IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARLY GRAFF, et. al. ***Plaintiffs,*** **v.** **ABERDEEN ENTERPRIZES II, INC., et. al.** ***Defendants.***	**Case No. 4:17-CV-606-TCK-JFJ**

PLAINTIFFS' RESPONSE IN OPPOSITION TO THE COUNTY SHERIFF DEFENDANTS' OFFICIAL CAPACITY MOTION TO DISMISS

BRIEF I

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INTRODUCTION

This class action lawsuit challenges a systemic illegal extortion scheme in Oklahoma in which Defendants conspired to use—and actually do use—the threat of arrest and incarceration to extract money from indigent people with court debts for traffic and criminal offenses. Defendants employ these coercive tactics against members of the putative class without employing any mechanism to assess their ability to pay the fines levied against them. Plaintiffs, all of whom owe fines, fees, and costs to the court system, are thus threatened, arrested, and imprisoned when they cannot pay, due not to any willful refusal, but solely to their indigence. As a result of this scheme, tens of millions of dollars—collected on the backs of Oklahoma's poorest citizens—flow to Aberdeen Enterprizes II, Inc. ("Aberdeen"), a private, for-profit debt-collection company; the Oklahoma Sheriffs' Association ("OSA"), a private lobbying organization; dozens of county sheriffs' offices themselves; and the Oklahoma court system. Plaintiffs' suit challenges the operation of this scheme, which violates the federal Constitution, Oklahoma law, and the federal RICO statute.

The Defendant Sheriffs of 51 Oklahoma counties ("Defendant Sheriffs") are sued here in both their individual and official capacities. This brief-in-opposition focuses on their official capacity arguments. *See* County Sheriff Defs.' Official Capacity Mot. to Dismiss (Doc. 234). Plaintiffs specifically allege that Aberdeen, empowered by the Sheriffs to conduct debt collection in their counties, unlawfully threatens and coerces members of the class to make payments they cannot afford and seek arrest warrants when such payments fail to materialize. *See* Second Am. Class Action Compl. ("SAC") ¶ 2. Plaintiffs allege that "Sheriff Defendants enforce Aberdeen, Inc.'s extortionate methods by routinely arresting and jailing individuals pursuant to these debt-collection arrest warrants that are based solely on nonpayment." *Id.* ¶ 10. Plaintiffs further allege

that "[w]hen a debtor is jailed for nonpayment, the Sheriff Defendants will not release her unless she pays a fixed sum," regardless of whether or not she is able to pay that amount. *Id*. The Sheriffs often "detain individuals who cannot pay in jail for days before they are allowed to see a judge—again, without ever making an inquiry into ability to pay—while allowing those able to pay to go free." *Id*. And Plaintiffs allege that Defendant Sheriffs financially benefit from Aberdeen's profit-maximization tactics, as they rely on money collected from court debts to partially fund their operations, SAC ¶ 30, and their agent, the Oklahoma Sheriffs Association ("OSA"), splits the 30% penalty surcharge that is attached to every debt arrest warrant. SAC ¶ 55.

The Second Amended Complaint makes clear that the Defendant Sheriffs are active and willing participants in this scheme—that is, despite knowledge of Aberdeen's nefarious conduct, the Sheriffs continue, through the OSA, to engage Aberdeen and to execute unlawful warrants. SAC ¶¶ 30, 65. It also alleges that Defendant Sheriffs execute arrest warrants for nonpayment and imprison debtors with the knowledge that the constitutionally required inquiry into ability to pay never occurs. SAC ¶¶ 65, 81.

Defendant Sheriffs raise several arguments in an effort to evade responsibility for their role in this extortion scheme. Incorporating the Motion to Dismiss filed by Oklahoma County Sheriff P.D. Taylor (Doc. 215), Defendant Sheriffs make the typical jurisdictional claims. Doc. 234 at 35-38. They invoke the *Rooker-Feldman* and *Heck* doctrines, relying on the oft-repeated fallacy, invoked by Taylor, that "Plaintiffs directly challenge the validity of their sentences." Doc. 234 at 36-37 (citing Doc. 215 at 17-19). But Plaintiffs make no such challenge. Instead, Plaintiffs challenge debt-collection practices that are *separate from* their convictions and sentences. Plaintiffs have all been convicted of an offense or received a traffic ticket and incurred court debt as part of their sentences. In the 51 counties at issue, however, when a debtor cannot pay,

Aberdeen, the Sheriffs, and the other Defendants convert that court debt into automatic jail time. It is that unlawful practice, not the underlying conviction or sentence, that this lawsuit contests. The law unambiguously requires a hearing on ability to pay before such a liberty-depriving conversion can be made, and Defendants routinely ignore this requirement.

Defendant Sheriffs also erroneously assert that the *Younger* doctrine precludes this suit. Doc. 234 at 36. As a threshold matter, *Younger* abstention applies only to state court proceedings that are "ongoing." Although Plaintiffs owe outstanding court debts and their sentences are not yet completed, incomplete sentences—specifically including unpaid court debts—are not considered "ongoing proceedings" for *Younger* purposes. *See Rodriguez v. Providence Cmty. Corr., Inc.*, 191 F. Supp. 3d 758, 763 (M.D. Tenn. 2016) (citing *Trombley v. Cty. of Cascade, Mont.*, No. 88-3727, 879 F.2d 866, at *1 (9th Cir. July 12, 1989)). In addition, *Younger* does not apply here because Plaintiffs have not had the required opportunity to raise these claims in state court. Defendant Oklahoma County Sheriff Taylor, whose arguments Defendant Sheriffs incorporate, spends much of his brief claiming otherwise, suggesting that there is a process that allows indigent debtors to raise their inability to pay and that the arrest warrants at issue are merely "bench warrants" compelling "the attendance of persons who have disobeyed an order of the court." Doc. 215 at 5; *see also id.* at 1-9. These claims are factually wrong and contradict the Second Amended Complaint. And at this stage, Plaintiffs' allegations must be "accepted as true." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In reality, and as Plaintiffs allege, Plaintiffs are arrested and jailed—sometimes for days at a time—*before* they have an opportunity to see a judge. SAC ¶¶ 97-98, 206-09. Plaintiffs are incarcerated by the Sheriff Defendants pursuant to these "bench warrants" and, despite their indigence, coerced into paying Aberdeen to obtain their freedom, without ever appearing in court.

SAC ¶¶ 189-192. The only way to end this cycle of threats, arrests, and unlawful jailing is to end Defendants' scheme.

Defendant Sheriffs attempt to evade liability for their wrongful conduct by arguing that their policy of partnering with Aberdeen to implement its debt collection scheme—including turning over debtor information to the company—presents no due process violation because the company exercises "executive functions" rather than judicial ones. Doc. 234 at 11. Defendant Sheriffs also argue that Plaintiffs' equal protection claim fails because Plaintiffs have not identified similarly situated individuals who are better treated and because Plaintiffs have not identified a county policy or practice that violates the Equal Protection Clause. These arguments also fail.

As Plaintiffs allege consistently, Defendant Sheriffs continue to work in partnership with Aberdeen, despite their knowledge of the company's extortionate and extreme debt collection practices. Aberdeen's substantial financial incentive to target debtors with extreme and onerous tactics is clear from the face of its contract. The Sheriffs also arrest and jail debtors for no reason other than their indigence, while not treating wealthier court debtors in the same manner. These policies and practices are those of the sheriffs and no one else.

Defendant Sheriffs additionally assert that certain Plaintiffs' court records contradict the allegations in the Second Amended Complaint, and argue that Plaintiffs lack standing to sue them. These arguments, too, are unavailing, and the Motion should be denied.

RELEVANT BACKGROUND

Each Defendant Sheriff's office authorized the Oklahoma Sheriffs' Association ("OSA") to enter into the contract for debt collection services with Aberdeen on the Sheriff's behalf. SAC ¶ 30. Defendant Sheriffs' contract with Aberdeen and its consistent renewal permits the company to use the threat of arrest and incarceration to pad their bottom line while abrogating the rights of

indigent debtors. The contract gives Aberdeen a direct financial stake in the cases under its authority and thus presents a conflict of interest that, as alleged in Count Six, violates the Due Process Clause. Defendant Sheriffs are fully aware of Aberdeen's misaligned incentives: the contract itself reveals that the company's revenue directly depends on how much debt it collects, and the Sheriffs own trade organization and agent has profited exponentially as a result of Aberdeen's collections activity. SAC ¶¶ 56-59, 104-07.

Moreover, Defendant Sheriffs make Aberdeen's threats reality by executing debt-collection arrest warrants against those too poor to pay—an action that is not required by any law or court and is thus fully within Defendant Sheriffs' discretion. These arrests and subsequent detention subject those too poor to pay, including Plaintiffs, to onerous debt collection enforcement methods not experienced by those who are able to pay court debts, in violation of the Equal Protection Clause, as alleged in Count Seven of the Second Amended Complaint.

These constitutional violations result from deliberate choices made by Defendant Sheriffs, each of whom is the final policymaker regarding "law enforcement activity" in their respective counties. *Myers v. Okla. County Bd. Of County Comm'rs*, 151 F.3d 1313, 1319 (10th Cir. 1998). Defendant Sheriffs have authority under Oklahoma law to select a method of debt collection. They chose—and continue to choose—Aberdeen for this purpose and provide Aberdeen with debtor information to assist its efforts. Defendant Sheriffs then arrest and confine individuals on debt-collection arrest warrants issued based on unsworn statements, without inquiry into the individual's ability to pay or any other pre-deprivation process, and on warrant applications that no reasonable person could believe were sufficient to justify arrest. SAC ¶ 30.

