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JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT (FEBRUARY 8, 2023)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

WILLIAM L. BURRELL, JR.;
JOSHUA HUZZARD; DAMPSEY STUCKEY,

v.

TOM STAFF, Individually; LOUIS DENAPLES, individually; DOMINICK DENAPLES; LACKAWANNA RECYCLING CENTER INC; COUNTY OF LACKAWANNA; LACKAWANNA COUNTY SOLID WASTE MANAGEMENT AUTHORITY,

William L. Burrell, Jr.; Joshua Huzzard; Dampsey Stuckey; *Anthony Cravath; *Anthony John Goodwin, Sr.; *Derrick M. Lake; *Eugene R. Taylor; *Ralph Wasko; *Timothy Alan Whited; *Torrance Allen; *Gabriel Martinez; and *Gerard Nelson,
Appellants.

*(Pursuant to Rule 12(a), Fed. R. App. P.)

No. 21-2846

On Appeal from the United States District Court
for the Middle District of Pennsylvania

(District Court Civil No. 3-14-cv-01891)
District Judge: Honorable Robert D. Mariani

Argued July 14, 2022

Before: GREENAWAY, JR., MATEY,
and NYGAARD, Circuit Judges.

JUDGMENT

This Cause came to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel on July 14, 2022.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the order of the said District Court entered on August 31, 2021, be and the same is hereby AFFIRMED IN PART, REVERSED IN PART, and REMANDED for proceedings consistent with this Courts opinion.

Costs shall not be taxed in this matter.

All of the above in accordance with the Opinion of this Court.

ATTEST:

/s/ Patricia S. Dodszuweit
Clerk

Dated: February 8, 2023

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT (FEBRUARY 8, 2023)

PRECEDENTIAL

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and NYGAARD, Circuit Judges.

(Filed: February 8, 2023)

OPINION OF THE COURT

NYGAARD, *Circuit Judge.*

Plaintiff child support debtor-civil contemnors brought several claims against Lackawanna County, the County's Solid Waste Management Authority, Lackawanna County Recycling Center, Inc. (the private corporation to which the Authority outsources the operation of its Recycling Center, or the "Corporation") and the Corporation's owners (brothers Louis and Dominick DeNaples), arising out of plaintiffs' nearly unpaid labor at the Recycling Center. The District Court dismissed all claims, and plaintiffs appealed.[1]

We will affirm dismissal of plaintiffs' Thirteenth Amendment and Pennsylvania Wage Payment and Collection Law claims in full, and of their Trafficking Victims Protection Act ("TVPA") and Racketeer

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[1] Plaintiffs do not appeal the dismissal of their claims against defendant Tom Staff, an administrator employed by Lackawanna County who regulated the Work Release Program and the Community Service Program at the Lackawanna County Prison. "All defendants" thus means the County, the Authority, the Corporation, and the DeNaples brothers.

Influenced and Corrupt Organizations Act ("RICO") claims against the DeNaples brothers.[2]

However, we will reverse dismissal of their TVPA claims against the County, the Authority, and the Corporation; their RICO claims against the Corporation; their Fair Labor Standards Act ("FLSA") and Pennsylvania Minimum Wage Act claims against the County, the Authority, and the Corporation; and their unjust enrichment claims against the County, the Authority, and the Corporation.[3]

I. Background

Plaintiffs William Burrell, Jr., Joshua Huzzard, and Dampsey Stuckey were held in civil contempt and sentenced to incarceration for not paying child support. They challenge Lackawanna County's policy of conditioning incarcerated civil contemnor child support debtors' access to regularly paid work release on first working for half of their sentences sorting through trash at the Recycling Center, in purportedly dangerous and disgusting conditions, for sixty-three cents per hour (five dollars per day), nominally as "community service."

Burrell first filed a complaint in September 2014 and a First Amended Complaint ("FAC") in December 2014, both *pro se*, describing the County's policy of conditioning work release on work at the Center, the Center's hazardous conditions and subminimum wages,

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[2] Plaintiffs do not appeal the dismissal of their RICO claims against the County and the Authority.

[3] Plaintiffs press their Fair Labor Standards Act claims on behalf of a FLSA collective and the rest of their claims on behalf of a Rule 23 class.

and alleging, as relevant here, Thirteenth Amendment, TVPA, RICO, and state-law claims. Although Burrell did not expressly invoke FLSA, the FAC alleged that he was paid five dollars per day to work forty hours per week at the Center.

The District Court dismissed the amended complaint before service of process. A panel of this Court affirmed in part and vacated in part. *Burrell v. Loungo*, 750 F. App'x 149, 160 (3d Cir. 2018). The panel reversed the District Court's dismissal of Burrell's TVPA and Thirteenth Amendment claims because although Burrell alleged that "he had a 'choice'—either work in the LRC or spend an extra six months in prison—given the dearth of case law in this area, it is not clear, especially at the screening stage, whether this 'choice' was sufficient to bring the alleged practice of coercing civil contemnors to work in the LRC out of the range of involuntary servitude." *Id.* at 159–60 (cleaned up). The panel also said in a footnote that

> One might argue, of course, that as a civil contemnor who would be released once he paid his child support obligations, Burrell "carr[ied] the keys of [his] prison in [his] own pockets." *Turner v. Rogers*, 564 U.S. 431, 441-42, 131 S. Ct. 2507, 180 L.Ed.2d 452 (2011). We leave it to the District Court to consider such an argument.

Id. at 160 n.7. Finally, the panel reversed the District Court's dismissal of Burrell's RICO claims because that ruling was based on dismissal of his Thirteenth Amendment and TVPA claims—the alleged predicate violations of law for RICO liability. *Id.* at 160.

On remand, Burrell obtained counsel and filed a Second Amended Complaint ("SAC"), which added Huzzard and Stuckey as plaintiffs and significantly refined its list of defendants, its factual allegations, and its legal claims. The SAC contends that conditioning plaintiffs' access to work release—which would have enabled them to earn the money they needed to secure their freedom from incarceration—on completing a period of sub-minimum-wage, dangerous, and disgusting work at a private business amounted to involuntary servitude and forced labor, in violation of the Thirteenth Amendment[4] and the TVPA, 18 U.S.C. §§ 1589, 1595;[5] that defendants' violations of the TVPA as an association in fact was a pattern of racketeering activity under RICO, 18 U.S.C. § 1961(1), in violation of *id.* §§ 1962(c), 1964(c); that failure to pay them the minimum wage for their work at the Recycling Center violated FLSA's minimum wage provision, 29 U.S.C. § 206(a)(1)(c), and the Pennsylvania Minimum Wage Act, 43 Pa. Stat. and Cons. Stat. § 333.104(a.1); that paying plaintiffs' daily five dollar wage into their commissary accounts, rather than in

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[4] Plaintiffs press their Thirteenth Amendment claims via 42 U.S.C. § 1983.

[5] § 1595 creates a civil cause of action for victims of, *inter alia*, a TVPA violation, "against the perpetrator [ ]or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter[.]" *Id.* § 1595(a). On January 5, 2023, Congress enacted the Abolish Trafficking Reauthorization Act of 2022. This amended the language in § 1595(a) to include a TVPA violation, "against the perpetrator [ ]or whoever knowingly benefits, *or attempts or conspires to benefit*, financially . . . ." *See* Pub. L. No. 117-347, 136 Stat 6199, 6200 (emphasis added).

cash or check, violated the Pennsylvania Wage Payment and Collection Law, *id.* § 260.2a; and that plaintiffs' work at the Center unjustly enriched defendants.

After briefing, the District Court granted defendants' motions to dismiss the SAC. The Court first held that the *Rooker-Feldman* doctrine did not preclude its jurisdiction over the TVPA and Thirteenth Amendment claims, so long as it did not credit plaintiffs' allegations that they could not pay their purges (payment of which would effect compliance with their contempt orders and get them out of prison). The Court then concluded that plaintiffs' Thirteenth Amendment and TVPA claims failed, because the legal requirement that the state court had to find that plaintiffs were able to pay their purges before sentencing them to incarceration for civil contempt meant that plaintiffs could have chosen to pay their purges and leave prison rather than work at the Recycling Center. The Court also dismissed plaintiffs' RICO and unjust enrichment claims because they were predicated on plaintiffs' failed Thirteenth Amendment and TVPA claims. The Court finally dismissed plaintiffs' FLSA, Pennsylvania Minimum Wage Act, and Pennsylvania Wage Payment and Collection Law claims because plaintiffs failed to allege an employer-employee relationship, an implied contract on wages to be paid, or a breach thereof.

Though the District Court dismissed some claims without prejudice, plaintiffs stood on their complaint and sought final judgment, which the District Court issued. Plaintiffs then timely appealed.

II. Standard of Review

Because this case arises from a motion to dismiss, we conduct a plenary review of the District Court's order granting a motion to dismiss for failure to state a claim, *Gelman v. State Farm Mut. Auto. Ins. Co.*, 583 F.3d 187 (3d Cir. 2009), and "accept as true the allegations of the complaint," *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 452 (2012).

III. Discussion

A. *Rooker-Feldman*, Issue Preclusion, and Changed Circumstances

1. *Rooker-Feldman* Doctrine

"In certain circumstances, where a federal suit follows a state suit, the *Rooker–Feldman* doctrine prohibits the district court from exercising jurisdiction. The doctrine takes its name from the only two cases in which the Supreme Court has applied it to defeat federal subject-matter jurisdiction[.]" *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 163–64 (3d Cir. 2010). The doctrine is narrowly confined to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments," and "does not otherwise override or supplant preclusion doctrine." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

"If a federal plaintiff presents some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party, then there is jurisdiction and state law deter-

mines whether the defendant prevails under principles of preclusion." *Id.* at 293. That distinction has consequences: "*Rooker-Feldman*, unlike claim and issue preclusion, implicates a federal court's subject-matter jurisdiction, meaning it cannot be forfeited or waived, and courts must evaluate its applicability *sua sponte* if it is a concern." *Vuyanich v. Smithton Borough*, 5 F.4th 379, 385 (3d Cir. 2021) (cleaned up).

Plaintiffs assert "that they had no option but to work at the Center" and Burrell asserts "that he did not have the ability to pay $2,129.43"—his purge amount. App. 62. Whether the purge orders preclude us from entertaining those assertions is a question subsidiary to plaintiffs' claims. And the "ability to pay" determination in the state court was merely a step towards the state court orders' ultimate purpose of ordering plaintiffs incarcerated to coerce their payment of overdue child support. As plaintiffs' claims may deny conclusions reached by the state court, but do not require review and rejection of the orders in which those conclusions were reached, *Rooker-Feldman* does not thwart federal jurisdiction. *See Exxon Mobil Corp.*, 544 U.S. at 293.

2. Issue Preclusion

The purge orders implicate issue preclusion, which is not a jurisdictional matter but instead an affirmative defense. *See* Fed. R. Civ. P. 8(c). Plaintiffs correctly point out that issue preclusion "has not yet been raised in this case." Pls.' Reply Br. at 4–5 n.1. But they "do not challenge the state-court ability-to-pay finding," *id.*, the only state court determination relevant to plaintiffs' claims. Instead, plaintiffs contend that they "allege injuries caused by events occurring

after the state-court orders—their ever-worsening financial circumstances and Defendants' exploitation of them," and that their "financial insecurity increased once detained." Pls.' Br. at 16–17. The state court purge orders' ability-to-pay findings were limited by law to plaintiffs' respective present abilities to pay at the time the orders were entered. *See Hyle v. Hyle*, 868 A.2d 601, 605 (Pa. Super. Ct. 2005) ("[T]he trial court must set the conditions for a purge in such a way as the contemnor has the present ability to comply with the order.") (emphasis in original). They did not, and could not, make any predictions about plaintiffs' ability to pay in the future.

Thus, while plaintiffs have waived, and are precluded from raising, any challenge to the state court findings that they were able to pay at the time the courts imposed their incarceration and purge orders, they are not precluded from contending that they were, at the time of their injuries, when faced with the "community service" scheme at issue here, unable to pay.

3. Changed Circumstances

The District Court, in dismissing plaintiffs' Thirteenth Amendment and TVPA claims, correctly pointed out that the SAC does not allege that plaintiffs' circumstances changed between when they were each adjudged able to pay a purge amount and when they began working at the Recycling Center under what they purport was coercion. Plaintiffs, however, respond, also correctly, that they were not required to allege as much in their complaint, as such facts are required only to overcome the affirmative defense of issue preclusion, and "'[u]nder Federal Rule of Civil Proce-

dure 8, a complaint need not anticipate or overcome affirmative defenses' to state a claim for relief and defeat a Rule 12(b)(6) motion to dismiss." Pls.' Br. at 21 (quoting *Schmidt v. Skolas*, 770 F.3d 241, 248 (3d Cir. 2014).

Although they do not allege changed circumstances in their complaint, the facts they do allege support no less than the inference that when faced with the choice of working at the Recycling Center, serving their contempt sentence, or paying their purge amount, plaintiffs were unable to pay. Plaintiffs allege that they worked at the Center because it was the only way they could qualify for work release, without which they could not pay their child support debt and regain their freedom. For just five dollars per day—approximately sixty-two-and-a-half cents per hour—they separated trash and recyclables on conveyor belts, frequently breaking out in skin rashes, suffering wounds from sharp pieces of glass, and vomiting from the stench of their abhorrent working conditions, which includes working in 100 degrees Fahrenheit. App. 132–33 ¶¶ 166–75. The Center provides them with unsanitary toilets that have been out of order and uncleaned for months to relieve themselves and takes away their food as punishment for working too slowly. *Id.* "[E]vidence of . . . extremely poor working conditions is relevant to corroborate disputed evidence regarding the use . . . of physical or legal coercion . . . or the causal effect of such conduct." *United States v. Kozminski*, 487 U.S. 931, 952 (1988). "[N]o individual who could pay his way to freedom would choose to work in the dangerous conditions of the Recycling Center for just five dollars per day." CAC & ACLU Amicus Br. at 6. Rather, the most plausible inference

for why plaintiffs chose to work at the Recycling Center was to access the work release program that would pay them enough to enable them to pay their purge and secure their freedom. Plaintiffs have thus stated plausible facts from which it can be reasonably inferred that they were, at the time of their injuries, unable to pay their purge.

The District Court also erred by requiring plaintiffs to allege why they did not request modification of their support orders in state court. The statute at issue, 23 Pa. C.S. § 4352(a.2), expressly excludes "incarceration for nonpayment of support" from "constitut[ing] a material and substantial change in circumstance that may warrant modification or termination of an order of support where the obligor lacks verifiable income or assets sufficient to enforce and collect amounts due." As plaintiffs were legally unable to have their support orders modified or terminated for changed circumstances stemming from incarceration for non-payment of support, they need not plead otherwise.

The District Court thus erred by dismissing plaintiffs' Thirteenth Amendment and TVPA claims based on their failure to allege changed circumstances and why they did not seek modification of their support orders. That does not, however, end the inquiry—plaintiffs still must state claims upon which relief can be granted.

B. Thirteenth Amendment

Section 1 of the Thirteenth Amendment to the Constitution of the United States states: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have

been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

In *Kozminski*, the Supreme Court held that the phrase "involuntary servitude," as used in 18 U.S.C. § 1584 and the Thirteenth Amendment, is "limited to cases involving the compulsion of services by the use or threatened use of physical or legal coercion." 487 U.S. at 948. The Court rejected the Government's broader proposed understanding of the phrase, which encompassed "the compulsion of services by any means that, from the victim's point of view, either leaves the victim with no tolerable alternative but to serve the defendant or deprives the victim of the power of choice," because that reading "would delegate to prosecutors and juries the inherently legislative task of determining what type of coercive activities are so morally reprehensible that they should be punished as crimes." *Id.* at 949.

"Modern day examples of involuntary servitude [under the Thirteenth Amendment] have been limited to labor camps, isolated religious sects, or forced confinement." *Steirer v. Bethlehem Area Sch. Dist.*, 987 F.2d 989, 999 (3d Cir. 1993). Thus, in *Zavala v. Wal Mart Stores Inc.*, where plaintiff illegal immigrants "allege[d] that they were coerced into working by threats to report their immigration status to authorities," we held that "[a]bsent some special circumstances, threats of deportation are insufficient to constitute involuntary servitude."[6] 691 F.3d 527,

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[6] Although *Zavala* involved a claim under 18 U.S.C. § 1584, the phrase "involuntary servitude" has the same meaning in § 1584 and the Thirteenth Amendment. *See Kozminski*, 487 U.S. at 944–45.

531, 541 (3d Cir. 2012). From *Zavala* we derive the principle that using an otherwise legal process for a purpose for which it was not created or intended to be used is not, on its own, sufficient to constitute the threat of legal sanction necessary to find a Thirteenth Amendment violation. Here, restricting access to the work release program and threatening plaintiffs with serving the entirety of their otherwise legal contempt sentences is akin to the threats of deportation in *Zavala*. Because plaintiffs do not sufficiently allege involuntary servitude, they fail to state a Thirteenth Amendment § 1983 claim on which relief can be granted, and we will affirm the District Court's dismissal of those claims.

C. TVPA

As to their TVPA claims, Plaintiffs allege three theories:

> 204. During all relevant times, Defendants attempted to and did obtain the labor of Plaintiffs and the Rule 23 Class through threats of continued physical restraint, specifically, by telling Debtors that if they did not work at the Center they would remain ineligible for work release, in violation of 15 U.S.C. § 1589(a)(1).
>
> 205. During all relevant times, Defendants attempted to and did obtain the labor of Plaintiffs and the Rule 23 Class through abuse of law and/or legal process, in violation of 15 U.S.C. § 1589(a)(3).
>
> 206. During all relevant times, Defendants attempted to and did obtain the labor of

> Plaintiffs and the Rule 23 Class by causing Debtors to believe that, if they did not provide labor at the Center, they would suffer continued physical restraint without the ability to participate in work release, in violation of 15 U.S.C. § 1589(a)(4).

App. 137.

Congress heeded the Court's call in *Kozminski* for legislative action, *see* 487 U.S. at 951–52, when it passed the TVPA, which defines forced labor broader than *Kozminski*'s definition of involuntary servitude as used in the Thirteenth Amendment by criminalizing

> knowingly provid[ing] or obtain[ing] the labor or services of a person by any one of, or by any combination of, the following means—
>
> (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
>
> (2) by means of serious harm or threats of serious harm to that person or another person;
>
> (3) by means of the abuse or threatened abuse of law or legal process; or
>
> (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint[.]

18 U.S.C § 1589(a). Specifically, subsections (2) and (4) draw more broadly than *Kozminski*'s limitation to "physical or legal coercion." *See also* 22 U.S.C. § 7101(b)(13) (noting, in support of the TVPA's passage,

Kozminski's narrow definition of involuntary servitude and stating that "[i]nvoluntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion."); H.R. Rep. No. 106-939, at 101 (2000) ("Section 1589 will provide federal prosecutors with the tools to combat severe forms of worker exploitation that do not rise to the level of involuntary servitude as defined in *Kozminski*.").

Congress also broadly defined "abuse or threatened abuse of law or legal process" as

> the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

18 U.S.C. § 1589(c)(1).

And Congress chose not to include the phrase "involuntary servitude" in the TVPA. Rather, the TVPA clearly encompasses a broad range of conduct which is not limited, as the dissent suggests, to 'appalling criminal conduct and shocking depravity.'" *See* Dissent Op. at n.6. That range of conduct encompasses circumstances in which the person whose labor is being exploited is faced with any number of choices as an alternative to working, including actual or threatened physical restraint, serious harm, and abuse of law or legal process. *See* 18 U.S.C. § 1589(a). And the TVPA bars getting or giving labor "by any one of, or by any combination of, the [prohibited] means," indicating that a victim can face more than

a binary choice and remain protected by the statute. *Id.* The TVPA's more-expansive definitions of coercion reflect the "increasingly subtle" ways by which labor may be forced, *United States v. Dann*, 652 F.3d 1160, 1169 (9th Cir. 2011), including both physical and "nonphysical forms of coercion," *Muchira v. Al-Rawaf*, 850 F.3d 605, 617 (4th Cir. 2017).

Defendants' conditioning of plaintiffs' access to the work release program (which plaintiffs allege they needed to free themselves) on a period of nearly free, grueling labor at the Recycling Center, is an abuse of law or legal process under the TVPA. That is so because it is a use of the work release program in a manner for which it was not designed, in order to pressure plaintiffs to work at the Center. *Id.* at 1589(c)(1).

Plaintiffs argue that

> Pennsylvania law authorizes state correctional facilities to implement and operate work-release programs, which enable inmates to temporarily leave their correctional facility to work in the community. But these programs must serve several statutory purposes (and only those purposes): to promote "account-ability of offenders to their community," to provide "opportunities for offenders to enhance their ability to become contributing members of the community," and to "protect society." 42 Pa. Stat. and Cons. Stat. § 9803(1)-(4). Here, the County operated its work-release program in a manner directly at odds with these purposes, manipulating the qualification standards for work-release eligibility solely to gain a pecuniary benefit.

Pls.' Br. at 31. No defendant challenges this argument. And the placement of Section 9813, "Work release or other court order and purposes," in Title 42, Chapter 98, "County Intermediate Punishment"—which also includes Section 9803, "Purpose," the Section relied on by plaintiffs—indicates that Section 9803's stated purposes govern county jail work release programs like that which plaintiffs sought to participate in here.

Section 9803 states in full:

> County intermediate punishment programs shall be developed, implemented and operated for the following purposes:
>
> (1) To protect society and promote efficiency and economy in the delivery of corrections services.
>
> (2) To promote accountability of offenders to their local community.
>
> (3) To fill gaps in local correctional systems and address local needs through expansion of punishment and services available to the court.
>
> (4) To provide opportunities for offenders who demonstrate special needs to receive services which enhance their ability to become contributing members of the community.

42 Pa. Stat. and Cons. Stat. § 9803.

Again, no defendant contends that conditioning access to work release on a period of dangerous, nearly unpaid labor serves any of those purposes. Rather, the nearly free labor for most of the grunt work at a joint public/private profit-seeking operation seems to be the point. The Professional Service

Operating Agreement between the Corporation and the Municipal Authority states that the "Authority shall use its best efforts to . . . provide [the Corporation] with the same number of Prisoners from the Lackawanna County Prison that have historically worked at the Center as part of their work release program as security requirements dictate." App. 150. Plaintiffs allege that "the only individuals typically performing this work are those from the Prison. The Center does not employ hourly-paid workers to regularly perform this work." App. 133 ¶ 176. And under the Operating Agreement, "the Authority shall retain the lesser of[ ] all revenues or the first $60,000.00 of gross revenue." App. 148. So long as the Center brings in more than $60,000, the Corporation and the Authority share the profits earned by exploiting plaintiffs' and their purported class members' nearly free labor—labor which plaintiffs purport to have provided so as to be eligible to later access the work release program, earn real wages, pay their purges, and free themselves from civil incarceration.

That is a clear example of "the use . . . of a law or legal process . . . in a[ ] manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action," which the TVPA defines as an abuse of law or legal process. 18 U.S.C. § 1589(c)(1); *see id.* § 1589(a)(3) (proscribing the obtaining or providing of labor or services by means of the abuse of law or legal process); *see also United States v. Calimlim*, 538 F.3d 706, 713 (7th Cir. 2008) ("[T]he immigration laws do not aim to help employers retain secret employees by threats of deportation, and so their 'warnings' about the consequences were directed

to an end different from those envisioned by the law and were thus an abuse of the legal process. *See Restatement (Second) of Torts* § 682. The warnings therefore fit within the scope of § 1589(3).”). Of course, plaintiffs do not have an independent due process or state-created liberty interest in access to a work release program in which they have not yet been placed. *See Powell v. Weiss*, 757 F.3d 338, 342– 46 (3d Cir. 2014). But they have a statutory right to be free from having their labor knowingly coerced via, *inter alia*, the abuse of law or legal process.

The TVPA also proscribes providing or obtaining labor “by any one of, or by any combination of,” the proscribed means. 18 U.S.C. § 1589(a). That includes (1) serious harm, such as “withholding basic necessities like food” if they did not work efficiently enough at the Recycling Center, *see Barrientos v. CoreCivic, Inc.*, 951 F.3d 1269, 1273 (11th Cir. 2020); (2) physical restraint, like plaintiffs allege they faced (albeit pursuant to a legal order) if they were unable to access the work release program to pay their purge; and (3) abuse of law or legal process, like conditioning access to a work release program on the furnishing of a period of nearly free labor. Plaintiffs have thus sufficiently pleaded that their labor was provided and obtained by a combination of means prohibited by the TVPA, 18 U.S.C. § 1589.

Several defendants also contest whether they, specifically, can be held liable. The Authority first argues that

> Child Support Debtors offend the intent and purpose of the TVPA by essentially analogizing their situations to the serious cases of physical and sexual exploitation of

> trafficked woman and children intended to be protected by the act. Child Support Debtors were lawfully sentenced to a term of imprisonment where eligibility for traditional work release was lawfully conditioned upon community service. Court ordered Community service is not human trafficking, and the TVPA was never intended to criminalize or impose liability upon governmental, municipal, and private entities and individuals who either offer inmates the opportunity to complete community service or provide a means to actually complete community service.

Auth Br. at 21–22.

But despite its legislative history, the TVPA is not limited to "serious cases of physical and sexual exploitation of trafficked woman and children." *Id.* Rather, it applies to "[w]hoever" falls within the reach of its plain text. 18 U.S.C. § 1589; *see Gonzalez v. CoreCivic, Inc.*, 986 F.3d 536, 539 (5th Cir. 2021) (cleaned up) (holding that § 1589(a) applies to a federally regulated work program in a privately operated federal immigration detention facility because "legislative history cannot muddy the meaning of clear statutory language"); *Barrientos*, 951 F.3d at 1276–77 (same). Just because the County and its Municipal Authority purport to operate community service and work release programs in compliance with Pennsylvania law does not mean that they are precluded from liability for those programs' TVPA violations.

The Authority and the Corporation's contentions that their alleged conduct was not proscribed by the TVPA similarly fail. The TVPA subjects to liability not only "[w]hoever knowingly provides or obtains

the labor or services of a person by any one of, or by any combination of, the" proscribed means, but also "[w]hoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the [proscribed] means . . . , knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means." 18 U.S.C. § 1589(a), (b). Plaintiffs argue that at minimum, they have plausibly alleged a beneficiary/venture claim as to the Authority, the Corporation, and the DeNaples brothers.

The alleged venture starts with the County's policy requiring child support debtor contemnors to work half of their sentences at the Corporation if they want to qualify for work release—which plaintiffs contend they depend on to earn money to free themselves from physical restraint in the form of civil contempt incarceration. That is an abuse of law or legal process as defined by the TVPA.

The County provides the debtors' labor to the Corporation via the Operating Agreement between the County's Municipal Authority and the Corporation, which states that the "Authority shall use its best efforts to . . . provide [the Center] with the same number of Prisoners from the Lackawanna County Prison that have historically worked at the Center as part of their work release program as security requirements dictate." App. 150. Plaintiffs sufficiently allege that the Authority and the Corporation, as parties to the contract, knowingly benefited from its provisions, including the providing of debtors' labor to the Corporation. *See* App. 134 ¶¶ 183–84 (allegations about

reduced operating costs benefitting venture defendants).

Plaintiffs also state sufficient facts supporting the reasonable inference that the Authority and the Corporation knew or should have known that the venture used prohibited means to obtain or provide labor. Plaintiffs allege extremely poor working conditions and direct on-site supervision by County and Corporation employees. *See Kozminski*, 487 U.S. at 952 (stating that "extremely poor working conditions are relevant to . . . the use or threatened use of physical or legal coercion, the defendant's intention in using such means, or the casual effect of such conduct.").[7] It is quite plausible to infer from those facts that it was apparent to those employees overseeing plaintiffs' work that "no individual who could pay his way to freedom would choose to work in the dangerous conditions of the Recycling Center for just five dollars per day." CAC & ACLU Amicus Br. at 6. Thus, plaintiffs have stated facts supporting the plausible inference that the Corporation should have known that those prisoners working at the Center, including plaintiffs, were made to do so by prohibited means.

