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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BRITTANY COLEMAN, et al., Plaintiffs, v. THE TOWN OF BROOKSIDE, ALABAMA, et al., Defendants.	Civil Action No. 2:22-cv-423-RDP **CLASS ACTION** **ORAL ARGUMENT REQUESTED**

PLAINTIFFS' RESPONSE IN OPPOSITION TO JETT'S TOWING, INC.'S MOTION TO DISMISS (Doc. 43) FIRST AMENDED COMPLAINT (Doc. 32)

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INTRODUCTION

Count 1 of this putative class action challenges Defendant Town of Brookside's unconstitutionally profit-fueled system of towing and impounding cars. As alleged in the First Amended Complaint (the "Complaint," Doc. 32), Brookside partners with a private towing company—Defendant Jett's Towing, Inc.—to unconstitutionally maximize the town's revenue. Jett's Towing, a yearslong participant in Brookside's profit-fueled system, has moved to dismiss itself from Count 1 (Doc. 43). Its arguments are unsupported by authority and meritless, and the motion should be denied.

Jett's Towing's motion begins and ends with a simple, inaccurate proposition: Because the company "is not a government agency," it "cannot violate a person's Constitutional rights" and cannot be sued under Section 1983. *See* Doc. 43 at 5. But decades of precedent make clear that "private entities can be considered state actors" under Section 1983 and the Fourteenth Amendment if the allegations against them plausibly satisfy any one of the well-established "public function," "nexus/joint action," or "compulsion" tests. *Charles v. Johnson*, 18 F.4th 686, 694 (11th Cir. 2021). Under any of those standards, the Complaint plausibly alleges that Jett's Towing's integral participation in Brookside's towing, impounding, and impound fee collection system makes the company liable for its role in that system.

Plaintiffs' allegations plausibly satisfy the public function test because car towing, when undertaken in the context of enforcing a criminal ordinance at the direction of a government entity, becomes an exercise of power traditionally reserved exclusively to the government. Plaintiffs' allegations plausibly satisfy the joint action test because of Jett's Towing's understanding and willful participation in Brookside's towing, impounding, and impound fee collection system. And Plaintiffs' allegations plausibly satisfy the compulsion test because a Brookside ordinance requires

Jett's Towing to condition the release of cars on proof of prior payment of Brookside's profit-fueled $175 mandatory impound fee. In similar cases, courts nationwide regularly hold the same.

The company's motion to dismiss acknowledges none of those relevant doctrines or precedents, let alone reckoning with them. And its residual arguments—for example, that Plaintiffs have failed to adequately allege a "conspiracy," which they need not do—are equally unfounded. The company's motion should be denied.

BACKGROUND[1]

Count 1 is the only claim to which Jett's Towing is currently a party. The claim rests on a simple but egregious and well-documented allegation: Since 2018, with Jett's Towing's knowing, active, and crucial participation, Brookside has implemented a car towing and impounding system that is designed to—and does—generate and maximize profit and revenue for itself and for Jett's Towing, in violation of the Fourteenth Amendment's guarantee against financially interested law enforcement practices. Doc. 32 ¶¶ 357–373.

From 2018 to the present, Jett's Towing has been the Brookside police department's sole towing and impounding operator. During that time, Brookside's policymakers have implemented and supercharged a system of towing cars under dubious circumstances and imposing mandatory fees for their release, resulting in a 1,400% increase in the number of cars towed within two years (from 50 in 2018, to 508 in 2019, to 789 in 2020).[2] Those circumstances—as exemplified by

[1] Because Jett's Towing's motion to dismiss does not contest the existence or unconstitutionality of Brookside's profit-fueled towing, impounding, and impound fee collection system, this section focuses on the facts relevant to Jett's Towing's arguments—namely, the facts demonstrating the company's participation in and amenability to suit for Brookside's system. The fuller facts and arguments demonstrating the existence and unconstitutionality of that system, that system's place in Brookside's broader policing-for-profit systems, and the survival of Plaintiffs' class allegations against that system are summarized in Plaintiffs' response to Brookside's motion to dismiss, Doc. 54 at 1–3, 4–9, 17–19, 19–25.

[2] The town has not released its 2021 or 2022 towing data. Doc. 32 ¶ 54.

