

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

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

**PLAINTIFF’S REPLY IN SUPPORT OF  
MOTION FOR CLASS CERTIFICATION**

Plaintiff has requested the Court to allow the case to proceed as a class action under Rule 23(b)(3) for two sub-classes. (ECF No. 57 at 1-2.) Plaintiff responds to defendants’ objections with a minor change to the definition of the “Fourth Amendment Arrest Subclass” and responds to defendants’ arguments below.

**I. Defendants’ Waived Objections**

The Court identified two viable claims in its ruling on defendants’ Rule 12(b)(6) motion to dismiss. *Wilbourn v. Sheriff of Cook County*, No. 23 CV 1782, 2024 WL 897463 (N.D. Ill. March 1, 2024). First, whether the Fourth Amendment allows an arrest for a “program violation” that is not also a violation of state law. *Id.* at \*4-\*5. And second, whether consent to enter a

dwelling to verify compliance with the Sheriff's electronic monitoring rules permits officers to enter the dwelling to make an arrest. *Id.* at \*3-\*4.

Consistent with the Court's ruling on the motion to dismiss, plaintiff has proposed that the Court certify a subclass to litigate each issue. (ECF No. 57 at 1-2.)

Defendants, while opposing class certification, do not challenge the definition of either of the proposed sub-classes. Nor do defendants argue that membership in either subclass is not ascertainable.<sup>1</sup> Finally, defendants do not dispute plaintiff's showing (ECF No. 57 at 4-6) that each of the proposed classes satisfies the numerosity requirement of Rule 23(a). The Court should therefore conclude that defendants have waived any such objections.

Plaintiff responds below to the narrow objections defendants make to class certification.

## **II. Plaintiff's "Fourth Amendment Arrest Sub-Class"**

### **A. The Arrest Sub-Class Does Not Turn on Individual Questions**

Defendants argue that this case cannot satisfy the commonality and typicality requirements of Rule 23(a) because the legality of an arrest always turns on individual questions. (ECF No. 65 at 6-8.) This is incorrect.

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<sup>1</sup> See *Mish Int'l Monetary Inc. v. Vega Cap. London, Ltd.*, No. 20 CV 4577, 2025 WL 1744895 at \*2 (N.D. Ill. June 24, 2025) ("In addition to Rule 23's explicit requirements, class definitions must be ascertainable") (cleaned up.)

The common question presented for the “Fourth Amendment Arrest Subclass” is whether every violation of the Sheriff’s EM rules is also a violation of state law. An arrest is only lawful when there is a reasonable belief “that an offense has been committed.” *Beck v. Ohio*, 379 U.S. 89, 96 (1964). Whether particular conduct is an offense is determined by state law. *Michigan v. DeFillipo*, 443 U.S. 31, 36 (1979). Plaintiff’s false arrest claim—the claim plaintiff asserts individually and for the proposed subclass—is that that every violation of an EM rule is not an offense under Illinois law.

The Court applied this framework when it denied defendants’ motion to dismiss, concluding that plaintiff’s individual false arrest claim turned on two facts: Whether plaintiff had knowingly violated the terms of electronic monitoring and whether “a route deviation amounts to probable cause to believe Wilbourn committed a knowing escape.” *Wilbourn v. Sheriff of Cook County*, No. 23 CV 1782, 2024 WL 897463 at \*5 (N.D. Ill. March 1, 2024).

Defendants ask the Court to view arrests for EM violations as identical to a police officer’s on-view arrest. But the arrests in this case are different from the typical on view arrest, where a police officer may be making “split-second judgments,” *O’Brien v. City of Chicago*, No. 20 CV 2260, 2023 WL 3947940, at \*6 (N.D. Ill. June 12, 2023), and need not identify the precise offense for which the officer is making the arrest. *Devenpeck v. Alford*, 543 U.S. 146 (2004). Resolution of whether a violation of an EM rule is a criminal

offense does not, as defendants argue, turn on “fact-specific inquiries into the circumstances of each alleged violation.” (ECF No. 65 at 8.)

Defendants are able to identify only one EM rule that is also a criminal offense. In EM-2021-6973 (summarized in Plaintiff’s Exhibit 1 at 3, ECF No. 57-2) the person who had been released on EM was returned to the Jail because he had failed to register as a gun offender, as required by the Sheriff’s EM rules (ECF No. 65-2 at 2) as well as by Section 8-26-020 of the Chicago Municipal Code. The subject of EM-2021-6973 is not a member of the false arrest subclass, but he is a member of the “warrantless home entry” subclass because a warrant is required to enter a dwelling to make an arrest. *Payton v. New York*, 445 U.S. 573 (1980).

The common question presented by the Fourth Amendment Arrest Sub-Class is similar to the question presented in *Paige v. City of Harvey*, No. 02-cv-5127, Mem. Op. Sept. 22, 2004 (attached as Exhibit 10). There, the plaintiff obtained class certification on his claim that “the City of Harvey has an unconstitutional policy or practice authorizing police to arrest people for loitering even though Harvey does not have a loitering ordinance.” (Exhibit 10 at 2.) The district court concluded that this claim presented a common question:

The issue of whether that conduct is an offense under the Harvey statutes is the same for all class members, and whether

Harvey had an unconstitutional policy to arrest people without probable cause is also a common issue to all class members.

*Paige v. City of Harvey*, No. 02-cv-5127, Mem. Op., Sept. 22, 2005, Exhibit 10 at 6.

Importantly, the class definition in *Paige* was limited to people arrested “solely” for conduct the arresting officer contended was loitering or lingering. The limitation in the definition in *Paige* avoided any individual issues of probable case based on other conduct. The same is true here with a minor edit to the last phrase in the class definition (new text is in italics):

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, *based solely on an alleged violation of a condition of the Sheriff’s electronic monitoring program that does not independently constitute a violation of Illinois law.*

The revised subclass definition makes plain that the common issue is whether the Fourth Amendment allows a warrantless arrest for an EM “program violation” that is not an independent violation of Illinois law. For example, failure to register as a sex offender violates both the Sheriff’s rules and Illinois law, while leaving one’s residence without authorization may violate the Sheriff’s rules but is not an independent criminal offense under Illinois law. The question presented by this class definition is common to all class members and satisfies the commonality requirement of Rule 23.

**B. Plaintiff's Individual Claim Is Typical of the Claim Asserted for the Class**

Defendants urge that plaintiff's individual claim cannot be typical of that asserted for the class because plaintiff has "cherry-picked data." (ECF No. 65 at 12.) The Court should reject this argument.

"Cherry picking" is a request "[t]o extrapolate from the experience of the 42 to that of the 2341 [members of the putative class]." *Espenscheid v. DirectSat USA, LLC*, 705 F.3d 770, 774 (7th Cir. 2013). Plaintiff in this case does not propose any extrapolation, but has carefully applied the proposed class definitions to the EM records defendants produced. Plaintiff thereby identified more than 50 class members. There cannot be any "cherry picking" when, as in this case, plaintiff applies objective criteria to identify each member of the proposed class:

Cherry picking would matter if Plaintiffs intended to use the sample to create an inference about people not in the sample, meaning the broader group. But cherry picking would not matter if they had identified at least 40 prospective class members.

