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THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY WAYNE WELCHEN, *et al.*, Plaintiffs, v. THE COUNTY OF SACRAMENTO, *et al.*, Defendants.	2:16-cv-185-TLN-DB PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS (ECF Doc. 36) Hearing: January 12, 2017 Time: 2:00pm Department: Courtroom 2, 15th Floor Judge: Honorable Troy L. Nunley

I. Introduction

Rather than narrowly tailoring pretrial detention to only those circumstances in which an arrestee is a particular flight risk or danger, California law enacts a wealth-based system of pretrial release that ensures that people who are poor will languish behind bars while the rich can buy their freedom. *See, e.g.*, Cal. Penal Code § 1269b(c) (requiring, among other things, each county to enact an across-the-board bail schedule). The Attorney General — who supervisors the Sacramento County Sheriff and District Attorney — concedes that Sacramento County's implementation of money bail may be unconstitutional, but argues that the state laws on their face pass strict scrutiny. Because the indiscriminate, blanket application of wealth-based detention embodied in the state laws violates Plaintiff's substantive due process rights, Plaintiff respectfully requests that the Attorney General's motion to dismiss be denied.

II. The State's Bail Laws Infringe on Plaintiff's Fundamental Right to Pretrial Freedom and Do Not Survive Strict Scrutiny

Under the state's bail laws, pretrial freedom is denied to those who are too poor to pay their money bail amount. Cal Pen. Code § 1269b(c) (requiring county bail schedules); § 1269b(b) (requiring detention of arrestees pursuant to a bail schedule). This wealth-based pretrial detention denies Plaintiff and Class Members their fundamental right to pretrial freedom, and because it is not "carefully limited to serve a compelling governmental interest," *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 777 (9th Cir. 2014), it must be stricken down.

Any infringement of pretrial freedom must pass strict scrutiny because the right to pretrial liberty is a fundamental right, and Defendant does not dispute this point. *Id.* at 780. Moreover, Defendant only defends against Plaintiff's facial attack, which is embodied in Request for Relief F (ECF Doc. 31, p. 22), meaning that the remainder of Plaintiff's claims (including his as applied challenge), are not opposed. Plaintiff's argument will thus be limited to the facial invalidity of the money bail laws. Under the framework set forth in *Lopez-Valenzuela*, two separate analyses independently illustrate why the state's bail laws do not survive strict scrutiny: (A) the bail provisions are not narrowly tailored to advance a compelling government interest, and (B) the bail provisions are excessive in relation to their purpose. Plaintiff need only succeed on one of these routes; in fact, both illustrate that the bail laws are unconstitutional.

A. The State's Bail Laws Are Not Narrowly Tailored to Advance a Compelling Government Interest

When applying strict scrutiny to the denial of a fundamental right, this Court makes two inquiries: (i) whether the laws advance a compelling government interest and (ii) whether the laws are narrowly tailored to serve that interest. *See Lopez-Valenzuela*, 770 F.3d at 780. Defendant's motion to dismiss sidesteps this analysis, but the close scrutiny required by precedent reveals that California's bail laws are not narrowly tailored to the goal of securing

presence at trial. Instead, they are indiscriminate, blunt, and blanket restrictions against anyone too poor to pay money bail.

i. The Only Conceivable Interest Is Securing Court Appearance, Because Money Bail Is Not Designed to Protect Public Safety

The state's bail laws make evident that the only possible governmental interest they serve is securing court appearance; no part of the laws do anything to protect public safety. Although California law contains a preventative detention provision designed to detain those shown to be dangerous — Cal. Const. Art. I, Sec. 12, which is not challenged here — the money bail laws notably lack any provision for protecting the public. Importantly, Defendant makes no effort in her opening brief to suggest that the money bail laws advance public safety, nor could she reasonably do so.

The most telling illustration of the bail laws purpose is that an arrestee who pays money bail has the full bail amount returned to her *even if she breaks the law while released*. Cal. Pen. Code § 1305 (allowing forfeiture of bail only for failure to appear). If California wanted to use money bail to increase compliance with state law, it would not return money bail for those who commit new crimes. Ironically, in fact, a rearrest (and subsequent detention) virtually guarantees the return of the posted bail amount, because a detained arrestee will make all future court appearances. The fact that money bail does not disincentivize future crimes makes evident that the law is not targeted at protecting public safety.

