IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MAURICE WALKER, on behalf of himself and others similarly situated, Plaintiff, v. CITY OF CALHOUN, GEORGIA, Defendant.	CIVIL ACTION FILE NO. 4:15-CV-170-HLM

ORDER

This case is before the Court on Plaintiff's Motion to Certify Class [10].

I. Background

On September 8, 2015, Plaintiff filed this action. (Docket Entry No. 1.) Plaintiff challenges Defendant's use of

fixed amounts of secured money bail, alleging that Defendant has a policy and practice of refusing "to release traffic and misdemeanor arrestees from jail unless they pay a generically set bond amount," which "varies for each offense but generally ranges from $90 to $1,000." (Compl. ¶ 4.) According to Plaintiff, "[b]ecause this sum is set by reference to the alleged offense of arrest, no individualized factors are considered, and anyone who cannot afford to pay is held in jail for up to seven days before the City brings its arrestees before the municipal court." (Id.) Plaintiff also alleges that Defendant "does not allow post-arrest release on recognizance or with an unsecured bond (in which a person would be released by promising to pay the scheduled amount if the person later does not appear)." (Id. ¶ 21.) Instead, Defendant requires "that the payment amount be made up front." (Id.) According to Plaintiff, "[e]ach Monday,

there are commonly about four to six indigent defendants who were not able to pay enough money to secure their release." (Id. ¶ 23.)

Plaintiff alleges that "[a] class action is a superior means, and the only practicable means, by which [Plaintiff] and other class members can challenge [Defendant's] unlawful detention scheme." (Compl. ¶ 25.) Plaintiff "proposes a class seeking declaratory and injunctive relief," defined as "[a]ll arrestees unable to pay for their release who are or will be in the custody of the City of Calhoun as a result of an arrest involving a misdemeanor, traffic offense, or ordinance violation." (Id. ¶ 28.)

Plaintiff alleges that the proposed class satisfies the numerosity requirement because "the number of future class members numbers in the hundreds." (Compl. ¶ 31.) Plaintiff contends that the proposed class satisfies the commonality

requirement because Plaintiff "seeks relief mandating [Defendant] to change its policies, practices, and procedures so that the constitutional rights of [Plaintiff] and the class members will be protected in the future," and "[e]ntitlement to relief will depend on whether [Defendant's] policies, practices, and procedures violate the rights of the class members." (Id. ¶ 32.) According to Plaintiff: "These common legal and factual questions arise from one central scheme and set of policies and practices: [Defendant's] post-arrest detention scheme." (Id. ¶ 33.) Plaintiff contends that "[t]he material components of the scheme do not vary from class member to class member." (Id.) Further, Plaintiff alleges that the case involves several common questions of fact and law. (Id. ¶¶ 34-35.)

Plaintiff also alleges that his claims are "typical of the claims of the other members of the class, and he has the

same interests in this case as all other members of the class that he represents." (Compl. ¶ 36.) According to Plaintiff, "[t]he answer to whether [Defendant's] bail scheme is unconstitutional will determine the claims of [Plaintiff] and every other class member." (Id.) Plaintiff alleges that, if he succeeds in his claim that Defendant's policies and practices violate his constitutional rights, this ruling will benefit all the other members of the class. (Id. ¶ 37.)

Further, Plaintiff alleges that he "is an adequate representative of the class because his interests in the vindication of the legal claims that he raises are aligned with the interests of the other class members, who each have the same basic constitutional claims." (Compl. ¶ 38.) Plaintiff states that "[h]e is a member of the class, and his interests coincide with, and are not antagonistic to, those of the other class members." (Id.) Plaintiff alleges that "[t]here are no

known conflicts of interest among members of the proposed class." (Id. ¶ 39.) Plaintiff also notes that his counsel "have experience litigating complex civil rights matters in federal court and extensive knowledge of both secured bail schedule schemes and the relevant constitutional law." (Id. ¶ 40.)