*Elizarri by Perez v. Sheriff of Cook County*, No. 17-CV-8120, 2022 WL 767487, at \*12 (N.D. Ill. Mar. 14, 2022), *affirmed sub nom Velleff v. Sheriff of Cook County*, 2025 WL 1898374 (7th Cir. July 9, 2025) (cited by defendants at ECF No. 65 at 12-13).

Plaintiff identified members of each sub-class after defendants produced 228 redacted "EM-Reincarceration" incident reports. Defendants

filed those redacted reports as ECF No. 65-3. Plaintiff has extracted the EM numbers of these 228 reports and displays them in Column 1 of Plaintiff's Exhibit 11, filed with this memorandum.

After entry of a protective order (ECF No. 44), defendants produced 71 unredacted reports of persons on EM who were returned to the jail because of a "program violation." (Plaintiff's Exhibit 9, ECF No. 57-10.) These reports are identified in column 2 of Plaintiff's Exhibit 11 as "culled by word search."

Plaintiff analyzed the 71 unredacted reports and excluded 13 persons who did not meet the criteria for class membership in both sub-classes.<sup>2</sup> Plaintiff sought to exclude persons whose release on EM had been revoked because of "program violations" that are also criminal offenses. Similarly, the "warrantless home entry" subclass consists only of persons who were returned to the Jail from EM by officers who entered the dwelling—persons found on the street are not part of the "warrantless home entry" subclass. *United States v. Santana*, 427 U.S. 38 (1976). The reports that were excluded by plaintiff are shown in column 3 of Plaintiff's Exhibit 11 as "excluded by plaintiff."

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<sup>2</sup> For example, in EM-2021-12371, the arrestee "had left her host site ... and never returned." Similarly, in EM-2021-2021-15253, the officers found the arrestee "outside of the host site."

Here, as shown by the EM reports of the members of the putative class, EM officers were ordered to travel to the arrestee's home and either return the arrestee to the jail or interrogate the arrestee to determine whether he had committed a program violation. This pattern is plain from the first five EM reports of members of the putative class (filed under seal as Plaintiff's Exhibit 1, ECF No. 57-2).

EM-2021-4403: The officers "conducted a home check ... for program violations," and transported the subject to the Jail "for violation of program rules." (Plaintiff's Exhibit 1 at 3, ECF No. 57-2.)

EM-2021-4414: the officers "were assigned ... in regards to unauthorized Leave assignment." (Plaintiff's Exhibit 1 at 4, ECF No. 57-2.)

EM-2021-4644: Officers were "assigned .. to reincarcerate ... for leaving his host site and traveling to a hotel." (Plaintiff's Exhibit 1 at 5, ECF No. 57-2.)

EM-2021-4791: Officers were "investigating a curfew violation," spoke with the subject, conducted "further investigation" and concluded that the subject should be returned to the Jail "for EM program violation rules and regulations/unauthorized leaves." (Plaintiff's Exhibit 1 at 6, ECF No. 57-2.)

EM2011-4877: Officers "were assigned ... to follow up on a curfew violation assignment" and, before arriving at the subject's home, concluded that he had "failed to follow the policy and procedure regarding the proper protocol for movement." (Plaintiff's Exhibit 1 at 7, ECF No. 57-2.)

This pattern continues through the remaining EM reports that make up Plaintiff's Exhibit 1, ECF No. 57-2.

Plaintiff's analysis of the records produced by defendants is not "cherry picking." As explained by the district judge in *Elizarri*, "cherry



picking” is not an appropriate label for identifying at least 40 class members, as plaintiff has done. Plaintiff shows below that the “cherry picking” label is fairly applied to defendants’ list of persons returned to the Jail from EM because of criminal offenses.

**C. Defendants’ Cherry-Picked List Does  
Not Show a Lack of Typicality**

Defendants ignore plaintiff’s analysis of class membership and identify 36 persons who were returned to the Jail from Electronic Monitoring for violating the EM rules *and* (defendant’s claim) for violating state law. (ECF No. 65 at 14-15.) Plaintiff, however, included only 3 of these 36 persons in the proposed sub-classes.<sup>3</sup>

Plaintiff illustrates the records selected by defendants in Exhibit 12. Column 1 is a list of the 228 redacted EM reports defendants produced. Column 2 are the 58 records identified by plaintiff as members of both putative sub-classes. Column 3 shows the 36 records challenged by defendants.

Exhibit 13, which was prepared by limiting column 3 to persons challenged by defendant and sorting by the EM number of proposed putative class members, shows that defendants are challenging 33 persons who are not members of the putative class.

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<sup>3</sup> Of these three, one is not a member of the Fourth Amendment Arrest subclass, as explained above at 4-5. Plaintiff shows below at 10-11 that the other two are properly included in each proposed subclass.

Defendants assert that the 36 persons they are challenging show that plaintiff's claim is not typical of that asserted for each putative sub-class. (ECF No. 65 at 22.) But other than challenges to three persons, none of the persons challenged by defendants are members of the putative classes.

The three challenges made by defendants to members of either proposed subclass are EM-2021-6973, EM-2021-7329, and EM-2021-11176. Plaintiff discussed the challenge to EM-2021-6973 above at 4 and agree that this person is not a member of the Fourth Amendment Arrest Subclass, but is a member of the Warrantless Home Entry subclass.

Defendants overread the EM report for EM-2021-7329. The report for that incident recites that officers were dispatched to the home site "due to a strap tamper and a battery critical." (Plaintiff's Exhibit 1 at 14, ECF No. 57-2.) The officers entered the dwelling and interrogated the subject, who "admitted to leaving his site without permission after being intoxicated." (*Id.*) Nothing in the report suggest that the officers had probable cause to believe that a crime had been committed.

Defendants also overread the EM report for EM-2021-11176. The "incident summary narrative" recites that the subject was being returned to the Jail because he had been "arrested at the EM residence for new charges Disorderly Conduct by Mount Prospect Police." (Plaintiff's Exhibit 1 at 16,

ECF No. 57-2.) The EM rules prohibit “engag[ing] in criminal activity.” (ECF No. 65-1 at 1.) The subject did not admit to any wrongdoing when the officers came to his home and the subject did not violate the EM rules by simply being arrested.

In any event, even if the individuals described in EM-2021-7329 and EM-2021-11176 are excluded from the class, plaintiff still satisfies the numerosity requirement of Rule 23. Defendants’ arguments about the 33 other individuals who are not class members are irrelevant.

Plaintiff’s claims arise from the “same event or practice or course of conduct that gives rise to the claims of the other class members,” *De La Fuente v. Stokeley-Van Camp*, 713 F.2d 225, 232 (7th Cir. 1983), and therefore satisfy the typicality requirement of Rule 23.

### **III. Plaintiff’s “Fourth Amendment Home Entry Sub-Class”**

#### **A. The Validity of Consent to Enter a Dwelling to Make an Arrest Does Not Turn on Individual Questions**

The Court, in its ruling on defendants’ motion to dismiss, rejected defendants’ argument that, as a matter of law, plaintiff and the members of the putative class had each consented to the home entry. *Wilbourn v. Sheriff of Cook County*, No. 23 CV 1782, 2024 WL 897463 at \*3-\*4 (N.D. Ill. March 1, 2024). Defendants rehash those arguments in objecting to class certification. (ECF No. 65 at 10-11.)

