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9 **THE UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 _____)
12)
13 GARY WAYNE WELCHEN, on behalf of)
14 himself and others similarly situated,)

15)
16 Plaintiffs,)

17)
18 v.)

Case No. 2:16-cv-00185-TLN-DB
(Class Action)

19)
20 THE COUNTY OF SACRAMENTO,)
21 KAMALA HARRIS in her Official)
22 Capacity as the California Attorney General,)
23 and SCOTT JONES in his Official Capacity)
24 as the Sacramento County Sheriff,)

25)
26 Defendants.)
27 _____)

28 **AMENDED CLASS ACTION COMPLAINT**

29 **Introduction**

30 1. This case is about Sacramento County keeping some of its poorest residents in jail
31 because of their inability to make a monetary payment. Named Plaintiff Gary Welchen is an
32 indigent arrestee who was kept in the county jail solely because he was too poor to pay the
33 amount of money that the Sacramento County Sheriff's Department demanded for his release.

34 2. In Sacramento, arrestees face two different outcomes depending on their wealth
35 status. If Mr. Welchen had been rich enough to pay \$10,000 — like many wealthier people
36 accused of the same offense — he could have walked out of his jail cell immediately under

1 Sacramento County's pay-for-freedom pretrial justice system. Because the only criterion
2 standing between Plaintiff and freedom was his ability to make a monetary payment, Sacramento
3 operates a wealth-based detention system.

4 3. On behalf of the many other arrestees subjected to Defendants' unlawful wealth-
5 based detention system, the named Plaintiff in this action challenges the use of money bail to
6 detain poor arrestees while letting wealthier arrestees free. Defendants' wealth-based detention
7 system violates the Equal Protection and Due Process Clauses of the United States Constitution
8 because it ties pretrial freedom to the ability to make a monetary payment, thus making freedom
9 dependent on wealth-status.

10 4. Defendants' wealth-based detention system is a violation of substantive due
11 process that demands heightened scrutiny because the fundamental right to pretrial liberty is at
12 stake. Defendants' wealth-based detention system fails heightened scrutiny because it does not
13 further a compelling government interest and is not narrowly tailored. Defendants' wealth-based
14 detention system also violates substantive due process because it imposes punishment prior to
15 trial, in that the effects of wealth-based pretrial detention are far in excess of any regulatory
16 purpose for having such detention.

17 5. By and through his attorneys and on behalf of himself and all others similarly
18 situated, the named Plaintiff seeks the vindication of his fundamental rights, injunctive relief
19 preventing future wealth-based detention of all Class Members, and a declaration that any state
20 statutory or constitutional provisions that require the use of secured money bail to detain any
21 person are unconstitutional. Defendants cannot use money bail to detain any person solely
22 because she is unable to make a monetary payment.

1 **Nature of the Action**¹

2 6. It is the policy and practice of the County of Sacramento and Sheriff Scott Jones,
3 in implementing Sacramento's bail system and enforcing Cal. Pen. Code §1269b, to refuse to
4 release arrestees from jail unless they pay their money bail amount. Additionally, the Sheriff and
5 the Attorney General enforce unconstitutional state laws that require the use of money bail to
6 detain individuals based on wealth-status. Plaintiffs seek declaratory and injunctive relief
7 prohibiting Defendants' wealth-based detention system and requiring that pretrial release or
8 detention decisions be based on factors other than wealth-status.

9 **Jurisdiction and Venue**

10 7. This is a civil rights action arising under 42 U.S.C. § 1983 and 28 U.S.C. § 2201,
11 *et seq.*, and the Fourteenth Amendment to the United States Constitution. This Court has
12 jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

13 8. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

14 **Parties**

15 9. Named Plaintiff Gary Welchen is a 50-year-old resident of Sacramento. He has
16 experienced homelessness on several occasions, and his sole source of income is social security
17 disability payments. He represents himself as an individual and represents a Class of similarly
18 situated people subjected to Defendants' wealth-based detention system.

19 10. Defendant County of Sacramento is a local government entity organized under the
20 laws of the State of California. The Sacramento County Sheriff's Department is a division of the
21 County and operates the Sacramento County Jail.

22 11. Defendant Scott Jones, in his official capacity as Sacramento County Sheriff, is an

¹ Plaintiffs make the allegations in this Complaint based on personal knowledge as to matters in which they have had personal involvement and on information and belief as to all other matters.

1 official of Defendant County of Sacramento in his role as jailor and with regard to release and
2 detention decisions and Sacramento's release/detention policy.

3 12. The Sheriff has charge of and is the sole and exclusive authority to keep the
4 county jail and the prisoners in it. Cal. Gov't Code § 26605. The Sheriff's Department detains
5 inmates at the county jail and is authorized to issue and sign orders of release for pretrial
6 detainees. *See* Cal. Pen. Code § 1269b(a).

7 13. The Sheriff's Department is headed by the Sacramento County Sheriff, who is an
8 officer of Sacramento County. The officers and employees of the Sheriff's Department are
9 authorized to accept money bail, order the release of an arrestee, and set a time for an arrestee's
10 appearance in state court. The Sheriff's Department, by policy and practice, detains arrestees too
11 poor to afford their bail amount.

12 14. The Correctional Services Division of the Sacramento County Sheriff's
13 Department is charged with the operations each of Sacramento's County Jails, Correctional
14 Health, Work Release, and the various Jail Programs.

15 15. The Sheriff is the final policymaker for Defendant County of Sacramento with
16 regard to release and detention decisions and Sacramento's release/detention policy.

17 16. While the money bail policies and practices of the Sheriff and the Sheriff's
18 Department are consistent with state law, they are not consistent with the federal Constitution.
19 More than just the particular manner of implementation, it is the Sheriff and County's policy of
20 implementing the money bail system that amounts to unconstitutional wealth-based detention.

21 17. Under the Supremacy Clause, the United States Constitution is the supreme law
22 of the land. All government officials must uphold the Equal Protection and Due Process Clauses
23 of the Fourteenth Amendment, regardless of contrary instructions from state officials, local

1 officials, state law, local law, or state judges. Additionally, upon taking office, the Sacramento
2 County Sheriff swears an oath to support and defend the Constitution of the United States.

3 18. The Sheriff enforces the law requiring use of secured money bail after arrest, and
4 Sacramento has a policy and practice of detaining individuals based on their inability to make a
5 monetary payment.

6 19. Sacramento is responsible for its application of its policies, including its release
7 and detention policies.

8 20. Defendant County of Sacramento is liable for its unconstitutional policies and
9 practices — including the policies and practices of its officers and divisions — even if they are
10 consistent with state law and even if they are consistent with orders of state judges.

11 21. Under *Ex parte Young*, 209 U.S. 123 (1908), the Sheriff in his official capacity
12 can be enjoined from enforcing any unconstitutional state laws. Any statutes requiring or
13 permitting wealth-based detention are unconstitutional.

14 22. Under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), the County of
15 Sacramento and the county Sheriff are liable for their unconstitutional policies and practices.
16 Any detention practices that tie freedom to wealth-status are unconstitutional.

17 23. Defendant Kamala Harris is the California Attorney General and the chief law
18 enforcement officer in California. She is charged with the enforcement of California's laws,
19 including provisions of the Penal Code. In her official capacity as the California Attorney
20 General, she requires the County of Sacramento and the county Sheriff to impose bail pursuant to
21 a bail schedule, thereby creating a wealth-based detention system. *See* Cal. Pen. Code § 1269b.

22 24. The Attorney General has direct supervision over every county sheriff in the state.
23 Cal. Const. Art. V, § 13; Cal. Gov't Code § 12560. Several statutory provisions give the

1 Attorney General specific supervisory powers over sheriffs. *See, e.g.*, Cal. Gov't Code §§
2 12524, 12560, 12561.

3 25. The Attorney General also has direct supervision over county district attorneys
4 and may assist the district attorney or take full charge of any investigation or prosecution. *See*
5 Cal. Gov't Code § 12550. The Attorney General has a duty to prosecute violations of law
6 whenever, in her opinion, "any law of the State is not being adequately enforced in any county."
7 Cal Const. Art. V, § 13. Criminal violations of the bail law can be prosecuted either by county
8 district attorneys or by the Attorney General herself.

