

**UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF MICHIGAN**

KEVIN LINDKE; MICHAEL SCHULTZ;
and all those similarly situated,

Plaintiffs,

v.

MAT KING, in his official and personal
capacities; TIMOTHY DONNELLON,
in his official and personal capacities;
COUNTY OF ST. CLAIR;
TRACY DECAUSSIN, in her official
and personal capacities; and
THOMAS BLISS, in his official
and personal capacities,

Defendants

Case No.: 22-cv-11767
Honorable Matthew Leitman

**AMENDED COMPLAINT
JURY DEMANDED**

**** CLASS ACTION ****

FIRST AMENDED COMPLAINT

NOW COME Plaintiffs KEVIN LINDKE and MICHAEL SCHULTZ, by
and through counsel, and complains as follows:

INTRODUCTION

1. There is no more fundamental understanding in the law than the
notion that individuals should never be imprisoned for longer than what is
legally mandated.

2. This class action case is filed to vindicated those who have been
imprisoned, detained, and/or incarcerated in the St. Clair County jail for
criminal contempt longer than permitted by Michigan law due to a long-
standing and illegal Sheriff's policy (over two administrations) that denied
individuals serving certain types of criminal sentences of entitled "good-time"
credits—the right to sentence reductions belonging to all jailed individuals.

PARTIES

3. Plaintiff KEVIN LINDKE is a resident of the State of Michigan.
4. Plaintiff MICHAEL SCHULTZ is a resident of the State of Michigan.
5. Defendant COUNTY OF ST. CLAIR is a municipal entity formed and the laws of the State of Michigan.
6. Defendant TIMOTHY DONNELLON is the former sheriff of St. Clair County and is sued in his official and personal capacities.
7. Defendant MAT KING is the current sheriff of St. Clair County and is sued in his official and personal capacities.
8. Defendant TRACY DECAUSSIN is the jail administrator for St. Clair County and is sued in her official and personal capacities.
9. Defendant THOMAS BLISS is the former jail administrator for St. Clair County and is sued in his official and personal capacities.

JURISDICTION

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, which authorizes federal courts to decide cases concerning federal questions; 28 U.S.C. § 1343, which authorizes federal courts to hear civil rights cases; 28 U.S.C. § 2201, which authorizes declaratory judgments via the Declaratory Judgment Act; and 28 U.S.C. § 1367 for the supplemental state law claims.
11. Venue is proper in this Court as Defendants conduct or have conducted their business in the Eastern District of Michigan.

GENERAL ALLEGATIONS

12. Under Michigan law, every prisoner in jail “whose record shows that there are no violations of the rules and regulations shall be entitled to a reduction from his or her sentence as follows: 1 day for each 6 days of the sentence.” See M.C.L. § 51.282.
13. This is commonly known as Michigan’s “Good-Time-Credit” statute.

14. Michigan courts interpreting the Good-Time-Credit statute have been clear that “there is nothing in the statute to suggest that [a] sheriff has [] discretion to set a rule on whether a prisoner is *eligible* to earn such credit in the first instance” because all individuals confined to the St. Clair County jail are eligible by statute.

15. Moreover, Michigan’s jurisprudence has been clear for decades that any trial court imposing a criminal sentence is not permitted to circumvent or nullify the statutory scheme by taking away good-time credits in advance. E.g. *People v. Cannon*, 206 Mich. App. 653, 655; 522 N.W.2d 716 (1994).

16. Despite the clear directives of Michigan’s appellate courts, Defendants have operated a system, by its own custom or policies, that refused to apply the good-time credit for certain case types (i.e. criminal contempt), which resulted in jailed individuals being kept in and confined to the St. Clair County jail longer than what Michigan criminal sentences dictate and thereby being an over-detention.

17. A long-standing policy, which has been implemented with the supposed consent of various chief judges of the 31st Circuit Court¹, provides that prisoners serving certain types of sentences are not entitled to earn good-time.

18. Copies of some of the policies are attached as **Exhibits A & B**.²

19. This sheriff-enacted policy, over two administrations, is contrary to well-established law and definitive interpretations of that law.

