

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

RACHEL McKEE, LONETA JACKSON,
JANET CATO, LARISSA COIL, JOSHUA
MOORE, and HILARIO NAYOLA

Plaintiffs,

v.

Civil Action No. 2:16-CV-00009-J

CITY OF AMARILLO, TEXAS

Defendant.

SECOND AMENDED COMPLAINT – CLASS ACTION

Plaintiffs Rachel McKee, Loneta Jackson, Janet Cato, Larissa Coil, Joshua Moore, and Hilario Nayola, by and through undersigned counsel, bring this Class Action Complaint against Defendant City of Amarillo, Texas (“the City”), on behalf of themselves and all others similarly situated and, as grounds therefore, state and allege as follows:

INTRODUCTION¹

1. This case involves a deliberate choice by the City to prioritize the collection of fines, fees, and costs revenue over the Constitutional rights of its residents by instituting a modern day debtor’s prison.

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

2. Until 1971 the practice in most municipal courts throughout the country and Texas was to impose a jail sentence on persons who did not pay fines assessed for non-jailable offenses such as traffic tickets. Under this practice, known as “pay or lay,” no consideration was given to individual defendants’ financial circumstances and no alternative methods of punishment were considered before sending people to jail for not paying their fines.
3. “Pay or lay” was abolished by the U.S. Supreme Court in *Tate v. Short*, 401 U.S. 395 (1971). There, the Court held that it was a violation of the Fourteenth Amendment to the U.S. Constitution to jail indigent persons solely for failing to pay a fine.
4. The City of Amarillo chose to ignore *Tate* and has maintained its policy of “pay or lay” from 1960 until the present. The City’s Municipal Code of Ordinances states:

Title II, Ch. 2-8, Art. I, Sec. 2-8-111. - Judgments; forms.

In the event of a conviction in a case pending before the Municipal Court, the judgment shall be in the name of the State and shall recover of the defendant the fine and other penalties for the use and benefit of the City. Except as otherwise provided the Court shall require the defendant to remain in the custody of the Chief of Police of the City until the fine, State-imposed fees and other penalties are paid, and order that execution issue to collect the fine and penalties.

(Code 1960, § 7-27; Ord. No. 5619, § 1, 8-26-86)

The Municipal Code of Ordinances contains no exceptions to § 2-8-111 for defendants who are indigent. It does not include any procedure allowing for the determination of indigence or the appropriateness of alternative punishments, such as community service, for those who are indigent. Despite 44 years of jurisprudence recognizing the Fourteenth Amendment rights spelled out in *Tate*

and its progeny, the City of Amarillo has stubbornly persisted in routinely jailing indigent people on the basis of its Code.

5. The City's policy and practice of "pay or lay" results in the illegal jailing of hundreds, if not thousands, of Amarillo residents each year, threatening those residents' jobs, housing, families, and already tenuous financial circumstances. Two such people are the Plaintiffs in this lawsuit.
6. This lawsuit seeks to hold the City accountable to Plaintiffs Rachel McKee, Loneta Jackson, Janet Cato, Larissa Coil, Joshua Moore, and Hilario Nayola, and the class members they seek to represent for these violations of their constitutional rights.

I. PARTIES

7. Plaintiff Rachel McKee is a 47 year-old resident of Amarillo, Texas.
8. Plaintiff Loneta Jackson is a 36 year-old resident of Amarillo, Texas.
9. Plaintiff Janet Cato is a 49-year-old resident of Amarillo, Texas.
10. Plaintiff Larissa Coil is a 25-year-old resident of White Deer, Texas.
11. Plaintiff Joshua Moore is a 25-year-old resident of Wichita, Kansas.
12. Plaintiff Hilario Nayola is a 19-year-old resident of Amarillo, Texas.
13. Defendant City of Amarillo is a municipality organized under the laws of the State of Texas. The City of Amarillo has established the Amarillo Municipal Court as a department of the City. The City of Amarillo may be served with process by serving the City Clerk, Mayor, Treasurer, or Secretary at 509 S.E. Seventh Avenue, Amarillo, Texas 79105.

II. JURISDICTION

14. This is a civil rights action arising under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and § 1343 (civil rights jurisdiction).

III. VENUE

15. Venue is proper in this District under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District and the City resides in this district.

