IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

JASON BAEZ
Plaintiff,

v.

RICKY DIXON, in his official capacity as Secretary of the Florida Department of Corrections,

Defendant.

Case No. 2025 CA 000811

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

The Florida Department of Corrections violated Plaintiff Jason Baez's right to due process by seizing all the funds in his inmate trust account to satisfy a cost of incarceration lien without following the judicially-prescribed lien-enforcement procedures or providing him notice and an opportunity to be heard. And by relying solely on an administrative procedure for this seizure, the Department unlawfully encroached on the judiciary's exclusive role to enforce civil judgment liens. Plaintiff has stated claims for relief warranting judicial review, and because he challenges Defendant's unlawful method of enforcement rather than the validity of the cost-of-incarceration statute itself or its application against Mr. Baez, Rule 1.071's notice provision does not apply. Finally, given a split among Florida's appellate courts regarding the viability of a statutory-violation claim, Plaintiff asserts that claim here solely to preserve it for appellate review. The Court should deny the Secretary's motion to dismiss.

SUMMARY OF KEY ALLEGATIONS

In July 2024, after Plaintiff settled a federal civil rights lawsuit against Defendant for its officers' use of excessive force, and other individuals for their failure to render appropriate medical care, Defendant filed a motion to impose a civil restitution lien against Mr. Baez in the state criminal court that sentenced him in 2006. Am. Compl., ¶¶ 8, 12. Defendant sought liquidated damages in the amount of $50 per day for each day of Plaintiff's 30-year sentence, totaling $547,850. *Id.* The trial court granted Defendant's motion the same day. *Id.*, ¶ 9. Mr. Baez challenged the imposition of the lien, seeking rehearing and raising several constitutional challenges. *Id.*, ¶ 10. The sentencing court denied the motion and imposed the lien, the appeal of which is pending. *Id.*, ¶ 11. Plaintiff also has a pending challenge in federal district court, alleging that imposition of the lien violates the Supremacy Clause of the United States Constitution because it destroys the compensatory and deterrent purposes of his federal civil rights settlement. *See* Secretary's Unopposed Motion for Judicial Notice, Ex. 1, § 30.

On February 12, 2025, Defendant, without following any judicial enforcement procedures, and without providing notice and an opportunity to be heard, used an administrative process to seize all the money in Plaintiff's inmate trust account—$320,490.64, including the money that the State of Florida paid to settle Plaintiff Baez's federal civil rights claims about FDC officers' use of excessive force against him. Am. Compl., ¶¶ 15, 17, 20-22. Plaintiff did not learn that Defendant had emptied his trust account until he received his monthly statement nearly three weeks after the seizure. *Id.*, § 21.

In this action, Plaintiff does not challenge imposition of the cost of incarceration lien against him, but rather contends that Defendant violated his right to due process both by failing to provide him with notice and an opportunity to be heard before enforcing the lien, and by failing to follow the judicially prescribed lien-enforcement procedures that guarantee due

process. Am. Compl., ¶¶ 24-34. He further contends that Defendant's enforcement of the lien through only an administrative procedure unlawfully encroaches on the purview of the judiciary. Am. Compl., ¶¶ 35-39. Plaintiff seeks a declaration that enforcement of the lien through an administrative process is both a due process violation and a separation of powers violation. Am. Compl., ¶¶ 34, 38-39.

LEGAL STANDARD

When evaluating a motion to dismiss for failure to state a claim, a court presumes the allegations in the complaint are true, "and all reasonable inferences arising therefrom are allowed in favor of the plaintiff." *Ralph v. City of Daytona Beach*, 471 So. 2d 1, 2 (Fla. 1983). "A motion to dismiss is designed to test the legal sufficiency of the complaint, not to determine factual issues." *The Fla. Bar v. Greene*, 926 So. 2d 1195, 1199 (Fla. 2006). Thus, review is confined to the four corners of the complaint. *Newberry Square Fla. Laundromat v. Jim's Coin Laundry & Dry Cleaners, Inc.*, 296 So. 3d 584, 589 (Fla. 1st DCA 2020).

