

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

VALARIE WHITNER, VINCENT BLOUNT, and))	
MILDRED BRYANT, individually and on behalf))	
of all others similarly situated,))	
)	
Plaintiffs,))	
v.))	Civil Case No. <u>4:15-cv-01655-RWS</u>
)	
CITY OF PAGEDALE, a Missouri municipal))	
corporation,))	
)	
Defendant.))	

**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CONSENT DECREE
AND FOR ENTRY OF AN ORDER FOR NOTICE AND HEARING**

Pursuant to Federal Rules of Civil Procedure 23 ("Rule 23"), Plaintiffs Valarie Whitner, Vincent Blount, and Mildred Bryant, on behalf of themselves and all others similarly situated (together, "Plaintiffs"), respectfully submit this Motion for Preliminary Approval of Consent Decree and for Entry of an Order for Notice and Hearing. In support of this motion, Plaintiffs state as follows:

1. On November 4, 2015, Plaintiffs filed this action against the city of Pagedale (the "City"). Pls.' Civil Rights Class Action Compl., ECF No. 1 ("Complaint"). The Complaint alleged that the City's enforcement of its municipal code and its operation of its municipal court violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

2. The first count of Plaintiffs' complaint ("Count One") sought relief on behalf of a proposed class of "all persons who, at any time since January 1, 2010, have received warnings

that they may receive tickets, have been ticketed, or will be ticketed by the city of Pagedale.”

Complaint ¶ 85.

3. As fully set forth in the accompanying Memorandum of Law in Support of Plaintiffs’ Motion for Preliminary Approval of Consent Decree and for Entry of an Order for Notice and Hearing (“Memorandum”), the parties have negotiated a consent decree (the “Consent Decree”) that, if entered, would resolve this case and provide significant benefits to the proposed class. It would provide meaningful procedural protections for defendants in the City’s municipal court and would reform the City’s municipal code. It would also foreclose further litigation expenses for the City and Plaintiffs.

4. Plaintiffs satisfy the requirements for certification of the class for settlement purposes under Rule 23. Specifically, Plaintiffs satisfy the requirements of Rule 23(a) for the following reasons.

5. Plaintiffs satisfy the numerosity requirement of Rule 23(a)(1) because the City has issued thousands of tickets to individuals since January 1, 2010, and warned a substantial number of people that they may be ticketed.

6. Plaintiffs satisfy the commonality requirement of Rule 23(a)(2) because the Complaint alleges that members of the proposed class have all suffered the same injury and this injury was caused by the City.

7. Plaintiffs satisfy the typicality requirement of Rule 23(a)(3) because Plaintiffs have the same interests and seek the same remedies as other class members, namely, declaratory and injunctive relief.

8. Plaintiffs satisfy the adequacy requirements of Rule 23(a)(4) because they and

their counsel are willing and competent to pursue this litigation and because the named plaintiffs' interests are not antagonistic to the interests of others in the proposed class.

9. Plaintiffs satisfy Rule 23(b)(2) because they represent a cohesive class that seeks declaratory and injunctive relief.

10. Plaintiffs meet the standards for preliminary approval of the Consent Decree under Rule 23(e) because the Consent Decree is fair, reasonable, and adequate.

11. The Consent Decree provides the class with substantial immediate benefits. The class may not achieve a similar level of success if the case proceeds on the merits. Even if Plaintiffs were successful at the end of litigation, moreover, these benefits would be years away.

11. The Consent Decree will not cause undue financial harm to the City because it does not award any money damages or attorneys' fees.

12. The Consent Decree will foreclose expensive, complex, and time-consuming litigation and save the resources of Plaintiffs, the City, and this Court.

13. The Consent Decree represents extensive arms-length negotiations between the parties. There is no evidence of collusion or uninformed decision-making and the Consent Decree is not unduly favorable to the named plaintiffs or their lawyers.

14. The Consent Decree also provides for notice to class members that is both constitutionally sufficient and compliant with Rule 23.

15. Accordingly, Plaintiffs respectfully request that this Court enter an order that does the following:

- a. certifies Plaintiffs' proposed class as a settlement class;
- b. appoints the Institute for Justice and Bryan Cave LLP as class counsel;

- c. schedules a hearing for consideration of this motion for 1:30 p.m.,
February 2, 2018;
- d. schedules a final approval hearing at least ninety (90) days from the date
this Court enters an order granting preliminary approval of the Consent Decree;
and
- e. directs that notice be provided to members of the class substantially in the
form of Exhibit B to the Consent Decree and by the means described in the
Memorandum.

WHEREFORE, for these reasons and those set forth in the Memorandum, Plaintiffs respectfully request that this Court grant this motion.

DATED this 11th day of January, 2018.

Respectfully submitted,

INSTITUTE FOR JUSTICE

/s/ William R. Maurer

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**Admitted Pro Hac Vice*

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2018, this *PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CONSENT DECREE AND FOR ENTRY OF AN ORDER FOR NOTICE AND HEARING* was electronically served on the below parties using the CM/ECF system of the United States District Court for the Eastern District of Missouri:

BEHR, MCCARTER & POTTER, P.C.

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Attorneys for Defendant City of Pagedale

INSTITUTE FOR JUSTICE

/s/ William R. Maurer

William R. Maurer*, WSBA No. 25451

**Admitted Pro Hac Vice*

Attorney for Plaintiffs

Exhibit 1

to the Motion for Preliminary Approval of
Consent Decree and for Entry of an
Order for Notice and Hearing

Proposed Consent Decree

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

VALARIE WHITNER, VINCENT BLOUNT, and))	
MILDRED BRYANT, individually and on behalf))	
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Plaintiffs,))	
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)	
CITY OF PAGEDALE, a Missouri municipal))	
corporation,))	
)	
Defendant.))	

CONSENT DECREE

This Consent Decree is made and agreed upon by and between plaintiffs Valarie Whitner, Vincent Blount, and Mildred Bryant, individually and on behalf of all others similarly situated (the "Plaintiffs"), and defendant the city of Pagedale (the "City"). Plaintiffs and the City shall jointly be referred to as the "Parties."

A. Introduction

1. Plaintiffs commenced this action against the City on November 4, 2015, in the United States District Court for the Eastern District of Missouri.

2. Plaintiffs' complaint (the "Complaint") alleged that the City's policies and practices regarding the enforcement and adjudication of the City's municipal code violated Plaintiffs' rights under the Due Process and Excessive Fines Clauses of the U.S. Constitution. The City has disputed that such rights have been violated by its practices.

3. The Parties agree that those ticketed or threatened with ticketing by the City for

violations of the Pagedale Municipal Code (the "Code") should receive constitutionally sufficient process and that such individuals should not be subject to excessive fines.

4. The Parties desire to avoid expending further time and expense and resolve all matters raised by this litigation.

5. The Parties recognize, and this Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith and that it is fair, reasonable, adequate, and in the public interest.

B. Jurisdiction and Venue

6. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331, 1343, and 2201(a).

7. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391.

C. Effective Date

8. This Consent Decree shall be effective the date this Court enters it, or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on this Court's docket (the "Effective Date").

9. This Consent Decree shall not take effect until this Court, pursuant to Federal Rule of Civil Procedure 23(e), approves this Consent Decree as full settlement and release of each and every claim against the City alleged by Plaintiffs, enters a judgment, and "So Orders" this Consent Decree.

