

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Plaintiff Maurice Walker (“Walker”) filed the Lawsuit while he was in the custody of the City of Calhoun after an arrest for a misdemeanor, alleging that

the City had a policy which unlawfully kept him in the custody of the City because he could not afford to post a cash bond pursuant to an established schedule for the alleged offense.

2. The Lawsuit, a class action for declaratory and injunctive relief, was filed by Walker based on allegations that the City's money bail policy violated the Fourteenth Amendment to the United States Constitution. The Lawsuit also included a claim for individual damages asserted by Mr. Walker. The City of Calhoun denies liability in this matter. The Plaintiff does not endorse all aspects of the Standing Bail Order (Exhibit A), and in particular disagrees that indigent persons should be subject to up to 48 hours of detention before an inquiry into ability to pay. However, this specific provision of the Standing Bail Order has been deemed to be constitutional by the controlling ruling of the Eleventh Circuit Court of Appeals for the United States in *Walker v. City of Calhoun*, 901 F.3d 1245 (11th Cir., 2018) (Cert. Denied 139 S.Ct. 1466(Mem) (2019)).

3. The parties agree, however, that a resolution of the claims in the Lawsuit would benefit all parties by avoiding the time and expense of further litigation.

4. The parties have entered into this Settlement Agreement in reliance on the mutual representations contained herein.

5. In consideration of the mutual promises of the parties set forth below, the undersigned parties agree to a final resolution of all claims for declaratory, injunctive, and other nonmonetary relief related to the Lawsuit.

6. Subject to the Court's approval under Rule 23(e) of the Federal Rules of Civil Procedure, it is hereby agreed by and between the undersigned as follows:

II. AGREEMENT REGARDING ARRESTEES

7. In consideration of the promises stated herein, the City of Calhoun agrees as follows:

8. The City of Calhoun Municipal Court will not return to the bail policies or procedures that were in effect when Plaintiff Maurice Walker was arrested in September 2015.

9. The City of Calhoun Municipal Court shall include the Gordon County Sheriff's Office within the present version of Standing Bail Order for 2019, hereto attached as Exhibit "A", as the municipality relies upon the jail facilities operated by this law enforcement agency for custody of all pre-trial detainees under the jurisdiction of the City of Calhoun Municipal Court, to ensure that no arrestee under the jurisdiction of the City of Calhoun Municipal Court will be held in jail after arrest pursuant to a secured monetary bond solely because the arrestee cannot afford to pay the bond amount, except for a reasonable amount of time, not to exceed 48 hours,

needed to process the arrestee and bring her or him before a neutral decision maker for a hearing on the arrestee's indigence and alternative release provisions.

10. The City of Calhoun will incorporate into a resolution for re-appointment of the current Judge of Municipal Court, and all individuals appointed in the future to serve in this judicial capacity a provision requiring that the Standing Bail Order attached hereto as Exhibit A is followed as the policy of the Calhoun Municipal Court. *See* O.C.G.A. § 36-32-2(a).

11. In accordance with Rule 23(e) of the Federal Rules of Civil Procedure, the parties will file a joint motion for preliminary approval of the parties' proposed settlement of this matter. Therein, the parties will request that the Court order: (a) preliminary approval of the settlement, (b) approval of a process for giving notice to the class, (c) scheduling of a final fairness hearing, and (d) following the final fairness hearing, final approval of the settlement agreement. This Agreement shall become effective on the date that it is approved by the Court in accordance with Rule 23(e) of the Federal Rules of Civil Procedure.

III. FEES, COSTS, AND MONETARY RELIEF

12. Walker's individual claims for damages, attorneys' fees, costs, and other monetary relief will be resolved by a separate agreement. The promises expressed in this Settlement Agreement are expressly conditioned on the parties

reaching a separate agreement disposing of Walker's claims for damages, attorneys' fees, costs, and other monetary relief.

