

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

| | | |
|--|---|-------------------------------|
| ANTHONY COOPER, individually |) | |
| and on behalf of a class of similarly |) | |
| situated people, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. 15-cv-425-WKW |
| |) | |
| THE CITY OF DOTHAN, |) | |
| |) | |
| Defendant. |) | (Class Action) |

**MOTION TO CONTINUE OR, IN THE ALTERNATIVE,
TO DENY THE PRELIMINARY INJUNCTION AS MOOT**

COMES NOW the City of Dothan (“City”) and files this motion to continue the hearing set in this matter for June 26, 2015 to give the Parties time to explore settlement given that any constitutional violation has been corrected. In the alternative, the City asks this Court to deny the motion for preliminary injunction as moot given the revised practices of the Municipal Court as set out below. As grounds for the same, the City shows the following:

(1) The complaint and motion for temporary restraining order [Docs. 1 & 2] in this action allege several constitutional violations in connection with the bail schedule as applied to indigent defendants brought before the Dothan’s Municipal Court.

(2) As evidenced by Exhibits 1 and 2 to this document, the City of Dothan has in place a system that is in all respects identical to the system now in place in Clanton, Alabama, wherein individuals upon their arrests are released on a signature bond, unless the individuals have outstanding warrants for failures to appear. See Doc. 16 at 3 (Plaintiff’s counsel’s characterization of the Clanton court’s bail practices); *see also Jones v. City of Clanton*, United States District Court for the Middle District, No. 2:15-cv-34-MHT, Doc. 66 & 66-1 (brief describing current

practices and order setting forth the same). Also, like Clanton, pursuant to Exhibit 1, the defendants in Dothan with outstanding failure to appear warrants are given the opportunity to be released pursuant to a secured bond, cash bond or property bond in accordance with the amounts set out in the bail schedule. *Id.* Also, like Clanton's court's practice, pursuant to Exhibit 1, those who are not released pursuant to the bail schedule are receiving a bond hearing and consideration of their indigence within forty-eight hours of their arrest. *Id.*

(3) The Plaintiff has conceded that the Clanton system, which has now been adopted in all material respects by Dothan, cures any constitutional problems. In Plaintiff Cooper's Reply to Response to Motion for Preliminary Injunction, Plaintiff Cooper's counsel states that "Clanton cured the illegality by using unsecured bond for all new arrestees and therefore ended the regime in which the indigent were kept in jail for several days after an arrest because of their poverty." Doc. 16 at 3.

(4) The City of Dothan's Municipal Court judge, without ever having been made a defendant in this action, initiated these changes.

(5) Under these circumstances – and given that the named Plaintiff has been released from custody and others similarly situated are being released upon signing a signature bond – there is no longer a need for a preliminary injunction or conversion of the TRO into a preliminary injunction.

(6) Also attached hereto is an affidavit of the City of Dothan's Court Administrator attesting to the import and effect of the Judge's order.

(7) As additional grounds for the continuance, the City of Dothan have hired new counsel who have only this afternoon made an appearance in this case and were not hired until the

evening of June 23. Said counsel need additional time to prepare and gather the facts and information relative to the issues raised in the case.

(8) Finally, undersigned counsel contacted Plaintiff's counsel to explore the possibility of continuing the preliminary injunction hearing for the purposes of pursuing settlement, and the Plaintiff's counsel declined.

WHEREFORE, the City of Clanton would request that this Court deny the Motion for Preliminary Injunction as moot and set a status conference in three weeks so that the Parties may explore a global settlement. In the alternative, the City of Clanton would request that the Court continue the preliminary injunction hearing and set a status conference in three weeks during which the Parties can explore settlement.

s/Shannon L. Holliday

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Counsel for Defendant – City of Dothan

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Email: alec@equaljusticeunderlaw.org

s/Shannon L. Holliday
Of Counsel

IN THE CITY OF DOTHAN MUNICIPAL COURT

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**STANDING ORDER REGARDING BAIL
AND INDIGENCY DETERMINATIONS**

Per the authority vested upon the Dothan Municipal Court pursuant to the Code of Alabama (1975), the Alabama Rules of Criminal Procedure, and the Alabama Rules of Judicial Administration, the Court hereby issues the following Order regarding bail for persons arrested on criminal charges to be tried within its jurisdiction:

