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**Admitted pro hac vice*

**IN THE FEDERAL DISTRICT COURT
DISTRICT OF WYOMING**

**ALFREDO GUILLERMO
SANCHEZ, DAVID
CHRISTOPHER “CHRIS”
BALL, AND SEAN MARX,**

Plaintiffs,

v.

**BRIDGET HILL, Wyoming
Attorney General in her
official capacity, MARK
GORDON, Governor of
Wyoming in his official
capacity, MATT CARR, Sheriff
of Teton County, Wyoming, in**

Civil Case Number:

22-cv-47 (SWS)

(JURY TRIAL DEMANDED)

his individual and official capacity, SARA KING n/k/a SARA WEST, Director – Teton County 24/7 Sobriety Program, in her individual and official capacity, BILL WEST, Acting Director – Teton County 24/7 Sobriety Program in his individual and official capacity, DOUG RAFFELSON, CODY HADERLIE, MATT HARPER, and HEIDEE MCKENZIE, Teton County Deputy Sheriffs in their individual and official capacities, TETON COUNTY SHERIFF’S DEPARTMENT and BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF TETON,

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND DAMAGES

INTRODUCTION

1. The Fourth Amendment to the U. S. Constitution protects citizens of Wyoming from being subjected to unreasonable warrantless searches and seizures unless they fit within well-delineated, exceptional circumstances. Yet, the Wyoming 24/7 Sobriety Program (24/7 Program) does just that. The 24/7 Program unreasonably authorizes officers to

search a person without a warrant by taking breath, urine, skin-patch or saliva tests repeatedly—sometimes twice daily—over prolonged periods of time—sometimes weeks or even months—without a recognized exception to the search warrant requirement. The 24/7 Program also permits officers to arrest persons without a warrant or without other recognized exception to the arrest warrant requirement. An officer merely needs to sign a written statement that in his or her judgment, a violation of the 24/7 Program occurred, and then the officer is authorized immediately to arrest the person. Often persons are detained in jail for hours or days after a suspected violation of the Program before being released.

2. The Fourteenth Amendment to the U.S. Constitution prohibits the State of Wyoming from depriving citizens of their freedom and liberty through arrest and detention without due process of law. The 24/7 Program, however, fails to provide due process to those who are arrested for a violation of the Program. Further, in Teton County, Wyoming, a person ordered to participate in the Program who is 30 minutes late to testing, or, who is late to testing on three occasions is also arrested immediately. The officers, to justify the arrest, will charge the person believed to have violated the 24/7 Program with indirect “contempt of

court” under Wyoming Rule of Criminal Procedure 42 (Rule 42) while simultaneously ignoring the rule’s clear due process requirements, including its requirement to first obtain an arrest warrant, provide advance notice of the allegation of contempt, and an opportunity to file a responsive pleading denying the allegation of contempt.

3. Additionally, the Eighth Amendment to the U.S. Constitution prohibits the imposition of excessive, unreasonable bail conditions. The 24/7 Program, however, imposes the cost of enrollment and testing upon those ordered to participate, including upon indigent persons who qualify for court-appointed counsel. Indigent persons are not provided a hearing first to determine whether they can afford to pay the testing and enrollment fees or obtain transportation to testing twice daily. And, persons ordered to participate in the 24/7 Program are not permitted to be released from the program unless they obtain a substance abuse evaluation at their own expense, which is also costly. The result is that indigent persons spend a significantly longer amount of time on the 24/7 Program—sometimes several months versus a few weeks—because they cannot afford the cost to obtain a substance abuse assessment. Those who can afford to get the assessment quickly spend significantly less time on

the 24/7 Program; give far fewer tests; and spend much less money on testing fees than indigent persons.

4. The 24/7 Program has substantially eroded these constitutional rights belonging to all Wyoming citizens through legislation which has the intended purpose to prevent repeat crime related to substance abuse. Rather than accomplish this goal, however, the 24/7 Program, categorically, invades the daily lives and bodies of pretrial participants through burdensome, expensive and invasive bodily testing solely because they have been merely accused—but not yet convicted—of an alcohol or drug related offense.

5. And, the 24/7 program statutes authorize the unconstitutional incarceration of people arbitrarily and capriciously based on the unfettered, unsworn discretion of an officer.

6. Conversely, people accused of other violations of the law in Wyoming, even violent offenses, are not subjected to similar invasive requirements as a condition of their bond or pre-trial release. However, those ordered to participate in the 24/7 Program are required to sign a Participation Agreement before they can be released from jail agreeing to

participate in the 24/7 Program. They are, in essence, coerced to waive constitutional rights in exchange for their liberty.

7. The 24/7 Program has resulted in significant over-incarceration and punishment prior to conviction for a large number of Wyoming citizens. The program operates in five counties: Teton, Sheridan, Campbell, Fremont and Sweetwater. Between the months of October through December 2021, sixty-six (66) people in Teton County were required to provide testing under the 24/7 Program and a total of 2,105 warrantless alcohol and drug tests were administered during this time frame. The Wyoming 24/7 Program is unconstitutional and should be enjoined temporarily and permanently to avoid the continued violation of Plaintiffs' and all Wyoming citizens' rights.

FACTUAL BACKGROUND

8. This is an as-applied and facial constitutional challenge to the State of Wyoming's 24/7 Sobriety Program codified at Wyoming Statutes §§ 7-13-1703 through 7-13-1709 (Challenged Statutes) and Administrative Rule 015.0017, Chapters 1 and 2 pursuant to 42 U.S.C. § 1983.

9. Wyoming Statute § 7-13-1708 is broadly worded and authorizes a judge "upon a charge or offense for conduct committed while

intoxicated or under the influence of a controlled substance,” to enroll and participate in the 24/7 Program as a condition of pretrial release or bond. This includes, but is not limited to, charges for suspected first time DUI’s.

10. The 24/7 Program requires participants to submit to warrantless twice daily alcohol breath tests or other frequent saliva, patch or urine testing at the participant’s expense without any showing of probable cause to believe the participant has committed any crime before the administration of each test. Testing can span the course of several weeks or months before trial and lasts until and if a participant can obtain a substance abuse assessment.

11. If the participant fails to submit to a test or has a positive test, Wyoming Statute § 7-13-1709 expressly authorizes a peace officer to immediately arrest the participant without a warrant or without probable cause.

12. Wyoming Statute § 7-13-1709 states a peace officer merely needs to provide a “signed statement” that “[i]n the judgment of the peace officer, the participant violated release conditions” before immediately arresting the participant.

13. As a result of Wyoming Statute § 7-13-1708 and Wyoming Statute § 7-13-1709, warrantless searches and warrantless arrests of participants occur without probable cause or any constitutionally recognized exception to the warrant requirement as required by the Fourth Amendment.

14. Participants who are charged with suspected DUI's in Teton County must take twice daily breath tests administered by Teton County Sheriff's Department deputies in the morning between the hours of 6:00 a.m. and 7:00 a.m. and again at night between the hours of 9:00 p.m. and 10:00 p.m.

15. Saliva, skin and urine testing to detect the presence of drugs and alcohol have different daily telephone call requirements and other weekly or monthly testing schedules which are not applicable to these Plaintiffs.

16. Plaintiffs in this Action were court ordered to enroll as participants in the 24/7 Program prior to being released from jail as a condition of their Appearance/Performance Bond or as a condition of their Order for Release following their arrest for a suspected DUI.

17. Plaintiffs were also court ordered, as part of their Appearance Bond or Order for Release, “to submit to alcohol breath tests twice daily” without any designated location or time contained within the order itself. They were further instructed to contact the Director of the Teton County 24/7 Program by phone at a phone number provided to them in the Appearance Bond or Order for Release.

18. Plaintiffs’ Order of Release or Appearance Bond required Plaintiffs to submit to alcohol testing if an officer had reasonable suspicion.

