

1 Phil Telfeyan (CA Bar No. 258270)
2 Attorney, Equal Justice Under Law
3 601 Pennsylvania Avenue NW
4 South Building — Suite 900
5 Washington, D.C. 20004
6 (202) 505-2058
7 ptelfeyan@equaljusticeunderlaw.org
8 *Attorney for Plaintiff Gary Welchen*

9 **THE UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 _____)
12)
13 GARY WAYNE WELCHEN, on behalf of)
14 himself and others similarly situated,)
15)
16 Plaintiffs,)
17)
18 v.)
19)
20 THE COUNTY OF SACRAMENTO,)
21 KAMALA HARRIS in her Official)
22 Capacity as the California Attorney General,)
23 and SCOTT JONES in his Official Capacity)
24 as the Sacramento County Sheriff,)
25)
26 Defendants.)
27 _____)

Case No. 2:16-cv-00185-TLN-DB
(Class Action)

28 **AMENDED CLASS ACTION COMPLAINT**

29 **Introduction**

30 1. This case is about Sacramento County keeping some of its poorest residents in jail
31 because of their inability to make a monetary payment. Named Plaintiff Gary Welchen is an
32 indigent arrestee who was kept in the county jail solely because he was too poor to pay the
33 amount of money that the Sacramento County Sheriff’s Department demanded for his release.

34 2. In Sacramento, arrestees face two different outcomes depending on their wealth
35 status. If Mr. Welchen had been rich enough to pay \$10,000 — like many wealthier people
36 accused of the same offense — he could have walked out of his jail cell immediately under

1 Sacramento County's pay-for-freedom pretrial justice system. Because the only criterion
2 standing between Plaintiff and freedom was his ability to make a monetary payment, Sacramento
3 operates a wealth-based detention system.

4 3. On behalf of the many other arrestees subjected to Defendants' unlawful wealth-
5 based detention system, the named Plaintiff in this action challenges the use of money bail to
6 detain poor arrestees while letting wealthier arrestees free. Defendants' wealth-based detention
7 system violates the Equal Protection and Due Process Clauses of the United States Constitution
8 because it ties pretrial freedom to the ability to make a monetary payment, thus making freedom
9 dependent on wealth-status.

10 4. Defendants' wealth-based detention system is a violation of substantive due
11 process that demands heightened scrutiny because the fundamental right to pretrial liberty is at
12 stake. Defendants' wealth-based detention system fails heightened scrutiny because it does not
13 further a compelling government interest and is not narrowly tailored. Defendants' wealth-based
14 detention system also violates substantive due process because it imposes punishment prior to
15 trial, in that the effects of wealth-based pretrial detention are far in excess of any regulatory
16 purpose for having such detention.

17 5. By and through his attorneys and on behalf of himself and all others similarly
18 situated, the named Plaintiff seeks the vindication of his fundamental rights, injunctive relief
19 preventing future wealth-based detention of all Class Members, and a declaration that any state
20 statutory or constitutional provisions that require the use of secured money bail to detain any
21 person are unconstitutional. Defendants cannot use money bail to detain any person solely
22 because she is unable to make a monetary payment.

1 **Nature of the Action**¹

2 6. It is the policy and practice of the County of Sacramento and Sheriff Scott Jones,
3 in implementing Sacramento's bail system and enforcing Cal. Pen. Code §1269b, to refuse to
4 release arrestees from jail unless they pay their money bail amount. Additionally, the Sheriff and
5 the Attorney General enforce unconstitutional state laws that require the use of money bail to
6 detain individuals based on wealth-status. Plaintiffs seek declaratory and injunctive relief
7 prohibiting Defendants' wealth-based detention system and requiring that pretrial release or
8 detention decisions be based on factors other than wealth-status.

9 **Jurisdiction and Venue**

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

13 8. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

14 **Parties**

15 9. Named Plaintiff Gary Welchen is a 50-year-old resident of Sacramento. He has
16 experienced homelessness on several occasions, and his sole source of income is social security
17 disability payments. He represents himself as an individual and represents a Class of similarly
18 situated people subjected to Defendants' wealth-based detention system.

19 10. Defendant County of Sacramento is a local government entity organized under the
20 laws of the State of California. The Sacramento County Sheriff's Department is a division of the
21 County and operates the Sacramento County Jail.

