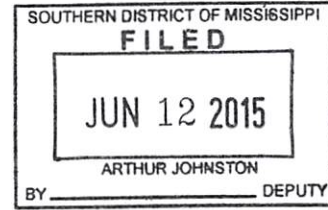


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION

\_\_\_\_\_  
)  
CHEVON ELIZABETH THOMPSON, et al.)  
)  
Plaintiffs, )  
)  
v. )  
)  
MOSS POINT, MISSISSIPPI, )  
)  
Defendant. )  
\_\_\_\_\_



Case No. 1:15cv182 LG-RHW  
(Class Action)

CLASS ACTION COMPLAINT

Introduction

This case is about the City of Moss Point jailing some of its poorest people because they cannot pay a small amount of money. Chevon Elizabeth Thompson was arrested within the past 24 hours and is currently detained by the City because she cannot afford to pay the amount of money generically set by the secured “bail schedule” used by Moss Point.

In Moss Point, most people arrested for traffic or misdemeanor offenses are released immediately upon payment of a small amount of money. The amount of the bond ranges from several hundred dollars to several thousand dollars. If a person is charged with multiple offenses, the fixed amount for each offense is added together to determine the total amount of cash required for release. Those arrestees who are too poor to afford to pay remain in jail because of their poverty for up to a week without seeing a judicial officer.

On behalf of the many other arrestees subjected to the City’s unlawful and ongoing post-arrest money-based detention scheme, the named Plaintiff challenges in this action the use of an unlawful generic offense-based “bail schedule” that operates to detain only the most impoverished misdemeanor arrestees. The City’s policy has no place in modern American law.

By and through her attorneys and on behalf of herself and all others similarly situated, the named Plaintiff seeks in this civil action the vindication of her fundamental rights, injunctive relief assuring that her rights and the rights of the other Class members will not continue to be violated, and a declaration that the City's conduct is unlawful.

**Nature of the Action<sup>1</sup>**

1. It is the policy and practice of Moss Point to refuse to release traffic and misdemeanor arrestees from jail unless they pay a generically set amount of money. That amount is between \$300 and \$2,250 for most violations. Because this sum is set generically 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 a week before any judicial hearing. Plaintiff seeks declaratory, injunctive, and compensatory relief.

**Jurisdiction and Venue**

2. This is a civil rights action arising under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, *et seq.*, and the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

3. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

**Parties**

4. Named Plaintiff Chevon Thompson is a 33-year-old woman living in the City of Moss Point, Mississippi. She is the mother of three children. She represents herself as an individual and a Class of similarly situated people all subject to the City's post-arrest money-based detention scheme.

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<sup>1</sup> Plaintiff makes the allegations in this Complaint based on personal knowledge as to matters in which she has had personal involvement and on information and belief as to all other matters.

5. Defendant Moss Point is a local government entity organized under the laws of the State of Mississippi. The City contracts with a jail operated by Jackson County to detain its arrestees, the plaintiff Class members, who are subject to the City's post-arrest detention policies.

### **Factual Background**

#### **A. The Named Plaintiff's Arrest**

6. Chevon Thompson is a 33-year-old mother of three children. *See* Exhibit 1, Declaration of Chevon Elizabeth Thompson.

7. Ms. Thompson was arrested by Moss Point police on June 11, 2015. She was charged with misdemeanor offenses, including shoplifting, disorderly conduct, and resisting arrest.

8. Pursuant to Moss Point police department policy, Ms. Thompson was taken to jail and told that she would be released if she paid Moss Point \$3,200. She was told that she would be kept in jail unless she paid \$800 as bond for her disorderly conduct charge and \$1,200 for each of her other two charges.

9. Ms. Thompson is indigent. She has no significant assets or regular income. She has no bank account and owns no real property. She lives with her elderly mother. Her only source of recent income has been occasional low-paying odd jobs that she performed around the neighborhood.