19. Plaintiffs Order of Release or Appearance Bond authorized arrest of Plaintiffs upon issuance of a warrant upon probable cause of a suspected violation of any of the conditions of the Order for Release or Appearance Bond.

20. Plaintiffs were tested twice daily through breath tests without reasonable suspicion or probable cause that the Plaintiffs had consumed alcohol or drugs.

21. Plaintiffs were searched without a search warrant at the Teton County Jail through testing that was administered by the Teton County Sheriff’s Department Deputies in the morning and at night except on the

occasions when Plaintiffs were arrested for being late to testing by 30 minutes or more; or did not go to testing out of fear of being arrested for being late by 30 minutes or more; or, when they were excused from testing through a court ordered furlough.

22. Plaintiff Ball gave twice daily breath tests over a period of three (3) weeks while Plaintiff Sanchez gave twice daily breath tests over a period of over four months resulting in the two Plaintiffs cumulatively providing almost 300 breath tests.

23. Plaintiff Marx has been on the program since early January 2022 and, is a current 24/7 Program participant who is still required to give twice daily breath tests at this time.

24. No search warrants were sought or obtained by the Teton County Sheriff's deputies prior to obtaining breath tests from the Plaintiffs throughout their participation in the 24/7 Program.

25. Defendants Carr, King, West and the Teton County Sheriff's Department intentionally developed, adopted and implemented a policy, procedure and unofficial custom that included arresting Plaintiffs and pre-trial participants for arriving 30 minutes late to testing or being late to

testing on three (3) occasions without reasonable suspicion, probable cause or first obtaining a warrant.

26. This policy resulted in the Defendant Deputies intentionally and immediately arresting Plaintiffs for being late by 30 minutes or more to testing irrespective of whether the Plaintiffs had a positive test.

27. Plaintiffs were arrested and held for hours or days in jail by Defendant Deputies for arriving 30 minutes late to testing or not testing out of a fear of being arrested because they were going to be late to testing as a result of the policies, procedures and unofficial custom developed and implemented by Defendant Sheriff's Department, Carr, West and King, which were enforced by Defendant Deputies.

28. Other pretrial participants have likewise been arrested for being late to testing by 30 minutes or more or being late to testing on three occasions. One pretrial participant, A.M. was arrested without a warrant or probable cause for being approximately 2 hours late to testing on 3 occasions because he could not get transportation to the morning testing and he worked late at nights at a chef. Then, A.M. was arrested a fourth time during his evening test because he was late on three prior occasions. A.M. tested negative for alcohol on each occasion he was arrested.

29. S.C. is another pretrial participant who was arrested by Teton County Deputies without a warrant or probable cause for being more than 30 minutes late to testing. S.C. was held more 24 hours in jail after giving a negative alcohol test.

30. Each time Plaintiffs were arrested for being late to testing, Defendant Deputies did not have probable cause or an arrest warrant, nor did they attempt to obtain an arrest warrant by submitting an affidavit which is required expressly under Wyoming Rule of Criminal Procedure 42 to arrest someone for indirect contempt of court.

31. Defendant Deputies lacked legal authority to charge Plaintiffs with direct contempt of court under Wyoming Rule of Criminal Procedure 42 which is expressly reserved for use by judge's only by statute.

32. When Defendant Deputies arrested Plaintiffs, they did so without probable cause and solely based on the fact that Plaintiffs were late to testing or had not appeared for a test because the Plaintiffs feared they would be arrested as a result of being late to testing.

33. Defendant Deputies possessed the Orders of Release and Appearance Bonds and had knowledge of the orders contents prior to arresting Plaintiffs for indirect contempt of court.

34. On each occasion Plaintiffs were arrested, Defendant Deputies arrested them without probable cause based solely on an unsworn statement that the Defendant Deputies prepared or that another officer prepared, that in his or her judgment, Plaintiffs failed to submit to testing even though Plaintiffs were present and a breath test was actually administered to Plaintiffs on each occasion prior to their arrests.

35. Plaintiffs bond and release had already been established prior to each arrest for an alleged violation of the 24/7 Program, yet Plaintiffs were not provided an Order to Show Cause, an opportunity to file an Answer, or submit evidence at a hearing to contest the allegation of contempt of court before each arrest.

36. Plaintiffs each spent several hours and sometimes days in jail after they were arrested for an alleged violation of the 24/7 Program.

37. Another pretrial participant spent six days in jail after being arrested the night before Thanksgiving. His car broke down causing him to be late to testing by 30 minutes or more. When he was tested by Deputies, his test result was negative but he was still arrested and held in jail six days.

38. The cost to house a person for 24 hours in the Teton County jail is \$72.

39. No Wyoming statute, regulation or administrative rule expressly authorizes the warrantless arrest of participants, without probable cause, for being late to testing.

40. The Order for Release or Appearance Bond for each Plaintiff further does not expressly authorize an arrest for being late to testing, nor does it state when testing should take place, or where testing should take place.

41. The Order for Release or Appearance Bond for each Plaintiff is not reasonably clear.

42. The Constitution of the United States of America does not authorize the warrantless arrest of participants without probable cause to believe a crime has been committed, and arriving late to testing is not a crime.

43. Wyoming Rule of Criminal Procedure 42 for Contempt of Court requires an Affidavit be submitted to support an allegation of contempt of court by anyone other than a judge.

44. Wyoming Rule of Criminal Procedure 42 for Contempt of Court requires good reason to believe the accused will not appear in response to the Order to Show Cause before the judge may issue an Order of Arrest of the accused.

45. Defendants at no time submitted a sworn Affidavit or otherwise established good reason to believe Plaintiffs would not appear in response to an Order to Show Cause; nor did a judge issue an Order of Arrest of the Plaintiffs before Defendant Deputies arrested them for indirect contempt or a violation of the 24/7 Program.

47. Plaintiffs were arrested without a warrant for indirect contempt of court or for a violation of the 24/7 Program and held in jail cumulatively a total of approximately 10 ½ days pretrial.

48. The Challenged Statutes failed to inform Plaintiffs and ordinary citizens of the conduct to which they must conform in order to avoid a violation of the law in order to avoid arrest.

49. The Challenged Statutes are overly broad, not narrowly tailored to serve the purpose of the statutes; nor do the Challenged Statutes serve any legitimate government purpose.

50. The Challenged Statutes do not serve the purposes of bail in Wyoming which are to ensure the Plaintiffs' presence in court using the least restrictive means available.

51. As a result of, Ball spent 2 days in jail, Sanchez spent 2 ½ days in jail, and Marx spent approximately 4 days in jail for alleged violations of the 24/7 Program or contempt of court prior to conviction, but after they were released on an appearance bond or release order.

52. The Defendants arrests of Plaintiffs and all pretrial participants for being late to testing or late on three occasions is based solely upon the rules, policies or unofficial customs of the Teton County Sheriff's Department authorized by Defendants Hill and Gordon.

53. Plaintiffs bring this cause of action to redress the systemic, repeated and widespread violation of their constitutional rights, and those rights of all citizens in Wyoming, to remain free from unreasonable warrantless searches and warrantless seizures through the use of the 24/7 Program while on pretrial release.

54. Plaintiffs further bring this cause of action to redress and prevent the systemic and widespread violation of their constitutional

rights, and the constitutional rights of all other citizens of Wyoming, to be free from excessive bail conditions.

55. The Plaintiffs bring this cause of action because the Defendants' actions violate the Fourth, Eighth and Fourteenth Amendments to the U.S. Constitution.

JURISDICTION AND VENUE

56. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution.

57. Jurisdiction is proper in the United States District Court for the District of Wyoming under 28 U.S.C. §§ 1331 and 1343.

58. Venue is proper as the events giving rise to the cause of action in this lawsuit occurred within the District of Wyoming. Therefore, venue is appropriate in this judicial district under 28 U.S.C. § 1391.

