TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED MARCH 3, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-2080

EUGENE DINGLE,

Plaintiff-Appellant,

v.

LESLIE ARMSTRONG, GUARDIAN AD LITEM OF DORCHESTER COUNTY FAMILY COURT IN HER INDIVIDUAL AND OFFICIAL CAPACITY; CANDICE LOREAL STERLING; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES CHILD SUPPORT ENFORCEMENT DIVISION; DORCHESTER COUNTY FAMILY COURT,

Defendants-Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Bruce H. Hendricks, District Judge. (2:23-cv-04141-BHH)

Submitted: January 17, 2025
Decided: March 3, 2025

Before KING and BERNER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Appendix A

Affirmed by unpublished per curiam opinion.

Eugene Dingle, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eugene Dingle appeals the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice Dingle's civil complaint for lack of subject matter jurisdiction and as frivolous, as well as the court's order denying Dingle's motions for reconsideration. Limiting our review of the record to the issues raised in Dingle's informal brief, we have reviewed the record and find no reversible error. *See* 4th Cir. R. 34(b); *see also Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we deny Dingle's pending motions and affirm the district court's orders. *Dingle v. Armstrong*, No. 2:23-cv-04141-BHH (D.S.C. Aug. 29, 2024; Oct. 8, 2024). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, FILED AUGUST 29, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Civil Action No. 2:23-4141-BHH

EUGENE DINGLE,

Plaintiff,

v.

LESLIE ARMSTRONG, CANDICE LOREAL STERLING, SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES CHILD SUPPORT ENFORCEMENT DIVISION, DORCHESTER COUNTY FAMILY COURT,

Defendants.

Filed August 29, 2024

ORDER

This matter is before the Court on Plaintiff Eugene Dingle's ("Plaintiff") pro se complaint against the above-named Defendants. (ECF No. 28.) The matter was referred to a United States Magistrate Judge for preliminary review in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C.

Appendix B

On June 6, 2024, Magistrate Judge Molly H. Cherry issued a Report and Recommendation ("Report") outlining the issues and recommending that the Court take the following actions: dismiss this action without prejudice, without issuance and service of process, and without leave to amend; deny Plaintiff's motion for judicial notice; and deny Plaintiff's second motion for preliminary injunction.[1] (ECF No. 29.) In her Report, the Magistrate Judge outlined the procedural history of this case and the allegations contained in Plaintiff's amended complaint and found this case subject to dismissal for lack of subject matter jurisdiction because: (1) Plaintiff's claims are an improper attempt to appeal the results of South Carolina family court actions to this Court and are barred by the *Rooker-Feldman* doctrine[2]; (2) Plaintiff's requests for

1. The Magistrate Judge previously entered a Report and Recommendation on January 16, 2024, evaluating Plaintiffs' fist motion for preliminary injunction and recommending that the Court deny the motion. (ECF No. 14.) The Court adopted her Report on January 29, 2024, and denied the motion. (ECF No. 19.) Plaintiff then filed a motion to reconsider, which the Court denied on April 2, 2024. (ECF Nos. 24, 26.)

2. As the Magistrate Judge noted, this is not the first action filed by Plaintiff regarding his South Carolina family court case. Specifically, Plaintiff previously filed an action in this Court against Leslie Armstrong ("Armstrong"), the guardian ad litem for the minor child at issue, and the family court judge. This Court summarily dismissed that action without prejudice for lack of subject matter jurisdiction. *See Dingle v. Armstrong, et al.*, No. 9:22-CV-2746-BHH, 2023 WL 144717 (D.S.C. Jan. 10, 2023).

Also, subsequent to filing the instant action, Plaintiff filed another case against Armstrong regarding his South Carolina family court case. *See Dingle v. Sterling, et al.*, No. 2:23-05333-BHH-MHC.

injunctive relief are barred by the Anti-Injunction Act, 28 U.S.C. § 2283; (3) the Declaratory Judgment action, 28 U.S.C. §§ 2201-2202, does not create an independent source of federal subject matter jurisdiction; (4) the Court should abstain from interfering to the extent that Plaintiff's state court proceedings remain pending, pursuant to *Younger v. Harris*, 401 U.S. 37 (1971); (5) the criminal statutes cited by Plaintiff do not create a private right of action or offer a basis for the Court to exercise federal question jurisdiction; and (6) the separation of powers doctrine is not binding on the states.

Additionally, the Magistrate Judge found this case subject to dismissal for frivolousness because: (1) a substantial portion of Plaintiff's allegations are incomprehensible and comprised of legalistic gibberish; (2) Defendant Armstrong is entitled to quasi-judicial immunity for duties performed in her role as a guardian ad litem; (3) Dorchester County is not a "person" subject to suit pursuant § 1983; (4) the Ninth Amendment does not provide a basis for a § 1983 claim; (5) and the Tenth Amendment does not create a constitutional right cognizable in a civil suit.

In her Report, the Magistrate Judge also considered Plaintiff's motion for judicial notice and found that the motion did not offer a set of indisputable facts or other information that may be appropriate for judicial notice. Rather, the Magistrate Judge found that the motion merely informed the Court as to Plaintiff's legal conclusions. Accordingly, the Magistrate Judge recommended that the Court deny the motion.

Lastly, the Magistrate Judge recommended that the Court deny Plaintiff's second motion for preliminary injunction, explaining that the motion is premature because the action has not yet been served and finding that Plaintiff failed to make a clear showing of the elements necessary for obtaining the extraordinary remedy of a preliminary injunction. *See* Fed. R. Civ. P. 65(a)(1) ("The court may issue a preliminary injunction only on notice to the adverse party."); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Attached to the Magistrate Judge's Report was a notice advising Plaintiff of the right to file written objections to the Report within fourteen days of being served with a copy. Plaintiff filed written objections on June 17, 2024, and he filed a motion for leave to file a second amended complaint on July 2, 2024. (*See* ECF Nos. 31, 32.)

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

In his 44-page objections, Plaintiff generally rehashes all of his claims and asserts that federal question jurisdiction exists because he alleges claims under 42

U.S.C. § 1983 due to violations of the First, Fourth, Ninth, Tenth, and Fourteenth Amendments. (ECF No. 31 at 2-3.) He then regurgitates his specific claims against each Defendant and asserts that his claims are not barred by the *Rooker-Feldman* doctrine because his claims raise independent constitutional violations that occurred during the underlying family court proceedings. (*Id.* at 4-7.) Plaintiff repeats his alleged constitutional violations, asserting that he was not provided proper notice in the family court or the opportunity to be heard; that he was detained unlawfully; and that his right to petition the government for redress was ignored. (*Id.* at 7-9.)