D. Class Definition—Settlement Class

10. This action shall be certified as a class action only with respect to Count One of the Complaint pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

11. The plaintiff class shall be defined as “all persons who, at any time since January 1, 2010, have received warnings that they may receive tickets, have been ticketed, or will be ticketed by the City of Pagedale.”

E. Reform of the Municipal Court Practices and City Prosecutions

12. Within ninety (90) days of the Effective Date, the City shall develop and implement all necessary ordinances and policies as described herein to ensure that any individual ticketed by the City and appearing before the Pagedale Municipal Court (a “defendant”) is afforded constitutionally sufficient process pursuant to the Fourteenth Amendment. Such ordinances and policies shall incorporate the following provisions and requirements set forth below.

13. For any case initiated after January 1, 2010, in which a defendant has made payments to the City or the Pagedale Municipal Court that exceed the initial amount of the fine for the alleged violation, including any payments for associated fines resulting from a failure to appear, the City shall dismiss all such fines and fees in excess of the initial fine and close the case without further collections. This dismissal shall include all cases dismissed “on payment of costs” where fines and fees remain outstanding. The City shall do so unilaterally and without requiring the defendant to appear in court or take any other action whatsoever. The City shall inform, via first-class mail, all defendants in such cases that they are no longer required to pay the City or the Pagedale Municipal Court any amount for those past violations.

14. For all cases initiated by the City after January 1, 2010, the City shall decline to prosecute all unresolved or open cases not yet adjudicated and all warrants associated with those cases shall be withdrawn. However, the Pagedale Municipal Prosecutor may continue a case and

maintain a municipal arrest warrant in a manner consistent with the terms of this Consent Decree if he or she finds good cause to continue prosecution. As used in this paragraph, "good cause" means that the Pagedale Municipal Prosecutor has a legally sufficient or substantial reason to continue prosecution.

15. The City shall eliminate, on its own volition and unilaterally, all pending charges, fines, and fees associated with any citation for Failure to Appear in Municipal Court (Pagedale, Mo., Code § 125.260) without requiring a defendant to make any payment, appear in court, or take any other action. The City shall inform, via first-class mail, all defendants in such cases of the elimination of such charges, fines, and fees. The City shall also inform any collection or credit agency with whom the City communicates regarding collections that it has eliminated such charges, fines, and fees.

16. The City shall maintain a list, which it shall publicly post, of the amount of each fine for any municipal ordinance violations for which a fine is allowed under Missouri law. The City shall post this list on its website and make a hard copy available to each defendant appearing before the Pagedale Municipal Court.

17. All citations, summonses, arrest notification forms, and other charging documents used or issued by the City shall provide all defendants with the following information: (i) the charges brought against them, including the specific ordinance the City alleges the defendant has violated, (ii) the potential penalty for conviction (including the amount of any fine), (iii) options for resolving the charge, (iv) all pending deadlines, (v) the date and time of any court session at which the defendant must appear, and (vi) the procedure for seeking a continuance. Any defendant who receives a citation, summons, arrest notification, or other charging document from

the City shall have the right to inspect and receive a copy, free of charge, of any ordinance the City alleges the defendant has violated. The defendant may only request such ordinance from the City at the Pagedale City Hall during its normal hours of operation.

18. At the beginning of every session of the Pagedale Municipal Court, the City shall provide to each defendant a handout substantially in the form of the document entitled "Your Municipal Court," attached to this Consent Decree as Exhibit A.

19. Upon conviction or entry of a guilty plea, the City shall provide to each defendant a handout explaining how to sign up to pay, in installments, any fine or fee imposed by the Pagedale Municipal Court. This handout may be combined into one document with the "Your Municipal Court" handout referred to in Section E.18 above, so long as the content of both documents remains substantially the same in the combined version.

20. The City shall issue a receipt for every payment it receives for any fine or fee imposed by the Pagedale Municipal Court. Each receipt shall contain, at a minimum, (i) the amount of the payment received, (ii) the specific violation to which the payment is to be applied, identified by the date of the offense and the specific ordinance violation (as well as any other information, such as the case number associated with the violation, which the City, in its discretion, may include), and (iii) the amount the defendant still owes for that violation.

21. At a minimum, the City shall hold court sessions on the following schedule each month: One session to begin and end between 9:00 a.m. to 5:00 p.m., Central Prevailing Time, Monday through Friday, and one session to occur in the evening, to begin at or around 6 p.m., Central Prevailing Time, Monday through Friday.

22. Any individual cited by the City shall be given, at the time the City issues the

citation, the option to choose whether to appear at a day or evening session of the Pagedale Municipal Court. In the event that such practice results in a large disparity in the number of cases on one of the dockets, the City may, when reasonably necessary to balance to load of the dockets, assign cases to a docket regardless of the choice of the individual cited. Similarly, and also subject to the City's ability to make docket assignments when reasonably necessary to balance the number of cases on the dockets in the event of a large disparity in the number of cases on the dockets, any defendant requesting a continuance shall be given the option to continue the hearing either at a day or evening session of the court.

23. The City shall not use municipal arrest warrants as a means of collecting civil court debt. The City denies that this is currently its policy or practice.

24. Before it imposes any penalty on any defendant for failure to pay any fine or fee imposed by the Pagedale Municipal Court, the Pagedale Municipal Court shall hold a contempt hearing. This contempt hearing shall include a determination by the Pagedale Municipal Court of the defendant's ability to pay any fine or fee. As part of the ability to pay determination, the Pagedale Municipal Court shall affirmatively inquire as to a defendant's capacity to pay prior to imposing a penalty for failure to pay. A defendant may demonstrate an inability to pay by completing a standard affidavit under penalty of perjury. Such an affidavit shall be prima facie evidence of the defendant's inability to pay and any defendant submitting such an affidavit shall be adjudicated unable to pay. Upon such a determination, the Pagedale Municipal Court shall proportion all penalties to the financial resources of the defendant. Included in the ability to pay determination shall be an express inquiry by the Pagedale Municipal Court into any documented fines and fees owed by the defendant to other municipal courts.

25. The Pagedale Municipal Court shall not sentence any defendant to incarceration or confinement unless that defendant is either (i) represented by counsel, or (ii) knowingly, intelligently, voluntarily, and on the record waived the right to counsel. All defendants facing a sentence of incarceration or confinement shall be informed orally by the Pagedale Municipal Court, as well as in the "Your Municipal Court" sheet referred to in Section E.18 above, that they are entitled to the appointment of counsel at no cost. The "Your Municipal Court" sheet shall explain the process by which counsel shall be appointed for any defendant entitled to an attorney.

26. The City shall not penalize defendants for failure to appear for either minor traffic violations or municipal ordinance violations, as those terms are defined in Mo. Rev. Stat. § 479.350 (as that statute may be amended from time to time).

27. The Pagedale Municipal Court shall not conduct more than seven (7) trials in any single session of the court. If the number of trials in a single session exceeds seven (7), the City shall schedule a third session, exclusively for conducting trials, within thirty (30) days of the date on which the surplus trials were initially scheduled.

28. The City shall revise its online payment system to allow any defendant to pay any fines and fees resulting from a minor traffic violation or a municipal ordinance violation, as those terms are defined in Mo. Rev. Stat. § 479.350 (and as those terms may be amended by statute from time to time).

