IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ZACHARY ROBINSON, and MICHAEL LEWIS, *et al.*, on behalf of themselves and a class and subclass of similarly situated persons, Plaintiffs, v. LEROY MARTIN JR., E. KENNETH WRIGHT, JR., PEGGY CHIAMPAS, SANDRA G. RAMOS, and ADAM D. BOURGEOIS JR., *et al.*, on behalf of themselves and a class of similarly situated persons, and THOMAS DART, in his official capacity as Sheriff of Cook County, Illinois, Defendants.	2016CH13587 CALENDAR/ROOM 06 TIME 00:00 Class Action Case No. _____ (Class Action)

MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO CERTIFY PLAINTIFF AND DEFENDANT CLASSES

This case is about Cook County Judges using money bail in a manner that forces some of the County's poorest people to be kept in jail cells because of their inability to pay the amount of money required for their release. Named Plaintiff Zachary Robinson is a 25-year-old arrestee who is imprisoned in the Cook County Jail because he cannot afford to pay a deposit of $1,000 pursuant to the $10,000 D bond order set by Defendant Judge Peggy Chiampas and maintained, upon Robinson's motion to reconsider bond, by Defendant Judge Sandra G. Ramos. Named Plaintiff Michael Lewis is an arrestee who is imprisoned in the Cook County Jail because he cannot afford to pay a deposit of $5,000 pursuant to the $50,000 D bond order set by Defendant Judge Adam D. Bourgeois Jr.

As described in the Complaint and the contemporaneously filed Motion for Preliminary Injunction, the crux of the Plaintiffs' claims is that the manner in which the Defendants use money bail constitutes an unconstitutional application of Illinois's bail statute because it results in a scheme that operates to release some arrestees but to detain others solely because they are poor and without any meaningful inquiry into or finding concerning their ability to pay. The named Plaintiffs challenge the use of money bail in this manner on behalf of the many other impoverished individuals who, like them, are detained due to this wealth-based scheme implemented by the Judicial Defendants and enforced by Defendant Sheriff Dart. Pursuant to 735 ILCS 5/2-801, the named Plaintiffs request to proceed with their suit as a certified class action on behalf of a Plaintiff Class and Subclass against a Judicial Defendant Class and Defendant Dart.

PROPOSED PLAINTIFF CLASS AND SUBCLASS

The named Plaintiffs propose to certify the following Plaintiff Class for the purpose of pursuing declaratory and injunctive relief: All release-eligible arrestees who are or who will become jailed in Cook County, Illinois and who are unable to pay the monetary bail amount required for their release.

The named Plaintiffs also propose to certify the following Plaintiff Subclass for the purpose of pursuing declaratory and injunctive relief with respect to their claim under the Illinois Civil Rights Act of 2003: All African American release-eligible arrestees who are or who will become jailed in Cook County, Illinois and who are unable to pay the monetary bail amount required for their release.

The named Plaintiffs and proposed representatives of the Plaintiff Class and Subclass are Zachary Robinson and Michael Lewis. Mr. Robinson is an indigent 25-year-old African American man who was arrested shortly before December 10, 2015. Mr. Robinson has been in Cook County

custody since that date on a pending theft charge because he cannot afford to pay the $1,000 monetary deposit required by Defendant Judge Peggy Chiampas for his release. During Mr. Robinson's preliminary hearing on January 5, 2016, his counsel moved the court to reconsider bond and requested that Mr. Robinson be released on electronic monitoring. The motion was denied by Defendant Judge Sandra G. Ramos. Mr. Lewis is an indigent 40-year-old African American man who was arrested on or about October 3, 2016 and has been in Cook County custody since that date on a pending retail theft charge because he cannot afford to pay the $5,000 monetary deposit required by Defendant Judge Adam D. Bourgeois Jr. for his release.

PROPOSED JUDICIAL DEFENDANT CLASS

The named Plaintiffs also propose to certify the following Judicial Defendant Class for the purpose of obtaining declaratory relief: [1] all judges of the Circuit Court of Cook County, Illinois who do or who will enter or maintain pretrial release or bail orders for release-eligible felony and misdemeanor defendants, either at their initial bail proceedings or upon motions for reconsideration of an initial bail order.