Next, Plaintiff asserts that his requests for injunctive relief fall within exceptions to the Anti-Injunction Act and that the Court can entertain this declaratory judgment proceeding under 28 U.S.C. §§ 2201 and 2202 because he raises federal constitutional claims. (*Id.* at 9-15.) Plaintiff objects to the Magistrate Judge's finding that *Younger* abstention applies, asserting that his state court case has now concluded, and he asserts that the doctrine does not apply because the state court proceedings were conducted in bad faith; because Plaintiff faces irreparable injury; and because there is no adequate state remedy. (*Id.* at 15-17.) Plaintiff then rehashes the alleged violations of his First, Fourth, Ninth, Tenth, and Fourteenth Amendment rights and contends that his "claims for injunctive and declaratory relief are robustly supported by 42 U.S.C. § 1983." (*Id.* at 18-20.) Plaintiff then sets forth a list of cases he contends support his claims. (*Id.* at 20-22.)

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As to the Magistrate Judge's findings regarding frivolousness, Plaintiff contends that the Magistrate Judge unfairly characterized his claims as legalistic gibberish, and he repeats his claims with various legal references. (*Id.* at 23-26.) Plaintiff also contends that his claims against Defendant Armstrong fall outside the scope of quasi-judicial immunity. (*Id.* at 26-30.) As to the Magistrate Judge's finding that Dorchester County is not a "person" amenable to suit under § 1983, Plaintiff requests leave to amend to add the appropriate individuals associated with Dorchester County. (*Id.* at 31.) He then repeats his Ninth and Tenth Amendment allegations. (*Id.* at 31-36.)

With respect to his motion for judicial notice, Plaintiff "acknowledges that judicial notice cannot be taken for legal conclusions," but he "emphasizes that the cases cited in his motion are intended to provide a legal framework for understanding the violations of his constitutional rights." (*Id.* at 37.) Ultimately, Plaintiff "requests that the Court consider the cited cases as part of the legal context and precedent that supports his claims, rather than as adjudicative facts subject to judicial notice." (*Id.* at 38.) Plaintiff then objects to the Magistrate Judge's findings as to his second motion for preliminary injunction and asks the Court to grant the motion. (*Id.* at 38-42.)

After careful review, the Court finds Plaintiff's objections wholly unavailing. Instead, a *de novo* review of the record plainly indicates to the Court that the Magistrate Judge accurately summarized Plaintiff's claims as well as the law applicable to those claims, and

the Court finds that nothing in Plaintiff's largely repetitive objections alters the Magistrate Judge's analysis. Indeed, the Court fully agrees with the Magistrate Judge's findings and recommendations, and the Court finds this action subject to summary dismissal for the myriad reasons set forth in the Report. Furthermore, the Court agrees with the Magistrate Judge that Plaintiff's motion for judicial notice is improper and that Plaintiff has failed to make a clear showing of the elements necessary for obtaining a preliminary injunction. Accordingly, the Court hereby adopts and specifically incorporates the Magistrate Judge's Report as the order of the Court.

Finally, as to Plaintiff's motion to amend, which was filed subsequent to his objections, the Court first notes that Plaintiff does not include a proposed amended complaint with his motion. Nevertheless, the Court ultimately concludes that amendment would be futile at this time because it would not correct this case's jurisdictional deficiencies, which were carefully and correctly outlined in the Report. Accordingly, the Court denies Plaintiff's motion to amend.

CONCLUSION

Based on the foregoing, the Court overrules Plaintiff's objections (ECF No. 31); the Court adopts and specifically incorporates the Magistrate Judge's Report as the Order of the Court (ECF No. 29); the Court denies Plaintiff's motion for judicial notice (ECF No. 21); the Court denies Plaintiff's second motion for a preliminary injunction (ECF No. 23); the Court denies

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Plaintiff's motion for leave to file a second amended complaint (ECF No. 32); and the Court dismisses this action without prejudice, without issuance and service of process, and without leave to amend.

IT IS SO ORDERED.

/s/ Bruce H. Hendricks
United States District Judge

August 29, 2024
Charleston, South Carolina

APPENDIX C — REPORT AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, FILED JUNE 6, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

C/A No. 2:23-04141-BHH-MHC

EUGENE DINGLE,

Plaintiff,

v.

LESLIE ARMSTRONG, CANDICE LOREAL STERLING, SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES CHILD SUPPORT ENFORCEMENT DIVISION, DORCHESTER COUNTY FAMILY COURT,

Defendants.

Filed June 6, 2024

REPORT AND RECOMMENDATION

This is a civil action filed by Eugene Dingle, proceeding pro se. Under 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

Appendix C

In an Order entered October 10, 2023, Plaintiff was directed to file certain documents to bring his case into proper form. The time was extended, and Plaintiff has now brought his case into substantially proper form. In an Order entered January 16, 2024, Plaintiff was advised of material deficiencies in his Complaint and given the opportunity to file an amended complaint. ECF No. 15. On February 2, 2024, Plaintiff filed what appears to be both an Amended Complaint (ECF No. 28) and a Second Motion for a Preliminary Injunction (ECF No. 23).

I. BACKGROUND

In his Amended Complaint, Plaintiff brings claims against Candice Loreal Sterling (Sterling), the custodial mother of a minor child; Leslie Armstrong (Armstrong), the guardian ad litem (GAL) for the minor child; the South Carolina Department of Social Services Child Support Enforcement Division (SCDSSCSED), and the Dorchester County Family Court. This action appears to concern child support and GAL fees in Plaintiff's South Carolina family court case.

Plaintiff previously filed an action in this Court against Armstrong and South Carolina Family Court Judge Anne Gue Jones. In that case, Plaintiff asserted that Judge Jones was discriminatory or unfair to him and showed favoritism to his minor child's mother, and that Armstrong (as GAL in the family court case) failed to look at all the evidence and failed to properly represent the minor child. The prior case was summarily dismissed without prejudice for lack of subject matter jurisdiction.

See Dingle v. Armstrong, No. 9:22-CV-2746-BHH, 2023 WL 144717 (D.S.C. Jan. 10, 2023). After he filed this action, Plaintiff filed another case (which is currently pending and may contain some duplicative claims) about his child custody and child support case against Armstrong and six judges of the Dorchester County Family Court. *See Dingle v. Sterling*, No. 2:23-05333-BHH-MHC (D.S.C.).

