)
COLVIN, CARL WILLIAMS, RAYSHONE)
WILLIAMS,)**

Plaintiffs,

vs.

Case No. 2:14-cv-186

CITY OF MONTGOMERY,

Defendant.

AGREEMENT TO SETTLE INJUNCTIVE AND DECLARATORY RELIEF CLAIMS

COME NOW the PARTIES to this Settlement Agreement, the sixteen Plaintiffs in the above-styled action, the City of Montgomery (hereinafter referred to as “the City”), and Presiding Judge Les Hayes, III, Judge Darron Hendley, Judge Lloria James, and Judge Milton Westry (each in his or her official capacity as Judge of the Municipal Court of the City of Montgomery) (hereinafter referred to collectively as “the Judges”) and, for good and valuable consideration, enter into this Agreement as a full and final settlement of all the Plaintiffs’ claims for declaratory and injunctive relief.

WHEREAS, the City denies any liability for the claims alleged by the Plaintiffs and further denies having authority over the Judges of the Municipal Court or over the Municipal Court itself in connection with the counts and claims pled in the above-styled action and takes the position that the relief requested cannot be provided by the City;

WHEREAS, the Judges of the Municipal Court of the City of Montgomery, without waiving any potential immunity to claims for damages, attorneys' fees, or any other relief or any defenses thereto, and to further promote the resolution of the lawsuit and thereby any potential proceedings which might be brought against them in the future;

WHEREAS, the Plaintiffs take the position that the City of Montgomery is responsible and liable for—and capable of preventing and remedying in the future—the constitutional violations alleged by the Plaintiffs, which the Plaintiffs contend involved various City officials, employees, and agents. Plaintiffs further take the position that the result of the City's actions was the illegal jailing of indigent City residents.¹ Plaintiffs seek a timely resolution of their claims for declaratory and injunctive relief in order to end the challenged practices and take the position that the following provisions, to which the parties agree, provide significant constitutional protections relating to their claims in the above-styled litigation.

The Judges of the Municipal Court of the City of Montgomery, in their official capacities, while denying liability and in order to promote the efficient and effective operation of the Court, agree to the following which are to be implemented beginning not more than forty-five days after the execution of this agreement:

1. To audio record compliance and indigence hearings (as those hearings are described in the Judicial Procedures attached hereto as Appendix 1) for a period of not less than twenty-four months following the execution of this Agreement.

¹ Nothing in this Agreement should be construed to constitute an admission by the Plaintiffs that the City of Montgomery is not liable for the constitutional violations alleged in this case or capable of remedying those violations and providing the relief sought. Similarly, nothing in this agreement should be construed to constitute an admission by the City that it is liable for the same.

2. To use a microphone when conducting court unless a Party asks that the microphone be turned off and the court finds, after allowing for objections to be made, that to turn the microphone off is appropriate to guard against disclosure of private medical information, information about a minor child, or other sensitive, private information. Use of the microphone pursuant to this Agreement shall be for a period of not less than three years following the execution of this Agreement.

3. To notify Plaintiffs' Counsel by email within twelve hours of any Municipal Court defendant's being placed in jail for nonpayment of a fine, costs or restitution (or otherwise placed in jail pursuant to the Plan, including for contempt of court for nonperformance of community service or any other reason stemming from nonpayment or nonperformance of community service in lieu of payment). Said notification would be provided to Alec Karakatsanis at the following email address: alec@equaljusticeunderlaw.org. The notification will include the defendant's name, the date of the order jailing the defendant, the case number(s), the name of the attorney representing the defendant, a copy of any written findings, and instructions regarding how to request the recording of the proceeding. The responsibility for providing said notifications will end one hundred and eighty days from the date this Agreement is executed.

4. To permit entry of the public into the courtroom in the event the doors are locked. Specifically, the Court will provide a means for the public to request entry into the courtroom by pressing a button located outside the entrance door to the courtroom which will notify security personnel within the courtroom that a member of the public wishes to enter. Once security inside the courtroom has been established, security personnel will go to the courtroom door and screen the person(s) wishing to enter the courtroom. Admission to the courtroom using this procedure will be granted as promptly as practicable. A sign will be posted at the entrance

door to the courtroom stating this procedure in large print. The amount of time in which the Municipal Court courtroom doors are locked will be minimized and limited to the time necessary to secure the courtroom, and, if it takes longer than ten minutes to secure the courtroom, and someone is seeking entrance, the Judge or courtroom clerk will call another staff member to open the door. This term will be in place for not less than three years following the execution of this Agreement

5. To train the Public Defenders regarding the requirements and holding of *Bearden v. Georgia*, 461 U.S. 660 (1983), and *Turner v. Rogers*, 131 S. Ct. 2507 (2011), within thirty days of the execution of this Agreement. The training will be conducted by Shannon Holliday and any designee made by her, and the need to request a *Bearden* hearing for any person who is subject to being jailed for failure to pay a fine, court costs, or restitution will be fully discussed with the Public Defenders as will the defendants' rights as implemented under the Judicial Procedures. The training will also emphasize the Public Defenders' obligation to represent their clients during courtroom proceedings in Municipal Court as described in the Judicial Procedures, to meet with and advise clients prior to any indigence/ability-to-pay hearing and to provide to the client the Public Defender's name and contact information, if requested, in cases in which clients are incarcerated for failure to pay fines and costs or have a pending contempt proceeding for failure to comply with an order to do community service in lieu of paying fines and costs and to fully inform their clients of their pertinent rights under Alabama law, the United States Constitution, and the new Municipal Court procedures as they relate to the indigence/ability to pay hearings.