IV. STATEMENT OF FACTS

A. The City's Policies, Practices, and Customs

16. The City of Amarillo is a home rule municipality located in Potter and Randall Counties in the panhandle of Texas. The City has a population of approximately 197,000 people. According to census data, approximately 17.1 percent of the population in Amarillo lives at or below the poverty level.
17. The City's government is constituted by, among other officials, a mayor and a four-person city council.
18. The City has established the City of Amarillo Municipal Court ("Municipal Court") as a Court of Record under Tex. Govt. Code § 30.00003 and conferred upon it jurisdiction as set forth in Tex. Govt. Code § 30.00005. Amarillo, Tx., Code § 2-8-2, 2-8-3 (1988). In addition, the City conferred jurisdiction under its Charter provisions in article II, Section 22. This includes jurisdiction over Class C misdemeanors, which are punishable only by fines. Class C misdemeanors are

the least serious crimes punishable by the State of Texas and include crimes such as traffic violations, failing to register one's vehicle, and failing to show proof of insurance.

19. Municipal Court judges are appointed to a two-year term. However, the City maintains the right to remove those judges under its Charter. City of Amarillo Charter, Article II, Section 22(ff).
20. The Municipal Court is a subdivision of the City's Finance division.
21. The City has reserved the right to establish, maintain, and regulate the means of punishment for "City convicts." City of Amarillo Charter, Article II, Section 22(gg).
22. The City contracts with the Randall County Jail to house those who are ordered by municipal court judges to serve jail time. This costs the City approximately \$1.9 million per year.² Upon information and belief, the contract with Randall County provides for a per inmate/bed charge and requires payment for a minimum number of inmates. Therefore the City has a sunk cost which has the potential to create an interest in using the beds it has paid for.
23. When someone is charged with a Class C Misdemeanor in Amarillo Municipal Court and is convicted either by plea or trial, they are ordered to pay a fine and court costs by a municipal court judge.
24. These fines and costs are frequently paid in full, which is the objective of the City of Amarillo. For indigent people who cannot afford to pay the full amount at once a different approach is taken.

² Amarillo City Budget FY 2014, p. 294

25. For such people, a court administrator creates a schedule of payments due. The administrator does not take into consideration the person's ability to pay such installments. Instead, the City has instituted an arbitrary payment schedule that is mechanically applied:

Amarillo's Minimum Payment Schedule

\$1.00-\$200.00—Balance is due within 30 days;

\$200.01-\$550.00—\$55-\$65 every two weeks based upon disposable income;

\$551.01-\$750.00—\$65-\$75 every two weeks based upon disposable income;

\$750.01 & Up—\$75 or higher every two weeks based upon disposable income.

Note: If unable to pay biweekly, a full monthly payment may be offered to the defendant. If the defendant bonds out of jail, one-third to one-half of the balance is due at judgment or sentencing. If a defendant is remanded to jail for failing to comply with orders of the court, once released, any balance of court costs, fees and fines remaining is due to the court in full. An additional payment plan is not an option.

Source: Municipal Court Recorder, vol. 14, no. 4, April/May 2005

26. When an indigent person fails to make a payment under this arbitrary installment plan, the court administrator and her staff confront the person about the consequences of failing to pay and try to force the person to comply without performing any meaningful inquiry into their ability to do so. This payment plan, along with the administrative functions of enforcing it, were put in place in May 2004 as part of a "focus on compliance" by the municipal court. *Id.* The clear tenor of this scheme is "pay or go to jail."
27. For those who ultimately cannot pay, a warrant is issued pursuant to article 45.045 of the Texas Code of Criminal Procedure. This causes the person to be

arrested and held by Amarillo City Police officers before being brought before the court, either in person or by video. The Amarillo Police Department makes no inquiry into whether the person was capable of paying the fine before taking them into custody. If the person is arrested on a warrant for failure to pay, they are held until a judge is available to arraign them. This, in some cases, can involve the individual being held over the weekend without any determination of their indigence.