22 11. Defendant Scott Jones, in his official capacity as Sacramento County Sheriff, is an

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 official of Defendant County of Sacramento in his role as jailor and with regard to release and
2 detention decisions and Sacramento's release/detention policy.

3 12. The Sheriff has charge of and is the sole and exclusive authority to keep the
4 county jail and the prisoners in it. Cal. Gov't Code § 26605. The Sheriff's Department detains
5 inmates at the county jail and is authorized to issue and sign orders of release for pretrial
6 detainees. *See* Cal. Pen. Code § 1269b(a).

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

12 14. The Correctional Services Division of the Sacramento County Sheriff's
13 Department is charged with the operations each of Sacramento's County Jails, Correctional
14 Health, Work Release, and the various Jail Programs.

15 15. The Sheriff is the final policymaker for Defendant County of Sacramento with
16 regard to release and detention decisions and Sacramento's release/detention policy.

17 16. While the money bail policies and practices of the Sheriff and the Sheriff's
18 Department are consistent with state law, they are not consistent with the federal Constitution.
19 More than just the particular manner of implementation, it is the Sheriff and County's policy of
20 implementing the money bail system that amounts to unconstitutional wealth-based detention.

21 17. Under the Supremacy Clause, the United States Constitution is the supreme law
22 of the land. All government officials must uphold the Equal Protection and Due Process Clauses
23 of the Fourteenth Amendment, regardless of contrary instructions from state officials, local

1 officials, state law, local law, or state judges. Additionally, upon taking office, the Sacramento
2 County Sheriff swears an oath to support and defend the Constitution of the United States.

3 18. The Sheriff enforces the law requiring use of secured money bail after arrest, and
4 Sacramento has a policy and practice of detaining individuals based on their inability to make a
5 monetary payment.

6 19. Sacramento is responsible for its application of its policies, including its release
7 and detention policies.

8 20. Defendant County of Sacramento is liable for its unconstitutional policies and
9 practices — including the policies and practices of its officers and divisions — even if they are
10 consistent with state law and even if they are consistent with orders of state judges.

11 21. Under *Ex parte Young*, 209 U.S. 123 (1908), the Sheriff in his official capacity
12 can be enjoined from enforcing any unconstitutional state laws. Any statutes requiring or
13 permitting wealth-based detention are unconstitutional.

14 22. Under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), the County of
15 Sacramento and the county Sheriff are liable for their unconstitutional policies and practices.
16 Any detention practices that tie freedom to wealth-status are unconstitutional.

17 23. Defendant Kamala Harris is the California Attorney General and the chief law
18 enforcement officer in California. She is charged with the enforcement of California's laws,
19 including provisions of the Penal Code. In her official capacity as the California Attorney
20 General, she requires the County of Sacramento and the county Sheriff to impose bail pursuant to
21 a bail schedule, thereby creating a wealth-based detention system. *See* Cal. Pen. Code § 1269b.

22 24. The Attorney General has direct supervision over every county sheriff in the state.
23 Cal. Const. Art. V, § 13; Cal. Gov't Code § 12560. Several statutory provisions give the

1 Attorney General specific supervisory powers over sheriffs. *See, e.g.*, Cal. Gov't Code §§
2 12524, 12560, 12561.

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

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

13 **Factual Allegations**

14 **A. The Named Plaintiff Was Held in Jail by Defendants Because He Was Unable to**
15 **Pay His Money Bail Amount**

16 27. At the time of his arrest, Gary Welchen was a 50-year-old resident of Sacramento.

17 28. Throughout the first several months of 2016, Mr. Welchen was experiencing
18 homelessness. Mr. Welchen was arrested by Sacramento police on January 29, 2016. He was
19 accused of second-degree burglary of an uninhabited dwelling.

20 29. Mr. Welchen was taken to jail and told that he would be released if he paid
21 \$10,000. He was told that he would be kept in jail unless he paid \$10,000. *See* Exhibit 1,
22 Declaration of Gary Welchen.

23 30. Mr. Welchen is indigent. He worked as a contractor and a roofer until 1996,
24 when he injured his back, and his disability has prevented him from working since then. Both

1 before and after his arrest, he was experiencing homelessness, without a stable address or place
2 to stay. His sole source of income is Social Security disability payments.

3 31. Because of his indigence, Mr. Welchen was unable to pay his money bail amount.

