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RECORD NO. 18-1524

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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TWANDA MARSHINDA BROWN; SASHA MONIQUE DARBY; CAYESHIA  
CASHEL JOHNSON; AMY MARIE PALACIOS; NORA ANN CORDER;  
XAVIER LARRY GOODWIN, on behalf of themselves and all others similarly  
situated; RAYMOND WRIGHT, JR., on behalf of themselves and all others  
similarly situated,

*Plaintiffs-Appellees,*

v.

GARY REINHART, in his individual capacity; REBECCA ADAMS, in her  
official and individual capacities as the Chief Judge for Administrative Purposes of  
the Summary Courts in Lexington County and in her official capacity as the Judge of  
the Irmo Magistrate Court; BRYAN KOON, in his official capacity as the  
Lexington County Sheriff,

*Defendants-Appellants,*

and

LEXINGTON COUNTY, SOUTH CAROLINA; ROBERT MADSEN, in his  
official capacity as the Circuit Public Defender for the Eleventh Judicial Circuit of  
South Carolina; ALBERT JOHN DOOLEY, III, in his official capacity as the  
Associate Chief Judge for Administrative Purposes of the Summary Courts in  
Lexington County,

*Defendants.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

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**JOINT APPENDIX**

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WILLIAM H. DAVIDSON, II  
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*Counsel for Plaintiffs-Appellees*

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**U.S. District Court  
District of South Carolina (Columbia)  
CIVIL DOCKET FOR CASE #: 3:17-cv-01426-MBS-SVH**

Brown et al v. Lexington County, South Carolina et al  
Assigned to: Honorable Margaret B Seymour  
Referred to: Magistrate Judge Shiva V Hodges  
Case in other court: United States Court of Appeals, 18-01524  
Cause: 42:1983pr (Other)

Date Filed: 06/01/2017  
Jury Demand: Both  
Nature of Suit: 550 Prisoner: Civil Rights  
Jurisdiction: Federal Question

**Plaintiff**

**Twanda Marshinda Brown**

represented by **Carl Gavin Snodgrass**  
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*PRO HAC VICE*  
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*LEAD ATTORNEY  
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**Plaintiff**

**Sasha Monique Darby**

represented by **Carl Gavin Snodgrass**  
(See above for address)  
*LEAD ATTORNEY  
PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**Eric Nusser**  
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PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**Nusrat Jahan Choudhury**  
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**Susan King Dunn**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Toby Marshall**  
(See above for address)  
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PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**Plaintiff**

**Cayeshia Cashel Johnson**

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PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**Eric Nusser**  
(See above for address)  
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**Susan King Dunn**  
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**Toby Marshall**  
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PRO HAC VICE  
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**Plaintiff**

**Amy Marie Palacios**

represented by **Carl Gavin Snodgrass**  
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*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Eric Nusser**  
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**Susan King Dunn**  
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*ATTORNEY TO BE NOTICED*

**Toby Marshall**  
(See above for address)  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Xavier Larry Goodwin**  
*on behalf of themselves and all others*  
*similarly situated*

represented by **Carl Gavin Snodgrass**  
(See above for address)  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Eric Nusser**  
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**Nusrat Jahan Choudhury**  
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**Susan King Dunn**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Toby Marshall**  
(See above for address)  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

represented by

**Raymond Wright, Jr**  
*on behalf of themselves and all others  
similarly situated*

**Carl Gavin Snodgrass**  
(See above for address)  
*LEAD ATTORNEY  
PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**Eric Nusser**  
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**Susan King Dunn**  
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**Toby Marshall**  
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PRO HAC VICE  
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**Plaintiff**

**Nora Ann Corder**

represented by **Carl Gavin Snodgrass**  
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*LEAD ATTORNEY  
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ATTORNEY TO BE NOTICED*

**Eric Nusser**  
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**Toby Marshall**  
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V.

**Defendant**

**Lexington County, South Carolina**

represented by

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*ATTORNEY TO BE NOTICED*

**Defendant**

**Gary Reinhart**  
*in his official and individual capacities as  
the Chief Judge for Administrative  
Purposes of the Summary Courts in  
Lexington County*

represented by **Kenneth Paul Woodington**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**William Henry Davidson , II**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Rebecca Adams**  
*in her official and individual capacities  
as the Associate Chief Judge for  
Administrative Purposes of the Summary  
Courts in Lexington County and in her  
official capacity as the Judge of Irmo  
Magistrate Court*

represented by **Kenneth Paul Woodington**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**William Henry Davidson , II**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Robert Madsen**  
*in his official capacity as the Circuit  
Public Defender for the Eleventh Judicial  
Circuit of South Carolina  
TERMINATED: 05/17/2018*

represented by **Kenneth Paul Woodington**  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**William Henry Davidson , II**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Bryan Koon**  
*in his official capacity as the Lexington  
County Sheriff*

represented by **Kenneth Paul Woodington**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**William Henry Davidson , II**  
(See above for address)  
*LEAD ATTORNEY*

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**Defendant**

**Albert John Dooley, III**  
*in his official capacity as the Associate  
 Chief Judge for Administrative Purposes  
 of the Summary Courts in Lexington  
 County*

represented by **Kenneth Paul Woodington**  
 (See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
06/01/2017	<u>1</u>	COMPLAINT against Rebecca Adams, Lexington County, South Carolina, Robert Madsen, Gary Reinhart, Bryan Koon (Filing fee \$ 400 receipt number 0420-7181905), filed by Sasha Monique Darby, Amy Marie Palacios, Xavier Larry Goodwin, Twanda Marshinda Brown, Cayeshia Cashel Johnson. Service due by 8/30/2017.(mwal) (Entered: 06/02/2017)
06/01/2017	<u>3</u>	Local Rule 26.01 Answers to Interrogatories by Twanda Marshinda Brown, Sasha Monique Darby, Xavier Larry Goodwin, Cayeshia Cashel Johnson, Amy Marie Palacios.(mwal) (Entered: 06/02/2017)
06/02/2017	<u>4</u>	Summons Issued as to Rebecca Adams, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. (mwal) (Entered: 06/02/2017)
06/02/2017	<u>5</u>	MOTION to Certify Class by Twanda Marshinda Brown. Response to Motion due by 6/16/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support, # <u>2</u> Affidavit In support of motion, # <u>3</u> Affidavit In support of motion, # <u>4</u> Affidavit In support of motion, # <u>5</u> Affidavit In support of motion, # <u>6</u> Exhibit Exh A. Chart of inmates, # <u>7</u> Exhibit Exh. B Analysis of Jail Population, # <u>8</u> Affidavit In support of motion, # <u>9</u> Exhibit Exh.A Brown Bench Warrant, # <u>10</u> Exhibit Exh.B Brown Public Index, # <u>11</u> Exhibit Exh.C Darby Bench Warrant, # <u>12</u> Exhibit Exh.D Darby Public Index, # <u>13</u> Exhibit Exh. E Johnson Bench Warrant, # <u>14</u> Exhibit Exh. F Johnson Public Index)No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Attachment 3 replaced on 6/5/2017) (mwal). Modified to add additional attachments at ECF No. <u>7</u> on 6/6/2017 (mwal). (Entered: 06/02/2017)
06/05/2017	<u>6</u>	MOTION to Appear Pro Hac Vice by Nusrat J. Choudhury ( Filing fee \$ 250 receipt number 0420-7188143) by Twanda Marshinda Brown. Response to Motion due by 6/19/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Affidavit Choudhury Affidavit in support of PHV motion, # <u>2</u> Exhibit Certificate of Good Standing for Choudhury)Proposed order is being emailed to chambers with copy to opposing counsel.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 06/05/2017)
06/05/2017	<u>7</u>	Additional Attachments to Main Document <u>5</u> MOTION to Certify Class . First attachment description: Palacio Bench Warrant. (Attachments: # <u>1</u> Palacio Public Index, # <u>2</u> Goodwin Bench Warrant, # <u>3</u> Goodwin Public Index, # <u>4</u> Spreadsheet Failure to Comply and Archived Bench Warrants, # <u>5</u> Spreadsheet narrowed to exclude Jail only and Nolle Prosequi)(mwal) (Entered: 06/06/2017)
06/08/2017	<u>8</u>	MOTION to Appear Pro Hac Vice by Toby J. Marshall ( Filing fee \$ 250 receipt number 0420-7194758) by Twanda Marshinda Brown. Response to Motion due by 6/22/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Affidavit Marshall Affidavit for PHV admission, # <u>2</u> Exhibit Marshall Certificate of Good Standing)Proposed order is being emailed to chambers with copy to opposing counsel.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 06/08/2017)
06/08/2017	<u>9</u>	MOTION to Appear Pro Hac Vice by Eric R. Nusser ( Filing fee \$ 250 receipt number 0420-7194770) by Twanda Marshinda Brown. Response to Motion due by 6/22/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Affidavit Nusser affidavit for PHV admission, # <u>2</u> Exhibit Nusser Certificate of Good Standing)Proposed order is being emailed to chambers with copy to opposing counsel.Motions referred to Shiva V

