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I. Introduction

This case challenges Defendant Anderson County's collection of pre-trial fees from individuals not convicted of any crime. As standard operating procedure, Defendant Garcia collects \$50 per month in bond supervision fees on behalf of Anderson County from arrestees released on bail before trial — without considering ability to pay or offering a waiver for individuals unable to pay. Defendant Garcia also charges urinalysis fees without considering ability to pay and employs questionnaires that violates individuals' privacy rights. On behalf of all others subjected to bond supervision in Anderson County, Plaintiffs Cristian Martinez and Paul Estrada seek class certification to challenge bond fees, urinalysis fees, and use of the questionnaires. Because these pre-trial fees are charged uniformly as a matter of county policy, common — not individual — issues of fact and law, as well as evidence and relief, abound.

Class action litigation is the only reasonable vehicle to remedy Defendants' unlawful fee collection scheme. The hundreds of individuals the scheme impacts lack the resources to hire their own lawyers to bring individual claims. Providing an economical alternative for aggrieved individuals who lack the ability to bring individual cases is a primary purpose of the class action device. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997).

II. Defendants' Documents and Declarations from Bond Office Supervisees Show that Defendants Impose Fees and Use Invasive Questionnaires as Matters of Policy

Defendants' records show, and the declarations of Bond Office supervisees confirm, that Defendants engage in several practices — imposing and collecting pre-trial fees without inquiry into arrestees' ability to pay and using invasive questionnaires — in a materially uniform manner. Because these practices are matters of policy, class action treatment is appropriate.

As a matter of policy, Defendants charge standard pre-trial fees without findings of guilt and fail to assess arrestees' ability to pay these fees. *See Ex. 1, Anderson County Interrogatory*

Responses, Response No. 6¹; Doc. 1-1, Declaration of Cristian Martinez ¶ 5; Doc. 1-2, Declaration of Paul Estrada ¶¶ 7–8. Defendants also use the challenged questionnaires as a matter of policy. See Doc. 1-6, Bond Office Visit Form; Doc. 1-9, Bond Office Intake Form. These policies apply to all class members because all have been, are currently, or will be subject to bond supervision.

III. Plaintiffs’ Proposed Classes and Claims for Relief

Plaintiffs seek to certify four separate classes. Plaintiffs expect significant overlap between members of the four proposed classes, but separate certification is appropriate given the differences between the claims made by each class and the forms of relief sought.

1. Main Damages Class: All persons who are or have been on pre-trial bond supervision in Anderson County and charged bond supervision and/or urinalysis fees.

2. Indigent Damages Subclass: All indigent persons who are or have been on pre-trial bond supervision in Anderson County and charged bond supervision and/or urinalysis fees.

3. Main Injunctive Class: All persons who are or will be on pre-trial bond supervision in Anderson County and charged bond supervision and/or urinalysis fees.

4. Indigent Injunctive Subclass: All persons who are or have been on pre-trial bond supervision in Anderson County and charged bond supervision and/or urinalysis fees.²

The Main Damages Class and the Indigent Damages Subclass are together referred to as the “Damages Classes.” The Main Injunctive Class and the Indigent Injunctive Subclass are together referred to as the “Injunctive Classes.”

Plaintiffs bring eight legal claims (Doc. 1 at ¶¶ 48–103, 128–151). The Main Damages

¹ Exhibit 1 is taken from Anderson County’s interrogatory responses in a related case, *Perkins v. Anderson County*, No. 6:20-cv-00076-JCB (E.D. Tex. 2020). This is the same case noted in Doc. 2, Plaintiffs’ Notice of Related Case.

² In addition to claims for injunctive relief, the Main Injunctive Class and Indigent Injunctive Subclass also bring claims for declaratory relief. “Main Injunctive Class” and “Indigent Injunctive Subclass” are used as shorthand.

Class seeks damages under Counts One, Two, Three, and Seven. The Indigent Damages Class seeks damages under Counts Four, Five, and Six. The Main Injunctive Class seeks injunctive and declaratory relief under Counts One, Two, Three, Seven, and Eight. The Indigent Injunctive Class seeks injunctive and declaratory relief under Counts Four, Five, and Six.

The Named Plaintiffs are appropriate representatives for all four classes. Both Named Plaintiffs can adequately represent the Main Damages Class because they have been charged pre-trial fees by the Bond Office without a conviction and seek damages in the form of returned fees. Because they are indigent, the Named Plaintiffs are also appropriate representatives of the Indigent Damages Subclass. Martinez Decl. ¶ 6; Estrada Decl. ¶¶ 4, 9–14. The Named Plaintiffs are appropriate representatives for the Main Injunctive Class because they are currently under supervision of the Bond Office and seek injunctive and declaratory relief against Defendants' unlawful practices. *See* Martinez Decl. ¶¶ 2, 9; Estrada Decl. ¶¶ 2, 15. Being indigent, the Named Plaintiffs also appropriately represent the Indigent Injunctive Subclass.

The members of the Damages Classes are easily ascertainable: Defendants maintain records of all individuals on bond supervision. *See, e.g.*, Ex. 2, Excerpt from Bond Office Supervision Roster; Ex. 3, Sample Bond Office Supervision Status Letter.

IV. Plaintiffs' Proposed Classes Satisfy the Requirements of Rules 23(a), 23(b)(2) & (3)

This Court should certify Plaintiffs' proposed classes because (A) each class satisfies the requirements of Rule 23(a), (B) the Injunctive Classes satisfy the requirements of Rule 23(b)(2), and (C) the Damages Classes satisfy the requirements of Rule 23(b)(3). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997) (listing factors for class certification under Rule 23).

