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; and BLACK HAWK COUNTY; Defendants.	Case No. 6:24-cv-02024-CJW-MAR **Oral Argument: September 20, 2024**

BRIEF IN OPPOSITION TO DEFENDANTS' PRE-ANSWER MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Pursuant to Rule 7(e) of the Local Rules of the United States District Courts for the Northern and Southern Districts of Iowa, Plaintiffs Leticia Roberts and Calvin Sayers file this resistance to Defendants' Pre-Answer Motion to Dismiss Plaintiffs' First Amended Complaint, ECF No. 12, filed by Defendants Tony Thompson, the Sheriff of Black Hawk County (the "Sheriff" or the "Department"), and Black Hawk County (the "County") (collectively, "Defendants"). Plaintiffs respectfully request that the Court deny the Defendants' Pre-Answer Motion to Dismiss in its entirety.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

Plaintiffs Leticia Roberts and Calvin Sayers have stated claims under the Due Process Clause of the Fourteenth Amendment that rest upon decades-old Supreme Court precedent. In an attempt to brush aside these claims as a "generalized grievance" or a "dislike" for jail fees, ECF No. 12-1 at 11, Defendants misconstrue Plaintiffs' claims. Defendants' failure to confront either the law or the facts dooms their motion to dismiss.

Plaintiffs challenge Defendants' use of confessions of judgment to collect jail fees. Confessions of judgment are an "ancient legal device by which the debtor consents in advance to the holder's obtaining a judgment without notice or hearing." *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 176 (1972).[1] Their use "has long been viewed with judicial distaste." *Tara Enters., Inc. v. Daribar Mgmt. Corp.*, 848 A.2d 27, 33 (N.J. Super. Ct. App. Div. 2004). Indeed, "given the ease with which a creditor may obtain a confessed judgment"—and that their use "lends itself to fraud and abuse"—challenges to such documents are typically construed "liberal[ly]." *Goshen Run Homeowners Assoc., Inc. v. Cisneros*, 223 A.3d 917, 934 (Md. 2020).

No court has ever upheld the constitutionality of a scheme like that used by these Defendants—and for good reason. By procuring confessions of judgment before an individual is released from the jail, Defendants deprive any individual who may owe jail fees an opportunity to challenge those fees, either through pre-litigation procedures or through the judicial process. Defendants demand payment under a confession of judgment and, if an individual is unable to pay the jail fees, the Sheriff files the document, knowing that the Department will be able to garnish an individual's wages or bank account—without notice, an opportunity to be heard, or any judicial review whatsoever. And Defendants spend the money for their own benefit.

[1] Internal citations and quotations are omitted unless otherwise indicated.

Defendants' policies, practices, and customs run afoul of the Due Process Clause of the Fourteenth Amendment in a variety of ways. *First*, Defendants deprive individuals any process for challenging the fees (Count 1). ECF No. 9 (First Am. Compl., or "FAC") ¶¶ 148–54. *Second*, the confessions of judgment themselves are procured in a manner entirely devoid of the procedural protections required by Supreme Court precedent (Count 3). *Id.* ¶¶ 168–77. *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 (Count 2). *Id.* ¶¶ 155–67.

Because Plaintiffs have alleged sufficient facts to state a claim as to each of these constitutional violations, the Court should deny Defendants' Motion in its entirety.

BACKGROUND

Defendants have developed a scheme under which they demand payment of jail fees without providing any process for challenging the fees. ECF No. 9 ¶¶ 2, 15, 100, 152. This prevents Plaintiffs and Class Members from raising a host of issues, including: whether jail fees are appropriate in a particular case, whether the amounts assessed are incorrect, that the individual does not have the ability to pay, that the confession of judgment was not properly executed, that the fees constitute an excessive fine, or that other debts have priority. *Id.* ¶¶ 16, 160. Defendants sidestep the process provided by Iowa state law by having individuals sign a confession of judgment prior to being released from the jail. *Id.* ¶ 30; *see also* ECF No. 9-2.

The Sheriff, as an employee and final policymaker for the County and the Department, has implemented the policies, practices, and customs surrounding Defendants' imposition and collection of jail fees. ECF No. 9 ¶ 9. Official Policy No. 1.2.1 on "Inmate Billing," states that: "The Sheriff shall collect fees for room, board and booking from every sentenced inmate held in the custody of the Black Hawk County Jail." *Id.* ¶ 28; *see also* ECF No. 9-1 at 1. But rather than filing a reimbursement claim under Iowa Code section 356.7 (the "Jail Fees Statute")—the law

governing jail fees—Defendants have devised their own method of collecting jail fees. ECF No. 9 ¶¶ 25, 43–49, 115, 151.

First, the Department seizes any money within an individual's possession at booking. *Id.* ¶¶ 35, 36, 133. Second, the Department, as a matter of policy, procures nonnegotiable confessions of judgment purporting to bind individuals to a payment plan before being released. *Id.* ¶¶ 13, 29–34, 106–07, 134–35. The Department then uses those confessions of judgment to collect any purported jail fee debt not satisfied by the amounts previously seized, following up with phone calls, *id.* ¶¶ 43, 113, and collection letters, *id.* ¶ 115. Defendants even send uniformed deputies of the Department to individuals' homes in an effort to collect unpaid fees. *Id.* ¶ 121.

