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United States Court of Appeals
For the Eighth Circuit

No. 18-2982

Tamatrice Williams

Plaintiff - Appellant

v.

City of Sherwood

Defendant - Appellee

Appeal from United States District Court
For the Eastern District of Arkansas - Little Rock

Submitted: December 10, 2019
Filed: January 28, 2020

Before ERICKSON, ARNOLD, and KOBES, Circuit Judges.

ARNOLD, Circuit Judge.

More than two decades ago, Tamatrice Williams wrote four checks on insufficient funds in violation of Arkansas law. *See* Ark. Code Ann. § 5-37-302(a). She alleges that, as a result, she got "caught in a never-ending cycle of court proceedings" over the next twenty years in the Sherwood District Court, which resulted in numerous fines, arrests, and days in jail. She sued the City of Sherwood under 42 U.S.C. § 1983, claiming that it had jailed her without inquiring into whether she had the means to pay the fines imposed and without appointing counsel for her. The district court[1] dismissed Williams's claims on the ground that a judgment in her favor "would necessarily imply the invalidity of h[er] conviction or sentence," *see Heck v. Humphrey*, 512 U.S. 477, 487 (1994), and Williams appeals. Reviewing de novo, *see Mick v. Raines*, 883 F.3d 1075, 1078 (8th Cir. 2018), we affirm, though on a different ground. *See Duffner v. City of St. Peters*, 930 F.3d 973, 976 (8th Cir. 2019).

At this stage we accept the factual allegations in the complaint as true and view them in a light most favorable to Williams. *See Barton v. Taber*, 820 F.3d 958, 963 (8th Cir. 2016). According to Williams, she and others lined up for cattle-call appearances before

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[1] The Honorable James M. Moody Jr., United States District Judge for the Eastern District of Arkansas.

the judge of what was called the hot-check division of the Sherwood District Court. Some defendants faced new charges while others appeared for periodic "review hearings" to update their progress in making payments toward previously imposed fines. Proceedings were closed to the public, including family and friends. To be allowed inside the courtroom, defendants had to sign forms waiving representation by counsel.

Williams asserts in her complaint that the city "treated each review hearing based on [a] prior conviction as an opportunity to open a new, separate, stand-alone criminal case, thereby purportedly authorizing the court to impose new and duplicative court costs, fines, and fees on the same hot check defendant." So when someone failed to appear for a review hearing or failed to make payments toward a fine, the city would issue an arrest warrant and open a new criminal case, which allowed the city to impose fines above and beyond the statutory limit for a hot-check conviction. The city's police department, according to Williams, carried out the arrest warrants by tracking down defendants and ordering them to make payments on the spot or be taken to jail.

Williams alleges that there was no inquiry into whether defendants had the ability to pay the fines imposed. Instead, when defendants fell behind on payments, the judge would order them jailed for up to 120 days or until outstanding debts were paid. Williams maintains that fines and fees made up a significant portion of the city's revenue.

Williams also maintains that she and her family paid several thousand dollars in fines and that she has been taken to jail in front of her young children on several occasions: She estimates she has been arrested eight different times and spent 160 days in jail. Williams escaped the debt cycle when the judge released her from her outstanding obligations to the city a mere two days after a putative class action was filed against the city and the judge involving the same practices that Williams challenges here. *See Dade v. City of Sherwood*, 4:16-CV-602-JM-JJV. The judge and the city eventually settled the *Dade* lawsuit, agreeing, among other things, to inquire into a person's ability to pay fines, to provide clearer advice on the right to counsel, and to maintain publicly accessible video recordings of the proceedings in the hot- check court. In the settlement agreement the city agreed to be bound only to the extent it employs someone, or there is a city official, who has any involvement or control over the complained-of practices.

In *Granda v. City of St. Louis*, the plaintiff sued the City of St. Louis and a municipal judge after the judge jailed her for her daughter's truancy. 472 F.3d 565, 566 (8th Cir. 2007). After the case was dismissed, the plaintiff argued on appeal that the city was liable for the judge's decision because the judge was the final municipal policymaker regarding truancy matters. We explained, however, that even though the mayor appointed the judge, who was required by ordinance to report data to the mayor about ordinance violations and confer with city officials about ordinance enforcement, the judge was not a final municipal

policymaker, if he was a municipal policymaker at all. *Id*. at 568–69. We explained that the municipal court was a division of the state circuit court, where decisions of the municipal court could be reviewed. We also emphasized that the judge's jailing of the plaintiff "was a judicial decision made in a case that came before [the judge] on a court docket," and the plaintiff failed to cite a single case where a municipality had been held liable for such a decision. *Id*. at 569.

Williams's claims are somewhat different though not meaningfully so. Her counsel explained two important features of Williams's case at oral argument. First, despite occasionally broader language in her complaint, Williams's counsel said she was asserting that her constitutional rights were violated on account of an unconstitutional municipal policy, not a custom or practice. A claim against a municipality under § 1983 is sustainable only if there is alleged a constitutional violation "committed pursuant to an official custom, policy, or practice of the city." *See id.* at 568. Second, Williams's counsel was careful to emphasize that Williams was not alleging that the judge was the final policymaker here; instead, Williams alleges that the city council and mayor were the final policymakers and that the judge was merely an agent carrying out the city's unconstitutional policies.

We fail to see how this can be, at least in regard to judicial actions taken by a judge like the one in this case. We recognize that the city paid the judge's salary and funded the Sherwood District Court. But the judicial decisions of a duly elected judge are not the

kind of decisions that expose municipalities to § 1983 liability. Neither the city council nor the mayor has the power to set judicial policy for Arkansas district court judges or the power to ratify their judicial decisions, even if the city's "policymakers knew of the judge's conduct and approved of it." *See DeLeon v. City of Haltom City*, 106 F. App'x 909, 911 (5th Cir. 2004). Or as another circuit court has held, "[a] municipality cannot be liable for judicial conduct it lacks the power to require, control, or remedy, even if that conduct parallels or appears entangled with the desires of the municipality." *Eggar v. City of Livingston*, 40 F.3d 312, 316 (9th Cir. 1994).

Another difficulty with Williams's claims is that she merely speculates vaguely and conclusorily that the city council and mayor had developed unconstitutional policies. The only possible marker of a municipal policy that Williams identifies in her complaint is a city ordinance that created a position at the judge's request to help with serving the warrants associated with the hot-check court and thereby help bring in revenue. But such an ordinance demonstrates merely that events occurring in the court "parallel[ed] or appears entangled with the desires of the municipality," *see id.*, or that the city knew of and approved of the judge's conduct. *See DeLeon*, 106 F. App'x at 911. Critically, at no point does Williams identify an ordinance or other municipal action whereby the city directs someone to commit an act that is a constitutional violation or, with deliberate indifference to known or obvious consequences, directs someone to take an action that leads to a violation of constitutional rights. *See Hollingsworth v. City of St.*

Ann, 800 F.3d 985, 992 (8th Cir. 2015). Williams has not alleged that city policymakers deliberately set itself on a course that would lead to her constitutional rights being violated. *See Szabla v. City of Brooklyn Park*, 486 F.3d 385, 390 (8th Cir. 2007) (en banc).

Instead, Williams relies on conclusory assertions that the city council and mayor somehow created some unspoken policy and tasked the judge with carrying it out. But as another circuit recently explained in a case containing similar conclusory allegations, "any connection between the judicial acts and the [city officials] is too chimerical to be maintained." *McCullough v. Finley*, 907 F.3d 1324, 1335 (11th Cir. 2018). To the extent Williams argues that, by agreeing to act as an agent for the city, the judge and city necessarily conspired to violate constitutional rights, we do not think the allegations of any such conspiracy are specific enough to survive a motion to dismiss. *See Johnson v. Perdue,* 862 F.3d 712, 718 (8th Cir. 2017); *Marti v. City of Maplewood*, 57 F.3d 680, 685 (8th Cir. 1995). Vague allegations of a conspiracy to violate constitutional rights do not plausibly support a claim. *See McCullough*, 907 F.3d at 1334–35.

We find it insignificant that the city had previously settled the *Dade* lawsuit, a fact that at first glance seems to implicate the city in the goings-on in the hot-check court. But litigants settle lawsuits for a variety of reasons, especially when they are political actors sometimes subject to public pressure to act in a certain way. At no point did the city admit that it had devised, or was responsible for, an unconstitutional

policy; in fact, the settlement agreement indicates to the contrary.

We therefore uphold the district court's dismissal of Williams's claims about the court's failure to inquire into her indigency and failure to appoint counsel, along with her related, derivative claims about the practices in the Sherwood District Court.

Affirmed.

ATTORNEY FOR APPELLANT	ATTORNEYS FOR APPELLEE
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

TAMATRICE WILLIAMS PLAINTIFF

V. 4:18CV00097 JM

CITY OF SHERWOOD, ARKANSAS DEFENDANT

ORDER

Pending is the Defendant's motion to dismiss. (Docket #5). Plaintiff has responded and Defendant has filed a reply. For the reasons set forth herein, the motion is granted.

Plaintiff filed suit against the City of Sherwood, Arkansas pursuant to 42 U.S.C. § 1983 alleging that the City's post judgment municipal procedures to collect money from hot check defendants violated her constitutional rights. Plaintiff "alleges that [the City's] procedures for enforcing those costs, fees and fines, which included incarceration and threats of incarceration," constituted an unconstitutional municipal policy. ECF No. 1 ¶46. The City moves to dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678(2009). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. However, courts are "not bound to accept as true a legal conclusion couched as a factual allegation" and such "labels and conclusions" or "formulaic recitation[s] of the elements of a cause of action will not do." *Id*. (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (internal quotation marks omitted). The Court must accept as true all factual allegations set forth in the complaint, drawing all reasonable inferences in the plaintiff's favor. *See Ashley Cnty., Ark. v. Pfizer, Inc.*, 552 F.3d 659, 665 (8th Cir. 2009).

"Municipal liability under section 1983 is appropriate in cases where a municipal 'policy' or 'custom' causes the constitutional violation." *Braswell v. Washington Cty.*, No. 5:14-CV-05387, 2016 WL 1178795, at 9 (W.D. Ark. Mar. 23, 2016), *appeal dismissed* (June 14, 2016) citing, *Doe v. Washington Cnty.*, 150 F.3d 920, 922 (8th Cir. 1998); and *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978). To succeed on her claim, Plaintiff must establish that the city "acted to inflict an injury through an official proclamation of the municipality's officers (officials whose edicts or acts represent official policy) or through custom" and that she incurred "constitutional injury." *Braswell* at 9, citing, *Bechtel v.*

City of Belton, Mo., 250 F.3d 1157, 1160 (8th Cir. 2001).

Plaintiff alleges that the city's procedures for enforcing the "costs, fees and fines [from hot check violators] which included incarceration and threats of incarceration, were invalid and unconstitutional" ECF No. 1 ¶46; and, "that her injuries were caused by post-judgment procedures employed by [the city] to incarcerate persons, such as Plaintiff, who were unable to pay excessive costs, fees and fines" *Id.* at ¶47. Plaintiff "challenges the improper procedures that culminated in her post-judgment incarceration." *Id.* at ¶ 48. Plaintiff claims to have been arrested on approximately eight (8) occasions, resulting in about one-hundred and sixty (160) days of incarceration, from four (4) bounced checks. *Id* at ¶ 59. The latest incarceration began in December 2014 and ended in "late January, 2015." *Id.* at ¶ 62.

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Court held that, if a judgment in the plaintiff's favor would necessarily imply the invalidity of his conviction or sentence, then the plaintiff cannot bring a § 1983 claim until that conviction or sentence is invalidated by the highest state court or a federal habeas court. Plaintiff contends that she is not challenging her conviction or sentence, but instead, challenges the procedures through which she was fined and incarcerated. However, the Supreme Court in *Edwards v. Balisok*, 520 U.S. 641 (1997) applied *Heck* to a prisoner's due process challenge to the procedures of a prison disciplinary hearing which resulted in the deprivation of the prisoner's good-time credits and thus lengthened his confinement. As in *Heck*, the Supreme Court concluded that the

prisoner's claims, would "necessarily imply the invalidity of the punishment imposed" and held that the claim was "not cognizable under § 1983." *Id.* at 648. Finally, the fact that Plaintiff's incarceration was for a short time, does not preclude the applicability of *Heck*. In *Newmy v. Johnson*, 758 F.3d 1008, 1009 (8th Cir.) *cert. denied*, 135 S.Ct. 774, 190 L.Ed.2d 627 (2014) the Eighth Circuit examined whether *Heck* should apply where a plaintiff's alleged unconstitutional imprisonment was so short that *habeas* relief was, as a practical matter, unavailable. The Court concluded that *Heck* applies to bar a § 1983 action, even if the period of imprisonment was so short as to render habeas or other post revocation relief impossible.[1]

Applying *Heck*, the court finds that the favorable-termination rule bars Plaintiff's suit. If Plaintiff's challenge to the procedures imposed by the City through which Plaintiff was fined and incarcerated, were to succeed, it "would necessarily imply the invalidity of [her] conviction or sentence." *Heck*, 512 U.S. at 487.

