

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

ZACHARY ROBINSON, and
MICHAEL LEWIS, *et al.*, on behalf of
themselves and a class and subclass of
similarly situated persons,

Plaintiffs,

v.

LEROY MARTIN JR.,
E. KENNETH WRIGHT, JR.,
PEGGY CHIAMPAS, SANDRA G. RAMOS,
and ADAM D. BOURGEOIS JR., *et al.*,
on behalf of themselves and a class of
similarly situated persons, and
THOMAS DART, in his official capacity
as Sheriff of Cook County, Illinois,

Defendants.

2016CH13587
CALENDAR/ROOM 06
TIME 00:00
Class Action

Case No. _____
(Class Action)

2016 OCT 14 PM 3:54
CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION
CLERK

CLASS ACTION COMPLAINT

INTRODUCTION

Plaintiffs, by their undersigned counsel, on behalf of themselves and a class of all persons who are or will be incarcerated in the Cook County Jail or elsewhere in Cook County and who have been determined to be eligible for release but who are detained solely because they cannot afford to post the required amount of bail, as well as a subclass of African American class members (collectively "Plaintiff classes"), complain about a class of Judicial Defendants and Defendant Thomas Dart (collectively "Defendants") as follows:

1. This lawsuit is brought against Defendant Judges LeRoy Martin Jr., E. Kenneth Wright Jr., Peggy Chiampas, Sandra G. Ramos, and Adam D. Bourgeois, Jr., and a class of similarly situated persons (hereafter the "Judicial Defendants") and against Defendant Thomas

Dart: (1) under 42 U.S.C. §1983 for violations of the United States Constitution, (2) directly under the United States Constitution for violations of the United States Constitution, (3) directly under the Illinois Constitution for violations of the Illinois Constitution, and (4) under the Illinois Civil Rights Act of 2003, 740 ILCS 23/5 (“ICRA”) for a violation of ICRA.

2. Plaintiffs and the Plaintiff Class seek a declaration of the unconstitutionality of the Judicial Defendants’ practice of applying Illinois’s bail statute, 725 ILCS 5/110-1, *et seq.* (“the Statute”), to set a monetary bail for pretrial arrestees without a meaningful inquiry into the person’s ability to pay and in amounts in excess of what the person is able to pay. Plaintiffs and the Plaintiff classes complain that this practice violates their rights under the Equal Protection and Due Process Clauses of the United States and Illinois Constitutions, U.S. Const., amend. XIV, Ill. Const. 1970, art. I, § 2, and under the Excessive Bail and Sufficient Sureties Clauses of the United States and Illinois Constitutions respectively, U.S. Const., amend VIII, Ill. Const. 1970, art. I, § 9. Plaintiffs and the Plaintiff Subclass further seek a declaration that because this practice has a disparate impact on African American class members, it has the effect of discriminating against them because of their race in violation of ICRA. 740 ILCS 23/1, *et seq.* Plaintiffs and the Plaintiff classes also seek an injunction against their continued unlawful incarceration by Defendant Dart. A lawful application of the Statute requires that anytime a Judicial Defendant conditions an arrestee’s pretrial release on a monetary payment, the Judicial Defendant must make an inquiry into the person’s ability to pay and a finding of fact that the arrestee is presently capable of paying the ordered amount.

3. Six decades ago, the United State Supreme Court declared that “[b]oth equal protection and due process emphasize the central aim of our entire criminal judicial system—all people charged with crime must, so far as the law is concerned, ‘stand on an equality before the

bar of justice in every American court.”¹ The Judicial Defendants’ application of the Statute flouts that age-old, constitutionally guaranteed tenet of equal justice by systemically incarcerating presumptively innocent individuals before trial for the sole reason that they are too poor to pay the required amount of money. The Judicial Defendants’ application of the Statute to determine arrestees to be eligible for immediate release but then to impose a financial condition of release that is a physical impossibility for them to meet further constitutes excessive bail in violation of both the United States and Illinois constitutions, and because it has the effect of subjecting African American individuals to discrimination because of their race, also violates the Illinois Civil Rights Act.

4. As a matter of practice, the Judicial Defendants impose financial conditions of release without making an inquiry into and findings concerning an arrestee’s ability to pay. No alternative is provided for those arrestees who are unable to pay the amount ordered for their release from custody even though they are eligible for pretrial release. As a result, in complying with the bail orders that the Judicial Defendants set, Defendant Dart routinely and knowingly incarcerates citizens who are poor and lack access to expendable savings or other assets. Every day, thousands of human beings in Cook County, each presumed innocent as a matter of law, remain in jail for the duration of their case simply because they cannot afford to pay a monetary amount set without relation to their ability to pay. The large and disproportionate majority of these persons are African Americans.

5. In addition to being unjustly deprived of their fundamental liberty interest, arrestees who are unable to secure a pretrial release from jail are also far more likely to be both convicted and sentenced more harshly in comparison to arrestees who obtained pretrial release. Those

¹ *Griffin v. Illinois*, 351 U.S. 12, 17 (1956) (quoting *Chambers v. Florida*, 309 U.S. 227, 241 (1940)).

detained prior to trial are also more likely to lose their employment, housing, and child custody, and they are also more likely to commit crimes in the future because of the documented criminogenic effects of even a few days in a jail cell after arrest. The results are devastating for the individuals, their families and communities – and for the taxpayers of Cook County who are forced to pay for these unconstitutional, illegal, and completely unnecessary incarcerations.

6. Because (1) the Judicial Defendants provide no guaranteed alternative to cash bail for all arrestees who are deemed eligible for pretrial release and (2) the Judicial Defendants frequently set monetary bail amounts that arrestees are incapable of paying without an inquiry into and findings concerning their ability to pay and without considering less restrictive alternatives, those arrestees who are among Illinois's impoverished are disproportionately, unnecessarily, and unconstitutionally incarcerated, convicted and punished. As such, the Judicial Defendants' application of the Statute violates the fundamental principles enshrined in the United States and Illinois Constitutions. Because this practice has a disparate impact on African Americans, it also violates the Illinois Civil Rights Act.