The confession of judgment form used by the Department has fixed terms. *Id.* ¶ 58. While there are blank spaces for the Department to fill in—such as contact information, number of days served, and total amount due for jail fees—the only blank space for completion by an individual at the jail is the "Inmate Signature" portion of the document. *Id.* ¶¶ 32, 33. There is also a space for a notary attestation. *Id.* ¶ 33. The confession of judgment form states:

> 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.

Id. ¶ 38; *see also* ECF No. 9-2. This document is presented to individuals prior to their release from the jail, without any opportunity to negotiate the terms of the form or to consult with an attorney. ECF No. 9 ¶¶ 30, 59, 135. "Aside from the limited text of the form itself, individuals who sign a confession of judgment are not advised as to the legal repercussions of a confession of judgment for jail fees, including whether they may still be released if they refuse to sign." *Id.* ¶ 31. "The form does not advise that by signing a confession of judgment, individuals agree that the Sheriff may file the confession of judgment and it will be entered by the court without any prior

notice." *Id.* ¶ 40. Defendants do not advise individuals of their due process rights. *Id.* ¶ 42.

Plaintiffs Leticia Roberts and Calvin Sayers both signed confessions of judgment for jail fees before release from the jail. *Id.* ¶¶ 100, 108, 135. Ms. Roberts was assessed $730 in jail fees, *id.* ¶¶ 7, 124, and Mr. Sayers was charged $4,415, *id.* ¶¶ 8, 133–34. When the First Amended Complaint was filed, Ms. Roberts had paid $85 in jail fees and Mr. Sayers $125. *Id.* ¶¶ 122,[2] 133, 138. Neither was "afforded any process by which the claims for jail fees were reviewed before they were deprived of their property." *Id.* ¶ 100; *see also id.* ¶¶ 125, 139.

If an individual does not make payments in full, "[a] claim for the remaining balance can be filed with the Clerk of Court without further notification." ECF No. 9-1 at 2. Defendants initiate such a claim by filing the confessions of judgment the Sheriff previously prepared. ECF No. 9 ¶ 46. "Upon filing, a disposition is entered by a court clerk in the Sheriff's favor for the Confession of Judgment. No judge reviews the claim." *Id.* ¶ 47. Individuals against whom such reimbursement claims are initiated receive no formal notice of their filing; rather, they only receive service once the Sheriff has obtained an ability to garnish. *Id.* ¶ 49.

Defendants have implemented policies, practices, and customs that allow the Sheriff to control 40% of the jail fees collected that are not otherwise allocated under the Jail Fees Statute. *Id.* ¶¶ 67–87. This money is deposited into the County's "40% Fund." *Id.* ¶ 66. The Sheriff's Department is the only entity that assesses whether jail fees should be charged; is solely responsible for collecting them; and controls how the money is spent. *Id.* ¶ 67.

[2] Paragraph 122 of the First Amended Complaint contains a typographical error. The paragraph alleges that Ms. Roberts "made a minimal amount of payment towards her jail fees in the amount of $5 each month" from the period of October 2023 to February 2024. ECF No. 9 ¶ 122. The correct year of the first payment was October 2022. *See, e.g.*, *id.* ¶ 11 ("[S]ince a Sheriff's deputy visited her home in or around October 2022, Ms. Roberts has ensured she makes regular payments."). If the Court deems it necessary, Plaintiffs will file an amended version of the First Amended Complaint fixing this error.

As the sole arbiter and collector of jail fees, "the Department . . . can hold back money from the County by refusing to impose and collect jail fees. In October 2022, the Sheriff did just that." *Id.* ¶¶ 68–69. On October 4, 2022, the County Board of Supervisors (the "Board") passed a resolution that placed "all jail fees in the County's general fund and spent only as approved by the Board." *Id.* ¶ 74. That resolution followed revelations that the Department was using proceeds from the 40% Fund for questionable expenses, "including those for a cotton candy machine, an ice cream machine, and laser tag." *Id.* ¶ 71. Following the Board's vote, the Sheriff notified Board members that his Department would no longer collect jail fees and would "instead focus[] on 'activities which directly benefit and affect' the Department." *Id.* ¶ 75. The Sheriff highlighted that the Department's Raymond Range Training Facility (the "Raymond Range")—used by employees and families—was funded solely by the 40% Fund. *Id.* ¶ 76. Due to the Department's efforts to "tenaciously pursue" jail fees, the 40% Fund had $227,000 in it at the time. *Id.* ¶ 77.

The Sheriff stopped collecting jail fees on October 10, 2022, less than a week after the Board's vote. *Id.* ¶ 79. Collections only resumed once the Board relented and allowed the Sheriff to operate the 40% Fund. *Id.* ¶¶ 84–87. The Sheriff now maintains control of the 40% Fund and continues "to spend money collected from jail fees . . . for the benefit of the Department." *Id.* ¶ 89.

ARGUMENT

I. Legal Standard.

Defendants challenge Plaintiffs' standing under Rule 12(b)(1) and Plaintiffs' statement of a claim under Rule 12(b)(6).

