

## **APPENDIX**

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*Appendix A*

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

**No. 23-3231**

**MICHELLE AVERY BEY,**

**Plaintiff-Appellant,**

**v.**

**DAVID HARPER, et al.,**

**Defendants - Appellees.**

**ORDER**

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Before BACHARACH, EID, and FEDERICO, Circuit  
Judges.

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Appellant's petition for rehearing is denied.

August 14, 2024

Entered for the Court

/s/ Christopher M. Wolpert, Clerk

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UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

No. 23-3231

MICHELLE AVERY BEY,  
Plaintiff-Appellant,

v.

DAVID HARPER; MATTHEW WILLARD;  
TYRONE GARNER; ROBERT BURNS; WENDY  
GREEN; DONALD TRACY.

Defendants - Appellees.

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ORDER AND JUDGMENT\*

Before BACHARACH, EID, and FEDERICO, Circuit  
Judges.

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\* The parties have not requested oral argument, and it  
would not help us decide the appeal. So we have decided the

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This suit grew out of Ms. Bey's challenge to an assessment of property taxes. In this challenge, Ms. Bey claimed that tax authorities had erroneously classified her property as commercial. To collect these taxes, authorities seized Ms. Bey's car and obtained an order requiring her to sell property. She ultimately redeemed the property by paying the disputed taxes.

The district court dismissed the action based on (1) a lack of jurisdiction based on the Tax Injunction Act and (2) an absence of standing.<sup>1</sup> We conduct de novo review of the dismissal. *Marcus v. Kan. Dep't of Revenue*, 170 F.3d 1305, 1309 (10th Cir. 1999).<sup>2</sup>

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appeal based on the record and the parties' briefs. See Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

This order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. See Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

<sup>1</sup> The district court also denied a motion to reconsider, but Ms. Bey challenges only the dismissal itself.

<sup>2</sup> One defendant, Mr. Donald Tracy, obtained summary judgment. Ms. Bey waived a challenge to this ruling by failing to discuss it in her opening brief. see *White v. Chafin*, 862 F.3d

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The Tax Injunction Act generally prohibits injunctions to prevent collection of state taxes. 28 U.S.C. § 1341. An exception exists when the taxpayer's state-court remedy is inadequate. *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 512 (1981).

Ms. Bey argues on appeal that (1) she's challenging the defendants' conduct, not the taxes themselves; (2) she's seeking damages rather than an injunction; and (3) the state-court remedy is inadequate.

We've rejected the first two arguments in other cases holding that the Tax Injunction Act applies to claims involving

- administration of a tax, *Brooks v. Nance*, 801 F.2d 1237, 1239 (10th Cir. 1986), and
  
- damages, *Marcus v. Kan. Dep't of Revenue*, 170 F.3d 1305, 1309 (10th Cir. 1999).

We also reject Ms. Bey's challenge to the adequacy of the state-court remedy. The state procedures allow taxpayers to protest an assessment of

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property taxes. Kan. Stat. Ann. § 79-2005. Under this procedure, taxpayers can meet with the county appraiser to protest a tax. If the meeting doesn't resolve the disagreement, the taxpayer can obtain review by the state board of tax appeals and pursue relief in state court. Kan. Stat. Ann. § 79-2005(a), (g); Kan. Stat. Ann. § 74-2426(c).

Ms. Bey argues that the state law didn't ensure adequate notice. The district court acknowledged this argument, but ruled that standing didn't exist because Ms. Bey hadn't tied an injury or the defendants to the lack of notice. Given this ruling, Ms. Bey needed to say in her opening brief why the district court had been wrong. See *White v. Chafin*, 862 F.3d 1065, 1067 (10th Cir. 2017). She didn't.

She did argue in her reply brief that the defendants bore responsibility for the lack of notice. But the reply brief was too late; by failing to challenge standing in her opening brief, she waived this argument. See *id.*

**Affirmed.**

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**July 23, 2024**

**Entered for the Court**

**Robert E. Bacharach  
Circuit Judge**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**No. 23-2125-EFM-ADM**

**MICHELLE AVERY BEY,**

**Plaintiff-Appellant,**

**v.**

**DAVID HARPER, et al.,**

**Defendant-Appellees.**

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**MEMORANDUM AND ORDER**

Before the Court are three Motions to Dismiss (Docs. 27, 38, and 47) and two Motions for Summary Judgment (Docs. 19 and 23) submitted by the six Defendants in this case. Plaintiff Michelle Avery Bey seeks \$41,815,534.89 in compensatory damages and thrice that in punitive damages from Defendants, suing them in their individual and official capacities. Sifting through the quasi-legalese of Plaintiff's Complaint, the essence of her story becomes clear—

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she doesn't like that Kansas state officials initiated tax foreclosure proceedings against her house and her car. Given the true nature of Plaintiff's claim, the Court concludes that it lacks jurisdiction to hear her case because of the Tax Injunction Act. Thus, the Court dismisses her case with prejudice for lack of jurisdiction.

1. Factual and Procedural Background<sup>1</sup>

Plaintiff is a resident of Wyandotte County, living in Kansas City, Kansas. She describes herself as "a Natural flesh and blood living breathing woman, in full life, Moorish American National." And she emphatically states that she is not pro se despite proceeding unrepresented, preferring the term "In Propria Persona Sui Juris."<sup>2</sup>

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<sup>1</sup> The facts are taken from Plaintiff's Complaint—considered true for the purposes of this Order—and public records of which this Court may take judicial notice. See *Hastey on behalf of YRC Worldwide, Inc. v. Welch*, 449 F. Supp. 3d 1053, 1060 (D. Kan. 2020) (holding a court may take judicial notice of matters of public record not subject to reasonable dispute); see also Fed. R. Evid. 201 (b).

