

1 **INTRODUCTION**

2 1. The Constitution guarantees that, irrespective of wealth, all people charged with a
3 crime stand on equal footing before the law. Inherent to this promise is that a person may not be
4 imprisoned before or after trial “solely because of his indigency.” (*Tate v. Short* (1971) 401 U.S.
5 395, 398.) As the California Supreme Court has confirmed: “No person should lose the right to
6 liberty simply because that person can’t afford to post bail.” (*In re Humphrey* (2021) 11 Cal.5th
7 135, 142.)

8 2. Yet in Santa Clara County, the Superior Court summons all out-of-custody
9 defendants to appear in court on newly filed charges by issuing arrest warrants with associated
10 cash bail amounts set based on the Uniform Bail Schedule. And due to a July 2022 directive
11 issued by the Superior Court (hereinafter, the “Directive”), any defendant who lacks the ability to
12 pay this cash bail must surrender to jail to await arraignment and a bail hearing. The Directive
13 prevents people subject to an initial arrest warrant from voluntarily scheduling a court appearance
14 to answer the charges against them. In so doing, the Directive creates two tiers of justice: those
15 who can afford to post money bail may purchase an out-of-custody arraignment, while those who
16 cannot pay are forced to undergo invasive booking procedures and pre-trial incarceration simply
17 to gain access to the court. The Superior Court, in effect, grants only people with money the
18 opportunity to walk through the courthouse doors, free of restraint.

19 3. Petitioners/Plaintiffs are directly impacted, or provide support to people directly
20 impacted, by the Superior Court’s Directive prohibiting voluntary appearances in court. They
21 bring this lawsuit challenging the Court’s policy on the grounds that it violates constitutional and
22 state law, was adopted in violation of statutory requirements for public notice and comment, and
23 wastes taxpayer money.

24 4. First, the Superior Court’s Directive violates the constitutional guarantees of equal
25 protection and due process because it creates a system of wealth-based detention. By imposing
26 disparate burdens on poor defendants who wish to come to court to answer the charges against
27 them, the Directive creates a system that necessitates the incarceration of poor people who are
28

1 often deemed eligible for pre-trial release as soon as they do appear in court. This system harms
2 individuals and the community that shoulders the costs of such unnecessary incarceration.

3 5. While the Superior Court cited “administrative difficulty” and concerns regarding
4 compliance with the California Department of Justice’s data reporting requirements in its
5 communication issuing the Directive, the policy is neither justified by nor tailored to serve these
6 interests. Indeed, the arbitrariness of the Court’s prohibition is highlighted by the fact that many
7 other courts across the state afford people charged with a criminal complaint the opportunity to
8 voluntarily appear in court for arraignment without first posting bail or surrendering to jail. These
9 other courts demonstrate that it is possible to both provide constitutionally adequate procedures
10 and comply with any data reporting requirements.

11 6. Second, the Directive deprives poor defendants of procedural due process. It
12 subjects defendants to unnecessary jailing before permitting access to an arraignment hearing on
13 the criminal complaint, at which a magistrate makes an individualized determination regarding
14 pre-trial release and often imposes a much lower money bail amount or orders release *without* the
15 need to pay bail. In addition to subjecting people to an unjustifiable loss of pre-trial liberty, the
16 Superior Court’s Directive deprives poor defendants of the opportunity to appear in court and
17 petition for pre-trial release on the same footing and with the same dignity as those with money.

18 7. Third, the Superior Court’s policy functions as a local rule promulgated in
19 violation of the procedural requirements for notice and comment. (Code Civ. Proc., § 575.1; Gov.
20 Code, § 68071; Cal. Rules of Court, rule 10.613.) In the absence of public input and comment, the
21 Court has adopted a rule that deprives all defendants of a fair opportunity to be heard before
22 taking on the burden of paying bail or surrendering into custody. The Court’s failure to follow the
23 legal requirements for adoption of a court rule renders the Directive invalid.

24 8. In light of these violations, Petitioners/Plaintiffs respectfully ask this Court to issue
25 a writ of mandate compelling Respondents to comply with their legal obligations by rescinding
26 the Directive at issue in this case and permitting people facing criminal charges to voluntarily
27 schedule a first appearance, without having to pay money bail or surrender to jail.

28 Petitioners/Plaintiffs further request that the Court order declaratory and injunctive relief to the

1 same effect. Absent the issuance of a writ of mandate and the other relief requested,
2 Petitioners/Plaintiffs have no plain, speedy, or adequate remedy at law.

3 **JURISDICTION AND VENUE**

4 9. This Court has jurisdiction pursuant to Code of Civil Procedure sections 526,
5 526a, 1060, and 1085; Civil Code section 3422; and article VI, section 10 of the California
6 Constitution.

7 10. Venue is proper in this Court because the acts and omissions complained of herein
8 occurred in Santa Clara County, where the parties are located. (Code Civ. Proc., §§ 393, 395.)

9 **PARTIES**

10 11. Petitioner/Plaintiff Nikolaus Jackson O’Neill Rogge (“Petitioner O’Neill Rogge”)
11 was until recently a resident of Santa Clara County. While applying for a job-training program
12 that runs background checks, Petitioner O’Neill Rogge learned for the first time that he was
13 subject to an initial arrest warrant for an alleged, non-violent offense. Having an outstanding
14 arrest warrant rendered him ineligible for the job-training program. Petitioner O’Neill Rogge
15 sought to address the warrant, but he could not afford the \$10,000 Uniform Bail Schedule amount
16 or a bond for that amount of bail. Although Petitioner O’Neill Rogge contacted the Santa Clara
17 Superior Court Clerk’s Office multiple times to attempt to get a court date and address the
18 warrant, he was told that his only option to proactively clear the warrant was to pay bail or to
19 surrender into jail custody. While Petitioner O’Neill Rogge wanted the opportunity to complete
20 the job-training program and suffered significant other consequences from having an active arrest
21 warrant, he did not want to go to jail simply to access court. He had never been arrested or jailed
22 before and was scared because he had seen the negative, life-long effects jail has had on family
23 members who, like him, suffer from health issues and disabilities. Ultimately, after months of
24 contacting the Clerk’s Office and attempting to voluntarily appear in court, Petitioner O’Neill
25 Rogge decided to surrender to law enforcement. As he feared, Petitioner O’Neill Rogge spent
26 three days in custody because he could not afford bail. Once he was brought to court, the
27 magistrate judge ordered him released on his own recognizance (“OR”) without assessing any
28 money bail.

1 12. Petitioner/Plaintiff Silicon Valley De-Bug (“Petitioner SVDB”) is a non-profit
2 community organizing and advocacy group based in San Jose, California. Petitioner SVDB
3 organizes around criminal justice reform as well as issues touching on racial and economic
4 justice. Petitioner SVDB also provides support and resources for people directly impacted by the
5 criminal legal system in Santa Clara County, pioneering a participatory defense model. As part of
6 this work, Petitioner SVDB holds weekly meetings for system-impacted people, including people
7 on release and family members of detained loved ones, to help navigate the criminal legal
8 process. Petitioner SVDB provides additional support to people during their arraignment and bail
9 hearings by, for example, helping families to complete information sheets that assist defense
10 counsel in developing arguments for release. Because of this work, and as relevant here,
11 Petitioner SVDB fields monthly requests for assistance from community members who are trying
12 to determine whether an initial arrest warrant has been issued against them and/or what to do
13 when they learn that such an arrest warrant has been issued. Often, these community members
14 cannot afford the Uniform Bail Amount associated with their outstanding arrest warrants but
15 would still like to address the warrant without going to jail and being absent from work,
16 caretaking, and other responsibilities. Because Santa Clara County provides no process for these
17 individuals to voluntarily appear and address their arrest warrant, Petitioner SVDB must direct
18 resources away from helping them develop their case and defense, and towards supporting them
19 while detained and at arraignment and bail hearings. Petitioner SVDB also regularly engages in
20 advocacy to avoid the kind of unnecessary detention that results from the Superior Court’s
21 prohibition on voluntary appearances. For example, Petitioner SVDB participated in the Santa
22 Clara County Alternatives to Incarceration Working Group, and has advocated for alternatives to
23 mandatory pre-arraignment incarceration before the Board of Supervisors. Petitioner SVDB is
24 incorporated and pays taxes in Santa Clara County, including payroll and sales taxes.