For these reasons, the city's motion to dismiss is GRANTED.

IT IS SO ORDERED this 17th day of August, 2018.

/s/ James M. Moody Jr.

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[1] *See also Entzi v. Redmann*, 485 F.3d 998, 1003 (8th Cir. 2007) (quoting *Heck*, 512 U.S. at 490 n. 10) ("the principle barring collateral attacks–a longstanding and deeply rooted feature of both the common law and our own jurisprudence–is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated.").

James M. Moody Jr.
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-2982

Tamatrice Williams

Appellant

v.

City of Sherwood

Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Little Rock
(4:18-cv-00097-JM)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by panel is also denied.

March 18, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

STATUTES

42 U.S. Code § 1983. Civil Action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. §1979; Pub. L. 96–170, §1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, §309(c), Oct. 19, 1996, 110 Stat. 3853.)

Ark. Code 16-17-1113. Reorganization of local district courts to state district courts as of January 1, 2021

(a)

(1) Beginning January 1, 2021, the following cities and counties that are currently served by local district courts pursuant to § 16-17-901 et seq. shall be reorganized as state district courts and served by state district court judges as assigned.

(2) The new state district court judgeships created by this section shall become effective January 1, 2021, and shall be placed on the ballot to be elected in the 2020 nonpartisan judicial election from the newly constructed state district court district.

(3) The cities and counties that were previously served by local district courts and will be served by state district courts shall comply with the cost-sharing requirements established in § 16-17-1106, effective January 1, 2021.

(b)

(1) The Seventh Judicial District shall be composed of the counties of Franklin and Johnson.

(2) The Seventh District shall have six (6) departments as follows:

(A) One (1) located in Charleston;
(B) One (1) located in Ozark;
(C) One (1) located in Altus;
(D) One (1) located in Clarksville;
(E) One (1) located in Coal Hill; and
(F) One (1) located in Lamar.

(3) The Seventh Judicial District shall be served by one (1) state district court judge.
(4) The Seventh Judicial District judge shall be elected districtwide.
(5) The Seventh Judicial District court shall have districtwide jurisdiction.

(c)

(1) The Eleventh Judicial District shall be composed of the counties of Randolph, Sharp, and Lawrence.
(2) The Eleventh District shall have seven (7) departments as follows:
(A) One (1) located in Pocahontas;
(B) One (1) located in Ash Flat;
(C) One (1) located in Cherokee Village;
(D) One (1) located in Walnut Ridge;
(E) One (1) located in Hoxie;
(F) One (1) located in Black Rock; and
(G) One (1) located in Portia.
(3) The Eleventh Judicial District shall be served by two (2) state district court judges.
(4) The Eleventh Judicial District judges shall be elected districtwide.
(5) The Eleventh Judicial District courts shall have districtwide jurisdiction.

(d)

(1) The Twelfth Judicial District shall be composed of the counties of Logan, Yell, and Conway.
(2) The Twelfth District shall have nine (9) departments as follows:
(A) One (1) located in Morrilton;
(B) One (1) located in Menifee;
(C) One (1) located in Oppelo;

(D) One (1) located in Paris;
(E) One (1) located in Booneville;
(F) One (1) located in Magazine;
(G) One (1) located in Danville;
(H) One (1) located in Plumerville; and
(I) One (1) located in Dardanelle.

(3) The Twelfth Judicial District shall be served by one (1) state district court judge.

(4) The Twelfth Judicial District judge shall be elected districtwide.

(5) The Twelfth Judicial District court shall have districtwide jurisdiction.

(e) [Repealed.]

(f) [Repealed.]

(g)

(1) The Fifteenth Judicial District shall be composed of the counties of Jackson and Woodruff.

(2) The Fifteenth District shall have eight (8) departments as follows:

(A) One (1) located in Newport;
(B) One (1) located in Diaz;
(C) One (1) located in Swifton;
(D) One (1) located in Tuckerman;
(E) One (1) located in Augusta;
(F) One (1) located in Cotton Plant;
(G) One (1) located in McCrory; and
(H) One (1) located in Patterson.

(3) The Fifteenth Judicial District shall be served by one (1) state district court judge.

(4) The Fifteenth Judicial District judge shall be elected districtwide.

(5) The Fifteenth Judicial District court shall have districtwide jurisdiction.

(h) [Repealed.]

(i)

(1) The Seventeenth District is composed of the counties of Clay and Greene.

(2) The Seventeenth District has five (5) departments as follows:

(A) One (1) located in Paragould;

(B) One (1) located in Marmaduke;

(C) One (1) located in Corning;

(D) One (1) located in Piggott; and

(E) One (1) located in Rector.

(3) The Seventeenth District is served by one (1) state district court judge.

(4) The Seventeenth District judge is elected districtwide.

(5) The Seventeenth District court has districtwide jurisdiction.

(j)

(1) The Twenty-Fourth Judicial District shall be composed of the counties of Scott, Polk, and Montgomery.

(2) The Twenty-Fourth Judicial District shall have three (3) departments as follows:

(A) One (1) located in Waldron;

(B) One (1) located in Mena; and

(C) One (1) located in Mt. Ida.

(3) The Twenty-Fourth Judicial District shall be served by one (1) state district court judge.

(4) The Twenty-Fourth Judicial District judge shall be elected districtwide.

(5) The Twenty-Fourth Judicial District court shall have districtwide jurisdiction.

(k)

(1) The Twenty-Fifth District is composed of the counties of St. Francis and Cross.

(2) The Twenty-Fifth District has six (6) departments as follows:

(A) One (1) located in Forrest City;

(B) One (1) located in Madison;

(C) One (1) located in Palestine;

(D) One (1) located in Wynne;

(E) One (1) located in Cherry Valley; and

(F) One (1) located in Parkin.

(3) The Twenty-Fifth District is served by two (2) state district court judges.

(4) The Twenty-Fifth District judges are elected districtwide.

(5) The Twenty-Fifth District courts have districtwide jurisdiction.

(l)

(1) The Thirtieth District shall be composed of Lonoke County.

(2) The Thirtieth District shall have six (6) departments as follows:

(A) One (1) located in Cabot;

(B) One (1) located in Ward;

(C) One (1) located in Austin;

(D) One (1) located in Lonoke;

(E) One (1) located in England; and

(F) One (1) located in Carlisle.

(3) The Thirtieth District shall be served by two (2) state district court judges.

(4) The Thirtieth District court judges shall be elected districtwide.

(5) The Thirtieth District courts shall have districtwide jurisdiction.

(m)

(1) The Thirty-First District is composed of the counties of Pulaski and Perry.

(2) The Thirty-First District has twelve (12) departments as follows:

(A) One (1) located in Jacksonville, to be known as "Jacksonville District Court";

(B) Four (4) located in Little Rock, to be known as:

(i) "Little Rock District Court — First Division";

(ii) "Little Rock District Court — Second Division";

(iii) "Little Rock District Court — Third Division"; and

(iv) "Pulaski County District Court";

(C) One (1) located in Maumelle, to be known as "Maumelle District Court";

(D) Two (2) located in North Little Rock, to be known as:

(i) "North Little Rock District Court — First Division"; and

(ii) "North Little Rock District Court — Second Division";

(E) One (1) located in Sherwood, to be known as "Sherwood District Court";

(F) One (1) located in Wrightsville, to be known as "Wrightsville District Court";

(G) One (1) located in Cammack Village, to be known as "Cammack Village District Court"; and

(H) One (1) located in Perryville, to be known as "Perryville District Court".

(3) The Thirty-First District shall be served by eight (8) state district judges. All the following judges shall be elected districtwide and shall have districtwide jurisdiction:

(A) The Jacksonville District Court and the Maumelle District Court shall be served by one (1) judge;

(B) The Little Rock District Court — First Division shall be served by one (1) judge;

(C) The Little Rock District Court — Second Division shall be served by one (1) judge;

(D) The Little Rock District Court — Third Division, the Wrightsville District Court, and the Cammack Village District Court shall be served by one (1) judge;

(E) The North Little Rock District Court — First Division shall be served by one (1) judge;

(F) The North Little Rock District Court — Second Division shall be served by one (1) judge;

(G) The Pulaski County District Court shall be served by one (1) judge;

(H) The Sherwood District Court shall be served by one (1) judge; and

(I) The Perryville District Court shall be served by one (1) of the district court judges listed under subdivisions (m)(3)(A)-(H) of this section.

(n)

(1) The Thirty-Ninth Judicial District shall be composed of the counties of Ouachita and Columbia.

(2) The Thirty-Ninth Judicial District shall have seven (7) departments as follows:

(A) One (1) located in Magnolia;

(B) One (1) located in Waldo;

(C) One (1) located in Camden;

(D) One (1) located in East Camden;

(E) One (1) located in Bearden;

(F) One (1) located in Chidester; and

(G) One (1) located in Stephens.

(3) The Thirty-Ninth Judicial District shall be served by one (1) state district court judge.

(4) The Thirty-Ninth Judicial District judge shall be elected districtwide.

(5) The Thirty-Ninth Judicial District court shall have districtwide jurisdiction.

(o)

(1) The Forty-First Judicial District shall be composed of Garland County.

(2) The Forty-First District shall have three (3) departments as follows:

(A) Two (2) located in Hot Springs; and

(B) One (1) located in Mountain Pine.

(3) The Forty-First Judicial District shall be served by two (2) state district court judges.

(4) The Forty-First Judicial District judges shall be elected districtwide.

(5) The Forty-First Judicial District courts shall have districtwide jurisdiction.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

TAMATRICE WILLIAMS, Plaintiff, v. CITY OF SHERWOOD, ARKANSAS, Defendant.	**FILED** Feb 01 2018 James W. McCormack, Clerk Case No. 4:18-cv-97-JM *****JURY TRIAL DEMANDED** This case assigned to District Judge Moody and to Magistrate Judge Deere

COMPLAINT

NOW COMES, Plaintiff, TAMATRICE WILLIAMS, by and through her attorneys, LAUX LAW GROUP, and for her cause of action against CITY OF SHERWOOD, ARKANSAS, states as follows:

JURISDICTION AND VENUE

1. This action arises under the United States Constitution, particularly under the Fourth, Sixth and Fourteenth Amendments, and under federal law, particularly 42 U.S.C. §§ 1983 and 1988. This Honorable Court has jurisdiction by virtue of 28 U.S.C. §§ 1331 and 1343.

2. Venue is founded in this Court upon 28 U.S.C. § 1391 as the acts of which Plaintiff complains arose in this District.

3. The phrase "all relevant times" generally refers to the time period from 1996 to approximately August 25, 2016.

PARTIES

4. At all relevant times, TAMATRICE WILLIAMS ("PLAINTIFF") was a citizen of the United States of America and was, therefore, entitled to all legal and constitutional rights afforded citizens of the United States of America. PLAINTIFF has been a resident of Pulaski County all her life, and, at all relevant times, resided in Little Rock, Arkansas.

5. At all relevant times, CITY OF SHERWOOD, ARKANSAS (hereafter "SHERWOOD"), was a municipality and an incorporated city, organized under the laws of the State of Arkansas which, SHERWOOD, through its agents, officials and policymakers, including members of the Sherwood City Council: (a) funded, operated, and created policies, practices and/or customs followed by the Sherwood District Court and the Sherwood Police Department (including paying the salary of Sherwood District Court Judge Milas H. Hale III, the public defender in the Sherwood District Court, and court clerks and other administrative staff); (b) funds and operates Sherwood District Court's Hot Check Division and processing service (including paying the salary of its director and the

director's staff); (c) seeks, issues and executes warrants arising out of "hot check" convictions and other related criminal proceedings; (d) collects debts from unpaid court costs, fines and fees arising out of hot check convictions and other related criminal proceedings in the Sherwood District Court; and (e) contributes funds to the Pulaski County Jail, in part, to pay for the incarceration of hot check defendants sent by the Sherwood District Court.

6. At all relevant times, the Sherwood City Council (hereafter "City Council") was a legislative governing body which consisted of eight (8) members. Pursuant state statute, SHERWOOD, through its agents, officials and policymakers, including members of the City Council, is empowered to make and publish bylaws or ordinances, not inconsistent with the law of the state, for carrying into effect or discharging the powers or duties conferred by state statute. At all relevant times, the City Council was empowered to provide for the imposition of fines for the violation of any of the ordinances of SHERWOOD, and the power to permit imprisonment and the threat of imprisonment to enforce fines for violations of SHERWOOD ordinances in some circumstances. At all relevant times, the City Council was responsible for enacting and enforcing the official policies of SHERWOOD.