20. As recently reconfirmed by the local trial court, any sentencing orders that noted the foreclosing good-time credit was simply “recognizing” this policy because denial of good-time credit was never part of a sentence because it never could have been. **Exhibit C**.

¹ A judge promulgating a rule or issuing administrative command, outside of a contested case, is undertaking legislative activity. *Alia v. Mich. Supreme Ct.*, 906 F.2d 1100, 1102 (6th Cir. 1990).

² It is unclear when Defendant Mat King actually signed Exhibit B, despite it being dated 2017, because he was not appointed sheriff until November 10, 2021. See <https://www.mlive.com/news/flint/2020/11/new-sheriff-appointed-in-st-clair-county.html>. It is believed he signed this policy, as the sheriff, immediately after becoming sheriff to continue the formal policy seamlessly since at least 2017.

21. Other judges in St. Clair County do not provide this notification in court papers, but are also equally denied good time. See e.g. **Exhibit D & E.**

Kevin Lindke

22. A St. Clair County trial court sentenced Plaintiff Kevin Lindke on March 30, 2021, June 22, 2021 and July 29, 2021 for criminal contempt resulting from personal protection orders, which involved non-threatening online speech and is the subject of other litigation.

23. Plaintiff Kevin Lindke was intentionally not provided the various good-time credits for each six-day period of his various sentences, which he was entitled to the same.

24. One or more Defendants, contrary to law and constitutional-protections, unlawfully extended Plaintiff Kevin Lindke's time being confined to the St. Clair County jail in excess of what his actual confinement should have been under Michigan law.

Michael Schultz

25. A St. Clair County probate court sentenced Plaintiff Michael Schultz on August 11, 2021 for criminal contempt resulting from an in-court dust-up during a guardianship proceeding.

26. Plaintiff Michael Schultz was intentionally not provided the various good-time credits for each six-day period of his 25-day sentence, which he was entitled to the same.

27. One or more Defendants, contrary to law and constitutional-protections, unlawfully extended Plaintiff Michael Schultz's time being confined to the St. Clair County jail in excess of what his actual confinement should have been under Michigan law.

CLASS ALLEGATIONS

28. This action is brought on behalf of all individuals during the relevant statutorily-limited time period who were imprisoned, detained, or incarcerated longer than permitted by Michigan law due to Defendants' long-standing and illegal policy that arbitrarily denies individuals of good-time credit when serving criminal contempt sentences.

29. The number of injured individuals who have been constitutionally injured is sufficiently numerous to make class action status the most practical method to secure redress for injuries sustained and class wide equitable relief.

30. There are clear questions of law and fact raised are common to, and typical of, those raised by the Class.

31. The violations of law and resulting harms alleged are typical of the legal violations and harms suffered by all Class members.

32. Plaintiffs Kevin Lindke and Michael Schultz, as Class representatives, will fairly and adequately protect the interests of the Class members and will vigorously prosecute the suit on behalf of the Class; and is represented by sufficiently experienced counsel.

33. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice, preventing possible inconsistent or varying adjudications with respect to individual members of the Class and/or one or more of the Defendants.

34. Defendants have acted and failed to act on grounds generally applicable to all members of the Class.

COUNT I
FAILURE OF TIMELY RELEASE – DUE PROCESS
42 U.S.C. § 1983

35. The prior allegations are realleged herein.

36. Since at least 2007 in this Circuit, it is “beyond dispute” that “when a prisoner’s sentence has expired, he [or she] is entitled to release.” *Shorts v. Bartholomew*, 255 Fed. App’x 46, 51 (6th Cir. 2007)

37. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have a constitutional right not be detained past the expiration of their actual terms of confinement, which determined and calculated using the Good-Time-Credit statute.

38. Since at least 1994, it has been “clear and unmistakable” that “every county prisoner” confined to jail “shall be entitled to a reduction of

sentence of one day for every six days served where there are no violations of the rules and regulations” and only “the sheriff is to prescribe how much good-time is to be forfeited for any infraction of the general rules and regulations.” *People v. Cannon*, 206 Mich. App. 653, 656; 522 N.W.2d 716 (1994).