APPROVED AND CONSENTED TO BY:

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EXHIBIT A

**IN THE MUNICIPAL COURT OF THE CITY OF CALHOUN
STATE OF GEORGIA**

**TO: ALL MUNICIPAL COURT STAFF
CHIEF OF POLICE, CALHOUN POLICE DEPARTMENT
SHERIFF OF GORDON COUNTY**

**2019 STANDING ORDER REGARDING PRE-TRIAL APPEARANCE,
ESTABLISHMENT OF BONDS IN ADVANCE OF INITIAL APPEARANCE
PURSUANT TO STATE LAW AND INDIVIDUALIZED INDIGENCY
DETERMINATIONS**

Per the authority vested upon the Municipal Court for the City of Calhoun pursuant to the Charter of the City of Calhoun, Georgia, as approved by local act of the Georgia General Assembly on April 8, 1983 (Ga. L. 1983, p. 4710), and as amended by Ord. No. 625A, §2, 12-8-1997 and Ord. No. 754, § 3, 5-26-2003; and in accordance with the jurisdiction granted by the Georgia General Assembly over certain statutory misdemeanor and high and aggravated misdemeanor criminal matters by O.C.G.A. §§ 36-32-1, *et seq.* and §§ 40-13-20, *et seq.*; in accordance with local ordinance violations as set forth in the Code of Calhoun, Georgia; the applicable Georgia Uniform Superior Court Rules regarding criminal procedure; and all other applicable rules and/or policies adopted by the Council for Municipal Court Judges for the State of Georgia, established by O.C.G.A. § 36-3240, the Court hereby issues the following Order regarding a pre-established schedule for secured bail, the initial appearance for persons arrested for both state statutory criminal charges and local ordinance violations; and recognizance bond for indigent persons as follows:

I. Rights of bail for persons accused of statutory criminal offenses or municipal ordinance.

The United States Supreme Court has established the accused is not entitled to bail as a

constitutional right. See *U.S. v. Salerno*, 481 US 739, 754, 107 S. Ct. 2095, 95 L. E. 2d 697 (1987) (citing the original source for Eighth Amendment in English Bill of Rights, majority finds very language of the Amendment “fails to say all arrests *must* be bailable” [emphasis added]). The accused is protected by both Article I, Section I, Paragraph XVII of the of the Constitution of The State of Georgia (1983) with regard to excessive bail, and the Eighth Amendment, as applied to the States by virtue of the Fourteenth Amendment of the United States Constitution.

The foremost consideration when fixing bail is the probability that the accused, if free, will appear at trial, and the amount assessed is within the sole discretion of the trial court and will not be overturned absent a clear abuse of discretion. *Myers v. St. Lawrence*, 289 Ga. 240, 710 S.E. 2d 557 (2011). The factors considered when establishing a bail include the defendant’s ability to pay or provide secured bail, the seriousness of the offense, and his/her character and reputation. *Dunn v. Edwards*, 275 Ga 458, 569 S.E. 2d 525 (2002); *Pullin v. Dorsey*, 271 Ga. 882, 525 S.E. 2d 87 (2000).

In accordance with O.C.G.A. § 17-6-1(b)(1) bail and bond decisions shall be controlled by the following language adopted by the Georgia General Assembly in 2018:

“All offenses not included in subsection (a) of this Code section, inclusive of offenses that are violations of local ordinances, are bailable by a court of inquiry. Except as provided in subsection (g) of this Code section, at no time, either before a court of inquiry, when indicted or accused, after a motion for new trial is made, or while an appeal is pending, shall any person charged with a misdemeanor be refused bail. When determining bail for a person charged with a misdemeanor, courts shall not impose excessive bail and shall impose only the conditions reasonably necessary to ensure such person attends court appearances and to protect the safety of any person or the public given the circumstances of the alleged offense and the totality of circumstances.”

Also, in accordance with O.C.G.A. § 17-6-1(e) bail and bond decisions shall be controlled by the following language adopted by the Georgia General Assembly in 2018:

“(1) A court shall be authorized to release a person on bail if the court finds that the person:

- (A) Poses no significant risk of fleeing from the jurisdiction of the court or failing to appear in court when required;
 - (B) Poses no significant threat or danger to any person, to the community, or to any property in the community;
 - (C) Poses no significant risk of committing any felony pending trial; and
 - (D) Poses no significant risk of intimidating witnesses or otherwise obstructing the administration of justice.
- (2) When determining bail, as soon as possible, the court shall consider:
- (A) The accused's financial resources and other assets, including whether any such assets are jointly controlled;
 - (B) The accused's earnings and other income;
 - (C) The accused's financial obligations, including obligations to dependents;
 - (D) The purpose of bail; and
 - (E) Any other factor the court deems appropriate.”