Defendants' consent argument is similar to the argument the Supreme Court rejected in *Bumper v. North Carolina*, 391 U.S. 543 (1968). There, officers had entered a dwelling, asserting that they had a lawful right to search. *Id.* at 546. One of the questions decided by the Court was the voluntariness of the consent to the home theory:

The issue thus presented is whether a search can be justified as lawful on the basis of consent when that 'consent' has been given only after the officers conducting the search had asserted that he possesses a warrant. [footnote omitted]

*Id.* at 548.

In this case, as in *Bumpers*, EM officers entered dwellings, asserting that they were lawfully entitled to do so. Plaintiff contends that, as in *Bumpers*, consent to enter the home to make an arrest was given only after the officers had asserted their right to enter. This common question does not turn on individual facts and circumstances and there is nothing atypical about plaintiff's experience with the officers.

### **B. Plaintiff Has Standing**

Removing a person from their home, and requiring them to await disposition of their criminal case while confined in the Cook County Jail will cause obvious emotional distress. For example, a person confined at home while on electronic monitoring may close the door to the washroom while engaging in bodily functions. This privilege is not available to persons detained at the Cook County Jail. A person confined at home may choose the

food and diet they wish to follow; not so for persons held at the Jail. A person held at the Jail is in constant fear of violence from other pre-trial detainees; not so for persons living at home on electronic monitoring.

Defendants are simply wrong in asserting that there is no emotional harm from pre-trial detention if the detainee eventually receives credit for the time served in pre-trial detention before trial. (ECF No. 65 at 15-16.) But the detainee would receive the same credit for time served at home on electronic monitoring. 725 ILCS 5/110-5(h). Class members have standing because of the difference between serving time in the Cook County Jail and serving time at home on electronic monitoring. The Court should reject defendant's standing argument.

#### **IV. Certification Is Appropriate under Rule 23(b)(3)**

There is no merit in defendants' argument that a class action would not be superior to 55 individual lawsuits. (ECF No. 65 at 22.) The legal issues in this case—whether the Fourth Amendment allows warrantless arrests for violations of the Sheriff's EM rules, and whether consent to enter a dwelling to check on compliance with EM rules authorizes a warrantless entry to arrest—do not turn on individual facts and circumstances but “can be resolved on a classwide basis.” *Scott v. Dart*, 99 F.3d 1076, 1092 (7th Cir. 2024).

## **V. CONCLUSION**

For the reasons above stated and those previously advanced, the Court should order that this case proceed as a class action under Rule 23(b)(3) for the following two sub-classes:

### **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, based solely on an alleged violation of a condition of the Sheriff's electronic monitoring program that does not independently constitute a violation of Illinois law.

### **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.

Respectfully submitted,

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## **LIST OF EXHIBITS**

- 10 *Paige v. City of Harvey*, No. 02-cv-5127, Mem. Op. Sept. 22, 2004
- 11 Table, How Plaintiff Identified Class Members from Defendants' List of 228 Potential Class Members
- 12 Table, 36 Persons Challenged by Defendants, Sorted by Membership in Putative Classes
- 13 Table, 36 Persons Challenged by Defendants, Sorted by Challenge to Putative Class Members

## **Exhibit 10**



# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Joan B. Gottschall	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 5127	DATE	9/22/2004
CASE TITLE	Wilson Paige vs. City of Harvey, et al.		

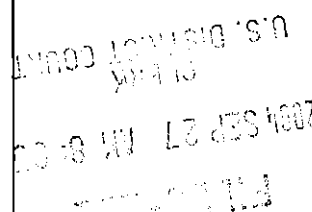
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☒ Status hearing is set for 10/13/04 at 9:30AM.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] ENTER ORDER. Plaintiff's motion for class certification [29-1] is GRANTED, with a class definition as indicated in the attached order. Defendants' motion to dismiss [28-1] is DENIED.

- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.		number of notices	<b>Document Number</b>  <div style="font-size: 2em;">47</div>
No notices required.		SEP 27 2004	
Notices mailed by judge's staff.		date docketed	
Notified counsel by telephone.		docketing deputy initials	
<input checked="" type="checkbox"/> Docketing to mail notices.		date mailed notice	
Mail AO 450 form.		mailing deputy initials	
Copy to judge/magistrate judge.			
RJ/MJ	courtroom deputy's initials	Date/time received in central Clerk's Office	

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

WILSON PAIGE,

Plaintiff,

V.

CITY OF HARVEY and HARVEY  
POLICE OFFICER MAGANA, #535,

Defendants.

DOCKETED

SEP 27 2004

Case No. 02 C 5127

Honorable Joan B. Gottschall

## ORDER

Before the court is Plaintiff Wilson Paige's motion to certify the case as a class action. Paige alleges that the City of Harvey falsely arrested himself and others for loitering. He alleges that the City of Harvey has an unconstitutional policy or practice authorizing police to arrest people for loitering even though Harvey does not have a loitering ordinance. Plaintiff defines his class as follows:

All persons arrested by police officers of the City of Harvey from July 19, 2000 to the date of entry of judgment for conduct that is, or has been, viewed as criminal solely because, in the view of the arresting officer as expressed in the arrest report that he (or she) prepared contemporaneously with the arrest, the conduct constituted "loitering" or "lingering."

Plaintiff's Motion to Certify Case as a Class Action, at 1. The Plaintiff bears the burden to show that a class should be certified. The City<sup>1</sup> raises four defenses to class certification, challenging the Rule 23(a) requirements of numerosity, typicality, and representativeness, and plaintiffs'

<sup>1</sup>All references to “the City” refer to both defendants in this action, as their opposition is joint.

assertion that Rule 23(b)(2) and (b)(3) are met in this case. After considering the parties' arguments, this court finds that Paige has met the requirements of Rule 23 to maintain a class action.

### **I. Numerosity**

The first prerequisite to bring a class action is that the proposed class must be "so numerous that joinder of all members is impracticable." Fed.R.Civ.P. 23(a)(1). Paige alleges that at least 235 members belong to the proposed class, but the City counters that only 30 members both meet Paige's class definition and have viable claims under 26 U.S.C. § 1983. The City first contends that a person who was convicted of a offense charged at the time of arrest cannot maintain a false arrest claim because that would imply the invalidity of his conviction. *See Heck v. Humphrey*, 512 U.S. 477 (1994). But the City's claim here is too broad, for while a claim of false arrest can imply the invalidity of a conviction, generally it does not. *See Gauger v. Hendle*, 349 F.3d 354, 360-61 (7th Cir. 2003). A false arrest claim is *Heck*-barred when evidence that led to the arrest or is the fruit of the arrest is essential to a subsequent criminal conviction. *See Gauger*, 349 F.3d at 361-62. The record currently does not allow the court to determine which of the 99 persons identified by the City would have *Heck*-barred claims, but given the nature of a disorderly conduct arrest, it seems likely that most of the 99 will have *Heck*-barred claims. So for purposes of determining whether the class is sufficiently numerous these people will be excluded. If the plaintiff, however, can show that some of these persons have valid § 1983 claims, they can be added to the class.