7. At all relevant times, SHERWOOD, through its agents, officials and policymakers, including members of the City Council, had a duty to abide by the United States Constitution and not violate the constitutional rights of citizens of the

United States, such as PLAINTIFF. At all relevant times, SHERWOOD, through its agents, officials and policymakers, including members of the City Council, operated under color of state law.

FACTUAL BACKGROUND

8. For many years, SHERWOOD, through its agents, officials and policymakers, including members of the City Council, zealously prosecuted misdemeanor violations of the Arkansas hot check statute, creating a system used by local officials to criminalize those who do not have enough money to cover bounced checks. Through this system, a single check for a nominal amount returned for insufficient funds can be leveraged into many thousands of dollars in court costs, fines and fees owed to SHERWOOD. These costs are often borne by the poorest and most disadvantaged citizens in the community, including PLAINTIFF, who find themselves caught in a never-ending cycle of court proceedings they do not understand, payments they cannot make, arrests they cannot avoid, and significant jail time, all because they cannot afford to pay for their freedom.

9. Under an informal agreement entered into in the mid-1970s, the Sherwood District Court has a virtual monopoly on the prosecution of misdemeanor hot check violations that occur within the Pulaski County. The Sherwood District Court has been used by SHERWOOD to prosecute thousands upon thousands of cases brought against those who are often financially vulnerable citizens. More importantly, SHERWOOD, through its agents,

officials and policymakers, including members of the City Council, have used the threat and reality of arrest and incarceration as a tool to coerce payments from those who are simply unable, through no fault of their own, to pay court costs, fees and fines.

10. In 1975, the then-Judicial District Prosecuting Attorney and the then-municipal judges in Pulaski County agreed that all misdemeanor cases brought under the Arkansas hot check statute in Pulaski County would be channeled through the Sherwood Municipal Court, which is now the Sherwood District Court. At all relevant times, the Hot Check Division was physically located in a separate building and had its own budget passed separately by the City Council. On its public website, SHERWOOD characterizes the Hot Check Division of the Sherwood District Court as a Department of SHERWOOD. At all relevant times, the individuals who oversaw and operated the Hot Check Division of the Sherwood District Court (with the exception of Pulaski County assistant prosecutors) were all employees of, and were paid by, SHERWOOD.

11. Pursuant to the Sherwood Municipal Code, SHERWOOD established the Sherwood District Court and gave the court's district court judge, including Judge Hale, his powers, jurisdiction, functions, and duties. SHERWOOD established the position of Chief Deputy Court Clerk and, by ordinance, named the holder of that office as the Director of SHERWOOD's Hot Check Division and also established Deputy Court Clerk positions in both

the Sherwood District Court and SHERWOOD's Hot Check Division.

12. At all relevant times, Judge Milas H. Hale, III (hereafter "Judge Hale"), was the local district court judge presiding in Sherwood District Court, and presided over SHERWOOD's hot check court. Judge Hale's salary was determined by and paid by SHERWOOD. The court clerk and other court administrative staff operate, and facilitate other administrative functions of, the Sherwood District Court. All of the salaries and operational expenses of the Sherwood District Court were paid by SHERWOOD out of its general fund.

13. Over 20 years ago, Arkansas enacted a fines collection law intended to set out the procedures to be followed for collecting fines imposed by courts, codified at Arkansas Code Annotated, Title 16, Subtitle 2, Chapter 13, Subchapter 7:

> "[t]he procedures established by this subchapter shall apply to the assessment and collection of all monetary fines, however, designated, imposed by... district courts for criminal convictions ... " See Arkansas Code Annotated§ 16-13-702.

Those procedures specifically required a court to take into account a defendant's ability to pay when imposing fines in the first instance and when addressing a defendant's failure to make payments previously ordered by the court.

> "Unless the defendant shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or to a failure on his or her part to make a good-faith effort to obtain the funds required for payment, the court may order the defendant imprisoned in the county jail or other authorized institution designated by the court until the fine or specified part thereof is paid." See Ark. Code Ann. § 16-13-703
>
> *****
>
> "If the court determines that the default in payment of the fine is not attributable to the causes specified in subsection (c) of this section, the court may enter an order allowing the defendant additional time for payment, reducing the amount of each installment, or revoking the fine or the unpaid portion thereof in whole or in part." See Ark. Code Ann.§ 16-13-703(d).

14. However, at all relevant times, SHERWOOD did not follow those procedures when they sought to enforce court costs, fines, and fees imposed by the Hot Check Division of the Sherwood District Court. Instead SHERWOOD, through its agents, officials and policymakers, including the Sherwood District Court and Judge Hale, put in place a hot check collection scheme that was designed to maximize the amount of court costs, fines, and fees imposed on individuals and that used the threat and reality of incarceration to coerce individuals to pay

these amounts, notwithstanding their inability to do so.

PROCESS FOR THE SHERWOOD "HOT CHECK" COLLECTIONS SCHEME

15. At all relevant times, the Sherwood District Court held hot check court every Thursday. Starting before 7:00 am, individuals would form a line that wound through the hallway of the small courthouse, waiting to enter the sole courtroom. Some of these individuals faced new hot check misdemeanor charges, while others appeared for "review hearings," which were hearings in which the Sherwood District Court monitored their progress in making payments on court costs, fines, and fees previously imposed by the Court. The proceedings were not open to the public, and a hot check defendant's family and friends were not allowed to accompany him or her into the courtroom.

16. At all relevant times, while hot check defendants waited in line to enter into the Sherwood District Court courtroom, they were presented with a "Waiver of Counsel" form and a form requiring them to provide their personal information. The hot check defendants were told that they must fill out these forms in order to be allowed into the courtroom. Although the "Waiver of Counsel" form referred only to hot check charges, court officials would often proceed as if anyone who filled out the form had waived his or her right to counsel for all purposes, even if the person was appearing on other types of charges or for other purposes.

17. At all relevant times, the Sherwood District Court held no hearing on the closure of the criminal proceedings to the public and did not consider the effect of the closure on a defendant's right to a public trial as required by the Sixth Amendment of the United States Constitution. No recordings of the proceedings were prepared and no transcript was made available to the public. Court clerks did not even post a list of the individuals who were to appear that day in court. The secrecy shrouding the proceedings in Sherwood District Court also ensured that violations of hot check defendants' constitutional rights went unchecked and unchallenged.

18. Because the only persons allowed in the courtroom were the judge, court clerks, prosecutors, court bailiffs, a probation officer, and a public defense attorney who did not actually represent the hot check defendants, the hot check defendants did not have a single advocate to whom to tum to understand and assert their rights.

19. Following a hot check conviction, SHERWOOD treated each review hearing based on this prior conviction as an opportunity to open a new, separate, stand-alone criminal case, thereby purportedly authorizing the court to impose new and duplicative court costs, fines, and fees on the same hot check defendant. Specifically, at all relevant times, SHERWOOD maintained a policy, practice and/or custom of seeking, issuing, and executing new, separate post-conviction arrest warrants whenever a defendant failed to make a payment of court costs, fines, and fees or failed to appear at a review hearing.

20. SHERWOOD treated each of the new arrest warrants as a separate "charging document" associated with a new, stand-alone criminal matter under a separate case number, with a whole new set of associated court costs, fines, and fees. These warrants often bore the signature of the clerk of court and were not supported by oath or affirmation that would establish probable cause for a crime. The Sherwood District Court also assessed over $300 in new and additional fees and costs on a hot check defendant with each new warrant of arrest.

21. Thus, if an individual failed to appear at a "review hearing," the Sherwood District Court would issue an arrest warrant and the Court's records would then reflect a new, separately numbered criminal prosecution for "failure to appear." Similarly, if an individual missed a period payment under a payment plan, the Sherwood District Court would issue an arrest warrant and the Court's records would then reflect a new, separately numbered criminal prosecution for "Failure to Pay Contempt of Court." By treating each of these proceedings as a new criminal proceeding, the Sherwood District Court was able to circumvent the limits on court costs, fines, and fees that can be imposed on a single hot check conviction.

22. At all relevant times, hot check defendants before the Sherwood District Court were afforded little to no due process for these new "prosecutions." The previously convicted and sentenced hot check defendants were often not notified that they faced a new, separate criminal charge or charges, not given an opportunity to defend

themselves from the charges, not afforded counsel, and/or notified of their right to appeal. Any hearings on the new and separate "charges" were often perfunctory and resolved in assembly-line fashion.

23. Even when such hot check defendants asserted or raised with the Sherwood District Court that they were unable to pay the outstanding amounts of court costs, fines, and fees, the court did not inquire further as to the hot check defendant's ability to pay, require that the State meet its burden of proof of demonstrating that the hot check defendant could pay, or make specific factual findings and a determination that the hot check defendant could or could not pay the amounts due. Pulaski County prosecutors sat silently at the prosecution table and failed to meet their burden of proof in the face of evidence that the hot check defendant could not pay.

24. Once Judge Hale determined that an individual was guilty of the new charges, the Sherwood District Court would then order that individual to pay new and additional court costs, fines, and fees, thereby using this procedure to leverage the amount of court costs, fines, and fees imposed on a single person. The Sherwood District Court then imposed a new, revised payment plan, scheduled a new "review hearing," and effectively started the original post-conviction procedures all over again, albeit with higher court costs, fines, and fees.

25. If an individual who appeared in the Sherwood District Court at any time after an original hot check conviction had not made all of his or her

payments, the Sherwood District Court Judge threatened to jail the person if he or she did not make the payments and directed the person either to arrange for payment or to contact family members who could make the payment on the person's behalf. If the Sherwood District Court Judge decided to send the individual to jail in order to coerce payment, he would direct that the hot check defendant be handcuffed and transported to the Pulaski County Jail for a specific period of time (often 60, 90, or 120 days) or until the individual's outstanding court costs, fines, and fees are paid.

26. If the Sherwood District Court ordered that a criminal defendant be incarcerated in the Pulaski County Jail, it would then issue a "speed letter." The form used to prepare the speed letter had various blanks that could be filled in, including the defendant's name, the relevant case number, the charges, and the time of commitment ordered by the Court. speed letters that ordered the commitment of an individual who has failed to pay often included only: the person's name; "FTP" (an abbreviation for "failure to pay"); and the sentence containing a number of days or payment of the amount owed, for example, "90 days or $ l,000."

27. At all relevant times, the prosecution in the Sherwood District Court of hot check criminal actions and the corresponding imposition of court costs, fines, and fees resulted in substantial revenue for SHERWOOD.

28. Upon information and belief, as of March 2011, there were more than 49,000 active hot check cases in Sherwood District Court's criminal division, which is approximately one (1) hot check related criminal case for every eight (8) citizens (men, women and children) living in Pulaski County at that time.

29. Upon information and belief, at its height, Sherwood Hot Check Division issued 35,000 warrants related to hot checks every year, which equaled 96 per day, every day of the year during that timeframe.

30. For the calendar years of 2014 or 2015 approximately, costs, fees and fines included a $165 fine; $100 in court costs; $25 prosecutor's fee; $50 warrant fee; $20 Sherwood jail fee; and $20 county jail fee. These costs, fees and fines total approximately $380.

31. Over the last several years, the Sherwood District Court collected nearly $12 million in court costs, fines, and fees assessed from hot check defendants, money that is deposited directly into the SHERWOOD's general fund. During this timeframe, the Sherwood District Court claimed to handle 22,000 to 25,000 cases each year. For the 2015 fiscal year, the combined receipts from court fines and forfeitures and from the City Administration Justice Fund were estimated to be approximately $2 million, which is equal to approximately 11.4% of the total revenues received by SHERWOOD into its General Fund and the third-highest revenue source after city and county sales taxes. This revenue was possible only by

leveraging each hot check case into an astounding number of collateral criminal cases for "failure to pay" and "failure to appear."

32. At all relevant times, this revenue, along with tax receipts from city sales and property tax and other monies held in the general fund, in tum, were used by SHERWOOD to fund and operate various citywide departments through which the Sherwood District Court and its Hot Check Division operated.

33. At all relevant times, court costs, fines, and fees, tax receipts, and other monies held in the general fund were also used by SHERWOOD to pay its obligations to fund the Pulaski County Jail pursuant to an inter-local agreement entered into by SHERWOOD and other communities within Pulaski County.

34. The Sherwood Police Department is physically adjacent to the Sherwood District Court. It operates temporary holding cells to hold individuals arrested by Sherwood Police Department officers for up to roughly 24 to 48 hours, including those awaiting transfer to the Pulaski County Jail. Any defendant who is jailed by the Sherwood District Court for more than a couple of days must be held in the Pulaski County Jail. By ordinance passed by the City Council, SHERWOOD designated the Sherwood Police Department to be the agency that is primarily responsible for the collection of fines imposed by the Sherwood District Court.

35. At all relevant times, the Sherwood Police Department functioned as an extension of SHERWOOD's hot check collections scheme. Each year the collections scheme operated officers of the Sherwood Police Department arrested hundreds of individuals on arrest warrants issued by the Sherwood District Court across Pulaski County.