28. Although there is some variance from one defendant to another as to the Court's specific findings, there is a consistent pattern of following the City's pay or lay ordinance and a corresponding failure by Amarillo Municipal Court judges to follow state and federal law in two respects: 1. A meaningful hearing is not held to determine whether a person is indigent; 2. Alternative methods of enforcing the judgment, such as community service, are not considered. The end result is that all but a statistically insignificant number of defendants are sent to jail if they cannot pay the fine. The statistical evidence of this procedure is irrefutable.
29. The moving force behind the City's collection scheme and the judges, clerks, and police who enforce it is Section 2-8-111 of its Code (*see infra*, ¶4). This ordinance is an express written policy by the City stating that those who fail to pay debts owed to the City must go to jail, with no consideration given to their ability to pay.
30. According to the Texas Office of Court Administration, the City reached final dispositions in 56,852 cases³ in calendar year 2014. Of those 56,582 cases,

³ OCA statistics are not available on a per-defendant basis and there is not a one-to-one ratio of cases to defendants.

there were only 9 cases in which the fines and court costs were waived for indigence and only 227 cases in which fines and courts costs were fully or partially satisfied by allowing the defendant to perform community service. In stark contrast, the fines and court costs in 11,089 cases were satisfied by jail time.

31. The City reached final dispositions in 47,627 cases in calendar year 2015. Of those 47,627 cases, there were only 5 cases in which the fines and court costs were waived for indigence and only 318 cases in which fines and courts costs were fully or partially satisfied by allowing the defendant to perform community service. The fines and court costs in 9,123 cases were satisfied by jail time.
32. The City's collection scheme results in tremendous profit. For example, in 2014 the Amarillo Municipal Court collected \$8,233,423 in fines, court costs, and "other amounts." Of that amount \$5,655,143 was kept by the City, with the rest being remitted to the State.

B. Rachel McKee

33. Ms. McKee is a 47-year-old woman with an eighth-grade education. She is the mother of three grown children she raised alone. When she can find work, Ms. McKee cleans houses, hotel rooms, and offices for a meager wage. When she is not working, she helps care for her grandchildren. At all times relevant to this complaint, Ms. McKee was legally indigent.
34. In early 2015, Ms. McKee was cited for no driver's license, no insurance, and speeding. Because she was indigent and afraid of being jailed, she did not enter an appearance for these citations. In October 2015, Ms. McKee was arrested on

those charges after a traffic stop. After spending two days in jail, Ms. McKee went before an Amarillo municipal judge on October 21, 2015. There, she pled guilty to both the older charges and the new citations she had just been issued.

35. After accepting her pleas, the judge ordered her to see the court administrator to establish a payment plan. To get on such a plan, Ms. McKee completed an application that indicated she was “homeless” and that her only income was \$40.00 per month in back child support. Despite her obvious indigence, the Court ordered her to pay \$232.00 in biweekly payments until a balance of \$1,727.00 was paid. Ms. McKee was charged \$25.00 to be put on such a payment plan and was ordered to pay \$200.00 down.
36. On November 2, 2015, Ms. McKee voluntarily returned to court to inform the judge that she could not meet the payment plan as scheduled and to ask to modify it to one she could afford. Ms. McKee had clearly indicated to the Court in her previous application for a payment plan and during her appearance before the Court that she was indigent. Her only purpose of reporting to the Court was to avoid going to jail. When she appeared before the Court, Ms. McKee made it clear that she did not want to go to jail and again made it clear to the judge that she was indigent.
37. Rather than modify the plan, the judge put Ms. McKee in jail, thus enforcing the City’s written policy set forth in Section 2-8-111. No hearing was conducted to determine her indigence and no alternative method of discharging her debt was offered.

38. Ms. McKee was given credit for \$100.00 per day towards payment of her debt by serving jail time. She spent 18 days in jail.
39. In an effort to make this process appear legal, a motion was filed purporting to bear Ms. McKee's electronic signature. The motion, titled "Defendant's Motion to Lay Out Fine in Jail," was created by the Court. Not only does the motion contain factual assertions that contradict what Ms. McKee told the Court, it also violated her due process under the Fourteenth Amendment and articulated in Texas Code of Criminal Procedure article 45.046.
40. While Ms. McKee does recall signing an electronic signature pad at some point during the proceedings, Ms. McKee maintains she has never seen the document and that the contents of the document were never discussed with her or explained to her. The Court made no effort to explain to Ms. McKee her right to request community service as an alternative method of discharging her debt.
41. Even had Ms. McKee knowingly signed the motion, which she does not concede, the Court was aware that the motion contained statements that were not only false, but also not in Ms. McKee's best interest. Allowing persons like Ms. McKee to sign such a document subverts the judicial process and violates their rights to due process and equal protection.
42. Had Ms. McKee, at any time, been offered the option of discharging her fines and costs through community service or other alternative means, she would have agreed to do so.
43. As a result of being jailed in violation of her Fourteenth Amendment rights, Ms. McKee suffered compensatory damages including mental anguish.

