UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARLY GRAFF, et. al.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	**Case No. 4:17-CV-606-TCK-JFJ**
ABERDEEN ENTERPRIZES II, INC., et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS SECOND AMENDED COMPLAINT BY DEFENDANT SCOTT WALTON, SHERIFF OF ROGERS COUNTY (INDIVIDUAL CAPACITY)

BRIEF D

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Index of Plaintiffs' Opposition Briefs

For ease of reference, each of Plaintiffs' opposition briefs has been labeled by letter according to the motion to dismiss to which it is responsive, listed below.

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INTRODUCTION

The Court should deny the motion of Defendant Scott Walton, Sheriff of Rogers County ("Walton"), in his individual capacity. Indigent court debtors in Rogers County have for years been subjected to illegal arrest and imprisonment at Walton's hands, and threats and harassment from Aberdeen Enterprizes II, Inc. ("Aberdeen") as a result of Walton's decision to contract with that company. Two named Plaintiffs face ongoing injury as a result of their currently active unlawful warrants, as do countless class members. Walton raises a number of defenses, many of which are identical to those of his co-defendants, and all of which lack merit. Like in his official capacity brief, he attempts to evoke a fictional scenario where the debt-collection arrest warrants he executes are merely court summonses. As alleged in the Second Amended Complaint, nothing could be further from the truth.

STATEMENT OF THE CASE

Plaintiffs' claims against Walton in his individual capacity are: Count One, for RICO violations under 18 U.S.C. § 1962 (c) and (d); Count Two, for executing arrest warrants for nonpayment without inquiry into ability to pay, in violation of the Fourteenth Amendment; Count Three, for executing arrest warrants based on unsworn allegations of nonpayment with material omissions in violation of the Fourth Amendment; Count Five, for violating state-created liberty interests; and Count Seven, for participation in onerous enforcement methods in violation of the Fourteenth Amendment. These claims are well founded.

Walton is one of the dozens of Defendant county sheriffs in Oklahoma who unlawfully participate in a wide-ranging enterprise with the "unflagging aim . . . to squeeze as much money out of impoverished court debtors as possible." SAC ¶ 2. Walton "routinely arrest[s] and jail[s] individuals pursuant to . . . debt-collection arrest warrants that are based solely on nonpayment." *Id.* ¶ 10. Walton, like the other Sheriff Defendants, will not release these debtors unless they pay

a "fixed sum payment to get out of jail." *Id.* Walton does so without providing, and knowing that other state actors do not provide, "any of the inquiries, findings or procedural safeguards required by Supreme Court precedent [and state law] prior to jailing a person for nonpayment." *Id.* Walton, like the other Sheriff Defendants, has "contractually delegated to Aberdeen, Inc. the responsibility to collect court debts" on behalf of his county. *Id.* ¶ 51. He is a member of the Oklahoma Sheriffs' Association ("OSA"), which administers the contract and profits enormously from it. *Id.* ¶¶ 105–06. As part of the contract with OSA, Walton is obligated to assist Aberdeen by making efforts to obtain debtor information, which OSA shares with the company. *Id.* ¶ 60.

The procedure by which unlawful debt-collection arrest warrants are issued in Rogers County is set forth in Plaintiffs' Opposition to the Rogers County Defendants' Motion to Dismiss in Their Official Capacity, Br. B at 2-3. Plaintiffs Carly Graff and Melanie Holmes both have debt-collection arrest warrants arising out of Rogers County. Ms. Graff is 40 years old, a resident of Rogers County, and the mother of two children she struggles to provide for. SAC ¶ 18, 155. Without conducting the constitutionally required inquiry into ability to pay, the Rogers Clerk sought, and the Rogers County Judge issued, a debt-collection arrest warrant against her. *Id.* ¶¶ 18, 158. Ms. Graff is indigent and would be unable to pay the required money to get out of jail were she to be arrested. *Id.* ¶ 18. She lives in constant fear of arrest, afraid to leave her house, and is in imminent danger of arrest and imprisonment by Walton. *Id.* ¶ 160.

Ms. Holmes is 41 years old and lives in Oregon. *Id.* ¶¶ 200, 212. She has an active debt-collection arrest warrant in Rogers County. *Id.* ¶ 206. When her Rogers County debt-collection arrest warrant was issued, she was indigent, and no constitutionally mandated inquiry was conducted into her ability to pay. *Id.* She has children and other family who still live in

Oklahoma, but she is afraid to visit them because of fear she will be arrested on her warrants. *Id.* ¶ 213.

LAW AND ARGUMENT

I. Plaintiffs' Claims Are Not Barred by the *Younger*, *Rooker-Feldman*, or *Heck* Doctrines

In an attempt to evade liability for his unlawful conduct, Walton argues initially Plaintiffs' claims should be dismissed for lack of subject-matter jurisdiction under *Younger v. Harris*, 401 U.S. 37 (1971), or the *Rooker-Feldman* doctrine, or, alternatively, that Plaintiffs' claims are barred by the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994). Doc. 228 at 3. Walton does not make his own arguments on these points, but instead wholly adopts the arguments made by the Rogers County Defendants Motion to Dismiss in Their Official Capacity, Doc. 226. Per the Court's order to avoid duplicative briefing, we do not reiterate the reasons the argument fails here, and refer the Court to Plaintiffs' Opposition to the Rogers County Defendants' Motion to Dismiss in Their Official Capacity, Br. B, Section III, pp. 9-11, and Plaintiffs' Opposition to the County Sheriffs' Motion to Dismiss in Their Official Capacity, Br. I, Section V.A, pp. 23-28.

II. Walton Cannot Escape His Liability Through a Claim of Absolute Immunity

Walton next asserts that he is entitled to absolute, "quasi-judicial" immunity for the claims against him that derive from his role in illegally executing debt-collection arrest warrants. Doc. 228 at 4. His claim is grounded in the argument that these warrants are facially valid judicial orders akin to traditional bench warrants, and in support he cites several cases, most notably *Valdez v. City and County of Denver*, for the proposition that "an official charged with the duty of executing a facially valid court order enjoys absolute immunity from liability for

damages in a suit challenging conduct prescribed by that order." 878 F.2d 1285, 1286 (10th Cir. 1989). But *Valdez* and similar cases do not apply here, for several reasons.