A. In Challenging Defendants' Uniform Pre-trial Fee Collection Policy, Plaintiffs Satisfy the Requirements of Rule 23(a)

This Court should certify Plaintiffs' proposed class under Fed. R. Civ. P. 23(a) because (i)

the hundreds of people subject to pre-trial supervision are so numerous that joinder is impracticable; (ii) claims challenging pre-trial supervision fees raise common questions of law and fact; (iii) Named Plaintiffs' claims against the fees are typical of the claims of each class; and (iv) Named Plaintiffs and class counsel will adequately protect the interests of each class. *See Ibe v. Jones*, 836 F.3d 516, 528–29 (5th Cir. 2016) (citing Fed. R. Civ. P. 23(a)(1)–(4)).

i. Each Numbering in the Hundreds, the Proposed Classes Satisfy 23(a)(1) Numerosity

All of Plaintiffs' proposed classes are "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). By comprising individuals who have been or are being charged pre-trial fees, the Main Damages Class is sufficiently numerous such that joinder of all members is impracticable. For the four years prior to this lawsuit being filed, there were, on average, approximately 150 bond supervision cases per year, meaning approximately 300 cases during 2020 and 2021. *See* Ex. 1, Interrogatory Response No. 7. Thus, the Main Damages Class is composed of hundreds of members and therefore satisfies the numerosity requirement. *See Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (noting that a class consisting of more than forty members raises a presumption that joinder is impracticable).

Similarly, because most members of the Main Damages Class are indigent, the Indigent Damages Subclass is also sufficiently numerous. According to the Texas Indigent Defense Commission, approximately 60% of criminal defendants in Anderson County in 2021 received a court-appointed attorney.³ Assuming an indigency rate of 60%, of the approximately 300 individuals in the Main Damages Class, approximately 180 are in the Indigent Damages Subclass.

The Main Injunctive Class and the Indigent Injunctive Subclass number in the hundreds

³ Texas Indigent Defense Commission, *Indigent Defense Data for Texas, Anderson County*, <https://tidc.tamu.edu/public.net/Reports/DataSheet.aspx?cid=1> (last viewed April 29, 2022).

and therefore satisfy Rule 23(a)(1). For the Main Injunctive Class, in any given year, well over a hundred individuals are subject to Bond Office fees. *See* Ex. 1, Interrogatory Response No. 7. Given the estimated indigency rate of 60% among Bond Office supervisees, the Indigent Injunctive Subclass is likewise sufficiently numerous.

ii. Subjected to a Uniform Fee Collection Policy, the Proposed Classes Satisfy 23(a)(2) Commonality

The proposed classes satisfy the commonality requirement because each class raises several common factual and legal questions. Fed. R. Civ. P. 23(a)(2). The Main Damages Class' claims are replete with common factual questions, which will "generate common answers apt to drive the resolution of the litigation." *Yates v. Collier*, 868 F.3d 354, 361 (5th Cir. 2017) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). For example, the factual question of whether Defendants require ongoing payment of bond and urinalysis fees as a condition of pre-trial release presents a common factual question necessary to resolve Counts One, Two, Three, and Seven. Other important factual questions common to all members include, but are not limited to: whether bond fees are used to pay for Defendant Garcia's salary and the Bond Office's operating expenses and whether Defendants use jail time to induce payment of bond and urinalysis fees. The answers to these factual questions are common to all members of the Main Damages Class because they would resolve key allegations against Defendants' policies. As a factual matter, all that varies between class members is the length of supervision, the amount in fees collected, and the frequency of urinalysis, but these variances are immaterial to the claims.

The claims brought by the Main Damages Class also involve common legal questions that, once resolved, will be answered for the entire class "in one stroke." *See Yates*, 868 F.3d at 361 (quoting *Dukes*, 564 U.S. at 350). For example, the legal question of whether the collection of Bond Office fees without a conviction constitutes a deprivation of property in violation of the Due

Process Clause presents a common legal question with an answer that would resolve all members' claim. Similarly, the legal question of whether the Bond Office fees function as a form of arbitrary bail in violation of procedural due process is a common question; its resolution will apply to all class members, all of whom have been subjected to pre-trial fees as a matter of county policy.

The Indigent Damages Subclass also raises factual and legal questions common to all members. To begin, whether Defendants collect bond and urinalysis fees without considering supervisees' ability to pay is a factual question necessary to resolve Counts Four, Five, and Six. Whether Defendants' failure to consider an arrestee's ability to pay pre-trial fees violates indigent arrestees' Equal Protection and Due Process rights likewise present legal questions common to all Indigent Damages class members.

The forward-looking challenge to Defendants' policies brought by the Main Injunctive Class presents numerous common questions of fact and law. As with the Main Damages Class, all that varies between class members is the length of supervision and the amount in fees, but the material features of the Bond Office are consistent policies. Common questions stem from the common policies; for example, whether arrestees are asked the challenged intake questions is a common factual question, and whether this practice violates due process is a common legal question. *See Dukes*, 564 U.S. at 350 (centering commonality determination on the "capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation.").

Similarly, the Indigent Injunctive Subclass' claims raise multiple common factual and legal questions. Defendants charge and collect pre-trial fees without considering arrestees' ability to pay, and Plaintiffs argue that this practice violates arrestees' rights under the Due Process Clause and the Equal Protection Clause. The Court's factual findings and legal holdings regarding these issues will apply to all Indigent Injunctive Subclass members.

