PETITION APPENDIX

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—APPENDIX A —

United States Court of Appeals for the Fifth Circuit

NO. 23-30194

RYAN HAYGOOD; HAYGOOD DENTAL CARE, L.L.C.,

Plaintiffs—Appellants,

versus

CAMP MORRISON; C. BARRY OGDEN; KAREN MOORHEAD; DANA GLORIOSO,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:13-CV-335

FILED September 17, 2024

Lyle W. Cayce, Clerk

ON PETITION FOR REHEARING *EN BANC*

Before SMITH, ENGELHARDT,
and RAMIREZ, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing

en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

The opinion issued August 15, 2024, 2024 U.S. LEXIS 20684, is WITHDRAWN, and the following is SUBSTITUTED:

No. 23-30194

* * * * *

— APPENDIX B —

United States Court of Appeals
for the Fifth Circuit

NO. 23-30194

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OPINION

Before SMITH, ENGELHARDT, and RAMIREZ, *Circuit Judges*.

JERRY E. SMITH, *Circuit Judge*:

This appeal arises from an investigation by the Louisiana State Board of Dentistry ("the Board") into Ryan Haygood, a dentist who practiced in the Shreveport/Bossier City area. Haygood opened a new practice that successfully recruited patients from

other established dentists. Upset, those established dentists allegedly conspired to drive Haygood from the market by using their influence with, and positions on, the Board to revoke Haygood's dental license. Beginning in late 2006, the Board launched an investigation of Haygood that led to the revocation of his license in 2010.

A sprawling legal quagmire unfolded over the next several years, but only small bits are relevant to this appeal. Specifically, in 2012, a Louisiana appellate court vacated the Board's revocation after holding that the Board had deprived Haygood of due process by allowing a Board attorney to serve both prosecutorial and adjudicative roles. Haygood then entered a consent decree with the Board that allowed him to keep his license.

While that appeal was pending, Haygood filed a civil action in state court against numerous individuals involved in, and affiliated with, the investigation. The state court civil action alleged violations of Haygood's due process rights and averred that the competing dentists, the Board members, and Board employees had engaged in unfair competition by using the Board's investigative powers to drive him from the marketplace. In February 2013, about two years after filing the state complaint, and after the disposition of the state appeal, Haygood sued in federal court claiming, *inter alia*, injuries under 42 U.S.C. § 1983 and the Louisiana Unfair Trade Practices Act ("LUTPA"), La. R.S. 51:1401 *et seq*. The

federal complaint and state complaint contained nearly identical factual allegations.

The district court dismissed the federal complaint for failure to state claims under § 1983 and the LUTPA. The district court also found that both claims were frivolous and awarded attorney's fees to the defendants. Haygood appealed the fee award only, averring that the district court erred in awarding fees and, alternatively, was erroneous in its fee calculation.

The district court did not err in awarding fees for a frivolous § 1983 claim, but it made a mistaken calculation of the amount. Therefore, we affirm the decision to award fees but remit the award to $98,666.50.

I.

Haygood contended that the competing dentists helped fabricate complaints to the Board concerning his treatment of periodontal issues, so the Board launched an investigation into Haygood's practice based on those complaints. Numerous instances of alleged impropriety followed. Relevant here, H.O. Blackwood—a competitor of Haygood's and a director of the Board—communicated with C. Barry Ogden, the executive director of the Board, and Camp Morrison, an investigator with the Board. Blackwood, Ogden, and Morrison allegedly took steps to tilt Board proceedings in a way that would ensure Haygood's loss of license.

For example, Ogden appointed Brian Begue as independent counsel for the Board during Haygood's hearings. The independent counsel is supposed to provide neutral advice and recommendations to Board members (who are mostly medical professionals) and may not "participate[] in the investigation or prosecution of the case." Yet "Begue repeatedly disregarded this role and interjected himself into the hearing" by "cross examining witnesses, providing supportive information to complaint counsel, providing and suggesting objections to complaint counsel and openly questioning the testimony of Dr. Haygood."

Ogden and Morrison also designated Robert Dies as an expert to testify against Haygood despite knowing that Dies was a direct competitor of Haygood's and that the relationship between the two was "antagonistic." Dies lacked experience in periodontal dentistry. Though the Board ended up appointing a new expert, it still used Dies's testimony in the proceeding.

Finally, Morrison engaged Karen Moorhead and Dana Glorioso as investigators to pose as fake patients to gather incriminating evidence against Haygood. But Moorhead and Glorioso were neither law enforcement officers nor licensed private investigators—they were dental assistants who worked for former and current Board members. Thus,

they may have violated Louisiana law by posing as patients in Morrison's investigation.[11]

The Board "found Dr. Haygood guilty of eight specifications under two separate charges, ordered permanent revocation of his dentistry license, and assessed the maximum monetary fine allowed by law[,] $40,000, awarding all costs at $133,074.02, for a total of $173,074.02." *Haygood v. La. State Bd. of Dentistry*, 101 So. 3d 90, 93 (La. Ct. App. 2012). Haygood appealed to the state trial court, which largely affirmed the substantive findings but remanded for reconsideration of the sanctions. *Id.* at 94. The Board reduced the monetary penalty by $5,000, but maintained the license revocation, and the trial court affirmed. *Id.*

The state appellate court, however, "reverse[d] the trial court's judgment which affirmed the revocation of Dr. Haygood's license and remand[ed] th[e] matter to the Board for a new hearing." *Id.* at 92. The appellate court reasoned that "the combination of the Board's general counsel's [Begue's] roles of prosecutor and adjudicator violated Dr. Haygood's [federal and state] due process rights." *Id.* at 92, 96–

[1] *See* LA. REV. STAT. ANN. § 37:3520(A): "It shall be unlawful for any person knowingly to commit any of the following acts . . . [p]rovide contract or private investigator service without possessing a valid license [or] [e]mploy an individual to perform the duties of a private investigator who is not the holder of a valid registration card."

97. The Louisiana Supreme Court denied the Board's petition for review,[2] and the Board and Haygood eventually entered a consent decree, in 2016, resolving the dispute and allowing Haygood to keep his license.

Haygood filed two lawsuits against Morrison, Ogden, Moorhead, and Glorioso during the pendency of those proceedings. The first was filed on September 26, 2011, in state district court ("the state complaint"). The second was filed on February 13, 2013, in federal district court ("the federal complaint"). The state complaint alleged violations of the Louisiana Constitution's due process clause and that the defendants engaged in unfair trade practices. The federal complaint alleged, *inter alia*, violations of LUTPA and § 1983. Both complaints contained nearly identical factual allegations, paralleling what we have set out above.

The federal district court dismissed the federal complaint for failure to state a claim. With respect to the LUTPA claim, the court held that Haygood could not plausibly claim that any named defendant had done any act that would enable him or her to gain a competitive advantage over Haygood. With respect to the § 1983 claim, the court held that it had been filed outside the statute of limitations and was therefore prescribed.

[2] 2012-2333 (La. 12/14/12), 104 So. 3d 445.

Defendants in the federal case then sought attorney's fees under 42 U.S.C. § 1988 and LA. REV. STAT. ANN. § 51:1409(A). The district court found that fees under § 1988 were warranted because "the plaintiffs clearly knew, or should have known," that the § 1983 claim was "clearly time-barred." The court also found that fees under § 51:1409(A) were warranted because "the Haygood Plaintiffs' [*sic*] failed to allege any act by Defendants which would enable them to achieve an unfair competitive advantage." The court awarded the defendants "attorneys' fees and costs in the amount of $110,993.62."

Haygood appealed only the fee award and does not challenge the underlying dismissal of his claims. He maintains that the district court erred in holding that (1) his § 1983 claim was so clearly time-barred as to be frivolous; (2) his LUTPA claim was groundless and brought in bad faith or for the purposes of harassment; and (3) $110,993.62 was a reasonable award.

II.

"We review an award of attorney's fees under § 1988 for abuse of discretion. A district court abuses its discretion if it awards sanctions based on an erroneous view of the law or a clearly erroneous assessment of the evidence." *Walker v. City of Bogalusa*, 168 F.3d 237, 239 (5th Cir. 1999) (internal quotation marks and citations omitted).

Section "1988 authorizes a district court to award attorney's fees to a defendant upon a finding

that the plaintiff's [§ 1983] action was frivolous, unreasonable, or without foundation." *Fox v. Vice*, 563 U.S. 826, 833 (2011) (internal quotation marks and citations omitted). A claim is frivolous under § 1988 if it is not "colorable" and lacks "arguable merit." *Vaughn v. Lewisville Indep. Sch. Dist.*, 62 F.4th 199, 204 (5th Cir. 2023) (quoting *Vaughner v. Pulito*, 804 F.2d 873, 878 (5th Cir. 1986)). To make that determination, a district court may consider various "factors," such as, *inter alia*, whether the plaintiff "established a prima facie case" or whether the claims were foreclosed by "squarely controlling precedent." *Id.* at 204–05 (internal citations omitted).

Haygood's § 1983 claim alleged that the defendants "deprived Dr. Haygood of his right to a fair and impartial hearing; presented knowingly false or exaggerated claims; [and] provided evidence obtained through unlawful means . . . ." As discussed above, Haygood's due process rights were likely violated by at least some of the named defendants during the pendency of the Board's investigation. Assuming *arguendo* that that established a *prima facie* case, the propriety of the § 1988 fee award turns on whether the district court properly found the federal complaint time-barred and whether the time bar outweighed the underlying merits. It did.[3]

[3] The defendants averred, for the first time at oral argument, that Haygood's notice of appeal was defective because it designated only the order setting the fee amount, not the separate order awarding fees in the first place. But in our circuit, "an appeal from a final judgment sufficiently preserves all prior

"Congress did not provide a statute of limitations for claims brought under 42 U.S.C. § 1983." *Brown v. Pouncy*, 93 F.4th 331, 332 (5th Cir. 2024), *petition for cert. filed* (U.S. June 18, 2024) (No. 23-1332). Instead, "a forum state's general or residual statute of limitations for personal injury claims applies to Section 1983 claims. In Louisiana, that period is one year." *Id.* (citations omitted).[4] "Although courts look to state law for the length of the limitations period, the time at which a § 1983 claim accrues is a question of federal law, conforming in general to common-law tort principles." *McDonough v. Smith*, 588 U.S. 109, 115 (2019) (internal quotation

orders intertwined with the final judgment." *Jordan v. Ector Cnty.*, 516 F.3d 290, 294 (5th Cir. 2008) (internal quotation marks and citation omitted). And "an order awarding attorney's fees or costs is not reviewable on appeal until the award is reduced to a sum certain," meaning an "order [that] does not reduce the sanctions to a sum certain . . . is not an appealable final decision." *S. Travel Club v. Carnival Air Lines*, 986 F.2d 125, 131 (5th Cir. 1993) (per curiam).

Haygood's notice of appeal designated the final decision with respect to the award of fees and costs because it designated the order setting the award amount. *See Davis v. Abbott*, 781 F.3d 207, 213 n.5 (5th Cir. 2015). Thus, the notice of appeal "sufficiently preserve[d]" challenges to the order awarding fees, and we have jurisdiction to review both the award of fees and the fee amount. *See Jordan*, 516 F.3d at 294.

[4] Effective July 1, 2024, Louisiana's statute of limitations for delictual actions, or torts, is two years. *See* TORT ACTIONS, 2024 La. Sess. Law Serv. Act 423 (H.B. 315). The two-year limitations period applies only to actions arising after July 1, 2024. *Id.*

marks and citation omitted). That means, in Louisiana, the limitations period for a § 1983 claim is one year from when the plaintiff knew or should have known that he "has a complete and present cause of action" under "analogous common-law torts." *Id.* at 115–16 (cleaned up).[5]

The parties dispute the tort to which Haygood's claim is most analogous. Haygood avers that his claims are analogous to malicious prosecution and/or fabrication of evidence.[6] An action under § 1983 analogous to malicious prosecution or fabrication of evidence accrues upon "favorable termination of [the] prosecution." *Id.* at 117. The defendants contend that those torts cannot be analogous because Haygood filed his federal complaint well before the favorable termination of the Board's proceedings.[7]

The defendants are correct. Malicious prosecution requires, as an element of the tort, the favorable termination of proceedings. *See*

[5] *See also Helton v. Clements*, 832 F.2d 332, 335 (5th Cir. 1987) ("[T]he statute of limitations begins to run from the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." (citations omitted)).

[6] The Supreme Court has treated the common-law torts of malicious prosecution and fabrication of evidence as interchangeable. *See McDonough*, 588 U.S. at 116.

[7] As noted above, the federal complaint was filed on February 13, 2013, and the consent decree was entered June 9, 2016.

RESTATEMENT (SECOND) OF TORTS § 658 (AM. LAW INST. 1965). Haygood entered a consent decree that brought the investigation to a close on June 9, 2016. That decree likely represented the favorable termination of the Board's proceedings.[8] The state appellate court's decision vacating the Board's fine and license suspension was not a favorable termination because the court "remand[ed] th[e] matter to the Board for a new hearing." *Haygood*, 101 So. 3d at 98.[9] That means malicious prosecution and/or fabrication of evidence cannot be the analogous tort.

The defendants do not postulate an analogous tort. Rather, they insist that any analogous, and otherwise viable, common-law tort claim-arising from the 2006-2010 Board proceedings culminating in the revocation of Haygood's dental license, including the complaints made and the investigation thereof-had accrued on or before September 26, 2011, when he filed his state court action.

[8] *Cf. Thompson v. Clark*, 596 U.S. 36, 39 (2022) ("To demonstrate a favorable termination of a . . . § 1983 [claim] for malicious prosecution, a plaintiff need only show that his prosecution ended without a conviction.").

[9] *See also id.* at 46 ("The technical prerequisite is only that the particular prosecution be disposed of in such a manner that it cannot be revived." (cleaned up)). Something remanded for further proceedings can, of course, be revived in the sense that the tribunal could reach the same disposition.

The defendants are again correct. *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (cleaned up). Therefore, the one-year limitations began to run on September 26, 2011, and the district court did not err in finding that the February 13, 2013, federal complaint was so clearly time-barred that it lacked arguable merit.

III.

Having determined that the district court did not err in awarding fees under § 1988, we turn to whether it calculated the fee award properly. It did not.[10]

[10] The district court also found that fees were warranted under LA. REV. STAT. ANN. § 51:1409(A) because Haygood's LUTPA claim was groundless and brought in bad faith. But the court focused entirely on the § 1988 award when setting the fee amount, using the associated federal standards exclusively to award $110,261.16 in fees and $732.46 in costs.

Contrary to Haygood's contentions, it was not error for the court to rely entirely on the federal standards in calculating the fee amount. "A court need not segregate fees where the facts and issues are so closely interwoven" that separation of the work done on each issue is impracticable. *Mota v. Univ. of Tex. Hous. Health Sci. Ctr.*, 261 F.3d 512, 528(5th Cir. 2001) (citation omitted). That is why, where the "issues [are] difficult to segregate, no reduction of fees is required." *Abell v. Potomac Ins. Co.*, 946 F.2d 1160, 1169 (5th Cir. 1991) (citations omitted).

There was extensive overlap between Haygood's § 1983 claim and his LUTPA claim. Indeed, both were premised on identical factual allegations; the relevant motion practice dealt with both claims. The LUTPA claim was "so closely interwoven" with the § 1983 claim that the district court did not err in using the federal standard exclusively and in failing to differentiate

"[A]n award of attorney's fees under section 1988 should normally be based on multiplying a reasonable number of hours worked by a reasonable rate of compensation." *Cobb v. Miller*, 818 F.2d 1227, 1231 (5th Cir. 1987). That "lodestar method yields a fee that is presumptively sufficient" to constitute a "reasonable fee." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). The presumptively sufficient fee may then be enhanced if "a fee applicant" produces "specific evidence" of factors not already "subsumed in the lodestar calculation." *Id.* at 553 (internal quotation marks and citations omitted). Overarching all of that is the district court's broad discretion to "determine whether the time expended by [movant's] counsel was reasonable." *Riverside v. Rivera*, 477 U.S. 561, 573 n.6 (1986).

Haygood avers that the district court did not closely scrutinize the time reports submitted by the defendants. The record belies that contention for most of the fees awarded. The defendants' private attorneys requested $103,392.60. The court, however, went line-

between the time billed on the LUTPA claim and the time billed on the § 1983 claim. *See Mota*, 261 F.3d at 528. That decision, though proper, has the effect of rendering irrelevant the district court's finding that fees were warranted under § 51:1409(A). Because the court based the fee calculation entirely on § 1988, there is no need to assess whether the findings under § 51:1409(A) were correct—the reasonableness of the award turns entirely on whether the court calculated the fee award under § 1988 properly.

by-line, multiplying the hours worked by a reasonable hourly rate, and ultimately determined that defendants' private attorneys had miscalculated. Thus, the court awarded $98,666.50. Given the court's obvious care and attention to the amount billed by the private attorneys, we cannot say it abused its discretion in setting the lodestar at $98,666.50.[11]

The court also awarded $11,594.66 for time billed by the Louisiana Attorney General's office. But the court did not use the lodestar method because "a change in data tracking procedures" at the Attorney General's Office deprived the court of "the number of hours or hourly rates billed by attorneys at the Louisiana Office of the Attorney General." Thus, the court was provided with only the "Total Amount Billed" by each state attorney. The court accepted the word of the state's attorneys and awarded the total amount they said they billed.

Our precedent does not permit the district court to bypass the lodestar in that way.[12] We have no idea how many hours the state's lawyers attorneys spent; that dooms any fee award on their behalf.

[11] The district court did not add any enhancements. It did award the defendants costs of $732.46, but Haygood does not contest that.

[12] *See Combs v. City of Huntington*, 829 F.3d 388, 392 (5th Cir. 2016) ("The court *must* first calculate the lodestar, which is equal to the number of hours reasonably expended multiplied by the prevailing hourly rate . . . ." (emphasis added) (internal quotation marks and citation omitted)).

Thus, the district court committed an error of law (and hence abused its discretion) by awarding $11,594.66 in fees without using the lodestar method. We remit the fee award to $98,666.50—the amount calculated properly.