A. Quasi-Judicial Immunity Does Not Apply to Claims Not Involving Execution of Judicial Orders or to Claims for Injunctive Relief

First, even if quasi-judicial immunity were to shield Walton's actions executing unlawful debt-collection warrants and detaining court debtors on demand of payment, it (1) would not apply to Plaintiffs' claims that do not rely on the execution of warrants—i.e., Count One, alleging a RICO conspiracy, and Count Seven, for use of Aberdeen and subjecting Plaintiffs to onerous enforcement methods—and (2) would only provide a defense to Plaintiffs' damages claims.

On the first point, Walton's arguments claiming quasi-judicial immunity only point to his role executing warrants signed by a judge. Count One implicates his role in the RICO enterprise, both as a participant under § 1962(c), which includes activities beyond executing warrants (as laid out in Plaintiffs' Opposition to the County Sheriffs' Motion to Dismiss in Their Individual Capacity, Br. A, Section III.A, pp. 8-11); and as a conspirator under § 1962(d). Count Seven, which challenges the subjection of Plaintiffs to onerous debt-collection methods, implicates Walton's various roles in subjecting Plaintiffs to Aberdeen's illegal methods, including contracting with Aberdeen and assisting in its unlawful debt-collection activities. These claims fall beyond the scope of quasi-judicial immunity, even as defined by Walton.

On the second point, quasi-judicial immunity provides no shield against requests for injunctive relief. As fully briefed in regard to Plaintiffs' Motion for a Preliminary Injunction,[1] Walton attempts to conflate doctrine that applies to a claim of *judicial* immunity with the scope

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[1] *See* Plaintiffs' Response to Defendants Vic Regalado, Don Newberry, and Darlene Bailey's Surreply to Motion for Preliminary Injunction, Doc. 191.

of the *quasi-judicial* immunity defense that he invokes. Judicial immunity applies when a judicial officer acts in a "judicial capacit[y]." *See, e.g.*, *Dennis v. Sparks*, 449 U.S. 24, 27 (1980) (quoting *Supreme Court of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 735 (1980)). By contrast, quasi-judicial immunity is broader and extends damages immunity to other officials when they take action as an "integral part" of the judicial process, even if not acting in a judicial capacity. *See, e.g.*, *Valdez*, 878 F.2d at 1287 ("[T]he common law provided absolute immunity from subsequent *damages liability* for *all* persons . . . who were integral parts of the judicial process.") (quoting *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983)) (first emphasis added). The sole case cited by Walton in arguing that he is immune from injunctive relief, *Lawrence v. Kuenhold*, 271 F. App'x 763 (10th Cir. 2008) (unpublished), was a suit against a judge. It provides no support to his claim about quasi-judicial immunity.

The Federal Courts Improvement Act of 1996 (FCIA), Pub. L. No. 104-317, 110 Stat. 3847, which extended judicial immunity to injunctive relief, did not address immunity for quasi-judicial actors who play an "integral part" in the proceeding. It applied only to acts or omissions taken in officers' "judicial capacity." 42 U.S.C. § 1983. The FCIA did not alter the longstanding rule that injunctive relief is available against quasi-judicial actors to prevent imminent constitutional harm. This distinction is seen most often in cases involving prosecutors, who enjoy quasi-judicial immunity from damages, *see, e.g.*, *Sandberg v. Englewood, Colorado*, No. 17-1147, 2018 WL 1180971, at *3 (10th Cir. Mar. 7, 2018) (unpublished), but not from injunctive relief, *see, e.g.*, *Samuels v. McDonald*, No. 17-5098, 2018 WL 798286, at *2 n.4 (10th Cir. Feb. 9, 2018) (unpublished). This same principle applies to all actors who might otherwise enjoy quasi-judicial immunity from damages, as the Tenth Circuit and this Court have recognized. *See Guiden v. Morrow*, 92 F. App'x 663, 665 (10th Cir. 2004) (court clerk had

quasi-judicial immunity from damages, but "would not be entitled to immunity in a suit seeking injunctive relief"); *Bishop v. United States ex rel. Holder*, 962 F. Supp. 2d 1252, 1274 (N.D. Okla. 2014) ("[B]ecause the suit is one for declaratory and injunctive relief, Smith [the county court clerk] is not entitled to judicial or quasi-judicial immunity.").

The Ninth Circuit recently confronted this issue head-on in *Moore v. Urquhart*, 899 F.3d 1094 (9th Cir. 2018), and found that the FCIA only restricts injunctive relief against "judges, and other officials who exercise 'discretionary judgment' similar to that of judges," *id.* at 1103, but not against "officers who execute court orders," *id.* at 1104. The Ninth Circuit reasoned that "[i]f Congress wanted the Act to cover not just judges and their equivalents but also law enforcement officials like the Sheriff, we think Congress would have spoken in far clearer terms." *Id.* at 1105.

B. Sheriff Walton Is Not Entitled to Absolute Immunity for Executing the Unlawful Debt-Collection Arrest Warrants Because of His Participation in the Scheme

For several reasons, Walton is not entitled to quasi-judicial immunity for the claims that challenge his execution of debt-collection arrest warrants and detention of debtors.

First, contrary to Defendants' suggestion, courts have not extended absolute immunity to officers who enforce unlawful court orders that they bear responsibility for procuring. The Tenth Circuit has long recognized that officers who help procure a court order in bad faith (or in a manner they know will render it invalid) are not immune for executing that order. *See Turney v. O'Toole*, 898 F.2d 1470, 1473 n.3 (10th Cir. 1990) (noting that "[s]uch an order does not provide the same quasi-judicial immunity as an order which the defendant played no part in procuring," and citing cases to that effect). This rule makes sense because an officer who knowingly procures an invalid order is a true cause of the constitutional violations that result from his execution of it. Unlike the innocent officer who should not be held liable for carrying out an

order that he had no role in procuring and no reason to regard as invalid, the bad-faith procurer *can* fairly be held responsible for his role in generating the resulting violations. This conclusion flows directly from the Supreme Court's reasoning in *Malley v. Briggs*, 475 U.S. 335 (1986), denying absolute immunity to an officer when seeking a warrant. *See id.* at 342–43. In essence, the "good faith" normally attributed to an officer who is executing a facially valid court order dissolves when the officer has invalidly procured it.

