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App. 1

[DO NOT PUBLISH]

In the
United States Court of Appeals
for the Eleventh Circuit

No. 23-11214

Non-Argument Calendar

JOHN DUNCAN FORDHAM,
Plaintiff-Appellant,
versus
GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES,
GREAT AMERICAN INSURANCE COMPANY,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 1:22-cv-00121-DHB-BKE

(Filed Sep. 6, 2023)

Before ROSENBAUM, JILL PRYOR, and BRASHER, Circuit
Judges.

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PER CURIAM:

After a jury convicted John Duncan Fordham of healthcare fraud, the district court imposed a prison sentence and ordered him to pay, jointly and severally with his codefendants, over one million dollars in restitution to the Georgia Department of Administrative Services and Great American Insurance Company. More than a decade after his conviction, President Trump granted Fordham a full and unconditional pardon. Fordham now seeks reimbursement of the restitution payments he made before his pardon, arguing that his presidential pardon requires the Department and Great American to refund his money. We disagree and affirm the district court's dismissal of his claim.

I.

The seeds of this controversy were sown when a jury convicted Fordham of one count of healthcare fraud, in violation of 18 U.S.C. § 1347. The district court sentenced Fordham to fifty-two months' imprisonment and three years of supervised release. Relevant here, it also ordered Fordham, jointly and severally with his codefendants, to pay \$1,021,888 in restitution to the Department and its insurer, Great American, the victims of Fordham's artifice. After ordering the seizure and liquidation of Fordham's assets, the district court disbursed the resulting proceeds to the Department and Great American. Fordham also made monthly restitution payments following his incarceration, as required by the district court.

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More than fifteen years after his conviction, President Trump granted Fordham a full and unconditional pardon. With pardon in hand, Fordham moved for an accounting of all his restitution payments, which the district court granted. The district court also relieved Fordham of any additional restitution obligation.

Fordham then sued for a return of all past restitution payments to the Department and Great American, which totaled over five hundred thousand dollars, alleging that his presidential pardon entitled him to such relief. The district court dismissed the claim for lack of subject-matter jurisdiction or, in the alternative, failure to state a claim. Fordham timely appealed.

II.

We review questions of subject-matter jurisdiction *de novo*. *Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007). A district court's dismissal for failure to state a claim also receives *de novo* review. *Luke v. Galley*, 975 F.3d 1140, 1143 (11th Cir. 2020). And we may affirm on any basis supported by the record, "even if not relied upon by the district court." *United States v. Chitwood*, 676 F.3d 971, 975 (11th Cir. 2012) (quoting *United States v. Al-Arian*, 514 F.3d 1184, 1189 (11th Cir. 2008)).

III.

Fordham argues that the full and unconditional pardon from President Trump compels the Department and Great American to refund all restitution payments. The district court resolved this case primarily through the lens of subject-matter jurisdiction, but we believe the better approach is to ask whether Fordham has stated a plausible claim for relief. We start by sketching the Rule 12(b)(6) standard and then turn to Fordham’s argument.

A.

The Federal Rules of Civil Procedure require that a plaintiff must “state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Rule 12(b)(6) applies in tandem with Rule 8, which requires a claim for relief to include “a short and plain statement . . . showing that the pleader is entitled to relief.” *Id.* 8(a)(2). The complaint must state a claim to relief that is more than conceivable—it must be plausible. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In other words, a facially sufficient complaint presupposes “some viable legal theory” for relief. *Id.* at 562 (quoting *Car Carriers v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)). “[A] formulaic recitation of the elements of a cause of action will not” suffice. *Id.* at 555. In short, if a complaint does not provide legal grounds for entitlement to relief, a court must dismiss. *See id.* at 555. And “the tenet that . . . [we] must accept as true all of the allegations contained in a complaint is inapplicable to

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legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added).

With these principles in mind, we address Fordham's argument.

B.

Fordham posits that a presidential pardon is much more than a badge of forgiveness. Rather, a presidential pardon, he asserts, entitles its recipient to recoup property that has vested in third parties. We disagree.

The Constitution provides that the President "shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." U.S. Const., art. II, § 2, cl. 1. The pardon power gives the President "plenary authority . . . to 'forgive' the convicted person in part or entirely, to reduce" a prison sentence, or to amend a penalty "with conditions which are in themselves constitutionally unobjectionable." *Schick v. Reed*, 419 U.S. 256, 266 (1974). "The pardon . . . shuts out from sight the offending act." *Young v. United States*, 97 U.S. 39, 66 (1877). A full pardon "releases the punishment and blots out of existence the guilt," rendering the offender innocent "in the eye of the law." *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 380 (1866). But a pardon does not affect any property rights "vested in others directly by the execution of the judgment for the offence, or which have been acquired by others whilst that judgment was in force." *Knote v. United States*, 95 U.S. 149, 154 (1877). Though a pardon "releases the offender from the consequences

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of his offence,” including asset forfeiture, that release must not impair the accrued property rights of others. *See Osborn v. United States*, 91 U.S. 474, 477 (1875). In this sense, the only limitation on the presidential pardon is that it does not reinstate “offices forfeited, or property or interests vested in others in consequence of the conviction and judgment.” *Garland*, 71 U.S. at 381.

Everyone agrees that the district court has already distributed to the Department and Great American the proceeds from the sale of Fordham’s assets and the monthly restitution payments. And the financial administrator for the district court confirmed as much, stating that all restitution payments “have been sent out the to the victims, Department of Administrative Service and Great American Insurance.”

No doubt, the Supreme Court has long held that, as long as proceeds from a restitution order remain in the court’s possession, they fall within a pardon’s grasp. *See Osborn*, 91 U.S. at 476; *cf. Knote*, 95 U.S. at 154 (holding that forfeited property does not vest when it “remain[s] under control of the Executive, or of officers subject to his orders, or . . . in the custody of the judicial tribunals” and “will be restored . . . to the original owner, upon his full pardon”). Thus, the district court properly concluded that Fordham’s pardon discharged his obligation to make *future* restitution payments. But the federal “government can only release what it holds,” *Osborn*, 91 U.S. at 477, and here, it holds nothing. The district court transferred all restitution monies to the victims, so the property rights to those

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funds have fully vested in the Department and Great American. *See Knote*, 95 U.S. at 154 (holding that, when monetary proceeds “have been paid to a party to whom the law has assigned them,” the party’s “rights . . . have become vested, and are as complete as if they were acquired in any other legal way”). In short, the money Fordham seeks is long gone. Allowing him to claw back past restitution payments under guise of a presidential pardon would impair the Department and Great American’s accrued property rights in that money, an outcome plainly proscribed by the Supreme Court. *See Osborn*, 91 U.S. at 476; *Garland*, 71 U.S. at 381.

Fordham’s claim that his presidential pardon entitles him to a refund of money vested in the Department and Great American directly contradicts Supreme Court precedent. Accordingly, his complaint did not advance any viable legal theory or a plausible basis for relief, and the district court correctly dismissed it. *See Twombly*, 550 U.S. at 562, 570; Fed. R. Civ. P. 12(b)(6).

IV.

The district court is **AFFIRMED**.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

JOHN DUNCAN FORDHAM, *
*
Plaintiff, * CV 122-121
*
v. *
*
GEORGIA DEPARTMENT OF *
ADMINISTRATIVE SERVICES *
and GREAT AMERICAN *
INSURANCE COMPANY, *
*
Defendants. *

ORDER

(Filed Mar. 23, 2023)

On September 8, 2022, Plaintiff John Duncan Fordham filed a Complaint seeking to recover monies that have been paid to Defendants Georgia Department of Administrative Services (“DOAS”) and Great American Insurance Company (“Great American”) as victims of honest services fraud for which Plaintiff was convicted. Defendants have filed separate motions to dismiss the Complaint. The matter has been fully briefed and is ripe for adjudication. Upon the relevant law, the Court dismisses this lawsuit.

I. BACKGROUND

On May 5, 2005, a jury convicted Plaintiff for honest services fraud in this Court in the case of United States v. Williams, Case No. CR 104-051 (S.D. Ga. May 26, 2004). Plaintiff was sentenced to serve 52 months imprisonment and to pay \$1,021,888 in restitution. (CR 104-051, Doc. No. 254.) Following the conviction, the Court entered a Final Order of Forfeiture, in which Plaintiff and his business, Fordham, Inc., forfeited \$500,000, with each being jointly and severally liable for that amount. (Compl., Doc. No. 1, Ex. A.) Relevant here, the Court also entered an Order finding Defendants DOAS and Great American to be co-victims entitled to restitution from the criminal defendants in the case, including Plaintiff and his business, Fordham, Inc. (Id., Ex. B.) Plaintiff paid through monthly payments and with monies received from the seizure and sale of his assets following his conviction the following: \$259,287.40 to DOAS and \$272,513.96 to Great American. (Id. ¶ 24.)

On January 19, 2021, the President of the United States issued a full and unconditional pardon to Plaintiff. (Id., Ex. C.) Based upon this pardon, Plaintiff demanded return of the funds paid to Defendants DOAS and Great American prior to filing this lawsuit. (Id. ¶ 23.) On September 8, 2022, Plaintiff filed this action for recovery of the funds “upon provisions of the United States Constitution.” (Id. ¶ 26.)

II. ANALYSIS

Defendant DOAS seeks to dismiss the lawsuit based upon Eleventh Amendment immunity, lack of subject matter jurisdiction, and for failure to state a claim upon which relief can be granted. Defendant Great American seeks to dismiss the lawsuit for failure to state a claim upon which relief can be granted.

A district court must first ensure that it has subject matter jurisdiction over a case. District courts “have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. In this case, Plaintiff asserts federal question jurisdiction by generally stating that his cause of action to recover the subject monies “arises under the Constitution of the United States of America.”¹

In order to bring a case under § 1331 based upon the Constitution, a right or immunity created by the Constitution must be an element of the plaintiff’s cause of action. See, e.g., Gully v. First Nat’l Bank, 299 U.S. 109, 112 (1936). In response to Defendant DOAS’s motion to dismiss, Plaintiff identifies the presidential pardon provision of the Constitution as the basis of his constitutional claim. See U.S. Const., art. II, § 2, cl. 1 (“The President .shall have Power to grant Reprieves and Pardons for Offenses against the United States . . .”).

¹ There is no assertion of subject matter jurisdiction based upon diversity.

For present purposes, the Court will accept that Plaintiff's cause of action for the recovery of monies paid as a result of a pardoned conviction either seeks to vindicate a right bestowed by the presidential pardon provision or requires the Court to construe that provision to determine the claim's validity. Nevertheless, the Court lacks jurisdiction because Plaintiff's complaint does not present a "substantial" question of federal law. See, e.g., Ex parte Poresky, 290 U.S. 30, 31 (1933) ("In the absence of diversity of citizenship, it is essential to jurisdiction that a substantial federal question should be presented."). The United States Supreme Court has explained that a case must be dismissed if the federal claim asserted is "'so insubstantial, implausible, foreclosed by prior decisions of [the Supreme Court], or otherwise completely devoid of merit as not to involve a federal controversy.'" Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 89 (1998) (quoting Oneida Indian Nation of N.Y. v. County of Oneida, 414 U.S. 661, 666 (1974)); see also Levering & Garrigues Co. v. Morrin, 289 U.S. 103, 106 (1933). As the Eleventh Circuit has explained: "A federal court will not have jurisdiction over a federal question that is 'plainly unsubstantial either because [it is] obviously without merit, or "because its unsoundness so clearly results from the previous decisions of [the Supreme Court] as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy.'"'" Harris v. BlueCross/Blue Shield of Ala., Inc., 951 F.2d 325, 327 (11th Cir. 1992) (quoting Levering, 289 U.S. at 106).

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Regarding the claim in this case, the United States Supreme Court has clearly foreclosed the notion that a presidential pardon can interfere with the vested property rights of third parties. See Knote v. United States, 95 U.S. 149, 154 (1877) (“Neither does the pardon affect any rights which have vested in others directly by the execution of the judgment for the offence, or which have been acquired by others whilst that judgment was in force.”); Ex parte Garland, 71 U.S. 333, 381 (1866) (“There is only this limitation to [the pardon power’s] operation: it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment.”); see also Osborn v. United States, 91 U.S. 474, 477 (1875) (explaining that the effect of a pardon is to restore to its recipient all rights of property lost by the offense pardoned unless the property, by judicial process, becomes vested in other persons). The Court cannot avoid the collective force of Supreme Court precedent. Accordingly, Plaintiff’s claim to recover monies vested in Defendants DOAS and Great American is so obviously without merit that it does not present a substantial federal question capable of conferring federal question jurisdiction. This case therefore must be dismissed for lack of subject matter jurisdiction.²

² This jurisdictional holding seems to conflate an inquiry into the merits of Plaintiff’s claim, an aspect of federal question jurisdiction recognized in 13 Charles Alan Wright, Arthur R. Miller, Edward H. Cooper & Richard D. Freer, Federal Practice and Procedure, § 3522 (3d ed. 2008). To be sure, had the Court jurisdiction over the matter, the case would be dismissed for failure to state a claim upon which relief can be granted under the same legal precedent outlined above.

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III. CONCLUSION

Upon the foregoing, the case is dismissed for lack of subject matter jurisdiction. The Clerk is directed to **CLOSE** the case and **TERMINATE** all motions and deadlines.

ORDER ENTERED at Augusta, Georgia this 23rd day of March, 2023.

/s/ Dudley H. Bowen, Jr.
UNITED STATES
DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JOHN DUNCAN FORDHAM,)
Plaintiff,)
v.) Civil Action No.
GEORGIA DEPARTMENT) 1:22-CV-00121-DHB
OF ADMINISTRATIVE)
SERVICES and GREAT)
AMERICAN INSURANCE)
COMPANY)
Defendants.)