The City next contends that 76 potential class members do not meet the class definition because they were arrested under statutory authority, namely City of Harvey ordinance 9-04-

010(A)(4), which criminalizes failure “to obey a lawful order of dispersal by a person known by him to be a peace officer under circumstances where three or more persons are committing acts of disorderly conduct in the vicinity, which acts are likely to cause substantial harm or serious inconvenience, annoyance or alarm.” The reports attached to the city’s response show that in each case, the officer ordered the arrestees to disperse, but only in a few cases is there any indication that the arresting officer believed that the arrestees were engaged in disorderly activity as described in the Harvey ordinance. Rather, the officers appeared to act on the belief that loitering is an offense, even though that conduct does not appear to be covered under Harvey’s disorderly conduct ordinance. One of the arrest reports attached to the defendants’ opposition suggests that the police in Harvey may be aware of the ordinance’s failure to include loitering, describing the offense in question as “*quasi* [disorderly conduct]/loitering.” See Defendant City of Harvey’s Opposition to the Motion for Class Certification, Exhibit I (Report no. 8432D-02). These people have colorable claims and therefore are included in the class.

The City next argues that 26 of the potential class members were arrested while trespassing on private property, which is an offense in Harvey. See Harvey ordinance 9-04-210. While these people were not arrested under Harvey’s trespassing statute, probable cause to arrest can be found on the basis of a charge closely related to the one actually charged. See *United States v. Reed*, 349 F.3d 457, 462-63 (7th Cir. 2003). Probable cause for arrest may be based on a closely related charge when the charge can be reasonably based on the same set of facts that led to the arrest, and when the charge is one that a reasonable officer would have recognized when acting in good faith. See *Reed*, 349 F.3d 457, 462-63 (7th Cir. 2003); *Williams v. Jaglowski*, 269 F.3d 778, 783 (7th Cir. 2001). The police reports attached to the Defendants’ brief show that the

police officers had knowledge that the arrestees were trespassing on private property at the time of their arrest. Moreover, trespassing is an offense that would be well-known to a reasonable police officer. Therefore, the 26 people identified by the Defendants as having been arrested while trespassing cannot maintain a suit challenging their arrests, and are excluded from the class.

Finally the City identifies 18 potential class members who can be validly excluded from the class. Four were, according to the police reports, engaged in a breach of the peace at the time of their arrest and therefore were validly arrested under the disorderly conduct statute. Fourteen were arrested for other offenses or were found to have outstanding warrants.

This leaves a total of 92 potential class members. In determining whether joinder is impracticable, the court looks to factors such as judicial economy, geographic diversity of the plaintiffs, and the ability of individual plaintiffs to sue on their own. *See Arenson v. Whitehall Convalescent and Nursing Home*, 164 F.R.D. 659, 663 (N.D.Ill. 1996). Judicial economy is well served by having these cases joined in a single class action; 92 separate cases would unduly burden this court. Moreover, individual false arrest claims such as these may not be sufficiently large to justify the costs of litigation proceeding alone. Therefore, the class is sufficiently numerous to make joinder impracticable.

## **II. Commonality**

The second prerequisite to maintain a class action is that there are “questions of law or fact common to the class.” Fed.R.Civ.P. 23(a)(2). This requires Plaintiffs to establish at least one issue common to the proposed class. *Honorable v. Easy Life Real Estate System, Inc.*, 182 F.R.D. 553, 559 (N.D.Ill. 1998). An issue is common when it stems from a common nucleus of

operative fact. *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998). In this case, each of the potential class members was arrested for the same reason, loitering or lingering. The issue of whether that conduct is an offense under the Harvey statutes is the same for all class members, and whether Harvey had an unconstitutional policy to arrest people without probable cause is also a common issue to all class members. Therefore, Plaintiff meets the requirement of commonality.

### III. Typicality/Representative

The third prerequisite to maintain a class action is that claims and defenses of the class representative must be typical of the claims of all class members, while the fourth is that the class representative will “fairly and adequately protect the interests of the class. *See* Fed.R.Civ.P. 23(a)(3-4). These requirements bleed together; an atypical representative is not one who would be likely to fairly represent his class. *Robinson v. Sheriff of Cook Cty.*, 167 F.3d 1155 (7th Cir. 1999). Further, a class representative whose claim is weak would not have an incentive to represent the class well. *Id.* The City argues that Paige is an improper representative because he was arrested in the presence of a known prostitute. This argument is based on testimony from the arresting officer that he knew the woman Paige was arrested with was a “known prostitute” in Harvey, and that he had “original suspicions” that Paige was soliciting her. But while a reasonable suspicion of criminal activity is sufficient to support a *Terry* stop, it is not sufficient to support an arrest. *See United States v. Brown*, 366 F.3d 456, 458 (7th Cir. 2004). To this end, it is highly telling that the arresting officer did not mention prostitution, solicitation or any violation of Harvey’s prostitution ordinance in his contemporaneous arrest report. Paige’s arrest report is entirely typical of that of the other potential class members. Paige, therefore, has the

same claim as that of the other class members. No other reason to doubt the ability of Paige to represent the class is apparent, and thus the third and fourth prerequisites have been satisfied.

#### **IV. Rule 23(b)**

Finally, in order to obtain class certification, plaintiff must demonstrate one of the factors listed in Rule 23(b). Plaintiff asserts that both Rule 23(b)(2) and (b)(3) are satisfied in this case. Rule 23(b)(2) requires the defendant to have acted “on grounds generally applicable to the class, thereby making appropriate final injunctive relief. . . .” While this rule was intended for use in civil rights cases, Rule 23(b)(2) may be used to certify a class only when injunctive or declaratory relief is the predominant relief sought. *See Lemon v. International Union of Operating Eng’rs*, 216 F.3d 577, 580-81 (7th Cir. 2000); *Jefferson v. Ingersoll International, Inc.*, 195 F.3d 894, 898 (7th Cir. 1999). Monetary relief is acceptable only if it is “incidental,” meaning that damages are to the class as a whole rather than dependent on the “intangible, subjective differences of each class member’s circumstances.” *Lemon*, 216 F.3d at 581 (quoting *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 415 (5th Cir. 1998)). The complaint in this case asks for individual damages in its prayer for relief, rather than for class damages. And while, in the event of a liability finding, plaintiffs would share a common constitutional injury, the extent of that injury would not necessarily be common, and individual damage hearings would be required. But individual damage hearings are inconsistent with an “incidental” monetary claim. *See id.* Therefore, plaintiff cannot obtain certification under Rule 23(b)(2).

Rule 23(b)(3) requires common issues of law and fact to “predominate over any questions affecting only individual members,” and further requires a finding “that a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.”

Fed.R.Civ.P. 23(b)(3). Plaintiff asserts that the class issues of whether the City has a policy of arresting persons for loitering, and whether such arrests amount to a Fourth Amendment violation, predominate over any individual variations among class members. The City counters that because the absence of probable cause is required to succeed in a false arrest claim, and because probable cause is a fact-specific inquiry, individual issues predominate. While probable cause is indeed a fact-specific inquiry, the arrests of the class members, judging from the reports, are far more alike than different. The general pattern is that the officer observes a person (or persons) lingering, tells the person to move along, and then later arrests the person for lingering or loitering under authority of the City of Harvey disorderly conduct ordinance. Loitering is a simple offense, and so the amount of factual variety that will be possible in this case is relatively narrow. If Plaintiff can prove that the City of Harvey has a policy to arrest people for loitering in the absence of statutory authority, then all of the arrests for loitering would be invalid despite any factual differences in how the persons were observed loitering. And while class members may have differing individual damages, they are not likely to be so different or burdensome as to predominate over the issues common to the class. *See, e.g., De La Fuente v. Stokley–Van Camp, Inc.*, 713 F.2d 225, 233 (7th Cir. 1983); *Williams v. Brown*, 214 F.R.D. 484, 485-86 (N.D.Ill. 2003). In short, a class action is not likely to be difficult to manage in this case.

