

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
\_\_\_\_\_ DIVISION

NIKITA LEE MAHONEY,  
KIMBERLY ANN SNODGRASS,  
CHRISTOPHER SNODGRASS,  
DETRICK BRANDON,  
TINA MARIE PHARES, and  
DAZARIOUS BRAGGS, individually and  
on behalf of all others similarly situated,

PLAINTIFFS

v. No. 60CV-\_\_\_\_ - \_\_\_\_\_

MARK DERRICK,  
in his official capacity as District Judge  
for the Arkansas 23rd Judicial District

DEFENDANT

**COMPLAINT – CLASS ACTION**  
**DEMAND FOR JURY TRIAL**

**INTRODUCTION & STATEMENT OF THE CASE**

1. This action seeks declaratory relief for thousands of people in White County, Arkansas, who have been and will be deprived of state and federal rights by the policies and practices of District Court Judge Mark Derrick. Those policies and practices have created an illegal, modern-day debtors' prison in White County.

2. A state may not punish an individual just because he or she is poor. The due process and equal protection rights afforded by the Fourteenth Amendment to the U.S. Constitution protect an individual from arrest, detention, incarceration, suspension of a driver's license, or imposition of other penalties, solely because of an inability to pay court-imposed fines, costs, fees, or restitution. Courts have a duty to determine ability to pay before punishing anyone for non-payment.

3. Despite these constitutional protections, Arkansas courts have used incarceration and driver's license suspension, and the threats of such punishments, to attempt to secure payment of court debt. The result is that many of Arkansas's poorest citizens are deprived of their liberty in violation of basic constitutional rights. Perversely, these court-imposed punishments make it more difficult for poorer citizens to pay their debts, let alone support themselves and their families, trapping them in a spiral of repetitive court proceedings, incarceration, and inescapable debt.

4. Judge Derrick's practices are among the most extreme. Judge Derrick routinely levies substantial fines, fees and costs against persons convicted of even the most minor infractions, and requires them to pay monthly amounts of at least \$100, and sometimes several hundred dollars, towards court-imposed debt. If they fail to pay this amount in full, he subjects them to arrest, driver's license suspension, and incarceration, as well as an additional \$450 to \$670 in fines and costs. He imposes these punishments without conducting any inquiry – let alone an adequate one – into the person's ability to pay or the reasons for non-payment.

5. State law requires courts to consider an individual's ability to pay at sentencing and to ensure that payment plans for court-ordered debt do not create undue hardships for defendants or their families. Judge Derrick routinely disregards these laws.

6. When an individual misses even a single payment or pays less than the full amount required monthly, Judge Derrick routinely issues an arrest warrant for failure to pay.

7. Judge Derrick routinely orders those arrested for failure to pay to be jailed for weeks or months, until they pay their entire debt in cash or their case is adjudicated, again without any consideration of whether that person can afford to pay any amount of money.

8. State law requires courts to offer or appoint a defense attorney for an individual promptly after his or her arrest. Judge Derrick routinely disregards this requirement, and waits

until an individual's arraignment, which usually occurs weeks after an arrest, to discuss appointment of an attorney for indigent defendants, and at that time seeks waiver of the right.

9. Judge Derrick routinely sentences individuals convicted of failure to pay to *twice* the length of jail time as those convicted of the most serious misdemeanors under State law. He does not credit the jail time against their debt; instead, the jail time is in addition to new debt imposed.

10. Judge Derrick routinely orders the suspension of an individual's driver's license if he or she misses a scheduled payment or court date. He does not provide sufficient notice to the affected individuals that their license will be suspended or that their ability to pay is at issue. He does not provide these individuals with a prior opportunity to be heard concerning whether they did in fact fail to pay or appear, whether their alleged failure to pay or appear was willful, or whether they received actual notice of the requirement to pay or appear.

11. Thousands of individuals currently owe debt in Judge Derrick's courts and may suffer harm at any time because of his unconstitutional and illegal policies and practices. Many of these individuals are impoverished, and have little or no income. Judge Derrick has jailed some for non-payment while they live in tents or shelters. Some are struggling with addiction or untreated health issues, which are only exacerbated by periodic jailing. Many have jobs and homes, but choose every month which bills to pay. They live in continuing fear that an unexpected expense or job loss will lead to another round of unavoidable jail.

12. For everyone subject to Judge Derrick's practices, pending warrants or license suspension alone may prevent them from obtaining jobs or homes. Arrest and imprisonment for failure to pay have caused individuals to lose jobs, homes, vehicles, even custody of their children, and have also harmed their physical and mental health.

13. Cycles of debt and detention without regard for ability to pay undermine the integrity of the judicial system.

14. Judge Derrick's policies and practices have left many who lack transportation alternatives with the untenable choice of driving with suspended licenses and facing the risk of additional charges and punishment, or losing their employment and not being able to provide for themselves and their families. Understandably, many choose to drive with a suspended license. In Judge Derrick's courts, fines and costs for driving with a suspended license are usually \$650 per suspension, and, statewide, the fee for reinstating a license is \$100 per suspension.

15. Each of the six Plaintiffs named has been convicted of criminal offenses—mostly traffic offenses—in Judge Derrick's courts. Each Plaintiff still owes debt relating to those convictions, in the form of fines and costs or restitution. And each Plaintiff has been and will continue to be harmed by Judge Derrick's unconstitutional and illegal policies and practices. They have been arrested, or threatened with arrest, on warrants for failure to pay at traffic stops, at home, at work, at court-ordered probation visits, in court, and even after contacting police for help. Most have had their driver's licenses suspended multiple times for failure to pay or appear in court. One Plaintiff is still fighting to regain custody of her children because she and her husband were imprisoned by Judge Derrick at the same time, one for failure to appear (on a charge ultimately dismissed) and one for failure to pay court-imposed fines and costs.

16. Judge Derrick has persisted in his policies and practices despite being encouraged by local authorities to reform them to eliminate the constitutional problems alleged and experienced by the Plaintiffs.

17. Plaintiffs, on behalf of themselves and all others similarly situated, respectfully seek declaratory relief from Judge Derrick's unconstitutional policies and practices.

## **JURISDICTION AND VENUE**

18. This is a civil rights action arising under 42 U.S.C. § 1983 and the Fourteenth Amendment to the U.S. Constitution. State law claims are brought pursuant to Ark. Code Ann. § 16-111-101, providing that courts of record have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. This Court has jurisdiction pursuant to Section 6, Amendment 80 to the Arkansas Constitution of 1874, and Section 13, Article 2 of the same.

19. Venue is proper pursuant to Ark. Code Ann. § 16-60-104(3).

## **JURY TRIAL DEMANDED**

20. Plaintiffs demand trial by jury of all issues properly triable thereby.

## **PARTIES**

### **Plaintiffs**

21. **NIKITA LEE MAHONEY** is 32 years old, and a mother of four children between the ages of eight and 14.<sup>1</sup> She resides in Heber Springs, Arkansas (Cleburne County). She is a Certified Nursing Assistant (CNA) and currently works two jobs, primarily with Alzheimer's patients. She was a stay-at-home mom until 2014, when her husband became incapacitated by a rare disease and lost a well-paying job he had held for more than a decade. She became the primary breadwinner for the family by working at Walmart on the overnight shift. She achieved certification as a nursing assistant in October 2015 and began working a CNA position in April

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<sup>1</sup> The allegations in this Complaint are based on Plaintiffs' personal knowledge and recollection of matters in which they were involved, as well as the investigation of counsel, and upon their information and belief.

2016. Since then, she has worked with three companies in White County and two where she now lives, in Cleburne County. The family has had a rough transition since Mr. Mahoney's illness. They have been homeless for periods of time, lived on food stamps, and pawned wedding rings.

22. Plaintiff Mahoney lost custody of her four children last year while both she and her husband were jailed for overlapping days on contempt warrants issued by Judge Derrick. She is still struggling to regain custody. Because she could not afford a cash bail of \$1,315, she spent 42 days in jail on a failure to appear charge. The charge was ultimately dropped. To avoid imprisonment on another contempt charge, she subsequently pled guilty to a charge under a statute that was previously ruled unconstitutional by a Circuit Court in Pulaski County ("Failure to Vacate").<sup>2</sup> This resulted in nearly \$20,000 in additional debt. She has otherwise only ever been convicted of traffic charges. Her vehicle was impounded earlier this year, when her husband was arrested for driving on a suspended license—a license that he recalls was suspended by Judge Derrick for failure to pay. Plaintiff and her husband together owe \$300 in payments per month to Judge Derrick's courts. Mrs. Mahoney refuses to travel through White County anymore, and sometimes travels miles out of her way to avoid it.

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<sup>2</sup> Arkansas law provides that a person who refuses or fails to pay rent, and who, after ten days' written notice to vacate from a landlord, "willfully refuse[s] to vacate and surrender" the premises is guilty of a misdemeanor offense. Ark. Code Ann. § 18-16-101. A Circuit Court in Pulaski County ruled the offense of Failure to Vacate unconstitutional on four separate grounds in January 2015, more than two years before Mrs. Mahoney was charged. *See Arkansas v. Smith*, 60CR-14-2707, Order of Jan. 20, 2015 (Pulaski Cnty Cir. Ct, 4th Div.). According to the opinion, "Arkansas is the only state in America to criminalize a tenant's failure to pay rent while remaining on the landlord's property." *Id.* at 2.; *see also* David Ramsey, "Effort to preserve punishing landlord-tenant law continues," ARKANSAS TIMES, [www.arktimes.com](http://www.arktimes.com), Jan. 26, 2017, available at <https://www.arktimes.com/ArkansasBlog/archives/2017/01/26/effort-to-preserve-punishing-landlord-tenant-law-continues> [last accessed on Aug. 1, 2018]. Mrs. Mahoney's debt in Judge Derrick's court includes a \$17,939.60 order for restitution, relating to a dispute about a gazebo and damage to the property in question, and an additional fine of \$1,050 and costs of \$180 imposed by Judge Derrick at sentencing.