**LIMITED APPEARANCE REPLY BRIEF
IN SUPPORT OF MOTION TO DISMISS**

(Filed Oct. 28, 2022)

COMES NOW, the Georgia Department of Administrative Services (“DOAS”), by and through counsel, Christopher M. Can, Attorney General for the State of Georgia, and, without submitting to the jurisdiction of this Court, and without waiving any defenses, files this Limited Appearance Reply Brief in Support of its Motion to Dismiss. In support thereof, DOAS respectfully asks the Court to consider the following:

INTRODUCTION

In his response in opposition, Mr. Fordham attempts to argue that the facts in this case are sufficient to overcome the legal deficiencies. However, Mr. Fordham

has failed to identify any waiver of Eleventh Amendment immunity, failed to identify a cognizable federal question sufficient to grant this Court jurisdiction, and failed to state a claim upon which relief can be granted. As such, DOAS asks this Court to Dismiss the Complaint in its entirety.

ARGUMENT AND CITATION TO AUTHORITY

A. Eleventh Amendment immunity bars this action

Mr. Fordham cites to the Georgia constitution's ex contractu waiver of sovereign immunity for his proposition that the instant action is not barred by Eleventh Amendment immunity.¹ Defendant's Response Brief ("Def. Resp."), pg. 4. This argument fails for several reasons. First, even if the ex contractu waiver was applicable in federal court, there is no contract in existence between Mr. Fordham and DOAS, nor was there a contract at the time Mr. Fordham was convicted and sentenced. Instead, this Court entered several final orders requiring Mr. Fordham to pay restitution and identifying DOAS as a victim entitled to such restitution. Final Order of Forfeiture, August 31, 2005 (attached to Complaint as Exhibit A); Order, November 15, 2005 (attached to Complaint as Exhibit B). For there to be an ex contractu waiver of sovereign

¹ The text of the ex contractu waiver can be found in Ga. Const. Art. I, § II, ¶ IX(c), which provides "[t]he state's defense of sovereign immunity is hereby waived as to any action ex contractu for the breach of any written contract now existing or hereinafter entered into by the state or its departments and agencies." *See also*, O.C.G.A. § 50-21-1.

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immunity, the party seeking to establish such a waiver has the burden of producing a “signed, contemporaneous agreement [] between the parties which demonstrates their intent to enter into a binding contract.” *Bd. of Regents of the Univ. Sys. of Georgia v. Barnes*, 322 Ga. App. 47, 50 (2013). Additionally, the state and its agencies are not subject to suit on the basis of implied contractual theories. *Fru-Con Construction Corp.*, 206 Ga. App. at 824 (holding that sovereign immunity is only waived for actions involving breaches of written contracts and parties cannot sue the State or its agencies on the basis of implied contractual theories). Therefore, in the absence of a mutually-signed, written agreement, there is no waiver of sovereign immunity.

More importantly, however, the issue here is not whether there has been a waiver of sovereign immunity, but whether Eleventh Amendment Immunity bars the suit. The Eleventh Circuit has held that even if there were a waiver of the State’s sovereign immunity, “evidence that a state has waived sovereign immunity in its own courts is not by itself sufficient to establish waiver of Eleventh Amendment immunity from suit in federal court.” *Schopler v. Bliss*, 903 F.2d 1373, 1379 (11th Cir. 1990). Additionally, in the same paragraph as the ex contractu waiver of sovereign immunity, the Georgia constitution states that “[n]o waiver of sovereign immunity under this Paragraph shall be construed as a waiver of any immunity provided to the state or its departments, agencies, officers, or employees by the United States Constitution.” Ga. Const. art. I, § II, ¶ IX(f). Thus, the waiver of sovereign immunity

as to claims brought *ex contractu* does not apply here. *See Barnes v. Zaccari*, 669 F.3d 1295 (11th Cir. 2012) (holding that the Board of Regents of Georgia has expressly retained its Eleventh Amendment immunity from breach of contract claims.).

Mr. Fordham further relies on the *Georgia Department of Revenue v. Burke* for the proposition that Eleventh Amendment immunity has been waived by DOAS' actions. 146 F.3d 1313 (11th Cir. 1998). However, Mr. Fordham omits that the *Burke* court explicitly limited the scope of its decision regarding Eleventh Amendment immunity to certain situations in bankruptcy cases: "We emphasize that our holding regarding the State's waiver of Eleventh Amendment immunity is *quite narrow* because the debtors seriously seek to recover only the costs and attorneys' fees incurred in enforcing the bankruptcy court's automatic stay and discharge injunction." *Burke*, 146 F.3d at 1319 (emphasis added).

Burke noted that "in the absence of explicit consent by state statute or constitutional provision, a state may consent to a federal court's jurisdiction through its affirmative conduct." *Burke*, 146 F.3d at 1318 (citing *Gardner v. New Jersey*, 329 U.S. 565 (1947)). The Supreme Court has discussed several avenues in which a state can explicitly consent to a waiver of Eleventh Amendment immunity through its conduct, but none of them are applicable here. *See, e.g., Lapides v. Board of Regents*, 535 U.S. 613 (2002) (holding that by joining in the removal of an action to federal court, the State waived its Eleventh Amendment immunity);

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Gardner, 329 U.S. 565 (holding that by filing a proof of claim in an active bankruptcy case constituted a waiver of immunity “respecting the adjudication of the claim”); *Clark v. Barnard*, 108 U.S. 436 (1883) (holding that by filing an intervening action “in which a State had sufficient interest to entitle it to become a party defendant” the state consented to a waiver of its immunity). However, each of these avenues is a narrow exception to the general rule of the Eleventh Amendment immunity *See, e.g., Lapides*, 535 U.S. 613, 623-4 (“the rule is a clear one . . . removal is a form of voluntary invocation of a federal court’s jurisdiction sufficient to waive the State’s [Eleventh Amendment immunity]”); *Burke*, 146 F.3d 1313 and *Diaz*, 647 F.3d 1073 (limiting the applicability of the waiver in relation to bankruptcy cases); *Clark*, 108 U.S. 436 (finding that the state had become a party to the case in which it had intervened). The Supreme Court has also recognized that “constructive consent” to a waiver of a constitutional right, such as Eleventh Amendment immunity, is not sufficient to waive the state’s immunity *Edelman v. Jordan*, 415 U.S. 651, 673 (1974).

In the instant case, DOAS has not explicitly consented to the waiver of immunity as contemplated by the Supreme Court. While DOAS filed a motion in the underlying criminal case, such motion did not constitute a voluntary submission the jurisdiction of this Court in the instant case. DOAS did not seek to remove an action in federal court like the state in *Lapides*. *Lapides*, 535 U.S. 613. Likewise, it did not seek to intervene like in *Clark*. *Clark*, 108 U.S. 436. In fact, the

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motion filed by DOAS was not an appearance in the case that “made [the State] a party to the litigation to the full extent required for its complete determination.” *Clark*, 108 U.S. at 448. In *Clark*, the state filed an intervention action (now governed by Rule 24 of the Federal Rules of Civil Procedure) and, thus, “became an actor as well as defendant, as by its intervention the proceeding became one in the nature of an interpleader, in which it became necessary to adjudicate the adverse rights of the State and the appellees to the fund, to which both claimed title.” *Id.* Lastly, DOAS did not file a proof of claim in a bankruptcy case like in *Gardner*. *Gardner*, 329 U.S. 565.

Instead, DOAS merely filed an unopposed motion to be identified as a victim entitled to restitution in the underlying criminal action. Motion of DOAS, Exhibit A (attached to Def. Resp. as Exhibit B); Order, November 15, 2005 (attached to Complaint as Exhibit B). Unlike the situations in *Lapides*, *Clark*, and *Gardner*, this motion did not make DOAS a party to the criminal case. Plaintiff relies on the *Burke* case, which cites *Gardner*, presumably to try to draw a parallel between filing a proof of claim and filing a motion to be identified as a victim entitled to restitution, but that reasoning is flawed because it is not supported by the case law or the facts in this case.

In *Florida Department of Revenue v. Diaz*, the Eleventh Circuit expounded on the scope of the waiver in bankruptcy courts – which it refers to as a “litigation waiver.” *Diaz*, 647 F.3d 1073, 1082, 1086-7 (11th Cir. 2011). By filing a proof of claim in bankruptcy, a state

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agency “waive[s] any immunity which is otherwise might have had *respecting the adjudication of the claim.*” *Gardner v. N.J.*, 329 U.S. 565, 574 (1947) (emphasis added). However, relying on *Gardner*, *Diaz* held that “[a] state that files a proof of claim in a bankruptcy case does not thereby subject itself to any and all lawsuits that in any way might relate to the bankruptcy.” *Id.* at 1087. Instead, the Court found that filing a motion regarding an automatic stay violation *four* years after it occurred and after a discharge order had been entered meant that “any action regarding stay violations was insufficiently related to the bankruptcy court’s adjudication of the Florida DOR’s claim” for a previous waiver of Eleventh Amendment immunity to attach. *Diaz*, 647 F.3d at 1087.

As *Diaz* makes clear, filing a proof of claim does not open a state to any and all litigation in bankruptcy court. Instead, the waiver that attaches upon the filing of a proof of claim is limited to the adjudication of the claim. Here, after the entry of the November 15, 2005 Order identifying DOAS as a victim entitled to restitution, “the adjudication of the claim” concluded. DOAS was no longer a party to the ongoing criminal case, the appeals, or the appointment of the receiver and the liquidation of funds. DOAS received payments of restitution pursuant to a lawful Order of the Court, but was no longer a party to the adjudication of the case.²

² As Mr. Fordham notes in his Response, the receiver had contact with several Assistant Attorney Generals and Special Assistant Attorney Generals. Def. Resp., p. 3. However, there is no

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Furthermore, this case was filed almost seventeen years after the November 15, 2005 restitution order. In *Diaz*, the Court made it clear that a motion filed *four years* after the adjudication of the claim was insufficiently related to be covered under the same waiver of Eleventh Amendment immunity. *Diaz*, 647 F.3d at 1087. Applying the same rationale here, the filing of a new case *seventeen years* after the original Order entered by this Court would be insufficiently related to that original Motion and Order for any waiver that may have existed at the time of the filing of the Motion to attach to the current case.

Eleventh Amendment immunity applies to states unless there has been a congressional waiver or immunity or the state has waived its immunity. *Hans v. Louisiana*, 134 U.S. 1, 10 (1890); *Nichols v. Alabama State Bar*, 815 F.3d 726, 731 (11th Cir. 2016). As discussed in detail in DOAS' Limited Appearance Motion to Dismiss, there has been no congressional abrogation of immunity for the instant action. In addition, DOAS has not waived its immunity in this action such that it is subject to this Court's jurisdiction in the instant action. As there is no waiver of Eleventh Amendment immunity in this case, this Court does not have jurisdiction. As such, this Court should dismiss the action in its entirety.

indication that these individuals participated in the adjudication of the case or that these individuals represented DOAS.

B. Plaintiff has not alleged a federal question sufficient to satisfy federal question jurisdiction under 28 U.S.C. § 1331

Even if this case was not barred by DOAS' Eleventh Amendment immunity, there is no federal question that would confer jurisdiction on this Court. 28 U.S.C. § 1331. Mr. Fordham repeatedly alleges that this Court "has jurisdiction to enforce the provisions of art. II, § 2; cl. 1 of the Constitution and to apply the plain meaning of the pardon to require that DOAC [sic] return these funds." Def. Resp., p. 8. This argument fails for two reasons. First, there is no cause of action under the presidential pardon that would allow Mr. Fordham to bring such a claim. Mr. Fordham continues to rely solely on the existence of the presidential pardon power in the constitution as basis for his claims. However, a "mere allegation of the existence of a Federal question" will not be sufficient to warrant jurisdiction under 28 U.S.C. § 1331. *St. Joseph & G.I.R. Co. v. Steele*, 167 U.S. 659, 662 (1897). As discussed in DOAS' Motion to Dismiss, there is no right under the presidential pardon power to recoup payments made pursuant to a lawful restitution and forfeiture order.

In fact, instead of citing to a right or immunity created by the constitution or other federal law, Mr. Fordham cites to a Georgia law regarding contracts to allege his right to recoupment of payments. Def. Resp., p. 4 ("Fordham does not owe restitution and he should recover from DOAS what was collected from him through this Court. *See*, O.C.G.A. § 13-7-12, which

allows for the recoupment of overpayments.”).³ Federal district courts “shall have original jurisdiction of all civil actions *arising under the Constitution, laws, or treaties of the United States.*” 28 U.S.C. § 1331(emphasis added). Thus, to the extent Mr. Fordham is claiming that O.C.G.A. § 13-7-12 creates a right to recoupment, no federal question exists regarding this claim.

Second, when it comes to federal question jurisdiction, courts have repeatedly held that jurisdiction may be lacking if the “federal question involved is wholly insubstantial and frivolous.” *Southpark Square Ltd. v. Jackson*, 565 F.2d 338, 341 (5th Cir. 1977) *cert. denied* 436 U.S. 946 (1978). To evaluate whether a case may involve a “wholly insubstantial and frivolous” question, the courts apply a two pronged test to determine whether a federal question is insubstantial or frivolous:

the federal question averred may be plainly unsubstantial either because [it is] obviously without merit, or ‘because its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy.’

Levering & Garrigues Co. v. Morrin, 289 U.S. 103, 105-106 (1933) (quoting *Hanns Distilling Co. v. Baltimore* 216 U.S. 285, 288 (1910)) (emphasis added); *see also*

³ Despite Mr. Fordham’s assertions, this statute does not apply to the instant case. *See, infra*, Section C, 2.

Southpark Square, 565 F.2d at 341-42; *California Water Service Co. v. City of Redding*, 304 U.S. 252 (1938); *McGilvra v. Ross*, 215 U.S. 70, 80 (1909).

