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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RIANA BUFFIN and CRYSTAL PATTERSON, on behalf of themselves and others similarly situated, Plaintiffs, v. THE CITY AND COUNTY OF SAN FRANCISCO, VICKI HENNESSY in her official capacity as the San Francisco Sheriff, and KAMALA HARRIS in her official capacity as the California Attorney General, Defendants.	Case No. 15-CV-4959 (YGR) (Class Action)

THIRD AMENDED CLASS ACTION COMPLAINT

Introduction

1. This case is about the City and County of San Francisco keeping some of its poorest residents in jail because of their inability to make a monetary payment. Named Plaintiffs Riana Buffin and Crystal Patterson are indigent arrestees who were kept in the county jail solely because they were too poor to pay the amount of money that the San Francisco Sheriff's Department demanded for their release.

2. In San Francisco, arrestees face two different outcomes depending on their wealth status. If Ms. Buffin and Ms. Patterson had been rich enough to pay $30,000 and $150,000 respectively — like many wealthier people accused of the same offenses — they could have walked out of their jail cells immediately under San Francisco's pay-for-freedom pretrial justice system. Because the only criterion standing between Plaintiffs and freedom was their ability to make a monetary payment, San Francisco operates a wealth-based detention scheme.

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

4. By and through their attorneys and on behalf of themselves and all others similarly situated, the named Plaintiffs seek the vindication of their fundamental rights, injunctive relief preventing future wealth-based detention of all Class Members, and a declaration that any state statutory or constitutional provisions that require the use of secured money bail to detain any person without an inquiry into ability to pay are unconstitutional. Defendants cannot use money bail to detain any person solely because she is unable to make a monetary payment.

Nature of the Action[1]

5. It is the policy and practice of the City and County of San Francisco and Sheriff Vicki Hennessy to refuse to release arrestees from jail unless they pay their money bail amount.

[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.

Additionally, the Sheriff and the Attorney General enforce unconstitutional state laws that require the use of money bail to detain individuals without an inquiry into their ability to pay. Plaintiffs seek declaratory and injunctive relief prohibiting Defendants' wealth-based detention scheme and requiring that pretrial release or detention decisions be based on factors other than wealth-status.

Jurisdiction and Venue

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

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

Intradistrict Assignment

8. Assignment to the San Francisco Division is proper pursuant to Civil L.R. 3-2(c). The events giving rise to this claim arise in the County of San Francisco.

Parties

9. Named Plaintiff Riana Buffin is a 19-year-old resident of Oakland. *See generally* Ex. 1, Buffin Decl. She lives with her mother, whose only source of income is disability payments, and her three younger brothers. Along with her mother, her two youngest brothers, ages 9 and 10, have severe disabilities. She represents herself as an individual and represents a Class of similarly situated people subjected to Defendants' wealth-based detention scheme.

10. Named Plaintiff Crystal Patterson is a 29-year-old resident of San Francisco. *See generally* Ex. 2, Patterson Decl. She lives with and is the primary caregiver for her grandmother. Her mother is unemployed and is experiencing homelessness. She represents herself as an individual and represents a Class of similarly situated people subjected to Defendants' wealth-

based detention scheme.

11. Defendant City and County of San Francisco is a local government entity organized under the laws of the State of California. The San Francisco Sheriff's Department is a division of San Francisco and operates the San Francisco County Jail.

12. Defendant Vicki Hennessy, in her official capacity as San Francisco Sheriff, is an official of Defendant City and County of San Francisco in her role as jailor and with regard to release and detention decisions and San Francisco's release/detention policy.

13. The Sheriff has charge of and is the sole and exclusive authority to keep the county jail and the prisoners in it. Cal. Gov't Code § 26605; San Francisco Charter § 6.105. The Sheriff's Department detains inmates at the county jail and is authorized to issue and sign orders of release for pretrial detainees. *See* Cal. Pen. Code § 1269b(a).

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

15. The Custody Division of the San Francisco Sheriff's Department is charged with the operations of all six of San Francisco's County Jails, the Hospital Ward, the Classification Unit, and the various Jail Programs.

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

17. Under the Supremacy Clause, the United States Constitution is the supreme law

of the land. All government officials must uphold the Equal Protection and Due Process Clauses of the Fourteenth Amendment, regardless of contrary instructions from state officials, local officials, state law, local law, or state judges. Additionally, upon taking office, the San Francisco Sheriff swears an oath to support and defend the Constitution of the United States.

