IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Vondell Wilbourn, individually and for others similarly situated, *Plaintiffs*, -vs- Sheriff of Cook County and Cook County, Illinois, *Defendants.*	)	No. 23-cv-1782 *(Judge Shah)*

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Pursuant to Rule 23(c), plaintiff, by counsel, moves the Court to order that this case proceed as a class action under Rule 23(b)(3) for the following two sub-classes (with the differences between the proposed sub-classes denoted by *italics*):

A. Fourth Amendment Arrest Sub-Class

Any person released on electronic monitoring supervised by the Sheriff of Cook County who was returned, without a court order, to the Cook County Jail by employees of the Sheriff of Cook County from March 22, 2021 to September 16, 2023, because the Office of the Sheriff determined that the person had violated a condition of the Sheriff's electronic monitoring program.

B. Fourth Amendment Home Entry Sub-Class

Any person released on electronic monitoring supervised by the Sheriff of Cook County who was returned, without a court order, to the Cook County Jail by employees of the Sheriff of Cook County from March 22, 2021 to September 16, 2023, because the Office of the Sheriff determined that the person had violated a condition of the Sheriff's electronic monitoring program *and who was taken into custody after agents of the Cook County Sheriff entered the person's home without a warrant. This proposed sub-*

class does not include any person residing in a half-way house or other group home.

Subclass A includes persons who are seized inside and outside of their dwelling; Subclass B is limited to persons who are seized after a warrantless entry into their residence. Each proposed class starts two years before plaintiff Wilbourn filed this lawsuit.[1] Each ends when the "Pre-Trial Fairness Act" became effective.[2]

I. Factual Background

When plaintiff filed this lawsuit on March 22, 2023, a person charged with a crime in Cook County could be released from the Cook County Jail and placed in an electronic monitoring program ("EM") managed by the Sheriff of Cook County.[3]

During the class period, the Sheriff authorized its EM officers to arrest and return to the Cook County Jail persons released on EM whom the Sheriff believed had violated one or more of the rules governing release on EM and thereby committed a "program violation." (Pasquel Dep. 8:6-9, Plaintiff's

[1] The statute of limitations for Section 1983 cases in Illinois is two years. *Lewis v. City of Chicago*, 914 F.3d 472, 478 (7th Cir. 2019).

[2] The evidence of record shows that, on the effective date of the "Pretrial Fairness Act," the Sheriff concluded that a court order was required to return to the Jail a person who had been released on electronic monitoring. (Pasquel Dep. 5:4-15, Plaintiff's Exhibit 2.) The Act became effective on September 17, 2023.

[3] This is no longer true: The Sheriff stopped accepting new EM participants on March 31, 2025. Detainees released subject to EM are now supervised by the Office of the Chief Judge of the Circuit Court of Cook County. The Sheriff continues to supervise EM participants who were ordered to its program before April 1, 2025. (Exhibit 3 at 1.)

Exhibit 2.) A typical "program violation" is "deviating from [authorized] movement, meaning if they have work or school movement, and they deviate and go somewhere else." (Pasquel Dep 8:1-5, Plaintiff's Exhibit 2.)

Plaintiff was returned to the Jail for a "program violation" after he drove his children to school, as authorized by the judge presiding over the criminal case, by one route and returned home by another; the Sheriff asserts that by taking a different route to return home, plaintiff violated EM rules by "deviating in his essential movement." (Answer to Amended Complaint, ¶ 11, ECF No. 27.) Defendants' position is simply that "[t]he Sheriff has arrest authority related to EM violations." (Plaintiff's Exhibit 3 at 2.)

Plaintiff contends that the Fourth Amendment does not allow an arrest for a "program violation" unless the violation is also criminal offense: There cannot be probable cause to arrest unless the facts and circumstances known to the arresting officers "reasonably support a belief that the individual has committed, is committing, or is about to commit a crime." *United States v. Davis*, 119 F.4th 500, 505 (7th Cir. 2024) (cleaned up).

Plaintiff's first claim, and the claim underlying the proposed "Fourth Amendment Arrest Sub-Class" is that the Sheriff's policy to arrest persons on EM for a "program violation" results in a false arrest, contrary to the Fourth Amendment. *Wilbourn v. Sheriff of Cook County*, No. 23 CV 1782, 2024 WL 897463, at *4-*5. (N.D. Ill. March 1, 2024).

