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*\*Motions for admission pro hac vice forthcoming*

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

**ALFREDO GUILLERMO  
SANCHEZ and DAVID  
CHRISTOPHER “CHRIS”  
BALL,**

**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-\_\_\_\_\_**

**(JURY TRIAL DEMANDED)**

**his individual and official capacity, SARA KING, 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 HEIDEL, 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.**

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**COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND DAMAGES**

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**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. An officer's signature on an unsworn statement that in his or her judgment the person violated the 24/7 Program is all that is required by statute to permit an officer to immediately arrest a person. 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 “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, even 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 Sixth Amendment to the U.S. Constitution guarantees those who are charged in a criminal case, like a suspected DUI or drug offense, with assistance of counsel at all critical stages of the proceedings. This includes court hearings where the State's attorney is present in an adversarial setting and the accused could be compelled to give statements against their interest that may adversely affect their case. Likewise, Wyoming Rule of Criminal Procedure 42 for Contempt of Court also guarantees those charged with contempt of court the right to counsel at court proceedings. However, the 24/7 Program deprives persons from counsel at hearings following an arrest for an alleged violation of the program if the person's counsel is not able to attend due to lack of notice. The person arrested is usually primarily concerned with getting out of jail. If their counsel is not present, they will proceed with the hearing in order

to be released even though the person does not voluntarily or intelligently waive their right to counsel.

5. The 24/7 Program has substantially eroded these constitutional rights belonging to all Wyoming citizens through legislation which had the intended purpose to prevent repeat crime related to substance abuse. Rather than accomplish this goal, however, the 24/7 Program 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. And, the 24/7 program authorizes 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 Wyoming's 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 authorizes a judge to discretionarily order persons charged with a suspected first or subsequent alcohol or drug offense to enroll and participate in the 24/7 Program as a condition of pretrial release or bond.

10. The 24/7 Program requires participants to submit to warrantless twice daily alcohol breath tests or 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.

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 are made without probable cause or any constitutionally recognized exception to the warrant requirement required by the Fourth Amendment.



14. Participants who are charged with suspected DUIs 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, weekly or monthly call and 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 "to submit to alcohol breath tests twice daily" and to contact the Director of the Teton County 24/7 Program by phone at a phone number provided to them.

18. Plaintiffs were tested twice daily through breath tests without a warrant at the Teton County Jail which were administered by the Teton County Sheriff's Department Deputies in the morning and at night except

on the occasions when Plaintiffs 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.

19. 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.

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

21. 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 first obtaining a warrant.

22. This policy resulted in the Defendant Deputies intentionally and immediately arresting Plaintiffs for being late to testing irrespective of whether the Plaintiffs had a positive test.

23. 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 the Defendant Sheriff's Department, Carr, West and King, which were enforced by Defendant Deputies.

24. Other pretrial participants have likewise been arrested for being late to testing by 30 minutes or more or being late on three occasions. One pretrial participant, A.M. was arrested for being approximately 2 hours late to testing on three (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, even though he was on time for the evening test. A.M. tested negative for alcohol on each occasion he was arrested. S.C. is another pretrial participant who was arrested by Teton County Deputies without a warrant for being more than 30 minutes late to testing. S.C. was held more 24 hours in jail after giving a negative alcohol test.

25. Each time the Plaintiffs were arrested for being late to testing, the Defendant Deputies did not have an arrest warrant, nor did they attempt to obtain an arrest warrant required expressly under Wyoming Rule of Criminal Procedure 42 for an indirect contempt of court charge.

26. Defendant Deputies lacked legal authority to charge Plaintiffs with direct contempt of court under Wyoming Rule of Criminal Procedure 42.

27. When Defendant Deputies arrested Plaintiffs, they did so 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.

28. On each occasion the Plaintiffs were arrested, Defendant Deputies arrested them based 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 the Plaintiff on each occasion prior to his arrest.

29. Plaintiffs were not allowed any opportunity to contest the written statement prepared in support of the arrest in order to avoid

detention or otherwise contest the indirect contempt of court charge for which they were arrested.

30. Plaintiffs each spent several hours and sometimes days in jail after they were arrested.

31. Another pretrial participant spent six days in jail after being arrested the night before Thanksgiving. His car broke down causing him to be 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.

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

33. No Wyoming statute, regulation or administrative rule expressly authorizes the warrantless arrest of participants for being late to testing nor does the Appearance Bond for each Plaintiff authorize an arrest for being late to testing.

34. 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 at testing late is not a crime.

35. Wyoming Rule of Criminal Procedure 42 for Contempt of Court requires an Affidavit be submitted to support an allegation of contempt of court.

36. 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.

37. Defendants at no time submitted a sworn Affidavit or otherwise established good reason to believe the 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 a violation of the 24/7 Program.

38. Plaintiffs were arrested without a warrant for indirect contempt of court for a violation of the 24/7 Program and held in jail cumulatively a total of 4 ½ days pretrial.

39. Ball spent two (2) days in jail and Sanchez spent two and one-half (2 ½) days in jail for alleged violations of the 24/7 Program prior to conviction.