To survive a motion to dismiss under Rule 12(b)(6), Plaintiffs must establish only that they have stated a claim to relief that is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In deciding a 12(b)(6) motion, the Court accepts all factual allegations as true and draws all reasonable inferences in favor of the nonmoving party. *See Simes v. Ark. Jud. Discipline & Disability Comm'n*, 734 F.3d 830, 834 (8th Cir. 2013).

A Rule 12(b)(1) motion can be either facial or factual. *Branson Label, Inc. v. City of Branson*, 793 F.3d 910, 914 (8th Cir. 2015). "In a facial attack, the court merely needs to look and see if plaintiff has sufficiently alleged a basis for subject matter jurisdiction." *Id*. "A factual attack, however, challenges the existence of subject matter jurisdiction in fact, . . . and matters outside the pleadings, such as testimony and affidavits, are considered." *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980). While Defendants submit brief attestations in support of their motion, they do not dispute any the factual allegations in Plaintiffs' complaint. Accordingly, Defendants make a facial challenge, and Plaintiffs "receive[] the same protections as [they] would defending against a motion under Rule 12(b)(6)." *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990); *see also Gen. Motors LLC v. KAR Auto Grp. of Decorah, Inc.*, No. 6:20-CV-02039, 2022 WL 1715216, *2 (N.D. Iowa Mar. 11, 2022).

II. Plaintiffs Have Standing to Assert Their Claims.

At the pleading stage, Plaintiffs' burden to establish standing is "relatively modest." *Bennett v. Spear*, 520 U.S. 154, 171 (1997). "To survive a motion to dismiss, a plaintiff need only allege sufficient factual matter, accepted as true, to support a reasonable and plausible inference that she satisfies the elements of Article III standing." *Johnson v. Griffin*, 69 F.4th 506, 510 (8th Cir. 2023). These elements are: (i) "an injury in fact that is concrete, particularized, and actual or imminent;" (ii) "that the injury was likely caused by the defendant;" and (iii) "that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Defendants challenge only the first element: whether Plaintiffs have actually sustained or imminently will sustain an injury in fact. ECF No. 12-1 at 8–11.

A. Plaintiffs' injury is concrete, particularized, and actual.

Defendants claim Roberts and Sayers have not actually sustained an injury because they have not alleged "another mechanism of collection" would have reduced their obligation. *Id.* at 10. This argument fails to recognize both the obvious injury of monetary harm and that the procedural due process violation is an injury in and of itself.

A denial of due process is actionable on its own. *See Carey v. Piphus*, 435 U.S. 247, 266–67 (1978) (denial of procedural due process is actionable for nominal damages, even without proof of actual injury); *see also Hughes v. City of Cedar Rapids*, 840 F.3d 987, 993 (8th Cir. 2016) ("allegations that the procedure is inadequate . . . sufficiently establish[] standing"). In other words, a constitutional violation *is* an injury in fact. *See, e.g.*, *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802 (2021). Plaintiffs are not required to allege, let alone prove, that they would have paid less absent the constitutional violation.[3] Defendants' deprivation of Plaintiffs' procedural due process rights is a concrete, injury entitled to redress. *See TransUnion*, 594 U.S. at 425 (among traditional intangible harms that are concrete are "harms specified by the Constitution itself").

In addition to the constitutional violation itself, "certain harms readily qualify as concrete injuries under Article III"—and among "[t]he most obvious" is monetary harm. *Id.* at 425. Since being compelled to sign the confessions of judgment, Roberts has paid $85 to the Department, (ECF No. 9 ¶ 122), and Sayers has paid $125 (*id.* ¶¶ 133, 138). Neither was "afforded any process by which the claims for jail fees were reviewed before they were deprived of their property." *Id.* ¶¶ 100, 125, 139. This "alleged economic harm is a concrete, non-speculative injury." *Enterprise*

[3] Plaintiffs do not concede that they would have had to pay the same amounts had Defendants filed a civil reimbursement claim. Indeed, the Sheriff has previously stated that meaningful judicial review can and does result in a reduced obligation. *See* ECF No. 9 ¶ 78 (explaining that jail fees "are generally the fees that judges are willing to waive").

Fin. Grp. v. Podhorn, 930 F.3d 946, 950 (8th Cir. 2019). Moreover, it is "particularized," as it "affect[s] the plaintiff[s] in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). In short, the salient fact is not whether, as Defendants would characterize, the amounts charged were "inaccurate," "improper," "wrong," or "excessive," ECF. No. 12-1, at 10, (though indeed they may be)—it is that Defendants seized Plaintiffs' money at all.

B. Plaintiffs face imminent further injury.

Defendants make much of the fact "*the confessions of judgment have not been filed against Plaintiffs*."[4] *Id.* at 10. But in the same breath, they allege Roberts and Sayers are in breach of the payment plan and thus could have the confession of judgment filed against them at any time. *Id.* Thus, not only are Plaintiffs facing the ongoing injury of continued payment of this "debt" and their unredressed constitutional injury, they also face further imminent injury in future proceedings. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) ("An allegation of future injury may suffice if the threatened injury is certainly impending or there is a substantial risk that the harm will occur."). The threat of the judgment, like the payment plan and the loss of their procedural process rights, hangs over the Plaintiffs every day.