In terms of the other factors specifically listed in Rule 23(b)(3), this court finds that individual claimants do not have a significant interest in controlling the prosecution of separate actions, first because the damages suffered by individual claimants are unlikely to be great, and second, because an injunction is a common remedy for all. Further, this court is not aware of any other litigation concerning loitering arrests in the City of Harvey, and no forum is inherently



preferable to this one considering that all of the arrests took place in this district. Therefore, this court finds that Plaintiffs have established that common issues of law and fact predominate and that a class action is an appropriate vehicle for this case.

#### **V. Defendant's Motion to Dismiss**

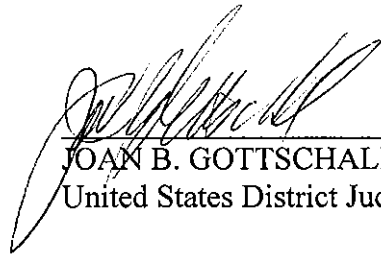
The City has moved to dismiss Plaintiff's claims for injunctive relief. The City argues that *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) and *Robinson v. City of Chicago*, 868 F.2d 959 (7th Cir. 1989) foreclose the possibility of injunctive relief in this case. Those cases hold that past exposure to illegal conduct by police does not confer standing to seek an injunction. *See, e.g., Lyons*, 461 U.S. at 102. Instead, plaintiffs must establish a "real or immediate threat that they will be wronged again." *Robinson*, 868 F.2d at 967. Assuming that plaintiffs were law-abiding in the future, these courts found that the risk that one would end up in a chokehold during an arrest, or that one would be subject to illegal detention after an arrest, were too speculative to provide standing. *Lyons*, 461 U.S. at 105-06; *Robinson*, 868 F.2d at 966. But the Supreme Court stated that injunctive standing would have been present in *Lyons* if that plaintiff had been able to show that the City "ordered or authorized police officers" to engage in unconstitutional behavior. *Lyons*, 461 U.S. at 106. That is precisely plaintiff's claim in this case: that the City of Harvey had an unconstitutional policy to arrest persons for loitering. Therefore *Lyons* does not bar this case. Further, unlike in *Robinson*, which involved post-arrest police conduct, this case involves an allegation that police in Harvey without probable cause arrest persons who are not engaging in illegal activity. Anyone standing in place outside in the City of Harvey is subject to arrest. No assumption need be made that Paige or any class member will engage in illegal activity in order to encounter the allegedly illegal police conduct again, and

the numerous arrests for lingering and loitering reflected in the record show that police in Harvey often make arrests for that reason. Therefore, the Defendants' motion to dismiss is denied.

#### **VI. Conclusion**

Plaintiff's motion to certify the case as a class action is granted. The class shall consist of all persons arrested by police officers of Harvey arrested after July 19, 2000, for conduct viewed as criminal solely because in the view of the arresting officer as expressed in a contemporaneous arrest report, it constituted loitering or lingering, provided that the arrestee was not subsequently convicted of an offense due to that conduct, was not subject to an outstanding warrant, and was not committing another offense for which he could have been arrested.

ENTER:

  
\_\_\_\_\_  
JOAN B. GOTTSCHALL  
United States District Judge

DATED: September 22, 2004

## **Exhibit 11**

**Plaintiff's Exhibit 11**  
**How Plaintiff Identified Class Members**  
**from Defendants' List of 228 Potential Class Members**

EM Number		Screened by Word Search	Proposed Putative Class
1	EM-2021-11067	EM-2021-11067	excluded by plaintiff
2	EM-2021-11176	EM-2021-11176	EM-2021-11176
3	EM-2021-11199	culled by word search	culled by word search
4	EM-2021-11583	culled by word search	culled by word search
5	EM-2021-12063	EM-2021-12063	EM-2021-12063
6	EM-2021-12217	EM-2021-12217	EM-2021-12217
7	EM-2021-12371	EM-2021-12371	excluded by plaintiff
8	EM-2021-12769	EM-2021-12769	EM-2021-12769
9	EM-2021-12920	culled by word search	culled by word search
10	EM-2021-13640	culled by word search	culled by word search
11	EM-2021-13723	culled by word search	culled by word search
12	EM-2021-13730	EM-2021-13730	EM-2021-13730
13	EM-2021-13793	EM-2021-13793	EM-2021-13793
14	EM-2021-13899	EM-2021-13899	EM-2021-13899
15	EM-2021-13911	EM-2021-13911	EM-2021-13911
16	EM-2021-13965	culled by word search	culled by word search
17	EM-2021-14026	culled by word search	culled by word search
18	EM-2021-15175	EM-2021-15175	EM-2021-15175
19	EM-2021-15253	EM-2021-15253	excluded by plaintiff
20	EM-2021-15254	EM-2021-15254	EM-2021-15254
21	EM-2021-15260	EM-2021-15260	EM-2021-15260
22	EM-2021-15261	EM-2021-15261	EM-2021-15261
23	EM-2021-15277	EM-2021-15277	EM-2021-15277
24	EM-2021-15280	EM-2021-15280	EM-2021-15280
25	EM-2021-15303	EM-2021-15303	EM-2021-15303
26	EM-2021-15307	EM-2021-15307	EM-2021-15307
27	EM-2021-15310	EM-2021-15310	EM-2021-15310
28	EM-2021-15834	culled by word search	culled by word search
29	EM-2021-15952	culled by word search	culled by word search
30	EM-2021-16161	EM-2021-16161	EM-2021-16161
31	EM-2021-16477	culled by word search	culled by word search
32	EM-2021-17015	culled by word search	culled by word search
33	EM-2021-17331	EM-2021-17331	excluded by plaintiff
34	EM-2021-17449	culled by word search	culled by word search
35	EM-2021-17684	EM-2021-17684	EM-2021-17684

**Plaintiff's Exhibit 11**  
**How Plaintiff Identified Class Members**  
**from Defendants' List of 228 Potential Class Members**