<sup>2</sup> Because there is no legal or practical difference between pro se and in propria persona plaintiffs, the Court will humor Plaintiff's distinction within this Order.

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Defendants are mostly government officials, except for Donald Tracy who owns a towing service company. David Harper is the Director of Kansas Division of Property Valuation. Matthew Willard is the Unified Government of Wyandotte County/Kansas City Kansas ("the County")'s County Appraiser. Tyrone Garner is Kansas City, Kansas's mayor. Robert P. Burns is a district judge for the Wyandotte County District Court. Wendy M. Green serves as the County's Senior Counsel.

Plaintiff's grievance against Defendants appears to have begun in 2012 when she alleges that Defendants misclassified her residential property for tax purposes. She apparently refused to pay the taxes due on her property, relying on sovereign citizen type arguments to claim that her residential property is immune from taxes because it is not "commercial property." This reluctance to pay taxes led to the County seizing her car in 2013 with the help of Defendant Tracy's towing service.

In either 2018 or 2019, the County first initiated foreclosure proceedings against Plaintiff's residential property because Plaintiff had still failed to pay taxes owed. Plaintiff then attempted to remove the case to federal court, attempting "to assert federal question jurisdiction based on federal constitutional

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defenses to a county tax foreclosure sale.<sup>3</sup> This Court had no difficulty in swiftly finding that Plaintiff "cannot meet her burden to show that jurisdiction is proper in federal court."<sup>4</sup> The Court remanded Plaintiff's case to Kansas state court for lack of jurisdiction.<sup>5</sup>

In 2021, the County again initiated foreclosure proceedings against Plaintiff's residence.<sup>6</sup> Defendant Burns presided as the judge, eventually ordering foreclosure of the tax lien and the sale of Plaintiff's property in March 2022.<sup>7</sup> On June 27, 2022, Plaintiff submitted an application to redeem her property. This application was granted after Plaintiff paid \$34,934.89 in back taxes, interest, costs, and penalties.

Those are the sole facts of this case. The rest of Plaintiff's Complaint states legal conclusions—claiming, for example, that Defendants conspired

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<sup>3</sup>Alvey v. Bey, 2019 WL 3716363, at (D.Kan.2019)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See *Unified Government of Wyandotte County/Kansas City, Kansas v. Aceves Zalayes, et al.*, Wyandotte County District Court Case No. 2021-CV-000625 (Tax Sale No. 350).

<sup>7</sup> Beyond mentioning their titles, Plaintiff does not specifically identify the role the other Defendants had in allegedly violating her rights.

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against her to steal her property under the guise of tax law. She purportedly asserts claims for violation of RICO statutes and the Fourth, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments as available under 42 U.S.C. § 1983. Plaintiff also seeks to hold Defendants accountable in this Court for extortion and robbery under 18 U.S.C. § 1951, deprivation of rights under 18 U.S.C. §§ 241, 242, and mail fraud under 18 U.S.C. § 1341. Finally, she alleges multiple violations of various Kansas statutes, both criminal and civil, substantive and procedural.

For her claimed injustices, Plaintiff seeks \$41,815,534.89 in compensatory damages and \$125,446,604.67 in punitive damages. She also seeks various injunctive relief, including: (1) removing all Defendants their offices; (2) stopping Defendants from abusing their power under color of law; and (3) "due process."

Each of the Defendants, except Tracy, have now moved to dismiss Plaintiff's claims against them. For his part, Tracy moves for summary judgment twice—once at Doc. 19 and again at Doc. 23. Defendants all cite abundant reasons why this Court should dismiss Plaintiff's claims. As discussed more below, one is sufficient—the Tax Injunction Act.

## 11. Legal Standard

### A. Federal jurisdiction under the Tax Injunction Act

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Federal courts are courts of limited subject matter jurisdiction.<sup>8</sup> As a result, federal courts "may only hear cases when empowered to do so by the Constitution and by act of Congress."<sup>9</sup> In fact, courts have "an independent obligation to raise jurisdictional issues *sua sponte* where necessary."<sup>10</sup> Because the subject matter jurisdiction of federal courts is limited, "there is a presumption against [the court's] jurisdiction, and the party invoking federal jurisdiction bears the burden of proof."<sup>11</sup>

Congress may also specifically divest federal courts of jurisdiction over certain types of cases.<sup>12</sup>

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<sup>8</sup> *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

<sup>9</sup> *Gad v. Kan. State Univ.*, 787 F.3d 1032, 1035 (10th Cir. 2015) (quoting *Radil v. Sanborn W. Camps, Inc.*, 384 F.3d 1220, 1225 (10th Cir. 2004)).

<sup>10</sup> *Alvey*, 2019 WL 3716363, at \*1 (citing *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004); see also Fed. R. Civ. P. 12(h)(3) (stating if court determines at any time that it lacks subject-matter jurisdiction, it must dismiss action)).

<sup>11</sup> *Penteco Corp. v. Union Gas Sys., Inc.*, 929 F.2d 1519, 1521 (10th Cir. 1991).

<sup>12</sup> See, e.g., *Marcus v. Kan. Dep 't of Revenue*, 170 F.3d 1305, 1309 (10th Cir. 1999).

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As relevant here, the Tax Injunction Act ("TIA") provides that "[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.<sup>13</sup> The TIA thus "operates to divest the federal courts of subject matter jurisdiction over claims challenging state taxation procedures where the state courts provide a plain, speedy and efficient remedy.<sup>14</sup> The Supreme Court has read the TIA as a "broad jurisdictional barrier" that is "first and foremost a vehicle to limit dramatically federal district court jurisdiction."<sup>15</sup> Not only does it prohibit suits for injunctive relief, but it "bars declaratory relief, and suits for damages as well."<sup>16</sup>

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<sup>13</sup> 28 U.S.C. § 1341.