		Hodges.(Dunn, Susan) (Entered: 06/08/2017)
06/27/2017	<u>10</u>	<b>TEXT ORDER granting <u>6</u> MOTION to Appear Pro Hac Vice by Nusrat J. Choudhury; granting <u>8</u> MOTION to Appear Pro Hac Vice by Toby J. Marshall; and granting <u>9</u> MOTION to Appear Pro Hac Vice by Eric R. Nusser. Signed by Magistrate Judge Shiva V Hodges on 6/27/2017. (mwal)</b> (Entered: 06/28/2017)
07/07/2017	<u>12</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>5</u> MOTION to Certify Class by Rebecca Adams, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 7/21/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 07/07/2017)
07/07/2017	<u>13</u>	<b>TEXT ORDER granting <u>12</u> Consent MOTION for Extension of Time. Defendants response to <u>5</u> MOTION to Certify Class is now due by August 7, 2017. Signed by Magistrate Judge Shiva V Hodges on 7/7/2017. (mwal)</b> (Entered: 07/07/2017)
07/07/2017	<u>14</u>	NOTICE of Appearance by William Henry Davidson, II on behalf of Rebecca Adams, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart (Davidson, William) (Entered: 07/07/2017)
07/18/2017	<u>15</u>	ANSWER to <u>1</u> Complaint, by Robert Madsen.(Woodington, Kenneth) (Entered: 07/18/2017)
07/19/2017	<u>16</u>	ANSWER to <u>1</u> Complaint, by Bryan Koon.(Woodington, Kenneth) (Entered: 07/19/2017)
07/19/2017	<u>17</u>	ANSWER to <u>1</u> Complaint, by Lexington County, South Carolina.(Woodington, Kenneth) (Entered: 07/19/2017)
07/19/2017	<u>18</u>	ANSWER to <u>1</u> Complaint, by Rebecca Adams, Gary Reinhart.(Woodington, Kenneth) (Entered: 07/19/2017)
07/20/2017	<u>19</u>	<b>SCHEDULING ORDER Rule 26(f) Conference Deadline 8/9/2017, 26(a) Initial Disclosures due by 8/23/2017, Rule 26 Report due by 8/23/2017, Motions to Amend Pleadings due by 10/18/2017, Plaintiffs ID of Expert Witness due by 11/17/2017, Defendants ID of Expert Witnesses due by 12/18/2017, Records Custodian Affidavit due by 12/18/2017, Discovery due by 2/15/2018, Motions due by 3/2/2018, ADR Statement due by 4/6/2018, Mediation due by 5/1/2018. Signed by Magistrate Judge Shiva V Hodges on 7/20/2017. (mwal)</b> (Entered: 07/20/2017)
07/21/2017	<u>20</u>	AMENDED COMPLAINT against All Defendants, filed by Twanda Marshinda Brown. Service due by 10/19/2017 (Dunn, Susan) (Entered: 07/21/2017)
07/21/2017	<u>21</u>	MOTION to Certify Class by Twanda Marshinda Brown. Response to Motion due by 8/4/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support Memo in support of Amended Motion for Class certification, # <u>2</u> Affidavit From Choudhury in support, # <u>3</u> Affidavit From Dunn in support of motion, # <u>4</u> Affidavit From Marshall in support of motion, # <u>5</u> Affidavit From Nusser in support of Motion, # <u>6</u> Exhibit A to Nusser declaration–Inmate Chart, # <u>7</u> Exhibit B to Nusser declaration– Bench Warrant analysis, # <u>8</u> Affidavit From Papachristo in support, # <u>9</u> Exhibit A to Papachristo–Bench Warrant Brown, # <u>10</u> Exhibit B to Papachristo–Public Index Brown, # <u>11</u> Exhibit C to Papachristo–Bench Warrant Darby, # <u>12</u> Exhibit D to Papachristo–Public Index Darby, # <u>13</u> Exhibit E to Papachristo–Bench Warrant Johnson, # <u>14</u> Exhibit F to Papachristo–Public index Johnson, # <u>15</u> Exhibit G to Papachristo–Bench Warrant Palacio, # <u>16</u> Exhibit H to Papachristo–Public Index Palacio, # <u>17</u> Exhibit I to Papachristo–Bench Warrant Goodwin, # <u>18</u> Exhibit J to Papachristo– Public Index Goodwin, # <u>19</u> Exhibit K to Papachristo–Inmate Chart, # <u>20</u> Exhibit L to Papachristo–Chart)No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 07/21/2017)
07/26/2017	<u>22</u>	Consent MOTION for Extension of Time to File Answer re <u>20</u> Amended Complaint by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 8/9/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P.

		6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 07/26/2017)
07/27/2017	<u>23</u>	<b>TEXT ORDER granting <u>22</u> Consent MOTION for Extension of Time. Additionally, Defendants' deadline to respond to Plaintiffs' motion to certify class is extended to August 18, 2017. Signed by Magistrate Judge Shiva V Hodges on 7/27/2017. (mwal)</b> (Entered: 07/27/2017)
08/17/2017	<u>24</u>	ANSWER to <u>20</u> Amended Complaint by Rebecca Adams, Albert John Dooley, III, Gary Reinhart.(Woodington, Kenneth) (Entered: 08/17/2017)
08/17/2017	<u>25</u>	ANSWER to <u>20</u> Amended Complaint by Bryan Koon.(Woodington, Kenneth) (Entered: 08/17/2017)
08/17/2017	<u>26</u>	ANSWER to <u>20</u> Amended Complaint by Lexington County, South Carolina.(Woodington, Kenneth) (Entered: 08/17/2017)
08/17/2017	<u>27</u>	ANSWER to <u>20</u> Amended Complaint by Robert Madsen.(Woodington, Kenneth) (Entered: 08/17/2017)
08/17/2017	<u>28</u>	Local Rule 26.01 Answers to Interrogatories by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart.(Woodington, Kenneth) (Entered: 08/17/2017)
08/18/2017	<u>29</u>	MOTION for Partial Summary Judgment ( <i>declaratory and injunctive relief</i> ) by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 9/1/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support, # <u>2</u> Exhibit Affidavit of Colleen Long)No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 08/18/2017)
08/18/2017	<u>30</u>	RESPONSE in Opposition re <u>21</u> MOTION to Certify Class Response filed by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart.Reply to Response to Motion due by 8/25/2017 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Woodington, Kenneth) (Entered: 08/18/2017)
08/23/2017	<u>31</u>	MOTION for Extension of Time to File Response/Reply as to <u>30</u> Response in Opposition to Motion, <u>29</u> MOTION for Partial Summary Judgment ( <i>declaratory and injunctive relief</i> ) by Twanda Marshinda Brown. Response to Motion due by 9/6/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 08/23/2017)
08/23/2017	<u>32</u>	Rule 26(f) Report by Twanda Marshinda Brown. (Attachments: # <u>1</u> Exhibit Joint 26f report)(Dunn, Susan) (Entered: 08/23/2017)
08/23/2017	<u>33</u>	<b>TEXT ORDER granting <u>31</u> MOTION for Extension of Time. Plaintiff's deadline to file a response to <u>29</u> MOTION for Partial Summary Judgment (<i>declaratory and injunctive relief</i>) and reply to <u>30</u> Defendants' Memorandum in Opposition to Class Certification is now September 11, 2017. Signed by Magistrate Judge Shiva V Hodges on 8/24/2017. (mwal)</b> (Entered: 08/24/2017)
08/24/2017	<u>34</u>	<b>FIRST AMENDED SCHEDULING ORDER 26(a) Initial Disclosures due by 9/13/2017, Rule 26 Report due by 8/23/2017, Motions to Amend Pleadings due by 10/18/2017, Plaintiffs ID of Expert Witness due by 1/19/2018, Defendants ID of Expert Witnesses due by 2/23/2018, Records Custodian Affidavit due by 2/23/2018, Discovery due by 4/2/2018, Motions due by 5/4/2018, ADR Statement due by 5/2/2018, Mediation due by 6/1/2018. Signed by Magistrate Judge Shiva V Hodges on 8/24/2017. (mwal)</b> (Entered: 08/24/2017)
09/11/2017	<u>35</u>	RESPONSE in Opposition re <u>29</u> MOTION for Partial Summary Judgment ( <i>declaratory and injunctive relief</i> ) Response filed by Twanda Marshinda Brown.Reply to Response to Motion due by 9/18/2017 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # <u>1</u> Affidavit Declaration of Goodwin, # <u>2</u> Affidavit Declaration of Wright)(Dunn, Susan) (Entered: 09/11/2017)

09/11/2017	<u>36</u>	REPLY to Response to Motion re <u>21</u> MOTION to Certify Class , <u>31</u> MOTION for Extension of Time to File Response/Reply as to <u>30</u> Response in Opposition to Motion, <u>29</u> MOTION for Partial Summary Judgment ( <i>declaratory and injunctive relief</i> ) Response filed by Twanda Marshinda Brown. (Dunn, Susan) (Entered: 09/11/2017)
09/14/2017	<u>37</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>35</u> Response in Opposition to Motion, <u>29</u> MOTION for Partial Summary Judgment ( <i>declaratory and injunctive relief</i> ) by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 9/28/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 09/14/2017)
09/14/2017	38	<b>TEXT ORDER granting ECF No. <u>37</u> . Defendants' reply to ECF No. 35 is now due by September 22, 2017. Signed by Magistrate Judge Shiva V. Hodges on 9/14/2017. (bgoo)</b> (Entered: 09/14/2017)
09/22/2017	<u>39</u>	REPLY to Response to Motion re <u>29</u> MOTION for Partial Summary Judgment ( <i>declaratory and injunctive relief</i> ) Response filed by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. (Attachments: # <u>1</u> Exhibit 10 year driving record of Xavier Goodwin, # <u>2</u> Exhibit Richland Co. records for Goodwin, # <u>3</u> Exhibit Lexington Co. records for Goodwin)(Woodington, Kenneth) (Entered: 09/22/2017)
09/22/2017	<u>40</u>	Supplemental MOTION for Summary Judgment by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 10/6/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Exhibit Memo of Chief Justice Beatty)No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 09/22/2017)
09/29/2017	<u>41</u>	MOTION for Extension of Time by Twanda Marshinda Brown. Response to Motion due by 10/13/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 09/29/2017)
09/29/2017	42	<b>TEXT ORDER granting <u>41</u> MOTION for Extension of Time. Plaintiff's response to <u>40</u> Supplemental MOTION for Summary Judgment is now due by October 13, 2017. Signed by Magistrate Judge Shiva V Hodges on 9/29/2017. (mwal)</b> (Entered: 09/29/2017)
10/13/2017	<u>43</u>	RESPONSE in Opposition re <u>40</u> Supplemental MOTION for Summary Judgment Response filed by Twanda Marshinda Brown.Reply to Response to Motion due by 10/20/2017 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # <u>1</u> Affidavit Declaration of Eric Nusser, # <u>2</u> Affidavit Declaration of Toby Marshall)(Dunn, Susan) (Entered: 10/13/2017)
10/18/2017	<u>44</u>	MOTION for Extension of Time to File Response/Reply as to <u>43</u> Response in Opposition to Motion, <u>40</u> Supplemental MOTION for Summary Judgment by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 11/1/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 10/18/2017)
10/18/2017	45	<b>TEXT ORDER granting <u>44</u> MOTION for Extension of Time. Defendants' reply in support to <u>40</u> Supplemental MOTION for Summary Judgment is now due by November 3, 2017. Signed by Magistrate Judge Shiva V Hodges on 10/18/2017. (mwal)</b> (Entered: 10/18/2017)
10/18/2017	<u>46</u>	MOTION to Amend/Correct <u>20</u> Amended Complaint by Twanda Marshinda Brown. Response to Motion due by 11/1/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Exhibit EX. 1 Proposed 2nd Amended Complaint with changes redlined, # <u>2</u> Exhibit EX.2 Proposed 2nd Amended Complaint (Clean copy))Proposed order is being emailed to chambers with copy to opposing counsel.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 10/18/2017)