C. Plaintiffs have standing regardless of how the Court interprets the Jail Fees Statute.

Defendants assert Plaintiffs lack standing because the Jail Fees Statute does not require the filing of a reimbursement claim to collect. ECF No. 12-1 at 11. As explained below in part III.B, Defendants' interpretation of the statute is wrong. But putting aside questions of statutory

[4] Defendants' attestations state that the County has not yet filed the confession of judgments held against Plaintiffs but do not disclaim a future intention to do so. *See* ECF No. 12-2 ¶¶ 3–4; ECF No. 12-3 ¶¶ 3–4. Their silence on this point suggests they file a reimbursement claim, given they have done so to many others. See *281 Care Committee v. Arneson*, 638 F.3d 621, 628 (8th Cir. 2011) (finding the threat of prosecution credible absent "a long history of disuse").

interpretation, Plaintiffs allege Defendants provide *no process whatsoever* to dispute their jail fees, ECF No. 9 ¶¶ 2, 15, 100, 152; no matter the process required under either state law or the U.S. Constitution, Defendants fall well short. What matters for standing is that (a) Plaintiffs signed documents requiring payment of certain amounts without the adequate constitutional safeguards, *id.* ¶¶ 13, 29–34, 106–07, 134–35; (b) Defendants use these documents to compel them to pay money, *id.* ¶¶ 43, 113, 115, 121; (c) Defendants deny Plaintiffs any notice or opportunity to be heard on their jail fees, *id.* ¶¶ 100, 125, 139; and (d) Defendants continue to threaten Plaintiffs with an immediate and essentially incontestable court action to compel further payments, *id.* at 46–49. The existence of *either* the deprivation of constitutional rights *or* the deprivation of property is enough to convey standing. Here, Plaintiffs have plausibly alleged both—plus the additional threat of additional injury.

Finally, Defendants' characterization of these facts as a mere "generalized grievance," ECF No. 12-1 at 11, could not be further from the truth. A "generalized grievance" is one held in common by members of the public. *See, e.g.*, *Nolles v. State Comm. for Reorganization of Sch. Dist.*, 524 F.3d 892, 900 (8th Cir. 2008) (rejecting claim of three Nebraska voters challenging implementation of state law prior to referendum vote repealing the law as "a generalized grievance shared in common by all the voters in Nebraska who voted to repeal"). In contrast, Plaintiffs and the class members they seek to represent have suffered personally because of Defendants' actions.

III. Plaintiffs Have Stated a Claim for Denial of Procedural Due Process (Count 1).

Defendants argue that Plaintiffs have no constitutionally cognizable interest in "the reimbursement procedure outlined in Iowa Code § 356.7;" that "Iowa Code § 356.7 does not create an exclusive mechanism to attempt to collect jail fees"; and that "confessions of judgment are a legally valid means of collection of monies in Iowa." ECF No. 12-1 at 13; *see also id.* at 6–7. These arguments do not withstand scrutiny.

First, Plaintiffs' claim is based in the Fourteenth Amendment—rather than a violation of state law. Defendants undeniably have deprived Plaintiffs of their money, which under black-letter law is a constitutionally protected property interest. Thus, even if Defendants were right that the Jail Fees Statute allows them to collect fees without filing a civil reimbursement claim, Due Process requires at least *some* process be given when Defendants deprive Plaintiffs and Class Members of their property. And here, Defendants not only fail to follow the process outlined in the Jail Fees Statute, they provide *no process whatsoever*. *See* ECF No. 9 ¶¶ 2 ("The scheme developed by the Sheriff . . . relies on the confessions of judgment to pocket money without any process whatsoever."); *id.* ¶ 15 ("the Sheriff denies individuals any process for reviewing or challenging the amount of jail fees charged"); *id.* ¶ 100 ("Neither Ms. Roberts nor Mr. Sayers were afforded any process by which the claims for jail fees were reviewed."); *id.* at 152 ("Defendants provide no process by which Plaintiffs and Class Members can challenge the imposition and collection of jail fees.").

Second, Defendants' interpretation of the Jail Fees Statute is wrong. The statute unambiguously provides for a single mechanism if an individual "fails to pay": a reimbursement claim. Iowa Code § 356.7(1). The Court should reject Defendants' attempts to rewrite Iowa Code.

A. Plaintiffs have adequately pleaded the elements of a procedural due process claim.

A procedural due process claim has three elements: (1) a protected property interest, (2) a deprivation of the protected interest, and (3) the absence of "adequate procedural rights prior to [deprivation of] the property interest." *Stevenson v. Blytheville Sch. Dist. #5*, 800 F.3d 955, 965–66 (8th Cir. 2015). Plaintiffs have sufficiently pleaded all three elements.

1. Plaintiffs' money is a protected property interest.

First, Plaintiffs have adequately pleaded that their money is a protected property interest.

