

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

VIRGINIA THOMAS, ERIKA BROCK, )  
STEVEN RILEY, TIMOTHY MASON, )  
JACQUELINE LINDSEY, CLARENCE )  
ANDERSON, CHRISTOPHER )  
JAMIESON, HUBERT LINDSEY, )  
KENNETH FOXWORTH, KAREN ELEY, )  
HENRY WINTERS, DOROTHY )  
COOLEY, DEBORAH JENKINS, OSCAR )  
JACKSON, CARL TATE, JOHN WHITE, )  
JOHNNY LEE HATTEN, )  
and KEVIN EDWARDS )  
Plaintiffs, )

v. )

CITY OF GULFPORT, MISSISSIPPI )

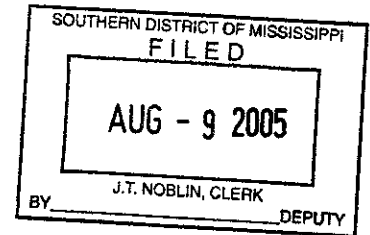
BILL ATCHISON, )  
Gulfport Municipal Court Judge, in his )  
official capacity, )

RICHARD SMITH, )  
Gulfport Municipal Court Judge, )  
in his official capacity, )

BILL MARKOPOULOS, )  
Court Administrator, Gulfport )  
Municipal Court, in his official )  
capacity, )

WALTER EIGHMEY, )  
Senior Warrants Officer, Gulfport Police )  
Department, in his official capacity, )

Defendants. )



**CIVIL ACTION**

**No. 1:05-CV-349-LG-RHW**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

## **AMENDED COMPLAINT**

COME NOW Plaintiffs VIRGINIA THOMAS, ERIKA BROCK, STEVEN RILEY, TIMOTHY MASON, JACQUELINE LINDSEY, CLARENCE ANDERSON, CHRISTOPHER JAMIESON, HUBERT LINDSEY, KENNETH FOXWORTH, KAREN ELEY, HENRY WINTERS, DOROTHY COOLEY, DEBORAH JENKINS, OSCAR JACKSON, CARL TATE, JOHN WHITE. JOHNNY LEE HATTEN, and KEVIN EDWARDS (collectively, "Plaintiffs"), on behalf of themselves and the class alleged herein, by and through their attorneys, and file this Complaint against Defendants, CITY OF GULFPORT, BILL ATCHISON, RICHARD SMITH, and BILL MARKOPOULOS, and WALTER EIGHMEY (collectively, "Defendants"). In support thereof, Plaintiffs respectfully state as follows:

### **PRELIMINARY STATEMENT**

1.

This is an action to stop Defendants, the City of Gulfport and the Judges of the Gulfport Municipal Court, from an abuse of their authority, through which they have been imprisoning indigent misdemeanants for nonpayment of fines in total disregard for the law. Due to the actions of Defendants, the Harrison County Jail in Gulfport, Mississippi has become a modern day debtors' prison. The jail is

packed with indigent men and women serving sentences for failure to pay “old fines.” Many of these people are completely destitute. Some are also mentally ill, mentally retarded, and/or physically disabled. They are unable to pay the fines imposed upon them. Over three decades ago, the United States Supreme Court held that criminal defendants may not be incarcerated for failure to pay old fines unless there is a willful failure to pay.<sup>1</sup> Defendants routinely disregard this clear Supreme Court mandate in their efforts to collect old fines for the City of Gulfport.

2.

The City of Gulfport employs a special force of police officers charged with patrolling the streets of Gulfport to arrest citizens who have failed to pay fines assessed by the Gulfport Municipal Court. These officers conduct periodic sweeps, during which they search the streets for people who look as though they might owe the City old fines. During these sweeps, the officers go to predominately African-American neighborhoods and stop people in the streets

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<sup>1</sup> See Bearden v. Georgia, 461 U.S. 660 (1983) (a court cannot jail an indigent probationer for failure to pay fine unless inquiry reveals willful failure to pay); Tate v. Short, 401 U.S. 395 (1971) (a court cannot convert a fine imposed under a fine-only statute into a jail term solely because the defendant cannot immediately pay the fine in full). See also Payne v. Mississippi, 462 So.2d 902, 905 (Miss. 1984) (“a court may not first fine a defendant and then, because of his indigency, convert the fine into a jail sentence for failure of the defendant to make immediate payment of the fine.”).

without any independent reason or suspicion, but for the sole purpose of checking to see if they owe the City old fines. Those who owe fines are taken to jail.

3.

Accused debtors of the City of Gulfport often sit in jail for up to five days before they are brought before the court. Once they do see a judge, the hearing typically lasts less than one minute; many hearings last no more than thirty seconds. In violation of law, the judges of the Gulfport Municipal Court routinely fail to inquire into whether the defendant's failure to pay the fine was willful, or the result of the defendant's poverty, illness, or disability. Unless the defendant can come up with the full amount that he owes or a significant portion thereof, he is sentenced to "sit off" his fines in the Harrison County Jail, at the rate of one day for every \$25 owed.

4.

Through this pervasive practice, Defendants have caused Plaintiffs irreparable injury: to lose jobs, to leave Plaintiffs' children and elderly parents without the benefit of Plaintiffs' income and support, to miss end-of-term college examinations, and, in one case, to miss an operation to repair a painful and debilitating injury. Defendants have also cost the citizens of Harrison County countless thousands of dollars in taxes to house these non-violent, impoverished debtors at the county jail.

5.

In addition to illegally incarcerating indigent misdemeanants for failure to pay fines, Defendants routinely violate accused misdemeanants' right to counsel. No counsel was ever appointed to any of the Plaintiffs, all of whom are indigent, when they appeared as defendants before the Gulfport Municipal Court. There are no defense attorneys present at the Municipal Court proceedings conducted by the Harrison County Jail. The judges rarely, if ever, appoint counsel. Defendants routinely violate the Sixth and Fourteenth Amendments to the United States Constitution by sentencing indigent defendants to terms of incarceration without first advising them of their right to court-appointed counsel.

6.

Defendants have also denied Plaintiffs access to their own municipal court files – public records that should be available for any citizen to view. In violation of the First and Fourteenth Amendments to the United States Constitution and Mississippi's Public Records Act, officials of the Gulfport Municipal Court require payment of a \$4.75 *per page* "retrieval fee" to view public court documents. The cost to view nine clients' court files sought in conjunction with this case was \$513. This practice is unreasonable, unconscionable, and in violation of law.

7.

Defendants keep inadequate records of proceedings before the Gulfport Municipal Court. As a consequence, some Plaintiffs have been forced to serve more than one term of incarceration for an alleged failure to pay the same fines.

8.

Defendants' policies of incarcerating indigent accused debtors, denying accused misdemeanants the right to counsel, and denying Plaintiffs reasonable access to public records violate the First, Sixth, Thirteenth, and Fourteenth Amendments to the United States Constitution. Further, Defendants' practices violate Mississippi laws governing punishment for nonpayment of fines (Miss. Code Ann. § 99-37-7, § 99-19-20), adjudication of incompetent persons (Miss. Code Ann. § 99-13-3), and access to public records (Miss. Code Ann. § 25-61-1, *et. seq.*). Plaintiffs assert claims for violation of their civil rights under 42 U.S.C. § 1983, violation of Art. 3, § 14 of the Mississippi Constitution, and violation of Mississippi statutes. They seek injunctive relief and a declaratory judgment that Defendants must conform their actions to the law.

9.

