

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

_____	)	
ALANA CAIN, et al.	)	
	)	Case No. 15-4479-SSV-JCW
Plaintiffs,	)	
	)	
v.	)	
	)	Judge Sarah S. Vance, Sec. R
CITY OF NEW ORLEANS, et al.	)	Mag. Judge Joseph C. Wilkinson, Div. 2
	)	(Class Action)
Defendants.	)	
_____	)	

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 56.1, Plaintiffs submit the following statement of material facts as to which there are no genuine issues for trial:

**Defendants**

1. Laurie A. White, Tracey Flemings-Davillier, Benedict Willard, Keva Landrum-Johnson, Robin Pittman, Byron C. Williams, Camille Buras, Karen K. Herman, Darryl Derbigny, Arthur Hunter, and Franz Zibilich are Judges of the Orleans Parish Criminal District Court (“OPCDC”) and Defendants in the above-captioned action (“Case”). See “Orleans Criminal Court Judges,” [www.criminalcourt.org/judges.html](http://www.criminalcourt.org/judges.html) [last accessed May 26, 2017]. Harry Cantrell, also a Defendant, is the OPCDC’s Magistrate Judge, elected to the Magistrate Section of the Court. *Id.* These Defendants are collectively referred to herein as “the Judges.”

2. Robert Kazik is the Judicial Administrator for the OPCDC. Rec. Doc. 248 ¶ 20. He was appointed by and is supervised by the Judges. La. Sup. Ct. Rules for La. Dist. Cts., Rule 4.1; Exhibit 2 (organizational chart for OPCDC). As Judicial Administrator, Mr. Kazik oversees

dozens of employees who support OPCDC operations, including the employees in the OPCDC's Collections Department. Ex. 2; Rec. Doc. 248 ¶ 21.

3. Marlin Gusman is the Sheriff of Orleans Parish. Orleans' Parish Sheriff's Office, [http://opso.us/index.php?option=com\\_content&view=article&id=145&Itemid=723](http://opso.us/index.php?option=com_content&view=article&id=145&Itemid=723) [last accessed June 15, 2017]. He is the "keeper of the public jail of his parish," La. R.S. § 13:5539C, and is charged by statute with collecting a percentage fee on every surety bond for distribution to the Judges, the District Attorney, the Public Defender, and the Sheriff's Office. La. R.S. §§ 22:822, 13:1381.5.

### **OPCDC Expenditures & Revenues**

4. The OPCDC draws funds from several sources: costs, fees, and fines assessed by the Judges and collected by the OPCDC; money appropriated by the State of Louisiana and the City of New Orleans; costs, fees, and forfeitures received from other actors in the legal system; public and private grants; and in-kind provisions. Rec. Doc. 248 ¶ 1.

5. A public audit of the OPCDC's revenues and expenditures is completed annually (hereinafter, "Audits"). *Id.* ¶ 3; *see also* Rec. Doc. 248-1 at 1-4 (2012-2015 Audit excerpts); Ex. 4 (2011 Audit). The Audits cover "all funds that are controlled by the judges en banc as independently elected officials with oversight responsibility." Ex. 3 at 17 (quote), 20 (salaries of the Judges and expenses for certain office supplies and travel reimbursements "paid directly by warrants drawn on the Louisiana Supreme Court are not included"); Rec. Doc. 248 ¶ 3.

6. The Audits divide the OPCDC's revenues into "Governmental Funds" and "Fiduciary Funds." Ex. 3 at 17-18 ("Fund Accounting"). Governmental Funds are further divided into an "Unrestricted Fund" and a "Restricted Fund." *Id.*

7. The Unrestricted Fund is also called the “General Fund.” *See, e.g.* Ex. 3 at 18. The Judges also sometimes call the General Fund the “Judicial Expense Fund.” Rec. Doc. 248 ¶¶ 2, 6. The General Fund is the “general operating fund of the Criminal Court,” Ex. 3 at 18, over which the Judges exercise total control, Rec. Doc. 248 ¶ 2.

### **General Fund Expenditures**

8. The Judges are charged as administrators and executives to manage the budget of the OPCDC. They have broad discretion to spend General Fund money on any expenses related to the operation of the OPCDC other than their own compensation. Rec. Doc. 248 ¶¶ 2, 5, 7, 29; *see also* Exhibit 5 (table showing Louisiana statutes authorizing assessment of costs and fees that return to the OPCDC, and broadly stated purposes for which funds may be used); Rec. Doc. 248-1 at 10-14 (tables showing most collections revenue is derived pursuant to La. R.S. § 13:1381.4, shown in the column titled “JEF Misd./Felony”); Exhibit 6 at A.6-A.7 (letter from OPCDC judges describing § 13:1381.4’s authorization of their spending as “extremely broad”); La. R.S. §§ 13:691(B) (limiting sources of compensation for judges); 13:1381.4(D) (barring use of funds for judicial salaries).

9. The State of Louisiana pays the salaries and benefits of OPCDC judges. Rec. Doc. 248 ¶ 5; *see also* La. Rev. Stat. §§ 13:691(A), 13:1346(A)(1); Act No. 67 (2016 Regular Session), Louisiana State Legislature, at 9.

10. Prior to 2012, the Judges spent hundreds of thousands of dollars annually from the General Fund on supplemental insurance premiums for themselves and their spouses. Ex. 4 at 3 (\$289,567 for “Insurance”); Rec. Doc. 248-1 at 1-4 (lesser amounts in 2012-2015).

11. In 2011, the District Attorney for Orleans Parish sent a letter to the Louisiana Attorney General asking for an investigation into the Judges for “extracting” money from debtors

by incarcerating debtors who did not pay; for failing to properly account for funds extracted; and for using money extracted into the Judicial Expense Fund for “personal benefit.” Ex. 29. The District Attorney also explained: “[I]t appears that the statute enabling the judicial expense fund is itself unconstitutional because it authorizes judges to order the payment of moneys that they themselves will spend.” *Id.* at 4-5.

