No. _____

In the Supreme Court of the United States

THE CITY OF MAPLEWOOD,
Applicant,

v.

CECELIA WEBB, ET AL.,
Respondents,

Application from the U.S Court of Appeals for the Eighth Circuit (No. 17-2381)

APPLICATION TO RECALL AND STAY THE MANDATE PENDING DISPOSITION OF THE PETITION FOR A WRIT OF CERTIORARI, DIRECTED TO THE HON. NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE SUPREME COURT AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT

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INTRODUCTION

TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE SUPREME COURT AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT:

This matter – an interlocutory appeal on sovereign immunity grounds from the district court's denial of Maplewood's motion to dismiss the class action complaint – revolves around two separate entities that respondents Cecelia Webb, et al. (collectively "Motorists") have grouped together under the formally-named defendant "The City of Maplewood": (1) a municipal court division that forms part of Missouri's unified state judicial system; and (2) a municipal corporation. The Eighth Circuit denied Maplewood's timely motion to stay the mandate on June 25, 2018. (Attach. C). A day later, the court issued the mandate (Attach. D), notwithstanding the general rule that a mandate will typically issue seven days after the denial of a motion to stay. *See* Fed. R. App. P. 41(b). The municipal court division, as an arm-of-the-state entitled to sovereign immunity, will suffer irreparable harm in the absence of this Court recalling and staying the Eighth Circuit's mandate, since discovery will now commence against it in the district court, and sovereign immunity "is for the most part lost as litigation proceeds past motion practice…." *Puerto Rico Aq. and Sewer Auth. v. Metcalf & Eddy*, *Inc.*, 506 U.S. 139, 145 (1993).

Two questions are presented making it likely this Court will grant certiorari on the Eighth Circuit's judgment:

1. On the one hand, in reviewing a claim of sovereign immunity "courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy is truly sought against the

sovereign." *See Lewis v. Clarke*, 137 S.Ct. 1285, 1290 (2017). On the other hand, municipal corporations are not state entities, and consequently do not enjoy sovereign immunity, even if they exercise a "slice of state power." *See Northern Ins. Trust of New York v. Chatham Cnty.*, 547 U.S. 189, 193-194 (2006). What happens when a complaint formally names a "municipality" as a defendant but then defines that "municipality" to include not only the municipal corporation, but also a separate entity that is an arm-of-the-state, such that any adverse judgment against such a defined "municipality" will bind the state entity? Does that render the complaint "an action [that] is in essence against a State even [though] the State is not a named party," *Lewis*, 137 S.Ct. at 1290, thus barring the lawsuit on sovereign immunity grounds? *See id*.

2. Furthermore, municipal corporations can only be liable for constitutional deprivations resulting from an unlawful policy or custom in an area where state law gives them final policymaking authority. *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 784-786 (1997). If the resolution of the sovereign immunity question posed above demonstrates that the arm-of-the-state is vested with the sole legal authority to take the actions leading to the alleged constitutional deprivations, does that mean that the claims against the "municipality" defined as a municipal corporation necessarily fail as a matter of law?

JURISDICTION

The Eighth Circuit issued both its opinion and its judgment affirming the district court's denial of the motion to dismiss on May 4, 2018. (Attach. A at 1;

Attach. B). It subsequently denied Maplewood's timely petition for rehearing en banc on June 13, 2018, (Attach. C), giving Maplewood up to and including September 11, 2018, to file its petition for a writ of certiorari. Sup. Ct. R. 13.3. On June 25, 2018, the Eighth Circuit denied Maplewood's timely motion to stay the mandate pending the disposition of its petition for a writ of certiorari, (Attach. D), and issued its mandate a day later. (Attach. E). This Court thus has jurisdiction under 28 U.S.C. §§ 1254(1) and 2101(f).

STATEMENT OF THE CASE

I. Summary of Motorists' allegations.

Motorists have filed a putative class action complaint under 42 U.S.C. § 1983, formally naming "The City of Maplewood, Missouri," as the only defendant. (Attach. G at 1). They allege that Maplewood is a municipal corporation that "operates the Maplewood Municipal Court…." (Attach. G at 5, ¶ 23). As the Eighth Circuit noted, Motorists claim that Maplewood, through the municipal court, violates their constitutional rights through an unlawful policy or custom. (Attach. A at 1). According to Motorists, Maplewood "automatically issues an arrest warrant whenever someone ticketed for violating its traffic and vehicle laws fails to pay a fine or appear in court." (Attach. A at 1). Upon being arrested, the motorist can either post bond without any prior hearing to determine his ability to pay, or sit in jail. (Attach. A at 2). After the court issues the warrant, "a motorist cannot avoid it by voluntarily returning to the municipal court or paying the outstanding fine, but must either submit to a custodial arrest or retain a lawyer to argue a motion before

the municipal judge to vacate the warrant." (Attach. A at 2). The municipal judge demands the motorist's physical presence in court, and a failure to appear will result in the motorist's arrest. (Attach. A at 2).

Motorists claim that these actions violate their due process and equal protection rights due to their alleged poverty and inability either to pay the bond or the fine. (Attach. A at 2). They seek both monetary damages and injunctive relief against these practices. (Attach. G at 55-57).

II. Overview of Missouri's unified court system, including its municipal court divisions.

As the Eighth Circuit rightly observed, all of Motorist's allegations center on judicial and quasi-judicial actions of the municipal court division within Maplewood – that is, the issuance of arrest warrants for failure to appear for a court hearing, the setting or revoking of bonds on such warrants, the determination of indigency, the imposition of fines, and the appointment or refusal to appoint counsel. (Attach. A at 1-2). Motorists have included this municipal court division within its definition of "the City of Maplewood" in their class action complaint. (Attach. G at 5, ¶ 23). Consequently, their allegations cannot be understood absent an overview of the municipal court divisions within Missouri law and how they form part of Missouri's unified court system, an arm-of-the-state.

A. Long ago, Missouri voters abolished municipal courts as entities independent of the State, merging them with the rest of the Missouri state judicial system.

The State of Missouri's judicial power is "vested in a supreme court, a court of appeals…and circuit courts." Mo. Const. Art. V, § 1. The circuit courts have "original

jurisdiction over all cases and matters, civil and criminal." Mo. Const. Art. V, § 14. Until approximately four decades ago, municipal courts within Missouri existed as entities separate and distinct from the Missouri state courts. *Gregory v. Corrigan*, 685 S.W.2d 840, 842 (Mo. 1985); Mo. Const. Art. V, § 27.2. But in 1976, Missouri voters approved amendments to the Missouri Constitution that revamped the state court system. *Gregory*, 685 S.W.2d at 842. Once the amendments went into effect in 1979, the municipal courts "ceas[ed] to exist," Mo. Const. Art. V, § 27.2(d), their powers and jurisdiction having been transferred to the particular circuit court covering the relevant municipality's geographic location. *Id*.

Now that the municipal courts have been abolished, "[v]iolations of municipal ordinances *shall* be heard and determined *only* before divisions of the circuit court…." Mo. Rev. Stat. § 479.010 (emphasis added). The presiding judge of the circuit court, furthermore, has "general administrative authority over the judges and court personnel of all divisions of the circuit hearing and determining ordinance violations within [that particular] circuit." Mo. S. Ct. R. 37.04.

B. The judges and clerks of the municipal divisions, and their powers.

The 1976 amendments provide that "[e]ach circuit may have such municipal judges as provided by law…." Mo. Const. Art. V, § 23. Municipal corporations may determine, via ordinance, how to select such judges and their clerks. Mo. Rev. Stat. §§ 479.020.1, 479.060.1. Municipal corporations also pay the salaries of both the municipal judges and municipal clerks, as well as "other expenses incidental to the operation of the municipal divisions…." Mo. Rev. Stat. § 479.060.1. But Missouri

law does not vest municipal corporations with any control or supervision over the municipal court divisions' judicial or quasi-judicial actions; rather, such control and supervision lies ultimately with the Missouri Supreme Court and, in very limited circumstances not relevant here, with the Missouri General Assembly. *See, e.g.,* Mo. Const. Art. V, §§ 4-5; Mo. S. Ct. R. 37.02; *State v. Reese*, 920 S.W.2d 94, 95 (Mo. 1996).

Judges selected pursuant to a municipal ordinance are "municipal judges of the circuit court and [are] divisions of the circuit court of the circuit in which the municipality…is located." Mo. Rev. Stat. § 479.020.5. They are "conservator[s] of the peace," Mo. Rev. Stat. § 479.070, and must maintain a written docket of each of their cases, which becomes a record of the circuit court. *Id.* They "have the power to administer oaths and enforce due obedience to all orders, rules, and judgments made by [them], and may fine or imprison for contempt committed before [them] while holding court, in the same manner and to the same extent as a circuit judge." *Id.*

The municipal clerks, furthermore, "constitute the clerical staff of the circuit court to perform the recordkeeping functions in the municipal divisions." Mo. Rev. Stat. § 483.241.3. Like the municipal judges, such municipal clerks are subject to the administrative authority of the presiding judge of the circuit court. Mo. S. Ct. R. 37.04. Either the municipal division judge or the municipal division clerk may sign an arrest warrant. Mo. S. Ct. R. 37.45(b)(6).

C. Criminal procedure within the circuit court's municipal divisions.

The Missouri Supreme Court Rules govern the procedure for prosecuting, trying, and executing judgments on ordinance violations. Mo. S. Ct. R. 37.01. Ordinance violations are charged via information. Mo. S. Ct. R. 37.34. The municipal division then issues a summons for the defendant to appear at a court date. Mo. S. Ct. R. 37.43. If a defendant fails to appear in response to a summons, and the municipal division finds probable cause to believe an ordinance violation has been committed, the municipal division may issue an arrest warrant for the defendant. Mo. S. Ct. R. 37.44. Alternatively, the municipal division judge may, in lieu of issuing a summons, issue a warrant for the defendant's arrest if there exists reasonable grounds for the court to believe that the defendant will not appear upon such a summons. Mo. S. Ct. R. 37.43. In either case, the arrest warrant must contain, among other things, the defendant's name, the charged ordinance violation, the date the warrant was issued, the issuing jurisdiction, the conditions of release, and the signature of either the judge or clerk of the municipal division. Mo. S. Ct. R. 37.45.

Any defendant arrested for an ordinance violation has a right to be released from custody pending trial, Mo. S. Ct. R. 37.15(a), but the municipal judge may condition the defendant's release on the execution of a bond to ensure that the defendant is reasonably likely to appear at the court hearing on the ordinance violation. Mo. S. Ct. R. 37.15(c)(3). The judge may modify the bond amount upon a finding that the bond is excessive. Mo. S. Ct. R. 37.19(a)(2).

Should the municipal division judge "fail to set conditions for release," or if the judge "set[s] inadequate or excessive conditions" for release, the defendant may file an application for relief "in a higher court…." Mo. S. Ct. R. 37.22(a). "If the higher court finds that the accused is entitled to be released and no conditions therefor have been set or that the conditions are excessive or inadequate, the court shall make an order setting or modifying conditions for the release of the [defendant]." Mo. S. Ct. R. 37.22(b). In addition, Missouri courts, like the federal courts, provide that an individual who has exhausted his ordinary legal remedies for seeking release from custody may petition for a writ of habeas corpus on the ground that he "is restrained of his or her liberty in violation of the constitution or laws of the state or federal government." *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 545 (Mo. 2003).

Defendants charged with municipal violations have a right to counsel if a conviction would result in possible confinement. Mo. S. Ct. R. 37.50. "If any person charged with an ordinance violation…shall be without counsel upon a first appearance before a judge, it shall be the duty of the judge to advise the defendant of the right to counsel," *id.*, and that the judge is willing to appoint counsel. *Id.* "Upon a showing of indigency," furthermore, "it shall be the duty of the judge to appoint counsel to represent the defendant." *Id.*

All defendants tried before a municipal division state judge in Missouri have a right to a trial de novo before a circuit judge or associate circuit judge of the State of Missouri. Mo. Rev. Stat. § 479.200.1. The defendant may then appeal the judgment

of this second trial to the Missouri Court of Appeals. *See, e.g., City of Slater v. Burks*, 714 S.W.2d 534 (Mo. App. W.D. 1986).

If a defendant is found guilty of an ordinance violation and assessed a fine, the municipal division judge "shall order a stay of execution on the payment of the fine" if it "appears to the judge that the defendant does not have at that time the present means to pay the fine…." Mo. S. Ct. R. 37.65(a). The judge shall, in such a case, either "(1) [g]rant the defendant a specified period of time in within which to pay the fine in full, or (2) [p]rovide for the payment of the fine on an installment basis under such terms and conditions as the judge may deem appropriate." *Id*.

Should the defendant not pay the fine under the judge's conditions, the judge may issue an order for the defendant to appear in court at a future date to show cause. Mo. S. Ct. R. 37.65(c). If the defendant fails to appear at this subsequent hearing, "the court may issue a warrant to secure the defendant's appearance for a hearing on the order to show cause." *Id.* Furthermore, if the defendant defaults in paying the fine or any of its installations, "the judge may issue an order to show cause why the defendant should not be held in contempt of court." Mo. S. Ct. R. 37.65(c).

If the defendant has already failed to appear at a previously-scheduled hearing on an order to show cause, the municipal division judge may, without a summons, "issue a warrant to secure the defendant's appearance for a hearing on the order to show cause." *Id*. "If following the show cause hearing the judge finds the defendant intentionally refused to obey the sentence of the court or to have made a good faith

effort to obtain the necessary funds for payment, the judge may confine the defendant for a term not to exceed thirty days for contempt of court." *Id.*

III. Procedural History.

In the district court, Maplewood timely moved to dismiss Motorists' class action complaint on sovereign immunity grounds, which the district court denied on June 5, 2017, (Attach. G at 13-14), though it did "agree that the complaint's allegations [were] largely based on action taken by and in the municipal court…." (Attach. G at 13). Maplewood then filed a timely notice of interlocutory appeal to the Eighth Circuit, which affirmed the district court's denial on May 4, 2018.[1] (Attach. A at 1; Attach. B). Following the Eighth Circuit's denial of en banc rehearing (Attach. C), Maplewood timely moved to stay the mandate, which the court denied. (Attach. D). Even though a federal appellate court will usually issue its mandate seven days after the denial of a motion to stay the mandate, *see* Fed. R. App. P. 41(b), the Eighth Circuit issued its mandate the very next day, on June 26, 2018, thus returning jurisdiction to the district court for discovery to commence.

REASONS FOR GRANTING THE APPLICATION

A single Justice has the authority to grant a stay of a mandate pending the disposition of a certiorari petition. 28 U.S.C. § 2101(f). To such relief, the applicant must demonstrate three things. First, it must be reasonably probable that the Court will grant certiorari. *Barnes v. E-Systems, Inc. Group Hosp. Med. & Surg. Ins. Plan*, 501 U.S. 1201, 1302 (1991) (Scalia, J., in chambers). Next, a "significant possibility"

[1] The Eighth Circuit also rejected Maplewood's argument that individual immunities such as judicial and quasi-judicial immunity barred the lawsuit (Attach. A at 4-6), but Maplewood does not seek certiorari on this issue.

has to exist that the Court will reverse the lower court's judgment. *Id*. Finally, the applicant must demonstrate "a likelihood of irreparable harm" if the mandate is not stayed. *Id*. If the lower court has already issued the mandate, the same standard applies for the Justice to recall the mandate and order it stayed. *See Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.*, 134 S.Ct. 1621 (2014) (Roberts, C.J., in chambers).

These three factors are considered in the context of balancing the equities – that is, "[i]t is ultimately necessary…to explore the relative harms to the applicant and respondent, as well as the interests of the public at large." *Barnes*, 501 U.S. at 1305. If it is a matter of the respondent suffering nothing more than "the prejudice that comes with any delay in a judicial proceeding" versus an entity claiming immunity being "put to further expense in preparing for trial," it is appropriate to grant the stay. *See U.S. ex rel. Chandler v. Cook County*, 282 F.3d 448, 451 (7th Cir. 2002) (Ripple, Circuit Judge, in chambers).

I. A reasonable probability exists that this Court will grant certiorari.

A. The Eighth Circuit decided, in a manner conflicting with this Court's precedents, a important question of federal law that this Court has never settled, but should.

Certiorari is appropriate if a lower federal appellate court has either "decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." *See* Sup. Ct. R. 10(c). So far as Maplewood has been able to determine, the two issues present here have never arisen before in the

context of any sovereign immunity analysis. Nor are these issues mere novelties of first impression that have no practical, important significance. Throughout this country in the last several years, numerous class action lawsuits have arisen against municipalities alleging constitutional violations that are, in fact, targeted against municipal courts and their issuance of arrest warrants, bonds, and fines.[2] The issues presented here go to the heart of caselaw governing both sovereign immunity and municipal liability. Since, as further discussed below, there is no question that the municipal court division in Maplewood is an arm-of-the-state, this case presents an ideal opportunity for this Court to resolve them.

Furthermore, to the extent that the Eighth Circuit did attempt to resolve these issues, it did so in a manner directly repugnant to this Court's decisions in the area. First, it ruled that the "real-party-in-interest test is used only to determine whether suits against a State's arm of instrumentality or employees in their official capacity are in essence against [the] State." (Attach. A at 2) (internal quotation marks omitted). Not so. Instead, the test is whether the test would legally operate against the State, *see Lewis*, 137 S.Ct. at 1292, "or interfere with the public administration, or if the effect of the judgment would be to restrain the Government from acting, or to compel it to act." *Duggan v. Rank*, 372 U.S. 609, 620 (1963) (internal citation and quotation marks omitted). By including the municipal court division within its

[2] *E.g., Odonnell v. Harris Cnty.*, 892 F.3d 147 (5th Cir. 2018); *Ward v. City of Norwalk*, 640 Fed.Appx. 462 (6th Cir. 2016); *McCullough v. City of Montgomery*, 2017 WL 956362 (M.D. Ala. March 3, 2017); *Walker v. City of Calhoun, Ga.*, 2017 WL 2794064 (N.D. Ga. June 16, 2017); *Cain v. City of New Orleans*, 184 F.Supp.3d 379 (E.D. La. May 3, 2016). This is to say nothing of *Fant v. The City of Ferguson*, currently on interlocutory appeal to Eighth Circuit on similar issues (Cause No. 18-1472), and *Thomas, et al., v. City of St. Ann*, currently pending in the Eastern District of Missouri (Cause No. 4:16-cv-1302).

definition of the "City of Maplewood," Motorists have structured a lawsuit in such a way that any adverse judgment against "Maplewood" will legally bind the municipal division as an arm-of-the-state. Even worse, they are asking the district court to enter injunctive relief against the municipal court division curbing the manner in which it issues arrest warrants, sets or revokes bonds, imposes fines, and appoints or declines to appoint counsel. If this does not amount to a judgment "restrain[ing] the Government from acting, or compel[ing] it to act," *id.*, what does?

Indeed, the Eighth Circuit's rationale is a classic example of circular reasoning: it concludes that the real-party-in-interest test only applies if the suit is against a formally-named arm-of-the-state or an employee sued in an official capacity because only in that situation is the State the real party in interest. This does not address in the first place whether an adverse judgment against the named defendant would act to operate against the State. *See Lewis*, 137 S.Ct. at 1290 ("If, for example, an action is in essence against a State even if the State is not a named party, then the State is the real party in interest and is entitled to invoke the Eleventh Amendment's protection.").

The Eighth Circuit further concluded that Maplewood "cannot identify a single case that has used the test to find that a municipality itself had immunity." (Attach. A at 3). But this is like saying that a named official sued in an official capacity is not entitled to claim sovereign immunity because no court has ever used the real-party-in-interest to find that a named official, as an individual, is entitled to sovereign immunity: such a conclusion fails to examine whether an adverse

judgment will operate against the State itself, despite it not being named a formal defendant. Maplewood never claimed to the Eighth Circuit that, to the extent Motorists define it as a municipal corporation, it is entitled to sovereign immunity. Rather, just as a named official sued in an official capacity would rightly claim that the plaintiff has structured the lawsuit to operate against the State, so too Maplewood is claiming that Motorists have structured their lawsuit to operate against the municipal court division, an arm-of-the-state.

