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Attorneys for Defendants COUNTY OF SACRAMENTO and SCOTT JONES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY WAYNE WELCHEN, on behalf of himself and others similarly situated,

Plaintiff,

v.

THE COUNTY OF SACRAMENTO and KAMALA HARRIS, in her official Capacity as the California Attorney General, and SCOTT JONES in his Official Capacity as the Sacramento County Sheriff,

Defendants.
_____/

CASE NO. 2:16-cv-00185 TLN-DB

NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Date: January 12, 2017
Time: 2:00 p.m.
Courtroom: 2, 15th Floor

Amended Complaint Filed: 11/09/2016
Complaint Filed: 01/29/2016

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on the above date and time, or as soon thereafter as the matter can be heard in Courtroom 2 of the United States District Court for the Eastern District of California, 501 "I" Street, Sacramento, California, Defendants COUNTY OF SACRAMENTO and SCOTT JONES will, and hereby do, move for an Order dismissing Plaintiff's First Amended Complaint under Fed. R. Civ. Proc. 12(b)(6) for failure to state a claim on the following grounds:

(1) Plaintiff's claim against Sacramento County Sheriff SCOTT JONES ("the Sheriff") is barred under the Eleventh Amendment to the extent Plaintiff seeks money damages. The Sheriff acts on behalf of the state when he detains a person based on his or her inability to pay the bail

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amount prescribed in the bail schedule established by the Superior Court.

(2) Since the Sheriff acts on behalf of the *state* in administering the bail system, rather than the COUNTY OF SACRAMENTO ("the County"), no claim can be stated against the County.

(3) Plaintiff's *Monell* "policy and practice" claim against the County also fails. A municipal policy for *Monell* purposes does not arise absent a deliberate choice to follow a course of action made from various alternatives by the official or officials responsible for establishing final policy. The County's involvement with the money bail system amounts to ministerial compliance with state law and court orders. No deliberate choice among various alternatives was or could have been made.

(4) Finally, Plaintiff's suit should be dismissed because he has failed to state a claim under the Due Process Clause; his sole remaining claim for relief. Monetary bail is a constitutional means of protecting society and securing the accused's appearance at trial. Indeed, the text of the Constitution pre-supposes that bail is permissible by prohibiting only *excessive* bail.

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities, the pleadings and records on file in this matter, and on any evidence, including oral and documentary evidence, if any, that may be presented at any later point including the hearing on the motion, and any such further matters as the Court deems appropriate.

Dated: December 13, 2016

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By /s/ Jeffrey A. Nordlander
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v.

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Defendants.
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CASE NO. 2:16-cv-00185 TLN-DB

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

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I.

INTRODUCTION

Plaintiff GARY WAYNE WELCHEN ("Plaintiff") was detained by the Sacramento County Sheriff's Department because probable cause existed to believe he committed a crime. Following his arrest, he was transported to the Sacramento County Main Jail and bail was set at $10,000. Plaintiff was allegedly unable to pay bail, and was detained for six days, as required by state law and court order.

Plaintiff asserts a single claim for relief—violation of the Due Process Clause of the Fourteenth Amendment—against the COUNTY OF SACRAMENTO and Sacramento County Sheriff SCOTT JONES (collectively, "County Defendants"), arising out of his detention. [1] In Plaintiff's view, the Sheriff's Department had no choice but to release him *immediately* once he said he could not post bail under the bail schedule.

The First Amended Complaint should be dismissed on the following grounds:

(1) Plaintiff's claim against Sacramento County Sheriff SCOTT JONES ("the Sheriff") is barred by the Eleventh Amendment to the extent Plaintiff seeks money damages. The Sheriff acts on behalf of the state when he detains a person based on his or her inability to pay the bail amount prescribed in the bail schedule established by the Superior Court.

(2) Since the Sheriff acts on behalf of the *state* in administering the bail system, rather than the COUNTY OF SACRAMENTO ("the County"), no claim can be stated against the County.