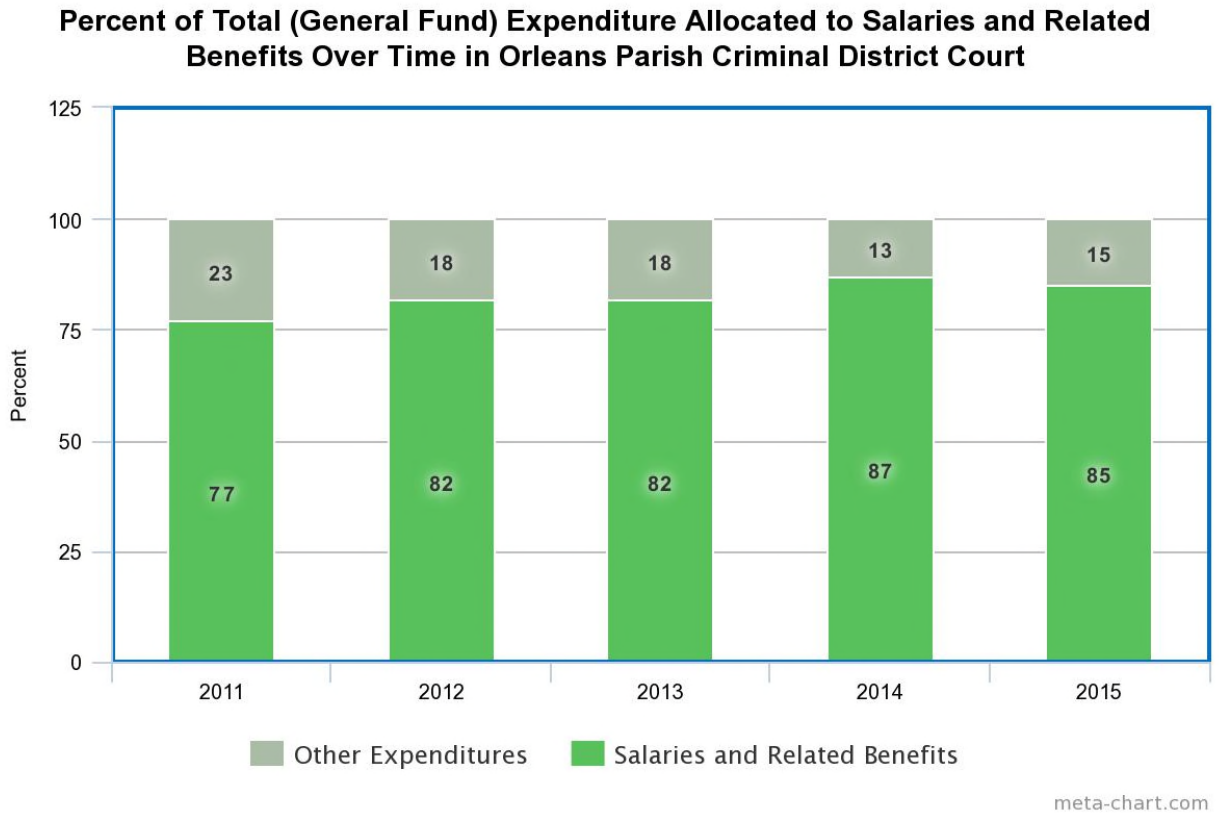
12. In November 2012, the Louisiana Legislative Auditor released an investigative audit of OPCDC judges’ spending on supplemental insurance premiums. *See* Ex. 6. During the Auditor’s three-year period of investigation (January 1, 2009 - December 31, 2011), the OPCDC paid 100% of the premiums for 229 supplemental “health, dental, hospitalization, cancer, critical illness, long-term care, accidental death and dismemberment, and life insurance” policies, with the average OPCDC judge having 15 (2009), 19 (2010), and 18 (2011) policies each year. *Id.* at 5, 6; *see also* Rec. Doc. 248 ¶ 10. “Eleven judges had separate long-term care policies for their spouses,” and “[e]ight of these spouses had multiple long-term care policies,” all paid for by the OPCDC. Ex. 6 at 7. One of the plans purchased by the Judges with Judicial Expense Fund money enabled each covered judge to receive up to \$10,000 per year in reimbursement for out-of-pocket medical expenses (for example, co-payments and prescription drugs). *Id.* at 8. OPCDC judges cancelled these policies during the audit period. *Id.*

13. In July 2015, The Times-Picayune published the apology of former Chief and current OPCDC Judge Camille Buras “for [her] past receipt of certain employment benefits.” Ex. 7. She wrote: “[B]ecause of the public controversy my receipt of these benefits has caused, which cast doubt on the public trust in me as a judge and raised the appearance of impropriety, I have now begun repayment of the costs of benefits to the Judicial Expense Fund of the court.” *Id.*

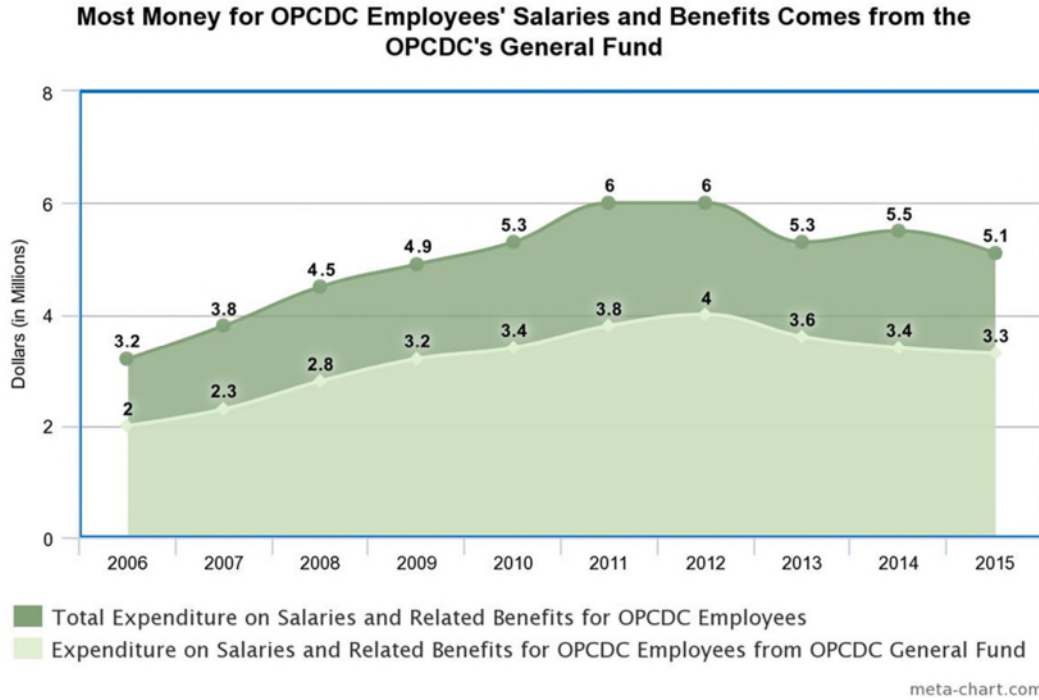
14. The Judges’ own benefit packages are still supplemented by money from the General Fund in the form of payments for premiums for professional liability insurance. Rec. Doc. 248 ¶ 5.

15. The Judges are also responsible for managing approximately 140 employees of the OPCDC. *Id.* ¶ 4; Ex. 2.

16. The Judges choose to spend most of the General Fund money on “Salaries and benefits” for their employees. Rec. Doc. 248-1 at 1-4; Ex. 4 at 11.



17. Most of the money for the “Salaries and benefits” of OPCDC employees comes from the General Fund. Rec. Doc. 248-1 at 1-4; Ex. 4 at 11.