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[7] The dissent's description of Plaintiffs' working conditions as "colorful descriptions of 'sorting through trash'" and "dirty, difficult, and demanding" work fails to accurately reflect what Plaintiffs' allege has occurred. One can celebrate and recognize the importance of blue-collar jobs and also point out working conditions that most workers would find repugnant and would serve as the basis for a TVPA claim—*i.e.*, getting paid less than six dollars per day, having your meals taken away if you do not work hard enough, lacking protective equipment or failing to have basic sanitary items like a functioning toilet.

And though the County Municipal Authority did not directly oversee plaintiffs' labor at the Center, the facts alleged suggest the inference that it knew about the venture's use of prohibited labor. The Authority is the party that contracted to provide prison labor to the Corporation. As the provider of the prisoners, it is reasonable to infer that the Authority knew that "a significant number of the prisoners supplied by the Authority to LRCI for work at the Center have been placed in the Prison following civil contempt proceedings for failure to pay child support." App. 130 ¶ 145. And additionally it can be inferred—from several of the Authority's obligations in the Operating Agreement, including to "(1) cooperate with Operator in effectuating the transition by providing a transition team to meet with Operator to plan the transition; (2) provide any and all necessary books and records, customer lists, vendor lists, sale invoices, purchase invoices, payroll records, etc.[; and] (3) provide Operator with the same number of Prisoners from the Lackawanna County Prison that have historically worked at the Center as part of their work release program"—that before the Corporation agreed to operate the Center, the Authority itself operated the Center primarily with prison labor. App. 150. There is no reason to think that the disgusting and dangerous nature of the work at the Center was any different before the Corporation took control. Plaintiffs have alleged sufficient factual matter to support the reasonable inference that the Authority knew that plaintiffs' (and other contemnors') work at the Center was obtained and provided by means prohibited by the TVPA—that is, threat of physical restraint and abuse of law or legal process. Thus,

plaintiffs have stated a TVPA claim as to the County, the Authority, and the Corporation.

The claims as to the DeNaples brothers are more tenuous. Plaintiffs state plausible facts alleging that the DeNaples brothers benefitted from and participated in the venture and generally allege that "Defendants were aware of Debtors' work at the Center," App. 134 ¶ 181, but they do not state any facts supporting that general conclusion, nor from which the conclusion could be reasonably inferred. *See Ashcroft v. Iqbal*, 556 U.S. 662, 686–87 (2009) ("Rule 8 does not empower respondent to plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss.").[8]

Accordingly, plaintiffs' TVPA claims against the County, the Authority, and the Corporation should not have been dismissed, but dismissal of their TVPA claims against the DeNaples brothers was appropriate.

D. RICO

The RICO Act, 18 U.S.C. § 1962(c), states that

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate

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[8] As stated in footnote five, Congress amended the TVPA on January 5, 2023. *See* Pub. L. No. 117-347, 136 Stat 6199, 6200. The 2023 TVPA amendment adds civil liability for anyone who "attempts or conspires to benefit" from a TVPA violation. Even if this applies retroactively, it neither alters the requirement that the defendant "knew or should have known" that the venture violated the TVPA nor our conclusion that pleadings as to the DeNaples brothers fail for this reason.

> or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Section 1961(1) defines "racketeering activity" to include "any act which is indictable under any of the following provisions of title 18, United States Code: . . . sections 1581-1592 (relating to peonage, slavery, and trafficking in persons)." And § 1964(c) provides a civil remedy for "[a]ny person injured in his business or property by reason of a violation of section 1962."

The SAC alleges that all defendants violated RICO by way of their alleged TVPA violations. The District Court dismissed the RICO claims against the Corporation because it found plaintiffs failed to plausibly allege a predicate TVPA violation. And the Court dismissed the RICO claims against the DeNaples brothers because the facts alleged in the SAC "are not sufficient to establish that Louis and Dominick DeNaples personally—separate and apart from their roles as corporate officers—'conducted or participated in the conduct of the enterprise's affairs, not just their own affairs.'" App. 66–67 (quoting *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 162 (2001)).

We agree that plaintiffs' RICO claims against the DeNaples brothers fail, but for a different reason—because plaintiffs' predicate TVPA claims against them fail. However, plaintiffs' RICO claims against the Corporation survive. The Corporation contends that plaintiffs have failed to allege that the Corporation engaged in the alleged TVPA violations. But, for the same reason that plaintiffs have sufficiently alleged predicate TVPA venture liability as to the Corporation, they have sufficiently alleged predicate RICO liability

as to the Corporation. The allusion to an argument that TVPA venture liability is not a predicate RICO offense has no basis in law. And the Corporation contracting for, and allegedly overseeing, plaintiffs' labor, in order to operate the Recycling Center for its and the County/Authority's profit, indicates that the Corporation "participated in the 'operation or management'" of the RICO enterprise—here, the same as the TVPA venture described above—"through a pattern of racketeering activity." *See In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 372 (3d Cir. 2010).

E. FLSA & Pennsylvania Minimum Wage Act

Plaintiffs contend that the Recycling Center, the County, and the Authority violated the FLSA's minimum wage protections, 29 U.S.C. § 206(a)(1)(C), and the Pennsylvania Minimum Wage Act, 43 Pa. Stat. and Cons. Stat. § 333.104(a.1),[9] by paying plaintiffs sixty-three cents an hour to work at the Recycling Center.

The District Court disagreed, relying on the D.C. Circuit Court of Appeals' rule

> that a prerequisite to finding that an inmate has "employee" status under the FLSA is that the prisoner has freely contracted with a non-prison employer to sell his labor. Under this analysis, where an inmate participates in a non-obligatory work release program in which he is paid by an outside employer,

[9] This analysis also applies to plaintiffs' Pennsylvania Minimum Wage Act claims. *See Commonwealth v. Stuber*, 822 A.2d 870, 873 (Pa. Commw. Ct. 2003).

> he may be able to state a claim under the FLSA for compensation at the minimum wage. However, where the inmate's labor is compelled and/or where any compensation he receives is set and paid by his custodian, the prisoner is barred from asserting a claim under the FLSA, since he is definitively not an "employee." At the pleading stage, this means that a federal prisoner seeking to state a claim under the FLSA must allege that his work was performed without legal compulsion and that his compensation was set and paid by a source other than the Bureau of Prisons itself. Absent such allegations, prison labor is presumptively not "employment" and thus does not fall within the ambit of the FLSA.

Henthorn v. Dep't of Navy, 29 F.3d 682, 686–87 (D.C. Cir. 1994). The Court held that plaintiffs' FLSA claims failed this test (1) because plaintiffs alleged that their labor was compelled, and thus it could not be voluntary—despite the Court previously discrediting plaintiffs' allegations of compulsion in order to dismiss their TVPA and Thirteenth Amendment claims[10]—

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[10] In order to conclude that plaintiffs had not sufficiently alleged that their work was voluntary, the District Court handwaved its earlier discrediting of plaintiffs' claims of compulsion and concluded that they had voluntarily chosen to work. But if the Court found implausible plaintiffs' allegations that their work was involuntary, then it had decided their work was voluntary, and could not dismiss their FLSA claims for failure to sufficiently allege voluntariness.

As the Recycling Center acknowledges, parties "can plead facts in the alternative, and under Fed. R. Civ. P. 8, a party may state as many separate claims or defenses as it has, regardless

and (2) because plaintiffs alleged that the Authority and the County, the latter of which was their jailer, set their pay. We will reverse, because plaintiffs have alleged sufficient plausible facts to state a claim that they are employees and that the County, its Municipal Authority, and the Corporation are their joint employers.

1. Joint Employment

The FLSA's minimum wage provisions apply to those that fall under the statutory definition of "employees" and "employers." 29 U.S.C. § 206. The FLSA defines "employee" as "any individual employed by an employer," "employ" as "to suffer or permit to work," and "employer" as any "person," which encompasses an "individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons" acting "directly or indirectly in the interest of an employer in relation to an employee and includes a public agency." 29 U.S.C. § 203(a), (d), (e)(1), (g).

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of consistency." Corp. Br. at 28 n.13. And it is true that plaintiffs cannot assert contradictory factual allegations that are not legitimately in doubt. *See id.* But whether plaintiffs' work was involuntary is not a fact; it is a mixed question of law and fact which is so in doubt that the District Court already denied it. The Court cannot then turn around and say plaintiffs did not allege the very thing the Court concluded had to be true—that plaintiffs' work was voluntary.

Of course, plaintiffs cannot prevail on the merits on both their TVPA claims, which require some degree of involuntary work, and their FLSA claims, which require that they worked voluntarily. But that does not bar plaintiffs from presenting both theories to a factfinder who can conclude whether the facts prove that plaintiffs' work was voluntary or involuntary.

The FLSA defines employer and employee broadly "and with 'striking breadth.'" *In re Enter. Rent-A-Car Wage & Hour Emp. Pracs. Litig.*, 683 F.3d 462, 467 (3d Cir. 2012) (quoting *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730 (1947); *Donovan v. DialAmerica Mktg., Inc.*, 757 F.2d 1376, 1382 (3d Cir. 1985) ("Congress and the courts have both recognized that, of all the acts of social legislation, the Fair Labor Standards Act has the broadest definition of 'employee.'"). That is because the FLSA "is part of the large body of humanitarian and remedial legislation enacted during the Great Depression, and has been liberally interpreted." *Brock v. Richardson*, 812 F.2d 121, 123 (3d Cir. 1987). "The Supreme Court has even gone so far as to acknowledge that the FLSA's definition of an employer is 'the broadest definition that has ever been included in any one act.'" *In re Enter. Litig.*, 683 F.3d at 467–68 (quoting *United States v. Rosenwasser*, 323 U.S. 360, 363 n.3 (1945)). Moreover, circuit courts have consistently held that prisoners as a class are not exempted from FLSA coverage. *Henthorn*, 29 F.3d at 685 (citing *Vanskike v. Peters*, 974 F.2d 806, 808 (7th Cir. 1992)). Congress has laid out "an extensive list of workers who are exempted from FLSA coverage" that does not include prisoners, so it would be an "encroachment upon legislative prerogative for a court to hold that a class of unlisted workers is excluded from the Act." *Carter v. Dutchess Cmty. Coll.*, 735 F.2d 8, 13 (2d Cir. 1984). FLSA coverage is a highly factual inquiry that requires consideration of "the circumstances of the whole activity . . . rather than any one particular factor." *DialAmerica Mktg.*, 757 F.2d at 1382 (citing *Rutherford Food Corp.*, 331 U.S. at 730). Accordingly, the FLSA employer/ employee determinations must be made in

light of the "economic reality" of the parties' relationship. *Goldberg v. Whitaker House Co-op., Inc.*, 366 U.S. 28, 33 (1961).

In *In re Enterprise Litigation*, this Court set out the test for whether a defendant is a joint employer. "[D]oes the alleged employer have: (1) authority to hire and fire employees; (2) authority to promulgate work rules and assignments, and set conditions of employment, including compensation, benefits, and hours; (3) day-to-day supervision, including employee discipline; and (4) control of employee records, including payroll, insurance, taxes, and the like." 683 F.3d at 469. The Court "emphasize[d], however, that these factors *do not constitute an exhaustive list* of all potentially relevant facts, and should not be blindly applied." *Id.* (emphasis in original) (cleaned up). We continued that "courts should not be confined to narrow legalistic definitions and must instead consider all the relevant evidence, including evidence that does not fall neatly within one of the above factors." *Id.* (cleaned up). And we noted that

> this is consistent with the FLSA regulations regarding joint employment, which state that a joint employment relationship will generally be considered to exist where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with another employer.

Id. at 468 (cleaned up).

In *Tourscher v. McCullough*, we held that both pre-trial and convicted inmates are "not entitled to minimum wages under the FLSA" for "intra-prison work." 184 F.3d 236, 243– 44 (3d Cir. 1999). To reach that conclusion as to convicted inmates, we agreed with the ten other circuits that had addressed the question and quoted analysis from the Second Circuit Court of Appeals: "The relationship is not one of employment; prisoners are taken out of the national economy; prison work is often designed to train and rehabilitate; prisoners' living standards are determined by what the prison provides; and most such labor does not compete with private employers." *Danneskjold v. Hausrath*, 82 F.3d 37, 42 (2d Cir. 1996). And we extended that rationale to pre-trial detainees by relying on analysis from the Eleventh Circuit Court of Appeals that

> The purpose of the FLSA is to protect the standard of living and general well-being of the American worker. Because the correctional facility meets [plaintiff's] needs, his standard of living is protected. In sum . . . [plaintiff]'s situation does not bear any indicia of traditional free-market employment contemplated under the FLSA.

Villarreal v. Woodham, 113 F.3d 202, 207 (11th Cir. 1997) (cleaned up).

Plaintiffs' work, however, was not the sort of "intra-prison work" for which inmates are categorically "not entitled to minimum wages under the FLSA." *Tourscher*, 184 F.3d at 243–44. The Recycling Center is located at an off-site facility to which plaintiffs and their purported class members were transported by County jail guards. The facility is owned by the

County Municipal Authority and operated, for the most part, by the Corporation, pursuant to an Operating Agreement between the Authority and the Corporation. Plaintiffs' off-site work, not done for the benefit of the jail but rather for the benefit of the public-private partnership between the Municipal Authority and the Recycling Center, is markedly different than inmates doing work within a facility "producing goods and services used by the prison" (like plaintiff in *Tourscher*'s work in the prison cafeteria).

The *Tourscher*, *Danneskjold*, and *Villarreal* opinions are limited to intra-prison labor, and each acknowledge and distinguish the Fifth Circuit Court of Appeals' opinion in *Watson v. Graves*, which held that the FLSA applied to convicted inmates allowed to work for a private construction company outside of the jail. 909 F.2d 1549, 1553–56 (5th Cir. 1990). *Watson* applied the traditional four-factor economic reality test originated by the Ninth Circuit Court of Appeals in *Bonnette v. California Health and Welfare Agency*, which is slightly less detailed than our *Enterprise* test: "whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records." 704 F.2d 1465, 1470.

By contrast, the D.C. Circuit Court of Appeals in *Henthorn* declined to apply the *Bonnette* test to incarcerated people at all and rejected the relevance of whether they work inside or outside of the prison or for public or private employers, instead asking whether (1) an inmate's labor is compelled or voluntary

and (2) their wages are set and paid by their custodian or an outside employer. 29 F.3d at 685–87. The plaintiff in *Henthorn* was a convicted federal prisoner, incarcerated at a federal prison on a naval base, and assigned to work on the grounds of the base outside of the prison. *Id.* at 683. The D.C. Circuit did not apply the traditional *Bonnette* economic reality test because "the prisoner is legally compelled to part with his labor as part of a penological work assignment" and "is truly an involuntary servant to whom no compensation is actually owed." *Id.* at 686 (citing *Vanskike*, 974 F.2d at 809 ("Thirteenth Amendment's specific exclusion of prisoner labor supports the idea that a prisoner performing required work for the prison is actually engaged in involuntary servitude, not employment.") and *Wilks v. District of Columbia*, 721 F. Supp. 1383, 1384 (D.D.C. 1989) (convicted "inmate labor belongs to the penal institution and inmates do not lose their primary status as inmates just because they perform work")).

As a preliminary matter, none of those cases involve non-convicted inmates like plaintiffs here. And the *Henthorn* test's muddled application to this case proves it too narrow and rigid to serve the FLSA's purposes.

As to the first factor, plaintiffs allege that their work was coerced, but as defendants argue, plaintiffs chose to work at the Recycling Center rather than merely complete their contempt sentences. Plaintiffs' work, as alleged, sits on a razor-thin line between involuntary and voluntary, and whether it falls to either side should be decided on the facts. And no one can say that not convicted plaintiffs' work belongs to the County or that the Thirteenth Amendment excludes

their labor from the prohibition on involuntary servitude.

The second factor—does the custodian or a private party set and provide pay?—is similarly unclear. Plaintiffs allege that the County and its Municipal Authority set inmate pay. While the County alone setting plaintiffs' pay may seem to weigh in favor of finding that they were not employees (because the County was plaintiffs' custodian), that is complicated in a case like this, where the County and its Municipal Authority financially benefitted from plaintiffs' labor. Further, plaintiffs are silent as to who actually paid them, and the County Municipal Authority seems to contend in its briefing that the Recycling Center paid them. *See* Auth. Br. at 17 ("The Authority did not set or pay any employee wages to either inmates completing community service at the recycling center or standard employees directly hired to work at the recycling center. All wages and compensation were managed and paid by the Center, out of its own contractual consideration."). And even if the County set and provided plaintiffs' pay, it did so in furtherance of its business relationship with the Recycling Center Corporation, with whom it operated the Center as a joint public-private venture (through the auspices of the Municipal Authority), to whom it contracted out plaintiffs' work as off-site sub-minimum wage labor, and who plaintiffs allege jointly controlled plaintiffs' work along with County jail guards. There is a real difference in the economic relationships at play when a custodial jurisdiction receives an economic benefit for its not convicted wards' work.

Application of the *Enterprise* test proves far more useful. Plaintiffs allege the following facts relevant to the *Enterprise* factors:

> 133. Pursuant to the Operating Agreement, County personnel select Debtors to work at the Center.
>
> 134. Upon information and belief, County personnel and LRCI personnel have authority to terminate Debtors from their assignments at the Center.
>
> 135. Defendants LRCI and the Authority jointly determine work rules and assignments.
>
> 136. Defendants LRCI, the County, and the Authority jointly determine the days and hours during which Debtors will work at the Center.
>
> 137. County personnel–specifically, prison guards–transport Debtors to the Center consistent with agreed-upon work schedules.
>
> 138. The prison guards remain on site at the Center to supervise Debtors and ensure security.
>
> 139. The prison guards and Center employees jointly supervise Debtors' work at the Center, including but not limited to ensuring that prisoners working on the line worked quickly.
>
> 140. If prisoners on the line did not move quickly enough or failed to remove all the glass from the conveyor belt, the prison guards or Center staff punished them by,

> for example, omitting portions of their prison-provided lunch.
>
> 141. Staff at the Center direct Debtors' work, including but not limited to assigning them to workstations, instructing them how to perform their tasks, and authorizing them to take breaks.
>
> 142. The Authority and the County set Debtors' pay at $5 per day.
>
> 143. Under the terms of the Operating Agreement, LRCI has the authority to set the rates of compensation of any employees of the Center.

App. 129–30 ¶¶ 133–43. These all indicate plaintiffs' joint employment by the County, its Municipal Authority, and the Corporation.

Also relevant to the economic reality of plaintiffs' relationships with the County, the Municipal Authority, and the Corporation, is the fact that the County and Authority contracted out plaintiffs' work to the Corporation for a joint economic benefit. Plaintiffs and their cohort did the facility's integral and necessary grunt work of hand-sorting garbage in lieu of the Corporation employing hourly-paid workers. That work "benefited Defendants by reducing the need for paid employees and artificially reducing their labor costs through access to a steady supply of sub-market rate labor for which Defendants did not provide unemployment and health insurance, worker's compensation, minimum wages, and/or overtime premiums." App. 138 ¶ 217. That is true as to the County, which had custody of plaintiffs and provided their labor, and its Municipal Authority, which owned

the facility out of which the Recycling Center ran and shared the profits that resulted from its operation. It is also true for the Corporation, which contracted with the County's Municipal Authority to run the Recycling Center. Pursuant to the Operating Agreement between the Recycling Center and the Authority, the "Authority shall use its best efforts to . . . provide [the Center] with the same number of Prisoners from the Lackawanna County Prison that have historically worked at the Center as part of their work release program as security requirements dictate." App. 150. As such, the Recycling Center relied on plaintiffs and other inmates to do work that other recycling facilities had to hire people to do.

The economic reality of plaintiffs' relationship with the County, its Municipal Waste Management Authority, and the Corporation is only truly understood by looking at *all* of those facts, which resemble an employee-joint employer relationship far more than the typical forced prison work program.

> The purposes underlying the FLSA bolster our conclusion. "The central aim of the Act was to achieve, in those industries within its scope, certain minimum labor standards." *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292, 80 S. Ct. 332, 335, 4 L.Ed.2d 323 (1960). Congress sought to correct labor conditions that are "detrimental to the minimum standard of living necessary for health, efficiency, and general well-being of workers." 29 U.S.C. § 202(a). In addition, the FLSA was intended to prevent unfair competition in commerce from the use of underpaid labor. 29 U.S.C. § 202(a)(3).

Vanskike, 974 F.2d at 810.

While plaintiffs' basic needs were provided for by Lackawanna County, plaintiffs allege that they were only incarcerated because they were unable to pay their purges. They needed money for a reason that the typical incarcerated person does not: to satisfy their contempt orders and secure their freedom from incarceration. Thus, while courts may conclude that typical prisoners do not need a minimum wage because they are fed and housed by the state, plaintiffs here had a concrete, important financial objective that they contend was the reason they worked at the Center. And as to competition in commerce, the Corporation here surely competed with other local and regional recycling facilities who had to hire employees; the Corporation, on the other hand, got an unfair advantage in the form of nearly free labor funneled from its business partner, the County—who stood to profit from the Corporation's success. Plaintiffs' work at the Center mirrors the work in *Watson*, where the defendant had access to a "pool of workers" whom he paid "token wages" far below the minimum wage, and "incurred no expenses for overtime, unemployment insurance, social security," etc. and did not need to worry about competition. *Watson*, 909 F.2d at 1555. The situations in *Watson* and here are "the very problems that FLSA was drafted to prevent—grossly unfair competition among employers and employees alike." *Id.*

We are not persuaded that the passage of the Ashurst-Sumners Act of 1935, *see* 18 U.S.C. §§ 1761–62, is reason to preclude from FLSA protection prisoners who partake in labor outside prison walls and who perform labor that does not benefit the

prison. While the Ashurst-Sumners Act "regulates the interstate transportation of prison-made goods to avoid competition between low-cost prison labor and free labor," *Danneskjold*, 82 F.3d at 42, "prison labor might implicate unfair-competition concerns when prisoners are paid below minimum wage to work for 'a company that was not providing services to the prison and that competed with companies required to pay wages set by the FLSA.'" *Gamble v. Minnesota State-Operated Servs.*, 32 F.4th 666, 671 (8th Cir. 2022) (quoting *Danneskjold*, 82 F.3d at 44). That is arguably the situation at hand. As stated above, the Corporation competed with other recycling facilities that had to hire employees and did not get the benefit of nearly free labor. Plaintiffs' work was done off-site and for the benefit of a public-private partnership, unlike in *Harker* where the prisoners worked at a workshop located in the prison and produced goods that reached the open market in limited ways. *See Harker v. State Indus.*, 990 F.2d 131, 136 (4th Cir. 1993). Plaintiffs' work was also not that of an inmate performing work assignments, such as janitor or kitchen worker, directly for the benefit of the prison. *See Vanskike*, 974 F.2d at 812. Here, the benefits of Plaintiffs' labor do not redound to the prison. The existence of the Ashurst-Sumners Act does not cause us to ignore the stark differences between work done for the prison's benefit and outside work done at least partially to benefit a private corporation.

Plaintiffs thus sufficiently allege that, while working at the Center, they were the employees of the County, the Authority, and the Corporation, acting as joint employers.

2. Statute of Limitations

The Corporation also argues that Burrell and Huzzard's claims are barred by the FLSA's statute of limitations, as their violations occurred in 2014 and 2013, respectively, and they did not raise their FLSA claims when plaintiffs filed their Second Amended Complaint in 2019.

Plaintiffs contend that the statute of limitations should be equitably tolled because defendants failed to conspicuously post required notices to alert them to their rights as employees and "actively misled Plaintiffs and members of the FLSA Collective regarding the nature of their relationship with Defendants by suggesting to them that they were not employees with rights but rather prisoners whom Defendants could force to perform work as punishment and as a condition of their liberty," and "[t]hese actions prevented Plaintiffs and those similarly situated from understanding that they had a right to federal minimum wage during the time they worked at the Center." App. 127 ¶¶ 118–119.

While we have not decided whether an employer's failure to post required FLSA notices, by itself, tolls the statute of limitations, at least one other Court of Appeals has. *See Cruz v. Maypa*, 773 F.3d 138, 146–47 (4th Cir. 2014). In *Cruz*, the Fourth Circuit Court of Appeals extended its prior precedent—holding "that the 180–day filing requirement of the Age Discrimination in Employment Act ("ADEA") was tolled by reason of the plaintiff's employer's failure to post statutory notice of workers' rights under the Act"—to the FLSA context, because "the notice requirements in the ADEA and the FLSA," and their purposes, "are almost identical," and, unlike the ADEA, the

FLSA lacks an administrative filing requirement. *Id.* (citing *Vance v. Whirlpool Corp.*, 716 F.2d 1010 (4th Cir. 1983)). We have held the same in the ADEA context, and a panel of our Court applied that holding in the Title VII context. *See Bonham v. Dresser Indus., Inc.*, 569 F.2d 187, 193 (3d Cir. 1977); *Hammer v. Cardio Med. Prods., Inc.*, 131 F. App'x 829, 831–32 (3d Cir. 2005). And we need not categorically conclude that failure to post notices is itself sufficient to equitably toll the limitations period. Plaintiffs here allege more: that defendants actively misled them by failing to post notices and telling them that they were not employees with rights but rather prisoners who could be forced to work for below the minimum wage. App. 126–27 ¶¶ 117–118. These allegations amount to "active misleading" such that equitable tolling applies. *See Hedges v. United States*, 404 F.3d 744, 751 (3d Cir. 2005).[11]

Accordingly, plaintiffs' FLSA claims against the County, the Authority, and the Corporation are not barred by the statute of limitations.

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11 Additionally, Burrell's FLSA claim relates back to the filing of his First Amended Complaint. His FLSA claim in the Second Amended Complaint "arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." Fed. R. Civ. P. 15(c)(1)(B). Burrell's *pro se* First Amended Complaint alleges that he was paid far below the minimum wage to work full days at the Center, and that he was told he could be treated as such because he was a prisoner. With regard to his FLSA claim in the SAC, that satisfies Fed. R. Civ. P. 15(c)(1)(B).

F. Pennsylvania Wage Payment and Collection Law

The Pennsylvania Wage Payment and Collection Law requires employers to pay employees their promised wages "in lawful money of the United States or check." 43 Pa. Stat. § 260.3(a). That requirement is not waivable. *Id.* § 260.7. The law "does not create a right to compensation. Rather, it provides a statutory remedy when the employer breaches a contractual obligation to pay earned wages. The contract between the parties governs in determining whether specific wages are earned." *Weldon v. Kraft, Inc.*, 896 F.2d 793, 801 (3d Cir. 1990).

The District Court first held that the law did not apply to plaintiffs based on its earlier conclusion that there was not an employer-employee relationship in the FLSA context. But it also held that even if there was, plaintiff failed to allege an implied contract or a breach thereof. The Court noted that while Burrell alleged he was told by prison staff that he would receive $5.00 a day for working at the Center, Huzzard and Stuckey did not allege that they were told as much, "only that they in fact received $5.00 a day and those payments were deposited in their commissary accounts." App. 82. It then extrapolated from those facts the conclusion that "[t]he Second Amended Complaint contains no allegation that a person acting with the authority to speak for any Defendant established that Plaintiffs would be paid $5.00 for their services. Thus, the Court cannot infer from the Second Amended Complaint that the parties 'agreed on the obligation to be incurred.'" App. 83 (quoting *Oxner v. Clivedon Nursing & Rehab. Ctr. PA, L.P.*, 132 F. Supp. 3d 645, 649 (E.D. Pa. 2015)) (cleaned up).

But the District Court's conclusion ignores its own acknowledgment that Burrell alleged that County prison staff—who presumably have the authority to speak for the County—told him that he would be paid $5.00 a day for his work at the Center. That directly contradicts the inference that plaintiffs fail to allege that anyone "acting with the authority to speak for any Defendant established that Plaintiffs would be paid $5.00 for their services." App. 83. That is exactly what Burrell has alleged.