(3) Plaintiff's *Monell* "policy and practice" claim against the County also fails. A municipal policy for *Monell* purposes does not arise absent a deliberate choice to follow a course of action made from various alternatives by the official or officials responsible for establishing final policy. The County's involvement with the money bail system amounts to ministerial compliance with state law and court orders. No deliberate choice among various alternatives was

[1] The Court dismissed Plaintiff's Equal Protection claim without leave to amend. *See* ECF No. 30. The County Defendants surmise that Plaintiff reasserts the claim for appeal purposes and is not attempting to actively litigate the Equal Protection claim before this Court. Since the Court's prior Order disposed of the issue, the County Defendants do not readdress it here.

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or could have been made.

(4) Finally, Plaintiff's suit should be dismissed because he has failed to state a claim under the Due Process Clause; his sole remaining claim for relief. Monetary bail is a constitutional means of protecting society and securing the accused's appearance at trial. Indeed, the text of the Constitution pre-supposes that bail is permissible by prohibiting only *excessive* bail.

The County Defendants also note that Plaintiff's counsel is currently litigating an essentially identical challenge to money bail in the Northern District of California. The Northern District recently issued an Order on Motions to Dismiss filed by Defendants in that action. *See Buffin v. City & Cnty. of San Francisco*, 2016 U.S. Dist. LEXIS 142734 (N.D.Cal. Oct. 14, 2016) (Case No. 15-cv-04959-YGR) (finding that the sheriff acts on behalf of the state and no *Monell* claim was stated against the County). The County Defendants have moved to dismiss the First Amended Complaint on largely the same grounds set forth in the Northern District's Order. *See id*.

II.

STATEMENT OF FACTS

Plaintiff was arrested on January 29, 2016 for burglarizing an uninhabited dwelling. ECF No. 31 ¶ 18. He was detained and transported to the Sacramento County Main Jail. *Id*. at ¶ 29. He was booked into custody and bail was set in the amount of $10,000. *Id*. Plaintiff did not pay the prescribed bail amount and was detained for six days. *Id*. at ¶ 33. Plaintiff alleges he was unable to pay because he is indigent. *Id*. at ¶ 30.

Plaintiff alleges that he was detained pursuant to "Defendants'" policy of detaining persons unable to pay the prescribed money bail amount. Under that alleged policy, arrestees are transported to the Main Jail for booking following arrest. *Id*. at ¶ 34. The Sheriff's Correctional Services Divisions books them. *Id*. Arrestees are booked and informed of their booking charge and bail amount. *Id*. at ¶ 37. The bail amount is prescribed by the Felony and Misdemeanor Bail Schedule as established by the Superior Court of California, County of Sacramento. *Id*. If arrestees pay the bail amount, they are released. *Id*. at ¶ 40. If an arrestee cannot furnish his or her bail amount, the Sheriff's Department keeps the arrestee in jail until the arrestee makes arrangements to pay the required amount, the arrestee is discharged, or the arrestee is arraigned in court 2 to 5

days later. *Id*. at ¶ 39-41. Plaintiff alleges this system violates his Due Process rights. *See generally*, ECF No. 31.

III.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a complaint should be dismissed if it fails to state a claim upon which relief can be granted. Although a complaint attacked by a motion to dismiss does not need "detailed factual allegations," it must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation omitted). A court should dismiss a complaint "if it fails to plead enough facts to state a claim to relief that is plausible on its face." *In re Cutera Securities Litig.*, 610 F.3d 1103, 1107 (9th Cir. 2010) (citation omitted). If a complaint's defects are not curable, the court should dismiss without leave to amend. *See Coakley v. Murphy*, 884 F.2d 1218, 1222 (9th Cir. 1989).

The First Amended Complaint's sole claim for relief is for violation of the Fourteenth Amendment's Due Process Clause. ECF No. 31. Because there is no direct cause of action under the United States Consitution, Plaintiff bring his claim against the County under 42 U.S.C. § 1983. *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). There are, however, limits on the availability of a claim against a municipality under Section 1983. Among other things, the challenged action must reflect a policy or law for which the municipality is responsible:

> Local governing bodies . . . can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers . . . . On the other hand, the language of § 1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort.

Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 690-91 (1978) (emphasis added). The Supreme Court emphasized this limitation when it examined *Monell* six years ago: "[T]he Court concluded that a municipality could be held liable under § 1983 only for its own

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violations of federal law." *Los Angeles Cty., Cal. v. Humphries*, 562 U.S. 29, 36 (2010); *see also id.* at 37 ("The *Monell* Court thought that Congress intended potential § 1983 liability where a municipality's own violations were at issue but not where only the violations of others were at issue.") (emphasis in original).

IV.

ARGUMENT

A. THE SHERIFF IS IMMUNE FROM MONEY DAMAGES UNDER THE ELEVENTH AMENDMENT.

1. DAMAGES IN A 42 U.S.C. § 1983 SUIT ARE UNAVAILABLE AGAINST A STATE OFFICIAL.

A prerequisite to liability under 42 U.S.C. § 1983 is the claimed violation being committed by a "person" acting under color of state law. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 109 (1989). "Person" does not have a universal scope; it does not encompass claims against a state or a state agency because the Eleventh Amendment bars such encroachments on a state's sovereignty.[2] *Doe v. Lawrence Livermore Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir.1997) ("States or governmental entities that are considered 'arms of the State' for Eleventh Amendment purposes are not 'persons' under § 1983," quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70 (1989)). Nominally County officials, including sheriffs, are state actors when they act at the behest of state law. *See, e.g., Scocca v. Smith*, 912 F. Supp. 2d 875, 879-80 (N.D. Cal. 2012) (California sheriffs act on behalf of state when issuing concealed carry permits because issuance is regulated by a statewide statutory scheme). In administering the money bail system, the Sheriff is a state actor who is immune under the Eleventh Amendment.

2. The Sheriff Acts on Behalf of the State.

The Sheriff is immune under the Eleventh Amendment because he acts on behalf of the state when he detains a person based on his or her inability to pay the bail amount prescribed in the bail schedule established by the Superior Court.

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[2] The *Ex Parte Young* exception to Eleventh Amendment immunity permits suits for prospective declaratory relief or injunctive relief against state officers in their official capacities for alleged violations of federal law. *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1133–34 (9th Cir. 2012)

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In *McMillan v. Monroe County, Alabama*, 520 U.S. 781 (1997), the Supreme Court articulated the parameters for determining whether local governmental officials are final policy makers for the local government, or instead represent the State and qualify for Eleventh Amendment Immunity. *McMillan*, 520 U.S. at 793.[3] The analysis is not "categorical," or "all or nothing." *McMillian v. Monroe Cty., Ala.*, 502 U.S. 781, 785 (1997). Instead, two principles guide the inquiry: (i) "whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue," and (ii) "the definition of the official's functions under relevant state law." *Id*. at 785-86.

In determining whether sheriffs act on behalf of the county or the state, the Ninth Circuit has focused on whether sheriffs act pursuant to County developed policies, or whether the challenged conduct is simply the execution of state law. *See, e.g., Cortez v. City of Los Angeles*, 294 F.3d 1186 (9th Cir. 2002) (sheriff acts on behalf of county in "establishing and implementing policies and procedures for the safekeeping of inmates in the county jail.").

Streit v. County of L.A., 236 F.3d 552, 560 (9th Cir. 2001), for example, concerned the County of Los Angeles adopting and implementing a policy requiring that a records check (*e.g.*, outstanding warrants) be conducted prior to an inmate's release. *Id*. at 555. Due to administrative delays, the policy resulted in prisoners' incarceration extending beyond their lawful release date under state law. *Id*. at 557. No statute, regulation, or provision in the California Constitution required LASD to hold the prisoners—the policy was a County invention. *Id*. at 563. For that reason, after examining the "precise function at issue in conjunction with the state constitution, codes, case law, [the court] conclude[d] that the LASD acts as the final policymaker for the county when administering the County's release policy and not in its state law enforcement capacity." *Id*. at 564-65. The court noted that the result would have been different had prisoners been detained

[3] California law deems elected sheriffs as state actors with respect to their law enforcement activities. *See Venegas v. County of Los Angeles*, 32 Cal. 4th 820, 839 (2004); *County of Los Angeles v. Superior Court (Peters)*, 68 Cal. App. 4th 1166, 1171 (1998). Although the Ninth Circuit generally stresses the primacy of federal law in the § 1983 context, some deference is afforded to state court decisions when considering whether officials act on behalf of the state. *See Streit v. County of L.A.* 236 F.3d 552, 560 (9th Cir. 2001). In *McMillan*, the Supreme Court closely examined the Alabama Constitution and case law in the course of holding that "Alabama sheriffs, when executing their law enforcement duties, represent the State of Alabama, not their counties." *McMillan*, 520 U.S. at 789-793.