Plaintiffs' own experiences—include unnecessary arrests, pretextual or made up violations, and tows even when the driver or someone else could safely and legally drive the car away. Doc. 32 ¶¶ 54, 94–98, 101–106, 121–127, 137–139, 172–175, 203–243, 244–276, 277–312.

Following each of those hundreds of car tows, a Brookside ordinance requires each driver to pay a $175 "mandatory impound fee." That fee redounds entirely to the town's benefit and profit, even though the town incurs little to no cost for its towing and impounding system, which is operated by Jett's Towing at no cost to Brookside. No neutral arbiter is involved or available at any point in the system. This profit-generating, oversight-free system incentivizes Brookside police to tow and impound as many cars as possible because the police department keeps 100% of the mandatory impound fees, which is the profit motive at the center of Count 1. Doc. 32 ¶¶ 101–113, 119–121, 165–168, 176–178, 357–373.

Jett's Towing not only tows and impounds every one of those cars at Brookside's behest (thanks in part to the company's practice of waiting near Brookside police to efficiently maximize each opportunity to tow). The company also plays a crucial role in the key aspect of Brookside's profit-fueled system because a Brookside ordinance requires the company to condition the release of every car on proof of the driver's prior payment to Brookside of the town's $175 mandatory impound fee. On top of that, the for-profit company collects from each driver its own $160 fee and daily impound fees, as well as auction revenues when drivers cannot afford to pay. Based on those figures, in 2020 alone the police department raked in over $130,000 in impound fees, and Jett's Towing over $125,000. Doc. 32 ¶¶ 95–98, 101–106, 126, 128–129, 132, 134–136, 138–140.

In January 2022, a Jett's Towing representative admitted to Plaintiff Brandon Jones's wife that Brookside "just want[s] the money"—and then he proceeded to verify that she had indeed paid

Brookside its money before charging her Jett's Towing's additional $168 towing and impounding fees for the family to get their car back. Doc. 32 ¶¶ 142–143, 273.

STANDARD OF REVIEW

To survive a motion to dismiss, a complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence to support the claim. *Carpenter v. Bd. of Trustees*, 2016 WL 1573267, at *2 (N.D. Ala. Apr. 19, 2016) (Proctor, J.). That task is context specific, and the allegations must permit the court, based on its judicial experience and common sense, to infer more than the mere possibility of misconduct. *Id.* Courts accept as true all non-conclusory allegations, viewing the allegations in the light most favorable to the plaintiffs and drawing all reasonable inferences in their favor. *Harper v. Prof'l Probation Servs. Inc.*, 976 F.3d 1236, 1238 n.1 (11th Cir. 2020); *Black Diamond Land Mgmt., LLC v. Twin Pines Coal Co.*, 2016 WL 3617974, at *8 (N.D. Ala. July 6, 2016) (Proctor, J.).

ARGUMENT

Jett's Towing's motion to dismiss Count 1 is meritless. The company nowhere disputes that Brookside's towing and impounding system violates the Fourteenth Amendment. *See* Doc. 32 ¶¶ 357–373. Nor does the company dispute that it is a key participant in that system. *See* Doc. 32 ¶¶ 113–120, 128–153; *accord* Doc. 43 at 2 (summarizing the company's extensive participation, including its conditioning of release of cars on proof of prior payment to Brookside).

The company simply asserts that because it is a private entity, it is categorically exempt from liability under Section 1983. *See* Doc. 43 at 5. That is wrong. It is well-established that private companies are subject to constitutional claims if their conduct satisfies any one of three standards: the "public function," "nexus/joint action," or "compulsion" tests. *Charles*, 18 F.4th at 694. And Plaintiffs' Complaint plausibly alleges that Jett's Towing fits neatly within each of those three standards based on its participation in Brookside's profit-fueled towing, impounding, and impound

fee collection system. Applying those standards in analogous circumstances, courts nationwide regularly reject efforts by government-aligned towing companies to extricate themselves from Section 1983 litigation, particularly at the pleading stage.[3] Assessing Plaintiffs' allegations pursuant to "judicial experience and common sense," the same result should hold here. *Carpenter*, 2016 WL 1573267, at *4.

For its part, Jett's Towing does not acknowledge the relevant precedent, much less reckon with it. And the company's remaining arguments—for instance, that Plaintiffs should have pleaded a "conspiracy" and that the Complaint is a "shotgun pleading"—are equally meritless. The Court should deny Jett's Towing's motion.