10/19/2017	47	<b>TEXT ORDER granting <u>46</u> MOTION to Amend/Correct <u>20</u> Amended Complaint. The Clerk's office is directed to file ECF No. 46-2 as Plaintiff's second amended complaint. Defendants' deadline to answer or otherwise plead as to the second amended complaint is November 2, 2017. Signed by Magistrate Judge Shiva V Hodges on 10/19/2017. (mwal)</b> (Entered: 10/19/2017)
10/19/2017	<u>48</u>	SECOND AMENDED COMPLAINT against Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart, filed by Sasha Monique Darby, Amy Marie Palacios, Xavier Larry Goodwin, Twanda Marshinda Brown, Cayeshia Cashel Johnson.(mwal) (Entered: 10/19/2017)
10/30/2017	<u>49</u>	MOTION to Stay re <u>40</u> Supplemental MOTION for Summary Judgment by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 11/13/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Exhibit Agenda for judges' training session)No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 10/30/2017)
10/31/2017	<u>50</u>	MOTION for Summary Judgment <i>on Damage Claims</i> by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 11/14/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support)No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 10/31/2017)
10/31/2017	<u>51</u>	MOTION to Stay <i>Discovery and Scheduling Order Deadlines</i> by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 11/14/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 10/31/2017)
11/01/2017	<u>52</u>	ANSWER to <u>48</u> Amended Complaint, by Lexington County, South Carolina.(Woodington, Kenneth) (Entered: 11/01/2017)
11/01/2017	<u>53</u>	ANSWER to <u>48</u> Amended Complaint, by Robert Madsen.(Woodington, Kenneth) (Entered: 11/01/2017)
11/01/2017	<u>54</u>	ANSWER to <u>48</u> Amended Complaint, by Rebecca Adams, Albert John Dooley, III, Gary Reinhart.(Woodington, Kenneth) (Entered: 11/01/2017)
11/02/2017	<u>55</u>	ANSWER to <u>48</u> Amended Complaint, by Bryan Koon.(Woodington, Kenneth) (Main Document 55 replaced to correct document on 11/2/2017) (mwal). (Entered: 11/02/2017)
11/07/2017	<u>56</u>	Consent MOTION for Extension of Time by Twanda Marshinda Brown. Response to Motion due by 11/21/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 11/07/2017)
11/07/2017	57	<b>TEXT ORDER granting <u>56</u> Consent MOTION for Extension of Time. Plaintiffs' deadline to respond to ECF Nos. <u>50</u> and <u>51</u> is now November 29, 2017. Defendants' replies will be due by December 11, 2017. Signed by Magistrate Judge Shiva V Hodges on 11/7/2017. (mwal)</b> (Entered: 11/07/2017)
11/13/2017	<u>58</u>	RESPONSE in Opposition re <u>49</u> MOTION to Stay re <u>40</u> Supplemental MOTION for Summary Judgment Response filed by Twanda Marshinda Brown.Reply to Response to Motion due by 11/20/2017 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Dunn, Susan) (Entered: 11/13/2017)
11/17/2017	<u>59</u>	Consent MOTION for Leave to File Excess Pages by Twanda Marshinda Brown. Response to Motion due by 12/1/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 11/17/2017)
11/17/2017	60	<b>TEXT ORDER granting <u>59</u> Consent MOTION for Leave to File Excess Pages. Signed by Magistrate Judge Shiva V Hodges on 11/17/2017. (mwal)</b> (Entered: 11/17/2017)

		11/17/2017)
11/20/2017	<u>61</u>	REPLY to Response to Motion re <u>49</u> MOTION to Stay re <u>40</u> Supplemental MOTION for Summary Judgment Response filed by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. (Woodington, Kenneth) (Entered: 11/20/2017)
11/21/2017	<u>62</u>	Withdrawal of Motions: <u>49</u> MOTION to Stay re <u>40</u> Supplemental MOTION for Summary Judgment filed by Bryan Koon, Gary Reinhart, Lexington County, South Carolina, Robert Madsen, Albert John Dooley, III, Rebecca Adams, <u>40</u> Supplemental MOTION for Summary Judgment filed by Bryan Koon, Gary Reinhart, Lexington County, South Carolina, Robert Madsen, Albert John Dooley, III, Rebecca Adams.. (Woodington, Kenneth) (Entered: 11/21/2017)
11/22/2017	<u>64</u>	Withdrawal of Motions: <u>5</u> MOTION to Certify Class filed by Twanda Marshinda Brown. (mwal) (Entered: 11/27/2017)
11/29/2017	<u>66</u>	RESPONSE in Opposition re <u>50</u> MOTION for Summary Judgment <i>on Damage Claims</i> Response filed by Twanda Marshinda Brown.Reply to Response to Motion due by 12/6/2017 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # <u>1</u> Affidavit Declaration of Brown, # <u>2</u> Affidavit Declaration of Darby, # <u>3</u> Affidavit Declaration of Palacios, # <u>4</u> Affidavit Declaration of Corder, # <u>5</u> Affidavit Declaration of Goodwin, # <u>6</u> Affidavit Affidavit of Ryan authenticating Exh. A and B, # <u>7</u> Affidavit Rule 56(b) Declaration of Chourdury)(Dunn, Susan) (Entered: 11/29/2017)
11/29/2017	<u>67</u>	RESPONSE in Opposition re <u>51</u> MOTION to Stay <i>Discovery and Scheduling Order Deadlines</i> Response filed by Twanda Marshinda Brown.Reply to Response to Motion due by 12/6/2017 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # <u>1</u> Affidavit Nusser declaration in opposition)(Dunn, Susan) (Entered: 11/29/2017)
12/08/2017	<u>68</u>	Consent MOTION for Leave to File Excess Pages <i>and for two-day extension of time</i> by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 12/27/2017. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Woodington, Kenneth) (Entered: 12/08/2017)
12/08/2017	69	<b>TEXT ORDER granting <u>68</u> Consent MOTION for Leave to File Excess Pages and extension of time. Replies to ECF Nos. <u>66</u> and <u>67</u> are now due by December 13, 2017. Signed by Magistrate Judge Shiva V Hodges on 12/8/2017. (mwal)</b> (Entered: 12/08/2017)
12/13/2017	<u>70</u>	REPLY to Response to Motion re <u>51</u> MOTION to Stay <i>Discovery and Scheduling Order Deadlines</i> , <u>50</u> MOTION for Summary Judgment <i>on Damage Claims</i> Response filed by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. (Attachments: # <u>1</u> Affidavit Long affidavit with attachments (tickets and bench warrants), # <u>2</u> Exhibit Amended Complainint in Foster v. Alexander)(Woodington, Kenneth) (Entered: 12/13/2017)
01/05/2018	<u>71</u>	Joint MOTION to Stay <i>Scheduling Order</i> by Twanda Marshinda Brown. Response to Motion due by 1/19/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 01/05/2018)
01/08/2018	72	<b>ORDER granting <u>71</u> Joint MOTION to Stay <i>Scheduling Order</i> filed by Twanda Marshinda Brown. Signed by Magistrate Judge Shiva V Hodges on 1/8/2018. (mwal)</b> (Entered: 01/08/2018)
02/05/2018	73	<b>TEXT ORDER granting <u>51</u> MOTION to Stay <i>Discovery and Scheduling Order Deadlines</i>, as consistent with the court's January 8, 2018 text order. Signed by Magistrate Judge Shiva V Hodges on 2/5/2018. (mwal)</b> (Entered: 02/05/2018)
02/05/2018	<u>74</u>	<b>REPORT AND RECOMMENDATION recommending the court: (1) deny Plaintiff's <u>21</u> MOTION to Certify Class; (2) grant Defendants' <u>29</u> MOTION for Summary Judgment as to declaratory and injunctive relief; and (3) deny Defendants' <u>50</u> MOTION for Summary Judgment as to Plaintiffs' damages claim</b>