36. At all relevant times, officers with the Sherwood Police Department tracked down individuals who owed money to the court at their homes. The officers would tell the individual that they will arrest them on a warrant issued by Sherwood District Court unless the individual can make a payment, in amounts ranging from $50 to hundreds of dollars, on the spot. If the individual could afford to pay, the officers would give them a court date instead of arresting the individual. An individual who did not have enough cash to pay was given the "opportunity" to call the Hot Check Division directly and give a credit card number over the phone. The poorest individuals, who could not pay, were arrested and taken to jail. According to Sherwood Police Department records, at all relevant times, arrests on "failure to pay" warrants were conducted pursuant to Arkansas Code Annotated § 5-4-203, which was repealed in 2009.

37. At all relevant times, SHERWOOD and the Sherwood District Court aggressively advertised and promoted the operations of the Sherwood District Court Hot Check Division to the local business community and the general public throughout Pulaski County. SHERWOOD listed the "Hot Check Division

of the Sherwood District Court" as a "department" of SHERWOOD on its website. The website contained the following description of the goals and activities of the Hot Check Division:

> The Hot Check Division of the Sherwood District Court prosecutes individuals and businesses that write checks that cannot be cashed due to closed accounts or insufficient funds. This service is available to merchants and individual victims within Pulaski County. If you own a business that accepts a large amount of checks for payment of goods or services, you have experienced the problem of receiving bad checks. Our hot check processing service boast an 85% collection rate for all cases handled. We can work to see that you receive the money you are owed, and there is no cost to you or your business. Our service is free of charge as part of our many efforts to create and maintain a business friendly environment here in Sherwood.
>
> Small businesses, which make up the largest group in our business community, are particularly vulnerable to the problem of bad checks. Our goal is to stamp out this impediment to doing business. It is a crime under Arkansas Statute 5-37-302 to write a bad check in the State of Arkansas. The Sherwood Hot Check Division issues over 35,000 warrants annually on charges related to bad checks.

> Our hot check processing service is often a last resort for individuals, businesses, and collection agencies. If you or your business is experiencing a problem with bad checks, call us first. We can help...

38. Making it plain that SHERWOOD's and the Sherwood District Court's interests in operating this enterprise are both fiscal and punitive toward hot check defendants, they expressly describe the local business community as "our clients" for which they work hard to create an effective service that provides healthy financial returns.

FANT ET AL. V. CITY OF FERGUSON, 107 F.Supp. 3d 1016 (8th Cir. 2015)

39. In *Fant v. City of Ferguson*, 107 F.Supp.3d 1016 (8th Cir. 2015) (hereafter "*Fant*"), a United States District Court addressed a case involving allegations against that the City of Ferguson, Missouri had a policy which operated a de facto debtor's prison resulting from the levying of nominal ordinance violation fines into significantly greater fines and periods of incarceration. The *Fant* court denied the City of Ferguson's Federal Rule of Civil Procedure 12(b)(6) motion to dismiss, and finding that the *Fant* plaintiffs' Due Process and Equal Protection claims stated a cause of action.

40. The *Fant* plaintiffs sought monetary damages.

41. The Eighth Circuit Court of Appeals found that the *Fant* plaintiffs did not complain of injuries caused by the state court judgment, but rather injuries caused by the post- judgment procedures the City of Ferguson employed to incarcerate persons who were unable to pay fines. Based on this finding, the Eight Circuit Court of Appeals determined that the *Fant* plaintiffs' claims were not barred by the *Rooker-Feldman* doctrine (promulgated in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149 (1923) and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303 (1983)) which bars unsuccessful state court parties from seeking what amounts to appellate review of the state judgment in a federal district court.

42. The Eighth Circuit Court of Appeals held that the *Fant* plaintiffs' claims were not barred by the *Heck* doctrine (promulgated in *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364 (1994)) which bars § 1983 plaintiffs from recovering damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal or called into question by a federal court's issuance of a writ of habeas corpus.

43. As articulated within the four comers of the instant complaint, PLAINTIFF does not challenge her underlying hot check convictions or fines imposed for those conviction(s).

44. As articulated within the four comers of the instant complaint, PLAINTIFF does not allege that her underlying hot check convictions or fines were invalid.

45. Rather, as articulated within the four comers of the instant complaint, PLAINTIFF's lawsuit challenges the constitutionality of SHERWOOD's post-judgment municipal procedures to collect money from hot check defendants, such as PLAINTIFF.

46. As articulated within the four comers of the instant complaint, PLAINTIFF alleges that SHERWOOD's procedures for enforcing those costs, fees and fines, which included incarceration and threats of incarceration, were invalid and unconstitutional.

47. Specifically, as asserted *infra*, PLAINTIFF alleges that her injuries were caused by post-judgment procedures employed by SHERWOOD to incarcerate persons, such as Plaintiff, who were unable to pay excessive costs, fees and fines.

48. PLAINTIFF challenges the improper procedures that culminated in her post-judgment incarceration.

49. PLAINTIFF does not challenge any state court judgments.

50. In *Fant*, the Eighth Circuit Court of Appeals stated that the *Younger* doctrine

(promulgated in *Younger v. Harris*, 401 U.S. 37 (1970)) which states that except in limited circumstances involving immediate irreparable injury, federal courts should not enjoin state criminal proceedings.

51. In *Fant*, the Eighth Circuit Court of Appeals stated that "'[b]y sentencing [a person] to imprisonment simply because he could not pay the fine without considering the reasons for the inability to pay or the propriety of reducing the fine or extending the time for payments or making alternative orders, the court automatically tum[s] a fine into a prison sentence,' in violation of the Fourteenth Amendment."

52. According to the Eighth Circuit Court of Appeals in *Fant*, allegations that, pursuant to a City policy and practice, a litigant was jailed for her failure to pay a fine without any inquiry into her ability to pay and without any consideration of alternative measures state a claim which is facially plausible, per the pleading standard articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

53. In *Fant*, the Eighth Circuit Court of Appeals stated "[t]he Supreme Court has held that 'absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.'"

54. According to the Eighth Circuit Court of Appeals in *Fant*, allegations that, pursuant to a City

policy and practice, a litigant was neither informed of a right to counsel nor appointed counsel in connection with their incarcerations state a claim which is facially plausible, per the pleading standard articulated in *Twombly*.

55. In *Fant*, the Eighth Circuit Court of Appeals reaffirmed its holding that "'the Due Process Clause forbids an extended detention without a first appearance, following arrest by warrant,' and has recognized that '[t]he consequences of prolonged detention may be more serious than the interference occasioned by arrest [because] [p]retrial confinement may imperil the suspect's job, interrupt his source of income, and imperial his family relationships.'"

56. According to the Eighth Circuit Court of Appeals in Fant, allegations of pre- appearance detentions lasting days and weeks, in unreasonable confinement conditions, state a claim which is facially plausible, per the pleading standard articulated in *Twombly*.

FACTUAL ALLEGATIONS

57. At all relevant times, with the exception of periods of incarceration of which she complains herein, PLAINTIFF was employed and working full-time in the hospitality industry. At all relevant times, PLAINTIFF was the mother of five (5) minor children, each of whom were dependent on her.

58. In early 1997, PLAINTIFF "bounced" approximately four (4) checks due to her having

insufficient funds in her bank account. These bounced checks were written to purchase life essentials, such as clothing and food.

59. At all relevant times, lasting many years, PLAJNTIFF has been arrested on approximately eight (8) occasions, totaling approximately one-hundred and sixty (160) days of incarceration, based on multiple criminal convictions consistent with the practices described in Paragraphs 15-26, *supra*, from those approximately four (4) bounced checks.

60. PLAINTIFF was often unable to cover these excessive costs, fees and fines.

61. As a result of SHERWOOD's unconstitutional actions, as fully alleged *infra*, PLAINTIFF suffered the following hardships:

a) She was arrested and taken away in front of her young children on several occasions;
b) She and her husband lost their interest in a family home;
c) She and her family paid approximately $5000-6000;
d) She was arrested and taken away on her minor daughter's birthday;
e) She received "FTAs" (an abbreviation for failures to appear) due to her incarceration, which served to compound the crippling effect of

SHERWOOD's unconstitutional actions; and

f) She suffered a loss of employment opportunities and advancement.

62. PLAINTIFF was arrested in December 2014 and not released until late January 2015, a period of nearly thirty (30) days. PLAINTIFF was released at that time only after paying $2500 in cash, money that was obtained by her husband from the sale of his interest in a family home.

63. During PLAINTIFF's incarcerations for hot check convictions, she was sexually harassed, physically abused and suffered emotional distress as a result of several incidents, which included PLAINTIFF witnessing an inmate hang herself.

64. Even when she was not incarcerated for days at a time, PLAINTIFF suffered hardships in the following forms:

a) She was arrested and bonded out four (4) times when she was fortunate enough to have money on her person or obtainable on the spot;
b) She was accosted at her place of employment on approximately twelve (12) occasions, which caused her to get written up by her employers, and compromised her work environment;
c) She was extorted at work, and forced to produce $200 or be arrested on the spot; and

d) She received no receipt for these "payments," and they were never reflected in her payment ledger.

65. PLAINTIFF suffered significant damages, including:

a) Her physical incarceration on no fewer than eight (8) occasions;
b) Devastating financial damages for her and her family;
c) Public, familial and personal humiliation;
d) Constant fear of arbitrary arrest and incarceration for an indefinite period of time;
e) Incarcerated in deplorable conditions for arbitrary and indefinite periods of time; and
f) Significant emotional distress and psychological damages.

66. PLAINTIFF's experiences are representative of hundreds of other poor individuals living in Pulaski County.

***DADE ET AL. V. CITY OF SHERWOOD ET AL.*, 4:16-CV-602 JM**

67. On August 23, 2016, a class action styled *Dade et al. v. City of Sherwood*, Arkansas, 4:16-CV-602 JM (hereafter "*Dade*") was filed in the Eastern District of Arkansas Federal District Court.

68. *Dade* challenged the propriety of the Arkansas hot check statute, alleging violations of the Due Process and Equal Protection Clauses of the Constitution of the United States and Article 2, Section 16, of the Constitution of the State of Arkansas of 1874.

69. Two days after the filing of the *Dade* class action lawsuit, on August 25, 2016, PLAINTIFF appeared before Judge Hale, with a still outstanding balance for costs, fees and fines, all stemming from prior hot check judgments. At the hearing, without explanation, Judge Hale waived PLAINTIFF's entire balance.

70. On August 25, 2016, PLAINTIFF was released from all of her financial obligations to SHERWOOD stemming from her original hot check convictions.

71. Therefore, as of August 25, 2016, there are no ongoing state proceedings in regard to PLAINTIFF's allegations.

72. As pled herein, PLAINTIFF is not litigating her criminal convictions.

73. As proof of the arbitrary nature of the SHERWOOD's post-judgment collection scheme, on August 25, 2016, after the filing of *Dade*, which challenged the propriety of the Arkansas hot check statute, and brought national attention thereto, Judge Hale simply waived the remainder of money owed by PLAINTIFF to SHERWOOD, even though

PLAINTIFF had not satisfied the entire amount owed at that time.

74. The filing of the *Dade* class action lawsuit and Judge Hale's subsequent act of waiving PLAINTIFF's outstanding balance were the first indications of the unconstitutionality of the SHERWOOD policy authorizing the hot check collections scheme, as well as the unconstitutionality of the scheme itself.

75. On June 8, 2017, *Dade* was dismissed without prejudice, in part, based on the submitted proposed findings and recommendations of Magistrate Judge Joe J. Volpe, who found that the *Dade* defendants' motion to dismiss should be granted "to the extent that they were based on the Younger abstention doctrine." *See June 8, 2017 Order from* Dade et al. v. City of Sherwood, Arkansas *(4:16-CV-602 JM Doc. #90) attached hereto as Exhibit 1.*

76. In his January 24, 2017 Proposed Findings and Recommendations, Magistrate Judge Volpe found that all three (3) *Younger* factors were met in *Dade*, including the presence of an "ongoing state proceeding." *See January 24, 2017 Proposed Findings and Recommendations from* Dade et al. v. City of Sherwood, Arkansas *(4:16-CV-602 JM Doc. #59) attached hereto as Exhibit 2.* Specifically, Magistrate Judge Volpe stated "Plaintiffs have ongoing criminal proceedings. They have the opportunity to raise their constitutional arguments in their state court proceedings." *See Ex. 2 at p. 5.*

77. On October 23, 2017, SHERWOOD, through the City Council, voted unanimously to agree to settlement agreement to resolve *Dade*.

78. On November 14, 2017, SHERWOOD was party to a "Stipulated Settlement Agreement" (hereafter "Agreement") with the Dade plaintiffs. *See November 14, 2017 Stipulated Settlement Agreement from* Dade et al. v. City of Sherwood, Arkansas *(4:16-CV-602 JM Doc. #112-1), attached hereto as Exhibit 3*. SHERWOOD Mayor Virginal Hillman Young was signatory to the Agreement, and, with her signature, assured SHERWOOD's compliance with the Agreement. *See Ex. 3 at p. 20*.