23. **KIMBERLY ANN SNODGRASS** is in her early 40s, and has three children. She resides in Judsonia, Arkansas (White County). Nearly 20 years ago, she struggled with and overcame drug addiction. She married Plaintiff Christopher Snodgrass soon after; they have two now-teenage children, a boy and a girl. Ms. Snodgrass also has an older daughter, who is currently pursuing a degree in music. Ms. Snodgrass worked as a restaurant server at Colton's for approximately eight years, then at a local country club for about two years. She lost her job at the country club five years ago when she relapsed into addiction. Since then, she and Mr. Snodgrass have separated and divorced. She has been only intermittently employed but just started a new job working in a kitchen. She lives with her mother and is trying to get a place of her own by fixing up a nearby home that is currently uninhabitable.

24. Ms. Snodgrass has been convicted of failure to pay by Judge Derrick 10 times in the last four years, each time incurring another \$450 to \$670 in additional debt, and sentences of 30 days' jail time in most cases. She is currently under court order to pay \$300 monthly to Judge Derrick's courts. This is in addition to payments owed for probation supervision and to other courts in White, Independence, and Pulaski counties (plus gas money to get to frequent required appearances). In total, she has been ordered to pay more than \$500 on court debt and probation fees each month, and may be expected to appear for probation check-ins and review hearings on nearly half a dozen different days per month in different counties.

25. Since her first arrest on a warrant issued by Judge Derrick in September 2014, Ms. Snodgrass has spent *one in every three* days of her life in the White County Detention Center, almost wholly for compliance issues. The hardest part of this has been the time spent away from her children. She has also been displaced from homes four times as a result of the jailings, each time losing much of what she and her children owned while the family struggled to move and store

their belongings. Her license has been suspended for non-payment or non-appearance all the while, and she has found it very difficult to obtain or hold down a job because she is arrested and jailed every few months. She has lost two jobs in the last few years as a result of being jailed for failure to pay. She fears that a new jailing or the inability to find a ride to work will cause her to lose her job again, and cost her another month away from her children.

26. **CHRISTOPHER M. SNODGRASS** is a 37-year-old father of two children with Plaintiff Kimberly Snodgrass, and resides in Judsonia, Arkansas (White County). Mr. Snodgrass has accumulated more than \$5,000 in debt due to convictions before Judge Derrick. One thousand dollars of that debt is from contempt convictions, one for failure to appear and one for failure to pay fines. Another \$615 in fines and costs resulted from a trespass conviction Mr. Snodgrass received for showing his daughter the railroad bridge he played under as a boy. The remaining debt is for traffic tickets, including one stop in January 2017 that resulted in four traffic charges and \$1,705 in fines and costs. He still owes around \$3,000 in total. Judge Derrick has suspended his driver's license at least five times in the last four years.

27. Mr. Snodgrass works hard but struggles to get by, support his kids, and deal with unexpected expenses and intermittent job loss, layoff, and jailing for traffic tickets. For the last six months or so, he has held a job constructing metal-framed buildings in Mississippi. He works eight days on, six days off, and rides to and from work with a co-worker. He previously worked at a factory from June 2017 to October 2017. He lost that job when he was jailed by another judge for 30 days for driving on a suspended license. Before that, he worked at an ice cream factory from roughly February 2017 to May 2017. He lost that job due to non-attendance soon after Judge Derrick jailed him for 16 days for failure to pay. Mr. Snodgrass has repeatedly tried to satisfy his debt with community service, but been turned away by local administrators.



28. **DETRICK BRANDON** is 31 years old, and a father of three. He resides in Newport, Arkansas (Jackson County). Mr. Brandon recently served a 30-day sentence from Judge Derrick for failure to pay. Mr. Brandon told Judge Derrick that the jail time would cause him to lose his job, and it did. Two months later, Judge Derrick nonetheless issued another warrant for Mr. Brandon's arrest for failure to pay, with a \$2,175 cash bond.

29. More than 10 years ago, in May 2006, a teenage Mr. Brandon was convicted on felony charges, after following friends into a liquor store after hours. He pled guilty to commercial burglary, theft, criminal mischief, and attempted commercial burglary. He was sentenced to four years' probation and \$5,495 in fines and costs, plus supervision fees of \$25 per month for probation and \$100 per month for jail fees. Due in part to this felony conviction, he has been unable to obtain steady work or pay his debt. In 2006 and 2007, Mr. Brandon failed to make payments, and missed meetings with his probation officer because he was afraid of being arrested for non-payment. As a result, in December 2007, Mr. Brandon's probation was extended by five years. In April 2009, after further cycles of unemployment and non-payment, Mr. Brandon's probation was revoked and he was sentenced to six years in prison. He served between one and two years in prison, away from his children and out of the workforce. Since his release, he has been trying to re-enter society and build a stable adult life, but is burdened with more than \$15,000 in court debt in Jackson County—plus more than \$2,000 now owed in Judge Derrick's courts— as well as periodic arrests and jailings for contempt issues, and a continuously suspended license.

30. Plaintiff Brandon recently regained the job he lost in January, but he missed payments while unemployed and fears he will be arrested again for failure to pay and lose his job.

31. **TINA MARIE PHARES** is 47 years old, and a mother of one, who resides in Beebe, Arkansas (White County). She has an associate's degree and previously worked for years

as an accounts manager. Ms. Phares has spent the last 12 years pushing through incredible tragedy and loss, including the death of her toddler son, the death of her father, an accident that left her husband in an induced coma and hospitalized for a year, and a difficult divorce. The barrage of events left her questioning her faith, and she turned to drugs.

32. In the last three years, Judge Derrick has convicted Ms. Phares of failure to pay nine times and sentenced her to 30 days' jail seven times. Since her first arrest on warrants from Judge Derrick in February of 2015, Ms. Phares has spent *one out of every five* days in the White County Detention Center, mostly for failure to pay. She has been unemployed and effectively homeless. She has been drug-free since entering a treatment program in late 2017. Ms. Phares completed three months' temporary work in early 2018 through a staffing agency, bringing home her first paycheck since her youngest son died. She owes approximately \$15,000 in debt from convictions before Judge Derrick. She is effectively destitute now but determined to start anew.

33. **DAZARIOUS KEYONTA BRAGGS** is 23 years old, and a father of two children, ages two and four. He resides in Searcy, Arkansas (White County). For the past several months, he has worked six days a week at a tire shop. His prior employment in the last four years has been through temporary staffing agencies, at different factories in the area. He has been unemployed for at least one month each year. Mr. Braggs is the sole breadwinner for his young family and struggles to make ends meet financially.

34. Mr. Braggs has only ever been convicted of traffic offenses in Judge Derrick's courts. He owes thousands of dollars, and is obligated to pay \$300 each month in total to three of Judge Derrick's courts. He has been jailed twice as a result of Judge Derrick's practices. In February 2017, Mr. Braggs was arrested on a warrant for failure to appear issued by Judge Derrick. At the time, Mr. Braggs was seeking help from a police detective regarding a bad check he had

received. Mr. Braggs was jailed for nearly three weeks on a cash bail of \$1,120, which he could not afford to pay. He pled for release, explaining that his children depended upon him, and that he had not received notice of the court date. He was released with a new court date only after his family members were able to buy his way out by paying the cash bail in full using a tax refund. The failure to appear charge was ultimately dropped. Mr. Braggs still owes thousands of dollars to Judge Derrick's courts.

35. Plaintiffs **MAHONEY, KIMBERLY AND CHRISTOPHER SNODGRASS, BRANDON, PHARES, and BRAGGS** are together referenced as "Plaintiffs." Plaintiffs seek to represent a class (the "**CLASS**") of all persons similarly situated, namely, "All individuals who owe or will incur fines, fees, costs, and/or restitution as part of a sentence for a misdemeanor criminal conviction imposed by Judge Derrick." Plaintiffs also seek to represent a subclass (the "**INDIGENT SUBCLASS**"), defined as: "All members of the Class who, at the time of any suspension of their driver's license for failure to pay fines, fees, costs, and/or restitution imposed at sentencing by Judge Derrick, cannot or could not pay the debt demanded due to their financial circumstances."

36. Persons other than the Plaintiffs who are members of the Class are referred to below as "class members," or Jane or John Doe.

### **Defendant**

37. **MARK DERRICK** is a state district court judge for Arkansas's 23rd Judicial District. At all times herein mentioned Judge Derrick was acting within the course and scope of his employment and under color of state law. He is sued in his official capacity.

### **FACTUAL BACKGROUND**

### **A. White County and its District Court**

38. White County is the second largest county by land mass and the ninth largest county by population in Arkansas, with approximately 80,000 residents. Approximately 25,000 residents live in Searcy, an hour from Little Rock, and the rest in smaller towns or rural areas.

39. As of 2016, nearly 16% of residents live below the federal poverty line.

40. The State of Arkansas has four levels of courts: District Courts, Circuit Courts, one Court of Appeals, and the Supreme Court. The District Courts are courts of limited jurisdiction. With respect to criminal matters, they have original and exclusive jurisdiction over violations of municipal ordinances, and original jurisdiction over state violations and misdemeanors, concurrent with Circuit Courts. District Courts do not hear felonies.