18. State law requires the use of secured money bail after arrest, but state law does not expressly bind the decision-making authority of the Sheriff and Sheriff's Department with regard to release and detention decisions. The Sheriff enforces the law requiring use of secured money bail after arrest, and San Francisco has a policy and practice of detaining individuals based on their inability to make a monetary payment.

19. San Francisco is responsible for its application of its policies, including its release and detention policies.

20. Defendant San Francisco is liable for its unconstitutional policies and practices — including the policies and practices of its officers and divisions — even if they are consistent with state law and even if they are consistent with orders of state judges.

21. Under *Ex parte Young*, 209 U.S. 123 (1908), the Sheriff in her official capacity can be enjoined from enforcing any unconstitutional state laws. Any statutes requiring or permitting wealth-based detention without an inquiry into an individual's ability to make a monetary payment are unconstitutional.

22. Under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), the City and County of San Francisco and the Sheriff are liable for their unconstitutional policies and practices. Any wealth-based detention practices lacking an inquiry into an individual's ability to make a monetary payment are unconstitutional.

23. Defendant Kamala Harris is the California Attorney General and the chief law

enforcement officer in California. She is charged with the enforcement of California's laws, including provisions of the Penal Code. In her official capacity as the California Attorney General, she requires the Sheriff to impose bail pursuant to a bail schedule, thereby creating a wealth-based detention scheme. *See* Cal. Pen. Code § 1269b.

24. The Attorney General has direct supervision over every county sheriff in the state. Cal. Const. Art. V, § 13; Cal. Gov't Code § 12560. Several statutory provisions give the Attorney General specific supervisory powers over sheriffs. *See, e.g.*, Cal. Gov't Code §§ 12524, 12560, 12561.

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

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

Factual Allegations

A. The Named Plaintiffs Were Held in Jail by the Sheriff and the City and County of San Francisco Because They Were Unable to Pay Their Money Bail Amount

27. Ms. Buffin was arrested by San Francisco police on October 26, 2015. She was accused of grand theft of personal property and conspiracy.

28. Ms. Buffin was taken to jail and told that she would be released if she paid

$30,000. She was told that she would be kept in jail unless she paid $30,000. *See* Ex. 1, Buffin Decl. at ¶ 3.

29. Ms. Buffin is indigent. She survived on the income she made working at the Oakland airport for approximately $10.25 per hour. *Id.* at ¶ 5. She lives with her mother, who has a disability and receives disability payments. *Id.* at ¶ 4. She is also a caretaker for her three younger brothers, two of whom have severe disabilities. *Id.*

30. Because of her indigence, Ms. Buffin was unable to pay her money bail amount. *Id.* at ¶ 6.

31. Ms. Buffin was not told when she would be brought to court and was never brought to court for an initial appearance. *See* Ex. 3, Boudin Decl. at ¶ 14. After approximately 46 hours in jail, she was discharged when the District Attorney's Office decided not to file formal charges against her.

32. Due to her detention, Ms. Buffin lost her job at the Oakland airport. *Id.* at ¶ 16.

33. Ms. Patterson was arrested by San Francisco police on October 27, 2015. She was accused of assault with force causing great bodily injury. Ex. 2, Patterson Decl. at ¶ 2.

34. Ms. Patterson was taken to jail and told that she would be released if she paid $150,000. She was told that she would be kept in jail unless she paid $150,000. *Id.* at ¶ 3.

35. Ms. Patterson is indigent. She survives on the income she makes doing in-home care services for approximately $12.50 per hour. *Id.* at ¶ 5. She lives with her grandmother, who is unemployed. *Id.* at ¶ 4. Because her mother is unemployed and is experiencing homelessness, Ms. Patterson is the primary caregiver for her grandmother, and her income goes to supporting her and her grandmother's basic necessities of life. *Id.*

36. Due to her indigence, Ms. Patterson was unable to pay her money bail amount.

Id. at ¶ 6.

37. Ms. Patterson was not told when she would be brought to court and was never brought to court for an initial appearance. Ex. 3, Boudin Decl. at ¶ 18. Desperate to get home to take care of her aging grandmother, Ms. Patterson was able to convince relatives to pay 1% ($1,500) of her bail amount to a private bail bond company. Ms. Patterson (and a co-signor) agreed to pay the balance of $15,000, financed over years "at the maximum rate of interest allowed by law." After signing the debt agreement and after several hours of processing by the private bail bond company, Ms. Patterson was eventually released, having spent a total of approximately 31 hours in jail.