The named Judicial Defendants and proposed representatives of the Judicial Defendant Class are Judge Leroy Martin, Jr., the Presiding Judge of the Criminal Division of the Circuit Court of Cook County, Judge E. Kenneth Wright, Jr., the Presiding Judge of the Municipal Division of the Circuit Court of Cook County, Judge Peggy Chiampas, the Cook County Municipal Judge who set the unlawful bail order for Plaintiff Robinson, Judge Sandra G. Ramos, the Cook County Municipal Judge who heard and unlawfully denied Plaintiff Robinson's motion to reconsider bond,

[1] The Complaint also names Defendant Thomas Dart on behalf of himself in his official capacity as Sheriff of Cook County, Illinois, as the official responsible for enforcing the unlawful money bail orders against the Plaintiff Class and Subclass.

and Judge Adam D. Bourgeois Jr., the Cook County Municipal Judge who set the unlawful bail order for Plaintiff Lewis.

ARGUMENT

Pursuant to 735 ILCS 5/2-801, certification of a class is appropriate if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interest of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy. "The [class action] statute expressly imposes the same requirements on defendant class actions as plaintiff class actions." *Baksinski v. Corey*, 173 Ill. App. 3d 1016, 1020 (1st Dist. 1988).

The Illinois Supreme Court has recognized that "section 2–801 is patterned after Rule 23 of the Federal Rules of Civil Procedure, and federal decisions interpreting Rule 23s are persuasive authority with regard to the question of class certification in Illinois." *Smith v. Illinois Cent. R.R. Co.*, 223 Ill. 2d 441, 447–48 (2006) (citing *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005)) (internal citation omitted). As discussed below, all of the section 2–801 prerequisites for class certification have been met with respect to the proposed Plaintiff Class and Subclass and the proposed Judicial Defendant Class. As such, this Court should certify the classes "as soon as practicable." 735 ILCS 5/2-802(a).

I. The Proposed Plaintiff Class and the Proposed Plaintiff Subclass Satisfy the Requirements of 735 ILCS 5/2-801.

A. Numerosity

The Plaintiff Class and Subclass are so numerous that joinder of all members is impractical, within the meaning of 735 ILCS 5/2-801(1). Federal courts recognize that a class "including more

than 40 members" generally meets this standard. *Barragan v. Evanger's Dog and Cat Food Co.*, 259 F.R.D. 330, 333 (N.D. Ill. 2009); *Streeter v. Sheriff of Cook County*, 256 F.R.D. 609, 612 (N.D. Ill. 2009) (same); *accord* William B. Rubenstein, *et al.*, Newberg on Class Actions, § 3:12 (5th ed. 2011) ("a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone.").

The number of Plaintiff Class members will certainly measure in the thousands.[2] Cook County Department of Corrections, run by the Sheriff's Office, is primarily a pretrial detention facility, and admits 100,000 detainees annually, averaging a daily population of 9,000. *See* Cook County Sheriff, Cook County Department of Corrections, available at http://www.cookcountysheriff.org/doc/doc_main.html (last accessed October 5, 2016). Because the large majority of those inmates are pretrial inmates without other holds, the number of current class members easily numbers in the thousands on any given night.[3] Thus, the number of Plaintiff Class members will easily satisfy the numerosity requirement. *Cf. Cruz v. Unilock Chicago*, 383

---

[2] Defendant Dart is in by far the best position to know exactly how many Plaintiff Class members there are and will be in the future. As Cook County Sheriff, he maintains records of the identities of the people who he detains. Given that this and any other relevant information concerning numerosity is in Defendant Dart's possession, the Court could permit limited discovery for the purpose determining with more specificity the number of future members of the Class if it requires further assurances of numerosity. *See, e.g., Oppenheimer Fund v. Sanders*, 437 U.S. 340, 351 n.13 (1978) (noting the availability of discovery "to illuminate issues upon which a district court must pass in deciding whether a suit should proceed as a class action under Rule 23. . . ."); *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1309-11 (11th Cir. 2008) (reversing denial of class certification as premature when court did not conduct discovery on the class certification factors); *see also Landsman & Funk v. Skinder-Strauss*, 640 F.3d 72, 93 (3d Cir. 2011); *In re Am. Med. Sys.*, 75 F.3d 1069, 1086 (6th Cir. 1996); *Stewart v. Winter*, 669 F.2d 328, 331 (5th Cir. 1982).

[3] The Cook County Sheriff's Office analyzed 1,574 cases in bond court between February 10 and March 29, 2016, and found that of the 880 defendants to receive D bonds, only 25% posted bond within 31 days of being booked into the Jail, and as of May 31, 2016, 36% of the defendants were still in custody. Cook County Sheriff's Justice Report, May 2016.