4 32. Had Mr. Welchen been able to afford his money bail amount, he would have paid
5 for his freedom immediately.

6 33. Unable to afford his money bail amount, Mr. Welchen was detained for six days
7 — from January 29, 2015, through February 4, 2015 — before he was released by the Sheriff's
8 Department.

9 **B. Defendants' Wealth-Based Detention Scheme Detains Arrestees Who Cannot Pay**
10 **Their Money Bail Amount while Releasing Those Who Can Pay**

11 34. Upon arrest, arrestees in Sacramento are transported to the Mail Jail for booking.
12 The Sheriff's Correctional Services Division performs booking processes on all arrestees.

13 35. The Sacramento County Sheriff's Department has a computerized Jail
14 Management System, which records various data on all inmates in the county jail system. These
15 records are updated on an ongoing basis as events occur, and include information about the time
16 of arrest and the charge(s), the posting of any bail, and the date and time of release from custody.

17 36. The booking processes of arrestees include searching arrestees, medical triage,
18 photographing, fingerprinting to include warrant checks, classification, criminal history review,
19 review for eligibility to be cited and released, DNA collection from persons arrested for felony
20 charges, and inventory and storage of property.

21 37. At the end of booking processes, arrestees are given a booking sheet, which
22 includes their booking charge and their bail amount. Bail is determined by referring to the
23 Felony and Misdemeanor Bail Schedule as established by the Superior Court of California,
24 County of Sacramento. Deputy sheriffs use this bail schedule, referring to an arrestee's booking

1 charge(s), when determining an arrestee's bail amount.

2 38. Arrestees are told that if they pay their bail amount, they will be released
3 immediately. They are told that if they cannot pay bail, they will remain in jail until arraignment
4 or discharge.

5 39. Arrestees who are not able to pay their money bail amount are shown a poster
6 listing the phone numbers of bail bond agents and told that they may call one of these numbers to
7 attempt to secure their release. Arrestees who obtain release through bail agents remain in jail
8 while making arrangements with the agent such as finding cosigners for the bail bond contract.
9 This process can take hours or days.

10 40. If an arrestee can afford to pay her bail amount, the Sheriff's Department accepts
11 the money and orders the release of the arrestee.

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

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

17 43. At any given time, there are approximately 4,400 inmates in the county jail,
18 roughly 57% of whom are being detained pretrial.

19 44. Although they are presumed innocent of the crime for which they have been
20 arrested, there are more than 2,500 individuals at any given time who are being detained pretrial
21 solely because they cannot afford money bail.

22 45. Approximately 60% of pretrial detainees are held due to probation revocation
23 proceedings, violation of terms of release, immigration detainers, or other holds. Even

1 discounting this percentage, more than 8,000 individuals are detained annually solely due to their
2 wealth-status.

3 **C. Defendants' Wealth-Based Detention Scheme Caused Plaintiff to Be Held in Jail**
4 **Solely Due to His Inability to Pay Bail**

5 46. The named Plaintiff would have been released from jail immediately if he had
6 paid the amount of money required by the Sheriff's Department.

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

10 48. The treatment of the named Plaintiff and other Class Members is caused by two
11 factors: (1) the unconstitutional provisions of California's Penal Code that are enforced by the
12 Sheriff and Attorney General and (2) the Sheriff's and Sacramento's policies and practices of
13 wealth-based detention.

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

18 50. Before an arrestee's first appearance in court, it is the policy and practice of the
19 Sheriff's department to set bail based on the bail schedule. The bail schedule assigns bail
20 amounts solely on the charges for which the arrestee was arrested.

21 51. It is the policy and practice of the Sheriff's Department to immediately release
22 those arrestees who pay their money bail amount.

23 52. In a typical week, the Sheriff's Department releases dozens of individuals who
24 pay their money bail amount.

1 53. It is the policy and practice of the Sheriff's Department to detain individuals who
2 do not pay their money bail amount. Before arraignment, it is the policy and practice of the
3 Sheriff's Department to detain individuals who do not pay the amount listed on the bail schedule.
4 After arraignment, it is the policy and practice of the Sheriff's Department to detain individuals
5 who do not pay the bail amount set by the Superior Court.

6 54. In a typical week, the Sheriff's Department detains dozens of individuals who do
7 not pay their money bail amount.