The plaintiff in *Levering & Garrigues Co.* filed suit seeking to enjoin a union from taking certain actions. 289 U.S. at 104. “The bill invoked the jurisdiction of the federal court . . . upon the ground that acts complained of unlawfully interfered with interstate commerce and constituted a violation of the federal anti-trust acts.” *Id.* The Supreme Court found that “the federal district court was without jurisdiction because the federal question presented was plainly unsubstantial, since it had been foreclosed by the two previous decisions . . . and was no longer the subject of controversy.” *Id.* at 108. *See also, O’Neal v. Allstate Ins. Co.*, 505 F. Supp. 3d 1193, 1202 (N.D.Al. 2020) (“the Court finds that the allegations of federal-question jurisdiction . . . are ‘wholly insubstantial and frivolous’” (quoting *Blue Cross & Blue Shield v. Sanders*, 138 F.3d 1347 (11th Cir. 1998))); *Swanson v. Ashcroft*, 2003 U.S. Dist. LEXIS 8045 (N.D.Al. 2003) (“[This] action is clearly foreclosed by prior decisions.”).

In contrast, in *Southpark Square*, a property owner filed an action against the state highway department and a city claiming that “the city’s denial of a building permit, ultimately resulting in the owner’s loss of his property . . . was a compensable taking.” *Southpark Square*, 565 F.2d at 342. *Southpark Square* found that the case presented a novel question of constitutional law because the court could “find no prior cases which make it ‘apparent to a legal certainty that

no constitutional violation had been committed as alleged.’ 565 F.2d at 342 (quoting *Rodriguez v. Ritchey* 556 F.2d 1185, 1192 (51 Cir. 1977)). The Fifth Circuit further found that courts “dealing with [a similar] question in roughly analogous fact situations have reached disparate conclusions hinging on subtle distinctions and not clearly foreclosing a finding for the plaintiff in this case.” *Southpark Square*, 565 F.2d at 342.

Like the question in *Levering & Garrigues Co.*, the question here has been clearly presented and answered on multiple occasions by the Supreme Court. *See, e.g., Ex parte Garland*, 71 U.S. 333, 381 (1867); *Osborn v. United States*, 91 U.S. 474 (1875); *Knote v. United States*, 95 U.S. 149 (1877); *Illinois C.R. Co. v. Bosworth*, 133 U.S. 92, (1890). The Supreme Court has consistently found that “[t]here is only this limitation to [a pardon’s] operation: it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment.” *Garland*, 71 U.S. at 381 (1867). Thus, to the extent a federal question has been presented, previous decisions of the United States Supreme Court have “foreclosed the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy” and this Court should dismiss this case in its entirety. *Levering & Garrigues Co.*, 289 U.S at 105-06.

C. Plaintiff has failed to state a claim upon which relief can be granted

1. *The effect of a presidential pardon is well-established*

Mr. Fordham argues that “[t]he interim payments to DOAC [sic] have never vested in that there has never been a Final Order in the criminal case approving the disbursement to either of the Defendants in this case.” Def. Resp. p. 10. This argument fails for two reasons. First, this Court has entered several final orders regarding the restitution payments. On August 31, 2005, the Court entered a Final Order of Forfeiture which found that “[a] joint and several forfeiture money judgment be entered against Defendants John Duncan Fordham and Fordham, Inc. d/b/a Duncan Drugs in the amount of \$500,000.00.” Final Order of Forfeiture, pg 2. August 31, 2005 (attached to Complaint as Exhibit A). The Final Order of Forfeiture further provided that “this Order of Forfeiture *shall become final . . . at the time of sentencing . . .*” *Id.* Additionally, this Court entered an Order finding that DOAS, Great American Insurance Company, and the Community Service Board of Central Georgia “are entitled to pursue any lawful restitution remedy.” Order, November 15, 2005 (attached to Complaint as Exhibit B). This Order clearly entitles DOAS and the other victims to restitution paid by Mr. Fordham, Duncan Drugs, and the other named criminal defendants. It is unclear what additional “Final Order” Mr. Fordham is alleging should have been entered here. This Court has already entered Final Orders imposing the restitution

on each defendant and identifying the victims entitled to such restitution.

Disbursements from the Court pursuant to the Final Order of Forfeiture do not require Final Orders, and it is nonsensical that payments made pursuant to a lawful Court Order would not vest until an additional order is entered by the Court. *See, e.g., Osborn v. United States*, 91 U.S. 474, 479 (1875) (holding that funds paid into the court are under the courts control “until they are distributed *pursuant* to final decrees” (emphasis added)). Here, the funds have been disbursed pursuant to the Final Order of Forfeiture and the November 15, 2005 Order identifying DOAS, among others, as a victim entitled to restitution.

Second, this argument fails because it is directly in opposition to the clear case law determining the effect of presidential pardons. Mr. Fordham rejects the holdings of the United States Supreme Court in numerous cases with little to no explanation, and, in fact, misstates the holding in one of these cases. Def. Resp. p.10. Contrary to Mr. Fordham’s assertion, in *Knote v. United States*, the Supreme Court *did not* restore the property to the claimant and instead found that the property had vested in the United States and was *not* recoverable. 95 U.S. 149 (1877). Mr. Fordham asks this Court to disregard the long-standing law established by the Supreme Court that once restitution has “been paid to a party to whom the law has assigned . . . [it] cannot be subsequently reached and recovered by the offender. The rights of the parties *have become vested*,

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and are as complete as if they were acquired in any other legal way.” *Id.* at 154 (emphasis added).

Mr. Fordham attempts to compare the restitution paid and the disbursements made to the victims pursuant to a lawful order of this Court to (1) bankruptcy attorney’s fees that are disgorged to pay creditors; (2) overpayments worker’s compensation benefits; and (3) overpayments of unemployment benefits. However, Mr. Fordham fails to explain how payments made in any of these very different situations are even remotely analogous to the disbursements made pursuant to the restitution order entered by this Court.⁴ Instead

⁴ DOAS does not believe that the restitution payments are even remotely analogous to any of the examples posited by Mr. Fordham. In the case of attorney’s fees in bankruptcy, “interim fees paid can . . . be disgorged *when a case becomes administratively insolvent . . .*” *In re WilsonSeafresh, Inc.*, 263 B.R. 624, 630 (Fla. N. D. B.C. 2001). However, this is a limited example of the disgorgement of fees that is specific to bankruptcy and the payment of creditors. There is no basis for applying this theory outside of bankruptcy. Additionally, in the case of both overpayments of workers’ compensation benefits and of unemployment benefits, the recoupment of overpayments is recouping money that the person never had a legal right to and is specifically authorized by statute. For workers’ compensation, the Workers’ Compensation Board has the power to order an employee to repay income benefit overpayments pursuant to O.C.G.A. § 34-9104(d); *see also Bahadori v. Nat'l Union Fire Ins. Co.* 270 Ga. 203, 203-4 (1998). For unemployment benefits, O.C.G.A. § 34-8-254(d) provides “any person who has received any sum as benefits under this chapter and is subsequently awarded or receives back wages from any employer for all or any portion of the same period . . . shall be liable to repay a sum equal to the benefits paid during the period for which such back wages were awarded . . .” Further, an employer that is a non-profit corporation making payments in lieu of contributions is “entitled to a setoff against the award of back wages

of comparing apples to oranges, the clear comparison here is to restitution paid in other cases dealing with the effect of presidential pardons. Thus, the restitution paid here is analogous to the restitution paid in *Knote*, as well as numerous other Supreme Court cases. *Knote*, 95 U.S. 149. See also, *Ex parte Garland*, 71 U.S. 333 (1867); *Osborn v. United States*, 91 U.S. 474, 477 (1875); *Illinois C.R. Co. v. Bosworth*, 133 U.S. 92, (1890).

The Supreme Court has consistently relied on the designation of whether property has vested in a third party as the benchmark for whether claimants can recover restitution after a pardon. *Knote*, 95 U.S. 149; *Osborn*, 91 U.S. 474. Contrary to Mr. Fordham's assertions, there is no requirement of an additional final order of a court to vest the property in others. Instead, the "property and the proceeds are not considered as so absolutely vesting in third parties or the United States as to be unaffected by the pardon *until they have passed out of the jurisdiction of the officer or tribunal*. The proceeds have thus *passed when paid over to the individual entitled to them . . .*" *Knote*, 95 U.S. at 154.

Mr. Fordham also claims that *Osborn* and *Illinois C.R. Co. v. Bosworth* support his position. Def. Resp. p. 11. While the Supreme Court did allow the claimants in both *Osborn* and *Bosworth* to recover funds or property after a pardon, the Supreme Court acknowledged in both cases that the outcome was *only* because the

in an amount equal to all benefits paid to the employee during the period for which such back wages are awarded or received." O.C.G.A. § 24-8254(d)(2); see also *Powell v. Dougherty Christian Acad.* 215 Ga. App 551, 552 (1994).

property or funds had not vested in the United States or a third party. *Osborn*, 91 U.S. at 476-9; *Bosworth*, 133 U.S. at 105. In *Osborn*, the funds had been paid into the court, but had not been lawfully disbursed. 91 U.S. at 476-9. The Supreme Court found that the claimant was entitled to the funds, but discussed that this was only true because the funds were still in control of the court. *Id.* at 479 (“The power of the court over moneys belonging to its registry continues until they are distributed pursuant to final decrees in the cases in which the moneys are paid.”). In *Bosworth*, the Supreme Court found that the claimant’s property “had never vested in any person when these acts of grace were performed.” 133 U.S. at 105. Thus, while the outcome of these cases was in favor of the claimant, each case still stands for the proposition that “subsequent pardon and amnesty did not have the effect of restoring the offender the right to these proceeds” that had vested in the United States or another party. *Bosworth*, 133 U.S. at 104.

Throughout his brief, Mr. Fordham cites several cases that discuss “conditional” presidential pardons. Def. Resp., pg. 8. However, it does not appear that this is a factor relevant to the analysis here. Generally, a “conditional pardon” is one “granted on the condition that the person who availed himself of it should take and keep a prescribed oath.” *United States v. Klein*, 80 U.S. 128, 148 (1871). After the conditions and qualifications attached by the President to the pardon have been satisfied, “the pardon and its connected promises took full effect.” *Id.* at 142. In *United States v. Wilson*,

the pardon at issue was conditional as it only pardoned the recipient for a certain crime, not any other crimes. 32 U.S. 150 (1833). Similarly, here, the pardon issued to Mr. Fordham is specifically “[f]or his conviction in the United States District Court for the Southern District of Georgia on a indictment (Docket No. 1:04-CR-00051-003) . . .” Pardon, attached to Complaint as Exhibit C. Thus, the ultimate effect of a pardon that hinges on conditions and an unconditional pardon is the same. The Supreme Court affirmed this in *Garland*, stating

The pardon produced by the petitioner is a full pardon “for all offences by him committed, arising from participation, direct or implied, in the Rebellion,” and is subject to certain conditions which have been complied with. The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the offence of treason, committed by his participation in the Rebellion.

71 U.S. at 381. Thus, the designation of Mr. Fordham’s pardon as “Full and Unconditional” only provides that it did not require Mr. Fordham to comply with any conditions prior to the issuance of such pardon.

Further, Mr. Fordham claims that “President Trump stated in said pardon that it was “a full and unconditional pardon for his conviction and sentence which includes \$1,021,888 in restitution.” Def. Resp., pg. 3. In fact, this is *not* a direct quote from the pardon as signed by former President Trump. Compl., Exhibit C. The pardon itself does indicate that it is “A Full and

Unconditional Pardon.” *Id.* However, it goes onto say “for his *conviction . . . for which he was sentenced* on September 15, 2005, to 52 months imprisonment, three years’ supervised release, \$1,021,888 restitution, and a \$100 special assessment.” *Id.* (emphasis added). It is simply not the case that President Trump’s pardon indicates that it applies to the restitution paid. *Id.* Instead, the pardon merely lists the crime *and the entire terms of the sentence imposed by this Court*. *Id.* It does not specifically call out restitution as an element of the pardon; it merely lists the full sentence imposed by the Court. *Id.* The reference to the restitution imposed by this Court was merely summarizing the sentence, not an element which must be pardoned, as the law surrounding the effects of presidential pardons clearly does not allow Mr. Fordham to recoup the payments already disbursed to the victims.

Here, there is no question that the funds have been paid over to the victims entitled to them – in fact, Mr. Fordham acknowledges this in his Complaint, and the exhibits to the Complaint confirm. Compl. ¶ 17; Compl. Ex. F. Thus, the funds have absolutely vested in the victims, and cannot be recovered by Mr. Fordham. *Knote*, 95 U.S. 159. As Mr. Fordham has not alleged any facts that state a claim upon which relief can be granted, the complaint should be dismissed in its entirety.

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2. *O.C.G.A. § 13-7-12 does not create a right for recoupment*

For the first time, Mr. Fordham cites O.C.G.A. § 13-7-12 in his Motion, claiming that it “allows for recoupment of overpayments.”⁵ Def. Resp., p. 4. This is incorrect. O.C.G.A. § 137-12 provides that “[r]ecoupment lies for overpayments by the defendant or for payments by fraud, accident, or mistake.” However, this statute only operates in reference to the setoff and recoupment statutes in Georgia law. O.C.G.A. § 13-7-1 *et seq.* Specifically, recoupment is governed by O.C.G.A. § 13-7-2, which provides “[r]ecoupment is a right of the defendant to have a deduction from the amount of the plaintiff’s damages for the reason that the plaintiff has not complied with the cross-obligations or independent covenants arising under the contract upon which the suit is brought.”

Nowhere in Mr. Fordham’s response does he explain how O.C.G.A. § 13-7-12 creates a right to recoupment of restitution paid into a federal court pursuant to a lawful final order of that court. There is no contract at issue in this case. There are no cross-obligations or independent covenants. There has been no allegation that the plaintiff in this case owes damages to the defendant. And finally, Mr. Fordham is not a defendant looking to recoup payments made by fraud, accident, or mistake. As such, Mr. Fordham cannot state a claim under O.C.G.A. § 13-7-12.

⁵ As discussed above, even if this statute were applicable, it would not be a basis for jurisdiction in this Court.

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CONCLUSION

For the above reasons, DOAS respectfully requests that the Complaint be dismissed in its entirety.

Respectfully submitted this 28th day of October, 2022.