Plaintiffs allege that Walton, through his participation in the Oklahoma Sheriffs' Association, contracting with Aberdeen through the Association, and assisting Aberdeen as required under the contract, knowingly procures invalid warrants and can therefore be held liable for their execution. The Second Amended Complaint alleges Walton's full knowledge of Aberdeen's unlawful methods. *See* SAC ¶¶ 5, 26, 29–30, 53–60, 65, 81, 282–84, 325, 335, 350, 356. He is therefore liable for the damage caused by his conduct.

Second, the Tenth Circuit has recognized, since *Valdez*, that an officer who executes a facially valid court order might not enjoy absolute immunity if he knows that the order is in fact invalid, whether or not he took part in procuring it. In *Welch v. Saunders*, 720 F. App'x 476 (10th Cir. 2017) (unpublished), the court considered whether deputy sheriffs enjoyed absolute, quasi-judicial immunity for executing a facially valid but superseded county-court protection order. Under the circumstances, the court found that the deputies were immune, but, critically, it noted that "[i]f the Deputies knew that the . . . [p]rotection [o]rder had been superseded, we would have a more challenging issue to resolve." *Id.* at 481 (noting that the record there did not support a finding of such knowledge).

Several circuits have affirmatively recognized such an exception to the usual rule that officers enjoy immunity for the act of executing a facially valid warrant. In *Juriss v. McGowan*,

957 F.2d 345 (7th Cir. 1992), for example, the Seventh Circuit found it "clear" that "the fourth amendment forbade an officer from executing a facially valid arrest warrant when he knew that the warrant was not supported by probable cause," *id.* at 350. The court held that, just as it was unconstitutional to obtain a warrant through deceit, it was unconstitutional to "execute [warrants] with full knowledge of that deceit." *Id.* at 351; *see also Robertson v. Lucas*, 753 F.3d 606, 619 (6th Cir. 2014) (examining the record for "evidence demonstrating that the remaining individual appellees either knew or were reckless in not knowing that [an officer] gave false testimony that tainted the finding of probable cause" (citing *Juriss*, 957 F.2d at 350–51)); *Williamson v. Curran*, 714 F.3d 432, 442 (7th Cir. 2013) ("[A] facially valid warrant will pose no bar to a claim of false arrest when the officers responsible for effectuating the arrest knew that the warrant was issued without probable cause."); *Lee v. Gregory*, 363 F.3d 931, 935 (9th Cir. 2004) ("Knowingly arresting the wrong man pursuant to a facially valid warrant issued for someone else violates rights guaranteed by the Fourth Amendment.").[2] *Juriss* and *Williamson* make clear that officers who know that a facially valid warrant is actually invalid lack immunity even if they did not themselves invalidate the warrant by procuring it in bad faith. *See* 957 F.2d at 350–51; 714 F.3d at 442–44.

To be clear, Plaintiffs are not asking Walton or the other Sheriff Defendants to act as "pseudo-appellate courts scrutinizing the orders of judges" for which they bear no responsibility. *Moss v. Kopp*, 559 F.3d 1155, 1165 (10th Cir. 2009) (quoting *Valdez*, 878 F.2d at 1289). Rather, Plaintiffs allege that Walton knows that these warrants are wrongfully *obtained* by the Sheriffs' own partners in collecting court debt—Aberdeen and the Rogers Clerk. On the basis of those

[2] *Cf. Krohn v. United States*, 742 F.2d 24, 26–27 (1st Cir. 1984) (holding that "a federal official does not violate the Constitution by executing a facially valid state warrant, *if he does not know that it is invalid*" (emphasis added)).

allegations, Plaintiffs ask this Court to hold that the Sheriffs cannot ignore their knowledge of and responsibility for the invalidity of those warrants any more than they could if they were the ones to put false or misleading information into the warrant application. *See Juriss*, 957 F.2d at 351. In this way, Plaintiffs seek to hold Walton liable based on their knowledge of what occurs before the warrant issues, not on the basis of any hypothetical duty to conduct an independent review of the warrant itself.

Plaintiffs allege that Walton, along with the other Sheriff Defendants, knows they are executing arrest warrants illegally sought and issued as a result of the scheme that they have entered into and repeatedly renewed with Aberdeen. SAC ¶¶ 65, 81, 282, 325, 335, 350. Walton and the other Sheriffs know that the warrants have no sworn factual basis sufficient to justify arrest, that they are issued upon nonpayment of arbitrary sums without any pre-deprivation process or inquiry into ability to pay, and that Aberdeen uses the warrants to threaten indigent debtors with jail in order to extort payments. *Id.* ¶¶ 31–32, 52, 65–66, 71–82, 96, 281–83, 324–25. As alleged, Walton is therefore liable for the execution of those warrants.[3]

Third, the arrest warrants at issue here are fundamentally different from traditional bench warrants, writs of restitution, and the mittimus challenged in *Valdez*. As the Tenth Circuit has noted, it is a substantive question "whether the absolute immunity granted by *Valdez* with respect to enforcement of judicial contempt orders extends" to other types of bench warrants. *Martin v.*

[3] The state law requirement cited by Walton provides no excuse. *See* Doc. 228 at 6. Per that statute, "[t]he sheriff . . . shall serve and execute, *according to law*, all process, writs, precepts and orders issued or made by lawful authorities." Okla. Stat. tit. 19, § 514 (emphasis added). In essence, Walton argues that this statute imposes upon him the duty to violate the Constitution and state law by executing warrants that he knows to be unlawful. That is not so. The statute plainly states that the serving and execution of court orders must be made "according to law." As described above, the execution of warrants that a law enforcement officer knows to be invalid is not mandated by the law—it is prohibited by it.