NATURE OF THE ACTION

7. With the exception of certain more serious cases, including those where a court determines that the defendant's release would "pose a real and present threat" to anyone's physical safety, the Illinois law mandates that "all persons *shall* be bailable before conviction." 725 ILCS 5/110-4 (emphasis added). For those persons (hereafter "release-eligible arrestees"), the Statute provides two possible alternatives for pretrial release. The first, release on personal recognizance (known as an I-Bond), is discretionary and is often not made available to release-eligible arrestees. See 725 ILCS 5/110-2. Between 2012 and 2014, only about 15% of pretrial arrestees on average in Cook County were released on their own recognizance. The second alternative, cash bail, is a theoretical opportunity provided by law to all release-eligible arrestees, but one that many of them

simply cannot afford as it is employed by the Judicial Defendants. Under the Judicial Defendants' application of the Statute, thousands of indigent arrestees who, pursuant to the Statute "shall" be bailable as a matter of law, have no practical opportunity to be free during the pendency of charges as to which they are presumed to be innocent.

8. While the Judicial Defendants are directed by the Statute to set monetary bail for release-eligible arrestees "*only* when it is determined that *no other conditions* of release will reasonably assure the defendant's appearance in court, that the defendant does not present a danger to any person or the community and that the defendant will comply with all conditions of bond" (725 ILCS 5/110-2) (emphasis added), they nonetheless set monetary bonds in the majority of all cases. Further, while the Judicial Defendants are directed by the Statute to set bail in an amount "considerate of the financial ability of the accused" (725 ILCS 5/110-5(b)(3)), they nonetheless fail as a matter of routine practice to conduct any form of inquiry into the accused's ability to pay and, even when they receive information regarding an arrestee's financial limitations, regularly set bond in an amount in excess of what the accused can afford.

9. Since posting a monetary deposit is the only way to avoid continued detention for many release-eligible arrestees, setting bail in amounts that those arrestees cannot afford deprives them of their fundamental right to pretrial liberty in violation of their rights to equal protection of the law and due process. In addition, for those who are unable to pay, cash bail set by the Judicial Defendants is unconstitutionally excessive. Finally, as African American pretrial arrestees are more likely to be unable to afford cash bonds, the Judicial Defendants' intentional imposition of monetary bonds without considering ability to pay and alternatives to incarceration results in widespread and systemic racial discrimination against this minority group.

10. There is no compelling or even legitimate governmental interest in requiring that release-eligible persons post cash bail as a condition of their pretrial release in an amount that makes that release a practical impossibility. Bail law and practices in other jurisdictions, especially the federal and District of Columbia judicial systems, show that non-cash bail alternatives are far more effective than incarceration of the poor pending trial. This has long been true, but it is even more so in recent years, when technological advances have led to the creation of a wide range of alternatives, such as basic text message reminder systems, drug and mental health treatment programs, unsecured bond, and sophisticated forms of electronic monitoring. Non-cash bail alternatives would more effectively serve the purposes of bail, and would do so at a fraction of the cost to Illinois taxpayers, without discriminating against the presumptively innocent on the basis of their economic status or race, and without subjecting them to the dangerous and injurious environment of jail.

VENUE

11. Venue is proper pursuant to 735 ICLS 5/2-101 as the Judicial Defendants apply the Statute and order the bail determinations of the Plaintiffs and Plaintiff class members in Cook County, Illinois and Defendant Dart incarcerates the Plaintiffs and Plaintiff class members in Cook County, Illinois.

PARTIES

12. Named Plaintiff Zachary Robinson is a 25-year-old indigent man and resident of Cook County, Illinois, who brings this action on behalf of himself and on behalf of a class of similarly situated release-eligible arrestees who were not offered personal recognizance release and cannot afford to post their cash bail, and who thus must remain in custody, as well as a subclass consisting of African American class members.

13. Named Plaintiff Michael Lewis is a 40-year-old indigent man and resident of Cook County, Illinois, who brings this action on behalf of himself and on behalf of a class of similarly situated release-eligible arrestees who were not offered personal recognizance release and cannot afford to post their cash bail, and who thus must remain in custody as well as a subclass consisting of African American class members.

14. Defendant Judge Leroy Martin, Jr. is a duly elected judge of the Circuit Court of Cook County, and the Presiding Judge of the Criminal Division of the Circuit Court of Cook County. He is sued on behalf of himself and as a representative of the class of all Cook County judges who apply the Statute and make release determinations in criminal cases.

15. Defendant Judge E. Kenneth Wright, Jr. is a duly elected judge of the Circuit Court of Cook County and the Presiding Judge of the Municipal Division of the Circuit Court of Cook County. He is sued on behalf of himself and as a representative of the class of all Cook County judges who apply the Statute and make release determinations in criminal cases.

16. Defendant Judge Peggy Chiampas is an associate judge of the Circuit Court of Cook County, Municipal Department. She is sued on behalf of herself and as a representative of the class of all Cook County judges who apply the Statute and make release determinations in criminal cases.

17. Defendant Judge Sandra G. Ramos is a duly elected judge of the Circuit Court of Cook County, Municipal Department. She is sued on behalf of herself and as a representative of the class of all Cook County judges who apply the Statute and make release determinations in criminal cases.

18. Defendant Judge Adam D. Bourgeois Jr. is an associate judge of the Circuit Court of Cook County, Municipal Department. He is sued on behalf of himself and as a representative

of the class of all Cook County judges who apply the Statute and make release determinations in criminal cases.

19. Defendant Cook County Sheriff Thomas Dart is the custodian of all members of the Plaintiff classes who are or will be incarcerated in Cook County. Defendant Dart is being sued in his official capacity as the Sheriff of Cook County.

STATEMENT OF FACTS

A. The Named Plaintiffs' Arrests and Inability to Post Bail

20. Zachary Robinson was arrested shortly before December 10, 2015, and charged with theft (720 ILCS 5/16-1(a)(A)). Mr. Robinson was booked at the Cook County Jail on that date and has been incarcerated ever since. (*See* Ex. A, Decl. of Zachary Robinson.)

