

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

LISA JONES , individually and on behalf of all others similarly situated, Plaintiff vs RUTHERFORD COUNTY , Defendant	Case No. Hon.
--	----------------------

COMPLAINT - CLASS ACTION

Plaintiff, for her complaint against Defendant, states as follows;

JURISDICTION AND VENUE

1. This action is brought by Plaintiff pursuant to 42 U.S.C. §1983 and the common and statutory laws of the State of Tennessee to redress the violation by Defendant of Plaintiff's rights secured by the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and applicable provisions of the Tennessee Constitution. This Court has jurisdiction under 28 U.S.C. § 1331 to hear Plaintiff's claims arising under the Constitution and laws of the United States and under 28 U.S.C. § 1343 to hear Plaintiff's claims to recover damages and to secure equitable relief under any Act of Congress providing for the protection of civil rights.
2. This Court has supplemental jurisdiction over all state law claims alleged in this complaint under 28 U.S.C. § 1367 as there is a common nucleus of operative facts between the state and federal law claims.
3. Venue is appropriate in the Middle District of Tennessee under 28 U.S.C. § 1391(b)(2) as this is the judicial district in which a substantial part of the events or omissions giving rise to this claim occurred.

PARTIES

4. Plaintiff Lisa Jones, formerly Lisa Mullins, is a resident of Bell Buckle, Bedford County, Tennessee. Plaintiff brings this claim on behalf of herself and all others similarly situated.
5. Defendant Rutherford County is a political subdivision of the State of Tennessee and operates a county jail and workhouse under the supervision, direction, and control of the Rutherford County Sheriff, Truman L. Jones, and employs judicial commissioners to act as magistrates as allowed under Tennessee law.

GENERAL ALLEGATIONS

6. On or about February 12, 2008, Plaintiff was arrested at her home by the Bedford County Sheriff's Department.
7. Bedford County deputies informed the plaintiff that they had a warrant for her arrest for failure to pay child support. However, the deputy informed her that he did not have any paperwork or the warrant.
8. But later, the Bedford County sheriff's deputy did show the plaintiff a warrant which was for non-payment of child support.
9. Bedford County sheriff's deputies transported the plaintiff to the county line and waited on the side of the road at a convenience store for Rutherford County sheriff's deputies to pick her up. They waited for about an hour.
10. Rutherford County deputies finally showed up and transported the plaintiff to the Rutherford County jail where she was booked.
11. When plaintiff first arrived at the jail, Rutherford County deputies were unsure of why she was there or why she had been arrested.
12. After about an hour, maybe more, the officer that had transported the plaintiff showed her a failure to appear warrant on an old vandalism charge. Plaintiff looked at the warrant and noticed that it was an old, yellowed piece of paper that said the name "Lisa Mullins" but had a different driver license number, different birth date, different middle name, different social security number, and a different residence address than her's. The warrant was from 1995.

13. Later, it turned out that the physical description of the Lisa Mullins wanted on the outstanding warrant was totally different than the plaintiff and a picture of the real person, which had been in the possession of the Rutherford County Sheriff's Department all along, showed a different person than the plaintiff.
14. In 1995, the apparent date of the warrant, Plaintiff did not have the last name of Mullins but rather Byrd. Plaintiff did not change her name to Mullins until 2002.
15. When she noticed the difference, Plaintiff notified the officer that she was not the same person. He said that Plaintiff would just have to take that up with the judge.
16. When Plaintiff looked at the old warrant, she noticed that it already had a bail amount set of \$5000.
17. No one ever asked the plaintiff anything about her employment, family relations, real estate owned, or other questions designed to determine her likelihood to flee or be a danger to the community if released prior to her bail being set.
18. The very same day as her arrest, Plaintiff asked to see a judicial commissioner but was told that one was not available by the officer sitting behind the desk. She was again told that she would have to take it up with the judge on her scheduled court date which was not scheduled to happen until February 26, 2008, two weeks later.
19. In fact, Rutherford County employs judicial commissioners and has them available in the same building as the jail 24 hours a day.
20. On February 16, 2008, Plaintiff filed a grievance with the jail regarding the conditions of her confinement and the lack of being seen by a judicial commissioner or other impartial magistrate after her arrest. No satisfactory response was ever received.
21. On February 19, 2008, Plaintiff filed another grievance and specifically asked to see a judicial commissioner. In the grievance, she also specifically pointed out that the information on the warrant for failure to appear did not pertain to her. No satisfactory response was ever received.
22. Plaintiff hired an attorney who filed a writ of *habeas corpus* on the basis that the plaintiff was not the person sought on the failure to appear warrant. The writ was granted and the charge was dismissed on February 22, 2008.

