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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Phillip Urquidi, Daniel Martinez, Susana Perez, Terilyn Goldson, Gerardo Campos, and Arthur Lopez, on behalf of themselves and all other similarly situated, and Clergy and Laity United for Economic Justice ("CLUE"), Reverend Jennifer Gutierrez, Reverend Gary Williams, and Rabbi Aryeh Cohen, individually,

Plaintiffs,

vs.

Case No. 22STCP04044

Honorable Lawrence P. Riff
Spring St. Courthouse, Dept. 7

PLAINTIFFS' OPPOSITION TO CITY DEFENDANTS' DEMURRER

Hearing:
Date: February 27, 2023
Time: 1:45 pm
Dept: 7 (Spring Street)

Complaint filed: November 14, 2022

City of Los Angeles, Los Angeles County, Los Angeles County Sheriff's Department, Sheriff Alex Villanueva, Los Angeles Police Department, and Chief Michel R. Moore,

Defendants.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

STATE CASES

STATE STATUTES

RULES - OTHER

CONSTITUTIONAL PROVISIONS

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

"Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." (*Lopez-Valenzuela v. Arpaio* (9th Cir. 2014) 770 F.3d 772, 781, citing *Foucha v. Louisiana* (1992) 504 U.S. 71, 75.) This case challenges Defendants' infringement of this core liberty interest. The Los Angeles Police Department ("LAPD") detained four of the Individual Plaintiffs —Phillip Urquidi, Daniel Martinez, Susana Perez, and Gerardo Campos—prior to arraignment.[1] LAPD informed Individual Plaintiffs of their money bail, which was set by the countywide bail schedule[2] without any consideration of whether jailing Individual Plaintiffs was necessary to ensure their appearance in court or protect public safety. Had Individual Plaintiffs been able to pay the amount on the bail schedule, they would have been immediately freed. Because they could not pay, LAPD kept them in jail for five days. During that time, they received neither counsel nor a judicial hearing. Hundreds of presumptively innocent individuals currently in LAPD custody suffer this same fate.

The City of Los Angeles, Chief of Police Michel R. Moore, and LAPD (collectively, "City Defendants") play a crucial role in enforcing this unconstitutional system. Each of the four Counts in the First Amended Complaint ("FAC") properly states a claim against City Defendants:

First, in Count One, Individual Plaintiffs, on behalf of themselves and those similarly situated, state a claim for declaratory and injunctive relief. City Defendants detain arrested individuals who pose no flight or public safety risk while releasing individuals who do pose such risks, based solely on each individual's ability to post cash bail set by the bail schedule. This practice is not narrowly tailored to serve a compelling government interest and is therefore

[1] The remaining two Individual Plaintiffs were detained by the Los Angeles County Sheriff's Department ("LASD") and therefore do not challenge LAPD's unconstitutional enforcement of the bail schedule. For simplicity, this Opposition refers to the four individuals arrested by LAPD as Individual Plaintiffs.

[2] There are separate bail schedules for felony and misdemeanor offenses. (See FAC ¶ 83.) For ease of reference, Plaintiffs refer to both as the "bail schedule." Plaintiffs also note that the bail schedule has been updated for 2023, but these updates cure none of the constitutional issues.

unconstitutional. City Defendants are proper defendants because they enforce the unconstitutional bail schedule and settled law establishes that courts may enjoin parties from enforcing unconstitutional policies. Because the FAC adequately pleads that City Defendants jail individuals based solely on their inability to pay, without any individualized findings, the Court must deny the Demurrer.

Second, in Count Two, Taxpayer Plaintiffs—Clergy and Laity United for Economic Justice ("CLUE"), Reverend Jennifer Gutierrez, Reverend Gary Williams, and Rabbi Aryeh Cohen—seek to enjoin City Defendants from spending funds to enforce the unconstitutional bail schedule California law gives taxpayers standing to restrain a city or agency's illegal expenditure of public funds. City Defendants are engaged in the illegal expenditure and waste of public funds by expending resources, including LAPD officers' time, to unconstitutionally jail individuals who cannot pay the amounts set by the bail schedule.

