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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

Oscar Melendres Sandoval and Mathew Wholf, on behalf of themselves and all others similarly situated, and Rabbi David Lazar and Reverend Jane Quandt, individually,

Plaintiffs,

vs.

Riverside County, Riverside County Sheriff's Office, Sheriff Chad Bianco, and Riverside County Superior Court,

Defendants.

Case No. CVRI 2502556

PLAINTIFFS' APPLICATION FOR ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

Every court in California that has assessed the use of cash bail pre-arraignment has found it to be unconstitutional. *E.g.*, *Buffin v. City & Cnty. of San Francisco*, No. 15-CV-04959-YGR, 2019 WL 1017537, at *23 (N.D. Cal. Mar. 4, 2019) ("The Bail Schedule . . . bears *no* relation to the government's interests in enhancing public safety and ensuring court appearance. It merely provides a 'Get Out of Jail' card for anyone with sufficient means to afford it.") (emphasis in original); *Welchen v. Bonta*, 630 F. Supp. 3d 1290, 1312 (E.D. Cal. Sept. 22, 2022) ("the use of the bail schedule in Sacramento County is unconstitutional"). The California Supreme Court has held that "detaining arrestees solely because of their indigency is fundamentally unfair and irreconcilable with constitutional imperatives." *In re Humphrey*, 11 Cal. 5th 135, 151 (2021) (citations omitted). Even the California Attorney General has acknowledged it is "straightforward" that pre-arraignment cash bail policies are unconstitutional. Declaration of Salil Dudani in Support of Plaintiffs' Application for Order to Show Cause for Preliminary Injunction ("Dudani Decl.") Ex. AI at 7, 9.

Nonetheless, Riverside County continues to condition pre-arraignment liberty on the payment of secured money bail, in direct violation of jailed individuals' fundamental due process and equal protection rights. Plaintiffs Oscar Melendres Sandoval and Mathew Wholf (the "Jailed Plaintiffs"), and countless others like them remain in Riverside County jails simply because they are too poor to purchase their freedom. They have not been appointed a lawyer, they have not seen a judge, and they have not received a bail hearing at which their detention was found necessary. Rather, they and others similarly situated remain confined "solely because of [their] financial inability to pay." *In re Antazo*, 3 Cal. 3d 100, 108 (1970). Plaintiffs/Petitioners ("Plaintiffs") move for a classwide preliminary injunction that will provide urgently needed relief from Defendants' unconstitutional cash-based bail policies.

Across Riverside County, whether individuals are jailed before arraignment depends in many, if not most, cases on their ability to pay secured money bail. For individuals arrested without a warrant, bail is set based on a countywide bail schedule, which provides a cash bail amount for the charged offense(s), with a handful of possible enhancements for prior convictions or aggravating circumstances. The bail schedule does not require consideration of whether the detainee can pay the amount listed or is a flight risk or a danger to the community, or whether there are other alternatives to detention.

Individuals arrested on warrants face the very same unconstitutional cash-based pre-arraignment jailing as those detained without a warrant. Magistrates set bail on warrants, which is typically the exact amount as provided on the bail schedule, or higher. The result is that one person will sit in jail while a similarly situated person—arrested on the same night, for the same alleged crime, in the same city—is released based solely on their access to cash. Defendants maintain this cash-based jailing system despite the wealth of rigorous scientific research establishing that "[s]ecured money bail is no more effective than unsecured bail or other non-monetary conditions" at either "promoting appearance in court" or "assuring public safety and law-abiding behavior." *See* Declaration of Jennifer Copp in Support of Plaintiffs' Application for Order to Show Cause for Preliminary Injunction ("Copp Decl.") ¶¶ 53-72. As such, Defendants' policy is not narrowly tailored and cannot survive strict scrutiny.

Although all cash-based pre-arraignment jailing is unconstitutional, Plaintiffs here make a more limited request for relief, in the interest of stemming as many of the ongoing constitutional violations as soon as possible. Specifically, Plaintiffs seek an order to show cause ("OSC") why a class-wide preliminary injunction should not issue to prohibit Defendants from unconstitutionally jailing individuals arrested for specified non-violent offenses, who without this relief will continue to be irreparably harmed each passing day.