9 26. Under *Ex parte Young*, the Attorney General in her official capacity can be
10 enjoined from enforcing any unconstitutional state laws. Any statutes requiring or permitting
11 wealth-based detention without an inquiry into an individual's ability to make a monetary
12 payment are unconstitutional.

13 **Factual Allegations**

14 **A. The Named Plaintiff Was Held in Jail by Defendants Because He Was Unable to**
15 **Pay His Money Bail Amount**

16 27. At the time of his arrest, Gary Welchen was a 50-year-old resident of Sacramento.

17 28. Throughout the first several months of 2016, Mr. Welchen was experiencing
18 homelessness. Mr. Welchen was arrested by Sacramento police on January 29, 2016. He was
19 accused of second-degree burglary of an uninhabited dwelling.

20 29. Mr. Welchen was taken to jail and told that he would be released if he paid
21 \$10,000. He was told that he would be kept in jail unless he paid \$10,000. *See* Exhibit 1,
22 Declaration of Gary Welchen.

23 30. Mr. Welchen is indigent. He worked as a contractor and a roofer until 1996,
24 when he injured his back, and his disability has prevented him from working since then. Both

1 before and after his arrest, he was experiencing homelessness, without a stable address or place
2 to stay. His sole source of income is Social Security disability payments.

3 31. Because of his indigence, Mr. Welchen was unable to pay his money bail amount.

4 32. Had Mr. Welchen been able to afford his money bail amount, he would have paid
5 for his freedom immediately.

6 33. Unable to afford his money bail amount, Mr. Welchen was detained for six days
7 — from January 29, 2015, through February 4, 2015 — before he was released by the Sheriff's
8 Department.

9 **B. Defendants' Wealth-Based Detention Scheme Detains Arrestees Who Cannot Pay**
10 **Their Money Bail Amount while Releasing Those Who Can Pay**

11 34. Upon arrest, arrestees in Sacramento are transported to the Mail Jail for booking.
12 The Sheriff's Correctional Services Division performs booking processes on all arrestees.

13 35. The Sacramento County Sheriff's Department has a computerized Jail
14 Management System, which records various data on all inmates in the county jail system. These
15 records are updated on an ongoing basis as events occur, and include information about the time
16 of arrest and the charge(s), the posting of any bail, and the date and time of release from custody.

17 36. The booking processes of arrestees include searching arrestees, medical triage,
18 photographing, fingerprinting to include warrant checks, classification, criminal history review,
19 review for eligibility to be cited and released, DNA collection from persons arrested for felony
20 charges, and inventory and storage of property.

21 37. At the end of booking processes, arrestees are given a booking sheet, which
22 includes their booking charge and their bail amount. Bail is determined by referring to the
23 Felony and Misdemeanor Bail Schedule as established by the Superior Court of California,
24 County of Sacramento. Deputy sheriffs use this bail schedule, referring to an arrestee's booking

1 charge(s), when determining an arrestee's bail amount.

2 38. Arrestees are told that if they pay their bail amount, they will be released
3 immediately. They are told that if they cannot pay bail, they will remain in jail until arraignment
4 or discharge.

5 39. Arrestees who are not able to pay their money bail amount are shown a poster
6 listing the phone numbers of bail bond agents and told that they may call one of these numbers to
7 attempt to secure their release. Arrestees who obtain release through bail agents remain in jail
8 while making arrangements with the agent such as finding cosigners for the bail bond contract.
9 This process can take hours or days.

10 40. If an arrestee can afford to pay her bail amount, the Sheriff's Department accepts
11 the money and orders the release of the arrestee.

12 41. If an arrestee cannot afford to pay her bail amount, the Sheriff's Department
13 keeps her in jail until either she can make other arrangements to obtain her release, she is
14 discharged, or she is taken to court 2 to 5 days later for arraignment.

15 42. In Sacramento, approximately 45,000 individuals are booked in county jail every
16 year. On a typical day, approximately 120 new arrestees are locked in the county jail.

17 43. At any given time, there are approximately 4,400 inmates in the county jail,
18 roughly 57% of whom are being detained pretrial.

19 44. Although they are presumed innocent of the crime for which they have been
20 arrested, there are more than 2,500 individuals at any given time who are being detained pretrial
21 solely because they cannot afford money bail.

22 45. Approximately 60% of pretrial detainees are held due to probation revocation
23 proceedings, violation of terms of release, immigration detainers, or other holds. Even

1 discounting this percentage, more than 8,000 individuals are detained annually solely due to their
2 wealth-status.

3 **C. Defendants' Wealth-Based Detention Scheme Caused Plaintiff to Be Held in Jail**
4 **Solely Due to His Inability to Pay Bail**

5 46. The named Plaintiff would have been released from jail immediately if he had
6 paid the amount of money required by the Sheriff's Department.

7 47. Arrestees are given a right to release pending trial, but Defendants' pay-for-
8 freedom system conditions their release on their ability to afford money bail, thus tying their
9 pretrial freedom to their wealth-status.

10 48. The treatment of the named Plaintiff and other Class Members is caused by two
11 factors: (1) the unconstitutional provisions of California's Penal Code that are enforced by the
12 Sheriff and Attorney General and (2) the Sheriff's and Sacramento's policies and practices of
13 wealth-based detention.

14 49. As a matter of policy and practice, when the county Sheriff's Department books a
15 new arrestee at the county jail, county employees inform the arrestee that she will be released
16 from jail immediately if she pays her money bail amount. The arrestee is told that she will
17 remain in jail if she is not able to make that payment.

18 50. Before an arrestee's first appearance in court, it is the policy and practice of the
19 Sheriff's department to set bail based on the bail schedule. The bail schedule assigns bail
20 amounts solely on the charges for which the arrestee was arrested.

21 51. It is the policy and practice of the Sheriff's Department to immediately release
22 those arrestees who pay their money bail amount.

23 52. In a typical week, the Sheriff's Department releases dozens of individuals who
24 pay their money bail amount.

1 53. It is the policy and practice of the Sheriff's Department to detain individuals who
2 do not pay their money bail amount. Before arraignment, it is the policy and practice of the
3 Sheriff's Department to detain individuals who do not pay the amount listed on the bail schedule.
4 After arraignment, it is the policy and practice of the Sheriff's Department to detain individuals
5 who do not pay the bail amount set by the Superior Court.

6 54. In a typical week, the Sheriff's Department detains dozens of individuals who do
7 not pay their money bail amount.

8 55. The Sheriff and Sheriff's Department have a longstanding practice and custom —
9 which constitutes the standard operating procedure of the Sheriff and the County of Sacramento
10 — of releasing those individuals who pay their money bail amount.

11 56. The Sheriff and Sheriff's Department have a longstanding practice and custom —
12 which constitutes the standard operating procedure of the Sheriff and the County of Sacramento
13 — of detaining those individuals who cannot pay their money bail amount.

14 57. Any provisions of California law that require the use of secured money bail to
15 detain individuals due to their inability to pay are unconstitutional because they violate the
16 principle that no person should have to spend a single day in jail simply because she cannot
17 make a monetary payment.

18 58. By directing that arrestees' money bail amounts are set without regard to ability to
19 pay, Cal. Pen. Code § 1269b(b) violates the Equal Protection and Due Process Clauses of the
20 Fourteenth Amendment.

21 59. The Sheriff is liable under *Ex parte Young* for enforcing California law in
22 imposing money bail irrespective of an arrestee's ability to pay.

23 60. The Attorney General is liable under *Ex parte Young* for enforcing California law

1 in supervising the Sheriff and in requiring imposition of money bail irrespective of an arrestee's
2 ability to pay.

3 61. The Sacramento County Sheriff and the County of Sacramento are liable under
4 *Monell* for the policy and practice of detaining all individuals who do not pay money bail while
5 releasing those individuals who do pay money bail.

6 **D. None of the Alternatives to Bail in Sacramento Allows for Immediate Release of**
7 **Arrestees**

8 62. Those arrestees too poor to pay for their freedom are not appointed counsel until
9 their first appearance in court. Such arrestees could theoretically apply to a magistrate for
10 release on lower bail or on their own recognizance, but this process is functionally non-existent
11 while arrestees remain unrepresented by counsel.