Bd. of Cty. Comm'rs of Cty. of Pueblo, 909 F.2d 402, 405 (10th Cir. 1990); *see also id.* & n.4 (citing cases denying quasi-judicial immunity to officers executing bench warrants distinct from the "judicial contempt orders" at issue in *Valdez*). The warrants challenged here are not issued on a judge's initiative based on that judge's observation of the violation of a court order. Instead, they are sought by non-judicial officers—Defendants Aberdeen, the Shofners, and the Rogers Clerk—without judicial direction and on the basis of facts outside any court's personal knowledge, purely for the purpose of collecting court debt. *See* Pls.' Opp. to the Tulsa Sheriff's Mot. to Dismiss in His Individual Capacity, Br. J, Section III.D at 23.[4] Their primary purpose is not judicial; it is entirely concerned with the administrative task of drawing revenue that supports the justice system itself. *See* SAC ¶¶ 140–54. When the purpose of arrest warrants is simply to coerce payment, they "are extra-judicial and focus more on the administrative task of collecting fines than the judicial act of imposing them." *Kneisser v. McInerney*, No. 1:15-cv-07043-NLH-AMD, 2018 U.S. Dist. LEXIS 55389, at *43 (D.N.J. Mar. 30, 2018); *see also id.* at *42 (declining to grant absolute immunity to judge or court clerk on summary judgment where, like here, the "whole point of incarceration was to collect fines"). Just as a judge is not entitled to absolute judicial immunity for his administrative acts, no quasi-judicial immunity flows from a warrant that was issued as an administrative act.

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[4] The Rogers County Sheriff cites an unpublished case in which a police officer was held absolutely immune, under *Valdez*, for serving a "bench" warrant issued upon nonpayment without prior notice and an opportunity to be heard. Doc. 228 at 6–7 (citing *Hackett v. Artesia Police Dep't*, 379 F. App'x 789, 793 (10th Cir. 2010) (unpublished)). *Hackett* was a pro se case setting forth virtually no reasoning on this point. *See* 379 F. App'x at 793. Importantly, however, the district court there had noted that it had already determined that the Judge "was authorized to issue the bench warrant, any alleged procedural irregularities notwithstanding." *Hackett v. Artesia Police Dep't*, Civ. No. 08-306 MCA/RHS, 2009 WL 10681494, at *10 (D.N.M. Sept. 23, 2009). This determination was crucial to the court's conclusion that the officer could not be liable for executing the warrant. *See id.* No such determination can be made here, for the reasons explained in Plaintiffs' Opposition to the Tulsa Sheriff's Motion to Dismiss in His Individual Capacity, which Plaintiffs incorporate here by reference. *See* Br. J, Section III.

Walton's additional, scattershot arguments that he is entitled to absolute immunity because he has not arrested Ms. Holmes or Ms. Graff, because the Plaintiffs' entering into payment agreements obviated the need for an ability-to-pay inquiry, and because the warrants were validly issued because they were "for the purposes of summoning Plaintiffs to explain or justify the breach of their plea agreements," Doc. 228 at 7–8, have nothing to do with absolute quasi-judicial immunity. They relate to the merits of Plaintiffs' constitutional claims. In either event, these arguments fall flat, because the issuance of an arrest warrant is itself a harm, *see* Br. B, Section I at 12-13, the arrest warrants are not summonses, *see id.* at 11, and no inquiry into ability to pay took place at the critical time, namely, when the warrants were issued. SAC ¶¶ 158, 206. Walton is not entitled to absolute immunity.

III. Qualified Immunity Does Not Shield Walton from Suit

Qualified immunity protects government officials from liability for civil damages only insofar as their conduct does not violate clearly established rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Walton raises qualified immunity, claiming that (1) there was no underlying constitutional violation, Doc. 228 at 9, (2) the right at issue was not clearly established, *id.* at 14, and (3) he was reasonably relying on duly enacted statutes and the Oklahoma Supreme Court's directive, *id.* at 16. His arguments fail. Plaintiffs have alleged clearly established constitutional violations which are not excused by state law.

As an initial matter, qualified immunity is more properly raised at summary judgment, rather than in a motion to dismiss. Given the fact-specific nature of the showing Defendants would have to make to establish qualified immunity, early consideration of qualified immunity requires an especially searching review. *Thomas v. Kaven*, 765 F.3d 1183, 1194 (10th Cir. 2014)

("Asserting a qualified immunity defense via a Rule 12(b)(6) motion . . . subjects the defendant to a more challenging standard of review than would apply on summary judgment.") (quoting *Peterson v. Jensen*, 371 F.3d 1199, 1201 (10th Cir. 2004)).

The merits of Plaintiffs' constitutional claim are generally addressed in Plaintiffs' Opposition to the Tulsa Sheriff's Motion to Dismiss in His Individual Capacity, Br. J, Section III, 9-20. Walton's individual argument that there has been no constitutional violation for which he can be held liable relies on the assertion that since neither Ms. Graff nor Ms. Holmes have yet been arrested on their Rogers County debt-collection arrest warrants, he is not responsible for their injuries, as he has not executed warrants against any of the named Plaintiffs. But the Second Amended Complaint sets forth, and Walton does not deny, that he has executed warrants under nearly identical factual circumstances for members of the putative class, or that he continues to do so. His argument, framed to assert that no constitutional violation has taken place, is really one of standing—that these particular Plaintiffs cannot raise their claims against him, as their violations have yet to occur.[5] Even if it had merit, this argument provides limited relief, as it only applies to Plaintiffs' claims for damages that rest upon Walton's execution of warrants. Plaintiffs' claims for equitable relief and for damages under Count Seven are unaffected.

First, Plaintiffs' claim in Count Seven of the Second Amended Complaint, alleging onerous debt collection under *James v. Strange*, 407 U.S. 128 (1972), does not rely on Walton having executed Plaintiffs' unlawful warrants. Walton was Sheriff of Rogers County at the time the initial contract with Aberdeen was signed, and has remained Sheriff through multiple

[5] The same reasoning that provides Plaintiffs standing against the 51 Sheriffs through the juridical link doctrine would provide standing against Walton. *See* Plaintiffs' Opposition to the 51 County Sheriffs' Official Capacity Motion to Dismiss, Br. I, Section VI at 40-42.

renewals. SAC ¶ 32. It was his decision to use Aberdeen in Rogers County. He is therefore responsible for Plaintiffs' injuries as a result of their subjection to its methods, and may be held liable. For the reasons set forth in Plaintiffs' Opposition to the 51 County Sheriffs' Individual Capacity Motion to Dismiss, Br. A, Section IV at 14-16, Count Seven pleads a violation of a clearly established right, and Walton is not entitled to qualified immunity for this count.