II. STATEMENT OF FACTS

A. Plaintiffs' Pre-Arraignment Cash-Based Detention

The Jailed Plaintiffs have been detained in Riverside County jails for two to four days, solely because they cannot pay the money bail amounts that are pre-set in Riverside's bail schedule. Declaration of Oscar Melendres Sandoval ("Melendres Sandoval" Decl.") ¶¶ 3-6, 21, 25;[1] Declaration of Mathew Wholf ("Wholf Decl.") ¶¶ 2-7, 11-13, 15-17. They have not been appointed counsel, brought before a judicial officer, or offered any way of out of jail other than paying money bail, which they cannot do. Melendres Sandoval Decl. ¶¶ 9-11; Wholf Decl. ¶¶ 8-10. Their lives have been seriously harmed by this detention. For days, they have been unable to work or tend to their family obligations. *E.g.*, Melendres Sandoval Decl. ¶¶ 13-16, 24; Wholf Decl. ¶¶ 18-20. They are even at risk of losing out

[1] The Jailed Plaintiffs' Declarations are attached to Plaintiffs' Verified Class Action Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate ("Complaint").

on the basic necessities of life. *E.g.*, Melendres Sandoval Decl. ¶¶ 13-16, 22, 24; Wholf Decl. ¶¶ 20-21. Meanwhile, Defendants permit similarly situated individuals—accused of the very same crimes as the Jailed Plaintiffs—to return to their families and their lives solely because they can pay cash bail.

B. Defendants' System of Pre-Arraignment Cash-Based Detention

In Riverside County, a person's liberty following arrest hinges on their access to money. Defendants Riverside County Sheriff's Office ("RSO") and Sheriff Chad Bianco ("Sheriff") release people in their custody who pay a pre-determined sum of money listed on the Riverside County Bail Schedule, Dudani Decl. Ex. A, which is promulgated by the Riverside County Superior Court Judges pursuant to Penal Code section 1269b. The amount of money required for release depends on the charge of arrest and may be enhanced for certain prior convictions or aggravating circumstances. Dudani Decl. Ex. A. Under the bail schedule, cash bail is available for nearly all offenses except for capital murder. *Id.* For a person arrested on a warrant, after a magistrate receives a probable cause declaration, the magistrate imposes bail on the warrant *ex parte*—typically the amount the schedule prescribes, or higher—with no consideration of the individual's ability to pay, no mechanism for meaningful individualized assessment, and no hearing in open court. *See* Declaration of Arsany A. Said in Support of Plaintiffs' Application for Order to Show Cause for Preliminary Injunction ¶¶ 1-4; Declaration of Mohammad Z. Qazi in Support of Plaintiffs' Application for Order to Show Cause for Preliminary Injunction ("Qazi Decl.") ¶¶ 1-7; Dudani Decl. Exs. M, N.

Any arrested individual who pays the amount dictated by the bail schedule or their warrant is promptly released, often the same day they are arrested. RSO's jails are open 24/7 for the payment of cash bail. *Id*. Ex. I. As a result, a person with money who is charged with murder can leave jail by paying bail, while an indigent person charged with a nonviolent offense remains jailed because they cannot. *Id*. Ex. A. Those who cannot pay bail are not appointed counsel until arraignment, which does not take place until at least two court days after arrest and routinely does not take place until up to five or, in some cases, even six, calendar days after arrest. Declaration of Caitlin Power in Support of Plaintiffs' Application for Order to Show Cause for Preliminary Injunction ("Power Decl.") ¶¶ 1-16.

Although magistrates have the authority to order a change the bail status of an indivdual jailed *ex parte*, Cal. Penal Code § 810, the Court's website, the bail schedule, and RSO's policy manuals only

establish a process by which law enforcement may petiton for pre-arraignment *increases* in money bail. Dudani Decl. Exs. J, K, L. Neither of the Jailed Plaintiffs has been made aware of any option to obtain pre-arraignment release other than by paying the amount of bail that was set under the bail schedule. Melendres Sandoval Decl ¶ 9; Wholf Dec. ¶ 8.[2] Nor do the Riverside County jails provide any avenue for doing so. Declaration of Victoria Rossi in Support of Plaintiffs' Application for Order to Show Cause for Preliminary Injunction ("Rossi Decl.") ¶¶ 2-19. As as a result, many individuals – like the Jailed Plaintiffs in this case – remain in RSO's custody because they cannot pay pre-arraignment money bail. They require urgent relief.