To cause the Public Defenders' contracts to be altered so as to remove the clause referencing the "Fair Trial Tax Fund" by which the Public Defender's compensation is currently linked to whether enough money is placed in that account, to add a clause requiring the Public

Defender's attendance at the training provided by the Municipal Court regarding the general operations of the Court, and to add a clause to the effect that the Public Defenders' duties in connection with defendants who are incarcerated for failure to pay fines, court costs, or restitution include notifying defendants of applicable appellate rights and assisting them in filing notices of appeal and motions to waive any appellate bond if they wish to claim indigence. This provision shall be in place for not less than three years following the execution of this Agreement.

6. To train the Prosecutors regarding the Judicial Procedures to ensure the proper functioning of the compliance and indigence hearings described in the Judicial Procedures, attached hereto as **Appendix 1**, and to train the prosecutors regarding the holdings of *Bearden v. Georgia*, 461 U.S. 660 (1983), and *Turner v. Rogers*, 131 S. Ct. 2507 (2011). Should any new prosecutor be hired within the three year period following the execution of this Agreement, the above-described training will be provided to that newly hired prosecutor.

7. To certify to the jail administrator, whenever a person is ordered to be jailed for nonpayment of costs, fines, or restitution (or otherwise ordered to be jailed in a case involving nonpayment for nonperformance of community service), that the Judicial Procedures have been followed and to make that written certification part of the court file and/or case action summary, and to ensure that both the prosecutor and defense attorney have access to the certification in the court file. This term will be in place for a period of not less than three years following the execution of this Agreement.

8. To agree not to hire, contract with, or otherwise use any private probation company (or any other company profiting from offering payment plans relating to unpaid court fines, costs, and restitution) for a period of not less than three years following the execution of this Agreement.

9. To comply with the provisions set out in the Judicial Procedures, attached hereto as **Appendix 1**, for a period of not less than three years following the execution of this Agreement.

10. To designate at least two days within the six months following the execution of this Agreement during which individuals who have outstanding arrest warrants for having failed to appear for compliance hearings, or for initial appearances for scheduled or nonscheduled offenses, or who otherwise owe outstanding payments, can appear at the window of the Municipal Court, receive a compliance hearing date and the formal notice thereof, and clear any warrants related to their nonpayment² or failure to appear rather than being arrested. These days will be referred to hereinafter as “amnesty days” for the sake of convenience, but the Parties understand that no individual will be relieved of fines, costs or restitution as a result of the provisions of this paragraph, although the Court retains its existing authority to do so on a case by case basis. The amnesty days will be publicized through a press release provided to local media outlets at least seven, but not more than twenty-one, days before the scheduled amnesty days, and news outlets will be permitted to ask questions related thereto at a press conference held during the same period of time subsequent to the publication of the press release. The press release will be posted on the window and front door at the courthouse and on the Municipal Court website. The foregoing provisions of this paragraph notwithstanding, any (a) individuals with outstanding arrest warrants for conduct unrelated to nonpayment and not based on failures to appear for initial appearances or compliance hearings and (b) individuals who were ordered to appear at compliance hearings in connection with matters other than the payment of a fine, court costs, or restitution, may be arrested when they appear for any reason at the window. Counsel for the Plaintiffs will be notified at least

²The Municipal Court Judges and City agree to this provision as written for the sake of settlement but take the position that warrants have not been issued for failure to pay fines, costs, or restitution.

one week in advance of each amnesty day selected as part of compliance with this agreement. The press release mentioned herein will contain the following sentence: “No person who comes to the court for the Amnesty Day will be jailed for non-payment or for a warrant in a case in which the only outstanding issue is non-payment.”

11. The Judges agree that the obligations set out in this Agreement are binding on their successors in office but only to the extent that said successors fulfill the office of Municipal Court Judge during the relevant time limits set out herein.

THE CITY agrees to the following to be implemented beginning not more than forty-five days after the execution of this Agreement unless otherwise set out herein:

1. To take whatever actions are necessary on its part to accomplish the items to which the Judges of the Municipal Court agreed above.

2. Its jail administrator will not knowingly jail a defendant based on nonpayment of fines, costs, or restitution without the above-referenced certification from the Municipal Court Judge regarding compliance with the Judicial Procedures.

3. To file with within ten days of the execution of this Agreement a motion seeking joinder of the Judges of the Municipal Court of Montgomery, Alabama in their official capacities as Party Defendants in the above-styled action for the sole purpose of filing thereafter a Joint Motion for Entry of Final Declaratory and Injunctive Relief as described below. Said motion for joinder is attached hereto as **Appendix 3**

PLAINTIFFS each agree to the following:

1. To agree to the entry of a final judgment as to all declaratory and injunctive relief as set out below and further to agree not to amend the Complaint in this action or to bring any

other action against any Party to this Agreement for any equitable relief which was or could have been sought in the above-styled action.

2. To forego their request for class certification and not hereafter file a Motion for Class Certification.

3. Not to oppose the joinder of the Municipal Court Judges in accordance with the language set out in **Appendix 3** hereto.

4. To notify counsel for the Municipal Court Judges and the City immediately upon the discovery of any alleged material breach of the foregoing agreement. This notice shall include the specific nature of said breach, the time and date of said breach, the court personnel involved in the breach, and any other details necessary to identify the case or proceeding in which the said breach occurred to the extent the information is available. Said notice shall be conveyed both through email and telephonically to Shannon Holliday or Bobby Segall at the following telephone number and email addresses: (334) 834-1180, holliday@copelandfranco.com, segall@copelandfranco.com. Plaintiffs will give the Defendants a reasonable opportunity to remedy the alleged breach before seeking relief from the Court.

5. That their heirs, personal representatives, successors and assigns will be bound by the terms of this Agreement.

ALL PARTIES agree to the following:

1. To file with the other Parties to the above-styled action a Joint Stipulation of Dismissal of all class certification allegations within ten days of the execution of this Agreement. Said Joint Stipulation of Dismissal is attached hereto as **Appendix 2**.