Additionally, the structure of the money bail laws in California prioritize orders of money bail as the primary means of detention without any consideration of alternatives that would protect the public. The laws' emphasis on money bail ignores the many alternative options that might increase public safety, such as stay-away orders, counseling, alcohol or drug dependency programs, and so on. Indeed, the money bail laws allow counties like Sacramento to operate

pretrial justice without any meaningful pretrial services agency. The design of the laws actually creates an incentive for counties *not* to develop robust pretrial services departments, because the laws allow counties to rely on money bail as their one-size-fits-all pretrial justice system. The laws' total lack of provisions for pretrial services further highlights that the money bail clauses are not designed to advance public safety.

In addition to these reasons, perhaps the simplest evidence that the money bail laws are not designed to protect the public is that the laws create a system in every county by which every arrestee is released or detained based on money bail, even if there is no risk to others. The state laws do not allow for an exception whereby counties can release first-time arrestees, those who lack a long criminal history, those who have never committed a violent crime, or those who otherwise are unlikely to pose a danger to the community. Under state law, money bail must be imposed for every felony offense. Cal. Pen. Code § 1269b(c). Because no particularized inquiry is made to target money bail only to specific instances of dangerous, dangerous is not part of the governmental interest at stake.

Defendant may argue that it would be an administrative burden to make different pretrial detention laws for different arrestees. For example, refined laws that treat those arrested for victimless crimes, non-serious felonies, or non-violent crimes differently might be administratively cumbersome. Or laws that treat those with long criminal histories different than first-time offenders might be hard to administer. Any pretrial release laws that more specifically focus on danger to the public might require more resources from counties. Even if those claims are true, administrative convenience is not a compelling justification for restricting pretrial freedom, nor is it synonymous with protecting the public. The money bail laws might very well be designed for administrative convenience, but they are not designed to protect public safety,

and Defendant wisely makes no argument to the contrary.

Supreme Court and Ninth Circuit precedent has established that only two possible justifications can serve as compelling enough interests to deny the fundamental right to pretrial freedom: securing appearance at trial and protecting the public from a specific risk of dangerousness. *See United States v. Salerno*, 481 U.S. 739, 749–50 (1987); *Lopez-Valenzuela*, 770 F.3d at 779. Because California's money bail laws are not designed to protect the public, and because administrative convenience is not a compelling justification to deny pretrial freedom, the only remaining conceivable government interest is securing court appearance. This fact is perhaps obvious: the philosophy of money bail is that those wealthy enough to afford it give money bail to the county as collateral to incentivize future court appearances. By ensuring the return of money bail after all court appearances are made, California law makes plain its only motive: to enhance court appearance rates. *See, e.g.*, Cal. Pen. Code 1305 (allowing forfeiture of money bail only if court appearances are missed).

ii. Far from Being Carefully Limited or Narrowly Tailored, the State's Bail Laws Are Indiscriminate, Blanket Restrictions of Pretrial Freedom for Poor Arrestees

Any infringement on the fundamental right to pretrial liberty must be "carefully limited" and "narrowly tailored." *Lopez-Valenzuela*, 770 F.3d at 780. Getting arrestees to court is indeed a valid government interest, but the bail laws are not narrowly tailored to advance this interest. Instead, they are an indiscriminate, blanket detention order on those too poor to pay the exorbitant bail amounts set in the bail schedule.

California's money bail laws allow release for someone who is rich, dangerous, and a flight risk while detaining someone who is poor, safe, and likely to appear in court. Money bail does not carefully delineate the circumstances under which any compelling governmental interest is satisfied because the only question that matters is whether an arrestee can afford her

money bail amount. The money bail laws allow thousands of poor arrestees to be detained, even if they show no particular risk of flight, solely because they are too poor to pay money bail.

