APPENDIX

TABLE OF CONTENTS

APPENDIX A
United States Court of Appeals
for the Fifth Circuit

No. 21-30510

THOMAS TATE TUNSTALL,

Plaintiff-Appellant,

versus

HOPE DAIGLE, formerly known as HOPE D. Theriot,

Defendant-Appelle.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:20-CV-02773

Before Owen, *Chief Judge*, and Higginbotham and Elrod, *Circuit Judges*.

PERCURIAM:*

Thomas Tunstall asserted various federal and state constitutional claims under 42 U.S.C. 1983 against Hope Daigle, a Louisiana state official, after she allegedly pursed an improper child support enforcement action against him. The magistrate dismissed Tunstall's claims against Daigle in her official capacity for lack of subject matter jurisdiction and Tunstall's claims against Daigle in her individual capacity on the grounds that they were prescribed. We affirm.

* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

This case involves over a decade of child support proceedings in Alabama, Georgia, and Louisiana. In the dispute before us, Tunstall, proceeding pro se, asserts various claims pursuant to 1983 against a single defendant-Daigle, a Louisiana Department of Family and Children Services official. Accordingly, we focus on Daigle's conduct giving rise to the alleged constitutional violations.

Tunstall claims that an Alabama state court terminated his child support obligations in 2008 as his children reached the age of majority; nevertheless, two Alabama officials "unlawfully altered [Tunstall's] official child support records by interpolating known false information" to make it appear as though he owed child support. Later, Daigle used this information to purse enforcement action against Tunstall in Louisiana. Tunstall asserts that Daigle knew he did not actually owe child support. And, without Tunstall being given "notice and the opportunity to be heard," Daigle allegedly "fraudulently procured ex parte income assignment and withholding orders from the Louisiana court." As a result, Tunstall claims his wages and tax returns were improperly seized.

Later, Tunstall's license and passport were suspended. Tunstall further alleges that Daigle "provided false and defamatory information that [Tunstall] as a 'Dead Beat Dad'" who owed a substantial amount of child support to various credit reporting agencies, which made him unable to obtain a loan for his business. As a result, Tunstall claims he lost his job and benefits. Finally, Tunstall was held in criminal contempt by a Louisiana state court, which he attributes to Daigle's enforcement action against him.

Tunstall claims that "[a]t all pertinent times Daigle had actual knowledge of the orders and judgments [by Georgia and Louisiana state courts] decisively demonstrating [Tunstall] and his property were not subject to state enforcement action and/or seizure." Accordingly, he asserts various constitutional claims against Daigle in both her individual and official capacities.[1] Against Daigle in her official capacity, Tunstall asks the court to "[e]nter a permanent injunction compelling Daigle ... to take any and all actions necessary to return all of [Tunstall's] property seized between September 8, 20120July 6, 2017." Against Daigle in her individual capacity, he seeks monetary damages including "(1) a minimum of $2,226,928.84 in actual damages; (2) a minimum of $2,226,928.84 in compensatory damages; (3) a minimum of $6,680,786.52 in punitive damages; [and] (4) prejudgment interest."

Both parties consented to the jurisdiction of a magistrate judge. Daigle filed a motion to dismiss pursuant to 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure. The magistrate judge granted Daigle's 12(b)(1) motion and dismissed Tunstall's claims against Daigle in her official capacity without prejudice, finding they were barred by the Eleventh Amendment. The magistrate judge also granted Daigle's 12(b)(6) motion and dismissed Tunstall's claims against Daigle in her personal capacity, finding that the claims were prescribed at the time the lawsuit was filed. Tunstall appealed.

II.

We review de novo a lower court's grant of a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction.[2] The party asserting jurisdiction bears the burden of proof.[3]

1 Specifically, Tunstall asserts that Daigle's conduct violates the Fourth and Fourteenth Amendments to the United States Constitution, as well as Article I of the Louisiana Constitution.

2 *Raj v. La. State Univ.*, 714 F.3d 322, 327 (5th Cir. 2013).

3 *Id.*

We also review de novo a lower court's frant of a motion to dismiss. for failure to state a claim.[4] We accept as true all well-pleaded facts in the complaint, viewing those facts in the light most favorable to the plaintiff.[5] We will affirm a gran of a motion to dismiss for failure to state a claim "when the plaintiff has not alleged enough facts to state a claim to relief that is plausible on its face."[6] A statute of limitations may support dismissal under Rule 12(b)(6) where it is evident from the plaintiff's pleadings that the action is barred and the pleadings fail to raise some basis for tolling or the like."[7]

III.

Tunstall urges that his claims against Daigle in her official capacity fall squarely within the exception to sovereign immunity provided by *Ex parte Young*. "The Eleventh Amendment bars citizens of a state from suing their own state or another state in federal court, unless the state has waived its sovereign immunity or Congress has expressly abrogated it."[8] Sovereign immunity extends to suits against state officials in their official capacities.[9] Where the state or a state official is entitled to sovereign immunity, this Court does not have subject matter jurisdiction over the suit.[10]

However, the Eleventh Amendment does not bar a suit seeking injunctive or declaratory relief brought against a state official in her official capacity acting in violation of federal law.[11]

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4 *Id.* at 329-30.

5 *Id.*

6 *Id.* at 330 (internal quotations and citations omitted).

7 *Jones v. Alcoa, Inc.*, 329 F.3d 359, 366 (5th Cir. 2003).

8 *Raj*, 714 F.3d at 328 (internal citations omitted); see also *Hans v. Louisiana*, 134 U.S. 1, 16-18 (1890).

9 *DeGomez v. Hous. Auth. Of the City of El Paso*, 148 S.W. 3d 471, 477 (Tex. App.-El Paso 2004, pet.denied).

10 *DeMonroe v. Louisiana Board of Elementary and Secondary Education*, 743 F.3d 959, 963 (5th Cir. 2014).

11 *Ex parte Young*, 209 U.S. 123, 155-56 (1908).

Tunstall described his claims for "declaratory and injunctive relief." but they still amount to a claim for money damages for retrospective harm. Tunstall asks the court to "[e]nter a permanent injunction compelling Daigle . . . to take any and all actions necessary to return all of [Tunstall's] property seized between September 8, 2012-July 6, 2017." The property Tunstall is referring to is garnished wages.[12] His claim is really a request for money damages to compensate his retrospective harm. "We do not read Ex parte Young . . . to indicate that any form of relief may be awarded against a state officer, no matter how closely it may in practice resemble a money judgment payable out of the state treasury, so long as the relief may be labeled 'equitable' in nature.[13] Because "[t]he funds to satisfy the award[requested] in this case must inevitably come from the general revenues of the State,"[14] Tunstall's claims against Daigle are barred by the Eleventh Amendment.[15]

Tunstall also seeks to avoid the bar presented by the Eleventh Amendment by arguing the underlying merits of his various constitutional claims. However, the Eleventh Amendment is a jurisdictional bar to the suit.[16] Regardless of the underlying merits of Tunstall's claims, the Eleventh Amendment bars relief for his claims against Daigle in her official capacity. We affirm the magistrate judge's dismissal of Tunstall's claims against Daigle in her official capacity for lack of subject matter jurisdiction.

IV.

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12 Tunstall claims Daigle "procure[d] ex parte income and assignment and withholding orders' from the Louisiana court at this time, which continued until 2017.

13 *Edelman v. Jordan*, 415 U.S. 651, 666 (1975).

14 *Id.* at 665.

15 *Fontenot v. McGraw*, 777 F.3d 741, 752-55 (5th Cir. 2015).

16 *Hans*, 134 U.S. at 11.

Tunstall next argues that his Fourth Amendment and Fourteenth Amendment claims against Daigle in her individual capacity are not prescribed. We affirm the magistrate judge's holding that Tunstall's claims against Daigle in her individual capacity are prescribed.

Because "Congress did not establish a statute of limitations or a body of tolling rules applicable to actions brought in federal court under §1983," the state law of limitations governing an analogous cause of action."[17] "The statute of limitations for Section 1983 claims is the forum state's personal-injury limitations period, which in Louisiana is one year."[18] While state law determines the length of the prescriptive period, federal law determines the accrual date: "a cause of action accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action."[19]

Tunstall asserts that his injury occurred between September 8, 2012 and July 6, 2017, the period in which Daigle allegedly improperly garnished his wages. Tunstall knew of his alleged injury during this time period. Even accepting the latest date in this period, July 6, 2017, as the accrual date, Tunstall did not file suit until October 5, 2020Amore than one year after the accrual date. Therefore, his claims are prescribed.

Tunstall seeks to avoid prescription by arguing the the "detention" of his "seized" property "has not ended" and Daigle's "post-judgment deprivation of his constitutional rights" are ongoing.[20] In other words, he argues that the statutory period has not run as his harm is

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17 *Bd. Of Regents v. Tomanio*, 446 U.S. 478, 482-84 (1980) (internal quotations omitted).