C. Loneta Jackson

44. Ms. Jackson is a 36-year-old mother of five children. Her youngest child is five years old and has special needs. Ms. Jackson did not graduate from high school and does not have a GED. Ms. Jackson has had sporadic employment primarily as a fast-food worker and currently works part-time at a Wienerschnitzel restaurant. Ms. Jackson receives \$5.00 per month in court-ordered child support. At all times relevant to this lawsuit, Ms. Jackson was legally indigent.
45. In 2013, Ms. Jackson was cited for no driver's license, no insurance, expired registration, and invalid inspection. Because she was indigent and afraid of being jailed, she did not enter an appearance for these citations.
46. In November 2015, Ms. Jackson lost her purse while riding the bus, losing her only form of identification and her son's Medicaid card. This left her unable to obtain employment or get medical care for her son. She knew there were warrants for her arrest and if she attempted to get a new driver's license she would be arrested. She had no alternative but to appear before the Municipal Court and attempt to resolve her debts.
47. When Ms. Jackson made the decision to voluntarily appear, it was her understanding that she would not be able to make the arbitrary payments that would be set by the court administrator. Ms. Jackson's previous experience with City policy and practice and the Municipal Court's reputation in the community led her to believe that the only options were "pay or lay."
48. On November 2, 2015, Ms. Jackson appeared before the judge. No hearing was conducted to determine her indigence, nor did the judge explain to Ms. Jackson

that she had the right to assert that she was indigent. No alternative methods to discharge her fines were offered or discussed. The only alternative presented by the judge to Ms. Jackson was to “pay or lay,” thus enforcing the City’s written policy set forth Section 2-8-111. Ms. Jackson could not pay, so the judge gave her credit for \$100.00 per day and sentenced her to jail. Ms. Jackson served 18 days in jail in order to discharge her debts.

49. As in Ms. McKee’s case (see ¶ 39-41), a motion titled “Defendant’s Motion to Lay Out Fine in Jail,” appears in Ms. Jackson’s file. Again, like Ms. McKee, Ms. Jackson was indigent and should have been offered alternative means of discharging her debt. While Ms. Jackson does recall signing an electronic signature pad at some point during the proceedings, Ms. Jackson maintains that she has never seen the document and did not ask the Court to send her to jail or deny her community service as an option to discharge her debts.
50. Even had Ms. Jackson knowingly signed the motion, which she does not concede, the Court was aware that the motion contained statements that were not only false, but also not in Ms. Jackson’s best interest. Allowing persons like Ms. Jackson to sign such a document subverts the judicial process and violates their rights to due process and equal protection.
51. Had Ms. Jackson, at any time, been offered the option of discharging her fines and costs through community service or other alternative means, she would have agreed to do so.
52. As a result of being jailed in violation of her Fourteenth Amendment rights, Ms. Jackson suffered compensatory damages including mental anguish.

53.

D. Janet Cato

54. Mrs. Cato is a 49-year-old woman and a U.S. Army veteran. She is a mother of three grown children whom she raised alone. Mrs. Cato has worked various jobs following her honorable discharge from the Army, including correctional officer for TDCJ, payroll clerk for Pantex, and a home healthcare professional. Recently Mrs. Cato filed for disability and is unable to work because she has scoliosis and rheumatoid arthritis. At all times relevant to this complaint, Ms. Cato was legally indigent.

55. In 2013, Mrs. Cato received 19 citations, one for speeding and 18 for dog-related offenses, and defaulted on the payment of the citations, resulting in capias warrants issued for her arrest.

56. On March 6, 2014, Mrs. Cato voluntarily appeared in court to resolve the 19 citations. Mrs. Cato was financially dependent on unemployment at the time she appeared and did not have the money to pay her outstanding fines and costs. She requested the Court grant her the ability to serve jail time on the weekends to satisfy her debt or the ability to satisfy the debt through community service. Without considering Mrs. Cato's financial situation, the judge responded, "In this court there are two options: you can pay it or lay it."