Plaintiff seeks class certification under Federal Rule of Civil Procedure 23(b)(2), contenting that Defendant "has acted in the same unconstitutional manner with respect to all class members." (Compl. ¶ 42.) According to Plaintiff, the class "seeks declaratory and injunctive relief to enjoin [Defendant] from continuing in the future to detain impoverished arrestees who cannot afford cash payments." (Id. ¶ 43.) Plaintiff alleges:

> Injunctive relief compelling [Defendant] to comply with these constitutional rights will similarly protect each member of the class from being subjected to [Defendant's] unlawful policies and practices. A declaration and injunction stating that [Defendant]

> cannot use a fixed secured money bail scheme that jails indigent arrestees but frees arrestees with financial means would provide relief to every member of the class. Therefore, declaratory and injunctive relief with respect to the class as a whole is appropriate.

(Id. ¶ 44.)

On September 9, 2015, Plaintiff filed his Motion to Certify Class. (Docket Entry No. 10.)[1] The briefing process for that Motion is complete, and the Court finds that the matter is ripe for resolution.

II. Discussion

Federal Rule of Civil Procedure 23 governs motions to proceed as a class action in federal court. Fed. R. Civ. P. 23. Rule 23 requires a two-step inquiry to determine whether class certification is appropriate. Id. Plaintiff bears the

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[1] It is worth noting that, on December 2, 2015, the Court denied Defendant's Motion to Dismiss for Failure to State a Claim and Motion for More Definite Statement. (Order of Dec. 2, 2015 (Docket Entry No. 28).)

burden of satisfying each of Rule 23's certification requirements. Columbus Drywall & Insulation, Inc. v. Masco Corp., 258 F.R.D. 545, 553 (N.D. Ga. July 20, 2007).

When assessing a motion for class certification, the Court ordinarily does not inquire whether the plaintiffs have adduced sufficient evidence to prevail on the merits of their claims. Columbus Drywall & Insulation, Inc., 258 F.R.D. at 554. The Court, however, "performs a rigorous analysis of the arguments offered in support of certifying the class." Rhodes v. Cracker Barrel Old Country Store, Inc., 213 F.R.D. 619, 673 (N.D. Ga. Mar. 7, 2003) (internal quotation marks and citation omitted). "When performing this analysis, the Court is not limited solely to the substance of the parties' pleadings." Id. When necessary, "the Court should allow . . . the parties to conduct discovery and adduce evidence relevant to the class certification issue." Id. In sum, the

Court must determine "through information submitted outside of the pleadings that the requirements of Rule 23 are met, not whether plaintiffs' claims are viable." Telecomm Tech. Servs. v. Siemens Rolm Commc'ns, Inc., 172 F.R.D. 532, 543 (N.D. Ga. Feb. 4, 1997). "Stated differently, the Court will examine whether sufficient evidence exists to reasonably conclude that Plaintiffs may proceed in the manner proposed, not whether the evidence can withstand any and all factual challenges leveled by Defendant[]." Rhodes, 213 F.R.D. at 673.

A. Initial Matters

Defendant first argues that Plaintiff lacks standing to pursue his claim, contending that Plaintiff suffered no injury because he eventually posted bond and that Defendant has changed its policy concerning granting bonds. (Resp. Mot. Certify Class (Docket Entry No. 36) at 3-4.) Certainly, "it is

well-settled that prior to the certification of a class, and technically speaking before undertaking any formal typicality or commonality review, the district court must determine that at least one named class representative has Article III standing to raise each class subclaim." Prado-Steinman ex rel. Prado v. Bush, 221 F.3d 1266, 1279 (11th Cir. 2000). To satisfy Article III's standing requirements, a plaintiff:

> [First] must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (internal quotation marks, alterations, and citations omitted).

"In a claim for prospective relief, . . . a plaintiff must show a real and immediate threat of future harm." Cook v. Bennett, 792 F.3d 1294, 1298 (11th Cir. 2015).

As an initial matter, Defendant's contention that Plaintiff eventually posted bond is simply wrong. Plaintiff was released after his counsel filed this action, later paid his fine, and, as such, was not required to appear in court. Further, the fact that Plaintiff may have been released from jail and paid his fine does not deprive him of standing. When Plaintiff filed this lawsuit, however, he was detained as a result of being financially unable to post bond, and his "injury was at that moment capable of being redressed through injunctive relief." Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 51 (1991). Under those circumstances, Plaintiff clearly has standing to pursue his claim.