The Eighth Circuit sought further rationale for its ruling by citing to this Court's holding in *Lake Country Estates, Inc. v. Tahoe Reg. Plann. Agency*, 440 U.S. 391, 401 (1979) that political subdivisions are may not claim sovereign immunity even if, as such subdivisions, they exercise a "slice of state power." (Attach. A at 3). This is wrong for two reasons: first, Maplewood has never claimed that, as a municipal corporation, it is exercising a "slice of state power" by operating the municipal court division. Rather, it is claiming that Motorists have defined it to include the municipal court division, *the State itself*. Second, *Lake Country's* language about political subdivisions not being entitled to sovereign immunity even though they exercise a "slice of state power" was made in the context of examining whether a bi-state entity was entitled to sovereign immunity. *Lake Country*, 440 U.S. at 400-401. This also applies to instances where it is undisputed that the entity in question is still a local entity even when exercising the function in question. *E.g.*, *North. Ins. Co. v. Chatham Cnty.*, 547 U.S. 189, 194 (2006). It does not apply in a situation like this, where a "municipality" has been defined to include not only a

municipal corporation, but also an arm-of-the-state. This means that any judgment will bind the state itself, and not a local political subdivision exercising a "slice of state power."

Turning to the second issue – if the resolution of the sovereign immunity issue demonstrates that the relevant state law vests the arm-of-the-state, and not the municipal corporation, with the authority to take the actions forming the basis for the constitutional deprivation, does this mean that Motorists' claims against "Maplewood" defined as a municipal corporation necessarily fail as a matter of law? Without any substantive analysis, the Eighth Circuit merely observed that if the municipal court division was entitled to immunity, "that immunity would not shield the City from its separate liability, if any," (Attach. A at 4), and ruled that it could not exercise pendent appellate jurisdiction over this portion of the interlocutory appeal. (Attach. A at 7). It came to this conclusion despite its earlier en banc ruling in *Lockridge v. Bd. of Trustees*, 315 F.3d 1005 (8th Cir. 2003) (en banc), holding that resolution of an immunity issue on interlocutory appeal can resolve claims on the merits if it "necessarily follows" from deciding the immunity issue that the claims are untenable on the merits, and that pendent appellate jurisdiction attaches to. *Id.* at 1012-1013. The Tenth Circuit also holds that pendent appellate jurisdiction exists over matters necessarily resolved by the disposition of the collateral matter eligible for interlocutory appeal. *Lynch v. Barrett*, 703 F.3d 1153, 1163 (10th Cir. 2013) (joined by Gorsuch, Circuit Judge).

Municipal corporations can only be liable under § 1983 for constitutional deprivations arising out of an unlawful policy or custom in an area where state law vests the municipal corporation to act. *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 785-786 (1997). Critically, this Court's cases in this area "instruct us to ask whether governmental officials are policymakers for the local government in a particular area, on a particular issue." *Id.* at 785. This is a matter of state law. *Id.* at 786. "[O]ur understanding of the actual function of a governmental official, in a particular area, will necessarily be dependent on the definition of the official's functions under relevant state law." *Id.* Federal courts are not "justified in assuming that municipal policymaking authority lies somewhere other than where the applicable law purports to put it." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988) (plurality opinion). As the Eighth Circuit itself recently put it, "there are no de facto final policymakers – only de jure." *Soltesz v. Rushmore Plaza Civic Ctr.*, 847 F.3d 941, 948 (8th Cir. 2017).

As discussed below in Section II, the municipal court divisions in Missouri are arms of the state, and Missouri law vests them with the exclusive authority to issue arrest warrants, set or recall warrant bonds, impose fines, and appoint counsel – all of the actions forming the basis for Motorists' claims. This necessarily means that, to the extent Motorists define Maplewood as a municipal corporation, their § 1983 claims against it must fail since Missouri law does not vest municipal corporation with any final policymaking authority over such actions.

B. The Eighth Circuit's opinion creates a conflict in principle between it on the one side and the Third and Fourth Circuits on the other.

The Eighth Circuit's conclusion that *Lewis's* real-party-in-interest test only applies to causes of action against a named arm-of-the-state and named officials sued in their official capacity creates a split in principle between it and both the Third and Fourth Circuits. This further demonstrates a reasonable probability that certiorari will be granted. *See* Sup. Ct. R. 10(a) (stating that a conflict between federal appellate courts on an important matter is one ground for the Court granting review). In *Cunningham v. Gen. Dynamics Info. Technology, Inc.*, 888 F.3d 640 (4th Cir. 2018), the Fourth Circuit upheld a private corporation's entitlement to sovereign immunity, since the entity was fulfilling a statutorily-imposed duty. *See id.* at 650. It cited to *Lewis* and other cases holding that sovereign immunity can apply even if the State is not a formally-named party. *See id.*

Likewise, in *In re Flonase Antitrust Litigation*, 879 F.3d 61 (3d. Cir. 2017), the Third Circuit had to confront whether sovereign immunity barred enforcement of a class action settlement agreement between two private parties against the State, even though the State had never formally signed the settlement agreement, but rather was merely an absent class member. *Id.* at 63-64. The Third Circuit ruled that the State was a real party in interest in the original lawsuit, despite not signing onto the settlement agreement. *Id.* at 66. The Third Circuit noted that, under *Lewis*, it had to "look beyond 'the characterization of the parties in the complaint' and, instead, scrutinize the requested remedy's effects to ensure that it does not infringe upon an unnamed sovereign's immunity…." *Flonase*, 879 F.3d at

66 (quoting *Lewis*, 137 S.Ct. at 1290). As a result, the court continued, it had to apply this test "when considering whether a claim implicates the rights of a state acting as an absent class member." *Id.* The Third Circuit concluded that sovereign immunity barred enforcement of the settlement against the State. *Id.* at 68-70.

While the issues confronting the Fourth and Third Circuits were not identical to the issues present in this case, both courts nevertheless recognized that *Lewis's* requirement of looking beyond the formally-named party to whether the State is the real party in interest apply even outside of official capacity claims or claims formally naming an arm-of-the-state. The Eighth Circuit's refusal to do this same creates a split in principle between it and the Third and Fourth Circuit's, creating a substantial likelihood that certiorari will be granted.

II. A significant possibility exists that, having granted certiorari, this Court will reverse the Eighth Circuit's judgment.

A. The municipal court division is an arm-of-the-state.

There is no question that under this Court's sovereign immunity precedents, the municipal court division is an arm-of-the-state. For purposes of the Eleventh Amendment, an entity is an arm-of-the-state if "it is so closely tied to the State as to be the direct means by which the State acts…." *See Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 313 (1990) (Brennan, J., concurring in the judgment). "[T]he critical inquiry is who may be legally bound by the court's adverse judgment, not who will ultimately pick up the tab." *Lewis*, 137 S.Ct. at 1292-1293.

Missouri law gives municipal corporations no legal authority over the judicial or quasi-judicial actions of the municipal court divisions. While they are funded by the

municipal corporations, and not by the State, this does not render them any less entitled to sovereign immunity." "While state sovereign immunity serves the important function of shielding state treasuries…the doctrine's central purpose is to accord the States the respect owed them as joint sovereigns." *Fed. Maritime Comn. v. South Carolina State Ports Authority*, 535 U.S. 743, 765)(2002). *Accord Regents of Univ. of Cal. v. Doe*, 519 U.S. 429 (1997) (ruling that state university's indemnification by the federal government did not divest it of sovereign immunity under the Eleventh Amendment). Not surprisingly, the Ninth Circuit concluded more than thirty years ago that California's county courts are arms-of-the-state, despite receiving almost all of their funding from local entities. *Greater L.A. Council on Deafness. Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987), superseded on other grounds as stated in *Hyland v. Wonder*, 117 F.3d 405, 413 (9th Cir. 1997). Likewise, the Sixth Circuit concluded that the county courts of Michigan are state entities, even though they also receive their funding from local municipal corporations. *Pucci v. Nineteenth District Court*, 628 F.3d 752, 760-765 (6th Cir. 2010).

In light of this, there can be no serious question that the Missouri municipal court divisions are arms of the state.

B. This Court has strongly hinted in the past that it will rule in Maplewood's favor.

In *Chatham*, this Court strongly hinted that, if confronted with the issues presented here, it would rule in Maplewood's favor. An insurance company brought suit against Chatham County, Georgia, seeking damages from a boating accident that took place after a drawbridge malfunctioned and collided with a passing board.

Chatham, 547 U.S. at 191-192. The County operated the drawbridge. *Id* at 192. It moved for dismissal on the ground that it was entitled to sovereign immunity. *Id*. Critically, the County conceded to this Court that, as a political subdivision, it was the real party in interest, and that it operated the drawbridge as a political subdivision, *not* as an arm-of-the-state. *Id*. at 194-195. But both the district court and the Eleventh Circuit, despite recognizing this, had nevertheless ruled that the County, as a political subdivision, was entitled to sovereign immunity due to a "residual" form of common law immunity which would protect a political subdivision, in its capacity as a political subdivision, from suit. *See id*. at 192-193. There was no dispute that this type of immunity was not of the kind encompassed by the Eleventh Amendment, *id*. at 193-194, and that adoption of such a definition of sovereign immunity would be a broader definition of sovereign immunity than that covered under the Eleventh Amendment. *Id*. at 194.

It was only in this context that this Court rejected the notion that political subdivisions could have sovereign immunity even where they exercise a "slice of state power" – that is, where a political subdivision as such was exercising a type of state power and was seeking a definition of sovereign immunity beyond that contemplated under the Constitution. *Id*. at 193-194. Having rejected this notion, this Court went on to strongly imply that had the County argued that it was an arm-of-the-state in operating the drawbridge, and not merely a political subdivision exercising a "slice of state power," sovereign immunity would have barred the lawsuit. *Id*. at 194-195.

This Court ruled that "[b]ecause the County may claim immunity neither based upon its identity as a county nor under an expansive arm-of-the-State test, the County is subject to suit *unless it was acting as an arm of the State, as delineated by this Court's precedents, in operating the drawbridge*." *Id*. at 194 (emphasis added). It took great pains to point out that the County had conceded both to the Eleventh Circuit and to this Court itself that, in operating the drawbridge, it was *not* acting as an arm-of-the-state. *See id*. at 194-195. "[T]he question on which we granted certiorari," it wrote, "is premised on the conclusion that the County is not an arm of the State for Eleventh Amendment purposes, and we presume that to be the case." *Id*. at 195. This "concession and the presumption underlying the question on which we granted review are dispositive." *Id*.

Unlike the County in *Chatham*, Maplewood has never argued that, as a municipal corporation, it is entitled to sovereign immunity due to it exercising a "slice of state power." Rather, its position is that, under Motorists' definition of "Maplewood," any adverse judgment against it will operate and bind not just a municipal corporation but also a municipal court division, an arm-of-the-state, and consequently any adverse judgment in this lawsuit will in fact *bind the State itself*.

Given these considerations, a "significant possibility" exists that this Court will reverse the Eighth Circuit's judgment in Maplewood's favor.

III. Maplewood will suffer irreparable harm in the absence of the mandate's recall and stay.

Even though the Eighth Circuit insisted the municipal court division is not the real party in interest, it tried to split the baby in half by "observing" that, on remand, any State entity or official, if it had a concern about submitting to discovery in this case, could raise an objection on sovereign immunity grounds to any subpoena Motorists serve on them. (Attach. A at 6-7). "The district court," it continued, "may address in the first instance whether the subpoena can be quashed on that ground." (Attach. A at 7). But in the Eighth Circuit, "[t]here is simply no authority for the position that the Eleventh Amendment shields government entities [as third parties] from discovery in federal court." *In re Missouri DNR*, 105 F.3d 434, 436 (8th Cir. 1997).

While the Eighth Circuit cited *Alltel Comm., LLC v. DeJordy*, 675 F.3d 1100 (8th Cir. 2012), in support of its suggestion that the municipal court division could raise a sovereign immunity objection to a discovery subpoena (Attach. A at 7), that very case proves that the municipal court division will suffer irreparable harm if discovery is allowed to proceed.

In *DeJordy*, a private limited liability corporation sued its former senior vice president for breach of contract in a matter relating to the Oglala Sioux Tribe. *Id*. at 1101-1102. The tribe was not a named party to the case. *Id*. The corporation served a third party discovery subpoena on the tribe, and the tribe moved to quash the subpoena on the ground of sovereign immunity, which the district court denied. *Id*.

The district court relied upon *Missouri DNR* as grounds for overruling the tribe's sovereign immunity objections. *DeJordy*, 675 F.3d at 1104.

The Eighth Circuit ruled that the tribe's objection should have been sustained on sovereign immunity grounds, but only because "tribal immunity is not congruent with that which the Federal Government, or the States, enjoy." *Id*. at 1104 (internal quotation marks omitted). It then concluded that *Missouri DNR* was not controlling in the context of tribal sovereign immunity, as opposed to a state's assertion of sovereign immunity. *See id*. at 1104.

In light of these holdings, it is difficult to see how the district court, on remand, would be willing to sustain any sovereign immunity objection to a third party subpoena issued to the municipal court division, since it is bound to follow *Missouri DNR*. But there is no question that the judicial and quasi-judicial actions of that court's personnel are at the heart of this lawsuit. It is guaranteed, therefore, that opposing counsel will not only seek document production from the court division, but also seek to depose its judge, clerks, and other personnel regarding their judicial and quasi-judicial actions. This is part of Motorists seeking to hold the municipal court division, within its definition of "Maplewood," liable for such actions and seeking injunctive relief affecting such judicial and quasi-judicial acts. (J.A. at 6, 56-57). *DeJordy* is cold comfort to the municipal court division.

In the absence of the mandate being stayed, the above discovery will commence, resulting in irreparable harm to the municipal court division, since that court division will be bound by any judgment entered in this case, despite not being a

formally-named party. This makes the stay of the mandate appropriate. *Cf. Chandler*, 282 F.3d at 451 (Ruling that the defendant correctly argued that "immunity from punitive damages is, in the context of this action, tantamount to an immunity from trial and…[the defendant] ought not to be put to the further expense of preparing for trial until the question of its immunity is decided definitively.") Motorists, by contrast, will not suffer any similar harm beyond "the prejudice that comes with any delay in a judicial proceeding." *See Chandler*, 282 F.3d at 451.

Given the irreparable harm that the municipal court division will suffer absent the mandate being stayed, along with the fact that Motorists will suffer no such irreparable harm, the balance of equities weighs in favor of this Court staying the mandate.

CONCLUSION

For all of these reasons, Maplewood respectfully asks this Court to recall and stay the Eighth Circuit's mandate pending the filing of the petition for a writ of certiorari.

Respectfully submitted,

/s/ John M. Reeves

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ATTACHMENT A

United States Court of Appeals
For the Eighth Circuit

No. 17-2381

Cecelia Roberts Webb; Darron Yates; Robert Eutz; Anthony Lemicy; Krystal Banks; Frank Williams, individually and on behalf of all others similarly situated.

Plaintiffs - Appellees

v.

City of Maplewood

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: April 12, 2018
Filed: May 4, 2018

Before COLLOTON, ARNOLD, and SHEPHERD, Circuit Judges.

ARNOLD, Circuit Judge.

Cecelia Webb and five other motorists have filed a putative class action against the City of Maplewood, Missouri, under 42 U.S.C. § 1983, claiming its policy or custom violates their constitutional rights. They assert the City automatically issues an arrest warrant whenever someone ticketed for violating its traffic and vehicle laws fails to pay a fine or appear in court. Once arrested, the motorist is allegedly presented

with a Hobson's choice: Either pay a bond the amount of which was set in advance without any determination of his ability to pay it, or sit in jail possibly for days. The plaintiffs further contend that once a warrant has been issued, a motorist cannot avoid it by voluntarily returning to the municipal court or paying the outstanding fine, but must either submit to a custodial arrest or retain a lawyer to argue a motion before the municipal judge to vacate the warrant. If the court does not grant the motion, the motorist, whose presence in court the judge allegedly demands, will be arrested and jailed. Jail, the plaintiffs assert, is the means by which the City attempts to coerce the motorist into paying the bond to secure his release. The complaint indicates that the City's policy or custom involves additional steps that can ensnare motorists in repeated cycles of arrest, jailing, and pressure to pay a bond irrespective of their ability to do so. The plaintiffs maintain that since their poverty makes it difficult if not impossible to pay the bond, the City thereby violates, among other things, their due-process and equal-protection rights.

The City moved the district court[1] to dismiss the complaint on several grounds, including that the City is immune from suit and that the complaint fails to state a claim against the City. The district court dismissed a single count from the complaint on the consent of both parties but otherwise denied the motion, ruling that the City is not immune from suit and that the complaint sufficiently states a claim of municipal liability. The City appeals from the order denying it immunity, and we affirm.

We review a district court's decision about whether a party is immune from suit de novo. *See Sample v. City of Woodbury*, 836 F.3d 913, 915–16 (8th Cir. 2016); *Balogh v. Lombardi*, 816 F.3d 536, 544 (8th Cir. 2016). The City argues that it enjoys immunity for two reasons: first, under the Eleventh Amendment since the municipal court, which is an arm of the State of Missouri, is responsible for most of the disputed

[1]The Honorable Catherine D. Perry, United States District Judge for the Eastern District of Missouri.

practices and is thus the real party in interest here; and second, because the absolute immunity of the responsible officials renders the City immune as well. The City is wrong in both respects.

The Eleventh Amendment protects States and their arms and instrumentalities from suit in federal court, *N. Ins. Co. v. Chatham Cty.*, 547 U.S. 189, 193 (2006), and the State of Missouri has not waived its sovereign immunity for the type of claim the plaintiffs have raised. *See* Mo. Rev. Stat. § 537.600.1; *see also Williams v. State*, 973 F.2d 599, 600 (8th Cir. 1992) (per curiam). But "municipalities, unlike States, do not enjoy a constitutionally protected immunity from suit." *Jinks v. Richland Cty.*, 538 U.S. 456, 466 (2003). So the district court correctly held that the City is liable for its constitutional violations under 42 U.S.C. § 1983. *See Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 166 (1993).

The City nonetheless insists that it enjoys Eleventh Amendment immunity since "the real party in interest" is the municipal court, "an arm of the state entitled to sovereign immunity." But we use the real-party-in-interest test only to determine whether suits against a State's "arm or instrumentality" or "employees in their official capacity" are "in essence against [the] State." *See Lewis v. Clarke*, 137 S. Ct. 1285, 1291–92 (2017). As the City conceded at oral argument, it cannot identify a single case that has used the test to find that a municipality itself had immunity. We believe the reason is clear: The Supreme Court "has consistently refused to construe the Amendment to afford protection to political subdivisions such as counties and municipalities, even though such entities exercise a 'slice of state power.'" *See Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 401 (1979).

In any event, in arguing for sovereign immunity, the City does not contend that it enacted or maintains the contested practices as an arm of the State, but that virtually all of the practices revolve around the municipal court, a separate and distinct entity over which it disclaims any control, and it is the court that is the arm of the State. But

if the municipal court rather than the City is responsible for the practices, the City will have a defense on the merits but not immunity from suit. *Cf. Leatherman*, 507 U.S. at 166. Even if the court were entitled to immunity—an issue we do not opine on—that immunity would not shield the City from its separate liability if any.

The City argues that it is also immune from suit since all of the individuals the complaint identifies as participating in the contested practices are personally immune from suit. "[I]f individual officials are immune from liability on the acts that allegedly constitute a municipality's policy or custom," the City asserts, "there are no unlawful acts which may form an unlawful policy or custom in the first place, precluding municipal liability." But even if we accepted the City's premise that its officials all enjoy personal immunity from suit, it hardly follows that they did not engage in any unlawful acts or that the City is thereby immune as well. Whether the challenged acts occurred, whether they were unlawful, and whether the City is liable for them under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), would still be open questions. *See Owen v. City of Independence*, 445 U.S. 622, 657 (1980); *see also Sample*, 836 F.3d at 917. We have long held for that reason that a municipality may be held liable for its unconstitutional policy or custom even when no official has been found personally liable for his conduct under the policy or custom. *See Praprotnik v. City of St. Louis*, 798 F.2d 1168, 1172 n.3 (8th Cir. 1986), *rev'd on other grounds*, 485 U.S. 112 (1988); *see also Speer v. City of Wynne*, 276 F.3d 980, 985–86 (8th Cir. 2002); *Parrish v. Luckie*, 963 F.2d 201, 207 (8th Cir. 1992). The district court did not err in denying the City immunity on this ground, either.