And it is no far stretch to identify an implied agreement. Plaintiffs allege that "[t]he Authority and the County set Debtors' pay at $5 per day." App. 130 ¶ 142. Further, as the Authority points out in its brief, 37 Pa. Code § 95.235(3) states that "[w]ritten local policy must require that inmates who participate in a work program (other than personal housekeeping and housing area cleaning) receive compensation. Written local policy must specify the type and amount of compensation." As plaintiffs allege that the County determined what plaintiffs would be paid for their services, and by law the County must specify that amount in a written policy, plaintiffs allege sufficient facts from which it can be reasonably implied that the County's written policy informed plaintiffs that they would be paid $5.00 a day for their work at the Center, which they then gave in exchange for that money.

The problems with plaintiffs' claims, however, are more fundamental. The crux of their claims is that "[p]ayment into the commissary accounts is not equivalent to payment by lawful money of the United States or check. Commissary accounts, among other things, earn no interest, are tightly controlled by the

Prison, and are subject to various mandatory deductions by the Prison." App. 131–32 ¶ 160. But cash and checks, on their own, earn no interest either. Cash and checks are also presumably contraband within the prison, which justifies depositing plaintiffs' pay into their commissary accounts, just as cash and checks would be deposited. And plaintiffs do not allege specific deductions that they contend made payment into their commissary accounts different than "lawful money." Plaintiffs thus fail to state Pennsylvania Wage Payment and Collection Law claims.

G. Unjust Enrichment

The District Court dismissed plaintiffs' unjust enrichment claim because it was pleaded as a companion to plaintiffs' forced labor and involuntary servitude claims, and where the unjust enrichment claim rests on the same improper conduct as the underlying tort claim, the unjust enrichment claim will rise or fall with the underlying claim. As plaintiffs' TVPA claims survive against the County, the Authority, and the Corporation, so do their unjust enrichment claims.

Further, plaintiffs contend that they "plausibly alleged the three elements of an unjust enrichment claim, independent from their TVPA and Thirteenth Amendment claims." Pls.' Br. at 53. Those three elements are (1) conferring a benefit on defendant; (2) defendant's knowledge of the benefit; and (3) circumstances are such that defendant's retention of that benefit would be unjust. *See Allegheny Gen. Hosp. v. Philip Morris,* 228 F.3d 429, 447 (3d Cir. 2000). They allege that they conferred the benefits of

their labor by working at the Center and the resulting lower operating costs on all defendants. They allege all defendants knowingly obtained those benefits. And they allege that defendants' retention of those benefits was not only unjust because it was the result of plaintiffs' unlawfully forced labor, but because Defendants got those benefits "from an unfair competitive advantage by paying subminimum wages into commissary accounts they tightly control." Pls.' Br. at 54. That species of unjust enrichment is more akin to a contract claim than a tort claim, and rises and falls with their FLSA claims rather than their TVPA claims.

As plaintiffs plausibly allege that the County, its Municipal Authority, and the Corporation unjustly retained the yield of their labor, whether by way of a TVPA violation or a FLSA violation, plaintiffs' unjust enrichment claims on both theories survive against those defendants.

IV. Conclusion

For the foregoing reasons, we will affirm dismissal of plaintiffs' Thirteenth Amendment and Pennsylvania Wage Payment and Collection Law claims in full, and of their TVPA and RICO claims against the DeNaples brothers. We will reverse dismissal of their TVPA, FLSA, Pennsylvania Minimum Wage Act, and unjust enrichment claims against the County, the Authority, and the Corporation, and of their RICO claims against the Corporation and remand.

MATEY, CIRCUIT JUDGE, CONCURRING IN PART AND DISSENTING IN PART

Choices usually come with consequences. We can honor our obligations, pursue opportunity, make good on our debts. Or we can walk the other way and decline to play by the rules. Ordinarily, law fences these two paths, rewarding industry and honesty, penalizing irresponsibility. The majority's decision moves that line. While I agree Plaintiffs fail to state claims under the original meaning of the Thirteenth Amendment[1] and the Pennsylvania Wage Payment

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[1] After an abhorrent chapter in our Nation's history, the Thirteenth Amendment confirmed the natural rights of all persons through "a practical application of that self-evident truth, 'that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness.'" Jacobus tenBroek, *Thirteenth Amendment to the Constitution of the United States: Consummation to Abolition and Key to the Fourteenth Amendment*, 39 Calif. L. Rev. 171, 178 (1951) (quoting Cong. Globe, 38th Cong., 2d Sess. 142 (1865) (statement of Rep. Godlove S. Orth)). The Amendment reiterated the natural law that supports our Constitution, making slavery irreconcilable "with the fundamental principles upon which our government rests." Joel Tiffany, *A Treatise on the Unconstitutionality of American Slavery* (1849), *reprinted in* 1 The Reconstruction Amendments: The Essential Documents 237, 237–38 (Kurt T. Lash ed., 2021) ("All men are possessed of the same natural rights, secured by the same natural guarantys—held by the same tenure—their title is derived from the same source. . . . Deny these truths, and you destroy the foundation upon which society is based. Violate them, and you are at war with yourself, with Man and God."). The Amendment, rooted in "our ancient faith [that] the just powers of governments are derived from the consent of the governed," recognized that slavery's existence was "a total violation of this principle . . . [of] self government." Abraham Lincoln, Speech at Peoria, Illinois (Oct. 16, 1854), *reprinted in* 2 The

and Collection Law, the majority rescues Plaintiffs from their own choices by allowing a host of statutory and common law claims. Respectfully, the District Court's decision dismissing the entire action got it right. Despite having the means, Plaintiffs did not pay child support. Despite Pennsylvania law giving them recourse to modify that order, they filed no petitions. Despite having the option not to, Plaintiffs asked to work during their confinement for contempt.

Collected Works of Abraham Lincoln 247, 265–66 (Roy Basler ed., 1953). "By the law of nature all men are born free and equal, and man has no *jus dominii* in man. . . . [F]or freedom is the natural right of every man, and slavery is abridgment by positive law." *Slavery and the Incoming Administration*, *in* 2 Brownson's Quarterly Review 65, 109 (1857). *See also Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 624 (1857) (Curtis, J., dissenting) ("Slavery, being contrary to natural right, is created only by municipal law."). The Thirteenth Amendment codified the truth that slavery could be treated as constitutional "only by disregarding the plain and common-sense reading of the Constitution itself." Frederick Douglass, *The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?* (1860), *reprinted in* 1 The Reconstruction Amendments: The Essential Documents 303, 308. *See also* Peter C. Myers, *Seed-Time and Harvest-Time: Natural Law and Rational Hopefulness in Frederick Douglass's* Life and Times, 99 J. Afr. Am. Hist. 56 (2014), *reprinted in* A Political Companion to Frederick Douglass 285, 287 (Neil Roberts ed., 2018) ("Douglass frequently invoked the law of nature both because he was convinced of its profound truth and also by virtue of its utility in various practical applications.").

None of Plaintiffs' claims approach a violation of the natural principles guarded in the Reconstruction Amendments, nor could the nature of their work approach the atrocities the Thirteenth Amendment protects against. Calling what amounts to a wage and hour dispute a violation of these laws would be a most remarkable departure from the Amendment's original meaning and disrespectful to that historic achievement.

None of these choices is disputed, none of the facts challenged. Still, claims of forced servitude, human trafficking, and unfair labor can now proceed. But regrets do not demand remedies in federal court, and the fact Plaintiffs' choices produced unappealing consequences does not require new definitions of torture and labor. So I dissent in part from the majority's decision.

I.

This action began (and really ended) when Plaintiffs failed to pay child support. No party argues that the court orders directing Plaintiffs to provide for their children were unlawful. None dispute that Plaintiffs failed to make those payments to their families. And there is no disagreement what happened next: After long periods without paying, each was cited for civil contempt. Hearings followed and a judge found, beyond a reasonable doubt,[2] that each Plaintiff had the present ability to pay the amounts owed to their children.[3] Pay that amount, the court ordered, or serve a fixed term in prison for contempt. That order and those findings have never been challenged. Not at the contempt hearing. Not on appeal.

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[2] *See Hyle v. Hyle*, 868 A.2d 601, 604–05 (Pa. Super. Ct. 2005) ("To be found in civil contempt, a party must have violated a court order" and "the court, in imposing coercive imprisonment for civil contempt, should set conditions for purging the contempt and effecting release from imprisonment with which it is convinced *beyond a reasonable doubt*, from the totality of the evidence before it, the contemnor has the present ability to comply." (citations and quotations omitted)).

[3] Child support payments follow guidelines based on the means of the parent and the needs of the child. 23 Pa. C.S. § 4322(a).

Not in a petition to modify the payments, a petition that "may be filed *at any time* and shall be granted if the requesting party demonstrates a substantial change in circumstances." 23 Pa. C.S. § 4352(a) (my emphasis). In short, Plaintiffs skipped their support payments and wound up in contempt of court. Decisions have consequences.

So how did this turn into a federal question? Neither Plaintiffs nor the majority are clear. "The law in [Pennsylvania] is . . . that the trial court must set the conditions for a purge in such a way as the contemnor has the present ability to comply with the order." *Hyle*, 868 A.2d at 605. Meaning Plaintiffs could have paid their debt and purged their contempt. Or, if their circumstances shifted after the hearing, they could have asked for relief under 23 Pa. C.S. § 4352(a). Why did Plaintiffs ignore these options? The Complaint—their second—offers no answers. Instead, there is a single statement that *one* Plaintiff, "Mr. Burrell[,] did not have $2,129.34—in fact, he had nothing close to that." App. 115, ¶ 28. And one other line, nearly identically worded for each Plaintiff, noting that, "lacking any other option, [Plaintiff] was compelled to work at the Center." *See* App. 117, ¶ 36; App. 120, ¶ 67; App. 122, ¶ 88. Allegations that fall below the pleading standards we regularly enforce in matters prepared by far less sophisticated counsel. *See, e.g.*, *Fantone v. Latini*, 780 F.3d 184, 193 (3d Cir. 2015) (noting that even with pro se complaints, "we nonetheless review the pleading to ensure that it has 'sufficient factual matter, accepted as true, to state a claim to relief that is plausible on [its] face'" (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009))). That, as the District Court concisely concluded, means "the

undisturbed Court of Common Pleas orders conclusively established that Plaintiffs were able to pay the purge at the time of their incarceration, [and that] Plaintiffs' conclusory assertions regarding 'lacking any option' but to work at the Center and Plaintiff Burrell's statement that he 'did not have $2,129.43' are not entitled to a presumption of truth." App. 62 (citations omitted).

We do not face men wrongfully imprisoned. Or, as the United States awkwardly attempted to analogize, women abducted and forced into sex slavery. *See* Oral Arg. at 34:03– 34:16 (Counsel for the United States) ("You can imagine victims of sex trafficking who aren't—they aren't—chained in the room. They're not locked in the basement. They could potentially leave."). Plaintiffs were found in willful contempt of an order to financially support their children. With ample process, each received an opportunity to cure his contempt by paying what he owed. And beyond a reasonable doubt, Plaintiffs had the ability to pay[4] and avoid prison altogether.[5] If all of that is wrong,

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[4] "[M]odification may be applied to an earlier period if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition." 23 Pa. C.S. § 4352(e). True, the process expressly excludes "incarceration for nonpayment of support." 23 Pa. C.S. § 4352(a.2). But the purge amount is set before surrender and calculated on the present ability to pay. Meaning that right now, Plaintiffs can challenge the purge amount that led to their contempt.

[5] As with the District Court, we need not "determine that the state court judgment was erroneously entered in order to grant the requested relief." *In re Knapper*, 407 F.3d 573, 581 (3d Cir. 2005) (citation omitted). "[I]f the circumstances in existence at

Commonwealth courts were, and still are, available to reconsider.

Properly framed, Plaintiffs' claims should be dismissed. Instead, the majority makes room for claims of human trafficking and unfair labor, reading new meanings into old laws to draw conclusions reached by no other federal circuit. That, I believe, is erroneous.

II.

Begin with the Trafficking Victims Protection Act ("TVPA"). The TVPA prohibits "knowingly provid[ing] or obtain[ing] the labor or services of a person" through a host of unlawful means or "knowingly benefit[ting]" from joining a venture involving forced labor. 18 U.S.C. § 1589(a), (b). Claims under the TVPA usually "involve circumstances such as squalid or otherwise intolerable living conditions," "threats of legal process such as arrest or deportation," and "exploitation of the victim's lack of education and familiarity with the English language, all of which are 'used to prevent [vulnerable] victims from leaving and to keep them bound to their captors.'" *Muchira v. Al-Rawaf*, 850 F.3d 605, 618–19 (4th Cir. 2017) (quoting *United States v. Callahan*, 801 F.3d 606, 619 (6th Cir. 2015)) (alteration in original).[6]

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the time the state court entered the contempt orders changed thereafter," "Plaintiffs could have availed themselves of the provisions of 23 Pa. C.S. § 4352" to modify the orders. App. 52.

[6] Not surprisingly, reported TVPA decisions turn on appalling criminal conduct and shocking depravity. *See, e.g.*, *Bistline v. Parker*, 918 F.3d 849 (10th Cir. 2019) (members of a congregation shielded a man who engaged in child rape, forced labor, and extortion); *Ricchio v. McLean*, 853 F.3d 553, 555 (1st Cir. 2017) (Souter, J.) (prostitution scheme where "McLean physically and

Plaintiffs allege three theories, but the majority relies on only one: that Plaintiffs' labor was procured through the "abuse or threatened abuse of law or legal process." 18 U.S.C. § 1589(a)(3), (b). To sustain a claim under the TVPA's "abuse of law" clause, Plaintiffs must plausibly allege the "use of a law or legal process . . . in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action." 18 U.S.C. § 1589(c)(1). Plaintiffs point to the direct acts of the County, and the indirect beneficiaries of those acts: the Authority, Corporation, and DeNaples. Meaning Plaintiffs must adequately allege first, that their work at the recycling facility was obtained through an abuse of law and legal process, and second, that Defendants knew, or recklessly disregarded, the fact that their labor was obtained through

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sexually abused Ricchio, repeatedly raping her, starving and drugging her, and leaving her visibly haggard and bruised"); *United States v. Callahan*, 801 F.3d 606, 620 (6th Cir. 2015) (a developmentally disabled young woman and her minor daughter deprived of food, locked in a basement for hours on end, forced to beat each other on camera while "Defendants threatened to show the video to the police and Children's Services if [the young woman] talked to any strangers, went to her mom's house, or otherwise 'messed up'"); *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013) (purchasers of commercial sex acts with children); *United States v. Dann*, 652 F.3d 1160 (9th Cir. 2011) (immigrant housekeeper who, among other things, was forbidden from leaving the apartment without permission, denied her passport, threatened with financial harm, and threatened that her children would suffer harm if she were to leave the employment); *United States v. Todd*, 627 F.3d 329 (9th Cir. 2010) (prostitution ring of young girls who were beaten, threatened, and, in at least one instance, forced to undergo an abortion). Sorting recyclables is nothing of the sort.

unlawful means. The Complaint lacks any allegation, no matter how generously construed, that plausibly satisfies these requirements

First, there is no plausible allegation Plaintiffs worked at the recycling facility because of an abuse of law. Plaintiffs start generally, stating Defendants (all of them) "force Debtors to work at the Center before they can 'qualify' for work release. This means that for potentially hundreds of Debtors, forced labor has been the price of freedom from incarceration."[7] App. 113, ¶ 3. That "prevent[s] Debtors from earning wages through work release that would benefit Debtors and their children, who would receive those wages through child support payments." App. 113, ¶ 4. Meaning Plaintiffs are held as captives, unable to pay their way to freedom by earning enough to pay their debts. Appalling, and a likely violation of the Thirteenth Amendment, if true.

Thankfully, it is not. Because, again, Plaintiffs have not been incarcerated as debtors and are not ordered to work to pay their creditors. They are civil contemnors found capable of paying child support amounts lawfully ordered. Lost in the discussion, but plain in the law and facts: Plaintiffs did not have to participate in the Commonwealth's discretionary work release program.[8] That is because the work program

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[7] The Complaint refers to Plaintiffs collectively as "Debtors" in a clumsy attempt, one supposes, to imply a violation of *Bearden v. Georgia*, 461 U.S. 660 (1983).

[8] *See* 42 Pa. C.S. § 9812 ("Nothing in this chapter shall be construed as creating an enforceable right in any person to participate in an intermediate punishment program in lieu of incarceration."). *See also Maldonado v. Karnes*, No. 3:CV-14-1330, 2014 WL 5035470, at *5 (M.D. Pa. Oct. 8, 2014) ("An inmate

is not designed to provide Plaintiffs with an opportunity to earn money to purge their contempt. Rather, the work program "fills gaps in local correctional systems and addresses local needs through expansion of punishment and services available to the court." 42 Pa. C. S. § 9803. Calling Plaintiffs "Debtors" in a "prison" does not make it so.[9]

Second, Plaintiffs do not, and cannot, allege Defendants knowingly benefitted from an abuse of law, 18 U.S.C. § 1589(b), or a "venture" that they "knew or should have known [was] engaged in an act in violation of" the TVPA, 18 U.S.C. § 1595(a).[10] *See*

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does not have a protected liberty or property interest in prison employment. The right to earn wages while incarcerated is a privilege, not a constitutionally guaranteed right." (citing *James v. Quinlan*, 866 F.2d 627, 629–30 (3d Cir. 1989); *Bryan v. Werner*, 516 F.2d 233, 240 (3d Cir. 1975) ("We do not believe that an inmate's expectation of keeping a particular prison job amounts either to a 'property' or 'liberty' interest entitled to protection under the due process clause.")).

[9] Left mostly unsaid is what role the Commonwealth courts are alleged to play in this scheme. Plaintiffs dance up to the line stating, "[s]ince at least 2006, a significant number of the prisoners supplied . . . for work at the Center have been placed in the Prison following civil contempt proceedings for failure to pay child support." App. 130, ¶ 145. And that "[u]pon information and belief, individuals deemed able to pay their [child] support obligations are routinely held in civil contempt." App. 130, ¶ 148. That suggests Defendants enjoy a steady supply of labor courtesy of an at least tacitly complicit judiciary. Such shocking suggestions demand far more specificity if they are to support a civil cause of action.

[10] On January 5, 2023, Congress enacted the Abolish Trafficking Reauthorization Act of 2022, which amended § 1595(a) to extend liability to "whoever knowingly benefits or attempts or conspires to benefit" from a TVPA violation. Pub. L. No. 117-347, 136 Stat. 6199, 6200. Even assuming the amendment

Muchira, 850 F.3d at 622–23. Plaintiffs, and the majority, offer a single speculation: "No individual who could pay his way to freedom would choose to work in the dangerous conditions of the Recycling Center for just five dollars per day." Maj. Op. at 12, 23. But that conclusion contains three problems. For one, it is not alleged. For another, it could not be alleged because, at the risk of repetition, there is no allegation that the Commonwealth court erred in setting the purge amount. And finally, if there were error, it could be corrected in the Commonwealth courts at any time. This is my key point of disagreement with the majority. Speculation about Plaintiffs' choices cannot substitute for the allegations in the second amended complaint. Perhaps it is puzzling why they chose jail over supporting their children. But it is equally puzzling that Plaintiffs would ignore the ample opportunities to remedy an incorrect contempt finding, particularly with the able assistance of the half-dozen attorneys and students from firms, schools, and clinics backed by public interest groups and the United States Department of Justice. Yet that is where we stand.

Nor can the invocation of the "dangerous and disgusting conditions," Maj. Op. at 5, and colorful descriptions of "sorting through trash," Maj. Op. at 5, 12, carry the ominous implications Plaintiffs seek. All can agree that working at a recycling factory is dirty, difficult, and demanding. Respectfully, to both the majority and the millions of workers who serve neighborhoods in the Commonwealth and across the

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applies retroactively, the new language does not cure Plaintiffs' pleading deficiencies which fail to show a knowing abuse of the law as required by the TVPA.

nation, that is the nature of physical labor. Not all sit at a keyboard. Many would not even if given the choice. The suggestion that because work is rigorous it must also be repugnant finds no support in law, logic, or human experience.[11] And it cannot shoulder the weight the majority assigns, that knowledge of recycling facility conditions allows an inference of knowledge of an abuse of the law. Because there is no allegation that Defendants were aware Plaintiffs supposedly could not pay their purge amounts and could not redress that legal error through the means provided by the Commonwealth, and thus could be preyed upon by Defendants' exploitative venture. The knowledge requirement of the TVPA demands much more than an awareness of "grueling" work, Maj. Op. at 17, a contrast illustrated by other cases.

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[11] By describing the work Plaintiffs do as repulsive, counsel perpetuates the stigmatization of "dirty work," the "tasks and occupations that are likely to be perceived as disgusting or degrading." *See* Blake E. Ashforth & Glen E. Kreiner, *"How Can You Do It?": Dirty Work and the Challenge of Constructing a Positive Identity*, 24 Acad. Mgmt. Rev. 413, 413 (1999). Occupations like recycling are essential to society but haunted by "[p]hysical taint," either by association "with garbage, death, [or] effluent," or involving "particularly noxious or dangerous conditions." *Id.* at 415. So the tasks are hidden, the workers "cast as taboo." *Id.* at 416. Yet, "abundant qualitative research from a wide variety of occupations indicates that people performing dirty work tend to retain relatively *high* occupational esteem and pride." *Id.* at 413. Rather than bemoaning the conditions of dirty work with patronizing concerns, we might note the importance of such labor and its consistency with the goals of the Commonwealth's inmate work program "[t]o provide opportunities for offenders . . . [to] enhance their ability to become contributing members of the community." 42 Pa. C.S. § 9803.

Take *Ricchio v. McLean*, where a woman was abducted, driven to another state, and taken to a motel where she was "physically and sexually abused" for days, with her tormentor "raping her, starving and drugging her, and leaving her visibly haggard and bruised," all part of "grooming her for service as a prostitute subject to his control." 853 F.3d at 555. The motel owners' knowledge was evident from the "high-fives" with the abductor in the parking lot, and visits to the room where they "nonchalantly ignored Ricchio's plea for help in escaping" and witnessed Ricchio kicked and forced back to the rented room "when she had tried to escape." *Id.* All creating a "plausible understanding" that the motel owners knew their lodge was being used for rape and assault. *Id.*

Or *Bistline v. Parker*, where attorneys "acknowledged . . . serious legal questions" about "graphic evidence of the ceremonial rape of little girls." 918 F.3d at 875 (cleaned up). Still, defendants discussed their client's "illegal goals" and aided a "scheme to 'cloak' forced labor and ritual rape of young girls 'with the superficial trappings of legal acceptance.'" *Id.* (citations omitted).

Bistline and *Ricchio* illustrate the kind of extra-ordinary and unusual circumstances necessary to infer knowledge for TVPA claims. Motel managers cannot feign ignorance of sex trafficking when they see a woman locked in a room, battered and pleading to escape. Lawyers may not shrug off evidence of child abuse and rape and return to drafting trusts. The knowledge suggested in this case shatters that standard and turns the TVPA's goal of "effectuat[ing] the constitutional prohibitions against slavery and involuntary servitude" into an employment action.

Muchira, 850 F.3d at 625. That is wrong, and as the District Court correctly concluded, Plaintiffs' TVPA claims should be dismissed.[12]

III.

Arguing in the alternative, Plaintiffs allege that if they are not slaves or involuntary servants, they must be employees under the Fair Labor Standards Act ("FLSA") and the Pennsylvania Minimum Wage Act.[13] Intricate questions about whether Defendants are employers, or joint employers, under the FLSA abound. But they need not be answered because Plaintiffs are contemnors, not employees, under the best reading of the FLSA.

Analyzing the FLSA requires that we "proceed[ ] methodically" through the statute's text. *Badgerow v. Walters*, 142 S. Ct. 1310, 1317 (2022). The goal, as always, is to give effect to the legislature's charge, *Brown v. Barry*, 3 U.S. (3 Dall.) 365, 367 (1797), as expressed in the text's "ordinary meaning . . . at the time Congress enacted the statute," *Perrin v. United States*, 444 U.S. 37, 42 (1979). This is a "fundamental canon of statutory construction." *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018) (quoting *Perrin*, 444 U.S. at 42). *See also Minor v. Mechanics' Bank of Alexandria*, 26 U.S. (1 Pet.) 46, 64 (1828).

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[12] Seeing no TVPA claim stated, I also see no predicate act supporting a RICO claim. 18 U.S.C. § 1962(c); *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 372 & n.69 (3d Cir. 2010).

[13] Like the majority, I review Plaintiffs' claims under the FLSA, 29 U.S.C. § 206, and the Pennsylvania Minimum Wage Act, 43 Pa. C.S. § 333.101 *et seq.*, under the same standards. *See Ford-Greene v. NHS, Inc.*, 106 F. Supp. 3d 590, 612–13 (E.D. Pa. 2015).

We interpret the language using all "the standard tools of interpretation," *Kisor v. Wilkie*, 139 S. Ct. 2400, 2414 (2019), reading the words "in their context and with a view to their place in the overall statutory scheme," *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1888 (2019) (citation omitted). *See also United States v. Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805) ("It is undoubtedly a well established principle in the exposition of statutes, that every part is to be considered, and the intention of the legislature to be extracted from the whole."). And where these efforts lead to multiple ordinary meanings, we adopt "the best reading" of the statutory text. *Yellen v. Confederated Tribes of Chehalis Rsrv.*, 141 S. Ct. 2434, 2442 (2021).

A.

The FLSA states an "employee" is "any individual employed by an employer," 29 U.S.C. § 203(e)(1), an explanation that directs us to technical rather than ordinary meaning. *See Lopez v. Att'y Gen.*, 49 F.4th 231, 234 n.4 (3d Cir. 2022). While ordinary and competent English speakers likely have a reasonable understanding of the word, the FLSA creates a legal distinction to extend particular rights and benefits to a limited class. *See Moskal v. United States*, 498 U.S. 103, 121 (1990) (Scalia, J., dissenting) ("[W]hen a statute employs a term with a specialized legal meaning relevant to the matter at hand, that meaning governs."). The definition of "employee" is part of the specialized guidelines for employers to comply with requirements for wages and hours, a way to know who deserves what. *Cf. Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 18 (2011) (Scalia, J., dissenting) (looking to the context of the

phrase "filed any complaint" within the FLSA and determining that "at the time the FLSA was passed (and still today) the word [complaint] when used in a legal context has borne a specialized meaning"). So the term "must be read by judges with the minds of the specialists." Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 536 (1947).[14]

Legal sources at the FLSA's enactment defined "employee" as "[o]ne who works for an employer," generally including "a person working for salary or wages," but "rarely to the higher officers of a corporation or government or to domestic servants." Black's Law Dictionary 657 (3d ed. 1933). Those general concepts yield to specific applications, "and whether one is an employee or not will depend upon particular facts and circumstances." *Id.*; *see, e.g.*, *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 571–72 (1943) ("The applicability of the Act is dependent on the character of the employees' work."). So our focus is not on "isolated factors but rather upon the circumstances of the whole activity." *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730 (1947).

The "circumstances of the whole activity" here, the genesis of Plaintiffs' work, is their custody. Without the contempt finding, they would not be committed to the Lackawanna County Prison. And Plaintiffs agree they are in custody and that their

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[14] Even though there is not much difference between the legal and ordinary meaning. *See* Webster's New International Dictionary of the English Language 718 (1930) (defining employee as "[o]ne employed by another; a clerk or workman in the service of an employer, usually disting. from *official* or *officer*, or one employed in a position of some authority").

work is tied to their incarceration. App. 115–16, ¶¶ 24–29 (Burrell); App. 119–20, ¶¶ 60–63, 67 (Huzzard); App. 121–22, ¶¶ 83–88 (Stuckey). Custody is another legal term, meaning "the detainer of a man's person by virtue of lawful process or authority," an "actual imprisonment." Black's Law Dictionary 493–94 (3d ed. 1933).[15] *See also Kelley v. Oregon*, 273 U.S. 589, 591 (1927) (describing the plaintiff as being "constantly in the custody of the warden of the penitentiary inside and outside of the courtroom, during the trial" and finding "[i]t is a new meaning attached to the requirement of due process of law that one who is serving in the penitentiary for a felony and while there commits a capital offense must, in order to secure a fair trial, be entirely freed from custody"); *Sibray v. United States*, 185 F. 401, 403–04 (3d Cir. 1911) ("The custody complained of must be actual and not constructive" and contrasting someone "in . . . custody or control" with one "out on bail."); *Smith v. Commonwealth*, 59 Pa. 320, 324 (1869) ("Custody is the detainer of a person under lawful authority.").

