No. 16-___

IN THE

Supreme Court of the United States

ERIK MICKELSON AND COREY STATHAM, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Petitioners,

v.

COUNTY OF RAMSEY, KEEFE COMMISSARY NETWORK, LLC, FIRST CALIFORNIA BANK, OUTPAY SYSTEMS, LLC, AND JOHN DOES 1-10,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Ramsey County confiscates $25 from every person its police arrest regardless of whether those people are guilty or innocent and then forces presumptively innocent arrestees to navigate a bureaucratic obstacle course in order to get their money back. The Eighth Circuit blessed this regime in an opinion that expands the widespread disagreement among the lower courts over what limits, if any, due process imposes on municipal fees. The question presented is therefore:

Whether due process allows governments to confiscate money from innocent people on the basis of an arrest and then force those people to prove that they are entitled to have their money returned.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

OPINIONS BELOW

The Eighth Circuit's opinion (App.1a) is at 823 F.3d 918. The district court's opinion (App.27a) is at 2014 WL 4232284.

JURISDICTION

The Eighth Circuit entered judgment on May 4, 2016, App.1a, and denied rehearing on June 22, 2016. App.63a. 28 U.S.C. § 1254(1) confers jurisdiction.

PROVISIONS INVOLVED

The Fourteenth Amendment states in relevant part that "nor shall any state deprive any person of life, liberty, or property, without due process of law."

STATEMENT

This case arises from the increasingly common practice in cash-strapped municipalities of funding government operations on the backs of the poorest citizens. Ramsey County confiscates $25 from every person its police arrest and do not immediately release, even if the arrest is unlawful or the County does not prosecute the arrestee; there are no exceptions to this policy and there is no way to contest the confiscation before it happens. App.2a-3a. The County collects its $25 by literally removing cash from every arrested person's pocket, keeping $25 for itself, and then returning the balance to the arrestee on a fee-laden debit card. *Id.*

Under Minnesota law, people who are arrested but not convicted are theoretically able to get their money back. To do so, they must obtain proof from the police that they were acquitted or will not be charged and then take that proof to the county officials who decide whether to issue a $25 refund.

App.2a-3a. This journey through county government is often too burdensome, too confusing, and too intimidating for innocent arrestees to complete, such that the County permanently keeps countless fees from countless innocent people. App.76a. Petitioner Corey Statham illustrates as much; he was arrested and booked and had $25 taken from his wallet. His charges were dismissed, but the County never gave the money back. App. 69a-76a.

The County's scheme of confiscating money from innocent people and forcing them to prove their entitlement to a refund conflicts with due process.

1. Minnesota law authorizes a county board to impose a fee on every person booked for confinement and not immediately released, Minn. Stat. § 641.12; Ramsey County has a policy of confiscating $25 from every person it books. App.2a. Thus, when the county's police book someone, they confiscate and inventory the money in that person's possession and pocket $25 to pay the booking fee, which is paid into the general treasury fund. App.74a. If an arrestee has less than $25 at the time of arrest, the County charges the balance of the fee against that person's inmate account, placing the account into a negative balance. App.2a. In that circumstance, Minnesota law directs the sheriff to notify the court where the arrested person's charges are pending; the court must order the fee paid "as part of any sentence or disposition imposed." Minn. Stat. § 641.12. Although state law requires the sheriff to return the fee if a person is acquitted, not charged, or if the charges are dismissed, Ramsey County does not automatically return the $25 if it has already taken it, or inform arrestees about a possible refund. App.75a-76a.

When Ramsey County discharges arrestees, it does not return their cash. Rather, it keeps $25 and returns the rest via a prepaid debit card. App.3a. These mandatory debit cards have numerous fees, including a $1.50-per-week maintenance fee that begins being imposed thirty-six hours after the card is issued. *Id.* The fee for using a domestic ATM is $2.75, the fee for transferring the balance to a bank is $3.00, and the fee for checking the card balance is $1.50. App.3a-4a. There is no practical way to convert the card back into cash without paying some sort of fee.

2. Corey Statham and Erik Mickelson were arrested in Ramsey County in 2013 and paid the $25 booking fee. App.32a-33a. Statham was arrested for disorderly conduct. The County confiscated $46 in cash when it booked him. App.4a. He was released on his own recognizance 48 hours later, and received a debit card containing $21, of which he eventually paid $7.25 in fees. App.5a, 33a. The charges against Statham were dismissed, but the County did not return his $25 booking fee. App.5a.

Mickelson was arrested for violating a noise ordinance. App.4a. Ramsey County confiscated $95 when it booked him. *Id.* He was released on his own recognizance later that same day. App.32a. The County issued him a prepaid debit card with a $70 balance, and he paid $5 in fees for using it. App.4a. He ultimately pleaded guilty to violating the ordinance. *Id.*

2. Statham and Mickelson sued the County for its booking-fee and debit-card policies. They also sued several entities that are involved in

administering the scheme: Keefe Commissary Network, L.L.C., which coordinates the debit-card scheme under contract with Ramsey County; First California Bank, which issues the debit cards; and Outpay Systems, which processes transactions related to the debit cards. App.4a-5a. Petitioners claimed that Respondents had violated their Fourth and Fourteenth Amendment rights, along with committing several state-law torts. App.5a.

The district court granted judgment on the pleadings to defendants. App.27a-62a. It held in relevant part that there was no violation of procedural due process because arrested persons have only a limited interest in the $25, the government has a strong interest in its collection scheme, and the risk of erroneous deprivation is low. App.36a-47a. It also held that there was no violation of substantive due process because the booking fee and debit-card fees "do not rise to the level of conscience-shocking conduct that would support a substantive due process violation." App.47a n.2.

3. The Eighth Circuit affirmed. App.1a-26a. It held there was no constitutional right to an opportunity to be heard before one's property is confiscated. According to the panel, the "usual rule" is that confiscating property requires only an adequate post-deprivation determination of whether the confiscation was proper. App.16a. The panel agreed that Petitioners have a property interest in the $25, but applied the balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine whether Petitioners were entitled to be heard before the County took their money. App.6a-17a.

The panel answered this question "no," finding that the *Mathews* factors weighed against Petitioners. It reasoned that an individual's interest in $25 is small, especially as compared to Ramsey County's interest in collecting its $25 upfront. App.9a. The panel further concluded that there was a low risk of erroneous deprivations. That was so, the panel reasoned, because a person must be arrested before paying the fee; the court surmised that, since arrests require probable cause, there was a low chance of innocent people being charged the fee. App.12a. Thus, in the panel's view, *Mathews* meant that the hypothetical possibility of a refund after acquittal or dismissal provided sufficient protection of Petitioners' interest in their money to satisfy due process. App.13a-14a.

The court also affirmed the dismissal of the debit-card claims. It held that Petitioners lacked a protectable interest in not paying the fees associated with the debit cards. That was so, the panel explained, because the fee amounts were low enough that Petitioners' interests were "*de minimis*" and not "sufficient to trigger the protections of due process." App.22a.

4. Petitioner sought rehearing of that decision and it was denied on June 22, 2016. *See* App.63a.

REASONS FOR GRANTING THE PETITION

The petition presents an important, recurring question of constitutional law. This Court has repeatedly held that due process requires governments to provide an opportunity to be heard before confiscating property unless an exigent circumstance requires immediate confiscation. That bedrock constitutional rule is based on the commonsense notion that it is unfair to take property from a person without first affording that person an opportunity to contest the deprivation. Allowing governments to confiscate first and provide process later puts innocent people in the position of having to prove their entitlement to their own property.

The panel's opinion turns this established constitutional rule on its head. Rather than require pre-deprivation process wherever feasible—as this Court has long required—the panel used the *Mathews v. Eldridge* balancing test to conclude that providing pre-deprivation process is unnecessary wherever impractical. That is wrong. The multi-factor *Mathews* test is the framework this Court has prescribed for determining *how much* process is due; it is not a framework for deciding anew in every case whether pre-deprivation process is required *at all*. The requirement that governments must generally provide process before confiscating property is a *rule*, not a suggestion that is up for case-by-case reevaluation. And by using the *Mathews* balancing test to dispense with that rule, the panel's decision discards many decades of this Court's precedent, while eradicating a core constitutional protection.

The panel's misuse of *Mathews* expanded the disagreement among lower courts about how to reconcile due process with the spreading practice of governments collecting revenue from their poorest residents through administrative "fees." Litigation over municipal fees like Ramsey County's has created significant conflict. That conflict is exemplified by the Seventh Circuit's en banc decision in *Markadonatos v. Village of Woodridge*, 760 F.3d 545 (7th Cir. 2014) (en banc), another case about so-called "booking fees," wherein that court's judges split 3-2-4-1, thus affirming by an equally divided court. As that decision illustrates, this Court's guidance on the rules for these sorts of fees is sorely needed.

Finally, this case is an excellent vehicle to consider this important issue. The issue is squarely presented, was discussed at length in a published opinion below, and has sufficiently percolated in the lower courts to be ready for review. The Question Presented is also related to the question this Court agreed to answer in *Nelson v. Colorado*, Case No. 15-1256, in which the Court granted certiorari on September 29, 2016. That case, like this one, requires the Court to consider the limits due process imposes on government schemes that confiscate money and then force presumptively innocent people to prove their entitlement to that money's return. This case is a natural companion or close successor to *Nelson*; having both cases before the Court would maximize the Court's ability to articulate a clear and comprehensive constitutional rule. For that reason, too, review is warranted.[1]

[1] In the alternative, Petitioner respectfully requests that the Court at least hold this case pending its decision in *Nelson*.

I. THE OPINION BELOW UPENDS THIS COURT'S LONGSTANDING PRECEDENT.

This Court has long expounded a clear, simple constitutional rule: Due process requires "that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest." *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). This rule has limited exceptions for when applying it would be unworkable, but those exceptions are narrow and are triggered only by a true exigency—not mere inconvenience.

The Court uses the test from *Mathews v. Eldridge* to determine *how much* process is required, not whether *any* pre-deprivation process is required. Yet the panel ignored *Boddie* and its progeny, instead deploying the *Mathews* framework to conclude that Petitioners have no right to *any* process before their money is confiscated. That inversion of this Court's precedent seriously threatens due process.

A. The General Constitutional Rule Is That Governments Must Provide Process Before Confiscating Property.

The central requirement of due process is the opportunity to be heard in some fashion before one's property is taken. As this Court put it, the "root requirement" of due process is providing "an opportunity for a hearing *before* [an individual] is deprived of any significant property interest." *Boddie*, 401 U.S. at 379. The Court's decision in *Mathews* faithfully applied that rule, recognizing that the Court "consistently has held that some form of hearing is required before an individual is finally deprived of a property interest." 424 U.S. at 333.

The question in *Mathews* was not whether *any* pre-deprivation process was required; it was whether the "administrative procedures provided" in that circumstance were "sufficient." *Id.* at 334.

The Court has reiterated this baseline rule time and time again. *See, e.g.*, *United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency*, 461 U.S. 555, 562 n.12 (1983) ("The general rule, of course, is that absent an 'extraordinary situation' a party cannot invoke the power of the state to seize a person's property without a *prior* judicial determination that the seizure is justified."); *Brock v. Roadway Exp., Inc.*, 481 U.S. 252, 261-62 (1987) (plurality) ("[T]he Court has upheld procedures affording less than a full evidentiary hearing if some kind of a hearing ensuring an effective initial check against mistaken decisions is provided before the deprivation occurs, and a prompt opportunity for complete administrative and judicial review is available." (internal quotation marks omitted)); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Boddie*, 401 U.S. at 379).

These decisions make clear that where, as here, the government is confiscating property pursuant to an established procedure, it must provide some form of process in advance. Depending on the *Mathews* analysis, "something less than an evidentiary hearing" may be sufficient, 424 U.S. at 343, but *some* form of pretermination process is generally "necessary," *Loudermill*, 470 U.S. at 545, unless truly exigent circumstances make providing it impossible.

The panel's decision conflicts with this basic framework.

1. Foremost, the panel's opinion jettisons the constitutional rule in favor of its limited exceptions. To do so, it twists flexibility concerning the *form of* process that must be provided into a "*usual rule*" that *no* process need be provided prior to seizing property. App.16a (emphasis added). But this Court's recognition that pre-deprivation process can often be "something less than an evidentiary hearing," *Mathews*, 424 U.S. at 343, does not authorize doing away with process altogether. To the contrary, "[t]hat the hearing required by due process … is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest." *Boddie*, 401 U.S. at 378-79.

Moreover, the panel's basic holding was that, "in view of the modest private interests at stake, the substantial state interests in the current withholding system, and the appellants' failure to complete the existing refund process and demonstrate its alleged inadequacies," App.20a-21a, "the *Mathews* factors show that a pre-deprivation hearing is not required and that a post-deprivation remedy may suffice," App.15a. That holding cannot be reconciled with this Court's repeated admonitions that a pre-deprivation hearing is the "general rule." *Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency*, 461 U.S. at 562 n.12. The government is permitted to forego all pre-deprivation process only in "extraordinary situations" where specific exigencies require it. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993). If pre-deprivation

process could be avoided whenever providing such process is inconvenient for the government—a criterion that is *always* satisfied—then that requirement would be a nullity.

2. *Mathews* reinforces this baseline rule. Under the *Mathews* test, courts weigh three factors in determining what sort of procedures satisfy due process: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. In that case, the Court applied these factors to hold that written proceedings "provide the claimant with an effective process for asserting his claim prior to any administrative action." *Id.* at 349. The Court held that "something less than evidentiary hearing is sufficient prior to adverse administrative action," *id.* at 343—a holding which necessarily presupposed that *something* still needed to be provided.

This Court's subsequent discussions of *Mathews* confirm that, as *Mathews* itself said, "some form of hearing is required before an individual is finally deprived of a property interest." *Id.* at 333. For example, when this Court examined the Secretary of Labor's power to order temporary reinstatement of a discharged employee under the Surface Transportation Act of 1982, the plurality used the *Mathews* analysis to determine whether the limited nature of the pre-deprivation hearing was justified.

Brock, 481 U.S. at 261-62. No Justice suggested that *Mathews* allowed the government to forego the pre-deprivation opportunity to be heard *altogether*; rather, *Mathews* was the guide for determining whether *that particular* pre-deprivation hearing satisfied the minimum requirement that "some kind of a hearing ensuring an effective initial check against mistaken decisions is provided before the deprivation occurs." *Id.* (quotation marks omitted).

And when this Court considered whether the government must afford notice and a hearing before using civil forfeiture to take real property, it restated that same "general rule." *James Daniel Good Real Prop.*, 510 U.S. at 48. The Court held that, because the government "has various means, short of seizure, to protect its legitimate interests in forfeitable real property," there "is no reason to take the additional step of asserting control over the property without first affording notice and an adversary hearing." *Id.* at 59. In short, the Court explained, "[u]nless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture." *Id.* at 62.

B. The Panel's Decision Expands The Exigency Exception To Devour The Pre-Deprivation Process Rule.

The panel's opinion eradicates this rule. Citing cases about taxation and about property that might be "removed," "destroyed," or "concealed," the panel held that "post-deprivation process suffices if the Government has an interest in collecting owed funds." App.17a. That general authorization to

confiscate property now and ask questions later is incorrect and would, if left standing, nullify the general constitutional rule.

1. Although the Due Process Clause ordinarily requires an opportunity to be heard before a deprivation pursuant to established procedure, that requirement does not apply if "exigent circumstances" require delaying process. *James Daniel Good Real Prop.*, 510 U.S. at 61. To qualify as exigent, the situation must be "truly unusual," *Fuentes v. Shevin*, 407 U.S. 67, 90 (1972), and this Court has invalidated schemes that dispensed with a pre-deprivation hearing absent "a showing of some exigent circumstance." *Connecticut v. Doehr*, 501 U.S. 1, 18 (1991).

Few circumstances qualify as exigent ones. For example, this Court permitted the government to unilaterally set rents in defense-area housing accommodations during World War II, with only post-enforcement review available, because of the ongoing "war emergency." *Bowles v. Willingham*, 321 U.S. 503, 521 (1944). Or it authorized the government to immediately destroy tainted poultry to avoid exposing the public to contaminated food. *N. Am. Cold Storage Co. v. City of Chicago*, 211 U.S. 306, 320 (1908). These unique circumstances involved "executive urgency," *James Daniel Good Real Property*, 510 U.S. at 60, and the decisions that arose from them do not suggest that mere administrative ease can justify the wholesale abandonment of pre-deprivation process.

Nor is Ramsey County's arrest fee justified by an actual need for urgent action. For example, the

Federal Deposit Insurance Company may suspend an indicted official from office in a federally insured bank, *Federal Deposit Ins. Corp v. Mallen*, 486 U.S. 230, 240 (1988) (citing *N. Am. Cold Storage Co.*, 211 U.S. at 314-21), the government may temporarily suspend a horse trainer from further racing if there is evidence of doping, *Barry v. Barchi*, 443 U.S. 55, 65 (1979), and the government can temporarily suspend someone's drivers license when there is strong evidence that that the person was drunk driving, *Mackey v. Montrym*, 443 U.S. 1, 17-18 (1979) (citing *N. Am. Cold Storage Co.*, 211 U.S. 306). But these suspensions involve exigent circumstances because any delay would allow destructive behavior to continue. The government has an urgent need to prevent the indicted official from defrauding the company, the horse trainer from cheating in more races, and the drunk driver from putting more people at risk. Ramsey County's desire to collect money as a means of raising revenue involves no comparable need to forestall an imminent harm.

2. The panel suggested that Ramsey County satisfies the exigency exception because "the Government has an interest in collecting owed funds." App.17a. But governments *always* have an interest in "collecting owed funds"—just as they have an interest in seizing real property when they believe doing so is warranted, or in ending disability benefits when they believe those benefits are unjustified. The relevant question is whether the government has an interest in seizing the particular property *right now* without pre-seizure process. Ramsey County clearly does not; it is fully capable of collecting its $25 when and if an arrestee is actually convicted.

In the panel's view, "[c]ommon sense dictates that waiting until after conviction … would decrease the certainty of collection." App.10a. But that is not sensible at all. Securing a conviction (whether through trial or by plea) will necessarily require the guilty individual to have another interaction with the government. The County thus has the *same* ability to collect the fee at the time of conviction as it has to collect the fee at the time of arrest; in both circumstances, the individual is under the government's control. In truth, the only reason to confiscate $25 from every person at the time of arrest—rather than collect $25 from guilty people at the time of conviction—is to confiscate money from innocent people who are too unsophisticated, too busy, or too fearful of the government to successfully reclaim their money later. That is obviously not a legitimate government interest.

Moreover, if the panel were correct that pre-deprivation process is unnecessary whenever "the Government has an interest in collecting owed funds," App.17a, then traffic tickets would also be unnecessary, as would be *any* proceeding that precedes *any* fine. Rather than issue tickets and require speeding motorists to contest the infraction or pay the fee, the police could simply empty speeders' wallets and dare them to file post-deprivation actions to get that money back. The money would be "owed"—to defray the undoubtedly high cost of policing traffic—just as much as Petitioners "owed" Ramsey County $25 despite their presumptive innocence at the time of arrest (and Mr. Statham's actual innocence today).

The government's pecuniary interest in collecting fees is, indeed, precisely *why* process is required *before* the government may effect a seizure. This Court recognized as much in *James Daniel Good Real Property*, which rejected the government's attempt to "justify the prehearing seizure of forfeitable real property as necessary for the protection of its revenues," on the ground that it "relies to some extent on forfeitures as a means of defraying law enforcement expenses." 510 U.S. at 61. This Court explained that the need for process is at its *apex* when the government has a stake in the outcome. As the Court put it, adversarial process "is of particular importance … where the Government has a direct pecuniary interest in the outcome of the proceeding." *Id.* at 55-56. The panel's decision flies in the face of that commonsense constitutional reasoning.