We have not always been as clear as we could have in discussing the relationship between individual and municipal liability. As the City notes, we have stated in the past that it is "a general rule" that "for municipal liability to attach, individual liability first must be found on an underlying substantive claim." *See McCoy v. City of Monticello*, 411 F.3d 920, 922 (8th Cir. 2005). But in *McCoy* we used that language to explain why a city could not be held liable "on either an

unconstitutional policy or custom theory or on a failure to train or supervise theory" once it has been determined that the underlying official conduct was "objectively reasonable" and thus did not violate the plaintiff's rights. *See id.* In *McCoy* we cited six cases that allegedly applied the "general rule"; in five of them we simply held that because the challenged official conduct was not unconstitutional, the municipality had nothing to be liable for. *See McVay v. Sisters of Mercy Health Sys.*, 399 F.3d 904, 909 (8th Cir. 2005); *Turpin v. Cty. of Rock*, 262 F.3d 779, 783–84 (8th Cir. 2001); *Veneklase v. City of Fargo*, 248 F.3d 738, 749 (8th Cir. 2001) (en banc); *Thomas v. Dickel*, 213 F.3d 1023, 1026 (8th Cir. 2000); *Eagle v. Morgan*, 88 F.3d 620, 628 (8th Cir. 1996). In the sixth case, we reversed a district court's ruling that official conduct was unconstitutional as a matter of law and remanded the case for a new trial. Since there no longer was a finding that the conduct was unlawful, we also reversed the district court's ruling that the city was liable for it. *See Abbott v. City of Crocker*, 30 F.3d 994, 998–99 (8th Cir. 1994).

The City contends we gave full effect to the "general rule" in *McCoy* when we stated in *Patterson v. Von Riesen*, 999 F.2d 1235 (8th Cir. 1993), that in order to hold a municipality liable for its unconstitutional policy, a plaintiff "must be able to attach liability to the decision in question," which, we further stated, could not happen if the municipal policymakers had "absolute" immunity from suit. *See id.* at 1238 n.2. We acknowledged that the Supreme Court had established that a city could still be held liable under *Monell* where "the individual municipal officials were all immune," *see Pembaur v. City of Cincinnati*, 475 U.S. 469, 475 (1986), but we distinguished that case on the ground that the policymaker in *Pembaur* did not engage "in a function protected by absolute immunity," while those in *Patterson* did. *See* 999 F.2d at 1238 n.2. We did not explain why that distinction made a difference, and it did not make one to the Supreme Court: The policymaker in *Pembaur* was the County Prosecutor, and the plaintiff did not sue him having determined he was "absolutely immune" from suit—an evaluation the Court expressed "no view" on. *See Pembaur*, 475 U.S. at 474 n.2, 485. The distinction in any event was flawed. As the Supreme Court commented

in *Bogan v. Scott-Harris*, 523 U.S. 44 (1998), although a municipality's legislators are all absolutely immune from suit for their legislative activities, the victims of their "legislative abuse" are not without recourse since under *Monell* the municipality itself can still "be held liable for constitutional violations." *See id.* at 53. So it is now clear that the absolute immunity of its policymakers does not shield a city from liability for its policies. *See McDonough v. Anoka Cty.*, 799 F.3d 931, 941–42 (8th Cir. 2015). We have indicated, moreover, that our statements in *Patterson* on absolute immunity and *Monell* liability were dicta: Since the plaintiff had "claimed only that [the county] was liable because of its 'authorization and ratification . . . of the acts of its agents,'" *see Patterson*, 999 F.2d at 1238 n.2., we "relied on a *respondeat superior* theory to find the county not liable." *See Sample*, 836 F.3d at 917 n.3. Our musings on whether the county could have been held liable under *Monell* instead were thus not binding.

So despite our occasional use of overbroad language, our case law has been clear since *Praprotnik* that although "there must be an unconstitutional act by a municipal employee" before a municipality can be held liable, *see Russell v. Hennepin Cty.*, 420 F.3d 841, 846 (8th Cir. 2005), there "need not be a finding that a municipal employee is liable in his or her individual capacity." *See Moyle v. Anderson*, 571 F.3d 814, 818 (8th Cir. 2009). The City's contrary rule conflicts not only with our longstanding precedent, *see Mader v. United States*, 654 F.3d 794, 800 (8th Cir. 2011) (en banc), but with one of the Supreme Court's reasons for denying municipalities immunity under § 1983: The need to provide "victims of municipal malfeasance" with a remedy, especially since the officials responsible for the injury may enjoy personal immunity from suit. *See Owen*, 445 U.S. at 651, 657.

At oral argument, the City raised for the first time its concern that if the City is not granted immunity, the plaintiffs may use this suit to obtain discovery from the State of Missouri and its officials. We normally do not consider issues raised for the first time at oral argument, *Bennie v. Munn*, 822 F.3d 392, 398 n.3 (8th Cir. 2016), but will observe that any State official or entity the plaintiffs subpoena for discovery

may raise a claim of sovereign immunity at that time. *See Alltel Commc'ns, LLC v. DeJordy*, 675 F.3d 1100, 1104–05 (8th Cir. 2012). The district court may address in the first instance whether the subpoena can be quashed on that ground.

The City maintains finally that we may exercise pendent appellate jurisdiction over the district court's order declining to dismiss the complaint on the basis of the insufficiency of its allegations of municipal liability. Unlike the district court's denial of the City's defense of immunity, the question of whether the complaint states a claim of municipal liability cannot normally be reviewed on interlocutory appeal. *See Hafley v. Lohman*, 90 F.3d 264, 266 (8th Cir. 1996). We may review that issue only if it is "coterminous with, or subsumed in," the issue of the City's immunity from suit. *Manning v. Cotton*, 862 F.3d 663, 671 (8th Cir. 2017). The issues are not inextricably intertwined here, however, since we have determined that the district court correctly denied the City immunity without having found it necessary to decide whether the complaint sufficiently pleads the City's *Monell* liability. *See id*. Since the issues are separate, we do not have jurisdiction to review whether the complaint states a claim of municipal liability, and we express no view on that question.

Affirmed.

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

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May 04, 2018

Mr. John M. Reeves
BRINKER & DOYEN
5th Floor
34 N. Meramec Avenue
Saint Louis, MO 63105-0000

RE: 17-2381 Cecelia Webb, et al v. City of Maplewood

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

JMM
Enclosure(s)
cc: Mr. Jeffrey Joseph Brinker
Mr. Nathaniel R Carroll
Mr. Thomas B. Harvey
Mr. Jeffrey D. Kaliel
Mr. Gregory J. Linhares
Mr. Gary Phillip Paul
Mr. Blake A. Strode
Jonathan E. Taylor
Mr. Michael-John Voss

District Court/Agency Case Number(s): 4:16-cv-01703-CDP

United States Court of Appeals
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May 04, 2018

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RE: 17-2381 Cecelia Webb, et al v. City of Maplewood

Dear Sirs:

A published opinion was filed today in the above case.

Counsel who appeared on the brief and presented argument on behalf of the appellant was John M. Reeves, of Saint Louis, MO. The following attorney(s) appeared on the appellant brief; Gary Phillip Paul, of Saint Louis, MO. and Jeffrey Joseph Brinker, of Saint Louis, MO.

Counsel who appeared on the brief and presented argument on behalf of the appellee was Jonathan E. Taylor, of Washington, DC. The following attorney(s) appeared on the appellee brief; Thomas B. Harvey, of Saint Louis, MO., Nathaniel R Carroll, of Saint Louis, MO., Blake A. Strode, of Saint Louis, MO., Jeffrey D. Kaliel, of Washington, DC. and Michael-John Voss, of Saint Louis, MO.

The judge who heard the case in the district court was Honorable Catherine D. Perry. The judgment of the district court was entered on June 5, 2017.

If you have any questions concerning this case, please call this office.

Michael E. Gans
Clerk of Court

JMM

Enclosure(s)

cc: MO Lawyers Weekly

District Court/Agency Case Number(s): 4:16-cv-01703-CDP

ATTACHMENT B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2381

Cecelia Roberts Webb; Darron Yates; Robert Eutz; Anthony Lemicy; Krystal Banks; Frank Williams, individually and on behalf of all others similarly situated.

Plaintiffs - Appellees

v.

City of Maplewood

Defendant - Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:16-cv-01703-CDP)

JUDGMENT

Before COLLOTON, ARNOLD and SHEPHERD, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

May 04, 2018

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

ATTACHMENT C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2381

Cecelia Roberts Webb, et al.

Appellees

v.

City of Maplewood

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:16-cv-01703-CDP)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Gruender did not participate in the consideration or decision of this matter.

June 13, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

ATTACHMENT D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2381

Cecelia Roberts Webb, et al.

Appellees

v.

City of Maplewood

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:16-cv-01703-CDP)

ORDER

The motion to stay the mandate is denied.

June 25, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

ATTACHMENT E

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2381

Cecelia Roberts Webb, et al.

Appellees

v.

City of Maplewood

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:16-cv-01703-CDP)

MANDATE

In accordance with the opinion and judgment of 05/04/2018, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

June 26, 2018

Clerk, U.S. Court of Appeals, Eighth Circuit

ATTACHMENT F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CECELIA ROBERTS WEBB, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:16 CV 1703 CDP
	)	
THE CITY OF MAPLEWOOD, MISSOURI,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

Plaintiffs in this putative class action claim that the City of Maplewood, Missouri (the City), caused warrants to be issued against them for "failure to appear" and/or for "failure to pay" on tickets for minor traffic and other offenses, and imposed warrant bond fees that required them to pay hundreds of dollars or be jailed in order to recall the warrant(s). They claim that the extortionist nature of these "warrant recall bonds," and the policies underlying their issuance, deprived them of various of their constitutional rights. The City moves to dismiss the complaint and, alternatively, to strike immaterial, impertinent, or scandalous matter from the complaint. Plaintiffs concede that Count Six of their seven-count complaint should be dismissed, and I will grant the motion to dismiss as it relates to that count. In all other respects, I will deny the City's motions.

Background[1]

The named plaintiffs are six individuals who allege that they have been arrested on warrants issued without probable cause by the City of Maplewood for failure to appear or failure to pay on minor ordinance violations and were made to pay hundreds of dollars in warrant bond fees or were jailed because they were unable to pay such fees. They claim that no inquiries were ever made into their ability to pay either the warrant bond fees or underlying fines, and they were not afforded counsel prior to being jailed on the warrants or in relation to the underlying debt-collection proceedings. They also claim that they are denied fair access to judicial proceedings given the threat of imprisonment if they appear in court without money to pay the warrant fees. They bring this action under 42 U.S.C. § 1983 asserting claims under the First, Fourth, Sixth, and Fourteenth Amendments to the United States Constitution. They also bring claims of unjust enrichment and due process violations under Missouri law.

Count One of the complaint alleges that, through its policies and practices, the City violated – and continues to violate – the Due Process and Equal Protection Clauses of the Fourteenth Amendment by jailing plaintiffs and/or threatening to jail them on warrants issued for their inability to pay debts owed for traffic and other minor offenses, without conducting any inquiry into their ability to pay and

[1] The facts set out here are taken from the allegations in plaintiffs' complaint and are considered true for the purpose of this Memorandum and Order.

without considering alternatives to imprisonment. Plaintiffs claim that the City has kept them, and persons similarly situated, in jail unless and until they pay arbitrarily-determined sums of money to the City. Plaintiffs allege that other persons who are likewise subject to these warrants, but who are not indigent and pay a sum of cash to release the warrants, are not imprisoned.

Count Two alleges that, through its policies and practices, the City violated – and continues to violate – the First and Fourteenth Amendments by denying plaintiffs access to judicial proceedings in the municipal court, depriving them of liberty and procedural due process. Plaintiffs claim that the courthouse doors are essentially closed to them because of the threat of imprisonment if they are unable to pay warrant recall bonds, thereby discouraging and/or preventing them from attending judicial proceedings to challenge the warrant recall bonds or the underlying charges of "failure to appear" or "failure to pay" upon which the warrants rest.

Count Three alleges that the City violated plaintiffs' rights under the Sixth and Fourteenth Amendments by jailing them for unpaid debts without affording them the benefit of counsel. Plaintiffs claim that the City has a policy and practice of not providing adequate counsel at hearings "where indigent people are ordered to be imprisoned . . . for unpaid debts (which are, in turn, based on payment plans arising from traffic and other violations at which the jailed individuals were also

unrepresented)[.]" (Compl., ECF #1 at 51.)

Count Four alleges that the City's policy and practice of issuing and serving arrest warrants without a fair and reliable determination of probable cause violates the Fourth and Fourteenth Amendments. Plaintiffs claim that these warrants are issued for failure to pay debts from traffic and other minor cases, without any inquiry into their ability to pay or with knowledge that they are impoverished and unable to pay. Plaintiffs claim that the City's policy permits wealthy or legally represented persons to remove these warrants with monetary payments to the City, but that persons who cannot afford to make such payments continue to have warrants lodged against them.

Count Five alleges that the use of jail and threat of jail to collect debts owed to the City violates the Equal Protection Clause of the Fourteenth Amendment because it imposes "unduly restrictive methods of collections solely because the debt is owed to the government and not to a private creditor." Plaintiffs further allege that the "City takes advantage of its control over the machinery of the penal and police systems to deny debtors the statutory protections that every other debtor may invoke against a private creditor." (Compl., ECF #1 at 52.)

Count Six alleges that, under Missouri Supreme Court Rule 74.06(b)(4), judgments entered for "failure to appear" are void because they fail to comply with the procedural requirements of Missouri Rule of Civil Procedure 37.33(b). In

response to the motion to dismiss, plaintiffs have conceded that the relief sought in this count is barred by the *Rooker-Feldman* doctrine. I will therefore grant the City's motion to dismiss as it relates to Count 6.

Count Seven alleges that the City was unjustly enriched when it accepted payments from plaintiffs and others similarly situated on the warrant recall bonds that were issued and imposed through unlawful and unconstitutional means.

As relief, plaintiffs seek a declaration that the City's policies and practices, as outlined above, violate plaintiffs' constitutional rights; a permanent injunction preventing the City from enforcing these policies and practices; an injunction preventing the City from denying court access to any individual and to order the City to forgive all outstanding "failure to appear" fines or "warrant recall" fees that have been assessed but not yet collected; restitution for monies paid to the City pursuant to its unlawful conduct, policies, and procedures; and an award of compensatory damages, attorneys' fees, and costs.

The City moves to dismiss the complaint in its entirety, arguing that various immunity doctrines bar the claims; that the complaint fails to comply with Fed. R. Civ. P. 8(a)(2) and 10(b); that this Court lacks jurisdiction over plaintiffs' constitutional claims for lack of standing and/or ripeness; that plaintiffs have failed to allege sufficient facts to support their constitutional claims; and/or that the City did not unjustly or inequitably appropriate plaintiffs' monies as alleged in Count

Seven. I will address each of these arguments in turn.

Discussion

A. Jurisdiction

Rule 12(b)(1) of the Federal Rules of Civil Procedure requires dismissal if the court lacks subject matter jurisdiction. A district court has subject matter jurisdiction in civil actions arising under the laws of the United States. 28 U.S.C. § 1331.

1. *Plaintiff Lemicy – Standing to Sue for Injunctive Relief*

The United States Constitution vests federal courts with jurisdiction over disputes only if there is a "case" or "controversy." U.S. Const. art. III, § 2; *Raines v. Byrd*, 521 U.S. 811, 818 (1997). One element of the case or controversy requirement is that the plaintiff must establish that he has standing to sue. *Raines*, 521 U.S. at 818. "To establish standing, a party must, at a minimum, have suffered an 'injury-in-fact,' fairly traceable to the defendant's conduct, which is likely to be redressed by a favorable decision." *Johnson v. Missouri*, 142 F.3d 1087, 1088 (8th Cir. 1998). "In the case of complaints for injunctive relief, the 'injury in fact' element of standing requires a showing that the plaintiff faces a threat of ongoing or future harm." *Park v. Forest Serv. of the United States*, 205 F.3d 1034, 1037 (8th Cir. 2000). Defendants argue that plaintiff Anthony Lemicy cannot establish such a threat. At this stage of the proceedings and based on the facts alleged in the

complaint, I disagree.

According to the complaint, the City of Maplewood issued numerous citations to Lemicy in or around 2013 for various violations, including inadequate vehicle registration and failure to provide insurance. In 2013, Lemicy was arrested on a City warrant for "failure to appear." The warrant had a bond of $500. Lemicy could not pay the bond and was jailed for approximately three days before being released. Lemicy was arrested again in August 2014 on another "failure to appear" warrant issued by the City. Lemicy could not pay the $500 bond on that warrant and was jailed for approximately three days before being released. Lemicy was again taken into custody in December 2015 on another "failure to appear" warrant, but he was not jailed at that time.[2] He was given a court date in January 2016, at which time he appeared and asked the municipal judge to give him credit for time served. The judge declined and sentenced Lemicy to perform forty hours of community service.

An additional court date was set in June 2016, after which the City issued another warrant for Lemicy's failure to appear, with a $400 bond attached. Upon learning of the warrant, Lemicy called the city clerk to request a new court date. The clerk informed him, however, that the warrant recall fee of $400 was in effect and that the warrant could be recalled only by payment of the fee or by being jailed

[2] He had just been released from custody in another jurisdiction on an unrelated charge.

for forty-eight hours. The clerk further informed Lemicy that the amount of the fee could not be reduced and that the fee could not be waived, even in Lemicy's circumstance of having already been sentenced to community service in lieu of payment. Lemicy also spoke to the assistant city manager who told him that he would likely be arrested if he came to the municipal courthouse without the $400 fee.

Lemicy, through counsel, filed a motion to recall the warrant, which was denied in August 2016 because Lemicy did not personally appear with counsel to argue the motion.[3] In September 2016, the municipal court granted the motion after "persistent begging" by both Lemicy and his counsel. The judge stated that he granted the motion because "Lemicy had 'found himself a persistent lawyer.'" (Compl., ECF #1 at 31.)

The City claims that Lemicy does not have standing to seek injunctive relief for his constitutional claims in this action because the complaint contains no allegations that he has any outstanding warrants against him or any municipal citations presently pending. The City argues that Lemicy therefore cannot establish that he faces a real and immediate threat of having an arrest warrant issued against him or of having a fine or bond levied against him. However, based on the facts alleged in the complaint, it appears that Lemicy did not have any

[3] He did not personally appear because he feared being jailed if he did not have the money.

outstanding citations pending against him in June 2016 when another "failure to appear" warrant was issued, given that he had already been sentenced to community service.[4] If the community service sentence was for his earlier failure to appear rather than for the underlying municipal citations, then these citations remain pending. The complaint alleges only that the warrant was recalled in September 2016; it does not state that the underlying citations went away. In this circumstance, that is, the continuing pendency of citations against Lemicy upon which the City previously issued warrants, I find the complaint to allege sufficient facts showing that Lemicy faces a threat of ongoing or future harm that will likely occur or continue if the City's alleged unlawful conduct goes unchecked. *Park*, 205 F.3d at 1037. *See also Lyons*, 461 U.S. at 102 (past wrongs are evidence of "whether there is a real and immediate threat of repeated injury.").

I will deny the City's motion to dismiss to the extent it claims that this Court lacks subject matter jurisdiction over Lemicy's claims for injunctive relief.

2. *Plaintiffs Webb, Yates, Eutz, Banks, and Williams – Ripeness*

The ripeness doctrine is grounded in Article III's jurisdictional limit to deciding actual cases and controversies. *Public Water Supply Dist. No. 8 of Clay Cnty., Mo. v. City of Kearney, Mo.*, 401 F.3d 930, 932 (8th Cir. 2005). The basic rationale of the doctrine is to "'prevent the courts, through avoidance of premature

[4] It is not clear from the complaint why Lemicy had a June 2016 court date.

adjudication, from entangling themselves in abstract disagreements.'" *Nebraska Pub. Power Dist. v. MidAmerican Energy Co.*, 234 F.3d 1032, 1037 (8th Cir. 2000) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967)). Accordingly, before a federal court may address a question, the dispute must be definite and concrete – not hypothetical or abstract. *Id.* at 1037-38.