<sup>14</sup> *Marcus*, 170 F.3d at 1309 (citation and internal quotations omitted).

<sup>15</sup> *Arkansas v. Farm Credit Servs. of Cent. Ark.*, 520 U.S. 821, 825—26 (1997) (internal quotations and citation omitted).

<sup>16</sup> *Brooks v. Nance*, 801 F.2d 1237, 1239 (10th Cir. 1986) (further citations omitted).

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The purpose of the TIA is to "protect the 'federal balance' by permitting states to 'define and elaborate their own laws through their own courts and administrative processes without undue influence from the Federal Judiciary."<sup>17</sup> "Courts must guard against interpretations of the Tax Injunction Act which might defeat its purpose and text."<sup>18</sup> That said, the TIA is not a "sweeping congressional direction to prevent federal-court interference with all aspects of state tax administration."<sup>19</sup>

**B. In propria persona plaintiffs**

In propria persona complaints are held to "less stringent standards than formal pleadings drafted by lawyers."<sup>20</sup> An in propria persona litigant is entitled

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<sup>17</sup> *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 761 (10th Cir. 2010) (quoting *Farm Credit Servs.*, 520 U.S. at 826).

<sup>18</sup> *Id* (quoting *Farm Credit Servs.*, 520 U.S. at 827) (brackets omitted).

<sup>19</sup> *Hibbs v. Winn*, 542 U.S. 88, 105 (2004) (quotation omitted).

<sup>20</sup> *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

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to a liberal construction of his pleadings.<sup>21</sup> If a court can reasonably read an in propria persona complaint in such a way that it could state a claim on which it could prevail, it should do so despite "failure to cite proper legal authority. . . confusion of various legal theories . . . or [Plaintiff's] unfamiliarity with the pleading requirements."<sup>22</sup> However, it is not the proper role of a district court to "assume the role of advocate for the [in propria persona] litigant."<sup>23</sup> For motions to dismiss generally, the court "accept[s] the well-pleaded allegations of the complaint as true and construe[s] them in the light most favorable to the plaintiff."<sup>24</sup> "Well-pleaded" allegations are those that are facially plausible such that "the court [can] draw the reasonable inferences that the defendant is liable for the misconduct alleged."<sup>25</sup>

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<sup>21</sup> See *Trackwell v. U.S. Gov 't*, 472 F.3d 1242, 1243 (10th Cir. 2007) ("Because Mr. Trackwell appears pro se, we review his pleadings and other papers liberally and hold them to a less stringent standard than those drafted by attorneys.").

<sup>22</sup> *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

<sup>23</sup> *Id*

<sup>24</sup> *Ramirez v. Dep 't of Corr., Colo.*, 222 F.3d 1238, 1240 (10th Cir. 2000).

<sup>25</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

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**III. Analysis**

Plaintiff's case must be dismissed because the Court lacks jurisdiction to hear her claims. Even liberally construing Plaintiff's Complaint, the only factual allegations remaining after stripping away unsupported legal conclusions and irrelevant legal jargon is that the County initiated foreclosure proceedings against her car and her house. These proceedings stemmed from Plaintiff's failure to pay taxes as assessed by the County. Thus, Plaintiff in actuality is seeking this Court to enjoin or provide damages for the County's collection of taxes. This requested relief fundamentally falls afoul of the TIA —something noted by this Court in its previous order denying Plaintiff jurisdiction in federal court.<sup>26</sup>

The burden remains on Plaintiff to show that the TIA does not prevent the Court from exercising jurisdiction. This she has not done. First, it is apparent that the entirety of her Complaint relates to the County's efforts to collect taxes. In responding to Defendant Burns' Motion, Plaintiff claims the TIA does not apply because she "points out how the

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<sup>26</sup> see *Alvey*, 2019 WL 3716363, at \*2 n.2; see also *Zewadski v. City of Reno*, 2006 WL 8441737 (D. Nev. 2006) (holding that plaintiff's RICO claims, while normally not blocked by the TIA, were veiled attempt to challenge tax assessment and thus fell under the TIA's purview)

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State's lawful process is being used unlawfully by Defendant in an organized way that shows an ongoing pattern of racketeering activities." This is a far-fetched argument when Plaintiff has asserted claims against nearly all the parties involved in determining the County's "lawful process" to begin with. Thus, the Court has little trouble concluding that Plaintiff's claims are really challenging the County's tax collection procedures, thus bringing her claims under the TIA.<sup>27</sup>

This Court has held multiple times that the tax refund procedures under Kansas, specifically K.S.A. § 79-2005, constitute a plain, speedy, and efficient remedy.<sup>28</sup> In fact, this Court recognized that once

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<sup>27</sup> See, e.g., *Zewadski v. City of Reno*, 2006 WL 8441737, at \*7 (D. Nev. 2006) ("Plaintiff's allegations make it clear that his RICO claims are a veiled attempt to challenge or otherwise assail the manner in which the Special Assessment District was created and operated by the Reno City Council. Such complaints concerning the administration of the tax system are barred by the Tax Injunction Act and principles of comity.").

<sup>28</sup> See, e.g., *ANR Pipeline Co. v. Lafaver*, 76 F. Supp. 2d 1142, 1148 (D. Kan. 1999) (listing cases in which this Court has held Kansas law offers a plain, speedy, and efficient remedy to challenge tax procedures).

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again in its prior order remanding Plaintiff's foreclosure case back to state court.<sup>29</sup> Plaintiff knew this, and yet still is attempting to work around this fact by disguising her claims as seeking damages for violations of constitutional amendments, RICO, and state and federal criminal statutes. Despite Plaintiff's legal contortions, there can be no doubt—the TIA deprives this Court of jurisdiction to hear her claims. Thus, the Court grants each of the Defendants' Motions to Dismiss with prejudice.

