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

LETICIA ROBERTS and CALVIN SAYERS, on behalf of themselves and others similarly situated; Plaintiffs, v. SHERIFF TONY THOMPSON, in his official capacity; BLACK HAWK COUNTY; Defendants.	Case No. 6:24-cv-02024-MAR **ORAL ARGUMENT REQUESTED**

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Leticia Roberts and Calvin Sayers, on behalf of themselves and a putative class of others similarly situated ("Class Members"), respectfully move for a preliminary injunction against Defendants Tony Thompson, the Sheriff of Black Hawk County (the "Sheriff" or the "Department"), and Black Hawk County (the "County") (collectively, "Defendants"), enjoining Defendants from: (a) using confessions of judgment to compel payment of booking fees and/or room and board (collectively, "jail fees"); (b) entering new confessions of judgment for jail fees; and (c) using confessions of judgment to initiate reimbursement claims against any individuals under Iowa Code section 356.7, regardless of when the confessions of judgment were signed.

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INTRODUCTION

Defendants have developed a scheme designed to extract as much money as possible from individuals who served time at the Black Hawk County Jail, no matter whether the amounts sought have been approved by a court or even whether the law permits Defendants to collect the money at all. Iowa law requires a civil reimbursement claim and a judgment before a claim for jail fees has the force of law. But Defendants sidestep that process by employing an antiquated legal instrument, the confession of judgment, which the Supreme Court has described as "the loosest way of binding a man's property that ever was devised in any civilized country." *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 177 (1972). By having Plaintiffs and Class Members sign confessions of judgment before they are released from jail, Defendants collect jail fees without providing any process, because subjecting the claims to judicial review would put Defendants' ability to collect at risk. This allows Defendants, as the Sheriff puts it, to squeeze "blood out of a turnip" and pour money into a fund used for the Department's discretionary expenses.

Defendants' scheme violates the Due Process Clause of the Fourteenth Amendment in at least three ways. ***First***, Defendants provide no process, much less the process mandated by Iowa law, by which individuals can challenge the fees. ***Second***, Defendants procure the confessions of judgment without the necessary procedural safeguards required by the U.S. Constitution. ***Third***, the Sheriff acts in an unconstitutional manner by standing as the sole arbiter of claims for reimbursement and collecting jail fees for the benefit of the Department.

Plaintiffs Leticia Roberts and Calvin Sayers signed confessions of judgment before their release from the jail and paid amounts to Defendants for jail fees, all without any due process of law. Plaintiffs move for a preliminary injunction on behalf of themselves and a putative class of "[a]ll individuals who have been released, or will be released, from the Black Hawk County Jail and have signed, or will sign, a confession of judgment for jail fees since May 14, 2022; and whose

jail fees have been paid, are being paid, or will be paid under a confession of judgment absent a court order." *Id.* First Am. Compl. ¶¶ 12, 141, ECF No. 9 (June 7, 2024). Because they have established the existence of irreparable harm, a likelihood of success on the merits of their claims, and that the balance of hardships and the public interest are in their favor, *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc), the Court should enjoin Defendants' policies, practices, and customs regarding the assessment and collection of jail fees.

BACKGROUND

A. Defendants Have Compelled Plaintiffs to Pay Jail Fees Under Confessions of Judgment Without any Process for Challenging the Fees.

Plaintiff Leticia Roberts is a single mother of three young children. Declaration of Leticia Roberts ("Roberts Decl.") ¶ 1. She served a total of nine days for two offenses of operating a motor vehicle while under the influence. *Id.* ¶ 4. On May 14, 2022, when she completed the first of her two sentences, she learned Defendants would charge her jail fees. *Id.* ¶ 7. At that time, she signed a confession of judgment for jail fees totaling $330, Ex. A, because she "felt [she] did not have a choice" in order to be released. Roberts Decl. ¶ 13. Her confession of judgment form contains a notary stamp, Ex. A, but no one notarized the document in Ms. Roberts's presence. Roberts Decl. ¶ 17. After her release, she informed the Department that she could not make the payments because she had to feed her three young children. *Id.* ¶ 18; *see also* Ex. A ("she said she can't make payments she needs to feed her 3 kids"). When she completed her second sentence, she again signed a confession of judgment before she was released from the jail because she felt she had no other choice. Roberts Decl. ¶ 20. Unable to afford the fees, she did not make payments between May and September 2022. *Id.* ¶ 24. In or around October 2022, a uniformed deputy sheriff visited her home and told her to make monthly payments so the Department would not bother her. *Id.* ¶ 22. Since then, she has paid $5 each month so that she could avoid further interactions with the

Department. *Id.* ¶ 24. She cannot afford the amount the Department says she owes. *Id.* ¶ 3.