		<b>against Lexington County for failure to afford counsel and grant the motion as to all other claims. Objections to R&amp;R due by 2/20/2018. (mwal)</b> (Main Document 74 replaced on 2/5/2018) (mwal, ). (Entered: 02/05/2018)
02/07/2018	<u>75</u>	Joint MOTION for Extension of Time by Twanda Marshinda Brown. Response to Motion due by 2/21/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Dunn, Susan) (Entered: 02/07/2018)
02/12/2018	76	<b>TEXT ORDER granting <u>75</u> Joint MOTION for Extension of Time. Objections to <u>74</u> REPORT AND RECOMMENDATION are now due by March 2, 2018. Reply to objections are now due by March 23, 2018. Signed by Honorable Margaret B Seymour on 2/12/2018. (mwal)</b> (Entered: 02/12/2018)
02/27/2018	<u>77</u>	Consent MOTION for Leave to File Excess Pages by Twanda Marshinda Brown. Response to Motion due by 3/13/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 02/27/2018)
02/27/2018	78	<b>TEXT ORDER granting <u>77</u> Consent MOTION for Leave to File Excess Pages filed by Twanda Marshinda Brown. Signed by Magistrate Judge Shiva V Hodges on 2/27/2018. (mwal)</b> (Entered: 02/27/2018)
03/02/2018	<u>79</u>	OBJECTION to <u>74</u> Report and Recommendation by Lexington County, South Carolina. Reply to Objections due by 3/16/2018 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Woodington, Kenneth) (Entered: 03/02/2018)
03/02/2018	<u>80</u>	OBJECTION to <u>74</u> Report and Recommendation by Twanda Marshinda Brown. Reply to Objections due by 3/16/2018 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Dunn, Susan) (Entered: 03/02/2018)
03/22/2018	<u>81</u>	REPLY by Twanda Marshinda Brown to <u>79</u> Objection to Report and Recommendation . (Dunn, Susan) (Entered: 03/22/2018)
03/23/2018	<u>82</u>	REPLY by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart to <u>80</u> Objection to Report and Recommendation . (Attachments: # <u>1</u> Exhibit Court Admin. memo, orders and forms)(Woodington, Kenneth) (Entered: 03/23/2018)
03/29/2018	<u>84</u>	<b>ORDER declining to adopt <u>74</u> Report and Recommendation; denying Plaintiffs' <u>21</u> Motion to Certify Class; denying Defendants' <u>29</u> Motion for Partial Summary Judgment as to declaratory and injunctive relief; and denying Defendants' <u>50</u> Motion for Summary Judgment. This matter is recommitted to the Magistrate Judge for further pretrial handling. Signed by Honorable Margaret B Seymour on 3/29/2018. (mwal)</b> (Entered: 03/30/2018)
04/03/2018	<u>85</u>	<b>SECOND AMENDED SCHEDULING ORDER: Plaintiffs ID of Expert Witness due by 6/4/2018, Defendants ID of Expert Witnesses due by 7/2/2018, Records Custodian Affidavit due by 7/2/2018, Discovery due by 8/6/2018, Motions due by 9/4/2018, ADR Statement due by 9/7/2018, Mediation due by 10/9/2018. Signed by Magistrate Judge Shiva V Hodges on 4/3/2018. (mwal)</b> (Entered: 04/03/2018)
04/17/2018	<u>86</u>	Second MOTION to Certify Class by Twanda Marshinda Brown. Response to Motion due by 5/1/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support Memo in support of 2nd amended class certification)No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 04/17/2018)
04/24/2018	<u>87</u>	MOTION for Reconsideration re <u>84</u> Order Ruling on Report and Recommendation, by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. Response to Motion due by 5/8/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support)No proposed order.(Woodington, Kenneth) Modified to edit text on 4/24/2018 (mwal). (Entered: 04/24/2018)

04/26/2018	<u>88</u>	Supplemental MOTION for Reconsideration re <u>84</u> Order Ruling on Report and Recommendation, by Lexington County, South Carolina. Response to Motion due by 5/11/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Memo in Support)No proposed order. (Woodington, Kenneth) Modified to edit text on 4/26/2018 (mwal). (Entered: 04/26/2018)
04/26/2018	<u>89</u>	RESPONSE in Opposition re <u>86</u> Second MOTION to Certify Class Response filed by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart.Reply to Response to Motion due by 5/3/2018 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Woodington, Kenneth) (Entered: 04/26/2018)
04/26/2018	<u>90</u>	NOTICE OF APPEAL as to <u>84</u> Order Ruling on Report and Recommendation, by Rebecca Adams, Bryan Koon, Gary Reinhart. – Filing fee \$ 505, receipt number 0420-7747398. The Docketing Statement form, Transcript Order form and CJA 24 form may be obtained from the Fourth Circuit website at www.ca4.uscourts.gov (Woodington, Kenneth) (Entered: 04/26/2018)
04/30/2018	<u>91</u>	Transmittal Sheet for Notice of Appeal to USCA re <u>90</u> Notice of Appeal, The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (mwal) (Entered: 05/01/2018)
05/01/2018	<u>92</u>	ASSEMBLED INITIAL ELECTRONIC RECORD TRANSMITTED TO FOURTH CIRCUIT COURT OF APPEALS re <u>90</u> Notice of Appeal, Electronic record successfully transmitted. (mwal) (Entered: 05/01/2018)
05/03/2018	<u>93</u>	RESPONSE in Opposition re <u>87</u> MOTION for Reconsideration re <u>84</u> Order Ruling on Report and Recommendation, , <u>88</u> Supplemental MOTION for Reconsideration re <u>84</u> Order Ruling on Report and Recommendation, Response filed by Twanda Marshinda Brown.Reply to Response to Motion due by 5/11/2018 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Dunn, Susan) (Entered: 05/03/2018)
05/03/2018	<u>94</u>	REPLY to Response to Motion re <u>86</u> Second MOTION to Certify Class <i>Reply in Support of Motion</i> Response filed by Twanda Marshinda Brown. (Dunn, Susan) (Entered: 05/03/2018)
05/08/2018	<u>95</u>	Letter from 4CCA. (mwal) (Entered: 05/08/2018)
05/10/2018	<u>97</u>	REPLY to Response to Motion re <u>87</u> MOTION for Reconsideration re <u>84</u> Order Ruling on Report and Recommendation, , <u>88</u> Supplemental MOTION for Reconsideration re <u>84</u> Order Ruling on Report and Recommendation, Response filed by Rebecca Adams, Albert John Dooley, III, Bryan Koon, Lexington County, South Carolina, Robert Madsen, Gary Reinhart. (Woodington, Kenneth) (Entered: 05/10/2018)
05/15/2018	<u>98</u>	MOTION to Appear Pro Hac Vice by Carl G. Snodgrass ( Filing fee \$ 250 receipt number 0420-7780793) by Twanda Marshinda Brown. Response to Motion due by 5/29/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Affidavit Application to Appear PHV, # <u>2</u> Exhibit Certificate of Good Standing)Proposed order is being emailed to chambers with copy to opposing counsel.Motions referred to Shiva V Hodges.(Dunn, Susan) (Entered: 05/15/2018)
05/15/2018	<u>99</u>	<b>TEXT ORDER granting <u>98</u> MOTION to Appear Pro Hac Vice by Carl G. Snodgrass. Signed by Magistrate Judge Shiva V Hodges on 5/15/2018. (mwal)</b> (Entered: 05/15/2018)
05/16/2018	<u>100</u>	STIPULATION of Dismissal without Prejudice <i>as to Defendant Madsen</i> by Twanda Marshinda Brown. (Dunn, Susan) (Entered: 05/16/2018)
05/16/2018	<u>101</u>	First MOTION to Compel <i>Production</i> by Twanda Marshinda Brown. Response to Motion due by 5/30/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # <u>1</u> Affidavit Declaration of Nusser in support of motion, # <u>2</u> Exhibit First set of requests to Lexington County and Madsen, # <u>3</u> Exhibit First set of request to Koon, # <u>4</u> Exhibit

		First set of requests to Reinhart, Adams and Dooley, # <u>5</u> Exhibit May 4, 2018 letter from Marshall to Defense attorneys, # <u>6</u> Exhibit Emails relating to production)No proposed order.Motions referred to Shiva V Hodges.(Dunn, Susan) (Main Document 101 replaced on 5/18/2018) (mwal, ). (Entered: 05/16/2018)
05/30/2018	103	NOTICE of Hearing: Telephone Status Conference re discovery set for 6/1/2018 at 2:00 p.m. in chambers before Magistrate Judge Shiva V Hodges. Plaintiff's counsel is directed to arrange and initiate the conference call at the specified time, conference in all other participating counsel and then connect to chambers at (803) 253-6431.(ttil, ) (Entered: 05/30/2018)
05/30/2018	104	<b>TEXT ORDER suspending the deadline for defendant's response to plaintiff's <u>101</u> First Motion to Compel Production pending further notice. Signed by Magistrate Judge Shiva V Hodges on 5/30/2018. (ttil, )</b> (Entered: 05/30/2018)
06/01/2018	105	AMENDED NOTICE of Hearing (change in time only): Telephone Status Conference re discovery set for 6/1/2018 at 3:00 p.m. in chambers before Magistrate Judge Shiva V Hodges. Plaintiff's counsel is directed to arrange and initiate the conference call at the specified time, conference in all other participating counsel and then connect to chambers at (803) 253-6431.(ttil, ) (Entered: 06/01/2018)
06/01/2018	106	<b>Minute Entry. Proceedings held before Magistrate Judge Shiva V Hodges: Telephone Status Conference held on 6/1/2018. The parties address the court re <u>101</u> Motion to Compel, oral order denying <u>101</u> Motion to Compel without prejudice, the court suspends the current scheduling order deadlines and directs the parties to contact chambers upon Judge Margaret Seymour's ruling on <u>87</u> Motion for Reconsideration. Court Reporter: no court reporter. (ttil, )</b> (Entered: 06/04/2018)

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

TWANDA MARSHINDA BROWN;  
SASHA MONIQUE DARBY;  
CAYESHIA CASHEL JOHNSON;  
AMY MARIE PALACIOS; NORA ANN  
CORDER; and XAVIER LARRY GOODWIN and  
RAYMOND WRIGHT, JR., on behalf of  
themselves and all others similarly situated;

Plaintiffs,

v.

LEXINGTON COUNTY, SOUTH CAROLINA;  
GARY REINHART, in his individual capacity;  
REBECCA ADAMS, in her official and individual  
capacities as the Chief Judge for Administrative  
Purposes of the Summary Courts in Lexington  
County and in her official capacity as the Judge of  
the Irmo Magistrate Court; ALBERT JOHN  
DOOLEY, III, in his official capacity as the  
Associate Chief Judge for Administrative Purposes  
of the Summary Courts in Lexington County;  
BRYAN KOON, in his official capacity as the  
Lexington County Sheriff; and ROBERT MADSEN,  
in his official capacity as the Circuit Public  
Defender for the Eleventh Judicial Circuit of South  
Carolina,

Defendants.

Case No.  
3:17-cv-01426-MBS-SVH

**DECLARATION OF ERIC R. NUSSER IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Eric R. Nusser, declare as follows:

1. I am an attorney with the law firm of Terrell Marshall Law Group PLLC ("Terrell Marshall"). I am licensed to practice law in the State of Washington, and have been admitted to

this Court pro hac vice. I make this declaration based on personal knowledge, and I am competent to testify regarding the following facts.

