UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARLY GRAFF, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No.: 4:17-CV-606-CVE-JFJ**
	)	
ABERDEEN ENTERPRIZES II, INC., et al.,	)	
	)	
Defendants.	)	

MOTION TO CERTIFY CLASS AND MEMORANDUM IN SUPPORT

February 1, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Rules, and Other Authorities

INTRODUCTION

This case is about an unlawful scheme involving the collection of court debts by the private debt collection company Aberdeen Enterprizes II, Inc., the Oklahoma Sheriffs' Association, individual Sheriffs, and various local officials, including county cost administrators, court clerks, and judges. The named Plaintiffs are people who owe debts as a result of traffic and criminal convictions in Oklahoma courts. As a result of Defendants' scheme to extort money from court debtors with no regard for their ability to pay, the named Plaintiffs have suffered arrest and jailing, paid fees and surcharges causing them hardship in meeting the basic necessities of life, and live in constant fear of being sent back to jail. On behalf of the many other individuals subjected to Defendants' scheme, the named Plaintiffs challenge in this action Defendants' unconstitutional and unlawful policies and practices regarding the assessment and collection of court debts.[1] Through this motion and memorandum in support, the named Plaintiffs respectfully move the Court to certify this action and the proposed classes discussed below.

PROPOSED CLASSES

The named Plaintiffs propose to certify the following Classes:

[1] The Named Plaintiffs file this motion contemporaneously with their amended complaint because of the inherently transitory nature of their claims. It is clear, however, that Defendants are in possession of all the information relevant to the factual and legal bases for class certification and that some discovery will likely be necessary before the Court can rule on this motion. Plaintiffs therefore reserve the right to supplement this motion after conducting discovery related to the Class. Given that relevant information concerning class certification is in Defendants' possession, the Court could, if necessary, permit limited discovery for the purposes of determining with more specificity the facts relevant to class certification. *See, e.g.*, *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 351 n.13 (1978) (noting the availability of discovery "to illuminate issues upon which a district court must pass in deciding whether a suit should proceed as a class action under Rule 23 . . . ."). Courts in this Circuit often permit limited discovery on disputed issues in class certification motions. *See, e.g., Gibson v. Cont'l Res., Inc.*, No. CIV-15-611-M, 2015 WL 5883426, at *3 (W.D. Okla. Oct. 8, 2015) (permitting limited jurisdictional discovery to determine citizenship of class members); *Lindley v. Life Inv'rs Ins. Co. of Am.*, No. 08-CV-0379-CVE-PJC, 2010 WL 944180, at *5 (N.D. Okla. Mar. 11, 2010) (allowing limited class discovery on issue of numerosity); *Prissert v. Emcore Corp.*, No. CV 08-1190 MV/RLP, 2009 WL 10668530, at *4 (D.N.M. Sept. 29, 2009) (allowing limited discovery relating to adequacy).

- **"Aberdeen Class"**

Plaintiffs propose the following Class for which they seek declaratory and injunctive relief: All persons who owe or who will incur court debts arising from traffic, misdemeanor, and felony cases in Oklahoma courts and whose debt Aberdeen, Inc. is or will be attempting to collect pursuant to an agreement with the Sheriff Defendants and the Sheriffs' Association. This class will be referred to as the "Aberdeen Class." The named Plaintiffs representing the Aberdeen Class are: Randy Frazier, Carly Graff, David Smith, Ira Wilkins, Kendallia Killman, Linda Meachum, and Christopher Choate.

- **"Damages Class"**

Plaintiffs propose the following class for which they seek monetary damages: All persons who have been subjected to Defendants' debt collections practices as a result of court debts arising from traffic, misdemeanor, and felony cases in Oklahoma courts. This class will be referred to as the "Damages Class." The named Plaintiffs representing the Damages Class are: Randy Frazier, Carly Graff, David Smith, Ira Wilkins, Kendallia Killman, Linda Meachum, and Christopher Choate.

- **"Tulsa Court Debt Class"**

Plaintiffs propose the following Class for which they seek declaratory and injunctive relief: All persons who owe court debt from a traffic, misdemeanor, or felony case arising in Tulsa County District Court and who are or will be unable to pay that debt. This Class will be referred to as the "Tulsa Court Debt Class." The named Plaintiffs representing the Tulsa Court Debt Class are: Randy Frazier, Christopher Choate, David Smith, Linda Meachum, and Ira Wilkins.

- **"Rogers Court Debt Class"**

Plaintiffs propose the following Class for which they seek declaratory and injunctive relief: All persons who owe court debt from a traffic, misdemeanor, or felony case arising in Rogers County District Court and who are or will be unable to pay that debt. This Class will be referred to as the "Rogers Court Debt Class." The named Plaintiff representing the Rogers Court Debt Class is Carly Graff.

ARGUMENT

Plaintiffs seeking to certify a class must satisfy each of the requirements of Fed. R. Civ. P. 23(a) and at least one of the three criteria for certification under Rule 23(b). *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614–15 (1997).

I. The Proposed Classes Satisfy the Requirements of Rule 23(A)

Plaintiffs seeking class certification must meet four requirements under Rule 23(a): *first*, the class must be so numerous that joinder of all members would be impracticable; *second*, there must be questions of law or fact common to the class; *third*, the claims or defenses of the representative parties must be typical of the claims or defenses of the class; and *fourth* the representative parties must fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23(a). As discussed below, the proposed classes meet these prerequisites—known respectively as numerosity, commonality, typicality, and adequacy.

A. Numerosity

Rule 23(a)(1) requires that "the class [be] so numerous that joinder of all members is impracticable." In determining class size, the exact number of potential members need not be shown. *Joseph v. General Motors Corp.*, 109 F.R.D. 635, 639 (D. Colo. 1986). However, classes have been certified with as few as 17 to 46 class members. *See Horn v. Associated Wholesale Grocers, Inc.*, 555 F.2d 270, 275-76 (10th Cir. 1977) (trial court erred in denying class certification on numerosity grounds where class consisted of between 41 and 46 persons); *Rex v. Owens ex rel.*

State of Okla., 585 F.2d 432, 436 (10th Cir. 1978) (noting that "[c]lass actions have been deemed viable in instances where as few as 17 to 20 persons are identified as the class").