Although “[c]ommonality does not require perfect identity of questions of law or fact among all class members[,] [r]ather, ‘even a single common question will do[,]’” this case nevertheless abounds with common legal questions that involve common facts. *Reyes v. Netdeposit, LLC*, 802 F.3d 469, 486 (3d Cir. 2015) (quoting *Dukes*, 564 U.S. at 359); *see also Yates*, 868 F.3d at 365 n.6. Common answers around the constitutionality of this policy will drive the resolution of this case; Rule 23’s commonality requirement is therefore satisfied.

iii. Named Plaintiffs’ Claims Are Materially Identical to the Claims of the Class, Satisfying 23(a)(3) Typicality

The proposed class action satisfies the typicality requirement because “the claims of the named plaintiffs are in fact those asserted as the common class claims.” *Boudreaux v. Sch. Bd. of St Mary Par.*, No. 6:65-CV-11351, 2020 WL 5367088, at *7 (W.D. La. Sept. 8, 2020) (citing Fed. R. Civ. P. 23(a)(3)). Typicality is satisfied because “Plaintiffs and the unnamed class members share in the same, fundamental aspects of the action, i.e., Defendants’ alleged course of conduct” — here, their collection of fees and use of questionnaires — and Plaintiffs’ “underlying remedial theory” — here, damages in the form of returned fees, a declaratory judgment, and a permanent injunction against the challenged practices, on the basis of the policies’ constitutional infirmity. *Earl v. Boeing Co.*, 339 F.R.D. 391, 420 (E.D. Tex. 2021).

Like all members of the Damages Classes, each Named Plaintiff has faced harm traceable to Defendants’ pre-trial fee collection scheme, and each brings damages claims to redress those harms. Named Plaintiffs and all putative class members were charged pre-trial fees without consideration of ability to pay and were subject to jail for nonpayment. Further, as indigent individuals, Named Plaintiffs bring claims identical to putative members of the Indigent Damages Subclass. The damages awards will vary between class members based on the amount collected in fees of each member, but the legal bases for damages relief are shared, and the calculation

process is uniform: for each class member, the total amount will be the amount paid in pre-trial fees, which can be verified through Anderson County's ledgers.

All members of the Main Injunctive Class bring a common set of constitutional claims and seek a single declaration and a single injunction to prevent the collection of fees and use of the questionnaires. Relatedly, as indigent individuals, Named Plaintiffs share identical claims with the absent members of the Indigent Injunctive Subclass.

iv. Plaintiffs Satisfy 23(a)(4) Adequacy

Class certification is proper because “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Plaintiffs satisfy the three inquiries encompassed within the adequacy requirement: “(a) the zeal and competence of the representative[s] counsel; (b) the willingness and ability of the representative[s] to take an active role in and control the litigation and to protect the interests of absentees; and (c) the risk of conflicts of interest between the named plaintiffs and the class they seek to represent.” *Slade v. Progressive Sec. Ins. Co.*, 856 F.3d 408, 412 (5th Cir. 2017) (internal quotation marks omitted).

a. Class Counsel Will Vigorously Fulfill Their Duties to the Class

As experienced attorneys, class counsel is well-suited to the task of vigorously advocating for the interests of the proposed classes. Plaintiffs are represented by attorneys from the Anderson County-based Law Office of Charles W. Nichols, P.C. and the national non-profit Equal Justice Under Law. Equal Justice Under Law attorneys have experience in litigating complex civil rights matters in federal court, particularly with regards to wealth-based discrimination. Ex. 4, Declaration of Edward Pruette ¶ 5. Attorneys from Equal Justice Under Law routinely litigate federal class action cases involving criminal justice issues on a nationwide basis, and Equal Justice Under Law has litigated dozens of complex wealth-based civil actions in many states. *Id.* at ¶ 5. Attorneys at the Law Office of Charles W. Nichols, P.C. have extensive experience litigating cases

and have knowledge of federal court processes, particularly within the Eastern District of Texas. *Id.* at ¶ 6. Class counsel have extensive knowledge of the relevant constitutional and statutory law, as well as county practices. *Id.* at ¶¶ 5–8. Class counsel have gathered testimony from Bond Office supervisees and developed relationships with individuals victimized by Defendants’ practices, gaining a deep understanding of how Defendants’ fee collection scheme works and how it affects class members. *Id.* at ¶ 7; *see also* Doc. 1-1, Martinez Decl. and Doc. 1-2, Estrada Decl. Counsel will fairly and adequately protect the interests of class members.

b. Class Representatives Will Vigorously Fulfill Their Duties

Plaintiffs propose Cristian Martinez and Paul Estrada as class representatives. Both were charged with criminal offenses in Anderson County and are required to report to the Bond Office as a condition of bond and to pay monthly bond supervision fees to Defendants. Martinez Decl. ¶¶ 3–5; Estrada Decl. ¶¶ 5, 8. Both Plaintiffs are indigent. Martinez Decl. ¶ 6; Estrada Decl. ¶¶ 5, 9–14. Both Named Plaintiffs, indigent and struggling under the demands of Defendants’ fee collection scheme, have an interest in joining with others to seek damages for past harms and declaratory and injunctive relief to prevent ongoing and future harm. Each is committed to this action and has worked with counsel to provide declarations and consult with counsel in this case. Ex. 4, Pruette Decl. ¶ 9. They are therefore well-suited to the task of prosecuting this action.

c. Named Plaintiffs’ Interests Are Aligned with Absent Class Members’ Interests

Named Plaintiffs have no conflicts of interests with absent class members. Pruette Decl. ¶ 4. As to the Damages Classes, no fundamental conflicts of interest between Named Plaintiffs and the absent class members exist. Courts routinely find a lack of conflicts of interest for adequacy purposes where, as here, class members seek damages based on shared theories of liability. *See, e.g., Angell v. GEICO Advantage Ins. Co.*, No. 4:20-CV-0799, 2021 WL 5585732, at *3–6 (S.D.