10. Ms. Thompson has not seen a judicial officer since her arrest and was told by Moss Point officials and agents that she might be brought to court on Tuesday, June 16, 2015, five days after her arrest. However, because Moss Point court sessions are occasionally

cancelled, it is not clear that she will be brought to court at that time. Pursuant to City policy, however, the earliest that she could be brought to court for a first appearance is June 16, 2015.

**B. The City's Policies and Practices**

11. The named Plaintiff would be released immediately by Moss Point if she or someone acting on her behalf paid the amount of cash set by Moss Point.

12. The treatment of the named Plaintiff and other Class members is caused by and is representative of the City's post-arrest detention policies and practices.

13. As a matter of policy and practice, when officers in Moss Point make an arrest for a traffic or misdemeanor violation, officers inform the arrestee at booking that the person will be released immediately if the person pays money set by a fixed schedule.<sup>2</sup> The arrestee is told that the arrestee will remain in jail if the arrestee is not able to make that payment. Moss Point contracts with Jackson County to hold Moss Point arrestees at the Jackson County jail unless or until they pay their money bond to the City.

14. Because court is held only once per week by Moss Point, an arrestee too poor to buy her way out of jail could wait up to a week before any judicial proceedings. Because even those hearings are occasionally cancelled, an impoverished arrestee might spend even longer in jail before a first court appearance.

15. After an arrest, it is the policy of Moss Point officials to apply the secured "bail schedule," *see* Exhibit 2, which generally sets payment amounts between \$300 and \$2,250 depending on the offense of arrest. City officials do not deviate from that schedule.

16. Unlike many other cities and counties, Moss Point does not allow post-arrest release on recognizance or with an unsecured bond (in which a person would be released by

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<sup>2</sup> Arrestees are also told that they can contract with a private bonding company by paying what usually amounts to 10% of the scheduled amount, but many impoverished arrestees cannot afford even that amount. Moreover, private bonding companies are under no obligation to provide a bond and can refuse to pay any bond in their discretion.

promising to pay the scheduled amount if the person later does not appear). Instead, City officials require that the money payment amount be secured (i.e. paid up front before release).

17. Many of Moss Point's arrestees are released soon after arrest upon payment of the scheduled amount of money. Others remain detained for varying lengths of time until they or their families are able to borrow sufficient amounts of money or arrange for third-party payment. Many others, like the named Plaintiff, who are too poor even to find anyone to pay the money bond for them, are kept in jail at least until they are brought to court up to a week later.<sup>3</sup>

### **Class Action Allegations**

18. The named Plaintiff brings this action, on behalf of herself and all others similarly situated, for the purpose of asserting the claims alleged in this Complaint on a common basis.

19. A class action is a superior means, and the only practicable means, by which the named Plaintiff and unknown Class members can challenge the City's unlawful poverty-based post-arrest detention scheme.

20. This action is brought and may properly be maintained as a class action pursuant to Rule 23(a)(1)-(4) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.

21. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of those provisions.

22. The Plaintiff proposes one Class seeking declaratory and injunctive relief. The Declaratory and Injunctive Class is defined as: all arrestees unable to pay for their release pursuant to Moss Point's secured bail schedule who are or who will be in the custody of Moss Point.

#### **A. Numerosity. Fed. R. Civ. P. 23(a)(1)**

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<sup>3</sup> As a matter of policy, pattern, and practice, even after they are brought to court, arrestees are not given indigency hearings and no attempt is made by City prosecutors, City contract defense attorneys, or City judges to evaluate alternatives to money-based detention.

23. Each arrestee is presented with the City's standard money bond choice of pay or jail. Arrestees are held in jail for varying lengths of time depending on how long it takes them to make the payment that the City requires for their release.

24. Some arrestees are able to pay for release immediately. Others are forced to wait a day or more until they or family members can make the payment. Others are not able to pay or to find someone else to pay for them even after several days of detention.

25. The number of current and future arrestees subjected to this policy if it is not enjoined is well over one hundred. City jail records show that there are often several Moss Point arrestees every day who have not been able to pay for their release.