21. On December 10, 2015, Mr. Robinson had a bond hearing in Cook County Central Bond Court before Defendant Judge Peggy Chiampas. During that hearing, the judge did not inquire of him how much he could afford to pay as bond. The judge set a \$10,000 "D-Bond," which requires a deposit of 10% of the bond.

22. During Mr. Robinson's preliminary hearing in Branch 48 on January 5, 2016, counsel for Mr. Robinson moved the court to reconsider Ms. Robinson's \$10,000 "D-Bond", and requested that Mr. Robinson be released on electronic monitoring. The motion was denied by Judge Sandra G. Ramos.

23. Mr. Robinson is indigent and currently remains incarcerated because he cannot afford to pay a \$1,000 bond deposit.

24. Prior to his arrest, Mr. Robinson had lived with a friend at the same address in the Southside of Chicago for the past three years. Mr. Robinson was employed at Jesse's Meat Mart on Cottage Grove Avenue in Chicago. He was also attending Kennedy-King College in Chicago,

and pursuing his Associate's Degree in Construction Management. As a result of his incarceration, he has lost his employment and been unable to continue with his education. There are no opportunities for Mr. Robinson to seek meaningful work or pursue college education at the Cook County Jail. (Ex. A.)

25. Mr. Robinson is indigent. He does not have a bank account, and prior to his arrest 10 months ago, he earned minimum wage at his employment, received food stamps and free healthcare from the government, and had his tuition and costs at Kennedy-King College covered in their entirety by financial aid.

26. Michael Lewis was arrested on or about October 3, 2016, and charged with retail theft (720 ILCS 5/16-25(a)(1)). Mr. Lewis was booked at the Cook County Jail on that date and has been incarcerated ever since. (See Ex. B, Decl. of Michael Lewis.)

27. On October 3, 2016, Mr. Lewis had a bond hearing in Cook County Central Bond Court before Defendant Judge Adam D. Bourgeois Jr. During that hearing, the judge did not inquire of him how much he could afford to pay as bond. The judge set a \$50,000 "D-Bond," which requires a deposit of 10% of the bond.

28. Mr. Lewis is indigent and currently remains incarcerated because he cannot afford to pay a \$5,000 bond deposit.

29. Mr. Lewis has lived at the same address with his 72-year-old godmother for the past two years in the South Shore neighborhood of Chicago. Prior to his arrest, Mr. Lewis received monthly disability payments of about \$700, as well as approximately \$6,000 per year as an independent caterer. He paid half of his disability payments toward household utilities and used the remaining money for basic necessities. He does not have a bank account and relies on Medicaid

for healthcare coverage. Before being incarcerated, he was caretaker for his godmother, who suffers from dementia. (Ex. B.)

30. Mr. Lewis suffers from Post-Traumatic Stress Disorder and clinical depression as a result of abuse he suffered as a child. He is currently incarcerated in the Residential Treatment Unit (“RTU”) of the Cook County Jail.

31. The treatment of the named Plaintiffs is representative of the Judicial Defendants’ systemic practices in all material respects, including that the named Plaintiffs are eligible for immediate release from Cook County custody at any moment, that they remain in custody pursuant to a financial condition of release that they cannot afford, and that the financial condition of release was imposed without any inquiry into or findings concerning their present ability to pay.

B. The Judicial Defendants’ Use of Cash Bail Unfairly Impacts the Indigent and Has a Disparate Impact on African Americans.

32. The Statute as applied by the Judicial Defendants imposes an unjust and insurmountable burden on arrestees who are eligible for release but impoverished, and it has a disproportionate adverse impact on African American arrestees.

33. The named Plaintiffs and members of the Plaintiff Class would be released from jail immediately if they could afford to pay 10% of their total monetary bond amounts (a “D-Bond”).

34. The Judicial Defendants preclude the release of indigent release-eligible arrestees by setting a monetary bond in an amount that the arrestees cannot afford rather than conducting a meaningful inquiry into their ability to pay and offering them an affordable bond amount, release on personal recognizance, or a type of supervised release involving a wide range of available non-financial conditions of release. Since they cannot afford to pay, the named Plaintiffs and members of the Plaintiff classes remain incarcerated as a result of the Judicial Defendants’ actions, and they

will likely remain incarcerated until the disposition of their cases. In contrast, wealthier release-eligible arrestees in Illinois who are able to pay 10% of their bond amount obtain immediate release, regardless of their criminal history or current charges.

35. The Judicial Defendants' determinations about pretrial release are done without any meaningful consideration of an arrestee's personal financial circumstances and present ability to pay.

36. The average bail amounts in Cook County are out of reach for the majority of pretrial arrestees. In early 2016, out of 1,574 bail hearings conducted over 30 days at Cook County's Central Bond Court, the average D-Bond was \$71,878. Yet, as of 2014, the median household income² in Cook County was \$54,828 and 17.1% of persons in Cook County were living in poverty. In other words, the average cash bond set was higher than annual household income of most persons in the County.

37. The Judicial Defendants' bail practices also has the effect of discriminating against African Americans. African American defendants are disproportionately represented among those who remain in custody pretrial. For instance, of those defendants against whom Class 4 felony charges were instituted in the years from 2011 to 2013, only 15.8% of the African American defendants were released on bond throughout their pretrial period as compared to 32.4% of non-African American defendants who were released on bond throughout their pretrial period. Conversely, 49.3% of the African American Class 4 felony defendants remained in custody throughout their pretrial period, while only 29.8% of the non-African American Class 4 felony defendants remained in custody throughout their pretrial period. The differential bond versus

² Defined as income received on a regular basis before payments for personal income taxes, social security, union dues, medicare deductions, etc.

custody outcomes for African American versus non-African American defendants is likewise stark with respect to defendants charged with other classes of felonies from 2011 to 2013.