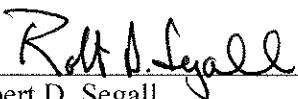
2. Once the above-referenced motion to join the judges of the Municipal Court (**Appendix 3**) is granted, to file within ten days thereof with the other Parties to this action a Joint

Motion for Entry of Final Declaratory and Injunctive Relief, as agreed-upon by the Parties and attached hereto as **Appendix 4**.


3. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Dated this 31st day of October, 2014.

**Attorney for Presiding Judge Les Hayes, III,
Judge Darron Hendley, Judge Lloria James,
and Judge Milton Westry, in their Official
Capacities, and Defendant City of
Montgomery:**



Robert D. Segall



Shannon L. Holliday

Attorneys for Plaintiffs:

Alec Karakatsanis

Matthew Swerdlin

Joseph Mitchell McGuire

Motion for Entry of Final Declaratory and Injunctive Relief, as agreed-upon by the Parties and attached hereto as **Appendix 4**.

3. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Dated this 31st day of October, 2014.

**Attorney for Presiding Judge Les Hayes, III,
Judge Darron Hendley, Judge Lloria James,
and Judge Milton Westry, in their Official
Capacities, and Defendant City of
Montgomery:**

Robert D. Segall

Shannon L. Holliday

Attorneys for Plaintiffs:



Alec Karakatsanis



Matthew Swerdlin



Joseph Mitchell McGuire

**JUDICIAL PROCEDURES OF THE
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BASIC PREMISES:

1. No defendant will be incarcerated for inability to pay any court-ordered monies, including fines, court costs or restitution. (Rule 26.11, Ala. R. Crim. P.).
2. A Public Defender will represent all defendants not otherwise represented by counsel at all compliance and indigence/ability-to-pay hearings. At said hearings, the judge will require that the Public Defender appear with the Defendant in front of the judge, and the Court will note the Public Defender's appearance in the record.
3. Procedures involving initial appearances at the window are applicable to those defendants appearing on or before the due date indicated on the Uniform Traffic Ticket and Complaint ("UTTC").
4. The granting of an initial sixty (60) day review will be afforded to all cases (new and old) as the procedures are implemented.
5. Form One (Payment of Fines and Costs) will be placed on the City of Montgomery website, displayed conspicuously in the Court and Lobby of the Municipal Court, and provided to defendants at their initial appearance if they are provided a compliance hearing along with Form Two (Order for Compliance Review).
6. The Court will use the current Federal Poverty Level ("FPL") chart when making an indigence determination, and there will be a presumption of indigence when a defendant is at or below 125% of the FPL subject to review of his or her assets.
7. The defendant will fill out an Affidavit of Substantial Hardship (Form C-10A) or any updated version of the same, and the inquiry relative to income and assets will follow from the information provided therein. A public Defender will be available to answer any questions about the form.
8. A defendant at 125% of FPL or below without substantial liquid assets available to pay the fines, costs, fees, or restitution will be deemed indigent. In determining whether a defendant has substantial liquid assets, the Court will not consider up to the first \$3,000 in personal property, and up to \$5,000 in home equity. A finding of substantial liquid assets cannot be based on the receipt of an Earned Income Tax Credit.
9. An indigent defendant will be given the option of either paying \$25.00 a month to pay off his fines, court costs, fees, and restitution or doing community service.
10. The Court retains the discretion to make credibility determinations relative to testimony and evidentiary submissions regarding income and assets and to question defendants relative to the same.
11. The ability of a defendant to pay who is not deemed indigent but who expresses an inability to pay his fines, costs, fees and restitution in full will be based on that defendant's: (i) disposable income, as reflected in the Affidavit of Substantial Hardship (Form C-10A) and as further clarified by questions raised in the indigence hearing, (ii) the defendant's assets, and (iii) the defendant's earning potential.
12. The community service hours' computation will be based on a minimum of \$10 credit for each hour of community service worked. The monthly requirements will be a minimum of eight (8) hours and a maximum of twenty-four (24) hours of community

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- service, provided, however, that the court may order more hours of monthly community service at the request of the defendant.
13. The court record shall contain an explanation of any determination of non-indigence.
 14. The Court or its designee will designate the entity with which the defendant assigned to community service must work, taking into account the needs of the City for community service, the needs of the other entities providing community service opportunities, and the defendant's needs.
 15. Defendants who do not initially pay in full are provided Forms One and Two attached hereto which provide notice regarding the procedures set out herein and defendants' rights.
 16. No person may be incarcerated for nonpayment in any case unless these procedures are followed.
 17. The payment of restitution as ordered by the court cannot be satisfied by the performance of community service, unless the restitution is owed to the City.
 18. The present language of Rule 19(C)(2) of the Rules of Judicial Administration authorizes an increase in the fine only when there is a failure to appear at the initial appearance (pre-judgment) on the ticket.
 19. After an initial ability to pay or indigence determination, a defendant's ability to pay may be re-assessed at subsequent compliance hearings based on changed circumstances or at the Court's discretion following the procedures set forth herein.
 20. No person unable to pay his or her fines and costs in full will be charged an additional fee for being placed on a payment plan unless affirmatively authorized by law.