59. Venue is proper for the individual Defendants Carr, all named Deputy Sheriffs, King, and West, under 28 U.S.C. § 1391 because they committed violations under color of law, acts, or omissions in the Wyoming District of the United States District Court.

60. Defendants' acts took place in the Wyoming District of the United States District Court that support Plaintiffs claims within Wyoming.

61. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure and the general legal and equitable powers of this Court.

PARTIES

62. Plaintiff Sanchez was arrested for a suspected DUI 2nd but later charged with a suspected DUI 3rd on May 9, 2021 in Teton County, Wyoming. Sanchez's case is pending in Teton County, Wyoming under case caption, *State of Wyoming v. Alfredo Guillermo Sanchez*, Case Number: CR 2021-204, in the Circuit Court of the Ninth Judicial District, Teton County, Wyoming. On May 10, 2021, Sanchez was granted a \$5,000 cash unsecured Appearance/Performance bond and ordered to enroll for participation in the 24/7 Program prior to his release from jail. Sanchez was ordered to submit to twice daily alcohol breath tests at the Teton County jail. Sanchez is a former participant in the 24/7 Program and was removed from the 24/7 Program on October 11, 2021, after completing a substance abuse assessment. Sanchez is subject to being placed back on

the 24/7 Program at any time prior to trial and has been arrested for a violation of the Program or contempt of court for the period time he had an order temporarily removing him from the Program to attend a funeral.

63. Plaintiff Ball was arrested for a suspected DUI 1st on February 25, 2021, which was pending in Teton County, Wyoming under case caption, *State of Wyoming v. David Christopher Ball*, Case Number: CR 2021-085, in the Circuit Court of the Ninth Judicial District, Teton County, Wyoming. As part of Ball's release conditions, Ball was ordered to enroll and participate in the 24/7 Program prior to release from jail. Ball was also ordered to give an alcohol breath test twice daily at the Teton County jail. Ball was removed from the Program on March 19, 2021, after completing a substance abuse assessment. Ball was sentenced on May 21, 2021 to 4 days in jail and granted credit for 4 days in jail which was jail time he served for the initial DUI arrest and for the alleged violations of the 24/7 Program. Ball also was sentenced to unsupervised probation for two years and is still on probation. Ball is subject to being placed back on the 24/7 Program at any time until his probation is completed under Wyoming Statute § 7-13-708(a).

64. Plaintiff Marx was arrested for a suspected DUI 2nd on January 2, 2022. Marx's case is currently pending in Teton County, Wyoming under case caption *State of Wyoming v. Sean Marx*, Case Number: CR 2022-003, in the Circuit Court of the Ninth Judicial District, Teton County, Wyoming. As part of his bail conditions, Marx was ordered to enroll for participation in the 24/7 Program prior to his release from jail. Marx is currently a participant in the 24/7 Program and is ordered to submit to twice daily alcohol breath tests under his release order. The testing is conducted at the Teton County jail.

65. Defendant Gordon is the Governor of the State of Wyoming. He is responsible, under Wyoming law, to "transact all necessary business with the officers of the government, civil," and is tasked with ensuring "that the laws be faithfully executed." Wy. Const. Art. 4, § 4. As such, Defendant Gordon, as the Governor of Wyoming, "shall formulate and administer the policies of, and shall exercise general supervision, direction and control over the executive branch of state government." Wyoming Statute § 9-1-201. Defendant Gordon had notice of the unlawful practices of Defendants Sheriff's Department, Carr, King, West, and Deputies. He is sued in his official capacity as Governor of the State of Wyoming.

66. Defendant Hill is the Attorney General of the State of Wyoming. Defendant Hill is the State's chief law enforcement officer and is responsible by law for prosecuting and defending the interests of the State of Wyoming in any court, any cause or matter, civil or criminal. Defendant Hill is required to "Represent the state in suits, actions or claims in which the state is interested in either the Wyoming supreme court or any United States court." Wyoming Statute § 9-1-603. Defendant Hill also exercises supervision over the state's prosecuting attorneys and had notice of the unlawful practices of Defendants Sheriff Department, Carr, King, West and Deputies prior to this Action. Id. Defendant Hill is sued in her official capacity.

67. Defendant Carr is the Sheriff of Teton County, Wyoming. Defendant Carr has the discretionary authority to determine whether the Teton County Sheriff's Department participates in the 24/7 Program and voluntarily chose to have the Teton County Sheriff's Department participate in the Program. Defendant Carr, by his voluntary choice to participate in the program, has a duty to enforce the 24/7 Program within Teton County, Wyoming. Defendant Carr was at all relevant times responsible for the maintenance, control, training, conduct and

supervision of law enforcement personnel employed by the Teton County Sheriff Department. Defendant Carr was also responsible for intentionally adopting and enforcing the law enforcement policies, practices, and unofficial customs of the Teton County Sheriff Department, including the 24/7 program once he adopted it for Teton County, including the policies, practices, and unofficial customs complained of herein. Defendant Carr is sued in his individual and official capacity.

68. Defendant Deputies Raffelson, Haderlie, Harper and Mckenzie (collectively Deputies) are Deputy Sheriffs employed by the Teton County Sheriff's Department during the times relevant to this Action. Defendant Deputies acted individually and within the scope and course of their employment with the Teton County Sheriff's Department. Defendant Deputies implemented and intentionally enforced the policies and practices complained of herein. Defendant Deputies are sued in their individual and official capacities.

69. Defendant King is the Director of the 24/7 Program in Teton County and Defendant West was the Acting Director of the 24/7 Program in Teton County. They were employed as such by the Teton County Sheriff's Department during all times relevant to this Action. King and

West were responsible for overseeing and implementing the 24/7 Program in its entirety. They, acting in concert with Defendants Carr and the Teton County Sheriff's Department, intentionally adopted and implemented the policies, procedures, and unofficial customs that are alleged in this Complaint. King and West acted both individually and within the scope and course of their employment with the Teton County Sheriff's Department and implemented and enforced the policies, practices, and unofficial customs complained of herein. Defendants King and West are sued in their individual and official capacities.

70. Defendant Teton County Sheriff's Department is organized under the laws of the state of Wyoming and is located at 180 South King Street, Jackson WY, 83001 and employs all named Defendant Deputies, Defendants King, West, and Carr. Defendant Sheriff's Department is tasked with implementation and enforcement of the 24/7 Program on a voluntary basis and is responsible for the protection of the life and property of citizens of Wyoming. Defendant Sheriff's Department is responsible for preserving the peace, seeking justice, acting as a public servant, providing a safe environment for its citizens and upholding the constitutional rights of all people.

FACTUAL ALLEGATIONS

I. Wyoming Statute § 7-13-1703 et. seq. and Administrative Rule 015.0017 Chapters 1 and 2.

71. The 24/7 Program, codified at Wyoming Statute § 7-13-1703 through § 7-13-1709 was passed by the Wyoming Legislature on March 7, 2014. The 24/7 Program was approved by the Governor of Wyoming on March 7, 2014 and it took effect on July 1, 2014. Under the 2014 enacted version of the Challenged Statutes, only persons arrested and charged with second and subsequent charges of offenses for conduct committed while intoxicated or under the influence of a controlled substance, including second DUI or drug offenses, probationers or parolees could be ordered to participate in the 24/7 Program.

72. On February 15, 2019, the Wyoming legislature amended the 24/7 Program statute Section 7-13-1708. Of significance to this Action, the amendment significantly enlarged the scope of the 24/7 Program's application to apply to any charge or offense for conduct committed while intoxicated or under the influence of a controlled substance. This means that first time alcohol and drug charges and offenses for suspected DUI could require someone to participate in the 24/7 Program.

73. The amended 24/7 Program statute, Section 7-13-1708, was approved by the Governor of Wyoming on February 18, 2019 and went into law on July 1, 2019.