23. Rutherford County judicial commissioners, on some occasions, increase bail as punishment for individuals who misbehave during the booking process.
24. Rutherford County judicial commissioners do not ask questions of the accused before them in an effort to determine that individual's likelihood to flee or be a danger to the community if released.
25. Plaintiff was ultimately released from jail on February 22, 2008.

COUNT 1

(§1983 - Rutherford County-class action)

26. Defendant Rutherford County, by knowingly and deliberately instituting and approving of a system where bail is set based on the charged offense and not on the statutory elements or an individualized determination of the need for bail, violated the Constitutional rights of Plaintiff, and others similarly situated to her, against unreasonable search and seizure (4th Amendment) and due process of law (14th Amendment). It also violated her rights to procedural due process under the 14th Amendment, against excessive bail under the 8th Amendment to the U.S. Constitution and Article 1, Section 15 and 16 of the Tennessee Constitution.
27. Because all the Rutherford County judicial commissioners follow this customary system of setting bail without regard to individualized considerations, it imposes an absolute restriction on Plaintiff's liberty, and those similarly situated, and forecloses any possibility of an immediate hearing on the necessity of her detention.
28. Due process demands a particularized, underlying justification for the detention of individuals.
29. In contrast to the Release from Custody and Bail Reform Act of 1978, T.C.A. 40-11-101, *et. seq.*, the Rutherford County system of setting bail based on the charged offense automatically applies to persons arrested without any individualized consideration, let alone consideration by a neutral arbiter and does not require any particularized finding that the arrested or convicted individual is likely to flee or not appear for court.
30. In place of the Bail Reform Act's neutral, individualized adjudication, the Rutherford County system of setting bail relies on only general assumptions that individuals arrested

are not likely to return for scheduled court appearances unless compelled to do so under the yoke of a monetary bail amount. Thus, almost all charges carry a monetary bail requirement.

31. Rutherford County uses a system of setting bail whereby a judicial commissioner will look at a list called "Adult Charge Code Listing" and set the bail amount based on the charge rather than an individualized assessment. **(Exhibit to Complaint)**
32. Each possible charge on the Adult Charge Code Listing is given a code and the bail amount increases due to the perceived severity of the charged offense. For example,
 - a. Arson has a pre-set bail amount of \$10,000 and has a code of "A195"
 - b. Possession of Burglary Tools has a pre-set bail amount of \$1500 and has a code of "B105"
 - c. Criminal Conspiracy (A Misdemeanor) - \$1500
 - d. Criminal Conspiracy (E Felony) - \$3000
 - e. Criminal Conspiracy (D Felony) - \$4000
 - f. Criminal Conspiracy (C Felony) - \$5000
 - g. Criminal Conspiracy (B Felony) - \$10,000
33. Littering has a pre-set bail of \$250.
34. The "Charge Code Listing" has pre-set bail amounts for criminal offenses that have long been abolished or declared to be unconstitutional.
 - a. Vagrancy - \$250
 - b. Treason - \$15,000
 - c. Homosexual Acts - \$250
35. Some pre-set bail amounts automatically increase based on the previous number of times the person has been charged with the same offense, such as
 - a. driving on revoked (2nd Offense) - \$1500
 - b. driving on revoked (15th offense) - \$2500
 - c. DUI offense #1 - \$2500
 - d. DUI offense #3 - \$3000
 - e. DUI Offense #4 - \$4000