Second, Walton's argument also provides no relief against Plaintiffs' requests for equitable relief. Qualified immunity is an affirmative defense against claims for damages, and does not apply to suits seeking injunctive or declaratory relief. *Cannon v. City & Cty. of Denver*, 998 F.2d 867, 876 (10th Cir. 1993). As stated in Br. B, Section I at 12-13, the existence of an active arrest warrant is an injury that merits injunctive—or, if unavailable, declaratory—relief. While Walton is correct that he has not arrested Ms. Graff or Ms. Holmes on their unlawful warrants, he makes no representations that he would not do so were he to have the opportunity. He is eligible to be enjoined from executing their warrants, which were unconstitutionally issued for the reasons set forth in Br. B, Section I.

IV. Plaintiffs Have Pled Violations of the RICO Act

The Second Amended Complaint states a valid claim under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–68 (RICO). Specifically, in Count One, Plaintiffs allege that Walton in his individual capacity, together with Aberdeen, Jim and Robert Shofner (the Shofners), the Oklahoma Sheriffs' Association (OSA), and the other 53 Sheriff Defendants in their individual capacities (collectively, "RICO Defendants"), are members of an enterprise that uses the threat of arrest and incarceration to extort millions of dollars in payments from thousands of impoverished debtors, in violation of 18 U.S.C. § 1962 (c) and (d). SAC ¶¶ 275–317. It is unlawful for any person associated with any enterprise, the activities of which

affect interstate commerce, to participate in the conduct of the enterprise's affairs through a pattern of racketeering activity. 18 U.S.C. § 1962(c). It is also unlawful "to conspire to violate" the RICO statute. *Id.* § 1962(d). As Walton correctly identifies, "[t]he major purpose behind RICO is to curb the infiltration of legitimate business organizations by racketeers." Doc. 228 at 18. Here, what might otherwise be a legitimate purpose has become corrupted by the pattern of extortion carried out by the enterprise through Aberdeen, and enabled by the remaining RICO participants. "The elements of a civil RICO claim are (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity." *Tal v. Hogan*, 453 F.3d 1244, 1261 (10th Cir. 2006). The Second Amended Complaint satisfies every element of civil RICO for each of the RICO Defendants, including Walton.

A. Plaintiffs Have Been Injured by the RICO Enterprise

Walton wrongly states that Plaintiffs lack standing because the Second Amended Complaint contains "no allegations that Plaintiffs were injured in their 'business or property' by reason of Defendants' violation of § 1962." Doc. 228 at 19. This is clearly incorrect. The Second Amended Complaint actually alleges injury in the form of money that Plaintiffs Killman, Meachum, Choate, Smith, and Holmes paid to Aberdeen as a consequence of extortionate threats. *See* SAC ¶ 315. A loss of money is a classic injury to "property" sufficient to satisfy Plaintiffs' burden. *See, e.g.*, *Colite Int'l Inc. v. Robert L. Lipton, Inc.*, No. 05-60046-CIV, 2006 WL 8431505, at *10 (S.D. Fla. Jan. 20, 2006) ("The loss of money, or goods, constitutes an injury to a 'business or property' interest for purposes of asserting a RICO claim."); *cf. Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) ("A consumer whose money has been diminished by reason of an antitrust violation has been injured 'in his . . . property' within the meaning of § 4.").

Walton also suggests that Plaintiffs have suffered no injury to their "business or property" because their payments to Aberdeen were "owe[d]" as court debt assessed pursuant to Oklahoma law. Doc. 228 at 19 (emphasis removed). Defendants seem to be arguing that Plaintiffs have failed to establish that their misconduct was a "cause in fact" of Plaintiffs' injuries—or, in RICO parlance, that Plaintiffs suffered their injuries "by reason of" the enterprise's activities. 18 U.S.C. § 1964(c). This is simply wrong. Aberdeen extorted from indigent Plaintiffs money they needed for basic living necessities, such as groceries, which, as a result of the extortion, they were forced to forgo. See SAC ¶¶ 21–24. Oklahoma law does not require indigent persons to pay under such circumstances, *see* Okla. Ct. R. Crim. App. 8.5, but Aberdeen actively worked to conceal that fact, instructing its employees to "***NEVER*** refer any defendant to call the court clerks," SAC ¶ 83. The injury is not a result of the assessment of court debt at the time of their convictions, but of Aberdeen's manner of collection at the time the money was paid. But for Aberdeen's conduct (on behalf of the RICO enterprise), Plaintiffs would not have made the payments and Oklahoma law did not require them to. Under these circumstances, Plaintiffs suffered an injury—the loss of their money—solely "by reason of" the enterprise's activities.

Aberdeen's scheme also extracted Supplemental Security Income ("SSI") and Social Security Disability Insurance ("SSDI") income from Plaintiffs Killman and Choate. This is a RICO injury. Federal law prohibits SSI and SSDI monies from being subject to "execution, levy, attachment, garnishment, or other legal process." 42 U.S.C. § 407(a). Courts have held that "other legal process" encompasses court-ordered payments of fines and fees. *See State v. Catling*, 413 P.3d 27, 29–30 (Wash. Ct. App. 2018) (holding that a trial court could not compel a convicted defendant to pay court fees from the defendant's SSDI); *see also, e.g.*, *In re Lampart*,

306 Mich. App. 226, 239 (2014). It follows that, when—in response to the extortionate threats—Plaintiffs handed over to Aberdeen funds from income sources protected by federal law, they suffered an injury "by reason of" the RICO enterprise's misconduct. 18 U.S.C. § 1964(c).