Plaintiff Calvin Sayers is a seventy-year-old retired man who supports his adult son with disabilities. Declaration of Calvin Sayers ("Sayers Decl.") ¶ 1. After Mr. Sayers pleaded guilty to operating a motor vehicle while intoxicated, a district court judge sentenced him to 57 days in the jail, served in increments so he could care for his son. *Id.* ¶¶ 4, 5. When he first went to the jail to serve time, the Sheriff seized the cash Mr. Sayers had at booking and refused to return it when Mr. Sayers was released. *Id.* ¶ 10. Believing he had to pay, Mr. Sayers brought money with him the next two times he went to the jail to serve his time. *Id.* ¶ 11. That money was also seized for jail fees. *See* Ex. B. When he finished his sentence, he signed a confession of judgment for jail fees in the amount of $4,340 because he "had to." *Id.*; Sayers Decl. ¶ 16. While his confession of judgment contains a notary stamp, Ex. B, no one notarized the document in Mr. Sayers's presence. Sayers Decl. ¶ 14. In addition to the $75 the Department initially seized from him, Mr. Sayers has paid $55 to the Sheriff. Sayers Decl. ¶ 20. He cannot afford the fees assessed. Sayers Decl. ¶ 22.

B. The Statutory Framework of Jail Fees in Iowa.

Pursuant to Iowa Code section 356.7 (the "Jail Fees Statute"), Iowa law grants county sheriffs the authority to "charge" certain individuals "the actual administrative costs . . . for room and board provided to the prisoner while in the custody of the county sheriff." Iowa Code § 356.7(1). These fees can only be assessed against those who have "been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order." *Id.* Prior to the law's amendment in 2020, a "claim for room and board [could] be enforced in two ways: as a judgment in the traditional sense, under Iowa Code chapter 626, or as part of a restitution plan under chapter 910." *State v. Gross*, 935 N.W.2d 695, 703 (Iowa 2019). In *Gross*, the Iowa Supreme Court held that when the second option was chosen—as restitution in a criminal case—such payments were subject to statutory guidance requiring consideration of an individual's ability to

pay. *Id.* Following *Gross*, the Iowa Legislature amended the Jail Fees Statute to provide that: "A claim for reimbursement shall be filed in a separate civil action rather than as a claim in the underlying criminal case." Iowa Code § 356.7(4) (2020). The 2020 amendments removed the ability of county sheriffs "to obtain any other remedy authorized by law." Iowa Code § 356.7(4) (2019). As a result, a "civil reimbursement claim" is now the exclusive remedy for obtaining and enforcing a judgment for jail fees. Iowa Code § 356.7(3) (2020).

C. Defendants Use Confessions of Judgment to Collect Jail Fees Without Due Process of Law.

Defendants present individuals with a confession of judgment for jail fees before release from the jail. The Sheriff's official policy on "Inmate Billing" states that "[t]he Sheriff shall collect fees for room and board and booking from every sentenced inmate held in the custody of the Black Hawk County Jail." Ex. C at 1. By charging "every sentenced inmate," *id.*, Defendants impose jail fees on individuals not covered under the Jail Fees Statute, such as those jailed for failure to pay child support or failure to appear for jury duty. Declaration of Charles Moore ("Moore Decl.") ¶ 7. Defendants give individuals an "invoice" "[a]t the time of release," *id.*, and "ask[] [them] to sign a completed Confession of Judgment agreeing to make scheduled payments," Ex. C at 2.

The circumstances surrounding release from the jail do not convey that signing the document is optional. Ms. Roberts and Mr. Sayers signed because they believed they had no choice. Roberts Decl. ¶¶ 12, 20; Sayers Decl. ¶ 16. A review of all confessions of judgment maintained at the jail reveals that, from 2022 to the present, only seven individuals were noted to have "refused" signing. Declaration of Abigail Frerichs ("Frerichs Decl.") ¶ 20. But of those seven, six were "released" to the Iowa Medical and Classification Center ("IMCC"), to a residential treatment facility, or into the custody of the federal government. *Id.* Only one form contains a notation indicating "refus[al]" absent circumstances indicating transfer to a different facility. *Id.*

¶ 22. At least one individual noted they signed the document "under duress." *Id.*, Ex. A at 51. Two others signed stating they did not agree. *Id.* ¶ 19.

In its current form, the confession of judgment used by Defendants provides the following:

> I understand that if I do not timely make payments according to this payment plan, the Black Hawk County Sheriff's Office can file the necessary legal proceedings, in Small Claims or District Court, to collect unpaid amounts from me, and that in such proceedings this document will be filed as a Confession of Judgment of the above balance due. I understand that if such legal proceedings take place and judgment is entered against me, I will also be liable for service of process fees and Court costs of those proceedings.

Ex. D. The confession of judgment is presented on a standard, pre-printed form with nearly all fields filled in. Roberts Decl. ¶ 12; Sayers Decl. ¶ 14. The only blank field for completion by the individual is the "Inmate Signature." Roberts Decl. ¶ 12; Sayers Decl. ¶ 14. The confessions of judgment are apparently notarized at some point, but no notary is present when the individual signs the document. Exs. A & B; Roberts Decl. ¶ 17; Sayers Decl. ¶ 14. No one advises individuals that Iowa law requires a court judgment before jail fees are lawfully enforceable. Roberts Decl. ¶ 16; Sayers Decl. ¶ 15. When individuals sign, they are not advised of their constitutional due process rights or of the nature of the confessions of judgment. Roberts Decl. ¶ 16; Sayers Decl. ¶ 15. Individuals have no opportunity to consult with an attorney before signing. Roberts Decl. ¶ 21; Sayers Decl. ¶ 17. There is no opportunity to negotiate the terms of the document. Roberts Decl. ¶ 21; Sayers Decl. ¶ 17. The form itself contains no language advising individuals they possess certain rights and defenses. *See* Ex. D.