41. There are no jury trials or court reporters in the District Courts.

42. A person convicted in a District Court may appeal a judgment of conviction to the Circuit Court; the appeal is tried *de novo* “as if no judgment had been rendered” in the District Court. Ark. R. Crim. P. 36. The District Court can delay the Circuit Court’s taking jurisdiction of the appeal for thirty days and require a monetary bond to stay its judgment. *Id.*

43. District Court judges are elected on a nonpartisan ballot for a four-year term.

44. District Courts are organized into numbered judicial districts. The 23rd Judicial District serves White and Prairie Counties. It has two Divisions; one elected judge serves each Division. It has thirteen Departments, which are different physical locations.

45. Judge Derrick presides in eight Departments, in eight towns within White County: Bald Knob, Beebe, Bradford, Judsonia, Kensett, McRae, Pangburn, and Rose Bud. Beebe is the largest municipality served by one of Judge Derrick’s Departments, with a population of

approximately 8,000 residents. Judge Derrick also presides in two Departments, in two towns within Prairie County: Biscoe and DeValls Bluff.

46. Traffic and contempt offenses comprise the majority of Judge Derrick's docket on any given day in each of the Departments.

47. District Courts typically process each charge as a discrete case. For example, one traffic stop may result in separate charges for speeding and driving without a seatbelt. As a result, multiple cases are created, leading to the imposition of multiple sets of fines, costs and fees.

48. Individuals detained pursuant to a warrant or commitment order issued by Judge Derrick are held at the White County Detention Center in Searcy, Arkansas.

#### **B. Judge Derrick was Elected on a Platform of High Fines and Strict Enforcement**

49. Judge Derrick was most recently re-elected in 2016. Just before his most recent election, when "asked the biggest difference between him and his opponent," Judge Derrick said "it's the amount of imposed fines and jail time."<sup>3</sup>

50. He explained: "I know my fines are a lot higher. I have people in my court that owe thousands and thousands of dollars because they keep getting in trouble. Some people may owe \$12,000, \$15,000, or \$20,000. I have a policy: Stay out of trouble for four years. That's a long time. Make your monthly payments. I set everyone at \$100. I want to impress on them that the payments are important. That they need to make it. Make the payments for 48 months and stay out of trouble. Come back before me. I'll verify it and then write off any outstanding balance. If they can do that for four years, they can do it for the rest of their lives. I try to hammer them at the front end and make them want to change, then I give them incentive."

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<sup>3</sup> Dana Hubbard, "Judge feels sentences incentive to change," *The Daily Citizen*, Feb. 29, 2016, available at [www.thedailycitizen.com](http://www.thedailycitizen.com) [last accessed May 24, 2018].

### C. Judge Derrick's Plea and Sentencing Practices<sup>4</sup>

51. Most defendants appearing before Judge Derrick plead guilty or no-contest. Proceedings last a few minutes per case. At arraignment, Judge Derrick reads the individual's name, charge, and what sentence he would impose, then asks some variation of "How do you want to plead?" Many defendants respond: "Guilty."

52. After receiving the guilty pleas, Judge Derrick routinely informs defendants that they need to sign a waiver indicating they understand their rights and wish to proceed without an attorney, and that they have a right to an attorney, including an appointed attorney. If the defendant signs the waiver, Judge Derrick repeats and imposes the sentence.

53. Pursuant to his stated policy, Judge Derrick usually imposes 15 days' jail time (in addition to fines, costs, and fees) upon any conviction for a Class A misdemeanor, which may be served on weekends over a ninety-day period. Class A misdemeanors are the most serious misdemeanors under State law.

54. Judge Derrick also has a custom and practice of sentencing individuals who miss a payment on court-imposed debt, or who make only a partial payment, to 30 days' jail time for failure to pay, to be served immediately and all at once.

55. Judge Derrick routinely sentences individuals convicted of failure to pay to *twice* the jail time of individuals convicted of the most serious State misdemeanors.<sup>5</sup>

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<sup>4</sup> The allegations in Parts C through J of the Complaint describe what often occurs with respect to proceedings in Judge Derrick's courtroom, and are based on the experience of Plaintiffs and facts learned during Plaintiffs' counsel's investigation, which includes observation of Judge Derrick's courtroom.

<sup>5</sup> Plaintiff Phares, for example, has been convicted once of drug-related charges, for possession of drug paraphernalia, which is classified as the most serious kind of misdemeanor under State law, Class A. Judge Derrick sentenced her to \$2,165 in fines and costs, plus one year of probation, and

56. Persons owing less than \$1,000 are often jailed 15 days for failure to pay.

57. Total fines, fees, and costs imposed on the most minor offenses typically range from \$300-\$600 per charge, and usually reach more than \$2,000 for the most serious charges.

58. In Judge Derrick's court, a conviction for driving on a suspended license usually results in a \$600 or \$650 debt; failure to appear costs \$500; failure to pay costs between \$450 and \$650.

59. If an individual is also put on probation, a \$35 monthly supervision fee is added for each case in which the individual is on probation. Judge Derrick often sentences those convicted of driving on a suspended license to six months' probation. Individuals convicted of traffic offenses may also be ordered to attend an eight-hour course on defensive driving, which costs an additional \$80. Individuals might also be ordered to complete community service as a part of their sentence, in addition to debt, jail, and/or probation.

60. Consistent with State law, all debts imposed at sentencing are due immediately. District Judges may permit individuals to enter into an installment plan to pay off their debt if they find the individuals are unable to pay the full debt immediately. State law defines an individual as able to pay if "the resources of the defendant, including all available income and resources, are sufficient to pay the fine and provide the defendant and his or her dependents with a reasonable subsistence compatible with health and decency." Ark. Code Ann. § 16-13-704(d).

61. Per State law, an additional fee of \$10 per month is added to a debtor's balance each month the debtor is on an installment plan.

#### **D. Judge Derrick Requires \$100 Minimum Monthly Payments on Court-Imposed Debt**

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15 days' jail. Judge Derrick has sentenced Ms. Phares to 30 days' jail for the offense of failure to pay, a Class C misdemeanor, the least serious kind of misdemeanor under State law, seven times.

62. Judge Derrick's practice is to order individuals who are put on installment plans to pay \$100 per month toward the debt imposed at sentencing. He issues these orders without conducting an inquiry into the individuals' ability to pay, and without setting a date certain for final payment on the debt that would, as required by State law, avoid creating a severe or undue hardship for the individual or her family.

63. Judge Derrick typically announces this \$100-per-month policy at the start of court proceedings. The policy is also announced on a sign posted outside the courtroom at the Beebe Department, which states: "**ALL FINES ARE DUE ON YOUR COURT DATE.** Judge Derrick will determine if a payment plan can be arranged if you are unable to pay on your court date. **ALL** payments are \$100 per month ...." (emphasis in original).

64. Judge Derrick does not routinely solicit, or direct anyone in his court to solicit, information at sentencing regarding defendants' ability to pay a debt or payment plan imposed.

65. Defendants are sometimes directed to sign a "Time Payment Contract." The "Time Payment Contract" has blank spaces that solicit basic contact information and include information such as the "total fine and cost assessed," "Court Docket Numbers," and a due date for the first payment. The spaces for case numbers and total amount owed are often left blank.

66. The form of the Time Payment Contract order varies slightly between Departments. Some of the orders have a line for the name of an employer, which is also often left blank. None of the orders request information about an individual's income, sources of income, assets, or other liabilities. None of the orders include a date-certain for final payment on the debt.

67. A monthly payment amount of \$100 is preprinted into the Time Pay Contract at many of Judge Derrick's courts.



68. All six Plaintiffs have been put on \$100-per-month payment plans at sentencings before Judge Derrick. None of the Plaintiffs have been permitted to enter any other variety of payment plan.

69. Judge Derrick's payment policy applies to every case and court separately, so an individual with more than one ticket or charge may owe multiple debts, requiring hundreds of dollars per month in payments, to Judge Derrick's various courts.

70. Plaintiffs Tina Phares and Kim Snodgrass, for example, owe \$300 each per month in total to Judge Derrick's courts; each owes \$100 payments to three different Departments.<sup>6</sup>

71. One class member, John Doe I, owes \$500 per month to Judge Derrick's courts. At one point, Doe was ordered to pay \$300 per month to one Department alone, pursuant to three different Time Pay Contracts for three different cases. The three cases all resulted from a single traffic stop, after which Doe was charged with driving on a suspended license, no liability insurance, and a subsequent failure to appear for arraignment on those charges.

72. Individuals who argue inability to pay or request lower payment amounts are typically refused lower payment amounts. Instead, Judge Derrick has told them they may complete 16 hours of community service within the month the payment is due, in lieu of payment.

73. Community service is an illusory option, however. Judge Derrick does not administer the community service he says may be completed in lieu of payment. Rather, individuals must make arrangements with the local police or other authorities in the town where the conviction occurred. They may be denied the opportunity to work at the discretion of other

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<sup>6</sup> Both Ms. Phares and Ms. Snodgrass have also, at one point, been on probation in more than one of Derrick's Departments at the same time, resulting in the addition of up to \$115 owed per month for probation supervision (\$35 times three). Ms. Snodgrass also owes monthly payments in two other Counties. Neither Plaintiff has had a steady income since incurring debt in Judge Derrick's courts.