For the reasons explained, we AFFIRM the decision to award fees for a frivolous § 1983 claim but REMIT the fee award to $98,666.50. The award of costs is not affected.

— APPENDIX C—

United States Court of Appeals

for the Fifth Circuit

NO. 23-30194

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FILED: August 15, 2024

Lyle W. Cayce, Clerk

Before SMITH, ENGELHARDT, and RAMIREZ,
Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that we AFFIRM the decision to award fees for a frivolous § 1983 claim but REMIT the fee award to $98,666.50. The award of costs is not affected.

IT IS FURTHER ORDERED that each party is to bear own costs on appeal.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

Certified as a true copy and issued as the mandate on Sep 18, 2024

Attest: Clerk, U.S. Court of Appeals, Fifth Circuit

— APPENDIX D —

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SMITH, *Circuit Judge*:

This appeal arises from an investigation by the Louisiana State Board of Dentistry ("the Board") into Ryan Haygood, a dentist who practiced in the Shreveport/Bossier City area. Haygood opened a new practice that successfully recruited patients from

other established dentists. Upset, those established dentists allegedly conspired to drive Haygood from the market by using their influence with, and positions on, the Board to revoke Haygood's dental license. Beginning in late 2006, the Board launched an investigation of Haygood that led to the revocation of his license in 2010.

A sprawling legal quagmire unfolded over the next several years, but only small bits are relevant to this appeal. Specifically, in 2012, a Louisiana appellate court vacated the Board's revocation after holding that the Board had deprived Haygood of due process by allowing a Board attorney to serve both prosecutorial and adjudicative roles. Haygood then entered a consent decree with the Board that allowed him to keep his license.

While that appeal was pending, Haygood filed a civil action in state court against numerous individuals involved in, and affiliated with, the investigation. The state court civil action alleged violations of Haygood's due process rights and averred that the competing dentists, the Board members, and Board employees had engaged in unfair competition by using the Board's investigative powers to drive him from the marketplace. In February 2013, about two years after filing the state complaint, and after the disposition of the state appeal, Haygood sued in federal court claiming, *inter alia*, injuries under 42 U.S.C. § 1983 and the Louisiana Unfair Trade Practices Act ("LUTPA"), La. R.S. 51:1401 *et seq*. The

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The district court did not err in awarding fees for a frivolous § 1983 claim, but it made a mistaken calculation of the amount. Therefore, we affirm the decision to award fees but remit the award to $98,666.50.

I.

Haygood contended that the competing dentists helped fabricate complaints to the Board concerning his treatment of periodontal issues, so the Board launched an investigation into Haygood's practice based on those complaints. Numerous instances of alleged impropriety followed. Relevant here, H.O. Blackwood—a competitor of Haygood's and a director of the Board—communicated with C. Barry Ogden, the executive director of the Board, and Camp Morrison, an investigator with the Board. Blackwood, Ogden, and Morrison allegedly took steps to tilt Board proceedings in a way that would ensure Haygood's loss of license.

For example, Ogden appointed Brian Begue as independent counsel for the Board during Haygood's hearings. The independent counsel is supposed to provide neutral advice and recommendations to Board members (who are mostly medical professionals) and may not "participate[] in the investigation or prosecution of the case." Yet "Begue repeatedly disregarded this role and interjected himself into the hearing" by "cross examining witnesses, providing supportive information to complaint counsel, providing and suggesting objections to complaint counsel and openly questioning the testimony of Dr. Haygood."

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they may have violated Louisiana law by posing as patients in Morrison's investigation.[1]

The Board "found Dr. Haygood guilty of eight specifications under two separate charges, ordered permanent revocation of his dentistry license, and assessed the maximum monetary fine allowed by law[,] $40,000, awarding all costs at $133,074.02, for a total of $173,074.02." *Haygood v. La. State Bd. of Dentistry*, 101 So. 3d 90, 93 (La. Ct. App. 2012). Haygood appealed to the state trial court, which largely affirmed the substantive findings but remanded for reconsideration of the sanctions. *Id.* at 94. The Board reduced the monetary penalty by $5,000, but maintained the license revocation, and the trial court affirmed. *Id.*

The state appellate court, however, "reverse[d] the trial court's judgment which affirmed the revocation of Dr. Haygood's license and remand[ed] th[e] matter to the Board for a new hearing." *Id.* at 92. The appellate court reasoned that "the combination of the Board's general counsel's [Begue's] roles of prosecutor and adjudicator violated Dr. Haygood's [federal and state] due process rights." *Id.* at 92, 96–

[1] *See* LA. REV. STAT. ANN. § 37:3520(A): "It shall be unlawful for any person knowingly to commit any of the following acts . . . [p]rovide contract or private investigator service without possessing a valid license [or] [e]mploy an individual to perform the duties of a private investigator who is not the holder of a valid registration card."

97. The Louisiana Supreme Court denied the Board's petition for review,[1] and the Board and Haygood eventually entered a consent decree, in 2016, resolving the dispute and allowing Haygood to keep his license.

Haygood filed two lawsuits against Morrison, Ogden, Moorhead, and Glorioso during the pendency of those proceedings. The first was filed on September 26, 2011, in state district court ("the state complaint"). The second was filed on February 13, 2013, in federal district court ("the federal complaint"). The state complaint alleged violations of the Louisiana Constitution's due process clause and that the defendants engaged in unfair trade practices. The federal complaint alleged, *inter alia*, violations of LUTPA and § 1983. Both complaints contained nearly identical factual allegations, paralleling what we have set out above.

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[1] 2012-2333 (La. 12/14/12), 104 So. 3d 445.

Defendants in the federal case then sought attorney's fees under 42 U.S.C. § 1988 and LA. REV. STAT. ANN. § 51:1409(A). The district court found that fees under § 1988 were warranted because "the plaintiffs clearly knew, or should have known," that the § 1983 claim was "clearly time-barred." The court also found that fees under § 51:1409(A) were warranted because "the Haygood Plaintiffs' [*sic*] failed to allege any act by Defendants which would enable them to achieve an unfair competitive advantage." The court awarded the defendants "attorneys' fees and costs in the amount of $110,993.62."

Haygood appealed only the fee award and does not challenge the underlying dismissal of his claims. He maintains that the district court erred in holding that (1) his § 1983 claim was so clearly time-barred as to be frivolous; (2) his LUTPA claim was groundless and brought in bad faith or for the purposes of harassment; and (3) $110,993.62 was a reasonable award.

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Section "1988 authorizes a district court to award attorney's fees to a defendant upon a finding that the plaintiff's [§ 1983] action was frivolous, unreasonable, or without foundation." *Fox v. Vice*, 563 U.S. 826, 833 (2011) (internal quotation marks and citations omitted). "[W]here it is clear from the face of a complaint" that "the claims asserted are barred by the applicable statute of limitations, those claims are properly dismissed [as frivolous]." *Gartrell v. Gaylor*, 981 F.2d 254, 256 (5th Cir. 1993) (per curiam).

Haygood's § 1983 claim alleged that the defendants "deprived Dr. Haygood of his right to a fair and impartial hearing; presented knowingly false or exaggerated claims; [and] provided evidence obtained through unlawful means . . . ." As discussed above, Haygood's due process rights were likely violated by at least some of the named defendants during the pendency of the Board's investigation. Thus, the frivolity of his § 1983 claim, and the propriety of the § 1988 fee award, turn entirely on whether the district court properly found the federal complaint time-barred. It did.[1]

[1] The defendants averred, for the first time at oral argument, that Haygood's notice of appeal was defective because it designated only the order setting the fee amount, not the separate order awarding fees in the first place. But in our circuit, "an appeal from a final judgment sufficiently preserves all prior orders intertwined with the final judgment." *Jordan v. Ector Cnty.*, 516 F.3d 290, 294 (5th Cir. 2008) (internal quotation marks and citation omitted). And "an order awarding attorney's

"Congress did not provide a statute of limitations for claims brought under 42 U.S.C. § 1983." *Brown v. Pouncy*, 93 F.4th 331, 332 (5th Cir. 2024), *petition for cert. filed* (U.S. June 18, 2024) (No. 23-1332). Instead, "a forum state's general or residual statute of limitations for personal injury claims applies to Section 1983 claims. In Louisiana, that period is one year." *Id.* (citations omitted).[1] "Although courts look to state law for the length of the limitations period, the time at which a § 1983 claim accrues is a question of federal law, conforming in general to common-law tort principles." *McDonough v. Smith*, 588 U.S. 109, 115 (2019) (internal quotation marks and citation omitted). That means, in

fees or costs is not reviewable on appeal until the award is reduced to a sum certain," meaning an "order [that] does not reduce the sanctions to a sum certain . . . is not an appealable final decision." *S. Travel Club v. Carnival Air Lines*, 986 F.2d 125, 131 (5th Cir. 1993) (per curiam).

Haygood's notice of appeal designated the final decision with respect to the award of fees and costs because it designated the order setting the award amount. *See Davis v. Abbott*, 781 F.3d 207, 213 n.5 (5th Cir. 2015). Thus, the notice of appeal "sufficiently preserve[d]" challenges to the order awarding fees, and we have jurisdiction to review both the award of fees and the fee amount. *See Jordan*, 516 F.3d at 294.

[1] Effective July 1, 2024, Louisiana's statute of limitations for delictual actions, or torts, is two years. *See* TORT ACTIONS, 2024 La. Sess. Law Serv. Act 423 (H.B. 315). The two-year limitations period applies only to actions arising after July 1, 2024. *Id.*

Louisiana, the limitations period for a § 1983 claim is one year from when the plaintiff knew or should have known that he "has a complete and present cause of action" under "analogous common-law torts." *Id.* at 115–16 (cleaned up).[1]

The parties dispute the tort to which Haygood's claim is most analogous. Haygood avers that his claims are analogous to malicious prosecution and/or fabrication of evidence.[2] An action under § 1983 analogous to malicious prosecution or fabrication of evidence accrues upon "favorable termination of [the] prosecution." *Id.* at 117. The defendants contend that those torts cannot be analogous because Haygood filed his federal complaint well before the favorable termination of the Board's proceedings.[3] The defendants are correct. Malicious prosecution requires, as an element of the tort, the favorable termination of proceedings. *See* RESTATEMENT

[1] *See also Helton v. Clements*, 832 F.2d 332, 335 (5th Cir. 1987) ("[T]he statute of limitations begins to run from the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." (citations omitted)).

[2] The Supreme Court has treated the common-law torts of malicious prosecution and fabrication of evidence as interchangeable. *See McDonough*, 588 U.S. at 116.

[3] As noted above, the federal complaint was filed on February 13, 2013, and the consent decree was entered June 9, 2016.

(SECOND) OF TORTS § 658 (AM. LAW INST. 1965). Haygood entered a consent decree that brought the investigation to a close on June 9, 2016. That decree likely represented the favorable termination of the Board's proceedings. [1] The state appellate court's decision vacating the Board's fine and license suspension was not a favorable termination because the court "remand[ed] th[e] matter to the Board for a new hearing." *Haygood*, 101 So. 3d at 98.[2] That means malicious prosecution and/or fabrication of evidence cannot be the analogous tort.

The defendants do not postulate an analogous tort. Rather, they insist that any analogous, and otherwise viable, common-law tort claim—arising from the 2006-2010 Board proceedings culminating in the revocation of Haygood's dental license, including the complaints made and the investigation thereof—had accrued on or before September 26, 2011, when he filed his state court action.

[1] *Cf. Thompson v. Clark*, 596 U.S. 36, 39 (2022) ("To demonstrate a favorable termination of a . . . § 1983 [claim] for malicious prosecution, a plaintiff need only show that his prosecution ended without a conviction.").

[2] *See also id.* at 46 ("The technical prerequisite is only that the particular prosecution be disposed of in such a manner that it cannot be revived." (cleaned up)). Something remanded for further proceedings can, of course, be revived in the sense that the tribunal could reach the same disposition.

The defendants are again correct. *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (cleaned up). Therefore, the one-year limitations began to run on September 26, 2011, and the district court did not err in finding that the February 13, 2013, federal complaint was easily time-barred.

III.

Having determined that the district court did not err in awarding fees under § 1988, we turn to whether it calculated the fee award properly. It did not.[1]

[1] The district court also found that fees were warranted under LA. REV. STAT. ANN. § 51:1409(A) because Haygood's LUTPA claim was groundless and brought in bad faith. But the court focused entirely on the § 1988 award when setting the fee amount, using the associated federal standards exclusively to award $110,261.16 in fees and $732.46 in costs.

Contrary to Haygood's contentions, it was not error for the court to rely entirely on the federal standards in calculating the fee amount. "A court need not segregate fees where the facts and issues are so closely interwoven" that separation of the work done on each issue is impracticable. *Mota v. Univ. of Tex. Hous. Health Sci. Ctr.*, 261 F.3d 512, 528 (5th Cir. 2001) (citation omitted). That is why, where the "issues [are] difficult to segregate, no reduction of fees is required." *Abell v. Potomac Ins. Co.*, 946 F.2d 1160, 1169 (5th Cir. 1991) (citations omitted).

There was extensive overlap between Haygood's § 1983 claim and his LUTPA claim. Indeed, both were premised on identical factual allegations; the relevant motion practice dealt with both claims. The LUTPA claim was "so closely interwoven" with the § 1983 claim that the district court did not err in using

"[A]n award of attorney's fees under section 1988 should normally be based on multiplying a reasonable number of hours worked by a reasonable rate of compensation." *Cobb v. Miller*, 818 F.2d 1227, 1231 (5th Cir. 1987). That "lodestar method yields a fee that is presumptively sufficient" to constitute a "reasonable fee." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). The presumptively sufficient fee may then be enhanced if "a fee applicant" produces "specific evidence" of factors not already "subsumed in the lodestar calculation." *Id.* at 553 (internal quotation marks and citations omitted). Overarching all of that is the district court's broad discretion to "determine whether the time expended by [movant's] counsel was reasonable." *Riverside v. Rivera*, 477 U.S. 561, 573 n.6 (1986).

Haygood avers that the district court did not closely scrutinize the time reports submitted by the defendants. The record belies that contention for most

the federal standard exclusively and in failing to differentiate between the time billed on the LUTPA claim and the time billed on the § 1983 claim. *See Mota*, 261 F.3d at 528. That decision, though proper, has the effect of rendering irrelevant the district court's finding that fees were warranted under § 51:1409(A). Because the court based the fee calculation entirely on § 1988, there is no need to assess whether the findings under § 51:1409(A) were correct—the reasonableness of the award turns entirely on whether the court calculated the fee award under § 1988 properly.

of the fees awarded. The defendants' private attorneys requested $103,392.60. The court, however, went line-by-line, multiplying the hours worked by a reasonable hourly rate, and ultimately determined that defendants' private attorneys had miscalculated. Thus, the court awarded $98,666.50. Given the court's obvious care and attention to the amount billed by the private attorneys, we cannot say it abused its discretion in setting the lodestar at $98,666.50.[1]

The court also awarded $11,594.66 for time billed by the Louisiana Attorney General's office. But the court did not use the lodestar method because "a change in data tracking procedures" at the Attorney General's Office deprived the court of "the number of hours or hourly rates billed by attorneys at the Louisiana Office of the Attorney General." Thus, the court was provided with only the "Total Amount Billed" by each state attorney. The court accepted the word of the state's attorneys and awarded the total amount they said they billed.

Our precedent does not permit the district court to bypass the lodestar in that way.[2] We have no idea

[1] The district court did not add any enhancements. It did award the defendants costs of $732.46, but Haygood does not contest that.

[2] *See Combs v. City of Huntington*, 829 F.3d 388, 392 (5th Cir. 2016) ("The court *must* first calculate the lodestar, which is equal to the number of hours reasonably expended multiplied by

how many hours the state's lawyers attorneys spent; that dooms any fee award on their behalf.

Thus, the district court committed an error of law (and hence abused its discretion) by awarding $11,594.66 in fees without using the lodestar method. We remit the fee award to $98,666.50—the amount calculated properly.

* * * * *

For the reasons explained, we AFFIRM the decision to award fees for a frivolous § 1983 claim but REMIT the fee award to $98,666.50. The award of costs is not affected.

the prevailing hourly rate . . . ." (emphasis added) (internal quotation marks and citation omitted)).

— APPENDIX E—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

On January 28, 2022, this Court granted in part the Motions for Reconsideration of and/or to Alter or Amend the Memorandum Rulings and Orders Awarding Attorney Fees to Defendants (Record Documents 326, 327, & 328). See Record Document 342. The Court was persuaded by Plaintiffs' contention that an award of attorney fees was premature because the merits of their appeal had not yet been ruled on by the Fifth Circuit. See id. The Court granted the motions "only to the extent that the orders awarding attorney fees [were] stayed and otherwise held in abeyance until such time as the Fifth Circuit issues its opinion in Haygood II." Id. at 3.

The Fifth Circuit issued its opinion in Haygood II on March 2, 2023. See Record Document 343. The

mandate was issued on March 24, 2023. See id. The Fifth Circuit held:

> [W]e AFFIRM the district court's orders on Haygood's Rule 60(b) motion and on Haygood's motion for an extension of time to file a notice of appeal, and we DISMISS for lack of jurisdiction the remainder of Haygood's appeal.

Id. at 15.

Accordingly, this Court's previous order (Record Document 342) staying the orders awarding attorney fees (Record Documents 320-325) and otherwise holding such orders in abeyance is now **VACATED**.[1] Such orders (Record Documents 320-325) are no longer stayed or held in abeyance.

IT IS SO ORDERED.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 29th day of March,2023.

s/ United States District Judge

[1] The total amount of attorney fees awarded in August 2021 was $270,661.80. See Record Document 342 at 1, citing Record Documents 320-325.