79. Per the Agreement, SHERWOOD represented that it: a) had full legal capacity to enter into the Agreement; b) fully understood the Agreement; and c) executed the Agreement voluntarily after the opportunity to review it with its attorneys.

80. "Employees" and "officials" of SHERWOOD were bound by the Agreement.

81. The Agreement reflects that SHERWOOD agreed:

a) to halt the jailing of defendants who can't afford to pay court debts;
b) to halt the revocation of drivers' licenses for failure to pay court debts;

c) to conduct an individualized evaluation at sentencing of a defendant's ability to pay;
d) to provide a clear advisement to defendants of their right to counsel prior to the entry of any plea and their rights if they are unable to pay their court debt;
e) to give defendants the option of receiving a sentence of community service;
f) to provide defendants who fall behind in making payments an opportunity to adjust their payment schedule or waive remaining payments and an opportunity to be resentenced to community service; and
g) to maintain a publicly accessible video recording of hot check court proceedings.

82. PLAINTIFF's legal financial obligations to SHERWOOD were waived on August 25, 2016, over a year prior to the entry of the Agreement.

83. At all relevant times, it was the official policy, practice and/or custom of SHERWOOD, through its agents, officials and policymakers, including members of the City Council:

a) to arrest, prosecute and imprison persons who have been previously sentenced to pay court costs, fines and fees-but who have not done so

because they cannot afford to pay-without making a proper inquiry into whether those persons are able to pay and without considering alternatives to imprisonment, in violation of the United States Constitution;

b) to jail indigent persons for failing to pay monetary debts for court costs, fines and fees that cannot pay, without informing those persons of their right to counsel, without providing adequate counsel to represent them, and without obtaining a knowing, intelligent and voluntary waiver of the right to counsel, in violation of the United States Constitution;

c) to deny the minimum procedural safeguards of due process before charging, convicting, sentencing and imprisoning persons who have been previously sentenced to pay court costs, fines and fees but who have not done so because they cannot afford to pay, in violation of the United States Constitution;

d) to seek, issue and execute unlawful arrest warrants in violation of the Fourteenth Amendment to the United States Constitution, against persons who have been previously sentenced to pay court costs, fines and fees-but who have not done so because they cannot afford to pay-

without any inquiry into whether those persons are able to pay;

e) to seek, issue and execute unlawful post-judgment arrest warrants in violation of the Fourteenth Amendment to the United States Constitution, which have no bearing on the validity of guilt in the underlying case(s) or the propriety of the amount of the fine(s) originally assessed, and were entirely apart from any judicial process, let alone pursuant to a valid conviction and sentence; and

f) to sentence indigent persons to indefinite, extended and arbitrary detentions, without a first appearance, in deplorable conditions, following arrest by warrant, causing these persons prolonged detention that oftentimes is more serious than the matter occasioned by the initial arrest, and imperiling their jobs and sources of income, while impairing their family relationships.

84. All of SHERWOOD's actions complained-of herein were pursuant to an official municipal policy and caused PLAINTIFF's injuries.

85. City Council meeting minutes further demonstrate that the Sherwood District Court Hot Check Division, the Sherwood Police Department, and the City Council worked together strategically to fund

SHERWOOD's departments in order to increase revenue through the collection scheme, without regard for the constitutional rights of PLAINTIFF and others similarly situated.

86. For example, on March 26, 2012, the City Council considered Ordinance No. 1933, entitled, "AN ORDINANCE CREATING ONE ADDITIONAL WARRANT CLERK POSITION IN THE CITY OF SHERWOOD POLICE DEPARTMENT." The meeting minutes reflects that the warrant clerk position was requested by Judge Hale at a City Council budget committee meeting. At this meeting, Sherwood Police Chief James Bedwell spoke to the City Council and justified adding the position, asserting that the extra clerk "would be helpful in serving the warrants to get revenue coming in." In urging the City Council to pass the ordinance, Mayor Virginia Hillman Young stated that "if the position does not prove to pay for itself and bring in additional revenue it will be removed." The ordinance passed unanimously.

CLAIMS FOR RELIEF

87. A city is liable under 42 U.S.C. § I 983 when city officials whose acts may fairly be said to represent official policy adopt a custom or policy that then causes a constitutional violation. Municipalities cannot be held liable under § 1983 unless deliberate action attributable to the municipality itself is the moving force behind the plaintiffs deprivation of federal rights. Such deliberate conduct may be shown through a counsel vote, agency action, or similar enactment, or a city may be liable for a custom that

has obtained the force of law by virtue of the persistent practices of state or local officials.

COUNT I
SHERWOOD Violated PLAINTIFF's Rights By Jailing Her For Her Inability To Pay SHERWOOD

88. PLAINTIFF adopts and incorporates by reference the allegations in Paragraphs 1 through 87 above.

89. The Supreme Court has held that "the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full."

90. At all relevant times, including up to August 25, 2016, SHERWOOD imprisoned citizens, including PLAINTIFF, who have been sentenced to pay court costs, fines and fees without making any inquiry into whether they are able to pay and/or notwithstanding their ability to pay.

91. The Fourteenth Amendment's due process and equal protection clauses have long prohibited imprisoning a person for the failure to pay money owed to the government if that person is indigent and unable to pay. SHERWOOD violated PLAINTIFF's rights by jailing her when she could not afford to pay the debts allegedly owed from traffic and other minor offenses.

92. SHERWOOD violated PLAINTIFF's rights by imprisoning her, and by threatening to imprison her, without conducting any inquiry into her ability to pay and without considering alternatives to imprisonment as required by the United States Constitution. At any moment, a wealthier person in PLAINTIFF's position could have paid a sum of cash and been released from jail. SHERWOOD's policy and practice of keeping PLAINTIFF in its jail unless and until they are able to pay arbitrarily determined and constantly-shifting sums of money violates the Fourteenth Amendment.

COUNT II
SHERWOOD Violated PLAINTIFF's Rights By Imprisoning Her Without Appointing Adequate Counsel

93. PLAINTIFF adopts and incorporates by reference the allegations in Paragraphs 1 through 92 above.

94. At all relevant times, SHERWOOD maintained a policy, practice and/or custom of systematically closing proceedings occurring in the Sherwood District Court to the public, thereby creating an atmosphere of confusion and intimidation.

95. SHERWOOD's hot check defendants were not, in any way, adequately informed of their right to counsel or of the significance of signing the waiver form. Sherwood District Court personnel did not inform hot check defendants of the benefits of counsel, did not inquire into a hot check defendant's

indigency for purposes of eliciting the need for public defender, and did not routinely elicit any on-the-record waivers of counsel. Sherwood District Court personnel did not adequately inform indigent hot check defendants and other indigent defendants of their right to counsel and did not otherwise obtain knowing, intelligent, and voluntary waivers of counsel from hot check defendants prior to proceedings in Sherwood District Court.

96. As a result, indigent hot check defendants, such as PLAINTIFF, regularly faced prosecution, pled guilty, and were sentenced to jail, suspended jail terms, probation, and fines, without the benefit of counsel. Whether such prosecutions, pleas, and sentencings occurred under the Arkansas hot check statute, the Arkansas fine collection statute, the Arkansas criminal contempt statute, the Arkansas failure to appear statute, or otherwise, many of the proceedings in the Sherwood District Court took place without the assistance of counsel and without a knowing, intelligent, and voluntary waiver of the right to counsel.

97. SHERWOOD violated the Sixth and Fourteenth Amendments by jailing PLAINTIFF without affording her the benefit of counsel or obtaining a knowing, intelligent and voluntary waiver of counsel. PLAINTIFF was not provided counsel at the time she was incarcerated for failing to pay her court-ordered fines. PLAINTIFF alleges that SHERWOOD has a policy and practice of not informing people of their right to counsel and not appointing counsel in proceedings in which indigent

people are ordered to be imprisoned in Pulaski County Jail for non-payment, which are, in tum, based on payment plans arising from other violations at which Plaintiff was also unrepresented.

98. SHERWOOD violated Plaintiffs' right to the effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution by jailing PLAINTIFF during proceedings initiated by prosecutors at which SHERWOOD did not have the benefit of counsel and did not knowingly, intelligently, and voluntarily waive counsel. SHERWOOD's policy of not providing adequate counsel in proceedings in which indigent people are ordered to be imprisoned in the Pulaski County jail for non-payment, which are, in tum, based on payment plans arising from traffic and other violations at which the person was also unrepresented, violates the Sixth and Fourteenth Amendments to the United States Constitution.

COUNT III

SHERWOOD's Use of Indefinite and Arbitrary Detention Violates Due Process

99. PLAINTIFF adopts and incorporates by reference the allegations in Paragraphs 1 through 98 above.

100. The Supreme Court has held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." This holding is applicable to "prosecutions for violations of municipal

ordinances," and "[t]he denial of the assistance of counsel will preclude the imposition of a jail sentence" where the State fails to provide alternative procedural safeguards (such as adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings).

101. SHERWOOD violated the Due Process Clause of the Fourteenth Amendment by its use of indefinite and arbitrary detentions of persons who are unable to pay debts owed. PLAINTIFF alleges that SHERWOOD has a policy and practice of jailing indigent persons owing debts to SHERWOOD indefinitely and without any meaningful legal process through which they can challenge their detention by keeping them confined unless or until they could make arbitrarily determined cash payments.

102. The Due Process Clause of the Fourteenth Amendment prohibits SHERWOOD from jailing PLAINTIFF indefinitely and without any meaningful legal process through which she could challenge her detention by keeping her confined in the Pulaski County jail unless or until she could make arbitrarily determined cash payments.

COUNT IV
SHERWOOD's Use of Jail and Threats of Jail To Collect Debts Owed To SHERWOOD Violates Equal Protection Because It Imposes Unduly Harsh And Punitive Restrictions On Debtors Whose Creditor Is the Government Compared To Those Who Owe Money to Private Creditors

103. PLAINTIFF adopts and incorporates by reference the allegations in Paragraphs 1 through 102 above.

104. SHERWOOD's hot check collections scheme was extremely profitable to SHERWOOD, earning it millions of dollars during the years of its operation. It also trapped certain individuals for years in a cycle of increased fees, debts, extortion, and cruel incarcerations. The families of indigent people often borrowed money to buy their loved ones out of jail at rates set arbitrarily by jail officials, only for them later to owe more money to SHERWOOD from increased fees and surcharges. Thousands of people, like PLAINTIFF, took money from their disability checks or sacrifice money that was desperately needed by their families for food, diapers, clothing, rent, utilities and other life essentials to pay ever increasing court fines, fees, costs, and surcharges. They were told by SHERWOOD, through its agents, officials and policymakers, if they did not pay, they would be thrown in jail. The cycle repeated itself, month after month, for years.

105. The United States Supreme Court has held that, when governments seek to recoup costs of prosecution from indigent defendants, it may not take advantage of their position to impose unduly harsh methods of collection solely because the debt is owed to the government and not to a private creditor. Not only does SHERWOOD place indigent people on generic and overly onerous payment plans lasting years or decades when the cases of wealthier people would be terminated, but by imposing imprisonment, repeated threats of imprisonment, indeterminate "payment dockets" for many years, extra and invalid fees and surcharges, and other restrictions, SHERWOOD takes advantage of its control over the machinery of the Pulaski County jail and police systems to deny debtors, like PLAINTIFF, the procedural and substantive statutory protections that every other Arkansas debtor may invoke against a private creditor.

106. Many people like PLAINTIFF owing money to SHERWOOD on old judgments have to borrow money and go further in debt in order to pay off SHERWOOD because other non-government creditors are not permitted to jail them for non-payment of debt. This coercive policy and practice constitutes invidious discrimination and violates the fundamental principles of equal protection of the laws.

COUNT V
SHERWOOD's Policy and Practice of Issuing and Serving Invalid Warrants, Including Those Solely Based on Nonpayment of Monetary

Debt, Violates the Fourth and Fourteenth Amendments.

l07. PLAINTIFF adopts and incorporates by reference the allegations in Paragraphs 1 through I 06 above.

108. At all relevant times, it was the policy, practice, and/or custom of SHERWOOD, through its agents, officials and policymakers, including members of the Sherwood Police Department, to serve and execute arrest warrants for "failure to pay," "failure to appear," and "failure to comply with probation" issued by the Sherwood District Court that bear the signature of the clerk of court and are not supported by oath or affirmation attesting to probable cause that a crime has been committed.

109. At all relevant times, SHERWOOD's policy, practice and/or custom to issue and serve arrest warrants against those who had not paid their debt. These warrants are sought, issued, and served without any inquiry into the person's ability to pay even when SHERWOOD has prior knowledge that the person is impoverished and unable to pay the debts and possesses other valid defenses. These warrants are regularly sought, issued, and served without any finding of probable cause that the person has committed the elements of any offense. SHERWOOD chooses to pursue warrants instead of issuing summons even when it has spoken to people on the phone or in person and has the opportunity to notify them to appear in court.