Plaintiff argues briefly that she did not receive notice of the original foreclosure proceedings. Theoretically, this procedural due process claim could fall outside the scope of the TIA's jurisdictional prohibition. But another jurisdictional requisite for this claim is standing, which requires Plaintiff to show "(1) injury in fact, (2) causation, and (3) redressability."<sup>30</sup>

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<sup>29</sup> See *Alvey*, 2019 WL 3716363, at \*2 n.2.

<sup>30</sup> *D.L. v. Unified Sch. Dist. No. 497*, 596 F.3d 768, 774 (10th Cir. 2010).

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Given that Plaintiff successfully redeemed her property without difficulty and alleges facts showing her involvement throughout the foreclosure proceedings, the Court finds that Plaintiff does not plausibly plead facts showing an injury in fact by not receiving notice. Furthermore, she does not allege any facts tying any of the named Defendants to this claim. It follows that she cannot show that they caused this alleged injury—or lack thereof, rather. Thus, to the extent Plaintiff asserts a denial of procedural due process claim unrelated to her tax assessment arguments, the Court dismisses the same for lack of standing. Considering the implausibility of Plaintiffs claims, the Court does not believe allowing Plaintiff to amend her claims would effectuate anything except a further waste of the parties' time and resources. Therefore, this dismissal is with prejudice.<sup>31</sup>

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<sup>31</sup>See *Lee v. Scafe*, 2008 WL 2266231, at \*1 (D. Kan. 2008) ("[A] court may dismiss *sua sponte* when it is patently obvious that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend the complaint would be futile.") (quoting *Phillips v. Pub. Serv. Co. of N.M.*, 58 F. App'x 407, 409 (10th Cir. 2003)) (further quotations omitted).

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IT IS THEREFORE ORDERED that Defendants' Motions (Docs. 19, 23, 27, 38, and 47) are GRANTED with prejudice.

IT IS SO ORDERED.

Dated this 2nd day of August, 2023.

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/s/ ERIC F. MELGREN  
CHIEF UNITED STATES DISTRICT JUDGE

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*Appendix D*

**In The District Court of the United States For  
Kansas Republic**

**No. 23-2125-EFM-ADM**

**Michelle Avery Bey**

**Plaintiff**

**v.**

**Donald Tracy et al.**

**Defendants**

**MEMORANDUM IN OPPOSITION TO MOTION  
FOR SUMMARY JUDGMENT OF DONALD  
TRACY**

**A. Concise Statement of Facts:**

1. I, Michelle Avery Bey, the plaintiff of this case, in full life, in propria persona, not to be confused with pro se, as I am not in the office of an attorney or a prosecutor, state with the following my opposition to the Motion for Summary Judgment dated May 10, 2023, filed by Anthony A. Stein as the attorney for Donald Tracy.
2. I am in receipt of seven (7) of the nine (9) documents allegedly served in one envelope, according to the item number 8. CERTIFICATE OF

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SERVICE document from the said attorney and dated May 10, 2023. Those received are items 2, 3, 4, 6, 7, 8, and 9. Those not included in envelope are items 1 and 5.

3. The relevant documents of which I see as needing my attention, at this time, are items numbered 2 and 4.

4. As per item number 2, which is actually labeled on the document CO-DEFENDANT

DONALD TRACY'S MOTION FOR SUMMARY JUDGMENT WITH AMENDED CERTIFICATE OF SERVICE, I do not agree that the pending action against co-defendant Donald Tracy should be dismissed. There are genuine disputes of material facts as they concern Donald Tracy, hereinafter co-defendant.

5. As per item number 4, which is actually labeled on the document CO-DEFENDANT

DONALD TRACY'S AMENDED MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, I recognize that the co-defendant has acknowledged a previous case that I filed with this Court in 2021. Due to the fact that the defendants were never served in that previous case, that previous case of 2021, although similar, is not the same as this case and is not the issue at this time with numbers 1 through 5 under A. Concise Statement of Facts of the said Memorandum; however, the statement of number 5 incorrectly

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alleges that my noncommercial automobile was sold by co-defendant in 2014. I have no knowledge of or if my said property was sold by co-defendant, as I have not received any reply to any of the updated bills of my ongoing injuries that I have sent to co-defendant on an average of monthly since I received a threatening letter through the mails from co-defendant in 2013.

6. I can agree with numbers 6, 7, and 9 under A. Concise Statement of Facts of the said Memorandum that I allege in my complaint for this case that my property was unlawfully taken, as robbery is unlawful and criminal, and that there are six defendants in this pending case; however, in number 8, co-defendant through his said attorney incorrectly claims that the only factual claims against co-defendant in this case are in numbers 22 and 25 of my complaint for this case. There are other factual claims against co-defendant in this case in numbers 27 and 28 of my complaint.

**B. Law and Argument,**

1. In the said Memorandum under section B. Law and Argument, the said attorney for the co-defendant states that "the Court must decide this single issue: Has the plaintiff stated a cause of action upon which relief may be granted against co-defendant Donald Tracy if the statute of limitation has run?" and then goes on to attempt to justify a two-year statute of limitation pursuant to Kansas Statute 60-513 (2). I disagree with the assertions.

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2. 60-513(2), does not apply to my property. My private noncommercial automobile was not personal property. Personal property is defined in the Black's Law Dictionary 6th Edition, page 1217 and previously in a currently not active Article of the Kansas Statute as a commercial asset:

Kansas Statute 21-113. Definitions (16) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

3. My complaint against co-defendant involves a pattern of racketeering activity which is defined at 18 U.S. Code § 1961- Definitions "(5) 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity". The acts of racketeering included in 18 USC § 1961 are robbery, attempted extortion, and mail fraud of which I claim against the co-defendant in this case of 2023.