— APPENDIX F—

United States Court of Appeals
for the Fifth Circuit

NO. 18-30866

RYAN HAYGOOD;

HAYGOOD DENTAL CARE, L.L.C.,

Plaintiffs—Appellants,

versus

ROSS H. DIES; ROSS H. DIES J. CODY COWEN BENJAMIN A. BEACH, A PROFESSIONAL DENTAL L.L.C.; ROBERT K. HILL; HILL D D S, INCORPORATED; CAMP MORRISON; C. BARRY OGDEN; KAREN MOORHEAD; DANA GLORIOSO; H.O. BLACKWOOD; ROBERT D D S, INCORPORATED

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:13-CV-335

FILED March 2, 2023

Lyle W. Cayce, Clerk

Before RICHMAN, *Chief Judge*, and BARKSDALE and DUNCAN, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

No. 18-30866

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED IN PART and DISMISSED IN PART in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that plaintiffs-appellants pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

Certified as a true copy and issued as the mandate on Mar 24, 2023

Attest: Clerk, U.S. Court of Appeals, Fifth Circuit

— APPENDIX G—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before the Court are Plaintiffs' three Motions for Reconsideration of and/or to Alter or Amend the Memorandum Rulings and Orders Awarding Attorney Fees to Defendants. See Record Documents 326, 327, & 328. The total amount of attorney fees awarded in August 2021 was $270,661.80. See Record Documents 320-325. Defendants Robert K. Hill, D.D.S. and Hill, D.D.S., Inc., Barry Ogden, Camp Morrison, Karen Moorhead, Dana Glorioso, and H.O. Blackwood, D.D.S. oppose the motions and contend the Court's award of attorney fees was entirely proper. See Record Documents 334, 337, & 338.

The instant motions for reconsideration are filed on five grounds: (1) Plaintiffs were deprived of the opportunity to object to the detailed time submissions since the Court did not issue a briefing

schedule; (2) the award of attorney fees for discovery and related activities conducted solely under the auspices of the state court was in error; (3) the award of attorney fees was premature; (4) the award of attorney fees is erroneous; and (5) the general impropriety of an award of attorney fees in this matter. See Record Documents 326, 327, & 328. This Court finds no legal grounds under Rules 54, 59, or 60 to reconsider or alter/amend it prior rulings based on Plaintiffs' arguments that they were deprived of the opportunity to object to the detailed time submissions since the Court did not issue a briefing schedule; the award of attorney fees for discovery and related activities conducted solely under the auspices of the state court was in error; the award of attorney fees is erroneous; and the general impropriety of an award of attorney fees in this matter. While it is true the Court did not set briefing deadlines after the submission of the detailed time records, Plaintiffs' "assum[ption] that the District Court had tabled the quantum of attorney fees until such time as the Fifth Circuit issued its opinion in *Haygood II*" was misplaced. Record Documents 326-2 at 15, 327-2 at 16, & 328-2 at 16. Counsel for Plaintiffs were free to inquire with the Court as to briefing deadlines and/or to file a response to the detailed time submissions at any time with the Court, but they failed to do so for years, not simply a matter of months. Additionally, this Court has previously addressed in great detail not only the propriety of the award of attorney fees, but also its lodestar analysis to reach the quantum of

attorney fees. The Court specifically considered the interwoven nature of the many claims and proceedings in this case, all of which involved a common core of facts and were based on related legal theories. The motions are **DENIED** on these four grounds.

The Court will now move to Plaintiffs' argument that the award of attorney fees was premature. Plaintiffs note:

> [T]his Court's rulings on the underlying motions that formed the basis of the attorney fees award are currently on appeal with the Fifth Circuit. *Haygood II*. This matter was submitted to the Fifth Circuit in July 2019; the Fifth Circuit heard oral argument on December 4, 2019; and, on May 28, 2020, the Fifth Circuit requested supplemental briefing. Nearly two years after oral argument – and as of the date of the filing of this motion for reconsideration – the Fifth Circuit has yet to issue an opinion.

Record Documents 326-2 at 21, 327-2 at 22, & 328-2 at 21-22. In sum, Plaintiffs contend an award of attorney fees is premature because the merits of their appeal have not yet been ruled on by the Fifth Circuit. See Record Document 326-2 at 22, Record Document 327-2 at 22, & Record Document 328-2 at 22. The Court is more persuaded by this argument and agrees to stay the enforcement of the orders awarding attorney fees in this case until such time as the Fifth

Circuit rules in Haygood II. Thus, the Motions for Reconsideration of and/or to Alter or Amend the Memorandum Rulings and Orders Awarding Attorney Fees to Defendants (Record Documents 326, 327, & 328) are **GRANTED** on this ground alone and only to the extent that the orders awarding attorney fees are stayed and otherwise held in abeyance until such time as the Fifth Circuit issues its opinion in Haygood II.

Accordingly, as set forth above, Plaintiffs' Motions for Reconsideration of and/or to Alter or Amend the Memorandum Rulings and Orders Awarding Attorney Fees to Defendants (Record Documents 326, 327, & 328) are **GRANTED IN PART AND DENIED IN PART**.

IT IS SO ORDERED.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 28th day of January, 2022.

— APPENDIX H—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

MEMORANDUM RULING

Before this Court is a Determination of Attorney Fees, resulting from the prior granting of Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead's (collectively referred to as "Defendants") Motion for Attorney Fees. See Record Document 293 & 294. For the reasons that follow, Defendants are awarded attorneys' fees and costs in the amount of $110,993.62.

BACKGROUND

In March 2014, this Court granted Defendants' Rule 12(b)(6) motion, dismissing the Haygood Plaintiffs' Section 1983 claims as prescribed and holding that the Sherman Act, state law defamation, and Louisiana Unfair Trade Practices Act ("LUTPA") claims failed under Rule 12(b)(6) and the

Twombly/Iqbal standard. See Record Documents 110 & 111. All claims against the Defendants were dismissed with prejudice. See id.

As to the Section 1983 claim, this Court held that Defendants are entitled to reasonable attorneys' fees under Section 1988(b). See Record Document 293. Section 1988(b) provides, in pertinent part:

> In any action or proceeding to enforce a provision of section[] . . . 1983 . . ., the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

42 U.S.C. § 1988(b). Section 1988(b) "authorizes a district court to award attorney's fees to a defendant upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation." Fox v. Vice, 563 U.S. 826, 833, 131 S.Ct. 2205, 2213 (2011) (citation and internal quotation omitted). In finding the Haygood Plaintiffs' Section 1983 claim frivolous, this Court reasoned:

> Because over two years elapsed between the filing of the initial proceeding in state court and the instant case, this Court finds that the plaintiffs clearly knew, or should have known, of the overt acts which might constitute a § 1983 violation at least two years before the instant suit was filed. Therefore, this Court finds that the alleged wrongdoing under 42 U.S.C. § 1983 by the Defendants has prescribed under Louisiana law.

. . .

> . . . The Court additionally notes that even if this action was not prescribed, the Rule 12(b)(6) Motion filed by the Defendants nonetheless would be granted because Dr. Haygood's bald conclusory allegations that he was involved in a conspiracy with the Dental Board fails the plausibility standard established in Twombly and Iqbal. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007); see also Iqbal, 556 U.S. 662 (2009).
>
> Record Document 110 at 5-6.

As to the LUTPA claims, this Court held that Defendants are entitled to reasonable attorneys' fees under La. R.S. 51:1409(A), which provides, in pertinent part:

> Upon a finding by the court that an action under this Section was groundless and brought in bad faith or for purposes of harassment, the court may award to the defendant reasonable attorney fees and costs.

This Court found that the Haygood Plaintiffs failed to allege any act by Defendants which would enable them to achieve an unfair competitive advantage over Plaintiffs. See id at 12. Thus, the LUTPA claims were groundless and brought in bad faith or for purposes of harassment, which entitled Defendants to attorneys' fees and costs under La. R.S. 51:1409(A).

Accordingly, Defendants' Motion for Attorney Fees was granted on March 14, 2019. See Record Document 293. Haygood's resulting Motion for Reconsideration of and/or to Alter or Amend the Memorandum Ruling and Order Granting Attorney's Fees was denied. See Record Document 316. Defendants timely filed Motions to Submit Detailed Time Reports for the Determination of Attorney Fees and now request attorneys' fees and costs totaling $114,987.26. See Record Document 311-3.

Haygood appealed the grant of attorneys' fees, and the Fifth Circuit dismissed the appeal for want of jurisdiction. See Record Document 319. Courts of appeal have authority to hear "appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. The Fifth Circuit reasoned that because, at the time of appeal, no order existed specifying the amount awarded in attorney's fees, the order was not final for purposes of appellate review. See id. This Court must now determine reasonable attorneys' fees and costs.

LAW AND ANALYSIS

42 U.S.C. § 1988(b) authorizes a district court, in its discretion, to award a reasonable attorney's fee to a prevailing party as part of the costs. Likewise, La. R.S. 51:1409(A) authorizes award of reasonable attorneys' fees and costs to a defendant when a court finds that the litigation was brought in bad faith or for purposes of harassment. In their submission of detailed time reports, Defendants identified three

categories of expenses billed to clients in defense of the instant suit: (1) the firm's attorneys' fees billed for time expended solely in defense of the instant suit, (2) attorneys' fees billed by the Louisiana Office of the Attorney General, and (3) costs relevant to the instant federal litigation. See Record Document 311-3.

Regarding the first and second categories, reasonable attorney fee awards in federal actions are determined by performing a two-step lodestar analysis. See Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 551, 130 S.Ct. 1662, 1672 (2010), Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933, 1939 (1983), Calix v. Ashton Marine LLC, No. 14-2430, 2016 WL 4194119, at *1 (E.D. La. July 14, 2016). First, "[a] lodestar is calculated by multiplying the number of hours reasonably expended by an appropriate hourly rate in the community for such work." Heidtman v. Cty. of El Paso, 171 F.3d 1038, 1043 (5th Cir. 1999). The lodestar is presumptively sufficient, 559 U.S. at 552, but may then be decreased or enhanced based on the relative weights of the twelve factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717–19 (5th Cir. 1974). See Heidtman, 171 F.3d at 1043. The Johnson factors are: "(1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the

client or circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) the award in similar cases." 488 F.2d at 717–19.

The prevailing party bears the burden of documenting and submitting the appropriate hours expended and hourly rates. See Hensley v. Eckerhart, 461 U.S. at 437, 103 S.Ct. at 1941. Counsel for the prevailing party must make a good faith effort to exclude excessive, duplicative, or otherwise unnecessary entries. See id. at 434, 103 S.Ct. at 1939–40. This Court, along with others within the Fifth Circuit, has noted that "some cases . . . require that attorneys perform work on numerous claims, issues or even proceedings, not all of which independently or standing alone give rise to a basis for an award of attorney's fees." Sabre Industries, Inc. v. Module X Solutions, LLC, No. 15-2501, 2019 WL 4794103, at *1 (W.D. La. Sept. 30, 2019) (citing Cashman Equip. Corp. v. Smith Marine Towing Corp., No. CV 12-945, 2013 WL 12229038, at *7 (E.D. La. June 27, 2013), report and recommendation adopted, No. CV 12-945, 2013 WL 12228976 (E.D. La. July 12, 2013)); see also NOP, LLC v. Kansas, No. CIV.A. 101423, 2011 SL 1485287, at *5 (E.D. La. Mar. 23, 2011), report and recommendation adopted, No. CIV.A. 10-1423, 2011 WL 1558687 (E.D. La. Apr. 18, 2011). In such cases, courts "need not segregate fees when the facts and issues are so closely interwoven

that they cannot be separated." Id. Rather, the determinative inquiry is whether the claims include a common core of facts or were based on related legal theories linking them to the successful claim. See id. If the facts and issues are closely interwoven, the prevailing party may recover reasonable attorneys' fees incurred to defend against the intertwined claims. See id.

In the instant case, the law from which state defamation and Sherman Act claims arise does not provide for award of attorneys' fees. See 15 U.S.C. §1 and §2. Based on review of the facts and circumstances of this case, this Court finds that all of the Plaintiff's claims rest on a common core of operative facts such that it would be impracticable to separate the hours attributable to each related claim. Defendants have exercised sound billing judgment in seeking this award of attorneys' fees by excluding entries related to Plaintiffs' case pending in State Court and writing off otherwise unnecessary entries before submitting time records to this Court. See Record Document 311-3. The Court conducted a thorough review of the Detailed Time Report submitted by Defendants. Defendants requested $102,660.14 as the sum of monthly firm invoices. Yet, this Court's review and calculation of the total monthly firm invoices was $98,666.50. See Record Documents 311-3 & 311-4. Thus, this Court will treat the sum of $98,666.50 as the amount of attorneys' fees requested by Defendants. Based upon this Court's review of the facts of this case and the

Detailed Time Reports in Record Document 311, this Court finds that the hours invoiced as represented in the detailed time report are reasonable for purposes of the lodestar calculation.

This Court must also determine reasonable hourly rates for billing attorneys and paralegals. A reasonable hourly rate is "to be calculated according to the prevailing market rates in the relevant community" and is a rate "adequate to attract competent counsel." Blum v. Stenson, 465 U.S. 886, 895–97, 104 S.Ct. 1541, 1547–48. This Court accepts that hourly rates of $125-140 for attorneys with varying experience, $25-50 for law clerks, and $50 for a paralegal are acceptable rates within the Western District of Louisiana. Such rates are also customary as to the fees normally charged by the firm. See Record Document 311-6. Thus, the hourly rates are reasonable for purposes of the lodestar calculation.

This Court notes that Exhibit A-2 does not provide the number of hours or hourly rates billed by attorneys at the Louisiana Office of the Attorney General because of a change in data tracking procedures between 2014 and 2015. See Record Document 3113. Based on review of the facts of this case, this Court finds the requested attorneys' fees of $11,594.66 reasonable given the Attorney General's role in this case.

Based on the foregoing analysis, the lodestar is $110,261.16 ($98,666.50 plus $11,594.66). There is a strong presumption that this lodestar figure is

reasonable, "but that presumption may be overcome in rare circumstances where the lodestar does not adequately take into account a factor that may be properly considered in determining a reasonable fee." Perdue, 559 U.S. at 554, 130 S.Ct. at 1673. The lodestar includes most, if not all, of the relevant factors constituting a reasonable attorney fee. See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 566, 106 S.Ct 3088, 3098 (1986). Novelty and complexity of issues, special skill and experience of counsel, quality of representation, and results obtained from litigation are presumably fully reflected in the lodestar and thus cannot be independent bases upon which a court increases the lodestar. See Blum v. Stenson, 465 U.S. at 898–900, 104 S.Ct. at 1548– 50. This Court finds that none of the Johnson factors warrant an increase or decrease in the award sought by Defendants.

Under Rule 1.5(a) of the Louisiana Rules of Professional Conduct, the factors to be considered in determining the reasonableness of attorney's fees are substantially similar to those considered under the federal lodestar analysis. This Court likewise finds that none of the Rule 1.5(a) factors warrant an adjustment to the award sought by Defendants.

As to the second category of expenses relating to costs incurred in defense of the instant case, reasonable out-of-pocket expenses such as photocopying, paralegal assistance, travel, and telephone are generally recoverable in cost awards.

See Associated Builders & Contractors of La., Inc. v. Orleans Par. Sch. Bd., 919 F.2d 374, 380 (5th Cir. 1990). Ultimately, reasonableness of costs awarded is within the sound discretion of the Court. See id.; see also La. Code Civ. Proc. Ann. art. 1920. This Court has reviewed the requested costs and finds all requested costs in Record Document 3114 reasonable. Thus, this Court awards Defendants costs totaling $732.46.

CONCLUSION

Based on the foregoing analysis, this Court finds attorneys' fees in the amount of $110,261.16 and costs in the amount of $732.46 to be reasonable. Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead are hereby awarded $110,993.62 in attorneys' fees and costs.

An order consistent with the terms of the instant Memorandum Ruling shall issue herewith.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 17th day of August, 2021.

— APPENDIX I—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

ORDER

Based on the foregoing Memorandum Ruling,

IT IS ORDERED that Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead's are awarded attorneys' fees and costs in the amount of $110,993.62.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 17th day of August, 2021.

— APPENDIX J—

United States Court of Appeals
for the Fifth Circuit

NO. 20-30133

RYAN HAYGOOD;

HAYGOOD DENTAL CARE, L.L.C.,

Plaintiffs—Appellants,

versus

CAMP MORRISON; C. BARRY OGDEN; KAREN MOORHEAD; DANA GLORIOSO,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:13-CV-335

Summary Calendar

FILED September 4, 2020

Lyle W. Cayce, Clerk

OPINION

Before HAYNES, WILLET, and HO, Circuit Judges

PER CURIAM:[1]

This appeal concerns an attorney's fee award. Ryan Haygood and Haygood Dental Care, LLC (collectively, "Haygood") sued Camp Morrison, C. Barry Ogden, Karen Moorhead, and Dana Glorioso (collectively, "Appellees"), along with defendants not part of this appeal. After dismissing Haygood's claims, the district court granted Appellees' motion for attorney's fees and denied Haygood's resulting motion for reconsideration. Haygood now appeals. For the following reasons, we DISMISS the appeal for want of jurisdiction.

Under 28 U.S.C. § 1291, we have authority to hear "appeals from all final decisions of the district courts of the United States." In most cases, "an order is final only when it `ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 214 (5th Cir. 2009) (quoting *Coopers & Lybrand v. Livesay,* 437 U.S. 463, 467 (1978)). An order imposing attorney's fees that leaves the amount for "later determination" is not final for purposes of appellate review. *Southern Travel Club. v. Carnival Air Lines*, 986 F.2d 125, 131 (5th Cir. 1993) ("[A]n order awarding attorney's fees or costs is not reviewable on

[1] Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.

appeal until the award is reduced to a sum certain."); *see also Pechon v. La. Dept. of Health*, 368 F. App'x 606, 609–10 (5th Cir. 2010) (explaining that a claim for attorney's fees is "a separate action from one on the merits" and leaving the amount in question is not a final order).

On March 14, 2019, the district court granted a motion for attorney's fees in Appellees' favor without specifying the amount awarded. It then ordered Appellees to file detailed time reports within twenty-one days of the order so that it could determine a reasonable amount for attorney's fees. After an extension, Appellees submitted a motion to file detailed time reports with an attached exhibit reflecting same. Thereafter, the district court granted the motion to submit detailed time reports, but it has not yet entered an order specifying the precise amount of attorney's fees awarded. Since no order exists specifying the amount awarded in attorney's fees, we lack jurisdiction over this appeal.

DISMISSED.