74. The 24/7 Program's stated "purpose ... is to reduce the number of repeat crimes that are related to substance abuse by monitoring an offender's sobriety through intensive alcohol and drug testing and immediate and appropriate enforcement of violations." **Exhibit 1, W.S. § 7-13-1703.**

75. Each Wyoming county, through its sheriff, is permitted—but is not required—to implement the 24/7 Program in their county under Wyoming Statute § 7-13-1704. If a sheriff chooses to implement the Program in their county, the statute requires the sheriff to “establish the testing locations and times for his county but shall have at least one (1) testing location and two (2) daily testing times approximately twelve (12) hours apart unless the sheriff utilizes a remote electronic alcohol monitoring device” **Exhibit 2, W.S. § 7-13-1704.**

76. Sheriffs are not, however, expressly authorized by the 24/7 Program to create their own rules for arresting participants for arriving late to testing.

77. Defendants Carr and Teton County Sheriff's Department voluntarily chose to implement the 24/7 Program in Teton County, Wyoming as authorized by Wyoming Statute § 7-13-1704. Carr and the Sheriff's Department use one testing location at the Teton County jail located at 175 S. Willow Street, Jackson, Wyoming. Teton County Sheriff's Department provides two daily testing times between the hours of 6:00 a.m. and 7:00 a.m. and between the hours of 9:00 p.m. and 10:00 p.m.

78. As it relates to the 24/7 Program, the Attorney General is required, by statute, to "adopt rules to implement this article," which "[p]rovide for the nature and manner of testing and the procedures and apparatuses to be used for testing," and to establish testing fees. **Exhibit 3, W.S. § 7-13-1705.**

79. The 24/7 Program statutes, do not, however, grant the Attorney General the power to authorize or instruct sheriffs to create their own rules to arrest participants for being late to testing.

80. Defendant Carr is required, by statute, "to collect and transmit testing fees to the state treasurer to be credited to the 24/7 sobriety program account created by Wyoming Statute § 7-13-1707. The fees shall

be distributed as provided by this article and the rules.” **Exhibit 4, W.S. § 7-13-1706.**

81. Defendant Hill is required, by statute, to “return no less than seventy-five percent (75%) of the remaining fees collected under Wyoming Statute 7-13-1706 to the sheriff who collected the fee. The sheriff shall utilize the funds only to administer or enhance the county’s 24/7 sobriety program.” **Exhibit 5, W.S. § 7-13-1707.**

82. Therefore, upon information and belief, Defendant Teton County Sheriff’s Department received payment for operation of the 24/7 Program in an amount equal to 75% of the amount it collected from Participants, including the amounts paid by the Plaintiffs, to enroll and participate in the Program.

83. Wyoming Statute § 7-13-1708 reads:

§ 7-13-1708. Authority of court to order participation in program.

(a) Upon a charge or offense for conduct committed while intoxicated or under the influence of a controlled substance, a court may order participation in the program as a condition of pretrial release, bond, suspension of sentence, probation or other conditional release.

(b) Participation in the program may be imposed as a condition of release under the Wyoming Rules of Criminal Procedure, including rules 46.1 and 46.2.

(c) Before ordering participation in the program, a court may require the person to undergo a substance abuse assessment. The cost of the substance abuse assessment shall be paid by the offender.

(d) The state board of parole may require a parolee to participate in the program as a condition of parole.

Exhibit 6, W.S. § 7-13-1708.

84. As it pertains to the 24/7 Program, “participation” is defined as “the person ordered to participate submits to and passes all required tests....” **Exhibit 7, W.S. § 7-13-1702.**

85. Plaintiffs are “participants” in the 24/7 Program as defined by Wyoming Statute § 7-13-1702.

86. Defendant Hill enacted Administrative Rule 0015.0017 Chapters 1 and 2 which provides for the nature and manner of testing and the procedures and apparatuses to be used for testing.

87. Administrative Rule 015.0017 Chapter 2 specifies alcohol testing is to be administered twice daily “not less than ten (10) hours and not more than (14) hours between each test,” through a “device designed to detect the presence of alcohol in the test subject’s breath, which need

not comply with the WY Dept. of Health's Rules and Regulations for Chemical Analysis for Alcohol Testing." **Exhibit 8 - Wy. Admin. Rule 015.0017 Ch. 2.**

88. Administrative Rule 0015.0017 Chapters 1 and 2 do not authorize the arrest of participants for being late to testing under the 24/7 Program.

89. No Wyoming statute or local ordinance expressly authorizes the arrest of participants for being late to testing under the 24/7 Program.

90. The Challenged Statutes and Administrative Rule 015.0017, Chapter 2, on their face, authorize warrantless searches of participants in the 24/7 Program without any constitutionally recognized exception to the search warrant requirement and without probable cause or reasonable suspicion.

91. The Plaintiffs were required to submit to Defendants Carr, King, West, Sheriff's Department and Defendant Deputies twice daily at the jail to provide warrantless breath tests over the course of several weeks or several months. Plaintiff Marx is still required to submit to warrantless breath tests twice daily currently and is a participant in the 24/7 Program.

92. Wyoming Statute § 7-13-1709 reads:

§ 7-13-1709. Apprehension of violators.

(a) Upon the failure of a person to submit to a test under the program or upon a positive test for alcohol or controlled substance in violation of the program, a peace officer or a probation and parole agent shall complete a written statement establishing the person, in the judgment of the officer or agent, violated a condition of release by failing to submit to or pass a test. A peace officer shall immediately arrest the person without warrant after completing or receiving the written statement.

(b) A person taken into custody under this section shall appear before a court within a reasonable time and shall not be released unless the person has made a personal appearance before a court.

Exhibit 9, W.S. § 7-13-1709.

93. Wyoming Statute § 7-13-1709 authorizes warrantless arrest of a participant if a peace officer believes a participant failed to submit testing or upon a positive test, and upon the completion of a written statement that in the officer's personal judgment, a violation of release conditions occurred instead of based upon probable cause to believe that a crime was committed.

94. The warrantless arrests of Plaintiffs by Defendant Deputies for indirect contempt of court related to alleged violations of the conditions of

release under the 24/7 Program were made pursuant to Wyoming Rule of Criminal Procedure 42, but the arrests lacked probable cause.

95. Each time the Plaintiffs were arrested, they were detained for hours or days in jail and deprived of their liberty before a hearing was held after their bond order was issued. In the case of Sanchez, on one occasion, he was arrested after an order excused him from testing. Sanchez was not released from custody until the order was received by the Sheriff's Department.

96. Plaintiffs informed the arresting officers of the reasons for being late to testing but were not provided sufficient notice under Wyoming Statute 7-13-1709 of what conduct they needed to conform to in order to avoid an arrest, nor did their bond order sufficiently inform of them of the conduct that would result in an arrest.

II. Teton County Sheriff's Department and Carr's Intentional Adoption and Enforcement of Policies, Procedures, and Unofficial Customs Related to the 24/7 Program.

97. The Sheriff's Department employs Carr, Deputies, King and West who were employees of the Sheriff's Department at all times material to this lawsuit.

98. The Sheriff's Department and Carr voluntarily elected to participate in the 24/7 Program, causing the Program to exist and be enforced pursuant to the official policy of Teton County.

99. Carr intentionally, motivated by evil motive or intent, recklessly, or with callous indifference to the federal rights of others and the constitutional violation ensuing by his acts, created, promulgated, implemented, or was responsible for the continued operation of a policy or unofficial custom, the enforcement of which, by Carr or his subordinates, subjected Plaintiffs or caused Plaintiffs to be subjected to the deprivation of any rights secured by the Constitution. This policy included, but was not limited to, searching, arresting and detaining the Plaintiffs without a warrant, or probable cause, and arresting and detaining Plaintiffs in jail for arriving 30 minutes late to testing or for being late to testing on three (3) occasions.

100. The Sheriff's Department, Carr, King, West and Deputies intentionally implemented the 24/7 Program's statutes and took action that was ostensibly authorized by the 24/7 Program but not authorized by Wyoming Rule of Criminal Procedure 42.

