

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF YAKIMA

JAYNE FUENTES, GINA TAGGART, and REESE
GROVES, individually and on behalf of all
others similarly situated;

Plaintiffs,

v.

BENTON COUNTY, a Washington
municipality,

Defendant.

NO.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Defendant Benton County operates a modern-day debtors' prison. The County has a systemic policy, practice, and custom of generating revenue by incarcerating or threatening to incarcerate indigent persons who are unable to afford the legal financial obligations (LFOs) imposed on them in Benton County District Court. On any given day, scores of indigent persons sit in Benton County jail or labor in partial confinement on a Benton County work crew simply because they are too poor to pay the government.

1 2. LFOs consist of the fines, fees, and costs that courts order as part of a criminal
2 conviction. These debts regularly total more than \$1,000 per offense.

3 3. Benton County has created and implemented a standard operating procedure
4 that governs the assessment, imposition, and collection of these LFOs. At no point in the
5 process is a defendant's ability to pay taken into consideration. Indigent persons who cannot
6 afford the charges are subjected to draconian collection proceedings without a meaningful
7 opportunity to be heard and without meaningful assistance of counsel. They are then
8 sentenced—pursuant to the County's systemic policy, practice, and custom—either to sit in
9 jail or to provide free manual labor to the County (in and of itself a deprivation of liberty, as
10 well as a direct pathway to jail) for weeks or months.

11 4. This LFO debt enforcement system is the result of policies and practices that
12 Benton County policymakers—namely, the board of commissioners and district court judges—
13 have created and repeatedly affirmed in order to generate County revenue, despite
14 awareness of the adverse impact it has on some of Benton County's poorest residents. The
15 County's practices are so permanent and well settled as to constitute custom with the force of
16 law, and County policymakers have actual and constructive knowledge of that custom.

17 5. The County explicitly renewed its commitment to this revenue generation
18 system in the fall of 2013, when the Benton County Board of Commissioners held a series of
19 meetings at which they and district court judges discussed concerns about the County's
20 policies at length. At the conclusion of those meetings, the County's policymakers reaffirmed
21 their commitment to the County's system of generating revenue at the expense of the rights
22 of the poor.

23 6. In 2014, the ACLU of Washington and Columbia Legal Services published a
24 report on debtors' prisons that highlighted Benton County's policies and practices of
25 incarcerating or threatening to incarcerate indigent persons without a meaningful
26 determination of their ability to pay. The groups called for specific changes to Benton County's

1 policies, practices, and custom. Again, however, the County's policymakers continued their
2 commitment to a system of debt collection that violates the rights of indigent persons for the
3 sake of generating revenue.

4 7. Benton County's debtor's prison system is unconstitutional. The Due Process
5 and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution
6 and Article I, Sections 3 and 12 of the Washington State Constitution prohibit the
7 incarceration of a person for nonpayment of LFOs without a meaningful, pre-deprivation,
8 ability-to-pay hearing and consideration of alternatives to incarceration. Incarceration is
9 allowed only after an inquiry into the reason for nonpayment and a specific finding that either
10 (a) the nonpayment was willful because the person refused to pay from available resources or
11 failed to make sufficient efforts to acquire additional resources, or (b) the person was unable
12 to pay, despite having made sufficient efforts to acquire resources, and alternative methods
13 are inadequate to satisfy a legitimate government interest in punishment or deterrence.
14 *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983); *Smith v. Whatcom Cnty. Dist. Court*, 147
15 Wn.2d 98, 111-12, 52 P.3d 485 (2002).

16 8. Benton County routinely incarcerates indigent persons through full
17 confinement in the Benton County Jail or partial confinement on the County work crew
18 without regard to indigence and without satisfying the requirements of *Bearden* and *Smith*.

19 9. Placement on work crew is not an alternative to incarceration; rather, it is
20 "confinement" under Washington law, specifically "partial confinement". RCW 9.94A.030(8);
21 RCW 9.94A.030(55); RCW 9.94A.731. Furthermore, a sentence to the Benton County work
22 crew functions as a pathway to full incarceration in the Benton County Jail—without any pre-
23 deprivation notice or process. If an indigent person does not or cannot complete work crew
24 (for example, due to lack of transportation), the County automatically converts work crew
25 placement into a jail sentence without an opportunity to request counsel and an intervening
26

1 court hearing on the underlying issue—the person’s inability to pay LFOs, efforts to secure
2 resources, and the availability and adequacy of alternatives of incarceration.

3 10. The County has constructed a collections mechanism with the purpose of
4 identifying and locating those individuals who owe LFOs to the County. Warrants and
5 summonses to hearings are customarily and efficiently issued for nonpayment of LFOs.
6 Indigent persons who owe LFOs and are unable to pay can expect to be summoned to a
7 hearing or arrested on the warrants.

8 11. Under the Sixth and Fourteenth Amendments to the United States Constitution
9 and Article I, Sections 3, 12, and 22 of the Washington State Constitution, indigent persons are
10 entitled to meaningful assistance of counsel when facing sanctions for nonpayment of LFOs
11 owed in a criminal case.

12 12. Benton County has a policy, practice, and custom of inadequately funding,
13 training, and supervising public defenders in their representation of indigent persons in LFO
14 enforcement proceedings. The County routinely jails indigent persons or orders them to serve
15 terms of partial confinement on the County work crew without ensuring they are given
16 meaningful assistance by court-appointed counsel prior to the imposition of these
17 punishments.

18 13. The County’s policy, practice, and custom amounts to deliberate indifference to
19 the constitutional right to meaningful assistance of counsel when indigent persons are facing
20 debt collection proceedings arising from nonpayment of LFOs. While the County has assigned
21 public defenders to the district court “compliance docket,” each public defender is
22 responsible on a weekly basis for representing dozens of indigent persons in debt collection
23 proceedings, which exceeds the maximum caseload limits established by the Washington
24 Supreme Court.

25 14. Without adequate funding, training, and supervision from the County, public
26 defenders do not interview clients regarding ability to pay; gather documentary evidence of

1 inability to pay; inform clients of defenses to charges of failure to pay LFOs; present evidence
2 about the financial circumstances of clients at relevant court hearings; or seek appellate
3 review of orders sentencing indigent defendants to jail or work crew.

4 15. As a result of the County's policy, practice, and custom, public defenders are
5 inadequately equipped to advocate for alternatives to incarceration for their indigent clients.
6 These policies, practices, and customs amount to deliberate indifference to the constitutional
7 right to meaningful assistance of counsel when indigent persons are facing county debt
8 collection proceedings arising from nonpayment of LFOs.

9 16. The County has designed and operates this unconstitutional system because it
10 generates substantial revenue or other financial benefit for the County in three ways. First,
11 indigent persons who fear being jailed or forced to participate on the County work crew to
12 discharge district court LFOs pay the County from public assistance or other funds that are
13 necessary to satisfy basic living expenses—sometimes going without food or other essentials.
14 As a result, the County collects substantially more in LFO revenue than comparable counties.
15 Second, indigent persons who fail to pay their LFO debt and are sentenced to partial
16 confinement on the County work crew provide labor benefitting the County (such as
17 landscaping and janitorial services on County property) and for which the County would
18 otherwise have to pay. Third, local cities compensate the County at a rate of nearly \$70 per
19 day whenever an indigent person is incarcerated over unpaid LFOs owed in relation to city
20 ordinance violations. Those daily payments defray the fixed costs of running the County jail,
21 which would otherwise be paid by the County.

22 17. As a result of Benton County's unconstitutional policies, practices, and
23 customs, indigent persons have suffered and will continue to suffer harm. This harm includes
24 illegal arrest and incarceration in jail or partial confinement on work crew for nonpayment of
25 LFO debt following proceedings in which there is a lack of meaningful assistance of counsel.
26

1 18. Plaintiffs bring this class action lawsuit under 42 U.S.C. § 1983, the Sixth and
2 Fourteenth Amendments to the United States Constitution, and Sections 3, 12, and 22 of
3 Article I of the Washington State Constitution. Plaintiffs respectfully ask this Court for
4 injunctive and declaratory relief to prevent further constitutional violations and to protect the
5 rights of all indigent persons who owe LFOs in relation to criminal cases prosecuted in Benton
6 County District Court. Plaintiffs also respectfully ask the Court for declaratory relief and an
7 award of nominal damages to all indigent persons who, since October 6, 2012, have been
8 jailed or placed in partial confinement on work crew for nonpayment of LFOs imposed in
9 Benton County District Court.

10 **II. JURISDICTION AND VENUE**

11 19. The Court has jurisdiction over this action under 42 U.S.C. § 1983 because this
12 is an action for deprivation of rights, privileges, and immunities secured by the United States
13 Constitution. *See Robinson v. City of Seattle*, 119 Wn.2d 34, 57 (1992) (noting state courts
14 have jurisdiction in actions brought under 42 U.S.C. § 1983).

15 20. The Court has jurisdiction over this action under Article IV, Section 6 of the
16 Washington State Constitution and RCW 2.08.010 because this is a case in equity.

17 21. The Court has jurisdiction over this action under Article IV, Section 6 of the
18 Washington State Constitution and RCW 2.08.010 because exclusive jurisdiction over this
19 matter has not been vested in some other court.

20 22. The Court has jurisdiction over this action under the Uniform Declaratory
21 Judgments Act. RCW 7.24.010.

22 23. Venue is proper in this Court under RCW 36.01.050(1) because Yakima County
23 is one of the two judicial districts nearest to Benton County.

24 **III. THE PARTIES**

25 24. Plaintiff Jayne Fuentes is a Benton County resident and an indigent person
26 whom Benton County sentenced to partial confinement on work crew in 2013 because of her

1 inability to pay LFOs imposed in Benton County District Court. Ms. Fuentes did not receive a
2 meaningful pre-deprivation ability-to-pay hearing or meaningful assistance of counsel. Ms.
3 Fuentes is at substantial imminent risk of being jailed or placed in partial confinement on work
4 crew because she continues to be indigent, owes LFOs to Benton County District Court, and
5 has been delinquent on payments.

6 25. Plaintiff Gina Taggart is a Benton County resident and an indigent person whom
7 Benton County jailed in 2012 and 2013 because of her inability to pay LFOs imposed in Benton
8 County District Court. Ms. Taggart did not receive a meaningful pre-deprivation ability-to-pay
9 hearing or meaningful assistance of counsel. Ms. Taggart is at a substantial imminent risk of
10 being jailed or placed in partial confinement on work crew because she continues to be
11 indigent and to owe LFOs to Benton County District Court, and is delinquent on payments.

