IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

MICHELLE TORRES, *et al.*, on behalf of themselves and those similarly situated, Plaintiffs, v. W. DOUGLAS COLLINS, in his official capacity as Hamblen County General Sessions Judge, *et al.*, Defendants.	Case No. 2:20-cv-00026

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

I. INTRODUCTION

Named Plaintiffs, Michelle Torres, Robbie Johnson-Loveday, Amanda Cameron, and Bethany Edmond, file this proposed class action motion contemporaneously with their Complaint challenging Defendants' unconstitutional pretrial bail practices, which jails Hamblen County's poorest residents because they cannot pay for their release. Named Plaintiffs, who seek injunctive and declaratory relief, move for class certification under Federal Rules of Civil Procedure 23(a) and 23(b)(2) to represent all people who are or will be arrested and charged with criminal offenses and who are or will be detained in the Hamblen County Jail because of Defendants' bail practices ("class members"). Plaintiffs also move for appointment of the undersigned counsel to represent the certified class under Rule 23(g) of the Federal Rules of Civil Procedure.

Class certification in this matter is appropriate. Plaintiffs' claims concern Defendants' unconstitutional bail and pretrial detention practices, which result in injuries to named Plaintiffs

and all putative class members: confinement in jail solely because they cannot pay for their release. The Named Plaintiffs and the proposed class meet Rule 23(a)'s prerequisites for class certification: joinder of all proposed class members in this numerous, transient, and indigent class is impracticable; the Named Plaintiffs' claims are typical of the class and resolving them requires resolving questions of law and fact common to the entire class; and the Named Plaintiffs and their counsel are dedicated to vindicating the constitutional rights of the proposed class. Finally, as Rule 23(b)(2) requires, Defendants' unconstitutional acts apply to every member of the class, such that the requested final declaratory and injunctive relief is appropriate for the class as a whole.

Accordingly, Plaintiffs seek to certify and represent a class, defined as: all people who are or will be arrested and charged with criminal offenses and who are or will be detained in the Hamblen County Jail because of Defendants' bail practices.

II. BACKGROUND

A. Defendants' Money Bail Practices Violate Plaintiffs' Right to Pretrial Liberty and Against Wealth-Based Detention.

Plaintiffs challenge Defendants' practice of requiring financial conditions of release that result in pretrial detention without any inquiry into ability to pay, and without any of the substantive findings or procedural safeguards required for a lawful order of pretrial detention. Specifically, Defendants do not provide a timely individualized hearing; notice of the issues to be determined; representation by counsel; the opportunity to present and confront evidence and make arguments; findings on the record explaining the basis for any condition of release imposed and the evidence relied on; or, if such conditions will result in pretrial detention, a finding by clear and convincing evidence that pretrial detention is necessary because no other alternative conditions or combination of conditions would reasonably ensure the individual's future court appearance and the safety of the community. Compl. ¶ 69. In short, the proceedings lack the basic hallmarks of

the adversarial legal process in the American constitutional tradition, let alone the robust findings and safeguards required for the deprivation of the fundamental right to pretrial bodily liberty of a presumptively innocent person.

Individuals arrested in Hamblen County are jailed if they cannot pay a money bail amount set *ex parte*. The individual cannot participate in determining whether or how much money she must pay to purchase her liberty. *Id.* ¶¶ 64-68. In determining conditions of release *ex parte*, the judicial official does not inquire into or make findings concerning the individual's ability to pay, the individual's ties to the community, alternatives to pretrial detention, or other factors relevant to pretrial release. *Id.* ¶ 66.

If the arrestee cannot pay the secured money bail amount, the first time she will appear before a judicial officer is at an initial appearance via closed circuit television up to three days after arrest. *Id.* ¶ 68. At the initial appearance, the judicial officer does not determine conditions of release or modify the previously imposed financial condition. *Id.* ¶¶ 69-70. Instead, the detained person is simply informed of the charges and her right to a preliminary hearing, and the judicial officer determines whether the arrestee is entitled to appointed counsel. *Id.* ¶ 70-71. The next hearing is then scheduled for up to fourteen business days later. *Id.* ¶ 72.

The policy of detaining every individual who cannot buy release, in a county where one out of every five people live in poverty, has resulted in hundreds of poor people languishing in the Hamblen County Jail. *Id.* ¶ 87. The result is a human rights emergency. These individuals pack the floors of the jail cells, while those suffering from mental illness or who pose suicide risks are shackled (often half-naked) to walls, door handles, and wheelchairs in the jail's common area. *Id.* ¶ 88. In Hamblen County, whether a presumptively innocent individual is released or detained in inhumane and dangerous conditions turns on her access to cash. The failure to make basic

substantive findings and provide procedural safeguards violates the constitutional rights of class members.