Nor do the taxation cases the panel invoked support its decision. App.17a-18a. The law has long understood the fundamental difference between taxes and other sorts of fees and levies. *See, e.g.*, 26 U.S.C. § 7421(a) (Anti-Injunction Act) ("[N]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person…."). This Court's due process jurisprudence on taxes thus likewise reflects the understanding that "the very existence of government depends upon the prompt collection of the revenues." *James Daniel Good Real Prop.*, 510 U.S. at 60 (quoting *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 352 n.18 (1977)). Not all fees that generate revenue are taxes, and the fees in this case—imposed only on those whom the County's police choose to arrest—are plainly not taxes in either name or form.

3. The panel's decision also erroneously relies on forfeiture cases involving non-fungible, movable property—*i.e.*, unique items that might be removed or destroyed. App.15a-17a. This Court has consistently allowed the government to temporarily seize specific items that are subject to forfeiture or where ownership is otherwise contested. But those cases depend on a clear risk that, without immediate seizure, the current possessor of the property will hide, squander, or destroy that property; such a rule is thus squarely and sensibly within the exigency exception to the pre-deprivation process requirement.

Decisions about seizing a yacht before it is sailed away (*Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974)), or sequestering specific property over which two people claim ownership (*Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 602 (1974)), have nothing to do with the $25 fee at issue here. Money is fungible and the money in Mr. Statham's bank account is no different than the money in his pocket. Should the County obtain a conviction—which all agree is required in order to lawfully keep the money—the County can seize its $25 at that time. There is no serious possibility that an arrestee who has $25 when he is arrested will spend all his money prior to conviction (and never again earn any money) as a means of cheating the County out of its $25 fee.

* * *

The "exigencies" present here are present everywhere. Whenever the government seeks to confiscate money from its citizens, it is easier to summarily take that money and then force citizens to

jump through hoops to get it back. But the point of due process is to restrain government, not facilitate the easy seizure of property. The panel's decision ignores that fundamental principle and this Court's decisions applying it, creating an inverted regime that—rather than require pre-deprivation process unless exigencies make providing it impossible—puts the onus on a deprived person to prove both that his or her individual interest is greater than the government's aggregated interest, and that a pre-deprivation hearing is indispensable to protect that interest. There is no way to reconcile that approach with this Court's decisions.

II. THERE IS WIDESPREAD DISAGREEMENT IN THE LOWER COURTS OVER DUE PROCESS AND MUNICIPAL FEES.

The panel is not alone. To the contrary, its decision contributes to spreading disagreement among the lower courts over the requirements of due process in the face of similar sorts of fees. No clear constitutional consensus has emerged on how due process interacts with municipal fees. This Court's guidance is thus sorely needed.

The marquee example of disagreement within the lower courts over the interplay between municipal fees and due process is the Seventh Circuit's en banc decision in *Markadonatos*, 760 F.3d 545. In that case, the Village of Woodridge charged a $30 fee on the completion of a custodial arrest and booking procedure. Jerry Markadonatos was arrested and paid the fee. He later sued, contending that it violated due process to charge him an arrest fee at

the time of booking without a hearing based solely on an arrest. The district court dismissed the case.

The en banc Seventh Circuit affirmed by an equally-divided-court that broke into a 2-4-3-1 split. Writing for two judges, Judge Easterbrook held that a police officer's unilateral decision to make an arrest provides a constitutionally sufficient basis for imposing a $30 fee. In his view, "[p]robable cause justifies substantial burdens," such "that there can't be a problem with a $30 fee" imposed on that basis. *Id.* at 553-54 (Easterbrook, J. concurring). Writing for four judges, Judge Hamilton rejected that rule, explaining that imposing a fee on every person the police arrest provides no protection against arbitrary government action because it permanently deprives each arrestee of property "based on nothing but the unreviewable say-so of one police officer." *Id.* at 563 (Hamilton, J., dissenting). In Judge Hamilton's view, a "fee based on the unreviewable say-so of one police officer is an arbitrary deprivation of property" that violates due process. *Id.* at 568. Judge Posner, writing for three judges, declined to decide the case presented by instead interpreting the ordinance as authorizing the fee for reasons other than arrest, *id.* at 551-52 (Posner, J. concurring), while Judge Sykes concluded that Markadonatos lacked standing because he had ultimately pled guilty, *id.* at 559 (Sykes, J., dissenting).[2]

[2] Ramsey County—unlike the government in *Markadonatos*—theoretically allows people whose charges are dismissed to obtain a refund. But that just clarifies the constitutional violation by making clear that, in Ramsey County, conviction—not arrest—is the actual criterion for the fee. Process is therefore critical to preventing errors, since many innocent people are arrested but not convicted.

Other courts considering similar fees have reached similarly divergent results. For example, the Southern District of Ohio held that Hamilton County's policy of charging all arrested persons a booking fee was unconstitutional. *Allen v. Leis*, 213 F. Supp. 2d 819, 831-34 (S.D. Ohio 2002). The court rejected the argument—embraced by the panel below—that *Mathews* displaced the baseline requirement that a person "cannot be deprived of his property without a notice and right to be heard." *Id.* at 833. It held that instead pre-deprivation process is necessary unless the situation satisfies one of the traditional exceptions, such as when "extraordinary or exigent circumstances exist" that require immediate seizure. *Id.* The court was not convinced by the argument that providing pre-deprivation process would be impracticable and unrealistic: "[I]f the County Defendants are unwilling or unable to offer every pretrial detainee their due process rights before charging them with the thirty dollar booking fee, then the County Defendants should wait until a conviction or a plea of guilty before assessing the book-in-fee." *Id.*

On the other side of the line, the Sixth Circuit held that a Kentucky county did not deprive arrested persons of due process when it withheld a $20 booking fee from inmates. *Sickles v. Campbell Cnty.* , 501 F.3d 726, 732 (6th Cir. 2007). But that court declined to say whether its analysis would be different if the government withheld the fees from an innocent person (like Mr. Statham); because one of the plaintiffs in that case had pleaded guilty and the other had been released on bond at the time of the lawsuit, the court held that neither of them had a

justiciable challenge to the policy as applied to an innocent person. *Id.* at 732-33. The court explained that the plaintiff would present a "live dispute" only if he were acquitted "and only if the county retain[ed] the previously withheld funds." *Id.* at 732.

As these decisions show, numerous governments have similar policies that confiscate money from innocent people, while those policies have led to divergent results in the lower courts. This unsettled and important area of law would benefit greatly from the Court's guidance.

III. THE CONSTITUTIONAL RULE AT STAKE IS CRITICAL IN PREVENTING GOVERNMENT ABUSE.

The issue presented is an exceptionally important one. Revenue-starved local governments are increasingly turning toward fees like Ramsey County's in order to bridge their budgetary gaps. But the unilateral decision of a single police officer to make an arrest cannot possibly justify summarily confiscating money. That is because the need for process is *greatest* when the government has a financial interest in the outcome (as here), and because there is substantial evidence that police officers frequently arrest people without probable cause (let alone clear evidence of actual guilt). Given the importance of every last dollar to our poorest citizens—"the very means by which to live" *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970)—ensuring that even relatively small amounts like the $25 at issue are not confiscated in contravention of the Constitution is worthy of this Court's attention.

A. Foremost, this Court has long recognized that requiring up-front process "is of particular

importance … where the Government has a direct pecuniary interest in the outcome of the proceeding." *James Daniel Good Real Prop.,* 510 U.S. at 55-56. Just as due process forbids judges from presiding over proceedings in which those judges profit from convictions, *Tumey v. Ohio*, 273 U.S. 510 (1927), it forbids vesting police with unilateral power to profit from their arrests by confiscating arrest fees that fund the governments for which they work. That is because providing a profit motive to *make* arrests gives officers an incentive to make *improper* arrests; like everyone else, the police act differently in the face of financial incentives. The interest the panel cited to justify immediate confiscation—the County's "interest in collecting owed funds," App.17a—is thus precisely the sort of *self*-interest that due process exists to constrain.

The reality is that few people will take the time, undergo the hassle, or brave the interactions with law enforcement required to recover their $25, such that the County will keep most of the fees it collects, even from the concededly innocent (like Mr. Statham). The County undoubtedly knows this, which gives it an incentive to arrest more people, collect more fees, and obtain additional revenue. The incentive to over-arrest would vanish, though, if the fee were postponed until a conviction is actually secured through the standard legal process.

Nor are concerns about profit-driven policing hypothetical. The Department of Justice's recent investigation in Ferguson, Missouri, uncovered just that. The Department found that Ferguson's "strategy of revenue generation through policing" led police officers to "routinely conduct stops that have

little relation to public safety and a questionable basis in law." U.S. Dep't of Justice, *Investigation of the Ferguson Police Department* 11, 15 (2015), https://goo.gl/lMI98l. The Department of Justice found that Ferguson's police were "routinely" arresting people without probable cause. *Id.* at 18. And the Department of Justice further found that these policies had a clear racial component. As the Department put it, "African Americans experience disparate impact in nearly every aspect of Ferguson's law enforcement system." *Id.* at 62.

Counteracting this sort of problem is precisely why pre-deprivation process is required. When individual government agents—like police officers—have effectively unreviewable power to confiscate property, then there is a real risk of individual error or abuse. But when the government is forced to provide meaningful process before taking property, it provides concrete assurance that any deprivation will actually be justified.

B. Further, recent investigative work by the Department of Justice shows that arrests are often unjustified—much more often than the panel assumed, App.12a—making arrest too arbitrary a basis for taking a person's money. Arrests are lawful only if supported by probable cause to believe the arrestee committed a crime, *Bailey v. United States*, 133 S. Ct. 1031, 1037 (2013), which is, if it exists, a reasonable proxy for guilt. But that probable cause requirement provides meaningful protection only if the police actually abide by it.

Unfortunately, evidence is mounting that police forces sometimes disregard this constitutional

requirement. For example, the Department of Justice recently released the report of its investigation into the Baltimore Police Department. The report concluded that Baltimore's police officers made large numbers of arrests without probable cause. U.S. Dep't of Justice, *Investigation of the Baltimore City Police Department* 34-36 (2016), https://goo.gl/6LoEHt (describing "BPD's pattern of making arrests without probable cause"). The State's Attorney's Office similarly concluded that officers made 1,983 arrests without probable cause from November 2010 through July 2015—a number that does not include the 6,736 arrestees that officials at Central Booking released without charge. *Id.* at 35. And these unlawful arrests were not the result of inadequate training or mistake. Instead, officers were actively encouraged to "clear corners" and otherwise exercise their authority even in the absence of criminal activity. *Id.* at 41. And just as the Department of Justice found a racial disparity in the costs of abusive police practices in Ferguson, its Baltimore Report concludes that this abusive policing disproportionately increased arrests of African Americans. *Id.* at 56.

This example vividly underscores the importance of requiring procedural protection beyond merely asking whether someone was arrested. Whether through mistake or malice, police officers often fail to adhere to the probable cause requirement, such that the unfettered judgment of a police officer should not be the basis for confiscating a person's money. The far better course—and the constitutionally required one—is to wait until a person is actually convicted before imposing fines that the County's own policy

recognizes are not justified *unless* the person is actually convicted.

C. Finally, the human costs of unjustified municipal fees are real. Even seemingly small fees can take a major toll on the people forced to pay them. While $25 might not seem like much, it is nearly enough to "feed an adult for a week" "under the federal Food Stamp program" and it is close to "half a day of work" at "the federal minimum wage." *Markadonatos v. Vill. of Woodridge*, 739 F.3d 984, 1000 (7th Cir. 2014) (Hamilton J., dissenting), *vacated by*, 760 F.3d 545. Losing the proceeds of "half a day of work," *id.*, is a major blow. That blow should not be inflicted without good reason, established through constitutionally adequate process.[3]

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[3] Nor is the harm always limited to the amount of the fee. One recent report by the Juvenile Law Center found that "[f]ines, fees and restitution mandates are levied on juvenile offenders to varying degrees in every state," with "effects [that] are greatest on the poor and racial minorities, creating a two-tiered system of justice." Erik Eckholm, *Court Costs Entrap Nonwhite, Poor Juvenile Offenders*, N.Y. TIMES (Aug. 31, 2016) (citing Debtors Prison for Kids: The High Cost of Finds and Fees in the Juvenile Justice System, Juvenile Law Center (2016)), https://goo.gl/1Vf3z8. And the Department of Justice's Ferguson report explained that the city would often impose "severe penalties" for missed payments, U.S. Dep't of Justice, *Investigation of the Ferguson Police Department* 3, which means that fees starting at $25 can quickly balloon into far greater amounts that create a vicious cycle of debt and punishment for failure to pay that debt. For example, one woman had been assessed a $151 fine, plus fees. Seven years later, after paying $550 on that initial balance, she still owed $541. *Id.* at 4; *see also, e.g.,* Elyssa Cherney, *OPD Arrested Hospice Patient for Failing to Pay Court Fees*, ORLANDO SENTINEL (Aug. 7, 2015)

IV. THIS CASE IS AN IDEAL VEHICLE FOR RESOLVING THIS IMPORTANT ISSUE.

This case is an ideal vehicle for answering the Question Presented. The issue was squarely addressed in a lengthy, published decision below, which provides this Court with a complete presentation of the counter-arguments. And these legal issues have received additional, detailed treatment in published opinions in the other circuits, most notably in four separate opinions authored or joined by every sitting judge on the Seventh Circuit. The relevant arguments have thus been extensively aired in the lower courts, ensuring that this Court has the benefit of wide-ranging perspectives concerning the correct legal rule.

Nor are there any obstacles in the record to fully resolving the Question Presented. Petitioners' Complaint properly advanced the allegations needed to provide a complete predicate for the contested legal rule, App.64a-86a; the Complaint was dismissed on the pleadings despite its alleging that the County's police arrested Petitioners and that County personnel confiscated $25 from each Petitioner before he was discharged. App.68a-70a. There is thus no question that the constitutional issue at stake—whether those summary confiscations comported with due process—is squarely presented.

And not only is that central issue squarely presented, it is presented in two different postures—

(continued…)

(police arrested and jailed a terminally ill man on a fixed income for failing to pay administrative fees), goo.gl/ZSZvE6.

that of an arrestee who has never been convicted and who is thus entitled to a refund under the County's own policy (Petitioner Statham, App.4a-5a), and that of an arrestee who was presumptively innocent when the fee was collected but who was ultimately convicted and thus could have been charged the fee at a later stage (Petitioner Mickelson, App.4a). Taking a case involving both someone who was never convicted and someone who was convicted maximizes this Court's ability to articulate a comprehensive constitutional rule. While Petitioners contend that the County's fee violates due process as to everyone—after all, every arrestee is legally innocent at the time of his or her arrest—this Court may ultimately determine that the correct constitutional rule is more nuanced. Reviewing a case that involves both types of arrestees would enable the Court to draw the constitutional line wherever it deems best.

This case is also a natural companion to, or close follower of, *Nelson v. Colorado*. That case, like this case, asks the Court to consider the rules governing when governmental entities can confiscate money and put innocent people in the position of demonstrating their entitlement to get the money back. This Court will thus already be reviewing the authorities cited herein and considering their relevance in a related area; deciding this case alongside that one would be efficient and sensible.

Granting review here is also necessary to fully answer the relevant constitutional questions. The central question in *Nelson* is the lawfulness of the high evidentiary burden Colorado requires innocent people to carry in order to reclaim their funds. This case deals with the more basic, threshold question of

whether innocent people can be forced to satisfy *any* burden—including the administrative, practical burdens that accompany any post-deprivation bureaucratic undertaking—to obtain the return of their property. The outcome in *Nelson* will likely depend upon the evidentiary burden, while the outcome here would be more generalized and would resolve the lawfulness of the much-more-common schemes—like Ramsey County's—wherein governments require innocent people to demonstrate their entitlement to have wrongly seized property returned. Only by considering the two cases together can this Court provide a complete answer to the proliferating questions over how due process constrains the ability of governments to confiscate money without providing an up-front mechanism to challenge that confiscation.[4]

Finally, there is a pressing need for this Court's review *now*. Challenges like this one—to governmental policies that are facially pedestrian and that involve small amounts of money—are relatively rare. The cost of litigating such challenges is high, the potential damages are low, and it is difficult for counsel to bring such cases in the face of confusing and contradictory lower court decisions. Moreover, as the panel's decision illustrates, the lower courts are understandably reluctant to interfere with municipal governance absent a clear mandate from this Court to protect the critical constitutional interests at stake. The proper time

[4] That said, should the Court disagree that considering these cases together is optimal, Petitioners respectively request, in the alternative, that the Court hold this petition until the resolution of *Nelson*.

has thus arrived for this Court to explain the dictates of due process in this context and ensure that these fundamental principles are being fully and fairly applied.

CONCLUSION

The petition should be granted. But in the alternative, and at the least, the Court should hold this petition pending a decision in *Nelson*.

Respectfully submitted,

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OCTOBER 2016

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Eighth Circuit

No. 14-3164

Erik Mickelson; Corey Statham, individually and on behalf of all others similarly situated

Plaintiffs - Appellants

v.

County of Ramsey; Keefe Commissary Network, L.L.C., doing business as Access Corrections; First California Bank; Outpay Systems, L.L.C.; John Does 1–10

Defendants - Appellees

Appeal from United States District Court for the District of Minnesota - Minneapolis

Submitted: October 22, 2015
Filed: May 4, 2016

Before WOLLMAN, BYE, and GRUENDER, Circuit Judges.[1]

GRUENDER, Circuit Judge.

[1] This opinion is being filed by Judge Gruender and Judge Wollman pursuant to Eighth Circuit Rule 47E.

Ramsey County, Minnesota collects all of a detained arrestee's cash upon booking. From this cash, the county automatically deducts a $25 booking fee. The county later returns the arrestee's remaining funds in the form of a prepaid debit card. Erik Mickelson and Corey Statham, two men previously arrested in Ramsey County, filed a 42 U.S.C. § 1983 action contending that the policies underlying these practices violated their Fourteenth Amendment rights. The district court[2] granted the defendants' motion for judgment on the pleadings. We affirm.

I.

Under Minnesota law, a "county board may require that each person who is booked for confinement at a county or regional jail, and not released upon completion of the booking process, pay a fee to the sheriff's department." Minn. Stat. § 641.12, subdiv. 1. This "fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department on the person's behalf." *Id.* Pursuant to this statute, Ramsey County collects $25 from each person who is booked into and not immediately released from its county detention facility. The county takes this sum from the cash an arrestee is carrying at the time of booking. If the arrestee is not carrying sufficient cash, the county charges the fee and places the arrestee's detention-facility account into a negative balance. An inmate must satisfy this balance before he or she can purchase items from the jail commissary or receive a disbursement of funds. If

[2] The Honorable Susan Richard Nelson, United States District Judge for the District of Minnesota.

the arrestee has no funds at the time of booking or during the period of incarceration, the county court may order payment of the fee as part of any sentence imposed. *Id.*

Persons arrested and detained in Ramsey County are entitled to a refund of the booking fee in three scenarios. First, an arrestee can recover the funds if he or she is not charged with a crime. Second, an arrestee may receive a refund if charges are dismissed. Finally, an arrestee may recover the $25 upon acquittal. To facilitate the refund process, the Ramsey County sheriff's department, according to a written policy, must give all released inmates a "Booking Fee Refund Form." Eligible inmates who properly submit this form can recover the $25 taken for the booking fee.

Ramsey County also has a policy of confiscating all cash arrestees have at the time they are booked into the county detention center. Instead of returning cash to detainees upon release, the county issues prepaid debit cards for a sum equal to the value of the confiscated cash less the booking fee. Along with the card, arrestees receive a cardholder agreement explaining the fees associated with certain card uses. The fees include:

Card Usage Fees	**Charge**
Card Activation Fee	FREE
Weekly Maintenance	$1.50
Support Calls Fee	FREE
PIN Change Fee	FREE
Domestic ATM Fees	$2.75
International ATM Fees	$3.75
ATM Account Inquiry	$1.50
POS Debit Fee (Pin and Signature)	FREE

ATM Decline for NSF	$2.75
Card to Bank Transfer (ACH) Fee	$3.00

The card starts incurring weekly maintenance fees after thirty-six hours. Withdrawing cash will result in an ATM fee. Materials provided along with the card include a website address providing customer service and a toll-free number that arrestees may call. These resources advise cardholders how to avoid all fees—such as by spending all of the funds on the card before the weekly maintenance fee accrues—and how to minimize other possible fees. Several private entities work with the county to provide these cards. Keefe Commissary Network, L.L.C. ("KCN") coordinates the Ramsey County inmate trust-fund and release-services program. First California Bank ("FCB"), issues the prepaid debit cards. Finally, Outpay Systems, L.L.C., ("Outpay") processes any debit-card transactions.