12 63. Under Defendants' pay-for-freedom system, those wealthy enough to pay their
13 bail amount are immediately released from the county jail. Some poorer arrestees eventually
14 make arrangements with private bail bond companies — arrangements that require significant
15 time spent in jail not suffered by wealthier arrestees and that require the payment of a non-
16 refundable deposit. And many others who are poorer still are left to languish in jail until the
17 resolution of their case.

18 64. Wealthy arrestees do not have to wait in jail for any of these processes, because
19 the County grants them immediate release when they pay their money bail amount.

20 65. By offering bail to arrestees, the Sheriff's Department allows pretrial release, but
21 conditions that release on an arrestee's wealth-status. Only those who can afford their money
22 bail amount are permitted pretrial release.

23 **E. Defendants' Use of Money Bail Infringes upon the Fundamental Right to Pretrial**
24 **Liberty, and Is Not Narrowly Tailored in Securing Court Attendance or Public**
25 **Safety**

1 66. Arrestees have a fundamental right to pretrial liberty that is infringed when money
2 is the deciding factor for whether that right is recognized. Because wealth-based pretrial
3 detention infringes on the fundamental right to pretrial liberty, Defendants' use of money bail is
4 subject to heightened scrutiny, requiring that it be narrowly tailored to advance a compelling
5 governmental interest.

6 67. No governmental interests — other than securing court appearance or public
7 safety — are compelling enough to justify pretrial detention.

8 68. Defendants' vehicle for pretrial detention — money bail — is not narrowly
9 tailored to advance compelling interests. Because money and wealth are the ultimate factors
10 determining release, Defendants' money bail system allows release for someone who is rich,
11 dangerous, and a flight risk while detaining someone who is poor, safe, and likely to appear in
12 court. Money bail does not carefully delineate the circumstances under which the compelling
13 governmental interests are satisfied because the only question that matters is whether an arrestee
14 can afford her money bail amount.

15 69. There is no evidence that ability to pay correlates closely with unmanageable
16 flight risk or public safety. There is no acute problem of unmanageable flight risk or public
17 safety that money bail tackles because a person's wealth is not determinative of her likelihood of
18 appearing for trial or threatening public safety. The money bail system applies to every case,
19 regardless of how serious or minor the charges.

20 70. Those wealthy enough to pay their bail amount have their full amount returned to
21 them if they appear for all their court dates, regardless of whether they commit additional crimes.
22 Thus, money bail has no connection to public safety.

23 71. Instead of basing pretrial release on risk level and therefore targeting a specific

group of people known to be high-risk, Defendants' money bail system is a blanket deprivation of poor arrestees' right to pretrial liberty simply because of their inability to pay bail.

72. Setting bail based on charges — as is Defendants' policy and practice — is not an individualized assessment that satisfies due process. Although the money bail system may be administratively convenient for the Sheriff and the County for handling arrestees, administrative convenience is a thoroughly inadequate basis for the deprivation of core constitutional rights.

73. The County of Sacramento does not supervise any pretrial arrestees. Instead, its wealth-based detention scheme is the central component of its pretrial justice system, making wealth-status the ultimate criterion for an arrestee's detention or release.

74. Defendants' money bail system violates substantive due process because the system is not narrowly tailored to serving the interests of public safety and court appearance. By making wealth-status the sole determinative factor of pretrial freedom, Defendants' system rests on a false assumption that wealth has bearing on a person's likelihood of showing up to court or ability to follow the law.

75. Defendants could use numerous other factors to determine pretrial release that are not tied to wealth status. They could choose to release all arrestees (or all arrestees charged with non-serious crimes); they could release those arrestees without prior failures to appear; they could release arrestees who show no particularized concerns of flight risk or danger; or they could choose other non-wealth-based metrics. Especially in light of the many possible systems Defendants could adopt, the current method of wealth-based detention is not narrowly tailored to further compelling interests.

F. Defendants' Money Bail Scheme Further Violates Substantive Due Process Because Its Effects Are Excessive in Relation to Its Regulatory Purpose

76. Wealth-based detention excessively restricts pretrial liberty in relation to any

1 regulatory purpose. Money bail categorically eliminates the opportunity for people who are poor
2 to achieve pretrial freedom, even if they are not a danger or flight risk. Wealth-based detention
3 imposes punishment before an adjudication of guilt.

4 77. There is no pressing societal problem that requires wealth-based detention, nor is
5 there evidence that money bail is as effective as several alternative systems successfully used in
6 other jurisdictions. Defendants' wealth-based detention system is excessive in light of successful
7 non-money-based systems that do not infringe on the fundamental right to pretrial liberty.

8 78. Defendants' wealth-based detention system is also excessive because it does not
9 provide for individualized assessments of risk level nor offers a prompt detention hearing.

10 79. The existence of private, for-profit bail bond companies is not an adequate
11 leveling resource, for poor arrestees have to pay non-refundable deposits that alone may be out
12 of reach for some arrestees. The fact that bail may be reduced or eliminated at some point is also
13 not an adequate alternative remedy, as arrestees will have already spent time in jail solely based
14 on their inability to pay their money bail before having access to those alternatives.

15 80. While tying pretrial freedom to wealth-status is the norm in Sacramento, other
16 jurisdictions throughout the country do not hold people in jail because of their poverty. Instead
17 of relying on money bail, these jurisdictions release arrestees with pretrial supervision practices
18 that effectively promote court attendance and public safety without requiring detention. Pretrial
19 services agencies in other counties employ numerous methods of maximizing public safety and
20 court appearances, including reporting obligations, phone and text message reminders of court
21 dates, rides to court for those without transportation or a stable address, counseling, drug and
22 alcohol treatment, batterer intervention programs, anger management courses, reporting
23 obligations, SCRAM bracelets (for alcohol testing), or electronic monitoring, among other

1 services, when necessary to guard against a particular risk. *See generally* Exhibit 2, Morrison
2 Aff.; Exhibit 3, Herceg Aff.; Exhibit 4, Murray Aff.

3 81. Other jurisdictions also employ non-monetary conditions of release, including
4 unsecured or “signature” bonds (which do not require payment up front), stay-away orders,
5 curfews, or even home detention, further contributing to high public safety and court appearance
6 rates. *See generally* Exhibit 4, Murray Aff.

7 82. Sacramento could use such pretrial services, but it does not do so to any
8 meaningful degree. The vast majority of arrestees booked in Sacramento County Jail are
9 processed and detained through Sacramento’s money bail scheme rather than non-monetary
10 supervision methods.

11 83. Jurisdictions with robust pretrial services and non-monetary conditions of release
12 often achieve court-appearance rates over 90%, with more than 85% of those released pretrial
13 remaining arrest-free (and 98–99% remaining arrest-free for violent crimes). *See generally*
14 Exhibit 2, Morrison Aff.; Exhibit 3, Herceg Aff.

15 84. Unnecessary pretrial detention has profound costs. It causes instability in
16 employment, housing, and care for dependent relatives. *See generally* Exhibit 4, Murray Aff.
17 Studies show that those detained pretrial face worse outcomes at trial and sentencing than those
18 released pretrial, even when charged with the same offenses. Detained defendants are more
19 likely to plead guilty just to shorten their jail time, even if they are innocent. Exhibit 5, Adachi
20 Decl. at ¶ 7. They have a harder time preparing for their defense, gathering evidence and
21 witnesses, and meeting with their lawyers. *Id.* at ¶ 8. Studies also show that just two days of
22 pretrial detention substantially increase the likelihood of future arrests.

23 85. Pretrial detention is more than ten times more expensive than effective pretrial

1 supervision programs. *See generally* Exhibit 4, Murray Aff. Through non-monetary tools,
2 pretrial supervision programs can save taxpayer funds while maintaining high public safety and
3 court appearance rates.

4 **Class Action Allegations**

5 86. The named Plaintiff brings this action, on behalf of himself and all others
6 similarly situated, to assert the claims alleged in this Amended Complaint on a common basis.

7 87. A class action is a superior means, and the only practicable means, by which the
8 named Plaintiff and unknown Class Members can challenge Defendants' unlawful wealth-based
9 detention system.

10 88. This action is brought and may properly be maintained as a Class action pursuant
11 to Rule 23(a)(1)–(4) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.

12 89. This action satisfies the numerosity, commonality, typicality, and adequacy
13 requirements of those provisions.

