

No. 18-35735

---

**In the United States Court of Appeals  
for the Ninth Circuit**

---

DANICA LOVE BROWN,  
*Plaintiff-Appellant,*

v.

STORED VALUE CARDS, INC., D/B/A NUMI FINANCIAL, ET AL.,  
*Defendant-Appellee.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

---

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* IN SUPPORT  
OF PLAINTIFF-APPELLANT DANICA LOVE BROWN**

---

**TYCKO & ZAVAREEI LLP**

Hassan Zavareei (CA SBN 181547)

Anna C. Haac

Tanya S. Koshy (CA SBN 277095)

1828 L St. NW Suite 1000

Washington, DC 20036

Telephone: 202-973-0900

hzavareei@tzlegal.com

ahaac@tzlegal.com

tkoshy@tzlegal.com

Counsel for *Amici Curiae*

Pursuant to Federal Rule of Appellate Procedure 29, *amici curiae* respectfully move for leave to file the accompanying brief. *Amici curiae* are national and statewide nonprofit organizations and law school clinics with expertise in criminal justice and immigrant justice, and include: International CURE (Citizens United for Rehabilitation of Errants), Equal Justice Under Law, The Florida Institutional Legal Services Project of Florida Legal Services, The Legal Aid Society, The National Police Accountability Project, Public Counsel, The San Francisco Public Defender's Office, The Southern Poverty Law Center, Texas Civil Rights Project, Working Narratives, and University of California Davis School of Law Immigration Law Clinic (collectively, "*amici*").

*Amici* are familiar with the issues presented in this case and are able to inform the Court with regard to areas that may not otherwise be addressed adequately in the briefing. Specifically, *amici* are able to advise the Court on the lived experiences of people who face multiple social barriers that make Numi's debit release cards far from the functional equivalent of the money they replace. Because of their unique perspective and their interest in the issues now before the Court, *amici* respectfully request permission from the Court to file the accompanying brief.

//

//

Respectfully submitted,

Dated: March 8, 2019

**TYCKO & ZAVAREEI LLP**

/s/ Hassan Zavareei

Hassan A Zavareei (SBN 181547)

1828 L St. NW Suite 1000

Washington, DC 20036

Telephone: 202-973-0900

[hzavareei@tzlegal.com](mailto:hzavareei@tzlegal.com)

## **CERTIFICATE OF SERVICE**

I hereby certify that, on March 8, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I also certify that all other participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

Dated: March 8, 2019

**TYCKO & ZAVAREEI LLP**

/s/ Hassan Zavareei

Hassan A. Zavareei (SBN 181547)

1828 L. St. NW Suite 1000

Washington, DC 20036

Telephone: 202-973-0900

hzavareei@tzlegal.com

No. 18-35735

---

**In the United States Court of Appeals  
for the Ninth Circuit**

---

DANICA LOVE BROWN,  
*Plaintiff-Appellant,*

v.

STORED VALUE CARDS, INC., D/B/A NUMI FINANCIAL, ET AL.,  
*Defendant-Appellee.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

---

**PROPOSED BRIEF OF *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-  
APPELLANT DANICA LOVE BROWN**

---

**TYCKO & ZAVAREEI LLP**

Hassan Zavareei (CA SBN 181547)

Anna C. Haac

Tanya S. Koshy (CA SBN 277095)

1828 L St. NW Suite 1000

Washington, DC 20036

Telephone: 202-973-0900

hzavareei@tzlegal.com

ahaac@tzlegal.com

tkoshy@tzlegal.com

Counsel for *Amici Curiae*

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. BACKGROUND .....5

III. ARGUMENT .....8

    A. Numi’s debit release card program is part of a larger “captive market” industry that outsources correctional services to private companies .....9

    B. Like other private companies involved in providing services to correctional facilities, Numi imposes numerous unavoidable fees on its cards that render them substantially less valuable than cash.....11

        i. .Because of barriers people in poverty routinely face, many people released from incarceration cannot avoid Numi’s fees.....13

        ii. People released from incarceration face disproportionate challenges that make it difficult to make informed decisions on avoiding fees.....16

        iii. .People deported after release find release cards largely unusable, which benefits Numi’s bottom line .....19

    C. Compounding the substantial costs of Numi’s cards is the fact that the card is a forced contract that threatens the privacy of already marginalized people.....21

IV. CONCLUSION .....24

**TABLE OF AUTHORITIES**

**Page(s)**

**Other Authorities**

American Civil Liberties Union, *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System* (June 2014), [https://www.aclu.org/sites/default/files/field\\_document/060614-aclu-car-reportonline.pdf](https://www.aclu.org/sites/default/files/field_document/060614-aclu-car-reportonline.pdf). ..... 10

Arun Gupta, *The Financial Firm that Cornered the Market on Jails*, *The Nation* (Aug. 1, 2016), <https://www.thenation.com/article/the-financial-firm-that-cornered-the-market-on-jails/>..... 15, 20

Ashley Hackett, *Thousands of Privately Owned Companies Are Profiting from the U.S. Prison System*, *Pacific Standard* (Apr. 27, 2018), <https://psmag.com/social-justice/thousands-of-privately-owned-companies-are-profiting-from-the-us-prison-system>. ..... 11

Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, *Prison Policy Initiative* (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html>. ..... 13

Brian Alexander, *When Prisoners Are a ‘Revenue Opportunity,’* *The Atlantic* (Aug. 10, 2017), <https://www.theatlantic.com/business/archive/2017/08/remote-video-visitation/535095/>..... 10

Bureau of Justice Assistance, U.S. Dep’t of Justice, *Contracting for Indigent Defense Services: A Special Report 3 n.1* (2000) ..... 3

Carmen Sandi, *Stress and Cognition*, *Wiley Interdis. Rev. Cogn. Sci.* (May 2013)..... 18

Catherine E. Akenhead, *How States Can Take A Stand Against Prison Banking Profiteers*, *85 Geo. Wash. L. Rev.* 1224 (2017)..... 21

Prison Policy Initiative, Comment Letter on Proposed Amendments to Regulation E 4 (Mar. 18, 2015), <http://static.prisonpolicy.org/releasecards/CFPB-comment>.....23

Dana Hunt et al., *ADAM II 2013 Annual Report: Arrestee Drug Abuse Monitoring Program II*, National Criminal Justice Reference Service (Jan. 2014), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=269191>..... 17

David Koon, *New UALR Survey Finds a Lack of Basic ‘Financial Literacy’ Among Inmates*, Arkansas Times (June 19, 2014), <https://www.arktimes.com/arkansas/new-ualr-survey-finds-a-lack-of-basic-financial-literacy-among-inmates/Content?oid=3351524>..... 14, 15

Eli McCormick *The Best Prepaid Debit Cards of 2017*, Top Ten Reviews, [http://prepaid-debit-cards-review.toptenreviews.com/\[https://perma.cc/QCE6-UDXL\]](http://prepaid-debit-cards-review.toptenreviews.com/[https://perma.cc/QCE6-UDXL]) ..... 23

Elizabeth Brico, *What It’s Like to Detox in Jail*, Tonic (Nov. 20, 2018), [https://tonic.vice.com/en\\_us/article/5988q3/what-its-like-to-detox-in-jail](https://tonic.vice.com/en_us/article/5988q3/what-its-like-to-detox-in-jail). .... 16

