

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

**STEVEN F. COX, KELLY FREEMAN, RUFUS)
IRVING, KEITH FASON, ERNIE KIRK and)
DAVID NAGY individually and on behalf of)
all similarly situated persons,)**

Plaintiffs,)

vs.)

CITY OF JACKSON, TENNESSEE,)

Defendants.)

**NO. 1:19-cv-01026-JDB-jay
JURY TRIAL DEMANDED
Rule 23 Class Action**

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF SETTLEMENT AND
PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS**

The Plaintiffs, Rufus Irving and Keith Fason, on behalf of themselves and all others similarly situated ("Plaintiffs"), through counsel of record ("Plaintiffs' Class Counsel"), respectfully submit this Memorandum in Support of Motion for Preliminary Approval of Settlement and Provisional Settlement Class Certification.

INTRODUCTION

In a Settlement Agreement to be executed prior to the hearing on this motion, Class Counsel (Michael L. Weinman, of Weinman and Associates in Jackson, Tennessee, J. Russ Bryant, Robert E. Morelli, III and Robert Emmett Turner, IV of Jackson, Shields, Yeiser, Holt, Owen and Bryant of Memphis, Tennessee, and J. Colin Morris, Jackson, Tennessee) have secured a proposed settlement (the "Settlement") that provides substantial benefits to individuals detained by the City of Jackson, Tennessee (the "City") who were arrested and detained for more than 48 hours without

having a probable cause determination made by a judge or certified clerk or other legally valid basis for detention.

The Settlement creates a Settlement Fund of \$1.05 million for the benefit of approximately 5,000 potential class members. The specifics of this relief are set forth in a Plan of Distribution that is attached to the parties' Settlement Agreement.

This highly beneficial settlement represents the culmination of nearly two years of contested litigation between the parties. Class Counsel has served extensive discovery on the Defendant and reviewed voluminous documents. Beginning in June of 2020, the parties engaged in settlement negotiations with the help of a highly experienced mediator, Gail Vaughn Ashworth of the Weisman Ashworth law group in Nashville, Tennessee. Although these lengthy and complex negotiations have been difficult, the parties' good-faith efforts to resolve this litigation ultimately resulted in a settlement representing a thoughtful compromise, which considers the parties respective concerns--a meaningful solution to the alleged constitutional violations incurred by the members of the class and the City's financial situation.

In short, this settlement is more than fair, adequate, and reasonable for the Settlement Class and the requirements for final approval will be satisfied. In considering preliminary approval, this is all that the moving party needs to show in order for class members to be notified of this settlement and a fairness hearing scheduled. *Kizer v. Summit Partners, L.P.*, No. 1:11-CV-38, 2012 U.S. Dist. LEXIS 63795, at *21-22 (E.D. Tenn. May 7, 2012) (citations omitted) ("This Circuit follows a three-step process for approving class action settlements: there must be preliminary approval of the proposed settlement; the class members must be provided notice of the proposed settlement; and, after a hearing, there must be final approval of the settlement.") Finally, the Plaintiffs request that, along with granting preliminarily approval of the Settlement, the Court

adopt the schedule set forth below, for the parties to effectuate the various steps in the settlement approval process under the Settlement Agreement:

	<i>Event</i>	<i>Time</i>
1	Notice Date	No more than forty-five (30) days after Preliminary Settlement
2	Deadline for filing Requests for Exclusion	Sixty (60) days from Notice Date.
3	Deadline for filing Objections	Sixty (60) days from Notice Date.
4	Fairness Hearing	One Hundred and Fifty (150) days from Notice Date.
5	Claim Date: deadline by which Settlement Class members must submit claims	Ninety (90) days after Notice Date.

Accordingly, at this preliminary stage of the settlement process, Plaintiffs respectfully request that the Court: (i) grant preliminary approval of the proposed settlement; (ii) certify a Settlement Class pursuant to the provisions of Fed. R. Civ. P. 23(b)(3); (iii) schedule a fairness hearing to consider final approval, pursuant to the schedule set forth above; (iv) direct that notice of the proposed settlement and hearing be provided to absent class members in a manner consistent with the Settlement Agreement and the Notice Plan, as set forth in the above-mentioned schedule, and, (v) enter the proposed Order for Preliminary Approval.

PROCEDURAL BACKGROUND OF THE CASE

On February 11, 2019, Plaintiffs Steven F. Cox and Kelly Freeman filed this class action lawsuit against the City of Jackson Tennessee, Jackson City Court Clerk Daryl Hubbard, in his individual and official capacity and Jackson Police Chief Julian Wiser, in his individual and official capacity, regarding the City's policy and practice of detaining individuals arrested in Jackson and charged in the Jackson City Court for more than 48 hours without providing them with the constitutionally mandated probable cause determination made by a judge or certified court

clerk¹. On May 31, 2019, Plaintiffs filed a First Amended Complaint that added Rufus Irving, Keith Fason, David Nagi and Ernie Kirk as plaintiffs in the action. On July 18, 2019 the City filed an Answer and Motion for Judgment on the Pleadings, which the Court granted on August 27, 2019, dismissing all claims. Plaintiffs appealed from that Order and on April 22, 2019, the Sixth Circuit Court of Appeals issued an opinion affirming in part and reversing in part the order of dismissal and remanded the case to proceed with the claims of Irving, Fason, Kirk and Nagi.²

Following the remand, the parties began discovery, including serving interrogatories and document requests and reviewing hundreds of documents. Counsel for the parties met on numerous occasions to discuss the logistics of discovery and reviewing documents that were maintained in the City Court Clerk's office. Given the volume of the relevant documents and number of potential witnesses to be deposed, the parties agreed to make an attempt at resolving the case before incurring the substantial time and expense of completing discovery, which would have likely usurped all of the available liability insurance coverage the City had in place to cover the claim.