8 55. The Sheriff and Sheriff's Department have a longstanding practice and custom —
9 which constitutes the standard operating procedure of the Sheriff and the County of Sacramento
10 — of releasing those individuals who pay their money bail amount.

11 56. The Sheriff and Sheriff's Department have a longstanding practice and custom —
12 which constitutes the standard operating procedure of the Sheriff and the County of Sacramento
13 — of detaining those individuals who cannot pay their money bail amount.

14 57. 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 58. 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 59. 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 60. 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 61. The Sacramento County Sheriff and the County of Sacramento are liable under
4 *Monell* for the policy and practice of detaining all individuals who do not pay money bail while
5 releasing those individuals who do pay money bail.

6 **D. None of the Alternatives to Bail in Sacramento Allows for Immediate Release of**
7 **Arrestees**

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

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

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

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

23 **E. Defendants' Use of Money Bail Infringes upon the Fundamental Right to Pretrial**
24 **Liberty, and Is Not Narrowly Tailored in Securing Court Attendance or Public**
25 **Safety**

1 66. Arrestees have a fundamental right to pretrial liberty that is infringed when money
2 is the deciding factor for whether that right is recognized. Because wealth-based pretrial
3 detention infringes on the fundamental right to pretrial liberty, Defendants' use of money bail is
4 subject to heightened scrutiny, requiring that it be narrowly tailored to advance a compelling
5 governmental interest.

6 67. No governmental interests — other than securing court appearance or public
7 safety — are compelling enough to justify pretrial detention.

8 68. Defendants' vehicle for pretrial detention — money bail — is not narrowly
9 tailored to advance compelling interests. Because money and wealth are the ultimate factors
10 determining release, Defendants' money bail system allows release for someone who is rich,
11 dangerous, and a flight risk while detaining someone who is poor, safe, and likely to appear in
12 court. Money bail does not carefully delineate the circumstances under which the compelling
13 governmental interests are satisfied because the only question that matters is whether an arrestee
14 can afford her money bail amount.

15 69. There is no evidence that ability to pay correlates closely with unmanageable
16 flight risk or public safety. There is no acute problem of unmanageable flight risk or public
17 safety that money bail tackles because a person's wealth is not determinative of her likelihood of
18 appearing for trial or threatening public safety. The money bail system applies to every case,
19 regardless of how serious or minor the charges.

20 70. Those wealthy enough to pay their bail amount have their full amount returned to
21 them if they appear for all their court dates, regardless of whether they commit additional crimes.
22 Thus, money bail has no connection to public safety.

23 71. Instead of basing pretrial release on risk level and therefore targeting a specific

1 group of people known to be high-risk, Defendants' money bail system is a blanket deprivation
2 of poor arrestees' right to pretrial liberty simply because of their inability to pay bail.

3 72. Setting bail based on charges — as is Defendants' policy and practice — is not an
4 individualized assessment that satisfies due process. Although the money bail system may be
5 administratively convenient for the Sheriff and the County for handling arrestees, administrative
6 convenience is a thoroughly inadequate basis for the deprivation of core constitutional rights.

7 73. The County of Sacramento does not supervise any pretrial arrestees. Instead, its
8 wealth-based detention scheme is the central component of its pretrial justice system, making
9 wealth-status the ultimate criterion for an arrestee's detention or release.

10 74. Defendants' money bail system violates substantive due process because the
11 system is not narrowly tailored to serving the interests of public safety and court appearance. By
12 making wealth-status the sole determinative factor of pretrial freedom, Defendants' system rests
13 on a false assumption that wealth has bearing on a person's likelihood of showing up to court or
14 ability to follow the law.

15 75. Defendants could use numerous other factors to determine pretrial release that are
16 not tied to wealth status. They could choose to release all arrestees (or all arrestees charged with
17 non-serious crimes); they could release those arrestees without prior failures to appear; they
18 could release arrestees who show no particularized concerns of flight risk or danger; or they
19 could choose other non-wealth-based metrics. Especially in light of the many possible systems
20 Defendants could adopt, the current method of wealth-based detention is not narrowly tailored to
21 further compelling interests.

22 **F. Defendants' Money Bail Scheme Further Violates Substantive Due Process Because**
23 **Its Effects Are Excessive in Relation to Its Regulatory Purpose**

24 76. Wealth-based detention excessively restricts pretrial liberty in relation to any

1 regulatory purpose. Money bail categorically eliminates the opportunity for people who are poor
2 to achieve pretrial freedom, even if they are not a danger or flight risk. Wealth-based detention
3 imposes punishment before an adjudication of guilt.