101. The Sheriff's Department, Carr, King, West and Deputies intentionally implemented, enforced and otherwise took action that was ***not*** authorized by the 24/7 Program by implementing a policy and custom to arrest Plaintiffs without probable cause or a warrant for being late to testing by 30 minutes or more or being late to testing on three (3) occasions.

102. The Sheriff's Department, Carr, King, West and Deputies searched Plaintiffs and other participants of the 24/7 Program repeatedly, sometimes twice daily without a warrant, reasonable suspicion, probable cause, or other constitutionally recognized exception to the warrant requirement through the breath test they administered over a period of weeks and months.

103. Warrantless searches by the Sherriff's Department, Carr, King, West and Deputies without reasonable suspicion, probable cause or a search of Plaintiff Marx are ongoing and continuing presently.

104. The Sheriff's Department, Carr, King, West and Deputies arrested Plaintiffs and other participants of the 24/7 Program for being late to testing or for being late on three (3) occasions which is not expressly

authorized by statute, regulation, administrative rule or Plaintiffs' bond orders expressly.

105. All actions taken by the Sheriff's Department, Carr, King, West and Deputies against Plaintiffs were pursuant to policies and customs intentionally created and enforced by Sheriff's Department, Carr, King and West.

106. Wyoming Rule of Criminal Procedure 42 requires the Sheriff's Department, Carr, King, West and Deputies to submit an affidavit and obtain an arrest warrant for an indirect contempt of court charge upon showing good reason exists to believe the Plaintiffs will not appear in court to answer for an Order to Show Cause.

107. The Sheriff's Department, Carr, King, West and Deputies failed to submit a sworn Affidavit to a judge showing that good reason existed to believe Plaintiffs would not appear in court to answer for an Order to Show Cause and they lacked probable cause to submit a sworn Affidavit.

108. The Sheriff's Department, Carr, King, West and Deputies lacked probable cause and failed to obtain an arrest warrant for an

indirect contempt charge against Plaintiffs on each occasion Plaintiffs were arrested for an alleged violation of the 24/7 Program.

109. Prior to each arrest of the Plaintiffs no Show Cause Orders were issued for indirect contempt of court related to an allegation of a violation of the 24/7 Program or failure to submit to testing.

110. Prior to each arrest of Plaintiffs and pretrial participants for being late to testing or late on three occasions, the Sheriff's Department, Carr, King, West and Deputies lacked probable cause.

111. Prior to each unlawful search and arrest of Plaintiffs, their liberty interests had been restored through issuance of an Appearance Bond or Release Order.

III. Sheriff's Department, Carr, King, West and all named Deputies.

112. The Sheriff's Department employed Carr, King, West, and Deputies who enforced the policies, practices, procedures and unofficial customs intentionally created by the Sheriff's Department, Carr, King and West, which deprived the Plaintiffs of constitutional rights.

113. The Sheriff's Department intentionally approved, created and developed policies, practices, procedures and unofficial customs related to

the 24/7 Program that were enforced and implemented by Carr, King, West and Deputies which deprived Plaintiffs of constitutional rights.

114. Defendants Carr, King and West intentionally approved, created, implemented and enforced policies, practices, procedures and unofficial customs related to the 24/7 Program that deprived Plaintiffs and all other pretrial participants of constitutional rights.

115. The Sheriff's Department, Carr, King and West intentionally approved, created, implemented and enforced policies, practices, procedures and unofficial customs authorizing warrantless arrests for being late to testing by 30 minutes or for being late to testing on three (3) occasions that resulted in the violation of constitutional rights of the Plaintiffs and pretrial participants.

116. The policies, practices and procedures intentionally developed by the Sheriff's Department, Carr, King and West that authorized warrantless arrests of Plaintiffs and pretrial participants for being late to testing by 30 minutes or for being late to testing on three (3) occasions are not expressly or implicitly authorized by the Wyoming 24/7 Program, the Challenged Statutes or Administrative Rule 0015.0017, Chapters 1 and 2.

117. Deputies, Carr, King and West's policies, practices, procedures and unofficial customs intentionally adopted by them along with the Sheriff's Department, to make arrests of participants for indirect contempt of court without an affidavit or warrant was in violation of the constitutional rights of the Plaintiffs and pretrial participants.

118. The Deputies assisted directly or indirectly in the adoption of the policies, practices, procedures and unofficial customs adopted by the Sheriff's Department, Carr, King and West.

119. The arrests and detentions of the Plaintiffs by the Sheriff's Department, Carr, King, West and Deputies for being late to testing or not appearing for testing out of a fear of being arrested, were motivated by or were a direct or indirect result of the policies, practices, procedures and unofficial customs approved and adopted by the Sheriff's Department, Carr and King.

120. The arrests and detentions of the Plaintiffs and pretrial participants without probable cause were also made without an affidavit or warrant for indirect contempt of court under Wyoming Federal Rule of Criminal Procedure 42 which resulted in the violation of the constitutional rights of the Plaintiffs and other pretrial participants.

IV. Plaintiff Sanchez.

121. Sanchez was searched twice daily through alcohol breath tests administered between the hours of 6:00 a.m. and 7:00 a.m. and again between the hours of 9:00 p.m. and 10:00 p.m. by Deputies, the Sheriff's Department and Carr without a search warrant on these dates:

- May 12, 2021 through the morning of June 4, 2021
- June 7, 2021 through July 1, 2021
- July 7, 2021 through August 22, 2021
- The evening of August 29, 2021 through October 11, 2021

122. Sanchez was excused by court order from testing all other dates except for on May 16, 2021, when Sanchez missed an evening test after oversleeping one hour. He was fearful of being arrested for being one hour late so Sanchez did not go in for testing but called the Sheriff's Department first to tell them he had overslept and was informed he would be arrested if he came to the jail for testing late.

123. Sanchez gave approximately 268 alcohol breath tests to the Sheriff's Department, Carr, King, West and Deputies as a participant in the 24/7 Program. Sanchez was never presented with a warrant prior to a test.

124. Sanchez was ordered to appear twice daily at the jail over the span of almost five (5) consecutive months to allow Carr, King, West and Deputies to administer breath tests to him.

125. Sanchez did not have the right to refuse to submit to a breath test without being arrested. Sanchez never voluntarily consented to such mandatory testing or searches, but rather was compelled to enroll in the program by court order as a condition of his release from pretrial incarceration.

126. Sanchez was arrested for being late to testing or for not taking a test even after he had been temporarily removed from the Program to by court order and was not required to submit to testing.

127. Sanchez was not sufficiently informed of the conduct to which he was required to conform to prevent an arrest for a violation of the program because the Challenged Statutes are vague and overly broad and while he gave a mitigating reason to deputies before his arrest, Sanchez was not provided an opportunity to meaningfully contest the allegation of contempt of court for a violation of the 24/7 Program before being arrested by Deputies Raffelson and Mckenzie.

128. Sanchez was arrested on May 16, 2021, by Deputy Raffelson and on August 30, 2021 by Deputies Raffelson and Mckenzie for being late to testing or not taking a breath test during the scheduled testing hours.

129. Deputies Raffelson and Mckenzie did not prepare an affidavit prior to arresting Sanchez on May 16, 2021, or prior to arresting Sanchez on August 30, 2021 and they lacked probable cause to arrest Sanchez on both occasions.

130. Deputies Raffelson and Mckenzie did not obtain an arrest warrant nor did they have probable cause prior to arresting Sanchez on May 16, 2021 or prior to arresting Sanchez on August 30, 2021.

131. On May 16, 2021 and August 30, 2021, Deputies cited Sanchez with contempt of court under Wyoming Rule of Criminal Procedure 42.