Fed. Deposit Ins. Corp., FDIC National Survey of Unbanked and Underbanked Households (2017), <https://www.fdic.gov/householdsurvey/2017/2017report.pdf>. .... 12

Henry J. Steadman et al., *Prevalence of Serious Mental Illness Among Jail Inmates*, Psychiatric Services (June 2009), <https://ps.psychiatryonline.org/doi/pdf/10.1176/ps.2009.60.6.761>. .... 17

Jerry Mitchell, *Mississippi, Companies Profit Off Inmates, Families*, Clarion Ledger (Nov. 21, 2015), <https://www.clarionledger.com/story/news/2015/11/21/mississippi-companies-profit-off-inmates-families/75884224/>..... 10

Kasey Bubnash, *No free rides: Detainees released late at night from Santa Barbara County Jail don’t get a ride home anymore, including those from North County*, Santa Maria Sun (Aug. 29, 2017), <http://www.santamariasun.com/cover/16440/no-free-rides-detainees-released-late-at-night-from-santa-barbara-county-jail-dont-get-a-ride-home-anymore-including-those-from-north-county/> ..... 18



Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*,  
 10 Criminology & Pub. Pol. 509 (2011) ..... 3

Madison Pauly, *Los Angeles County Has Agreed to Try to Fix Its “Jail to Skid Row” Problem*, Mother Jones (Dec. 12, 2018),  
<https://www.motherjones.com/crime-justice/2018/12/los-angeles-county-jail-mental-health-settlement/>..... 16

Mary Madden et. al., *Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans*,  
 95 Wash. U.L. Rev. 53 (2017) ..... 23, 24

Matthew Goldberg, *13 Data Breaches That Stung US Consumers*,  
 Bankrate.com (Nov. 30, 2018),  
<https://www.bankrate.com/finance/banking/us-data-breaches-1.aspx#slide=12>..... 23

Max Lewontin, *As More Americans Go Smartphone-Only, High-Speed Internet Becomes a Luxury*,  
 The Christian Science Monitor (Dec. 22, 2015),  
<https://www.csmonitor.com/Technology/2015/1222/As-more-Americans-go-smartphone-only-high-speed-Internet-becomes-a-luxury>. ..... 13

Max Lewontin, *Why Many Low-Income Families Have Internet Access, But Remain ‘Under-Connected,’*  
 The Christian Science Monitor (Feb. 3, 2016),  
<https://www.csmonitor.com/Technology/2016/0203/Why-many-low-income-families-have-Internet-access-but-remain-under-connected>..... 14

Michael Ames, *Captive Market*,  
 Harpers Magazine (Feb. 2015),  
<https://archive.harpers.org/2015/02/pdf/HarpersMagazine-2015-02-0085313.pdf?AWSAccessKeyId=AKIAJUM7PFZHQ4PMJ4LA&Expires=1551898707&Signature=bOoKF2JXGHOfTzFxxIkiZiGOp44%3D>. ..... 11

National Household Travel Survey, *Mobility Challenges for Households in Poverty*, (2014),  
<https://nhts.ornl.gov/briefs/PovertyBrief.pdf>. ..... 14

No More Deaths, <i>Shakedown: How Deportation Robs Immigrants of Their Money and Belongings</i> 30-31 (2014), <a href="http://nomoredeaths.org/wp-content/uploads/2014/12/Shakedown-withcover.pdf">http://nomoredeaths.org/wp-content/uploads/2014/12/Shakedown-withcover.pdf</a> .....	20
Nuala Sawyer, <i>Late-Night Jail Releases Under Fire</i> (Aug. 8, 2018), <a href="http://www.sfweekly.com/news/late-night-jail-releases-under-fire/">http://www.sfweekly.com/news/late-night-jail-releases-under-fire/</a> .....	19
Peter Wagner & Bernadette Rabuy, <i>Following the Money of Mass Incarceration</i> , Prison Policy Initiative (January 25, 2017), <a href="https://www.prisonpolicy.org/reports/money.html">https://www.prisonpolicy.org/reports/money.html</a> . ....	9
Peter Wagner & Bernadette Rabuy, <i>Mass Incarceration: The Whole Pie 2017</i> , Prison Policy Initiative (March 14, 2017), <a href="https://www.prisonpolicy.org/reports/pie2017.html">https://www.prisonpolicy.org/reports/pie2017.html</a> . ....	9
Rachel Chason, <i>Doing time far from home, D.C. prisoners face extra barriers to rehabilitation</i> , Washington Post (Dec. 13, 2017), <a href="https://www.washingtonpost.com/local/dc-politics/incarcerated-in-federal-prisons-far-from-home-dc-prisoners-face-extra-barriers-to-rehabilitation/2017/12/13/b57d42aa-ca5e-11e7-aa96-54417592cf72_story.html?utm_term=.e975f1d20ae1">https://www.washingtonpost.com/local/dc-politics/incarcerated-in-federal-prisons-far-from-home-dc-prisoners-face-extra-barriers-to-rehabilitation/2017/12/13/b57d42aa-ca5e-11e7-aa96-54417592cf72_story.html?utm_term=.e975f1d20ae1</a> .....	18
Rupert Neate, <i>Welcome to Jail Inc: How Private Companies Make Money Off US Prisons</i> , The Guardian (June 16, 2016), <a href="https://www.theguardian.com/us-news/2016/jun/16/us-prisons-jail-private-healthcare-companies-profit">https://www.theguardian.com/us-news/2016/jun/16/us-prisons-jail-private-healthcare-companies-profit</a> . ....	10
Shivani Tomar, <i>The Psychological Effects of Incarceration on Inmates: Can We Promote Positive Emotion in Inmates</i> , Delhi Psychiatry Journal (Apr. 2013), <a href="http://medind.nic.in/daa/t13/i1/daat13i1p66.pdf">http://medind.nic.in/daa/t13/i1/daat13i1p66.pdf</a> .....	18
Steven Renderos and Ramla Sahid, <i>How the Government's Surveillance Practices Criminalize Communities of Color</i> , Colorlines (Jul. 20, 2018), <a href="https://www.colorlines.com/articles/how-governments-surveillance-practices-criminalize-communities-color-opinion">https://www.colorlines.com/articles/how-governments-surveillance-practices-criminalize-communities-color-opinion</a> . ....	23

Taylor Elizabeth Eldridge, *The Big Business of Prisoner Care Packages*,  
 The Marshall Project (Dec. 21, 2017),  
[https://www.themarshallproject.org/2017/12/20/the-  
 big-business-of-prisoner-care-packages](https://www.themarshallproject.org/2017/12/20/the-big-business-of-prisoner-care-packages)..... 10

TriMet, Honored Citizen Fares,  
<https://trimet.org/fares/honoredcitizen.htm>  
 (low-income riders pay \$1.25 for a single bus  
 ride in Multnomah County) (last accessed March 6, 2019)..... 15

Urban Justice Center and Corrections Accountability Project,  
*The Prison Industrial Complex: Mapping  
 Private Sector Players* (April 2018),  
[https://static1.squarespace.com/static/58e127cb  
 1b10e31ed45b20f4/t/5ade0281f950b7ab293c86a6/  
 1524499083424/The+Prison+Industrial+Complex+-  
 +Mapping+Private+Sector+Players+%28April+2018%29.pdf](https://static1.squarespace.com/static/58e127cb1b10e31ed45b20f4/t/5ade0281f950b7ab293c86a6/1524499083424/The+Prison+Industrial+Complex+-+Mapping+Private+Sector+Players+%28April+2018%29.pdf)..... 10