25 13. Respondent/Defendant Rebecca Fleming (“Respondent Fleming”) is the Court
26 Executive Officer (“CEO”) for the Superior Court of California, County of Santa Clara. She is
27 sued in her official capacity. As the government official responsible for overseeing court
28 operations and supervising court personnel, Respondent Fleming’s duties include “calendar

1 management” and “identify[ing]” and “recommending procedural and administrative changes to
2 the court.” (See Cal. Rules of Court, rule 10.610(b) & (c)(4), (9).)

3 14. Respondent/Defendant Honorable Daniel T. Nishigaya (“Respondent Nishigaya”)
4 is the Supervising Judge for the Criminal Division of the Superior Court of California, County of
5 Santa Clara. He is sued in his official capacity. As the government official responsible for
6 overseeing the Criminal Division of the Superior Court, Respondent Nishigaya’s duties include
7 managing arraignments, assigning criminal matters, and meeting and collaborating with
8 stakeholders such as court personnel, the district attorney, and the public defender to “identify
9 and eliminate problems in the criminal court system and to discuss other problems of mutual
10 concern.” (See Cal. Rules of Court, rules 10.951(a), (b) & 10.952; Super. Ct. Santa Clara County,
11 Criminal Rules, rule 1(A).) Respondent Nishigaya is directly responsible for issuing the July 2022
12 Directive prohibiting judges within the Criminal Division from calendaring requests for out-of-
13 custody defendants to voluntarily appear, have their arrest warrants recalled, and have an
14 individualized determination made regarding bail and/or release.

15 15. Respondent/Defendant Honorable Beth McGowen (“Respondent McGowen”) is
16 the Presiding Judge for the Superior Court of California, County of Santa Clara. She is sued in her
17 official capacity. As the government official responsible for “leading the court, establishing
18 policies, and allocating resources in a manner that promotes access to justice for all members of
19 the public,” Respondent McGowen’s duties include making judicial assignments, supervising the
20 court’s calendar, providing “general direction to and supervision of the [CEO],” and “ensur[ing]
21 that the court regularly and actively examines access issues, including . . . economic barriers that
22 impede the fair administration of justice.” (See Cal. Rules of Court, rule 10.603(a), (b) & (c)(1),
23 (5), (9)(B).) As a result, Respondent McGowen supervises the CEO and Supervising Judge.

24 **FACTUAL BACKGROUND**

25 **A. In Santa Clara County, new criminal cases are accompanied by an arrest warrant** 26 **affixing bail according to a standardized and typically unaffordable bail schedule.**

27 16. A criminal case begins when the district attorney files a formal charging
28 document, otherwise known as a criminal complaint or indictment. In California, once a criminal

1 complaint is filed and presented to the court, the court generally issues a warrant for the arrest of
2 an out-of-custody defendant, unless the prosecutor elects to request a summons directing the
3 individual to appear in court on a particular date. (Pen. Code, §§ 813, 1427.) In Santa Clara
4 County, there is no summons process in place, and every case filed against a person who is out-
5 of-custody is accompanied by an arrest warrant issued by the court (hereinafter, “initial arrest
6 warrant”).

7 17. When issuing an initial arrest warrant, a court must set bail at an amount that “will
8 be reasonable and sufficient for the appearance of the defendant following his arrest.” (Pen. Code,
9 § 815a.) To set such amounts, Santa Clara Superior Court generally employs the County’s
10 Criminal Bail Schedule, which fixes presumptive uniform bail amounts depending on the charges
11 alleged on the face of the complaint.¹ The “Uniform Bail Amount” associated with an initial
12 arrest warrant generally does not reflect any individualized considerations specific to a defendant,
13 such as that person’s ability to pay the amount set or the fact-specific allegations set forth in the
14 criminal complaint. When such factors are considered at arraignment or at subsequent bail
15 hearings, they can lead to the Court forgoing money bail amounts altogether or imposing much
16 lower “Individualized Bail Determination” amounts consistent with *Humphrey, supra*, 11 Cal.5th
17 at pp. 152, 156 (requiring a court to “consider an arrestee’s ability to pay alongside the efficacy of
18 less restrictive alternatives when setting bail,” and holding that an arrestee may not be held in
19 pretrial detention absent an “individualized determination” that such detention is necessary).

20 18. Uniform Bail Schedules in California are particularly unaffordable; the median
21 bail amount in the state, \$50,000, is more than five times the median amount in the rest of the
22 nation.²

23 19. Santa Clara’s Uniform Criminal Bail Schedule is similarly far out of reach for
24 many people facing criminal charges in the county. The 2023 Criminal Bail Schedule prescribes

25 _____
26 ¹ See Superior Court of California, Santa Clara County, 2023 Criminal Bail Schedule, *available at*
<https://www.sccourt.org/documents/criminal_bail_schedule_2023.pdf> (as of July 27, 2023).

27 ² Sonya Tafoya, Public Policy Institute of California, *Pretrial Detention and Jail Capacity in*
28 *California* (July 2015) at p. 4, *available at* <https://www.ppic.org/wp-content/uploads/content/pubs/report/R_715STR.pdf> (as of July 24, 2023).

1 bail amounts ranging from \$1,000–10,000 for each misdemeanor charge, and felony bail amounts
2 ranging from five to seven figures depending on the charges alleged. These uniform, non-
3 individualized bail amounts are particularly onerous given that nearly one in three households in
4 the Bay Area does not make enough money to cover the cost of basic necessities.³

5 20. If a person is arrested on an initial arrest warrant and can post the Uniform Bail
6 Amount or a bond for that amount, their release is processed that day. (Pen. Code, § 823.) In
7 Santa Clara County, a person being released after posting bail or a bond is usually given a first
8 court date approximately 30 days later.

9 21. If a person is arrested on an initial arrest warrant and cannot post the Uniform Bail
10 Amount, they are generally held in jail pending their first court appearance, unless they are
11 charged with a misdemeanor that qualifies for “cite release,” meaning they are given a citation
12 with a court date and then released. (Pen. Code, § 853.6.) California law requires that a person
13 who is held in jail be brought before the court within 48 hours, not including weekends and
14 holidays. (Pen. Code, § 825.)

15 22. In Santa Clara County, people arrested on an initial arrest warrant usually wait
16 between 24 and 72 hours to be arraigned. While a person booked into custody in the afternoon or
17 evening is typically brought to court for the afternoon arraignment calendar the next business day,
18 “non transport” problems—when someone in custody is not physically transferred to court in time
19 for arraignment—are common and can extend the period of pre-arraignment detention.

20 23. In some cases, a person who self-surrenders on a warrant in a neighboring county
21 may be forced to wait in custody pending transportation to the Santa Clara County jail and
22 scheduling of an initial court date.