Third, Counts Three and Four seek writs of mandate on behalf of Individual Plaintiffs and Taxpayer Plaintiffs, respectively. City Defendants have a duty to refrain from carrying out their statutory duties in violation of the state and federal constitution. Again, the FAC pleads that City Defendants are jailing individuals unconstitutionally. The Court should issue a writ of mandate to put an end to that unconstitutional conduct.

For the foregoing reasons, the Court should deny City Defendants' Demurrer in full.

II. BACKGROUND

Throughout Los Angeles, arrested individuals are unconstitutionally detained solely because they lack the resources to pay cash bail. This unconstitutional detention is the direct result of City Defendants' enforcement of the bail schedule, the countywide chart setting bail amounts for felonies, misdemeanors, and several infractions. (FAC ¶ 83; Exs. A, B.) The Bail and Executive Committees of the Los Angeles County Superior Court (the "Committees") promulgate the bail schedule on behalf of the County, pursuant to Penal Code § 1269b and Local Rule 8.3. For warrantless arrests, the bail schedule dictates the amount of cash bail individuals must pay to buy their freedom before arraignment based on the offense charged, with a handful of possible enhancements for prior convictions or aggravating circumstances. (*Id.* ¶ 83, Exs. A, B.)

Neither the bail schedule nor City Defendants consider whether arrested individuals can pay the amount listed, whether they are a flight risk, or whether their release would affect community safety. (*Id.*)

LAPD enforces the bail schedule by freeing arrested individuals who can afford to pay the scheduled amount and jailing those who cannot, as was the case for four of the Individual Plaintiffs—each of whom was jailed for five days before seeing a judge or being appointed counsel. (FAC ¶¶ 3281.) Their lives were dramatically disrupted: they lost job opportunities, were separated from loved ones, and were deprived of fresh air and exercise for days. (FAC ¶ 37 ["The conditions at the jail are unsanitary. There are bed bugs everywhere and the floors of the holding cell where Mr. Urquidi is being held are dirty. Those jailed are not allowed out for fresh air or exercise."]; ¶ 46 ["Mr. Martinez had an interview for a full-time construction job paying $17/hour scheduled for Friday, November 11. He hoped this job would change his life and allow him to get his own apartment. Because he was in jail due to his inability to pay his bail amount, he missed the interview."]; ¶ 53 ["Being in jail has kept Ms. Perez away from her family and her boyfriend. Ms. Perez has been working to find stable housing and create a better life for herself. Being in jail has disrupted that goal.]; ¶ 69 [Mr. Campos "works construction as often as he can, but his work opportunities are unstable and hard to predict."].)

City Defendants are among the primary enforcers of the unconstitutional bail schedule. LAPD is the second-largest arresting agency in the County, second only to LASD. (FAC ¶¶ 24, 26.) When arrested individuals are unable to pay the pre-determined sum the bail schedule demands, LAPD detains them in its lock-ups—or transports them to LASD so that LASD may jail them. (*Id.*) The City of Los Angeles owns, operates, manages, directs, and controls LAPD as well as its officers, employees, and other personnel. (FAC ¶ 22.) Defendant Moore is Chief of LAPD and is responsible for formulating, executing, and administering the laws, customs, and practices that comprise LAPD's post-arrest release and detention policy. (FAC ¶ 27.) City Defendants know who is in their jails, including the basis for each individual's detention, whether any are subject to any detainers or otherwise ineligible for pretrial release, and the amount of money bail each must pay for immediate release. (FAC ¶ 29.) They therefore know that use of the bail

schedule results in systemic, cash-based detention, and that it confines presumptively innocent people every night who would be released but for their indigency. (*Id*.)

Plaintiffs—individuals who have been detained pursuant to the bail schedule, and taxpayers who reside in Los Angeles—brought this lawsuit to hold City Defendants accountable and to end unconstitutional wealth-based discrimination in Los Angeles. Individual Plaintiffs seek declaratory relief and an injunction prohibiting City Defendants from jailing people based solely on their inability to pay the amounts set forth by the bail schedule (Count One). Individual Plaintiffs are joined in the suit by Los Angeles taxpayers ("Taxpayer Plaintiffs"), who seek to enjoin the illegal expenditure of public funds in furtherance of the unconstitutional detention scheme (Count Two). In addition, both Individual Plaintiffs and Taxpayer Plaintiffs seek a writ of mandate against City Defendants (Counts Three and Four, respectively).