Ill. App. 3d 752, 767-68 (2d Dist. 2008) (class of upwards of 90 employees satisfied numerosity requirement); *Kulins v. Malco, Microdot Co.*, 121 Ill. App. 3d 520, 530 (1st Dist. 1984) (19 class members satisfied numerosity requirement). The majority of the Plaintiff Class members are African American, therefore, the Plaintiff Subclass also easily satisfies the numerosity requirement.

Moreover, because the Judicial Defendants subject new arrestees to a wealth-based system of detention and release every day, there is a future stream of Plaintiff Class and Subclass members who will suffer the same injury absent declaratory and injunctive relief, making traditional "joinder" impracticable. *See* Newberg on Class Actions § 25:4 (4th ed.) ("Even a small class of fewer than 10 actual members may be upheld if an indeterminate number of individuals are likely to become class members in the future or if the identity or location of many class members is unknown for good cause."); *Krislov v. Rednour*, 946 F. Supp. 563, 568 (N.D. Ill. 1996) ("If a class includes future members, they are necessarily unknown and unidentifiable, and their joinder is clearly impracticable."). Moreover, because the putative Plaintiff Class and Subclass seek declaratory and injunctive relief against an ongoing policy, a resolution will affect numerous people in the future, and the compositions of the Plaintiff Class and Subclass arefluid and unknown. *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975) (granting liberal construction of numerosity prong in a case seeking injunctive relief on behalf of future class members because "[t]he general rule encouraging liberal construction of civil rights class actions applies with equal force to the numerosity requirement of Rule 23(a)(1)."); *see also, Nicholson v. Williams*, 205 F.R.D. 92, 98 (E.D.N.Y. 2001); *Brown v. City of Barre*, 2010 WL 5141783 (D. Vt. 2010).

These considerations were the foundation of the Supreme Court's decision to hear a similar class action brought by two post-arrest inmates in *Gerstein v. Pugh*, 420 U.S. 103 (1975):

> Pretrial detention is by nature temporary, and it is most unlikely that any given individual could have his constitutional claim decided on appeal before he is either released or convicted. The individual could nonetheless suffer repeated deprivations, and it is certain that other persons similarly situated will be detained under the allegedly unconstitutional procedures.

Id. at 110–11 n.11. The Supreme Court's discussion of why such cases are not moot is therefore relevant to why it is critical to allow such challenges to ongoing policies to proceed as a class:

> It is by no means certain that any given individual, named as plaintiff, would be in pretrial custody long enough for a district judge to certify the class. Moreover, in this case the constant existence of a class of persons suffering the deprivation is certain.

Id.

In addition to the future stream of arrestees suffering the same violations, other factors highlight the undesirability of individual lawsuits here. In assessing impracticability of non-class joinder, courts "make common sense assumptions," and consider factors such as "judicial economy and the ability of class members to institute individual suits." *Patrykus v. Gomilla*, 121 F.R.D. 357, 360–61 (N.D. Ill. 1988). The judicial resources that would be expended in repeated litigation and discovery, the potential for multiple or conflicting judgments inherent in many more individual cases concerning the same wealth-based scheme of detention and release, and the lack of access to the legal system for low-income arrestees all point strongly toward the advantages offered by the class-action vehicle in this case.

The ability of individual impoverished arrestees to instigate separate lawsuits is severely compromised because they do not have the financial or legal resources to investigate and develop their constitutional claims. Further, unlike for example those who have been injured by a defective product, indigent arrestees may not even be aware that they have valid constitutional and statutory claims. *See Jackson v. Foley*, 156 F.R.D. 538, 541–42 (E.D.N.Y. 1994) (finding numerosity and impracticable joinder when the majority of class members came from low-income households,

greatly decreasing their ability to bring individual lawsuits); *Sherman v. Griepentrog*, 775 F. Supp. 1383, 1389 (D. Nev. 1991) (holding, in action brought for injunctive relief challenging Medicaid policy, that joinder was impracticable because the proposed class consisted of poor and elderly or disabled people who could not bring individual lawsuits without hardship); *Gerardo v. Quong Hop & Co.*, 2009 WL 1974483, at *2 (N.D. Cal. 2009) (certifying class where "potential class members are not legally sophisticated" making it difficult for them to bring individual claims).