Any stereotype or prejudice that people who are poor are necessarily an unmanageable flight risk lacks rational or empirical support and must be banished from this case. It is a sad reality that many people incorrectly (and perhaps subconsciously) fear that poor arrestees are more likely to skip court, but this prejudice is no justification for the blanket application of wealth-based detention imposed by California law. There is no evidence that ability to pay correlates closely with unmanageable flight risk or public safety. There is no acute problem of unmanageable flight risk or public safety that money bail tackles, because a person's wealth-status is not determinative of her likelihood of appearing for trial or threatening public safety. The money bail system applies to every case, regardless of how serious or minor the charges. The total lack of evidence that poor arrestees necessarily represent an across-the-board flight risks illustrates the lack of narrow tailoring in the money bail laws.

California's money bail laws are not individualized or based on specific evidence of flight risk. They do not take into account individual factors such as prior failures to appear. When the Supreme Court analyzed the Federal Bail Reform Act in *Salerno*, a crucial part of its analysis was the individualized and particularized focus on each defendant before any order of detention or conditions of release were imposed. *Salerno*, 481 U.S. at 750. *Salerno* also emphasized the importance of the federal bail law's limitation to "operate only on individuals who have been arrested for a specific category of extremely serious offenses." *Id.* California's system of imposing financial restrictions on release — which are impediments to pretrial freedom — is premised on its indiscriminate application that is, by definition, not narrowly tailored.

California law has chosen a wealth-based metric for pretrial freedom, but numerous alternatives could be employed. Instead of imposing money bail on all arrestees, California law could choose to release all arrestees (or all arrestees charged with non-serious crimes); it could release those arrestees without prior failures to appear; it could release arrestees who show no particularized concerns of flight risk or danger; or it could choose other non-wealth-based metrics.

Although particularized evidence is not the concern of California's across-the-board, categorical, and broad-based bail laws, the evidence offered in Plaintiff's complaint shows that numerous alternatives to money bail are more narrowly tailored to securing court appearance. For example, in Washington, D.C.'s pretrial justice system, no arrestee is given a money bail order; all are considered for release or detention on an individualized basis; over 90% of arrestees are released; effective pretrial supervision services are employed; and virtually all arrestees return to court (without committing any future crimes). ECF Doc. 31-2, ¶ 12. The federal system similarly employs an individualized analysis along with pretrial supervision services to ensure that arrestees return to court. 18 U.S.C. § 3142(e)–(i). This evidence of effective alternatives illustrates that California's scheme is not narrowly tailored to advance the interest of court appearance; other, less restrictive methods accomplish the same goal of high court appearance rates.

The obvious should not be overlooked in this case: the requirement of narrow tailoring is inconsistent with a state's goal of administrative convenience, and California has enacted money bail laws designed primarily for administrative convenience. By operation of California law, every county is required to enact an across-the-board bail schedule. In creating the maximally convenient system, California has ignored the important and fundamental nature of the right to

pretrial freedom, instead treating arrestees as faceless, nameless herds to be managed. The convenience of California's money bail system lends itself to the efficient processing of human beings, all while undercutting the individualized focus, particularized consideration, narrow tailoring, and careful limitations that should always be used before imposing restrictions on pretrial liberty.

Defendant ignores the elephant in the room — the bail laws' design for administrative convenience — at the expense of the many poor arrestees who are detained by a system that ties pretrial freedom to wealth-status. At the same time, Defendant sidesteps the rigorous analysis required by strict scrutiny, instead arguing that California's bail laws do not categorically deny release to a class of arrestees. But California's bail laws do categorically deny release to all those too poor to afford money bail. A quick examination of Sacramento's money bail schedule — which includes many amounts in the thousands or even tens of thousands of dollars — reveals how, for the vast majority of felonies, money bail is a *de facto* order of detention for those who are poor. Failing to include any individualized, particularized analysis makes the application of the bail laws categorical.

Defendant also argues that California law allows multiple options for release for poor arrestees, but this argument also misses the point. Even if there are other options for release, any restrictions on pretrial freedom must be narrowly tailored and carefully limited only to those instances where necessary to guard against a particular risk. Imposition of money bail is a restriction against pretrial freedom and, even if the state makes other options available, it cannot impose money bail in the uniform, broad-based, indiscriminate manner required by the bail laws.