Settlement negotiations began in June of 2019, when the parties met for a mediation session conducted by Gail Vaughn Ashworth of the Weisman Ashworth law group in Nashville, Tennessee. A second mediation session was held with Ms. Ashworth on November 5, 2019, and the Parties reached a settlement in principle. After reaching a settlement, the parties have spent several weeks memorializing the terms of the Settlement Agreement, preparing for the administration of the settlement, and drafting the class notices that are attached to the Settlement Agreement. The parties will execute the Settlement Agreement prior to the hearing on this motion.

¹ On April 4, 2019 an Agreed Order was entered dismissing without prejudice the individual capacity claims against Hubbard and Wiser.

² The Sixth Circuit upheld the dismissal of the Cox and Freeman's claims and they are no longer parties to this action.

BRIEF FACTUAL BACKGROUND OF THE CASE

Plaintiffs were all, at various times, arrested by officers of the Defendant, Jackson, Tennessee's police department, charged in the Jackson City Court, and detained for a period of time following their arrests.³ The officers arrested the Plaintiffs without an arrest warrant and following each arrest, an arrest warrant or affidavit of complaint was issued by the Defendant for each Plaintiff, which appeared on its face to have been issued by a sworn clerk after a probable cause finding made upon the sworn testimony of the arresting officer as required by the Fourth Amendment.⁴ In fact, pursuant to the Defendant's regular practice, none of the Warrants or Affidavits had actually been sworn to by the arresting officers before or after they were executed despite appearing otherwise.⁵

Plaintiffs were not aware that the Warrants or Affidavits lacked this constitutionally mandated requirement until the District Attorney General for the 26th Judicial District of Tennessee issued a press release to the local media about the deficiency on January 18, 2019.⁶ Not long after learning of the constitutional deficiency, Plaintiffs instituted this class action lawsuit against the City of Jackson for this unconstitutional policy and practice on behalf of all individual who had also been detained without having had a valid probable cause determination made by a qualified magistrate or clerk within 48 hours of being detained.

THE PROPOSED SETTLEMENT

Class Counsel is pleased to present to the Court Plaintiffs' application for preliminary

³ First Am. Compl. (ECF No. 33) at ¶¶ 2-7.

⁴ *Id.* at ¶¶ 10-17.

⁵ *Id.* at ¶ 18.

⁶ *Id.*

approval of the settlement of this litigation. This settlement is made on behalf of all persons arrested in Jackson, Tennessee and charged in the Jackson City Court and detained for more than 48 hours without being provided the constitutionally mandated probable cause determination made by a judge or certified court clerk or other legally valid basis for detention during the period of January 18, 2016 and January 18, 2019. The proposed settlement Class is defined as:

All persons arrested in Jackson, Tennessee and charged in the Jackson City Court and detained for more than 48 hours without being provided the constitutionally mandated probable cause determination made by a judge or certified court clerk or for which there was no other legally valid basis for detention (e.g., a pending unrelated arrest warrant or *capias*) during the period of January 18, 2016 and January 18, 2019.

As described below, the Settlement Agreement provides for the creation of a fund to compensate Class members for these constitutional violations

THE SETTLEMENT FUND

The settlement creates a fund of \$1.05 million (the “Settlement Fund”). The Defendant and its insurer, Public Entity Partners, has agreed that it will advance \$50,000.00 as the initial contribution, to be used by the Settlement Administrator, to cover the initial costs of notice and administration of the settlement. Defendant’s remaining obligation of \$1,000,000.00 will be deposited into the Settlement Fund within thirty (30) days of final approval of the settlement by the Court.

All administrative expenses, including the costs of settlement administration, website administration and the provision of notice to class members, as well as the amount awarded by the Court for attorneys’ fees and costs and service awards to the Class Representatives, will be deducted from the Settlement amount prior to determining the amount of distribution for Settlement Class Members. Qualified Settlement Class Members will each receive \$100 for each

24-hour period that they were detained (after the initial 48-hour period of confinement) without having had a probable cause determination made by either a judge or certified clerk or for which there was no other legally valid basis for detention, up to a maximum of 21 days. If the total amount due on the qualified claims exceeds the amount of the net settlement funding (after the deduction of administrative costs, attorney's fees and service awards), then the daily rate each Settlement Class Member will receive will be reduced by a pro-rata amount. If the total amount of the certified claims is less than the amount of the net settlement funding, then the City and its insurer, Public Entity Partners, will be entitled to a reversion in the amount that net settlement funding exceeds the total amount of the certified claims. Plaintiffs expect that each qualified class member will receive between \$100 and \$2,100. The Class Representatives will also receive a service award of \$2,500 each, in addition to the amount they are entitled to as Settlement Class Members. Class Counsel believes the amount of the settlement represents the present limit of the City of Jackson's ability to pay.

CLASS NOTICE AND SETTLEMENT ADMINISTRATION

Both the Class Notice and Settlement Administration provided for in the Settlement Agreement comport with the requirements of applicable law, Rule 23 of the Federal Rules of Civil Procedure and due process. First, all costs associated with publishing notice to the Settlement Class Members and the administration of the Settlement shall be deducted directly from the settlement amount before determining the distribution to the Settlement Class. Second, notice will be provided to the class by publication in the Jackson Sun, and the West Tennessee Examiner on at least one day per week for three consecutive weeks. Notice will also be provided to the class by way of a televised notice campaign on both WBBJ and WNBJ, a radio campaign on the stations operated by Thomas Media in Jackson, Tennessee and a limited billboard campaign.

ATTORNEYS FEES

Class Counsel will petition the court for reasonable attorneys' fees and expenses payable from the Settlement Fund. The Settlement Agreement currently provides that Class Counsel will seek attorneys' fees of one third of the total Settlement Fund, and an award of pre-settlement litigation expenses of an amount not to exceed Five Thousand (\$5,000.00) dollars.