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Certificate of Service

I hereby certify that I have this day served a copy of the foregoing **REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS** upon the parties via the Court's electronic filing system and upon United States Mail postage prepaid at the following address:

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This 28th day of October, 2022

/s/Amy L. Patterson
AMY L. PATTERSON
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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

JOHN DUNCAN FORDHAM,)
PLAINTIFF,) CIVIL ACTION
VS.) FILE NO.
GEORGIA DEPARTMENT OF) 1:22-CV-00121-DHB
ADMINISTRATIVE SERVICES)
and GREAT AMERICAN)
INSURANCE COMPANY)
DEFENDANTS)

BRIEF IN OPPOSITION TO
MOTION TO DISMISS FILED BY
GREAT AMERICAN INSURANCE COMPANY

(Filed Oct. 25, 2022)

COMES NOW, JOHN DUNCAN FORDHAM (“Fordham”), and responds to the Motion to Dismiss filed by Great American Insurance Company (“Great American”). The facts stated by Great American are incomplete and fail to mention the specific wording of the pardon in question. President Donald J. Trump granted to Fordham “A Full and Unconditional Pardon” which specifically provided that the pardon was:

“For his conviction in the United States District Court for the Southern District of Georgia . . . for which he was sentenced on September 15, 2005 to 52 months’ imprisonment, three years’ supervised release,

\$1,021,888 restitution, and a \$100 special assessment. [emphasis added].

President Trump did not have to give a pardon for the restitution amount but elected to do so. It is not for this Court to construe or interpret the plain language utilized by the President of the United States in his exercise of powers conferred upon him by Art. 2, § 2, ¶ 1 of the United States Constitution. It is readily apparent from the documents furnished by the Clerk of the United States District Court and by the United States Attorney's Office pursuant to this Court's Order that Great American Insurance Company ("Great American") obtained money improperly and by mistake. These funds were collected by the Clerk of this Court and were disbursed by the United States Attorney's Office.

The priority of the payments to Georgia Department of Administrative Services ("DOAS") and Great American were that DOAS was to be paid first. After DOAS was paid \$425,000, then payments were to be made to Great American on its subrogation claim. This is apparent from the documents that are a part of Exhibit "F" to Plaintiff's Complaint (specifically Ex. F, p. 32, a copy of which is attached hereto as Ex. 1). That document indicates that Duncan Fordham was to have the money that he was paying into the Registry of the Court or from the receiver appointed by this Court, first to the satisfaction of \$425,000 to the DOAS. That is not what happened. From the accounting received pursuant to the June 30, 2022 Order of this Court entered in CR104-0511-03 (see, Ex. E to Plaintiff's

Complaint), it is apparent that Great American began receiving more than it should have received and at a minimum had received \$165,670.12. In Georgia and elsewhere it is the law that victims are made whole first and then an insurance company can recover under its subrogation provisions. *See, Landrum v. State Farm Mut. Auto. Ins. Co.*, 241 Ga.App. 787, 527 S.E.2d 637 (2000); *Simpson v. Southwire Co.*, 249 Ga.App. 406, 548 S.E.2d 660 (2001). In this case, Great American has received payments by mistake from the United States Attorney's Office and all of those payments should be refunded to the Clerk of this Court. This Court set forth the priority of payments consistent with the priority afforded such payments. Payment received by Great American in excess of that owed should be repaid to the Clerk of this Court. *Gulf Life Ins. Co. v. Folsom*, 256 Ga. 400, 349 S.E.2d 368 (1986). Great American has been unjustly enriched. To not require Great American to refund these payments to the Clerk of this Court will encourage future violations of this Court's Orders. Great American knew the rules as to the priority of payments and rather than return these funds to the United States Attorney's Office made the decision to keep them. The only way for this Court to insure that its Orders will be obeyed is to require that all payments received by Great American be returned to the Clerk of this Court where they will be available for distribution to their owner, Fordham.

In situations involving bankruptcy cases in which a Trustee has mistakenly overpaid a claim, the Trustee is required to take back the overpayment

and the overpayment is to be returned to the debtor. *See, In re R&W Enterprises*, 181 B.R. 624 (N.D. Fla. 1994); *In re Talbot*, 124 F.3d 1201 (10th Cir. 1997); *In re Vaugh*, 110 B.R. 94 (Bknr. N.D.Ga. 1990).

ARGUMENT

I. Great American has not had property vested in it.

The first argument made by Great American is that an executive pardon “cannot divest third parties of restitution already paid.” The cases cited by Great American do not support Great American’s argument. Those cases involve pardons in which the individual is specifically pardoned from the payment of a specific amount of funds.

The facts in *Ex parte Garland*, 71 U.S. 333 (1866) do not support Great American’s position. Garland was admitted to the United States Supreme Court and took the oath in 1860 that he would support the Constitution of the United States. After the ordinance of succession was entered and after Garland took part in the rebellion, this decision was rendered. While *Ex parte Garland*, *supra*, sets forth the history of pardons, none of the cases cited by Great American involve the historical perspective dealing with the very issue before this Court, that is, does the President of the United States have authority to pardon someone by providing that he is pardoned from \$1,021,880 in restitution?

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The second case cited by Great American on pages 3 and 4 is Knote v. U.S., 95 U.S. 149 (1877). The pardon that Knote relied upon was the general pardon granted by President Andrew Johnson to all who had participated with the Confederate government in the rebellion. There, Knote had been the owner of certain personal property in West Virginia which was seized by the United States authorities on the grounds of his participation in the rebellion. Some \$11,000 received from Knote was paid into the Treasury of the United States. The pardon that was granted by then-President Andrew Johnson did not specifically refer to property that had to be returned. In that case, the proceeds from the sale of the property had been paid into the Treasury of the United States and the Court stated that there was not specific authorization by any act of Congress to restore any such property. That case is completely inapposite to the issues involved in the case at hand in which the Presidential Pardon specifically states that Fordham is pardoned from the \$1,021,880 in restitution. Here, the money that has been collected is still under the control of this Court. In that Great American has received money at a greater rate than to which it would be entitled, all of that money should be returned to the Clerk of this Court so that it can be repaid to Fordham.

Great American then cites U.S. v. Wilson, 32 U.S. 150 (1833). In that case, James Porter and George Wilson were sentenced to death for robbery of the mails and for placing the life of the mail carrier in jeopardy. Porter was executed on July 2, 1830. Wilson had

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withdrawn his not guilty plea and pled guilty. Andrew Jackson pardoned him and thereby saved him from the death penalty. However, that pardon expressly provided that the "pardon shall not extend to any judgment which may be had or obtained against him in any other case or cases now pending before the court". That was a conditional pardon. The Court then stated that a pardon may release a part of the penalty affected by law and reserve the other and that a pardon may be granted on condition as shown. That case in no way supports the position taken by the Defendants in this case.

The case of Vanderslice v. U.S., 19 Ct. Cl. 480 (1884), also cited by Great American on page 4 of its brief involved the pardon of a military officer. Vanderslice was convicted of receiving bribes and of conduct unbecoming an officer. There, the Court pointed out that a pardon does not restore a man to his previous position in the military. The dicta cited for that case has nothing to do with the issues in the case at hand.

Great American also cites U.S. v. Morris, 26 F. Cas. 1336 (C.C.D.N.Y. 1822) for the proposition that if property is beyond the reach of a court that the court cannot have jurisdiction over it. There was no mention in that case of a situation in which the money is within the reach of the court and the individuals who have participated in the claims process have consented to the jurisdiction of the Court.

The next case cited by Great American is Com. of Pennsylvania v. Ahl, 43 Pa. 53 (Pa. 1862). In that case,

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the defendant was tried twice and both times convicted of the serious offenses of fornication and creating a bastard child. He obtained a pardon from the governor. While there was a substantial amount of dicta in the opinion, the bottom line was that the pardon must be respected by the Court and costs and underlying expenses and maintenance of the child which were an essential part of the sentence can only be imposed where the sentence can also be pronounced. The pardon prevented the sentence from being pronounced and therefore discharged him from the consequences of the conviction. The holding in that case, as opposed to the dicta, supports Fordham's position. All of the state law cases involved State Constitutions that are each somewhat different from Art. 2, § 2, ¶ 2 of the United States Constitution.

While the New Jersey case of Cook v. Bd. of Chosen Freeholders of Middlesex County, 26 N.J.L. 326 (N.J. 1857) does indicate that money paid for a fine cannot be restored, that is based upon New Jersey law and the terms of the New Jersey Constitution. The next case cited is In re Flournoy, 1 Ga. 606 (Ga. 1846). There, the holding shows that it does not support Great American's position. There the opinion states:

The effect of a pardon is, to restore the citizen to the condition in which he was before conviction; it proceeds upon the idea of innocence. The power is given to the Executive to relieve against the possible contingency, under all systems of laws, of a wrongful conviction. And as all good governments are founded upon

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essential equity, the sovereign authority will not permit, so far as it can be prevented consistently with the maintenance of general laws, injustice to be done.

In the case at hand, there is no such contract benefiting Great American. Without such a contract the pardon has the effect of restoring the funds to Fordham. Furthermore, the provisions of the United States Constitution which prohibits states from passing any laws impairing contracts does not bar the United States of America from having that power. This Court should honor the language employed by President Trump and restore this property to Fordham.

Great American then cites the case of Rucker v. Bosworth, 30 Ky. 645 (Ky. App. 1832) without referring to the provisions of the Kentucky Constitution relating to the power of the governor to remit fines and forfeitures, and grant reprieves and pardons, which specifically provides that the Governor will have no power to remit the fees of the Clerk, Sheriff or Commonwealth Attorneys in penal criminal cases. The case of PA Prison Soc. v. Cortes, 622 F.3d 215 (3rd Cir. 2010), also fails to support Great American's position. There, the Society was attacking the provisions of Pennsylvania law relating to the number of votes needed by the Pennsylvania Board of Pardons and Paroles relating to commutations for life sentences before such recommendations would go to the Governor. The Governor at all times kept full discretionary authority under Pennsylvania law, with the contention being that this violated the *ex post facto* clause. The Third Circuit

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disagreed, reversed the lower courts, and recommended that the case be dismissed. That case has no bearing on the issues in the case at hand.

Great American then cites U.S. vs. Puentes, 803 F.3d 597, 607 (11th Cir. 2015) for the proposition that the Mandatory Victims Restitution Act (MVRA) did not permit a district court to eliminate the defendant's restitution obligations. There, the District Court for the Southern District of Florida granted the Government's motion to reduce the terms of incarceration, but also terminated the obligation to pay restitution. In that case, the Eleventh Circuit held that the District Court, under 18 U.S.C. § 3663A, could not modify a restitution statute. However, nothing in that opinion relates to the power of the President of the United States to grant a pardon. The most analogous situation would be in connection with an exonerated defendant and whether or not that person would be entitled to the restitution paid by the defendant

Colorado law requires that an exonerated defendant show actual innocence to be refunded costs, fees and restitution paid by the defendant. The Supreme Court of the United States reversed in Nelson v. Colorado, 137 S.Ct. 1249, 197 L.Ed.2d 611 (2017). In concurring with the judgment, Justice Alito pointed out that the central question courts will have to ask is whether or not the possessor will give offense to equity in good conscience if permitted to retain Nelson's money, citing Atlantic Coast Line R. Co. v. State of Florida, 295 U.S. 301, 55 S.Ct. 713, 79 L.Ed. 1451

(1935). In the case at hand, equity and good conscience require that these funds be restored.

It is well-settled under Georgia law that overpayment of Workers Compensation benefits are never vested and can be recovered. Bahadori v. National Union Fire Ins. Co., 270 Ga. 203, 507 S.E.2d 467 (1998). The same is true for the overpayment of unemployment benefits. Powell v. Dougherty Christian Academy, Inc., 215 Ga.App. 551, 451 S.E.2d 465 (1994).

II. Great American mischaracterizes the claim asserted by the Fordham.

This is not a Bivens claim as stated by Great American on pages 7 through 9 of its brief. This is a claim for money had and received to which Great American has no claim to the funds. *See, Sentinel Offender Svcs., LLC. v. Glover*, 296 Ga. 315, 766 S.E.2d 456 (2014), holding that probationers had the right to recover under the doctrine of monies had and received against a private probation company in connection with criminal sentences where the private probation company did not have its contract approved as required by state law and the private probation company was not legally entitled to those funds. In the case at hand, demand has been made for the return of these fees prior to filing of this action and there was no response.

Fordham is entitled to the refund in that in equity and good conscience Great American should not be allowed to keep these funds.

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Conclusion

For the reasons stated herein, the Motion to Dismiss filed by Great American should be denied.

Respectfully submitted, this 25th day of October, 2022.

/s/ John B. Long

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/s/ Thomas W. Tucker

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Victim	Total Restitution	Williams	Camp	Long	Duncan Fordham	Fordham Inc.	Total Debt
Community Mental Health Ctr	\$54,000.00	\$54,000.00	\$54,000.00				.
Dept of Administrative Service	\$425,000.00	\$416,500.00	\$39,609.00	\$20,000.00	\$425,000.00	\$425,000.00	
Great American Insurance	\$987,902.00	\$979,402.00	\$39,609.00	\$20,000.00	\$596,888.00	\$596,888.00	
Total Restitution	\$1,466,902.00	\$1,449,902.00	\$133,218.00	\$40,000.00	\$1,021,888.00	\$1,021,888.00	

Payments	D Fordham	Fordham, Inc
Old CD/CS record	\$117,016.51	\$117,016.51
Current CD/CS record	\$800.00	\$800.00
Debtor Total Beginning Balance	\$1,021,888.00	\$1,021,888.00
Debtor Total Paid	\$117,816.51	\$117,816.51.
Debtor Balance	\$904,071.49	\$904,071.49

\$54,000.00 to be paid first (Community Mental Health Ctr)

and from Williams

\$195,000.00 to be paid 2nd (Dent of Admin Services)

Duncan Fordham \$425,000.00

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and 391 (Great American Missions)

Duncan Fordham \$596,888.00

Fordham, Inc. \$596,888.00

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all Counsel of Record by the CM/ECF system on October 25, 2022.

/s/ John B. Long _____

JOHN B. LONG, ESQ.