B. The Named Plaintiffs Will be Kept in Jail Because They Cannot Pay the Money Bail Demanded for Their Release.

Named Plaintiffs Michelle Torres, Robbie Johnson-Loveday, Amanda Cameron, and Bethany Edmond were arrested on charges on February 12 (Johnson-Loveday and Edmond) and February 15 (Torres and Cameron), 2020, and are currently detained pretrial at Hamblen County Jail on secured money bail[1] ranging from $1,500 to $75,000, which they cannot afford to pay. Declaration of Plaintiff Michelle Torres ("Torres Decl.") ¶¶ 2, 4-5, Ex. 2 to Pls.' Mem. Supp. Mots. TRO & Prelim Inj.; Declaration of Plaintiff Robbie Johnson-Loveday ("Johnson-Loveday Decl.") ¶¶ 2, 13, 16, Ex. 3 to Pls..' Mem. Supp. Mots. TRO & Prelim. Inj.; Declaration of Plaintiff Amanda Cameron ("Cameron Decl.") ¶¶ 2, 4-5, Ex. 4 to Pls.' Mem. Supp. Mots. TRO & Prelim. Inj.; Declaration of Plaintiff Bethany Edmond ("Edmond Decl.") ¶¶ 2, 4-5, Ex. 5 to Pls.' Mem. Supp. Mots. TRO & Prelim. Inj. For each of these Named Plaintiffs, a secured money-bail amount was set by a judicial official who never inquired into their ability to pay or their ties to the community or made other individualized inquiry into alternatives to pretrial detention. Torres Decl. ¶¶ 4, 6-7; Johnson-Loveday Decl. ¶¶ 5-13; Cameron Decl. ¶¶ 6-7; Edmond Decl. ¶¶ 4, 6-8. None of the Named Plaintiffs received the assistance of counsel prior during their pretrial release and detention proceedings. Johnson-Loveday Decl. ¶ 9; Edmond Decl. ¶ 7. Thus, each of the Named Plaintiffs are being kept in jail solely because they are too poor to pay a secured financial condition of release without any determination that such pretrial detention serves any government interest and without procedural safeguards that the Constitution requires for confidence in such a

[1] "Secured money bail" is an order to pay the money bail amount in full, up front as a condition of release from jail. By contrast, "unsecured bail" or "personal bond" is a promise to pay money bail later, if an individual fails to appear in court.

finding. As a result of being detained on unaffordable money bail, each Named Plaintiff has suffered or will suffer serious harm, including loss of jobs and income, loss of housing, and deterioration of mental and physical health due to the inhumane conditions at the Hamblen County Jail that stem directly from Defendants' unconstitutional pretrial detention practices. Torres Decl. ¶¶ 11-13; Johnson-Loveday Decl. ¶¶ 18-23; Cameron Decl. ¶¶ 9, 11-12; Edmond Decl., ¶¶ 11-14.

III. QUESTIONS PRESENTED

1. Whether Named Plaintiffs Michelle Torres, Robbie Johnson-Loveday, Amanda Cameron and Bethany Edmond may maintain this action as representative parties on behalf of all people who are or will be detained in the Hamblen County Jail post-arrest because they are unable to pay the monetary release conditions, where the named Plaintiffs have demonstrated that the prerequisites of Rule 23(a) and 23(b)(2) are satisfied.

2. Whether Plaintiffs' counsel may be appointed to represent the class under Federal Rule of Civil Procedure 23(g), where counsel have committed substantial resources to investigate Defendants' alleged misconduct and prosecuting the claims, have the resources to continue representing the class, and have substantial litigation experience litigating similar actions.

IV. ARGUMENT

A. CERTIFICATION OF THE PROPOSED CLASS IS PROPER UNDER RULES 23(A) AND B(2).

Under Federal Rule of Civil Procedure 23(a), the party seeking class certification must show that:

> (1) The class is so numerous that joinder of all members is impracticable;
> (2) There are questions of law or fact common to the class;
> (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (4) The representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. 23(a); *Stout v. J.D. Byrider*, 228 F.3d 709, 717 (6th Cir. 2000).

Once those conditions are satisfied, the moving party must also demonstrate that the putative class falls within at least one of the subcategories of Rule 23(b). *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996). Named Plaintiffs seek certification of the class under Rule 23(b)(2), which is commonly used in certifying civil rights class actions. Class certification under Rule 23(b)(2) is appropriate when a "single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011).

Although the Court must perform a "rigorous analysis" to determine whether to certify a class, *id.* at 351, Plaintiffs need not prove their claims at the class certification stage, *see Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). Rather, courts consider merits questions only to the extent that they are "relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen*, 568 U.S. at 466. Thus, "[a]n evaluation of the probable outcome on the merits is not properly part of the certification decision." *Id.*

Class certification is particularly favored when, as here, the named plaintiffs assert civil rights claims that are transitory in nature, such that mootness concerns would make it difficult or impossible for individuals to litigate the issues outside of the class context. *See Gratz v. Bollinger*, 539 U.S. 244, 268 (2003) (noting that class-action treatment was "particularly important" in a case where the claims of the individual plaintiffs ran "the risk of becoming moot" because the "[t]he class action vehicle . . . provides a mechanism for ensuring that a justiciable claim is before the Court") (quotation marks and citation omitted)). Indeed, class-action treatment is favorable when a claim involves pretrial detention, which is inherently temporary. *See, e.g.*, *Hiatt v. Cty. of Adams*, 155 F.R.D. 605, 608–09 (S.D. Ohio 1994) (explaining that given the "short term nature of incarceration in a county jail," a class should be certified when it is the "only vehicle whereby the legality of [a jail's] operation can be reviewed").