Finally, in accordance with O.C.G.A. § 17-6-1(f)(1) the adoption of a published, pre-established bail schedule is authorized by the following language adopted by the Georgia General Assembly in 2018:

“Except as provided in subsection (a) of this Code section or as otherwise provided in this subsection, the judge of any court of inquiry may by written order establish a schedule of bails and unless otherwise ordered by the judge of any court, an accused

shall be released from custody upon posting bail as fixed in the schedule.”

The Georgia Supreme Court has noted the absence of any “decision holding that an indigent defendant is entitled to have bail set which he can meet.” *Chafin v. Jones*, 243 Ga. 267, 253 S.E. 2d 389 (1979).¹

II. Statutory authority for an established bond schedule for criminal violations of the Official Code of Georgia.

Pursuant to O.C.G.A. § 17-6-1 the Court for the City of Calhoun, Georgia, as a court of inquiry with original jurisdiction acting in the stead of the Superior Court of Gordon County, Georgia, for certain offenses hereby re-adopts and re-affirms the written and established bail schedule attached as Exhibit “A.” The provisions of said exhibit are hereby incorporated by reference by this standing order as if fully set forth herein.

Any party, defendant, accused, or other person required or permitted by law to give or post bail as surety or security in a criminal matter may discharge this requirement by depositing cash in the amount of said bail. O.C.G.A. § 17-6-4(a). Additionally, an accused may provide his/her driver’s license as collateral for any bail as provided for by O.C.G.A. § 17-6-2.

The purpose is to permit the posting of bail without a delay associated with the “First Appearance” within 48 hours of being confined to the Gordon County Jail, as mandated by Georgia Uniform Superior Court Rule 26.1. It is the opinion of the Court that the employ of such a schedule, as authorized by state law, “provides speedy and convenient release for those who have no difficulty

¹The Court takes note that this opinion follows *after* the opinion of the 5th Circuit opinion in *Pugh v. Rainwater*, 572. F 2d. 1053 (5th Cir. 1978) which has yet to be cited on the same issue by a later or modern opinion of the 11th Circuit Court of Appeals relating to the issue of bail for indigent persons.

in meeting its requirements[.]” *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978).

The initial amount on said schedule as indicated by the “highlighted” yellow color represents the amount necessary for secured bail by payment of same. This amount represents the expected fine with applicable surcharges for all offenses charged as mandated by State Law for disposition should the accused later enter a plea, or be found guilty following a bench trial. Should the accused person seek to make secured bail by property or surety, the amount shall then be twice that as set forth in said schedule to ensure attendance at trial and prevent avoidance of penalty or sanction.

In particular, this schedule, authorized by the Georgia General Assembly, shall apply to all custodial arrests permitted by O.C.G.A. §§ 17-4-20 and 17-4-23, or other applicable code provisions for the following offenses:

- (a) Possession of one ounce or less of marijuana in Violation of the Georgia Controlled Substances Act (O.C.G.A. §§ 16-13-30, 16-13-25(2)(P)(i) & (ii) and as sentenced by O.C.G.A. § 16-13-2(b)) pursuant to O.C.G.A. §36-32-6(a);
- (b) Transactions in Drug Related Objects (O.C.G.A. § 16-13-32) pursuant to O.C.G.A. § 36-32-6.1;
- (c) Operation of Motor Vehicles Without Insurance (O.C.G.A. § 40-6-10) pursuant to O.C.G.A. § 36-32-7;
- (d) Operating Motor Vehicle Without Certificate of Emission Inspection (O.C.G.A. § 129-55) pursuant to O.C.G.A. § 36-32-8;
- (e) Misdemeanor Theft by Shoplifting (O.C.G.A. § 16-8-14(b)(1)) pursuant to O.C.G.A. § 36-32-9;
- (f) Criminal Offenses Involving Alcohol and Any Persons Under 21 Years of Age, Including Possession, Sale, Purchase or Furnishing to Same (O.C.G.A. § 3-3-23(a)(1) through (5)) pursuant to O.C.G.A. § 36-32-10;
- (g) Criminal Trespass (O.C.G.A. § 16-7-21) pursuant to O.C.G.A. § 36-32-10.1;

- (a) All Violations of Title 40: Motor Vehicles and Traffic of the Official Code of Georgia Annotated pursuant to O.C.G.A. § 40-13-21;
- (b) Operating an Unregistered Vehicle on Public Highway (O.C.G.A. § 40-2-8) pursuant to O.C.G.A. § 40-13-22; and
- (c) All other offenses that might otherwise be amended or added to be included by the authority envisioned by O.C.G.A. § 36-32-10.2 as the Georgia General Assembly shall deem applicable.