Resolution of the issue presented by this case is of paramount importance to our criminal justice system, and indeed to our constitutional democracy. The question of whether the fundamental right to personal liberty may turn on personal wealth is essential by its very nature. It is far preferable for all parties involved to resolve the central facts and legal issues concerning the Defendants' operation of a wealth-based post-arrest detention scheme in a single judicial proceeding rather than to repeatedly engage in litigation on behalf of new indigent arrestees each week and each month, risking a potentially endless cycle of violations of fundamental rights and contradictory determinations without any clear resolution. The members of the Plaintiff Class and Subclass are easily ascertainable from records in Defendant Dart's possession, and the Plaintiff Class and Subclass are limited in geographic scope to this county. Indeed, requiring separate individual lawsuits, even if it were financially feasible, would likely result in far greater manageability problems, such as duplicative discovery, repeated adjudication of similar controversies with the resultant risk of inconsistent judgments, and excessive costs for everyone involved.

B. Commonality

Common questions of law and fact predominate over any questions affecting only individual members in this case, in satisfaction of the commonality requirement of 735 ILCS 5/2-

801(2). The commonality requirement is satisfied by a showing that "successful adjudication of the purported class representatives' individual claims will establish a right of recovery in other class members." *Slimack v. Country Life Ins. Co.*, 227 Ill. App. 3d 287, 292-93 (5th Dist. 1992). "Once the basic determination has been made that a predominating common question of fact or law exists, the fact that there may be individual questions will not defeat the predominating common question" and "should not be a bar to a class action." *Id.*

Under Illinois law, this Court need not find *both* common issues of law and fact. *Miner v. Gillette Co.*, 87 Ill. 2d 7, 17 (1981). That being said, this entire case is pervaded by critical and dispositive issues of both law and fact that are common to the Plaintiff Class and Subclass. Among the most important, but not the only, common questions of fact for members of the Plaintiff Class are:

- Whether the Judicial Defendants set monetary bail in cases in which release-eligible arrestees cannot afford to pay for their pretrial release.
- Whether the Judicial Defendants have a policy, practice, or custom of setting monetary bail amounts without meaningful consideration of present ability to pay and without making findings that an arrestee has the present ability to pay the amount set.
- Whether conditioning pretrial release from custody on ability to pay a monetary deposit without an inquiry into ability to pay or consideration of alternatives has the effect of disproportionately incarcerating people who are indigent before the disposition of their cases.
- Whether release-eligible arrestees who are detained pretrial because they cannot afford to pay a monetary bail suffer serious consequences with respect to their criminal cases and their personal lives.
- Whether there are available alternatives that the Defendants could use for release-eligible arrestees who cannot afford to pay their monetary bail that would be equally or more effective in achieving the purposes of bail.

Among the most important, but not the only, common questions of fact for members of the Plaintiff Subclass are:

- Whether conditioning pretrial release from custody on ability to pay a monetary deposit without an inquiry into ability to pay or consideration of alternatives and without specific findings that the person has the ability to pay the financial condition of release has the effect of disproportionately incarcerating people who are African American before the disposition of their cases.

These questions of fact exemplify that the central factual issues in this case will be common to all arrestees in the Plaintiff Class and Subclass.

Among the most important, but not the only, common questions of law for members of the Plaintiff Class are:

- Whether the Judicial Defendants' use of cash bail in a manner that causes arrestees to be detained solely based on their inability to pay an ordered amount of monetary bail violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Illinois Constitution.

- Whether requiring indigent release-eligible arrestees to pay monetary bail in an amount they cannot afford as the sole opportunity for their pretrial release from detention violates the Excessive Bail Clause of the Eighth Amendment of the United States Constitution and the Bailable by Sufficient Sureties Clause of Article I, Section 9 of the Illinois Constitution.

Among the most important, but not the only, common questions of law for members of the Plaintiff Subclass are:

- Whether the Judicial Defendants' practice of requiring release-eligible arrestees to pay monetary bail in an amount they cannot afford as the sole opportunity for their pretrial release from detention has the effect of subjecting African American individuals to discrimination because of their race.

Since the questions at issue here pertain to a systemic practice of Defendants that applies generally to all members of the Plaintiff Class and Subclass, this case presents a textbook example of adequate commonality. Indeed, federal courts in Illinois have repeatedly recognized that "[a] class action is . . . an appropriate vehicle to address what is alleged to be a systemic problem." *Coleman v. County of Kane*, 196 F.R.D. 505, 507 (N.D. Ill. 2000) (finding commonality in case challenging sheriff's policy regarding bond fees). *See also Streeter v. Sheriff of Cook County*, 256 F.R.D. 609, 612–13 (N.D. Ill. 2009) (certifying class of detainees challenging the Cook County

jail's strip search policy); *Olson v. Brown*, 594 F.3d 577 (7th Cir. 2010) (finding a class action was an appropriate vehicle to challenge jail policies concerning responding to grievances and opening inmates' legal mail).