12 26. Plaintiff Reese Groves is a Benton County resident and an indigent person
13 whom Benton County jailed in 2015 because of his inability to pay LFOs imposed in Benton
14 County District Court. Mr. Groves did not receive a meaningful pre-deprivation ability-to-pay
15 hearing or meaningful assistance of counsel. Mr. Groves is at substantial imminent risk for
16 being jailed or placed in partial confinement on work crew because he continues to be
17 indigent and to owe LFOs to Benton County District Court.

18 27. Defendant Benton County is a Washington municipality.

19 IV. CLASS ACTION ALLEGATIONS

20 28. Plaintiffs Fuentes, Taggart, and Groves bring this action pursuant to Civil Rule
21 23(a) and (b)(2) on behalf of themselves and all others similarly situated (collectively, the
22 Indigent Class Members) as members of the following proposed plaintiff class (the Indigent
23 Class):

24 All indigent persons who owe legal financial obligations in
25 relation to criminal cases prosecuted in Benton County District
26 Court.

1 29. Plaintiffs Fuentes, Taggart, and Groves also bring this action pursuant to Civil
2 Rule 23(a) and (b)(2) on behalf of themselves and all others similarly situated (collectively, the
3 Incarcerated Class Members) as members of the following proposed plaintiff class (the
4 Incarcerated Class):

5 All indigent persons who, at any time since October 6, 2012,
6 were jailed or placed in partial confinement on work crew (or
7 both) for nonpayment of legal financial obligations owed in
8 relation to criminal cases prosecuted in Benton County District
9 Court.

10 30. Both of the Classes are so numerous that the individual joinder of all members
11 is impracticable. Hundreds if not thousands of indigent persons currently owe legal financial
12 obligations in relation to criminal cases prosecuted in Benton County District Court. Likewise,
13 hundreds if not thousands of indigent persons have been jailed or placed in partial
14 confinement on work crew for nonpayment of LFOs owed in relation to criminal cases
15 prosecuted in Benton County District Court since October 6, 2012.

16 31. There are questions of law and fact common to both of the Classes.

17 32. The questions of law and fact common to all members of the Indigent Class
18 include but are not limited to the following:

- 19 a. Whether Benton County has a policy, practice, or custom of generating
20 revenue by incarcerating or threatening to incarcerate indigent persons
21 who are unable to afford the LFOs imposed on them in district court;
- 22 b. Whether Benton County's policymakers adopted or promulgated that
23 policy, or whether that practice is so pervasive and well settled as to
24 constitute Benton County custom with the force of law;
- 25 c. Whether Benton County policymakers have actual or constructive
26 knowledge of, and acquiesce in, that custom or policy;
- d. Whether Benton County District Court judges, acting pursuant to the
 County's policy, practice, or custom, enforce district court LFO debts by

1 ordering indigent persons to jail or work crew without any meaningful
2 pre-deprivation inquiry into their ability to pay, their efforts to secure
3 resources to pay, the willfulness of nonpayment, or the adequacy of
4 alternatives to incarceration;

5 e. Whether Benton County's policy, practice, or custom of generating
6 revenue by incarcerating or threatening to incarcerate indigent persons
7 who are unable to afford the LFOs imposed on them in district court has
8 caused, and will continue to cause, the rights of indigent persons to be
9 violated;

10 f. Whether Benton County has a policy, practice, or custom of
11 inadequately funding, training, and supervising the Benton County
12 Office of Public Defense (OPD) in its representation of indigent persons
13 who face charges of nonpayment of LFOs imposed in district court;

14 g. Whether Benton County is deliberately indifferent to the violation of
15 indigent persons' right to meaningful assistance of counsel when facing
16 charges of nonpayment of LFOs imposed in district court;

17 h. Whether that practice is so pervasive, permanent, and well settled as to
18 constitute Benton County custom with the force of law; or whether
19 Benton County policymakers have actual or constructive knowledge of
20 and acquiesce in that custom;

21 i. Whether the rights of indigent persons have been, and will continue to
22 be, violated as a result of Benton County's policy, practice, or custom of
23 inadequately funding, training, and supervising the OPD and failing to
24 provide meaningful assistance of counsel to indigent persons facing
25 charges of nonpayment of LFOs imposed in district court; and
26

- 1 j. Whether Indigent Class members are entitled to declaratory and
2 injunctive relief.

3 33. The questions of law and fact common to all members of the Incarcerated Class
4 include but are not limited to the following:

- 5 a. Whether Benton County has had a policy, practice, or custom of
6 generating revenue by incarcerating or threatening to incarcerate
7 indigent persons who are unable to afford the LFOs imposed on them in
8 district court;
- 9 b. Whether Benton County's policymakers adopted or promulgated that
10 policy, or whether that practice has been so pervasive, permanent, and
11 well settled as to constitute Benton County custom with the force of
12 law;
- 13 c. Whether Benton County policymakers have had actual or constructive
14 knowledge of, and have acquiesced in, that custom;
- 15 d. Whether Benton County District Court judges, acting pursuant to the
16 County's policy, practice, or custom, enforce district court LFO debts by
17 ordering indigent persons to jail or work crew without a meaningful pre-
18 deprivation inquiry into their ability to pay, their efforts to secure
19 resources to pay, the willfulness of nonpayment, or the adequacy of
20 alternatives to incarceration;
- 21 e. Whether Benton County's policy, practice, or custom of generating
22 revenue by incarcerating or threatening to incarcerate indigent persons
23 who are unable to afford the LFOs imposed on them in district court has
24 caused the rights of indigent persons to be violated;
- 25 f. Whether Benton County has had a policy or practice of inadequately
26 funding, training, and supervising the OPD in its representation of

indigent persons who faced sanction for nonpayment of LFOs imposed in district court;

g. Whether Benton County has been deliberately indifferent to the violation of indigent persons' rights to meaningful assistance of counsel when facing charges of nonpayment of LFOs imposed in district court;

h. Whether that practice has been so pervasive, permanent, and well settled as to constitute Benton County custom with the force of law, or whether Benton County policymakers have had actual or constructive knowledge of and have acquiesced in that custom;

i. Whether the rights of indigent persons have been violated as a result of Benton County's policy of inadequately funding, training, and supervising the OPD and the County's practice of failing to provide meaningful assistance of counsel to indigent persons facing charges of nonpayment of LFOs imposed in district court;

j. Whether Incarcerated Class members are entitled to declaratory relief; and

k. Whether Incarcerated Class Members are entitled to an award of nominal damages.

34. Plaintiffs' claims are typical of the claims of the members of the respective Classes Plaintiffs seek to represent.

35. Plaintiffs will fairly and adequately protect the interests of the respective Classes they seek to represent. There are no conflicts of interest between Plaintiffs and the members of the Classes. Plaintiffs will vigorously prosecute this action on behalf of the Classes. Plaintiffs are also represented by competent counsel who will vigorously prosecute the case on behalf of the Classes.

1 36. Benton County is acting or refusing to act on grounds generally applicable to
2 the Indigent Class, thereby making appropriate final injunctive relief or corresponding
3 declaratory relief with respect to the Indigent Class as a whole.

4 37. The declaratory and injunctive claims asserted on behalf of Plaintiffs and the
5 Indigent Class are capable of repetition while evading review. There is a continuing and
6 substantial public interest in these matters.

7 38. Benton County has acted or refused to act on grounds generally applicable to
8 the Incarcerated Class, thereby making appropriate declaratory relief with respect to the
9 Incarcerated Class as a whole.

10 **V. FACTS ENTITLING PLAINTIFFS TO RELIEF**

11 **A. Benton County's Systemic Policy and Practice of Generating Revenue by** 12 **Incarcerating or Threatening to Incarcerate Indigent Persons Who Are Unable** 13 **to Afford LFOs**

14 39. Legal financial obligations are the fees, fines, costs, and restitution that courts
15 impose as part of a criminal sentence. *See, e.g.*, RCW 36.110.020(4). While some LFOs are
16 mandatory, most are discretionary. *See, e.g.*, RCW 10.01.160(1).

17 40. LFOs "may be enforced in the same manner as a judgment in a civil action by
18 the party or entity to whom the legal financial obligation is owed." RCW 3.66.120. In addition,
19 "[t]he party or entity to whom the court-ordered restitution obligation is owed may utilize any
20 other remedies available to the party or entity to collect the court-ordered financial
21 obligation." *Id.*

22 41. LFOs imposed in Benton County District Court are owed to Benton County,
23 Kennewick, Richland, West Richland, and Prosser, depending on which entity filed the criminal
24 charge. Benton County, however, collects all of the LFO payments.

- 25 a. In cases arising out of Benton County charges, Benton County is entitled to
26 keep 100 percent of all costs paid by defendants (such as costs for court
 appointed attorneys and costs of serving warrants). The County also retains

1 approximately 68 percent of all *fin*es and *fee*s included within the LFO
2 payment. RCW 3.62.020(2). It must remit the remaining 32 percent of the
3 *fin*es and *fee*s to the treasurer of Washington. *Id.*

4 b. In cases arising out of charges brought by one of the cities, Benton County
5 and the city are entitled to keep 100 percent of all *cost*s included within
6 those LFOs, and the city is entitled to keep approximately 68 percent of all
7 *fin*es and *fee*s. RCW 3.62.040(2). The remaining 32 percent of the *fin*es and
8 *fee*s must be remitted to the treasurer of Washington. *Id.*

9 42. The County gains substantially more revenue when it incarcerates an indigent
10 person who owes LFOs for city ordinance violations than it does when that person pays the
11 debt. As noted above, the city and the State receive any fines and fees that are collected,
12 while the city and County receive any costs. If, for example, an indigent person owes \$600 in
13 fines and \$400 in costs and the County collects the total amount owed, the most the County
14 will receive is \$400. But if the County jails the person for nonpayment of the total \$1000
15 owed, the County will receive as much as **\$1,400**—more than *three times* the amount it can
16 get through collection efforts. This is because the indigent person will spend 20 days in jail
17 (based on the typical credit toward the debt of \$50/day), and the city that charged the person
18 will pay the County approximately \$70 for each of those days.

19 43. Before 1991, Benton County had a policy, practice, and custom of enlisting a
20 collection agency when persons failed to pay the fines, fees, and costs imposed on them in
21 Benton County District Court.

22 44. In 1991, Benton County, through district court judges Craig Matheson and
23 Eugene Pratt, acting in their administrative capacity, created a compliance docket to increase
24 the collection of LFO payments. People who failed to pay their LFO debt to the County were
25 brought to district court and made to answer.
26

1 45. Over time Benton County implemented and sustained a systemic policy,
2 practice, and custom of generating revenue by incarcerating or threatening to incarcerate
3 indigent persons who are unable to afford the LFOs imposed on them in district court.