As such, district courts around the country have consistently certified classes that, similar to the proposed class here, are composed of individuals who are arrested and subjected to bail policies that detain them solely because of their inability to pay secured money bail, in violation of due process and equal protection. *See, e.g.*, *Dixon v. City of St. Louis*, No. 4:19-cv-0112-AGF, 209 WL 2437026 (E.D. Mo. June 11, 2019); *Booth v. Galveston Cty.*, No. 3:18-CV-00104, 2019 WL 1129492 (S.D. Tex. Mar. 12, 2019); *Daves v. Dallas Cty.*, No. 3:18-CV-0154-N, 2018 WL 4537202 (N.D. Tex. Sept. 20, 2018); *Caliste v. Cantrell*, No. CV 17-6197, 2018 WL 1365809 (E.D. La. Mar. 16, 2018); *Edwards v. Cofield*, No. 3:17-CV-321-WKW, 2018 WL 4323920 (M.D. Ala. Sept. 10, 2018); *Buffin v. City & Cty. of San Francisco*, No. 15-CV-04959-YGR, 2018 WL 1070892 (N.D. Cal. Feb. 26, 2018); *ODonnell v. Harris Cty.*, No. CV H-16-1414, 2017 WL 1542457 (S.D. Tex. Apr. 28, 2017); *Walker v. City of Calhoun*, No. 4:15-CV-170-HLM, 2016 WL 361580 (N.D. Ga. Jan. 28, 2016). As discussed below, each of the requirements under Rule 23(a) and (b)(2) is met in this case, and the Court should grant Plaintiffs' motion for class certification. *See Phipps v. Wal-Mart Stores*, 792 F.3d 637, 652 (6th Cir. 2015) *abrogated on other grounds by China Agritech, Inc. v. Resh*, 138 S.Ct. 1800 (2018) ("By its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claims as a class action." (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010))).

1. Joinder of All Proposed Class Members Is Impracticable

Rule 23(a)(1) requires that the class be so numerous that joinder of all members would be impracticable. "There is no strict numerical test for determining impracticality of joinder." *In re Am. Med. Sys., Inc.*, 75 F. 3d 1069, 1079 (6th Cir. 1996). "When class size reaches substantial proportions, however, the impracticality requirement is usually satisfied by the numbers alone."

Id. The "sheer number of potential litigants in a class, especially if it is more than several hundred, can be the only factor needed to satisfy" numerosity. *Bacon v. Honda of Am. Mfg. Inc.*, 370 F.3d 565, 570 (6th Cir. 2004). However, numerosity can be satisfied with far fewer than one hundred class members. *See, e.g.*, *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 523 (6th Cir. 1976) (affirming a district court's class certification after the trial showed that the class consisted of 16 individuals); *Afro Am. Patrolmens League v. Duck*, 503 F.2d 294, 298 (6th Cir. 1974) (affirming certification of a class of 35 identifiable members).

Numerosity is satisfied in this case for three reasons. First, the number of people in the class is far greater than the minimum necessary for class certification. A December 2019 report from the Tennessee Department of Correction showed 384 men and women were detained in the Hamblen County Jail on a daily basis.[2] Over half were incarcerated pretrial. *Id*. These individuals are incarcerated solely because they cannot afford the monetary release conditions of their bail that have been imposed without the substantive findings and procedural safeguards required for a lawful order resulting in pretrial detention. The number of current and future individuals subject to Defendants' policies and practices—if not enjoined—amounts to thousands every year. Joinder of so many individual claims would be impracticable.

Second, class relief is appropriate where, as here, traditional joinder is not practicable because there is an indeterminate future stream of class members who will suffer the same injury, absent injunctive relief. *See, e.g.*, *Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (finding impracticability of non-class joinder for a class including future members, who could not yet be identified); *Farm Labor Org. Comm. v. Ohio State Highway Patrol*, 184 F.R.D. 583, 586 (N.D. Ohio 1998) ("In deciding whether joinder would be impracticable, factors such as

[2] Tenn. Dep't of Corr., *Tennessee Jail Summary Report* 1 (2019), https://www.tn.gov/content/dam/tn/correction/documents/JailDecember2019.pdf.

