

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS**

CYNTHIA EASLEY and TERRY)
EASLEY, on behalf of themselves and)
others similarly situated,)
Plaintiffs,)
v.)
TERESA HOWELL in her official capacity)
as PROSECUTING ATTORNEY FOR)
MALVERN/HOT SPRING COUNTY,)
MIKE CASH in his official capacity as HOT)
SPRING COUNTY SHERIFF,)
Defendants.)

**PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

Case No. 6:21-cv-06125-SOH
(Class Action)

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I. Introduction

Arkansas' Criminal Eviction Statute, Arkansas Code § 18-16-101, deprives tenants of their property interests without due process and punishes them with criminal charges as they seek to assert their rights. This proposed class action is about putting an end to this unconstitutional statute, the only law in the country that criminalizes a person's failure to pay rent. Not only is Arkansas' criminal eviction process unlawful, it is also unnecessary; landlords have a civil eviction process to evict non-paying tenants — which is the method used by every other state in the nation and many counties within Arkansas. In bringing this motion, Plaintiffs seek to join with Arkansas renters similarly impacted by the Criminal Eviction Statute to invalidate the law, so that no Arkansas renter will face its threat of unlawful and unfair criminal prosecution.

Class action is the only reasonable recourse for class members to remedy this unconstitutional criminal eviction scheme. Members of Plaintiffs' proposed class "may be without any effective redress unless they may employ the class-action device," *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338 (1980), because they lack the resources to hire their own lawyers to bring individual claims, as evidenced by the fact that they are not even in a position to afford rent. Providing an economical alternative for aggrieved individuals is a primary purpose of the class action device. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 617 (1997). Even if potential class members could afford to try these cases individually, the courts would be clogged with hundreds of suits, redundant discovery, and repeated adjudication of many similar controversies, wasting judicial time and resources. Such waste is unnecessary given that Plaintiffs and class members seek only declaratory and injunctive relief with no need for individualized determinations. Class action is therefore not only an appropriate method for resolving this dispute and vindicating Plaintiffs' constitutional rights; it is the best method.

Plaintiffs respectfully request that this Court grant their Motion for Class Certification by certifying a declaratory and injunctive class defined as: **All people in the state of Arkansas who are or will be unable to afford rent and who are being or will be prosecuted or who are or will be at risk of prosecution under Arkansas Code § 18-16-101.**

II. Plaintiffs’ Challenge to Defendants’ Class-Wide Policy of Criminal Eviction Should Be Certified for Class Treatment

Plaintiffs’ proposed class (A) satisfies each of the four requirements of Rule 23(a) of the Federal Rules of Civil Procedure as well as (B) at least one of the criteria for certification under Rule 23(b), specifically 23(b)(2), because Plaintiffs’ proposed class consists of a large group of similarly-situated individuals harmed in the same manner by the class-wide threat of criminal prosecution under Arkansas Code § 18-16-101. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997) (listing factors for class certification under Rule 23). Therefore, this Court should certify Plaintiffs’ proposed class.

A. 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 joinder of all members in Plaintiffs’ proposed revolving class numbering in the hundreds is impracticable; (ii) Plaintiffs bring identical legal claims resting on common factual assertions, satisfying commonality; (iii) the Named Plaintiffs share identical claims with the other class members, satisfying typicality; and (iv) both the Named Plaintiffs and class counsel are well prepared to advocate for the interests of the class, satisfying adequacy. *See Murphy v. Gospel for Asia, Inc.*, 327 F.R.D. 227, 234–35 (W.D. Ark. 2018) (citing Fed. R. Civ. P. 23(a)(1)–(4)).

i. As a Revolving Class Likely Numbering in the Hundreds, Plaintiffs’ Proposed Class Satisfies the Rule 23(a)(1) Numerosity Requirement

Plaintiffs satisfy numerosity because the proposed class “is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Plaintiffs’ proposed class is a statewide

revolving class that includes all individuals being prosecuted or who will be at risk of prosecution under the Arkansas Criminal Eviction Statute.

Defendants' evidence shows that hundreds of individuals in Arkansas are or will be prosecuted under Arkansas Code § 18-16-101. A review of Defendants' discovery production, along with court records in CourtConnect (Arkansas' online court records system) revealed over one hundred criminal eviction cases since 2018 in Hot Spring County alone. Ex. A, Declaration of Edward Pruette ¶ 4. Therefore, it is reasonable to assume that, both within Hot Spring County and amongst the other 74 counties statewide, there will continue to be multiple dozens or hundreds of cases every year, easily satisfying numerosity. *See Sueoka v. United States*, 101 F. App'x 649, 653 (9th Cir. 2004) (explaining that, in the context of injunctive and declaratory relief, the numerosity requirement is relaxed and Plaintiffs may draw inferences from the evidence to estimate the number of unknown and future members).