III. LEGAL STANDARD

"To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action." (*C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872.) In evaluating a demurrer, the Court must "accept as true [Individual Plaintiffs'] well-pleaded allegations" and "likewise accept facts that are reasonably implied or may be inferred from the complaint's express allegations," and it must "give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Chiatello v. City and County of San Francisco* (2010) 189 Cal.App.4th 472, 480, as modified on denial of reh'g (Nov. 16, 2010).) "For the purpose of determining the effect of a complaint, its allegations are liberally construed, with a view toward substantial justice." (*Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601, as modified (Oct. 18, 1999).) If "the complaint does not state a claim, but there is a reasonable possibility that the defects can be cured by amendment, leave to amend must be granted." (*Id.*)

IV. ARGUMENT

The FAC states: (1) a claim for declaratory and injunctive relief on behalf of Individual Plaintiffs and the putative class; (2) a taxpayer claim; and (3) writs of mandate on behalf of both Individual Plaintiffs and the putative class, and Taxpayer Plaintiffs. Each claim stems from City

Defendants' unconstitutional pre-arraignment detention of individuals who cannot afford to pay the amounts set by the bail schedule. For the reasons below, City Defendants' Demurrer should be denied as to all four counts.

A. Individual Plaintiffs and the Putative Class State a Claim for Declaratory and Injunctive Relief (Count One)

City Defendants' enforcement of the bail schedule violates substantive due process and equal protection. An injunction issued against City Defendants—the parties enforcing the unconstitutional policy—would remedy the violation. Individual Plaintiffs and the putative class are entitled to an order declaring enforcement of the bail schedule unconstitutional and enjoining City Defendants from enforcing it. The Demurrer should be denied as to Count One of the FAC.

1. Pre-Arraignment Jailing of Individuals Based Solely on Their Inability to Pay the Amounts Set by the Bail Schedule Fails To Satisfy Strict Scrutiny.

Freedom from governmental confinement is a fundamental liberty interest whose infringement is subject to strict scrutiny: City Defendants cannot detain individuals pretrial "unless no less restrictive conditions of release can adequately vindicate the state's compelling interests." (*In re Humphrey* (2021) 11 Cal.5th 135, 143, 151-52; *Lopez-Valenzuela,* 770 F.3d 772, 780 [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."] [quoting *Reno v. Flores* (1993) 507 U.S. 292, 302].) An arrested individual also has "crucial state and federal equal protection rights against wealth-based detention." (*In re Humphrey* at p. 151 ["detaining arrestees solely because of their indigency is fundamentally unfair and irreconcilable with constitutional imperatives"]; *In re Brown* (2022) 76 Cal.App.5th 296, 308 ["[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"].)[3]

[3] Because incarceration based on ability to pay also implicates a person's indigent status, the due process and equal protection frameworks converge in the money bail context. (*In re Humphrey* (2021) 11 Cal.5th 135, 150.)

When applying strict scrutiny to the government's denial of an individual's fundamental right, courts consider: (i) whether the laws advance a compelling government interest and (ii) whether the laws are narrowly tailored to serve that interest. (*Lopez-Valenzuela*, 770 F.3d at pp. 780-81 [applying a strict scrutiny framework derived from *United States v. Salerno* (1987) 481 U.S. 739].) The standard is the same under both the California and United States Constitutions—the California Supreme Court has regularly applied strict scrutiny to cases involving wealth-based detention. (*In re Humphrey* (2021) 11 Cal.5th at pp. 151-52, 156 [citing *United States v. Salerno* (1987) 481 U.S. 739]; *In re Antazo* (1970) 3 Cal.3d 100, 112 [holding that wealth-based jailing is unconstitutional unless the government proves it necessary to promote a compelling interest, even when imposed *after conviction*].)