I. The Complaint plausibly alleges that Jett's Towing is a government actor and subject to suit under Section 1983 and the Fourteenth Amendment.

Count 1 of the Complaint (the only count currently naming Jett's Towing) asserts a Fourteenth Amendment due process claim against Brookside and the company. Doc. 32 ¶¶ 357–373. In its motion to dismiss, Jett's Towing does not contest that Brookside's profit-fueled towing system violates the Due Process Clause. It argues instead that, as a private company, it cannot be

[3] *E.g.*, *Meier v. St. Louis*, 934 F.3d 824, 829–30 (8th Cir. 2019); *Smith v. Insley's Inc.*, 499 F.3d 875, 880 (8th Cir. 2007); *Coleman v. Turpen*, 697 F.2d 1341, 1345 (10th Cir. 1982); *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1322 (9th Cir. 1982); *Stypmann v. City & Cnty. of San Francisco*, 557 F.2d 1338, 1341–42 (9th Cir. 1977); *W. Funding, Inc. v. S. Shore Towing, Inc.*, 2021 WL 1399798, at *7–9 (D.N.J. Apr. 14, 2021); *Cooper v. Hutcheson*, 2020 WL 7122421, at *2–4 (E.D. Mo. Dec. 3, 2020); *Bey v. Due*, 2019 WL 5061183, at *3 (E.D. Tex. Sept. 18, 2019), *report and recommendation adopted*, 2019 WL 4981599 (E.D. Tex. Oct. 8, 2019); *Smith v. City of Princeton*, 2017 WL 9285413, at *2 (E.D. Tex. June 8, 2017), *report and recommendation adopted*, 2017 WL 3033397 (E.D. Tex. July 18, 2017); *Howard v. Vance Cnty. Sheriff Dep't*, 2015 WL 5093281, at *5 (E.D.N.C. June 18, 2015), *report and recommendation adopted as modified*, 2015 WL 5093330 (E.D.N.C. Aug. 28, 2015); *Foster v. City of Philadelphia*, 2014 WL 5821278, at *17 (E.D. Pa. Nov. 10, 2014); *Waymyers v. Moore*, 2014 WL 9944733, at *4 (M.D. Ga. Oct. 7, 2014), *report and recommendation adopted*, 2015 WL 3868141 (M.D. Ga. June 23, 2015); *Young v. City of Sandusky*, 2005 WL 1491219, at *4 (N.D. Ohio June 23, 2005); *Doe v. City of Chicago*, 39 F. Supp. 2d 1106, 1112 (N.D. Ill. 1999); *EXP Logistics v. Kilgore*, 2013 WL 3753981, at *4 (E.D. Tenn. July 15, 2013); *Hann v. Carson*, 462 F. Supp. 854, 868–69 (M.D. Fla. 1978).

held liable for violating the Fourteenth Amendment. *See* Doc. 43 at 5. The company cites no authority for this proposition, and for good reason: It breaks with decades of federal precedent, including with respect to government-aligned towing companies. *See supra* n.3.

The Fourteenth Amendment of course "applies solely to state action." *Charles*, 18 F.4th at 693. Section 1983 likewise secures a cause of action against those who violate federal rights "under color of state law," so "the deprivation must be made by a state actor." *Id.* at 694 (noting overlap between Fourteenth Amendment's state-action element and Section 1983's color-of-state-law element). Contrary to Jett's Towing's view, however, private entities are not categorically exempt from liability under either Section 1983 or the Fourteenth Amendment. Rather, "private entities can be considered" government actors in at least three scenarios: **(1)** when the private entity "performed a public function that was traditionally the exclusive prerogative of the State" (the "public function" test); **(2)** when "the State had so far insinuated itself into a position of interdependence with the private parties that it was a joint participant in the enterprise" (the "nexus/joint action" test); or **(3)** when "the State has coerced or at least significantly encouraged the action alleged to violate the Constitution" (the "compulsion" test). *Id.* (quoting *Rayburn ex rel. Rayburn v. Hogue*, 241 F.3d 1341, 1347 (11th Cir. 2001)). These inquiries are "necessarily fact-bound." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 (1982). Under any one of them, Plaintiffs have plausibly alleged that Jett's Towing is a government actor with respect to its participation in Brookside's towing, impounding, and impound fee collection system.[4]