38. Hours after her release, Ms. Patterson's case was discharged when the District Attorney's Office decided not to file formal charges against her. *Id.* at ¶ 17. Even though she does not face any criminal charges, Ms. Patterson is still indebted to a private bail bond company for the balance of her $15,000 debt, plus interest. This is debt she never would have had to take on were it not for San Francisco's wealth-based detention.

39. Had Ms. Patterson been wealthy enough to pay the full bail amount of $150,000 immediately, she would have been immediately released and would have had her full amount returned to her when her case was discharged.

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

40. Upon arrest, all arrestees in San Francisco are transported to San Francisco County Jail #1 for booking. The Sheriff's Custody Division performs booking processes on all arrestees.

41. The San Francisco Sheriff's Department has a computerized Jail Management System, which records various data on all inmates in the county jail system. These records are

updated on an ongoing basis as events occur, and include information about the time of arrest and the charge(s), the posting of any bail, and the date and time of release from custody.

42. The booking processes of arrestees include searching arrestees, medical triage, photographing, fingerprinting to include warrant checks, classification, criminal history review, review by the O.R. Project for eligibility to be released on one's own recognizance, review for eligibility to be cited and released, DNA collection from persons arrested for felony charges, and inventory and storage of property.

43. The San Francisco Pretrial Diversion Project contracts with the Sheriff's Department to provide certain pretrial services, including the O.R. Project. *See* Ex. 4, McCovey Aff. at ¶ 12. Employees of the O.R. Project interview inmates in the county jail and prepare a workup to submit to a magistrate. *Id.* The workup includes contacting references provided by the inmate. *Id.* The process of obtaining release through the O.R. Project may take hours or several days.

44. At the end of booking processes, arrestees are given a booking sheet, which includes their booking charge and their bail amount. Bail is determined by referring to the Felony and Misdemeanor Bail Schedule as established by the Superior Court of California, County of San Francisco. Deputy sheriffs use this bail schedule, referring to an arrestee's booking charge(s), when determining an arrestee's bail amount.

45. Arrestees are told that if they pay their bail amount, they will be released immediately. They are told that if they cannot pay bail, they will remain in jail until arraignment or discharge, unless they are able to obtain release through the O.R. Project.

46. Arrestees who are not able to pay their money bail amount are shown a poster listing the phone numbers of bail bond agents and told that they may call one of these numbers to

attempt to secure their release. Arrestees who obtain release through bail agents remain in jail while making arrangements with the agent such as finding cosigners for the bail bond contract. This process can take hours or days.

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

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

49. The Sheriff's Department books approximately 18,000 individuals in county jail every year. On a typical day, the Sheriff's Department locks approximately 50 new arrestees in the county jail.

50. At any given time, approximately 85% of county jail inmates in San Francisco are being detained pretrial.

51. Although they are presumed innocent of the crime for which they have been arrested, more than 100 individuals at any given time are being detained by San Francisco solely because they cannot afford money bail.

52. Approximately 90% of pretrial detainees are held due to probation revocation proceedings, violation of terms of release, immigration detainers, or other holds. Even discounting this percentage, San Francisco detains more than 1,800 individuals annually who are in jail solely due to their wealth-status.

C. Defendants' Wealth-Based Detention Scheme Caused Plaintiffs To Be Held in Jail Solely Due to Their Inability To Pay Bail

53. The named Plaintiffs would have been released from jail immediately if they had paid the amount of money required by the Sheriff's Department.

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

55. The treatment of the named Plaintiffs and other Class Members is caused by two factors: (1) the unconstitutional provisions of California's Penal Code that are enforced by the Sheriff and Attorney General and (2) the Sheriff's and San Francisco's policies and practices of wealth-based detention.

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

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

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

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

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

61. No provision of California law expressly prohibits the Sheriff and the Sheriff's

Department from releasing indigent arrestees from jail even if they have not paid their money bail amount.

62. The Sheriff and Sheriff's Department have a longstanding practice and custom — which constitutes the standard operating procedure of the Sheriff and the City and County of San Francisco — of releasing those individuals who pay their money bail amount.

63. The Sheriff and Sheriff's Department have a longstanding practice and custom — which constitutes the standard operating procedure of the Sheriff and the City and County of San Francisco — of detaining those individuals who cannot pay their money bail amount.

64. Under San Francisco's pay-for-freedom system, those wealthy enough to pay their bail amount are immediately released from the county jail. Some poorer arrestees eventually make arrangements with private bail bond companies — arrangements that require significant time spent in jail not suffered by wealthier arrestees. And many others who are poorer still are left to languish in jail until the resolution of their case.