110. SHERWOOD's policy of allowing wealthy residents or residents who can afford to hire an attorney to remove their warrants but refusing to clear warrants for indigent people who cannot afford those options is unlawful. Moreover, SHERWOOD's policy, practice and/or custom of not presenting arrestees in court or unreasonably delaying presentment for days or weeks for no legitimate reason is unlawful. These policies, practices and/or customs violate the Fourth and Fourteenth Amendments and result in a deprivation of fundamental liberty without adequate due process.

WHEREFORE, Plaintiff, TAMATRICE WILLIAMS, requests judgment against the Defendant, SHERWOOD, and prays for the following relief:

1. That SHERWOOD be required to pay PLAINTIFF's compensatory damages;
2. That SHERWOOD be required to pay economic and non- economic damages, including but not limited, loss of liberty interest and mental anguish;
3. That SHERWOOD be required to pay punitive damages;
4. That SHERWOOD be required to pay reasonable costs and attorney fees per 42 U.S.C. § 1988; and
5. That PLAINTIFF receive any other such relief as this Honorable Court deems just and proper.

Respectfully submitted,

/s/ Michael J. Laux
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E. Dist. Arkansas Bar No. 6278834
One of the Attorneys for
PLAINTIFF
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

CHARLES DADE, et al. **PLAINTIFFS**

vs. **No. 4:16-cv-602-JK-JJV**

CITY OF SHERWOOD, ARKANSAS; PULASKI COUNTY ARKANSAS; MILAS H. HALE, III, in his Official and Individual Capacities; and LARRY JEGLEY In his Official Capacity **DEFENDANTS**

ORDER

Plaintiffs challenge the post-conviction collection methods of "hot check" cases in Pulaski County, Arkansas. They argue that the post-conviction debt collection system utilizes arrest and incarceration to coerce payments from plaintiffs that are unable to pay the fines, costs, and fees in a way that violates their constitutional rights under the U.S. and the Arkansas Constitutions. Plaintiff Phillip Axelroth asserts a claim for illegal exaction under Arkansas law arising out of the alleged misuse and misapplication of public funds arising out of the hot check cases.

This case was referred to U.S. Magistrate Judge Joe J. Volpe for consideration and determination of all pre-trial matters and for

EXHIBIT 1

recommended disposition for the resolution of any dispositive matters. At the time of the referral, each of the defendants had filed motions to dismiss Plaintiffs' amended complaint. Specifically, the City of Sherwood and Milas H. Hale, III (the "Sherwood Defendants") filed a motion for judgment on the pleadings (Document No. 15), Larry Jegley filed a motion to dismiss (Document No. 25), and Pulaski County filed a motion for judgment on the pleadings (Document No. 28).[1] After these motions were fully briefed, Magistrate Judge Volpe submitted proposed findings and recommendations (Document No. 59) in which he recommended that the motions to dismiss be granted to the extent that they were based on the *Younger* abstention doctrine.[2] Judge Volpe did not reach the remaining issues in the motions and recommended that the motions be denied in all other respects as a result of the recommended abstention.

After the parties had an opportunity to submit objections to the recommended disposition, as well as responses to the objections, the Court held a hearing at Plaintiffs' request to hear oral argument. After a de novo review of the record, the Court is going to adopt the recommended disposition and grant the motions to dismiss to the extent that they are based on the *Younger* abstention doctrine.

IT IS, THEREFORE, ORDERED that:

1. Defendants' Motion for Judgment on the Pleadings (Document No. 15), Motion to Dismiss for

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[1] The Sherwood Defendants also filed a motion to adopt and incorporate by reference the arguments made by the other defendants (Document No. 41); that motion is granted.

[2] *Younger v. Harris*, 401 U.S. 37, 41 (1971).

Failure to State a Claim (Document No. 25), and Motion for Judgment on the Pleadings (Document No. 28) are GRANTED to the extent that they are based on the Younger abstention doctrine, and DENIED in all other respects.

2. Defendants Milas Hale, III and the City of Sherwood's Motion to Adopt (Doc. No. 41) the arguments made in the other Defendants' briefs is GRANTED.

3. The Court declines to extend supplemental jurisdiction over Plaintiff Axelroth's remaining state law claims.

4. Plaintiffs' motion to strike (Document No. 75) is DENIED.

5. The Sherwood Defendants' motion for reconsideration (Document No. 78) is DENIED.

4. This matter is DISMISSED without prejudice.

IT IS SO ORDERED this 8th day of June, 2017.

/s/ James M. Moody Jr.
James M. Moody Jr.
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

CHARLES DADE, NAKITA LEWIS, NIKKI PETREE, LEEANDREW ROBERTSON, and PHILIP AXELROTH, individually and on behalf of all others similarly situated **PLAINTIFFS**

v. **4:16CV00602-JM-JJV**

CITY OF SHERWOOD, ARKANSAS, *et al*. **DEFENDANTS**

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge James M. Moody, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen days from the date of the findings and recommendations. The copy will be furnished to the

EXHIBIT 2

opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact. If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence proffered at the hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

I. BACKGROUND

Plaintiffs assert that Defendants are using "Hot Check Laws" to create "a debt enforcement and

collection scheme that results in widespread arrests and jailing, duplicative criminal prosecutions for failure to appear at 'review hearings' and/or for late payment of court costs, fines, and fees, and the denial of due process for a steady stream of local citizens."[1] They argue that Defendants "imprison citizens who have been sentenced to pay court costs, fines, and fees without making any inquiry into whether they are able to pay and/or notwithstanding their inability to pay."[2] Additionally, Plaintiffs contend that they are routinely lined-up for cattle call hearings, required to sign waivers of counsel, and marched into non-public hearings which lack any official record of what happened. They contend that they "do not have a single advocate to whom to turn to understand and assert their rights."[3]

Plaintiff, Philip Axelroth, who has never been prosecuted under the "Hot Check Laws," argues that "Defendants are also misusing and misapplying public funds received from taxes paid by [him] and other taxpayers in Sherwood, Arkansas, by arresting and incarcerating individuals in the Pulaski County Regional Detention Center" under the allegedly unconstitutional scheme.[4] He asserts that the "misuse and misapplication of public funds constitute illegal exactions under the Arkansas Constitution."[5]

Now pending are Defendants Milas Hale, ill and the City of Sherwood's Motion for Judgment on the Pleadings (Doc. No. 15); Defendant Larry Jegley's

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[1] Doc. No. 1.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*

Motion to Dismiss for Failure to State a Claim (Doc. No. 25); and Defendant Pulaski County's Motion for Judgment on the Pleadings (Doc. No. 28). Judge Hale and the City of Sherwood also filed a Motion to Adopt (Doc. No. 41) the arguments made in the other Defendants' briefs. Plaintiffs have responded to each Motion and Defendants have replied.[6]

After careful consideration of the pleadings and for the reasons set out below, the Motions to Dismiss should be GRANTED to the extent they rely on the Younger abstention doctrine[7] and DENIED in all other respects.

II. STANDARD OF REVIEW

A Federal Rule of Civil Procedure 12(c) motion for judgment on the pleadings and a 12(b)(6) motion to dismiss require the same review from a court.[8] When considering a Rule 12(b)(6) motion to dismiss, the court "accept[s] as true all of the factual allegations contained in the complaint, and review[s] the complaint to determine whether its allegations show that the pleader is entitled to relief."[9] A motion to dismiss should not be granted because the complaint "does not state with precision all elements that give rise to a legal basis for recovery."[10] A

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[6] Doc. Nos. 45, 46, 47, 53, 54, 66.

[7] *Younger v. Harris*, 401 U.S. 37 (1971).

[8] See *Ginsberg v. InBev NV/SA*, 623 F.3d 1229, 1233 n.3 (8th Cir. 2010) ("As a general rule, a Rule 12(c) motion for judgment on the pleadings is reviewed under the same standard as 12(b)(6) motion to dismiss")

[9] *Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 549 (8th Cir. 2008).

[10] *Schmedding v. Tnemec Co. Inc.*, 187 F.3d 862, 864 (8th Cir. 1999).

complaint need only contain "' a short and plain statement of the claim showing that the pleader is entitled to relief.'"[11] "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint."[12] "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."[13]

Under the Twombly "plausibility standard," the allegations in a plaintiffs complaint must be evaluated to determine whether they contain facts sufficient to "nudge[] [his] claims across the line from conceivable to plausible."[14]

III. DISCUSSIONS

A. *Younger* Abstention Doctrine

Plaintiffs' Amended Complaint makes numerous allegations, and Defendants present a number of reasons to dismiss the claims. However, after careful consideration of the pleadings, I find dismissal is appropriate pursuant to the *Younger* abstention doctrine.[15]

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[11] *Id*. (quoting Fed. R. Civ. P. 8(a)).

[12] *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007) (overruling language from *Conley v. Gibson*, 78 S. Ct. 99, 102 (1957), which stated , "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief").

[13] *Id*. at 1964-65 (citations omitted)

[14] *Id*. at 1974.

[15] *Younger v. Harris*, 401 U.S. 37 (1971)

Except Philip Axelroth, each Plaintiff admits that he or she "still faces" unpaid costs, fines, and fees and the "likelihood that [he or she] will be incarcerated again in the future."[16] Additionally, Plaintiffs do not dispute Defendants' assertion that "each Plaintiff is a defendant in a criminal proceeding *now pending* before the Sherwood District Court "[17]

The *Younger*[18] abstention doctrine *requires* a federal district court to "abstain from exercising jurisdiction when (1) there is an ongoing state proceeding, (2) which implicates important state interests, and (3) there is an adequate opportunity to raise any relevant federal questions in the state proceeding."[19]

I do not recommend dismissal lightly, as I recognize that "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule."[20] Abstention "is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it." Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest.[21] But abstention "is also appropriate where

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[16] Doc. No. 13

[17] Doc. No. 26 (emphasis added).

[18] *Younger v. Harris, 401 U.S. 37 (1971).*

[19] *Plouge v. Ligon*, 606 F.3d 890, 8982 (8th Cir. 2010)

[20] *Colorado River Water Conservation Dist. V. U.S.*, 424 U.S. 800, 813(1976).

[21] *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188-189 (1959).

there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar."[22] "Finally, abstention is appropriate where, absent bad faith, harassment, or a patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings. . ."[23]

Turning to the *Younger* factors, I find all three are met. Based on the allegations in the Amended Complaint, I find there are ongoing state proceedings. And these proceedings implicate important state interests in overseeing its laws regarding the prosecution of hot checks. Furthermore, Plaintiffs can (and should) raise the federal questions regarding the alleged unconstitutional enforcement practices by exercising the adequate processes available to them in state court. Plaintiffs "must present [their] constitutional claims in [the state proceedings] 'unless it plainly appears that this course would not afford adequate protection.'" [24] There is no reason to believe that seeking a remedy through the Arkansas courts would not afford Plaintiffs adequate constitutional protections.

Plaintiffs argue that the *Younger* abstention doctrine does not apply "because they do not seek to have any sentence overturned, nor do they seek to enjoin any criminal proceeding. Rather, Plaintiffs

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[22] *Colorado River Water Conservation Dist.*, 424 U.S. at 814.

[23] *Id*. at 816 (citing *Younger v. Harris*, 401 U.S. 37 (1971)).

[24] *Plouge*, 606 F.3d at 893 (quoting *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 435)).

seek to have declared unconstitutional, as a violation of core due process, equal protection, and other U.S. constitutional rights, the post-conviction debt collection scheme" that continues to be practiced by Defendants.[25] Plaintiffs' position is unpersuasive. Without question, enjoining the state court's practices, as Plaintiffs request, would result in enjoining these and other ongoing criminal cases. However, the fact that Plaintiffs seek only declaratory and injunctive relief does not require a different result.[26] Furthermore, Plaintiffs' argument that prospective relief would not call into question the legitimacy of their convictions is unavailing. The fact remains that if Defendants' practices violated Plaintiffs' due process rights, then the legitimacy and validity of convictions (or, at the very least, the alleged illegal fines) would be called into question. Plaintiffs' attempts to limit the scope of this case to prospective relief does not change this fact.

Plaintiffs have ongoing criminal proceedings. They have the opportunity to raise their constitutional arguments in their state court proceedings. Such "opportunity" includes a trial de novo in the circuit court.[27] But rather than appeal the allegedly unlawful procedures under which their convictions were obtained through the Arkansas court system, Plaintiffs ask this Court to declare "unconstitutional and unlawful" the proceedings that resulted in their convictions and fines. In doing so, Plaintiffs ask this Court to ignore a "vital

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[25] Doc. No. 46

[26] *Samuels v. Mackell*, 401 U.S. 66, 73 (1971).