4 77. There is no pressing societal problem that requires wealth-based detention, nor is
5 there evidence that money bail is as effective as several alternative systems successfully used in
6 other jurisdictions. Defendants' wealth-based detention system is excessive in light of successful
7 non-money-based systems that do not infringe on the fundamental right to pretrial liberty.

8 78. Defendants' wealth-based detention system is also excessive because it does not
9 provide for individualized assessments of risk level nor offers a prompt detention hearing.

10 79. The existence of private, for-profit bail bond companies is not an adequate
11 leveling resource, for poor arrestees have to pay non-refundable deposits that alone may be out
12 of reach for some arrestees. The fact that bail may be reduced or eliminated at some point is also
13 not an adequate alternative remedy, as arrestees will have already spent time in jail solely based
14 on their inability to pay their money bail before having access to those alternatives.

15 80. While tying pretrial freedom to wealth-status is the norm in Sacramento, other
16 jurisdictions throughout the country do not hold people in jail because of their poverty. Instead
17 of relying on money bail, these jurisdictions release arrestees with pretrial supervision practices
18 that effectively promote court attendance and public safety without requiring detention. Pretrial
19 services agencies in other counties employ numerous methods of maximizing public safety and
20 court appearances, including reporting obligations, phone and text message reminders of court
21 dates, rides to court for those without transportation or a stable address, counseling, drug and
22 alcohol treatment, batterer intervention programs, anger management courses, reporting
23 obligations, SCRAM bracelets (for alcohol testing), or electronic monitoring, among other

1 services, when necessary to guard against a particular risk. *See generally* Exhibit 2, Morrison
2 Aff.; Exhibit 3, Herceg Aff.; Exhibit 4, Murray Aff.

3 81. Other jurisdictions also employ non-monetary conditions of release, including
4 unsecured or “signature” bonds (which do not require payment up front), stay-away orders,
5 curfews, or even home detention, further contributing to high public safety and court appearance
6 rates. *See generally* Exhibit 4, Murray Aff.

7 82. Sacramento could use such pretrial services, but it does not do so to any
8 meaningful degree. The vast majority of arrestees booked in Sacramento County Jail are
9 processed and detained through Sacramento’s money bail scheme rather than non-monetary
10 supervision methods.

11 83. Jurisdictions with robust pretrial services and non-monetary conditions of release
12 often achieve court-appearance rates over 90%, with more than 85% of those released pretrial
13 remaining arrest-free (and 98–99% remaining arrest-free for violent crimes). *See generally*
14 Exhibit 2, Morrison Aff.; Exhibit 3, Herceg Aff.

15 84. Unnecessary pretrial detention has profound costs. It causes instability in
16 employment, housing, and care for dependent relatives. *See generally* Exhibit 4, Murray Aff.
17 Studies show that those detained pretrial face worse outcomes at trial and sentencing than those
18 released pretrial, even when charged with the same offenses. Detained defendants are more
19 likely to plead guilty just to shorten their jail time, even if they are innocent. Exhibit 5, Adachi
20 Decl. at ¶ 7. They have a harder time preparing for their defense, gathering evidence and
21 witnesses, and meeting with their lawyers. *Id.* at ¶ 8. Studies also show that just two days of
22 pretrial detention substantially increase the likelihood of future arrests.

23 85. Pretrial detention is more than ten times more expensive than effective pretrial

1 supervision programs. *See generally* Exhibit 4, Murray Aff. Through non-monetary tools,
2 pretrial supervision programs can save taxpayer funds while maintaining high public safety and
3 court appearance rates.

4 **Class Action Allegations**

5 86. The named Plaintiff brings this action, on behalf of himself and all others
6 similarly situated, to assert the claims alleged in this Amended Complaint on a common basis.

7 87. A class action is a superior means, and the only practicable means, by which the
8 named Plaintiff and unknown Class Members can challenge Defendants' unlawful wealth-based
9 detention system.

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

12 89. This action satisfies the numerosity, commonality, typicality, and adequacy
13 requirements of those provisions.