ARGUMENT

I. Plaintiffs Have Stated a Valid Claim for a Due Process Violation Because of Aberdeen's Conflicting Loyalties to Money and Justice

Defendant Sheriffs move to dismiss Count Six of the Second Amended Complaint (which challenges, *inter alia*, the Sheriffs' role in entering into a contract with Aberdeen that, on its face, gives Aberdeen an unconstitutional financial stake in the cases under its authority) by arguing that Aberdeen is a "purely executive actor," ostensibly with no decisionmaking power, and is therefore not required to be financially disinterested from the collection process. Doc. 234 at 17. But Aberdeen's conflicting loyalties to money and justice plainly violate the prohibition on law enforcement officials having a significant financial interest in the outcome of the cases they pursue. Defendant Sheriffs' attempts to distinguish this scheme from those previously held unconstitutional by the courts are unavailing based on well-established standards applied by the Supreme Court.

A. The Aberdeen Contract on Its Face Violates the Due Process Clause's Neutrality Principle

The implication of Defendants' argument is that the Sheriffs do not believe that due process places *any* constraints on the pecuniary conflicts of interest for "executive" actors. The Sheriffs are wrong. When prosecutors, police officers, or other "executive" officials are personally compensated based on the law enforcement decisions they make, serious due process concerns arise. The arrangement between Defendant Sheriffs, through their agent OSA, and Aberdeen on its face violates Due Process because its participants' earnings depend directly on how vigorously they pursue court debtors.[1]

[1] Aberdeen makes a contrary argument: that it functions as a "quasi-judicial" actor entitled to absolute immunity even though it is a for-profit company making a business decision to engage in the conduct challenged in this case. Doc. 230 at 16. Defendants Don Newberry, Darlene Bailey,

The Supreme Court has long held that judges and other neutral decisionmakers must be free from such financial conflicts of interest. *Caperton v. A.T. Massey Coal*, 556 U.S. 868, 876-78 (2009); *Tumey v. Ohio*, 273 U.S. 510, 522 (1927). Although these protections are at their peak when an official performs judicial or quasi-judicial functions, they apply to all officials who perform law enforcement functions. *See Marshall v. Jerrico, Inc.*, 446 U.S. 238, 251 (1980) (noting that due process problems would be implicated where there was "a realistic possibility that the assistant regional administrator's judgment will be distorted by the prospect of institutional gain as a result of zealous enforcement efforts"); *Young v. United States ex rel. Vuitton*, 481 U.S. 787, 803-05, 807-08 (1987) (finding that structural error existed because of the mere "*potential* for private interest to influence" prosecutor's discharge of public duty") (emphasis original). This principle does not require proof that any particular decision was rendered out of bias and does not require any *personal* financial conflict of interest. *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972). That is because "[a] scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision" that raise constitutional concerns. *Jerrico*, 446 U.S. at 249–50 . This is the precise nature of Aberdeen's contract with Defendant Sheriffs.

To avoid just such a circumstance, courts all over the country have rejected policies that on their face create financial conflicts of interest for the decisionmaker—regardless of how any

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and Kim Henry also argue that they are entitled to quasi-judicial immunity for their roles in requesting and assisting Aberdeen in requesting unconstitutional warrants. These arguments fail under binding immunity precedent. *See* Doc. 236 at 9, Doc. 237 at 8 and Doc. 227 at 4. And it certainly cannot be both that, as the Sheriffs argue here, these Defendants are executive actors entirely exempt from due process neutrality requirements and at the same time so connected to the judicial process as to deserve *absolute judicial immunity*.

individual decisionmaker might behave.[2] And especially relevant here, courts have specifically applied these principles to law enforcement agents other than prosecutors. For example, in *Flora v. Southwest Iowa Narcotics Enforcement Task Force*, the court denied the defendant police officers' motion for summary judgment on the plaintiff's due process claim because the officers had "failed to establish . . . that [they] are not financially dependent on maintaining a large and continuing stream of forfeiture penalties . . . [and] did not stand to profit economically from vigorous enforcement of the law." No. 1:16-CV-00002-JEG, 2018 WL 1150999, *19 (S.D. Iowa Feb. 12, 2018); *see also Harjo v. City of Albuquerque*, No. CV 16-1113 JB/JHR, 2018 WL 1626099, at *39 (D.N.M. Mar. 30, 2018) (due process violated where personal or institutional incentives to enforce aggressively).

Thus, the contract between Aberdeen and the Defendant Sheriffs (through their agent, OSA), which facially incentivizes Aberdeen's extreme and extortionate conduct towards debtors

[2] *See Merck Sharp & Dohme Corp. v. Conway*, 861 F. Supp. 2d 802, 812 (E.D. Ky. 2012) ("[T]here are certain circumstances under which a prosecutor's financial interest in the outcome of a case will violate the defendant's right to due process," including where prosecutors are compensated based on the outcome of cases); *State v. Eldridge*, 951 S.W.2d 775, 782 (Tenn. Crim. App. 1997) (same); *State v. Culbreath*, 30 S.W.3d 309, 316, 318 (Tenn. 2000) (condemning "fundamentally unfair" prosecution in which prosecutor was compensated "hourly" and thus "acquired a direct financial interest in the duration and scope of the ongoing prosecution"); *Bhd. of Locomotive Firemen v. U.S.*, 411 F.2d 312, 319 (5th Cir. 1969) (finding due process violation in interested prosecutor because "[t]he point is that those conflicting claims of undivided fidelity present subtle influences on the strongest and most noble of men" and "the system we prize cannot tolerate the unidentifiable influence of such appeals"); *Ganger v. Peyton*, 379 F.2d 709, 713–14 (4th Cir. 1967) (holding that a prosecutor's attempt "to serve two masters" violates Due Process) (internal citations omitted); *State ex rel. Koppers Co. v. Int'l Union*, 298 S.E.2d 827, 831–32 (W.Va. 1982) (citing cases condemning the "appearances of impropriety and of inherent conflicts of interest" when prosecutors have a financial interest); *People v. Zimmer*, 414 N.E.2d 705, 707–8 (Ct. App. N.Y. 1980); *Cantrell v. Commonwealth*, 329 S.E.2d 22, 26–27 (Va. 1985).

as described in the Second Amended Complaint, is *alone* enough to establish the due process violation.

Further, to the extent Defendant Sheriffs' "executive actor" argument attempts to downplay the centrality of the company's role, it ignores Plaintiffs' allegations about how the contract between Aberdeen and OSA actually works in practice. *See, e.g.*, Doc. 234 at 17 (asserting without citation that the company "cannot—at any point—affect whether a debt is owed"). Specifically, Plaintiffs' Second Amended Complaint—which, at this stage, must be taken as true—alleges that Aberdeen decides what payment plans to accept, when to choose to seek an arrest warrant for non-compliance with the company's payment policies, and when to recall a warrant. *See, e.g.*, SAC ¶¶ 27-28, 68, 78. Plaintiffs further allege that judges routinely issue warrants that Aberdeen requests without meaningfully reviewing the alleged basis for the warrrant, and that each new warrant carries with it more fines and fees. *See* SAC ¶ 11. The Sheriffs' factual description of Aberdeen's authority to affect Plaintiffs' legal rights cannot be squared with these allegations, which must be taken as true.[3]

[3] No evidence beyond Plaintiffs allegations are necessary at this stage. But the plausibility of Plaintiffs' claims is supported by the record in *Jones v. Hacker*, a case on which the Sheriffs' co-defendants rely. *See, e.g.*, Deft. Don Newberry, in his individual capacity, Mot. to Dismiss, Doc. 236 at 2, 11, 12, 16; Deft. Darlene Bailey, in her individual capacity, Mot. to Dismiss, Doc. 237 at 2, 10, 11. An employee of the clerk's office of Okmulgee County (the County in which Defendant Eddy Rice is Sheriff) submitted a list of her "daily duties" to the federal district court in that case, and those duties included the following: "1. Check email for recalls from Aberdeen Enterprizes[.] If there is a recall write down the name and case number on a recall sheet. Go to the case and recall warrant[.]" Ex. 9 to Def. Linda Beaver, in her official capacity, Mot. for Summ. J. and Br. in Supp. at 9, *Jones v. Hacker*, No. 13-CV-144-JHP, 2015 WL 1279352 (E.D. Okla. Mar. 20, 2015).

B. The Case Law Defendants Cite Does Not Suggest that They Are Exempted from the Due Process Clause's Neutrality Principle

Defendant Sheriffs ignore binding case law applying the due process constraint on pecuniary conflicts of interest to non-judicial actors and rely significantly on *Broussard v. Parish of Orleans*, 318 F.3d 644 (5th Cir. 2003), to argue that only judicial officers are subject to that due process constraint. The Sheriffs then use *Broussard* to support their contention that they cannot be held accountable for Aberdeen's conflict of interest because the company does not assume a judicial role when attempting to collect debts. Doc. 234 at 10-12. In *Broussard*, the plaintiffs challenged a state statute that required arrestees to pay a small fee, distributed to sheriffs, on top of their bail for each offense on which they had been detained. The plaintiffs argued that this per-offense fee created an impermissible incentive for sheriffs to "stack" charges, and gave the sheriffs—like the mayor in *Ward*—both executive and judicial functions.