"Impracticability of joinder is not determined according to a strict numerical test but upon the circumstances surrounding the case." *Horn*, 555 F.2d at 276. There are a several factors that are relevant to the impracticability issue, including "the nature of the action, the size of the individual claims, and the location of the members of the class or the property that is the subject matter of the dispute." *Colorado Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1215 (10th Cir. 2014) citing 7A Charles Alan Wright, Arthur R. Miller & Marry Kay Kane, Federal Practice and Procedure § 1762, at 206–07 (3d ed.2005); *see also Kohn v. Am. Housing Found., Inc.*, 178 F.R.D. 536, 540 (D. Colo. 1998) ("In determining whether joinder is impractical, the court looks at the size of the proposed class, the geographic dispersion of its members, and whether the members' names are easily ascertainable."); *Yazzie v. Ray Vickers' Special Cars, Inc.*, 180 F.R.D. 411, 415 (D.N.M. 1998) ("In determining whether joinder is impractical, the court must consider such factors as the size of the proposed class, the geographic dispersion of class members, the nature of the action, the size of individual claims, judicial economy, the financial resources of class members and whether the class members' names are easily ascertainable."). To be impracticable does not mean that joinder must be impossible, but rather, that it would be difficult or inconvenient. *See Yazzie*, 180 F.R.D. at 415 ("To satisfy the numerosity requirement, the plaintiff must show that joinder is impracticable, not impossible.").

The proposed Classes satisfy the numerosity requirements for four reasons. First, the number of people in each Class is well beyond the number that other courts have found viable for certification. There are thousands of indigent persons who owe or who will incur court debts arising from traffic, misdemeanor, and felony cases in Oklahoma courts. Aberdeen, Inc. is or will

be in charge of collecting the debt owed for a substantial percentage of those individuals. These people make up the Aberdeen Class.

The Damages Class is comprised of the thousands of people whom Defendants have subjected to their extortionate practices when attempting to collect court debt from people who have been assessed fines and fees in criminal and traffic cases in Oklahoma District Courts.

The members of the proposed Tulsa Court Debt Class and Rogers Court Debt Class are not known but number in the thousands as every criminal defendant whose case arose in or will arise in Rogers County District Court or Tulsa County District Court, who was or will be assessed court fines and fees, and who is or will be unable to pay these court debts is a member of the respective Classes. The numbers of potential members of each Class therefore weighs in favor of a finding of numerosity.

Second, it would be practically impossible to join each putative class member to the action individually. By definition, Plaintiffs could not join the future stream of class members because their number changes every day as Defendants assess new debts. *See Abercrombie & Fitch Co.*, 765 F.3d at 1215 ("[T]he fact that the class includes unknown, unnamed future members also weighs in favor of certification.") (quoting *Pederson v. La. State Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000)); *Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (finding impracticability of non-class joinder for a class including future members, who could not yet be identified); *Skinner v. Uphoff*, 209 F.R.D. 484, 488 (D. Wyo. 2002) (finding certification appropriate for class of current and future prisoners seeking injunctive relief because "[a]s members *in futuro*, they are necessarily unidentifiable, and therefore joinder is clearly impracticable").

Third, the vast majority of potential plaintiffs lack the resources to bring separate lawsuits. *See Colorado Cross-Disability Coal. v. Taco Bell Corp.*, 184 F.R.D. 354, 359 (D. Colo. 1999) (finding joinder impracticable where many class members could not afford to bring individual actions); *Jackson v. Foley*, 156 F.R.D. 538, 541–42 (E.D.N.Y. 1994) (finding joinder impracticable where the majority of class members came from low-income households, greatly decreasing their ability to bring individual lawsuits); *Sherman v. Griepentrog*, 775 F. Supp. 1383, 1389 (D. Nev. 1991) (finding joinder impracticable because the proposed class consisted of poor, elderly, and disabled plaintiffs who could not bring individual lawsuits without hardship). Indeed, the members of each proposed class are among the most marginalized and economically desperate members of the community, unable to find a lawyer to represent them after their arrest, let alone to investigate and develop their constitutional claims. Many may not even be aware that they have a valid constitutional claim against Defendants, since many people are not aware of the constitutional precedent condemning jailing of the poor for the inability to make a monetary payment. *See Gerardo v. Quong Hop & Co.*, No. C 08-3953 JF (PVT), 2009 U.S. Dist. LEXIS 60900, at *6 (N.D. Cal. July 6, 2009) (certifying class where "potential class members are not legally sophisticated," making it difficult for them to bring individual claims).

Fourth and finally, adjudicating this case through individual lawsuits against Defendants would strain judicial resources. Separate lawsuits would result in duplicative discovery (including numerous depositions of the same officials and repetitive production of documents), repeated adjudication of similar controversies in this Court (with the resultant risk of inconsistent judgments), and excessive costs for everyone involved. *See Harlow v. Sprint Nextel Corp.*, 254 F.R.D. 418, 423 (D. Kan. 2008) ("The alternative to a class action would be for many plaintiffs to bring individual suits against Sprint. This would be grossly inefficient, costly, and time consuming

because the parties, witnesses, and courts would be forced to endure unnecessarily duplicative litigation.").

B. Commonality

The second Rule 23(a) requirement is that "there [be] questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Rule 23(a)(2) "requires only a single question of law or fact common to the entire class." *D.G. ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1195 (10th Cir. 2010); *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1288 (10th Cir. 1999). The threshold for this requirement is usually satisfied when it can be demonstrated that class members have suffered similar injuries. *See Wal-Mart Stores v. Dukes*, 564 U.S. 338, 349–50 (2011) (commonality requires common factual or legal questions that "generate common answers apt to drive the resolution of the litigation" (emphasis omitted)).

Commonality is generally satisfied where, as in this case, "the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001); *see also Adamson v. Bowen*, 855 F.2d 668, 676 (10th Cir. 1988) ("That the claims of individual putative class members may differ factually should not preclude certification under Rule 23(b)(2) of a claim seeking the application of a common policy."); *Milonas v. Williams*, 691 F.2d 931, 938 (10th Cir. 1982) (holding that common issue of law concerning legality of Defendant's practices overrode factual differences among class members); *Stricklin*, 594 F.3d 1188 ("Factual differences between class members' claims do not defeat certification where common questions of law exist.").