F. Municipal Code Revisions

29. The City shall take the following actions:

- a. Within one hundred twenty (120) days of the Effective Date, the City shall repeal: Chapter 215 (entitled "Nuisances"), Articles I and III; and, Chapter

515, Article I (“Minimum Housing Standards”) of the Code and replace such chapters with an ordinance adopting, or ordinances substantially in the form of, the St. Louis County Property Maintenance Code, Chapter 1110 Title XI, Public Works and Building Regulations—Adoption of International Property Maintenance Code, Year 2009 Edition (Ordinance No. 24,440, Approved July 14, 2010);

- b. Within thirty (30) days of the Effective Date, the City shall repeal, and shall not reenact, the following ordinances: Pagedale, Mo., Code § 210.750 (regarding barbeques); Pagedale, Mo., Code § 210.770 (prohibiting wearing pants below the waist in public); Pagedale, Mo., Code § 345.030 (regarding walking on the left side of a crosswalk); Pagedale, Mo., Code § 345.080 (regarding walking on a roadway); Pagedale, Mo., Code § 405.080(A) (regarding basketball hoops and wading pools); and Pagedale, Mo., Code § 405.270 (prohibiting a dish antenna on the front of houses).

30. The City shall ensure that any provision of the Code repealed or modified pursuant to this Consent Decree shall remain repealed or modified and shall not be replaced with any similar ordinances or policies, whether formal or informal.

31. The City shall only issue citations for violations of specific provisions of the Code. The City shall cease ticketing, and shall cease threatening to ticket, individuals for conditions not specifically mentioned in the Code. The City shall dismiss all outstanding cases for violations of such conditions. The City shall provide written notice, via first-class mail, to all defendants in such cases of such dismissal.

32. The City shall dismiss all outstanding citations and cases for the violation of any ordinance that is modified or repealed, in whole or in part, by the terms of this Consent Decree. The City shall provide written notice, via first-class mail, to all recipients of such citations or defendants in such cases of such dismissal.

G. Amnesty

33. The City shall dismiss each, any, and all outstanding citations, fines, fees, and warrants for the named plaintiffs. Furthermore, the City shall take no further action on any warning or code inspection report issued to such named plaintiffs prior to the Effective Date.

H. Enforcement

34. In order to ensure compliance with this Consent Decree, the City shall provide Plaintiffs with the following documents and information.

35. The City shall provide Plaintiffs with the following documents and information on an annual basis within sixty days (60) of completion:

- a. An audited financial statement, compliant with Government Accounting Standards Board standards, for each fiscal year;
- b. The approved, final budget showing forecasted revenue and expenditures by fiscal year;
- c. Any reports provided by the City to the Missouri State Auditor pursuant to Senate Bill 5 or Senate Bill 572;
- d. Any reports provided by the City to the Missouri Office of State Courts Administrator, including the Municipal Division Summary Reporting Form;
- e. A municipal court statistics report including statistics on active cases and

finances and fees collected; and

- f. Any copies of issued financial or management performance audits and related corrective action plans prepared by or on behalf of the City.

36. The City shall provide the Plaintiffs with the following documents and information within sixty (60) days of the end of each fiscal quarter:

- a. Quarterly interim budget reports reflecting year-to-date revenues and expenditures as compared with budgeted amounts; and
- b. Records of collections by the Pagedale Municipal Court.

37. The City will provide the Plaintiffs any findings or reports issued by the Missouri State Auditor concerning the City or the Pagedale Municipal Court within sixty (60) days of the City becoming aware of the same.

38. The City shall provide such reports for five (5) years following the Effective Date.

39. Within five (5) years of the Effective Date, at Plaintiffs' written request, the City shall provide Plaintiffs with information reasonably necessary to demonstrate the City's performance of its obligations under this Consent Decree. Plaintiffs' written request must be reasonable and Plaintiffs' request shall not be more frequent than once every six (6) months.

40. If Plaintiffs reasonably believe that the City is not in substantial compliance with the terms of this Consent Decree, Plaintiffs' counsel shall, by written notice, call a meeting with the City's counsel to be held at a mutually agreeable time and place within thirty (30) days of the request to discuss and attempt to resolve the dispute. The City's counsel shall attend such a meeting.

41. In the event that counsel for the City and counsel for Plaintiffs cannot come to an

agreement that resolves the claimed violations, Plaintiffs may move this Court, pursuant to Rule 70 of the Federal Rules of Civil Procedure or any other applicable rule or procedure, for an order enforcing the provisions of this Consent Decree and any other enforcement and implementation mechanisms as may be necessary or appropriate. If this Court issues such an order, this Court may, in its discretion, award Plaintiffs' counsel their reasonable attorneys' fees and costs associated with obtaining such order.

42. This Consent Decree constitutes final relief entered by this Court and is enforceable through this Court's contempt powers. This Court shall retain jurisdiction over this matter for all purposes and may issue such orders as may be necessary or appropriate to enforce this Consent Decree.

43. The Parties may jointly agree to make changes, modifications, and amendments to this Consent Decree, which shall be effective if approved by this Court.

44. The Parties agree to defend the provisions of this Consent Decree, including in collective bargaining. Each party shall notify the other of any legal challenge to this Consent Decree, whether such challenge arises in a court, a union, or an administrative proceeding or otherwise. If any provision of this Consent Decree is challenged in any state or municipal court, the Parties shall agree to consent to removal to Federal Court.

45. The City shall require compliance with this Consent Decree by its respective officers, employees, agents, agencies, assigns, or successors.

I. FRCP 23(e) Hearing

46. Plaintiffs' counsel shall make a motion to this Court for preliminary approval of this Consent Decree and for entry of an Order for Notice and Hearing. Such motion shall request

this Court set a date for a hearing to determine if the resolution of this matter is fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e). Such motion shall also request that this Court determine that sufficient and adequate notice of the hearing consists of (i) the City posting a Notice of Hearing at the City's City Hall and Municipal Court; (ii) the City posting a Notice of Hearing on the City's website; and (iii) publication of the Notice of Hearing by the City twice within a three-week period in each of the following publications: *The St. Louis American*; *The St. Louis Post-Dispatch*. The Notice of Hearing shall be in the form attached as Exhibit B to this Consent Decree.

J. Release

47. As of the Effective Date, all claims raised by the Plaintiffs against the City shall be resolved with prejudice and all remedies sought in the Complaint concerning such claims shall be replaced by the provisions of this Consent Decree.

48. The Parties shall each bear their own fees, expenses, and costs with respect to all claims raised by the Plaintiffs in the Complaint.

K. Miscellaneous Provisions

49. This Consent Decree shall remain in effect until this Court, upon the motion of either party, determines that the provisions are no longer necessary to ensure that the City's policies and practices are consistent with constitutional standards.

50. The Parties have both participated in the drafting of this Consent Decree. As such, any ambiguity in this Consent Decree shall not be construed against either party.

51. Any notice or reporting required by or made pursuant to the terms of this Consent Decree shall be sent by both first-class mail, postage prepaid, and electronic mail to:

FOR PLAINTIFFS:

INSTITUTE FOR JUSTICE
Attn: William R. Maurer
10500 NE 8th Street, Suite 1760
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Email: wmaurer@ij.org

INSTITUTE FOR JUSTICE
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FOR THE CITY:

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SJALTON LAW, LLC
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Any party may change the above-designated addressee or address by written notice to the other party.