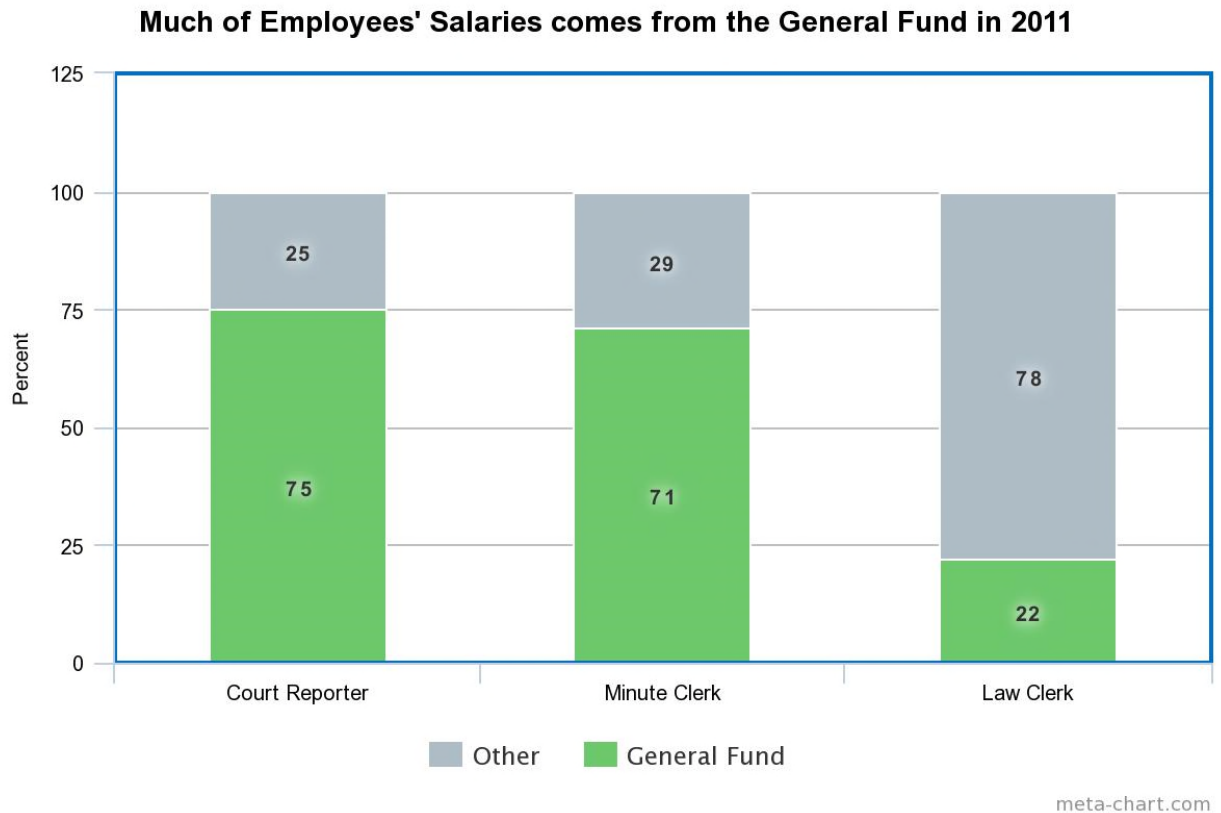
18. Pursuant to vote by the OPCDC judges acting collectively as administrators, each Judge has independent authority over approximately a quarter-million dollars of General Fund money each year, including \$1,000 per month for general court operations and \$250,000 annually for the salaries and benefits of employees dedicated to serving each Judge’s particular section. Rec. Doc. 248 ¶ 6.

19. Many positions at the OPCDC are wholly funded by the General Fund. In 2014, 23 positions were wholly funded this way, including nine Secretarial positions, each of which was assigned to serve an individual Section/judge of the OPCDC, and all of the Court Messengers and debt Collections Agents. *See* Exhibit 8 (table showing OPCDC positions, salaries, and sources of funding for those positions). In 2015, 21 positions were so funded. Ex. 2.

20. Most other OPCDC positions are subsidized with General Fund money. In 2014, 79 positions were subsidized by Fund money, including the salaries of Court Reporters, Law

Clerks, Minute Clerks, Secretaries other than those wholly funded by the General Fund (four in total), Administration personnel, and Jury Commissioners. Ex. 8.

21. The General Fund supplements to individual employees’ salaries are significant. In 2011, more than half of the total funds for each of the 30 Court Reporters’ and 17 Minute Clerks’ salaries, as well as 22% of the salaries paid to the Judges’ Law Clerks, came from the General Fund. Ex. 9 (table showing OPCDC positions, salaries, and sources of funding for each position).



22. By 2014 at the latest, more than two-thirds of the Judges’ employees depended wholly or partly on the Judicial Expense Fund to pay their salaries. *Supra* ¶¶ 16, 20, 21; Ex. 8.

23. If, in any given year, General Fund revenues drop from forecasted budget projections, the Judges may be forced to reduce the number of employees at the OPCDC — including employees serving directly in their chambers — and/or reduce their employees’ salaries or benefits. *See* Ex. 10 (notes from a 2013 meeting between Kazik and a City Councilmember in

which Kazik reported cuts in benefits for OPCDC employees and the elimination of four positions due to revenue drops); Ex. 11 (2014 letter from Kazik to the Deputy Mayor and CAO for the City seeking increased appropriations to “avoid further pay cuts” for employees, and concluding: “[T]he Court has exhausted all means of financially supporting the daily personnel and operational expenses and ... this desperate request is now warranted.”); Ex. 12 (2015 letter from Deputy Mayor to Mayor, relaying OPCDC request for more funds needed to “avoid laying off staff”).

24. In addition to salaries and insurance, General Fund money is also spent on the following, in no particular order: Travel subsidies, Legislative Expenses, Conference and Legal Education, Ceremonies, Office Supplies, Cleaning Supplies, Law Books, Bottled Water, Jury Expenses, Telephone Service, Postage, Pest Control, Dues and Subscriptions, Paper Supplies, Advertising, Building Maintenance and Repairs, Cleaning Services, Capital Outlay, Equipment and Maintenance Repairs, Lease Payments, Equipment Rentals, Professional and Contractual Expenses, Drug Testing Supplies, Coffee, Transcripts, and Miscellaneous expenses. Rec. Doc. 248 ¶ 2.