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

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

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

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

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

69. The Sheriff and the City and County of San Francisco are liable under *Monell* for the policy and practice of detaining all individuals who do not pay money bail while releasing those individuals who do pay money bail.

D. None of the Alternatives to Bail Available in San Francisco Allows for Immediate Release of Arrestees

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

71. Some indigent arrestees are released without bail at the discretion of the O.R. Project, a service contracted by the Sheriff's Department. This service does not operate to release all arrestees, and it is not immediate. Even those eventually released under the O.R. Project spend significant time in jail before their release.

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

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

E. Defendants' Use of Money Bail Is Not Narrowly Tailored — Nor Is It as Effective as Many Other Methods — in Securing Court Attendance or Public Safety

74. While tying pretrial freedom to wealth-status is the norm in San Francisco, other jurisdictions throughout the country do not hold people in jail because of their poverty. Instead

of relying on money bail, these jurisdictions release arrestees with pretrial supervision practices that effectively promote court attendance and public safety without requiring detention. Pretrial services agencies in other counties employ numerous methods of maximizing public safety and court appearances, including reporting obligations, phone and text message reminders of court dates, rides to court for those without transportation or a stable address, counseling, drug and alcohol treatment, batterer intervention programs, anger management courses, reporting obligations, SCRAM bracelets (for alcohol testing), or electronic monitoring, among other services, when necessary to guard against a particular risk. *See generally* Ex. 5, Murray Aff.; Ex. 6, Morrison Aff.

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

76. San Francisco can and does use such pretrial services, but only tangentially. *See generally* Ex. 7, Mirkarimi Decl. at ¶ 9. The majority of arrestees booked in San Francisco County Jail are processed and detained through San Francisco's money bail scheme rather than non-monetary supervision methods.

77. Jurisdictions with robust pretrial services and non-monetary conditions of release often achieve court-appearance rates over 90%, with more than 85% of those released pretrial remaining arrest-free (and 98–99% remaining arrest-free for violent crimes). *See generally* Ex. 6, Morrison Aff.; Ex. 8, Herceg Aff.

78. Unnecessary pretrial detention causes instability in employment, housing, and care for dependent relatives. *See generally* Ex. 5, Murray Aff. Studies show that those detained

pretrial face worse outcomes at trial and sentencing than those released pretrial, even when charged with the same offenses. Detained defendants are more likely to plead guilty just to shorten their jail time, even if they are innocent. Ex. 9, Adachi Decl. at ¶ 7. They have a harder time preparing for their defense, gathering evidence and witnesses, and meeting with their lawyers. *Id.* at ¶ 8. Studies also show that just two days of pretrial detention substantially increase the likelihood of future arrests.

79. Pretrial detention is more than ten times more expensive than effective pretrial supervision programs. *See generally* Ex. 5, Murray Aff. Through non-monetary tools, pretrial supervision programs can save taxpayer funds while maintaining high public safety and court appearance rates.

80. Although money bail is the central component of Defendants' pretrial justice system, in limited circumstances the Sheriff's Department can and does rely on a variety on non-wealth-based metrics to make release/detention decisions. For example, the Sheriff's Department decides to detain arrestees (without money bail) who have violated probation, have violated terms of release, have immigration detainers, or have other holds. The Sheriff's Department can also detain individuals accused of certain serious crimes without money bail. Similarly, the Sheriff and the City and County of San Francisco can release arrestees without requiring money bail.

Class Action Allegations

81. The named Plaintiffs bring this action, on behalf of themselves and all others similarly situated, to assert the claims alleged in this Third Amended Complaint on a common basis.

82. A class action is a superior means, and the only practicable means, by which the

named Plaintiffs and unknown Class Members can challenge Defendants' unlawful wealth-based detention scheme.

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

84. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of those provisions.

85. Plaintiffs propose one Class seeking declaratory and injunctive relief. The Declaratory and Injunctive Class is defined as: all arrestees who are or will be in the custody of the City and County of San Francisco and are or will be detained for any amount of time because they are unable to pay money bail.

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

86. The San Francisco County Jail detains approximately 18,000 individuals annually. Of those, approximately 85% are detained pretrial. Those arrestees who are not held due to probation revocation proceedings, violation of terms of release, immigration detainers, or other holds are presented with Defendants' standard money bail choice of pay or jail.

87. Some arrestees are able to pay for release immediately. Those not able to pay are held in the county jail pursuant to Defendants' wealth-based detention scheme.