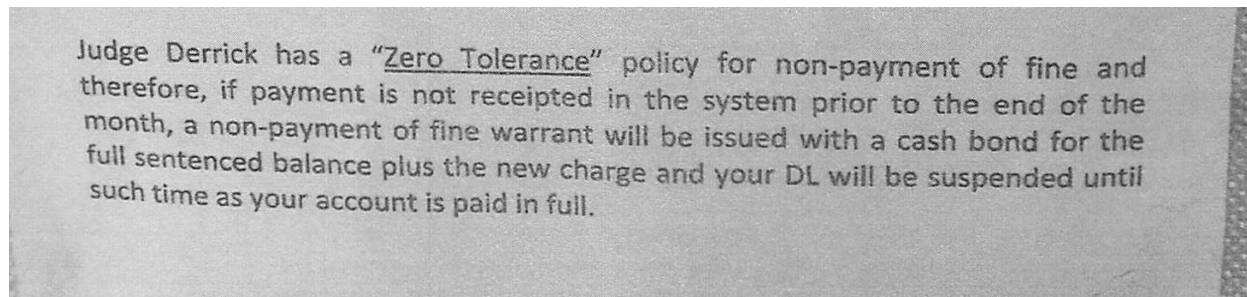
municipal officials for any reason, including that there is no work available that day, not enough work available, or that no one is available to administer it. Plaintiff Christopher Snodgrass, for example, has tried and failed three times to complete community service by reporting to the police department in Judsonia. On one occasion, because his driver's license is suspended, Mr. Snodgrass walked to the police station in below-freezing weather only to be told that it was too cold to work that day.

74. On information and belief, there is frequently no community service available at all in the town of Beebe. There is frequently no community service, or any alternative, available anywhere for those who are disabled or unable to perform the manual labor entailed (such as cleaning pens at the animal shelter, cleaning offices, or roadside cleanup work).

75. On information and belief, court costs may not be satisfied by completion of community service. They must be paid in full.

**E. Judge Derrick Has a “Zero Tolerance” Policy Regarding Non-Payment of Debt**

76. Judge Derrick maintains a “Zero Tolerance” policy towards the non-payment of court-imposed debt. The Zero Tolerance policy is posted on a sign in the Beebe Department.



77. The sign states: “Judge Derrick has a ‘Zero Tolerance’ policy for non-payment of fine and therefore, if payment is not receipted in the system prior to the end of the month, a non-

payment of fine warrant will be issued with a cash bond for the full sentenced balance plus the new charge and your DL will be suspended until such time as your account is paid in full.”

78. Judge Derrick also announces this policy at the start of most court proceedings, stating “If you fail to make a payment, a warrant will issue for your arrest.”

79. Pursuant to this Zero Tolerance policy, Judge Derrick routinely issues warrants charging individuals who have missed a payment with “Failure to Pay Time Pay,” even if a debtor contacts the clerks in one of Derrick’s courts to seek an extension, make a partial payment, or plead inability to pay.

80. Extensions are occasionally granted, and partial payments are sometimes accepted, but individuals are usually nonetheless told that a warrant may issue for their arrest.

81. A sign posted in the Kensett Department informs debtors that they are allowed two extensions annually.

82. Plaintiff Mahoney was told by a clerk in the Beebe Department that a warrant would issue for her arrest even if she made a payment of \$99.99.

83. One member of the Class, Jane Doe I, who works two jobs but pays half her income toward child support and otherwise survives on just a few hundred dollars monthly, consistently made payments between \$10 and \$30 toward her speeding ticket, for months, explaining each time that she did not have the money to make larger payments. The court nonetheless issued a warrant for failure to pay (and later sentenced her to jail for contempt of court).

84. Multiple Class members have been arrested for failure to pay while they were attempting to make the payments to the clerk that they had missed.

85. All of the Plaintiffs have informed Judge Derrick and/or his clerks that they are unemployed or struggling to get by, but all of the Plaintiffs have nonetheless had warrants for failure to pay issued by Judge Derrick for their arrest.

86. In March of 2017, Judge Derrick issued a warrant from the Beebe Department for Plaintiff Kimberly Snodgrass's arrest for failure to pay just 14 days after she was released from a 30-day sentence on a failure to pay conviction in the Beebe Department.

87. In December of 2016, Judge Derrick issued a warrant from the Beebe Department for Plaintiff Phares's arrest for failure to pay less than month after she was released on two *consecutive* 30-days sentences for convictions of failure to pay. Ms. Phares was arrested on September 4, 2016, on three warrants for failure to pay issued by Judge Derrick. She was convicted in two Departments, Beebe and Kensett, and released on November 4, 2016, with a new court date in Judsonia for her third failure to pay charge. The Beebe Department filed a *new* failure to pay charge on December 1, 2016. Ms. Phares appeared as ordered in the Judsonia Department six days later, on December 7, 2016, and pled guilty to failure to pay. She was arrested again four months later, on April 2, 2017, on the December 2016 warrant for failure to pay from Beebe, and on another warrant for failure to pay issued from Kensett in the meantime.

88. As a result of Judge Derrick's policy, practice, and custom, more than 4,000 warrants for failure to pay fines were issued in the Beebe Department alone between April 2016 and April 2018. The Beebe Department serves a community of just 8,000 people.

**F. Judge Derrick Detains Poor Debtors on Cash Money Bail Equal to the Total Amount of Court-Imposed Debt Owed in the Department or Case, Without Consideration of Their Ability to Pay the Bail**

89. Pursuant to his Zero Tolerance policy, Judge Derrick routinely issues warrants for failure to pay that require a cash-only bail amount equal to the total court-imposed debt owed plus the fines and costs he would impose on the new charge for failure to pay.

90. Pursuant to his other customs and policies, Judge Derrick also generally issues warrants for failure to appear with fixed cash-only bail amounts.

91. Pursuant to State law, individuals who are arrested and not promptly released on bail must be “taken before a judicial officer without unnecessary delay.” Ark. R. Crim. P. 8.1.

92. Individuals detained in the White County Detention Center are usually brought before one of the 23rd Judicial District judges within hours or up to three days after arrest. This is commonly called a “First Appearance.”

93. The two 23rd Judicial District judges take turns presiding over First Appearances on any given day. Arrested individuals will have their First Appearance before whichever judge is presiding that day, regardless of which court originated the charges resulting in detention.

94. There is no standard practice, including the use of any form, to elicit relevant financial information from an individual at a First Appearance.

95. Judge Derrick routinely does not consider alternative bond conditions when individuals arrested for failure to pay or appear have a First Appearance before him.

96. Individuals who cannot afford to pay the cash bail amount are generally held in jail until their arraignment on the contempt charges alleged in the warrants.

97. Arraignments are usually set one to three weeks from the date of arrest.

98. In the smallest Departments, where Judge Derrick only sits once a month, individuals can be jailed nearly a month waiting for arraignment. Because the maximum sentence for failure to pay is 30 days, individuals unluckily arrested soon after Judge Derrick’s visit to a

small Department and who cannot afford to pay the bail amount effectively serve a maximum sentence before they have even had a chance to plead guilty or not guilty.

99. All of the Plaintiffs were detained after arrest for failure to pay or appear on cash bails set by Judge Derrick that they could not afford to pay, without any consideration of their ability to pay the cash amount demanded, before or after Judge Derrick set the bail conditions.

100. Plaintiffs Brandon, Christopher and Kim Snodgrass, and Phares were effectively sentenced to time served by Judge Derrick on at least one occasion, each after waiting in jail on cash bails for between two weeks and one month to be arraigned on their charges for failure to pay.

101. Plaintiff Brandon was arrested on January 10, 2018, and detained on a warrant with a cash only bond, in the amount of \$1,665. He had his First Appearance before Judge Derrick on January 12. Mr. Brandon informed the judge that he had started a new job just a few weeks before and that company policy indicated he would be fired if he missed more than eight days of work. That same day, Mr. Brandon submitted a request through an electronic kiosk available at the jail, seeking a reduced bond and stating::

“i need a paper bond<sup>7</sup> to post bail i just got paid Thursday in I cant make a \$1500 cash bond im trying to get out so i can keep my job in set up a thing w[h]ere the[y] ca take money from my check every week i just got this job in i really don’t want to l[o]se it like this all im ask for is 1 chance please I will not let you down just trust in me this 1 time please in thank you.”

Judge Derrick did not alter the \$1,665 cash bail order, and Mr. Brandon remained in jail. Mr. Brandon was not arraigned on the charge until February 9, 2018. He pled guilty and was sentenced to 30 days’ jail, with 30 days’ credit. He lost his job as a result.

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<sup>7</sup> This is a request for a bond order that would permit Plaintiff Brandon to pay 10% of the total order to a bonding agent, who would serve as a surety to the court for the full amount if Plaintiff Brandon would fail to appear at the next scheduled court date.

102. Plaintiffs Braggs and Mahoney were both detained for weeks on cash bails for failure to appear charges on which they were ultimately not convicted.

103. Mr. Braggs attempted to obtain a bail order change through an electronic kiosk at the jail. Mr. Braggs was arrested (after speaking with the police to report a bad check) on February 6, 2017, on charges of failure to appear before Judge Derrick, and contempt for failure to pay, on a warrant from a different judge, on an old juvenile conviction. Mr. Braggs was given a new court date and released on his own recognizance on the failure to pay charge on February 13. That day, he asked Judge Derrick through the electronic kiosk if he could be released on a “paper bond” for the failure to appear. He explained that he was unaware of the court date he allegedly missed, has “a family at home that relies” on his support, and that, if he were released, he could file his tax return and then pay off his outstanding debt with his tax refund. Judge Derrick refused the request. Mr. Braggs was not released until ten days later, when one of Mr. Braggs’ family members was able to use money from a different tax refund to bail him out. The failure to appear charge was ultimately dismissed, as court error.