[4] While the inquiry speaks in terms of a "state" actor, the Eleventh Circuit and other courts of appeals regularly apply it to cases, like this one, involving a private company's participation in conduct undertaken with municipal actors or pursuant to municipal authority. *E.g.*, *Harper*, 976 F.3d at 1238, 1240 n.5 (private probation company could be liable under the test for its conduct "[p]ursuant to a contract with a municipal court"); *Meier*, 934 F.3d at 829–30 (private towing company could be liable under the test for involvement in municipal police towing and impounding policies and practices); *Stypmann*, 557 F.2d at 1341–42 (private towing company

A. The Complaint plausibly alleges that Jett's Towing is a government actor under the "public function" test.

The Complaint plausibly alleges that Jett's Towing's participation in Brookside's profit-fueled towing and impounding system satisfies the "public function" test because the company "exercise[s] . . . powers traditionally exclusively reserved to the" government. *Harper*, 976 F.3d at 1240 n.5 (internal quotation marks omitted). "While towing itself is not an inherently public function, when undertaken in the context of enforcing a criminal ordinance and/or abating a public nuisance at the direction of a government entity, towing becomes an exercise of powers traditionally reserved exclusively to the [government]." *Young*, 2005 WL 1491219, at *4.

For the same reason, the operation of a municipal towing and impounding system predicated on tickets or arrests for alleged traffic law violations is a purely and exclusively governmental act, as are the ordinance-based imposition and collection of mandatory impound fees that redound entirely to the benefit of the municipality. *Doe v. City of Chicago*, 39 F. Supp. 2d at 1112.

Those are the actions by Brookside from which Plaintiffs' allegations arise. Doc. 32 ¶¶ 95, 97–98, 101–104, 114–117, 122–125, 147–150. And Jett's Towing participates in all of those functions. It is the sole entity responsible for towing and impounding cars at Brookside officers' behest, predicated on tickets or arrests for alleged traffic violations, and the company plays a crucial role in the collection of Brookside's ordinance-based mandatory impound fees because it

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could be liable under the test where it worked only at direction of police pursuant to municipal ordinance); *accord Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 173 (1970) (holding that private company could be liable under the test and explaining that "[i]n the same way that a law whose source is a town ordinance can offend the Fourteenth Amendment even though it has less than state-wide application, so too can a custom with the force of law in a political subdivision of a [s]tate offend the Fourteenth Amendment even though it lacks state-wide application").

conditions the release of every car towed for Brookside on proof of prior payment to Brookside of the town's $175 mandatory impound fee. Doc. 32 ¶¶ 95–98, 101–104, 117, 126.

This situation is on all fours with *Doe v. City of Chicago*, where the court held that the facts alleged regarding the arrangement between a municipality and a private towing company plausibly satisfied the public function test because the company was "responsible for towing, storing, and releasing all cars throughout the [city] at the [c]ity's direction." 39 F. Supp. 2d at 1112. Under those circumstances, the court held that the plaintiff had plausibly alleged that the city "allocated the full powers of [its] 'in-house' towing and storage entity to" the private company even though the city "reserve[d] the responsibilities of collecting towing fees." *Id.*

So too here: Jett's Towing is Brookside's sole, effectively in-house towing and impounding operator; it operates at the town's direction; and even though—as in *Doe*—it does not "collect fees for Brookside," *see* Doc. 43 at 6, it *facilitates* (and is indeed vital to) the collection of those fees because the company conditions the release of cars on proof of prior payment of Brookside's mandatory impound fee. The company is therefore performing a public function by "operat[ing] a vehicle towing and impounding system together with" Brookside, so it is liable for constitutional violations arising from the operation of that system—namely, the system's prioritization of "generat[ing] and maximiz[ing] revenue and profit for" the town and the company. Doc. 32 ¶¶ 95, 360–361, 362–373.

B. The Complaint plausibly alleges that Jett's Towing is a government actor under the "nexus/joint action" test.

For similar reasons, Plaintiffs plausibly allege that Jett's Towing's participation in Brookside's profit-fueled towing and impounding system also meets the "nexus/joint action" test. This test looks to "interdependence" between the government and private entity with respect to the system at issue. *Carpenter*, 2016 WL 1573267, at *4 (quoting *Rayburn*, 241 F.3d at 1347). No

allegations of a conspiracy or the company's intent to act unconstitutionally are required; the facts need only show the private company's "understanding" and "willful participation" in the system at issue. *Charles*, 18 F.4th at 696–97 (quoting *Bendiburg v. Dempsey*, 909 F.2d 463, 469 (11th Cir. 1990)).