Critically, the plaintiffs in *Broussard* "conced[ed] that *Ward* and *Tumey* applied to judges and focused on the requirement that [judges] remain impartial." *Id.* at 661. They then argued that the statutory fees constituted a "punishment" and that the sheriffs acted in a judicial role in imposing them. *Id.* ("In making their argument, arrestees seem to presuppose that the fees are analogous to punishment or to a determination of guilt before trial. *That is the basis on which they argue that sheriffs impermissibly control [both] executive and judicial functions*, in violation of due process.") (emphasis added). Because the Fifth Circuit concluded that the fees were administrative, not a form of "punishment," and that the sheriffs did not exercise a "judicial function," it rejected the plaintiffs' claims.

That holding has no application to Plaintiffs' claims here. Plaintiffs do not claim that Aberdeen performs a judicial function. Moreover, the Fifth Circuit in *Broussard* could arrive at its conclusion only by ignoring *Jerrico*, likely as a result of the *Broussard* plaintiffs' flawed

concession and decision to rely solely on cases concerning judicial actors. As noted, *Jerrico* shows that due process protections against actual or perceived conflicts of interest apply to *all* officials who enforce the law, such as Aberdeen. *Jerrico*, 446 U.S. at 249 (noting that "traditions of prosecutorial discretion do not immunize from judicial scrutiny cases in which the enforcement decisions of an administrator were motivated by improper factors"). Thus, to the extent *Broussard* can be read to confine due process principles to judicial actors, that reading conflicts with binding Supreme Court precedent and myriad lower court holdings.[4]

The Sheriffs additionally argue that due process precedent does not apply because Aberdeen only chooses to *begin* an enforcement action. Constitutional principles are not implicated, they say, unless a judge decides to issue an arrest warrant. Doc. 234 at 17. But several of the cases discussed *supra*—including *Jerrico*, *Young* and *Flora*—all concern decisions to initiate judicial proceedings, as Defendants do here. Indeed, the court in *Flora* just rejected this very argument months ago. 292 F. Supp. 3d at 904 ("Although state courts have the final say on whether forfeiture is proper in a given case . . . there remains an issue as to whether Task Force officers, such as Miller, and PCAO prosecutors, such as Sudmann, are so incentivized to enforce Iowa's civil forfeiture law as to distort their judgment.").

As these cases highlight, the antecedent decision to begin judicial proceedings can itself cause serious harm, and the presence of pecuniary interests infects decisionmaking in ways that

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[4] *See, e.g., Bhd. of Locomotive Firemen v. U.S.*, 411 F.2d 312, 319 (5th Cir. 1969); *Ganger v. Peyton*, 379 F.2d 709, 713–14 (4th Cir. 1967); *Flora v. Sw. Iowa Narcotics Enf't Task Force*, 292 F. Supp. 3d 875, 903 (S.D. Iowa 2018); *Harjo v. City of Albuquerque*, 307 F. Supp. 3d 1163, 1172 (D.N.M. 2018); *Sourovelis v. City of Philadelphia*, 103 F. Supp. 3d 694, 709 (E.D. Pa. 2015); *Merck Sharp & Dohme v. Conway*, 861 F. Supp. 2d 802, 811–12 (E.D. Ky. 2012); *People v. Zimmer*, 414 N.E.2d 705, 707–8 (N.Y. App. Div. 3d 1980); *State v. Culbreath*, 30 S.W.3d 309, 316, 318 (Tenn. 2000); *State v. Eldridge*, 951 S.W.2d 775, 782 (Tenn. Crim. App. 1997); *Cantrell v. Commonwealth*, 329 S.E.2d 22, 26–27 (Va. 1985); *State ex rel. Koppers Co. v. Int'l Union*, 298 S.E.2d 827, 831–32 (W.Va. 1982).

poison the operation of the legal system—as illustrated here by the especially troubling fact that Aberdeen initiates judicial proceedings on the basis of material omissions. Plaintiffs allege that Aberdeen has a financial incentive to obtain new warrants because Aberdeen leverages warrants—and the attendant threat of arrest—to extract payments from indigent debtors. Aberdeen thus has a clear financial incentive to make its path to obtaining a warrant as straightforward as possible. To do so, Plaintiffs allege, Aberdeen either declines to inquire into a debtor's ability to pay or, when it has information because the debtor volunteered it, withholds that information from the state court that formally issues the warrant. SAC ¶¶ 63, 64, 82-85. If Aberdeen properly informed the court (and the court properly performed its oversight role), the vast majority of the warrants Aberdeen seeks—including those against Plaintiffs—would not issue. Aberdeen's financial incentive results in the opposite result, and lies at the core of the unconstitutional conduct challenged in this lawsuit.

Defendant Sheriffs' reliance, Doc. 234 at 15-16, on *Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1086 (E.D. Cal. 2008), for the proposition that a third-party debt collector that administered "bad check diversion programs" was not bound by the requirements of the Due Process Clause, is also misplaced. Although the Sheriffs argue that "recounting" the key facts of that case "is not necessary," Doc. 234 at 16, it is precisely those facts that demonstrate its irrelevance here. The critical fact in *Craighead* was that the defendant in that case, the CEO of a private entity that collected debts from participants in a bad check diversion program, "[u]nder no circumstance" had any authority to deprive [anyone] of their property" or liberty. 522 F. Supp. 3d at 1087 (citation omitted). The arrangement between Craighead and district attorneys did not permit Craighead such discretion. After a merchant referred a bad check to Craighead, he sent three notices—drafted by the district attorney, not Craighead—to the bad check writer offering to

let her pay to enter into a bad check diversion program. *Id.* at 1064-65. If the bad check writer agreed, Craighead collected the money. If the bad check writer did not agree, Craighead applied the "county's guidelines" to determine whether to notify the district attorney or to send the check back to the merchant—either way, Craighead's collection efforts ceased. *Id.* at 1066. This was a binary, yes-or-no determination that involved application of county guidelines, as opposed to the vast discretion left to Aberdeen. All Craighead did was notify the District Attorney when a person had elected not to participate in the bad-check diversion program. If prosecutors later decided to take action based on the evidence, such as by seeking a warrant or filing charges, Craighead played no role (and the prosecutors themselves had no financial interest in the outcome). This was the critical fact the court relied on to hold that the *Tumey-Ward-Jerrico* line of cases was "inapplicable to Craighead." *Id.* at 1086-87.

Craighead is therefore inapposite. Aberdeen is not a middleman transmitting objective facts under specific guidelines. Rather, the company *itself* exercises discretion to determine what payments are owed, whether to seek arrest when its payment policies have not been complied with, and under what conditions to recall a warrant.[5] A warrant on a case referred to Aberdeen only issues if and when *Aberdeen* decides to seek one. *See* SAC ¶ 62 (describing court docket stating "DO NOT ISSUE WARRANT UNLESS CONTACTED BY ABERDEEN"). So to the extent

[5] Nor does the only other case relied on (without explanation) by the Sheriffs help. In that case, *Hamilton v. Am. Corrective Counseling Servs.*, No. 3:05-CV-434RM, 2006 WL 3332828, (N.D. Ind. Nov. 14, 2006), the court concluded that "American Corrective's role in the collection scheme was to provide seminars and notice of the procedures under which a check-writer could contest the deprivation before a neutral decision maker," but the contract did not authorize the company "to deprive check writers of their property." *Id.* at *6. Thus, the court expressly distinguished another case, *Wilson v. City of New Orleans*, 479 So.2d 891 (La. 1985), in which the court found a due process violation because a private company with a financial interest played a role in determining which cars the city government would boot for unpaid tickets. *Id.* at 901–902.

Craighead could be read to apply to these facts, then it is in open conflict with established precedent holding that law enforcement entities are bound by the neutrality principles inherent in the Due Process Clause.

Here, Aberdeen's broader constitutional obligations require it to determine not merely whether or not a debtor has made payments, but also whether any nonpayment was willful—and Aberdeen's financial incentives result in it ignoring that latter inquiry or withholding from the state court any information that the debtor volunteers. It cannot seriously be argued that the company's conduct does not affect the liberty or property interests of debtors whose debts are referred.

II. Plaintiffs Have Stated a Claim that Defendant Sheriffs Violate Plaintiffs' Equal Protection Rights, and Have Properly Alleged Municipal Liability

Defendant Sheriffs assert that Plaintiffs' equal protection argument "suffers from two fundamental issues which . . . should result in dismissal." Doc. 234 at 18. But neither of the issues they raise supports dismissal.

A. Plaintiffs Allege That Indigent and Wealthy Debtors Are Treated Unequally

Defendants first contention is that "Plaintiffs' alleged 'similarly situated groups' . . . are not 'similarly situated.'" *Id*. This argument, which is nearly identical to the argument presented in their individual capacity motion, *compare id.* to Doc. 239 at 23, is without merit. Plaintiffs allege that the Sheriffs treat indigent debtors and wealthy debtors unequally and that there is no difference between these two classes of court debtor other than wealth. Plaintiffs incorporate by reference Section IV, at 18-21, of Plaintiffs' Opposition to Defendant County Sheriffs' Personal Capacity Motion to Dismiss (Brief A), which responds in full to this argument.

B. Plaintiffs Have Pled That Defendant Sheriffs' Policies Cause the Violation of Their Equal Protection Rights

Defendant Sheriffs' second contention is that Plaintiffs have failed to "plead fact allegations showing the County Sheriffs adopted customs, policies[,] and/or procedures which were the moving force behind the purported Equal Protection violation." Doc. 234 at 18. This claim is actually an argument that Plaintiffs have failed to sufficiently allege municipal liability under *Monell*. But the Second Amended Complaint belies this claim. Plaintiffs have alleged constitutional violations for which the county sheriffs are liable.