IT IS SO STIPULATED AND AGREED:

William R. Maurer*, WSBA No. 25451 Date
Institute for Justice
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Bellevue, WA 98004
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Counsel for Plaintiffs

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Counsel for Defendant City of Pagedale

SO ORDERED:

Rodney W. Sippel
United States District Judge

Date: _____

Exhibit A
to the Consent Decree

"Your Municipal Court"

YOUR MUNICIPAL COURT

The Municipal Courts of Missouri are a division of the Circuit Courts of the State of Missouri and are open to the public. These courts are authorized by the Missouri Constitution and created by charter. The purpose of these courts is to provide you with a place to obtain a fair and impartial trial on any citation alleging a violation of a city ordinance. The municipal courts have jurisdiction over all cases arising under their city charter or any ordinance of the city and all other such jurisdictions as are or may be hereafter conferred by law. The range of punishment on municipal violations is up to a _____ fine and up to _____ days in jail, or both.

More information, include the courts hours of operation and court contact information can be found on the City's website at www._____.com or by calling _____.

Municipal courts are a court of law established to protect the rights of all citizens. If there is anything you do not understand, do not hesitate to ask the Judge any questions.

While In The Courtroom, You Are Expected To: remain seated until your case is called, not smoke or consume food or drink, not talk, or make noise; not sleep or otherwise disrupt the Court proceedings.

You have a right to plead (1) guilty, (2) guilty with an explanation or (3) not guilty. You are presumed to be innocent unless and until the City's prosecution proves your guilt beyond a reasonable doubt. When reasonable doubt exists, the case will be decided in your favor. If, after the charge is read and you understand it, you feel you have violated the law, you may enter a plea of guilty. If you believe you have not violated the law, or have a defense to the alleged violation, you should plead not guilty. If in doubt, plead not guilty. You will not be given a heavier penalty because of a not guilty plea.

Right to an attorney:

You have the right to be represented by an attorney and may employ one to represent you at any time. At the first setting of your case, you have the right to obtain a continuance in order to obtain a lawyer or to prepare your defense. If you desire a continuance, you should request it after your case is called and before entering your plea of guilty or not guilty. However, you may represent yourself at trial. If you establish that you cannot afford an attorney, and the City is seeking jail time for the offense charged, the Court will appoint an attorney to represent you.

If You Plead Guilty:

1. You will be sentenced this evening.
2. A guilty plea associated with moving violations may result in points on your driving record.
3. A guilty plea associated with criminal charges will be on your arrest record as a conviction.
4. The court will allow you time to pay your fine. The court will consider installment payments if you establish the need for additional time to pay the fine. If you establish that you cannot pay the fine, the court will also consider community service to satisfy payment. If you are given an extension to pay your fine, you will receive a sheet explaining payment. **READ THE SHEET CAREFULLY.** Make sure you appear on the court date noted on the sheet if you have not paid your court fine and/or costs as instructed. **YOU WILL NOT BE ARRESTED FOR INABILITY TO PAY A FINE. HOWEVER, FAILURE TO APPEAR IN COURT ON THE DATE REQUIRED WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.**

If You Plead Guilty with an Explanation:

This plea has the same effect as a plea of guilty, but says that you would like to explain to the Judge mitigating circumstances with respect to your charge/s. This also gives the Judge the opportunity to consider any unusual circumstances which you believe may be in your favor before you are sentenced.

If You Plead Not Guilty:

Because of the number of cases before the Court each month and the need to have the officer and any witnesses present, your case cannot be heard tonight. You will be given a future court date for trial.

At trial:

You have a right to testify or remain silent. If you remain silent, it is not considered an admission of guilt. If you testify, the Judge may consider any statement you make in determining your guilt or innocence.

You have the right to ask questions of witnesses testifying against you.

You have a right to have subpoenas issued and served for witnesses on your behalf to appear at the trial and to question all witnesses who testify against you at trial.

Your case is tried. If you are found not guilty, the case ends.

You may, if found guilty, accept the decision of the Municipal Court or appeal your case to the Circuit Court of St. Louis County, where you may have a new trial before a different Judge. The request for appeal must be made within 10 (ten) days of entry of the court's decision and cannot be extended for any reason. Complete details of the appeal procedure will be explained to you by Court personnel upon request.

The Order of Trial Is As Follows:

The case is called.

Witnesses are sworn.

The City's witnesses testify to explain their version of what happened.

You or your attorney can question City's witnesses.

You may testify and/or call witnesses to testify in your behalf to explain your version of what happened.

The City Prosecutor may question you and your witnesses, if you and your witnesses testify.

The Judge renders the Court's Decision.

Right to release pending hearing

If you are confined on a municipal court charge you have the right to release from custody unless the Court makes a determination that you need to be held for the protection of the community. If the Court orders your release, there may be conditions placed upon your release.

Right to access court records

If you have a case pending in municipal court, you have the right to access court records regarding your case. This includes records which show charges, court rulings, fines owed, and other information related to your case.

Right to change of judge or recusal of judge

You may request a change of judge without cause no later than ten (10) days after you entered your initial plea. If it is past the ten (10) days, then you must show cause as to why the judge should be removed.

In addition a judge may recuse him or herself upon a determination that he or she has an interest in the case or that the judge will appear as the prosecuting attorney in a neighboring county where the prosecuting attorney will serve as judge.

In traffic cases, the objective of this court is to reduce the number of accidents and injuries and to make our streets safer. Careful driving is the daily responsibility of each and every one of us.

Exhibit B
to the Consent Decree

Form of Notice

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI
NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND CONSENT DECREE

Whitner et al. v. City of Pagedale

Case No. 4:15-cv-01655-RWS

TO ALL PERSONS WHO, AT ANY TIME SINCE JANUARY 1, 2010, HAVE RECEIVED WARNINGS THAT THEY MAY RECEIVE TICKETS, HAVE BEEN TICKETED, OR WILL BE TICKETED BY THE CITY OF PAGEDALE:

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION.

SUMMARY OF THE LITIGATION AND SETTLEMENT NEGOTIATIONS

1. Plaintiffs Valarie Whitner, Vincent Blount, and Mildred Bryant (the "Named Plaintiffs") filed a class action lawsuit in the Eastern District of United States District Court for the Eastern District of Missouri entitled *Whitner et al. v. City of Pagedale*, Case No. 4:15-cv-01655 (the "Action"). The Named Plaintiffs alleged in Count One of the Action ("Count One") that the city of Pagedale's (the "City") policies and practices regarding the enforcement and adjudication of the City's municipal code violated the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. In particular, Count One alleged that the City financed itself by identifying, ticketing, prosecuting, convicting, and fining individuals to raise money for the City's treasury. The Named Plaintiffs requested declaratory and injunctive relief on behalf of the class for this alleged violation.

