

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

CARINA CANAAN and LEVI LANE,	§	
	§	
Plaintiffs,	§	
v.	§	Civil Action No. 16-cv-132
	§	
CITY OF EL PASO,	§	
Defendant.	§	JURY TRIAL DEMANDED

PLAINTIFFS' FIRST AMENDED COMPLAINT¹

1. The City of El Paso (“Defendant”) intentionally and deceitfully denies poor El Pasoans, including Carina Canaan and Levi Lane (“Plaintiffs”), fair notice of the issues to be determined at their hearings for failure to pay and an opportunity to present a meaningful defense prior to their incarcerations at those hearings. As a result, the Plaintiffs, and tens of thousands like them, have been wrongly incarcerated for their inability to pay outstanding fines, costs, and/or special expenses owed to Defendant (collectively, “Municipal Debt”). In 2015 alone, 34,000 poor El Pasoans who could not pay their fines went to jail without receiving a fundamentally fair opportunity to present a defense based on their indigency.

2. This case is not about municipal judges. It is about the city officials whose policies and actions rob the poor of their personal freedom — their liberty — simply because they are poor.

3. In the manner detailed below, Defendant’s policymakers have unconstitutionally adopted, maintained, and enforced policies and practices that require all individuals, including the poorest, to pay 25% of all fines owed for low-level, Class C misdemeanors before they may qualify for payment plans (the “25% Upfront Policy”) on their Municipal Debt. On its face, the 25% Upfront Policy denies the substantial benefit of payment plans to those El Pasoans who cannot afford to pay a quarter of their fines upfront due to their poverty.

¹ Plaintiffs file this Amended Complaint without a motion for leave because the Court has already granted leave to do so. *See* Jan. 13, 2017, Order 15, ECF No. 33.

4. Moreover, in order to enforce the 25% Upfront Policy, Defendant repeatedly, deceitfully, and systematically misinforms poor El Pasoans that they can satisfy Municipal Debt in just three ways: pay their fines in full; pay 25% of their fines upfront to qualify for a payment plan; or be forced to sit out their fines in jail after arrest on outstanding warrants. Thus, Defendant intentionally and deceitfully misleads poor El Pasoans into believing that the issue of their ability to pay Municipal Debt is not relevant at their preincarceration hearings, despite the U.S. and Texas Constitutions' longstanding prohibition against imprisoning poor debtors purely for their inability to pay. These Texans, who are without the benefit of counsel, traverse the municipal court system facing adversarial proceedings against Defendant — which is the prosecutorial entity, the party that benefits from the debt collection, and the entity with the power to set the policies and procedures for that collection — while Defendant is simultaneously misleading those same Texans into believing that their inability to pay is not a relevant issue at their hearings. Defendant thereby deceptively denies those Texans adequate notice that ability to pay is in fact *the* critical issue to be determined at their hearings if they are to avoid incarceration, thereby denying Municipal Debtors a meaningful opportunity to defend against their incarceration for failure to pay. Defendant further intentionally conceals alternative policies and procedures that those individuals could use to seek relief outside of a monetary payment to Defendant.

5. Thus, Defendant enforces its 25% Upfront Policy through a coercive campaign of misinformation that actively misinforms Municipal Debtors of the issues to be determined at their hearing upon their arrest. The 25% Upfront Policy thereby creates a chilling effect on poor debtors' ability to prepare a proper defense prior to their incarceration for failure to pay.

6. The entirely foreseeable result, of course, is that indigent defendants who owe Municipal Debt to the City of El Paso (“Municipal Debtors”) are forced to either come up with money they do not have or they are actively misled that their inability to pay is not a relevant issue at

their predetention hearings. Municipal Debtors therefore do not have a fair opportunity to assert a defense to their incarceration for failure to pay and end up being forced to sacrifice their liberty in order to pay off their Municipal Debt. This, unfortunately, is the intended result driving Defendant's practice of misinforming poor criminal defendants — to create a climate of fear among Municipal Debtors wishing to avoid incarceration in order to coerce monetary payments out of Municipal Debtors, like Plaintiffs, notwithstanding the obvious risk that many indigent El Pasoans will be unlawfully deprived of their personal freedoms.

7. In sum, Defendant has, under the power granted to Defendant by Texas state law to create the policies and procedures for the collection and enforcement of Municipal Debt in the El Paso Municipal Courts, promulgated the facially unconstitutional 25% Upfront Policy, which denies the substantial benefit of payment plan options to those El Pasoans who cannot afford to pay 25% of their fines upfront solely based on their poverty.