B. California Law's System of Wealth-Based Detention Is Excessive in Relation to the Goal of Increasing Court Appearance

In addition to failing the narrow tailoring analysis, California's bail laws violate

substantive due process because they are excessive in relation to their goal of increasing court appearance. *Lopez-Valenzuela* struck down Arizona's system of pretrial detention as excessive, noting that there was no evidence of a pressing societal problem of flight risk. 770 F.3d at 783. Here too, there is no pressing societal problem that requires wealth-based detention, nor is there evidence that money bail is as effective as several alternative systems successfully used in other jurisdictions. *See, e.g.*, ECF Doc. 31-2.

Lopez-Valenzuela also highlighted the lack of individualized assessments in its excessiveness inquiry, and, like in Arizona, California's wealth-based detention system is excessive because it does not provide for individualized assessments of risk level. By requiring an across-the-board money bail schedule, California law guarantees that arrestees will be subject to money bail orders without individualized consideration. Regardless of the offense of arrest, regardless of the lack of any history of failures to appear, and regardless of the lack of any risk of future flight risk, arrestees under California law are immediately subject to money bail.

California's belated and costly mechanisms for release are insufficient mitigants to the indiscriminate denial of pretrial freedom to poor arrestees. The existence of private, for-profit bail bond companies is not an adequate leveling resource, for poor arrestees have to pay non-refundable deposits that alone may be out of reach for some arrestees. The fact that bail may be reduced or eliminated at some point is also not an adequate alternative remedy, as arrestees will have already spent time in jail solely based on their inability to pay their money bail before having access to those alternatives.

Even a few days in jail can have devastating consequences in a person's life, such as the loss of a job, instability in housing, or the inability to arrange safe alternate care for dependent relatives. *See* ECF Doc. 31-4, pp. 1–3. Those detained pretrial suffer worse outcomes at trial

and sentencing than those released pretrial, even when charged with the same offenses. Christopher T. Lowenkamp *et al.*, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Laura and John Arnold Foundation, 3 (November 2013) available at www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf; *see* also Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics Online, Table 5.22.2010, http://www.albany.edu/sourcebook/pdf/t5222010.pdf; S. Rosenmerkel, M. Durose, and D. Farole, Felony Sentences in State Courts, 2006–Statistical Tables (Washington, DC: Bureau of Justice Statistics, 2009), 1; Mary T. Phillips, *Pretrial Detention and Case Outcomes, Part 1: Nonfelony Cases*, New York Criminal Justice Agency, Inc., 55–56 (November 2007), http://www.nycja.org/lwdcms/docview.php?module=reports&module_id=669&doc_name=doc. Pretrial detention can impede a defendant's ability to meet with her lawyer, gather witnesses and evidence, and prepare for her own defense. ECF Doc. 31-5. Those detained pretrial are more likely to plead guilty just to shorten their jail time, even if innocent. Confinement also exposes arrestees to the risk of unsanitary conditions, infection, and other medical and safety emergencies prevalent in local jails. *See, e.g.*, Bureau of Justice Statistics, Sexual Victimization in Prisons and Jails Reported by Inmates, http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4654 (finding that 3.2% of jail inmates reported being sexually abused during their current stay in jail).

For all of these reasons, the Supreme Court has consistently held that no person should spend a single day in jail solely because she cannot afford a monetary payment. *See, e.g.*, *Bearden v. Georgia,* 461 U.S. 660, 672–73 (1983), "[To] deprive [a] probationer of his conditional freedom simply because, through no fault of his own he cannot pay [a] fine . . . would be contrary to the fundamental fairness required by the Fourteenth Amendment."); *Tate v. Short*, 401 U.S. 395, 398 (1971) ("[T]he Constitution prohibits the State from . . . automatically

converting [a fine] into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full."); *Williams v. Illinois*, 399 U.S. 235, 242 (1970) ("By making the maximum confinement contingent upon one's ability to pay, the State has visited different consequences on two categories of persons since the result is to make incarceration in excess of the statutory maximum applicable only to those without the requisite resources to satisfy the money portion of the judgment."). The holdings of *Bearden*, *Tate*, and *Williams* establish an overarching maxim inherent in our system of justice: an individual cannot be jailed solely due to her inability to make a monetary payment.