2. The City denied and continues to deny the allegations and claims in the Action.

3. The Named Plaintiffs and the City (together, the "Parties") participated in extensive arms-length negotiations to resolve the Action, including written, telephonic, and in-person negotiations. As a result of these negotiations, the Parties have proposed a written consent decree (the "Consent Decree") that settles and resolves on a class-wide basis any and all claims in the Action, that occurred after January 1, 2010, and up to upon the date the United States District Court for the Eastern District of Missouri (the "District Court") enters the Consent Decree, or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the District Court's docket (the "Effective Date").

4. On or about February 2, 2018, the District Court provisionally approved all terms of the Consent Decree, finding them to be sufficiently fair, reasonable, and adequate to warrant issuance of this Notice of Proposed Class Action Settlement and Consent Decree.

TERMS OF THE CONSENT DECREE

5. The Class. The Named Plaintiffs propose to settle the Action pursuant to the terms of the Consent Decree that will be binding upon all class members, which the Consent Decree

defines as “all persons who, at any time since January 1, 2010, have received warnings that they may receive tickets, have been ticketed, or will be ticketed by the City of Pagedale” (the “Class”).

6. Provisions of the Consent Decree. The Consent Decree implements changes that will ensure that defendants in the Pagedale Municipal Court (the “Municipal Court”) receive constitutionally sufficient process. The Consent Decree also provides for the repeal of certain provisions of the Code and, in some cases, replacement by provisions of the St. Louis County Property Maintenance Code. The details are contained in the Consent Decree, which is available at the following website: www.cityofpagedale.com/_____. In general, the Consent Decree requires the City to take certain actions with respect to the following, as all set forth in greater detail in the Consent Decree:

- With respect to the Pagedale Municipal Court, the City will: dismiss and close cases (and related fines and fees) in which a defendant has already made payments to the Municipal Court which exceed the amount of the original fine (including amounts resulting from an associated failure to appear); decline to prosecute all unresolved or open cases unless the Pagedale Municipal Prosecutor finds good cause to continue prosecution; eliminate all pending charges, fines, and fees associated with any citation for failure to appear; publicly post and distribute to all defendants a list of all fines for municipal code violations for which a fine is permitted under Missouri law; ensure that citations issued provide certain specific information concerning the citation and resulting municipal Court case; provide specific information at each Municipal Court session explaining the defendant’s rights and the procedures of the Court and payment methods; issue receipts for payment of fines and fees that indicates the amount paid, the specific violation to which the payment is to be applied, and the amount the defendant still owes for that violation; ensure that a hearing is conducted before a defendant is penalized for failing to pay a fine or fee; establish an additional monthly Municipal Court session (one day, one night), limit the number of trials per session, and provide a third monthly session for trials if necessary; attempt to accommodate a defendant’s preference for attending either a day or night session of Municipal Court; ensure that no defendant will be sentenced to confinement unless that defendant is represented by counsel or has waived the right to counsel; not penalize defendants for failure to appear for minor traffic violations or municipal code violations; and provide online payment options for minor traffic and/or municipal ordinance violations.
- With respect to its Municipal Code, the City will: repeal certain sections of its municipal code dealing with nuisances and housing standards and replace these sections with corresponding sections of the St. Louis County Property Maintenance Code; repeal several ordinances in addition to these provisions; and not issue tickets for conditions not specifically mentioned in the Pagedale

Municipal Code and dismiss all outstanding cases for violations of such conditions.

7. Monitoring Requirements. The parties have agreed that compliance with the Consent Decree will be monitored for five (5) years after the Effective Date by providing certain information, as set forth in greater detail in the Consent Decree, to Named Plaintiffs concerning the City's budgeting, financial statements, and collections of the Pagedale Municipal Court.

8. Attorneys' Fees, Costs, and Damages. Pursuant to the Consent Decree, each party will be responsible for its attorneys' fees and costs. The Consent Decree does not award damages to the Named Plaintiffs or the Class.

9. Continued Jurisdiction of the District Court. The District Court may enforce the Consent Decree through its contempt powers. The District Court will maintain jurisdiction over the Action and may issue such orders as may be necessary or appropriate to enforce the Consent Decree.

EFFECT OF THE CONSENT DECREE

10. If it is finally approved by the District Court, the Class will be bound by the terms and conditions of the Consent Decree, and shall be bound by any order issued by the District Court that enjoins all in the Class from asserting against the City and its respective affiliates, trustees, directors, officers, employees, representatives, consultants, insurance carriers, attorneys, assigns, executors, administrators, and agents, past and present, any and all rights, claims, demands, liabilities, actions and causes of action for injunctive, declaratory, or equitable relief, as well as associated attorneys' fees, costs, and expenses, of whatever nature whatsoever, known or unknown, fixed or contingent, suspected or unsuspected, that all or any members of the Class now have, or may ever have, against the City, that occurred between January 1, 2010, and the Effective Date and that arise out of or in any way relate to the claims and allegations asserted in the Action.

FINAL CONSENT DECREE APPROVAL HEARING

11. On __, 2018, at __, the District Court will conduct a final approval hearing (the "Final Hearing") to determine whether to certify the Class for purposes of settlement and grant final approval of the Consent Decree. The Final Hearing shall be conducted in Courtroom 16 South, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, St. Louis, MO 63102.

OBJECTIONS OR COMMENTS TO PROPOSED CONSENT DECREE

12. Class members have a right to object to the terms of the Consent Decree. To be considered by the District Court, Class member objections can be made via telephone or in writing at the phone number and address for counsel for the proposed class ("Class Counsel") listed below, but must be made to Class Counsel no later than _____.

13. Objections must include the following information: (i) the objector's contact information (name, address, phone number, and email), (ii) an explanation of the objector's objection to the Consent Decree; and (iii) whether the objector intends to appear at the Final

Hearing on _____. All information submitted to Class Counsel will be provided to the City and the District Court.

14. It not necessary for Class members to appear at the Final Hearing. An objector who wishes to appear at the Final Hearing must give notice, either in writing or by phone, to all Parties of his or her objection and his or her intention to appear at the Final Hearing. Objectors may withdraw their objections at any time.

HOW TO GET MORE INFORMATION

15. Class members may request a complete copy of the Consent Decree by contacting Class Counsel at the address or numbers below, or view it on the internet at www.cityofpagedale.com/_____.

16. Class members who have questions about the Consent Decree should contact Class Counsel at:

Institute for Justice
901 N. Glebe Road, Suite 900
Arlington, VA 22203
ph: (703) 682-9320.

Class members may also inspect the District Court's file regarding this case during business hours at the office of the Clerk of Court, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, St. Louis, MO 63102. **Please do not direct questions to the District Court.**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

VALARIE WHITNER, VINCENT BLOUNT, and))	
MILDRED BRYANT, individually and on behalf))	
of all others similarly situated,))	
)	
Plaintiffs,))	
v.))	Civil Case No. <u>4:15-cv-01655-RWS</u>
)	
CITY OF PAGEDALE, a Missouri municipal))	
corporation,))	
)	
Defendant.))	