Here, Individual Plaintiffs have alleged that City Defendants' enforcement of the bail schedule fails to satisfy strict scrutiny because it infringes on Individual Plaintiffs' and class members' fundamental liberty and is not narrowly tailored to achieve a compelling government interest. The FAC alleges that City Defendants jail Individual Plaintiffs and class members solely because they cannot pay cash bail in the amount set by the bail schedule. (FAC ¶¶ 32-81, 86-91, 99-113.) And the FAC alleges extensive facts establishing that City Defendants' jailing of individuals unable to pay cash bail is not narrowly tailored to advance any governmental interest; in fact, the current money-based system fails to ensure court appearance and undermines public safety. (*Id.* ¶¶ 92-98, 113-22.)[4]

City Defendants do not dispute that the strict scrutiny standard applies, nor do they argue that the bail schedule is narrowly tailored to advance any governmental interest. City Defendants primarily argue that they are free to follow the bail schedule because *Humphrey* "charged *trial courts*—not municipalities and their local police departments—with protecting the rights of indigent arrestees." (Demurrer at p. 4.) Not so.

[4] The bail schedule's failure to satisfy strict scrutiny is further detailed in Plaintiffs' Application for a Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction, filed 11/14/2022 ("Preliminary Injunction Motion"), at pp. 16-20.

Consistent with well-settled law holding that pretrial detention and wealth-based detention are both subject to strict scrutiny, *Humphrey* affirms that "[pretrial detention] is impermissible unless no less restrictive conditions of release can adequately vindicate the state's compelling interests." (*Humphrey*, 11 Cal.5th at pp. 151-52 [citing *Bearden v. Georgia* (1983) 461 U.S. 660, 671 and *Antazo*, *supra*, 3 Cal.3d at p. 114].) City Defendants cannot evade *Humphrey*'s core holding: "the common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional." (*Humphrey*, 11 Cal.5th 135 at p. 143.)

That *Humphrey* does not expressly rule on the use of pre-arraignment bail schedules is of no matter. *Humphrey* recognizes that government detention of people based solely on whether they can afford bail implicates due process and equal protection. (See e.g., *id.* at p. 151 ["[d]etaining an arrestee [solely because they cannot pay bail] accords insufficient respect to the arrestee's crucial state and federal equal protection rights against wealth-based detention as well as the arrestee's state and federal substantive due process rights to pretrial liberty"].) This is consistent with the litany of cases from the California Supreme Court preceding *Humphrey* under which any wealth-based deprivation of bodily freedom is subject to strict scrutiny—precedent that City Defendants do not even attempt to address. (See, e.g., *Antazo*, *supra*, 3 Cal.3d at pp. 111-12 [holding that wealth-based jailing is unconstitutional unless the government proves it necessary to promote a compelling interest, even when imposed *after conviction*]; *People v. Olivas* (1976) 17 Cal.3d 236, 243-51 [holding that the government must justify incarceration under strict scrutiny because it impinges upon a "fundamental" interest]; *Van Atta v. Scott* (1980) 27 Cal.3d 424, 435 [holding that pretrial liberty is a "fundamental" interest].) Indeed, the Attorney General, the federal court in *Welchen*, and the Commission on the Revision of the Penal Code have all acknowledged that *Humphrey* renders pre-arraignment bail schedules difficult to defend,[5] as has the County Board of Supervisors. (See Motion by Supervisors Sheila Kuehl and Hilda L. Solis,

[5] See Defendant Rob Bonta's Opposition to Plaintiff's Motion for Partial Summary Judgment (May 5, 2022), *Welchen v. Bonta* (E.D.Cal. 16-cv-185) at pp. 12-15; *Welchen v. Bonta*, (E.D.Cal., Sept. 22, 2022), No. 2:16-CV-00185-TLN-DB, 2022 WL 4387794, at p. *4; Committee on Revision of the Penal Code, Annual Report and Recommendations (Dec. 22), available at http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf, at 71-72.

Implementing the California Supreme Court's Humphrey *Decision*, April 20, 2021, at p. 2 ["This ruling means that the State cannot continue to rely on bail schedules . . . ."]).