Tex. Nov. 30, 2021) (certifying class of insureds challenging underpayment); *In re Chesapeake Energy Corp.*, No. CV H-21-1215, 2021 WL 4776685, at *11–12, 27 (S.D. Tex. Oct. 13, 2021) (certifying settlement classes of oil-and-gas leaseholders). By contrast, courts have found fundamental conflicts of interest where the economic objectives or legal arguments of some class members are adverse to those of other members. *See, e.g., Pickett v. Iowa Beef Processors*, 209 F.3d 1276 (11th Cir. 2000) (reversing class certification where proposed class included individuals who alleged to have been harmed by contracts and others who had benefitted from those same contracts); *Hughes v. WinCo Foods*, No. 11–00644, 2012 WL 34483, at *7 (C.D. Cal. Jan 4, 2012) (holding subordinate not adequate representative of supervisor). Here, the objectives and legal claims of the Named Plaintiffs and absent members of the Damages Classes are aligned.

As to Plaintiffs’ claims for injunctive relief, fundamental conflicts of interest will not arise. If, for example, the Named Plaintiffs prevail on their claim that Defendants’ imposition of pre-trial fees without regard to ability to pay violates due process, they will be entitled to declaratory and injunctive relief, which would benefit (and not harm) all absent class members. Similarly, if Named Plaintiffs prevail on their claim that the fee collection scheme violates the federal and/or state Equal Protection clause, that holding will benefit all members of the Indigent Injunctive Subclass. Therefore, no conflicts of interest exist.

B. Faced with Defendants’ Class-Wide Fee Collection Policies, the Proposed Injunctive Classes Satisfy the Requirements of Rule 23(b)(2)

Certification under Rule 23(b)(2) is warranted for the Injunctive Classes because Defendants “have acted or refused to act on grounds that apply generally to the class” by collecting pre-trial fees without considering ability to pay and using invasive questionnaires as a matter of policy, in a manner affecting all class members. Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) applies in precisely these circumstances because “a single injunction or declaratory judgment would

provide relief to each member of the class,” and the injunction warranted is of an “indivisible nature.” *Yates*, 858 F.3d at 367 (quoting *Dukes*, 564 U.S. at 360). In this case, members of the Main Injunctive Class bring common legal claims and seek a single, indivisible declaration and injunction: an order declaring Defendants’ fee scheme unlawful and preventing its continued implementation. Resolution of the declaratory and injunctive claims will not require individualized determinations, because the case centers on consistent policies, as opposed to the particular harms faced by individual members. The same is true for the Indigent Injunctive Class, which seeks a single, indivisible declaration and injunction.

Courts frequently certify classes that meet Rule 23(a) requirements and seek only declaratory or injunctive relief under Rule 23(b)(2), as is the case with the Injunctive Classes. *See, e.g., Yates*, 868 F.3d at 366–69 (certifying class of incarcerated persons seeking injunctive relief against policies allegedly creating unconstitutional conditions of confinement); *A.A. by & through P.A. v. Phillips*, 339 F.R.D. 232, 247–49 (M.D. La. 2021) (certifying class of children demanding that state agency institute policy of providing intensive home- and community-based services); *Boudreaux v. Sch. Bd. of St Mary Par.*, No. 6:65-CV-11351, 2020 WL 5367088, at *8–9 (W.D. La. Sept. 8, 2020) (certifying class of Black students seeking injunctive relief against school board’s alleged racial segregation of students). Absent a change in Defendants’ challenged policies, members of the Injunctive Classes will be subject to the same harm. All will be charged pre-trial fees without a conviction and without consideration of their ability to pay.

Further, the injunctive relief sought is specific enough such that the final order “may be crafted to describe in reasonable detail the acts required.” *Yates*, 868 F.3d at 367 (internal quotation marks omitted). Plaintiffs seek a permanent injunction against Defendants’ collection of supervision and urinalysis fees without a conviction or consideration of pre-trial arrestees’

ability to pay, as well as Defendants' use of certain questions in Bond Office questionnaires.

C. The Proposed Damages Classes Should Be Certified Under Rule 23(b)(3) Because Plaintiffs' Action Meets the Rule's Requirements for Damages Relief

The Main Damages Classes' claims seeking damages in the form of returned fees are appropriate for class certification under Fed. R. Civ. P. 23(b)(3) because (i) "the questions of law or fact common to class members predominate over any questions affecting only individual members"; (ii) a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy;" *Ticknor v. Rouse's Enterprises, L.L.C.*, 592 F. App'x 276, 278 (5th Cir. 2014) (quoting Fed. R. Civ. P. 23(b)(3)); and (iii) certification of Plaintiffs' proposed class satisfies the policy concerns of Rule 23(b)(3).

i. Common Questions Regarding Defendants' Fee Collection Policy Predominate Over Individual Questions of Damages

Common questions raised by the Damages Classes predominate over individual questions. Common questions exist where "the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof." *Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700, 710 (5th Cir. 2020) (quoting *Tyson Foods v. Bouaphakeo*, 136 S.Ct. 1036, 1045 (2016)). Here, the factual questions are susceptible to class-wide proof because Defendants' challenged practices are policies applicable to all supervisees. Accordingly, common questions about how the Bond Office operates, as opposed to individual questions about how particular individuals experience the harms of the county's policies, are central to the case and will be "the focus of a trial." *Cruson v. Jackson Nat'l Life Ins. Co.*, 954 F.3d 240, 254 (5th Cir. 2020).