"Municipal liability under § 1983 attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1189 (10th Cir. 2010) (quoting *Pembaur v. City of Cincinatti*, 475 U.S. 469, 483 (1986)) (alteration omitted); *see also Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690–91 (1978). Such liability "may be based on a formal regulation or policy statement, or it may be based on an informal 'custom' so long as this custom amounts to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a 'custom or usage' with the force of law." *Brammer-Hoelter*, 602 F.3d at 1189 (internal quotation marks omitted).

Sheriffs are final policymakers when it comes to "law enforcement activities" in their counties, which include the practices of executing warrants and detaining criminal defendants. *See Myers v. Okla. County Bd. Of County Comm'rs*, 151 F.3d 1313, 1319 (10th Cir. 1998) (citing *Pembaur*, 475 U.S. at 483 n.12); Okla. Stat. Ann. tit. 19, § 516 ("It shall be the duty of the sheriff . . . to keep and preserve peace in their respective counties[.]"). And, unquestionably, each County Sheriff has exercised discretion as a county policymaker to decide to contract with Aberdeen

(through OSA as an intermediary), and to assist in Aberdeen's collection activities. The sheriffs are responsible for all the harms that flow therefrom.

1. Defendant Sheriffs Are Final Policymakers for Contracting with and Assisting Aberdeen

Oklahoma law confirms that the decision to hire Aberdeen falls within the scope of the Defendant Sheriffs' final policymaking authority. The law under which each Defendant Sheriff contracted with Aberdeen provided that "the county sheriffs" "*may*" contract with a private debt collector to allow the debt collector "to attempt to *locate and notify persons* of their outstanding misdemeanor or failure-to-pay warrants." *See* Okla. Stat. tit. 19, § 514.4(A) (2010) (emphasis added).[6] Each county sheriff, moreover, had authority to decide whether to enter into the contract itself or to designate OSA as its agent to do so. *Id.* § 514.4(E). "Locat[ing] and notify[ing]" people of warrants is a law enforcement activity within the domain of a county sheriff, as is determining the most effective way to do so. Rather than handling that responsibility in-house with their own employees or contracting directly with a private company, each Sheriff Defendant designated OSA as his agent to contract with a private debt collector. Indeed, the description of the legislation empowering the sheriffs to make that decision was "[a]n Act relating *to counties and county officers* . . . which relate to outstanding warrants; modifying scope of certain contracts; modifying administrative costs for certain warrants; and providing an effective date." H.B. 3242, 52d Leg., 2d Reg. Sess. (Okla. 2010) (emphasis added). Thus, when each County Sheriff exercised his discretion under this statutory provision to permit OSA to hire Aberdeen and then to reauthorize

[6] An amended version of this law went into effect on November 1, 2018. The new law still gives county sheriffs final policymaking authority, but now only provides the option to contract with the OSA, instead of directly with a debt collector. Plaintiffs have attached here a copy of the law in effect at the time this suit was filed. *See* Exhibit A.

that decision, year after year, he did so as a county officer and as the officer with final policymaking authority.[7]

Further proof that each County Sheriff acted as a county policymaker is found in the Tenth Circuit's treatment of similar state laws. The Tenth Circuit has concluded that sheriffs are final policymakers with regard to county jails by pointing to an Oklahoma law that provides "[t]he sheriff shall have the charge and custody of the jail of his county." Okla. Stat. tit. 19, § 513; *see Lopez v. LeMaster*, 172 F.3d 756, 763 (10th Cir. 1999). And the Tenth Circuit has found that sheriffs are final policymakers with respect to "law enforcement activities" and "the service and execution of orders issued by Oklahoma courts" on the basis of laws that give sheriffs the "duty . . . to keep and preserve the peace of their respective counties," Okla. Stat. tit. 19, § 516(A), and that task the sheriffs with responsibility to "serve and execute, according to law, all process . . . and . . . attend upon the several courts of record held in his count," Okla. Stat. tit. 19, § 514; *see Hollingsworth v. Hill*, 110 F.3d 733, 743 (10th Cir. 1997); *Reid v. Hamby*, 124 F.3d 217, 1997 WL 537909, at *5 & n.1 (10th Cir. 1997) (unpublished). Just as the sheriffs are county actors and

[7] Defendant Taylor has suggested that sheriffs are not final policymakers because the Oklahoma Supreme Court "retains some measure of ability to reject the use of any particular vendor by virtue of the absolute control they maintain over the Oklahoma Court Information Systems (OCIS)." Doc. 215 at 3. Even assuming this assertion is true, nothing in Oklahoma law requires a "vendor" such as Aberdeen to use the Oklahoma Court Information Systems when carrying out its responsibility to "locate and notify" debtors of their warrants. The contract itself acknowledges that some counties do not use OCIS. Doc. 212, Ex. A at 5. Nor can it be said that, because the Oklahoma Supreme Court issued the administrative order stating that "[e]ach district court is authorized and directed to participate in the misdemeanor or failure-to-pay warrant collection program authorized by Title 19 Oklahoma Statutes Sections 514.4 and 514.5" the court bears ultimate responsibility for everything related to Aberdeen, as some Defendants have suggested. *See* Doc. 238 at 6 (quoting Supreme Court Order, S.C.A.D. 2011-08 (Doc. 99-35)). That order instructed "district courts," not sheriffs, and the district courts have a separate role under Sections 514.4 and 514.5, including, for example, to allow payment of court debt in certain forms (such as personal checks and internet payments). *See, e.g.*, Ex. A at § 514.4(B).

final policymakers for the responsibilities identified in those provisions, so too are they county actors and final policymakers for the decision of whether, and with whom, to contract *in their specific county* under Okla. Stat. tit. 19, § 514.4. Tellingly, the provision that vests the sheriffs with authority to decide whether to contract with an entity such as Aberdeen is part of the same chapter of Oklahoma law as these other provisions that have already been held to concern county functions.

Moreover, under the terms of the contract that each Sheriff authorized as county policymaker, the County Sheriffs are required to assist Aberdeen in its collection activities. *See* SAC ¶ 283 (requiring sheriffs to "provide debtor information"); *id.* (sheriffs and court clerks are granted "sole discretion" to choose cases to transfer to Aberdeen). Any assistance provided to the company is attributable to the contract authorized by each sheriff, making the decision for his county.

Each county sheriff was thus the final county policymaker in his respective county's decision to hire and assist Aberdeen. This fact is sufficient to establish county liability with respect to the only claims that Plaintiffs bring against the County Sheriffs in their official capacity: Count Six, for using Aberdeen as an enforcement actor with an improper financial incentive and Count Seven, for subjecting Plaintiffs to unconstitutionally onerous debt collection. No other activity by the sheriffs need be alleged to show that they have animated the harms that are challenged in these claims.

2. County Sheriffs Are Final Policymakers for Their Execution of Warrants They Know to Be Unlawful

In addition to their responsibility for contracting with and assisting Aberdeen, Defendant Sheriffs exacerbate the harms Aberdeen's activities cause by executing debt-collection arrest warrants. Defendant Sheriffs have discretion to *not* execute court orders that they know to be

unlawful, such as the arrest warrants issued to Plaintiffs in this case. And here, Plaintiffs have pled that the County Sheriffs have a practice of executing warrants that they know to be unlawful. As the Second Amended Complaint alleges, "courts routinely issue" the nonpayment warrants Aberdeen requests, "without any inquiry into or knowledge of whether the person had the means to pay." SAC ¶ 92. The courts "issue the debt-collection arrest warrants Aberdeen seeks, even though the warrants are predicated on nothing more than Aberdeen's unsworn factual allegation that a debtor has not made payments." SAC ¶ 64. Defendant Sheriffs thereafter "execute the illegal arrest warrants and detain debtors based solely on the unsworn allegations of nonpayment[.]" SAC ¶ 65. Critically, Plaintiffs allege that Defendant Sheriffs do this *with full knowledge of Aberdeen's unlawful collection practices and the unconstitutionality of the warrants*. SAC ¶¶ 65, 81.

To be clear, although the courts issue these warrants, Defendant Sheriffs make the deliberate choice to enforce them. The state law empowering sheriffs to execute warrants and court orders authorize sheriffs to enforce only *lawful* process; it does not mandate the execution of warrants that sheriffs know to be unconstitutional. Oklahoma law recognizes that a Sheriff is not required to execute judicial orders where the judicial process is manipulated. It provides that "[t]he sheriff . . . shall serve and execute, according to law, all process, writs, precepts and orders *issued or made by lawful authorities*[.]" Okla. Stat. tit. 19, § 514 (emphasis added). Neither Aberdeen nor the Defendant Sheriffs have the "lawful authorit[y]" to issue a warrant, but they have nonetheless, in effect, seized control of the warrant issuance process by omitting—or, in the case of the Sheriffs, ignoring the omission of—material information related to ability to pay.[8] Under

[8] Functionally, this is no different than a warrantless arrest, and a Sheriff, of course, does not act as an arm of the state courts in carrying out such arrests.

such circumstances, Oklahoma law does not compel the Defendant Sheriffs to execute the warrants, given that they were not issued by "lawful authorities." For example, in *Burns v. State*, the Criminal Court of Appeals of Oklahoma found that a warrant could not be lawfully executed, even though it was issued by a judge, because the person who had obtained it was not employed by a sheriff and did not swear to the allegations in the request, creating a risk a false statements. 220 P.2d 473, 475-76 (1950).