2. From May 1 through May 28, 2017, I visited or directed my legal assistant to visit the Lexington County Sheriff's Department Jail Inmate Search website, which is publicly available and lists all inmates whom the Lexington County Sheriff's Department ("Sheriff's Department") reports as being incarcerated in the Lexington County Detention Center ("Detention Center") on the date the website is visited.<sup>1</sup>

3. Each day during this 28-day period, I converted or directed my legal assistant to convert the daily list of inmates incarcerated in the Detention Center ("Daily Inmate List") to a PDF document using the computer's print function. No daily list was converted on May 6 or May 17 because neither of us had the opportunity to do so. No daily list was converted on May 12 because the Inmate Search would not allow the conversion function to properly convert the list into a PDF document. I have noted below where information from these days is excluded from calculations.

4. Each of the remaining 25 days, I reviewed or directed my legal assistant to review the Daily Inmate List to identify all inmates with a primary charge of either "Magistrate Court Bench Warrant" or "Magistrate/Municipal Court Bench Warrant" (collectively "Bench Warrant Charge"). There were 95 inmates identified through this process. Information from the Daily Inmate List was recorded for each such inmate along with additional information gathered from the inmate's public booking record, which was available through a link on the Inmate Search website. I also reviewed or directed my legal assistant to review cases associated with each inmate on the Lexington County Public Index Search ("Public Index").<sup>2</sup> Attached hereto as

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<sup>1</sup> The internet address for the Inmate Search website is <http://jail.lexingtonsheriff.net/p2c/jailinmates.aspx>.

<sup>2</sup> The internet address for the Public Index website is <http://cms.lex-co.com/scjdweb/publicindex/>.

Exhibit A is a true and correct copy of information recorded from the Daily Inmate List, public booking records, and the Public Index identifying the 95 inmates, their primary charges, and the fines and costs associated with their primary charge.

5. For each of the 25 days for which the Daily Inmate List was converted to PDF, I compared or directed my legal assistant to compare the Daily Inmate List for that day against the list for the previous day and to identify any names that had been newly added (i.e., booked in the previous 24 hours). We also compared the two lists to identify any names that had been on the previous day's list but were not on the current day's list. A person who appeared on the previous day's list but not on the current day's would have been released at some point in the previous 24 hours.

6. Between May 1 and May 28, 2017, there were 95 unique inmates who appeared on at least one Daily Inmate List with a Bench Warrant Charge as the primary charge.

7. For 19 of these inmates, the primary charge was listed as "Magistrate Court Bench Warrant." *See* Exhibit A. For the other 76 inmates, the primary charge was listed as "Magistrate/Municipal Court Bench Warrant." A review of the Public Index indicates that at least 38 of these 76 individuals were arrested on a bench warrant issued by a Lexington County magistrate court. *Id.* (The issuing courts for the remaining 38 individuals could not be determined.) Thus, at least 57 of the 95 unique inmates were arrested and jailed on bench warrants issued by magistrate courts—the 19 listed as "Magistrate Court Bench Warrant" plus the 38 listed as "Magistrate/Municipal Court Bench Warrant" but confirmed to be from magistrate courts.

8. All seven Lexington County magistrate courts—i.e., the Central Traffic Court and each of the six District Courts—issued a bench warrant for the arrest and jailing of at least one of these 57 inmates. *Id.*

9. On May 26, 2017, the Daily Inmate List included a total of 609 inmates incarcerated in the Detention Center. On that same day, there were 63 inmates—or 10.34% of all inmates—whose primary charge was listed as a Bench Warrant Charge.

10. On May 27, 2017, the Daily Inmate List included a total of 625 inmates incarcerated in the Detention Center. On that same day, there were 63 inmates—or 10.08% of all inmates—whose primary charge was listed as a Bench Warrant Charge.

11. On any given day from May 1 to May 28, 2017, there was an average of 43 inmates incarcerated in the Detention Center whose primary charge was listed as a Bench Warrant Charge. Attached hereto as Exhibit B is a true and correct copy of the data used to determine this average. Note that data from May 6, May 12, and May 17 is excluded from the average; therefore, only the data from the remaining 25 days is averaged.

12. On average for the period from May 1 to May 28, 2017, 7.22% of all inmates on the Daily Inmate List had a Bench Warrant Charge listed as their primary charge. *See* Exhibit B. Note that data from May 6, May 12, and May 17 is excluded from the average; therefore, only the data from the remaining 25 days is averaged.

13. The Daily Inmate Lists and public booking records included statements of debts owed for 58 of the 95 unique inmates incarcerated for Bench Warrant Charges. The greatest amount owed by any one of these inmates was \$3,470.00. The least amount owed by any one of these inmates was \$232.50. Eleven of these inmates—i.e., 11% of all inmates, and 18.6% of inmates whose debt is listed—owed \$262.50 or less in fines and costs.

14. The total debt listed for all 58 people combined was \$55,714.87. Dividing this amount by 58 indicates that the average debt owed among these 58 inmates was \$960.60.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed in Seattle, Washington on this 20th day of July, 2017.

By:   
Eric R. Nusser, WSBA #51513

# **EXHIBIT A**

Last Name	First Name	Race	Gender	Age	Arrest Date	Primary Charge	Fines & Costs	Sentencing Court
AMAKER	JOHN HENRY	B	Male	43	4/29/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$262.50	Cayce-West Columbia Magistrate Court
AMBLER	SHANIQUA M	B	Female	35	5/11/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$2,130.00	Unknown
ARGOE	JAMES RANDOLPH	W	Male	54	5/3/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
ASBILL	CHRISTOPHER DWAYNE	W	Male	43	5/6/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
BAILEY	JOSHUA DANIEL	W	Male	32	4/26/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
BARRS	TIFFANY MARIE	W	Female	30	5/25/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$257.50	Lexington Magistrate Court
BEST	PAUL RAWLING	B	Male	50	5/7/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$652.50	Irmo Magistrate Court
BOULWARE	PATRICIA ANN	W	Female	55	5/9/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
BOWERS	LEROY MARQUIVES	B	Male	33	5/13/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$652.50	Traffic Court
BRANTLEY	QYERA SHARDA	B	Female	22	4/28/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$1,092.50	Unknown
CAINE	EARLE MONTIETH	W	Male	50	5/25/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Oak Grove Magistrate Court
CARTER	MEGAN KRISTINE	W	Female	31	4/14/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Lexington Magistrate Court
DANIELS	JACK LYLE	W	Male	64	4/9/2017	MAGISTRATE COURT BENCH WARRANT	\$805.65	Traffic Court
DEPEW	JAMIE LEE	W	Male	31	5/10/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Irmo Magistrate Court
DILLARD	JEFFREY DEAN	W	Male	48	1/3/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Oak Grove Magistrate Court
FRANKLIN	JOEY	B	Male	37	3/10/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$1,275.00	Oak Grove Magistrate Court
GANTT	JAMES EDWARD	B	Male	48	5/15/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$652.50	Unknown
GLOVER	RICHARD ADAM	W	Male	46	5/11/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$244.63	Unknown
GOODWIN	PAULESS LEE	W	Male	57	5/11/2017	MAGISTRATE COURT BENCH WARRANT		Swansea Magistrate Court
GREENE	KATERENA	B	Female	26	5/26/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
GRIMSLEY	ROBBIE LEE	W	Male	58	5/23/2017	MAGISTRATE COURT BENCH WARRANT	\$232.50	Oak Grove Magistrate Court
HALL	STEVEN BRYANT WILSON	B	Male	22	5/18/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$445.00	Unknown
HALTIWANGER	WESLEY	B	Male	55	4/17/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$232.50	Irmo Magistrate Court
HARDEY	DAMON LAZAR	B	Male	51	5/11/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$244.63	Unknown

HARRIS	STEPHONE	B	Male	55	4/21/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$647.50	Unknown
HAYGOOD	HENRY	B	Male	44	5/19/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$250.00	Traffic Court
HOOVER	GORDON KEITH	W	Male	51	5/23/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$1,275.00	Unknown
INGLE	MICHAEL DEVOUGHN	W	Male	51	5/26/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$647.00	Lexington Magistrate Court
ISENHOWER	CARRIE SABRINA	W	Female	25	1/11/2017	MAGISTRATE COURT BENCH WARRANT	\$252.50	Batesburg-Leesville Magistrate Court
JACKSON	JAMES ALLEN	W	Male	25	5/23/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
JAMISON	DESMOND MCARTHUR	B	Male	30	5/22/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$647.00	Swansea Magistrate Court
JEFFCOAT	DUSTIN MITCHELL	W	Male	21	5/15/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$2,168.15	Lexington Magistrate Court
JEFFCOAT	LISA ANN	W	Female	32	5/22/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Traffic Court
JERIDORE	ROBERT LEE	B	Male	24	12/9/2016	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$615.00	Swansea Magistrate Court
JOHNSON	BRIAN LEE	W	Male	28	5/4/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$440.00	Lexington Magistrate Court
JOHNSON	LAUREN ELIZABETH	W	Female	31	5/26/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$453.95	Lexington Magistrate Court
JOHNSON	MARCUS HALEY	B	Male	35	5/9/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$1,512.50	Cayce-West Columbia Magistrate Court
KIRKLAND	JACOB	W	Male	31	5/21/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$434.48	Unknown
LEE	ASHLEY DIANE	W	Female	36	5/27/2017	MAGISTRATE/MUNICI PAL COURT BENCH WARRANT		Unknown
LINCKE	PAUL F	W	Male	58	4/25/2017	MAGISTRATE COURT BENCH WARRANT	\$604.24	Magistrate Court
LONG	DAVID SEAN	B	Male	24	5/11/2017	MAGISTRATE COURT BENCH WARRANT	\$1,212.50	Traffic Court
LUTZ	CRYSTAL ANN	W	Female	37	5/12/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Irmo Magistrate Court
LYBRAND	AARON MICHEAL	W	Male	30	4/26/2017	MAGISTRATE COURT BENCH WARRANT		Magistrate Court
MARTIN	MARCUS ELI	W	Male	42	5/15/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$237.50	Irmo Magistrate Court
MARTIN	AMANDA DIANE	W	Female	37	5/25/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
MARZE	JOEL LEE	W	Male	24	3/29/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$262.50	Unknown
MAYES	NEHEMIAH JIMMY	B	Male	27	4/27/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$1,094.38	Unknown
MAYSON	WILLIAM JOSEPH	W	Male	53	5/2/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Irmo Magistrate Court