39. Defendants deprived Plaintiffs Kevin Lindke and Michael Schultz and the Class members of their right to be timely released by the actions, customs, and policies of Defendants.

40. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result thereof.

41. Defendants’ action not effectuating a timely release is a policy, custom, and/or practice of Defendants sufficient to impose damages and other relief pursuant to *Monell v. New York City Department of Social Services* and its progeny.

42. Plaintiffs Kevin Lindke and Michael Schultz and Class members have experienced injury by the unconstitutional processes and procedures undertaken by a policy, custom, and/or practice of Defendants.

43. Defendants’ conduct was wanton, intentional, and/or grossly negligent, or otherwise indicated active malice toward Plaintiffs Kevin Lindke and Michael Schultz and the members of the Class (or at least a reckless and deliberate disregard for and indifference to constitutional rights) that justifies an award of punitive damages in addition to the actual damages which Plaintiffs Kevin Lindke and Michael Schultz and the Class are entitled to recover.

COUNT II
FAILURE OF TIMELY RELEASE
MICHIGAN CONSTITUTION, ART I, § 17

44. The prior allegations are realleged herein.

45. The same allegations as outlined in Count I also constitute violation(s) of Article I, Section 17 of the Michigan Constitution which protects Plaintiffs Kevin Lindke and Michael Schultz and the Class members from being the untimely release from confinement within the St Clair County jail.

46. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result of Defendants' violation(s) of Article I, Section 17 of the Michigan Constitution.

COUNT III
FOURTEENTH AMENDMENT SUBSTANTIVE DUE PROCESS
VIOLATION
42 U.S.C. § 1983

47. The prior allegations are realleged herein.

48. By the actions, customs, and policies of Defendants, acting individually and/or in conspiracy with others, Defendants wrongfully refused to apply the entitlement of good-time credit, which resulted in individuals who have served their actual sentence, like Plaintiffs Kevin Lindke and Michael Schultz and the Class members, to be and/or have been unlawfully kept in and confined to the St. Clair County jail longer than what Michigan criminal sentences permit.

49. Defendants' intentional non-compliance with well-established jail confinement law(s) regarding good-time violates the Fourteenth Amendment to the United States Constitution by arbitrarily and capriciously denying liberty rights in a manner that inter alia shocks the conscience.

50. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result thereof.

51. Defendants' arbitrary and capricious denial of good-time is a policy, custom, and/or practice of Defendants sufficient to impose damages and other relief pursuant to *Monell v. New York City Department of Social Services* and its progeny.

52. Plaintiffs Kevin Lindke and Michael Schultz and Class members have experienced injury by the unconstitutional processes and procedures undertaken by a policy, custom, and/or practice of Defendants.

53. Defendants' conduct was wanton, intentional, and/or grossly negligent, or otherwise indicated active malice toward Plaintiffs Kevin Lindke and Michael Schultz and the members of the Class (or at least a reckless and deliberate disregard for and indifference to constitutional rights) that justifies an award of punitive damages in addition to the actual damages

which Plaintiffs Kevin Lindke and Michael Schultz and the Class are entitled to recover.

**COUNT IV
SUBSTANTIVE DUE PROCESS VIOLATION
MICHIGAN CONSTITUTION, ART I, § 17**

54. The prior allegations are realleged herein.

55. The same allegations as outlined in Count III also constitute violation(s) of Article I, Section 17 of the Michigan Constitution which protects Plaintiffs Kevin Lindke and Michael Schultz and the Class members from being “deprived of life, liberty or property, without due process of law.”

56. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result of Defendants’ violation(s) of Article I, Section 17 of the Michigan Constitution.

**COUNT V
FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS
VIOLATION
42 U.S.C. § 1983**

57. The prior allegations are realleged herein.

58. By the actions, customs, and policies of Defendants, acting individually and/or in conspiracy with others, Defendants deprived Plaintiffs Kevin Lindke and Michael Schultz and the Class members of their liberty rights (i.e. the right to be free of state-controlled confinement) without predeprivation notice and/or the opportunity to be heard whereby keeping in and confining individuals to the St. Clair County jail longer than what Michigan criminal sentences permit.