ARGUMENT

I. Plaintiff's Claims Do Not Trigger the Rule 1.071/§ 86.091 Notice Requirement.

Defendant asserts that Plaintiff's Due Process claim (Count I) should be dismissed for failure to meet the notice requirements under Florida Rule of Civil Procedure 1.071 and Fla. Stat. § 86.091 before filing suit. Mot. to Dismiss Am. Compl., pp. 7-9. But those provisions apply only where a party challenges the constitutionality of a statute, either facially or as applied. Here, there is no dispute that the civil restitution lien statutes (Fla. Stat. §§ 960.29 *et al.*) are facially valid or that Defendant could lawfully apply them against Plaintiff. Instead, Plaintiff alleges that in enforcing these statutes against Mr. Baez, Defendant violated his right to due process by 1) failing to provide notice and an opportunity to be heard; and 2) ignoring the required judicial lien

enforcement procedures before seizing his funds to satisfy a lien. Defendant claims that an administrative procedure allowed it to bypass judicial lien enforcement procedures. *See* Mot. to Dismiss Am. Compl., p. 13 (citing Fla. Admin. Code R. 33-203.201 in support of its assertion that FDC can set-off inmate trust accounts). By invoking only an administrative rule,[1] FDC effectively concedes it bypassed the lien statute entirely and provided no notice or hearing—the very safeguards Plaintiff claims were denied—before emptying his trust account.

And because Plaintiff's due process claim rests on Defendant acting outside both the constitutional floor and statutory process for lien enforcement, it cannot reasonably be construed as a challenge to the constitutionality of a statute—facial, as applied, or otherwise. A ruling in Plaintiff's favor would simply enforce the statute's judicial process requirement, not strike down any portion of the law. *See Lee Mem'l Health Sys. v. Progressive Select Ins. Co.*, 260 So. 3d 1038, 1042 (Fla. 2018) (failure to comply with rule "bars consideration of a claim that would result in the striking of a state statute as unconstitutional.").

Rule 1.071 and Fla. Stat. § 86.091 are therefore inapplicable, and the cases Defendant cites are inapposite.

Even if this Court finds that notice is required, Plaintiff cured any purported defect by serving a Rule 1.071 notice on October 2, 2025. Because this case remains at the motion to dismiss phase, there is still sufficient time for the State to participate in the proceedings should it choose to do so. *Cf. Lee Mem'l Health Sys.*, 260 So. 3d 1038 at 1042 (Fla. 2018) (holding that notice served after the summary judgment hearing was too late to cure any defect because the State was not provided with a sufficient opportunity to participate).

[1] FDC does cite to Fla. Stat. § 944.516, but that statute simply governs how FDC can manage trust accounts and does not speak to set-off.

II. Plaintiff States a Claim for Violation of Procedural Due Process

a. Defendant failed to provide the due process baseline of notice and an opportunity to be heard.

Plaintiff's first due process argument is straightforward: By seizing the funds in his trust account without providing notice and an opportunity to be heard, FDC violated his right to due process. "Procedural due process requires both reasonable notice and a meaningful opportunity to be heard." *N.C. v. Anderson*, 882 So. 2d 990, 993 (Fla. 2004). The notice must "afford them an opportunity to present their objections . . . and it must afford a reasonable time for those interested to make their appearance.'" *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)). In evaluating a due process claim, courts must first determine whether a party "has been deprived of a constitutionally protected liberty or property interest. Absent such a deprivation, there can be no denial of due process." *Joshua v. City of Gainesville*, 768 So. 2d 432, 438 (Fla. 2000).

Here, there is no question that Plaintiff "has a protected property interest in the funds contained his inmate trust account and [] cannot be deprived of that process without due process of law." *McLeod v. Henderson*, No. 8:98-CV-2490-T-17, 2000 WL 141249, at *2 (M.D. Fla. Jan. 31, 2000); *see also Watkins v. Israel*, 661 F. App'x 608, 609 (11th Cir. 2016) ("An inmate has a property interest in most money in his inmate trust account."). The only question is whether Defendant gave Plaintiff the most basic protections—a timely and meaningful opportunity to object—before seizing his funds. Defendant did not.