8. Moreover, in order to enforce that 25% Upfront Policy, Defendant employs an intentional and deceitful campaign of misinformation designed to deprive Municipal Debtors of adequate notice of the issues to be determined at their preincarceration hearings and an opportunity to present a fair defense to those issues. The resulting chill on Municipal Debtors' ability to prepare a defense against incarceration creates a predictable and systematic deprivation of any fundamentally fair opportunity to present a defense based on indigency prior to incarceration, which works — as intended — to coerce monetary payments on Class C misdemeanors from even the poorest members of society.

9. Further, Defendant intentionally conceals established policies and procedures, that are specific to the City of El Paso, for Municipal Debtors to seek options through the El Paso Municipal Courts that do not require monetary payment in order to satisfy Municipal Debt. Indeed, Defendant purposefully places numerous obstacles to obtaining that information, including

intentional and deceitful misrepresentations that the only options to satisfy Municipal Debt are found in the 25% Upfront Policy.

10. It is this system that violates Plaintiffs' constitutional rights and forms the basis of this action. These due process violations are only exacerbated by the fact that the party actively misleading the Municipal Debtor is the adversarial party with a stake in the collection of monetary payments.

11. Defendant adopted this policy, and disregarded constitutionally required protections, in bad faith in order to fully maximize revenue, despite clear federal and state caselaw that such a policy violates Municipal Debtors' rights. In 2015, Defendant procured almost \$19 million in fines and court costs — one of its most substantial general revenue sources and a shocking amount in a county where nearly a quarter of the population lives in poverty.

12. Like nearly one-quarter of their fellow El Pasoans, Plaintiffs Carina Canaan and Levi Lane live in poverty. When Ms. Canaan and Mr. Lane were unable to pay traffic fines owed to Defendant, Defendant employed unconstitutional collections practices that intentionally misled Plaintiffs into believing that their ability to pay would not be a relevant issue at their judicial hearings by repeatedly, deceitfully, and systematically misinforming Plaintiffs' that their only options in El Paso were to either pay in full, pay 25% upfront to qualify for a payment plan, or face incarceration in order to sit out the fines. In doing so, Defendant actively misled Plaintiffs to believe that they had just two options — monetary payment of their fines or jail.

13. Ms. Canaan was jailed twice due to her indigency, including while pregnant. She still owes outstanding Municipal Debt that she is unable to pay, and lives in fear of further incarceration. Mr. Lane spent twenty-three days in jail due to his indigency, losing his job. Ms. Canaan and Mr. Lane bring this action to challenge Defendant's unconstitutional policies and practices in enforcing the collection of Municipal Debt through its active and intentional campaign of misinformation,

which is in violation of the Texas Constitution, longstanding U.S. Supreme Court case law, and other federal and state laws.

14. Community members, organizations, the media, and state lawmakers have put Defendant's policymakers on notice that its policies and practices fail to give poor Municipal Debtors proper notice or the opportunity to avoid jail through a fundamentally fair opportunity to assert a defense based on indigency. Nonetheless, Defendant has continued to enforce these policies and procedures and will continue to do so, until and unless it receives a court order to the contrary. Therefore, there is no doubt that Defendant's unlawful actions are intentionally and deliberately indifferent to the known violations of Municipal Debtors' due process and equal protection rights. Defendant remains indifferent to these violations in order to coerce maximum monetary payments on outstanding Municipal Debt.

15. In summary, through its policies, practices, and improper training and supervision, Defendant is violating the Due Process and Equal Protection rights of Ms. Canaan, Mr. Lane, and thousands of other El Pasoans who are too poor to pay a significant portion of their Municipal Debt upfront, under the Equal Protection Clause of the United States Constitution in conjunction with the Civil Rights Act of 1871 (42 U.S.C. § 1983), and the Texas Constitution.

16. Plaintiffs bring this action to vindicate their constitutional rights. Ms. Canaan and Mr. Lane both seek a declaratory judgment that Defendant's practices in enforcing and collecting Plaintiffs' Municipal Debt violated their constitutional rights.

17. Ms. Canaan seeks an injunctive order preventing Defendant from engaging in this unlawful conduct in the future in order to ensure these violations cease in El Paso. Specifically, Ms. Canaan seeks an order requiring Defendant to implement constitutional policies and training to ensure that Defendant (1) ceases intentionally misleading poor Municipal Debtors into believing that they have no defense based on inability to pay, (2) ceases deceitfully misleading Municipal Debtors

as to the issues to be determined upon arrest for their outstanding warrants, (3) ceases enforcing its unconstitutional requirement that Municipal Debtors pay 25% upfront to qualify for a payment plan, and (4) ensures that Defendant publishes its policies and procedures for community service, payment plans, and indigency hearings in a manner reasonably calculated to inform the public of the procedures available to pursue them.