Erik Mickelson and Corey Statham, the plaintiffs in the present suit, were arrested in Ramsey County and subjected to the above-described policies and fees. Mickelson was arrested for violating a noise ordinance. Police booked him into the Ramsey County Law Enforcement Center and confiscated his personal property, including $95 cash. Upon his release, Mickelson received a debit card carrying $70, a value that represented his $95 in cash less the $25 booking fee. He subsequently incurred $5 in fees while using the debit card. Mickelson ultimately pleaded guilty to violating a city ordinance.

Statham was arrested for disorderly conduct and obstructing the legal process. He was carrying $46 in cash when police booked him into the Ramsey County Law Enforcement Center. Upon his release, Statham

received a debit card containing $21. His debit-card fees amounted to $7.25. All charges against Statham eventually were dismissed. Despite this dismissal, Statham did not receive a refund of the $25 booking fee.

Mickelson and Statham sued Ramsey County, KCN, FCB, and Outpay, alleging four claims related to the booking-fee and debit-card policies: (1) defendants were liable under 42 U.S.C. § 1983 for violating the plaintiffs' Fourth and Fourteenth Amendment rights, (2) defendants were liable under 42 U.S.C. § 1983 for conspiring to violate the plaintiffs' civil rights, (3) defendants committed conversion, and (4) defendants committed civil theft under § 604.14 of the Minnesota statutes. The defendants answered, acknowledging that they administered and enforced the contested policies. The plaintiffs and the defendants filed cross motions for judgment on the pleadings. Mickelson and Statham alternatively moved for summary judgment. The court considered the record before it, including Ramsey County's written policy. The court denied Mickelson and Statham's motions and denied their class-certification motion as moot. The court granted the defendants' motions and entered judgment in favor of Ramsey County, KCN, FCB, and Outpay. Mickelson and Statham now appeal, arguing only that the district court erred by granting judgment for the defendants on the due process claims.

II.

"We review a judgment on the pleadings *de novo*." *Williams v. Bradshaw*, 459 F.3d 846, 848 (8th Cir. 2006). In doing so, "[w]e apply 'the same standard as when we review the grant of a motion to dismiss

under Federal Rule of Civil Procedure 12(b)(6).'" *McIvor v. Credit Control Servs., Inc.*, 773 F.3d 909, 912-13 (8th Cir. 2014) (quoting *Packard v. Darveau*, 759 F.3d 897, 900 (8th Cir. 2014)). To survive a motion for judgment on the pleadings, a "complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "[W]ell-pleaded facts, not legal theories or conclusions, determine [the] adequacy of [t]he complaint." *Clemons v. Crawford*, 585 F.3d 1119, 1124 (8th Cir. 2009) (alterations in original) (quoting *Mattes v. ABC Plastics, Inc.*, 323 F.3d 695, 698 (8th Cir. 2003)). "The facts alleged in the complaint must be enough to raise a right to relief above the speculative level." *Id.* (quoting *Drobnak v. Andersen Corp.*, 561 F.3d 778, 783 (8th Cir. 2009)). "Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. We may consider materials that necessarily are embraced by the pleadings or that are part of the public record and do not contradict the complaint. *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999).

A.

Mickelson and Statham argue first that the district court erred by determining that the county's system of immediately collecting the booking fee complies with procedural due process. In this appeal, Mickelson and Statham raise no substantive due process or equal protection challenge to the statutorily authorized fee itself. Instead, they

contend only that the county violates the Fourteenth Amendment by deducting the fee before first conducting a pre-deprivation hearing. They suggest that the county, to avoid a constitutional violation, must delay collection until an arrestee has been afforded the type of hearing associated with conviction. Our court therefore must determine whether the district court correctly held that the county did not violate the arrestees' constitutional rights by collecting the $25 fee at booking without affording a pre-deprivation hearing.

As an initial matter, we agree that Mickelson and Statham had a property interest in the $25 used to pay the booking fee. The booking-fee policy thus implicates procedural due process, and "the question remains what process is due." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The requirements of due process are not rigid; rather, they "call[] for such procedural protections as the particular situation demands." *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 12 (1979). To determine whether the process afforded is sufficient, our court must balance: "first, 'the private interest that will be affected by the official action;' second, 'the Government's interest;' and third, 'the risk of an erroneous deprivation of [the private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.'" *Wallin v. Minnesota Dep't of Corr.*, 153 F.3d 681, 690 (8th Cir. 1998) (alteration in original) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). "The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed

upon administrative action to assure fairness." *Mathews*, 424 U.S. at 348.

Although this booking-fee policy presents an issue of first impression in our circuit, other courts have passed upon the constitutional validity of collecting a similar fee at booking. The Sixth Circuit examined this issue in *Sickles v. Campbell County*, 501 F.3d 726 (6th Cir. 2007). There, the court noted that Campbell County automatically deducted a booking fee of $20—later $30—immediately upon an inmate's arrival at the jail by taking the sum from the arrestee's cash and crediting the rest of the cash value to the inmate's canteen account. *Id.* at 729. The court rejected a procedural due process challenge from several arrestees who contended that the county should refrain from collecting the fee without a pre-deprivation hearing or until after sentencing. *Id.* at 731. The court held that a pre-deprivation hearing was not constitutionally required because the county had a legitimate interest in collecting the fee and because the challenging parties did not demonstrate why the jail's grievance procedure and other post-deprivation remedies failed to protect their interests in preventing a flawed withholding. *Id.* at 731-32.

We find persuasive the Sixth Circuit's assessment of the private and state interests at play in *Sickles*. First, we agree with the court's conclusion that the private interest at stake—the lost use of the $25 booking fee taken from each arrestee—is "small in absolute and relative terms." *Id.* at 730. Although $25 is not an insubstantial amount from the subjective standpoint of some arrested individuals, the private interest in the use of this sum "do[es] not begin to approach the kinds of government conduct

that have required a predeprivation hearing, such as a limitation on the 'historic' 'right to maintain control over [one's] home,' or the termination of government benefits, which for many people are 'the very means by which to live.'" *Id.* (alternation in original) (internal citations omitted). For the erroneously deprived arrestee, the temporary deprivation of $25 is not comparable to "the cessation of essential services for any appreciable time[, which] works a uniquely final deprivation." *See Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 20 (1978). Other courts have reached the same conclusion about the limited nature of the private interest at stake when examining automatic deductions for jail-related fees, even fees that could far exceed the $25 at issue here. *See*, *e.g.*, *Slade v. Hampton Roads Reg'l Jail*, 407 F.3d 243, 253 (4th Cir. 2005) (stating that inmates had only a "limited" property interest in a dollar-per-day jail-housing fee because the fee could only be imposed, absent a hearing, for a period not to exceed five months). Accordingly, we agree with the *Sickles* court's determination that the private interest is relatively modest.

Second, we agree with the *Sickles* court's conclusion that the county's interest in collecting the fees at booking is substantial. Collecting the fee from those required to pay under the statute allows the county to manage the costs of serving and policing the community and "further[s] offender accountability." 501 F.3d at 731. Courts routinely recognize this interest when approving the collection of jail-related fees. In *Slade*, for example, the Fourth Circuit upheld a jail's practice of automatically charging pretrial detainees one dollar per day in part

because the jail had a "legitimate interest in attempting to defray the costs of a prisoner's keep and a legitimate interest in the collection of the fee." 407 F.3d at 253. The Fifth Circuit recognized a similar interest in *Broussard v. Parish of Orleans*, 318 F.3d 644 (5th Cir. 2003). There, the court upheld against a due process challenge a Louisiana statutory scheme that required inmates to pay a fee as a prerequisite to release on bail because the policy furthered "the government's interest in conserving scarce resources" and in "maintaining cost-effective procedures." *Id.* at 656-57.

The county's interest in upfront collection—the current policy—stems from the increased likelihood that the county will be able to collect this statutorily authorized fee. Prompt collection from an arrested person ensures the county can secure the funds as contemplated under Minnesota law because the county can take the money from an arrestee's available cash. As the Sixth Circuit recognized in *Sickles*, waiting until release would allow the detained arrestee to exhaust the funds in his or her commissary account prior to conviction. 501 F.3d at 731. Common sense dictates that waiting until after conviction similarly would decrease the certainty of collection. In addition, although little or no discernable collection costs are associated with the current system, the county would inevitably incur costs in post-conviction attempts to collect this modest fee. Such costs would frustrate the purpose of collecting the fee as a means to defray the expenses associated with booking. In weighing the public interest, we must be cognizant of these realities. *Cf. Mathews*, 424 U.S. at 347 (noting that convenience,

efficiency, and administrative cost are appropriate considerations in determining what kind of hearing is necessary). We conclude that the county's interest in upfront collection of this fee weighs more heavily than the relatively modest private interests of the arrestees.[3]

Our *Mathews* inquiry does not end with the balancing of the private and state interests at stake, however. We also must consider "the likelihood of an erroneous deprivation of the private interest involved as a consequence of the procedures used." *Mackey v. Montrym*, 443 U.S. 1, 13 (1979). In assessing this factor, we are mindful of the fact that "[t]he Due Process Clause simply does not mandate that all governmental decisionmaking comply with standards that assure perfect, error-free determinations." *Id.* Although a pre-deprivation hearing offers "the best means of ascertaining truth and minimizing the risk of error," the Supreme Court has recognized the

[3] Although we could conceive of a situation in which the county's interest might be minimal, the appellants here did not seek any discovery related to the county's interest in the current system. And they do not argue now that judgment on the pleadings was improper because genuine issues of fact remained regarding that interest. Instead, in their appeal, they rely on the pleadings and documents encompassed by them, and they contend that these documents alone make clear that the county violates due process. Because it "is not our task . . . to scour the record in search of a genuine issue of triable fact," we limit our analysis to the argument presented. *See Brasic v. Heinemann's Inc.*, 121 F.3d 281, 285 (7th Cir. 1997); *cf. Greer v. United States*, 207 F.3d 322, 326 (6th Cir. 2000) (noting that "cross motions for summary judgment do authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the parties") (quoting *Harrison Western Corp. v. Gulf Oil Co.*, 662 F.2d 690, 692 (10th Cir. 1981)).

"'ordinary principle' . . . that 'something less than an evidentiary hearing' [may be] sufficient prior to adverse administrative action." *Id.* (quoting *Dixon v. Love*, 431 U.S. 105, 113 (1977)).

With this principle in mind, we begin our analysis of this factor with the county's criteria for upfront collection. Before Ramsey County collects the $25 fee, an individual must be arrested and detained at the county detention facility. Arrest, as our court often has recognized, requires probable cause to support the belief that an arrestee has committed or was committing a crime. *Kuehl v. Burtis*, 173 F.3d 646, 649-50 (8th Cir. 1999); *Markadonatos v. Vill. of Woodridge*, 760 F.3d 545, 553 (7th Cir. 2014) (en banc) (Easterbrook, J., concurring). Of course, upfront collection based on probable cause necessarily means that the county will collect $25 from some arrestees who ultimately are not convicted. To alleviate this problem, Ramsey County has in place a post-deprivation process through which eligible arrestees can recoup the $25 booking fee.

Pursuant to Ramsey County policy, all inmates charged a booking fee must receive a "Booking Fee Refund Form" upon release from the county detention facility. Generally, submission of the form is the only prerequisite to receiving a refund once an individual has been acquitted or has had his charges dismissed.[4] The policy requires the county to mail

[4] If an applicant attempts to recoup the fee based on his contention that he will not be charged in the future, he also must submit documentation from the arresting agency supporting this contention. This requirement did not apply to either Mickelson or Statham. Mickelson pleaded guilty, and Statham's charges were dismissed.

the refund to all eligible applicants within thirty days of the form's receipt. In addition, as the district court recognized and as the court found significant in *Sickles*, the jail's grievance procedure also is available to the county inmates. The grievance procedure provides a mechanism through which inmates may challenge any unfair treatment, including alleged wrongful deductions. *See Sickles*, 501 F.3d at 731 (noting the availability of the jail's internal grievance procedures); *see also Tillman v. Lebanon Cty. Corr. Facility*, 221 F.3d 410, 422 (3d Cir. 2000) (upholding against a due process challenge a county's collection of fees for housing costs during the period of incarceration, finding that the plaintiff "had an adequate postdeprivation remedy in the grievance program").

As written, this policy allows for the correction of any errors inherent in the overinclusive system of upfront collection. If all deprived arrestees who are not convicted can recoup their $25 simply by sending in a form, the risk of error is minimal, limited only to the possibility that some arrestees temporarily will lose the use of $25. We do not discern any constitutionally significant value in the appellants' proposed alternative—delaying collection until after conviction—that would outweigh the state's valid interest in upfront collection of the fee. *Cf. Mathews*, 424 U.S. at 331 ("A claim to a predeprivation hearing as a matter of constitutional right rests on the proposition that full relief cannot be obtained at a postdeprivation hearing."). Although Mickelson and Statham correctly note that the current system places the onus on the deprived arrestee to complete and submit a refund form before the county returns

the booking fee, the appellants' complaint contains no allegation that this facially minor imposition is so cumbersome as to undermine the constitutional adequacy of this post-deprivation refund process. *Cf. Gates v. City of Chicago*, 623 F.3d 389, 412 (7th Cir. 2010) (finding a fact issue where the plaintiffs testified that the city would not release confiscated cash even if the plaintiff had a court order). And absent such allegations, we view this process as consistent with the voucher-submission system, approved by the Second Circuit, through which arrestees retrieve their confiscated property in New York City. *See Butler v. Castro*, 896 F.2d 698, 699, 702 (2nd Cir. 1990); *see also City of W. Covina v. Perkins*, 525 U.S. 234, 238 (1999) (discussing California's system for return of seized property).

The appellants rely heavily on the Seventh Circuit's fractured en banc decision in *Markadonatos v. Village of Woodbridge* to argue that the county's system of collecting the booking fee upfront cannot pass constitutional muster. 760 F.3d 545.

There, seven of ten judges indicated that an Illinois city's policy of collecting a $30 fee automatically from all arrested persons, even those who were falsely arrested, posed, at the very least, "a serious constitutional issue." *Id.* at 546 (Posner, J., concurring); *see also id.* at 567 (Hamilton, J., dissenting). Critically, however, the city in *Markadonatos* provided no post-deprivation remedy through which arrestees could receive a refund. Instead, "[t]he deprivations occurred at the time of arrest, immediately and finally," and the system "allowed no room for dispute or review of any kind." *Id.* at 567. The policy thus imposed a *permanent*

deprivation based solely "on the unreviewable decision of one police officer." *Id.* Significantly, the appellant in *Markadonatos* suggested that the city's collection policy would pass constitutional muster if the city afforded a post-deprivation procedure "by which those who are wrongfully arrested, never charged, or are found not guilty may obtain a refund." *Id.* at 557. Such a system is present in the case before us.

With the *Sickles* and *Markadonatos* decisions in mind, we conclude that Mickelson and Statham did not plead facts sufficient to establish that Ramsey County's booking-fee policy fails to pass constitutional muster simply because it provides a post-deprivation remedy instead of a pre-deprivation hearing. The county has in place a coordinated refund process, and the modest private interest at stake does not approach those interests found to warrant a full-fledged pre-deprivation hearing. *See Sickles*, 501 F.3d at 730. The district court thus correctly concluded that the county's interest in ensuring it can collect the statutorily authorized fee outweighs the minimal paperwork and temporary deprivation imposed on wrongfully deprived arrestees. *Cf. Craft*, 436 U.S. at 19 (holding that a prior hearing is not required "where the potential length or severity of the deprivation does not indicate a likelihood of serious loss and where the procedures . . . are sufficiently reliable to minimize the risk of erroneous determination"). Accordingly, we conclude that the *Mathews* factors show that a pre-deprivation hearing is not required and that a post-deprivation remedy may suffice.

Notwithstanding *Mathews* and the decisions of our sister circuits, Mickelson and Statham argue on appeal that *only* a pre-deprivation hearing can satisfy due process. They cite *Walters v. Wolf*, 660 F.3d 307 (8th Cir. 2011), to argue that such process is due whenever a deprivation occurs pursuant to an established state policy. As an initial matter, this broad assertion appears inconsistent with the Supreme Court's holding in *Mathews* that "something less than an evidentiary hearing" may be "sufficient prior to adverse . . . action," even when the deprivation imposes a "significant" hardship. 424 U.S. at 342-43. Indeed, the appellants' assertion conflicts with the "usual rule" that "[w]here only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate." *Mitchell v. W. T. Grant Co.*, 416 U.S. 600, 611 (1974) (alteration in original) (quoting *Phillips v. Comm'r*, 283 U.S. 589, 596-97 (1931)); *Ewing v. Mytinger & Casselberry*, 339 U.S. 594, 599 (1950) ("It is sufficient, where only property rights are concerned, that there is at some stage an opportunity for a hearing and a judicial determination.").

In *Walters*, we stated that the district court erred when it determined that the availability of a post-deprivation action in replevin was fatal to a plaintiff's due process claim, a claim challenging a city's policy of retaining a handgun and ammunition confiscated from an arrestee. 660 F.3d at 313. However, our holding turned on the inherently "lengthy and speculative" nature of the post-deprivation remedy available—an action in tort. *Id.* at 313-14 (quoting

Logan v. Zimmerman Brush Co., 455 U.S. 422, 436-37 (1982), to discuss the problems associated with redress through tort). Our court since has suggested that post-deprivation administrative remedies are innately distinguishable. *See Hopkins v. City of Bloomington*, 774 F.3d 490, 492-93 (8th Cir. 2014). This reading is consistent with the fact that our decision in *Walters* made much of the city's failure to afford *any* independent administrative process through which an arrestee could contest the city's retention of his property, even after the dismissal of charges. 660 F.3d at 314-15.

We do not read *Walters* to foreclose the possibility that an adequate post-deprivation process may satisfy the Fourteenth Amendment in a case such as this one. Indeed, *Walters* cited several Supreme Court cases explaining that post-deprivation process may suffice, even when the deprivation occurs pursuant to established state policy. *Id.* at 313-14 (citing *Zinermon v. Burch*, 494 U.S. 113, 132 (1990), and *Logan*, 455 U.S. at 436, two cases that assert a post-deprivation hearing is inadequate only in the absence of the necessity of quick action by the state or the impracticality of providing any predeprivation process). As relevant here, the Supreme Court has held that post-deprivation process suffices if the Government has an interest in collecting owed funds. In tax cases, for example, the Supreme Court has not required a pre-deprivation hearing. *See Laing v. United States*, 423 U.S. 161, 186 (1976) (Brennan, J., concurring); *Phillips*, 283 U.S. at 595-601. This is so because "[a]llowing taxpayers to litigate their tax liabilities prior to payment might threaten a government's financial security . . . by making the

ultimate collection of validly imposed taxes more difficult." *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco, Dep't of Bus. Regulation of Florida*, 496 U.S. 18, 37 (1990). Similarly, the Court has found post-deprivation procedures sufficient when the Government seeks to ensure that property subject to valid forfeiture will not be "removed to another jurisdiction, destroyed, or concealed." *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974).