Plaintiff's second claim involves the warrant clause of the Fourth Amendment. Before September 17, 2023, when the Pre-Trial Fairness Act became effective, reincarcerations for alleged "program violations" proceeded without "the obtaining of a judicial warrant" that the Fourth Amendment "generally requires." *Lange v. California*, 594 U.S. 295, 301 (2021) (cleaned up).

The Sheriff contends that all persons released on electronic monitoring consent to a warrantless entry of their dwelling. (Pasquel Dep. 12:2-5, Plaintiff's Exhibit 2.) Plaintiff disagrees, contending that the consent was not voluntary and that the scope of consent is limited to "verifying compliance" with the EM rules. *Wilbourn*, 2024 WL 897463, at *3-4. These disputed questions of law are the basis for the "Fourth Amendment Home Entry Sub-Class."

Plaintiff shows below that each of the proposed subclasses satisfies Rule 23(a) and that certification is appropriate under Rule 23(b)(3).

II. Certification Is Appropriate under Rule 23(a)

A. Numerosity

The Sheriff requires detailed reports from the deputy Sheriffs who return a person from EM to the Jail. The Sheriff maintains these reports as computerized records and has produced a spreadsheet identifying 73 incidents between April 1, 2021 and September 9, 2023. These incident reports are classified by the Sheriff as "EM—Reincarceration" and were selected by the

Sheriff's Office by using a word search for "program violation."[4] (Email, Branum to Flaxman, January 28, 2025, Exhibit 9.)

The program-violation reports the Sheriff produced show 58 instances in which Sheriff's deputies entered a dwelling and reincarcerated a person who had been released on bail conditioned on electronic monitoring. Plaintiff has extracted and reprinted the relevant portions of these reports in Plaintiff's Exhibit 1.[5] As in *Lacy v. Cook County*, 897 F.3d 847, 864 (7th Cir. 2018), the records maintained by defendants identify each member of the class, meaning that the class is ascertainable.

Plaintiff has omitted from Exhibit 1 reports of persons returned to the Jail who did not appear to have been harmed by the challenged policies, such as persons returned to the Jail from a group home that had withdrawn consent and one case where the person had been arrested on another charge and was being detained at a police station.

In *Orr v. Shicker*, 953 F.3d 490, 498 (7th Cir. 2020), the Seventh Circuit approvingly cited its previous decision in *Mulvania v. Sheriff of Rock Island*

[4] The Sheriff's spreadsheet may be incomplete. As summarized in the Table of Contents to Plaintiff's Exhibit 1, the spreadsheet shows 13 persons were returned to the Jail by Sheriff's deputies for EM violations in August of 2021, but no one returned in October and November of 2021, January through April of 2022, and March of 2023. These anomalies suggest that the word search for "program violation" was inadequate to produce a list of all members of the putative class.

[5] Defendant produced the underlying spreadsheet under a confidentiality order and has requested plaintiff to file under seal the documents plaintiff generated from the spreadsheet. Plaintiff will therefore provisionally file under seal, pursuant to Local Rule 26.2(c), the reports excerpted in Exhibit 1.

County, 850 F.3d 849 (7th Cir. 2017) for the rule that that "a forty-member class is often regarded as sufficient to meet the numerosity requirement." *Id.* at 859. Plaintiff has identified 58 members of each proposed class; as in *Orr*, the Court should find that 58 persons is, in the language of Rule 23(a)(1), "so numerous that joinder of all members is impracticable." Plaintiff shows below that this case satisfies each of the three other requirements of Rule 23(a).

B. Commonality

This case presents three disputed questions arising under the Fourth Amendment. *See ante* at 3-5.

First, whether the Fourth Amendment allows an arrest for an EM "program violations" that is not a violation of state or federal law.

Second, whether persons on electronic monitoring have consented to a warrantless entry of their dwelling (Pasquel Dep. 12:2-5, Plaintiff's Exhibit 2) for the purpose of returning the person to the Jail.

Third, whether the officers exceed the scope of the consent when they enter a dwelling to make a warrantless arrests for an EM "program violation."

Each of these common questions satisfies the commonality requirement of Rule 23(a)(2).

The Court of Appeals recently analyzed the commonality requirement of Rule 23(a) in *Scott v. Dart*, 99 F.4th 1076 (7th Cir. 2024), when it reversed a district court's finding of lack of commonality. *Scott* teaches that the crucial issue is whether the claims "depend on a common contention that is capable of

classwide resolution—which means that determination of its truth or falsity will involve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 1088 (cleaned up).