Defendant counters that Plaintiff was not entitled to notice and a hearing because the lien "is akin to a bank set-off," and, even if Plaintiff were entitled to any process, he received it when the lien was imposed. Mot. to Dismiss Am. Compl. at p. 12-13. But Defendant's set-off

arguments are inapplicable, and the (questionable) notice Defendant provided in a separate proceeding does not cure the lack of notice here.

i. FDC's "Bank Setoff" Analogy Fails: Inmate Trust Accounts Are Protected Property.

Defendant's "bank set-off" argument fails because FDC does not operate as a bank in administering the funds in inmate trust accounts. "When a customer deposits funds into his bank account, the bank takes title to the money, and it owes a debt to its customer for the deposit amount." *In re Dorand*, 95 F.4th 1355, 1365 (11th Cir. 2024); *see also Collins v. State*, 33 Fla. 429, 15 So. 214 (Fla. 1894) ("General deposits in a commercial bank . . . transfer[] the ownership of the money to the bank, and the relationship . . . between the bank and the depositor, is simply that of debtor and creditor at common law."). Conversely, when incarcerated individuals deposit money into their trust accounts, FDC "accept[s] and administer[s] as a trust any money or other property received for the personal use or benefit of any inmate." Fla. Stat. § 944.516(1)(a). Thus, while a bank becomes a debtor to its depositor, FDC acts as trustee. This distinction makes set offs inapplicable here because "[m]utuality for the purposes of an offset requires that each party owe the other a debt. . . ." *State, Dep't of Fin. Servs. v. Branch Banking & Tr. Co.*, 40 So. 3d 829, 834 (Fla. 1st DCA 2010).

The cases Defendant cites not only illustrate this point but defeat FDC's argument. For example, in *Everglade Cypress Co. v. Tunnicliffe*, 107 Fla. 675, 679-80 (1933), the Florida Supreme Court expressly stated that "set-off . . . is never warranted against a trust or special fund." This is because "[t]he very essence of and basis for set-off is mutuality of claims." *Id.* at 678.

And in *Coyle*, unlike here, the parties had the required mutuality of claims. Pan American Bank owed its depositor (Shores Corporation) $55,000 on an account, while Shores

simultaneously owed the bank on an $80,000 loan in default—creating mutual debts and permitting setoff. When a third-party judgment creditor (Coyle) later garnished the account, the courts upheld the bank's prior right of set-off due to this debt mutuality. *Coyle v. Pan Am. Bank of Miami*, 377 So. 2d 213, 215–17 (Fla. 3d DCA 1979).

In addition to reaffirming that set-off applies only in the context of mutuality of debts, these cases also reinforce the principle that creditors must use judicial process to enforce debts, and that courts decide debt priority and protect due process before funds can be collected. In *Coyle*, 377 So. 2d at 215, the judgment creditor filed a writ of garnishment, while in *Everglade Cypress Co*., 107 Fla. at 676, a depositor filed a suit in a court of equity to assert a preferred claim. In neither case did a bank simply reach into the account of a depositor and seize money without court sign-off. That is exactly what Defendant did here.

Defendant's invocation of Fla. Admin. Code R. 33-203.201 fares no better as a basis for any set-off right. While true that the rule states FDC can pay "[a]ny cost judgment or other monetary judgment, order, or sanction imposed against an inmate" by "offsetting the amount of the judgment or monetary order or sanction against the inmate's funds in his or her inmate trust account . . ." the cost judgments referred to are narrowly defined and do not include cost of incarceration lien judgments.

Specifically, FDC can offset only: 1) "a cost judgment entered by a state or federal court against the inmate in a civil or criminal action **brought by the inmate**"; 2) "a cost judgment entered by a state or federal court against the inmate in an appeal of a civil or criminal action **brought by the inmate**"; or 3) "any other monetary judgment, order, or sanction imposed by a court against the inmate." Fla. Admin. Code R. 33-203.201(9)(a)-(c) (emphasis added).