Victoria Law, *\$15 for 15 Minutes: How Courts Are Letting  
 Prison Phone Companies Gouge Incarcerated People*,  
 The Intercept (June 16, 2017),  
[https://theintercept.com/2017/06/16/fcc-prison-  
 phone-call-rates-court-deregulate-trump/](https://theintercept.com/2017/06/16/fcc-prison-phone-call-rates-court-deregulate-trump/)..... 10

William Wan, *Think crowded jails are an urban problem?  
 A new study says rural jails are growing fastest*,  
 Washington Post (June 13, 2017),  
[https://www.washingtonpost.com/national/think-  
 crowded-jails-are-an-urban-problem-a-new-study-  
 says-rural-jails-are-growing-fastest/2017/06/13/08cd91e2-4f  
 be-11e7-be25-3a519335381c\\_story.html?utm\\_term=.9e425cb62e1b](https://www.washingtonpost.com/national/think-crowded-jails-are-an-urban-problem-a-new-study-says-rural-jails-are-growing-fastest/2017/06/13/08cd91e2-4fbe-11e7-be25-3a519335381c_story.html?utm_term=.9e425cb62e1b). .... 18

## I. INTRODUCTION

*Amici curiae*<sup>1</sup> International CURE (Citizens United for Rehabilitation of Errants), Equal Justice Under Law, The Florida Institutional Legal Services Project of Florida Legal Services, The Legal Aid Society, The National Police Accountability Project, Public Counsel, The San Francisco Public Defender’s Office, The Southern Poverty Law Center, Texas Civil Rights Project, Working Narratives, and University of California Davis School of Law Immigration Law Clinic<sup>2</sup> submit this brief in support of Plaintiff-Appellant Danica Brown and the thousands of people who will be harmed if the district court’s decision in this case stands.

To aid the Court in its assessment of the district court’s summary judgment ruling, *amici* seek to add the perspective of the populations they serve—people most commonly entangled in the criminal justice system—to show the real-world limitations of Defendant-Appellee Stored Value Cards, Inc.’s (“Numi”) debit release cards that make it nearly impossible to avoid the card’s fees.

---

<sup>1</sup> *Amici curiae* file this brief pursuant to Federal Rule of Appellate Procedure 29. *Amici curiae* state that no counsel for any party has authored this brief in whole or in part; no party or a party’s counsel has contributed money that was intended to fund preparing or submitting this brief; no person—other than the *amici curiae* or its counsel—contributed money that was intended to fund preparing or submitting this brief.

<sup>2</sup> A list with descriptions of proposed *amici* is attached as Appendix A.

The question for the Court is whether the district court wrongly concluded that no permanent taking occurs when a person released from a correctional facility has no other option but to accept the return of their money in the form of Numi's debit release card, which bears numerous, unavoidable fees designed to consume a substantial amount of their money. When the practical implications of Numi's cards are taken into account, it is clear that cards are not the functional equivalent of cash they replace and the district court erred in granting summary judgment on Plaintiff's per se takings claim. *Amici* urge this Court to reverse.

The district court's ruling does not take into account that Numi capitalizes on and profits from the particular vulnerabilities of those released from incarceration. Traditionally, at the time of release, correctional facilities returned any money people possessed at booking or accrued during incarceration in the form of cash or check. Often, this is the only money releasees<sup>3</sup> have available when leaving incarceration, and they need it to pay for basic and immediate needs: transportation, food, and housing, to list a few.

Numi convinced Multnomah County and others like it to provide releasees their money in the form of Numi's debit release cards, which include unreasonably

---

<sup>3</sup> People are released from incarceration under a number of circumstances, including being released from jail on bail pending the outcome of a criminal proceeding, after completing a term in prison, or being released from immigration detention to deportation. The brief will collectively refer to this population as "releasees."

high fees that are designed to be unavoidable, particularly given the specific and numerous challenges people face upon release from incarceration. Numi is able to extract such high fees because it enjoys monopolistic power over the terms associated with its cards, including the fees, which are foisted on releasees without a cash or check alternative option.

In granting summary judgment, the district court wrongly concluded that the card Numi provides to a person upon release does not constitute a per se taking because it is the “functional equivalent” of the money it replaced. (ER 44.) The district court also incorrectly found that accessing money was “ridiculously easy” because Plaintiff Brown could withdraw the full value of her money using the card at any Mastercard-affiliated bank without a fee. (ER 41-42.)<sup>4</sup> But there is nothing “ridiculously easy” about avoiding fees for people released from this country’s criminal justice and immigrant detention systems who are overwhelmingly poor.<sup>5</sup> Indeed, Numi was able to charge service fees to nearly 80% of releasees who were

---

<sup>4</sup> The district court did not address Plaintiff’s argument in the alternative that the release card was an invasive regulatory taking that substantially affected her ability to use her money. (ER 37-45.)

<sup>5</sup> See Bureau of Justice Assistance, U.S. Dep’t of Justice, *Contracting for Indigent Defense Services: A Special Report* 3 n.1 (2000) (estimating that 60% to 90% of criminal cases nationwide involve indigent defendants); Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 *Criminology & Pub. Pol.* 509, 516 (2011) (“Criminal defendants are overwhelmingly poor . . .”).

given cards. That statistic belies any characterization of the avoidance of fees as “ridiculously easy.”

For the people *amici* serve, there are few, if any, benefits of Numi’s high-fee cards and the transactional costs associated with them are substantial—especially compared to the relatively small amounts of money they contain. Releasees face immediate, urgent needs and, in comparison to the general population, are financially unsophisticated and lack the resources to avoid Numi’s fees. They are likely to have limited or no access to the internet, transportation, and bank accounts. They are also likely to experience substantial stress and trauma from their incarceration and may suffer from mental health or substance abuse problems. Any one of these vulnerabilities presents urgent challenges upon release that may affect a person’s ability to absorb information and make rational, informed decisions on how to access their money to avoid fees. Moreover, some releasees are deported to another country, where it is difficult to access money at all.

Numi understands and exploits these particular vulnerabilities of releasees, charging fees that are intentionally structured to be difficult to avoid for this population. One egregious example is the \$5.95 “monthly” maintenance fee the Numi charges a mere *five days* after a person is released—a time period that is particularly critical and challenging to survival for releasees. Numi also charges a fee to check a balance on an ATM machine, a fee to withdraw money from an

ATM, and a fee when a purchase is declined due to insufficient funds or an incorrect PIN. Once a card has a balance of less than \$20, releasees are functionally barred from withdrawing money from an ATM. And if they want to withdraw money from a bank, releasees must identify a Mastercard-affiliated bank—which is not readily apparent to most people—and go to the bank during business hours. Withdrawals from non-Mastercard-affiliated bank will incur fees.

In short, because fees are basically unavoidable for the releasee population, the cards are worth less than the money they replace, meaning Numi's cards are far from the functional equivalent of cash. The cards are not the functional equivalent of cash for other reasons. Numi requires releasees to give up sensitive financial and personal information if a releasee wants to have her money transferred to her bank or to track her balance, which constitutes a government-forced erosion of privacy that itself has additional risks, given the rise and frequency of widespread data breaches. Thus, only when considered in a vacuum would the costs and benefits of Numi's cards amount to a "wash," as the district court concluded. (ER 41.) *Amici* respectfully requests that this Court reverse the district court's ruling which directly harms the most vulnerable people in our communities.