C. The Harms of Defendants' System of Pre-Arraignment Cash-Based Detention

1. Harms to Plaintiffs and Those Similarly Situated

People suffer in many ways when they are jailed. Many lose their jobs or housing; even among those with strong work histories, nearly half (46%) of those detained 4-7 days lose jobs due to missed work. Copp Decl. ¶ 38. Indeed, just three days of jail result in an average loss of $29,000 in lifetime earnings. *Id.* ¶¶ 35-40, 45, 49. Jailed individuals' children endure traumatic family separation. *Id.* ¶ 41.[3] The destabilizing harms of unnecessary incarceration also have other effects on their children, other family members, and larger social networks. Copp Decl. ¶¶ 40-45. Individuals detained pretrial, even for short periods, also have worse case outcomes than similarly situated people who are released, in significant part because detained individuals face pressure to plead guilty in exchange for release from pretrial jailing. *Id*. ¶¶ 15-19 ("inability to pay secured money bail results in a greater likelihood and length of pretrial detention"), ¶¶ 20-29.

Individuals detained in Riverside County jails are also subjected to dangerous and sometimes deadly conditions. Riverside County has the fourth highest county jail population—88% of which is detained pretrial—and had the second most deaths nationwide from 2020 to 2023. Dudani Decl. Ex. G at 1, Ex. Q at 1-2, Ex. D. Defendants admit "overcrowding [is] prevalent throughout [the County's] jail

[2] The Jailed Plaintiffs' respective pages from the RSO's Jail Information Management System (listing bail amounts, arrest charges, and other basic information), are attached as Exs. AK, AL (birth dates redacted).

[3] *Youngblood v. Gates*, 200 Cal. App. 3d 1302, 1326 (1988) ("It should not be hard to realize that for many persons arrested, . . . the break in family contact, even for a brief period, [is] debilitating.").

system[.]" Dudani Decl. Ex. H at 19, Ex. E at 17, 19; *see also id*. Exs. F and G. These dangerous conditions can lead to death, even within just a day or two of pre-arraignment detention. *Id*. Ex. X at 1, 5, Ex. R at 1, Ex. S at 2, Ex. T at 5, 12, Ex. V at 1-2. In fact, about one third of jail deaths in California occur within the first three days of booking, with upwards of 40% occurring within the first week. *Id*. Ex. Y; *see also id*. Ex. X, Ex. Z, Ex. AA. Individuals jailed in Riverside County are at heightened risk of dying from "homicide, overdose, natural causes or suicide," largely due to "neglect by jail employees, access to illicit drugs, and cell assignments that put [them] at increased risk of violence or [do] not allow for close oversight," *id*. Ex. T at 2, along with "deficiencies in mental health treatment," *id.* at 5.[4] In fact, the "concerning levels of in-custody deaths" in Riverside County's jails led the California Attorney General to launch a civil rights investigation into the conditions of confinement. *Id*. Ex. P. Yet, jailed individuals continue to suffer the dangerous conditions in Riverside County jails simply because they lack access to the requisite cash.

2. Pre-arraignment Secured Money Bail Is Ineffective and Counterproductive

Defendants' system of pre-arraignment cash-based detention promotes neither appearance in court nor public safety. In fact, the scientific evidence indicates it *worsens* both. Despite the common justification for money bail—that posting a sum of money to be returned at the end of the case incentivizes court appearances—in practice, almost everyone who pays for release does so by paying a non-refundable fee to a commercial bonding company. Dudani Decl. Ex. AH at 1, n. 6; *see also* Qazi Decl. ¶ 2. Because these fees are not returned under any circumstances, they create limited, if any, financial incentive to appear. *See id*.; Copp Decl. ¶ 57. Unsurprisingly, rigorous empirical studies have overwhelmingly concluded that secured money bail does not increase rates of appearance in court. Copp Decl. ¶¶ 53-58. To the contrary, it worsens appearance rates. *Id.* ¶¶ 48-49, 51, 58.

Money bail also fails to improve public safety, even in theory, because money posted is not forfeited in the event of new criminal activity (only in the event of nonappearance). *See Reem v.*

[4] RSO has exacerbated the dangers posed to jailed people by changing staffing and training requirements in a way that drained critical experience and training from jails, Dudani Decl. Ex. Q at 6-7, incorrectly training staff, *id*. at 15, and by failing to adhere to practices meant to protect detained people, such as monitoring surveillance cameras, conducting periodic checks, and appropriately intervening when required, *id*. at 2-3; 8-9; Dudani Decl. Ex. T at 3, Ex. W at 1.