Ultimately, City Defendants do not, and cannot, articulate any reason why wealth-based pre-arraignment detention would not trigger strict scrutiny under the well-settled due process and equal protection principles applied in *Humphrey*. The bare fact that *Humphrey* focused on bail hearings does not suffice.[6] Here too, the rights to pretrial liberty and against wealth-based detention are impinged, and here too, this "is impermissible unless no less restrictive conditions of release can adequately vindicate the state's compelling interests." (*Humphrey*, 11 Cal.5th at pp. 151-52 [citing *Bearden*, *supra*, 461 U.S. at p. 672 and *Antazo*, *supra*, 3 Cal.3d at p. 114].)

Further, Plaintiffs also cite multiple courts that have applied these constitutional principles to invalidate bail practices like those of City Defendants. (Preliminary Injunction Motion at pp. 16-20.) Federal courts have held that the bail schedules in Sacramento and San Francisco—which are substantively identical to the bail schedule in Los Angeles County—infringed on individuals' fundamental liberty interests and failed strict scrutiny. (*Welchen v. Bonta* (E.D. Cal., Sept. 22, 2022, No. 2:16-CV-00185-TLN-DB) 2022 WL 4387794, at p. *4; *Buffin v. City & County. of San Francisco* (N.D. Cal. Mar. 4, 2019, No. 15-CV-04959-YGR) 2019 WL 1017537, at pp. *7, 16.) Notably, both *Welchen* and *Buffin* found the bail schedules at issue were not narrowly tailored because they incarcerated all arrested individuals unable to pay bail, regardless of whether they posed flight or public safety risks. (*Id.*) Similarly, the Ninth Circuit found unconstitutional a state law categorically denying bail to all undocumented immigrants—the law likewise failed strict scrutiny because it was not narrowly tailored, as the defendants provided "no evidence" that their interest in containing flight risk justified the plaintiffs' detention. (*Lopez Valenzuela*, 770 F.3d at

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[6] Cf., e.g., *In re Jenson* (2018) 24 Cal.App.5th 266, 281 [rejecting attempts to argue that *In re Trejo* (2017) 10 Cal.App.5th 972, which expressly considered statutory sentencing schemes for youth who committed crimes in prison, did not control in a case involving adults because there was "nothing in [*Trejo*'s] thoughtful statutory analysis that would not apply equally to defendants who commit in-prison crimes as adults"]; *In re Julio N.* (1992) 3 Cal.App.4th 1120, 1123, fn. 2, mod. (Mar. 24, 1992) ["We recognize that the situation in [a previously decided California Supreme Court case] was somewhat different from that in the present case; however, the Supreme Court's reasoning and holdings apply equally to the present situation."].

p. 786; see *id.* at p. 781 [finding the applicable standard to be whether the policy is "narrowly tailored to serve a compelling state interest"].) Here too, City Defendants' categorical incarceration of individuals unable to pay the amounts set by the bail schedule furthers no government interest and fails under strict scrutiny.

City Defendants' secondary argument that their conduct comports with the U.S. Supreme Court's holding in *United States v. Salerno* (1987) 481 U.S. 739, is baseless for similar reasons. (Demurrer at pp. 8-10.) *Salerno* recognized that pretrial liberty is "fundamental" and that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." (*Id.* at pp. 744, 755.) The bail scheme at issue in *Salerno* was "carefully limited": it advanced the stated governmental interest of protecting the public in cases where the government had proven "by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community." (*Id.* at pp. 750-51; see also *Reno v. Flores* (1993) 507 U.S. 292, 302 [describing *Salerno* as "forbid[ding] the government to 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 pp. 779-81 [affirming that *Salerno* was applying strict scrutiny].) Here, as detailed in the Preliminary Injunction Motion, the pre-arraignment use of the bail schedule "[c]ondition[s] [pre-arraignment] detention on the arrestee's financial resources, without ever assessing whether a defendant can meet those conditions or whether the state's interests could be met by less restrictive alternatives." (*Humphrey*, 11 Cal.5th at p. 156.) Unlike the pretrial detention in *Salerno*, City Defendants' enforcement of the bail schedule does not further the goals of reasonably ensuring court appearances or public safety or serve *any* other governmental interest at all, let alone as the least restrictive means of doing so. It therefore fails strict scrutiny.

2. This Court Can Enjoin City Defendants from Enforcing the Bail Schedule.

Rather than seriously disputing that the FAC states a claim for a constitutional violation, City Defendants attempt to sidestep responsibility, arguing that they should not have to defend this suit because they did not make the bail schedule challenged here; they merely follow it.