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FIRST COURT APPEARANCE WITH ADJUDICATION OR PLEA OF GUILTY

1. Plea of guilty entered at the window (scheduled offenses only)
 - a. Obtain signature on Plea of Guilty/Waiver of Rights Form
 - b. Collection of scheduled fine and court costs
 - i. If paid in full, close case and issue receipt.
 - ii. If unable to pay on the same day, the defendant will be given an (approximate) sixty (60) day review by the Court at a compliance hearing (Forms One and Two provided).
2. Plea of guilty entered or adjudicated in Court (scheduled and non-scheduled offenses)
 - a. Judge orally receives guilty plea or adjudication of guilt
 - b. Imposition of Sentence (possible fine, court costs and jail sentence)
 - i. If it is determined that the conduct for which the defendant has been convicted warrants the imposition of a jail sentence, the sentence shall be carried out as directed by the Court. The imposition of a jail sentence will have nothing to do with a defendant's inability to pay the fines and court costs.
 - ii. If able to pay the fine and court costs on the same day, the defendant may be directed to the pay window or otherwise informed how to make payment. The full amount is paid and the case is closed.
 - iii. If the defendant tells the Court that he or she is unable to pay on the same day, the defendant will be given the following options and/or ordered as follows: placed on a payment plan and given a compliance hearing date; given an approximate sixty (60) day review by the Court at a compliance hearing; given an order to complete community service; or any other disposition deemed just and appropriate at the discretion of the Court, excluding incarceration. (Forms One and Two to be provided)
 - (a) It will not be a standard practice to hold an indigence /ability-to-pay hearing at this stage of the proceedings. However, the Court reserves the option to do so and, where the defendant is found indigent, to provide the defendant the option of the minimum payment plan or community service at this stage and to enter an order consistent with the option chosen.

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COURT APPEARANCE – COMPLIANCE REVIEW DATES

1. If the defendant does not appear (and the defendant has not received a continuance from the Court) a warrant will be issued.
2. The defendant must be given an opportunity to present evidence that the amount allegedly owed is not accurate or is not in fact owed if the Defendant believes that the amount is not correct.
3. If the defendant has not paid in full the Court will inquire as to the reasons for noncompliance, including whether the defendant has an inability to pay the amount then due. During this inquiry the Court will specifically ask questions pertaining to the defendant's ability or inability to pay the amount owed in full. One of the initial questions asked in connection with the ability to pay inquiry will be "Are you able to pay today?" or words to that effect.
4. If after inquiry by the Court, there is
 - a. No indication of inability to pay, the defendant may be placed on a payment plan by the Court; given another review date set as a compliance hearing (Forms One and Two provided); sentenced to serve time in jail (but not without an indigence/ability-to-pay hearing described below); or given any other disposition deemed just and appropriate at the discretion of the Court.
 - b. An indication of inability to pay
 - i. the defendant will be directed to a Public Defender to assist with the completion of an Affidavit of Substantial Hardship Form and any further paperwork the Court deems necessary;
 - ii. the Court will then hold a hearing at which the Public Defender will represent the defendant, and the Court will make an indigence/ability to pay determination taking into consideration any testimony, the Affidavit of Substantial Hardship, any other paperwork the Court deems necessary, and any documents submitted by the defendant. The defendant will be permitted to present evidence. If, after questioning (including questioning by the Court) and presentation of evidence, the defendant is
 - (a) determined to be at or below 125% of the Federal Poverty Level (FPL), the defendant will be determined to be indigent and unable to pay the fines, fees, court costs, and/or restitution in full at the Compliance Hearing, unless the defendant has substantial liquid assets with which he or she could satisfy the payments. In determining whether a defendant has substantial liquid assets, the Court will not consider up to the first \$3,000 in personal property,

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and up to \$5,000 in home equity. A finding of substantial liquid assets cannot be based on the receipt of an Earned Income Tax Credit.

- (b) determined to be above 125% of the FPL, the defendant will not receive a presumption of indigence, but the Court will still consider whether the defendant has the ability to pay based on the defendant's disposable income, liquid assets, and earning potential.
- iii. If the defendant is determined to be indigent or otherwise unable to pay the amount owed for fines, fees, court costs, and/or restitution in full as ordered, the Court:
- (a) may determine the defendant's ability to make payments based on that defendant's: (i) disposable income, as reflected in the Affidavit of Substantial Hardship and any other paperwork required by the Court, and as further clarified by answers to questions posed in the hearing, (ii) the defendant's assets, and (iii) the defendant's earning potential; order the defendant to make payments consistent therewith; and schedule a review at another compliance hearing (Forms One and Two provided). However the Court will not order a monthly payment in excess of \$25.00 for indigent defendants;
 - (b) may remit costs and fines;
 - (c) must (unless fines and costs are remitted in full) provide a defendant deemed indigent or otherwise unable to pay the \$25.00 minimum monthly payment, the option to complete community service (if physically able) in lieu of payment of costs and fines and schedule a review at another compliance hearing, provided that: (i) if a defendant who has previously been placed on a payment plan fails to make one or more payments, the Court may order said defendant to complete community service (if physically able) to satisfy his or her debt; and (ii) that community service will not be an option for satisfaction of amounts owed for restitution, unless restitution is owed to the City (Forms One and Two provided); and/or
 - (c) may order any other remedy deemed just and appropriate at the discretion of the Court, excluding incarceration.
- iv. If the defendant is determined in the indigence/ability-to-pay hearing to have had the ability to pay as ordered (including individuals previously placed on a payment plan), the Court may:

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- (a) place the defendant on a payment plan or modify the existing payment plan and schedule a review at another compliance hearing in approximately sixty days (60) (Forms One and Two provided);
 - (b) give the defendant another review date set as a compliance hearing (Forms One and Two provided);
 - (c) order the defendant to complete community service (if physically able) in lieu of payment of costs and fines and schedule a review at another compliance hearing (Forms One and Two provided);
 - (d) remit costs and fines;
 - (e) order the defendant to serve jail time with fines and costs reduced per day at an amount no less than that allowed by Ala. R. Crim. P. 26.11 (Public Defender present unless otherwise represented) if there is a finding of willful nonpayment provided that the days to which the defendant is sentenced do not exceed the number of days required to work off the amount then currently due and owing; and/or
 - (f) provide any other disposition deemed just and appropriate at the discretion of the Court.
5. If the defendant was ordered to do community service in lieu of paying, the Court may, upon the defendant's failure to comply, set a contempt hearing to determine if the defendant should be sanctioned. The Court will comply with the requirements of Ala. R. Crim. P. 33, including, but not limited to, providing notice, hearing, and written findings. The Court will remit additional fines and costs associated with any contempt conviction and will remit the original fines, fees, and costs in connection with any jail sentence given for contempt at the same rate as that provided defendants jailed pursuant to Ala. R. Crim. P. 26.11.