23 **B. Individuals have significant interests in the prompt resolution of an arrest warrant.**

24 24. An individual may learn they are subject to an initial arrest warrant in a number of
25 ways other than an arrest. For example, they may learn of the arrest warrant by looking up their

26
27 ³ United Ways of California, *The Real Cost Measure in California 2023: Bay Area*, available at
28 <<https://public.tableau.com/app/profile/hgascon/viz/TheRealCostMeasureinCalifornia2023/RealCostDashboard?publish=yes>> (as of July 24, 2023).

1 case information with the local court or having a background check run during an application
2 process for a job, housing, or training program. Individuals may also learn of an arrest warrant
3 from their defense counsel or probation officer on a separate matter. In some circumstances, a
4 person may receive mail notice regarding issuance of an arrest warrant as well.

5 25. Petitioner O’Neill Rogge first learned that he had an outstanding initial arrest
6 warrant for a non-violent alleged offense when San Jose Job Corps, a free career training and
7 education program, ran a background check on him as a condition of his participation. He did not
8 receive any written communications from the issuing law enforcement agency or the Superior
9 Court about this arrest warrant and never saw the arrest warrant. Instead, he was able to glean
10 only limited details about the criminal complaint by repeatedly calling the Santa Clara Superior
11 Court Clerk’s Office in an effort to calendar and clear the warrant before his self-surrender.

12 26. There are various reasons why a person who learns of an outstanding and unserved
13 initial arrest warrant might want to proactively address the warrant and make their first
14 appearance in the criminal case, rather than wait to be arrested. A person with an outstanding
15 warrant risks being arrested upon contact with any law enforcement officer at any time. The
16 unpredictability of when an arrest may occur can have significant detrimental consequences on
17 top of those associated with incarceration, including unanticipated absence from work or
18 caretaking responsibilities. Additionally, a person who is contacted during a routine traffic stop or
19 while their car is in a temporary location, such as timed street parking, may be at risk of a costly
20 vehicle impoundment. Having an outstanding arrest warrant can also impose barriers to obtaining
21 or maintaining employment and housing, or when traveling. All these potential collateral
22 consequences, and the uncertainty of when they may manifest in an individual’s life, can impose
23 a significant psychological toll as well.

24 27. For example, having an outstanding arrest warrant prevented Petitioner O’Neill
25 Rogge from participating in San Jose Job Corps, which would have provided free job training,
26 education, and structure. Petitioner O’Neill Rogge also made attempts to access certain mental
27 health services while the warrant was outstanding, but at least one provider informed him that
28 they ran background checks and could not offer services while he had a warrant on his record.

1 28. People also often have an interest in promptly appearing in court to address or
2 dispute the underlying allegations. Just as the Constitution recognizes an individual’s interest in a
3 speedy trial, so too does an individual have an interest in promptly obtaining information about
4 the charges against them and securing evidence and witnesses in their defense. (*Serna v. Superior*
5 *Court* (1985) 40 Cal.3d 239, 253–54 [discussing the prejudice inhering from a delay in
6 prosecution and loss of reliable evidence].) Petitioner O’Neill Rogge was initially only generally
7 aware of the nature of the charges against him based on what he learned from the Superior Court
8 Clerk’s Office and was unable to access information about the specific allegations or
9 meaningfully collect information in his defense until he was arraigned in court.

10 29. Moreover, people have an interest in appearing in the best light possible before the
11 court, which is the ultimate decisionmaker when it comes to significant questions like pre-trial
12 release. Voluntarily appearing in court on an arrest warrant may help demonstrate to the court that
13 an individual does not pose a flight risk and is otherwise accountable and responsible—important
14 factors for individualized bail and release determinations.

15 **C. Other courts across California permit individuals with outstanding arrest warrants**
16 **to voluntarily appear in court to address the charges against them.**

17 30. California statutory law does not specifically address the procedures by which an
18 individual subject to an initial arrest warrant may appear voluntarily in court, be arraigned, and
19 seek an individualized determination of their bail and/or release status, *i.e.* an Individualized Bail
20 Determination. Even in the absence of explicit statutory directives, however, many superior
21 courts in California provide a self-surrender process that does not entail incarceration before
22 arraignment. Such process accords with constitutional protections against *de facto* detention
23 where a poor individual faces incarceration solely because they lack financial means. (*See, e.g.,*
24 *Bearden v. Georgia* (1983) 461 U.S. 660, 667–68; *Humphrey, supra*, 11 Cal.5th at p. 143.)

25 31. Some jurisdictions allow out-of-custody defendants to file *ex parte* motions with
26 the court to request that the matter be added to the court’s calendar. In San Luis Obispo,⁴ for

27 _____
28 ⁴ Super. Ct. San Luis Obispo County, Warrants, *available at*
<<https://www.slo.courts.ca.gov/es/node/56>> (as of July 25, 2023).

1 example, out-of-custody defendants can surrender to court by filing a motion, *pro se* or through
2 counsel, requesting that the matter be calendared for a hearing to address the warrant and the
3 defendant’s pre-trial release status. Amador and Plumas Counties likewise allow out-of-custody
4 defendants to file requests to place their arrest warrant on calendar.⁵

5 32. Other jurisdictions allow out-of-custody defendants with active warrants to show
6 up in person to be placed on the court’s calendar for a same-day appearance. In Contra Costa,
7 Napa, Sonoma, and Monterey Counties, for example, defendants with outstanding arrest warrants
8 may check in with the respective clerk’s office before a certain time to be placed on the court’s
9 calendar that day.⁶ Riverside County directs people with outstanding arrest warrants to report to
10 the Criminal Division that ordered the warrant by a certain time in the morning.⁷ Alpine County
11 directs people who wish to clear a warrant to come to the courthouse on any Monday afternoon
12 when the court holds its criminal calendar.⁸ And in Colusa, Inyo, Lassen, Merced, Trinity and
13 Nevada Counties, there are set days of the week for defendants with active arrest warrants to
14 come to court and address the warrant.⁹

15 ⁵ Super. Ct. Amador County, Criminal “Warrants,” *available at*
16 <https://www.amadorcourt.org/dv-criminal.aspx> (as of July 26, 2023);
17 Super. Ct. Plumas County, Procedure for Surrender on Misdemeanor Warrants, *available at*
18 [http://www.plumascourt.ca.gov/Procedure%20for%20Surrender%20on%20Misdemeanor%20W](http://www.plumascourt.ca.gov/Procedure%20for%20Surrender%20on%20Misdemeanor%20Warrants.pdf)
19 [arrants.pdf](http://www.plumascourt.ca.gov/Procedure%20for%20Surrender%20on%20Misdemeanor%20Warrants.pdf) (as of July 26, 2023).

20 ⁶ Super. Ct. Contra Costa County, Criminal General Information, “Clearing My Warrant,”
21 *available at* <https://www.cc-courts.org/criminal/general.aspx> (as of July 26, 2023);
22 Super. Ct. Napa County, Criminal/Post Court Services Division Frequently Asked Questions,
23 “How can I take care of my outstanding warrant?”, *available at*
24 <https://www.napa.courts.ca.gov/divisions/criminal/> (as of July 26, 2023);
25 Super. Ct. Sonoma County, Criminal Division Frequently Asked Questions, “How do I clear my
26 warrant?”, *available at* <https://sonoma.courts.ca.gov/divisions/criminal/> (as of July 26, 2023);
27 Super. Ct. Monterey County, Criminal FAQ, “What if I want to place a matter on calendar?”,
28 *available at* <https://www.monterey.courts.ca.gov/divisions/criminal/criminal-faq> (as of July
29 25, 2023).

30 ⁷ Super. Ct. Riverside County, Criminal “Warrant Information,” *available at*
31 <https://www.riverside.courts.ca.gov/Divisions/Criminal/criminal.php> (as of July 25, 2023).