The fundamental common questions of fact and law listed above are the dispositive issues necessary to determine the Defendants' liability as to all Plaintiff Class and Subclass members. To put it simply, the Judicial Defendants obviously order some arrestees to pay monetary sums that they cannot afford, leaving those individuals without any ability to secure pretrial release. If, as described in the Complaint, that practice disproportionately causes arrestees who are indigent or who are African American to suffer collateral consequences that other arrestees do not suffer because they can afford to pay their monetary bail, then this litigation turns on whether that practice is unlawful.

Do the Judicial Defendants routinely order arrestees to pay monetary bail amounts without making any meaningful inquiry into or findings concerning those arrestees' ability to pay? Does that practice result in African Americans being disproportionately subjected to pretrial incarceration? Are there alternatives to monetary bail available that would ensure the government's interests without jeopardizing public safety? Are those alternatives meaningfully considered and available? Is the jailing of a presumptively innocent human being solely because he cannot afford a payment inconsistent with longstanding due process and equal protection principles? The answers to these common questions — as well as to other simple but connected factual and legal questions — will determine, for the Plaintiff Class and Subclass as a whole, whether the Judicial Defendants are violating their rights.

C. Adequacy of Representation

Plaintiffs and their counsel in this case will fairly and adequately protect the interests of the Plaintiff Class and Subclass in accordance with 735 ILCS 5/2-801(3). Adequacy of representation involves two inquiries: (i) whether the representative parties fairly represent and share the same interests as those not joined, and (ii) whether the attorneys for the representative parties are qualified, experienced and generally able to conduct the proposed litigation. *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 16 (citing *Miner*, 87 Ill. 2d at 14).

The named Plaintiffs are adequate representatives of the Plaintiff Class and Subclass because their interests in the vindication of the legal claims that they raise are completely aligned with the interests of the other Plaintiff Class and Subclass members. They are each members of the Plaintiff Class and the Plaintiff Subclass, and their interests are not antagonistic to, but rather coincide with, those of the other Plaintiff Class members.

The named Plaintiffs, like other Plaintiff Class members, have a strong interest in not being held in a jail cell based on their inability to pay cash bond and, like other Plaintiff Subclass members, have a strong interest in not being subjected to a bail setting practice that results in racial discrimination. Even if the named Plaintiffs successfully move the court in their respective criminal cases to reduce their bonds to an amount that they can afford, the claims of the class are not moot. Class certification is appropriate where the named Plaintiffs sought class certification prior to the named Plaintiffs' interests becoming moot, as occurred here. *See, e.g., Barber v. Am. Airlines, Inc.*, 241 Ill. 2d 450, 456-57 (2011) (defendant may not moot a proposed class representative's claims by tendering complete relief after the filing of a motion for class certification); *Hillenbrand v. Meyer Med. Grp., S.C.*, 308 Ill App. 3d 381, 392 (1st Dist. 1999) (filing of motion for class certification that is pending before individual plaintiffs' claims become

moot avoids mootness of class). There are no known conflicts of interest among members of the proposed Plaintiff Class, all of whom have a similar interest in vindicating their constitutional rights in the face of their unlawful treatment by their local government.

The Plaintiffs and proposed Plaintiff Class and Subclass are represented by attorneys from Hughes Socol Piers Resnick & Dym, Ltd. ("HSPRD"), the Roderick and Solange MacArthur Justice Center (the "MacArthur Justice Center"), and Civil Rights Corps, who have vast collective experience litigating complex civil rights matters in Illinois state courts and federal courts, as well as extensive knowledge of both the details of wealth-based post-arrest detention schemes and the relevant constitutional law. Plaintiffs' counsel has conducted an extensive investigation into the operation of the Cook County scheme, including observing Cook County bail proceedings, consulting with national experts in post-arrest procedures and constitutional law, and meeting with municipal government employees, inmates, advocate groups and stakeholders. Further, Plaintiffs' counsel has studied the way that bail systems function in other cities and counties in order to investigate the wide array of reasonable constitutional options in practice for municipalities. As a result, Plaintiffs' counsel has devoted substantial resources to becoming familiar with Cook County's wealth based detention scheme and with all of the relevant state and federal laws and procedures that relate to it.