The Department employs several extrajudicial tactics to collect jail fees. Per Defendants' official policy, if an individual has cash when booked at the jail, it is seized and applied toward jail fees. Ex. C at 2; *see also* Ex. B; Sayers Decl. ¶ 11. Once released from the jail, the Department routinely sends individuals "collection letters." Frerichs Decl. ¶ 10. Those letters advise individuals that non-payment "has resulted in further enforcement steps," which "may increase the

total amount due." Ex. E. The letters inform individuals they must pay within 10 days "to avoid further action." *Id.* Uniformed deputies from the Department also visit individuals' homes to compel them to make payments. *See* Roberts Decl. ¶ 22. The Department also contacts probation officers and notes when a purported debtor has an active warrant. Frerichs Decl. ¶¶ 27–30.

The Sheriff himself—and agents of the Department—are aware that Plaintiffs and Class Members struggle to pay jail fees. Jail records indicate that numerous individuals have informed the Department they cannot make payments. Frerichs Decl. ¶ 15. Captain Nathan Neff, the jail administrator, informed the Black Hawk County Board of Supervisors (the "Board") that "the time servers are increasingly unable to pay their room and board charges." Ex. F at 8. Sheriff Thompson himself has acknowledged "experience tells us that only 30%–40% [of jail fees] is actually collectable ('blood out of a turnip' mentality). The rest of it is actually just bad debt that will eventually have to be written off or tenaciously pursued." Ex. G at 2.

D. Defendants' Policies, Practices, and Customs Have Allowed the Sheriff to Exercise Complete Control Over 40% of All Jail Fees Collected.

The Jail Fees Statute provides that sixty percent of the jail fees collected will be deposited in the county general fund and earmarked for specific expenses. Iowa Code § 356.7(5)(a). The remaining forty percent is unallocated. *Id.* In Black Hawk County, that forty percent is deposited into a fund that is referred to as the "40% Fund." During the last two years, the Department engaged in a campaign to control the fund and ensure the fees it collects are used for its preferred expenses.

During a meeting on September 27, 2022, the Board "questioned expenditures for a cotton candy machine, an ice cream machine and laser tag" that had been billed by the Department to the 40% Fund. Ex. H at 6. Thereafter, on October 4, 2022, the Board passed a resolution that jail fees would be placed in the County general fund and spent as "determined by the Board." Ex. I at 6. After the vote, the Sheriff sent an e-mail informing Board members that the Department would no

longer collect "room and board proceeds for a couple of very clear reasons," the first of which was that "staff's time will be better directed at activities which directly benefit and affect the efforts of our agency and office as a whole." Ex. G at 1. By the Sheriff's estimation, the Department was "averaging approximately $300,000 in net collection each year," and there was $227,000 in the 40% Fund. *Id.* Among other expenses, the Sheriff highlighted that the Department had used the 40% Fund to develop the Raymond Range Training Facility (the "Raymond Range"), a gun range for Department employees. *Id.* at 3. But the Sheriff expected fewer collections because "[w]e have very few time serving inmates in our jail . . . [and] [e]ven fewer are being required by the judges to repay room and board fees. In fact, *if there are fees that are ever being waived by courts, room and board are generally the fees that judges are willing to waive*." *Id.* (emphasis added).

After the Board's vote, the Department sent a proposal to the Board under which the Department would continue collecting jail fees as long as the 40% Fund would "remain in an account to be used at the Sheriff's discretion to pay for unbudgeted operating expenses such as, but not limited to . . . ongoing maintenance costs at the Raymond Range." Ex. J. On December 13, 2022, the Board approved a resolution to allow the Department to continue to use the 40% Fund, including for "routine expenses for the [Raymond Range]." Ex. K at 6.

The Sheriff's gambit succeeded: once he threatened to halt collections of jail fees, the Board relented, and the Department retained control of the 40% Fund. As a result, the Sheriff continues to use the 40% to fund discretionary expenses for the Department.