36. Out of the more than 480 offenses listed on the code sheet, only one has a pre-set bail of “ROR”, “Driving By Permit W/O Lic Driver”.
37. On one charge, “Hitch Hiking on Interstate”, bail is allowed to be set by the State Trooper. (Code Listing indicates “Per Trooper” as pre-set amount).
38. Pre-set bail for theft of merchandise is proportionately higher based on the dollar amount of merchandise alleged to have been stolen.
39. When a police officer or other person seeks a warrant against a person, if the warrant is issued, a Rutherford County judicial commissioner sets the bail amount immediately even though the person is not yet in custody and cannot answer questions related to his/her likelihood to flee. In effect, Rutherford County has a policy, custom or pattern of pre-set bail.
40. Requiring bail in an amount higher than that which is individually calculated to serve as an additional assurance of the presence of a particular person accused of an offense as required by the Bail Reform Act is excessive *per se*.
41. As a direct and proximate result of the acts of Defendant, Plaintiff had her Constitutional rights to a reasonable system for bail determination violated.

CLASS ACTION ALLEGATIONS

42. The named plaintiff brings this action on her own and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of
 - a. all individuals who have had bail set using the unconstitutional system and all future individuals that will be subject to such a system.
43. The class is so numerous that joinder of all members is impracticable. Thousands of people pass through the judicial commissioners and have bail set each year or are arrested on warrants with pre-set bail amounts.
44. There are questions of law and fact common to the class: Whether Defendant Rutherford County, through its judicial commissioners, are setting bail and bail amounts without regard to statutory requirements and Constitutional limitations in violation of individuals’ due process rights, rights against excessive bail and other statutory rights.

45. In particular, if the attached schedule of bail is the criteria by which judicial commissioners set bail, then the common question of law is whether or not this system constitutes excessive bail because it is not based on an individualized assessment of an individual's likelihood to flee or be a danger to the community if released.
46. In addition, the common question of fact is whether or not judicial commissioners increase bail as a punitive measure either on their own or on the request of police officers.
47. The claims of the named plaintiff are typical of the claims of the class. Plaintiff does not attack the dollar amount of her bail but rather the system by which that amount was determined. Plaintiff had her bail for failure to appear set by a judicial commissioner without an individualized assessment of her likelihood to flee or be a danger to the community if released.
48. The named plaintiff will fairly and adequately protect the interests of the class. Plaintiff intends to prosecute this action vigorously in order to secure remedies for all of the class members and has no conflict of interest with other putative class members.
49. This action is appropriately maintained as a class action under F.R.C.P. 23(b)(2) because Defendants have acted on grounds generally applicable to the class and Plaintiff is seeking final class-wide structural, injunctive or declaratory relief with respect to the class as a whole which would equally benefit each class member. Specifically, Plaintiff seeks a permanent injunction preventing Defendant Rutherford County, and its officers and employees, from disregarding the statutorily and Constitutionally required individualized determination of the need for bail.
50. Although compensatory damages are sought, they are sought only to the extent which they may enure to the benefit of the class as a whole. It is difficult if not impossible to put a monetary value on the violation of one's Constitutional rights but a broad-based, across the board damage award that does not call for individualized damage assessment is consistent with the provisions of (b)(2) classes.

Therefore, Plaintiff requests that this Court award:

1. Compensatory damages to Plaintiff and the putative class and against Defendant Rutherford County in an amount to be determined at trial and such as to enure to the benefit of the class as a whole;
2. Punitive damages to Plaintiff and the putative class and against Defendant Rutherford County in an amount to be determined at trial and such as to enure to the benefit of the class as a whole;
3. A permanent injunction against Rutherford County requiring that judicial commissioners employed by the county determine bail on an individualized basis and limited to the purpose of ensuring a defendant's presence in court and of ensuring the safety of the community.
4. Reasonable attorney's fees;
5. Cost of suit and such other and further relief as the court deems just and proper.

Respectfully Submitted,

/s/ Jerry Gonzalez
Jerry Gonzalez (18379)
Attorney for Plaintiff
2441-Q Old Fort Parkway
Box 381
Murfreesboro, TN 37128
615-360-6060
jgonzalez@edge.net