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

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

89. The relief sought is common to all Class Members, and common questions of law and fact exist as to all Class Members. The named Plaintiffs seek relief concerning whether provisions of state law that require the use of money bail and whether the Sheriff Department's

policies, practices, and procedures violate the rights of the Class Members and relief mandating that Defendants not enforce such provisions nor continue such practices so that the constitutional rights of the Class Members will be protected in the future.

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

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

- Do the Sheriff and San Francisco have a policy and practice of requiring money bail as a prerequisite for post-arrest release?
- Do the Sheriff and San Francisco immediately release those arrestees wealthy enough to pay their money bail amount?
- Do the Sheriff and San Francisco detain, for any amount of time, those arrestees too poor to pay their money bail amount solely because they cannot make that monetary payment?

91. Among the most important common question of law are:

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

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

92. The named Plaintiffs' claims are typical of the other Class Members' claims, and they have the same interests in this case as all other Class Members. Each Class Member is confined in jail because she could not afford her money bail amount. The answer to whether Defendants' wealth-based detention scheme is unconstitutional will determine the claims of the named Plaintiffs and every other Class Member.

93. If the named Plaintiffs succeed in the claim that Defendants' policies and

practices concerning wealth-based detention violate their constitutional rights, that ruling will likewise benefit every other Class Member.

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

94. The named Plaintiffs are adequate representatives of the Class because their interests in the vindication of the legal claims that they raise are entirely aligned with the interests of the other Class Members, who each have the same basic constitutional claims. They are a member of the Class, and their interests coincide with, and are not antagonistic to, those of the other Class Members.

95. 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.

96. 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.

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

98. Class counsel have a detailed understanding of state law and practices as they

relate to federal constitutional requirements. Counsel have studied the way that these systems function in other counties in order to investigate the wide array of lawful alternatives.

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

E. Rule 23(b)(2)

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

101. The Class therefore seeks declaratory and injunctive relief to enjoin the Sheriff and San Francisco from detaining arrestees who cannot afford their money bail amounts. Because the putative Class challenges Defendants' scheme as unconstitutional through declaratory and injunctive relief that would apply the same relief to every Class Member, Rule 23(b)(2) certification is appropriate and necessary.

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

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

Claims for Relief

Count One: Defendants Violate Plaintiffs' Rights by Jailing Them Because They Cannot Afford a Monetary Payment

104. Plaintiffs incorporate by reference the allegations in paragraphs 1–103.

105. The Fourteenth Amendment's Equal Protection and Due Process Clauses prohibit jailing a person because of her inability to make a monetary payment. Defendants violate Plaintiffs' fundamental rights by keeping them in jail 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 Defendant City and County of San Francisco and the Sheriff violate the named Plaintiffs' 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 Plaintiffs and the Class of similarly situated people that they represent;

c. An order and judgment preliminarily and permanently enjoining Defendant City and County of San Francisco — 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 to make a monetary payment;

d. An order and judgment preliminarily and permanently enjoining the Attorney General from requiring the use of money bail to detain indigent arrestees in San Francisco;

e. An order declaring that all Defendants must follow the requirements of the Equal

Protection and Due Process Clauses, regardless of contrary state law or contrary policies and practices;

f. An order declaring that, as applied by Defendants against Plaintiffs and Class Members, California Penal Code section 1269b(b) and any other state statutory or constitutional provisions that require the use of secured money bail to detain any person without an inquiry into ability to pay are unconstitutional;

g. A judgment individually compensating the named Plaintiffs for the damages that they suffered as a result of Defendants' unconstitutional and unlawful conduct, including damages resulting from their confinement in jail;

h. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and any other relief this Court deems just and proper.

Respectfully submitted,

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF RIANA BUFFIN

I, Riana Buffin, state and declare as follows:

1. I, Riana Buffin, am a 19-year-old resident of Oakland.

2. I was arrested on Monday, October 26, and booked in the county jail by the San Francisco Sheriff's Office for grand theft of personal property and conspiracy.

3. When I got to jail, I was told that I had to pay $30,000 for my release, and that if I did not pay, I would be kept in jail.

4. I live with my mother and three brothers. My mother's only source of income is disability payments. My nine-year-old brother was born with a heart disability and my ten-year-old brother also has a disability. My sixteen-year-old brother is in school and does not work.

5. I work at Oakland airport and earn $10.25 per hour. I have no savings and use my income to support my family.

6. I cannot afford to buy my release from jail. None of my friends or family is able to pay the money to buy my release from jail. If I had the money — or if I could get the money from any friend or relative — I would immediately pay for my freedom.