ARGUMENT

I. Legal Standard.

"Whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will

succeed on the merits; and (4) the public interest." *Dataphase Sys.*, 640 F.2d at 113. "No single factor in itself is dispositive; in each case all of the factors must be considered to determine whether on balance they weigh towards granting the injunction." *Baker Elec. Coop., Inc. v. Chaske*, 28 F.3d 1466, 1472 (8th Cir. 1994). The decision whether to grant a preliminary injunction is within the Court's sound discretion. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

II. Plaintiffs Have Suffered Irreparable Harm and Will Further Experience Irreparable Harm Absent an Injunction.

A party seeking a preliminary injunction must demonstrate a threat of irreparable harm. *Dataphase Sys.*, 640 F.2d at 113. The loss of constitutional rights "unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Plaintiffs and Class Members have already suffered constitutional injuries and further violations will occur absent an injunction. Defendants deprive Plaintiffs and Class Members their property without any due process of law; the confessions of judgment do not comport with the Due Process Clause; and Defendants act counter to the impartiality requirement of the Fourteenth Amendment. *See infra* Part III. Without an injunction, Defendants may continue to demand payment from Plaintiffs and Class Members under confessions of judgment without adequate due process of law. Such constitutional violations constitute irreparable harm and support the issuance of a preliminary injunction. *See, e.g., Planned Parenthood of Minn., Inc. v. Citizens for Cmty. Action*, 558 F.2d 861, 867 (8th Cir. 1977).

What's more, Plaintiffs and Class Members have been and will be injured by having to make arrangements to accommodate this unlawful debt. Such injuries constitute irreparable harm. *See, e.g., Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261, 1267–68 (W.D. Mich. 1990) (finding that an increase in Medicare out-of-pocket expenses and inability to plan medical expenses poses irreparable harm). By definition, Class Members are individuals who have served time in jail, a group of people who are "typically economically disadvantaged and are subject to a host of

attendant costs and charges" associated with their involvement in the criminal system. Expert Declaration of April Fernandes Ph.D. & Gabriela Kirk-Werner Ph.D. ("Fernandes & Kirk-Werner Decl.") ¶ 10. "[E]ven a brief jail stay can affect potential for employment, depress wages, and negatively impact physical and mental health outcomes." *Id.* Therefore, Plaintiffs and Class Members suffer injuries in being forced to address jail fee debt, often by "either not paying for everyday necessities or accruing additional debt via credit cards or payday loan centers." *Id.* To pay the unlawful debt Defendants claim they owe, Plaintiffs would have to sacrifice necessities for themselves or their children in their household budgets. Roberts Decl. ¶ 25; Sayers Decl. ¶ 22.

Monetary damages at some later date cannot recompense the injuries of Plaintiffs and Class Members. S*ee United Steelworkers of Am. v. Fort Pitt Steel Casting*, 598 F.2d 1273, 1280 (3d Cir. 1979) ("The fact that payment of monies is involved does not automatically preclude finding of irreparable harm."). Accordingly, Plaintiffs have established irreparable harms.

III. Plaintiffs Have Established a Likelihood of Success on the Merits.

A party may succeed on a motion for a preliminary injunction when they establish a "fair chance of prevailing" on the merits. *Planned Parenthood of Minn., N.D., & S.D. v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008). This factor is considered the "most significant" in the Court's analysis. *Minn. Ass'n of Nurse Anesthetists v. Unity Hosp.*, 59 F.3d 80, 83 (8th Cir. 1995). Parties seeking a preliminary injunction "need only establish a likelihood of succeeding on the merits of any one of [their] claims." *Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng'rs*, 826 F.3d 1030, 1040 (8th Cir. 2016). Because Plaintiffs have established a likelihood of success on the merits of at least one claim, the Court should grant a preliminary injunction.

A. Defendants Violate Procedural Due Process by Denying Any Process Whatsoever, Including the Process Provided Under the Jail Fees Statute.

Plaintiffs have established a likelihood of success with respect to their procedural due

process claim because Defendants provide no pre- or post-deprivation process by which an individual can challenge their jail fees—and in fact they circumvent the process required by Iowa law. There are three elements to a procedural due process claim: (1) a protected property interest, (2) a deprivation of the protected interest, and (3) the absence of "adequate procedural rights prior to depriving [] the property interest.'" *Stevenson v. Blytheville Sch. Dist. #5*, 800 F.3d 955, 965–66 (8th Cir. 2015) (citation omitted). All three elements are present here.

The first and second elements are beyond dispute. First, Plaintiffs have a property interest in the amounts demanded and seized for jail fees. *See, e.g.*, *Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337, 340 (1969) (loss of use of garnished wages amounts to deprivation of property). Second, Defendants deprive Plaintiffs of that property by demanding payment or seizing money for jail fees. *See id.* at 342 (prejudgment garnishment violates due process).

The final factor—how much process is due—is assessed under the familiar balancing test announced in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The U.S. Supreme Court has long recognized that pre-judgment deprivations run afoul of the Due Process Clause where the claim has not been "tested . . . through the process of a fair prior hearing." *Fuentes v. Shevin*, 407 U.S. 67, 96 (1972). The amounts collected by Defendants before a reimbursement claim is initiated are obtained beyond the authority permitted by the Jail Fees Statute. Defendants, therefore, compel payment of jail fees absent the required statutory process, and absent any process at all.

i. The Jail Fees Statute Requires the Filing of a Civil Reimbursement Claim Before Collection.