Further, the fact that Defendant changed its bail policy is not dispositive. Defendant's change to its Standing Bail Order (the "Standing Order") came about voluntarily some time after Plaintiff filed this lawsuit, and there is no guarantee that Defendant will not revert back to its previous bail policy at some point. Further, Plaintiff's counsel points out serious concerns with the Standing Order, which may well give rise to the same concerns as the previous bail policy. Given Plaintiff's evidence that he is indigent, it is entirely foreseeable that Plaintiff might be subject to arrest and detention in violation of his rights even under the new Standing Order. See Church v. City of Huntsville, 30 F.3d 1332, 1338-39 (11th Cir. 1994) (observing that, in lawsuit that sought to bar a city from harassing or removing the plaintiffs from the city because of the plaintiffs' homeless status, the plaintiffs, who were involuntarily homeless, could

not "avoid future exposure to the challenged course of conduct in which the City allegedly engages," and could pursue their claims). As such, Defendant's new Standing Order does not deprive Plaintiff of standing.

Defendant's new Standing Order also does not moot this case. "Generally, a case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." Cook, 792 F.3d at 1299 (internal quotation marks and citation omitted). "When a defendant voluntarily ceases the activity that forms the basis of the lawsuit, a federal court does not necessarily lose jurisdiction." Id. "Instead, the party asserting mootness must show that subsequent events [have] made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Id. (alteration in original) (internal quotation marks and citation omitted). Indeed, "[v]oluntary

cessation of offensive conduct will only moot litigation if it is clear that the defendant has not changed course simply to deprive the court of jurisdiction." Id. (internal quotation marks and citation omitted). Admittedly, "[w]hen the government is the defendant, [courts] extend a reasonable presumption that government actors are unlikely to resume illegal activities," and "[t]his presumption is particularly warranted in cases where the government repealed or amended a challenged statute or policy—often a clear indicator of unambiguous termination." Id. at 1299-1300 (internal quotation marks and citation omitted). Here, however, the changes in the Standing Order "are insufficient to render this case moot . . . because it is not absolutely clear that the allegedly wrongful behavior could not be reasonably expected to recur." Id. at 1300 (internal quotation marks and citation omitted). There is no guarantee that

Defendant will not return to its former bail policy, and, as Plaintiff points out, the new Standing Order presents some of the same concerns that arose from the former bail policy. Under those circumstances, the Court finds that Defendant has not met its burden to show that the case is moot. See Cook, 792 F.3d at 1300 (finding that changes in Florida law and in school districts' policies after filing of a lawsuit did not render the case moot, as a real possibility remained that the districts could implement policies with effects similar to the policies and law at issue in the lawsuit).

Further, Defendant's argument that Plaintiff's claim is moot misses the point. The termination of a class representative's claim will not necessarily moot the claims of the unnamed members of the class, even where the class is not certified until after the named plaintiff's claims become moot. McLaughlin, 500 U.S. at 51. Instead, "[i]n such cases,

the relation back doctrine is properly invoked to preserve the merits of the case for judicial resolution." Id. (internal quotation marks omitted).

Defendant also argues that no causal connection exists between Plaintiff's injury and Defendant's conduct. (Resp. Mot. Class Certification at 5-6.) According to Defendant, it has no control over the actions of the Municipal Court, and it does not control the bail policy. Under Georgia law, however, a "municipal court is a municipal office discharging strictly municipal functions." Ward v. City of Cairo, 276 Ga. 391, 393, 583 S.E.2d 821, 823 (2003). A municipal court is thus distinguishable from a superior court or other court of record. See generally City of Lawrenceville v. Davis, 233 Ga. App. 1, 502 S.E.2d 794 (1998). Indeed, under Georgia law, "the governing authority of each municipal corporation within this state having a municipal court, as provided by the