Georgia State Bar No. 457200

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

UNITED STATES OF AMERICA)
)
v.) CR104-051
ROBIN L. WILLIAMS,)
CHARLES MICHAEL)
BROCKMAN, DUNCAN)
FORDHAM, MATTHEW CHAD)
LONG, RICK LAMAR CAMP,)
and FORDHAM, INC.)
d/b/a DUNCAN DRUGS)

**MOTION OF THE COMMUNITY SERVICE
BOARD OF EAST CENTRAL GEORGIA,
STATE OF GEORGIA DEPARTMENT OF
ADMINISTRATIVE SERVICES, AND GREAT
AMERICAN INSURANCE COMPANY TO BE
IDENTIFIED AS VICTIMS ENTITLED TO
RESTITUTION IN SENTENCING ORDER**

(Filed Sep. 22, 2005)

THE COMMUNITY SERVICE BOARD OF EAST CENTRAL GEORGIA, formerly doing business as the Community Mental Health Center (hereinafter "CSB-CMHC"), STATE OF GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES, as subrogee of the CSB-CMHC (hereinafter "DOAS"), and GREAT AMERICAN INSURANCE COMPANY, as subrogee of the CSB-CMHC (hereinafter "Great American"), hereby file this Motion to be Identified as Victims

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entitled to Restitution in Sentencing Order and, in support thereof, show this Court the following:

1. CSB-CMHC was the victim of the criminal misconduct alleged in the Indictment and for which the defendants were convicted in the captioned case.
2. On September 15, 2005, following a sentencing hearing, this Court imposed sentences against the defendants, including restitution to be paid to the victim(s). Recognizing that entities other than CSB-CMHC might be legally entitled to restitution (i.e., by virtue of insurance payments to CSB-CMHC for the losses caused by the criminal defendants), the Court reserved ruling on naming any victim(s) who would be entitled to restitution.
3. At all relevant times, CSB-CMHC was insured under an insurance policy issued by Great American which provided coverage for losses caused by employee dishonesty. DOAS made available said insurance to CSB-CMHC pursuant to O.C.G.A. §§ 50-5-51 & 51.1 and was responsible for the payment of any deductible to CSB-CMHC in the event of a covered loss.
4. After discovering the criminal misconduct at issue in this case, CSB-CMHC made a claim under the aforementioned insurance policy. Great American evaluated the claim, and the parties reached a compromise on the amount of the loss for purposes of the insurance claim. Attached hereto as Exhibit "A" is a copy of the Amended Proof of Loss submitted by CSB-CMHC which itemizes the nature and amount of the loss accepted by Great American.

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5. Great American sent its portion of the loss payment (full payment less deductible) to DOAS. DOAS then sent full payment to CSB-CMHC. Copies of two DOAS checks to CSB-CMHC totaling \$1,448,902 are attached hereto as Exhibits "B" and "C."
6. Of the \$1,448,902 insurance payment to CSB-CMHC, DOAS paid the deductible of \$443,000, and Great American paid the balance of \$1,005,901. Attached hereto as Exhibit "D" is the Release and Subrogation Agreement between CSB-CMHC and Great American reflecting the amount paid by Great American.
7. By virtue of their insurance payments and agreements, DOAS and Great American are subrogated to the rights of CSB-CMHC to recover the amount of the insurance claim from the defendants.
8. CSB-CMHC did not make a claim for nor has it been reimbursed for \$54,000 of the \$133,218 in restitution ordered against defendant Rick Lamar Camp. However, pursuant to the insurance policy, if any sums are collected from defendant Camp, CSB-CMHC will be entitled to recover the un-reimbursed \$54,000 before DOAS and Great American recover for their payments to CSB-CMHC based on for Camp's misconduct.
9. CSB-CMHC should be named in the Sentencing Order as the victim that is entitled to the restitution ordered by the Court against each defendant because the financial proceeds of the criminal misconduct came directly from CSB-CMHC.

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10. DOAS and Great American should be named in the Sentencing Order as co-victims that are entitled to the restitution ordered by the Court against defendants Robin L. Williams, Charles Michael Bradman, Duncan Fordham, Fordham, Inc. d/b/a Duncan Drugs, and Matthew Chad Long because of their status as subrogees that have reimbursed CSB-CMHC for all restitution amounts owed by these defendants.
11. DOAS and Great American should be named in the Sentencing Order as co-victims that are entitled to restitution in the amount of \$79,218 from defendant Rick Lamar Camp, which represents the amount paid by DOAS and Great American to CSB-CMHC on the insurance claim for Rick Lamar Camp's criminal misconduct.
12. Based on the past conduct of the defendants, CSB-CMHC, DOAS, and Great American have good reason to be concerned about whether they will actually collect the restitution ordered by the Court. Consequently, these victims ask that the court permit them to pursue (or at least not prohibit them from pursuing) any lawful restitution enforcement remedies, including but not limited to enforcement under 18 U.S.C.A. § 3664.

WHEREFORE, the COMMUNITY SERVICE BOARD OF EAST CENTRAL GEORGIA and its subrogees, STATE OF GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES and GREAT AMERICAN INSURANCE COMPANY, respectfully request that the Court's Sentencing Order provide the following:

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- a) Identify the COMMUNITY SERVICE BOARD OF EAST CENTRAL GEORGIA as the victim entitled to the restitution ordered against each defendant;
- b) Identify STATE OF GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES and GREAT AMERICAN INSURANCE COMPANY, subrogees of THE COMMUNITY SERVICE BOARD OF EAST CENTRAL GEORGIA, as co-victims entitled to the restitution ordered by the Court against defendants Robin L. Williams, Charles Michael Brockman, Duncan Fordham, Fordham, Inc. d/b/a Duncan Drugs, and Matthew Chad Long;
- c) Identify STATE OF GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES and GREAT AMERICAN INSURANCE COMPANY, subrogees of THE COMMUNITY SERVICE BOARD OF EAST CENTRAL GEORGIA, as co-victims entitled to restitution in the amount of \$79,218 ordered by the Court against defendant Rick Lamar Camp;
- b) Allow these victims to pursue (or at least not prohibit them from pursuing) any lawful restitution enforcement remedies, including but not limited to enforcement under 18 U.S.C.A. § 3664; and
- c) Order any other or further relief which is just and proper.

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This 22 day of September, 2005.

/s/ Scott W. Kelly

SCOTT W. KELLY
Georgia Bar No: 413115

Attorney for Community Service
Board of East Central Georgia
and Great American Insurance
Company

THURBERT E. BAKER
Attorney General
Ga. State Bar No. 033887

JOHN B. BALLARD
Senior Assistant Attorney General
Ga. State Bar No. 035550

FULCHER HAGLER LLP

By: /s/ N. Staten Bitting
N. STATEN BITTING
Special Assistant Attorney General
Ga. State Bar No. 058940
SCOTT W. KELLY
Georgia Bar No: 413115

Attorneys for State of Georgia
Department of Administrative
Services

OF COUNSEL:

FULCHER HAGLER LLP
520 Greene Street
P.O. Box 1477
Augusta, GA 30903-1477
(706) 724-0171

EXHIBIT A

GREAT AMERICAN INSURANCE COMPANIES
AMERICAN NATIONAL FIRE
INSURANCE COMPANY

AMENDED PROOF OF LOSS -----FIDELITY

To Great American Insurance Company

Under your Policy Number GBT 375-68-52 issued to State of Georgia I, on behalf of the Community Mental Health Center of East Central Georgia, hereby make a claim for Loss of \$1,448,902, occurring through the dishonesty of Charles Michael Brockman (and others) employed as Administrative Operations Manager, Business Manager, Deputy Director and other positions from November 23, 1998 to November 30, 2002, said loss occurring between December 1999 and March 2003, and discovered in March 2003. The said loss occurred as set forth in the statement below.

DETAILED STATEMENT OF CLAIM

12-01-99	Lease agreement resulting in rental payments for premises never used by CMHC	\$ 22,500
02-15-00	Illegitimate payment to Rick Camp	\$ 2,000
03-13-00	Illegitimate payment to Rick Camp	\$ 2,000
04-13-00	Illegitimate payment to Rick Camp	\$ 2,000

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05-10-00	Illegitimate payment to Rick Camp	\$ 2,000
06-16-00	Illegitimate payment to Rick Camp	\$ 71,218
07-04-00	Illegitimate payment to Rick Camp	\$ 20,000
02-07-01	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$ 17,221
02-14-01	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$ 9,621
02-28-01	illegitimate Incentive payment to Duncan Drugs, Inc.	\$ 15,300
03-09-01	Illegitimate payment to Robin Williams	\$ 30,000
04-27-01	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$ 40,973
07-09-01	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$107,423
07-26-01	Illegitimate payment to Chad Long	\$ 20,000
09-05-01	Illegitimate payment to Chad Long	\$ 2,000
09-13-01	Illegitimate Bonus payment to Capitol Health	\$ 10,000
09-13-01	Illegitimate payment to Chad Long	\$ 2,000
10-05-01	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$ 70,061

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10-12-01	Illegitimate payment to Chad Long	\$ 2,000
10-24-01	Illegitimate Bonus payment to Capitol Health	\$ 10,000
11-09-01	Illegitimate Bonus payment to Capitol Health	\$ 10,000
11-16-01	Illegitimate payment to Chad Long	\$ 2,000
12-05-01	Illegitimate payment to Chad Long	\$ 2,000
12-14-01	Illegitimate Bonus payment to Capitol Health	\$ 10,000
01-15-02	Illegitimate payment to Chad Long	\$ 2,000
01-18-02	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$ 99,804
01-23-02	Illegitimate Bonus payment to Capitol Health	\$ 10,000
02-07-02	Illegitimate payment to Chad Long	\$ 2,000
02-22-02	illegitimate Bonus payment to Capitol Health	\$ 10,000
03-07-02	Illegitimate payment to Chad Long	\$ 2,000
03-22-02	Illegitimate Bonus payment to Capitol Health	\$ 10,000
04-03-02	Illegitimate payment to Chad Long	\$ 2,000

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04-16-02	Illegitimate Bonus payment to Capitol Health	\$ 10,000
04-17-02	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$154,785
05-03-02	Illegitimate payment to Chad Long	\$ 2,000
05-29-02	Illegitimate Bonus payment to Capitol Health	\$ 10,000
06-05-02	Illegitimate payment to Chad Long	\$ 2,000
07-02-02	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$179,948
07-02-02	Illegitimate payment to Chad Long	\$ 2,000
08-21-02	Illegitimate payment to Chad Long	\$ 2,000
10-03-02	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$192,048
10-21-02	Illegitimate Incentive payment to Capitol Health Systems	\$107,000
12-02-02	Illegitimate Sick Pay to Brock- man	\$ 17,000
01-07-03	Illegitimate Incentive payment to Duncan Drugs, Inc.	\$150,000
TOTAL LOSS . . .		\$1,448,902

Charles D. Williamson being duly sworn according to law, deposes and says that he is Acting Executive Director for the Community Mental Health Center, that the above Statement of Claim is true and correct,

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that the moneys set opposite the several items listed therein were misappropriated by Charles Michael Brockman and others on the dates and in the respective amounts set forth, that said moneys, and/or monies realized from the proceeds of goods not exceeding their cost value as set forth in said Statement, have not been paid over or returned in any way whatever to the said employer except as herein stated, and that same have been fraudulently misappropriated by the said employee to his own use and benefit with the intent to deprive the said employer of said moneys or property.

That all items as set forth above are correct and that there has been no settlement made with the employee for any default covered by the Policy.

If other security, indemnity or surety against loss is held, list the amounts, names and addresses of the indemnitors or sureties with full description of same.

Further, that *there* are no offsets whatever against said claim for salary, commissions, etc., other than as set forth particularly on the above Statement, and that the said employer has fully complied with all the conditions of the Policy.

And, further, that the said employee has been continuously in the employ of the said employer for the period beginning November 23, 1998 and ending November 30, 2002, the employment having been discontinued by reason of resignation of the employee.

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BRIEF STATEMENT AS TO MANNER
OF MISAPPROPRIATION

The Community Service Board of East Central Georgia (“Board”) is a state entity under the umbrella of the Georgia Department of Human Resources. The Board is comprised of appointed volunteers and oversees the operation of the Community Mental Health Center of East Central Georgia (CMHC) which provides mental health, developmental disability and addictive disease services to primarily poor and uninsured citizens in East Central Georgia, including Augusta, where the CMHC facility is located. Most of the CMHC’S budget comes directly from the State of Georgia.

In late 1998 or, early 1999, an elected member of the Georgia House of Representatives, Robin L. Williams, recommended to the Board that it should promote Charles Michael Brockman to the position of Business Manager a/k/a Deputy Director. Williams said he would have money allocated from the State Budget to pay for the position, When Williams secured the government funding, CMHC used those funds to promote Brockman.

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Thereafter, Brockman used his position as Business Manager (and later as Chief Financial Officer and Executive Director of CMHC) to defraud the CMHC by arranging for the CMHC to make payments, enter contracts and otherwise conduct its affairs in a manner designed to result in kickbacks and other illegal incentives to Williams and others, including himself.

On May 26, 2004, a Federal Grand Jury issued an Indictment in the United States District Court for the Southern District of Georgia, Case Number CR104-51, indicting Brockman, Williams and others for their illegal and dishonest activities with the CMHC. The Indictment outlines most but not all of the illegal conduct which is the subject of this Proof of Claim. The Indictment is attached hereto as Exhibit 1 and incorporated herein by reference.

Brockman's primary *modus operandi* to defraud the CMHC was through the awarding of lucrative contracts at inflated prices to third parties who would ostensibly provide goods and services to the CMHC. In return for the inflated contracts, the third parties would pay kickbacks or other illegal incentives to Williams. Brockman and other CMHC employees also benefitted directly from these illegal incentives.

Some of the contracts provided no benefit to CMHC whatsoever. Others provided some benefit but only for a contract price which exceeded the value of the goods and services provided. Included in the category of inflated and illegitimate contracts were CMHC's contracts with purported lobbyists and

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consultants (Rick Lamar Camp, Matthew Chad Long, Robin Williams) who provided little or no services whatsoever, contracts with Duncan Drugs, Inc. for the management and operation of a pharmacy at the CMHC, and a contract with Capitol Health Systems, Inc. for providing billing services to CMHC. The Indictment details many of the kickbacks and other improper incentives received by Williams, Brockman and others.