C. Pretrial Arrestees Who Remain in Custody Pending Trial Have Significantly Worse Outcomes Than Those Who Are Released on Bond.

38. As a result of the Judicial Defendants' unconstitutional and illegal practice of setting bail in amounts which are unaffordable, the Plaintiffs and members of the Plaintiff Class suffer not only unconstitutional and illegal deprivations of their right to liberty, but also lasting damages in terms of the outcomes of the charges against them and the impact of incarceration and conviction on other aspects of their lives.

39. Compared to defendants who are released on bond, Plaintiff class members who are detained pretrial have a harder time preparing for their defense, gathering evidence and witnesses, and meeting with their lawyers, and they are more likely to be coerced to plead guilty even if they are innocent. They are also ultimately more likely to be convicted and sentenced to prison than those defendants who are released on bond. Persons against whom charges were instituted in the years from 2011 to 2013 and who remained in custody pretrial were half as likely to be found not guilty or to have their charges dismissed as defendants who were never in custody. Persons facing the least serious felony charges who were kept in custody were one-fourth as likely to be found not guilty or have their charges dismissed as defendants who were never in custody.

40. Persons facing the most serious felony charges who were in pretrial custody were five times as likely to be sentenced to the Illinois Department of Corrections ("IDOC") as defendants who were never in custody pending the disposition of their cases. Those persons accused of the least serious felony charges and who were held in pretrial custody were ten times as likely to be sentenced to IDOC as those who were released.

41. Individuals who are detained in Cook County pending trial are also more likely to get enhanced sentences. Persons against whom charges were instituted in 2011 through 2013 and who were in custody throughout their pretrial period received prison sentences that were on average one year longer than those received by defendants who were released on pretrial bond. Fewer than 20% of the persons who remained in custody throughout their pretrial period received non-detention penalties, including fines, probation, conditional discharge, community service and/or restitution. In contrast, more than 60% of the persons who were on bond throughout their pretrial period received such penalties in lieu of incarceration.

42. Beyond case-related consequences, those who are detained pretrial are significantly less likely to thereafter stay employed, be enrolled in an educational program, and maintain stable housing and dependent care compared to those who are released on bond.

43. In addition, the physically and psychologically dangerous conditions in the Cook County Jail are well known and widely documented. The wrongful detention of Plaintiffs and the members of the Plaintiff class in this infamous facility is unconscionable.

D. The Judicial Defendants' Use of Cash Bail Does Not Protect Public Safety and Better Alternatives Exist to Ensure Court Attendance.

44. Detaining release-eligible arrestees who are too poor to afford bond does not serve to protect the community or increase public safety. In fact, individuals who are detained for a period of time pending trial are more likely to commit new crimes both before trial and for up to several years in the future and are less likely to appear in court than those who are released within 24 hours of arrest.

45. More effective alternatives to the cash bail requirement, such as supervised or monitored release, would fully effectuate the government's only valid pretrial interests – ensuring future court appearances and public safety while protecting the vital interest in pretrial freedom –

at a fraction of the cost to taxpayers and without the discriminatory and injurious consequences suffered by indigent arrestees under Judicial Defendants' application of the Statute.

46. Pretrial detention is many times more expensive than even the most thorough effective pretrial supervision programs, which allow the criminally charged who do not pose specific dangers to the safety of others to return to their homes and communities, and continue their regular responsibilities, such as childcare, employment, attending school and participating in job skill programs.

47. A number of other jurisdictions throughout the country do not detain arrestees prior to trial because of their poverty. Instead, those other jurisdictions release arrestees and employ the least restrictive pretrial supervision practices that effectively maximize both public safety and court appearances, including reporting obligations, phone and text message reminders of court dates, rides to court for those without transportation or a stable address, counseling, drug and alcohol treatment, mental health intervention and treatment, batterer intervention programs, anger management courses, community participation and release cooperatives, alcohol bracelets (for alcohol testing), or electronic monitoring, among other services, as necessary to guard against a particular risk. Other jurisdictions also employ non-monetary conditions of release, including unsecured or "signature" bonds (which do not require payment up front but require payment if a defendant does not return to court), stay-away orders, curfews, or home detention, further contributing to high public safety and court appearance rates.

48. Jurisdictions with robust pretrial services and non-monetary conditions of release often achieve court-appearance rates over 90%, with more than 85% of those released pretrial remaining arrest-free (and 98–99% remaining arrest-free for violent crimes).

CLASS ACTION ALLEGATIONS

A. The Plaintiff Class and Subclass:

49. The individual named Plaintiffs bring this action on behalf of themselves and a class, as further defined below, of all release-eligible persons who are detained pending the disposition of their criminal charges solely because they are unable to post the set amount of bail, as well as a subclass of African American class members. Plaintiffs and the class members are similarly situated for the purpose of asserting the claims alleged in this Complaint on a common basis. The class does not include anyone not eligible for release, such as those held without bond pursuant to a lawful finding that the person poses a specific danger to the community.

50. A class action is a superior means, and the only practicable means, by which the named Plaintiffs and the class members can challenge the Statute's cash bail requirement as applied by the Judicial Defendants.

51. This action is brought and may properly be maintained as a class action pursuant to 735 ILCS 5/2-801.

52. This action satisfies the numerosity, commonality, adequacy, and appropriateness requirements of the class action statute.

53. The Plaintiffs propose a class and subclass seeking declaratory and injunctive relief against the Judicial Defendants and injunctive relief against Defendant Dart. The Plaintiff Class is defined as: all release-eligible arrestees who are or who will become jailed in Cook County, Illinois and who are unable to pay the monetary bail amount required by Judicial Defendants for their release. The Plaintiff Subclass is defined as: all African American release-eligible arrestees who are or who will become jailed in Cook County, Illinois and who are unable to pay the monetary bail amount required by Judicial Defendants for their release.