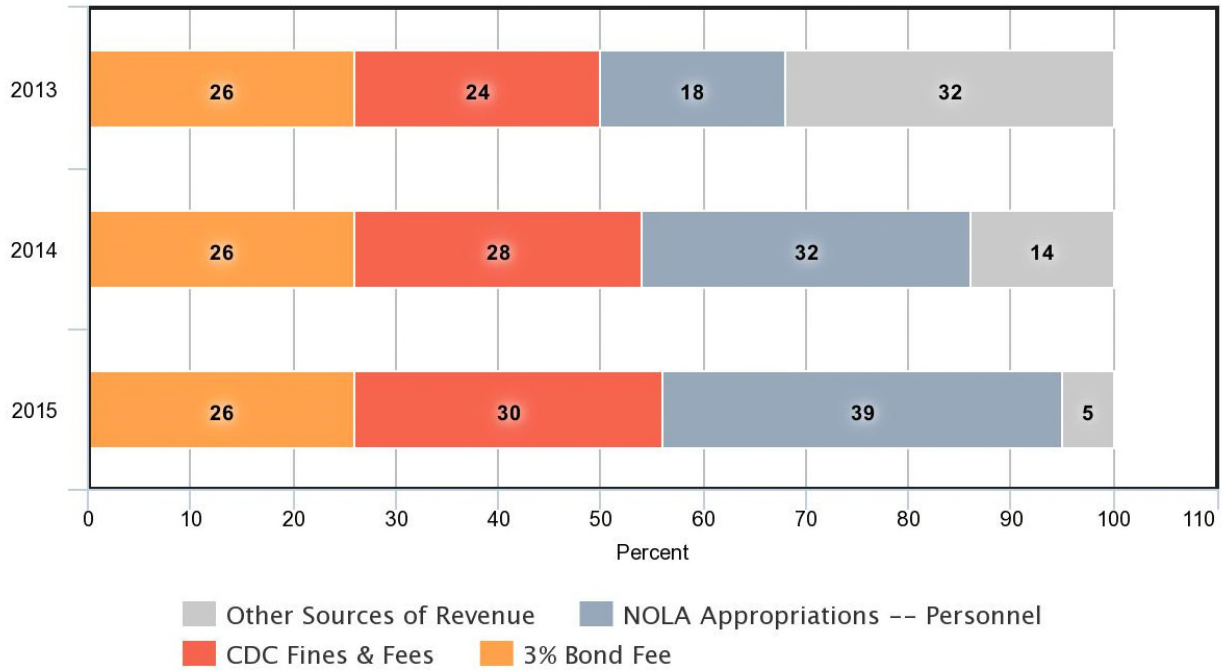
### **General Fund Revenues**

25. The General Fund is composed largely of three kinds of revenue: money appropriated by the City of New Orleans for OPCDC personnel costs (“City Money”); money received pursuant La. R.S. § 22:822 (the 3% bail “Bond Fee”); and money collected as a result of fees, costs, and fines assessed by the Judges (“Costs”). Ex. 18 (OPCDC accountant describing OPCDC General Fund revenue sources to City Councilmembers); Ex. 13 (table of OPCDC General Fund Revenue, by Major Sources, 2015-2012).

26. In the year this Case was filed (2015) and the two years prior, a majority of General Fund revenue came from the 3% Bond Fee and from Costs collected by the OPCDC. Ex. 13.



**The Majority of the OPCDC’s General Fund (Unrestricted) Revenue comes from the 3% Bond Fee and “Fines & Fees” Collections between 2013 and 2015**



meta-chart.com

27. The total amount of money the OPCDC receives from the City of New Orleans changes every year and is within the discretion of the New Orleans City Council (“City Council”). See Rec. Doc. 248 ¶ 1; Ex. 13 (showing appropriations ranging from \$749,065 in 2013 to \$1,549,065 in 2015); Ex. 14 (transcript of City Council hearing in which Councilmember estimates that the City is obliged by State law to pay only \$173,700 annually to the OPCDC for personnel); La. R.S. §§ 13:1373, 13:1347A(2) (obliging City to pay \$4,800 annually for salaries of each minute clerk, \$5,400 for each court reporter).

28. The OPCDC receives approximately one million dollars per year as a result of the Bond Fee. Rec. Doc. 248 ¶ 1.

29. The 3% Bond Fee is a fee collected by the Sheriff for the OPCDC on every monetary bail set by the Judges and paid with a commercial surety. Rec. Doc. 248 ¶ 29. The portion retained by the Judges is equal to 1.8% of whatever monetary bail amount that they impose.

La. R.S. § 22:822(A)(2); § 13:1381.5(B)(2)(a). (The rest of the 3% is divided between the District Attorney, the Sheriff, and the Public Defender. *Id.*)

30. The Judges have “extremely broad” discretion over the use of Bond Fee money. La. R.S. § 13:1381.5(B)(2)(a) (directing Sheriff to deposit Bond Fees into Judicial Expense Fund); Ex. 6 at A.7 (letter from OPCDC judges describing language as to purpose in § 13:1381.4, establishing the “Judicial Expense Fund,” as “extremely broad”); Rec. Doc. 248 ¶ 29.

31. The Judges can influence Bond Fee revenues by requiring defendants who appear before them to pay a secured money bail rather than permitting release on an unsecured bond or using non-financial condition of release, and by increasing or decreasing the amount of money bail required. *See* La. Code Crim. Proc. art 314 (authority to fix bail); art. 321 (types of bail).

32. Most defendants whose money bail is set by OPCDC judges are required to pay a secured money bail. Ex. 15 at 25, 25 n.39 (showing that, in 2015, 5,031 individuals were ordered to pay secured money bail in order to be released from jail and 609 were released on their own recognizance).

33. Most OPCDC defendants ordered to pay money bail do so using a commercial surety. *Id.* at 24 (stating that in 2015, 97% of those who posted money bail used commercial surety). The Judges only receive a percentage of the monetary bond payment if it is made through a commercial surety. La. R.S. § 22:822.

34. In a hearing before the City Council on October 28, 2013, an accountant for the OPCDC described the Bond Fee revenue as “critical” to the OPCDC’s ability to meet monthly payroll expenses. Ex. 16 (transcript); *see also* Rec. Doc. 248 ¶ 29 (Bond Fee supplements payroll).

35. In addition to the Bond Fee, the OPCDC receives approximately one million dollars per year as a result of the Costs collections from OPCDC court debtors. Rec. Doc. 248 ¶ 1; Ex.

17 (council hearing transcript). Defendant Zibilich has told the City Council that the OPCDC “need[s]” Costs revenues “to be operational.” Ex. 17.

### **OPCDC Assessments & Collections**

36. The Judges influence Costs revenue at the front end, by exercising their discretion to increase or decrease total costs assessed on OPCDC defendants, and at the back end, by exercising control over the manner in which costs are collected. Rec. Doc. 248 ¶¶ 13, 15, 19; Ex. 18 (testimony of OPCDC accountant to City Council, stating: “The biggest area that we can hopefully influence is gonna be the collection of fees . . . fines and fees”).

### **Monetary Assessments at Sentencing**

37. The Judges’ monetary assessments at sentencing serve to generate revenue for the OPCDC and indicate efforts in recent years to increase OPCDC Costs revenue.

- a. The Judges generate revenue via sentencing assessments in a variety of ways.
  - i. They may<sup>1</sup> assess a fine. The OPCDC receives 50% of all money assessed and collected as fines. La. R.S. § 15:571.11(D). But, unlike with other assessments, the Judges must share any fine money assessed with the District Attorney. *Id.* Any money collected per § 15:571.11(D) may also decrease money that the City may be obligated to pay to the OPCDC (for jury expenses). La. R.S. § 15:304.
  - ii. They may assess a discretionary “additional cost” not exceeding \$500 for a misdemeanor or \$2,500 for a felony. La. R.S. § 13:1381.4(A)(2).
  - iii. They may assess additional costs of up to \$100. La. R.S. § 13:1377(A).
  - iv. They may assess a cost of \$5. La. R.S. § 13:1381.4(A)(1).
  - v. They may assess \$14.50 per case “to compensate court reporters” for “transcripts for indigent defendants.” La. R.S. § 13:1381.1(A).
  - vi. They may assess unspecified amounts for the “Indigent Transcript Fund” pursuant to La. Code Crim. Proc. art. 887(A). Rec. Doc. 248 ¶ 14.
  - vii. They may assess unspecified costs for probation supervision or drug testing pursuant to La. R.S. §§ 13:5301-5304.
  - viii. Since 2013, the Judges have assessed five different costs for the OPCDC in most cases at sentencing: a \$5 cost, pursuant to La. R.S. § 13:1381.4(A)(1);

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<sup>1</sup> Use of “may” in this section is meant only to describe the Judges’ practices at sentencing. It reflects no judgment as to whether those assessments are mandatory or discretionary or properly imposed in any given case under Louisiana law. The legality of certain of the Judges’ common assessment practices, even under state law, is the subject of controversy.

