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 Attorneys for Plaintiffs Riana Buffin and Crystal Patterson

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

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

THIRD AMENDED CLASS ACTION COMPLAINT

Introduction

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

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

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

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

Nature of the Action¹

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

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

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

6 **Jurisdiction and Venue**

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

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

11 **Intradistrict Assignment**

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

14 **Parties**

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

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

1 based detention scheme.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 24. The Attorney General has direct supervision over every county sheriff in the state.
 6 Cal. Const. Art. V, § 13; Cal. Gov't Code § 12560. Several statutory provisions give the
 7 Attorney General specific supervisory powers over sheriffs. See, e.g., Cal. Gov't Code §§
 8 12524, 12560, 12561.

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

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

19 **Factual Allegations**

20 **A. The Named Plaintiffs Were Held in Jail by the Sheriff and the City and County of** 21 **San Francisco Because They Were Unable to Pay Their Money Bail Amount**

22
 23 27. Ms. Buffin was arrested by San Francisco police on October 26, 2015. She was
 24 accused of grand theft of personal property and conspiracy.

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

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

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

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

9 31. Ms. Buffin was not told when she would be brought to court and was never
10 brought to court for an initial appearance. *See* Ex. 3, Boudin Decl. at ¶ 14. After approximately
11 46 hours in jail, she was discharged when the District Attorney's Office decided not to file
12 formal charges against her.

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

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

16 34. Ms. Patterson was taken to jail and told that she would be released if she paid
17 \$150,000. She was told that she would be kept in jail unless she paid \$150,000. *Id.* at ¶ 3.

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

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

1 *Id.* at ¶ 6.

2 37. Ms. Patterson was not told when she would be brought to court and was never
3 brought to court for an initial appearance. Ex. 3, Boudin Decl. at ¶ 18. Desperate to get home to
4 take care of her aging grandmother, Ms. Patterson was able to convince relatives to pay 1%
5 (\$1,500) of her bail amount to a private bail bond company. Ms. Patterson (and a co-signor)
6 agreed to pay the balance of \$15,000, financed over years “at the maximum rate of interest
7 allowed by law.” After signing the debt agreement and after several hours of processing by the
8 private bail bond company, Ms. Patterson was eventually released, having spent a total of
9 approximately 31 hours in jail.

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

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

18 **B. Defendants’ Wealth-Based Detention Scheme Detains Arrestees Who Cannot Pay**
19 **Their Money Bail Amount while Releasing Those Who Can Pay**
20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **C. Defendants' Wealth-Based Detention Scheme Caused Plaintiffs To Be Held in Jail**
22 **Solely Due to Their Inability To Pay Bail**
23

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **D. None of the Alternatives to Bail Available in San Francisco Allows for Immediate**
7 **Release of Arrestees**
8

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

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

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

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

22 **E. Defendants' Use of Money Bail Is Not Narrowly Tailored — Nor Is It as Effective as**
23 **Many Other Methods — in Securing Court Attendance or Public Safety**
24

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

1 of relying on money bail, these jurisdictions release arrestees with pretrial supervision practices
2 that effectively promote court attendance and public safety without requiring detention. Pretrial
3 services agencies in other counties employ numerous methods of maximizing public safety and
4 court appearances, including reporting obligations, phone and text message reminders of court
5 dates, rides to court for those without transportation or a stable address, counseling, drug and
6 alcohol treatment, batterer intervention programs, anger management courses, reporting
7 obligations, SCRAM bracelets (for alcohol testing), or electronic monitoring, among other
8 services, when necessary to guard against a particular risk. *See generally* Ex. 5, Murray Aff.; Ex.
9 6, Morrison Aff.

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

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

18 77. Jurisdictions with robust pretrial services and non-monetary conditions of release
19 often achieve court-appearance rates over 90%, with more than 85% of those released pretrial
20 remaining arrest-free (and 98–99% remaining arrest-free for violent crimes). *See generally* Ex.
21 6, Morrison Aff.; Ex. 8, Herceg Aff.

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

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

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

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

19 **Class Action Allegations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 10 • Do the Sheriff and San Francisco have a policy and practice of requiring money bail as a
- 11 prerequisite for post-arrest release?
- 12 • Do the Sheriff and San Francisco immediately release those arrestees wealthy enough to
- 13 pay their money bail amount?
- 14 • Do the Sheriff and San Francisco detain, for any amount of time, those arrestees too poor
- 15 to pay their money bail amount solely because they cannot make that monetary payment?
- 16

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

- 18 • Do the Equal Protection and Due Process Clauses prohibit the government from jailing
- 19 an individual solely due to her inability to make a monetary payment?
- 20 • Does jailing an individual due solely to her inability to afford money bail constitute
- 21 jailing her due to her inability to make a monetary payment?
- 22

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 101. The Class therefore seeks declaratory and injunctive relief to enjoin the Sheriff
14 and San Francisco from detaining arrestees who cannot afford their money bail amounts.
15 Because the putative Class challenges Defendants' scheme as unconstitutional through
16 declaratory and injunctive relief that would apply the same relief to every Class Member, Rule
17 23(b)(2) certification is appropriate and necessary.

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

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

Claims for Relief

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

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

105. The Fourteenth Amendment's Equal Protection and Due Process Clauses prohibit jailing a person because of her inability to make a monetary payment. Defendants violate Plaintiffs' fundamental rights by keeping them in jail solely because they cannot afford to pay money bail.

Request for Relief

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

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

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

- 3
- 4 f. An order declaring that, as applied by Defendants against Plaintiffs and Class
5 Members, California Penal Code section 1269b(b) and any other state statutory or
6 constitutional provisions that require the use of secured money bail to detain any
7 person without an inquiry into ability to pay are unconstitutional;
- 8
- 9 g. A judgment individually compensating the named Plaintiffs for the damages that
10 they suffered as a result of Defendants' unconstitutional and unlawful conduct,
11 including damages resulting from their confinement in jail;
- 12
- 13 h. An order and judgment granting reasonable attorneys' fees and costs pursuant to
14 42 U.S.C. § 1988, and any other relief this Court deems just and proper.
- 15

16 Respectfully submitted,

17
18 /s/ Phil Telfeyan

19 Phil Telfeyan (California Bar No. 258270)

20 /s/ Katherine Hubbard

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