1) Numerosity — 735 ILCS 5/2-801(1)

54. At any point in time, there are approximately 9,000 to 10,000 persons incarcerated in the Cook County Jail. Of those, approximately 90% are detained pretrial. The majority of those individuals are African American. Each release-eligible arrestee for whom a monetary bail is set must deposit 10% of their total bail in order to be released (“D-Bond”), or the entire amount of their total bail, if they are given a cash-bond (“C-Bond”). 725 ILCS 5/110-7(a); 725 ILCS 5/110-8(a).

55. Some arrestees are able to pay for release immediately. Others are forced to wait however long it takes until they or family members or others can make the payment. Others, members of the proposed class, are not able to pay or to find someone else to pay for them, and they are detained pursuant to the Judicial Defendants’ cash bail practices until disposition of the charges against them, often for periods of time in excess of one year.

2) Commonality — 735 ILCS 5/2-801(2)

56. The relief sought is common to all members of the Plaintiff Class and Subclass, and common questions of law and fact exist as to all members of the Plaintiff Class and Subclass. Those common questions of fact or law predominate over any questions affecting individual members of the Plaintiff classes.

57. The named Plaintiffs seek a declaration that the Judicial Defendants’ use of cash bail without an inquiry into and findings concerning an arrestee’s ability to pay and without consideration of alternatives violates the state and federal constitutional rights of the Plaintiff Class members and an injunction forbidding the continued detention of any release-eligible arrestees who would be released but-for his or her inability to afford a monetary sum set without any inquiry into or findings concerning his or her ability to pay it.

58. The named Plaintiffs also seek a declaration that the Judicial Defendants' use of cash bail without an inquiry into and findings concerning an arrestee's ability to pay and without consideration of alternatives violates the statutory rights of the Plaintiff Subclass to not be subjected to discrimination because of their race.

59. These common legal and factual questions arise from the Judicial Defendants' routine use of monetary bail as the only option provided to many release-eligible arrestees to secure release from pretrial incarceration. The Judicial Defendants misapply the Statute to mandate secured financial conditions of release in materially the same manner every day. The material components of the violations do not vary from class member to class member or subclass member to subclass member, and the resolution of these legal and factual issues will determine whether all of the members of the Plaintiff classes are entitled to the relief that they seek.

60. The common questions of fact include:

- Whether the Judicial Defendants set monetary bail in cases in which release-eligible arrestees will not be able to afford to pay for their pretrial release.
- Whether the Judicial Defendants have a policy, practice, or custom of setting monetary bail amounts without meaningful consideration of present ability to pay and without making findings that an arrestee has the present ability to pay the amount set.
- Whether release-eligible arrestees who are detained pretrial because they cannot afford to pay a monetary bail suffer serious consequences with respect to their criminal cases and their personal lives.

- Whether the Judicial Defendants have a compelling interest in not providing an available alternative to monetary bail for release-eligible arrestees who cannot afford to pay the set amount of cash bail.
- Whether the Judicial Defendants have a compelling interest in not providing some type of supervised or monitored release as a guaranteed alternative to monetary bail for release-eligible arrestees who cannot afford to pay the set amount of cash bail.
- Whether the use of monetary bail amounts set in excess of what a release-eligible defendant can afford is the most narrowly tailored way of achieving any compelling state interest.
- Whether conditioning pretrial release from custody on ability to pay a monetary deposit without an inquiry into ability to pay or consideration of alternatives has the effect of disproportionately incarcerating people who are indigent (and with respect to the Plaintiff Subclass, African Americans) before the disposition of their cases.

61. Among the common question of law are:

- Whether release-eligible arrestees who are detained pretrial because they cannot afford to pay a monetary bail are deprived of their fundamental right to liberty.
- Whether failing to offer release-eligible arrestees an available alternative to monetary bail in order to secure their pretrial release from incarceration violates the Fourteenth Amendment's Due Process and Equal Protection Clauses.

- Whether detaining indigent arrestees solely based on their inability to pay an amount of money they cannot afford violates the Fourteenth Amendment's Due Process and Equal Protection Clauses.
- Whether failing to offer release-eligible arrestees an available alternative to monetary bail in order to secure their pretrial release from incarceration violates the Due Process and Equal Protection Clauses of Article I, Section 2 of the Illinois Constitution.
- Whether the Judicial Defendants' use of cash bail in a manner that causes indigent arrestees to be detained solely based on their inability to pay an ordered amount of monetary bail violates the Due Process and Equal Protection Clauses of Article I, Section 2 of the Illinois Constitution.
- Whether requiring indigent release-eligible arrestees to pay monetary bail in an amount they cannot afford as the sole opportunity for their pretrial release from detention violates the Eighth Amendment's Excessive Bail Clause and the Bailable by Sufficient Sureties Clause of the Article I, Section 9 of the Illinois Constitution.
- Whether (with respect to the Plaintiff Subclass) the Judicial Defendants' practice of requiring indigent release-eligible arrestees to pay monetary bail in an amount they cannot afford as the sole opportunity for their pretrial release from detention has the effect of subjecting African American individuals to discrimination because of their race.

3) Adequacy — 735 ILCS 5/2-801(3)

62. The named Plaintiffs are adequate representatives of and will fairly and adequately protect the interests of the putative Plaintiff classes because their interests in the vindication of the legal claims that they raise are entirely aligned with the interests of the other putative class and subclass members, who each have the same basic constitutional and statutory claims. They are members of the putative class and subclass, and their interests coincide with, and are not antagonistic to, those of the other putative class and subclass members.

63. Plaintiffs are represented by counsel who are experienced in litigating complex civil rights and class action matters in both state and federal courts, and who have extensive knowledge of both the requirements and impact of the Statute.

64. The interests of the members of the putative class and subclass will be fairly and adequately protected by the Plaintiffs and their attorneys.