Plaintiff asserts that in April 2022, Armstrong was appointed to serve as a GAL and Plaintiff and Sterling were ordered to share equally in the GAL fees and costs. ECF No. 28-1 at 12.[1] On October 20, 2022, Plaintiff was allegedly ordered by the Dorchester County Family Court to pay Sterling child support each month through the SCDSS statewide disbursement unit. *Id.* at 13. Plaintiff claims that, prior to the enforcement of the support order, he was not given notice of any hearings concerning the establishment of Plaintiff as an absent parent of a child who would or had become dependent on welfare assistance. *Id.* at 14. Plaintiff asserts that on October 21, 2022, Sterling applied for governmental assistance and child support benefits for an absent father and that she allegedly unlawfully included his name, date of birth, social security number, and driver's license number on the application. *Id.* at 13.

On February 1, 2023, the Dorchester County Family Court allegedly declared Plaintiff to be in contempt of court and ordered that he serve five days in jail or pay

1. Plaintiff has not provided a statement of the facts in his Amended Complaint. The facts included here are found within his causes of action.

fees owed to the GAL. ECF No. 28-1 at 16. Plaintiff claims he tried to get Armstrong to accept the same payment plan that had been offered to Sterling, but he received no response. *Id.* at 16-17. On February 20, 2023, Plaintiff allegedly received an affidavit of non-compliance and a copy of a request for a bench warrant via email from Armstrong, and a bench warrant was allegedly issued on February 27, 2023. *Id.* at 17.

A child support contempt of court hearing was allegedly convened on April 19, 2023, and another bench warrant was issued. Plaintiff contends he was not properly served notice of the hearing, and that he was arrested and taken to the Greenville Detention Center on May 17, 2023. After a day, he allegedly was transferred to the Dorchester County Detention Center where he remained for thirteen days until his father paid GAL fees and past due child support. In May 2023, garnishment of Plaintiff's wages allegedly began. ECF No. 28-1 at 18.

On October 24, 2023, Plaintiff was allegedly ordered to serve six months in jail on a contempt charge or pay the remainder of the fees owed. Plaintiff allegedly had to pay his balance owed within 90 days, but Sterling had "an infinite amount of time with a payment plan[.]" ECF No. 28-1 at 11, 18.

In this action, Plaintiff lists his causes of action as: (1) declaratory judgment; (2) permanent injunction; (3) Social Security Fraud against Sterling (42 U.S.C. § 408(a)(7)(B), 2); (4) Aggravated Identity Theft against Sterling (18 U.S.C. § 1028A, 2); and (5) Deprivation of Liberty under Color of

Law State Law against Armstrong.[2] ECF No. 28-1 at 6-26. He appears to ask for declaratory and injunctive relief.

II. STANDARD OF REVIEW

Although Plaintiff is not proceeding *in forma pauperis*,[3] this filing is nonetheless subject to review pursuant to the inherent authority of this Court to ensure that a plaintiff has standing; subject matter jurisdiction exists; and the case is not frivolous.[4] *See Ross v. Baron*, 493 F. App'x 405, 406 (4th Cir. Aug. 22, 2012); *Ferguson v. Wooton*, 741 F. App'x 955 (4th Cir. 2018) (collecting cases and explaining that "[f]rivolous complaints are subject to dismissal pursuant to the district court's inherent authority, even when the plaintiff has paid the filing fee" and that "dismissal prior to service of process is permissible when a court lacks subject matter jurisdiction over a patently frivolous complaint"); *Smith v. Kagan*, 616 F. App'x 90 (4th Cir. 2015) ("Frivolous complaints are subject to dismissal pursuant to the court's inherent

2. This is listed as the sixth cause of action ("Count VI") in the Amended Complaint, but there is no number 5 (or Count V) cause of action. *See* ECF No. 28-1 at 10.

3. Plaintiff has paid the full filing fee. *See* Receipt Number 200019845.

4. Pre-screening under 28 U.S.C. § 1915 is inapplicable in pro se, non-prisoner, fee-paid cases. *See Bardes v. Magera*, No. 2:08-487-PMD-RSC, 2008 WL 2627134, at *8–10 (D.S.C. June 25, 2008) (finding persuasive the Sixth Circuit's opinion in *Benson v. O'Brian*, 179 F.3d 1014 (6th Cir. 1999), that 28 U.S.C. § 1915(e)(2) is inapplicable to actions that are not pursued *in forma pauperis*).

authority, even when the plaintiff has paid the filing fee."); *Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 363–364 (2d Cir. 2000); *see also Pillay v. INS*, 45 F.3d 14, 16–17 (2d Cir. 1995) (noting that although 28 U.S.C. § 1915(d) was not applicable where a pro se party filed an appeal and paid the filing fee, the court had "inherent authority, wholly aside from any statutory warrant, to dismiss an appeal or petition for review as frivolous"). "[I]t is well established that a court has broad inherent power *sua sponte* to dismiss an action, or part of an action, which is frivolous, vexatious, or brought in bad faith." *Brown v. Maynard*, No. L-11-619, 2011 WL 883917, at *1 (D. Md. Mar. 11, 2011) (citing cases). Therefore, a court has "the discretion to dismiss a case at any time, notwithstanding the payment of any filing fee or any portion thereof, if it determines that the action is factually or legally frivolous." *Id.* As such, this case is subject to review pursuant to the inherent authority of this Court to ensure that subject matter jurisdiction exists and that the case is not frivolous. *See, e.g.*, *Carter v. Ervin*, No. 14-0865, 2014 WL 2468351 (D.S.C. June 2, 2014); *Cornelius v. Howell*, No. 06-3387, 2007 WL 397449, at *3 (D.S.C. Jan. 8, 2007), *report and recommendation adopted*, 2007 WL 4952430 (D.S.C. Jan. 30, 2007), *aff'd*, 251 F. App'x 246 (4th Cir. 2007).

This Court is required to liberally construe pro se complaints, which are held to a less stringent standard than those drafted by attorneys. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the Court can ignore a

clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions").

III. DISCUSSION/RECOMMENDATION FOR SUMMARY DISMISSAL

It is recommended that this action be summarily dismissed for the reasons discussed below.