4 46. There are three ways in which Benton County gains financially from this policy,
5 practice, and custom. First, Benton County collects substantially more in LFOs than
6 jurisdictions that use collection agencies to enforce such debt. As Benton County District Court
7 Judge Robert Ingvalson has remarked: “[T]here are a number of people who pay Benton
8 County because they don’t want to sit . . . out [their LFOs in jail] and they don’t pay other
9 counties because they’re in collection and they don’t have anything. So, it’s is an effective
10 thing.” This effectiveness stems in part from the fact that when threatened with jail or work
11 crew for nonpayment of LFOs, many indigent persons make payments from funds they would
12 otherwise use to meet their basic needs, including funds obtained from needs-based, means-
13 tested public assistance programs.

14 47. Second, Benton County receives significant payments whenever an indigent
15 person is incarcerated for nonpayment of LFOs arising out of a district court charge filed by
16 Kennewick, Prosser, Richland, or West Richland. The municipality that filed the charge pays
17 approximately \$70 to Benton County for each day the indigent person is incarcerated. These
18 sums defray the fixed costs of operating the Benton County jail.

19 48. Third, Benton County receives a substantial financial benefit from the labor of
20 indigent persons who serve on work crew because of their inability to pay LFOs imposed on
21 them in Benton County District Court. Indigent persons sentenced to partial confinement on
22 work crew perform approximately forty hours per week of unskilled labor benefitting the
23 County, such as landscaping and janitorial services on County property, and for which the
24 County would otherwise have to pay.

25 49. Numerous statements by Benton County policymakers demonstrate the
26 County’s adoption or promulgation of a formal policy of generating revenue by incarcerating

1 or threatening to incarcerate indigent persons who are unable to afford the LFOs imposed on
2 them in district court. Alternatively, the statements demonstrate the existence of a pervasive,
3 permanent, and well settled practice and custom of generating revenue by incarcerating or
4 threatening to incarcerate indigent persons who are unable to afford the LFOs imposed on
5 them in district court without a meaningful pre-deprivation inquiry into ability to pay—a
6 practice or custom of which the policymakers have actual or constructive knowledge and in
7 which the policymakers acquiesce.

8 50. Many of these statements were made in public hearings held to address
9 concerns about the appropriateness and legality of Benton County's system of revenue
10 generation through LFO collection. Among those questioning the County's policy, practice,
11 and custom was a group of officials from various cities within the County. As noted above,
12 these cities pay the County whenever it incarcerates indigent persons for nonpayment of LFOs
13 arising out of district court charges filed by the cities.

14 51. At a public hearing held on September 17, 2013, for example, Benton County
15 Administrator David Sparks acknowledged the County's policy, practice, and custom of
16 generating revenue by incarcerating or threatening to incarcerate indigent persons who are
17 unable afford LFO payments. According to Mr. Sparks, Kennewick Police Chief Ken Hohenberg
18 had remarked that the cities "didn't like" having indigent persons "sitting out [their] fines in
19 jail" at a cost to the cities of approximately \$70 per day. This was not the first time that the
20 cities had spoken up on this issue. Two years earlier, the cities asked Benton County "to
21 substantially reduce the use of the 'pay or serve' program" for LFO debt enforcement.

22 52. Mr. Sparks recognized that eliminating the County's scheme for LFO debt
23 enforcement would be good for the cities, but he said it would negatively impact the County's
24 budget: "[I]f that [policy, practice, and custom] changes, it reduces [the cities'] costs but it
25 increases ours. So, it's kind of, what benefits them doesn't necessarily benefit us. So I was
26 sitting in this meeting and all the cities are like, 'let's not have these people sitting in jail.' And

1 I'm just sitting there looking at our jail costs going up and not necessarily having the same
2 opinion."

3 53. In response to the comments of Mr. Sparks, Benton County Commissioner Shon
4 Small noted that the County's "annual costs" for the jail are fixed at "about \$16 million dollars
5 a year." Thus, if the County ended its policy, practice, and custom of incarcerating or
6 threatening to incarcerate indigent persons who are unable to afford the LFOs imposed on
7 them in district court, the County would have to pay more to maintain its jail. Specifically, the
8 County would have to make up the substantial revenue previously collected from the cities.

9 54. On October 1, 2013, the Benton County board of commissioners held a public
10 meeting on the County's systemic policy, practice, and custom of generating revenue by
11 incarcerating or threatening to incarcerate indigent persons who are unable to afford the
12 LFOs imposed on them in district court. Among those attending the meeting were Benton
13 County Commissioners Shon Small, Jerome Delvin, and James Beaver, and Benton County
14 Administrator David Sparks.

15 55. During the October 1 meeting, Benton County District Court Judge Robert
16 Ingvalson told the board that the County was taking "a great deal of heat" from Northwest
17 Justice Project over the policy, practice, and custom of generating revenue by incarcerating or
18 threatening to incarcerate indigent persons who are unable to afford the LFOs imposed on
19 them in district court. Judge Ingvalson noted that Benton County is "one of the few
20 jurisdictions that actually has people sit out their fines" as a means of enforcement.

21 56. Judge Ingvalson explicitly recognized that Benton County's board of
22 commissioners held the power to decide whether to continue using actual or threatened
23 incarceration as a tool to enforce LFOs imposed on indigent persons convicted in district
24 court, saying: "[It's] a policy decision that's finally decided by you guys" and "[i]f you don't
25 want to continue this policy, you can revoke [it], we're done."
26

1 57. During the hearing, Commissioner Small acknowledged the dispute over what
2 he referred to as Benton County's "collection procedure." The board asked how revenue
3 would be impacted if the County discontinued its policy, practice, and custom of using actual
4 or threatened incarceration to enforce LFO debts and instead referred unpaid debts to private
5 collections agencies. Judge Ingvalson explained the County "wouldn't collect" from indigent
6 persons because "you can only garnish someone if they make better than minimum wage . . .
7 [o]r if they have a job." Commissioner Delvin then asked, "Can't [the County] go after their
8 welfare or anything?" and Judge Ingvalson responded, "No, those are all exempt."

9 58. Judge Ingvalson made clear that Benton County's policy, practice, and custom
10 has impacted "the poor" and that the County could adopt a different approach: "They don't
11 have a license, to start with. They don't have credit. . . . We're already starting with the
12 premise that they can't afford this. So, we can modify the fines. We can stop fines altogether
13 and use jail time instead. I don't care. Or you can impose the fine and the question is, 'Are you
14 going to forgive it?' And understand me, sending it to collection is forgiving it."

15 59. Recognizing the County "bring[s] in a little more than \$10 million . . . a year" in
16 payments for LFOs imposed in district court, Judge Ingvalson told the board that if the County
17 stopped using actual or threatened incarceration to enforce LFO debt, "it will affect our
18 revenue. You can look at the counties that do not follow this practice and . . . compare our
19 revenue with theirs, and it will have a decided impact upon it. It will lose a considerable
20 amount of money."

21 60. After further discussion, Commissioner Delvin said the County needed to make
22 a "policy decision." Commissioner Small remarked that this was "a multi-million dollar
23 decision," and he recommended the board get additional information and input on the issue.
24 A follow-up hearing was scheduled.

25 61. The Tri-City Herald published a story about the scheduled hearing. *See Kai-Huei*
26 *Yau, Paying district court fines with jail time debated in Benton County*, Tri-City Herald, Nov. 2,

1 2013 (available at [http://www.tri-cityherald.com/2013/11/02/2655770_paying-district-court-](http://www.tri-cityherald.com/2013/11/02/2655770_paying-district-court-fines-with.html?rh=1)
2 [fines-with.html?rh=1](http://www.tri-cityherald.com/2013/11/02/2655770_paying-district-court-fines-with.html?rh=1)). The Herald noted that “for more than two decades,” people “who are
3 delinquent on payments” have been ordered “to participate on work crew or sit in jail in
4 exchange for having their fines and costs eliminated.” *Id.* The paper quoted Judge Ingvalson as
5 saying the County’s district court judges would meet with the board of commissioners to
6 determine whether “the commissioners still support the long-standing county policy on
7 converting fines to time, or [whether] the [county] needs to find another tool to get
8 payment.” *Id.* The paper also reported the concern of Benton County’s public defense
9 coordinator, who said people “below the poverty level because of economic and social
10 circumstances” are being “sent to jail for unpaid fines” and “treated differently than a person
11 with the means to immediately write a check.” *Id.*

12 62. The follow-up hearing was held on November 18, 2013. Benton County
13 Commissioners Shon Small, Jerome Delvin, and James Beaver as well as Benton County
14 District Court Judges Robert Ingvalson, Joseph Burrowes, Terry Tanner, and Katherine Butler
15 participated.

16 63. Judge Burrowes started by saying, “[W]e’re here today . . . to determine if this
17 board would like to continue with th[e] practice of allowing individuals to either sit [fines] out
18 as a form of punishment or work[] them off as a form of punishment I want to be real
19 clear: we’re not here to advocate for the policy, or against the policy. It is up to you We
20 will utilize this mechanism if it continues to be in place.”

21 64. Judge Burrowes informed the board that the district court “hold[s] about nine
22 hearings a week” to enforce LFOs owed to the County. “Every day at the jail, we have people
23 that are incarcerated for not paying their fines. That’s five days a week. We have two
24 probation hearings on Monday that deal with fines. We have special pre-warrant fine hearings
25 on Tuesday mornings and also on Tuesday afternoons.”
26

1 65. Like Judge Ingvalson, Judge Burrowes said that Benton County's system for
2 enforcing LFO debts "is unique." He noted that most counties send such debts "to collections"
3 when people fail to pay.

4 66. After Judge Burrowes spoke, the board heard from Dee Willis, then a chaplain
5 at the Benton County jail. Mr. Willis told the board that he had studied the impacts of the
6 County's policy, practice, and custom and over the past three years and "on any given day,"
7 scores of indigent persons are in jail "just sitting out fines." Mr. Willis went on to say that he
8 estimates "the annual cost of this practice is minimally 2.8 million [dollars] to the taxpayers."

9 67. Benton County Prosecutor Andy Miller agreed, telling the board: "[I]n the long
10 run, this program is costing the taxpayers a lot of money." Mr. Miller advocated for the
11 County to "either eliminate[] or dramatically change[]" its longstanding policy, practice, and
12 custom of generating revenue by incarcerating or threatening to incarcerate indigent persons
13 who are unable to afford the LFOs imposed on them in Benton County District Court.