The Seventh Circuit found in *Scott* a "common question of liability that will yield a common answer." *Id.* at 1090. There, the question was "whether the County's decision not to keep an oral surgeon on the Jail's medical staff was objectively unreasonable." *Id.*

The three contested legal issues presented in this case can be resolved "in one fell swoop," *Pella Corp. v. Saltzman*, 606 F.3d 391, 394 (7th Cir. 2010), even if other issues (such as damages and causation) require individual determination. *Jacks v. DirectSat USA, LLC*, 118 F.4th 888, 890 (7th Cir. 2024). The Court should therefore conclude that the proposed sub-classes satisfy the commonality requirement of Rule 23(a)(2).

C. Typicality

The depositions of plaintiff, Damien Stewart (a member of the putative class), four deputy Sheriffs who implemented the Sheriff's policy, and the reports collected in Plaintiff's Exhibit show that plaintiff's claims are typical of those asserted for each sub-class.

Typicality in Rule 23(a)(3) "is closely related to the preceding question of commonality." *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her

claims are based on the same legal theory." *De La Fuente v. Stokeley–Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983). Although "[t]he typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members," the requirement "primarily directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large." *Id.*

A recurring fact pattern emerges from the program-violation reports collected in Plaintiff's Exhibit 1: The officers arrive at the residence of the EM subject, enter the dwelling, and return the subject to the Cook County Jail because of a suspected violation of EM rules. That fact pattern is consistent with the testimony discussed below.

1. Damien Stewart

Stewart was at home sleeping when the officers arrived. (Stewart Dep. 78:4-6, Plaintiff's Exhibit 4.) The deputies "came to my house and did a check and said they was doing something, like a no-movement check or something like that." (Stewart Dep. 41:11-14, Plaintiff's Exhibit 4.) Stewart felt that he could not "open up the door and say, oh, man, I want y'all to leave." (Stewart Dep. 84:10-11, Plaintiff's Exhibit 4.)

An officer told Stewart that he been "tampering with [his] equipment" (Stewart Dep. 44:17, Plaintiff's Exhibit 3) and stated that "one screw was loose." (Stewart Dep. 76:14, Plaintiff's Exhibit 4.) Stewart denied involvement

with any loose screw (Stewart Dep. 80:9-10, Plaintiff's Exhibit 4) and told the deputies that it was not believable that he been tampering with his EM device because he was going to resolve the criminal case at his next appearance.[6] (Stewart Dep. 80:13-17, Plaintiff's Exhibit 4)

The officers returned Stewart to the Cook County Jail. (Stewart Dep. 74:11-18, Plaintiff's Exhibit 4) where he remained until he accepted a "dress-in/dress-out" plea bargain on May 6, 2021. (Stewart Dep. 111:10-23, Plaintiff's Exhibit 4.)

2. Plaintiff Vondell Wilbourn

Plaintiff was asleep when Sheriff's deputies arrived at his home. (Wilbourn Dep. 174:23-25, Plaintiff's Exhibit 5) He heard banging at the door (Wilbourn Dep. 175:19-22, Plaintiff's Exhibit 5) and screaming from his two small children. (Wilbourn Dep. 177:2-7, Plaintiff's Exhibit 5.) Wilbourn walked to his front door, opened it (Wilbourn Dep. 177:10-15, Plaintiff's Exhibit 5), and followed an officer's command to "Turn around. Cuff Up." (Wilbourn Dep. 181:20-22, Plaintiff's Exhibit 5). (Wilbourn explained the officer's command: "Cuff up" means "turn around, put your hands behind your back." Wilbourn Dep. 194:19-21, Plaintiff's Exhibit 5.)

After handcuffing plaintiff, the officers "came in and pushed me to the side, sat me down on the couch and started searching around." (Wilbourn Dep.

[6] Stewart received a sentence that allowed him to "dress in/dress out" from the penitentiary on the same day. (Stewart Dep. 45:9-14, Plaintiff's Exhibit 3 at 45.)

180:1-6, Plaintiff's Exhibit 5.) One of the officers told plaintiff that he had violated an EM rule. (Wilbourn Dep. 201:14-19, Plaintiff's Exhibit 5.) Wilbourn was then taken from his home to the Jail. (Wilbourn Dep. 253:21-22, Plaintiff's Exhibit 5.)