132. On Saturday night, May 15, 2021, Sanchez overslept and missed the designated 1-hour window to appear and take the breath test. Upon awaking, he called the Teton Sheriff's Department around 11:00 p.m. to ask if he could come take the breath test. Sanchez was advised by an unknown deputy on the telephone that Sanchez would be arrested if he came to the testing location at the jail to give a breath test because he would be approximately one hour late. Rather than spend all weekend in

jail, Sanchez waited until Sunday morning May 16, 2021 around 11:35 a.m. to take a breath test. Sanchez's breath test was negative for alcohol but he was immediately arrested anyway, for not taking the test Saturday between the hours of 9:00 p.m. and 10:00 p.m. or Sunday between 6:00 a.m. and 7:00 a.m.

133. Even though the breath test Sanchez provided Sunday May 16, 2021 was negative for the consumption of alcohol, Sanchez was arrested by Defendants Raffelson and Mckenzie without a warrant or probable cause.

134. On May 16, 2021, Sanchez was arrested, strip-searched and held in jail until he had a court hearing on the following day, Monday May 17, 2021.

135. Sanchez was placed back into the 24/7 Program at the hearing by the Hon. Judge Radda on May 17, 2021, ordered to submit again to twice daily testing at Sanchez's own expense and released from jail in the afternoon.

136. Sanchez spent 2 days and 1 night in jail after his arrest at around 11:30 a.m. on Sunday May 16, 2021, until the time of his release from jail around 4:00 p.m. on Monday May 17, 2021.

137. Sanchez was arrested a second time without a warrant or probable cause on August 30, 2021 for not testing during the week of August 23, 2021 through August 29, 2021 despite Sanchez having a court-ordered furlough excusing him from testing to attend the funeral of a family member.

138. On August 30, 2021, Sanchez went to the Teton County jail for testing at 6:45 a.m. in compliance with his court-ordered furlough.

139. At the jail Sanchez was immediately arrested by Deputies Raffelson and Mckenzie. Deputy Raffelson threw Sanchez against the wall during the arrest, causing Sanchez to experience a panic attack.

140. Sanchez explained to Deputies Raffelson and Mckenzie that he had a furlough excusing him from testing the previous week.

141. Deputies Raffelson and Mckenzie proceeded to arrest, book and detain Sanchez before they verified the existence of a furlough order.

142. Sanchez was handcuffed, detained and placed in a locked jail cell restricting his liberty all without probable cause and without a warrant where Sanchez remained in a locked observation cell while he experienced the panic attack.

143. Sanchez spent 4 ½ hours in jail following the warrantless arrest on August 30, 2021, by Deputies Raffelson and Mckenzie before he was released after they received a copy of his order for furlough.

144. Sanchez missed work due to the arrest by Deputies Raffelson and Mckenzie on August 30, 2021.

145. When Sanchez was released by Deputies Raffelson and Mckenzie, Sanchez was told by Deputy Mckenzie she would arrest him if he tried to drive his vehicle even though Sanchez had a valid work driver's permit.

146. Sanchez walked home after his release from jail on August 30, 2021, to avoid yet another arrest by Deputy Mckenzie.

147. Sanchez was required to appear twice daily at the Teton County jail to give a breath test over the span of almost five (5) months.

148. Sanchez paid \$30 for enrollment into the 24/7 Program and paid \$2 per test thereafter.

149. Sanchez sustained lost wages from his employment due to testing and arrests for alleged violations of the 24/7 Program.

150. Sanchez suffered emotional distress, trauma, embarrassment, humiliation, damages, and harm as a result of the repeated warrantless searches and warrantless arrests.

151. The arrests of Sanchez described above were made without a warrant, without recognized constitutional exception and without probable cause.

152. Sanchez was not afforded sufficient opportunity to conform his behavior to that which would prevent his arrest due to the Challenged Statutes' vagueness and over-breadth and while he gave a mitigating reason to deputies prior to his arrest, Sanchez was not provided meaningful opportunity to contest the allegations of contempt of court before he was arrested and detained.

153. Sanchez's Appearance Bond was not sufficiently clear to inform Bond of the actions that would violate the order and result in his arrest in order for him to conform his behavior.

V. Plaintiff Ball.

154. Ball was searched between the dates of February 26, 2021 and March 19, 2021 by Carr and Deputies who gave Ball alcohol breath tests

at the Teton County jail under the 24/7 Program, which were all negative for alcohol consumption.

155. Ball was arrested on February 28, 2021 and on March 8, 2021 by Deputies Harper and Haderlie for being late to testing by 30 minutes or more or for missing tests out of fear of being arrested due to being late.

156. On two occasions, Ball overslept in the morning due to his late work hours and consequently woke up after 7:00 a.m. On both occasions, he was arrested for indirect contempt of court under Wyoming Rule of Criminal Procedure 42.

157. On February 28, 2021 Ball was late by 30 minutes or more to testing due to over-sleeping unintentionally.

158. Ball worked nights at a local resort and restaurant until late into the evening or early morning hours.

159. On February 28, 2021, at 7:15 a.m. Ball awoke and called the Teton County Sheriff's Department to see if he could still take a breath test. An unknown deputy told him he would be immediately arrested if he came to the jail to test so Ball decided to wait to go in for testing later in the day since he was going to be arrested either way.

160. Rather than spend the entire day in jail, Ball went in for testing that night at 9:50 p.m. whereupon Ball was immediately arrested for missing the morning test and was charged with indirect contempt of court. Ball tested negative for alcohol consumption on February 28, 2021.

161. The arresting deputies did not prepare an affidavit or obtain an arrest warrant prior to arresting Ball for indirect contempt of court. The arresting deputies also lacked probable cause to arrest Ball on February 28, 2021 without a warrant.

162. On February 28, 2021, Ball spent 1 night and 1 day in jail and was released the following day on March 1, 2021, after Ball attended a court hearing.

163. Ball was arrested a second time on March 8, 2021, for an alleged violation of the 24/7 Program and cited for indirect contempt of court. Ball overslept because his cell phone battery died so his alarm did not go off. Rather than spend the entire weekend in jail, Ball went to the jail on March 8, 2021, at around 9:58 a.m. to take a breath test.

164. Ball gave a negative breath test on March 8, 2021, but was arrested anyway, for missing the breath testing on March 6 and March 7, 2021.

165. The arresting deputies did not prepare an affidavit or obtain an arrest warrant prior to arresting Ball for indirect contempt of court and lacked probable cause or other recognized constitutional exception to arrest Ball on March 8, 2021 without a warrant.

166. On March 8, 2021, Ball spent 1 day in jail and was released following a court appearance.

167. Ball spent 2 days in jail and 1 night in jail total for these warrantless arrests.

168. Ball cumulatively gave 33 warrantless breath tests over 21 days.

169. After each arrest for an alleged violation of the 24/7 Program, Ball was strip searched and detained in a jail cell where his freedom, rights and liberties were restricted substantially.

170. Ball was not afforded sufficient opportunity to conform his behavior to that which would prevent his arrest due to the Challenged Statutes' vagueness and over-breadth and while he gave a mitigating reason to deputies prior to his arrest, Ball was not provided meaningful opportunity to contest the allegations of contempt of court before he was arrested and detained.

171. Ball's Release Order was not sufficiently clear to inform him of the actions that would violate the order and result in his arrest in order for him to conform his behavior.

172. Ball paid \$30 for the enrollment fee into the 24/7 Program and testing fees of \$2 per test.

173. Ball sustained lost wages due to arrests for being late to testing and being arrested for it; or having to submit to twice daily testing.

174. Ball suffered emotional distress, trauma, embarrassment, humiliation, damages, and harm as a result of the repeated warrantless searches and arrests.

VI. Plaintiff Marx

175. Marx was ordered to enroll and participate in the 24/7 Program in early January 2022 and is a current participant of the 24/7 Program.

176. Marx is currently searched twice daily through alcohol breath tests administered between the hours of 6:00 a.m. and 7:00 a.m. and again between the hours of 9:00 p.m. and 10:00 p.m. at the Teton County jail.