As reflected through the previously existing schedule for setting bail for persons charged with municipal ordinance violations, all such violations, with the exception of Driving Under the Influence, shall have bail set at \$500.00. Persons charged with Driving Under the Influence shall have bail set at \$500.00. This dollar bail amount shall be referred to as the City of Dothan's "bail schedule." All persons charged with violations of an Ordinance of the City of Dothan, who have no outstanding warrants from the City of Dothan for failure to appear, shall be released pursuant to an unsecured appearance bond in the amount established by the bail schedule. The unsecured appearance bond form which should be used is attached hereto as Addendum A. Any individual with an outstanding failure to appear arrest warrant from the City of Dothan must post a cash bond, commercial surety bond, or the signatory bond of an owner of real property within the State of Alabama in the amount established by the bail schedule. All such bonds shall be in an amount reflecting the total bail figure for all charges pending against a particular person. It is the opinion of the Dothan Municipal Court that the bail schedule for persons charged with Ordinance violations represents the least burdensome manner in which to reasonably ensure a criminal defendant's future appearance in court. Furthermore, utilization of such a bail schedule "provides speedy

and convenient release for those who have no difficulty in meeting its requirements." *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978).

Nothing in this Order, though, shall inhibit the ability of a judicial officer to eliminate bail as an option to a person arrested for violations of Ordinances of the City of Dothan in order to obtain his or her release if that person poses a danger to himself, herself or others in the community. Furthermore, the judicial officer shall adhere to all statutory requirements governing release of persons charged with certain offenses, *e.g.* domestic violence or driving under the influence of alcohol, which may preclude, for instance, the arrestee's immediate release.

For those individuals who do not obtain release pursuant to the bail schedule as outlined above, the Court will, within forty-eight hours of their arrest, hold a hearing either to arraign the arrestee or otherwise hold the proceeding to which the arrestee failed to appear (unless that proceeding was a trial or other matter requiring the setting of a new court date) and to determine, if necessary, what conditions, if any, should be placed on the arrestee pending release. At this time, the arrestee will be given the opportunity to object to the bail amount set for him or her. In the unlikely event that no hearing can be held within the forty-eight hour time frame, the arrestee shall be released pursuant to an unsecured bond. The jailing authority for the City of Dothan shall inform the Municipal Court of any such arrestees in a timely fashion and will facilitate their appearance via teleconference with the Municipal Court of the City of Dothan at the time set by the Court.

Done this 25th day of June 2015.


MUNICIPAL COURT JUDGE
CITY OF DOTHAN

Case No. _____

UNSECURED APPEARANCE BOND

IN THE MUNICIPAL COURT OF THE CITY OF DOTHAN ALABAMA

CITY OF DOTHAN V. _____ [Defendant]

I, _____ [Defendant] agree to pay to the CITY OF DOTHAN the sum of \$_____ and such costs as authorized by law unless I, the defendant, appear before the DOTHAN MUNICIPAL COURT on _____ [date] at _____ [time] and from day to day of each session thereafter (until defendant is discharged by the DOTHAN MUNICIPAL COURT) to answer to the charge of _____, or any other charge as authorized law.

I understand that should I fail to appear as ordered, absent express leave of the Court upon good faith showing by me, I will be arrested for such failure, and that I will be fully obligated to post security in the above specified amount [\$_____] prior to obtaining any subsequent release.

I understand that should my address and other contact information change from that listed below, I must immediately inform DOTHAN MUNICIPAL COURT personnel of such change, and that my failure to do so will not excuse my absence from any future Court ordered appearances **which may be mailed to my home address** related to the charges specified herein. I swear under penalty of perjury pursuant to the laws of the State of Alabama that the forgoing information is correct on the date so indicated.

Signature of Defendant

Date

Address

Phone #

City

State

Zip

Social Security #

Driver's License #

Race

Sex

Height

Weight

Date of Birth

Employer Information

Email Address

ADDENDUM A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

| | | |
|---------------------------------------|---|------------------------|
| ANTHONY COOPER, individually |) | |
| and on behalf of a class of similarly |) | |
| situated people, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. 15-cv-425-WKW |
| |) | |
| THE CITY OF DOTHAN, |) | |
| |) | |
| Defendant. |) | (Class Action) |

AFFIDAVIT OF TONJA MINNIFIELD

STATE OF ALABAMA)

HOUSTON COUNTY)