57. Mrs. Cato was booked into Randall County Jail on March 6, 2014 to lay out the 19 citations totaling \$5,271. She was given credit of \$100.00 per day towards payment of her debt by serving jail time. After spending 52 days in jail, Mrs. Cato was released on April 27, 2014.

58. Had Mrs. Cato, at any time, been offered the option of discharging her fines and costs through community service or other alternative means, she would have agreed to do so.
59. As a result of being jailed in violation of her Fourteenth Amendment rights, Mrs. Cato suffered compensatory damages including mental anguish.

E. Larissa Coil

60. Ms. Coil is a 25-year-old woman with a high school education. She moved out on her own when she was 16, finishing her high school education on her own. She attended the Art Institute in Dallas, Texas for a short time, pursuing a degree in photography, but had to drop out because she could not afford tuition even with grants and scholarships. Ms. Coil has primarily worked food service jobs as a waitress or hostess, and is currently a hostess at Harrah's restaurant in White Deer, Texas. At all times relevant to this complaint, Ms. Coil was indigent.
61. Ms. Coil began receiving citations for Failure to Maintain Financial Responsibility as early as 2012. When arrested for defaulting on the payment of these fines and costs, Ms. Coil's mother paid the outstanding balance to free her daughter. On January 28, 2014, Ms. Coil was booked into Randall County Jail for three traffic citations: Failure to Maintain Financial Responsibility, Operation of Vehicle with Expired License, and Failure to Yield Right of Way-Left Turn. Once again her mother was able to pay at least a portion of the outstanding fines and costs to free her daughter.
62. On April 9, 2014, Ms. Coil voluntarily appeared in court to resolve the citations from January 28, 2014 that had become capias warrants, as well as three new

citations: No Insurance, Driving While License Invalid, and Fail to Comply Striking Unattended Vehicle. The judge questioned Ms. Coil about why she failed to pay her fines and costs, and Ms. Coil replied that she did not have any money. The judge found her indigent, stated that she had “failed to make a good faith effort” to discharge her fines and costs, and ordered her to jail. Ms. Coil was not offered a chance to do community service or any other way of resolving her citations. Her mother was unable to pay any of the fines and costs to keep Ms. Coil out of jail.

63. Ms. Coil was booked into Randall County Jail on April 9, 2014 for six traffic citations totaling \$1,907. She spent 14 days in jail.
64. Had Ms. Coil, at any time, been offered the option of discharging her fines and costs through community service or other alternative means, she would have agreed to do so.
65. As a result of being jailed in violation of her Fourteenth Amendment rights, Ms. Coil suffered compensatory damages including mental anguish.

F. Joshua Moore

66. Mr. Moore is a 25-year-old single man, with an 11th grade education, who works as a laborer. He is currently working on getting a commercial driver’s license. At all relevant times to this complaint, Mr. Moore was legally indigent.
67. Mr. Moore has appeared in court several times to resolve his outstanding fines and costs. Each time the Court failed to consider his finances and sent him to the collections office to make calls to his relatives asking them to bring money to bail

him out. Each time he was ordered to jail because he could not come up with the money in time.

68. Mr. Moore was booked into the Randall County Jail on six traffic citations that had become capias warrants: Registration-Expired Buyer's Plate, Failure to Maintain Financial Responsibility-2nd, No Driver's License, No Valid Inspection Certificate, Failure to Maintain Financial Responsibility, and No Driver's License. The total for these citations was \$2,229 and he spent 32 days in jail.
69. Mr. Moore was booked into the Randall County Jail again on April 14, 2015. This time he was in for six more traffic violations: Failure to Maintain Financial Responsibility, No Driver's License, Operation of Vehicle with Expired License Plate, No Valid Inspection Certificate, Driving While License Invalid, and Failure to Maintain Financial Responsibility. The total for these citations was \$1,879 and he spent three days in jail before a friend was able to pay enough to have him released.
70. Had Mr. Moore, at any time, been offered the option of discharging his fines and costs through community service or other alternative means, he would have agreed to do so.
71. As a result of being jailed in violation of his Fourteenth Amendment rights, Mr. Moore suffered compensatory damages including mental anguish.