4. All the criminal activities and Constitutional violations by the co-defendant as stated in my complaint in this case assisted in carrying out the acts of racketeering, therefore, the statute of limitation that co-defendant wants to borrow from Kansas Statute for 42 USC § 1983 does not supersede 18 USC § 1961's ten years. Ten years at

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the earliest would be June 6, 2023.

5. 42 USC § 1983 does not have statute of limitations for Constitutional violations of which I claim in this case against co-defendant.

C. Conclusion:

Wherefore the foregoing co-defendant Donald Tracy is not entitled to summary judgment because as nonmovant I have demonstrated that there are genuine disputes as to material facts and the time-barred by the Kansas two-year statute of limitation does not apply to this case.

I declare under the penalty of perjury under the law of the UNITED STATES CODES that the above is true and correct to the best of my knowledge and honorable intent.

Respectfully submitted this 19th day of May, 2023

I Am: /s/ Michelle Avery Bey  
In Propria Persona  
All Rights Reserved

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*Appendix E*

**UNITED STATES DISTRICT COURT DISTRICT  
OF KANSAS**

**No. 23-2125-EFM-ADM**

**MICHELLE AVERY BEY**

**Plaintiff,**

**v.**

**DONALD TRACY, et al.**

**Defendants**

**CO-DEFENDANT DONALD TRACY'S AMENDED  
MEMORANDUM IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

**A. Concise Statement of Facts:**

1. Plaintiff has filed two separate complaints with this Court related to the alleged unlawful taking of her automobile by co-defendant Donald Tracy in 1983. [Doc. No. 1; Exhibit "1"]
2. The first Complaint was filed with this Court on August 23, 2021 in the case of *Michelle Avery Bey v. (Governor) Laura Kelly, et al*, case no. 2:21-CV-2367-KHV-JPO (hereinafter the "Governor Kelly" case). [Exhibit "1"]

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3. There are three defendants in the Governor Kelly case:

- a. Defendant 1 : (Governor) Laura Kelly,
- b. Defendant 2: David Alvey, and
- c. Defendant 3: Donald Tracy.

[Exhibit "1"]

4. In the Governor Kelly case, the plaintiff has made only these factual allegations against co-defendant Donald Tracy:

**7. Defendants 1, and 2. have ignored my inquiries but through the years have continued their racketeering activities of:**

- a. sending threatening instruments through the United States Mails to advertise and sale my property and evict me from my property if the alleged debt is not received (July 17, 2012);**
- b. sending through the United States Mails a copy of an alleged lien put on my property (July 17, 2012);**
- c. sending through the United States Mails statements that the Unified Government was a government and not a corporation nor a republic (July 17, 2012);**
- d. conspiring with Defendant robbing me on the highways of my noncommercial automobile on June 6, 2013 and informing**

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**me of what I must do to obtain it back which included paying the unjustified property taxes;**

**e. unlawfully selling my private property (November 10, 2014);  
[Exhibit "1 "]**

5. Plaintiff, in the Governor Kelly case, alleged that co-defendant Donald Tracy somehow participated in the unlawful taking of plaintiff's personal property in 2013 and sale of that automobile in 2014. [Exhibit "1 "]

6. The pending (second) case before this Court presents a Complaint that alleges similar claims of an unlawful taking of the same automobile in 2013 as alleged in the Governor Kelly case. [Doc. No. 1]

7. There are six defendants in the pending case. Plaintiff identifies Donald Tracy as defendant 6. [Doc. No. 1, para. ll. 6].

8. Plaintiff makes only these factual claims against Donald Tracy in the pending case:

22. On June 6, 2013, through the training or lack thereof of Defendants 2, and 3, other employees of the UG, deceptively disguised themselves as government in sheriff vehicles, and pretended to be executing an emergency through the use of the vehicles emergency 1

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ights, of which I relied on when I pulled over, robbed me on the highway with guns of my non commercial automobile with the help of Defendant 6. In participation of the racketeering scheme, the said robbery was a means to fraudulently extort finances from me for the alleged tax debt. At the time of the said robbery, I was told in addition to other things by the employee that pretended the emergency, C. Morris, that I needed to "pay" the alleged tax debt in order to obtain my said automobile back. These acts are criminal offenses of extortion and robbery in 18 USC §1951 and robbery under Kansas Statute 21-5420.

25. Defendants 1, 2, 3, and 6 through their racketeering involvement have deprived me of my liberty in the use of my said automobile in violation of 18 USC §§ 241 and 242, 42 USC § 1983, Kansas 21-5803, and Amendments IV, V, IX, X, and XIV of the said Constitution for the United States as I should be allowed to be secure in my property against unreasonable searches and seizures, afforded due process of the law and equal protection of the law in the deprivation of my property, and have the liberty to do what is not expressly prohibited as long as I am not injuring others.

9. Plaintiff's allegations of an illegal taking of her

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automobile in the present case mirrors her allegations in the Governor Kelly case. Both clearly state that the alleged illegal taking occurred in 2013. [Compare Doc. No. 1 and Exhibit "1"]

**B. Law and Argument.**

Plaintiff Complaint [Doc. No. 1] has inartfully asserted what appears to be a claim under 42 USC § 1983 related to the alleged unlawful taking of her automobile in 2013. Plaintiff has filed two separate complaints with this Court related to this single alleged unlawful taking of her automobile.

In deciding this motion, the Court must decide this single issue: Has the plaintiff stated a cause of action upon which relief may be granted against co-defendant Donald Tracy if the statute of limitation has run?

It is well-settled law in Kansas that factual statements made by a party serve as admissions. "As a general rule, " 'parties to an action are bound by their pleadings and judicial declarations...' *Jones v. Tanks Plus, LLC*, 294 P.3d 1211 (Kan. App. 2013). Plaintiff has admitted that the alleged taking of her automobile occurred in 2013.