A. Lack of Federal Court Jurisdiction

This action is subject to summary dismissal because this court lacks jurisdiction over Plaintiff's claims. Federal courts are courts of limited jurisdiction, *see Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994), and a district court is charged with ensuring that all cases before it are properly subject to such jurisdiction. *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998). Generally, a case can be filed in a federal district court only if there is diversity of citizenship under 28 U.S.C. § 1332,[5] or if

5. Plaintiff has not asserted diversity jurisdiction. *See* ECF No. 28 at 2 (asserting federal question jurisdiction only under § 1331). Moreover, he cannot establish diversity jurisdiction. A district court may have jurisdiction of a civil action "where the matter in controversy exceeds the sum or value of $75,000 . . . and is between – (1) citizens of different States . . . ". 28 U.S.C. § 1332. Plaintiff has not alleged complete diversity of the parties. *See Owen*

there is federal question jurisdiction under 28 U.S.C. § 1331.[6]

Plaintiff asserts that his basis for federal court jurisdiction is federal question under § 1331. He appears to bring claims under 42 U.S.C. § 1983 (§ 1983), for alleged violations of his First, Fourth, Ninth, Tenth, and Fourteenth Amendment rights. ECF No. 28 at 2; ECF No. 28-1 at 1-2. Although he also lists Article VI, Clause

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Equipment & Erection Co. v. Kroger, 437 U.S. 365, 372-374 (1978) (Complete diversity of parties means that no party on one side may be a citizen of the same State as any party on the other side). There is not complete diversity as Plaintiff and all Defendants appear to be South Carolina citizens. *See id.* at 3. Thus, complete diversity is lacking and Plaintiff may not bring his claims pursuant to § 1332.

Additionally, federal courts generally abstain from hearing child custody matters brought based on diversity jurisdiction. *See Cantor v. Cohen*, 442 F.3d 196, 202 (4th Cir. 2006) ("We find additional support for our decision in this case in the long established precedent that federal courts are courts of limited jurisdiction and generally abstain from hearing child custody matters.") (citing *Cole v. Cole*, 633 F.2d 1083, 1087 (4th Cir. 1980)). The Supreme Court has held that under the domestic relations exception, " 'divorce, alimony, and child custody decrees' remain outside federal jurisdictional bounds[.]" *Marshall v. Marshall*, 547 U.S. 293, 308 (2006) (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 703–04 (1992)); *see also Wasserman v. Wasserman*, 671 F.2d 832, 834 (4th Cir. 1982) ("diversity jurisdiction does not include the power to grant divorces, determine alimony or support obligations, or decide child custody rights").

6. "The 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.

2[7] and Article I, Section 8,[8] he has provided no facts or argument as to how these constitutional provisions provide a basis for jurisdiction in his case.

1. Appeal of State Court Actions

It is recommended that this action be dismissed for lack of federal court jurisdiction because Plaintiff's claims are an attempt to appeal the results of South Carolina family court actions to this Court.[9] This case should be dismissed because federal district courts do not hear "appeals" from state court actions. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476-82 (1983) (a federal district court lacks authority to review final determinations of state or local courts because

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7. The Supremacy Clause, U.S. Const. Art. VI, cl. 2, is not the source of any federal rights. *See Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324-325 (2015); *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 107 (1979) (stating that the Supremacy Clause "is not a source of any federal rights; it secure[s] federal rights by according them priority whenever they come in conflict with state law") (citation and internal quotation marks omitted); *Whittman v. Virginia*, No. 02-cv-1362-A, 2002 WL 32348410, *5 (E.D. Va. Nov. 4, 2002) ("[T]he Supremacy Clause provides no right of action for a private plaintiff against the state").

8. Nor has Plaintiff identified which of the eighteen clauses in this section provides federal jurisdiction.

9. An appeal of a final order of the South Carolina family court is to the South Carolina Court of Appeals. *See* S.C. Code Ann. § 63-3-630(A) ("Any appeal from an order, judgment, or decree of the family court shall be taken in the manner provided by the South Carolina Appellate Court Rules."); Rule 203(b)(3), SCACR.

such review can only be conducted by the Supreme Court of the United States under 28 U.S.C. § 1257); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *see also Hulsey v. Cisa*, 947 F.3d 246 (4th Cir. Jan. 17, 2020). To rule in favor of Plaintiff on claims filed in this action may require this court to overrule and reverse orders and rulings made in the state court. Such a result is prohibited under the *Rooker-Feldman* doctrine. *See Davani v. Virginia Dep't. of Transp.*, 434 F.3d 712, 719-720 (4th Cir. 2006); *see also Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 293-294 (2005); *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 201 (4th Cir. 1997).

The *Rooker-Feldman* doctrine is applicable both to claims at issue in a state court order and to claims that are "inextricably intertwined" with such an order. *See Exxon Mobil*, 544 U.S. at 284. Plaintiff has not alleged any facts to indicate that this is a case where the federal complaint raises claims independent of, but in tension with, a state court judgment such that the *Rooker-Feldman* doctrine would not be an impediment to the exercise of federal jurisdiction. *See Vicks v. Ocwen Loan Servicing, LLC*, 676 F. App'x 167 (4th Cir. 2017) (district court erred in applying *Rooker-Feldman* doctrine to bar appellants' claims where the claims did "not seek appellate review of [the state court] order or fairly allege injury caused by the state court in entering that order"); *Thana v. Bd. of Licenser Comm'rs for Charles Cty., Md.*, 827 F.3d 314, 320 (4th Cir. 2016) (*Rooker-Feldman* doctrine is not an impediment to the exercise of federal jurisdiction when the federal complaint raises claims independent of, but in tension with, a state court judgment simply because the

same or related question was aired earlier by the parties in state court).

Moreover, other courts in this Circuit have found that the success of a plaintiff's claims concerning family court matters including custody and child support are inextricably intertwined with the state court decision such that the federal court did not have subject matter jurisdiction. *See, e.g., Ihenachor v. Maryland*, No. RDB-17-3134, 2018 WL 1863678, at *2 (D. Md. Apr. 18, 2018) (As the success of the plaintiff's claims necessarily depended upon a determination that the state court wrongly decided issues of physical custody, legal custody, and child support, the claims were inextricably intertwined with the state court decision and thus the court did not have subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine); *Richardson v. N.C. Dept. of Health & Human Servs.*, No. 5:12-CV-180-D. 2012 WL 4426303, at *1 (E.D.N.C. June 29, 2012) (holding that *Rooker-Feldman* applied to a claim challenging a child support order on the grounds of violation of due process), *report and recommendation adopted*, 2012 WL 4426059 (E.D.N.C. Sept. 24, 2012). Thus, Plaintiff's request for this Court to review his case is not appropriately before the Court and Plaintiff should instead seek review with the South Carolina appellate court and thereafter possibly to the United States Supreme Court. *See Duncan v. McKinney*, No. 1:17CV1026, 2017 WL 6888832, at *3 (M.D.N.C. Dec. 12, 2017) ("[T]o the extent Plaintiffs appear to be attempting to use this proceeding to appeal the state court's no-contact order, or the finding of civil contempt, that request is not appropriately before this Court, and