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CONSENT DECREE AND FOR ENTRY OF AN
ORDER FOR NOTICE AND HEARING**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”), Plaintiffs Valarie Whitner, Vincent Blount, and Mildred Bryant, individually and on behalf of all others similarly situated (“Plaintiffs”), respectfully submit this memorandum of law in support of their Motion for Preliminary Approval of Consent Decree and for Entry of an Order for Notice and Hearing (the “Motion”). Specifically, Plaintiffs request that this Court grant the Motion and issue an order that does the following: (i) certifies Plaintiffs’ proposed class as a settlement class, (ii) appoints Plaintiffs as representative plaintiffs for such class, (iii) appoints Plaintiffs’ counsel as class counsel, (iv) sets a hearing at which the Court will consider whether to preliminarily approve the proposed consent decree attached to the Motion as Exhibit 1 (the “Consent Decree”), (iv) directs notice to be provided to the class, and (v) sets a final hearing to determine if the Consent Decree is fair, reasonable, and adequate. Defendant city of Pagedale (the “City”) does

not oppose the Motion.

FACTS AND LITIGATION HISTORY¹

The City is a municipal corporation located in St. Louis County, Missouri. About 3,000 people live in the City. It is governed by a mayor and a board of alderpersons. It maintains a Municipal Court presided over by a judge employed by the City.

Named plaintiffs Valarie Whitner, Vincent Blount, and Mildred Bryant are all residents of the City. The City threatened Whitner, Blount, and Bryant with tickets, and ticketed and fined Whitner and Blount numerous times. The City has arrested and released Whitner for an issue relating to tickets and repeatedly arrested and incarcerated Blount for issues relating to tickets.

Plaintiffs brought this suit on November 4, 2015. Pls.' Civil Rights Class Action Compl., ECF No. 1 (the "Complaint"). The Complaint alleged that the City had a policy and practice of relying on fees from tickets to generate revenue and that the City had violated the Due Process Clause of the Fourteenth Amendment, the Excessive Fines Clause of the Eighth Amendment, and exceeded its police powers. Complaint ¶¶ 95-134. Plaintiffs sought class certification for Count One of the Complaint, which alleged that the City had violated the Due Process Clause of the named plaintiffs and the members of the proposed class. Complaint ¶¶ 95-106. The Plaintiffs sought to certify the following class: "all persons who, at any time since January 1, 2010, have received warnings that they may receive tickets, have been ticketed, or will be ticketed by the city of Pagedale." Complaint ¶ 85.

The City filed an answer denying Plaintiffs' allegations. Def. City Pagedale's Answer

¹ The facts and background supporting this memorandum are derived from Plaintiffs' Civil Rights Class Action Complaint, ECF No. 1, as well as their motion to certify the class, Plaintiff's Motion to Certify Class, ECF No. 89, and the documents supporting that motion. Pursuant to Federal Rules of Evidence Rule 10(c), Plaintiffs adopt these documents by reference as if fully set forth in this Memorandum.

Affirmative Defenses Pls.' Compl., ECF No. 17. The City then moved to strike Plaintiffs' class allegations. Def. City Pagedale's Mot. Strike Class Allegations Pls.' Civil Rights Class Action Compl., ECF No. 18. This Court denied that motion. Mem. Order, Jan. 22, 2016, ECF No. 28. The City also moved to dismiss parts of the Complaint. Def. City Pagedale's Mot. Dismiss Count IV Pl. Mildred Bryant's Claims Pls.' Civil Rights Class Action Compl., ECF No. 21. This Court dismissed Plaintiffs' police powers claim but otherwise denied the motion. Mem. Order, March 10, 2016, ECF No. 31.

The parties then engaged in discovery. While discovery was ongoing, the parties participated in mediation conducted by the Honorable Stephen N. Limbaugh, Sr., but were unable to come to an agreement. On October 18, 2017, Plaintiffs moved to certify the class. Pls.' Mot. Certify Class, ECF No. 89. After Plaintiffs filed the motion, the parties engaged in settlement negotiations. This Court stayed the case schedule while the parties attempted to reach a resolution. After significant negotiations, the parties have agreed to resolve this case in the manner set forth in the Consent Decree.

ARGUMENT

The parties seek preliminary approval of a Consent Decree that provides significant benefits to the members of the proposed class. The terms of the Consent Decree will provide meaningful procedural protections to those who are subject to the City's criminal and civil enforcement process while avoiding the risks and costs of continued litigation. It allows the City to implement meaningful reforms carefully negotiated by the parties and forecloses further litigation expenses for the municipality. This Court should therefore hold that (i) Plaintiffs meet the standard for certification of the proposed class for settlement purposes, and (ii) the settlement meets the standards set out in Rule 23(e) for approval.

I. Certification of the Class for Settlement Purposes is Proper

The Federal Rules of Civil Procedure permit a court to certify a class for settlement purposes. *Amchen Prods., Inc. v. Windsor*, 521 U.S. 591, 618 (1997). In doing so, the district court must determine whether the proposed class satisfies the requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy of representation), and at least one of the criteria of Rule 23(b)—here, that the defendant has acted or refused to act in a way that applies to the whole class. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010); *In re Target Corp. Customer Data Sec. Breach Litig.*, 847 F.3d 608, 612 (8th Cir. 2017). Plaintiffs satisfy both requirements.

A. Plaintiffs Satisfy the Requirements of Rule 23(a)

i. The Proposed Class is Sufficiently Numerous

Rule 23(a)(1) requires that the proposed class is “so numerous that joinder of all members is impracticable.” There is no set number for class size, but courts generally consider joinder impracticable if the proposed class has more than forty members. *Paxton v. Union Nat’l Bank*, 688 F.2d 552, 559 (8th Cir. 1982). As discussed in Plaintiffs’ memorandum in support of its motion to certify the class, the City has ticketed over 18,000 unique individuals since January 1, 2010. Mem. Law Supp. Pls.’ Mot. Certify Class, ECF No. 90 (the “Certification Memorandum”).⁵ In addition, it is reasonable to conclude that the City has threatened to ticket hundreds of individuals during this time. *Id.* This is more than sufficient to demonstrate numerosity.

ii. The Proposed Class Presents Common Questions of Law and Fact

Rule 23(a)(2) requires “questions of law or fact common to the class.” “Commonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury.’” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011) (quoting *Gen. Tel. Co. of Sw. v.*

Falcon, 457 U.S. 147, 157 (1982)). Here, the questions of whether the City issued tickets to generate revenue, and if it did, whether this was constitutional, constitute common questions that hold the proposed class together. These issues “focus on defendant’s conduct, meaning that the questions will be resolved through common proof, and without class certification, each individual class member would be forced to separately litigate the same issues of law and fact.” *In re Simply Orange Orange Juice Mktg. & Sales Practices Litig.*, No. 4:12-md-02361-FJG, 2017 U.S. Dist. LEXIS 114806, at *19 (W.D. Mo. July 27, 2017).

iii. The Named Plaintiffs Are Typical of Members of the Class

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “Typicality means that other members of the class have the same or similar grievances as the Plaintiffs, in that they have been subjected to the same allegedly unlawful treatment.” *Tinsley v. Covenant Care Servs., LLC*, No. 1:14CV00026 ACL, 2016 U.S. Dist. LEXIS 11988, at *23-24 (E.D. Mo. Feb. 2, 2016) (quotation marks and citations omitted). Plaintiffs here are typical of the class because they have been ticketed or threatened with tickets, as have the other members of the class. The named plaintiffs seek the same remedy as the other members of the class: a declaration as to the constitutionality of these actions and an injunction to prevent the City from taking similar actions in the future. They are therefore typical of the members of the class.

iv. The Named Plaintiffs and Their Attorneys Will Adequately Protect the Interests of the Proposed Class Members