14 68. In his remarks to the board, Benton County Sheriff Steve Keane estimated that
15 there are thousands of indigent persons with unserved warrants for nonpayment of LFOs
16 imposed in Benton County District Court.

17 69. At the end of the November 18 hearing, the board of commissioners took no
18 action to discontinue the County's systemic policy, practice, and custom of generating
19 revenue by incarcerating or threatening to incarcerate indigent persons who are unable to
20 afford the LFOs imposed on them in district court. Instead, the board agreed to revisit the
21 issue in January 2014. This never happened.

22 70. In spring 2014, the ACLU of Washington and Columbia Legal Services published
23 a report highlighting Benton County's unlawful policies. The groups also sent a letter calling
24 for reform of County practices. The County did not respond but instead continued its systemic
25 policy, practice, and custom of generating revenue by incarcerating or threatening to
26 incarcerate indigent persons unable to afford the LFOs imposed on them in district court.

1 **B. Benton County's Revenue Generation Program**

2 (i) The County's Practice of Imposing Significant LFOs on Indigent Persons
3 Convicted in District Court

4 71. "[T]he fines, fees, and restitution imposed in a sentence are some of the most
5 significant and far reaching consequences of a conviction." Travis Stearns, *Legal Financial*
6 *Obligations: Fulfilling the Promise of Gideon by Reducing the Burden*, 11 Seattle J. for Soc. Just.
7 963, 965 (2013). Once imposed, LFOs become a judgment that may be enforced at any time
8 during a period of up to 20 years. See RCW 3.66.120; RCW 6.17.020(4). The burden of LFOs
9 "creates financial stress" and "forces families 'to choose between food, medicine, rent, child
10 support, and legal debt." Stearns, *supra*, at 974 (quoting Alexes Harris et al., *Drawing Blood*
11 *from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 Am. J.
12 Soc. 1753, 1785 (2010)); see also Katherine A. Beckett, Alexes M. Harris & Heather Evans, *The*
13 *Assessment and Consequences of Legal Financial Obligations in Washington State* 4-5 (Wash.
14 State Minority & Justice Comm'n Aug. 2008).

15 72. The Washington Supreme Court has recognized there are many "problems
16 associated with LFOs imposed against indigent defendants," including "increased difficulty in
17 reentering society, the doubtful recoupment of money by the government, and inequities in
18 administration." *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015). "The inability to
19 pay off the LFOs means that courts retain jurisdiction over impoverished offenders long after
20 they are released" *Id.* at 836-37. "This active record can have serious negative
21 consequences on employment, on housing, and on finances." *Id.* at 837. "All of these reentry
22 difficulties increase the chances of recidivism." *Id.*

23 73. In light of these problems, the Washington Supreme Court has held that a trial
24 court must conduct an on-the-record examination of a person's financial circumstances and
25 determine current and future ability to pay before imposing LFOs as part of a criminal
26 sentence. *Blazina*, 182 Wn.2d at 838-39. Factors to consider include whether the person has
been or will be incarcerated; whether the person has other debts; whether the person's

1 household income is at or below 1.25 times the federal poverty guideline; whether the person
2 receives assistance from a needs-based, means-tested assistance program; and any other
3 compelling circumstances that demonstrate the person is unable to pay. *Id.* If the person
4 meets the General Rule 34 standard for indigence, the court must “seriously question” the
5 person’s ability to pay LFOs. *Id.* A repayment obligation may not be imposed if it appears there
6 is no likelihood that the person’s indigence will end. *State v. Curry*, 62 Wn. App. 676, 680, 814
7 P.2d 1252 (1991), *aff’d*, 829 P.2d 166 (1992).

8 74. Acting pursuant to Benton County’s policy, practice, and custom, district court
9 judges routinely impose LFOs on indigent persons without any examination of their financial
10 circumstances or determination of their current and future ability to afford the debt. These
11 LFOs regularly include criminal fines, probation costs, warrant costs, criminal traffic fees,
12 conviction filing fees, public defense fees, domestic violence fees, and costs of incarceration.
13 Indigent persons are routinely ordered to pay LFOs totaling between hundreds of dollars and
14 well over a thousand dollars in a single case.

15 75. The indiscriminate imposition of LFOs on indigent persons convicted in Benton
16 County District Court is part and parcel of, and results directly from, Benton County’s systemic
17 policy, practice, and custom of generating revenue by incarcerating or threatening to
18 incarcerate indigent persons who are unable to afford those LFOs.

19 (ii) The County’s Practice of Collecting LFOs by Incarcerating or Threatening
20 to Incarcerate Indigent Persons Unable to Afford the LFOs

21 76. When an indigent person convicted in Benton County District Court is unable to
22 pay LFOs immediately upon sentencing, the person is placed on a payment plan. Some
23 indigent persons make payments toward the LFOs with funds that are necessary to meet basic
24 needs such as housing, medication, and food. These funds are often obtained from needs-
25 based, means-tested public assistance programs.
26

1 77. If the indigent person fails to satisfy the terms of that payment plan, he or she
2 is typically summoned for enforcement proceedings. The County has constructed a collections
3 mechanism to identify and locate those individuals who are delinquent in their payments to
4 Benton County, and indigent persons who are unable to pay LFOs can expect to be summoned
5 to a hearing to face charges of nonpayment. Benton County District Court judges generally
6 permit indigent persons who appear after the first period of nonpayment to “restart” LFO
7 payments. The judges generally refuse, however, to restart LFO payments more than twice.

8 78. Indigent persons who have not paid LFOs also have warrants issued for their
9 arrest. For example, whenever an indigent person fails to appear at a debt enforcement
10 proceeding, a warrant is issued for his or her arrest. Once a warrant has been issued, the
11 person must pay \$100 warrant fee in order to schedule a hearing to explain the reasons for
12 nonpayment or non-appearance. Indigent persons who cannot afford to pay the \$100 warrant
13 fee must turn themselves into jail and spend time in custody before receiving a hearing. In
14 some instances, a warrant is issued immediately after a period of nonpayment and without
15 the opportunity for a pre-warrant hearing.

16 79. Acting pursuant to Benton County’s policy, practice, and custom, district court
17 judges collect LFOs by routinely ordering indigent persons to partial confinement on the
18 County’s work crew or full confinement in the County’s jail when those persons have failed to
19 pay their LFOs after only one or two restarts (and sometimes even after no restarts). The
20 resulting orders are entered without regard to indigence.

21 80. A person may “purge” the order of jail or work crew by payment of the full
22 amount of LFOs owed. Purge amounts are set without regard to indigence or ability to pay.
23 Indigent persons who are unable to afford the purge amounts are incarcerated in jail or in
24 partial confinement on work crew and receive a “credit” toward those debts for each day of
25 incarceration.
26

1 81. Benton County, acting through its board of commissioners, establishes the daily
2 rates of credit for inmates incarcerated for nonpayment of LFOs. Inmates placed in partial
3 confinement on work crew earn a credit of \$80 per day against their LFOs, though they must
4 pay \$5 per day in cash in order to participate. Inmates who sit in jail earn a credit of \$50 per
5 day against their LFOs. And inmates who work in the jail as “trustees” (performing, for
6 example, cooking, laundry, and cleaning services) earn a credit of \$80 per day against their
7 LFOs.

8 82. Work crew is a form of “partial confinement.” A sentence to work crew can
9 quickly transition to full confinement. For example, if an indigent person does not appear for a
10 work crew sentence or is terminated from work crew due to a violation of a work crew rule,
11 the person’s sentence is automatically converted to a jail sentence without the benefit of a
12 hearing in court (and, therefore, an opportunity to request counsel). Similarly, indigent
13 persons who are deemed ineligible for work crew have sentences summarily converted to jail
14 without the benefit of a hearing or the opportunity to request counsel.

15 83. The Fourteenth Amendment to the United States Constitution and Article I,
16 Sections 3 and 12 of the Washington State Constitution prohibit governments from
17 incarcerating persons for nonpayment of LFOs when the nonpayment is due to indigence.
18 *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983); *Smith v. Whatcom Cnty. Dist. Court*, 147
19 Wn.2d 98, 111-12, 52 P.3d 485 (2002). Thus, several requirements must be satisfied before a
20 person is incarcerated for nonpayment of LFOs. *See Bearden*, 461 U.S. at 672-73; *Smith*, 147
21 Wn.2d at 111-12. First, the government must notify the person that he or she may be charged
22 with nonpayment of a fine and, if the failure to pay is determined to be “willful,” may be
23 incarcerated as a result. *Smith*, 147 Wn.2d at 112-13. Second, if the person is indigent, the
24 government must provide a public defender to the person. *Id.* Third, the court must conduct a
25 pre-deprivation inquiry into the person’s ability to pay, efforts to secure resources to pay, and
26 adequacy of alternatives to incarceration, and this inquiry must be on the record. *Bearden*,

1 461 U.S. at 672; *Smith*, 147 Wn.2d at 112. And fourth, there must be a finding that the failure
2 to pay is willful (either because the person has the means to pay and has refused to do so, or
3 because the person has failed to make sufficient efforts to acquire additional resources). If the
4 failure to pay is not willful—that is, if the person was unable to pay despite having made
5 sufficient efforts to acquire resources—the court must also find that alternative methods are
6 inadequate to satisfy a legitimate interest in punishment or deterrence. *Bearden*, 461 U.S. at
7 672; *Smith*, 147 Wn.2d at 112. “The general rule,” however, “is that a [person] may not be
8 jailed for nonpayment of a fine where the failure to pay is solely because of indigence.” *Smith*,
9 147 Wn.2d at 111.

10 84. In addition, Washington law requires proceedings to collect LFOs owed to
11 district court to comply with the civil contempt statutes. RCW 10.01.180. The statutory
12 scheme requires defendants facing sanction for nonpayment of district court LFOs to be
13 afforded “notice that failure to pay a fine may be contempt of court and may result in being
14 sent to jail.” *Smith*, 147 Wn.2d at 112. Moreover, under Washington law, a contemnor should
15 be jailed only “when no reasonable or effective alternatives are available” and the record
16 must show that “all less restrictive alternatives failed.” *Smith*, 147 Wn.2d at 113.

17 85. Benton County routinely fails to comply with these statutory limitations in its
18 debt enforcement proceedings.

19 86. Indigent persons in debt enforcement proceedings in Benton County District
20 Court are routinely deprived of meaningful assistance of counsel when facing charges of
21 nonpayment of the LFOs imposed on them.