Several courts have applied the logic of these cases to uphold the collection of jail fees from an inmate without pre-deprivation process. *See*, *e.g.*, *Tillman*, 221 F.3d at 421 n.12 (citing *Logan*, 455 U.S. at 436); *Sickles*, 501 F.3d at 731 (citing *Calero-Toledo*, 416 U.S. at 679). And several of our sister circuits, while not expressly citing this line of cases, also have upheld the automatic collection of comparable fees against procedural due process challenges when adequate post-deprivation relief is available. *See*, *e.g.*, *Slade*, 407 F.3d at 253 (rejecting, in dicta, a procedural due process challenge to a jail's practice of charging pretrial detainees one dollar per day where inmates adjudicated not guilty on all charges were entitled to a refund); *Enlow v. Tishomingo Cty.*, 45 F.3d 885, 889 (5th Cir. 1995) (adopting the analysis of *Enlow v. Tishomingo Cty.*, No. CIV. A. EC 89-61-D-D, 1990 WL 366913, at *5-*6 (N.D. Miss. Nov. 27, 1990), and upholding imposition of a $60 bond fee against a procedural due process challenge where the money was returned if the defendant was found not guilty at a subsequent hearing or trial). Our holding in *Walters* does not prevent us from reaching a similar conclusion regarding the booking fee at issue

here. We reject the appellants' contention that post-deprivation process simply cannot suffice.

Of course, for the specific post-deprivation remedy in place to satisfy due process, the remedy must be adequate. *See* Mitchell, 416 U.S. at 611. In this vein, we note that it is conceivable that future plaintiffs could claim that Ramsey County runs afoul of the Fourteenth Amendment if and when it does not follow its policy as written. However, the appellants fell short of raising that contention before the district court and on appeal.[5] Although the appellants pointed out some potential issues with the efficacy of the current system in their brief to our court, they raised this issue not as an independent basis for relief but rather to "illustrate[] why the Constitution *requires* pre-deprivation process." The appellants thus failed to raise the argument on appeal that the county must change or improve its post-deprivation procedure in order to comply with the due process requirement that the remedy be adequate. In the absence of that argument, we cannot and do not consider the issue here. *See Lind v. Midland Funding, L.L.C.*, 688 F.3d 402, 408 n.6 (8th Cir. 2012) (limiting the due process analysis to the question

[5] The closest the appellants came to making such an allegation is found in a paragraph of their complaint that states that a pretrial detainee is not informed about the refund process when he or she "is *brought* to the Ramsey County detention facility." This allegation is not inconsistent with the Ramsey County policy of informing detainees *upon release*. Moreover, the appellants failed to develop in their brief any argument that the county's post-deprivation remedy is inadequate based on the county's failure to inform arrestees of the available process. Absent this argument, we will not *sua sponte* consider the question here. *See Brasic*, 121 F.3d at 285.

whether a pre-deprivation hearing was required because the appellants assumed no post-deprivation remedy could suffice and therefore did not challenge the adequacy of the post-deprivation remedy).

Significantly, neither Mickelson nor Statham alleged in their complaint that they submitted the Booking Fee Refund Form or engaged the jail grievance procedure. Indeed, Mickelson was statutorily ineligible for a refund because he pleaded guilty to his charges. *See* Minn. Stat. § 641.12, subdiv. 1. And Statham, though eligible, did not allege in the complaint that he applied for return of his funds using the Booking Fee Refund Form or the jail grievance procedure, nor did he attach any documents to his complaint to demonstrate such action. Absent his exhaustion of the available process, we cannot know whether the current system would fail to yield a return of Statham's $25. Thus, any allegation that the current system is inadequate as a post-deprivation procedure is not properly before the court. We follow our course in *Hopkins v. City of Bloomington* and refrain from attempting to examine the adequacy of a post-deprivation administrative remedy where the appellants have not alleged that they pursued it prior to bringing a § 1983 suit. 774 F.3d at 492-93; *accord Sickles*, 501 F.3d at 731, 732-33 ("[W]e save the resolution of this 'premature' dispute for another day . . . when 'an administrative decision has been formalized and its effects felt in a concrete way by *the challenging parties*.'" (emphasis added) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967))).

In sum, in view of the modest private interests at stake, the substantial state interests in the current

withholding system, and the appellants' failure to complete the existing refund process and demonstrate its alleged inadequacies, we conclude that Mickelson and Statham have not stated a plausible claim that the booking fee posed a violation of constitutional rights that is actionable under 42 U.S.C. § 1983. We thus affirm the district court's judgment on the pleadings.

B.

Mickelson and Statham also contend that the district court erred by granting the defendants' motion for judgment on the pleadings regarding the constitutionality of the prepaid debit-card scheme. Ramsey County instituted the debit-card policy to avoid having employees hold on hand, guard, regularly access, and track large sums of cash from numerous inmates. Mickelson and Statham argue that this scheme violates both procedural and substantive due process.

As discussed in the previous section, an individual must have a constitutionally protected interest in life, liberty, or property in order for the protections of procedural due process to attach. *Singleton v. Cecil*, 176 F.3d 419, 424 (8th Cir. 1999) (en banc) (noting that "[t]he possession of a protected life, liberty, or property interest is . . . a condition precedent to any due process claim") (alteration in original) (quoting *Movers Warehouse, Inc. v. City of Little Canada*, 71 F.3d 716, 718 (8th Cir. 1995)). Protected property interests range from welfare—"the very means by which to live," *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970)—to an individual's personal items, such as a handgun and ammunition, *Walters*, 660 F.3d at 311. Due process protections, however, do not attach to all

property. Instead, there exists "a *de minimis* level of imposition with which the Constitution is not concerned." *Smith v. Copeland*, 87 F.3d 265, 268 (8th Cir. 1996) (quoting *Bell v. Wolfish*, 441 U.S. 520, 539 n.21 (1979)). "Only if we find a protected interest do we examine whether the deprivation of the protected interest was done in accordance with due process." *Forrester v. Bass*, 397 F.3d 1047, 1054 (8th Cir. 2005). Absent a protected interest, a procedural due process challenge must fail. *Id.*

Here, the appellants failed to establish a constitutionally cognizable interest related to the debit-card scheme that is sufficient to trigger the protections of due process. Mickelson and Statham argue that the county deprived them of their interest in cash by converting the funds into a fee-laden debit card, and they contend that such a scheme violates the constitutional rights of arrestees. However, as opposed to depriving the appellants of the "very means by which to live," *Goldberg*, 397 U.S. at 264, the prepaid debit cards make the inmates' funds immediately available and usable at local stores and ATMs. This benefit was not available under the county's previous system of issuing checks to released arrestees because banks had to verify the checks with the county before honoring them. We acknowledge that the debit cards are not equivalent to cash in that they are not perfectly fungible, and arrestees can use them only at vendors equipped with card-reader technology. However, we conclude that the distinctions between cash and the cards are not constitutionally significant such that they trigger due process protections.

According to the fee schedule provided to each inmate, fees may be avoided by the vast majority of, and perhaps all, arrestees. The card starts to incur a weekly maintenance fee of $1.50 *only* if an inmate has not spent the funds on the debit cards within thirty-six hours. If the arrestee spends the funds during this initial window, the card does not incur the fee. Likewise, the debit-card website advises that cardholders may "remove [the] entire card balance for no charge by visiting any financial institution that is a MasterCard principal member and asking for a cash advance for the balance on the card." If the inmate instead converts the debit card back into cash using an ATM, only a one-time ATM fee of $2.75 automatically applies.[6] Such a minimal imposition does not trigger constitutional due process protection. The D.C. Circuit explained almost thirty years ago that "matters involving a few dollars or less" do not trigger due process. *Gray Panthers v. Schweiker*, 652 F.2d 146, 156 n.19 (D.C. Cir. 1980). Several other courts have issued consistent decisions. *See*, *e.g.*, *Moncla v. Kelley*, 430 F. App'x 714, 718 (10th Cir. 2011) (unpublished) (finding *de minimis* any lost interest on $20 that had been temporarily withheld); *Kennedy v. City of Cincinnati*, 595 F.3d 327 (6th Cir. 2010) (holding that an individual's property interest in a $10 pool pass was *de minimis*); *Northern v. Nelson*, 448 F.2d 1266, 1267 (9th Cir. 1971) (finding a

[6] The debit card materials indicate that the local ATM provider may charge a separate fee for withdrawal. However, the debit card's customer service website provides a link to a map of surcharge-free ATMs and alternatively advises that selecting the "cash back" option at certain vendors will allow cardholders to obtain cash for no additional charge.

claim for damages of $1.05 was properly dismissed as *de minimis*); *cf. Schilb v. Kuebel*, 404 U.S. 357, 365 (1971) (stating that a $7.50 bail fee imposed on an equally vulnerable population "smacks of administrative detail" and is "hardly to be classified as a 'fundamental' right").

Our precedent is also consistent. Although we have observed that the Due Process Clause "sets no minimum threshold value for which protection begins," our court, prior to carrying out a due process analysis, has ensured that the interests at stake "manifestly equal[ ] or exceed[ ] those recognized as deserving of Fourteenth Amendment protection." *Gentry v. City of Lee's Summit*, 10 F.3d 1340, 1344 (8th Cir. 1993); *accord Woods v. City of Michigan City*, 940 F.2d 275, 284 (7th Cir. 1991) ("The due process clause does not mandate procedure for its own sake."). Judged by this standard, the appellants' interest in cash rather than cards with the avoidable, minimal fees falls short. The potential deprivation is *de minimis*. And we see no need to "constitutionaliz[e] . . . [these] government procedures" to impose the "additional cost in terms of money and administrative burden" that the appellants' requested process would require. *Mathews*, 424 U.S. at 347; *cf. Dahlia v. Rodriguez*, 735 F.3d 1060, 1092 (9th Cir. 2013) (O'Scannlain, J., concurring) (cautioning that a court must not "stretch the Constitution to match [its] sense of justice," lest it exceed the judicial power vested in it by Article III). We are careful to note, however, that we do not foreclose the possibility of a challenge to any future scheme in which fees are triggered by *any and all* uses or in which fees are greater than those at issue

here. This is, after all, a highly fact-intensive inquiry. Our decision here is premised solely on the combination of the fees being both avoidable *and* minor. Under these circumstances, they are *de minimus*.

In any event, we see no dispute of fact that a pre-deprivation or post-deprivation hearing would resolve. The criteria for conversion of cash to a debit card are arrest and temporary detention, and neither Mickelson nor Statham contests the fact that they were lawfully arrested or detained. When a plaintiff identifies no dispute that a hearing could resolve, he has no viable basis for demanding more process. *See Codd v. Velger*, 429 U.S. 624 (1977). "The due process clause does not mandate procedure for its own sake." *Woods*, 940 F.2d at 284. We thus reject the appellants' challenge to the district court's decision on this procedural due process claim.

In this appeal, Mickelson and Statham also contend that the debit-card scheme violates substantive due process. We conclude that this claim is not properly before our court. When a party fails to argue a claim before the district court, we consider that claim abandoned such that we need not examine it on appeal. *Demien Const. Co. v. O'Fallon Fire Prot. Dist.*, 812 F.3d 654, 657 (8th Cir. 2016). As the district court observed, Mickelson and Statham's arguments in their motion for judgment on the pleadings addressed procedural due process. Mickelson and Statham expressly disavowed any substantive due process challenge in their memorandum in opposition to the defendants' motions for judgment on the pleadings. They stated: "Plaintiffs concede that their Equal Protection claim

is subject to dismissal. They would be willing to so stipulate if necessary. In addition, Plaintiffs are alleging that Defendants violated their procedural due process rights, *not their substantive due process rights*." In light of this affirmative disavowal, we will not consider the issue here.[7] *See Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).[8]

III.

For the foregoing reasons, we affirm.

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[7] The appellants contend that procedural and substantive due process arguments are inextricably intertwined such that a court must consider both on appeal. We disagree. Our court previously has found that a party waived a substantive due process claim even when our court entertained a procedural due process appeal. *See Hartman v. Workman*, 476 F.3d 633, 634-35 (8th Cir. 2007).

[8] Because we uphold the district court's determination that no constitutional violation occurred, we need not reach the question whether KCN, FCB, and Outpay are liable as state actors. *Cf. Jenn-Ching Luo v. Baldwin Union Free Sch. Dist.*, 556 F. App'x 1, 2 (2d Cir. 2013) (unpublished) ("Because the lack of [a] . . . violation in this case justifies upholding the district court's decisions, we need not reach the question[] of whether . . . [the defendant] acted under color of state law.").

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MINNESOTA

Erik Mickelson and Corey Statham, **Plaintiffs,** **-vs-** **County of Ramsey, Keefe Commissary Network, L.L.C., and John Does 1–10** **Defendants.**	**Civil No. 13-CV-2911 (SRN/FLN)** **MEMORANDUM OPINION AND ORDER**

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Marty E. Moore, Peck Hadfield, Baxter & Moore, LLC, 399 North Main, Suite 300, Logan, Utah 84321, and Daniel L. Payne, Meagher & Geer, PLLP, 33 South Sixth Street, Suite 4400, Minneapolis, Minnesota 55402, for Defendants First California Bank and Outpay Systems, L.L.C.

SUSAN RICHARD NELSON, United States District Court Judge

This matter is before the Court on Plaintiffs' Motion for Class Certification, Appointment of Class Representatives, and Appointment of Class Counsel [Doc. No. 21]; Plaintiffs' Motion for Judgment on the Pleadings, or in the Alterative, Summary Judgment on the Issue of Liability [Doc. No. 38]; Defendant Ramsey County's Motion for Judgment on the Pleadings [Doc. No. 53]; Defendant Keefe Commissary Network, L.L.C.'s ("KCN's") Motion for Judgment on the Pleadings [Doc. No. 59]; and Defendants First California Bank ("FCB") and Outpay Systems, L.L.C. ("Outpay's") Motion for Judgment on the Pleadings [Doc. No. 64].) For the reasons set forth herein, Plaintiffs' judgment on the pleadings motion is denied and their class certification motion is denied as moot. Defendants' motions are granted.

I. BACKGROUND

Defendant Ramsey County charges a $25 booking fee to all individuals booked for confinement in its detention facilities. (Second Am. Compl. ¶¶ 25–27 [Doc. No. 14]; Ramsey Cnty. Sheriff's Office Inmate Booking Fee Policy at 1, Ex. 2 to Lindberg Aff. [Doc. No. 73-2].) The booking fee is imposed pursuant to

Minnesota law and is assessed to offset the costs associated with booking inmates. (Ramsey Cnty. Sheriff's Office Inmate Booking Fee Policy at 1, Ex. 2 to Lindberg Aff. [Doc. No. 73-2].) Under Minnesota law:

> A county board may require that each person who is booked for confinement … pay a fee to the sheriff's department of the county in which the jail is located to cover costs incurred by the county in the booking of that person. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department on the person's behalf.

Minn. Stat. § 641.12, subd. 1. If the individual being booked has no funds at the time of booking, the sheriff must notify the district court in the county where the charges related to the booking are pending, and request the assessment of the fee. (*Id.*)

Pursuant to the statute, detainees are entitled to a refund of the booking fee if they are not charged, are acquitted, or the charges against them are dismissed. (*Id.*) Ramsey County provides all inmates released from custody with a "Booking Fee Refund Form," and, consistent with Minn. Stat. § 641.13, subd. 1, the county's policy is to issue refunds of booking fees under the three circumstances noted above. (Ramsey Cnty. Sheriff's Office Inmate Booking Fee Policy at 2, Ex. 2 to Lindberg Aff. [Doc. No. 73-2].)

Ramsey County's Inmate Handbook details the grievance procedure by which detainees may challenge unfair treatment. (Ramsey Cnty. Inmate Handbook at 8, Ex. 4 to Lindberg Aff. [Doc. No. 73-4].)

The procedure contemplates both informal verbal grievances and formal written grievances:

> **GRIEVANCE PROCEDURE**
>
> If you think that you have been treated unfairly you may tell your Housing Officer, another staff member, or request to speak to a Sergeant. If you are unable to resolve the issue verbally, you may file a formal grievance.
>
> All formal grievances must be in writing and submitted on a Grievance Form. All grievances are investigated and the results given to you. If you are not satisfied with the decision, you may appeal it to a Lieutenant. ICE Boarders may also file complaints with the Department of Homeland Security.

(*Id.*)

Also under Ramsey County's policies and procedures, cash inventoried from detainees at the Ramsey County Adult Detention Center is not returned in the form of cash upon the detainees' release. (Second Am. Compl. ¶ 25 [Doc. No. 14]; Ramsey Cnty. Inmate Handbook at 15, Ex. 4 to Lindberg Aff. [Doc. No. 73-4].) Instead, detainees receive a check or debit card upon release. (Second Am. Compl. ¶ 26 [Doc. No. 14].)

Detainees who receive a debit card are provided with a Cardholder Agreement explaining the fees associated with the card. (Fee Information, Ex. A to Second Am. Compl. [Doc. No. 14 at 30-33]; Cardholder Agreement, Ex. A to KCN's Answer to Second Am. Compl. [Doc. No. 34-1 at 2–3].) The Cardholder Agreement provides the following information regarding fees:

Fees. We will provide you written notice of a change in fees at least thirty (30) days prior to the effective date of such change. If [w]e are unable to contact you for any reason, [w]e will post the changes to the fees on the Card website at www.accessfreedomcard.com. You will be deemed to have proper notice thirty days (30) after the amendments are posted.

Card Usage Fees	**Charge**
Card Activation Fee	FREE
Weekly Maintenance Fee	$1.50*
Support Calls Fee	FREE
PIN Change Fee	FREE
Domestic ATM Fees**	$2.75
International ATM Fees**	$3.75
ATM Account Inquiry Fee	$1.50
POS Debit Fee (PIN and Signature)	FREE
ATM Decline for NSF Fee	$2.75
ATM Decline International Fee	$3.75
Card to Bank Transfer (ACH) Fee	$3.00
Account Closure Fee	$25.00

* After one and one half (1.5) days/36 hours of issuance the card starts incurring weekly maintenance fees to cover the cost of the FDIC insured account.

** ATM Service providers may charge additional fees for ATM transactions.

(Cardholder Agreement, Ex. A to KCN's Answer to Second Am. Compl. [Doc. No. 34-1 at 2–3].)

Ramsey County's issuance of debit cards began in the fall of 2011 when the county—which contracts with various suppliers of goods and services for its Adult Detention Center—entered into an agreement with KCN to provide prepaid debit cards to inmates released from the Adult Detention Center. (Second Am. Compl. ¶ 9 [Doc. No. 14]; Agreement, Ex. A to Second Am. Compl. [Doc. No. 14 at 25–27].) Pursuant to the terms of the agreement between Ramsey County and KCN, FCB issued the debit cards and Outpay processed any debit card transactions. (Agreement, Ex. A to Second Am. Compl. [Doc. No. 14 at 25–27]; Second Am. Compl. ¶¶ 32–33 [Doc. No. 14].)

On May 22, 2013, Plaintiff Erik Mickelson ("Mickelson") was arrested in St. Paul for violating a noise ordinance. (Second Am. Compl. ¶ 11 [Doc. No. 17].) Mickelson was booked into the Ramsey County Law Enforcement Center. (*Id*. at ¶ 12.) At the time Mickelson was booked, his inventoried personal property included $95 in cash. (*Id*. at ¶ 13.) Upon Mickelson's release later the same day, Ramsey County issued him a debit card containing $70—the value of his cash minus the $25 booking fee. (*Id*. at ¶ 29.)

On August 30, 2013, Plaintiff Corey Statham ("Statham") was arrested for disorderly conduct and obstructing the legal process. (*Id*. at ¶ 18.) Statham was booked into the Ramsey County Law Enforcement Center, where he remained for 48 hours. (*Id*. at ¶ 19.) At the time Statham was booked, his inventoried personal property included $46 in cash.

(*Id*. at ¶ 20.) Upon his release, Ramsey County issued Statham a debit card containing $21—the value of his cash minus the $25 booking fee. (*Id*. at ¶ 30.)

Plaintiffs assert the following claims against Ramsey County, KCN, FCB, and Outpay: (1) a claim under 42 U.S.C. § 1983 that Defendants violated Plaintiffs' civil rights under the Fourth and Fourteenth Amendments (*id*. at ¶¶ 105–07); (2) a claim under 42 U.S.C. § 1985(3) that Defendants conspired to violate Plaintiffs' civil rights (*id*. ¶¶ 108–111); (3) a claim for conversion (*id*. ¶¶ 112–16); (4) a claim for civil theft in violation of Minn. Stat. § 604.14 (*id*. at ¶¶ 117–20); and (5) a claim of unjust enrichment (*id*. ¶¶ 121–24).