a cost of \$14.50, per § 13:1381.1(B); a \$100 cost, per § 13:1377; costs in the hundreds of dollars, with no specified limit, for the “Indigent Transcript Fund,” pursuant to La. Code of Crim. Pro. art. 887(A); and costs in the hundreds of dollars, up to \$500 for a misdemeanor or \$2500 for a felony, per La. R.S. § 13:1381.4(A)(2). Ex. 19 at Ex. B, 10-19 (table of monetary assessments at sentencing in twenty cases from Sections A-L and fifteen from Section M); Rec. Doc. 248-1 at 5 (“Court Cost Breakdown”).

ix. All of these assessments become part of the General Fund. Rec.Doc. 248 ¶ 2; Ex. 30 at (2015 OPCDC Mid-Year Budget Hearing presentation).

b. Most defendants are only ordered to pay costs and fees, not fines or restitution. Rec. Doc. 248 ¶ 14 (6 of 6 plaintiffs ordered to pay no fines); Ex. 19 at Ex. C, 17-23 (table showing percentages of total monetary assessments for 255 cases composed of fines, restitution, and costs for the OPCDC).

Cases with Only Costs and/or Fees Assessed at Sentencing out of 255 Surveyed	206	81%	4 in 5
Cases with Fine Assessed at Sentencing	14	5%	1 in 20
Cases with Restitution Assessed	35	14%	1 in 7
Cases with No Costs or Fees Assessed	7	3%	1 in 33

c. For most individuals, most money assessed by the Judges is due back to the OPCDC itself. Rec. Doc. 248 ¶ 14 (showing Plaintiffs’ assessments); Ex. 5 (showing assessments per La. R.S. § 13:1381.4 and La. Code Crim. Proc. art 887(A) go to OPCDC); Ex. 19 at Ex. C, 17-23 (table showing percentage of total monetary assessments in 255 that is due back to the OPCDC as revenue).

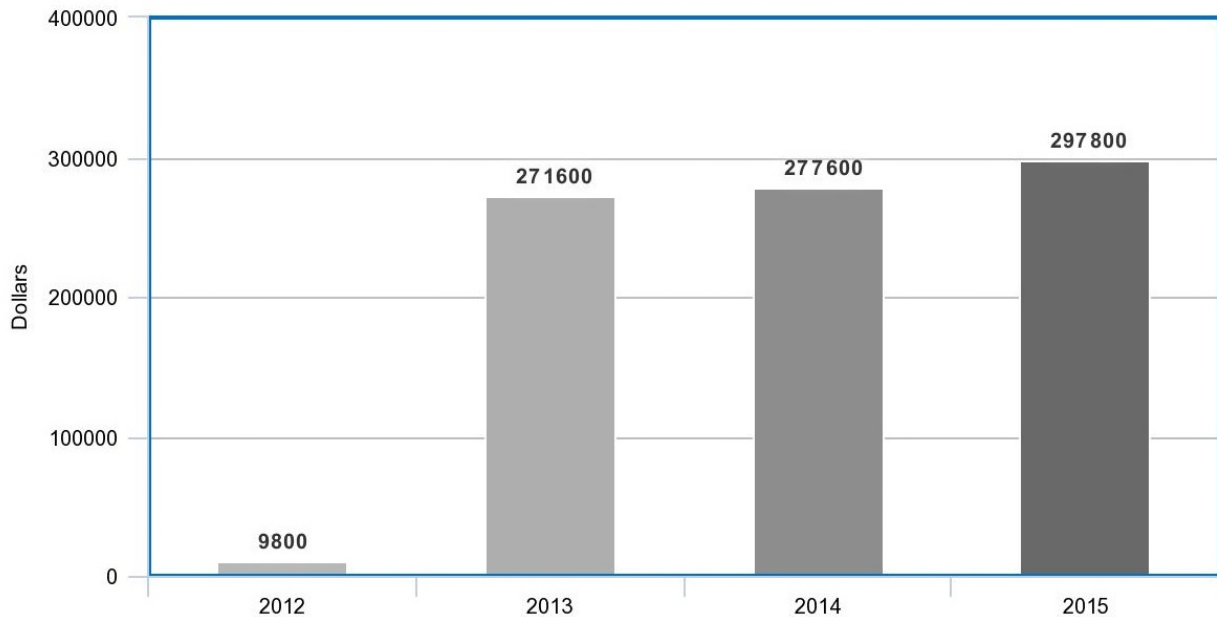
d. In 2012, 2013, 2014, and 2015, the Judges’ total assessment of fines was dwarfed by their total assessment of court costs for the OPCDC pursuant to La. R.S. § 13:1381.4 alone. Rec. Doc. 248-1 at 6-9 (compare “‘FINE’ 50% Split with DA” with “JEF Misd./Felony”).

e. The total amounts assessed in the form of fines and the total number of Judges assessing fines at all has decreased since 2012. Rec. Doc. 248-1 at 6-9. Most Judges assessed less than \$1,000 total in fines in 2014 and 2015. *Id.*

	2012	2013	2014	2015
Total Judges who assessed No fines	2	4	6	9
Total Judges who assessed between \$1 and \$1,000 total in fines	4	1	2	3
Total Judges who assessed between \$0 and \$1,000 total in fines	6	5	8	12

f. Since 2012, annual total assessments for the Indigent Transcript Fund (“ITF”) have increased by almost 3,000%. *Id.*

**Judges' Assessments for the Indigent Transcript Fund Increased almost 3000% from 2012 to 2013, 2014, and 2015**



g. Each individual Judge’s assessments for the ITF increased over those same years at very high rates. *Id.*

Section	2012 ITF Assessments	2013 ITF Assessments	% Change Over 2012	2014 ITF Assessments	% Change Over 2012	2015 ITF Assessments	% Change Over 2012
1	\$200.00	\$7,950	3875%	\$9,950	4875%	\$23,470	11635%

2	\$100.00	\$20,463	20363%	\$12,737	12637%	\$3,500	3400%
3	\$7,450.00	\$26,100	250%	\$25,084	237%	\$13,000	74%
4	\$350.00	\$20,984	5895%	\$30,782	8695%	\$34,450	9743%
5	\$408.00	\$9,908	2328%	\$23,275	5605%	\$36,319	8802%
6	\$383.00	\$12,659	3205%	\$13,910	3532%	\$14,500	3686%
7	\$0.00	\$12,377	NA	\$16,343	NA	\$10,816	NA
8	\$191.50	\$43,794	22769%	\$53,450	27811%	\$41,800	21728%
9	\$100.00	\$41,577	41477%	\$28,577	28477%	\$31,150	31050%
10	\$159.00	\$19,550	12196%	\$13,300	8265%	\$18,525	11551%
11	\$500.00	\$17,300	3360%	\$16,374	3175%	\$34,800	6860%
12	\$0.00	\$0	NA	\$550	NA	\$0	NA
17	\$0.00	\$38,920	NA	\$33,200	NA	\$35,250	NA
Total	\$9,841.50	\$271,582	2660%	\$277,531	2720%	\$297,580	<b>2924%</b>

h. Total combined assessments for the ITF and pursuant to La. R.S. § 13:1381.4 (“JEF”) were \$600,000 higher in 2015 than in 2012, despite the fact that the OPCDC closed almost 40% fewer cases in 2015 than in 2012. *See* Rec. Doc. 248 ¶ 17 (showing closed cases); Rec.Doc. 248-1 at 6-9 (showing JEF and ITF assessments, under “JEF Misd./Felony” and “ITF”).