Under the plain text of the Jail Fees Statute, a claim for jail fees has no force of law until the sheriff files a reimbursement claim and a court enters judgment on it. The statute provides that sheriffs may "charge" jail fees. Iowa Code § 356.7(1). It imposes no duty on individuals previously incarcerated to pay such fees, absent a court order. *Id.* The prior version of the statute permitted

sheriffs to pursue "any other remedy authorized by law." Iowa Code § 356.7(4) (2019). But the statute now provides for only one method by which the Sheriff can effectuate a claim for jail fees: by filing a civil reimbursement claim in court. Iowa Code § 356.7(4) (2020).

The Iowa Supreme Court has made clear that judicial approval of reimbursement claims is not automatic. "To interpret section 356.7 to allow for no judicial review of the claim . . . would almost certainly run afoul of [Iowa's] constitution[al] provision for separation of powers." *State v. Abrahamson*, 696 N.W.2d 589, 592 (Iowa 2005) (citing Iowa Const. art. III, § 1). "[T]he statutory mandate that the district court 'shall approve' the claim simply means that the court shall approve it before it may be paid." *Id.* at 593. Therefore, "the 'sound judgment, practical sagacity, [and] wise discretion' going into the order for reimbursement for room and board must be that of the court—not the sheriff." *Id.* In sum, "the 'shall approve' language of section 356.7(3) [i]s a grant of authority to the court to resolve the merits of the claim—not a mandate that it simply sign the order as a ministerial function." *Id.* Thus, Iowa law is clear: to collect jail fees, sheriffs must file a civil reimbursement claim in a court of law.[1] Iowa's courts must substantively review those claims, and enter judgment, *before* sheriffs can collect.

ii. Defendants Do Not Provide Any Process, Let Alone the Process Laid Out in the Jail Fees Statute.

Defendants seek collection of jail fees without court approval and without providing any process whatsoever for Plaintiffs and Class Members to challenge the fees. No amount of balancing under *Mathews*, 424 U.S. 319, can sanction Defendants' outright denial of due process.

[1] The Iowa Office of the Ombudsman recently issued a report on collection of medical costs under the Jail Fees Statute. Bernardo Granwehr, *Investigation of Inmate Medical Co-Pays at Iowa's County Jails*, Iowa Office of Ombudsman (Mar. 21, 2024), https://ombudsman.iowa.gov/reports/categories/58c76956c4844f8b85357ed75f4937bf. The report concluded collecting jail fees without a court order did "not comply with the law." *Id.* at 11.

To determine the process that is due, courts balance three factors: "first, the private interest that will be affected by the official action; second, the Government's interest; and third, the risk of an erroneous deprivation of the private interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Wallin v. Minn. Dep't of Corrs.*, 153 F.3d 681, 690 (8th Cir.1998) (cleaned up) (quoting *Mathews*, 424 U.S. at 335). "In most cases, some type of predeprivation notice and hearing are constitutionally required before a property interest is invaded, but in some situations meaningful postdeprivation remedies are constitutionally sufficient." *Parrish v. Mallinger*, 133 F.3d 612, 615 (8th Cir. 1998). Here, Defendants provide neither pre-deprivation notice and hearing nor post-deprivation remedies, and each factor demonstrates that Defendants' policies, practices, and customs are wholly inadequate.

First, Plaintiffs' private interest at stake is significant, as the amount of money collected by Defendants is substantial. The Sheriff estimates that the Department collects $300,000 in jail fees each year. Ex. G at 1. The $70 the Department charges per day for room and board and the $25 per booking come at a significant cost to Plaintiffs and Class Members. Neither Ms. Roberts nor Mr. Sayers can afford the amounts, $730 and $4,415 respectively, that Defendants have demanded. Exs. A, B; Roberts Decl. ¶ 3; Sayers Decl. ¶ 22.

Second, Defendants' interest in collecting jail fees through confessions of judgment does not outweigh the interests of Plaintiffs and Class Members. The Jail Fees Statute provides that collection of jail fees must be done through initiating a civil reimbursement claim. Any purported interest in upending this process for the sake of prompt payment cannot be justified, particularly in comparison to individuals' financial wellbeing. *See Padda v. Becerra*, 37 F.4th 1376, 1382 (8th Cir. 2022). Any purported interest in funding operations that either promote community safety or jail efficiency is irrelevant here, as the Sheriff has admitted that Defendants' collection efforts are

focused on benefiting the Department, not the public. Ex. G at 1.

Third, the risk of erroneous deprivation and the value of additional procedural safeguards are both high. The outright denial of any process heightens the risk of an erroneous deprivation of property. *Fuentes*, 407 U.S. at 81. Here, Defendants have imposed jail fees on individuals over whom they have no such authority. The Jail Fees Statute provides that county sheriffs may assess jail fees *only* against "a prisoner . . . who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order." Iowa Code § 356.7(1). Defendants' policy, however, is to impose jail fees on "*every* sentenced inmate." Ex C at 1 (emphasis added). Individuals serving time for failure to pay child support or for failure to appear for jury duty, for example, may serve a sentence at the jail but cannot lawfully be charged jail fees. Iowa Code § 356.7(1). Nevertheless, Defendants have imposed jail fees and filed reimbursement claims against at least three such individuals. Moore Decl. ¶¶ 6, 7, Exs. A, B, C.