Here, individual questions where "members of a proposed class will need to present evidence that varies from member to member," *Mitchell*, 954 F.3d at 710 (quoting *Bouaphakeo*, 136 S.Ct. at 1045) concern only damage amounts (but not the method of calculation) and therefore present a less significant aspect of the case. The only individual questions as to damages involve

the length of an individual's supervision and the amounts of fees collected. Determining damages for each class member is therefore "susceptible to a mathematical or formulaic calculation," *Mitchell*, 954 F.3d at 710, that properly "measures only those damages attributable to" Plaintiffs' theory of liability. *Ludlow v. BP, P.L.C.*, 800 F.3d 674, 683 (5th Cir. 2015) (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 35 (2013)). In this case, damages can be calculated through a manageable formula by reviewing Defendants' records of the amount in fees collected from each class member. *See, e.g.*, Ex. 2, Excerpt from Bond Office Supervision Roster; Ex. 3, Sample Bond Office Supervision Status Letter; *see also Earl v. Boeing Company*, 339 F.R.D. at 441–44 (finding predominance where individual damages could be calculated by reliance on a common formula consistent with plaintiffs' theory of liability); *Ludlow*, 800 F.3d at 683–89 (affirming predominance where plaintiffs proposed manageable formula consistent with theory of liability).

Plaintiffs' theory of predominance applies to both the Main Damages and the Indigent Damages Classes. Given that both classes seek damages awards only in the form of returned fees, the two classes share a common set of evidence regarding Defendants' fee collection scheme.

ii. A Class Action is the Superior Means for Adjudicating Defendants' Class-wide Fee Collection Scheme

A class action is the superior method of adjudicating the Damages Classes' claims given the relatively small size of proposed class members' individual monetary recovery and the class-wide nature of Defendants' fee collection scheme. *See Boos v. AT&T, Inc.*, 252 F.R.D. 319, 326 (W.D. Tex. 2008) (finding class action superior where plaintiffs' individual monetary claims were small). Even if every class member were awarded the full amount of pre-trial fees each paid to Defendants, individual damages would generally fall in the hundreds of dollars. *See, e.g.*, Ex. 1, Interrogatory Response Nos. 7 and 15 (showing \$82,772 collected in fees in 2021 over 168 cases, for an average of approximately \$493 per case). While these individual amounts are heavily

burdensome to putative class members who are struggling to gain stability after arrest, they are simply too small to incentivize a private attorney to litigate individual claims. Indigent class members face even more difficulty finding representation. Incarcerated class members would also be a significant disadvantage to bring individual cases. Given class members' disadvantages and their relatively small individual monetary recoveries, certification will "vindicat[e] . . . the rights of groups of people who individually would be without effective strength to bring their opponents into court at all[.]" *Amchem Prods.*, 521 U.S. at 617, furthering the purpose of Rule 23(b)(3).

Plaintiffs will offer a common body of evidence showing the class-wide impact of Defendants' challenged practices. *See supra* Section II. Class action litigation is superior to individual adjudication because it is efficient and will conserve judicial resources.

iii. Certification of Plaintiffs' Proposed Damages Classes Satisfies the Policy Concerns of Rule 23(b)(3)

Certification of the Damages Classes advances the policy concerns of Rule 23(b)(3), which concern: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability of concentrating the litigation of the claims in a particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(A)–(D). All four policy considerations militate in favor of class certification.

First, because a § 1983 lawsuit requires significant time and legal resources, the members of the Damages Classes, especially the members of the Indigent Damages Subclass, likely have a more significant interest in challenging Defendants' fee collection scheme collectively as opposed to individually prosecuting parallel actions. For many (if not all) putative class members, collective action is the only action available.

Second, the extent and nature of litigation concerning class members favors certification.

Edward Perkins, a supervisee of the Anderson County Bond Office who is represented by the same counsel as Named Plaintiffs in the instant case, filed a complaint challenging Defendants' policies in March 2020. His case survived a motion to abstain after full briefing and argument and began the discovery process. Because the plaintiffs in both cases are represented by the same counsel, the *Perkins* plaintiff has not yet sought certification, and there are no other cases challenging the same practices. Thus certifying the proposed classes in the instant case does not raise the risk of inconsistent adjudications. This case will make use of discovery gained in the *Perkins* case, which will save time and effort of the parties and the court.

Third, concentration of the putative class members' claims in this single forum is desirable because important witnesses and evidence are located within Anderson County. The Bond Office is within the forum, and supervisees often must report to the office in person. *See* Martinez Decl. ¶ 8; Estrada Decl. ¶ 8.

Fourth, the class members' claims are more manageable in the context of a single class action than they would be in the context of numerous individual actions because, as discussed above, the questions of fact and law, as well as the relief sought, are predominantly common to the class, not specific to individual class members. Adjudicating individual damage amounts will be manageable, because, as discussed, Defendants keep records of individuals supervised and amounts charged and collected. *See, e.g.*, Ex. 2, Excerpt from Bond Office Supervision Roster; Ex. 3, Sample Bond Office Supervision Status Letter. Though the determination of damages for a class of hundreds may take time, the process would constitute a relatively efficient means of vindicating individual members' rights, as compared to numerous individual actions.

V. Conclusion

Plaintiffs respectfully request that this Court certify the four proposed classes.

Respectfully submitted,

/s/ Natasha Baker

Natasha Baker, D.C. Bar # 1600874

Phil Telfeyan, D.C. Bar #1029157

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/s/ Charles W. Nichols

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Fax. (903) 729-0347

Certificate of Conference

Defendants have not entered an appearance as of the date of this filing, thus no meet and confer was held.