7. Lacking the required money to buy my freedom, I am told that I will remain in jail until I am brought to trial.

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

Riana Buffin

Riana Buffin
October 28, 2015

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF CRYSTAL PATTERSON

I, Crystal Patterson, state and declare as follows:

1. I, Crystal Patterson, am a 29-year-old resident of San Francisco.

2. I was arrested on Tuesday, October 27, and booked in the county jail by the San Francisco Sheriff's Office for assault with force causing great bodily injury.

3. When I got to jail, I was told that I had to pay $150,000 for my release, and that if I did not pay, I would be kept in jail.

4. I live with my 79-year-old grandmother. My mother is unemployed and homeless, so I am my grandmother's primary caregiver.

5. I perform in-home care services for elderly individuals and get paid $12.50 per hour. I am not paid to care for my grandmother, and my income goes to support both her and my necessities of life. I have no savings or money.

6. I cannot afford to buy my release from jail. None of my friends or family is able to pay the money to buy my release from jail. If I had the money — or if I could get the money from any friend or relative — I would immediately pay for my freedom.

7. Lacking the required money to buy my freedom, I am told that I will remain in jail until I am brought to trial.

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

Crystal Patterson
October 28, 2015

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RIANA BUFFIN and CRYSTAL PATTERSON, *et al.*, Plaintiffs, v. THE CITY AND COUNTY OF SAN FRANCISCO and THE STATE OF CALIFORNIA, Defendants.	Case No. 15-CV-4959 (YGR) (Class Action)

DECLARATION OF CHESA BOUDIN

I, Chesa Boudin, state and declare as follows:

1. My name is Chesa Boudin, and I am over 18 years old. I live and work in San Francisco, California.

2. I am a Deputy Public Defender for the City and County of San Francisco. My office represents indigent criminal defendants in San Francisco Superior Court criminal proceedings.

3. I have personally represented over 400 indigent criminal defendants in my role as Deputy Public Defender. I am familiar with every stage of the local criminal justice system, from arrest to booking to arraignment and beyond.

4. Individuals suspected of criminal activity in San Francisco can be arrested either by the San Francisco Police Department, the California Highway Patrol, the Sheriff's Department, or a number of other local law enforcement agencies. If the arrestee is to be jailed, she is typically booked at the county jail.

5. The arresting law enforcement agency informs the Sheriff's deputies at the county jail what the "booking charges" are. Although this is not a formal charge brought by the District Attorney ("DA"), the "booking charge" is used to determine an arrestee's bail amount.

6. Bail amounts are set by reference to the San Francisco Bail Schedule.

7. If an arrestee is wealthy enough to pay her bail amount, she can post bail immediately and be released immediately.

8. If an arrestee is too poor to pay her bail amount, she will remain in the county jail while the DA decides whether and what charges to file.

9. For felony charges, the DA's office has 48 hours to decide whether to bring formal charges. If the DA does not bring charges within 48 hours, the arrestee is released from the county jail.

10. If the DA does file charges, the arrestee makes an initial appearance in Superior Court, typically within two or three business days of the arrest (not counting weekends and holidays). The initial appearance is also the arrestee's arraignment, at which point she is read the formal charges and enters a plea. This is the arrestee's first appearance before any kind of judicial officer.

11. If an arrestee is indigent, my office is assigned to the case, typically at the arraignment (assuming no conflicts or other reason barring appointment of counsel from my office).

12. It is the DA's formal charging decision — not the "booking charge" used by the county jail at booking — that officially charges an arrestee with a crime.

13. My office has access to the Superior Court's Case Management System ("CMS"), which details the status of charges and proceedings.

14. Riana Buffin has never been formally charged with any offense, including the offense for which she was arrested on October 26, 2015. Although she received a "booking charge" and a bail amount from the county, she was never charged by the DA. She was released without formal charges ever being filed.

15. Ms. Buffin was never arraigned. She has never appeared before a Superior Court judge, and there are no future court dates set. She has no open or pending case.

16. I am personally aware that, as a result of her detention, Ms. Buffin lost her job at the Oakland airport.

17. Crystal Patterson has never been formally charged with any offense, including the offense for which she was arrested on October 27, 2015. Although she received a "booking charge" and a bail amount from the county, she was never charged by the DA. She was released without formal charges ever being filed.

18. Ms. Patterson was never arraigned. She has never appeared before a Superior Court judge and there are no future court dates set. She has no open or pending case.