Defendants may argue that Defendant Howell's decision to *nolle prosequi* particular criminal eviction cases, along with her "current" plan to refrain from pursuing new cases, *see* Doc. 15-1 at 2, moot the claims of putative class members, resulting in an insufficiently numerous class. But Defendant Howell's discretionary plans have no bearing on the numerosity analysis in this case. A defendant's voluntary cessation of challenged conduct moots a case only "if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000) (internal citation omitted). Such absolute clarity of any reasonable expectation of reoccurrence as to any class member is absent here. First, Defendant Howell has not promised to stop prosecuting these cases; she has simply represented that she has no "current" plans to bring such cases. Second, a successor in interest could decide to resume

prosecutions. *See, e.g., Hatchett v. Barland*, 816 F. Supp. 2d 583, 592–95 (E.D. Wis. 2011) (prosecutors’ decisions to suspend enforcement did not moot constitutional challenge where officers and their successors remained free to enforce valid statutes). Third, neither Defendant Howell’s decisions, nor those of successors in office, prevent sheriff’s offices and police departments from arresting individuals allegedly in violation of Arkansas Code § 18-16-101. These individuals are still subject to arrest and are thus included in Plaintiffs’ proposed class. Finally, Plaintiffs’ propose a state-wide class — the decisions of Defendant Howell and her successors do not prevent prosecutors from Arkansas’ 74 other counties, or even other prosecutors within Hot Spring County, from bringing criminal eviction charges.¹ For all these reasons, any decision on Defendant Howell’s part regarding enforcement of Arkansas Code § 18-16-101 does not defeat numerosity.

The proposed class is not only numerous, but the nature of the proposed class also makes joinder impracticable. The statewide nature of the class makes joinder impracticable, as it creates a large geographical dispersion of class members. *Sanft v. Winnebago Industries, Inc.*, 214 F.R.D. 514, 523 (N.D. Iowa 2003), *amended in part*, 216 F.R.D. 453 (N.D. Iowa 2003) (“The finding of geographic dispersion generally supports a finding of numerosity because such a finding supports the proposition that joinder is impracticable.”). Another factor that makes joinder impracticable is the fact that class members lack the financial resources to bring individual lawsuits to vindicate their rights, seeing as though they lack the financial resources to pay rent. This Court may “consider the financial resources of the potential class members with regard to their ability to institute individual lawsuits” in determining whether numerosity is

¹ The Malvern City Attorney, located within Hot Spring County, may also bring criminal charges under Ark. Code § 18-16-101. Ex. B, Defendant Howell’s Supplemental Discovery Responses of March 14, 2022 at 2.

satisfied, and indigent class members are likely unable to bring individual lawsuits. *Id.* at 524. Furthermore, because the proposed class “includes unidentified future class members, joinder of all class members is impracticable.” *J.S.X. Through Next Friend D.S.X. v. Foxhoven*, 417CV00417SMRHCA, 2019 WL 1147144, at *7 (S.D. Iowa Mar. 13, 2019); *see also M.B. by Eggemeyer v. Corsi*, 327 F.R.D. 271, 278 (W.D. Mo. 2018) (finding numerosity where future class members are included because “future members of the putative class are necessarily unidentifiable”); *Jordan v. Los Angeles County*, 669 F.2d 1311, 1320 (9th Cir. 1982), *vacated on other grounds, County of Los Angeles v. Jordan*, 459 U.S. 810 (1982) (noting that numerosity is satisfied for any class that contains “unnamed and unknown future [class members]” because “joinder of unknown individuals is inherently impracticable.”). For all these reasons, joinder is impracticable, and numerosity is satisfied.

ii. Facing a Class-Wide Threat of Criminal Prosecution for Non-Payment of Rent, Plaintiffs Satisfy the Rule 23(a)(2) Commonality Requirement

Centered on the constitutionality of Arkansas Code § 18-16-101, this case raises numerous common questions of fact and law, satisfying the commonality requirement. As an example of a common factual question, this case asks whether Arkansas Code § 18-16-101 allows for tenants to be automatically stripped of their property interests upon a landlord’s allegation of non-payment of rent and criminally charged for that non-payment, without verification of a landlord’s allegations regarding rent arrears. Because this question concerns how the statute operates against any individual subject to prosecution, it is a question common to all class members. As another example, if this Court finds, as Plaintiffs allege, that Arkansas Code § 18-16-101 allows for criminal prosecution of a renter without an ability-to-pay inquiry, then that finding will speak to how the statute may be applied against all class members, who are, by definition, unable to afford rent.