104. Plaintiff Mahoney was held for 42 days on a cash bail of \$1,315 that she could not afford to pay on a charge of failure to appear that was ultimately not prosecuted. Mrs. Mahoney was arrested on June 22, 2017, for failure to appear in the Beebe Department. At the time, she and her family had just returned from a two months’ stay in Indianapolis, where her husband unsuccessfully sought contract work. She had a job lined up with a former employer and was scheduled to begin orientation within days. During a First Appearance before Judge Derrick on June 23, she explained to him that she was currently the sole breadwinner for her family of four young children and husband and that she could not afford to pay the cash bail. Judge Derrick did not change the bail order, and she remained detained. She was brought from jail for arraignment

three weeks later and explained to Judge Derrick that she had been given a different court date than the one at which she allegedly failed to appear. Judge Derrick accepted this as a plea of not guilty, assigned Mrs. Mahoney a public defender (with a \$200 fee), and set a new court date for August 2, 2017, nearly three weeks later. He did not change the bail order; she remained jailed.

105. Plaintiff Mahoney realized that her attempt to explain that she was not guilty meant she would be jailed another three weeks only as she returned to her cell. Desperate to return to her family, she wrote multiple letters to the local prosecutor pleading guilty and begging to be released. No further action was taken on the case until she appeared again before Judge Derrick on August 2, at which point the prosecutor dropped the failure to appear charge.

106. While Mrs. Mahoney was jailed for those 42 days, she lost the job she had waiting for her, was thrown off her regular medications, and missed her son's first lost tooth.

107. Worse still, her husband was also arrested while she was jailed, on July 28, 2017. On July 25, Mrs. Mahoney was mistakenly informed that she had been given a new court date of July 28. On that day, Mr. Mahoney arrived at the White County Detention Center thinking his wife would be released with time served and ready to come home. Instead, Mr. Mahoney was arrested at the jail, on a warrant for failure to pay issued by Judge Derrick, with a mandatory cash bail. Mr. Mahoney did not have a First Appearance until four days later, on July 31; he appeared before Judge Derrick and explained that both he and his wife were now jailed, that he had left their four kids with family, and could not pay the cash bail, but needed to be released immediately to resume caretaking duties. Judge Derrick denied him release and did not alter the bail order.

108. Mr. Mahoney was detained another 25 days until he appeared for arraignment and pled guilty to failure to pay. Judge Derrick sentenced him to new fines and costs plus 30 days' jail, with 28 days' credit. He was released on August 27.



109. When Mr. Mahoney did not return home with Mrs. Mahoney as expected on July 28, their children were reported as “abandoned” and taken into custody by the State. The Mahoneys are still trying to regain custody.

110. Many other Class members have lost jobs, home, and health while detained on cash bails they could not afford to pay. One Class member, John Doe II, who was not timely given his heart medications, nearly died of a heart attack while detained on a cash bail he could not afford, on a warrant for failure to pay. Another, Jane Doe II, was evicted after she missed a rent payment while jailed three weeks on a cash bail, waiting for her arraignment on a three-year-old failure to pay charge.

#### **G. Judge Derrick Routinely Ignores State Law Requiring Early Appointment of Counsel**

111. Pursuant to Ark. R. Crim. P. 8.2(a), a “judicial officer shall determine whether the defendant is indigent and, if so, appoint counsel to represent him or her at the first appearance, unless the defendant knowingly and intelligently waives the appointment of counsel.”

112. Judge Derrick routinely ignores Rule 8.2. When he presides over First Appearances, he does not ask defendants if they need an appointed attorney, conduct indigency determinations, or secure knowing and intelligent waivers of appointment of counsel.

113. Plaintiffs Brandon, Christopher and Kimberly Snodgrass, and Phares all pled guilty to contempt of court for failure to pay and were sentenced to terms of imprisonment without ever speaking to an attorney. None was questioned concerning the appointment of counsel during their First Appearances; all signed documents waiving their right to counsel at arraignment, weeks after their arrests, and after pleading guilty.

114. Like many Class members, Plaintiffs Brandon, Christopher and Kimberly Snodgrass, and Phares believe that had they asked for an attorney at arraignment, they would have spent weeks in jail waiting for a court-appointed attorney.

115. As discussed above, Judge Derrick once appointed a public defender for Plaintiff Mahoney at her arraignment. Judge Derrick had neither previously asked her if she wanted an attorney nor appointed her one before this date. The appointment did in fact result in her spending more time in jail than she likely would have had she simply pled guilty without an attorney.

**H. Judge Derrick Routinely Sentences Individuals to Jail for Non-Payment Without Notice That Their Ability to Pay Is at Issue or Meaningful Inquiry Into Their Ability to Pay**

116. Judge Derrick does not solicit information regarding defendants' financial situation or their ability to pay, even when defendants plead guilty before him for failure to pay.

117. Willful disobedience of a court order is a Class C misdemeanor under State law. A maximum of 30 days' jail and a \$500 fine, as well as costs and fees, may be imposed upon a resulting conviction for contempt.

118. Non-compliance with a court order is not a crime unless it was willful.

119. Decisions of the United States and Arkansas Supreme Courts firmly establish that one who does not have the ability to comply does not willfully disobey an order.

120. Judge Derrick's "Time Payment Contract" causes debtors to believe that they are guilty of a criminal offense for non-payment alone. It states: "I understand that if I fail to comply with this agreement or do not make payments as agreed, the Court will issue a Warrant for my

arrest, at which time the existing balance must be paid in full plus a \$450.00 Warrant Fee for failing to comply.”<sup>8</sup>

121. Many individuals plead guilty to a charge of contempt for failure to pay because they believe that any non- or partial payment is commission of the offense.

122. Judge Derrick does not inform debtors that their ability to pay is relevant to the question of whether they are guilty of a criminal offense for non-payment of fines. He simply asks most individuals how they would like to plead, and then accepts their guilty plea.

123. Most of the named Plaintiffs have pled guilty to contempt for failure to pay before Judge Derrick. Judge Derrick knew that most of them were unemployed when they were charged with failure to pay and when he accepted their guilty pleas. Judge Derrick did not make any inquiry into Plaintiffs’ income, assets, or liabilities before accepting their guilty pleas or before sentencing them to punishment.

124. Judge Derrick has convicted Plaintiff Phares of contempt of court for failure to pay nine times since July 2015. All of her jail records indicate that she was unemployed at the time of her arrest. Judge Derrick has sentenced her to 30 days’ jail for failure to pay seven times. On one occasion, she spent two consecutive months in prison for failure to pay in Judge Derrick’s courts—30 days for a conviction in Beebe and then 30 days for a conviction in Kensett.<sup>9</sup>

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<sup>8</sup> Plaintiff Mahoney appears to have been assessed something like this “Warrant Fee” penalty, twice, without pleading guilty or being found guilty of contempt for failure to pay. In the fall of both 2014 and 2017, Plaintiff Mahoney was arrested on a warrant for failure to pay fines issued by Judge Derrick. On both occasions, she was released before arraignment by paying a cash bond and then later appeared at her scheduled arraignment. Court records indicate only a disposition of “Bond Forfeit” and payments of \$505 each time. Under “Plea” each record says “NONE.” Under “Finding” each record says “NONE.” She was not sentenced to any jail time for these ambiguous convictions.

<sup>9</sup> Plaintiff Phares was also charged with failure to pay in the Judsonia Department at the same time. When she appeared for arraignment on that charge, while jailed, she simply asked if Judge Derrick

125. Judge Derrick has convicted Plaintiff Kimberly Snodgrass of contempt of court for failure to pay 10 times in the last four years. All but one of her jail records indicate she was unemployed at the time of arrest. Judge Derrick has sentenced her to 30 days' jail for failure to pay seven times and to lesser sentences three times (29, 17, and four days).

126. Both Ms. Phares and Ms. Snodgrass have been jailed for 150 days or more on failure to pay warrants issued by Judge Derrick alone, and both have additionally incurred between \$4,000 and \$5,000 in fines and costs for the same charges over the last three or four years. Both have tried to work intermittently, but find it very hard to obtain and maintain jobs due to their license suspensions, frequent jailings, and required court and probation appearances. Both live in small towns where their "problems with the law" are well known, including by employers. Both have lost jobs because of their entanglement with Judge Derrick's courts. Both have worked more in the kitchen at the White County Detention Center than anywhere else in the last few years.<sup>10</sup>

127. Plaintiff Christopher Snodgrass has been convicted of contempt of court for failure to pay by Judge Derrick once and sentenced to 16 days in jail. He lost his job soon after he was jailed due to non-attendance.

128. Plaintiff Brandon has been convicted of contempt of court for failure to pay by Judge Derrick once and sentenced to 30 days in jail. He lost his job as a result of the jailing.

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could run her jail time concurrent with the other charges. He advised her that if she pled not guilty he might reduce her bond on the Judsonia charge. She pled not guilty and was released on that charge with a new court date. She appeared for that court date in Judsonia, pled guilty, and was given more fines and costs but no new jail time.

<sup>10</sup> Inmates who work at the White County Detention Center are "trustees." Trustees in the kitchen work approximately fourteen hours a day with one short break. Trustees are not paid for their labor or given any credit against their debt or jail term—they are given an extra half portion of food each day.

129. Judge Derrick has convicted hundreds of other Class members in the last year of contempt for failure to pay and sentenced them to terms of imprisonment in the same manner.

