No. 22-585

In the Supreme Court of the United States

HALIMA TARIFFA CULLEY, ET AL., PETITIONERS

v.

STEVEN T. MARSHALL, ATTORNEY GENERAL OF ALABAMA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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June 22, 2023

Petition for a Writ of Certiorari Filed: Dec. 20, 2022
Certiorari Granted: April 17, 2023

TABLE OF CONTENTS

APPENDIX A

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

STATE OF ALABAMA, ex rel ASHLEY M. RICH, District Attorney for the 13th Judicial Circuit of Alabama (Mobile County), Plaintiff,	* * * * * * * * * * * *	CV19-
vs.	* *	
One Sig Sauer Handgun and One Nissan Altima, Seized from TAYJON CULLEY and Titled to HALIMA TARIFFA CULLEY Respondents.	* * * * * * * *	

COMPLAINT

COMES NOW, the Plaintiff, the State of Alabama, by and through Ashley M. Rich, District Attorney for the 13th Judicial Circuit of Alabama (Mobile County), and shows the following unto this Honorable Court:

1) That this action is brought pursuant to §20-2-93 of the Code of Alabama (1975), in order to forfeit to the State of Alabama:

a) One Sig Sauer 9MM Handgun, Serial # [redacted]2891, and

b) One 2015 Nissan Altima, VIN #[redacted]8447;

2) On February 17, 2019, the above listed weapon and vehicle were seized by Officers of the Satsuma Police Department, acting within their capacity as, and in exercise of their official duties as, law enforcement officers of the City of Satsuma, while conducting a traffic stop at Interstate 65 at Exit 19 (Mile Marker 18) in Satsuma, which is within Mobile County, Alabama;

3) That said seizure was incident to the arrest of **TAYJON CULLEY**, who was found by Officers of the City of Satsuma to be in Possession of Marijuana and Possession of Drug Paraphernalia, in violation of §13A-12-213 and §13A-12-260 of the Code of Alabama (1975);

4) That **TAYJON CULLEY** was in possession of the weapon at issue at the time of the incident made the basis of this suit, and the State alleges that said weapon was used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of a controlled substance in violation of any law of this State and/or constitutes, or are derived from proceeds obtained directly, or indirectly, from violations of the laws of this State concerning controlled substances.

5) The State further alleges that **TAYJON CULLEY** was in possession of the vehicle at issue at the time of the incident made the basis of this suit, and

the State alleges that said vehicle was used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of a controlled substance in violation of any law of this State and/or constitutes, or is derived from proceeds obtained directly, or indirectly, from violations of the laws of this State concerning controlled substances.

6) On February 17, 2019, Officer Moore with the City of Satsuma Police Department stopped the Respondent **TAYJON CULLEY** for following too closely. He was operating the above referenced Nissan Altima at the time of the stop.

Upon making contact with Respondent **TAYJON CULLEY**, Officer Moore noticed that he was visibly shaking and his voice was unsteady. Officer Moore also detected the very strong odor of marijuana coming from inside the vehicle. Respondent **TAYJON CULLEY** was asked to exit the vehicle. While walking to Officer Moore's patrol car, Respondent **TAYJON CULLEY** spontaneously stated that he only had "a joint in the car."

While searching the above referenced Nissan Altima, Officer Moore found marijuana throughout the passenger compartment. He found six partially smoked hand rolled marijuana cigarettes, a clear bag of marijuana in the driver's seat, loose buds of marijuana in the cup holders and on the floor board, a glass jar containing marijuana buds and flakes in the center console, an additional bag of marijuana was found in a black jacker on the back seat. In total, Officer Moore seized approximately 21 grams (0.75 ounces) of marijuana from inside the vehicle.

The above referenced, loaded, SIG SAUER pistol along with a digital scale with marijuana flakes on it were also found inside the above referenced Nissan Altima.

Post Miranda Respondent **TAYJON CULLEY** stated that he has not had a job since he graduated from high school and that he paid for the above referenced Nissan Altima. He stated that he purchased the above referenced pistol after the car was burglarized.

7) Respondent, **HALIMA TARIFFA CULLEY**, either knew or should have known that the above listed vehicle would be used or intended to be used, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of a controlled substance in violation of any law of this State and/or Respondent **HALIMA TARIFFA CULLEY** is not the actual owner of the vehicle.

8) That said weapon and vehicle are presently in the custody of the City of Satsuma Police Department.

WHEREFORE, the premises considered, Plaintiff respectfully prays that this Honorable Court enter an order declaring said weapon and vehicle be forfeited to the State of Alabama for disposition as permitted by §20-2-93, Code of Alabama (1975). Plaintiff prays for such other and further relief as it may be deemed entitled by this Honorable Court.

Respectfully Submitted,

/s/ *Chris McDonough*
CHRIS MCDONOUGH
Assistant District Attorney
Attorney for the Plaintiff
205 Government Street
Suite C-701
Mobile, AL 36644-2701

PLEASE SERVE RESPONDENTS AS FOLLOWS:

TAYJON CULLEY	HALIMA TARIFFA CULLEY
[redacted]	[redacted]
Mobile, AL 36695	Conyers, GA 30094

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APPENDIX B

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

STATE OF ALABAMA, Plaintiff	*	
	*	CV-2019-_____
v.	*	
ROGER DAVID MAZE, and LENA SUTTON, and ONE (1) AUTOMOBILE, FICTITIOUS DEFENDANT A, and FICTITIOUS DEFENDANT B, and FICTITIOUS DEFENDANT C, and FICTITIOUS DEFENDANT D, and FICTITIOUS DEFENDANT E, DEFENDANTS	*	

COMPLAINT

The State of Alabama requests that the Court enter an order condemning and forfeiting the property described herein and as grounds for condemnation and forfeiture alleges as follows:

1. The State files this action pursuant to Ala. Code § 20-2-93 et seq.

2. On or about 2019-03-04 and/or at other times, law enforcement officers and/or other persons encountered defendant ROGER DAVID MAZE at ALABAMA HIGHWAY 68 and/or at other places in CHEROKEE County, Alabama. At the time of the encounter(s), defendant ROGER DAVID MAZE was in possession of the following contraband and other property:

> a. Contraband: TRAFFICKING MASS OF METHAMPHETAMINE and DRUG PARAPHERNALIA; and
>
> b. Vehicle(s): ONE (1) AUTOMOBILE, as more fully described in the attachments hereto; and/or

and/or Defendant(s) committed other drug crimes by use of the property which is subject-matter of this action and/or acquired said property as direct or indirect proceeds traceable to such an exchange.

3. TRAFFICKING MASS OF METHAMPHETAMINE is/are (a) controlled substance(s), the unlawful possession, sale, or manufacture of which is prohibited by Alabama law. DRUG PARAPHERNALIA also constitutes contraband under relevant provisions of law.

4. The vehicles, currency, electronic items, firearms and/or other items described above constitute or constituted:

> a. Raw materials, products or equipment of any kind which are used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting

any controlled substance in violation of any law of this state; or

b. Property which is or was used as a container for controlled substances which have been grown, manufactured, distributed, dispensed or acquired in violation of any law of this state or for property described in Subparagraph (a) above; or

c. Moneys, negotiable instruments, securities or other things of value furnished by any person in exchange for a controlled substance in violation of any law of this state, or proceeds traceable to such an exchange; or moneys, negotiable instruments or securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances; or

d. (A) conveyance(s) used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt possession or concealment of any property constituting controlled substances which were or were to be grown, manufactured, distributed, dispensed or acquired in violation of any law of this state, or raw materials, products and equipment of any kind which were or were to be used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting any controlled substance in violation of any law of this state; or

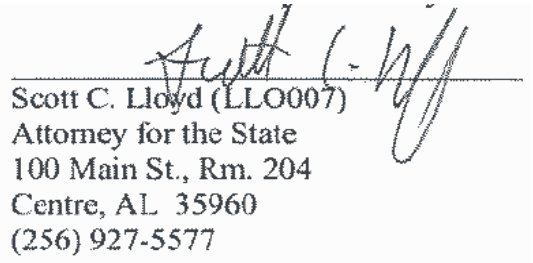
e. Property constituting or derived from any proceeds obtained directly or indirectly from any violation of any law of this state concerning controlled substances or was used or intended to be used to facilitate any violation of any law of this state regarding controlled substances

and as such is subject to condemnation and forfeiture pursuant to Ala. Code § 20-2-93.

5. Defendant(s) ROGER DAVID MAZE and/or LENA SUTTON is/are the owner(s), registered owner(s), apparent owner(s), partial owner(s), or possessor(s) of the property made subject matter of this action or a portion thereof.

6. FICTITIOUS DEFENDANT A, FICTITIOUS DEFENDANT B, FICTITIOUS DEFENDANT C, FICTITIOUS DEFENDANT D, and FICTITIOUS DEFENDANT E are other persons or entities who hold or might claim ownership, possessory, security, lienholder or other interests in the property that is made subject-matter of this action.

WHEREFORE, the State requests that the Court enter an order in the nature of a declaratory judgment finding that the property described above is contraband and forfeiting said property for destruction, for law enforcement use or to be sold as provided by law.



Scott C. Lloyd (LLO007)
Attorney for the State
100 Main St., Rm. 204
Centre, AL 35960
(256) 927-5577

FORFEITURE REQUEST FORM AND AFFIDAVIT

From: Investigator Jamie Chatman	**Agency**: Leesburg Police Department	**Date of Forfeiture request**: 03-04-2019
Perpetrator of Drug Crime: ROGER DAVID MAZE	**Perpetrator's Address**: [redacted]ARAB ALABAMA 35016	**Date of Drug Crime**: 02-20-2019
Date of Seizure: 02-20-2019	**Location of Drug Crime**: HIGHWAY 68, LEESBURG, AL	**Location of Seizure**: HIGHWAY 68, leesburg al 35983
Contraband involved (substances, paraphernalia, lab equipment, etc.): Quantity of Methamphetamine (120.7 grams)	**Other Useful Information**: HAVE HAD A KNOWN PAST OF DRUG CRIMES. HAD A HIGH QUANTITY OF METHAMPHETAMINE. OWNER OF THE VEHICLE STATED SHE KNEW THE DRIVER HAD A DRUG PROBLEM.	

I. Vehicle(s)

Vehicle	Manufacturer	Model / Year	Description
A	CHEVY	2012	4 DOOR RED
B			
C			
D			
E			
F			

Serial Number	Registered Owner and Complete Address	Lien holders and Complete Addresses	Evidence This Item Constitutes Proceeds or Instrumental-ities of Drug Crime
1G1JE6 SB5C41 70447	LENA SUTTON, [redacted] HANCE-VILLE	LENA SUTTON, [redacted] HANCE-VILLE	TRAFFICK-ING METHAM-PHETAMINE

II. Electronic Items

Elec. Item	Manufacturer	Model	Description
A			
B			
C			
D			
E			
F			

Serial Number	Owner: (If Unknown, type "Unknown")	Lien holder(s): (If none found, type "none found")	Evidence This Item Constitutes Proceeds or Instrumentalities of Drug Crime

III. Firearms

Firearm	Manufacturer	Model	Description
A			
B			
C			
D			
E			
F			

Serial Number	Owner: (If Unknown, type "Unknown")	Lien holder(s): (If none found, type "none found")	Evidence This Item Constitutes Proceeds or Instrumentalities of Drug Crime

IV. Currency

Amount of Currency:	Name and Address of Apparent Owner or any Known or Expected Claimants:	Where Found	Evidence this Currency Constitutes Fruits or Instrumentalities of Drug Crime:
$			

V. Real Estate

Parcel	Owner and Complete Mailing Address	Street Address of Property	Lien holders and Complete Mailing Address	Evidence this Currency Constitutes Fruits or Instrumentalities of Drug Crime:
A				
B				
C				

ON 02/20/2019, I OFFICER BUTLER WAS TRAVELING ON HIGHWAY 68 WHEN A RED VEHICLE WAS TRAVELING AT A HIGH RATE OF SPEED. I CONDUCTED MY TRAFFIC STOP AT HOPKINS STREET I SPOKE TO THE DRIVER ABOUT THE VIOLATION. THE DRIVER WAS

IDENTIFIED AS ROGER MAZE AND THE PASSENGER WAS TRACY WALKER. WHILE SPEAKING TO ROGER I OBSERVED TRACY REACHING BETWEEN HIS LEGS I ASK TRACY TO KEEP HIS HANDS SO I COULD SEE THEM. I ASK ROGER WAS THERE ANY WEAPONS IN THE VEHICLE HE STATED NO. DISPATCHED ADVISED ME THAT TRACY HAD A WARRANT. SERGEANT KELLEY ASSISTED ME ON THE TRAFFIC STOP WHILE SPEAKING TO SERGEANT KELLY I NOTICED TRACY WAS REACHING IN THE PASSENGER FLOOR BOARD. I ASK TRACY WHAT HE WAS REACHING FOR HE STATED NOTHING. I ASK TRACY WOULD HE STEP OUT OF THE VEHICLE HE SAID SURE. I PATTED TRACY DOWN FOR OFFICERS SAFETY I ASK TRACY WAS THERE ANYTHING ILLEGAL IN THE VEHICLE. HE SAID HE DIDN'T NO I EXPLAIN TO TRACY WHY I ASK HIM OUT OF THE VEHICLE WAS HE WOULD NOT KEEP HIS HANDS IN PLAIN VIEW. I ASK ROGER WOULD HE MIND STEPPING OUT OF THE VEHICLE AND TO REAR FOR OFFICER'S SAFETY AND HIS TO AVOID TRAFFIC. HE STATED SURE I PATTED ROGER DOWN FOR OFFICER SAFETY ROGER STATED HE HAD A POCKET KNIFE IN HIS RIGHT POCKET. I SECURED THE KNIFE WHILE BRUSHING OVER THE WAIST LINE TO THE LEFT PANTS [POCKET THERE WAS A BAGGIE HANGING OUT OF THE POCKET I ASK WHAT WAS THE PLASTIC HANGING OUT OF HIS POCKED ROGER STATED METH. I PLACED TRACY AND ROGER INTO CUSTODY SERGEANT KELLY AND I DID A INVENTORY ON

THE VEHICLE IN THE GLOVE BOX OF THE VEHICLE WAS OBJECT THAT WAS BLACK TAPED AT THE END OF THE OBJECT THERE WAS PLASTIC PIECE STICKING OUT. SERGEANT KELLEY UNWRAPPED THE OBJECT THERE WAS A VACUUM SEALED BAG INSIDE THE SEALED BAG WAS A ZIPLOC BAG CONTAINING CRYSTAL LIKE SUBSTANCE. THAT FIELD TESTED POSITIVE FOR METHAMPHETAMINE. SERGEANT KELLEY ASK WHO'S DID THE CRYSTAL LIKE SUBSTANCE BELONING TO. ROGER AND TRACY STATED THEY DID NOT NO. DUE TO THE LARGE AMOUNT OF METHAMPHETAMINE IN THE VEHICLE BOTH TRACY AND ROGER HAD ACCESS TO THE ILLEGAL NARCOTIC AT ANY POINT AND TIME. TRACY AND ROGER WAS PLACED IN THE BACK OF MY PATROL VEHICLE AND TRANSPORTED TO CHEROKEE COUNTY JAIL. WHERE THEY WAS BOOKED IN WITHOUT INJURIES. THE EVIDENCE WAS LOGGED IN AND PLACED IN LOCKER # 3. THE VEHICLE WAS TOWED TO LEESBURG IMPOUND LOT.

V. Compliance with "Miscellaneous" Requirements of the Circuit Court

I hereby request that forfeiture proceedings be instituted against the above-described property. I certify that the facts asserted above are true and correct to the best of my knowledge, information and belief. The vehicles, currency, electronic items, firearms and/or other items described above constitute or constituted:

a. Raw materials, products or equipment of any kind which are used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting any controlled substance in violation of any law of this state; or

b. Property which is or was used as a container for controlled substances which have been grown, manufactured, distributed, dispensed or acquired in violation of any law of this state or for property described in Subparagraph (a) above; or

c. Moneys, negotiable instruments, securities or other things of value furnished by any person in exchange for a controlled substance in violation of any law of this state, or proceeds traceable to such an exchange; or moneys, negotiable instruments or securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances; or

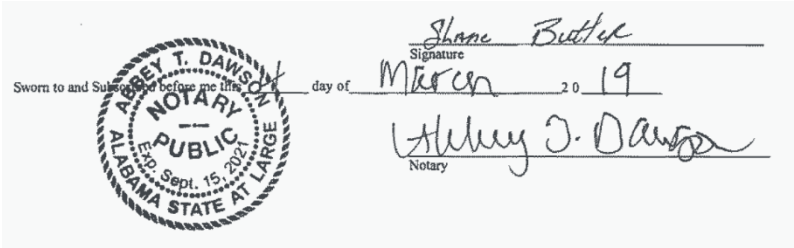
d. (A) conveyance(s) used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt possession or concealment of any property constituting controlled substances which were or were to be grown, manufactured, distributed, dispensed or acquired in violation of any law of this state, or raw materials, products and equipment of any kind which were or were to be used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting any controlled substance in violation of any law of this state; or

e. Property constituting or derived from any proceeds obtained directly or indirectly from

> any violation of any law of this state concerning controlled substances or was used or intended to be used to facilitate any violation of any law of this state regarding controlled substances

and as such is subject to condemnation and forfeiture pursuant to Ala. Code § 20-2-93.

I have searched relevant Department of Revenue Records and/or Probate Court records for the existence of liens against the property listed. Unless there are lienholders specifically enumerated herein, there were no lienholders found to the subject-matter of this action.



APPENDIX C

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

STATE OF ALABAMA, Plaintiff	)	
v.	)	CV-2019-900034
ROGER DAVID MAZE, et al. Defendants	)	

DEFAULT DECLARATORY JUDGMENT

This action came on the motion of the plaintiff for a default judgment against Defendant(s)

a. ROGER DAVID MAZE;

b. LENA SUTTON;

pursuant to Rule 55 of the Alabama Rules of Civil Procedure, and the defendant having been duly served with summons and complaint and not being an infant or an unrepresented incompetent person and having failed to plead or otherwise defend, and default having been duly entered and the defendant having taken no proceedings since such default was entered,

IT IS ORDERED AND ADJUDGED that the interest(s) of defendant(s)

a. ROGER DAVID MAZE;

b. LENA SUTTON;

if any, in the following property:

a. Vehicle(s): One 2012 CHEVROLET , VIN 1G1JE6SB5C4170447;

which is the subject of this action is/are hereby condemned and forfeited pursuant to Ala. Code § 20-2-93 to the TOWN OF LEESBURG FOR THE LEESBURG POLICE DEPARTMENT for official use or sale or to be destroyed as provided by law. Said property is hereby declared contraband.

The clerk shall issue a cost bill to the attorney for the State and said costs shall be paid from the proceeds of this forfeiture. If there is not currency forfeited hereunder that is sufficient to pay the costs, then property forfeited hereunder other than firearms shall be sold at auction until there have been generated sufficient funds to pay the costs or all property other than firearms has been sold. Alternatively, if the agency to which property has been forfeited hereunder wishes to retain said property for official use, it may pay the costs from its operating funds. All sales and payments ordered in this paragraph shall be made with reasonable promptness.