4) Appropriateness — 735 ILCS 5/2-801(4)

65. Class action status is appropriate because the Judicial Defendants have acted in the same unconstitutional manner with respect to all Plaintiff Class members and in the same unlawful manner with respect to all Plaintiff Subclass members. A legal ruling concerning the unconstitutionality of enforcing financial conditions of pretrial release without an inquiry into and findings concerning the present ability to pay would simultaneously vindicate the rights of every class member. The Judicial Defendants have applied a scheme of wealth-based detention and release: wealthy release-eligible arrestees can guarantee their immediate release from a Cook County jail cell by paying, while poorer arrestees must remain in jail — often for the entire pretrial duration of their case — while they are presumed innocent. Wealth, rather than any determination of dangerousness or likelihood to comply with court orders, determines as a matter of routine

whose liberty interests are protected, and the indigent and African Americans are disproportionately subjected to pretrial incarceration as a result.

66. Because of the fundamental and substantial nature of the rights involved, the widespread and ongoing injury to all of the members of the putative class, the ever-changing composition of the class and subclass (as some are released or sent to prison and others added, literally every day), the lack of resources of the class members, the lack of effective opportunity to litigate these constitutional and statutory challenges on an individual basis, the necessity to develop class-wide evidence for the systemic nature of the claims, the limited scope of statutory review of individual bail decisions in the State of Illinois, the prospect that the passage of time will moot the claims of individual class members before judicial relief can be obtained, the inability to raise affirmative constitutional and statutory claims in criminal prosecutions, and the profound significance of the issues raised in this case to the criminal legal system, a class action is the only available method for fairly and efficiently adjudicating the controversy.

67. Plaintiffs therefore seek declaratory and injunctive relief to declare that the Judicial Defendants' application of the Statute violates the state and federal constitutions and the Illinois Civil Rights Act of 2003, and to enjoin the continued unlawful detention of release-eligible arrestees who would be released but for their inability to afford a monetary sum set without inquiry into and findings concerning their ability to pay it. Because the declaratory and injunctive relief sought by Plaintiffs would apply the same relief to every member of the Plaintiff classes, section 5/2-801 certification is appropriate and necessary.

B. The Judicial Defendant Class:

68. The individual named Judicial Defendants are being sued on behalf of themselves and a class, as further defined below, of all judges who make bail determinations for criminal

defendants in Cook County, Illinois. The named Judicial Defendants and the Defendant Class members are similarly situated for the purpose of defending the claims alleged in this Complaint on a common basis.

69. This action is brought against a class and may properly be maintained against a class pursuant to 735 ILCS 5/2-801.

70. The class of Judicial Defendants satisfies the numerosity, commonality, adequacy, and appropriateness requirements of the class action statute.

71. The Judicial Defendants are all being sued for declaratory relief with respect to their unlawful application of the Statute. The Judicial Defendant class is defined as: all judges of the Circuit Court of Cook County, Illinois who do or who will enter or maintain pretrial release or bail orders for release-eligible felony and misdemeanor defendants, either at their initial bail proceedings or upon motions for reconsideration of an initial bail order.

1) Numerosity — 735 ILCS 5/2-801(1)

72. The Circuit Court of Cook County has a County Department that includes a Criminal Division, as well as a Municipal Department that includes six Municipal Districts, all of which include criminal sections or calls.

73. There are 43 Cook County judges currently assigned to the County Department's Criminal Division. There are 150 other Municipal Department judges who hear a variety of matters, which do or may include criminal matters, on a rotating basis with other Municipal Department judges.

74. Any Cook County judge presiding over any aspect of a criminal defendant's case may apply the Statute because criminal defendants may move to reconsider their bail orders at any time in the course of their criminal proceedings.

75. Therefore, the putative Defendant Class consists of close to 200 judges, which includes the named Judicial Defendants Judge LeRoy Martin Jr., Judge E. Kenneth Wright Jr., Judge Peggy Chiampas, Judge Sandra G. Ramos, and Judge Adam D. Bourgeois, Jr.

2) Commonality — 735 ILCS 5/2-801(2)

76. The claims brought against the Judicial Defendants are common to all members of the class, and common questions of law and fact exist as to all members of the class. *See supra* ¶¶ 60-61. Those common questions of fact or law predominate over any questions affecting individual members of the Judicial Defendant class. The Plaintiffs and Plaintiff classes seek relief concerning whether the Judicial Defendants' use of cash bail in the manner described herein violates the state and federal constitutional rights of the Plaintiff Class members and the state statutory rights of the Plaintiff Subclass members.

77. These common legal and factual questions arise from the Judicial Defendants' routine use of cash bail as the only option provided to many release-eligible arrestees to secure release from pretrial incarceration. The Judicial Defendants apply the Statute in materially the same manner every day and routinely impose cash bail orders that release-eligible arrestees in the Plaintiff class cannot afford to pay. By entering or deciding to maintain cash bail orders that members of the Plaintiff class cannot afford without making any inquiry into or findings concerning present ability to pay and without considering non-financial alternatives, the Judicial Defendants' application of the Statute do not vary in any way material to the constitutional claims, and the resolution of these legal and factual issues will determine whether all of the members of Judicial Defendant class are liable for declaratory relief as to their unlawful application of the Statute.

3) Adequacy — 735 ILCS 5/2-801(3)

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

79. Judicial Defendants will be represented by the Illinois Attorney General, the state's chief legal officer, whose credentials, abilities, and resources are beyond question.

80. The interests of the members of the putative Judicial Defendant Class will be fairly and adequately protected by the named Judicial Defendants and their counsel.

4) Appropriateness — 735 ILCS 5/2-801(4)

81. Permitting the Plaintiff class to bring their claims against the Judicial Defendants as a class is appropriate because the Judicial Defendant Class members have acted in the same unconstitutional manner with respect to all Plaintiff Class members and in the same unlawful manner with respect to all Plaintiff Subclass members. The Judicial Defendants have applied a scheme of wealth-based detention and release: wealthy release-eligible arrestees can guarantee their immediate release from incarceration by paying, while poorer arrestees must remain in jail — often for the entire pretrial duration of their case — while they are presumed innocent. Wealth, rather than any determination of dangerousness or likelihood to comply with court orders, frequently determines whose liberty interests are protected, and the indigent and African Americans are disproportionately subjected to pretrial incarceration as a result. Because the

determination of unlawful application of the Statute would apply the same to every member of the Defendant class, section 5/2-801 certification is appropriate and necessary.