	2012	2013	2014	2015	
Total JEF Assessed	\$818,777.00	\$1,105,750.82	\$872,301.50	\$1,147,199.50	
Total ITF Assessed	\$9,841.50	\$271,581.75	\$277,581.00	\$297,779.50	
Total JEF + ITF Assessed	\$812,960	\$1,205,333	\$1,134,458	\$1,416,329	
Total Cases Closed ("X")	5904	4630	4233	4282	
% Change JEF Over Prior Year	NA	35%	-21%	32%	
% Change X Over Prior Year	NA	-22%	-9%	1%	
% Change X in 2015 from 2012					-38%
Difference 2012 JEF + ITF Assessed from 2015					\$603,370

i. Combined assessments for the ITF and JEF increased in 2013, 2014 and 2015 from 2012 despite a change in State law effective mid-2012, which increased another

cost for the OPCDC from \$25 to \$100. Act 578 (Regular Session 2012), Louisiana State Legislature, amending La. R.S. § 13:1377.

- j. The Judges choose to assess costs pursuant to La. R.S. § 13:1377 on almost every defendant. *See* Ex. 19, at Ex. B, 10-16 (showing “Costs” equal to Court Cost Breakdowns assessed on most defendants); Rec. Doc. 248-1 at 5 (2015 “Court Cost Breakdown,” showing \$100 cost for Criminal District Court); Ex. 28 (2012 Breakdown, showing \$25 cost for same); Ex. 19 at Ex. D, 24 (table showing changes in Court Cost Breakdown); Ex. 19 (Second Kelley Declaration explaining calculations).

38. Pursuant to Louisiana law, OPCDC judges also assess a number of court costs and fees at sentencing that the OPCDC collects and transmits to a variety of other actors in the criminal legal system, including, as of at least February 2015, the following: \$25 to the “Criminal Sheriff,” \$45 to the Orleans Public Defender, \$10 to the Clerk of Criminal District Court, \$20 to the District Attorney, \$2 to the Louisiana Commission on Law Enforcement’s Training and Assistance Fund, \$50 for the Crime Victims Reparation Fund, \$3 to the Louisiana Supreme Court, \$2 for Crime Stoppers, \$10 to the Coroner’s Operation Fund, and, for drug convictions only, an additional \$50 for the Drug Abuse Education and Treatment Fund. Rec. Doc. 248-1 at 5 (“Court Cost Breakdown”).

39. The Judges know that the people upon whom the OPCDC relies for Costs—the people they sentence—were almost all found indigent and often lack any assets or steady income.

- a. Mr. Kazik has publicly represented that most of the people relied upon for Costs are “indigent and unemployed.” In an August 2014 letter to Deputy Mayor and

CAO for the City Andy Kopplin, Mr. Kazik appealed to the City for additional funding, explaining the OPCDC's need for additional funding as follows:

The remainder of the budget is received from the various fines and fees assessed to defendants at sentencing. *Most defendants are unemployed and indigent, which makes collecting those assessed fees a challenge* and an unreliable revenue resource for the Court's operational needs. Ex. 11 (emphasis added).

- b. At a City Council hearing in July 2014, Defendant Zibilich estimated that 95% of all OPCDC defendants cannot afford an attorney. Ex. 21 (transcript). He added: "If they can't afford an attorney, just imagine how difficult it's going to be for us to chase him around the block to try to get money from them." *Id.*
- c. At a City Council hearing in June 2015, the OPCDC's accountant explained that annual revenues were lower than expected because of the difficulty of collecting Costs. Ex. 18. He stated: "There's really no explanation other than the source of our funding is not very reliable when it comes to fees that we collect from inmates — our defendants I should say." *Id.*
- d. Later in that same hearing, the OPCDC's accountant was asked why the OPCDC did not accept payment via credit card. Ex. 18. He explained: "I don't think that we found that that would be an asset to the people that are paying us fees. I'm not sure those individuals have credit cards." *Id.* When a Councilmember pointed out that the Municipal Court accepts credit cards, he explained the difference as follows: "They're citizens that are paying fines and fees over there, versus, we're actually dealing with an indigent client base and ex-criminals that we're dealing with on our side." *Id.*



- e. A local news story on funding the courts “off the backs of the poor” reported former OPCDC Judge Calvin Johnson as stating: “I was as guilty of that as any when I was on the bench, but you have to fund yourself in some fashion. And so you did it on the backs of the people who were least able to pay.” Ex. 33.
- f. All of the Plaintiffs were determined to be indigent. Rec. Doc. 228 at 6.

40. The Judges do not routinely solicit information from individual defendants relevant to the individuals’ ability to pay court-imposed debt, at sentencing or otherwise. Ex. 22 (Response to No. 14) (stating Judges consider “input received from defense counsel and/or the defendant *when brought to the Court’s attention*” (emphasis added)). They do not systematically collect information on individuals’ income, assets or liabilities. *Id.*

- a. None of the Plaintiffs or former plaintiffs were asked any information relevant to their financial income, assets, or liabilities at sentencing. Rec. Doc. 95-3 at 6-24 (Cain); Rec. Doc. 95-4 at 11-25 (Brown); Rec. Doc. 95-6 at 8-14 (Reynajia Variste); Rec. Doc. 95-8 at 8-16 (Maxwell); Rec. Doc. 95-7 at 6-12 (Long); Rec. Doc. 95-5 at 36-52 (Reynaud Variste).
- b. Judges Buras and Cantrell, on behalf of the OPCDC, have been working with other stakeholders from Orleans Parish on a system-wide plan to reduce the Parish jail population. Ex. 31 (Criminal Justice Council, Jail Population Management Subcommittee, “Strategic Plan to Reduce the Jail Population”); Ex. 10 (Judges Buras and Cantrell endorse plan on behalf of OPCDC). The group developed a list of goals, released in September 2015, expected to produce a reduction in the local jail population, Ex. 31 at 2, the first one of which is for the OPCDC judges to

“asses[s] indigency at sentencing” and “to scale discretionary fees and fines correspondingly,” *id.* at 6, 7.

41. The Judges expect that if they took individuals’ ability to pay into consideration at sentencing and scaled discretionary fees and fines accordingly, they would lose Costs revenue. *Id.* at 7 (New Orleans Criminal Justice Council plan to implement “Indigency Assessment at Sentencing,” and proposing “compensation to judges for fines and fees portion of the Judicial Expense Fund, assuming a reduction of discretionary fines”).

### **OPCDC Post-Sentencing Debt Collection**

42. At least until the filing of this Case, OPCDC defendants who did not pay their court-imposed debt immediately after sentencing were sent to the Collections Department. Rec. Doc. 248 ¶ 18.