Analogously, under longstanding precedent, law enforcement officers are liable for executing unlawful warrants despite the fact that a court issued them, when, among other circumstances, "the magistrate wholly abandoned his judicial role" or the warrant is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *United States v. Leon*, 468 U.S. 897, 923 (1984) (citations and quotation omitted); *see also Rathbun v. Montoya*, No. 14-1352, 628 F. App'x. 988, 993–94 (10th Cir. Oct. 16, 2015) (unpublished). "[T]he fact that a neutral magistrate has issued a warrant" authorizing the allegedly unconstitutional search or seizure "does not end the inquiry into objective reasonableness." *Messerschmidt v. Millender*, 565 U.S. 535, 547 (2012).

Here, Plaintiffs allege that magistrates have abandoned their judicial role by rubber-stamping warrants at Aberdeen's request, and the warrants themselves lack any indicia of probable cause whatsoever. No reasonable officer could rely on the warrants, and the Defendant Sheriffs cannot claim that the mere existence of warrants they know to be illegal and invalid rendered them wholly without discretion. The decision to enforce unconstitutional warrants accordingly fell within each Defendant Sheriff's discretion, and was not mandated by law. The Sheriffs may each therefore be held liable under *Monell*.

Further, the Tenth Circuit has noted that decisions regarding the execution of warrants fall within the policymaking authority of sheriffs. In *Myers*, the defendant sheriff obtained a court order authorizing him to take a mentally ill man into custody. 151 F.3d at 1315. Despite that order, the Tenth Circuit stated that, if the decision to enter an apartment to execute the order had "resulted in a constitutional violation, the County would be liable." *Id.* at 1319 ("[T]here is no dispute in this case that the County, through Sheriff Sharp, was the 'moving force' behind the decision to enter the apartment."). In other words, a court order does not inoculate law enforcement from its own independent constitutional obligations when executing a warrant or detaining someone.

3. The Tulsa Sheriff Has Final Policymaking Authority Over the Challenged Detention Practices

Defendant Sheriffs are also the final policymakers for their illegal post-confinement practices of jailing debtors who are too poor to pay a fixed sum required for their release, SAC ¶ 65, which are entirely within the Sheriffs' control and discretion of law enforcement. Defendant Sheriffs are the final policymaker with respect to the jail where the Sheriffs hold individuals. *See Lopez v. LeMaster*, 172 F.3d 756, 763 (10th Cir. 1999). Further, the arrestees end up in that jail only because of practices (just described) that fall within the policymaking authority of the Defendant Sheriffs.

Furthermore, Defendant Sheriffs attempt to evade responsibility by arguing that there is no "agency relationship" between the Sheriffs and Aberdeen, and by stating that they "are not liable . . . for Aberdeen's conduct." Doc. 234 at 24. This assertion misunderstands Plaintiffs' claims. Plaintiffs do not allege that Defendant Sheriffs—acting in their official capacity—are liable for Aberdeen's conduct, they allege that the Sheriffs played an active role in inflicting Plaintiffs' injuries by entering into the Agreement with Aberdeen and enabling Aberdeen's extortion scheme

by executing unconstitutional debt-collection arrest warrants. These allegations clearly establish Defendant Sheriffs' personal participation in the unconstitutional scheme and do not rely on vicarious liability through Aberdeen.

III. Plaintiffs' Allegations Are Consistent with Public Records

The County Sheriffs ask this Court to dismiss Plaintiffs claims because judicially noticeable records in Plaintiff Kendallia Killman's and Ira Lee Wilkins' criminal and traffic cases in Oklahoma state courts "demonstrate that the only factual allegations made against these County Sheriffs are false." Doc. 234 at 26. For the reasons discussed in Plaintiffs' Opposition to the Sheriffs' Individual Capacity Motion to Dismiss (Brief A), Section V at 21, this is wrong.

IV. Plaintiffs Have Stated a Claim for Relief Against Each County Sheriff Officially

The County Sheriffs assert that the Second Amended Complaint amounts to a "shotgun pleading" and uses "collective allegations" that fail to provide fair notice of the challenged wrongful conduct. Doc. 234 at 34, 35. That contention is incorrect. Plaintiffs have pled that each Defendant Sheriff has the same two unlawful policies: "[e]ach Defendant Sheriff's office authorized the Sheriffs' Association to enter into the contract for debt collection services with Aberdeen on the Sheriff's behalf" and "each of the Sheriff Defendants" uses the power of arrest to collect court debts. *See* SAC ¶ 30. It is not improperly "collective" to plead that multiple defendants have engaged in the same type of unconstitutional conduct. Nothing in Rule 8's notice requirement demands that Plaintiffs list allegations against each defendant in separate paragraphs.

Moreover, the County Sheriffs undermine their own claim of lack of notice. They spend much of their brief arguing that their authorization of the use of Aberdeen to collect debt does not violate due process neutrality principles. And they state that "as pled, it cannot be the 'policy and

procedure' of any Defendant (*besides these County Sheriffs*) to execute warrants." Doc. 234 at 34-35 (emphasis added). Precisely so.

V. No Jurisdictional or Abstention Doctrines Bar Plaintiffs' Claims

The County Sheriffs argue that this Court lacks subject-matter jurisdiction to hear Plaintiffs' claims by adopting and incorporating the arguments in the Oklahoma County Sheriff's Motion to Dismiss (Doc. 215) regarding the applicability of *Rooker-Feldman*, *Younger*, and *Heck v. Humphrey* to this case. Doc. 234 at 35-37. These doctrines do not bar this Court from deciding Plaintiffs' claims.

A. Neither the *Rooker-Feldman* Nor *Heck* Doctrines Bar Relief to Plaintiffs

Defendants' arguments that Plaintiffs' claims are barred by the *Rooker-Feldman* and *Heck* doctrines rely on mischaracterizing Plaintiffs' claims as a challenge to their state court convictions and sentences. But despite Defendant Taylor's efforts to confuse the issue, Plaintiffs make no such challenge. There is no dispute about whether Plaintiffs owe money to the state. Rather, Plaintiffs challenge Defendants' extortionate and constitutionally infirm methods of post-conviction debt-collection. *Rooker-Feldman* and *Heck*, therefore, do not apply.

1. Rooker-Feldman Does Not Apply

Rooker-Feldman bars federal courts from hearing "cases brought by state-court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). "In other words, an element of the claim must be that the state court wrongfully entered its judgment." *Campbell v. City of Spencer*, 682 F.3d 1278, 1283 (10th Cir. 2012).

Plaintiffs here do not seek a finding that "the state court wrongfully entered its judgment" against them. Nowhere in the Second Amended Complaint do Plaintiffs allege that they were wrongly convicted of the offenses for which they owe money, nor do they challenge the sentences imposed by the state court or seek any kind of review of those sentences. *See Mayotte v. U.S. Bank Nat'l Ass'n for Structured Asset Inv. Loan Trust Mortg. Pass-Through Certificates, Series 2006-4*, 880 F.3d 1169, 1174 (10th Cir. 2018) (*Rooker-Feldman* applies only when the federal action "tries to *modify or set aside* a state-court judgment because the state proceedings should not have led to that judgment." (emphasis in original)). Plaintiffs also do not advance any claim related to whether they had the ability to pay at the original time the state court assessed fines, fees, and costs against them.

Rather, this case challenges debt-collection practices commenced *subsequent* to any conviction or sentencing—including threats, arrests, and confinement without inquiry into ability to pay—which have no bearing on the validity of their criminal convictions or the amount of fines, fees, and costs originally assessed. *See Powers v. Hamilton Cty. Pub. Defender Comm'n*, 501 F.3d 592, 606 (6th Cir. 2007) (holding *Rooker-Feldman* "has no bearing" where plaintiff did "not allege that he was deprived of his constitutional rights by the state-court judgment," but rather challenged the public defender's practice of failing to request indigency hearings for clients facing jail time for non-payment of court-imposed fines). Adjudicating Plaintiffs' claims would not in any way invalidate the state court judgments of conviction that gave rise to the court debt.

In an attempt to muddy the waters, Defendants suggest that, even if Plaintiffs do not attempt to disturb final state court judgments, their claims are "inextricably intertwined" with such judgments and are therefore precluded on that basis. Doc. 215 at 11. But that is emphatically not the law. The Tenth Circuit clarified in *Campbell* that *Rooker-Feldman* bars only direct challenges

to state court judgments, not claims that arguably may be "inextricably intertwined" with those judgments. *See Campbell*, 682 F.3d at 1283 ("("It is unclear whether a claim could be inextricably intertwined with a judgment other than by being a challenge to the judgment. . . . We think it best to follow the Supreme Court's lead, using the *Exxon Mobil* formulation and not trying to untangle the meaning of *inextricably intertwined.*"). None of Plaintiffs' claims about extortionate debt collection processes is "inextricably intertwined" with any state court judgment, but even if it were, binding precedent holds that the doctrine applies only where the source of the injury is the judgment itself.[9]

Further, Defendants' assertion that "Plaintiffs' complaints regarding the imposition of costs and fines" could have been raised on direct appeal (Doc. 215 at 12) is specious for the same reasons discussed above. An appeal to the Court of Criminal Appeals would have allowed Plaintiffs to challenge their convictions or sentences, not the post-sentencing practices they *actually* challenge in this lawsuit. Accordingly, Plaintiffs have not "circumvent[ed] numerous opportunities," Doc. 215 at 12, to challenge what is at issue here—*i.e.*, that Defendants,