Third, at a minimum, the money that Plaintiffs paid and that has been retained by Aberdeen and OSA constitutes a RICO injury resulting from the enterprise's misconduct. *See, e.g.*, SAC ¶¶ 20, 29. Pursuant to statute, Aberdeen and OSA may collect a 30% penalty that is triggered when a warrant issues and a debtor's case is "referred to" Aberdeen. *See* Okla. Stat. tit. 19, § 514.5(A). But the "warrants" here issue, and the case is referred to Aberdeen, without any pre-deprivation process, in violation of the federal Constitution. As a result, the penalty is null and, contrary to Defendants' claims, Plaintiffs did not "owe" the amounts that have now been retained by Aberdeen and OSA. Because Plaintiffs paid that money only in response to the enterprise's extortionate conduct, their loss is an injury that came about "by reason of" the RICO enterprise.

Finally, Walton seems to argue that Plaintiffs' injuries were not proximately caused by the RICO enterprise, because (1) Plaintiffs have not identified any racketeering activity or associated harms; and (2) "[a]ny harm suffered by Plaintiffs is directly connected to their violation of Oklahoma law, their agreement to pay fines in accordance with plea agreements, and their admitted failure to comply with the terms of those agreements or otherwise seek a Rule 8 hearing." Doc. 228 at 24. This argument, which is made without citation to any supporting facts or case law, is mistaken. On the first point, as established *infra*, Plaintiffs have pled a pattern of racketeering activity and resulting injuries. On the second, regardless of whether Plaintiffs' court debt is "connected" to their underlying offenses and the initial imposition of fines and fees, their injuries occurred as a direct result of the unlawful debt-collection practices which comprise

the RICO enterprise's predicate acts. Plaintiffs could not have been lawfully compelled to pay the money. The racketeering activity proximately caused Plaintiffs' injuries.

B. Plaintiffs Have Identified a RICO Enterprise

Walton wrongly argues that no RICO enterprise has been identified. *See id.* at 20– 21. But the facts alleged belie that claim. To show the existence of an association-in-fact constituting a RICO enterprise, Plaintiffs need only establish that there was a "group of persons associated together for a common purpose of engaging in a course of conduct." *United States v. Turkette*, 452 U.S. 576, 583 (1981); *United States v. Kamahele*, 748 F.3d 984, 1003 (10th Cir. 2014) (quoting *Turkette*, 452 U.S. at 583); *see also* 18 U.S.C. § 1961(4). When two separate corporate entity defendants join together to engage in a course of conduct, this can qualify as an enterprise for RICO purposes. *George v. Urban Settlement Servs.*, 833 F.3d 1242, 1251 (10th Cir. 2016). And such enterprises "may be proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *United States v. Hutchinson*, 573 F.3d 1011, 1020 (10th Cir. 2009) (Gorsuch, J.) (internal quotation marks and citations omitted).

Here, the enterprise is straightforward: two separate corporate entity defendants (Aberdeen and OSA), along with their officers and members (the Shofners and Sheriff Defendants), have united by contract with the common purpose of engaging in a course of conduct to maximize the collection of money from indigent court debtors in Oklahoma counties. SAC ¶¶ 55 *et seq.* The allegations meet every requirement for an association-in-fact enterprise. It is (1) an ongoing organization (the contractual relationship has persisted since at least 2010), *id.* ¶ 56; (2) formal (established by contract), *id.*; and (3) functioning as a continuing unit, as each

member of the enterprise plays a crucial role in allowing it to succeed and shares in the profits, *id.* ¶¶ 26–32.

Walton further maintains that there was no enterprise due to the absence of a "decision-making framework." Doc. 228 at 20–21. This claim does not hold water, as it is **based on precedent that was overturned by the Supreme Court**. His argument relies on the Tenth Circuit's abrogated holding in *United States v. Sanders*, 928 F.2d 940, 943 (10th Cir. 1991). In *Sanders* and its progeny *United States v. Smith*, 413 F.3d 1253 (10th Cir. 2005), as well as the unpublished case cited by Walton, *Kearney v. Dimanna*, 195 F. App'x 717 (10th Cir. 2006), the Tenth Circuit required an "ongoing organization with a decision-making framework or mechanism for controlling the group" in order to establish a RICO enterprise. *Smith*, 413 F.3d at 1266–67 (quoting *Sanders*, 928 F.2d at 943). But that test was expressly overruled by the Supreme Court in *Boyle v. United States*, 556 U.S. 938 (2009), finding "no basis" for requiring a certain structure to form a RICO enterprise, *id.* at 948. Rather, the Court held,

> an association-in-fact enterprise is simply a continuing unit that functions with a common purpose. Such a group need not have a hierarchical structure or a "chain of command"; decisions may be made on an ad hoc basis and by any number of methods—by majority vote, consensus, a show of strength, etc. Members of the group need not have fixed roles; different members may perform different roles at different times.

Id. at 948; *see also Hutchinson*, 573 F.3d at 1021 (recognizing abrogation of *Smith* and applying *Boyle* test). Under that test, the Second Amended Complaint properly pleads that the RICO enterprise here functioned as a continuing unit with a common purpose.

Walton's additional argument that there was no enterprise independent from the racketeering activity itself is similarly mistaken. *See* Doc. 228 at 21. Here, not all of the collection activities undertaken by the enterprise were unlawful. The enterprise has both lawfully collected money from those who are not indigent and can afford to pay, and extorted

money from those who are and cannot. *See, e.g.*, SAC ¶ 8. Accordingly, the enterprise exists separately from the racketeering activity that is the subject of Count One. Moreover, the racketeering activity and the enterprise no longer need be strictly separated: "Simply put, after *Boyle*, an association-in-fact enterprise need have . . . no purpose or economic significance beyond or independent of the group's pattern of racketeering activity." *Hutchinson*, 573 F.3d at 1021.