COUNT I

The Defendants' Use of Cash Bail Violates Equal Protection Guaranteed by the Fourteenth Amendment of the United States Constitution

82. Plaintiffs incorporate by reference the allegations in paragraphs 1-81.

83. The Defendants' use of cash bail in the systemic manner described herein violates the right of Zachary Robinson, Michael Lewis, and the Plaintiff Class to equal protection of the law guaranteed by the United States Constitution because it invidiously discriminates against them by denying them the pretrial freedom made available to those with an ability to make a monetary payment who are likewise charged with a crime and determined to be eligible for release.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Zachary Robinson and Michael Lewis, on behalf of themselves and the putative Plaintiff Class they seek to represent, request that this Court grant the following relief:

- a. A declaratory judgment that by incarcerating the individual named Plaintiffs and Plaintiff Class members solely because they cannot afford to pay a monetary deposit to secure their pretrial release after arrest, the Defendants violate their rights to equal protection under the Fourteenth Amendment of the United States Constitution.
- b. An order and judgment preliminarily and permanently enjoining Defendant Dart from unlawfully incarcerating the individual named Plaintiffs and Plaintiff Class members who would be released but-for their inability to afford a monetary sum set without any inquiry into and findings concerning their ability to pay it; and

- c. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- d. Any other relief this Court deems just and proper.

COUNT II

The Defendants' Use of Cash Bail Violates Equal Protection Guaranteed by Article One, Section Two of the Illinois Constitution

84. Plaintiffs incorporate by reference the allegations in paragraphs 1-81.

85. The Defendants' use of cash bail in the systemic manner described herein violates the right of Zachary Robinson, Michael Lewis, and the Plaintiff Class to equal protection of the law guaranteed by the Illinois constitution because it invidiously discriminates against them by denying them the pretrial freedom made available to those with an ability to make a monetary payment who are likewise charged with a crime and determined to be eligible for release.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Zachary Robinson and Michael Lewis, on behalf of themselves and the putative Plaintiff Class they seek to represent, request that this Court grant the following relief:

- a. A declaratory judgment that by incarcerating the individual named Plaintiffs and Plaintiff Class members solely because they cannot afford to pay a monetary deposit to secure their pretrial release after arrest, the Defendants violate their rights to equal protection under the Article One, Section Two of the Illinois Constitution.
- b. An order and judgment preliminarily and permanently enjoining Defendant Dart from unlawfully incarcerating the individual named Plaintiffs and Plaintiff Class members who would be released but-for their inability to afford a monetary sum set without any inquiry into and findings concerning their ability to pay it; and

- c. An order and judgment granting reasonable attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and
- d. Any other relief this Court deems just and proper.

COUNT III

The Defendants' Use of Cash Bail Violates Due Process Guaranteed by the Fourteenth Amendment of the United States Constitution

86. Plaintiffs incorporate by reference the allegations in paragraphs 1–81.

87. The Defendants' use of cash bail in the systemic manner described herein violates the right of Zachary Robinson, Michael Lewis, and the Plaintiff Class to due process guaranteed by the United States Constitution because it causes the loss of the fundamental right to liberty without serving any compelling (or even legitimate) governmental interest and without ensuring that any deprivation of fundamental liberty is accomplished in the most narrowly tailored way.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Zachary Robinson and Michael Lewis, on behalf of themselves and the putative Plaintiff Class they seek to represent, request that this Court grant the following relief:

- a. A declaratory judgment that by incarcerating the individual named Plaintiffs and Plaintiff Class members solely because they cannot afford to pay a monetary deposit to secure their pretrial release after arrest, the Defendants violate their rights to due process under the Fourteenth Amendment of the United States Constitution.
- b. An order and judgment preliminarily and permanently enjoining Defendant Dart from unlawfully incarcerating the individual named Plaintiffs and Plaintiff Class members who would be released but-for their inability to afford a monetary sum set without any inquiry into and findings concerning their ability to pay it; and

- c. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- d. Any other relief this Court deems just and proper.

COUNT IV

The Defendants' Use of Cash Bail Violates Due Process guaranteed by Article One, Section Two of the Illinois Constitution

88. Plaintiffs incorporate by reference the allegations in paragraphs 1–81.

89. The Defendants' use of cash bail in the systemic manner described herein violates the right of Zachary Robinson, Michael Lewis, and the Plaintiff Class to due process guaranteed by the Illinois constitution because it causes the loss of the fundamental right to liberty without a compelling governmental interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Zachary Robinson and Michael Lewis, on behalf of themselves and the putative Plaintiff Class they seek to represent, request that this Court grant the following relief:

- a. A declaratory judgment that by incarcerating the individual named Plaintiffs and Plaintiff Class members solely because they cannot afford to pay a monetary deposit to secure their pretrial release after arrest, the Defendants violate their rights to due process under the Article One, Section Two of the Illinois Constitution.
- b. An order and judgment preliminarily and permanently enjoining Defendant Dart from unlawfully incarcerating the individual named Plaintiffs and Plaintiff Class members who would be released but-for their inability to afford a monetary sum set without any inquiry into and findings concerning their ability to pay it; and

- c. An order and judgment granting reasonable attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and
- d. Any other relief this Court deems just and proper.