There is no statute of limitations within the language of 42 USC §1983. The United States Supreme Court has directed Federal district courts to borrow and apply the most analogous state statute

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of limitations to all § 1983 cases. *Owens v. Okure*, 488 US 235, 240 (1989). The closest Kansas statute related to plaintiff's repeated claims against Donald Tracy is K.S.A. 60-513(2) which provides, in relevant part, as follows:

60-513. Actions limited to two years. (a) The following actions shall be brought within two years:

(2) An action for taking, detaining or injuring personal property, including actions for the specific recovery thereof.

Accepting plaintiff's factual allegations against Donald Tracy as true for purposes of considering Donald Tracy's pending motion, the statute of limitations of plaintiff's claims against Donald Tracy ran on June 6, 2015 (two years after the alleged tortious taking of her car). Here we are now, nearly eight years later.

Co-defendant Donald Tracy asserts that plaintiff has failed to state a cause of action upon which relief can be granted because the statute of limitation has long since run. In *Continental Ins. Co. v. Windle*, 214 Kan. 468, 520 P.2d 1235 (1974)(a bailment case), the Kansas Supreme Court held that in a claim of tortious taking of personal property, the Kansas two-year statute of limitation applied.

In *Leathers v. Leathers*, 856 F.3d 729, 757 (10<sup>th</sup> Cir. 2017), the 10<sup>th</sup> Circuit held that the statute of limitation on converting personal property is two-

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years pursuant to K.S.A. 60-513(2). The *Leathers* court held:

The statute of limitations for conversion is two years. See Kan. Stat. Ann. S 60-513(a)(2). As relevant here, a cause of action for conversion typically accrues—and thus starts the clock on the limitations period—when "the fact of injury becomes reasonably ascertainable to the injured party." Id. § 60-513(b) • *Armstrong v. Bromley Quarry & Asphalt, Inc.*, 305 Kan. 16, 378 P.3d 1090, 1096 (2016).

*Leathers v. Leathers*, 856 F.3d at 757.

C. Conclusion:

Defendant Donald Tracy is entitled to summary judgment because movant has demonstrated that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

Based on plaintiff's factual pleadings, it is clear that Ms. Bey's claims against Donald Tracy are time-barred by the Kansas two-year statute of limitation. Plaintiff's claims against Donald Tracy should be dismissed because the plaintiff has failed to state a cause of action against Donald Tracy upon which relief may be granted. (Filed May 10, 2023)

Respectfully submitted,  
THE STEIN LAW FIRM  
/a/ Anthony A. Stein  
Attorney for co-defendant Donald Tracy

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**In The District Court of the United States  
For Kansas Republic**

**No. 23-2125-EFM-ADM**

**Michelle Avery Bey**

**Plaintiff**

**v.**

**David Harper  
Matthew Willard  
Tyrone Garner  
Robert P. Burns  
Wendy M. Green  
Donald Tracy**

**Defendants**

**TRIAL BY JURY OF MY OWN PEERS IS  
DEMANDED**

**1. JURISDICTION**

**This action containing complaints for relief and for  
damage is brought against the Defendants in their**

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official and individual capacities to secure due process of law, equal protection and other rights, privileges and immunities guaranteed to complainant by the Constitution and laws of the United States Republic.

Jurisdiction of this court is invoked pursuant to Article III § 2 of Constitution of the United States for the United States of America which extends the jurisdiction to cases arising under the said Constitution.

Plaintiff brings this suit pursuant to Title 18 of the United States Codes § 1962 for acts of racketeering affecting interstate commerce and pursuant to Title 42 of the United States Codes § 1983 for violations of certain protections guaranteed to her by the Fourth, Fifth, Sixth, Ninth, Tenth, and Fourteenth Amendments of the said Constitution by the Defendants under color of law in their official capacities.

**Venue**

Jurisdiction is with the district courts of the United States pursuant to Title 18 § 1964 of the United States Codes for violations of Title 18 § 1962 of the United States Codes.

**II. PARTIES**

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Plaintiff

Michelle Avery Bey, In Propria Persona Sui Juris, not to be confused with Pro se, a Natural flesh and blood living breathing woman, in full life, Moorish American National. Mailing Location: c/o 1838 North 50<sup>th</sup> Court, Kansas City, Kansas Republic [66102].

Defendants

David Harper, dba Director of Kansas Division of Property Valuation of the STATE OF KANSAS, corporation, established in the year EIGHTEEN SIXTY-ONE(1861), foreign to the organic Kansas Republic; and foreign to the United States Republic of North America. Address: 300 SouthWest 29<sup>th</sup> Street, Topeka, Kansas 66611.

2. Matthew Willard, dba County Appraiser for the GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS, a political subdivision of the STATE OF KANSAS; private corporation foreign to the United States Republic; and foreign to the organic Kansas Republic. Address: 8200 State Avenue, Kansas City, Kansas 66112.

3. Tyrone Garner, dba Mayor/CEO for the UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS, a political subdivision of the STATE OF KANSAS; private

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corporation foreign to the United States Republic; and foreign to the organic Kansas Republic. Address: 701 North 7<sup>th</sup> Street, Kansas City, Kansas 66101.

4. Robert P. Burns, dba a Court Judge for the Wyandotte County District Court aka District Court of Wyandotte County, Kansas, a court of the STATE OF KANSAS, corporation established in the year EIGHTEEN SIXTY-ONE(1861), foreign to the organic Kansas Republic; and foreign to the United States Republic of North America. Address: 710 North 7<sup>th</sup> Street, Kansas City, Kansas 66101.

5. Wendy M. Green, dba Senior Counsel for the UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS, a political subdivision of the STATE OF KANSAS; private corporation foreign to the United States Republic; and foreign to the organic Kansas Republic. Address: 701 North 7<sup>th</sup> Street, Suite 961, Kansas City, Kansas 66101.