**I. Judge Derrick Routinely Suspends Driver's Licenses Upon Alleged Non-Payment or Alleged Failure to Appear, Without Notice or Adequate Opportunity to Be Heard**

130. Pursuant to his Zero Tolerance policy, in addition to arresting and jailing poor debtors, Judge Derrick directs clerks in his courts to prepare and submit an order to suspend an individual's driver's license when a warrant is prepared for that individual charging him or her with contempt for failure to pay.

131. Pursuant to his own policy and practice, Judge Derrick also orders an individual's license to be suspended for any alleged failure to appear. When Judge Derrick calls someone's name in court, and he or she does not appear before him within a minute or two, he directs a clerk to issue a warrant for the individual's arrest and to suspend the individual's driver's license.

132. At Judge Derrick's direction, court staff execute an order to suspend an individual's license by faxing or sending a written order to the State Department of Finance and Administration's Driver Control Section, or by directly inputting the order into an electronic database linked to or housed at Driver Control.

133. The written order for license suspension includes basic information identifying the subject driver; a line that says only "REASON:" "Failure to Pay" or "Failure to Appear;" the name of the original violation, offense date, and citation number, and one formulaic sentence: "This Court being well and sufficiently advised, does hereby order the Department of Finance and Administration, Driver Control Section, to Suspend driving privileges indefinitely."

134. Driver Control automatically suspends driver's licenses pursuant to orders from District Judges. Orders from Judge Derrick's courts to suspend an individual's license appear on the individual's Driver Control record as ordered by the relevant Department.

135. Pursuant to State law, a District Judge “may certify in writing to the Department of Finance and Administration that a debtor has failed to make satisfactory arrangements for the payments of fines and request the department to revoke, suspend or refuse to renew the debtor’s motor vehicle registration or driver’s license.” Ark. Code Ann. § 16-13-708(a).

136. Pursuant to State law, a license suspended under Ark. Code Ann. § 16-13-708 is suspended indefinitely, and conditioned upon the affected driver’s ability to pay outstanding court-imposed debt and/or the arbitrary satisfaction of a District Judge.

137. Pursuant to State law, a District Judge may also suspend the driver’s license of any individual who, “having been served with any form of notice to appear for any criminal offense, traffic violation, or misdemeanor charge,” fails to appear. Ark. Code Ann. § 16-17-131.

138. Pursuant to State law, “the license shall be suspended until the person appears and completes the sentence ordered by the court.” Ark. Code Ann. § 16-17-131(b)(2).

139. Pursuant to State law and Judge Derrick’s policy and custom, there is no pre-deprivation notice to an individual that his or her license will be suspended under Ark. Code Ann. §§ 16-13-708 or 16-17-131; no explanation of what he may do to avoid suspension; and no opportunity to be heard as to whether: 1) he or she in fact appeared or made “satisfactory arrangements” for the payment of court-ordered debt; 2) was in fact ordered to pay or appear; or 3) whether he or she has or had any ability to comply with the relevant order.

140. On information and belief, after an individual’s license has been suspended, Driver Control sends the individual a letter informing him or her of the suspension and the amount of reinstatement fees owed, but without instructions as to how one may challenge the suspension.

141. Neither Judge Derrick nor his court staff routinely provide individuals with any notice that he has ordered their license to be suspended or any information as to how to resolve the suspension.

142. Many individuals whose license has been suspended first learn of the suspension when they encounter law enforcement during traffic stops and receive a ticket for driving on a suspended license.

143. Pursuant to State law, an individual caught driving while his license is suspended is guilty of a misdemeanor and “shall be punished by imprisonment for not less than two (2) days” and up to *six months*, in addition to a maximum \$500 fine. Ark. Code Ann. § 27-16-303.

144. Pursuant to State law, there is a \$100 reinstatement fee charged for every order to suspend an individual’s driver’s license, which must be paid before the license will be reinstated. Ark. Code Ann. § 27-16-508. An individual whose license is repeatedly suspended may thus owe hundreds or thousands of dollars in fees to the State that must be paid before their license is restored.

145. Upon information and belief, when White County law enforcement officials find an individual driving on a suspended license, the driver is arrested. Typically, if there is no passenger or nearby friend or relative who can drive the vehicle following the driver’s arrest, the vehicle is impounded. There is a fee of approximately \$250 to retrieve a vehicle from impound, and the vehicle incurs storage fees for every day it remains in impound.

146. Plaintiffs Christopher and Kimberly Snodgrass, Mahoney, and Phares have all had their driver’s licenses suspended for alleged failure to pay pursuant to Judge Derrick’s orders.

147. Plaintiff Christopher Snodgrass has had his driver’s license suspended five times in the last four years per Judge Derrick’s orders: once for failure to pay by the Beebe Department,

three times for failure to appear by the Judsonia Department, and once for failure to appear by the Kensett Department.

148. Plaintiff Kimberly Snodgrass has also had her driver's license suspended at least five times in the last four years per Judge Derrick's orders: twice for failure to pay and once for failure to appear by the Bald Knob Department, and once each for failure to pay and failure to appear by the Beebe Department. On information and belief, she owes \$1,200 in reinstatement fees.

149. Judge Derrick has suspended Plaintiff Mahoney's driver's license at least twice in the last four years for failure to pay, through the Beebe Department. Judge Derrick has also suspended Mrs. Mahoney's husband's driver's license for failure to pay at least once. As a result of the suspension, Mr. Mahoney was arrested for driving on a suspended license. Although Mrs. Mahoney was also in the car, she could not drive the vehicle away because her own license was also suspended. The vehicle was impounded and the Mahoneys remain unable to retrieve it.

150. Judge Derrick has also suspended Plaintiff Phares' driver's license at least twice in the last three years for failure to pay, once each through the Beebe and Judsonia Departments.

151. The Due Process Clause of the Fourteenth Amendment requires government officials to provide notice and an opportunity to be heard before depriving an individual of a liberty or property interest. A state's issuance of a driver's license creates a property interest protected by due process.

152. No notice was given to any of the Plaintiffs that their license was about to be suspended before the suspension was executed at Judge Derrick's direction.

153. No hearing or opportunity to be heard was given to the Plaintiffs as to whether they had in fact appeared, paid, or made arrangements to appear or to pay, or whether the Plaintiffs



were in fact ordered to do so by the date alleged, or as to any reasons for the alleged non-payment or non-appearance.

154. The suspension of an individual's driver's license threatens one's ability to earn a livelihood, care for dependents, and meet basic human needs. This is especially true in White County, which does not have public transportation. The County is not densely settled or populated. Most individuals need to drive themselves, or be driven by another, in order to get to work, school, medical appointments, or court-ordered appearances.

155. One class member, John Doe III, has to walk 20 minutes just to get to a road at the end of the gravel driveway leading to his home.

156. As of 2016, nearly 96% of White County residents drove to work: 82.1% drove to work alone, and 11.7% drove to work in a carpool. The average commute time for White County residents was approximately 23 minutes.

157. The suspension of an individual's driver's license, pursuant to State law and to Judge Derrick's policies and customs, perversely makes it harder for someone unable to pay court-ordered debt to earn the funds to pay the court-ordered debt and therefore to support themselves and their dependents.

158. Judge Derrick's practices cause harm beyond Plaintiffs and the Class, and extends to their families – particularly minor children. Five of the Plaintiffs have children who are younger than 18 years old. Judge Derrick's debt collection and non-payment punishments have made it difficult for Plaintiffs to earn a living and take care of their families. These practices have also endangered parental custodial rights. Plaintiffs' children, and the children of indigent members of the Class, have suffered as a result.

159. Plaintiff Christopher Snodgrass, for example, has been told by multiple employers that they could not hire him because he lacked a valid driver's license.

160. Plaintiff Brandon has not held a valid driver's license since he was 18 years old, as a result of his inability to pay a debt associated with a twelve-year-old felony conviction. For the last 12 years, he has tried to make a living by working odd jobs through family members, or by seeking employment at places where he knows others work and with whom he can carpool. He feels that his inability to drive legally has been a tremendous obstacle to building an adult life.

161. The Equal Protection Clause of the Fourteenth Amendment requires that any classification intentionally drawn between two groups of people be at minimum rational.

162. Individuals who can afford to pay all debt imposed at sentencing in Judge Derrick's courts, or in any District Courts, are not subject to license suspension pursuant to Ark. Code Ann. §16-13-708. Only individuals who cannot afford to pay all debt imposed immediately are subject to the loss of their driver's license for failure to pay alone. This distinction subjects poor debtors to unequal and unconstitutional punishment for their poverty.

#### **J. Recordkeeping in Judge Derrick's Courts Is Prone to Error**

163. The systemic challenges described above are exacerbated by the minimal recordkeeping that occurs in Judge Derrick's courts. As a result, defendants before Judge Derrick are often uninformed or misinformed regarding the status of their debt and their court dates.

164. If an individual asks for a receipt for payment or a printout of what he or she owes on a court date, he or she is likely to be told to come back another day when court is not in session, regardless of whether their license is known to be previously suspended.

165. Time Pay Contracts frequently only show the individual's name, a payment due amount of \$100, and the next payment date. They do not summarize the total debt owed on an individual case or on all cases in a particular Department.

166. Although payment histories are electronically stored, the case file of any given individual often reveals hand-edited changes to payments made or amounts due, often without referencing the reason for the changes.

167. In some Departments, all payments must be cash or money order, so there is no electronic record of a debtor's payment other than that kept by Judge Derrick's courts.