Act incorporating the municipal corporation or any amendments thereto, is authorized to appoint a judge of such court," and "[a]ny person appointed as a [municipal court judge] shall possess such qualifications and shall receive such compensation as shall be fixed by the governing authority of the municipal corporation and shall serve at the pleasure of the governing authority." O.C.G.A. § 36-32-2(a). Georgia law is quick to point out that this statute "shall not be construed to require the governing authority of any municipal corporation to appoint a judge; but such governing authority may appoint a judge if, acting in its sole discretion, the governing authority determines that such appointment would be in the best interest of the municipal corporation." O.C.G.A. § 36-32-2(b). A municipal court is thus a very different creature than a superior court, which generally would be considered to be a state entity. Further,

given Defendant's own City Code, it is abundantly clear that Defendant possesses considerable control over the municipal court.[2] In any event, Defendant certainly has control over its chief of police, who is the custodian of

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[2] **Error! Main Document Only.**Article VI of Defendant's City Code governs the municipal court. (City Code (Docket Entry No. 29-6) Art. VI.) Section 6-101 creates the municipal court. (Id. Art. VI, Sec. 6-101.) Section 6-102 governs chief and associate judges of the municipal court. (Id. Art. VI, Sec. 6-102.) Notably, the mayor and council set the compensation for the municipal court judges, and the judges "shall be appointed by the mayor and council and shall serve at the pleasure of the mayor and council, subject to removal, with or without any stated cause, upon a majority vote by the mayor and counsel." (Id. Art. VI, Sec. 6-102(a)(1).) The City Code also sets the qualifications for municipal court judges. (Id. Art. VI, Sec. 6-102(a)(2).) Further, under the City Code, the mayor and council may fill vacancies in the office of the chief municipal judge by appointment if the vacancies occur "by reason of death, resignation, removal or other reason." (Id. Art. VI, Sec. 6-102(c).) Section 6-103 governs convening the municipal court, and provides that "[t]he court shall sit at a place designated by the mayor and council." (Id. Art. VI, Sec. 6-103.) Section 6-104 sets forth the municipal court's jurisdiction, which consists of "violations of city ordinances" and "[t]he prosecution of traffic offenses as set forth in O.C.G.A. Title 40," among other things. (Id. Art. VI, Sec. 6-104.)

Defendant's arrestees. See O.C.G.A. § 42-4-1(b) ("By virtue of their offices, chiefs of police are the jailers of the municipal corporations and have the authority to appoint other jailers, subject to the supervision of the municipal governing authority, as prescribed by law."). The Court therefore rejects this argument.

Further, the Court rejects Defendant's contention that the proposed class fails the cohesiveness requirement because no hard and fast rules exist concerning excessive versus reasonable bail. (Resp. Mot. Class Certification at 6 n.2.) Plaintiff's allegation is that Defendant has a standing policy that results in indigent arrestees being detained without individualized determinations as to eligibility. Under those circumstances, it is hard to fathom how the proposed class would not satisfy the cohesiveness requirement.

For the above reasons, the Court rejects Defendant's contentions relating to standing and mootness. The Court next determines whether Plaintiff can satisfy Federal Rule of Civil Procedure 23(a)'s requirements.

B. Rule 23(a)'s Requirements

Under Rule 23(a), a plaintiff must show that:

(a) the class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the class;

(c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(d) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). "These four requirements commonly are referred to as the prerequisites of numerosity, commonality, typicality, and adequacy of representation, and

they are designed to effectively limit class claims to those fairly encompassed by the named plaintiffs' individual claims." Prado-Steiman v. Bush, 221 F.3d 1266, 1278 (11th Cir. 2000) (internal quotation marks and citation omitted). The Court addresses those requirements in turn.

1. Numerosity

"The numerosity requirement is satisfied if the proposed class is so numerous that joinder of all members is impracticable." In re Tri-State Crematory Litig., 215 F.R.D. 660, 689 (N.D. Ga. Mar. 17, 2003). "The requirement that joinder is impracticable does not mandate that joinder is impossible; rather, Plaintiff[] need only show that it would be extremely difficult or inconvenient to join all members of the class." Id. (internal quotation marks and citation omitted). To make that showing, a plaintiff "generally must proffer some evidence of a reasonable estimate of the number of

members comprising the purported class." Id. (internal quotation marks and citation omitted). The former United States Court of Appeals for the Fifth Circuit has observed that "[s]maller classes are less objectionable where . . . the plaintiff is seeking injunctive relief on behalf of future class members as well as past and present members." Jones v. Diamond, 519 F.2d 1090, 1100 (5th Cir. 1975).[3] "Practicability of joinder depends on many factors, including, for example, the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion." Kilgo v. Bowman Transp., Inc., 789 F.2d 859, 878 (11th Cir.