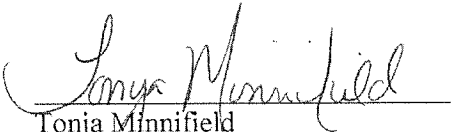
My name is Tonja Minnifield. I am employed by the City of Dothan, and I currently hold the position of Court Administrator of the City of Dothan Municipal Court. I have been a magistrate for over ten (10) years. I am the custodian of records for the City of Dothan Municipal Court. I am over the age of nineteen (19) years, and I have personal knowledge of the facts herein set forth:

The City of Dothan Municipal Court has implemented the use of a bail schedule for persons arrested on criminal charges that will be prosecuted within its jurisdiction. Bail for all ordinance violations and misdemeanors is set at \$300-\$500 per charge. See Exh. 1 hereto. All arrestees to be prosecuted in the Dothan Municipal Court are taken into custody at the City of Dothan jail. All arrestees who had no outstanding warrants for failure to appear violations are now given the ability to obtain release by signing a signature bond. Thereafter they are assigned a court date.

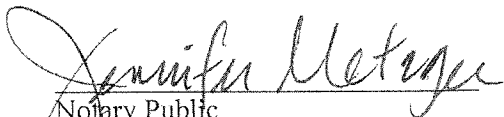
If a criminal defendant, released on bail, fails to appear on the specified court date, an alias warrant is issued for his or her arrest. If arrested on the alias warrant, the defendant will only be given the opportunity to be released pursuant to the bond schedule upon posting a secured bond, cash bond or

property bond.

I have, as of today, reviewed the files of the city of Dothan Municipal Court and can confirm that there are no pretrial detainees in the Dothan City jail with the exception of detainees who had a prior alias (failures to appear) warrant. Those defendants are now being given a hearing to determine their bond amount within forty-eight hours, at which time their indigence is taken into account, and alternatives to money bond are being considered.


Tonja Minnifield

Sworn to and subscribed before me this 25 day of June, 2015.


Notary Public
My Commission Expires: _____

JENNIFER METZGER
Notary Public, AL State At Large
My Comm. Expires August 13, 2016

3. The defendant's prior criminal record, including prior releases on recognizance or on secured appearance bonds, and other pending cases.
4. The identity of responsible members of the community who will vouch for the defendant's reliability.
5. Violence or lack of violence in the alleged commission of the offense.
6. The nature of the offense charged, the apparent probability of conviction, and the likely sentence, insofar as these factors are relevant to the risk of nonappearance.
7. The type of weapon used, e.g., knife, pistol, shotgun, sawed-off shotgun.
8. Threats made against victims and/or witnesses.
9. The value of property taken during the alleged commission of the offense.
10. Whether the property allegedly taken was recovered or not; damage or lack of damage to property allegedly taken.
11. Residence of the defendant, including consideration of real property ownership, and length of residence in his or her place of domicile.
12. In cases where the defendant is charged with a drug offense, evidence of selling or pusher activity should indicate a substantial increase in the amount of bond.
13. Consideration of the defendant's employment status and history, the location of defendant's employment, e.g., whether employed in the county where the alleged offense occurred, and the defendant's financial condition.
14. Any enhancement statutes related to the charged offense.

“(b) BAIL SCHEDULE. The following schedule is established as a general guide for circuit, district and municipal courts in setting bail for persons charged with bailable offenses. Except where release is required in the minimum scheduled amount pursuant to the Rules of Criminal Procedure, courts should exercise discretion in setting bail above or below the scheduled amounts.

**BAIL SCHEDULE (effective September 1, 2007)
Recommended Range**

FELONIES:

| | |
|------------------------------------|-----------------------------|
| Capital felony | \$50,000 to No Bail Allowed |
| Murder | \$15,000 to \$75,000 |
| Class A felony | \$10,000 to \$60,000 |
| Class B felony | \$5,000 to \$30,000 |
| Class C felony | \$2,500 to \$15,000 |
| Drug Manufacturing and Trafficking | \$5,000 to \$1,500,000 |

Misdemeanors (not included elsewhere in the schedule):

| | |
|---------------------|------------------|
| Class A misdemeanor | \$300 to \$6,000 |
| Class B misdemeanor | \$300 to \$3,000 |
| Class C misdemeanor | \$300 to \$1,000 |
| Violation | \$300 to \$500 |

Municipal Ordinance Violations **\$300 to \$1,000**

Traffic Related Offenses

| | |
|--------------------------|--------------------|
| DUI | \$1,000 to \$7,500 |
| Reckless driving | \$300 to \$1,000 |
| Speeding | \$300 to \$500 |
| Other traffic violations | \$300 to \$500 |

EXHIBIT 1