168. Warrants for failure to pay or failure to appear are issued in boilerplate form, without any supporting affidavit or narrative detailing what or when the warrant subject allegedly failed to pay or appear, or whether the individual has made any contact with the court to explain the missed payment or appearance or seek an extension, or made any partial payment.

169. In some Departments, there may be delays of weeks or even months between when a clerk prepares a warrant for failure to pay and when Judge Derrick signs and issues the warrant.

170. Summonses to appear in court are not provided or recorded in any uniform way.

171. Individual case files do not contain copies of any documents evidencing that an individual has been given notice of any court date other than those that may be shown on a citation or warrant. Electronic dockets do not record any information indicating when or how an individual was informed of a changed court date or any date subsequent to the initial appearance.

172. Copies of warrants that are kept in individual case files reveal that they do not consistently inform an individual of their scheduled court dates.

173. Most individuals are never even shown or provided copies of the warrants upon which they are arrested. They are forced to rely on jail staff to tell them their court dates. Court

dates that occur while they are jailed are communicated in person or through an electronic kiosk. Court dates that occur after release are generally provided by jail staff on a small piece of paper for released inmates to take with them.

174. Judge Derrick's practice of assigning alternate arraignment dates amplifies confusion about court dates. Judge Derrick assigns arraignment dates based on whether and for how long an individual is detained pretrial. If an individual is not released on bail before his or her First Appearance, Judge Derrick generally sets an individual's arraignment for a court date between one and three weeks later; but, at the same time, he will set an alternate court date, later in time, to be used if the individual is released on bail before the earlier arraignment date.

175. Plaintiff Christopher Snodgrass's driver's license was suspended twice for failure to appear on the same ticket for "No Seatbelt," in June and September of 2016. According to the court's docket for the ticket, he was given an initial court date for arraignment of June 15 and did not appear; Judge Derrick issued a warrant for failure to appear and, on June 18, suspended Mr. Snodgrass's driver's license for one month. Judge Derrick suspended Mr. Snodgrass's driver's license again on September 21, indefinitely, and on September 24 issued another warrant for failure to appear. The notation "2d No Seat Belt" is handwritten on the warrant. There is no indication in Mr. Snodgrass's file of when he was supposed to appear for the second time on the No Seatbelt charge or whether he was properly notified and ordered to appear at that court date. Mr. Snodgrass does not recall receiving notice of a second court date.

176. On any given day in court, one or more individuals are likely to point out an error in either a court date given or a payment not recorded.

### **CLASS ACTION ALLEGATIONS**

177. All of the named Plaintiffs bring this action, on behalf of themselves individually and on behalf of all others similarly situated, to assert all claims in this Complaint on a common basis.

178. This action is brought and may properly be maintained as a Class Action under Rule 23(a)(1)-(4) and Rule 23(b) of the Arkansas Rules of Civil Procedure.

179. The Plaintiffs will seek to certify a class (the “Class”), defined as: “All individuals who owe or will incur fines, fees, costs, and/or restitution as part of a sentence for a misdemeanor criminal conviction imposed by Judge Derrick.” The Plaintiffs will also seek to certify a subclass (the “Indigent Subclass”), defined as: “All members of the Class who, at the time of any suspension of their driver’s license for failure to pay fines, fees, costs, and/or restitution imposed at sentencing by Judge Derrick, cannot or could not pay the debt demanded due to their financial circumstances.”

180. A class action is the only practicable means by which Plaintiffs and unknown Class members can challenge Judge Derrick’s unlawful debt-collection scheme, warrant practices and detention policies.

181. The Plaintiffs are the proposed representatives of the Class and the Indigent Subclass.

182. All four requirements of Rule 23(a) are satisfied.

a. *Numerosity*: Joinder of all class members is impracticable because of the size of the Class and the Indigent Subclass. Tens of thousands of individuals are current or future members of the Class. Thousands of individuals are convicted of misdemeanor offenses in Judge Derrick’s courts each year, cannot pay that debt immediately, and are or may be subject to harm as a result of Judge Derrick’s unconstitutional and illegal policies, practices, and customs. Between April 2016 and April 2018, there were more than 4,000 warrants issued for failure to pay

alone in the Beebe Department, which is only one of eight of Judge Derrick’s courts. Between August 1, 2017, and August 1, 2018, there were approximately 300 bookings at the White County Detention Center on warrants for failure to pay alone.<sup>11</sup> During the same period, another approximately 300 bookings were for failure to appear alone. Thousands of individuals are also current or future members of the Indigent Subclass. Thousands in White County live below the federal poverty line. The median household income in White County in 2016 was \$42,197 and the per capita income was \$22,510.<sup>12</sup>

b. *Commonality*: There are questions of law and fact common to all members of the Class and Indigent Subclass, including, but not limited to:

i. whether Judge Derrick has a policy, practice, or custom of arresting and incarcerating individuals for non-payment of fines, fees, costs, and restitution without first conducting an inquiry into the reasons for non-payment and determining that non-payment was willful, and whether such policies, practices, and customs violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

ii. whether Judge Derrick has a policy, practice, or custom of ordering individuals detained on monetary bail conditions without inquiring as to the ability of individual defendants to pay the amount of bail, and whether such policies, practices, and customs violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

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<sup>11</sup> This number does not include bookings for individuals charged with failure to pay and anything else, for example, a booking on warrants for both failure to pay and for failure to appear.

<sup>12</sup> “White County, Arkansas,” United States Census Bureau Quick Facts, *available at* <https://www.census.gov/quickfacts/fact/table/whitecountyarkansas> [last accessed July 30, 2018].

iii. whether Judge Derrick has a policy, practice, or custom of suspending the driver's license of anyone who allegedly misses a court-ordered debt payment or appearance, without providing meaningful, pre-deprivation notice or opportunity to be heard, and whether such policies, practices, or customs violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

iv. whether Ark. Code Ann. §§ 16-13-708 and 16-17-131 permit the suspension of an individual's driver's license for allegedly missing a court-ordered debt payment or appearance, without providing meaningful notice or opportunity to be heard pre-deprivation, and whether those sections, as applied, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

v. whether Judge Derrick has a policy, practice, or custom of setting payment plans at sentencing without any prior consideration of an individual's ability to pay, without setting a date certain for final payment, and without designing a payment plan to both meet that goal and avoid creating a severe and undue hardship, and whether such policies, practices or customs violate the Arkansas Fines Collection Law;

vi. whether Judge Derrick has a policy, practice, or custom of failing to consider attorney appointment until an individual appears for arraignment, and whether such policy, practice, or custom violates Ark. R. Crim. P. 8.2; and

vii. whether the members of the Class and the Indigent Subclass have been and will be injured by Judge Derrick's failure to inquire into their financial condition before arresting and incarcerating them for non-payment, ordering them detained on monetary bail conditions, suspending their driver's license, and/or setting their payment plans.

c. *Typicality*: The named Plaintiffs' claims are typical of the claims of the other members of the Class and the Indigent Subclass, and they have the same interests in this case as all other members of the Class and the Indigent Subclass. The legal theories under which the named Plaintiffs seek declaratory relief are the same or similar to those on which all members of the class will rely, and the harms suffered by the named Plaintiffs are typical of the harms suffered by all members of the Class and the Indigent Subclass.

d. *Adequacy*: The named Plaintiffs are adequate representatives of the Class and Indigent Subclass they represent because their interests in the vindication of the legal claims that they raise are entirely aligned with the interests of the other Class and Indigent Subclass members. Plaintiffs are members of the Class and the Indigent Subclass, and their interests coincide with, and are not antagonistic to, those of the other Class and Indigent Subclass members. There are no known conflicts of interest among members of the proposed Class and Indigent Subclass, all of whom have a similar interest in vindicating their constitutional rights in the face of their unlawful treatment by Judge Derrick. The Plaintiffs are represented by Class Counsel from the Lawyers' Committee for Civil Rights Under Law, Venable LLP, and Shults & Adams LLP, all of whom are experienced in litigating complex civil rights matters and class action lawsuits.

183. This action is properly maintainable as a class action under Rule 23(b) of the Arkansas Rules of Civil Procedure because the common questions of law and fact predominate. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because prosecuting separate actions by individual class members would create a risk of adjudications with respect to individual class members that would be inconsistent or varying and, thus, would establish incompatible standards of conduct for Judge Derrick. The answer to whether Judge Derrick's policies, practices, and customs are unconstitutional or illegal will



determine the claims of the named Plaintiffs and every other Class and Indigent Subclass member. If the named Plaintiffs succeed in the claim that Judge Derrick's policies, practices, and customs concerning the treatment of persons who owe debt for court costs, fines, and fees violate Plaintiffs' constitutional or state rights, that ruling will likewise benefit every other member of the Class and the Indigent Subclass.

184. This action is properly maintainable as a class action under Rule 23(b) of the Arkansas Rules of Civil Procedure because Judge Derrick has acted and/or refused to act on grounds generally applicable to the Class and the Indigent Subclass, thereby rendering final relief appropriate with respect to the named Plaintiffs and the Class and Indigent Subclass as a whole. These claims focus on whether Judge Derrick's policies, practices, and customs are unconstitutional or illegal. Therefore, these claims can be proven on a class-wide basis. Because these claims challenge Judge Derrick's policies, practices, and customs, he is unlikely to assert individualized defenses. Further, the same state laws apply to all Class and Indigent Subclass members' claims.