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[3] Opinions of the United States Court of Appeals for the Fifth Circuit issued prior to October 1, 1981, the date marking the creation of the United States Court of Appeals for the Eleventh Circuit, are binding precedent on this Court. Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1209-11 (11th Cir. 1981) (en banc).

1986). "[W]hile there is no fixed numerosity rule, generally less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors." Cox v. Am. Cast Iron Pipe Co., 784 F.2d 1546, 1553 (11th Cir. 1986) (internal quotation marks and citation omitted); see also Consol. Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir. 1995) (noting that "numerosity is presumed at a level of 40 members").[4]

Here, Plaintiff asserts that "the number of class members will consist of several hundred arrestees per year." (Br. Supp. Mot. Certify Class (Docket Entry No. 10-1) at 4 (footnote omitted).) Plaintiff notes that "[e]ach weekly court appearance in [Defendant's] municipal court includes

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[4] The United States Court of Appeals for the Eleventh Circuit has observed that "the relevance of the numerosity requirement to class certification may in appropriate cases be less significant were in fact class wide discrimination has been alleged." Evans v. U.S. Pipe & Foundry Co., 696 F.2d 925, 930 (11th Cir. 1983).

approximately four to six confined inmates arrested since the previous Monday who are still in custody because they could not afford the money amount set by [Defendant's] policy." (Id. (footnote omitted).) Even under a conservative estimate, the number of class members would consist of approximately 200 individuals in a given year. Further, there is a future stream of class members who would suffer the same injury absent injunctive relief. Under those circumstances, the Court agrees with Plaintiff that joinder is impracticable.[5]

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[5] As Plaintiff points out, Defendant's Municipal Court has a significant volume of cases, and Defendant's police department arrests and detains a sizeable number of individuals each year. (Reply Supp. Mot. Class Certification Ex. B (Docket Entry No. 39-2); see also Administrative Office of the Courts, Georgia Municipal Court Caseload, Calendar Year 2014, Cases Filed, at 2 (listing number of cases filed in Defendant's municipal court for 2014).) Further, Census Bureau data establishes that 26.9 percent of the individuals living in the City live below the poverty level, which certainly indicates that a sizeable number of arrestees will be unable to afford to purchase their release. U.S. Census Bureau, Calhoun, Georgia, available at

"A second element of the numerosity requirement is that the proposed class [must] meet a minimal standard of identifiability." In re Tri-State Crematory Litig., 215 F.R.D. at 689-90. "Although [i]t is not necessary that the members of the class be so clearly identified that any member can be presently ascertained . . . [Plaintiff] must establish that there exists a legally definable class that can be ascertained through reasonable effort." Id. at 690 (first and second alterations in original) (internal quotation marks and citation omitted). "The class simply must meet a minimum standard of definiteness which will allow the trial court to determine membership in the proposed class." Id. (internal quotation marks and citation omitted). Plaintiff has satisfied this

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http://quickfacts.census.gov/qfd/states/13/1312456.html (last visited on Jan. 25, 2016). Moreover, the jail docket from the Gordon County Jail indicates that the numerosity requirement is satisfied. (Reply Supp. Mot. Class Certification Ex. B.)

requirement, as Defendant's own police chief's records, as well as the records of the Gordon County Jail, should permit Plaintiff and the Court to identify the class members. The fact that the class members may come from other jurisdictions or geographical areas does not cause the class to fail the ascertainability requirement.

2. Commonality

"To satisfy the commonality requirement, Plaintiff[] must show the presence of questions of law or fact common to the entire class." In re Tri-State Crematory Litig., 215 F.R.D. at 690. "[W]hile it is not necessary that every question of law or fact is common to every class member, commonality will not exist as long as there is a predominance of individual

issues." Id. (alteration in original) (internal quotation marks and citation omitted).[6]

Here, Plaintiff alleges that Defendant has policies and practices in place concerning its bond fee schedule that unlawfully imprison indigent arrestees, causing those arrestees to remain in confinement longer than arrestees who are financially able to post bail immediately. The factual and legal questions surrounding Defendant's policies and practices, whether under the previous bail policy or under the new Standing Order, present questions that are common to the entire class. Further, Defendant's speculation that an arrestee might choose to stay in jail if offered release does not defeat commonality. (Resp. Mot. Class Certification at

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[6] Plaintiff seeks class certification only under Rule 23(b)(2), and, consequently, "there is no requirement that common issues of law or fact predominate." Kenny A. ex rel. Winn v. Perdue, 218 F.R.D. 277, 298 (N.D. Ga. Aug. 18, 2003).