Done on this the 1st day of May, 2019.

Jonathan Lee
Circuit Judge

cc: Scott Lloyd, Attorney for the State

APPENDIX D

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

STATE OF ALABAMA Plaintiff, v. ROGER DAVID MAZE, et al Defendants.	**CIVIL ACTION NO. CV: 2019-9000034**

MOTION TO SET ASIDE DEFAULT JUDGMENT

1. I am Lena Hulsey Sutton, named as one of the defendants in this case.

2. I own the automobile that is also listed as a defendant in this case.

3. I have committed no crime, but the police took my automobile and this lawsuit is trying to make me forfeit my automobile.

4. I have not even been charged with a crime. When the police took my automobile, I was at home and my automobile was being driven by someone else.

5. My automobile was being driven to the car parts store to get supplies to change the oil for the car.

6. I understand that a motion was filed seeking a default judgment against me and my automobile, although I never received a copy of it.

7. After this lawsuit was filed, I was in fear for my life due to a domestic situation, and my address was temporary only. During the time that the lawsuit was pending, I moved to my present address in Prattville, Alabama. To make matters worse, my telephone was broken and I could not talk to anyone trying to help me when the State of Alabama was seeking the default. I have not received a copy of any of the lawsuit pleadings after being served with the summons and complaint, but have only become aware of those recently through another party. I wish to answer the lawsuit with the same things I am saying in this motion to set aside the default judgment. Under Court Rule 55, the default may be set aside since this Motion has been filed within 30 days.

8. I do not think it is right, or fair, or legal that the police can take my automobile, when I have not ever been charged with a crime, nor have I committed a crime. My automobile was not used by me to commit a crime, and I think it is unconstitutional and an excessive fine or punishment to seize my property, when I have not even been charged with anything for which I can be fined or punished.

9. My new address is [redacted] Prattville, Alabama, 36067.

Lena Hulsey Sutton

LENA HULSEY SUTTON

FILED

MAY 0 1 2019

CIRCUIT CLERK, CHEROKEE COUNTY, AL

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

LENA SUTTON, on behalf of herself and those similarly situated as described below,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION NO.: _____**
STEVE MARSHALL in his official capacity as the Attorney General of the State of Alabama,	)	
Defendant.	)	

CLASS ACTION COMPLAINT

Plaintiff Lena Sutton states the following as to her Complaint against Steve Marshall, in his official

capacity as the Attorney General of the State of Alabama[1]:

I. PARTIES

1. Lena Sutton is over the age of nineteen (19), and is a resident of Autauga County, Alabama. At the time of the incident made the basis of this action, she was living in Cherokee County, Alabama.

2. Defendant Steve Marshall in his official capacity as the Attorney General of the State of Alabama is the chief law enforcement officer of the State of Alabama, subject to suit for prospective injunctive relief under 42 U.S.C. §1983. Seminole Tribe of Fla. V. Fla., 517 U.S. 44, 73 (1995).

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this case under 28 U.S.C. § 1331, Federal Question jurisdiction, because the case is a civil rights lawsuit brought pursuant to 47 U.S.C. § 1983, for violation of the Due Process clause of the Fourteenth Amendment to the United States Constitution.

4. Part of the relief requested herein is an injunction enjoining unconstitutional state action. The law allows a § 1983 action to go forward against a state action to enjoin unconstitutional activity.

5. Actions brought under 42 U.S.C. § 1983 to enjoin state courts are not prohibited by the anti-injunction statute, 28 U.S.C. § 2283, because they are an "expressly authorized" exception to the ban on

[1] When "State of Alabama," "the State," "State" are used herein, Mr. Marshall, in his official capacity, is included in the reference.

federal injunction of state court proceedings. Mitcham v. Foster, 497 U.S. 225 (1972).

III. BACKGROUND AND INTRODUCTION

A. Alabama's Civil Forfeiture Statute.

6. The Alabama Uniform Controlled Substance Act, Ala. Code 20-2-1 (1975), *et. seq.*, contains a section providing for the forfeiture, not only of controlled substances, but of , "all monies … intended to be furnished by any person in exchange for a controlled substance … [or] used or intended to be used to facilitate any violation of any law of this section concerning controlled substances …" Ala. § 20-2-93 (1975). ("The Civil Forfeiture Act") In addition to the forfeiture of property or cash connected to a transaction involving controlled substances, the Civil Forfeiture Act provides for the forfeiture of vehicles or conveyances used or intended to be used to transport, or in any way facilitate, a transaction in violation of the Controlled Substances Act, Ala, Code § 20-2-93 (1975).

7. The Civil Forfeiture Act provides for the seizure of property used or intended to be used in the commission of violations of the Controlled Substances Act "upon process issued by any court having jurisdiction over the property." Ala. Code § 20-2-93(b)(1975). The Act, however, provides that property may be seized without process if the seizure is incident to an arrest or a search under a search warrant or an inspection, … the property has been the subject of a prior judgment in favor of the state for a criminal injunction … [there is] probable cause to believe that the property is … dangerous, or probably cause to believe that the property was used or is intended to be used in violation of the Alabama Controlled Substances Act. Ala. Code § 20-2-93(b).

8. The Civil Forfeiture Act states that seized property is not even subject to a replevin action, but "is deemed to be in the custody of the state, county, or municipal law enforcement agency subject only to orders and judgment of the court having jurisdiction over the forfeiture proceedings." Ala. Code § 20-2-93(d). In other words, those who have had their property seized have no access to their property, or ability to replevin or re-acquire their property, other than to defend an action brought against them through the civil litigation process, which could take months while the defendants have been deprived of their property.

9. Not only is property seized without any process, but it, as is this case with the named plaintiff, the owner of the property was not the subject of the arrest. The statute puts the burden on the unafflicted person to prove he or she had no connection to the crime. The statute states, "An owners' or bona fide lienholders' in any type of property other than real property and fixtures shall be forfeited under this section until the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use." Ala. Code. 20-2-93(h). In short, there is a seizure, and in order for one not even charged with a crime to get his or her property back, the burden is placed on the property owner to prove he or she had no involvement.

10. While statistics of the actual amounts seized, statewide, are not readily available; in 2014, in fourteen counties according to the Southern Poverty Law

Center, the courts awarded over $2,100,000 in cash to various law enforcement agencies, along with 405 weapons and 119 vehicles, which were presumably sold, and the monies sent to the general fund of the jurisdictions of award.

11. In approximately 25% of the 2014 civil forfeiture cases studied by the Southern Poverty Law Center, criminal charges were not brought against the owner of the property.

12. The money collection in civil forfeiture actions in Alabama, per the statute, are awarded by order of the court, "and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which respective agency or department contributed to the police work resulting in the seizure." Ala. Code § 20-2-93(e)(2).

13. The result of the forfeiture and the divvying up of the proceeds for civil forfeiture actions is that the law enforcement entities in charge of the forfeiture actions have a direct financial stake in the civil forfeiture action. The state district attorneys' offices often take a percentage of the money awarded in civil forfeiture actions they bring, and the study cited above reports that 42% of the proceeds from civil forfeitures went to police departments. This is "policing for profit," where police personnel are incentivized to

seize property, knowing much of it will be forfeited on default, because it ends up in the department's coffers.

14. All of this is done with no process whatsoever upon seizure, and without any requirement that the owner of the property be convicted or even charged with a crime.

15. The State need not prove the owner used the property in the commission of a crime to seize property; or that the owner was convicted of a crime; or that the owner is even charged with a crime. The property is seized immediately, and subject to the grist of the civil forfeiture action mill.

16. A system has been created whereby the State of Alabama, and its local and municipal agents doing the policing, seizes property, and the only process undertaken is the institution of a civil forfeiture action against the property and its owners.

17. The only recourse one who's property has been seized is to defend that civil action. However, even if successful in defending that civil action, the following are true: (1) the Plaintiff Class members are deprived of their property during the pendency of the action; (2) in order to successfully defend the civil forfeiture action, the Plaintiff Class has to hire counsel and pay counsel to recover assets taken from them in the initial seizure; and (3) those assets are originally seized without any process.

18. The practices have been held to be subject to scrutiny under the 4th, 8th and 14th Amendments to the Constitution, and failing to meet basic standards of due process.

IV. FACTS OF THE CASE

19. In the spring of 2019, Plaintiff Lena Sutton was separated from her spouse and found herself having to find a new place to live.

21. Her funds were limited due to her domestic situation, and she ended up relying on a friend, Roger David Mize, for a place to stay, temporarily, until she could get herself back on her feet.

22. On or about February 20, 2018, Ms. Sutton told Mr. Mize that her car needed an oil change. Mr. Mize told Ms. Sutton that he could do it. Ms. Sutton agreed, and Mr. Mize took her car, a 2012 Chevrolet, to get the necessary supplies to perform the oil change.

23. Either on the way to or back from the auto parts store, Mr. Mize picked up Tracy Walker. Mr. Mize was pulled over by the Leesburg Police Department for speeding.

24. During the traffic stop, Mr. Mize and the vehicle were searched, and a trafficking sized amount of methamphetamine was discovered.

25. Mr. Mize and Ms. Walker were arrested and charged with trafficking in a controlled substance.

26. Ms. Sutton did not know that Mr. Mize had methamphetamine on his person while making the trip, and had no knowledge of any of his actions regarding methamphetamine.

27. Ms. Sutton has not been charged with any crime.

28. Ms. Sutton has not been charged with a crime, but her vehicle was seized on the day of Mr. Mize's arrest. She has not had her vehicle since February 20, 2019.

29. Not only has Ms. Sutton been deprived of her vehicle, but she has been given no opportunity to present any case that she did not know her vehicle was going to be used in connection with drug trafficking.

30. Under Alabama's Civil forfeiture statute, Ms. Sutton's only chance to redeem her vehicle is to contest the forfeiture action and to retain her property, she has to prove, under Ala. Code § 20-2-93, that she had no knowledge of the crime, and could not have prevented the crime. However, she is not versed in the law, and even if she were to prevail, she would pay legal fees to get back a car taken from her without any proof of her knowledge of its use in a crime.

V. CLASS ALLEGATIONS

31. Class Definition: Pursuant to Fed.R.Civ.P. 23(a), (b)(1), and (b)(2), Plaintiff brings this action on behalf of herself and all others similarly situated, as members of the proposed Plaintiff Class.

32. Numerosity: The members of each class and subclass are so numerous that their individual joinder would be impracticable in that: (a) the Class includes at least hundreds of individual members; (b) the precise number of Class members and their identities are unknown to Plaintiffs, but are available through public records, and can easily be determined through discovery; (c) it would be impractical and a waste of judicial resources for each of the at least hundreds of individual class members to be individually represented in separate actions; and (d) it is not economically feasible for those class members to file individual actions.

33. Commonality/Predominance: Common questions of law and fact predominate over any questions affecting only individual class members. These

common legal and factual questions include, but are not limited to, the following:

a. Whether ex parte seizures of property, without a prompt hearing, are violations of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

b. Whether it is a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution for the State and its local law enforcement agents to prosecute civil forfeiture actions when they have a direct stake in the outcome of those cases.

c. Whether it is a violation of the 4th and 8th Amendments, and Due Process Clause of the Fourteenth Amendment of the United States Constitution for property to be seized without providing a prompt hearing at which time the State and its local law enforcement agents must show some exigency for the seizure of property.

d. Whether it is a violation of the 4th, 8th, and 14th Amendments to seize the property of one who has not been charged with a crime, and force them, under Ala. Code. § 20-2-93(h) to prove they did not have knowledge of the crime, and could not have prevented the crime.

e. Whether Ala. Code § 20-2-93(1975), is unconstitutional because it does not provide for a meaningful, prompt hearing after property has been seized, and only calls

for the litigation of a civil forfeiture under the ordinary Rules of Civil Procedure.

f. Whether it is a violation of the 8th Amendment's prohibition against excessive fines for the state to seize the property of someone not even charged with a crime.

34. Typicality: Plaintiff is typical of the claims of the class members. Plaintiff and all class members have been injured by the same wrongful practices. Plaintiff's claim arises out of the same practices and course of conduct that give rise to the claims of the class, and are based on the same legal theories for the class.

35. Adequacy: Plaintiff will fully and adequately assert and protect the interests of the class. Plaintiff has counsel experienced in class actions and complex mass tort litigation. Neither Plaintiff nor counsel have interests contrary to or conflicting with the interests of the class or subclasses.

36. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is large, the individual damage suffered by each, in many cases is too small to warrant the expense of individual lawsuits. The court system would be unreasonably burdened by the number of cases that would be filed it as a class action if not certified.

37. Plaintiff does not anticipate any difficulties in the management of this litigation management of this litigation.

38. The State and its local law enforcement agents have acted on grounds generally noticeable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole proper.

COUNT I

(Failing to Provide Notice and a Meaningful Hearing at a Meaningful Time Violates Fourth Amendment and the Due Process Claims of the Fourteenth Amendment)

39. Plaintiff incorporates by reference, as if set forth fully herein paragraphs 1-38 above.

40. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of Constitutional rights by one acting under color of state law the right to bring a civil action to vindicate those rights.

41. Under the practices of the State of Alabama as executed by Attorney General Marshall, Ms. Sutton and the Class Members first learn that their property is threatened when their property is seized during an arrest.

42. The State and its agent local and municipal law enforcement agents thereby have seized the property of Ms. Sutton and the Class members with no meaningful opportunity to be heard.

43. It is the policy and practice of local and state law enforcement to seize property without providing any evidence that the property must be preserved for civil forfeiture, or that providing notice will jeopardize the ability of law enforcement to effectuate civil forfeiture.

44. It is the policy and practice of the State and its local and municipal law enforcement agents to

seize personal and real property without proffering any particular evidence of exigent circumstances as required by U.S. v. James Daniel Good Real Property, 510 U.S. 43 (1993).

45. Indeed, in order for a seizure to pass due process muster, there must be an "extraordinary situation [] where some valid governmental interest is at stake that justifies postponing the hearing until after the event." James Daniel Good Real Property, 510 U.S. at 53.

46. In the case of Ms. Sutton, there is no governmental interest in her automobile that would outweigh her own interest in having her car.

47. It is the policy of the State of Alabama and its agents to seize vehicles, cash, real property, and any other property, ex parte without proffering any evidence, without any notice of hearing, and without any evidence that a temporary restraining order restricting transfer of the property or other less restrictive means would be insufficient to protect the State's interest during the pendency of a civil forfeiture proceeding.

48. The policy of seizing property first without providing a meaningful opportunity to be heard violates the Furth Amendment, as an illegal search, and Due Process Clause of the Fourteenth Amendment.

49. As a direct and proximate result the actions of the State, pursuant to the Alabama Civil Forfeiture Act, Plaintiff Sutton and the members of the plaintiff class have suffered irreparable injury to their constitutional rights, including the harshness of being deprived of the sole means of transportation.

50. Declaratory and injunctive relief, as outlined below, is necessary to remedy the seizure of Plaintiffs', and Plaintiff Class's, property without notice or a hearing. Without appropriate declaratory and injunctive relief, the State is unconstitutional policies and practice will continue.

COUNT II

(Failing to Provide an Adequate, Prompt, Post-Deprivation Hearing Violates the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment)

51. Plaintiff incorporates by reference, as if fully set forth herein, paragraphs 1-50 above.

52. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of Constitutional rights by one acting under color of state law the right to bring a civil action to vindicate those rights.

53. After seizing or restraining property, the State and its agents have failed to provide Plaintiffs and the Class with a prompt hearing at which they would be able to challenge, before a neutral arbiter, the basis for the seizure, and/or indefinite retention of their property, particularly without ever being charged with a crime, pending alternate determination on the merits of whether the property should be forfeited.

54. For all practical purposes, the State effects a temporary restraining order as to the property without meeting the elements required for a temporary restraining order: i.e., a clear pleading showing that irreparable harm will result to the State if the ex parte seizure is not effectuated; a likelihood of success on the merits; and the posting of security.

55. This action continues, and will continue, unless this Court grants the relief requested.

56. The State has a policy and practice of seizing property indefinitely for civil forfeiture when it knowns, or should know, that there is no meaningful opportunity to contest the seizure at a meaningful time before an ultimate hearing on the merits of the forfeiture, which usually takes months.

57. The State knows, or should know, that the costs associated with defending a civil forfeiture action, which could take months, often outweighs the value of the property seized, and yet does nothing to provide a meaningful hearing at a meaningful time after seizure.

58. The State's policy of initiating civil forfeiture proceedings against seized or restrained property where it knows or should reasonably know that there is no meaningful opportunity to contest the seizure or restraint at a meaningful time before the ultimate hearing on the merits of the forfeiture is violation of the Fourth Amendment as an illegal seizure, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

59. The process afforded defendants in civil forfeiture proceedings does not provide a meaningful means to contest the deprivation of property at a meaningful time. Even if a civil forfeiture action is filed within weeks of the ex parte deprivation of property, civil forfeiture litigation then takes months to conclude, all the while depriving defendants, many of whom are not ever charged with a crime, not to mention convicted, of their property, and making it unsalable in the meantime.

60. As a direct and proximate result of the actions of the State, through Attorney General Marshall and its local and municipal law enforcement agents, Plaintiff and the plaintive Class have suffered irreparable harm to their constitutional rights, including being deprived of their property without notice or an opportunity to be heard.

61. Declaratory and injunctive relief is necessary. Without appropriate declaratory and injunctive relief, the State's unconstitutional policies and practices will continue.

COUNT III

(Having Local Law Enforcement Agencies Prosecuting Civil Forfeiture Proceedings Violates the Due Process Clause of the Fourteenth Amendment)

62. Plaintiff incorporates by reference, as if set forth fully herein, paragraphs 1-61 above.

63. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of Constitutional rights by one acting under color of state law the right to bring a civil action to vindicate those rights.

64. The State, through Attorney General Marshall, and its local law enforcement agents, directly prosecutes civil forfeiture actions, including making determinations whether to seize property and file the action at all, and making default determinations.

65. The State and its local agents have a direct financial interest in the proceedings because the bounty of civil forfeiture actions fund law enforcement at the State and local level. This is a violation of substantive Due Process under the Fourteenth Amendment to the United States Constitution.

66. Declaratory and injunctive relief is necessary to correct the State and its local agents' unconstitutional conduct of having those with a direct financial interest in the outcome of the proceedings prosecute those proceedings. Without appropriate declaratory and injunctive relief, the state's unconstitutional policies and practices will continue.

COUNT IV

(Violation of the 8th Amendment's Prohibition Against Excessive Fines)

67. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of constitutional rights by one acting under color of state law the right to bring a civil action to undercut those rights.

68. Ms. Sutton and the Class members who were not charged with a crime have had their property seized and retained without due process.

69. They have been fined by the State in two ways: (1) their property has been seized, so even if they are able to get this property back through the civil forfeiture action, they have been deprived of their property in the meantime; and (2) they have to hire legal counsel and pay to prove they had no connection to the crime.