— APPENDIX K—

United States Court of Appeals
for the Fifth Circuit

NO. 20-30133

Summary Calendar

RYAN HAYGOOD; HAYGOOD DENTAL CARE, L.L.C.,

Plaintiffs
—
Appellants,

versus

CAMP MORRISON; C. BARRY OGDEN; KAREN MOORHEAD; DANA GLORIOSO,

Defendants
—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:13-CV-335

FILED September 4, 2020

Lyle W. Cayce, Clerk

Before HAYNES, WILLET, and HO, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that appellants pay to appellees the costs on appeal to be taxed by the Clerk of this Court.

— APPENDIX L—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before the Court is Plaintiffs' Motion for Reconsideration of and/or to Alter or Amend the Memorandum Ruling and Order Granting Attorney's Fees to Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead. See Record Document 302. Plaintiffs contend that the Court's ruling is improper due to mistake and/or inadvertence; is otherwise erroneous as a matter of law; and/or is erroneous due to an intervening change in controlling law. See id. Plaintiffs ask that the award of attorney's fees be vacated and reversed. See id. Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead have opposed the Motion for Reconsideration. See Record Document 305.

This Court has reviewed all of the pertinent parts of the record and likewise considered the legal standards applicable to Rules 54, 59, and 60. Based on the foregoing and the showing made by Plaintiffs in the instant motion, the Motion for Reconsideration of and/or to Alter or Amend the Memorandum Ruling and Order Granting Attorney's Fees to Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead (Record Document 302) is hereby **DENIED**.

IT IS SO ORDERED.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 7th day of February, 2020.

— APPENDIX M—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.
VERSUS.
BRIAN BEGUE, ET AL.
CIVIL ACTION NO. 13-0335
JUDGE S. MAURICE HICKS, JR
MAGISTRATE JUDGE HORNSBY

ORDER

Considering the foregoing Motion to Submit Detailed Time Report submitted by Barry Ogden, Camp Morrison, Karen Moorhead, and Dana Glorioso (the "Motion"), I find that it has merit, and that therefore

IT IS HEREBY ORDERED that the Motion be and is hereby GRANTED, and that the Detailed Time Report attached as Exhibit "A" to the Motion will be submitted in the above-captioned and numbered action.

THUS DONE AND SIGNED on this 21st day of May, 2019, at Shreveport, Louisiana.

s/ Maurice Hicks, Jr., Chief Judge
UNITED STATES DISTRICT COURT

— APPENDIX N—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

ORDER

Based on the foregoing memorandum Ruling,

IT IS ORDERED that the Motion for Attorney's Fees (Record Document 230) filed by Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead (collectively referred to as "Defendants") be and is hereby **GRANTED**. No later than twenty-one days from the date of this Order, Defendants are ordered to file a separate motion to submit detailed time reports, such that a lodestar analysis can be performed to determine the amount of reasonable attorneys fees.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 14th day of March, 2019.

— APPENDIX O—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

MEMORANDUM RULING

Before the Court is a Motion for Attorney's Fees (Record Document 230) filed by Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead (collectively referred to as "Defendants"). Defendants seek to recover reasonable attorney's fees under 42 U.S.C. § 1988(b) and La. R.S. 51:1409(A). Plaintiffs Ryan Haygood, D.D.S. and Haygood Dental Care, LLC (hereinafter referred to as "Dr. Haygood" or the "Haygood Plaintiffs") opposed the motion. See Record Document 256. For the reasons set forth below, the Motion for Attorney's Fees is **GRANTED.**

BACKGROUND

In March 2014, this Court granted Defendants' Rule 12(b)(6) motion, dismissing the Haygood Plaintiffs' Section 1983 claims as prescribed and holding that the Sherman Act, state law defamation, and Louisiana Unfair Trade Practices Act ("LUTPA") claims failed under Rule 12(b)(6) and the Twombly/Iqbal standard. See Record Documents 110 & 111. All of the claims against Defendants were dismissed with prejudice. See id. As to the Section 1983 claims, this Court reasoned:

> Dr. Haygood filed a state court claim which named these Defendants on September 27, 2011. However, no claim fora 42 U.S.C. § 1983 violation against these Defendants occurred until the filing of the complaint in the instant matter on February 13, 2013. Because over two years elapsed between the filing of the initial proceeding in state court and the instant case, this Court finds that the plaintiffs clearly knew, or should have known, of the overt acts which might constitute a § 1983 violation at least two years before the instant suit was filed. Therefore, this court finds that the alleged wrongdoing under 42 U.S.C. § 1983 by the Defendants has prescribed under Louisiana law.
>
> . . .

> . . . Dr. Haygood received notice of the revocation of his license on or about November 8, 2010. . . . Therefore, the § 1983 claims against Defendants had already prescribed when the federal suit was filed on February 13, 2013.
>
> The Court additionally notes that even if this action was not prescribed, the Rule 12(b)(6) Motion filed by the Defendants nonetheless would be granted because Dr. Haygood's bald conclusory allegation that these Defendants were involved in a conspiracy with the Dental Board fails the plausibility standard established in Twombly and lqbal. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007); see also Ashcroft v. lqbal, 556 U.S. 662 (2009).

Record Document 110 at 5-6. This Court dismissed the LUTPA claims, holding:

> In the instant matter, Dr. Haygood fails to allege any act by these Defendants which would enable them to achieve an unfair competitive advantage over Plaintiffs (no can he since none of these Defendants are dentists). Therefore, Defendants' Motion to Dismiss this claim is **GRANTED.**

Id. at 12.

LAW AND ANALYSIS

Defendants argue they are the prevailing parties with respect to the Haygood Plaintiffs' Section 1983 claims and LUPTA claims; thus, they maintain they are entitled to reasonable attorney's fees under Section 1988(b) and Section 1409, "as the [Section] 1983 and LUPTA claims against him were frivolous and brought in bad faith." Record Document 189 at 2. Section 1988(b) provides, in pertinent part:

> In any action or proceeding to enforce a provision of section[] . . . 1983 . . ., the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

42 U.S.C. § 1988(b). In the context of prevailing defendants, Section 1988(b) is meant "to protect defendants from burdensome litigation having no legal or factual basis." Fox v. Vice, 563 U.S. 826, 833, 131 S.Ct. 2205, 2213 (2011) (citation omitted). Thus, Section 1988 "authorizes a district court to award attorney's fees to a defendant upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation." Id. (citation and internal quotation omitted). The Fox court further reasoned:

> [A] defendant may deserve fees even if not all the plaintiff's claims were frivolous. . . . That remains true when the plaintiff's suit also includes non-frivolous claims. The

> defendant, of course, is not entitled to any fees arising from these non-frivolous charges. But the presence of reasonable allegations in a suit does not immunize the plaintiff against paying for the fees that his frivolous claims imposed.

Id. at 834, 131 S.Ct. at 2214 (internal citations omitted).

Here, this Court held that "the plaintiffs clearly knew, or should have known, of the overt acts which might constitute a § 1983 violation at least two years before the instant suit was filed." Record Document 110 at 5. Claims that are clearly time-barred are meritless and are properly deemed frivolous. See Provensal v. Gaspard, 524 F. App'x 974, 977 (5th Cir. 2013); see also Willis v. W. Carroll Parish Det. Ctr., No. 09-1716, 2010 WL 2291994 (W.D. La. Apr. 28, 2010); report and recommendation adopted, 09-1716, 2010 WL 2291996 (W.D. La. June 2, 2010); Brown v. Pool, 79 F. App'x 15 (5th Cir. 2003); Zihlaysky v. Police Dep't of Bossier City, 244 F.3d 136 (5th Cir. 2000); Williams v. Connick, 30 F.3d 1495 (5th Cir. 1994).

Section 1409(A) provides, in pertinent part:

> Upon a finding by the court that an action under this Section was groundless and brought in bad faith or for purposes of harassment, the court may award to the defendant reasonable attorney fees and costs.

La. R.S. 51:1409(A). Section 1409(a) "is penal in nature and is subject to reasonably strict construction." Walker v. Hixson Autoplex of Monroe, L.L.C., 51,758 (La. App. 2 Cir. 11/29/17), citing Double—Eight Oil & Gas, L.L.C. v. Caruthers Producing Co., Inc., 41,451 (La. App. 2 Cir. 11/20/06), 942 So.2d 1279. Courts have "discretion in determining whether to award attorney's fees under the statute." See id.

In its March 2014 ruling, this Court concluded that the Haygood Plaintiffs' failed to allege any act by Defendants which would enable them to achieve an unfair competitive advantage. See Record Document 110 at 12. The Court further noted that such allegations were not possible because none of these Defendants were dentists. See id. Thus, the undersigned believes that the totality of the record establishes that the Haygood Plaintiffs' LUPTA claims were groundless and were brought in bad faith or for purposes of harassment.

CONCLUSION

The Haygood Plaintiffs' Section 1983 were frivolous and their LUPTA claims were groundless and brought in bad faith or for purposes of harassment. Accordingly, Defendants' Motion for Attorney Fees (Record Document 230) be and is hereby **GRANTED.** No later than twenty-one days from the date of this Memorandum Ruling, Defendants shall file a separate motion to submit detailed time reports, such that a lodestar analysis

can be performed to determine the amount of reasonable attorneys fees. **IT IS SO ORDERED.**

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 14th day of March, 2019.

s/ Maurice Hicks, Jr., Chief Judge

UNITED STATES DISTRICT COURT

— APPENDIX P—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CIVIL ACTION NO. 13-CV-0335

RYAN HAYGOOD, DDS and HAYGOOD DENTAL CARE, LLC

VERSUS — JUDGE MAURICE HICKS, JR.

BRIAN BEGUE, ET AL — MAGISTRATE JUDGE HORNSBY

MEMORANDUM RULING

Before this Court is a Motion to Dismiss (Record Document 29) filed by Defendants Barry Odgen, Camp Morrison, Dana Glorioso, and Karen Moorhead (hereafter referred to as Defendants) under Rule 12(b)(6) and in the alternative, Motion for Summary Judgment on the theory that the claims are not yet ripe and, thus this Court lacks subject matter jurisdiction See Record Document 29. For the reasons which follow, the Motion to Dismiss under Rule 12(b)(6) is **GRANTED**.

BACKGROUND

The allegations in the instant suit relate to formal complaints by patients and other dentists which eventually led to an investigation and administrative proceeding wherein Dr. Ryan

Haygood's dental license was revoked by the Louisiana State Board of Dentistry ("Dental Board"). The Dental Board initially became involved because of a complaint against Dr. Haygood, claiming that he recommended extensive and expensive treatment plans after over-diagnosing/unnecessarily diagnosing patients with peridontal disease. The investigation and resulting administrative proceeding took place over a three year period.

On November 8, 2010, at the conclusion of four days of adversarial hearings, which included the presentation of witnesses, experts and medical / dental evidence, a three-member disciplinary panel revoked Dr. Haygood's dental license and levied fines against him. This punishment was imposed due to Dr. Haygood's violations of the Dental Practice Act. Louisiana Revised Statute Section 37:751 et seq.

Dr. Haygood appealed the November 8, 2010 decision of the Dental Board to the Civil District Court of Orleans Parish ("CDC") Docket No. 2010-12060. On May 31, 2011, the CDC affirmed some of the findings, but remanded part of the case the to Dental Board due to the erroneous inclusion of charges against Dr. Haygood that were previously dismissed. In all other respects, the CDC affirmed the Dental Board's decision. Dr. Haygood appealed the portion of the May 31, 2011 decision of the CDC which was affirmed to the Louisiana Fourth Circuit Court of Appeal, Docket No. 2011-CA-1327.

On August 29, 2011, the Dental Board issued a decision regarding the remanded portion of the suit. It again levied fines against Dr. Haygood and affirmed the revocation of his dental license in its Amended Decision After Remand. This decision was also appealed by Dr. Haygood to the CDC, which affirmed the ruling on December 9, 2011. The two decisions by the CDC (May 31, 2011 and August 29, 2011) were consolidated on appeal to the Louisiana Fourth Circuit Court of Appeal. The Fourth Circuit vacated and remanded the Dental Board's ruling, finding that the Dental Board's independent counsel participated in the administrative hearing in dual roles as prosecutor and adjudicator in violation of Dr. Haygood's due process rights.

Plaintiffs, Ryan Haygood, DDS and his dental limited liability company (hereafter referred to as Dr. Haygood or Plaintiffs), brought the instant lawsuit against Ogden, Morrison, Glorioso, and Moorhead, among other defendants, on February 13, 2013, alleging damages arising out of violations of 42 U.S.C. 1983, and 15 U.S.C. § 1 and § 2, as well as Louisiana state law claims for defamation and for violations of the Louisiana Unfair Trade Practices Act - LSA-R.S. 51:1409 et seq. (Document 71-2). The defendant filed a Motion to Dismiss for failure to state a claim and dismissal due to untimeliness in regards to violations of 42 U.S.C. § 1983, antitrust violations, defamation, and violations of the Louisiana Unfair Trade Practices Act.

LAW AND ANALYSIS

A. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) allows for dismissal of an action "for failure to state a claim upon which relief can be granted." While a complaint attacked by a Rule 12(b)(6) motion does not need detailed factual allegations, in order to avoid dismissal, the plaintiff's factual allegations "must be enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007); see also Cuvillier v. Taylor, 503 F.3d 397, 401 (5th Cir. 2007). A plaintiff's obligation "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. The Supreme Court recently expounded on the Twombly standard, explaining that a complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. See Ashcroft v. Iqbal, – U.S. –, 129 S.Ct. 1937, 1949 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. In evaluating a motion to dismiss, the Court must construe the complaint liberally and accept all of the plaintiff's factual allegations in the complaint as true. See In re Katrina Canal Breaches Litigation, 495 F.3d 191, 205 (5th Cir. 2009).

Although courts generally are not permitted to review materials outside of the pleadings when

determining whether a plaintiff has stated a claim for which relief may be granted, there are limited exceptions to this rule. Specifically, a court may consider documents attached to a Fed. R. Civ. P. 12(b)(6) motion to be part of the pleadings if the plaintiff refers to those documents and they are central to the claim. See Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 498-499 (5th Cir. 2000); Causey v. Sewell Cadillac-Chevrolet, Inc., 394 F.3d 285, 288 (5th Cir. 2004). Additionally, pleadings filed in state or other federal district courts are matters of public record and the Court may take judicial notice of those documents in connection with a Rule 12(b)(6) motion to dismiss. See Cinel v. Connick, 15 F.3d 1338, 1343 (5th Cir. 1994).

B. Legal Analysis

1. 42 U.S.C. § 1983

Dr. Haygood claims a violation by the Defendants under Title 42, Section 1983 of the United States Code. To state a claim under this statute, the plaintiff must establish that he was deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under the color of state law. See American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50, 119 S.Ct. 977, 985 (1999). "[T]he under color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful." Id.

Dr. Haygood alleges that these Defendants, together with the other named defendants, including the state dental board, conspired to limit competition among dentists in the Shreveport/ Bossier City area. Dr. Haygood claims that the defendants (individually and in conspiracy) "deprived and denied Plaintiffs of their constitutional and/or statutory rights." [Record Document 71-2, § 167]. Defendants deny the allegation, and further assert that the § 1983 claim for the alleged wrongdoing has prescribed.

The Court will first address the prescription issue. Claims brought under Title 42, Section 1983 of the United States Code are subject to state statutes of limitation for personal injury actions. Owens v. Okure, 488 U.S. 235, 249-251 (1989). In Louisiana, there is a one (1) year prescriptive period for § 1983 claims, as established by LSA-C.C. Art. 3492. Hawkins v. McHugh, 46 F.3d 10, 12 (5th Cir. 1995); Smith v. Humphrey, 10-1070, 2012 WL 1970883 *2 (W.D. La. 04/09.12); adopted by 2012 WL 1969317. In the case of a conspiracy, the prescriptive period begins to toll from the moment that the plaintiff knew or should have known of the overt acts involved in the conspiracy. Helton v. Clements, 832 F.2d 332, 335 (5th Cir. 1987); Smith, supra at *3. Therefore, the claims asserted in the instant case are subject to a one (1) year prescriptive period.

Dr. Haygood filed a state court claim which named these Defendants on September 27, 2011. However, no claim for a 42 U.S.C. § 1983 violation

against these Defendants occurred until the filing of the complaint in the instant matter on February 13, 2013. Because over two years elapsed between the filing of the initial proceeding in state court and the instant case, this Court finds that the plaintiffs clearly knew, or should have known, of the overt acts which might constitute a § 1983 violation at least two years before the instant suit was filed. Therefore, this court finds that the alleged wrongdoing under 42 U.S.C. § 1983 by the Defendants has prescribed under Louisiana law.

The Court finds the Defendant's argument citing Brossette v. City of Baton Rouge, 837 F.Supp. 759, 762 (E.D. La. 1993) compelling. In Brossette, a bar owner's liquor license was suspended by the Alcoholic Beverage Control Board ("ABCB") for violations of a Baton Rouge ordinance. The suspension was appealed through the Louisiana courts, and the Louisiana Supreme Court ultimately reversed the decision and remanded the case for the district court for a new trial. Id. at 761. Following the Louisiana Supreme Court decision, Brosette filed a § 1983 claim in federal court. The federal court determined that the plaintiff's cause of action arose from a "single act" against Brossette, the suspension of this license. Therefore, the prescriptive period began to toll from the day he received notice that his license was suspended. Id. At 763. Accordingly, the claim was already prescribed on the day he filed the federal proceedings, more than a year after Brossette received notice of the suspension. Id. At 762.

The rationale applied in Brossette is directly on point in the instant matter. Dr. Haygood received notice of the revocation of his license on or about November 8, 2010. This single act of the Dental Board revoking Dr. Haygood's Dental License provides the date from which the one-year prescriptive period began to toll. Therefore, the § 1983 claim against the Plaintiffs was prescribed when suit was filed on February 13, 2013.

The Court additionally notes that even if this action was not prescribed, the Rule 12(b)(6) Motion filed by the Defendants nonetheless would be granted because Dr. Haygood's bald conclusory allegation that these Defendants were involved in a conspiracy with the Dental Board fails the plausibility standard established in Twombly and Iqbal. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007); see also Ashcroft v. Iqbal, 556 U.S. 662 (2009).