43. All of the Plaintiffs were assessed costs and fees, Rec. Doc. 248 ¶ 14, including costs that were due back to the OPCDC itself, ranging from \$44.50 (Long, cut for OPCDC of “Court costs”) to \$744.50 (Cain, JEF plus ITF plus cut for OPCDC of “Court costs”), *id.*; Ex. 19 at ¶ 19 (explaining changes in cuts of “Court costs” due to OPCDC over time, citing Ex. 28 (2012 “Court Cost Breakdown”) and Rec. Doc. 248-1 at 5 (2015 “Court Cost Breakdown”)). They were all directed to set up payment plans with the Collections Department after sentencing. Rec. Doc. 248 ¶ 11.

44. The Collections Department (“Collections”) was created by the then-sitting OPCDC judges sometime in the late 1980s to facilitate the collection of court debts. *Id.* ¶ 19. It is staffed by OPCDC employees who each hold the title “Collections Agent.” *See, e.g.*, Ex. 2.

45. Debtors previously sentenced by OPCDC judges sometimes also have additional debts imposed post-conviction for drug testing fees. *See supra* ¶ 37(a)(vii); Ex. 20 at \*6 (original

sentence showing \$500 and \$190.50 costs imposed), \*5 (Collections Report issued years later showing \$1,390.00 bill for “Drug Screening Fee,” in addition to costs imposed at sentencing). As a result, the total share of court-imposed debts due back to the OPCDC may increase over time for certain debtors. *Id.*

46. The Judges prioritize collection of costs and fees due back to the OPCDC above costs due to other criminal justice actors by applying partial payments to OPCDC costs first. Rec. Doc. 248 ¶ 9.

47. At least until the filing of this Case, Collections Agents had authority from some Judges to accept payments, to create payment plans, to grant extensions for payment, to telephone or write individuals who missed payments, to issue arrest warrants, and to recall those arrest warrants in their discretion for no payment, partial payment, or full payment. *Id.* ¶ 23.

48. At least until the filing of this Case, Agents had no standard list of questions to ask an individual, except those asked at an individual’s first meeting with Collections (“Intake”), when Agents obtained address, telephone, and employment information (that is, place of employment, if any). *Id.* ¶ 22; Ex. 23 (Response to Nos. 15-20); Rec. Doc. 1-2 at 4:29-5:6.

49. There is no Collections Department policy related to assessing whether an individual who owes court-imposed debts has the ability to pay those debts. Ex. 23 (Response to No. 13).

50. There are no written rules, procedures, guides, training materials or manuals governing the Collections Agents’ work, including with respect to assessing an individual’s ability to pay court debts or how to determine whether and when to choose to order the person’s arrest for non-payment. Ex. 24 (Response to Nos. 4, 6, 11).

51. Payment plans are generally \$100 per month. Ex. 23 (Nos. 15-20).

52. At intake, Collections Agents give individuals a document titled “Payment Notice,” which lists the total amount of OPCDC debts due and the due date for first payment, and which states after the due date: “If payment is not received by 3:00 p.m., a warrant will be issued for your arrest.” *See, e.g.*, Rec. Doc. 95-6 at 16 (Payment Notice to Reynajia Variste).

53. Each Collections Agent sets his or her own pace for reviewing payment delinquency. Rec. Doc. 248 ¶ 27.

54. Collections Agents are trained to send two letters (“Letters”) to individuals who miss one or more payments. Rec. Doc. 1-2 at 6:6-14; *see also* Ex. 22 at 40-41 (blank examples of such letters). One Letter instructs individuals to appear at Collections “to resolve the matter” of the delinquent payment. Ex. 22 at 40. It concludes: “Failure to comply with the conditions of probation will result in your immediate arrest.” *Id.* Plaintiffs Brown, Maxwell, and Reynajia Variste were sent such Letters. Rec. Docs. 95-4 at 29; 95-8 at 18; 95-6 at 17. There is no record of such a Letter sent to Plaintiff Cain. Rec. Doc. 95-3 at 37. The other Letter, titled “\*\*\*\*\*FINAL NOTICE\*\*\*\*\*/A WARRANT WILL BE ISSUED FOR YOUR ARREST!!!,” begins: “Since you have not responded to the Court’s instructions as to this above referenced case, we will have no alternative but to issue a warrant for your arrest.” Ex. 22 at 41. There is no record of such a Letter sent to any of the Plaintiffs. Rec. Docs. 95-3, 4, 6, and 8.

55. The Letters do not inform individuals that they have a right to be heard with respect to their ability to pay the debt due. Ex. 22 at 40-41. The Letters do not instruct individuals to appear before a judge, or at a specific time or date. *Id.*

56. The Letters are sent by regular mail. Rec. Doc. 1-2 at 9:7-14.

57. At least until the filing of this Case, if an individual did not pay the amount due by the due date, a Collections Agent reviewing the case would typically issue a warrant for the

individual's arrest. Rec. Doc. 248 ¶ 24; Rec. Doc. 1-2 at 7:2-30. Agents were expected to check the Docket Master (a database containing court dockets) to see if an OPCDC judge had granted an extension or accepted a payment unbeknownst to Collections, as well as probation and local jail records. Rec. Doc. 248 ¶ 24. If those sources revealed no information, Agents themselves issued an arrest warrant. *Id.*

58. Agents are not required to consult with OPCDC judges before issuing a warrant in any given case. Rec. Doc. 1-2 at 9:26 - 10:1-5; 7:2-30.

59. Agents do not complete affidavits or testify to the existence of facts supporting the issuance of an arrest warrant. Rec. Doc. 1-2 at 7:31-8:9.

60. Agents do not present the warrants to OPCDC judges or other staff for review or signature. Rec. Doc. 248 ¶¶ 23, 24; Rec. Doc. 1-2 at 8:5-22. .

61. Collections Agents use computer software to affix the signature of an OPCDC Judge to the arrest warrant even though that Judge is not aware of the issuance of the warrant, or the facts supporting it, in any given instance. Rec. Doc. 1-2 at 8:5-31

62. Agents do not inform a target individual when an warrant is issued for his or her arrest. Rec. Doc. 248 ¶ 24.

63. At least until the filing of this Case, some Judges authorized a predetermined bond for the debt-collection arrest warrants issued by the Collections Department, typically in the amount of \$20,000. Rec. Doc. 248 ¶ 25. A blank example of a Collections Department warrant is attached as Exhibit 22 at 43. Collections Department warrants state they are for contempt. *Id.*

64. All Plaintiffs were arrested on Collections Department warrants with \$20,000 predetermined secured bonds. Rec. Doc. 248 ¶ 11.

65. A money bail amount of \$20,000 is seventeen times higher than the total amount of monetary debt assessed in an average case (\$1,125) in the OPCDC in 2015. *See* Ex. 15 at 28.