These "common linguistic intuitions" are "at least strained by the classification of prisoners as 'employees.'" *Vanskike v. Peters*, 974 F.2d 806, 807 (7th Cir. 1992). First, the prison does not act as Plaintiffs' employer. It is, rather, the caretaker of Plaintiffs "by virtue of lawful process or authority." *See* Black's

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[15] A meaning that also mirrors ordinary understanding. *See* Webster's New International Dictionary of the English Language 554 (1930) (custody means "penal safe-keeping; control of a thing or person with such actual or constructive possession as fulfills the purpose of the law or duty requiring it; specif., as to persons, imprisonment").

Law Dictionary 493–94 (3d ed. 1933). As such, Plaintiffs are detainees in the prison's custody, not employees. Second, Plaintiffs are not persons working for salary or wages; they are able to voluntarily participate in the recycling center to help "accept, process and market recyclable commodities." App. 149 (Operating Agreement between Center and Authority). That fits squarely into Pennsylvania law to "fill gaps in local correctional systems and address local needs through expansion of punishment and services available to the court." 42 Pa. C.S. § 9803. Nowhere among these statutory purposes is earning income. Rather, the programs are designed with a rehabilitative mindset to benefit both prisoners and the community—not a typical design for the average hourly job. All leaving prisoners outside the best legal reading of the FLSA.

B.

Context confirms that reading, as all laws are "part of an entire *corpus juris*," and we must interpret "laws dealing with the same subject" "harmoniously." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 252 (2012). *See also Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 638 (2009) (noting that the Court "has consistently held" two statutes "must be read *in pari materia*"); *Lafferty v. St. Riel*, 495 F.3d 72, 81–82 (3d Cir. 2007) (interpreting two statutes using "the common canon of statutory construction that similar statutes are to be construed similarly"). And we "presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts." *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 185 (1988). Just three years before the FLSA's passage in 1938, Congress enacted

the Ashurst-Sumners Act of 1935, which targeted unfair competition derived from prison labor by making it illegal to knowingly transport goods made by prisoners. *See* 18 U.S.C. §§ 1761–62. *See also Danneskjold v. Hausrath*, 82 F.3d 37, 42 (2d Cir. 1996) ("[T]he Ashurst-Summers [sic] Act . . . regulates the interstate transportation of prison-made goods to avoid competition between low-cost prison labor and free labor. . . . " (citation omitted)). That, as other courts have held, is strong reason to conclude prisoners are not employees protected by the FLSA. *See, e.g.*, *Danneskjold*, 82 F.3d at 42 ("[T]he continued existence of the Ashurst-Summers [sic] Act . . . reveals a congressional assumption that prison labor will not be paid at FLSA minimum wage levels."); *Harker v. State Use Indus.*, 990 F.2d 131, 134 (4th Cir. 1993) ("We must read [the FLSA and Ashurst-Sumners Act] in *pari materia*. . . . [T]he FLSA [] does not apply here because Congress has dealt more specifically with [the problem of prison goods entering the open market and threatening fair competition] through the Ashurst-Sumners Act."); *Vanskike*, 974 F.2d at 812 ("[T]he Ashurst-Sumners Act supports the conclusion that Congress did not intend to extend the FLSA's definition of 'employee' to prisoners working in prison.").

That is a sensible reading. Unlike the Ashurst-Sumners Act, the FLSA "was enacted to improve the living conditions and general well-being of free-world American workers and their bargaining strength vis-a-vis employers." *Reimonenq v. Foti*, 72 F.3d 472, 476 (5th Cir. 1996). If a prison puts its inmates "to work, it is to offset some of the cost of keeping them, or to keep them out of mischief, or to ease their transition

to the world outside, or to equip them with skills and habits that will make them less likely to return to crime outside." *Bennett v. Frank*, 395 F.3d 409, 410 (7th Cir. 2005). Such goals are incompatible "with federal regulation of their wages and hours. The reason the FLSA contains no express exception for prisoners is probably that the idea was too outlandish to occur to anyone when the legislation was under consideration by Congress." *Id.*[16]

Finally, the majority distinguishes between intra-prison work and work done by prisoners outside of the prison not for the benefit of the prison. *See* Maj. Op. at 30–32; *Tourscher v. McCullough*, 184 F.3d 236, 243 (3d Cir. 1999) ("[P]risoners who perform intra-prison work are not entitled to minimum wages under the FLSA.").[17] But there is nothing rooted in

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[16] Prison work serves a different purpose than the traditional goal of earning a living. "At its root, the work release program exists for the benefit of the prisoner himself. The purpose of the program is to prepare inmates upon release from prison to function as responsible, self-sufficient members of society." *Reimonenq*, 72 F.3d at 476. "Work has been an important feature of prison systems in the United States since the colonial period." Anthony Pierson, Keith Price & Susan Coleman, *Prison Labor*, 4 Pol. Bureaucracy & Just. 12, 13 (2014). And "[t]hose offenders who are employed have fewer disciplinary infractions in prison, obtain better jobs when released, and recidivate less than do unemployed prisoners." *Id.* at 12. Concepts consistent with the natural principle that "[t]he want of a useful and honest occupation is the foundation of an infinite number of mischiefs." Jean-Jacques Burlamaqui, The Principles of Natural and Politic Law 435 (Knud Haakonssen ed. 2006) (1752).

[17] The majority concludes Plaintiffs' work "mirrors" the facts in *Watson* where a Sheriff operated an unauthorized work release program and assigned prisoners to work for his daughter and son-in-law. *See* Maj. Op. at 37; *Watson v. Graves*, 909 F. 2d

the text of the FLSA or the original understanding of the term "employee" that suggests work involving a third party or taking place outside the prison grounds converts a prisoner's status into one of an employee in a formal employment relationship. Prisoners are not employees under the FLSA because their work relationships "arise out of their status as inmates, not employees." *Franks v. Okla. State Indus.*, 7 F.3d 971, 972 (10th Cir. 1993) (cleaned up) (quoting *Williams v. Meese*, 926 F.2d 994, 997 (10th Cir. 1991)). "The state's absolute power over appellants is a power that is not a characteristic of—and indeed is inconsistent with—the bargained-for exchange of labor which occurs in a true employer-employee relationship." *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1325 (9th Cir. 1991). This reasoning reaches all prisoners inside and outside the prison walls.

Plaintiffs were not employees while working at the Center. No work can untether Plaintiffs from their status as individuals in custody for contempt. Thus, the motions to dismiss the FLSA claims were properly granted.[18]

1549, 1551 & n.2 (5th Cir. 1990). *Watson* applied the "economic reality test" championed by the Ninth Circuit in *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983) and characterized the prisoners as employees under the FLSA because they worked outside of the prison. But the economic reality test does not consider the text of the FLSA and the technical meaning of the word "employee." And the statutory history of the FLSA, including the Ashurst-Sumners Act, casts a shadow on the notion that the FLSA is Congress' intended tool for combatting unfair competition.

18 "Where [an] unjust enrichment claim rests on the same improper conduct as the underlying tort claim, the unjust enrichment claim will rise or fall with the underlying claim."

IV.

Plaintiffs, really their counsel, have strong opinions. About holding delinquent dads in contempt when they stop following court orders and stop supporting their children. About sanitary work, and whether it serves a salutary purpose. How to manage a recycling plant. How much to pay prisoners. All topics fit for consideration by the Commonwealth's elected officials. Rather than pursue that option, or provide direct assistance to Plaintiffs to reduce what is repeatedly claimed to be an unjust court order, all take the plunge into protracted litigation. Offering, it seems, no help to Plaintiffs or future contemnors allegedly laboring endlessly in perpetual confinement. Moreover, such a ruling diverges from the traditional and classically ordered principles acknowledging the great duty parents hold to care for their children[19]

Whitaker v. Herr Foods, Inc., 198 F. Supp. 3d 476, 493 (E.D. Pa. 2016). As Plaintiffs have no valid TVPA or FLSA claim, they have no unjust enrichment claim, as the District Court properly concluded.

[19] *See* 2 William Blackstone, Commentaries *435 (1765) ("The duty of parents to provide for the *maintenance* of their children is a principle of natural law; an obligation . . . laid on them not only by nature herself, but by their own proper act, in bringing them into the world. . . . By begetting them therefore they have entered into a voluntary obligation, to endeavour, as far as in them lies, that the life which they have bestowed shall be supported and preserved. And thus the children will have a perfect *right* of receiving maintenance from their parents."); Burlamaqui, Principles of Natural and Politic Law 61 ("Providence for this reason has inspired parents with that instinct or natural tenderness, which prompts them so eagerly to delight in the most troublesome cares, for the preservation and good of those whom they have brought into the world."); Samuel Pufendorf, The Whole Duty of Man, According to the Law of Nature 179

and the "great importance to use every endeavour to banish idleness, that fruitful source of disorders." Burlamaqui, Principles of Natural and Politic Law 435.[20]

Respectfully, we should follow the sound reasoning of the District Court and dismiss these novel claims, leaving all free to work, to petition the government for change, or to decline to do anything. Such is the usual way of our Republic and, accordingly, I dissent in part.

(Knud Haakonssen ed., Jean Barbeyrac trans. 2003) (1673) ("Because the Law of Nature it self, when Man was made a Social Creature, injoin'd to *Parents the Care of their Children*.").

[20] *See also* John Locke, Second Treatise of Government §§ 32, 42 (1689) ("God, when he gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. . . . [W]hen any one hath computed, he will then see how much labour makes the far greatest part of the value of things we enjoy in this world. . . . ").

MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA (AUGUST 6, 2021)

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

WILLIAM L. BURRELL, JR., JOSHUA HUZZARD, and DAMPSEY STUCKEY, individually and as representatives of the classes,

Plaintiffs,

v.

LACKAWANNA RECYCLING CENTER, INC., LACKAWANNA COUNTY SOLID WASTE MANAGEMENT AUTHORITY, LACKAWANNA COUNTY, LOUIS DENAPLES, DOMINICK DENAPLES, and THOMAS STAFF,

Defendants.

Civil Action No. 3:14-CV-1891

(Magistrate Judge Saporito)

Before: Hon. Robert D. MARIANI,
United States District Judge.

MEMORANDUM OPINION

I. Introduction

Here the Court considers the Report and Recommendation ("R&R") issued by Magistrate Judge Joseph F. Saporito addressing the four pending motions to dismiss (Docs. 99, 101, 102, 103) with which all Defendants seek dismissal of Plaintiffs' Second Amended Complaint (Doc. 77). This case arises in relation to Plaintiffs' incarceration pursuant to Lackawanna Court of Common Pleas civil contempt orders. Magistrate Judge Saporito recommends granting the motions in part and denying them in part. (Doc. 120 at 27-28.) For the reasons discussed below, the Court will adopt the R&R in part and will grant Defendants' motions to dismiss.

II. Background

Plaintiffs were child support debtors who were sentenced to serve a period of incarceration after they failed to pay overdue child support. (Doc. 77 ¶¶ 18-96.) While Plaintiff Stuckey may have had overlapping criminal sentences (*see* Doc. 120 at 10 n.6), Plaintiffs Burrell and Huzzard could be released before the expiration of the imposed sentence upon payment of a monetary sum established by the Lackawanna County Court of Common Pleas Order, a sum known as the "purge" amount. (Doc. 77 ¶¶ 26, 61.) As per Lackawanna County Prison staff directives, Plaintiffs could not participate in the work release program until they successfully completed a period of participation in the Lackawanna County Community Services Program, which in each case here resulted in working at the Lackawanna Recycling Center, Inc.

for approximately eight hours a day at a pay rate of $5.00 per day paid into the inmate's prison commissary account. (Doc. 77 ¶¶ 32, 36, 42, 43, 66, 67, 70, 71, 87, 88, 91, 92.) Court orders for Plaintiffs Burrell and Huzzard accommodated and confirmed this arrangement. (Doc. 77 ¶¶ 33-35, 66.)

As set out in the R&R,

> Since at least March 31, 2005, the [Lackawanna County Solid Waste Authority ("Authority")] and [Lackawanna Recycling Center, Inc. ("LRCI")] have been parties to a contract (the "Operating Agreement") regarding the operations of the Lackawanna County Recycling Center (the "Center"), a recycling center owned by the Authority. Under the terms of the Operating Agreement, LRCI assumed responsibility for operation and management of the Center, including the hiring, supervision, training, and payment of personnel to staff the Center. Besides these employees of LRCI, however, the Operating Agreement also provided that the Authority would continue to "provide the same number of Prisoners from the Lackawanna County Prison that have historically worked at the Center as part of their work release program as security requirements dictate."
>
> In accordance with this last provision, county personnel—specifically prison guards—transport prisoners to the Center to work there. Prison guards remain on site at the Center to supervise prisoners, maintain security, and discipline prisoners. Some number of the prisoners supplied by the

> Authority to work at the Center are child support debtors sentenced to terms of incarceration following civil contempt proceedings for failure to pay child support.

(Doc. 120 at 3-4.)

Defendant Louis DeNaples is the president of LRCI. (Doc. 77 ¶ 11.) Defendant Dominick DeNaples is the vice president of LRCI. (*Id.* ¶ 12.) At the relevant time, Defendant Thomas Staff was an administrator employed by Defendant County who regulated the Work Release Program and the Community Service Program at the Lackawanna County Prison. (*Id.* ¶ 15.) Defendant Staff is sued only in his official capacity. (*Id.*)

Plaintiffs' Second Amended Complaint contains seven counts. In Count I, Plaintiffs seek to hold all Defendants liable for unlawfully obtaining their labor in violation of the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. § 1589. (Doc. 77 ¶¶ 202-207.) In Count II, Plaintiffs seek to hold Lackawanna County ("County"), the Lackawanna County Solid Waste Management Authority ("Authority"), and Thomas Staff liable for subjecting them to involuntary servitude in violation of the Thirteenth Amendment, made actionable by 42 U.S.C. § 1983, by requiring them to work at the Lackawanna County Recycling Center, Inc. ("LRCI") or remain incarcerated and ineligible for work release. (*Id.* ¶¶ 208-212.) In Count III, Plaintiffs assert that the Center, the County, and the Authority violated the Fair Labor Standards Act ("FLSA") by failing to pay them the federal minimum wage. (*Id.* ¶¶ 213-227.) In Count IV, Plaintiffs assert that the Center, the County, and the Authority violated the Pennsylvania Minimum Wage Act

("PMWA") by failing to pay them the state minimum wage. (*Id.* ¶¶ 228-232.) In Count V, Plaintiffs assert that the Center, the County, and the Authority violated the Pennsylvania Wage Payment and Collection Law ("PWPCL") by failing to pay them their wages "in lawful money of the United States or check." (*Id.* ¶¶ 233-237.) In Count VI, Plaintiffs seek to hold all Defendants liable for violation of the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. § 1962(c) made actionable by 18 U.S.C. § 1964(c). (*Id.* ¶¶ 228-243.) In Count VII, Plaintiffs assert a state law claim for unjust enrichment. (*Id.* ¶¶ 244-246.)

The Second Amended Complaint (Doc. 77) was filed after a panel of the Court of Appeals for the Third Circuit considered an appeal of this Court's December 8, 2016, dismissal of Plaintiff Burrell's First Amended Complaint (Docs. 11, 44) and remanded the matter for further proceedings, *Burrel v. Luongo*, 750 F. App'x 149 (3d Cir. 2018) (not precedential). The Circuit panel concluded that this Court had properly dismissed numerous claims contained in the First Amended Complaint, *id.* at 154-57, and identified several claims that could be pursued after remand including Thirteenth Amendment and 18 U.S.C. § 1589, Trafficking Victims Protection Act ("TVPA"), claims, civil RICO claims, and state law claims, *id* at 157-60.

The four pending motions are Rule 12(b)(6) Motion to Dismiss Second Amended Complaint by Defendants Lackawanna County and Thomas Staff (Doc. 99); Motion to Dismiss by Lackawanna County Recycling Center, Inc. (Doc. 101); Motion to Dismiss by Louis DeNaples and Dominic DeNaples (Doc. 102); and Motion to Dismiss Plaintiffs' Second Amended

Complaint Pursuant to F.R.C.P. 12(b)(6) by Defendant, Lackawanna County Solid Waste Management Authority (Doc. 103). The R&R recommends granting the motions in part and denying them in part: claims against Defendant Staff should be dismissed as redundant of the claims against his employer, Lackawanna County; FLSA, PMWA, and PWPCL claims (Counts III, IV, and V) should be dismissed for failure to state a claim; and RICO claims (Count VI) should be dismissed as to all Defendants except LRCI. (Doc. 120 at 27-28.) Based on the foregoing, the R&R recommends that the TVPA claims in Count I go forward as to all Defendants except Defendant Staff; Thirteenth Amendment claims in Count II go forward as to Defendant County and Defendant Authority; the RICO claim in Count VI go forward as to LCRI, and the unjust enrichment claims in Count VII go forward as to all Defendants except Defendant Staff. (*Id*. at 28.)

All parties except Defendant Staff have filed objections to the R&R. (Docs. 121129.) In sum, the parties raise objections to the R&R's recommendations as to each count contained in the Second Amended Complaint with Plaintiffs objecting to the recommendations that Counts III, IV, and V be dismissed and Defendants objecting to the recommendations that Counts I, II, VI, and VII go forward.

III. Legal Standards

A. Report and Recommendation

A District Court may "designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court

proposed findings of fact and recommendations for the disposition" of certain matters pending before the Court. 28 U.S.C. § 636(b)(1)(B). If a party timely and properly files a written objection to a Magistrate Judge's Report and Recommendation, the District Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* at § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(3); M.D. Pa. Local Rule 72.3; *Brown v. Astrue*, 649 F.3d 193, 195 (3d Cir. 2011). "If a party does not object timely to a magistrate judge's report and recommendation, the party may lose its right to *de novo* review by the district court." *EEOC v. City of Long Branch*, 866 F.3d 93, 99-100 (3d Cir. 2017). The *de novo* standard applies only to objections which are specific. *Goney v. Clark*, 749 F.2d 5, 6-7 (3d Cir. 1984). However, "because a district court must take some action for a report and recommendation to become a final order and because the authority and the responsibility to make an informed, final determination remains with the judge, even absent objections to the report and recommendation, a district court should afford some level of review to dispositive legal issues raised by the report." *City of Long Branch*, 866 F.3d at 100 (internal citations and quotation marks omitted).

B. Motion to Dismiss Standard

A complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(6) if it does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court

to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal citations, alterations, and quotations marks omitted). A court "take[s] as true all the factual allegations in the Complaint and the reasonable inferences that can be drawn from those facts, but . . . disregard[s] legal conclusions and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ethypharm S.A. France v. Abbott Labs.*, 707 F.3d 223, 231 n.14 (3d Cir. 2013) (internal citation, alteration, and quotation marks omitted). Thus, "the presumption of truth attaches only to those allegations for which there is sufficient 'factual matter' to render them 'plausible on [their] face.'" *Schuchardt v. President of the U.S.*, 839 F.3d 336, 347 (3d Cir. 2016) (alteration in original) (quoting *Iqbal*, 556 U.S. at 679). "Conclusory assertions of fact and legal conclusions are not entitled to the same presumption." *Id.*

"Although the plausibility standard 'does not impose a probability requirement,' it does require a pleading to show 'more than a sheer possibility that a defendant has acted unlawfully.'" *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 786 (3d Cir. 2016) (internal citation omitted) (first quoting *Twombly*, 550 U.S. at 556; then quoting *Iqbal,* 556 U.S. at 678). "The

plausibility determination is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Id.* at 786-87 (quoting *Iqbal,* 556 U.S. 679).

The Third Circuit Court of Appeals has identified the following three-step inquiry as appropriate to determine the sufficiency of a complaint pursuant to *Twombly* and *Iqbal*:

> First, the court must take note of the elements a plaintiff must plead to state a claim. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.

Burtch v. Milberg Factors, Inc., 662 F.3d 212, 221 (3d Cir.2011); *see also Connelly v. Steel Valey Sch. Dist.*, 706 F.3d 209, 212 (3d Cir. 2013); *Santiago v. Warminster Twp.,* 629 F.3d 121, 130 (3d Cir.2010).

In considering a motion to dismiss, the reviewing court examines

> the "complaint, exhibits attached to the complaint, [and] matters of public record," *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010), we can also consider documents "that a defendant attaches as an exhibit to a motion to dismiss," *Pension Benefits Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993), if they are "undisputedly authentic" and "the [plaintiff's]

> claims are based [on them]," *Mayer*, 605 F.3d at 230. That holding extends to settlement material because plaintiffs "need not provide admissible proof at th[e] [motion-to-dismiss] stage." *In re OSG Sec. Litig.*, 12 F. Supp.3 d 619, 622 (S.D.N.Y. 2014); *see also In re MyFord Touch Consumer Litig.*, 46 F. Supp.3d 936, 961 n.5 (N.D. Cal. 2014) (same). Moreover, the Supreme Court has been clear about the scope of our review, stating we "*must* consider the complaint in its entirety, as well as other sources [we] ordinarily examine when ruling on . . . motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Telabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322, 127 S. Ct. 2499, 168 L.Ed.2d 179 (2007) (emphasis added).

Estate of Roman v. City of Newark, 914 F.3d 789, 796–97 (3d Cir.), *cert. denied sub nom. Estate of Roman v. City of Newark, New Jerse*y, 140 S. Ct. 82, 205 L. Ed. 2d 28 (2019), and *cert. denied*, 140 S. Ct. 97, 205 L. Ed. 2d 28 (2019).

Even "if a complaint is subject to Rule 12(b)(6) dismissal, a district court must permit a curative amendment unless such an amendment would be inequitable or futile." *Philips v. Cty. of Allegheny*, 515 F.3d 224, 245 (3d Cir. 2008).

> [E]ven when plaintiff does not seek leave to amend his complaint after a defendant moves to dismiss it, unless the district court finds that amendment would be inequitable or futile, the court must inform the plaintiff

> that he or she has leave to amend the complaint within a set period of time.

Id.

IV. Discussion

With their objections, Defendants assert that the Magistrate Judge wrongly concluded that Plaintiffs' TVPA and Thirteenth Amendment claims, RICO claims, and unjust enrichment claims (Counts I, II, VI, and VII) should go forward. (Docs. 121-126, 129.[1]) Plaintiffs object to the Magistrate Judge's determination that their FLSA, PMWA, and PWPCL claims should be dismissed. (Docs. 127-128.[2])

A. Trafficking Victims Protection Act and Thirteenth Amendment and Claims

The R&R recommends that Plaintiffs' Thirteenth Amendment and TVPA claims go forward based on the Third Circuit's decision in *Burrel v. Luongo*, 750 F. App'x 149 (3d Cir. 2018), and the law of the case

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[1] Defendants Louis DeNaples, Dominick DeNaples, Lackawanna Recycling Center, Inc., and Lackawanna County filed objections to the R&R (Docs. 121, 122, 125) and briefs in support of the objections (Docs. 123, 124, 126). The Court hereinafter will cite to the briefs supporting the objections (Doc. 123, 124, 126). Defendant Lackawanna County Solid Waste Management Authority joined in the objections filed by other Defendants. (Doc. 129.) As noted in the text, *see supra* p. 5, Defendant Staff does not object to the R&R. Thus, in the context of objections, the Court's reference to "Defendants" does not include Defendant Staff.

[2] Plaintiffs filed objections to the R&R (Doc. 127) and a brief in support of the objections (Doc. 128). Hereinafter the Court will cite to the brief in support of the objections.

doctrine. (Doc. 120 at 14-15.) Defendants object to this recommendation, asserting that the R&R's determination is not compelled by the Third Circuit's decision. (*See*, *e.g.*, Doc. 123 at 3; Doc. 124 at 3; Doc. 126 at 5, 8.)

1. Relevant Legal Framework

As explained in the Third Circuit panel's decision,

> [t]he Thirteenth Amendment abolishes "involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted." And while the Thirteenth Amendment's primary purpose "was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War, . . . the Amendment was not limited to that purpose; the phrase 'involuntary servitude' was intended to extend 'to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results.'" *United States v. Kozminski*, 487 U.S. 931, 942, 108 S. Ct. 2751, 101 L.Ed.2d 788 (1988) (quoting *Butler v. Perry*, 240 U.S. 328, 332, 36 S. Ct. 258, 60 L.Ed. 672 (1916)). . . . "[I]nvoluntary servitude" could encompass peonage, where a person is forced, through a threat of legal sanctions, to work off a debt. *See, e.g., Bailey v. Alabama*, 219 U.S. 219, 243, 31 S. Ct. 145, 55 L.Ed. 191 (1911); *Clyatt v. United States*, 197 U.S. 207, 215-16, 25 S. Ct. 429, 49 L.Ed. 726 (1905).
>
> . . . [T]he Supreme Court has remarked that "in every case in which [it] has found a con-

> dition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction." *Kozminski*, 487 U.S. at 943, 108 S. Ct. 2751. . . .
>
> Similarly, under 18 U.S.C. § 1589(a), the Trafficking Victims Protection Act ("TVPA"), a victim may sue for damages and attorney fees (*see* 18 U.S.C. § 1595) if his labor or services have been obtained "by means of force, threats of force, physical restraint, or threats of physical restraint." Through this statute, "Congress intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion, as well as through physical or legal coercion." *Muchira v. Al-Rawaf*, 850 F.3d 605, 617 (4th Cir. 2017), *as amended* (Mar. 3, 2017), *petition for cert. filed* (U.S. July 31, 2017) (No. 17154) (quoting *United States v. Dann*, 652 F.3d 1160, 1169 (9th Cir. 2011)) (internal quotation marks omitted).

Burrel, 750 F. App'x at 159-60.

Regarding civil contempt proceedings, The Supreme Court in *Turner* described civil contempt as seeking

> only to "coerc[e] the defendant to do" what a court had previously ordered him to do. *Gompers v. Bucks Stove & Range Co.,* 221 U.S. 418, 442, 31 S. Ct. 492, 55 L.Ed. 797 (1911). A court may not impose punishment "in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the

> order." *Hicks v. Feiock,* 485 U.S. 624, 638, n. 9, 108 S. Ct. 1423, 99 L.Ed.2d 721 (1988). And once a civil contemnor complies with the underlying order, he is purged of the contempt and is free. *Id.,* at 633, 108 S. Ct. 1423 (he "carr[ies] the keys of [his] prison in [his] own pockets" (internal quotation marks omitted)).

564 U.S. at 441–42.

In *Hyle v. Hyle*, 868 A.2d 601 (Pa. Super. 2005), the Pennsylvania Superior Court explained that

> [t]he purpose of a civil contempt order is to coerce the contemnor to comply with a court order. *See Gunther v. Bolus,* 853 A.2d 1014, 1016 (Pa.Super.2004), *appeal denied* 578 Pa. 709, 853 A.2d 362 (2004). Punishment for contempt in support actions is governed by 23 Pa.C.S. § 4345. Section 4345 provides that
>
> (a) General rule.—A person who willfully fails to comply with any order under this chapter, except an order subject to section 4344 (relating to contempt for failure of obligor to appear), may, as prescribed by general rule, be adjudged in contempt. Contempt shall be punishable by any one or more of the following:
>
> (1) Imprisonment for a period not to exceed six months.
>
> (2) A fine not to exceed $1,000.
>
> (3) Probation for a period not to exceed one year.

> (b) Condition for release.—An order committing a defendant to jail under this section shall specify the condition the fulfillment of which will result in the release of the obligor.
>
> 23 Pa.C.S. § 4345.
>
> To be found in civil contempt, a party must have violated a court order. *See Garr v. Peters,* 773 A.2d 183, 189 (Pa. Super.2001). Accordingly, the complaining party must show, by a preponderance of the evidence, that a party violated a court order. *See Sinaiko v. Sinaiko,* 445 Pa.Super. 56, 664 A.2d 1005, 1009 (1995). The alleged contemnor may then present evidence that he has the present inability to comply and make up the arrears. *See Barrett v. Barrett,* 470 Pa. 253, 264, 368 A.2d 616, 621 (Pa.1977); *see also, Sinaiko,* 664 A.2d at 1009. When the alleged contemnor presents evidence that he is presently unable to comply
>
> > the court, in imposing coercive imprisonment for civil contempt, should set conditions for purging the contempt and effecting release from imprisonment with which it is convinced *beyond a reasonable doubt,* from the totality of the evidence before it, the contemnor has the present ability to comply.
>
> *Barrett,* 470 Pa. at 264, 368 A.2d at 621 (emphasis in original); *see also, Sinaiko,* 664 A.2d at 1010.