This case is also replete with questions of law common to all class members. For example, Plaintiffs' case asks whether the Due Process Clause prohibits tenants from being automatically stripped of their property interests upon a landlord's allegation of rent non-payment of rent. This case also asks whether the Due Process Clause prohibits criminal charges for an individual's failure to pay rent, without any cap on the number of charges or associated fines. If this Court holds that these features of the Criminal Eviction Statute violate due process, that finding will resolve a common legal claim in favor of all putative class members, all of whom are currently subject to criminal charges, prosecution, and fines under the statute. And similarly, if this Court holds that the Criminal Eviction Statute cannot stand because the Equal Protection Clause prohibits the government from criminalizing a person's inability to afford rent, then all putative class members will have a legal question resolved in their favor because all are unable to afford rent. The same reasoning applies to the remaining questions of law: all putative class members bring the same constitutional claims against the statute, so the resolution of a claim for or against Plaintiffs will apply broadly to all class members. Those legal questions include whether the Eighth Amendment prohibits the government from criminalizing a renter's poverty status and whether the Excessive Fines Clause of the Eighth Amendment prohibits the charging of daily fines for nonpayment of rent, without any cap on the total fine amount. If class certification were denied, each member of Plaintiffs' proposed class would have grounds to bring a case raising the very same factual questions and legal questions as the questions of fact and law outlined above. The putative class members' questions of fact and law are therefore shared.

Importantly, the resolution of these legal and factual issues will determine whether all class members are entitled to the relief they seek. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) ("What matters to class certification . . . is not the raising of common

‘questions’ — even in droves — but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.”) (emphasis in original). The resolution of this case’s constitutional claims will generate those “common answers” generally applicable to all class members because all class members are at risk of prosecution under the statute, and all seek injunctive and declaratory relief foreclosing that risk of prosecution. Commonality is therefore satisfied.

iii. The Proposed Class Action Satisfies the Rule 23(a)(3) Typicality Requirement Because Named Plaintiffs’ Claims Are Identical to those of All Other Class Members

The proposed class action satisfies the typicality requirement because the Named Plaintiffs’ claims are “typical of the claims . . . of the class.” Fed. R. Civ. P. 23(a)(3). The Named Plaintiffs, like all other Class Members, are at risk of criminal prosecution under Arkansas Code § 18-16-101 and challenge the constitutionality of the law. *See* Doc. 19 at 2–6. The factual questions and legal claims raised by the Named Plaintiffs are not merely typical of the absent class members, they are identical. The Named Plaintiffs challenge the constitutionality of the Criminal Eviction Statute facially and as applied on behalf of all persons similarly situated; their claims are identical to those of the absent class members, who make the same legal challenge. *See DeBoer v. Mellon Mortgage Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995) (“The burden of showing typicality is fairly easily met so long as other class members have claims similar to the named plaintiff.”).

Defendants may argue that Defendant Howell’s decision to *nolle prosequi* the Named Plaintiffs’ criminal case, *see* Doc 15-1 at 2, forecloses the risk of the Named Plaintiffs’ prosecution under Arkansas Code § 18-16-101 and therefore renders their claims atypical. But as discussed — *see supra* Section II.A.i.; Doc. 19 at 3–5 — Defendant Howell’s discretionary decision to *nolle prosequi* the Easleys’ criminal case does not foreclose the risk of their