Rule 23(a)(4) requires that the named plaintiffs fairly and adequately protect the interests of the class members. To meet this requirement, the named plaintiffs must (i) be members of the proposed class, (ii) possess the same interests as the class, and (iii) suffer the same injury as the

class. *Sample v. Monsanto Co.*, 218 F.R.D. 644, 648-49 (E.D. Mo. 2003). The named plaintiffs here meet this requirement. They are all members of the class in that they have been threatened with tickets or received tickets and they will likely receive tickets in the future. Their interests are aligned with the interests of the members of the class who have likewise been threatened or ticketed, or will be ticketed in the future, by the City. They have vigorously prosecuted this action by, among other things, participating in depositions, appearing in sessions of court, and reviewing relevant pleadings. Certification Memorandum 10. Finally, the City's defenses apply to both the named plaintiffs and the other class members, so no named plaintiff faces defenses to the claim that are unique to them. *Id.*

The adequacy requirement also applies to lawyers seeking to represent the class. *Sample*, 218 F.R.D. at 649. Rule 23(g) requires a court to appoint class counsel after considering the following non-exclusive factors: (i) the work counsel has done in identifying and investigating potential claims; (ii) counsel's experience handling class actions, complex litigation, and claims like those raised in the case; (iii) counsel's knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A)-(B). Plaintiffs' counsel—the Institute for Justice (IJ) and Bryan Cave LLP (“Bryan Cave”)—satisfy these requirements. IJ has performed extensive pre-filing work to identify potential claims, including observing a session of the City's municipal court, researching and developing constitutional theories, holding a town hall for residents of the City, and interviewing scores of Pagedale residents. IJ has vigorously prosecuted this case since filing, including litigating two motions to compel and defending a motion to dismiss and a motion to strike class allegations. It has reviewed thousands of pages of documents, conducted numerous depositions, participated in mediation, and hired experts in municipal finance. IJ is a nationwide public interest law firm

with extensive experience in litigating constitutional challenges to protect the rights of individuals to own and enjoy their property and their entitlement to due process when the government threatens that right. *See Kelo v. City of New London*, 545 U.S. 469, 472 (2005); *Brody v. Village of Port Chester*, 509 F. Supp. 2d 269 (S.D.N.Y. 2007). Certification Memorandum 11.

Bryan Cave is an international law firm that has represented Ms. Whitner since before this case was filed. It has extensive experience in complex litigation and class action suits. Bryan Cave attorneys Barbara Smith and Ben Clark have litigated constitutional cases in the past and attorney Jeffrey Russell specializes in complex class action cases. *Id.*

B. Plaintiffs Satisfy the Requirements of Rule 23(b)(2)

This case satisfies Rule 23(b)(2) because the Complaint alleges that the City has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. Here, except for nominal damages of \$1.00, Plaintiffs seek only injunctive and declaratory relief. “As the rule itself makes clear, certification under Rule 23(b)(2) is intended for classes seeking primarily injunctive or declaratory relief—not money damages.” *In re Teflon Prod. Liab. Litig.*, 254 F.R.D. 354, 368 (S.D. Iowa 2008). Because the named plaintiffs allege that they have suffered the same injury as the other members of the class, the relief sought would satisfy all claims and there is no need for individual determinations of liability as to each member of the class. “It is sufficient under Rule 23(b)(2) if class members complain of a pattern or practice that is generally applicable to the class as a whole.” *Smith v. ConocoPhillips Pipe Line Co.*, 298 F.R.D. 575, 585 (E.D. Mo. 2014). That is precisely what the Plaintiffs here have done, and they have therefore satisfied Rule 23(b)(2).

For these reasons, this Court should certify the proposed class for settlement purposes.

II. This Court Should Approve the Consent Decree

When the parties reach a settlement or compromise in a class action suit, the federal rules require the district court to review and approve it. Fed. R. Civ. P. 23(e). This entails a three-step process. *Komoroski v. Serv. Partners Private Label, Inc.*, No. 4:16-cv-00294-DGK, 2017 U.S. Dist. LEXIS 119292, at *2 (W.D. Mo. July 31, 2017). The first step is a preliminary, pre-notification determination that the proposed resolution is within the range of possible approval. *Id.* If it is, the second step requires notice to the class describing the proposed resolution and giving members an opportunity to object or opt out of the settlement. *Id.* at *3. The third step is a final hearing on whether the proposed resolution is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). This case is in the first stage—preliminary approval.

In determining whether a proposed resolution is fair, reasonable, and adequate, the district court considers (i) the merits of the plaintiff’s case weighed against the terms of the settlement, (ii) the defendant’s financial condition, (iii) the complexity and expense of further litigation, and (iv) the amount of opposition to the settlement. *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005).² The single most important factor is the strength of the plaintiff’s case weighed against the terms of the settlement. *Marshall v. Nat’l Football League*, 787 F.3d 502, 508 (8th Cir. 2015).

The federal courts favor the settlement of class actions lawsuits, *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005), and the courts regard settlement agreements in class action suits as “presumptively valid.” *Marshall*, 787 F.3d at 508. “At the preliminary approval stage,

² Because consideration of the Consent Decree is at the preliminary approval stage, the parties have not provided the members of the class with notice and dissenting class members have yet to have an opportunity to object to it. The fourth factor is therefore not at issue at this stage.

the 'fair, reasonable, and adequate' standard is lowered, with emphasis only on whether the settlement is within the range of possible approval due to an absence of any glaring substantive or procedural deficiencies." *Schoenbaum v. E.I. Dupont De Nemours & Co.*, No. 4:05CV01108 ERW, 2009 U.S. Dist. LEXIS 114080, at *13 (E.D. Mo. Dec. 8, 2009). In considering a motion for preliminary approval, the courts consider whether the settlement "carries the hallmarks of collusive negotiation or uninformed decision-making, is unduly favorable to class representatives or certain class members, or excessively compensates attorneys." *Id.* at *13-14.

A. The Terms of the Consent Decree Provide a Substantial Benefit to the Class

As discussed above, the first—and most important—consideration is the strength of the plaintiff's claim weighed against the terms of the settlement. The Consent Decree provides the class with the following immediate relief:

- For any case initiated after January 1, 2010, in any case in which the defendant has made payments to the Pagedale Municipal Court that exceed the amount of the initial fine (including amounts resulting from an associated failure to appear), the City will dismiss all fines and fees in excess of the initial fine and close the case without further collections;
- For any case initiated after January 1, 2010, the City will decline to prosecute all unresolved or open cases unless the Pagedale Municipal Prosecutor finds good cause to continue prosecution;
- The City will eliminate all pending charges, fines, and fees associated with any citation for failure to appear;
- The City will publicly post and distribute to all defendants a list of all fines for municipal code violations for which a fine is permitted under Missouri law;

- All citations issued by the City will provide defendants with the specific ordinance the defendant is alleged to have violated, the potential penalty upon conviction, options for resolving the charge, all pending deadlines, and the date and time of the court session at which the defendant must appear, and the procedure for seeking a continuance;
- At each session of the Pagedale Municipal Court, the City will provide defendants with a sheet explaining the defendant's rights and the procedures of the court;
- Upon conviction or a plea of guilty, the City will provide defendants with a sheet that explains how they may pay any fine in installments;
- The City will issue receipts for payment of fines and fees that indicate the amount paid, the specific violation to which the payment is to be applied, and the amount the defendant still owes for that violation;
- The City will have one evening session and one day session of its municipal court per month. At the time the City issues a citation, the defendant may indicate which session he or she prefers;
- The City will not use municipal arrest warrants as a means of collecting civil court debt (the City denies it is currently doing so);
- Before a defendant is penalized for failing to pay a fine or fee, the Pagedale Municipal Court will hold a contempt hearing at which the court will determine the defendant's ability to pay the fine or fee, including inquiring as to any fines and fees the defendant owes in other jurisdictions. A defendant can demonstrate an inability to pay by completing a standard affidavit. Any fines or fees for

failure to pay shall be proportioned to fit the financial resources of the defendant;

- The Pagedale Municipal Court will not sentence a defendant to confinement unless that defendant is represented by counsel or has waived the right to counsel;
- The City will not penalize defendants for failure to appear for minor traffic violations or municipal code violations;
- The Pagedale Municipal Court will not conduct more than seven (7) trials per session and, if the number of trials exceeds seven (7), the court will schedule a third, trials-only, session;
- Defendants will be able to pay any fines and fees associated with minor traffic violations or a municipal ordinance violation online;
- The City will repeal sections of its municipal code dealing with nuisances and housing standards and replace these sections with corresponding sections of the St. Louis County Property Maintenance Code;
- The City will repeal several ordinances in addition to these provisions; and
- The City will not issue tickets for conditions not specifically mentioned in the Pagedale Municipal Code and dismiss all outstanding cases for violations of such conditions.

The Consent Decree lists only one benefit unique to the named plaintiffs: namely, that the City will dismiss any outstanding citations, fees, and warrants against them and not take any action against them for any inspection report issued prior to the effective date of the Consent Decree.

These are outstanding results for the members of the class. Plaintiffs believe that the Consent Decree reflects the strong due process arguments underlying Plaintiffs' claims. If this

case proceeds on the merits, however, the members of the class could lose some or all of these benefits. Even if, at the end of litigation, the class achieved an order in their favor, there is a chance that the result would not be the carefully calibrated, systemic reform—voluntarily undertaken by the City—that the Consent Decree achieves. Put another way, there is some risk that litigation would achieve benefits as good as those in the Consent Decree and, even if Plaintiffs ultimately prevail in litigation, those benefits would likely be years in the future. The Consent Decree thus satisfies the first prong of the fairness test.

B. Because Plaintiffs Seek Only Declaratory and Injunctive Relief, the Consent Decree Will Not Cause Undue Harm to the City's Financial Condition

A defendant's financial condition is not particularly important in actions that are not for monetary damages. *Van Orden v. Schafer*, No. 4:09CV00971 AGF, 2016 U.S. Dist. LEXIS 162288, at *13 (E.D. Mo. Nov. 23, 2016). Here, the Consent Decree provides remedies that are entirely non-monetary, as Plaintiffs seek to recover no money in this case. Moreover, Plaintiffs have waived any entitlement to attorneys' fees they might have to reach agreement on the Consent Decree. This factor strongly supports preliminary approval.

C. The Consent Decree Forecloses Further Complex and Expensive Litigation

In general, class actions place an enormous burden of costs and expense on the parties. *Marshall*, 787 F.3d at 512. This case is no exception. It involves complex and innovative constitutional claims. Even though the parties have spent over two years litigating the case, it has not yet reached the class certification stage. Once that stage is completed, the parties expect to move for summary judgment. Discovery in this case has involved thousands of pages of documents, analysis of the City's REJIS database, and numerous depositions. Summary judgment will involve substantial briefing and proof, and Plaintiffs anticipate expert testimony to

support their claims, which will further add to the complexity of this case. If this Court does not grant summary judgment, a trial will be necessary.

In sum, if this Court were to approve the Consent Decree, it would save the parties and this Court considerable time and expense. This weighs heavily in favor of preliminary approval.

D. The Consent Decree is the Product of Extensive Arms-Length Negotiations, There Is No Evidence of Collusion or Uninformed Decision-Making, and the Consent Decree Is Not Unduly Favorable to the Named Plaintiffs or Their Attorneys

The Consent Decree represents hours of arms-length negotiations on its substance. Once an agreement in principle was reached, the parties worked to craft a Consent Decree that accurately reflected their agreement and did not provide either party with unintended benefits or burdens. It is the understanding of undersigned counsel that the Pagedale Board of Alderpersons has considered the Consent Decree and voted to approve it. In addition, the named plaintiffs have carefully considered all aspects of the Consent Decree. Apart from amnesty for their outstanding citations, the named plaintiffs will not receive any benefits beyond what other members of the class receive. Plaintiffs' attorneys will not be overcompensated. Indeed, as noted above, they have waived any right to attorneys' fees.

For these reasons, the Consent Decree does not contain any substantive or procedural deficiencies. It is well within the range of possible approval and this Court should therefore preliminarily approve it.

IV. Plaintiffs' Proposed Notice Is Sufficient

The parties propose that the City provide notice of the final hearing on the fairness of the Consent Decree to the members of the class by (i) posting a notice of the final hearing at the City's City Hall and its Municipal Court, (ii) posting a notice of the final hearing on the City's

webpage, and (iii) publishing a notice of the final hearing twice within a three-week period in both the *St. Louis American* and the *St. Louis Post-Dispatch*. A proposed form of notice is attached to the Consent Decree as Exhibit B.

The parties' proposed form of notice is reasonable under Rule 23(e) and satisfies the due process rights of the settlement class. It provides the time and date of the final fairness hearing. It gives members of the class a summary of the case and the terms of the Consent Decree, as well as information on how to file objections and how to opt out of the class and settlement.

The Consent Decree deals with injunctive relief that applies to defendants appearing before the Pagedale Municipal Court. Posting at City Hall and in the Municipal Court will provide notice to those affected by the Consent Decree at a time and place where such notice will be especially relevant. Any person who the City has ticketed or threatened with ticketing who wishes to obtain additional information regarding the City's Municipal Court on the City's website will see the notice. Moreover, direct notice is impracticable here because the proposed class includes those who the City has not yet ticketed and those who will be ticketed after preliminary approval but before final approval. As such, the proposed notice is appropriate.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court enter an order (i) certifying Plaintiffs' proposed class as a settlement class, (ii) appointing the named plaintiffs as class plaintiffs and the law firms of the Institute for Justice and Bryan Cave LLP as class counsel, (iii) scheduling a hearing for consideration of Plaintiffs' motion for preliminary approval of the Consent Decree for 1:30 p.m., February 2, 2018, (iv) scheduling a final approval hearing at least ninety (90) days from the date this Court enters an order granting preliminary approval of the Consent Decree, and (v) directing that notice be provided to the members of the

class substantially in the form of Exhibit B to the Consent Decree and by the means described in this memorandum.

DATED this 11th day of January, 2018.

Respectfully submitted,

INSTITUTE FOR JUSTICE

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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2018, this ***PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CONSENT DECREE AND FOR ENTRY OF AN ORDER FOR NOTICE AND HEARING*** was electronically served on the below parties using the CM/ECF system of the United States District Court for the Eastern District of Missouri:

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