32 ⁸ Super. Ct. Alpine County, Criminal Division General Information and Frequently Asked
33 Questions, “How do I clear a warrant issued out of Alpine County?”, *available at*
34 <https://www.alpine.courts.ca.gov/divisions/criminal/> (as of July 26, 2023).

35 ⁹ Super. Ct. Colusa County, Criminal Frequently Asked Questions, “I just learned I have a
36 warrant out for my arrest. What can I do?”, *available at*
37 <https://www.colusa.courts.ca.gov/divisions/criminal/> (as of July 26, 2023);
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1 33. Upon appearing in court, defendants and their legal counsel may request to have
2 the warrant “recalled” (that is, rescinded or otherwise removed from law enforcement’s active
3 warrant notification system) or otherwise cleared, and address whether pre-trial release is
4 appropriate while their criminal case is pending.

5 **D. Santa Clara Superior Court previously permitted out-of-custody defendants to**
6 **voluntarily appear in court upon notification of an arrest warrant.**

7 34. In the past, Santa Clara County also provided opportunities for out-of-custody
8 defendants to address an initial arrest warrant without first surrendering to the jail or posting
9 money bail.

10 35. Beginning in 2020, some judges within the Superior Court allowed attorneys with
11 the Public Defender Pre-Arrest Representation and Review (“PARR”) team to set warrant
12 recall and arraignment dates for clients who could not afford to post bail on their active initial
13 arrest warrants.

14 36. At these arraignment hearings, the Court considered whether pre-trial release was
15 appropriate given individualized information about a defendant’s community ties, the pending
16 charges, available alternatives to pre-trial incarceration, and their ability to pay bail. In almost
17 every case involving PARR, after hearing from both sides, the Court recalled the warrant,
18 declined to require money bail, and ordered the defendant to remain on pre-trial release.

19 **E. In 2022, Respondents adopted a change in policy prohibiting all voluntary**
20 **appearances on an arrest warrant.**

21 37. In early 2022, following changes in the Superior Court’s administration, the
22 Criminal Division informally began refusing all warrant calendaring requests.

24 Super. Ct. Nevada County, Self Surrender Warrants, *available at*
25 <<https://www.nevada.courts.ca.gov/divisions/criminal-misdemeanor/self-surrender-warrants>> (as
26 of July 26, 2023);
26 Merced County, FAQs, “How can I clear my warrant?”, *available at*
27 <<https://www.countyofmerced.com/FAQ.aspx?QID=214>> (as of July 26, 2023);
27 Super. Ct. Lassen County, Criminal FAQs, “I just learned I have a warrant out for my arrest.
28 What can I do?”, *available at* <<https://www.lassen.courts.ca.gov/divisions/criminal>> (as of July
28 26, 2023).

1 38. Despite efforts by stakeholders, including the Public Defender’s Office and the
2 Office of Pretrial Services, to resolve this issue, ultimately, on July 25, 2022, Respondent
3 Nishigaya, the Supervising Judge of the Criminal Division, issued an email Directive instructing
4 judges to not add to calendar unserved arrest warrants. A true and correct copy of this email
5 Directive is attached as **Exhibit A**.

6 39. The Directive indicated that the “Court Administration opposes adding to calendar
7 an unserved arrest warrant” and explained:

8 [T]he position of Court Administration is based upon important legal principles involving
9 the execution of warrants, arrest, citation and release, notice to appear, service of
10 summons, booking, and informal booking, all of which are law enforcement functions and
11 meant to be addressed by law enforcement *prior to* the accused person’s first appearance
12 in court. In addition, these law enforcement actions trigger the creation of various event
13 numbers and other data points that the court needs to respect in order to allow all agencies
14 to comply with valuable Department of Justice reporting requirements, minimize error
15 rates, and maintain the integrity of criminal record information.

16 Citing the “administrative difficulty” that calendaring voluntary appearances had caused,
17 Respondent Nishigaya directed his colleagues to take a “unified approach” and not calendar such
18 appearances going forward.

19 40. While the Superior Court’s Directive was implemented throughout the Criminal
20 Division of the Superior Court, no such changes were published or made available for comment
21 as required under Code of Civil Procedure section 575.1 and rule 10.613 of the California Rules
22 of Court. Nor was the public afforded the time period designated in Government Code section
23 68071 before the rule went into effect. In fact, rule 10 of the local Criminal Rules published by
24 the Superior Court still indicates that a defendant may file a “Request for Calendar Setting” to
25 add a case to calendar, without excepting initial appearances for an arrest warrant.¹⁰

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28 ¹⁰ Super. Ct. Santa Clara County, Criminal Division Local Rules, Rule 10, *available at*
https://www.sccourt.org/general_info/rules/pdfs/Criminal.pdf (as of July 25, 2023).

1 their release on other matters from voluntarily appearing in court to address a newly filed arrest
2 warrant.

3 45. Instead, their options for accessing the court are in almost all cases contingent on
4 their financial means. If a person can afford to post the Uniform Bail Amount on the arrest
5 warrant, they are given a future date to first appear in court without ever going into custody. By
6 contrast, according to the Superior Court's Directive, if a person cannot afford the Uniform Bail
7 Amount, they must surrender to the Santa Clara County Main Jail to be booked as an inmate in
8 order to obtain a first court date.

9 46. The Directive and current system result in the unnecessary and avoidable
10 incarceration of people who would otherwise be found eligible for non-monetary pre-trial release
11 if afforded the opportunity to address the Court and seek an Individualized Bail Determination.
12 Indeed, as noted *supra*, the Court's own past practice demonstrates that people with unaffordable
13 Uniform Bail Amounts on their arrest warrants were generally deemed eligible for release when
14 given a chance to calendar a hearing in court without first surrendering to jail custody.

15 **G. Under the Directive, wealthy defendants can purchase the right to an out-of-custody**
16 **arraignment and non-custodial booking procedure, and gain other benefits in their**
17 **criminal case.**

18 47. Under the Superior Court's Directive, defendants who can post the Uniform Bail
19 Amount or a bail bond on an arrest warrant are subjected to far fewer burdens to gain access to
20 the court process. First, an out-of-custody defendant who posts bail is given an arraignment court
21 date, typically scheduled around one month after posting bail, and may remain free until their first
22 appearance in court. At that court date, the parties have the option to present additional
23 information for the Court to consider whether continued release on money bail remains
24 appropriate.

25 48. A defendant who has been released on bail pending their first appearance has the
26 advantage of being able to develop and marshal favorable information regarding employment,
27 law-abiding behavior, or other evidence they have developed while on bail, all of which may be
28 beneficial to further pre-trial release determinations and the ultimate resolution of the case.

1 49. In addition to remaining out of jail custody through their initial court date, people
2 who post the Uniform Bail Amount before being arrested on a warrant are generally given access
3 to different procedures for “booking” or formal identification. In particular, these defendants can
4 take advantage of streamlined non-custodial booking processes, generally in the lobbies of law
5 enforcement agencies in Santa Clara (hereinafter, “non-custodial booking process” or “lobby
6 booking”).

7 50. At the Santa Clara Sheriff’s Office, for example, records clerks wearing civilian
8 clothing rather than law enforcement uniforms manage the non-custodial booking process, which
9 occurs when the defendant and/or their bondsperson come to post bail for the arrest warrant. First,
10 the person being booked completes a short information sheet, which provides basic identifying
11 and other information like any employment, vehicles, and emergency contacts.¹² The defendant
12 also provides some form of identification to the records clerk. The records clerk then uses a
13 digital live scan machine to take the defendant’s fingerprints before taking a digital photograph.
14 Finally, the records clerk provides the defendant with a date and time to appear for arraignment,
15 usually around a month away.