Plaintiff should instead raise any such challenges in state court.") (citing *Casey v. Hurley*, 671 F. App'x. 137, 138 (4th Cir. 2016) ("To the extent [the plaintiff] seeks review of the state court's adverse decisions, the district court lacked jurisdiction to conduct such a review under the [*Rooker-Feldman*] doctrine.")), *report and recommendation adopted*, 2018 WL 377318 (M.D.N.C. Jan. 11, 2018); *McAllister v. North Carolina*, No. 5:10-CV-79-D, 2011 WL 883166, at *4 (E.D.N.C. Mar. 11, 2011) (concluding that a plaintiff dissatisfied with a state court child support proceeding may appeal within the state court appellate system and, thereafter, to the United States Supreme Court).

2. Anti-Injunction Act

Plaintiff's requests for injunctive relief are barred by the federal Anti-Injunction Act which provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. "[A]ny injunction against state court proceedings otherwise proper . . . must be based on one of the specific statutory exceptions [in the Act] if it is to be upheld." *Atlantic Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287 (1970). State-court proceedings "should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately [the United States Supreme Court]." *Id.* The Act "is an absolute prohibition against any injunction of any state-court proceedings,

unless the injunction falls within one of the three specifically defined exceptions in the Act." *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630 (1977). Plaintiff has alleged nothing to suggest that one of the exceptions to the Act's prohibition against federal-court intervention into state-court proceedings applies or allows that relief. Thus, any requests for injunctive relief are subject to summary dismissal under the Anti-Injunction Act. *See, e.g., Ngambo v. Purcell*, No. 22-CV-8550 (LTS), 2022 WL 13826138, at *2 (S.D.N.Y. Oct. 19, 2022) (dismissing the plaintiff's action in which he alleged he was subjected to a state court action that resulted in his payment of child support against the strict mandate of 15 U.S.C. § 1673 because the relief he sought was precluded by the federal Anti-Injunction Act and the domestic relations abstention doctrine).

3. Declaratory Relief under 28 U.S.C. §§ 2201 and 2202

Plaintiff asserts that this Court has authority to provide declaratory relief under 18 U.S.C. §§ 2201 and 2202. *See* ECF No. 28 at 3. However, to the extent that he is attempting to assert jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202,[10] it does not

10. Section 2201 provides, in pertinent part:

> (a) In a case of actual controversy within its jurisdiction, except . . . , any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

28 U.S.C. § 2201(a). Section 2202 provides:

create an independent source of federal jurisdiction. *See CGM, LLC v. BellSouth Telecomms., Inc.*, 664 F.3d 46, 55 (4th Cir. 2011) ("[The Declaratory Judgment Act], however, is remedial only and neither extends federal courts' jurisdiction nor creates any substantive rights.") (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671–72 (1950)). "[I]t is elementary that a federal court may properly exercise jurisdiction in a declaratory judgment proceeding when three essentials are met: (1) the complaint alleges an 'actual controversy' between the parties 'of sufficient immediacy and reality to warrant issuance of a declaratory judgment;' (2) the court possesses an independent basis for jurisdiction over the parties (e.g., federal question or diversity jurisdiction); and (3) the court does not abuse its discretion in its exercise of jurisdiction." *Volvo Constr. Equip. N. Am., Inc. v. CLM Equip. Co.*, 386 F.3d 581, 592 (4th Cir. 2004) (citations omitted). Here, Plaintiff has not alleged any facts to indicate an independent basis for jurisdiction over the parties because he has not alleged a viable basis for federal question or diversity jurisdiction and thus there is no federal jurisdiction under 28 U.S.C. §§ 2201 and 2202.

> Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 U.S.C. § 2202.

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4. *Younger v. Harris*

Additionally, to the extent that Plaintiff's state court proceedings are pending, this Court should abstain from interfering in those proceedings. In *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court held that a federal court should not interfere with state criminal proceedings "except in the most narrow and extraordinary of circumstances." *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996). *Younger* abstention may apply in noncriminal proceedings when three elements are met: "(1) ongoing state judicial proceedings; (2) the proceedings implicate important state interests; and (3) there is an adequate opportunity to raise federal claims in the state proceedings." *Brown-Thomas v. Hynie*, 441 F. Supp. 3d 180, 219 (D.S.C. 2019) (citing *Martin Marietta Corp. v. Md. Comm'n on Hum. Rels.*, 28 F.3d 1392, 1398 (4th Cir. 1994)). If there are pending proceedings, the first prong is met and the third prong would be met because Plaintiff could raise his objections in the family court or possibly on appeal in the state appellate courts. The second prong is met because family law is an important state interest. *See, e.g., Horan v. Coen*, No. CV 1:22-2017-SAL-SVH, 2022 WL 20628781 (D.S.C. July 25, 2022), *report and recommendation adopted*, 2023 WL 5345547 (D.S.C. Aug. 21, 2023). Plaintiff has not alleged "extraordinary circumstances" justifying federal interference with any pending state proceedings. *See Robinson v. Thomas*, 855 F.3d 278, 286 (4th Cir. 2017) ("A federal court may disregard *Younger's* mandate to abstain from interfering with ongoing state proceedings only where 'extraordinary circumstances' exist that present the possibility of

irreparable harm."). As such, *Younger* abstention would apply, and any requests for injunctive and/or declaratory relief should be dismissed.

5. Criminal Statutes not a Basis for Federal Question Jurisdiction

In the jurisdiction section of his Amended Complaint, Plaintiff alleges that his rights under 18 U.S.C. § 242 were violated. Later in his Amended Complaint, he appears to attempt to allege violations 42 U.S.C. § 408 (Penalties) and 18 U.S.C. §§ 2 (Principals), 641 (Public money, property or records), and 1028A (Aggravated identity theft). *See* ECF No. 28 at 2; ECF No. 28-1 at 9-11.