59. Defendants’ intentional non-compliance with well-established jail confinement law(s) regarding good-time violates the Fourteenth Amendment to the United States Constitution by denying Plaintiffs Kevin Lindke and Michael Schultz and the Class members their liberty rights without any due process or the required due process of law.

60. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result thereof.

61. Defendants' denial of good-time is a policy, custom, and/or practice of Defendants sufficient to impose damages and other relief pursuant to *Monell v. New York City Department of Social Services* and its progeny.

62. Plaintiffs Kevin Lindke and Michael Schultz and Class members have experienced injury by the unconstitutional processes and procedures undertaken by a policy, custom, and/or practice of Defendants.

63. Defendants' conduct was wanton, intentional, and/or grossly negligent, or otherwise indicated active malice toward Plaintiffs Kevin Lindke and Michael Schultz and the members of the Class (or at least a reckless and deliberate disregard for and indifference to constitutional rights) that justifies an award of punitive damages in addition to the actual damages which Plaintiffs Kevin Lindke and Michael Schultz and the Class are entitled to recover.

COUNT VI
PROCEDURAL DUE PROCESS VIOLATION(S)
MICHIGAN CONSTITUTION, ART I, § 17

64. The prior allegations are realleged herein.

65. The same allegations as outlined in Count V also constitute violation(s) of Article I, Section 17 of the Michigan Constitution which protects Plaintiffs Kevin Lindke and Michael Schultz and the Class members from being "deprived of life, liberty or property, without due process of law."

66. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result of Defendants' violation(s) of Article I, Section 17 of the Michigan Constitution.

COUNT VII
FOURTEENTH AMENDMENT EQUAL PROTECTION VIOLATION(S)
42 U.S.C. § 1983

67. The prior allegations are realleged herein.

68. By the actions, customs, and policies of Defendants, acting individually and/or in conspiracy with others, Defendants deprived Plaintiffs Kevin Lindke and Michael Schultz and the Class members of their equal protection of law by denying good-time credit to those individuals serving a

sentence related to criminal contempt when all others were granted good-time credits under Michigan law despite Michigan law not providing any such differing in treatment.

69. The denial of good-time credit to those serving a term of confinement due to criminal contempt (as opposed to all other criminal sentences) resulted in individuals being unlawfully kept in and confined to the St. Clair County jail longer than what Michigan criminal sentences permit.

70. Defendants' intentional non-compliance with well-established jail confinement law(s) regarding good-time violates the Fourteenth Amendment to the United States Constitution by denying Plaintiffs Kevin Lindke and Michael Schultz and the Class members the equal protection of law.

71. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result thereof.

72. Defendants' denial of good-time credit is a policy, custom, and/or practice of Defendants sufficient to impose damages and other relief pursuant to *Monell v. New York City Department of Social Services* and its progeny.

73. Plaintiffs Kevin Lindke and Michael Schultz and Class members have experienced injury by the unconstitutional processes and procedures undertaken by a policy, custom, and/or practice of Defendants.

74. Defendants' conduct was wanton, intentional, and/or grossly negligent, or otherwise indicated active malice toward Plaintiffs Kevin Lindke and Michael Schultz and the members of the Class (or at least a reckless and deliberate disregard for and indifference to constitutional rights) that justifies an award of punitive damages in addition to the actual damages which Plaintiffs Kevin Lindke and Michael Schultz and the Class are entitled to recover.

COUNT VIII
EQUAL PROTECTION VIOLATION(S)
MICHIGAN CONSTITUTION, ART I, § 2

75. The prior allegations are realleged herein.

76. The same allegations as outlined in Count VII also constitute violation(s) of Article I, Section 2 of the Michigan Constitution which protects

Plaintiffs Kevin Lindke and Michael Schultz and the Class members from the unequal protection of law.

77. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result of Defendants' violation(s) of Article I, Section 2 of the Michigan Constitution.