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pursuant to a "facially-valid warrant" because executing facially-valid warrants is a "law enforcement function with which the LASD is tasked under California state law." *Id*. at 564. Although a seemingly "subtle" distinction, the Ninth Circuit made clear it is "critical." *Id*.

Recognizing this critical distinction, multiple District Courts have held that California sheriffs act on behalf of the state when holding prisoners in accordance with state law and/or court orders.[4] *See McNeely v. Cty. of Sacramento*, No. 205-CV-1401- MCE-DAD, 2008 WL 489893, at *4 (E.D. Cal. Feb. 20, 2008) ("While the Ninth Circuit has treated the sheriff as a county actor where his administrative or investigative responsibilities are under scrutiny, those cases are distinguishable from the present case, which concerns conduct arising from simply detaining Plaintiff in jail pending the outcome of ongoing criminal proceedings in Sacramento and Placer Counties."); *Munoz v. Kolender*, 208 F.Supp.2d 1125, 1152 n. 31 (S.D. Cal. 2002) (distinguishing *Streit*'s finding that the sheriff was county actor on the ground that the sheriff was required to detain the plaintiff by state law); *Smith v. Cty. of San Mateo*, No. C 99-00519 CRB, 1999 WL 672318, at *7 (N.D. Cal. Aug. 20, 1999) (sheriff was state rather than county official when detaining plaintiff pursuant to an outstanding bench warrant).

Here, a brief review of the "comprehensive statutory scheme" regulating bail in California shows that the Sheriff is a state actor when he enforces the bail schedule set by the Superior Court. *See Galen v. City of Los* Angeles, 447 F.3d 652, 660 (9th Cir. 2007) (bail system in California exists pursuant to a comprehensive statutory scheme). In this context, the Sheriff does not execute County policy but rather merely acts in accordance with mandatory state law and court orders.

There are three types of pretrial release available under California law: "(1) citation (Pen. Code, §§ 853.5, 853.6); (2) bail (Pen. Code, § 1268 et seq.); (3) own recognizance release (Pen. Code, § 1318 et seq.)." *Van Atta v. Scott*, 27 Cal.3d 424, 430 (1980). Plaintiff does not challenge the County's administration of citation release.[5] Decisions regarding own recognizance release

[4] Such a distinction is relied upon in other contexts, as well. *See, e.g., Engebretson v. Mahoney*, 724 F.3d 1034 (9th Cir. 2013) ("prison officials charged with executing facially valid court orders enjoy absolute immunity from § 1983 liability for conduct prescribed by those orders.")

[5] The First Amended Complaint does not allege that Defendants have a policy of imposing pretrial confinement on individuals who are eligible for citation release, and Plaintiff has no standing to make such a claim in any event, because he was not eligible for citation release. *See* Cal. Pen. Code §§ 853.5, 853.6 (authority for law enforcement to cite and release offenders is limited to certain infractions and misdemeanors).

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(OR), on the other hand, are made by the Superior Court under California law. *See, e.g.*, Cal. Const. art. I, § 12; Cal. Pen. Code §§ 1268, 1270 (any person, except those charged with a capital offense, "may be released on his or her own recognizance by a *California court or magistrate* . . .") (emphasis added).

Nor is the Sheriff responsible for determining an arrestee's bail amount. Bail is set in one of three ways: (1) in the warrant of arrest (to the extent one exists); (2) by the bail schedule established by the judges of the Superior Court as required by state law (which serves as the default amount); or (3) individually by the court (once the defendant has appeared). Cal Pen. Code § 1269(b). Before the initial appearance, and depending on the offense, a person in custody may also apply to the *court* for release on bail in an amount below that set by the bail schedule. *Id.* § 1269c. In all cases, conditions of release, including the amount of bail, are set by the Superior Court. Cal. Pen. Code § 1269c ("The *magistrate or commissioner* to whom the application is made is authorized to set bail in an amount that he or she deems sufficient . . . ");), § 1275(a)(1) ("In setting, reducing, or denying bail, a *judge or magistrate* shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case.")