COUNT V

The Defendants' Use of Cash Bail Violates the Excessive Bail Clause of the Eighth Amendment of the United States Constitution

90. Plaintiffs incorporate by reference the allegations in paragraphs 1– 81.

91. The Defendants' use of cash bail in the systemic manner described herein violates the right of Zachary Robinson, Michael Lewis, and the Plaintiff Class to not be required to pay excessive bail as guaranteed by the United State Constitution because imposing a monetary bail amount in a sum greater than a person can afford (and, indeed, without an inquiry into and findings concerning a person's ability to pay it) cannot serve the legitimate interests of bail and constitutes an unreasoned, unreasonable, and excessive restraint on pretrial release.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Zachary Robinson and Michael Lewis, on behalf of themselves and the putative Plaintiff Class they seek to represent, request that this Court grant the following relief:

- a. A declaratory judgment that by incarcerating the individual named Plaintiffs and Plaintiff Class members solely because they cannot afford to pay a monetary deposit to secure their pretrial release after arrest, the Defendants violate their rights to not be subjected to excessive bail under the Eighth Amendment of the United States Constitution.
- b. An order and judgment preliminarily and permanently enjoining Defendant Dart from unlawfully incarcerating the individual named Plaintiffs and Plaintiff Class members

who would be released but-for their inability to afford a monetary sum set without any inquiry into and findings concerning their ability to pay it; and

- c. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- d. Any other relief this Court deems just and proper.

COUNT VI

The Defendants' Use of Cash Bail Violates the Bailable by Sufficient Sureties Clause of Article One, Section 9 the Illinois Constitution

92. Plaintiffs incorporate by reference the allegations in paragraphs 1–81.

93. The Defendants' use of cash bail in the systemic manner described herein violates the right of Zachary Robinson, Michael Lewis, and the Plaintiff Class to be bailable by sufficient sureties as guaranteed by the Illinois Constitution because any monetary bail amounts to an unreasoned and unreasonable denial of bail for persons who are indigent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Zachary Robinson and Michael Lewis, on behalf of themselves and the putative Plaintiff Class they seek to represent, request that this Court grant the following relief:

- a. A declaratory judgment that by incarcerating the individual named Plaintiffs and Plaintiff Class members solely because they cannot afford to pay a monetary deposit to secure their pretrial release after arrest, the Defendants violate their rights to bail by sufficient sureties under the Article One, Section Nine of the Illinois Constitution.
- b. An order and judgment preliminarily and permanently enjoining Defendant Dart from unlawfully incarcerating the individual named Plaintiffs and Plaintiff Class members

who would be released but-for their inability to afford a monetary sum set without any inquiry into and findings concerning their ability to pay it; and

- c. An order and judgment granting reasonable attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and
- d. Any other relief this Court deems just and proper.

COUNT VII

The Defendants' Use of Cash Bail Violates the Illinois Civil Rights Act of 2003, 740 ILCS 23/5

94. Plaintiffs incorporate by reference the allegations in paragraphs 1–81.

95. The Defendants' use of cash bail in the systemic manner described herein violates the right of Zachary Robinson, Michael Lewis, and the Plaintiff Subclass to not be effectively discriminated against by their local government because of their race, as guaranteed by the Illinois Civil Rights Act of 2003, because the monetary criterion used to determine whether they will be released prior to the disposition of their case results in the disproportionate pretrial incarceration of African Americans.

PRAYER FOR RELIEF


WHEREFORE, Plaintiffs Zachary Robinson and Michael Lewis, on behalf of themselves and the putative Plaintiff classes they seek to represent, request that this Court grant the following relief:

- a. A declaratory judgment that by incarcerating the individual named Plaintiffs and Plaintiff Subclass members solely because they cannot afford to pay a monetary deposit to secure their pretrial release after arrest, the Defendants subject them to discrimination because of their race, in violation of the Illinois Civil Rights Act of 2003;

- b. An order and judgment preliminarily and permanently enjoining Defendant Dart from unlawfully incarcerating the individual named Plaintiffs and any member of the putative Plaintiff Subclass who would be released but-for his or her inability to afford a monetary sum set without any inquiry into and findings concerning his or her ability to pay it; and
- c. An order and judgment granting reasonable attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(1), and any other relief this Court deems just and proper.

Dated: October 14, 2016

Respectfully submitted,

/s/ 
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Exhibit A

I, Zachary Michael Robinson, am 25 years old. I state the following:

- 1) I was arrested by Chicago Police Department for a theft charge in early December 2015. I have been in Cook County Jail for almost a year. I haven't been convicted of anything.
- 2) Soon after I was arrested, I went to bond court at 26th and California. I went in front of a judge for about 3 minutes. The judge didn't say anything to me except to tell me my bond was \$10,000 D. I have to pay \$1,000 to get out.
- 3) I can't pay the \$1,000. My mom can't pay it either. Before I was arrested, I worked at Jesse's meat market on the Southside for minimum wage. I lost that job when I got locked up. I don't have a bank account. I get Link (food stamps) and free healthcare.

4) When I got locked up, I was enrolled at Kennedy King College for my Associates Degree in construction management. Financial aid covers all my costs.

5) I can't work or go to school when I'm stuck in jail. If I were able to work, I could save money to pay my bond (many times over).

6) Since I've been locked up I lost my apartment at 91st and near Cottage Grove. I have been living there three or so years.

7) Cook County Jail is dangerous. I have been the victim of acts of violence by multiple other detainees.

8) Being in here, I've lost my relationships. My girlfriend broke up with me and I don't talk to my friends anymore.

I declare that the above is
true and correct, under penalty
of perjury.

10/14/2016

Zachary Robinson
Zachary Robinson

Exhibit B

I, Michael Ray Lewis, am a 40 year old man and state the following:

- 1) I am currently in Cook County Jail, Division 8, which is the "RTU"
- 2) I was arrested on October 2nd. The Monday after my arrest I went to bond court at 26th and California. I was in front of the judge for about a minute. The judge did not talk to me or ask me any questions. He did not ask me how much bond I could afford.
- 3) The judge gave me a \$50,000 D bond. To get out, I need to pay \$5,000. I cannot afford to pay this. I rely on my disability payments to meet my needs. I don't get nearly enough to cover bond. I have Medicaid and no bank account.
- 4) I suffer from PTSD and clinical depression from childhood abuse.

5) I live with my 72-year old godmother in South Shore Chicago. I help pay the bills. Since I have been locked up the bills keep piling up. Because I am in jail I can't help take care of her.

I declare under penalty of perjury that everything is true and correct.

10/14/2016 Michael Lewis

Michael Lewis