14 90. Plaintiff proposes one Class seeking declaratory and injunctive relief. The
15 Declaratory and Injunctive Class is defined as: all arrestees who are or will be in the custody of
16 the County of Sacramento and are or will be detained for any amount of time because they are
17 unable to pay money bail.

18 **A. Numerosity — Fed. R. Civ. P. 23(a)(1)**

19 91. The Sacramento County Jail detains approximately 45,000 individuals annually.
20 Of those, approximately 57% are detained pretrial. Those arrestees who are not held due to
21 probation revocation proceedings, violation of terms of release, immigration detainers, or other
22 holds are presented with Defendants' standard money bail choice of pay or jail.

23 92. Some arrestees are able to pay for release immediately. Those not able to pay are

1 held in the county jail pursuant to Defendants' wealth-based detention system.

2 93. The number of current and future arrestees detained pursuant to Defendants'
3 wealth-based detention system — if it is not enjoined — is well into the hundreds.

4 **B. Commonality — Fed. R. Civ. P. 23(a)(2)**

5 94. The relief sought is common to all Class Members, and common questions of law
6 and fact exist as to all Class Members. The named Plaintiff seeks relief concerning whether
7 provisions of state law that require the use of money bail and whether the Sheriff Department's
8 policies, practices, and procedures violate the rights of the Class Members and relief mandating
9 that Defendants not enforce such provisions nor continue such practices so that the constitutional
10 rights of the Class Members will be protected in the future.

11 95. These common legal and factual questions arise from one set of policies and
12 practices: Defendants' wealth-based detention system. Defendants operate this system in
13 materially the same manner every day. The material components of the system do not vary from
14 Class Member to Class Member, and the resolution of these legal and factual issues will
15 determine whether all Class Members are entitled to the relief they seek.

16 Among the most important, but not the only, common questions of fact are:

- 17 • Do the Sheriff and County have a policy and practice of requiring money bail as a
18 prerequisite for post-arrest release?
19 • Do the Sheriff and County immediately release those arrestees wealthy enough to pay
20 their money bail amount?
21 • Do the Sheriff and County detain, for any amount of time, those arrestees too poor to pay
22 their money bail amount solely because they cannot make that monetary payment?
23

24 96. Among the most important common question of law are:

- 25 • Do the Equal Protection and Due Process Clauses prohibit the government from jailing
26 an individual solely due to her inability to make a monetary payment?
27 • Does jailing an individual due solely to her inability to afford money bail constitute
28 jailing her due to her inability to make a monetary payment?
29

C. Typicality — Fed. R. Civ. P. 23(a)(3)

97. The named Plaintiff's claims are typical of the other Class Members' claims, and he has the same interests in this case as all other Class Members. Each Class Member is confined in jail because she cannot afford her money bail amount. The answer to whether Defendants' wealth-based detention scheme is unconstitutional will determine the claims of the named Plaintiff and every other Class Member.

98. If the named Plaintiff succeeds in the claim that Defendants' policies and practices concerning wealth-based detention violates his constitutional rights, that ruling will likewise benefit every other Class Member.

D. Adequacy — Fed. R. Civ. P. 23(a)(4)

99. The named Plaintiff is an adequate representative of the Class because his interest in the vindication of the legal claims that he raises is entirely aligned with the interests of the other Class Members, who each have the same basic constitutional claims. He is a member of the Class, and his interests coincide with and are not antagonist to those of the other Class Members.

100. There are no known conflicts of interest among Class Members, all of whom have a similar interest in vindicating their constitutional rights in the face of Defendants' pay-for-freedom system.

101. Plaintiffs are represented by attorneys from Equal Justice Under Law, who have experience in litigating complex civil rights matters in federal court and extensive knowledge of both the details of Defendants' scheme and the relevant constitutional and statutory law. Counsels' relevant qualifications are more fully set forth in the previously filed Motion for Class Certification.

1 102. The combined efforts of Class counsel have so far included extensive
2 investigation into money bail schemes over a period of years, including numerous interviews
3 with witnesses, court employees, jail inmates, families, attorneys throughout the region,
4 community members, statewide experts in the functioning of state and local courts, and national
5 experts in constitutional law, post-arrest procedure, law enforcement, judicial procedures,
6 criminal law, pretrial services, and jails.

7 103. Class counsel have a detailed understanding of state law and practices as they
8 relate to federal constitutional requirements. Counsel have studied the way that these systems
9 function in other counties in order to investigate the wide array of lawful alternatives.

10 104. As a result, counsel have devoted enormous time and resources becoming
11 intimately familiar with Defendants' system and with the relevant state and federal laws.
12 Counsel have also developed relationships with many of the individuals and families most
13 victimized by Defendants' practices. The interests of the Class Members will be fairly and
14 adequately protected by the Plaintiffs and their attorneys.

15 **E. Rule 23(b)(2)**

16 105. Class action status is appropriate because Defendants have acted in the same
17 unconstitutional manner with respect to all Class Members. Defendants enforce a wealth-based
18 system of pretrial justice: wealthy arrestees can purchase their immediate release, while poorer
19 arrestees must remain in jail.

20 106. The Class therefore seeks declaratory and injunctive relief to enjoin Defendants
21 from detaining arrestees who cannot afford their money bail amounts. Because the putative
22 Class challenges Defendants' system as unconstitutional through declaratory and injunctive relief
23 that would apply the same relief to every Class Member, Rule 23(b)(2) certification is

1 appropriate and necessary.

2 107. Injunctive relief compelling Defendants to comply with these constitutional rights
3 will similarly protect each Class Member from being subjected to Defendants' unlawful policies
4 and practices. A declaration and injunction stating that Defendants cannot detain arrestees due to
5 their inability to make a monetary payment would provide relief to every Class Member.
6 Therefore, declaratory and injunctive relief with respect to the Class as a whole is appropriate.

7 108. Plaintiffs seek the following relief and hereby demand a jury in this cause for all
8 matters so appropriate.

9 **Claims for Relief**

10 **Count One: Defendants Violate Plaintiffs' Substantive Due Process Rights by Jailing Them**
11 **Because They Cannot Afford a Monetary Payment**

12 109. Plaintiffs incorporate by reference the allegations in paragraphs 1–108.

13 110. The Fourteenth Amendment's Due Process Clause prohibits infringement of the
14 fundamental right to pretrial freedom without narrow tailoring to a compelling governmental
15 interest. Because Defendants' wealth-based detention model is not narrowly tailored to a
16 compelling governmental interest, Defendants violate Plaintiffs' substantive due process rights
17 by keeping them in jail solely because they cannot afford to pay money bail.

18 111. Furthermore, the Fourteenth Amendment's Due Process Clause prohibits
19 imposing punishment prior to trial. Because the effects of Defendants' restrictions are excessive
20 in relation to any legitimate regulatory purpose, Defendants violate Plaintiffs' substantive due
21 process rights by keeping them in jail solely because they cannot afford to pay money bail.

22 112. Defendant County of Sacramento violates Plaintiffs' Fourteenth Amendment
23 rights by implementing the state's bail laws and by implementing its wealth-based detention
24 system. Such implementation is a policy and practice of Defendant County of Sacramento.

113. Defendant Scott Jones, in his official capacity as Sacramento County Sheriff, violates Plaintiffs' Fourteenth Amendment rights by implementing the county's wealth-based detention scheme through his oversight of the county jail, by implementing the state's bail laws, and by enforcing provisions of California state law regarding the use of money bail.

114. Defendant Kamala Harris, in her official capacity as California Attorney General, violates Plaintiffs' Fourteenth Amendment rights by requiring Defendants County of Sacramento and Scott Jones to adopt and implement a bail schedule that results in detaining them solely because they cannot afford to pay money bail.

Count Two: Defendants Violate Plaintiffs' Equal Protection Rights by Jailing Them Because They Cannot Afford a Monetary Payment [PRESERVED FOR APPEAL]

115. Plaintiffs incorporate by reference the allegations in paragraphs 1–114.

116. The Fourteenth Amendment's Equal Protection Clause prohibits jailing a person because of her inability to make a monetary payment. Defendants violate Plaintiffs' equal protection rights by detaining them solely because they cannot afford to pay money bail.