EM Number	Screened by Word Search	Proposed Putative Class
36 EM-2021-17738	culled by word search	culled by word search
37 EM-2021-18169	culled by word search	culled by word search
38 EM-2021-20103	EM-2021-20103	excluded by plaintiff
39 EM-2021-20220	culled by word search	culled by word search
40 EM-2021-21864	EM-2021-21864	EM-2021-21864
41 EM-2021-22410	EM-2021-22410	EM-2021-22410
42 EM-2021-22432	EM-2021-22432	EM-2021-22432
43 EM-2021-22587	culled by word search	culled by word search
44 EM-2021-23214	EM-2021-23214	EM-2021-23214
45 EM-2021-23824	EM-2021-23824	EM-2021-23824
46 EM-2021-4403	EM-2021-4403	EM-2021-4403
47 EM-2021-4414	EM-2021-4414	EM-2021-4414
48 EM-2021-4461	culled by word search	culled by word search
49 EM-2021-4571	culled by word search	culled by word search
50 EM-2021-4623	culled by word search	culled by word search
51 EM-2021-4644	EM-2021-4644	EM-2021-4644
52 EM-2021-4648	culled by word search	culled by word search
53 EM-2021-4652	culled by word search	culled by word search
54 EM-2021-4669	EM-2021-4669	excluded by plaintiff
55 EM-2021-4791	EM-2021-4791	EM-2021-4791
56 EM-2021-4877	EM-2021-4877	EM-2021-4877
57 EM-2021-4921	EM-2021-4921	EM-2021-4921
58 EM-2021-5295	culled by word search	culled by word search
59 EM-2021-5381	culled by word search	culled by word search
60 EM-2021-5382	culled by word search	culled by word search
61 EM-2021-5496	EM-2021-5496	excluded by plaintiff
62 EM-2021-5670	culled by word search	culled by word search
63 EM-2021-5937	EM-2021-5937	EM-2021-5937
64 EM-2021-6266	EM-2021-6266	excluded by plaintiff
65 EM-2021-6906	culled by word search	culled by word search
66 EM-2021-6973	EM-2021-6973	EM-2021-6973
67 EM-2021-6977	culled by word search	culled by word search
68 EM-2021-7188	culled by word search	culled by word search
69 EM-2021-7314	culled by word search	culled by word search
70 EM-2021-7329	EM-2021-7329	EM-2021-7329

**Plaintiff's Exhibit 11**  
**How Plaintiff Identified Class Members**  
**from Defendants' List of 228 Potential Class Members**

EM Number	Screened by Word Search	Proposed Putative Class
71 EM-2021-8832	culled by word search	culled by word search
72 EM-2021-8900	EM-2021-8900	EM-2021-8900
73 EM-2021-9080	EM-2021-9080	excluded by plaintiff
74 EM-2021-9175	EM-2021-9175	EM-2021-9175
75 EM-2021-9442	culled by word search	culled by word search
76 EM-2021-9942	culled by word search	culled by word search
77 EM-2022-10375	EM-2022-10375	EM-2022-10375
78 EM-2022-11083	culled by word search	culled by word search
79 EM-2022-11414	culled by word search	culled by word search
80 EM-2022-11463	culled by word search	culled by word search
81 EM-2022-11845	culled by word search	culled by word search
82 EM-2022-11850	culled by word search	culled by word search
83 EM-2022-13422	culled by word search	culled by word search
84 EM-2022-13453	culled by word search	culled by word search
85 EM-2022-14590	culled by word search	culled by word search
86 EM-2022-14824	culled by word search	culled by word search
87 EM-2022-14906	EM-2022-14906	EM-2022-14906
88 EM-2022-16286	culled by word search	culled by word search
89 EM-2022-16633	culled by word search	culled by word search
90 EM-2022-16716	culled by word search	culled by word search
91 EM-2022-17059	EM-2022-17059	EM-2022-17059
92 EM-2022-17064	culled by word search	culled by word search
93 EM-2022-17166	culled by word search	culled by word search
94 EM-2022-1717	culled by word search	culled by word search
95 EM-2022-17721	EM-2022-17721	excluded by plaintiff
96 EM-2022-17846	culled by word search	culled by word search
97 EM-2022-1797	culled by word search	culled by word search
98 EM-2022-18327	culled by word search	culled by word search
99 EM-2022-18808	culled by word search	culled by word search
100 EM-2022-19246	culled by word search	culled by word search
101 EM-2022-19544	culled by word search	culled by word search
102 EM-2022-19637	culled by word search	culled by word search
103 EM-2022-19909	culled by word search	culled by word search
104 EM-2022-19957	culled by word search	culled by word search
105 EM-2022-20026	culled by word search	culled by word search

**Plaintiff's Exhibit 11**  
**How Plaintiff Identified Class Members**  
**from Defendants' List of 228 Potential Class Members**

EM Number	Screened by Word Search	Proposed Putative Class
106	EM-2022-20121	culled by word search
107	EM-2022-20387	culled by word search
108	EM-2022-20538	culled by word search
109	EM-2022-20626	culled by word search
110	EM-2022-20635	EM-2022-20635
111	EM-2022-20646	EM-2022-20646
112	EM-2022-20938	culled by word search
113	EM-2022-21017	culled by word search
114	EM-2022-21976	culled by word search
115	EM-2022-2260	EM-2022-2260
116	EM-2022-22606	culled by word search
117	EM-2022-22612	culled by word search
118	EM-2022-22633	culled by word search
119	EM-2022-22720	culled by word search
120	EM-2022-23125	culled by word search
121	EM-2022-23127	culled by word search
122	EM-2022-23213	culled by word search
123	EM-2022-23215	culled by word search
124	EM-2022-23216	culled by word search
125	EM-2022-23217	culled by word search
126	EM-2022-24198	culled by word search
127	EM-2022-24299	EM-2022-24299
128	EM-2022-25184	culled by word search
129	EM-2022-25276	culled by word search
130	EM-2022-25288	culled by word search
131	EM-2022-25366	culled by word search
132	EM-2022-26226	culled by word search
133	EM-2022-26300	culled by word search
134	EM-2022-26393	culled by word search
135	EM-2022-26753	culled by word search
136	EM-2022-2686	culled by word search
137	EM-2022-2876	EM-2022-2876
138	EM-2022-3793	culled by word search
139	EM-2022-412	culled by word search
140	EM-2022-5811	culled by word search

**Plaintiff's Exhibit 11**  
**How Plaintiff Identified Class Members**  
**from Defendants' List of 228 Potential Class Members**

EM Number	Screened by Word Search	Proposed Putative Class
141	EM-2022-5812	culled by word search
142	EM-2022-5853	culled by word search
143	EM-2022-6373	culled by word search
144	EM-2022-6485	culled by word search
145	EM-2022-7399	culled by word search
146	EM-2022-778	culled by word search
147	EM-2022-8025	culled by word search
148	EM-2022-9848	culled by word search
149	EM-2023-11268	EM-2023-11268
150	EM-2023-11376	culled by word search
151	EM-2023-11576	EM-2023-11576
152	EM-2023-11947	culled by word search
153	EM-2023-12010	culled by word search
154	EM-2023-13017	culled by word search
155	EM-2023-13022	culled by word search
156	EM-2023-13068	culled by word search
157	EM-2023-13078	EM-2023-13078
158	EM-2023-13200	culled by word search
159	EM-2023-13831	culled by word search
160	EM-2023-13999	culled by word search
161	EM-2023-14012	culled by word search
162	EM-2023-14073	culled by word search
163	EM-2023-14580	EM-2023-14580
164	EM-2023-14587	culled by word search
165	EM-2023-14590	culled by word search
166	EM-2023-15116	culled by word search
167	EM-2023-1540	culled by word search
168	EM-2023-15429	EM-2023-15429
169	EM-2023-1570	culled by word search
170	EM-2023-16284	culled by word search
171	EM-2023-17431	EM-2023-17431
172	EM-2023-17459	excluded by plaintiff
173	EM-2023-18052	culled by word search
174	EM-2023-18411	EM-2023-18052
175	EM-2023-19061	culled by word search
	EM-2023-19061	EM-2023-19061