22 87. Indigent persons in debt enforcement proceedings in Benton County District
23 Court are routinely jailed or ordered to work crew without a constitutionally required pre-
24 deprivation inquiry into their financial circumstances or a determination of their current
25 ability to afford the debt.
26

1 88. Indigent persons in debt enforcement proceedings in Benton County District
2 Court are routinely jailed or ordered to work crew for nonpayment of LFOs even though the
3 nonpayment is not willful but instead is due to their indigence.

4 89. On any given day, dozens of indigent persons sit in Benton County jail or labor
5 in partial confinement on a Benton County work crew because they are unable to afford to
6 pay the LFOs imposed on them in district court. A survey of jail rosters from September 29,
7 2014 to March 16, 2015—a period of approximately six and a half months—shows that 320
8 individuals sat in jail or labored on a work crew because they were unable to pay their district
9 court LFOs. On average, of 88 individuals were incarcerated over district court LFOs on any
10 given day, a figure corresponding to more than 28 percent of all people incarcerated by the
11 Benton County District Court. The debtors in the survey owed a total of \$854,676.40 in LFOs,
12 which averages out to \$2,670.86 per person. At a credit of \$80 per day (served on work crew),
13 it takes 33 days of incarceration before the average debt is forgiven. At a credit of \$50 per day
14 (served in jail), the average length of incarceration is 53 days. One jailed debtor identified in
15 the survey owed \$17,254 in district court LFOs, which translates to a minimum of 215 and a
16 maximum of 345 days of incarceration depending on the rate of credit afforded for each day
17 in jail.

18 90. Indigent persons incarcerated in the Benton County jail or in partial
19 confinement on Benton County work crew are unable to work during their period of
20 confinement and are likewise unable to look for work that would enable them to make
21 payments towards their LFOs and meet their basic living expenses.

22 91. These deprivations of due process and equal protection are part and parcel of,
23 and result directly from, Benton County's systemic policy, practice, and custom of generating
24 revenue by incarcerating or threatening to incarcerate indigent persons who are unable to
25 afford those LFOs. Benton County has persisted in its pursuit of revenue despite being aware
26

1 of the pervasive constitutional violations that result from the County's policy, practice, and
2 custom.

3 **C. Benton County's Failure to Afford the Meaningful Assistance of Counsel to**
4 **Indigent Persons Facing Charges of Nonpayment of LFOs**

5 92. The Sixth and Fourteenth Amendments to the United States Constitution and
6 Article I, Sections 3, 12, and 22 of the Washington State Constitution guarantee the right to
7 counsel to every indigent person facing sanctions for nonpayment of LFOs owed in a criminal
8 case.

9 93. The Washington State Legislature has specifically found that the assistance of
10 counsel must be meaningful: "effective legal representation should be provided for indigent
11 persons and persons who are indigent and able to contribute, consistent with the
12 constitutional requirements of fairness, equal protection, and due process in all cases where
13 the right to counsel attaches." RCW 10.101.005.

14 94. Benton County has a constitutional duty to provide meaningful assistance of
15 counsel to every indigent person who appears in Benton County District Court for a hearing to
16 determine whether the person will be incarcerated for nonpayment of LFOs.

17 95. Benton County has established an Office of Public Defense (OPD) to provide
18 "publicly funded defense services to indigent persons when required by law or the
19 Constitution." Benton County Office of Public Defense Homepage (available at
20 www.co.benton.wa.us/pview.aspx?id=802&catid=45).

21 96. Benton County has a policy of inadequately funding, training, and supervising
22 the OPD in its representation of indigent persons who face charges of nonpayment of LFOs
23 imposed in district court, and the County is deliberately indifferent to the rights that indigent
24 persons have to meaningful assistance of counsel in such circumstances.

25 97. The County has failed to establish or enforce any meaningful case or workload
26 limits for its contract public defenders.

1 98. Contract defense attorneys assigned to the “compliance” docket each handle
2 dozens of LFO compliance cases per week, well in excess of the public defense caseload
3 standards set by the Washington Supreme Court.

4 99. The County maintains a flat fee system of compensation for its contract public
5 defenders, regardless of the number of cases handled or the amount of time expended on a
6 client’s behalf.

7 100. As a result of the flat fee system of compensation and the excessive workload
8 imposed by the County, Benton County public defenders are unable to provide their clients
9 with meaningful representation.

10 101. Benton County has a policy, practice, and custom of failing to adequately
11 advise indigent persons in debt enforcement proceedings of their right to counsel, particularly
12 when these persons appear out of custody. Indigent persons appearing out of custody are not
13 advised that they have the right to counsel until *after* the court has determined that
14 incarceration is an appropriate remedy. As a result, indigent persons frequently appear before
15 the court without representation even though public defenders attend the weekly fine review
16 hearing dockets.

17 102. Benton County has failed to effectively monitor or evaluate the performance of
18 the OPD in its representation of indigent persons facing charges of nonpayment of LFOs
19 imposed in a criminal case.

20 103. Benton County has failed to train public defenders at the OPD to ensure proper
21 representation of indigent persons facing charges of nonpayment of LFOs imposed in district
22 court. For example, Benton County does not instruct its public defenders to devote sufficient
23 time to interviewing and counseling indigent persons who face sanction for nonpayment of
24 LFOs imposed in district court; to communicate with these indigent persons regarding their
25 defenses against charges of nonpayment of LFOs; to inform these indigent persons that they
26 can avoid incarceration by demonstrating their inability to pay LFOs; to obtain and present

1 evidence regarding such inability to pay LFOs, efforts to secure resources, and any other
2 defenses against failure-to-pay charges; to advocate with the district court on behalf of these
3 indigent persons regarding their defenses; and to seek appellate review of orders sentencing
4 indigent persons to jail or partial confinement on work crew for nonpayment of LFOs.

5 104. Benton County's practice of failing to provide meaningful assistance of counsel
6 to indigent persons facing charges of nonpayment of LFOs imposed in district court is so
7 pervasive, permanent, and well settled as to constitute Benton County custom with the force
8 of law. Benton County policymakers have actual and constructive knowledge of and acquiesce
9 in that custom, which is a moving force for constitutional violations of the right to counsel.

10 105. Under Benton County's public defense system, indigent persons who face
11 sanction for nonpayment of LFOs imposed in Benton County District Court are deprived of
12 adequate consultation and communication with attorneys; forced to make decisions about
13 their rights and contest issues without adequate factual or legal investigation by attorneys
14 and without adequate legal advice; and deprived of meaningful opportunities to demonstrate
15 their indigence.

16 106. Benton County has breached its constitutional duties by establishing and
17 perpetuating a public defense system that deprives indigent persons of the constitutional
18 right to meaningful assistance of counsel when they face sanction for nonpayment of LFOs
19 imposed in district court.

20 **D. Benton County's Violations of Plaintiffs' Constitutional Rights**

21 (i) Plaintiff Jayne Fuentes

22 107. On or about August 25, 2010 and March 23, 2011, the Benton County District
23 Court ordered Ms. Fuentes to pay approximately \$3,229 in LFOs in relation to three
24 convictions for misdemeanor theft (the 2010 and 2011 LFOs). Approximately \$1,500 of those
25 LFOs were costs of recoupment, including public defender fees.
26

1 108. At each of the hearings in which Ms. Fuentes was sentenced for these
2 convictions, the court imposed the LFOs without examining Ms. Fuentes's financial
3 circumstances or determining her current and future ability to pay. The public defenders
4 assigned to Ms. Fuentes's cases likewise failed to present the court with any evidence or
5 information regarding Ms. Fuentes's financial circumstances or her current and future ability
6 to pay LFOs.

7 109. At the time the Benton County District Court judges imposed the 2010 and
8 2011 LFOs on Ms. Fuentes, she lacked the ability to pay them, and it was highly unlikely that
9 she would be able to pay them in the foreseeable future. At all relevant times between August
10 2010 and March 2011, Ms. Fuentes was either incarcerated or unemployed and homeless. Ms.
11 Fuentes also had (and continues to have) a diagnosed disability that substantially limits her
12 ability to maintain gainful employment. In fact, Ms. Fuentes received disability benefits
13 through the Social Security Administration from approximately 2004 through 2009, when her
14 benefits were terminated due to incarceration. In addition, at the time of her sentencings, Ms.
15 Fuentes had no higher education and when working had been able to earn only minimum
16 wage.

17 110. At all relevant times between August 2010 and March 2011, Ms. Fuentes owed
18 thousands of dollars in LFOs to Benton County and other jurisdictions and had repeatedly
19 served jail time because of her inability to pay those obligations. Those debts, coupled with
20 Ms. Fuentes's disability, made it highly unlikely that she would be able to afford the 2010 and
21 2011 LFOs.

22 111. On or about May 30, 2012, Ms. Fuentes was ordered to pay approximately
23 \$2,486 in LFOs in relation to two convictions for misdemeanor theft (the 2012 LFOs).
24 Approximately \$1,300 of those LFOs are costs of recoupment, including public defender fees.
25 At the hearing sentencing Ms. Fuentes, the court imposed these LFOs without examining Ms.
26 Fuentes's financial circumstances or determining her current and future ability to pay. The

1 public defender assigned to Ms. Fuentes's cases likewise failed to present the court with any
2 evidence or information regarding Ms. Fuentes's financial circumstances or her current and
3 future ability to pay LFOs.

4 112. At the time these LFOs were imposed on Ms. Fuentes, she lacked the ability to
5 pay them, and it was highly unlikely that she would be able to pay them in the foreseeable
6 future. In May 2012, Ms. Fuentes remained disabled and unemployed, and faced incarceration
7 on other charges. Ms. Fuentes owed thousands of dollars in LFOs to Benton County and other
8 jurisdictions and had repeatedly served jail time because of her inability to pay those
9 obligations. Those debts, coupled with Ms. Fuentes's disability, made it highly unlikely that
10 she would be able to afford the 2012 LFOs.

11 113. Between 2010 and 2013, Ms. Fuentes missed payments towards the 2010,
12 2011, and 2012 LFOs, including during times in which she was incarcerated.

13 114. On June 18, 2013, Ms. Fuentes was ordered to appear at a hearing related to
14 her nonpayment of LFOs. During that hearing, Ms. Fuentes asked the court to give her
15 additional time to make payments on her 2010, 2011, and 2012 LFOs. The court restarted Ms.
16 Fuentes's 2012 LFOs, but refused to restart the 2010 and 2011 LFOs. The court ordered Ms.
17 Fuentes to either serve time on Benton County work crew or to sit out the 2010 and 2011
18 LFOs in the Benton County jail.