LEGAL ARGUMENT

A. The Settlement Agreement Should Be Preliminarily Approved by the Court

In this motion, Plaintiffs seek preliminary approval of the Settlement Agreement between Plaintiffs and Defendant. The Sixth Circuit and courts in this district have recognized that the law favors the settlement of class action lawsuits. *UAW v. General Motors Corp.*, 497 F.3d 615, 632 (6th Cir. 2007) (noting "the federal policy favoring settlement of class actions"); *IUE-CWA v. General Motors Corp.*, 238 F.R.D. 583, 593 (E.D. Mich. 2006) (noting "the general federal policy favoring the settlement of class actions"). This policy applies with equal force whether the settlement is partial, involving only some of the defendants, or complete. See *In re Beef Ind. Antitrust Litig.*, 607 F.2d 167, 172 (5th Cir. 1979) (finding nothing in the cases or the commentaries to suggest that approval of a pre-certification settlement is dependent upon the settlement being complete as to all parties); *Newby v. Enron Corp.*, 394 F.3d 296 (5th Cir. 2004) (affirming approval of partial settlement where class certified for settlement purposes only) and cases collected at pp. 14-15 of Direct Purchaser Plaintiffs' Response to Defendants' motion to stay (Dkt. No. 214, 14-15.) *In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2010 U.S. Dist. LEXIS 77645, at *33-34 (E.D. Mich. Aug. 2, 2010)

Plaintiff seek preliminary approval of the Settlement Agreement under Fed. R. Civ. P. 23. Rule 23(e)(1)(B)(i) directs a court to determine, at the preliminary approval stage, whether it "will

likely be able to . . . approve the proposal under Rule 23(e)(2).” Rule 23(e)(2), as amended December 1, 2018, sets out four factors for courts to consider when determining whether to preliminarily approve a class action settlement. *See Day v. AMC Corp.*, No. 5:17-cv-183, 2019 U.S. Dist. LEXIS 143021, 2019 WL 3977253, at *3 (E.D. Ky. July 26, 2019) (noting that the amendments to Rule 23(e) provide a “new rubric” for preliminary settlement approval). Under Rule 23(e)(2), the court must review whether the proposed settlement is “fair, reasonable, and adequate after considering whether”:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2)(A)-(D); *Fitzgerald v. P.L. Mktg.*, No. 2:17-cv-02251-SHM-cgc, 2020 U.S. Dist. LEXIS 25672, at *26-27 (W.D. Tenn. Feb. 13, 2020); *Hillson v. Kelly Servs. Inc.*, No. 2:15-cv-10803, 2017 U.S. Dist. LEXIS 8699, 2017 WL 279814, at *6 (E.D. Mich. Jan. 23, 2017) (granting preliminary approval of class action settlement where “[t]he procedural history of [the] case reflect[ed] arms-length, noncollusive negotiations,” including “both informal and formal written discovery” and “two mediation sessions”).

The Settlement Agreement meets all these factors. First, it is undeniable that it was the result of arm's-length negotiations, conducted by experienced counsel for all parties. The

settlement was negotiated on behalf of Plaintiffs by a team of attorneys who have been vigorously prosecuting the class case against the City. Class counsel has extensive experience representing plaintiffs in civil class litigation. This consideration is often shaped by the experience and reputation of counsel. *General Motors*, 55 F.3d at 787-88; *Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977); *In re Coordinated Pretrial Proceedings in antibiotic Antitrust Actions*, 410 F.Supp. 659 (D.Minn.1974) (“The recommendation of experienced antitrust counsel is entitled to great weight.”); *Fisher Brothers v. Phelps Dodge Industries, Inc.*, 604 F.Supp.446 (E.D. Pa. 1985) (“The professional judgment of counsel involved in the litigation is entitled to significant weight.”). Class counsel, Michael L. Weinman, has practiced in this and other federal courts for over 29 years and has represented plaintiffs in numerous civil rights and class action cases in this and other federal courts. Class counsel, J. Russ Bryant, similarly, has extensive experience representing both plaintiffs and defendants in class litigation across the country. This settlement was specifically negotiated by experienced counsel to meet all the requirements of Rule 23 and specifically, to provide administrative procedures to assure all class members equal and sufficient due process rights. Accordingly, the settlement was not the product of collusive dealings, but, rather, was informed by the vigorous prosecution of the case by the experienced and qualified counsel. Further, continued litigation would be long, complex and expensive, and a burden to Court dockets. *Lake v. First National Bank*, 900 F. Supp. 726 (E.D. Pa. 1995) (expense and duration of litigation are factors to be considered in evaluating the reasonableness of a settlement); *Weiss v. Mercedes-Benz of N. Am. Inc.*, 899 F. Supp. 1297 (D.N.J. 1995) (burden on crowded court dockets to be considered).

Finally, there is no reason to doubt the fairness of the proposed Settlement Agreement. The Settlement Agreement was the result of good faith, arm’s length negotiations between experienced

and informed counsel on both sides. The Settlement and its material terms were negotiated with the substantial assistance of a highly qualified and experienced mediator. The proposed Settlement Agreement does not unduly grant preferential treatment to the class representatives or to segments of the Settlement Class, and it does not provide excessive compensation to counsel. And, there was no collusion between the negotiating parties. Accordingly, the standards for preliminary approval are met in this case and the Court should grant Plaintiffs' motion in its entirety. *Id.*; see also *In re NASDAQ Market- Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1999).