The risk of erroneous deprivation caused by Defendants' practice of circumventing judicial review is high for several other reasons. Iowa law restricts counties' garnishment of wages; there is a statute of limitations governing the time in which a county may attempt to collect; and limitations on debt collection practices may apply to sheriffs. *Gross*, 935 N.W.2d at 706 (Wiggins, J., concurring) (citing Iowa Code §§ 642.21, 614.1, 614.17A, 537.7101). The Jail Fees Statute itself provides a further limitation in that "the claim shall not have priority over competing claims for child support obligations." Iowa Code § 356.7(3). Additionally, only a court can determine whether jail fees constitute a constitutionally excessive fine in violation of the Eighth Amendment's Excessive Fines Clause. *See State v. Fagan*, No. 19-1757, 2021 WL 211151, at *2 n.6 (Iowa App. Jan. 21, 2021).

Defendants' use of confessions of judgment denies Plaintiffs and Class Members a host of

due process protections they would have in court. Individuals receive "no notice, no opportunity to be heard . . . , no opportunity to confront witnesses, and no meaningful judicial supervision." Expert Report of Alex Kornya at 4 ("Kornya Rep."). The factual and legal issues that could be litigated are innumerable. *See id.* at 10. "[W]ithout a lawsuit, the debtor is not entitled to discovery or subpoena rights" that would allow them to develop such defenses. *Id.* As merely one example, the use of a payment plan means that the amount owed "changes over time," which "creates a fact issue as to the true balance owed, but one that will never be tried." *Id.* at 7–8. Because "people subject to confessions only learn of the judgment after their wages or bank accounts have been garnished," *id.* at 4, there is no opportunity to raise such factual and legal defenses, *id.* at 10.

By using confessions of judgment to avoid the judicial process outlined in the Jail Fees Statute, Defendants deny Plaintiffs and Class Members their due process rights.

B. Defendants Rely on Confessions of Judgment Without Providing the Necessary Constitutional Safeguards.

Due process demands notice and an opportunity to be heard such that arrangements "postponing [or waiving] notice and opportunity for a hearing . . . must be truly unusual." *Fuentes*, 407 U.S. at 90. In Black Hawk County, such arrangements have become the norm.

A confession of judgment—also known as a cognovit provision—is an "ancient legal device by which the debtor consents in advance to the holder's obtaining a judgment without notice or hearing." *Overmyer*, 405 U.S. at 176. Such provisions must entail adequate protections to satisfy the Fourteenth Amendment. *See generally id.*; *Swarb v. Lennox*, 405 U.S. 191 (1972). Confessions of judgment may be invalid when the "contract is one of adhesion, there is great disparity in bargaining power, or the debtor receives nothing for the cognovit provision." *See Goshen Run Homeowners Assoc., Inc. v. Cisneros*, 223 A.3d 917, 938 (Md. 2020). Applying *Overmyer* and *Swarb*, courts have invalidated confessions of judgment or entire statutes authorizing them. *See*,

e.g., *Goshen Run*, 223 A.3d 917 (invalidating confessions of judgment used to collect homeowners association fees); *Isbell v. County of Sonoma*, 577 P.2d 188 (Cal. 1978) (holding California's confession of judgment statute unconstitutional); *Huston v. Christensen*, 203 N.W.2d 535 (Minn. 1972) (invalidating confession of judgment); *see also Resnick v. KrunchCash, LLC*, 34 F.4th 1028 (11th Cir. 2022) (reversing dismissal of class action challenging confessions of judgment). Because the necessary procedural safeguards are absent here, the confessions of judgment procured by Defendants fail to provide adequate due process of law.

First, the confessions of judgment at issue here do not contain adequate language to inform a signatory of the rights purportedly waived by signing. "[W]aiver of constitutional rights is not presumed." *Isbell*, 577 P.2d at 192 (citing *Overmyer*, 405 U.S. at 186). A purported constitutional waiver is invalid when the document "made no mention of this constitutional interest and provides no evidence of a thoughtful relinquishment of it," there was "little if any discussion of the legal ramifications" of the waiver, and no counsel was present. *Lamberts v. Lillig*, 670 N.W.2d 129, 134 (Iowa 2003). Defendants' form contains no language informing individuals they are waiving due process rights. *See* Ex. D. Defendants also do not advise individuals released from the jail of the legal ramifications of signing. Roberts Decl. ¶ 16; Sayers Decl. ¶ 15. Nor do individuals have the opportunity to consult with counsel before signing. Roberts Decl. ¶¶ 16, 21; Sayers Decl. ¶ 17.