II. DISCUSSION

A. Standard of Review

Federal Rule of Civil Procedure 12(c) provides that a motion for judgment on the pleadings is appropriate after the pleadings are closed. Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings will be granted "only where the moving party has clearly established that no material issue of fact remains and the moving party is entitled to judgment as a matter of law." *Waldron v. Boeing Co.*, 388 F.3d 591, 593 (8th Cir. 2004).

A motion for judgment on the pleadings is evaluated under the same standard as a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Clemons v. Crawford*, 585 F.3d 1119, 1124 (8th Cir. 2009). The Court assumes the facts in the complaint to be true and construes all reasonable inferences from those facts in the light most favorable to the plaintiff. *Morton v. Becker*, 793 F.2d 185, 187 (8th

Cir. 1986). The Court, however, need not accept as true wholly conclusory allegations, *Hanten v. Sch. Dist. of Riverview Gardens*, 183 F.3d 799, 805 (8th Cir. 1999), or legal conclusions that the plaintiff draws from the facts pled. *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990).

To survive a motion to dismiss, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). Although a complaint need not contain "detailed factual allegations," it must contain facts with enough specificity "to raise a right to relief above the speculative level." *Id.* at 555. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," will not pass muster under *Twombly*. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555).

When considering a motion for judgment on the pleadings, the Court must also generally ignore materials outside the pleadings. The Court may consider the complaint, "some materials that are part of the public record or do not contradict the complaint," orders, materials embraced by the complaint, and exhibits attached to the complaint. *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999). Here, the Court considers the Second Amended Complaint and attached exhibits, Exhibit A to KCN's Answer to the Second Amended Complaint (the "Cardholder Agreement"), and the following exhibits to the Affidavit of Brad Lindberg: Exhibit 1, September 22, 2009 Ramsey County Board Minutes (adopting booking fee) [Doc. No. 73-1]; Exhibit 2, Ramsey County Sheriff's Office Inmate

Booking Fee Policy [Doc. No. 73-2]; Exhibit 3, Estimates for Booking Fee Charges [Doc. No. 73-3]; Exhibit 4, Ramsey County Inmate Handbook [Doc. No. 73-4]; Exhibit 6, Debit Card Directive [Doc. No. 73-6]. The Court considers these particular exhibits to be "embraced by the complaint," as the Second Amended Complaint refers to the schedule of fees reflected in Exhibit A to KCN's Answer to the Second Amended Complaint (the Cardholder Agreement) (*see* Second Am. Compl. ¶¶ 36–42), and the Second Amended Complaint similarly refers to the policies or information contained in Exhibits 1–4 and 6 to the Lindberg Affidavit. (*Id.* at ¶¶ 15, 22, 25, 26, 27, 34, 35 [Doc. No. 14].) No other documents will be considered.

B. 42 U.S.C. § 1983

Plaintiffs have brought the instant lawsuit under 42 U.S.C. § 1983 alleging that their constitutional rights were violated by the Defendants' actions. Section 1983 provides a private cause of action against those who, under color of law, deprive a citizen of the United States of "any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. A plaintiff may bring a § 1983 claim against persons in their individual or official capacity, or against a governmental entity. *See Baker v. Chisom*, 501 F.3d 920, 923 (8th Cir. 2007). Under § 1983, a municipality may not be held vicariously liable for the unconstitutional acts of its employees. *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999). However, a municipality may be sued directly under § 1983 where the allegedly unconstitutional action implements or executes a policy statement, ordinance, regulation, or decision

officially adopted or promulgated by those whose acts are representative of official policy. *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 690 (1978).

Because the imposition of § 1983 liability requires a plaintiff to establish a violation of a constitutional right, *Avalos v. City of Glenwood*, 382 F.3d 792, 802 (8th Cir. 2004), the Court first examines whether Plaintiffs' claims establish this element. Plaintiffs contend that Defendants violated their rights under the Fourth and Fourteenth Amendments through the denial of due process, the unlawful seizure of their property, and the denial of a property interest—all related to the loss of Plaintiffs' seized funds, the inconvenience imposed by the issuance of debit cards, and the amount of fees charged. (Second Am. Compl. § § 105–07 [Doc. No. 14].)

1. Due Process

The Due Process Clause of the Fourteenth Amendment is directed at the states and their political subdivisions, but it is otherwise identical to the Due Process Clause of the Fifth Amendment, which applies against the federal government. *Johnson v. Alexander*, 572 F.2d 1219, 1220 (8th Cir. 1978). Procedural due process imposes constraints on governmental decisions that burden a person's protected interests in life, liberty, or property, *see Mathews v. Eldridge*, 424 U.S. 319, 332 (1976), while substantive due process protects against official conduct that is conscience-shocking and violative of a fundamental right that is deeply rooted in history, and implicit in the concept of ordered liberty. *Slusarchuk v. Hoff*, 346 F.3d 1178, 1181–82 (8th Cir. 2003) (citing *Moran v. Clarke*, 296 F.3d 638, 651 (8th

Cir. 2002) (en banc) (Bye, J., concurring and writing for the majority on this issue). Plaintiffs do not specify in their pleading whether they allege a violation of procedural or substantive due process (*see* Second Am. Compl. ¶¶ 105–07 [Doc. No. 14]), however the arguments in Plaintiffs' Motion for Judgment on the Pleadings address only procedural due process. The Court therefore focuses its analysis on procedural due process.

"Generally, 'due process requires that a hearing before an impartial decision-maker be provided at a meaningful time, and in a meaningful manner.'" *Booker v. City of Saint Paul*,___ F.3d ___, No. 13–2747, 2014 WL 3896174, at *2 (8th Cir. Aug. 7, 2014) (quoting *Coleman v. Watt*, 40 F.3d 255, 260 (8th Cir. 1994)). In *Mathews*, 424 U.S. at 335, the Supreme Court outlined three factors that courts must balance when determining what procedural process is owed, and when that process is due, in order for the state to deprive a person of their private property without violating the Constitution:

> [1] First, the private interest that will be affected by the official action; [2] second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and [3] finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. Balancing these factors in *Mathews*, the Supreme Court held that when the government terminates Social Security disability benefits, it need only

provide a post-termination hearing. *Id*. at 348. The Court reached this conclusion based on the "elaborate character" of the existing administrative procedures in place and the substantial governmental interests at stake. *Id*. at 339–40. As the *Mathews* balancing test suggests, due process is not a fixed, technical concept, but rather, it is flexible, "call[ing] for such procedural protections as the particular situation demands." *Id*. at 334. Accordingly, resolution of the instant motions requires analysis of the governmental and private interests that are affected by the challenged policies.

The specific question of whether assessing a booking fee and returning arrestees' money in the form of a prepaid debit card violates the Due Process Clause appears to be an issue of first impression in the Eighth Circuit. In *Schilb v. Kuebel*, 404 U.S. 357, 360–61 (1971), the Supreme Court considered the constitutionality of an Illinois bail reform statute that was enacted to curb abuses by professional bail bondsmen. Under the statute, a detainee could obtain pretrial release by depositing ten percent of the amount of bail, but the clerk of court was allowed to keep ten percent of the amount deposited (i.e., one percent of the amount of the bail). *Id*. at 358. Plaintiff challenged the statute on grounds of equal protection and due process. Upholding the statute, the Supreme Court found the fee to be an acceptable "administrative cost" imposed on everyone who sought the benefit of the statute and, therefore, found that it was not violative of due process. *Id*. at 370–71.

Similarly, the majority of courts that have addressed the booking fee or bail fee issue, including the Third, Fourth, Fifth, and Sixth Circuits, have

held that the collection of nominal fees from arrestees for booking, room and board, or bond—without a predeprivation hearing—does not violate due process, particularly in light of the low amount of discretion involved, the administrative nature of the fee, and the minimal risk of error. *See, e.g.*, *Sickles v. Campbell Cnty., Ky.*, 501 F.3d 726 (6th Cir. 2007) (finding that withholding a portion of an inmate's canteen account funds to cover the costs of booking and room and board, without holding a predeprivation hearing, did not violate due process); *Slade v. Hampton Roads Reg'l Jail*, 407 F.3d 243 (4th Cir. 2005) (no procedural due process violation when charges were deducted from pretrial detainee's account without holding predeprivation hearing), *Broussard v. Parish of Orleans*, 318 F.3d 644 (5th Cir. 2003) (finding no due process violations as to bail fee statutes requiring arrestees to pay certain fees after posting bail), *Tillman v. Lebanon Cnty. Corr. Facility*, 221 F.3d 410 (3d Cir. 2000) (holding that predeprivation hearing was not necessary prior to assessing a $10 daily housing fee during inmate's incarceration, and that postdeprivation remedies satisfied due process); *see also Markadonatos v. Vill. of Woodbridge*, ___ F.3d ___, No. 12–2619, 2014 WL 3566203 (7th Cir. July 21, 2014) (per curiam) (although not reaching the due process merits, affirming the district court's dismissal of a § 1983 claim alleging a due process violation stemming from the assessment of a $30 booking fee); *Cole v. Warren Cnty., Ky.*, No. 1:11–DV–00189–JHM, 2012 WL 1950419, at *6 (W.D. Ky. May 30, 2012) (finding no due process deprivation resulting from assessment of a $20 booking fee, a $20 daily housing fee, and a $5

bond fee.); *Hohsfield v. Polhemus*, No. 11–3007 (FLW), 2012 WL 603089, at *4–5 (D.N.J. Feb. 23, 2012) (holding that a booking fee and a $20 daily housing fee were "nominal and non-punitive" and not violative of due process). However, a minority of courts have held that the imposition of a booking fee violates due process or may violate due process. *See, e.g.*, *Roehl v. City of Naperville*, 857 F. Supp. 2d 707 (N.D. Ill. 2012) (ruling on defendant's motion to dismiss that plaintiff asserted a plausible due process claim where city ordinance imposed a $50 bail or bond fee on arrestees, but lacked procedural protections and remedies); *Allen v. Leis*, 213 F. Supp. 2d 819 (S.D. Ohio 2002) (finding that jail's policy of appropriating cash immediately to cover jail booking fee was not statutorily authorized and violated due process).

Turning to the first *Mathews* factor—the private interest at stake—Defendants acknowledge that Plaintiffs have a property interest in their cash. (Def. Ramsey Cnty.'s Opp'n Mem. at 7 [Doc. No. 72]; KCN's Mem. Supp. Mot. for J. on the Pleadings at 12 [Doc. No. 61]; FCB's Mem. Supp. Mot. for J. on the Pleadings at 12 [Doc. No. 66]) (adopting arguments presented by Ramsey County and KCN).) However, Defendants characterize this interest as "slight," or of less significance than the other *Mathews* factors. (*Id.*) In contrast, Plaintiffs cite *Huss v. Spokane County*, 464 F. Supp. 2d 1056, 1062 (E.D. Wash. 2006), to support their assertion that a person's interest in the continued possession and use of his or her money is substantial. While the district court in *Huss* found this private interest "significant," and concluded that a statute which required the immediate payment of a

booking fee without a predeprivation hearing was facially unconstitutional, *id*., the court later vacated its own ruling on a motion to reconsider. *Huss*, No. CV–05–180–FVS, 2007 WL 1115296, at *4 (E.D. Wash April 13, 2007) (finding that the plaintiff lacked standing).

Plaintiffs have a property interest in their money that is protected by the Due Process Clause of the Fourteenth Amendment, *see Parrish v. Mallinger*, 133 F.3d 612, 614 (8th Cir. 1998) (inmates have a property interest in their money); *Jenson v. Klecker*, 648 F.2d 1179, 1183 (8th Cir. 1981) (same), however, the Court does not find the interest to be substantial. Without diminishing Plaintiffs' property interest, the Court agrees with the Sixth Circuit Court of Appeals in *Sickles* that

> [t]he private stakes at issue . . . do not begin to approach the kinds of government conduct that have required a predeprivation hearing, such as a limitation on the "historic" "right to maintain control over [one's] home," *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53–54 (1993), or the termination of government benefits, which for many people are "the very means by which to live," *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

Sickles, 501 F.3d at 730. As in *Sickles*, the private interests at stake here, both with respect to the $25 booking fee and the smaller fees associated with the debit cards, are relatively modest. courts have reached the same conclusion with respect to similar fees. *See, e.g., Slade*, 407 F.3d at 253–54 (finding the plaintiffs' property interest to be slight under the first factor of the *Mathews* test); *Broussard*, 318 F.3d

at 656–57 (characterizing the level of private interest as *de minimis*).

Under the second prong of *Mathews*, the Court considers the risk of erroneous deprivation, and the probable value, if any, of any additional safeguards. *Mathews*, 424 U.S. at 335. The *Sickles* court found the risk of erroneous deprivation in withholding a certain amount from inmates' canteen accounts to cover the costs of booking, room and board to be "minor," observing that the "withholding of funds involves elementary accounting that has little risk of error and is non-discretionary." *Sickles*, 501 F.3d at 730. Similarly, in *Slade*, the Fourth Circuit found that "[t]he daily deduction of the charge from the prisoner's account is a ministerial matter with no discretion and minimal risk of error." *Slade*, 407 F.3d at 253–54 (citing *Tillman*, 221 F.3d at 422).

Ramsey County's booking fee policy is statutorily authorized and applicable to all persons booked for confinement. Under the policy, the county's employees have no discretion in determining who should be charged the booking fee and who should not be charged. Rather, as KCN observes, Ramsey County staff either assess a booking fee to an arrestee who is being booked, or they do not assess a booking fee to a person who has not been arrested and is not being booked. (*See* KCN's Mem. Supp. Mot. for J. on the Pleadings at 12–14 [Doc. No. 61].) This lack of discretion reduces the potential for erroneous deprivation. Moreover, the assessment of the booking fee involves simple transactions which also lowers the risk of an erroneous deprivation. Ramsey County's internal policy of refunding the booking fee to the person at their last known address if that

person is not charged, is acquitted, or if the charges are dismissed (Ramsey Cnty. Sheriff's Office Inmate Booking Fee Policy at 2, Ex. 2 to Lindberg Aff. [Doc. No. 73-2]), provides an adequate post-deprivation remedy, given the nature and weight of the private interests at stake, as does Ramsey's County Adult Detention Center's internal grievance policy. (Ramsey Cnty. Inmate Handbook at 8; 15, Ex. 4 to Lindberg Aff. [Doc. No. 73- 4].)

In contrast, the absence of any such reimbursement procedure has led other courts to find similar booking fee ordinances unconstitutional. *See*, *e.g.*, *Roehl*, 857 F. Supp. 2d at 708. While Plaintiffs argue that the potential availability of state law post-deprivation remedies is inapplicable here (Pls.' Mem. Supp. Mot. for J. on the Pleadings at 18–19 [Doc. No. 39]) (citing *Roehl*, 857 F. Supp. 2d at 718), Ramsey County's own policy provides for the booking fee refund in the circumstances authorized by Minn. Stat. § 641.12. Ramsey County's remedy is not of the type found wanting by the court in *Roehl*—there, the court held that the existence of a post-deprivation state law tort remedy did not preclude a plaintiff's § 1983 due process claim. Here, under Ramsey County's own policy, detainees are provided with notice of both the provision for a booking fee refund as well as the general internal grievance procedure. (Ramsey Cnty. Inmate Handbook at 8, 15, Ex. 4 to Lindberg Aff. [Doc. No. 73-4].) In upholding similar statutes and ordinances, other courts have noted that the existence of a general inmate grievance process satisfies the requirements of due process. *See*, *e.g.*, *Sickles*, 501 F.3d at 731 (noting that the plaintiffs had notice about fees and internal grievance

procedures); *Tillman*, 221 F.3d at 422 (stating, "The plaintiff had an adequate postdeprivation remedy in the grievance program."); *Cole*, 2012 WL 1950419, at *8 (observing that the inmates "were provided notice regarding the jail's internal grievance procedures); *Hohsfield*, 2012 WL 603089, at *6 (noting, "Pursuant to general state prison policy, inmates have an opportunity to challenge the deductions from their inmate accounts through the general internal inmate grievance procedure provided for them."). The Court finds no due process violation with respect to the booking fee.

Plaintiffs further argue that the risk of erroneous deprivation and the need for additional or substitute safeguards is even greater with respect to the debit card fees. (Pls.' Mem. Supp. Mot. J. Pleadings at 16 [Doc. No. 39].) While Ramsey County returns the booking fee under certain circumstances, Plaintiffs contend that the deprivation of the "unavoidable" debit card fees is permanent. (*Id*. at 17.) The Court finds, however, that as with the set booking fee, the assessment of debit card fees is ministerial, involving set deductions, simple calculations, and a lack of discretion. (*See* Cardholder Agreement, Ex. A to KCN's Answer to Second Am. Compl. [Doc. No. 34-1 at 2–3].) As the Third Circuit found in Tillman with respect to a $10 per day housing fee, "[i]t is impractical to expect the prison to provide predeprivation proceedings" given the "low risk of error" associated with the program." *Tillman*, 221 F.3d 410, 422 (3d Cir. 2000). The possible benefits of any additional safeguards, including a pre-deprivation hearing, are slight and would be highly impractical and time-consuming, for the same

reasons as noted above with respect to the booking fee. Moreover, not only are arrestees informed of the issuance of debit cards, they are given information regarding the fees—including information on how to avoid incurring fees. (Fee Information, Ex. A to Second Am. Compl. [Doc. No. 14 at 30–33]; Cardholder Agreement, Ex. A to KCN's Answer to Second Am. Compl. [Doc. No. 34-1 at 2–3].)

As to the third *Mathews* factor—the government's interest—this Court finds, as others have found, that the government's interest in "sharing the costs of incarceration and furthering offender accountability . . . are substantial." *Sickles*, 501 F.3d at 732. So too is "the government's interest in conserving scarce resources and the administrative burden on the government resulting from additional procedural requirements." *Broussard*, 318 F.3d at 656. Ramsey County has a strong interest in continuing to assess a nominal booking fee to offset at least a portion of the administrative costs incurred in booking detainees.[1] Moreover, Ramsey County has an interest in avoiding an additional hearing before or after it assesses the $25 booking fee. Such an additional administrative requirement would likely involve substantial resources and potential costs, including "court time, a judge's time, and a prosecutor's time, as well as the property owner's time, who may nor may not wish to be there and who

[1] Ramsey County estimates that the true cost incurred in booking an inmate at the Adult Detention Center is over $65 per inmate. (Preliminary Estimates for Booking Fee Charges, Ex. 3 to Lindberg Aff. [Doc. No. 73-3].)

may or may not retain an attorney." *Booker*, 2014 WL 3896174, at *4.

Ramsey County likewise has an important interest in returning detainees' funds to them in the form of a prepaid debit card. Once the card is provided to the released detainee, Ramsey County is no longer involved—no further administrative expense is required. Moreover, the issuance of a debit card provides certain benefits to detainees. The issuance of a card is immediate, whereas the provision of a check may be delayed. Moreover, despite Plaintiffs' contention that incurring fees is unavoidable, released detainees can avoid the imposition of debit card fees, and are specifically advised about how to do so in the provided Cardholder Agreement. (*See* Cardholder Agreement, Ex. A to KCN's Answer to Second Am. Compl. [Doc. No. 34-1 at 2].) Detainees are specifically advised:

Want to save money on fees? Follow these easy tips:

- Check your balance online or through customer service before using an ATM.
- Use your card as a payment method in grocery stores, convenience stores, drug stores, or anywhere that accepts Debit MasterCard®.
- If your card is rejected at an ATM, never attempt over and over again. Some ATMs impose a fee even for declined transactions.
- Maintain your account for free online.
- Retain this document for future reference.