1. The actual, likely amount to be received by class members is fair, adequate and reasonable.

This Circuit follows a three-step process for approving class action settlements: there must be preliminary approval of the proposed settlement; the class members must be provided notice of the proposed settlement; and, after a hearing, there must be final approval of the settlement. *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 903 (S.D. Ohio 2001) (citing *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983)) (additional citations omitted). The standard for approval is “whether the proposed settlement is fair, adequate, and reasonable under the circumstances, and whether the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued.” *Id.* (citing *Bailey v. Great Lakes Canning, Inc.*, 908 F.2d 38, 42 (6th Cir. 1990)) (additional citations omitted). A court should base its preliminary approval of the proposed settlement agreement “upon its familiarity with the issues and evidence of the case as well as the arms-length nature of the negotiations prior to the settlement.” *Id.* (citing *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 369 (S.D. Ohio 1990)). The Court should determine that the settlement is not illegal or collusive. *Id.* (citing *Vukovich*, 720 F.2d at 921; *In re Dun*, 130 F.R.D. at 369). *Kizer v. Summit Partners, L.P.*, No. 1:11-CV-38, 2012 U.S. Dist. LEXIS 63795, at *21-22 (E.D. Tenn. May 7, 2012)

The court must also consider whether a precisely defined class exists and whether the named plaintiffs are a member of the proposed class. *Thacker v. Chesapeake Appalachia, L.L.C.*, 259 F.R.D. 262, 266 (E.D. Ky. 2009); *Taylor v. CSX Transp., Inc.*, 264 F.R.D. 281, 286 (N.D. Ohio 2007); *Edwards v. McCormick*, 196 F.R.D. 487, 490-91 (S.D. Ohio 2000). Generally, classes should be defined to specify a particular group at a particular time and location who were harmed in a particular manner. *Edwards*, 196 F.R.D. at 491 (citing *Crosby v. Soc. Sec. Admin.*, 796 F.2d 576, 580 (1st Cir. 1986)). In addition, the class should be defined so that the court can “ascertain its membership in some objective manner.” *Id.* (citing *Crosby*); see 7A Charles Alan Wright, et al., *Federal Practice and Procedure* § 1760 (3d ed. 2005) (“[T]he requirement that there be a class will not be deemed satisfied unless the class description is sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member.”) *Kinder v. Nw. Bank*, 278 F.R.D. 176, 182 (W.D. Mich. 2011)

Here the class is sufficiently defined by specifically identifying the group potentially harmed by the defendant’s conduct, the nature of the harm claimed and the relevant time period covered by the settlement. Potential class members can be ascertained from Defendant’s court, arrest, and detention records. Reviewing these records will allow the Settlement Administrator to determine if a potential individual is a qualified member of the Settlement Class. As discussed more fully below, at this stage of preliminary approval, there is clear evidence that the Settlement Agreement is within the range of possible approval and thus should be preliminarily approved.

2. The standards and procedures for preliminary approval

Rule 23(e) of the Federal Rules of Civil Procedure mandates that a court must approve any class action settlement:

A class action shall not be dismissed or compromised without the approval of the court and notice of the

proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

Fed. R. Civ. P. 23(e); *Amchem*, 521 U.S. at 617.

The procedure of providing notice to the class, followed by a hearing to consider approving a class settlement, is now standard practice in this Circuit, as well as throughout the country. *Bronson v. Board of Education of the City School District of the City of Cincinnati*, 604 F. Sup. 68 (S.D. Ohio 1984); *The Manual for Complex Litigation, Third* (Federal Judicial Center 1995) §30.41. Authorizations to disseminate notice reflects a recognition by the Court that the settlement is in the range of possible approval; the ultimate Rule 23(e) determination, however, is reserved, pending the completion of the notice and initial opt-out process, to give the Court any opportunity to consider input from the class members who will ultimately be bound by the final approval Order. *Wess v. Storey*, No. 2:08-cv-623, 2011 U.S. Dist. LEXIS 41050, at *17 (S.D. Ohio Apr. 14, 2011) (“The benefits of a settlement can be realized only through the final certification of a settlement class.”); see also *In re General Motors Corp. Pick- Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768 (3d Cir. 1995).

3. The settlement is fair, reasonable and adequate.

In deciding whether settlement should be approved under Rule 23, a court looks to whether there is a basis to believe that the more rigorous, final approval standard will be satisfied. The standard for final approval of a settlement consists of showing that the settlement is fair, reasonable, and adequate. See e.g., *General Motors*, 55 F.3d at 785; *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115 (3d Cir. 1990).

Since the Settlement Agreement falls within the “range of possible approval,” preliminary approval of the settlement should be granted. In this phase of the class action settlement process,

the Court's function is not to make a final fairness determination, but “ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Armstrong*, 616 F.2d at 314 (citation omitted); *see also*, Manual for Complex Litigation, Third §30.41 at 237 (1995); *General Motors*, 55 F.3d at 785; *Armstrong*, 616 F.2d at 314 (The purpose of the pre-notification hearing is “to determine whether the proposed settlement is ‘within the range of possible approval.’”); *In re Baldwin-United Corp. Sec. Lit.*, 105 F.R.D. 475 (S.D.N.Y. 1984)) (“Upon consideration of the proposed settlement presented to this Court for preliminary approval, the Court finds that it is at least sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard.”).

4. The actual, likely amount to be received by class members is fair and reasonable.

It is clear that the proposed amount to be distributed to potential Settlement Class Members, between \$100 and \$2,100 per Settlement Class Member, depending on the number of days the Settlement Class Member spent detained, is fair and reasonable, given the inherent risks of litigation. The Settlement Agreement gives Settlement Class Members the benefit of a significant amount of compensation, without having to prove particular damages or circumstances of the arrest and detention. The proposed settlement provides class members a recovery while avoiding the risk of dismissal prior to trial and the uncertainty of outcome inherent in every jury trial. The proposed settlement also offers Settlement Class Members a guaranteed monetary recovery. If this litigation continues, Defendant’s solvency is not guaranteed, and there is a real possibility no Plaintiff or Settlement Class Members could recover a money judgment for Defendant’s alleged constitutional violations. A person who believes he would be entitled to significantly more can, of course, opt-out and pursue an independent remedy. Thus, the amount offered to Settlement Class Members pursuant to the settlement here is fair.

B. CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS IS APPROPRIATE TO RESOLVE THE WRONGFUL DETENTION AGAINST DEFENDANTS.

Both the Supreme Court and various circuit courts have recognized the benefits of the proposed settlement could only be realized through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591 (1997); *Wess v. Storey*, No. 2:08-cv-623, 2011 U.S. Dist. LEXIS 41050, at *17 (S.D. Ohio Apr. 14, 2011) (“The benefits of a settlement can be realized only through the final certification of a settlement class.”); *see also In re Prudential Ins. Co. Of Am. Sales Practices Litig.*, 148 F.3d 283 (3d Cir. 1998)).

Court in this Circuit have established a preference for class certification: *See e.g., Norfolk Cty. Ret. Sys. v. Cmty. Health Sys.*, 332 F.R.D. 556, 566 (M.D. Tenn. 2019) (quoting *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3d Cir. 1985)) (“when in doubt as to whether to certify a class action, the district court should err in favor of allowing a class.”); *Rankin v. Rots*, 220 F.R.D. 511, 517 (E.D. Mich. 2004) (same). To obtain class certification, the plaintiffs must show that “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). These four requirements—numerosity, commonality, typicality, and adequate representation—serve to limit class claims to those that are fairly encompassed within the claims of the named plaintiffs because class representatives must share the same interests and injury as the class members. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2550, 180 L. Ed. 2d 374 (2011). In addition to fulfilling the four prerequisites of Rule 23(a), the proposed class must also meet at least one of the three requirements listed in Rule 23(b).

1. The Elements of Rule 23(a) are Satisfied in the Present Case

In order for a lawsuit to be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, the named plaintiff must establish each of the four threshold requirements of Subsection (a) of the Rule, which provides:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); Smith v. Cash Am. Int’l, Inc., No. 1:15-CV-00760-MRB, 2019 U.S. Dist. LEXIS 92893, at *5 (S.D. Ohio June 4, 2019).

a. Numerosity Under Rule 23(a)(1)

The Sixth Circuit has set no arbitrary number of class members which will satisfy the numerosity requirement. *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006). Numerosity is typically met, however, when the proposed class has forty (40) or more individuals. *Appoloni v. United States*, 218 F.R.D. 556, 561 (W.D. Mich.), *amended*, 219 F.R.D. 116 (W.D. Mich. 2003) (“it is generally accepted that a class of 40 or more members is sufficient to establish numerosity” (citing *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483)).

Given the fact that the class consists of approximately 5,000 individuals, there is no question that the element of numerosity has been met. *Rankin*, 220 F.R.D. at 517 (the plaintiff “says that the class will likely include ‘thousands’ and will include persons located throughout the United States, making joinder impracticable. Defendants do not contest numerosity. Thus, this element is satisfied.”)

b. Commonality Under Rule 23(a)(2)

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” To

demonstrate commonality, Plaintiffs must show that class members have all suffered the same injury. *Amos v. PPG Indus.*, No. 2:05-cv-70, 2018 U.S. Dist. LEXIS 3068, at *17 (S.D. Ohio Jan. 5, 2018) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011)). The commonality requirement is met when there is a “common issue the resolution of which will advance the litigation.” *Reese v. CNH Amer., LLC*, 227 F.R.D. 483, 487 (E.D. Mich. 2005).

The commonality and typicality requirements are also easily satisfied, as the claims of the Class Representatives and all Settlement Class Members are premised upon the same detention policy and practice – an alleged failure to obtain constitutionally sound warrants before detaining them in excess of forty-eight (48) hours. This class is “defined to specify a particular group at a particular time and location who were [all] harmed in a particular manner. *Kinder v. Nw. Bank*, 278 F.R.D. 176, 182 (W.D. Mich. 2011). Rather than requiring that all questions of law or fact be common, Rule 23 only requires that “the questions of law or fact common to the members of the class predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3). Plaintiffs are not required to show that all class members’ claims are identical to each other as long as there are common questions at the heart of the case. A party is entitled to certification where the class claims arise “from a ‘common nucleus of operative fact’ regardless of whether the underlying facts fluctuate over the class period and vary as to individual claimants.” *In re Asbestos Sch. Litig.*, 104 F.R.D. 422, 429 (E.D. Pa. 1984).

Applying these principles, it is readily apparent that commonality requirement is met here. The central issues posed by this litigation is whether Defendant violated the Fourth and Fourteenth Amendments by arresting and detaining individuals charged with crimes in the Jackson City Court without having an arrest warrant or Affidavit of Complaint sworn to before a magistrate or neutral and detached authorized clerk upon a finding of probable cause.

Given the presence of this common question, Rule 23(a)(2)'s requirement for the existence of common questions of fact or law has been met here. *See Sutton v. Hopkins County*, 2007 WL 119892, *4 (W.D. Ky. Jan. 11, 2007) ("Plaintiffs have alleged that the Defendants had a policy, custom, or practice of strip-searching persons on admission to and/or just prior to release from the Hopkins County Jail without regard to whether there existed the requisite individual, reasonable suspicion required by law. Given this allegation, the existence and constitutionality of the county's policy, custom or practice are common questions."); *see also Dodge v. County of Orange*, 226 F.R.D. 177, 180-181 (S.D.N.Y. 2005) (commonality exists where all members of the class contend that a blanket strip search policy exists, where all members contend that the policy is illegal, and where all members of the class claim they were searched pursuant to the policy which was uniformly applied to all detainees);

c. Typicality Under Rule 23(a)(3).