Request for Relief

WHEREFORE, Plaintiffs and the other Class Members request that this Court issue the following relief:

- a. A declaratory judgment that Defendants violate the named Plaintiff's and Class Members' constitutional rights by keeping them in jail solely because they cannot make a monetary payment;
- b. An order and judgment preliminarily and permanently enjoining Defendants from enforcing their unconstitutional wealth-based detention policies and practices against the named Plaintiff and the Class of similarly situated people that he represents;
- c. An order and judgment preliminarily and permanently enjoining Defendant County of Sacramento — including the Sheriff and all officers and employees of the Sheriff's Department at the county jail — from using money bail to detain any person due to her inability to make a monetary payment and requiring that all release/detention decisions be based on factors other than wealth-status or ability

1 to make a monetary payment;

- 2 d. An order and judgment preliminarily and permanently enjoining the Attorney
3 General from requiring the use of money bail to detain indigent arrestees in
4 Sacramento;
- 5 e. An order declaring that all Defendants must follow the requirements of the Equal
6 Protection and Due Process Clauses, regardless of contrary state law or contrary
7 policies and practices;
- 8 f. An order declaring that California Penal Code section 1269b(b) and any other
9 state statutory or constitutional provisions that require the use of secured money
10 bail to detain any person without an inquiry into ability to pay are facially
11 unconstitutional;
- 12 g. An order declaring that, as applied by Defendants against Plaintiffs and Class
13 Members, California Penal Code section 1269b(b) and any other state statutory or
14 constitutional provisions that require the use of secured money bail to detain any
15 person without an inquiry into ability to pay are unconstitutional;
- 16 h. A judgment individually compensating the named Plaintiff for the damages that
17 he suffered as a result of Defendants' unconstitutional and unlawful conduct,
18 including damages resulting from his confinement in jail;
- 19 i. An order and judgment granting reasonable attorneys' fees and costs pursuant to
20 42 U.S.C. § 1988, and any other relief this Court deems just and proper.

21 Respectfully submitted,

22 /s/ Phil Telfeyan

23 Phil Telfeyan (California Bar No. 258270)

24 Attorney, Equal Justice Under Law

25 601 Pennsylvania Avenue NW

26 South Building — Suite 900

27 Washington, D.C. 20004

28 (202) 505-2058

29 ptelfeyan@equaljusticeunderlaw.org

30 *Attorney for Plaintiffs*

DECLARATION OF GARY WELCHEN

I, Gary Welchen, state and declare as follows:

1. I, Gary Welchen, am a 50-year-old resident of Sacramento.
2. I was arrested for second-degree burglary today (Friday, January 29), and booked in the county jail by the Sacramento Sheriff's Office.
3. When I got to jail, I was given a booking form which stated that I would be released if I paid \$10,000. I was informed that if I did not pay, I would have to remain in jail.
4. I was formerly employed as a contractor and roofer but sustained a severe back injury that has left me unable to work since 1976. I do not have a job and my only income is Social Security disability payments. I have no savings, and I am currently experiencing homelessness.
5. I cannot afford to buy my release from jail. If I had the money, I would immediately pay for my release.

I declare under penalty of perjury that the foregoing is true and correct.

Gary Welchen
January 29, 2016

AFFIDAVIT OF JUDGE TRUMAN MORRISON

The Honorable Truman A. Morrison III, having been duly sworn according to law, deposes and states as follows:

Background

1. My name is Truman Morrison. I am a Senior Judge on the Superior Court of the District of Columbia. In 1971 I began work as a lawyer at the District of Columbia Public Defender Service. In 1975, I was named head of the trial division where I supervised 40 lawyers trying cases ranging from delinquency matters to first-degree murder. I worked in that position until my appointment to the District of Columbia Superior Court by President Jimmy Carter in 1979.

2. In my thirty-seven continuous years as a trial judge, I have handled family, domestic violence, civil, and criminal cases. I sit regularly as a Senior Judge, hearing mainly criminal cases.

Overview

3. In this affidavit, I will give an overview of the pretrial justice decision-making system in Washington, D.C. I will explain how Washington, D.C.'s pretrial system operates effectively and safely without using money bail to decide detention or release of defendants based on their wealth-status. This overview is based on my 45 years of experience with the court as well as statistics from the District of Columbia's Pretrial Services Agency ("PSA").

4. I am receiving no compensation for my preparation of this affidavit.

Analysis

5. Our bail law in Washington, D.C. is rooted in the premise that a defendant's inability to pay money bail should not determine whether he is detained before trial. Release or detention prior to trial is instead to be based upon one's risk.

6. Prior to 1994, Washington, D.C. operated its pretrial decision-making scheme in largely the same way that virtually all jurisdictions now operate: defendants were given arbitrary amounts of money as bail amounts, and those who could afford to pay the amount were released regardless of risk. Those who could not pay remained in jail, also regardless of risk. In other words, the system was totally based on wealth-status.

7. In 1994, the D.C. Code was amended to state that financial conditions could be utilized to reasonably assure appearance only if they do not result in pretrial detention. In other words, if money is used, defendants are entitled to a bond they can meet. It has always been our law that money may never be used to attempt to assure community safety. In practice today, financial conditions are almost never used for any purpose. To my knowledge, we operate the only jail in America that contains no persons detained there prior to trial because they cannot afford to pay bond amounts.

8. The District of Columbia now operates an “in or out” pretrial decision-making system. Decisions about release or detention are made transparently with open courtroom discussions of any accused person’s actual potential risk. The court employs a preventive detention statute that provides a Due Process-appropriate hearing for fairly determining who is too dangerous or too much of a flight risk to be released. The use of preventive detention has been appropriately limited to less than 10–15% of all defendants. Everyone else is released on his or her promise to appear in court or on conditions supervised by our Pretrial Services Agency. Neither money bond nor private bail bond companies play any role in release decision-making (although both are technically legal in Washington today).

9. The overall process for pretrial defendants in Washington, D.C. is as follows: After an arrest, law enforcement agencies process arrestees at one of the city’s local police districts. Arrestees charged with nonviolent misdemeanors may receive a citation release from the police station, with a future court date provided. Otherwise, after processing, arrestees are transferred to the court for an arraignment (for misdemeanors) or presentment (for felonies) hearing. At this initial appearance, the judge considers whether the defendant should be released or briefly detained pending a formal detention hearing within three to five days. After hearing, pretrial detention until trial can be ordered if the judicial officer concludes that a defendant presents an unmanageable risk of flight or harm to the community.

10. Our Pretrial Services Agency conducts a risk assessment for defendants to assist judicial officers in release/detention determinations. The risk assessment process consists of two components: conducting a background investigation and interviewing defendants. PSA interviews defendants and collects and verifies information on each defendant’s community ties, criminal history, physical and mental health status, substance abuse, and current supervision status with probation or parole agencies. It also uses a scientifically determined set of factors to assess risk. This process takes place for most defendants within 24 hours of arrest.

11. When ordered to do so, PSA supervises defendants released during the pretrial period by monitoring their compliance with certain conditions of release and helping to assure that they appear for scheduled court hearings. There are a number of programs and supervision conditions that can be assigned to defendants based on their risk and needs. Last year, we released about one third of arrested persons with no special supervision conditions, asking them only to return to court and not break the law.

12. In the District of Columbia, in recent years we release between 85% and 92% of all arrestees, a much higher percentage than all but a few court systems. In the fiscal year 2015, more than 91% were released and 98% of released defendants remained arrest-free from violent crimes during pretrial release. 89% of released defendants remained arrest-free from all crimes. Of those released pretrial, 88% made *all* scheduled court appearances during the pretrial period. The District accomplishes these high rates of non-arrest and court appearances, again, without using money bonds.

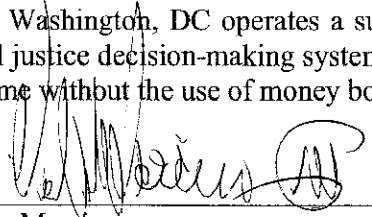
13. Our system, simply stated, seeks to scientifically assess risk and then attempts to mitigate that assessed risk in a law-based fashion, maximizing release. For those relatively few persons

for whom risk cannot be effectively mitigated while released, we order bondless detention pending an expedited trial. There is no guesswork as to their status. Rich or poor, they are detained.