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MISCELLANEOUS PROCEDURES

In addition, the Judges of the Court will:

1. provide notice of a compliance hearing, as set out in these procedures, to all defendants on a Judicial Correction Services payment plan or contract as of June 2014;
2. treat probationers as set out in the above procedures if and when probation is subject to revocation for nonpayment of fines, costs, fees or restitution;
3. treat those who are currently on payment plans as set out in the above procedures;
4. have the Public Defender inform any defendant not otherwise represented by counsel of his or her appellate rights and provide said defendant Form 3 should he or she be sentenced to jail for failure to pay fines, costs, fees or restitution;
5. instruct the clerks to provide defendants who have failed to appear as required by their UTTC (uniform traffic ticket and complaint) with a license reinstatement letter (if the Court has notified the Alabama Department of Public Safety of the failure to appear) upon the defendant's first voluntary appearance at a compliance hearing or upon full payment of costs, fines, fees or restitution, whichever occurs first; and
6. permit a defendant who has failed to appear at his or her initial appearance date for a scheduled traffic offense and who is subject to an arrest warrant for the same, to appear at the window at the Court and *not* be arrested on that warrant but instead to be provided a compliance hearing date; and
7. instruct the clerks that no warrant for failure to appear shall be confirmed unless it is supported in the Court's file by notification from the Court or notification in a charging instrument which notification provides a specific date and time for a court hearing.

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FORM ONE

Payment of Fines and Costs

If at any time you cannot pay your fines and costs as ordered by the Court, you may go before the Court at your Compliance Hearing to discuss your financial situation, to ask that the Court's Order be changed (for example, to ask that you pay less) and/or to explain why you are unable to pay. The time and date of your Compliance Hearing before the Court will be provided to you in a Court Order given to you.

If you indicate that you are unable to pay your fines and costs, the Court will order you to complete an Affidavit of Substantial Hardship and other forms as deemed necessary, and may inquire about your finances, to include but not be limited to: income, expenses (i.e. rent, childcare, utilities, food, clothing, medical condition/bills, transportation, etc.), bank accounts, and other assets. In some circumstances, the Court may also inquire about your efforts to obtain the money to pay, including your job skills and efforts to apply for jobs. You should present any documents that you have to the Court during this inquiry. If you cannot afford an attorney, the Court will provide a Public Defender to represent you.

Based on your income, you may be ordered to perform community service or be placed on a monthly payment plan. You will be given a Compliance Hearing date to return to Court for the Judge to review your particular case(s). Your appearance at this Compliance Hearing is mandatory.

You cannot be put in jail solely for your inability to pay your fines and costs, or for nonperformance of community service, unless you willfully failed to pay or to perform the community service ordered despite having the ability to do so.

You may pay the full amount you owe at any time in accordance with the Court's Order, and at that point you will not have to continue to make payments, finish your community service, or appear at your next scheduled Compliance Hearing. You may contact the Court or inquire at a Municipal Court pay window if you would like to obtain your balance owed.

If the Court determines that you have a disability, illness, or other circumstances that would prevent you from performing community service, you will not be required to perform community service.

In summary, after you have been ordered by the Court to pay your fines and court costs or to perform community service, you will be given a Compliance Hearing date to come back to Court to review your case(s). **This hearing is mandatory.** Even if you are unable to pay all of your fines and costs or complete the hours ordered before that date, you must attend. At this Hearing, you will have the opportunity to explain to the Court why you have not complied with the Court's Order(s) and present evidence. You could be put in jail only if the Court determines that you willfully violated the Court's Order. **If you do not appear at your Compliance Hearing, a warrant will be issued for your arrest.**

**JUDICIAL PROCEDURES OF THE
MUNICIPAL COURT OF THE CITY OF MONTGOMERY FOR
INDIGENT DEFENDANTS AND NONPAYMENT**

Page 9 of 11

FORM TWO

Municipal Court
City of Montgomery
320 North Ripley Street
Montgomery, AL 36104

ORDER SETTING HEARING FOR COMPLIANCE REVIEW

**IN THE MUNICIPAL COURT OF MONTGOMERY, ALABAMA
MUNICIPALITY OF MONTGOMERY**

V.

ADULT NWS TEST JR, DEFENDANT

To the Defendant of the Case listed below:

<u>Case#</u>	<u>Officer</u>	<u>Attorney</u>	<u>Balance Due</u>	<u>Court Date-Hearing</u>
1999CRA999999	Jane Roe		\$332.00	Friday, August 31, 2012
THEFT OF PROPERTY 3				8:00 am

If your address changes, you shall provide notification to the court immediately.

You must attend the court hearing on the date and time referenced above unless you have paid in full your fines and court costs or completed and submitted proof of completed community service.

Your ability to pay is a critical issue in this hearing. If you are unable due to no fault of your own to pay the court costs and fines or to perform community service as ordered by the Court by the above referenced date, you may testify at this hearing and should bring with you any records to help explain the reasons for your nonpayment or nonperformance to include, but not limited to, pay stubs, utility bills, expenses, federal and state tax returns, medical bills, documents evidencing any medical condition, any evidence of efforts to gain employment, etc. If you cannot afford an attorney, a Public Defender will be provided to assist and represent you.