(Demurrer at pp. 5, 9.) But, as detailed above, this suit challenges City Defendants' enforcement of the unconstitutional bail schedule. By enforcing this unconstitutional system and incarcerating individuals prior to arraignment based solely on their inability to pay, City Defendants violate the fundamental constitutional rights of Individual Plaintiffs and putative class members. (FAC ¶¶ 26-29, 84-91.)

The Court can and should enjoin that enforcement. It is a bedrock legal principle that a plaintiff may sue a state or local officer who enforces an unconstitutional law or policy to enjoin that enforcement—the fact that the officer is following an unconstitutional law is no defense. (See *Comm. To Defend Reprod. Rts. v. Myers* (1981) 29 Cal.3d 252, 257 [enjoining director from enforcing budget law that unconstitutionally restricted funding for abortions]; *Serrano v. Priest* (1976) 18 Cal.3d 728, 752 [permitting suit against state and county education officials and school districts regarding constitutionality of school financing]; *In re Taylor* (2015) 60 Cal.4th 1019, 1038 [affirming decision enjoining the Department of Corrections and Rehabilitation from enforcing statutory residency restrictions as applied to class of people on parole].) Indeed, the California Supreme Court has repeatedly considered cases against sheriff and police departments for their enforcement of unconstitutional laws or policies, including with respect to the bail system. For instance, in *Van Atta v. Scott*, the California Supreme Court considered a due process suit against the San Francisco sheriff and police department over the city and county's system for releasing detained individuals on their own recognizance and held the system violated procedural due process. ((1980) 27 Cal.3d 424, 433; see also *McKay Jewelers v. Bowron* (1942) 19 Cal.2d 595, 598-99 [suit to enjoin enforcement of municipal code against "defendants, as enforcement officers of the city of Los Angeles"].)

Buffin and *Welchen* underscore the propriety of an injunction barring City Defendants from enforcing the unconstitutional bail schedule. The *Buffin* and *Welchen* courts enjoined the sheriffs—the law enforcement actors who, like City Defendants here, were directly responsible for enforcing the bail schedule in those cases—from using bail schedules to jail individuals before arraignment. (See *Buffin*, 2019 WL 1017537, at p. *24 ["[T]he Court will issue an injunction enjoining the Sheriff from using the Bail Schedule as a means of releasing a detainee who cannot

afford the amount."]; *Welchen*, 2022 WL 4387794, at p. *14 [holding that the sheriff's "use of the bail schedule in Sacramento County" was unconstitutional and requesting briefing on the "nature of injunctive relief necessary in this case"].) Indeed, *Welchen* expressly rejected that sheriff's request to be dismissed on the basis that the sheriff "does not set bail," determining instead that plaintiffs could "bring claims for prospective relief" because "the Sheriff directly enforces the bail schedule." (*Welchen*, 2022 WL 4387794, at p. *11.)

Just like the bail schedule at issue here, the bail schedules at issue in those cases were promulgated by Superior Court judges, not by the sheriffs. (See *Buffin*, 2019 WL 1017537, at p. *4; Welchen, 2022 WL 4387794, at p. *2.) But the sheriffs, as jailers, were infringing on plaintiffs' liberty interests, so their enforcement of the bail schedules was unconstitutional and properly enjoined. This Court should likewise order City Defendants, who are directly responsible for enforcing the bail schedule, to cease their unconstitutional conduct.[7]

In addition to their fundamental mischaracterization of the basic constitutional principles, City Defendants rely on two inapposite statutes to argue that they cannot be held liable for enforcing the bail schedule.

First, City Defendants cite Penal Code § 1269a for the proposition that an officer "releasing any defendant upon bail otherwise than as [provided by the Penal Code] shall be guilty of a misdemeanor." (Demurrer at p. 9.) But § 1269a applies only to conditions of bail set by courts for defendants "charged in a *warrant* of arrest" (emphasis added); it has no application to this case, which, as City Defendants acknowledge, challenges only the use of the bail schedule in *warrantless* arrests. (*Id.* at p. 4.)