Hennessy, No. 17-cv-6628-CRB, 2017 WL 6539760, at *3 (N.D. Cal. Dec. 21, 2017) ("[T]he bail the person posts does nothing to incentivize him not to commit crimes."); Cal. Pen. Code §§ 1269, 1278(a), 1305(a); Copp Decl. ¶ 64. Empirical research confirms that paying secured money bail does not reduce a person's risk of rearrest. Copp Decl. ¶ 67. Instead, secured money bail destabilizes individuals' lives, leading to *increased* crime, causing thousands of crimes that would not have been committed but for their pretrial confinement and the resulting disruptions to their lives. *Id.* ¶¶ 31-34, 46-52, 65-66.

The current system is not only ineffective and counterproductive—it is also expensive: RSO spends roughly $300 million per year on "correction[]" Dudani Decl. Ex. AJ. Those funds would be better spent on less restrictive and empirically supported alternatives to secured money bail.

D. The Efficacy of Less Restrictive Means

In contrast to secured money bail, less restrictive and evidence-based alternatives effectively promote both court appearance and public safety. These alternatives include unsecured money bail (i.e., immediate release solely upon a promise to pay the monetary amount upon failure to appear), Copp Decl. ¶¶ 14 n.2, 53-55, 62, 63, 67; reminders for court dates via text or phone calls, *id*. ¶¶ 59-61; and increased use of pre-trial services, *id*. ¶ 54. Measures like court reminders are effective because "the primary reasons individuals fail to appear for their court date are forgetfulness, employment obligations, childcare, or other logistical issues such as lack of transportation." Dudani Decl. Ex. AG at 9; Copp Decl. ¶ 59 (two recent studies in New York found that text and phone call reminders reduced failures to appear in court by up to 37%). The empirical evidence shows that these measures are equally or more effective at assuring court appearances and promoting public safety than secured money bail. Copp Decl. ¶¶ 54-72.

In fact, a recent analysis of dozens of jurisdictions found *no relationship* between the use of money bail and crime rates. *Id*. ¶ 71. Jurisdictions that have reduced the use of secured money bail have achieved equal or greater success in minimizing failures to appear, re-arrests on bond, and crime generally. *Id*. ¶¶ 54-59, 67-72; *see id.* ¶ 70 (in and around Houston, TX, bail "reform reduced future criminal justice system contact (i.e., a 6% decline in new cases over 3 years)"). In Illinois, following the enactment of the Pretrial Fairness Act, which eliminated the use of cash bail in all criminal cases and

prohibited pretrial detention altogether for most defendants, the average rate of detention at initial hearings dropped from 51% to 9%, and failures to appear decreased. *Id*. ¶ 56.

For decades, Washington, D.C. has largely eliminated the use of cash bail in its pretrial system, D.C. Code § 23-1321, and over 90% of defendants there are released without any financial conditions, whether secured or unsecured. Dudani Decl. Ex. AC at 1. Under this system, D.C. has experienced low rates of failures to appear and re-arrest on release. *Id*. Ex. AD. Between 2020-2024, 88-93% of defendants released in D.C. remained arrest-free on release and 86-92% made all scheduled court appearances, excluding the negligible minority on secured money bail. *Id*. Ex. AC. In 2017, New Jersey also largely eliminated secured money bail and implemented alternative programs, such as automated court reminders via text message, email, or phone call. *Id*. Ex. AF at 60-61. Fewer than ten percent (9.2%) of all those arrested since then in New Jersey are detained pretrial, yet court appearance rates have consistently remained high (89-91%). *Id.* at 18-19, 40.

Los Angeles County Superior Court's Pre-Arraignment Release Protocol is yet another example of a more effective, less restrictive alternative to secured money bail. Since October 1, 2023, in response to a preliminary injunction curtailing the use of pre-arraignment cash bail, the Los Angeles Superior Court has maintained a bail schedule, called the Pre-Arraignment Release Protocol ("PARP"). Under PARP, individuals arrested for most non-violent, non-serious offenses are released automatically without having to post money bail. Dudani Decl. Ex B. Social scientists have concluded that the adoption of the PARP reduced the jail population in Los Angeles without a corresponding increase in crime. Copp Decl. ¶ 68.

Rigorous empirical investigations and the experiences of other jurisdictions overwhelmingly demonstrate that secured money bail not only fails to *reduce* re-arrests and non-appearance rates, but also appears to *increase* re-arrests and failures to appear due to its disruptive and destructive consequences. Meanwhile, less restrictive alternatives achieve results that are no worse than money bail with respect to failures to appear and re-arrests and are often far better.

III. ARGUMENT

Plaintiffs are plainly likely to succeed on the merits, and the balance of harms weighs heavily in their favor. The preliminary injunction requested is modest, easily administrable, and has worked in

many jurisdictions, including Los Angeles.