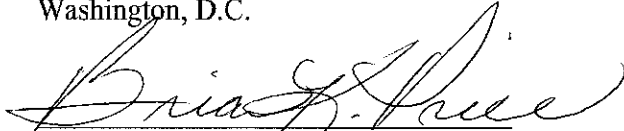
14. We have learned that we have numerous tools at our disposal to maximize court appearance and public safety for the vast majority of defendants without resorting to detention. Stay-away orders (for example, in shoplifting, assault, or domestic violence cases); counseling; drug, mental health, and alcohol treatment programs; reporting to pretrial services; mail, phone and text message reminders of court dates; drug testing; and electronic and GPS monitoring can all be employed to reasonably assure high rates of court appearance and public safety.

Conclusions

15. Washington, DC operates a substantially safe, effective, transparent, and fair system of pretrial justice decision-making system. We have empirically demonstrated that this can be done over time without the use of money bond.


Truman Morrison

SWORN AND SUBSCRIBED BEFORE ME
This 14 day of March, 2016
Washington, D.C.


NOTARY PUBLIC

Brian K. Price
District of Columbia, Notary Public
My Commission Expires
August 31, 2019



AFFIDAVIT OF GARRY HERCEG

Garry Herceg, having been duly sworn according to law, deposes and states as follows:

Background

1. I have been Director of the Office of Pretrial Services for Santa Clara County since December 2010. I also currently work as a consultant for Justice System Partners.
2. Prior to my appointment as Director of the Office of Pretrial Services, I spent over 16 years in adult and juvenile probation services with Santa Cruz and Monterey Counties.
3. I served as Assistant Division Director of Santa Cruz County Juvenile Hall from 2007 to 2010. During this time I was responsible for implementing evidence-based programs that improved the conditions of confinement for juvenile detainees. In addition, I oversaw the daily operations of the home supervision and electronic monitoring programs.
4. I have a bachelor's degree from San Jose State University in Administration of Justice. My professional training includes Stanford University's Leadership and Transformation Program, National Institute of Corrections Pretrial Executive Program, California Institute of Mental Health Aggression Replacement Instructor Training, Burns Institute Disproportionate Minority Contact Training, and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative.
5. I am a member of the California Association of Pretrial Services as well as the National Association of Pretrial Services Agencies.
6. I was honored in 2006 as Santa Cruz County's Probation Officer of the Year.

Overview

7. In this affidavit, I will describe Santa Clara County's Office of Pretrial Services. I will also express opinions on the efficacy of pretrial service programs, explain why private bail bond companies are unnecessary, and describe what I view as problems with a wealth-based system for pretrial detention.
8. The facts and opinions expressed in this affidavit are based on my education, training, and experience as Director of the Office of Pretrial Services as well as the knowledge I have acquired through years of experience in the criminal justice system.
9. I am receiving no compensation for the preparation of this affidavit.

Analysis

A. Pretrial Services in Santa Clara County

10. The Office of Pretrial Services in Santa Clara County facilitates release for defendants held in jail pending trial. Most felony arrestees are interviewed at the time of booking, and investigative reports are prepared and presented to judges who determine suitability for Own Recognizance (“OR”) release, Supervised Own Recognizance (“SOR”) release, or probable cause to detain.

11. Individuals may be granted an OR release by the judge and be required to make all scheduled court appearances and not violate any laws while their case is pending. The judge also has the option of imposing conditions of release and may grant an SOR release from jail. Conditions of release vary according to the particular risks involved in the case and may include drug testing, alcohol monitoring, substance abuse or mental health treatment, domestic violence counseling, restraining/stay-away orders, curfews, home detention, and electronic monitoring.

12. The Jail Unit of Pretrial Services operates 24 hours a day, 7 days a week and interviews all defendants booked on new felony charges for the purpose of recommending those arrestees who can be released from custody on OR, who are most likely to appear in court and who will not compromise public safety. For those not released, officers assist the judge or night commissioner in the determination of probable cause to detain the arrestee and the setting of money bail. The Jail Unit has a station in the jail booking area with a phone and computer access to records, so there is no need to wait until court is in session to make release recommendations. Judges are available 24 hours a day, 7 days a week to review cases and permit pre-arraignment release.

13. The empirically researched Santa Clara County Pretrial Risk Assessment Instrument (locally validated in 2013) is used for initial screening. The instrument measures the likelihood of appearance in court and likelihood of new offenses. The risk assessment examines a defendant’s status at the time of the arrest as it relates to the current charges, other pending charges, past criminal history, residence, employment, primary caregiver, domestic violence and history of drug abuse.

14. Officers assigned to the Supervision Unit monitor defendants who are released on supervised own recognizance with conditions. Officers provide supervision during the adjudication process of all individuals who have been granted SOR release to ensure that they comply with the conditions of their release. Supervision officers refer clients to appropriate services within the community, such as substance abuse treatment or domestic violence counseling, for the purpose of intervention that will assist the defendant in successfully completing the period of pretrial supervision. Performance reports are provided for defendants at the time of sentencing as requested by the judge. Those individuals who fail to comply with release conditions are returned to court for appropriate sanctions.

15. The Drug Testing Unit provides urine drug testing as a part of the supervision of defendants released on SOR. Drug testing results are used as a means to monitor the pretrial conduct of released defendants in order to deter drug use and determine if individuals are in compliance with court-ordered release conditions. Drug testing is arranged by the assigned supervision officer and strict chain-of-custody procedures are followed by the community workers conducting the test.

16. The Court Unit officers provide investigative reports to the Court at the time of a defendant’s arraignment. Officers recommend OR or SOR and include information regarding the

scheduled bail amount in order to assist the judge in making an informed decision to release a defendant from jail or set an individualized bail amount. At arraignment, court officers appear as needed to present the reports, conduct follow-up investigation and answer any questions the judge or attorneys may have about the release recommendation. Court officers prepare reports at any court hearings at the judge's request for further consideration of release on OR or SOR.

17. Data from the first 9 months of 2015 show an average appearance rate of 95.4% in Santa Clara County for defendant released OR or SOR. The percentage of OR and SOR defendants who are not arrested for a new offense during the pretrial stage was 99.3%. The rate of defendants who (1) are not arrested for a new offense during pretrial supervision, (2) appear for all scheduled court appearances, and (3) are not revoked for technical violations of conditions was 93%.

18. According to an audit report by Harvey Rose Associates, over a six-month period in 2011, the Office of Pretrial Services saved the County nearly \$32 million in jail bed costs.

19. In cases where defendants are not released OR or SOR, detention is ordered by setting a money bail. This is troubling. When a judge does not believe that someone should be released, she sets a money bail amount and crosses her fingers in hopes that the defendant will not be able to afford that amount. Sometimes the defendant is able to afford the amount and is released even though he presents a flight risk or danger to the community. Money bail is used as a coarse order of detention.

20. A defendant ordered detained on money bail has essentially three options. Those wealthy enough to afford the full amount can pay it to the county and have it returned upon the resolution of their proceedings. Those who cannot afford the full amount but who are wealthy enough to pay 10% of their bail amount can pay a private bail bond company to secure their release. The poorest defendants must stay in jail pending the resolution of their case.

21. Sometimes arrestees post bail through a private bail bond company prior to arraignment and then at arraignment the judge increases their bail to an amount that they are unable to pay. In such situations, the defendants remain in jail until the resolution of their cases but must also pay the fee to the private bail bond company. The private bail bond company is then able to collect large fees from the arrestees while doing no work to supervise them.

22. Similarly, sometimes defendants post bail through a bail bond company and then charges are dismissed or the judge eliminates any money bail requirement. Again, in such situations, the private bail bond company still gets the fee from the defendants despite doing no work to supervise them pretrial.

B. Best Practices in Pretrial Services

23. In California, an average of 64% of the jail population is made up of pretrial detainees.

24. Many jurisdictions use a money bail schedule that links each alleged offense to a dollar amount, but there is no research to indicate whether or not this accurately predicts or mitigates

risk. Conversely, research does show that certain elements of a defendant's past and current behavior and circumstances are predictive of risk.

25. Across California, individualized assessments of defendants' public safety and flight risk are routinely forgone, making pretrial release less a question of public safety and more a question of defendants' financial ability. The lack of individualized risk assessment at the time of arraignment has contributed to the high rates of pretrial detention. Individuals with financial means, such as a home to use as collateral, can secure release and return to their jobs, families, and communities. Others who cannot raise the necessary collateral must stay in jail, for several months in some cases, and may more readily accept a plea bargain as a result.