"The touchstone of a ripeness inquiry is whether the harm asserted has matured enough to warrant judicial intervention." *Parrish v. Dayton*, 761 F.3d 873, 875 (8th Cir. 2014) (internal citations and quotation marks omitted). "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States,* 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Prods. Co.,* 473 U.S. 568, 580-81 (1985)). Plaintiffs need not wait, however, for the consummation of a threatened injury in order to obtain preventive relief. *Parrish*, 761 F.3d at 876. "If the injury is certainly impending, that is enough." *Id.* (quoting *Babbitt v. United Farm Workers Nat'l Union,* 442 U.S. 289, 298 (1979)).

The City argues that the equitable claims of plaintiffs Cecelia Roberts Webb, Darron Yates, and Frank Williams are not ripe for adjudication because the complaint does not allege that there are any outstanding warrants against them, and there is no certainty that warrants will be issued against them in the future or that they will have to post any bonds. The City also claims that, although these

plaintiffs have municipal citations pending against them, the complaint fails to allege that they have been found guilty of the charged violations and will have to pay fines. As to plaintiffs Robert Eutz and Krystal Banks, the City argues that, despite the active warrants against them, their claims are likewise not ripe because there is no certainty that they will be jailed or required to pay bonds on the warrants, especially since the municipal court could recall the warrants if plaintiffs appear in court with attorneys seeking such recall. I reject the City's arguments.

First, Eutz and Banks are subject to arrest at any time in any jurisdiction on pending warrants issued by the City, thereby triggering the alleged Hobson's choice of paying hundreds of dollars in warrant bond fees or sitting in jail. The City's argument that this hypothetical scenario may not come to pass if the municipal court recalls the warrants is itself too speculative given that multiple contingencies must occur in order to achieve this perceived resolution: *if* plaintiffs secure counsel, and *if* plaintiffs appear in court with counsel, the municipal court *might* recall the warrants. With these pending warrants, allegedly issued without probable cause and without other constitutional considerations, the City's alleged unconstitutional mechanism is already in motion. At this stage of the proceedings, I find the facts in the complaint sufficient to allege injury to Eutz and Banks that is certainly impending.

Plaintiffs Webb, Yates, and Williams likewise face impending harm. They

all currently have City citations pending against them and have previously been arrested on City warrants, jailed, and subjected to hundreds of dollars in warrant bond fees, which they paid. In relevant part, the complaint alleges as follows:

- Webb was arrested and jailed by City officers in May or June 2016 for reasons unknown to her. She was released from jail only after paying $550 in a warrant bond fee. The City thereafter issued citations for alleged conduct that occurred during the actual arrest, and these citations remain pending. Webb is unable to pay fines associated with these citations and fears being arrested even if she is compliant with the law.

- Yates was issued a City citation in January 2016. He attempted to appear in court on the matter but was "too late," and a warrant issued. He was arrested on the warrant in April 2016 and paid $200 in a warrant bond fee after spending over two days in jail. He thereafter appeared in court and pled not guilty to the citation because he could not afford the fine that would be imposed with a guilty plea. The citation against Yates remains pending. He fears being arrested for being unable to pay on the citation.

- Williams lives in Maplewood. He was arrested in 2014 on a City warrant and taken to jail. The bond on the warrant was $300 but was increased to $500 for reasons unknown. He remained in custody for a total of sixteen days on this and other warrants from other jurisdictions. During this time, Williams was transferred to other jails and ultimately landed in the St. Louis City Jail where he was released. According to the complaint, the St. Louis jail officials determined that sixteen days in jail was long enough. Williams was again arrested on a City warrant in February 2016 that arose out of a citation issued in 2012 for a violation that Williams was unaware of. He paid the $500 warrant bond fee and was released. He was arrested again on March 29, 2016, for failing to appear the night before – on March 28 – for trial on the citation. Williams spent two days in jail and was released after paying a $300 warrant bond fee. Williams is afraid to leave his Maplewood home or to travel in the St. Louis area, fearing that he may be arrested on charges unknown to him.

The complaint alleges that Webb, Yates, and Williams were each subjected to and harmed by the City's unconstitutional conduct through its policies and practices in

relation to the issuance of citations and arrest warrants, the imposition of related warrant fees and bonds, and conditions imposed to obtain release from jail and/or from warrants. Considering that these plaintiffs currently have citations pending against them, a likelihood of additional unconstitutional conduct directed toward them exists, especially given the City's alleged past pattern of conduct against plaintiffs and others, which included issuing and executing arrest warrants on pending citations.

I will deny the City's motion to dismiss to the extent it contends that the equitable claims of plaintiffs Webb, Yates, Eutz, Banks, and Williams are not ripe for adjudication.

B. Immunity

The City first argues that plaintiffs' constitutional challenges are directed to the conduct of the municipal court only, and that therefore their claims are barred by the Eleventh Amendment's sovereign immunity doctrine given that the municipal court is an arm of the State under Missouri law. I agree that the complaint's allegations are largely based on action taken by and in the municipal court, but the complaint clearly alleges that this conduct was and is driven by the policies and practices implemented by the City for the purpose of increasing City revenue. Indeed, in addition to conduct undertaken by the municipal court, the complaint alleges that the City's unlawful policies are also executed through the

conduct of its clerk, city manager, police department, and city attorney – all of whom act under the authority of the city council. The complaint sufficiently claims that plaintiffs were subjected to unlawful conduct carried out pursuant to the unconstitutional policies and practices of the City of Maplewood. Because the Eleventh Amendment does not afford protection to political subdivisions such as municipalities, *Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 401 (1979), I will deny the City's motion to dismiss to the extent it seeks to invoke sovereign immunity protection under the Eleventh Amendment.

For these same reasons, the City's argument that the doctrines of absolute judicial, prosecutorial, and quasi-judicial immunity bar plaintiffs' constitutional claims likewise fails. Although the City attempts to couch the complaint in terms that limit potential liability to individual actors, such as the clerk, judge, and police officers to whom these immunity doctrines may apply, the complaint clearly alleges that it was the City's unconstitutional policies, practices, and procedures that drove the unlawful conduct. Unlike government officials, municipalities do not enjoy absolute or qualified immunity from constitutional claims brought under 42 U.S.C. § 1983. *Sample v. City of Woodbury*, 836 F.3d 913, 917 (8th Cir. 2016) (citing *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163 (1993); *Owen v. City of Independence, Mo.*, 445 U.S. 622 (1980)). Municipalities may be liable under § 1983 if municipal policy or custom caused

the unconstitutional injury. *Id.*

Plaintiffs allege that their constitutional rights were infringed as the result of the City of Maplewood's unconstitutional customs, practices, and policies. They do not allege *respondeat superior* liability; nor do they claim that these unconstitutional policies were set by independent actions of individual actors. Instead, they claim that these actors merely enforced the City's already established and commonly practiced unconstitutional policies and customs. This is sufficient to establish liability against the City under *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978). *See Granda v. City of St. Louis*, No. 4:04CV1689 MLM, 2006 WL 1026978, at *7 (E.D. Mo. Apr. 13, 2006). In such circumstances, immunity doctrines that may protect individual actors do not protect the City from liability on plaintiffs' claims. *Sample*, 836 F.3d at 917.

The City's motion to dismiss on the basis of immunity will be denied.

C. Sufficiency of Facts to State a Claim

To survive a motion to dismiss for failure to state a claim, plaintiffs' allegations must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678, (2009) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007)). I must accept the plaintiffs' factual allegations as true and construe them in plaintiffs' favor, but I am not required to accept the legal conclusions the plaintiffs draw from

the facts alleged. *Id.*; *Retro Television Network, Inc. v. Luken Commc'ns, LLC,* 696 F.3d 766, 768-69 (8th Cir. 2012). Drawing on my "judicial experience and common sense," I must consider the plausibility of plaintiffs' claim as a whole, not the plausibility of each individual allegation. *Zoltek Corp. v. Structural Polymer Grp.,* 592 F.3d 893, 896 n.4 (8th Cir. 2010).

The City argues that the facts alleged in Counts One through Five of the complaint fail to state a constitutional claim because, as argued previously, they challenge only the actions of a municipal court judge, which is an insufficient basis to establish municipal custom or policy. For the reasons stated above in relation to the City's immunity defense, the complaint alleges sufficient facts to state a claim of municipal liability against the City under *Monell*.

The City also contends that Count Three fails to allege facts sufficient to state a claim that plaintiffs were denied counsel, given that Yates, Eutz, Lemicy, and Banks aver that they are currently represented by counsel in relation to their municipal citations and related warrants, and Williams and Webb fail to plead that they requested counsel and were denied. The City's argument is misplaced.

The general allegations of the complaint state facts alleging that all six plaintiffs were arrested and taken into custody on "failure to pay" or "failure to appear" warrants issued by the City and were advised that they could be released only upon payment of warrant bond fees or after staying in jail for a period of days.

Count Three specifically alleges that plaintiffs were not afforded counsel in relation to their incarceration, which itself arose out of debt-collection proceedings where they likewise were not afforded counsel. Being subjected to actual imprisonment, and thus being actually deprived of liberty, without being afforded counsel may violate due process in the circumstances alleged. *See Fant v. City of Ferguson*, 107 F. Supp. 3d 1016, 1032-34 (E.D. Mo. 2015). The fact that some plaintiffs are now represented by counsel does not affect the alleged denial of counsel in relation to their previous incarceration. Nor does the failure of other plaintiffs to allege that they specifically requested counsel preclude their claim that the City failed to afford them counsel in relation to their incarceration.

I find at this stage of the proceedings that the facts alleged in the complaint are sufficient to state a plausible claim that the City's failure to afford counsel in the given circumstances violated plaintiffs' due process rights, especially given that they were not afforded any hearing in connection with their imprisonment, there was no inquiry into their ability to pay, and no alternative procedural safeguards were provided. *See Fant*, 107 F. Supp. 3d at 1032-34. The City's motion to dismiss on this basis will be denied.

D. Rules 8(a)(2) and 10(b) and Motion to Strike

The federal pleading rules provide that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed.

R. Civ. P. 8(a), and "[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances," Fed. R. Civ. P. 10(b). "[A]ny redundant, immaterial, impertinent, or scandalous matter" may be stricken from the complaint. Fed. R. Civ. P. 12(f). Although courts enjoy "broad discretion" in determining whether to strike a party's pleadings, such an action is "an extreme measure." *Stanbury Law Firm, P.A. v. IRS*, 221 F.3d 1059, 1063 (8th Cir. 2000). Accordingly, motions to strike are "viewed with disfavor and are infrequently granted." *Id.*

Upon review of plaintiffs' complaint, I find it to satisfy Rules 8(a)(2) and 10(b). The complaint is stated with sufficient, but not superfluous, detail, and its paragraphs are limited, as far as practicable, to discrete sets of circumstances, such that the City should be able to frame a responsive pleading. Further, there is no language in the complaint so redundant, impertinent, or scandalous as to warrant the extreme measure of striking. I will therefore deny the City's motion to dismiss on this basis, as well as its motion to strike under Rule 12(f).

E. Unjust Enrichment

In its motion to dismiss, the City relies on the defenses raised above to argue that there was no unjust enrichment because its actions in leveling arrest warrant bonds and fines were lawful. I have rejected these arguments, however, and the City provides no other basis to support its assertion that plaintiffs' claim for unjust

enrichment should be dismissed. I will therefore deny the City's motion to dismiss directed to plaintiffs' claim of unjust enrichment raised in Count Seven of the complaint.

Accordingly,

IT IS HEREBY ORDERED that defendant City of Maplewood, Missouri's motion to dismiss [14] is **GRANTED** as to Count Six of the complaint, and Count Six is hereby dismissed. In all other respects, the motion to dismiss is **DENIED**. The City of Maplewood shall file its answer to Counts One through Five and Count Seven of the complaint within the time prescribed by the federal rules.

IT IS FURTHER ORDERED that defendant City of Maplewood, Missouri's motion to strike [16] is **DENIED**.

The case will be set for a Rule 16 scheduling conference by separate Order.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 5th day of June, 2017.

ATTACHMENT G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CECELIA ROBERTS WEBB, DARRON YATES, ROBERT EUTZ, ANTHONY LEMICY, KRYSTAL BANKS, and FRANK WILLIAMS, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Case No. 4:16-cv-1703
THE CITY OF MAPLEWOOD, MISSOURI,	)	**JURY TRIAL DEMANDED**
Defendant.	)	

CLASS ACTION COMPLAINT

Introduction

1. Out of a desire to profit off of individuals subject to arrest solely for failing to pay minor municipal fines or failing to appear in its municipal court, the City of Maplewood devised and implements daily an unlawful pay-to-play system. By using "warrant recall bonds," which function as a pay wall, Maplewood bars citizens' access to the courts, disproportionately impacting poor and black residents frequently commuting through Maplewood's major thoroughfares between home, work and school, and squeezing funds from individuals who can least afford the expense. The system, ratified and promulgated by Maplewood's city officials at various levels, violates the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

2. The six named Plaintiffs—Cecelia Roberts (Webb), Darron Yates, Robert Eutz, Anthony Lemicy, Krystal Banks, and Frank Williams—bring this class action lawsuit against the City of Maplewood for vindication of their own constitutional rights and the rights of thousands

of other similarly situated individuals, all of whom have been subjected to the unconstitutional warrant procedures described herein.

3. Plaintiffs are a group of similarly situated individuals who are victims of the Defendant City of Maplewood's extortionate scheme, in which Maplewood police perform unlawful seizures to ensnare individuals in the Maplewood municipal court machine. The court, in turn, issues arrest warrants with insurmountable warrant bond fees against individuals who are unable to satisfy a scheduled court payment or appearance, thereby effectively locking the courthouse doors to individuals who cannot afford to pay. Maplewood's policies and procedures achieve this result by providing those individuals with a Hobson's choice to recall an arrest warrant: (1) sit in jail; or (2) spend money to either (a) pay the entire warrant bond fee, a sum which may typically range from $300 to $500, or (b) to hire an attorney to attempt to advocate on their behalf.

4. Until an individual satisfies one of those options, the warrant looms overhead in perpetuity. Meanwhile, Maplewood systematically denies the individual their constitutional right to access the courts to gain any information about their case or charges, or to certify the case to a higher court.

5. Maplewood's officials and employees—through their conduct, decisions, training, rules, policies, practices, and procedures—constructed and implemented this scheme for the improper purpose of imposing punitive measures not permitted by the United States Constitution upon those charged with municipal offenses, and as a mechanism of unlawful discrimination and abuse against a population of poor, disproportionately African-American individuals.

6. Thousands of people in the Plaintiffs' position must divert funds from their disability checks, or sacrifice meager earnings their families desperately need for food, diapers,

clothing, rent, and utilities, to pay "warrant recall bonds" and other costs demanded by the City to gain access to Maplewood's court or avoid imprisonment. Such individuals, including Plaintiffs, have suffered arrest and jail time when they cannot afford to pay, deepening their poverty.

7. The system of warrants, arrests and imprisonment Maplewood imposes through its municipal court frightens away from the courthouse those unable to pay the bond demand, who would otherwise be entitled to seek relief in the form of a lowered bond. The system creates perverse incentives for the City to maximally profit off the poor while simultaneously discouraging participation by arrestees, contradicting the City's purported intent of encouraging those same arrestees to attend calendared court appearances through the financial obligation of a bond.

8. Furthermore, Maplewood's "warrant recall bond" policy and procedure denies individuals access to the courts until they either pay the enormous warrant recall "bond," or spend 48 hours in jail. Maplewood's policy and procedure is to deny warrant-status individuals (a) access to information about underlying charges; (b) a new court date; (c) an opportunity to seek a judicial determination on their ability to pay the warrant recall bond itself; and/or (d) an opportunity to file any other motions, including motions to certify the municipal charges to a higher associate circuit court for impartial determination.

9. The treatment of the named Plaintiffs reveals an intentional, systemic effort by Defendant Maplewood through both police and municipal court practices, to deprive some of the area's poorest residents of their rights under the United States Constitution. For years, Defendant has engaged in the same conduct, as a matter of policy and practice, against Plaintiffs and thousands of other impoverished citizens. These citizens' fundamental constitutional rights to

liberty and access to the courts, however, cannot depend on personal income. Such flagrant abuse is not consistent with this country's values, with the rule of law, nor with the constitutional guarantees of Equal Protection and Due Process.

Nature of the Action

10. Defendant Maplewood's policy and practice related to "warrant recall fees" or "warrant bonds" triggered by Failure to Appear and Failure to Pay charges directly prevents people from appearing in court until the fee is paid or until they serve the arbitrary 48-hour stint in jail.

11. Pursuant to policy and practice, Defendant jails indigent people who are unable to pay these sums without informing them of their right to counsel and without providing counsel for those who cannot afford it.

12. Pursuant to policy and practice, Defendant Maplewood issues and enforces invalid arrest warrants, threatens alleged debtors with jail if they do not bring cash to court, holds alleged debtors in jail for days without due process, sets and modifies monetary payments necessary for release with no regard for ability to pay or basic fairness.

13. Then, pursuant to policy and practice, Defendant Maplewood denies individuals access to the courts by withholding case information, refusing to issue new court dates, refusing to consider motions raised by individuals, and refusing to certify warrant-status municipal cases up to the St. Louis County Associate Circuit Court. Defendant Maplewood's policy and practice leaves individuals with the choice of either paying the entire bond amount or sitting in jail, which has the effect of frightening people away from appearing in court while fining them for not appearing, all in violation of the United States Constitution.

14. The Plaintiffs seek declaratory, injunctive, and compensatory relief.

Jurisdiction and Venue

15. This is a civil rights action arising under 42 U.S.C. § 1983, 28 U.S.C. § 2201, *et seq.*, and the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

16. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

Parties

17. Plaintiff Cecelia Roberts (a/k/a Cecelia Webb) is a resident of St. Louis City, Missouri.

18. Plaintiff Darron Yates is a resident of University City in St. Louis County, Missouri.

19. Plaintiff Robert Eutz is a resident of St. Louis City, Missouri.

20. Plaintiff Anthony Lemicy is a resident of St. Louis City, Missouri.

21. Plaintiff Krystal A. Banks is a resident of St. Louis City, Missouri.

22. Plaintiff Frank Williams is a resident of the City of Maplewood in St. Louis County, Missouri.

23. Defendant City of Maplewood is a municipal corporation organized under the laws of the State of Missouri. The City of Maplewood operates the Maplewood Municipal Court and Maplewood Police Department, and contracts and/or conspires with other municipalities in the St. Louis region to fine and imprison individuals for violations of Maplewood City Ordinances.

FACTUAL ALLEGATIONS

A. Maplewood's Racially and Economically Stratified Geography Leads to Disproportionate Traffic Enforcement Against Poorer Black Motorists.

24. Maplewood is a predominantly white, middle-class city of nearly 8,000 people

that is able to rely on a substantial tax base to fund a variety of municipal services. However, Maplewood's practice of raising money through traffic tickets, municipal court fines, and bond fees from people passing through its boundaries is the latest permutation of a very old model developed to maintain a system of racial and class exclusion, and a mechanism to extort payment from vulnerable targets. [1]

25. The City of Maplewood is a municipal town within St. Louis County, Missouri, that abuts the western border of the City of St. Louis. Several major thoroughfares bisect Maplewood, where its police freely dole out tickets to motorists passing through and within the city on interstates, state highways, four-lane city boulevards, and small neighborhood streets.

26. In the early 1900s, the City of St. Louis became the first city to pass by popular ballot a local ordinance mandating that blacks and whites live on separate, designated blocks. After that practice was ruled unconstitutional in *Buchanan v. Warley,* 245 U.S. 60 (1917), racial segregation was enforced through restrictive covenants, until those, too, were ruled unconstitutional in *Shelley v. Kraemer*, 334 U.S. 1 (1948). The proliferation of micro cities and municipalities across St. Louis county was a scheme cut from the same cloth—municipalities were able to use zoning ordinances and residency requirements to exclude blacks that hoped to "intrude" upon white neighborhoods.