. . . requests for prospective and injunctive relief that could affect future class members are significant." (citing Moore's Federal Practice § 23.22[2], [5], [7] (3d ed. 1998)); Newberg on Class Actions § 25:4 (4th ed. 2002) ("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. . . ."). In this case, Defendants arrest and detain new people every day pursuant to its bail policies and practices. Thus, the numerosity requirement is met because the putative class seeks equitable relief against an ongoing policy, a resolution will affect numerous people in the future, and the composition of the class is fluid and unknown.

Third, in addition to the size of the class and the existence of a future stream of class members, other factors highlight the impracticability of joinder, including "judicial economy . . . and the practicality with which individual putative class members could sue on their own." *Cannon v. GunnAllen Fin., Inc.*, 2008 WL 4279858, at *4 (M.D. Tenn. Sept. 15, 2008). Adjudicating this case through individual lawsuits against Defendants, including repetitious litigation and discovery, would strain judicial resources and risk conflicting judgments. *See Hill v. Snyder*, 878 F.3d 193, 215 (6th Cir. 2017) (considering claims "in one class action will avoid patchwork decisions, promote consistency, conserve scarce judicial resources, and provide crucial guidance to the parties and the public alike"); *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988) ("[A] class action in the instant case avoided duplication of judicial effort and prevented separate actions from reaching inconsistent results . . . . "); *Harlow v. Sprint Nextel Corp.*, 254 F.R.D. 418, 423 (D. Kan. 2008) ("The alternative to a class action would be for many plaintiffs to bring individual suits against [the defendant]. This would be grossly inefficient, costly, and time consuming because the parties, witnesses, and courts would be forced to endure unnecessarily duplicative litigation.").

Finally, the ability of individual impoverished arrestees to file separate lawsuits is diminished because they are unlikely to have the resources to investigate and develop their constitutional claims, let alone to find a lawyer to represent them in the hours after their arrest. As a group, they are among the most marginalized and economically desperate members of the community. And, unlike those who, for example, have been injured by a defective product, indigent arrestees may not even be aware that they have a valid claim for challenging the practice of jailing the poor for the inability to make a monetary payment. *See Gerardo v. Quong Hop & Co.*, No. 08-CV-3953, 2009 WL 1974483, at *2 (N.D. Cal. July 7, 2009) (certifying class where "potential class members are not legally sophisticated," making it difficult for them to bring individual claims); *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).

2. The Claims of the Proposed Class Raise Common Questions that will Generate Common Answers

Rule 23(a) also requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The commonality "inquiry focuses on whether a class action will generate common answers that are likely to drive resolution of the lawsuit." *In re Whirlpool Corp. Front-Loading Washer Prods. Liabl. Litig.*, 722 F.3d 838, 852 (6th Cir. 2013). Not *all* questions of law or fact at issue need to be common, for the Rule requires only "a *single* common question" that unites the proposed class. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (emphasis added) (quotation and alterations omitted); *see also Powers v. Hamilton Cty. Pub. Def. Comm'n*,

501 F.3d 592, 619 (6th Cir. 2007); *In re Am. Med. Sys., Inc*., 75 F.3d at 1080. ("[T]here need be only a single issue common to all members of the class.") (quotation and citation omitted). Moreover, "[c]ommonality does not require that Plaintiffs' claims be identical." *Eddleman v. Jefferson Cty., Ky.*, 96 F.3d 1448, 1448 (6th Cir. 1996) (unpublished). Rather, it "requires that the resolution of common questions affect all or a substantial number of the class members." *Id.*; *see also Sterling*, 855 F.2d at 1197 ("[T]he mere fact that questions peculiar to each individual member of the class remain after the common questions of the defendant's liability have been resolved does not dictate the conclusion that a class action is impermissible.").

Although there need not be *both* common issues of law and fact under Rule 23(a), here the entire case is pervaded by critical and dispositive issues of both law and fact that are common to the class. Among the most important, but not the only, common questions of fact are:

> (1) Whether Defendants impose monetary conditions of release that result in detention without consideration of class members' ability to pay;
>
> (2) Whether Defendants require pretrial conditions of release that result in detention without any substantive findings that detention is necessary;
>
> (3) Whether, when, and how Defendants determine what conditions of pretrial release should be and whether, for example, Defendants provide a timely individualized hearing; notice of the issues to be determined; representation by counsel; the opportunity to present and confront evidence and make arguments; findings on the record explaining the basis for any condition of release imposed and the evidence relied on; and, if such conditions will result in pretrial detention, a finding by clear and convincing evidence that pretrial detention is necessary because no alternative conditions or combination of conditions would reasonably ensure the individual's future court appearance and the safety of the community; and
>
> (4) How long individuals arrested must wait in jail after arrest before they have an opportunity to challenge pretrial release conditions, raise their inability to pay for their release or to request alternative, non-financial conditions.