70. Since Ms. Sutton and the Plaintiff Class have not ever been charged with a crime, this forfeiture, even if brief, is by definition excessive under the 8th Amendment to the Constitution of the United States.

71. Declaratory and injunctive relief, as outlined below, is necessary to remedy the seizure and Plaintiff and Plaintiff Class's property without being charged with a crime. Without appropriate declaratory and

injunctive relief, the Stat's unconstitutional practices will continue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests, on behalf of herself and all others similarly situated, the following relief:

1. An order certifying this action as a class action under Fed.R.Civ.P. 23(b)(2);
2. Entry of judgment declaring the following unconstitutional under the Due Process clause of the Fourteenth Amendment.
    a. The practice of the State and its local law enforcement agents seizing real and personal property, and cash, without any evidence of exigent circumstances or necessity;
    b. The State and its local law enforcement agents' practice of targeting the presence of drugs alone as an exigent circumstance;
    c. The State and its local law enforcement agents' policy and practice of failing to provide adequate and prompt post-deprivation hearings to individuals whose property has been seized and retained;
    d. The State and its local law enforcement agents' practice of retaining all seized property and its proceeds;
    e. The States and its' local law enforcement agents' policy and practice of having those with a direct financial

interest in the outcome of civil forfeiture proceedings control these proceedings.

3. For entry of judgment declaring the State liable for the above-described unconstitutional practices and policies.
4. For entry of preliminary and permanent injunctions prohibiting the State from engaging in the above-described policies and practices.
5. For entry of judgment declaring Ala. Code § 20-2-93(b) and (c) (1975) unconstitutional, to the extent they foreclose a meaningful hearing at a meaningful time relative to the seizure of property.
6. For entry of judgment declaring Ala. Code § 20-2-83(h) unconstitutional to the extent they require owners of seized property to prove they had no connection to the crime in order to have their property returned to them.
7. For entry of judgment requiring the State and its local law enforcement agents to:
   a. dismiss the civil forfeiture action against named Plaintiff Lena Sutton;
   b. restitution in the form of the return of all property seized from the named Plaintiff and all Class Members
   c. dismiss all civil forfeiture actions brought against all Class Members.
8. An award of attorneys' fees, costs, and expenses of this action pursuant to 42 U.S.C. §1988(b).

JURY DEMAND

Plaintiff demands a trial by struck jury on all issues so triable.

/s/ Brian M. Clark
Brian M. Clark (asb-5319-r78b)
Attorney for Plaintiff

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APPENDIX F

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

STATE OF ALABAMA,	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
	)	**NO.: CV-2019-**
v.	)	**900034**
	)	
ROGER DAVID MAZE, LENA SUTTON, et al.,	)	
	)	
	)	
Defendants.	)	

AFFIDAVIT OF LENA SUTTON

My name is Lena Sutton, aka Lena Hulsey. I am over the age of nineteen (19), a resident of Autauga County, Alabama, and make this affidavit is based upon my personal knowledge of the facts stated herein.

1. On or about February 21, 2019, I was separated from my spouse. I was temporarily staying with Roger Maze, whose mother I had known for many years and whom I highly respected. I mentioned to Mr. Maze that my car needed an oil change, and Roger Maze and his friend Tracy Walker offered to drive my car to the auto parts store to get supplies for an oil change as a favor to me.

2. I learned that Roger and Tracy were arrested on that day in my car when they did not return with the car.

3. The next day, February 22, 2019, I called the only number to the Leesburg police I could find, which was dispatch. I spoke with a lady who took my message. I did not receive a return telephone call, and I then spoke with a male officer later after I still had not received a return phone call by the following Monday. I traded phone messages with the Leesburg Police Department on Monday, February 25, and Tuesday, February 26.

4. When I was finally able to get in touch with someone who could discuss my car with me on Tuesday, February 26, Officer Butler of the Leesburg Police Department immediately began berating me, asking me why it took so long to get in touch with them. I explained the difficulty I had reaching them, and he asked if I knew about the criminal background of the two parties. I told him I did not. He asked again, so you don't know about their past? I told him that we all had a past, but I thought they were just helping me out since I had been going through some personal issues. I told him that I knew they were arrested for trafficking.

5. Office Butler asked me if I knew what was in the car. I told him that my personal belongings were in the car, but I did not know anything else.

6. Office Butler told me that if he believed my story he would give the car back, but he did not believe me. I had no knowledge that any drugs were in the car, or that the car was in any way connected with drug activity or any illegal activity.

7. After multiple telephone conversations with Officer Butler, he attempted to get me to come to Leesburg to meet with him. Since I had no car, I could not meet with him, and I informed him by text message that I was unable to find a ride to Leesburg.

8. In addition, I told officer Butler via text message that I had missed appointments due to my vehicle being held by them, and that I needed it back.

9. Finally, I advised Officer Butler via text message that an attorney advised me not to meet with him on Saturday, March 2, at 5:00 p.m. unless my vehicle was released. My attorney at that time was Paul Holland, of Decatur Alabama. – In addition, I notified Officer Butler that I would be contacting the department daily until my vehicle was released. My vehicle remains in the custody of the Leesburg Police Department.

10. Being without a car has been a tremendous hardship to me. I have been receiving mental health medical treatment, and with my car not available, I missed several appointments. In addition, Officer Butler told me that he knew I was received mental health medical treatment, because he saw my medical records in the car.

11. In addition to missing my mental health medical appointments, I have been unable to arrange job interviews because I have no transportation. So as of now, I cannot begin to work again.

12. In addition to my car being taken, the contents of the car have also not been returned to me. Those contents contain my medical records, or some of them, along with my W-2, which has preventing me from filing my taxes.

13. After the city of Leesburg police took my car, it added stress to my already stressful situation. In late March, I was in Cullman at Wellstone Mental Health all week.

13. Because I had no car and could not work, I had no income, and bills were piling up. One of the bills that went unpaid was my cell phone bill, which kept me from receiving or sending communications related to the civil asset forfeiture lawsuit that was filed against me for a significant period of time until I could manage to get it restored. This made it very difficult for me to do the things necessary to participate in that action, and is why I was unable to file a response until May 1, 2019.

I hereby state that the above is true and accurate to the best of my knowledge.

Lena Hulsey Sutton

Lena Hulsey Sutton

June 24, 2019

Date

STATE OF ALABAMA)

COUNTY OF Cullman)

Before me, the undersigned, a Notary Public in and for said county in the same state, hereby certifies **LENA SUTTON**, whose name is signed to the foregoing, who is known to me and acknowlegded before me on this day that she has been informed of the contents above and foregoing and has executed same voluntarily as such on the day the same bears date.

Witness my hand and official seal on this the 24 day of June, 2019.

Angela Bone
NOTARY PUBLIC
My commission expires: _____

[Affix Seal]

ANGELA BONE
MY COMMISSION EXPIRES 10/28/2019

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA MOBILE DIVISION

HALIMA TARIFFA CULLEY, on behalf of herself and those similarly situated as described below,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION NO.:**
STEVE MARSHALL, in his official capability as the Attorney General of the State of Alabama; ASHLEY RICH, in her official capacity as the District Attorney of the 13th Judicial Circuit of Alabama (Mobile County); and the CITY OF SATSUMA, ALABAMA,	)	
Defendants.	)	

CLASS ACTION COMPLAINT

Plaintiff Halima Tariffa Culley states the following as to her Complaint against Steve Marshall, in his official capacity as the Attorney General of the State of Alabama; Ashley Rich, in her official capacity as the District Attorney for the 13th Judicial Circuit of Alabama (Mobile County); and the City of Satsuma, Alabama[1]:

I. PARTIES

1. Halima Tariffa Culley is over the age of nineteen (19), and is a resident of Rockdale County, Georgia.

2. Defendant Steve Marshall, in his official capacity as the Attorney General of the State of Alabama is the chief law enforcement officer of the State of Alabama, subject to suit for prospective injunctive relief under 42 U.S.C. §1983. Seminole Tribe of Fla. v. Fla., 517 U.S. 44, 73 (1995)

3. Ashley M. Rich, in her official capacity as the District Attorney for the 13th Judicial Circuit of Alabama, is the chief law enforcement officer for Mobile County, Alabama, and the party through which the State of Alabama is acting in the civil forfeiture action described below.

4. The City of Satsuma, Alabama, is a municipal corporation organized under the laws of the state of Alabama, and subject to suit.

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[1] When "State of Alabama", "the State", or "State" are used herein, Mr. Marshall and Ms. Rich, in their official capacities are included in the reference.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this case under 28 U.S.C. § 1331, Federal Question jurisdiction, because the case is a civil rights lawsuit brought pursuant to 42 U.S.C. § 1983, for violation of the Due Process clause of the Fourteenth Amendment to the United States Constitution.

6. Part of the relief requested herein is an injunction enjoining unconstitutional state action. The law allows a § 1983 action to go forward against a state actor to enjoin unconstitutional activity.

7. Actions brought under 42 U.S.C. § 1983 to enjoin state courts are not prohibited by the anti-injunction statute, 28 U.S.C. § 2283, because they are an "expressly authorized" exception to the ban on federal injunction of state court proceedings. Mitcham v. Foster, 497 U.S. 225 (1972).

8. The Complaint also states a damages claim against the City of Satsuma, Alabama under 42 U.S.C. § 1983 for conspiracy between the City of Satsuma and the State of Alabama to violate the constitutional rights of Ms. Culley and the class stated herein.

III. BACKGROUND AND INTRODUCTION

A. Alabama's Civil Forfeiture Statue.

9. The Alabama Uniform Controlled Substance Act, Ala. Code § 20-2-1 (1975), *et. seq.*, contains a section providing for the forfeiture, not only of controlled substances, but of, "all monies … intended to be furnished by any person in exchange for a controlled substance … [or] used or intended to be used to facilitate any violation of any law of this section concerning controlled substances …" Ala. § 20-2-93 (1975). ("The

Civil Forfeiture Act") In addition to the forfeiture of property or cash connected to a transaction involving controlled substances, the Civil Forfeiture Act provides for the forfeiture of vehicles or conveyances used or intended to be used to transport, or in any way facilitate, a transaction in violation of the Controlled Substances Act, Ala, Code § 20-2-93 (1975).

10. The Civil Forfeiture Act provides for the seizure of property used or intended to be used in the commission of violations of the Controlled Substances Act "upon process issued by any court having jurisdiction over the property." Ala. Code § 20-2-93(b)(1975). The Act, however, provides that property may be seized without process if the seizure is incident to an arrest or a search under a search warrant or an inspection, … the property has been the subject of a prior judgment in favor of the state for a criminal injunction … [there is] probable cause to believe that the property is … dangerous, or probably cause to believe that the property was used or is intended to be used in violation of the Alabama Controlled Substances Act. Ala. Code § 20-2-93(b).

11. The Civil Forfeiture Act states that seized property is not even subject to a replevin action, but "is deemed to be in the custody of the state, county, or municipal law enforcement agency subject only to orders and judgment of the court having jurisdiction over the forfeiture proceedings." Ala. Code § 20-2-93(d). In other words, those who have had their property seized have no access to their property, or ability to replevin or re-acquire their property, other than to defend an action brought against them through the civil litigation process, which could take months while the defendants have been deprived of their property.

12. This case is not about the initial seizure, or the ultimate decision at trial in civil forfeiture actions. It is about the fact that the State, in conjunction with the City of Satsuma, Alabama, seizes vehicles and other property and retains custody of it while the civil forfeiture action, which could take months, if not years to resolve, is pending. Moreover, the statute states, "An owner's or bona fide lienholder's interest in any type of property other than real property and fixtures shall be forfeited under this section unless the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed … and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use." Ala. Code. § 20-2-93(h). In short, there is a seizure, and in order for one not even charged with a crime to get his or her property back, the burden is placed on the property owner to prove he or she had no involvement.

13. While statistics of the actual value of property and cash seized, statewide, are not readily available; in 2014, in fourteen counties according to the Southern Poverty Law Center, the courts awarded over $2,100,000 in cash to various law enforcement agencies, along with 405 weapons and 119 vehicles, which were presumably sold, and the monies sent to the general fund of the jurisdictions of award.

14. In approximately 25% of the 2014 civil forfeiture cases studied by the Southern Poverty Law Center, criminal charges were not brought against the owner of the property.

15. The money collected in civil forfeiture actions in Alabama, per the statute, are awarded by order of

the court, "and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the seizure." Ala. Code § 20-2-93(e)(2).

16. The result of the forfeiture and the divvying up of the proceeds for civil forfeiture actions is that the law enforcement entities in charge of the forfeiture actions have a direct financial stake in the civil forfeiture action. The state district attorneys' offices often take a percentage of the money awarded in civil forfeiture actions they bring, and the study cited above reports that 42% of the proceeds from civil forfeitures went to police departments. This is "policing for profit," where police personnel are incentivized to seize property, knowing much of it will be forfeited on default, because it ends up in the department's coffers.

17. All of this is done without any requirement that the owner of the property be convicted or even charged with a crime.

18. The State need not prove the owner used the property in the commission of a crime to seize property; or that the owner was convicted of a crime; or that the owner is even charged with a crime. The property is seized immediately, and subject to the grist of the civil forfeiture action mill.

19. A system has been created whereby the State of Alabama, and its local and municipal agents doing the policing, seizes property, and the only process undertaken is the institution of a civil forfeiture action against the property and its owners.

20. The only recourse for one who's property has been seized is to defend that civil action. However, even if successful in defending that civil action, the following are true: (1) the Plaintiff Class members are deprived of their property during the pendency of the action; (2) in order to successfully defend the civil forfeiture action, the Plaintiff Class has to hire counsel and pay counsel to recover assets taken from them in the initial seizure; and (3) those assets are originally seized without any process.

21. The practices have been held to be subject to scrutiny under the 8th and 14th Amendments to the Constitution, and fail to meet basic standards of due process.

IV. FACTS OF THE CASE

22. Ms. Culley is a resident of Rockdale County, Georgia, where she is employed as a nurse.

23. Ms. Culley has a 23 year old son, Tayjon, who is a student at the University of South Alabama, in Mobile, Alabama.

24. When Tayjon went to college at South Alabama, Ms. Culley bought a 2015 Nissan Altima for his use.

25. While the car was purchased for Tayjon Culley's use, it is titled to Ms. Culley, and registered in the State of Georgia.

26. Ms. Culley pays the registration, and keeps the car insured.

27. On or about February 17, 2019, Ms. Culley's son, Tayjon, was arrested and charged with possession of marijuana and drug paraphernalia.

28. Incident to that arrest, police officers of the City of Satsuma, Alabama, seized Ms. Culley's automobile.

29. Ms. Culley has not been charged with a crime, and she had no knowledge that her son, in another state, had marijuana or paraphernalia, and could not have, under any circumstance, prevented him from committing the alleged crime.

30. Upon learning that her car had been seized incident to the arrest of her son, Ms. Culley contacted the City of Satsuma, Alabama, and made efforts to retrieve her vehicle.

31. The efforts to retrieve her vehicle by Ms. Culley have been ongoing, but she has been unsuccessful. The City of Satsuma, has retained her vehicle for more than six months since its original seizure in February of 2019.

32. Instead of returning her vehicle, the City of Satsuma made known to the State of Alabama, through Ashley M. Rich, the District Attorney for the 13th Judicial Circuit of Alabama (Mobile County), that it had seized Ms. Culley's vehicle. The State of Alabama and Ms. Rich are sometimes referred to collectively as "the State."

33. The State, with the full cooperation of the City of Satsuma, and in conjunction with the City of Satsuma, did not return Ms. Culley's vehicle. Instead, the State instituted a civil forfeiture action against Ms. Culley and her vehicle on or about February 27, 2019.

34. Indeed, the agreement between the State and the City of Satsuma, Alabama is that the City notifies the State, through the District Attorney, that it has seized property. The State then institutes civil forfeiture actions while the City, by agreement retains the property, and will not return it to an owner while the action proceeds.

35. Ms. Culley has appeared in the civil action, and has continued to try to work with the City of Satsuma to get her vehicle back, but to no avail. Instead, Ms. Culley is left to defend a civil forfeiture action.

36. While she defends the civil forfeiture action, and without any proof she knew anything about the alleged crime, Ms. Culley has been without her car.

37. The car was supposed to come home with her son this summer for use by Ms. Culley, her son, Tayjon, and another child, of driving age, but it did not, creating transportation difficulties. Moreover, Ms. Culley continues to pay insurance premiums on a car she has no access to.

38. Not only has Ms. Culley been deprived of her vehicle, but she has been given no opportunity to present any case requiring the State to at least show probable cause that her automobile was used in a crime with her knowledge, or that there is no less restrictive way, i.e., the posting of a bond, to secure the vehicle should the State be ultimately successful in the forfeiture action.

39. Under Alabama's Civil forfeiture statute, Ms. Culley's only chance to redeem her vehicle is to contest the forfeiture action, a process that could take many more months.

V. CLASS ALLEGATIONS

40. Class Definition: Pursuant to Fed.R.Civ.P. 23(a), (b)(1), and (b)(2), Plaintiff brings this action on behalf of herself and all others similarly situated, as members of the proposed Plaintiff Class. That class is:

> All persons who have had their property seized by the City of Satsuma, Alabama, have not been charged with a crime, and have had a civil forfeiture action filed against them from four years prior to the filing of this action, to the present.

41. Numerosity: The members of each class and subclass are so numerous that their individual joinder would be impracticable in that: (a) the Class includes at least hundreds of individual members; (b) the precise number of Class members and their identities are unknown to Plaintiffs, but are available through public records, and can easily be determined through discovery; (c) it would be impractical and a waste of judicial resources for each of the at least hundreds of individual class members to be individually represented in separate actions; and (d) it is not economically feasible for those class members to file individual actions.

42. Commonality/Predominance: Common questions of law and fact predominate over any questions affecting only individual class members. These common legal and factual questions include, but are not limited to, the following:

a. Whether ex parte seizures of property, without a prompt post-seizure hearing, are violations of the Fourth Amendment and the Due Process Clauses of the Fifth

and Fourteenth Amendments to the United States Constitution.

b. Whether it is a violation of the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution for property to be seized without providing a prompt hearing at which time the State and its local law enforcement agents must show some exigency for the seizure of property, some preliminary showing that the property is connected to a crime, and some reason why a less restrictive method of security is not proper.

c. Whether Ala. Code § 20-2-93(1975), is unconstitutional in part because it does not provide for a meaningful, prompt hearing after property has been seized, and only calls for the litigation of a civil forfeiture under the ordinary Rules of Civil Procedure.

d. Whether a conspiracy to violate the constitutional rights of Ms. Culley and the Plaintiff Class exists between the State and the City of Satsuma, Alabama.

43. Typicality: Plaintiff is typical of the claims of the class members. Plaintiff and all class members have been injured by the same wrongful practices. Plaintiff's claim arises out of the same practices and course of conduct that give rise to the claims of the class, and are based on the same legal theories for the class.

44. Adequacy: Plaintiff will fully and adequately assert and protect the interests of the class. Plaintiff has counsel experienced in class actions and complex

mass tort litigation. Neither Plaintiff nor counsel have interests contrary to or conflicting with the interests of the class or subclasses.

45. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is large, the individual damage suffered by each, in many cases, is too small to warrant the expense of individual lawsuits. The court system would be unreasonably burdened by the number of cases that would be filed if a class action is not certified.

46. Plaintiff does not anticipate any difficulties in the management of this litigation.

47. The State and its local law enforcement agents have acted on grounds generally noticeable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole proper.

COUNT I

(Claim Against the State That Failing to Provide an Adequate, Prompt, Post-Deprivation Hearing Violates the Fourth Amendment And the Due Process Clauses of the Fifth and Fourteenth Amendment)

48. Plaintiff incorporates by reference, as if fully set forth herein, paragraphs 1-47 above.

49. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of Constitutional

rights by one acting under color of state law the right to bring a civil action to vindicate those rights.

50. If a pre-seizure probable cause hearing is not practical, as is the case with the seizure of property incident to an arrest, a prompt post-seizure hearing to establish that Ms. Culley, and others similarly situated, had no knowledge of, or involvement in, the facts leading to an arrest is due.

51. After seizing or restraining property, the State and its agents have failed to provide Plaintiff and the Plaintiff Class with a prompt hearing at which they would be able to challenge, before a neutral arbiter, the basis for the seizure, and/or indefinite retention of their property, particularly without ever being charged with a crime, pending ultimate determination on the merits of whether the property should be forfeited.

52. For all practical purposes, the State effects a temporary restraining order as to the property without meeting the elements required for a temporary restraining order: i.e., a clear pleading showing that irreparable harm will result to the State if the ex parte seizure is not effectuated; a likelihood of success on the merits; and or the posting of security.

53. This action continues, and will continue, unless this Court grants the relief requested.

54. The State has a policy and practice of seizing property indefinitely, and having the City of Satsuma, Alabama hold it, while the civil forfeiture action proceeds when it knows, or should know, that there is no meaningful opportunity to contest the retention of the property at a meaningful time before an ultimate hearing on the merits of the forfeiture, which takes months, if not years.

55. The process afforded defendants in civil forfeiture proceedings does not provide a meaningful means to contest the deprivation of property pendente lite at a meaningful time. This lack of process violates the Fourth and Fourteenth Amendments to the Constitution. Even if a civil forfeiture action is filed within weeks of the ex parte deprivation of property, civil forfeiture litigation then takes months to conclude, all the while depriving defendants, many of whom are not ever charged with a crime, not to mention convicted, of their property. Moreover, defendants in civil forfeiture actions are given no opportunity to show, at a meaningful time, that there is a less restrictive way for the State to secure the property, such as the posting of a bond.

56. As a direct and proximate result of the actions of the State, through Attorney General Marshall, District Attorney Rich, and local and municipal law enforcement agents like the City of Satsuma, Plaintiff and the Plaintiff Class have suffered irreparable harm to their constitutional rights under the Fourth, and Fourteenth Amendments, including being deprived of their property without notice or an opportunity to be heard.

57. Moreover, under the Civil Forfeiture Act, there is no provision for a prompt hearing to consider the posting of a bond as security for the property subject to the civil forfeiture action, which would be a much less restrictive way to secure the State's interest in the property, pendente lite.

58. Declaratory and injunctive relief is necessary. Without appropriate declaratory and injunctive relief, the State's unconstitutional policies and practices will continue.

COUNT II

(Violation of the 8th Amendment's Prohibition Against Excessive Fines Against the State)

59. This claim is brought pursuant to 42 U.S.C. § 1983, which gives persons deprived of constitutional rights by one acting under color of state law the right to bring a civil action to vindicate those rights.

60. Ms. Culley and the Class members who were not charged with a crime have had their property retained without due process.

61. They have been fined by the State because their property has been seized, so even if they are able to get this property back through the civil forfeiture action, they have been deprived of their property in the meantime.

62. Since Ms. Culley and the Plaintiff Class have not ever been charged with a crime; this forfeiture, even if brief, is by definition excessive under the 8th Amendment to the Constitution of the United States.

63. Declaratory and injunctive relief, as outlined below, is necessary to remedy the seizure of Plaintiff and Plaintiff Class's property without being charged with a crime. Without appropriate declaratory and injunctive relief, the State's unconstitutional practices will continue.

COUNT III

(Conspiracy Claim Against the City of Satsuma, Alabama Under 42 U.S.C. § 1983 to Violate the Constitutional Rights of Ms. Culley and the Class)

64. Plaintiff incorporates by reference, as if set forth fully herein, paragraphs 1 through 63 above.

65. As stated above, Ms. Culley's constitutional rights have been violated, creating an action for injunctive relief under 42 U.S.C. § 1983.

66. The Supreme Court and the Eleventh Circuit have recognized that a conspiracy to violate constitutional rights states another claim under § 1983. Dennis v. Sparks, 449 U.S. 24, 29 (1980); Strength v. Hubert, 854 F.2d 421, 425 (11th Cir. 1988).

67. To establish a claim for conspiracy to violate constitutional rights under § 1983, a plaintiff must establish: (1) a violation of federal rights; (2) an agreement among defendants to violate such a right; and (3) an actionable wrong. Grider v. City of Auburn, 618 F.3d 1240, 1260 (11th Cir. 2016).

68. All of the above-referenced elements have been met in this case. Counts I and II lay out in detail the violations of the federal rights of Ms. Culley and the class under the 14th and 8th Amendments. Those allegations are specifically incorporated herein.

69. There is an agreement between the City of Satsuma and the State to violate Ms. Culley's constitutional rights. The agreement is that when the City of Satsuma seizes a vehicle incident to an arrest, it will contact the State, who will institute a civil forfeiture action. The City of Satsuma knows that the State will institute such an action, and it knows that,

pursuant to Ala. Code § 20-2-93(c), it will eventually see the proceeds from the disposition of forfeited property. The City, for its part, keeps the vehicle, and refuses to release it pendente lite, while the civil forfeiture action is prosecuted by the State. The City of Satsuma knows, or should know, that its holding of property pending prosecution of a civil forfeiture action is an unconstitutional deprivation of the Plaintiff and Plaintiff Classes 4th, 14th, and 8th Amendment rights, but does so anyway at the direction of the State, so that the State can proceed with the civil forfeiture action.

70. The actionable wrong by the City of Satsuma and the State is the holding of property, pendente lite, with the City of Satsuma, despite all efforts of civil forfeiture defendants, who have not been charged with a crimes, to retrieve the property.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against the City of Satsuma, Alabama.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests, on behalf of herself and all others similarly situated, the following relief:

1. An order certifying this action as a class action under Fed.R.Civ.P. 23(b)(2);
2. Entry of judgment declaring the following unconstitutional under the Fourth Amendment and Due Process Clauses of the Fifth and Fourteenth Amendments.
    a. The State and its local law enforcement agents' policy and practice of failing to provide adequate and

prompt post-deprivation hearings to individuals whose property has been seized and retained;

b. The State and its local law enforcement agents' practice of retaining all seized property and without a prompt post-seizure hearing;

3. For entry of judgment declaring the State liable for the above-described unconstitutional practices and policies.

4. For entry of preliminary and permanent injunctions prohibiting the State from engaging in the above-described policies and practices.

5. For entry of judgment declaring Ala. Code § 20-2-93(b)(c) (1975) unconstitutional, to the extent it forecloses a meaningful hearing at a meaningful time relative to the retention of seized property.

6. For entry of judgment requiring the State and its local law enforcement agents to:

a. Immediately institute hearings on all cases where property has been seized for the purpose of determining whether the State has probable cause to retain property seized due to a likelihood it was used in a crime, or in the case of a non-charged owner, that said owner had some knowledge of the use of his or her property in a crime.

b. Immediately institute hearings in each case where property has

been seized for the purpose of determining what is a reasonable security for the State to retain seized property.

7. An award of compensatory and punitive damages to Plaintiff and the Plaintiff class against the City of Satsuma, Alabama for conspiracy to violate 42 U.S.C. § 1983.

8. An award of attorneys' fees, costs, and expenses of this action pursuant to 42 U.S.C. §1988(b).

JURY DEMAND

Plaintiff demands a trial by struck jury on all issues so triable.

/s/ Brian M. Clark
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APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

LENA SUTTON, on behalf of herself and those similarly situated as described below,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION NO.:**
TOWN OF LEESBURG, ALABAMA,	)	**JURY DEMAND**
Defendant.	)	

CLASS ACTION COMPLAINT

Plaintiff Lena Sutton states the following as to her Complaint against the Town of Leesburg, Alabama ("Leesburg", or "Town of Leesburg"):

I. PARTIES

1. Lena Sutton is over the age of nineteen (19), and is a resident of Autauga County, Alabama. At the time of the indictment made the basis of this action, she was living in Cherokee County, Alabama.

2. The Town of Leesburg, Alabama, is a municipal corporation organized under the laws of the States of Alabama ("the State"), and subject to suit.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this case under 28 U.S.C. § 1331, Federal Question jurisdiction, because the case is a civil rights lawsuit brought pursuant to 47 U.S.C. § 1983, for violation of the Fourth Amendment, the Eighth Amendment, and Due Process clause of the Fourteenth Amendment to the United States Constitution.

III. BACKGROUND AND INTRODUCTION

A. Alabama's Civil Forfeiture Statue.

4. The Alabama Uniformed Controlled Substance Act, Ala. Code § 20-2-1 (1975), *et. seq.*, contains a section providing for the forfeiture, not only of controlled substances, but of, "all monies … intended to be furnished by any person in exchange for a controlled substance … [or] used or intended to be used to facilitate any violation of any law of this section concerning controlled substances …" Ala. Code § 20-2-93 (1975). ("The Civil Forfeiture Act") In addition to the forfeiture of property or cash connected to a transaction involving controlled substances, the Civil Forfeiture Act provides for the forfeiture of vehicles or conveyances used or intended to be used to transport, or in any way facilitate, a transaction in violation of

the Controlled Substances Act, Ala, Code § 20-2-93 (1975).

5. The Civil Forfeiture Act provides for the seizure of property used or intended to be used in the commission of violations of the Controlled Substances Act "upon process issued by any court having jurisdiction over the property." Ala. Code § 20-2-93(b)(1975). The Act, however, provides that property may be seized without process if the seizure is incident to an arrest or a search under a search warrant or an inspection, … the property has been the subject of a prior judgment in favor of the state for a criminal injunction … [there is] probable cause to believe that the property … dangerous, or probably cause to believe that the property was used or is intended to be used in violation of the Alabama Controlled Substances Act. Ala. Code § 20-2-93(b).

6. The Civil Forfeiture Act states that seized property is not even subject to a replevin action, but "is deemed to be in the custody of the state, county, or municipal law enforcement agency subject only to orders and judgment of the court having jurisdiction over the forfeiture proceedings." Ala. Code § 20-2-93(d). In other words, those who have had their property seized have no access to their property, or ability to replevin or re-acquire their property, other than to defend an action brought against them through the civil litigation process, which could take months while the defendants have been deprived of their property.

7. This case is not about the initial seizure, or an ability to ultimately prevail at a trial in a civil forfeiture action. It is about the fact that the State, in conjunction with the Town of Leesburg, Alabama, seizes vehicles and other property, and retains

custody of them while the civil forfeiture action, which could take months, if not years to resolve, is pending. Moreover, the statute states, "An owners' or bona fide lienholders' in any type of property other than real property and fixtures shall be forfeited under this section until the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed and that the owner could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use." Ala. Code. § 20-2-93(h). In short, there is a seizure, and in order for one not even charged with a crime to get his or her property back, the burden is placed on the property owner to prove he or she had no involvement.

8. While statistics of the actual amounts seized, statewide, are not readily available; in 2014, in fourteen counties according to the Southern Poverty Law Center, the courts awarded over $2,100,000 in cash to various law enforcement agencies, along with 405 weapons and 119 vehicles, which were presumably sold, and the monies sent to the general fund of the jurisdictions of award.

9. In approximately 25% of the 2014 civil forfeiture cases studied by the Southern Poverty Law Center, criminal charges were not brought against the owner of the property.

10. The money collected in civil forfeiture actions in Alabama, per the statute, are awarded by order of the court, "and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law

enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which respective agency or department contributed to the police work resulting in the seizure." Ala. Code § 20-2-93(e)(2).

11. The result of the forfeiture and the divvying up of the proceeds for civil forfeiture actions is that the law enforcement entities in charge of the forfeiture actions, including the Town of Leesburg, have a direct financial stake in the civil forfeiture action. The state district attorneys' offices often take a percentage of the money awarded in civil forfeiture actions they bring, and the study cited above reports that 42% of the proceeds from civil forfeitures went to police departments. This is "policing for profit," where police personnel are incentivized to seize property, knowing much of it will be forfeited on default, because it ends up in the department's coffers.

12. All of this is done without any requirement that the owner of the property be convicted or even charged with a crime.

13. The State need not prove the owner used the property in the commission of a crime to seize property; or that the owner was convicted of a crime; or that the owner is even charged with a crime. The property is seized immediately, and subject to the grist of the civil forfeiture action mill.

14. A system has been created whereby the State of Alabama, and its local and municipal agents doing the policing, including the Town of Leesburg seizes property, and the only process undertaken is the

institution of a civil forfeiture action against the property and its owners.

15. The only recourse one whose property has been seized is to defend that civil action. However, even if successful in defending that civil action, the following are true: (1) the Plaintiff Class members are deprived of their property during the pendency of the action; (2) in order to successfully defend the civil forfeiture action, the Plaintiff Class has to hire counsel and pay counsel to recover assets taken from them in the initial seizure; and (3) those assets are originally seized without any process.

16. The practices have been held to be subject to scrutiny under the Fourth, Eighth, and Fourteenth Amendments to the Constitution, and for failing to meet basic standards of due process.

IV. FACTS OF THE CASE

17. In the spring of 2019, Plaintiff Lena Sutton was separated from her spouse and found herself having to find a new place to live.

18. Her funds were limited due to her domestic situation, and she ended up relying on a friend, Roger David Mize, for a place to stay, temporarily, until she could get herself back on her feet.

19. On or about February 20, 2018, Ms. Sutton told Mr. Mize that her car needed an oil change. Mr. Mize told Ms. Sutton that he could do it. Ms. Sutton agreed, and Mr. Mize took her car, a 2012 Chevrolet, to get the necessary supplies to perform the oil change.

20. Either on the way to or back from the auto parts store, Mr. Mize picked up Tracy Walker. Mr.

Mize was pulled over by the Leesburg Police Department for speeding.

21. During the traffic stop, Mr. Mize and the vehicle were searched, and a trafficking sized amount of methamphetamine was discovered.

22. Mr. Mize and Ms. Walker were arrested and charged with trafficking in a controlled substance.

23. Ms. Sutton did not know that Mr. Mize had methamphetamine on his person while making the trip, and had no knowledge of any of his actions regarding methamphetamine.

24. Ms. Sutton has not been charged with any crime.

25. Ms. Sutton has not been charged with a crime, but her vehicle was seized on the day of Mr. Mize's arrest. She has not had her vehicle since February 20, 2019.

26. Either the next day, or February 22, Ms. Sutton began calling the Town of Leesburg Police Department to attempt to get her car back.

27. Ms. Sutton left several messages through February 26, 2019, and missed calls from the Town of Leesburg from February 22, to February 26, and was finally able to get in touch with Officer Butler of the Town of Leesburg Police Department on February 26, 2019.

28. When she talked with Officer Butler in an attempt to retrieve her vehicle, he berated Ms. Sutton, asking her why it took so long for her to get in touch with the Police Department, and repeatedly asking whether she knew the criminal background of Mr. Mize and Ms. Walker.

29. Ms. Sutton responded that she had made several attempts to contact the Town of Leesburg Police Department by phone, but could not get through to anybody, and that, no, she was unaware of the criminal background of Mr. Mize and Ms. Walker.

30. Officer Butler asked Ms. Sutton whether she knew there were drugs in the car, and she responded that she only knew of her personal belongings in the car, but nothing else, and had no knowledge of the crime, or that Mr. Mize intended to use her vehicle to commit a crime. Ms. Sutton just asked for her car back.

31. Officer Butler told Ms. Sutton if he believed her story, she would get the car back, but he did not, so he was not going to return it to her.

32. Officer Butler tried to get Ms. Sutton to come to Leesburg to talk with him about her car, but she could not get there because she had no car.

33. Ms. Sutton told Officer Butler that she had missed appointments due to not having a car, and told him via text message that she needed her car back to be able to care for herself, and to be able to look for a job. These hardships have continued. She has no car to get to work, and has missed medical appointments due to lack of transportation.

34. Ms. Sutton's attempts did no good, and she called almost daily to try to get her car back, but eventually it became clear to her that she was not going to get her car back. This went on at least through March 2.

35. Instead of returning Ms. Sutton's vehicle, the Town of Leesburg communicates to the State, through the District Attorney for Cherokee County, Alabama,

that it has confiscated a vehicle incident to an arrest, and requests that the State institute a Civil Forfeiture Action against the vehicle, and name the owner as a co-defendant.

36. The Town of Leesburg initiates this process with full knowledge that the defendant party in the Civil Forfeiture Action will be deprived of the property during the pendency of the case, and will have no opportunity to retrieve it, pendente lite.

37. The Town of Leesburg initiates, by communication with and in conjunction with the State, Civil Forfeiture Actions knowing that, pursuant to Ala. Code § 20-2-93(e)(2), it will receive proceeds from the ultimate disposition of the property it seizes, including Ms. Sutton's vehicle.

38. On March 6, 2019, the State of Alabama filed a civil forfeiture action against Ms. Sutton.

39. She was not served with the Complaint until March 12, 2019.

40. Ms. Sutton has appeared in that action. That action remains pending, and she has now been without her vehicle for almost a year. She has not been charged with a crime, not to mention convicted of a crime.

41. Not only has Ms. Sutton been deprived of her vehicle, but she has been given no opportunity to present any case requiring the State of the Town of Leesburg to at least show probable cause that her automobile was used in a crime with her knowledge, or that there is no less restrictive way, i.e., the posting of a bond, to secure the vehicle should the State be ultimately successful in the forfeiture action.

42. Under Alabama's civil forfeiture statute, Ms. Sutton's only chance to redeem her vehicle is to contest the forfeiture action.

V. CLASS ALLEGATIONS

43. Class Definition: Pursuant to Fed.R.Civ.P. 23(a), (b)(1), and (b)(2), Plaintiff brings this action on behalf of herself and all others similarly situated, as members of the proposed Plaintiff Class defined as follows:

> All persons who have had property seized by the Town of Leesburg, Alabama, and where a Civil Forfeiture Action was instituted by the State of Alabama beginning two (2) years before the filing of this action.

44. Numerosity: The members of each class and subclass are so numerous that their individual joinder would be impracticable in that: (a) the Class includes at least hundreds of individual members; (b) the precise number of Class members and their identities are unknown to Plaintiffs, but are available through public records, and can easily be determined through discovery; (c) it would be impractical and a waste of judicial resources for each of the at least hundreds of individual class members to be individually represented in separate actions; and (d) it is not economically feasible for those class members to file individual actions.

