No. 21-2846

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

William Burrell, Jr. et al.,

Plaintiffs-Appellants,

v.

Lackawanna Recycling Center, Inc. et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Pennsylvania
No. 3:14-cv-01891 (Mariani, J.)

REPLY BRIEF OF PLAINTIFFS-APPELLANTS WILLIAM BURRELL, JR. ET AL.

Marielle Macher
COMMUNITY JUSTICE PROJECT
118 Locust St.
Harrisburg, PA 17101

Juno Turner
TOWARDS JUSTICE
2840 Fairfax St., Suite 200
Denver, CO 80207

Matthew Handley
Rachel Nadas
HANDLEY FARAH & ANDERSON PLLC
200 Massachusetts Ave., NW, 7th Floor
Washington, D.C. 20001

Sanders Keyes Gilmer
Alessandra Lopez
Daniel Wassim
Student Counsel*

Madeline Meth
Brian Wolfman
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW, Suite 312
Washington, D.C. 20001
(202) 662-9549

Counsel for Plaintiffs-Appellants

April 29, 2022

*Motion to admit law students pending

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes and Rule

Regulation

INTRODUCTION AND SUMMARY OF ARGUMENT

Faced with well-pleaded allegations of forced labor, racketeering, wage theft, and unjust enrichment, Defendants resort to blaming each other—and Plaintiffs—for their wrongdoings. Defendants' attempts to thwart liability are unavailing.

I. Defendants fight the well-established principle that Plaintiffs' allegations at the motion-to-dismiss stage must be taken as true. Their attempt to circumvent the pleadings by alluding to *Rooker-Feldman* fails.

Plaintiffs have plausibly alleged that Defendants forced detainees to work in violation of the Thirteenth Amendment and the TVPA. Rather than respond directly to these claims, Defendants misinterpret the Thirteenth Amendment and distort the TVPA's coercion requirement. The Thirteenth Amendment's penal exception applies only to individuals convicted of a crime—not civil detainees like Plaintiffs. Furthermore, as the United States points out as amicus, whether Plaintiffs held the keys to the prison is not dispositive as to whether Plaintiffs' labor was coerced under the TVPA. And Plaintiffs plausibly pleaded that Defendants procured Plaintiffs' labor at the Center through threats of physical restraint, serious harm, and abuse of legal process.

II. Plaintiffs have plausibly alleged that Defendants formed a RICO association-in-fact enterprise, collaborating to obtain and profit from Plaintiffs' forced labor. Because both TVPA perpetrator liability and venture liability are sufficient predicate acts for RICO, Plaintiffs stated a plausible

claim for relief under RICO against LRCI and the DeNaples.

III. Defendants' understanding of the economic-reality test under the FLSA and the Pennsylvania Minimum Wage Act ignores the FLSA's text and purpose and contravenes this Court's precedent. LRCI's last-ditch argument that Plaintiffs' FLSA claims are time-barred also fails. And though Defendants dispute the existence of an implied contract for wages under the Pennsylvania Wage Payment and Collection Law, Plaintiffs plausibly alleged otherwise.

IV. As for Plaintiffs' unjust-enrichment claim, Defendants do everything from gesturing at forfeiture to insisting they gained no benefit from Plaintiffs' nearly-free labor. None of their defenses negate the reality that, as alleged, Defendants' retention of ill-gotten profits from Plaintiffs' forced labor is unjust.

ARGUMENT

I. Defendants forced Plaintiffs to work at the Center in violation of the Thirteenth Amendment and the TVPA.

A. *Rooker-Feldman* does not bar Plaintiffs' claims or undermine their well-pleaded allegations.

Defendants largely leave *Rooker-Feldman* by the wayside, making only cryptic references to it. *See* LRCI Br. 9, 12-13, 20-21; County Br. 4, 6-8; Authority Br. 1-3. But Plaintiffs' well-pleaded allegations and resulting inferences stated plausible claims that their injuries were caused by Defendants' exploitation of their worsening financial circumstances, not

related state-court orders. *See* Opening Br. 16-20.

Defendants suggest that Plaintiffs could have petitioned the state court to adjust their purge amounts based on an inability to pay due to their incarceration. *See* LRCI Br. 20-21; Authority Br. 2. They maintain that Plaintiffs' failure to do so means this Court cannot take as true that Plaintiffs lacked the ability to pay (once they began working for Defendants) without sanctioning a collateral attack on the state-court contempt orders. *See* LRCI Br. 12-13, 21. But purge amounts cannot be modified based on post-hearing circumstances. *See Barrett v. Barrett*, 368 A.2d 616, 621 (Pa. 1977). The purpose of civil-contempt orders is to coerce payment *before* the punishment—here, incarceration—is imposed. *See, e.g.*, *Garr v. Peters*, 773 A.2d 183, 191 (Pa. Super. Ct. 2001). Moreover, Defendants incorrectly assume that a purge reflects a debtor's ongoing ability to pay, regardless of the passage of time. *See* LRCI Br. 10-12. A purge only reflects what the state court concluded a debtor could pay on the date of the contempt hearing, not whether the debtor could pay that purge amount in perpetuity. *See* Opening Br. 5, 17-18; *see also Hyle v. Hyle*, 868 A.2d 601, 605-06 (Pa. Super. Ct. 2005).