15-16.) As Plaintiff points out, "[t]he point of this lawsuit is that poor arrestees should be given the same choice that [Defendant] gives to the wealthy," and "[t]he possibility that some arrestees might hypothetically decline to be released does not change the fact that denying them that choice solely because they are poor violates their rights." (Reply Supp. Mot. Class Certification (Docket Entry No. 39) at 8 (citation and footnote omitted).) Likewise, the fact that some arrestees may be subject to immigration holds or to detention holds from other jurisdictions does not affect those arrestees' rights not to be detained simply because they cannot afford to post bond. (Id. at 8 n.8.) Further, as Plaintiff correctly points out, although Defendant may be correct in its contention that it would not be wise to release arrestees who are under the influence of drugs or alcohol, enjoining Defendant's bail policy will not affect that issue, as the policy

permits arrestees to be released, whether sober or not, upon paying bail. (Id. at 8.)[7] Under those circumstances, the Court finds that Plaintiff satisfies the commonality requirement. Melanie K v. Horton, No. 1:14-CV-710-WSD, 2015 WL 1308368, at *4 (N.D. Ga. Mar. 23, 2015).

3. Typicality

"The typicality requirement is satisfied if the claims and defenses of the representative parties are typical of the claims and defenses of the class." In re Tri-State Crematory Litig., 215 F.R.D. at 690. "A representative plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of the other class

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[7] Plaintiff correctly notes that other laws may give Defendant authority to detain intoxicated arrestees without bond, and that any Order that the Court may issue preventing Defendant from continuing to detain arrestees solely because of inability to pay will not diminish that authority. (Reply Supp. Mot. Class Certification at 8-9 & n.9.)

members, and her or his claims are based on the same legal theory." Id. (internal quotation marks and citation omitted). "In other words, the Court simply inquires whether the named representatives' claims have the same essential characteristics as the claims of the class at large." Id. (internal quotation marks and citation omitted).

Plaintiff asserts that he was jailed by Defendant after being unable to pay the cash bond required by Defendant's bond schedule. Plaintiff's claims arise out of the same conduct as the class's claims, and his claims are the same as those of the proposed class. Plaintiff also was injured in the same way as the other class members suffered injuries. Plaintiff therefore satisfies the typicality requirement. Melanie K, 2015 WL 1308368, at *5.

Defendant contends that Plaintiff's claims are not typical because Plaintiff's injury was self-inflicted, arguing that

Plaintiff delayed contacting someone to sign a property bond or obtain a surety. (Resp. Mot. Class Certification at 20.) As an initial matter, nothing in the record supports this contention. In any event, it misses the mark--Plaintiff is alleging that indigent arrestees should be provided with the same right to a speedy and convenient release that Defendant offers to arrestees who have sufficient financial means to pay a cash bond. For the same reason, the fact that Plaintiff did not file a bond reduction motion does not defeat typicality. As Plaintiff points out, "[r]elease is not 'convenient' if it requires a pro se detainee to file court papers from his jail cell, and it is not 'speedy' where it depends on intervention of a court that is in session for only a few hours once per week." (Reply Supp. Mot. Class Certification at 9-10 (footnote omitted).) Indeed, the record supports Plaintiff's assertion "that the only reason he was

released from jail after six days was that Plaintiff filed this lawsuit, requested a TRO, and undersigned counsel repeatedly contacted [Defendant's] lawyers to ask for [Plaintiff's] release." (Id. at 10 n.10.)