**B. Commonality. Fed. R. Civ. P. 23(a)(2).**

26. The relief sought is common to all members of the Class, and common questions of law and fact exist as to all members of the Class. The named Plaintiff seeks relief concerning whether the City's policies, practices, and procedures violate the rights of the Class members and relief mandating the City to change its policies, practices, and procedures so that the constitutional rights of the Class members will be protected in the future.

27. These common legal and factual questions arise from one central scheme and set of policies and practices: the City's post-arrest detention schedule. The City operates this scheme openly and in materially the same manner every day. The material components of the scheme do not vary from Class member to Class member, and the resolution of these legal and factual issues will determine whether all of the members of the class are entitled to the constitutional relief that they seek.

Among the most important, but not the only, common questions of fact are:

- Whether Moss Point has a policy and practice of using a "bail schedule" to determine the amount of money necessary to secure post-arrest release;

- Whether Moss Point requires that scheduled amount of money to be paid up front before it will release a person from jail;
- What standard post-arrest procedures Moss Point performs on misdemeanor arrestees; for example, whether Moss Point has any other alternate procedures for promptly releasing indigent people unable to afford a monetary payment.

28. Among the most important common question of law are:

- Whether a secured “bail schedule” setting standard amounts of money required up front to avoid post-arrest detention violates the Fourteenth Amendment’s due process and equal protection clauses.

**C. Typicality. Fed. R. Civ. P. 23(a)(3).**

29. The named Plaintiff’s claims are typical of the claims of the other members of the Class, and she has the same interests in this case as all other members of the Class that she represents. Each of them suffers injuries from the failure of the City to comply with the basic constitutional provisions: they are each confined in jail because they could not afford to pay the City’s standardized cash bond amount. The answer to whether the City’s scheme of policies and practices is unconstitutional will determine the claims of the named Plaintiff and every other Class member.

30. If the named Plaintiff succeeds in the claim that the City’s policies and practices concerning post-arrest detention violate her constitutional rights, that ruling will likewise benefit every other member of the Class.

**D. Adequacy. Fed. R. Civ. P. 23(a)(4).**

31. The named Plaintiff is an adequate representative of the Class because her interests in the vindication of the legal claims that she raises are entirely aligned with the interests of the other Class members, who each have the same basic constitutional claims. She is a member of the Class, and her interests coincide with, and are not antagonistic to, those of the other Class members.

32. There are no known conflicts of interest among members of the proposed Class, all of whom have a similar interest in vindicating their constitutional rights in the face of their unlawful treatment by their local government.

33. Plaintiffs are represented by attorneys from Equal Justice Under Law<sup>4</sup> and the Roderick and Solange MacArthur Justice Center at the University of Mississippi School of Law (“MacArthur Justice Center”),<sup>5</sup> who have experience in litigating complex civil rights matters in federal court and knowledge of both the details of the City’s scheme and the relevant constitutional and statutory law.

34. The efforts of Class counsel have so far included investigation of Moss Point’s money-based pretrial detention system, interviews of jail inmates and attorneys practicing in the area, consultation with local and national experts, and research regarding the legality of Moss Point’s secured money bail regime.

35. Class counsel have studied the way that post-arrest detention systems function in other cities and counties in order to investigate the wide array of lawful options in practice for municipal entities.

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<sup>4</sup> Equal Justice Under Law is a non-profit civil rights organization based in Washington, D.C. The organization is funded in part by the Harvard Law School Public Service Venture Fund.

Counsel from Equal Justice Under Law was recently lead counsel in a landmark federal civil rights class action lawsuit against the City of Montgomery for engaging in similar practices. In that case, the United States District Court for the Middle District of Alabama issued a preliminary injunction condemning and forbidding the City’s similar jailing of impoverished people with unpaid debts, and the case was successfully settled after the City agreed to compensate the Plaintiffs and to the entry of an injunction reforming its entire municipal debt-collection regime. *See Mitchell et al. v. City of Montgomery*, 14-cv-186 (M.D. Ala. 2014).