Typicality is met when the claims or defenses of the representative parties are typical of the claims of the class. Fed. R. Civ. P. 32(a)(3). "The typicality requirement is said to limit the class claims to those fairly encompassed by the named plaintiff's claims." *Gen. Tel. Co. of the Nw. v. Equal Employment Opportunity Comm'n*, 446 U.S. 318, 330 (1980). In general, a finding that commonality is met will also result in a finding that typicality is met since the requirements for commonality, typicality, and adequacy tend to merge. *Dukes*, 131 S. Ct at 2551 n. 5; *see also 7 C. Wright and A. Miller*, Federal Practice and Procedures 1764 (1972)) ("The typicality requirement is a "duplicate requirement prescribed by other provisions in Rule 23.")

In essence, typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct. In other words, when such a relationship is shown,

a plaintiff's injury arises from or is directly related to a wrong to a class, and that wrong includes the wrong to the plaintiff. Thus, a plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory. *Am. Med. Sys., Inc.*, 75 F.3d 1069, 1082 (6th Cir. 1996). The burden of demonstrating typicality is fairly easily met, so long as other class members have claims similar to the named plaintiff. *Pavlov v. Cont'l Cas. Co.*, No. 5:07CV2580, 2009 WL 10689011, at *5 (N.D. Ohio Oct. 7, 2009) (Typicality was easily met because the plaintiffs' claims arose from the same facts, circumstances, and conduct as the putative class.)

Here, the Class Representatives are typical of the claims of the proposed settlement class. These claims arise from the same course of events and any two individuals would have to make the same or effectively the same arguments to prosecute their claims as would be made by members of the proposed class. Typicality is satisfied here because the claims of the Class Representatives and the putative class arise from the same facts, circumstances, and conduct. "A representative's claim is typical despite the fact that the evidence relevant to his or her claim varies from other class members, some class members would be subject to different defenses, and the members may have suffered varying levels of injury." *Reese*, 227 F.R.D. at 487-88 (citation omitted).

d. "Adequacy" Under Rule 23(a)(4).

The final requirement of Rule 23(a) is set forth in subsection (a)(4), which requires that "the representative parties will fairly and adequately protect the interests of the class." Although commonality, typicality, and adequacy tend to merge, adequacy also raises questions of the competency of counsel and conflict of interests. *Dukes*, 131 S. Ct. at 2551 n. 5. "There are two criteria for determining whether the representation of the class will be adequate: 1) The representative must have common interests with unnamed members of the class, and 2) it must

appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.” *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524–25 (6th Cir. 1976) (citing *Gonzales v. Cassidy*, 474 F.2d 67, 73 (6th Cir. 1973)).

Adequacy of representation is assured as the class is represented by legal counsel who have extensive experience in complex civil rights litigation such as this case. Plaintiffs’ Counsel maintain nationwide class and collective action practices. Plaintiffs and Class Counsel have fairly and adequately represented the class here, especially judging by the excellent settlement achieved in this litigation. Indeed, in the present case, the presumption of adequate representation cannot be rebutted. With respect to the issue of adequacy of counsel, the Court may take judicial notice of the fact that Plaintiffs’ attorneys have substantial experience in litigating complex civil rights actions. The class is represented by competent and experienced counsel who have invested considerable time and resources into the prosecution of this action.

2. The Requirements of Rule 23(b)(3) Are Met in the Settlement Context

Plaintiffs’ proposed class also meet the requirements of Rule 23(b)(3). Under 23(b)(3) a class action may be maintained if:

the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Fed. R. Civ. P. 23(b)(3). Certification of a class under Rule 23(b)(3) for settlement of the compensatory damages claims also is appropriate because all such relief is premised on the common constitutional violations visited on the Class by the Defendant's allegedly unlawful detention. There is no danger that individual variations, type or magnitude of damage suffered by individual class members will affect predominance, as the Class Representatives have suffered the same type of damages -- and seek the same type of relief -- as members of the proposed class. Moreover, resolution of this litigation by class settlement is superior to the individual adjudication of class members' claims for compensatory relief. In particular, the settlement provides Plaintiffs with an ability to obtain prompt, predictable and certain compensatory relief, and contains well defined administrative procedures to assure due process in the application of the Agreement to each individual claimant including the right to "opt-out." By contrast, individualized litigation carries with it great uncertainty, risk and costs, and provides no guarantee that the injured plaintiff will obtain necessary and timely compensatory relief at the conclusion of the litigation process. Settlement also would relieve judicial burdens that would be caused by repeated adjudication of the same issues in thousands of individualized trials against The City of Jackson, Tennessee.

Other federal courts, in considering the situation where cities or counties have employed blanket unconstitutional search or detention practices or policies, have consistently recognized the propriety of certifying such cases as class actions and the decisions certifying such cases are legion. *See, e.g., Eddlemen v. Jefferson Co., Ky.*, 96 F.3d 1448 (6th Cir. 1996); *Marriott v. County of Montgomery*, 227 F.R.D. 159 (N.D.N.Y. 2005), *aff'd*, 2005 WL 3117194 (2d Cir. 2005); *Kahler v. County of Rensselaer*, No. 03-CV-1324 (N.D.N.Y. 2004); *Dodge v. County of Orange*, 209 F.R.D. 65 (S.D.N.Y. 2002); *Calvin v. Sheriff of Will County*, 2004 WL 1125922 (N.D. Ill. May 17, 2004); *Blihovde v. St. Croix County, Wis.*, 219 F.R.D. 607 (W.D. Wis. 2003); *Tardiff v.*

Knox County, 218 F.R.D. 332 (D. Me. 2003), *aff'd*, 365 F.3d 1 (2004); *Nilsen v. York County*, 219 F.R.D. 19 (D. Me. 2003); *Bynum v. Dist. of Columbia*, 217 F.R.D. 43 (D.D.C. 2003); *Ford v. City of Boston*, 154 F. Supp. 2d 123 (D. Mass. 2001); *Mack v. Suffolk Co.*, 91 F.R.D. 16 (D. Mass. 2000); *Smith v. Montgomery Co.*, 574 F. Supp. 604 (D. Md. 1983).