Plaintiffs' claims are also independent from the state-court proceedings because Plaintiffs challenge the brutal conditions Defendants imposed, not the state-court orders. *See* Opening Br. 19-20. Defendants do not directly contest this point but suggest a *Rooker-Feldman* problem by asserting that Plaintiffs challenge state-court orders requiring completion of the Community Service Program for work-release eligibility. *See* Authority Br.

1-2, 26; LRCI Br. 23-24; County Br. 7-8. But the state court played no part in creating a dangerous work environment at the Center, nor did it give Defendants "any specific instructions" on how to operate their Community Service Program. *See Vuyanich v. Smithton Borough*, 5 F.4th 379, 386-87 (3d Cir. 2021); *see also* Opening Br. 19-20; Vol. 2 at 145-46. Because Plaintiffs seek "damages for the actions Defendants took under the guise of implementing [the state-court] order," Plaintiffs' claims are independent from the state-court proceedings. *Vuyanich*, 5 F.4th at 387; *see also* Opening Br. at 19-20.

Conflating the *Rooker-Feldman* doctrine with issue preclusion, Defendants argue that this Court cannot infer that Plaintiffs lacked the ability to pay once incarcerated without contradicting the state court's ability-to-pay findings. *See* LRCI Br. 10-13. Defendants have yet to affirmatively raise issue preclusion. *See* Opening Br. 20-21. And, besides, preclusion can apply only when "the issue was actually litigated." *Jean Alexander Cosms., Inc. v. L'Oreal USA, Inc.*, 458 F.3d 244, 249 (3d Cir. 2006). Thus, Plaintiffs are not precluded from litigating whether they lacked the ability to pay *during* their imprisonment because, as Defendants recognize, Plaintiffs did not litigate that issue in state court (nor could they have). *See* County Br. 6-7; *see* Opening Br. 19-20.[1]

[1] Plaintiffs also do not challenge the state-court ability-to-pay finding (the only previously litigated issue in state court). *See* LRCI Br. 9-10. Regardless, such a challenge would not be barred by *Rooker-Feldman* because Plaintiffs' Thirteenth Amendment and TVPA claims are independent from that state-

B. Defendants coerced Plaintiffs to work in violation of the Thirteenth Amendment.

Defendants insist that Plaintiffs continuously had the ability to pay to leave prison. Authority Br. 15, 26; County Br. 4, 7; LRCI Br. 4-5, 9-13. But Plaintiffs have plausibly pleaded that their work at the Center was involuntary. *See* Opening Br. 22. Plaintiffs' well-pleaded allegations are reinforced by reasonable inferences that they suffered physical harms because of the dangerous working conditions at the Center in exchange for subminimum wages. See *id.* at 9, 24-25. Thus, Defendants must accept that, once incarcerated, Plaintiffs lacked the ability to pay. *See id.* at 15, 18, 21, 25-26, 40.

Defendants also argue that Plaintiffs had a choice to petition the state court to modify their child support payments. *See* County Br. 4, 8; LRCI Br. 21-22. But child-support debtors cannot modify their child-support obligations based on the changed circumstance of incarceration. *See* Opening Br. 5-6; 23 Pa. Stat. and Cons. Stat. § 4352(a.2); LRCI Br. 22 n.7 (acknowledging this principle of Pennsylvania law but ignoring its implications here).

Contrary to LRCI's assertions, *see* LRCI Br. 46, the Thirteenth Amendment's penal exception does not extend to all forms of "proper

---

court determination. *See* Opening Br. 19-21. Instead, any challenge would implicate issue preclusion, which has not yet been raised in this case and is therefore an improper basis for affirmance. *See id.* at 20-21.

imprisonment." *See* Opening Br. 26-27. Plaintiffs were not convicted of a crime and thus fall outside the exception. *See id.*; *Burrell v. Loungo*, 750 F. App'x 148, 159 (3d Cir. 2018) (per curiam).

The Authority asserts that, as a municipal entity, it lacks the "capacity to violate" the Thirteenth Amendment. *See* Authority Br. 17. But local governmental entities, like the Authority, are "persons" under Section 1983, *Monell v. Dep't of Soc. Servs. of N.Y.C.*, 436 U.S. 658, 690-91 (1978), and can be liable for Thirteenth Amendment violations.

C. Defendants violated the TVPA by obtaining and benefiting from Plaintiffs' forced labor.

Plaintiffs plausibly pleaded that Defendants' forced labor scheme violated the TVPA. *See* Opening Br. 27-34.[2]

1. The County provided Plaintiffs' forced labor to the other Defendants.

The TVPA's text does not limit its protections to any class of individuals. *See* 18 U.S.C. § 1589; Opening Br. 28-29. Thus, the County does not dispute that the statute applies to the forced labor of civil detainees.

a. Knowledge. The County does not directly dispute that Plaintiffs plausibly alleged knowledge. Nor could it. The County's own policies

[2] To demonstrate their entitlement to relief, Plaintiffs focus on the allegations stating a plausible claim against the County as the principal perpetrator and the other Defendants as venture beneficiaries. *See* Opening Br. 28.

mandated that Plaintiffs "ha[d] to work at the Center" before they could "apply for work release." Vol. 2 at 116; *see* Opening Br. 29. This fact—in addition to the County's knowledge of the Center's rancid working conditions, the paltry pay, and Plaintiffs' status as civil debtors—was sufficient to plausibly allege that the County knew it was coercing Plaintiffs' labor. *See* Opening Br. 24-26. Indeed, it is irrational to suggest that the County believed Plaintiffs willingly chose to endure the horrible working conditions alleged in the complaint.

b. Physical Restraint and Serious Harm. Taking Plaintiffs' allegations as true and drawing reasonable inferences in their favor, the County compelled Plaintiffs' labor at the Center through the threat of continued physical restraint and serious harm. *See* Opening Br. 30-31; *Bridges v. Poe*, 487 F. Supp. 3d 1250, 1261 (N.D. Ala. 2020).