(*Id.*) (emphasis in original). As noted, detainees are also informed of the fees, or lack of fees, associated

with certain uses of the debit cards. (*Id.*) For example, they can receive instant, free access to point-of-sale providers and the weekly maintenance fee of $1.50 is only incurred after 36 hours of issuance. (*Id.*) In addition, released detainees may track their purchases online and replace lost cards. (*Id.* at 2–3.) In the event of errors or questions about debit card transactions, detainees are provided with a toll-free number and mailing address. (*Id.* at 3.)

Requiring Ramsey County to provide an additional hearing before or after any such fees are deducted would be impractical and administratively inefficient. Detainees receive notice regarding the fees, are advised how to avoid incurring fees, and have recourse with the card issuer to resolve any errors. Balancing the *Mathews* factors with respect to the debit card fees, the Court finds that Ramsey County's interest in providing a secure, efficient means by which detainees may immediately access their money outweighs Plaintiffs' interest in the relatively negligible fees that may possibly be deducted from their prepaid debit cards. The Court finds no procedural due process violation.[2]

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[2] While the Court finds that Plaintiffs' due process claims concern procedural due process, to the extent that they may be construed to allege substantive due process, they likewise fail. As noted, substantive due process protects against official conduct that is conscience-shocking and violative of a fundamental right that is deeply rooted in history, and implicit in the concept of ordered liberty. *Slusarchuk*, 346 F.3d at 1181–82. "[A]ctionable substantive due process claims involve a level of . . . abuse of power so brutal and offensive that [they do] not comport with traditional ideas of fair play and decency." *Hart v. City of Little Rock*, 432 F.3d 801, 806 (8th Cir. 2005). Here, the imposition of a $25 booking fee and the possible imposition of

2. Unlawful Seizure of a Property Interest

While the parties' memoranda focus primarily on Plaintiffs' Fourteenth Amendment due process claims, Plaintiffs' § 1983 claim also alleges a violation of the Fourth Amendment. (Second Am. Compl. ¶¶ 105–07 [Doc. No. 14].) To the extent that Plaintiffs address the Fourth Amendment aspect of their § 1983 claim, they contend that "Ramsey County officials intentionally take money from people being processed into the ADC. The deprivation of property occurs at the moment the booking fee is separated from the remainder of a detainee's property." (Pls.' Mem. Supp. Mot. for J. on the Pleadings at 9 [Doc. No. 39].)

The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. Const. amend. IV. Accordingly, every search or seizure by a government agent must be reasonable. *Id*. A "seizure" of property occurs when "'there is some meaningful interference with an individual's possessory interests in that property.'" *Soldal v. Cook Cnty., III.*, 506 U.S. 56, 61 (1992) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)).

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small debit card fees do not rise to the level of conscience-shocking conduct that would support a substantive due process violation. *See Broussard*, 318 F.3d at 657–58 (finding no substantive due process violation where the imposition of bail fees failed to infringe any fundamental rights and the fees were reasonable administrative charges, not arbitrary charges).

When a suspect is brought to a detention facility for booking, law enforcement officers have broad authority to remove and itemize all property found on the person or in the person's possession. *Illinois v. Lafayette*, 462 U.S. 640, 646 (1983). The standards used by courts in evaluating the constitutionality of inventory searches are helpful in this Court's analysis of Plaintiffs' claims of unlawful seizure of property. An inventory search protects the "owner's property while it remains in police custody," and also protects "police against claims or disputes over lost or stolen property" and "from potential danger[s]." *United States v. Smith*, 715 F.3d 1110, 1117 (8th Cir. 2013) (quoting *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976)). An inventory search must be reasonable under the totality of the circumstances. *United States v. Taylor*, 636 F.3d 461, 464 (8th Cir. 2011). "The reasonableness requirement is met when an inventory search is conducted according to standardized police procedures, which generally remove the inference that the police have used inventory searches as a purposeful and general means of discovering evidence of a crime." *Id.* (internal quotation marks omitted); *see also United States v. Allen*, 713 F.3d 382, 387–88 (8th Cir. 2013) (stating that examining "all the items removed from the arrestee's person or possession and listing or inventorying them is an entirely reasonable administrative procedure.).

Here, Plaintiffs allege that it is "Ramsey County's policy to confiscate cash and coin from all persons booked at its detention facilities and return such money in a form other than cash." (Second Am. Compl. ¶ 34 [Doc. No. 14].) Plaintiffs also contend

that Ramsey County "confiscates" the $25 booking fee from any of the funds found on the detainee at booking. (*Id.* ¶ 49.) Similarly, Plaintiffs assert that the deduction of fees from the debit cards issued by Ramsey County upon the detainees' release is an unlawful seizure. (*Id.* ¶ 35.) Even if these actions may be characterized as "seizures," the booking fees are assessed and collected pursuant to Minnesota state law and, as Plaintiffs themselves allege, "Ramsey County's policy." (*See id.* ¶ 34.) Ramsey County's actions in levying the $25 booking fee were therefore undertaken pursuant to both state law and county policy. Plaintiffs offer no allegations or facts suggesting that the fees were taken for any purpose other than pursuant to state law and county policy. Similarly, as to the fees associated with the debit card, as Plaintiffs again allege, offering prepaid debit cards to released detainees was undertaken pursuant to Ramsey County policy. Nothing in the record demonstrates that this practice is unreasonable, improperly administered, or undertaken in bad faith.

To the extent that Plaintiffs claim that the seizure of their funds upon booking or through debit card processing fees offends the Fourth Amendment's reasonableness requirement because the seizure violates due process, for all of the reasons set forth in the Court's due process analysis, Plaintiffs' claim fails. Accordingly, to the extent that Plaintiffs' § 1983 claim is premised on violations of the Fourth Amendment for unlawful seizure of Plaintiffs' property interests, the Court finds no constitutional violation.

3. Failure to Train

As Ramsey County notes, Plaintiffs appear to assert a failure to train claim, alleging that "Ramsey County is sued directly and also, on all relevant claims, on the theories of respondeat superior or vicarious liability and pursuant to Minn. Stat. § 466.02 for the unlawful conduct of John Does 1–10. Ramsey County is the political subdivision charged with training and supervising John Does 1–10." (Second Am. Compl. ¶ 3 [Doc. No. 14].)

In "limited circumstances," a local government may be liable under § 1983 for the inadequate training of its employees, *City of Canton*, 489 U.S. at 387–88, "where (1) the [county's] . . . training practices [were] inadequate; (2) the [county] was deliberately indifferent to the rights of others in adopting them, such that the 'failure to train reflects a deliberate or conscious choice by [the county]'; and (3) an alleged deficiency in the . . . training procedures actually caused the plaintiff's injury." *Parrish v. Ball*, 594 F.3d 993, 997 (8th Cir. 2010) (citing *Andrews v. Fowler*, 98 F.3d 1069, 1076 (8th Cir. 1996)). The Supreme Court has limited such claims to very specific circumstances, explaining,

> That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from factors other than a faulty training program. It may be, for example, that an otherwise sound program has occasionally been negligently administered. Neither will it suffice to prove that an injury or accident could have been avoided if an officer had had better or more training, sufficient to equip him to avoid

> the particular injury-causing conduct. Such a claim could be made about almost any encounter resulting in injury, yet not condemn the adequacy of the program to enable officers to respond properly to the usual and recurring situations with which they must deal. And plainly, adequately trained officers occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding the city liable.

City of Canton, 489 U.S. at 390–91 (citations omitted). Thus, a plaintiff must establish that, through the municipality's policymakers, it "failed to train or supervise employees despite: 1) having actual or constructive knowledge of a pattern of similar constitutional or statutory violations by untrained employees; or 2) the fact that the constitutional violation alleged was a patently obvious and 'highly predictable consequence' of inadequate training. *Sampson v. Schenck*, 973 F. Supp. 2d 1058, 1064 (D. Neb. 2013) (citing *Board of Comm'rs of Bryan Cnty., Okla. v. Brown*, 520 U.S. 397, 407–09 (1997)). The analysis applicable to claims for failure to train likewise applies to claims for failure to supervise. *See Robinette v. Jones*, 476 F.3d 585, 591 (8th Cir. 2007) (citing *Liebe v. Norton*, 157 F.3d 574, 579 (8th Cir. 1998)).

To the extent that Plaintiffs assert a failure to train or supervise claim against Ramsey County, because Plaintiffs have failed to demonstrate a constitutional or statutory violation, as discussed

herein, any such claim fails[3]. "For there to be section 1983 liability, 'there must first be a violation of the plaintiff's constitutional rights.'" *Avalos*, 382 F.3d at 802 (quoting *Shrum ex rel. Kelly v. Kluck*, 249 F.3d 773, 777 (8th Cir. 2001)). Accordingly, Plaintiffs' § 1983 claim is dismissed.

C. Conspiracy - 42 U.S.C. § 1985

Plaintiffs also assert a claim of conspiracy to violate their civil rights pursuant to 42 U.S.C. § 1985(3). Although Plaintiffs do not specify the civil rights in question in their§ 1985(3) conspiracy claim, it appears that the conspiracy claim is based on Defendants' alleged violations of Plaintiffs' due process rights, rights against unlawful seizure, and rights against the denial of a property interest. (Second Am. Compl. ¶¶ 108–111 [Doc. No. 14]) (asserting in § 1985(3) claim, "By their conduct detailed above, Defendants have been and continue to be jointly engaged in a conspiracy with the purpose and effect of depriving Plaintiffs . . . of their federally protected civil rights.") It also appears that Plaintiffs' allegations of conspiracy are limited to the imposition and collection of debit card fees—and not the $25 booking fee—as the Second Amended Complaint asserts that "[b]y [Defendants'] knowledge that the debit card contract and policy will result in unavoidable, nonconsensual fees . . . the Defendants'

[3] Because the Court finds that Plaintiffs' § 1983 claim fails on the merits, it does not address the additional argument raised by KCN, FCB, and Outpay that they were not acting under color of law. (*See* KCN's Mem. Supp. Mot. for J. on the Pleadings at 16-18 [Doc. No. 61]; FCB & Outpay's Mem. Supp. Mot. for J. on the Pleadings at 1–2 [Doc. No. 66] (adopting arguments raised by co-Defendants).)

conspiracy is undertaken with the purpose and effect of directly and/or indirectly depriving the Plaintiffs . . . of their constitutionally protected rights." (*Id.* ¶ 110.) Because the Second Amended Complaint does not reference Ramsey County's $25 booking fee, the Court confines its analysis to Plaintiffs' claims of conspiracy related to the debit card fees[4].

A plaintiff asserting a conspiracy claim under 42 U.S.C. § 1985(3), must establish the following: (1) the defendants conspired; (2) with the intent to deprive the plaintiff, either directly or indirectly, of equal protection of the laws, or equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to the plaintiff's person or property, or a deprivation of any right or privilege of a citizen of the United States. *Barstad v. Murray Cnty.*, 420 F.3d 880, 887 (8th Cir. 2005). A conspiracy claim requires a showing of an agreement between the conspirators to deprive the plaintiff of his or her civil rights, *id.*, and the agreement must be alleged with sufficient particularity. *Marti v. City of Maplewood, Mo.*, 57 F.3d 680, 685 (8th Cir. 1995). Conclusory allegations of conspiracy lacking sufficient facts concerning a mutual understanding or meeting of the mind fail to state a claim under § 1985. *Cabal v. United States Dep't of Justice*, No. 92-2100, 1992 WL 336447, at *2 (8th Cir. Nov. 18, 1992) (citing *Snelling v. Westhoff*, 972 F.2d 199, 200 (8th Cir. 1992). Moreover, to demonstrate the purpose or

[4] In any event, a § 1985(3) claim as to Ramsey County's $25 booking fee would likely fail, as it is imposed and collected solely by Ramsey County and not the corporate Defendants.

intent of the conspiracy under § 1985(3), a plaintiff must demonstrate that race- or class-based animus motivated the defendant's actions. *See Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); *City of Omaha Employees Betterment Ass'n v. City of Omaha*, 883 F.2d 650, 652 (8th Cir. 1989).

As pleaded, Plaintiffs' § 1985(3) claim fails to specify the unlawful agreement among the Defendants—in fact, the Plaintiffs' conspiracy claim does not mention an agreement of any kind. (*See* Second Am. Compl. ¶¶ 108–11 [Doc. No. 14].) At most, Plaintiffs assert that Defendants passively knew that imposing fees would diminish the value of Plaintiffs' property and that the conspiracy was undertaken with the purpose of "depriving Plaintiffs . . . of their constitutionally protected rights." (*Id.* ¶ 110.) Yet, as noted in the Court's analysis above, Plaintiffs have failed to establish the violation of a constitutional right.

Nor do Plaintiffs allege that the imposition and collection of the debit card fees was motivated by animus based on race or class. To the extent that Plaintiffs argue in their motion papers—but do not assert in their pleadings—that Defendants' actions disproportionately impact persons of color because such persons may be detained at disproportionate rates (Pl.'s Mem. Supp. Mot. for J. on the Pleadings at 20–21 [Doc. No. 39]), a disproportionate effect, standing alone, does not demonstrate that such persons are deprived of equal protection of the laws. *See Washington v. Davis*, 426 U.S. 229, 242 (1976); *see also Henley v. Brown*, 686 F.3d 634, 641–42 (2012) (noting, as to a § 1983 claim, that an act does not violate equal protection simply because it has a

racially disproportionate effect; rather, "to amount to a constitutional violation, the act must be committed with a 'discriminatory racial purpose.'"); *Inmates of Neb. Penal and Corr. Complex v. Greenholtz*, 567 F.2d 1368, 1374–75 (8th Cir. 1977) ("It is incumbent upon plaintiffs to establish that a racially disproportionate impact, if there is one, was occasioned by a racially motivated purpose."). What is lacking here is any allegation, based on fact, that Defendants agreed to impose and collect the debit card fees with the purpose of discriminating against persons based on race or class. Nothing before the Court demonstrates the existence of such a purpose—much less have Plaintiffs alleged even a bald statement to this effect in their § 1985 claim or in their general factual allegations. Of course, a bald statement, without more, would fail in any case, as the claim would fail to contain facts with enough specificity "to raise a right to relief above the speculative level." *Twombly*, 550 U.S. 555. In any event, the facts, even as pleaded by Plaintiffs, show that Ramsey County contracted with KCN with respect to the debit cards. (Second Am. Compl. ¶ 9 [Doc. No. 14].) Plaintiffs fail to allege or point to any facts demonstrating that this contractual agreement was motivated by a desire to deprive persons of their constitutional rights based on reasons of race or class. In addition, the facts as alleged by Plaintiffs show that, under the terms of the contract between Ramsey County and KCN, debit cards were issued by FCB and transactions were processed by Outpay. (*Id.* ¶¶ 32–33.) Thus, once Ramsey Count gives a released detainee a card, Ramsey County has no role in the assessment or collection of debit card fees.

For all of the reasons set forth above, the Court thus finds that Defendants are entitled to judgment as a matter of law on Plaintiffs' civil conspiracy claim.

D. State Law Claims

Plaintiffs assert claims of conversion, civil theft under Minn. Stat. § 604.14, and unjust enrichment against Defendants. As to the portion of these claims based on the imposition of debit card fees, the Cardholder Agreement provides for the application of California law. (Cardholder Agreement, Ex. A to KCN's Answer to Second Am. Compl. [Doc. No. 34-1 at 2–3].) Because the Court finds that under either Minnesota or California law, the outcome of the instant motions is the same as to these claims, the Court need not decide which state's law to apply. *Leonards v. Southern Farm Bureau Cas. Ins. Co.*, 279 F.3d 611, 612 (8th Cir. 2002) (noting that when the relevant legal principles are the same in the states at issue, the court need not resolve which state's law applies).

1. Conversion

"Conversion occurs where one willfully interferes with the personal property of another 'without lawful justification,' depriving the lawful possessor of 'use and possession.'" *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. Ct. App. 2003) (citing *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997)). The elements of conversion are: (1) the plaintiff holds a property interest, and (2) the defendant deprives plaintiff of that interest. *Id.*; *accord Los Angeles Fed. Credit Union v. Madatyan*, 147 Cal. Rptr. 3d 771 (Cal. Ct. App. 2012) (stating, "Conversion is the wrongful exercise of dominion over the property of another.

The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages.") (citation omitted). While Plaintiffs hold a property interest in their money, the fees at issue were assessed with lawful justification. Ramsey County assessed the $25 booking fee pursuant to Minn. Stat. § 641.12, subd. 1, to cover costs incurred in the booking process.

Likewise, there is nothing unlawful about the imposition of small, administrative debit card fees, which are largely avoidable, in any event. The assessment of the debit card fees arises out of a valid, lawful agreement between Ramsey County and KCN. (Agreement, Ex. A to Second Am. Compl. [Doc. No. 14 at 25–27].) Accordingly, because the imposition of the booking fee and the debit card fees was lawfully justified, Plaintiffs' claim for conversion fails. *See Strei v. Blaine*, ___ F. Supp. 2d ___, No. 12–CV– 1095 (JRT/LIB), 2014 WL 555205, at *19 (D. Minn. Feb. 12, 2014) (plaintiff's conversion claim failed where there was no evidence of unlawful actions with respect to the property); *Rachuy v. Pauly*, Nos. A13-393, A13-394, 2014 WL 103388, at *3 (Minn. Ct. App. Jan. 13, 2014) (finding that conversion claim did not lie where the plaintiff presented no evidence that the officer acted without justification in police seizure of property); *Hassan v. City of Minneapolis*, No. C8-00-154, 2000 WL 1051910, at *4 (Minn. Ct. App. Aug. 1, 2000) (concluding that the plaintiff's conversion claim failed because there was lawful justification for the seizure of the plaintiff's property pursuant to a search warrant); *accord Encompass Holdings, Inc. v.*

Daly, No. C09-1816 BZ, 2011 WL 5024450, at *6 (N. D. Cal. 2011) (finding that a conversion claim under California law failed where there was no evidence that defendants purported to be the owners of the property or that defendants' actions constituted unlawful possession or control). The Court therefore finds that Plaintiffs' conversion claim fails and it is dismissed.

2. Civil Theft

Regarding Plaintiffs' civil theft claim under Minn. Stat. § 604.14, the statute provides, in relevant part: "**Liability for theft of property**. A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either $50 or up to 100 percent of its value when stolen, whichever is greater." Minn. Stat. § 604.14, subd. 1 (emphasis in original). While noting that there is limited authority addressing Minnesota's civil theft statute, this Court has relied upon Minnesota's criminal theft statute, Minn. Stat. § 609.52, in determining whether a defendant's conduct constitutes civil theft. *Strei*, 2014 WL 555205, at *20. Among the definitions of theft in Minnesota's criminal theft statute is the taking of property "without claim of right." Minn. Stat. § 609.52, subd. 2(1). This Court "[has found] this standard to be analogous to the 'without legal justification' standard for conversion and trespass to chattel." *Strei*, 2014 WL 555205, at *20. For the reasons noted above, the imposition of the $25 booking fee and the debit card fees is legally justified. Assessing and collecting such fees cannot be construed as "theft" or "stealing" under the civil theft

statute. Accordingly, dismissal is appropriate as to Plaintiffs' civil theft claim.

3. Unjust Enrichment

For the unjust enrichment claim to survive, Plaintiffs must show that Defendants "'knowingly received something of value to which [they were] not entitled, and that the circumstances are such that it would be unjust for [Defendants] to retain the benefit.'" *Hennepin Cnty. v. Fed. Nat'l. Mortg. Ass'n.*, 933 F. Supp. 2d 1173, 1179 (D. Minn. 2013) (DSD/TNL) (quoting *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. Ct. App. 2001)); *accord In re ConAgra Foods Inc.*, 908 F. Supp. 2d 1090, 1113 (C.D. Cal. 2012) (citing *Lectrodryer v. SeoulBank*, 91 Cal. Rptr. 2d 881 (Cal. Ct. App. 2000)). Moreover, "'[u]njust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully.'" *City of Maple Grove v. Marketline Const. Capital, LLC*, 802 N.W.2d 809, 817–18 (Minn. Ct. App. 2011) (quoting *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996)). As discussed above, Ramsey County is legally entitled to impose a booking fee and to contract with third parties for particular services. Pursuant to KCN's agreement with Ramsey County, the assessment of debit card fees, or "coordination fees," was legally authorized. (Agreement, Ex. A to Second Am. Compl. [Doc. No. 14 at 26].) Defendants were not "unjustly enriched" by the imposition of these fees and the equitable remedy of unjust enrichment is unavailing to Plaintiffs.