3. Sheriff's Deputies

John Fleming has been an investigator for the Cook County Sheriff's Office for more than ten years. (Fleming Dep. 4:22-5:2, Plaintiff's Exhibit 6.) Fleming confirmed that the Sheriff's policy was that "If they violate the terms of the program, we do not need a court order [to return a person on EM to the jail]." (Fleming Dep. 10:23-24, Plaintiff's Exhibit 6.) Fleming, who was one of the officers who returned plaintiff to the Jail (Fleming Dep. 12:11-14, Plaintiff's Exhibit 6), stated that the officers did not have a warrant. (Fleming Dep. 14:2-5, Plaintiff's Exhibit 6.)

Richard Pasquel has worked for the Sheriff for 12 years, including two years in Electronic Monitoring. (Pasquel Dep. 4:17-22, Plaintiff's Exhibit 2.) Pasquel stated that officers never had a warrant when they were going to return an EM releasee to the Jail. (Pasquel Dep. 7:8-13, Plaintiff's Exhibit 2.) This was because the Sheriff's policy was that Deputies did not need a warrant to go into the homes of persons who had been released on EM. (Pasquel Dep. 6:14-23, 12:2-5, 15:20-16:4, 19:2-10, Plaintiff's Exhibit 2.)

Anthony Holmes has worked for the Sheriff for 13 years, including five years in Electronic Monitoring, and was a sergeant when plaintiff was returned

to the Jail from EM. (Holmes Dep. 4:14-22, Plaintiff's Exhibit 7.) Holmes stated that Deputy Sheriffs "do not utilize a warrant" when they are returning a person on EM to the Jail (Holmes Dep. 8:12-23, Plaintiff's Exhibit 7.)

Mark Halt is one of the deputy Sheriffs who returned plaintiff to the Jail on March 3, 2023. (Halt Dep. 5:15-20, Plaintiff's Exhibit 8.) Halt, who worked in the Sheriff's Electronic Monitoring Unit for more than ten years (Halt Dep. 4:10-13, 54:12-14, Plaintiff's Exhibit 8), stated that his partner, Officer Bledsoe, handcuffed plaintiff immediately after he had opened the front door and while he was still inside his house. (Halt Dep. 5:21-24, Hall Dep. 12:22-13:1, Plaintiff's Exhibit 8.)

The Seventh Circuit restated the standards for Rule 23(a) typicality in some *Scott v. Dart*, 99 F.4th 1076 (7th Cir. 2024):

> "[C]ommonality and typicality tend to merge." *Priddy v. Health Care Serv. Corp.*, 870 F.3d 657, 660 (7th Cir. 2017). Typicality requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." FED. R. CIV. P. 23(a)(3). That requirement may be satisfied "even if there are factual distinctions between the claims of the named plaintiffs and those of other class members[;]" it "primarily directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large." *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009) (quoting *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983)).

Id. at 1092. As in *Scott*, the Office of the Sheriff applied the challenged policies to each member of each proposed sub-class. Typicality is therefore satisfied.

The same is true for the adequacy of representation requirement of Rule 23(a)(4).

D. Plaintiff Will Adequately Represent Each Sub-Class

Plaintiff is represented by competent counsel and will "fairly and adequately protect the interests of the class," as required by Rule 23(a)(4).

First, defendants do not assert any unique defense against plaintiff. *Randall v. Rolls–Royce Corp.*, 637 F.3d 818, 824 (7th Cir. 2011); *Lipton v. Chattem, Inc.*, 289 F.R.D. 456, 459 (N.D. Ill. 2013).

Second, plaintiffs are represented by counsel skilled and experienced in these matters. Plaintiffs' principal attorney Kenneth N. Flaxman, was admitted to practice in 1972; his work in class action litigation includes *United States Parole Commission v. Geraghty*, 445 U.S. 388 (1980) (class action challenging federal parole guidelines); *Doe v. Calumet City*, 128 F.R.D. 93 (N.D. Ill. 1989) (class action challenging strip search practice of Calumet City police department); *Calvin v. Sheriff of Will County*, 405 F. Supp. 2d 933 (N.D. Ill. 2005) (class action challenging strip search practice at Will County Jail), *Fonder v. Sheriff of Kankakee County*, 823 F.3d 1144 (7th Cir. 2016) (class action challenging strip search practice at the Kankakee County Jail), and *Rogers v. Cook County*, No. 15-cv-1632, N.D. Ill. (class action challenging methadone tapering policy at the Cook County Jail).[7] Plaintiffs' principal attorney has also argued

[7] With co-counsel, plaintiffs' principal attorney has litigated several class actions against the Sheriff of Cook County, including *Jackson v. Sheriff of Cook County*, 2006 WL

more than 150 federal appeals, including five cases in the United States Supreme Court.[8]

Plaintiffs' second attorney Joel A. Flaxman, is also competent to represent the class; he was admitted to practice in 2007, served three years in judicial clerkships,[9] followed by four years as a trial attorney in the United States Department of Justice, Civil Rights Division, before entering private practice.[10] Most recently, Joel Flaxman was the attorney of record in *Smith v. City of Chicago*, 142 S. Ct. 1665 (2022), vacating and remanding the decision of the Seventh Circuit in 3 F.4th 332 (7th Cir. 2021), opinion following remand available at 2022 WL 2752603 (7th Cir. July 14, 2022).