45. Commonality/Predominance: Common questions of law and fact predominate over any questions affecting only individual class members. These common legal and factual questions include, but are not limited to, the following:

a. Whether ex parte seizures of property, without a prompt post-seizure hearing, are violations of the Fourth Amendment and the Due Process Clause, and Fourteenth Amendment to the United States Constitution.

b. Whether it is a violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution for property to be seized without providing a prompt hearing at which time the State and its local law enforcement agents must show some exigency for the seizure of property, some preliminary showing that the property is connected to a crime, and some reason why a less restrictive method of security is not proper.

c. Whether the holding of property, pendente lite, violates the Eighth Amendment prohibition against excessive fines.

d. Whether Ala. Code § 20-2-93(1975), is unconstitutional in part because it does not provide for a meaningful, prompt hearing after property has been seized pendente lite, and only calls for the litigation of a civil forfeiture under the ordinary Rules of Civil Procedure.

e. Whether the Town of Leesburg, Alabama has conspired with the State of Alabama and its Constitutional officers to violate the Constitutional rights of Ms. Sutton.

46. Typicality: Plaintiff is typical of the claims of the class members. Plaintiff and all class members

have been injured by the same wrongful practices. Plaintiff's claim arises out of the same practices and course of conduct that give rise to the claims of the class, and are based on the same legal theories for the class.

47. Adequacy: Plaintiff will fully and adequately assert and protect the interests of the class. Plaintiff has counsel experienced in class actions and complex mass tort litigation. Neither Plaintiff nor counsel have interests contrary to or conflicting with the interests of the class or subclasses.

48. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the class members is economically unfeasible and impractical. While the aggregate amount of the damages suffered by the class is large, the individual damage suffered by each, in many cases is too small to warrant the expense of individual lawsuits. The court system would be unreasonably burdened by the number of cases that would be filed it as a class action if not certified.

49. Plaintiff does not anticipate any difficulties in the management of this litigation.

50. The State and its local law enforcement agents have acted on grounds generally noticeable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole proper.

VI. THE UNDERLYING CONSTITUTIONAL DEPRIVATIONS

A. Failing to Provide An Adequate, Prompt, Post-Deprivation Hearing Violates The Fourth Amendment And The Due Process Clauses Of The Fifth And Fourteenth Amendments.

51. If a pre-seizure probable cause hearing is not practical, as is the case with the seizure of property incident to an arrest, a prompt post-seizure hearing to establish that Ms. Sutton, and others similarly situated, had knowledge of, or involvement in, the facts leading to an arrest, is due.

52. After seizing and retaining property, the State and its agents in conspiracy with the Town of Leesburg, Alabama, have failed to provide Plaintiff and the Class with a prompt hearing at which they would be able to challenge, before a neutral arbiter, the basis for the seizure, and/or indefinite retention of their property, particularly without ever being charged with a crime, pending ultimate determination on the merits of whether the property should be forfeited

53. For all practical purposes, the State with the full knowledge and cooperation of the Town of Leesburg, Alabama effects a temporary restraining order as to the property without meeting the elements required for a temporary restraining order: i.e., a clear pleading showing that irreparable harm will result to the State if the ex parte seizure is not effectuated; a likelihood of success on the merits; and or a deposit of security.

54. The State, in agreement with the Town of Leesburg, Alabama, has a policy and practice of

seizing property indefinitely for civil forfeiture when it knows, or should know, that there is no meaningful opportunity to contest the retention of the property at a meaningful time before an ultimate hearing on the merits of the forfeiture, which usually takes months.

55. The process afforded defendants in civil forfeiture proceedings does not provide a meaningful means to contest the deprivation of property pendente lite at a meaningful time. This lack of process violates the Fourth and Fourteenth Amendments to the Constitution. Even if a civil forfeiture action is filed within weeks of the ex parte deprivation of property, civil forfeiture litigation then takes at a minimum months to conclude, all the while depriving defendants, many of whom are not ever charged with a crime, not to mention convicted, of their property. Moreover, defendants in civil forfeiture actions are given no opportunity to show, at a meaningful time, that there is a less restrictive way for the State to secure the property, such as the posting of a bond.

56. As a direct and proximate result of the actions of the State, in conjunction with the Town of Leesburg, Alabama, Plaintiff and the Plaintive Class have suffered irreparable harm to their Constitutional rights under the Fourth and Fourteenth Amendments, including being deprived of their property without notice or an opportunity to be heard.

57. Moreover, under the Civil Forfeiture Act, there is no provision for a prompt hearing to consider the posting of a bond as security for the property subject to the civil forfeiture action, which would be a much less restrictive way to secure the State's interest in the property, pendent lite.

B. Violation of the 8th Amendment Prohibition Against Excessive Fines.

58. Ms. Sutton and the Class members have had their property seized and retained without due process.

59. They have been fined by the State, with the knowledge and cooperation of the Town of Leesburg, Alabama, who holds the vehicle, because their property has been seized, so even if they are able to get this property back through the civil forfeiture action, they have been deprived of their property in the meantime.

60. Ms. Sutton and members of the Plaintiff Class who have not even been charged with a crime, have been particularly damaged. In such cases, this forfeiture, even if brief, is by definition excessive under the Eighth Amendment to the Constitution of the United States.

COUNT I

(Conspiracy Claim Against the Town of Leesburg, Alabama Under 42 U.S.C. § 1983 to Violate the Constitutional Rights of Ms. Culley and the Class)

61. Plaintiff incorporates by reference, as if set forth fully herein, paragraphs 1 through 60 above.

62. As stated above, Ms. Sutton's constitutional rights have been violated.

63. The Supreme Court and the Eleventh Circuit have recognized that a conspiracy to violate constitutional rights states a claim under § 1983. Dennis v. Sparks, 449 U.S. 24, 29 (1980); Strength v. Hubert, 854 F.2d 421, 425 (11th Cir. 1988).

64. To establish a claim for conspiracy to violate constitutional rights under § 1983, a plaintiff must establish: (1) a violation of federal rights; (2) an agreement among defendants to violate such a right; and (3) an actionable wrong. Grider v. City of Auburn, 618 F.3d 1240, 1260 (11th Cir. 2016).

65. All of the above-referenced elements have been met in this case. Section VI of this Complaint lays out in detail the violations of the federal rights of Ms. Sutton and the Class under the Fourth and Eighth Amendments. Those allegations are specifically incorporated herein.

66. There is an agreement between the Town of Leesburg and the State to violate Ms. Sutton's and the Class's constitutional rights. The agreement is that when the Town of Leesburg seizes a vehicle incident to an arrest, it will contact the State, who will institute a civil forfeiture action. The Town of Leesburg knows that the State will institute such an action, and it knows that, pursuant to Ala. Code § 20-2-93(e)(2), it will eventually see the proceeds from the disposition of forfeited property. The City, for its part, keeps the vehicle, and refuses to release it pendente lite, while the civil forfeiture action is prosecuted by the State.

67. The Town of Leesburg knows, or should know, that its holding of property pending prosecution of a civil forfeiture action is an unconstitutional deprivation of the Plaintiff and Plaintiff Class's Fourth, Fourteenth, and Eighth Amendment rights, but does so anyway at the direction of the State, so that the State can proceed with the Civil Forfeiture Action.

68. The actionable wrong by the Town of Leesburg and the State is the holding of property, pendente lite, with the Town of Leesburg, despite all efforts of civil

forfeiture defendants, who have not been charged with a crimes, to retrieve the property.

WHEREFORE, Plaintiffs demand compensatory and punitive damages against the Town of Leesburg, Alabama.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests, on behalf of herself and all others similarly situated, the following relief:

1. An order certifying this action as a class action under Fed.R.Civ.P. 23(b)(2);
2. Entry of judgment declaring the following unconstitutional under the Fourth Amendment and Due Process Clauses of the Fourteenth Amendment.
    a. The State and Town of Leesburg's policy and practice of failing to provide adequate and prompt post-deprivation deprivation hearings to individuals whose property has been seized and retained;
    b. The State and Town of Leesburg's practice of retaining all seized property and without a prompt post-seizure hearing;
3. An award of compensatory and punitive damages to Plaintiff and the Plaintiff Class against the Town of Leesburg, Alabama for conspiracy to violate 42 U.S.C. § 1983.

4. An award of attorneys' fees, costs, and expenses of this action pursuant to 42 U.S.C. §1988(b).

JURY DEMAND

Plaintiff demands a trial by struck jury on all issues so triable.

/s/ Brian M. Clark
Brian M. Clark
Attorney for Plaintiff

OF COUNSEL

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/s/ Darrell Cartwright
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PLEASE SERVE DEFENDANT AT:

Town of Leesburg, Alabama
215 Industrial Boulevard
Leesburg, Alabama 35983

APPENDIX I

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

STATE OF ALABAMA,	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
	)	**NO.: CV-2019-**
v.	)	**900034**
	)	
ROGER DAVID MAZE, LENA SUTTON, et al.,	)	
	)	
	)	
	)	
Defendants.	)	

DEFENDANT LENA SUTTON'S MOTION FOR SUMMARY JUDGMENT

Defendant Lena Sutton states the following as her Motion for Summary Judgment, pursuant to Ala. R. Civ. P. 56, in the above-referenced case.

1. Defendant Lena Sutton incorporates by reference, as if specifically set forth herein, the Memorandum in Support of Motion for Summary Judgment, and the attachments thereto, filed herewith. This document sets forth, in detail, the grounds and reasons why Ms. Sutton is entitled to summary judgment in this case.

2. Defendant Lena Sutton is entitled to summary judgment in this case because there area no material facts in dispute, and she is entitled to judgment as a matter of law. Ala. R. Civ. P. 56. Ms. Sutton had no knowledge whatsoever that her vehicle would be used for a crime. Sutton Aff., ¶¶ 3-5.

3. Alabama Code § 20-2-93(h), contains an innocent owner defense. Under that statutory section, the property of an innocent owner who can show she had no knowledge of the commission of the alleged crime, and had no ability to prevent it, is not subject to forfeiture.

4. Ms. Sutton, per her affidavit, certainly had no knowledge of the commission of any crime, and no ability to prevent it.

5. The State has proffered no evidence, including in discovery responses, which it should have supplemented pursuant to Ala. R. Civ. P. 30(e), if it had any such evidence, that Ms. Sutton had any knowledge, or any ability to stop the alleged crime.

WHEREFORE, for the reasons stated above, and for the reasons stated in the Memorandum in Support of Motion for Summary Judgment, and the attachments thereto, Defendant Lena Sutton is entitled to summary judgment in this case.

Respectfully submitted,

/s/ Brian M. Clark
Brian M. Clark
Attorney for Plaintiff

OF COUNSEL

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/s/ Allan Armstrong
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/s/ Darrell Cartwright
Darrell Cartwright
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2020, I electronically filed the foregoing with the Clerk of Court using the Alafile system, which will automatically send email notifications of such filing to the following counsel of record:

Scott M. Lloyd
Attorney for the State
100 Main Street, Room 204
Centre, Alabama 35960

Evan W. Smith
Attorney at Law
201 1st Avenue North
Centre, Alabama 35960

/s/ Brian M. Clark
Of Counsel

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

STATE OF ALABAMA,	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
	)	**NO.: CV-2019-**
v.	)	**900034**
	)	
ROGER DAVID MAZE, LENA SUTTON, et al.,	)	
	)	
	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant Lena Sutton states the following as her Memorandum in Support of her Motion for Summary Judgment filed herewith.

I. FACTS

The relevant facts of this case are straightforward and largely undisputed. They are as laid out in the numbered paragraphs below:

1. In February of 2019, Ms. Sutton had separated from her husband, and needed a place to stay. She was temporarily staying with Roger Maze, whom she respected, and had known for years. Sutton Affidavit, Ex. A, ¶ 1.

2. On or about February 21, 2019, Ms. Sutton mentioned to Mr. Maze that her car, a 2012 Chevrolet, last four VIN numbers 0447, needed an oil change. Ex. A, ¶ 1.

3. Roger Maze offered to drive Ms. Sutton's car to an auto parts store to get the necessary supplies to do an oil change as a favor to Ms. Sutton. Ex. A, ¶ 1.

4. When Mr. Maze left with the car, Ms. Sutton knew that her personal belongings were in the car, but nothing else. Ex. A, ¶ 5.

5. Mr. Maze was arrested for trafficking methamphetamines while he was out with Ms. Sutton's car. See, Arrest Record. Ex. B hereto.

6. Ms. Sutton had no knowledge that any drugs were in the car, or that the car was in any way connected with drug activity or any illegal activity. Ex. A, ¶ 6.

7. On or about July 24, 2019, Ms. Sutton served upon Plaintiff her Combined Interrogatories and Requests for Production. Interrogatory No. 1 asks the State if it contends that Lena Sutton had any knowledge that Roger Maze was going to use her automobile to transport or otherwise traffic or use methamphetamines. Ex. C hereto. Defendant State of Alabama ("the State") has not substantively answered the question, instead stating that, "A response to this request will be forthcoming." Ex. D hereto.

8. The next Interrogatory asks, "If you responded to Interrogatory No. 1 in the affirmative, please state each and every fact you are aware of, or in any way reply upon in contending that Ms. Sutton had any knowledge or participation in the use, sale, distribution, or trafficking in methamphetamines."

Ex. C. Again, the State did not substantively answer, stating that, "A response to this request will be forthcoming." Ex. D hereto.

9. There is simply no evidence that Ms. Sutton had any connection to the alleged crime. She has denied any such knowledge, and the State has offered nothing to contradict her.

II. ARGUMENT

A. Rule 56 Standard

Under Ala. R. Civ. P. 56, once a movant makes a prima facie showing there is no genuine issue of material fact, "the burden shifts to the nonmovant to present substantial evidence creating such an issue." Ayers v. Calvary SVP I, LLC, 876 So.2d 474, 476 (Ala. 2003). In this case, the State can make no showing, not to mention a showing "of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." Id. quoting, West v. Founders Life Assurance, 547 So.2d 870, 871 (Ala. 1989), that Ms. Sutton had any knowledge of the crime it alleges Mr. Maze committed.

B. The State Has Not Supplemented Its Discovery Responses, and Cannot Now Do So.

The State has refused to respond, substantively, to Interrogatory Nos. 1 and 2, asking for any information that the State has that Ms. Sutton had any knowledge of the alleged crime. The State has not supplemented this response. Rule 26(e)(2) provides that a party is under a duty to supplement a discovery response "if the party knows that the response was incorrect when made, or (b) knows that the response,

though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment." Ala. R. Civ. P. 26(c)(2). If there were a substantive response to the Interrogatories, the State is under a duty to supplement. Since the State has not proffered any evidence responsive to the Interrogatories, it can only be assumed that there is none.

C. Ms. Sutton Has Met Her Burden Under The Statute To Show Innocent Ownership, And The State Cannot Refute It.

The State has brought a Civil Forfeiture Action against Ms. Sutton and her vehicle, alleging that under Ala. Code § 20-2-93, it is entitled to be possessed of Ms. Sutton's vehicle because it alleges, the vehicle, is a conveyance "used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt, possession or concealment of any property constituting controlled substances …" Ala. Code § 20-2-93(a). Doc. 1.

Ms. Sutton has not been charged with any crimes. Indeed, as search of Ms. Sutton's name on Alacourt, Ex. E, reveals that she has never been charged with a crime in any year covered by Alacourt. The Civil Forfeiture Act provides a defense for innocent owners of property. Ala. Code § 20-2-93(h). The Act states that property shall not be forfeited "if the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property

so as to have prevented such use." Ala. Code § 20-2-93(h).

In this case, the only facts of record are that Ms. Sutton had no knowledge of the use of the vehicle for alleged drug trafficking. Ex. A, ¶¶ 3-4, 6. Of course, if she had no knowledge of the alleged use of her vehicle for a drug crime, she had no ability to prevent the use of the vehicle for the commission of the crime alleged. The State, when given the opportunity to explain how Ms. Sutton had any connection to this crime, utterly failed to do so. As such, Ms. Sutton has carried her burden to make a prima facie case that the innocent owner defense under Ala. Code § 20-2-93(h) applies, and the State cannot put forth any evidence that this defense does not apply. As such, Ms. Sutton is entitled to summary judgment in this case.

Respectfully
submitted,

/s/ Brian M. Clark
Brian M. Clark
Attorney for Plaintiff

OF COUNSEL
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/s/ Darrell Cartwright
Darrell Cartwright
Attorney for Plaintiff

OF COUNSEL
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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2020, I electronically filed the foregoing with the Clerk of Court using the Alafile system, which will automatically send email notifications of such filing to the following counsel of record:

Scott M. Lloyd
Attorney for the State
100 Main Street, Room 204
Centre, Alabama 35960

Evan W. Smith
Attorney at Law
201 1st Avenue North
Centre, Alabama 35960

/s/ Brian M. Clark
Of Counsel

APPENDIX J

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

STATE OF ALABAMA, Plaintiff, V. MAZE ROGER DAVID, SUTTON LENA, AUTOMOBILE ONE (1), A FICTITIOUS DEFENDANT ET AL, Defendants.	)	Case No.: CV-2019-900034.00

ORDER GRANTING DEFENDANT SUTTON'S MOTION FOR SUMMARY JUDGMENT

Having duly considered Defendant's Motion for Summary Judgment, Doc. 41, the Court hereby rules as follows:

1. The State has proved a prima facie case that the vehicle was used as a conveyance for a controlled substance in violation of the Controlled Substance Laws of the State of Alabama.

2. Ms. Sutton has sustained her burden to prove that she did not know and court not through the exercise of reasonable diligence have learned of the

intended unlawful use of her vehicle so as to have prevented it.

3. This action for forfeiture of the vehicle is denied.

4. The vehicle is hereby ordered released to Ms. Sutton.

DONE this 28th day of May, 2020.

/s/ SHAUNATHAN C. BELL
CIRCUIT JUDGE

APPENDIX K

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

STATE OF ALABAMA, ex rel, ASHLEY M. RICH, District Attorney for the 13th Judicial Circuit of Alabama (Mobile County)	)	
Plaintiff,	)	**CIVIL ACTION NO.: CV-2019-900565**
v.	)	
One Sig Sauer Handgun and one Nissan Altima, Seized from TAYJON CULLEY and Titled to HALIMA TARIFFA CULLEY,	)	
Defendants.	)	

AFFIDAIVIT OF HALIMA TARIFFA CULLEY

My name is Halima Tariffa Culley. I am over the age of 19 years, I am a resident of Rockdale County, Georgia, and make this affidavit based upon my personal knowledge of the facts stated herein:

1. In February 2019, my son, Tayjon Culley, was a student at the University of South Alabama, in Mobile, Alabama.

2. Tayjon went to college at the University of South Alabama in 2014. In March 2017, I bought a 2015 Nissan, Altima ("the vehicle"). I allowed Tayjon to drive the vehicle while at school in Mobile, Alabama.

3. The vehicle is titled in my name, and it is registered in the State of Georgia. I pay the registration for the vehicle, and I maintained full coverage insurance of the vehicle until March 2020 when I changed the coverage to storage status.

4. Tayjon had possession of the vehicle while he was in college in Mobile, Alabama, and I, of course, did not know how he was using the vehicle on a daily basis.