66. Individuals arrested on Collections Department warrants are expected to stay in jail unless or until they can obtain release by asking friends and family to make payments to Collections. Rec. Doc. 1-2 at 12:25-13:28.

a. While incarcerated at the Orleans Parish Prison (“OPP”), Plaintiff Vanessa Maxwell wrote inquiries to OPP staff asking why she was being detained and how she could be released. Ex. 25. In response to her first grievance, staff wrote: “NO COURT DATE SHOWING YET . . . ALL YOU HAVE TO DO IS GET SOMEONE TO GO TO FINES AND FEES TO MAKE ARRANGEMENTS. AND AS LONG AS YOU ARE NOT ON ACTIVE PROBATION [O]R PAROLE AND SOMEONE GO MAKE ARRANGEMENTS . . . FINES AND FEES WILL SENT A RELEASE.” *Id.* at 1.

b. Two days later Maxwell again wrote to OPP staff, asking, “attention capt. Franklin could u please try an get me on the [docket] . . . been here sence day before mothers day could u please see what u can do for me thank u.” *Id.* Jail staff replied: “ITS A FINES N FEES WARRANT . . . YOU CAN GET A FAMILY TO GO OVER AND MAKE ARRANGEMENTS WITH FINES N FEES . . . EXPLAIN YOU HAVE BEEN INCARCERATED THEY WILL MAKE SOME TYPE OF ARRANGEMENTS FOR PAYMENTS.” *Id.*

67. None of the Plaintiffs were brought before a magistrate or judge within 72 hours of their arrest on a debt-collection warrant.

- a. Plaintiff Cain spent a week in jail before being brought to court. Ex. 27 (detention reports from OPP) at 1 (arrested 3/11/2015); Rec. Doc. 95-3 at 2 (appeared 3/18/2015). She was released without payment. *Id.* (entry 3/18/2015).
  - b. Plaintiff Brown spent approximately two weeks in jail before he was brought before an OPCDC judge to resolve his Collections Department warrant, and another night in jail after that appearance before an order issued for his release, after Brown's family made a \$100 payment to Collections. Rec. Doc. 95-4 at 3 (docket entries dated 7/23/2015, 8/06/2015, and 8/07/2015); Rec. Doc. 8-3 ¶¶ 7-12.
  - c. Plaintiff Maxwell spent twelve days in jail before being brought to court. Ex. 27 at 2 (arrested 5/10/2015); Rec. Doc. 95-8 at 2 (appeared 5/22/2015). She was ordered released without payment. *Id.* (entry for 5/22/2016).
  - d. Plaintiff Reynajia Variste spent six days in jail before being brought to court. Ex. 27 at 3 (arrested 5/28/2015); Rec. Doc. 95-6 at 1 (appeared 6/02/2015). She was ordered released on June 2, 2016 after a family member paid \$400 to Collections. Rec. Doc. 95-6 at 1 (order of 6/02/2015); *id.* at 22 (payment of \$400 on 6/02/2016). She was released one day later, on June 3, 2016. Ex. 27 at 3.
  - e. Plaintiff Thaddeus Long spent eight days in jail before being brought to court. Ex. 27 at 4 (arrested 6/8/2015); Rec. Doc. 95-7 at 1-2 (appeared 6/15/2015). He was ordered released without payment on June 15, 2015, Rec. Doc. 95-7 at 1-2, and released two days later, on June 17, 2015, Ex. 27 at 4.
68. Until at least the filing of this Case, it was common for individuals arrested solely on Collections Department warrants to be detained more than 72 hours before being brought to

court. *See* Ex. 32 (table showing examples from review of 41 initial case files produced by the Judges before discovery was stayed).

- a. Tyrone Singleton was arrested on November 11, 2013. The OPCDC was notified of his arrest fourteen days later, on November 25, 2013. He appeared in the OPCDC the next day, November 26, 2013, and was reset for appearance one week later, on December 3, 2013. He was released December 3, 2013, without payment.
- b. Jamar Higgins was arrested on December 22, 2014. The OPCDC was notified of his arrest one week later, on December 29, 2014. He appeared before a judge nine days later, on January 7, 2015, and was released without payment.
- c. Jeffrey Valentine was arrested on January 28, 2015. The OPCDC was notified of his arrest six days later, on February 3, 2015. He appeared before a judge another six days later, on February 9, 2015, and was released without payment.
- d. Keenan Sorrell was arrested on December 4, 2012 and again on March 8, 2013. On his first arrest, he was confined for nine days before seeing a judge, then released upon promise to pay \$30 within a few days' time. On his second arrest, he was confined for four days before seeing a judge, and was released without payment.
- e. Charles Hughes was arrested on July 8, 2014 and again on April 21, 2015. On his first arrest, he was confined for 15 days before appearing before a judge, then confined another two days before a satisfactory payment of \$140 was made to Collections. On his second arrest, he was confined six days before seeing a judge, and released after the judge ordered \$119 seized at the time of his arrest surrendered to the OPCDC.



f. According to the Vera Institute of Justice, in 2015 and the first half of 2016, defendants sentenced in 2015 and jailed solely on a warrant issued by the OPCDC for failure to pay were jailed an average of two weeks before release. Ex. 15 at 30.

69. There are thousands of individuals who owe debt imposed by the OPCDC Judges and who may be subject to the practices described above. Rec. Doc. 248 ¶¶ 13, 17.

70. In a hearing before City Councilmembers on July 9, 2014 regarding the OPCDC's budget, OPCDC judges were asked about their court cost collections efforts. Ex. 21. Councilmember Guidry began her question by stating that “obviously the people who come through the criminal district court aren't as a rule moneyed people.” *Id.* Defendant Willard explained that the judges were working “collectively and collaboratively” to try to “increase” collections, including by sharing ideas at meetings. *Id.* He pointed out that Defendant Zibilich is one of the OPCDC's “top collectors” and had ideas to share. *Id.* Willard concluded that, in any event, the Judges could not “put somebody in jail simply because they have a debt that's owed to the court.” *Id.* Judge Zibilich interjected:

You're darned if you do, and you're darned if you don't. If you pick somebody up for failing to pay the fine—you can threaten them, and you can scare them into maybe paying the money. But guess what happens while they're in jail ? ... All of us are paying for them to be in jail. . . . Basically all you can do is—I mean this is terrible to say, but it's about inconveniencing somebody into paying. If I put them on the docket once a week and see if I can collect the twenty-five dollars, sooner or later, they're gonna say, 'wow, it's costing me an hour-and-a-half, two-and-a-half hours every time I gotta go deal with Zibilich, so maybe, maybe I'll pay so I don't have to see him.' *Id.*

Soon thereafter, Councilmember Guidry commented, “This is not at all the way that a court system should be funded.” *Id.*

71. A local news story reported Defendant Flemings-Davillier as stating: “Of course, I’d like [the OPCDC] to be funded another way. . . . But we’ve got to get funded. It is what it is.” Ex. 26. The same story reported Defendant Hunter as stating: “I think the way we fund criminal justice in New Orleans is a sin. We saw this happening in Ferguson (Missouri). It’s really happening around the county. It’s . . . backwards. You’re placing an additional burden on someone who (as a result) may end up back in jail.” *Id.* (alterations in original).

72. In a hearing before the City Council on the OPCDC’s proposed budget for 2016, Defendant Zibilich reflected on the impact of the filing of this Case as follows:

[T]he unfortunate thing is we’re going to be back looking for help from you all as a direct result of this lawsuit. . . . It is already impacting the way that certain judges deal with collections. . . . [W]e collect somewhere in the neighborhood of about a million dollars a year through fines and fees, not counting restitution. That million dollars probably represents fully a fourth of the monies that we need to be operational, and if we are handcuffed in that particular regard, that money replacement’s going to have to come from some place. So it’s unfortunate. Ex. 17.

Dated: June 20, 2017

Respectfully submitted,

*/s/ Alec Karakatsanis*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2017 a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

*/s/ Judy Kwan* \_\_\_\_\_