3718041(06-CV-493, N.D. Ill., Dec. 14, 2006); *Parish v. Sheriff of Cook County.*, No. 07 4369, 2008 WL 4812875 (N.D. Ill. Oct. 24, 2008); *Phipps v. Sheriff of Cook County*, 249 F.R.D. 298 (N.D. Ill. 2008); *Lacy v. Dart*, No. 14 C 6259, 2015 WL 1995576 (N.D. Ill. Apr. 30, 2015); and *Bell v. Dart*, No. 14 C 8059, 2016 WL 337144 (N.D. Ill. Jan. 26, 2016).

[8] In addition to *Geraghty*, Flaxman argued *Browder v. Director, Department of Corrections*, 434 U.S. 257 (1978); *Jaffee v. Redmond*, 518 U.S. 1 (1996); *Ricci v. Arlington Heights*, *cert dismissed as improvidently granted*, 523 U.S. 613 (1998), and *Wallace v. Kato*, 549 U.S. 384 (2007).

[9] Counsel was a staff law clerk for the Seventh Circuit from 2007 to 2009 and then a law clerk for the Honorable Rebecca Pallmeyer from 2009 to 2010.

[10] With co-counsel, plaintiffs' second attorney has served as class counsel in several recent cases, including *Conyers v. City of Chicago*, No. 12 CV 06144, 2017 WL 4310511 (N.D. Ill. Sept. 28, 2017); *Wilson v. City of Evanston*, No. 14 C 8347, 2017 WL 3730817 (N.D. Ill. Aug. 30, 2017); *Bell v. Dart*, No. 14 C 8059, 2016 WL 337144 (N.D. Ill. Jan. 26, 2016); *Beley v. City of Chicago*, No. 12 C 9714, 2015 WL 8153377, at *1 (N.D. Ill. Dec. 7, 2015); and *Lacy v. Dart*, No. 14 C 6259, 2015 WL 1995576 (N.D. Ill. Apr. 30, 2015).

Plaintiff's attorneys, who recently successfully litigated the appeal to the Seventh Circuit in *Scott v. Dart*, 99 F.4th 1076 (7th Cir. 2024), will adequately represent each proposed subclass.

III. Certification Is Appropriate under Rule 23(b)(3)

The Fourth Amendment questions presented in this case "can be resolved for all members of a class in a single adjudication." *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 811 (7th Cir. 2012) (internal citation omitted). These "common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016).

In addition to satisfying the predominance prong of Rule 23(b)(3), a class action is superior to other methods for adjudicating the claims of the members of the proposed class. The amount of damages to which each plaintiff would be entitled "is so small that no one would bring this suit without the option of a class." *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1030 (7th Cir. 2018).

Nor is there any merit in the argument, rejected by the Seventh Circuit in *Scott*, that "if the class prevails on that common issue, the class members would need to proceed in individualized trials to prove causation and to seek damages." *Scott v. Dart*, 99 F.4th at 1092. As the Court of Appeals wrote in *Mulvania v. Sheriff of Rock Island County.*, 850 F.3d 849, 859, (7th Cir. 2017), the reason underlying this argument is "a mistake" because "it has long been recognized that the need for individual damages determinations at [a] later

stage of the litigation does not itself justify the denial of certification." *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 671 (7th Cir. 2015). As stated in *Scott*,

> If the district court were to determine on the merits that [the Sheriff's view of plaintiff's claims is correct] … then all the class members' claims would fail together. If the plaintiffs prevail on the common issue, it will not need to be revisited in each individual proceeding. That is enough to show predominance and superiority.

Scott, 99 F.4th at 1092-93.

IV. CONCLUSION

For the reasons above stated, the Court should order that this case proceed as a class action under Rule 23(b)(3) for the following two sub-classes (with the differences between the proposed sub-classes denoted by *italics*):

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Respectfully submitted,

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