G. Hilario Nayola

72. Hilario Nayola is a 20-year-old college student majoring in Biology. A former foster child, he works part-time jobs while attending class full time. His part-time

wages help support his four younger siblings. At all times relevant to this lawsuit, Mr. Nayola was legally indigent.

73. In 2013 and 2014, Mr. Nayola received citations for traffic violations he could not afford to pay. He was arrested in October of 2014 and appeared before the judge after spending two days in jail. He pled guilty to several petty offenses, including expired registration, speeding, and no proof of insurance. He was released and instructed to report to Collections with \$453.00 by 9:00 AM the next business day. Unable to pay that amount and fearing arrest, Mr. Nayola did not appear the next day and another warrant was issued for his arrest.
74. In August of 2015, Mr. Nayola appeared in court to resolve his pending citations. This time his payment plan was set at \$95.00 every two weeks. Again, in accordance with the City's practice, no consideration was made regarding Mr. Nayola's financial circumstances and ability to meet the payment plan. When he was unable to make payments in accordance with the plan, a warrant was issued for his arrest.
75. Mr. Nayola was arrested on November 10, 2015. He was brought before a Municipal Court judge. The judge did not give him a hearing to determine whether he was indigent. The judge also did not consider whether he could discharge his judgment through community service or some other alternative method. Instead, he was sent to jail where he was given \$100.00 per day credit toward payment of his debt. He served six days until a relative paid \$940.00 and he was released.

76. At the time Mr. Nayola was jailed, he had been offered a housekeeping job at BSA. He was scheduled to start that job the week that he was jailed. As a result of being incarcerated, Mr. Nayola lost the job, furthering his inability to pay his debts.
77. Mr. Nayola still owed money to the City of Amarillo. He was ordered to report once again to the Municipal Court collections department the day after being released from jail, this time with \$250.00. Without \$250.00 and convinced that he would be jailed, causing him to miss classes and exams, Mr. Nayola did not report.
78. On December 10, 2015, his classes now complete, Mr. Nayola voluntarily appeared in court. He explained to the judge why he had missed his appointment and that he was indigent. The judge agreed that he was indigent, but sent him to jail without offering any other means to discharge the judgment.
79. Had Mr. Nayola, at any time, been offered the option of discharging his fines and costs through community service or other alternative means, he would have agreed to do so.
80. As a result of being jailed in violation of his Fourteenth Amendment rights, Mr. Nayola suffered compensatory damages including lost wages and mental anguish.

V. CLASS ACTION ALLEGATIONS

Defined Class

81. Plaintiffs McKee, Jackson, Cato, Coil, Moore, and Nayola seek class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of a class defined as: "All

indigent⁴ persons adjudicated by the City of Amarillo Municipal Court to owe fines and/or court costs who on or after January 14, 2014 were jailed for their failure to pay the adjudicated fines and/or court costs” (“the Class”).

82. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

Numerosity (Rule 23(a)(1))

83. On information and belief, the proposed Class is expected to consist of at least 1,000 members or more and is so numerous that joinder of all of its members is impractical. While the exact number of class members is unknown to named Plaintiffs at the present time, Plaintiffs believe the members of the class to be so numerous as to render joinder of all class members in this action impractical.
84. The City disposes of cases through jail time versus alternative punishment or waiver at a ratio of approximately 47:1. This ratio is irreconcilable with a 17.1 percent poverty rate. Even if impoverished people are marginally over or under-represented in Municipal Court cases, and even if one assumes defendants typically have multiple cases, the statistical evidence is that there are hundreds, if not thousands, of indigent people who have been jailed in violation of their Constitutional rights in the last two years.

⁴ An “indigent” person is consistently defined by Texas law as someone who earns not more than 125 percent of the income level established by the applicable federal poverty guidelines. See e.g. Tex. Local Gov’t Code § 133.002; TEX. TRANSP. CODE § 708.158; and the Armstrong, Potter, and Randall District Court and County Court Indigent Defense Plan submitted in accordance with the Texas Fair Defense Act (Tex. Code Crim. Proc. Art. 26.04).

85. Class members may be identified by court records readily available from Defendant, and notice of the pendency of this action may be provided to class members by mail at the addresses identified in the court records. Supplemental notice may be provided (if deemed necessary by this Court) by means of published notice in one or more newspapers of general circulation within the City of Amarillo or by other Court-approved dissemination methods.