III. Scheduling of hearing to consider the setting of bond/bail for individuals not otherwise capable of making bail pursuant to the schedule established in accordance with O.C.G.A. §17-61(e) and as approved by the Eleventh Circuit Court of Appeals in *Walker v. City of Calhoun*, 901 F.3d 1245 (11th Cir. 2018) (Cert. Denied, 139 S.Ct. 1446 (Mem) (2019)).

For those individuals who do not obtain release pursuant to the secured bail schedule as outlined above, within forty-eight (48) hours from their arrest, they shall then be brought before the Court for a “first appearance” for the purposes of bail and bond in accordance with O.C.G.A. § 17-6-1(e). In addition to those obligations established by the Statute, the accused shall be represented by court appointed counsel. At this time the accused will be given the opportunity to object to the bail amount set for him or her by the schedule previously adopted by this Court and as authorized by O.C.G.A. § 17-6-1(f)(1), including any claim of indigency. The Court shall then determine whether the accused is unable to post a secured bail because he/she is indigent, making an individualized determination based upon the evidence provided. The Court shall then determine, following an evidentiary hearing with the assistance of appointed counsel, whether the accused is able to pay the secured bail amount, making an individualized determination based upon

the evidence provided. Should the Court find that the accused is able to pay the secured bail amount, or lacks sufficient resources for same, the Court shall reduce its decision to writing as an order of the Court and shall include in its order the facts and circumstances on which it relied in considering the accused's ability to pay including any alternative release provisions for bond/bail.

The standard for making an individualized determination of indigency shall be that established by O.C.G.A. § 36-32-1(f) and (g), as defined by O.C.G.A. § 17-2-2(6)(A) regarding an "indigent person" charged with a misdemeanor, violation of probation, or a municipal code offense punishable by imprisonment. These legislative provisions have established an "indigent person" or "indigent defendant" for appointed legal counsel as one "earning less than 100 percent of the federal poverty guidelines, unless there is evidence that the person has other resources that might be reasonably used to employ a lawyer without undue hardship on the person or his or her dependents[.]" For purposes of this order, "100 percent of the federal poverty guidelines" shall specifically mean the guidelines published in the Federal Register of January 22, 2015, Volume 80, Number 14 on ppgs 3237, 3238 (a copy of same being attached as Exhibit "B" hereto), and as may be further promulgated and adopted for subsequent years in the Federal Register.

Should the Court find, based upon the evidence then provided that the accused is indigent by said standard, then he/she shall be subject to release on recognizance without making a secured bail in accordance with O.C.G.A. § 17-6-1(i). Said individual shall then be provided written notice of the date for the next proceeding or trial. It shall be the responsibility of the accused to notify the Clerk of Municipal Court should he/she have a change of residence or mailing address prior to a adjudication and sentencing to ensure notice of any change in the scheduled proceedings.

In the unlikely event that no hearing can be held within the forty-eight (48) hour time frame established by Georgia Uniform Superior Court Rule 26.1, then the accused shall be released on a recognizance bond in accordance with O.C.G.A. § 17-6-1(i).

The staff of the Gordon County Jail shall inform the Municipal Court staff of any such accused in a timely fashion and shall additionally facilitate his/her appearance via video transmission or teleconference at a time to be set by the Court.

IV. Ability of any person charged with a violation of The Code of Calhoun, Georgia (local ordinance violations) not otherwise a misdemeanor offense as defined by statutory law to post unsecured bond.

All persons charged with violations of The Code of Calhoun, Georgia who have no outstanding failure to appear arrest warrant from the City of Calhoun, or any other similar governing authority duly established by the Georgia General Assembly or the Constitution of The State of Georgia, shall be released on an unsecured appearance bond in the amount established by the aforementioned bail schedule. The unsecured appearance bond form which shall be used is hereto attached as Exhibit "C," and same is incorporated as if fully set forth herein.

SO ORDERED and DECREED this the _____ day of _____, 2019.

SUZANNE H. SMITH, CHIEF
JUDGE MUNICIPAL COURT
CITY OF CALHOUN, GEORGIA
STATE OF GEORGIA

STANDING ORDER FOR BAIL
PROCEDURES AND SCHEDULE
MUNICIPAL COURT
CITY OF CALHOUN
STATE OF GEORGIA