18. Mr. Lane seeks compensation for the past violations of his constitutional rights.

JURISDICTION AND VENUE

19. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the action arises under the Constitution and laws of the United States. The Court additionally has jurisdiction pursuant to 28 U.S.C. §§ 1343(a)(3) and (4) because this action seeks to redress the deprivation, under color of state law, of Plaintiffs' civil rights and to recover damages and secure equitable or other relief for the violation of those rights.

20. The Court has supplemental jurisdiction over Plaintiffs' state law claims because they are so related to the federal claims within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. *See* 28 U.S.C. § 1367(a).

21. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is located in this district, and under 28 U.S.C. § 1391(b)(2) because all of the events giving rise to Plaintiffs' claims occurred in this district.

PARTIES

22. Plaintiff Carina Canaan is a married mother of two young children and resides in El Paso County, Texas. She has worked at a number of low-income jobs across El Paso, never earning more than \$8.50 per hour. Ms. Canaan's husband works temporary jobs when he is able to, but his employment is sporadic at best. As a result, their family lives near the federal poverty level. Ms.

Canaan dreams of becoming a nurse one day, as she is passionate about helping her fellow El Pasoans.

23. Plaintiff Levi Lane is a twenty-three year old man who lives in El Paso County, Texas. At the time of his incarceration, Mr. Lane had no savings, owed significant student loan debt, was working at a pet food distribution company earning \$9 an hour, and assisted with the care of his brother, who had physical disabilities. He also lived at or near the federal poverty level.

24. Defendant City of El Paso, Texas is a municipality organized under the laws of the State of Texas.

25. Defendant is the prosecutor in the enforcement of Municipal Debt, the party standing to benefit from the collection of that unpaid Municipal Debt, and the governmental entity with the statutory power and duty to adopt rules, regulations, policies, and procedures concerning the enforcement and collection of that same Municipal Debt in the El Paso Municipal Courts. Pursuant to this power, Defendant's City Council adopted and approved the 25% Upfront Policy, including its policy of actively misinforming Municipal Debtors of the issues to be determined if they are arrested on outstanding warrants for failure to pay, as well as concealing from Municipal Debtors the policies and procedures Defendant enacted, as required by State and federal law, to provide Municipal Debtors with options outside monetary payments on their Municipal Debt. Defendant recently considered the 25% Upfront Policy in detail and decided to neither repeal nor amend its policy. Defendant further relies upon the City Manager, who in turn is assisted by the City Clerk and/or Municipal Court Clerk (collectively the "Municipal Clerk") and the Municipal Clerk's staff, to promulgate and enforce these policies. The City Council has the power to direct and control the City Manager, as well as the power to hire and fire him. By law, it further gives the City Manager the power to direct and supervise the administration of all departments, offices, and agencies of the City of El Paso, including the Municipal Clerk and courts. Under this authority,

Defendant's City Manager, with the help of the Municipal Clerk, promulgates the 25% Upfront Policy; and all of Defendant's employees, including its court clerks, are acting and trained to act pursuant to the policy.

26. Defendant may be served with process by serving its mayor, clerk, secretary, or treasurer at 300 N. Campbell, El Paso, Texas 79901, or wherever they may be found. *See* Fed. R. Civ. P. 4(j)(2); Tex. Civ. Prac. & Rem. Code § 17.024(b). Defendant has appeared in this action and is represented by Counsel.

STATEMENT OF FACTS

Defendant's 25% Upfront Policy and How It Affects Poor El Pasoans

27. On April 6, 2006, Defendant instituted and promulgated its 25% Upfront Policy, thereby mandating that:

Municipal Court payment plans will carry the following schedule for payment, after completion of the required application:

- 25% of the fine is required upfront at the time the plan is requested[;]
- 50% is required on the 30th day of the payment plan[;]
- 75% is required on the 60th day of the payment plan[; and]
- 100% is required on the 90th day of the payment plan[.]