## **II. BACKGROUND**

Rather than return releasees' money by cash or check, Numi convinced Multnomah County to allow Numi to return releasees' money in the form of pre-



activated debit cards that carry unreasonable and excessive fees. These fees are exceedingly difficult for releasees to avoid, significantly disproportionate to any purported benefits, and unrelated to the costs of maintaining the accounts. In short, Numi's cards are designed to maximize Numi's profits by making it prohibitively difficult for releasees to access their full balance on the cards.

Most notably, Numi charges releasees exorbitant "monthly" maintenance fees of \$5.95 only five days after activating the card—when releasees are likely still trying to meet immediate housing, food, and transportation needs. Numi also charges numerous other fees that do not appear to have any relationship to the cost of doing business. The following chart lists the fees that Numi charges under this profit-generating scheme:

<b>Fee Amount</b>	<b>Fee Description</b>
\$5.95	Monthly service charge (which first occurs only 5 calendar days after activation)
\$9.95	Fee for requesting the balance of the card via check
\$2.95	ATM withdrawal fee (in addition to any fee charged by the ATM terminal)
\$4.95	International ATM withdrawal fee (which is in addition to any surcharges that the ATM operator may assess)
\$4.95	Bank cash advance fee
\$1.00	ATM balance inquiry fee

\$1.50	ATM international balance inquiry fee
\$1.95	Declined ATM transaction fee
\$0.50	Automated consumer service inquiry fee (the first is free)
\$3.95	Live consumer service inquiry (the first is free)
\$3.00	Paper statement fee
\$0.95	Fee for each transaction declined for insufficient funds or incorrect PIN

(ER 615.)

The district court nevertheless found that the transactional costs of the release cards are “outweighed or equaled by [their] benefits.” (ER 39.) That is, the district court concluded that the “transactional costs here . . . are small in either direction, de minimus such that . . . they [don’t] matter ultimately . . . [and are] a wash here in [the] functional equivalency analysis.” (ER 41.) In reaching this finding, the district court noted as “very important” that getting cash was “ridiculously easy to do” because it involved going to a Mastercard-affiliated bank and withdrawing the funds. (ER 41-42.)

But what a Mastercard-affiliated bank is or how to locate one is not self-evident. And Numi’s fees include a \$4.95 “bank cash advance fee,” which makes the mistake of withdrawing from a non-Mastercard-affiliated bank all the more consequential. The district court’s holding also ignores the time and monetary costs of transportation involved in traveling to such a bank during business hours.

Further, to avoid the first fee of \$5.95 for “monthly” maintenance, a releasee must, within *five days* of receiving the card, use the funds entirely or transfer the funds by registering with Numi online and providing sensitive personal and financial information or finding a Mastercard-affiliated bank to withdraw their money. In short, there is a fee, or prohibitive transactional cost, with every means of accessing or using one’s own money. Cash, of course, would not impose any of these fees or restrictions on a releasee’s use.

Plaintiff Danica Love Brown filed this class action, on behalf of herself and a nationwide class of similarly situated individuals, to redress injuries that she and thousands of others have suffered and continue to suffer as a result of Numi’s extortionate practices.

### **III. ARGUMENT**

In granting summary judgment on Plaintiff’s takings claim, the district court did not appreciate the practical implications of Numi’s predatory release card practices on a particularly vulnerable releasee population. That is, the district court ignored the serious impediments that releasees face in accessing their money without fees, including but not limited to lack of affordable transportation, internet access, and the immediate need to find food, safety, and shelter. Given the urgent survival needs that these individuals must meet upon release from incarceration, accessing funds without unnecessary and unreasonable fees is not a simple task.

When considered in context of the experiences and needs of releasees, Numi's fees are significant and unavoidable—not de minimus and voluntarily assumed.

**A. Numi's debit release card program is part of a larger "captive market" industry that outsources correctional services to private companies**

It is worth first considering the backdrop behind Numi's debit release card program. 641,000 people exit state prison and people enter county jails over 11 million times each year.<sup>6</sup> At any given point, more than 2.3 million people are incarcerated in correctional facilities in the United States, giving it the highest incarceration rate in the world.<sup>7</sup> Given this incarceration rate and "churn" of people in and out of the system, the correctional system alone costs \$81 billion annually.<sup>8</sup> Recognizing the potential for substantial profits, private companies have birthed a new industry to tap the enormous flow of funds through prisons, jails, and detention facilities

---

<sup>6</sup> See Peter Wagner & Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2017*, Prison Policy Initiative (March 14, 2017), <https://www.prisonpolicy.org/reports/pie2017.html>.

<sup>7</sup> This includes state and federal prisons, local and Indian County jails, juvenile correctional facilities, as well as in military prisons, immigration detention facilities, civil commitment centers, and prisons in the U.S. territories. *See id.*

<sup>8</sup> Peter Wagner & Bernadette Rabuy, *Following the Money of Mass Incarceration*, Prison Policy Initiative (January 25, 2017), <https://www.prisonpolicy.org/reports/money.html>.

through the outsourcing of healthcare,<sup>9</sup> phone calls,<sup>10</sup> commissary items,<sup>11</sup> family visits,<sup>12</sup> and even care packages.<sup>13</sup>

The increasing privatization of the correctional industry creates perverse incentives to maximize revenue by encouraging overcrowding and poor living conditions.<sup>14</sup> Thus, increasingly, in a system that permits more than 3,100 corporations to profit off of people in jails and prisons,<sup>15</sup> the ones who shoulder the

---

<sup>9</sup> Rupert Neate, *Welcome to Jail Inc: How Private Companies Make Money Off US Prisons*, *The Guardian* (June 16, 2016), <https://www.theguardian.com/us-news/2016/jun/16/us-prisons-jail-private-healthcare-companies-profit>.

<sup>10</sup> Victoria Law, *\$15 for 15 Minutes: How Courts Are Letting Prison Phone Companies Gouge Incarcerated People*, *The Intercept* (June 16, 2017), <https://theintercept.com/2017/06/16/fcc-prison-phone-call-rates-court-deregulate-trump/>.

<sup>11</sup> Jerry Mitchell, *Mississippi, Companies Profit Off Inmates, Families*, *Clarion Ledger* (Nov. 21, 2015), <https://www.clarionledger.com/story/news/2015/11/21/mississippi-companies-profit-off-inmates-families/75884224/>.

<sup>12</sup> Brian Alexander, *When Prisoners Are a 'Revenue Opportunity'*, *The Atlantic* (Aug. 10, 2017), <https://www.theatlantic.com/business/archive/2017/08/remote-video-visitation/535095/>.

<sup>13</sup> Taylor Elizabeth Eldridge, *The Big Business of Prisoner Care Packages*, *The Marshall Project* (Dec. 21, 2017), <https://www.themarshallproject.org/2017/12/20/the-big-business-of-prisoner-care-packages>.

<sup>14</sup> American Civil Liberties Union, *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System* (June 2014) [https://www.aclu.org/sites/default/files/field\\_document/060614-aclu-car-reportonline.pdf](https://www.aclu.org/sites/default/files/field_document/060614-aclu-car-reportonline.pdf).