[9] *Kline v. Biles*, 861 F.3d 1177, 1180 (10th Cir. 2017), which Defendant Taylor cites (Doc. 215 at 11), is not to the contrary. The Tenth Circuit in *Kline* adopted the district court's analysis and holding. *Kline*, 861 F.3d at 1182. The district court, in turn, stated that *Rooker-Feldman* barred two types of claims: (1) those "actually decided by a state court" and (2) those "inextricably intertwined with a prior state-court judgment." *Kline v. Biles*, No. 2:15-CV-09335-DGK, 2016 WL 6680940, at *4 (D. Kan. Nov. 14, 2016) (citation and quotation marks omitted). But the district court then defined the "inextricably intertwined" standard as covering claims that a "state-court judgment *caused*, actually and proximately, the *injury*" at issue. *Id.* at *6 (quoting *Tal v. Hogan*, 453 F.3d 1244, 1256 (10th Cir. 2006) (emphasis in *Tal*)). That is the same standard as the one articulated in *Campbell*. And the district court then applied that standard to find the plaintiff in *Kline* could not challenge the deprivation of his law license as having occurred without due process because that would directly challenge the "Kansas Supreme Court's decision suspending his law license." *Id.* This is no different from the (correct) standard Plaintiffs ask this Court to apply. In short, the stray use of the term "inextricably intertwined" in the Tenth Circuit's decision in *Kline* should not be taken as an invitation to stretch the *Rooker-Feldman* doctrine beyond its current boundaries.

collectively, sought, issued, and executed warrants for Plaintiffs' arrest and confinement in violation of Plaintiffs' statutorily and constitutionally-protected rights. The crux of the matter is that Defendants' scheme ensures that people are arrested and incarcerated for non-payment many days *before* they receive even a theoretical opportunity to protest their confinement in state court.

2. *Heck* Does Not Bar Relief

Defendants claim that Plaintiffs' suit is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because "fines and court costs are a part of the penalty imposed by a court at sentencing." Doc. 215 at 17. That is clearly wrong. *Heck* held that, when habeas relief is available, a prisoner cannot evade such proceedings by pursuing a civil suit that, if successful, would undermine the legitimacy of her criminal conviction or sentence. *Id.* at 487. By its own terms, then, *Heck* does not apply here for two reasons. First, the relief sought does not call into question any plaintiff's conviction or sentence. Second, and perhaps even more fundamental, habeas relief is not available to Plaintiffs here because, as a matter of law, court-imposed fines and fees are not challengeable in a habeas action.

To the first point, the *Heck* doctrine addresses a concern that does not apply here: using a civil suit to overturn a "conviction or sentence." *Heck*, 512 U.S. at 487. *Heck* thus applies when a person seeks a ruling that "would *necessarily* imply the invalidity of his conviction or sentence." 512 U.S. at 487 (emphasis added). Federal courts have therefore consistently rejected application of *Heck* to cases that, like the one at bar, merely seek to ensure that court debt is collected in a constitutional way, as opposed to challenging the underlying conviction. *See, e.g.*, *Powers*, 501 F.3d at 604; *Cain v. City of New Orleans*, 186 F. Supp. 3d 536, 548 (E.D. La. 2016); *Fant v. City of Ferguson*, 107 F. Supp. 3d 1016, 1028 (E.D. Mo. 2015). The violations alleged here—specifically including the extortion scheme, the threats of jail, and the failure to consider Plaintiffs'

ability to pay before converting a fine into a jail sentence—simply do not threaten to invalidate their sentences. That is because a "judgment in Plaintiffs' favor would not necessarily demonstrate the invalidity of Plaintiffs' underlying [] convictions or fines, but only the City's procedures for enforcing those fines." *Fant*, 107 F. Supp. 3d at 1028.

Defendants nonetheless argue otherwise on two tenuous bases. First, Defendants miscast Plaintiffs' claims asserting that "challenge the validity of their sentences by claiming that 'exorbitant' costs and fines were imposed and that the sentencing judges failed to follow the procedures mandated by the Rules of the Court of Criminal Appeals." Doc. 215 at 17-18. At the risk of redundancy: Plaintiffs bring no such claims. They challenge only the methods used to collect debt *after* fines, fees, and costs are assessed.

Second, Defendants contend that Plaintiffs' claims imply the invalidity of their guilty pleas and, therefore, a ruling in their favor would undermine their convictions. Doc. 215 at 18-19. To support this assertion, Defendants take a detour into the basics of contract law. Doc. 215 at 18-19. But none of this changes the simple fact that no Plaintiff in this lawsuit has challenged her conviction or sentence—either directly or by implication. Moreover, a plea agreement could not possibly bar a person from filing a lawsuit about unconstitutional treatment by private and public debt-collectors years after the case concluded, as is the case here. Taken to its logical conclusion, Defendants' argument would mean that a criminal defendant who pleads guilty could never complain of any collateral consequence resulting from the sentence. For example, a prisoner could not challenge unconstitutional conditions related to her confinement.

Further, *Heck* is inapplicable because a habeas action here would not allow Plaintiffs to vindicate their constitutional rights: that is, "the payment of a restitution or a fine . . . is not the sort of 'significant restraint on liberty' contemplated in the 'custody' requirement of the federal habeas

statutes." *Erlandson v. Northglenn Mun. Court*, 528 F.3d 785, 788 (10th Cir. 2008). In cases such as this, where Plaintiffs have no viable way to vindicate their federal rights through habeas, the Tenth Circuit has specifically recognized that *Heck* does not bar relief. *See Cohen v. Longshore*, 621 F.3d 1311, 1317 (10th Cir. 2010) (holding petitioner who has no available remedy in habeas, through no lack of diligence on his part, is not barred by *Heck* from pursuing a § 1983 claim).

As Defendants point out, Plaintiffs *do* challenge the validity of "extra debts" imposed after sentencing, Doc. 215 at 18—*i.e.*, the 30 percent penalty surcharge assessed by the clerk when a case is transferred to Aberdeen for collection. SAC ¶¶ 5, 55, 361. But, critically, this surcharge is not a part of the state court judgment. Under Oklahoma law, any time an arrest warrant is "referred" to a private entity, a 30 percent penalty surcharge is automatically added. SAC ¶ 55; Okla. Stat. tit. 19, § 514.5(a). In this case, after referring a case to Aberdeen, the clerk enters the penalty surcharge on the docket *without an order signed by the judge*. *See* SAC ¶¶ 35-37. No notice is even given to the debtor when the surcharge is added. The surcharge, once collected, belongs to OSA in the first instance, and a portion of the money collected may be allocated to Aberdeen as compensation, but no portion is directed to the court as payment for the fines and fees assessed as part of the sentence. SAC ¶ 55; Okla. Stat. tit. 19, § 514.5. In sum, this surcharge—which is assessed by the clerk after the sentence has been determined and which does not go toward paying off any fines or fees associated with the sentence—is not part of the state court judgment and therefore cannot implicate *Heck* (or *Rooker-Feldman*).

B. Plaintiffs' Claims Are Not Barred by the *Younger* Doctrine

Defendant Sheriffs argue that this court should abstain from adjudicating Plaintiffs' § 1983 claims under *Younger v. Harris*, 401 U.S. 37 (1971). Doc. 215 at 12. But "only exceptional circumstances" not present here "justify a federal court's refusal to decide a case in deference to

the States" pursuant to the *Younger* doctrine. *New Orleans Public Service, Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 368 (1989). For *Younger* abstention to apply, each of three requirements must be met: (1) an ongoing state judicial proceeding that warrants due deference, (2) an adequate opportunity to raise federal claims in the state proceedings, and (3) the presence of an important state interest. *Planned Parenthood of Kansas v. Andersen*, 882 F.3d 1205, 1221 (10th Cir. 2018). This case meets none of those three requirements.

1. There Are No Ongoing State Proceedings That Are Due Deference

In an attempt to satisfy the first *Younger* requirement, Defendants claim that, because the imposition of court costs is part of the sentence imposed by the state court, the criminal proceedings are "ongoing" until the debtor pays in full. *See, e.g.*, Doc. 215 at 13. But that is not the law. "[A]n incomplete sentence, such as an undischarged term of imprisonment, probation, or parole, does not constitute an 'ongoing state judicial proceeding' for purposes of *Younger* abstention."[10] *Rodriguez*, 191 F. Supp. 3d at 763 (citing *Trombley v. Cty. of Cascade, Mont.*, 879 F.2d 866 (9th Cir. 1989) (no ongoing proceeding when plaintiff "is currently out on parole")); *Almodovar v. Reinder*, 832 F.2d 1138, 1141 (9th Cir. 1987) ("Probation is not a pending criminal action for *Younger* purposes."). Here, the criminal "proceedings" against Plaintiffs ended when they were convicted and fines were imposed at sentencing. That Plaintiffs still owe money to the government is no more relevant in this context than the fact that plaintiffs in other cases still had time left their prison sentences or were otherwise under state supervision. *See Rodriguez*, 191 F. Supp. 3d at 763.

[10] Additionally, as explained above, certain fees are imposed by clerks of courts and cost administrators *after* a sentence is entered and without the entry of an order or judgment from a judge. Those fees are not part of a sentence for purposes of *Younger* or for any other purpose.

Even were the "proceedings" at issue "ongoing"—and they are not—they are not due deference under *Younger*. Proceedings receive such deference only in three "exceptional" circumstances: when a plaintiff seeks to enjoin a pending state 1) criminal prosecution; 2) civil enforcement proceeding closely related to and in aid of state criminal statutes, such as nuisance abatements; or 3) proceeding "uniquely in furtherance of the state courts' ability to perform their judicial functions," such as ongoing contempt proceedings. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013). This case presents none of those "exceptional" circumstances; it is about civil debt collection that has been contracted out to a private company. Defendants do not cite any case in which *Younger* has been applied to post-judgment debt collection. And because Oklahoma law provides that such debt is collected in the same way as any civil debt, Okla. Stat. tit. 28, § 101 ("the same remedies shall be available for enforcement . . . as are available to any other judgment creditor"), ruling in Defendants' favor would have the effect of extending *Younger* to *all* civil debt collection—a dramatic expansion of a purposefully limited doctrine.