Money is among the most obvious property interests protected by the Due Process Clause. *See Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 571–72 (1972) ("[T]he property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money"); *Nelson v. Colorado*, 581 U.S. 128, 135 (2017) (holding there is "an obvious interest in regaining the money . . . paid to" the state). Indeed, the Supreme Court has repeatedly affirmed that individuals have a protected property interest in their incomes and governmental benefits. *See, e.g.*, *Golberg v. Kelly*, 397 U.S. 254, 264 (1970) (government benefits); *Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337, 340 (1969) (garnished wages). This does not change merely because the government imposes a fine or fee. *Herrada v. City of Detroit*, 275 F.3d 553, 556–57 (6th Cir. 2001) (plaintiff who got parking ticket "clearly has a property interest in her money").

Here, Plaintiffs and Class Members have a protected property interest in the amounts demanded and seized by Defendants. Defendants assessed Ms. Roberts $730 in jail fees, ECF No. 9 ¶¶ 7, 124, and Mr. Sayers $4,415, *id.* ¶¶ 8, 133–34. At the time the First Amended Complaint was filed, Ms. Roberts had paid $85 in fees and Mr. Sayers $125. *Id.* ¶¶ 122, 133, 138. These are not insignificant amounts for any person, but especially for Plaintiffs whose uncontested testimony makes clear they cannot afford these amounts. ECF No. 11–13 ¶ 3; ECF No. 11-14 ¶ 22.

Plaintiffs do not allege that they have a liberty interest created by the Jail Fees Statute. They simply allege that Defendants have deprived them of their money without due process. ECF No. 9 ¶ 150. As the U.S. District Court for the Eastern District of Missouri explained:

> [Defendants] argue that because the Missouri parole statute does not create a liberty interest in parole, there can be no liberty interest in the conditions of parole. But Jackson has already obtained parole status, and he is not seeking to protect an interest in a condition of parole. Instead, Jackson seeks to protect an interest in his private funds. Jackson has a property interest over funds legitimately earned or received, where he retains rightful ownership.

Jackson v. Chairman & Members of Missouri Bd. of Prob. & Parole, No. 4:10CV104, 2010 WL

5070722, *5 (E.D. Mo. Dec. 7, 2010). Since Plaintiffs' money is a constitutionally protected property interest, Defendants' argument that Plaintiffs lack a cognizable interest in the use of civil reimbursement claims is irrelevant.

2. Defendants deprived Plaintiffs of their money.

Second, Plaintiffs allege that by demanding payment or seizing money for jail fees, Defendants have deprived Plaintiffs of their protected property interest. *See Sniadach,* 395 U.S. at 342 (prejudgment garnishment violates due process). Defendants do not dispute that they deprived Plaintiffs of their money.

3. Defendants failed to provide adequate process prior to depriving Plaintiffs of their property.

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) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (cleaned up)). Defendants do not contest that the *Mathews* test applies, and in fact make no arguments under *Mathews* at all.

A careful balancing of the three *Mathews* factors shows an absence of adequate procedural rights. First, Plaintiffs have a property interest in the substantial amounts of money demanded by Defendants. Defendants have demanded payments of $730 and $4,415, respectively, from Plaintiffs. ECF No. 9 ¶¶ 7, 8, 124, 133–34. In the case of Plaintiffs, they cannot afford the fees imposed as they rely on their fixed incomes to get by. *Id.* ¶¶ 102, 127; *see also* ECF No. 11-13 ¶ 3; ECF No. 11-14 ¶ 22. It goes without saying that "the very means by which [Plaintiffs] live" constitutes a significant private interest, the deprivation of which requires considerable due

process. *Goldberg*, 397 U.S. at 264–65 (1970).

As to the second factor, Defendants' only interest here is in using confessions of judgment to extract jail fees (and avoiding judicial review) rather than filing civil reimbursement claims.[5] Defendants' interest in avoiding lawful procedure is, at best, "slight" in comparison to individuals' interest in their own money. *Padda v. Becerra*, 37 F.4th 1376, 1382 (8th Cir. 2022). There is no suggestion that following the lawful procedure outlined in the Jail Fees Statute will harm Defendants. Accordingly, the second *Mathews* factor also weighs in favor of Plaintiffs.

Third, the outright denial of any process in Defendants' use of confessions of judgment heightens the risk of an erroneous deprivation of property. "[W]hen a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented." *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). In contrast, 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." *Id.* at 96. Here, Plaintiffs receive no opportunity—let alone a meaningful opportunity—to be heard. Defendants compel payment without any process at all. Also, by collecting from "every sentenced inmate," Defendants collect from individuals outside the scope of the Jail Fees Statute. ECF No. 9 ¶ 28; ECF No. 9-1 at 1. Finally, the value of additional or substitute procedural safeguards is clear. Therefore, the third *Mathews* factor is met.

In sum, under *Matthews*, Plaintiffs have alleged facts which, if true, show that Defendants' use of confessions of judgment to collect jail fees deprives them of notice and an opportunity to be heard as to the imposition of fees.

[5] Defendants cannot assert an interest in promoting community safety or jail efficiency because they have admitted they use the funds to benefit the department, not the public. ECF No. 9 ¶ 75.

B. Defendants' interpretation of the Jail Fees Statute is wrong

Even if Plaintiffs were required to plead that Defendants have violated state law in order to adequately state a claim—which they are not—they have done so. The Jail Fees Statute requires filing a reimbursement claim before seeking to collect.