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

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

19 91. The Sacramento County Jail detains approximately 45,000 individuals annually.
20 Of those, approximately 57% are detained pretrial. Those arrestees who are not held due to
21 probation revocation proceedings, violation of terms of release, immigration detainers, or other
22 holds are presented with Defendants' standard money bail choice of pay or jail.

23 92. Some arrestees are able to pay for release immediately. Those not able to pay are

1 held in the county jail pursuant to Defendants' wealth-based detention system.

2 93. The number of current and future arrestees detained pursuant to Defendants'
3 wealth-based detention system — if it is not enjoined — is well into the hundreds.

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

5 94. The relief sought is common to all Class Members, and common questions of law
6 and fact exist as to all Class Members. The named Plaintiff seeks relief concerning whether
7 provisions of state law that require the use of money bail and whether the Sheriff Department's
8 policies, practices, and procedures violate the rights of the Class Members and relief mandating
9 that Defendants not enforce such provisions nor continue such practices so that the constitutional
10 rights of the Class Members will be protected in the future.

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

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

- 17 • Do the Sheriff and County have a policy and practice of requiring money bail as a
18 prerequisite for post-arrest release?
19 • Do the Sheriff and County immediately release those arrestees wealthy enough to pay
20 their money bail amount?
21 • Do the Sheriff and County detain, for any amount of time, those arrestees too poor to pay
22 their money bail amount solely because they cannot make that monetary payment?
23

24 96. Among the most important common question of law are:

- 25 • Do the Equal Protection and Due Process Clauses prohibit the government from jailing
26 an individual solely due to her inability to make a monetary payment?
27 • Does jailing an individual due solely to her inability to afford money bail constitute
28 jailing her due to her inability to make a monetary payment?
29

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

2 97. The named Plaintiff's claims are typical of the other Class Members' claims, and
3 he has the same interests in this case as all other Class Members. Each Class Member is
4 confined in jail because she cannot afford her money bail amount. The answer to whether
5 Defendants' wealth-based detention scheme is unconstitutional will determine the claims of the
6 named Plaintiff and every other Class Member.

7 98. If the named Plaintiff succeeds in the claim that Defendants' policies and
8 practices concerning wealth-based detention violates his constitutional rights, that ruling will
9 likewise benefit every other Class Member.

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

11 99. The named Plaintiff is an adequate representative of the Class because his interest
12 in the vindication of the legal claims that he raises is entirely aligned with the interests of the
13 other Class Members, who each have the same basic constitutional claims. He is a member of
14 the Class, and his interests coincide with and are not antagonist to those of the other Class
15 Members.

16 100. There are no known conflicts of interest among Class Members, all of whom have
17 a similar interest in vindicating their constitutional rights in the face of Defendants' pay-for-
18 freedom system.

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

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

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

10 104. As a result, counsel have devoted enormous time and resources becoming
11 intimately familiar with Defendants' system and with the relevant state and federal laws.
12 Counsel have also developed relationships with many of the individuals and families most
13 victimized by Defendants' practices. The interests of the Class Members will be fairly and
14 adequately protected by the Plaintiffs and their attorneys.

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

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

20 106. The Class therefore seeks declaratory and injunctive relief to enjoin Defendants
21 from detaining arrestees who cannot afford their money bail amounts. Because the putative
22 Class challenges Defendants' system as unconstitutional through declaratory and injunctive relief
23 that would apply the same relief to every Class Member, Rule 23(b)(2) certification is

1 appropriate and necessary.

2 107. Injunctive relief compelling Defendants to comply with these constitutional rights
3 will similarly protect each Class Member from being subjected to Defendants' unlawful policies
4 and practices. A declaration and injunction stating that Defendants cannot detain arrestees due to
5 their inability to make a monetary payment would provide relief to every Class Member.
6 Therefore, declaratory and injunctive relief with respect to the Class as a whole is appropriate.

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

9 **Claims for Relief**

10 **Count One: Defendants Violate Plaintiffs' Substantive Due Process Rights by Jailing Them**
11 **Because They Cannot Afford a Monetary Payment**

12 109. Plaintiffs incorporate by reference the allegations in paragraphs 1–108.

13 110. The Fourteenth Amendment's Due Process Clauses prohibits infringement of the
14 fundamental right to pretrial freedom without narrow tailoring to a compelling governmental
15 interest. Because Defendants' wealth-based detention model is not narrowly tailored to a
16 compelling governmental interest, Defendants violate Plaintiffs' substantive due process rights
17 by keeping them in jail solely because they cannot afford to pay money bail.