B. 15 U.S.C. § 1 and § 2

The Sherman Act, 15 U.S.C. § 1 and § 2, provides the framework to forbid monopolies within the United States. To establish a violation under Section 1, the plaintiff must prove: (1) the defendants engaged in a conspiracy, (2) that restrained trade (3) in the relevant market. Gold Bridge Technology, Inc. v. Motorola, Inc., 547 F.3d 266, 271 (5th Cir. 2008), cert denied 556 U.S._____(2009); Apani Sw. Inc. v. Coca-Cola Enter., Inc., 300 F.3d 620, 627 (5th Cir. 2002); Johnson v. Hosp. Corp. Of Am., 95 F.3d 383, 392 (5th Cir. 1996). The first element that must be

shown by the plaintiff is that the defendants engaged in a conspiracy. To establish the first element, "the complaint must contain enough factual matter to suggest that an agreement among the alleged conspirators was actually made." Dowdy v. Dowdy Partnership v. Arbitron, Inc., 2010 WL 3942755, *3 (S.D. Miss. 2010)(citing Twombly at 556). The Supreme Court in the Twombly decision further provided:

> Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement.

Twombly at 545.

With regard to allegations of a conspiracy, courts have held that plaintiffs "must do more than plead facts that may be consistent with a conspiracy – [the plaintiffs] must plead facts that suggest a prior agreement between the Defendants." Dowdy at *4.

Here, Plaintiffs allege that the defendants were involved in a conspiracy to purposefully restrain trade among dentists in Northwest Louisiana. The allegation is based on claimed circumstantial evidence of communications between various named defendants. As the Defendants point out, the Plaintiffs fail to point to any facts regarding "(1) when, where, or how a conspiracy was formed, (2)

that the Defendants, in fact, agreed to restrain the trade of dental services, (3) that Defendants communicated regarding the restraint of trade, or (4) that Defendants shared a common intent to restrain trade." Record Document 29-1 at p. 28. Accordingly, the plaintiff's compliant of a conspiracy as required under § 1 is simply a bare allegation and fails to meet the necessary pleading requirements established in Twombly.

Likewise, Dr. Haygood's allegation under § 2 also fails to meet the minimum requirement established by the Twombly standard. Section 2 states that it is illegal to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States." Further, Section 2 "covers both concerted and independent action, but only if that action 'monopolize[s]' or 'threatens actual monopolization,' a category that is narrower than restraint of trade." Am. Needle, Inc. v. Nat'l Football League, 130 S. Ct. 2201, 2208-2209 (2010)(internal citations omitted). To succeed under Section 2, "it is generally required that...a plaintiff must prove (1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power." Spectrum Sports, Inc. V. McQuillan, 506 U.S. 447, 113 S.Ct. 884, 890-891 (1983). Specifically, a plaintiff must show "the defendant's ability to lessen or destroy competition in that market." Id. at 457.

In the instant matter, Dr. Haygood fails to provide any plausible facts that these non-dentist Defendants had a "dangerous probability of actual monopolization." As mentioned supra, Dr. Haygood failed to provide plausible facts that these Defendants were involved in a conspiracy.[2]

Therefore, Plaintiffs' claims for conspiracy against these Defendants are **DISMISSED** pursuant to FRCP 12(b)(6).

C. State Law Defamation Claim

Dr. Haygood's next cause of action against these Defendants is for defamation under Louisiana state law. Under Louisiana law, defamation, which is a delictual action, is subject to a one year prescriptive period. La. C.C. art. 3492. W.T.A. v. N.Y., 2010-839 (La. App. 3rd Cir. 3/9/11) 58 So.3d 612, 617, *writ denied,* 2011-0491 (La. 05/06/11) 250 So.3d 1285; Farber v. Bobear, 2010-0985 (La. App. 4th Cir. 1/19/11), 56 So.3d 1061, 1069; Doughty v. Cummings, 44,812 (La. App. 2nd Cir. 12/30/09), 28 So.3d 580, 583, *writ denied,* 2010-0251 (La. 04/09/10), 31 So.3d 394; Clark v. Wilcox, 2004 - 2254 (La. App. 1st Cir. 12/22/05), 928 So.2d 104, 112,*writ denied,* 2006-0185

[2] "One who does not compete in a product market or conspire with a competitor cannot be held liable as a monopolist in that market." White v. Rockingham Radiologists, Ltd., 820 F.2d 98, 104 (4th Cir. 1987).

(La. 6/2/06), 929 So.2d 1252; see also Federal & Deposit Co. of Maryland v. Smith, 730 F.2d 1026, 1035 (5th Cir. 1984). Under Article 3492 of the Louisiana Civil Code, prescription in a defamation case tolls from the date injury or damage is sustained. Farber, 56 So.3d at 1069. Each publication or communication of a defamatory statement is a separate cause of action; therefore, multiple publications or communications are independent and cannot be considered to be continuous. Wiggins, 475 So.2d at 781; see also Collinson v. Tarver Land Dev., LLC., 111787, 2012 WL 688551 *1 (W.D. La. 02/01/2012).

The defendant pleading prescription typically bears the burden of proving that the claim has prescribed. However, when the face of the petition reveals that the plaintiff's claim has prescribed, the burden shifts to the plaintiff to show why the claim has not prescribed. Hogg v. Chevron USA, Inc., 2009-2632 (La. 7/6/10), 45 So.3d 991, 998; W.T.A., 58 So.3d at 617; Farber 56 So.3d at 1069.

According to the Complaint the instant case, even if a basis existed for a cause of action for defamation, the last administrative hearing which would have given rise to this cause of action occurred in October, 2010. See Record Document 71-2.

At the very latest, the claimed damages from the alleged defamation would have been known to Dr. Haygood and, therefore, by his one-person dental limited liability company, when he learned of the

revocation of his dental license in November, 2010 or even after the amended decision after remand in August, 2011. The instant lawsuit was not filed until February 13, 2013; however, Dr. Haygood claims that the filing of the state court proceedings against these defendants in the First Judicial District, Caddo Parish, Louisiana on September 26, 2011, interrupted prescription.

However, Dr. Haygood fails to satisfy the minimum pleading requirements for a defamation suit. Under Louisiana law, Plaintiffs must allege all of the following elements for a defamation: (1) defamatory words; (2) publication or communication to persons other than the one defamed; (3) falsity; (4) malice, actual or implied; and (5) resulting injury." While under Louisiana law a quoted statement is not required, the plaintiff must provide reasonable specificity. See Badeaux v. Southwest Computer Bureau, Inc., 2005-0612 (La. 3/17/06); 929 So.2d 1211, 1218. In the instant matter, Dr. Haygood's complaint fails to meet the Badeaux requirements. Accordingly, Defendants' Motion to Dismiss is **GRANTED**.

D. Louisiana Unfair Trade Practices Act - LSA-R.S. 51:1401 et seq.

The next cause of action brought by the Plaintiffs is under the Louisiana Unfair Trade Practices Act. This act grants a private action to: "Any person who suffers any ascertainable loss of money or movable property, corporeal or incorporeal,

as a result of the use of employment by another person of an unfair or deceptive method, act, or practice declared unlawful by R.S. 51:1405." La. R.S. 51:1409. "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." La. R.S. 51:1405. "'Trade' or 'commerce' means the advertising, offering for sale, sale, or distribution of any services and any property, corporeal or incorporeal, immovable or movable, and any other article, commodity, or thing of value wherever situated, and includes any trade or commerce directly or indirectly affecting the people of the state." La. R.S. 51:1402. The Court already discussed conspiracy in the context of Section 1 of the Sherman Act, the Plaintiff's bald allegation of a conspiracy fails to meet the necessary pleading requirements under Federal Rule of Civil Procedure 12. Supra, p. 8. For those same reasons, the Court fails to find that a conspiracy existed in the LUTPA context. Therefore, the Court will analyze the LUTPA claims against these Defendants on an individual basis.

LSA-R.S. 51:1405(A) prohibits any "unfair or deceptive acts or practices in the conduct of any trade or commerce." The Courts have the power to determine, on a case-by-case basis, the type of conduct that falls within that category. Sheramine Services, Inc. v. Shell Deepwater Production Company, Inc., 2009-1633 (La. 04/23/10), 35 So.3d 1053, 1059. The Sheramine decision provides additional guidance. There the Louisiana Supreme

Court required that a plaintiff must allege conduct that "offends established public policy and is immoral, unethical, oppressive, unscrupulous or substantial[ly] injurious." Id.; Cargill, Inc. v. Degesch America, Inc., 875 F. Supp. 2d 667, 676 (E.D. La. 2012); Jones Energy Co., LLC v. Chesapeake Louisiana, L.P., 873 F. Supp. 2d 779, 789 (W.D. La. 2012).

In the instant matter, Dr. Haygood fails to allege any act by these Defendants which would enable them to achieve an unfair competitive advantage over Plaintiffs (nor can he since none of these Defendants are dentists). Therefore, Defendants' Motion to Dismiss this claim is **GRANTED**.

CONCLUSION

Based on the foregoing, the Motion for Summary Judgment filed by these Defendants is **GRANTED**. Court finds that: (1) Plaintiffs claim under 42 U.S.C. § 1983 has prescribed; and (2) Plaintiffs failed to meet the pleading standard required under Twombly and Iqbal regarding the alleged violations of 15 U.S.C. §1 and §2, state defamation laws, and LUTPA. Accordingly, all of Plaintiffs claims against Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead are hereby **DISMISSED WITH PREJUDICE**.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 31st day of March, 2014.

— APPENDIX Q—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

ORDER

Considering Defendants, Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead 's, Motion to Dismiss [Record Document 29], **IT IS ORDERED** that the Motion is **GRANTED**. Having thoroughly reviewed the record, and the briefs filed therein, the Court finds: (1) Plaintiffs claim under 42 U.S.C. § 1983 has prescribed; and (2) Plaintiffs failed to meet the pleading standard required under Twombly and Iqbal regarding the alleged violations of 15 U.S.C. §1 and §2, state defamation laws, and LUTPA.

Therefore, the Defendants' Motion to Dismiss [Record Document 29] is **GRANTED**. **IT IS ORDERED** that all of Plaintiffs claims against Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead are hereby **DISMISSED WITH PREJUDICE**.

Therefore, **THUS DONE AND SIGNED** in Shreveport, Louisiana, this 31st day of March, 2014.

— APPENDIX R—

SUPREME COURT OF LOUISIANA

NO. 2012-C-2333

C. RYAN HAYGOOD, DDS

VERSUS

LOUISIANA STATE BOARD OF DENTISTRY

ORDER

IN RE: Louisiana State Board of Dentistry; Defendant; Applying For Writ of Certiorari and/or Review, Parish of Orleans, Civil District Court Div. K, No. 2010-12060 C/W 11-10167; o the Court of Appeal, Fourth Circuit, No. 2011-CA-1327 C/W 2012-0214 C/W 2010-0215;

– – – – – –

December 14, 2012

Denied.

GGG
BJJ
JPV
JTK
MRC

WEIMER, J., would grant.

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— APPENDIX S—

FOURTH CIRCUIT COURT OF APPEAL

STATE OF LOUISIANA

NO. 2011-CA-1327

C. RYAN HAYGOOD, DDS

VERSUS

LOUISIANA STATE BOARD

OF DENTISTRY

CONSOLIDATED WITH:

C. RYAN HAYGOOD, D.D.S.

VERSUS

LOUISIANA STATE BOARD OF DENTISTRY

NO. 2012-CA-0214

CONSOLIDATED WITH:

C. RYAN HAYGOOD, D.D.S.

VERSUS

LOUISIANA STATE BOARD OF

DENTISTRY

NO. 2012-CA-0215

EXHIBIT "A"

.

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2010-12060, C/W 10-12060, C/W 11-10167,
DIVISION "K-5"
Honorable Herbert A. Cade, Judge

* * * * * *

Judge Tern F. Love

(Court composed of Judge James F. McKay III, Judge Terri F. Love, Judge Roland L. Belsome)

BELSOME, J., CONCURS WITH REASONS

Scott L. Zimmer
COOK YANCEY KING & GALLOWAY333 Texas Street, Suite 1700, P. **O.** Box 22260, Shreveport, LA 71120--2260
COUNSEL FOR PLAINTIFF/APPELLANT

M. Thomas Arceneaux
BLANCHARD WALKER O'QUIN & ROBERTS
400 Texas Street, Suite 1400
P.O. Drawer 1126
Shreveport, LA 71163—1126
COUNSEL FOR DEFENDANT/APPELLEE

VACATED AND REMANDED

September 26, 2012

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OPINION

Dr. C. Ryan Haygood appeals the decision of the Louisiana State Board of Dentistry to permanently revoke his dentistry license. Dr. Haygood maintains that the Board's decision cannot be upheld because the Board's independent counsel, who is also its general counsel, participated in the administrative hearing in dual roles as prosecutor and adjudicator.

After conducting a *de novo* review, we find the combination of the Board's general counsel's roles of prosecutor and adjudicator violated Dr. Haygood's due process rights. We find the Board improperly combined the prosecutorial and judicial functions by allowing its general counsel, Mr. Brian Begue, to serve as the prosecutor, general counsel, panel member, and adjudicator for the proceedings against Dr. Haygood. We hold this conduct is violative of the Louisiana Administrative Procedure Act and Dr. Haygood's due process right to a neutral adjudicator and a fair hearing.

We find the Louisiana State Board of Dentistry's decision to revoke Dr. C. Ryan Haygood's dental license is arbitrary and capricious; therefore, we reverse the trial court's judgment which affirmed the revocation of Dr. Haygood's license and remand this matter to the Board for a new hearing.

FACTS AND PROCEDURAL HISTORY

The Louisiana State Board of Dentistry ("Board") opened an investigation of Dr. C. Ryan

Haygood, D.D.S. in 2007 after receiving complaints from some of his patients regarding the treatment plans he recommended and the dental care that he provided. Prior to filing formal charges against Dr. Haygood, an informal resolution conference was held, with Dr. Haygood denying all allegations of wrongdoing. Subsequent to Dr. Haygood's denial of the charges against him, Board member, Dr. Conrad McVea, directed the Board's investigator, Camp Morrison, "to send people in" to Dr. Haygood's office. According to Mr. Morrison, this was the first time that the Board had "sent people in to act as patients."

Mr. Morrison engaged multiple individuals at an hourly rate to pose as patients who purported to have various periodontal symptoms and complications and sought treatment from Dr. Haygood based upon their alleged conditions, including Dana Glorioso and Karen Moorehead. Ms. Glorioso worked for Dr. Louis Joseph, who was an active Board member at the time he recommended her to Mr. Morrison. Ms. Glorioso used the alias "Dana Brister" when she was examined Dr. Haygood. Karen Moorehead was recommended by Dr. White Graves, a former Board member and Ms. Moorehead's employer. Ms. Moorehead used the alias "Karen Hill" when she was treated by Dr. Haygood. Seven other patients were involved in the investigation against Dr. Haygood.

Formal charges were filed against Dr. Haygood at the conclusion of the investigation. The Board formally charged him with violating La. R.S. 37:776

(A)(16) (Charge 1) on nine occasions (Specifications 1 through 9), La. R.S. 37:776(a)(19) and La. R.S. 37:776(A)(15) (Charge 2) on three occasions (Specifications 1 through 3) and La. R.S. 37:776(A)(7) and (8) (Charge 3) on three occasions (Specification 1 through 3). The nine specifications in Charge 1 alleged that Dr. Haygood engaged in conduct intended to deceive or defraud the public by fraudulently diagnosing periodontal disease and other dental conditions and intending to deceive the individuals regarding the necessity of treatment. Charge 2 alleged that Dr. Haygood improperly offered discounts in exchange for patient referrals. Charge 3 alleged Dr. Haygood failed to satisfy the prevailing acceptable standard of dental practice. Charge 3 and all specifications within it were dismissed by the Board's complaint counsel prior to deliberation.

Four different hygienists were involved with the care of the patients included in the charges against Dr. Haygood; however, only two of Dr. Haygood's hygienists, Julie Snyder and Wendy Greene, were formally charged and faced disciplinary action by the Board.

The Board's complaint counsel prosecuted the charges against Dr. Haygood. The Board's general counsel, Mr. Begue, was engaged by the Board to serve as independent counsel to rule on evidentiary matters. The three Board members who comprised the disciplinary panel for Dr. Haygood's hearing were

Doctors Samuel Trinca, Dean Manning, and James Moreau, Jr.

At the conclusion of four days of testimony, the Board found Dr. Haygood guilty of eight specifications under two separate charges, ordered permanent revocation of his dentistry license, and assessed the maximum monetary fine allowed by law $40,000, awarding all costs at $133,074.02, for a total of $173,074.02.

Dr. Haygood appealed the Board's decision to the trial court, and posted the proper security. The trial court enjoined the Board from enforcing its decision for the maximum amount of time allowed under the Dental Practice Act. The court also assessed costs against Dr. Haygood in the amount of $133,074.02.

After a two-day hearing, the trial court rendered judgment, which reversed the Board's decision to delete findings of fact as to which both parties agreed were either withdrawn during the administrative trial, or for which no evidence was adduced. The trial court affirmed the remainder of the findings, but remanded to consider whether the sanctions previously imposed remained appropriate.

The panel members subsequently issued an Amended Decision which, pursuant to the trial court's Judgment, eliminated the findings. However, the discipline remained. After the Board's complaint counsel filed a motion to amend, the Board issued an

Amended Decision After Remand, deleted the $5,000 fine imposed for the Specification that had been removed by the trial court, but maintained the permanent license revocation, the $35,000 fine, and costs.

Dr. Haygood filed a Petition for Review with the trial court, contesting the Board's Amended Decision After Remand. The trial court issued a Judgment affirming the Amended Decision After Remand.

Dr. Haygood timely appealed both Judgments issued by the trial court.