A. Legal Standard

On a motion for a preliminary injunction, the Court considers (i) "the likelihood that the plaintiff will prevail on the merits at trial" and (ii) "the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if is the preliminary injunction were issued." *Cohen v. Bd. of Supervisors*, 40 Cal. 3d 277, 286(1985) (citations omitted). If the Court finds that Plaintiffs have demonstrated a likelihood of success and irreparable harm, it can and should enjoin the Defendants' use of pre-arraignment cash-based jailing, be it through bail schedules or arrest warrants.

B. Plaintiffs Are Likely to Succeed on the Merits

Plaintiffs are highly likely to succeed on the merits of Causes of Action 1-4 alleged in the Complaint, which challenge cash-based jailing. Multiple courts have enjoined materially identical bail policies.

1. Pre-Arraignment Cash-Based Detention Must Satisfy Strict Scrutiny

Defendants' pre-arraignment cash-based detention system threatens two fundamental constitutional rights. *First*, it impairs individuals' substantive due process right to bodily liberty. "[I]n our society liberty is the norm, and detention prior to trial . . . is the carefully limited exception." *In re Humphrey*, 11 Cal. 5th at 155 (citation omitted). Hence, pretrial detention is "impermissible unless no less restrictive conditions of release can adequately vindicate the state's compelling interest." *Id.* at 151-52; *see also Van Atta v. Scott*, 27 Cal. 3d 424, 435 (1980) (pretrial detention "affects the detainee's liberty, a fundamental interest second only to life itself in terms of constitutional importance").

Second, Defendants' pre-arraignment cash-based detention system violates an "arrestee's crucial state and federal equal protection rights against wealth-based detention." *In re Humphrey*, 11 Cal. 5th at 151 ("detaining arrestees solely because of their indigency is fundamentally unfair and irreconcilable with constitutional imperatives"); *In re Brown*, 76 Cal. App. 5th 296, 308 (2022) ("[T]he *Humphrey* Court broadly held the common practice of conditioning an arrestee's release from custody pending trial solely on whether an arrestee can afford bail is unconstitutional."). The right against wealth-based detention, which arises from a convergence of equal protection and due process principles, is rooted in

U.S. Supreme Court precedent holding that, absent an individualized holding of necessity, the government may not jail a person solely because they are unable to pay. *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983).

Deprivation of these fundamental rights must satisfy strict scrutiny. *In re Humphrey*, 11 Cal. 5th at 152; *People v. Olivas*, 17 Cal. 3d 236, 243, 251 (1976); *In re Antazo*, 3 Cal. 3d at 112 ("Our inquiry then is whether imprisonment of an indigent convicted defendant for nonpayment of a fine is necessary to promote a *compelling* governmental interest.") (citation omitted) (emphasis in original); *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 780 (9th Cir. 2014) (en banc) (under analogous federal law, applying strict scrutiny to Arizona pretrial detention law because it infringed on the "fundamental" right to pretrial liberty); *Serrano v. Priest*, 18 Cal. 3d 728, 761 (1976) (when wealth-based distinction impinges on a "fundamental" interest, strict scrutiny applies).

Under strict scrutiny, the government may not "infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Lopez-Valenzuela*, 770 F.3d at 780 (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)). Defendants bear the burden of proof on both prongs of this analysis. The California Supreme Court has explained, "the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose." *Antazo*, 3 Cal. 3d at 111 (quoting *Castro v. State*, 2 Cal. 3d 223, 234-36 (1970)) (emphasis in original). In other words, if less restrictive policies would adequately serve the government's interests without systemically infringing on detainees' bodily liberty and right against wealth-based detention, then the use of cash-based detention is unconstitutional.

2. Defendants' Pre-Arraignment Cash-Based Detention System Fails Strict Scrutiny

Defendants cannot meet their heavy burden under strict scrutiny analysis. Numerous courts have found that secured money bail schedules and statutes are subject to—and fail—strict scrutiny. *E.g.*, *Lopez-Valenzuela*, 770 F.3d at 780; *Welchen*, 630 F. Supp. 3d at 1299; *Buffin*, 2018 WL 424362, at *10.