16 51. During this non-custodial booking process, an individual posting bail does not
17 relinquish their personal property, is not formally detained, and is not subjected to invasive steps
18 like a strip search, pat down, or medical and mental health history questionnaire.

19 **H. The Superior Court’s Directive forces poor defendants to undergo an invasive**
20 **booking procedure and submit to detention in order to initiate their case.**

21 52. By contrast, an out-of-custody defendant who does not, or cannot, pay the Uniform
22 Bail Amount associated with their arrest warrant must self-surrender and is subjected to an
23 invasive and extensive custodial booking and detention process in order to access arraignment.

24 53. Custodial bookings take place in the basement of the Santa Clara County Main
25 Jail. Once a person is arrested or self-surrenders on an arrest warrant, they are brought in

26 _____
27 ¹² See Pre-Booking Form, Office of the Sheriff – Santa Clara County, Court Training Program –
28 Court Training Manual at p. 66, available at
https://countysheriff.sccgov.org/sites/g/files/exjcpb406/files/Court%20Training%20Manual%20February%202019_Redacted.pdf (as of July 25, 2023).

1 handcuffs by the arresting officer through a metal detector to the basement, known as “Lower
2 Booking.” Once there, they remain in physical restraints until they have completed the initial
3 booking process and are transferred to a holding cell.

4 54. The experience of being booked into custody can be humiliating, invasive, and
5 intimidating. People booked into custody typically undergo a physical pat-down search and, in
6 some circumstances, may be required to comply with a strip search. They are required to answer
7 questions about their medical and mental health conditions, and may also be questioned about
8 matters like their sexual orientation and perceived gang association.

9 55. During a custodial booking, an individual must surrender their personal items, like
10 wallet and cell phone, which are inventoried and placed in a plastic “property” bag they do not
11 have access to while in the jail. They are fingerprinted and photographed and then assigned a
12 booking number or Criminal Justice Information Control (“CJIC”) Event Number (“CEN”) to
13 record the booking. Other identifying information is entered into CJIC, including name, date of
14 birth, address, and Social Security Number and/or driver’s license if applicable.

15 56. People undergoing a custodial booking generally spend hours in Lower Booking,
16 much of which is spent in a holding cell furnished with only a bench and toilet, the latter of which
17 has no door to separate a person from other detainees. Lower Booking is often crowded and
18 noisy, as this area is also where people brought in from warrantless arrests are processed. There is
19 no visual privacy from deputies or other arrestees. Individuals typically remain locked in a
20 holding area with other arrestees—including people who may be intoxicated or are behaving
21 unpredictably due to their mental state—and do not have access to a cot or bed for sleeping.
22 Pursuant to regulation, law enforcement agencies may keep individuals in temporary holding cells
23 without mattresses for up to 12 hours. (Admin. Code, tit. 15, § 1270.)

24 57. Under a Santa Clara County Sheriff Policy, individuals held on certain
25 misdemeanor charges are given a citation with a court date and then released following
26 completion of the custodial booking process.

27 58. Anyone who is not cite released after booking is transferred to an upstairs housing
28 unit in the Main Jail or taken to another facility, potentially 15 minutes away by bus, for further

1 detention. There, they are required to switch out their personal clothing for jail-issued uniforms
2 and have limited means of outside contact. Depending on their charges, they may also be required
3 to undergo a strip search before entering the housing unit. Once someone has been moved to a
4 housing unit, they are considered fully processed.

5 59. In Petitioner O’Neill Rogge’s case, he surrendered on his arrest warrant and was
6 taken through the booking procedures at the main jail in San Jose. During this time he was
7 detained in a holding cell in the Lower Booking area, with anywhere from three to five other
8 strangers in the cell with him at any given time. The holding cell was cold and physically
9 uncomfortable. Petitioner O’Neill Rogge was unable to tell how long he was held there because
10 he had no means of telling the time.

11 60. Eventually, Petitioner O’Neill Rogge was moved into a dormitory-style unit in the
12 jail to await his court appearance. Throughout his time in the jail he remained on edge, as he had
13 never been incarcerated before and was informed that some of the other people in the jail had
14 committed violent offenses.

15 **I. Those required to self-surrender are generally held anywhere from 12 to 72 hours**
16 **before they can appear in court.**

17 61. If an individual is booked into custody at the Santa Clara Main Jail and fully
18 processed by approximately 11:00 a.m., they will generally be transported to the Superior Court
19 for an early afternoon in-custody arraignment that day.

20 62. If they are not fully processed by 11:00 a.m., the person will be a “non-transport,”
21 which means their arraignment will be continued at least one day and they will remain jailed
22 pending their court appearance.

23 63. If someone is arrested or self-surrenders on a Friday, the next possible in-custody
24 arraignment would be Monday afternoon.

25 64. Sometimes, extenuating circumstances will prevent a person from being brought to
26 court on these timelines altogether. In such circumstances, the individual is still required to
27 remain in jail to await their first court appearance.

28

1 65. Once a person is transported to their initial appearance on the court’s afternoon
2 calendar, they are arraigned and given an Individualized Bail Determination. During this process,
3 they may present information to the court regarding their financial and living circumstances and
4 the appropriateness of pre-trial release. If the court orders them released from custody, they must
5 first be transported back to the jail and have their release processed, which often results in people
6 remaining detained until around midnight the day of their release.

7 66. In Petitioner O’Neill Rogge’s case, he was transported to the courthouse early in
8 the morning the day after he was booked into Santa Clara custody and was held in a holding area
9 for most of the day until his case was up for review in the afternoon. Once he appeared in court,
10 he was appointed an attorney who requested his pre-trial release. The Court considered
11 Petitioner’s lack of criminal history and other factors and ultimately ordered him released “OR”
12 pending trial or resolution of his case. Despite Petitioner O’Neill Rogge having had a Uniform
13 Bail Amount of \$10,000 assessed when the charges were filed against him, the court’s order
14 required him to pay *zero dollars* in money bail to secure his pre-trial release.

15 67. After receiving his order for release, Petitioner O’Neill Rogge was made to wait
16 with the other defendants to be transported back to the jail, where they arrived late in the evening.
17 Because of their late arrival and the exhausting nature of the proceedings, Petitioner O’Neill
18 Rogge fell asleep, but was soon awoken by officials to process his release. Even though he
19 informed officials that there was no nearby public transit available at that hour and that he had no
20 other means of transportation, he was nonetheless released after 2:00 a.m. without any resources
21 for transportation.

22 **J. Requiring poor defendants to access the court via the jail results in negative**
23 **individual collateral consequences and is contrary to the public interest.**

24 68. While the number of individuals directly impacted by the Superior Court’s
25 Directive is unclear, there are hundreds of active arrest warrants issued by the Court that remain
26 unserved at any given time. Barring individuals subject to such warrants from accessing court
27 proceedings, absent ability to pay a Uniform Bail Amount or self-surrender into custody, imposes
28 significant hardships on those individuals and the community at large.

1 69. It is widely acknowledged that pretrial detention can have profound consequences
2 for individuals, their families, and others who depend on them, even if the period of incarceration
3 is brief. Short periods of incarceration can be highly disruptive for parents and people with other
4 caretaking responsibilities, who cannot afford to be jailed pending an appearance in court.

5 70. Absence from work, particularly for people employed in low-wage jobs that do not
6 offer time off,¹³ may cause loss of employment and other financial disruption. One study looking
7 at the longitudinal effects of pre-trial incarceration found that roughly half of study participants
8 who lost their employment due to incarceration were only in jail for one to three days.¹⁴

9 71. Jail can also disrupt an individual’s efforts to access consistent mental health or
10 substance abuse treatment. Nationally, less than half of jail inmates with a history of reported
11 mental illness receive treatment while incarcerated.¹⁵ This disruptive effect can be particularly
12 counterproductive for people who are already participating in mental health or drug treatment
13 programs, as they may be at risk of losing their spot in the program if required to go to jail on an
14 arrest warrant.