<sup>15</sup> Urban Justice Center and Corrections Accountability Project, *The Prison Industrial Complex: Mapping Private Sector Players* (April 2018), <https://static1.squarespace.com/static/58e127cb1b10e31ed45b20f4/t/5ade0281f950b7ab293c86a6/1524499083424/The+Prison+Industrial+Complex+-+Mapping+Private+Sector+Players+%28April+2018%29.pdf>.

heaviest burden and are hurt the most are incarcerated people and their families.

Private vendors capitalize on a literally captive population, where no free market or competition exists to drive prices down or incentivize better services.<sup>16</sup> Companies take advantage of this vulnerable population, knowing that incarcerated individuals and their families disproportionately lack the political power and resources necessary to challenge these exploitative practices.<sup>17</sup>

**B. Like other private companies involved in providing services to correctional facilities, Numi imposes numerous unavoidable fees on its cards that render them substantially less valuable than cash**

Numi's release cards are a prime example of private companies capitalizing on incarcerated individuals and their families by forcing them to pay unnecessary and exorbitant fees for the sole purpose of generating profit.

As background, Multnomah County, like many state and local governments, contracts with Numi to provide pre-activated release cards to releasees that contain money from their inmate trust accounts. But Numi's release cards are different, and more exploitative in some sense, than other correctional services outsourced to

---

<sup>16</sup> Michael Ames, *Captive Market*, Harper's Magazine (Feb. 2015), <https://archive.harpers.org/2015/02/pdf/HarpersMagazine-2015-02-0085313.pdf?AWSAccessKeyId=AKIAJUM7PFZHQ4PMJ4LA&Expires=1551898707&Signature=bOoKF2JXGHOfTzFxxIkiZiGOp44%3D>.

<sup>17</sup> Ashley Hackett, *Thousands of Privately Owned Companies Are Profiting from the U.S. Prison System*, Pacific Standard (Apr. 27, 2018), <https://psmag.com/social-justice/thousands-of-privately-owned-companies-are-profiting-from-the-us-prison-system>.

private companies. That is, the one service that Numi provides is returning releasees their *own* money. But Numi then imposes a fee schedule and usage requirements that make it extremely difficult, if not practically impossible, for releasees to access their own money without incurring excessive fees.

As a threshold matter, Numi charges a \$5.95 “monthly” fee that is really a misnomer because it is first charged just *five days after activation*. Accordingly, the *only* way to avoid this fee is if a releasee: 1) has online access and an existing bank account to transfer all of her funds within five days of card activation; 2) finds a Mastercard-affiliated bank and withdraw all funds within five days of card activation; or 3) spends all of her money in point of sale transactions within five days of card activation.

All three scenarios present obstacles that cash or a check do not. And when the person is poor, unbanked<sup>18</sup> and financially illiterate, mentally unstable, battling an addiction, suffering from acute stress, or facing deportation, like many of *amici*’s clients, those obstacles can be nearly insurmountable. In that sense, Numi imposes fees on a particularly vulnerable population for no other reason than it can.

---

<sup>18</sup> The Federal Deposit Insurance Corporation defines “unbanked” as having no checking or savings account. *See* Fed. Deposit Ins. Corp., FDIC National Survey of Unbanked and Underbanked Households (2017), <https://www.fdic.gov/householdsurvey/2017/2017report.pdf>.

**i. Because of barriers people in poverty routinely face, many people released from incarceration cannot avoid Numi's fees**

Poverty drives many of the challenges that releasees face upon incarceration, which make it difficult for them to access their money in a way that avoids fees.

To avoid fees, releasees need to spend all their money, go online to create an account on Numi's website and transfer money, or travel to a bank to withdraw money. But releasees, disproportionately poor,<sup>19</sup> may have difficulty accessing modern-day necessities, including the internet and transportation, that are required to make any of these tasks easy. In that sense, avoiding Numi's fees is not just mildly inconvenient, but practically prohibitive or impossible for many releasees.

Specifically, approximately 15% of Americans lack internet access and 13% of Americans have access only through their smartphones.<sup>20</sup> Moreover, internet access through a phone does not mean uninterrupted access: Among families that use a phone to go online, 24% had their phone service cut off because they could

---

<sup>19</sup> Reports indicate that people in state prison have a median annual income of just \$19,185 prior to their incarceration, which is 41% less than people who have not been incarcerated. See Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, Prison Policy Initiative (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html>.

<sup>20</sup> Max Lewontin, *As More Americans Go Smartphone-Only, High-Speed Internet Becomes a Luxury*, The Christian Science Monitor (Dec. 22, 2015), <https://www.csmonitor.com/Technology/2015/1222/As-more-Americans-go-smartphone-only-high-speed-Internet-becomes-a-luxury>.



not afford their bills.<sup>21</sup> And transportation costs, which rise each year, have a disproportionate impact on people in poverty.<sup>22</sup> Indeed, people in poverty take three times as many trips on public transit and are less likely to own a vehicle.<sup>23</sup>

In practical terms, withdrawing or transferring money from Numi's cards means having to pay an expensive phone bill (to access the internet) and finding bus or gas money (to go to and from a bank)—all within five days of being released from incarceration. That is far from a simple task for someone living on the margins.

Other challenges faced by releasees impact their ability to avoid fees. Just as poverty affects internet and transportation access, it also impacts a person's financial literacy and access to banking. A study of people in Arkansas correctional facilities found that 27% had never opened a checking account, and 16.8% had never opened an account of any kind in a bank.<sup>24</sup> And over a third could not correctly answer this question: "If you put \$100 in a bank account paying 5 percent

---

<sup>21</sup> Max Lewontin, *Why Many Low-Income Families Have Internet Access, But Remain 'Under-Connected,'* The Christian Science Monitor (Feb. 3, 2016), <https://www.csmonitor.com/Technology/2016/0203/Why-many-low-income-families-have-Internet-access-but-remain-under-connected>.

<sup>22</sup> National Household Travel Survey, *Mobility Challenges for Households in Poverty*, (2014), <https://nhts.ornl.gov/briefs/PovertyBrief.pdf>.

<sup>23</sup>*Id.*

<sup>24</sup> David Koon, *New UALR Survey Finds a Lack of Basic 'Financial Literacy' Among Inmates*, Arkansas Times (June 19, 2014), <https://www.arktimes.com/arkansas/new-ualr-survey-finds-a-lack-of-basic-financial-literacy-among-inmates/Content?oid=3351524>.

interest, how much will you have in your account after one year?”<sup>25</sup> Given this backdrop, Numi’s options to transfer money to a bank or to go to a bank to withdraw money are simply not practical for many of *amici*’s clients—particularly within a five-day timeframe.

As described briefly above, Veronica Thompson’s experience reflects the substantial, not de minimis, transactional costs of Numi’s fees for poor releasees.<sup>26</sup> Like Plaintiff Brown, Ms. Thompson was arrested and placed in jail in Multnomah County, giving up \$15.50 in cash. When Ms. Johnson was released the next morning, Multnomah County gave her a Numi release card with \$15.50 on it. Ms. Thompson tried to get cash back at a convenience store near the jail but the cashier refused her. Without money, she had to walk three miles home. And before she could use up all of the money, Numi took \$5.95 as a “monthly” fee, eating up the remaining balance. That \$5.95 is not inconsequential. Not only does \$5.95 amount to 38% of the total Ms. Thompson possessed, it is also the cost of nearly *four* rides on the local bus line offered by Multnomah County<sup>27</sup> or the cost of a hot meal at a fast food restaurant. In short, Ms. Thompson’s experience with Numi’s release

---

<sup>25</sup> *Id.*

<sup>26</sup> Arun Gupta, *The Financial Firm that Cornered the Market on Jails*, *The Nation* (Aug. 1, 2016), <https://www.thenation.com/article/the-financial-firm-that-cornered-the-market-on-jails/>.