2. There Are No State Proceedings at Which Plaintiffs Could Raise Their Claims Prior to Suffering the Injury

Younger abstention is improper for another, independent reason: Plaintiffs do not have an opportunity to raise their federal claims prior to suffering the injury they seek to redress, *i.e.*, unconstitutional jailing. In *Gerstein v. Pugh*, 420 U.S. 103, 107 n.9 (1975), the Supreme Court explained that *Younger* is inapplicable when arrestees complain about the legality of detention that occurs *before* the arrestee is brought to court. The reason for this is obvious: if the constitutional violation complained of occurs prior to the chance to challenge it in state court, there is no proceeding with which a federal court could interfere.

This case fits easily within *Gerstein*'s holding. The gravamen of Plaintiffs' claims is that they are jailed based on arrest warrants sought by Aberdeen or local officials *before* there is *any*

proceeding at which they can make argument or present evidence concerning their ability to pay. The availability of a court proceeding *after* Plaintiffs suffer the constitutional harm of being jailed is not adequate to prevent the harm that they would already have suffered. As the Fifth Circuit explained in the opinion upheld in *Gerstein,* "no remedy would exist" if arrestees had to wait until a later hearing, because the challenged jailing "would have ended as of [that] time." *Pugh v. Rainwater,* 483 F.2d 778, 782 (5th Cir. 1973). Federal courts have repeatedly rejected similar *Younger* arguments where the alleged harm occurred prior to plaintiffs' ability to challenge the constitutional violation. *See, e.g.*, *ODonnell v. Harris Cty., Texas,* 892 F.3d 147, 156 (5th Cir. 2018); *Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp. 3d 758, 766 (M.D. Tenn. 2015) (finding *Younger* abstention inapplicable because "[t]he harm alleged—that probationers do not receive inquiries into indigency as required by the Fourteenth Amendment—has been inflicted before a probationer could voice any constitutional concerns").

Defendants further assert that the state appellate process is the appropriate forum for review of court costs and fees and already executed debt-collection arrest warrants, *see* Doc. 215 at 13-14, but this argument misunderstands Plaintiffs' claims. Although a challenge to the imposition or the amounts of their fines, court costs, or fees may be heard on appeal, Plaintiffs actually seek an order from this Court that Defendants cannot arrest and detain them without the constitutionally required determination that any nonpayment is willful or that there are no alternatives to incarceration. During the course of a direct appeal, no court considers how a criminal fine or fee will be collected at some indeterminate point in the future. The issue is thus entirely collateral to the merits of any issue that could be raised in a direct appeal and is not barred by *Younger*. *See*

Younger, 401 U.S. at 46 ("[T]he threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single prosecution."). [11]

Nor can Plaintiffs seek such an order in the state court "cost docket" proceedings that Defendants claim provide for continuing review of indigency. The cost docket, at most, considers what a criminal or traffic defendant can pay at the moment the defendant appears (*see* SAC ¶ 130); it is not a forum in which constitutional claims relating to the procedures used to collect the debt in the future could be raised. This is ingrained in the Rules of the Oklahoma Court of Criminal Appeals, which provides for a "judicial determination . . . to the defendant's ability to *immediately* satisfy the fines and costs." *See* Okla. Ct. Crim. App. R. 8.1 (emphasis added). To put it more concretely, for any number of reasons, a defendant may be financially able to pay the fine imposed on the day of his court appearance but may lose that ability the day after. Constitutionally-speaking, Defendants cannot, weeks or months later, arrest and jail that defendant for nonpayment without first assessing whether his delinquency results from an inability to pay. But that is precisely what Defendants currently do—detaining debtors essentially at Aberdeen's whim without first providing any opportunity to be heard in a Rule 8 proceeding or otherwise.

Further, even if Plaintiffs could initiate cost dockets proceedings to resolve these issues—and they cannot—*Younger* does not impose such an exhaustion requirement. As a general matter, § 1983 imposes no exhaustion requirement. *See Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 498 (1982). There is a narrow exception when *Younger* abstention is at issue, but that exception applies only when the state proceedings at which a federal plaintiff could have raised

[11] Although Plaintiffs challenge the subsequent imposition of the 30% penalty surcharge, there is no state procedure for challenging this addition at the time of sentencing (before it has been imposed) or at the time of imposition. Indeed, there is not even any notice to the debtor that a surcharge has been applied.

her claims are "coercive" such that the federal plaintiff must participate. *Brown ex rel. Brown v. Day*, 555 F.3d 882, 890 (10th Cir. 2009).[12] But it does not apply to "remedial" proceedings that the federal plaintiff (in theory) could have initiated to gain some sort of relief. *Id.* There is thus no duty on Plaintiffs to initiate cost docket proceedings.

3. The Current Scheme Does Not Serve an Important State Interest

Finally, although the state plainly has a legitimate interest in pursuing debts owed, no important state interest is served by Defendants' current debt-collection scheme. In fact, the practices challenged by Plaintiffs—whereby Defendants arrest people who owe court debts without inquiry into whether their non-payment was willful—violate not only federal but also state law. Okla. Ct. Crim. App. R. 8.4 ("If the defendant fails to make an installment payment when due, he/she must be given an opportunity to be heard as to the refusal or neglect to pay the installment when due. If no satisfactory explanation is given at the hearing on failure to pay, the defendant may then be incarcerated."). No legitimate government interest can be served by a system that, like Defendants', is in open violation of the state's own laws.

4. At a Minimum, Plaintiffs Damages Claims Should Proceed

Finally, even if *Younger* barred Plaintiffs' claims for equitable relief because of an ongoing state proceeding, it would not bar Plaintiffs' damages claims. *Younger* extends to federal claims for monetary relief only if a judgment for the plaintiff would have "preclusive effects on a pending state-court proceeding." *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1228 (10th Cir. 2004).

[12] This operates, in other words, like a waiver principle. If the federal plaintiff was involved in coercive state proceedings that would be due *Younger* deference, the plaintiff cannot fail to raise an issue and then, after the state proceedings come to a close, raise that issue in federal court. This is akin to the rule that, when *Younger* applies to a trial court proceeding, a plaintiff must first exhaust state appellate proceedings before coming to federal court. *See Huffman v. Pursue, Ltd.*, 420 U.S. 592, 609 (1975).

The damages that Plaintiffs seek would not preclude Defendants from their ongoing debt-collection efforts. If this court were to find that these debt-collection practices constitute an ongoing proceeding for *Younger* purposes and that damages would have preclusive effect on those proceedings, the correct course of action would be to stay, rather than dismiss, the monetary claims. *See Deakins v. Monaghan*, 484 U.S. 193, 202 (1988) (holding that a district court "has no discretion to dismiss rather than stay claims for monetary relief that cannot be redressed in the state proceeding").

VI. Plaintiffs Have Standing for Their Federal Claims

Defendant Sheriffs, again incorporating Oklahoma County's brief by reference, argue that Plaintiffs lack Article III standing. Doc. 234 at 37. Specifically, Defendants contend that, because the named Plaintiffs in this class action lawsuit do not make specific allegations that the County Sheriffs injured Plaintiffs directly, there can be no standing for the class. Doc. 215 at 16. This is wrong.

Defendant Sheriffs all knowingly participate in the same scheme, whereby they enable and endorse Aberdeen's profit-seeking conduct through "execut[ing] the arrest warrants threatened and obtained by Aberdeen, Inc." and transferring cases to Aberdeen for collection. SAC ¶ 283. When a plaintiff alleges harm at the hands of a conspiracy, the plaintiff has standing to sue all participants in the conspiracy, regardless of whether the plaintiff interacted directly with each individual participant. *See, e.g.*, *Rios v. Marshall*, 100 F.R.D. 395, 404 (S.D.N.Y. 1983) ("[A] plaintiff injured by one of the defendants as a result of the conspiracy has standing to sue the co-conspirator defendants even though that plaintiff had no direct dealings with the co-conspirators. Such a plaintiff therefore has standing to represent a class of individuals injured by any of the defendants as part of the conspiracy."); *Brown v. Cameron-Brown Co.*, 30 Fed. R. Serv. 2d 1181 (E.D. Va.

1980), *affirmed in relevant part, rev'd on other grounds*, 652 F.2d 375 (4th Cir. 1981) ("If, however, all defendants . . . are linked together by virtue of participation in a conspiracy . . . , the requisite nexus between the defendants and the injured plaintiffs may be established."). This stems from the foundational tort law principle that each individual member of a conspiracy is jointly and severally liable for the damages caused by the conspiracy. *See, e.g.*, *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 113 (D.N.J. 2012); *Commercial Standard Ins. Co. v. Liberty Plan Co.*, 283 F.2d 893, 894 (10th Cir. 1960).

Under this standard, Plaintiffs have standing to seek relief against Defendant Sheriffs. Plaintiffs have alleged that *all* Defendant Sheriffs have entered into a conspiracy that has harmed the named Plaintiffs. *See, e.g.*, SAC ¶¶ 292, 315-16. This conspiracy underpins Plaintiffs' RICO claims and Plaintiffs' claims in Count Six—challenging Aberdeen's improper financial incentives and Defendant Sheriffs' role in enabling it—and Count Seven—challenging all Defendants' onerous debt collection practices. Thus, because Plaintiffs have sufficiently alleged the existence of a conspiracy, Plaintiffs have standing to sue all of the conspirators.