5. On March 8, 2019, I learned that Tayjon had been arrested by the City of Satsuma, Alabama and charged with possession of marijuana and drug paraphernalia.

6. I learned that the City of Satsuma, Alabama, through its Police Department, seized the vehicle I owned because of Tayjon's arrest.

7. Shortly after learning that the vehicle I own was in the possession of the City of Satsuma, Alabama, I called the City of Satsuma, Alabama Police Department and attempted to retrieve the vehicle. The Satsuma Police Department did not seem to know the location of the vehicle. Ultimately, I contacted Assistant District Attorney William Christopher McDonough III. Mr. McDonough explained the situation and told me to respond to the summons wherein

I had been named a defendant in Civil Asset Forfeiture Action, Case No. CV-2019-900565 and return a follow-up affidavit they would send me. I was told he would review the information upon receipt and that I should be able to retrieve the vehicle. I timely complied with Mr. McDonough's instructions and then spoke with Abby, who I believed to be in the forfeiture department, and was advised a court date would be set. She further informed me I would not be able to retrieve the vehicle prior to a court date that might be six months or longer. I could no longer reach Mr. McDonough. I later learned that I spoke with Abby Mason who is Mr. McDonough's trial coordinator rather than someone in the forfeiture department.

8. To date, I am unable to retrieve the vehicle, and instead I remain the defendant in Civil Asset Forfeiture Action, Case No. CV-2019-900565.

9. I have never been charged with a crime because of Tayjon's arrest on February 17, 2020, and had no knowledge that my son, while in another state, had marijuana or any other paraphernalia in his possession.

10. I certainly had no idea that Tayjon would be driving the vehicle I own on February 17, 2019 while in possession of marijuana or drug paraphernalia.

11. Because I had no knowledge of what he had been doing in my car on February 17, 2019, I had no ability to prevent him from committing any alleged crime, or from having marijuana or drug paraphernalia on his person or in the vehicle on that day, or any other date.

Dated this the 6 day of July 2020.

Halima Tariffa Culley

STATE OF GEORGIA)

COUNTY OF Gwinnett)

Before me, the undersigned, a Notary Public in and for said county in the same state, hereby certify that Halima Tariffa Culley, whose name is signed to the foregoing, who is known to me and acknowledged before me on this day that she has been informed of the contents above and foregoing and has executed same voluntarily as such on the day the same bears date.

Witness my hand and official seal on this the 6 day of JULY 2020.

NOTARY PUBLIC
My commission expires: 01/12/2024
[Affix Seal]

APPENDIX L

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

STATE OF ALABAMA, ex rel, ASHLEY M. RICH, District Attorney for the 13th Judicial Circuit of Alabama (Mobile County)	)	
Plaintiff,	)	**CIVIL ACTION NO.: CV-2019-900565**
v.	)	
One Sig Sauer Handgun and one Nissan Altima, Seized from TAYJON CULLEY and Titled to HALIMA TARIFFA CULLEY,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant Halima Tariffa Culley states the following as her Memorandum in Support of her Motion for Summary Judgment filed herewith.

I. FACTS

The relevant facts of this case are straightforward and largely undisputed. They are as laid out in the numbered paragraphs below:

1. Defendant Halima Tariffa Culley owns a 2015 Nissan Altima, registered in the State of Georgia. Ms. Culley pays the registration for the vehicle, and paid the insurance on it until March of 2020, when she changed it to storage status due to the events set forth below. Culley Aff., Ex. A hereto, ¶¶ 1-3.

2. Ms. Culley has a son, Tayjon, who, at the time of his arrest made the subject of this civil forfeiture action, was as student at the University of South Alabama, in Mobile, Alabama. Culley Aff., ¶ 1.

3. Ms. Culley allowed her son to drive the vehicle while he was at school. But he never owned the vehicle. Of course, she did not know how he was using the vehicle on a daily basis. Culley Aff., ¶ 1.

4. On March 8, 2019, Ms. Culley learned that Tayjon had been arrested on February 17, 2019. Culley Aff., ¶

5. Tayjon was charged with possession of marijuana and drug paraphernalia. Complaint, Doc. 7, p. 1.

5. Ms. Culley learned that her vehicle had been seized, and was in the possession of the City of Satsuma, Alabama. Culley Aff., ¶¶ 6-7.

6. Ms. Culley contacted the City of Satsuma Police Department, and attempted to retrieve her car. She eventually spoke with Assistant District Attorney William Christopher McDonough, III, who told her that she was now the defendant in a civil asset forfeiture case, and gave her instructions as to what to do. Ultimately, she was unsuccessful in retrieving her

vehicle through self-help measures. Ms. Culley was told by "Abby" from the District Attorney's office that she would not be able to retrieve her vehicle prior to a court date that might be six months or longer. Culley Aff., ¶ 7.

7. To date, Ms. Culley has been unable to retrieve her vehicle. Culley Aff., ¶ 8.

8. Ms. Culley has never been charged with a crime as a result of Tayjon's arrest, and had no knowledge that her son, in another state had marijuana or drug paraphernalia in his possession. Culley Aff., ¶ 9.

9. Ms. Culley had no idea that her son would be driving her vehicle on February 17, 2019 while in possession of marijuana or drug paraphernalia, as a result, she had no ability to prevent him from committing any alleged crime, or from having marijuana or drug paraphernalia on his person or in the vehicle on that date, or any other date. Culley Aff., ¶¶ 10-11.

II. ARGUMENT

A. Rule 56 Standard

Under Ala. R. Civ. P. 56, once a movant makes a prima facie showing there is no genuine issue of material fact, "the burden shifts to the nonmovant to present substantial evidence creating such an issue." Ayers v. Calvary SVPI, LLC, 876 So.2d 474, 476 (Ala. 2003). In this case, the State can make no showing, not to mention a showing "of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." Id. Quoting, West v. Founders Life Assurance, 547 So.2d 870, 871 (Ala. 1989),

that Ms. Culley had any knowledge of the crime it alleges Tayjon Culley to have committed.

B. Ms. Sutton Has Met Her Burden Under The Statute To Show Innocent Ownership, And The State Cannot Refute It.

The State has brought a Civil Forfeiture Action against Ms. Culley and her vehicle, alleging that under Ala. Code § 20-2-93, it is entitled to be possessed of Ms. Sutton's vehicle because it alleges, the vehicle, is a conveyance "used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt, possession or concealment of any property constituting controlled substances …" Ala. Code § 20-2-93(a). Doc. 2.

Ms. Culley has not been charged with any crimes. Indeed, a search of Ms. Culley's name on Alacourt, Ex. B, reveals that she has never been charged with a crime, other than a traffic violation in any year covered by Alacourt. The Civil Forfeiture Act provides a defense for innocent owners of property. Ala. Code § 20-2-93(h). The Act states that property shall not be forfeited "if the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use." Ala. Code § 20-2-93(h).

In this case, the **only** facts of record are that Ms. Culley had no knowledge of the use of the vehicle for alleged drug possession and drug paraphernalia. Ex. A, ¶¶ 9-11. Of course, if she had no knowledge of the alleged use of her vehicle for a drug crime, she had no

ability to prevent the use of the vehicle for the commission of the crime alleged. As such, Ms. Culley has carried her burden to make a prima facie case that the innocent owner defense under Ala. Code § 20-2-93(h) applies, and the State cannot put forth any evidence that this defense does not apply.

This situation mirrors the case of State v. Sutton, Civil Action No. CV-2019-900034.00, in the Circuit Court of Cherokee County, Alabama, wherein the Court granted a motion for summary judgment to a defendant in a civil forfeiture action based upon the innocent owner defense contained at § 20-2-93(h). Like in this case, Ex. C hereto, the defendant put forth an affidavit stating that she had no knowledge of or involvement in the crime. The Court granted the motion, stating in its Order that, "Ms. Sutton has sustained her burden to prove that she did not know and could not through the exercise of reasonable diligence have learned of the intended unlawful use of her vehicle so as to have prevented it." Order, Ex. D hereto. Similarly, Ms. Culley has sustained her burden in this case, and like the Sutton case, the forfeiture complaint should be denied, and the vehicle should be released to Ms. Culley.

WHEREFORE, for the foregoing reasons, based on the evidence attached hereto, and for the reasons set forth in the Motion for Summary Judgment, the forfeiture is due to be denied, and Ms. Culley's vehicle returned to her.

Respectfully submitted,

/s/ Brian M. Clark
Brian M. Clark
Attorney for Plaintiff

OF COUNSEL

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/s/ Darrell Cartwright
Darrell Cartwright
Attorney for Plaintiff

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dcartwright@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2020, I electronically filed the foregoing with the Clerk of Court using the Alafile system, which will automatically send email notifications of such filing to the following counsel of record:

Scott M. Lloyd
Attorney for the State
100 Main Street, Room 204
Centre, Alabama 35960

Roger David Maze
[redacted]
Arab, Alabama 35016

/s/ Brian M. Clark
Of Counsel

APPENDIX M

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

STATE OF ALABAMA, Plaintiff, V. CULLEY TAYJON, CULLEY HALIMA TARIFFA Defendants.	)	Case No.: CV-2019-900565.00

ORDER and JUDGMENT

This action came on the motion of Defendant Halima Tariffa Culley for a summary judgment pursuant to Rule 56 of the Alabama Rules of Civil Procedure. Upon consideration of said motion and the accompanying proof, the Court finds that Defendant's motion is due to be, and hereby is, GRANTED.

Therefore, it is Ordered, Adjudged and Decreed that JUDGMENT is entered in favor of Defendant Defendant Halima Tariffa Culley and against the Plaintiff as to possession of the subject vehicle (2015 Nissan Altima, VIN # [redacted]8447).

The State is ORDERED to return the subject vehicle to Halima Tariffa Culley. No storage fees are to be charged to Halima Tariffa Culley.

The State is entitled to keep the Sig Sauer 9MM handgun (Serial #[redacted]2891).

A default was previously entered against Defendant Tayjon Culley, so this order is a final order.

Costs are remitted.

DONE this 30th day of October, 2020.

/s/ MICHAEL A. YOUNGPETER
CIRCUIT JUDGE

APPENDIX N

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

LENA SUTTON, *on behalf of herself and those similarly situated*,	]	
Plaintiff,	]	**4:20-cv-00091-ACA**
v.	]	
LEESBURG, ALABAMA, et al.,	]	
Defendants.	]	

MEMORANDUM OPINION AND ORDER

Plaintiff Lena Sutton lent her car to a friend who, unbeknownst to her, used it to carry drugs. After police officers from Defendant Town of Leesburg pulled her friend over and found the drugs, Leesburg seized Ms. Sutton's car and asked the State of Alabama to institute civil forfeiture proceedings under Alabama Code § 20-2-93. In accordance with that statute, Leesburg retained Ms. Sutton's car during the

pendency of the civil forfeiture proceedings in state court, which took over a year to complete and ended in a judgment in Ms. Sutton's favor.

Near the end of the state civil forfeiture proceeding, Ms. Sutton filed this federal putative class action against Leesburg. She seeks damages and a declaratory judgment that Leesburg's pre-judgment retention of seized property without a probable cause hearing or other method for property owners to reclaim the property is unconstitutional. Ms. Sutton does not name the State as a defendant, but she claims that Leesburg's practice of retaining property pre-judgment is part of a conspiracy with the State to violate the Fourth, Eighth, and Fourteenth Amendments.[1]

Because Ms. Sutton's lawsuit challenges the constitutionality of a state statute, the State intervened, under 28 U.S.C. § 2403(b), for the limited purpose of "argument on the question of constitutionality." The State has now moved to dismiss the complaint, contending that issue preclusion requires the court to abstain under the *Younger* abstention doctrine[2]; that even if issue preclusion does not apply, the court should exercise its discretion to abstain under *Younger*; that the court must dismiss the case because the State is a required and indispensable party under Federal Rule of Civil Procedure 19(b) but that its sovereign immunity prevents its joinder; that Alabama's

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[1] Ms. Sutton's complaint makes one passing reference to the Fifth Amendment. (Doc. 1 at 14). Even if that were enough to assert a claim under the Fifth Amendment, her brief concedes that she cannot state a claim under the Fifth Amendment. (Doc. 34 at 25 n.3).

[2] *Younger v. Harris*, 401 U.S. 37 (1971).

doctrine of claim preclusion bars the case; and that Ms. Sutton fails to state a claim in any event. (Doc. 28).

Leesburg has separately filed a motion for judgment on the pleadings (doc. 31), making the same arguments as the State with respect to issue preclusion (doc. 32 at 6–13; doc. 37), and Ms. Sutton's ability to state a claim about the availability of a bond procedure (doc. 32 at 13–14). The court stayed briefing on Leesburg's motion in the interest of addressing the State's motion first. (Doc. 33). Now, having considered the State's motion, the court concludes that further briefing on Leesburg's motion is unnecessary because the resolution of the State's arguments applies equally to Leesburg's motion.

The court **GRANTS IN PART** and **DENIES IN PART** the State's motion to dismiss and Leesburg's motion for judgment on the pleadings. The court finds that issue preclusion does not require it to abstain under *Younger* and that the court should not abstain because there is no possibility that this case will interfere with Ms. Sutton's state court forfeiture proceedings. Furthermore, the State is not a required party, so a Rule 19(b) dismissal is unwarranted. In addition, Alabama's doctrine of claim preclusion does not bar Ms. Sutton's claims because she was the prevailing defendant in the state court case.

On the merits, however, the court concludes that Ms. Sutton cannot state a claim under the Fourth or Eighth Amendments, and therefore **WILL DISMISS** those claims **WITH PREJUDICE**. The court also **WILL DISMISS WITH PREJUDICE** the part of Ms. Sutton's Fourteenth Amendment claim asserting that either Leesburg or the statute fails to offer any

method for forfeiture defendants to reclaim their property during the forfeiture proceedings, because the statute plainly provides for the execution of a bond in exchange for the property. However, the court **DENIES** the motion to dismiss the Fourteenth Amendment claim with respect to Ms. Sutton's challenge to the lack of a prompt post-seizure probable cause hearing because the State has not met its burden of making persuasive argument about why that claim must fail as a matter of law.

I. BACKGROUND

As an initial matter, the State asserts that dismissal is proper for lack of subject matter jurisdiction, under Federal Rule of Civil Procedure 12(b)(1), and for failure to state a claim, under Rule 12(b)(6). (Doc. 28 at 3). The basis for the Rule 12(b)(1) motion is the State's contention that, under the *Younger* abstention doctrine, the court should decline to exercise jurisdiction over the case. (*See id.* at 10–14). The Eleventh Circuit has recently stated that the *Younger* abstention doctrine does not implicate the court's subject matter jurisdiction. *See Walker v. City of Calhoun*, 901 F.3d 1245, 1254 (11th Cir. 2018) ("*Younger* is based not on jurisdiction, but on the principles of equity and comity.") (quotation marks omitted); *see also Tenet v. Doe*, 544 U.S. 1, 6 n.4 (2005) (noting that courts may resolve the threshold question of the applicability of the *Younger* doctrine "before addressing jurisdiction," therefore implying that the *Younger* doctrine does not operate as a jurisdictional bar); *Tokyo Gwinnett, LLC v. Gwinnett Cty.*, 940 F.3d 1254, 1266–67 (11th Cir. 2019) (using an abuse-of-discretion standard to review a district court's decision to abstain under *Younger*).

The court will therefore proceed under only Rule 12(b)(6).

In considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court must accept as true the factual allegations in the complaint and construe them in the light most favorable to the plaintiff. *Butler v. Sheriff of Palm Beach Cty.*, 685 F.3d 1261, 1265 (11th Cir. 2012). The court may also consider judicially noticed documents "for the purpose of determining what statements the documents contain and not to prove the truth of the documents' contents." *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999); *see also United States ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 811 (11th Cir. 2015) (adopting *Bryant* outside the securities context). Alabama's motion to dismiss relies partly on state and federal court records from two previous cases involving the same facts presented by this case. (*See* Docs. 28-1, 28-2). The court takes judicial notice of these court records and will incorporate them into the description of the underlying facts.[3] *See* Fed. R. Evid. 201(b).

1. The Statute

Before delving into the facts underlying this case, the court must give an overview of the statute at issue in this case. Alabama's civil forfeiture statute provides for the civil forfeiture of vehicles used "to

[3] The State also contends that the court may consider the judicial records because they are central to Ms. Sutton's claims and she has not challenged their authenticity. (Doc. 28 at 5). The court need not determine whether each of the documents is central to Ms. Sutton's claims (as opposed to the State's defenses) because the court will consider them as judicially noticed documents.

transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of" controlled substances. Ala. Code § 20-2-93(a)(5). Police may seize property without a warrant incident to an arrest. *Id.* § 20-2-93(b)(1).

In cases involving a warrantless arrest, a judge or magistrate must, within 48 hours of the arrest, determine "whether probable cause exists to believe that the defendant *committed the charged offense*." Ala. R. Crim. P. 4.3(a)(iii) (emphasis added). It is not clear what impact this determination might have on the retention of property seized incident to the arrest.

In cases of property seized "unlawfully," a person entitled to possession of the property may file, in the criminal case, a motion for return of the property. Ala. R. Crim. P. 3.13(a). This type of motion can succeed only if the movant proves that the seizure itself was illegal. *State v. Greenetrack, Inc.*, 154 So. 3d 940, 953 (Ala. 2014). And it ceases to be an option once the State or county district attorney, *see id.* § 20-2-93(h), *incorporating by reference id.* § 28-4-286, institutes a civil forfeiture proceeding, *see id.* § 20-2-93(d).

Once a civil forfeiture proceeding has begun, the property is "not … subject to replevin," Ala. Code § 20-2-93(d), a common law action for the return of goods wrongfully taken. At that point, the only way a civil forfeiture defendant may obtain her property during the pendency of the proceeding is by "execut[ing] a bond in double the value of such property." *Id.* § 20-2-93(h), *incorporating by reference id.* § 28-4-287; *State v. Two White Hook Wreckers*, __ So. 3d __, 2020 WL 7326386, at *2 (Ala. Dec. 11, 2020) (holding that the double-value bond "is the exclusive method by which

a claimant may obtain seized personal property during the pendency of a forfeiture action").

To prevail in a civil forfeiture proceeding, the State must prove that the "act or omission [giving rise to forfeiture] was committed or omitted with the knowledge or consent of [the] owner or lienholder." Ala. Code § 20-2-93(h). The property owner may assert the affirmative defense that she is an innocent owner. *Id.* To succeed on that defense, the owner must prove that she had no knowledge of the act subjecting the property to forfeiture and "could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use." *Id.*

While the action is pending, the property is "deemed to be in the custody of the state, county, or municipal law enforcement agency." Ala. Code § 20-2-93(d). The entity having custody of personal property may put the property under seal, move the property "to a place designated by it," or move the property "to an appropriate location for disposition in accordance with law." *Id.* § 20-2-93(d)(1)–(3). If the State prevails in the forfeiture action, it may, among other options, sell the property. *Id.* § 20-2-93(e)(2). After paying for the cost of the proceedings, the State must award the remaining proceeds of the sale to "the municipal law enforcement agency or department" that participated in the investigation resulting in the seizure. *Id.*

2. The Facts

On February 20, 2019, Ms. Sutton's friend, Roger Maze, borrowed her car to run an errand for her. (Doc. 1 at 5–6 ¶¶17–19; *see also id.* at 8 ¶ 25). As it turned out, Mr. Maze was a drug dealer and, after he was pulled over for speeding, the police searched the car

and found methamphetamine. (*Id.* at 7 ¶¶ 20–21, 23). The police arrested Mr. Maze and his passenger and seized the car. (*Id.* at 8 ¶ 25).