Although Camp and Long were purportedly hired as consultants and lobbyists, they provided no valuable goods or services whatsoever and, in fact, were mere conduits for funneling kickbacks to Williams. All payments to Camp totaling \$99,218 (See Exhibit 2) and all payments to Long totaling \$46,000 (See Exhibit 3) were fraudulent and illegitimate.

Williams was defeated for reelection in a primary election in July 2000 and his term in the House of Representatives ended in January 2001. Thereafter, Williams held himself out as a lobbyist and consultant. Like Camp and Long, the direct payment to Williams of \$30,000 (See Exhibit 4) was illegitimate. He provided no valuable goods or services and only maintained his relationship with CMHC to remain close to Brockman and the contractors who were paying him, kickbacks.

Duncan Drugs, Inc. was hired in October 1999 to operate and manage the pharmacy at CMHC at a monthly base contract price of \$11,500. Other remuneration to Duncan Drugs was expected to result from

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the sales at the pharmacy. Brockman and/or Campbell Peery, a former Executive Director with CMHC, renegotiated the contract with Duncan Drugs, Inc. to provide illegitimate incentive payments to Duncan Drugs which were then used for kickbacks and other illegal incentives to Williams, Brockman and others. (See Exhibit 5)

Capitol Health Systems, Inc. was hired to provide billing services for CMHC. Unbeknownst to the Board, Williams had a stake in Capitol Health. Capitol Health received a total of \$90,000 in wholly illegitimate incentive payments (See Exhibit 6) for which no valuable goods or services were provided. Additionally, the contract between Capitol Health and CMHC provided for additional bonus payments which were also wholly illegitimate because no valuable goods or services were provided for the payments. One bonus payment was made in the amount of \$107,000 (See Exhibit 7).

Besides the fraudulent third party contracts, Brockman also arranged for CMHC to sublease certain premises which it never used or benefitted from. Brockman signed the sublease on behalf of CMHC. (See Exhibit 8) Some of the rental payments were deposited directly into the bank account of Williams even though these payments were not issued to him.

Brockman also arranged for the CMHC to pay him for sick leave to which he was not entitled. To obtain these funds, Brockman wrote a memorandum to CMHC personnel stating that the Board had approved for him and another CMHC employee, Jim Points, to

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receive the sick leave when, in fact, the Board had not done so. (See Exhibits 1 & 9).

Although Brockman was the primary employee at CMHC behind the scheme to defraud CMHC and the State of Georgia, it is believed that other CMHC employees and officers, including Jim Points and F. Campbell Peery, were involved to some lesser extent or aware of the scheme.

EXHIBIT B

THIS CHECK IS VOID IF GREEN COLORED BACKGROUND IS ABSENT

↑— PLEASE FOLD BACK AND DETACH CHECK HERE —↑

CLAIM NUMBER	PAYMENT FOR	FOR THE PERIOD FROM THRU	AMOUNT	CODE
L103157201	CHARLES BROCKMAN	01/16/03 01/16/03	1,431,140.50	3310

EXHIBIT C

"0030586470" :061113279: 07 535 873"		FOR THE PERIOD FROM THRU	AMOUNT	CODE
CLAIM NUMBER	PAYMENT FOR			
L103157201 Supplemental	CHARLES BROCKMAN payment dishonesty settlement D.A.	01/16/03 01/16/03	17,761.50	3310

EXHIBIT D

RELEASE AND SUBROGATION AGREEMENT

THE GREAT AMERICAN INSURANCE COMPANIES
THE AMERICAN NATIONAL
FIRE INSURANCE COMPANY

BOND NO. GVT3756852 State of Georgia
Community Mental Health Center

RELEASE

Received of the Great American Insurance Company of Cincinnati Ohio the sum of One Million Five Thousand Nine Hundred Two and No/100 Dollars (\$1,005,902.00) in full settlement of all claims, demands, actions and causes of action, which the undersigned may now have, or ever after may acquire, under Bond No. GVT3756852 executed the Great American Insurance Co., or the American National Fire Insurance Co. as surety issued in favor of the undersigned as insured, and arising out of the breach of the conditions of the aforesaid Bond by Charles Michael Brockman, an employee of the undersigned, covered by said Bond. This release is limited to liability for the acts of the above named employee only, and does not affect such coverage as may exist for other employees.

And, it is hereby agreed by the undersigned that there is now due from said employee the sum of One Million Five Thousand Nine Hundred Two and No/100 Dollars (\$1,005,902.00) by virtue of said employee's breach of the conditions of the aforesaid Bond.

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And, the undersigned agrees that the Great American Insurance or the American National Fire Insurance Co. is subrogated to all rights of the undersigned against said employee, and agrees to execute any and all instruments, including assignments, which the companies may at any time request, and further agrees, upon demand from the companies, to deliver to them all books, vouchers, receipts and other data and evidence necessary in the enforcement of said claim, and to assist the Companies in the prosecution of any subrogation claim arising from the subject of this release.

Agreed this 9th day of February 2005

/s/ [Illegible]
(Insured's Signature)

CEO
(Title)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served by U.S. Mail, postage prepaid, upon the following counsel of record, this 22 day of September, 2005:

Harrison Kohler	James D. Durham
Assistant Attorney General	Assistant United States
State of Georgia Healthcare	Attorney
Fraud Control Unit	United States Attorney's
2100 East Exchange Place	Office
Building 1, Ste. 200	P.O. Box 8970
Tucker, GA 30084-5336	Savannah, GA 31412

Jerome J. Froelich, Jr. McKenney & Froelich Two Midtown Plaza 1349 West Peachtree Street, Ste. 1250 Atlanta, GA 30309-2920	Kirby Atkinson Andrew Ekonomou Ekonomou, Atkinson & Lambros, LLC The Hurt Building 50 Hurt Plaza, Ste. 450 Atlanta, GA 30303
James L. Coursey, Jr. Assistant United States Attorney United States Attorney's Office P.O. Box 8970 Savannah, GA 31412	Daniel P. Griffin Miller & Martin, PLLP 1170 Peachtree Street, NE Ste. 800 Atlanta, GA 30309
Bruce H. Moths Finestone, Cardon & Morris Suite 2540 Tower Place 3340 Peachtree Road, NE Atlanta, GA 30326-1000	Edward J. Coleman, III, RECEIVER 901 SunTrust Building 801 Broad Street Augusta, GA 30901

/s/ Scott W. Kelly
SCOTT W. KELLY

FULCHER HAGLER LLP A PARTNERSHIP INCLUDING
ATTORNEYS AT LAW SINCE 1946 PROFESSIONAL CORPORATIONS
Post Office Box 1477 •
Augusta, Georgia 30903-1477
One 10th Street, Suite 700 •
Augusta, Georgia 30901
Telephone: (706) 724-0171

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Scott W. Kelly
Direct Fax No: (706) 396-3623
E-mail Address: Skelly@fulcherlaw.com
Admitted in Georgia

March 4, 2008

Linda Flanders
Resident Deputy in Charge
United States District Court
For the Southern District of Georgia
Federal Justice Center
600 James Brown Boulevard
Augusta, GA 30901

RE: Restitution Debt of J. Duncan Fordham and
Fordham Inc. in the case of United States
v. Robin L. Williams, Charles Michael
Brockman, Duncan Fordham, Matthew
Chad Long, Rick Lamar Camp, and
Fordham, Inc. d/b/a Duncan Drugs,
CR104-051
Great American Policy No: GVT 375-68-52
DOAS Claim File No: LI03157201
Our File No: 299/17

Dear Ms. Flanders:

We represent Great American Insurance Company and the Georgia Department of Administrative Services in their efforts to collect amounts owed in restitution by the Defendants in the captioned criminal case. Recently, we were able to recover \$116,791.51 from the sale of Duncan Fordham's former home in Columbia County. This sum needs to be credited to Mr. Fordham and Fordham Inc. on the restitution amount they owe. Specifically, the State of Georgia

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received \$38,930.50 of this sum. Great American insurance Company received \$77,861.01 of this sum.

By copy of this letter, we are notifying the U.S. Attorney's office of the status of this collection effort.

Sincerely,

/s/ Scott W. Kelly

Scott W. Kelly
For the Firm

SWK:gc

cc: Laura Boutwell
Rachelle Weimer
Ruth H. Young
(Assistant United States Attorney)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all Counsel of Record by the CM/ECF system on November 17, 2022.

/s/John B. Long _____
JOHN B. LONG, ESQ.
Georgia State Bar No. 457200

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

JOHN DUNCAN FORDHAM,)
)
PLAINTIFF,) CIVIL ACTION
VS.) FILE NO. _____
GEORGIA DEPARTMENT OF)
ADMINISTRATIVE SERVICES)
and GREAT AMERICAN)
INSURANCE COMPANY)
)
DEFENDANTS)

COMPLAINT

(Filed Sep. 8, 2022)

COMES NOW, JOHN DUNCAN FORDHAM, and brings this his complaint against the Georgia Department of Administrative Services and Great American Insurance Company, and in support thereof shows:

1. That the jurisdiction of this Court is being invoked pursuant to 28 U.S.C. § 1331 in that this case involves federal question jurisdiction under Art. 2, Sec. 2, Para. 1 of the Constitution of the United States, and the effect of a Presidential Pardon granted to John Duncan Fordham under Art. 2, Sec. 2, Para. 1 of the Constitution of the United States by President Donald J. Trump. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

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2. That Defendant Georgia Department of Administrative Services can be served by serving its Commissioner, Rebecca N. Sullivan, at 200 Piedmont Ave., S.E., Suite 1804, West Tower, Atlanta, Georgia 30334.
3. That the Attorney General of the State of Georgia, Mr. Christopher M. Carr, is also being served with a copy of this Complaint at his office located at 40 Capitol Square, S.W., Atlanta, Georgia 30334.
4. That Great American Insurance Company is an Ohio corporation with its principle place of business being at 301 East 4th St., 15th Floor, Cincinnati, Ohio 45202-4201. Its Registered Agent for Service of Process in Georgia is the United Agent Group, Inc., 2985 Gordy Parkway, 1st Floor, Marietta, Cobb County, Georgia 30066.
5. That the Georgia Department of Administrative Services is given the authority under O.C.G.A. § 50-5-51.1 to assist and coordinate with county departments of health, county departments of family and children services, and community services boards to purchase commercial fidelity bonds for officials, officers and employees of such department and boards.
6. That pursuant to that authority, the Georgia Department of Administrative Services is believed to have purchased a surety bond from Great American Insurance Company providing protection for the Community Service Board of East Central Georgia.

7. That Plaintiff John Duncan Fordham was hired to operate and manage the pharmacy for the Community Service Board of East Central Georgia.

8. That thereafter Plaintiff John Duncan Fordham was convicted in the United States District Court for the Southern District of Georgia of honest services fraud in connection with a criminal action brought in the case of United States of America vs. Robin L. Williams, Charles Michael Brockman, John Duncan Fordham, Matthew Chad Logg, Rick Lamar Camp and Fordham, Inc.,” d/b/a Duncan Drugs, Criminal Case No. 104-051.

9. That following that conviction, an order was entered by the United States District Court for the Southern District of Georgia on November 15, 2005 finding that the Community Services Board and its subrogee, the Georgia Department of Administrative Services, and Great American Insurance Company were co-victims entitled to restitution from the criminal defendants, including John Duncan Fordham and Fordham, Inc.

10. That after being convicted and sentenced for honest services fraud, John Duncan Fordham, appealed his conviction to the United States Court of Appeals for the Eleventh Circuit, which conviction was affirmed, in the case of United States vs. Williams, 219 Fed. Appx. 963 (11th Cir. 2007).

11. That on August 31, 2005, the Honorable Dudley H. Bowen, Jr. entered a final order of forfeiture

forfeiting from John Duncan Fordham and Fordham, Inc. the sum of \$500,000, all as shown by Exhibit A.

12. That thereafter the United States District Court for the Southern District of Georgia entered an order on November 15, 2005 finding that the co-victims therein were entitled to restitution from John Duncan Fordham and Fordham, Inc., as shown by Exhibit B.

13. That following his conviction, certain of John Duncan Fordham's assets were seized and liquidated by the United States District Court for the Southern District of Georgia, and those proceeds were paid into the Clerk of the United States District Court for the Southern District of Georgia and were disbursed either by the United States Attorney's Office or by the Clerk of the United States District Court for the Southern District of Georgia.

14. That after serving his sentence John Duncan Fordham filed an application for post-conviction relief before the United States District Court for the Southern District of Georgia contending that the decision by the United States Supreme Court in the case of Skilling v. United States, 561 U.S. 358, 130 S.Ct. 2896 (2010), limited for the first time the scope of what constituted honest services fraud.

15. That the United States District Court for the Southern District of Georgia denied that petition and affirmed the Magistrate Judge's decision on January 24, 2012 in the case of Fordham v. United States, 2012 WL 527414 (S.D. Ga. Jan. 24, 2012), which was in part based upon the judicially created doctrine of

procedural default, which order was affirmed by the Eleventh Circuit Court of Appeals on January 31, 2013 in Fordham v. United States, 706 F.3d 1345 (11th Cir. 2013).

16. That following John Duncan Fordham's release from incarceration, he began making monthly payments to the United States District Court for the Southern District of Georgia.

17. That those funds, together with monies received from the seizure and sale of assets following his conviction, were paid either to the Georgia Department of Administrative Services and to Great American Insurance Company, all as set forth by the order of this Court, entered on November 15, 2005, Exhibit A.

18. That on January 19, 2021, the President of the United States of America, the Honorable Donald J. Trump issued to Plaintiff Fordham a full and unconditional pardon, a copy of which is attached hereto as Exhibit C.

19. That the pardon by President Trump was based upon a request by Plaintiff Fordham set forth in the letter attached hereto as Exhibit D, which letter raised the issues set forth in the Skilling decision.