The extent of requirements under the Jail Fees Statute is a question of statutory interpretation, which is guided by "well-established principles:"

> First, legislative intent is expressed by what the legislature has said, not what it could or might have said. When a statute's language is clear, [courts] look no further for meaning than its express terms. Intent may be expressed by the omission, as well as the inclusion, of statutory terms. Put another way, the express mention of one thing implies the exclusion of other things not specifically mentioned. Finally, a change is presumed when a new statute does not contain language included in a former version of the law.

State v. Beach, 630 N.W.2d 598, 600 (Iowa 2001).

Iowa's courts have held that the prior version of the Jail Fees Statute—which contained almost exactly the same language—was not ambiguous. *State v. Jackson*, 601 N.W.2d 354, 356 (Iowa 1999), *overruled on other grounds by State v. Davis*, 944 N.W2d 641, 647 (Iowa 2020). Therefore, the plain language governs. That language states that "[t]he county sheriff . . . may charge" jail fees to certain individuals. Iowa Code § 356.7(1). "If a prisoner who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order fails to pay for [jail fees], the sheriff or municipality may file a reimbursement claim with the district court as provided in subsection 2." Iowa Code § 356.7(1). In 2020, the Iowa Legislature amended the law to remove language authorizing sheriffs to collect jail fees using "any other remedy authorized by law." Iowa Code § 356.7(4) (2019). The amended language provides: "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 amended Jail Fees Statute, therefore, provides a single method of pursuing reimbursement: initiating a civil reimbursement claim. Once

the sheriff has obtained a judgment from the court, "the claim . . . shall have the force and effect of a judgment for purposes of enforcement" and the sheriff "may choose to enforce the claim in the manner provided in chapter 626." Iowa Code § 356.7(3). In sum, *before* filing a reimbursement claim, the Sheriff has no ability to enforce a claim for jail fees; the power to enforce arises only *after* a court enters judgment on the claim.

Before the 2020 amendments, Iowa's courts interpreted the statute to require a court order before a sheriff could collect. *State v. Abrahamson*, 696 N.W.2d 589, 592 (Iowa 2005) (describing court approval as a "condition precedent to collection" when pursued as a civil claim). And the Iowa Supreme Court recently acknowledged the amended statute "requires the commencement of separate civil actions for imposing reimbursement claims." *State v. Shackford*, 952 N.W.2d 141, 148 (Iowa 2020).[6] The Iowa Office of the Ombudsman, too, agrees that a reimbursement claim is required before fees can be seized or demanded. Bernardo Granwher, Iowa Office of Ombudsman, *Investigation of Inmate Medical Co-Pays at Iowa's County Jails* 4 (Mar. 21, 2024); *see also id.* at 11 (noting that a county jail collecting jail fees by deducting money from commissary accounts "does not comply with the law" because it collects "without filing the required reimbursement claim"). This makes sense: when the legislature amended the statute, it *narrowed* the available methods sheriffs may use to collect fees. It defies logic to interpret the amended law as now *permitting* sheriffs to collect without a court order when they previously could not do so.

Contrary to Defendants' assertions, the Jail Fees Statute is silent as to a sheriff's ability to "collect" jail fees. Defendants speculate that the "fails to pay" language in the Jail Fees Statute must be "a reference to the ability to attempt to collect jail fees before pursuing the option to file

[6] The court also predicted "future due process questions on this subject." *Shackford*, 952 N.W.2d at 148.

a reimbursement claim," because "[t]here can be no failure to pay without collection efforts taking place first." ECF No. 12-1 at 6–7. But nothing in the Jail Fees Statute authorizes the sheriff to collect except by file a reimbursement claim.[7]

Finally, Defendants argue that because neither Mr. Sayers nor Ms. Roberts has had legal proceedings initiated against them related to the confessions, their claims fail even if the reimbursement claim is the only means of collecting fees. ECF No. 12-1 at 13. But by obtaining a confession of judgment before release from jail, Defendants ensure there will be no process even if a reimbursement claim is later initiated. ECF No. 9 ¶¶ 46–50; *see also id.* ¶ 152 ("Defendants provide no process by which Plaintiffs and Class Members can challenge the imposition and collection of jail fees.").

In sum, Defendants' reading of the Jail Fees Statute cannot be reconciled with the statute's language or Iowa Supreme Court precedent.

IV. Plaintiffs Have Stated a Claim for Declaratory Relief that Defendants' Confessions of Judgment for Jail Fees Are Unlawful (Count 3).

Defendants misconstrue Plaintiffs' claims as a facial challenge to "all confessions of judgment, which are authorized by Iowa Code Chapter 676." ECF No. 12-1 at 13.[8] That is not the case. Rather, Plaintiffs allege that the confessions of judgment Defendants use to extract jail fees

[7] Moreover, in contrast to other subsections under Iowa Code section 356, the Iowa legislature imposed no obligations on individuals subject to section 356.7. For example, an individual on work release "is liable for the cost of the prisoner's board in the jail" and "shall pay the sheriff for the board" if they are employed. Iowa Code § 356.30; *see also id.* § 356.15A(2) (prisoners primarily responsible for medical care costs). But section 356.7 imposes no duty on individuals to pay jail fees. It merely states that sheriffs "may charge" the fees and "may file a reimbursement claim" if someone fails to pay. Iowa Code § 356.7(1). While the obligation for individuals on work release to make payments exists independent of any court action, no such obligation exists under section 356.7 unless and until a court enters judgment on a reimbursement claim.