**Plaintiff's Exhibit 11**  
**How Plaintiff Identified Class Members**  
**from Defendants' List of 228 Potential Class Members**

EM Number	Screened by Word Search	Proposed Putative Class
176	EM-2023-19294	culled by word search
177	EM-2023-19779	culled by word search
178	EM-2023-19927	culled by word search
179	EM-2023-20003	culled by word search
180	EM-2023-20066	culled by word search
181	EM-2023-20334	EM-2023-20334
182	EM-2023-20907	culled by word search
183	EM-2023-2191	culled by word search
184	EM-2023-2196	culled by word search
185	EM-2023-2198	culled by word search
186	EM-2023-24296	culled by word search
187	EM-2023-24297	EM-2023-24297
188	EM-2023-2484	EM-2023-2484
189	EM-2023-26218	EM-2023-26218
190	EM-2023-267	culled by word search
191	EM-2023-297	culled by word search
192	EM-2023-3120	culled by word search
193	EM-2023-3190	culled by word search
194	EM-2023-3204	EM-2023-3204
195	EM-2023-329	culled by word search
196	EM-2023-3928	EM-2023-3928
197	EM-2023-3931	culled by word search
198	EM-2023-4415	culled by word search
199	EM-2023-4419	EM-2023-4419
200	EM-2023-470	culled by word search
201	EM-2023-480	culled by word search
202	EM-2023-4810	culled by word search
203	EM-2023-5942	culled by word search
204	EM-2023-5957	culled by word search
205	EM-2023-616	culled by word search
206	EM-2023-6932	culled by word search
207	EM-2023-7254	culled by word search
208	EM-2023-7541	EM-2023-7541
209	EM-2023-7547	culled by word search
210	EM-2023-7632	EM-2023-7632

**Plaintiff's Exhibit 11**  
**How Plaintiff Identified Class Members**  
**from Defendants' List of 228 Potential Class Members**

EM Number		Screened by Word Search	Proposed Putative Class
211	EM-2023-7647	culled by word search	culled by word search
212	EM-2023-7706	culled by word search	culled by word search
213	EM-2023-7724	culled by word search	culled by word search
214	EM-2023-7791	culled by word search	culled by word search
215	EM-2023-8198	EM-2023-8198	EM-2023-8198
216	EM-2023-8272	EM-2023-8272	EM-2023-8272
217	EM-2023-8277	EM-2023-8277	EM-2023-8277
218	EM-2023-8302	culled by word search	culled by word search
219	EM-2023-8307	culled by word search	culled by word search
220	EM-2023-8392	culled by word search	culled by word search
221	EM-2023-845	culled by word search	culled by word search
222	EM-2023-86	culled by word search	culled by word search
223	EM-2023-872	culled by word search	culled by word search
224	EM-2023-8883	EM-2023-8883	EM-2023-8883
225	EM-2023-8952	culled by word search	culled by word search
226	EM-2023-8997	culled by word search	culled by word search
227	EM-2023-9277	culled by word search	culled by word search
228	EM-2023-9319	culled by word search	culled by word search

## **Exhibit 12**

**Plaintiff's Exhibit 12**  
**36 Persons Challenged by Defendants.**  
**Sorted by Membership in Putative Classes**

	EM Number	Proposed Putative Class Members	Defense Challenge
1	EM-2021-11067		
2	EM-2021-11176	EM-2021-11176	challenged
3	EM-2021-11199		
4	EM-2021-11583		challenged
5	EM-2021-12063	EM-2021-12063	
6	EM-2021-12217	EM-2021-12217	
7	EM-2021-12371		
8	EM-2021-12769	EM-2021-12769	
9	EM-2021-12920		
10	EM-2021-13640		
11	EM-2021-13723		
12	EM-2021-13730	EM-2021-13730	
13	EM-2021-13793	EM-2021-13793	
14	EM-2021-13899	EM-2021-13899	
15	EM-2021-13911	EM-2021-13911	
16	EM-2021-13965		
17	EM-2021-14026		
18	EM-2021-15175	EM-2021-15175	
19	EM-2021-15253		
20	EM-2021-15254	EM-2021-15254	
21	EM-2021-15260	EM-2021-15260	
22	EM-2021-15261	EM-2021-15261	
23	EM-2021-15277	EM-2021-15277	
24	EM-2021-15280	EM-2021-15280	
25	EM-2021-15303	EM-2021-15303	
26	EM-2021-15307	EM-2021-15307	
27	EM-2021-15310	EM-2021-15310	
28	EM-2021-15834		
29	EM-2021-15952		
30	EM-2021-16161	EM-2021-16161	
31	EM-2021-16477		
32	EM-2021-17015		
33	EM-2021-17331		
34	EM-2021-17449		
35	EM-2021-17684	EM-2021-17684	

**Plaintiff's Exhibit 12**  
**36 Persons Challenged by Defendants.**  
**Sorted by Membership in Putative Classes**

EM Number	Proposed Putative Class Members	Defense Challenge
36	EM-2021-17738	
37	EM-2021-18169	
38	EM-2021-20103	
39	EM-2021-20220	
40	EM-2021-21864	EM-2021-21864
41	EM-2021-22410	EM-2021-22410
42	EM-2021-22432	EM-2021-22432
43	EM-2021-22587	challenged
44	EM-2021-23214	EM-2021-23214
45	EM-2021-23824	EM-2021-23824
46	EM-2021-4403	EM-2021-4403
47	EM-2021-4414	EM-2021-4414
48	EM-2021-4461	
49	EM-2021-4571	
50	EM-2021-4623	
51	EM-2021-4644	EM-2021-4644
52	EM-2021-4648	
53	EM-2021-4652	
54	EM-2021-4669	
55	EM-2021-4791	EM-2021-4791
56	EM-2021-4877	EM-2021-4877
57	EM-2021-4921	EM-2021-4921
58	EM-2021-5295	
59	EM-2021-5381	
60	EM-2021-5382	challenged
61	EM-2021-5496	
62	EM-2021-5670	
63	EM-2021-5937	EM-2021-5937
64	EM-2021-6266	
65	EM-2021-6906	
66	EM-2021-6973	EM-2021-6973
67	EM-2021-6977	challenged
68	EM-2021-7188	
69	EM-2021-7314	
70	EM-2021-7329	EM-2021-7329
		challenged

**Plaintiff's Exhibit 12**  
**36 Persons Challenged by Defendants.**  
**Sorted by Membership in Putative Classes**

EM Number	Proposed Putative Class Members	Defense Challenge
71	EM-2021-8832	
72	EM-2021-8900	EM-2021-8900
73	EM-2021-9080	
74	EM-2021-9175	EM-2021-9175
75	EM-2021-9442	
76	EM-2021-9942	
77	EM-2022-10375	EM-2022-10375
78	EM-2022-11083	
79	EM-2022-11414	
80	EM-2022-11463	
81	EM-2022-11845	
82	EM-2022-11850	
83	EM-2022-13422	
84	EM-2022-13453	
85	EM-2022-14590	
86	EM-2022-14824	
87	EM-2022-14906	EM-2022-14906
88	EM-2022-16286	
89	EM-2022-16633	
90	EM-2022-16716	challenged
91	EM-2022-17059	EM-2022-17059
92	EM-2022-17064	
93	EM-2022-17166	
94	EM-2022-1717	challenged
95	EM-2022-17721	challenged
96	EM-2022-17846	
97	EM-2022-1797	challenged
98	EM-2022-18327	
99	EM-2022-18808	challenged
100	EM-2022-19246	challenged
101	EM-2022-19544	challenged
102	EM-2022-19637	
103	EM-2022-19909	
104	EM-2022-19957	
105	EM-2022-20026	