177. Marx was required to pay a \$30 fee to be enrolled in the 24/7 Program and has paid \$2 per breath test since that time.

178. Marx has been arrested once for arriving over 30 minutes late to a breath test.

179. Following this arrest he spent approximately two days in jail before attending a hearing at which he was ordered back on the 24/7 Program.

180. During Marx's time in the 24/7 Program he has had no positive alcohol tests.

181. Marx was unable to conform his actions to avoid arrest and violation of the Challenged Statutes due to their vagueness and overbreadth.

182. Marx's Appearance Bond was not sufficiently clear to inform him of the requirements and actions he needed to take to avoid being arrested for a violation of the order.

183. Marx gave mitigating reasons to deputies regarding his lateness to testing, but he was not provided meaningful opportunity to contest the allegations of a violation of the 24/7 Program before his arrest.

183. Marx suffered emotional distress, trauma, embarrassment, humiliation, damages, and harm as a result of the repeated warrantless

searches and arrests made without probable cause or other exception to the warrant requirement.

184. Marx has sustained lost wages, loss of employment, loss of his health insurance due to the twice daily testing and arrests described above.

COUNT 1
DECLARATORY JUDGMENT
FOURTH AMENDMENT WARRANTLESS SEARCHES
(ALL DEFENDANTS)

185. Plaintiffs restate and incorporate all prior paragraphs as if set forth fully herein.

186. The Challenged Statutes authorize frequent, repetitive warrantless searches without reasonable suspicion or probable cause over a prolonged period of days, weeks and months resulting in significant intrusion into the privacy rights of the Plaintiffs and all other pretrial participants on a daily, weekly and monthly basis depending on the type of testing ordered.

187. The 24/7 Program violates the rights afforded Plaintiffs and pretrial participants under the Fourth Amendment “to be secure in their persons, ... against unreasonable searches and seizures,” and violates the

Fourth Amendment's mandate that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV.

188. The 24/7 Program's warrantless searches conducted through each test, were individually without probable cause and as such, "are per se unreasonable ... subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967).

189. There exists no established and well-delineated exception to the search warrant requirement that would apply to the searches of the Plaintiffs or other pretrial participants because no exceptions permit categorical warrantless searches for general crime prevention that seeks to uncover evidence by law enforcement.

190. The 24/7 Program violated the Plaintiffs' right to remain free from unreasonable, warrantless searches conducted without probable cause under the Fourth Amendment to the United States Constitution.

191. Facially, the Challenged Statutes contain no constitutionally permissible standard or exception to the warrant requirement to meaningfully restrict the unfettered discretion of law enforcement for a search of Plaintiffs or pretrial participants.

192. The Challenged Statutes are vague and fail to sufficiently establish a constitutional standard to guide law enforcement to avoid arbitrary enforcement.

193. Under no set of circumstances would a warrantless search without probable cause of the Plaintiffs or other pretrial participants twice daily be permitted that meets the reasonableness standard under the Fourth Amendment.

194. The 24/7 Program is a general crime prevention program that fails to meet the “special needs” exception to the warrant requirement. Berger v. New York, 388 U.S. 41, 54 (1967).

195. The 24/7 Program’s programmatic need, according to the stated purpose, is to prevent repeat alcohol and drug crimes and it is not regulatory in nature. Solid Waste Dep't Mechanics v. City of Albuquerque, 156 F.3d 1068, 1072 (10th Cir. 1998).

196. As applied to the Plaintiffs, Carr, King, West, Sheriff’s Department and Deputies repeated and, in the case of Plaintiff Marx who is still on the Program, continued warrantless searches of the Plaintiffs as participants of the 24/7 Program without a recognized exception to the

search warrant requirement or probable cause amounted to, and continues to amount to, unconstitutional, illegal searches.

197. Exigent circumstances did not exist at the time Carr, King, West, Sheriff's Department and the Deputies conducted warrantless breath tests of the Plaintiffs without probable cause. Nor do exigent circumstances currently exist to justify the continued warrantless searches of Plaintiff Marx.

198. Plaintiffs were compelled to enroll in the 24/7 Program by a court order and did not freely or voluntarily consent to participate.

199. Under the totality of the circumstances, Plaintiff's privacy rights, liberty rights and presumption of innocence are not diminished at the pretrial stage and these rights outweigh any reason offered by the State to justify the warrantless searches of Plaintiffs. United States v. Scott, 450 F.3d 863, 864 (9th Cir. 2006).

200. Defendants caused Plaintiffs to sustain loss of liberty, emotional, mental and physical harm through their actions described above thus depriving them of fundamental rights protected under the U.S. Constitution.

201. King, West, Carr, Sheriff's Department and Deputies acted—and in the case of Plaintiff Marx are continuing to act—intentionally, recklessly, willfully, wantonly, and in disregard of the constitutional rights of the Plaintiffs by their actions described above.

COUNT 2
DECLARATORY JUDGMENT
FOURTH AMENDMENT WARRANTLESS ARREST
(ALL DEFENDANTS)

202. Plaintiffs restate and incorporate all prior paragraphs above as if set forth fully herein.

203. A warrantless arrest is permitted only when an officer has probable cause to believe that a person committed a crime or when specific circumstances are present, none of which applied to the Plaintiffs in this Action. Vernonia School Dist. v. Acton, 515 U.S. 646, 654 (1995).

204. Wyoming Rule of Criminal Procedure 42 requires an Affidavit be submitted to a judge to support a Contempt of Court charge and an order for arrest must be issued by a judge prior to an arrest for indirect contempt of court.

205. Wyoming Statute § 7-13-1709 and Administrative Rule 0015.0017, Chapter 2 both purport to facially authorize warrantless arrests without a stated exception to the arrest warrant requirement.

206. Facially, the Challenged Statutes contain no constitutionally permissible standard to meaningfully restrict the unfettered discretion of law enforcement for a warrantless arrest of Plaintiffs or other pretrial participants of the 24/7 Program nor do the Challenged Statutes contain any constitutionally recognized exception to the arrest warrant requirement to avoid arbitrary enforcement of the Challenged Statutes by law enforcement.

207. Facially, the Challenged Statutes are vague and overbroad such that it provides no constitutional guidance to law enforcement and is unconstitutionally vague.

208. Deputies did not act lawfully when they arrested Plaintiffs or other pretrial participants for failing to appear for a test, for being late to testing by 30 minutes or for being late on three (3) occasions to testing.

209. Under no set of circumstances would a warrantless arrest of the Plaintiffs or pretrial participants without probable cause for being late to testing satisfy the Fourth Amendment to the U.S. Constitution because Wyoming Rule of Criminal Procedure 42 mandates an arrest warrant be sought before an arrest is made for contempt of court.

210. The warrantless arrests of the Plaintiffs and all other pretrial participants for alleged violations of the 24/7 Program violated the Fourth Amendment to the U. S. Constitution.

211. The repeated arrests of Plaintiffs and other 24/7 Program pretrial participants by Carr, King, West and Deputies were an “execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy,” which, “inflict[ed] the injury that the government as an entity is responsible under § 1983,” against the Plaintiffs. Monell v. Dept. of Social Services, 436 U.S. 658, 694 (1978).

212. Carr, King, West and Deputies caused emotional, mental, and physical harm to the Plaintiffs and to other pretrial participants through their actions described above.

213. Carr, King, West and Deputies acted intentionally, recklessly, callously, wantonly and in deliberate disregard of the rights of the Plaintiffs.

COUNT 3
DECLARATORY JUDGMENT
FOURTEENTH AMENDMENT DUE PROCESS
(ALL DEFENDANTS)

214. Plaintiffs restate and incorporate all prior paragraphs above as if set forth fully herein.

215. The Challenged Statutes and administrative rules violate the Due Process Clause of the Fourteenth Amendment which provides “No state shall ... deprive any person of ... liberty, ... without due process of law.” U.S. Const. Amend. XIV both substantively and procedurally.