prosecution as to their original alleged offense of April 19, 2021. As a matter of Arkansas law, a prosecutor remains free to bring a subsequent prosecution after entering a *nolle prosequi*, where the record does not reflect that the *nolle prosequi* was intended as an unconditional dismissal or as the final disposition of the case. *State v. Crawford*, 373 Ark. 95, 98 (2008) (internal citations omitted). The *nolle prosequi* motions filed with respect to Named Plaintiffs Terry and Cynthia Easley do not indicate an intention of unconditional dismissal or final disposition. *See* Doc 15-1 at 3–4. Moreover, as of the time of filing this motion, the Easleys remain in their home without paying rent, *see* Pruette Decl. ¶ 9, and Arkansas’ criminal eviction statute designates *each individual day* that a tenant remains in his home past the 10-day notice period as a *separate criminal offense*. Thus, while Defendant Howell has chosen to not pursue a criminal eviction case against the Named Plaintiffs for the alleged April 19, 2021 violation, Defendant Howell can still bring charges for any other day (within the one-year statute of limitations period) that the Easleys have remained in their home. *See, e.g., City of Los Angeles v. Lyons*, 461 U.S. 95, 107 n. 8, 109–10 (1983) (noting that being in violation of a law contributes to reasonable expectation of being prosecuted under the law and thus being injured under the law). Therefore, the Named Plaintiffs remain at risk of prosecution. By definition, the putative class members are at risk of prosecution under the Criminal Eviction Statute; the Named Plaintiffs are thus typical of the proposed class in that respect.

iv. The Proposed Class Action Satisfies the Rule 23(a)(4) Adequacy Requirement Because the Class Representatives and Class Counsel Are Prepared to Advocate for the Class Members’ Rights Vigorously and Without Compromise

Class certification is proper because the representative parties “will fairly and adequately protect the interests of the class.” *Rattray v. Woodbury Cty., IA*, 614 F.3d 831, 835 (8th Cir. 2010) (quoting Fed. R. Civ. P. 23(a)(4)). Given the competence of the class representatives, the

unity of interests between the representatives and absent class members, and the experience of class counsel, the proposed class action satisfies the two main concerns of the adequacy inquiry: competence to fulfill duties to the class and the lack of conflicts of interest. *See Cromeans v. Morgan Keegan & Co.*, 303 F.R.D. 543, 553 (W.D. Mo. 2014) (explaining that adequacy requires that class representatives and their counsel are “able and willing to prosecute the action competently and vigorously,” and that “each representative’s interests are sufficiently similar to those of the class that it is unlikely that their goals and viewpoints will diverge”) (internal citation omitted).

Named Plaintiffs Cynthia and Terry Easley are well-suited to the task of advocating for the class members’ rights vigorously and without compromise. In the fall of 2020, the Easleys fell behind on rent due to the expenses incurred as the result of losing running water in their home, and they were later served with a failure to vacate eviction notice pursuant to Arkansas Code § 18-16-101. *See* Docs. 2-1 at ¶¶ 11, 19, 21; 2-2. The Easleys are therefore members of the proposed class, and their interests are completely aligned with, and not antagonistic to, the interests of the absent class members. All putative class members — Named Plaintiffs and absent members alike — share an interest in the vindication of their constitutional claims. The Named Plaintiffs have no known conflicts with absent class members, *see* Pruette Decl. ¶ 5, nor are any likely to arise. Courts have found adequacy defeated due to a conflict of interest where the legal theories or legal interests of some putative class members directly oppose others’. *See, e.g., Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280–1281 (11th Cir. 2000) (reversing class certification where some putative class members claimed contracts harmful and others benefitted from those same contracts); *Hughes v. WinCo Foods*, No. 11–00644, 2012 WL 34483, at *7 (C.D.Cal. Jan 4, 2012) (in unpaid wages case, holding that a subordinate could not

adequately represent a supervisor). But here, all putative class members are tenants and all seek injunctive relief against the same statute, relying on the same set of legal claims. The fact that Plaintiffs are not seeking damages eliminates a common source of conflict, as Defendants cannot simply settle with the Named Plaintiffs individually to moot their claims.

The counsel representing the proposed class are well-qualified and prepared to vigorously prosecute this matter. The Named Plaintiffs are represented by attorneys from Equal Justice Under Law, who have extensive experience with similar cases challenging debtors' prisons, haven undertaken several complex civil rights matters in federal court. Pruette Decl. ¶ 6. Counsel have extensive knowledge of how Arkansas' Criminal Eviction Statute works in practice and the relevant constitutional and statutory law. Pruette Decl. ¶¶ 7–8. Counsel have worked closely with Named Plaintiffs Cynthia and Terry Easley over several months, allowing counsel to develop substantial relationships with them and learn how the Criminal Eviction Statute has impacted their lives. Pruette Decl. ¶ 7. Counsel have also engaged in substantial discovery and briefing in this action. Pruette Decl. ¶ 7. The interests of the class members will therefore be fairly and adequately protected by the Named Plaintiffs and their attorneys.