A cost of incarceration lien clearly does not fall into either of the first two buckets. Nor does it fall into the third bucket because by statute it constitutes only "a lien upon any real or personal property of the convicted offender," not a "monetary judgment." Fla. Stat. § 960.294(1); Fla. Admin. Code R. 33-203.201(9)(c). And though the statute provides that the lien arises through the entry of an "order," that order is purely administrative in function: it establishes the State's lien interest but does not itself impose a monetary obligation on the incarcerated person. Section 33-203.201(9)(c)'s reference to a "monetary judgment, order, or sanction" contemplates an order that *requires payment*, e.g., an order assessing costs, restitution, or sanctions directly against the incarcerated person. By contrast, a cost of incarceration lien order merely authorizes the State to pursue collection through separate civil enforcement mechanisms.

Indeed, § 960.294(2) makes clear that a civil restitution lien order "may be enforced in the same manner as a judgment in a civil action," underscoring that the lien is not itself a judgment or enforceable money order. If it were, there would be no need for the statute to direct enforcement "in the same manner" as a civil judgment. Instead, the State must invoke the judicial processes available to any civil judgment creditor—levy, garnishment, foreclosure, or execution—to give the lien effect. *See Ilkanic v. City of Fort Lauderdale*, 705 So. 2d 1371, 1373(Fla. 1998) (enforcement of cost of incarceration liens must be "in the same manner as a judgment in a civil action").

Even assuming a civil restitution lien were a "monetary judgment" or "order," Defendant still failed to provide adequate process by failing to comply with the procedural framework of the rule itself. Specifically, *before* offsetting, the rule requires that the attorney representing the state file a true copy of the monetary order along with a letter certifying enumerated information with FDC's Office of General Counsel. Fla. Admin. Code R. 33-203.201(10)(a)(1-4). The Office

of General Counsel must transmit the letter and a copy of the judgment to the Bureau of Finance and Accounting, which then withdraws funds from the trust account. Fla. Admin. Code R. 33-203.201(b)-(c). Even assuming this procedure was appropriate, FDC has made no assertion—and the First Amended Complaint makes no claim—that it followed this protocol. Its failure to use either judicial mechanisms or its own rule-mandated process underscores the due process violation.

ii. Notice of Lien Imposition is Not Notice of Lien Enforcement.

Defendant's argument disputing Plaintiff's entitlement to notice and an opportunity to be heard before seizure of his funds, and its claim that it provided Plaintiff sufficient process, are both mistaken. Mot. to Dismiss Am. Compl. at p. 13, 16-17. In advancing these arguments, Defendant erroneously conflates two distinct stages: imposition of a cost-of-incarceration lien, where liability merely attaches; and enforcement, where the actual deprivation of property occurs. Defendant's notice of the former does not satisfy due process for the latter.

This state's highest court and the plain text of Fla. Stat. § 960.294 confirm this distinction. In *Ilkanic,* , the Florida Supreme Court held that *imposition* of a cost of incarceration lien without an ability-to-pay determination did not violate procedural due process because the deprivation had not yet occurred and procedural safeguards would come later in the process. 705 So. 2d at 1373 ("Should the city seek to impose the lien against Ilkanic's property, he retains the same protections afforded to any civil judgment debtor."). In other words, collection is separate from imposition and due process protections attach at the collection stage.

Again, Defendant relies on a case—*Shinault v. Hawks*, 782 F. 3d 1053 (9th Cir. 2015)—that undermines rather than supports its argument. There, before freezing or seizing any of Mr. Shinault's funds, the Oregon Department of Corrections (ODOC) issued an order requiring

payment of his cost of incarceration. *Id.* at 1056. That order advised Mr. Shinault of his right to contest the obligation through a hearing. *Id.* But before that hearing, ODOC froze Mr. Shinault's access to his funds. The Ninth Circuit held this violated due process because a hearing must precede deprivation:

> [T]he integrity of Oregon's prison system does not diminish if a hearing precedes a freeze of inmate assets, particularly because the funds in fact remain in the State's control. Nor does the financial viability of the correctional system require immediate recoupment of inmate costs given their insignificance in relation to ODOC's overall budget.