Ms. Sutton quickly informed Leesburg that she had nothing to do with Mr. Maze's crime and that she needed her car back, but Leesburg requested that the State initiate a forfeiture action against her car. (Doc. 1 at 8–9 ¶¶ 29–35). The State filed the forfeiture action against Ms. Sutton on March 6, 2019, two weeks after her car was seized on February 20. (*Id.* at 10 ¶ 38; *see also* Doc. 28-1 at 4–6). The court will refer to the civil forfeiture action as *Sutton I*.

Although Ms. Sutton was served with the complaint in Sutton I, she did not appear in that case until May 1, 2019, the day the state court entered a default declaratory judgment forfeiting the car to Leesburg. (Doc. 28-1 at 18, 34, 45). She immediately moved to set aside the default, arguing in part that the lack of a timely post-seizure hearing to determine whether Ms. Sutton's car should be returned to her violated her constitutional rights. (*Id.* at 47, 108–18).

On the same day as the entry of default judgment and Ms. Sutton's motion to set aside the default in *Sutton I*, Ms. Sutton filed a federal lawsuit against Alabama's Attorney General, asserting that Alabama's civil forfeiture statute is unconstitutional and seeking injunctive relief and declaratory judgment. *Sutton v. Marshall*, no. 4:19-cv-00660-KOB, Doc. 1 (N.D. Ala. May 1, 2019). The court will refer to that federal case as *Sutton II*.

In June 2019, as *Sutton II* was getting underway, the state court in *Sutton I* set aside the default judgment and Ms. Sutton filed an answer. (Doc. 28-1 at 171–72). In July 2019, Ms. Sutton served

interrogatories on the State. (*Id.* at 186). The State responded to the interrogatories later that month, providing no information but indicating that "[a] response … [would] be forthcoming." (*Id.* at 206–07). Nothing further happened in that case until February 2020, when the state court set the case for a trial to be held in April 2020. (*Id.* at 236).

In the meantime, in November 2019, the federal district court hearing *Sutton II* determined that, in light of the ongoing state court proceedings in *Sutton I*, the federal court should abstain under the *Younger* doctrine. *Sutton v. Marshall*, 423 F. Supp. 3d 1294 (N.D. Ala. 2019). It therefore dismissed *Sutton II* without prejudice. *Id.*

In January 2020, while the state court proceeding in *Sutton I* was still pending, Ms. Sutton filed this putative class action against Leesburg, seeking to certify a class defined as "[a]ll persons who have had property seized by the Town of Leesburg, Alabama, and where a Civil Forfeiture Action was instituted by the State of Alabama beginning two (2) years before the filing of this action." (Doc. 1 at 11 ¶ 43). Proceeding under 42 U.S.C. § 1983, she asserts that Leesburg conspired with the State to violate (1) the Fourth and Fourteenth Amendment by retaining seized property before and during the pendency of civil forfeiture proceedings without holding a prompt post-deprivation hearing (*id.* at 14–16 ¶¶ 51–57, 18 ¶ 67); and (2) the Eighth Amendment by depriving property owners of their property during the pendency of the forfeiture proceedings (*id.* at 16 ¶¶ 59–60). In addition to a request for declaratory judgment, Ms. Sutton seeks compensatory and punitive damages. (*Id.* at 18–19).

In February 2020, the state court in *Sutton I* set an April 2020 trial date. (Doc. 28-1 at 236). Before the trial, Ms. Sutton moved for summary judgment on the ground that the State had no evidence she was involved in or even knew about Mr. Maze's illegal activity. (*Id.* at 238–44). In May 2020, the state court granted summary judgment in Ms. Sutton's favor and denied the State's request for forfeiture of the car (*id.* at 386).

Returning to this case, in October 2020, Ms. Sutton filed a belated notice under Federal Rule of Civil Procedure 5.1 and 28 U.S.C. § 2403 that this action questions the constitutionality of a state statute. (Doc. 24). After the court certified to the Attorney General that this action raises a constitutional challenge to the civil forfeiture statute, the State, without waiving its sovereign immunity, moved to intervene for the limited purpose of filing a motion to dismiss. (Doc. 26). This court granted the motion and the State filed the instant motion to dismiss. (Docs. 27, 28). Leesburg soon followed with its motion for judgment on the pleadings. (Doc. 31).

II. DISCUSSION

The State moves to dismiss this case, contending that: (1) the federal doctrine of issue preclusion mandates that this court abstain under the *Younger* doctrine because the *Sutton II* court abstained; (2) even if issue preclusion does not apply, the court should abstain; (3) under Rule 19(b), it is an indispensable party that cannot be joined due to its sovereign immunity from suit; (4) Alabama's doctrine of claim preclusion bars this case; and (5) Ms. Sutton fails to state a claim. (Doc. 28). Leesburg joins in the State's arguments about the applicability of issue preclusion

to the *Sutton II* court's abstention, as well as its argument about the part of Ms. Sutton's claim alleging that the statute does not provide for a bond procedure. (Docs. 32, 37).

Before the court addresses those arguments, it must clarify two things about Ms. Sutton's complaint. First, Ms. Sutton requests a declaratory judgment that the civil forfeiture statute violates the "Fourth Amendment and Due Process Clauses of the Fourteenth Amendment" by: (1) "failing to provide adequate and prompt post-deprivation deprivation [sic] hearings to individuals whose property has been seized and retained"; and (2) "retaining all seized property and without a prompt post-seizure hearing." (Doc. at 17–18). These requests are somewhat difficult to parse.

However, a careful reading of the complaint in conjunction with Ms. Sutton's other filings in this case reveals that the first request relates to the lack of a post-seizure hearing about whether there is probable cause to believe the property is subject to forfeiture. (*See* Doc. 1 at 14 ¶¶ 51–52; Doc. 22 at 2 ¶ 5). The second request relates to a civil forfeiture defendant's alleged inability to retrieve her property while the forfeiture action is pending. (*See* Doc. 1 at 15 ¶ 55, 18 ¶ 68; Doc. 22 at 2 ¶ 5).

Second, Ms. Sutton's brief in opposition to the motion to dismiss makes references to requests for injunctive relief against the State. (*See* Doc. 24 at 24). Ms. Sutton's complaint does not actually make any request for injunctive relief, instead requesting only declaratory judgment and damages from Leesburg. (*See* Doc. 1 at 18–19). Ms. Sutton cannot add a request for injunctive relief or name a new defendant via

briefing in opposition to a motion to dismiss. *See Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004). Accordingly, the court will not address any requests for injunctive relief raised in briefing, but instead only the requests for relief actually made in Ms. Sutton's complaint.

With that understanding of Ms. Sutton's complaint, the court turns to the State's arguments in support of dismissal.

1. *Younger* Abstention

First, the State contends that under the *Younger* abstention doctrine, this court should abstain because (1) the *Sutton II* court abstained, thereby binding this court under the doctrine of issue preclusion; and (2) although the state court proceedings in *Sutton I* have now ended, they were still ongoing when Ms. Sutton filed this case. (Doc. 28 at 10–14).

"Under *Younger v. Harris* and its progeny, federal district courts must refrain from enjoining pending state court proceedings except under special circumstances." *Old Republic Union Ins. Co. v. Tillis Trucking Co.*, 124 F.3d 1258, 1261 (11th Cir. 1997). "By abstaining from exercise of their jurisdiction, the federal courts promote the value of comity between the states and the federal government and avoid unnecessary determinations of federal constitutional questions." *Liedel v. Juvenile Court of Madison Cty.*, 891 F.2d 1542, 1546 (11th Cir. 1990). But abstention is the exception to the general rule that federal courts have a "virtually unflagging obligation to exercise the jurisdiction given them." *31 Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003) (quoting *Col. River Water Conservation Dist. v. United States*, 424

U.S. 800, 817 (1976)) (quotation marks and alteration omitted).

The *Younger* doctrine originally applied only to federal cases seeking to enjoin state criminal proceedings, but it has been extended to apply to federal cases seeking any form of relief that would "effectively" enjoin certain state court civil proceedings. *Republic Union Ins. Co.*, 124 F.3d at 1261. Where state court civil proceedings are at issue, a court must consider whether (1) the federal proceeding would interfere with the ongoing state judicial proceeding; (2) the state proceeding implicates important state interests; and (3) the plaintiff has an adequate state remedy available. *31 Foster Children*, 329 F.3d at 1274–75. The Eleventh Circuit has explained that a state court proceeding is considered "ongoing" if it was pending at the time the plaintiff filed the federal complaint. *Liedel*, 891 F.2d at 1546 n.6. But the court must decide whether to abstain based on the circumstances present at the time of the decision. *See Redner v. Citrus Cty.*, 919 F.2d 646, 649 n.5 (11th Cir. 1990).

a. Issue Preclusion

As an initial matter, the State contends that this court need not engage in any analysis of whether to abstain under *Younger* because the *Sutton II* court's decision to abstain binds the court under the doctrine of issue preclusion. (Doc. 28 at 12–13). Because the State seeks to use a federal decision based on a federal question to issue-preclusive effect, this court must apply federal preclusion principles. *CSX Transp., Inc. v. Bhd. of Maint. of Way Employees*, 327 F.3d 1309, 1316 (11th Cir. 2003).

Under Eleventh Circuit law, issue preclusion prohibits a party from relitigating an issue if four criteria

are met: (1) "the issue at stake is identical to the one involved in the prior proceeding"; (2) "the issue was actually litigated in the prior proceeding"; (3) the determination of the issue in the prior litigation was a "critical and necessary part of the judgment"; and (4) "the party against whom [issue preclusion] is asserted … had a full and fair opportunity to litigate the issue in the prior proceeding." *Pleming v. Universal-Rundle Corp.*, 142 F.3d 1354, 1359 (11th Cir. 1998) (quotation marks omitted). Where circumstances have materially changed, issue preclusion does not apply. *CSX Transp., Inc.*, 327 F.3d at 1317–18.

Here, it is unclear that the district court's discretionary decision not to exercise jurisdiction in *Sutton II* resulted in the type of judgment that would have preclusive effect. But even assuming for the sake of simplicity that it did, the application of issue preclusion is not appropriate in this case because the *Younger* issue presented in *Sutton II* is not identical to the *Younger* issue presented in this case and the circumstances have materially changed.

For one thing, although the underlying facts in this case and *Sutton II* are identical up to a point, the analysis of whether *Younger* requires abstention is not. In *Sutton II*, Ms. Sutton expressly sought various forms of injunctive relief against Alabama's Attorney General, including a court order requiring the State and local law enforcement agents to "institute hearings" in all cases involving the forfeiture of property and a preliminary injunction prohibiting the allegedly unconstitutional "practices" complained of in these cases. *Sutton II*, no. 4:19-cv-00660-KOB, Doc. 14 at 17–18 (N.D. Ala. June 28, 2019). She also requested a declaratory judgment, but no money damages. *Id.*

By contrast, in this case, Ms. Sutton seeks money damages and a declaratory judgment, but no injunctive relief. (Doc. 1 at 18–19). Because an integral part of the *Younger* analysis involves whether the relief sought in the federal case will interfere with ongoing state court proceedings, the issue presented in *Sutton II* and this case is not identical. *Cf. CSX Transp. Inc.*, 327 F.3d at 1317 ("If we were bound by broad legal decisions by other courts at a given level of abstraction out of the facts of every similar case by the mere fact of an identical caption, the novel defense of issue preclusion would serve to bind the adjudication of many more cases than would serve the interests of justice and move outside the scope of the purposes of [issue preclusion].").

Even if the issues were identical, only "one material differentiating fact that would alter the legal inquiry" is required to "overcome the preclusive effect" of an earlier judgment. *CSX Transp., Inc.*, 327 F.3d at 1317. When the *Sutton II* court made its decision, the state court proceedings in *Sutton I* were still pending. Now *Sutton I* has ended in Ms. Sutton's favor. This change is material because the potential for the federal court judgment to interfere with the state court proceedings is of paramount importance in the *Younger* analysis. *See Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) ("*Younger v. Harris* … and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances."); *31 Foster Children*, 329 F.3d at 1276 ("[A]n essential part of the … *Younger* abstention analysis is whether the federal proceeding will interfere with an ongoing state court proceeding. If there is no interference, then abstention

is not required."). Accordingly, issue preclusion does not require this court to abstain under the Younger doctrine, and the court must undertake its own analysis about whether to abstain.

b. Whether to Abstain

A court considering whether to abstain must determine whether (1) the federal proceeding would interfere with the ongoing state judicial proceeding; (2) the state proceeding implicates important state interests; and (3) the plaintiff has an adequate state remedy available. *31 Foster Children*, 329 F.3d at 1274–75. There is no dispute that the state civil forfeiture action in *Sutton I* is a state court civil proceeding that involves important state interests. There is also no dispute that *Sutton I* was still ongoing when Ms. Sutton filed this case, meaning that for purposes of the *Younger* analysis, the court must consider *Sutton I* to be an ongoing state court proceeding.[4] *See Liedel*, 891 F.2d at 1546 n.6.

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[4] The court notes, however, that in *Liedel*, the federal district court abstained ten days *before* the state court hearing the plaintiffs sought to enjoin. 891 F.2d at 1544. The only order the district court entered *after* the state court hearing was a denial of a motion to alter or amend, which the district court issued during the period when the plaintiffs could still appeal the state court's order. *Id.* at 1545. And the plaintiffs were still seeking to enjoin the future enforcement of orders or the future issuance of orders relating to the state court proceeding. *Id.* at 1544; *see also The News-Journal Corp. v. Foxman*, 939 F.2d 1499, 1506, 1510 (11th Cir. 1991) (affirming the district court's decision to abstain because the state court had before it a motion for reconsideration before it when the federal court abstained). Thus, the underlying state court proceeding had not concluded when the federal district court abstained.

However, the Eleventh Circuit has clearly instructed that a proceeding's ongoing nature is not enough to justify *Younger* abstention if the federal court's decision will not interfere with the proceeding. *31 Foster Children*, 329 F.3d at 1275. And here, there is no possibility that this case could interfere with *Sutton I* because *Sutton I* has ended with a final judgment in Ms. Sutton's favor that the State has not appealed. Even if Ms. Sutton were to prevail in this case and win both money damages and a declaratory judgment, the federal judgment would have no effect on the *Sutton I* proceeding or judgment.

Moreover, it is unclear that the declaratory relief sought in this case would effectively enjoin civil forfeiture proceedings. As discussed above, Ms. Sutton seeks a declaratory judgment about the unconstitutionality of the lack of (1) a prompt post-seizure probable cause hearing and (2) a method for civil forfeiture defendants to retrieve the property at issue during the forfeiture proceedings. In effect, she wants a declaration that the State and Leesburg cannot hold onto the property during the forfeiture proceedings unless they have shown probable cause and provided some pre-judgment method for forfeiture defendants to obtain their property.

Putting aside the merit of Ms. Sutton's claims, the State has not persuaded this court that the declaratory judgment Ms. Sutton seeks would effectively enjoin any forfeiture proceedings. *See Fuentes v. Shevin*, 407 U.S. 67 72 n.3 (1972) (noting that Younger did not bar an action seeking declaratory and injunctive relief against the enforcement of a state's prejudgment replevin statute because the lawsuit "challenged only the summary extra-judicial process

of prejudgment seizure of property to which [the plaintiffs] had already been subjected"); *Gerstein v. Pugh*, 420 U.S. 103, 107–08 & 108 n.9 (1975) (holding that *Younger* abstention was not required where the plaintiff in a class action sought an injunction requiring pretrial probable cause hearings before a prosecutor could order the detention of criminal defendants); *see also Walker*, 901 F.3d at 1254 (holding that *Younger* did not apply where a plaintiff filed a class action seeking prompt bail determinations, because requiring such a pretrial bail determination would not interfere with a subsequent prosecution and the relief requested did not ask for "pervasive federal court supervision" of the ongoing state proceedings). But in any event, the court does not need to engage in that analysis at this point because, as discussed above, there is no possibility that this case could interfere with Ms. Sutton's forfeiture proceedings. The court therefore declines to abstain under *Younger*.

2. Rule 19

Next, the State asserts that it is a required and indispensable party under Rule 19, but it cannot be joined to the suit because of its sovereign immunity, requiring dismissal of the case. (Doc. 28 at 14–21). It emphasizes that although it intervened in this case, it did so for the limited purpose of defending the constitutionality of § 20-2-93, and that intervening under 28 U.S.C. § 2403 does not subject it to liability. (*Id.* at 14–15; Doc. 26).

Federal Rule of Civil Procedure 19 sets out the standard for determining whether a party who has not been named in a case is nevertheless a "required party" and, if it is, whether its absence from the case

mandates dismissal. Fed. R. Civ. P. 12; *Fla. Wildlife Fed'n Inc. v. U.S. Army Corps of Eng'rs*, 859 F.3d 1306, 1316 (11th Cir. 2017). Joinder of a party is required if (1) the party is subject to service of process; (2) joinder will not deprive the court of subject matter jurisdiction; and (3) the party "claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may … as a practical matter impair or impede the person's ability to protect the interest." Fed. R. Civ. P. 19(a)(1). "[P]ragmatic concerns, especially the effect on the parties and the litigation, control this analysis." *Fla. Wildlife Fed'n, Inc. v. U.S. Army Corps of Eng'rs*, 859 F.3d 1306, 1316 (11th Cir. 2017) (quotation marks omitted). If a required party cannot be joined in the action, "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b).

The State first argues that it is a required party because Ms. Sutton alleges that Leesburg conspired with the State. (Doc. 28 at 15–16). But it points to no precedent holding that a plaintiff must name as a defendant every participant in an alleged conspiracy, and this court has found no such precedent.

The State next argues that because this lawsuit challenges the constitutionality of a state statute and the State has an interest in defending the constitutionality of its statutes, it is a required party. (Doc. 28 at 16–17). The court agrees that the State "claims an interest relating to the subject of the action," but concludes that it is not "so situated that disposing of the action in the person's absence may … as a practical

matter impair or impede the person's ability to protect the interest." Fed. R. Civ. P. 19(a)(1).

As the Second Circuit has explained, "[s]tate (and federal) statutes are frequently challenged as unconstitutional without the state (or federal) government as a named party." *Am. Trucking Ass'n, Inc. v. N.Y. State Thruway Auth.*, 795 F.3d 351, 359 (2d Cir. 2015). Section 2403(b), which permits the State to intervene without subjecting it to liability, "contemplates such suits by providing a notice mechanism and relaxed intervention rules for an absent sovereign in cases challenging the validity of its laws." *Id.* Here, the State has taken advantage of the opportunity offered by § 2403(b) to intervene, without waiving its sovereign immunity, in order to defend its interest in the case. As a practical matter, its nonjoinder does not "impair or impede [its] ability to protect [its] interest." Fed. R. Civ. P. 19(a)(1).