MCCRACKEN	RYAN FRANKLIN	W	Male	35	12/30/2016	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$2,105.00	Unknown
METZE	JAMES RANDOLPH	W	Male	47	4/27/2017	MAGISTRATE COURT BENCH WARRANT	\$500.00	Cayce-West Columbia Magistrate Court
MICKLES	KRYSTAL CASSANDRA	B	Female	44	5/9/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Lexington Magistrate Court
MOBLEY	TAMARA DESHEA	B	Female	40	5/22/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$453.20	Unknown
MORIN SEVRIE	JOSEPH RYAN	W	Male	25	5/3/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$1,097.50	Unknown
MOSS	RAYEANNE L K	B	Female	35	5/26/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$615.00	Lexington Magistrate Court
NASH	NATHANIEL EUGENE	B	Male	55	5/9/2017	MAGISTRATE COURT BENCH WARRANT	\$232.50	Swansea Magistrate Court
NEIL	ROBERT CAMERON	W	Male	24	5/20/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
PARNELL	WILLIAM PATRICK	W	Male	39	7/29/2016	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Batesburg-Leesville Magistrate Court
PAYNE	ANITA NICOLE	W	Female	33	5/6/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$465.00	Unknown
PEEL	EDWARD LOREN	W	Male	53	5/16/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Cayce-West Columbia Magistrate Court
POWELL	ASHLEY NICOLE	W	Female	28	5/19/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
PRIESTER	OLLIE	B	Male	34	5/9/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Swansea Magistrate Court
REYNOLDS	JEREMY	W	Male	33	5/23/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$652.50	Unknown
RICHBURG	DANIELLE REBECCA	W	Female	30	5/1/2017	MAGISTRATE COURT BENCH WARRANT	\$647.50	Traffic Court
ROSE	THOMAS EDDIE	W	Male	48	4/13/2017	MAGISTRATE COURT BENCH WARRANT		Cayce-West Columbia Magistrate Court
SANDERS	KENNETH DON	W	Male	21	11/30/2016	MAGISTRATE COURT BENCH WARRANT		Unknown
SCIOPIO	LAKEEM ANTWAN	B	Male	25	4/29/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$647.50	Traffic Court
SCOTT	ANDRAE LEVAR	B	Male	39	5/15/2017	MAGISTRATE COURT BENCH WARRANT		Magistrate Court
SHARPE	STEVEN WYATT	W	Male	35	4/29/2017 & 5/24/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$615.00	Lexington Magistrate Court
SHAW	AMY DENISE	W	Female	32	4/15/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Traffic Court
SINGLETARY	JOHN	B	Male	43	5/12/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$2,100.00	Unknown
SINKLER	DETWON MARQUIS	B	Male	23	4/27/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$652.50	Unknown
SMART	KEJUAN ALEXIS	B	Male	37	4/25/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Traffic Court
SNYDER	CALEB ROBERT	W	Male	27	4/27/2017	MAGISTRATE COURT BENCH WARRANT		Irmo Magistrate Court

SPEAKE	FRED MELTON	W	Male	60	5/25/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Swansea Magistrate Court
SPENCER	ASHLEY DAWN	W	Female	33	5/17/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$495.00	Unknown
STRICKLAND	ASHTEN DANIELLE	W	Female	28	4/13/2017	MAGISTRATE COURT BENCH WARRANT	\$1,214.96	Irmo Magistrate Court
TAYLOR	ROBERT MICHAEL	W	Male	46	4/21/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Traffic Court
THOMPSON	HENRY DOUGLAS	B	Male	57	5/12/2017	MAGISTRATE COURT BENCH WARRANT	\$647.50	Traffic Court
TINKER	ANDREW LEE	W	Male	29	5/20/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
TITTLE	CARL FLOYD	W	Male	59	5/18/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
TREADWELL	MICHAEL LEON	B	Male	53	4/28/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$1,087.50	Unknown
UPCHURCH	DOYLE EDWARD	W	Male	41	5/25/2017	MAGISTRATE COURT BENCH WARRANT	\$776.17	Lexington Magistrate Court
VEREEN	ARTHUR	B	Male	39	5/15/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$990.66	Traffic Court
WHITE	VINCENT ANTONIO	B	Male	34	5/16/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$647.50	Unknown
WHITE	DARIUS NORMAN	B	Male	26	5/22/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Traffic Court
WHITTEN	LAURA LEANN	W	Female	31	5/4/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Unknown
WILLIAMS	EUGENE	B	Male	39	5/7/2017	MAGISTRATE COURT BENCH WARRANT	\$237.50	Irmo Magistrate Court
WILLIAMS	ROBERT	B	Male	45	5/21/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$262.50	Cayce-West Columbia Magistrate Court
WILLIAMS	CARLISHA SHAWASHKI	B	Female	31	4/15/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$465.00	Unknown
WITTEN	WILLIAM RUSELL-BLAKE	W	Male	26	5/14/2017	MAGISTRATE COURT BENCH WARRANT	\$647.50	Lexington Magistrate Court
WOODS	BRITTNEY SHENEE	B	Female	28	5/8/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT		Traffic Court
WRENN	TIMOTHY JOSEPH	W	Male	21	5/22/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$1,270.00	Lexington Magistrate Court
WRIGHT	JOHN HEYWARD	W	Male	37	4/5/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$470.00	Unknown
YOUNG	DARRYL JAVONTAE	B	Male	29	5/5/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$622.08	Traffic Court
ZISSETT	HENRY THOMAS	W	Male	41	5/12/2017	MAGISTRATE/ MUNICIPAL COURT BENCH WARRANT	\$1,087.50	Unknown

# **EXHIBIT B**

	Total number of inmates in Detention Center	Number of inmates whose primary charge is listed as a Bench Warrant Charge	Percentage of inmates whose primary charge is listed as a Bench Warrant Charge
5/1/2017	578	28	4.84%
5/2/2017	581	29	4.99%
5/3/2017	587	28	4.77%
5/4/2017	593	32	5.40%
5/5/2017	602	31	5.15%
5/6/2017			
5/7/2017	600	34	5.67%
5/8/2017	594	34	5.72%
5/9/2017	589	31	5.26%
5/10/2017	585	35	5.98%
5/11/2017	585	35	5.98%
5/12/2017			
5/13/2017	569	38	6.68%
5/14/2017	574	39	6.79%
5/15/2017	574	41	7.14%
5/16/2017	590	46	7.80%
5/17/2017			
5/18/2017	593	48	8.09%
5/19/2017	598	48	8.03%
5/20/2017	612	50	8.17%
5/21/2017	607	50	8.24%
5/22/2017	606	50	8.25%
5/23/2017	626	55	8.79%
5/24/2017	627	54	8.61%
5/25/2017	624	57	9.13%
5/26/2017	609	63	10.34%
5/27/2017	625	63	10.08%
5/28/2017	630	61	9.68%
Average	598.32	43.2	7.22%

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

TWANDA MARSHINDA BROWN;  
SASHA MONIQUE DARBY;  
CAYESHIA CASHEL JOHNSON;  
AMY MARIE PALACIOS; NORA ANN  
CORDER; and XAVIER LARRY GOODWIN and  
RAYMOND WRIGHT, JR., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

LEXINGTON COUNTY, SOUTH CAROLINA;  
GARY REINHART, in his individual capacity;  
REBECCA ADAMS, in her official and individual  
capacities as the Chief Judge for Administrative  
Purposes of the Summary Courts in Lexington  
County and in her official capacity as the Judge of  
the Irmo Magistrate Court; ALBERT JOHN  
DOOLEY, III, in his official capacity as the  
Associate Chief Judge for Administrative Purposes  
of the Summary Courts in Lexington County;  
BRYAN KOON, in his official capacity as the  
Lexington County Sheriff; and ROBERT  
MADSEN, in his official capacity as the Circuit  
Public Defender for the Eleventh Judicial Circuit of  
South Carolina,

Defendants.

Case No. 3:17-cv-01426-MBS-SVH

**DECLARATION OF NINA PAPACHRISTOU IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Nina Papachristou, declare and state as follows:

1. I am currently employed as a paralegal in the American Civil Liberties Union Foundation ("ACLU") Racial Justice Program. In 2014, I received a Bachelor of Arts degree from Stanford University. I began working for the ACLU as a legal assistant in June 2015

and was promoted to paralegal in July 2016. For the duration of my employment at the ACLU, I have worked with, and been supervised by, attorneys on the above-captioned case.

2. I submit this declaration in support of Plaintiffs’ Motion for Class Certification. I have personal knowledge of the facts set forth herein and could competently testify to them if called as a witness.