/s/ Natasha Baker
Natasha Baker
Counsel for Plaintiffs

EXHIBIT 1

DEFENDANT'S ADDITIONAL OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 6: Describe the Anderson County Bond Office's ("Bond Office") policies and procedures regarding the charging, collecting, and enforcement of bond supervision fees, including:

- a. How the amount and frequency of the bond supervision fee is determined;
- b. Who determines who is subject to the fee and how the determination of who is subject to the fee is made;
- c. How persons subject to the bond supervision fee are informed of their obligation to pay, including description and identification of any forms, handouts, notices, contracts, or any other documents related to payment;
- d. Payment options, including any policies and procedures related to determining the financial status and/or ability to pay of persons subject to the bond supervision fee;
- e. The methods used to collect payment, such as in-person communications, phone calls, letters, etc., and a description of the contents of those methods;
- f. Who is responsible for collecting the fee;
- g. How fees collected are used/what fees collected are used for;
- h. Who and/or what fees collected are reported to; and
- i. The consequences for non-payment of fees.

ANSWER: Objection: This is a compound improper request for a narrative of a large amount of information that is more conducive to response in a deposition, rather than interrogatories, and is therefore burdensome. The interrogatory seeks irrelevant information about financial status and revocation. This pre-certification discovery is beyond the permissible scope and is unwarranted at this time. Subject to and without waiving the objections, Defendant responds as follows: The \$50 per month fee has been established from the beginning as the same fee being charged

for bond supervision by the Probation Department. Persons subject to the fee are those who are placed under bond supervision by the court, and they are informed about the fee by the court and/or by court or probation personnel and/or by the Bond Supervision Officer. The fee is collected by the Bond Supervision Office. The fees are forwarded to the Anderson County Clerk's Office for deposit in the Anderson County General Fund. The Bond Supervision Office provides a monthly report to the County Judge regarding the collection of fees. Any consequences for non-payment of the fee are up to the Court.

INTERROGATORY NO. 7: For each of the years 2018, 2019, 2020, 2021, and 2022, state the number of persons who have been charged bond supervision fees, including those currently being charged bond supervision fees. If this number cannot be given for any reason:

- a. Explain why the number cannot be given; and
- b. Provide your best estimate or estimated range.

Answer: **Objection:** The interrogatory seeks information that is equally available to Plaintiff from produced documents or public records and answering would improperly require Defendant to perform research and calculations to answer; this pre-certification discovery is beyond the permissible scope and is unwarranted at this time. Subject to the objections, and without waiving same, information provided by the Bond Supervision Office is as follows:

2018 - 122 cases
2019 - 135 cases
2020 - 166 cases
2021 - 168 cases
2022 - 13 cases to February 14, 2022

INTERROGATORY NO. 8: For each person charged bond supervision fees in 2018, 2019, 2020, 2021, and 2022, provide:

- a. The person's name;
- b. How much they have been charged in bond supervision fees;
- c. How much they have paid in bond supervision fees;
- d. Describe if and how information regarding the person's financial status is

- collected by the Bond Office;
- e. The date supervision via the Bond Office began;
 - f. The date supervision via the Bond Office ended;
 - g. Whether — and how many — revocation reports were filed by the Bond Office regarding this person where non-payment of fees was a basis for filing the report;
 - h. Whether the person's bond was revoked and if yes, how many times; and
 - i. The resolution status of the case for which supervision via the Bond Office was ordered, such as dismissal, nolle pros, plea, acquittal, etc.

ANSWER: Objection: The interrogatory seeks irrelevant information; is harassing and burdensome; the interrogatory also seeks information that is equally available to Plaintiff from produced documents or public records and answering would improperly require significant burdens on Defendant to perform substantial research and calculations to answer; some information sought is private information of the person; this pre-certification discovery is beyond the permissible scope and is unwarranted at this time. Subject to the objections, Defendant is providing printouts of the names of the persons placed under bond supervision during each year.

INTERROGATORY NO. 9: For the years 2018–2022, state the number of revocation reports filed by the Bond Office with the county court system for non-payment of bond supervision fees, including revocation reports where non-payment of fees is one of multiple reasons the Bond Office requests revocation. If this number cannot be given for any reason:

- a. Explain why the number cannot be given; and
- b. Provide your best estimate or estimated range.

ANSWER: Objection: The interrogatory seeks irrelevant information; is harassing and burdensome; the interrogatory assumes disputed facts; the interrogatory also seeks information that is equally available to Plaintiff from produced documents or public records and answering would improperly require Defendant to perform substantial research and calculations to answer.

INTERROGATORY NO. 10: For the years 2018–2022, state the number of revocation reports filed by the Bond Office with the county court system where non-payment of bond supervision fees is the sole reason the Bond Office requests revocation. If this number cannot be given for any reason:

- a. Explain why the number cannot be given; and
- b. Provide your best estimate or estimated range.

ANSWER: **Objection: The interrogatory seeks irrelevant information; is harassing and burdensome; the interrogatory assumes disputed facts; the interrogatory also seeks information that is equally available to Plaintiff from produced documents or public records and answering would improperly require Defendant to perform substantial research and calculations to answer. Subject to and without waiving the objections, none to Defendant’s knowledge.**

INTERROGATORY NO. 11: For revocation reports filed by the Bond Office with the county court system for non-payment of bond supervision fees in 2018–2022 where non-payment of fees is one of multiple reasons the Bond Office requests revocation, state the number of reports that were granted, meaning that the county court system ordered revocation of a person’s bond. If this number cannot be given for any reason:

- a. Explain why the number cannot be given; and
- b. Provide your best estimate or estimated range.