(i) By conditioning work-release on labor at the Center, the County threatened Plaintiffs with physical restraint. The County states that Plaintiffs were not coerced to work because they could petition the court for reconsideration of their financial means, *see* County Br. 8, or were "free to stay in the prison." *Id.* at 9. First, the County's bald assertion that Plaintiffs could have petitioned the court for reconsideration of their financial means is incorrect. *See* Opening Br. 5-6; *supra* at 3, 5.

Next, the County's argument that Plaintiffs were "free to stay in the prison," County Br. 9, is an oxymoron. Prison is an extreme form of physical restraint. Furthermore, this assertion acknowledges that Plaintiffs could not

pay their purge amount (and thus would "stay in the prison" without work release). Taking Plaintiffs' allegations as true, their debts continued to accrue while they remained in prison. *See* Opening Br. 8. Work release provided a lifeline for these inmates to pay their purges, support their children, and leave prison permanently. *Id.* Defendants leveraged Plaintiffs' precarious financial circumstances by requiring them to first work at the Center for subminimum wages before allowing them access to work release. *Id.* In the face of financial instability, conditioning work release on completion of work at the Center was a "sufficient" threat of physical restraint to "maintain or obtain" the inmates' labor. *See United States v. Afolabi*, 508 F. App'x 111, 117 (3d Cir. 2013) (citation omitted).

(ii) The keys-to-the-cell inquiry is not required. Although Plaintiffs maintain they lacked the ability to leave prison once they began work at the Center, this inquiry is not required under the TVPA. The County's threats of physical restraint and serious harm to coerce Plaintiffs to work at the Center violated the TVPA, regardless of whether Plaintiffs had the keys to their cells. As the United States has explained, the ability to secure release "has no bearing on the lawfulness of forcing civil detainees to work." *See* DOJ Br. 10, 14. For example, civil-immigration detainees who have the means of obtaining release from detention can nonetheless hold the detention center liable for forced labor under the TVPA when the defendants condition better living circumstances and freedom from solitary confinement on labor. *Gonzalez v. CoreCivic*, 986 F.3d 536, 538-39 (5th Cir. 2021); *Barrientos v.*

CoreCivic, 951 F.3d 1269, 1276-78 (11th Cir. 2020). Although the forced labor schemes addressed in *Gonzalez* and *Barrientos* are not carbon copies of Defendants' scheme, the principle from those cases applies here: Even when detainees have the ability to secure release, their labor may be coerced in various ways through use or threats of "physical restraint," "serious harm" or "abuse of legal process." 18 U.S.C. § 1589(a)(1), (3).

Here, Plaintiffs state a plausible claim for relief pursuant to the TVPA regardless of whether they had the ability to otherwise secure release. First, mere removal from programs that allow prisoners to "leave [their] cell block to perform work under the supervision of [their] jailers" constitutes a "threat of physical restraint" that violates the TVPA by depriving Plaintiffs of the opportunity to spend time outside the prison. *Bridges*, 487 F. Supp. 3d at 1254, 1261; Opening Br. 30-31; *see United States v. Kozminski*, 487 U.S. 931, 952 (1988).

Moreover, Defendants' scheme consisted of more than simply pressuring Plaintiffs to join the Community Service Program: They also threatened to harm Plaintiffs once they were at the Center. If they did not work fast enough—or simply failed to remove all the glass—County prison guards and LRCI staff punished them by taking away their prison-provided lunch. Vol. 2 at 130. Defendants thus "depriv[ed]" Plaintiffs of "basic necessities" under the guise of a "so-called voluntary work program" that, in reality, "threaten[ed] to harm or actually harm[ed] those who refuse[d] to work." *Barrientos*, 951 F.3d at 1274.

c. Abuse of legal process. Plaintiffs also plausibly pleaded that the County coerced their labor through abuse of legal process. *See* Opening Br. 31-32. The County manipulated state work-release statutes and the court's orders to "exert pressure" on Plaintiffs to work at the Center in violation of the TVPA. 18 U.S.C. § 1589(c)(1). Plaintiffs rely on the County's manipulation of Burrell's court orders to illustrate each of Plaintiffs' circumstances. *See* Opening Br. 7 n.7. The County abused the state court's first order that Burrell be provided "immediate work release if he qualifies," *see, e.g.*, Vol. 2 at 145, declaring Burrell ineligible for work release until he worked half of his sentence at the Center as part of the prison's "Community Service Program." *Id.* at 116, 119, 122.

The County also manipulated the court's next order—explicitly conditioning Burrell's eligibility for work release on completion of the County's "Community Service Program"—which plausibly heightened the pressure he felt. *See* Vol. 2 at 146. This order held that a "[v]iolation of any rules or regulations will result in removal from the above programs and return to Lackawanna County Prison." *Id.*

It is reasonable to infer that the County relied on these court orders to convince Plaintiffs that they were required to work at the Center in dangerous conditions for meager pay. County prison staff told Plaintiffs "in unequivocal terms that," to qualify for work release, they would have to work at the Center for six months. *Id.* at 116. In other words, if Plaintiffs refused to work at the Center—in violation of the prison's rules—they would

lose their opportunity to earn work release. *See id.* at 116-17.