Commonality (Rule 23(a)(2))

86. This action involves questions of law and fact common to the class:
- a. Whether Defendant engaged in the conduct alleged herein;
 - b. Whether Defendant has a policy, practice, and/or custom of arresting indigent persons who cannot pay fines and costs and converting those unpaid monetary sentences to jail time;
 - c. Whether Defendant has a policy and practice of failing to ask about the reasons for a person's failure to pay before jailing that person for failure to pay;
 - d. Whether the Defendant has a policy and practice of not considering alternative punishments before imprisoning a person for failure to pay;
 - e. Whether the City provides notice to debtors that their ability to pay will be a relevant issue at the hearings at which they are jailed and whether the City makes findings concerning ability to pay and alternatives to incarceration;
 - f. What procedural mechanisms, if any, the City uses as matter of policy and practice to determine indigence and ability to pay;
 - g. Whether the City applies state procedural and state and federal substantive law designed to determine indigence and to protect indigent debtors;

- h. Whether the City has a policy and practice of threatening debtors with incarceration for unpaid debts without informing them of their constitutional rights;
- i. Whether the City can employ incarceration, threats of incarceration, and other harsh debt-collection measures (such as applying arbitrary and unreasonable payment schedules) against debtors who cannot afford immediately to pay their debts in full;
- j. Whether the foregoing policies and practices are officially promulgated policies, final decisions by municipal policymakers, practices or customs so widespread and well-settled that knowledge is attributable to municipal policymakers, or the byproduct of Defendant's deliberate indifference to putative class members' rights under the Due Process Clause of the Fourteenth Amendment and/or the Equal Protection Clause of the Fourteenth Amendment;
- k. Whether the foregoing policies and practices violate the Due Process Clause of the Fourteenth Amendment and/or the Equal Protection Clause of the Fourteenth Amendment; and
- l. Whether the Class is entitled to the damages and other monetary relief and if so, what the terms of relief should be.

Typicality (Rule 23(a)(3))

- 87. The claims of the representative Plaintiffs are typical of the claims of each member of the putative Class. Plaintiffs, like all other members of the putative Class, have sustained damages in the form of illegal imprisonment arising from Defendants' unconstitutional policies, practices and/or customs.

88. Specifically, the Plaintiffs were indigent at the time they were jailed and could have satisfied their fines through alternative means of punishment without undue hardship. None of the named Plaintiffs has received unusual treatment by the Defendant.

Adequacy (Rule 23(a)(4))

89. Plaintiffs will fairly and adequately represent the interests of the members of the putative Class. Plaintiffs have no known interests which are adverse to or in conflict with other members of the putative Class that would make class certification inappropriate.

90. Plaintiffs have retained attorneys who are competent and experienced in complex litigation including civil rights litigation. Counsel has handled numerous cases on behalf of individuals who suffered Constitutional deprivations which resulted in personal injury, wrongful death, unlawful convictions, unlawful imprisonment, and other damages.

91. Counsel has experience with class actions as well. Mr. Hoffman is currently representing a putative class of Colorado citizens in the ongoing litigation against Volkswagen and another putative class in a recently filed wage-and-hour claim.

92. Counsel also has extensive experience with substantive and procedural criminal defense law which bears heavily on the issues in this case. Mr. Blackburn is a board-certified criminal defense lawyer who has represented in excess of 1,000 defendants in criminal actions.

93. Counsel has the added advantage of being local. Mr. Hoffman has practiced in Amarillo for approximately 18 years and maintains an office there. Mr. Blackburn

has resided and practiced in Amarillo for approximately 32 years and maintains his office there.

94. Counsel has invested substantial time and resources into becoming intimately familiar with the City's scheme and with all of the relevant municipal, state, and federal laws and procedures that can and should govern it. Counsel has also developed relationships with many of the individuals and families most victimized by the City's practices.
95. Counsel for the putative Class will zealously assert all class members' claims.

Predominance and Superiority (Rule 23(b)(3))

96. The common questions of law and fact (see ¶ 54) arising in this action predominate over any questions solely affecting individual class members. Specifically, the core facts of the Constitutional violations at issue are common to Plaintiffs, and all class members will be pursuing the same legal theories based upon these core facts. More generally, the factual and legal issues concerning the scope and effect of Defendant's policies, practices, and customs alleged herein are:
 - a. Central to the claims of Plaintiffs and all Class members;
 - b. Substantially identical with respect to the burden of demonstrating liability; and
 - c. Consist of the most important and fundamental issues to be determined at trial.
97. The class action mechanism is superior to any alternatives that might exist for the fair and effective adjudication of this cause of action.

98. Proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort, and judicial resources.
99. A class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate.
100. Class treatment is the only realistic means by which indigent Plaintiffs and other members of the Damages Class, with relatively small individual claims, can effectively litigate against a large, well-represented municipality such as the City. If the Class is not certified, it is unlikely that the putative class members will be able to secure counsel and pursue their claims because they are by definition poor and unable to afford a lawyer.
101. Should the putative class members be denied class certification, numerous repetitive individual actions would place an enormous burden on federal courts as they are forced to review duplicative evidence and repeatedly decide over the same issues relating to the conduct of the City.
102. There are no unusual difficulties likely to be encountered in the management of this case as a class action, and Plaintiffs and their counsel are not aware of any reason why this case should not proceed as a class action.
103. The question of damages will also be driven by Class-wide determinations, such as the policies, practices, and customs of the City of Amarillo. To the extent that individual damages will vary, they will vary depending in large part on the amount of time that a person was unlawfully jailed. Determining damages for individual Class members can thus typically be handled in a ministerial fashion based on

easily verifiable records of the length of unlawful incarceration. If need be, individual hearings on Class-member-specific damages based on special circumstances can be held after Class-wide liability is determined—a method far more efficient than the wholesale litigation of hundreds or thousands of individual lawsuits.

VI. CLAIMS FOR RELIEF

Count One: Failure to Inquire Into Ability to Pay and Alternatives to Incarceration (42 U.S.C. § 1983 and Due Process Clause)

104. The City, through its Municipal Code of Ordinances and through the actions of its Municipal Court, judges, court administrators, and police department, has a policy and practice of jailing indigent people without first inquiring into the reasons the person has failed to pay the debt, without determining whether they are indigent, and without considering adequate alternatives to incarceration.
105. The written policy contained in the City's ordinances and the practices of its Municipal Court, judges, court administrators, and police department were the moving force behind the violation of Plaintiffs' rights of due process. All individuals complained of were acting under color of law when they violated Plaintiffs' rights to due process.
106. Jailing a person who is too poor to pay her debt without first inquiring into the reasons she has failed to pay her debt, without determining if she is indigent, and without consideration of adequate alternatives to incarceration violates the Due Process Clause of the Fourteenth Amendment. *Bearden v. Georgia*, 461 U.S. 660, 666 (1983).

Count Two: Commitment to Jail Solely Due to Inability to Pay

(42 U.S.C. § 1983 and Equal Protection Clause)

107. The City, through its Municipal Code of Ordinances and through the actions of its Municipal Court, judges, court administrators, and police department, has a policy and practice of jailing indigent people solely because they are unable to pay their debts arising from fines and costs for fine-only offenses.
108. The written policy contained in the City's ordinances and the practices of its Municipal Court, judges, court administrators, and police department were the moving force behind the violation of Plaintiffs' rights of equal protection. All individuals complained of were acting under color of law when they violated Plaintiffs' rights to due process.
109. Jailing a person solely because they lack the resources to pay a fine violates the Equal Protection Clause of the Fourteenth Amendment. *Tate v. Short*, 401 U.S. 395 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970).

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the members of the Class, respectfully pray for judgment as follows:

- A. Certification of the proposed Class, including appointment of Plaintiffs as representatives of the Class and the appointment of Plaintiffs' counsel as Class counsel;
- B. Damages, including compensatory damages, for the Class members in an amount to be determined at trial;
- C. Pre- and post-judgment interest on any amounts awarded as allowed by law;
- D. Compensatory damages for Plaintiffs for efforts taken on behalf of the Class;

E. Costs and attorney's fees; and

F. For such other and further relief that the Court deems proper.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFFS

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2016, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the CM/ECF system, which will send notification of such filing to the following:

Bryan McWilliams
Assistant City Attorney
William M. McKamie
City Attorney
City of Amarillo
Post Office Box 1971
Amarillo, Texas 79105-1971

/s/ Chris Hoffman

Chris Hoffman