Here, with respect to Jett's Towing's participation in Brookside's towing and impounding system, "judicial experience and common sense" confirm that the Complaint "plausibly allege[s] that the relationship between [Jett's Towing and Brookside] may satisfy . . . the . . . nexus/joint action test." *Carpenter*, 2016 WL 1573267, at *4. For example:

- Since at least 2018, Jett's Towing has been Brookside's sole towing and impounding operator and the town's "designated and approved Brookside impound lot," Doc. 32 ¶¶ 95–98, 131;
- "On information and belief, Brookside regularly has a Jett's Towing tow truck on standby directly next to, behind, or within a block or two of Brookside police cars in order to immediately tow vehicles, for the profit of Brookside and Jett's Towing," Doc. 32 ¶ 126;
- In accordance with a Brookside ordinance and Jett's Towing's own policy, the company assists in the collection of Brookside's $175 mandatory impound fee by conditioning the release of every car towed and impounded for Brookside on proof of prior payment of that fee, Doc. 32 ¶¶ 103, 106, 117;
- Pursuant to a Brookside ordinance, Jett's Towing's status as the town's sole towing and impounding operator is conditioned on the company assisting in the collection of Brookside's mandatory impound fee, Doc. 32 ¶¶ 103, 106;

- Brookside encourages Jett's Towing to maintain its status as the town's sole towing and impounding operator by letting the company "directly" profit from its participation in the town's profit-fueled towing and impounding system, Doc. 32 ¶¶ 106, 135—which the company does, in the form of a $160 fee and daily impound fees, or auction revenues, for every car it tows and impounds for the town, Doc. 32 ¶¶ 129–130, 135–136;
- From 2018 to 2020, the number of cars Jett's Towing towed and impounded for Brookside increased from 50 to 508 to 789—with commensurate increases in the amount of Brookside's impound fee collection that Jett's Towing facilitates for Brookside (over $130,000 in 2020 alone) and rakes in for itself (over $125,000 in 2020 alone), Doc. 32 ¶¶ 138–140; and
- Jett's Towing's representative admitted to Plaintiff Brandon Jones's wife in January 2022 that Brookside "just want[s] the money"—and then proceeded to verify that she had indeed paid Brookside its money before charging her Jett's Towing's additional $168 towing and impounding fees for the family to get their car back, Doc. 32 ¶¶ 142–143, 273.

Given these allegations, it is at least plausible (indeed, probable) that Jett's Towing meets the "nexus/joint action" standard. The Eighth Circuit's recent decision in *Meier v. St. Louis* confirms the sufficiency of these allegations. The court explained that the joint action test was satisfied there because a towing company "employee refused to release" the plaintiff's car "in accordance with [the company's] policy of not releasing [certain cars] without police authorization." 934 F.3d at 829–30; *see also supra* n.3 (collecting joint action towing cases). That is akin to Jett's Towing's policy of refusing to release cars without Brookside's authorization in

the form of proof of prior payment to Brookside of the town's $175 mandatory impound fee. That fee is the key to Brookside's profit-fueled towing and impounding system, thus plausibly suggesting a deep "interdependence" between the two parties with respect to the operation of that unconstitutional system. *Carpenter*, 2016 WL 1573267, at *4 (quoting *Rayburn*, 241 F.3d at 1347).

C. The Complaint plausibly alleges that Jett's Towing is a government actor under the "compulsion" test.

Finally, the Complaint plausibly alleges that Jett's Towing is a government actor under the "compulsion" test because it alleges that Brookside, "by its law, has compelled the act" of which Plaintiffs complain (i.e. participation in Brookside's unconstitutionally profit-fueled towing, impounding, and impound fee collection system). *Adickes*, 398 U.S. at 170. This standard is met if the Complaint plausibly alleges that Brookside "has coerced or at least significantly encouraged the action alleged to violate the Constitution." *Carpenter*, 2016 WL 1573267, at *4 (quoting *Rayburn*, 241 F.3d at 1347). The conduct of private towing companies plausibly satisfies this standard when they tow or hold cars at the behest of police officers or municipal authorities. *See EXP Logistics*, 2013 WL 3753981, at *4 (holding that complaint plausibly pleaded facts sufficient to satisfy the compulsion test where officer ordered plaintiff to turn vehicle over to towing company).