216. The Challenged Statutes are overly broad and vague and failed to inform the Plaintiffs and ordinary citizens of the conduct that is prohibited so they could conform theirs to avoid violation of the law.

217. The 24/7 Program is not narrowly tailored to achieve a compelling government interest, is excessive in achieving its stated purpose, and punishes Plaintiffs and other pretrial participants prior to conviction.

218. The 24/7 Program’s immediate arrest statute, Wyoming Statute § 7-13-1709, is punitive in purpose.

220. Wyoming Statute § 7-13-1709 does not contain an intent element and thus does not apprise Plaintiffs of actions that constitute a violation of the program.

221. Wyoming Statute § 7-13-1709 is void for vagueness and is subject to different interpretations and arbitrary enforcement by law enforcement.

223. The Challenged Statutes violated the Plaintiffs and other pretrial participants' liberty rights under the Fourteenth Amendment to the United States Constitution which existed following the establishment of bond.

224. As applied to Plaintiffs, they were not sufficiently informed of the Challenged Statutes requirements or the conduct it prohibited due to its vagueness thus violating their due process rights.

225. As to Marx, the due process violation is ongoing as he continues to be a participant of the 24/7 Program under a bond order.

226. The Appearance Bond and Release Orders were not sufficiently clear to support a citation of contempt of court by arresting Deputies, nor did they sufficiently inform Plaintiffs of the conduct that was required or prohibited.

COUNT 4
DECLARATORY JUDGMENT
EIGHTH AND FOURTEENTH AMENDMENT – EXCESSIVE BAIL
(ALL DEFENDANTS)

227. Plaintiffs restate and incorporate all prior paragraphs above as if set forth fully herein.

228. The 24/7 Program's burdensome and excessive combination of testing appearances, conditions, and fees over a prolonged period of weeks and months violates the Eighth Amendment to the U.S. Constitution which provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII.

229. The Eighth Amendment, which applies to the State of Wyoming through the Fourteenth Amendment, prohibits the State of Wyoming from imposing excessive bail conditions that do not achieve valid government interests. Stack v. Boyle, 342 U.S. 1, 5 (1951).

230. The Challenged Statutes are not narrowly drawn, are excessive and do not achieve the purposes of bail in Wyoming, any other valid government interest or the 24/7 Program's stated purpose.

231. The Challenged Statutes conflict with the bail conditions authorized by the Wyoming Rules of Criminal Procedure and conflict with the Plaintiffs' bond orders.

232. Plaintiffs' and other pretrial participants' bond conditions that compel them to enroll in a program that requires warrantless searches and seizures without probable cause, on a daily, weekly and monthly, basis spanning weeks and months pretrial are excessive bail conditions.

233. The manner in which the 24/7 Program is implemented by the Sheriff's Department, Carr, and Deputies through the arrests of Plaintiffs for being late to testing by 30 minutes or late to testing on three (3) occasions is not authorized expressly or implicitly by the Challenged Statutes or Wyoming's bail statutes.

234. The Challenged Statutes are not sufficiently tailored to achieve a compelling interest, or their stated purpose of preventing crime related to repeat alcohol and drug abuse, particularly when all testing for these Plaintiffs was *negative for alcohol consumption* when they were arrested.

235. The testing fees imposed on Plaintiffs for the excessive number and frequency of testing, in combination with the length of time testing occurs, is excessive under the Eighth Amendment in light of the purpose of bail in Wyoming to insure the appearance in court under the least restrictive means pretrial.

236. The testing fees imposed on Plaintiffs and in particular for indigent persons who qualify for court appointed public defenders like Plaintiffs Sanchez and Marx and do not further the purpose of bail in Wyoming.

237. No hearings were provided to Plaintiffs to determine whether they had sufficient financial capability to pay for the enrollment and testing fees required by the 24/7 Program.

238. In combination, the Challenged Statutes pretrial release conditions and fees imposed under the 24/7 Program constitute excessive bail conditions in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

COUNT 5
INJUNCTIVE RELIEF - TEMPORARY AND PERMANENT
RESTRAINING ORDER
(ALL DEFENDANTS)

239. Plaintiffs restate and incorporate all prior paragraphs above as if set forth fully herein.

240. Plaintiffs and all other pretrial participants will sustain immediate, irreparable harm by the ongoing violations of their constitutional rights under the Fourth, Eighth and Fourteenth Amendments.

241. Plaintiffs and all other pretrial participants are subject to loss of privacy rights inherent in the Constitution, loss of liberty, denial of due process, and other immediate, irreparable harm if the 24/7 Program is not immediately and permanently enjoined from enforcement against Plaintiffs and pretrial participants.

COUNT 6
DAMAGES
(CARR, KING, SHERIFF'S DEPARTMENT AND ALL NAMED
DEPUTIES)

242. Plaintiffs restate and incorporate all prior paragraphs above as if set forth fully herein.

243. The repeated, systemic, illegal, unlawful, unconstitutional, and in the case of Plaintiff Marx, continuing searches and arrests of Plaintiffs and other pretrial participants by Carr, King, West, Deputies, and the Sheriff's Department, occurred pursuant to and as execution of a government's official policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, and in doing so, inflicted the injury that the government as an entity is responsible under § 1983 against the Plaintiffs. Monell v. Dept. of Social Services, 436 U.S. 658, 694 (1978).

244. Carr, King and West, motivated by evil motive or intent, or reckless or callous indifference to the federal rights of others and the constitutional violation ensuing by their acts, created, promulgated, implemented, or possessed responsibility for the continued operation of a policy, practice or unofficial custom the enforcement of which, by Carr, King and West, or their subordinates, subjected Plaintiffs or caused Plaintiffs to be subjected to the deprivation of rights secured by the U.S. Constitution. This policy or custom included, but was not limited to, searching Plaintiffs without a warrant or recognized exception to the warrant requirement repeatedly over prolonged periods of time; and arresting Plaintiffs and other participants of the 24/7 Program for not testing, arriving 30 minutes late to testing, or being late to testing on three (3) occasions without an arrest warrant, as required by Wyoming Rule of Criminal Procedure 42 for Contempt of Court, without probable cause, and in contradiction to the bond orders themselves.

245. Carr, King and West's policies resulted in Deputies arresting Plaintiffs without an arrest warrant or probable cause for being late to testing irrespective of whether the Plaintiffs had a positive test or reason to establish lack of intent.

246. Plaintiffs have sustained damages directly and proximately, including lost wages, from the unlawful, warrantless searches and seizures in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution.

247. Plaintiffs have sustained emotional and mental distress as a direct and proximate cause of the actions of the all Defendants described above in an amount to be proven at trial.

248. Plaintiffs have incurred testing and enrollment fees and other damages related to the unconstitutional warrantless searches and arrests of Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request that this Honorable Court enter its Order in favor of the Plaintiffs and against the Defendants as follows:

1. That Wyoming Statutes § § 7-13-08 and 7-13-09 and Administrative Rule 0015.0017 Chapters 1 and 2 of the 24/7 Sobriety Program be declared facially unconstitutional and unconstitutional as applied to Plaintiffs;

2. That Wyoming Statutes § § 7-13-08 and 7-13-09 and Administrative Rules 0015.0017 Chapters 1 and 2 of the 24/7 Sobriety Program be temporarily and permanently enjoined from enforcement by the Defendants and those acting in concert with them against the Plaintiffs and pretrial participants;
3. That the Plaintiffs recover damages, including punitive damages, from all Defendants as allowed by law and in an amount to be proven at trial;
4. That the Plaintiffs recover pre-judgment and post-judgment interest as permitted by law;
5. That the Plaintiffs recover their attorney's fees and costs; and
6. For such other and further relief as is just and equitable.

Respectfully submitted this 4th day of April, 2022.

KILLMER, LANE & NEWMAN, LLP

/s/ Darold W. Killmer

Darold W. Killmer

Wyoming Bar No. 8-6643

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