Relying on this Supreme Court precedent, numerous courts have held that any kind of pay-or-jail scheme is unconstitutional when it operates to jail the poor. For example, in *Frazier v. Jordan,* 457 F.2d 726 (5th Cir. 1972), the court found that an alternative sentencing scheme of monetary payments or time in jail was unconstitutional because "[t]hose with means avoid imprisonment [but] the indigent cannot escape imprisonment." *Id.* at 728; *see also see also United States v. Hines*, 88 F.3d 661, 664 (8th Cir. 1996) ("A defendant may not constitutionally be incarcerated solely because he cannot pay a fine through no fault of his own."); *Barnett v. Hopper*, 548 F.2d 550, 554 (5th Cir.1977) ("To imprison an indigent when in the same circumstances an individual of financial means would remain free constitutes a denial of equal protection of the laws."), *vacated as moot*, 439 U.S. 1041 (1978); *United States v. Estrada de Castillo*, 549 F.2d 583, 586 (9th Cir. 1976) ("[I]f a defendant, because of his financial inability to pay a fine, will be imprisoned longer than someone who has the ability to pay the fine, then the sentence is invalid.").

District courts have recently reaffirmed the principle that, in the criminal justice system, people who are poor cannot be penalized because of their wealth-status. For example, in *United*

States v. Flowers, 946 F. Supp. 2d 1295 (M.D. Ala. 2013), a criminal defendant faced imprisonment because he could not afford the cost of release on home confinement monitoring. The court found — as the federal government conceded, *id*. at 1301 — that keeping a person in jail solely due to wealth-status would be "wrong" and that "the Constitution's guarantee of equal protection is inhospitable to the Probation Department's policy of making monitored home confinement available to only those who can pay for it." *Id*. at 1302. The court acknowledged that "the principle that wealth and poverty have no place in sentencing decisions is nothing new." *Id.* Other federal district courts have consistently enforced the same fundamental principle condemning the jailing of individuals who are poor simply due to their inability to pay a monetary sum. *See*, *e.g.*, *United States v. Waldron*, 306 F. Supp. 2d 623, 629 (M.D. La. 2004) ("It is well established that our law does not permit the revocation of probation for a defendant's failure to pay the amount of fines if that defendant is indigent or otherwise unable to pay. In other words, the government may not imprison a person solely because he lacked the resources to pay a fine.").

Without hesitation, courts have applied the Constitution's ban on wealth inequality in the criminal justice system to pretrial detention schemes. In *Pugh v. Rainwater*, 572 F.2d 1053, 1056 (5th Cir. 1978) (*en banc*), the Fifth Circuit (consistent with every other federal court to closely examine the issue) emphasized:

> We have no doubt that in the case of an indigent, whose appearance at trial could reasonably be assured by one of the alternate forms of release, pretrial confinement for inability to post money bail would constitute imposition of an excessive restraint.

572 F.2d at 1058. *Rainwater* unambiguously prohibits the jailing of someone just because she cannot afford a money bail amount. *Id.* at 1056 ("At the outset, we accept the principle that imprisonment solely because of indigent status is invidious discrimination and not

constitutionally permissible."). The court held: "The incarceration of those who cannot [afford a cash payment], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements." *Id*. at 1057; *see also*, *e.g.*, *Williams v. Farrior*, 626 F.Supp. 983, 985 (S.D. Miss. 1986) ("[I]t is clear that a bail system which allows only monetary bail and does not provide for any meaningful consideration of other possible alternatives for indigent pretrial detainee infringes on both equal protection and due process requirements.").

Several federal district courts have recently held that the Constitution's ban on jailing someone based on wealth-status applies in full force to the use of money bail pretrial. *See, e.g.*, *Walker v. City of Calhoun*, 4:15-cv-170-HLM at *48 (N.D. Ga. Jan. 28, 2016) ("Certainly, keeping individuals in jail solely because they cannot pay for their release, whether via fines, fees, or a cash bond, is impermissible."); *Thompson v. Moss Point*, 1:15-cv-00182-LG-RHW (S.D. Miss. Nov. 6, 2015); *Cooper v. City of Dothan*, 1:15-cv-425-WKW (M.D. Ala. June 18, 2015) (issuing Temporary Restraining Order and holding that the City of Dothan's fixed money bail schedule violates the Fourteenth Amendment); *Jones v. City of Clanton*, 2:15-cv-34-MHT (M.D. Ala. Sept. 14, 2015) (declaring unconstitutional the use of wealth-based detention procedures as applied to indigent arrestees).