Plaintiffs' counsel from Civil Rights Corps has also been the lead attorney in numerous recent constitutional civil rights class action lawsuits raising similar issues. *See, e.g., Walker v. City of Calhoun*, --- F. Supp. 3d ---, 2016 WL 361612 (N.D. Ga. Jan. 28, 2016) (granting class-wide preliminary injunction to stop the use of money bond to detain new arrestees without an inquiry into the arrestee's ability to pay); *Rodriguez v. Providence Community Corrections, Inc.*, --- F. Supp. 3d ---, 2015 WL 9239821 (M.D. Tenn. 2015) (granting class-wide preliminary

injunction to stop the use of money bond to detain misdemeanor probationers without an inquiry into the arrestee's ability to pay); *Cooper v. City of Dothan*, 2015 WL 10013003 (M.D. Ala. 2015) (issuing Temporary Restraining Order and holding that the practice of requiring secured money bond without an inquiry into ability to pay violates the Fourteenth Amendment); *Snow v. Lambert*, 2015 WL 5071981 (M.D. La. 2015) (issuing a Temporary Restraining Order and holding that the Plaintiff was likely to succeed on the merits of her claim that Ascension Parish's money bail schedule violated due process and equal protection); *Jones on behalf of Varden v. City of Clanton*, 2015 WL 5387219 (M.D. Ala. 2015) (declaring secured money bond unconstitutional without an inquiry into ability to pay); *Thompson v. City of Moss Point*, 2015 WL 10322003 (S.D. Miss. 2015) (same); *Pierce et al. v. City of Velda City*, 2015 WL 10013006 (E.D. Mo. 2015) (same). Those cases have already resulted in numerous jurisdictions changing their post-arrest procedures through federal consent decrees or voluntarily to remove secured money bail for new arrestees. New arrestees in each of those jurisdictions are now released either on recognizance or on unsecured bond.

HSPRD is a local law firm that has one of the most successful civil rights practices in the nation with extensive experience in prosecuting civil rights class action cases in state and federal courts. Counsel are knowledgeable concerning the factual and legal issues involved in this lawsuit and are committed to providing the resources necessary to represent the class. They possess the necessary qualifications, experience, and resources. Counsel have a history of zealous advocacy on behalf of their clients, as evidenced by the filings in those cases and the favorable results obtained. A few of HSPRD's significant cases as counsel for classes of varying types of civil rights plaintiffs include: *Lewis v. City of Chicago*, 560 U.S. 205 (2015) (prevailing in trial, appellate, and U.S. Supreme Court in Title VII action against the Chicago Fire Department on behalf of class of

more than 6,000 African Americans firefighter applicants, resulting in the hiring of class members and payment of $78.5 million in back pay and pension contributions); *Joshaway v. First Student and Hunter v. First Transit*, No. 09 CV 6178, 2011 WL 12686815 (N.D. Ill. Mar. 15, 2011) (successfully challenging the use of criminal background checks on employees and applicants in violation of the Fair Credit Reporting Act by the two subsidiaries of the largest public transportation provider in the United States); *Hispanics United v. Village of Addison*, 248 F.3d 617 (7th Cir. 2001) (successfully preventing village's planned destruction of two predominantly Mexican communities in class action brought under the Fair Housing Act on behalf of community owners and residents); *People Who Care v. Rockford Board of Education*, No. 89 C 20168, 1996 WL 364802 (N.D. Ill. June 7, 1996) (obtaining remedial order on behalf of plaintiff class, which provided for the effective integration of African American and Latino students in the second largest public school district in Illinois, as well as tens of millions of dollars of new school construction in minority neighborhoods).

The MacArthur Justice Center is a nationally renowned public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. MacArthur has offices at the Northwestern University School of Law, at the University of Mississippi School of Law, in St. Louis and in New Orleans. Its Chicago-based attorneys have successfully brought civil rights class actions in Chicago and throughout the State of Illinois to protect the rights of the incarcerated, including: *Essex Mason v. Cook County*, No. 06 C 3449 (N.D. Ill.) (challenging the use of video bond in Cook County); *M.H. v. Monreal*, No. 12cv8523 (N.D. Ill.) (winning the appointment of state-funded counsel on behalf of class of juveniles in the custody of the Department of Juvenile Justice facing revocation of their parole); and *United States of America ex rel Mervin Green v. Peters*, 153 F.R.D. 615 (N.D. Ill. 1994)