These statutes make plain that pretrial determinations are the prerogative of Superior Court judicial officers, not the Sheriff. The Sheriff is simply obliged by state law to detain prisoners absent receipt of the prescribed bail amount or a court order directing the prisoner's release. Cal. Pen. Code § 4004 ("A prisoner committed to the county jail for examination, or upon conviction for a public offense, must be actually confined in the jail until legally discharged."). The amount of the bail is set by reference to "uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided [herein]." *Id.* § 1269b(b). "It is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail" for all bail-eligible offenses. *Id.* § 1269b(c). A sheriff is authorized only to "approve and accept bail in the *amount fixed* by the [warrant, bail schedule, or order and] . . . to issue and sign an order for the release." Penal Code § 1269b(a) (emphasis added). In fact, it is a crime to release prisoners except in accordance with the bail

schedule. *Id*. § 1269a ("Any officer releasing any defendant upon bail otherwise than as herein provided shall be guilty of a misdemeanor.")

The Sheriff has a mere ministerial role in following the bail system established by state law and "prepare[d], adopt[ed], and annually revise[d]", Cal. Penal Code § 1269b(c), by Superior Court judges.[6] For that reason, the Sheriff is a state actor when enforcing money bail and is immune from money damages under the Eleventh Amendment.

B. NO CLAIM CAN BE STATED AGAINST THE COUNTY BECAUSE THE SHERIFF ACTS ON BEHALF OF THE STATE.

In *Weiner*, the Ninth Circuit explained that, when a county official acts on behalf of the State, the county is entitled to dismissal from the suit: "In the present case … the San Diego County district attorney was acting as a state official in deciding to proceed with Weiner's criminal prosecution. Weiner's § 1983 claim against the County, therefore, fails. The County was not the actor; the state was." 210 F.3d at 1031; *see also Eggar v. City of Livingston*, 40 F.3d 312, 315 (9th Cir. 1994) (affirming grant of summary judgment for city because Montana municipal judge acted on behalf of the state, not the city). The same, of course, is true where a county is sued for the actions of the sheriff as a state official. *See, e.g., McNeely*, 2008 WL 489893, at *4-5 (dismissing claims against counties because sheriffs act as state officials when detaining individuals pretrial or on a warrant); *Smith*, 1999 WL 672318, at *8 (same); *Scocca*, 912 F.Supp.2d at 879-84 (dismissing claim against county because sheriff was state official when granting or denying licenses to carry concealed weapons); *Rojas v. Sonoma Cty.*, No. C-11-1358 EMC, 2011 WL 5024551, at *4 (N.D. Cal. Oct. 21, 2011) (dismissing claim against county because sheriffs are representatives of the State when providing courtroom security services). Thus, since the Sheriff acts on behalf of the state in enforcing the money bail system, no claim can be asserted against the County.

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[6] Nor is the County responsible for the orders of the Superior Court. *Greater Los Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) (the court's "geographical location within any particular county cannot change the fact that the court derives its power from the State and is ultimately regulated by the State); Cal. Const. art. 6 §§ 1, 5.

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C. THE COUNTY DOES NOT HAVE A "POLICY AND PRACTICE," UNDER *MONELL*, OF DETAINING PERSONS WHO ARE UNABLE TO PAY THE PRESCRIBED BAIL AMOUNT.

Plaintiff alleges the "treatment of the named Plaintiff and other Class Members is caused by two factors: (1) the unconstitutional provisions of California's Penal Code that are enforced by the Sheriff and Attorney General; (2) the Sheriff's and Sacramento's policies and practices of wealth-based detention." ECF No. 31, ¶ 48. However, Plaintiff has not alleged how the County's "policies and practices" differ from the requirements of California's Penal Code and the orders of the Superior Court. Any County "policy" is nothing more than ministerial compliance with state law and court orders.[7] In fact, the true objects of Plaintiff's lawsuit are the allegedly unconstitutional actions of others—the State, which enacted the law requiring a bail schedule and other laws that allow the imposition of money bail, and the judges of the Superior Court, who establish the amounts in the schedule and set bail in arrest warrants and bail orders in individual criminal proceedings. For that reason, no *Monell* claim is stated.