Hyle, 868 A.2d at 604–05.

In *Hyle*, the Superior Court determined that the trial court correctly found that the individual who failed to pay child support was in contempt of the support order but the trial court erred in setting a figure that the contemnor "[did] not have the present ability to pay." *Id.* at 605. Although the trial court recognized this, it stated in its opinion "that the purge 'is well within [the contemnor's] means to accomplish by working for a short period of time.'" *Id.* (quoting Trial Court Opinion). The Superior Court noted that the trial court had ordered the contemnor eligible for work release so that he could obtain employment and pointed out that this arrangement meant that the "ability to comply with the purge set by the trial court will only occur sometime in the future; Appellant must first secure employment and then earn $2,500.00 to pay the purge amount." *Id.*

Hyle then explained why this arrangement violated Pennsylvania law:

> The law in this Commonwealth is, however, that the trial court must set the conditions for a purge in such a way as the contemnor has the present ability to comply with the order. *See, e.g., Barrett,* 470 Pa. at 265, 368 A.2d at 622 (reversing contempt order where alleged contemnor had no present ability to pay purge amount); *Muraco v. Pitulski,* 470 Pa. 269, 273, 368 A.2d 624, 626 (1977) (reversing contempt order where there was no evidence that alleged contemnor had present ability to pay purge amount on day of contempt hearing); *Commonwealth ex rel. Heimbrook v. Heimbrook,* 295 Pa.Super. 300, 441 A.2d 1242, 1244 (1982) (vacating

contempt order where record did not support finding that alleged contemnor had "a present ability to purge himself by making an immediate payment"); *Durant v. Durant,* 339 Pa. Super. 488, 489 A.2d 266, 268 (1985) (vacating order directing payment of purge amount where there was "nothing to indicate that appellant has access to [purge] sum . . . or may readily obtain that amount"); *Travitzky v. Travitzky,* 369 Pa. Super. 65, 534 A.2d 1081, 1086 (1987) (vacating order directing payment of purge amount where there was insufficient evidence that alleged contemnor had present ability to pay purge amount on day of contempt hearing); *Wetzel v. Suchanek,* 373 Pa.Super. 458, 541 A.2d 761, 764 (1988) (reversing trial court's imposition of 60 day sentence for finding of civil contempt where the only way appellant could purge himself of sentence was by obtaining employment and remanding for trial court to impose a purge which was within appellant's present ability to comply with); *Caloway v. Caloway,* 406 Pa. Super. 454, 594 A.2d 708, 710 (1991) (affirming trial court's decision to not impose a contempt order where alleged contemnor's "present situation" was such that he could not pay purge amount).

In this case, the trial court has imposed a condition for a purge which Appellant does not have the present ability to meet. "[A] court may not convert a coercive sentence into a punitive one by imposing conditions

> that the contemnor cannot perform and thereby purge himself of the contempt." *Barrett,* 470 Pa. at 262, 368 A.2d at 621.

Hyle, 868 A.2d at 605–06. Based on the trial court's error, the Superior Court vacated the contempt order directing payment of $2,500.00 and remanded for the trial court "to determine what conditions will be sufficiently coercive yet enable Appellant to comply with the order." *Id.* at 606. The civil contemnor's ability to pay the purge amount was again stressed by the Superior Court in *I.D. v. K.O.J.*, 237 A.3d 456 (Pa. Super. 2020) (Table Decision), where the court stated that "[t]he trial court's conclusion regarding the contemnor's present ability to pay the purge condition must be supported by the record and cannot be based on speculative factors such as potential earning capacity or values of assets not in evidence." *Id.* at *3.

2. District Court Jurisdiction

Before considering Defendants' objection to the Magistrate Judge's determination regarding the law of the case, the Court will address the issue of jurisdiction raised by Defendants Louis DeNaples, Dominick DeNaples, and LCRI. These Defendants contend that the *Rooker-Feldman* doctrine deprives the Court of jurisdiction over the Thirteenth Amendment and TVPA claims because Plaintiffs seek to collaterally attack their state court contempt orders which they cannot do in this proceeding. (Docs. 136 and137 at 3 (citing *Gary v. Braddock Cemetery*, 517 F.3d 195, 206 (3d Cir. 2008) ("Under [the] *Rooker–Feldman* [doctrine], a federal court lacks subject matter jurisdiction when, in order to grant the relief sought, the federal court must conclude that the state court's judgment

in a prior proceeding was entered in error, or must take action that would render the state judgment ineffectual.").) They add that Plaintiffs cannot "by fanciful pleading, contend that they lacked the 'present ability' to comply with the underlying support orders." (*Id*.) Plaintiffs disagree with this assessment. (Doc. 142 at 3.) For the reasons that follow, the Court concludes that *Rooker-Feldman* does not deprive the Court of jurisdiction over the Thirteenth Amendment and TVPA claims.

In their response to Defendants' argument, Plaintiffs assert that *Rooker-Feldman* does not apply here because their claims "do not seek to undo the state court judgments." (Doc. 142 at 3.) They argue as follows:

> Plaintiffs have presented "independent claim[s]" under the TVPA and the Thirteenth Amendment. *See In re Philadelphia Ent. & Dev. Partners*, 879 F.3d at 500 (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005). In fact, Plaintiffs can recover regardless of whether the state courts set their purge amounts correctly as a matter of Pennsylvania child support law, as the injury alleged by Plaintiffs in this case was not caused by the state court judgment. In the context of child support contempt determinations, Pennsylvania courts must set purge conditions that "will be sufficiently coercive yet enable [the debtor] to comply with the order." *Hyle v. Hyle*, 868 A.2d 601, 606 (Pa. Super. 2005). In other words, the purge amounts were designed to be coercive. The question central to Plaintiffs' claims continues to be whether the purge amounts

> were coercive enough, as a matter of federal statutory and constitutional law, that their labor was procured in violation of the TVPA or the Thirteenth Amendment. Rooker-Feldman "does not apply merely because the claim for relief if granted would as a practical matter undermine a valid state court order." *In re Philadelphia Ent. & Dev. Partners*, 879 F.3d at 503.
>
> At most, the underlying state court judgments provide evidence that, while Plaintiffs and putative class members had some means by which they could have paid their purge amounts, the amounts were high enough "to coerce the contemnor to comply with [the] court order[s]." *Id.* at 604. Without proceeding to discovery, this Court cannot evaluate whether the funds were accessible to Plaintiffs, other financial burdens faced by Plaintiffs, or other context regarding the coerciveness of the purge amount. Instead, the Court must rely on Plaintiffs' SAC, which unequivocally alleges that Plaintiffs had no other options but to work under abysmal conditions for just $5 per day to pay their child support and regain their freedom. *See* SAC at ¶¶ 28, 36, 67, 88. These allegations suffice to survive Defendants' motions to dismiss, and do not divorce this Court of jurisdiction as LRCI and the DeNaples now argue for the first time in their reply brief.

(Doc. 142 at 4.)

The United States Supreme Court has explained that "a federal court generally may not rule on the

merits of a case without first determining that it has jurisdiction." *Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.,* 549 U.S. 422, 430–31 (2007); *see Federated Dep't Stores, Inc. v. Moitie,* 452 U.S. 394, 399 n. 3 (1981) (noting that a dismissal for failure to state a claim upon which relief can be granted is a judgment on the merits). *Rooker-Feldman* prevents federal district courts from exercising jurisdiction "[i]n certain circumstances, where a federal suit follows a state suit." *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 163–64 (3d Cir. 2010); *Taliaferro v. Darby Twp. Zoning Bd.,* 458 F.3d 181, 192 (3d Cir. 2006). Therefore, the Court, as a threshold matter, will turn to whether *Rooker-Feldman* presents a jurisdictional bar to consideration of Plaintiffs' Thirteenth Amendment and TVPA claims.

The *Rooker-Feldman* doctrine originated from two Supreme Court opinions issued over the course of six decades, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Initially, the United States Supreme Court held that lower federal courts may not hear claims actually decided by a state court, as district courts have no appellate jurisdiction. *Rooker*, 263 U.S. at 416 (1923). The Supreme Court later extended this holding, explaining that a federal district court lacks jurisdiction over any claims that are "inextricably intertwined" with a state court judgment. *Feldman*, 460 U.S. at 486. Federal claims are "inextricably intertwined" with a previous state court judgment when "the federal court must determine that the state court judgment was erroneously entered in order to grant the requested relief" or "the federal court must take an action that would negate

the state court's judgment." *In re Knapper*, 407 F.3d 573, 581 (3d Cir. 2005). As summarized in *Taliaferro*, "[u]nder the *Rooker-Feldman* doctrine, a district court is precluded from entertaining an action, that is, the federal court lacks subject matter jurisdiction, if the relief requested effectively would reverse a state court decision or void its ruling." *Id.* at 192.

The Supreme Court has stated that the scope of the *Rooker-Feldman* doctrine is "narrow," confined to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The doctrine is not implicated "simply because a party attempts to litigate in federal court a matter previously litigated in state court" and therefore "[i]f a federal plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.'" *Id.* at 293, (quoting *GASH Assoc. v. Vil. of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)). The jurisdictional bar imposed by *Rooker–Feldman* is not so expansive as to include federal actions "that simply raise claims previously litigated in state court." *Exxon Mobil*, 544 U.S. at 287 n.2; *see also, Turner v. Crawford Square Apartments III, L.P.*, 449 F.3d 542, 547 (3d Cir. 2006) ("Turner's action in the district court did not complain of injuries caused by the state court judgment. Rather, Turner's complaint raised federal claims, grounded on the FHA [Fair Housing Act], *not* caused by the state-court judgment but instead attributable to defend-

ants' alleged FHA violations that preceded the state-court judgment.)

In the Third Circuit, four requirements must be met for the *Rooker-Feldman* doctrine to apply: (1) the federal plaintiff lost in state court; (2) the plaintiff "complain[s] of injuries caused by [the] state-court judgments"; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments. *Great Western*, 615 F.3d at 166 (alteration in original) (quoting *Exxon Mobil*, 544 U.S. at 284). The Circuit Court also stated that "[t]he second and fourth requirements are the key to determining whether a federal suit presents an independent-non-barred claim." *Id.* "A useful guidepost is the timing of the injury, that is, whether the injury complained of in federal court existed prior to the state-court proceedings and thus could not have been 'caused by' those proceedings." *Id.* at 167 (citation omitted).

As the party asserting jurisdiction, a plaintiff has an affirmative burden to show that his claims are not precluded by the *Rooker-Feldman* doctrine. *See Khalil v. NJ Div. of Child Prot. & Permanency*, 594 F. App'x 88, 90 (3d Cir. 2015).

Applying the *Rooker-Feldman* doctrine to the facts of this case, the first requirement is met because Plaintiffs lost in state court when the Court of Common Pleas Family Court division entered enforcement orders against them and ordered their imprisonment following civil contempt proceedings. *See Lyman v. Philadelphia Ct. of Common Pleas Domestic Rels. Div.*, 751 F. App'x 174, 177 (3d Cir. 2018) (in suit for claims arising from state court domestic relations

proceedings, first *Rooker-Feldman* requirement met: "Lyman lost in state court when [the Domestic Relations Division ("DRD")] entered enforcement orders against him and ordered his imprisonment following civil contempt proceedings.)[3] The third requirement is also met because the state court judgments were rendered before the federal suit was filed. *Great Western*, 615 F.3d at 166.

Whether the second and fourth requirements are met are more difficult questions. The second requirement—that a plaintiff must be complaining of injuries caused by a state-court judgment—may also be thought of as an inquiry into the source of the plaintiff's injury. *Great Western*, 615 F.3d at 166 (citing *Turner v. Crawford Square Apartments III, L.P.,* 449 F.3d 542, 547 (3d Cir.2006) ("Here, the district court erred by applying the *Rooker–Feldman* doctrine 'beyond the contours of the *Rooker* and *Feldman* cases,' because

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[3] *Lyman* also found the remaining three *Rooker-Feldman* requirements met:

> Second, Lyman complains of injuries caused by the state court judgments, namely, that the October 29, 2014, enforcement order "made no finding regarding [his] present ability to comply with the support order or the purge amount," and that the civil contempt proceedings took place without provision of counsel for him. . . . Third, the state court judgments were finalized before Lyman filed his federal action. And fourth, we undoubtedly would have to review the state court's judgments to determine whether DRD improperly entered the enforcement orders without considering certain factors.
>
> It thus follows that the District Court lacked subject matter jurisdiction to entertain Lyman's claims.

Lyman, 751 F. App'x at 178.

Turner's action in the district court did not complain of injuries 'caused by the state court judgment.'" (quoting *Exxon Mobil,* 544 U.S. at 283–84)). "The critical task is . . . to identify those federal suits that profess to complain of injury by a third party, but actually complain of injury 'produced by a state-court judgment and not simply ratified, acquiesced in, or left unpunished by it.'" *Id.* at 167 (quoting *Hoblock v. Albany County Board of Elections*, 422 F.3d 77, 88 (2d Cir. 2005)). *Great Western* also explained that

> [w]hat this requirement targets is whether the plaintiff's claims will require appellate review of state-court decisions by the district court. Prohibited appellate review "consists of a review of the proceedings already conducted by the 'lower' tribunal to determine whether it reached its result in accordance with law." *Bolden v. City of Topeka, Ks.,* 441 F.3d 1129, 1143 (10th Cir.2006). It is important to distinguish such appellate review from those cases in which "a party attempts to litigate in federal court a matter previously litigated in state court," *Exxon Mobil,* 544 U.S. at 293, 125 S. Ct. 1517, or in which "the federal plaintiff and the adverse party are simultaneously litigating the same or a similar dispute in state court," *Noel v. Hal,* 341 F.3d 1148, 1163 (9th Cir.2003) (cited with approval in *Exxon Mobil*). If the matter was previously litigated, there is jurisdiction as long as the "federal plaintiff present[s] some independent claim," even if that claim denies a legal conclusion reached by the state court. *Exxon Mobil,* 544 U.S. at

> 293, 125 S. Ct. 1517 (internal quotation marks & citation omitted; alteration in original). When "the second court tries a matter anew and reaches a conclusion contrary to a judgment by the first court, without concerning itself with the bona fides of the prior judgment," the second, or federal, court "is not conducting appellate review, regardless of whether compliance with the second judgment would make it impossible to comply with the first judgment." *Bolden,* 441 F.3d at 1143.

Great Western, 615 F.3d at 169.

As set out above, the parties disagree on whether Plaintiffs complain of injuries caused by the state court judgments. Plaintiffs assert that the Thirteenth Amendment and TVPA were violated because, to qualify for work release and potentially earlier release from prison, they lacked any option other than working at the Center. (Doc. 77 ¶¶ 36, 67, 88.) Plaintiffs say they do not complain of injuries caused by the state court judgments (Doc. 142 at 3) but their argument on the issue is vague and conclusory (*see id.* at 2-4). In a sense it may be true that Plaintiffs' injuries were caused by what happened *after* the state court judgments, *i.e.*, *post incarceration* allegedly coerced participation in the Community Service Program where they worked for $5.00 a day at the Center. However, for reasons discussed in greater detail in the "Merits Analysis" section below, the civil contempt legal framework indicates that what came after Plaintiffs' incarceration is linked to the state court orders because Plaintiffs were incarcerated for failing to pay a purge amount which the state court had deter-

mined beyond a reasonable doubt they had the ability to pay. *See supra* pp. 11-15; *see infra* p. 30.

Despite this inescapable link between the state court orders at issue and the claimed injury allegedly resulting from the lack of option in Community Service participation, the Court would not necessarily need to "determine that the state court judgment was erroneously entered in order to grant the requested relief," *In re Knapper*, 407 F.3d at 581, if the circumstances in existence at the time the state court entered the contempt orders changed thereafter such that Plaintiffs could have availed themselves of the provisions of 23 Pa. C.S. § 4352 which will be further discussed in the Merits Analysis section of this Memorandum Opinion. Given this potential scenario, the unusual facts and claims in this case, and *Great Western's* caution against an expansive application of the *Rooker-Feldman* doctrine, the Court concludes that the second *Rooker-Feldman* requirement is not satisfied here.

Regarding the fourth requirement, it follows from the conclusion on the second requirement that a scenario may exist where Plaintiffs would not necessarily be "inviting the district court to review and reject the state judgments." *Great Western*, 615 F.3d at 166 (citing *Exxon Mobil*, 544 U.S. at 284). Therefore, like the second requirement, the fourth requirement does not weigh in favor of finding a lack of jurisdiction.

Having determined that two of the four *Rooker-Feldman* requirements are not necessarily satisfied here, the Court has jurisdiction to consider Plaintiffs' Thirteenth Amendment and TVPA claims. Our analysis goes forward based on the presumption that Plaintiffs

do not attack the state court judgment itself. To the extent Plaintiffs position is otherwise, *i.e.*, they allege an inability on the part of Plaintiffs to purge at the time the state court order of contempt was imposed, they thereby attack the state court judgment and such a claim is barred by *Rooker-Feldman*.

3. Law of the Case Doctrine

As set out above, Defendants object to the Magistrate Judge's recommendation that the Thirteenth Amendment and TVPA claims go forward based on the law of the case doctrine. (*See*, *e.g.*, Doc. 123 at 3; Doc. 124 at 3; Doc. 126 at 5, 8.) For the reasons discussed below, the Court concludes that the Third Circuit panel's decision does not preclude consideration of these claims under the motion to dismiss standard.

The doctrine of the law of the case

> limits relitigation of an issue once it has been decided. . . . [T]his doctrine is concerned with the extent to which the law applied in decisions at various stages of the same litigation becomes the governing legal precept in later stages. 18 James Wm. Moore Et Al., Moore's Federal Practice ¶ 134.20 (3d ed.1999). The Court has defined the law of the case as a precept that "'posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.' This rule of practice promotes the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.'" *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816, 108 S. Ct. 2166,

> 100 L.Ed.2d 811 (1988) (citing *Arizona v. California*, 460 U.S. 605, 618, 103 S. Ct. 1382, 75 L.Ed.2d 318 (1983), and citing 1B James Wm. Moore Et Al., Moore's Federal Practice ¶ 0.404[1], p. 118 (1984)).

In re Cont'l Airlines, Inc., 279 F.3d 226, 232-33 (3d Cir. 2002).

It is well-established that the law of the case doctrine "does not restrict a court's power but rather governs its exercise of discretion." *In re City of Philadelphia Litig.*, 158 F.3d 711, 718 (3d Cir. 1998) (citing *Public Interest Research Group of New Jersey, Inc. v. Magnesium Elektron, Inc.*, 123 F.3d 111, 116 (3d Cir. 1997)). Accordingly, the doctrine does not preclude reconsideration of previously decided issues in extraordinary circumstances such as where: "(1) new evidence is available; (2) a supervening new law has been announced; or (3) the earlier decision was clearly erroneous and would create manifest injustice." *Id.* at 718 (citation omitted).

In this legal framework, the Court must first determine if the Thirteenth Amendment and TVPA claims now before the Court were decided by the Third Circuit panel in *Burrel v. Luongo* and became the law of the case in this litigation.

The Second Amended Complaint (Doc. 77) at issue here was filed after a panel of the Court of Appeals for the Third Circuit considered an appeal of this Court's December 8, 2016, dismissal of Plaintiff Burrell's First Amended Complaint (Docs. 11, 44) and remanded the matter for further proceedings, *Burrel v. Luongo*, 750 F. App'x 149 (3d Cir. 2018) (not precedential). As explained in the R&R,

> [i]n screening Burrell's *pro se* first amended complaint, this court found that he had failed to state a claim upon which relief could be granted with respect to both his Thirteenth Amendment indentured servitude and TVPA forced labor claims because Burrell had a choice between a full twelve months of imprisonment or work at the Center in unpleasant conditions for meager pay. *Burrel* [*v. Luongo*, Civ. A. No. 3:14-CV-1891], 2016 WL 7177549, at *11-14 [(July 18, 2016)], *adopted by* 2016 WL 7175615. (Docs. 34; Doc. 44.) On appeal, the Third Circuit noted that, "given the dearth of case law in this area, . . . it is not clear, especially at the screening stage, whether this "choice" was sufficient to bring the alleged practice of coercing civil contemnors to work in the [Center] out of the range of involuntary servitude" or forced labor. *Burrel*, 750 Fed. Appx. At 159-60.

(Doc. 120 at 14-15.) In this context, the R&R concluded that

> [o]n remand, faced with substantively the same factual allegations concerning Burrell, we are, of course, compelled to agree. *Paul v. Hearst Corp*., 261 F. Supp. 2d 303, 305, n.4 (M.D. Pa. 2002) ("The law of the case requires that, on remand, 'the trial court must proceed in accordance with the mandate and the law as established on appeal.' 'A trial court must implement both the letter and spirt of the mandate, taking into account the appellate court's opinion and

> circumstances it embraces." (quoting *Bankers Tr. Co. v. Bethlehem Steel Corp.*, 761 F.2d 943, 949 (3d Cir. 1985) (citations and alterations omitted))).

(Doc. 120 at 15.)

Defendants disagree with the assessment that the Magistrate Judge was constrained by the law of the case doctrine to allow the Thirteenth Amendment and TVPA claims to go forward in that the Third Circuit panel decided only that it was improper to dismiss these claims at the screening stage. (*See*, *e.g.*, Doc. 123 at 3 (citing Doc. 120 at 16, n.9;[4] *Burrel*, 750 F. App'x at 160).)

On the Thirteenth Amendment issue, after setting out the relevant legal standard, *see supra* pp. 10-11, the Circuit panel stated that

> according to Burrell's complaint, he had a "choice"—either work in the LRC or spend an extra six months in prison. But given the dearth of case law in this area, we conclude

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[4] The R&R noted as follows:

> If we were presented with a blank slate, evaluating the facts alleged in the second amended complaint for the first time, we would find that the plaintiffs have failed to allege sufficient facts to plausibly state claims under the Thirteenth Amendment, the TVPA, or RICO (the latter claims being predicated on a pattern of TVPA offenses). *See Burrell*, 2016 WL 7177549, at *11-*14, *16, *adopted by* 2016 WL 7175615. But, as we have noted above, in light of the history of this litigation, our recommended disposition is constrained by the law of the case doctrine.

(Doc. 120 at 16 n.9.)

> that it is not clear, especially at the screening stage, whether this "choice" was sufficient to bring the alleged practice of coercing civil contemnors to work in the LRC out of the range of involuntary servitude. *See Steirer by Steirer v. Bethlehem Area Sch. Dist.*, 987 F.2d 989, 999 (3d Cir. 1993) *abrogation on other grounds recognized by Troster v. Pa. State Dep't of Corr.*, 65 F.3d 1086, 1087 (3d Cir. 1995) (describing cases where involuntary servitude had been recognized, such as in "labor camps, isolated religious sects, or forced confinement"); *cf. Tourscher v. McCulough*, 184 F.3d 236, 242 (3d Cir. 1999) (dismissal of complaint before service was premature where inmate held for a time as a pretrial detainee alleged that he was required to work in violation of Thirteenth Amendment).

Burrel, 750 F. App'x at 159.

After setting out the requirements of a TVPA claim, *see supra* p. 11, the panel explained that "[a]gain, it may be that Burrell had a sufficient 'choice' so that any coercion to work at the [Center] did not convert that work into involuntary servitude, but we conclude that the claim deserves more consideration and should not have been dismissed before service of process." *Id.* at 160. In conjunction with this conclusion, the panel noted that "[o]ne might argue . . . that as a civil contemnor who would be released once he paid his child support obligations, Burrell 'carr[ied] the keys of [his] prison in [his] own pockets.' *Turner v. Rogers*, 564 U.S. 431, 441-42, 131 S. Ct. 2507, 180 L.Ed.2d 452 (2011). We leave it to

the District Court to consider such an argument." *Burrel*, 750 F. App'x at 160 n.7 (alterations in *Burrell*).

The Court concludes that the basis for remand was satisfied in part with service of Plaintiffs' Second Amended Complaint. Further, the Court is now in a position to follow the Circuit panel's directive to give "more consideration" to the Thirteenth Amendment and TVPA claims, including the specific argument regarding whether Plaintiffs had the keys to the prison. *See* 750 F. App'x at 160 & n.7. While many factual allegations are similar to those contained in the Amended Complaint before the Circuit Court, notable distinctions exist between that document and the Second Amended Complaint. For example, *Burrell* set out the following summary:

> [Burrell] claims that the state court and its domestic relations office routinely manipulate child support enforcement proceedings to obtain civil contempt findings against men who are financially unable to meet their child support obligations[,] . . . [and] then [ ] sentence them to be incarcerated as civil contemnors at [LCP], where they are assigned to work at the recycling center in substandard conditions and for meager pay.

750 F. App'x at 153 (citing July 18, 2016, R&R, Doc. 34 at 3-4) (alteration in original). In the Amended Complaint considered by the Circuit panel, Plaintiff Burrell named as defendants the Director of the Lackawanna County Domestic Relations office, Patrick Luongo, and Richard Saxton, Trish Corbett, and Vito Geroulo, identifying each as a "judge for Lackawanna County Pennsylvania." (Doc. 11 ¶¶ 11, 14, 15, 21.) These defendants are not named in the Second

Amended Complaint nor is anyone identified as a Domestic Relations administrator or Lackawanna County judge. (*See* Doc. 77.) The Second Amended Complaint contains no allegations regarding manipulation of child support proceedings by the state court and the domestic relations office to obtain civil contempt findings against men who are financially unable to meet their child support obligations. (*See id.*) Therefore, the factual basis upon which the Circuit panel considered the Thirteenth Amendment and TVPA claims has now changed.

Given the differences between the current procedural posture of the case and distinctions between the Amended Complaint (Doc. 11) and the Second Amended Complaint (Doc. 77), the Court concludes that *de novo* review of the merits of Plaintiffs' Thirteenth Amendment and TVPA claims would not run afoul of the *Burrel* decision. Therefore, the Court will proceed with a merits analysis of these claims.

4. Merits Analysis

The pertinent question identified in *Burrell* regarding a Thirteenth Amendment claim is whether "the victim had no available choice but to work or be subject to legal sanction,'" 750 F. App'x at 159 (quoting *Kozminski*, 487 U.S. at 943). Here that question is specifically whether Plaintiffs had a choice whether to work at the Center or be subject to legal sanction. As to the TVPA, the relevant question identified in *Burrel* is similar, *i.e.*, whether Plaintiffs "labor or services have been obtained 'by means of force, threats of force, physical restraint, or threats of physical restraint.'" *Id.* at 160 (quoting *Muchira*, 850 F.3d at 617). The sufficiency of the "choice" Plaintiffs had

regarding their work at the Center is central to whether that work was converted to involuntary servitude. *Id.*

Proceeding with the analysis outlined in *Burrell*, the Court focuses on the various choices Plaintiffs made and the impact of those choices. At the outset, the Court notes that consideration of the "choice" issue in *Burrel* was undertaken in the context of allegations in the Amended Complaint (Doc. 11) that the state court and domestic relations office manipulated child support enforcement proceedings to obtain civil contempt findings against men who were financially unable to meet their child support obligations and this set the stage for incarceration and work at the Center. 750 F. App'x at 153. With these allegations, the propriety of Domestic Relations actions and the state court contempt orders was at issue and the Circuit panel focused on the choice identified by Burrell—the "'choice' of either to work [at the Center] or spend an extra six months in prison." *Id.* at 159. As discussed above, the Second Amended Complaint makes no allegations regarding manipulation of child support enforcement proceedings as the foundation for Plaintiffs' incarceration and work at the Center. *See supra* pp. 27-28. Therefore, the Court finds no allegations in the Second Amended Complaint present a barrier to considering the interplay between Plaintiffs' responses to the state court contempt orders and their subsequent choice regarding participation in the Community Service Program.