(obtaining certification of class of habeas petitioners represented by the Illinois State Appellate Offender whose rights were violated by extensive delays in appeals). MacArthur has also fought civil rights battles in areas that include police misconduct (obtaining special prosecutors in the cases of Jon Burge, the shooting death of Laquan McDonald and the Chicago police officers involved in the cover-up of the McDonald shooting), execution (helping to abolish the Illinois death penalty), compensation for the wrongfully convicted as a result of police misconduct and torture in Illinois (including $20 million in *Juan Rivera v. Lake County et al.*, $25 million in *Thaddeus Jimenez v. City of Chicago*, $40 million to Robert Taylor and his co-plaintiffs in *Taylor v. Village of Dixmoor et al.*, $6.15 million in *Ronald Kitchen v. Burge et al.*, $3.6 million in *Robert Wilson v. City of Chicago et al.*, and $900,000 in *Trevon Yates v. St. Clair County et al.*), and the treatment of incarcerated men and women in Illinois and nationwide, such as First Amendment challenges in *Vonperbandt v. Baldwin*, No. 16 C 2674 (N.D. Ill.) (winning temporary restraining order against IDOC for religiously-based substance abuse program) and *Abu Jamal v. Kane*, 105 F. Supp. 3d 448 (M.D. Pa 2015) (granting permanent injunction of state statute authorizing unlawful injunctive suits against prisoners for conduct causing "temporary or mental anguish" to victims), cases challenging the use of solitary confinement and unjust punishment in Illinois jails and prisons (*Outlaw v. Cahokia*, 16 C 456 (S.D. Ill) , and a suit resulting in settlement on behalf of a young man raped in IDOC as a result of the Department's violation of the Prison Rape Elimination Act (*Fontano v. Godinez et al.*, No. 12 C 3042 (C.D. Ill.)).

Individually and collectively Civil Rights Corps, HSPRD, and the MacArthur Justice Center are eminently able to conduct this litigation and protect the interests of this class. It is anticipated that the Defendants will not dispute Plaintiffs' counsel's qualifications or ability to prosecute this case on a class action basis.

D. Appropriateness

A class action is an appropriate method for the fair and efficient adjudication of the instant controversy in satisfaction of 735 ILCS 5/2-801(4). In assessing whether this final requirement for class certification is met, Illinois courts consider "whether a class action can best secure economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain." *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 679 (2d Dist. 2006). "Where the first three requirements for class certification have been satisfied, the fourth requirement may be considered fulfilled as well." *Id. See also Hall v. Sprint Spectrum L.P.*, 376 Ill. App. 3d 822, 833–34 (5th Dist. 2007) ("[W]e note that our holding that the first three prerequisites of section 2–801 have been established makes it evident that the fourth requirement has been fulfilled as well.").

As discussed above, the first three requirements for class certification are met here. Since there are numerous Plaintiff Class and Subclass members and common questions amongst them, a class action serves the economies of time, effort, and expense and prevents possible inconsistent results. Litigating individual lawsuits would be a waste of this Court's resources, whereas addressing the common issues in one class action would aid judicial administration.

A class action that will allow Plaintiffs to efficiently litigate their claims is especially appropriate here where Plaintiffs allege that their fundamental right to liberty is being violated, where new individuals will become members of the Plaintiff Class and Subclass and subjected to irreparable constitutional harm with each passing day, and where the individual members of the Plaintiff Class and Subclass by definition lack the resources to retain counsel to litigate their constitutional rights at issue in this lawsuit. For all of these reasons, there is no better method

available for the adjudication of the Plaintiffs' claims, which might be brought by each individual arrested and ordered to pay a monetary deposit that he or she cannot afford.

II. The Proposed Judicial Defendant Class Satisfies the Requirements of 735 ILCS 5/2-801.

A. Numerosity

Like the Plaintiff Class and Subclass, the Judicial Defendant Class is so numerous that joinder of all members is impractical, within the meaning of 735 ILCS 5/2-801(1). As previously discussed, a class "including more than 40 members" generally meets this standard. *Barragan v. Evanger's Dog and Cat Food Co.*, 259 F.R.D. 330, 333 (N.D. Ill. 2009). The Judicial Defendant Class easily exceeds that number.

Since criminal defendants may move to reconsider their bail orders at any time in the course of their criminal proceedings, any Cook County judge presiding over any aspect of a criminal defendant's case may apply Illinois's bail statute in the unconstitutional manner complained of by the Plaintiffs. The Circuit Court of Cook County has a County Department that includes a Criminal Division, as well as a Municipal Department that includes six Municipal Districts, all of which include criminal sections or calls. There are 43 Cook County judges currently assigned to the County Department's Criminal Division. There are 150 other Municipal Department judges who hear a variety of matters, which do or may include criminal matters, on a rotating basis with other Municipal Department judges. Therefore, the Judicial Defendant Class consists of close to 200 judges.