20. That Plaintiff Fordham has demanded of the United States Attorney's Office that an accounting be provided of exactly what monies were paid by him and what disbursements were made as a result thereof.

21. That the United States District Court for the Southern District of Georgia, pursuant to a motion

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filed by Plaintiff Fordham for an accounting of all funds collected, entered an Order on June 30, 2022 granting Fordham's Motion for an Accounting, and designated Ms. Erica Thornton of the Savannah Divisions of the Clerk's Office of the United States District Court for the purpose of responding to the appropriate inquiry made and ordered that the United States of America make available to the Assistant United States Attorney, Xavier Cunningham, all records, including but not limited to letters, emails, reports, checks that reflect the collection and disbursement of Fordham's restitution payments, as shown by Exhibit E attached hereto.

22. That pursuant to the June 30, 2022 Order, Ms. Erica Thornton has cooperated fully, along with the assistance of Ms. Mary Susan Robichau, Assistant United States Attorney, and in a series of emails and correspondence reported as of August 19, 2022 as follows:

- a. \$45,979.29 in restitution paid in monthly payments by Plaintiff Fordham to the Clerk of the United States District Court for the Southern District of Georgia;
- b. Additional funds from the sale of Plaintiff Fordham's assets which total \$485,822.07.

(All as shown by Exhibit F.)

23. That Plaintiff Fordham has demanded return of the funds paid to the Georgia Department of

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Administrative Services and Great American Insurance Company prior to the filing of this action.

24. That from the documents produced by the Clerk of this Court and the United States Attorney's Office, \$259,287.40 was paid to the Georgia Department of Administrative Services from funds paid by Plaintiff Fordham and \$272,513.96 has been paid to Great American Insurance Company.

25. That Plaintiff Fordham is entitled to a judgment against the Georgia Department of Administrative Services and Great American Insurance Company for the return of monies paid to each which total \$531,801.36, plus interest on said sum during the periods of time that each of the Defendants have held the respective amounts received by them.

26. That the cause of action being brought herein for recovery of these funds is based upon provisions of the United States Constitution.

27. That this right of action did not accrue until January 19, 2020 when President Donald J. Trump granted a pardon to Plaintiff Fordham, and he is entitled to the return of funds under the terms and provisions of said pardon in that he received a full and unconditional pardon as permitted by the Constitution of the United States of America.

28. That this cause of action arises under the Constitution of the United States of America.

WHEREFORE, Plaintiff Fordham prays that he have judgment against the Georgia Department of

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Administrative Service and Great American Insurance Company in the sum of \$531,801.36, plus interest.

Respectfully submitted, this 7th day of September, 2022.

/s/ John B. Long

JOHN B. LONG, ESQ.
Georgia State Bar No. 457200

THOMAS W. TUCKER, ESQ.
Georgia State Bar No. 717975

TUCKER LONG, P.C.
P. O. BOX 2426
453 GREENE STREET
AUGUSTA, GA 30903
(706) 722-0771
ttuckert@tuckerlong.com
jlong@tuckerlong.com

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

JOHN DUNCAN FORDHAM,)
PLAINTIFF,) CIVIL ACTION
VS.) FILE NO. _____
GEORGIA DEPARTMENT OF)
ADMINISTRATIVE SERVICES)
and GREAT AMERICAN)
INSURANCE COMPANY,)
DEFENDANTS)

VERIFICATION

Personally appeared before the undersigned attesting authority, duly authorized to administer oaths, JOHN DUNCAN FORDHAM, who after first being duly sworn, states that she has read the within and foregoing COMPLAINT and the statements contained therein are true and correct.

This 31 day of August, 2022.

/s/ John Duncan Fordham (L.S.)
JOHN DUNCAN FORDHAM

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[SEAL]

Sworn to and subscribed before me,
this 3 day of August, 2022.

/s/ [Illegible]
NOTARY PUBLIC [Illegible] COUNTY,
STATE OF GEORGIA

My Commission expires: 3-9-2026

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

UNITED STATES)
OF AMERICA,)
v.) CR 104-51
ROBIN L. WILLIAMS,)
CHARLES MICHAEL BROCKMAN,)
MATTHEW CHAD LONG,)
RICK LAMAR CAMP, and)
DUNCAN DRUGS)

FINAL ORDER OF FORFEITURE

Before the Court is the United States' Motion for a Final Order of Forfeiture. The Court finds that on May 5, 2005, as the result of the convictions of the above Defendants to Counts 1r-17r and 19r-30r of the Redacted Indictment, the Defendants agreed to forfeit

to the United States the following amounts of U.S. Currency, respectively, as a personal money judgment and in lieu of the government forfeiting the properties named in the May 26, 2004, Indictment and the government's Bill of Particulars: Defendant Robin L. Williams will forfeit \$400,000.00; Defendant Duncan Fordham and Duncan Drugs will forfeit \$500,000.00, with each being jointly and severally, liable for that amount; Defendant Rick Lamar Camp will forfeit \$55,000.00; Defendant Matthew Chad Long will forfeit \$35,000; and Defendant Charles Michael Brockman will forfeit \$14,026.00.

The United States has filed a Motion for Entry of Final Order of Forfeiture which would consist of a personal money judgment against each Defendant in the amounts specified above. Rule 32.2(b)(1) and (c)(1) of the Fed.R.Crim.P. authorizes the Court to enter a personal money judgment against a Defendant and provides that "no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment." Based upon the argument Of counsel and the record in this case, the United States' motion is GRANTED.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- A. A forfeiture money judgment be entered against Defendant Robin L. Williams in the amount of \$400,000.00;
- B. A joint and several forfeiture money judgment be entered against Defendants John Duncan Fordham

and Fordham, Inc. d/b/a Duncan Drugs in the amount of \$500,000.00;

C. A forfeiture money judgment be entered against Defendant Rick Lamar Camp in the amount of \$55,000.00;

D. A forfeiture money judgment be entered against Defendant Matthew Chad Long in the amount of \$35,000; and

E. A forfeiture money judgment be entered against Defendant Charles Michael Brockman in the amount of \$14,026.00.

IT IS FURTHER ORDERED that the real and personal properties named in the Forfeiture Allegation of the Indictment and in the government's February 4, 2005 Bill of Particulars are dismissed;

IT IS FURTHER ORDERED that the Restraining Order entered by this Court on June 3, 2004, is vacated;

IT IS FURTHER ORDERED that the Court retains jurisdiction in the case for the purpose of enforcing this Order;

IT IS FURTHER ORDERED that pursuant to Rule 32.2(b)(3), this Order of Forfeiture shall become final as to Defendants at the time of sentencing and shall be made part of the judgment and commitment order;

IT IS FURTHER ORDERED that the United States may, at any time, move pursuant to Rule 32.2(e) to

App. 84

amend this Order of Forfeiture to substitute property having a value not to exceed the amount agreed to by each Defendant to satisfy the money judgment in whole or in part;

IT IS FURTHER ORDERED that as the United States collects funds or other tangible assets to satisfy the money judgments ordered herein, that said funds or other tangible assets shall, after disposition and payment of costs and expenses incurred in connection with the seizure, detention and forfeiture of the asset, be deposited forthwith and on a continuing basis by the United States Marshal into the Department of Justice Asset Forfeiture Fund in accordance with Title 28, United States Code, Section 524(c) and 21 U.S.C. § 853(n); and

IT IS FURTHER ORDERED that the Clerk shall forward four certified copies of this Order to the United States Attorney's Office, Post Office Box 8970, Savannah, GA 31412-8970.

SO ORDERED this 31st day of August, 2005.

/s/ Dudley H. Bowen, Jr.

HON. DUDLEY BOWEN, JR. JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

United States District Court
Southern District of Georgia

UNITED STATES *
OF AMERICA *
*
vs. * CASE NO. CR104-51
*
ROBIN L. WILLIAMS, *
et al. *

The undersigned, a regularly appointed and qualified deputy in the office of this Clerk of this District, while conducting the business of the Court for said Division does hereby certify the following:

1. Pursuant to instructions from the court, and in the performance of my official duties, I personally placed in the U.S. Mail a sealed envelope bearing the lawful frank of the Court, and properly addressed to each of the persons, parties or attorneys listed below;
and
2. That the aforementioned envelope(s) contain a copy of the documents known as Final Order of Forfeiture dated 8/31/05, which is part of the official records of this case.

Date of Mailing: 8/31/05
Date of Certificate: 8/31/05

SCOTT L. POFF, CLERK
By /s/ L. Flander

NAME:

1. Robin L. Williams, Mike Garrett, Bruce Morris
2. Charles Brockman, Jerome Froelich
3. Duncan Fordham, Michael Lambros, Adam Humes, Kirby Atkinson, Andrew Bkonomou
4. Matthew Long, Daniel Griffin
5. Rick Camp, Ja Stron water, Harry Dixon
6. _____
7. _____

Cert/Copy

District Judge
 Magistrate Judge
 Minutes
 U.S. Probation
 U.S. Marshal
 U.S. Attorney
 JAG Office

Cert/Copy

Dept. of Justice
 Dept. of Public Safety
 Voter Registrar
 U.S. Court of Appeals
 Nicole/Debbie
 Ray Stalvey
 Cindy Reynolds

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA GEORGIA**

UNITED STATES	*
OF AMERICA	*
	*
v.	*
ROBIN L. WILLIAMS,	*
CHARLES MICHAEL	*
BROCKMAN,	*
DUNCAN FORDHAM,	*
MATTHEW CHAD LONG,	*
RICK LAMAR CAMP, and	*
FORDHAM, INC. d/b/a/	*
DUNCAN DRUGS	*

ORDER

In the captioned criminal matter, Defendants were sentenced on September 15, 2005, including an order of restitution to be paid to the victim(s). The victim(s) entitled to restitution were not identified at that time however. Presently, the Community Service Board of East Central Georgia ("CSB"), the State of Georgia Department of Administrative Services ("DOAS"), and the Great American Insurance Company ("Great American") have moved the Court to identify them as victims entitled to restitution.

Upon full consideration of the motion and supporting documentation, and hearing no opposition from the United States or the Defendants, **IT IS ORDERED** that said motion is **GRANTED**. More particularly, the CSB is identified as a victim entitled to restitution from each Defendant. The CSB and its subrogees, the State of Georgia DOAS and Great American; are identified as co-victims entitled to restitution from Defendants Robin L. Williams, Charles Michael Brockman, Duncan Fordham, Matthew Chad Long, and Fordham, Inc. Further, the CSB and its subrogees, the State of Georgia DOAS and Great American, are identified as co-victims entitled to restitution in the amount of \$79,218 from Defendant Rick Lamar Camp. **IT IS FURTHER ORDERED** that these three victims are entitled to pursue any lawful restitution remedy.

ORDER ENTERED at Augusta, Georgia, this 15th day of November, 2005.

/s/ Dudley H. Bowen, Jr.
UNITED STATES
DISTRICT JUDGE

EXHIBIT C

Executive Grant of Clemency

DONALD J. TRUMP

President of the United States of America

**TO ALL TO WHOM THESE
PRESENTS SHALL COME, GREETING:**

BE IT KNOWN, THAT THIS DAY, I, DONALD TRUMP, PRESIDENT OF THE UNITED STATES, PURSUANT TO MY POWERS UNDER ARTICLE II, SECTION 2, CLAUSE 1, OF THE CONSTITUTION, HAVE GRANTED UNTO

DUNCAN FORDHAM

A FULL AND UNCONDITIONAL PARDON

FOR HIS CONVICTION in the United States District Court for the Southern District of Georgia on a indictment (Docket No. 1:04-CR-00051-003) charging violation of Section 1347, Title 18, United States Code, for which he was sentenced on September 15, 2005, to 52 months' imprisonment, three years' supervised release, \$1,021,888 restitution, and a \$100 special assessment.

I HEREBY DESIGNATE, direct, and empower the Office of the Pardon Attorney, as my representative, to sign a grant of clemency to the person named herein. The Office of the Pardon Attorney shall declare that its action is the act of the President, being performed at my direction.

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IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of the Department of Justice to be affixed.

*Done at the City of Washington in the
District of Columbia this Nineteenth day of
January in the year of our Lord Two
Thousand and Twenty and of the
Independence of the United States the Two
Hundred and Forty-fifth.*

/s/ Donald J. Trump
DONALD J. TRUMP
PRESIDENT

EXHIBIT D

LAW OFFICES
TUCKER LONG, P.C.
P.O. BOX 2426
AUGUSTA, GEORGIA 30903
WWW.AUGUSTALAWOFFICE.COM
November 16, 2020

JOHN B. LONG, ESQ.
jlong@tuckerlong.com

OFFICE
453 GREENE STREET

—
TELEPHONE
(706) 722-0771

—
TELECOPIER
(706) 722-7028

—
OF COUNSEL
A MONTAGUE MILLER
A. ZACHRY EVERITT

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Re: Mr. John Duncan Fordham

Dear Mr. President:

The purpose of this letter is to ask for a presidential pardon of Mr. John Duncan Fordham. Mr. Fordham was convicted on May 5, 2005 of one (1) count of health care fraud in violation of 18 U.S.C. § 1347. Mr. Fordham was a pharmacist who was asked to operate a

pharmacy at the Community Mental Health Center of East Central Georgia in Augusta, Georgia and for which he was permitted to earn a profit. The basis of the charge and the basis of the conviction was a violation of the honest services fraud statute. Subsequent to Mr. Fordham's conviction, that statute was declared unconstitutional.

For 20 years, Mr. Fordham owned a private pharmacy. He was asked to operate the pharmacy at the Community Mental Health Center of East Central Georgia. He signed a contract that was drafted by the Community Mental Health Center's attorney. His compensation was agreed upon by the Community Mental Health Center.