If, at the time of the hearing, you have failed to pay the full court costs, fines, fees or restitution ordered by the Court or have failed to meet the requirements of your payment plan, you may be sentenced to jail after the hearing for failure to pay, but only if you are found to have had the ability to pay. If you have previously been ordered to perform community service and have failed to perform community service as ordered by the Court and are found to have had the ability to do so, you may be held in contempt of court only after notice and a hearing.

If you are on probation, your probation can also be revoked and you may be jailed for failing to comply with the other terms of your probation.

If you believe the "Balance Due" amount is incorrect, you may request a balance history (both fines/fees/costs added and payments received) from a Clerk at the Window in the Municipal Court. If you still believe the "Balance Due" amount is incorrect you may discuss it with the

**JUDICIAL PROCEDURES OF THE
MUNICIPAL COURT OF THE CITY OF MONTGOMERY FOR
INDIGENT DEFENDANTS AND NONPAYMENT**

Page 10 of 11

Clerk at the Window. You may also discuss it with the Public Defender, and raise it with the Judge.

**IF YOU FAIL TO ATTEND COURT ON THE DATE REFERENCED ABOVE, A
WARRANT WILL BE ISSUED AND ADDITIONAL CHARGES MAY BE INITIATED.**

May 22, 2012

Municipal Court Judge

**JUDICIAL PROCEDURES OF THE
MUNICIPAL COURT OF THE CITY OF MONTGOMERY FOR
INDIGENT DEFENDANTS AND NONPAYMENT**

Page 11 of 11

FORM THREE

Notice of Appeal Rights

You have a right to appeal the decision of the Montgomery Municipal Court. If you file an appeal, the Montgomery County Circuit Court will review your case.

Under Alabama law, you have 14 days from the date of your trial/hearing in which to file your appeal. If you wish to file an appeal, you should tell your Municipal Court attorney or the public defender that you wish to file an appeal and you may speak to the Public Defender about how to do so.

When you file an appeal, you ordinarily must file an appeal bond. The amount of the appeal bond varies, depending upon the particular offense. If you cannot afford the cost of an appeal bond, you have a right to have a hearing before the judge for the judge to decide if you do not have to file an appeal bond and can file your appeal for free. You must fill out an affidavit of substantial hardship if you have not already done so.

If you are in jail and file an appeal, you will be released from jail once your appeal bond is posted with the court or when the Court determines that no bond is required.

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

SHARNALLE MITCHELL, LORENZO)
BROWN, TITO WILLIAMS, COURTNEY)
TUBBS, TEQUILA BALLARD, WILLIE)
WILLIAMS, THOMAS ELLIS, GAVIN)
BULLOCK, KENDRICK MAUL, TAMARA)
DUDLEY, JERMAINE TYLER, JANET)
EDWARDS, RISKO MCDANIEL, DEMETRI)
COLVIN, CARL WILLIAMS, RAYSHONE)
WILLIAMS,)

Plaintiffs,)

vs.)

Case No. 2:14-cv-186

CITY OF MONTGOMERY,)

Defendant.)

**JOINT STIPULATION OF DISMISSAL OF PLAINTIFFS' REQUEST FOR CLASS
CERTIFICATION AND ALL REQUESTS FOR CLASS-WIDE RELIEF**

COME NOW, the Parties to the above-styled action and stipulate to the dismissal of all portions of the First Amended Class Action Complaint (Doc. 26) in this case which seek class-wide relief. To the extent that the Plaintiffs seek class-wide relief in connection with any count pled in the First Amended Class Action Complaint (Doc. 26), the Parties stipulate that the Plaintiffs' request for class-wide relief is dismissed with prejudice. The parties therefore stipulate and agree that the Plaintiffs will not hereafter file a Motion for Class Certification.

s/Shannon L. Holliday

Robert D. Segall (ASB-7354-E68R)
Shannon L. Holliday (ASB-5440-Y77S)
Copeland Franco Screws & Gill, P.A.
Post Office Box 347
Montgomery, AL 36101-0347
Telephone: (334) 834-1180
Email: holliday@copelandfranco.com
Email: segall@copelandfranco.com

Stephanie L. Smithee (ASB-8497-T82S)
City of Montgomery
Legal Department
Post Office Box 1111
Montgomery, Alabama 36101-1111
Telephone: (334) 625-2050
ssmithee@montgomeryal.gov

**ATTORNEYS FOR DEFENDANT
CITY OF MONTGOMERY**

s/Alec Karakatsanis

Alec Karakatsanis, Esq. (D.C. Bar No. 999294)
Admitted Pro Hac Vice
Equal Justice Under Law
916 G Street, NW, Suite 701
Washington, DC 20001
Telephone: 202-681-2409
Email: alec@equaljusticeunderlaw.org

Matthew Swerdlin
P.O. Box 550206
Birmingham, AL 35255
Telephone: (205) 795-3517
Email: matt@attorneyswerdlin.com

Joseph Mitchell McGuire
31 Clayton Street
Montgomery, AL 36104
Telephone: (334) 517-1000
Email: jmcguire@mandabusinesslaw.com

ATTORNEYS FOR PLAINTIFFS

APPENDIX 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**SHARNALLE MITCHELL, LORENZO)
BROWN, TITO WILLIAMS, COURTNEY)
TUBBS, TEQUILA BALLARD, WILLIE)
WILLIAMS, THOMAS ELLIS, GAVIN)
BULLOCK, KENDRICK MAUL, TAMARA)
DUDLEY, JERMAINE TYLER, JANET)
EDWARDS, RISKO MCDANIEL, DEMETRI)
COLVIN, CARL WILLIAMS, RAYSHONE)
WILLIAMS,)**

Plaintiffs,

vs.