Having demonstrated that each of the mandatory requirements of Rule 23(a) are satisfied here, Plaintiffs now turn to consideration of the factors which, independently, justify class treatment of this action under subdivision 23(b)(3) of the rule.

“The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. Although Rule 23(b)(3) requires that common issues of law and fact predominate, it does not require that there be an absence of any individual issues. *In re Sugar Industry Antitrust Litig.*, 73 F.R.D. 322, 344 (E.D. Pa. 1976). The Court must find that “the group for which certification is sought seeks to remedy a common legal grievance.” *Hochschuler v. G.D. Searle & Co.*, 82 F.R.D. 339 (N.D. Ill. 1978); *Dietrich v. Bauer*, 192 F.R.D. 119 (S.D.N.Y. 2000) (in determining whether common issues of fact predominate, “a court’s inquiry is directed primarily toward whether the issue of liability is common to members of the class”). Rule 23(b)(3) does not require that all questions of law or fact be common. See *Telectronics*, 172 F.R.D. at 287-88. The class claims are likely to predominate if liability can be determined with common evidence. *In re Polyurethane Foam Antitrust Litig.*, 314 F.R.D. 226, 240 (N.D. Ohio 2014) (quoting *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) *cert. denied*, 571 U.S. 1196 (2014)) (“All that is needed is ‘common evidence and methodology,’ not ‘also common results for members of the class.’”)

Here, the proposed class members’ claims involve one central legal question: Was the City’s practice of detaining individuals charged in City Court for more than 48 hours without

affording them a probable cause determination made by a judge or certified clerk constitutional? Proof of this issue, with a goal to answering this core legal question, would be the undoubted focus of any trial. Clearly, legal and factual issues in this litigation predominate over any of the Plaintiffs' individual issues.

Given the nature of this action and the fact that it is likely that a substantial proportion of the class membership is comprised of economically disenfranchised individuals, a class action is also the superior method by which to adjudicate claims of individual class members.⁷ Poor and marginalized class members are unlikely to be able to litigate their cases individually. See *Mack*, 191 F.R.D. at 25; *D'Alauro v. GC Services Ltd.*, 168 F.R.D. 451, 458 (E.D.N.Y. 1996); *In re Nassau County*, 461 F.3d 219 at 230; *Tardiff*, 365 F.3d at 7 ("class status here is not only the superior means, but probably the only feasible one ... to establish liability and perhaps damages"). The class action device is designed for the situation where an individual seeks to vindicate "the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *Amchem Prod.*, 521 U.S. at 617. "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." *Mack*, 191 F.R.D. at 25 (internal citations omitted); *Yang v. Odum*, 392 F.3d 97, 106 (3d Cir. 2004); *Marriott*, 227 F.R.D. at 173; Sutton, 2007 WL 119892, *9 ("litigating the existence of a uniform policy for the class as a whole would both reduce the

⁷ This assertion is supported by Court records indicating that some of the individuals arrested and charged in City Court were able to make bond before the constitutionally mandated 48-hour deadline for a probable cause determination. It can be logically inferred that a relatively high percentage of those who did not make a bond within that period of time were unable to do so because of their limited financial means.

range of issues and promote judicial economy.”)(internal quotation marks and citations omitted).

Considerations of judicial economy underscore the superiority of the class action mechanism in this case. The prosecution of this case as a class action is superior to thousands of individual cases being filed in this Court, each of which would be repetitious and possibly yield inconsistent adjudications. See *Califano v. Yamaski*, 42 U.S. 682, 700-701 (1979); *Dodge*, 226 F.R.D. at 183 (“Where a single issue (such as the existence of a uniform policy) is guaranteed to come up time and time again, issues of judicial economy strongly militate in favor of resolving that issue via a technique that will bind as many persons as possible. The trial in this action would last for weeks, with numerous city employees being examined about the practices of the Jackson City Court in an effort to establish municipal liability. Even having a small proportion of class members have duplicative trials on this issue would be an enormous waste of judicial resources and would not be the superior and appropriate way to resolve this controversy.

Settlement on a class basis also is superior to individual litigation and adjudication because settlement provides class members with prompt compensation for their damages, whether those damages exist now or manifest themselves sometime in the future. By contrast, compensation resulting from litigation is highly uncertain and may not be received before lengthy trial and appellate proceedings are complete. In addition, the settlement obviously removes the overwhelming and redundant costs of individual trials.

The superiority requirement is met when, after considering what other forms the litigation could take, a class action is the superior method. “Rule 23(b)(3)’s superiority requirement asks whether a ‘class action is superior to other available methods for fairly and efficiently adjudicating the controversy.’” *Martin v. Behr Dayton Thermal Prod. LLC*, 896 F.3d 405, 415 (6th Cir. 2018), *cert. denied*, 139 S. Ct. 1319 (2019) (quoting Fed. R. Civ. P. 23(b)(3)). The Sixth Circuit has

explained that district courts must, when determining if the superiority requirement is met, consider the difficulties of managing a class action. The district court should also compare other means of disposing of the suit to determine if a class action is sufficiently effective to justify the expenditure of the judicial time and energy that is necessary to adjudicate a class action and to assume the risk of prejudice to the rights of those who are not directly before the court. Additionally, the court should consider the value of individual damage awards, as small awards weigh in favor of class suits. *Id.*

Accordingly, the Settlement Agreement renders a class action superior to other potential avenues of recovery for Plaintiffs and the class. Therefore, this case presents the paradigmatic example of a dispute which can be resolved to effectuate the fundamental goals of Rule 23: (1) to promote judicial economy through the efficient resolution of multiple claims in a single action; and (2) to provide persons with smaller claims, who would otherwise be economically precluded from doing so, the opportunity to assert their rights. Wright, Miller & Kane, *Federal Practice & Procedure: Civil 2d* § 1754. Moreover, unless class members obtain relief through the settlement, most of them will not obtain any relief at all. It would be inconceivable for every one of the thousands of potential plaintiffs to conduct expensive and extensive discovery to prove liability under the legal theories proffered in the complaint for a potential individual recovery of damages. *See In re Kirschner Medical Corp. Sec. Litig.*, 139 F.R.D. 74, 83 (D. Md. 1991) (class suits superior when individual claims are too small to warrant individual suit). At the same time, the settlement fully preserves the due process rights of each individual plaintiff seeking compensatory damages. In sum, the requirements of Rule 23(b)(3) are satisfied and certification of the proposed class is appropriate.