Among the most common questions of law with respect to the Class are:

(1) Whether requiring an individual to pay money to secure release from pretrial detention without an inquiry into or findings concerning the individual's ability to pay the amount required, and without meaningful consideration of and findings concerning less restrictive alternative conditions of release, violates the Fourteenth Amendment's Due Process and Equal Protection clauses;

(2) Whether it is lawful to impose a secured financial condition of release that operates as a *de facto* order of pretrial detention because of a person's inability to pay without complying with the procedural safeguards, applying the correct legal standard, and making the substantive findings required for an order of preventive pretrial detention; and

(3) Whether setting of pretrial release conditions without affording an individual counsel violates the Sixth Amendment and the Fourteenth Amendment's Due Process Clause.

This case exemplifies the Supreme Court's explanation of commonality in *Dukes*, 564 U.S. at 349–51. There must be factual or legal questions the answers to which help to advance the legal claims of the Plaintiffs. *Id*. In this case, the fundamental common questions of fact and law listed above are the dispositive issues necessary to resolve the case as to all class members.

Named Plaintiffs, and other members of the class, are subject to Defendants' policies and practices of determining the amount of money required to secure pretrial release without the arrestee or her lawyer present for an adversarial hearing that considers ability to pay and alternatives to money bail, and all are subject to *de facto* pretrial detention without the findings and safeguards required for such detention. Every member of the proposed class will be subjected to monetary release conditions, meaning that a monetary amount will be imposed pursuant to the process described above; every class member will be detained in the Hamblen County Jail if she is unable to pay the amount; no class member will receive a timely inquiry into her ability to pay a particular amount set or consideration of alternative non-financial conditions of release; no class member will receive an adversarial hearing with counsel, an opportunity to be heard and to

confront evidence, findings by clear and convincing evidence that other alternative conditions cannot reasonably serve the State's interests, and a statement of reasons on the record.

Because Defendants engage in detention practices with the same constitutional flaws for each class member and cause the same harm to each class member, the proposed class easily meets the commonality requirement.

3. The Named Plaintiffs' Claims Are Typical of the Proposed Class

Rule 23(a)'s "typicality" requirement ensures that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "[A] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *In re Am. Med. Sys., Inc.*, 75 F.3d at 1082 (quoting 1 *Newberg on Class Actions* § 3:13, at 3-76). "To be typical, a representative's claim need not always involve the same facts or law, provided there is a common element of fact or law." *Id.* (quoting *Senter*, 532 F.2d at 525 n.31); *see also Bauer v. Nortek Glob. HVAC LLC*, No. 3:14-CV-1940, 2016 WL 5724232, at *9 n.13 (M.D. Tenn. Sept. 30, 2016) ("Rule 23(a)(3) requires that the named plaintiffs' claims be 'based on the same legal theory' as the class claims . . . .") (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d at 1082)).

The named Plaintiffs are injured in the same way as the other class members: they each challenge *de facto* pretrial detention orders made without the substantive findings and procedural safeguards that the U.S. Constitution requires.

The Named Plaintiffs' legal theories will also advance the interests of the other putative class members who are also subjected to the Defendants' pretrial detention scheme. The proof concerning whether the Defendants engage in those policies and the legal argument about whether

those policies are unlawful are critical for each class member in this case to establish the Defendants' liability. Thus, if the Named Plaintiffs succeed in their claim that the Defendants' policies and practices concerning pretrial detention as alleged in the Complaint are unlawful, then that ruling will likewise benefit every other member of the class. That is the essence of Rule 23(a)'s typicality requirement.

4. The Named Plaintiffs Are Competent and Dedicated Class Representatives

Rule 23(a)(4) requires that the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). The Sixth Circuit has set forth two criteria for meeting the adequacy of representation requirement: "1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 543 (6th Cir. 2012) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d at 1083). "The first criterion requires that there be no antagonism or conflict between representative plaintiffs and the other members of the class that they seek to represent. The second criterion inquires into the competency of counsel." *In re Nortel Networks Corp. ERISA Litig.*, 2009 WL 3294827, at *10 (M.D. Tenn. Sept. 2, 2009) (citations omitted).

Named Plaintiffs are adequate representatives because they share completely the class members' interests in establishing the illegality of Defendants' policies and practices concerning pretrial release in Hamblen County. Their injuries arise from policies and practices to which all class members have been or will be subjected and they seek the same injunctive and declaratory relief for themselves as for the putative class. There are no known material conflicts of interest among members of the proposed class, which is comprised of individuals who have a common interest in vindicating their constitutional rights in the face of their unlawful treatment.

The Plaintiffs are represented by attorneys who "will vigorously prosecute the interests of the putative class." *Abadeer v. Tyson Foods, Inc.*, No. 3:09-00125, 2009 WL 4110295, at *8 (M.D. Tenn. Nov. 25, 2009), *modified* (Sept. 27, 2010). Plaintiffs are represented by counsel from Civil Rights Corps, the Institute for Constitutional Advocacy and Protection, and Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. ("Baker Donelson"). Counsel are "qualified, experienced," and amply "able to conduct the litigation." *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 757 (6th Cir. 2013) (citation and quotations omitted). Each organization has experience litigating complex civil rights matters in federal court and extensive knowledge of both the details of pretrial wealth-based detention schemes and the relevant constitutional law. *See* Exs. 1 & 2. As discussed in further detail below, *infra* section IV.B, Plaintiffs' counsel are qualified and experienced. with a history of zealous advocacy on behalf of their clients, and Rule 23(a)(4)'s adequacy requirement is thus met.