6. Donald Tracy, Owner of the ALANDON'S TOWING AND AUTOMOTIVE SERVICE, aka, ALANDON REBUILDERS AND EQUIPMENT, INC.. a business chartered by the STATE OF KANSAS, corporation in the year NINETEEN EIGHTY-FOUR(1984). Address: 6224 Kansas Avenue, Kansas City, Kansas 66111.

III. FACTS AND LEGAL CLAIMS

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I. Defendants have participated in an organized scheme that unlawfully classifies the property of we the people (the people) as business use when the property is not of business use and systematically use the classification to abuse a commercial process as the means to seize jurisdiction and ownership under the color of law, gain unlawfully obtained revenue, and harm the people. This scheme has been practiced for decades on the people that are tricked into registering their property.

Around September 22, 2021, Plaintiff (hereinafter I, or me, or my), received a summons and complaint for case number 2021-cv (tax sale no. 350) of the District Court of Wyandotte County, Kansas alleging the UNIFIED GOVERMCENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS, corporation (UG) as the plaintiff and numerous defendants of which I was alleged to be number 95. The said case was not a class action suit.

3. The said complaint instituted by Defendants 1, 2, 3, and 5 and procured by the above described organized scheme consisted of an unsubstantiated tax debt assessed on my private noncommercial property/my shelter claimed to be owed to the UG and a prayer to seize my said property to satisfy the alleged debt as was the basis of the suit for many of the other alleged defendants in the said case.

4. The said alleged debt was computed by and to be

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discharged by obligations of the United States, Federal Reserve notes, per 18 United States Code (USC) § 8 which violates Article I, § 10 of the Constitution of the United States for the United States of America and 31 USC § 3124. In furthering the racketeering activities, the said complaint omitted material facts concerning the status of my said property and described my said property as an asset of the UG.

5. Under special appearance I responded to said complaint within the time allowed; therefore, I was not in a default status. My said response contained genuine issues of material facts and questions that, if answered or rebutted by the UG corporation or court of said case, it would have disclosed whether the said court had jurisdiction to hear the said case.
6. Defendants 4 and 5 violated 42 USC § 1983 and Amendments V and of the said Constitution as well as 42 USC § 1983 and Kansas Statutes 60-205(1)(D) and 60-205(1)(E) when they blatantly disregarded my constitutionally secured right to due process of the law and equal protection of the laws as I was never served with notice of any documentary acknowledgment of any of the documents I filed in said case nor of any movement in the said case while the purpose of the said case was to deprive me of my said property.
7. Around May 5, 2022, I became aware that my said

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property was still unlawfully listed for sale in an upcoming public auction of the UG for the said alleged debt due to unknown people and investors sending letters, calling for me on the phone, and walking on my said property who were interested in acquiring my said property due to the UG's public advertisement of the said public auction done under the supervision of Defendants 1, 2, and 3.

8. On May 5, 2022 I filed a request outside the said case under the Kansas Open Records Act with the UG to try to get justification of the UG listing my said property in the upcoming auction, as to my knowledge the said case was still in progress.

9. Due to filing the said Records request, around May 23, 2022, I received further evidence of the racketeering activities, copies of an ex parte issued journal entry of judgment electronically dated March 18, 2022 and an ex parte issued order of sale electronically dated March 21, 2022 of the said case conspired by Defendants 4 and 5 under color of law.

10. As I was not in default and the said judgment did not provide legal certainty to the parties for a declaratory judgment, the said ex parte judgment would be a summary judgment per Kansas Statute 60-212(h). In being a summary judgment, Defendant 4 violated Kansas Statute 60-256(c) (I)(A) by not affording the discovery period prior to the ex parte motion for the summary judgment of material facts that are still outstanding.

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11. The said ex partes were distributed to other employees of the UG per Kansas Statute 60-2401 in order to unlawfully sell my said property in the said public auction. In so doing, Defendants 4 and 5 violated Kansas Statute 21-5907, simulating a legal process procured by the above stated fraud of classifying property as business use.

12. The said ex partes and actions thereby also violated Amendment VI of the said Constitution by Defendant 4 not allowing me to confront any witnesses against me, as well as Amendments V and XIV and 42 USC § 1983 in not giving me due process of the law and equal protection of the laws by not giving me notice of the actions within the said case of which Defendant 4 seized jurisdiction and deprived me of my said property. Notice is required by Kansas Statutes 60-205 and 60-258. In addition, the said actions were not emergencies to being ex parte; therefore, void judgments.

13. As *prima facie* evidence of further assisting the racketeering activities for the intented extortion, the said ex parte judgment and order conveniently did not provide any determination of finding of facts and conclusions of law by Defendant 4 as stipulated by Kansas Statute 60-252(a) (1); however, the said ex partes are relied on as justification to, obtain satisfaction of the alleged debt at whatever cost by the UG employees and associates.

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14. As the allotted 30 days per Kansas Statute 60-2103 had expired when I received the said ex parte copies, Amendments V and XIV and 42 USC § 1983 of the said Constitution were again violated by Defendant 4 in not affording me due process of law and equal protection of the law as I was not given the opportunity to be heard in rebutting or to appeal the actions in the said case of depriving me of my said property.
15. Due to the said unlawful actions of Defendants 4 and 5 in the said case, the nonresponse to my documents filed in said case, and under the threat and fear of my property being unlawfully sold by the UG in its upcoming public auction and my reliance thereon, I was injured by the above mentioned extortion practices of Defendants 1, 2, 3, 4 and 5. In that regard, on June 27, 2022 I was forced to give the UG 34,934.89 Federal Reserve notes in order to temporarily halt any further injuries and harm to me and my said property from the racketeering scheme.
16. Since 2012 I have made many attempts to get Defendants 1, 2, and 3 to stop the illegal activities as it involves me and my said property after I became aware of the fraud of the classification of the property. As with the said case, my correspondences were ignored and the racketeering activities continue.
17. The Kansas Constitution in Article 11 gives

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authorization to the corporations such as the UG to tax different classifications of real property which are all commercial in nature. None of the classifications describe my said property as my said property is not real property in the first instance, however, Defendants 1; 2, 3, 4, and 5 use the classification in the said Article 11 of 'Residential Real Property" to describe the property of the people and my said property when the description is false due to the very definition of "residential real property" alone represents a business use for lodging per Kansas Statute 58-2543.