LAW AND DISCUSSION

Standard of Review

The trial court applies the manifest error standard of review in reviewing the facts as determined by the administrative tribunal; the trial court applies the arbitrary and capricious test in reviewing the administrative tribunal's conclusions and its exercise of discretion. *Save Ourselves, Inc. v. Louisiana Envtl. Control Comm* 'n, 452 So. 2d 1152, 1159 (La. 1984); *Rochon v. Whitley,* 96-0835, p. 5 (La. App. 1 Cir. 2/14/97), 691 So. 2d 189, 192. An aggrieved party may obtain review of any final judgment of the district court by appeal to the appropriate court of appeal. "On review of the district court's judgment, no deference is owed by the court of appeal to factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme

Court to factual findings or legal conclusions of the court of appeal." *Eicher v. Louisiana State Police, Riverboat Gaming Enforcement Div.,* 97-0121, p. 5 n. 5. *See* LA. CONST. art. V, § 5(C); *Donnell v. Gray,* 215 La. 497, 41 So. 2d 66, 67 (1949).

Moreover, "[a]ppellate review of a question of law involves a determination of whether the lower court's interpretive decision is legally correct." *Johnson v. Louisiana Tax Comm 'n,* 01-0964, p. 2 (La. App. 4 Cir. 1/16/02), 807 So. 2d 329, 331. The trial court is required to conduct its review upon the record that was before the Board. *Crawford v. Am. Nat'l Petroleum Co.,* 00-1063, p. 6 (La. App. 1 Cir. 12/28/01), 805 So. 2d 371, 377. It considers only facts on the Board's record and questions of law. *Id.* According to the Louisiana Supreme Court in *St. Pierre's Fabrication and Welding, Inc. v. McNamara,* 495 So. 2d 1295, 1298 (La. 1986), the Board's findings of fact are to be accepted by the reviewing trial court where there is substantial evidence in the record to support them. These findings of fact are not to "be set aside unless they are manifestly erroneous in view of the evidence on the entire record." *Id.* at 1298. The Board's decision must be affirmed absent legal error or a failure to follow the correct procedural standards. *Collector of Revenue v. Murphy Oil Co.,* 351 So. 2d 1234, 1236 (La. App. 4th Cir. 1977); *Crawford, supra.*

The standard of judicial review of a decision of an agency is set forth in La. R.S. 37:786 and La. R.S. 49:964(G). La. R.S. 49:964(G) provides that:

> the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are (1) in violation of constitutional or statutory provisions; (2) in excess of the agency's statutory authority; (3) made upon unlawful procedure; (4) affected by error of law; (5) arbitrary, capricious, or an abuse of discretion; or (6) manifestly erroneous.

The manifest error test is used in reviewing the facts as found by the administrative tribunal; the arbitrary and capricious test is used in reviewing the administrative tribunal's conclusions and its exercise of discretion. *Save Ourselves,* 452 So. 2d at 1159. On legal issues, the reviewing court gives no special weight to the findings of the administrative tribunal, but conducts a *de novo* review of questions of law and renders judgment on the record. *See State, Through Louisiana Riverboat Gaming Comm 'n v. Louisiana State Police Riverboat Gaming Enforcement Div.,* 95-2355, p. 5 (La. App. 1 Cir. 8/21/96), 694 So. 2d 316, 319.

Commingling of Roles

Dr. Haygood argues that he was not afforded due process at the hearing before the Board. He also contends that during four days of testimony, Mr. Begue "repeatedly interfered and zealously advocated on behalf of the Board by cross-examining

witnesses, supplying objections to complaint counsel, and questioning the credibility of Dr. Haygood." The Board argues that Dr. Haygood's allegations of bias are unsubstantiated and do not warrant reversal of the revocation of his license under the *Allen* case. The Board contends that Mr. Begue's actions were to "expedite the process." We have comprehensively reviewed the transcripts of the four-day hearing, and we agree with Dr. Haygood's representation of Mr. Begue's actions.

Mr. Begue's Appointment as Independent Counsel

As the Board's general counsel, Mr. Begue is expected to serve in an advocacy role on behalf of the Board. The Board's selection of its general counsel taints the role of independent counsel, which is a role that requires neutrality and independence and the appearance of neutrality and independence. "In light of the substantial powers given to administrative bodies, the courts must be vigilent [sic] in assuring that parties in administrative adjudications receive the procedural protections our law affords." *Allen v. Louisiana State Bd. of Dentistry,* 543 So. 2d 908, 915 (La. 1989). Mr. Begue's twofold role as prosecutor and adjudicator violated Dr. Haygood's right to a hearing that is fair and impartial and has the appearance of being fair and impartial.

There is a risk of commingling the prosecutorial and adjudicative functions of the Board when an independent counsel acts as prosecutor.

Title 46, Part XXXIII, § 923(D) of the Louisiana Administrative Code limits Mr. Begue's role to ruling on evidentiary matters. Section 923(D) provides:

> During and before an adjudication hearing, the chairman shall rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire hearing panel in executive session. At any such time, the hearing panel may be assisted by legal counsel, retained by the board for such purpose, who is independent of complaint counsel and who has not participated in the investigation or prosecution of the case. If the board or hearing panel is attended by such counsel, the chairman may delegate to such counsel ruling on evidentiary objections and other procedural issues raised during the hearing.

The type of commingling found in this case is strictly prohibited by the Louisiana Administrative Procedure Act. *See* La. R.S. 49:960.[1]

[1] La. R.S. 49:960 provides:

A. Unless required for the disposition of ex parte matters authorized by law, members or employees of agency assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing

Procedural Management by the Board

The chairman of the disciplinary committee, Dr. Trinca, delegated to the Board's general counsel and appointed independent counsel for the hearing panel "the obligation of ruling on all procedural and evidentiary issues raised during the hearing of this

shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

B. A subordinate deciding officer or agency member shall withdraw from any adjudicative proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a subordinate deciding officer or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a subordinate deciding officer, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the governor immediately shall appoint a member pro tern to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of A.S. 49:957 shall apply.

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matter reserving the panel's right to overrule any decision made by the counsel." Mr. Begue's sole role during Dr. Haygood's hearing was to serve as independent counsel — as an unbiased hearing officer whose purpose was limited to ruling on evidentiary matters. However, he participated in the hearing before the Board's panel both as prosecutor and adjudicator. The Board condoned Mr. Begue's behavior and failed to acknowledge Dr. Haygood's objection that Mr. Begue was overstepping his role in the proceedings.

The record is replete with instances in which Mr. Begue acted as prosecutor throughout the proceedings, and at times, simultaneously acted as prosecutor, panel member and independent counsel — even ruling on his own objection. The Louisiana Supreme Court held,

> [w]e find the commingling of prosecutorial and adjudicative functions violates both the letter of the Louisiana Administrative Procedure Act and the due process goals it is designed to further ... The idea of the same person serving as judge and prosecutor is anathema under our notions of due process. Such a scenario is devoid of the appearance of fairness.

In Re Georgia Gulf Corp. v. Bd. of Ethics, 96-1907, p.7 (La. 1997), 694 So. 2d 173, 177. Without objection from the Board, Mr. Begue expanded his limited statutory duty. By allowing Mr. Begue to act

as adjudicator and prosecutor, the Board violated Dr. Haygood's due process rights.

Denial of Dr. Haygood's Due Process Rights

It is unquestionable that Dr. Haygood has a protected property right in his license to practice dentistry and that he is entitled to due process of law under both the federal and state constitutions. *See Banjavich v. Louisiana Licensing Bd. For Marine Divers,* 237 La. 467, 111 So. 2d 505, 511 (La. 1959). A person cannot be deprived of life, liberty, or property without due process of law. U.S. Const. Amend. XIV, § 1; LA. CONST. Art. 1, § 2. Due process requires a fair trial before a fair tribunal. A due process violation may exist even if an adjudicatory body's actual impartiality is not proven. The appearance of fairness and the absence of a probability of outside influence on the adjudication are required by due process. *Utica Packing Co. v. Block,* 781 F.2d 71, 77-78 (6th Cir. 1986); *Allen,* 543 So. 2d at 915.

Moreover, due process requires that the accused be provided with a neutral and impartial referee to impart fairness. The essential guarantee of the Due Process Clause is fundamentally fair procedure for the individual in the resolution of the factual and legal basis for government actions which deprive him of life, liberty or property. Therefore, there must be some type of neutral and detached decision maker, be it judge, hearing officer or agency. This requirement applies to agencies and government

hearing officers as well as judges. An impartial decision maker is essential to due process. Even if an individual cannot show special prejudice in his particular case, the situation in which an official occupies two inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process.

City of Alexandria v, Alexandria Civil Service Comm 'n, 09-484, p. 7 (La. App. 3 Cir. 11/4/09), 23 So. 3d 407, 413 (citations omitted).

The Louisiana State Board of Dentistry is a statutory agency created and governed by La. R.S. 37:753, *et seq.* La. R.S. 37:760A(4)(a) empowers the Board with the sole authority to revoke, limit or suspend licenses of dentists practicing in this state. The relevant provisions provide as follows:

> The board shall exercise, subject to the provisions of this Chapter, the following powers and duties:
>
> Conduct hearings on proceedings to revoke, limit, or suspend, and to revoke, limit, or suspend a license granted under this Chapter, as well as conduct hearings to sanction unlicensed persons illegally practicing dentistry or dental hygiene, when evidence has been presented showing violation of any of the provisions of this Chapter.

According to Title 46, Part XXXIII, § 923(B) of the Louisiana Administrative Code, the conduct of an adjudication hearing is explained as follows:

> At an adjudication hearing, opportunity shall be afforded to complaint counsel and respondent to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for a full and true disclosure of the facts and disposition of the complaint.

"An impartial decision maker is essential to an administrative adjudication that comports with due process, even if *de novo* review is available." *Butler v. Dep't of Public Safety and Corr.,* 609 So. 2d 790, 793 (La. 1992). In this case, the Board's failure to comply with Section 923(D) of the Louisiana Administrative Code and the expressed due process requirements of the Fourteenth Amendment of the United States Constitution and Article 1, Section 2 of the Louisiana Constitution, renders the decision to revoke Dr. Haygood's license unenforceable.

Based upon our review of the record, we find that Mr. Begue's functions of general counsel, independent counsel, prosecutor and fact-finder were so interwoven that they became indistinguishable, which created the appearance of impropriety and

deprived the proceedings of the imperative and fundamental appearance of fairness. Therefore, the Board's decision to revoke Dr. Haygood's license must be reversed.

Dr. Haygood's Remaining Issues

Because we find that Dr. Haygood was denied due process and that this matter is to be remanded to the Board for a new hearing, we pretermit addressing the remaining issues raised by Dr. Haygood alleging other erroneous findings.

DECREE

We conclude that the combination of Mr. Begue's roles of general counsel, prosecutor, and adjudicator violated Dr. Haygood's due process rights. We find the Board improperly combined the prosecutorial and judicial functions by allowing its general counsel, Mr. Begue, to serve as the prosecutor, general counsel, panel member and adjudicator for the proceedings against Dr. Haygood. We hold this conduct is violative of the Louisiana Administrative Procedure Act and Dr. Haygood's due process right to a neutral adjudicator and a fair hearing.

We find the Louisiana State Board of Dentistry's decision to revoke Dr. Haygood's dental license is arbitrary and capricious; therefore, we reverse the trial court's judgment, which affirmed the revocation of Dr. Haygood's license, and remand this matter to the Board for a new hearing.

VACATED AND REMANDED

BELSOME, J., CONCURS WITH REASONS

I respectfully concur with the majority's opinion but write separately to further discuss the co-mingling of duties by the Board's independent counsel. Although the independent counsel's role was designed to be one that assisted the Board in conducting the hearing in a fair and expeditious manner, the record indicates his duties far exceeded **that** role. Throughout the hearing **the** independent counsel regularly took over the questioning of witnesses eliciting testimony adverse to Dr. Haygood; and while questioning Dr. Haygood he became antagonistic and argumentative. A reading of the hearing transcripts leaves one to believe that he was working as co-counsel with the Board's attorney rather than independent counsel. For these reasons I concur with the conclusions reached by the majority opinion.

— APPENDIX T—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

NOTICE OF APPEAL

PURSUANT to Federal Rules of Appellate Procedure 3 and 4, notice is hereby given that Plaintiffs, RYAN HAYGOOD, DDS and HAYGOOD DENTAL CARE, LLC appeal to the United States Court of Appeals for the Fifth Circuit from the following:

- Memorandum Order (R. Doc. 320) and Order (R. Doc. 321) awarding attorneys' fees and costs in the amount of $64,285.52 to Defendant, H.O. Blackwood;

- Memorandum Order (R. Doc. 322) and Order (R. Doc. 323) awarding attorneys' fees and costs in the amount of $110,993.62 to Defendants, Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead; and,

- Memorandum Order (R. Doc. 324) and Order (R. Doc. 325) awarding attorneys' fees and costs in the amount of $95,382.66 to Defendants, Robert K. Hill, D.D.S. and Hill D.D.S., Inc.

- Memorandum Order (R. Doc. 342) and denying in part and granting in part Plaintiff-Movant's Motions to Reconsider and/or to Alter or Amend the Memorandum Rulings and Orders Awarding Attorneys' Fees to Defendants (R. Doc. 326, R. Doc. 327, and R. Doc. 328), and noting that it "agrees to stay the enforcement of the orders awarding attorney fees in this case until such time as the Fifth Circuit rules in Haygood II **[***Haygood, et al. v. Dies, et al.*, No. 18-30866 (5th Cir. Mar. 2, 2023)]." (R. Doc. 342, at p. 3).

- Memorandum Order ([R. Doc. 344]) vacating the staying of the orders awarding attorney fees (R. Docs. 320-325).

As noted above, the District Court, on March 29, 2023, issued a Memorandum Order stating, "this Court's previous order (Record Document 342) staying the orders awarding attorney fees (Record Documents 320-325) and otherwise holding such orders in abeyance is now **VACATED**. Such orders (Record Documents 320-325) are no longer stayed or held in abeyance." (R. Doc. 344, at pp. 1-2) (emphasis in original). Accordingly, this matter is now ripe for appellate review. *See Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 214 (5th Cir. 2009) (*quoting*, *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978)) ("[A]n

order is final only when it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'").

Respectfully submitted,
HARPER LAW FIRM
BY: /s/ Anne E. Wilkes
Jerald R. Harper, La. Bar No. 06585
Anne E. Wilkes, La. Bar No. 36729

— APPENDIX U—

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RYAN HAYGOOD, DDS, ET AL.

VERSUS.

BRIAN BEGUE, ET AL.

CIVIL ACTION NO. 13-0335

JUDGE S. MAURICE HICKS, JR

MAGISTRATE JUDGE HORNSBY

NOTICE OF APPEAL

PURSUANT to Federal Rules of Appellate Procedure 3 and 4, notice is hereby given that Plaintiffs, RYAN HAYGOOD, DDS and HAYGOOD DENTAL CARE, LLC appeal to the United States Court of Appeals for the Fifth Circuit from the Memorandum Order (R. Doc. 316) entered in this matter on February 7, 2020, denying Plaintiffs' *Motion for Reconsideration of and/or to Alter or Amend the Memorandum Ruling and Order Granting Attorney's Fees to Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead* (R. Doc. 302).

Respectfully submitted,
BY: ***s/Jerald R. Harper***
JERALD R. HARPER
Louisiana State Bar No. 6585

HARPER LAW FIRM
213 Texas Street
Shreveport, Louisiana 71101
(318) 213-8800 (telephone)

— APPENDIX V—
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

RYAN HAYGOOD, DDS, AND HAYGOOD DENTAL CARE, LLC

V.

BRIAN BEGUE, ROSS H. DIES, DDS, ROSS H. DIES, DDS, J. CODY COWEN, DDS AND BENJAMIN A. BEACH, DDS, A PROFESSIONAL DENTAL LIMITED LIABILITY COMPANY, ROBERT K. HILL, DDS, HILL DDS, INC., CAMP MORRISON, CAMP MORRISON INVESTIGATIONS, LLC, C. BARRY OGDEN, KAREN MOORHEAD AND DANA GLORIOSO

CIVIL ACTION NO.: 13-335

Filed: February 13, 2013

COMPLAINT FOR DAMAGES
ARISING OUT OF VIOLATIONS OF
42 U.S.C. 1983, AND 15 U.S.C. §1 AND §2.

NOW INTO COURT, through undersigned counsel, come RYAN HAYGOOD, DDS and HAYGOOD DENTAL CARE, LLC which hereby show as follows:

INTRODUCTION

This is an action for damages under Amendment XIV of the United States Constitution, 42 U.S.C. 1983, and 15 U.S.C. §1 and §2.

JURISDICTION AND VENUE

This Court has original jurisdiction pursuant to 28 U.S.C. §1331 over Plaintiffs' causes of action arising under the Constitution of the United States, 42 U.S.C. §1983, and 15 U.S.C. §1 and §2. This Court has supplemental jurisdiction over plaintiff's causes of action arising under Louisiana state law pursuant to 28 U.S.C. §1367.

This Court has original jurisdiction pursuant to 28 U.S.C. §1332 over all of Plaintiffs' causes of action.

Venue lies in the United States District Court for the Western District of Louisiana because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Bossier and Caddo Parishes, Louisiana, and a number of the named defendants reside in Bossier and Caddo Parishes, Louisiana. 28 U.S.C. § 1391(b)(1) and (2).

PLAINTIFFS

1.

Plaintiff Ryan Haygood is a resident of the State of North Carolina.

2.

Plaintiff Haygood Dental Care, LLC, is a Louisiana Limited Liability Company and a citizen of North Carolina.

DEFENDANTS

Made Defendants herein are:

3.

Defendant Brian Begue is an individual of the full age of majority and a resident of Orleans Parish, Louisiana. Mr. Begue acted as general counsel to the Louisiana State Board of Dentistry ("the Board") at all times pertinent herein.

4.

Defendant Dr. Ross H. Dies is an individual of the full age of majority and a domiciliary of Caddo Parish, Louisiana. Dr. Dies is a competitor of Plaintiffs who served as an expert for the Board at all times pertinent herein.

5.

Defendant Ross H. Dies, DDS, J Cody Cowen, DDS and Benjamin A. Beach, DDS, A Professional Dental Limited Liability Company is a Louisiana Limited Liability Company with its principal place of business in Caddo Parish, Louisiana. Ross H. Dies, DDS, J Cody Cowen, DDS and Benjamin A. Beach, DDS, A Professional Dental Limited Liability Company is a competitor of Plaintiffs. All acts alleged

herein of Dr. Dies were committed on behalf of Ross H. Dies, DDS, J Cody Cowen, DDS and Benjamin A. Beach, DDS, A Professional Dental Limited Liability Company.