The state court's need to find "beyond a reasonable doubt, from the totality of the evidence before it, the contemnor had the ability to comply," *Barrett*, 368 A.2d at 621, indicates that the question of whether

Plaintiffs "'had no available choice but to work [at the Center] or be subject to legal sanction,'" *Burrel*, 750 F. App'x at 159 (quoting *Kozminski*, 487 U.S. at 943), encompasses consideration of the choice initially faced by each Plaintiff, *i.e.*, to either pay the amount the Court of Common Pleas had determined he had the ability to pay beyond a reasonable doubt or be incarcerated. Because a court may not impose punishment "in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order." *Hicks,* 485 U.S. at 638 n. 9, and a court "may not convert a coercive sentence into a punitive one by imposing conditions that the contemnor cannot perform and thereby purge himself of the contempt,'" *Hyle*, 868 A.2d at 606 (quoting *Barrett*, 368 A.2d at 621), it must follow unavoidably that each Plaintiff necessarily had the ability to pay the purge amount at the time the order of incarceration was imposed.

The counseled Second Amended Complaint makes the following averments concerning Plaintiff Burrell:

> 24. On or around May 14, 2014, Mr. Burrell was arrested for failure to pay child support.
>
> 25. On or around May 16, 2014, the Court of Common Pleas for the County of Lackawanna, Family Court Domestic Relations Section sentenced Mr. Burrell to two consecutive six-month terms in the Lackawanna County Prison (the "Prison").
>
> 26. The court ordered that Mr. Burrell could be released early upon payment of $2,129.43.
>
> 27. In the same order, the court ordered

> Mr. Burrell to "immediate work release if he qualifies."
>
> 28. Mr. Burrell did not have $2,129.43—in fact, he had nothing close to that.
>
> . . .
>
> 36. Because he could not otherwise qualify for work release, and because he was eager to pay his child support debt and regain his freedom, and lacking any other option, Mr. Burrell was compelled to begin working at the Center on May 28, 2014.

(Doc. 77 at 4, 6.) The actual purge amount established for Plaintiff Burrell was $7,033.00. (Doc. 107-1 at 1.)

Although the specific averments as to Plaintiffs Huzzard and Stuckey do not identify a purge amount and do not include a categorical statement that they did not have the amount identified, it was averred as to each that "[b]ecause he could not otherwise qualify for work release, and because he was eager to pay his child support debt and regain his freedom, and lacking any other option, [he] was compelled to begin working at the Center." (Doc. 77 ¶¶ 67, 88.)

Given the relevant legal framework, the Court must consider whether Plaintiffs' assertions that they had no option but to work at the Center and Burrell's assertion that he did not have the ability to pay $2,129.43 are entitled to the presumption of truth which attaches to well-pleaded facts. As set out above, the presumption of truth is subject to an important caveat: it attaches "only to those allegations for which there is sufficient 'factual matter' to render them 'plausible on [their] face.'" *Schuchardt*, 839 F.3d

at 347 (quoting *Iqbal*, 556 U.S. at 679). Here state law establishes that Plaintiffs had the ability to pay the purge at the time they were incarcerated. *See supra* pp. 12-15. Taken from the starting point that the undisturbed Court of Common Pleas orders conclusively established that Plaintiffs were able to pay the purge at the time of their incarceration, Plaintiffs' conclusory assertions regarding "lacking any option" but to work at the Center and Plaintiff Burrell's statement that he "did not have $2,129.43" (Doc. 77 ¶¶ 28, 36, 67, 88) are not entitled to a presumption of truth and, if accepted, would present an attack on the state court contempt judgments which is precluded by *Rooker-Feldman*, *see supra* pp. 21-23.

To plausibly state a claim for relief, Plaintiffs would, at a minimum, have to plead facts which show that financial situations changed after the state court made its findings such that they were no longer able to pay the purge amount and they were prevented from availing themselves of the provisions of 23 Pa. C.S. § 4352 which generally allow for requests for modification of previous support orders and retroactive modification of arrears in certain circumstances or, alternatively, how availing themselves of modification pursuant to state domestic relations law would not have provided them with the choice they said they were deprived of regarding working at the Center.[5]

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[5] 23 Pa. C.S. § 4352 addressed "Continuing jurisdiction over support orders" and provides the following in pertinent part:

> (a) General rule.—The court making an order of support shall at all times maintain jurisdiction of the matter for the purpose of enforcement of the order and for the purpose of increasing, decreasing, modifying or

In the Second Amended Complaint, the Court finds no averments stating or implying changed financial circumstances following the issuance of the state court orders. (*See* Doc. 77.) Without such a showing, the Court has no basis to conclude that Plaintiffs did not have their own keys to the prison—the finding by the Court of Common Pleas that they had the ability to pay would be undisturbed and this Court would be legally obligated to respect the determination of the state court that Plaintiffs had the ability to pay the purge amount.

> rescinding the order[.] . . . A petition for modification of a support order may be filed at any time and shall be granted if the requesting party demonstrates a substantial change in circumstances.
>
> . . . .
>
> (e) Retroactive modification of arrears.—No court shall modify or remit any support obligation, on or after the date it is due, except with respect to any period during which there is pending a petition for modification. If a petition for modification was filed, modification may be applied to the period beginning on the date that notice of such petition was given, either directly or through the appropriate agent, to the obligee or, where the obligee was the petitioner, to the obligor. However, modification may be applied to an earlier period if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition. . . .

23 Pa. C.S. § 4352; *M.A. v. F.W.A.*, 241 A.3d 470 (Pa. Super. 2020) (considering retroactive application pursuant to 23 Pa. C.S. § 4352); *Albert v. Albert*, 707 A.2d 234 (Pa. Super. 1998) (same).

In their filings related to Defendants' pending motions (Docs. 134, 142), Plaintiffs point to no facts supporting an inference of changed circumstances nor do they seek an opportunity to make the requisite showing. However, they assert in their sur-reply brief that discovery is needed to evaluate "whether the funds were accessible to Plaintiffs, other financial burdens faced by Plaintiffs, or other context regarding the coerciveness of the purge amount." (Doc. 142 at 4.) The asserted need for discovery on these issues is without merit. First, the answer to the questions of what funds were accessible to Plaintiffs and what other financial burdens they had are fully within Plaintiffs' control. Therefore, no discovery need be engaged in to provide a factual basis for a claim that Plaintiffs' experienced changed financial circumstances. Second, discovery regarding "the coerciveness of the purge amount" (*id*.) is not necessary because that amount was set by the Court of Common Pleas to coerce the contemnor to comply with the *previously court-ordered child support* and, as a matter of state law, had to be, at the time set, an amount determined to "beyond a reasonable doubt [to be] an amount the contemnor has the present ability to pay." *Barrett*, 368 A.2d at 621.

Based on this review of Plaintiffs' Second Amended Complaint, the Court finds they have pled no facts and raised no inference supporting changed circumstances. Further, Plaintiffs have pled no facts which support an inference that they were prevented from availing themselves of the provisions of 23 Pa. C.S. § 4352 and they have provided no facts regarding the ineffectiveness of modification regarding the issue of their alleged lack of choice to work at the Center. Be-

cause this is the minimum Plaintiffs must show to plead plausible claims for relief on their Thirteenth Amendment and TVPA claims, *i.e.*, that they did not have the keys to the prison, *Turner*, 564 U.S. at 441-42, Defendants' motions to dismiss these claims are properly granted. The Court further concludes that it cannot be definitely determined at this time that leave to amend would be futile, particularly given the Third Circuit panel's guidance that the context of the choice given civil contemnors is important and the fact that there is a "dearth of case law in this area." *Burrel*, 750 F. App'x at 159. Because the Court cannot conclude that amendment would be futile, the dismissal of the Thirteenth Amendment and TVPA claims will be without prejudice.[6]

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[6] Although the Court concludes that dismissal without prejudice is appropriate in the circumstances presented here, the Court makes no determination on the potential merits of Thirteenth Amendment and TVPA claims based on the possibility that Plaintiffs experienced diminished financial circumstances subsequent to the entry of the state court contempt orders such that the choice they had to pay the purge amount at that time was no longer an option and they were unable to avail themselves of modification pursuant to 23 Pa. C.S. § 4352 or that mechanisms available under state domestic relations law would not provide them the choice they said they were deprived of regarding working at the Center. At this stage, the Court concludes only that a showing of changed financial circumstances and the unavailability or inadequacy of domestic relations remedies potentially impacts these claims in a legally significant way. This is not to say that Plaintiffs were subject to any legal sanction when they chose to participate in the Community Service Program—that is an analysis that only need be undertaken if Plaintiffs' choice changed significantly. ("A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them," *Lyng v. Nw. Indian Cemetery Protective*

B. RICO Claims

In their Second Amended Complaint, Plaintiffs allege in Count VI that all Defendants violated the Racketeer Influenced and Corrupt Organizations Act ("RICO") by violating 18 U.S.C. § 1962(c) and 1964(c) with the "patterns of racketeering" being that Defendants and the Enterprise engaged in acts and schemes violating the TVPA, 15 U.S.C. § 1589(a)(1). Because the Court has concluded that Plaintiffs' TVPA claims must be dismissed and the RICO claims are based on alleged TVPA violations, Plaintiffs' RICO claims also must be dismissed. The question is whether dismissal of these claims should be with or without prejudice.

Magistrate Judge Saporito made several findings regarding Plaintiffs' RICO claims which the parties have not challenged. He concluded that the RICO claims against the County and the Authority should be dismissed for failure to state a claim because a civil RICO action under 18 U.S.C. § 1964(c) cannot be maintained against a municipal corporation as a matter of law. (Doc. 120 at 21 (citing *Gentry v. Resolution Tr. Corp.*, 937 F.2d 899, 914 (3d Cir. 1991).) The R&R notes that this rationale also applies to an official-capacity RICO claim against Defendant Thomas Staff. (Doc. 120 at 21 n.10.) Therefore, RICO claims against the County, the Authority, and Thomas Staff in his official capacity will be dismissed with prejudice.

Ass'n, 485 U.S. 439, 445 (1988).) Magistrate Judge Saporito's thorough analysis of the Thirteenth Amendment and TVPA claims raised in the Amended Complaint (Doc. 11) illustrates certain difficulties Plaintiffs' face in stating plausible claims for relief under the Thirteenth Amendment and TVPA. (*See* Doc. 34 at 30-41.)

The R&R also recommends that RICO claims against Louis and Dominick DeNaples be dismissed because facts alleged in the Second Amended Complaint "are not sufficient to establish that Louis and Dominick DeNaples personally—separate and apart from their roles as corporate officers—'conducted or participated in the conduct of the enterprise's affairs, not just their own affairs.'" (Doc. 120 at 23 (quoting *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 162 (2001)) (additional citations omitted).[7]) Unlike the

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[7] The R&R set out the following analysis of Plaintiffs' RICO claims against Louis DeNaples and Dominick DeNaples:

> "To plead a RICO claim under § 1962(c), 'the plaintiff must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *In re Brokerage Antitrust Litig.*, 618 F.3d 300, 362, (3d Cir. 2010). Under the statute, an "enterprise" includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. 1961(4). In this case, the plaintiffs have pleaded an association-in-fact enterprise comprised of (1) LRCI, (2) its corporate officers and co-owners, Louis and Dominick DeNaples, (3) Lackawanna County and Thomas Staff, in his official capacity, and (4) the Authority.
>
> The Supreme Court has recognized that a corporation's owner could be sued as a RICO 'person' acting through the corporation as the 'enterprise.' However, the Court distinguished this scenario from the type of claim where a corporation is alleged to be a RICO person based on an alleged association with its own employees." *Friedland v. Unum Grp.*, 50 F. Supp. 3d 598, 605 (D. Del. 2014) (citations omitted) (citing *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163-64 (2001)). Here, the plaintiffs have asserted the latter type of claim, naming LRCI as a defendant and a RICO "person" that conducted or participated

claims against the County and the Authority, due to the basis upon which dismissal is recommended, the Court cannot conclude that granting leave to amend RICO claims against Louis DeNaples and Dominick DeNaples would be futile. Therefore, RICO claims against these Defendants will be dismissed without prejudice.

The R&R recommends that the RICO claim against LRCI go forward because the Second Amended Complaint plausibly pleaded an association-in-fact enterprise and the necessary predicate acts of racketeering by LCRI was plausibly pleaded because the R&R found that Plaintiffs' had plausibly pleaded a TVPA claim against LCRI. (Doc. 120 at 24-25 & n.11.) As set out above, the Court has determined that Plaintiffs' TVPA claims must be dismissed. Therefore, the RICO claim against LCRI also must be dismissed. The Court will dismiss the RICO claim against LCRI without prejudice for the same reasons as the TVPA claims are dismissed without prejudice.

> in the alleged association-in-fact enterprise. The plaintiffs further name LRCI's officers and co-owners, Louis and Dominick DeNaples, as additional participants in the enterprise. But the facts in the second amended complaint are not sufficient to establish that Louis and Dominick DeNaples personally—separate and apart from their roles as corporate officers—"conducted or participated in the conduct of the 'enterprise's affairs." *Cedric Kushner Promotions*, 533 U.S. at 162; *see also Friedland*, 50 F. Supp. 3d at 605; *Curtin v. Tilley Fire Equip. Co.*, No. Civ. 99-2373, 1999 WL 1211502, at *3 (E.D. Pa. Dec. 14, 1999).

(Doc. 120 at 22-23.)

C. Unjust Enrichment

The R&R concludes that Plaintiffs' unjust enrichment claim (Count VII) should go forward because it was "pleaded as a companion to the plaintiffs' forced labor and indentured servitude claims," and "'[w]here the unjust enrichment claim rests on the same improper conduct as the underlying tort claim, the unjust enrichment claim will rise or fall with the underlying claim.'" (Doc. 120 at 25-26 (citing *Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc.*, 171 F.3d 912, 936 (3d Cir. 1999)) (quoting *Whitaker v. Herr Foods, Inc.*, 198 F. Supp. 3d 476, 493 (E.D. Pa. 2016)).) Plaintiffs agree with Magistrate Judge Saporito, stating that he "correctly understood Plaintiffs' unjust enrichment claim to be connected to their forced labor claims." (Doc. 134 at 13.) Because Plaintiffs' unjust enrichment claim rises or falls on the Thirteenth Amendment and TVPA claims, the unjust enrichment claim must also be dismissed. Because the Court has concluded that the Thirteenth Amendment and TVPA claims should be dismissed without prejudice, it follows that the Unjust Enrichment claim should be dismissed without prejudice.

D. FLSA and PWMA Claims

The R&R recommends dismissal of Plaintiffs' FLSA and PWMA minimum wage claims against LRCI, Lackawanna County, and the authority (Count III) because the relationship is not one of employment. (Doc. 120 at 17-18 (citing *Wilkerson v. Samuels*, 524 F. App'x 776 779 (3d Cir. 2013) (per curiam) ("It is well established that a prisoner is not an employee under the Fair Labor Standards Act (FLSA), because

the relationship is not one of employment, but arises out of the prisoner's status as an inmate."); *Tourscher v. McCullough,* 184 F.3d 236, 243-44 (3d Cir. 1999) (holding that pretrial detainees were not "employees" under the FLSA); *see also Matherly v. Andrews,* 859 F.3d 264, 278 (4th Cir. 2017) (holding that civil detainee committed as sexually violent person was not an "employee" under the FLSA); *Smith v. Dart,* 803 F.3d 304, 314 (7th Cir. 2015) ("We cannot see what difference it makes if the incarcerated person is a prisoner, civil detainee, or pretrial detainee."); *Villarreal v. Woodham,* 113 F.3d 202, 206 (11th Cir. 1997) (FLSA does not apply to prisoners who have not been convicted-as with convicted prisoners, pretrial detainees are in a custodial relationship, they were under the supervision and control of a governmental entity, and they were provided by the prison with all of their basic needs).)

Plaintiffs object to the R&R's recommendation that these claims be dismissed, maintaining that the critical distinction between this case and those relied upon by the Magistrate Judge is that Plaintiffs were working for a private entity outside the prison setting and caselaw supports the conclusion that, in these circumstances, they can pursue claims under the wage and hour laws. (*See*, *e.g*. Doc. 138 at 2-3.) With this objection, the Court will assess whether the facts pled in the Second Amended Complaint plausibly give rise to FLSA and PMWA claims.

As stated in the R&R, claims under the FLSA and PMWA are to be analyzed under the same standards. (Doc. 120 at 18 (citing *Ford-Greene v. NHS, Inc.*, 106 F. Supp. 3d 590, 612-13 (E.D. Pa. 2015).)

The FLSA provides in relevant part: "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages . . . not less than" minimum wage. 29 U.S.C. § 206(a)(1). The FLSA defines "employee" as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). The term "employer" "includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency." 29 U.S.C. § 203(d). In *Thompson v. Real Estate Mortgage Network*, 748 F.3d 142 (3d Cir. 2014), the Third Circuit noted that

> the breadth of these definitions is both intentional and obvious:
>
> > When determining whether someone is an employee under the FLSA, "economic reality rather than technical concepts is to be the test of employment." Under this theory, the FLSA defines employer "expansively," and with "striking breadth." The Supreme Court has even gone so far as to acknowledge that the FLSA's definition of an employer is "the broadest definition that has ever been included in any one act."
>
> *In re Enterprise Rent-A-Car Wage & Hour Emp't Prac. Litig.*, 683 F.3d 462, 467–68 (3d Cir.2012) (citations omitted).

Thompson, 748 F.3d at 148.

The "economic reality" concept in FLSA analysis was announced in *Goldberg v. Whitaker House Coop.,*

Inc., 366 U.S. 28 (1961), where the Supreme Court first stated that "'economic reality' rather than 'technical concepts' is to be the test of employment" for purposes of the FLSA. *Id.* at 33.[8] The Court of Appeals for the Third Circuit recognized *Goldberg's* directive that the term "employee" be interpreted "in light of the 'economic reality' of the relationship between the parties." *Tourscher v. McCulough*, 184 F.3d 236, 243 (3d Cir. 1999). In consideration of the prisoner plaintiff's argument that pretrial detainees and convicted prisoners should be paid minimum wage for their work in the prison (the plaintiff was assigned to work in the prison cafeteria while the appeal of his

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[8] As stated in *Henthorn v. Department of Navy*, 29 F.3d 682 (D.C. Cir. 1994), this directive gave rise to a

> four-factor "economic reality" test for determining whether an individual is an "employee" covered by the FLSA. This test considers the extent to which typical employer prerogatives govern the relationship between the putative employer and employee. The test asks: "whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records." *See Bonnette v. California Health & Welfare Agency,* 704 F.2d 1465, 1470 (9th Cir.1983) (internal quotations omitted).

Henthorn, 29 F.3d at 684. Although the test has been applied in the prisoner/FLSA context, *see*, *e.g.*, *Carter v. Dutchess Community College*, 735 F.2d 8, 12 (2d Cir. 1984), appellate courts moved away from its usage in favor of an economic reality test at a higher level of generality after finding the *Bonette* factors unhelpful in determining the economic reality of the employment relationship in the prisoner context. *Danneskjold v. Hausrath*, 82 F.3d 37, 40-44 (2d Cir. 1996) (listing cases).

conviction was pending in state court, *id.* at 242), *Tourscher* reasoned as follows:

> Each circuit that has addressed the question has concluded that prisoners producing goods and services used by the prison should not be considered employees under the FLSA. *See Gambetta v. Prison Rehabilitative Industries,* 112 F.3d 1119, 1124–25 (11th Cir.1997); *Danneskjold v. Hausrath,* 82 F.3d 37, 43 (2d Cir.1996); *Reimonenq v. Foti,* 72 F.3d 472, 475 n. 3 (5th Cir.1996); *Henthorn v. Department of Navy,* 29 F.3d 682, 684–87 (D.C.Cir.1994); *McMaster v. Minnesota,* 30 F.3d 976, 980 (8th Cir.1994); *Hale v. Arizona,* 993 F.2d 1387, 1392–98 (9th Cir.1993) (en banc); *Franks v. Oklahoma State Indus.,* 7 F.3d 971, 972 (10th Cir.1993); *Harker v. State Use Indus.,* 990 F.2d 131, 133 (4th Cir.1993); *Miler v. Dukakis,* 961 F.2d 7, 8–9 (1st Cir.1992); *Vanskike v. Peters,* 974 F.2d 806, 809–10 (7th Cir.1992); *but cf. Watson v. Graves,* 909 F.2d 1549, 1554–55 (5th Cir.1990) (holding the FLSA applicable where the prisoners worked for an outside construction company in competition with other private employers and where this competition tended to undermine compliance with the FLSA).
>
> In *Danneskjold,* the Second Circuit reasoned as follows:
>
> > The relationship is not one of employment; prisoners are taken out of the national economy; prison work is often designed to train and rehabilitate;

> prisoners' living standards are determined by what the prison provides; and most such labor does not compete with private employers. . . .
>
> As a result, no Court of Appeals has ever questioned the power of a correctional institution to compel inmates to perform services for the institution without paying the minimum wage. Prisoners may thus be ordered to cook, staff the library, perform janitorial services, work in the laundry, or carry ou[t] numerous other tasks that serve various institutional missions of the prison, such as recreation, care and maintenance of the facility, or rehabilitation. Such work occupies prisoners' time that might otherwise be filled by mischief; it trains prisoners in the discipline and skills of work; and it is a method of seeing that prisoners bear a cost of their incarceration.

82 F.3d at 42–43.

Tourscher, 184 F.3d at 243. Based on this analysis, the Third Circuit Court agreed with its sister circuits "prisoners who perform intra-prison work are not entitled to minimum wages under the FLSA." *Id.*

Toursher then went on to examine how pretrial detainee status affected the FLSA calculation, noting that the only circuit which has examined the question of whether the FLSA's minimum wage provision should apply to work performed by a pretrial detainee held that the FLSA is inapplicable to pretrial detainees

working for prison authorities since, like prisoners, they are not employees under the FLSA. *Id.* (citing *Vilarreal v. Woodham,* 113 F.3d 202, 206–07 (11th Cir.1997)). *Tourscher* set out the following reasoning contained in *Villarreal*:

> "Focusing on the economic reality of the situation in its entirety, we conclude that [a pretrial detainee] is not an "employee" under the FLSA. The purpose of the FLSA is to protect the standard of living and general well-being of the American worker. Because the correctional facility meets Villarreal's needs, his "standard of living" is protected. In sum, "the more indicia of traditional, free-market employment the relationship between the prisoner and his putative 'employer' bears, the more likely it is that the FLSA will govern the employment relationship." Villarreal's situation does not bear any indicia of traditional free-market employment contemplated under the FLSA. Accordingly, we hold that Villarreal and other pretrial detainees in similar circumstances are not entitled to the protection of the FLSA minimum wage requirement."

Tourscher, 184 F.3d at 243-44 (quoting Villarreal, 113 F.3d at 207). The circumstances of the plaintiff's prison employment in *Vilarreal* were that he was a pretrial detainee in a county correctional facility when the sheriff required him to perform translation services for other inmates, medical personnel, and court personnel. *Villarreal*, 113 F.3d at 202. As an issue of first impression, the Eleventh Circuit held that "pretrial detainees who perform services at the

direction of correction officials and for the benefit of the facility are not covered under the FLSA." *Id.* at 204. *Tourshcer* agreed with *Villarreal's* "economic reality" rationale and found that the plaintiff's employment in the prison cafeteria "bears no indicia of traditional free-market employment." 184 F.3d at 244.

Based on *Toursher*, this Court has observed that

> The Third Circuit Court has explicitly held that prisoners who perform intraprison work are not entitled to minimum wages under the FLSA. *Tourscher v. McCulough,* 184 F.3d 236, 243 (3d Cir.1999). In doing so, the Third Circuit Court found that each circuit that has addressed the question of whether an inmate is entitled to the federal minimum wage has concluded that prisoners producing goods and services used by the prison should not be considered employees under the FLSA. *See id.* (citing *Gambetta v. Prison Rehabilitative Indus.,* 112 F.3d 1119, 1124–25 (11th Cir.1997); *Danneskjold v. Hausrath,* 82 F.3d 37, 43 (2d Cir. 1996); *Reimoneng v. Foti,* 72 F.3d 472, 475 n. 3 (5th Cir.1996); *Henthorn v. Dept. of Navy,* 29 F.3d 682, 684–87 (D.C.Cir.1994); *McMaster v. Minnesota,* 30 F.3d 976, 980 (8th Cir.1994); *Hale v. Arizona,* 993 F.2d 1387, 1392–98 (9th Cir. 1993) (en banc); *Franks v. Oklahoma State Indus.,* 7 F.3d 971, 972 (10th Cir.1993); *Harker v. State Use Indus.,* 990 F.2d 131, 133 (4th Cir.1993); *Miler v. Dukakis,* 961 F.2d 7, 8–9 (1st Cir.1992); *Vanskike v. Peters,* 974 F.2d 806, 809–10 (7th Cir.1992)).

Banks v. Roberts, Civ. A. No. 1:06-CV-01232, 2007 WL 1574771, at *10 (M.D. Pa. May 31, 2007), *aff'd*, 251 F. App'x 774 (3d Cir. 2007). In *Banks,* the plaintiff, an inmate at USP-Canaan, worked as a landscaper on the USP-Canaan compound and the opinion noted that he did not assert that any of his landscaping duties took place on any property other than the USP-Canaan compound. *Id.* In these circumstances, the court found that the plaintiff was not entitled to be paid minimum wage for his work. *Id.*

Cases in this Circuit and elsewhere uniformly hold that prisoner-laborers who perform work within the prison compound, whether working for prison authorities or private employers, were not "employees" under the FLSA.[9] Importantly, courts have not held that "prisoners are *categorically* barred from ever being 'employees' within the meaning of the FLSA merely because of their prisoner status." *Henthorn v. Department of Navy*, 29 F.3d 682, 685 (D.C. Cir. 1994) (citing *Vanskike*, 974 F.2d at 808; *Hale*, 993 F.2d at 1393). Notably, prisoners as a class are not exempted from FLSA coverage. *Carter*, 735 F.2d at 13. As *Carter* explained,

> in § 13 of the FLSA, 29 U.S.C. § 213 (1982), Congress has set forth an extensive list of workers who are exempted expressly from FLSA coverage. The category of prisoners is not on that list. It would be an encroachment upon the legislative prerogative for a court to hold that a class of unlisted workers is excluded from the Act. Congress must be

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[9] Quotations and parenthetical case information set out in the R&R (Doc. 120 at 17-18) relate to the intra-prison work context.

> presumed to be aware of and to approve of the use by the courts of the economic reality test, which involves a case-by-case factual analysis.

735 F.2d at 13.

Henthorn noted that "cases in which courts have found that the FLSA does govern inmate labor have involved prisoners working outside the prison for private employers. *Id.* (citing *Watson,* 909 F.2d at 1553–54 (prisoners working for construction company outside the prison on work release program were "employees" of company governed by the FLSA); *Carter,* 735 F.2d at 13–14 (prisoner working as a teaching assistant at community college which paid him his wages directly could be FLSA "employee")). The D.C. Circuit concluded that "[i]n cases such as *Watson* and *Carter* where the prisoner is voluntarily selling his labor in exchange for a wage paid by an employer other than the prison itself, the Fair Labor Standards Act may apply." 29 F.3d at 686. *Henthorn* distinguished such cases from others like *Hale* and *Vanskike*

> in which the prisoner is legally compelled to part with his labor as part of a penological work assignment and is paid by the prison authorities themselves, the prisoner may not state a claim under the FLSA, for he is truly an involuntary servant to whom *no* compensation is actually owed. *See Vanskike,* 974 F.2d at 809 ("Thirteenth Amendment's specific exclusion of prisoner labor supports the idea that a prisoner performing required work for the prison is actually engaged in involuntary servitude, not employment.");

> *see also Wilks* [*v. District of Columbia,* 721 F. Supp. 1383, 1384 (D.D.C. 1989)] (typically "inmate labor belongs to the penal institution and inmates do not lose their primary status as inmates just because they perform work").

Henthorn, 29 F.3d at 686.