B. The Proposed Class Action Satisfies the Requirements of Rule 23(b)(2) for Injunctive and Declaratory Relief Because Defendants' Application of the Criminal Eviction Statute Applies Generally to the Class

Class certification under Rule 23(b)(2) is warranted because “the par[ties] opposing the class” (here, Defendants) “have acted or refused to act” (by enforcing the Criminal Eviction Statute) “on grounds that apply generally to the class[]” (such that all putative class members, who by definition are unable to afford rent, face the risk of prosecution). Fed. R. Civ. P. 23(b)(2). The Supreme Court has explained that “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class” — only when the injunction warranted is of an “indivisible nature.” *Dukes*, 564 U.S. at 360. In this case,

all members of the proposed class seek the same injunctive and declaratory relief: an order invalidating Arkansas Code § 18-16-101. The injunction sought, indivisible in nature, is applicable to all class members because all class members are subject to prosecution and the order sought would prevent that risk of prosecution for all members. The relief would not vary at all from one class member to another and resolution of the putative class members' legal claims would not require any individualized determinations. Certification for the Injunctive Classes under Rule 23(b)(2) is therefore warranted.

Courts routinely find that forward-looking classes seeking injunctive and declaratory relief against state statutes or policies meet the requirements of Rule 23(b)(2). *See, e.g., Thompson v. Bond*, 421 F. Supp. 878, 885–86 (W.D. Mo. 1976) (certifying class of incarcerated individuals seeking invalidation of a “civil death” state statute); *Jones v. Desantis*, No. 4:19CV300-RH/MJF, 2020 WL 5646124, at *5–8 (N.D. Fla. Apr. 7, 2020) (certifying classes of individuals convicted of felonies seeking injunctive and declaratory relief against felony reenfranchisement statute); *M.B. by Eggemeyer v. Corsi*, 327 F.R.D. at 282 (W.D. Mo. 2018) (certifying statewide class of children in foster care challenging state agency’s prescription and administration of psychotropic medications); *Rodriguez v. Hayes*, 591 F.3d 1105, 1111, 1125–26 (9th Cir. 2010) (reversing district court’s denial of class certification, holding that a class of immigration detainees seeking injunction requiring individual bond hearings met Rule 23(b)(2) requirements). Consistent with these cases, Plaintiffs seek an indivisible injunction invalidating the Criminal Eviction Statute, which will prevent the law from harming all putative class members. Plaintiffs’ proposed class therefore merits certification under Rule 23(b)(2).

III. Conclusion

For the reasons above, Plaintiffs respectfully request that this Court grant their Motion for Class Certification.

Respectfully submitted,

By: /s/ Phil Telfeyan
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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2022, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to the counsel of record.

/s/ Natasha Baker
Attorney for Plaintiffs

EXHIBIT A

Declaration of Edward Pruette

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS**

)
CYNTHIA EASLEY and TERRY)
EASLEY, on behalf of themselves and)
others similarly situated,)
Plaintiffs,)
v.)
TERESA HOWELL in her official capacity)
as PROSECUTING ATTORNEY FOR)
MALVERN/HOT SPRING COUNTY,)
MIKE CASH in his official capacity as HOT)
SPRING COUNTY SHERIFF,)
Defendants.)
)

Case No. 6:21-cv-06125-SOH
(Class Action)

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. My colleagues and I have reviewed Defendants’ preliminary discovery production showing cases prosecuted under Arkansas Code § 18-16-101 (Def. Howell Docs. pp. 11–12; HSC_Sheriff000001 – HSC_Sheriff000223) and have also reviewed records of additional cases prosecuted under Arkansas Code § 18-16-101 using CourtConnect, Arkansas’ online court records system. Through this review, we identified over 100 cases of criminal eviction under Arkansas Code § 18-16-101 since 2018 in Hot Spring County alone.

5. To our knowledge, there are no conflicts of interests between Named Plaintiffs Cynthia and Terry Easley and the putative class members.
6. Attorneys at Equal Justice Under Law have extensive experience with similar cases, having undertaken several constitutional civil rights class action lawsuits challenging debtors' prisons. In six 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. Phil Telfeyan, Co-Founder and Executive Director of Equal Justice Under Law, was directly involved in all of these cases.
7. By working closely with Named Plaintiffs over the course of several months, speaking with other individuals similarly impacted by Arkansas' Criminal Eviction Statute, engaging in the discovery process with Defendants' counsel, and conducting independent research, we have gained extensive knowledge as to how the statute works in practice and how it impacts individuals unable to afford rent.
8. Our experience in past cases challenging state and local laws and policies on federal constitutional grounds, combined with our significant research into the Criminal Eviction Statute, has allowed us to develop a thorough understanding of how the statute relates to the relevant state and federal constitutional law.