6.

Defendant Dr. Robert K. Hill is an individual of the full age of majority and a domiciliary of Bossier Parish, Louisiana. Dr. Hill is a competitor of Plaintiffs who assisted and encouraged the initiation of complaints against Plaintiffs.

7.

Defendant Hill D.D.S., Inc. is a Louisiana Corporation with its principal place of business in Caddo Parish, Louisiana. Hill D.D.S. is a competitor of Plaintiffs who assisted and encouraged the initiation of complaints against Plaintiffs and the prosecution of Dr. Haygood. All acts alleged herein of Dr. Hill were committed on behalf of Hill D.D.S., Inc.

8.

Defendant Camp Morrison is an individual of the full age of majority and a domiciliary of Orleans Parish, Louisiana. Mr. Morrison is a private investigator employed by the Board.

9.

Defendant Camp Morrison Investigations, LLC is a Louisiana Limited Liability Company with its principal place of business in Orleans Parish,

Louisiana. Camp Morrison Investigations, LLC is employed by the Board. All acts alleged herein of Camp Morrison were committed on behalf of Camp Morrison Investigations, LLC.

10.

Defendant C. Barry Ogden is an individual of the full age of majority and a domiciliary of Orleans Parish, Louisiana. He served as executive director of the Board at all times pertinent herein. He is named in his individual and official capacities.

11.

Defendant Karen Moorhead is an individual of the full age of majority and a domiciliary of Union Parish, Louisiana.

12.

Defendant Dana Glorioso, an individual of the full age of majority and a domiciliary of Rapides Parish, Louisiana.

13.

Plaintiffs are informed and believe and therefore allege that Defendants were aided and abetted in their activities by Dr. Conrad P. McVea, III, Dr. H.O. Blackwood, Dr. Johnny Black, Dr. Tom Colquitt, Jon Stewart, and perhaps others. Plaintiffs reserve the right to supplement and amend these pleadings as discovery dictates.

BACKGROUND

14.

Dr. Haygood graduated from Louisiana Tech University in 1997, Magna Cum Laude, with a degree in molecular biology, and from Louisiana State University of Dentistry with a Doctors of Dental Surgery degree in 2000. After graduation from dental school, Dr. Haygood moved to North Carolina, worked at Baptist Hospital in Winston-Salem for a year, and then was in private practice in Wake Forest from August 2001 - October 2005. Dr. Haygood also taught at UNC School of Dentistry in Chapel Hill.

15.

Shortly after graduation from dental school, Dr. Haygood was also licensed to practice of dentistry in the State of Louisiana. In 2005 he opened offices in Shreveport and Bossier City, Louisiana, commencing his practice through a limited liability company named "Haygood Dental Care, LLC." He actively advertised his professional services in the Shreveport/Bossier City community.

16.

In order to establish his new dental practice, Dr. Haygood did not buy an existing dental practice but, rather built a new practice "from the ground up." All of his patients were "new patients".

17.

In 2006, in an effort to obtain new patients, Dr. Haygood began an active publicity campaign for his new dental practices in Shreveport-Bossier, which resulted in a significant increase in patients seeking Dr. Haygood's professional services in those communities. Although such advertising among dentists is perfectly lawful, many dentists, particularly older dentists in Louisiana, frown on such publicity.

18.

Dr. Haygood's efforts to obtain new patients were enormously successful, to the apparent consternation of some other area dentists. Because the population of the Shreveport-Bossier market did not grow during the time period that Haygood established his practice, the "new patients" obtained by Dr. Haygood were necessarily patients who were lost by other, competing dentists in the Shreveport-Bossier area.

19.

Shortly after Dr. Haygood's advertising campaign began in earnest, and his practice began to experience rapid growth, the Board apparently began to receive complaints about alleged improper professional practices of various sorts attributable to Dr. Haygood. Dr. Haygood is informed and believes, and therefore alleges, that these complaints were

encouraged, if not directly solicited, by his competitors.

20.

Beginning in late 2006 and the early months of 2007, the Board zealously embarked upon an investigation, prosecution, and adjudication of a wide variety of claims against Dr. Haygood, during the course of which the Board and its agents and contractors, (i) exceeded their lawful authority; (ii) violated Dr. Haygood's rights to due process; (iii) acted without neutrality; (iv) simultaneously acted in adjudicatory and prosecutorial roles; (v) conducted themselves in a manner which was unlawful and at least in one case violative of the criminal laws of the State of Louisiana; (vi) violated the Board's duty of trust; and (vii) violated the Board's duty to maintain such investigations in confidence.

21.

In late 2006, the Board received complaints regarding Dr. Haygood from three patients of Dr. Robert Hill and one patient of Dr. Kevin Martello. Dr. Hill has admitted to assisting his patients in drafting their complaints, to the extent of reviewing letters and even taking a complaint letter from one patient's chart and showing it to at least one other patient for use as an example.

22.

Beginning no later than March 22, 2007, Dr. H.O. Blackwood, a director of the Board and competitor of Dr. Haygood from northwest Louisiana, communicated directly and indirectly with C. Barry Ogden and Camp Morrison, and developed a scheme to contact "very motivated" dentists in the Shreveport-Bossier area seeking additional complaints against Dr. Haygood. Discussions with these dentists led to Morrison's "concerns" and "questions" regarding a number of other people who had not filed any complaints with the Board.

23.

One such person, Jacqueline Foster, was contacted by Dr. Tom Colquitt and encouraged to file a complaint against Dr. Haygood. After speaking with her via telephone, he thanked her "for her help," encouraged her to write a letter to the Board, and enclosed an envelope in which she could forward him a copy of her complaint, a copy of which he stated he "would love to have."

24.

Without any investigation, both Ogden and Morrison developed a theory or opinion that Haygood had a "predilection for diagnosing unnecessary periodontal work." The Defendants actively sought evidence in support of that theory. In late March 2007, Ogden authorized the issuance of subpoenas for patients of various dentists in northwest Louisiana for

the purpose of gathering additional complaints against Dr. Haygood. Later, in June 2007, the Board had the complainants examined by Dr. Dies, a direct competitor of Dr. Haygood.

25.

An informal hearing of these complaints was held in August 2007, during which Dr. Haygood denied all allegations. Afterward, the Board, apparently unable to formally charge Dr. Haygood on the basis of the complaints in their possession and the biased findings of Dr. Dies, decided to gather additional damning evidence by directing Morrison to retain unlicensed investigators to pose as patients seeking treatment from Dr. Haygood.

26.

Though the investigation and proceedings of the Board are to be conducted in strict secrecy, in accordance with Louisiana law, in 2009 anonymous internet posting containing false and derogatory information that could have only been obtained during the course of the Board's investigation and proceedings began to appear. Haygood's investigation and prosecution was also discussed among dentists in Shreveport and Bossier City, Louisiana during the 2007-2010 time frame.

27.

The Board conducted informal hearings involving Dr. Haygood on March 13, 2009, and

November 13, 2009. A final complaint was issued against Dr. Haygood on March 10, 2010.

28.

In an effort to bring additional pressure to bear on Dr. Haygood, the Board determined to bring charges against his two hygienists, Wendy Green and Julie Snyder, who were accused of aiding and abetting alleged fraudulent conduct by Haygood.

29.

The Board set a formal hearing before the Disciplinary Committee ("Committee") consisting of Dr. Samuel Trinca, Dr. Dean Manning, and Dr. James Moreau on September 24-25, 2010 and October 22-23, 2010 relative to the formal administrative complaint lodged against Dr. Haygood.

30.

During the hearing, Brian Begue, appointed to act as “independent counsel” for the Board, repeatedly disregarded this role and interjected himself into the hearing as an additional "prosecutor" by cross examining witnesses, providing supportive information to complaint counsel, providing and suggesting objections to complaint counsel and openly questioning the testimony of Dr. Haygood.

31.

Dr. Haygood introduced as a witness world renowned periodontist, lecturer and author Dr.

Raymond Yukna, who agreed with Dr. Haygood's professional opinions with respect to the professional treatment at issue in the case.

32.

The Committee also heard the tainted expert testimony of Dr. Dies and the two unlicensed private investigators, whose testimony should never have been permitted.

33.

After hearing the testimony of Dr. Yukna, M. Thomas Arcenaux, prosecutor for the Board approached the Board Director, Barry Ogden, suggesting that the evidence might be insufficient for any conviction. Ogden responded that the Board was "in too far financially and boxed in politically" and the case had to be pursued.

34.

On November 8, 2010, the Louisiana State Board of Dentistry, whose members included but not limited to a disciplinary committee consisting of Dr. Samuel Trinca, Dr. Dean Manning and Dr. James Moreau issued an Opinion, finding by "clear and convincing evidence" under the Louisiana Dental Practice Act multiple counts of engaging in conduct intending to defraud the public, and, remarkably, findings by Dr. Haygood guilty by "clear and convincing evidence" of *charges which had been dismissed* by the Board of Dentistry. Maximum fines

were levied as to all counts. This proceeding was a sham and the product of the actions of the defendants and those Board members who aided and abetted them.

35.

Dr. Haygood appealed the findings of the Board by seeking judicial review in the Orleans Parish Civil District Court, in accordance with the procedure set forth in La. R.S. 37:786. The district court affirmed some of the findings of the Board, reversed the findings of fact as to which both parties agreed were either withdrawn during the administrative trial, or for which no evidence was adduced, and remanded the case for reconsideration of the Board's imposition of sanctions. The Board issued a new judgment eliminating the dismissed findings but retaining the sanctions. After the Board's complaint counsel filed a motion to amend, the Board issued an Amended Decision After Remand, deleted the $5,000 fine, imposed for the Specification that had been removed by the trial court, but maintained the permanent license revocation, the $35,000 fine, and costs. Dr. Haygood filed a Petition for Review with the trial court, contesting the Board's Amended Decision after Remand. The trial court issued a Judgment affirming the Amended Decision after Remand.

36.

Dr. Haygood timely appealed both Judgments issued by the trial court to the Fourth Circuit Court of

Appeals. The Fourth Circuit held that the manner in which the Board conducted its proceedings against Dr. Haygood (specifically, by permitting Brian Begue to commingle his roles of general counsel, prosecutor, and adjudicator) was arbitrary and capricious, violated the Louisiana Administrative Procedure Act, and denied Dr. Haygood his constitutional due process rights to a neutral adjudicator and a fair hearing. A copy of this opinion, and the denial of writs by the Louisiana Supreme Court is attached hereto as Exhibit "A."

THE LOUISIANA STATE BOARD OF DENTISTRY

37.

The Louisiana State Board of Dentistry (the "Board") is a state board of the State of Louisiana. The Board was created under the provisions of La. R.S. 37:751, et seq. The Board, as provided by La. R.S. 36:259(E), is under the supervision and control of the Louisiana Department of Health and Hospitals. The Board is composed of 14 members, including 13 licensed and practicing dentists and one dental hygienist. The Board also has 5 employees. All members are appointed by the Governor and serve 5-year terms. The Board is charged with the responsibility of screening applicants, preparing and administering examinations, issuing licenses for dentists and dental hygienists, and investigating bona fide complaints in the field of dentistry. Operations of

the Board are funded by examination fees, license fees and fines imposed on miscreant professionals.

38.

The Board and its Disciplinary Committee stand in a relation of trust to the public, the profession and those who appear before that body. Its deliberations are to be conducted in utmost confidence.

39.

By statute, the Board's power to investigate is limited as follows:

> "The Board shall investigate complaints of illegal evidence or a violation of this chapter, *when evidence is presented to the Board*..." (emphasis added)

Moreover, the Board has authority to investigate "charges brought, which must be made under oath, noticed and docketed." (emphasis added)

40.

When the Board performs an investigation in good faith and determines to adjudicate a formal administrative complaint against a dentist or other dental professional, the Board is obligated to conduct such hearing in a manner which, although not necessarily perfect, must meet minimum levels of fairness, independence and neutrality, free from

malicious or competitive biases or financial influences.

41.

In addition to the foregoing, Louisiana law requires that such hearing be conducted in a manner which maintains the *appearance* of fairness, neutrality, and freedom from the taint of improper influences, such as competitive considerations, financial strains on the Board, and maliciousness on the part of its participants.

42.

The financial statements for the Board for the year end June 30, 2009 as set forth in the independent auditor's report on financial statements submitted by Leroy Chustz and Beverly A. Ryall, CPAs, stated as follows under "Financial Highlights":

> "The Louisiana State Board of Dentistry's liabilities exceeded its assets at the close of fiscal year 2009 by $62,962.00, which represents a 267.4 per cent increase from last fiscal year. The net assets decreased by $100,569.00 (or 267.4 per cent). The Louisiana State Board of Dentistry's revenue decreased $61,740.00) or 6.4 per cent) and the net results from activities decreased by $49,702.00 (or 88.7 per cent)."

43.

The same financial statements for year end June 30, 2009 stated as follows under "Variations Between Original and Final Budgets":

> "Revenues were $210,000.00 under budget, due mainly to lower than expected revenue from license renewals and enforcement actions. Expenditures were approximately $148,000.00 under budget due mainly to lower than expected salaries and benefit expenses, operating expenses and fixed asset acquisitions."

44.

The Board's basic financial statements and independent auditor's report for the year ending June 30, 2010 stated as follows:

> "Net assets of the Louisiana State Board of Dentistry decreased by $41,276.00 (or 65.6 per cent) from June 30, 2009 to June 30, 2010. Causes of this decrease include an increase in legal and investigation cost due to an increase in disciplinary actions and an increase in computer support services due to the implementation of a new data base and the computer hardware that supports it."

45.

On Friday, May 7, 2010, the Board conducted a special meeting in New Orleans, Louisiana. According to the Minutes of that meeting, Mr. Barry Ogden, Executive Director of the Board "brought the Board's attention to the financial statements for the nine month period ending March 31, 2010. He explained that the Board currently had an unprecedented eight formal proceedings against licensees and that those proceedings had driven up the Board's legal and investigative fees."

BRIAN BEGUE

46.

Defendant Ogden appointed Brian Begue, an attorney who serves on the staff of the Board to act as "independent counsel" for the Committee during the hearings for Dr. Haygood.

47.

The duties of independent counsel are carefully defined by statute so as to allow the Board the benefit of legal counsel on evidentiary and procedural issues but to remain entirely neutral so as to avoid conflict of interest in acting as counsel both in an adjudicatory role and a prosecutorial role. Specifically, La. C. 46-923(D) states as follows:

> "During and before adjudication hearing, the chairman shall rule upon evidentiary objections and other procedural

> questions, but in his discretion may consult with the entire hearing panel in executive session. At any time, the hearing panel may be assisted by legal counsel retained by the Board for such purpose, who is independent of complaint counsel and who has not participated in the investigation or prosecution of the case. If the Board or hearing panel is attended by such counsel, the chairman may delegate to such counsel ruling on evidentiary objections and other procedural issues raised during the hearing."

48.

As defendant Ogden was well aware at the time he appointed Mr. Begue as "independent counsel", Mr. Begue had already "participated in the investigation or prosecution of the case" against Haygood.

49.

Moreover, despite the limitation placed on Mr. Begue by statute, during the hearings pertaining to Dr. Haygood, Begue repeatedly disregarded this role and interjected himself into the hearing as an additional “prosecutor” by cross examining witnesses, providing supportive information to complaint counsel, providing and suggesting objections to complaint counsel and openly questioning the testimony of Dr. Haygood.

50.

Neither the Board members present at the hearing nor the prosecuting attorney acting on behalf of the Board did anything to discourage Begue's conduct.

51.

This impermissible confusion of the roles of the Committee as both adjudicators and prosecutor undermined whatever remaining integrity there were to these proceedings and led to the Fourth Circuit's ruling holding that "...the Board improperly combined the prosecutorial and judicial functions by allowing its general counsel, Mr. Brian Begue, to serve as the prosecutor, general counsel, panel member, and adjudicator for the proceedings against Dr. Haygood. We hold this conduct is violative of the Louisiana Administrative Procedure Act and Dr. Haygood's due process right to a neutral adjudicator and a fair hearing. We find the Louisiana State Board of Dentistry's decision to revoke Dr. C. Ryan Haygood's dental license is arbitrary and capricious.."

DR. ROBERT HILL

52.

Robert Hill has been a Louisiana dentist for the past 19 years, and is a principal in Hill D.D.S., Inc. The activities of Dr. Hill complained of were performed on behalf of Hill D.D.S., Inc.

53.

Beginning with the opening of Dr. Haygood's dental practices in Shreveport and Bossier in December, 2005, Dr. Haygood and Dr. Hill became direct, primary competitors in the professional practice of dentistry in the greater Shreveport/Bossier community. Their professional limited liability companies are also direct, primary competitors.

54.

Three of the four initial complaints filed with the Board against Dr. Haygood all stem from patients of Dr. Hill, and Plaintiffs believe that Dr. Hill encouraged the filing of these complaints. Dr. Hill knew at least one of these patients personally. Additionally, he has admitted to assisting these patients in drafting their complaints, to the extent of reviewing letters and violating HIPAA by taking a complaint letter from one patient's chart and showing it to at least one other patient for use as an example.

55.

When deposed during the Board proceedings, he could provide no explanation for his actions.

56.

When asked to provide patient records to the Board, Dr. Hill voluntarily forwarded correspondence to Camp Morrison listing his own opinions regarding the treatment these patients received from Dr. Haygood.

DR. ROSS H. DIES

57.

Ross Dies has been a Louisiana dentist for the past 25 years, and is a principal in Shreveport-Bossier Family Dental Care, LLC. The activities Dr. Dies complained of were performed on behalf of Shreveport-Bossier Family Dental Care, LLC.

58.

Beginning with the opening of Dr. Haygood's dental practices in Shreveport and Bossier in December, 2005, Dr. Haygood and Dr. Dies became direct, primary competitors in the professional practice of dentistry in the greater Shreveport/Bossier community. Their professional limited liability companies are also direct, primary competitors.

59.

At all times pertinent hereto, Dr. Dies had developed a strong personal dislike and profound animosity toward Dr. Haygood, expressing that opinion to others both in and out of the dental profession.