CITY OF MONTGOMERY,

Defendant.

Case No. 2:14-cv-186

UNOPPOSED MOTION FOR JOINDER OF PARTIES

COMES NOW Defendant, City of Montgomery, in the above-styled matter and moves this Honorable Court to join the Judges of the Municipal Court of the City of Montgomery in their official capacities as Parties to this action pursuant to Rule 19, Fed. R. Civ. P, and/or Rule 20, Fed. R. Civ. P. As grounds therefor, the City shows the following:

1. The Judges of the Municipal Court of Montgomery, Alabama include the following persons: Presiding Judge Les Hayes, III, Judge Milton Westry, Judge Darron Hendley, and Judge Lloria James (hereinafter collectively referred to as “the Judges of the Municipal Court,” or “the Judges”).

2. The current Parties to this action along with the Judges of the Municipal Court of Montgomery Alabama, in their official capacities, have entered into an agreement entitled

Agreement to Settle Injunctive and Declaratory Relief Claims (hereinafter “Settlement Agreement”) which settles all matters relative to the declaratory and injunctive relief requested by the Plaintiffs in this action.

3. The Judges of the Municipal Court in their official capacities will be providing relief to the Plaintiffs as agreed upon in the Settlement Agreement.

4. The Plaintiffs in this case further seek this Court’s continued jurisdiction over the equitable relief agreed upon by the Parties including the Municipal Court Judges, as set out in the Settlement Agreement.

5. It is the City’s understanding and as represented in the Agreement attached hereto and signed by the Municipal Court Judges of the City of Montgomery, that the Municipal Court Judges of the City of Montgomery, in the interests of promoting the efficient and effective operation of the Court, and further promoting the resolution of the lawsuit and thereby any potential proceedings which might be brought against them in the future, have agreed to joinder in their official capacities. They have agreed to joinder for this limited purpose and do not intend, in doing so, as set forth in the Settlement Agreement, to waive any potential immunity to claims for damages, attorneys’ fees, or any other relief, including other equitable relief, nor do they intend to waive any other defenses. The Judges join for the sole purpose of filing hereafter with the other Parties to this action a Joint Motion for Entry of Final Declaratory and Injunctive Relief.

6. For the entirety of the equitable relief negotiated and agreed to by the parties in the Settlement Agreement to be afforded, it is necessary that the Judges of the Municipal Court of the City of Montgomery be joined in their official capacities as Party Defendants to this action for the sole purpose of making them subject to the jurisdiction of this Court relative to this Court’s equitable jurisdiction over the Settlement Agreement.

7. This basis for seeking joinder is consistent with the requirements of Rules 19 and 20 of the Federal Rules of Civil Procedure.

8. Rule 19(a)(1) provides that “[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if: (A) in that person’s absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may: (i) as a practical matter impair or impede the person’s ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations because of the interest.”

9. With respect to Rule 19, the Settlement Agreement between the Parties is such that without joinder of the Municipal Court Judges in their official capacities Plaintiffs cannot obtain the full constellation of negotiated equitable relief. *See* Rule 19(a)(1)(A).

10. Furthermore, the Municipal Court Judges in their official capacities have an interest relating to the subject matter of this lawsuit (specifically the request for equitable relief) such that it is in their interest to control the nature of any resolution of this matter involving the operations of the Municipal Court. For that reason, it was in their interest to take part in the negotiations between the Parties and to agree to the specific relief set out in the Settlement Agreement. *See* Rule 10(a)(1)(B)(i).

11. Rule 20 provides that “persons ... may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.”

12. With respect to Rule 20, permissive joinder is appropriate because the relief which the Plaintiffs request arises, in part, out of the same transactions, i.e., hearings held before the Municipal Court, and the parties have agreed to a negotiated settlement which involves the agreement of the Judges of the Municipal Court to take certain actions.

13. Joinder as Defendants for the purpose of entering into the Settlement Agreement is the most efficient manner in which the equitable relief agreed to by the parties in this action can be resolved.

14. Furthermore, joinder for the purpose of settling civil rights actions that implicate and involve multiple parties is appropriate under Rule 19. *See, e.g., Martin v. Wilks*, 490 U.S. 755 (U.S. 1989), *abrogated by statute as the holding applies to Title VII as recognized in, Landgraf v. USI Film Prods.*, 511 U.S. 244, 251 (U.S. 1994).

15. Once joinder is granted, the Parties collectively intend immediately to file a Joint Motion for Entry of Final Declaratory and Injunctive Relief.

16. As set forth in the Agreement to settle the Plaintiffs' claims for injunctive and declaratory relief, nothing in that Agreement or in this Motion should be construed as an admission by the City of Montgomery that it is liable for the constitutional claims alleged in this case or by the Plaintiffs that the City of Montgomery is not liable for the constitutional claims alleged in this case.