Counsel is also lead counsel in recent similar challenges to the fixed “bail schedule” schemes employed by the City of Clanton, Alabama, and the City of Velda City, Missouri. *See Varden et al. v. City of Clanton*, 15-cv-34 (M.D. Ala 2015); *Pierce et. al. v. City of Velda City*, 15-cv-570 (E.D. Mo. 2015). In each case, the City of Clanton and the City of Velda City agreed to end their use of a fixed cash bail system for new arrestees.

<sup>5</sup> The MacArthur Justice Center is a non-profit public interest law firm housed at the University of Mississippi. Undersigned counsel J. Cliff Johnson, the Director of the MacArthur Justice Center, has practiced law in Mississippi for more than 20 years and has litigated a wide variety of complex civil and criminal matters in state and federal court. Undersigned counsel Jacob W. Howard, Of Counsel to the MacArthur Justice Center, has practiced law in Mississippi since 2012 and has litigated civil rights and criminal cases at the trial, appellate, and post-conviction stages in state and federal court.



36. Class counsel also have experience litigating similar challenges in other jurisdictions and years of experience litigating complex and important cases in Mississippi federal courts.

37. As a result, counsel have undertaken significant efforts toward becoming intimately familiar with the City's scheme and with all of the relevant state and federal laws and procedures that can and should govern it. The interests of the members of the Class will be fairly and adequately protected by the named Plaintiff and her attorneys.

**E. Rule 23(b)(2)**

38. Class action status is appropriate because the City, through the policies, practices, and procedures that make up its post-arrest detention scheme, has acted in the same unconstitutional manner with respect to all class members. Moss Point has created and applied a simple scheme of post-arrest detention and release: it charges monetary sums typically ranging between \$300 and \$2,250 for every arrest. The City releases those who can pay and detains those who cannot. Impoverished arrestees who remain detained are eventually taken to court on the one day per week that the City holds court proceedings, which is usually Tuesday.

39. The Class therefore seeks declaratory and injunctive relief to enjoin the City from continuing in the future to detain impoverished arrestees who cannot afford money payments. Because the putative Class challenges the City's scheme as unconstitutional through declaratory and injunctive relief that would apply the same relief to every member of the Class, Rule 23(b)(2) certification is appropriate and necessary.

40. Injunctive relief compelling the City to comply with these constitutional rights will similarly protect each member of the Class from being subjected to the City's unlawful policies and practices. A declaration and injunction stating that the City cannot use a secured

money “bail schedule” 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.

41. Plaintiff seeks the following relief and hereby demands a jury in this cause for all matters so appropriate.

**Claims for Relief**

**Count One: Defendant Moss Point Violates Plaintiff’s Rights By Jailing Her Because She Cannot Afford A Money Payment Prior to a First Court Appearance.**

42. Plaintiff incorporates by reference the allegations in paragraphs 1-41.

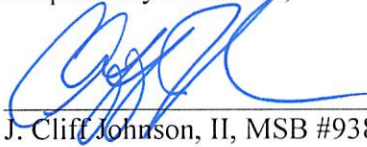
43. The Fourteenth Amendment’s due process and equal protection clauses have long prohibited keeping a person in jail because of the person’s inability to make a monetary payment. Defendant Moss Point violates Plaintiff’s rights by placing and keeping her in jail when she cannot afford to pay the amount of money set by the generic secured bail “schedule” used by Moss Point.

**Request for Relief**

WHEREFORE, Plaintiff and the other Class members request that this Court issue the following relief:

- a. A declaratory judgment that the Defendant City violates the named Plaintiff’s and Class members’ constitutional rights by jailing them and keeping them in jail when they cannot pay a generically set amount of money to secure release after an arrest;
- b. An order and judgment preliminarily and permanently enjoining Defendant Moss Point from enforcing the unconstitutional post-arrest money-based detention policies and practices against the named Plaintiff and the Class of similarly situated people that she represents;
- c. A judgment individually compensating the individual named Plaintiff for the damages that she suffered as a result of the City’s unconstitutional and unlawful conduct, including damages resulting from her confinement in jail;
- d. An order and judgment granting reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, and any other relief this Court deems just and proper.

Respectfully submitted,



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