**Plaintiff's Exhibit 12**  
**36 Persons Challenged by Defendants.**  
**Sorted by Membership in Putative Classes**

EM Number	Proposed Putative Class Members	Defense Challenge
106	EM-2022-20121	
107	EM-2022-20387	challenged
108	EM-2022-20538	
109	EM-2022-20626	
110	EM-2022-20635	
111	EM-2022-20646	EM-2022-20646
112	EM-2022-20938	
113	EM-2022-21017	
114	EM-2022-21976	
115	EM-2022-2260	
116	EM-2022-22606	
117	EM-2022-22612	
118	EM-2022-22633	
119	EM-2022-22720	challenged
120	EM-2022-23125	
121	EM-2022-23127	
122	EM-2022-23213	
123	EM-2022-23215	challenged
124	EM-2022-23216	challenged
125	EM-2022-23217	
126	EM-2022-24198	challenged
127	EM-2022-24299	EM-2022-24299
128	EM-2022-25184	
129	EM-2022-25276	
130	EM-2022-25288	
131	EM-2022-25366	challenged
132	EM-2022-26226	
133	EM-2022-26300	
134	EM-2022-26393	
135	EM-2022-26753	
136	EM-2022-2686	
137	EM-2022-2876	
138	EM-2022-3793	
139	EM-2022-412	
140	EM-2022-5811	

**Plaintiff's Exhibit 12**  
**36 Persons Challenged by Defendants.**  
**Sorted by Membership in Putative Classes**

	EM Number	Proposed Putative Class Members	Defense Challenge
141	EM-2022-5812		
142	EM-2022-5853		
143	EM-2022-6373		
144	EM-2022-6485		
145	EM-2022-7399		
146	EM-2022-778		
147	EM-2022-8025		challenged
148	EM-2022-9848		
149	EM-2023-11268	EM-2023-11268	
150	EM-2023-11376		
151	EM-2023-11576	EM-2023-11576	
152	EM-2023-11947		challenged
153	EM-2023-12010		
154	EM-2023-13017		
155	EM-2023-13022		
156	EM-2023-13068		
157	EM-2023-13078	EM-2023-13078	
158	EM-2023-13200		challenged
159	EM-2023-13831		
160	EM-2023-13999		challenged
161	EM-2023-14012		challenged
162	EM-2023-14073		
163	EM-2023-14580	EM-2023-14580	
164	EM-2023-14587		
165	EM-2023-14590		
166	EM-2023-15116		
167	EM-2023-1540		
168	EM-2023-15429	EM-2023-15429	
169	EM-2023-1570		challenged
170	EM-2023-16284		
171	EM-2023-17431		
172	EM-2023-17459		
173	EM-2023-18052	EM-2023-18052	
174	EM-2023-18411		challenged
175	EM-2023-19061	EM-2023-19061	



**Plaintiff's Exhibit 12**  
**36 Persons Challenged by Defendants.**  
**Sorted by Membership in Putative Classes**

EM Number	Proposed Putative Class Members	Defense Challenge
176	EM-2023-19294	
177	EM-2023-19779	
178	EM-2023-19927	
179	EM-2023-20003	challenged
180	EM-2023-20066	
181	EM-2023-20334	EM-2023-20334
182	EM-2023-20907	challenged
183	EM-2023-2191	challenged
184	EM-2023-2196	
185	EM-2023-2198	
186	EM-2023-24296	
187	EM-2023-24297	
188	EM-2023-2484	EM-2023-2484
189	EM-2023-26218	
190	EM-2023-267	
191	EM-2023-297	challenged
192	EM-2023-3120	
193	EM-2023-3190	
194	EM-2023-3204	EM-2023-3204
195	EM-2023-329	
196	EM-2023-3928	EM-2023-3928
197	EM-2023-3931	
198	EM-2023-4415	
199	EM-2023-4419	EM-2023-4419
200	EM-2023-470	
201	EM-2023-480	challenged
202	EM-2023-4810	challenged
203	EM-2023-5942	
204	EM-2023-5957	
205	EM-2023-616	
206	EM-2023-6932	
207	EM-2023-7254	
208	EM-2023-7541	EM-2023-7541
209	EM-2023-7547	challenged
210	EM-2023-7632	EM-2023-7632

**Plaintiff's Exhibit 12**  
**36 Persons Challenged by Defendants.**  
**Sorted by Membership in Putative Classes**

	EM Number	Proposed Putative Class Members	Defense Challenge
211	EM-2023-7647		
212	EM-2023-7706		
213	EM-2023-7724		challenged
214	EM-2023-7791		
215	EM-2023-8198	EM-2023-8198	
216	EM-2023-8272	EM-2023-8272	
217	EM-2023-8277	EM-2023-8277	
218	EM-2023-8302		
219	EM-2023-8307		
220	EM-2023-8392		challenged
221	EM-2023-845		
222	EM-2023-86		challenged
223	EM-2023-872		
224	EM-2023-8883	EM-2023-8883	
225	EM-2023-8952		
226	EM-2023-8997		
227	EM-2023-9277		
228	EM-2023-9319		

## **Exhibit 13**

**Plaintiff's Exhibit 12**  
**36 Persons Challenged by Defendants.**  
**Sorted by Challenge to Putative Class Members**

	EM Number	Proposed Putative Class Members	Defense Challenge
1	EM-2021-11176	EM-2021-11176	challenged
2	EM-2021-6973	EM-2021-6973	challenged
3	EM-2021-7329	EM-2021-7329	challenged
4	EM-2021-11583		challenged
5	EM-2021-22587		challenged
6	EM-2021-5382		challenged
7	EM-2022-16716		challenged
8	EM-2022-1717		challenged
9	EM-2022-17721		challenged
10	EM-2022-1797		challenged
11	EM-2022-18808		challenged
12	EM-2022-19246		challenged
13	EM-2022-19544		challenged
14	EM-2022-20387		challenged
15	EM-2022-22720		challenged
16	EM-2022-23215		challenged
17	EM-2022-23216		challenged
18	EM-2022-24198		challenged
19	EM-2022-25366		challenged
20	EM-2022-8025		challenged
21	EM-2023-11947		challenged
22	EM-2023-13200		challenged
23	EM-2023-13999		challenged
24	EM-2023-14012		challenged
25	EM-2023-1570		challenged
26	EM-2023-18411		challenged
27	EM-2023-20003		challenged
28	EM-2023-20907		challenged
29	EM-2023-2191		challenged
30	EM-2023-297		challenged
31	EM-2023-480		challenged
32	EM-2023-4810		challenged
33	EM-2023-7547		challenged
34	EM-2023-7724		challenged
35	EM-2023-8392		challenged

**Plaintiff's Exhibit 12**  
**36 Persons Challenged by Defendants.**  
**Sorted by Challenge to Putative Class Members**

	EM Number	Proposed Putative Class Members
36	EM-2023-86	Defense Challenge challenged