Plaintiff has not alleged any facts to establish that these criminal statutes create a private cause of action, and "[t]he Supreme Court historically has been loath to infer a private right of action from "a bare criminal statute," because criminal statutes are usually couched in terms that afford protection to the general public instead of a discrete, well-defined group." *Doe v. Broderick*, 225 F.3d 440, 447-48 (4th Cir. 2000) (citing *Cort v. Ash*, 422 U.S. 66, 80 (1975)); *see Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002) (observing that enforcement of statutory violation under § 1983 requires showing that "intended to create a federal right"). Where, as here, a criminal statute bears "no indication that civil enforcement of any kind was available to anyone," a civil complaint alleging violations of such statutes cannot be sustained as a matter of law. *Cort v. Ash*, 422 U.S. at 80; *see also Central Bank of Denver, N.A. v. First Interstate Bank*

of Denver, N.A., 511 U.S. 164, 190-91 (1994) (finding no civil cause of action for violations of federal securities law exists under the aiding and abetting statute 18 U.S.C. § 2), *United States v. Oguaju*, 76 F. App'x 579, 581 (6th Cir. 2003) (finding that the District Court properly dismissed the defendant's claim filed pursuant to 18 U.S.C. §§ 241 and 242 because he had no private right of action under either of those criminal statutes); *Ali v. Timmons*, No. 04-CV-0164E, 2004 WL 1698445, at *2 (W.D.N.Y. July 26, 2004) ("Initially, plaintiff's claims for criminal theft and embezzlement must be dismissed because there is no private right of action, either express or implied, under the criminal statute raised by plaintiff, 18 U.S.C. § 641."); *Atiemo v. Proctor*, PX-16-3763, 2016 WL 7012300, at *1 (D. Md. Dec. 1, 2016) (noting that § 641 provides no private cause of action); *Lewis-Davis v. Baltimore Cnty. Pub. Sch. Infants & Toddlers Program*, No. CV ELH-20-0423, 2021 WL 1720235, at *18 (D. Md. Apr. 30, 2021) (finding no private cause of action under § 1028A and dismissing claim). *Prater v. Am. Heritage Fed. Credit Union*, 351 F. Supp. 3d 912, 917 (E.D. Pa. 2019) (explaining that § 1028A "does not give rise to a civil cause of action").

Additionally, Plaintiff has not presented any facts to indicate he has a private cause of action under 42 U.S.C. § 408. Although this statute allows a court to order restitution when sentencing a defendant convicted of an offense under 42 U.S.C. § 408(a), Plaintiff has not identified any criminal case against the Defendants under this statute. Plaintiff cannot bring a private action under this statute. *See Manigault v. Spry*, No. 123CV264LEKCFH, 2024 WL 1345340, at *4 (N.D.N.Y. Mar. 28, 2024) (noting

that the plaintiff, as a private individual, could not maintain a suit under 42 U.S.C. § 408); *Johnson Bene v. Wells Fargo*, No. 22-06782, 2023 WL 4332388, at *5 (N.D. Cal. July 3, 2023) (explaining that "Section 408 is a criminal statute that criminalizes Social Security fraud and does not provide a private right of action."); *Robertson v. Wells Fargo Home Mortg.*, No. 10-CV-1110-BR, 2011 WL 1937240, at *6 (D. Or. May 20, 2011) (finding that "§ 408 does not create a private remedy"); *Alexander v. Wash. Gas Light Co.*, 481 F. Supp. 2d 16, 33 (D.D.C. 2006) (finding § 408(a)(8) "does not provide a basis for a private civil cause of action"); *Duncan v. Cone*, No. 00-5705, 2000 WL 1828089, at *1 (6th Cir. Dec. 7, 2000) (unpublished table decision) (holding that district court properly dismissed claim because § 408(a)(8) does not provide for a private cause of action).

6. Separation of Powers

Plaintiff alleges that there is an "actual, present and justiciable controversy of whether [Defendant SCDSSCSED] is in violation of Separation of Powers Doctrine in Article I, Section 10 for unconstitutional enforcements[.]" ECF No. 28 at 2. However, the separation of powers doctrine, which is embodied in the federal Constitution, is not binding on the states. *See Grimm v. Johnson*, No. 3:10CV593, 2011 WL 3321474, at *2 (E.D. Va. Aug. 2, 2011); *Whalen v. United States*, 445 U.S. 684, 689 n.4 (1980); *Garcia v. Strom*, No. CV 3:21-1715-JMC-SVH, 2021 WL 10319075 (D.S.C. June 23, 2021) ("[T]he United States Constitution does not define the separation of powers in state governments."), *report*

and recommendation adopted, No. 3:21-CV-1715-SAL, 2023 WL 2071815 (D.S.C. Feb. 17, 2023), *aff'd*, No. 23-1280, 2023 WL 3598600 (4th Cir. May 23, 2023).

B. Frivolousness

As discussed above, this action should be dismissed for lack of jurisdiction. To the extent Plaintiff can establish federal jurisdiction, his claims against Defendants are subject to summary dismissal because his claims are frivolous for the reasons discussed below.

1. Gibberish

Much of the Second Amended Complaint is fairly characterized as being composed of what some courts have described as "buzz words" or "legalistic gibberish." *See, e.g., Rochester v. McKie*, No. 8:11-CV-0797-JMC-JDA, 2011 WL 2671306 (D.S.C. Apr. 13, 2011), *report and recommendation adopted*, No. 8:11-CV-0797-JMC, 2011 WL 2671228 (D.S.C. July 8, 2011). For example, in his sixth cause of action, Plaintiff makes accusations against the South Carolina Department of Revenue (which is not a party to this action) and asserts (without any accompanying facts to support his assertions) claims about a contract. He talks at length and makes assertions, without any corresponding facts, about license suspensions, clerks and court staff performing judicial functions, the Internal Revenue Code, the appointment of private probation companies with pecuniary interests, levying of bank accounts, and the collection of taxes. *See* ECF No. 28-1 at 21-26. He also frivolously claims that

Defendants have violated his rights by not responding to his demand letters. *See id.* at 14-15; *see also* ECF Nos. 28-2 and 28-3. Additionally, he discusses the "constitutional" meaning of income without context and claims that Defendants are "put on notice." ECF No. 28-1 at 30-34. As such, a substantial portion of Plaintiff's allegations are so generally incomprehensible or filled with what could only be considered by a reasonable person as unconnected, conclusory, and unsupported comments or "gibberish", that it is unclear what is to be made of them. *See Hagans v. Lavine*, 415 U.S. 528, 536-537 (1974) (noting that federal courts lack power to entertain claims that are "so attenuated and unsubstantial as to be absolutely devoid of merit"); *see also Livingston v. Adirondack Beverage Co.*, 141 F.3d 434 (2nd Cir. 1998); *Adams v. Rice*, 40 F.3d 72 (4th Cir. 1994) (affirming dismissal of Plaintiff's suit as frivolous where allegations were conclusory and nonsensical on their face).