26. Many California counties have significantly reduced their need for expensive jail beds by implementing pretrial programs that use assessments to determine risk and then release detainees who are low risk for flight and committing new crimes, with or without some form of supervision depending on the defendants' needs.

27. In addition to risk-avoidance concerns regarding defendant behavior, pretrial risk assessment instruments can consider offender needs for treatment or other assistance.


28. A sound pretrial detention/release strategy can benefit justice system operations, reducing or forestalling court congestion and jail overcrowding.

Conclusions

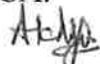
29. Santa Clara County's Office of Pretrial Services operates a safe and effective pretrial system that maintains high appearance and safety rates while allowing quick release for many defendants.

30. Whether or not detainees are released often is based on their ability to pay rather than the risk that they present. The result is inappropriate detention: many defendants who are considered low risk for flight or to commit a new crime are detained in jails solely because they cannot afford bail.

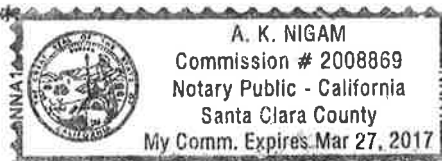
31. Pretrial Services does just as well, if not better, than bail agents in terms of getting defendants to their court dates. The difference is that Pretrial performs this service without requiring money from the defendants.

 3-9-16
Garry Herceg

SWORN AND SUBSCRIBED BEFORE ME
This 9th day of March, 2016
San Jose, CA.


(Notary Public)

STATE OF California
COUNTY OF Santa Clara



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Affidavit of Garry Herceg4
* by Garry Herceg proved to me on the basis of satisfactory evidence to be the person who appeared before me.

AFFIDAVIT OF TIM MURRAY

Tim Murray, having been duly sworn according to law, deposes and states as follows:

Background

1. My name is Tim Murray, and I currently serve as Director Emeritus of the Pretrial Justice Institute. I have worked as a criminal justice practitioner at the local, state, and federal levels for 40 years. I have held management and executive positions with the pretrial services systems in Washington, D.C. and Miami-Dade County, Florida. While in Miami, I was the principal architect and administrator of the nation's first drug court. I served as the first director of the Drug Court Program Office for the United States Department of Justice. Following that appointment, I held the positions of Director of Policy and Planning and Director of Program Development at the Bureau of Justice Assistance. I also worked as part of the start-up team for the Transportation Security Administration (now part of the United States Department of Homeland Security).

2. In 2006, I was selected to be director of the Pretrial Justice Institute. I am a lifetime member of the National Association of Pretrial Services Agencies and the proud recipient of the Association's most prestigious honor, the Ennis J. Olgiati Award. I have served as faculty at the National Judicial College and numerous State Judicial Training Institutes over the past three decades. I have testified before the United States Congress as well as state and local legislatures across the nation on the issues of pretrial justice and bail.

Overview

3. In this affidavit, I will express opinions on the harm caused to criminal defendants by the use of money bail, the lack of harm to jurisdictions that forego the use of money bail, and the public interest that is served by the eradication of money bail.

4. In forming my opinions, I have relied on personal experience gained during my 40 years of work as a criminal justice practitioner as well as numerous studies authored by researchers and scholars in the field of pretrial justice.

5. I am receiving no compensation for the preparation of this affidavit.

Analysis

A. The Use of Money Bail to Detain People Based on Wealth Status Causes Harm to Indigent Arrestees

6. Detention due to money bail leads to worse outcomes at trial and sentencing. A recent study¹ that analyzed records of over 60,000 arrestees in Kentucky in 2009 and 2010 found that

¹ Christopher T. Lowenkamp *et al.*, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Laura and John Arnold Foundation, 3 (November 2013) available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf.

defendants who were detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial — even when charged with the same offenses. These defendants' sentences were also significantly longer: defendants sentenced to jail received sentences almost three times longer if they were detained pretrial; those sentenced to prison were sentenced more than twice as long if detained pretrial — again, even for the same offenses as their peers who were released pretrial.

7. Another study² examined similar questions in the context of federal courts. Drawing on 1,798 cases from two United States District Courts, the research found that defendants detained pretrial are given longer sentences than those released pretrial, even when charged with the same offenses. Indeed, detained defendants' sentences are, on average, nearly two times longer than those of released defendants. And while defendants who were released and later revoked received longer sentences than defendants who completed pretrial release without incident, their sentences were still shorter than defendants who were never released at all. These findings were obtained while controlling for known variables.

8. Other research confirms that pretrial detention alone leads to harsher treatment and outcomes than pretrial release. Relatively recent research from both the Bureau of Justice Statistics³ and the New York City Criminal Justice Agency⁴ continues to confirm studies conducted over the last 60 years demonstrating that, controlling for all other factors, defendants detained pretrial are convicted more often, and are sentenced to prison and receive harsher sentences than similar defendants who are released. Perhaps most disturbingly, defendants who are detained pretrial are more likely to plead guilty, suggesting that even some defendants who are innocent plead guilty solely because of their pretrial detention.

9. Being incarcerated prior to trial makes it more difficult for arrestees to take an active role in preparing their defense. For incarcerated arrestees, it is more difficult to meet with their attorneys and to gather witnesses and evidence.

10. Being incarcerated pretrial can have disruptive or disastrous consequences for arrestees. People detained pretrial experience instability in employment, housing, and care for dependent relatives.

11. Added to these costs are dollars associated to lost wages, economic mobility (including intergenerational effects), possible welfare and foster care costs for defendants' families, and a variety of social costs, including the possibility of imposing punishment prior to conviction,

² James C. Oleson *et al.*, *The Sentencing Consequences of Federal Pretrial Supervision*, Crime & Delinquency, 1:21, 2014.

³ See Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics Online, Table 5.22.2010, <http://www.albany.edu/sourcebook/pdf/t5222010.pdf>; and S. Rosenmerkel, M. Durose, and D. Farole, *Felony Sentences in State Courts, 2006—Statistical Tables* (Washington, DC: Bureau of Justice Statistics, 2009), 1.

⁴ Mary T. Phillips, *Pretrial Detention and Case Outcomes, Part I: Nonfelony Cases*, New York Criminal Justice Agency, Inc., 55–56 (November 2007) available at http://www.nycja.org/lwdcms/docview.php?module=reports&module_id=669&doc_name=doc.

denying the defendant the ability to assist with his or her own defense, and eroding justice system credibility due to its complacency with a wealth-based system of pretrial detention.

12. Very few persons arrested or admitted to jail are ultimately sentenced to significant incarceration post-trial. Indeed, some studies⁵ suggest that only 3–5% of jail inmates nationally are sent to prison. In one statewide study,⁶ only 14% of those defendants detained for the entire duration of their case were sentenced to prison. Thirteen percent had their cases dismissed (or the cases were never filed), and 37% were sentenced to noncustodial sanctions. This means that half of arrestees detained pretrial were never sentenced to jail as punishment — their only period of incarceration was, ironically, while they were presumed innocent pending trial. Another study⁷ showed that more than 25% of felony pretrial detainees were acquitted or had their cases dismissed, and approximately 20% were ultimately sentenced to a noncustodial sentence. Despite the fact that these detainees are never sentenced to any jail time, all of them languish in jail awaiting disposition of their cases simply because they lack the financial means to secure their release.

B. Non-Financial Pretrial Release Policies Will Not Harm Cities and Counties that Currently Rely on Money Bail

13. In 1968, the American Bar Association⁸ openly questioned the presumption that money bail serves as a motivator for court appearance. Since then, no valid study has suggested that money bail improves court appearance rates. Instead, the best research to date suggests what criminal justice leaders have long suspected: secured money bail does not improve either public safety or court appearance rates.

14. The Lowenkamp study⁹ demonstrated that keeping low-risk defendants in jail pre-trial correlates with *increased* likelihood that they will fail to appear at court hearings. Low-risk defendants held for 2–3 days are 22% *more likely* to fail to appear than similar defendants (in terms of criminal history, charge, background, and demographics) held for less than 24 hours. The increased failure-to-appear rate jumps to 41% for defendants held 15–30 days. For low-risk defendants held for more than 30 days, the study found a 31% increase in failure to appear. In other words, pretrial detention actually hurts court appearance rates. The arrestees most likely to show up for their court dates are those detained for the shortest amount of time.