Even if the Court finds no conspiracy, Plaintiffs still have standing against Defendant Sheriffs for their § 1983 claims. Defendants do not argue that no member of the putative class has been injured by his actions, but only that the named plaintiffs have not. But members of the class have been injured by each of the Sheriffs in the same way, and so the named Plaintiffs have Article III standing to bring these claims, on behalf of the class, through the "juridical link" doctrine. That is, "if all the defendants took part in a similar scheme that was sustained either by a contract or conspiracy, or was mandated by a uniform state rule, it is appropriate to join as defendants even parties with whom the *named* class representative did not have direct contact." *Payton v. County of Kane*, 308 F.3d 673, 679 (7th Cir. 2002), *cert. denied* 540 U.S. 812 (2003). In such

circumstances, standing exists "even though the representative was injured by the conduct of only one of the" defendants. 7AA Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1785.1. This is because the "defendants [a]re so closely related that they should be treated substantially as a single unit." *Id.*

The reasoning underlying the juridical link doctrine is straightforward. As stated by the Eleventh Circuit:

> Other named plaintiffs could be supplied to match with each named defendant but it would be unwieldy to do so. Each plaintiff and the defendants have connection to each other. . . . The case is simpler and more economical with the class of plaintiffs and the named defendants. . . . No court would want to have 644 separate lawsuits.

Moore v. Comfed Sav. Bank, 908 F.2d 834, 838 (11th Cir. 1990).

Payton v. County of Kane is instructive on this point. There, the plaintiffs brought a class action challenging bail fees in nineteen Illinois counties, although the class representatives had been injured only in two. The Seventh Circuit found that standing was established through the juridical link doctrine because, as explained by the Supreme Court, "class certification issues are . . . logically antecedent to Article III concerns." *Payton*, 308 F.3d at 680 (quoting *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 831 (1999)).[13]

[13] *See also, e.g., La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461, 466 (9th Cir. 1973) (doctrine preventing a plaintiff without claim from bringing suit against a defendant on behalf of another does not apply where "all injuries are the result of a conspiracy or concerted schemes between the defendants" or where "all defendants are juridically related in a manner that suggests a single resolution of the dispute would be expeditious"); *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 424 (6th Cir. 1998) ("[O]nce a potential ERISA class representative establishes his individual standing to sue his own ERISA-governed plan, there is no additional constitutional standing requirement related to his suitability to represent the putative class of members of other plans to which he does not belong."); *Stewart v. Bureaus Inv. Grp. No. 1, LLC*, 24 F. Supp. 3d 1142, 1152–56 (M.D. Ala. 2014) (holding that the "juridical link theory supplies standing" where plaintiff alleged that "individual Defendants . . . engaged in the same allegedly intention and deceptive scheme of suing debtors . . . without authority").

This case is factually analogous to *Payton*, and the reasoning underlying both it and *Moore* easily applies here. All Defendant Sheriffs take part in a similar scheme sustained by a single multiple county-wide contract that applies to "participating County Sheriffs of Oklahoma," *i.e.*, Sheriff Defendants in this action. SAC, Ex. A at 1. The facts supporting Plaintiffs' claims against these sheriffs and the ensuing injuries are materially identical for each Sheriff, as they have each authorized cases to be transferred to Aberdeen for debt collection.[14] SAC ¶ 30. And, as a practical matter, the sheer number of defendants engaged in the same unlawful activity makes it infeasible to add individual named plaintiffs for each county or to bring separate lawsuits.

Plaintiffs recognize that this Court declined to apply the juridical link doctrine to find standing in *Hunnicutt v. Zeneca, Inc.*, No. 10-CV-708-TCK-TLW, 2012 U.S. Dist. LEXIS 133634, at *7 n.3 (N.D. Okla. Sep. 19, 2012). But *Hunnicutt* is factually distinct from the present case—so much so that the plaintiffs there explicitly disclaimed reliance on the doctrine. The juridical link doctrine supplies standing where, as in *Moore* and the present case, large numbers of defendants make the addition of class representatives or separate law suits unwieldy. *Hunnicutt*, by contrast, involved only two defendants, and this Court recognized that the juridical link doctrine does not apply in such circumstances. *Id.* at *12 n.5. Here, adding over 50 named plaintiffs or bringing dozens of separate law suits would be unwieldy and unreasonable, and this Court should find that the juridical link doctrine provides standing for the class representatives to sue all the Sheriff Defendants.

[14] Plaintiffs have only named all Sheriff Defendants in Counts Six and Seven, and have not advanced claims against all Sheriffs that vary from county to county.

CONCLUSION

Plaintiffs have standing to sue Defendant County Sheriffs in their official capacity and have pled claims against them for violating the Due Process Clause through their role in Aberdeen, Inc.'s impermissible financial bias in collecting debts and for violating the Equal Protection Clause through their role in subjecting individuals who owe court debts to onerous collection enforcement methods. The County Sheriffs' Official Capacity Motion to Dismiss should be denied.

Dated: November 30, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants who have appeared in this case.

/s/ Seth Wayne

EXHIBIT A

2010 Okla. Sess. Law Serv. Ch. 87 (H.B. 3242) (WEST)

OKLAHOMA 2010 SESSION LAW SERVICE

Fifty-Second Legislature, 2010 Second Regular Session

Additions are indicated by **Text**; deletions by ~~Text~~ .

CHAPTER 87
H.B. No. 3242
COUNTIES AND COUNTY OFFICERS--OUTSTANDING WARRANTS

An Act relating to counties and county officers; amending Sections 1 and 2, Chapter 254, O.S.L. 2003, as amended by Sections 2 and 3, Chapter 208, O.S.L. 2005 (19 O.S. Supp. 2009, Sections 514.4 and 514.5), which relate to outstanding warrants; modifying scope of certain contracts; modifying administrative costs for certain warrants; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

<< OK ST T. 19 § 514.4 >>

SECTION 1. AMENDATORY Section 1, Chapter 254, O.S.L. 2003, as amended by Section 2, Chapter 208, O.S.L. 2005 (19 O.S. Supp. 2009, Section 514.4), is amended to read as follows:

Section 514.4. A. Notwithstanding any other section of law, the county sheriffs of any Oklahoma county may enter into a private contract, pursuant to Section 85.41 of Title 74 of the Oklahoma Statutes. Such contract shall require the contractor to attempt to locate and notify persons of their outstanding misdemeanor **or failure-to-pay** warrants.

B. A person may make payment directly to the court, as allowed by law, or the contractor shall be authorized to accept payment on misdemeanor **or failure-to-pay** warrants by various means including, but not limited to, payment by phone, mail, or Internet, and in any payment form including, but not limited to, personal, cashier's, traveler's, certified, or guaranteed bank check, postal or commercial money order, nationally recognized credit or a debit card, or other generally accepted payment form. Any payment collected and received by the contractor shall be paid within fifteen (15) days to the court clerk of the entity that issued the outstanding misdemeanor **or failure-to-pay** warrant.

C. As provided for by this section, a person may pay in lieu of appearance before the court and such payment accepted by the court shall constitute a finding of guilty as though a plea of nolo contendere had been entered by the defendant as allowed by law and shall function as a written, dated, and signed plea form acceptable to the court. Such payment shall serve as a written waiver of a jury trial.

D. The court shall release the outstanding misdemeanor **or failure-to-pay** warrant upon receipt of all sums due pursuant to said warrant including the misdemeanor **or failure-to-pay** warrant, scheduled fine or sum due, all associated fees, costs and statutory penalty assessments, and the administrative cost pursuant to Section 514.5 of this title.

E. The provisions of any contract entered into by a county sheriff shall be administered by a statewide association of county sheriffs in Oklahoma. The county sheriff of any Oklahoma county may assign their right to contract to the statewide association administering the provisions of this contract.

F. The provisions of this section and Section 514.5 of this title shall be applicable to:

1. Any misdemeanor **or failure-to-pay** warrant issued or relating to any proceeding pursuant to the State and Municipal Traffic Bail Bond Procedure Act; ~~and~~

2. Any misdemeanor **or failure-to-pay** warrant issued that allows a defendant to resolve the matter by payment in lieu of a personal appearance in court**; and**

3. Any failure-to-pay warrant issued in a criminal case.

<< OK ST T. 19 § 514.5 >>

SECTION 2. AMENDATORY Section 2, Chapter 254, O.S.L. 2003, as amended by Section 3, Chapter 208, O.S.L. 2005 (19 O.S. Supp. 2009, Section 514.5), is amended to read as follows:

Section 514.5. A. Misdemeanor **or failure-to-pay** warrants referred to the contractor pursuant to Section 514.4 of this title shall include the addition of an administrative cost of ~~twenty percent (20%)~~ **thirty percent (30%)** of the outstanding misdemeanor **or failure-to-pay** warrant, scheduled fine or sum due, and all associated fees, costs and statutory penalty assessments. This administrative cost shall not be waived or reduced except by order of the court.

B. The administrative cost reflected in subsection A of this section, when collected, shall be distributed to the association administering the provisions of the contract, a portion of which may be used to compensate the contractor.

C. The monies collected and disbursed shall be audited at least once a year by a firm approved by the State Auditor and Inspector.

SECTION 3. This act shall become effective November 1, 2010.

Approved April 12, 2010.

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