Based on these distinctions, *Henthorn* held that

> A prerequisite to finding that an inmate has "employee" status under the FLSA is that the prisoner has freely contracted with a non-prison employer to sell his labor. Under this analysis, where an inmate participates in a non-obligatory work release program in which he is paid by an outside employer, he may be able to state a claim under the FLSA for compensation at the minimum wage. However, where the inmate's labor is compelled and/or where any compensation he receives is set and paid by his custodian, the prisoner is barred from asserting a claim under the FLSA, since he is definitively not an "employee." At the pleading stage, this means that a federal prisoner seeking to state a claim under the FLSA must allege that his work was performed without legal compulsion and that his compensation was set and paid by a source other than the Bureau of Prisons itself. Absent such allegations, prison labor is presumptively not "employment" and thus does not fall within the ambit of the FLSA.

Id. at 686-87.

This Court finds the straight-forward, common sense approach taken by the D.C. Circuit applicable to the case at bar. As a threshold matter, the pleading-stage inquiry set out in *Henthorn* does not undermine the Third Circuit's holding in *Tourscher* that "prisoners who perform intra-prison work are not entitled to minimum wages under the FLSA." 184 F.3d at 243. Further, insofar as the *Henthorn* analysis is rooted in consideration of the "'indicia of the free market employment relationship,'" *Tourscher*, 184 F.3d at 243 (quoting *Villarreal*, 113 F.3d at 207), between an employer and employee as applied in the prisoner context, application of *Henthorn's* pleading stage requirements does not run afoul of principles set out in *Tourshcer* and *Villarreal.* Thus, the Court will now turn to the question of whether Plaintiffs' Second Amended Complaint alleges "that the prisoner has freely contracted with a non-prison employer to sell his labor" and "that their work was performed without legal compulsion and that any compensation received for their work was set and paid by a non-prison source." *Henthorn*, 29 F.3d at 686-87.

Regarding the question of whether the work was performed "without legal compulsion," *Henthorn* looked for allegations by the plaintiff that the work he performed was voluntary and not compelled by the Bureau of Prisons. *Id.* Here, Plaintiffs do not allege that they freely contracted with a non-prison employer and their work at the Center was voluntary and not compelled by the Lackawanna County Prison. Plaintiffs specifically allege that they were actively misled into believing that they were prisoners who could be forced to work as punishment and as a condition of liberty. (Doc. 77 ¶¶ 50, 76, 118.) As discussed in the

preceding section addressing Plaintiffs' Thirteenth Amendment and TVPA claims, Plaintiffs also allege that because they could not otherwise qualify for work release and because they wanted to pay their child support and regain their freedom, and because they lacked any other option, they were "compelled" to begin working at the Center. (Doc. 77 ¶¶ 36, 67, 88.) Setting aside the question of whether Plaintiffs were actually compelled to work at the Center which was addressed as to the Thirteenth Amendment and TVPA claims, with paragraphs 36, 67, and 88, Plaintiffs do not allege that their work at the Center was freely contracted and voluntary. Therefore, Plaintiffs' Second Amended Complaint does not establish or infer that their work at the Center was voluntary.

As to the second part of the inquiry—whether their compensation was set by a non-prison source, Plaintiffs specifically allege that the Authority and the County set Debtors' pay at $5.00 per hour. (Doc. 77 ¶ 142.) Because the County operates the Lackawanna County Prison, Plaintiffs do not unequivocally allege that their compensation of $5.00 a day was set by a non-prison source.

Because Plaintiffs' Second Amended Complaint does not satisfy the two-pronged test for pleading sufficiency set out above, their FLSA and PMWA claims will be dismissed. The claims will be dismissed without prejudice because the Court cannot determine on the present record that granting leave to amend would be futile.

With this determination, Defendants' statute of limitations defenses on the FLSA and PMWA claims as to Defendants Burrell and Huzzard and consideration of the parties' equitable tolling arguments as to

these Defendants (Doc. 105 at 6; Doc. 115 at 128; Doc. 132 at 10; Doc. 138 at 8) will not be considered at this time.

E. PWPCL Claims

Count V of the Second Amended Complaint asserts PWPCL claims against LRCI, Lackawanna County, and the Authority for failure to pay the plaintiffs in "lawful money of the United States or check." (Doc. 77 ¶ 235.) Specifically, the Second Amended Complaint alleges that, while participating in the Community Service Program and working at the Center, Plaintiffs were paid $5 for each day they worked at the Center, which was deposited into their prison commissary accounts. (*Id.* ¶¶ 157, 158.) Plaintiffs contend that payment into their prison commissary accounts was not equivalent to payment by lawful money of the United States (*i.e.*, cash) or check, due to various restrictions placed on their use of funds in their prison commissary accounts. (*Id.* ¶¶ 159, 160.)

The R&R set out the following relevant legal framework:

> "The [PWPCL] statute itself does not create a right to compensation." *Sendi v. NCR Comten, Inc.*, 619 F. Supp. 1577, 1579 (E.D. Pa. 1985). The PWPCL merely "provides employees a statutory remedy to recover wages and other benefits that are *contractually* due to them." *Lehman v. Legg Mason, Inc.,* 532 F. Supp. 2d 726, 733 (M.D. Pa. 2007) (quoting *Oberneder v. Link Computer Corp.,* 696 A.2d 148, 150 (Pa. 1997)); *see also Ford-Greene,* 106 F. Supp. 3d at 613; *Sendi,* 619 F. Supp. at 1579. "Accordingly, a

> prerequisite for relief under the [P]WPCL is a contract between employee and employer that sets forth their agreement on wages to be paid. Relief under the [P]WPCL is implausible without existence of a contract." *Lehman,* 532 F. Supp. 2d at 733 (citations omitted). In other words, "[for the [P]WPCL to apply, an employer-employee relationship is required." *Gladstone Tech. Partners, LLC v. Dahl,* 222 F. Supp. 3d 432, 439 (E.D. Pa. 2016).

(Doc. 120 at 19-20.)

The R&R concludes that, for the reasons stated regarding Plaintiffs' FLSA and PMWA claims, Plaintiffs "failed to allege an employer-employee relationship" and their PWPCL claims against LRCI, Lackawanna County, and the Authority should be dismissed for failure to state a claim upon which relief can be granted. (Doc. 120 at 20.)

Plaintiffs object to this conclusion because the R&R does not address whether Plaintiffs pled the existence of a contract and ignores Plaintiffs' argument that they did. (Doc. 128 at 7.) Plaintiffs assert that, "[t]o the extent the PWPCL contains a contractual requirement, they have satisfied it" because employees can satisfy the requirement by alleging an "implied oral contract" arising from the employment relationship. (*Id.*) Plaintiffs further allege that the Second Amended Complaint sets out the allegations necessary to satisfy the elements of implied contract. (*Id.* at 7-8 (citing *Oxner v. Clivedon Nursing & Rehabilitation Center PA, L.P.*, 132 F. Supp. 3d 645, 649 (E.D. Pa. 2015)).)

The WPCL does not create a right to compensation; it provides a statutory remedy when the employer breaches a contractual obligation to pay earned wages. *De Asencio v. Tyson Foods, Inc.,* 342 F.3d 301, 309 (3d Cir.2003) (citing *Antol v. Esposto,* 100 F.3d 1111, 1117 (3d Cir.1996)). The contract between the parties governs in determining whether specific wages are earned. *Id.* Where an employee does not work under a written employment contract or collective bargaining agreement, the employee will have to establish the formation of an implied oral contract to recover under the WPCL. *Id.* at 309–10; *see also Braun v. Wal–Mart Stores, Inc.,* 24 A.3d 875, 954 (Pa.Super.Ct.2011) (citing *De Asencio,* 342 F.3d at 309), *aff'd,* 106 A.3d 656 (Pa.2014).

Under Pennsylvania law, an implied contract arises when parties agree on the obligation to be incurred, but their intention, instead of being expressed in words, is inferred from the relationship between the parties and their conduct in light of the surrounding circumstances. *See Halstead v. Motorcycle Safety Found., Inc.*, 71 F.Supp.2d 455, 459 (E.D.Pa. 1999). An offer and acceptance need not be identifiable and the moment of formation need not be precisely pinpointed. *See Ingrassia Constr. Co., Inc. v. Walsh,* 337 Pa.Super. 58, 486 A.2d 478, 483 (1984). In general, there is "an implication of a promise to pay for valuable services rendered with the knowledge and approval of the recipient, in the

> absence of a showing to the contrary." *Martin v. Little, Brown & Co.,* 304 Pa. Super. 424, 450 A.2d 984, 987 (1981). As the Pennsylvania Superior Court explained, "a promise to pay the reasonable value of the service is implied where one performs for another, with the other's knowledge, a useful service of a character that is usually charged for, and the latter expresses no dissent or avails himself of the service." *Id.* (citing *Home Prot. Bldg. & Loan Ass'n,* 143 Pa. Super. 96, 17 A.2d 755, 756–57 (1941); 17A Am.Jur.2d Contracts § 5). A promise to pay for services can only be implied, however, in circumstances under which the party rendering the services would be justified in entertaining a reasonable expectation of being compensated by the party receiving the benefit of those services. *Id.*

Oxner, 132 F. Supp. 3d at 649.

Although the Court has concluded that Plaintiffs' Second Amended Complaint does not allege an employer-employee relationship for PMWA purposes, even if the Court were to assume *arguendo* that this determination does not control the PWPCL claims, Plaintiffs' implied contract argument would fail.

The Second Amended Complaint asserts that prison staff told Plaintiff Burrell that he would receive $5.00 a day for working at the Center (Doc. 77 ¶ 31) and he received $5.00 a day for working at the Center which were deposited in his commissary account (*id.* ¶¶ 42, 43). Plaintiffs Huzzard and Stuckey do not assert that they were told they would receive $5.00 per day for working at the Center. (*See id.*

¶¶ 54-96.) As to these Plaintiffs, the Second Amended Complaint alleges only that they in fact received $5.00 a day and those payments were deposited in their commissary accounts. (*Id*. ¶¶ 70, 71, 91, 92.)

These allegations fall short of stating a plausible claim for relief based on an implied contract theory. According to *Lehman,* "a prerequisite for relief under the [P]WPCL is a contract between employee and employer that sets forth *their agreement on wages to be paid*." 532 F. Supp. 2d at 733 (emphasis added). The PWPCL seeks to remedy the employer's breach of a contractual obligation to pay earned wages. *DeAsencio*, 342 F.3d at 309. The Second Amended Complaint contains no allegation that a person acting with the authority to speak for any Defendant established that Plaintiffs would be paid $5.00 for their services. Thus, the Court cannot infer from the Second Amended Complaint that the parties "agree[d] on the obligation to be incurred." *Oxner*, 132 F. Supp. 3d at 649 (citing *Halstead*, 71 F. Supp. 2d at 459). Because Plaintiffs' rely on the existence of an implied contract to support their PWPCL claims and no allegations in the Second Amended Complaint support the existence of an implied contract regarding an agreement on wages to be paid or breach of a contractual obligation to pay earned wages, Plaintiffs PWPCL claims will be dismissed. The dismissal will be without prejudice as the Court cannot conclude that granting leave to amend would be futile.

V. Conclusion

For the foregoing reasons, the R&R (Doc. 120) will be adopted in part and Defendants' motions to dismiss (Docs. 99, 101, 102, 103) will be granted.

Count I (Trafficking Victims Protection Act), Count II (42 U.S.C. § 1983 Thirteenth Amendment), Count III (Fair Labor Standards Act), Count IV (Pennsylvania Minimum Wage Act), Count V (Pennsylvania Wage Payment and Collection Law), and Count VII (Unjust Enrichment) of Plaintiffs' Second Amended Complaint (Doc. 77 at 26-30) will be dismissed without prejudice. Count VI (Racketeer Influenced and Corrupt Organization Act) of the Second Amended Complaint (Doc. 77 at 30) will be dismissed with prejudice as to Defendants County, Authority, and Thomas staff in his official capacity and will be dismissed without prejudice as to Defendants Louis DeNaples, Dominick DeNaples, and LCRI. A separate Order is filed simultaneously with this Memorandum Opinion.

/s/ Robert D. Mariani
United States District Judge

REPORT AND RECOMMENDATION BY MAGISTRATE JUDGE JOSEPH F. SAPORITO, JR. (MARCH 1, 2021)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM BURRELL JR.,

Plaintiff,

v.

PATRICK LOUNGO, ET AL.,

Defendants.

Civil Action No. 3:14-cv-01891

Before: MARIANI, J., SAPORITO, M.J.

This action originally commenced upon filing of a *pro se* complaint by the lead plaintiff, William Burrell Jr., on September 29, 2014. (Doc. 1.) Burrell subsequently filed a *pro se* amended complaint. (Doc. 11.) That amended complaint was dismissed, and Burrell appealed, *pro se.* (Doc. 34; Doc. 44; Doc. 45; Doc. 50; Doc. 51; Doc. 52.) On appeal, the Third Circuit affirmed this court's decision in part and vacated it in part, remanding the case for further proceedings. (Doc. 57.)[1]

[1] *See generally Burrell v. Loungo*, Civil Action No. 3:14-cv-01891, 2016 WL 7177549 (M.D. Pa. July 18, 2016), *report & recommendation adopted by* 2016 WL 7175615 (M.D. Pa. Dec. 8,

On remand, newly represented by counsel, Burrell filed his second amended complaint on December 6, 2019. (Doc. 77.) This counseled pleading narrowed the field of named defendants to six: (1) the Lackawanna County Solid Waste Management Authority (the "Authority"), a Pennsylvania municipal authority; (2) Lackawanna County, a political subdivision of the Commonwealth of Pennsylvania; (3) Thomas Staff, an administrator employed by Lackawanna County; (4) Lackawanna Recycling Center, Inc. ("LRCI"), a Pennsylvania business corporation; (5) Louis DeNaples, president and co-owner of LRCI; and (6) Dominick DeNaples, vice president and co-owner of LRCI. The counseled second amended complaint also joined two newly added plaintiffs—Joshua Huzzard and Dampsey Stuckey—and sought certification of a class action under Rule 23 of the Federal Rules of Civil Procedure.

The six defendants have filed four separate motions to dismiss. (Doc. 99 (Lackawanna County & Staff); Doc. 101 (LRCI); Doc. 102 (Louis & Dominick DeNaples); Doc. 103 (Authority).) These motions are fully briefed and ripe for decision. *(See* Doc. 104; Doc. 105; Doe. 107; Doe. 109; Doc. 115; Doc. 116; Doc. 117; Doc. 118.)

2016) (dismissing with leave to amend), *aff'd in part and vacated in part per curiam*, 750 Fed. App'x 149 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2640 (2019); *Burrell v. Loungo,* Civil Action No. 3:14-cv-01891, 2017 WL 727266 (M.D. Pa. Jan. 19, 2017), *report and recommendation adopted by* 2017 WL 722596 (M.D. Pa. Feb. 23, 2017) (dismissing with prejudice), *aff'd in part and vacated in part per curiam*, 750 Fed. App'x 149 (3d Cir. 2018), *cert. denied*, 139 5. Ct. 2640 (2019).

I. Factual Background

A. Lackawanna County Recycling Center

Since at least March 31, 2005, the Authority and LRCI have been parties to a contract (the "Operating Agreement") regarding the operations of the Lackawanna County Recycling Center (the "Center"), a recycling center owned by the Authority.[2] Under the terms of the Operating Agreement, LRCI assumed responsibility for operation and management of the Center, including the hiring, supervision, training, and payment of personnel to staff the Center. Besides these employees of LRCI, however, the Operation Agreement also provided that the Authority would continue to "provide the same number of Prisoners from the Lackawanna County Prison that have historically worked at the Center as part of their work release program as security requirements dictate."

In accordance with this last provision, county personnel—specifically, prison guards—transport prisoners to the Center to work there. Prison guards remain on site at the Center to supervise the prisoners, maintain security, and discipline prisoners. Some number of the prisoners supplied by the Authority to work at the Center are child support debtors sentenced to terms of incarceration following civil contempt proceedings for failure to pay child support.

B. William Burrell

William Burrell is the father of three children. Burrell had been paying child support for his two younger children until he sustained an injury in

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2 (*See* Doc. 11-6; *see also* Doc. 107-3.) *See generally infra* note 6.

early 2014 and missed three weeks of work. As a result of his injury and inability to work, Burrell fell behind on his child support payments. On May 14, 2014, Burrell was arrested for failure to pay child support.

On May 16, 2014, following a contempt hearing, a state family court judge, Judge Richard Saxton, found that Burrell had the ability to pay and sentenced him to serve two consecutive six-month terms at the Lackawanna County Prison, with each sentence subject to a purge provision: Burrell could be released earlier upon payment of his total arrearage of $7,033 in overdue child support.[3] The two family court orders also directed that Burrell be placed on work release immediately, if he qualified.

Shortly after his arrival at Lackawanna County Prison, Burrell was told by unidentified prison staff that to qualify for work release, he would first need to work at the Center for six months, during which time he would be paid $5 per day for his work there. Burrell was told that it was the prison's policy that child support prisoners work for half of their sentence at the Center and the other half on work release, unless they "purged out" earlier by paying the remainder of their child support arrears.

On May 22, 2014, Judge Saxton entered an order in Burrell's child support cases transferring him to the Lackawanna County Prison Community Service

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[3] The second amended complaint references a balance of arrears of $2,129.43, but this amount reflects only one of Burrell's two child support obligations. He owed an outstanding balance of $4,904.79 on the other obligation. (*See* Doc. 1-1, at 1, 2.) *See generally infra* note 6.

Program.[4] The order directed that Burrell be granted work release status on November 11, 2014, "contingent upon positive work ethics and successful completion of the Community Service Program."

Under the auspices of the community service program, Burrell Burrell's two child support began working at the Center on May 28, 2014, while continuing to reside at the county prison. Each workday morning, prison staff drove Burrell to the Center in a van, along with other prisoners working there. Burrell typically worked at the Center from 7 a.m. to 3 p.m., five days per week. During the workday, he typically received one 15-minute break and one 30-minute break. At the end of each workday, prison staff drove Burrell and the others back to the prison. Burrell was paid $5 for each day he worked at the Center, which was deposited into his prison commissary account.

For some of his time working at the Center, Burrell worked on the "soda line," along with other prisoners. In that role, he was required to remove recyclable glass from a line of fast-moving garbage moving on a conveyer belt. The rest of his time at the Center, Burrell worked in an "upper magnet" job, where he was responsible for removing metal from a stream of garbage that included glass, plastic, and other refuse.

C. Joshua Huzzard

Joshua Huzzard is the father of five children. On several occasions, Huzzard had fallen behind on his child support payments. On several occasions, Huzzard

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[4] (*See* Doc. 1-1, at 3.) *See generally infra* note 6.

had received summonses for family court hearings. On several occasions, Huzzard had been held in contempt for failure to make child support payments and sent to prison, with each sentence subject to a purge provision.

During one of Huzzard's stints at the prison, in mid-2013, defendant Staff approached Huzzard and told him he was eligible to work at the Center. Staff told Huzzard that, in order to be eligible for work release, he would need to work half of his sentence at the Center. At around this same time, Huzzard petitioned the family court to be placed on work release.[5] The court denied his petition and told him that, to qualify for work release, he first needed to work at the Center.

Huzzard went to work at the Center. He worked there five days per week, from approximately 7 a.m. to 3:30 p.m. During the workday, he typically received one 10-to 1.5-minute break and one 30-minute break. Sometimes he received an additional 10-minute break in the afternoon. Huzzard was paid $5 for each day he worked at the Center, which was deposited into his prison commissary account.

At the Center, Huzzard stood with other prisoners at a conveyor belt, separating recyclable items from garbage. He sometimes worked on another conveyor belt, separating different types of glass. He also worked on the "upper magnet," tearing open bags of garbage and emptying their contents onto the conveyor belt.

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[5] Huzzard alleges that he sought work release so he could be present at the birth of one of his children.

D. Dampsey Stuckey

Dampsey Stuckey is the father of four children. In 2017, Stuckey fell behind on his child support payments due to unspecified health issues. In March 2018, Stuckey was arrested. During his arrest, the arresting officer issued him a warrant for failure to pay child support. At a contempt hearing shortly after his arrest, Stuckey was sentenced to serve a term of six months at the prison, presumably subject to a purge provision.

Shortly after his arrival at Lackawanna County Prison, Stuckey spoke with Staff about the work release program. It was Stuckey's understanding that, in order to qualify for work release, he was required to first work at the Center.

Stuckey worked at the Center beginning in May or June 2018 and continuing until August 2018. He worked there five days per week, from approximately 7:30 a.m. to 3:30 p.m. During the workday, he typically received one 15-minute break and one 30-minute break. Stuckey was paid $5 for each day he worked at the Center, which was deposited into his prison commissary account.

At the Center, Stuckey stood with other prisoners at a conveyor belt, separating recyclable items from garbage. He sometimes worked on the "upper magnet," tearing open bags of garbage and emptying their contents onto the conveyor belt. He also worked on the "glass chute," separating clear, green, and brown glass.

II. Legal Standard

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a defendant to move to dismiss for "failure to state a claim upon which relief can be. granted." Fed. R. Civ. P. 12(b)(6). "Under Rule 12(b)(6), a motion to dismiss may be granted only if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds the plaintiffs' claims lack facial plausibility." *Warren Gen. Hosp. v. Amgen Inc.*, 643 F.3d 77, 84 (3d Cir. 2011) (citing *Bell Atlantic Corp. v. Twornbly*, 550 U.S. 544, 555-56 (2007)). In deciding the motion, the Court may consider the facts alleged on the face of the complaint, as well as "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Although the Court must accept the fact allegations in the complaint as true, it is not compelled to accept "unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation." *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (quoting *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007)). Nor is it required to credit factual allegations contradicted by indisputably authentic documents on which the complaint relies or matters of public record of which we may take judicial notice. *In re Washington Mut. Inc.*, 741 Fed. App'x 88, 91 n.3 (3d Cir. 2018); *Sourovelis v. City of Philadelphia*, 246 F. Supp. 3d 1058, 1075 (E.D. Pa. 2017); *Banks v. Cty. of*

Allegheny, 568 F. Supp. 2d 579, 588-89 (W.D. Pa. 2008).[6]

III. Discussion

The plaintiffs have asserted an array of federal and state claims against these defendants in their seven-count second amended complaint. In Count I, the plaintiffs seek to hold all six defendants liable for unlawfully obtaining their labor in violation of the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C.

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[6] In addition to the second amended complaint itself we have considered the Operating Agreement (Doc. 11-6) and the three court orders entered in Burrell's child support cases (Doc. 1-1). All of these are documents incorporated into the second amended complaint by reference. Moreover, a district court may properly take judicial notice of state court records, as well as its own. *See* Fed. R. Evid. 201; *Sands v. McCormick*, 502 F.3d 263, 268 (3d Cir. 2007); *Ernst v. Child & Youth Servs. of Chester Cty.*, 108 F.3d 486, 498-99 (3d Cir. 1997); *Pennsylvania v. Brown*, 373 F.2d 771, 778 (3d Cir. 1967); *Barrett v. Matters*, No. 1:14-cv-1250, 2015 WL 5881602, at *9 & n.8 (M.D. Pa. Sept. 30, 2015) (considering exhibits attached to original, superseded complaint).

We note that the County Defendants have also submitted papers reflecting the incarceration of plaintiff Stuckey pursuant to a criminal conviction that that overlaps some of the time period when he claims to have been forced to work at the Center as a child support debtor. (Doc. 107-4; Doc. 107-5; Doc. 107-6; Doc. 107-7.) These papers indicate that he was incarcerated for a criminal conviction from November 22, 2017, through February 22, 2018, and again from June 6, 2018, through an unspecified release date. They also indicate that his criminal sentence included 100 hours of community service. While we might properly take judicial notice of these court records, and while this information might impact the scope of Stuckey's claims or potential recovery, we decline to further consider these papers here because they do not appear to be fully dispositive of his claims as alleged in the second amended complaint.

§ 1589, made actionable by 18 U.S.C. § 1595. In Count II, the plaintiffs seek to hold Lackawanna County, the Authority, and Thomas Staff liable for subjecting them to involuntary servitude, in violation of the Thirteenth Amendment to the United States Constitution, made actionable by 12 U.S.C. § 1983. In Count III, the plaintiffs seek to hold LRCI, Lackawanna County, and the Authority liable for failure to pay the plaintiffs the federal minimum wage, in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 206(a), made actionable by 29 U.S.C. § 216(b). In Count IV, the plaintiffs seek to hold LRCI, Lackawanna County, and the Authority liable for failure to pay the plaintiffs the state minimum wage, in violation of the Pennsylvania Minimum Wage Act ("PMWA"), 43 P.S. § 333.104(a), made actionable by 43 P.S. § 333.113. In Count V, the plaintiffs seek to hold LRCI, Lackawanna County, and the Authority liable for failure to pay the plaintiffs in "lawful money of the United States or check," in violation of the Pennsylvania Wage Payment and Collection Law ("PWPCL"), 43 P.S. § 260.3(a), made actionable by 43 P.S. § 260.9a. In Count VI, the plaintiffs seek to hold all six defendants liable for conducting or participating in an enterprise through a pattern of racketeering activity, in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), made actionable by 18 U.S.C. § 1964(c). In Count VII, the plaintiffs seek to hold all six defendants liable for common-law unjust enrichment.

A. Official Capacity Defendant

In Counts I, II, VI, and VII, the second amended complaint names Thomas Staff as a defendant in his

official capacity only. It names his employer, Lackawanna County, as a defendant to these same counts as well. But [o]fficial capacity actions are redundant where the entity for which the individual[ ] worked is named." *Highhouse v. Wayne Highlands Sch. Dist.*, 205 F. Supp. 3d 639, 646 (M.D. Pa. 2016) (dismissing official capacity claims against municipal officials as redundant when municipality was also named as a defendant). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985).

Accordingly, it is recommended that the plaintiffs' claims against Thomas Staff in his official capacity be dismissed as redundant because his employer—Lackawanna County—is also named in the complaint, pursuant to the Court's inherent authority to control its docket and avoid duplicative claims. *See Dewees v. Haste*, 620 F. Supp. 2d 625, 630 (M.D. Pa. 2009) (dismissing official-capacity claims against county prison officials where county was also named as defendant); *see also Janowski v. City of N. Wildwood*, 259 F. Supp. 3d 113, 131-32 (D.N.J. 2017); *Korth v. Hoover*, 190 F. Supp. 3d 394, 402-03 (M.D. Pa. 2016); *Satterfield v. Borough of Schuylkill Haven*, 12 F. Supp. 2d 423, 431-32 (E.D. Pa. 1998).

B. Thirteenth Amendment and TVPA Claims

In Count I, the second amended complaint asserts TVPA forced labor claims against Lackawanna County, the Authority, LRCI, Louis DeNaples, Dominick DeNaples, and Thomas Staff in his official capacity only. In Count II, the second amended complaint

asserts Thirteenth Amendment indentured servitude claims against Lackawanna County, the Authority, and Thomas Staff in his official capacity only.

With respect to Burrell, the original plaintiff in this case, the facts alleged in the counseled second amended complaint are substantially the same as those alleged in Burrell's *pro se* first amended complaint. In screening Burrell's *pro se* first amended complaint, this court found that he had failed to state a claim upon which relief could be granted with respect to both his Thirteenth Amendment indentured servitude and TVPA forced labor claims because Burrell had a *choice* between a full twelve months of imprisonment or work at the Center in unpleasant conditions for meager pay. *Burrell*, 2016 WL 7177549, at *11-*14, *adopted by* 2016 WL 7175615. (Doc. 34; Doc. 44.) On appeal, the Third Circuit noted that, "given the dearth of case law in this area, . . . it is not clear, especially at the screening stage, whether this 'choice' was sufficient to bring the alleged practice of coercing civil contemnors to work in the [Center] out of the range of involuntary servitude" or forced labor. *Burrell*, 750 Fed. App'x at 159-60. (Doc. 57.) On remand, faced with substantively the same factual allegations concerning Burrell, we are, of course, compelled to agree. *See Paul v. Hearst Corp.*, 261 F. Supp. 2d 303, 305 n.4 (M.D. Pa. 2002) ("The law of the case rules require that, on remand, 'the trial court must proceed in accordance with the mandate and the law of the case as established on appeal.' A trial court must implement both the letter and spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces.'" (quoting *Bankers Tr. Co. v. Bethlehem Steel Corp.*, 761

F.2d 943, 949 (3d Cir. 1985) (citations and alterations omitted))).[7]

We further find that the facts alleged with respect to the newly added co-plaintiffs, Huzzard and Stuckey, are substantially similar to those alleged regarding Burrell.[8] Under these circumstances, we find that Huzzard and Stuckey have plausibly pleaded their Thirteenth Amendment involuntary servitude and TVPA forced labor claims as well.