5. Certification of the Class for Prospective Relief Is Appropriate Under Rule 23(b)(2)

In addition to satisfying Rule 23(a), the proposed class in this case satisfies Rule 23(b)(2). Rule 23(b)(2) provides for class certification when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. Rule 23(b)(2). By its terms, Rule 23(b)(2) imposes two independent but related requirements. First, plaintiffs must show that defendants' actions or inactions are based on "on grounds generally applicable to the class." *Senter*, 532 F.2d at 525. Second, the "key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or to none of them." *Gooch* v. *Life Inv'rs Ins. Co. of Am.*, 672 F.3d 402, 428 (6th Cir. 2012) (citation and

quotation omitted); *see also Cole v. City of Memphis*, 839 F.3d 530, 542 (6th Cir. 2016) ("The main the purpose of a (b)(2) class is to provide relief through a *single* injunction or declaratory judgment.").

Moreover, the "precise identity of each class member need not be ascertained" for a Rule 23(b)(2) class. *Cole*, 839 F.3d at 542 (holding that "ascertainability is not an additional requirement for certification of a (b)(2) class seeking only injunctive and declaratory relief"). Indeed, the Advisory Committee Notes to the 1966 amendment to Rule 23 demonstrate that subsection (b)(2) was intended to reach precisely the type of class proposed in this case: "Illustrative are various actions in the civil rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration." 39 F.R.D. 69, 102 (1966); *see also Senter*, 532 F.2d at 525 ("Lawsuits alleging class-wide discrimination are particularly well suited for 23(b)(2) treatment since the common claim is susceptible to a single proof and subject to a single injunctive remedy.").

Here, the proposed class satisfies Rule 23(b)(2) on two grounds. First, Defendants, through the policies, practices, and procedures that make up their use of money bail, have acted and/or refused to act on grounds generally applicable to the entire class. *See Amchem Prods., Inc v. Windsor*, 521 U.S. 591, 614 (1997) ("Rule 23(b)(2) permits class actions for declaratory or injunctive relief where the party opposing the class has acted or refused to act on grounds generally applicable to the class. Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples." (quotations and citation omitted)). Thus, a declaration that the policy, pattern, and practice requiring pretrial conditions of release that result in detention without any substantive findings justifying that detention violates the Fourteenth Amendment's Due Process and Equal Protection clauses would benefit every member of the proposed class. The

same applies to legal rulings on the other claims, such as a declaration that setting of pretrial release conditions without sufficient procedural due process safeguards and without affording an individual counsel violates the Sixth Amendment and the Fourteenth Amendment's Due Process Clause.

Second, Plaintiffs' request for relief satisfies 23(b)(2) because the remedy they seek would provide relief to all current and future arrestees in Hamblen County. *See, e.g.*, *Wal-Mart v. Dukes*, 564 U.S. at 362-63 ("When a class seeks an indivisible injunction benefitting all its members at once, there is no reason to undertake a case-specific inquiry into whether class issues predominate. . . . Predominance and superiority are self-evident."); *In re Veneman*, 309 F.3d 789, 792 (D.C. Cir. 2002) ("Rule 23(b)(2) certification is appropriate where plaintiffs seek declaratory or injunctive relief for class-wide injury."). For example, an injunction prohibiting the County from enforcing bail practices and orders of *de facto* or transparent pretrial detention that keeps arrestees in jail without the constitutionally required findings would provide relief to every member of the class, as would equitable relief on all of Plaintiffs' other claims. The injunctive relief that Plaintiffs seek would protect each member of the class from Defendants' unlawful policies and practices. For this reason, Defendants' systemic, unconstitutional money bail practices are particularly well-suited to a Rule 23(b)(2) class action.

Because all members of the proposed class have or will be injured by Defendants' unconstitutional conduct, and because the relief Plaintiffs seek would apply to all members of the class, the class meets the requirements of 23(b)(2). Having already met the threshold requirements of Rule 23(a), this class fulfills all the prerequisites for certification.