185. Absent declaratory relief, Plaintiffs and all others similarly situated will continue to be harmed by Judge Derrick's unconstitutional policies, practices, and customs.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Failure to Provide Notice and Opportunity to Be Heard on Ability to Pay and Failure to Inquire Concerning Ability to Pay Prior to Jailing Violates the Fourteenth Amendment Under 42 U.S.C. §1983**

186. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

187. Judge Derrick's policies, practices, and customs of imprisoning members of the Class, by arrest and/or sentence, for failure to pay monetary debts imposed at sentencing, without conducting a contemporaneous, pre-deprivation inquiry into their ability to pay and finding that their non-payment was willful, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. These unconstitutional policies, practices and customs are exemplified by Judge Derrick's imprisonment of some of the Plaintiffs.

## **COUNT II**

### **Detention of Individuals on Money Bail Without Consideration of Ability to Pay Violates the Fourteenth Amendment Under 42 U.S.C. §1983**

188. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

189. Judge Derrick's policy, practice, and custom of ordering the detention of individuals on monetary bail conditions without inquiring as to the ability of individual defendants to pay the monetary bail violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. This unconstitutional policy, practice and custom is exemplified by Judge Derrick's detention of Plaintiffs.

## **COUNT III**

### **Failure to Consider an Individual's Ability to Pay at Sentencing and to Set Payment Plans that Avoid a Severe and Undue Hardship to the Individual and His or Her Dependents Violates the Arkansas Fines Collection Law**

190. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

191. Judge Derrick's policies, practices, and customs of setting uniform payment plans at sentencing without prior consideration of an individual's ability to pay, setting a date certain for

final payment, and establishing payment plans designed to meet that goal without creating a severe and undue hardship for the individual or his or her dependents violate the Arkansas Fines Collection Law. Ark. Code Ann. §§ 16-13-701 *et seq.* These unconstitutional policies, practices and customs are exemplified by Judge Derrick's sentencing of Plaintiffs.

#### **COUNT IV**

##### **Failure to Address Attorney Appointment at an Arrestee's First Appearance Violates Arkansas Rule of Criminal Procedure 8.2**

192. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

193. Judge Derrick's policy, practice, and custom of waiting to consider attorney appointment until an individual appears for arraignment, even if that individual has been detained pretrial, violates Arkansas Rule of Criminal Procedure 8.2. In any case, if an individual desires and qualifies for an appointed attorney, one must be appointed promptly. If an individual is detained pretrial and has a First Appearance after their arrest, the appointment must occur no later than that First Appearance, unless the presiding judge determines that the individual will hire an attorney or wishes to knowingly and voluntarily waive the right to an attorney. These unconstitutional policies, practices and customs are exemplified by the experiences of Plaintiffs in proceedings before Judge Derrick.

#### **COUNT V**

##### **Failure to Provide Adequate Notice and Meaningful Opportunity to Be Heard on Ability to Pay and Failure to Inquire Concerning Ability to Pay Prior to Suspending Drivers' Licenses Violates the Due Process Clause of the Fourteenth Amendment Under 42 U.S.C. § 1983**

194. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

195. Judge Derrick's policy, practice, and custom of suspending an individual's driver's license upon missed payment of court-ordered debt alone, without providing adequate notice or a meaningful opportunity to be heard on the question of whether he or she did pay, his or her ability to pay and whether non-payment was willful, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This unconstitutional policy, practice, and custom is exemplified by Judge Derrick's suspensions of the drivers' licenses of some of the Plaintiffs.

196. Ark. Code Ann. § 16-13-708 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution to the extent it permits the suspension of an individual's driver's license upon mere allegation of missed payment of court-ordered debt, without providing adequate notice or meaningful opportunity to be heard on the question of his or her non-payment, ability to pay and whether any non-payment was willful.

## COUNT VI

### **Failure to Provide Notice & Opportunity to Be Heard Regarding Failure to Appear Prior to Suspending Drivers' Licenses Violates the Due Process Clause of the Fourteenth Amendment Under 42 U.S.C. § 1983**

197. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

198. Judge Derrick's policy, practice, and custom of suspending an individual's driver's license upon non-appearance at an allegedly court-ordered appearance date, without providing adequate notice or a meaningful opportunity to be heard on the question of whether the individual received notice of the missed date, or had any reasons for missing the court date, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This unconstitutional policy, practice, and custom is exemplified by Judge Derrick's suspensions of the drivers' licenses of some of the Plaintiffs.

199. Ark. Code Ann. § 16-17-131 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution to the extent it permits the suspension of an individual's driver's license upon non-appearance at an allegedly court-ordered appearance date, without providing notice or meaningful opportunity to be heard on the question of whether the individual received notice of the missed date, or had any reasons for missing the court date.

### **COUNT VII**

#### **Suspension of a Driver's Licenses for Non-Payment of Court-Ordered Debt Alone Violates the Equal Protection Clause of the Fourteenth Amendment Under 42 U.S.C. § 1983**

200. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

201. Judge Derrick's policy, practice, and custom of suspending an individual's driver's license for non-payment of court-ordered debt alone, absent a finding that the individual's non-payment was willful, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This unconstitutional policy, practice, and custom is exemplified by Judge Derrick's suspensions of the drivers' licenses of some of the Plaintiffs.

202. Ark. Code Ann. § 16-13-708 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to the extent it permits the suspension of an individual's driver's license for non-payment of court-ordered debt absent a finding that the individual's non-payment was willful.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Certify the Class and Indigent Subclass as proposed herein;
2. Enter Judgment in favor of Plaintiffs on all counts;

3. Award Plaintiffs declaratory judgment on each count, as follows:
  - a. With respect to Counts I and II,
    - i. Judge Derrick's detention of Class Plaintiffs for non-payment of some amount of money without prior determination of ability to pay violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution;
    - ii. The Fourteenth Amendment prohibits punishment of any individual for their poverty. Judges have a constitutional duty to inquire into and to determine ability to pay before depriving any individual of his or her liberty for failure to pay. Before an individual's liberty can be taken for non-payment of some monetary amount, procedural Due Process requires contemporaneous, pre-deprivation notice that his or her ability to pay is at issue and a meaningful opportunity to be heard;
  - b. With respect to Count III,
    - i. Judge Derrick's practice of setting uniform court-ordered installment plans, without consideration of individuals' ability to pay and the need to avoid imposing a severe and undue hardship on individuals or their dependents, violates the Arkansas Fines Collection Law;
    - ii. The Arkansas Fines Collection Law requires District Judges to consider defendants' ability to pay any debt imposed at sentencing for criminal convictions. If any defendant is unable to pay the debt imposed immediately, and is put on an installment plan, District Judges must set a date certain for final payment on the debt, and create an installment plan

that meets that goal without creating a severe or undue hardship on the defendant or his or her dependents;

- c. With respect to Count IV,
  - i. Judge Derrick's policy and custom of waiting to consider attorney appointment until an individual appears for arraignment violates Arkansas Rule of Criminal Procedure 8.2;
  - ii. Arkansas Rule of Criminal Procedure 8.2 requires that, if an individual desires and qualifies for an appointed attorney, one must be appointed promptly. If an individual is detained pretrial and has a First Appearance, the appointment must occur no later than that First Appearance, unless the presiding judge determines that the individual will hire an attorney or wishes to knowingly and intelligently waive his or her right to counsel under the Sixth Amendment to the U.S. Constitution;
- d. With respect to Counts V and VI,
  - i. Judge Derrick's policy and custom of suspending Class Plaintiffs' driver's licenses upon alleged non-payment of debt alone, or alleged non-appearance, without adequate pre-deprivation notice and opportunity to be heard on the questions of whether Class Plaintiffs in fact failed to pay or appear, were in fact ordered to do so, and their ability to comply, including ability to pay, violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;
  - ii. Class Plaintiffs have a property interest in their driver's license that is protected by the Due Process Clause. Procedural Due Process requires that

Class members be given adequate notice and opportunity to be heard before their driver's license may be suspended for alleged non-payment or non-appearance;

- iii. Ark. Code Ann. § 16-13-708, as applied, violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution to the extent it permits the suspension of Class Plaintiffs' driver's licenses upon mere allegation of unsatisfactory payment of court-ordered debt without adequate pre-deprivation notice and meaningful opportunity to be heard on the questions of Class Plaintiffs' non-payment and ability to pay;
- iv. Ark. Code Ann. § 16-17-131, as applied, violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution to the extent it permits the suspension of Class Plaintiffs' driver's licenses upon mere allegation of non-appearance without adequate pre-deprivation notice and meaningful opportunity to be heard on the questions of Class Plaintiffs' non-appearance and ability to appear;
- e. With respect to Count VII,
  - i. Judge Derrick's policy and custom of suspending Indigent Subclass Plaintiffs' driver's licenses for failure to pay, absent a finding that Indigent Subclass Plaintiffs willfully failed to pay, violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution;
  - ii. Equal Protection prohibits the government from imposing unduly harsh or discriminatory punishments on poor debtors alone. Sanctions for non-payment of court-imposed debt that threaten only poor debtors with



destitution are unduly harsh and discriminatory. Equal Protection prohibits judges from suspending an individual's license for non-payment of some monetary amount without finding that the non-payment was willful.

iii. Ark. Code Ann. § 16-13-708, as applied, violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution to the extent it permits the suspension of Indigent Subclass Plaintiffs' driver's licenses for failure to pay without a prior finding that Indigent Subclass Plaintiffs willfully failed to pay;

4. Award Plaintiffs the costs of this action and reasonable attorneys' fees; and
5. Award such other relief as the Court deems just and proper.

DATED: August 9, 2018.

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