9. As of March 31, 2022, Named Plaintiffs Cynthia and Terry Easley remain in their home without paying rent.

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

A handwritten signature in black ink, appearing to be 'E. Pruette', written over a horizontal line.

By Edward Pruette
March 31, 2022

EXHIBIT B

Defendant Howell's Supplemental Discovery Responses of March 14, 2022



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March 14, 2022

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Re: Howell's Supplemental Discovery Responses *Easley v. Howell, et al*, United States District Court for the Western District of Arkansas, Case No. 6:21CV-06125

To Counsel,

Below and enclosed are Defendant Howell's Supplemental discovery responses based upon the letter from you dated March 7, 2022 and the subsequent telephone conversations between us.

Supplemental/Follow Up to Interrogatory No. 1: What is the process by which a prosecutor "approves" a third party affidavit regarding Ark. Code § 18-16-101? How does a "case to move forward" and how is a defendant "notified to appear"?

Supplemental Response to Interrogatory No. 1: The most common way that a case initiated and processed pursuant to Ark. Code Ann. § 18-16-101 is as follows: A third party obtains a "Criminal Summons/ Affidavit for Warrant of Arrest." In the form, the affiant provides the facts and attests that the information provided in the truthful and accurate. The document is then signed by the affiant in the presence of a notary, who also signs the document. The document is then presented by the affiant to the Hot Spring County Prosecutor's Office. A deputy prosecutor reviews the document presented and reads the facts provided by the affiant to determine if based upon § 18-16-101 reasonable cause exists to proceed forward. If so, the prosecutor signs the document and submits the document to the Hot Spring County District Court. The District Court Judge reviews the information provided and determines if the facts present reasonable and probable cause sufficient to issue an arrest warrant for the potential defendant. If so, then the judge signs the document. The document is given to the district court clerk and an arrest warrant is issued for the potential defendant. At that point, the warrant may be served in a variety of ways, which do not involve the Hot Spring County Prosecutor's Office.

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Once the potential defendant is served with the warrant, then the normal criminal procedure process is followed, including plea and arraignment. If the case progresses to a trial, the a bench trial is held before the Hot Spring County District Court judge and the affiant takes the stand as a witness and is questioned by prosecutor and defendant. Once all the evidence is presented, then the judge makes a decision in the case.

Supplemental Response to Request for Production No. 1: The spreadsheet¹ presented is enclosed hereto and with bates numbers, Howell Docs. 11-12. This spreadsheet was generated by the Hot Spring County District Clerk's Office at the requests of the Hot Spring County Prosecutor's Office in December, 2021. Additionally, cases with the Case ID that begin with "MVC" are cases handled by the Malvern City Attorney's Office. Cases that begin with "MVS" or "MVK" are handled by the Hot Spring County Prosecutor's Office.

Documents for the requested cases are indicated below:

- MVK-20-19 Howell Docs. p. 13-38;
- MVS-20-46 Howell Docs. p. 39-56;
- MVS-20-47 Howell Docs. p. 57-59;
- MVS-20-783 Howell Docs. p. 60-65;
- MVS-20-887 Howell Docs. p. 66-79; and
- MVS-20-889 Howell Docs. p. 80-96.

Supplemental Response to Request for Production No. 2: There is no standard documents regarding the decision to *nolle prosequi* cases brought pursuant to Ark. Code Ann. § 18-16-101 as each case and decision is made on an independent basis. An example of a record reflecting a decision to *nolle procequi* a case is found at Howell Docs. p. 95.

Supplemental Response to Request for Production No. 3: There are no documents nor any form of training manuals that exists that are responsive to Plaintiff's Request for Production No. 3. For an explanation of how cases involving Ark. Code Ann. § 18-16-101 are handled by the Hot Spring County Prosecutor's Office, please see Supplemental Response to Interrogatory No. 1.

Sincerely,



Vincent P. France
Assistant Attorney General

Enclosure:

¹ An electronic version was emailed by undersigned counsel to Plaintiff's counsel on March 8, 2022, which did not contain any bates numbers.