27. As a result of these inequitable racial and economic divides, wealthier, whiter

[1] Maplewood's population in 2014 neared 8,000 people who are predominantly white, middle-class families, with only 17.20% of its population is black and 20.80% of its population earning below the poverty line. *See Judicial Report Supp.: Fiscal Year 2014*, OFFICE OF STATE COURTS ADMIN.MO., Table 94, http://www.courts.mo.gov/file.jsp?id=83262; *General Administration #2*, BETTER TOGETHER ST. LOUIS at 8-12 (December 2015), http://www.bettertogetherstl.com/wp-content/uploads/2015/12/Better-Together-General-Administration-Report-2-FINAL-.pdf; U.S. CENSUS BUREAU, PROFILE OF GENERAL POPULATION AND HOUSING DATA (2010); U.S. CENSUS BUREAU, 2010-2014 AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES: SELECTED ECONOMIC CHARACTERISTICS (2014).

municipalities like Maplewood and its neighbors are home to big box stores, chain restaurants, and other minimum-wage employment opportunities not found in the poorer municipalities to the north or within St. Louis City to the east. The divide compels Plaintiffs and the purported class members to work in and travel through the wealthier cities, like Maplewood and its neighbors, cities in which they largely cannot afford to live.

28. Specifically, motorists from St. Louis City traveling west along Interstate 44 and State Highway 100 (also called "Manchester Road") must pass through Maplewood, while many North County residents necessarily traverse south via the four-lane Big Bend Boulevard across some of the wealthiest municipalities, including Maplewood, along their daily commute.

29. Essentially, Maplewood's geographical location provides it opportunity to catch, release, and re-catch motorists—like fish trapped in an overstocked pond—all to increase its revenue with traffic fines, court costs, money bail payments, and warrant recall fees at a steady rate.

B. Maplewood's Flawed and Unlawful Warrant Process Disproportionately Targets Black Motorists, Whether Residents of Maplewood or Not.

30. Pursuant to policy and practice, Defendant applies uniform illegal policies to issue and enforce arrest warrants for those unable to satisfy Defendant's extortionate demands.

31. Based on data reported by police departments to the Missouri Attorney General, Black residents living in and traveling through Maplewood are much more likely to be searched and/or arrested as a result of a vehicle stop than other racial groups, particularly whites. For example, in 2015, out of 3,327 total vehicle stops in Maplewood, 3.74% of stops involving white individuals resulted in a search, while the proportion of black stops resulting in a search was *more than double* that rate, at 8.61%. Even though contraband is equally-likely to be discovered during stops involving both white drivers and black drivers, black drivers are nearly *three times*

more likely to be arrested than white drivers under Maplewood's scheme.[2]

32. Defendant issues arrest warrants for failure to make a payment of the underlying fine by a certain date ("Failure to Pay") without inquiring as to whether the person has the ability to make a payment. Defendant preys on the unrepresented, refusing to withdraw arrest warrants even for those who are plainly too poor to make payments.

33. Defendant also routinely issues arrest warrants for "Failure to Appear" at court dates without giving people adequate notice of the supposed obligation to appear, such as when Defendant fails to serve a valid summons or when the Defendant reschedules a hearing without providing reasonable notice.

34. The arrest warrants that Defendant issues for "Failure to Pay" and "Failure to Appear" at court dates are automatically generated by a computer program, based on information that the municipal court clerks enter manually into the computer system. On information and belief, no judge or magistrate approves these warrants before they are issued.

35. After arresting a person based on an automatically generated warrant, Defendant routinely demands that the arrestee make immediate payment and, if she does not, Defendant holds the arrestee in jail and unnecessarily delays presentment in court for days or weeks in an effort to coerce the victim to pay for her freedom, regardless of her indigence. Without affording any legal process, Defendant also tacks on a "warrant" fee for the person's missed payment date. The person is not arraigned on any new charge for "Failure to Pay" or "Failure to Appear" before Defendant imposes the additional "warrant" fee, nor does Defendant allow the person a meaningful opportunity to defend against the charge, or show that Defendant has not satisfied its

[2] MISSOURI ATTORNEY GENERAL VEHICLE STOPS REPORT, *available at* https://ago.mo.gov/home/vehicle-stops-report/advanced-search.

elements.[3] Again, Defendant appoints no attorney to assist the person on any new charge. Defendant simply adds the charges to the person's debts.

i. Maplewood Fails to Follow Its Own Rules of Procedure or the Missouri Rules of Civil Procedure When Charging Bonds and Warrant Recall Fees.

36. Defendant Maplewood employs policies and practices that not only violate its own municipal codes, but also violate the Missouri Rules of Civil Procedure with regard to issuance of "Failure to Appear" charges.

37. Maplewood charges individuals who miss a court date or fail to submit payment to the court on time with "Failure to Appear," and automatically issues a warrant for their arrest. These warrants are regularly sought, issued, and served without any finding of probable cause that the person has committed the elements of any offense.

38. The "Failure to Appear" ordinance in Maplewood contains an intent element, which necessarily requires some inquiry into the mind of the accused and affords individuals an immediately available defense against the charge:

> MAPLEWOOD MUNI. CODE Ch. 34 Art. I § 34-13: Any person who having been released upon a recognizance bond ***willfully*** fails to appear in the municipal court as required, shall be guilty of a misdemeanor and punished . . . . (emphasis added)

39. Defendant chooses to pursue warrants instead of issuing summonses even when it has spoken to accused individuals by telephone or in person, and has ample opportunity to notify the individual of their obligation to appear in court. The city at no time affords the accused a

[3] The practice of adding on illegal warrant recall fees is widespread throughout the region. Counsel for Plaintiffs has sued several municipalities in state court for imposing these fees. *See White* v. *City of Pine Lawn*, 14SL-CC04194 (St. Louis County Circuit Court, Dec. 2014); *Pruitt v. City of Wellston*, 14SL-CC04192 (St. Louis Co. Cir. Ct., Dec. 2014); *Lampkin v. City of Jennings*, 14SL-CC04207 (St. Louis Co. Cir. Ct., Dec. 2014); *Wann v. City of St. Louis*, 1422-CC10272 (St. Louis City Cir. Ct., Dec. 2014); *Reed v. City of Ferguson*, 14SL-CC04195 (St. Louis Co. Cir. Ct., Dec. 2014); *Eldridge v. City of St. John*, 15SL-00456 (St. Louis Co. Cir. Ct., Feb. 2015); *Watkins v. City of Florissant*, 16SL-CC00165 (St. Louis Co. Cir. Ct., Jan. 2016).

chance to defend himself against the "Failure to Appear" charge.

40. Under these circumstances, persons accused of "Failure to Appear" in Maplewood are automatically presumed guilty of this violation and charged a "warrant recall fee," but are unable to defend themselves against the "Failure to Appear" charge or the warrant recall fee itself unless they first pay the full warrant recall fee. At that point, the accused then must ask the very judge who issued the guilty "Failure to Appear" conviction to admit it was entered unlawfully and overturn it.

41. Maplewood further operates its "Failure to Appear" machine pursuant to policies and procedures that almost certainly violate the notice requirements set forth in the Missouri Rules of Civil Procedure for convictions issued upon automatic presumptions of guilt.

42. In Missouri, a prosecutor must prosecute ordinance violations pursuant to issuance of an "information" statement. *See* Mo. R. Civ. P. §§ 37.34–37.41. However, the "information" statement must be supported by a document called a "Violation Notice." *See* Rule 37.34. Pursuant to Missouri Rules, a municipality like Maplewood must issue a "Violation Notice" to every person accused of any crime. To wit, subsection (b) of Rule 37.33 states:

> When a violation has been designated by the court to be within the authority of a violation bureau pursuant to Rule 37.49, the accused *shall also be provided* the following information:
>
> (1) The specified fine and costs for the violation; and
> (2) That a person must respond to the violation notice by:
>
> (A) Paying the specified fine and court costs; or
> (B) *Pleading not guilty and appearing at trial.*

Mo. R. Civ. P. 37.33(b) (emphasis added).

43. This requirement for Violation Notice is particularly important in the context of the Defendant Maplewood's policies and procedures whereby the Defendant operates on a

presumption of guilt without affording the accused an opportunity to rebut that presumption.

44. On information and belief, pursuant to its policies and procedures, Defendant Maplewood does not send such notices as required under Rule 37.33(b). Such failure serves as yet another blatant denial of court access and due process for poor persons accused of "Failure to Appear" charges.

45. Although parsing municipal ordinances and state rules of civil procedure may not seem important to Defendant Maplewood, the aggregate effect of Maplewood's careless disregard for their own municipal ordinances and their inevitable failure to follow Missouri rules requiring the issue of proper Violation Notices is daunting: on information and belief, nearly every "Failure to Appear" conviction and subsequent fine assessment and collection executed by Defendant Maplewood is voidable because either (1) it was achieved without any inquiry into the intent of the accused; or (2) Defendant Maplewood failed to provide the accused with proper Violation Notices informing the accused of the nature, costs, and rights to contest each "Failure to Appear" charge.

46. As a result, on information and belief, Defendant Maplewood's "Failure to Appear" convictions—and fees collected therefrom—are void for lack of proper due process under Missouri state law.[4]

C. Maplewood's "Warrant Recall Fee" or "Warrant Bond" Denies Access to Courts

47. Defendant Maplewood systematically deprives the First Amendment rights of poor individuals, including Plaintiffs, by operating a system pursuant to its established policies and procedures, which inextricably ties an individual's ability to pay a "warrant recall fee" (or other monetary fee associated with "Failure to Pay" warrants or "Failure to Appear" warrants) to

[4] *See* Mo. S. Ct. R. 74.06(b)(4).

that individual's ability to access Defendant's courtroom, court files, and the information and proceedings contained therein.

48. Once Maplewood issues an arrest warrant for Failure to Appear or Failure to Pay charges, it levies an insurmountable "warrant recall fee" or "warrant bond fee" against individuals who are unable to satisfy a scheduled court payment or appearance. This warrant bond creates a "pay-to-play" structure that essentially locks the courthouse doors to individuals who cannot afford to pay for access, but unlocks and opens them for individuals who can either pay the bond amount or pay a lawyer to attempt to achieve the unlikely result of getting the warrant recalled.

49. The warrant stands until the individual satisfies one of those options, while Maplewood systematically denies individuals their constitutional right to access the courts by (a) refusing to provide information about the underlying municipal charges; (b) refusing to schedule new court dates; (c) denying individuals any opportunity to challenge the bond amount or quash the warrant itself, no matter their personal or financial circumstance; (d) refusing all requests to certify warrant-status municipal cases to a higher county associate circuit court, thus ignoring and violating state and local court rules; and (e) arresting and jailing individuals brave enough to physically walk into the Maplewood courthouse with empty pockets to challenge the warrants and bonds.

50. Defendant's policies and procedures deprive the First Amendment rights of the Plaintiffs and others similarly situated to access the courts.

51. The fear fostered by Defendant Maplewood has further degraded the quality of life of the poorest residents in the St. Louis metropolitan area. Many have cut back on food, clothing, utilities, sanitary home repairs, and other basic necessities of life to satisfy, or try to

satisfy, Defendant's rapacious demands for money.

52. People who have faced charges in the Maplewood municipal court have observed the following practices:

a. Maplewood officials refused to recall a warrant unless the individual paid the cash bond amount in full;

b. Maplewood officials told individuals over the telephone that arrangements for partial payments are not permitted;

c. Maplewood refused to conduct a determination as to whether an individual could afford her $500 bond;

d. Maplewood refused to schedule a new court appearance or bond hearing when requested by an individual until the bond was fully paid;

e. Maplewood refused an individuals' request to certify the case to St. Louis County Circuit Court by writing "Denied. Def. in Warrant Status" on the face of her motion;

f. One Maplewood judge responded to an individual's motion for bond reduction in open court by stating "I believe people need to be punished for failing to appear in court" and that "the bond remains at $500";

g. One individual was told by Maplewood officials on the telephone that Maplewood's policy provided only two ways to get a warrant recalled: (1) pay his entire $400 bond; or (2) turn himself in at the Maplewood Court and sit in jail for 48 hours;

h. When the individual contacted the Maplewood Assistant City Manager to seek additional help resolving the warrant, the Assistant City Manager said the individual would likely be arrested if he showed up to the Maplewood courthouse on that day without the $400 bond money; and

i. One Maplewood judge told an individual the only reason he would waive the bond fee was because the individual had "found himself a persistent lawyer."

D. The Named Plaintiffs' Struggles to Gain Access to Maplewood Court

i. Cecelia Roberts (Webb)

53. Cecelia Roberts (a.k.a. Cecelia Webb) is a 26-year-old African-American mother who lives with her husband and minor daughter in St. Louis City, Missouri. Ms. Webb presently works part time for a nonprofit organization earning $8 per hour, and her husband works as a server at a local restaurant. Even with their combined incomes, Ms. Webb and Mr. Webb struggle to earn enough money to pay the normal costs of living, and they cannot afford health insurance for their family.

54. In September 2015, Ms. Webb was hired to work a night shift at a Wal-Mart in Maplewood, Missouri. There, Ms. Webb's exemplary work ethic earned her a promotion and a raise, and placed her on a fast-track to become an assistant manager. Along with the promotion, Ms. Webb received full-time benefits including health insurance for her entire family, life insurance, and a retirement plan.

55. Each night, Ms. Webb drove the family vehicle to work by 10:00 p.m. Each night, Ms. Webb liked to call home to her husband upon arriving at the Wal-Mart store to assure him she had arrived safely at work.

56. On one particular evening in April 2016, Ms. Webb drove the family vehicle to the Maplewood Wal-Mart, where she safely parked her vehicle in the same spot in which she parked every night she worked, arriving a few minutes early for her 10:00 p.m. night shift.

57. Ms. Webb exited her vehicle and reached for her cell phone inside her purse to call her husband and tell him she had arrived safely. However, on this night, a Maplewood Police Officer drove his patrol vehicle directly in Ms. Webb's path between her vehicle and the Wal-Mart entrance, preventing Ms. Webb from completing the telephone call to her husband and from completing her short walk into work.

58. Maplewood Officer Eric Forest got out of his vehicle and shouted "Whose vehicle

is that? Get back in the car!" Ms. Webb peacefully complied, and asked, "What have I done wrong?" Ms. Webb also informed the Maplewood Officer that she worked at the Wal-Mart store, and asked the officer to allow her to contact her manager inside so that she would not be penalized for being late. She was wearing her Wal-Mart uniform, including a vest and name badge.

59. The Maplewood Officer did not allow Ms. Webb to leave her car to go inside her workplace, and when Ms. Webb asked if she could at least call her supervisor on the phone, Officer Forest said "no."

60. Ms. Webb then asked if she could call her husband to let him know she had made it to work safely, and to inform him that she had been stopped by the Maplewood police, but the Maplewood Officer did not allow Ms. Webb to do so.

61. The Maplewood Officer forced Ms. Webb to remain in her car for over thirty (30) minutes while he ran her license plates and driver's license.

62. The Maplewood Officer informed Ms. Webb that he had discovered a warrant issued by the City of Webster Groves for an alleged "Failure to Appear" and told Ms. Webb, "I could lock you up, you know. Or I could be nice." Ms. Webb felt powerless and afraid at that point, and was fearful that she would be arrested and jailed.

63. The Maplewood Officer then told her he chose to "be nice" and issued three municipal citations against Ms. Webb for Failure to Register Vehicle, Failure to Provide Proof of Insurance, and Failure to Wear Seatbelt.

64. On information and belief, Defendant Maplewood eventually issued a "Failure to Appear" warrant—with a corresponding bond or warrant recall fee—against Ms. Webb in connection with these citations.

65. Once the Maplewood Officer left, Ms. Webb went to work, where her supervisor had to assess "points" which would count against her within Wal-Mart's point-based termination system.

66. Ms. Webb was able to keep her job at Wal-Mart despite the Maplewood Officer's interference that night. However, this would not be the last time Maplewood Officer Forest interfered in Ms. Webb's life and work.

67. On a night sometime in late May or early June 2016, Ms. Webb was driving a newer, more reliable (used) vehicle. After the first Maplewood police interference, the Webbs decided to sell the previous vehicle for which Maplewood ticketed Ms. Webb, as described above, because the Webbs could not afford to pay for the many significant repairs the vehicle needed in order to pass inspection.

68. That evening, Ms. Webb pulled up to a four-way stop sign at the entrance of the Wal-Mart parking lot, where she made a complete stop and turned on her left turn signal to indicate her intention to turn into the Wal-Mart parking lot.

69. There, she noticed a Maplewood police car had already stopped at the sign opposite Ms. Webb, so Ms. Webb waited for the Maplewood police car to proceed through the intersection before Ms. Webb turned left.

70. The officer within the police car waived his hand to Ms. Webb to signal that Ms. Webb could turn left into the parking lot first.

71. Ms. Webb obeyed the officer's gesture and pulled into the parking lot entrance. On this particular night, the Wal-Mart parking lot where Ms. Webb normally parked was undergoing maintenance, so she parked her vehicle near other employee vehicles in the adjacent Sam's Club parking lot, which was further from the Wal-Mart entrance than usual. Additionally,

because it was nearly 10:00 p.m. and the Sam's Club store was closed, the Sam's Club parking lot was unlit and very dark.

72. Ms. Webb parked and began to exit the vehicle. The new vehicle visibly displayed a valid temporary vehicle registration affixed to the interior of the rear window in the upper left-hand corner.

73. Per her usual routine, Ms. Webb exited her vehicle and reached for her cell phone to call her husband while walking into work just a few minutes before 10:00 p.m. Once again, however, a Maplewood police car quickly pulled in front of Ms. Webb's path and blocked her from advancing toward work.

74. The Maplewood police officer stepped out of his vehicle, and Ms. Webb immediately recognized him as Officer Forest, the same officer who had confronted her in the Wal-Mart parking lot months prior.

75. Ms. Webb stated to Officer Forest that she had a new car now, with current temporary tags and proper insurance, and that she was in compliance with the law.

76. Once again, Officer Forest ordered Ms. Webb to get back into her car because her temporary tags were not visible. Ms. Webb attempted to reach to the rear window of the vehicle to show the officer the tags, at which point he grabbed Ms. Webb by the left arm, pulled her from the vehicle, and pushed her up against her vehicle.

77. Within moments, two additional Maplewood patrol cars and two additional Maplewood officers arrived on the scene.

78. Ms. Webb stated to Officer Forest "I know my rights" and that she had not done anything wrong.

79. In response, Officer Forest then placed handcuffs on Ms. Webb, and in doing so,

inadvertently cuffed one of Ms. Webb's purse handles between the handcuff and Ms. Webb's arm.

80. The three officers on the scene began shouting for Ms. Webb to drop her purse and simultaneously began pulling on the purse. At this point, Ms. Webb screamed out "You're hurting me! It's stuck!" but the officers continued to pull on the purse several more times until they realized their careless mistake.

81. Once the Maplewood officers removed the purse and re-handcuffed Ms. Webb, they searched through her purse, dumping out its contents until they found her identification. The entire time, Ms. Webb told them her full name and continued to ask what she had done wrong.

82. Ms. Webb pleaded with the three officers to please let her go into work, and informed them that she would be fired if she was late again. The officers refused Ms. Webb's pleas, and took her cell phone to prevent her from calling inside to the Wal-Mart store.

83. Ms. Webb noticed that a woman walking nearby had stopped to film the incident on her mobile phone. Ms. Webb shouted to the woman to please call her husband to tell him Maplewood police were arresting her. The woman agreed and asked Ms. Webb for the number. As Ms. Webb began to shout the number to the woman, the Maplewood officers yelled over Ms. Webb to "shut up" and "be quiet" and tried to prevent Ms. Webb from relaying the information to the woman nearby.

84. The officers placed Ms. Webb in the back of one of the patrol cars and transported her to the Richmond Heights Jail.

85. Ms. Webb began to fear for her safety and for her life at this point. She was not sure whether her husband would know what had happened to her because the officers had possibly prevented the bystander from hearing Ms. Webb calling out Mr. Webb's telephone

number.

86. Ms. Webb arrived at the Richmond Heights jail at approximately 10:40 p.m. After approximately one hour, Ms. Webb was booked, fingerprinted, and permitted to use her cell phone to call her employer, but no one at Wal-Mart answered when Ms. Webb telephoned. Shortly thereafter, the Richmond Heights and Maplewood officials took Ms. Webb's cell phone, shoelaces, and Wal-Mart vest, and locked her in a holding cell.

87. Ms. Webb sat in the Richmond Heights holding cell for over two (2) hours, during which time she was not allowed to place a telephone call to her husband.

88. During this time, neither the Richmond Heights officials nor Maplewood officials had informed Ms. Webb of the basis for her detention.

89. At one point, Ms. Webb asked the Richmond Heights and Maplewood officials at the jail to please let her go because she had done nothing wrong and feared she was going to lose her job. One of the officials replied: "You're not going anywhere."

90. Again, Ms. Webb feared for her safety and for her life in the hands of these municipal officials. To this day, Ms. Webb recalls the emotions she experienced during that moment as feeling "powerless" and "helpless" because "I'm in their world now."

91. Finally, after several hours, Richmond Heights permitted Ms. Webb to telephone her husband. While on the phone, Mr. Webb asked Ms. Webb how to get her out of jail. Ms. Webb pleaded with the Richmond Heights jailer to tell her sufficient information to relay to her husband so that he could bail her out. The Richmond Heights jailer tersely stated "Go pay $300 to Webster Groves, and then bring $550 to Richmond Heights." Ms. Webb relayed this information to her husband quickly, and then the Richmond Heights jailer cut off the call.

92. Sometime later, at or around 3:00 a.m., after having first driven to the Webster

Groves police department to pay $300, Mr. Webb and the Webb's church pastor, Rev. Patrick Reel, finally arrived at the Richmond Heights jail. They paid the additional $550 demanded by Maplewood to free Ms. Webb from captivity.

93. As the Webbs and Rev. Reel walked out of the Richmond Heights Jail, Officer Forest was standing nearby and stated to Ms. Webb: "Next time, just say 'hello' to me."

94. Ms. Webb felt this statement was intended to intimidate and humiliate her, and to reinforce in Ms. Webb a fear of the Maplewood police and of Officer Forest.

95. Then, to make matters even worse, the Webbs discovered upon Ms. Webb's release that the City of Maplewood had also towed their family vehicle from the Sam's Club parking lot to the Maplewood impound lot. So, the Webbs went to the Maplewood impound lot, operated by a private towing service, and paid an additional amount exceeding $200 to recover their family vehicle.

96. Altogether, the Webbs had to pay Defendant Maplewood and Webster Groves a total amount exceeding One Thousand Dollars ($1,000) as a result of the Defendant Maplewood's actions toward Ms. Webb.

97. In addition to paying over $1,000 that evening, Ms. Webb returned to work at Wal-Mart the next week, only to learn that she had been fired because she had not shown up for work the night she was arrested. The Wal-Mart manager could not make an exception to Wal-Mart's policy, but told her she could re-apply after 90 days and start over.

98. Defendant Maplewood completely erased Ms. Webb's tireless efforts to secure a promotion and full-time benefits for herself and her family. As a result, the Webbs lack health insurance, life insurance, retirement savings, and steady income.

99. Since the Maplewood arrest ended Ms. Webb's employment at Wal-Mart, Ms.

Webb has not been able to secure full-time employment, and has only found part-time seasonal work for $8.00 per hour at a local non-profit.

100. Maplewood charged Ms. Webb with "Disorderly Conduct" and "Failure to Comply" following her arrest, which remain pending and for which Maplewood seeks a large monetary fine along with court costs.

101. As of this filing, Defendant Maplewood has not made an inquiry or determination of Ms. Webb's ability to pay any fines or fees, and Defendant Maplewood never made an inquiry as to whether she could afford to pay the $550 warrant recall bond.

102. As a result of Maplewood's conduct, which was performed pursuant to its policies and procedures, Ms. Webb and her family fear that they cannot safely travel and go about their normal, peaceful lives in the St. Louis region because they cannot afford to pay the fines and costs associated with the underlying municipal charges if pulled over and/or arrested. Ms. Webb and her family now fear they can be arrested at any time, for any reason, even if they are in full compliance with the law.

ii. Darron Yates

103. Darron Yates ("Mr. Yates") is a 48-year-old African-American resident of University City, Missouri who lives with his elderly mother.

104. Mr. Yates suffers from disabilities, and as a result is unemployed with the exception of earning minimal income from sporadic odd jobs.

105. Late on the evening of January 28, 2016, Mr. Yates was driving a neighbor's vehicle in Maplewood when the vehicle ran out of gas near a Wal-Mart store.

106. Mr. Yates walked down to the QuikTrip gas station on Hanley Road and filled his gallon can of gas. While he was walking, he noticed a Maplewood police squad car nearby, and

the officers inside it were watching Mr. Yates.

107. Mr. Yates took the gas can back to the vehicle, refueled it, and started the vehicle.

108. Mr. Yates drove approximately one block and was stopped by the same Maplewood police officers from the squad car, and then two more Maplewood police squad cars arrived.

109. The Maplewood police began searching the vehicle without Mr. Yates' permission or consent and without a warrant.

110. The Maplewood officers claimed the search was due to a report that someone in the neighborhood had been stealing property from inside other vehicles.

111. During the traffic stop, Mr. Yates witnessed a young teenager riding a skateboard nearby and holding what Mr. Yates believed to be GPS devices and cables that appeared to be stolen from other vehicles. Mr. Yates alerted the Maplewood police officers that the teenager appeared to be their actual theft suspect, but the Maplewood officers ignored Mr. Yates and the teenager passing by.

112. The Maplewood police officers peeled off the license plate stickers from the vehicle and told Mr. Yates the vehicle was improperly licensed. The officers held Mr. Yates against the hood of the vehicle and patted him down.

113. The officers then made Mr. Yates sit on his hands on the curb and interlock his legs, where he remained for about 20 minutes in the cold while the Maplewood officers searched the vehicle and wrote tickets.

114. Mr. Yates informed the Maplewood officers that the car belonged to his neighbor, and asked if he could simply return the vehicle home to the neighbor. The Maplewood officers refused Mr. Yates' request and issued three tickets citing Mr. Yates for the following charges:

a. Driving while suspended;

b. Failure to Provide Proof of Insurance; and

c. Failure to Obtain Proper Vehicle Registration.

115. Because the Maplewood officers refused to let Mr. Yates drive the vehicle back to his neighbor, Mr. Yates had to call a relative to come pick up the vehicle and return it to the neighbor.

116. Due to a printing defect, the ticket itself did not clearly state the date and time for his first court appearance, but Mr. Yates believed that he could make out the date from the botched printing.

117. On the evening Mr. Yates believed to be his first scheduled court appearance, Mr. Yates telephoned the Maplewood Court to inquire as to the time and date of his court appearance. The Maplewood clerk told Mr. Yates "You are too late" and told Mr. Yates not to come to the Maplewood court because "the doors are closed already" and that a warrant had been issued for his arrest.

118. Mr. Yates asked for a new court date and requested the warrant be recalled. In response, the Maplewood clerk told him there were only two ways to get the warrant recalled at that point: (1) that he could bring $500 to the court; or (2) he could come turn himself for arrest in at the Maplewood Court and sit in jail.

119. Mr. Yates did not have $500 and was afraid he would be arrested if he went to the Maplewood court to ask the judge to recall the warrant and eliminate the bond on the basis of his indigence.

120. One evening in April 2016, Mr. Yates was collecting bulk items from the street when University City police stopped Mr. Yates and accused him of stealing and trespassing.

121. The University City police arrested Mr. Yates, charged him with trespassing, and took him to the University City jail, where Mr. Yates was held for over twenty (20) hours in hazardous conditions.[5]

122. After 20 hours, University City police told Mr. Yates they were releasing him on a recognizance bond (without requiring payment) from the University City charges, but refused to let Mr. Yates leave the jail because they had discovered an active Maplewood warrant in their computer system.

123. The University City police called the Maplewood police department five (5) times over the course of the next eight (8) hours to come retrieve Mr. Yates.

124. Finally, Maplewood police came to the University City Jail and transported Mr. Yates to the Richmond Heights Jail to be held on the Maplewood warrant. The Richmond Heights jailers told Mr. Yates: "Your bond is going to be $500."

125. Mr. Yates could not afford to pay any amount of money to get out of jail, let alone $500, so Richmond Heights continued to hold Mr. Yates in jail on behalf of Maplewood.

126. Mr. Yates remained in jail for two (2) days because he could not pay the $500 bond.

127. While in jail, Mr. Yates observed that nine of the ten inmates in the Richmond Heights Jail were African-American. Seven of the ten were African-American men, including Mr. Yates.

128. At the conclusion of the second full day in jail, Maplewood Municipal Judge Brian Dunlop came to the Richmond Heights Jail to see Mr. Yates and the other persons

[5] *See University City Police Department Building Condemned at City Council Meeting*, WALB NEWS 10, (Feb. 23, 2016), http://www.walb.com/story/31289651/university-city-police-department-building-condemned-at-city-council-meeting.

incarcerated on Maplewood warrants.

129. Judge Dunlop scolded Mr. Yates in front of the other detainees, stating: "Darron, you're going to learn not to drive in *my* city without a license." Mr. Yates pleaded with Judge Dunlop to let him out of jail and release him for his "time served," which at that point was nearly three days (over 20 hours in University City plus 48 hours in Richmond Heights). Judge Dunlop denied Mr. Yates' request to release Mr. Yates for time served, and only lowered Mr. Yates' bond to $200.

130. Judge Dunlop told Mr. Yates that once Mr. Yates came up with the $200, he should "just come to court, you'll be fine."

131. After the Maplewood judge left the jail, one of the Richmond Heights jailers told Mr. Yates to call someone to get money using the in-cell "TIP Systems" calling system. Mr. Yates telephoned his mother, Ms. Janice Yates, at their home.

132. Ms. Janice Yates received the call and eventually brought $200 of her personal money to pay Maplewood to release Mr. Yates from the Richmond Heights jail. Ms. Yates informed her son that this money was her "bill-paying-money" that she had intended to use to pay utilities and to buy groceries, and that Mr. Yates would have to repay his mother.

133. Upon Mr. Yates' release, his underlying traffic tickets were placed on the Maplewood Court "payment docket," even though Mr. Yates had not pleaded guilty to any of the charges, and despite Mr. Yates requesting the tickets be scheduled for a trial setting.

134. Fearful of another warrant, Mr. Yates appeared at the scheduled Maplewood court payment docket, where Mr. Yates informed the court that he could not afford to make any payments and had not pleaded guilty to any charges. In response, Maplewood Judge Dunlop told Mr. Yates "this case is getting old" and tried to persuade Mr. Yates to simply plead guilty to all

three charges and set up a payment plan with the prosecutor and the clerk.

135. Mr. Yates did not wish to agree to a guilty plea or payment plan, as he could not afford to pay the amount of fines demanded. At that time, Mr. Yates asked the Maplewood prosecutor to accept his "time served" in lieu of payment, but the prosecutor stated "we aren't allowed to do that by law," which was a false representation.[6] Mr. Yates then requested a trial date.

136. At the date and time Maplewood scheduled the trial, Mr. Yates appeared with his *pro bono* counsel to present his case, but the City of Maplewood failed to produce any police officer witness to the charges. Having waited for the City's absent witness for approximately two hours, Mr. Yates and his counsel demanded to proceed with the trial nonetheless, or to have the court dismiss the action, and the court refused both requests and granted the prosecutor's request to continue the matter for another trial date over Mr. Yates' objections.

137. Mr. Yates has not received a refund of the $200 bond monies paid to Maplewood for his release from the Richmond Heights jail.

138. As of the date of this filing, the City of Maplewood refuses to consider Mr. Yates' inability to pay any fines or fees, including the $200 bond money he had to borrow from his mother.

139. Mr. Yates retained ArchCity Defenders to attempt to resolve the underlying Maplewood violations, but continues to live in fear of being arrested again because of his inability to pay.

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[6] *See* R.S.Mo. 558.031.1, which states: "A sentence of imprisonment shall commence when a person convicted of an offense in this state is received into the custody of the department of corrections or other place of confinement where the offender is sentenced. Such person shall receive credit toward the service of a sentence of imprisonment for all time in prison, jail or custody after the offense occurred and before the commencement of the sentence, when the time in custody was related to that offense . . . ."

iii. Robert Eutz

140. Robert Eutz ("Mr. Eutz") is a 36-year-old African-American resident of the City of St. Louis, Missouri who works part time at a fast-food restaurant earning $8.00 per hour. He is the fiancée of Plaintiff Krystal Banks.

141. Sometime in October 2013, Mr. Eutz had nearly completed a routine drive home through the City of Maplewood when a Maplewood police officer turned on his police lights to pull Mr. Eutz over.

142. Mr. Eutz was so close to home when the officer turned on his police lights that Mr. Eutz pulled into his own apartment driveway.

143. At the time, Mr. Eutz's vehicle bore temporary tags, which were still current. Mr. Eutz had not committed any moving violations. The Maplewood police officer did not disclose why he stopped Mr. Eutz, yet wrote a ticket citing Mr. Eutz for driving with a suspended license.

144. Defendant Maplewood issued an arrest warrant for Failure to Appear after Mr. Eutz's first court date.

145. In 2014, Mr. Eutz moved to the State of Indiana, but moved back to St. Louis in October 2015 to care for his mother, who had fallen ill.

146. Sometime after Mr. Eutz returned to St. Louis, Florissant police arrested Mr. Eutz and held him in the Florissant Jail for approximately ten (10) hours before Mr. Eutz could be processed and post bond.

147. At the Florissant Jail, the Florissant jail official told Mr. Eutz that a Maplewood warrant was still active against Mr. Eutz. The Florrisant jail official telephoned a Maplewood official, and then relayed to Mr. Eutz that Maplewood said "they wouldn't come get [him], but they said 'you still have a warrant.'"

148. Mr. Eutz telephoned the Maplewood court once he was released from the Florissant Jail and asked for a new court date. The Maplewood clerk told Mr. Eutz that "Maplewood doesn't do any warrant recalls" and that the bond to recall his warrant was $800.

149. Mr. Eutz informed the Maplewood clerk that he could not pay the $800, but the Maplewood clerk refused to recall the warrant.

150. Mr. Eutz then sought assistance from a private attorney, who informed Mr. Eutz that he also knew that Maplewood's policy is to refuse to recall all warrants until Maplewood can either (1) collect the entire warrant recall fee, or (2) arrest and hold individuals in jail for approximately 48 hours or until they can pay the fee.

151. Mr. Eutz cannot afford to pay the $800 warrant recall fee to Maplewood, and so, as of the date of this filing, the Maplewood warrant remains active against Mr. Eutz, preventing him from obtaining new or additional employment, and further jeopardizing his ability to complete an unrelated probation matter.

152. Maplewood has refused to entertain Mr. Eutz's Motions for Warrant Recall unless Mr. Eutz accompanies his attorney to the Maplewood court; a risk Mr. Eutz is afraid to take because he believes Maplewood would lock him in jail if and when his motion is denied.

153. Because the Maplewood warrant remains active, Mr. Eutz is fearful when leaving his home and traveling throughout the St. Louis region.

iv. Anthony Lemicy

154. Anthony Lemicy ("Mr. Lemicy") is a 37-year-old African-American man who suffers from homelessness and underemployment.

155. Between the years 2013 and 2014, Mr. Lemicy was pulled over while driving through Maplewood on at least two (2) separate occasions; on each occasion, Maplewood police

cited Mr. Lemicy for multiple charges arising from his poverty and subsequent inability to pay for services required by law, including, *inter alia*, inadequate vehicle registration and failure to provide insurance.

156. Sometime in 2013, Mr. Lemicy was arrested pursuant to an alleged "Failure to Appear" warrant issued by Maplewood, which was subject to a $500 recall bond.

157. Mr. Lemicy could not pay Maplewood the $500 bond, so Maplewood placed Mr. Lemicy in the Richmond Heights jail and detained him for approximately three (3) days before releasing him.

158. Then, in August 2014, Mr. Lemicy was arrested a second time, pursuant to an alleged "Failure to Appear" warrant issued by Maplewood, also subject to a $500 recall bond.

159. Again, Mr. Lemicy could not afford to pay Maplewood the $500 bond, so Maplewood again placed Mr. Lemicy in the Richmond Heights jail and detained him for approximately three (3) days before releasing him.

160. On December 8, 2015, after having spent eight months in the St. Louis City jail on an unrelated charge, which was ultimately dismissed, the St. Louis City police released Mr. Lemicy into the custody of the Richmond Heights police department because there was yet another outstanding Maplewood warrant for an alleged "Failure to Appear" by Mr. Lemicy.

161. The Richmond Heights police picked up Mr. Lemicy and transported him to the Richmond Heights jail. The Richmond Heights jailer told Mr. Lemicy he was not going to hold Mr. Lemicy pursuant to the outstanding Maplewood warrant because Mr. Lemicy had just spent eight months in jail. The Richmond Heights jailer gave Mr. Lemicy a court date to appear in Maplewood.

162. In January 2016, Mr. Lemicy appeared in Maplewood Court to resolve the

underlying issues, and asked the Maplewood judge to give him credit for "time served" for his previous six (6) days in Maplewood custody and his eight months in St. Louis City. The Maplewood judge told Mr. Lemicy "we can't do time served," and sentenced Mr. Lemicy to perform forty (40) hours of community service in lieu of monetary fines and costs.

163. Nonetheless, the Maplewood Court reset the matter for June 3, 2016, on which date it issued an arrest warrant against Mr. Lemicy for an alleged Failure to Appear, attaching to it a $400 recall fee.

164. When Mr. Lemicy learned of the warrant, he telephoned the Maplewood Court and spoke to the Maplewood clerk to request a new court date. The Maplewood clerk informed Mr. Lemicy that a warrant recall fee of $400 was now in effect. Furthermore, the Maplewood clerk informed Mr. Lemicy that it was the policy and procedure of the Maplewood Court that there were only two ways to get a warrant recalled: (1) pay the entire $400 bond or warrant recall fee; or (2) turn himself in at the Maplewood Court and sit in jail for 48 hours.

165. Mr. Lemicy asked the Maplewood clerk if the warrant recall fee could be waived entirely, since he was awarded community service in lieu of payment, and the Maplewood clerk told Mr. Lemicy that a waiver was not possible.

166. Mr. Lemicy then asked the Maplewood clerk if the fee could be reduced, or if he could set up a payment plan, to which the Maplewood clerk replied that "$400 is the smallest amount [Maplewood] could accept."

167. The Maplewood clerk told Mr. Lemicy to "come to court on Friday" to talk about the warrant. Mr. Lemicy feared that doing so may result in his incarceration, since he did not have $400 to bring with him to the Maplewood Court.

168. Mr. Lemicy then contacted the Maplewood Assistant City Manager, Anthony

Traxler, to seek help resolving the warrant. Mr. Traxler told Mr. Lemicy that he was unable to assist Mr. Lemicy, but did inform him that the Maplewood Court does not hold sessions on Fridays, and that Mr. Lemicy would likely be arrested if he showed up at the Maplewood Courthouse on that Friday without the $400 bond money.

169. As a result of the many minor municipal charges and the alleged Failure to Appear charges by Maplewood, Mr. Lemicy's driver's license has been suspended. This suspension, along with the warrants, prevented Mr. Lemicy from obtaining steady, gainful employment.

170. Maplewood continuously refused to entertain Mr. Lemicy's Motions for Warrant Recall unless Mr. Lemicy accompanied his attorney to the Maplewood court—a risk Mr. Lemicy was afraid to take because he believed Maplewood would lock him in jail if he appeared without money.

171. On August 15, 2016 Maplewood denied a Motion to Recall Warrant raised by Mr. Lemicy's *pro bono* counsel because Mr. Lemicy was not physically present at the court when the motion was raised.

172. On September 12, 2016 Mr. Lemicy reluctantly appeared at the Maplewood court with his *pro bono* counsel and once again raised his Motion to Recall Warrant. After persistent begging by both Mr. Lemicy and his *pro bono* counsel, the Maplewood Judge agreed to recall the warrant, stating that the only reason the Judge granted the motion was because Mr. Lemicy had "found himself a persistent lawyer."

v. Krystal Banks

173. Krystal A. Banks ("Ms. Banks") is a 23-year-old African-American mother living in the City of St. Louis, Missouri and working part time as an assistant for a doctor's office in

Creve Coeur, Missouri. She supports herself and her three-year-old child on a limited income.

174. Sometime in 2013, Ms. Banks was driving her fiancée Robert Eutz to work in a used vehicle Ms. Banks had recently purchased, when she was pulled over by a Maplewood police officer in a McDonald's parking lot on the corner of Big Bend and Oxford in the City of Maplewood.

175. The Maplewood officer informed Ms. Banks that he had pulled her over for failure to use her turn signal. Ms. Banks informed the officer that she had used her turn signal, and that the officer would not have been able to see her turn signal based on the location of the officer's patrol car and nearby traffic.

176. Nonetheless, the Maplewood officer issued a total of seven (7) citations, which included citations for failure to provide registration and failure to wear a seatbelt.

177. Ms. Banks personally attended her first Maplewood court appearance on the citations, where she pleaded guilty to the charges and agreed to make $50 monthly payments for six (6) months, totaling $300 in fines, along with additional court costs.

178. At some point thereafter, Defendant Maplewood issued a warrant to arrest Ms. Banks for nonpayment.

179. Later, one morning in July 2014, Ms. Banks was driving to work at a children's retail store in a vehicle bearing temporary license plates.

180. One of Defendant Maplewood's police officers pulled Ms. Banks over and arrested Ms. Banks on the Maplewood warrant for nonpayment.

181. The Maplewood officer took Ms. Banks to a jail in the municipality of Brentwood, Missouri, where her bond was set at an amount exceeding One Thousand Dollars ($1,000.00).

182. Ms. Banks could not afford to pay such a large amount of money, so she remained in jail.

183. At some point, the Maplewood arresting officer telephoned the Maplewood court, and, on information and belief, the Maplewood judge or Maplewood clerk reduced Ms. Banks' bond to Six Hundred Forty Six Dollars ($646.00).

184. The Maplewood police officer then inspected Ms. Banks' purse and removed about $300—all of the cash Ms. Banks had received from cashing her paycheck the previous day.

185. The Maplewood officer held up the money and said to Ms. Banks, "Here you go. You have half of it right here. Go make a phone call and see if anybody else can come up with the other half, or you'll have to sit in jail for the next two or three days."

186. Ms. Banks then used the Brentwood Jail telephone to call her mother, Angela Banks, who eventually came to the Brentwood Jail and paid the remaining bond amount with her own money.

187. Ms. Banks spent over five (5) hours in jail in order for Maplewood to extract $646 from Ms. Banks and her mother. She missed work that day and ultimately had to find new employment.

188. Upon her release, Ms. Banks did not receive any notice of a new court date, nor any confirmation that her warrant was recalled.

189. Later sometime in the spring of 2016, Ms. Banks received an employment offer at a doctor's office in downtown St. Louis, Missouri that was contingent upon a clear background check.

190. When Ms. Banks received the results of the background check, she discovered

that the Maplewood warrant remained active, despite her previous incarceration and payment of $646 to Maplewood.

191. Ms. Banks then telephoned the Maplewood court clerk, Ruth Swallows, who told Ms. Banks that she had to pay Five Hundred Dollars ($500.00) to get the warrant recalled.

192. Ms. Banks informed the Maplewood clerk that she could not afford to make any payment, let alone the full $500, and asked the Maplewood clerk if she could recall the warrant and set a new court date. The Maplewood clerk said "No, you missed your court dates, so court costs went up." The Maplewood clerk informed Ms. Banks that a new court date had been set following her release from incarceration but that her file indicated that nobody had appeared on that date.

193. Ms. Banks informed the Maplewood clerk that she never received notice of the new court date, but the Maplewood clerk informed Ms. Banks that the Maplewood policy requires that Ms. Banks either pay the full $500 or to come down to the Maplewood court and turn herself in.

194. Ms. Banks feared and continues to fear arrest because of her inability to pay the $500 warrant recall fee.

195. Ms. Banks' *pro bono* attorney submitted a Motion to Recall Warrant with the Maplewood court, and attempted to argue the motion on August 15, 2016. The Maplewood Court refused to hear the motion and ignored counsel's additional request for an indigency determination.

196. Because Ms. Banks could not and cannot afford the $500 fee to remove the warrant, she was unable to accept the employment offer at the doctor's office in downtown St. Louis due to the active Maplewood warrant.

197. As of the date of this filing, the Maplewood arrest warrant against Ms. Banks—which stems from municipal charges that are now almost three years old—remains active.

198. Maplewood has refused to entertain Ms. Banks' Motions for Warrant Recall unless Ms. Banks accompanies her attorney to the Maplewood court—a risk Ms. Banks is afraid to take because she believes Maplewood would lock her in jail if and when her motion is denied.

199. But for the Maplewood warrant, Ms. Banks would not have lost the job opportunity in downtown St. Louis, which would have been easily accessible via public transit.

200. Because the warrant remains active, Ms. Banks is fearful when leaving her home or travelling throughout the St. Louis region, including the twenty-plus-mile round trip commute to her job in Creve Coeur.

vi. Frank Williams

201. Frank Williams ("Mr. Williams") is a 56-year-old African-American man who lives in the City of Maplewood. He is also the father of Plaintiff Cecelia Roberts Webb.

202. Due to a mental disability preventing Mr. Williams from comprehending and recalling information he has seen or read, Mr. Williams is functionally illiterate. Additionally, he suffers from physical disabilities including asthma, high blood pressure, and chronic back pain. As a result, Mr. Williams cannot secure gainful employment and receives a very small amount of money each month from Social Security, with which he must pay for housing, clothing, medicine, food, and transportation.

203. Throughout his life, Mr. Williams has been arrested and jailed over ten (10) times by various municipalities in the St. Louis region for minor municipal code violations, including in the Defendant City of Maplewood, in 1994, 1995, 1996, 1998, 2005, 2010, 2011, 2014, and as recently as 2016.

204. On information and belief, Mr. Williams estimates that in his lifetime he has paid over $10,000 in bail fees, court costs, and fines to local municipalities, including Maplewood, all for minor municipal infractions.

205. In February 2012, Defendant Maplewood issued Mr. Williams a ticket for "Failure to Produce Insurance ID."

206. One evening in 2014, Mr. Williams was returning home from a trip to the grocery store, where he had used what little money he had remaining after paying for housing and medicine to purchase his weekly supply of groceries. Mr. Williams was pulled over by Maplewood police and immediately arrested on a warrant issued by Defendant Maplewood and taken to the Richmond Heights Jail. The money Mr. Williams spent on groceries went to waste while his groceries spoiled in his vehicle.

207. Maplewood also towed Mr. Williams' vehicle to an impound lot, where Mr. Williams' wife would eventually have to pay over $100 to have it released.

208. Maplewood officials initially demanded that Mr. Williams pay $300 in exchange for his release.

209. Mr. Williams informed Defendant Maplewood and officials at the Richmond Heights Jail that he could not afford to pay $300 for his release, jail officials ran Mr. Williams' name through their electronic REJIS warrant database and noticed an active warrant from the City of Jennings, which, on information and belief, may have been generated by "Failure to Appear" charges related to traffic tickets that were more than ten (10) years old.

210. Defendant Maplewood transferred Mr. Williams to the City of Jennings Jail after two (2) hours in the Richmond Heights Jail, where the Jennings officials informed Mr. Williams that his bond for Maplewood was now $500 and his bond for Jennings was $1,500.

211. Mr. Williams informed the Jennings officials that he could not afford to pay the Maplewood bond and sat in the Jennings jail for over fourteen (14) days. At the Jennings jail, in the course of those two weeks, Mr. Williams was allowed to shower only once. For those two weeks, Mr. Williams was denied a toothbrush and toothpaste. He was forced to sleep on a steel platform without a mattress, pillow, or covers. Worst of all, for two weeks, Mr. Williams was denied his blood pressure and asthma medication.

212. At all times, Mr. Williams was unable to use the jail telephone.

213. After suffering in the Jennings Jail for two weeks, Mr. Williams and the other incarcerated individuals were taken upstairs to the Jennings court, where Mr. Williams informed the judge that he only received disability income and could not afford to pay the Maplewood bond nor the Jennings bond.

214. Mr. Williams recalls that the judge told him that since Mr. Williams did not have any money, "he should just stay right here"—in jail—until he could pay the bond amounts for both Maplewood and for Jennings.

215. At the conclusion of Mr. Williams' interaction with the judge, Mr. Williams was once again transferred to another jail, this time the St. Louis City Jail. Mr. Williams remained in the St. Louis City Jail for two more days, where the St. Louis City jail officials determined that sixteen (16) days in jail was "long enough" and allowed Mr. Williams to leave.

216. Upon Mr. Williams' eventual release, after having survived 16 days in jail without his necessary medication, Mr. Williams' blood pressure levels had skyrocketed. As a result, Mr. Williams and his physician spent nearly two years adjusting and readjusting Mr. Williams' blood pressure medications to return Mr. Williams to his stable, pre-incarceration levels.

217. Then, on February 16, 2016, Defendant Maplewood arrested Mr. Williams, on information and belief, based on a 2012 ticket for Driving with a Suspended License. Mr. Williams did not know his license had ever been suspended.

218. That same day, Mr. Williams paid a $500 cash bond to avoid spending time in jail. Upon payment of the bond, Defendant Maplewood issued a written Summons to Mr. Williams setting a court date of March 28, 2016 at 6:00 p.m.

219. On March 29, 2016, Defendant Maplewood arrested Mr. Williams on a warrant for his alleged Failure to Appear at the March 28, 2016 Maplewood municipal court docket.

220. Mr. Williams spent the next two days in the Richmond Heights Jail until he was able to pay Maplewood's additional $300 warrant bond for his release.

221. As a result of the conduct of Defendant Maplewood, Mr. Williams is fearful of leaving his home in Maplewood and traveling throughout the St. Louis region because he might get arrested by Defendant Maplewood or any other municipality for minor traffic charges unknown to Mr. Williams.

F. Class Allegations

222. The Plaintiffs bring this action on behalf of themselves and all others similarly situated, for the purpose of asserting the claims alleged in this Complaint on a common basis.

223. A class action is a superior means, and the only practicable means, by which Plaintiffs and unknown Class members can challenge the Defendant's unlawful scheme to deny individuals access to the courts as leverage in extorting money warrants, warrant recall fees, arrests, and bonds.

224. This action is brought and may properly be maintained as a Class action pursuant to Rule 23(a)(1)-(4), Rule 23(b)(2), and Rule 23(b)(3) of the Federal Rules of Civil Procedure.

225. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of those provisions.

226. Plaintiffs propose the following three Classes:

> **Rule 23(b)(2) class:**
>
> All persons, whether or not such person has ever been jailed, who have paid or currently owe warrant recall fees or warrant bonds to the City of Maplewood arising from cases in the Maplewood court (the "Injunctive Class");
>
> **Rule 23(b)(3) classes:**
>
> All persons, whether or not such person has ever been jailed, who have paid any amount to the City of Maplewood from fines, fees, costs, or surcharges, including warrant recall fees or warrant bonds arising from cases in the Maplewood court and who have not been provided an opportunity to prove indigence (the "Paid Warrant Bond Class"); and
>
> All persons who have been jailed by the City of Maplewood for non-payment of fines, fees, costs, or surcharges, including warrant recall fees and/or warrant bonds arising from cases in the Maplewood court and who (1) were not been provided an opportunity to prove indigence prior to jailing; (2) were not considered a danger to the community by notation in Maplewood's file; and (3) were not designated as a flight risk at the time of jailing (the "Jailed Class").

1. Numerosity. Fed. R. Civ. P. 23(a)(1)

227. Over the past five years, Defendant Maplewood has levied arrest warrants with warrant recall fees, warrant bonds, or other pay-for-access fees against thousands of people in order to extort money most of those individuals could not afford. Pursuant to Defendant's policies and practices, Maplewood has placed thousands of people, who could not somehow pay their warrant-related fees in total, under the constant and indefinite threat of arrest and jailing if they do not make the payments in the amount purportedly required by Maplewood.

228. Maplewood has caused hundreds of people to be kept in nearby jails for non-payment of warrant-related fees in each of the past five years. Defendant Maplewood retains, and

is required by law to retain, records of these instances.

229. Defendant employed and continues to employ warrant fee policies, practices, and procedures to accomplish the jailing and extortion of monies of the Class members. For example, pursuant to the Defendant's policies and practices, those kept in jail pursuant to alleged non-payment of Maplewood warrant-related fees did not receive meaningful inquiries into their ability to pay as required by federal and Missouri law. Pursuant to Defendant's policies, Defendant made no determinations of indigence, ability to pay hearings, or evaluations of alternatives to incarceration, and the Defendant provided none of the relevant state and federal protections for those arrested. Nor were those jailed pursuant to a Maplewood warrant-related fee provided adequate counsel to represent them. Finally, for those individuals subject to Maplewood warrants and warrant-related fees who were not or have not yet been arrested, Defendant Maplewood's policy and practice is to deny such individuals their access to the courts until those individuals pay the total amounts of warrant-related fees demanded by Maplewood, and to threaten the arrest of those individuals who cannot make those payments.

230. Those who still owe Maplewood warrant-related fees or other payments or who will incur such fees will be subjected to the same ongoing policies and practices absent the relief sought in this Complaint.

2. Commonality. Fed. R. Civ. P. 23(a)(2).

231. The relief sought is common to all members of the Injunctive and Damages Classes, and common questions of law and fact exist as to all members of the Classes. The Plaintiffs seek relief concerning whether the Defendant's policies, practices, and procedures violated their rights and relief mandating Defendant to change its policies, practices, and procedures so that the Plaintiffs' rights will be protected in the future.

232. Among the most important, but not the only, common questions of fact are:

a. Whether and to what extent, if any, Defendant has a policy and practice of making individuals' ability to access the courts contingent upon payment of warrant-related fees and/or a combination of jail time and bond payments;

b. Whether Defendant has a policy and practice of failing to conduct meaningful inquiries into the ability of a person to pay before assessing warrant-related fees and before jailing the person for non-payment;

c. Whether Defendant provides notice to debtors that their ability to pay will be a relevant issue at the proceedings at which they are jailed or kept in jail and whether Defendant makes findings concerning ability to pay and alternatives to incarceration;

d. Whether Defendant provides adequate legal representation to those jailed for unpaid debts in proceedings that result in their incarceration;

e. Whether Defendant's employees and agents have a policy and practice of threatening debtors and families of debtors with incarceration for unpaid debts without informing them of their rights;

f. Whether Defendant has a policy and practice of issuing and executing warrants for the arrest of debtors despite lacking probable cause that they have committed any offense and without any notice or opportunity to be heard concerning their ability to pay or the validity of the debt;

g. Whether Defendant's policies and practices seek to extort funds from poor residents of the St. Louis area by ensnaring them in an escalating spiral of indebtedness and imprisonment;

h. Whether Defendant has a policy and practice of providing notice to persons accused of "Failure to Appear" charges and, if so, whether Defendant's notice contains information listed within the notice requirements of Mo. R. Civ. P. 37.33(b); and

i. Whether Defendant's policies and practices discriminate on the basis of race or other impermissible factors.

233. Among the most important common question of law are:

a. Whether the Defendant may withhold information about an individual's court case unless and until the individual pays warrant-

related fees, serves jail time, and/or a combination of jail time and payment of warrant-related fees;

b. Whether the Defendant may withhold, deny access to, or otherwise refuse to disclose to individuals information regarding the individuals' underlying municipal court cases where those individuals cannot afford to pay "warrant recall fees" or other monetary penalties assessed against individuals on the basis of "Failure to Appear" warrants or "Failure to Pay" warrants;

c. Whether the Defendant may deny individuals access to their courtrooms on the basis of the existence of outstanding warrants and unpaid "warrant recall fees" or other monetary penalties assessed against individuals on the basis of "Failure to Appear" warrants or "Failure to Pay" warrants;

d. Whether the Defendant may deny an individual's right to file motions, enter into plea negotiations, or otherwise petition the courts based on that individual's inability to pay "warrant recall fees" or other monetary penalties assessed against individuals on the basis of "Failure to Appear" warrants or "Failure to Pay" warrants;

e. Whether the Defendant may deny an individual's request/motion/demand to certify their municipal cases to the Associate Circuit Court of St. Louis County, Missouri based on the individual's ability to pay "warrant recall fees" or other monetary penalties assessed against the individual on the basis of "Failure to Appear" warrants or "Failure to Pay" warrants;

f. Whether keeping people in jail solely because they cannot afford to make a monetary payment is lawful;

g. Whether people are entitled to a meaningful inquiry into their ability to pay before being jailed by Defendant for non-payment of debts;

h. Whether people who cannot afford to pay Defendant are entitled to the consideration of alternatives to incarceration before being jailed for non-payment of debts;

i. Whether people are entitled to adequate legal representation in debt-collection proceedings initiated and litigated by Defendant's prosecutors that result in their incarceration if they cannot afford an attorney;

j. Whether Defendant may jail, threaten to jail, and use other harsh debt-collection measures (such as ordering payment of significant portions

of a person's public assistance benefits) against debtors who cannot afford immediately to pay the Defendant in full;

k. Whether the Defendant may arrest people based solely on their non-payment without any probable cause that they have committed any willful conduct or other offense and without notice and an opportunity to be heard concerning legal predicates for a valid detention, such as their ability to pay and the validity of the debt;

l. Whether the Defendant may impose, assess, and collect "warrant recall fees" or other monetary penalties against individuals for whom "Failure to Appear" warrants or "Failure to Pay" warrants are issued, and whether those "warrant recall fees" or other monetary penalties serve as a barrier to individuals' rights under the First Amendment to access the courts;

m. Whether the Defendant's policies and procedures to issue "Failure to Appear" charges accompanied by an arrest warrant and a "warrant recall fee" constitutes a presumption of guilt disallowed by Federal and State rules of civil procedure;

n. Whether the Defendant's policies and procedures to issue "Failure to Appear" charges accompanied by an arrest warrant and a "warrant recall fee" are subject to the notice requirements set forth in Mo. R. Civ. P. 37.33(b), and if so, whether Defendant issued proper Violation Notices when charging individuals with "Failure to Appear" charges;

o. Whether any and all "Failure to Appear" judgments and fines obtained by the Defendant outside of the Violation Notice requirements under Rule 37.33(b) are void pursuant to lack of due process under Mo. S. Ct. R. 74.06(b)(4); and

p. Whether the Defendant's continued retention of and benefit from monies collected from Plaintiffs and others similarly situated through Defendant's unlawful "warrant recall fees" creates an inequity that is sufficiently detrimental to Plaintiffs and others similarly situated to justify this Court to award Plaintiffs and others similarly situated restitution.

234. These common legal and factual questions arise from one central scheme and set of policies and practices: the Defendant's lucrative pay-for-access warrant-related system. Maplewood operates this scheme openly and in materially the same manner every day, and all of the ancillary factual questions about how that scheme operates are common to all members of the

Classes, as well as the resulting legal questions about whether that scheme is unlawful. The material components of the scheme do not vary from Class member to Class member, and the resolution of these legal and factual issues will determine whether all of the members of the class are entitled to the constitutional relief that they seek.

3. Typicality. Fed. R. Civ. P. 23(a)(3).

235. The named Plaintiffs' claims are typical of the claims of the members of the Classes and Subclasses respectively, and they have the same interests in this case as all other members of the Classes that they represent. Each of them suffered injuries from the failure of Defendant Maplewood to comply with the basic constitutional provisions detailed herein. The answer to whether the Defendant's scheme of policies and practices is unconstitutional will determine the claims of the named Plaintiffs and every other Class member.

236. If the named Plaintiffs succeed in their claims that the Defendant's policies and practices concerning warrant-related fees attached to failure to pay and failure to appear charges violate the law in the ways alleged in each claim of the Complaint, then that ruling will likewise benefit every other member of the Injunctive and Damages Classes.

4. Adequacy. Fed. R. Civ. P. 23(a)(4).

237. The named Plaintiffs are adequate representatives of the Classes because they are members of the Classes and because their interests coincide with, and are not antagonistic to, those of the Classes. There are no known conflicts of interest among Class members, all of whom have a similar interest in vindicating the constitutional rights to which they are entitled.

238. Plaintiffs are represented by attorneys from Tycko & Zavareei LLP, a firm with experience litigating complex civil rights matters in federal court and extensive knowledge of both the details of the Defendant's scheme and the relevant constitutional and statutory law.

Plaintiffs are also represented by attorneys from ArchCity Defenders, who have extensive experience with the functioning of the entire municipal court system through their representation of numerous impoverished people in the St. Louis area.[78]

239. The efforts of Plaintiffs' counsel have so far included extensive investigation over a period of months, including numerous interviews with witnesses, Defendant's employees, families, attorneys practicing in the Defendant's Municipal Courts, community members, statewide experts in the functioning of Missouri municipal courts, and national experts in constitutional law, debt collection, bankruptcy law, criminal law, and forced labor.

240. Counsel have also observed numerous courtroom hearings in Maplewood and in

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[7] Tycko & Zavareei LLP is a nationwide law firm with offices in Washington, D.C. and in Oakland, California. It has successfully achieved class-wide relief in numerous consumer class actions for consumer fraud, race discrimination, illegal banking and investment practices, and false product labeling.

[8] ArchCity Defenders is a non-profit public interest law firm based in Saint Louis. It has represented the poor and homeless in cases involving Maplewood and other municipalities for the past five years and is an expert on the ways in which the Defendant's illegal practices and policies make and keep people poor. Most recently, ArchCity Defenders brought a class action against thirteen Missouri municipalities for some of the same practices described in the instant lawsuit. *See Thomas et al. v. City of St. Ann, et al.*, 4:16-cv-01302-RWS (E.D. Mo. 2016). ArchCity Defenders has also recently brought class actions in the Eastern District of Missouri restricting the use of chemical munitions on peaceful protesters, is co-counsel on two federal class actions alleging the operation of debtors' prisons in Ferguson and Jennings, Missouri, two additional class actions ending cash bail, and an additional series of state class action suits alleging the imposition of illegal fees and fines in various municipal courts in the St. Louis County region. *See Templeton v. Dotson,* 4:14-cv-01019; *Jenkins et al. v. City of Jennings*, 15-cv-252-CEJ (E.D. Mo. 2015); *Fant et al. v. City of Ferguson*, 15-cv-253-AGF (E.D. Mo. 2015); *Powell v. City of St. Ann* 4:15-cv-840 (E.D. Mo. 2015); *Pierce v. City of Velda City*, 4:15-CV-570 (E.D. Mo. 2015); *White* v. *City of Pine Lawn*, 14SL-CC04194 (St. Louis Co. Cir. Ct., Dec. 2014); *Pruitt v. City of Wellston*, 14SL-CC04192 (St. Louis Co. Cir. Ct., Dec. 2014); *Lampkin v. City of Jennings*, 14SL-CC04207 (St. Louis Co. Cir. Ct., Dec. 2014); *Wann v. City of St. Louis*, 1422-CC10272 (St. Louis City Cir. Ct., Dec. 2014); *Reed v. City of Ferguson*, 14SL-CC04195 (St. Louis Co. Cir. Ct., Dec. 2014); *Eldridge v. City of St. John*, 15SL-00456 (St. Louis Co. Cir. Ct., Feb. 2015); *Watkins v. City of Florissant*, 16SL-CC00165 (St. Louis Co. Cir. Ct., Jan. 2016). ArchCity Defenders also published an extensive report detailing these practices and policies in the cities of Bel-Ridge, Ferguson, and Florissant in August of 2014. The report is available at http://www.archcitydefenders.org.

other municipalities across the region in order to compile a detailed understanding of state law and practices as they relate to federal constitutional requirements. Counsel have studied the way that these systems function in other cities in order to investigate the wide array of options in practice for municipalities.

241. As a result, counsel have devoted enormous time and resources to becoming intimately familiar with the Defendant's scheme and with all of the relevant state and federal laws and procedures that can and should govern it. Counsel also have developed relationships with many of the individuals and families most victimized by the Defendant's practices.

242. The interests of the members of the Class will be fairly and adequately protected by the Plaintiffs and their attorneys.

5. Rule 23(b)(2)

243. Class action status is appropriate because Defendant, through the policies, practices, and procedures that make up its warrant-related fee and pay-for-access scheme, has acted and refused to act on grounds generally applicable to the Injunctive Class.

244. A declaration that people jailed on behalf of Maplewood cannot be held in jail solely because they cannot afford to make a monetary payment will apply to each Class member.

245. Similarly, a determination that Class members are entitled, as a matter of federal law, to access the courts to obtain information, assert defenses, bring motions, and seek certification to a higher court, regardless of their ability to pay warrant-related fees or other pay-for-access fees to Maplewood for non-payment will apply to each Class member.

246. The same applies to rulings on the other claims, including: that Class members are entitled to representation by counsel at proceedings initiated and litigated by Defendant's prosecutors in connection with which they are jailed; that Maplewood cannot imprison Class

members for debts; that Maplewood cannot collect debts from Class members in a manner that violates and evades all of the relevant protections for other judgment debtors; and that Maplewood cannot issue and execute arrest warrants for traffic debtors without probable cause that they have committed an offense and without notice or a hearing prior to the deprivation of their liberty.

247. Injunctive relief compelling Defendant Maplewood to comply with these constitutional rights will similarly protect each member of the Class from being again subjected to Defendant's unlawful policies and practices with respect to existing non-appearance or non-payment warrants, the warrant-related fees, and the threat of incarceration debts that they still owe and protect those who will incur such debts in the future from the same unconstitutional conduct. Therefore, declaratory and injunctive relief with respect to the Class as a whole is appropriate.

6. Rule 23(b)(3)

248. Class treatment under Rule 23(b)(3) is also appropriate because the common questions of law and fact overwhelmingly predominate in this case. This case turns, for every Plaintiff, on what the Defendant's policies and practices are, and on whether those policies and practices are lawful.

249. The common questions of law and fact listed above are dispositive questions in the case of every member of the Classes and Subclasses. The question of liability can therefore be determined on a class-wide basis. Class-wide treatment of liability is a far superior method of determining the content and legality of the Defendant's policies and practices than individual suits by hundreds or thousands of Defendant's residents and persons subject to warrant-related fees and/or jailing by Defendant. The question of damages will also be driven by class-wide

determinations.

250. To the extent that individual damages will vary, they will vary depending in large part on the amount of money that an individual paid to Maplewood to remove a warrant, bond out of jail, or access the courts, and determination of those damages can easily be ascertained by Defendant's records. Determining damages for individual Class members can thus typically be handled in a ministerial fashion based on easily verifiable records of the length of unlawful incarceration. Additionally, to the extent that individual damages will vary with respect to length of time spent in jail, a single calculation of the value of time spent in jail can be determined. If needed, individual hearings on Class-member specific damages based on special circumstances can be held after Class-wide liability is determined—a method far more efficient than the wholesale litigation of hundreds or thousands of individual lawsuits.

CLAIMS FOR RELIEF

COUNT I
Violation of the Fourteenth Amendment — Imprisonment For Inability To Pay

251. The preceding paragraphs are incorporated herein by reference.

252. The Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution prohibit imprisoning a person for failure to pay money owed to the government if that person is indigent and unable to pay.

253. Defendant Maplewood imprisoned and/or threatened to imprison each of the Plaintiffs when they could not afford to pay debts allegedly owed for traffic and other minor offenses without conducting any inquiry into their ability to pay and without conducting any inquiry into alternatives to imprisonment, as required by the United States Constitution. At any moment, a person with financial resources in the Plaintiffs' positions could have paid a sum of cash and been released from jail.

254. Defendant Maplewood maintained and continue to maintain a policy and practice of (i) imprisoning, or threatening to imprison, people, including Plaintiffs, when they cannot afford to pay the debts allegedly owed from traffic and other minor offenses, and (ii) keeping people, including Plaintiffs, in jail unless and until they are able to pay arbitrarily determined (and constantly shifting) sums of money.

255. Defendant Maplewood's actions violated, and continue to violate, Plaintiffs' rights, and the rights of others similarly situated, under the Fourteenth Amendment to the United States Constitution. Defendant is liable under 42 U.S.C. § 1983.

256. As a direct result of the Defendant's unlawful practices, Plaintiffs and others similarly situated have suffered extensive damages, including, but not limited to, pain and suffering, anxiety, anguish, feeling of unjust treatment, fear, and lost earnings.

COUNT II
Violation of First and Fourteenth Amendments—Denial of Access to Courts
(42 U.S.C. § 1983)

257. The preceding paragraphs are incorporated herein by reference.

258. The United States Supreme Court has consistently held that the First Amendment to the U.S. Constitution grants all individuals the a right of access to judicial proceedings, both criminal and civil. Both the place and process of municipal court proceedings in this country have historically been open to the general public, and certainly to individuals summoned to appear therein. Furthermore, the ability of an individual member of the public against whom judicial proceedings are lodged—whether final, stayed, or presently pending—to access those proceedings plays a significant positive role in the functioning of the judicial system.

259. Each of the Plaintiffs and others similarly situated all possess these rights to access the judicial proceedings of Defendant Maplewood's municipal court pursuant to the First

and Fourteenth Amendments to the United States Constitution.

260. Furthermore, Defendant's policies and procedures prohibit, deny, discourage, or otherwise lack a procedure by which Plaintiffs and others similarly situated can challenge the amount of the "warrant recall fee" or bond or the underlying "Failure to Pay" or "Failure to Appear" upon which the arrest warrant rests.

261. Together, Defendant's policies and procedures related to "warrant recall fees" or bonds constitute a deprivation of liberty under the First Amendment, along with a violation of the procedural due process rights of Plaintiffs and others similarly situated under the Fourteenth Amendment. Defendant is thus liable under 42 U.S.C. § 1983.

262. As a direct result of the Defendant's unlawful practices, Plaintiffs and others similarly situated have suffered extensive damages, including, but not limited to, pain and suffering, anxiety, anguish, feeling of unjust treatment, fear, and lost earnings.

263. Additionally, as a direct result of the Defendant's unlawful practices, Plaintiffs and others similarly situated have suffered extensive actual monetary damages in the form of "warrant recall fees" or other bonds actually paid to Defendant in order to access Defendant's municipal courts.

COUNT III
Violation of the Sixth and Fourteenth Amendments—Failure to Provide Adequate Counsel

264. The preceding paragraphs are incorporated herein by reference.

265. Defendant Maplewood violated Plaintiffs' rights, and the rights of others similarly situated, to the effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution. Plaintiffs, and others similarly situated, have been and continue to be imprisoned by Defendant Maplewood in connection with debt-collection proceedings in which those people jailed are not afforded counsel.

266. Defendant Maplewood's policy and practice of not providing adequate counsel at hearings in which indigent people are ordered to be imprisoned in the Defendant's jails for unpaid debts (which are, in turn, based on payment plans arising from traffic and other violations at which the jailed individuals also were unrepresented), violates the Sixth and Fourteenth Amendments to the United States Constitution. Defendant is liable under 42 U.S.C. § 1983.

267. As a direct result of the Defendant's unlawful practices, Plaintiffs and others similarly situated have suffered extensive damages, including, but not limited to, pain and suffering, anxiety, anguish, feeling of unjust treatment, fear, and lost earnings.

COUNT IV

Violation of the Fourth and Fourteenth Amendments — Issuance of Invalid Warrants

268. The preceding paragraphs are incorporated herein by reference.

269. The Defendant's policy and practice is to issue and serve arrest warrants against those who have not paid their debt from old judgments in traffic and other minor cases. These warrants are sought, issued, and served without any inquiry into the person's ability to pay even when Defendant has prior knowledge that the person is impoverished and unable to pay the debts or possesses other valid defenses.

270. Defendant Maplewood enforces a policy of allowing wealthy residents or residents who can afford to hire an attorney to remove their warrants by payment of money, but refuses to remove warrants assessed against those individuals who cannot afford to pay.

271. These practices violate the Fourth and Fourteenth Amendments by effecting unreasonable seizures without a fair and reliable determination of probable cause and causing a deprivation of fundamental liberty without adequate due process. Defendant is liable under 42 U.S.C. § 1983.

272. As a direct result of the Defendant's unlawful practices, Plaintiffs and others

similarly situated have suffered extensive damages, including, but not limited to, pain and suffering, anxiety, anguish, feeling of unjust treatment, fear, and lost earnings.

COUNT V
Violation of the Fourteenth Amendment — Threats of Incarceration to Collect Debts

273. The preceding paragraphs are incorporated herein by reference.

274. The United States Supreme Court has held that, when a government seeks to recoup costs of prosecution from indigent defendants—for example, the cost of appointed counsel—it may not take advantage of its position to impose unduly restrictive methods of collection solely because the debt is owed to the government and not to a private creditor.

275. By incarcerating the Plaintiffs and threatening to incarcerate them, Defendant takes advantage of its control over the machinery of the penal and police systems to deny debtors the statutory protections that every other debtor may invoke against a private creditor. This coercive policy and practice constitutes invidious discrimination and violates the fundamental principles of equal protection of the laws. Defendant is liable under 42 U.S.C. § 1983.

276. As a direct result of the Defendant's unlawful practices, Plaintiffs and others similarly situated have suffered extensive damages, including, but not limited to, pain and suffering, anxiety, anguish, feeling of unjust treatment, fear, and lost earnings.

COUNT VI
Declaration that "Failure to Appear" Judgments are Void for Lack of Due Process Pursuant to Mo. R. Civ. P. 37.33(b), Cognizable under Mo. S. Ct. R. 74.06(b)(4).

277. The preceding paragraphs are incorporated herein by reference.

278. In Missouri, a judgment obtained in violation of due process is void. *See* Mo. S. Ct. R. 74.06(b)(4).

279. Defendant Maplewood is bound to follow the due process requirements issued by the State of Missouri, including but not limited to, Missouri Rule of Civil Procedure 37.33, which sets forth the procedural requirements for municipalities accusing individuals of ordinance violations and therein specifies the required contents of a Violation Notice. Subsection (b) of Rule 37.33 states:

> When a violation has been designated by the court to be within the authority of a violation bureau pursuant to Rule 37.49, the accused *shall also be provided* the following information:
>
> (3) The specified fine and costs for the violation; and
> (4) That a person must respond to the violation notice by:
>
> (A) Paying the specified fine and court costs; or
> (B) *Pleading not guilty and appearing at trial.*

Mo. R. Civ. P. 37.33(b) (emphasis added).

280. As set forth above, Defendant Maplewood, pursuant to its policies and procedures, withholds basic information about the fines costs assessed against Plaintiffs and others similarly situated who cannot pay "Failure to Appear" warrant recall fees.

281. Additionally, as set forth above, Defendant Maplewood, pursuant to its policies and procedures, also denies Plaintiffs and others similarly situated from accessing its court for purposes of pleading not guilty and appearing at trial where those individuals are unable to pay the arbitrary warrant recall fees.

282. Furthermore, as set forth above, Defendant Maplewood, pursuant to its policies and procedures, refuses to issue new court appearance dates or to allow individuals to file any motions related to their underlying citations or to their "Failure to Appear" citations until Plaintiffs and others similarly situated either (1) pay the entire "warrant recall fee" or bond amount associated with the "Failure to Appear" charge; or (2) turn themselves in to be arrested

and jailed for an indefinite period of time.

283. Based on these denials of court access, it follows that Defendant Maplewood, pursuant to its policies and procedures, either (i) does not provide the accused *any* notice whatsoever when issuing "Failure to Appear" or "Failure to Pay" warrants and accompanying warrant recall or bond fees; or (ii) any notice Defendant Maplewood may send cannot possibly satisfy the requirements set forth in Rule 37.33(b), since Rule 37.33(b) requires the Defendant Maplewood to notify individuals of procedural rights Defendant Maplewood refuses to afford to Plaintiffs and others similarly situated. Either way, Defendant Maplewood's policies and procedures violate the due process requirements set forth in Rule 37.33(b), and should be declared void pursuant to Mo. S. Ct. Rule 74.06(b)(4).

COUNT VII
Unjust Enrichment

284. The preceding paragraphs are incorporated herein by reference.

285. The Plaintiffs and others similarly situated conferred a benefit upon Defendant Maplewood when they paid money to Defendant Maplewood pursuant to the Defendant's unlawful "warrant recall fee" or other pay-for-access policies and procedures.

286. Furthermore, Defendant Maplewood appreciated the benefit conferred upon it by the Plaintiffs and others similarly situated when Defendant Maplewood deposited the money into their coffers for their own use, and the value of such benefit can be readily ascertained to be an amount equaling the face value of the monies paid to Defendant Maplewood, along with interest.

287. As set forth above, Defendant Maplewood accepted payments from Plaintiffs and others similarly situated through unlawful, inequitable, and unconstitutional means.

288. Thus, allowing Defendant Maplewood to retain these ill-gotten gains would

constitute an inequitable injustice whose only remedy is injunctive relief in the form of restitution of the monies the Plaintiffs and others similarly situated paid to Defendant Maplewood, along with an award of interest for the length of time during which Defendant Maplewood have appreciated and continue to appreciate the benefit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue the following relief:

a. Certification of the Declaratory and Injunctive Class and the Damages Classes, as defined above;

b. A declaratory judgment that Defendant violated, and continues to violate, Plaintiffs' First and Fourteenth Amendment rights by denying Plaintiffs access to the courts unless and until Plaintiffs pay or paid "warrant recall fees," "warrant bonds," or other monetary pay-for-access fees related to Plaintiffs' alleged "Failure to Appear" or "Failure to Pay" charges;

c. A declaratory judgment that Defendant violated, and continues to violate, Plaintiffs' Fourteenth Amendment due process and equal protection rights by imprisoning them for their inability to pay court fees and fines, including warrant recall fees, warrant bonds, or other pay-for-access fees without conducting any meaningful inquiry into those individuals' abilities to pay or into any alternatives to incarceration;

d. A declaratory judgment that Defendant violated, and continues to violate, Plaintiffs' rights under the Sixth and Fourteenth Amendments by imprisoning them without appointing adequate counsel at the proceedings that led to their incarceration;

e. A declaratory judgment that Defendant violated, and continues to violate, Plaintiffs' constitutional rights by holding them indefinitely and arbitrarily in jail without any valid legal process;

f. A declaratory judgment that Defendant violated, and continues to violate, Plaintiffs' Fourth and Fourteenth Amendment rights by issuing and serving arrest warrants without probable cause to believe that the elements of an offense had been committed, with unreasonable delay prior to presentment, and without providing pre-deprivation of liberty process where such process is easily available to the Defendant;

g. A declaratory judgment that Defendant violated, and continues to violate, Plaintiffs' due process rights set forth by Mo. R. Civ. P. 37.33(b) when it

failed to send proper Violation Notice to persons accused of "Failure to Appear" and/or "Failure to Pay" charges;

h. An order and judgment declaring void all "Failure to Appear" and/or "Failure to Pay" judgments entered by Defendant's municipal court for failure of due process pursuant to Mo. S. Ct. R. 76.04(b)(4); along with an order and judgment against Defendant Maplewood to refund to Plaintiffs and all others similarly situated any and all fines, fees, warrant recall fees, bonds, and court costs received by Defendant pursuant to void "Failure to Appear" and/or "Failure to Pay" judgments;

i. An order enjoining Defendant Maplewood to forgive any and all outstanding "Failure to Appear" fines or "warrant recall fees" that have been assessed but have not yet been collected; and further enjoining Defendant Maplewood from denying court access to any individuals for any reason whatsoever;

j. An order and judgment in equity against Defendant Maplewood for restitution of all monies paid by Plaintiffs and others similarly situated pursuant to the unlawful conduct, policies, and procedures of Defendant Maplewood, along with an award of interest in favor of Plaintiffs and others similarly situated to compensate them for the period of time during which Defendant Maplewood retained the benefit of their ill-gotten gains;

k. An order and judgment permanently enjoining Defendant from enforcing the above-described unconstitutional policies and practices against Plaintiffs and others similarly situated;

l. A declaratory judgment that Defendant Maplewood violated the equal protection rights of Plaintiffs and others similarly situated by imposing harsh debt collection measures not imposed on debtors whose creditors are private entities;

m. A judgment compensating the Plaintiffs and others similarly situated for the damages that they suffered as a result of Defendant's unconstitutional and unlawful conduct; and

n. An order and judgment granting Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and 18 U.S.C. § 1595, and any other relief this Court deems just and proper.

Dated: November 1, 2016

Respectfully submitted,

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