Just like their federal counterparts, numerous state courts have stricken down wealth-based detention schemes similar to the one employed by Defendants. The Mississippi Supreme Court long ago condemned the jailing of the poor based on inability to pay secured monetary bail. *See, e.g.*, *Lee v. Lawson*, 375 So. 2d 1019, 1023 (Miss. 1979) ("A consideration of the equal protection and due process rights of indigent pretrial detainees leads us to the inescapable conclusion that a bail system based on monetary bail alone would be unconstitutional."); *see*

also, e.g., *Robertson v. Goldman*, 369 S.E.2d 888, 891 (W. Va. 1988) ("[W]e have previously observed in a case involving a "peace bond," which we said was analogous to a bail bond, that if the appellant was placed in jail because he was an indigent and could not furnish [bond] while a person who is not an indigent can avoid being placed in jail by merely furnishing the bond required, he has been denied equal protection of the law.") (internal quotation marks omitted). In *State v. Blake*, 642 So. 2d 959, 968 (Ala. 1994), the Alabama Supreme Court struck down a state statute that allowed for indigent arrestees to be held for 72 hours solely because they could not afford monetary payments to secure their release prior to their first appearance. *Id.* at 968; *see also id.* at 966 ("Putting liberty on a cash basis was never intended by the founding fathers as the basis for release pending trial.") (quoting decision of lower court).

In line with the numerous federal and state courts that have stricken down wealth-based pretrial detention schemes, the United States Department of Justice has explained that the fundamental ban on wealth-based detention applies in full force to the use of money bail. *See* ECF Doc. 2-2, United States Department of Justice, Statement of Interest, *Varden et al. v. City of Clanton,* 15-cv-34 (M.D. Ala. 2015) (arguing on behalf of the United States government that the use of secured monetary bail schedules to keep indigent arrestees in jail "not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes bad public policy.").

The American Bar Association's seminal Standards for Criminal Justice condemn Defendants' wealth-based detention policies as having no place in American law. *American Bar Association Standards for Criminal Justice – Pretrial Release* (3d ed. 2007) ("ABA Standards"), *available at* http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.authcheckdam.pdf. The ABA Standards call for the presumption of release on recognizance, followed by release pursuant to the least restrictive non-financial

conditions; most importantly, they condemn the use of money bail that results in detention (as in Defendants' wealth-based detention scheme). ABA Standards § 10-1.4(a).

Defendant's references to cases that have upheld the use of money bail in theory are irrelevant, because Plaintiff's challenge is to a non-individualized, blanket application of wealth-based detention that operates to jail people who are poor. Plaintiff is not arguing that money bail can never be used (for example, as part of an order of release and as genuine collateral for someone who can afford it and for whom money bail will provide an incentive to return). In other words, none of Plaintiff's constitutional arguments would bar an individual judge from ordering release and adding, as a condition of release, a requirement that the defendant post a refundable money bail deposit as genuine collateral. Money bail should only be used where it is the most effective means of securing appearance, not as a detention order for people who are poor. Plaintiff is not seeking the total eradication of all money bail; the challenge in this case is against money bail as a *de facto* detention order based on wealth-status. Thus, despite the permissibility of specific money bail orders in appropriate individual cases, money bail cannot be used in the indiscriminate, broad-based, and arbitrary manner that amounts to wealth-based detention.

III. Conclusion

While conceding that Sacramento's implementation of money bail may be unconstitutional, the Attorney General only defends the facial constitutionality of California's bail laws. But Defendant's efforts must fail, because the bail laws outline an across-the-board wealth-based detention system, which cannot pass the strict scrutiny required for infringements on pretrial liberty. Although Sacramento County also violates Plaintiff's fundamental rights by executing its money bail system, the state laws must be stricken on their face because they are

not narrowly tailored, but are indiscriminate applications of a wealth-based scheme.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 29, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following counsel:

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