[8] That important claim is raised in *Mason v. Iowa Student Loan Liquidity Corp.*, Case No. 4:23-cv-00515-RGE-WPK (S.D. Iowa), but is not at issue in this case.

are unlawful and unenforceable. *See, e.g.*, ECF No. 9 ¶ 3 ("Defendants' . . . use of confessions of judgment to impose and collect jail fees is unlawful."); *id.* ¶¶ 182–84 (requesting declaratory relief that Defendants' confessions of judgment are unlawful and injunctive relief barring their use). Confessions of judgment, like any legal instrument that supposedly allows for seizure of property without notice or an opportunity to be heard, are analyzed under the Due Process Clause. *Overmyer Co.*, 405 U.S. at 175; *Swarb v. Lennox*, 405 U.S. 191, 193 (1972); *Fuentes*, 407 U.S. at 80.

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." *Overmyer*, 405 U.S. at 188. Each circumstance is present here. First, Defendants use what amounts to a contract of adhesion because "[t]he Department uses a standardized confession of judgment form with fixed terms," ECF No. 9 ¶ 58, and there is "no opportunity to negotiate the terms of the confession of judgment at the time of its signing," *id.* ¶ 59. Second, there is a great disparity in bargaining power because "the Department jails the would-be signatories . . . and takes custody of their possessions." *Id.* ¶ 60. Third, "individuals who sign the confessions of judgment receive no consideration in exchange for their acquiescence." *Id.* ¶ 61. Accordingly, there are sufficient allegations to make out a claim as to Count 3.

Defendants fail to articulate any theory for how their use of confessions of judgment is permissible under controlling U.S. Supreme Court precedent—and do not even acknowledge *Overmyer*, *Swarb*, or *Fuentes*. Instead, they rely on *Cuykendall v. Doe*, which involved a confession of judgment executed in 1885 in Delaware by the debtor's attorney. 105 N.W. 698, 699 (Iowa 1906). *Cuykendall* held only that such a document should be given "full faith and credit" if it was valid under Delaware law, even though it would have "no validity" under Iowa law. *Id.* at 700–01. This case offers no support for Defendants' argument that confessions of judgment are

"legally valid" in Iowa. ECF No. 12-1 at 13.

Defendants claim, with no support, that "the due process afforded through a civil action brought by confession of judgment is nearly identical to that afforded through a reimbursement proceeding under § 356.7." *Id.* at 14. No reading of the relevant Iowa Code provisions can possibly support Defendants' position. "A judgment by confession, *without action*, may be entered by the clerk of the district court." Iowa Code § 676.1 (emphasis added). As Defendants concede, the only basis on which a confession of judgment would not be automatically approved by the clerk is if it "lack[s] the necessary statutory elements" under chapter 676—a bare minimum that does not include any assessment of the validity of the underlying fees. ECF No. 12-1 at 15.[9]

In contrast, when a reimbursement claim is filed under the Jail Fees Statute, an individual receives notice and an opportunity to be heard in court. For the claim to be actionable, an Iowa court must be empowered "to resolve the merits of the claim." *Id.* This means "the court—not the sheriff" decides whether jail fees are warranted. *Abrahamson*, 696 N.W.2d at 593.

In sum, by using confessions of judgment, Defendants deny any opportunity for individuals like Plaintiffs to be heard, and any opportunity for Iowa courts to review the underlying facts upon which a reimbursement claim relies. Plaintiffs have pleaded that Defendants use confessions of judgment to avoid judicial review. ECF No. 9 ¶¶ 51. The law supports those allegations. Plaintiffs have pleaded sufficient allegations for declaratory judgment that Defendants' confessions of

[9] Defendants cite *Blott v. Blott*, 290 N.W. 74 (Iowa 1940), for the proposition that courts must follow "mandatory . . . statutory instructions meticulously before entering a judgment based on a confession." ECF No. 12-1 at 14. But *Blott* confirms that a clerk—not a court—enters such judgments without any judicial review of the underlying debt. In *Blott*, the only failure to follow instructions was that of the clerk, who "record[ed] . . . the debtor's admission of indebtedness and confession of judgment" but failed to formally "enter judgment." *Blott*, 290 N.W. at 76–77. *Hughes v. Burlington N. RR. Co.*, 545 N.W.2d 318 (Iowa 1996), is equally unhelpful to Defendants. *Hughes* concerned an *offer to confess judgment* under Iowa Code section 677.7, which is entirely different from a confession of judgment. *See id.* at 320–21; ECF No. 11-24 at 8.

judgment are unlawful and unenforceable.

V. Plaintiffs Have Stated a Claim for Due Process Conflict of Interest (Count 2).

Defendants characterize Plaintiffs' conflict of interest claim as "duplicative" and merely raising "an inherent conflict of interest for Defendants to do what Iowa Code § 356.7 authorizes them to do." ECF No. 12-1 at 15–16. But Defendants provide no basis for dismissing this claim.