Further, the fact that the Municipal Department judges rotate in and out of criminal calls makes the composition of the Judicial Defendant class fluid. As discussed with respect to the Plaintiff Class including a stream of future members, this characteristic makes class action even

more appropriate because traditional "joinder" is not practicable. *E.g.* Newberg on Class Actions § 25:4 (4th ed.); *Krislov v. Rednour*, 946 F. Supp. 563, 568 (N.D. Ill. 1996).

Again, it is far preferable for all parties involved here to resolve the central facts and legal issues concerning the Judicial Defendants' operation of a wealth-based post-arrest detention scheme in a single judicial proceeding than to repeatedly engage in litigation against new Judicial Defendants for committing identical constitutional violations, thereby unnecessarily draining resources and risking inconsistent judgments.

B. Commonality

The same common questions of law and fact that predominate over any questions affecting individual Plaintiff Class and Subclass members in this case likewise predominate over any questions affecting individual Judicial Defendant Class members, thus satisfying the commonality requirement of 735 ILCS 5/2-801(2). These common questions of law and fact, *see supra* pages 9-10, arise from the Judicial Defendants' routine use of cash bail as the only option provided to many release-eligible arrestees to secure release from pretrial incarceration. The Judicial Defendants apply Illinois's bail statute in materially the same manner every day. And, by entering or deciding to maintain cash bail orders that members of the Plaintiff Class and Subclass cannot afford without making any inquiry into or findings concerning present ability to pay and without considering non-financial alternatives, the Judicial Defendants' application of the bail statute does not vary in any way material to the claims raised by Plaintiffs. The resolution of fundamental common legal and factual issues will determine whether all of the members of Judicial Defendant class are liable for declaratory relief as to their unlawful application of Illinois's bail statute. *Cf. Olson v. Brown*, 594 F.3d 577 (7th Cir. 2010) (finding a class action was an appropriate vehicle to challenge jail policies concerning responding to grievances and opening inmates' legal mail).

C. Adequacy of Representation

The named Judicial Defendants and their counsel satisfy the 735 ILCS 5/2-801(3) inquiries: (i) whether the representative parties fairly represent and share the same interests as those not joined, and (ii) whether the attorneys for the representative parties are qualified, experienced and generally able to conduct the proposed litigation. *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 16 (citing *Miner*, 87 Ill. 2d at 14).

The named Judicial Defendants are adequate representatives of the Judicial Defendant Class because their interests in defending the legal claims raised against them are entirely aligned with the interests of the other putative class members, who are each alleged to have violated the law in the same manner. They are members of the putative class, and their interests coincide with, and are not antagonistic to, those of the other putative class members.

Further, Judicial Defendants will be represented by the Illinois Attorney General, the state's chief legal officer, whose credentials, abilities, and resources are beyond question. As such, the interests of the members of the putative Judicial Defendant Class will be fairly and adequately protected by the named Judicial Defendants and their counsel.

D. Appropriateness

A defendant class action is an appropriate method for the fair and efficient adjudication of the instant controversy in satisfaction of 735 ILCS 5/2-801(4). As previously discussed, because the first three requirements for defendant class certification are met here, this Court may consider the adequacy requirement to be fulfilled as well. *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 679 (2d Dist. 2006); *Hall v. Sprint Spectrum L.P.*, 376 Ill. App. 3d 822, 833–34 (5th Dist. 2007). Since there are numerous Judicial Defendant Class members and common questions amongst them, a defendant class action serves the economies of time, effort, and expense and

prevents possible inconsistent results. Litigating individual lawsuits would be a waste of this Court's resources, whereas addressing the common issues in one defendant class action would aid judicial administration. Ultimately, because the determination of unconstitutionality would apply the same to every member of the Judicial Defendant class, section 5/2-801 certification is appropriate and necessary.

CONCLUSION

For the reasons stated above, the named Plaintiffs respectfully ask this Court to certify the Plaintiff Class, the Plaintiff Subclass and the Judicial Defendant Class described in this Motion.

Dated: October 14, 206

Respectfully submitted,

/s Chirag Badlani

One of the Attorneys for Plaintiffs

Matthew J. Piers
Chirag G. Badlani
Kate E. Schwartz
HUGHES SOCOL PIERS RESNICK & DYM, LTD.
70 West Madison Street, Suite 4000
Chicago, Illinois 60602
312-580-0100
Attorney No. 45667

Locke Bowman
Alexa VanBrunt
RODERICK AND SOLANGE MACARTHUR JUSTICE CENTER
375 E Chicago Ave.
Chicago, Illinois 60611
312-503-1271

Alec Karakatsanis
CIVIL RIGHTS CORPS
916 G Street NW, Suite 701
Washington, DC 20001
202-681-2409