Moreover, the state-court orders requiring Plaintiffs to participate in "Community Service" make no mention of Plaintiffs' purported ability to pay their way out of prison. Vol. 2 at 146-47. So when Defendants used those orders to disguise the Center's dangerous working conditions as court-ordered community service, it is reasonable to infer that Plaintiffs would have believed they were required to work at the Center regardless of their ability to pay.

2. LRCI, the Authority, and the DeNaples benefited from their participation in a venture that they knew or should have known had obtained Plaintiffs' forced labor.

At minimum, Plaintiffs have also plausibly alleged a TVPA Section 1595(a) beneficiary claim against LRCI, the Authority, and the DeNaples. *See* Opening Br. 32-34. Plaintiffs have sufficiently alleged that these Defendants benefited financially from participation in a venture that they knew or should have known committed a TVPA violation—here, forced labor. *See id.*; 18 U.S.C. § 1595(a).

Benefit. Defendants do not dispute that they received a financial benefit because this scheme reduced their operating costs and increased their profits.

The Authority nonetheless relies on *Watson v. Graves*, 909 F.2d 1549 (5th Cir. 1990), and *United States v. Peterson*, 627 F. Supp. 2d 1359 (M.D. Ga. 2008), to argue that benefitting from forced labor cannot trigger TVPA liability

when a detainee participates in a prison work program. *See* Authority Br. 20-21. Both *Watson* and *Peterson* concern inmates convicted of crimes—not civil detainees—who asserted only generalized allegations of "subtle" tactics to intimidate the inmates, *Watson*, 909 F.2d at 1552, or did not allege coercion at all, *Peterson*, 627 F. Supp. 2d at 1372-73. Here, Plaintiffs plausibly alleged the threat of physical restraint, serious harm, and blatant abuse of legal process to coerce indigent civil detainees to work. *Supra* at 6-11.

Participation. Plaintiffs' allegations and resulting inferences plausibly alleged the existence of a venture between Defendants. *See* Opening Br. 33-34. Plaintiffs did not need to use the magic word "venture" in describing Defendants' relationship to plead a TVPA claim. *See Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014) (per curiam); *Stanton v. Elliott*, 25 F.4th 227, 237-38 (4th Cir. 2022). Rather, to adequately plead the TVPA's "venture" element, Plaintiffs needed to plausibly allege only a "continuous business relationship" between Defendants such that "it would appear that the [Defendants] have established a pattern of conduct or could be said to have a tacit agreement." *A.B. v. Marriott Int'l, Inc.*, 455 F. Supp. 3d 171, 186 (E.D. Pa. 2020) (citation and quotation marks omitted).

Plaintiffs detailed the overall scheme of forced labor and each Defendant's role in the arrangement. The complaint describes Defendants' Operating Agreement that evidenced a "pattern of conduct" establishing a "continuous business relationship." *A.B.*, 455 F. Supp. 3d at 186; Vol. 2 at 135-36. Under this contract, the Authority "shall possess and have the sole right

to all funds collected, received or receivable as a result of [LRCI's] operation and management of the Center," Vol. 2 at 148, and "shall retain administrative, financial and operational control of the Center and Center Assets." *Id.* at 154. Moreover, the contract requires the Authority to "provide [LRCI] with the same number of Prisoners from the Lackawanna County Prison that have historically worked at the Center." *Id.* at 150. This language creates an understanding between the Authority, LRCI (a private company run by the DeNaples), and the prison warden (the County).

Knowledge. The Authority asserts that it only owned the property, that it did not establish the prisoners' pay, and that its participation was too attenuated to the scheme to establish knowledge of coercion. *See* Authority Br. 23-24. LRCI and the DeNaples assert they lacked the specific knowledge that Plaintiffs could not afford their purge amounts. *See* LRCI Br. 30; DeNaples Br. 29-30. But the relevant inquiry is whether Defendants "knew or should have known" that their venture benefited from Plaintiffs' forced labor, not whether they knew exactly how the labor was being coerced. 18 U.S.C. § 1595(a).

The allegations of abhorrent conditions and miniscule wages alone were sufficient to plead that Defendants knew that the detainees' labor may have been coerced. *See* Opening Br. 34. Moreover, the DeNaples (LRCI's owners) and the Authority signed the Operating Agreement, which expressly required the Authority to provide detainees as labor. Vol. 2 at 150. Taken together, Plaintiffs have plausibly alleged that the Authority, LRCI, and the

DeNaples should have known they were benefiting from Plaintiffs' forced labor. *See* Opening Br. 34.

II. LRCI and the DeNaples violated RICO by participating in an enterprise to obtain Plaintiffs' coerced labor.

Plaintiffs plausibly pleaded that Defendants formed a RICO association-in-fact enterprise, collaborating to obtain and profit from Plaintiffs' forced labor. *See* Opening Br. 35-41. The Authority spills much ink arguing how, as a municipal agency, it cannot violate RICO. *See* Authority Br. 17, 28-30. But Plaintiffs do not pursue a RICO claim against the County or the Authority and discuss their participation in the association-in-fact enterprise only to show an enterprise existed. *See* Opening Br. 36 n.10.

