

IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MARVIN JONES,)	Civil Action No. 4:10CV-011-P-S
)	
Plaintiff)	
)	
v.)	
)	
TYSON FOODS, INC.; HALEY)	
BARBOUR, in his official capacity of)	
Governor of the State of Mississippi;)	
CHRISTOPHER EPPS, in his)	
individual and official capacities as)	
Commission of the Mississippi)	
Department of Corrections; LEE)	
McTEER, in his official capacity as)	
Community Correctional Director for)	
Region I and in his individual capacity;)	
and JONATHAN BRADLEY, in his)	
official capacity as Correctional)	
Supervisor of Leflore County)	
Restitution Center and in his individual)	
capacities)	
Defendants.		

**PLAINTIFF’S REPOSE TO DEFENDANT CHRISTOPHER EPPS
MOTION TO DISMISS**

COMES NOW, the Plaintiff, by and through counsel, and files this his Response to Defendant Christopher Epps’ Motion to Dismiss on grounds of Eleventh Amendment immunity, and would show unto the Court the following:

I.

Plaintiff moves, pursuant to Local Rule 7.2 (F)(1), for a hearing and/or oral argument concerning the merits of Defendant Epps’ motion at a date to be determined by the Court. The

issues presented by Defendant's motion, coupled with the nature of Plaintiff's case, suggest a hearing/oral argument would be beneficial to the Court.

II.

Defendant Epps has filed a Motion to Dismiss seeking to dismiss the Plaintiff's Sections 1983 and 1985 claims brought against him in his *official* capacities. Defendant Epps is not seeking to dismiss the civil rights claims brought against him in his individual capacity.¹ As such, he will not be dismissed from this suit via the present motion.

III.

Plaintiff's First Amended Complaint asks this Court to "[d]eclare that Defendants' actions, as herein described, violated Plaintiff's constitutional rights under the Eighth, Thirteenth and Fourteenth Amendments to the United States Constitution." As such, the "official capacity" Defendants should ultimately remain defendants in this case because declaratory relief is being sought. *See Ex parte Young*, 209 U.S. 123 (1908) (carving out exception to Eleventh Amendment and specifically authorizing private suits against state officials for injunctive relief and declaratory relief in situations where defendants violate federal law).

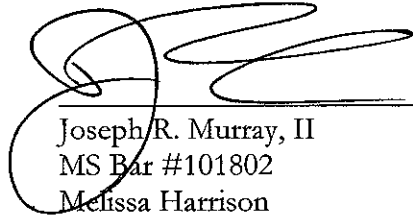
IV.

A brief in opposition to Defendant Tyson's Motion to Dismiss is being filed simultaneously herewith.

¹ The Eleventh Amendment does not bar the Plaintiff's Section 1983 claims brought against the defendants in their individual capacities. In *Ex parte Young*, the Supreme Court held that a state official cannot invoke the shield of sovereign immunity if the official has acted in violation of the Constitution. *Ex parte Young*, 209 U.S. 123, 160 (1908). Under *Young*, when a state officer acts unconstitutionally, he is acting outside his authority and is "stripped of his official or representative character." *Id.* at 160. *See also Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 101 (1984). Because the Plaintiff has sued the defendants in both their official and individual capacities, his claim falls within *Ex parte Young* and he can maintain an action against the defendants in their individual capacities under 42 U.S.C. § 1983. *See e.g. American Civil Liberties Union of Mississippi v. Finch*, 638 F.2d 1336, 1340-41 (5th Cir. 1981).

WHEREFORE, in light of the above-stated reasons, Plaintiff prays that the Defendant's Motion to Dismiss be denied, as well as any relief requested.

Respectfully submitted,

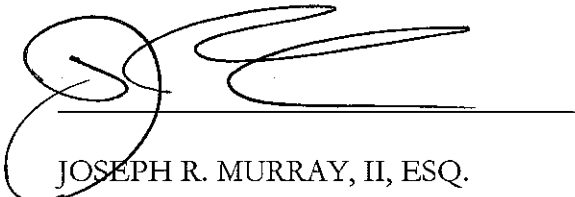


Joseph R. Murray, II
MS Bar #101802
Melissa Harrison
MS Bar # 100046
Harrison Law Office, PLLC
114 East Jefferson Street
Ripley, MS 38663

CERTIFICATE OF SERVICE

I, Joseph R. Murray, II, attorney for Plaintiff, do hereby certify that I have filed the forgoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Christopher R. Fontan	cfontan@brunini.com, smartin@brunini.com
Pelicia Everett Hall	phall@ago.state.ms.us, cirvi@ago.state.ms.us, cland@mdoc.state.ms.us, efair@ago.state.ms.us, jgardner@mdoc.state.ms.us, jnorris@mdoc.state.ms.us, lbarns@mdoc.state.ms.us, lvincent@mdoc.state.ms.us, ngardner@mdoc.state.ms.us
R. David Kaufman	dkaufman@brunini.com, rharrell@brunini.com
William Easom Jones , III	tjones@brunini.com, lgregory@brunini.com


JOSEPH R. MURRAY, II, ESQ.