Defendants' illegal conduct continues to take place on a near-daily basis and affects hundreds of people. Although some Plaintiffs may be released from the county jail before the resolution of this lawsuit, Defendants' illegal practices are

still a threat to them. Several Plaintiffs have been arrested repeatedly and jailed for old fines, in violation of law. One Plaintiff, Virginia Thomas, has, on five occasions, spent *over one month* in jail for failure to pay old fines. Plaintiffs seek prospective relief so that Defendants will not, in the future, violate their rights. Defendants' illegal practices are capable of repetition, yet evading review.

10.

Plaintiffs bring this putative class action on behalf of themselves and all other indigent persons who are: (1) facing criminal charges in the Gulfport Municipal Court and entitled to court-appointed counsel, (2) currently incarcerated by order of the Gulfport Municipal Court for failing to pay old fines, and/or (3) eligible for arrest by the Gulfport Police Department or its agents for failing to pay fines imposed by the Gulfport Municipal Court.

11.

Plaintiffs bring this action to compel Defendants to: (a) conduct an inquiry into a person's ability to pay old fines owed or the reasons for non-payment and refrain from incarcerating any person for failure to pay fines because of inability to pay; (b) inform all accused indigent misdemeanants facing jail or suspended jail sentences in the Gulfport Municipal Court of their right to court-appointed counsel; (c) provide counsel for indigent misdemeanants, as required by the United States and Mississippi Constitutions; and (d) provide misdemeanants and

accused misdemeanants reasonable access to their court files.

## **PARTIES**

### **Plaintiffs**

12.

VIRGINIA THOMAS, a 36-year-old African-American woman, is a resident of Gulfport, Mississippi. She is illiterate and mentally retarded. Ms. Thomas's sole source of income is a monthly disability check, which she receives from the federal government because she is too mentally disabled to work. Since 1999, Ms. Thomas has been arrested and jailed by the Gulfport police for "old fines" *nine* times. Ms. Thomas was most recently incarcerated for old fines from March 24, 2005 to June 7, 2005. Given her indigence and consistent inability to pay old fines in the past, Ms. Thomas is in danger of being arrested again and incarcerated because of her indigence. The Gulfport Municipal Court judge who sentenced Ms. Thomas made no inquiry into her ability to pay before he sentenced her to "work off" her fines in jail. Ms. Thomas has never been represented by counsel in any proceeding before the Gulfport Municipal Court. Nor has she been advised that she has the right to court-appointed counsel if she cannot afford to hire a lawyer. Defendants have deprived Ms. Thomas of her liberty without due process of law, denied her the equal protection of the law, and violated her right to



counsel. Ms. Thomas seeks the enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

13.

ERIKA BROCK, a 34-year-old African-American woman, is a resident of Gulfport, Mississippi. Ms. Brock is mentally ill and can barely walk due to injuries she sustained in a suicide attempt in December 2004. Her disabilities are apparent. Despite clear indications that Ms. Brock is not in a position to pay the \$2,000 she allegedly owes the City of Gulfport, Ms. Brock has been repeatedly incarcerated by the City of Gulfport for failure to pay. Ms. Brock is currently incarcerated in the Harrison County Jail. After her arrest on June 3, 2005, Ms. Brock appeared before the Gulfport Municipal Court on June 7 and again on June 9. She pleaded with the judges to be released, explaining that she was scheduled to have surgery to repair the broken bones in her feet. The judges did not release her. Nor did they conduct any inquiry into the reasons for her failure to pay the fines. Instead, one judge told Ms. Brock that he would release her if she produced \$1,000; otherwise she would have to "work off" her fines in jail. Ms. Brock has never been represented by a lawyer in the Gulfport Municipal Court. Defendants have deprived Ms. Brock of her liberty without due process of law, denied her the equal protection of the laws, and violated her right to counsel. Ms. Brock seeks

the enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

14.

STEVEN RILEY, a 42-year-old African-American man, is a resident of Gulfport, Mississippi. In May 2005, Mr. Riley spent two weeks in jail for failure to pay \$314 in old fines. He was arrested on May 16, 2005 and jailed for two weeks even though he had already "worked off" his fines by doing community service two years earlier. Due to his two weeks of incarceration, Mr. Riley lost a job he had just started eight days before. In addition, he was unable to care for his mother, a 79-year-old woman confined to a wheelchair. Mr. Riley has never been represented by counsel in any proceeding before the Gulfport Municipal Court. Nor has he ever been advised that he has the right to court-appointed counsel if he cannot afford to hire a lawyer. Defendants have deprived Mr. Riley of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr. Riley seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

15.

TIMOTHY MASON, a 28-year-old Caucasian man, is a resident of Harrison County, Mississippi. At the time of his arrest on shoplifting charges, Mr.

Mason was living with his girlfriend and her three children in a trailer which lacked electricity or running water. He and his family are so poor that, at times, he has resorted to eating out of garbage dumpsters because he cannot afford food. Mr. Mason was jailed from May 11, 2005 until June 26, 2005 for failure to pay old fines. No judge made an inquiry into Mr. Mason's ability to pay the fines or whether the alleged failure to pay was "willful." Mr. Mason was not informed of his right to court-appointed counsel before his incarceration for failure to pay fines. Defendants have deprived Mr. Mason of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr. Mason seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

16.

JACQUELINE LINDSEY, a 46-year-old African-American woman, is a resident of Harrison County, Mississippi. Ms. Lindsey was arrested by the Gulfport Police while walking home from a restaurant on June 1, 2005. The officers who approached Ms. Lindsey asked her name and told her to wait while they checked their database to see if she owed fines. She did. Because Ms. Lindsey could not come up with the full amount she owed on the spot, Ms. Lindsey was taken to jail. Ms. Lindsey sat in the jail for nearly a week before she saw a judge. At her court appearance on June 7, 2005, Ms. Lindsey was sentenced

to 52 days in jail. She was never advised of her right to counsel. In addition, the judge who sentenced her failed to conduct an inquiry into the reason for the nonpayment of fines. If he had, the judge would have known that Ms. Lindsey was too poor to pay her fines. Defendants have deprived Ms. Lindsey of her liberty without due process of law, denied her the equal protection of the laws, and violated her right to counsel. Ms. Lindsey seeks the enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

17.

CLARENCE ANDERSON, a 20-year-old African-American man, is a resident of Gulfport, Mississippi. Mr. Anderson's only criminal convictions are misdemeanor convictions for driving without a license or insurance, "interfering with the duties of a police officer," and failing to appear in court. Mr. Anderson has a football scholarship to attend Gulf Coast Community College. As an athlete and full-time student, Mr. Anderson's only source of income is a small stipend. On May 18, 2005, Mr. Anderson was arrested and incarcerated for failure to pay fines. Judge Atchison, the Gulfport Municipal Court judge who sentenced Mr. Anderson, made no inquiry into Mr. Anderson's ability to pay. Instead, Judge Atchison said: "I'm giving you days to sit off. If you can get someone to bring half, I'll release you." Mr. Anderson was in jail for two months – until July 18,

2005. As a result, he missed final examinations and his football scholarship is in jeopardy. Mr. Anderson was not represented by counsel in any proceeding before the Gulfport Municipal Court, nor was he informed of his right to court-appointed counsel. Defendants deprived Mr. Anderson of his liberty without due process of law, denied him the equal protection of the law, and violated his right to counsel. Mr. Anderson seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

18.

CHRISTOPHER JAMIESON is a 48-year-old Caucasian Vietnam veteran who is mentally ill. Mr. Jamieson's sole source of income is a monthly disability check that he receives from the government. Mr. Jamieson has been incarcerated in the Harrison County Jail since June 19, 2005 because he is unable to pay the fines imposed upon him by the Gulfport Municipal Court. When Mr. Jamieson appeared in court on June 21, the presiding judge failed to make any inquiry into Mr. Jamieson's financial circumstances before sentencing him to jail. Mr. Jamieson was not represented by counsel in any proceeding before the Gulfport Municipal Court, nor was he informed of his right to court-appointed counsel. Defendants have deprived Mr. Jamieson of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr.