18 *Smith v. Reg'l Transit Auth.*, 827 F.3d 412, 421 (5th Cir. 2016)(internal quoatations and citations omitted).

19 *Id.* (citations omitted).

20 Because, on appeal, Tunstall does not argue that his state law claims were not prescribed, nor does he argue for equitable tolling, "interruption," or *contra non valentem*, these issues are waived. *See Cinel v. Connick*, 13 F.3d 1338, 1345 (5th Cir. 1994).

ongoing. However, adopting Tunstall's theory would undermine statutory periods of limitations.[21] The relevant inquiry is not whether Tunstall continues to suffer ongoing harm as a result of Daigle's actions. Rather, the relevant inquiry is when Tunstall knew or had reason to know of the injury giving rise to his cause of action and whether he filed suit within the prescriptive period from that date.[22] Tunstall failed to file suit within one year of the accrual date; therefore his claims against Daigle in her individual capacity are prescribed.

We AFFIRM the dismissal of Tunstall's claims against Daigle.

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21 *Tomanio*, 446 U.S. at 485-86.

22 *Smith*, 827 F.3d at 421.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

THOMAS T. TUNSTALL, V	**CIVIL ACTION**
VERSUS	**NO. 20-2773-JVM**
HOPE DAIGLE, f/k/a HOPE D. THERIOT	

ORDER AND REASONS

Plaintiff, Thomas T. Tunstall, V, filed this *pro se* federal civil action against Hope Daigle pursuant to 42 U.S.C. § 1983. He claimed that his rights were violated by actions taken by Daigle in her role as an employee of the Louisiana Department of Family and Children Services ("LDFCS"). Specifically, he made the following allegations in his complaint:

In 2008, an Alabama state court terminated plaintiff's court-ordered obligation to pay child support. Nevertheless, two "Alabama state agents" thereafter altered records to make it falsely appear as though he owed a substantial amount of child support and forwarded same, along with other false documentation, to Daigle. On or about November 8, 2008, she then began publishing "known false and defamatory information" indicating that plaintiff was a "Dead Beat Dad" who owed more than $150,000 in child support. Further, on or about November 20, 2008, she, acting in concert with the Terrebonne Parish District Attorney, had a petition filed in Louisiana state court concerning that alleged arrearage. Without plaintiff being given notice and an opportunity to be heard on the matter, the Louisiana court granted an "*ex parte* income assignment and withholding orders." However, in 2010, after he established that his children were adults and that no arrearage in fact existed, the court ordered that both the petition and the

income assignment and withholding orders be "DISMISSED ... in their entirety." The state of Louisiana was notified of that dismissal, and the Louisiana child support case was closed.

But things did not end there. Rather, in 2011, Kimberly Glidewell, the mother of plaintiff's children, then "fraudulently procured a Default Judgment against Plaintiff for $171,171.17." Based on that judgment, Daigle thereafter "falsified official government records" and utilized same to "again fraudulently procure *ex parte* income assignment orders" from the Louisiana state court, which she then used to "propound payroll garnishments upon Plaintiff's employer and begin the process to seize Plaintiff's state and federal income tax returns." However, after LDFCS was sent a copy of the 2010 Louisiana state court judgment and advised that no wages would be withheld, plaintiff once again "concluded the matter had been resolved."

It was not. Instead, in 2013, Daigle then "procured the suspension of Plaintiff's licenses and passport privileges." In addition, while once again acting in concert with the Terrebonne Parish District Attorney, she pursued a "Rule for Contempt" against plaintiff in the Louisiana state court.

In February of 2014, several events then occurred. First, when plaintiff attempted to renew his driver's license, he learned of the suspension procured by Daigle. Second, when he was "notified by Capital One Bank that [his] company's loan application was **DENIED** based solely on the negative information [Daigle] had been reporting to various credit reporting agencies," he learned of her publication of the "known false and defamatory information" regarding the purported child support arrearages. Third, due to the suspension of his licenses, he "was forced to cease working as an Admiralty Expert resulting in the continuous loss of approximately $30,000.00 in annual salary." Fourth, he was served with the contempt action.

In March of 2014, as result of his inability to obtain funding necessary to meet his contractual obligations, plaintiff "was legally divested of all ownership of M & T Oceanographic Research, a closely held private LLC, resulting in the loss of approximately $1,350,000.00 in assets, approximately $4,050,00.00 [sic] of the company's value and approximately $50,000.00 in annual draws and other benefits."

Thereafter, during a hearing on April 3, 2014, plaintiff first learned of the Glidewell 2011 default judgment. Moreover, at that hearing, the hearing officer, based on Daigle's "knowing and willful misrepresentations," recommended that "the Louisiana court adjudge Plaintiff guilty as charged and sentence [him] to 30 days confinement (suspended upon paying $7500.00) and probation for a **DEFINITIVE** period of 2 years." On June 12, 2015, the Louisiana state court followed the hearing officer's recommendation and held him in contempt.

On or about June 13, 2017, Daigle then notified plaintiff that the case she instigated against him had been closed; nonetheless, she still "refused to issue the statutorily mandated compliance release certificates, effectively maintaining the unlawful suspension of Plaintiff's licenses and passport privileges."On July 6, 2017, the Louisiana state court then finally vacated all orders against plaintiff concerning the contempt and "DISMISSED the case in its entirety." Moreover, on February 5, 2018, the Louisiana court further "entered an order in the criminal contempt action finding: Plaintiff owed zero dollars in child support; the State of Louisiana was required to reinstate all Plaintiff's licenses; and the court lacked jurisdiction or authority to order the U.S. Department of State reinstate Plaintiff's passport privileges."

According to plaintiff, despite those 2017 and 2018 court orders, Daigle still refused to issue the compliance release certificates necessary to negate the suspension of plaintiff's

licenses. Ultimately, however, her supervisor executed the release certificates, and his licenses were reinstated on February 7, 2019. Although his licenses have now been reinstated, he alleges that Daigle still refuses "to take any action to return Plaintiff's property unlawfully seized between September 8, 2012 – July 6, 2017."

In his complaint, plaintiff included the following prayer for relief:

> A. Declare Daigle's continued deprivation of Plaintiff's possessory interest in his unlawfully seized property is violative of the 14th Amendment, U.S. Constitution and Article 1, §§2 and 3 Louisiana Constitution;
>
> B. Enter a permanent injunction compelling Daigle, and those persons in active concert or participation with her, to take any and all actions necessary to return all of Plaintiff's property seized between September 8, 2012 – July 6, 2017;
>
> C. Enter judgment against Daigle in her individual capacity for: (1) a minimum of $2,226,928.84 in actual damages; (2) a minimum of $2,226,928.84 in compensatory damages; (3) a minimum of $6,680,786.52 in punitive damages; (4) prejudgment interest; and
>
> D. Grant Plaintiff such other and further relief this Court deems just and proper.[1]

Daigle filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.[2] Plaintiff opposed that motion.[3] The parties consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).[4]

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[1] Rec. Doc. 1, pp. 14 and 15.
[2] Rec. Doc. 10.
[3] Rec. Doc. 11.
[4] Rec. Doc. 18.

I. Rule 12(b)(1)

Rule 12(b)(1) governs challenges to a federal district court's subject-matter jurisdiction. The United States Fifth Circuit Court of Appeals has explained:

> Federal courts are courts of limited jurisdiction; without jurisdiction conferred by statute, they lack the power to adjudicate claims. Under Rule 12(b)(1), a claim is properly dismissed for lack of subject-matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the claim. The court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits.

In re FEMA Trailer Formaldehyde Products Liability Litigation (Mississippi Plaintiffs), 668 F.3d 281, 286 (5th Cir. 2012) (citations and quotation marks omitted). "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001) (citations omitted).

One of the limitations on federal judicial authority is found in the Eleventh Amendment, which states: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." Regarding the Eleventh Amendment, the United States Supreme Court a century ago held:

> That a State may not be sued without its consent is a fundamental rule of jurisprudence having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a State without consent given: not one brought by citizens of another State, or by citizens or subjects of a foreign State, because of the Eleventh Amendment; and not even one brought by its own citizens, because of the fundamental rule of which the Amendment is but an exemplification.

In re State of New York, 256 U.S. 490, 497 (1921). That "limitation deprives federal courts of any jurisdiction to entertain such claims, and thus may be raised at any point in a proceeding." Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 99 n.8 (1984); accord Sissom v. University of Texas High School, 927 F.3d 343, 347 (5th Cir. 2019) ("[T]he Eleventh Amendment textually divests federal courts of jurisdiction over states ...."). Therefore, "[w]hen the Eleventh Amendment applies, [federal] courts lack subject-matter jurisdiction over the claim." Bryant v. Texas Department of Aging & Disability Services, 781 F.3d 764, 769 (5th Cir. 2015).

Moreover, that jurisdictional bar applies "regardless of the nature of the relief sought." Pennhurst, 465 U.S. at 100; accord Guajardo v. State Bar of Texas, 803 F. App'x 750, 754 (5th Cir. 2020) (noting that the Eleventh Amendment provides "immunity from private suit – including for money damages, injunctive relief, and declaratory relief"). And, important for the purposes of the instant case, Eleventh Amendment immunity extends not only to the states themselves, but also to state officials sued in their official capacities. Pennhurst, 465 U.S. at 101-02 ("The Eleventh Amendment bars a suit against state officials when the state is the real, substantial party in interest. Thus, the general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter. And, as when the State itself is named as the defendant, a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief." (footnote, citations, quotation marks, and brackets omitted)).

A. Official-Capacity Claims for Monetary Damages

Because Daigle is a state official, she argues that this Court lacks subject-matter jurisdiction over any claims for monetary damages asserted against her in her official capacity. True enough. Chaney v. Louisiana Work Force Commission, 560 F. App'x 417, 418 (5th Cir. 2014) ("[A] suit against a state official in [her] official capacity for monetary damages is treated as a suit against the state and is therefore barred by the Eleventh Amendment."). But the flaw in her argument is that plaintiff does **not** expressly assert any claims for monetary damages against her in her **official** capacity; he asserts such claims against her only in her **individual** capacity.[5] The Eleventh Amendment has no bearing on such claims. "Officers sued in their personal capacity come to court as individuals, and the real party in interest is the individual, not the sovereign." Lewis v. Clarke, 137 S. Ct. 1285, 1291 (2017) (citation, quotation marks, and brackets omitted). "Where the power of government is abused by officeholders, ... monetary recovery from the responsible individuals serves as an important mechanism to vindicate constitutional guarantees." Stem v. Ahearn, 908 F.2d 1, 5 (5th Cir. 1990). Therefore, "sovereign immunity does not erect a barrier against suits to impose individual and personal liability." Lewis, 137 S. Ct. at 1291 (quotation marks omitted).

Accordingly, this Court has subject-matter jurisdiction over plaintiff's claims for monetary damages asserted against Daigle in her individual capacity, and so those claims must be considered *infra* under Rule 12(b)(6).

B. Official-Capacity Claims for Declaratory and Injunctive Relief[6]

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[5] Rec. Doc. 1, p. 15.

[6] The claims for declaratory and injunctive relief are asserted against Daigle in her official capacity. See id. p. 11.

Daigle next argues that this Court lacks subject-matter jurisdiction over plaintiff's claims against her for declaratory and injunctive relief. That argument is somewhat trickier due to an important limitation on the reach of the Eleventh Amendment: "[T]he Eleventh Amendment permits suits for prospective injunctive relief against state officials acting in violation of federal law." Frew *ex rel.* Frew v. Hawkins, 540 U.S. 431, 437 (2004) (emphasis added); accord K.P. v. LeBlanc, 729 F.3d 427, 439 (5th Cir. 2013) ("A suit is not 'against' a state ... when it seeks prospective, injunctive relief from a state actor, in her official capacity, based on an alleged ongoing violation of the federal constitution. That principle, the Ex Parte Young rule, is based on the legal fiction that a sovereign state cannot authorize an agent to act unconstitutionally." (footnote, quotation marks, and brackets omitted)). However, Daigle argues that the foregoing limitation is inapplicable here because, despite how plaintiff has couched his prayer for relief, the relief he is seeking is actually monetary in nature. That argument is persuasive.

Eleventh Amendment immunity turns on the true nature of the relief sought. Therefore, when a plaintiff is truly after **money** from a state official, the way his prayer for relief is phrased is not determinative. See, e.g., Edelman v. Jordan, 415 U.S. 651, 666 (1974) ("We do not read Ex parte Young or subsequent holdings of this Court to indicate that any form of relief may be awarded against a state officer, no matter how closely it may in practice resemble a money judgment payable out of the state treasury, so long as the relief may be labeled 'equitable' in nature."); see also Papasan v. Allain, 478 U.S. 265, 278 (1986) ("Relief that in essence serves to compensate a party injured in the past by an action of a state official in his official capacity that was illegal under federal law is barred even when the state official is the named defendant. This is true if the relief is expressly denominated as damages. **It is also true if the relief is**

tantamount to an award of damages for a past violation of federal law, even though styled as something else." (emphasis added; footnote and citation omitted)); Fontenot v. McCraw, 777 F.3d 741, 754 (5th Cir. 2015).

In the instant case, plaintiff requests that the Court "**[d]eclare** Daigle's continued deprivation of Plaintiff's possessory interest in his unlawfully seized property is violative of the 14th Amendment, U.S. Constitution and Article 1, §§2 and 3 Louisiana Constitution" and "**[e]nter a permanent injunction** compelling Daigle, and those persons in active concert or participation with her, to take any and all actions necessary to return all of Plaintiff's property seized between September 8, 2012 – July 6, 2017."[7] However, Daigle notes, and plaintiff does not dispute, that the only "property" of his which has not already been returned are seized **wages**. And there's the rub.

The wages that were seized from plaintiff during that period do not exist as an identifiable piece of property. Rather, those wages were fungible and, presumably, are now sitting in a government treasury commingled with other monies. Therefore, any order "declaring" their seizure wrongful and "enjoining" the state (through Daigle) from continuing to retain them is tantamount an order that the state make plaintiff whole **by paying him an equivalent amount of money**. That simply would not be prospective equitable relief to halt a continuing wrong; it would be monetary damages paid by the state for past wrongful conduct. As a result, the Eleventh Amendment precludes this federal court from granting such relief, regardless of how the prayer for relief is phrased. See, e.g., Zynda v. Arwood, 175 F. Supp. 3d 791, 801 (E.D. Mich. 2016) ("[Plaintiffs] request that the court '[o]rder defendants to return any

[7] Id. at pp. 14-15 (emphasis added).

state or federal tax return or wages garnished or intercepted' by the state. Relief styled as such an 'order to return' money is not 'prospective.' It compensates Plaintiffs for a past wrong, and the amount owed would be 'measured in terms of monetary loss resulting from past breach of a legal duty on the part of defendant officials.' See Edelman, 415 U.S. at 668. This claim for relief is barred by the Eleventh Amendment." (citation omitted)).

Accordingly, the Rule 12(b)(1) motion is **GRANTED** as to the claims for declaratory and injunctive relief, and those claims are **DISMISSED WITHOUT PREJUDICE** for lack of subject-matter jurisdiction.

II. Rule 12(b)(6)

As noted, Daigle alternatively requests dismissal pursuant to Rule 12(b)(6). Therefore, plaintiff's remaining claims against her in her individual capacity for monetary damages must now be considered under that rule.

Rule 12(b)(6) allows a defendant to move for dismissal when a plaintiff fails to state a claim upon which relief can be granted. In ruling on such a motion, "[t]he court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *In re* Katrina Canal Breaches Litigation, 495 F.3d 191, 205 (5th Cir. 2007) (quotation marks omitted).

Here, Daigle argues that plaintiff's remaining claims are prescribed. "With respect to the statute of limitations defense, dismissal at the 12(b)(6) stage is proper only where it is evident from the complaint that the action is barred and the complaint fails to raise some basis for tolling." Academy of Allergy & Asthma in Primary Care v. Quest Diagnostics, Inc., 998 F.3d 190, 200 (5th Cir. 2021) (quotation marks and brackets omitted).

In an action, such as this one, brought pursuant to 42 U.S.C. § 1983, the applicable statute of limitations is determined by reference to **state** law. Harris v. Hegmann, 198 F.3d 153, 156-57 (5th Cir. 1999) ("Federal courts borrow state statutes of limitations to govern claims brought under section 1983. ... [S]tate law supplies the applicable limitations period and tolling provisions." (citations omitted)); see also Bourdais v. New Orleans City, 485 F.3d 294, 298 (5th Cir. 2007) ("In § 1983 claims, the applicable statute of limitations is that which the state would apply in an analogous action in its courts."). Therefore, "[t]he statute of limitations for Section 1983 claims is the forum state's personal-injury limitations period, which in Louisiana is one year." Smith v. Regional Transit Authority, 827 F.3d 412, 421 (5th Cir. 2016).

On the other hand, "[w]hen a cause of action under § 1983 accrues is a question of **federal** law: the accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law." Bradley v. Sheriff's Department St. Landry Parish, 958 F.3d 387, 391 (5th Cir. 2020) (boldface emphasis added; quotation marks omitted). On that point, the United States Fifth Circuit Court of Appeals has explained:

> Under federal law, the limitations period begins to run the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured. A plaintiff's awareness encompasses two elements: (1) The existence of the injury; and (2) causation, that is, the connection between the injury and the defendant's actions. A plaintiff need not realize that a legal cause of action exists; a plaintiff need only know the facts that would support a claim. Moreover, a plaintiff need not have actual knowledge if the circumstances would lead a reasonable person to investigate further.

Piotrowski v. City of Houston, 51 F.3d 512, 516 (5th Cir. 1995) (footnotes, citations, quotation marks, and brackets omitted).

This is the point at which this case gets particularly complicated. Plaintiff denominates his individual-capacity claims against Daigle in the complaint as Claims II and III.[8] However, those claims are overlapping (in that they are seemingly based on some or all of the same events) and not clearly differentiated. But, in essence, there appear to be two distinct categories of claims, namely one category concerning his **property** (i.e. that his property was wrongly seized) and another category concerning his **person** (i.e. that he was wrongly charged with criminal contempt). For the following reasons, different limitations periods apply to those two categories of claims, and, therefore, the claims must be addressed separately.

A. The "Property" Claim(s)

By plaintiff's own admission, the seizure of his property was effected between September 8, 2012, and July 6, 2017. At the latest, plaintiff knew of the existence of that injury and Daigle's purported role in causing it on **July 6, 2017**. Seemingly, therefore, that is the latest point at which the property claim(s) could have accrued. If so, that presents plaintiff with a problem: This lawsuit was not filed within one year of that date – in fact, it was not filed until **October 7, 2020**, several years past the deadline.

In an attempt to overcome that problem, plaintiff argues that his prescriptive period was interrupted and/or tolled. But, as is explained below, it was not.

1. The "Interruption" Argument

Plaintiff argues that he interrupted the limitations period by naming Daigle as a defendant in an amended complaint he filed in a federal court in Alabama on November 16, 2018.[9] He

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[8] Id. at pp. 12-14.

[9] Rec. Doc. 11, pp. 8-9

opines: "The interruption of prescription ended and the prescription period started anew again on September 30, 2020, when Chief District Judge Dubose [sic] dismissed Daigle as a defendant [from the Alabama lawsuit] for lack of personal jurisdiction."[10]

Prescription can indeed be interrupted by the filing of a different lawsuit. The United States Fifth Circuit Court of Appeals has explained:

> Pursuant to Louisiana Civil Code Article 3462, prescription is interrupted when the plaintiff files suit within the prescriptive period "in a court of competent jurisdiction and venue." However, if the "action is commenced in an incompetent court, or in an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period." La. Civ. Code Ann. art. 3462 (2011); see also Doe v. Delta Women's Clinic of Baton Rouge, 37 So.3d 1076, 1079 (La.App. 1 Cir. 2010).

Carner v. Louisiana Health Service & Indemnity Co., 442 F. App'x 957, 959 (5th Cir. 2011).

However, that rule does not aid plaintiff in this case. The Alabama federal court was not "a court of competent jurisdiction and venue" with respect to claims against Daigle; that is why that court ultimately dismissed those claims. And, while a lawsuit filed in an incompetent court can still interrupt prescription, it does so **only if** the defendant was **served within the prescriptive period**. That obviously did not occur here –plaintiff did not attempt to file the amended complaint adding Daigle as defendant in that lawsuit until November 16, 2018,[11] and service was not perfected on her until October 3, 2019.[12] ***Both*** of those dates are well over one year past the latest possible accrual date of the property claim(s) (July 6, 2017).

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[10] Id. at p. 9 (footnote omitted). Chief DuBose did in fact dismiss the claims against Daigle on that basis on that date. Tunstall v. Glidewell, Civ. Action No. 18-0356, 2020 WL 5816939, at *7 (S.D. Ala. Sept. 30, 2020).

[11] See Doc. 11, p. 8.

[12] Id.

In an attempt to avoid that complication, plaintiff advances yet another argument. Citing Manuel v. City of Joliet, 903 F.3d 667 (7th Cir. 2018), he invokes what is sometimes referred to as the "continuing wrong" theory.[13] Regarding that theory, the court in Manuel explained: "When a wrong is ongoing rather than discrete, the period of limitations does not commence until the wrong ends." Id. at 669. Pointing to that language, he opines that his property claim(s) did not accrue until at least **February 1, 2019**, the date on which Daigle's supervisors "executed compliance release certificates" which finally "brought to an end, in part, Daigle's ongoing violations of Plaintiff [sic] constitutional rights to due process and equal protection of laws that occurred each and every day she effectively maintained the unlawful suspension of Plaintiff's licenses by refusing to issue the statutorily mandated compliance release certificates."[14] He argues that because Daigle was served in the Alabama lawsuit within one year of **that date**, his prescriptive period was interrupted despite the fact that the Alabama federal court was not "a court of competent jurisdiction and venue" with respect to claims against Daigle.

Alas, no. Even if the "continuing wrong" theory might sometimes be applicable, it is not in this case. As the Seventh Circuit has explained:

> The theory ... is not suited to cases ... where the harm is definite and discoverable, and nothing prevented the plaintiff from coming forward to seek redress. The exception as to continuing, ongoing acts does not apply where the alleged tortious acts caused direct damages that occurred at a certain point in time – resulting in immediate and direct injury with consequential effects.

Wilson v. Giesen, 956 F.2d 738, 743 (7th Cir. 1992) (quotation marks and ellipses omitted). Here, the alleged "wrongs" were the actions Daigle took to seize plaintiff's property, and those actions ceased no later than July 6, 2017. Although the harm occasioned by those wrongs was not

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[13] Id.

[14] Id. at p. 8 & n.50.

remedied until much later, that is immaterial. As even the court in Manuel cautioned: "Notice that we speak of a continuing *wrong*, not of continuing *harm*; once the wrong ends, the claim accrues even if that wrong has caused a lingering injury." Manuel, 903 F.3d at 679; accord Earle v. District of Columbia, 707 F.3d 299, 306 (D.C. Cir. 2012) ("[T]he mere failure to right a wrong cannot be a continuing wrong for that is the purpose of any lawsuit and the exception would obliterate the rule." (quotation marks and ellipses omitted)); Mata v. Anderson, 635 F.3d 1250, 1253 (10th Cir. 2011) ("[T]he doctrine is triggered by continual unlawful acts, not by continual ill effects from the original violation.").

Accordingly, because plaintiff's property claim(s) would not qualify as a "continuing wrong," they accrued no later than July 6, 2017, the last date on which Daigle took any action to seize plaintiff's property, and the one-year limitations period then expired no later than July of 2018. As a result, when plaintiff moved to add Daigle as a defendant in the Alabama lawsuit in November of 2018, the limitations period **had already expired**. Therefore, at that point, there was simply nothing left to "interrupt."

2. The "Tolling" Argument

a. Contra non valenten

"In applying the forum state's statute of limitations, the federal court should also give effect to any applicable tolling provisions." Gartrell v. Gaylor, 981 F.2d 254, 257 (5th Cir. 1993). Here, plaintiff argues that his limitations period was tolled under Louisiana's rule of *contra non valentem*. It was not.

The United States Fifth Circuit Court of Appeals has observed:

Louisiana's general rule for tolling is referred to as *contra non valentem*, under which a prescription is tolled or suspended when a plaintiff is effectually prevented from enforcing his rights for reasons external to his own will. *Contra non valentem* prevents the running of the prescriptive period in four situations:

> **(1) where there was some legal cause which prevented the courts or their officers from taking cognizance of or acting on the plaintiff's action;**
> (2) where there was some condition coupled with the contract or connected with the proceedings which prevented the creditor from suing or acting;
> (3) where the debtor himself has done some act effectually to prevent the creditor from availing himself of his cause of action; or
> (4) where the cause of action is neither known nor reasonably knowable by the plaintiff even though the plaintiff's ignorance is not induced by the defendant.

Bradley v. Sheriff's Department St. Landry Parish, 958 F.3d 387, 394 (5th Cir. 2020) (boldface emphasis added; footnotes and quotation marks omitted).

Plaintiff argues his case falls within the first category.[15] Specifically, he argues that the Rooker-Feldman doctrine and the Younger abstention rule effectively prevented him from pursuing his claims against Daigle in a federal lawsuit at an earlier point in time. However, the parties have not adequately briefed whether such legal limitations affecting a claim's present cognizability are among the types of "causes" adequate to implicate the first category, and there is reason to believe they would not be. The Louisiana Supreme Court has noted that the first *contra non valentem* category is "infrequently applicable in modern times." Whitnell v. Menville, 540 So. 2d 304, 308 (La. 1989). Indeed, the category is rarely litigated, and the few Louisiana state court cases addressing it appear to involve causes that made it **physically** impossible for a litigant to access the courts. See Treadwell v. St. Tammany Parish Jail, Civ. Action No. 13-5889, 2014 WL 3702691, at *5 n.2 (E.D. La. July 24, 2014) ("The standard for application of the first category of *contra non valentem* appears fairly high. The courts,

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[15] Id. at p. 10.

essentially, have to have been actually closed."), aff'd, 599 F. App'x 189 (5th Cir. 2015). For example, one Louisiana court observed:

> The first category of contra non valentem has been held to encompass situations **in which the courts are closed due** to war or some natural disaster, such as a hurricane. Frank L. Maraist and Thomas C. Galligan, LOUISIANA TORT LAW, § 10.04[2] (2004 ed.). The first category of contra non valentem thus covers the "'law of catastrophes': war, flood, hurricane, epidemic, strike, profound illness, etc. These cases can be seen as veritable applications of the concept of force majeure." Benjamin West Janke and Francois-Xavier Licari, Contra Non Valentem in France and Louisiana: Revealing the Parenthood, Breaking A Myth, 71 La. L. Rev. 503, 516 (2011).

Felix v. Safeway Insurance Co., 183 So. 3d 627, 629 (La. App. 4th Cir. 2015) (emphasis added); accord National Union Fire Insurance Co. v. Ward, 612 So. 2d 964, 968 (La. App. 2d Cir. 1993) ("As to the first category, the plaintiff cannot claim that it was prevented from bringing suit because of some legal cause which prevented the courts from taking cognizance of or acting on the plaintiff's claim. A 'legal cause' **in this context** appears to refer to a situation such as **the courts being closed** by wartime conditions, as noted in Quierry's Executor v. Faussier's Executors, 4 Mart. (O.S.) 609 (1817)." (emphasis added)). Similarly, the category has been found to encompass times when a litigant was unable to file his suit because the court was closed for an extended holiday break. Saxon v. Fireman's Insurance Co., 224 So. 2d 560, 561 (La. App. 3d Cir. 1969) ("The prescriptive period is suspended when, due to the absence of the clerk of court or other personnel authorized to receive suits for filing, the party is unable to file his pleadings on the last day of the delay. Smith v. Taylor, 10 Rob. 133 (1845); see also, Ayraud v. Babin's Heirs, 7 Mart, N.S., 471, 481 (1829). The principle thus applied is summarized by the maxim, Contra non valentem agere nulla currit praescripto (No prescription runs against a person unable to bring

an action)."); see also Labit v. Palm's Casino & Truck Stop Inc., 4 So. 3d 911 (La. App. 4th Cir. 2009).

Therefore, it is not at all clear that the first category of Louisiana's rule of *contra non valentem* would encompass legal restrictions which merely involve the **cognizability** of a plaintiff's underlying claims. And the Court finds plaintiff's argument particularly uncompelling given that "*[c]ontra non valent[e]m* is an exceptional remedy" and "should be strictly construed." Ellender v. Goldking Production Co., 775 So. 2d 11, 17 (La. App. 1st Cir. 2000). Nevertheless, the Court is given pause by the construction given *contra non valentem* by the United States Fifth Circuit Court of Appeals in Burge v. Parish of St. Tammany, 996 F.2d 786 (5th Cir. 1993). Citing to the doctrine, the Fifth Circuit held that the rule tolled a federal limitations period while a prisoner exhausted his remedies in the Louisiana state courts, reasoning:

> Prescription runs against all persons unless an exception is established by legislation. However, Louisiana's jurisprudence recognizes a limited exception to codified prescriptions: *Contra non valentem agere nulla currit praescriptio, i.e.* prescription does not run against a party who is unable to bring an action. There are four recognized situations where the doctrine of *contra non valentem* might apply to toll the prescriptive period:
>
> > (1) Where there was a legal cause which prevented the courts or their officers from taking cognizance of or acting on the plaintiff's action; (2) where some condition coupled with the proceedings prevented the creditor from suing or acting; (3) where the debtor has done an act to prevent the creditor from using the cause of action; (4) where the cause of action is not known or reasonably knowable by the plaintiff, even though he is not induced by the defendant.
>
> **It is the first situation, prevention by a legal impediment, that guides the resolution of the instant dispute.**
>
> **Burge could not have prosecuted his civil rights claim for damages against the Appellees until he exhausted available state habeas remedies.** This was a legal cause which prevented the courts or their officers from taking

> cognizance of or acting on the plaintiff's action. Because he could not have prosecuted the § 1983 and § 1985 claims until the state habeas proceedings were exhausted, Burge's June 1991 filing of his civil rights claims was not prescribed.

Id. at 788 (emphasis added; citations, quotation marks, and brackets omitted); accord Harris v. Hegmann, 198 F.3d 153, 156-59 (5th Cir. 1999). Given that more expansive construction of *contra non valentem* by the Fifth Circuit, this inferior Court, out of an abundance of caution, will simply assume for the purposes of this decision that the first category does potentially encompass such legal limitations affecting a claim's present cognizability. Nevertheless, that assumption ultimately does not aid plaintiff – because neither the Rooker-Feldman doctrine nor the Younger abstention rule actually prevented him from seeking federal relief for the following reasons.

First, Rooker-Feldman: The United States Supreme Court is vested with **exclusive** "jurisdiction over appeals from **final** state-court judgments." Lance v. Dennis, 546 U.S. 459, 463 (2006) (emphasis added). Therefore, "under what has come to be known as the Rooker-Feldman doctrine, lower federal courts are precluded from exercising appellate jurisdiction over final state- court judgments." Id.[16] Moreover, although "the doctrine usually applies only when a plaintiff explicitly attacks the validity of a state court's judgment, ... it can also apply if the plaintiff's federal claims are so inextricably intertwined with a state judgment that the federal court is in essence being called upon to review the state court decision." Illinois Central Railroad Co. v. Guy, 682 F.3d 381, 390-91 (5th Cir. 2012) (quotation marks omitted).

Here, plaintiff opines that the Rooker-Feldman doctrine "barred [him] from **commencing** any action against Daigle (or the Alabama state agents) **until** all adverse state court orders and

[16] The Rooker-Feldman doctrine derives its name from two Supreme Court cases, Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

judgments had been set aside and pending state court actions dismissed."[17] But that is inaccurate. Even if Rooker-Feldman might otherwise be applicable, which is an issue this Court need not and does not reach, plaintiff's contention that the doctrine applies when the state court proceedings are **ongoing** is simply incorrect. The United States Supreme Court "has repeatedly held that the **pendency** of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." Exxon Mobile Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 292 (2005) (emphasis added; quotation marks omitted). And the Rooker-Feldman doctrine does not change that general rule. Rather, again, "the Rooker-Feldman doctrine is a narrow jurisdictional bar" triggered only by a **final** state-court judgment – in other words, it is limited "to those cases in which a party suffered an adverse final judgment **rendered by a state's court of last resort**." Gross v. Dannatt, 736 F. App'x 493, 494 (5th Cir. 2018) (quotation marks omitted); accord Parker v. Lyons, 757 F.3d 701, 706 (7th Cir. 2014) ("Rooker-Feldman does not bar the claims of federal-court plaintiffs who ... file a federal suit when a state-court appeal is pending."). Accordingly, "the Rooker-Feldman doctrine does not apply if, at the time the federal suit is filed, the state proceeding implicated was ongoing, even if on appeal." Anthony of the Family Baker v. Child Support Division, No. 3:19-cv-341, 2018 WL 4858743, at *5 (N.D. Tex. Sept. 18, 2018), adopted, 2018 WL 4854167 (N.D. Tex. Oct. 5, 2018). Therefore, the Rooker-Feldman doctrine would not have prevented the federal courts or their officers from taking cognizance of or acting on a claim asserted by plaintiff against Daigle.

Second, Younger: In Younger v. Harris, 401 U.S. 37 (1971), the United States Supreme Court "held that absent extraordinary circumstances federal courts should not enjoin pending

[17] Rec. Doc. 11, pp. 10-11 (emphasis added).

state criminal prosecutions." New Orleans Public Service, Inc. v. Council of City of New Orleans, 491 U.S. 350, 364 (1989) (NOPSI). Subsequently, out of a "concern for comity and federalism," the Supreme Court then expanded Younger's protections beyond state criminal proceedings to certain state civil proceedings. Id. at 368; accord Sprint Communications, Inc. v. Jacobs, 571 U.S. 69, 72- 73 (2013) ("This Court has extended Younger abstention to particular state civil proceedings that are akin to criminal prosecutions or that implicate a State's interest in enforcing the orders and judgments of its courts." (citations omitted)); Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 432 (1982) ("The policies underlying Younger are fully applicable to noncriminal judicial proceedings when important state interests are involved.").

Nevertheless, Younger abstention is neither automatic nor without limitation. Rather, "even in the presence of parallel state proceedings, **abstention from the exercise of federal jurisdiction is the exception**, not the rule." Sprint Communications, Inc., 571 U.S. at 81-82 (emphasis added; quotation marks omitted); see also NOPSI, 491 U.S. at 368 ("[O]nly **exceptional** circumstances justify a federal court's refusal to decide a case in deference to the States." (emphasis added)). Therefore, as the United States Fifth Circuit Court of Appeals has explained:

> Although Younger has been expanded beyond the criminal context, abstention is not required in every case of parallel state-court proceedings. Rather, as the Supreme Court recently clarified, it applies only to three exceptional categories of state proceedings: ongoing criminal prosecutions, certain civil enforcement proceedings akin to criminal prosecutions, and pending civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions. If state proceedings fit into one of these categories, a court appropriately considers before invoking Younger whether there is (1) an ongoing state judicial proceeding, which (2)

> implicates important state interests, and (3) provides an adequate opportunity to raise federal challenges.

Google, Inc. v. Hood, 822 F.3d 212, 222 (5th Cir. 2016) (footnotes, citations, quotation marks, brackets, and ellipses omitted). Moreover, given the nature of plaintiff's allegations regarding the purported ongoing and pervasive wrongs he has allegedly suffered through the intentionally abusive and fraudulent actions of state authorities, it is also important to remember that "[d]espite the strong policy in favor of abstention, a federal court may nevertheless intervene in a state proceeding upon a showing of bad faith, harassment or any other unusual circumstance that would call for equitable relief." Diamond "D" Construction Corp. v. McGowan, 282 F.3d 191, 198 (2d Cir. 2002) (quotation marks omitted);[18] accord Nobby Lobby, Inc. v. City of Dallas, 970 F.2d 82, 87-89 (5th Cir. 1992) (finding that "the district court did not err in declining to abstain under Younger" because "the contested seizures and arrests [at issue] were conducted in bad faith and with an intent to harass").

Therefore, the mere existence of the Younger abstention doctrine in no sense prevented plaintiff from commencing a federal lawsuit against Daigle in a timely manner. He could have done so. If he had, perhaps Daigle might have raised the doctrine in attempt to thwart his claim; however, even if she had done so, plaintiff's quiver was not empty, because, again, there are

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[18] The McGowan court explained:

> In a companion case to Younger, the Supreme Court expanded on Younger's conception of bad faith, explaining that abstention may be inappropriate in cases proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction. As the application of Younger abstention evolved beyond the criminal realm, the language of the bad faith exception became more generic. So, now, for a federal plaintiff to invoke the bad faith exception, the party bringing the state action must have no reasonable expectation of obtaining a favorable outcome. Thus, for example, we have found that a refusal to abstain would be justified where a proceeding has been brought to retaliate for or to deter constitutionally protected conduct, or where a prosecution or proceeding is otherwise brought in bad faith or for the purpose to harass.

McGowan, 282 F.3d at 198-99 (citations, quotations marks, and ellipsis omitted).

exceptions to Younger, and he was free argue that they applied and permitted his claims to proceed in federal court. Such an argument might – or might not – have prevailed; but we have no way to know, because he did not even try. Instead, he chose a perilous course of action: he merely assumed that any attempt would have been futile and simply hoped that a federal court in the future would agree and therefore excuse a filing he made after the limitations period had expired. In hindsight, of course, that was clearly imprudent, but that fact is not sufficient to change the result herein.

For these reasons, the Court finds that neither the Rooker-Feldman doctrine nor the Younger abstention rule prevented plaintiff from seeking federal relief in a timely manner. Therefore, even if the first category of *contra non valentem* scenarios is properly extended to encompass **legal doctrines** which prevent the courts or their officers from taking cognizance of or acting on a plaintiff's action, neither the Rooker-Feldman doctrine nor the Younger abstention would qualify under the facts of the instant case.

b. Other Basis for Equitable Tolling

Lastly, the Court notes that plaintiff also appears to make a broader bid for equitable tolling by arguing that any delays in serving Daigle in the Alabama lawsuit were simply not his fault. Specifically, he argues that (1) because the Alabama court had to first rule that he was allowed even to file the amended complaint naming Daigle as a defendant in that action, and (2) because that was a protracted process, all resulting delays in service were solely the court's fault, not his. That argument is a nonstarter. In the first place, as already explained, any arguments premised on the Alabama lawsuit are a red herring – the limitations period for asserting the

property claim(s) against Daigle had **already expired** before plaintiff even attempted to add her as a defendant in that action. As such, even if plaintiff's delay in serving Daigle in the Alabama lawsuit were justified, it is of no consequence in **this** action. In the second, again, plaintiff simply has not shown that he was required to pursue his claims against Daigle in the context of that lawsuit.[19] Rather, he could have – and should have – filed a separate suit against Daigle in a court of competent jurisdiction and venue within the limitations period.

Even in cases where equitable tolling is recognized, it is available only when an "external obstacle" prevented a litigant from seeking federal relief in a timely fashion – and the mere fact that a litigant believed an otherwise required action would have been futile, uncertain, risky, or expensive does not qualify. See Menominee Indian Tribe of Wisconsin v. United States, 577 U.S. 250, 255-58 (2016). As explained exhaustively herein, there was no such external obstacle which prevented plaintiff from presenting his claims against Daigle to a federal court for consideration within the limitations period. Therefore, equitable tolling simply is not available.

In summary: Plaintiff's property claim(s) against Daigle in her individual capacity accrued in July of 2017, and the limitations period expired one year later in July of 2018. **That limitations period was neither interrupted nor tolled.** As a result, when plaintiff filed this lawsuit on October 7, 2020, the prescriptive period for the claim(s) had already expired. Accordingly, as Daigle argues, the property claim(s) must be dismissed pursuant to Rule 12(b)(6).

B. The "Person" Claim

[19] Rec. Doc. 1, p. 15. And, obviously, he should not have done so, in that the Alabama court was not one of competent jurisdiction and venue with respect to any claims against Daigle.

Now, lastly, the Court addresses plaintiff's claim(s) that Daigle's actions led to him being wrongly charged with and convicted of criminal contempt. He argues that because such claims were "predicated on Daigle's fabrication of evidence and use of known falsified official government records to initiate the criminal contempt action against Plaintiff,"[20] they did not accrue until his criminal contempt conviction was invalidated in **February of 2018.**[21] But, again, even if the Court simply assumes for the purposes of this decision that he is correct on that point, dismissal is still necessary. Under that scenario, he would have had to file this lawsuit by **February of 2019**. But, as noted, this lawsuit was not filed until **October 7, 2020**. Again, too late. Therefore, plaintiff's "person" claim(s) must likewise be dismissed unless the prescriptive period was either interrupted or tolled. It was not.

Even if interruption would otherwise be available based on the Alabama lawsuit, plaintiff would have had to serve Daigle in that action in within one year of February of 2018 – and he admits that she was not served until October of 2019. That was too late to result in an interruption.

Any argument based on *contra non valentem* or other equitable doctrine likewise fails because, again, nothing prevented plaintiff from filing a lawsuit against Daigle in a court of competent jurisdiction and venue within the limitations period.

For all of these reasons, it is apparent that the claims against Daigle in her individual capacity were prescribed at the time that this lawsuit was filed. Therefore, the Court need not – and does not –address her alternative arguments advanced in support of her motion.

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[20] Rec. Doc. 11, p. 7.

[21] Id. at pp. 7-8.

Accordingly,

IT IS ORDERED that Daigle's motion to dismiss, Rec. Doc. 10, is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's official-capacity claims against Daigle are **DISMISSED WITHOUT PREJUDICE** for lack of subject-matter jurisdiction.

IT IS FURTHER ORDERED that plaintiff's individual-capacity claims against Daigle are **DISMISSED WITH PREJUDICE** as prescribed.

New Orleans, Louisiana, this 10th day of August, 2021.

JANIS VAN MEERVELD
UNITED STATES MAGISTRATE JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

THOMAS T. TUNSTALL, V	**CIVIL ACTION**
VERSUS	**NO. 20-2773-JVM**
HOPE DAIGLE, f/k/a HOPE D. THERIOT	

JUDGMENT

Considering the record, the Order and Reasons issued this date, and the law, for the reasons assigned,

IT IS ORDERED, ADJUDGED, AND DECREED that plaintiff's official capacity claims against the defendant are **DISMISSED WITHOUT PREJUDICE** for lack of subject-matter jurisdiction.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff's individual capacity claims against the defendant are **DISMISSED WITH PREJUDICE** as prescribed.

New Orleans, Louisiana, this 10th day of August, 2021.

JANIS VAN MEERVELD
UNITED STATES MAGISTRATE JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

THOMAS T. TUNSTALL V	*	CIVIL ACTION NO. 20-02773
*		
VS.	*	SECT. R MAG. 1
	*	
Hope Daigle, f/k/a Hope D. Theriot,	*	
	*	
Defendant.	*	

COMPLAINT

I. INTRODUCTION

1. This 42 U.S.C. §1983 complaint is brought against state agent Hope Daigle for her systemic violation of Plaintiff's rights guaranteed by the 4th and 14th Amendments, U.S. Constitution, while acting under the color of law, beyond her authority, in deliberate violation of state and federal regulatory, statutory and constitutional provision, by and through her unlawful use of Louisiana state enforcement services and judicial system to perpetuate the interstate scheme to extort over $150,000.00 from Plaintiff, and in turn, defraud the United States Government of sums certain granted under 42 U.S.C. §§655(e), 659a(C); 45 CFR §§301.15, 302.55 and 305.31, between November 8, 2008 and the filing of this instant action.

2. Plaintiff also seeks declaratory and injunctive relief to enjoin state agent Hope Daigle's continued deprivation of Plaintiff's possessory interest in his property unlawfully seized between January 1, 2013 – July 6, 2017, in violation of the 14th Amendment, U.S. Constitution and Article 1, §§2 and 3 Louisiana Constitution.

II. JURISDICTION AND VENUE

3. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§1331; 1343(a)(3), (4); 1367(a); and 42 U.S.C. §1983.

4. The Court is vested with authority to grant declaratory relief pursuant to 28 U.S.C. §§2201 and 2202, and injunctive relief under Ex parte Young, 209 U.S. 123 (1908).

5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(1) & (2), (c)(1).

III. PARTIES

6. Plaintiff, Thomas T. Tunstall V (hereinafter "Plaintiff"), is a United States citizen over 21 years of age, domiciled in Houma, Louisiana. (See Exhibit "A").

7. Defendant, Hope Daigle, f/k/a Hope D. Theriot (hereafter "Daigle"), is a United States citizen over the age of 21, domiciled in Gray, Louisiana and at all relevant times employed by Louisiana Department of Family and Children Services (DCFS).

IV. FACTUAL BACKGROUND

A. Chronology of events giving rise to this instant action.

8. On or about April 2, 2008, the Juvenile Court of Baldwin County Alabama (hereafter "juvenile court") terminated Plaintiff's child support obligations as established by said court on June 24, 1995 and thereafter modified on February 18, 2004. (See Exhibit "B").

9. Between September 30 – October 31, 2008, Alabama state agents Kelley O. Edwards (hereafter "Edwards") and Cynthia T. Mosley (hereafter "Mosley") unlawfully altered Plaintiff's official child support records by interpolating known false information to simulate: (1) the Superior Court of Liberty County Georgia (hereafter "Georgia court") on October 13, 1994, in Civil Action 94-V-01246 ordered Plaintiff to pay $750.00 per month in support; (2) owed an arrearage of $150,171.17 accruing between September 25, 1992 – March 5, 2007; and (3) that BCDHR had been actively enforcing the same.

10. On or about October 31, 2008, Edwards and Mosley knowingly falsified an official Child Support Transmittal and Registration Statement by completing the same with the information set forth ¶9, and misrepresenting no other support order was known to exist.

11. On or about October 31, 2008 Edwards and/or Mosley transmitted the known falsified Child Support Transmittal and Registration Statement, as well as the fabricated official child support records and Kimberly M. Glidewell's (hereafter "Glidewell") known perjured affidavit, to Daigle to take enforcement action against Plaintiff.

12. Despite the absence of a valid and enforceable support order and/or any judgment finding Plaintiff owed any arrearage to Glidewell, on or about November 8, 2008, Daigle began publishing to various credit reporting agencies and on publicly accessible internet websites known false and defamatory information that Plaintiff was a "Dead Beat Dad" and has owed a child support arrearage of $150,117.17 since September 25, 1992.

13. On or about November 20, 2008, Daigle, by and through the Terrebonne Parish District Attorney (TPDA), in the Civil Division, 32nd Judicial District Court, Parish of Terrebonne, Louisiana (hereafter "Louisiana court"), filed a Uniform Interstate Family Support Act (UIFSA) Petition, docketed as Civil Action 132320-IV-D LASES: 002029760-01, predicated on the known falsified and fabricated official government records and perjured affidavits described in ¶¶9-11 above. (See Exhibit "C").

14. Without giving Plaintiff notice and the opportunity to be heard, on or about December 8, 2008, Daigle, by and through the TPDA, fraudulently procured *ex parte* income assignment and withholding orders from the Louisiana court by use of the known falsified and fabricated official government records and perjured affidavits made part of the UIFSA petition.

15. On January 5, 2010, during hearing of the UIFSA petition, after then Defendant Tunstall proved the claims set forth therein were false and fraudulent and that no child support and/or arrearage was owed to Glidewell for the parties ***adult*** children who were neither mentally or physically handicap, the Hearing Officer and Assistant District Attorney Michele Morel recommended the Louisiana court DISMISS the UIFSA petition and income assignment and withholding orders in their entirety.

16. On January 12, 2010, the Louisiana court DISMISSED the UIFSA petition and income assignment and withholding orders in their entirety. (See Exhibit "D").

17. On or about January 12, 2010, notice of the Louisiana court's DISMISSAL of the UISFA petition was given to state agent Daigle and Alabama state agents Edwards and Mosley.

18. On April 1, 2010, after the time in which an appeal of the Louisiana court's January 12, 2010, had passed, the State of Louisiana closed the case. (See Exhibit "E").

19. As fully set out in Exhibit A ¶¶30-38, on or about April 18, 2011, Kimberly M. Glidewell fraudulently procured a Default Judgment against Plaintiff for $171,171.17 from the juvenile court.

20. After receiving a second known falsified official Child Support Transmittal and Registration Statement from Edwards and Mosley, containing the same information and documents identified in ¶¶9-11 *supra.*, and the known VOID April 18, 2011 Default Judgment, Daigle, to prevent Plaintiff from collaterally attacking the known VOID Default Judgment falsified official government records to simulate on September 25, 1992 the Louisiana court established Plaintiff's support obligations and that an arrearage of approximately $171,171.17 had accrued pursuant to said order.

21. On or about September 8, 2012, without giving Plaintiff notice and opportunity to be heard, Daigle, by and through the TPDA, utilized the fabricated official government records identified in ¶20 to again fraudulently procure *ex parte* income assignment and withholding orders from the Louisiana court.

22. In October 2012, without giving Plaintiff notice and the opportunity to be heard, Daigle utilized the known fraudulently procured September 8, 2012, *ex parte* income assignment and withholding orders, and falsified official government records described in ¶20 to propound payroll garnishments upon Plaintiff's employer and begin the process to seize Plaintiff's state and federal income tax returns.

23. In October 2012, in response to the payroll garnishments propounded on Plaintiff's employer, Plaintiff sent DCFS a copy of the Louisiana court's January 12, 2010, order entered in Civil Action 132320-IV-D LASES: 002029760-01 and advised that no income would be withheld from Plaintiff's payroll. No further notice was received by Plaintiff's employer from DCFS and thus, Plaintiff rationale concluded the matter had been resolved.

24. On or about March 7, 2013, without giving Plaintiff notice and the opportunity to be heard, Daigle procured the suspension of Plaintiff's licenses and passport privileges.

25. In April 2013, Daigle, by and through the TPDA, instigated in the criminal division, Division "E", of the Louisiana court, a Rule for Contempt, docketed as 132320-IV-D "E" LASES: 002029760-01, charging Plaintiff with knowingly, willfully and continuously violating the order Daigle falsified official government records to simulate was entered by the Louisiana court on September 25, 1992. (See Exhibit "F").

26. On or about February 12, 2014, Plaintiff first learned Daigle had obtained the unlawful suspension of his drivers license when attempting to renew the same.

27. In February 2014 Plaintiff first became aware Daigle had been publishing the known false and defamatory information described in ¶12 *supra.*, increasing the amount reported (by or greater than $642.00) each and every month thereafter, when notified by Capital One Bank that Plaintiff's company's loan application was **DENIED** based solely on the negative information Daigle had been reporting to various credit reporting agencies.

28. In February 2014, as a result of the unlawful suspension of Plaintiff's licenses, Plaintiff was forced to cease working as an Admiralty Expert resulting in the continuous loss of approximately $30,000.00 in annual salary.

29. On or about February 28, 2014, Plaintiff was served with summons issued in the criminal contempt action.

30. Precluded from obtaining critical funding to meet his companies contractual obligations for the reasons set forth in ¶¶25-27 *supra.*, on or about March 1, 2014, Plaintiff was legally divested of all ownership in M & T Oceanographic Research, a closely held private LLC, resulting in the loss of approximately $1,350,000.00 in assets, approximately $4,050,00.00 of the company's value and approximately $50,000.00 in annual draws and other benefits.

31. On April 3, 2014, based solely on Daigle and Terrebonne Parish ADA Samuel J. Markus' knowing and willful misrepresentations that Plaintiff's children were minors, that Plaintiff had violated the nonexistent September 25, 1992 order purportedly entered by the Louisiana court; suppression of the orders entered by the juvenile court between January 25, 1995 – April 2, 2008 and the Louisiana court on January 12, 2010, and use of the heretofore identified falsified official governments records and perjured affidavits, the Hearing Officer recommended the Louisiana court adjudge Plaintiff guilty as charged and sentence Plaintiff to 30 days confinement (suspended upon paying $7500.00) and probation for a **DEFINITIVE** period of 2 years.

32. During the April 3, 2014, hearing Plaintiff first learned of the insidious April 18, 2011 Default Judgment entered against him when ADA Markus represented to the court, state agent Edwards attested to the veracity of same.

33. On April 7, 2014, Plaintiff timely filed an objection to the Hearing Officer's recommendation and thereafter retained legal representation in Louisiana and Alabama.

34. In May 2014, after Plaintiff's legal removal as co-owner of M & T Oceanographic Research, Chase Bank approved the company's loan application for over $950,000.00, inclusive of $150,000.00 revolving line of credit.

35. In November 2014, as a result of Daigle obtaining and maintaining the unlawful suspension of Plaintiff's licenses, Plaintiff's full-time employment with M & T Oceanographic Research was terminated resulting in the loss of $75,000.00 in annual salary and approximately $43,350.00 in annual benefits, including medical insurance coverage.

36. On June 12, 2015, the Louisiana court held Plaintiff in criminal contempt, sentencing Plaintiff to 30 days confinement (suspended upon paying $7500.00) and probation for a **DEFINITIVE** period of two (2) years. (See Exhibit "G").

37. On or about June 13, 2017, Daigle sent notice to Plaintiff indicating the State of Louisiana CLOSED the case *she* instigated against Plaintiff, however, she refused to issue the statutorily mandated compliance release certificates, effectively maintaining the unlawful suspension of Plaintiff's licenses and passport privileges.

38. On July 6, 2017, the Louisiana court VACATED all orders entered against Plaintiff in the Criminal Contempt Rule, 132320-IV-D "E" LASES: 002029760-01, retrospectively to September 2, 2012, and DISMISSED the case in its entirety, releasing Plaintiff from the custody of the State of Louisiana on said date. (See Exhibit "H").

39. On February 5, 2018, the Louisiana court entered an order in the criminal contempt action finding: Plaintiff owed zero dollars in child support; the State of Louisiana was required to reinstate all Plaintiff's licenses; and the court lacked jurisdiction or authority to order the U.S. Department of State reinstate Plaintiff's passport privileges. (See Exhibit "I").

40. The orders entered by the Louisiana court on July 6, 2017 and February 5, 2018 in the criminal contempt action conclusively demonstrate the June 12, 2015 criminal conviction and sentence of Plaintiff were declared invalid by a state tribunal authorized to make such determination.

41. Despite the Louisiana court's entry of the July 6, 2017 and February 5, 2018 orders, Daigle, in absence of any objectively reasonable basis in fact or law, refused to issue Plaintiff executed compliance release certificates effectively maintaining the unlawful suspension of Plaintiff's licenses.

42. On or about February 1, 2019, Plaintiff obtained fully executed compliance release certificates from Daigle's DCFS supervisor and on February 7, 2019, the State of Louisiana reinstated Plaintiff's licenses.

43. Despite the vacatur of all adverse orders and judgment entered against Plaintiff and dismissal of all state court actions, as of the filing of this instant action Daigle has refused to take any action to return Plaintiff's property unlawfully seized between September 8, 2012 – July 6, 2017.

44. As a result of Daigle causing Plaintiff's loss of employment and medical insurance coverage, between December 2014 – December 2019, Plaintiff was forced to forego routine medical examinations.

45. On or about March 12, 2020, Plaintiff sought medical attention for unexplained swelling of left cervical lymph nodes and surrounding soft tissue.

were predicated on the same facts, evidence, and relief set forth in the UIFSA Petition, and that upon DISMISSAL of the UIFSA Petition on January 12, 2010, no future action could be commenced against Plaintiff in any court, by Glidewell and/or anyone acting on her behalf, predicated on the same facts, evidence and relief. To be clear, Daigle knew and/or should have known the doctrines of *res judicata* and *collateral estoppel* barred commencement of any of the actions taken against Plaintiff.

54. There is not another discernible case in which Daigle, acting individually or in concert with other state agents, knowingly used falsified official government records to manufacture a basis for state action to fraudulently obtain a judgment against a noncustodial parent for sums certain that were not owed, after their child support obligations had been terminated by court order, like Plaintiff.

55. The absence of any rationale basis in fact or law for the actions taken against Plaintiff decisively demonstrates Daigle singled Plaintiff out with the specific intent to extort sums certain from Plaintiff and inflict the injuries and damages done to Plaintiff.

C. The delays in commencement of this instant action are not attributable to Plaintiff.

56. As fully set out in Exhibit A ¶¶, Plaintiff aggressively pursed judicial remedies in Louisiana to obtain reversal of the criminal contempt conviction and in Alabama to have the insidious VOID April 18, 2011, Default Judgment vacated.

57. The *Rooker-Feldman* and *Younger* abstention doctrines barred commencement of this instant action until all adverse State court orders and judgments entered against Plaintiff had been vacated and the ongoing State court actions dismissed. As such, under the doctrine of *contra non valentem* the limitation period did not begin to run until June 11, 2018, when the juvenile court dismissed all ongoing inextricably intertwined cases. (See Exhibit A, ¶¶56-69).

58. On August 13, 2018, Plaintiff filed in the U.S. District Court, Southern District of Alabama, civil rights action docketed as Civil Action No. 18-00356-KD-B.

59. On November 16, 2018, Plaintiff filed in Civil Action No. 18-00356-KD-B, Second Amended Complaint (Doc. 4) specifically naming Daigle as a defendant, well within the 1 year limitations period prescribed in La. C.C.P. Art. 3492 when measured from February 8, 2018, the date on which the Louisiana court entered the last order in the criminal contempt action.

60. On September 30, 2020, Chief U.S. District Court Judge Kristi K. Dubose entered in Civil Action No. 18-00356-KD-B an order dismissing, *without prejudice*, all claims against Daigle for lack of personal jurisdiction. (Doc. 89)

61. Plaintiff would posit, under the doctrine of *equitable tolling* the limitations period for the claims asserted herein were tolled while the state and federal court actions were ongoing and because Daigle committed additional violations during the limitations period, the last of which occurring on February 1, 2019, under the *continuing violation* doctrine the limitations period did not prescribe until February 1, 2020. As such, all claims asserted herein are properly before the Court.

71. Plaintiff and his property violated Plaintiff's constitutional rights to procedural due process guaranteed by the 14th Amendment U.S. Const. and Article 1, §2 Louisiana Const.

72. By engaging in the unlawful actions and conduct set forth herein, Daigle intentionally sought to and did deprive Plaintiff of his liberty interests in his person, reputation and property, in deliberate contravention with the 14th Amendment's guarantees that no State shall deprive any person of life, liberty or property without due process of law.

73. Daigle's actions and conduct set forth herein were not the result of single misinterpretation of the law, they were deliberate and continuous violations of clearly established state and federal regulatory, statutory, and constitutional provisions over a ten (10) year period, specifically done so to deprive Plaintiff of the equal protections of the law guarantees of the 14th Amendment, U.S. Const. and Article 1, §3 Louisiana Const.

74. Daigle's deliberate violation of Plaintiff's 14th Amendment rights were the direct and proximate cause for the injuries and damages Plaintiff suffered, warranting an award for actual and compensatory damages, and because Daigle's actions and conduct were arbitrary, capricious and malicious, effectuated with the specific intent to inflict the damages and injuries done to Plaintiff and because Daigle has failed to take any action to remedy the injuries and damages done, justifies the award of punitive damages, as set forth in the Prayer for Relief.

COUNT III

§1983 VIOLATION OF 4th AMENDMENT, U.S. CONSTITUTION

(Individual Capacity)

75. Plaintiff reasserts and incorporates ¶¶1- 58 as if fully set forth herein

76. The Fourth Amendment protects "[t]he right of people to be secure in their persons ... against unreasonable ... seizures."

77. Daigle intentionally and maliciously deprived Plaintiff of his liberty rights under the Fourth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by falsifying official government records to obtain and maintain the seizure of Plaintiff and his property.

78. As a proximate and foreseeable result of Daigle's violation of Plaintiff's Fourth Amendment Rights, Plaintiff remained in the custody of State of Louisiana from on or about April 3, 2014 until on or about July 6, 2017 when all orders entered in the criminal contempt action were vacated, retrospectively to September 8, 2012.

79. Daigle's deliberate violation of Plaintiff's 4th Amendment rights were the direct and proximate cause for the injuries and damages Plaintiff suffered, for which Plaintiff is entitled to an award for actual and compensatory damages, and because Daigle's unlawful actions and conduct were arbitrary, capricious and malicious, effectuated with the intent to inflict the damages and injuries done to Plaintiff, justifies the award of punitive damages, as set forth in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Thomas T. Tunstall V, prays this Honorable Court:

A. Declare Daigle's continued deprivation of Plaintiff's possessory interest in his unlawfully seized property is violative of the 14th Amendment, U.S. Constitution and Article 1, §§2 and 3 Louisiana Constitution;

B. Enter a permanent injunction compelling Daigle, and those persons in active concert or participation with her, to take any and all actions necessary to return all of Plaintiff's property seized between September 8, 2012 – July 6, 2017;

C. Enter judgment against Daigle in her individual capacity for: (1) a minimum of $2,226,928.84 in actual damages; (2) a minimum of $2,226,928.84 in compensatory damages; (3) a minimum of $6,680,786.52 in punitive damages; (4) prejudgment interest; and

D. Grant Plaintiff such other and further relief this Court deems just and proper.

Respectfully submitted,

Thomas T. Tunstall V
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Phone: (870)499-5622
Email: thomas@thetunstallgroup.com

CERTIFICATION

I, Thomas T. Tunstall V, based on my personal knowledge declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Date: October 5, 2020

Thomas T. Tunstall V
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