A municipal policy for *Monell* purposes does not arise absent "a deliberate choice to follow a course of action [] made from various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483. The County has made no such deliberate choice. *See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 821-23 (1985) (explaining that *Monell*'s "policy or custom" requirement "was intended to prevent the imposition of municipal liability under circumstances where no wrong could be ascribed to municipal decisionmakers," and noting that "the word 'policy' generally implies a course of action consciously chosen from among various alternatives"); *Brass v. Cty. of Los Angeles*, 328 F.3d 1192, 1199 (9th Cir. 2003) ("We have defined broadly 'policy' for purposes of a Monell claim as 'a deliberate choice to follow a course of action . . . made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.'"); *Scott*, 975 F.2d at 371

[7] The Sheriff's Department has in place administrative policies relating to money bail, as it does with respect to nearly all Department operations. The First Amended Complaint contains no allegations specifying how these policies deviate from State law such that they amount to an independent "policy and practice" for *Monell* purposes. In addition, there is no indication that the Sheriff's administrative policies relating to money bail are the source of Plaintiff's alleged injuries.

n.3 ("The Scotts' allegation that O'Grady had a 'policy and practice' of following state law, however, cannot magically transform that state law into a county policy actionable under *Monell*."). The "policy or practice" requirement applies regardless of whether the plaintiff seeks damages or prospective injunctive relief. *Humphries*, 562 U.S. at 39.

Since the Supreme Court's decisions in *Pembaur* and *Tuttle*, *supra*, the Ninth Circuit has repeatedly recognized that Monell liability requires a choice, and that municipalities are not the "moving force" behind an alleged constitutional injury when they do only what state law requires them to do. For example, in *Estate of Brooks ex rel. Brooks v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999), the plaintiff was arrested by the U.S. Marshals Service and taken to the Alameda County jail, where he was detained for twelve days pursuant to Cal. Penal Code § 4005(a), a provision that (analogously to Section 4004) requires county sheriffs to "receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he or she is discharged according to law." The plaintiff sued the county under Monell based on the allegedly unlawful detention, but the court held that the claim was properly dismissed: In the circumstances, the County's policies, whatever they may have been, could not have altered what happened to Brooks. The County was without authority either to bring Brooks before a federal magistrate judge itself, because it cannot act for the United States, or to release him, because it cannot ignore the state statute.[8]

This rule is applied in the pretrial confinement context as well. For example, the Northern District dismissed a claim against Sonoma County that challenged the plaintiff's pretrial detention based on the existence of an invalid parole hold. *Chavez v. City of Petaluma*, No. 14-CV-05038-MEJ, 2015 WL 3766460 (N.D. Cal. June 16, 2015). Noting that the Sheriff does not decide who is on parole, and that there were no allegations that the County is otherwise responsible for such a

[8] Numerous District Courts have also dismissed similar claims where the County acts pursuant to state law. *See,, e.g.*, *Nichols v. Brown*, 859 F.Supp.2d 1118, 1136 (C.D. Cal. 2012) ("a 'policy' of enforcing state law is an insufficient ground for municipal liability under section 1983"); *Wong v. City & Cty. of Honolulu*, 333 F.Supp.2d 942, 951 (D. Haw. 2004) ("mere enforcement of a state statute is not a sufficient basis for imposing § 1983 municipal liability"); *Laurie Q. v. Contra Costa Cty.*, 304 F.Supp.2d 1185, 1201-02 (N.D. Cal. 2004) ("When the County accurately applies the state's mandatory foster care payment schedule (or when a law enforcement officer serves a warrant pursuant to a mandate from a state court) … a plaintiff may seek recourse only against the state for establishing the policy.")