3. Attached hereto as exhibits are true and correct copies of the following documents:

<u>Document</u>	<u>Exhibit</u>
Bench Warrant Issued by the Irmo Magistrate Court against Twanda Marshinda Brown on January 12, 2017 .....	A
South Carolina Judicial Department Public Index <sup>1</sup> (“Public Index”) Case Page for April 12, 2016, DUS, 2nd charge against Twanda Marshinda Brown in the Irmo Magistrate Court (visited on May 18, 2017).....	B
Bench Warrant Issued by the Irmo Magistrate Court against Sasha M. Darby on December 8, 2016 .....	C
Public Index Case Page for August 23, 2016, Assault and Battery, 3rd Degree charge against Sasha M. Darby in the Irmo Magistrate Court (visited on April 17, 2017).....	D
Bench Warrant Issued by the Lexington County Central Traffic Court (“Central Traffic Court”) against Cayeshia Cashel Johnson on September 26, 2016.....	E
Public Index Case Page for September 22, 2016, Uninsured Motor Vehicle Fee Violation, 1st charge against Cayeshia Cashel Johnson in the Central Traffic Court (visited on April 3, 2017).....	F
Bench Warrant Issued by the Central Traffic Court against Amy Marie Palacios on November 15, 2016 .....	G
Public Index Case Page for November 10, 2016, DUS, 1st charge against Amy Marie Palacios in the Central Traffic Court (visited on May 2, 2017).....	H
Bench Warrant Issued by the Central Traffic Court against Xavier Larry Goodwin	

<sup>1</sup> South Carolina Judicial Department, “Case Records Search,” <http://www.sccourts.org/casesearch/> (last accessed May 17, 2017).

on August 10, 2016 .....I

Public Index Case Page for August 9, 2016, DUS, 2nd charge against Xavier Larry Goodwin in the Central Traffic Court (visited on April 26, 2017).....J

Lexington County Magistrate Courts “Failure to Comply” and “Archived Bench Warrant” Cases February 1, 2017 to March 31, 2017 Spreadsheet .....K

Lexington County Magistrate Courts “Failure to Comply” and “Archived Bench Warrant” Cases February 1, 2017 to March 31, 2017 Spreadsheet (Narrowed to Exclude “Jail Only” and “Nolle Prosequi” Cases).....L

**A. Bench Warrants Issued by Lexington County Magistrate Courts Against the Named Plaintiffs**

4. I reviewed the bench warrants issued by the Lexington County Central Traffic Court (“Central Traffic Court”) and the Irmo Magistrate Court against Plaintiffs Twanda Marshinda Brown, Sasha M. Darby, Cayeshia Cashel Johnson, Amy Marie Palacios, and Xavier Larry Goodwin, which are attached as Exhibits A, C, E, G, and I to this declaration.

5. I also reviewed online records of the South Carolina Judicial Department Public Index (“Public Index”) that correspond to the Central Traffic Court and the Irmo Magistrate Court cases in which each of the bench warrants concerning these Plaintiffs were issued. These Public Index case records are attached as Exhibits B, D, F, H, and J to this declaration.

6. The date of issuance identified on the face of each bench warrant corresponds with the date on which court staff entered a “Failure to Comply” or “Archived Bench Warrant” notation in the “Action” tab of the applicable magistrate court case record on the Public Index.

7. For example, the Irmo Magistrate Court issued a bench warrant on January 12, 2017 ordering the arrest and incarceration of Ms. Brown unless she paid \$1,907.63. See Exhibit A. The corresponding Public Index case record indicates that court staff entered a “Failure to Comply” notation in the case on January 12, 2017 as well. See Exhibit B.

8. The Irmo Magistrate Court issued a bench warrant on December 8, 2016 ordering the arrest and incarceration of Ms. Darby unless she paid \$680. *See* Exhibit C. The corresponding Public Index case record indicates that court staff entered a “Failure to Comply” notation in the case on December 8, 2016 as well. *See* Exhibit D.

9. Similarly, the Central Traffic Court issued a bench warrant on November 15, 2016 ordering the arrest and incarceration of Ms. Palacios unless she paid \$647.50. *See* Exhibit G. The Public Index case record indicates that court staff entered a “Failure to Comply” notation on November 15, 2016 as well. *See* Exhibit H.

10. The Central Traffic Court issued a bench warrant on September 26, 2016 ordering the arrest and incarceration of Ms. Johnson unless she paid \$1,287.50. *See* Exhibit E. The Public Index case record indicates that court staff entered an “Archived Bench Warrant” notation on September 26, 2016 as well. *See* Exhibit F.

11. The Central Traffic Court issued a bench warrant on August 10, 2016 ordering the arrest and incarceration of Mr. Goodwin unless he paid \$1,710. *See* Exhibit I. The Public Index case record indicates that court staff entered an “Archived Bench Warrant” notation on August 10, 2016 as well. *See* Exhibit J.

12. The issuance of a bench warrant by a Lexington County magistrate court is documented by the entry of a “Failure to Comply” or “Archived Bench Warrant” notation in the applicable Public Index case record.

**B. Estimated Number of Bench Warrants Issued by Lexington County Magistrate Courts in February and March 2017**

13. I conducted searches of online case records of the Central Traffic Court, the Irmo Magistrate Court, the Lexington Magistrate Court, the Oak Grove Magistrate Court, the

Swansea Magistrate Court, the Cayce-West Columbia Magistrate Court, and the Batesburg-Leesville Magistrate Court (collectively, “Lexington County magistrate courts”) to determine the number of bench warrants issued by these courts against people charged with nonpayment of magistrate court fines and fees during a specified time period.

14. Specifically, I searched the Public Index for all Lexington County magistrate court cases in which a “Failure to Comply” or “Archived Bench Warrant” notation was entered between February 1, 2017 and March 31, 2017. The records retrieved through this search are summarized in the Excel spreadsheet attached to this Declaration as Exhibit K (“Lexington County Magistrate Courts “Failure to Comply” and “Archived Bench Warrant” Cases February 1, 2017 to March 31, 2017 Spreadsheet”).

15. This search yielded a total of 217 unique cases in Lexington County magistrate courts in which a “Failure to Comply” or “Archived Bench Warrant” notation had been entered between February 1, 2017 and March 31, 2017. *See* Exhibit K.

16. I closely examined the Public Index case records for each of the 217 cases to determine whether information in the case record suggests that the defendant was not charged with failure to comply due to nonpayment of fines and fees. I excluded thirteen cases in which information in the Public Index case records suggested that the defendant had been sentenced to jail only or that the case was not ultimately prosecuted.

17. Once these thirteen cases were excluded, there were 204 cases in Lexington County magistrate courts in which a “Failure to Comply” or “Archived Bench Warrant” notation was entered between February 1, 2017 and March 31, 2017, and case information suggested that the notation was related to nonpayment. The information compiled from these records is summarized in the Excel spreadsheet attached to this Declaration as Exhibit L.

(“Lexington County Magistrate Courts “Failure to Comply” and “Archived Bench Warrant” Cases February 1, 2017 to March 31, 2017 Spreadsheet (Narrowed to Exclude “Jail Only” and “Nolle Prosequi Cases”)”). A bench warrant for nonpayment of fines and fees had been issued in 204 cases, which correspond to 183 different defendants. *See* Exhibit L.

18. Therefore, between February 1, 2017 and March 31, 2017, an estimated 183 individuals were at risk of being arrested, or ultimately were arrested, on bench warrants issued for failure to pay fines and fees to a Lexington County magistrate court.

19. If bench warrants are issued at the same rate throughout the year, this two-month estimate suggests that around 1,098 people are subjected to a bench warrant for nonpayment of fines and fees to a Lexington County magistrate court each year.

20. Notably, the Central Traffic Court and the Irmo Magistrate Court issued the largest number of bench warrants during the time period reviewed. Of the 183 individuals targeted with bench warrants by Lexington County magistrate courts from February 1, 2017 to March 31, 2017, 62 were defendants in Central Traffic Court cases and 36 were defendants in the Irmo Magistrate Court cases.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 20th of July, 2017 in New York, NY.



Nina Papachristou

## **EXHIBIT L**

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
1	Adams, Mocquez Andre	5102P0570773	Traffic Court	560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$232.50	\$232.50
2	Adams, Tracie Nicole	5102P0561993	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	3/22/2017	TIA Guilty Bench Trial	03/22/2017-00:00	Failure to Comply	\$232.50	\$232.50
3	Adams, Tracie Nicole	5102P0561994	Traffic Court	2554-Traffic / Improper start of vehicle	Traffic	3/22/2017	TIA Guilty Bench Trial	03/22/2017-00:00	Failure to Comply	\$232.50	\$232.50
4	Alexander, Steven Kwame	5102P0404337	Oak Grove Magistrate Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	Criminal	3/22/2017	Pled Guilty	3/22/2017-00:00	Failure to Comply	\$2,100.00	\$2,100.00
5	Alverio, Jacqueline	32-07779	Swansea Magistrate Court	320011034-Ordinance / Restraint and Confinement	Criminal	2/7/2017	TIA Guilty Bench Trial	2/7/2017-00:00	Failure to Comply	\$100.00	\$100.00
6	Amen, Joshua Ray	2.01616E+13	Lexington Magistrate Court	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	1/18/2017	TIA Guilty Bench Trial	3/23/2017-00:00	Failure to Comply	\$440.00	\$440.00
7	Anderson, Janice Lynn	2016A3210201218	Cayce-West Columbia Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	2/14/2017	Pled Nolo Contendere	2/14/2017-00:00	Failure to Comply	\$0.00	\$0.00
8	Ayers, Robin Sue	2015A3210201290	Swansea Magistrate Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	Criminal	4/6/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$2,105.00	\$1,745.00
9	Balkcom III, Charles Edward	5102P0408155	Irmo Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/7/2017	TIA Guilty Bench Trial	3/8/2017-00:00	Failure to Comply	\$647.50	\$647.50
10	Barnes, Creale Lee	2017A3210200193	Traffic Court	3466-Vehicle / Poss., conceal, sell., or dispose of stolen vehicle, value \$2,000 or less	Criminal	3/9/2017	TIA Guilty Bench Trial	03/09/2017-00:00	Failure to Comply	\$2,125.00	\$2,125.00
11	Beaver, Rhett Alexander	5102P0404312	Irmo Magistrate Court	2054-DUS / Driving under suspension, license suspended for DUI - 1st offense	Traffic	2/21/2017	TIA Guilty Bench Trial	2/22/2017-00:00	Failure to Comply	\$647.50	\$647.50
12	Bedenbaugh, Brandon	5102P0576548	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/23/2017	TIA Guilty Bench Trial	3/23/2017-00:00	Failure to Comply	\$647.50	\$647.50
13	Best, Paul Rawling	5102P0408151	Irmo Magistrate Court	2054-Traffic / Driving while privilege to drive is suspended and person is not licensed	Traffic	2/21/2017	TIA Guilty Bench Trial	2/21/2017-00:00	Failure to Comply	\$232.50	\$232.50