Defendants' system of pre-arraignment cash-based detention has deprived the Jailed Plaintiffs and other like them of their fundamental due process right to bodily liberty and their fundamental due

process and equal protection right against wealth-based detention. The Jailed Plaintiffs were arrested between May 24-26, and as of filing, they have remained in custody without appointed counsel for two to four days. Wholf Decl. ¶ 2, 9; Melendres Sandoval Decl. ¶ 3, 11. Each one could go free at any moment if he could pay the bail amount set by the bail schedule, but they lack the means to do so. The deprivation of their rights, and its consequences, are severe. *E.g.*, *Buffin*, 2019 WL 1017537, at *18 ("[T]he evidence reveals that individuals can also lose their housing, public benefits, and child custody, and be burdened by significant long-term debt due to a short period of detention."); *In re Humphrey*, 11 Cal. 5th at 147 ("pretrial detention heightens the risk of losing a job, a home, and custody of a child"); Copp Decl. ¶¶ 35 (detailing detention's negative impact on earnings), 38-45 (detailing detention's negative impact on employment, property, child wellbeing, and government assistance).

Defendants cannot show that their system of pre-arraignment cash-based detention is necessary to serve any compelling state interest.

Defendants' Pre-Arraignment Cash-Based Detention System Is Not Narrowly Tailored

Imposing secured money bail prior to any bail hearing in court is both overinclusive, because it confines many individuals who may pose no flight or safety risk simply because they cannot pay, and underinclusive, because it allows individuals who might pose a serious risk to go free simply because they can. A "statute is not narrowly tailored if it is either underinclusive or overinclusive in scope." *Welchen*, 630 F. Supp. 3d at 1301 (quoting *IMDb.com Inc. v. Beccera*, 962 F.3d 1111, 1125 (9th Cir. 2020)) (finding bail schedule "both overinclusive and underinclusive"); *see also Brown v. Merlo*, 8 Cal. 3d 855, 876 (1973) (overinclusive and underinclusive statutes do "not treat similarly situated individuals in like manner"); *Taking Offense v. State*, 66 Cal. App. 5th 696, 718 (2021) (to be narrowly tailored, statutes must not be overinclusive nor underinclusive); *In re Humphrey*, 11 Cal. 5th at 142 ("Whether an accused person is detained pending trial often does not depend on a careful, individualized determination of the need to protect public safety, but merely . . . on the accused's ability to post the sum provided in a county's uniform bail schedule.").

Defendants' Pre-Arraignment Cash-Based Detention System Does Not Further Any Government Interest

Defendants may argue that two government interests justify their pre-arraignment cash-based jailing system: "assuring the arrestee's appearance at trial and protecting the safety of the victim as well as the public." *In re Humphrey*, 11 Cal. 5th at 142. "Yet just as neither money bail (nor any other condition of release) can guarantee that an arrestee will show up in court, no condition of release can entirely *eliminate* the risk that an arrestee may harm some member of the public." *Id.* at 154. Perfection is not the standard; rather, the question here is whether the deprivation of fundamental rights caused by Defendants' use of secured money bail is necessary such that *no other alternative* can reasonably ensure court appearance and public safety. As the empirical evidence unequivocally demonstrates, it is not.

Secured money bail does not promote either of the government's goals. Cash bail policies do not ensure public safety. Because money bail is not forfeited if a person reoffends, "the bail the person posts does nothing to incentivize him not to commit crimes." *Reem*, 2017 WL 6539760, at *3. Not surprisingly then, empirical research confirms that paying secured money bail does not reduce a person's risk of rearrest—individuals released without money bail are no more likely to be charged with a new crime than those released with money bail. Copp Decl. ¶ 67. In fact, evidence shows that secured money bail actually *increases* a person's likelihood of being charged with new criminal offenses in the future. *Id*. ¶ 65 (discussing study showing use of secured money bail led to an increase in recidivism). Secured money bail also does not ensure court appearances. Empirical investigations have overwhelmingly concluded that secured money bail does not increase rates of appearance. *Id*. ¶¶ 54-58.

Because Effective Alternatives Exist, Defendants Cannot Show Their Policy Is Necessary

Defendants also cannot show their cash-based jailing system is the least restrictive alternative available to ensure court appearances and protect public safety. Evidence from jurisdictions across the country shows that numerous less restrictive alternatives to the use of secured money bail exist that are equally—or more—effective at achieving the government's interests. *See* Section II.D, *supra*. Other jurisdictions use unsecured bonds, court reminders, pretrial supervision, and stay-away orders to achieve these goals. Copp Decl. ¶¶ 53-55, 59-62, 67. Empirical research confirms that these alternatives are equally or more effective at ensuring court appearances and promoting public safety than secured money bail. *Id*. In light of the unequivocal evidence, prior courts have readily concluded that effective alternatives exist, e.g., *Welchen*, 630 F. Supp. 3d at 1303 ("With respect to less restrictive alternatives

adopted by other jurisdictions, Plaintiff provides a number of examples which the Court finds persuasive."). Similarly, the American Bar Association has for many years opposed cash bail policies like Defendants'. *See* Brief for American Bar Association as Amicus Curiae in Support of Plaintiffs/Appellants/Cross-Appellees*, Daves v. Dallas County*, No. 18-11368, 2021 WL 1566334, at *8 (5th Cir. April 12, 2021) ("Both the ABA's Pretrial Release Standards and its 2017 Resolution also explicitly condemn the use of 'bail schedules' in which money bail is 'fixed according to the nature of the charge.'").