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determination, the court concluded that the plaintiff had failed to establish a county policy or practice responsible for his detention pursuant to the parole hold. Id. at *7. Similarly, in *Munoz*, the court concluded that there was no *Monell* claim against the Sheriff in his official capacity—which the court noted was equivalent to a suit against the county itself—because the plaintiff had been transferred to county jail (for purposes of availability for civil judicial proceedings) pursuant to court orders, and thus his custody "was not the result of a Sheriff's Department policy or custom." *Munoz v. Kolender*, 208 F.Supp.2d 1125, 1152 (S.D. Cal. 2002); *see also, Tene v. City & Cty. of San Francisco*, No. C 00-03868 WHA, 2004 WL 1465726, at *4 (N.D. Cal. May 12, 2004) (in constitutional challenge to conditions in order for pretrial release, "plaintiff cannot seek to impose liability upon [county] defendants herein pursuant to the actions of a state-court judge.").

Another way of disposing of the issue is to simply note that causation is a required element of a § 1983 claim. *Snyder v. King*, 745 F.3d 242, 249 (7th Cir. 2014) ("When state law unequivocally instructs a municipal entity to produce binary outcome X if condition Y occurs, we cannot say that the municipal entity's 'decision' to follow that directive involves the exercise of any meaningful independent discretion, let alone final policymaking authority. It is the statutory directive, not the follow-through, which causes the harm of which the plaintiff complains.") (footnote omitted); *see also Eggar v. City of Livingston*, 40 F.3d 312, 316 (9th Cir. 1994) (finding that judicial conduct could not constitute a municipal policy or practice because "[a] municipality cannot be liable for judicial conduct it lacks the power to require, control, or remedy.").

Nor are County officials required to disregard state law and court orders to avoid *Monell* liability. *Rivera v. Cty. of Los Angeles*, 745 F.3d 384, 392 (9th Cir. 2014) (upholding dismissal of Monell claim, explaining that "[i]f a suspect is held according to court order, county officials are not required to investigate whether that court order is proper.").

In sum, Plaintiff's effort to expand municipal liability to situations where the County has made no deliberate decision violates the express limits the Supreme Court has placed on the doctrine, and ignores the true origin of bail policy and decisions. Plaintiff's objections are to state law and judicial decisions that are not of the County's making. Labelling ministerial compliance by the County a "policy and practice" does not overcome this fact. The County should be

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dismissed from this lawsuit.

D. PLAINTIFF HAS FAILED TO STATE A CLAIM FOR VIOLATION OF THE DUE PROCESS CLAUSE.

Plaintiff asserts a single claim for relief: violation of the Due Process Clause. Plaintiff alleges that "Defendants" violated his due process rights by not releasing him *immediately* once he said he could not post bail under the bail schedule. However, the Constitution requires no such thing. The Supreme Court has repeatedly recognized that monetary bail is a constitutional means of protecting society and securing the accused's appearance at trial. Indeed, the text of the Constitution pre-supposes that bail is permissible by prohibiting only *excessive* bail. Therefore, Plaintiff has failed to state a claim for relief and his suit should be dismissed.

Supreme Court cases concerning pretrial detention underscore this fact. "The modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as [] assurance of the presence of an accused." *Stack v. Boyle*, 342 U.S. 1, 4 (1951); (citing *Ex parte Milburn*, 34 U.S. (9 Pet.) at 710). Similarly, in *United States v. Salerno*, 481 U.S. 739 (1987), the Court held that neither the Due Process Clause nor the Eighth Amendment prohibit the government from detaining especially dangerous defendants, *without bail*, in order to protect the community from danger. The Court never questioned that pretrial detention and monetary bail are constitutional, and that "a primary function of bail is to safeguard the courts' role in adjudicating the guilt or innocence of defendants." *Salermo*, 481 U.S. at 753.

Plaintiff's argument that *immediate* release is required for persons who cannot post bail is also unfounded. "There is no constitutional right to speedy bail." *Fields v. Henry County*, 701 F.3d 180, 185 (6th Cir. 2012); *see also Collins v. Ainsworth*, 382 F.3d 529, 545 (5th Cir. 2004) ("There is no right to post bail within 24 hours of arrest."); *Woods v. Michigan City*, 940 F.2d 275, 283 (7th Cir. 1991) (Will, D.J., concurring) ("Nothing in the eighth amendment … guarantees instant release for misdemeanors or any other offense.").