Plaintiffs have plausibly alleged that LRCI and the DeNaples violated RICO through their predicate TVPA abuses. LRCI and the DeNaples appear to argue that a RICO violation may be premised only on TVPA perpetrator liability, rather than venture liability. *See* LRCI Br. 32; DeNaples Br. 31-32.

But venture liability is a sufficient predicate act for RICO. 18 U.S.C. § 1961(1). Plaintiffs have plausibly alleged that the venture-beneficiary Defendants benefited financially from participation in a venture that they knew or should have known engaged in a TVPA violation. *See* 18 U.S.C. § 1595(a); *supra* at 11-14. LRCI and the DeNaples benefited from Plaintiffs' forced labor (through reduced operating costs) knowing, actually or constructively, that it was forcibly obtained. Defendants' conduct thus violated the TVPA, *supra* at 11-14, and consequently RICO.

III. The County, the Authority, and LRCI violated the FLSA and the Pennsylvania Minimum Wage Act.

The County's, the Authority's, and LRCI's attempts to avoid liability for wage theft are unavailing. *See* Opening Br. 41-50.[3]

A. Plaintiffs were employees.

Defendants do not even try to confront the FLSA's text, which compels the conclusion that Plaintiffs were Defendants' employees. *See* Opening Br. 42-45; NELP Br. 10-11. Nor do they square their position with the FLSA's objectives in ensuring worker well-being and preventing unfair competition. *See* Opening Br. 45-46; NELP Br. 15-16. Rather, Defendants distort the economic-reality test to resist the conclusion that Plaintiffs were employees.

The Authority argues that "[i]t is well established that a prisoner is not an employee" covered by the FLSA. Authority Br. 26. Incorrect: Other circuits have held that even convicted inmates working for private, non-prison entities—as Plaintiffs did here—can be employees covered by the FLSA. *See Watson v. Graves*, 909 F.2d 1549, 1555-56 (5th Cir. 1990); *Carter v. Dutchess*

[3] LRCI and the County agree with Plaintiffs that courts "look to the FLSA for guidance in interpreting the Pennsylvania Minimum Wage Act." *See* Opening Br. 41 n.11; County Br. 12; LRCI Br. 33 n.9. The Authority makes the puzzling argument that Plaintiffs did not receive "wages" under the PMWA because they participated in the prison's Community Service Program. *See* Authority Br. 26-27. The crux of Plaintiffs' argument is that they performed work covered by the PMWA. The Authority's say-so that Plaintiffs' labor was community service cannot overcome Plaintiffs' well-pleaded PMWA claim.

Cmty. Coll., 735 F.2d 8, 13-15 (2d Cir. 1984). Despite the Authority's contrary assertions, whether civil contemnors working for private, non-prison entities can be employees is an open question in this Circuit. And for the reasons provided in the Opening Brief and here, this Court should hold that Plaintiffs were covered employees. *See* Opening Br. 42-48.

The County and LRCI offer a less radical, but equally misguided view of the economic-reality test. LRCI parrots *Henthorn v. Department of Navy*, 29 F.3d 682, (D.C. Cir. 1994), to argue that there are two prerequisites to show that someone working for a private, non-prison entity is an employee covered by the FLSA: that (1) the worker freely contracted for his work, and (2) compensation was set and paid by a non-prison entity. *See* LRCI Br. 34-36; County Br. 10. But *Henthorn* was wrongly decided and is inapposite here. *See* Opening Br. 48-50.

First, *Henthorn* is based on the penal exception to the Thirteenth Amendment—an exception irrelevant to the FLSA and inapplicable to civil contemnors like Plaintiffs. *See* Opening Br. 41-42, 50. LRCI's attempt to analogize civil detainees to convicted prisoners falls flat because only convicted criminals are subject to the Thirteenth Amendment's penal exception. *See supra* at 5-6.

Second, LRCI and the County's suggestion that conclusive weight can be given to two factors of the economic-reality test is at odds with this Court's precedent. *See* LRCI Br. 34-36; County Br. 10. Under the economic-reality test, "neither the presence nor absence of any particular factor

is dispositive." *Razak v. Uber Techs., Inc.*, 951 F.3d 137, 143 (3d Cir. 2020) (citation omitted). Instead, courts "examine the circumstances of the whole activity" to determine whether "as a matter of economic reality," an individual is an employee covered by the FLSA. *Id.*; *see Carter*, 735 F.2d at 12-13 (rejecting the argument that any factor can be dispositive in determining a prisoner's employment status under the FLSA); *Watson*, 909 F.2d at 1554-56 (same).

Finally, LRCI echoes the district court in arguing that workers, like Plaintiffs, who allege their work was performed under coercion are ineligible to receive the minimum wage. *See* LRCI Br. 36-37. But the FLSA's guiding purpose is to protect employees who lack sufficient freedom to achieve the "bargaining power to secure for themselves a minimum subsistence wage." *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 n.18 (1945); *see* Opening Br. 49. Accepting LRCI's false dichotomy between forced labor and wage theft would run roughshod over the FLSA's text and purpose to create "an exclusion for most incarcerated people that Congress did not authorize when it designated the categories of workers who are exempted from FLSA coverage." NELP Br. 14-15. Creating this exclusion would allow private employers to exploit a cheap, captive workforce to gain an unfair competitive advantage—another ill the FLSA guards against. *See id.* at 15. In sum, this Court should reject LRCI and the County's proposed prerequisites—and the district court's reliance on them.

This Court should start instead with the FLSA's text. *See* Opening Br. 42-

45. Defendants do not dispute that they each "suffer[ed] or permit[ted]" Plaintiffs to work. 29 U.S.C. § 203(g).

This Court can also consider "the circumstances of the whole activity" to conclude as a matter of economic reality that Plaintiffs sufficiently alleged they were Defendants' employees. *Razak*, 951 F.3d at 143 (citation omitted). Defendants do not contest that the free-market indicia of Plaintiffs' employment all favor their recognition as employees covered by the FLSA. *See* Opening Br. 46-48; NELP Br. 12-14. Rather, Defendants blame each other, with the Authority and LRCI arguing that the other entity hired Plaintiffs, paid them, and supervised them. *See* Authority Br. 28; LRCI Br. 39-40. This finger-pointing only highlights Plaintiffs' allegations that Defendants jointly hired, paid, and supervised Plaintiffs for their work to the benefit of a private employer. *See* Opening Br. 50; *Carter*, 735 F.2d at 12 (considering the power to hire, fire, pay, and supervise employees as free-market indicia of employment).

B. Defendants are joint employers.

LRCI argues that Plaintiffs "cannot rely on rules governing, and precedent discussing, 'joint employers' as a basis for attributing the actions of one putative employer to another." LRCI Br. 41-42. But as this Court has explained, a complaint sufficiently alleges that entities are joint employers if it pleads that they "share or co-determine those matters governing the essential terms and conditions of employment," like hiring, supervision,

discipline, and firing. *In re Enter. Rent-A-Car Wage & Hour Emp. Pracs. Litig.*, 683 F.3d 462, 468-69 (3d Cir. 2012) (quoting *NLRB v. Browning-Ferris Indus. of Pa., Inc.*, 691 F.2d 1117, 1123 (3d Cir. 1982)). Thus, an employee need not plead that each putative joint employer had "ultimate control" over the employee; rather, the employee must plead only that each entity had "significant control," including "indirect control." *Id.*

Here, taking the allegations as true, the County, the Authority, and LRCI each exercised "significant control" over Plaintiffs by "shar[ing] or co-determin[ing]" essential terms of employment. *In re Enterprise Rent-A-Car*, 683 F.3d at 468; *see* Vol. 2 at 130; Opening Br. 50. As LRCI acknowledges, the County was responsible for controlling Plaintiffs' subminimum wages in their commissary accounts. *See* LRCI Br. 40. And as the complaint alleged, the County and Authority were responsible for selecting workers and setting their pay. *See* Vol. 2 at 130-31. Moreover, County prison guards supervised Plaintiffs as they worked and took away their lunches if they did not work fast enough. *Id.* at 130. And as the Operating Agreement states, LRCI was engaged to "supervise, direct, and control the management and operation of the Center." *Id.* at 151. This supervision included determining work rules and assignments (a shared responsibility with the Authority) and terminating workers (a shared responsibility with the County). *Id.* at 129. The complaint thus sufficiently alleged that the County, the Authority, and LRCI exercised significant control over Plaintiffs, rendering them liable as joint employers.

C. Burrell's and Huzzard's FLSA claims are not time-barred.

LRCI asserts that Burrell's and Huzzard's FLSA claims fall outside of the FLSA's statute of limitations because they were first explicitly raised in the Second Amended Complaint filed on December 6, 2019. *See* LRCI Br. 47-49.[4] LRCI is wrong because equitable tolling applies to Plaintiffs' FLSA claims, Vol. 2 at 126-27, and Burrell's claim relates back to his December 19, 2014, First Amended Complaint.

1. Equitable tolling applies to Plaintiffs' FLSA claims.

Equitable tolling is appropriate because LRCI, the Authority, and the County "actively misled [Plaintiffs] regarding [their] cause of action," preventing them from asserting their rights. *See Hedges v. United States*, 404 F.3d 744, 751 (3d Cir. 2005); *accord* Vol. 2 at 126-127.

LRCI protests that "[t]his Court has not decided that an employer's failure to post required FLSA notices, by itself, necessarily tolls the statute of limitation." LRCI Br. 49. True, but this Court has held the same in the Title VII and ADEA contexts. *See Hammer v. Cardio Med. Prods., Inc.*, 131 F. App'x 829, 831-32 (3d Cir. 2005); *Bonham v. Dresser Indus., Inc.*, 569 F.2d 187, 193 (3d Cir. 1977). And LRCI cannot explain why *Hammer* and *Bonham* do not apply to the FLSA because "the notice requirements in the ADEA and the FLSA are almost identical." *Cruz v. Maypa*, 773 F.3d 138, 146-47 (4th Cir. 2014); *see*

[4] The County and Authority have not argued that the FLSA claims against them are time-barred and have thus forfeited this defense.

Henchy v. City of Absecon, 148 F. Supp. 2d 435, 439 (D.N.J. 2001); *Kamens v. Summit Stainless, Inc.*, 586 F. Supp. 324, 328 (E.D. Pa. 1984).

Plaintiffs alleged that Defendants failed to post notice in a conspicuous place to alert them to their rights as employees as required by 29 C.F.R. § 516.4. Vol. 2 at 126. Moreover, Plaintiffs alleged that Defendants suggested to them that they were not employees with rights but rather prisoners whom Defendants could force to work for below minimum wage. *Id.* at 127. Because Defendants "actively misled" Plaintiffs by failing to post the required FLSA notices and deceiving them as to their employment status, Plaintiffs' FLSA claims are timely. *See Hedges*, 404 F.3d at 751.

2. Burrell's FLSA claim relates back to his First Amended Complaint.

Under Federal Rule of Civil Procedure 15(c)(1)(B), an amendment to a pleading relates back to the date of the earlier pleading when the amendment pleads a claim "that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." Application of this Rule thus entails a "search for a common core of operative facts in the two pleadings." *Bensel v. Allied Pilots Ass'n*, 387 F.3d 298, 310 (3d Cir. 2004). If this common core exists, Defendants had "fair notice" of the newly asserted claims, and relation back is warranted. *Id.*

Burrell's pro se First Amended Complaint contains the operative facts underlying his FLSA claim. Burrell explained that, during the workday, he "labored 8 hours" for LRCI. Dkt. 11 at 56. Burrell also alleged that he was

paid only $5 per day and expressed shock to prison officials that he was being paid such a low wage. *Id.* at 46. Finally, Burrell detailed his job duties and explained how his work primarily benefited LRCI and the DeNaples, who saved "millions of dollars in minimum wage labor." *See id.* at 53, 57. These allegations gave Defendants fair notice of Burrell's FLSA claim, which relates to Burrell's employment described in detail in his First Amended Complaint. Burrell's FLSA claim thus relates back to December 19, 2014, and is timely for that reason as well.

IV. LRCI, the Authority, and the County violated the Pennsylvania Wage Payment and Collection Law.

Defendants argue that none of them made an agreement for wages with Plaintiffs. *See* County Br. 12-13; LRCI Br. 50-52; Authority Br. 28. But the complaint alleged that prison staff—that is, County employees—promised to pay Plaintiffs $5 per day for laboring at the Center, *see* Vol. 2 at 116, and Plaintiffs therefore had "a reasonable expectation of being compensated" by the County sufficient to form an implied oral contract. *Oxner v. Cliveden Nursing & Rehab. Ctr. PA, LP*, 132 F. Supp. 3d 645, 649 (E.D. Pa. 2015).

Plaintiffs' allegations create a reasonable inference that LRCI and the Authority also had implied contracts for wages with Plaintiffs. The Authority notes that the Operating Agreement makes LRCI responsible for hiring, firing, paying, and managing employees. *See* Authority Br. 28; Vol. 2 at 128. And LRCI points to Plaintiffs' allegation that the Authority "set [Plaintiffs'] pay for work at the Center." LRCI Br. 51; *accord* Vol. 2 at 130.

Defendants' finger-pointing reinforces the sufficiency of Plaintiffs' pleading. A promise for payment 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." *Oxner*, 132 F. Supp. 3d at 649 (citations omitted). Here, Plaintiffs provided, and Defendants eagerly accepted, Plaintiffs' cheap labor, without which Defendants would need to hire other employees and pay them the minimum wage. *See* Vol. 2 at 133.

LRCI questions whether promissory estoppel can support a claim under the PWPCL. *See* LRCI Br. 51-52. This Court has explained that the PWPCL "establishes a right to enforce payment of wages and compensation that the employer has legally obligated itself to pay." *Scully v. US WATS, Inc.*, 238 F.3d 497, 516-17 (3d Cir. 2001). One way an entity can legally obligate itself to pay is through promissory estoppel. As Plaintiffs alleged (and the Authority echoes), LRCI played a role in promising Plaintiffs their subminimum wages. *See* Vol. 2 at 152; Authority Br. 28. Because Plaintiffs have detrimentally relied on that broken promise by spending time and working in hazardous conditions at the Center, justice can be served only by enforcing the promise and holding Defendants liable under the PWPCL. *See Weaver Bros. Ins. Assoc. v. Braunstein*, 2014 WL 2599929, at *16 n.15 (E.D. Pa. June 10, 2014).

V. Defendants were unjustly enriched by Plaintiffs' forced, nearly unpaid labor.

Plaintiffs have advanced two bases for their unjust-enrichment claim. *See* Opening Br. 53.

On the first, which rises or falls with Plaintiffs' Thirteenth Amendment and TVPA claims, *see* Opening Br. 53, LRCI and the DeNaples argue that Plaintiffs never asserted below that their unjust-enrichment claim rests on their underlying forced-labor claims. *See* LRCI Br. 53; DeNaples Br. 32. Incorrect: Plaintiffs have consistently maintained that it was grossly unjust for Defendants to benefit from Plaintiffs' forced labor. *See, e.g.*, Vol. 2 at 130-34. Regardless, this gesture at forfeiture fails because forfeiture precludes an appellate court from "consider[ing] an issue not passed upon below." *Goldenstein v. Repossessors Inc.*, 815 F.3d 142, 149 (3d Cir. 2016) (citation omitted). As LRCI and the DeNaples acknowledge, *see* LRCI Br. 53; DeNaples Br. 32, the district court "passed upon" this basis for recovery, *see* Vol. 1 at 38-39, and it is preserved for review.