Second, the Sheriff presents individuals released from the jail with a confession of judgment on a form that amounts to an "adhesion contract." Black's Law Dictionary defines an adhesion contract to be: "A standard-form contract prepared by one party, to be signed by another party in a weaker position, [usually] a consumer, who adheres to the contract with little choice about the terms." *Contract*, Black's Law Dictionary (11th ed. 2019) (adhesion contract). The Department's form contains only a few fields that are adjusted for each individual, such as the

number of "bookings," the "number of billable days," and the "balance due." Ex D. When Defendants present confessions of judgment for signing prior to release, these fields are already filled out. Roberts Decl. ¶¶ 12, 19; Sayers Decl. ¶ 13. The only blank space for an individual to fill in is for "Inmate Signature." Roberts Decl. ¶¶ 12, 19; Sayers Decl. ¶ 14. There is no opportunity to negotiate the terms. Roberts Decl. ¶ 21; Sayers Decl. ¶ 17. The confessions of judgment are therefore rightly considered adhesion contracts for purposes of the due process analysis.

Third, there is a great disparity in bargaining power between individuals who are jailed and their jailers. Scholars studying pay-to-stay regimes like the one in Iowa have noted collection relies on such a power disparity. Fernandes & Kirk-Werner Decl. ¶ 13. "The conditions of confinement create an inherently unequal power dynamic between the incarcerated and the state." *Id.* ¶ 15. Individuals who are incarcerated are "uniquely vulnerable to exploitation" such that they are unable to "meaningfully consent." *Id.* ¶ 14; *see also* Kornya Rep. at 5 (the disparity inherent in confessions of judgment "is only enhanced when law enforcement" is involved). It would, therefore, be "illogical to assume that individuals who are incarcerated against their will agree to the financial costs that result from the local pay-to-stay laws," regardless of whether they sign a confession of judgment. Fernandes & Kirk-Werner Decl. ¶ 24.

Defendants' policies, practices, and customs take advantage of this disparity in bargaining power. The Department presents individuals with a confession of judgment while they are still incarcerated, before being released from the jail. In such an environment, Plaintiffs and Class Members do not have equal bargaining power. Fernandes & Kirk-Werner Decl. ¶ 22. The environment is so coercive that jail records suggest that only one individual who was released to the public (rather than another facility) between 2022 and the present refused to sign the document. Frerichs Decl. ¶ 22. Indeed, Ms. Roberts and Mr. Sayers both signed because they felt they had no

other choice if they wanted to be released. Roberts Decl. ¶¶ 12, 20; Sayers Decl. ¶ 16.

Fourth, Plaintiffs and Class Members receive no consideration in exchange for signing the confession of judgment. The confession of judgment form requires individuals released from jail to give up a lot—to make certain payments and to relinquish their right to challenge or amend those obligations. But they receive nothing in return for their signature.

These circumstances present the precise circumstances against which the Supreme Court warned. Plaintiffs have therefore succeeded in demonstrating a likelihood of success on the merits.

C. Defendants' Scheme Violates the Due Process Clause's Impartiality Requirement.

The Supreme Court has long recognized that the Due Process Clause requires impartiality from judges, quasi-judicial actors, and enforcement actors. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *Tumey v. Ohio*, 273 U.S. 510, 522 (1927). This requirement is firmly rooted in the guarantee "that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law." *Marshall*, 446 U.S. at 242. In this way, the Due Process Clause "ensur[es] that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Id.*

Impartiality is judged under one of two standards: (1) the "strict" *Tumey*/*Ward* standard applicable to judges and quasi-judicial actors; and (2) for enforcement actors, the *Marshall* standard. *See Harper v. Pro. Prob. Servs., Inc.*, 976 F.3d 1236, 1241–42 (11th Cir. 2020). Under *Tumey*/*Ward*, any arrangement that gives rise to even a "possible temptation" to act in a biased manner that benefits the decisionmaker runs afoul of the Due Process Clause. *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972); *Tumey*, 273 U.S. 510; *see also Yamaha Motor Corp., U.S.A. v. Riney*, 21 F.3d 793, 798 (8th Cir. 1994) ("In general, the test is whether the adjudicator's situation is one which might lead him not to hold the balance between the parties nice, clear and

true." (cleaned up)). Under *Marshall*, enforcement actors violate the impartiality requirement by "injecting a personal interest, financial or otherwise, into the enforcement process." 446 U.S. at 249–50; *see also Young v. United States ex rel. Vuitton*, 481 U.S. 787, 805 (1987) ("the *potential* for private interest to influence the discharge of public duty" violates the impartiality requirement). Such actors must avoid any conflict that creates a "realistic possibility" that their "judgment will be distorted by the prospect of institutional gain as a result of zealous enforcement." *Id.* at 250.

By sidestepping the judicial process, Defendants act in a quasi-judicial manner such that even a "possible temptation" of financial gain offends the Constitution. The heightened *Tumey*/*Ward* standard applies to enforcement actors where their actions are quasi-judicial in nature. *See, e.g.*, *Tumey*, 273 U.S. 510 (mayor who oversaw village's municipal court); *Harper*, 976 F.3d at 1242 (probation officers who unilaterally extended probation). Under Defendants' policies, practices, and customs, the Sheriff acts as the sole arbiter of the appropriateness of imposing jail fees in each case—a role the Iowa Supreme Court has recognized as exclusively reserved for the judiciary. *See Abrahamson*, 696 N.W.2d at 592. The role of determining the validity of any claim for reimbursement "must be that of the court—not the sheriff." *Id.* at 593. By removing from the judiciary the role of reviewing the reimbursement claims, the Sheriff usurps the judicial role of approving jail fees in any particular case. The Department is therefore "bound by the 'strict' impartiality requirement applicable to judges." *Harper*, 976 F.3d at 1243.