17. Plaintiffs do not oppose this motion to the extent it seeks permissive joinder under Rule 20.

WHEREFORE, the City asks this Court to join the Judges of the Municipal Court as Party Defendants in this action for the limited purposes set out above.

s/Shannon L. Holliday
Robert D. Segall (ASB-7354-E68R)
Shannon L. Holliday (ASB-5440-Y77S)
Copeland Franco Screws & Gill, P.A.
Post Office Box 347
Montgomery, AL 36101-0347
Email: holliday@copelandfranco.com
Email: segall@copelandfranco.com
Phone: (334) 834-1180
Facsimile: (334) 834-3171

Stephanie L. Smithee (ASB-8497-T82S)
City of Montgomery
Legal Department
Post Office Box 1111
Montgomery, Alabama 36101-1111
Telephone: (334) 625-2050
Facsimile: (334) 625-2310
Email: ssmithee@montgomeryal.gov

**ATTORNEYS FOR DEFENDANT
CITY OF MONTGOMERY**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2014, I filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to the following counsel of record:

Alec Karakatsanis, Esq.
Equal Justice Under Law
916 G Street, NW, Suite 701
Washington, DC 20001

Joseph Mitchell McGuire
31 Clayton Street
Montgomery, AL 36104

Matthew Swerdlin, Esq.
1736 Oxmoor Road
Suite 101
Homewood, AL 35209

s/Shannon L. Holliday
Of Counsel

APPENDIX 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**SHARNALLE MITCHELL, LORENZO)
BROWN, TITO WILLIAMS, COURTNEY)
TUBBS, TEQUILA BALLARD, WILLIE)
WILLIAMS, THOMAS ELLIS, GAVIN)
BULLOCK, KENDRICK MAUL, TAMARA)
DUDLEY, JERMAINE TYLER, JANET)
EDWARDS, RISKO MCDANIEL, DEMETRI)
COLVIN, CARL WILLIAMS, RAYSHONE)
WILLIAMS,)**

Plaintiffs,

vs.

CITY OF MONTGOMERY,

Defendant.

Case No. 2:14-cv-186

**JOINT MOTION FOR ENTRY OF FINAL
DECLARATORY AND INJUNCTIVE RELIEF**

COME NOW the Parties, including the Municipal Court Judges in their official capacity in connection with whom an uncontested motion for joinder is pending, and move this Court for entry of the attached Order. As grounds therefor, the Parties show the following:

1. The Parties have resolved all disputes regarding declaratory and injunctive relief sought by the Plaintiffs in the above-styled action by agreeing to seek entry of the Order attached hereto as **Exhibit 1**.

2. The Parties have agreed to the continued jurisdiction of this Court for the periods set out in the Agreement to Settle Declaratory and Injunctive Claims (“Settlement Agreement”) attached as **Exhibit A to Exhibit 1** for enforcement of the particular terms of the Agreement.

WHEREFORE, the Parties hereto request entry of the Order attached hereto as **Exhibit 1**.

s/Shannon L. Holliday

Robert D. Segall (ASB-7354-E68R)
Shannon L. Holliday (ASB-5440-Y77S)
Copeland Franco Screws & Gill, P.A.
Post Office Box 347
Montgomery, AL 36101-0347
Telephone: (334) 834-1180
Facsimile: (334) 834-3171
Email: holliday@copelandfranco.com
Email: segall@copelandfranco.com

Stephanie L. Smithee (ASB-8497-T82S)
City of Montgomery
Legal Department
Post Office Box 1111
Montgomery, Alabama 36101-1111
Telephone: (334) 625-2050
Email: ssmithee@montgomeryal.gov

**ATTORNEYS FOR PRESIDING
JUDGE LES HAYES, III, JUDGE
DARRON HENDLEY, JUDGE LLORIA
JAMES, AND JUDGE MILTON
WESTRY, IN THEIR OFFICIAL
CAPACITIES, AND DEFENDANT
CITY OF MONTGOMERY**

s/Alec Karakatsanis

Alec Karakatsanis, Esq. (D.C. Bar No. 999294)
Admitted Pro Hac Vice
Equal Justice Under Law
916 G Street, NW, Suite 701
Washington, DC 20001
Telephone: 202-681-2409
Email: alec@equaljusticeunderlaw.org

Matthew Swerdlin
P.O. Box 550206
Birmingham, AL 35255
Telephone: (205) 795-3517
Email: matt@attorneyswerdlin.com

Joseph Mitchell McGuire
31 Clayton Street
Montgomery, AL 36104
Telephone: (334) 517-1000
Email: jmcguire@mandabusinesslaw.com

ATTORNEYS FOR PLAINTIFFS

**EXHIBIT 1
TO JOINT MOTION FOR ENTRY OF FINAL DECLARATORY
AND INJUNCTIVE RELIEF**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**SHARNALLE MITCHELL, LORENZO)
BROWN, TITO WILLIAMS, COURTNEY)
TUBBS, TEQUILA BALLARD, WILLIE)
WILLIAMS, THOMAS ELLIS, GAVIN)
BULLOCK, KENDRICK MAUL, TAMARA)
DUDLEY, JERMAINE TYLER, JANET)
EDWARDS, RISKO MCDANIEL, DEMETRI)
COLVIN, CARL WILLIAMS, RAYSHONE)
WILLIAMS,)**

Plaintiffs,

vs.

CITY OF MONTGOMERY,

Defendant.

Case No. 2:14-cv-186

ORDER GRANTING FINAL DECLARATORY AND INJUNCTIVE RELIEF

Based on the representation of the Parties before the Court, the Court orders the following:

1. The Parties to the Agreement to Settle Declaratory and Injunctive Claims (“Settlement Agreement”) which is **Exhibit A** to this Order are ordered to comply with its terms for the periods set out therein.

2. The Plaintiffs’ request for declaratory and injunctive relief is hereby resolved in full subject only to the further jurisdiction of this Court to enforce the Settlement Agreement for the periods set out therein.

3. Plaintiffs are instructed to notify this Court of any material breaches of the Settlement Agreement after making full attempts to resolve the dispute with the Parties as set out in the Settlement Agreement.

District Judge

EXHIBIT A – TO EXHIBIT 1 TO JOINT MOTION FOR ENTRY OF DECLARATORY AND
INJUNCTIVE RELIEF

[The Parties agree that the entire Settlement Agreement with its appendices will constitute this exhibit and that it need not be reproduced here.]