<sup>27</sup> TriMet, Honored Citizen Fares, *available at* <https://trimet.org/fares/honoredcitizen.htm> (low-income riders pay \$1.25 for a single bus ride in Multnomah County) (last accessed March 6, 2019).

cards demonstrates how easily fees are sustained by poor releasees and are far from “voluntary,” as Numi suggests.

**ii. People released from incarceration face disproportionate challenges that make it difficult to make informed decisions on avoiding fees**

Compounding the barriers imposed by poverty are the wide and diverse range of other challenges many releasees face that make it even more difficult to focus on avoiding fees associated with release cards.

Take Philip Kramer’s experience upon release as an example.<sup>28</sup> During an opioid and cocaine relapse, Mr. Kramer was arrested and booked into a jail for a traffic violation in Las Vegas. He was incarcerated for a month, during which time he received no treatment for his addiction, which only served to lower his tolerance to opioids. A few days after he was released, with his now lower opioid tolerance, Mr. Kramer overdosed, was hospitalized, and was then sent home. A few days later, he overdosed again and, within days, passed away. Similarly, Los Angeles County Jail released Derrick Thomas, diagnosed with post-traumatic stress disorder, paranoid schizophrenia, and traumatic brain injury, at 2 a.m.<sup>29</sup> Officers

---

<sup>28</sup> Elizabeth Brico, *What It’s Like to Detox in Jail*, Tonic (Nov. 20, 2018), [https://tonic.vice.com/en\\_us/article/5988q3/what-its-like-to-detox-in-jail](https://tonic.vice.com/en_us/article/5988q3/what-its-like-to-detox-in-jail).

<sup>29</sup> Madison Pauly, *Los Angeles County Has Agreed to Try to Fix Its “Jail to Skid Row” Problem*, Mother Jones (Dec. 12, 2018), <https://www.motherjones.com/crime-justice/2018/12/los-angeles-county-jail-mental-health-settlement/>.

threatened Thomas with re-arrest if he did not get off jail property. With no place to go at that late hour, and without any counseling or housing assistance, Mr. Thomas walked over to Skid Row and spent the night—which he described as “cold as hell”—under cardboard. Mr. Thomas then spent weeks trying to fill his PTSD medication, a task made difficult because he lost his identification.

Mr. Kramer and Mr. Thomas faced immediate and life-threatening challenges upon release and their experiences are not unusual.<sup>30</sup> Under these common circumstances, avoiding Numi’s fees is simply not a focus. Immediate and urgent challenges, such as filling medication or avoiding a relapse, make it more difficult, if not impossible, for many releasees to prioritize identifying ways to use release cards to avoid fees.

More broadly, releasees, even those without mental health and substance abuse issues, suffer from acute stress of incarceration. Incarceration induces a

---

<sup>30</sup> Indeed, a substantial percentage of people in correctional facilities experience mental health and substance abuse issues. Approximately 2 million people with serious mental illnesses are booked into jail each year; stated otherwise, 14.5% of men and 31.0% of women booked into jail have a serious mental illness. Henry J. Steadman et al., *Prevalence of Serious Mental Illness Among Jail Inmates*, Psychiatric Services (June 2009), <https://ps.psychiatryonline.org/doi/pdf/10.1176/ps.2009.60.6.761>. Likewise, 63% to 83% of adult men in a study of five major American cities tested positive for at least one drug in their system at the time of arrest and entrance in jail. Dana Hunt et al., *ADAM II 2013 Annual Report: Arrestee Drug Abuse Monitoring Program II*, National Criminal Justice Reference Service (Jan. 2014), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=269191>.

number of negative psychological effects, including depression, anxiety, stress, and delusions.<sup>31</sup> These psychological consequences have a direct impact on cognition and information processing.<sup>32</sup> Thus the trauma of incarceration diminishes a person's ability to focus on and digest details related to Numi's debit release cards.

And there are other practical challenges releasees face. Yet another example is the fact that releasees are oftentimes released at night. Both Mr. Thomas and Plaintiff Brown were released from jail at 2 a.m. (ER 292 ¶ 51.) Indeed, it is all too common for jails to be in remote areas or areas far away from releasees' homes or shelter, and to release people at night.<sup>33</sup> For example, Santa Rita Jail in Dublin,

---

<sup>31</sup> See Shivani Tomar, *The Psychological Effects of Incarceration on Inmates: Can We Promote Positive Emotion in Inmates*, Delhi Psychiatry Journal (Apr. 2013), <http://medind.nic.in/daa/t13/i1/daat13i1p66.pdf>.

<sup>32</sup> See Carmen Sandi, *Stress and Cognition*, Wiley Interdisc. Rev. Cogn. Sci. 245, 245-46 (May 2013).

<sup>33</sup> See, e.g., Rachel Chason, *Doing time far from home, D.C. prisoners face extra barriers to rehabilitation*, Washington Post (Dec. 13, 2017), [https://www.washingtonpost.com/local/dc-politics/incarcerated-in-federal-prisons-far-from-home-dc-prisoners-face-extra-barriers-to-rehabilitation/2017/12/13/b57d42aa-ca5e-11e7-aa96-54417592cf72\\_story.html?utm\\_term=.e975f1d20ae1](https://www.washingtonpost.com/local/dc-politics/incarcerated-in-federal-prisons-far-from-home-dc-prisoners-face-extra-barriers-to-rehabilitation/2017/12/13/b57d42aa-ca5e-11e7-aa96-54417592cf72_story.html?utm_term=.e975f1d20ae1); Kasey Bubnash, *No free rides: Detainees released late at night from Santa Barbara County Jail don't get a ride home anymore, including those from North County*, Santa Maria Sun (Aug. 29, 2017), <http://www.santamariasun.com/cover/16440/no-free-rides-detainees-released-late-at-night-from-santa-barbara-county-jail-dont-get-a-ride-home-anymore-including-those-from-north-county/>; William Wan, *Think crowded jails are an urban problem? A new study says rural jails are growing fastest*, Washington Post (June 13, 2017), [https://www.washingtonpost.com/national/think-crowded-jails-are-an-urban-problem-a-new-study-says-rural-jails-are-growing-fastest/2017/06/13/08cd91e2-4f8e-11e7-be25-3a519335381c\\_story.html?utm\\_term=.9e425cb62e1b](https://www.washingtonpost.com/national/think-crowded-jails-are-an-urban-problem-a-new-study-says-rural-jails-are-growing-fastest/2017/06/13/08cd91e2-4f8e-11e7-be25-3a519335381c_story.html?utm_term=.9e425cb62e1b).

California has a standard practice of releasing people at 1 a.m., even though the jail is a two-mile, 40-minute walk to the closest subway station which starts running at 5 a.m.<sup>34</sup>

Released late at night, and in unfamiliar neighborhoods far away from home or shelter to walk, releasees may be forced to withdraw cash from a debit card at an ATM and sustain a fee in order to get money for a cab. Under these circumstances, it strains credulity to characterize incurring fees as voluntary.