C. The RICO Enterprise Affects Interstate Commerce

Plaintiffs have properly alleged that the activities of Defendants' debt-collection enterprise "affect[] interstate . . . commerce." 18 U.S.C. § 1962(c). To satisfy this requirement, a plaintiff need only establish that the enterprise had at least some "minimal effect" on interstate commerce. *United States v. Garcia*, 793 F.3d 1194, 1210 (10th Cir. 2015); *see also id.* (collecting cases). Despite Walton's contention, *see* Doc. 228 at 19–20, a plaintiff can make this showing in numerous ways, two of which are particularly relevant and easily met here. First, the plaintiff may establish that the enterprise uses "an instrumentality of commerce, such as telephone lines"; such use is "generally viewed as an activity that affects interstate commerce." *United States v. Mejia*, 545 F.3d 179, 203 (2d Cir. 2008). This is true even if the use of the "interstate facility"—i.e., the telephone, internet, or wires—is "infrequent." *United States v. Muskovsky*, 863 F.2d 1319, 1325 (7th Cir. 1988). Second, the plaintiff may prove that the enterprise's conduct depletes the assets of victims who potentially would have used such assets to purchase goods in interstate commerce. *See United States v. Curtis*, 344 F.3d 1057, 1070 (10th Cir. 2003); *United States v. Cruz-Arroyo*, 461 F.3d 69, 75 (1st Cir. 2006). "Criminal acts directed towards individuals" satisfy the depletion-of-assets theory when "the number of

individuals victimized or the sum at stake is so large that there will be some cumulative effect on interstate commerce." *United States v. Quigley*, 53 F.3d 909, 910 (8th Cir. 1995).

The Second Amended Complaint easily satisfies both theories under the lenient "minimal effect" standard. First, Plaintiffs have alleged that Defendants' enterprise uses interstate mail and wires (through telephone calls) to contact debtors across state lines and collect court debt from people out of state. SAC ¶ 279. These allegations on their own satisfy the interstate commerce element of a valid RICO claim. *See, e.g.*, *Miller v. Dogwood Valley Citizens Ass'n, Inc.*, No. Civ. 3:06CV00020, 2006 WL 3304219, at *4 (W.D. Va. Nov. 13, 2006).

Second, and independently, Plaintiffs have alleged facts that meet the depletion-of-assets theory. The Second Amended Complaint alleges that the enterprise has "collected millions of dollars in payments from thousands of debtors who would have used some of that money to purchase goods in interstate commerce." SAC ¶ 279. Thus, interstate commerce was affected by Defendants' actions. *See United States v. Boulahanis*, 677 F.2d 586, 589–90 (7th Cir. 1982) (government proved an effect on interstate commerce under Hobbs Act where extortionate activities prevented victim's purchases of out-of-state coffee that "amounted to only about $68 a month").

Walton offers flawed reasoning why the Second Amended Complaint does not allege an enterprise in interstate commerce. He argues that Plaintiffs have failed to properly plead the interstate commerce element because every party is a citizen of Oklahoma and Plaintiffs' court debt arose under Oklahoma law. *See* Doc. 228 at 19–20. This misunderstands the relevant inquiry. The statute asks whether the "*enterprise*" is "engaged in, or [its] activities . . . affect[] interstate . . . commerce," 18 U.S.C. § 1962(c) (emphasis added), not whether the parties to the litigation, associated debt, or even specific activities of the enterprise taken in isolation implicate

interstate commerce. *See United States v. Altomare*, 625 F.2d 5, 8 n. 8 (4th Cir. 1980). Here, the enterprise, among other activities, "makes threats of arrest to, and collects money from, debtors and debtors' family members who live outside of Oklahoma." SAC ¶ 76. The legal origin of the debt and the location of most parties within Oklahoma[6] does not negate these activities.

D. Walton Has Participated in the Conduct of the RICO Enterprise

Walton makes two separate arguments regarding his participation in the conduct of the RICO enterprise, which essentially claim the same thing—that his only participation was execution of warrants, which cannot constitute participation in RICO conduct. Serving such warrants, he claims, constitutes services performed in the regular course of business. Doc. 228 at 21. These arguments do not support dismissal. Walton and the other Sheriff Defendants have participated in the RICO enterprise in multiple ways. They also profit off the enterprise by collection of Sheriff's Fees, *see* SAC ¶ 149, and through participation in OSA, *see id.* ¶¶ 105–06. Walton's argument is the same as that of the 51 Sheriff Defendants, and, per the Court's instruction to avoid duplicative briefing, Plaintiffs hereby incorporate the reasoning set forth in Plaintiffs' Opposition to the 51 Sheriffs' Individual Capacity Motion to Dismiss, Doc. A, Section III at 13-16.

E. Plaintiffs Allege a Pattern of Racketeering Activity

Finally, Walton argues that there is no "pattern" or racketeering activity, as required by the RICO Act, because this case "does not involve 'extortion.'" Doc. 228 at 22. His argument is mistaken. The allegations adequately plead multiple types of extortion, specifically, the predicate offenses of extortion under the Hobbs Act, 18 U.S.C. § 1951, the Travel Act, 18 U.S.C. § 1952, and Okla. Stat. tit. 21, §§ 1481–82.

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[6] Plaintiff Melanie Holmes resides in Oregon. SAC ¶ 212.

i. *The Second Amended Complaint adequately pleads the predicate offense of Hobbs Act extortion*

First, to establish extortion under the Hobbs Act, Plaintiffs must only show that "(1) the defendant induced his victim to part consensually with property (2) either through the wrongful use of actual or threatened force, violence or fear or under color of official right (3) in such a way as to adversely affect interstate commerce." *United States v. Smalley*, 754 F.2d 944, 947 (11th Cir. 1985). In this case, Walton has not contested that Plaintiffs "consensually" parted with property by paying Aberdeen, and the interstate commerce element is addressed in Section IV.C *supra*. The only remaining issue is whether the Second Amended Complaint adequately pleads that the RICO enterprise took payment (1) through "wrongful use of actual or threatened force, violence or fear" or (2) "under color of official right." The Second Amended Complaint establishes that Aberdeen and the Shofners engaged in both forms of Hobbs Act extortion on behalf of the RICO enterprise.