Further, Defendant argues that Plaintiff cannot satisfy the typicality requirement because Plaintiff posted bond. (Resp. Mot. Class Certification at 20.) As previously noted, this argument is factually incorrect. Plaintiff did not post a bond, but instead paid his ticket after being released from custody. Plaintiff correctly notes that his "payment of $160 a month after release does nothing to counter the fact that he was held in jail for six days only because he could not get that money sooner." (Reply Supp. Mot. Class Certification at 10.)

In sum, the Court finds that Plaintiff satisfies the typicality requirement of Rule 26(a). The Court next addresses the fourth Rule 26(a) requirement: adequacy.

4. Adequacy

To satisfy the fourth Rule 23(a) requirement, Plaintiff must show that he, as the class representative, will fairly and adequately protect the class's interests. Fed. R. Civ. P. 23(a)(4). "This requirement involves a two-part inquiry: (1) whether Plaintiff[] possess[es] interests that are antagonistic to the interests of other class members, and (2) whether the proposed class[] counsel possesses the qualifications and experience to conduct the litigation." In re Tri-State Crematory Litig., 215 F.R.D. at 690-91.

Here, Plaintiff's interests are aligned with those of the class members. Further, it does not appear that conflicts of interest exist among members of the proposed class.

Plaintiff thus satisfies the adequacy requirement. See Hardy v. Dist. of Columbia, 283 F.R.D. 29, 25 (D.D.C. Aug. 22, 2012) (finding that the named plaintiffs satisfied the adequacy requirement where "[t]here is no evidence that Plaintiffs' interests are antagonistic or in some way conflict with the interests of the unnamed class members."

Defendant contends that Plaintiff is an inadequate representative because Plaintiff took advantage of the bond schedule, posted a cash bond, and failed to appear for his own arraignment. (Resp. Mot. Class Certification at 22 & n.4.) As Plaintiff points out, this contention is misplaced because Plaintiff's ticket was paid after his release, thus eliminating the need for Plaintiff to make a court appearance. (Reply Supp. Mot. Class Certification at 10.) The fact that Plaintiff paid his ticket after obtaining release from jail does not make him an inadequate representative.

Defendant also argues that Plaintiff is not an adequate class representative because of his individual damages claim. (Resp. Mot. Class Certification at 23.) This argument also fails, as "[t]he fact that the named plaintiffs are seeking money damages for themselves but are only seeking declaratory and equitable relief for the class they wish to represent" will not defeat a finding of adequacy. Daniels v. City of New York, 198 F.R.D. 409, 416 (S.D.N.Y. Jan. 25, 2001); see also Faught v. Am. Home Shield Corp., No. 2:07-CV-1928-RDP, 2010 WL 10959223, at *10 (concluding that request for incentive payments to class representatives did not indicate that the class representatives were inadequate); Peters v. Cars to Go, Inc., 184 F.R.D. 270, 279 (W.D. Mich. Nov. 16, 1998) ("[T]he fact that Plaintiffs may have claims for damages not held by members of the class does not automatically mean that their interests are antagonistic to the

putative class members' interests."). Nothing indicates that Plaintiff's individual claim for damages "will have an actual adverse impact upon [his] representation of the class, and the Court need not engage in hypothetical analysis about possible future conflicts within the class." Peters, 184 F.R.D. at 279 (internal quotation marks and citation omitted).

Defendant also appears to suggest that Plaintiff may not be an adequate class representative because Plaintiff suffers from a mental illness. (Resp. Mot. Class Certification at 21-22.) As an initial matter, Plaintiff's mental illness, standing alone, would not necessarily make him incompetent to represent his interests or those of a class, and courts have allowed individuals who have disabilities to proceed as class representatives. See Tugg v. Towey, 864 F. Supp. 1201, 1204 (S.D. Fla. July 19, 1994) (certifying a class represented by deaf and hearing-impaired plaintiffs who needed mental

health counseling). Nothing indicates that Plaintiff's mental illness would render him incompetent to represent the class in this case, and he is represented by highly able and experienced counsel who can adequately protect both Plaintiff's interests and those of the proposed class. The Court therefore rejects Defendant's argument.