In short, there are numerous, and all too common, challenges that make avoiding fees an insurmountable task. Many releasees often have to focus on other immediate concerns, including finding shelter, obtaining medication, finding transportation, or managing drug withdrawal. Given these challenges, avoiding fees by finding a Mastercard-affiliated bank or transferring all money to a bank account is far from a “ridiculously easy” task.

**iii. People deported after release find release cards largely unusable, which benefits Numi’s bottom line**

For many releasees deported upon release from incarceration, Numi’s release cards effectively deprive them of the entirety of their money. Many people are not able to access their money internationally—ATMs may not permit

---

<sup>34</sup> Nuala Sawyer, *Late-Night Jail Releases Under Fire* (Aug. 8, 2018), <http://www.sfweekly.com/news/late-night-jail-releases-under-fire/>

withdrawals and stores may not accept the cards for purchases.<sup>35</sup> And entities that do accept the card invariably require exorbitant international exchange fees, among other fees.<sup>36</sup>

Martin Quintana-Cerna's experience demonstrates how Numi's release card scheme is uniquely structured to deprive people released to deportation of their money. After Mr. Quintana-Cerna was deported to Tijuana in April 2015, he had \$9.90 on a Numi card. A denied withdrawal from an ATM cost him \$3.45 in fees, even more than the \$1.95 it would have cost him in the United States. Attempting to access the remaining \$6.45 was futile because \$4.95 would be deducted as an international ATM fee, in addition to a 3% foreign transaction fee and the local ATM fee.<sup>37</sup> Under this commonplace scenario, Numi's release card loaded with \$9.90 in no way functions the same as \$9.90 in cash and instead results in a windfall for Numi.

The multiple barriers the releasee population face function as a practical bar to obtaining releasees' money without fees. Indeed, Numi has charged service fees to nearly 80% of releasees who were given cards. (ER 301¶14.) Numi's release

---

<sup>35</sup> No More Deaths, *Shakedown: How Deportation Robs Immigrants of Their Money and Belongings* 30-31 (2014), <http://nomoredeaths.org/wp-content/uploads/2014/12/Shakedown-withcover.pdf>.

<sup>36</sup> *Id.*

<sup>37</sup> Arun Gupta, *The Financial Firm that Cornered the Market on Jails*, *The Nation* (Aug. 1, 2016), <https://www.thenation.com/article/the-financial-firm-that-cornered-the-market-on-jails/>.

cards, therefore, are not the functional equivalent to cash and are worth substantially less. Cash simply does not impose similar fees on a marginalized population with limited means to avoid them.

**C. Compounding the substantial costs of Numi's cards is the fact that the card is a forced contract that threatens the privacy of already marginalized people**

There are other attributes of the release cards that render it inferior to cash or check. First, because releasees must accept Numi's cards or forego their money, the release cards function as a forced contract. Without any real bargaining power, Plaintiff Brown and other releasees are forced to accept the terms of release cards.

Given that the release cards are forced on releasees, there is no incentive for Numi to lower its fees. Without any competition from other financial services companies and no option to get money in the form of cash or check, Numi can charge fees in an exploitative manner that most people, under other circumstances, would not accept. That is, Numi's fee schedule depends on having a captive—literally—customer base without any meaningful choice to opt out. And these fees tend to be higher than similar cards available to consumers.<sup>38</sup>

---

<sup>38</sup> Catherine E. Akenhead, *How States Can Take A Stand Against Prison Banking Profiteers*, 85 Geo. Wash. L. Rev. 1224, 1240 (2017) (citing Prison Policy Initiative, Comment Letter on Proposed Amendments to Regulation E 4 (Mar. 18, 2015), <http://static.prisonpolicy.org/releasecards/CFPB-comment>; Eli McCormick, *The Best Prepaid Debit Cards of 2017*, Top Ten Reviews, <http://prepaid-debit-cards-review.toptenreviews.com/> [<https://perma.cc/QCE6-UDXL>]).



Most notably, Numi can charge a “monthly” maintenance fee of \$5.95 just five days after activation, which Numi could not likely charge to the general population that can seek business elsewhere. In addition to the fees, the Numi Cardholder Agreement has an arbitration provision which Numi wields to compel releasees into arbitration, notwithstanding the fact that releasees have been forced to accept a release card and thus have not voluntarily agreed to arbitrate. (*See* ER 933, Dkt. 22.)

Releasees are not only forced to accept oppressive terms and fees, they must give up their privacy to avail themselves of Numi’s touted benefits and to avoid certain fees. Numi charges \$0.95 if a purchase is declined for insufficient funds and \$1.00 to track a card’s balance on an ATM.<sup>39</sup> Thus the only way to track a balance, while avoiding an insufficient funds fee and an ATM balance inquiry fee, is to sign up for an online account with Numi and provide sensitive personal and financial information in the process. Likewise, a releasee would have to create an online account if she would like to transfer money to a bank account. Finally, if a person wants to avail himself of lost or stolen card protections, he must also create an online account.

And not only does a releasee have to give Numi sensitive information to set up an online account, but such an account also enables Numi to track a person’s

---

<sup>39</sup> *See supra* Section II.

spending activity. Further, importantly, in this age of multiple widespread data breaches, releasees' private information is vulnerable to identity theft.<sup>40</sup> Identity theft renders all people vulnerable to financial loss, but for low-income people, the consequences can be even more devastating, including harassment from debt collection companies, child support garnishments to collect on unpaid debt, and wrongful arrests.<sup>41</sup>

This disregard for releasees' privacy is part of a broader, historical pattern of disregarding the boundaries and privacy of marginalized people. Marginalized people are subject to numerous erosions of their privacy when, for example, they apply for food stamps, Medicaid, or public housing. Those erosions include forced DNA tests, fingerprinting, and intrusive questioning into private relationships.<sup>42</sup> And the public has come to understand that poor neighborhoods and communities of color are routinely over-surveilled and over-policed.<sup>43</sup> In this context, requiring releasees to divulge sensitive information to Numi is ostensibly de minimis but fits

---

<sup>40</sup> Matthew Goldberg, *13 Data Breaches That Stung US Consumers*, Bankrate.com (Nov. 30, 2018), <https://www.bankrate.com/finance/banking/us-data-breaches-1.aspx#slide=12>.

<sup>41</sup> Mary Madden et. al., *Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans*, 95 Wash. U.L. Rev. 53, 62–63 (2017).

<sup>42</sup> *Id.* at 59.

<sup>43</sup> See Steven Renderos and Ramla Sahid, *How the Government's Surveillance Practices Criminalize Communities of Color*, Colorlines (Jul. 20, 2018), <https://www.colorlines.com/articles/how-governments-surveillance-practices-criminalize-communities-color-opinion>.

with a larger pattern of ignoring the privacy harms marginalized people uniquely face. Those privacy harms “even if they are not always visible, . . . are real and can have physical and psychological impacts.”<sup>44</sup>

Cash and checks simply do not have the same oppressive terms and privacy harms. As such, these harms should be taken into account when determining whether Numi’s release cards are the functional equivalent to cash or checks. For all the reasons stated above, they are not.

#### IV. CONCLUSION

For the foregoing reasons, *amici* urge this Court to reverse the District Court’s summary judgment ruling.