For much the same reasons detailed above, the Complaint plausibly alleges that Brookside (at a minimum) "significantly encourages" Jett's Towing to tow, impound, and hold cars in accordance with—and as a crucial part of—Brookside's profit-fueled towing, impounding, and impound fee collection system. Indeed, the company's motion illustrates the point. In the company's telling, it tows and impounds cars "pursuant to Brookside directive" and refuses to release them until Brookside "authorize[s]" it to do so. *See* Doc. 43 at 2. And, as alleged in the Complaint, a Brookside ordinance *requires* the company to hold impounded cars until after the

town gets its "mandatory impound fee." Doc. 32 ¶¶ 103, 106; *see* Ala. Dep't of Exam'rs of Pub. Accts., Report on the Town of Brookside (Apr. 15, 2022) at 28–31 (Brookside Ordinance 519 as amended by Brookside Ordinances 527 and 533), *available at* https://examiners.alabama.gov/PDFLink.aspx?IDReport=6500.

And Jett's Towing does so. The company "refuses to release a vehicle without proof that Brookside's $175 mandatory impound fee has already been paid to Brookside." Doc. 32 ¶ 117. Therefore, while it is technically correct that Jett's Towing does not "collect fees for Brookside," *see* Doc. 43 at 6, the Complaint plausibly alleges that the company's role in facilitating the collection of those fees is vital to the operation of Brookside's unconstitutionally profit-fueled towing and impounding system, and that that facilitation is pursuant to Brookside's ordinance. Doc. 32 ¶¶ 103, 106, 117. That is sufficient to satisfy the compulsion test because it plausibly alleges that Brookside has "entered into [Jett's Towing's] decision-making process" for the release of every car the company tows and impounds for Brookside. *Cohen v. World Omni Fin. Corp.*, 457 F. App'x 822, 829 (11th Cir. 2012) (citing *Langston ex rel. Langston v. ACT*, 890 F.2d 380, 385 (11th Cir. 1989)).

The company could, of course, eliminate that compulsion by refusing to do business with Brookside. But "common sense" dictates that Brookside "'significantly encourage[s]'" Jett's Towing not to terminate the relationship or eliminate the compulsion, *Carpenter*, 2016 WL 1573267, at *4 (quoting *Rayburn*, 241 F.3d at 1347), because Brookside's official "Vehicle Release Process" authorizes the company to "directly" profit from its participation in the town's towing and impounding system, Doc. 32 ¶¶ 106, 135—which the company does, in the form of a $160 fee and daily impound fees, or auction revenues, for every car it tows and impounds for the town, Doc. 32 ¶¶ 129–130, 136.

* * *

Each of the three standards discussed above is designed to answer the same question: whether a private company's conduct is "fairly attributable" to the government. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999). That is why Jett's Towing has it backwards by insisting that it should be dismissed from this case because it does not independently make stopping, arresting, towing, and impounding decisions and instead acts at the behest of Brookside. *See* Doc. 43 at 5–6. To the contrary, courts across the country are united in treating private towing companies as government actors subject to suit under Section 1983 and the Fourteenth Amendment precisely because they act at the behest of municipal actors or participate in municipal systems. *E.g.*, *Meier*, 934 F.3d at 829–30 (private towing company could be liable as a government actor where it held a car "in accordance with [its] policy of not releasing [certain cars] without police authorization"); *Stypmann*, 557 F.2d at 1341–42 (private towing company could be liable as a government actor where a "police officer makes the initial determination that a car will be towed and summons the towing company" and the "towing company tows the vehicle only at the direction of the officer").

In short, whether viewed through the lens of the public function test, the joint action test, or the compulsion test, the Complaint's allegations point to one conclusion: Jett's Towing is an integral participant in Brookside's unconstitutional towing and impounding system, and Plaintiffs' claim against the company should proceed to the merits.

II. Jett's Towing's residual arguments are unsupported and meritless.

Jett's Towing's remaining arguments for dismissal are equally unsupported and meritless.