Plaintiff's counsel, attorneys from Equal Justice Under Law and the Southern Center for Human Rights, have experience litigating complex civil rights matters in federal court, including matters relating to bail schedules. Plaintiff's attorneys also have experience in several recent civil rights class action lawsuits involving issues similar to those at issue in this case, as well as in other class actions. Under those circumstances, the Court finds that Plaintiff's counsel satisfy the adequacy requirement.

B. Rule 23(b)(2)

Plaintiff seeks to certify a class under Federal Rule of Civil Procedure 23(b)(2). That rule allows certification of a class action if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The central focus of this case is Defendant's policies and practices that allegedly result in incarcerating the indigent. "These policies and practices are equally applicable to each class member, and injunctive or declaratory relief addressing [the policies and practices] with respect to the class as a whole is appropriate." Melanie K, 2015 WL 1308368, at *5. Rule 23(b)(2) certification is particularly appropriate where, as here, a plaintiff seeks affirmative changes in government practices through

injunctive or declaratory relief. Jackson v. Foley, 156 F.R.D. 538, 544 (E.D.N.Y. July 7, 1994).[8]

Here, Plaintiff challenges Defendant's post-arrest bail scheme, and seeks declaratory and injunctive relief to enjoin Defendant from continuing in the future to enforce its policy of securing post-arrest detention based on financial status. The relief sought would apply equally to the entire class.

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[8] The Supreme Court has observed:

> Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member would be entitled to a different injunction or declaratory judgment against the defendant.

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 131 S. Ct. 2541, 2557 (2011) (emphasis in original).

Under those circumstances, this case qualifies for certification under Rule 23(b)(2).[9]

Defendant argues that the Standing Order defeats certification under Rule 23(b)(2). (Resp. Mot. Class Certification at 24.) As previously noted, however, the Standing Order does not moot Plaintiff's original challenge, and, because it may cause the same harm as the original policy, the same injunction can remedy either harm. The Court therefore finds this argument unpersuasive.

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[9] The fact that Plaintiff also seeks monetary damages for his own claims will not defeat certification under Rule 23(b)(2). The predominant relief sought here is injunctive, not monetary. See Murray v. Auslander, 244 F.3d 807, 812 (11th Cir. 2001) ("Monetary relief may be obtained in a Rule 23(b)(2) class action so long as the predominant relief sought is injunctive or declaratory."); see Probe v. State Teachers' Retirement Sys., 780 F.2d 776, 780 (9th Cir. 1986) ("Class actions certified under Rule 23(b)(2) are not limited to actions requesting only injunctive or declaratory relief, but may include cases that also seek monetary damages.").

Finally, Defendant contends that the class is not sufficiently "cohesive and homogenous" enough to satisfy Rule 23(b)(2), noting that the class may be too "demographically and geographically" diverse to justify certification. (Resp. Mot. Class Certification at 24.) The fact that the individual members of the class may come from different demographic groups and different geographic areas, however, does not preclude Rule 23(b)(2) certification. The Court agrees with Plaintiff that "[i]t is difficult to imagine a class more similar than a group of people arrested in the same city by the same police agency, placed in the same jail, held for the same reason pursuant to the same procedures, and prosecuted in the same court." (Reply Supp. Mot. Class Certification at 15.) Rule 23(b)(2) injunctive relief will help protect the alleged right of each proposed class member not to be jailed simply because they

lack immediate access to sufficient funds or property to post bond. This argument therefore does not defeat class certification.

C. Summary

In sum, the Court finds that Plaintiff satisfies the requirements of Rule 23(a) and Rule 23(b)(2) for class certification. The Court therefore grants Plaintiff's Motion to Certify Class, and certifies the following class for purposes of pursuing declaratory and injunctive relief: "All arrestees unable to pay for their release who are or will be in the custody of the City of Calhoun as a result of an arrest involving a misdemeanor, traffic offense, or ordinance violation."

III. Conclusion

ACCORDINGLY, the Court **GRANTS** Plaintiff's Motion to Certify Class [10]. The Court **CERTIFIES** the following

class for purposes of pursuing declaratory and injunctive relief: "All arrestees unable to pay for their release who are or will be in the custody of the City of Calhoun as a result of an arrest involving a misdemeanor, traffic offense, or ordinance violation."

IT IS SO ORDERED, this the 28th day of January, 2016.

UNITED STATES DISTRICT JUDGE