28. The effect of the 25% Upfront Policy, which is an official administrative directive, is twofold for El Paso's poor. First, for those who are too poor to either pay their fines or qualify for a payment plan, Defendant brings to bear the breadth of its governmental power to actively misinform Municipal Debtors that they have no option but to meet the monetary demands of the 25% Policy or go to jail to sit out their fines, thereby actively misleading them to believe that their ability to pay is not a relevant issue at their preincarceration hearings, and as a result denying Municipal Debtors of a meaningful opportunity to present a defense on that issue prior to their incarceration. As a result, the 25% Upfront Policy creates a chilling effect on Municipal Debtors' ability to prepare a proper defense prior to incarceration; instead, afraid of incarceration, indigent

debtors are coerced into paying fines that they cannot, in fact, afford. Second, the 25% Upfront Policy provides an illusory payment plan option for those Municipal Debtors too poor to pay 25% of their Municipal Debt upfront, thereby creating a disparate treatment of, and invidious discrimination against, poor El Pasoans by discriminating against them and creating two unequal classes, purely based on their poverty.

The Debt Collection Process for Class C Misdemeanor Fines

29. The 25% Upfront Policy is an official policy and plays a prominent role throughout the Municipal Debt collections process. Defendant's municipal clerk staff send official notices to Municipal Debtors that prominently display the policy and actively mislead Municipal Debtors that they must pay a minimum 25% of the debt, pay in full, or face jail. Moreover, TV screens in Defendant's municipal courts display and reinforce this deliberate, false, and misleading message to all who enter.

30. Defendant ensures its misinformation campaign reaches Municipal Debtors before they come to the court. When a Municipal Debtor accrues a fine or fee based on a traffic ticket, Defendant's Municipal Clerk issues a notice to the Municipal Debtor informing him or her to pay it or come to the court on a specific date. Defendant's clerks include the amount of the fine due, along with a bold-faced notice stating that, "If a payment plan is needed, you must pay 25% of the amount due; otherwise payment in full is expected."

31. Moreover, Defendant notifies those Municipal Debtors who do attempt to fill out an Application for Extension of Time for Payment of Fine, Court Costs, and Fees in capitalized bold font, that "25% INITIAL PAYMENT PER VIOLATION MUST BE PAID."

32. If, prior to their appearance dates, Municipal Debtors call Defendant's municipal clerk staff in order to inquire into their options for satisfying their Municipal Debt, Defendant's municipal clerks and their staff have been trained to actively and intentionally mislead those

Municipal Debtors that the only options provided by the City of El Paso for a Municipal Debtor are to pay in full, pay a minimum of 25% upfront, or to sit out the fines in jail for failing to pay. In doing so, Defendant intentionally creates a chilling effect on Municipal Debtors' opportunity to prepare a defense against incarceration based on their indigency. Defendant does so in the hopes of coercing maximum monetary payments on Municipal Debt.

33. Moreover, aside from a publicly prominent display of the requirements of the 25% Upfront Policy, Defendant has not published its policies and procedures for seeking options outside of the demands of the 25% Upfront Policy in any manner reasonably calculated to give Municipal Debtors notice of those procedures.

34. So, any Municipal Debtors who receive a notice from Defendant who cannot afford at least 25% of a fine are intentionally misled to believe that they can expect to go to jail if they appear at the Municipal Court. For Ms. Canaan and Mr. Lane, the amount due was significant — more than \$1,000 was due upfront from each.

35. Unsurprisingly, many poor Municipal Debtors choose not to appear at their trials for fear of incarceration. For these Municipal Debtors, a warrant is issued for their arrest.

36. Each warrant notice issued by Defendant shows the total amount of all accumulated fines and fees, and informs the debtors — once again — that if they want to avoid arrest under the warrant, “it will be necessary for you to immediately post the required bond.” The notice further informs Municipal Debtors that if they would like to set their “delinquent citation” for a court hearing they “must” first “post the required bond.” It is clear from the warrant notification that the bond is equivalent to the outstanding Municipal Debt owed for the offense underlying the warrant.

37. In addition to the warrant, Defendant's municipal court staff consistently publicizes the 25% Upfront Policy, thereby actively misleading Municipal Debtors into believing that they must pay their Municipal Debt in order to avoid arrest. Many indigent Municipal Debtors, therefore,

decide not to answer their warrant for fear of incarceration. As a result, between 2014 and 2015, Defendant's clerks sent out over 64,000 post-trial notices.

38. Meanwhile, Defendant prominently displays its 25% Upfront Policy on a rotating loop on television screens throughout its courts, ensuring that all Municipal Debtors who do appear at the Municipal Court quickly see it.

39. If Defendant's officers subsequently arrest a Municipal Debtor on an outstanding warrant, either for failure to appear at trial or failure to pay Municipal Debt, the arresting officer takes the Municipal Debtor to jail, where Defendant's employees deprive her of her liberty for 24-48 hours before she even receives a chance to set foot in the municipal court. Municipal Debtors also receive an additional \$64 to \$97 in court costs and warrant fees added to their outstanding fines for *each* ticket.