The Eleventh Circuit's decision in *Florida Wildlife Federation, Inc.*, is not to the contrary. In that case, the plaintiff challenged a federal agency's management of a state waterway as violating a federal statute through its violations of state law. *Fla. Wildlife Fed'n, Inc.*, 859 F.3d at 1308. A state agency moved to intervene so that it could file a motion to dismiss. *Id.* at 1314. The district court denied the motion to intervene and ultimately dismissed the case on a different ground. *Id.* at 1315. The Eleventh Circuit held that the district court should have dismissed the action for failure to join the state agency, which was an indispensable party. *Id.* at 1316. The Court did not discuss § 2403(b)'s effect on the Rule 19 analysis, likely because that case did not involve a challenge to the constitutionality of a state statute. *See* 28 U.S.C.

§ 2403(b) (permitting the State to intervene in "any action, suit, or proceeding … wherein the constitutionality of any statute of that State affecting the public interest is drawn in question").

Unlike *Florida Wildlife Federation, Inc.*, the State in this case has the statutory right to intervene to defend its interest, and it has taken advantage of that right. The practical reality is that the State is well situated to protect its interest in defending its civil forfeiture statute. Joinder as a party is unnecessary and the court will not dismiss this action under Rule 19.

3. Claim Preclusion

Next, the State contends that Ms. Sutton's constitutional claims are barred by Alabama's doctrine of claim preclusion because she either raised them or could have raised them during the civil forfeiture proceedings in *Sutton I*. (Doc. 28 at 24–26). Leesburg purports to join in the State's motion to dismiss on this ground (doc. 37), although its brief in support of the joinder addresses only the separate defense of issue preclusion (doc. 38).

The court must apply Alabama law to determine the preclusive effect of an Alabama state court judgment. *Kizzire v. Baptist Health Sys., Inc.*, 441 F.3d 1306, 1308 (11th Cir. 2006). Under Alabama law, claim preclusion is an affirmative defense which the party asserting it must prove. *Bond v. McLaughlin*, 229 So. 3d 760, 767 (Ala. 2017). Claim preclusion bars "any claim that was, or that could have been, adjudicated in [a] prior action" where there is "(1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action

presented in both actions." *Ex parte Beck*, 988 So. 2d 950, 954 (Ala. 2007) (quotation marks omitted).

Ms. Sutton argues that claim preclusion cannot bar her lawsuit because she was the prevailing defendant in *Sutton I*. (Doc. 34 at 22–24). She is correct. The Alabama Supreme Court has explained that, with two exceptions, claim preclusion will not bar a successful defendant in an action from filing a later action bringing her own claims based on the same facts:

> As a general rule, where a defendant has an independent claim against the plaintiff, such as might be either the basis of a separate action or might be pleaded as a set-off or counterclaim, he is not obliged to plead it in plaintiff's action, although he is at liberty to do so, and if he omits to set it up in that action, or if, although he introduces it in evidence in rebuttal of plaintiff's demand, it is not used as a set-off or counterclaim, this will not preclude him from afterward suing plaintiff upon it, in the absence of some statute to the contrary. But the rule does not apply where the subject matter of the set-off or counterclaim was involved in the determination of the issue in the former action in such wise that the judgment therein necessarily negatives the facts on which defendant would have to rely in order to establish his demand

Maxcy v. Twilley, 271 So. 2d 243, 244 (1972) (citing *A.B.C. Truck Lines v. Kenemer*, 25 So. 2d 511 (Ala. 1946)). In short, under *Maxcy* and *Kenemer*, claim

preclusion does not bar a prevailing defendant from filing her own claims against the losing plaintiff unless (1) a statute specifically bars the assertion of the claim in a later action or (2) the judgment in the earlier action establishes a fact that would necessarily defeat the claim.[5]

The State does not address the rule set out in *Kenemer* and *Maxcy*, arguing that Alabama's law on claim preclusion does not make an exception for prevailing defendants. (*See* Doc. 28 at 24–26; Doc. 35 at 7–8). It points to a later Alabama Supreme Court case in which a prevailing plaintiff was barred from bringing later claims against the same defendant. *Old Republic Ins. Co. v. Lanier*, 790 So. 2d 922, 927–30 (Ala. 2000). *Old Republic Insurance Company* is entirely consistent with *Kenemer* and *Maxcy*, and does not establish that Alabama courts have dispensed with the "prevailing defendant" exception. *See also Burdeshaw v. White*, 585 So. 2d 842, 844 (Ala. 1991) ("The traditional [claim preclusion] case … involves prior litigation between a plaintiff and a defendant,

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[5] Alabama law also provides that "failure to assert a compulsory counterclaim bars the assertion of that claim in another action." *Brooks v. Peoples Nat. Bank of Huntsville*, 414 So. 2d 917, 920 (Ala. 1982); Ala. R. Civ. P. 13(a). This rule derives from the doctrines of claim and issue preclusion. *See* Ala. R. Civ. P. 13(a), committee comments. Rule 13 carves out several exceptions, including what appears to be an exception for a prevailing defendant. *See* Ala. R. Civ. P. 13(a) ("[R]elitigation of [an unasserted compulsory counterclaim] may be barred by the doctrines of [claim preclusion] or [issue preclusion] by judgment *in the event certain issues are determined adversely to the party electing not to assert the claim*.") (emphasis added). In any event, the State has not argued that Ms. Sutton's current claims are barred under Rule 13 as unasserted compulsory counterclaims, and it has therefore waived that argument.

which is decided on the merits by a court of competent jurisdiction, and then a subsequent attempt by the prior plaintiff to relitigate the same cause of action against the same defendant, or perhaps to relitigate a different claim not previously litigated but which arises out of the same evidence…. If the plaintiff won, the claim is merged into the judgment; if the defendant won, the plaintiff is barred from relitigating any matter which could have been litigated in the prior action.") (quotation marks omitted) (emphasis added).

Because the State does not acknowledge the "prevailing defendant" exception, it also does not argue that Ms. Sutton's claims are barred by a statute or that the judgment in *Sutton I* establishes a fact that would necessarily defeat Ms. Sutton's current claims. The State has therefore failed to carry its burden of showing that it is entitled to the affirmative defense of claim preclusion.

4. Claim Splitting

In a footnote, the State makes a passing argument that the court must dismiss this case under the claim splitting doctrine. (Doc. 28 at 26 n.9). The court disagrees.

The claim splitting doctrine prohibits a plaintiff from filing multiple lawsuits against a defendant at the same time in the same court. *See Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 841 (11th Cir. 2017) ("[P]laintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time.") (quoting *Curtis v. Citibank N.A.*, 226 F.3d 133, 139 (2d Cir. 2000)). The prohibition against claim splitting "derives from the doctrine of [claim preclusion]," *id.* at 840 n.3, but "claim splitting is more concerned with the district

court's comprehensive management of its docket," *id.* at 841. The decision to dismiss for improper claim splitting is a discretionary one. *Id.* at 837.

Although Ms. Sutton has been involved in multiple lawsuits relating to the same nucleus of operative fact, she has not engaged in impermissible claim splitting. As an initial matter, it is not clear that a pending state court case can support the dismissal of a federal case for claim splitting. *See, e.g., Kanciper v. Suffolk Cty. Soc. for the Prevention of Cruelty to Animals*, Inc., 722 F.3d 88, 92 (2d Cir. 2013) (finding that the district court abused its discretion by dismissing a case for claim splitting based on the existence of a state court case involving the same subject matter jurisdiction). But even if a state case could be the basis for a claim-splitting dismissal, *Sutton I* cannot be because Ms. Sutton was not the plaintiff in that case. *See Vanover*, 857 F.3d at 841. And *Sutton II* cannot be the basis for dismissal because Ms. Sutton did not file this case until after the court dismissed *Sutton II* without prejudice, so the two federal cases were never pending at the same time. *See id.* The court will not dismiss the case for claim splitting.

5. Merits

Ms. Sutton challenges the enforcement of the civil forfeiture statute under the Fourth, Eighth, and Fourteenth Amendments, arguing that Leesburg and the State's established procedure does not provide for a post-seizure probable cause hearing or a method for forfeiture defendants to obtain their property during the pendency of the forfeiture proceedings. The State contends that Ms. Sutton does not state a claim because (1) the Fourth Amendment does not apply to civil forfeiture actions; (2) Ms. Sutton received due

process under the Fourteenth Amendment; and (3) Ms. Sutton was not fined in violation of the Eighth Amendment. (Doc. 28 at 26).

As an initial matter, to the extent Ms. Sutton challenges the purported lack of a method by which forfeiture defendants can obtain their property during the pendency of the civil forfeiture proceeding, her claim must fail. As the court set out above, and as the *Sutton II* court clearly explained in its decision, *see Sutton*, 423 F. Supp. 3d at 1298, the civil forfeiture statute provides a method for property owners to reclaim their property by executing a double-value bond, Ala. Code § 20-2-93(h), *incorporating by reference id.* § 28-4-287; *Two White Hook Wreckers*, __ So. 3d at __, 2020 WL 7326386, at *2. Ms. Sutton does not argue that requiring payment of a bond that is twice the value of the property is unconstitutional; she argues that no such option exists at all. (*See* Doc. 1 at 10 ¶ 41, 15 ¶ 55, 16 ¶ 57; *see also* Doc. 34 at 4 (arguing that she had "no avenue to retrieve her vehicle" during the pendency of the civil forfeiture proceedings)). Because it is clear from the face of the statute that executing a double-value bond is a method by which forfeiture defendants may reclaim property during the forfeiture proceedings, the court **WILL GRANT** the State's motion to dismiss and Leesburg's motion for judgment on the pleadings with respect to that claim. The court **WILL DISMISS** that claim **WITH PREJUDICE**.

The rest of the court's opinion will address only Ms. Sutton's other theory—that the lack of a prompt post-seizure probable cause hearing violates the Constitution.

i. Fourth Amendment

Ms. Sutton claims that Leesburg's "policy and practice" of not providing a probable cause hearing violates the Fourth Amendment. (Doc. 1 at 18–19). The State contends that Ms. Sutton does not state a claim under the Fourth Amendment because the Fourth Amendment governs only the initial seizure and not the retention of the property. (Doc. 28 at 27–28).

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. A plaintiff may state a Fourth Amendment claim for an unreasonable seizure of property and possibly even for retention of unconstitutionally seized property. *Case v. Eslinger*, 555 F.3d 1317, 1327 (11th Cir. 2009); *Bruce v. Beary*, 498 F.3d 1232, 1248 (11th Cir. 2007) (stating that "the continued retention of" property seized pursuant to an unlawful search "would be a constitutional violation as well"); *Barker v. Norman*, 651 F.2d 1107, 1131 (5th Cir. Unit A July 30, 1981) ("[C]ontinued retention by police officers of allegedly stolen property, as distinct from the initial seizure of that property, may in some circumstances be a constitutional deprivation."). But a plaintiff cannot state a Fourth Amendment claim based on the continued retention of legally seized property; instead, such a claim "raises an issue of procedural due process under the Fourteenth Amendment." *Case*, 555 F.3d at 1330.

Ms. Sutton expressly does not challenge the constitutionality of the initial seizure of her car. (Doc. 1 at 3 ¶ 7; *see also* Doc. 34 at 26). Her challenge to the retention of her car therefore cannot implicate the

Fourth Amendment. *See Case*, 555 F.3d at 1327; *Byrd v. Stewart*, 811 F.2d 554, 554–55 (11th Cir. 1987) (stating that a challenge to the retention of property is properly brought as a procedural due process claim). Accordingly, Ms. Sutton cannot state a claim under the Fourth Amendment. The court **WILL GRANT** the motion to dismiss Ms. Sutton's Fourth Amendment claim and **WILL DISMISS** that claim **WITH PREJUDICE**.

ii. Fourteenth Amendment Due Process

Ms. Sutton claims that the lack of a prompt post-seizure hearing to determine whether there is probable cause to believe the property is subject to forfeiture violates the Fourteenth Amendment's Due Process Clause. (Doc. 1 at 18–19). The State contends that this does not state a due process claim because Ms. Sutton's forfeiture proceedings satisfied the requirements for a speedy trial, as required by *Barker v. Wingo*, 407 U.S. 514 (1972), and any delay in the resolution of the merits of the forfeiture action was due to Ms. Sutton's own actions. (Doc. 28 at 29–33). Ms. Sutton responds that she is not challenging how long it took to reach a final judgment in the forfeiture proceedings, but instead the pre-judgment deprivation of her property without a probable cause determination. (Doc. 34 at 27–30). She argues that the court must conduct the due process balancing test set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). (*Id.*).

The State's reliance on *Barker* is misplaced. Ms. Sutton does not argue that she was deprived of a speedy forfeiture proceeding. (*See* Doc. 1 at 18–19 (requesting declaratory judgment that the lack of a post-seizure hearing is unconstitutional); Doc. 34 at 27). Because she challenges the post-seizure retention of

property, her claim is one for a violation of her right to procedural due process. *See also Case*, 555 F.3d at 1330 ("A complaint of continued retention of legally seized property raises an issue of procedural due process under the Fourteenth Amendment"); *Byrd*, 811 F.2d at 554–55.

A plaintiff asserting a procedural due process claim must show (1) "a deprivation of a constitutionally-protected liberty or property interest"; (2) state action; and (3) constitutionally inadequate process. *Foxy Lady, Inc. v. City of Atlanta*, 347 F.3d 1232, 1236 (11th Cir. 2003). Under *Mathews v. Eldridge*, a court evaluating whether a plaintiff received due process must consider: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) the governmental "interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

The State's brief and cursory argument about the *Mathews* test (doc. 35 at 10– 11) is insufficient to carry its burden of showing that Ms. Sutton's claim fails as a matter of law. The court emphasizes that this ruling does not mean that Ms. Sutton states a claim, but merely that the State's motion is inadequate to support dismissal. Accordingly, the court **DENIES** the motion to dismiss the Fourteenth Amendment claim to the extent it challenges the lack of a prompt post-seizure hearing about whether probable cause exists to believe that the property is subject to forfeiture.

iii. Eighth Amendment Excessive Fines Clause

Ms. Sutton claims that the retention of her car while the civil forfeiture proceedings were ongoing was an excessive fine, in violation of the Eighth Amendment, and that she can recover damages from Leesburg because it engaged in a conspiracy with the State to violate that Amendment. (Doc. 1 at 16 ¶ 59, 19 ¶ 3). The State contends that this claim fails because a "fine" under the Eighth Amendment occurs only if the property is forfeited, but Ms. Sutton's car was not forfeited. (Doc. 28 at 33–34).

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The Excessive Fines Clause is applicable to the States through the Fourteenth Amendment. *Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019). It is axiomatic that an excessive fine claim requires the plaintiff to establish the existence of both "(1) a fine and (2) excessive[ness]." *United States v. 817 N.E. 29th Drive, Wilton Manors, Fla.*, 175 F.3d 1304, 1309 (11th Cir. 1999). The only question before the court on this claim is whether Ms. Sutton was "fined" when Leesburg retained her car before the entry of judgment in the civil forfeiture proceeding. (*See* Doc. 28 at 33–34). Ms. Sutton contends that even a temporary deprivation of the car constitutes a "fine" for Eighth Amendment purposes. (Doc. 34 at 34–35).

The State has the better argument. Civil *in rem* forfeitures are considered "fines" under the Eighth Amendment "when they are at least partially punitive." *Timbs*, 139 S. Ct. at 689; *see also United States v. Browne*, 505 F.3d 1229, 1281 (11th Cir. 2007) ("Forfeitures are subject to the Eighth Amendment's

prohibition against excessive fines if they constitute punishment for an offense.") (quotation marks omitted). But Ms. Sutton does not cite to any cases finding that a prejudgment retention of property constitutes a "fine" where the property is not ultimately forfeited, and this court has been unable to locate any decision holding that retention of property during a civil proceeding—even a civil forfeiture proceeding—can be considered a "fine."

This makes sense. "[A]t the time the Constitution was adopted, the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense." *United States v. Bajakajian*, 524 U.S. 321, 327 (1998) (emphasis added). Forfeitures are "payments in kind." *Id.* at 328; *see also Austin v. United States*, 509 U.S. 602, 609–10 (1993) ("The Excessive Fines Clause limits the government's power to *extract payments*, whether in cash or in kind, as punishment for some offense.") (emphasis added). But the pre-judgment retention of property is not payment, even in kind, because ownership of the property does not change until after the entry of a judgment.

Although Ms. Sutton did not have access to her property while Leesburg held it, the property still belonged to her. Neither the State nor Leesburg has the power to use or sell seized property until after it is forfeited. *See* Ala. Code § 20-2-93(d) (permitting the entity holding the property pre-forfeiture to place the property under seal, remove the property to a specific place, and in the case of real property, to post a notice and record the seizure), *id.* § 20-2-93(e) (permitting the State, county, or municipality to use or sell property only after the property has been forfeited). All

they can do is hold the property until a judgment has issued.

Leesburg's pre-judgment retention of Ms. Sutton's car cannot be considered a "fine" as that word is used in the Eighth Amendment's Excessive Fines Clause. Accordingly, the court **GRANTS** the motion to dismiss and **WILL DISMISS** Ms. Sutton's excessive fine claim **WITH PREJUDICE**.

III. CONCLUSION

The court **GRANTS IN PART** and **DENIES IN PART** the State's motion to dismiss the amended complaint and Leesburg's motion for judgment on the pleadings. The court **WILL DISMISS** Ms. Sutton's Fourth and Eighth Amendment claims **WITH PREJUDICE**. The court also **WILL DISMISS** Ms. Sutton's claim that Leesburg or § 20-2-93 fails to provide a method by which a forfeiture defendant may reclaim property during the pendency of the forfeiture proceeding. But the court **DENIES** the motions with respect to Ms. Sutton's Fourteenth Amendment claim arising from the lack of a prompt post-seizure hearing about whether there is probable cause to believe the property is subject to forfeiture.

The court will enter a partial judgment consistent with this memorandum opinion and order.

DONE and **ORDERED** this April 6, 2021.

ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE

APPENDIX O

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

LENA SUTTON, *on behalf of herself and those similarly situated*,	]	
Plaintiff,	]	**4:20-cv-00091-ACA**
v.	]	
LEESBURG, ALABAMA, et al.,	]	
Defendant.	]	

PARTIAL JUDGMENT

Consistent with the accompanying memorandum opinion and order, the court **DISMISSES WITH PREJUDICE** Plaintiff Lena Sutton's claims to the extent they assert that the Town of Leesburg or Alabama's civil forfeiture statute, Alabama Code § 20-2-93, fail to offer a method for forfeiture defendants to obtain their property during the pendency of forfeiture proceedings. The court also **DISMISSES WITH**

PREJUDICE Ms. Sutton's Fourth and Eighth Amendment claims.

Ms. Sutton's Fourteenth Amendment claim arising from the lack of a prompt post-seizure probable cause hearing will proceed.

DONE and **ORDERED** this April 6, 2021.

ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE