UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE-COLUMBIA DIVISION

KAREN MCNEIL, LESLEY JOHNSON, TANYA MITCHELL, INDYA HILFORT, and SONYA BEARD, On behalf of themselves and all others similarly situated	)	Case No.: 1:18-cv-00033
Plaintiffs,	)	JUDGE CAMPBELL/ JUDGE FRENSLEY
v.	)	JURY DEMAND
COMMUNITY PROBATION SERVICES, LLC; COMMUNITY PROBATION SERVICES, L.L.C.; COMMUNITY PROBATION SERVICES; PROGRESSIVE SENTENCING, INC.; PSI-PROBATION II, LLC; PSI-PROBATION, L.L.C.; TENNESSEE CORRECTIONAL SERVICES, LLC; TIMOTHY COOK; GILES COUNTY, TENNESSEE; PATRICIA MCNAIR; MARKEYTA BLEDSOE; HARRIET THOMPSON,	)	
Defendants.	)	

BRIEF OF COMMUNITY PROBATION SERVICES, LLC
AND PATRICIA MCNAIR CONCERNING STANDING TO OPPOSE
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Comes now the Defendant Community Probation Services, LLC, and Patricia McNair, pursuant to the District Judge's order to brief issues of standing (Docket Entry No. 178). Plaintiff joined Giles County along with the private probation companies and their employees, including these CPS defendants, into a single suit. By joining all parties together, Plaintiff has made a unified claim against each of them, which they will as a practical matter have to defend together at trial. Plaintiff now seeks to unilaterally sever portions of the case as it suits them, in an entirely unveiled effort to obtain partial relief

which they then will seek to use as a predicate for relief against the remaining defendants (including CPS). In other words, the Plaintiff wants to obtain a finding now that Giles County has violated the Constitution, so they can use that finding as a predicate for a finding that the co-Defendant probation companies also violated the same portions of the Constitution in the same way – without giving these co-Defendants an opportunity to defend these constitutional principles that are applicable to them in other portions of the same case.

Plaintiff wants the Court to make rulings now that foreclose identical defenses these other defendants will raise later in the same case, without giving these Defendants a fair opportunity to be heard.

Moreover, the Plaintiff has asserted a civil conspiracy claim against the defendants, so they want an adverse finding against Giles County as a predicate for a conspiracy claim against these others. And of course, the Plaintiff will seek prevailing party attorneys' fees from all defendants for the depositions and other efforts in connection with any portion of the suit on which they prevail.

Fundamentally, though, Plaintiffs have created the clear and unmistakable interest that gives all the remaining defendants indisputable standing: Plaintiffs have incorporated all their allegations, including their "Count 15" allegations, into a civil conspiracy claim against these private co-defendants. As it relates to CPS specifically, those claims are in Count 25. The very first numbered paragraph of Count 25 says: "Plaintiffs incorporate by reference the allegations in paragraphs 1-612." (See Docket Entry No. 41, page 128 of 133, ¶ 613.). Of course, that paragraph then incorporates all of Count 15 and every other part of the complaint. No one compelled Plaintiff to write their

suit this way; they did it because they *want* to tie in everything together. As a result, the defendants all have standing to oppose all relief on all counts, because they have a clear, unmistakable interest in defending themselves from all of the allegations that have been incorporated against them, including those in "Count 15" a/k/a paragraphs 559-562.

Further, the civil conspiracy claim is essentially an attempt to try and create a joint and several liability. To be sure, the CPS Defendants vigorously contest any attempt to impose joint and several liability on them for anything at all. But because Plaintiff elected to allege it, then these Defendants have standing to oppose it at every turn.

Plaintiff alleges, for example, in paragraph 616 (*id*.): "Defendants accomplished to their common design via the unlawful means of contracting with the County…" They further assert that it is the imprisonment (that is the very subject of "Count 15") that is the penalty of the "threat" in the supposed extortion scheme. See, *id*.

Plaintiff undoubtedly wants these defendants to sit quietly and allow them to try and obtain a finding of unconstitutional conduct by the county, only to then turn around and have that supposed unlawful act form a basis for a civil conspiracy by all defendants.

Judge Parkes, an independent state judge familiar with the actual facts in this case, testified briefly in his deposition about some of these selected allegations, and specifically testified in response to the other co-defendant PSI's questions that Plaintiff lacks a good faith basis for certain assertions:

Q. Do you know of any facts in existence that could provide someone with a good-faith basis to make that allegation?

A. No. (Deposition of Judge Parkes, p. 97, lines 21-24) (filed by all parties).

But the doctrine of standing does not require Plaintiff's claims to be strong before a defendant has a right to deny them. Just because Plaintiff cannot genuinely succeed on a civil conspiracy claim does not mean that the CPS Defendants lack standing to oppose the frivolous claim.

Plaintiff also claims "abuse of process" (See "Count 21") joining Giles County, CPS, and its employee Patricia McNair into this single count, referring to the process that results in the arrest that leads to the detention that is the subject of "Count 15"). (See Docket Entry No. 41, page 122-123 of 133, ¶ 584-590). The "abuse of process" claim and the "Count 15" claims predicated on the resulting detention from the same allegedly abusive process are inextricably intertwined in all respects, not the least of which are damages. These Defendants have standing to ensure no adverse finding as to any portion of this legitimate event.

There are few cases addressing the concept of standing among various defendants simply trying to defend against a Plaintiff's multiple claims against multiple defendants. One good example can be found in *Diamond Services Corp. v. Oceanografia SA de CV*, 2013 WL 312368 (W.D. La. 2013). In that case, the Court considered whether one defendant had standing to oppose the entry of default against an unrelated defendant. The Court held that the co-defendant did have standing, explaining:

> The first issue this Court must address is whether Oceanografia has standing to oppose the motion filed by Diamond and to seek to set aside the preliminary entry of default against Diamond's co-defendant, CON–Dive. **This Court agrees with Oceanografia that standing exists.** Although this Court was unable to find cases within the Fifth Circuit so holding, **other courts have held a defendant against whom liability has been alleged jointly and/or severally has standing to challenge an entry of default against a co-defendant.** In *Rodriguez v. Irwin*, 2011 WL 737316 (E.D.N.C.2011), the court stated:

> The court found that because the plaintiff had alleged that all the defendants acted jointly and as each other's agents, the appearing defendant had demonstrated an injury in fact and had standing to challenge the entry of default against non-appearing defendants. Similarly, here, a judgment against Chappell is executable against Irwin Naturals by virtue of the theory of joint liability alleged in the amended complaint. Thus, Irwin Naturals has standing to oppose entry of default, because it has shown (1) injury in fact (Irwin Naturals is subject to a default judgment against Chappell), (2) causation (the entry of default judgment against Chappell if not challenged) and (3) redressability (challenging the entry of default may remedy exposure to liability for default judgment).

(internal citations omitted). See also *Sack v. Seid*, 2002 WL 31409573, at *2 (N.D.Ill.2002) (appearing defendant had standing to challenge entry of default against non-appearing defendants); see also *In Re Uranium Antitrust Litig.*, 617 F.2d 1248, 1256 n. 32 (7th Cir.1980) (non-defaulted defendants demonstrated injury in fact and had standing to challenge entry of default judgment where alleged joint and several liability subjected the non-defaulting defendants to execution of the default judgment). **In the instant case, Diamond alleges in its Second Amended Complaint that Oceanografia and CON–Dive were part of the same "single business enterprise"** [Doc. 103, ¶¶ 11 & 31], and Diamond alleges in its Motion for Default Judgment that "CON–Dive and [Oceanografia] are jointly and severally liable for the entire amount owed." [Doc. 140, pg. 3]. Considering the foregoing, this Court concludes liability has been alleged against Oceanografia and CON–Dive jointly and severally, and Oceanografia therefore has standing to challenge the default judgment entered against its co-defendant, CON–Dive.

Id.

Likewise, the constitutional issues to be decided by this Court relating to Plaintiff's claims on "Count 15" govern numerous parts of the case, and denying these Defendants the opportunity to litigate such rulings practically deprives these Defendants of arguing the issue later, as this Court obviously will follow its prior rulings to avoid inconsistency. Thus, the Court will be inclined to uphold whatever conclusion the Court reaches on these constitutional questions on "Count 15" in other parts of the case.

Critically, Plaintiff – finally in their reply brief for the first time – explicitly admitted that they really are seeking a finding that "strict scrutiny" applies to the claims relating to "indigence" versus supposed "wealth." Plaintiff insists on this unsupported standard, notwithstanding the absence of a genuine suspect class, because they know it will be impossible for them to prevail on the appropriate rational basis review. Thus, the Court's determination on this important question will guide numerous outcomes throughout this case. These Defendants deserve to be heard on these critical issues that affect their own defense throughout the voluminous case.

Plaintiff also asserts in "Count 15" that constitutional law requires advance individualized consideration of a class member's ability to pay – that is the defect they claim with the Tennessee statutory system concerning the issuance of an arrest warrant for probation violations with bond. That is also separately, precisely what they have alleged against the CPS defendants: "Defendants knew or should have known that Tennessee and federal law require individual consideration of each Plaintiff or proposed Class Member's ability to pay…" (See Docket Entry No. 41, page 129 of 133,¶ 618). These Defendants have standing to participate in defense of Plaintiff's arguments on this issue. The same legal questions necessary to resolution of the preliminary injunction involving Giles County are pervasive throughout the case.

In another analogous case from this district, Judge Trauger referred to whether a defendant has "a dog in this fight" to determine whether a co-defendant could participate. *Stone v. Marten Transport*, LLC, 2014 WL 1666420 (M.D.Tenn. 2014). Judge Trauger explained:

> If the court were to adopt DLS Trucking's position, it could have adverse consequences for Americold and Marten/Pittner, who might be forced to shoulder any blame that might otherwise be assigned to DLS Trucking. Accordingly, if the court were to ignore Americold and Marten/Pittner's arguments and factual challenges out of hand, it could prejudice Americold and Marten/Pittner's substantive right under Tennessee law to assign blame to potentially culpable parties. Because Americold and Marten/Pittner certainly "have a dog in this fight," the court finds that they have standing to challenge the motion.

Id.

The Court should clearly find that all defendants "have a dog in this fight" when all of the issues are so inextricably intertwined, and where the Plaintiff made the conscious, elective decision to join all the challenges against all the defendants in the civil conspiracy claim.

CONCLUSION

For the foregoing reasons, the Court should find that the co-defendants have sufficient standing to oppose Plaintiff's demands for relief, and particularly permit these defendants to participate in the portions of the case including those where the Court is required to determine the constitutionality of these practices in Tennessee, whether the appropriate review is rational basis or strict scrutiny, and whether the Plaintiff may maintain these claims in any event.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney herby certifies that on November 26, 2018, a true and exact copy of the foregoing pleading was filed electronically. Notice of this filing was sent by operation of the Courts electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties my access the filing through the Court's electronic filing system.

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This the 26th day of November, 2018.

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