40. Ultimately, poor debtors who are simply unable to meet Defendant's coercive demands for monetary payment do exactly what Defendant actively misleads them to believe is their only option: they plead guilty to the charges against them, do not prepare or assert any defense, and are jailed for a period of time calculated at the rate of \$100 per day for fines they could not pay in the first place.

41. Accordingly, Defendant's 25% Upfront Policy disregards well-established Texas constitutional protections. Indeed, Defendant's adopted policies and procedures for the collection of Municipal Debt in fact actively work to deny Municipal Debtors of knowledge of the issues to be determined at their hearings prior to their incarceration for failure to pay and to deny Municipal Debtors the ability to prepare a proper defense to that potential incarceration. Thus, for those indigent, unrepresented individuals who are unable to pay their fines, the effect of the 25% Upfront Policy and improper training and supervision of its employees is to create a chilling effect on those Municipal Debtors' ability to prepare a defense of their constitutional rights and to,

predictably, lead to many Municipal Debtors being unconstitutionally incarcerated as a matter of course. Defendant's 25% Upfront Policy is the moving force behind Defendant's unconstitutional practices.

Failure to Reform, Despite Notice of Constitutional Concerns

42. Defendant's policymakers are well aware that their 25% Upfront Policy, use of due process violations to coerce payment, and inadequate training and supervision, violate the rights of indigent El Pasoans. Nonetheless, Defendant has exhibited deliberate indifference to correcting these known constitutional failings by refusing to make any effort at real reform despite knowledge of the obvious risk that those Municipal Debtors who Defendant intentionally misleads into believing they have no defense to their incarceration will be incarcerated solely by reason of their indigency. Instead, after recent public uproar about its practices, Defendant doubled-down on its efforts to advertise the 25% Upfront Policy.

43. In 2015, news media exposed some of the constitutional failings in Defendant's Municipal Debt collections process. Soon after, a number of community organizations jointly delivered a letter to each of Defendant's City Council members further informing Defendant of these issues.

44. In early 2016, Defendant's City Council directed its City Manager and Municipal Clerk to review El Paso's Municipal Debts collection process. The Municipal Clerk presented a series of recommendations for reforming the collections process on January 19, 2016, which the City Council adopted that day. However, Defendant's policymakers refused to repeal the unlawful 25% Upfront Policy or to improve training or supervision of Defendant's personnel. Oddly, the recommendations focused on increasing *Municipal Debtors'* knowledge of Defendant's *current* unconstitutional policies and procedures.

45. After Defendant failed to adequately address its unconstitutional collections practices, state Senator José Rodríguez sent a letter to Defendant, voicing his concerns as a representative of the people of El Paso. Still, Defendant's policymakers have refused to reform its 25% Upfront Policy, change its practice of actively and intentionally misleading Municipal Debtors about the issues that will be addressed at their hearings, or provide adequate training or supervision to its employees.

46. As illustrated by the facts set forth above, Defendant's City Council, City Manager, and Municipal Clerk have actual notice that the 25% Upfront Policy, along with their practices and training, is unconstitutional. Accordingly, Defendant is well-aware that it does not have in place adequate procedures to assure that a Municipal Debtor receives a fundamentally fair determination of, and an opportunity to present a defense on, the issue to be determined prior to their incarceration – whether the Municipal Debtor is able to pay their Municipal Debt. Nonetheless, Defendant is also aware of the significant revenue collected through the coercive collection of outstanding traffic fines, and has thus agreed to continue enforcement of the 25% Upfront Policy.

Injury to Ms. Canaan

47. Ms. Canaan is a married mother of two who dreams of becoming a nurse. However, despite her best efforts, Ms. Canaan has struggled to pursue that dream due to financial hardships and her immediate needs to provide for herself and her family. She has worked at a number of low-income jobs across El Paso, never earning more than \$8.50 per hour, and lives near the federal poverty level.

48. Among her financial hardships are more than forty traffic tickets from Defendant since 2007. Of those fines and fees, however, only five actually related to moving violations. The remaining thirty-five directly stemmed from Ms. Canaan's indigency, such as fines for driving with

an expired license, inability to afford insurance, or inability to maintain her vehicle registration. In total, Defendant claimed that Ms. Canaan owed more than \$10,000.

49. Defendant's employees arrested Ms. Canaan on two occasions as a result of warrants issued after Ms. Canaan failed to appear to pay her fines. In 2011, Ms. Canaan was incarcerated for two days because she was unable to pay \$5,416 in Class C misdemeanor fines. Two years later, in 2013, Ms. Canaan was again incarcerated for nineteen days because she was unable to pay \$4,571.24 in Class C misdemeanor fines. At the time of her second detention, Ms. Canaan was pregnant with her first child.