19. It is not uncommon for arrestees who are too poor to pay their bail amount to contact family and friends to see if anyone else can pay. Especially when the care of dependent relatives is at stake, or the stability of employment or housing is threatened, arrestees can be in a desperate situation. Many of the clients my office represents face imminent threats to employment, housing, and the well-being of family members with even one day of detention.

20. If an arrestee is wealthy enough to pay her full bail amount, she is released immediately. She pays her bail amount directly to the county, and her bail money is returned to her in full after the case is resolved or after the court exonerates bail, meaning that she does not

lose any money.

21. There are numerous private bail bond companies in San Francisco that cater almost exclusively to arrestees who are too poor to pay their bail amount in full.

22. Private bail bond companies typically charge 8–10% of the scheduled or judicially determined bail amount to an arrestee. If the arrestee pays that amount, she will never see that money again, regardless of whether she makes all her court appearances (and regardless of whether she is eventually exonerated). Even if formal charges are never filed by the DA, the arrestee will not get the money she paid to a private bail bond company back.

23. In cases of extreme desperation and for the most destitute arrestees in San Francisco, private bail bond companies will often post the full bail amount after accepting a down payment of 1% of the bail amount and contracting with the arrestee who must agree to pay the balance of the 8–10%. The remaining amount is often financed at exorbitant interest rates. In this situation, regardless of what happens with the arrestee's criminal charges, she will never see the 1% returned to her and she is still contractually obligated to the remaining balance of the 8–10%. Even if formal charges are never filed by the DA, the arrestee is still contractually obligated to pay the balance, plus interest.

24. Even after their criminal case concludes, individuals under debt to private bail bond companies often spend years paying off their debt.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this Twenty-Third day of November, 2015.

Chesa Boudin

Chesa Boudin

AFFIDAVIT OF ALLISON McCOVEY

Allison McCovey, having been duly sworn according to law, deposes and states as follows:

Background

1. I am Chief Operating Officer of the San Francisco Pretrial Diversion Project (SFPDP), a non-profit organization that is contracted by the San Francisco Sheriff's Department to provide pretrial services for criminal defendants in San Francisco.

2. I have worked for SFPDP for a total of 13 years. I have been COO for two years. I previously served as Human Resources Director/Executive Assistant and as Director of Program Services.

Overview

3. In this affidavit, I will describe the San Francisco Pretrial Diversion Project and the various programs that it operates to facilitate pretrial release for defendants in San Francisco.

4. The facts expressed in this affidavit are based on my thirteen years of experience working for the SFPDP.

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

Background

6. The San Francisco Pretrial Diversion Project was established in 1976 through the joint efforts of a group of socially conscious citizens, the San Francisco Bar Association, and the judges of the Municipal Courts. The experience of these groups had shown that most individuals charged with a misdemeanor offense did not perceptibly benefit from jail time. They were convinced that both the goals of crime prevention and rehabilitation would be better served by an alternative program of rehabilitation, education, and community service work.

7. The mission of SFPDP is to facilitate, within various communities, positive and effective alternatives to fines, criminal prosecution, and detention.

San Francisco Pretrial Diversion Project's Programs

8. SFPDP's Supervised Pretrial Release program was started in 1995 to alleviate jail overcrowding and to help non-violent offenders receive necessary social services. Eligible clients are released directly from custody into SPR's supervision, where they receive daily case management. Case managers ensure that clients attend their court dates and help clients access services such as drug and alcohol counseling. Case Managers also communicate with the Court regarding the client's progress. Clients remain under SPR's supervision until they are sentenced, diverted, or their cases are dismissed or discharged. In the first three quarters of 2015, 92% of SPR clients were not charged with a new offense during the pretrial stage.

9. Pretrial Diversion provides first-time misdemeanor offenders with court-proceeding alternatives and services on issues such as anger management, parenting, domestic violence, and substance abuse counseling and education. In the first three quarters of 2015, 96% of PTD clients were not charged with a new offense during the pretrial stage.

10. Court Accountable Homeless Services (CAHS) provides case management and supervision services to homeless misdemeanor and felony defendants referred by the Court. CAHS is an alternative to pretrial detention. Once a client has been released to CAHS, a SFPDP staff will accompany a client to all court dates and escort them to other appointments with community providers. If a client does not comply with check-in requirements, the CAHS case manager or Peer Outreach Worker conducts searches, using the background and/or collateral contact information gathered while the client was in custody. In the first three quarters of 2015, CAHS served 167 unique clients. 42% of the successful graduates of the program had more

stable housing at case completion. 87% of the clients were not charged with a new offense during pretrial stage.