Defendants' motion for the dismissal of this claim is granted.

Finally, the Court notes that Plaintiffs do not distinguish among Defendants with respect to these claims (see Second Am. Compl. ¶¶ 112–24 [Doc. No. 14]), although the record demonstrates that Ramsey County alone assessed the $25 booking fee, whereas KCN, FCB, and Outpay acted with respect to the debit card fees. Thus, even if these claims succeeded on the merits, portions of the claims would fail as to the particular Defendants.

E. Motion for Class Certification

In light of the dismissal of all of Plaintiffs' claims, Plaintiffs' Motion for Class Certification, Appointment of Class Representatives, and Appointment of Class Counsel [Doc. No. 21] is denied as moot.

F. Immunity

Ramsey County raises various claims of immunity in its memoranda. Because all of Plaintiffs' asserted claims against Defendants are dismissed, the Court will not address these arguments.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Motion for Class Certification, Appointment of Class Representatives, and Appointment of Class Counsel [Doc. No. 21] is **DENIED AS MOOT**;
2. Plaintiffs' Motion for Judgment on the Pleadings, or in the Alterative, Summary Judgment on the Issue of Liability [Doc. No. 38] is **DENIED**;

3. Defendant Ramsey County's Motion for Judgment on the Pleadings [Doc. No. 53] is **GRANTED**;
4. Defendant Keefe Commissary Network, L.L.C.'s ("KCN's") Motion for Judgment on the Pleadings [Doc. No. 59] is **GRANTED**; and
5. Defendants First California Bank and Outpay Systems, L.L.C. ("Outpay's) Motion for Judgment on the Pleadings [Doc. No. 64]) is **GRANTED**;
6. All claims (Counts I–V) in the Second Amended Complaint [Doc. No. 14] are **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 26, 2014

s/Susan Richard Nelson
SUSAN RICHARD NELSON
U. S. District Court Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 14-3164

Erik Mickelson and Corey Statham, individually and on behalf of all others similarly situated

Appellants

v.

County of Ramsey, et al.

Appellees

Appeal from U.S. District Court for the District of Minnesota - Minneapolis
(0:13-cv-02911-SRN)

ORDER

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

June 22, 2016

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

/s/ Michael E. Gans

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Erik Mickelson and Corey Statham, individually and on behalf of all others similarly situated, Plaintiffs, v. County of Ramsey; Keefe Commissary Network, L.L.C. d/b/a Access Corrections; First California Bank; Outpay Systems, L.L.C.; and John Does 1–10; Defendants.	Court File No. 13-CV-2911 (SRN/FLN) **SECOND AMENDED CLASS ACTION COMPLAINT (JURY TRIAL DEMANDED**

Plaintiffs Erik Mickelson and Corey Statham, individually and on behalf of all others similarly situated, by their attorneys, bring the following action for violations of the U.S. Constitution and Minnesota statutory law, in addition to common law claims. Plaintiffs state the following:

THE PARTIES

1. Plaintiff Erik Mickelson is an adult male who currently resides and has resided in St. Paul, Minnesota at all times relevant to this action.

2. Plaintiff Corey Statham, who is also known as Tamir Ali, is an adult male who currently resides and has resided in St. Paul, Minnesota at all times relevant to this action.

3. Defendant Ramsey County is a political subdivision of the State of Minnesota. Ramsey County employed defendants John Does 1–10 at all times relevant to this action. Ramsey County is sued directly and also, on all relevant claims, on the theories of respondent superior or vicarious liability and pursuant to Minn. Stat. § 466.02 for the unlawful conduct of John Does 1–10. Ramsey County is the political subdivision charged with training and supervising John Does 1–10. Ramsey County has established and implemented, or delegated the responsibility for establishing and implementing policies, practices, procedures, and customs used by personnel employed by Ramsey County regarding seizures of personal property of persons detained in Ramsey County facilities, preserving the seized property of persons detained in Ramsey County facilities, and contracting with suppliers of goods and services for Ramsey County detention facilities. Ramsey County is therefore also being sued directly pursuant to *Monell v. Dept. of Soc. Svcs.*, 436 U.S. 658 (1978).

4. Defendant Keefe Commissary Network, L.L.C. d/b/a Access Corrections ("KCN") contracted with the Ramsey County defendants to provide prepaid debit

card services to persons booked in Ramsey County detention facilities. Due to KCN's position, entanglements, and the nature of the services it provides, KCN is a willful participant with the Ramsey County defendants in depriving Plaintiffs and those similarly situated of their constitutionally protected rights. Therefore, it acted under color of state law at all times relevant to this action. KCN's principal place of business is located in St. Louis, Missouri. KCN's registered office in the state of Minnesota is located at 100 South 5th Street #1075, Minneapolis, Minnesota 55402.

5. Defendant First California Bank ("FCB") is the 13th largest bank in California. FCB is a direct beneficiary of the contract between Ramsey County and KCN identified above. Due to FCB's position, entanglements, and the nature of the services it provides, FCB is a willful participant with the Ramsey County defendants in depriving Plaintiffs and those similarly situated of their constitutionally protected rights. Therefore, it acted under color of state law at all times relevant to this action. FCB's principal place of business is 78-000 Fred Waring Drive #100, Palm Desert, California 92211.

6. Defendant Outpay Systems, L.L.C. provides payment services for the correctional facility industry. Outpay Systems is a direct beneficiary of the contract between Ramsey County and KCN identified above. Due to Outpay Systems's position, entanglements, and the nature of the services it provides, Outpay Systems is a willful participant with the Ramsey County defendants in depriving Plaintiffs and those similarly situated of their constitutionally protected rights. Therefore, it acted under color of state law at

all times relevant to this action. Defendant Outpay Systems's registered address with the State of South Carolina is 1036 Ewall Street, Mt. Pleasant, South Carolina 29464.

7. Defendants John Does 1–10 are adults who at all times relevant to this action were employed by Ramsey County. Their true names are unknown to Plaintiffs at this time. John Does 1–10 established and implemented, or delegated the responsibility for establishing and implementing policies, practices, procedures, and customs used by personnel employed by Ramsey County regarding seizures of personal property of persons booked in Ramsey County detention facilities ("detention facilities"), preserving the seized property of persons booked in Ramsey County detention facilities, and contracting with suppliers of goods and services for Ramsey County detention facilities. Some of the Does carried out these policies, practices, procedures, and customs in connection with Plaintiffs and Class members' personal property. The Does acted under color of state law at all times relevant to this action. They are sued in their individual capacities.

JURISDICTION AND VENUE

8. This is an action for monetary, declaratory, and injunctive relief under 42 U.S.C. §§ 1983, 1985, and 1988, Minnesota statutory law, and federal and state common law. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1343(a)(3), 1331, and 1367. Venue is proper in this district under 28 U.S.C. § 1391, as the acts and omissions giving rise to this action occurred in this district and, on

information and belief, all Defendants reside in this district.

GENERAL ALLEGATIONS

9. On October 19, 2011, Ramsey County entered into a contract with KCN for the provision of services regarding prepaid debit cards for persons booked at Ramsey County detention facilities. (*See* Exhibit A.)

10. On information and belief, Ramsey County and the Does adopted and implemented the terms of that contract.

11. On May 22, 2013, Plaintiff Mickelson was arrested on, *inter alia*, suspicion of violating a City of St. Paul noise ordinance.

12. After his arrest, Plaintiff Mickelson was booked into the Ramsey County Law Enforcement Center, where he spent several hours.

13. A document that Ramsey County personnel issued to Plaintiff Mickelson reflects that at the time Mickelson was booked, his inventoried personal property included $95.00 in cash, among other things.

14. Ramsey County personnel confiscated Plaintiff Mickelson's $95.00 in cash when they booked him.

15. During his detention and booking, Plaintiff Mickelson was subjected to the policies and practices of Defendants that are the subject of this action.

16. On May 22, 2013, Plaintiff Mickelson was released from the Law Enforcement Center on his own recognizance.

17. At the time of Plaintiff Mickelson's release, Ramsey County personnel did not return the $95.00 in cash confiscated from him at booking.

18. On August 30, 2013, Plaintiff Statham was arrested on, *inter alia*, suspicion of disorderly conduct and/or obstructing legal process.

19. After Plaintiff Statham's arrest, he was booked into the Ramsey County Law Enforcement Center, where he spent up to 48 hours.

20. A document that Ramsey County personnel issued to Plaintiff Statham reflects that at the time Statham was booked, his inventoried personal property included $46.00 in cash, among other things.

21. Ramsey County personnel confiscated Plaintiff Statham's $46.00 in cash when they booked him.

22. During his detention and booking, Plaintiff Statham was subjected to the policies and practices of Defendants that are the subject of this action.

23. On September 2, 2013, Plaintiff Statham was released from the Law Enforcement Center on his own recognizance.

24. At the time of Plaintiff Statham's release, Ramsey County personnel did not return the $46.00 in cash confiscated from him at booking.

25. On information and belief, Ramsey County's policy is to not return cash money seized from persons booked at its detention facilities.

26. Rather, Ramsey County returns confiscated money to persons booked at its detention facilities by issuing them a debit card or check when they are released.

27. Under Ramsey County's policies and procedures, Ramsey County deducted a $25.00 booking fee from the cash Ramsey County confiscated from Plaintiffs.

28. As a result of these policies and practices, the $95.00 in cash that Ramsey County confiscated from Plaintiff Mickelson was never returned to him, nor was the $46.00 in cash that Ramsey County confiscated from Plaintiff Statham.

29. Instead of returning the $95.00 seized from him, Ramsey County issued Plaintiff Mickelson a prepaid debit card for $70.00 at the time of his discharge from the Law Enforcement Center.

30. Instead of returning the $46.00 seized from him, Ramsey County issued Plaintiff Statham a prepaid debit card for $21.00 at the time of his discharge from the Law Enforcement Center.

31. On information and belief, Ramsey County and the Does contracted with KCN to issue these debit cards to detainees.

32. The contract between Ramsey County and KCN stated that the debit cards would be issued by Defendant FCB. (*See* Exhibit A.)

33. The contract between Ramsey County and KCN stated that the debit card transactions would be processed by Defendant Outpay Systems. (*Id.*)

34. On information and belief, Ramsey County's policy is to confiscate cash and coin from all persons booked at its detention facilities and return such money in a form other than cash.

35. On information and belief, Ramsey County decided in 2011 to replace paper checks with prepaid debit cards as the means by which it returns money to persons booked at its detention facilities.

36. Under the schedule of fees associated with the debit cards, Plaintiffs and all others similarly

situated were charged a weekly maintenance fee of $1.50. According to the schedule, "after 36 hours of issuance the card starts incurring weekly maintenance fees." (*Id.*)

37. Under the schedule of fees associated with the debit card, Plaintiffs and all others similarly situated would be charged a $2.75 ATM fee. (*Id.*)

38. Under the schedule of fees associated with the debit card, Plaintiffs and all others similarly situated would be charged a $3.00 "card to bank funds transfer (ACH) fee." (*Id.*)

39. Therefore, under this fee schedule, it was impossible for Plaintiffs and all others similarly situated to recover or otherwise access the amounts seized from them without incurring a fee.

40. Plaintiffs were charged the weekly maintenance fee at least once.

41. In addition to the fees detailed above, other fees in connection with the debit card—including but not limited to a $1.50 fee just to check account balances—deprived Plaintiffs and Class members of the amounts Ramsey County seized from them. (*Id.*) All the debit card fees are listed accurately in Exhibit A.

42. On information and belief, the unavoidable fees associated with the debit cards Ramsey County issues conveyed and continue to convey a benefit to Defendant FCB, which FCB knowingly received.

43. FCB, though not entitled to this benefit, has retained it.

44. Indeed, on information and belief, KCN, Outpay Systems, and FCB each profited from

Ramsey County's debit card policy, which violated and continues to violate the rights of pretrial detainees held at Ramsey County detention facilities.

45. Ramsey County's booking fee is mandatory, imposed without exception on each person who is booked for confinement at Ramsey County detention facilities and not released upon completion of the booking process.

46. At all times relevant to this action, Ramsey County's booking fee was $25.00 regardless of the crime a pretrial detainee allegedly committed.

47. At all times relevant to this action, the booking fee was $25.00 regardless of the pretrial detainee's prior criminal record, if any.

48. Funds confiscated from pretrial detainees for booking fees were collected immediately upon the detainee's arrival at a Ramsey County detention facility.

49. Ramsey County confiscates the booking fee directly from any funds found on a pretrial detainee at the time of booking.

50. The booking fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department on that person's behalf.

51. Ramsey County intentionally confiscates the booking fee from pretrial detainees being processed into Ramsey County detention facilities.

52. If the person being booked has no funds at the time of booking or during the period of any incarceration, the sheriff must notify the district court in the county where the charges related to the

booking are pending, and must request the assessment of the fee.

53. If the person being booked has funds at the time of booking but the funds amount to less than $25.00, Ramsey County forcibly confiscates all of the pretrial detainee's funds.

54. Ramsey County does not conduct a pre-confiscation investigation as to the pretrial detainee's obligations, if any, to support a dependent.

55. Ramsey County does not attempt to determine a pretrial detainee's financial status before forcing the detainee to pay the booking fee.

56. Before confiscating funds for the booking fee, Ramsey County does not engage in any inquiry as to whether the pretrial detainee's funds are exempt from seizure to enforce a claim upon a debt.

57. Before confiscating funds for the booking fee, Ramsey County does not engage in any inquiry as to whether the pretrial detainee's funds arose from a non-attachable source (e.g., social security payments).

58. Before confiscating funds for the booking fee, Ramsey County does not engage in any inquiry as to whether the confiscated funds even belong to the pretrial detainee.

59. Ramsey County has not filed any civil actions to recover funds owed by detainees who failed to pay the booking fee in full based on the funds in their possession at the time they were booked.

60. Ramsey County's $25.00 booking fee is not a *per diem* charge for room and board.

61. Ramsey County's $25.00 booking fee is not in any way connected to the consumables required to house and feed a pretrial detainee.

62. Plaintiffs and all others similarly situated did not receive any service or good in exchange for the booking fee Ramsey County forced them to pay.

63. Nor did Plaintiffs and all others similarly situated receive a service or good in exchange for the debit card fees Defendants forced them to pay.

64. Instead, Ramsey County's $25.00 booking fee is confiscated to offset costs associated with the County's booking process.

65. A state statute, Minn. Stat. § 641.12, authorizes but does not mandate collection of a pretrial detainee's funds to pay a booking fee.

66. Minn. Stat. § 641.12 does not provide for notice to detainees regarding the booking fee Ramsey County imposes.

67. Minn. Stat. § 641.12 does not provide for a pre-deprivation hearing for detainees regarding the booking fee Ramsey County imposes.

68. Minn. Stat. § 641.12 does not provide for a prompt post-deprivation hearing for detainees regarding the booking fee Ramsey County imposes.

69. Nor does Minn. Stat § 641.12 provide a mechanism for determining whether the money taken from pretrial detainee's to satisfy the booking fee is exempt public benefits or is actually the property of a third person.

70. Ramsey County places the booking fees collected pursuant to statute in the County's or the sheriff's general operating fund.

71. Ramsey County deducts a booking fee from any money then possessed by the person being booked, even if the person has previously been booked in Ramsey County.

72. Ramsey County's booking fee is imposed on every pretrial detainee, even if the funds in his or her possession at the time he or she is booked are not evidence or fruits of a crime.

73. No extraordinary or exigent circumstances necessitate immediately forcing pretrial detainees in Ramsey County to pay booking fees without prior notice and an opportunity to be heard.

74. Ramsey County had no warrant or probable cause related to the $25.00 the County confiscated from Plaintiffs and all others similarly situated.

75. Detainees could seek the return of the money confiscated by Ramsey County at a later date, but only upon the following conditions: if the person was not charged, was acquitted, or if the charges were dismissed.

76. For those persons entitled to have their booking fee returned by Ramsey County, Minn. Stat. § 641.12 permits the deprivation of their money for a considerable length of time; that is, until the person is exonerated.

77. Unless a detainee is acquitted, not charged, or the charges are dismissed, Ramsey County will not return the booking fee to the detainee.

78. No pretrial detainee receives any hearing, much less an adequate hearing, before Ramsey County confiscates his or her funds, if any, for the booking fee.

79. Nor did Ramsey County provide Plaintiffs and all others similarly situated with notice before the County confiscated the booking fee.

80. Nor were Plaintiffs and all others similarly situated given any prompt post-deprivation hearing by Ramsey County regarding the confiscated funds.

81. Indeed, Ramsey County failed to provide any procedural mechanism whatsoever, whether pre-deprivation or post-deprivation, to address whether the booking fee was properly imposed on a pretrial detainee.

82. Even if Plaintiffs and all others similarly situated could have contested the booking fee withheld from them via a post-deprivation claim under state law, such a claim would have deprived them of resources at a time when such resources may have been necessary to meet their basic needs.

83. Ramsey County has not returned any of the booking fees Plaintiffs and all others similarly situated were forced to pay, even though the charges against Plaintiff Statham were dismissed.

84. When a pretrial detainee is brought to a Ramsey County detention facility, he or she is not informed that a refund of the booking fee can be applied for if the detainee is not charged, is acquitted, or if the charges against him or her are dismissed.

85. When a pretrial detainee is brought to a Ramsey County detention facility, he or she is not informed regarding to how apply for a refund of the booking fee if the detainee is not charged, is acquitted, or if the charges against him or her are dismissed.

86. The primary purpose of the $25.00 booking fee is to raise revenue for Ramsey County.

87. Upon information and belief, Ramsey County has seized in excess of hundreds of thousands of dollars from thousands of detainees at Ramsey County detention facilities under the same procedures used with Plaintiffs, including failure to provide adequate notice and an adequate pre- or post-deprivation hearing.

88. Yet Ramsey County's booking fee recoups only a very small portion of the funding Ramsey County allocates for booking at its detention facilities.

89. Taking Ramsey County's practice—of confiscating booking fees without adequate notice or an adequate hearing—to its logical extreme, no one subject to arrest, guilty or innocent, has a right to his or her property in Ramsey County until guilt or innocence has been determined.

90. All actions Ramsey County took regarding the collection of booking fees described in the foregoing paragraphs were undertaken according to official County practice and policy as approved by the County Commissioners or other policy makers.

91. Defendants' conduct, as detailed above, denied Plaintiffs and all others similarly situated adequate notice or an adequate pre-deprivation or post-deprivation hearing regarding Defendants' confiscation of their money.

92. Unless Defendants are immediately restrained from their actions, the Class members will continue to suffer irreparable injury.

CLASS ACTION ALLEGATIONS

93. Plaintiffs bring this action on behalf of themselves and all individuals similarly situated. The proposed class is defined as follows: all individuals, from October 23, 2007 to present, who were deprived of their property pursuant to Ramsey County's booking fee or debit card policy without being provided the constitutionally guaranteed due process of law.

94. This action is maintainable as a class action under the Federal Rules of Civil Procedure, Rule 23, because the class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interest of the class.

95. This action is also properly maintainable as a class action under Federal Rule of Civil Procedure, Rule 23(b), because questions of law or facts common to members of the class predominate over any questions affecting only individual members, and because the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

96. The members of the class identified above are so numerous that joinder of all members is impracticable. The exact number of the class is unknown, but may be determined from records maintained by Defendants. Upon information and belief, there are thousands of individuals from whom cash money (currency and/or coin) was confiscated

upon their arrest or booking into a Ramsey County detention facility within the past six years.