50. Prior to both arrests and detentions, Defendant's employees repeatedly, deceitfully, and intentionally misinformed Ms. Canaan that her only options were to pay her fines in full, pay 25% to qualify for a payment plan, or face going to jail to sit out her fines pursuant to outstanding warrants. Defendant's employees thereby actively worked to create a chilling effect on Ms. Canaan's knowledge of her right to a defense against incarceration based on indigency, and her corresponding ability to prepare and assert that defense, by intentionally misleading her into believing that her indigency was not a relevant issue before the sentencing court. Defendant further intentionally misled Ms. Canaan as to the policies and procedures available in the El Paso Municipal Court for seeking options to satisfy Municipal Debt that do not require monetary payment. Defendants employees were acting pursuant to the 25% Upfront Policy and/or Defendant's failure to adequately train its staff. Ms. Canaan did not have the professional legal skill to protect herself against the misinformation disseminated by Defendant's municipal court staff and, because of her indigency, Ms. Canaan could not afford counsel to protect her rights. Instead, Defendant deceitfully and fraudulently concealed the issues to be determined at the hearing prior to Ms. Canaan's incarceration. Defendant did so in a bad faith effort to harass Ms. Canaan into making monetary payment on her Municipal Debt.

51. As a result, at the hearing after her arrest, Ms. Canaan did the only thing Defendant intentionally misled her into believing that she could: she prepared no defense of indigency against incarceration and she simply pled guilty to each charge and went to jail.

52. Defendant caused Ms. Canaan to suffer psychological damage, humiliation, mental anguish, lost wages, and emotional injury as a result of this denial of due process and equal protection rights.

53. Ms. Canaan still has three outstanding warrants — all directly related to her indigency — for inability to pay traffic tickets. Defendant issued these tickets to Ms. Canaan years after her prior arrests and detention. Despite her best efforts, Ms. Canaan remains unable to pay her outstanding fines and cannot qualify for the 25% Upfront Policy. Because of this, she cannot keep her vehicle registration or license plates up to date and drives with an expired license, all of which present imminent cause for Defendant's police officers to pull her over. Still, she must continue to drive to make money, buy groceries, take her children to the doctor, and generally support her family. Ms. Canaan therefore faces a real and immediate threat that Defendant will stop, arrest, and subject her to its unconstitutional debt collections practices.

Injury to Mr. Lane

54. In or about late April of 2014, Mr. Lane had no savings. He had been working full-time for approximately four months at a pet food distribution company earning \$9 an hour, and lived in an apartment with his brother, who had physical disabilities. Mr. Lane tried to assist his brother as best he could, even though Mr. Lane was living at or near the federal poverty level and from paycheck to paycheck.

55. Among other expenses, Mr. Lane was trying to pay off a student loan burden of more than \$20,000. He had incurred his student loans while completing an associates degree.

Despite having completed all the relevant course work, Mr. Lane never received his diploma because he was financially unable to make his final tuition payments.

56. Mr. Lane also faced the burden of seventeen traffic tickets. Of the seventeen outstanding tickets, however, only three were related to moving violations. The remaining fourteen directly stemmed from Mr. Lane's indigency, largely related to a financial inability to maintain vehicle registration and insurance. In total, Defendant claimed Mr. Lane owed more than \$4,300.

57. In 2014, Defendant's employees arrested Mr. Lane on warrants issued as a result of his inability to pay his fines. Mr. Lane subsequently spent twenty-four days in jail merely because of his inability to pay those fines, causing him to lose his job and causing emotional distress.

58. Prior to his arrest, Mr. Lane had called Defendant's municipal court clerks on several occasions to inquire into his options to resolve his debt. However, acting pursuant to the 25% Upfront Policy and/or Defendant's failure to adequately train its staff, Defendant's employees repeatedly, deceitfully, and intentionally misinformed Mr. Lane that his only options were to pay his fines in full, pay 25% to qualify for a payment plan, or face going to jail to sit out his fines pursuant to the outstanding warrants. In fact, Defendant's employees on at least one occasion told Mr. Lane that Defendant no longer provided payment plans at all. Defendant thereby actively worked to create a chilling effect on Mr. Lane's knowledge of his right to a defense against incarceration based on indigency, and his corresponding ability to prepare and assert that defense, by intentionally misleading him into believing that his indigency was not a relevant issue before the sentencing court. Defendant's employees further actively and intentionally misled Mr. Lane as to the policies and procedures available in the El Paso Municipal Court for seeking options to satisfy Municipal Debt that do not require monetary payment. Mr. Lane did not have the professional legal skill to protect himself against the misinformation disseminated by Defendant's municipal court staff and, because of his indigency, Mr. Lane could not afford counsel to protect his rights. Instead, Defendant

deceitfully and fraudulently concealed the issues to be determined at the hearing prior to Mr. Lane's incarceration. Defendant did so in a bad faith effort to harass Mr. Lane into making monetary payment on his Municipal Debt.