2. Defendant Armstrong/Quasi-Judicial Immunity

Defendant Armstrong is also subject to summary dismissal because Plaintiff's claims against her are frivolous as she is entitled to quasi-judicial immunity for duties performed in her role as a GAL. *See Fleming v. Asbill*, 42 F.3d 886, 889 (4th Cir. 1994); *Smith v. Smith*, No. 7:07cvl 17, 2007 WL 3025097, *6 (W.D. Va. Oct. 12, 2007) (The GAL appointed to represent the child, "is immune from liability under § 1983, since all of the actions complained of occurred with the course of the custody and divorce proceedings."). In *Fleming*, the court held,

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> [P]rivate persons appointed as guardians ad litem in private custody proceedings are afforded immunity for acts performed within the scope of their appointment. Because one of the guardian's roles is to act as a representative of the court, and because this role can only be fulfilled if the guardian is not exposed to a constant threat of lawsuits from disgruntled parties, a finding of quasi-judicial immunity is necessary. Such a grant of immunity is crucial in order for guardians to properly discharge their duties. The immunity to which guardians ad litem are entitled is an absolute quasi-judicial immunity.

Fleming, 483 S.E.2d at 755–56.

3. Dorchester County Family Court is not a Person Under § 1983

Plaintiff's claims against Defendant Dorchester County Family Court are frivolous because this Defendant is a department, facility, or building and courts have routinely held that an inanimate object (such as a building, facility, and grounds) does not act under color of state law and is not a "person" subject to suit under § 1983. *See Allison v. California Adult Auth.*, 419 F.2d 822, 823 (9th Cir. 1969) (California Adult Authority and San Quentin Prison not "person[s]" subject to suit under 42 U.S.C. § 1983); *Nelson v. Lexington Cnty. Det. Ctr.*, C/A No. 8:10-2988-JMC, 2011 WL 2066551, at *1 (D.S.C. May 26, 2011) (Finding that a detention center, as a building

and not a person, was not amenable to suit under § 1983); *Chieves v. Richland Prob. Ct. Commitment Div.*, No. 623CV04195JFAKFM, 2023 WL 8703474, *2 (D.S.C. Oct. 30, 2023), *report and recommendation adopted*, 2023 WL 8702741 (D.S.C. Dec. 15, 2023) (State of South Carolina Richland Probate Court Commitment Division not a "person" for purposes of § 1983); *Whatley v. Richland Cnty. Fam. Ct. Columbia S.C.*, No. CV 3:22-2119-SAL-PJG, 2022 WL 19402460, *2 n. 2 (D.S.C. Aug. 11, 2022), *report and recommendation adopted*, 2023 WL 2727577 (D.S.C. Mar. 31, 2023), *aff'd*, No. 23-1449, 2023 WL 5526590 (4th Cir. Aug. 28, 2023), *cert. denied*, 144 S. Ct. 595 (2024) (finding that the Richland County Family Court is not a "person" amenable to suit under § 1983); *Mullinax v. Lovelace*, No. 619CV01040BHHJDA, 2019 WL 4307466, *5 (D.S.C. Apr. 23, 2019), *report and recommendation adopted*, 2019 WL 3000912 (D.S.C. July 10, 2019) (family court is a facility or building and is not a "person" that can be sued under § 1983).

4. Ninth Amendment Claims

Plaintiff alleges that his Ninth Amendment rights have been violated, but has asserted no facts to support his allegation. Moreover, any such claims are frivolous because the Ninth Amendment "has not been interpreted as independently securing any constitutional rights for purposes of making out a constitutional violation." *Schowengerdt v. United States*, 944 F.2d 483, 490 (9th Cir. 1991) (rejecting Navy civilian engineer's Ninth Amendment claim arising out of allegedly improper investigation and discharge), *cert. denied*, 503 U.S. 951

(1992); *see also Dyson v. Le'Chris Health Sys., Inc.*, No. 4:13-CV-224-BO, 2015 WL 134360, at *3 (E.D.N.C. Jan. 9, 2015) (the Ninth Amendment provides "no independent constitutional protection . . . which may support a § 1983 cause of action." (citations omitted)); *Strandberg v. City of Helena*, 791 F.2d 744, 748-49 (9th Cir. 1986) (rejecting § 1983 claim based on the penumbra of the Ninth Amendment in the absence of some specific constitutional guarantee).

5. Tenth Amendment Claims

Plaintiff alleges that his Tenth Amendment rights have been violated, but has asserted no facts as to any violation. Further, any such claim is frivolous as the Tenth Amendment "creates no constitutional rights cognizable in a civil rights cause of action." *Strandberg v. City of Helena*, 791 F.2d 744, 74r (9th Cir. 1986); *see also Stone v. City of Prescott*, 173 F.3d 1172, 1175 (9th Cir. 1999) ("Plaintiffs cannot found a [§] 1983 claim on the Tenth Amendment because it is neither a source of federal authority nor a fount of individual constitutional rights."); *Dyson v. Le'Chris Health Sys., Inc.*, 2015 WL 134360, at *3 (the Ninth Amendment provides "no independent constitutional protection . . . which may support a § 1983 cause of action." (citations omitted)).

IV. MOTION FOR JUDICIAL NOTICE

On February 2, 2024, Plaintiff filed what he titles "Judicial Notice." In his motion, he lists a number of cases and appears to be attempting to inform the Court that

it is on notice of what he believes is applicable law to his case. *Id.* at 1-2.[11] "[A] court may properly take judicial notice of 'matters of public record' and other information that, under Federal Rule of Evidence 201, constitute 'adjudicative facts.'" *Goldfarb v. Mayor & City Council of Balt.*, 791 F.3d 500, 508 (4th Cir. 2015); *see also Katyle v. Penn Nat'l Gaming, Inc.*, 637 F.3d 462, 466 (4th Cir. 2011). However, under the Federal Rules of Evidence, a court may take judicial notice of adjudicative facts only if they are "not subject to reasonable dispute," in that they are "(1) generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). "Only indisputable facts are susceptible to judicial notice," and judicial notice of legal conclusions would be inappropriate. *Nolte v. Capital One Fin. Corp.*, 390 F.3d 311, 317 (4th Cir. 2004) (citing Fed. R. Evid. 201(b)); *United States v. Daley*, 378 F. Supp. 3d 539, 546 (W.D. Va. 2019), *aff'd sub nom., United States v. Miselis*, 972 F.3d 518 (4th Cir. 2020). Here, review of Plaintiff's motion reveals that it is not a set of indisputable facts or other information that may be appropriate for judicial notice, but instead is an attempt to inform the Court of Plaintiff's legal conclusions and/or law that he believes is applicable to his case. Thus, it is

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11. Plaintiff also states that he does "not consent to the Jurisdiction of any Magistrate Pursuant to Federal Rules of Civil Procedure 73(b) and 28 U.S.C. 636(c)." ECF No. 23 at 1. There is no indication on the docket that Plaintiff has consented to trial before a United States Magistrate Judge. As noted above, pretrial proceeding have been assigned to this United States Magistrate under 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.).

recommended that his Motion for Judicial Notice (ECF No. 21) be denied.