The commonality requirement does not demand that all questions of law or fact at issue be common, it only requires that significant common issues of law or fact exist. *Queen Uno Ltd. P'ship v. Coeur D'Alene Mines Corp.*, 183 F.R.D. 687, 691 (D. Colo. 1998); *see also Lopez v. City*

of Santa Fe, 206 F.R.D. 285, 289 (D.N.M. 2002) ("Commonality requires only a single issue common to the class, and the fact that the claims of individual putative class members may differ factually should not preclude certification under Rule 23(b)(2) of a claim seeking the application of a common policy." (citations omitted)). Even "factual differences in the claims of the individual putative class members should not result in a denial of class certification where common questions of law exist." *In re Intelcom Group Sec. Litig.*, 169 F.R.D. 142, 148 (D. Colo. 1996).

The commonality requirement is satisfied here because the legal and factual questions arising from Defendants' procedures and practices do not vary from one Class member to the next. *See Adamson*, 855 F.2d at 676 (application of common policy to all class members suffices to meet commonality requirement). Defendants operate their debt-collection system in a routine and consistent way, and all Class members were similarly subjected to Defendants' policies and procedures. And although different members may have entered the system through different charges and suffered different *degrees* of harm, that does not diminish the commonality among them with respect to the uniform policies and practices applied to them. As shown below, several factual questions concerning the scheme's operation are common to the members of each Class, as are the resulting legal questions about whether the Defendants' procedures are unlawful. The resolution of these common legal and factual issues will determine whether the members of each Class are entitled to relief.

For the Aberdeen Class, among the most important, but not the only, common questions of fact are:

- Whether the Sheriffs' Association and Aberdeen, Inc. contracted for the provision of debt collection services by Aberdeen, Inc.;
- How Aberdeen, Inc. earns its profits and what fees it charges pursuant to the contractual arrangement;

- How Aberdeen, Inc. credits the accounts of persons from whom Aberdeen, Inc. collects debt;
- What role Aberdeen, Inc. plays in seeking arrest warrants;
- What role Aberdeen, Inc. plays in the recall of arrest warrants;
- What policies and practices, if any, Aberdeen, Inc. uses to determine indigency;
- How, if at all, Aberdeen, Inc. accounts for indigency when setting payment plans;
- Whether Aberdeen, Inc. demands a lump sum payment when a case is transferred to exploit the consequences of an outstanding warrant;
- Whether Aberdeen, Inc. has collected money from indigent debtors based on threats of arrest;
- What role Aberdeen, Inc. plays in setting the monetary amount a person arrested for nonpayment must pay to be released; and
- The basic facts surrounding all of Aberdeen, Inc.'s policies and practices relating to collecting debts, communicating with debtors, and agreements with government officials.

Among the most important, but not the only, common questions of law are:

- Whether it is lawful to seek, obtain, and enforce arrest warrants based solely on non-payment without any pre-deprivation process or inquiry into ability to pay;
- Whether it is lawful to seek, obtain, and enforce arrest warrants based solely on non-payment without sworn factual assertions supporting probable cause to arrest for any offense and relying on material omissions of critical facts that demonstrate indigence;
- Whether a government and a private for-profit company, working together, can circumvent state debt-collection protections by using onerous collection methods that no private creditor could lawfully use;
- Whether it is lawful to detain a person after arrest because the person cannot afford to pay a preset monetary amount without any inquiry into ability to pay or any other findings;
- Whether it is lawful to use legal process purportedly concerning the collection of fines and fees with the ulterior motive to earn profit;
- Whether the association of Aberdeen, Inc., Jim and Rob Shofner, the Sheriffs' Association, and the Sheriff Defendants for the purpose of collecting court debt constitutes a RICO enterprise; and
- Whether the collection of payment using threats of unlawful arrest by Aberdeen, Inc., Jim and Rob Shofner, the Sheriffs' Association, and the Sheriff Defendants constitutes extortionate activity for the purposes of RICO predicate offenses.

For the Damages Class, among the most important, but not the only, common questions of fact are:

- Whether the Sheriffs' Association and Aberdeen, Inc. contracted for the provision of debt collection services by Aberdeen, Inc.;

- How Aberdeen, Inc. earns its profits and what fees it charges pursuant to the contractual arrangement;
- How Aberdeen, Inc. credits the accounts of persons from whom Aberdeen, Inc. collects debt;
- What role Aberdeen, Inc. plays in seeking arrest warrants;
- What role Aberdeen, Inc. plays in the recall of arrest warrants;
- Whether the Tulsa Clerk and Tulsa Cost Administrator's warrant applications are supported by sworn statements;
- Whether the Tulsa and Rogers County Sheriffs detain people who have been arrested for nonpayment if they cannot afford to pay a cash amount;
- What policies and practices, if any, Aberdeen, Inc. uses to determine indigency;
- How, if at all, Aberdeen, Inc. accounts for indigency when setting payment plans;
- Whether Aberdeen, Inc. demands a lump sum payment when a case is transferred to exploit the coercive power of an outstanding warrant;
- Whether Aberdeen, Inc. has collected money from indigent debtors based on threats of arrest;
- What role Aberdeen, Inc. plays in determining the amount of money a person arrested for nonpayment must pay to be released from jail; and
- The basic facts surrounding all of Aberdeen, Inc.'s policies and practices relating to collecting debts, communicating with debtors, and agreements with government officials.

Among the most important common questions of law are:

- Whether it is lawful to seek, obtain, and enforce arrest warrants based solely on non-payment without any pre-deprivation process or inquiry into ability to pay;
- Whether it is lawful to seek, obtain, and enforce arrest warrants based solely on non-payment without sworn factual assertions supporting probable cause to arrest for any offense and relying on material omissions of critical facts that demonstrate indigence;
- Whether a government and a private for-profit company, working together, can circumvent state debt-collection protections by using onerous collection methods that no private creditor could lawfully use;
- Whether it is lawful to detain a person after arrest because the person cannot afford to pay a preset monetary payment without any inquiry into ability to pay or any other findings;
- Whether it is lawful to use legal process purportedly concerning the collection of fines and fees with the ulterior motive to earn profit;
- Whether the Tulsa and Rogers Clerks and the Tulsa Cost Administrator have violated Plaintiffs' clearly established rights;
- Whether the Tulsa and Rogers Clerks and/or the Tulsa Cost Administrator are county policy makers;
- Whether the association of Aberdeen, Inc., Defendants Jim and Rob Shofner, the Sheriffs' Association, and the Sheriff Defendants for the purpose of collecting court debt constitutes a RICO enterprise; and

- Whether the collection of payments by Aberdeen, Inc., Jim and Rob Shofner, the Sheriffs' Association, and the Sheriff Defendants' using threats of unlawful arrest constitutes extortionate activity for the purposes of RICO predicate offenses.