Defendants may choose any number options to promote court appearances and public safety that do not offend due process and equal protection. But they cannot condition individuals' liberty pre-arraignment on the payment of money. Because the Jailed Plaintiffs and others like them are jailed solely because they have not paid pre-arraignment money bail, they are highly likely to prevail on the merits of their constitutional claims.

C. Plaintiffs Will Suffer Irreparable Harm Without a Court Order

The widespread and irreversible deprivation of the constitutional rights of the Jailed Plaintiffs and many others in Riverside County is alone sufficient to establish irreparable harm. *See, e.g.*, *Hillman v. Britton*, 111 Cal. App. 3d 810, 826 (1980).

But here the irreparable harm caused by these individuals' confinement extends even further, causing damage to these individuals well beyond the time they are detained, and even to the jailed individuals' families and their broader communities. As the California Supreme Court in *In re Humphrey* explained, "[t]he disadvantages to remaining incarcerated pending resolution of criminal charges are immense and profound." 11 Cal. 5th at 147. Depriving these individuals of their fundamental right to pretrial liberty may cause psychological and economic harm: "It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972). Just several days of pre-arraignment detention may cause a detainee to lose their job or impair their ability to care for children or family members. Copp Decl. ¶¶ 35-45; *Buffin*, 2019 WL 1017537, at *6; Melendres Sandoval Decl. ¶¶ 13-16; Wholf Decl. ¶¶ 19-20. For example, Mr. Melendres Sandoval and Mr. Wholf are losing the opportunity to earn or seek income because they have been unable to work while in custody. Melendres Sandoval Decl. ¶¶ 13-15, 25; Wholf Decl. ¶¶ 19-20, 22. Moreover, even

short periods of pretrial detention "diminish[es] public safety, limits individuals' labor market access and increases their financial instability, places financial and emotional burdens on members of their social networks, and reduces the financial well-being of their communities." Copp. Decl. ¶ 30.

D. The Harm to Plaintiffs Outweighs Any Arguable Harm to Defendants

"It is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation omitted). But here the balance of harms *overwhelmingly* favors Plaintiffs. The extreme harms to the Jailed Plaintiffs and the many others like them are substantial, and all available evidence shows that the Defendants' interests would be *better* served if they ended or, at least, reduced cash-based jailing pre-arraignment as Plaintiffs request.

E. The Requested Injunction Is Modest, Easily Administrable, and Supported by Years of Success in Los Angeles and Other Jurisdictions

The Court "has broad power to fashion relief to fit the facts before it." *People v. Custom Craft Carpets, Inc.*, 159 Cal. App. 3d 676, 684 (1984). Though Plaintiffs are highly likely to succeed on their claims seeking to end all pre-arraignment cash-based jailing, *see Buffin*, 2019 WL 1017537, at *24; *Bonta*, 630 F. Supp. 3d at 1312, in the interest of obtaining urgent relief, Plaintiffs seek a more limited preliminary injunction now.[5] Plaintiffs' proposed injunction is limited to those for whom the constitutional analysis and balance of harms are most clear-cut and amenable to emergency action: individuals arrested for low-level, nonviolent offenses—the same type of individuals that have been successfully designated for release in Los Angeles for approaching two years. *See* Dudani Decl. Ex. B.

[5] The Court should grant Plaintiffs' application even if, by the time the Court hears this Application, some or all of the Jailed Plaintiffs have been released from custody. The California Supreme Court has repeatedly held that courts should rule on inherently transitory pretrial detention even when the individuals bringing the challenge have been released, particularly in putative class actions like this case. *See, e.g.*, *In re Humphrey*, 11 Cal. 5th at 147, fn. 2 (considering challenge to money bail even though petitioner "was no longer detained or subject to money bail"); *In re White*, 9 Cal. 5th 455, 458 n.1 (2020) (considering plaintiff's claim challenging the imposition of money bail even after plaintiff left pretrial detention); *In re Webb*, 7 Cal. 5th 270, 274 (2019) ("Questions involving release on bail especially tend to evade review. Accordingly, we will decide the issue presented even though it is moot as to defendant."); *see also Johnson v. Hamilton*, 15 Cal. 3d 461, 465 (1975) ("Although the underlying controversy may be moot as to petitioner, others similarly situated may be affected and the issues as to them may not be moot.").