Id. at 1058.

Here, with even fewer pre-deprivation procedures, Defendant similarly violated Plaintiff's due process rights. In *Shinault*, ODOC at least "satisfied the notice component" through its order issued a few days before freezing Mr. Shinault's funds. *Id*. at 1059. In contrast, Plaintiff had no advance notice of the financial liability because Defendant moved in the sentencing court to impose the lien, and the court granted the motion the same day. Am. Compl. ¶¶ 8-9. And, analogous to ODOC's failure to provide Mr. Shinault a pre-deprivation hearing before freezing his funds, the sentencing court's immediate entry of a lien against Plaintiff also effectively denied him access to his funds before he could meaningfully object.

Plaintiff was only able to file objections in the sentencing court after he received the order imposing the lien more than a week after it was entered. Am. Compl., ¶ 10. Then he had to wait five months to receive a hearing, during which time Defendant had already frozen Plaintiff's access to his trust account. But even that hearing provided Plaintiff no meaningful due process because the sentencing court refused to consider his constitutional challenges under *Fla. Dep't of Corr. v. O'Neal*, 398 So. 3d 1100, 1103

(Fla. 2d DCA 2024) ("entry of [a cost of incarceration] lien is a ministerial duty."). And before the court had issued its final order, Defendant had already seized Plaintiff's funds. Am. Compl., ¶15.

Thus, even if it were permissible to collect on a lien based solely on imposition procedures, a hearing held five months after the lien was imposed and Plaintiff lost access to his funds cannot be said to occur at "a meaningful time," and a hearing where there is no real opportunity to contest the lien's imposition cannot be said to be held in a "meaningful manner." *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citation omitted).

b. Defendant violated due process by failing to follow the lien enforcement statutes.

Plaintiff's second due process argument is also straightforward. Plaintiff contends that under Fla. Stat. § 960.294, civil restitution liens must be enforced "in the same manner as a judgment in a civil action." *Ilkanic*, 705 So. 2d at 1373. In turn, civil judgment liens "may be enforced only through judicial process, including attachment under chapter 76; execution under chapter 56; garnishment under chapter 77; a charging order under s. 605.0503, s. 620.1703, or s. 620.8504; or proceedings supplementary to execution under s. 56.29." Fla. Stat. § 55.205(6). Together, these statutes reflect the Legislature's direction that lien enforcement proceed only through the courts, where notice, hearing, and adjudication are guaranteed. Judicial enforcement is not incidental; it is the very mechanism by which due process protections—notice, hearing, and neutral adjudication—are secured. Defendant's seizure of Plaintiff's trust account bypassed these statutory safeguards.

Florida courts have long held that when a statute defines procedures for protecting a constitutional right (like liberty or property), failure to follow that process constitutes a due

process violation. *See, e.g., In re Inquiry Concerning a Judge re Graziano*, 696 So. 2d 744, 750 (Fla. 1997) ("due process requires the [Judicial Qualifications Commission] to be in substantial compliance with its procedural rules."); *Dougherty v. State*, 149 So. 3d 672, 676-78 (Fla. 2014) (due process violated where court fails to adhere to procedures set forth in criminal rules for determining competency); *Joshua v. City of Gainesville*, 768 So. 2d 432, 438–39 (Fla. 2000) (due process violated where agency failed to follow statutory procedures under the Florida Civil Rights Act); *Bouldin v. Okaloosa Cnty.*, 580 So. 2d 205, 209 (Fla. 1st DCA 1991) (allegations that county commissioners failed to comply with statutory notice-and-hearing procedures for road closing stated a cause of action for declaratory and injunctive relief based on denial of procedural due process).

Plaintiff has stated a due process claim, and Defendant's Motion to Dismiss should be denied.

III. Plaintiff States a Claim That FDC's Administrative Enforcement of Civil Restitution Liens Violates Separation of Powers.