ANSWER: **Objection: The interrogatory seeks irrelevant information; is harassing and burdensome; the interrogatory assumes disputed facts; the interrogatory also seeks information that is equally available to Plaintiff from produced documents or public records and answering would improperly require Defendant to perform substantial research and calculations to answer.**

INTERROGATORY NO. 12: For revocation reports filed by the Bond Office with the county court system for non-payment of bond supervision fees in 2018–2022 where non-payment of fees is the sole reason the Bond Office requests revocation, state the

number of reports that were granted, meaning that the county court system ordered revocation of a person's bond. If this number cannot be given for any reason:

- a. Explain why the number cannot be given; and
- b. Provide your best estimate or estimated range.

ANSWER: Objection: The interrogatory seeks irrelevant information; is harassing and burdensome; the interrogatory assumes disputed facts; the interrogatory also seeks information that is equally available to Plaintiff from produced documents or public records and answering would improperly require Defendant to perform substantial research and calculations to answer. Subject to and without waiving the objections, not applicable to Defendant's knowledge.

INTERROGATORY NO. 13: For revocation reports in 2018–2022 that were granted, meaning the county court system ordered revocation of a person's bond, and those reports were filed by the Bond Office with the county court system for non-payment of bond supervision fees with non-payment of fees as one of multiple reasons the Bond Office requests revocation, state the number of persons revoked and the average number of revocations per person. If this number cannot be given for any reason:

- a. Explain why the number cannot be given; and
- b. Provide your best estimate or estimated range.

ANSWER: Objection: The interrogatory seeks irrelevant information about revocation, and is harassing and burdensome; the interrogatory assumes disputed facts; the interrogatory also seeks information that is equally available to Plaintiff from produced documents or public records and answering would improperly require Defendant to perform substantial research and calculations to answer.

INTERROGATORY NO. 14: For revocation reports in 2018–2022 that were granted, meaning the county court system ordered revocation of a person's bond, and those reports were filed by the Bond Office with the county court system with non-payment of fees as the sole reason the Bond Office requests revocation, state the number of

persons revoked and the average number of revocations per person. If this number cannot be given for any reason:

- a. Explain why the number cannot be given; and
- b. Provide your best estimate or estimated range.

ANSWER: Objection: The interrogatory seeks irrelevant information; is harassing and burdensome; the interrogatory assumes disputed facts; the interrogatory also seeks information that is equally available to Plaintiff from produced documents or public records and answering would improperly require Defendant to perform substantial research and calculations to answer. Subject to and without waiving the objections, not applicable to Defendant's knowledge.

INTERROGATORY NO. 15: For each of the years 2018, 2019, 2020, 2021, and 2022, state the dollar amount collected in bond supervision fees. If this number cannot be given for any reason:

- a. Explain why the number cannot be given; and
- b. Provide your best estimate or estimated range.

ANSWER: Objection: The interrogatory seeks information that is equally available to Plaintiff from produced documents and improperly requires Defendant to perform substantial work and calculations to answer; this pre-certification discovery is beyond the permissible scope and is unwarranted at this time. Subject to and without waiving the objections, the Bond Supervision Office has provided the following information:

Jan. – Feb. 11, 2022: \$10,485.00

2021 : \$82,772.00

2020 : \$62,946.00

2019 : \$46,573.00

2018: \$56,094.00

INTERROGATORY NO. 16: Explain what collected bond supervision fees are used for and how they are distributed, including identifying any and all entities and individuals

EXHIBIT 2

TXANDERSONPROD

Case Index

Version: Public Filed Date: 01/01/2021 to 12/31/2021 Sorted By: Case Number

County Clerk	County Court	County Court at Law			
1894-BOSU	Holbrook, Megan	BOND SUPERVISION (12/02/2021)	BOND SUPERVISION	12/03/2021	
1895-BOSU	WARD, CHRISTOPHER WAYNE	BOND SUPERVISION (12/02/2021)	BOND SUPERVISION	12/03/2021	12/03/2021 New
1896-BOSU	ESTRADA, PAUL	BOND SUPERVISION (12/03/2021)	BOND SUPERVISION	12/03/2021	12/03/2021 New
1897-BOSU	HENRY, JAMES DWAYNE	BOND SUPERVISION (12/07/2021)	BOND SUPERVISION	12/08/2021	12/08/2021 New
1898-BOSU	LIMON, HERIBERTO, Jr.	BOND SUPERVISION (12/08/2021)	BOND SUPERVISION	12/08/2021	12/08/2021 New
1899-BOSU	SANTOYO-ESCAMILLA, AURELIO	BOND SUPERVISION (12/08/2021)	BOND SUPERVISION	12/08/2021	