59. As a result, at the hearing after his arrest, Mr. Lane did the only thing Defendant intentionally misled him into believing that he could: he prepared no defense of indigency against incarceration and he simply pled guilty to each charge and went to jail.

60. As a result, Defendant caused Mr. Lane to lose his job. Defendant also caused Mr. Lane to suffer psychological damage, humiliation, mental anguish, lost wages, and emotional injury as a result of the denial of his due process and equal protection rights.

61. There are currently no ongoing state judicial proceedings against Mr. Lane.

CAUSES OF ACTION

I. Violations of the Right to Due Process **Under the Texas Constitution**

62. Plaintiffs incorporate by reference the allegations in paragraphs 1-61 above.

63. Under the Texas Due Course of Law Clause, the principle of due process requires fundamental fairness by the City in all of its dealings with those accused of crimes. Accordingly, a governmental entity like the City of El Paso is required to provide both notice and opportunity for a fundamentally fair determination of a debtors' ability to pay prior to depriving individuals of their liberty for failure to pay fine-only Class C misdemeanors. Through its 25% Upfront Policy and/or failure to properly train its employees, Defendant deprived Plaintiffs of this due process by intentionally misleading Plaintiffs as to the issues to be resolved at the adversarial proceeding prior to their incarceration. In doing so, Defendant deceitfully, intentionally, and fraudulently misled Plaintiffs as to the issues at stake in the proceedings in a deliberate attempt to coerce them into payment for fear of seemingly inevitable incarceration. Defendant further intentionally concealed from Plaintiffs the policies and procedures available in El Paso to satisfy Municipal Debt without

monetary payments. Thus, Plaintiffs, who were indigent defendants unrepresented by counsel, were forced to traverse the municipal court system in the face of a campaign of intentionally misleading information from a municipal court staff that is one and the same with the prosecution and the party that stands to benefit from the collection of monetary payments on fines. This policy not only denied Plaintiffs' of proper notice and opportunity to present a defense prior to their incarceration, but actually deliberately misled them regarding their right to a defense based on indigency and ability to prepare and assert that defense, all in violation of the Due Course of Law Clause of the Texas Constitution.

64. Defendant, through its policymakers, knew or should have known, and was and continues to be deliberately indifferent to, the obvious fact that some indigent Municipal Debtors, like Plaintiffs, would be denied fair notice of the issues to be determined at their pre-incarceration hearings, would not prepare or present a defense based on their inability to pay, and would therefore be unconstitutionally incarcerated solely because they were indigent. Nonetheless, Defendant pursued this intentional campaign of misinformation pursuant to, and in order to enforce, its 25% Upfront Policy. Accordingly, the 25% Upfront Policy and/or failure to adequately train and supervise its employees are the moving forces behind these violations.

**III. Violations of the Right to Equal Protection
Under the Federal Constitution, in conjunction with 42 U.S.C. § 1983, and the Texas
Equality of Rights Provision of the Texas Constitution**

65. Plaintiffs incorporate by reference the allegations in paragraphs 1-61 above.

66. Defendant intentionally creates two separate and unequal classes with its 25% Upfront Policy and inadequate training and supervision. The first class includes individuals who can afford to pay 25% or more of their outstanding fines upfront, and who therefore benefit from the option of a payment plan to satisfy Municipal Debt. At the same time, Defendant offers an illusory option of payment plans to indigent people like Ms. Canaan and Mr. Lane who are unable to pay

25% of their Municipal Debt in order to qualify. Defendant, through its 25% Upfront Policy, therefore creates a disparate impact on, and invidious discrimination against, poor El Pasoans who are effectively excluded from equal access to payment plan options solely based on their economic status. The Equal Protection Clause prohibits the unequal treatment of people based upon their inability to pay fines because they are indigent. Defendant's 25% Upfront Policy and/or failure to adequately train and supervise its employees are the moving forces behind these violations.