19 115. At the hearing, the court did not inquire into Ms. Fuentes's financial
20 circumstances, her income, her living expenses, or her other financial obligations. The court
21 did not make a finding that Ms. Fuentes' nonpayment was willful. No public defender
22 advocated for Ms. Fuentes's inability to pay LFOs. Ms. Fuentes was told that she could "purge"
23 the work crew order by paying the total amount of LFOs then outstanding on the 2010 and
24 2011 cases, approximately \$3,000. The court did not make any finding that Ms. Fuentes had
25 the ability to pay the purge amount.
26

1 116. At the time she was sentenced to partial confinement or incarceration on the
2 2010 and 2011 LFOs, Ms. Fuentes was recently released from prison. She had no cash income
3 and received approximately \$200 in benefits from the federal Supplemental Nutritional
4 Assistance Program (SNAP, or food stamps) as well as rental assistance from the Department
5 of Corrections. Ms. Fuentes was unable to meet her basic living expenses with her limited
6 income, and she was often forced to borrow money from family members or church groups in
7 order to pay for her utilities, transportation, and hygiene products.

8 117. On November 1, 2013, Ms. Fuentes reported to work crew to discharge her
9 2010 and 2011 LFOs. On work crew, Ms. Fuentes was required to check into custody for
10 approximately nine hours per day, four days a week. In order to participate in work crew, Ms.
11 Fuentes had to pay \$20 per week in cash to Benton County, which she borrowed from family.
12 For each day Ms. Fuentes labored in partial confinement on work crew, she received
13 approximately \$80 of credit against the 2010 and 2011 LFOs.

14 118. During the time that Ms. Fuentes was partially confined on work crew, she
15 developed breathing problems because of required physical activity. She sought medical
16 treatment and was ordered to stop work crew for a week. After her medical leave, Ms.
17 Fuentes resumed the period of partial confinement on the work crew, which she completed
18 on approximately February 13, 2014.

19 119. Ms. Fuentes continues to owe the 2012 LFOs. As of the filing of this complaint,
20 Ms. Fuentes has missed several payments toward the 2012 LFOs. Ms. Fuentes has been
21 unable to make LFO payments due to financial hardship. Between late June 2012 and May
22 2013, Ms. Fuentes was incarcerated and earning little-to-no income. Between May 2013 and
23 December 2013, Ms. Fuentes had no cash income and relied on about \$200 in SNAP benefits
24 and assistance from family and church in order to meet basic needs. Between January 2014
25 and July 2015, Ms. Fuentes's only income was \$197 in state disability benefits and
26 approximately \$189 in SNAP benefits.

1 120. In July 2015, Ms. Fuentes obtained a job at a fast food restaurant working 20-
2 25 hours per week. Ms. Fuentes earns minimum wage and has been unable to find another
3 job due to her changing work schedule, her criminal history record, and her disability. In
4 August of 2015, Ms. Fuentes was hospitalized for two weeks due to illness and was unable to
5 work or earn income for over a month. Though she was recently able to return to work, Ms.
6 Fuentes's extremely limited income is often insufficient to pay for basic necessities.
7 Accordingly, she currently receives \$189 in SNAP benefits to help defray the cost of food. She
8 has occasionally been able to borrow money from family in order to make LFO payments and
9 pay for basic necessities, but these additional debts further strain her ability to continue
10 making timely payments.

11 121. Ms. Fuentes has already had her May 2012 LFO payments reset twice, and a
12 Benton County District Court judge told her that she has had her "last restart."

13 (ii) Plaintiff Gina Taggart

14 122. On or about August 8, 2011, Plaintiff Gina Taggart was ordered to pay \$1,034 in
15 LFOs in relation to a conviction for misdemeanor theft (the 2011 LFOs). Of those LFOs,
16 approximately \$500 is costs of recoupment, including public defender fees.

17 123. At the hearing sentencing Ms. Taggart, the court imposed the 2011 LFOs
18 without examining Ms. Taggart's financial circumstances or determining her current and
19 future ability to pay. The public defender assigned to Ms. Taggart's case likewise failed to
20 present the court with any evidence or information regarding Ms. Taggart's financial
21 circumstances or her current and future ability to pay LFOs.

22 124. At the time the 2011 LFOs were imposed on Ms. Taggart, she lacked the ability
23 to pay them, and it was highly unlikely that she would be able to pay them in the foreseeable
24 future. Ms. Taggart was living in a trailer on family property and had been unemployed for
25 about two years. Ms. Taggart also owed thousands of dollars in infraction penalties to Benton
26 County and other jurisdictions.

1 125. Between August 2011 and January 2012, Ms. Taggart missed several payments
2 towards the 2011 LFOs and also failed to appear at hearings related to nonpayment. A
3 warrant was issued for Ms. Taggart's arrest and served on or about March 26, 2012.

4 126. On or around March 26, 2012, a Benton County District Court judge reset Ms.
5 Taggart's fines, noting that this was her "last restart."

6 127. Ms. Taggart failed to make required payments because she was homeless,
7 unemployed, and struggling with addiction. The Benton County District Court subsequently
8 issued a warrant for her arrest.

9 128. On or around August 6, 2012, Ms. Taggart was arrested on the bench warrant
10 and brought before the Benton County District Court. The court ordered her to either serve
11 time on Benton County work crew or to sit out her fines in the Benton County jail.

12 129. At the August 6, 2012 hearing, the court did not inquire into Ms. Taggart's
13 financial circumstances, her income, her living expenses, or her other financial obligations.
14 The court did not make a finding that Ms. Taggart's nonpayment was willful. No public
15 defender advocated for Ms. Taggart's inability to pay legal financial obligations. Ms. Taggart
16 was told that she could "purge" the work crew order by paying the total amount of LFOs then
17 outstanding, approximately \$1,243. The court did not find that Ms. Taggart had the ability to
18 pay the purge amount.

19 130. Ms. Taggart failed to report to partial confinement on work crew and a warrant
20 was issued for her arrest. On approximately December 27, 2012, Ms. Taggart was arrested on
21 a bench warrant. The next day, Ms. Taggart was ordered to serve 60 days for "failure to show
22 for jail" and again ordered to sit out her fines in the Benton County jail with no inquiry into
23 her ability to pay. After completing the sentence for "failure to show," Ms. Taggart served
24 approximately 16 additional days in Benton County jail, earning credit against her fines for
25 each day she was incarcerated.
26

1 131. On or about January 11, 2013—while Ms. Taggart was incarcerated due to
2 nonpayment of the 2011 LFOs—the Benton County District Court ordered her to pay
3 approximately \$543 in LFOs (the 2013 LFOs) in relation to a conviction for misdemeanor
4 trespass. Out of those LFOs, approximately \$150 is costs of recoupment, including public
5 defender fees. At the hearing sentencing Ms. Taggart, the court imposed these LFOs without
6 examining Ms. Taggart’s financial circumstances or determining her current and future ability
7 to pay. The public defender assigned to Ms. Taggart’s case likewise failed to present the court
8 with any evidence or information regarding Ms. Taggart’s financial circumstances or her
9 current and future ability to pay LFOs.

10 132. At the time the 2013 LFOs were imposed on Ms. Taggart, she lacked the ability
11 to pay them, and it was highly unlikely that she would be able to pay them in the foreseeable
12 future. Ms. Taggart was in custody because of nonpayment of her 2011 LFOs. She also faced
13 incarceration on charges in other jurisdictions. Ms. Taggart was unemployed and owed
14 thousands of dollars in LFOs and infraction penalties to Benton County and other jurisdictions.
15 These debts made it highly unlikely that she would be able to afford the 2013 LFOs.

16 133. Ms. Taggart continues to owe the 2013 LFOs. As of the filing date of this
17 complaint, Ms. Taggart has missed several payments towards the 2013 LFOs due to financial
18 hardship. Between December 2012 and March 2013, Ms. Taggart was incarcerated and
19 earning little to no income. From late March 2013 to mid-July 2013, Ms. Taggart was homeless
20 and unemployed. From mid-July 2013 through mid-August 2013, Ms. Taggart was
21 incarcerated. In September 2013, Ms. Taggart found stable housing but was unemployed and
22 relied on odd jobs and church assistance to meet her basic needs.

23 134. From March 2014 through November 2014, Ms. Taggart worked part time with
24 a landscaping company. From September 2014 through July 2015, Ms. Taggart worked part-
25 time and made minimum wage at a fast food restaurant. Since about July 2015, Ms. Taggart
26 has been able to increase her hours at that job to approximately 40 hours per week.

1 Nevertheless, Ms. Taggart's income is sufficiently low that she qualifies for SNAP benefits. She
2 has custody of a minor child and contributes to the support of that child.

3 135. In addition to payments for rent, utilities, transportation and other basic
4 necessities, Ms. Taggart pays significant sums to child support and LFOs in other jurisdictions.
5 Her monthly expenses increased in September 2015 due to modifications of child support
6 payment schedules and LFO payments to other jurisdictions. Ms. Taggart is not guaranteed to
7 receive 40 hours of work per week, and her income has been reduced in prior winter months,
8 when work is generally slow. Ms. Taggart's limited income is often insufficient to pay for her
9 basic necessities. She has occasionally been able to borrow money from family in order to
10 make LFO payments and pay for basic necessities, but these additional debts further strain her
11 ability to continue making timely payments.

12 136. Ms. Taggart has already had her 2013 LFO payment reset three times, and she
13 been told that she has had her "last restart."

14 (iii) Plaintiff Reese Groves

15 137. On or about May 7, 2012, December 5, 2012, and September 24, 2014, judges
16 in Benton County District Court ordered Plaintiff Groves to pay approximately \$3,493 in LFOs
17 in relation to three convictions for misdemeanor driving with a license suspended in the third
18 degree (the 2012 and 2014 LFOs). Out of those LFOs, approximately \$2,118 is costs of
19 recoupment, including public defender fees.

20 138. At each of the hearings in which Mr. Groves was sentenced for these
21 convictions, the court imposed the LFOs without examining Mr. Groves's financial
22 circumstances or determining his current and future ability to pay. The public defenders
23 assigned to Mr. Groves's cases likewise failed to present the court with any evidence or
24 information regarding Mr. Groves's financial circumstances or his current and future ability to
25 pay LFOs.
26

1 139. At the time the Benton County District Court judges imposed the 2012 and
2 2014 LFOs, Mr. Groves was not working or working only sporadically. He also owed thousands
3 of dollars to Benton County and other jurisdictions for traffic infractions. The unpaid
4 infractions have led to the suspension of his driver's license, and the suspension cannot be
5 lifted until Mr. Groves is able to pay his outstanding infraction debt.