C. THE COURT SHOULD DIRECT NOTICE TO THE CLASS.

Under Fed. R. Civ. P. 23(e), class members are entitled to notice of any proposed settlement before it is ultimately approved by the Court. Manual for Complex Litigation Third (1995) §30.212. The Settlement Agreement provides for reasonable notice to prospective class members in that it requires notice to be provided by newspaper, TV, radio, billboards and the Internet.

Under Rule 23(e) and the relevant due process considerations, adequate notice must be given to all absent class members and potential class members to enable them to make an intelligent choice as to whether to opt-out of the class. *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227 (9th Cir. 1996). However, neither Rule 23 or due process considerations requires actual notice to every class member in every case, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985), but simply calls for “notice reasonably certain to reach most of those interested in objecting is likely to safeguard the interests of all.” *Id.* Nevertheless, Plaintiffs’ Notice Program has been developed with the thought of providing the comprehensive notice possible to “reach” all class members.

The federal courts have sanctioned a variety of public notices to ensure that absent members are aware of the class and are capable of making an informed choice. In the Eastern District of Pennsylvania, the federal court found that utilizing the mass media and posting notices in prisons gave adequate notice to absent class members in a civil rights action regarding the overcrowding of prisons. *Harris v. Reeves*, 761 F.Supp. 383 (E.D. Pa. 1991). In the Second Circuit, the parties sought the aid of the mass media and the state governments to provide adequate notice to the absent class members. *In Re Agent Orange Prod. Liability Litigation*, 818 F.2d 145, 169 (2nd Cir. 1987). In the Northern District of Georgia, the federal court sanctioned publication in 100 of the largest cities in the United States and through a public awareness program. The public

awareness program included news releases through the broadcast media and the print media. *See In Re Domestic Air Trasp. Antitrust Litigation*, 141 F.R.D. 534 (N.D. Ga. 1992). Through those sophisticated publications, the courts found Rule 23(e) and due process have been satisfied.

In this case, counsel for the settlement class will use marketing efforts to provide adequate notice to all absent class members and will engage print and broadcast media to provide notice to potential class members. Moreover, the Settlement Administrator will also provide a copy of the Class Notice and Claim Form to anyone who requests notice through written communication, through a dedicated internet website, Facebook page and through a toll-free number to be established. Through these extensive efforts, absent class members will receive adequate notice of the Settlement. Finally, this Notice will include all necessary legal requirements and provide a comprehensive explanation of the Settlement in simple, non-legalistic terms.

D. A FINAL FAIRNESS HEARING SHOULD BE SCHEDULED.

The Court should schedule a final fairness hearing to determine that class certification is proper and to approve the settlement. *See Manual for Complex Litigation*, Third §30.44 (1995). The fairness hearing will provide a forum to explain, describe or challenge the terms and conditions of the class certification and settlement, including the fairness, adequacy and reasonableness of the settlement. Accordingly, Plaintiffs request that the Court schedule the time, date, and place of the final fairness hearing.⁸

⁸ In the alternative, given the dire situation the COVID pandemic has left wage-earners in, some courts are now finding the need for prompt compensation outweighs the need for a hearing given ongoing coronavirus restrictions. *See Smith v. DTLR, Inc.*, No.: 1:18-cv-07628 (N.D. Il. Apr. 29, 2020) (ECF No. 71), attached as *Appendix 1*. (“[T]he Court determines, in light of the adequacy of notice and the absence of objections and opt-outs, and due to the coronavirus pandemic and resulting restrictions on travel and the cancellation of all hearings . . . through 5/29/2020, that the need for class members to receive prompt compensation outweighs the need for an in-court hearing, which would have to be delayed well into June, and perhaps later depending on how the pandemic progresses. The Court therefore foregoes holding a hearing on the motion for final

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order: (1) conditionally certifying a class action with respect to the claims against Defendants pursuant to Fed. R. Civ. P. 23(b)(3) for the purpose of effectuating a class action settlement of the claims against Defendants; (2) preliminarily approving a class settlement with Defendants; (3) directing notice to class members regarding settlement of certain claims against Defendants on a final and complete basis; and (4) scheduling a final fairness hearing.

Respectfully submitted,

s/Michael L. Weinman

MICHAEL L. WEINMAN, BPR #015074

WEINMAN & ASSOCIATES

101 North Highland Avenue

PO Box 266

Jackson, TN 38302

Email: mike@weinmanthomas.com

**JACKSON, SHIELDS, YEISER, HOLT,
OWEN & BRYANT**

J. RUSS BRYANT, BPR #033830

ROBERT E. MORELLI, BPR #37004

Attorneys for the Plaintiffs

262 German Oak Drive

Memphis, TN 38018

rbryant@jsyc.com

rmorelli@jsyc.com

approval and grants the motion.”)

The Parties submit that the reasoning employed the *Smith* court is exceedingly persuasive.

LAW OFFICE OF J. COLIN MORRIS

J. Colin Morris

J. COLIN MORRIS, BPR #015855

Attorney for the Plaintiffs

204 W. Baltimore St.

Jackson, TN 38301

jcolinmorris@gmail.com