Jamieson seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

19.

HUBERT LINDSEY, JR., a 54-year-old African-American man, is homeless and unemployed. He lives in a tent. Mr. Lindsey's left eye is clouded and half-shut due to an injury. He also has a serious and visible injury to his left shoulder. Mr. Lindsey's impairments have curtailed his ability to find employment. On July 1, 2005, Mr. Lindsey was arrested for failure to pay fines. He appeared before the Gulfport Municipal Court on July 7. The presiding judge sentenced Mr. Lindsey to "sit out" \$4,780 worth of old fines, without making any inquiry into Mr. Lindsey's financial situation. Mr. Lindsey is still in jail. Mr. Lindsey has never been represented by counsel in the Gulfport Municipal Court. Defendants have deprived Mr. Lindsey of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr. Lindsey seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

20.

KENNETH FOXWORTH, a 36-year-old African-American man, is homeless. He is mentally disabled and has difficulty reading. At the time of his arrest, Mr. Foxworth had been unemployed for over one month. On July 7, 2005,

Smith of the Gulfport Municipal Court sentenced Mr. Foxworth to "sit out" \$685 in old fines. Judge Smith made no inquiry into Mr. Foxworth's financial circumstances other than to ask Mr. Foxworth if he was working. When Mr. Foxworth replied that he was unemployed, Judge Smith derided him for "watching TV and standing around on the street corner." Despite his indigence, Mr. Foxworth has never been apprised of his right to court-appointed counsel and has never been represented by an attorney in any proceeding before the Gulfport Municipal Court. Defendants have deprived Mr. Foxworth of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr. Foxworth seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

21.

KAREN ELEY, a 28-year-old Caucasian woman, has three children under the age of five for whom she is the sole caretaker. Ms. Eley receives food stamps to feed her family. In the several months preceding her arrest, she had been unemployed, but had finally found a job in June 2005. On July 2, 2005, Ms. Eley was stopped by the Gulfport police as she pulled out of a grocery store parking lot. She was then arrested for failure to pay fines previously assessed in connection with misdemeanor convictions for driving without insurance, a seat belt violation, and related offenses. Because Ms. Eley could not produce \$1000 on the spot, she

was taken to jail where she remained for five days. Ms. Eley was released on July 7 after her relative made a partial payment of the money she purportedly owed. During her five-day incarceration, Ms. Eley was forced to leave her children in the care of her teenage sister. Ms. Eley was never apprised of her right to court-appointed counsel and was never represented by an attorney in any proceeding before the Gulfport Municipal Court. Defendants have deprived Ms. Eley of her liberty without due process of law, denied her the equal protection of the law, and violated her right to counsel. Ms. Eley seeks the enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

22.

HENRY WINTERS, a 52-year-old African-American man, is a resident of Gulfport, Mississippi. He is homeless and had been sleeping in an abandoned house at the time of his arrest on May 18, 2005. The house is in disrepair, and is only periodically equipped with water and gas. Mr. Winters was arrested for old fines on May 18 and appeared before Gulfport Municipal Court Judge Bill Atchison on May 19. Although Mr. Winters obviously appeared to be indigent, Judge Atchison failed to inquire into Mr. Winters's ability to pay the fines. Instead, Judge Atchison told Mr. Winters that he owed old fines and sentenced him to nearly one month in jail. Mr. Winters, who possesses only an 8<sup>th</sup> grade



education, has never been appointed counsel in his cases before the Gulfport Municipal Court. Defendants have deprived Mr. Winters of his liberty without due process of law, denied him the equal protection of the law, and violated his right to counsel. Mr. Winters seeks enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

23.

DOROTHY COOLEY is a 41-year-old African-American woman and a resident of Gulfport, Mississippi. She is the mother of three children. Though she is employed at a nursing home, she earns less than \$9000 a year, and has been unable to pay the fines assessed for arrests for public intoxication. Ms. Cooley was arrested on July 4, 2005 and remains in jail. Ms. Cooley has never been appointed a lawyer by the court, nor evaluated to determine her capability of paying her fines. She has been sentenced to "sit off" almost \$1900 in fines, which will keep her behind bars for nearly two-and-a-half months, jeopardizing her employment. Defendants have deprived Ms. Cooley of her liberty without due process, denied her equal protection of the law, and violated her right to counsel. Ms. Cooley seeks enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

24.

DEBORAH JENKINS is an African-American woman and a resident of

Gulfport, Mississippi. She is employed at a dry cleaner where she earns approximately \$400 per month. Ms. Jenkins was arrested for old fines on June 21. The Gulfport Municipal Court did not inquire into her ability to pay her fines, or offer the appointment of a lawyer at any time during her hearings. She was released on June 24 after her daughter paid a portion of her fine. Ms. Jenkins allegedly still owes the City of Gulfport about \$2500 in fines. Because she still owes a large amount of money, and because she earns very little, she is at continued risk of further deprivation of her liberty. Defendants have deprived Ms. Jenkins of her liberty without due process, denied her equal protection of the law, and violated her right to counsel. Ms. Jenkins seeks enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

25.

OSCAR JACKSON, a 42-year-old African-American man, is a resident of Gulfport, Mississippi. He works as a bricklayer and earns approximately \$12,000 a year. Mr. Jackson was arrested on May 23 and spent nearly two months in jail for owing old fines. The Gulfport Municipal Court never inquired into Mr. Jackson's ability to pay his fines, nor offered him court-appointed counsel. Defendants have deprived Mr. Jackson of his liberty without due process, denied him equal protection of the law, and violated his right to counsel. Mr. Jackson seeks

enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

26.

CARL TATE, an African-American man, is a resident of Gulfport, Mississippi. On July 8, 2005, the Gulfport Police stopped Mr. Tate while he was walking down the street and then arrested him for owing old fines. Mr. Tate had been unable to pay his fines because he earns approximately \$120 a week, is a part-time student, and helps to support two children. Mr. Tate spent five days in jail and was released on July 12. Because he still purportedly owes the City fines, Mr. Tate is at continued risk of further deprivation of his liberty. Defendants have deprived Mr. Tate of his liberty without due process, denied him equal protection of the law, and violated his right to counsel. Mr. Tate seeks enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

27.

JOHN WHITE, a Caucasian man, is a resident of Gulfport, Mississippi. Mr. White lost his leg in a car accident in 2000. Although he was steadily employed as a sales manager for the 12 preceding years, he is now disabled and unable to work. Mr. White is a single father raising two children on an income of approximately \$146 per month in welfare assistance and \$241 per month in food

stamps. He has over \$100,000 in medical expenses and has sold most of his possessions to pay for his care. On February 26, 2005, Mr. White was arrested for driving under the influence, first offense, and failure to have insurance. He bonded out of jail the same day. At his court hearing, on or around April 14, 2005, Mr. White pled guilty and was assessed a fine in the amount of over \$1200, put on probation, and required to take a victim impact class. Given Mr. White's financial circumstances, the presiding judge gave Mr. White six months to pay his fines. Thereafter, Mr. White complied with all orders of the court. He paid a \$151 victim impact class fee, completed the four week victim impact course, and paid a probation fee of \$75. On two occasions, Mr. White reported to the Gulfport Municipal Court with \$200 to pay his fine. He came up with the \$200 by selling baseball cards. On the first occasion, the Court refused to accept the payment, since Mr. White could not show that he had proof of insurance. On the second occasion, on July 1, 2005, Mr. White presented \$200 and proof of insurance to a Gulfport Municipal Court clerk for payment. Disregarding the Court's order giving him six months to pay his fine, the clerk told Mr. White that he would need to pay the entire \$1200 that day or go to jail. A warrants officer then arrested Mr. White and led him to a room behind the courtroom. The officer instructed Mr. White to call friends or family members to come up with the \$1200. Mr. White called his mother who put the \$1000 fine on her credit card to keep Mr. White

from going to jail. Mr. White still allegedly owes \$561.43 in fines to the City of Gulfport. He is at risk of being re-arrested and deprived of his liberty in violation of law. Mr. White seeks enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

28.