6 140. Between February 2013 and May 2014, Mr. Groves worked regularly and
7 steadily made payments toward his LFOs. In August 2014, Mr. Groves lost his job. Since then,
8 Mr. Groves has been unable to secure steady work in part because he lacks a valid driver's
9 license. He has supported himself and his two young children by selling personal possessions
10 and working odd jobs. Mr. Groves currently owns no property or assets.

11 141. Between 2014 and 2015, Mr. Groves missed several payments towards the
12 2012 and 2014 LFOs. The court issued warrants for Mr. Groves' arrest and after two hearings,
13 restarted Mr. Groves's LFOs. On March 30, 2015, Mr. Groves was arrested on a warrant for
14 nonpayment of LFOs.

15 142. At a March 30, 2015 hearing, the court sentenced Mr. Groves to partial
16 confinement on work crew to satisfy his LFO obligation. The court did not inquire into Mr.
17 Groves' financial circumstances, his income, his living expenses, or his other financial
18 obligations. Mr. Groves was asked only whether he admitted or denied that he "willfully failed
19 to pay." The court did not make a factual finding that Mr. Groves's nonpayment was willful.
20 No public defender advocated for Mr. Groves's inability to pay LFOs.

21 143. At the time Mr. Groves was sentenced to work crew on the 2012 and 2014
22 LFOs, he was unemployed and the sole support for his two young children. Mr. Groves had no
23 steady income and received approximately \$370 in SNAP benefits. He also qualified for public
24 benefits through the Department of Social and Health Services to defray the cost of childcare.
25 Mr. Groves was unable to meet his basic living expenses with his limited resources, and his
26

1 family's basic living expenses outstripped any funds he was able to earn through odd jobs or
2 the sale of personal items.

3 144. On or about April 8, 2015—shortly after he was sentenced to partial
4 confinement on the 2012 and 2014 LFOs—judges in Benton County District Court ordered Mr.
5 Groves to pay approximately \$2,092 in LFOs in relation to two convictions for misdemeanor
6 driving with license suspended in the third degree (the 2015 LFOs). Out of those LFOs,
7 approximately \$1,590 is costs of recoupment, including public defender fees. At the hearing
8 sentencing Mr. Groves, the court imposed these LFOs without examining Mr. Groves's
9 financial circumstances or determining his current and future ability to pay. The public
10 defender assigned to Mr. Groves's cases likewise failed to present the court with any evidence
11 or information regarding Mr. Groves's financial circumstances or his current and future ability
12 to pay LFOs.

13 145. At the time these LFOs were imposed on Mr. Groves, he lacked the ability to
14 pay them, and it was highly unlikely that he would be able to pay them in the foreseeable
15 future. In April 2015, Mr. Groves was unemployed and looking for work. He also owed
16 thousands of dollars in infraction penalties to Benton County and other jurisdictions and was
17 about to serve a sentence for nonpayment of the 2012 and 2014 LFOs. Those circumstances
18 made it highly unlikely that Mr. Groves would be able to pay the 2015 LFOs in the foreseeable
19 future.

20 146. During the time between the order sentencing him to work crew and his work
21 crew report date, Mr. Groves was charged with driving with a license suspended in the third
22 degree in Pasco Municipal Court and with possession of a stolen vehicle in Benton County
23 Superior Court. Under County policy, those charges, and the warrants issued in connection
24 with those charges, barred Mr. Groves from serving his sentence of partial confinement on
25 work crew for nonpayment of the 2012 and 2014 LFOs.
26

1 147. Mr. Groves's work crew sentence for nonpayment of the 2012 and 2014 LFOs
2 was automatically converted to full incarceration in the Benton County jail without an
3 intervening ability-to-pay hearing or representation by counsel. Mr. Groves was in custody
4 from April 22, 2015 to September 24, 2015, both sitting out fines on the 2012 and 2014 LFOs
5 and serving sentences for the 2015 offenses.

6 148. During the time when Mr. Groves was incarcerated, his children were sent to
7 live with relatives. Mr. Groves has been ordered to pay the state several hundred dollars to
8 cover the cost of public benefits paid to his son's maternal grandmother during the time Mr.
9 Groves was incarcerated and unable to care for his child.

10 149. Mr. Groves continues to owe the 2015 LFOs, and his first payment is due on
11 October 25, 2015. Mr. Groves is unemployed, and set to serve approximately 60 days on work
12 crew related to DWLS 3 charges in Pasco Municipal Court. He lacks a stable residence and is
13 working to regain physical custody of his children.

14 **J. Plaintiffs Fuentes, Taggart, and Groves Face a Continuing Risk that Their**
15 **Constitutional Rights Will Be Violated**

16 150. As a result of Benton County's acts and omissions—including the policies,
17 practices, and procedures Benton County has implemented, maintained, and countenanced
18 with respect to indigent persons who owe LFOs for criminal cases prosecuted in Benton
19 County District Court—Plaintiffs Fuentes, Taggart, and Groves and Indigent Class Members
20 face an imminent and substantial risk of harm. Among other things, Plaintiffs and Indigent
21 Class Members face a substantial likelihood of being stopped, detained, arrested, held,
22 partially confined on work crew, and incarcerated for nonpayment of LFOs owed in relation to
23 criminal cases prosecuted in Benton County District Court. Plaintiffs and Indigent Class
24 Members also face a substantial likelihood of being deprived of the right to counsel when
25 facing charges of nonpayment of LFOs owed in relation to criminal cases prosecuted in Benton
26 County District Court.

1 151. There is a substantial risk that Benton County policies, practices, and customs
2 will continue and will deprive Plaintiffs Fuentes, Taggart, and Groves and Indigent Class
3 Members of their rights. Among other things:

4 a. Benton County has persisted in a wrongful and systemic course of
5 conduct since at least 2012;

6 b. Benton County has known that its wrongful and systemic conduct
7 causes the rights of indigent persons to be violated;

8 c. Benton County has failed to take prompt action to end its wrongful and
9 systemic course of conduct;

10 d. Plaintiffs Fuentes, Taggart and Groves were each sentenced to partial
11 confinement in work crew for nonpayment of LFOs without any meaningful pre-deprivation
12 ability-to-pay hearing or representation by counsel, and fear similar future treatment in light
13 of their indigence, past experience and Benton County's continuing policies, practices and
14 customs.

15 d. Plaintiffs Taggart and Groves were each incarcerated in jail following
16 revocation of a work crew sentence imposed for nonpayment of LFOs, without any
17 meaningful, intervening pre-deprivation ability-to-pay hearing or representation by counsel,
18 and fear similar future treatment in light of their indigence, past experience and Benton
19 County policies, practices and customs.

20 **VI. CAUSES OF ACTION—COUNT ONE**

21 **(By Plaintiffs Fuentes, Taggart, and Groves, on behalf of**
22 **Themselves and Members of the Indigent Class, for Violation of**
23 **the Fourteenth Amendment to the United States Constitution**
 (42 U.S.C. § 1983) and Article I, Sections 3 and 12 of the
 Washington State Constitution)

24 152. The allegations of paragraphs 1 through 151 above are incorporated herein.

25 153. The Due Process and Equal Protection clauses of the Fourteenth Amendment
26 to the United States Constitution and Article I, Sections 3 and 12 of the Washington State

1 Constitution prohibit incarcerating a person for nonpayment of LFOs when the nonpayment is
2 due to the person's indigence unless alternative methods are inadequate to satisfy a
3 legitimate interest in punishment or deterrence.

4 154. Before incarcerating a person for nonpayment of LFOs, a court must conduct
5 an inquiry into the person's ability to pay, efforts to secure resources to pay and, if the person
6 lacks the ability to pay despite having made sufficient efforts to acquire additional resources,
7 the availability and adequacy of alternative punishments. The court is prohibited from
8 incarcerating the person unless it conducts this inquiry and finds on the record that (a) the
9 nonpayment is willful, either because the person refuses to pay from available resources or
10 has failed to make sufficient efforts to acquire additional resources or (b) the person is unable
11 to pay despite having made sufficient efforts to acquire resources and alternative methods
12 are inadequate to satisfy a legitimate government interest in punishment or deterrence.

13 155. Acting under color of law, Benton County has a systemic policy, practice, and
14 custom of generating revenue by incarcerating or threatening to incarcerate indigent persons
15 who are unable to afford the LFOs imposed on them in district court. As a result, Benton
16 County is violating and causing violations of the Fourteenth Amendment of the United States
17 Constitution and Article I, Sections 3 and 12 of the Washington State Constitution.

18 156. Benton County District Court judges—acting pursuant to County policy,
19 practice, and custom—routinely order indigent persons to jail or work crew without
20 conducting a constitutionally required inquiry into the ability of those persons to pay, the
21 adequacy of efforts to acquire resources to pay, the willfulness of nonpayment, or the
22 adequacy of alternatives to incarceration for punishment or deterrence.

23 157. Plaintiffs Fuentes, Taggart, and Groves and members of the Indigent Class are
24 indigent persons who currently owe money for LFOs imposed on them in Benton County
25 District Court. Because of their indigence, Plaintiffs Fuentes, Taggart and Groves and Indigent
26 Class Members are unable to afford their LFO debt.

1 158. Each Plaintiff has a substantial, well-founded fear of being denied the
2 constitutional right to a meaningful pre-deprivation inquiry into his or her ability to pay,
3 efforts to secure resources, and the adequacy of alternatives to incarceration. Each Plaintiff
4 also has a substantial, well-founded fear of being incarcerated or threatened with
5 incarceration for nonpayment of LFOs despite his or her inability to pay. Indeed, Benton
6 County already sentenced Plaintiffs Fuentes, Taggart and Groves to jail or work crew (or both)
7 for prior nonpayment of LFO debt without any meaningful pre-deprivation ability-to-pay
8 hearing or representation by counsel.

9 159. The real and substantial injuries that Plaintiffs Fuentes, Taggart, and Groves
10 face are the result of Benton County's systemic policy, practice, and custom of generating
11 revenue by incarcerating or threatening to incarcerate indigent persons who are unable to
12 afford the LFOs imposed on them in district court.

13 160. Unless enjoined by the Court, Benton County will violate and cause violation of
14 the constitutional rights of Plaintiffs Fuentes, Taggart, and Groves and members of the
15 Indigent Class.

16 161. As a result of Benton County's unconstitutional actions, Plaintiffs Fuentes,
17 Taggart, and Groves and members of the Indigent Class are entitled to declaratory and
18 injunctive relief, as well as an award of attorneys' fees and costs.

19 **VII. CAUSES OF ACTION—COUNT TWO**
20 **(By Plaintiffs Fuentes, Taggart, and Groves, on Behalf of**
21 **Themselves and Members of the Incarcerated Class, for**
22 **Violation of the Fourteenth Amendment to the United States**
23 **Constitution (42 U.S.C. § 1983) and Article I, Sections 3 and 12 of**
24 **the Washington State Constitution)**

25 162. The allegations of paragraphs 1 through 161 above are incorporated herein.