Plaintiff also states a claim that FDC's administrative enforcement of civil restitution liens violates the Florida Constitution's separation of powers clause.[2]

The Florida Constitution provides that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Art. II, § 3, Fla. Const. "The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts." Art. V, § 1, Fla. Const. Circuit courts in turn

[2] As discussed in section II(a), *infra*, Plaintiff does not agree that Fla. Admin. Code R. 33-203.201 is applicable to civil restitution liens. If this Court concludes otherwise, Plaintiff asserts the regulation is unconstitutional as applied because it impermissibly intrudes upon the judiciary's exclusive authority to enforce civil judgments. Even if construed as a challenge to the regulation itself, notice would not be required, since the statutory notice provisions apply only to statutes, not administrative regulations.

"shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law." Art. V, § 5, Fla. Const. Consistent with this broad grant, the Florida Supreme Court has recognized that circuit courts "have authority over any matter not expressly denied them by the constitution or applicable statutes." *Dep't of Revenue v. Kuhnlein*, 646 So. 2d 717, 720 (Fla. 1994). Moreover, "Florida's constitution authorizes the legislature to prescribe the jurisdiction of the circuit and county courts." *Wells v. State*, 654 So. 2d 145, 146 (Fla. 3d DCA 1995).

Lien enforcement has long been recognized as a judicial function: Fla. Stat. § 960.294(2), for example, requires that civil restitution liens "be enforced . . . in the same manner as a judgment in a civil action," and Fla. Stat. § 55.205(6) specifies that judgment liens may be enforced only through judicial process such as levy, garnishment, or execution. The Florida Supreme Court has also held that a cost-of-incarceration lien may be imposed without first determining "a prisoner's ability to pay" because enforcement—requiring notice, hearing, and judicial process—comes later. *Ilkanic*, 705 So. 2d at 1373. By bypassing the necessary statutory procedures and seizing funds administratively, FDC usurped judicial authority in violation of Article II, § 3.

Federal precedent underscores the same principle: when a proceeding is "in the nature of an action at common law," it implicates private rights and adjudication by a court "is mandatory." *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 128 (2024). Lien enforcement, like garnishment or foreclosure, is one of those proceedings.

Defendant's argument that no authority grants exclusive enforcement power to the judiciary (Mot. to Dismiss Am. Compl., p. 11-12) misreads Fla. Stat. § 960.294 and

misunderstands *Ilkanic's* interpretation of the statute. The full language of the applicable subsection of § 960.294 is:

> A civil restitution lien order may be enforced by the crime victims, the state and its local subdivisions, or other aggrieved parties named in the civil restitution lien order, in the same manner as a judgment in a civil action, including levy against personal property by the sheriffs of this state and foreclosure against nonexempt real property.

Fla. Stat. § 960.294(2). Plaintiff agrees that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." Mot. to Dismiss Am. Compl., p. 10-11 (quoting *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020)). Here, the text means that enforcement through the courts is required. The phrase "may be enforced by" identifies the parties authorized to bring enforcement actions. The phrase "in the same manner as a judgment in a civil action" mandates the procedure those parties must follow. Defendant wrongly collapses these two distinct clauses.

The Florida Supreme Court understood "in the same manner as a judgment in a civil action" to be a separate clause mandating enforcement through the courts. *Ilkanic*, 705 So. 2d at 1373. Thus, contrary to Defendant's assertions, the Florida Supreme Court was not quoting the statute at all but interpreting it—an interpretation binding on this Court.

Further, Defendant misconstrues this state's separation of powers jurisprudence. While the cases Defendant cites do recognize that not every governmental activity is exclusively assigned to a single branch, they do not hold exclusivity must be textually enumerated by the Constitution, as Defendant suggests. Mot. to Dismiss Am. Compl., p. 11. In fact, at least one case holds the opposite. *Simms v. State, Dep't of Health & Rehab. Servs.*, 641 So. 2d 957, 960–61 (Fla. 3d DCA 1994) (citation omitted) ("The exclusive powers of the three branches of government are generally not delineated in the Constitution or in statutes. These powers are

determined by considering the language and intent of the Constitution as well as the history, nature, powers, limitations and purposes of our form of government.").