Accordingly, we recommend that the defendants' motions to dismiss be denied with respect to the plaintiffs' Thirteenth Amendment involuntary servitude claims against Lackawanna County and the Authority and their TVPA forced labor claims against Lackawanna County, the Authority, LORI, Louis De-

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[7] We note that LRCI and the DeNaples brothers present additional arguments in favor of dismissal of the TVPA claims against them, one of which bears comment. These defendants acknowledge that the TVPA prohibits knowingly benefiting financially from participation in a venture which has engaged in the providing or obtaining of forced labor, but they argue that the second amended complaint fails to allege facts to support an inference that LRCI and the DeNaples brothers knowingly benefited from such a venture. However, based on the facts alleged in the second amended complaint and on the Operating Agreement itself, we find it reasonable to infer that the corporate defendant, LRCI, and its primary executive officers—one or both of whom appear to have signed that agreement—were necessarily aware of the Center's policy and practice of relying extensively on prisoner labor and the resultant benefit to LRCI of reduced operating costs. Whether that benefit may be further attributed to the DeNaples as owners of LRCI, which has a separate corporate existence, is an open question, not fully explored in the parties' briefs at this, the pleadings stage.

[8] Regarding plaintiff Stuckey, *see also supra* note 6.

Naples, and Dominick DeNaples, and that these claims be permitted to proceed to discovery.[9]

C. FLSA Claims

In Count III, the second amended complaint asserts FLSA claims against LRCI, Lackawanna County, and the Authority for failure to pay the plaintiffs the federal minimum wage.

"It is well established that a prisoner is not an employee under the Fair Labor Standards Act (FLSA), because the relationship is not one of employment, but arises out of the prisoner's status as an inmate." *Wilkerson v. Samuels*, 524 Fed. App'x 776, 779 (3d Cir. 2013) (per curiam). The fact that a plaintiff was incarcerated pursuant to a civil contempt order rather than a criminal judgment of sentence is immaterial, as the relationship nevertheless bears no indicia of traditional free-market employment. *See Tourscher v. McCullough*, 184 F.3d 236, 243-44 (3d Cir. 1999) (holding that pretrial detainees were not "employees" under the FLSA); *see also Matherly v. Andrews*, 859 F.3d 264, 278 (4th Cir. 2017) (holding that civil detainee committed as sexually violent person was not an "employee" under the FLSA); *Smith v. Dart*, 803 F.3d 304, 314 (7th Cir. 2015) ("We cannot see

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[9] If we were presented with a blank slate, evaluating the facts alleged in the second amended complaint for the first time, we would find that the plaintiffs have failed to allege sufficient facts to plausibly state claims under the Thirteenth Amendment, the TVPA, or RICO (the latter claims being predicated on a pattern of TVPA offenses). *See Burrell*, 2016 WL 7177549, at *11-*14, *16, *adopted by* 2016 WL 7175615. But, as we have noted above, in light of the history of this litigation, our recommended disposition is constrained by the law of the case doctrine.

what difference it makes if the incarcerated person is a prisoner, civil detainee, or pretrial detainee."). As with convicted prisoners, pretrial detainees, or other civil detainees, the plaintiffs were in a custodial relationship, they were under the supervision and control of a governmental entity, and they were provided by the prison with all of their basic needs. *See Villarreal v. Woodham*, 113 F.3d 202, 206 (11th Cir. 1997).

Accordingly, it is recommended that the plaintiffs' FLSA minimum wage claims against LRCI, Lackawanna County, and the Authority be dismissed for failure to state a claim upon which relief can be granted.

D. PMWA Claims

In Count IV, the second amended complaint asserts PMWA claims against LRCI, Lackawanna County, and the Authority for failure to pay the plaintiffs the state minimum wage. Courts have held that the PMWA should be read consistently with the FLSA. *See Ford-Greene v. NHS, Inc.*, 106 F. Supp. 3d 590, 612-13 (E.D. Pa. 2015) (citing 43 P.S. § 333.104). Accordingly, for the same reasons discussed above concerning the plaintiffs' FLSA minimum wage claims, it is recommended that the plaintiffs' PMWA minimum wage claims against LRCI, Lackawanna County, and the Authority be dismissed for failure to state a claim upon which relief can be granted.

E. PWPCL Claims

In Count V, the second amended complaint asserts PWPCL claims against LRCI, Lackawanna County, and the Authority for failure to pay the

plaintiffs in "lawful money of the United States or check." Specifically, the second amended complaint alleges that, while participating in the Community Service Program and working at the Center, the plaintiffs were paid $5 for each day they worked at the Center, which was deposited into their prison commissary accounts. The plaintiffs contend that payment into their prison commissary accounts was not equivalent to payment by lawful money of the United States (*i.e.*, cash) or check, due to various restrictions placed on their use of funds in their prison commissary accounts.

"The [PWPCL] statute itself does not create a right to compensation." *Sendi v. NCR Comten, Inc.*, 619 F. Supp. 1577, 1579 (E.D. Pa. 1985). The PWPCL merely "provides employees a statutory remedy to recover wages and other benefits that are *contractually* due to them." *Lehman v. Legg Mason, Inc.*, 532 F. Supp. 2d 726, 733 (M.D. Pa. 2007) (quoting *Oberneder v. Link Computer Corp.*, 696 A.2d 148, 150 (Pa. 1997)); *see also Ford-Greene*, 106 F. Supp. 3d at 613; *Sendi*, 619 F. Supp. at 1579. "Accordingly, a prerequisite for relief under the [P]WPCL is a contract between employee and employer that sets forth their agreement on wages to be paid. Relief under the [P]WPCL is implausible without existence of a contract." *Lehman*, 532 F. Supp. 2d at 733 (citations omitted). In other words, If or the [P]WPCL to apply, an employer-employee relationship is required." *Gladstone Tech. Partners, LLC v. Dahl*, 222 F. Supp. 3d 432, 439 (E.D. Pa. 2016).

For the same reasons stated in the two preceding sections of this report, accepting all well-pleaded allegations in the complaint as true and viewing

them in the light most favorable to the plaintiffs, we find that plaintiffs have failed to allege an employer-employee relationship. Accordingly, it is recommended that the plaintiffs' PWPCL claims against LRCI, Lackawanna County, and the Authority be dismissed for failure to state a claim upon which relief can be granted.

F. RICO Claims

In Count VI, the second amended complaint asserts RICO claims against Lackawanna County, the Authority, LRCI, Louis DeNaples, Dominick DeNaples, and Thomas Staff in his official capacity only.

1. RICO Claims Against the County and the Authority

The second amended complaint asserts RICO claims against Lackawanna County and the Authority, both of which are municipal corporations. But it is well established that a civil RICO claim. brought under 18 U.S.C. § 1964(c) cannot be maintained against a municipal corporation as a matter of law. *See Gentry v. Resolution Tr. Corp.*, 937 F.2d 899, 914 (3d Cir. 1991). Accordingly, it is recommended that the plaintiffs' RICO claims against Lackawanna County and the Authority be dismissed for failure to state a claim upon which relief can be granted.[10]

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[10] This rationale would apply to an official-capacity RICO claim against Thomas Staff as well.

2. RICO Claims Against the DeNaples Brothers

The remaining three defendants to the plaintiffs' RICO claim are LRCI, a corporation, and Louis and Dominick DeNaples, co-owners of the corporation. Apart from their ownership of the corporation and their respective positions as president and vice president of the corporation, the second amended complaint alleges no affirmative conduct by—or other facts about—the DeNaples brothers.

"To plead a RICO claim under § 1962(c), 'the plaintiff must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 362 (3d Cir. 2010). Under the statute, an "enterprise" includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). In this case, the plaintiffs have pleaded an association-in-fact enterprise comprised of (1) LRCI, (2) its corporate officers and co-owners, Louis and Dominick DeNaples, (3) Lackawanna County and Thomas Staff, in his official capacity, and (4) the Authority.

"The Supreme Court has recognized that a corporation's owner could be sued as a RICO 'person' acting through the corporation as the 'enterprise.' However, the Court distinguished this scenario from the type of claim where a corporation is alleged to be a RICO person based on an alleged association with its own employees." *Friedland v. Unum Grp.*, 50 F. Supp. 3d 598, 605 (D. Del. 2014) (citations omitted) (citing *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163-64 (2001)). Here, the plaintiffs have

asserted the latter type of claim, naming LRCI as a defendant and a RICO "person" that conducted or participated in the alleged association-in-fact enterprise. The plaintiffs further name LRCI's officers and co-owners, Louis and Dominick DeNaples, as additional participants in the enterprise. But the facts alleged in the second amended complaint are not sufficient to establish that Louis and Dominick DeNaples personally—separate and apart from their roles as corporate officers—"conducted or participated in the conduct of the 'enterprise's affairs,' not just their own affairs." *Cedric Kushner Promotions*, 533 U.S. at 162; *see also Friedland*, 50 F. Supp. 3d at 605; *Curtin v. Tilley Fire Equip. Co.*, No. Civ.A. 99-2373, 1999 WL 1211502, at *3 (E.D. Pa. Dec. 14, 1999). Thus, the plaintiffs have not plausibly pleaded a § 1962(c) RICO claim against either Louis or Dominick DeNaples, personally. *See Ins. Brokerage Antitrust Litig.*, 618 F.3d at 369-70 (applying *Iqbal* and *Twombly* pleading standards to allegations of an association-in-fact enterprise); *see also Friedland*, 50 F. Supp. 3d at 605.

Accordingly, it is recommended that the plaintiffs' RICO claims against Louis and Dominick DeNaples be dismissed for failure to state a claim upon which relief can be granted.

3. RICO Claims Against LRCI

That leaves the corporate defendant, LRCI, as the last remaining "RICO person," subject to civil RICO liability under § 1964(c). Notwithstanding the plaintiffs' inability to obtain relief against the municipal defendants under RICO, Lackawanna County and the Authority may still serve as additional legal

entities for the purpose of establishing an association-in-fact enterprise. "Municipal entities can be part of an unlawful purpose association-in-fact enterprise so long as those who control the entities share the purposes of the enterprise." *United States v. Cianci*, 378 F.3d 71, 83 (1st Cir. 2004). In other words, "[a] RICO enterprise animated by an illicit common purpose can be comprised of an association-in-fact of municipal entities and [other] members when the latter exploits the former to carry out that purpose." *Id.* Here, we find that the second amended complaint has plausibly pleaded an association-in-fact enterprise comprised of LRCI, Lackawanna County, and the Authority.[11]

Accordingly, we recommend that LRCI's motion to dismiss be denied with respect to the plaintiffs' RICO claim against LRCI, and that this claim be permitted to proceed to discovery.

G. Unjust Enrichment

In Count VII, the second amended complaint asserts unjust enrichment claims against Lackawanna County, the Authority, LRCI, Louis DeNaples, Dominick DeNaples, and Thomas Staff in his official capacity only.

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[11] We note that LRCI has argued that the second amended complaint has failed to allege any predicate acts of racketeering by LRCI, relying on its contention that the second amended complaint has failed to state a TVPA claim against LRCI. But because we have found that the plaintiffs have plausibly pleaded a TVPA claim against LRCI, we necessarily find this particular argument unpersuasive.

> As this court has previously observed:
>
> > Pennsylvania law supports two species of unjust enrichment claims: (1) a quasi-contract theory of liability, in which case the unjust enrichment claim is brought as an alternative to a breach of contract claim; or (2) a theory based on unlawful or improper conduct established by an underlying claim, such as fraud, in which case the unjust enrichment claim is a companion to the underlying claim.

Mifflinburg Tel., Inc. u. Criswell, 277 F. Supp. 3d 750, 801 (M.D. Pa. 2017). As in *Mifflinburg Telegraph*, the claim in this case appears to be the latter type, pleaded as a companion to the plaintiffs' forced labor and indentured servitude claims. *See Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc.*, 171 F.3d 912, 936 (3d Cir. 1999) ("In the tort setting, an unjust enrichment claim is essentially another way of stating a traditional tort claim (*i.e.*, if defendant is permitted to keep the benefit of his tortious conduct, he will be unjustly enriched).").

> To prevail on an unjust enrichment claim in Pennsylvania, a plaintiff must demonstrate the following elements: (1) a benefit conferred on the defendant by the plaintiff; (2) appreciation of such benefit by the defendant; and (3) acceptance and retention of such benefit under circumstances such that it would be inequitable for the defendant to retain the benefit without payment to the plaintiff. The most significant element of the doctrine is whether the enrichment of the defendant is unjust; the doctrine does not apply simply because the defendant may

> have benefited as a result of the actions of the plaintiff. Instead, a claimant must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that would be unconscionable for her to retain.

EBC, Inc. v. Clark Bldg. Sys., Inc., 618 F.3d 253, 273 (3d Cir. 2010) (citations, internal quotation marks, and alterations omitted). Typically, "[w]here the unjust enrichment claim rests on the same improper conduct as the underlying tort claim, the unjust enrichment claim will rise or fall with the underlying claim." *Whitaker v. Herr Foods, Inc.*, 198 F. Supp. 3d 476, 493 (E.D. Pa. 2016).

As in the typical case, the unjust enrichment claim here appears to rise or fall with the underlying forced labor and indentured servitude claims. Accepting all well-pleaded allegations in the second amended complaint as true and viewing them in the light most favorable to the plaintiffs, we find the plaintiffs have plausibly pleaded the elements of unjust enrichment against each of the five remaining defendants.

Accordingly, we recommend that the defendants' motions to dismiss be denied with respect to the plaintiffs' unjust enrichment claims against Lackawanna County, the Authority, LCRI, Louis DeNaples, and Dominick DeNaples, and these claims be permitted to proceed to discovery.

IV. Recommendation

For the foregoing reasons, it is recommended that:

1. The defendants' several motions to dismiss the second amended complaint (Doc. 99; Doc. 101; Doc. 102; Doc. 103) be GRANTED in part and DENIED in part;

2. The plaintiffs' TVPA claims (Count I), Thirteenth Amendment claims (Count II), RICO claims (Count VI), and unjust enrichment claims (Count VII) be DISMISSED as redundant with respect to defendant Thomas Staff, named in his official capacity only;

3. The plaintiffs' FLSA claims (Count III), PMWA claims (Count IV), and PWPCL claims (Count V) be DISMISSED in their entirety for failure to state a claim upon which relief can be granted;

4. The plaintiffs' RICO claims (Count VI) be DISMISSED with respect to defendants Lackawanna County, the Authority, Louis DeNaples, and Dominick DeNaples for failure to state a claim upon which relief can be granted;

5. The plaintiffs' TVPA claims (Count I) against defendants Lackawanna County, the Authority, LRCI, Louis DeNaples, and Dominick DeNaples, their Thirteenth Amendment claims (Count II) against Lackawanna County and the Authority, their RICO claim (Count VI) against LRCI, and their unjust enrichment claims (Count WI) against Lackawanna County, the Authority, LRCI, Louis DeNaples, and Dominick DeNaples be permitted to proceed to discovery; and

6. This matter be remanded to the undersigned for further proceedings.

/s/ Joseph F. Saporito, Jr.
United States Magistrate Judge

Dated: March 1, 2021

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DENYING PETITION FOR REHEARING (MARCH 8, 2023)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

WILLIAM L. BURRELL, JR.;
JOSHUA HUZZARD; DAMPSEY STUCKEY,

v.

TOM STAFF, Individually; LOUIS DENAPLES, individually; DOMINICK DENAPLES; LACKAWANNA RECYCLING CENTER INC; COUNTY OF LACKAWANNA; LACKAWANNA COUNTY SOLID WASTE MANAGEMENT AUTHORITY,

William L. Burrell, Jr.; Joshua Huzzard; Dampsey Stuckey; *Anthony Cravath; *Anthony John Goodwin, Sr.; *Derrick M. Lake; *Eugene R. Taylor; *Ralph Wasko; *Timothy Alan Whited; *Torrance Allen; *Gabriel Martinez; and *Gerard Nelson,

Appellants.

*(Pursuant to Rule 12(a), Fed. R. App. P.)

No. 21-2846

(DC Civil No. 3-14-cv-01891)

SUR PETITION FOR REHEARING

Before: CHAGARES, Chief Judge, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and NYGAARD,* Circuit Judges.

The petitions for rehearing filed by appellees Lackawanna County Solid Waste Management Authority, Lackawanna Recycling Center Inc., and County of Lackawanna in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied. Judge Matey would have granted rehearing.

BY THE COURT,

/s/ Richard L. Nygaard
Circuit Judge

Dated: March 8, 2023
PDB/cc: All Counsel of Record

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* Pursuant to Third Circuit I.O.P. 9.5.3, Judge Richard L. Nygaard's vote is limited to panel rehearing.

STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 203—Definitions

As used in this chapter—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)

(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

(v) in the Library of Congress, or

(vi) the[1] Government Publishing Office;

(B) any individual employed by the United States Postal Service or the Postal Regulatory Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

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[1] So in original. Probably should be preceded by "in".

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

(4)

(A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(5) The term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) [2] of title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly

hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m)

(1) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities

are customarily furnished by such employer to his employees: Provided, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: Provided further, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee.

(2)

(A) In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

(i) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

(ii) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in clause (i)

and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(B) An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips, regardless of whether or not the employer takes a tip credit.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

(o) Hours Worked—In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona

fide collective-bargaining agreement applicable to the particular employee.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r)

(1) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (A) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (C) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises

leased to it by a person who also leases premises to other retail or service establishments.

(2) For purposes of paragraph (1), the activities performed by any person or persons—

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(C) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

(s)

(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)

(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate

family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(y) "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker,

ambulance personnel, or hazardous materials worker, who—

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

18 U.S.C. § 1589—Forced labor

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—

(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

(2) by means of serious harm or threats of serious harm to that person or another person;

(3) by means of the abuse or threatened abuse of law or legal process; or

(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint,

shall be punished as provided under subsection (d).

(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

(c) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administra-

tive, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

(d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnaping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

23 Pa.C.S. § 4352
Continuing Jurisdiction Over Support Orders

(a) General rule

The court making an order of support shall at all times maintain jurisdiction of the matter for the purpose of enforcement of the order and for the purpose of increasing, decreasing, modifying or rescinding the order unless otherwise provided by Part VIII (relating to uniform interstate family support) or VIII-A (relating to intrastate family support) without limiting the right of the obligee, or the department if it has an assignment or other interest, to institute additional proceedings for support in any county in which the obligor resides or in which property of the obligor is situated. The Supreme Court shall by general rule establish procedures by which each interested party shall be notified of all proceedings in which support obligations might be established or modified and shall receive a copy of any order issued in a case within 14 days after issuance of such order. A petition for modification of a support order may be filed at any time and shall be granted if the requesting party demonstrates a substantial change in circumstances.

(a.1) Automatic review

Upon request of either parent, or automatically if there is an assignment under Title IV-A of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.), each order of support shall be reviewed at least once every three years from

the date of establishment or the most recent review. The review shall be for the purpose of making any appropriate increase, decrease, modification or rescission of the order. During the review, taking into the account the best interest of the child involved, the court shall adjust the order, without requiring proof of a change in circumstances, by applying the Statewide guidelines or a cost-of-living adjustment in accordance with a formula developed by general rule. Automated methods, including automated matches with wage or State income tax data, may be used to identify the support orders eligible for review and implement appropriate adjustments.

(a.2) Effect of incarceration

Incarceration, except incarceration for nonpayment of support, shall constitute a material and substantial change in circumstance that may warrant modification or termination of an order of support where the obligor lacks verifiable income or assets sufficient to enforce and collect amounts due.

(b) Notice

Each party subject to an automatic child support review shall receive:

(1) thirty days' advance notice of the right of such party to request a review and adjustment of the order, except when the adjustment results from a cost-of-living adjustment or other automated adjustment;

(2) a copy of any order establishing, modifying or rescinding a child support obligation or, in the case of a denied petition for modification, a notice of determination that there should be no change in the amount of the child support order, within 14 days after issuance of such order or determination; and

(3) a 30-day period from the date of the notice of a cost-of-living adjustment or other automated adjustment to request an individual review and adjustment in accordance with the Statewide guideline.

(c) Transfer of action

Where neither party to the action resides or is employed in the county wherein the support action was filed, the court may transfer the matter to any county wherein either party resides or where the defendant is regularly employed. If one of the parties resides outside of this Commonwealth, the action may be transferred to the county of residence or employment of the other party.

(d) Arrears as judgments

On and after the date it is due, each and every support obligation shall constitute a judgment against the obligor by operation of law, with the full force, effect and attributes of a judgment of court, including the ability to be enforced, and shall be entitled as a judgment to full faith and credit in this or any other state. Overdue support obligations of this or any other state which are on record at the county domestic relations section

shall constitute a lien by operation of law against all real property owned by the obligor within the county as provided in subsection (d.1). The department shall develop and implement a system for providing notice to the public of liens arising out of overdue support obligations. The system and its procedures shall ensure convenient access to lien information and shall address hours of access by the business community and the general public and access via modem or automated means. Thirty days after publication of notice in the Pennsylvania Bulletin that the system has been established, any lien on record shall constitute a lien against any real property in this Commonwealth owned by the obligor and shall also have the effect of a fully perfected security interest in personal property owned by the obligor in which a security interest can arise. The department shall consult with the Department of Transportation in the development of this system to enforce compliance with this subsection as it applies to liens on motor vehicles. The Supreme Court shall by general rule establish procedures for the recording of liens of other states at the county domestic relations section and for the enforcement of liens arising from overdue support without prior judicial notice or hearing. A bona fide good faith purchaser of personal property for value which is subject to a lien under this subsection acquires all title which the transferor had or had the power to transfer pursuant to 13 Pa.C.S. Ch. 24 (relating to title, creditors and good faith purchasers), and the obligee shall have all rights against such property which would be preserved to a fully

perfected secured creditor under 13 Pa.C.S. Div. 9 (relating to secured transactions; sales of accounts, contract rights and chattel paper). The obligation for payment of arrears or overdue support shall terminate by operation of law when all arrears or overdue support has been paid.

(d.1) Real property liens

(1) Overdue support shall be a lien on real estate within the county in which the overdue support is on record at the county domestic relations section if:

(i) the underlying support action is pending in the county domestic relations section or is being enforced by the county domestic relations section;

(ii) notice of the existence of the support action is available to the public through a docket book or automated means; and

(iii) the county domestic relations section is able to determine the amount of overdue support by reference to its records and is able to provide the amount of the overdue support upon request.

(2) The priority and amount of a lien for overdue support shall be determined as follows:

(i) The date of the lien for purposes of determining priority shall be determined separately for each unpaid overdue support payment. The date shall be the later of:

(A) the date the obligor obtains a real property interest which may be subject to a lien;

(B) the date the overdue support becomes a lien under paragraph (1); or

(C) January 1, 1998.

(ii) The amount of the lien on any date shall be the amount of overdue support shown on that date in the records of the domestic relations section.

(3) Upon request of any person, the domestic relations section shall issue a written certification of the amount of overdue support owed by an individual as of the date of the certification and shall note on the docket the date of certification and the amount certified. The interests of any purchaser of real estate for value, mortgagee or other lienor that in good faith purchases the real estate or lends money on the security of the real estate and that records, within 30 days before or 60 days after the date of issuance of a certificate under this paragraph, a deed, mortgage or other encumbrance against the real estate shall not be subject to any lien for overdue support in excess of the amount shown on the certification.

(4) The amount of overdue support owed by an obligor and the name of the obligor shall be public information and shall be deemed a public record subject to the act of June 21, 1957 (P.L. 390, No. 212),[1] referred to as the Right-to-Know Law.

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[1] 65 P.S. § 66.1 et seq. (repealed); see 65 P.S. § 67.101 et seq.

(5) A lien arising from overdue support:

(i) shall automatically attach to after-acquired property owned by the obligor;

(ii) shall retain its priority without renewal or revival;

(iii) shall continue to encumber the property upon sale or other transfer;

(iv) shall not be divested upon a judicial sale or execution by a person with a lien with less priority;

(v) shall not attach to the interest of any other co-owner in the property;

(vi) shall expire 20 years after the due date of the last unsatisfied overdue support payment; and

(vii) may be released by the court as against abandoned or distressed real property at the request of a governmental unit in order to facilitate the property's sale and rehabilitation.

(6) The domestic relations section:

(i) shall satisfy the lien promptly upon payment but no later than 60 days following receipt of the payment;

(ii) may charge a fee not to exceed the lesser of its estimated cost of producing the report or $20 for the issuance of a lien certification or other written report of the overdue support obligations of an obligor;

(iii) shall provide to the prothonotary of the county the identity of obligors and amount of overdue support to be used to make the information available to the public. The information shall be updated at least monthly and shall be provided by a paper listing, diskette or any other electronic means until the Statewide system under subsection (d) is implemented; and

(iv) shall transmit at least every 60 days to credit bureaus directly or through the department reports and updates regarding the liens for overdue support.

(7) The domestic relations section or employees thereof shall not be liable for errors in the certification of amounts of overdue support or satisfaction of liens for overdue support except as provided in 42 Pa.C.S. § 8550 (relating to willful misconduct).

(8) Support may cease to be overdue if a revised payment schedule is established by the court, but any lien which has previously arisen against real estate shall remain in effect until paid or divested.

(9) Notwithstanding paragraphs (2) and (3), the interests of any person who recorded a deed, mortgage or other instrument creating an interest in or lien against real estate on or after January 1, 1998, and before the effective date of this subsection shall not be subject to a lien for any overdue support accruing on or after the date the deed, mortgage or other instrument creating the interest or lien was recorded.

(e) Retroactive modification of arrears

No court shall modify or remit any support obligation, on or after the date it is due, except with respect to any period during which there is pending a petition for modification. If a petition for modification was filed, modification may be applied to the period beginning on the date that notice of such petition was given, either directly or through the appropriate agent, to the obligee or, where the obligee was the petitioner, to the obligor. However, modification may be applied to an earlier period if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition. In the case of an emancipated child, arrears shall not accrue from and after the date of the emancipation of the child for whose support the payment is made.

(f) Deleted by 1996, April 4, P.L. 58, No. 20, § 4, imd. effective.

(g) Notice to obligors and obliges

The domestic relations section shall mail notice to obligors and obligees of existing orders informing them that such orders may attain the status of a judgment by operation of law. The notice shall explain the nature of a judgment by operation of law and its effect. Further, the notice shall advise each party to a support proceeding of the party's duty to advise the domestic relations

section of material changes in circumstance and of the necessity to promptly request a modification as soon as circumstances change.

(g.1) Nondisclosure of certain information

If the court finds in an ex parte or other proceeding or if an existing order provides that the health, safety or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, the court shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this part. Any court order under this subsection must be docketed in the domestic relations section.

(g.2) Work activities

If an obligor owes overdue support with respect to any child receiving cash or medical assistance, the court shall upon motion of the department or domestic relations section order that overdue support be paid in accordance with a plan approved by the court or that the obligor participate in work activities approved by the department. Work activities include:

(1) Subsidized or unsubsidized public or private sector employment.

(2) Work experience programs.

(3) Work training programs.

(4) Community service programs.

(5) Job search requirements.

(6) Job readiness programs.

(7) Education directly related to employment.

(8) Attendance at secondary school.

(9) For a person who has not graduated high school, study leading to a high school diploma or equivalent.

(g.3) Voidable transfers

The court may void any voidable transfer by the obligor pursuant to 12 Pa.C.S. Ch. 51 (relating to voidable transactions). It shall be a rebuttable presumption that a transfer by an obligor is voidable as to an obligee if the transfer was made for less than reasonably equivalent value and the transfer occurred after the initiation of a proceeding to establish or enforce support.

(h) Applicability

This section applies to all support orders whether entered under this chapter or any other statute.