97. There are numerous and substantial questions of law and fact common to all of the members of the Class including, but not limited to, the following:

a. Whether Defendants adopted a policy and/or custom of returning cash money seized from Class members in the form of a prepaid debit card with unavoidable associated fees.

b. The schedule of fees charged to Class members related to the prepaid debit cards, which are the method by which money seized from the Class members is returned to them, and the method of calculation of the Class members' damages.

c. Whether Defendants' policy and/or custom of issuing a prepaid debit card with associated fees rather than returning the money taken from Class Members violates the Fourth and/or Fourteenth Amendments to the U.S. Constitution.

d. Whether Defendants' policy and/or custom of issuing a prepaid debit card with unavoidable associated fees, rather than returning the money taken from Class members, constitutes a conspiracy to violate civil rights under 42 U.S.C. § 1985(3).

e. Whether Defendants' policy and/or custom of issuing a prepaid debit card with unavoidable associated fees rather than returning the money taken from Class Members violates Minn. Stat. § 604.14.

f. Whether Defendants' policy and/or custom of issuing a prepaid debit card with unavoidable associated fees rather than returning the money taken from Class Members constitutes conversion under Minnesota state law.

g. Whether Defendants' policy and/or custom of confiscating Class Members' funds without adequate notice or an adequate pre- deprivation or post-deprivation hearing comports with the constitutionally guaranteed due process of law.

h. The availability and validity of any defenses asserted by Defendants, and particularly immunity-based defenses.

98. Defendants are expected to raise common defenses to this class action, including denial that its actions violated the law.

99. The Named Plaintiffs will fairly and adequately protect the interests of the Class, and they have retained counsel experienced and competent in the prosecution of complex litigation.

100. The claims of the Named Plaintiffs, set forth under Counts I through V of this Complaint, are typical of the claims of the Class. The Named Plaintiffs have the same interest and suffer from the same injury as the class members. This injury arises from the same policy, contracts, customs, and/or conduct, and violates the law under the same legal theories.

101. Upon information and belief, no other member of the class has an interest in individually controlling the prosecution of his/her claims,

especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against governmental entities. However, if any such class member should become known, he or she may "opt out" of this action upon receipt of the class action notice pursuant to the Federal Rules of Civil Procedure, Rule 23(c)(2)(B).

102. Plaintiffs are unaware of any other litigation concerning this controversy commenced by or for other class members.

103. Litigation should be concentrated in this forum because the class members suffered harm at Ramsey County detention facilities, which are located within this forum.

104. The Court has the resources and ability to effectively manage this class action.

COUNT I

DEPRIVATION OF CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. § 1983 AND THE FOURTH AND FOURTEENTH AMENDMENTS—UNLAWFUL SEIZURE, DENIAL OF PROPERTY INTEREST, AND DENIAL OF DUE PROCESS

105. Plaintiffs restate the previous paragraphs as though fully incorporated herein.

106. Defendants, under color of law, willfully and maliciously deprived Plaintiffs and the Class members of their protected property interests in their own personal property, namely, their own cash money (currency and coin), which they possessed at the time of arrest and/or booking, without due process of law, and in an unreasonable manner, in

violation of the Fourth and Fourteenth Amendments to the United States Constitution.

107. Defendants' actions caused Plaintiffs and the Class members to suffer harm, including, but not limited to: loss of their seized funds, the inconvenience imposed by the issuance of a debit card, and the amount of the unavoidable fees charged.

COUNT II

CONSPIRACY TO VIOLATE CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. § 1985(3)

108. Plaintiffs restate the previous paragraphs as though fully incorporated herein.

109. By their conduct detailed above, Defendants have been and continue to be jointly engaged in a conspiracy with the purpose and effect of depriving Plaintiffs and the Class members of their federally protected civil rights as set forth herein.

110. By their knowledge that the debit card contract and policy will result in unavoidable, nonconsensual fees to the Plaintiffs and Class members which diminish the value of their property, the Defendants' conspiracy is undertaken with the purpose and effect of directly and/or indirectly depriving the Plaintiffs and Class members of their constitutionally protected rights.

111. Defendants' actions caused Plaintiffs and the Class members to suffer harm, including, but not limited to: loss of their seized funds, the inconvenience imposed by the issuance of a debit card, and the amount of the unavoidable fees charged.

COUNT III

CONVERSION

112. Plaintiffs restate the previous paragraphs as though fully incorporated herein.

113. By their conduct detailed above, Defendants acted in a manner contrary to Plaintiffs' and Class members' personal property rights.

114. By their conduct detailed above, Defendants intentionally destroyed, diminished, damaged, and/or changed Plaintiffs' and Class members' personal property.

115. By their conduct detailed above, Defendants intentionally deprived Plaintiffs and Class members of possession of their personal property.

116. Defendants' actions caused Plaintiffs and the Class members to suffer harm, including but not limited to: loss of their seized funds, the inconvenience imposed by the issuance of a debit card, and the amount of the unavoidable fees charged.

COUNT IV

CIVIL THEFT IN VIOLATION OF MINN. STAT. § 604.14

117. Plaintiffs restate the preceding paragraphs as if fully stated herein.

118. The Defendants unlawfully took and deprived Plaintiffs' and Class members' personal property in violation of Minn. Stat. § 604.14.

119. The Defendants have no intention of returning the personal property.

120. Defendants' actions caused Plaintiffs and the Class members to suffer harm, including, but not

limited to: loss of their seized funds, the inconvenience imposed by the issuance of a debit card, and the amount of the fees charged.

COUNT V

UNJUST ENRICHMENT

121. Plaintiffs restate the preceding paragraphs as if fully stated herein.

122. The activities described in this Complaint conveyed and continue to convey benefits to Defendants, which Defendants have knowingly received.

123. Defendants are not entitled to such benefits, and retaining them would be unjust to Plaintiffs and Class members.

124. Consequently, Plaintiffs and Class members are entitled to recover the reasonable value of the benefits conveyed to Defendants by the activities described in this Complaint.

JURY DEMAND

125. Plaintiffs demand a jury trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the class, respectfully request that the Court:

1. Enter judgment in Plaintiffs' and Class members' favor on their claims against Defendants in an amount to be proven at trial;
2. Declare that Defendants' conduct, as set forth above, violated 42 U.S.C. § 1983, 42 U.S.C. § 1985, and Minn. Stat. § 604.14;

3. Enjoin Defendants from engaging in the conduct challenged in this action;
4. Award Plaintiffs and Class members damages to compensate them for the injuries they suffered as a result of Defendants' unlawful conduct;
5. Award Plaintiffs and Class members treble damages under Minn. Stat. § 548.05;
6. Award Plaintiffs and Class members punitive damages with respect to the claims under federal law, the exact amount to be proven at trial;
7. Award Plaintiffs and Class members punitive damages of at least $50.00 each for Defendants' violations of their rights under Minn. Stat. § 604.14;[1]
8. Grant Plaintiffs leave to amend the Complaint to include a claim for punitive damages with respect to any state common law claims, the exact amount to be proven at trial;
9. Award Plaintiffs reasonable expenses incurred in this litigation, including attorney and expert fees, pursuant to 42 U.S.C. § 1988;

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[1] The pleading restrictions of Minn. Stat. § 549.191 do not apply to the claims brought under the Civil Theft statute. *OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 349 (8th Cir. 2007); Minn. Stat. § 604.14 ("A person who steals personal property from another is civilly liable to the owner of the property for its value when stolen plus punitive damages of either $50 or up to 100 percent of its value when stolen, whichever is greater.").

10. Award Plaintiffs the reasonable value of the benefits conveyed to Defendants as described in this Complaint.
11. Grant Plaintiffs leave to add additional plaintiffs;
12. Grant Plaintiffs and Class members all statutory relief to which they are entitled;
13. Grant Plaintiffs leave to amend this Complaint to supplement any factual deficiencies or otherwise address any pleading deficiencies herein; and
14. Grant any other relief the Court deems just and equitable.

Dated: December 20, 2013

By s/ Joshua R. Williams
Joshua R. Williams (#389118)
jwilliams@jrwilliamslaw.com
Tim M. Phillips (#390907)
tphillips@jrwilliamslaw.com
3249 Hennepin Avenue S, Suite 216
Minneapolis, Minnesota 55408
(612) 486-5540
(612) 605-1944 Facsimile

ATTORNEYS FOR PLAINTIFF

EXHIBIT A

Agreement for Prepaid Debit Card Release

THIS AGREEMENT FOR DISTRIBUTION OF PREPAID DEBIT CARDS ("Agreement") is entered into as of the 19th day of October, 2011 ("Effective Date") by and between Keefe Commissary Network L.L.C. d/b/a Access Corrections ("KCN"), located at 10880 Linpage Place, St. Louis Missouri 63132 and Ramsey County ("Client"), located at 425 Grove Street, St. Paul, Minnesota 55101.

WHEREAS, KCN, a solution provider for the correctional market, coordinates inmate trust fund release services for correctional facilities via a third party's provision of prepaid debit cards;

WHEREAS, Client desires to coordinate inmate trust fund release services at the above mentioned correctional facility;

WHEREAS, Both parties, intending to be legally bound, hereby agree as follows:

1. ***Term***. This Agreement shall be effective as of the Effective Date and shall continue for an initial term of three (3) years. Thereafter, this Agreement shall automatically renew for successive terms of one (1) year unless either party provides the other party with written notice of its desire not to renew at least thirty (30) days prior to a scheduled renewal.
2. ***Release Methods***. KCN shall provide technical support and coordination for the following release method for processing inmate trust fund balances to Client inmates at time of release from the Client:

Prepaid Debit Cards ("Cards"): described as, a debit card which may be used for ATM withdraws and/or pin-based and signature purchases after inmate activation. The Cards will be issued by First California Bank in Palm Desert, California and transactions processed by a third-party company called Outpay Systems, L.L.C.

*Additional Release Methods may be made available to the Client throughout the term of this Agreement and shall become part of this Agreement with the Client's acceptance. No Release Methods shall be implemented without Client approval. Another Card Brand, Issuing Bank or Program Manager may be substituted during the term of this agreement at KCN's discretion and shall not constitute an "Additional Release Method." The Client will be notified in writing of any such change.

3. ***Maintenance of Designated Account***. Client agrees to maintain an account at the following bank ("Designated Account") from which funds will be withdrawn by KCN and sent to the bank issuing the Cards:

Bank Name: [REDACTED]

Bank Address: [REDACTED]

Routing Number: [REDACTED]

Account Number: [REDACTED]

Bank Contact Name and Title: [REDACTED]

Bank Contact Phone Number: [REDACTED]

4. ***Authorization to Withdraw Funds from Designated Account***. Client hereby authorizes KCN to withdraw funds from the Designated Account without signature or notice to effect all deductions and other transactions due KCN provided for in this Agreement. KCN shall notify Client if at any time there are insufficient funds in the Designated Account to cover any amount that is due and owing to KCN. Client shall promptly pay such amount to KCN. KCN will withdraw funds from the Designated Account every business day to cover the funds necessary to issue the Cards.

   This authorization is to remain in full force and effect until KCN has received written notification from Client of its termination in such time and in such manner as to afford KCN and the Bank named above reasonable opportunity to act on it. Client shall give KCN no less than three banking business days notice if the Designated Account is to be changed so as to allow enough time for KCN to make the necessary system modifications.

5. ***Responsibilities of the Client***. All responsibilities of the Client are outlined in the attached "Security Requirements for the Storage of Prepaid Cards", "Exhibit A" of this Agreement KCN reserves the right to modify "Security Requirements for the Storage of Prepaid Cards", "Exhibit A" of this Agreement. KCN shall notify the Client of any such change in writing.

6. ***Fees and Charges***. KCN shall charge a fee for its role in setting up the bank account with the bank issuing the Cards and for coordinating third party processing services. "Coordination fees" are

in accordance with the fee structure located in "Exhibit C". All fees shall be assessed to the card holder/inmate.

7. ***Taxes***. Each party shall be responsible for calculating, collecting and remitting their own federal, state and/or local taxes, associated with the release services.

   ****Taxes should not be levied on the issuance of a Card unless Client's laws dictate such.***

8. ***Equipment***. Upon expiration or termination of this Agreement, Client agrees that all equipment and materials remain the property of KCN and upon expiration or termination of this Agreement KCN agrees to promptly remove all equipment and materials from the above mentioned Client. Client shall be responsible for any unusual wear and tear, lost or stolen equipment as well as any lost, stolen or improperly funded Cards during the term of this Agreement as per "Exhibit A" of this Agreement.

9. ***Confidentiality***. KCN agrees to keep all information about inmates confidential and to make no disclosure thereof to any third party, except as may otherwise be required by law. KCN agrees to give Client prompt notice of any such disclosure.

10. ***Exclusivity***. Client acknowledges that based on this Agreement, KCN has the sole and exclusive right and authority to provide the services contemplated by this Agreement for all inmate accounts under the Client's control and Client shall not, throughout the term of the Agreement,

engage the services of any other company to provide such services.

11. ***Compliance***. KCN and the Client shall comply with all laws, orders, rules and regulations applicable to it that are associated with the performance of its duties and obligations under this Agreement and as stated in "Exhibit A and Exhibit H" of this Agreement.

12. ***Governing Law***. This Agreement shall be governed and construed in accordance with the laws of the State of Missouri.

13. ***Fiduciary Responsibility***. Client agrees that it shall, to the full extent allowed by law, assume all liability for any Client related job functions that lead to discrepancies/deficiencies associated with any funding, Card loss, improper storage, etc. expressly attributed to the loading, inventorying and distribution of the Cards to the Client inmates.

14. ***Indemnification***. Each party shall indemnify and hold the officers, directors, agents, employees, representatives, subsidiaries, parent company, affiliates, and customers harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and

defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement.

15 ***Force Majeure***. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

16. ***Termination***. In the event that either party believes that the other party has materially breached any obligations under this Agreement, or if either party believes that the other party has exceeded the scope of the Agreement, such party shall so notify the breaching party in writing. The breaching party shall have 30 days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the 30 days, the non-breaching party shall have the right to terminate the Agreement without further notice. KCN reserves the right to terminate this Agreement if the Client, or its representatives' actions, breech the Clients responsibilities listed in this Agreement including all Attachments and Exhibits.

17. ***Entire Agreement***. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications,

understandings and agreements relating to the subject matter hereof, whether oral or written.

18. ***Assignment***. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors of interest, except that Client may not assign this Agreement to any person or entity without the written consent of KCN.

19. ***Notices***. All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within 10 days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile or email, confirmation copies must be sent by mail or hand delivery to the addresses listed above.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

Keefe Commissary Network, L.L.C.		***Client***	
BY:		BY:	/s/ David Metusalem
NAME:		NAME:	David Metusalem
TITLE:		TITLE:	Undersheriff
DATE:		DATE:	10-19-11

Exhibit A
Security Requirements for
the Storage of Prepaid Cards

The security requirements in this document are based on policies and guidelines developed by the Payment Networks and industry best practices. These requirements must be implemented at all locations that store and distribute instant-issue card products.

Card Ordering

Card orders will be shipped to the designated locations by OPS (OutPaySystems) or its assignees by bonded and approved carrier. Card orders must be signed for upon arrival. All cards must be placed at the time of receipt into inventory in a secured storage area. An employee designated by management should be appointed to ensure the physical and procedural security policies are implemented.

Card Inventory

Physical security of the cards in inventory must be maintained at all times. Cards must be stored in a controlled environment, such as a safe or locked storage device, with access limited to employees who have successfully passed background screening checks.

An inventory log must account for the number of cards received, cards used, cards spoiled (cards that cannot be used due to damage, tampering or expiration) and remaining cards that should balance to the number of cards on hand at any time. An explanation of spoilage should be included on the log. Any inventory discrepancy must be reported to OPS as soon as detected.

Card Destruction

OPS may request return of unused cards in inventory for destruction for any of the reasons listed below.

1 Cards are compromised or tampered with;

2. Card stock expired;

3. Cards are damaged or defective;

4. Program is terminated.

Cards to be returned should be securely packaged. A copy of the inventory log should be included in the shipment. A second copy of the inventory log should be transmitted to OPS electronically.

Alternatively, the location may destroy any defective or damaged card and certify its destruction by maintaining a detailed inventory log, and destroying the cards using a cross cut shredder that creates pieces no larger than ¼" by ½" in size. A certified report of destruction outlined in Exhibit B, attached hereto and incorporated herein by this reference must be submitted to OPS on a monthly cycle even if no cards were destroyed in that period.

The remainder of this page intentionally left blank.

Exhibit B
Certificate of Destruction of
Defective or Damaged Cards

I __________________________ certify that the cards listed below were either damaged or defective. I further certify that the cards below were destroyed using a cross cut shredder that created pieces no larger than ¼" by ½" in size.

Destruction Date (mmddyyyy)	Card Number	Expiration	Name (first, last)	Signature

Exhibit C
Inmate Release Card Program Fee

Cardholder Fees Associated with the Inmate Release Program.

	Charge
Weekly Maintenance*	$1.50
Re-Loading of card at a Credit Union	$0.00
Pin Change	$0.00
Domestic ATM Fees**	$2.75
International ATM Fees**	$3.75
ATM Account Inquiry	$1.50
POS Debit Fee (PIN and signature)	$0.00
ATM Decline for NSF	$2.75
Card to Bank Funds Transfer (ACH)	$6.00
Card to Bank wire transfer	$38.00
Card to Card Transfer	$0.00
Account Closure Fee (should a cardholder want to receive a check from the bank)	$30.00

No fee for service calls.

Replacement Card if lost: $4.95.

* After 36 hours of being issued the card starts incurring weekly maintenance fees to cover the cost of the FDIC insured account

**** Fees may also be imposed by the local ATM provider and are in addition to OutPay Systems's card fees. Visit *http://www.co-opfs.org/public/locators/atmlocator/* for a listing of surcharge-free ATMS.**

Customer Service / Servicio Al Clients:
Toll Free from U.S.A. - (888) 609-0008
www. AccessFreedom.net

NEW ACCOUNT START UP SHEET

CUSTOMER NAME:	**Ramsey County Adult Detention Center**
CUSTOMER NUMBER:	**32570J**

TECHNICAL/IMPLEMENTATION CONTACT:

Provide the name of a facility contact available to interact with Keefe TECHNICAL staff regarding implementation and operation of the debit release card program.

FULL NAME	TITLE	MAILING ADDRESS

PHONE	FAX	EMAIL

ACCOUNTING CONTACT:

Provide the name of a facility contact available to interact with Keefe ACCOUNTING staff regarding ongoing support of the debit release card program. John Shoemake will contact this person during startup to introduce himself and answer any questions the facility staff may have. This will be the

ongoing contact for John should any accounting issues arise.

FULL NAME	TITLE	MAILING ADDRESS

PHONE	FAX	EMAIL

CARD INVENTORY CONTACT:

Provide the name of a facility contact responsible for receiving the shipment of release cards and marketing materials from OutPay. If it is one of the contacts listed above, please indicate.

FULL NAME	TITLE	MAILING ADDRESS

PHONE	FAX	EMAIL

NEW ACCOUNT START UP SHEET

***Please answer the following questions*:**

1. **How are inmates referred to in formal written communications?**
   - ☐ Inmate
   - ☐ Resident
   - ☐ Offender
   - ☐ Other (please specify) _____

2. **What ID Is used for the inmate's financial account and how is it referenced?**

   Please limit the reference to 12 characters or less.

   - ☐ Booking Number
     - Referred to as _____
   - ☐ Permanent ID
     - Referred to as _____

     Other
     - Referred to as _____

     Please list any non-alphanumeric characters that might be included in the ID (hyphens, colons, etc.)
     _____

3. **What is the average number of inmate releases per month?** _____
(Used to determine number of cards to be shipped to the facility each month)

NEW ACCOUNT START UP SHEET

Inmate Release Card Program Fee

Cardholder Fees Associated with the Inmate Release Program.

	Charge
Weekly Maintenance*	$1.50
Re-Loading of card at a Credit Union	$0.00
Pin Change	$0.00
Domestic ATM Fees**	$2.75
International ATM Fees**	$3.75
ATM Account Inquiry	$1.50
POS Debit Fee (PIN and signature)	$0.00
ATM Decline for NSF	$2.75
Card to Bank Funds Transfer (ACH)	$6.00
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