Moreover, the state has a compelling interest in public safety and assuring an arrestee's appearance at trial. *County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) ("States have a strong interest in protecting public safety by taking into custody those persons who are reasonably

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suspected of having engaged in criminal activity."). Thus, under the Fourth Amendment, for instance, individuals may be arrested and detained for up to 48 hours before a probable cause hearing. *Id.* at 54-56. The rule is equally applicable to felonies and misdemeanors. *See, e.g.*, *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001). It makes little sense that prisoners cannot be detained for a similar period while they attempt to secure payment of the required bail.

Moreover, the Supreme Court has "repeatedly held that the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest." *Salerno*, 481 U.S. at 748. "The Government has a substantial interest in ensuring that persons accused of crimes are available for trials and, ultimately, for service of their sentences, [and] that confinement of such persons pending trial is a legitimate means of furthering that interest." *Bell v. Wolfish*, 441 U.S. 520, 534 (1979). Thus, "the Government may permissibly detain a person suspected of committing a crime prior to a formal adjudication of guilt." *Id.* Weighing society's "interest in preventing crime by arrestees" and assuring a prisoner's appearance at trial against "the individual's strong interest in liberty," *Salerno*, 481 U.S. at 749-50, establishes Plaintiff cannot state a claim under the Due Process Clause.

V.

CONCLUSION

For the foregoing reason, Plaintiff's claims should dismissed without leave to amend. Plaintiff cannot state a claim under the Due Process Clause of the Fourteenth Amendment. To the extent the Court concludes Plaintiff has stated a claim, the Sheriff is nevertheless immune from money damages under the Eleventh Amendment because he acts on behalf of the State when he requires money bail. Since the Sheriff is a state actor, rather than a County actor, all claims against the County must be dismissed. Plaintiff's claims against the County must be dismissed for the additional reason that he cannot sufficiently allege a "policy and practice" for *Monell* purposes.

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Dated: December 13, 2016

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Attorneys for Defendants COUNTY OF SACRAMENTO and SCOTT JONES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY WAYNE WELCHEN, on behalf of himself and others similarly situated,

Plaintiff,

v.

THE COUNTY OF SACRAMENTO and KAMALA HARRIS, in her official Capacity as the California Attorney General, and SCOTT JONES in his Official Capacity as the Sacramento County Sheriff,

Defendants.
_____/

CASE NO. 2:16-cv-00185 TLN-DB

[PROPOSED] ORDER ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Date: January 12, 2017
Time: 2:00 p.m.
Courtroom: 2, 15th Floor

Amended Complaint Filed: 11/09/2016
Complaint Filed: 01/29/2016

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Defendants COUNTY OF SACRAMENTO and SCOTT JONES' ("County Defendants") Motion to Dismiss Plaintiff's First Amended Complaint came for hearing before this Court on January 12, 2017. Having reviewed the papers filed in support of and in opposition to, and being fully advised, and finding good cause therefor, the Court rules as follows:

IT IS HEREBY ORDERED:

1. Defendant Sacramento County Sheriff SCOTT JONES ("the Sheriff") acts on behalf of the state when he detains a person based on his or her inability to pay the bail amount prescribed in the bail schedule established by the Superior Court. County officials who act on behalf of the state are immune from money damages under the Eleventh Amendment. Plaintiff's

claims are therefore dismissed to the extent money damages are sought against the Sheriff.

2. Since the Sheriff acts on behalf of the state in administering the money bail system no claim can be stated against Defendant COUNTY OF SACRAMENTO ("the County"). The County is dismissed from this case.

3. The County is dismissed for the additional reason that Plaintiff has not stated a claim for municipal liability under *Monell*. A municipal policy for *Monell* purposes does not arise absent a deliberate choice to follow a course of action made from various alternatives by the official or officials responsible for establishing final policy. The County's involvement with the money bail system amounts to ministerial compliance with state law and court orders. No deliberate choice among various alternatives was or could have been made.

4. Plaintiff's suit is dismissed because he has failed to state a claim under the Due Process Clause; his sole remaining claim for relief. Monetary bail is a constitutional means of protecting society and securing the accused's appearance at trial.

Dated: _____

_____
Troy L. Nunley
United States District Judge

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