15 72. One study found that being jailed for even two to three days pre-trial is associated
16 with a measurable increase in the likelihood that an otherwise “low-risk” individual will
17 recidivate.¹⁶ While the causal mechanisms are uncertain, these findings emphasize that the costs
18 of this system are not simply borne by the impacted individual, but are spread across the
19 community more generally.

21 ¹³ In California there is no legal requirement for employers to offer employees vacation or job-
22 protected personal time. Division of Labor Standards Enforcement, “Vacation FAQ,” available at
<https://www.dir.ca.gov/dlse/faq_vacation.htm> (as of July 25, 2023).

23 ¹⁴ Kimbrell & Wilson, George Mason University, *Money Bond Process Experiences and*
24 *Perceptions* (Sept. 9, 2016) at p. 19, available at
<https://www.prisonpolicy.org/scans/Money_Bond_Process_Experiences_and_Perceptions_2016.pdf> (as of July 25, 2023).

25 ¹⁵ Bronson & Berzofsky, U.S. Dept. of Justice, *Indicators of Mental Health Problems Reported*
26 *by Prisoners and Jail Inmates, 2011-12* (June 2017) at p. 8, available at
<<https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>> (as of July 25, 2023).

27 ¹⁶ Lowenkamp, et al., *The Hidden Costs of Pretrial Detention* (Nov. 2013) at pp. 19–20, available
28 at <https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf> (as of July 25, 2023).

1 73. Beyond public safety harms, the public also bears the greater financial cost
2 associated with pretrial detention. The Santa Clara County Bail and Release Work Group has
3 found that pre-trial detention costs nearly 14 times¹⁷ more per day than supervised release.¹⁷

4 74. One analysis of Santa Clara County jail data revealed that between January and
5 September 2022, over fifteen thousand people were booked into jail custody and released within
6 10 days.¹⁸ For those who were not cited and released immediately after booking, the next
7 opportunity to be released generally occurred at arraignment, and County data showed that 90
8 percent of these detainees were released within five days of booking.¹⁹ These numbers suggest
9 that pre-arraignment incarceration and delayed access to Individualized Bail Determinations is a
10 major contributor to the cycling jail population and costs to taxpayers.

11 75. Finally, in the absence of a process to appear voluntarily in court without first
12 surrendering to jail, some people elect not to address their warrants at all, resulting in avoidable
13 delays to the resolution of criminal cases. This has systemic impacts on the timely resolution of
14 criminal allegations.

15 76. Petitioners' experiences underscore these individual and societal harms. Petitioner
16 O'Neill Rogge, for example, had never been to jail as an inmate and initially delayed surrendering
17 on the warrant out of fear of going into custody, notwithstanding the impact of the arrest warrant
18 on his access to programs like San Jose Job Corps. The experience of surrendering to jail was
19 disorienting, embarrassing, traumatic, and ultimately left him stranded at a jail facility at 2:00
20 a.m. with no means of safe transport. When he was given the opportunity to go to court, he was

22 ¹⁷ Greta S. Hansen, Chief Operating Officer, *Overview of the City, County, and Superior Court's*
23 *Role in the Criminal Justice System*, Mem. To the County of Santa Clara Board of Supervisors,
24 Public Safety and Justice Committee (Sept. 8, 2022) at packet pp. 53–54, available at
<<http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=12955&Inline=True>> (as of July
25 27, 2023).

26 ¹⁸ Greta S. Hansen, Chief Operating Officer, *Snapshot of Jail Population Incarcerated for 10*
27 *Days or Less*, Mem. To the County of Santa Clara Board of Supervisors Public Safety and Justice
28 Committee (Dec. 8, 2022) at packet pp. 121–122, available at
<<http://sccgov.iqm2.com/citizens/FileOpen.aspx?Type=1&ID=13128&Inline=True>> (as of July
25, 2023).

¹⁹ *Id.*

1 released without having to pay any money bail amount at all, clearly indicating that his detention
2 and resulting hardship served no interest in public safety.

3 77. Petitioner SVDB, for its part, fields requests for assistance on a monthly basis
4 from community members who are desperate to find means to get into court and address their
5 arrest warrant without forgoing work, caretaking responsibilities, and other obligations. The
6 organization regularly works to provide case and reentry support to people who have experienced
7 the harms of pre-trial incarceration firsthand, and has an interest in ensuring that people are not
8 unnecessarily subjected to these harms. Currently, Petitioner SVDB must devote significant
9 resources to helping the families of detained loved ones prepare materials to offer the Court in
10 support of a release determination. Petitioner SVDB provides this support by, among other things,
11 having staff attend arraignment and bail hearings and helping families fill out information sheets
12 to provide to defense counsel arguing for release.

13 78. These harms are entirely avoidable, as the practices of other courts—and Santa
14 Clara Superior Court’s own historical experience—demonstrate. There are alternative
15 mechanisms by which the Court can accomplish its stated interest in seeing defendants booked
16 and accurately identified, and the Court need not subject poor defendants to the Hobson’s choice
17 of surrendering to jail to get into court or forgoing their right to appear in court altogether.

18 **FIRST CAUSE OF ACTION**

19 **All Petitioners/Plaintiffs Against All Respondents/Defendants**
20 **Violation of Substantive Due Process and Equal Protection**
21 **Article I, § 7 of the California Constitution**
22 **Fourteenth Amendment to the U.S. Constitution**

23 79. Petitioners/Plaintiffs re-allege and incorporate by reference all the above
24 allegations as though fully set forth herein.

25 80. The Directive violates the “basic principle of fairness that the rich and poor should
26 have equal access to the justice system.” (*People v. Bellosso* (2019) 42 Cal.App.5th 647, 656.)
27 More specifically, the Directive violates two rights rooted in due process and equal protection: the
28 right against wealth-based detention and the right to access court without differential burdens of
access based on wealth.

1 81. A person may not be imprisoned before or after trial “solely because of his
2 indigency.” (*Tate, supra*, 401 U.S. at p. 398.) Or, as the California Supreme Court has put it, “No
3 person should lose the right to liberty simply because that person can’t afford to post bail.”
4 (*Humphrey, supra*, 11 Cal.5th at p. 142.) Courts apply heightened scrutiny to systems that burden
5 pre-trial liberty interests based on a person’s ability to pay. (*Id.* at pp. 153–54; *Buffin v. City &*
6 *County of San Francisco* (N.D.Cal. 2019) 2019 WL 1017537, at p. *13.) “The accused retains a
7 fundamental constitutional right to liberty” (*Humphrey, supra*, 11 Cal.5th at p. 150), and even a
8 relatively short period of incarceration before trial is a “significant deprivation” of liberty that
9 must satisfy heightened constitutional scrutiny (*see, e.g., Buffin, supra*, 2019 WL 1017537, at pp.
10 *2–6, 18).

11 82. The Directive results in significant deprivations of liberty based on wealth because
12 it effectively requires defendants who are unable to post the Uniform Bail Amount associated
13 with the charges filed against them to self-surrender into custody in order to make their first
14 appearance in court. Individuals who have self-surrendered on an arrest warrant often wait
15 upwards of three days just to appear in court and hear the charges against them, only to then be
16 released on their own recognizance or with non-financial conditions. The Directive must therefore
17 satisfy heightened scrutiny.