18. Defendants 1, 2, 3, 4, and 5 know the said classification is false because they do not have any evidence of such business use of the property of the people nor of my said property and because I have informed them of non business use.

19. The unlawful classification is the foundation of the organized scheme of which Defendants 1, 2, 3, 4, and 5 under color of law use to claim a right to tax the property of the people and carry out the organized scheme.

20. Defendants 1, 2, 3, 4, and 5 have created fictitious obligations with the said ex partes, unsigned assessments, and tax statements in this organized scheme and have used the mails to carry out the scheme on me and the people in violation of 18 USC § 514.

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21. Defendants 1, 2, 3, 4, and 5 have from the said organized scheme unlawfully seized and converted the ownership of the property of the people and my said property through the said unlawful classification to being an asset of the UG. The said seizure and conversion has stagnated my enjoyment of my said property due to the unauthorized control over my said property with regulations and permit requirements for which I should have the liberty to exercise without. This is theft as denoted by Kansas Statute 21-5801.

22. On June 6, 2013, through the training or lack thereof of Defendants 1, 2, and 3, other employees of the UG, deceptively disguised themselves as lawful government in sheriff vehicles, and pretended to be executing an emergency through the use of the vehicles emergency lights, of which I relied on when I pulled over, robbed me on the highway with guns of my non commercial automobile with the help of Defendant 6. In participation of the racketeering scheme, the said robbery was a means to fraudulently extort finances from me for the alleged tax debt. At the time of the said robbery, I was told in addition to other things by the employee that pretended the emergency, C. Morris, that I needed to "pay" the alleged tax debt in order to obtain my said automobile back. These acts are criminal offenses of extortion and robbery in 18 USC § 1951 and robbery under Kansas Statute 21-5420.

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23. The said employee, C. Morris, had previously worked in the UG office that processes property taxes at a time I had sent documents to the property tax office. During the time this employee was working in the property tax office, he was under the supervision of Defendant 1, 2, and 3. He replied through the mails to a document I had sent to the property tax office with his written interpretation of the law on taxing my said property and informed me of the threatening steps he had and was to take to make me comply which included posting a lien he had just placed on my said property inside his employer's building which violated Kansas Statute 21-5428 - Blackmail.

24. I've been in receipt of other unsigned threatening documents through the mails from the UG to obtain the alleged debt because of the said organized scheme.

25. Defendants 1, 2, 3, and 6 through their racketeering involvement have deprived me of my liberty in the use of my said automobile in violation of 18 USC §s 241 and 242, 42 USC § 1983, Kansas Statute 21-5803, and Amendments IV, V, IX, X, and XIV of the said Constitution for the United States as I should be allowed to be secure in my property against unreasonable searches and seizures, afforded due process of the law and equal protection of the law in the deprivation of my property, and have the liberty to do what is not expressly prohibited as long

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as I am not injuring others.

26. Defendants 1, 2, 3, 4, and 5 through the racketeering activities in addition to the other violations stated above have violated Amendments IV, IX, and X of the said United States Constitution by depriving me my god given right to have a place to stay for shelter from the elements of the weather and my substantive right to the peaceful possession of my said property.

27. Defendant 1 as the supervisor of the taxing affairs of the entire State of Kansas of which comprises the taxing activities of the UG, Defendants 2, 3, and 5 as employees of the UG, and Defendants 4 and 6 as having regular business relations with the UG, have, as stated above, violated the RICO Statute, 18 USC § 1962 through robbery and extortion in violation of 18 USC § 1951 and Kansas Statute 21-5420, and mail fraud in violation of 18 USC § 1341 which are patterns they use to deliberately injure me and the people for the unlawful financial gain of the UG corporation. The Defendants' racketeering practices affect interstate commerce through the public auctions of the UG and the public auctions of Defendant 6 in selling the property unlawfully obtained by way of the said organized scheme to the public, through the use of the Postal Service for the delivery of documents used to threaten and defraud me and the people of property and our right of a lawfully functioning

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government, and through the UG obtaining grants from the federal government with the use of the falsified records of the scheme in declaring the UG corporation's assets and liabilities to utilize Kansas Statute 12-2811.

28. I have been injured in my property by the Defendants from the extortion as stated above of the 34,934.89 FRNs, the lost of liberty in the use of my said noncommercial automobile by the said robbery, mental anguish from public humiliation of my said property being advertised and liened, and from the finances and time I have expended in trying to put a stop to the racketeering activities of the Defendants as the activities relate to me.

IV. RELIEF

1. I demand due process of the law as protected by the Constitution for the United States of America.
2. I demand this District Court of the United States stop these abuses of colorable law - colorable authority by the Defendants.
3. The immediate recusal from his/her office any Defendant's involvement found guilty in violation of the Constitution for the United States of America, the United States Codes of Law, or the Kansas State laws.
4. Defendants, in their individual and official

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capacities, collectively, are being sued for \$41,815,534.89 for compensatory damages; and treble for punitive damages in their private capacities.

5. All other relief the Court deems appropriate.

I declare under the penalty of perjury under the law of the UNITED STATES CODES that the above is true and correct to the best of my knowledge and honorable intent.

Respectfully submitted this 23rd day of March, 2023

I Am: /s/ Michelle Avery Bey  
In Propria Persona  
All Rights Reserved