26 163. The Due Process and Equal Protection clauses of the Fourteenth Amendment
to the United States Constitution and Article I, Sections 3 and 12 of the Washington State
Constitution prohibit incarcerating a person for nonpayment of LFOs when the nonpayment is

1 due to the person's indigence unless alternative methods are inadequate to satisfy a
2 legitimate interest in punishment or deterrence.

3 164. Before incarcerating a person for nonpayment of LFOs, a court must conduct
4 an inquiry into the person's ability to pay, efforts to secure resources to pay and, if the person
5 lacks the ability to pay despite sufficient efforts to acquire additional resources, the adequacy
6 of alternative punishments. The court is prohibited from incarcerating the person unless it
7 conducts this inquiry and finds on the record that (a) the nonpayment is willful, either because
8 the person refuses to pay from available resources or has failed to make sufficient efforts to
9 acquire additional resources or (b) the person is unable to pay despite having made sufficient
10 efforts to acquire resources and alternative methods are inadequate to satisfy a legitimate
11 interest in punishment or deterrence.

12 165. Neither at the time that indigent persons are sentenced to work crew, nor at
13 the time when those sentences are converted into jail sentences, are indigent persons
14 afforded a meaningful pre-deprivation inquiry into their ability to pay LFOs.

15 166. Acting under color of state law, Benton County has had a systemic policy,
16 practice, and custom of generating revenue by incarcerating or threatening to incarcerate
17 indigent persons who are unable to afford the LFOs imposed on them in district court. As a
18 result, Benton County has violated and caused violations of the Fourteenth Amendment of the
19 United States Constitution and Article I, Sections 3 and 12 of the Washington State
20 Constitution.

21 167. Benton County District Court judges—acting pursuant to County policy,
22 practice, and custom—have routinely ordered the incarceration of indigent persons without
23 conducting a constitutionally required inquiry into the ability of those persons to pay, the
24 adequacy of efforts to acquire resources to pay, the willfulness of nonpayment, or the
25 adequacy of alternatives to incarceration for punishment or deterrence.
26

1 168. As a result of Benton County's unlawful policy, practice, and custom, Plaintiffs
2 and members of the Incarcerated Class were denied a meaningful pre-deprivation inquiry into
3 their ability to pay LFOs imposed in Benton County District Court, their efforts to secure
4 resources, and the availability and adequacy of alternatives to incarceration. Benton County
5 has incarcerated Plaintiffs and members of the Incarcerated Class for nonpayment of LFOs
6 despite their inability to pay.

7 169. Benton County's unconstitutional actions have caused injury to Plaintiffs and
8 members of the Incarcerated Class.

9 170. The harm that Plaintiffs and members of the Incarcerated Class have suffered is
10 the result of Benton County's systemic policy, practice and custom of generating revenue by
11 incarcerating or threatening to incarcerate indigent persons who are unable to afford the
12 LFOs imposed on them in district court.

13 171. As a result of Benton County's unconstitutional actions, Plaintiffs and members
14 of the Incarcerated Class are entitled to declaratory relief, nominal damages, and an award of
15 attorney's fees and costs.

16 **VIII. CAUSES OF ACTION—COUNT THREE**

17 **(By Plaintiffs Fuentes, Taggart, and Groves, on behalf of**
18 **Themselves and Members of the Indigent Class, for Violation of**
19 **the Sixth and Fourteenth Amendments to the United States**
20 **Constitution (42 U.S.C. § 1983) and Article I, Sections 3, 12, and**
21 **22 of the Washington State Constitution)**

22 172. The allegations of paragraphs 1 through 171 above are incorporated herein.

23 173. The Sixth and Fourteenth Amendments to the United States Constitution and
24 Article I, Sections 3, 12, and 22 of the Washington State Constitution guarantee the right to
25 counsel to every indigent person facing sanctions for nonpayment of LFOs owed in a criminal
26 case.

 174. Acting under color of state law, Defendant Benton County has a policy of
inadequately funding, training, and supervising the Benton County Office of Public Defense in

1 its representation of indigent persons who face charges of nonpayment of LFOs imposed in
2 Benton County District Court, and the County is deliberately indifferent to the right indigent
3 persons have to assistance of counsel.

4 175. Acting under color of state law, Benton County also has a practice of failing to
5 provide meaningful assistance of counsel to indigent persons who face sanctions for non-
6 payment of LFOs imposed in district court. The County's practice is so pervasive, permanent,
7 and well settled as to constitute a Benton County custom with the force of law. Benton
8 County policymakers have actual and constructive knowledge of and acquiesce in that
9 custom, which is a moving force for constitutional violations of the right to counsel.

10 176. As a result of its conduct, Benton County is violating or causing violations of the
11 Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 3,
12 12, and 22 of the Washington State Constitution.

13 177. Plaintiffs Fuentes, Taggart, and Groves are indigent persons who currently owe
14 money for LFOs imposed on them in Benton County District Court. Because of their indigence,
15 Plaintiffs Fuentes, Taggart, and Groves are unable to afford their LFO debt. Each Plaintiff has a
16 substantial, well-founded fear of having to appear in district court to face charges of
17 nonpayment of those LFOs without meaningful assistance of counsel. Indeed, Benton County
18 has already failed to provide meaningful assistance of counsel to Plaintiffs when they
19 previously faced incarceration over LFOs imposed in district court.

20 178. The real and substantial injuries that Plaintiffs Fuentes, Taggart, and Groves are
21 also the result of failing to provide meaningful assistance of counsel to indigent persons facing
22 charges of nonpayment of LFOs owed to Benton County District Court.

23 179. Unless enjoined by the Court, Defendant Benton County will violate the
24 constitutional right to counsel to which Plaintiffs and members of the Indigent Class are
25 entitled.
26

1 180. As a result of Benton County's unconstitutional actions, Plaintiffs Fuentes,
2 Taggart, and Groves and members of the Indigent Class are entitled to declaratory and
3 injunctive relief, as well as an award of attorneys' fees and costs.

4 **IX. CAUSES OF ACTION—COUNT FOUR**

5 **(By Plaintiffs Fuentes, Taggart, and Groves, on behalf of**
6 **Themselves and Members of the Incarcerated Class, for**
7 **Violation of the Sixth and Fourteenth Amendments to the**
8 **United States Constitution (42 U.S.C. § 1983) and Article I,**
9 **Sections 3, 12, and 22 of the Washington State Constitution)**

10 181. The allegations of paragraphs 1 through 180 above are incorporated herein.

11 182. The Sixth and Fourteenth Amendments to the United States Constitution and
12 Article I, Sections 3, 12, and 22 of the Washington State Constitution guarantee the right to
13 counsel to every indigent person facing sanctions for nonpayment of LFOs owed in a criminal
14 case.

15 183. Acting under color of state law, Defendant Benton County has had a policy of
16 inadequately funding, training, and supervising the Benton County Office of Public Defense in
17 its representation of indigent persons who face sanction for nonpayment of LFOs imposed in
18 Benton County District Court, and the County has been deliberately indifferent to the right
19 indigent persons have to assistance of counsel.

20 184. Acting under color of state law, Benton County also has had a practice of failing
21 to provide meaningful assistance of counsel to indigent persons facing charges of non-
22 payment of LFOs imposed in district court. The County's practice has been so pervasive,
23 permanent, and well settled as to constitute a Benton County custom with the force of law.
24 Benton County policymakers have had actual and constructive knowledge of and have
25 acquiesced in that custom, which was a moving force for constitutional violations of the right
26 to counsel.

185. As a result of its conduct, Benton County has violated or caused violations of the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 3, 12, and 22 of the Washington State Constitution.

186. The harm Plaintiffs Fuentes, Taggart, and Groves have suffered is the result of Benton County's systemic policy, practice and custom of failing to provide meaningful assistance of counsel to indigent persons facing charges of nonpayment of LFOs owed to Benton County District Court.

187. As a result of Benton County's unconstitutional actions, Plaintiffs Fuentes, Taggart, and Groves, and the members of the Incarcerated Class are entitled to declaratory relief as well as an award of nominal damages, attorneys' fees, and costs.

X. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for relief as follows:

A. For certification of the Classes defined above;

B. For a declaration that Benton County's systemic policy, practice, and custom of generating revenue by incarcerating or threatening to incarcerate indigent persons who are unable to afford the LFOs imposed on them in district court violates the rights of the named Plaintiffs and the Indigent Class members under the Fourteenth Amendment to the United States Constitution and Article I, Sections 3 and 12 of the Washington State Constitution;

C. For a declaration that Benton County's systemic policy, practice, and custom of generating revenue by incarcerating or threatening to incarcerate indigent persons who are unable to afford the LFOs imposed on them in district court has violated the rights of the named Plaintiffs and the Incarcerated Class members under the Fourteenth Amendment to the United States Constitution and Article I, Sections 3 and 12 of the Washington State Constitution;

D. For a declaration that Benton County's systemic policy of inadequately funding, training, and supervising the Benton County Office of Public Defense in its representation of

1 indigent persons who face sanction for nonpayment of LFOs imposed in district court violates
2 rights of the named Plaintiffs and the Indigent Class members under the Sixth and Fourteenth
3 Amendments to the United States Constitution and Article I, Sections 3, 12, and 22 of the
4 Washington State Constitution;

5 E. For a declaration that Benton County's systemic practice and custom of failing
6 to provide meaningful assistance of counsel to indigent persons who face charges of
7 nonpayment of LFOs imposed in district court has violated the rights of the named Plaintiffs
8 and Incarcerated Class members under the Sixth and Fourteenth Amendments to the United
9 States Constitution and Article I, Sections 3, 12, and 22 of the Washington State Constitution;

10 F. For the issuance of preliminary and permanent injunctions restraining Benton
11 County from acting pursuant to policies, practices, or customs that violate the Indigent Class's
12 rights under the Sixth and Fourteenth Amendments to the United States Constitution and
13 Article I, Sections 3 and 12 of the Washington State Constitution;

14 G. For an award of nominal damages to each member of the Incarcerated Class.

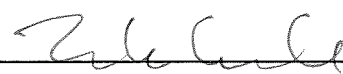
15 H. For an award of Plaintiffs' attorneys' fees and costs; and

16 I. For such other and further relief as the Court may deem just and proper.

17 DATED this 6th day of October, 2015.

18 Respectfully submitted,

19 TERRELL MARSHALL LAW GROUP PLLC

20
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*Application for limited admission pending