[27] Ark. Cont. Amend. 80, § 7(A)

consideration, the notion of 'comity,'"[28] while being unwilling to pursue any avenue of state court process. Plaintiffs' unwillingness to pursue any relief in state court also fails to support a showing of "great and immediate" irreparable injury.[29]

All of the claims made in Plaintiffs' Amended Complaint could be properly presented in state court. Notably, Plaintiffs have not disputed this fact. Plaintiffs are required to do so under the law. Finally, I do not find that any of the exceptions to the *Younger* doctrine apply in this case. Therefore, Defendants' Motion to Dismiss pursuant to the *Younger* abstention doctrine should be GRANTED.

B. Philip Axelroth

Philip Axelroth asserts that Defendants' allegedly unconstitutional actions mentioned above constitute illegal exaction under Arkansas Code Annotated § 16-123-105.[30] Because the federal claims should be dismissed, this Court should decline to extend supplemental jurisdiction over Plaintiff's state-law exaction claim.[31]

IV. CONCLUSION

IT IS, THEREFORE, RECOMMENDED THAT:

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[28] *Younger v. Harris*, 401 U.S. at 44.

[29] *Id*. at 46.

[30] Doc. No. 13.

[31] 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . [it] has dismissed all claims over which it has original jurisdiction.").

1. Defendants' Motion for Judgment on the Pleadings (Doc. No. 15), Motion to Dismiss for Failure to State a Claim (Doc. No. 25), and Motion for Judgment on the Pleadings (Doc. No. 28) be GRANTED to the extent that they are based on the *Younger* abstention doctrine, and DENIED in all other respects.

2. Defendants Milas Hale, III and the City of Sherwood's Motion to Adopt (Doc. No. 41) the arguments made in the other Defendants' briefs be GRANTED.

3. The Court should decline to extend supplemental jurisdiction over Plaintiff Axelroth's remaining state law claims.

4. This matter should be DISMISSED without prejudice.

IT IS SO RECOMMENDED this 24th day of January, 2017.

/s/ Joe J. Volpe
JOE J. VOLPE
UNITED STATED MAGISTRATE JUDGE

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (the "Agreement") is made by and among Charles Dade, Nikki Petree, Nakita Lewis, Lee Andrew Robertson, and Philip Axelroth (hereinafter referred to collectively as the "Plaintiffs"), the City of Sherwood, Arkansas ("Sherwood" or the "City"), and Judge Milas H. Hale, III in his individual and official capacity (the "Judge"), on behalf of themselves and each of their respective heirs, successors, and assigns. All "employees" who are hired by the District Court Judge, irrespective of how they are paid, who have any involvement for implementation and retention of the practices outlined herein will cooperate and follow the directives of the District Court Judge in the retention of the practices outlined herein. To the extent the City of Sherwood employs any individual who, as a matter of Arkansas law, is considered an "employee" of the City of Sherwood, or a City "official," as that term is construed as a matter of Arkansas law, and who has any involvement or control over the practices outlined herein, that person will cooperate with and follow the directives of the District Court Judge in the retention of the practices outlined herein. However, in no event does the City agree to be bound by any act or omission of any person not considered an "employee" or "official" of the City of Sherwood, as those terms are construed under Arkansas law, who may have involvement or control over the practices outlined herein. The City of Sherwood explicitly does not agree to be bound by any act or omission of any person over whom it does not employ as an

"employee," or who is not a City "official," as those terms are construed under Arkansas law, for any act or omission alleged to be in violation of this Agreement

Plaintiffs, Judge Hale, and the City are from time to time hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS. each of the named Plaintiffs. other than Philip Axelroth, allege that they were incarcerated because of an inability to pay fines, fees, costs, and/or restitution (collectively, "legal financial obligations" or "LFOs") imposed by the Sherwood District Court (the "Court"), where Judge Hale presides as the District Court Judge, for misdemeanor offenses related to that Court's "Hot Check" docket, but allegedly were not afforded ability-to- pay hearings or informed of their right to request counsel prior to being jailed, and were not provided court-appointed counsel as indigent persons facing possible incarceration for failure to pay LFOs; and

WHEREAS, Plaintiffs commenced an action by filing a Complaint on August 23, 2016, in the United States District Court for the Eastern District of Arkansas (the "'Federal District Court") entitled *Dade et al. v. City of Sherwood et al.*, Case No. 4:16-cv-00602-JM (the "Lawsuit"), and, thereafter, filed a First Amended Complaint on September 30, 2016 (the "Amended Complaint"), seeking equitable relief and alleging violations of, *inter alia*, Plaintiffs' rights to due process and equal protection under the U.S. Constitution and the Constitution of the State of Arkansas of 1874; and

WHEREAS, Judge Hale and the City of Sherwood have denied Plaintiffs' allegations and deny

any and all liability arising out of Plaintiffs' allegations; and

WHEREAS, Plaintiffs, Judge Hale, and the City of Sherwood now desire to resolve the issues raised in this Lawsuit as between themselves, without further proceedings and without Judge Hale or the City admitting to any of Plaintiffs' allegations; and

WHEREAS, the Parties have agreed to execute a stipulation pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) dismissing this action with prejudice subject to the terms of this Agreement.

NOW, THEREFORE, in reliance on the mutual promises, covenants, and obligations as set out in this Agreement, and for good and valuable consideration, the Parties, through their representative counsel, agree on the following terms and conditions.

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A. PRACTICES:

Judge Hale states that he has adopted the following practices in A.1 through A.27 below, and the agreement herein is an agreement to continue these practices.

Evaluation of ability to pay Legal Financial Obligations;
procedures during initial appearance

1. The Judge or any person that has any involvement or control over the following practices in paragraphs A.1 through A.27 below will continue the practices in paragraphs A.1 through and A.27 noted below: Whenever the Judge seeks to impose a

sentence on a criminal or hot check case that includes an LFO, the Judge or a designated employee of the Sherwood District Court distributes to individual defendants after the hearing on guilt or innocence the "Sherwood District Court Unable to Pay Your Ticket or Fine" document used by the Sherwood District Court, attached hereto as Exhibit A, and made a part hereof, and the "Affidavit of Ability to Pay," attached hereto as Exhibit B, and made a part hereof.

2. At sentencing, the Judge conducts an individualized inquiry into each defendant's ability to pay, taking into account the resources of the defendant, including without limitation whether he or she has a job or income and whether there are other financial obligations that would impair the defendant's ability to pay. In conducting an individualized inquiry into ability to pay, the Judge considers the information provided by the defendant on that defendant's Affidavit of Ability to Pay. If a defendant is unable to provide information the Judge deems relevant at the time of the hearing, the Judge will consider allowing the defendant (and, if applicable, counsel) additional time to gather information to respond to the Judge's questions. If, after a defendant has received the documents referenced in A.1, and the Court has reviewed the Affidavit of Ability to Pay, the defendant proposes through counsel that he or she can pay the LFOs assessed or enter a payment plan, the Court may confirm that payment on the terms indicated by defense counsel is acceptable upon: 1) defense counsel's representation that he/she has discussed ability to pay with the client and 2) a description by defense counsel of the information or evidence

supporting the client's ability to pay. If the defendant offers a payment plan, on his/her own, the Court will make a brief inquiry on their ability to pay, as has been its practice, and adopt that payment plan once it is satisfied the defendant can afford to comply.

3. Judge Hale will continue the Court's practice of not jailing or detaining any defendant who states that they are able to pay, but not pay in full, on sentencing day. Such defendants are given the option of paying LFOs through a monthly payment plan administered by the Sherwood District Court. There is no set minimum amount that Sherwood District Court will accept as payment in monthly installments. If a defendant agrees to a monthly payment plan, Sherwood District Court will continue its practice of providing a written copy of that plan following the person's sentence.

4. Defendants who state that they are unable to pay their LFOs are given the option of receiving a sentence of community service in lieu of LFOs.

a) If a defendant receives a sentence of community service, that defendant is given options as to where he or she can perform the service and an explanation as to what the defendant must do. Community service hours ordered are proportionate to the violation and reasonable in light of any disabilities, driving restrictions, transportation limitations, and caregiving and employment responsibilities of the individual.

b) If a defendant agrees to a community service plan, he or she will receive a written copy of that plan following sentencing, including the monetary value of the hours of community service performed and how community service hours will be credited toward the payment of the defendant's LFOs.

5. Defendants will not be subject to any additional charges or interest for being placed, in whole or part, on a community service plan or payment plan.

6. Beyond community service, and based on consideration of the difficulties a defendant may have in paying LFOs in light of the information obtained by the Sherwood District Court through the ability-to-pay inquiry, the Judge will also consider alternatives when considering a sentence, including reduction of LFOs, waiver of LFOs, extension of time to pay, job skills training, counseling, and other interventions.

7. When a defendant provides evidence or an affidavit establishing that he or she receives federal or state public assistance, resides in a mental health facility, and/or has income below the federal poverty guidelines, such individual will be presumed unable to pay his or her LFOs and eligible for waiver of any LFOs that are not mandatory under state law. However, other alternatives to LFOs as discussed in paragraphs A.4 and A.6 may be considered by the Sherwood District Court as possible sentences.

8. When a defendant is placed on a payment plan or community service plan, the Judge or a designated

employee of the Sherwood District Court will confirm and record the person's mailing address and telephone numbers {including any cell phone numbers) in the person's case file. The defendant will be advised that he or she must notify the Court of any changes to his or her mailing address or telephone numbers.

*****

Access to counsel

9. Prior to the entry of any plea, in any criminal or hot check case, Judge Hale shall continue his practice of advising a defendant of the incarceration, and the LFOs, that the defendant is potentially facing, and advise the defendant that he/she has the right to an attorney or a public defender can be appointed at no cost if he or she cannot afford counsel. If a defendant chooses the assistance of a public defender, one will be appointed to represent the defendant before there has been an entry of a plea or a disposition of charges.

10. Any determination that a defendant has waived the right to counsel will be conducted orally after the Judge:

a) has advised the defendant of the right to counsel, the costs and benefits of proceeding without counsel, and the maximum possible LFOs and, if applicable, incarceration, that may result from proceeding without counsel; and

b) has made a factual finding that the defendant has knowingly and voluntarily waived the right to counsel.

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Evaluation of ability to pay Legal Financial Obligations;
Order to Show Cause Procedures

11. For each defendant sentenced to payment or community service plans, but who has missed or otherwise not kept up with payments or the community service hours required, an employee of the Sherwood District Court will continue their practice of calling to inquire as to the defendant's status and whether he or she needs to see the Judge to provide updated information on his or her ability to pay LFOs or ability to perform required community service. For those who do not have a current phone contact number on file, notice will be mailed to the last given address.

12. The Judge will hold a review hearing for individuals on community service. The Judge will hold the hearing at least 30 days after the end of the period for which the defendant was sentenced to community service. Defendants who complete their community service before the review date will not have to appear if they turn in their proof of completion to the court clerk's office before the review date.

13. The Judge no longer holds review hearings for persons on payment plans. If a person on a payment plan fails to make two consecutive monthly payments, or a person on a community service plan fails to perform the required hours during two consecutive months, and fails to respond to attempted

contact from employees of the Sherwood District Court regarding noncompliance. the Sherwood District Court may cause to be served a written notice, with an Order to Show Cause, to the person, directing him or her to appear at the Court on a specified date for a hearing at which she or he will be required to explain his or her failure to comply with the terms of the payment plan or community service plan.

14. The Order to Show Cause is not an arrest warrant. and no person will be subject to arrest or detention at the time an Order to Show Cause is served. The Form attached as Exhibit C will be included with any Order to Show Cause that is served.

15. At an Order to Show Cause hearing, the Judge will advise the defendant that he or she has a right to be represented by an attorney at no cost if the defendant cannot afford one. At the hearing, the Judge will conduct an updated individualized inquiry into the defendant's ability to pay LFOs or whether the defendant should receive an adjustment to the community service hours ordered or to the schedule for such community service. Defendants will be permitted to complete an updated Affidavit of Ability to Pay. Exhibit B, and the Judge will consider this information in evaluating the defendant's ability to pay.

16. Individuals who state that they are no longer able to pay LFOs will be eligible for reduction or waiver of remaining payment amounts and will be given the option to perform community service in lieu of any amount not waived.

17. The Judge will only order incarceration of a defendant for failure to pay LFOs or complete community service in the event that the Judge makes

factual determinations on the record and written findings that a failure to comply was willful. Incarceration will only be ordered if the defendant was represented by counsel or knowingly and intelligently waived the right to counsel pursuant to paragraphs A.9 and A.10 above.

18. The Sherwood District Court will not order a person's driver's license revoked for failure to pay or failure to complete required community service.

19. The Judge or a designated employee of the Sherwood District Court will request updated contact information for any individuals appearing at an Order to Show Cause Hearing and add that information to the defendant's case file.