V. MOTION FOR A PRELIMINARY INJUNCTION

On February 2, 2024, Plaintiff filed his Second Motion for a Preliminary Injunction.[12] ECF No. 23. He appears to argue that his motion should be granted because he is likely to succeed on the merits of his complaint, the granting of the injunction "will not disserve the public interest," he is likely to suffer irreparable harm to his privacy rights if an injunction is not granted, and the harm to him will likely be greater than harm to the court. ECF No. 23-1 at 26-30.

A preliminary injunction is "an extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it." *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 188 (4th Cir. 2013) (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 811 (4th Cir. 1991)) (internal quotation marks omitted). The decision whether to grant a preliminary injunction is committed to the equitable discretion of the district court. *See Salazar v. Buono*, 559 U.S. 700, 714 (2010); *Christopher Phelps & Assocs., LLC v. Galloway*, 492 F.3d 532, 543 (4th Cir. 2007).

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12. Plaintiff's previous motion for a preliminary injunction (ECF No. 2) was denied on January 29, 2024 (ECF No. 19), and his motion for reconsideration was denied on April 2, 2024 (ECF No. 26).

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Initially, Plaintiff's request for a preliminary injunction should be denied because the motion is premature as this action has not yet been served and thus Defendants have not received notice. "The court may issue a preliminary injunction only on notice to the adverse party." Fed. R. Civ. P. 65(a)(1).

Even if Plaintiff could show notice to the adverse party, his motion for a preliminary injunction should be denied because Plaintiff has not made a clear showing for relief. A party seeking a preliminary injunction must establish all four of the following elements: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A plaintiff must make a clear showing that he is likely to succeed on the merits of his claim. *Winter*, 555 U.S. at 22. Similarly, he must make a clear showing that he is likely to be irreparably harmed absent injunctive relief. *Id.* at 20-23. Only then may the court consider whether the balance of equities tips in the plaintiff's favor. Finally, the court must pay particular regard to the public consequences of employing the extraordinary relief of injunction. *Id.* at 24. Here, Plaintiff has not demonstrated that he meets these four elements.

Plaintiff fails to meet the first prong because he is unlikely to succeed on the merits because this Court does not have jurisdiction over his Amended Complaint, as

discussed above.[13] Additionally, Plaintiff is not likely to be succeed on the merits because his requests for relief appear to be barred by the federal Anti-Injunction Act and/or *Younger*, as discussed above.

Even if he can meet the first prong, Plaintiff has not shown that he meets the other three prongs of the *Winter* test. He has not shown that he is likely to suffer irreparable harm in the absence of preliminary relief he is suffering. To establish irreparable harm, the plaintiff must show that he is suffering actual and imminent harm, not just a mere possibility, and that harm is truly irreparable and cannot be remedied at a later time with money damages. *See Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d at 811. Irreparable harm "is suffered when monetary damages are difficult to ascertain or are inadequate." *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994) (quoting *Danielson v. Local 275*, 479 F.2d 1033, 1037 (2nd Cir. 1973)), *abrogated on other grounds by Winter.*

Additionally, Plaintiff fails to establish that the balance of equities tips in his favor. Finally, he has not established that an injunction is in the public interest. Plaintiff has merely asserted his own opinion that it is in the public interest and claims that there would not be

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13. Once again, Plaintiff appears to argue he meets a standard for showing that he meets this first prong based on inapplicable law from other circuits, arguing that he only has to demonstrate that he "will probably succeed on the merits of [his[] claims." *See* ECF No. 23-1 at 27-28. However, as discussed above, this is not the standard used in the Fourth Circuit.

harm to the court (which is not a party to this action). Thus, it is recommended that Plaintiff's Second Motion for a Preliminary Injunction (ECF No. 23) be denied.

VI. RECOMMENDATION

Based on the foregoing, it is recommended that this action be dismissed without prejudice,[14] without issuance and service of process, and without leave to amend.[15] It is also recommended that Plaintiff's Motion for Judicial Notice (ECF No. 21) be DENIED, and that Plaintiff's Second Motion for a Preliminary Injunction (ECF No. 23) be DENIED.

/s/ Molly H. Cherry
Molly H. Cherry
United States Magistrate Judge

June 6, 2024
Charleston, South Carolina

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14. *See Platts v. O'Brien*, 691 F. App'x. 774 (4th Cir. 2017) (citing *S. Walk at Broadlands Homeowner's Ass'n v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013)) ("A dismissal for . . . [a] defect in subject matter jurisdiction[] must be one without prejudice because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits.").

15. *See Britt v. DeJoy*, 45 F.4th 790, 796 (4th Cir. 2022) (holding that "when a district court dismisses a complaint or all claims without providing leave to amend . . . the order dismissing the complaint is final and appealable").

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED APRIL 1, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-2080
(2:23-cv-04141-BHH)

EUGENE DINGLE,

Plaintiff-Appellant,

v.

LESLIE ARMSTRONG, GUARDIAN AD LITEM OF DORCHESTER COUNTY FAMILY COURT IN HER INDIVIDUAL AND OFFICIAL CAPACITY; CANDICE LOREAL STERLING; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES CHILD SUPPORT ENFORCEMENT DIVISION; DORCHESTER COUNTY FAMILY COURT,

Defendants-Appellees.

Filed: April 1, 2025

ORDER

The court denies the petition for rehearing and rehearing en banc and all pending post-judgment motions. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Appendix D

Entered at the direction of the panel: Judge King, Judge Berner, and Senior Judge Traxler.

For the Court

/s/ Nwamaka Anowi, Clerk

Additional material from this filing is available in the Clerk's Office.