There is no question that such a targeted injunction would be easily administrable and effective. Even setting aside the extensive empirical evidence from studies performed around the country, similarly situated people just a few miles away in Los Angeles County, have been released pre-arraignment for years without an increase in crime. Copp Decl. ¶ 68. Moreover, the arrested individuals who would benefit from the proposed injunction are already *eligible* for release—they just need to pay for their freedom. The unequivocal consensus among researchers is that conditioning release on the payment of money does not accomplish any government interest and instead, makes future crime and nonappearance *more* likely. Copp Decl. ¶¶ 53-72.

Plaintiffs' requested injunction focuses on the most obvious constitutional violations in Defendants' pre-arraignment cash bail system. Their proposed relief would benefit not only the putative class members and their families by stemming the ongoing slew of constitutional violations and associated harms; it would also benefit the public and the broader community by preventing wasteful incarceration that makes future crime more likely. *Id*. ¶¶ 63-72.

F. The Court Should Also Enjoin the Expenditure of Funds on Pre-Arraignment Cash-Based Jailing

Plaintiffs Rabbi David Lazar and Reverend Jane Quandt also seek to prevent the unnecessary expenditure of funds used to implement Defendants' unconstitutional practice of demanding individuals pay cash bail as a condition of pre-arraignment release. *See* Code Civ. Proc., § 526a (taxpayers may sue to "prevent[] [the] illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency"); *California DUI Lawyers Association v. California Department of Motor Vehicles*, 20 Cal. App. 5th 1247, 1261 (2018) ("Cases that challenge the legality or constitutionality of governmental actions fall squarely within the purview of section 526a."). Because Defendants continue to use taxpayer dollars to unconstitutionally detain large numbers of individuals pre-arraignment, this is one of the "extraordinary case[s] . . . in which the taxpayer's interest is sufficient to justify injunctive relief." *Cerletti v. Newsom*, 71 Cal. App. 5th 760, 767, fn. 8. (2021).[6]

[6] Indeed, in *White v. Davis*, when discussing circumstances in which granting a preliminary injunction might be warranted in a taxpayer action, the California Supreme Court noted the example of a Controller who "continues to approve expenditures that have been held unlawful by a controlling

G. The Court Should Exercise Its Discretion to Waive Posting of Bond

The party seeking an injunction generally must post a bond sufficient to pay the party enjoined "any damages . . . the party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction." Cal. Code Civ. Proc. § 529(a). Defendants will not be monetarily harmed by this injunction. It would result in Defendants spending less than they do currently on pre-arraignment jailing. Therefore, no bond is needed. Further, even if the Court determines an undertaking would be required, the Court may "waive a provision for a bond in an action or proceeding . . . if the court determines that the principal is unable to give the bond because the principal is indigent and is unable to obtain sufficient sureties, whether personal or admitted surety insurers." *Id.* § 995.240. Here, the Jailed Plaintiffs are unable to obtain sufficient sureties and respectfully request that the Court waive any undertaking to secure this injunction. *See* Melendres Sandoval Decl. ¶¶ 3-6, 21, 25; Wholf Decl. ¶¶ 2-7, 11-13, 15-17.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court immediately issue an OSC as to why a preliminary injunction should not issue enjoining (1) Defendants Riverside County, Riverside County Sheriff's Office, and Sheriff Chad Bianco from jailing any individuals, whether arrested with or without an arrest warrant, pre-arraignment who would be automatically released under the "CR" (cite and release) or "BR" (book and release) provisions of the Los Angeles County Bail Schedule, and (2) Defendant Superior Court from requiring, whether by bail schedule or arrest warrant, the detention of any individuals pre-arraignment who would be automatically released under the "CR" (cite and release) and "BR" (book and release) provisions of the 2025 Los Angeles County Bail Schedule. Plaintiffs also request that the Court set a hearing as early as is possible for the Court to hear the preliminary injunction.

judicial precedent." 30 Cal. 4th 528, 556-557 (2003). Here, too, Defendants continue to expend funds to implement a pre-arraignment cash-based detention system that is unconstitutional under controlling California Supreme Court precedent.

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Respectfully Submitted,
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