Second, City Defendants cite California Code of Civil Procedure § 526(b)(4) for the proposition that no injunction can issue to prevent City Defendants from following the Penal Code because §526(b)(4) prohibits an injunction "[t]o prevent the execution of a public statute by officers of the law for the public benefit." (Demurrer at pp. 9-10 [citing Code Civ. Proc.,

[7] As explained in Plaintiffs' Opposition to the County's Demurrers ("County Demurrer Opp."), Plaintiffs also seek an injunction prohibiting the promulgation of the Bail Schedule by the County. (See County Demurrer Opp. at 17.)

§ 526(b)(4)].) But it is well-established that this prohibition does not apply "(1) where the statute is unconstitutional and there is a showing of irreparable injury; [or] (2) where the statute is valid but is enforced in an unconstitutional manner [.]" (*Jamison v. Dep't of Transportation* (2016) 4 Cal.App.5th 356, 364.) This case falls squarely within these exceptions: the thrust of this suit is that the system of pre-arraignment detention in Los Angeles County is unconstitutional because it leads to putative class members being jailed based solely on their ability to pay cash bail. Thus, Penal Code § 526 does not apply here, and the Court can issue an injunction prohibiting the unconstitutional detention of putative class members.

Third, City Defendant suggest that this Court is powerless to order injunctive relief because no other court has previously found *this* bail schedule to be unconstitutional. (Demurrer at pp. 8-10.) But this flies in the face of this Court's inherent power to decide disputes. (See Cal. Const., art. VI, § 10 [except as specified, superior courts have original jurisdiction in all causes].) As *Humphrey*, *Buffin*, and *Welchen* demonstrate, courts are free to determine that governmental action is unconstitutional in the first instance and order remedies based on that determination. And that is exactly what this Court should do. By jailing individuals pre-arraignment pursuant to the bail schedule, City Defendants "condition[] freedom solely on whether an arrestee can afford bail." (*Humphrey,* 11 Cal.5th 135 at p. 143.) This practice violates due process and equal protection and this Court has the power to enjoin it.

3. This Case Presents an "Actual Controversy" Warranting Declaratory Relief.

Contrary to City Defendants' assertion, this case presents an actual controversy between Individual Plaintiffs and City Defendants that warrants declaratory relief. (Demurrer at pp. 9-10.) Under the California Code, declaratory relief is appropriate "in cases of actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) An "actual controversy" warranting declaratory relief exists when (1) a plaintiff contests the legality of a governmental defendant's conduct and (2) the court can reasonably assume that the governmental defendant intends to continue that course of conduct. (*Env't Def. Project of Sierra County. v. County. of Sierra* (2008) 158 Cal.App.4th 877, 886 [actual controversy existed where plaintiff

contended streamlined zoning violated the Government Code and the government planned to continue streamlined zoning].)

That is the situation here. Individual Plaintiffs have pleaded that by jailing Individual Plaintiffs and putative class members under the bail schedule, City Defendants unconstitutionally deprive them of their fundamental constitutional rights. City Defendants disagree and continue to jail class members pursuant to this unconstitutional policy. The parties' disagreement presents a dispute ripe for declaratory relief. (Compare Demurrer at p. 4 ("City is plainly complying with any ministerial duties imposed on the City under the Penal Code") with *Blair v. Pitchess* (1971) 5 Cal.3d 258, 269 [rejecting defendants' contention that "as sheriff and marshal, respectively, they merely carry out ministerial functions in executing (an unconstitutional law) and have, therefore, no real interest adverse to plaintiffs"].)

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In sum, the Court should overrule City Defendants' Demurrer to Count One.

B. Taxpayer Plaintiffs State a Claim under Section 526a (Count Two).

Taxpayer Plaintiffs' claim for injunctive relief easily survives City Defendants' Demurrer for similar reasons.

Section 526a of the California Code of Civil Procedure allows a resident or corporate taxpayer to bring "[a]n action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency." (Code Civ. Proc., § 526a; accord *Blair v. Pitchess* (1971) 5 Cal.3d 258, 267 ["[S]ection 526a . . . authorizes actions by a resident taxpayer against officers of a county, town, city, or city and county to obtain an injunction restraining and preventing the illegal expenditure of public funds."].) The amount of money at stake is irrelevant and no showing of harm to the taxpayer is necessary. (*Id.*at pp. 268, 270.)