15. Money bail is not necessary to protect public safety or ensure court appearance. A comprehensive study by the Pretrial Justice Institute¹⁰ of nearly 2,000 arrests in Colorado found that unsecured bonds are as effective as secured bonds at achieving public safety and ensuring court appearance. In fact, when relevant statistical factors are controlled, defendants who are

⁵ Department of Justice, National Institute of Corrections, *Fundamentals of Bail*, 26 (2014) available at http://www.clebp.org/images/2014-09-04_Fundamentals_of_Bail.pdf.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Lowenkamp, *supra*, note 1.

¹⁰ Michael R. Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, 16, available at <http://www.pretrial.org/download/research/Unsecured%20Bonds,%20The%20As%20Effective%20and%20Most%20Efficient%20Pretrial%20Release%20Option%20-%20Jones%202013.pdf>.

detained 2 to 3 days pretrial are more likely to fail to appear than defendants who are detained 1 day.

16. Ending the use of money bail would actually benefit jurisdictions by saving them money. Pretrial detention imposes costs on counties, and unnecessary pretrial detention does so wastefully. In a purely monetary sense, these costs can be estimated, such as the comparative cost of incarceration (from \$50–\$150 per day) versus community supervision (from as low as \$3–\$5 per day). Other monetary costs — such as the loss of jobs, instability in housing, lack of care for dependent relatives, and higher recidivism rates resulting from pretrial detention— are harder to calculate, but are still borne by the community as a whole.

17. Some jurisdictions successfully operate their criminal justice systems without using money bail. For example, Washington, D.C. uses virtually no money at all in its bail setting process. Instead, using an “in or out,” “bail/no bail” scheme, the District of Columbia releases over 85% of all defendants — detaining the rest through rational, fair, and transparent detention procedures — and yet maintains high court appearance and public safety (no new crime) rates.¹¹ Rather than using money bail to determine who is detained, Washington, D.C. releases everyone who is not determined to be an unmanageable flight risk or a danger to others.

18. The federal system also eschews money bail. The federal system employs a risk-based model, detaining only those individuals who show either a flight risk or danger to others. The federal system forbids wealth-based detention by prohibiting the imposition of any monetary condition that would result in detention.

C. Ending Reliance on Money Bail Benefits the Public Interest

19. The use of money bail actually has a negative impact on public safety. Even for relatively short periods of detention, the longer a low-risk defendant is detained before trial, the more likely she is to commit a new crime within two years of case disposition.¹² Pretrial detention increases long-term recidivism, particularly for low-risk defendants.

20. Evidence suggests that an alarming percentage of those arrestees who are empirically measured as most likely to fail to appear and/or to reoffend during the pretrial phase of their cases easily secure their release under the current system. Even more disturbingly, once these high-risk defendants have purchased their freedom, they return to the community unfettered by appropriate supervision or monitoring.

21. Secured money bail also leads to significantly higher pretrial detention rates at taxpayer expense. Pretrial detainees account for more than 60% of the inmate population in our jails.¹³ The cost to incarcerate defendants pretrial has been estimated at over \$9 billion per year.¹⁴

¹¹ Fundamentals of Bail, *supra*, note 5, at 25–26.

¹² Lowenkamp, *supra*, note 1.

¹³ Laura and John Arnold Foundation, *Pretrial Criminal Justice Research Summary*, 1, available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf.

¹⁴ *Id.*

22. Given the volume of defendants and their varying lengths of stays, an individual jail can spend millions of dollars per year simply to house low-risk defendants who are also presumed innocent by the law. Jails that are crowded can create an even more costly scenario for taxpayers, as new jail construction can easily reach \$75,000 to \$100,000 per inmate bed.

Conclusions

23. The use of money bail to detain people causes irreparable harm. Detention due to money bail leads to worse outcomes at trial and sentencing. Being incarcerated prior to trial makes it more difficult for arrestees to take an active role in preparing their defense. People detained pre-trial experience instability in employment, housing, and care for dependent relatives. Pretrial detention results in real dollar costs and social costs as people are kept from their jobs and families.

24. A jurisdiction that ends its reliance on money bail is unlikely to suffer any irreparable harm. Unsecured bonds are as effective as secured bonds at achieving public safety and ensuring court appearance. Because pretrial detention imposes costs on cities and counties, ending the use of money bail would actually benefit jurisdictions by saving them money. The lack of harm is demonstrated by jurisdictions such as Washington, D.C. and the federal system, both of which operate successfully without relying on secured money bail to detain people who are poor.

25. The current system of money bail is neither safe, fair, nor effective. For the most part, pretrial release under cash-based systems is reserved for the privileged few who have the means to purchase their liberty, regardless of their risk of flight or their threat to the community, while pretrial detention is inevitable for even the safest defendant who lacks the financial means to post bond. Cash-based pretrial release is fundamentally incapable of achieving the purposes of bail by its very design. Ending reliance on money bail benefits the public interest. The use of money bail has a negative impact on public safety because pretrial detention increases long-term recidivism, particularly for low-risk defendants. Conversely, an alarming percentage of those classified as the most dangerous risks are simply purchasing their release under the current system, making the public less safe. Secured money bail leads to significant and needless pretrial detention rates that far exceed the risk of many who are detained at considerable taxpayer expense.


Tim Murray

SWORN AND SUBSCRIBED BEFORE ME
This 14 day of March, 2016
Washington, D.C.


NOTARY PUBLIC

LARISSA LESIW
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires October 30, 2018

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

DECLARATION OF PUBLIC DEFENDER JEFF ADACHI

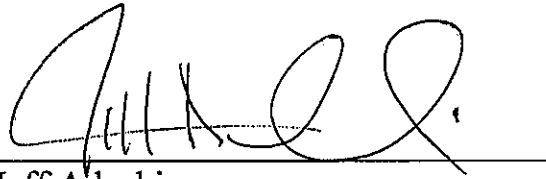
I, Jeff Adachi, state and declare as follows:

1. My name is Jeff Adachi, and I am over 18 years old. I live in San Francisco, California.
2. I am the Public Defender of the City and County of San Francisco. I was first elected as Public Defender in March 2002. My office provides representation to over 20,000 indigent persons each year who cannot afford to hire an attorney. Many are also unable to post bail.
3. I am familiar with the lawsuit brought by the civil rights organization Equal Justice Under Law on behalf of indigent arrestees in San Francisco. The lawsuit alleges that the use of money bail after arrest operates to discriminate against indigent arrestees, thereby depriving them of equal protection under law.
4. I agree that the use of monetary conditions to detain pretrial defendants penalizes indigent arrestees solely based on their wealth status. The harm to indigent arrestees is not just their jailing, but also worse outcomes at trial.
5. There are no sound policy justifications for detaining arrestees based on their wealth status. Indeed, there are strong policy reasons not to do so.
6. Many poor arrestees sit in jail — even though they are not dangerous —

simply because they cannot afford the predetermined amount of money arbitrarily set on the bail schedule.

7. Someone who is detained is more likely to plead guilty — even if they are innocent — to shorten their time in jail.
8. Detained defendants are also less able to fully participate in their own defense. A detained defendant is less able to help gather evidence, identify witnesses, and develop trial strategy. It places the defendant who is in custody in an inferior position to a defendant who has the means to post bail.
9. As a result of these factors, individuals who are detained face worse outcomes at trial. In other words, detained defendants are more likely to be convicted — even if they are innocent — solely due to their detention.
10. The worse outcomes faced by detained defendants are particularly unjust when the detention is wealth-based, as it is in San Francisco.
11. The City and County have many reasonable methods of protecting the public without arbitrarily detaining indigent arrestees. For example, electronic monitoring can be used more widely to minimize flight risk. Pretrial services can also ensure court attendance and help minimize risks to the community.
12. A fair system of pretrial justice would not rely on monetary conditions, as such conditions penalize arrestees solely based on their wealth status.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this twenty-eighth day of October, 2015.

A handwritten signature in black ink, appearing to read 'Jeff Adachi', is written over a horizontal line.

Jeff Adachi
Public Defender

CIVIL COVER SHEET

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) _____

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Case 2:16-cv-00185-TLN-DB Document 31-6 Filed 11/09/16 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.