40. Sanchez was deprived counsel at the hearing after his arrest and did not voluntarily or intelligently waive his right to counsel.

41. 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.

42. 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 and to preserve the right to counsel at all critical stages of their criminal case.

43. 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**

44. 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.

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

46. 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.

47. 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.

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

49. 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**

50. Plaintiff Sanchez was arrested for a suspected DUI 2<sup>nd</sup> but later charged with a suspected DUI 3<sup>rd</sup> 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.

51. Plaintiff Ball was arrested for a suspected DUI 1<sup>st</sup> 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).

52. 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 is sued in his official capacity as Governor of the State of Wyoming.

53. 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. Id. Defendant Hill is sued in her official capacity.

54. 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.

55. Defendant Deputies Raffelson, Haderlie, Heidel 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.

56. 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.

57. 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.**

58. 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 DUI or drug offenses, probationers or parolees could be ordered to participate in the 24/7 Program.

59. On February 15, 2019, the Wyoming legislature amended the 24/7 Program. Of significance to this Action, the amendment enlarged the scope of the 24/7 Program's application to also include first time alcohol and drug arrests, in addition to second and subsequent alcohol and drug arrests. Persons with a first-time suspected DUI or suspected drug arrest could be ordered to participate in the 24/7 Program.

60. The amended 24/7 Program was approved by the Governor of Wyoming on February 18, 2019 and went into law on July 1, 2019.

61. 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.**

62. 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.**

63. 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.

64. 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.**

65. 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.**

66. 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.**

67. 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.

68. 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.**

69. 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.**

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

71. 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.

72. 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.**

73. 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.

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

75. 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.

76. 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.

77. 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.**

78. Wyoming Statute § 7-13-1709 authorizes arrest of a participant if a peace officer believes a violation of the release conditions occurred in the officer's personal judgment instead of based upon probable cause to believe that a crime was committed.

79. The warrantless arrests of the 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.

80. 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; or, in the case of Sanchez on one occasion, when a furlough order excusing him from testing was received by the Sheriff's Department.

81. Plaintiffs were not provided an opportunity to contest the allegation of a violation of the 24/7 Program or indirect contempt of court charge before being arrested.

## **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.**

82. 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.

83. 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.

84. 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, and arresting and detaining Plaintiffs in jail for arriving 30 minutes late to testing or for being late to testing on three (3) occasions.

85. 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.

86. 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 a warrant for being late to testing by 30 minutes or more or being late to testing on three (3) occasions.

87. 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 through the breath test they administered.

88. 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 constitutionally recognized exception to the search warrant requirement through the breath tests they administered.

89. 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 or administrative rule.

90. 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.

91. Wyoming Rule of Criminal Procedure 42 requires the Sheriff's Department, Carr, King, West and Deputies to 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.

92. 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 the Plaintiffs would not appear in court to answer for an Order to Show Cause.

93. The Sheriff's Department, Carr, King, West and Deputies failed to obtain an arrest warrant for an indirect contempt charge against Plaintiffs on each occasion the Plaintiffs were arrested for an alleged violation of the 24/7 Program.

94. 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.

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

95. 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.

96. 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.

97. 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.

98. 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.

99. 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 Challenged Statutes or Administrative Rule 0015.0017, Chapters 1 and 2.

100. 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.

101. 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.

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

#### **IV. Plaintiff Sanchez.**

103. 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:

- o 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

104. 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.

105. Sanchez gave at least 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.

106. 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.

107. 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 participate in the program as a condition of his release from pretrial incarceration.

108. Sanchez was arrested for being late to testing or for not taking a test because Sanchez feared he would be late to testing which would result in his arrest.

109. Sanchez was not provided an opportunity to contest the allegation of contempt of court for a violation of the 24/7 Program before being arrested by Deputies Raffelson and Mckenzie.

110. 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.

111. 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.

112. Deputies Raffelson and Mckenzie did not obtain an arrest warrant prior to arresting Sanchez on May 16, 2021 or prior to arresting Sanchez on August 30, 2021.

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

114. 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.

115. 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.

116. 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.

117. 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.

118. 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.

119. Sanchez's counsel was not able to appear at his court hearing on Monday May 17, 2021, so his hearing took place without counsel.

120. Sanchez did not knowingly or intelligently waive his right to counsel at the hearing on Monday May 17, 2021.

121. Sanchez was arrested a second time without a warrant 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.

122. 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.

123. 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.

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

125. Deputies Raffelson and Mckenzie proceeded to arrest, book and detain Sanchez while waiting to verify the existence of a furlough order.

126. Sanchez was handcuffed, detained and placed in a locked jail cell restricting his liberty.

127. Sanchez, while in jail, was forced to remain in a locked observation cell while he experienced the panic attack.

128. Sanchez spent four and one-half (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.

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

130. 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.

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

132. 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.

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

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

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

## **V. Plaintiff Ball.**

136. 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.

137. Ball was arrested on February 28, 2021 and on March 8, 2021 by Deputies Heidel 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.

138. 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.

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

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

141. 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.



142. 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.