18 111. Furthermore, the Fourteenth Amendment's Due Process Clause prohibits
19 imposing punishment prior to trial. Because the effects of Defendants' restrictions are excessive
20 in relation to any legitimate regulatory purpose, Defendants violate Plaintiffs' substantive due
21 process rights by keeping them in jail solely because they cannot afford to pay money bail.

22 112. Defendant County of Sacramento violates Plaintiffs' Fourteenth Amendment
23 rights by implementing the state's bail laws and by implementing its wealth-based detention
24 system. Such implementation is a policy and practice of Defendant County of Sacramento.

1 113. Defendant Scott Jones, in his official capacity as Sacramento County Sheriff,
 2 violates Plaintiffs’ Fourteenth Amendment rights by implementing the county’s wealth-based
 3 detention scheme through his oversight of the county jail, by implementing the state’s bail laws,
 4 and by enforcing provisions of California state law regarding the use of money bail.

5 114. Defendant Kamala Harris, in her official capacity as California Attorney General,
 6 violates Plaintiffs’ Fourteenth Amendment rights by requiring Defendants County of Sacramento
 7 and Scott Jones to adopt and implement a bail schedule that results in detaining them solely
 8 because they cannot afford to pay money bail.

9 **Count Two: Defendants Violate Plaintiffs’ Equal Protection Rights by Jailing Them**
 10 **Because They Cannot Afford a Monetary Payment [PRESERVED FOR APPEAL]**

11 115. Plaintiffs incorporate by reference the allegations in paragraphs 1–114.

12 116. The Fourteenth Amendment’s Equal Protection Clause prohibits jailing a person
 13 because of her inability to make a monetary payment. Defendants violate Plaintiffs’ equal
 14 protection rights by detaining them solely because they cannot afford to pay money bail.

15 **Request for Relief**

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

- 18 a. A declaratory judgment that Defendants violate the named Plaintiff’s and Class
 19 Members’ constitutional rights by keeping them in jail solely because they cannot
 20 make a monetary payment;
- 21 b. An order and judgment preliminarily and permanently enjoining Defendants from
 22 enforcing their unconstitutional wealth-based detention policies and practices
 23 against the named Plaintiff and the Class of similarly situated people that he
 24 represents;
- 25 c. An order and judgment preliminarily and permanently enjoining Defendant
 26 County of Sacramento — including the Sheriff and all officers and employees of
 27 the Sheriff’s Department at the county jail — from using money bail to detain any
 28 person due to her inability to make a monetary payment and requiring that all
 29 release/detention decisions be based on factors other than wealth-status or ability

- 1 to make a monetary payment;
- 2 d. An order and judgment preliminarily and permanently enjoining the Attorney
3 General from requiring the use of money bail to detain indigent arrestees in
4 Sacramento;
- 5 e. An order declaring that all Defendants must follow the requirements of the Equal
6 Protection and Due Process Clauses, regardless of contrary state law or contrary
7 policies and practices;
- 8 f. An order declaring that California Penal Code section 1269b(b) and any other
9 state statutory or constitutional provisions that require the use of secured money
10 bail to detain any person without an inquiry into ability to pay are facially
11 unconstitutional;
- 12 g. An order declaring that, as applied by Defendants against Plaintiffs and Class
13 Members, California Penal Code section 1269b(b) and any other state statutory or
14 constitutional provisions that require the use of secured money bail to detain any
15 person without an inquiry into ability to pay are unconstitutional;
- 16 h. A judgment individually compensating the named Plaintiff for the damages that
17 he suffered as a result of Defendants' unconstitutional and unlawful conduct,
18 including damages resulting from his confinement in jail;
- 19 i. An order and judgment granting reasonable attorneys' fees and costs pursuant to
20 42 U.S.C. § 1988, and any other relief this Court deems just and proper.

21 Respectfully submitted,

22 */s/ Phil Telfeyan*

23 Phil Telfeyan (California Bar No. 258270)

24 Attorney, Equal Justice Under Law

25 601 Pennsylvania Avenue NW

26 South Building — Suite 900

27 Washington, D.C. 20004

28 (202) 505-2058

29 ptelfeyan@equaljusticeunderlaw.org

30 *Attorney for Plaintiffs*