11. The O.R. Project interviews all eligible defendants housed in the County Jail System.

12. These interviews elicit information regarding a person's ties to the community. The O.R. Project will then call the defendant's references and verify the given information. The O.R. Project will also run the criminal history and obtain the police report. The entire O.R. document is presented to the duty judge for O.R. review. The criteria for eligibility for pre-arraignment review is based on the California Penal Code and the Sheriffs citation release policy. If the judge grants pre-arraignment O.R., the O.R. Project will process the release. Defendants whose O.R. applications are denied by the duty judge or who are not eligible for pre-arraignment review may have their applications reviewed by the judge at their arraignment. At arraignment, the judge will review the O.R. workup and may choose to release the defendant on Court O.R. or refer their case to Supervised Pretrial release for additional consideration. Additionally, persons who have outstanding felony and certain misdemeanor warrants may contact the O.R. Project and apply for pre-approved O.R. In the first three quarters of 2015, 96% of people released through the O.R. Project were not charged with a new offense during the pretrial stage.

Conclusion

13. The San Francisco Pretrial Diversion Project offers services that facilitate safe and effective pretrial release. The vast majority of defendants who are supervised by SFPDP are not charged with a new offense during the pretrial stage.

14. With additional resources, SFPDP could provide pretrial supervision services to additional defendants.

Allison McCovey

SWORN AND SUBSCRIBED BEFORE ME
This _____ day of _____, 2016
San Francisco, CA

_____
NOTARY PUBLIC

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.

STATE OF CALIFORNIA COUNTY OF San Francisco
Subscribed and sworn to (or affirmed) before me on this 17 day of March
20 16 by Allison McCovey

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(Signature of Notary)

ALAN LEONG
COMM. # 2068931
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires May 19, 2018

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 study[1] 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 study[2] 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 Statistics[3] and the New York City Criminal Justice Agency[4] 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,

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[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 1: 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 studies[5] 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 study[7] 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 Association[8] 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 study[9] 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 Institute[10] 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

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 de 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 Commision Expires
August 31, 2019

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

DECLARATION OF SHERIFF ROSS MIRKARIMI

I, Sheriff Ross Mirkarimi, state and declare as follows:

1. My name is Ross Mirkarimi, and I am over 18 years old. I live in San Francisco, California.

2. I am the Sheriff of the City and County of San Francisco. I began serving as Sheriff in January 2012.

3. I am familiar with the lawsuit brought by 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 the laws.

4. I agree that the use of monetary conditions to detain pretrial defendants penalizes indigent arrestees solely based on their wealth status. The notion that someone's freedom depends on the amount of money they have is anathema to equality and justice.

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

arbitrary set on the bail schedule.

7. Similarly, wealthy arrestees can secure their release with money, regardless of whether they are a danger to others. Two individuals may commit the same crime and have the same criminal history; the wealthy individual will enjoy freedom pending trial, while the poor individual must languish in jail pending trial.

8. Valuable taxpayers dollars are wasted detaining indigent arrestees. In addition to the injustice of penalizing an arrestees solely based on wealth status, the whole system wastes limited law enforcement resources.

9. The Sheriff's Department and the judicial system have many reasonable methods of protecting the public without arbitrary detaining indigent arrestees. For example, electronic monitoring (which is already used in certain situations, particular post-conviction) can be used more widely to minimize flight risk. Pretrial services can also ensure court attendance and help minimize risks to the community.

10. 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-fifth day of October, 2015.

Ross Mirkarimi
Sheriff of the City and County of San Francisco

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

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.

STATE OF California

COUNTY OF Santa Clara

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

(Notary Public)

A. K. NIGAM
Commission # 2008869
Notary Public - California
Santa Clara County
My Comm. Expires Mar 27, 2017

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

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.

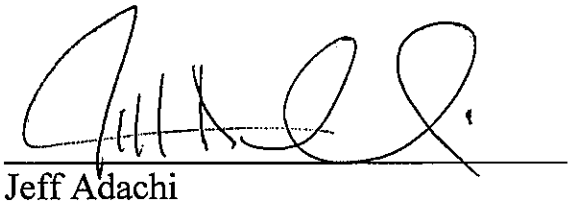
9. As a result of these factors, individuals who are detained face worse outcomes at trial. In other words, detained defendants are more likely to be convicted — even if they are innocent — solely due to their detention.

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.



Jeff Adachi
Public Defender