And the "constitutionally assigned" language referred to in *State v. Palmer*, 791 So. 2d 1181, 1183 (Fla. 1st DCA 2001) does not equate to textually enumerated as Defendant again misstates. Mot. to Dismiss Am. Compl., p. 11. Indeed, the quote relied on by Defendant cites to *Simms*, as well as *State v. Johnson*, 345 So.2d 1069 (Fla. 1977), and *Department of Health and Rehab. Servs. v. Hollis*, 439 So.2d 947 (Fla. 1st DCA 1983), all of which recognize that exclusivity is not tied to textual enumeration. *See Johnson*, 345 So. 2d at 1071 (quoting *State v. Atlantic Coast Railroad Co.,* 47 So. 969, 975 (Fla. 1908) (The division of governmental powers into Legislative, executive, and judicial is abstract and general . . . . There has been no complete and definite designation by a paramount authority of all the particular powers that appertain to each of the several departments."); *Hollis*, 439 So.2d at 948-49 (rejecting agency's separation-of-powers challenge where the court acted pursuant to both statutory and inherent authority in child welfare matters).

This reading aligns with case law, which is replete with examples of the branches having power not textually conferred by the Constitution. *See, e.g., White v. Bd. of Cnty. Comm'rs of Pinellas Cnty.*, 537 So. 2d 1376, 1379 (Fla. 1989) (statute violated separation of powers where it curtailed court's "inherent power to secure effective, experienced counsel for the representation of indigent defendants in capital cases."); *City of Daytona Beach v. Palmer*, 469 So. 2d 121, 123 (Fla. 1985) (holding that "discretionary judgmental decisions" of firefighters are "inherent in [the] public safety function of fire protection" and thus exclusively executive in nature); *B.R. v. Dep't of Health & Rehab. Servs.*, 558 So. 2d 1027, 1029 (Fla. 2d DCA 1989) (evidentiary presumptions "arise as a matter of law" and "the power to establish them is reserved solely to the

courts and the legislature."); *State v. Cotton*, 769 So. 2d 345, 351 (Fla. 2000) (collecting cases holding that, based on proper statutorily-vested authority, the exercise of prosecutorial discretion is not subject to judicial review); *Ashlock v. State*, 632 So. 2d 213, 214 (Fla. 5th DCA 1994) (holding that only the court, not a probation officer, may set a restitution payment schedule, because the statute vests that authority in the judiciary).

In the same vein, precedent confirms that statutes may implement powers conferred by the Constitution. *See, e.g., Kirk v. Baker*, 224 So. 2d 311, 317 (Fla. 1969) (statute allowing Governor to assign state attorneys to other circuits implements executive constitutional power to "take care that the laws be faithfully executed.") (quoting Art. IV, § 1(a), Fla. Const.). Similarly, here, the lien statutes operate as an implementation of judicial power: by mandating that liens be enforced as civil judgments through judicial process, the Legislature defined the courts' jurisdiction. *See Alexdex Corp. v. Nachon Enters., Inc.*, 641 So. 2d 858, 861 (Fla. 1994) ("The jurisdiction of the courts of the state is broadly defined by our State Constitution; however, the legislature may further define a court's jurisdiction so long as the jurisdiction, as redefined, is not in conflict with the Constitution.").

Because Plaintiff has stated a viable separation of powers claim, this Court should deny Defendant's Motion to Dismiss.

IV. The First District Court of Appeal Conflicts with the Second and Third District Courts of Appeal Regarding Whether Sovereign Immunity Bars Count III.