COUNT IX
FOURTH AMENDMENT VIOLATION(S)
42 U.S.C. § 1983

78. The prior allegations are realleged herein.

79. By the actions, customs, and policies of Defendants, acting individually and/or in conspiracy with others, Defendants wrongfully refused to apply the entitlement of good-time credit, which resulted in individuals who have served their actual sentence, like Plaintiffs Kevin Lindke and Michael Schultz and the Class members, to be and/or have been unlawfully kept in and confined to the St. Clair County jail longer than what Michigan criminal sentences permit.

80. Defendants' intentional non-compliance with well-established jail confinement law(s) regarding good-time violates the Fourth Amendment to the United States Constitution as unreasonable seizures.

81. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result thereof.

82. Defendants have policy, custom, and/or practice sufficient to impose damages and other relief pursuant to *Monell v. New York City Department of Social Services* and its progeny.

83. Plaintiffs Kevin Lindke and Michael Schultz and Class members have experienced injury by the unconstitutional processes and procedures undertaken by a policy, custom, and/or practice of Defendants.

84. Defendants' conduct was wanton, intentional, and/or grossly negligent, or otherwise indicated active malice toward Plaintiffs Kevin Lindke and Michael Schultz and the members of the Class (or at least a reckless and deliberate disregard for and indifference to constitutional rights) that justifies an award of punitive damages in addition to the actual damages

which Plaintiffs Kevin Lindke and Michael Schultz and the Class are entitled to recover.

**COUNT X
UNREASONABLE SEIZURE(S)
MICHIGAN CONSTITUTION, ART I, § 11**

85. The prior allegations are realleged herein.

86. The same allegations as outlined in Count IX also constitute violation(s) of Article I, Section 11 of the Michigan Constitution, which protects the “persons” of Plaintiffs Kevin Lindke and Michael Schultz and the Class members from unreasonable seizures.

87. Plaintiffs Kevin Lindke and Michael Schultz and the Class members have suffered damages as a result of Defendants’ violation(s) of Article I, Section 11 of the Michigan Constitution.

RELIEF REQUESTED

88. WHEREFORE, Plaintiffs Kevin Lindke and Michael Schultz, individually and on behalf of members of the Class, respectfully requests this Court to:

- a. Enter an order certifying this case as a class action;
- b. Enter an order declaring³ the conduct of Defendants as being unconstitutional;

³ This request for declaratory relief is retrospective only. Requesting retrospective declaratory relief is proper when it serves as a predicate to a damages award based on the same underlying legal violation. *In re Financial Oversight & Mgt Bd. for Puerto Rico*, 979 F.3d 10, 16 (1st Cir. 2020); *Lippoldt v. Cole*, 468 F.3d 1204, 1217 (10th Cir. 2006) (“A claim for ‘declaratory judgment is generally prospective,’ but we treat declaratory relief as retrospective ‘to the extent that it is intertwined with a claim for monetary damages that requires us to declare whether a past constitutional violation occurred.’”); *F.E.R. v. Valdez*, 58 F.3d 1530, 1533 (10th Cir. 1995); see also *Wolff v. McDonnell*, 418 U.S. 539, 554-555 (1974) (noting that a declaratory judgment as a predicate to a damages award may be proper); *Crue v. Aiken*, 370 F.3d 668, 677 (7th Cir. 2004) (“When a claim for injunctive relief is barred but a claim for damages remains, a declaratory judgment as a predicate to a damages award can survive.”).

- c. Award any/all economic, non-economic, and nominal damages and/or appropriate compensation as is deemed proper against any/all Defendants;
- d. Award punitive damages against Defendants Timothy Donnellon, Mat King, Tracy DeCaussin, and Thomas Bliss in their personal capacities as is deemed proper;
- e. Enter an order for an award of interest;
- f. Enter an order for an award of attorney fees and expenses pursuant to all applicable laws, rules, or statutes; and
- g. Enter an order for all such other legal and equitable relief which the Court deems proper, just, or warranted.

JURY DEMAND

89. For all triable issues, a jury is hereby demanded.

Date: October 6, 2022

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison
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CERTIFICATE OF SERVICE

I, the undersigned attorney of record, hereby certify that on the date stated below, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel or parties of record.

Date: October 6, 2022

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison

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