Mr. Fordham's conviction was upheld on appeal by the 11th Circuit Court of Appeals. After the Skilling decision was rendered by the United States Supreme Court's declaring that the honest services fraud statute was unconstitutional, Mr. Fordham filed a petition for a writ of habeas corpus. That petition was denied by the United States District Court for the Southern District of Georgia on February 16, 2012 based upon the judicially-created theory that Mr. Fordham "procedurally defaulted" because he was not so clairvoyant as to know that when he was tried in 2005 that the United States Supreme Court would, some five (5) years later, hold that the honest services fraud statute was unconstitutional! *See, Fordham v. U.S.*, 2012 Westlaw 527413 (S.D. Ga. 2012), aff'd 706 F.3d 1345 (2013). As a result of his conviction, Mr. Fordham spent years in jail and continues to be penalized for a

App. 93

non-existent crime. He cannot have his pharmacy license reinstated nor is he allowed to process Medicare or Medicaid claims. Mr. Fordham has been punished more than enough for a crime that did not exist at the time of the alleged incidents.

Most Respectfully,

/s/
John B. Long

JBL/dec

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA GEORGIA**

UNITED STATES *
OF AMERICA *
v. * CR 104-051-03
JOHN DUNCAN FORDHAM *

ORDER

On September 15, 2005, Defendant John Duncan Fordham was convicted by a jury for his role in a health care fraud scheme. The Court sentenced Fordham to serve 52 months imprisonment followed by three years

of supervised release, He was ordered to pay a \$100 special assessment and \$1,021,888.00 in restitution, jointly and severally with co-defendants, to two victims: Department of Administrative Services and Great American Insurance Company. The records of the Clerk of Court reflect that there is an outstanding balance of \$370,870.73 due and owing in restitution.

On January 19, 2020, Fordham was granted a full and unconditional presidential pardon. In July 2021, Fordham's attorney, Mr. Jack B. Long, Esq., sought from the United States Attorney's Office an accounting of all funds collected from Fordham and disposition made thereof with respect to restitution since his conviction. (See Def.'s Reply, Doc. No. 450, Ex. A.) The United States Attorney's Office did not respond. Consequently, Fordham filed the present motion under consideration – a motion for "An Accounting by the United States of America for all Funds that have been Collected from John Duncan Fordham or Duncan Drugs." (Doc. No. 444.)

The Government understandably interpreted the motion as one seeking not only an accounting, but also a reimbursement of all restitution funds paid by either Fordham or his business Duncan Drugs. (See Def.'s Mot. ¶ 9 ("That under the Presidential Pardon granted to Fordham, he is entitled to the return of all monies. . . ."). The Government opposed the return of any money to Fordham; it also deflected any responsibility (or willingness) to make an accounting of the restitution monies to the Clerk of Court for the Southern District of Georgia. In reply, Fordham represents that he

is not seeking the return of any funds through the present motion. Rather, “[t]he issue before the Court is getting an accounting, that is, knowing exactly what funds have been received from the sale of Fordham’s property, what funds were paid by Fordham, and to whom the Government disbursed those funds.” (Def.’s Reply at 5.) Upon due consideration, the Court fully agrees that Fordham is entitled to the requested accounting.

IT IS THEREFORE ORDERED that the motion for an accounting (doc. no. 444) is **GRANTED**. The responsibility for ensuring that Defendant Fordham receives the most accurate and complete understanding of restitution collection and disbursement falls upon both the Clerk of Court and the United States Attorney. First, the Clerk of Court is hereby **ORDERED** to make available to Mr. Long a case report and any supporting documentation in the matter. The Clerk of Court Shall designate **Ms. Erika Thornton** of the Savannah Division (912-650-4027) for this purpose and to respond to any appropriate inquiries made by Mr. Long. Second, the United States Attorney is hereby **ORDERED** to make available to Mr. Long, through **Assistant United States Attorney Xavier Cunningham**, any and all records, including, but not limited to letters, details, reports, and checks, that reflect the collection and disbursement of Fordham’s restitution payments. In the event that Mr. Long is dissatisfied with the efforts of these offices, he may petition the Court for a hearing.

Finally, because a pardon reaches the punishment prescribed for an offense, **IT IS ORDERED** that Defendant Fordham is hereby relieved of any further obligation to pay any retaining restitution obligation. See Ex parte Garland, 71 U.S. 333, 334 (1866) (stating that if a pardon is granted, after conviction, “it removes the penalties and disabilities and restores [the defendant] to all his civil rights”).

ORDER ENTERED at Augusta, Georgia, this 30th day of June, 2022.

/s/ Dudley H. Bowen, Jr.
UNITED STATES
DISTRICT JUDGE

EXHIBIT F

Jack Long

From: Erika Thornton <ErikaThornton@gas.uscourts.gov>
Sent: Friday, July 8, 2022 10:35 AM
To: Jack Long
Subject: CR104-51-03 John Duncan Fordham
Attachments: CR104-51-03 Fordham Payments
RA.xlsx

Mr. Long,

I am attaching the list of payments that Mr. Fordham has paid directly to the Clerk’s Office which total \$46,079.29 (\$100 SPA + \$45,979.29).

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All payments that have been applied to Mr. Fordham's restitution have been sent out to the victims, Department of Administrative Service and Great American Insurance.

I will follow up with Xavier Cunningham this morning to get confirmation on the receiver payments.

If you have any questions about the report, please let me know.

Thank you,

/s/ **Erika Thornton**
[SEAL] Financial Administrator
United States District
Court, Savannah Division
(912) 650 - 4027

Thank you very much. Did the \$45,979.29 that was paid to the victims sent directly to the Georgia Department of Administrative Services or Great American?
Jack Long

App. 98

From: Erika Thornton <Erika_Thornton@gas.uscourts.gov>

Sent: Thursday, August 18, 2022 2:49 PM

To: Jack Long <JLong@tuckerlong.com>

Subject: RE: CR104-51 John Duncan Fordham

Mr. Long,

Mary Sue Robichaux (replaced Xavier Cunningham) and Margrita Brady are working on this case at the US Attorney's office.

As I previously provided, Mr. Fordham has paid to the court \$45,979.29 in restitution that has been paid to the victims. In addition, payments were sent directly to victims outside of the court. I can verify with the USAO's records that the following occurred:

Dept. of Admin received \$174,22035 + \$39,087.76
Great American received \$244,682.44 + \$27,831.52

If any additional sale/funds were sent directly to victims outside of the court, the United States Attorney's office would have to answer those questions.

Please let me know if I can be of any more assistance.

Thank you for your patience,

/s/ **Erika Thornton**

[SEAL] Financial Administrator
 United States District
 Court, Savannah Division
 (912) 650 - 4027

App. 99

From: Erika Thornton
Sent: Tuesday, August 9, 2022 2:27 PM
To: jlong@tuckerlong.com
Subject: CR104-51 John Duncan Fordham

Mr. Long,

I just wanted to check in with you in regards to the documentation that you have requested in CR104-51 Fordham. It just came to my attention last week that Xavier Cunningham is no longer with the United States Attorney's Office. He was the one that I had reached out to obtain additional information on this case but was unsuccessful. I was not sure if the USAO had contacted you with additional information or not so I just wanted to follow up.

If you have time, please call me at 912-650-4027 or reply to my email if that is more convenient.

Thank you!

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (*SEE INSTRUCTIONS ON EXT PAGE OF THIS FORM.*)

I. (a) PLAINTIFFS JOHN DUNCAN FORDHAM

(b) County of Residence of First Listed Plaintiff

Richmond

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) JOHN B. LONG and THOMAS W.

**TUCKER, TUCKER LONG, PC, P.O. BOX 2426,
AUGUSTA GA 706/722-0771**

**DEFENDANTS GEORGIA DEPARTMENT OF
ADMINISTRATIVE SERVICES and GREAT
AMERICAN INSURANCE COMPANY**

**County of Residence of First Listed Defendant Fulton
(IN U.S. PLAINTIFF CASES ONLY)**

**(NOTE: IN LAND CONDEMNATION CASES, USE
THE LOCATION OF THE TRACT OF LAND
INVOLVED)**

Attorneys (If Known)

**II. BASIS OF JURISDICTION (Place an x in One
Box Only)**

1 U.S. Government 3 Federal Question
Plaintiff *(U.S. Government Not a Party)*

2 U.S. Government 4 Diversity
Defendant *(Indicate Citizenship of Parties
in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES

*(For Diversity Cases Only) (Place an x in One Box
Box for Plaintiff and
One Box for Defendant)*

	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/> 1
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/> 2
Citizen or Subject of a Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/> 3
Incorporation or Principal Place of Business In This State	<input type="checkbox"/>	<input checked="" type="checkbox"/> 4
Incorporation and Principal Place of Business In Another State	<input type="checkbox"/>	<input type="checkbox"/> 5
Foreign Country	<input type="checkbox"/>	<input type="checkbox"/> 6

IV. NATURE OF SUIT *Place an "X" in One Box Only)*

Click here for: [Nature of Suit Code Descriptions](#).

CONTRACT

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement
of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans
(Excludes Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholder's Suits
- 190 Other Contract

App. 102

- 195 Contract Product Liability
- 196 Franchise

REAL PROPERTY

- 210 Land Condemnation
- 220 Foreclosure
- 230 Rent Lease & Ejectment
- 240 Torts to Land
- 245 Tort Product Liability
- 290 All Other Real Property

TORTS

PERSONAL INJURY

- 310 Airplane
- 315 Airplane Product Liability
- 320 Assault, Libel & Slander
- 330 Federal Employers' Liability
- 340 Marine
- 345 Marine Product Liability
- 350 Motor Vehicle
- 355 Motor Vehicle Product Liability
- 360 Other Personal Injury
- 362 Personal Injury - Medical Malpractice

PERSONAL INJURY

- 365 Personal Injury - Product Liability
- 367 Health Care/Pharmaceutical
- 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- 370 Other Fraud
- 371 Truth in Lending
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability

CIVIL RIGHTS

- 440 Other Civil Rights
- 441 Voting
- 442 Employment
- 443 Housing/Accommodations
- 445 Amer. w/Disabilities - Employment
- 446 Amer. w/Disabilities - Other
- 448 Education

PRISONER PETITIONS

Habeas Corpus:

- 463 Alien Detainee
- 510 Motions to Vacate Sentence
- 530 General
- 535 Death Penalty

Other:

- 540 Mandamus & Other
- 550 Civil Rights
- 555 Prison Condition
- 560 Civil Detainee - Conditions of Confinement

FORFEITURE PENALTY

- 625 Drug Related Seizure of Property 21 USC 881
- 690 Other

LABOR

- 710 Fair Labor Standards Act
- 720 Labor/Management Relations
- 740 Railway Labor Act
- 751 Family and Medical Leave Act
- 790 Other Labor Litigation
- 791 Employee Retirement Income Security Act

IMMIGRATION

- 462 Naturalization Application
- 465 Other Immigration Actions

BANKRUPTCY

- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- 820 Copyrights
- 830 Patent
- 835 Patent - Abbreviated New Drug Application
- 840 Trademark

SOCIAL SECURITY

- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS

- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS—Third Party 26 USC 7609

OTHER STATUTES

- 375 False Claims Act
- 376 Qui Tam (31 USC 3729(a))
- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce
- 460 Deportation

- 470 Racketeer Influenced and Corrupt Organizations
- 480 Consumer Credit
- 485 Telephone Consumer Protection Act
- 490 Cable/Sat TX
- 850 Securities/Commodities/Exchange
- 890 Other Statutory Actions
- 891 Agricultural Acts
- 893 Environmental Matters
- 895 Freedom of Information Act
- 896 Arbitration
- 899 Administrative Procedure Act/Review or
Appeal of Agency Decision
- 950 Constitutionality of State Statutes

V. ORIGIN (*Place an "X" in One Box Only*)

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing

(Do not cite jurisdictional statutes unless diversity):

Art.2Sec2Paral United States Constitution

Brief description of cause:

Recovery of funds for restitution following Presidential Pardon

App. 106

VII. REQUESTED IN COMPLAINT
 CHECK IF THIS IS A **CLASS ACTION**
UNDER RULES 23, F.R.Cv.P.

DEMAND\$ CHECK YES only if demanded in complaint:
531,801.00 **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (*See instructions*):
JUDGE D.H. Bowen, Jr. DOCKET NUMBER CR104-51

DATE SIGNATURE OF ATTORNEY OF RECORD
9/7/22 [Illegible]

FOR OFFICE USE ONLY

RECEIPT # ____ AMOUNT ____ APPLYING IFP ____
JUDGE ____ MAG. JUDGE ____

2311 Douglas Street
Omaha, Nebraska 68102-1214



1-800-225-6964
(402) 342-2831
Fax: (402) 342-4850

E-Mail Address:
contact@cocklelegalbriefs.com

Web Site
www.cocklelegalbriefs.com

No. _____

JOHN DUNCAN FORDHAM,
Petitioner,
v.
GEORGIA DEPARTMENT OF
ADMINISTRATIVE SERVICE and
GREAT AMERICAN INSURANCE COMPANY,
Respondents.

AFFIDAVIT OF SERVICE

I, Renee Goss, of lawful age, being duly sworn, upon my oath state that I did, on the 29th day of November, 2023, send out from Omaha, NE 2 package(s) containing 3 copies of the PETITION FOR WRIT OF CERTIORARI in the above entitled case. All parties required to be served have been served by Priority Mail. Packages were plainly addressed to the following:

SEE ATTACHED

To be filed for:

JOHN B. LONG, ESQ.
Counsel of Record

Of Counsel:
TUCKER LONG, P.C.
P. O. Box 2426
453 Greene Street (30901)
Augusta, GA 30903
(706) 722-0771
(706) 722-7028 Fax
jlong@tuckerlong.com

THOMAS W. TUCKER, ESQ.
Attorneys for Petitioner

Subscribed and sworn to before me this 29th day of November, 2023.
I am duly authorized under the laws of the State of Nebraska to administer oaths.

State of Nebraska – General Notary
ANDREW COCKLE
My Commission Expires
April 9, 2026

Notary Public

Renee J. Goss
Affiant

ATTORNEYS FOR GDAS:

Christopher Michael Carr, Esq.
Amy Patterson, Esq.
40 Capitol Square, SW
Atlanta, GA 30334-1300
404-657-0658
ccarr@law.ga.gov
apatterson@law.ga.gov

ATTORNEYS FOR GAIC:

Michael R. Pennington, Esq.
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