For the Tulsa County Court Debt Class, among the most important, but not the only, common questions of fact are:

- Whether any meaningful inquiry into ability to pay is made at the time a debt-collection arrest warrant issues;
- Whether any meaningful inquiry into ability to pay is made at the time a payment plan is set;
- Whether debt-collection arrest warrants in Tulsa issue on the basis of sworn statements;
- Whether people are held in Tulsa County Jail on debt-collection arrest warrants pursuant to a predetermined cash ransom amount;
- Whether the Tulsa County Sheriff detains people who cannot afford that cash ransom;
- Whether the Tulsa Sheriff's detention policies are necessary to ensure court appearances; and
- Whether the Tulsa Sheriff's detention policies advance public safety.

Among the most important common questions of law are:

- Whether due process requires pre-deprivation process and an inquiry into ability to pay prior to arrest and confinement in jail based solely on nonpayment of a monetary sum;
- Whether an arrest warrant issued without any inquiry into ability to pay lacks probable cause;
- Whether an application for an arrest warrant requires the factual allegations to be based on oath or affirmation;
- Whether Defendants may seek, issue, and execute arrest warrants for non-payment by making material omissions concerning the inability of a debtor to pay the amount required;
- Whether issuing and executing a warrant for nonpayment without any inquiry into ability to pay or consideration of alternatives violates the Fourth and Fourteenth Amendments;
- Whether the Tulsa County Sheriff can lawfully detain a person in jail solely because the person cannot pay a cash ransom; and
- Whether there is an obligation to inquire into an arrestee's ability to pay before setting the amount of a cash ransom.

For the Rogers County Court Debt Class, among the most important, but not the only, common questions of fact are:

- Whether any meaningful inquiry into ability to pay is made at the time a debt-collection arrest warrant issues;
- Whether any meaningful inquiry into ability to pay is made at the time a payment plan is set;
- Whether debt-collection arrest warrants in Tulsa issue on the basis of sworn statements;
- Whether people are held in Rogers County Jail on debt-collection arrest warrants pursuant to a predetermined cash ransom amount;
- Whether the Rogers County Sheriff detains people who cannot afford that cash ransom;
- Whether the Rogers Sheriff's detention policies are necessary to ensure court appearances; and
- Whether the Rogers Sheriff's detention policies advance public safety.

Among the most important common questions of law are:

- Whether due process requires pre-deprivation process and an inquiry into ability to pay prior to arrest and confinement in jail based solely on nonpayment of a monetary sum;
- Whether an arrest warrant issued without any inquiry into ability to pay lacks probable cause;
- Whether an application for an arrest warrant requires the factual allegations to be based on oath or affirmation;
- Whether Defendants may seek, issue, and execute arrest warrants for non-payment by making material omissions concerning the inability of a debtor to pay the amount required;
- Whether issuing and executing a warrant for nonpayment without any inquiry into ability to pay or consideration of alternatives violates the Fourth and Fourteenth Amendments;
- Whether the Rogers County Sheriff can lawfully detain a person in jail solely because the person cannot pay a cash ransom; and
- Whether there is an obligation to inquire into an arrestee's ability to pay before setting the amount of a cash ransom.

Given the need to resolve these central issues before Defendants' liability to each Plaintiff is assessed, the proposed Classes meet the commonality requirement.

C. Typicality

"[T]ypicality exists where . . . all class members are at risk of being subjected to the same harmful practices, regardless of any class member's individual circumstances." *Stricklin*, 594 F.3d at 1199; *see also Adamson* 855 F.2d at 676 ("[D]iffering fact situations of class members do not

defeat typicality under Rule 23(a)(3) so long as the claims of the class representative and class members are based on the same legal or remedial theory."); *Penn v. San Juan Hospital, Inc.*, 528 F.2d 1181, 1189 (10th Cir. 1975) ("It is to be recognized that there may be varying fact situations among individual members of the class and this is all right so long as the claims of the plaintiffs and the other class members are based on the same legal or remedial theory."); *see also Payson v. Capital One Home Loans, LLC*, No. 07-2282-JTM, 2008 WL 4642639, at *4 (D. Kan. Oct. 16, 2008) ("Typicality determines whether a sufficient nexus exists between the claims of the named plaintiffs and the class. Claims need not be identical to be typical." (citation omitted)).

Here, the named Plaintiffs' claims are typical of the claims of the members of the proposed Classes, and they have the same interests in this case as all other members of the Class or Classes that they represent. Each of them suffered injuries from the failure of the Defendants to comply with the basic constitutional and statutory provisions detailed below. If the named Plaintiffs succeed in their claims that the Defendants' policies and practices concerning debt collection, detention, and arrest warrants violate the law in the ways alleged in the Complaint, then that ruling will likewise benefit every other member of the Class.

In sum, because the named Plaintiffs suffered from the same scheme that has harmed and continues to harm other members of the proposed classes, and because their legal arguments and claims for relief are the same as those of their classmates, Plaintiffs satisfy the typicality requirement of Rule 23(a)(3). If they succeed in their claims that Defendants' policies and practices concerning post-arrest procedures and debt collection for court debts and surcharges violate the law as alleged in the Complaint, that ruling will likewise benefit every other member of their respective Classes. That is the essence of Rule 23 typicality.

D. Adequacy

Finally, it is clear that the Class representatives will "fairly and adequately protect the interests of the class," as required by Rule 23(a)(4). The adequacy analysis encompasses two separate inquiries: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Rutter & Willbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187-88 (10th Cir. 2002).

The named Plaintiffs are adequate representatives because they entirely share their classmates' interests in establishing the illegality of Defendants' policies and practices concerning post-arrest procedures and debt collection. Each named Plaintiff is a member of the class they represent. Their injuries arise from policies that all class members were subjected to, and their legal challenges to Defendants' policies are shared among the members of their respective classes. There are no known material conflicts of interest among members of the proposed classes, all of whom have a similar interest in vindicating their constitutional rights in the face of their unlawful treatment.

The Plaintiffs and proposed classes are represented by attorneys who are "qualified, experienced and able to vigorously conduct the proposed litigation." *In re Ribozyme Pharm., Inc. Sec. Litig.*, 192 F.R.D. 656, 659 (D. Colo. 2000). Plaintiffs are represented by counsel from Smolen, Smolen & Roytman PLLC, J Webb Law firm PLLC, Civil Rights Corps, and the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center. Each organization has experience litigating complex civil rights matters in federal court and extensive knowledge of both the details of post-arrest wealth based detention schemes and the relevant constitutional law. *See* Exhibit 1 (Declaration of Elizabeth Rossi).

Counsels' efforts with regard to this litigation have so far included extensive investigation over a period of months, including numerous interviews with witnesses, government employees, former jail inmates, families, attorneys practicing in Oklahoma, community members, and experts in the functioning of Oklahoma's criminal justice system. *Id.* at ¶5. Counsel have also observed numerous courtroom hearings in Oklahoma District Courts in order to compile a detailed understanding of state law and practices as they relate to federal constitutional requirements. Counsel has studied the way that these systems function in multiple courts to investigate the wide array of options in practice. *Id.* As a result, counsel has devoted enormous time and resources to becoming intimately familiar with the Defendants' scheme and with all of the relevant state and federal laws and procedures that can and should govern it. *Id.*

Among other matters, counsel for the Plaintiff has also been lead counsel in several similar class action constitutional challenges to unlawful debt-collection regimes in Tennessee, Missouri, Alabama, Mississippi, and Louisiana. *See, e.g., Rodriguez v. Providence Comm. Corrections, Inc.*, 155 F. Supp. 3d 758 (M.D. Tenn. 2015) (class action settlement against a private for-profit probation company and Rutherford County, Tennessee obtaining classwide preliminary injunctive relief to a class of tens of thousands of probationers and debtors and resulting in a $14.3 million settlement); *see also, e.g., Jenkins et al. v. City of Jennings*, 15-cv-252-CEJ (E.D. Mo. 2015) (settled with classwide injunction and $4.75 million damages for nearly 2,000 court debtors who were illegally jailed); *Mitchell et al, v. City of Montgomery*, 2014-cv-186 (M.D. Ala. 2014) (landmark litigation and consent decree to end widespread injustices involving the use of private for-profit probation and the jailing of impoverished debtors by the City of Montgomery); *Bell, et al. v. City of Jackson*, 3:15-cv-732 TSL-RHW (S.D. Miss. 2015) (settled with consent decree ending jailing of court debtors in Jackson, Mississippi). Counsel is also lead attorney in pending

lawsuits challenging the treatment of indigent court debtors in Ferguson, Missouri and New Orleans, Louisiana. *Fant et al. v. City of Ferguson*, 15-cv-253-AGF (E.D. Mo. 2015) (pending); *Cain v. City of New Orleans*, Case No. 15-4479, 2:15-cv-04479-SSV-JCW (E.D. La. 2015) (pending). *Id.* at ¶¶6-7.

II. The Proposed Classes Satisfy the Requirements of Rule 23(b)

In addition to the threshold requirements of Rule 23(a), Plaintiffs must also demonstrate that the proposed class action fits within one of the categories described in Rule 23(b). *In re Motor Fuel Temperature Sales Practices Litig.*, 271 F.R.D. 221, 224 (D. Kan. 2010). For the reasons discussed below, the Aberdeen 23(b)(2) Class, the Tulsa Court Debt Class, and the Rogers Court Debt Class all satisfy Rule 23(b)(2) and the Aberdeen 23(b)(3) Class satisfies Rule 23(b)(3).

A. The Aberdeen Class, the Tulsa Court Debt Class, and the Rogers Court Debt Class all satisfy Rule 23(b)(2)

A class action is appropriate under Rule 23(b)(2) if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). By its terms, Rule 23(b)(2) imposes two independent but related requirements. First, plaintiffs must show that defendants' actions or inactions are based on "grounds generally applicable to all class members." *Shook v. El Paso Cty.*, 386 F.3d 963, 971 (10th Cir. 2004). Second, plaintiffs must demonstrate that the requested injunctive relief is "appropriate for the class as a whole." *Id.* Together, the requirements demand "cohesiveness" among class members with respect to their injuries such that (1) the requested injunction will satisfy the requirements of Rule 65(d); and (2) class members' injuries are sufficiently similar that they can be remedied in a single injunction without differentiating among class members. *See Stricklin*, 594 F.3d at 1199–1200.

Rule 23(b)(2) is "well suited for cases where the composition of a class is not readily ascertainable; for instance, in a case where the plaintiffs attempt to bring suit on behalf of a shifting prison population." *Shook*, 386 F.3d at 972. Indeed, the Advisory Committee Notes to the 1966 amendment to Rule 23 demonstrate that subsection (b)(2) was intended to reach precisely the type of class proposed in this case: "Illustrative are various actions in the civil rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration." [2]

The declaratory and injunctive Classes satisfy Rule 23(b)(2) on two grounds. First, Defendants, through the policies, practices, and procedures that make up their debt-collection scheme, have acted and/or refused to act on grounds generally applicable to each of the Classes. Thus, a declaration that the policy, pattern, and practice of threatening to jail people for nonpayment without informing them of their rights or inquiring into their ability to pay constitutes an extortion enterprise in violation of racketeering laws would benefit every member of the proposed Classes. The same applies to legal rulings on the other claims, including: that they are entitled to a neutral administrator of their court debt who has no personal financial conflict of interest; that the Agreement is void; that the arrangement and the Defendants' policies violate the Equal Protection Clause by employing debt-collection methods far more onerous than any private creditor could lawfully impose; and that the scheme to issue arrest warrants based solely on non-payment violates the Fourth and Fourteenth Amendments.

[2] Rule 23(b)(2) arose out of experience "in the civil rights field," *Amchem*, 521 U.S. at 614 (quoting Benjamin Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)*, 81 Harv. L. Rev. 356, 389 (1967)), in which the government typically treats a whole class in an unconstitutional manner based on law or government policy. "Rule 23(b)(2) was drafted in significant measure to enable civil rights class actions." *Shook*, 543 F.3d at 610; *see also* Moore's Federal Practice § 23.43. This category is typically employed in civil rights cases and other actions not primarily seeking money damages. The (b)(2) class action is often referred to as a 'civil rights' or 'injunctive' class suit.").

Second, Plaintiffs' request for relief satisfies 23(b)(2) because the remedy they seek would provide relief to all current and future debtors of Defendants. For example, the Court's declaration that Defendant Sheriffs cannot place and hold people in jail solely because they cannot afford to make a monetary payment will affect every person who has outstanding debt. A declaration that all people who owe a debt to Defendant Aberdeen, Inc. are entitled, as a matter of federal law, to a meaningful inquiry into their ability to pay and an evaluation of alternatives to incarceration would similarly affect all Class members. The injunctive relief that Plaintiffs seek would protect each member of the Class from being subjected to Defendants' unlawful policies and practices with respect to the debts that they still owe. It would also protect those who will incur such debts or be subject to arrest in the future from the same unconstitutional conduct. For this reason, Defendants' widely applied, unconstitutional debt collection scheme is particularly well-suited to a Rule 23(b)(2) class action.

Because Defendants' unconstitutional extortion scheme applies against all members of the Aberdeen Rule 23(b)(2) Class, the Tulsa Court Debt Class, and the Rogers Court Debt Class, and because the relief Plaintiffs seek would apply to all members of each Class, the Classes meet the requirements of 23(b)(2). Having already met the threshold requirements of Rule 23(a), these Classes fulfill all the prerequisites for certification.

B. The Damages Class Satisfies Rule 23(b)(3)

The Damages Class can be certified under Rule 23(b)(3). To certify a class under Rule 23(b)(3) Plaintiffs must show that "the questions of law or fact common to the members of the class predominate over any questions of law or fact affecting only individual members," and that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." The Damages Class satisfies both requirements.

"Rule 23(b)(3) is a broad catch-all provision allowing the district court to certify a class in its discretion when to do so would conserve the resources of the judiciary and the parties by resolving the dispute via a class action rather than numerous individual suits." *Hart*, 186 F.3d at 1298. Class certification under Rule 23(b)(3) is appropriate if the "questions of law or fact common to the members of the class predominate over any questions affecting only individual members."

1. The Common Questions of Law and Fact Predominate

The Rule 23(b)(3) predominance inquiry tests "whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Dukes*, 564 U.S. at 376. To determine predominance, the court must "characterize the issues in the case as common or not, and then weigh which issues predominate." *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014). "The nature of the evidence that will suffice to resolve a question determines whether the question is common or individual." *Seabron v. Am. Family Mut. Ins. Co.*, Civil Action No. 11-cv-01096-WJM-KMT, 2013 WL 3713652, at *7 (D. Colo. July 16, 2013) (citing *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 136–40 (2d Cir. 2001)).

The dispositive questions of fact in this case are susceptible to resolution through common evidence because they all center on the routine procedures and practices of Defendants. Because the evidence relevant to establishing that Defendants engaged in the alleged unlawful debt collection policies and practices is common to all members of the Class, the Class clearly meets the standard for predominance. *See e.g.*, *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499, 506 (D. Kan. 2015) (finding plaintiff had satisfied predominance requirement where common evidence, *i.e.*, a standardized letter sent to all class members, would answer common questions). Because

the dispositive issues of law and fact can be resolved through common evidence, the Aberdeen Class meets the requirements of Rule 23(b)(3).

The fact that Defendants' unconstitutional policies and practices may have injured different people to different degrees does not alter the commonsense conclusion that common issues of law and fact predominate. *Tripp*, 310 F.R.D. at 506–07 ("While determining the extent of statutory damages may require the Court to resolve some individual questions, such as the amount of actual damages incurred and any additional damages . . . to award plaintiff, these considerations do not overwhelm the common issues" (citing *Bertulli v. Indep. Ass'n of Cont'l Pilots*, 242 F.3d 290, 298 (5th Cir. 2001) (holding individual damage calculations do not defeat predominance when "virtually every issue prior to damages is a common issue")). For example, if two Plaintiffs may each have been jailed without an inquiry into their ability to pay, but one of them spent three days in jail while another spent only two, the difference in the number of days spent in jail, which may raise or lower damages proportionally, would not in any way affect the critical factual and legal issues common to both of their claims.[3]

2. The Class Action Is a Superior Vehicle for Adjudicating This Dispute

Rule 23(b)(3) also considers whether class resolution is the superior mechanism for the fair and efficient adjudication of the controversy. Specifically, Rule 23(b)(3) requires courts to

[3] In cases involving improper incarceration, courts have consistently found that general damages for the loss of liberty "per se" are separately calculable from any individualized special damages also caused by such illegal confinement (such as loss of a particular person's job or medical problems). *See, e.g.*, *Kerman v. City of New York*, 374 F.3d 93, 125–26, 130–31 (2d Cir. 2004) (holding that a person held illegally is entitled to general damages simply for the loss of liberty—an amount separable from any special damages); *Phillips v. District of Columbia*, 458 A.2d 722, 725 (D.C. 1983) (loss of liberty itself requires damages *per se*).

In class action cases, these general damages for loss of liberty are tried on a class-wide basis through a number of commonly used methods. *See, e.g.*, *Dellums v. Powell*, 566 F.2d 167, 174 n.6, 188 n.56 (D.C. Cir. 1977) (damages in mass arrest case tried and determined "for the class as a whole or by subclass" based on number of hours or days in custody); *Barnes v. District of Columbia*, 278 F.R.D. 14, 20–21 (D.D.C. 2011) (calculating general, classwide damages for loss of liberty through a sample of the plaintiffs selected by each party); *Augustin v. Jablonsky*, 819 F. Supp. 2d 153, 174, 177 (E.D.N.Y. 2011) (awarding general damages of $500 per unlawful strip search and holding that further special damages must be tried on an individual basis).

consider "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." These factors overwhelmingly favor class adjudication of Plaintiffs' claims.

The interest and ability of individual Class members to pursue separate actions is limited here. First, as previously noted, *supra* Part I.A, many of the potential class members lack the resources required to litigate claims of this magnitude and complexity. *See. Taco Bell Corp.*, 184 F.R.D. at 359 (finding joinder impracticable where many class members could not afford to bring individual actions); *Yazzie*, 180 F.R.D. at 415 (finding court must consider such factors as the financial resources of class members).

Second, the individual damages sought by each class member are unlikely to be substantial enough for individual Plaintiffs to attract their own attorneys willing to devote the time and energy to litigate the legality of the City's debt-collection scheme, especially given the costs associated with the many stages of such litigation. *See Taco Bell Corp.*, 184 F.R.D. at 359 (finding joinder impracticable where no attorneys' fees were recoverable and the most an individual member could obtain in damages would be $500).

Third, consolidating the litigation in a single class action is far preferable to the alternative of having proceedings and discovery repeatedly litigated in this Court. *See Harlow*, 254 F.R.D. at 423 ("The alternative to a class action would be for many plaintiffs to bring individual suits against Sprint. This would be grossly inefficient, costly, and time consuming because the parties, witnesses, and courts would be forced to endure unnecessarily duplicative litigation.").

Adjudicating the claims in one forum would avoid duplicative results and eliminate the potential for inconsistent judgments.

Finally, as noted above, a class action does not present any insurmountable difficulties in management. The proposed Class is ascertainable from public court records and other records already in Defendants' possession, and they are limited in geographic scope (unlike a nationwide, multi-district class containing millions of members). Indeed, requiring separate individual lawsuits would likely result in far greater manageability problems, such as duplicative discovery (including numerous depositions of the same officials and repetitive production of documents), repeated adjudication of similar controversies in this Court, and excessive costs.[4] Judicial economy will therefore be better served if the legality of Defendants' uniform debt-collection scheme is adjudicated in a single class proceeding rather than through a flood of individual suits.

Class-wide treatment of liability is a far superior method of determining the content and legality of the Defendants' policies and practices than individual suits by the thousands of persons whose debt is, has been, or will be collected by Aberdeen, Inc. To the extent that individual damages will vary, they will vary depending in large part on the amount of time that a person was subjected to the unlawful scheme and the amount of money extorted from them or obtained through abuse of process. Determining damages for individual Class members can thus typically be handled in a ministerial fashion based on easily verifiable records in the Defendants' possession. If need be, individual hearings on Class-member specific damages based on special circumstances

[4] The Court also has considerable discretion in designing the most appropriate classes for certification. For example, instead of certifying separate Rule 23(b)(2) and Rule 23(b)(3) classes, the Court could certify a Rule 23(b)(3) class along with a hybrid class of those seeking equitable relief. *See Williams v. Mohawk Indus.*, 568 F.3d 1350, 1360 (11th Cir. 2009) (describing process of certifying class under Rule 23(b)(3) and certifying a hybrid class pursuant to Rule 23(b)(2) and Rule 23(c)(4) for those members of the class who have standing to seek equitable relief); *see also Lemon v. Int'l Union of Operating Eng'rs, Local No. 139*, 216 F.3d 577, 581 (7th Cir. 2000); *Jefferson v. Ingersoll Int'l Inc.*, 195 F.3d 894, 898 (7th Cir. 1999); *Eubanks v. Billington*, 110 F.3d 87, 96 (D.C. Cir. 1997). Those options may require subtle redefinition of the Classes, which the Court could undertake with the guidance of the parties if it deems such a process appropriate.

and particular hardships endured as a result of Defendants' extortion scheme 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.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully ask this Court to certify the Classes described in this Motion.

Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants who have appeared in this case.

I further certify that a copy of the foregoing will be served by personal service on the following parties: Jim D. Shofner; Rob Shofner; Oklahoma Sheriffs' Association; Vic Regalado, Sheriff of Tulsa County; Scott Walton, Sheriff of Rogers County; The Board of County Commissioners of the County of Tulsa; The Board of County Commissioners of the County of Rogers; Judge Dawn Moody; Judge Doug Drummond; Judge William J. Musseman, Jr.; Don Newberry, Tulsa County Court Clerk; Darlene Bailey, Tulsa County Cost Administrator; Judge Terrell S. Crosson; and Kim Henry, Rogers County Court Clerk.

I further certify that a copy of the foregoing will be served by U.S. Mail on the following parties: Jason Ritchie, Sheriff of Adair County; Rick Wallace, Sheriff of Alfalfa County; Tony Head, Sheriff of Atoka County; Ruben Parker, Jr., Sheriff of Beaver County; Tony Almaguer, Sheriff of Blaine County; Chris West, Sheriff of Canadian County; Chris Bryant, Sheriff of Carter County; Norman Fisher, Sheriff of Cherokee County; Todd Gibson, Sheriff of Cleveland County; Bryan Jump, Sheriff of Coal County; Heath Winfrey, Sheriff of Craig County; Bret Bowling, Sheriff of Creek County; Harlan Moore, Sheriff of Delaware County; Clay Sander, Sheriff of Dewey County; Jerry Niles, Sheriff of Garfield County; Jim Weir, Sheriff of Grady County; Scott Sterling, Sheriff of Grant County; Devin Huckabay, Sheriff of Greer County; Thomas McClendon, Sheriff of Harper County; Marcia Maxwell, Sheriff of Hughes County; Roger Levick, Sheriff of Jackson County; Jeremie Wilson, Sheriff of Jefferson County; Jon Smith, Sheriff of Johnston County; Steve Kelley, Sheriff of Kay County; Dennis Banther, Sheriff of Kingfisher County; Jesse James, Sheriff of Latimer County; Rob Seale, Sheriff of Leflore County; Marty Grisham, Sheriff of Love County; Danny Cryer, Sheriff of Marshall County; Mike Reed, Sheriff of Mayes County; Kevin Clardy, Sheriff of McCurtain County; Kevin Ledbetter, Sheriff of McIntosh County; Darrin Rodgers, Sheriff of Murray County; Sandy Hadley, Sheriff of Nowata County; Steven Worley, Sheriff of Okfuskee County; P.D. Taylor, Sheriff of Oklahoma County; Eddy Rice, Sheriff of Okmulgee County; Eddie Virden, Sheriff of Osage County; Jeremy Floyd, Sheriff of Ottawa County; Mike Waters, Sheriff of Pawnee County; R.B. Hauf, Sheriff of Payne County; Mike Booth, Sheriff of Pottawatomie County; B.J. Hedgecock, Sheriff of Pushmataha County; Darren Atha, Sheriff of Roger Mills County; Shannon Smith, Sheriff of Seminole County; Larry Lane, Sheriff of Sequoyah County; Matt Boley, Sheriff of Texas County; Bobby Whittington, Sheriff of Tillman County; Chris Elliot, Sheriff of Wagoner County; Rick Silver, Sheriff of Washington County; Roger Reeve, Sheriff of Washita County; Rudy Briggs, Jr., Sheriff of Woods County; and Kevin Mitchell, Sheriff of Woodward County.

/s/Robert D. Friedman

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARLY GRAFF, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No.: 4:17-CV-606-CVE-JFJ**
	)	
ABERDEEN ENTERPRIZES II, INC., et al.,	)	
	)	
Defendants.	)	

DECLARATION OF ELIZABETH ROSSI

1) My name is Elizabeth Rossi and, on behalf of Civil Rights Corps, I am one of the counsel for the named Plaintiffs and the putative Class members in this case. I submit this Declaration in support of the motion to certify class.

2) I am a founding attorney of Civil Rights Corps, a non-profit civil rights organization based in Washington, D.C.

3) Prior to my employment with Civil Rights Corps, I served as a Litigation Fellow with Equal Justice Under Law, where I litigated federal civil rights class action lawsuits. Prior to that, I was a Staff Attorney in the Appellate Division of the Maryland Office of the Public Defender, and served as a law clerk in the United States District Court for the District of New Hampshire, and the United States Court of Appeals for the Sixth Circuit.

4) Civil Rights Corps has conducted extensive investigation into court debt-collection practices in jurisdictions across the country. As a result, the organization has devoted substantial resources to becoming intimately familiar with the collection of court fines, fees, and costs and with all of the relevant state and federal laws and procedures that relate to these systems. We have studied the way that these debt-collection and poverty-based post-arrest detention systems function

in other cities and counties in order to investigate the wide array of reasonable constitutional options in practice for local and county governments.

5) Counsels' efforts with regard to this litigation have so far included extensive investigation over a period of months, including numerous interviews with witnesses, government employees, former jail inmates, families, attorneys practicing in Oklahoma, community members, and experts in the functioning of Oklahoma's criminal justice system. Counsel have also observed numerous courtroom hearings in Oklahoma District Courts in order to compile a detailed understanding of state law and practices as they relate to federal constitutional requirements. Counsel has studied the way that these systems function in multiple courts to investigate the wide array of options in practice. As a result, counsel has devoted enormous time and resources to becoming intimately familiar with the Defendants' scheme and with all of the relevant state and federal laws and procedures that can and should govern it.

6) Civil Rights Corps attorneys been class counsel on a number of recent constitutional civil rights class action lawsuits raising similar issues. *See, e.g., Rodriguez v. Providence Comm. Corrections, Inc.*, 155 F. Supp. 3d 758 (M.D. Tenn. 2015) (class action settlement against a private for-profit probation company and Rutherford County, Tennessee obtaining classwide preliminary injunctive relief to a class of tens of thousands of probationers and debtors and resulting in a $14.3 million settlement); *see also, e.g., Jenkins et al. v. City of Jennings*, 15-cv-252-CEJ (E.D. Mo. 2015) (settled with classwide injunction and $4.75 million damages for nearly 2,000 court debtors who were illegally jailed); *Mitchell et al, v. City of Montgomery*, 2014-cv-186 (M.D. Ala. 2014) (landmark litigation and consent decree to end widespread injustices involving the use of private for-profit probation and the jailing of impoverished debtors by the City of Montgomery); *Bell, et al. v. City of Jackson*, 3:15-cv-732

TSL-RHW (S.D. Miss. 2015) (settled with consent decree ending jailing of court debtors in Jackson, Mississippi). Counsel is also lead attorney in pending lawsuits challenging the treatment of indigent court debtors in Ferguson, Missouri and New Orleans, Louisiana. *Fant et al. v. City of Ferguson*, 15-cv-253-AGF (E.D. Mo. 2015) (pending); *Cain v. City of New Orleans*, Case No. 15-4479, 2:15-cv-04479-SSV-JCW (E.D. La. 2015) (pending). These cases have resulted in agreements with a number of cities and counties to change their debt-collection and post-arrest procedures to remove secured money bail for new misdemeanor arrestees.

7) I have been appointed class counsel in two ongoing class action lawsuits. *ODonnell v. Harris County, Tex.* 251 F. Supp. 3d. 1052 (S.D. Tex. 2017) (granting preliminary injunction ending County's policy of requiring arrestees to pay secured money bail without inquiry into and findings concerning ability to pay; *Rodriguez v. Providence Comm. Corrections, Inc*., 155 F. Supp. 3d 758 (M.D. Tenn. 2015) (class action settlement against a private for-profit probation company and Rutherford County, Tennessee obtaining classwide preliminary injunctive relief to a class of tens of thousands of probationers and debtors and resulting in a $14.3 million settlement). I am lead counsel in a putative class action filed in the Northern District of Texas on similar issues. *Daves v. Dallas County, Tex.*, Case No. 3:18-cv-154 (N.D. Tex. Jan. 21, 2018).

8) Civil Rights Corps, in conjunction with co-counsel, has sufficient funds available to litigate this case. Plaintiffs' counsel have paid for all costs associated with this litigation to date, and will continue to do so.

9)

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

*/s/ Elizabeth Rossi*_____ February 1, 2018_____
Elizabeth Rossi Date

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARLY GRAFF, et. al.	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
ABERDEEN ENTERPRIZES II, INC., et al.;	)	**Case No. 4:17-CV-606-CVE-JFJ**
	)	
Defendants.	)	
	)	
	)	

[PROPOSED] ORDER CERTIFYING CLASSES AND APPOINTING COUNSEL

Upon consideration of Plaintiffs' Motion for Class Certification, it is ORDERED that the motion is GRANTED. The following classes are certified:

- **"Aberdeen Class":** All persons who owe or who will incur court debts arising from traffic, misdemeanor, and felony cases in Oklahoma courts and whose debt Aberdeen, Inc. is or will be attempting to collect pursuant to an agreement with the Sheriff Defendants and the Sheriffs' Association.
- **"Damages Class":** All persons who have been subjected to Defendants' debt collections practices as a result of court debts arising from traffic, misdemeanor, and felony cases in Oklahoma courts.
- **"Tulsa Court Debt Class":** All persons who owe court debt from a traffic, misdemeanor, or felony case arising in Tulsa County District Court and who are or will be unable to pay that debt.

- **"Rogers Court Debt Class":** All persons who owe court debt from a traffic, misdemeanor, or felony case arising in Rogers County District Court and who are or will be unable to pay that debt.

J Webb Law Firm PLLC, Smolen, Smolen & Roytman, Civil Rights Corps, and the Institute for Constitutional Advocacy and Protection shall serve as class counsel.

Ordered this _____ day of _____, 2018.

_____
United States District Judge