B. PLAINTIFFS' COUNSEL SHOULD BE APPOINTED CLASS COUNSEL UNDER RULE 23(G).

Federal Rule of Civil Procedure 23(g) requires that the court appoint class counsel for any class that is certified. Fed. R. Civ. P. 23(g)(1). Class counsel must "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). In determining whether this requirement is met, courts must consider: (1) "the work counsel has done in identifying or investigating potential claims in the action;" (2) "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;" (3) "counsel's knowledge of the applicable law;" and (4) "the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

Undersigned counsel satisfy these four requirements. First, Plaintiffs' counsel have interviewed Named Plaintiffs and other class members, performed relevant legal research and drafting, and investigated the facts and legal claims raised in this case for many months. *See* Ex. 1. Second, Plaintiffs' counsel have significant experience litigating class and civil rights actions, including claims concerning due process, equal protection, and the right to counsel, and have litigated challenges to unconstitutional bail practices in other jurisdictions across the country. *See* Exs. 1 & 2. Third, Plaintiffs' counsel are particularly familiar with the application of constitutional rights in criminal cases. *See* Exs. 1 & 2. Counsel have advocated for policy reform on the issues raised in this case with state and local officials and educated the public and other attorneys about preventing and remedying the type of constitutional violations exemplified by this case. *See* Exs. 1 & 2. Finally, Plaintiffs' counsel are prepared to contribute significant resources to the representation of this class.

Plaintiffs' counsel therefore satisfy Rule 23(g), and they respectfully request this Court's appoint them class counsel for the proposed class.

CONCLUSION

For the above reasons, Plaintiffs respectfully request the Court grant Plaintiffs' Motion for Class Certification. In the alternative, if Defendants contest material issues of fact necessary for class certification, Plaintiffs request the opportunity to conduct discovery related to class certification and hold a subsequent hearing.

Dated: February 16, 2020

Respectfully submitted,

/s/ Tara Mikkilineni
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**Pro Hac Vice application forthcoming.*

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2020 I electronically filed the foregoing with the clerk of the court for the U.S. District Court, Eastern District of Tennessee, using the electronic case filing system of the Court. This Memorandum in Support of Plaintiffs' Motion for Class Certification will be served in accordance with the Federal Rules of Civil Procedure.

/s/ George T. Lewis

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

MICHELLE TORRES, *et al.*, on behalf of themselves and those similarly situated, Plaintiffs, v. W. DOUGLAS COLLINS, in his official capacity as Hamblen County General Sessions Judge, *et al.*, Defendants.	Case No. 2:20-cv-00026

DECLARATION OF TARA MIKKILINENI

1) My name is Tara Mikkilineni and, on behalf of Civil Rights Corps, I am one of the counsel for the named Plaintiffs and the putative Class members in this case. I submit this Declaration in support of the motion for class action treatment.

2) I am a senior attorney at Civil Rights Corps, a non-profit civil rights organization based in Washington, D.C.

3) Prior to my employment at Civil Rights Corps, I was Fair Lending Enforcement Counsel at the Consumer Financial Protection Bureau, where I investigated and litigated complex federal enforcement actions. Prior to that, I was habeas counsel at the Habeas Corpus Resource Center in California, where I represented capital habeas defendants in the state and federal courts. From 2010-2014 I was an attorney in the Special Litigation Division of the Public Defender Service for the District of Columbia, where I litigated constitutional civil rights cases, including class action cases, and complex criminal law issues in federal and District of Columbia trial and appellate courts. I was also an associate at the law firm Sidley Austin, where I worked on complex

government investigations and civil litigation, and a law clerk for the Hon. Emilio M. Garza of the Fifth Circuit Court of Appeals.

4) Civil Rights Corps, along with co-counsel, has conducted an investigation into the use of secured money bail to detain impoverished people in Hamblen County. This investigation has included interviews with witnesses, government employees, incarcerated people, local attorneys, community members, experts in the functioning of courts and jails, and national experts in post-arrest procedures and constitutional law.

5) I have studied the way that these systems function in other cities and counties in order to investigate the wide array of reasonable constitutional options in practice. As a result, I have devoted substantial resources to becoming intimately familiar with systems of wealth-based detention and with all of the relevant state and federal laws and procedures that relate to them. I have studied the way that these poverty-based post-arrest detention systems function in other cities and counties in order to investigate the wide array of reasonable constitutional options in practice for local systems like Hamblen County. I have therefore devoted significant time and resources to becoming familiar with the scheme in Hamblen County and with all of the relevant state and federal laws and procedures that can and should govern it.

6) Civil Rights Corps has been appointed class counsel in three materially identical lawsuits, challenging money bail practices in Harris County, Texas; *see ODonnell v. Harris County*, 2017 WL 1542457, at *7-8 (Apr. 28, 2017); Dallas County, Texas; *see Daves v. Dallas. County,* No. 3:18-CV-0154-N, 2018 U.S. Dist. LEXIS 160742 (N.D. Tex. Sep. 20, 2018); and St. Louis, Missouri; *see Dixon v. City of St. Louis*, No. 4:19-cv-0112-AGF, 2019 U.S. Dist. LEXIS 97327 (E.D. Mo. June 11, 2019).

7) In *ODonnell*, the district court entered, and the Fifth Circuit Court of Appeals affirmed, a preliminary injunction to cease unconstitutional money bail practices in one of the largest jurisdictions in the country. In *Daves* and *Dixon* the district courts entered similar preliminary injunctions, which are currently on appeal to the Fifth and Eighth Circuits, respectively.