Respectfully submitted,

/s/ Hassan Zavareei  
Hassan A. Zavareei (SBN 181547)  
1828 L St. NW Suite 1000  
Washington, DC 20036  
Telephone: 202-973-0900  
hzavareei@tzlegal.com

---

<sup>44</sup> Madden, et al., *supra* note 42.

## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because the brief contains 6,474 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman type.

/s/ Hassan Zavareei

Hassan A. Zavareei (SBN 181547)  
1828 L St. NW Suite 1000  
Washington, DC 20036  
Telephone: 202-973-0900  
hzavareei@tzlegal.com

*Counsel for Amici*

March 8, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that, on March 8, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I also certify that all other participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Hassan Zavareei

Hassan A. Zavareei (SBN 181547)  
1828 L St. NW Suite 1000  
Washington, DC 20036  
Telephone: 202-973-0900  
hzavareei@tzlegal.com

*Counsel for Amici*

March 8, 2019

No. 18-35735

---

**In the United States Court of Appeals  
for the Ninth Circuit**

---

DANICA LOVE BROWN,  
*Plaintiff-Appellant,*

v.

STORED VALUE CARDS, INC., D/B/A NUMI FINANCIAL, ET AL.,  
*Defendant-Appellee.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

---

**APPENDIX A OF PROPOSED BRIEF OF *AMICI CURIAE* IN SUPPORT  
OF PLAINTIFF-APPELLANT DANICA LOVE BROWN**

---

**TYCKO & ZAVAREEI LLP**

Hassan Zavareei (CA SBN 181547)

Anna C. Haac

Tanya S. Koshy (CA SBN 277095)

1828 L St. NW Suite 1000

Washington, DC 20036

Telephone: 202-973-0900

hzavareei@tzlegal.com

ahaac@tzlegal.com

tkoshy@tzlegal.com

Counsel for *Amici Curiae*

# **APPENDIX A**

## **APPENDIX A**

**International CURE (Citizens United for Rehabilitation of Errants)** has been working with released prisoners for almost fifty years and has received consultative status from the United Nations. From CURE's experience, the key to successful reentry is having money on release. To lose any of the release money will result in a higher recidivism rate.

**Equal Justice Under Law ("EJUL")** works to eliminate wealth-based discrimination in the criminal justice system through litigation and advocacy. EJUL recognizes that most incarcerated persons cannot afford ongoing legal representation, and that cutting them off from access to the best source of free and up-to-date information on how they may know and vindicate their rights will disadvantage them vis-à-vis wealthier prisoners, epitomizing how access to the justice system is restricted for those lacking financial resources.

**The Florida Institutional Legal Services Project of Florida Legal Services ("FLS")** is a non-profit that uses impact litigation, community lawyering, and policy advocacy to defend and advance the civil rights of adults and children who are incarcerated in prisons, jails, juvenile justice facilities, and immigration detention centers statewide in Florida. FLS also provides re-entry assistance and self-help resources to assist formerly incarcerated persons with obtaining access to



housing, healthcare, and public benefits when returning to their communities. In addition, FLS engages in legal advocacy to eliminate discriminatory barriers to economic opportunity for persons who are formerly incarcerated that have an unfair burden on those with low or no income.

**The Legal Aid Society** is a private, non-profit organization that has provided free legal assistance to indigent New Yorkers for 130 years, and serves as New York City's largest public defender. Its **Prisoners' Rights Project (PRP)**, founded in 1971, seeks to ensure that incarcerated people are afforded full protection of their legal rights while incarcerated and returning to society. PRP advocates and litigates on behalf of people confined in and released from New York State prisons, New York City jails, and federal prisons and jails. PRP engages in litigation (including class action litigation) to remedy unconstitutional, unlawful, and inhumane prison conditions, including inadequate medical and mental health treatment, mistreatment, brutality, sexual abuse and discrimination based on disability.

**The National Police Accountability Project ("NPAP")** was founded in 1999 by members of the National Lawyers Guild to address allegations of misconduct by law-enforcement and detention-facility officials through coordinating and assisting civil-rights lawyers representing their victims. NPAP provides training and support for these attorneys and other legal workers, public

education and information on issues related to law-enforcement and detention-facility misconduct and accountability, and resources for non-profit organizations and community groups involved with victims of such misconduct. NPAP supports legislative efforts aimed at increasing law- enforcement and detention-facility accountability and appears regularly as *amicus curiae* in cases such as this one presenting issues of particular importance for its member lawyers and their clients. NPAP's members regularly represent prisoners and detainees in civil rights litigation.

**Public Counsel** is the nation's largest pro bono law firm, located in Los Angeles, California. Its attorneys have successfully challenged excessive fees and fines imposed on indigent defendants who cannot pay them. Public Counsel's Consumer Law Project also works on matters involving bail bonds, access to credit and banking services, and criminalization of poverty.

**The San Francisco Public Defender's office** accepts appointment in over 25,000 cases per year in felony, misdemeanor, and juvenile courts. Our office represents the majority of the indigent defendant, but San Francisco also has an active conflicts panel and private bar which handles the remaining cases. Though this practice is not currently used in our jails, we fear the denial of this suit will encourage the ubiquity of these cards which will be another obstacle to reentry and rehabilitation for our clients.

The **Texas Civil Rights Project (TCRP)** boldly serves the movement for equality and justice in and out of the courts. We are Texas lawyers for Texas communities, and we use our tools of litigation and legal advocacy to protect and advance the civil rights of everyone in Texas. We undertake our work with a vision of a Texas in which all communities can thrive with dignity, justice, and without fear. Through its Criminal Justice Reform Program, TCRP represents prisoners and persons most affected by the criminal justice system. TCRP has worked extensively on behalf of communities that are impacted by grossly burdensome costs imposed by our criminal justice system. Recent advocacy includes challenging fines and fees imposed through Class C misdemeanors and traffic tickets (the nonpayment of which may result in incarceration), working to eliminate unconstitutional bail practices, and eliminating oppressive costs imposed by private companies that restrict liberties and profit disproportionately from persons with limited economic resources.

**The Southern Poverty Law Center (“SPLC”)** has provided pro bono civil rights representation to low-income persons in the Southeast since 1971, with particular focus on combating unlawful discrimination and ending poverty. The SPLC provides educational materials, engages in policy reform, and develops litigation to minimize the burdens placed on the poor, to ensure meaningful access to social safety nets, and to enable upward mobility.

**Working Narratives** is an arts and social justice organization that works with prisoners, formerly incarcerated persons, their families, and policy makers to advance positive criminal justice reform. Each year, arts and education programming reaches thousands of prisoners. Working Narrative's work focuses on building connections with those inside prisons and working to create community driven solutions.

The **University of California Davis School of Law Immigration Law Clinic** ("The Clinic") is an academic institution dedicated to defending the rights of detained noncitizens in the United States. The Clinic provides direct representation to detained immigrants who are placed in removal proceedings. In addition, the Clinic screens unrepresented individuals to facilitate placement with pro bono attorneys and presents legal orientation programs for detained individuals in removal proceedings who are unable to obtain direct representation.

**CERTIFICATE OF SERVICE**

I hereby certify that, on March 8, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I also certify that all other participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Hassan Zavareei

Hassan A. Zavareei (SBN 181547)  
1828 L St. NW Suite 1000  
Washington, DC 20036  
Telephone: 202-973-0900  
hzavareei@tzlegal.com

*Counsel for Amici*

March 8, 2019