Defendant argues that the Court should dismiss Plaintiff's statutory violations claim (Count III) based on sovereign immunity. Mot. to Dismiss Am. Compl., p. 5-7. In support, Defendant asserts that this claim falls outside the three exceptions to sovereign immunity enumerated in *Univ. of Fla. Bd. of Trs. v. Rojas*, 351 So. 3d 1167, 1179 (Fla. 1st DCA 2022) (listing constitutional violations, breach of contract, and legislative waiver as exceptions to

sovereign immunity), quashed on other grounds, *Rojas v. Univ. of Fla. Bd. of Trs.*, -- So. 3d --, 2025 WL 1969959 (Fla. July 17, 2025) . *Id.* at 5-6. Plaintiff agrees.

But the Second and Third District Courts of Appeal recognize another exception to the state's sovereign immunity: when government officials act ultra vires, including when they collect monies in violation of state statutes. *See Sarasota Drs. Hosp., Inc. v. Sarasota Cnty.*, 396 So. 3d 648, 657 (Fla. 2d DCA 2024) (sovereign immunity does not bar claims alleging that government officials' "conduct is ultra vires"); *Bill Stroop Roofing, Inc. v. Metro. Dade Cnty.,* 788 So.2d 365, 367 (Fla. 3d DCA 2001) ("[W]e reject . . . that refunds of illegal tax or fee exactions are subject to sovereign immunity defenses unless the action is based on a violation of the federal or state constitutions.") (citation and punctuation omitted). Defendant has engaged in such ultra vires conduct here—it seized Plaintiff's funds without following the procedures required under Fla. Stat. §§ 960.297, 55.205(6), 56, and 77. Am. Compl., §§ 41-44.

And, contrary to Defendant's assertion, Plaintiff sufficiently pleaded facts demonstrating Defendant's conduct meets this ultra vires exception. Mot. to Dismiss Am. Compl., p. 6-7; *see* Am. Compl., §§ 19 (setting forth the mandatory statutory procedures for lien enforcement), 20 and 23 (alleging Defendant seized Plaintiff's funds without following the mandatory statutory procedures).

Plaintiff recognizes this Court is bound by the First District Court of Appeal's decision in *Univ. of Fla. Bd. of Trs. v. Browning*, 387 So. 3d 371, 377 (Fla. 1st DCA 2024), which rejected an exception to sovereign immunity based on governmental actors' collection of a fee in violation of statutory law. *Id.* ("To the extent *Bill Stroop Roofing, Inc.* holds that sovereign immunity does not bar a declaratory judgment action against the State even when the claim is not based on an alleged constitutional violation and the State has not waived immunity pursuant to

law for such claim, we certify conflict with the Third District's decision."), *reh'g denied* (June 14, 2024), *review dismissed*, No. SC2024-1061, 2024 WL 4372241 (Fla. Oct. 2, 2024). Nonetheless, because the First District certified conflict with the Third District's contrary decision, Plaintiff raises this issue to preserve it for appeal in the event of further review or a change in the controlling law.

CONCLUSION

Defendant has failed to establish that dismissal is warranted. Therefore, Plaintiff respectfully asks the Court to deny Defendant's Motion to Dismiss.

Dated: November 25, 2025

Respectfully Submitted,

/s/*Krista Dolan*
Krista Dolan
Florida Bar No. 1012147
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788
Telephone: (850) 521-3000
Email: krista.dolan@splcenter.org

Kelly Knapp
Florida Bar No. 1011018
Southern Poverty Law Center
2 S. Biscayne Blvd., Suite 3750
Miami, FL 33131-1804
Telephone: (305) 537-0575
Email: kelly.knapp@splcenter.org

Dante Trevisani
Florida Bar No. 72912
Email: DTrevisani@fji.law
Anne Janet Hernandez Anderson
Florida Bar. No. 18092
Email: ajhernandez@fji.law
Florida Justice Institute, Inc.
40 NW 3rd St., Suite 200
Miami, FL 33128-1839
Telephone: (786) 342-6911

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the court via the Florida E-Filing Portal, which provides notice to all parties satisfactorily to Rule 2.525(e)(3), on the 25th of November, 2025.

/s/*Krista Dolan*
Krista Dolan
Florida Bar No. 1012147
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788
Telephone: (850) 521-3000
Email: krista.dolan@splcenter.org