The RICO enterprise has engaged in a straightforward pattern of Hobbs Act extortion through "threatened force" and "fear." Plaintiffs allege that Aberdeen "demands . . . payment under threat of unlawful arrest, intentionally conceals alternative options that would avoid issuance of an arrest warrant, and seeks warrants for the arrest of persons who it knows to be indigent without disclosing such information." SAC ¶ 281. It also "calls family members and threatens prolonged incarceration of the indigent person if the family does not pay money to Aberdeen, Inc." *Id.* As a result of these threats, Aberdeen has obtained payment from named Plaintiffs—payments Plaintiffs could make only after foregoing basic necessities. *Id.* ¶ 293.

Moreover, Aberdeen has also collected money for the RICO enterprise "under color of official right." To establish extortion under color of official right, the plaintiff must show that "a public official has obtained payment to which he was not entitled, knowing that the payment was

made in return for official acts." *United States v. Vigil*, 523 F.3d 1258, 1266 (10th Cir. 2008) (quoting *Evans v. United States*, 504 U.S. 255, 268 (1992)). Aberdeen and OSA act as public officials in their respective roles contracting for collection and collecting court debt on behalf of the RICO Enterprise, *see* Br. G, Section III; Br. E, Section I.A, and the RICO enterprise also comprises numerous sheriffs, including Walton, who are undeniably public officials. The allegations in the Second Amended Complaint clearly state that both Aberdeen and OSA received payments to which they were not entitled (for example, payment from disability benefits, *see* Section IV.A *supra*) in return for the official act by Aberdeen of either seeking recall of a warrant, or refraining from seeking issuance of a warrant. *See, e.g.*, SAC ¶ 29.

ii. The Second Amended Complaint adequately pleads the predicate offenses of Travel Act and State Law Extortion

The Travel Act prohibits "travel[] in interstate or foreign commerce or use[] [of] the mail or any facility in interstate or foreign commerce with intent to" commit unlawful activity, including extortion. 18 U.S.C. § 1952(a). As already established, Aberdeen sends threats by mail, SAC ¶ 72, and "makes threats of arrest to, and collects money from, debtors and debtors' family members who live outside of Oklahoma," *id*. ¶ 76; *see also* Section IV.C, *supra*. Accordingly, the first prong of a Travel Act violation is adequately pled.

The second prong requires a showing of extortion. Extortion under the Travel Act is defined in relation to state law. *United States v. Nardello*, 393 U.S. 286, 290 (1969) ("refer[s] to those acts prohibited by state law which would be generically classified as extortionate"). Under Oklahoma law, similar to the Hobbs Act, "[e]xtortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right." Okla Stat. tit. 21, § 1481. "Fear" actionable under state law "may be induced by a threat," in relevant part, (1) "[t]o do an unlawful injury to the person or property of the individual

threatened . . .;" (2) "[t]o accuse him . . . of any crime;" or (3) "[t]o expose, or impute to him . . . any deformity or disgrace." *Id.* § 1482. As with the Hobbs Act, an attempt to obtain "satisfaction of a legitimate debt" is not considered a defense to extortion under state extortion laws. *United States v. French*, 628 F.2d 1069, 1075 (8th Cir. 1980). "Likewise, it does not justify extortion of a wrongful payment under color of official right that the payment came from one who had a legitimate debt to the government." *Id.*

The allegations in the Second Amended Complaint satisfy these broad categories for purposes of extortion under state law and the Travel Act. Aberdeen has threatened "to do an unlawful injury" by subjecting Plaintiffs to unlawful arrest; threatened "to accuse [them] . . . of any crime" by seeking a warrant against indigent persons for nonpayment that was not willful; and threatened to "expose[], or impute[] to [them] . . . any deformity or disgrace" by threatening arrest and incarceration, and by seeking warrants, implying willful nonpayment for those it knew could not be paid.

iii. The Second Amended Complaint adequately pleads the predicate offense of extortionate extension of credit

Finally, Aberdeen, on behalf of the RICO enterprise, committed the predicate offense of extortionate credit transactions under 18 U.S.C. §§ 891–94. The merits of this claim are set forth in Plaintiffs' Opposition to the Shofners' Motion to Dismiss, Br. F, Section III.C.3, and to avoid duplicative briefing, Plaintiffs hereby incorporate the relevant portion of that brief.

iv. Property was obtained by the RICO enterprise

Walton's suggestion that there has been no extortion because *he himself* did not obtain any property, Doc. 228 at 22, is a red herring (and merely a reiteration of his previous "participation" arguments). The relevant question is not whether individual participants in the RICO enterprise directly extorted money themselves, or participated in every aspect of the

enterprise. It is sufficient that they played "some part—even a bit part—in conducting the enterprise's affairs," *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 884 (10th Cir. 2017) (quoting *George v. Urban Settlement Servs.*, 833 F.3d 1242, 1252 (10th Cir. 2016)), which Walton has, as described in Section IV.D *supra*. It is clearly pled in the Second Amended Complaint that Ms. Killman, Ms. Meachum, Mr. Smith, Mr. Choate, and Ms. Holmes all paid Aberdeen at the expense of procuring basic necessities. SAC ¶ 315. It is not required that each enterprise participant be directly paid for the enterprise to engage in extortion. The fact that these plaintiffs do not reside in Rogers County and did not pay the Sheriff directly does not absolve the Rogers County Sheriff of his participation in the larger RICO enterprise, which has extorted money from thousands of citizens, including some of the named plaintiffs, and which stretches far beyond the boundaries of Rogers County itself.

v. Extortion benefitted private corporate entities as well as government

Walton also argues that an extortion claim cannot be based on the collection of money intended solely for the government. *See* Doc. 228 at 23–24. This provides no defense here, as Aberdeen and OSA are both private beneficiaries of the money extorted by the RICO enterprise. Walton's argument is the same as that of the 51 Sheriffs, and to avoid duplicative briefing, Plaintiffs hereby incorporate the argument to that effect in Plaintiffs' Opposition to the 51 Sheriffs in their Individual Capacities, Br. A, Section III.A.

CONCLUSION

For all the reasons stated above, the Court should deny the Rogers County Sheriff's Individual Capacity Motion to Dismiss.

Dated: November 30, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants who have appeared in this case.

/s/ Seth Wayne