60.

Plaintiffs allege that C. Barry Ogden and H.O Blackwood communicated with Camp Morrison and Dr. Ross Dies throughout the investigation and adjudication proceeding in an effort to assist in

removing Dr. Haygood as a competitor in the practice of dentistry in the State of Louisiana.

61.

No later than June 7, 2007, Ogden and Morrison designated defendant Dr. Ross Dies as their "expert", and forwarded medical records to him, ostensibly for a neutral and independent evaluation of "complaints", the vast majority of which were apparently unsupported by written, sworn complaint from patients.

62.

The Board was well aware that Dr. Dies was a direct competitor with Dr. Haygood and in fact, Camp Morrison later described Dies' relationship with Dr. Haygood as that of an "antagonistic" competitor. However, Morrison has characterized Dies as the “obvious choice” for use as the Board’s expert.

63.

When Barry Ogden and Camp Morrison communicated with Dr. Dies and sought his assistance as an "expert" they admonished him that "all this must be held in strictest confidence". Further, Morrison assured him that there was no risk to his participation in the scheme, guaranteeing that he would "receive the benefit of immunity as you will be acting on behalf of the LSBD and hence be an agent of the State."

64.

Though Dr. Dies understood that his evaluations would be used as evidence against Dr. Haygood, his evaluations are studded with inaccuracies, falsehoods, exaggerations and improper assumptions. These evaluations were introduced as evidence in the proceedings by the conspirators against Dr. Haygood conducted on September 24-25, 2010 and October 22-23, 2010, and Dr. Haygood knowingly provided those evaluations for that very purpose.

65.

In July 2007, Dr. Dies, purporting to act as an "independent expert," submitted written evaluations of the records of patients which were the subject of the investigation all of which found the treatment and professional actions of Dr. Haygood to be improper. Dr. Dies was neither an expert in periodontal dentistry nor was he independent, as both the Board and his co-conspirators were well aware.

66.

In March, 2010, Dr. Dies hired one of these two hygienists, Wendy Green, despite the pending charges against her and his role as Board "expert" in the charges against Dr. Haygood.

67.

Dr. Dies was fully aware of the pending charges against Ms. Green and began talking to her about the

pending investigations prior to her interview with his dental office. Green was ultimately hired, but before she worked her first day at the office, Dr. Dies approached Green and offered her immunity on behalf of the Board for changing her testimony and testifying against Dr. Haygood. During the same conversation, Dr. Dies freely spoke of his "hate" for Haygood.

68.

Despite their impropriety, Dies' actions on behalf of the Board were apparently authorized or at least were subsequently ratified by a phone call made within 24 hours by a Board representative to Green's attorney relating that a "deal" could be arranged with Green for immunity in exchange for "cooperation", in the form of testimony against Dr. Haygood.

69.

While employed with Dr. Dies, Green also interacted with Dr. Dies' partner, Dr. Cody Cowen, who professed knowledge of the supposedly confidential proceedings against Haygood and Haygood's patients. Dr. Cowen and Dr. Dies made frequent reference to "our friends at the Board" when talking with Green.

70.

Subsequently, Green left Dies' practice for employment with Dr. Paul Heilman, whereupon Dr. Dies contacted Heilman and asked him to "probe around about Haygood". Ultimately, Green was

unwilling to testify to the Board's satisfaction and the Board continued to pursue claims against her to completion.

71.

Also in late 2008 Dr. Ross Dies, who was simultaneously participating in the "investigation," began surreptitiously seeking to purchase Dr. Haygood's dental practice. Dr. Haygood determined to enlist the services of a business broker for a possible sale of his dental practice, a step which was fostered by the burden of the investigation and the cost incurred in connection therewith. Dr. Dies surreptitiously communicated with the business broker hired by Dr. Haygood for this purpose and, making representations that he was interested in purchasing that practice, obtained highly confidential financial information pertaining to Dr. Haygood's medical practice.

72.

Whatever the value of Dr. Dies' opinions might have been, the Board belatedly recognized his antagonistic relationship with Dr. Haygood and his obvious bias. Accordingly, the Board submitted the patient records, many of which were still apparently unsupported by sworn complaints, to Dr. Donald Harris, a dentist in New Iberia.

73.

Although the Board is to be credited for its belated recognition of Dies' obvious bias, remarkably it continued to allow the proceedings to be tainted with that antagonism and bias as a result of: (i) sending Dies' findings to Harris in an effort to influence Harris' opinion; (ii) actually utilizing the testimony of Dr. Dies at the final trial of this matter as an "expert" (in addition to Dr. Harris); and (iii) as set forth hereinbelow, permitting Dr. Dies to continue to participate in the "investigation" in various roles that far surpass any proper authority with which he might otherwise have been vested.

74.

At some point following November 2010, Linda Anderson, a purported former patient of Dr. Dies, informed him that she had filed complaints against Dr. Haygood. Though Dr. Dies' participation in the investigation of Dr. Haygood had supposedly concluded long before this date, he asked for copies of the complaints, and Ms. Anderson's husband delivered three letters addressed to C. Barry Ogden (dated August 23, 2010, October 1, 2010, and November 27, 2010) to Dr. Dies the next day. Dr. Dies has retained copies of these letters.

75.

Dr. Dies' telephone records indicate that he continued to communicate with Camp Morrison through at least October 2011, which

communications, in information and belief, were in furtherance of the conspiracy.

76.

Dr. Dies' telephone records indicate that he continued to communicate with Dr. H.O. Blackwood through at least October 2010.

CAMP MORRISON

77.

In or about September 2007, apparently not satisfied with the evidence compiled to date, Camp Morrison and Board Member Dr. Conrad McVea developed a scheme which involved Morrison's employment of Karen Moorhead and Dana Glorioso to act as unlicensed investigators, retained to pose as patients and to present Dr. Haygood's office with false medical histories and symptoms.

78.

Mr. Morrison, who is a licensed private investigator under the laws of the State of Louisiana, was well aware that this scheme is expressly prohibited under Louisiana law (La. R.S. 37:3520)

79.

Notably, both Moorhead and Glorioso were dental assistants who worked with former and current Board members. With the knowledge and consent of Dr. McVea and Board prosecutor Thomas Arceneaux, Morrison contacted their employers, Dr. White Graves

and Dr. Louis Joseph, regarding the presentation of these dental assistants under fraudulent pretenses. Both Graves and Joseph provided dental care to their assistants, and had misdiagnosed these patients. This placed the hygienists in the position of either testifying adversely against Haygood or admitting misdiagnosis by their own employers. These witnesses, like others involved in the investigation, were not only acting in contravention to Louisiana law but also hopelessly compromised by their role on behalf of the prosecution of the case.

80.

Dana Glorioso and Karen Morehead are both experienced dental assistants. Likewise, Camp Morrison is a licensed private investigator with extensive experience who has provided investigative services to the Louisiana State Board of Dentistry for several years. As such, Glorioso, Morehead, and Morrison all knew or should have known of the nature and the significance of investigations conducted by the Louisiana State Board of Dentistry ("Board") and of the proceedings of the Board against its licensees. Specifically, they all knew or should have known of the devastating effects adverse investigatory findings and/or procedural decisions could have on the subject of such investigations and proceedings.

81.

Morrison, who had been asked by the Board to find two appropriate candidates "for an undercover

operation into the dental offices of Dr. Haygood in Shreveport," chose Glorioso and Moorhead, and instructed them to deceive Dr. Haygood's office by using fake names as part of their "undercover operation." Morrison has testified that, though he knew that neither was a licensed private investigator, he retained Glorioso and Moorhead as contract employees of Camp Morrison Investigations. Glorioso and Moorhead readily agreed to act as private investigators for Morrison, who retained them to falsely present themselves as patients to Dr. Haygood, and both received payment from Morrison for their illegal service as his employees.

82.

Glorioso, Morehead, and Morrison knowingly and intentionally agreed to act in concert with the other defendants named in Plaintiffs' original Petition for Damages to illegally ensure that the investigation produced false evidence of misconduct on Dr. Haygood's part so that the proceedings of the Board would result in adverse findings against Dr. Haygood.

83.

Their illegal acts include the intentional violation of La. R.S. 37:3520. That provision states in pertinent part: A. It shall be unlawful for any person knowingly to commit any of the following acts: (1) Provide contract or private investigator service without possessing a valid license. (2) Employ an individual to perform the duties of a private

investigator who is not the holder of a valid registration card. (3) Designate an individual as other than than a private investigator to circumvent the requirements of this Chapter. Morrison's actions are a violation of La. R.S. 37:3520(A)(2) and (3), and Glorioso and Morehead's acts constitute a violation of La. R.S. 37:3520(A)(1). The acts are felonies.

84.

La. R.S. 37:3721 states that no person shall engage in the business of providing private investigation they do in accord with the rules and regulations of the Board under the Revised Statutes. Whoever violates the provisions of the chapter licensing private investigators within the Revised Statutes, "shall be fined not less than $1,000.00, no more than $500.00 or imprisoned for not less than three (3) months, no more than one year or both." Hence, Morrison, Glorioso, and Moorehead engaged in criminal activity on behalf of the Board when investigating Dr. Haygood.

85.

By using the "evidence" obtained by Morrison, Glorioso, and Moorehead, the Board encouraged their violation of La. R.S. 37:3520.

86.

In addition to the foregoing, due to their experience, Morrison, Glorioso, and Moorehead knew or should have known of the strictly confidential

manner in which investigations and proceedings of the Board should be conducted, and yet all knowingly participated in and contributed to conversations with their co-conspirators that breached the confidentiality of the investigations and proceedings.

87.

Finally, Plaintiffs show that Glorioso and Morehead went beyond violating La. R.S. 37:3520 in their participation in the investigation of Dr. Haygood, and actually took the initiative to fabricate false symptoms and dental histories to present to Dr. Haygood. Both have confirmed that, upon reporting to Dr. Haygood for the examinations coordinated by Camp Morrison, they intentionally presented false symptoms and histories, despite the fact that they had not been instructed to do so, and the fact that, as dental assistants, both knew or should have known the significance of an accurate presentation of symptoms in a dentist's rendering of an correct diagnosis. Plainly, both intended to skew Dr. Haygood's examination in order to obtain "evidence" that the Board could use against him.

88.

Glorioso, specifically, reported to Dr. Haygood that she had not seen a dentist in five years, and that she suffered from bleeding from her gums with brushing and flossing her teeth. Morehead went even further in her efforts to obtain damning evidence to be used against Dr. Haygood, presenting false symptoms

including bleeding of the gums, pain, and sensitivity, and lying about the frequency with which she brushed and flossed her teeth. In fact, Morehead has since admitted that virtually every aspect of her dental history and symptoms, as presented to Dr. Haygood, was false.

89.

Significantly, neither Glorioso nor Morehead presented false symptoms to any of the other dentists who examined them during the course of the investigation of Dr. Haygood. Clearly, both acted with the intention of obtaining false "evidence" to be used against Dr. Haygood.

90.

In addition to the foregoing, Morehead gave contradictory testimony regarding the treatment she received by Dr. Haygood and the statements made to her at his office throughout the course of the proceedings against Dr. Haygood. For instance, in a written account provided to the Board after her examination with Dr. Haygood, she indicated that she received a negative response when she asked whether she would lose her teeth. When questioned later, however, Morehead testified to the effect that she was told by Dr. Haygood's staff that she would need dentures.

91.

As a result of the foregoing criminal acts, breaches of confidentiality, and false and defamatory statements made by Morrison, Morehead, and Glorioso, acting in concert with the other named co-defendants, Dr. Hayood and Haygood Dental Care, LLC have been damaged, incurring financial loss, reputational loss and substantial general damages of embarrassment, humiliation, and worry. Dr. Haygood has been deprived of the opportunity to practice dentistry in his home town in the State of Louisiana, perhaps permanently as a result of these intentional and malicious acts.

CONSPIRACY

92.

In late 2006 or early 2007, the named Defendants, along with Dr. Conrad P. McVea, III, Dr. H.O. Blackwood, Dr. Johnny Black, Dr. Tom Colquitt, Dr. Jon Stewart, and perhaps others, conspired with the object to damage Dr. Haygood and his practice and to exclude Plaintiffs from the Louisiana dental services market through, inter alia, the initiation and conduction of sham peer review proceedings that did not conform to statutory or constitutional requirements and resulted in the unlawful revocation of his dental license. None of these parties has withdrawn from or dissociated from the conspiracy, which, based on information and belief, continues to the present date.

CAUSES OF ACTION

Count 1: Antitrust Violations

93.

Defendants, acting individually and in concert, aiding and abetting one another, and in conspiracy with one another, combined to exclude Plaintiffs from the practice of dentistry in the Shreveport-Bossier metropolitan area (the relevant geographical market) by means of the improper conduct described above. Plaintiffs were proximately injured as a result of defendants' conduct, which damage constitutes antitrust injury, through the elimination of a competitor by means other than the economic freedom of participants in a relevant market.

94.

The unreasonable exclusion of Plaintiffs from the relevant through adverse and unfair peer review proceedings and other misconduct described above, affects patient choice and concomitantly interferes with competition in the marketplace. The foregoing conduct constitutes both per se violations of the Unitrust laws and violates the "rule of reason analysis" as well.

95.

Plaintiffs allege that the defendants and their co-conspirators on the Louisiana Board of Dentistry knowingly engaged in conduct which violated 15 U.S.C. §1 and §2 by conspiring with the intent to

exclude Plaintiffs from the Louisiana dental services market through the initiation and conduction of sham peer review proceedings that did not conform to statutory requirements and resulted in the revocation of his dental license. The results of the peer review processes are a matter of public record, and serve to affect dentists' employment opportunities not only in Louisiana but also throughout the United States. In addition, the reduction of the provision of dental services in the Shreveport-Bossier area substantially affects interstate commerce because dentists practicing in that market routinely serve nonresident patients (particularly residents of Texas and Arkansas) and receive reimbursement from Medicare and Medicaid. Finally, elimination of dentists from the market undoubtedly results in higher costs and reduced treatment options for consumers in a market that suffers from some of the highest rates of natural tooth loss in the United States.

Count 2: 28 U.S.C. 1983 Claims for Deprivation of Rights, Privileges, and Immunities Guaranteed under Federal Law and the United States Constitution

96.

The defendants, acting individually and in conspiracy with one another, acting under color of state law, deprived and denied Plaintiffs of their constitutional and/or statutory rights.

97.

Dr. Haygood and Haygood Dental Care, LLC allege that by virtue of Defendants' participation in highly irregular and unlawful actions in connection with the investigation, prosecution and adjudication of decisions by the Louisiana State Board of Dentistry in "Re: Ryan Haygood, DDS, License No. 5334", defendants knowingly and intentionally, or with reckless disregard for the truth, deprived Dr. Haygood of his right to a fair and impartial hearing; presented knowingly false or exaggerated claims; provided evidence obtained through unlawful means; and took other actions which deprived Dr. Haygood of the right and privilege to conduct his livelihood as a licensed dentist in the State of Louisiana.

98.

Plaintiffs further allege that Defendants' institution of prosecution of Plaintiffs was motivated by (i) actual and implied malice; (ii) improper competitive considerations and; (iii) of financial considerations to permit the Board to make recoveries of fines.

99.

Plaintiffs allege that Defendants, acting with and obtaining significant aid from their co-conspirators on the Louisiana Board of Dentistry, knowingly engaged in conduct which deprived Dr. Haygood of due process under Amendment XIV of the United States Constitution. Plaintiffs seek damages

under 42 U.S.C. 1983 for these constitutional violations.

100.

Plaintiffs allege that defendants, acting with and obtaining significant aid from their co-conspirators on the Louisiana Board of Dentistry, knowingly and in bad faith, instituted sham proceedings against Plaintiffs, without probable cause, with the intent to deprive Dr. Haygood of his dental license. Plaintiffs seek damages under 42 U.S.C. 1983 and Louisiana law for these constitutional violations.

101.

As a result of the foregoing, Dr. Haygood and Haygood Dental Care, LLC have been damaged, incurring financial loss, reputational loss and substantial general damages of embarrassment, humiliation, and worry. Dr. Haygood has been deprived of the opportunity to practice dentistry in his home town in the State of Louisiana, perhaps permanently, as a result of these intentional and malicious acts.

Count 3: Defamation

102.

Plaintiffs re-allege and incorporate by this reference all allegations set forth above in paragraphs 14-90.

103.

Dr. Haygood and Haygood Dental Care, LLC allege that the Defendants violated Louisiana state law by acting in concert to proliferate malicious and non-privileged communications, both for initial publication and foreseeable republication, which communications were designed to cause harm to Haygood in the dental profession and among his friends, colleagues and patients, actual and potential.

Count 4: Louisiana Unfair Trade Practices Act Violations

104.

Plaintiffs re-allege and incorporate by this reference all allegations set forth above in paragraphs 14-91.

105.

Plaintiffs allege that Defendants' conduct constitutes a violation of the Louisiana Unfair Trade Practices Act, La. R.S. 51:1409, et seq.

106.

Plaintiffs seek a trial by jury on all issues herein.

WHEREFORE PLAINTIFFS Ryan Haygood, DDS and Haygood Dental Care, LLC pray that after due proceedings are had herein that plaintiffs be awarded such damages as they shall show themselves justly entitled, both general and special, and an award of attorney's fees, interest and such other relief as the

court shall deem appropriate under the circumstances.

Respectfully submitted,
BY: ***s/Jerald R. Harper***
JERALD R. HARPER
Louisiana State Bar No. 6585
HARPER LAW FIRM
(A Professional Law Corporation)
213 Texas Street
Shreveport, Louisiana 71101
(318) 213-8800 (telephone)
(318) 213-8804 (facsimile)
harper@harperfirm.com (e-mail)

And

AMBER H. WATT
Louisiana State Bar No.29916
HARPER LAW FIRM
(A Professional Law Corporation)
213 Texas Street
Shreveport, Louisiana 71101
(318) 213-8800 (telephone)
(318) 213-8804 (facsimile)
amber@harperfirm.com (e-mail)
ATTORNEYS FOR PLAINTIFFS RYAN HAYGOOD, DDS AND HAYGOOD DENTAL CARE, LLC