JOHNNY LEE HATTEN is an African-American man and a resident of Gulfport, Mississippi. Mr. Hatten is homeless and has paranoid schizophrenia. He earns his living doing odd jobs, such as cutting grass and painting houses. On July 20, 2005, the Gulfport Police arrested Mr. Hatten for old fines while he was standing in line at the Salvation Army, waiting for a free meal. When Mr. Hatten appeared before Judge Atchison on July 21, he was given a hearing that lasted no more than 30 seconds. Mr. Hatten tried to explain his financial circumstances, but Judge Atchison cut him off, stating "You're lying like a dog." Judge Atchison then threatened to hold Mr. Hatten in contempt if he said anything else. On August 5, 2005, after an employer for whom Mr. Hatten performs odd jobs intervened, the court agreed to release Mr. Hatten if he would pay down his old fines at a rate of \$250 per month. Mr. Hatten's disability, low income and inconsistent employment render his ability to meet the terms of his payment plan unlikely. He is at risk of being arrested again and being deprived of his liberty in violation of the law. Also, upon information and belief, the Gulfport Municipal Court previously incarcerated

Mr. Hatten for three months for contempt for the same fines from July to October 2004.

29.

KEVIN EDWARDS is an African-American man and a resident of Gulfport, Mississippi. Mr. Edwards owes old fines to the City of Gulfport for misdemeanors allegedly committed in 2004. On December 17, 2004, Mr. Edwards came to the Gulfport Municipal Court to attempt to make an installment payment on his fines. Officers from the Gulfport Police Department arrested Mr. Edwards and took him to jail because he could not afford to pay all of the fines that he allegedly owed. Mr. Edwards was incarcerated for a week, and released on December 23. As a result of his incarceration, he lost his job as a fiberglass mechanic. Immediately after his release, Mr. Edwards looked for another job to enable him to pay his fines. He found a job in construction. After receiving a pay check from his new job, Mr. Edwards went to the Gulfport Municipal Court on February 24, 2005 to make a \$200 payment. Because he could not pay the full amount of fines that he allegedly owed, Mr. Edwards was *again* handcuffed, arrested, and taken to the Harrison County Jail. He was in jail for over one week, until March 1, 2005. As a result, Mr. Edwards lost a second job. He has not been able to find steady employment since. Mr. Edwards was never represented by counsel before the Gulfport Municipal Court. Mr. Edwards still allegedly owes old

finer and is in danger of being re-incarcerated in violation of law.

**Defendants**

30.

Defendant City of Gulfport is a municipal corporation with its primary place of business located at Gulfport City Hall, 2309 15<sup>th</sup> Street, Gulfport, Mississippi. The City of Gulfport has caused, created, authorized, condoned, ratified, approved, and/or knowingly acquiesced in the policy of illegally arresting and incarcerating indigent defendants for failure to pay old fines, as described in this Complaint. In addition, the City of Gulfport has caused, created, authorized, condoned, ratified, approved, and/or knowingly acquiesced in the policy of illegally denying indigent defendants the right to counsel, as described in this Complaint.

31.

Defendant Bill Atchison is the Chief Judge of the Gulfport Municipal Court and is a resident of Harrison County, Mississippi. Judge Atchison has repeatedly imprisoned indigent defendants for failure to pay old fines without conducting any inquiry into whether the defendants' failure to pay was willful. He has repeatedly jailed persons exhibiting signs of serious mental illness without any competency determination. Judge Atchison has also illegally denied indigent defendants their constitutional right to court-appointed counsel. Upon information and belief,

Judge Atchison's implementation of the City's old fines policy is administrative rather than judicial in nature. Judge Atchison is sued in his official capacity.

32.

Defendant Richard Smith is a judge of the Gulfport Municipal Court and is a resident of Harrison County, Mississippi. Judge Smith has repeatedly imprisoned indigent defendants for failure to pay old fines without conducting an appropriate inquiry into whether the defendants' failure to pay was willful. He has repeatedly jailed persons exhibiting signs of serious mental illness without any competency determination. Judge Smith has also illegally denied indigent defendants their constitutional right to court-appointed counsel. Upon information and belief, Judge Smith's implementation of the City's old fines policy is administrative rather than judicial in nature. Judge Smith is sued in his official capacity.

33.

Defendant Bill Markopolous is the Court Administrator of the Gulfport Municipal Court and is a resident of Harrison County, Mississippi. Defendant Markopolous is responsible for overseeing the administrative aspects of the court, including maintaining Gulfport Municipal Court criminal case files and responding to requests by citizens to view these files. Mr. Markopolous is responsible for creating and/or enforcing the Court's policy of charging a \$4.75



per page "retrieval fee" to view public court records. By charging Plaintiffs excessive and unreasonable fees to view public court documents, Mr. Markopolous has violated the Mississippi Public Records Act and the First and Fourteenth Amendments to the United States Constitution. In addition, upon information and belief, Mr. Markopoulos's actions and inactions have resulted in the maintenance of files that are incomplete and do not accurately reflect important information such as: court-ordered payment plans, completed terms of community service, and completed terms of incarceration. Upon information and belief, as a result of this incomplete record-keeping, Plaintiffs Riley, Hatten, Lindsey, and possibly others served or are serving more than one term of incarceration for alleged failure to pay the same fines for which they have already served their penalties. Upon information and belief, as a result of this incomplete record-keeping, Plaintiff White's court-ordered payment plan was not recorded in his file, resulting in Mr. White's illegal arrest. Mr. Markopoulos is sued in his official capacity.

34.

Defendant Walter Eighmey is the Senior Warrants Officer for the City of Gulfport Police Department. He has caused, created, authorized, condoned, ratified, approved, and/or knowingly acquiesced in the policy of illegally arresting and incarcerating indigent defendants for failure to pay old fines, as described in

this Complaint. Specifically, Officer Eighmey and the officers in his charge patrol the streets of African-American neighborhoods, stopping people without reasonable suspicion solely to “run their names” to determine if they owe old fines. In addition, Officer Eighmey and the officers in his charge disregard court orders permitting certain defendants to make payments in installments. He and the officers in his charge arrest defendants who have not paid fines in their entirety, irrespective of whether the court has permitted that defendant additional time to pay.

### **JURISDICTION AND VENUE**

35.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the action arises under and is brought under the Civil Rights Act of 1871, 42 U.S.C. § 1983 and the First, Sixth, Thirteenth, and Fourteenth Amendments to the United States Constitution. The Court has supplemental jurisdiction over Plaintiffs’ state law claims under 28 U.S.C. § 1367 because they are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

36.

Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because at least one Defendant resides in this judicial district. This District also is an appropriate venue for this action under 28 U.S.C. § 1391(b)(2) because all or at least a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district.

## **FACTUAL BACKGROUND**

37.

The Gulfport Municipal Court exercises jurisdiction over defendants accused of “violating municipal ordinances and state misdemeanor laws made offenses against the municipality.” Miss. Code Ann. § 21-23-7(1). The Court holds hearings on most weekdays at the Municipal Court building at 2200 15<sup>th</sup> Street in Gulfport, Mississippi. It also holds twice-weekly hearings at the Harrison County Jail at 10451 Larkin Smith Drive in Gulfport, Mississippi. The presiding judges of the Gulfport Municipal Court (herein after “the judges”) are Chief Judge Bill Atchison and Judge Richard Smith.

38.

The judges of the Gulfport Municipal Court routinely deny Plaintiffs the right to counsel and deprive them of their liberty. The judges fail to inform defendants of their right to court-appointed counsel if they cannot afford to hire their own attorneys. Judge Atchison informs defendants that they have a right to a lawyer only *after* they have entered a guilty plea. Judge Smith, unlike Judge Atchison, gives a brief speech at the beginning of daily proceedings in which he informs accused misdemeanants that they have the right to a lawyer, and usually informs them that they have the right to a court-appointed lawyer. However, Judge Smith makes no effort to insure that the defendants hear or understand their

right to court-appointed counsel, and Judge Smith does not repeat notice of the right to court-appointed counsel as each individual defendant approaches the bench.

39.

Despite their indigency, none of the Plaintiffs was advised of his or her right to court-appointed counsel. None was given counsel.

40.

The judges of the Gulfport Municipal Court routinely impose hundreds – sometimes thousands – of dollars in fines on misdemeanants. The following are some examples of the fines and costs commonly imposed on misdemeanants:

Public intoxication	\$152
Expired automobile tag	\$222
Suspended driver's license	\$626
Improper lane usage	\$141
Providing a false name	\$622
Noise violation	\$622
Possession of drug paraphernalia	\$622
Public profanity	\$222
Possession of marijuana	\$372
Shoplifting (1 <sup>st</sup> offense)	\$622
Trespassing	\$327

41.

The same fine is imposed regardless of the financial situation of the defendant.

42.

Many indigent misdemeanants – particularly those charged with driving violations, which often include multiple charges with separate fines – leave Gulfport Municipal Court owing the City well over \$1,000. The Gulfport Municipal Court requires that all fines and fees assessed by the Court be paid in full within thirty days. This payment schedule is infeasible for indigent defendants. Judge Atchison routinely informs misdemeanants that “payment plans” are no longer permitted by the Court, and that they will be arrested if they do not pay within thirty days. He also advises indigent defendants that if they do not have the cash to pay the fines, they should “take out a credit card.” Arrest warrants are issued for those who fail to pay within the thirty days.

**Defendants’ Illegal Fine-Collection Practices**

43.

Defendants actively discourage indigent misdemeanants from making installment payments toward their fines. Indigent misdemeanants who attempt to make installment payments are routinely threatened with jail or jailed. In one instance, a man sent his wife into the Gulfport Municipal Court with a \$20 payment while he waited in the car. Officers came out to the car and took the man to jail. In another instance, relatives of a misdemeanant tried twice to pay \$200 towards fines but were turned away because the officers would only accept full

payment. The man was later arrested for failure to pay his fines.

44.

The City of Gulfport employs an “old fines” collection squad whose sole purpose is to arrest citizens who owe old fines. The City of Gulfport also contracts with a private corporation that is charged with collecting fines that are over two years old. Pursuant to its contract with the City, the private corporation, Haggerty & Associates, Inc., keeps 39% of the money it collects.

45.

The City’s fine collection agents employ unconstitutional tactics to collect old fines. These officers conduct periodic sweeps, during which they search the streets for people who might owe the City old fines. During these sweeps, they go to predominately African-American neighborhoods and stop people in the streets without probable cause or reasonable suspicion, but for the sole purpose of checking to see if they owe old fines. Those who owe old fines are jailed. One such sweep was conducted on June 1, 2005. As a result, approximately 37 people, including Plaintiff Jacqueline Lindsey, were arrested and incarcerated for owing old fines on June 1 and June 2, 2005.

46.

Defendants also employ other illegal means to coerce misdemeanants into paying old fines. In some cases, people who owe old fines receive a notice in the

mail summoning them to Gulfport Municipal Court. Before court begins, when no judge is present, their names are called by a fine collection officer. These individuals are instructed to proceed to a back room, where some are handcuffed to a chair. They are told to use the telephone to contact family members or friends to come up with the money they owe. Those who are unable immediately to produce the money are taken to the Harrison County Jail.

**Imprisonment for Inability to Pay Fines**

47.

People believed to have failed to pay their fines often wait in jail for up to five days, without counsel, before they are brought before a judge of the Gulfport Municipal Court.

48.

The Gulfport Municipal Court holds hearings at the Jail twice per week. The majority of those present allegedly owe old fines to the City of Gulfport. Defendants are called up to the bench one by one for a brief hearing, usually lasting less than one minute. In each case, the municipal judge tells the defendant what he owes and demands payment of the fine. Those who have friends or family who might have money are often directed to call their friends or family from a telephone at the judge's bench in open court while court employees and other arrestees look on.



49.

The judges who conduct these proceedings routinely fail to inquire as to the misdemeanants' ability to pay the fines.

50.

When accused debtors try to explain their financial circumstances and their inability to pay within the court's prescribed 30 days, the judges often refuse to permit them to explain their inability to pay. In one instance, Judge Atchison threatened to hold a homeless man who appeared to be mentally ill in contempt when he briefly protested that he was too poor to pay. In another instance, an accused misdemeanant who attempted to ask a question about his old fines was shoved by an officer of the Gulfport Municipal Police Department. The officer told him, in open court that if he asked another question, the officer would "knock his f----- a-- out."

51.

In the substantial majority of cases, those who cannot raise all of the money they owe are sentenced to a term of incarceration – even though they have not been represented by counsel – to “work off” the old fines. Pursuant to statute, they are sentenced to one day in jail for every \$25 owed.<sup>2</sup> Only rarely does the Court consider any alternate measure of punishment besides imprisonment.

Sometimes, defendants offer what little cash they have. This, generally, will not suffice. Judge Atchison often tells defendants who owe large fines “bring me a grand and I’ll let you out.” Most of these hearings last less than one minute.

52.

The City of Gulfport is facing a financial crisis. A recent budget report states that the general fund budget contained a \$1.4 million operating deficit. On information and belief, the City and the judges of the Municipal Court are seeking to increase the City’s revenue at the expense of the constitutional rights of Plaintiffs and other misdemeanants. As such, the judges are acting in an administrative capacity on behalf of the City to implement the old fines policy.

53.

On information and belief, in recent months, the City has stepped up its efforts to collect old fines. On June 11, 2005, Judge Atchison was quoted in the *Sun Herald* newspaper in an article about the collection of old fines. He stated that this year has been “a record year for collecting fines” in Gulfport. He further stated: “From the start of the fiscal year in October to June 2, we have collected \$1 million.”<sup>3</sup>

54.

(..continued)

<sup>2</sup> See Miss. Code Ann. § 99-19-20.

<sup>3</sup> See Michael Newsom, “Unpaid Fines Add Up, But Collecting Them Tough,” *Sun*

The imprisonment of indigent people for failure to pay fines violates Miss. Code Ann. § 99-19-20(2), which provides that a criminal defendant sentenced to pay a fine “may be imprisoned until the fine is paid if the defendant is financially able to pay a fine and the court so finds . . .” (emphasis supplied).

55.

The failure to advise indigent defendants of their right to counsel and the failure to provide counsel violates Miss. Code Ann. § 25-32-9, which provides: “No person determined to be an indigent as provided in this section shall be imprisoned as a result of a misdemeanor conviction unless he was represented by the public defender or waived the right to counsel.”

### **Imprisonment of the Destitute and Homeless**

56.

Many of the people sentenced to terms of incarceration for nonpayment of fines are without any assets and live on little or no income. Because the judges do not inquire into the ability of defendants to pay, these factors are not heard or considered by the Court.

57.

(..continued)

*Herald*, June 11, 2005.

Erica Brock is impaired because of severe injuries to her feet. In addition, she suffers from serious mental illness and has spent time at Whitfield State Mental Hospital. Despite clear indications that Ms. Brock is not in a position to pay the \$2,000 she allegedly owes to the City, Ms. Brock has been repeatedly incarcerated by the City of Gulfport for failure to pay her old fines.

58.

During her last incarceration in the jail (November 24 – December 20, 2004), Ms. Brock attempted suicide by jumping off of a top cell tier. As a result, she shattered the bones in her feet. Since that incident, Ms. Brock has been unable to work, and she has no income.

59.

Ms. Brock was again arrested for old fines in June 2005. On June 7, Ms. Brock appeared before Judge Smith. She pleaded with the Court to allow her to be released because she had surgery scheduled to repair the injuries to her feet. Judge Smith refused to release her but scheduled her to appear before Judge Atchison on June 9.

60.

Ms. Brock appeared before Judge Atchison on June 9. She pleaded with the judge to let her go, promising to pay the city with her Social Security disability income once her application for disability had been approved. Judge Atchison

also refused to release Ms. Brock. Neither Judge Atchison nor Judge Smith made any inquiry into Ms. Brock's ability to pay her fine. Both judges ignored her pleas to release her to receive medical treatment.

61.

Ms. Brock was not informed of her right to counsel at either hearing. She has never been represented by a lawyer in the Gulfport Municipal Court.

62.

Michael Gay is a 41-year-old Caucasian man. He is homeless. On May 6, 2005, Mr. Gay was asleep in his sleeping bag when he was awakened by police officers, arrested for old fines, littering, and public intoxication, and brought to jail. The Gulfport Municipal Court judge who arraigned Mr. Gay did not make any inquiry into Mr. Gay's ability to pay his fines or advise him of his right to counsel. Mr. Gay spent over one month in jail.

63.

Hubert Lindsey is homeless and unemployed. He lives in a tent. Mr. Lindsey's left eye is clouded and half-shut due to an injury. He also has a serious and visible injury to his left shoulder. Both of these impairments have limited Mr. Lindsey's ability to work. On July 1, 2005, Mr. Lindsey was stopped by the police for "riding his bicycle without a light." The police then arrested Mr. Lindsey for failure to pay fines and took him to jail. Mr. Lindsey appeared before the Gulfport

Municipal Court on July 7. The presiding judge sentenced Mr. Lindsey to "sit out" \$4,780 worth of old fines, without making any inquiry into Mr. Lindsey's indigence or ability to pay these fines. Mr. Lindsey is still in jail.

64.

Henry Winters has been homeless for some time, and because of this, had been sleeping in an abandoned house at the time of his arrest on May 18, 2005. The house does not have gas or water. Mr. Winters was arrested for old fines on May 18 and came before Gulfport Municipal Court Judge Bill Atchison on May 19. Although Mr. Winters's physical appearance suggested that he was indigent, Judge Atchison did not ask Mr. Winters any questions. Instead, Judge Atchison told Mr. Winters that he owed the City \$1729 and sentenced him to nearly one month in jail. Mr. Winters was not given an opportunity to speak at the hearing.

### **Imprisonment of the Mentally Ill and Mentally Retarded**

65.

Many of the people sentenced to terms of incarceration for nonpayment of fines are mentally retarded or mentally ill. Because the judges do not inquire into the ability of defendants to pay, these factors are not heard or considered by the Court. Mentally ill people, in particular, are repeatedly arrested by the City of Gulfport and incarcerated for failure to pay old fines.

66.

Plaintiff Virginia Thomas has been arrested by the Gulfport Police Department and incarcerated at the Jail for misdemeanors *17 times* since 1998. She has never been informed by the court that she has the right to court-appointed counsel.

67.

Ms. Thomas is illiterate and mentally retarded. She is unable even to sign her own name.

68.

Most recently, Ms. Thomas summoned the Gulfport Police to her residence on March 24, 2005 after a neighbor threatened her. When the police arrived, they discovered that Ms. Thomas owed old fines. They took her to jail. Ms. Thomas was not accused of or charged with any wrongdoing in connection with the disagreement with her neighbor but was arrested solely for old fines.

69.

Ms. Thomas sat in jail for five days without counsel before she appeared before the court. On or about March 29, 2005, Ms. Thomas appeared before Judge Richard Smith of the Gulfport Municipal Court. Judge Smith did not conduct any inquiry into Ms. Thomas's ability to pay the fines. Instead, he ordered Ms. Thomas confined to jail until she paid off her fines, at a rate of \$25 per day. As a result, Ms. Thomas spent three months in jail.

70.

Ms. Thomas has been arrested and incarcerated for old fines on nine separate occasions. On five of those occasions, she has been held in jail for a period of more than one month.

71.

Ms. Thomas has not willfully failed to pay her fines. She is indigent and mentally retarded. Ms. Thomas lives on a small monthly payment of Supplemental Security Income (“SSI”) provided by the federal government. According to the Social Security Administration, SSI is a federal income supplement program “designed to help aged, blind, and disabled people, who have little or no income.” It “provides cash to meet basic needs for food, clothing, and shelter.”<sup>4</sup> Ms. Thomas is unable to pay the money she owes to the City of Gulfport.

72.

Clark Crawley, a 64-year-old Caucasian man with paranoid schizophrenia, was arrested by the Long Beach police on March 24, 2005. He was charged with “public profanity” and taken to jail. Once in custody, it was determined that Mr. Crawley owed over \$2,000 in old fines to the City of Gulfport. On March 31, Mr.

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<sup>4</sup> See <http://www.ssa.gov/notices/supplemental-security-income/>.



Crawley appeared before Judge Atchison. Judge Atchison never advised Mr. Crawley of his right to counsel and told him that he would have to remain in jail to “work off” his fines. When Mr. Crawley informed the court that he could not afford to pay the fines, Judge Atchison ordered Mr. Crawley to step away from the bench and told him that if he did not do so, he would be held in contempt. Mr. Crawley remained in jail for 12 days, in part, because of the old fines he owed.

73.

Travis Hudson, a 40-year-old Caucasian man, was arrested for old fines on May 18, 2005. Mr. Hudson appears to suffer from mental illness and lives in his car. The court did not make any inquiry into Mr. Hudson’s ability to pay or advise him of his right to counsel. Mr. Hudson spent six days in the jail for old fines. The Gulfport police arrested Mr. Hudson again on June 1, charging him with public intoxication. Mr. Hudson is so indigent that he remains in jail on the public intoxication charge because he is unable to afford the \$15.20 bond fee.

**Loss of Livelihood**

74.

Defendants' illegal actions have harmed many people who are barely economically able to provide for themselves and their families.

75.

In May 2005, Plaintiff Steven Riley spent two weeks in jail for old fines. As a result, he lost his job, and his mother, confined to a wheelchair, was left alone without anyone to care for her.

76.

Mr. Riley was arrested on May 16, 2005, when the Gulfport Police Department pulled over a car in which Mr. Riley was a passenger. The police placed him under arrest and brought him to jail. The only reason for his arrest was that he allegedly owed old fines.

77.

On May 17, 2005, Mr. Riley appeared before Judge Richard Smith of the Gulfport Municipal Court. Mr. Riley told Judge Smith that he had "worked off" his fines by doing community service in 2002. He told the judge the name of his community service supervisor and told the judge that he had taken his receipt verifying completion of his hours to the clerk of the Gulfport Municipal Court.

The court did not inquire about Mr. Riley's financial status or make any determination about whether his failure to pay fines was willful.

78.

Mr. Riley remained in the jail for the next two weeks. He called everyone he could to come up with the money, but he was not able to borrow the \$314 he supposedly owed.

79.

Just eight days before he was arrested, Mr. Riley had started a new job. Because of his incarceration, he lost his job. Since then, he has only been able to find part-time work.

80.

Plaintiff Timothy Mason was incarcerated at the Harrison County Jail "working off" his old fines from May 12 to June 26, 2005. Mr. Mason was arrested by the D'Iberville police on May 11, 2005 after he stole a packet of beef jerky from Wal-Mart. On May 12, Mr. Mason pled guilty to shoplifting in D'Iberville Municipal Court. He received a fine of \$542 and six months probation. Mr. Mason remained in jail, however, because of old fines owed to the City of Gulfport.

81.

At the time of his arrest, Mr. Mason was living in a trailer with no electricity or running water. He and his family are so poor that at times, he has resorted to eating out of garbage dumpsters because he cannot afford food. As a result of his incarceration, Mr. Mason lost a job he had just started, laying sheetrock. This is the third time Mr. Mason has been arrested for old fines.

82.

Mr. Mason has never been advised of his right to counsel by the judges of the Municipal Court. Nor has he ever been represented by counsel in that court.

83.

Plaintiff Jacqueline Lindsey has been incarcerated at the Harrison County Jail for almost two months for being too poor to pay her fines.

84.

Ms. Lindsey was arrested by the Gulfport Police while walking home from a restaurant on June 1, 2005. The officers who approached Ms. Lindsey asked her name and told her to wait while they checked to see if she owed fines. Because Ms. Lindsey owed old fines, she was taken to jail.

85.

Nearly one week later, Ms. Lindsey appeared before Judge Smith and was never advised of her right to counsel. Ms. Lindsey was permitted to call her uncle

from the telephone at the judge's bench. In open court, with court staff and a room full of inmates looking on, Ms. Lindsey pleaded with her uncle to bring her the money she owed, promising to sell her car to pay him back. Unable to come up with the money, Ms. Lindsey was sentenced to 52 days in jail.

86.

Judge Smith did not conduct any inquiry into Ms. Lindsey's background or financial circumstances before he sentenced her to nearly two months in jail. If he had, he would have known that Ms. Lindsey was too poor to pay her fines.

Although she has worked pressing clothes at Exclusive Cleaners for the last two years, she makes barely above minimum wage. Due to her incarceration, Ms. Lindsey's employer had to hire someone else to fill her position. When she is released from jail, she will be without a job. She has lost her only source of income.

87.

Leo Benoit, a 36-year-old African-American man, was riding his bicycle home after working the night shift at Burger King – wearing his Burger King uniform and visor – when the Long Beach Police stopped him. The police told him that they stopped him for “riding a bicycle without a light.” The police then “ran” Mr. Benoit's name and found that he owed \$406 in old fines to Long Beach and \$355 to Gulfport. Mr. Benoit spent thirteen days in jail. The Gulfport

Municipal Court did not conduct any inquiry into Mr. Benoit's ability to pay the fine or advise him of his right to counsel. Mr. Benoit supports his two children under the age of two on his salary from Burger King. His thirteen days in jail deprived his family of two weeks of his income.

88.

Defendants' fine collection practices are illegal and unconstitutional. Defendants have no authority to incarcerate indigent defendants who are unable to pay all of their fines. They also have no legal authority to keep them in jail for months for the sole reason that they are too poor, and/or mentally, or physically disabled to pay fines.

**Illegal Obstruction of Plaintiffs' Right to View Public Court Documents**

89.

Officials of the Gulfport Municipal Court deny Plaintiffs and others similarly situated access to court files regarding their cases in violation of the First and Fourteenth Amendments to the United States Constitution and Mississippi's Public Records Act.

90.

In accordance with the policy of the Gulfport Municipal Court, the undersigned counsel submitted a written request to view the court files of nine of

their clients. The Gulfport Municipal Court charged Plaintiffs' counsel a \$4.75 per page "retrieval fee" for the files. Court Administrator Bill Markopoulos insisted that the \$513 bill be paid in full before counsel would be permitted to *see* their clients' files. The \$4.75 per page "retrieval fee" bears no relation to the fee schedule posted in the Municipal Court Clerk's office.

91.

The Mississippi Public Records Act states that "public records must be available for inspection by any person unless otherwise provided [by the Act]," and "providing access to public records is a duty of each public body." Miss. Code Ann. § 25-61-1. The Act permits a public body to charge "fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching" for records.

92.

Defendant Markopoulos and other Municipal Court officials have violated the Public Records Act and the First and Fourteenth Amendments to the United States Constitution by charging excessive fees, charging fees that bear no relation to the actual cost of retrieving files, and purposely obstructing Plaintiffs from access to public records.

## **CLASS ACTION ALLEGATIONS**

93.

Plaintiffs bring this class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on their behalf and on behalf of a class similarly situated and affected during the pendency of this lawsuit and in the future. The class is defined as all indigent persons who are: (1) facing criminal charges in the Gulfport Municipal Court and entitled to court-appointed counsel, (2) currently incarcerated by order of the Gulfport Municipal Court for failing to pay old fines, and/or (3) eligible for arrest by Gulfport City Police or their agents for failing to pay fines imposed by the Gulfport Municipal Court.

94.

The members of this class are so numerous that their joinder is impractical. Thousands of accused misdemeanants come before the Gulfport Municipal Court each year. There are currently over 100 misdemeanants at the Harrison County Jail – a facility that is already severely overcrowded. The majority of these misdemeanants are awaiting adjudication by the Gulfport Municipal Court or serving sentences imposed by the Court. The practices of the Municipal Court are capable of repetition yet evading review, and this is best addressed in a class action. On information and belief, there are hundreds more people who are indigent and owe old fines, who if arrested will be subject to incarceration for



failure to pay.

95.

The policies and practices challenged in this action apply with equal force to the named Plaintiffs and all members of the class so that the claims of the named Plaintiffs are typical of those of the class. All class members are current or future defendants in the Gulfport Municipal Court. Class members have been or will be, absent this Court's intervention, deprived of the right to liberty without due process of law upon any alleged failure to pay. All class members will continue to be subject to such conditions absent the requested relief.

96.

The named Plaintiffs will fairly represent and adequately protect the interests of the class as a whole. They possess the requisite personal interest in the subject matter of the lawsuit and possess no interests adverse to other class members. Plaintiffs are representative of the class of all persons who are: (1) facing criminal charges in the Gulfport Municipal Court and entitled to court-appointed counsel, (2) currently incarcerated by order of the Gulfport Municipal Court for failing to pay old fines, and/or (3) eligible for arrest by Gulfport City Police or their agents for failing to pay fines imposed by the Gulfport Municipal Court.

97.

Plaintiffs are represented by counsel who are experienced in class action litigation involving the rights of indigent criminal defendants. The named Plaintiffs and the class members are represented by attorneys at the Southern Center for Human Rights, a privately funded, nonprofit organization with extensive experience in complex class action litigation including litigation challenging the provision of indigent defense, as well as by attorneys at the NAACP Legal Defense and Educational Fund, Inc., a civil rights organization dedicated to enforcing the rights of African Americans. Plaintiffs are also represented by Robert McDuff, an attorney based in Jackson, Mississippi, with extensive experience as a civil rights litigator. Plaintiffs' counsel have the resources, expertise, and experience to effectively prosecute this action.

98.

The questions of fact and law common to the class as a whole concerning the constitutionality and lawfulness of each of the following of Defendants' policies and practices are:

- (a) the failure to provide counsel to people accused of misdemeanors who may be deprived of their liberty for failure to pay fines in 30 days;
- (b) the practice of imposing fines without a determination of Gulfport Municipal Court defendants' ability to pay;

- (c) the policy and practice of summoning people to court, handcuffing them to a chair in a back office, and directing them to contact friends and family to come up with the money they owe;
- (d) the policy and practice of requiring people who cannot afford to pay fines to “work off” their fines at \$25 per day in jail;
- (e) the policy and practice of failing to inform defendants of the right to court-appointed counsel in cases resulting in jail or suspended jail sentences;
- (f) the policy and practice of jailing persons who exhibit signs of serious mental illness without any determination of competency.

99.

Defendants, in creating and enforcing the policies regarding provision of counsel and fine collection, have acted in a way generally applicable to the class the Plaintiffs represent, thereby making preliminary and permanent injunctive relief and corresponding declaratory relief appropriate for the class as a whole pursuant to Rule 23(b)(2).

**CLAIMS FOR RELIEF**

**COUNT ONE**

**DENIAL OF THE RIGHT TO COUNSEL**

100.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of the preceding paragraphs.

101.

By failing to provide counsel at proceedings which could lead to a denial of liberty, Defendants have violated Plaintiffs' right to counsel under the Sixth and Fourteenth Amendments to the United States Constitutions, as applied to the states and enforced through 42 U.S.C. § 1983.

102.

In each and every instance set forth above, Defendants acted intentionally, or at least recklessly, in disregard of Plaintiffs' constitutional rights. Defendants knew or should have known that their conduct violated Plaintiffs' constitutional rights.

103.

The actions set forth above were taken by Defendants under color of state law.

104.

As a direct and proximate result of Defendants' illegal policies and practices, Plaintiffs were wrongfully deprived of their liberty. Each Defendant either personally participated in the actions or failures to act, or implicitly authorized, approved, or knowingly acquiesced or failed to remedy the wrongs at issue.

105.

Absent this Court's intervention, Defendants will continue to violate Plaintiffs' rights in the manner described herein.

## **COUNT TWO**

### **DENIAL OF DUE PROCESS OF LAW**

106.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of the preceding paragraphs.

107.

Defendants, by depriving Plaintiffs of their liberty for their failure to pay fines despite the inability of Plaintiffs to pay those fines, and by effectively denying Plaintiffs access to public court documents, have deprived Plaintiffs of due process of law in violation of the Fourteenth Amendment to the United States

Constitution, as applied to the states and enforced through 42 U.S.C. § 1983, and Art. 3, § 14 of the Mississippi Constitution.

108.

Defendants routinely incarcerate defendants who appear mentally ill, and, in fact, do have serious mental illness, without any inquiry or determination as to their competence to stand trial, in violation of the Fourteenth Amendment to the United States Constitution, as applied to the states and enforced through 42 U.S.C. § 1983, and Art. 3, § 14 of the Mississippi Constitution.

109.

In each and every instance set forth above, Defendants acted intentionally, or at least recklessly, in disregard of Plaintiffs' constitutional rights. Defendants knew or should have known that their conduct violated Plaintiffs' constitutional rights.

110.

The actions set forth above were taken by Defendants under color of state law.

111.

As a direct and proximate result of Defendants' illegal policies and practices, Plaintiffs were wrongfully deprived of their liberty. Each Defendant either personally participated in the actions or failures to act, or implicitly

authorized, approved, or knowingly acquiesced or failed to remedy the wrongs at issue.

112.

Absent this Court's intervention, Defendants will continue to violate Plaintiffs' rights in the manner described herein.

### **COUNT THREE**

#### **DENIAL OF EQUAL PROTECTION OF THE LAWS**

113.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of the preceding paragraphs.

114.

Defendants, by depriving indigent Plaintiffs of their liberty for their failure to pay fines despite the inability of Plaintiffs to pay those fines, and by effectively denying Plaintiffs access to their court files, have denied Plaintiffs equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution, as applied to the states and enforced through 42 U.S.C. § 1983, and Art. 3, § 14 of the Mississippi Constitution.

115.

In each and every instance set forth above, Defendants acted intentionally, or at least recklessly, in disregard of Plaintiffs' constitutional rights. Defendants knew or should have known that their conduct violated Plaintiffs' constitutional rights.

116.

The actions set forth above were taken by Defendants under color of state law.

117.

As a direct and proximate result of Defendants' illegal policies and practices, Plaintiffs were wrongfully deprived of their liberty. Each Defendant either personally participated in the actions or failures to act, or implicitly authorized, approved, or knowingly acquiesced or failed to remedy the wrongs at issue.

118.

Absent this Court's intervention, Defendants will continue to violate Plaintiffs' rights in the manner described herein.



**COUNT FOUR**  
**VIOLATION OF PROHIBITION**  
**AGAINST INVOLUNTARY SERVITUDE**

119.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of the preceding paragraphs.

120.

By incarcerating indigent persons for failure to pay fines and/or by requiring these persons to perform labor while incarcerated, Defendants have violated the Thirteenth Amendment's prohibition against involuntary servitude, as applied to the states and enforced through 42 U.S.C. § 1983.

121.

In each and every instance set forth above, Defendants acted intentionally, or at least recklessly, in disregard of Plaintiffs' constitutional rights. Defendants knew or should have known that their conduct violated Plaintiffs' constitutional rights.

122.

The actions set forth above were taken by Defendants under color of state law.

123.

As a direct and proximate result of Defendants' illegal policies and practices, Plaintiffs were wrongfully deprived of their liberty. Each Defendant either personally participated in the actions or failures to act, or implicitly authorized, approved, or knowingly acquiesced or failed to remedy the wrongs at issue.

124.

Absent this Court's intervention, Defendants will continue to violate Plaintiffs' rights in the manner described herein.

### **COUNT FIVE**

#### **DENIAL OF RIGHT TO INSPECT PUBLIC COURT DOCUMENTS**

125.

Plaintiffs incorporate herein and re-allege, as if fully set forth herein, the allegations of the preceding paragraphs.

126.

Defendants have purposely blocked access to public court documents by charging Plaintiffs exorbitant, arbitrary, and unreasonable fees that bear no relation to the actual cost of retrieving files. Defendants, by denying Plaintiffs access to their own criminal court files, have violated the First and Fourteenth Amendments

to the United States Constitution, as applied to the states and enforced through 42 U.S.C. § 1983.

127.

In each and every instance set forth above, Defendants acted intentionally, or at least recklessly, in disregard of Plaintiffs' constitutional rights. Defendants knew or should have known that their conduct violated Plaintiffs' constitutional rights.

128.

The actions set forth above were taken by Defendants under color of state law.

129.

As a direct and proximate result of Defendants' illegal policies and practices, Plaintiffs were wrongfully deprived of their liberty. Each Defendant either personally participated in the actions or failures to act, or implicitly authorized, approved, or knowingly acquiesced or failed to remedy the wrongs at issue.

130.

Absent this Court's intervention, Defendants will continue to violate Plaintiffs' rights in the manner described herein.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction over this action;
2. Determine by Order pursuant to Rule 23 of the Federal Rules of Civil Procedure that this action be maintained as a class action;
3. Order trial by jury on all claims so triable;
4. Enter judgment in favor of Plaintiffs;
5. Enter a preliminary injunction and thereafter a permanent injunction ordering Defendants to: (a) refrain from incarcerating any person for failure to pay fines who has not willfully failed to pay, (b) provide counsel to all accused misdemeanants in the Gulfport Municipal Court who face potential loss of liberty, and (c) provide misdemeanants and accused misdemeanants reasonable access to their court files;
6. Order defendants to devise a constitutionally permissible approach to imposing punishment on indigent mentally ill and/or mentally retarded persons who are frequently convicted of misdemeanors;
7. Award Plaintiffs the costs of this lawsuit and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;

8. Order such other and further relief as this Court may deem just and proper.

Respectfully submitted this 8th day of August, 2005.

BY: Miriam Gohara

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 2005, I caused to be served, via overnight delivery, a copy of the foregoing pleading to:

Harry Hewes, Esq.  
Gulfport City Attorney  
2309 15<sup>th</sup> St.  
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M. Gordon