There is clearly a "possible temptation" for the Sheriff to use the jail fees for institutional gain. The rationale underlying Defendants' policies, practices, and customs is clear: any judicial review of the Department's claims for jail fees would place the Sheriff's discretionary expenses at risk, given courts' tendency to waive the fees. Ex. G at 1. The Sheriff's influence over the assessment and collection of jail fees has led to direct financial gains for the Department, with

complete control over a fund that had $227,000 in it at one point in time. *Id.* at 2. The Sheriff has wrested control of the 40% Fund to ensure that the Department gains financially from the collection of jail fees. *Id.* As the Sheriff put it, there is a temptation to pursue jail fees "tenaciously," *id.*, regardless of whether doing so is lawful in any particular case.

Even if the Court concludes that the *Tumey*/*Ward* standard does not control and that the *Marshall* standard should apply, Plaintiffs still succeed in establishing a probability of success on the merits. Where the government "stands to profit economically from vigorous enforcement," a constitutional violation may arise under *Marshall*. 446 U.S. at 250. Through its collections, the Sheriff funds discretionary expenditures not otherwise budgeted. Ex. G at 2–3. "[I]n effect, the more revenues the [Sheriff] raises, the more money the [] program can spend." *Harjo v. City of Albuquerque*, 326 F. Supp. 3d 1145, 1195 (D.N.M. 2018) (citing *Ward*, 409 U.S. at 60). Defendants have imposed jail fees on and filed reimbursement claims against individuals who do not fall under the ambit of the Jail Fees Statute. Moore Decl. ¶ 7. And Defendants are so incentivized to collect jail fees that they have tossed the law aside in pursuit of revenue, using the criminal process to collect even though jail fees are no longer a part of a criminal case, including by: (a) contacting parole and probation officers to assist in collections, Frerichs Decl. ¶ 27–29; (b) noting purported jail fee debtors with active warrants, *id.* ¶ 30; and (c) sending uniformed Sheriff's deputies to individuals' homes to demand payment, Roberts Decl. ¶ 22.

The U.S. District Court for the Southern District of Iowa recently scrutinized a forfeiture program with features similar to Defendants' scheme. *Flora v. Sw. Iowa Narcotics Enf. Task Force*, 292 F. Supp. 3d 875 (S.D. Iowa 2018). There, the court determined that a reasonable jury could conclude that a forfeiture scheme run by a narcotics task force and a County Attorney's Office violated the *Marshall* standard. *Id.* at 905–06. As in *Flora*, Defendants are "guaranteed to

profit economically as penalties will flow to their offices." 292 F. Supp. 3d at 904. Defendants' scheme is even more problematic because, unlike the defendants in *Flora*, they do not limit collection to only of those claims not deemed "excessive," *id.* at 904, nor do they subject such claims to review by state courts, *id.* Rather, Defendants seek them from "*every* sentenced inmate," Ex. C at 1 (emphasis added), and the state courts' role in reviewing reimbursement claims has been completely subverted by Defendants' scheme. *See supra* Part III.a. This is precisely the type of financial conflict of interest the impartiality requirement of the Due Process Clause prohibits.

Accordingly, no matter which standard applies, Plaintiffs have established a probability of success on the merits of this claim.

IV. Balancing the Weight of the Injuries and Public Interest Supports a Preliminary Injunction.

"[W]hen the [g]overnment is the opposing party," the final two factors—balancing the weight of the injuries and the public interest—necessarily merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The balancing inquiry involves assessing the harm a plaintiff would suffer without an injunction against the harm to other interested parties if the injunction is issued. *Chaske*, 28 F.3d at 1473. The public-interest factor requires courts to consider the interest of the public when deciding whether to issue a preliminary injunction. *Dataphase Sys., Inc.*, 640 F.2d at 114. "[T]he public is served by the preservation of constitutional rights." *D.M. v. Minn. State High Sch. League*, 917 F.3d 994, 1004 (8th Cir. 2019). If the Court grants the injunction, at worst, Defendants will be delayed in collecting jail fees by their preferred method. But without an injunction, Defendants can continue to subject additional individuals to the unconstitutional policies, practices, and customs that constitute the basis of Plaintiffs' claims. These factors support an injunction.

CONCLUSION

The Court should grant Plaintiffs' motion for preliminary injunction.

RESPECTFULLY SUBMITTED AND DATED this 12th day of July, 2024.

By: *s/ Charles Moore*

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CERTIFICATE OF SERVICE

The undersigned certifies that on July 12, 2024, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which together with the production and transmission of a Notice of Electronic Filing (NEF) by the CM/ECF system, constitutes filing of the document and service of the document on all persons who have appeared in the case and are CM/ECF system registrants.

Dated: July 12, 2024

s/ Charles Moore
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