18 83. The Directive must also satisfy heightened scrutiny because it implicates the due
19 process and equal protection right of access to court. (*See Griffin v. Illinois* (1956) 351 U.S. 12,
20 13, 18; *Payne v. Superior Court* (1976) 17 Cal.3d 908, 922–24.) This right prohibits not only
21 complete denials of access but also systems that impose a “differential burden on access,”
22 including “a higher price” of access to court for poor defendants “in the form of a web of
23 counterproductive hardships” and collateral consequences. (*People v. Son* (2020) 49 Cal.App.5th
24 565, 586.)

25 84. Under the Directive, poor defendants experience a differential burden on accessing
26 arraignment, including the higher price of the emotional, familial, and financial hardships of
27 detention. Poor defendants also pay the price of higher collateral costs. For example, they too
28 have interests in a speedy trial and promptly obtaining information about the charges against them

1 in order to secure evidence and witnesses in their defense (*Serna, supra*, 40 Cal.3d at pp. 253–
2 54), but, under the Directive, are disincentivized to come forward merely to be forced into
3 custody. Ultimately, these collateral costs carry over to taxpayers in the County, who also
4 shoulder the price of subjecting people to unnecessary detention.

5 85. The Directive fails heightened scrutiny because, among other reasons, there are
6 alternative mechanisms by which the Court can accomplish its stated interest in booking and
7 identifying defendants. The practice of other courts and Santa Clara Superior Court’s own
8 historical practice are just two available alternatives. Because the Directive is neither necessary
9 nor narrowly tailored to serve the Superior Court’s stated interests, it violates the due process and
10 equal protection clauses of the California and U.S. Constitutions.

11 **SECOND CAUSE OF ACTION**
12 **All Petitioners/Plaintiffs Against All Respondents/Defendants**
13 **Violation of Procedural Due Process**
14 **Article I, § 7 of the California Constitution**

15 86. Petitioners/Plaintiffs re-allege and incorporate by reference all the above
16 allegations as though fully set forth herein.

17 87. Article I, section 7 of the California Constitution guarantees the right to procedural
18 due process. Whether a rule or policy is consistent with the dictates of due process depends on a
19 weighing of the “private interest” implicated, the “risk of an erroneous deprivation” of that
20 interest, the “dignitary interest in informing individuals of the nature, grounds and consequences
21 of the action and in enabling them to present their side of the story before a responsible
22 governmental official,” and finally, the “governmental interest” at stake. (*People v. Ramirez*
23 (1979) 25 Cal.3d 260, 269.)

24 88. California law specifically recognizes the importance of treating all people with
25 dignity and as equal members of society. “Thus, even in cases in which the decision-making
26 procedure will not alter the outcome of governmental action, due process may nevertheless
27 require that certain procedural protections be granted the individual in order to protect important
28 dignitary values, or, in other words, ‘to ensure that the method of interaction itself is fair in terms
of what are perceived as minimum standards of political accountability—of modes of interaction

1 which express a collective judgment that human beings are important in their own right, and that
2 they must be treated with understanding, respect, and even compassion.” (Ramirez, supra, 25
3 Cal.3d at p. 268.)

4 89. Respondents’ Directive violates the guarantees of procedural due process by
5 depriving defendants of the ability to freely and voluntarily appear in court to be arraigned.

6 90. In particular, the Directive implicates indigent defendants’ interest in pre-trial
7 liberty, “a fundamental interest second only to life itself in terms of constitutional importance,”
8 by requiring those who cannot post bail to self-surrender. (*Van Atta v. Scott* (1980) 27 Cal.3d 424,
9 435, *superseded on other grounds as stated in In re York* (1995) 9 Cal.4th 1133.) The Directive
10 creates a substantial risk of wrongful deprivation of liberty by subjecting people to pre-
11 arraignment incarceration on arbitrary and discriminatory criteria such as wealth.

12 91. Respondents’ Directive also ignores the important dignitary interest of all
13 defendants in being permitted to enter the court on the same standing and seek an Individualized
14 Bail Determination without first shouldering the burdens of incarceration or unaffordable money
15 bail.

16 92. Because the Directive is neither necessary nor narrowly tailored to serve the
17 Superior Court’s stated interests, it violates the dictates of procedural due process.

18 **THIRD CAUSE OF ACTION**
19 **All Petitioners/Plaintiffs Against All Respondents/Defendants**
20 **Violation of California Statute and Rules of Court**
21 **Code of Civil Procedure § 575.1; Government Code § 68071;**
22 **Cal. Rules of Court Rule 10.613**

23 93. Petitioners/Plaintiffs re-allege and incorporate by reference all the above
24 allegations as though fully set forth herein.

25 94. Respondents’ Directive functions as a local rule adopted in violation of the
26 procedural mandates of Code of Civil Procedure section 575.1, Government Code section 68071,
27 and California Rules of Court rule 10.613. These authorities cumulatively impose requirements
28 regarding notice and opportunity to comment on proposed rules; submission to the Judicial
Council for public examination; and further prescribe that no new rule shall take effect until
January 1 or July 1, whichever comes first following the 45th day after filing with the Judicial

1 Council.

2 95. In issuing the Directive, Respondents adopted a policy applying to calendaring in
3 all departments in the Criminal Division of Santa Clara Superior Court. Further, the Directive
4 effectively carves out an exception to local Criminal Rule 10, by excepting arraignments on
5 matters with an arrest warrant from the calendar setting procedures adopted by that local rule.

6 96. Respondents did not comply with Code of Civil Procedure section 575.1,
7 Government Code section 68071, or Rules of Court rule 10.613 when issuing the Directive.

8 97. Respondents are under a duty to comply with these statutory authorities and rules
9 promulgated by the Judicial Council, and their failure to do so renders the Directive invalid. (*Hall*
10 *v. Superior Court* (2005) 133 Cal.App.4th 908, 913.)

11 **FOURTH CAUSE OF ACTION**
12 **All Petitioners/Plaintiffs Against All Respondents/Defendants**
13 **Writ of Mandate**
14 **Code of Civil Procedure § 1085**

15 98. Petitioners/Plaintiffs re-allege and incorporate by reference all the above
16 allegations as though fully set forth herein.

17 99. The CEO, Supervising Judge, and Presiding Judge are persons within the meaning
18 of Code of Civil Procedure section 1085(a). They are responsible for developing and enforcing
19 the Superior Court's Directive challenged herein. (*See City of Redondo Beach v. Padilla* (2020)
20 46 Cal.App.5th 902, 908 fn.4.)

21 100. As Santa Clara Superior Court officials, Respondents have mandatory, non-
22 discretionary duties to obey the California and U.S. Constitutions, including their guarantees of
23 substantive and procedural due process and equal protection. (*See Zubarau v. City of Palmdale*
24 (2011) 192 Cal.App.4th 289, 305; *Rhyne v. Municipal Court* (1980) 113 Cal.App.3d 807, 821.)
25 Pursuant to the Directive, they refuse to calendar requests for defendants to voluntarily appear on
26 initial arrest warrants and be arraigned, instead detaining pre-arraignment defendants who self-
27 surrender or are arrested and cannot afford the Uniform Bail Amount on their initial arrest
28 warrants. The Directive deprives defendants of their liberty and dignitary interests by denying
them an arraignment and Individualized Bail Determination before subjecting them to jail; results

1 in wealth-based detention; and discriminates against indigent defendants. The CEO, Supervising
2 Judge, and Presiding Judge therefore violate their mandatory duties when they enforce the
3 Directive.

4 101. The CEO, Supervising Judge, and Presiding Judge also have mandatory, non-
5 discretionary duties to comply with California law. Because Respondents issued the court-wide
6 policy change, which functions as a local rule, without proper notice and comment, Respondents
7 issued the Directive in violation of Code of Civil Procedure section 575.1, Government Code
8 section 68071, and Rules of Court rule 10.613.