Grand Total: 168

AC000335

TXANDERSONPROD

Case Index

Version: Public Filed Date: 01/01/2022 to 12/31/2022 Sorted By: Case Number

County Clerk County Court County Court at Law
County Clerk

Case Number	Style Offenses (Offense Date)	Case Type Case Subtype	File Date	Case Status Date Active Case Status
1900-BOSU	MILLER, LOUIS JERRY BOND SUPERVISION (12/21/2021)	BOND SUPERVISION	01/03/2022	01/03/2022 New
1901-BOSU	DAVIS, MICHAEL DEAN BOND SUPERVISION (12/13/2021)	BOND SUPERVISION	01/03/2022	01/03/2022 New
1902-BOSU	MARTIN, JOHN AARON, Jr. BOND SUPERVISION (12/15/2021)	BOND SUPERVISION	01/03/2022	01/03/2022 New
1903-BOSU	MCCOY, KEVIN RAY BOND SUPERVISION (12/20/2021)	BOND SUPERVISION	01/03/2022	01/03/2022 New
1904-BOSU	MARTINEZ, CRISTIAN BOND SUPERVISION (12/20/2021)	BOND SUPERVISION	01/03/2022	01/03/2022 New
1905-BOSU	SMITH, BRYANT RAY BOND SUPERVISION (12/28/2021)	BOND SUPERVISION	01/03/2022	01/03/2022 New
1906-BOSU	PHARIS, JULIE PETIT BOND SUPERVISION (12/20/2021)	BOND SUPERVISION	01/03/2022	01/03/2022 New
1907-BOSU	LINGO, RONALD DEE BOND SUPERVISION (12/20/2021)	BOND SUPERVISION	01/03/2022	01/03/2022 New
1908-BOSU	JENNUM, JESSICA ANN BOND SUPERVISION (01/06/2022)	BOND SUPERVISION	02/08/2022	02/08/2022 New
1909-BOSU	BROWN-LEWIS, NOAH R BOND SUPERVISION (01/21/2022)	BOND SUPERVISION	02/09/2022	02/09/2022 New
1910-BOSU	CHIVERS, JACOBY DESHON BOND SUPERVISION (12/16/2021)	BOND SUPERVISION	01/06/2022	01/06/2022 New
1911-BOSU	DE LA CRUZ, JACOBO LUNA BOND SUPERVISION (01/17/2022)	BOND SUPERVISION	02/11/2022	02/11/2022 New

AC000336

EXHIBIT 3



ANDERSON COUNTY BOND OFFICE

500 N. Church Street, Room 11
Palestine, Texas 75801
(903) 723-7890

S. Karina Garcia
Director

Name: JOHN DOE
123 BOSU DR
PALESTINE, TX 75801

Date: February 8, 2022

Next Appointment

Thursday, 03/03/22 at 04:00PM - Report In Person - Ov with Karina Garcia

Cause	Delinquent	Balance	CSR Hours Remaining
12345	\$150.00	\$1,200.00	0.00

Conditions Needed

Alcohol/Drug Restriction
Monthly Reporting
Victim Restriction

CSR hours completed

Comments:

Karina Garcia
Bond Supervision Officer
903-723-7890
sgarcia@co.anderson.tx.us

AC000340

EXHIBIT 4

DECLARATION OF EDWARD PRUETTE

1. My name is Edward Pruette. I am over 18 years old, and a resident of Washington, D.C.
2. I am a Legal Fellow at Equal Justice Under Law, a non-profit civil rights organization based in Washington, D.C.
3. Phil Telfeyan and Natasha Baker, attorneys at Equal Justice Under Law, are counsel for the Named Plaintiffs and the putative class members in this case. This declaration is submitted in support of Plaintiffs' Motion for Class Certification.
4. To our knowledge, there are no conflicts of interests between Named Plaintiffs Cristian Martinez and Paul Estrada, and the putative class members.
5. Attorneys at Equal Justice Under Law have extensive experience with similar cases, having undertaken several constitutional civil rights class action lawsuits challenging fines and fees in the criminal system. In five cases — *Mitchell, et al. v. Montgomery*, 2:14-cv-00186 (M.D. Ala. 2014); *Fant, et al., v. City of Ferguson*, 4:15-cv-00253 (E.D. Mo. 2015); *Jenkins, et al., v. City of Jennings*, 4:15-cv-00252 (E.D. Mo. 2015); *Cain, et al. v. City of New Orleans*, 15-cv-4479 (E.D. La. 2015); and *Bell, et al. v. City of Jackson*, 3:15-cv-00732 (S.D. Miss. 2016) — the organization challenged the defendant municipalities' jailing of individuals for failure to pay fines without any inquiry into their ability to pay. Those cases resulted in the cities of Montgomery, Alabama; Ferguson, Missouri; Jennings, Missouri; New Orleans, Louisiana and Jackson, Mississippi agreeing to change their policies and practices with respect to individuals who fail to pay criminal fines. The organization has litigated over forty complex wealth-based civil actions in seventeen states. Phil Telfeyan, Co-Founder and Executive Director of Equal Justice Under Law, was directly involved in all of these cases. In addition, Equal Justice Under Law is currently

litigating multiple civil rights class action cases challenging government practices that criminalize poverty, including *Easley, et al. v. Howell, et al.*, 6:21-cv-06125 (W.D. Ark. 2021) and *Evenson-Childs, et al v. Ravalli County, et al.*, 9:21-cv-00089 (D. Mont. 2021); Phil Telfeyan and Natasha Baker are directly involved in those matters as plaintiffs' counsel, and I am involved in my capacity as Legal Fellow.

6. Attorneys at the Law Office of Charles W. Nichols, P.C. have extensive experience litigating cases in Texas and have knowledge of federal court processes, particularly within the Eastern District of Texas.
7. By working closely with Named Plaintiffs, speaking with other individuals similarly impacted by Anderson County's pre-trial fee policies, and conducting independent research, we have gained extensive knowledge as to how the county's fee collection policy works in practice and how it affects class members.
8. Our experience in past cases challenging state and local laws and policies on federal constitutional grounds, combined with our research into the Anderson County Bond Office, has allowed us to develop a thorough understanding of how the county's practices relate to the relevant state and federal constitutional law.
9. Each plaintiff is committed to this action and has worked with counsel to provide declarations and consult with counsel in this case.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.



By Edward Pruette
May 3, 2022