67. Defendant further violated Plaintiffs' rights under the Equal Protection Clause because it used unduly harsh and discriminatory debt collection schemes against Plaintiffs. Defendant's 25% Upfront Policy and/or failure to adequately train and supervise its employees are the moving forces behind these violations.

68. Defendant's policymakers are or should be aware of the risk that its 25% Upfront Policy discriminated against poor debtors based on economic status and would result in an incarceration-for-credit scheme that was unduly harsh—and indeed unconstitutional—for indigent debtors. Nonetheless, Defendant has refused to change or otherwise address these policies even though it has no good reason to maintain them. In doing so, Defendant has been deliberately indifferent to its unduly harsh debt collection scheme and to the injuries it has caused to Plaintiffs.

REQUEST FOR RELIEF

Declaratory and Injunctive Relief

69. Plaintiffs seek declaratory relief because Defendant violated their rights under the federal and state constitutions, as described above.

70. Defendant continues to maintain its illegal policies, practices, procedures, and inadequate training and supervision. Defendant further continues to enforce these unconstitutional policies, practices, and procedures against the same class of indigent Municipal Debtors, and in the same manner, as Defendant did against Plaintiffs. As a result, Ms. Canaan, who has outstanding

warrants for her arrest on failure-to-pay grounds, and who continues to be financially unable to pay those fines, continues to face a real and immediate risk of further deprivations of her federal and state constitutional rights.

71. Ms. Canaan therefore seeks an injunction preventing Defendant from engaging in this unlawful conduct in the future and, in order to ensure these violations cease in El Paso, an order requiring Defendant to implement constitutional policies and training to ensure that Defendant (1) ceases intentionally misleading poor Municipal Debtors into believing that they have no defense based on inability to pay, (2) ceases deceitfully misleading Municipal Debtors as to the issues to be determined upon arrest for their outstanding warrants, (3) ceases enforcing its unconstitutional requirement that Municipal Debtors pay 25% upfront to qualify for a payment plan, and (4) ensures that Defendant publishes its policies and procedures for community service, payment plans, and indigency hearings, in a manner reasonably calculated to give notice of those procedures.

72. Both Mr. Lane and Ms. Canaan further seek a declaratory judgment declaring the 25% Upfront Policy, as well as the other rules, practices, and procedures that result in the taking of Municipal Debtors' liberty, as described above, invalid under long-standing federal and state law.

Damages

73. The actions of Defendant caused Mr. Lane to suffer damages, including unnecessarily spending numerous days in jail and losing his job, and considerable emotional distress and mental anguish.

74. Mr. Lane therefore seeks compensatory and exemplary damages for Defendant's violations of his constitutional civil rights by refusing Mr. Lane equal opportunity to enjoy the benefits of a payment plan merely because of his economic status.

Attorneys' Fees

75. As a result of Defendant's conduct, Plaintiffs had to retain counsel to protect their rights. Plaintiffs will also continue to expend reasonable costs and fees. Pursuant to 42 U.S.C. § 1988, Plaintiffs ask that the Court award them reasonable attorneys' fees, costs, and expenses.

JURY DEMAND

76. Plaintiffs respectfully demand a jury trial on their individual damages claims and all other matters which may be tried to a jury.

PRAYER

77. Plaintiffs respectfully request that the Court grant the following relief:
- a. Enter a judgment declaring that Defendant's policies, practices, training, supervision, acts, and omissions in its Municipal Debt collections efforts, as described herein, are unlawful and violated Plaintiffs' rights under the Constitution and laws of the United States and the State of Texas;
 - b. Permanently enjoin Defendants, their subordinates, agents, employees, successors, and all others acting in concert with them, from subjecting Plaintiffs and other similarly situated Municipal Debtors to the unconstitutional and unlawful practices described above, including its policies, training, and supervision;
 - c. Award compensatory and exemplary damages to Mr. Lane for psychological damage, humiliation, mental anguish, lost wages, and emotional distress, suffered as a result of Defendant's unconstitutional policies, practices, and acts;
 - d. Grant Plaintiffs their reasonable attorneys' fees, expenses, and costs pursuant to 42 U.S.C. § 1988; and
 - e. Issue such other relief, legal and equitable, general and specific, to which Plaintiffs are justly entitled.

Dated: January 20, 2017.

Respectfully submitted,

By: /s/ William B. Jacobi
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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2017, a true copy of this document was electronically filed with the Clerk of Court using the CM/ECF filing system, which will send notification of the filing to Defendant's attorney of record in this case, William M. McKamie, McKamie Krueger, LLP, 941 Proton Road, San Antonio, TX 78258.

/s/ William B. Jacobi
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