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11
12 **THE UNITED STATES DISTRICT COURT**
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

14 _____)
15)
16 GARY WAYNE WELCHEN, on behalf of)
17 himself and others similarly situated,)
18)
19 Plaintiffs,)
20) Case No. 2:16-at-90
21 v.) (Class Action)
22)
23 THE COUNTY OF SACRAMENTO and)
24 KAMALA HARRIS in her Official)
25 Capacity as the California Attorney General,))
26)
27 Defendants.)
28 _____)

29
30 **CLASS ACTION COMPLAINT**

31 **Introduction**

32 1. This case is about Sacramento County’s wealth-based detention scheme, which
33 operates to jail some of the County’s poorest residents solely because they cannot make a
34 monetary payment. Named Plaintiff Gary Welchen is an impoverished arrestee currently
35 imprisoned in the county jail because he is too poor to pay the money the County demands for
36 his release. If he were rich enough to pay \$10,000 — like many wealthier people accused of the
37 same offense — he could walk out of his jail cell immediately under Sacramento County’s pay-
38 for-freedom pretrial justice system.

1 *et seq.*, and the Fourteenth Amendment to the United States Constitution. This Court has
2 jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

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

4 **Parties**¹

5 8. Named Plaintiff Gary Welchen is a 50-year-old resident of Sacramento. He is
6 currently experiencing homelessness, and his sole source of income is social security disability
7 payments. He represents himself as an individual and represents a Class of similarly situated
8 people subjected to Defendants' wealth-based detention scheme.

9 9. Defendant County of Sacramento is a local government entity organized under the
10 laws of the State of California. The Sacramento County Sheriff's Department is a division of the
11 County and operates the Sacramento County Jail. The Sheriff's Department detains inmates at
12 the county jail and is authorized to issue and sign orders of release.

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

18 11. Under the Supremacy Clause of the United States Constitution, all officials must
19 uphold the Equal Protection and Due Process Clauses of the Fourteenth Amendment, regardless
20 of contrary instructions from state officials, local officials, or state judges. Additionally, upon
21 taking office, the Sacramento County Sheriff swears an oath to support and defend the
22 Constitution of the United States.

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 without bail until two additional days after his first appearance.

2 **B. Defendants' Wealth-Based Detention Scheme**

3 19. The named Plaintiff would be released from jail immediately if he paid the
4 amount of money required by the County.

5 20. Arrestees are given a right to release pending trial, but Defendants' pay-for-
6 freedom system conditions their release on their ability to afford money bail, thus tying their
7 pretrial freedom to their wealth-status.

8 21. The treatment of the named Plaintiff and other Class Members is caused by and is
9 representative of Defendants' wealth-based detention policies and practices.

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

14 23. For arrestees booked at the county jail, the Sheriff's Department determines the
15 money bail amount by reference to the Sacramento County Bail Schedule based on each
16 arrestee's booking charges. An arrestee's booking charges are determined by the Sheriff's
17 Department (or other arresting agency, such as a police department). The Superior Court judges
18 of Sacramento County prepare, adopt, and annually revise Sacramento's county bail schedule in
19 their administrative capacity.

20 24. Before an arrestee's first appearance in court, it is the policy and practice of the
21 Sheriff's department to set bail based on the bail schedule.

22 25. An arrestee's first appearance in court occurs at least two to five days after arrest.
23 At each arrestee's first appearance in court, the arrestee receives formal charges from the district

1 attorney's office. If the formal charges differ from the booking charges, the Superior Court
2 judge will reset the bail according to the bail schedule based on the formal charges. Superior
3 Court judges do not entertain a reduction or increase in bail until at least two days after an
4 arrestee's first appearance in court.

5 26. It is the policy and practice of the Sheriff's Department to immediately release
6 those arrestees who pay their money bail amount.

7 27. It is the policy and practice of the Sheriff's Department to detain individuals who
8 do not pay their money bail amount. Before a Superior Court bail hearing, it is the policy and
9 practice of the Sheriff's Department to detain individuals who do not pay the amount listed on
10 the bail schedule. After a Superior Court bail hearing, it is the policy and practice of the
11 Sheriff's Department to detain individuals who do not pay the bail amount set by the Superior
12 Court.

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

18 29. In Sacramento, approximately 45,000 individuals are booked in county jail every
19 year. On a typical day, approximately 120 new arrestees are locked in the county jail.