Here, Taxpayer Plaintiffs have stated a claim under § 526a by pleading that (1) the individual Taxpayer Plaintiffs reside in the City and County of Los Angeles, and all of the Taxpayer Plaintiffs have been assessed sales and/or other taxes in the year preceding the filing of this action; and (2) City Defendants are engaged in the illegal expenditure and waste of public

funds by expending resources, including LAPD officers' time, to unconstitutionally jail individuals who cannot pay the amounts set by the bail schedule. (FAC ¶¶ 18-21, 138, 140.)

City Defendants do not challenge Taxpayer Plaintiffs' standing or the sufficiency of the pleadings. Instead, they argue that Taxpayer Plaintiffs cannot enjoin City Defendants from following the Penal Code. (Demurrer at p. 10.) But like their unfounded Demurrer to Count One, this argument misses the mark: Plaintiffs have pled that, in carrying out their duties under the Penal Code, City Defendants are violating the Constitution.

Under well-settled law, taxpayer claims may be brought against government officers to enjoin them from spending taxpayer funds either to enforce an unconstitutional law or policy or to enforce a valid law in an unconstitutional manner. (See *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 257 [permitting California taxpayer to bring suit "to enjoin the expenditure of public monies in the enforcement of an invalid law"].) In *Blair*, for example, a taxpayer claim was proper "against the county and its sheriff, marshal, and deputy sheriff" to enjoin them "from expending their own time and the time of other county officials in executing" an allegedly unconstitutional law. (5 Cal.3d at pp. 265, 269.) Here, too, City Defendants may and should be enjoined from expending their resources to enforce the unconstitutional bail schedule.

Accordingly, the Court should overrule City Defendants' Demurrer to Count Two.

C. Plaintiffs' Petitions for Writ of Mandate Survive for the Same Reasons (Counts Three and Four).

Counts Three and Four of the FAC seek writs of mandate on behalf of Individual Plaintiffs and Taxpayer Plaintiffs, respectively. The writ "[lies] to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which [he] is entitled...." (Code Civ. Proc., § 1085.) In essence, "[m]andamus lies to compel the performance of a clear, present, and ministerial duty where the petitioner has a beneficial right to performance of that duty." (*Carrancho v. California Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1265.)

City Defendants once again attempt to hide behind their duty to follow the Penal Code, arguing that no writ of mandate should lie because "the City is compelled to follow the Penal

Code." (Demurrer at p. 11.) But the case law is clear: "[the] duty to perform a mandatory ministerial duty in accordance with law embodies a corollary duty to *not* perform the duty in violation of law." (*Planned Parenthood,* 181 Cal.App.3d 245, 262.) The Court may properly issue the writ to prohibit "the performance of a statutory ministerial duty [that] would violate the Constitution." (*Id.* at p. 263 [explaining that the writ is known as "prohibitory mandate" when employed to restrain unlawful performance of a duty].) The FAC alleges that enforcing the Penal Code to jail individuals who cannot pay for their freedom as required by the bail schedule is unconstitutional, and City Defendants have a duty to refrain from violating the Constitution even when carrying out their putative statutory duties. (FAC ¶ 144.) A writ of prohibitory mandate is an appropriate remedy for enjoining the unconstitutional harms alleged.

V. CONCLUSION

For the foregoing reasons, the Court should overrule City Defendants' Demurrer in full. If the Court disagrees, Plaintiffs request leave to amend to address any deficiencies.

DATED: February 8, 2023

Respectfully Submitted,

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**Pro Hac Vice applications forthcoming*

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 350 South Grand Avenue, Fiftieth Floor, Los Angeles, CA 90071-3426.

On February 8, 2023, I served true copies of the following document(s) described as

PLAINTIFFS' OPPOSITION TO CITY DEFENDANTS' DEMURRER

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Pursuant to Court Order and agreement by the parties, I served the document(s) on the persons listed in the Electronic Service List by submitting an electronic version of the document(s) to Case Anywhere, through the user interface at www.caseanywhere.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 8, 2023, at Los Angeles, California.

/s/ *Loren Rives*
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