9 102. Ensuring that Respondents discharge their mandatory duties under the California
10 and U.S. Constitutions and California law is a matter of compelling public interest. (*See Save the*
11 *Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166.) Petitioners
12 therefore have public interest standing to pursue relief. Petitioner SVDB also has a beneficial
13 interest in the relief sought because it regularly expends resources to support individuals who are
14 impacted by the Superior Court's Directive.

15 103. Petitioners/Plaintiffs have no other plain, speedy, and adequate remedy in the
16 ordinary course of law to prevent the breach of the CEO, Supervising Judge, and Presiding
17 Judge's mandatory legal obligations and to protect the interests at stake here. Absent mandamus
18 relief, Respondents will continue to enforce a court-wide policy issued in contravention of state
19 law and local rules that results in serious deprivations of the due process and equal protection
20 guarantees of the California and U.S. Constitutions. Issuance of a writ of mandate compelling the
21 CEO, Supervising Judge, and Presiding Judge to perform their duties under the California and
22 U.S. Constitutions, California law, and Rules of Court is therefore required. Based on the
23 foregoing, Petitioners/Plaintiffs are entitled to a peremptory writ of mandate prohibiting
24 Respondents from enforcing the Directive, and directing them to provide a process to calendar
25 requests for out-of-custody defendants to voluntarily appear and be arraigned on initial arrest
26 warrants without posting bail or surrendering to jail.

1
2 **FIFTH CAUSE OF ACTION**
3 **Petitioner/Plaintiff Silicon Valley De-Bug Against All Respondents/Defendants**
4 **Declaratory Relief**
5 **Code of Civil Procedure §§ 526a, 1060**

6 104. Petitioners/Plaintiffs re-allege and incorporate by reference all the above
7 allegations as though fully set forth herein.

8 105. Petitioner SVDB is a non-profit organization based in Santa Clara County and has
9 been assessed taxes and/or has paid taxes, such as payroll and sales tax, in Santa Clara County
10 within the year prior to commencement of this action.

11 106. The CEO, Supervising Judge, and Presiding Judge are officers, agents, or persons
12 acting in an administrative capacity on behalf of the Superior Court for the County of Santa Clara,
13 a local agency within the meaning of Code of Civil Procedure section 526a, subsection (d),
14 paragraph (1). They are responsible for issuing and enforcing the Directive challenged herein.

15 107. Respondents' Directive violates the due process and equal protection guarantees of
16 the California and U.S. Constitutions. Pursuant to the Directive, they refuse to accept calendaring
17 requests for out-of-custody defendants to voluntarily appear on initial arrest warrants, be
18 arraigned, and receive an Individualized Bail Determination, thereby requiring defendants who
19 cannot pay the Uniform Bail Amount on their initial arrest warrants to go to jail to access the
20 court. This Directive violates procedural due process, results in wealth-based detention, and
21 discriminates against indigent defendants.

22 108. Respondents issued this court-wide policy change in violation of Code of Civil
23 Procedure section 575.1, Government Code section 68071, and Rules of Court rule 10.613.

24 109. By issuing and enforcing the Directive, the CEO, Supervising Judge, and Presiding
25 Judge's conduct constitutes an illegal expenditure and a waste of public funds.

26 110. Petitioner SVDB has an interest in ensuring that the CEO, Supervising Judge, and
27 Presiding Judge oversee and manage the Superior Court in a manner consistent with California
28 statute, the Rules of Court, and, most fundamentally, the California and U.S. Constitutions,
including by not detaining individuals subject to initial arrest warrants based solely on their

1 ability to pay, and by not discriminating against indigent defendants. Petitioner SVDB also has an
2 interest in enjoining the waste of government resources and in restraining officials from enforcing
3 an unlawful or unconstitutional court directive, local rule, and/or policy.

4 111. Pursuant to Code of Civil Procedure sections 526a and 1060 and this Court's
5 equitable power, Petitioner SVDB seeks declaratory relief to prevent continued harm and to
6 protect Petitioner SVDB, the other Petitioner/Plaintiff, and the public from Respondents'
7 unlawful policies and practices described herein.

8 **SIXTH CAUSE OF ACTION**

9 **Petitioner/Plaintiff Silicon Valley De-Bug Against All Respondents/Defendants
10 Injunctive Relief**

11 **Code of Civil Procedure § 526a; Civil Code § 3422**

12 112. Petitioners/Plaintiffs re-allege and incorporate by reference all the above
13 allegations as though fully set forth herein.

14 113. Petitioner SVDB is a non-profit organization based in Santa Clara County and has
15 been assessed taxes and/or has paid taxes, such as unsecured payroll and sales taxes, in Santa
16 Clara County within the year prior to commencement of this action.

17 114. The CEO, Supervising Judge, and Presiding Judge are officers, agents, or persons
18 acting in an administrative capacity on behalf of the Superior Court for the County of Santa Clara,
19 a local agency within the meaning of Code of Civil Procedure section 526a, subsection (d),
20 paragraph (1). They are responsible for issuing and enforcing the Directive challenged herein.

21 115. The Directive violates the due process and equal protection guarantees of the
22 California and U.S. Constitutions. Pursuant to the Directive, Respondents refuse to accept
23 calendaring requests for out-of-custody defendants to voluntarily appear on initial arrest warrants,
24 be arraigned, and receive an Individualized Bail Determination, thereby requiring defendants who
25 cannot pay the Uniform Bail Amount on their initial arrest warrants to go to jail to access the
26 court. This Directive violates procedural due process, results in wealth-based detention, and
27 discriminates against indigent defendants.

28 116. Respondents issued this court-wide policy change in violation of Code of Civil
Procedure section 575.1, Government Code section 68071, and Rules of Court rule 10.613.

1 iv. For prospective injunctive relief requiring Respondents to immediately rescind the
2 Directive and to provide a process for out-of-custody defendants to voluntarily appear and be
3 arraigned on initial arrest warrants without first being subjected to jail custody if they cannot pay
4 the Uniform Bail Amount;

5 v. For reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5;

6 vi. For costs of suit;

7 vii. And such other and further relief as the Court may deem just and proper.
8

9 Dated: July 28, 2023

Respectfully submitted,

10
11 

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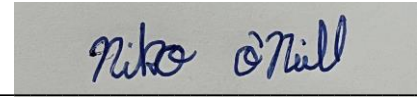
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VERIFICATION of PETITIONER O'NEILL ROGGE

I, Nikolaus O'Neill Rogge, a Petitioner/Plaintiff in this matter, have read this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive relief in the matter of *O'Neill Rogge v. Fleming*. I have personal knowledge of the facts stated in paragraphs 11, 25, 27, 28, 59–60, 66–67, 76 and know them to be true. I am informed, and do believe, that the matters stated in the remainder of the Petition/Complaint are true. On these grounds, I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 28, 2023, in Fresno, California.



Nikolaus O'Neill Rogge


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VERIFICATION of PETITIONER SVDB

I, Raj Jayadev, am a coordinator of Silicon Valley De-Bug, which is a Petitioner/Plaintiff in this matter. I have read this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive relief in the matter of *O’Neill Rogge v. Fleming*. I have personal knowledge of the facts stated in paragraphs 12, 19–22, 24, 26, 29, 35, 37, 45, 48, 52, 57, 63–65, 69–71, 73–74, 77, 105, 110, 113, and 118, and know them to be true. I am informed, and do believe, that the matters stated in the remainder of the Petition/Complaint are true. On these grounds, I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 28, 2023, in San Jose, California.



Raj Jayadev