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

144. Ball was arrested a second time on March 8, 2021, for an alleged violation of the 24/7 Program and charged with 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.

145. 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.

146. The arresting deputies did not prepare an affidavit or obtain an arrest warrant prior to arresting Ball for contempt of court.

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

148. Ball spent two (2) days in jail and one (1) night in jail total for these warrantless arrests.

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

150. 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.

151. Ball was afforded no opportunity to contest the allegations of contempt of court before he was arrested and detained.

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

153. 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.

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

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

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

156. The Challenged Statutes authorize frequent, repetitive warrantless searches 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.

157. 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.

158. The 24/7 Program’s warrantless searches conducted through each test, were individually “without prior approval by [a] judge or [a] magistrate [judge],” 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).

159. 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.

160. The 24/7 Program violated the Plaintiffs' right to remain free from unreasonable, warrantless searches under the Fourth Amendment to the United States Constitution.

161. 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.

162. Under no set of circumstances would a warrantless search of the Plaintiffs or other pretrial participants twice daily be permitted that meets the reasonableness standard under the Fourth Amendment.

163. 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).

164. The 24/7 Program's programmatic need, according to the stated purpose, is to prevent repeat alcohol and drug crimes and is not

regulatory in nature. Solid Waste Dep't Mechanics v. City of Albuquerque, 156 F.3d 1068, 1072 (10th Cir. 1998).

165. As applied to the Plaintiffs, Carr, King, West, Sheriff's Department and Deputies repeated warrantless searches of the Plaintiffs as participants of the 24/7 Program without a recognized exception to the search warrant requirement amounted to unconstitutional illegal searches.

166. Exigent circumstances creating an emergency situation did not exist at the time Carr, King, West, Sheriff's Department and the Deputies conducted warrantless breath tests of the Plaintiffs.

167. Plaintiffs were compelled to enroll in the 24/7 Program and did not freely or voluntarily consent to participate.

168. Under the totality of the circumstances, Plaintiff's privacy rights and presumption of innocence are not diminished at the pretrial stage and the presumption of innocence outweighs 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).

169. Defendants caused Plaintiffs to sustain loss of liberty, emotional, mental and physical harm through their actions described above.

170. King, West, Carr, Sheriff's Department and Deputies acted intentionally, recklessly, willfully, wantonly, and in disregard of the constitutional rights of the Plaintiffs.

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

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

172. 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).

173. 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.

174. 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.

175. 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.

176. 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.

177. Under no set of circumstances would a warrantless arrest of the Plaintiffs or pretrial participants for being late to testing satisfy the Fourth Amendment because Wyoming Rule of Criminal Procedure 42 mandates an arrest warrant be sought before an arrest is made for contempt of court.

178. 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.

179. 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).

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

181. 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)**



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

183. The 24/7 Program violated 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.

184. The 24/7 Program deprived the Plaintiffs and pretrial participants of liberty without due process of law through repeated warrantless searches and arrests.

185. 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.

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

187. 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.

188. Wyoming Statute § 7-13-1709 is vague and consequently is subject to different interpretations by law enforcement.

189. The 24/7 Program violates the Plaintiffs and other pretrial participants' rights under the Fourteenth Amendment to the United States Constitution.

190. The Defendants' arrests of the Plaintiffs for contempt of court without first submitting an affidavit and obtaining an arrest warrant and order to show cause, pursuant to Wyoming Rule of Criminal Procedure 42 violated the Fourteenth Amendment to the United States Constitution.

191. The Defendants failure to provide Plaintiffs with prior notice, opportunity to contest the contempt allegations, file an Answer, and adequately prepare for the hearings violated the Fourteenth Amendment to the United States Constitution.

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

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

193. 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.

194. 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).

195. The 24/7 Program imposes pretrial release conditions that are excessive and do not achieve valid government interests because the conditions mandate a waiver of Fourth Amendment protections.

196. Plaintiffs’ and other pretrial participants’ bond conditions that compel them to enroll in a program that requires warrantless searches and seizures on a daily, weekly and monthly basis spanning weeks and months pretrial are excessive bail conditions.

197. 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 sufficiently tailored to achieve its 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.

198. The testing fees imposed on Plaintiffs for the excessive number and frequency of testing amount to excessive bail under the Eighth Amendment, in particular for indigent persons who qualify for court appointed public defenders.

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

200. In combination, the pretrial release conditions and fees imposed by the 24/7 Program constitute excessive bail conditions in violation of the Eighth Amendment to the United States Constitution.

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

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

202. 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.

203. 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)**

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

205. The repeated, systemic, illegal, unlawful, and unconstitutional 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).

206. 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.

207. Carr, King and West's policies resulted in Deputies arresting Plaintiffs without an arrest warrant for being late to testing irrespective of whether the Plaintiffs had a positive test.

208. 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.

209. 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.

210. 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 7<sup>th</sup> day of March, 2022.

KILLMER, LANE & NEWMAN, LLP

*/s/ Darold W. Killmer* \_\_\_\_\_

Darold W. Killmer

Wyoming Bar No. 8-6643

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