20 30. At any given time, there are approximately 4,400 inmates in the county jail,
21 roughly 57% of whom are being detained pretrial. Although they are presumed innocent of the
22 crime for which they have been arrested, there are more than 2,500 individuals at any given time
23 who are being detained pretrial.

1 31. Approximately 60% of pretrial detainees are held due to probation revocation
2 proceedings, violation of terms of release, immigration detainers, or other holds. Even
3 discounting this percentage, more than 8,000 individuals are detained annually solely due to their
4 wealth-status.

5 32. Those arrestees too poor to pay for their freedom are not appointed counsel until
6 their first appearance in court. Such arrestees could theoretically ask a magistrate to be released
7 without money bail, but this process is functionally non-existent while arrestees remain
8 unrepresented by counsel.

9 33. At their first appearance, arrestees too poor to afford their money bail are told that
10 they cannot seek release until at least two days later, meaning that they have to wait a minimum
11 of four to seven days before having the chance for a judge to release them without money bail.

12 34. Wealthy arrestees do not have to wait in jail for any of these processes, because
13 the County grants them immediate release if they pay their money bail amount.

14 35. By offering bail to all arrestees, Defendants allow pretrial release to everyone, but
15 condition that release on an arrestee's wealth-status. Only those who can afford their money bail
16 amount are permitted pretrial release.

17 36. While tying pretrial freedom to wealth-status is the norm Sacramento, many other
18 jurisdictions throughout the country do not hold people in jail because of their poverty. Instead,
19 many other places release arrestees with pretrial supervision practices that can help increase
20 court attendance and public safety without requiring detention. Pretrial services agencies in
21 other counties employ numerous methods of maximizing public safety and court appearances,
22 including reporting obligations, phone and text message reminders of court dates, rides to court
23 for those without transportation or a stable address, counseling, drug and alcohol treatment,

1 batterer intervention programs, anger management courses, reporting obligations, SCRAM
2 bracelets (for alcohol testing), or electronic monitoring, among other services, when necessary to
3 guard against a particular risk.

4 37. Other counties also employ non-monetary conditions of release, including
5 unsecured or “signature” bonds (which do not require payment up front), stay-away orders,
6 curfews, or even home detention, further contributing to high public safety and court appearance
7 rates.

8 38. Jurisdictions with robust pretrial services and non-monetary conditions of release
9 often achieve court-appearance rates over 90%, with more than 85% of those released pretrial
10 remaining arrest-free (and 98–99% remaining arrest-free for violent crimes).

11 39. Unnecessary pretrial detention causes instability in employment, housing, and
12 care for dependent relatives. Studies show that those detained pretrial face worse outcomes at
13 trial and sentencing than those released pretrial, even when charged with the same offenses.
14 Detained defendants are more likely to plead guilty just to shorten their jail time, even if they are
15 innocent. They have a harder time preparing for their defense, gathering evidence and witnesses,
16 and meeting with their lawyers. Studies also show that just two days of pretrial detention
17 increases the likelihood of future arrests.

18 40. Pretrial detention is more than ten times more expensive than effective pretrial
19 supervision programs. Through non-monetary tools, pretrial supervision programs can save
20 taxpayer expense while maintaining high public safety and court appearance rates.

21 41. The County of Sacramento does not supervise any pretrial arrestees. Instead, its
22 wealth-based detention scheme is the central component of its pretrial justice system, making
23 wealth-status the ultimate criterion for an arrestee’s detention or release.

Class Action Allegations

1
2 42. The named Plaintiff brings this action, on behalf of himself and all others
3 similarly situated, for the purpose of asserting the claims alleged in this Complaint on a common
4 basis.

5 43. A class action is a superior means, and the only practicable means, by which the
6 named Plaintiff and unknown Class Members can challenge the Defendants' unlawful wealth-
7 based detention scheme.

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

10 45. This action satisfies the numerosity, commonality, typicality, and adequacy
11 requirements of those provisions.

12 46. Plaintiff proposes one Class seeking declaratory and injunctive relief. The
13 Declaratory and Injunctive Class is defined as: all arrestees who are or will be in the custody of
14 the County of Sacramento and are or will be detained for any amount of time because they are
15 unable to pay money bail.

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

17 47. The Sacramento County Jail detains approximately 45,000 individuals annually.
18 Of those, approximately 57% are detained pretrial. Arrestees are presented with the County's
19 standard money bail choice of pay or jail.