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Alterations to contempt procedures, arrest warrants, and recall of prior warrants

20. The Judge may only consider assessing a defendant with a failure-to-appear charge and warrant for defendant's failure to appear in Court for arraignment, plea, or trial on the original, underlying hot check charges under AC.A.§ 5-37-301-307 or any successor statute ("Arkansas Hot Check Law"), and for failure to appear at any Show Cause hearings where Show Cause notice was properly served. No other failure-to-appear charges will be considered, noticed, or adjudged by the Sherwood Court.

21. The Judge will not enter or assess a charge of contempt of court for a defendant's failure to pay LFOs, unless, the Judge makes a factual determination on the record, and written findings,

that a failure to pay was willful. Incarceration can only be ordered if the Defendant is represented by counsel, or knowingly and intelligently waived the right to counsel pursuant to paragraphs A.9 and A.10, above.

22. All arrest warrants for failure to pay, failure to appear, and failure to comply with probation, issued by the Sherwood District Court prior to November 1, 2016 were recalled via directive of Judge Hale and purged from any warrant database system maintained by the City.

23. As it pertains to criminal cases under the Arkansas Hot Check Law, Judge Hale only issues arrest warrants on a defendant's original criminal charges under the Arkansas Hot Check Law and on any failure-to-appear charge arising from a failure to appear for the trial, plea, or arraignment for such original criminal charges. However, Judge Hale reserves the right to issue an arrest warrant on a defendant's failure to appear at Show Cause hearings where notice was properly served.

24. For all open cases, which were open as of the filing of the First Amended Complaint on September 30, 2016, where restitution has been fully paid, the Judge has waived or will waive any remaining LFOs.

25. For open cases, which were open as of the filing of the First Amended Complaint on September 30, 2016, where restitution has not been paid, the Judge will consider a person's ability to pay as discussed herein, and that person may complete an Affidavit of Ability to Pay, attached as Exhibit B. If a defendant indicates he or she cannot pay restitution, the Judge will permit the defendant to perform

community service for the remaining amount of restitution and waive any additional LFOs.

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Access to Courtroom

26. The Sherwood District Court maintains a video recording of all hearings of proceedings under the Arkansas Hot Check Law held in the Court. Recordings will be maintained for at least one year and will be available to members of the public upon request.

27. Members of the public are permitted by the Sherwood District Court to enter and observe the Court's proceedings whether or not they have a hearing scheduled before the Court. This provision shall not apply to Sobriety or DWI Court staffings.

B. JURISDICTION AND DISPUTE RESOLUTION

Jurisdiction

1. For a period of two years from the date of the Parties' stipulation of dismissal of the Lawsuit pursuant to paragraph D.11 of this Agreement, the Federal District Court shall retain ancillary jurisdiction, and the Parties agree to the jurisdiction of the Federal District Court, solely for the purpose of enforcing compliance with the terms of the Agreement. Plaintiffs hereby waive any action they may have hereinafter for breach of this Agreement under state common law after the two-year period specified in this Agreement.

Resolution process for potential disputes

2. In the event that a dispute arises regarding the City's or the Judge's compliance with the Agreement, the Parties shall follow the following process: (1) Plaintiffs shall give the Sherwood District Court written notice of any instance of alleged noncompliance with this Agreement and an opportunity to cure. (2) The Sherwood District Court will review the issues identified by the notice and make a good faith effort to resolve or correct any failures to comply with the terms of this Agreement within forty-five (45) days of receipt of such notice. (3) If Plaintiffs do not believe the issues have been resolved, Plaintiffs may request and the Parties agree to meet, in-person and/or by telephone, to confer within ten business days of such request in a good faith effort to settle the dispute. (4) If the Plaintiffs do not believe the meet and confer process resolves the dispute and the Federal Court's jurisdiction under paragraph B.1 above is still effective, Plaintiffs may request and the Parties agree to hold an in-person and/or telephonic mediation conference among Plaintiffs, the Sherwood District Court, and the Federal District Court (or a mediator assigned by the Federal District Court) within thirty

D. MISCELLANEOUS

1. If any provision of this Agreement is declared invalid or unenforceable by a court having competent jurisdiction, it is mutually agreed that this Agreement shall endure except for the part declared invalid or unenforceable by order of such court, unless

the elimination of the invalid provision shall materially affect the intent of this Agreement. The Parties to this Agreement shall consult and use their best efforts to agree upon a valid and enforceable provision that shall be a reasonable substitute for such invalid or unenforceable provision in light of the intent of this Agreement.

2. No Party shall be deemed to be a prevailing party of the Lawsuit for any purpose.

3. The Parties expressly indicate an intent to be bound by the terms of this Agreement, in their official and individual capacity, and that the Agreement is intended to avoid further litigation of Plaintiffs' claims in the Lawsuit and be final and complete.

4. The Parties reserve their rights to assert all arguments, claims, or defenses in the event that the Federal District Court determines that the Parties have not entered into a valid and enforceable settlement agreement.

5. This Agreement shall be deemed to have been jointly drafted and no provision herein shall be interpreted or construed for or against any Party because such Party drafted or requested such provision, or this Agreement as a whole.

6. This Agreement contains the entire understanding, and all of the terms and conditions agreed upon by the Parties hereto, relating to the subject matter and settlement of the Lawsuit. Neither any oral agreement entered into at any time, nor any written agreement entered into prior to the execution of this Agreement, regarding the settlement or subject matter of the Lawsuit shall be deemed to exist, or to

bind the Parties hereto, or to vary the terms and conditions contained herein.

7. The Parties expressly represent and warrant that they have full legal capacity to enter into this Agreement, that they have carefully read and fully understand this Agreement, that they have had the opportunity to review this Agreement with their attorneys and that they have executed this Agreement voluntarily, without duress, coercion or undue influence.

8. The terms of this Agreement may not be modified or amended except by a writing signed by counsel for all Parties.

9. The construction, interpretation, operation, effect and validity of this Agreement, and all documents necessary to effectuate it shall be governed by the internal laws of the State of Arkansas without regard to conflicts of laws.

10. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Signatures that have been scanned and transmitted by electronic mail shall be deemed valid and binding to execute this Agreement.

11. Within five business days of the full execution of this Agreement, including the signatures of all Parties and all of their acknowledging counsel, and subject to the terms of this Agreement, the Parties shall file a stipulation of dismissal with prejudice of the Lawsuit with the Federal District Court pursuant to Fed. R. Civ. P. 41(a)(l)(A)(ii). Such stipulation shall attach as an exhibit thereto a copy of the fully executed Agreement.

For Plaintiffs

/s/ Charles Dade
Plaintiff Charles Dade Date: 11-4-17
c/o Myesha Braden
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER THE LAW
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

/s/ Nikki Petree
Plaintiff Nikki Petree Date: 11-9-17
c/o Myesha Braden
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER THE LAW
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

/s/ Nakita Lewis
Plaintiff Nakita Lewis Date: 11-7-17
c/o Myesha Braden
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER THE LAW
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

/s/ Lee Andrew Robertson
Plaintiff Lee Andrew Robertson Date: 11-7-17
c/o Myesha Braden
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER THE LAW
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

/s/ Philip Axelroth
Plaintiff Philip Axelroth Date: 11/8/17
c/o Myesha Braden
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER THE LAW
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

Acknowledged by Counsel for Plaintiffs

/s/ Bettina E. Brownstein
Bettina E. Brownstein Date: 11-9-17
BETTINA E. BROWNSTEAIN LAW FIRM
904 West 2nd Street
Little Rock, AR 72201

/s/ Reggie Koch
Reggie Koch Date: 11-10-17
THE KOCH LAW FIRM
2024 Arkansas Valley Drive, Suite 707
Little Rock, AR

/s/ Myesha Braden
Myesha Braden Date: 11-9-17
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER THE LAW
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

/s/ J. Alexander Lawrence
J. Alexander Lawrence Date: 11-10-17
MORRISON & FOERSTER LLP
250 West 55th Street

New York, NY 10019

For Defendants

/s/ _____ Defendant
Date: 10/27/17 c/o

/s/ _____ Defendant
Date: 10/27/17 c/o

Acknowledged by Counsel for Defendants

/s/ _____ Counsel
Date: 10/30/17

_____
Counsel Date:

EXHIBIT A

SHERWOOD DISTRICT COURT
UNABLE TO PAY YOUR TICKET OR FINE

If you requested a fine payment plan, but your circumstances change, and you are unable to pay your fine, the court can allow you to work the fine off in the form of community service. For each day of community service worked, you will be given at least $40.00 credit toward your tine. (For example, if your fine is $400.00 and you request community service as the way to pay it you will be assigned 10 days of service work or less.) The community service can be done at a location near your home or work, or at a court-selected place. You will be given a form for the supervisor of the community service to sign verifying the day(s) performed.

The judge win set a review date for you to inform the Sherwood District Court that you finished the community service. You may appear in person on the assigned date. If you appear but have not completed the days assigned, the court will give you an extension and a new review court date. No one will be committed to jail for failure to pay fines or complete their community service, unless the court, after a hearing*. determines the conduct not to pay the fines, or complete the community service, was willful.

If you complete the assigned days before your court date, simply tum in, in person, or mail in the community service sheet to the Sherwood Court

Clerk, and you will not have to participate in the review hearing.

If you are on a payment plan or doing community service, and find that you need an adjustment in the amount you pay or days of community service, please contact the court immediately at (501) 835-0898. You will be given a court date to discuss the matter with the judge.

*If the Court schedules a hearing because of non-payment, your ability to pay will be a crucial issue. The court may inquire about your finances to include, but not limited to: income, expenses (i.e., rent, childcare, utilities, clothing, food, medical conditions/bills, transportation etc.,) bank accounts, and other assets. The court may also inquire about your efforts to obtain money to pay, including your job skills, and efforts to apply for jobs. The judge will give you an Affidavit to complete, and a meaningful opportunity to be heard on the question of your financial circumstances. You should also present any documents that you want the judge to consider.

Consult an attorney before coming to your hearing. If you cannot afford an attorney the court will appoint the Public Defender at no cost to you.

PLEASE NOTE. You are responsible for making sure the court has your correct address, telephone number, and e-mail Please notify us immediately of any change of address, telephone number, or email.

SHERWOOD DISTRICT COURT
AFFIDAVIT OF ABILITY TO PAY

Exhibit B

CASE NO. _____

Name	Date of Birth:	Last 4 digits of SSN#:
Address:	City	Zip:
Phone:	Fax:	E-mail:
Employer:	Work Phone:	Length of Employment:
Other Employment:	Work Phone:	Length of Employment:

ASSETS

Vehicle 1: (Make, Model, Year)	Present value:
Vehicle 2: (Make, Model, Year)	Present value:
Boat, Jet ski, Motorcycle, 4-wheeler:	Present value:
Home, Other Real Estate	Present value:
Savings/Cash/Checking	Present value:

Monthly Income	**Monthly Expenses**
Net Monthly Income (Self)	Mortgage
Net Monthly Income (Spouse)	Vehicle Payments

Child Support/ Alimony Received	Utilities
Social Security/ Disability Received	Child Support/Alimony Payments:
Other Income:	Food:
	Other Payments: (Credit Cards)
Total Income	Total Expenses

I,_____, swear that the information provided herein in true, to the best of my knowledge and recollection. I understand that furnishing false information under oath, may subject me to

EXHIBIT C [For inclusion with Order the Show Cause]

SHERWOOD DISTRICT COURT
UNABLE TO PAY YOUR TICKET OR FINE

You are receiving this notice because you have missed monthly payments to Sherwood District Court under your payment plan or because you have not performed required community service hours. The Court has directed you to appear on the specified date to explain why you have missed making payments or not completed scheduled community service hours.

This notice is not an arrest warrant. No one will be committed to jail for failure to pay fines or complete their community service, unless the court, after the hearing, determines the conduct not to pay the fines, or complete the community service, was willful. At the hearing, your ability to pay will be a crucial issue. The court may inquire about your finances to include, but not limited to: income, expenses (i.e., rent, childcare, utilities, clothing, food, medical conditions/bills, transportation etc.,) bank accounts, and other assets. The court may also inquire about your efforts to obtain money to pay, including your job skills, and efforts to apply for jobs. The judge will give you an Affidavit to complete, and a meaningful opportunity to be heard on the question of your financial circumstances. You should also present any documents that you want the judge to consider.

Consult an attorney before coming to any hearing for non-payment or failure to complete community service. If you cannot afford an attorney

the court will appoint the Public Defender at no cost to you.

If you requested a fine payment plan, but your circumstances change, and you are unable to pay your fine, the court can allow you to work the fine off in the form of community service. For each day of community service worked, you will be given at least $40.00 credit toward your fine. (For example, if your fine is $400.00 and you request community service as the way to pay it you win be assigned 10 days of service work or less.) The community service can be done at a location near your home or work, or at a court-selected place. You will be given a form for the supervisor of the community service to sign verifying the day(s} performed.

PLEASE NOTE. You are responsible for making sure the court has your correct address, telephone number, and e-mail. Please notify us immediately of any change of address, telephone number, or email.