The impartiality requirement of the Due Process Clause is 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 v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). For nearly a century, the U.S. Supreme Court has acknowledged time and again that conflicts of interest run afoul of the impartiality requirement where a self-interested actor engages in decision making for the benefit of themselves or their institutions. *See Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972); *Tumey v. Ohio*, 273 U.S. 510, 522 (1927); *Young v. United States ex rel. Vuitton*, 481 U.S. 787, 805 (1987). Defendants fail to even acknowledge this line of cases. *See* ECF No. 12-1 at 15–16.

To successfully allege a conflict of interest, a plaintiff must allege facts which, if true, would permit a factfinder to find that there exists either a "possible temptation" or a "realistic possibility" that a decisionmaker will be tempted to act in an unbiased manner. *Marshall*, 446 U.S. at 242, 250; *see also Ward*, 409 U.S. at 60; *Tumey*, 273 U.S. at 532–34. "[T]he 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." *Yamaha Motor Corp., U.S.A. v. Riney*, 21 F.3d 793, 798 (8th Cir. 1994); *see also Brown v. Vance*, 637 F.2d 272, 284 (5th Cir. 1981) (noting the question is "not whether a particular man *has* succumbed to temptation, but whether the economic realities make the design of the *system* vulnerable to the possible temptation of the average man") (emphasis added). A plaintiff must merely allege facts supporting "any financial interest that offers a possible temptation to the average man as a judge to forsake his obligation of impartiality." *Harper v. Pro.*

Prob. Servs., Inc., 976 F.3d 1236, 1241 (11th Cir. 2020). "The extent of th[e] profit incentive and its potential to distort these officials' judgment is a factual issue that the Court cannot resolve on a motion to dismiss." *Brucker v. City of Doraville*, 391 F. Supp. 3d 1207, 1217 (N.D. Ga. 2019); *see also Sourovelis v. City of Philadelphia*, 103 F. Supp. 3d 694, 709 (E.D. Pa. 2015) (holding a conflict of interest claim presents an "inherently a factual issue" such that "resolution via a Rule 12(b)(6) motion would be improper").

Here, Plaintiffs allege extensive circumstances that a factfinder could find create an incentive to act for financial gain for Defendants' benefit. *See, e.g.*, ECF No. 9 ¶¶ 68–87 (Department can and did "hold back money from the County by refusing to impose and collect jail fees"); *id.* ¶ 88 (Sheriff admitted that he collects jail fees only because they "directly benefit" the Department); *id.* ¶ 89 (since he regained control of the 40% Fund, the Sheriff has "spen[t] money collected from jail fees . . . for the benefit of the Department," including the Raymond Range); *id.* ¶ 161 ("Sheriff stands to profit from vigorous collection of jail fees [and] draws from the 40% Fund to fund superfluous expenses for the benefit of the Department."); *id.* ¶ 162 ("County profits from vigorous enforcement because 60% of the amount collected is deposited in the County general fund."); *id.* ¶ 163 (Sheriff's use of confessions of judgment to assess and collect jail fees "creates an unconstitutional conflict of interest because those practices incentivize the Department to 'tenaciously pursue' collections for the benefit of the Department"); *id.* ¶ 165 ("Due to the prospect of financial gain, the Sheriff is incentivized to maximize the amount of jail fees extracted from individuals released from the jail.")

Defendants' temptation to vigorously impose and collect jail fees to fund programs not otherwise budgeted is substantial. Plaintiffs have plainly stated a claim under Count 2.

CONCLUSION

For the reasons provided above, the Court should deny the Motion.

RESPECTFULLY SUBMITTED AND DATED this 13th day of August, 2024.

By: */s/ Charles Moore*

Charles Moore
Public Justice
1620 L Street NW, Suite 630
Washington, DC 20036
T: (202) 861-5226
cmoore@publicjustice.net
(admitted Pro Hac Vice)

Rita Bettis Austen
Thomas Story
Shefali Aurora
ACLU of Iowa Foundation, Inc.
505 Fifth Ave., Suite 808
Des Moines, IA 50309-2317
T: (515) 207-0567
F: (515) 243-8506
rita.bettis@aclu-ia.org
thomas.story@aclu-ia.org
shefali.aurora@aclu-ia.org

Leslie A. Bailey
Public Justice
475 14th Street, Suite 610
Oakland, California 94612
T: (510) 622-8203
lbailey@publicjustice.net
(admitted Pro Hac Vice)

Thomas P. Frerichs
Frerichs Law Office, P.C.
106 E. 4th Street, P.O. Box 328
Waterloo, IA 50704-0328
T: (319) 236-7204
F: (319) 236-7206
tfrerichs@frerichslaw.com

Brandon R. Underwood
Kelcy Whitaker
Michael D. Currie
Sarah Golwitzer
Fredrikson & Byron P.A.
111 East Grand Ave., Suite 301
Des Moines, IA 50309-1884
T: (515) 242-8900
F: (515) 242-8950
bunderwood@fredlaw.com
kwhitaker@fredlaw.com
mcurrie@fredlaw.com
sgolwitzer@fredlaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on August 13, 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: August 13, 2024 *s/ Charles Moore*