First, the company contends that "the Complaint fails to state a plausible conspiracy claim." *See* Doc. 43 at 5. To state the obvious, however, Plaintiffs have not pleaded a conspiracy claim. They have pleaded a due process claim. Doc. 32 ¶¶ 357–373. And the Eleventh Circuit has made clear that no allegations of conspiracy are needed to hold a private entity liable for a non-

conspiracy claim. *Charles*, 18 F.4th at 697 ("We have admonished a district court for requiring direct proof of a conspiracy, saying that 'nothing more than an 'understanding' and 'willful participation' between private and state defendants is necessary to show the kind of joint action that will subject private parties to § 1983 liability.'") (quoting *Bendiburg*, 909 F.2d at 469). As detailed above, Plaintiffs have amply alleged that Jett's Towing is a government actor with respect to its participation in Brookside's towing and impounding system. No added allegations of "agreement or conspiracy" are required, *contra* Doc. 43 at 5–6.

Second, the company states that it "has nothing to do with the stop, arrest, or the decision to tow the vehicle of the Plaintiffs," which are decisions made by the Brookside police. *See* Doc. 43 at 5. But that is beside the point; indeed, it only confirms that the company acts at Brookside's behest and is therefore a government actor, as detailed above. That ends the inquiry, which does not ask whether the private company is alleged to be in charge of an unconstitutional system, but only whether the character of its participation in an unconstitutional system plausibly satisfies one of the government actor tests.

Third, Jett's towing posits that the complaint violates the "shotgun pleading" rule and "fails to allege facts capable of showing that they can meet Rule 23's requirements." *See* Doc. 43 at 3–4. But the company makes no effort to explain either argument. Because both arguments are "naked assertion[s], unsupported by reference to the record" and with "virtually no briefing," Jett's Towing has waived both arguments. *Covey v. Colonial Pipeline Co.*, 2021 WL 724600, at *9 n.11 (N.D. Ala. Feb. 24, 2021) (Proctor, J.); *Bell v. Colvin*, 2015 WL 4656362, at *13 (N.D. Ala. Aug. 6, 2015) (Proctor, J.); *see also Singh v. U.S. Att'y Gen.*, 561 F.3d 1275, 1278 (11th Cir. 2009) ("simply stating that an issue exists, without further argument or discussion, constitutes abandonment of that issue"); *Wilson v. City of Mission*, 2020 WL 2079359, at *10 (S.D. Tex. Apr.

29, 2020) ("Federal courts are not merely a repository into which [a party] may dump the burden of argument and research, nor is it the obligation of this court to act as an advocate. This [c]ourt is entitled to have issues clearly defined; arguments asserted without citation to authority or left undeveloped are waived.") (quotation marks and citations omitted).

Regardless, the Complaint easily satisfies the shotgun pleading rule. The Complaint identifies the one claim asserted against Jett's Towing. Doc. 32 ¶¶ 357–373. It identifies (down to the paragraph number) the allegations relevant to that claim and refrains from reincorporating unrelated counts. Doc. 32 ¶¶ 357–358. It identifies the particular class allegations relevant to Count 1. Doc. 32 ¶¶ 336–342. And it specifies the relief sought under Count 1. Doc. 32 Request for Relief ¶ A. Simply, the Complaint does its job: It gives Defendants "adequate notice of the claims against them and the grounds upon which each claim rests." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1323 (11th Cir. 2015). That both Brookside and Jett's Towing appear to have had no trouble preparing detailed (though losing) motions to dismiss only underscores the point.

Finally, as to Jett's Towing's throwaway line regarding the adequacy of Plaintiffs' class allegations, *see* Plaintiffs' response to Brookside's motion to dismiss, Doc. 54 at 19–25.

CONCLUSION

Jett's Towing's motion to dismiss Count 1 against it should be denied.

Dated: July 25, 2022

Respectfully submitted,

s/ Jaba Tsitsuashvili

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CERTIFICATE OF NON-FRIVOLOUS SUBMISSIONS

I hereby certify that I have affirmatively sought to submit to the court only those documents, factual allegations, and arguments that are material to the issues to be resolved in the motion, that careful consideration has been given to the contents of all submissions to ensure that the submissions do not include vague language or an overly broad citation of evidence or misstatements of the law, and that all submissions are non-frivolous in nature.

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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