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

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

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

2 50. The relief sought is common to all Class Members, and common questions of law
3 and fact exist as to all Class Members. The named Plaintiff seeks relief concerning whether
4 Defendants' policies, practices, and procedures violate the rights of the Class Members and relief
5 mandating Defendants to change their policies, practices, and procedures so that the
6 constitutional rights of the Class Members will be protected in the future.

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

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

- 13 • Does the County have a policy and practice of requiring money bail as a prerequisite for
14 post-arrest release?
15 • Does the County immediately release those arrestees wealthy enough to pay their money
16 bail amount?
17 • Does the County detain, for any amount of time, those arrestees too poor to pay their
18 money bail amount solely because they cannot make that monetary payment?
19

20 52. Among the most important common question of law are:

- 21 • Do the Equal Protection and Due Process Clauses prohibit the government from jailing
22 an individual solely due to her inability to make a monetary payment?
23 • Does jailing an individual due solely to her inability to afford money bail constitute
24 jailing her due to her inability to make a monetary payment?
25

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

27 53. The named Plaintiff's claims are typical of the other Class Members' claims, and
28 he has the same interests in this case as all other Class Members. Each Class Member is
29 confined in jail because she cannot afford to pay Defendants' money bail amount. The answer to

1 whether Defendants' wealth-based detention scheme is unconstitutional will determine the
2 claims of the named Plaintiff and every other Class Member.

3 54. If the named Plaintiff succeeds in the claim that Defendants' wealth-based
4 detention scheme violates his constitutional rights, that ruling will likewise benefit every other
5 Class Member.

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

7 55. The named Plaintiff is an adequate representative of the Class because his interest
8 in the vindication of the legal claims that he raises is entirely aligned with the interests of the
9 other Class Members, who each have the same constitutional claims. He is a Member of the
10 Class, and his interests do not conflict with those of the other Class Members.

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

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

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

1 criminal law, pretrial services, and jails.

2 59. Class counsel have a detailed understanding of state law and practices as they
3 relate to federal constitutional requirements. Counsel have studied the way that these systems
4 function in other counties in order to investigate the wide array of lawful alternatives.

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

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

11 61. Class action status is appropriate because Defendants — through the policies and
12 practices that make up their wealth-based detention scheme — have acted in the same
13 unconstitutional manner with respect to all Class Members. Defendants enforce a wealth-based
14 system of pretrial justice: wealthy arrestees can purchase their immediate release, while poorer
15 arrestees must remain in jail.

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

21 63. Injunctive relief compelling Defendants to comply with these constitutional rights
22 will similarly protect each Class Member from being subjected to Defendants' unlawful policies
23 and practices. A declaration and injunction stating that Defendants cannot detain arrestees due to

1 their inability to make a monetary payment would provide relief to every Class Member.
2 Therefore, declaratory and injunctive relief with respect to the Class as a whole is appropriate.

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

5 **Claims for Relief**

6 **Count One: Defendant County of Sacramento Violates Plaintiffs' Rights by Jailing Them**
7 **Because They Cannot Afford a Monetary Payment**

8
9 65. Plaintiffs incorporate by reference the allegations in paragraphs 1–64.

10 66. The Fourteenth Amendment's Equal Protection and Due Process Clauses prohibit
11 jailing a person because of her inability to make a monetary payment. Defendant County of
12 Sacramento violates Plaintiffs' fundamental rights by keeping them in jail solely because they
13 cannot afford to pay money bail.

14 **Count Two: Defendant Kamala Harris, in Her Official Capacity, Violates Plaintiffs' Rights**
15 **by Requiring Defendant County of Sacramento to Adopt a Money Bail Schedule**

16
17 67. Plaintiffs incorporate by reference the allegations in paragraphs 1–66.

18 68. The Fourteenth Amendment's Equal Protection and Due Process Clauses prohibit
19 jailing a person because of her inability to make a monetary payment. Defendant Kamala Harris,
20 in her official capacity as California Attorney General, violates Plaintiffs' rights by requiring
21 Defendant County of Sacramento to adopt a bail schedule that results in detaining them solely
22 because they cannot afford to pay money bail.

23 **Request for Relief**

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

26 a. A declaratory judgment that Defendants violate the named Plaintiff's and Class
27 Members' constitutional rights by keeping them in jail solely because they cannot