8) Civil Rights Corps has been lead counsel in many constitutional civil rights class action lawsuits raising similar issues. A small sampling of these cases includes: *Schultz v. State*, 330 F. Supp. 3d 1344 (N.D. Ala. 2018); *Edwards v. Cofield*, 265 F. Supp. 3d 1344 (M.D. Ala. 2017); *Caliste v. Cantrell*, No. 17-6197, 2018 U.S. Dist. LEXIS 43338 (E.D. La. Mar. 16, 2018); *Jones on behalf of Varden v. City of Clanton*, 2015 WL 5387219 (M.D. Ala. 2015); *Pierce et al. v. City of Velda City,* 2015 WL 10013006 (E.D. Mo. 2015); *Walker v. City of Calhoun*, 2016 WL 361612 (N.D. Ga. Jan. 28, 2016); *Rodriguez v. Providence Community Corrections, Inc.*, 2015 WL 9239821 (M.D. Tenn. 2015); *Cooper v. City of Dothan*, 2015 WL 10013003 (M.D. Ala. 2015); *Snow v. Lambert*, 2015 WL 5071981 (M.D. La. 2015); *Thompson v. City of Moss Point*, 2015 WL 10322003 (S.D. Miss. 2015).

9) Many of those cases have resulted in consent decrees requiring jurisdictions to change their post-arrest procedures to remove secured money bail for new arrestees. Many other jurisdictions have worked with us and others to change their practices voluntarily in the wake of these cases. Civil Rights Corps has worked with legislators, judges, Attorneys General, and community members to help identify problems with post-arrest systems and to design constitutional and effective solutions. I am also counsel in a number of ongoing class action lawsuits with substantial legal overlap with this one. *See e.g.*, *Graff v. Aberdeen Enterprizes II,*

Inc., 4:17-cv-606 (N.D. Okla. 2017); *Fant et al. v. City of Ferguson*, 15-cv-253-AGF (E.D. Mo. 2015); *Robinson v. Purkey*, 3:17–cv–1263-AAT (M.D. Tenn. 2017).

10) Civil Rights Corps is prepared to contribute significant resources to litigating this case. Plaintiffs' counsel have paid all costs associated with the investigation and litigation to date and will continue to do so.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

/s/ Tara Mikkilineni____ 2-16-2020
Tara Mikkilineni Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

MICHELLE TORRES, *et al.*, on behalf of themselves and those similarly situated, Plaintiffs, v. W. DOUGLAS COLLINS, in his official capacity as Hamblen County General Sessions Judge, *et al.*, Defendants.	Case No. 2:20-cv-00026

DECLARATION OF SETH WAYNE

1. My name is Seth Wayne and, on behalf of the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center (ICAP), I am one of the counsel for the named Plaintiffs and the putative Class members in this case. I submit this Declaration in support of the motion for class certification.

2. ICAP is an institute based at the Georgetown University Law Center in Washington, D.C. ICAP is composed of experienced litigators and professionals, with a mission to defend American constitutional rights and values. ICAP is prepared to devote considerable and sufficient resources to prosecute this case.

3. I was first licensed to practice law in 2011 and have practiced continuously since then.

4. Prior to my employment as Senior Counsel at the Institute for Constitutional Advocacy and Protection, I worked as a trial attorney in the Special

Litigation Section of the Civil Rights Division in the United States Department of Justice for approximately two years. Prior to that, I worked as a special litigation staff attorney at the Orleans Public Defenders in New Orleans, Louisiana for approximately five years.

5. I have developed substantial experience related to the constitutionality of bail procedures. Specifically, I represent plaintiffs and have been appointed class counsel in a similar civil rights lawsuit challenging money bail practices in St. Louis, Missouri in *Dixon v. City of St. Louis*, No. 4:19-cv-0112-AGF, 2019 U.S. Dist. LEXIS 97327 (E.D. Mo. June 11, 2019). I have also authored amicus briefs discussing the legality of money bail practices in *In re Kenneth Humphrey*, No. S247278 (Cal. 2018), *Walker v. Calhoun*, 901 F.3d 1245 (11th Cir. 2018); and *Buffin v. Hennessy*, 15-cv-4959 (N.D. Cal. 2015).

6. I also have general expertise in the constitutionality of practices in the criminal justice system. I represent Plaintiffs in a multi-county putative class action challenging the use of fines and fees to jail court debtors, *Graff v. Aberdeen Enterprizes II, Inc.*, 4:17-cv-606 (N.D. Okla. 2017), a case with substantial legal overlap with this one. With the Department of Justice I represented the United States investigating, litigating, and negotiating settlements against law enforcement agencies in large jurisdictions engaged in a pattern or practice of civil rights violations, including *United States v. Police Department of Baltimore City*, 17-cv-99 (D. Md. 2017).

7. I have experience throughout my career in all stages of litigation, including multiple bench and jury trials.

/s/ *Seth Wayne*
Seth Wayne

February 16, 2020
Date