Plaintiffs also raised an independent, quasi-contract basis for liability. *See* Opening Br. 53-54. Defendants insist that this basis for recovery and the argument that an employment contract existed under the PWPCL are incompatible claims. LRCI Br. 54; DeNaples Br. 34-35. But unjust enrichment is only inconsistent with a contract claim if the contract governs "the same subject matter" as the unjust-enrichment claim. *See Jem Accessories, Inc. v. D&H Distrib., Co.*, 2018 WL 3584790, at *2 (M.D. Pa. July 26, 2018). Here, the

implied contract under the PWPCL governs the payment of Plaintiffs' $5-per-day wages, Vol. 2 at 140-41, while the unjust-enrichment claim involves the value of the benefit Defendants retain, *id.* at 142. Because the remedies for these two claims relate to different subject matter, the claims are not inconsistent.[5]

The Authority's claim that it received no benefit from Plaintiffs' labor beggars belief. *See* Authority Br. 31. The Authority received revenues from the Center, *see* Vol. 2 at 148, and was benefited by Plaintiffs, who have plausibly alleged that their subminimum wage labor reduced operating costs and raised revenue for the Authority. *See id.* at 141. Equally unconvincing is the Authority's argument that it did not "unjustly" receive a benefit because it did not set Plaintiffs' rate of compensation. *See* Authority Br. 31-32. First, this naked assertion is contradicted by Plaintiffs' allegation that the Authority and the County did set Plaintiffs' rate of compensation, *see* Vol. 2 at 130, which must be accepted as true, *see Oakwood Labs. LLC v. Thanoo*, 999 F.3d 892, 904 (3d Cir. 2021). Moreover, the Authority's wrongful conduct is not just that it set Plaintiffs' rate of compensation but also that it knowingly provided forced labor to LRCI in violation of the TVPA and the Thirteenth Amendment. *See* Vol. 2 at 137-38. This illegal conduct makes

[5] In any case, because Defendants dispute that Plaintiffs had an implied contract with Defendants under the PWPCL, Plaintiffs can, at minimum, proceed on both theories alternatively. *See Premier Payments Online, Inc. v. Payment Sys. Worldwide*, 848 F. Supp. 2d 513, 527 (E.D. Pa. 2012).

retention of the Authority's benefits unjust. *See Babyage.com, Inc. v. Toys "R" Us, Inc.*, 558 F. Supp. 2d 575, 589 (E.D. Pa. 2008).

LRCI and the DeNaples attempt to distance themselves from their wrongdoing by arguing that they were third parties to a contract between Plaintiffs and the County and cannot be unjustly enriched unless they requested a benefit or misled Plaintiffs into performing the contract. *See* LRCI Br. 54-55; DeNaples Br. 35. But they weren't third parties. LRCI and its owners—the DeNaples—were parties to a contract that procured Plaintiffs' forced labor, *see* Vol. 2 at 147-63, and jointly employed Plaintiffs with the County and the Authority. *See supra* at 18-19. And even if they were third parties, they obtained the benefit of Plaintiffs' labor by signing the Operating Agreement, which accepted the procurement of prison labor provided by the Authority. Vol. 2 at 150.

The DeNaples make a last-ditch effort to avoid liability by contending that, if LRCI is liable, as corporate officers they can be liable only if they participated in obtaining Plaintiffs' forced labor. *See* DeNaples Br. 33-34. True, but irrelevant, because the DeNaples were participants. *See* Opening Br. 38. Their actions were integral to receiving the unjust benefit. Louis DeNaples signed the Operating Agreement that procured Plaintiffs' forced labor, *see* Vol. 2 at 163, and he was sent all notices concerning the Agreement, *id.* at 162. And as LRCI's President and Vice President, the DeNaples participated in operating a business staffed by forced labor. *Id.* at 114, 135. The DeNaples have therefore been unjustly enriched by participating in

obtaining Plaintiffs' forced labor.

CONCLUSION

This Court should reverse the district court's judgment on all of Plaintiffs' claims and remand for further proceedings.

Respectfully submitted,

s/ Madeline Meth
Madeline Meth
Brian Wolfman
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave. NW, Suite 312
Washington, D.C. 20001
(202) 662-9549

Juno Turner
TOWARDS JUSTICE
2840 Fairfax St., Suite 200
Denver, CO 80207

Marielle Macher
COMMUNITY JUSTICE PROJECT
118 Locust St.
Harrisburg, PA 17101

Matthew Handley
Rachel Nadas
HANDLEY FARAH & ANDERSON PLLC
200 Massachusetts Ave., NW, 7th Floor
Washington, D.C. 20001

Sanders Keyes Gilmer
Alessandra Lopez
Daniel Wassim
Student Counsel*

Counsel for Plaintiffs-Appellants

April 29, 2022

*Motion to admit law students pending

CERTIFICATE OF COMPLIANCE

1. In accordance with Rule 32(g), I certify that this brief (i) complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 6,434 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and (ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 365, set in Palatino Linotype font in 14-point type.

2. In accordance with Local Rule 28.3(d), I certify that I am a member of the bar of the Third Circuit in good standing.

3. In accordance with Local Rule 31.1(c), I certify that (i) this brief has been scanned for viruses using McAfee LiveSafe and is free of viruses; and (ii) when paper copies are required by this Court, the paper copies will be identical to the electronic version of the brief filed via CM/ECF.

s/ Madeline Meth
Madeline Meth
Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I certify that on April 29, 2022, this brief was filed using the Court's CM/ECF system. All attorney participants in the case are registered CM/ECF users and will be served electronically via that system.

s/ Madeline Meth
Madeline Meth
Counsel for Plaintiffs-Appellants