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
14	Beswick, Nicole Lee	5102P0871890	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/22/2017	TIA Guilty Bench Trial	03/22/2017-00:00	Failure to Comply	\$647.50	\$647.50
15	Beswick, Nicole Lee	5102P0871891	Traffic Court	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	3/22/2017	TIA Guilty Bench Trial	03/22/2017-00:00	Failure to Comply	\$440.00	\$440.00
16	Boatwright, Raven Hayley	36680FK	Cayce-West Columbia Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	2/28/2017	TIA Guilty Bench Trial	2/28/2017-00:00	Failure to Comply	\$1,087.50	\$1,087.50
17	Bogan, John David	2016A3210201870	Swansea Magistrate Court	0528-Shoplifting / Shoplifting, value \$2,000 or less	Criminal	11/1/2016	TIA Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$155.00	\$0.00
18	Bradley, Travis Terry	5102P0407339	Oak Grove Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	9/7/2016	Guilty Bench Trial	3/14/2017-00:00	Failure to Comply	\$666.93	\$0.00
19	Brown, Juanita Maria	5102P0566364	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/22/2017	TIA Guilty Bench Trial	03/22/2017-00:00	Failure to Comply	\$647.50	\$647.50
20	Brown, Lester	4102P0143157	Traffic Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	Traffic	8/26/2015	Guilty Bench Trial	02/02/2017-00:00	Failure to Comply	\$2,105.00	\$1,333.00
21	Brunson, Antwan Alexander	510P0277247	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	11/10/2016	Guilty Bench Trial	03/24/2017-00:00	Failure to Comply	\$666.93	\$666.93
22	Burgess, Carson Adams	5102P0405017	Swansea Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/7/2017	TIA Guilty Bench Trial	3/7/2017-00:00	Failure to Comply	\$647.50	\$647.50
23	Calloway, Mikeal Demond	2016A3210800375	Irmo Magistrate Court	3813-Domestic / Domestic Violence, 3rd degree	Criminal			3/27/2017-00:00	Failure to Comply	\$5,237.50	\$5,237.50
24	Camacho, Deserae Shonta	2.01616E+13	Swansea Magistrate Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Traffic	4/4/2017	Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$647.50	\$547.50
25	Cameron, Teresa Denise	5102P0406722	Irmo Magistrate Court	3243-Traffic / Expired vehicle license	Traffic	3/21/2017	TIA Guilty Bench Trial	3/24/2017-00:00	Failure to Comply	\$232.50	\$232.50

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
26	Case, Glen Dale	5102P0407775	Irmo Magistrate Court	2492-Traffic / Unauthorized soliciting for ride, employment, etc. on highway	Traffic	2/7/2017	TIA Guilty Bench Trial	2/7/2017-00:00	Failure to Comply	\$0.00	\$0.00
27	Caughman, Gary Wayne	67569GN	Cayce-West Columbia Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	1/18/2017	Pled Nolo Contendere	3/6/2017-00:00	Failure to Comply	\$500.00	\$500.00
28	Cha, Peter Hyunchul	2017A3210800082	Lexington Magistrate Court	3419-Larceny / Petit or Simple Larceny - \$2,000 or less	Criminal	3/22/2017	Pled Guilty	3/22/2017-00:00	Failure to Comply	\$50.00	\$50.00
29	Chapman, Phillip Kyle Jr	4102P048270	Irmo Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Criminal	2/14/2017	Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$0.00	\$0.00
30	Cheatham, David Jerome	2014A3211000217	Swansea Magistrate Court	0175-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. Offense	Criminal	10/7/2014	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$2,105.00	\$1,330.00
31	Cooper, Alyssa Brooke	2.01616E+13	Lexington Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	1/18/2017	TIA Guilty Bench Trial	3/23/2017-00:00	Failure to Comply	\$647.50	\$0.00
32	Cora, Milia Ann	2015A3210900147	Irmo Magistrate Court	0179-Drugs / Simple Possession of Marijuana - 1st offense	Criminal	3/22/2017	Guilty Jury Trial	3/24/2017-00:00	Failure to Comply	\$0.00	\$0.00
33	Corales-Rodgers, Joanna Maria-Paquita	5102P0570238	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/1/2017	TIA Guilty Bench Trial	03/01/2017-00:00	Failure to Comply	\$647.50	\$0.00
34	Council, Jermel Donta	29926FU	Lexington Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Criminal	10/12/2016	Pled Guilty	3/23/2017-00:00	Failure to Comply	\$638.60	\$538.60
35	Craig, Brian Terrell	33975HA	Irmo Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	8/4/2015	TIA Guilty Bench Trial	2/1/2017-00:00	Failure to Comply	\$652.50	\$652.50
36	Day, Charles Stephen Sr	2016A3210200610	Lexington Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Criminal	5/25/2016	TIA Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$638.60	\$388.60
37	Desantis, Jonathan Antonio	5102P0407729	Lexington Magistrate Court	2054-DUS / Driving under suspension, license suspended for DUI - 1st offense	Criminal	11/17/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$666.93	\$0.00

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
38	De-Souza, Eduardo	5102P0407909	Swansea Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	2/7/2017	TIA Guilty Bench Trial	2/7/2017-00:00	Failure to Comply	\$1,087.50	\$0.00
39	Dreher-Lott, Ashley Sha Carey	32898HA	Irmo Magistrate Court	2464-Traffic / Hit and run, att. Vehicle, duties of driver involved in accident, property damage	Traffic	2/21/2017	TIA Guilty Bench Trial	2/21/2017-00:00	Failure to Comply	\$232.50	\$0.00
40	Dyches, Scott C	2016A3210202025	Swansea Magistrate Court	1167-Trespassing / Entering premises after warning or refusing to leave on request	Criminal	11/17/2016	Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$460.00	\$460.00
41	Eaves, Zavier Jeremiah	5102P0405407	Lexington Magistrate Court	3219-Traffic / Violation of Beginner Permit	Traffic	3/22/2017	Pled Guilty	3/22/2017-00:00	Failure to Comply	\$232.50	\$0.00
42	Fanning, Gregory	36510FK	Cayce-West Columbia Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Criminal	1/17/2017	Pled Guilty	2/21/2017-00:00	Failure to Comply	\$407.50	\$407.50
43	Farmer, Stephanie Y	2.01616E+13	Lexington Magistrate Court	2559-Traffic / Failure to maintain proof of insurance in motor vehicle	Traffic	12/7/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$239.48	\$0.00
44	Figueredo, Fernando Lobaina	29785GU	Swansea Magistrate Court	0701-Traffic / Driving without a license - 1st offense	Traffic	3/7/2017	TIA Guilty Bench Trial	3/7/2017-00:00	Failure to Comply	\$232.50	\$232.50
45	Filgo, Brian Keith	5102P0566565	Traffic Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Traffic	3/22/2017	TIA Guilty Bench Trial	03/22/2017-00:00	Failure to Comply	\$1,270.00	\$1,270.00
46	Filgo, Brian Keith	32-07685	Swansea Magistrate Court	320011034-Ordinance / Restraint and Confinement	Criminal	9/15/2016	Pled Guilty Fine Suspended	2/16/2017-00:00	Failure to Comply	\$0.00	\$0.00
47	Floyd, Drew Sentell	5102P0408154	Irmo Magistrate Court	2073-Traffic / Operating vehicle on highway without registration and license due to delinquency	Traffic	2/21/2017	TIA Guilty Bench Trial	2/21/2017-00:00	Failure to Comply	\$232.50	\$232.50
48	Folden, Brandon Michael	G483882	Traffic Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	Traffic	3/7/2017	TIA Guilty Bench Trial	03/07/2017-00:00	Failure to Comply	\$2,100.00	\$2,100.00
49	Folden, Brandon Michael	G483883	Traffic Court	0657-Traffic / Reckless Driving	Traffic	3/7/2017	TIA Guilty Bench Trial	03/07/2017-00:00	Failure to Comply	\$440.00	\$440.00

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
50	Fowler, Jon Buck	4102P0428435	Oak Grove Magistrate Court	0528-Shoplifting / Shoplifting, value \$2,000 or less	Criminal	3/2/2017	Guilty Bench Trial	3/2/2017-00:00	Failure to Comply	\$0.00	\$0.00
51	Franklin, Joey	31657GU	Oak Grove Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	3/16/2017	Pled Guilty	2/3/2017-00:00	Failure to Comply	\$1,087.50	\$1,087.50
52	Franklin, Joey	31657GU	Oak Grove Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	3/16/2017	Pled Guilty	3/1/2017-00:00	Failure to Comply	\$1,087.50	\$1,087.50
53	Franklin, Joey	31658GU	Oak Grove Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	3/16/2017	Pled Guilty	3/16/2017-00:00	Failure to Comply	\$1,087.50	\$1,087.50
54	Frazier, Jason Devonne	4102P0139465	Lexington Magistrate Court	3313-Traffic / Uninsured motor vehicle fee violation, 2nd offense	Criminal	2/22/2017	Pled Guilty	2/22/2017-00:00	Failure to Comply	\$440.00	\$440.00
55	Freeman, Ashley Marie	2015A3210400021	Batesburg-Leesville Magistrate Court	2883-Checks / Fraudulent checks or stop payment > \$500 < \$1000, 1st offense	Criminal	3/7/2017	Guilty Jury Trial	3/7/2017-00:00	Failure to Comply	\$2,082.37	\$2,082.37
56	Galvin, Jose Del Carmen	5102P0575250	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	2/14/2017	TIA Guilty Bench Trial	02/14/2017-00:00	Failure to Comply	\$232.50	\$232.50
57	Gantt, Dana Carrol Sr	2016A3210200952	Swansea Magistrate Court	3813-Domestic / Domestic Violence, 3rd degree	Criminal	2/24/2017	Pled Nolo Contendere	2/27/2017-00:00	Failure to Comply	\$1,030.00	\$730.00
58	Gantt, Dominique Tyqwuwan	5102P0408455	Swansea Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/23/2017	TIA Guilty Bench Trial	3/23/2017-00:00	Failure to Comply	\$647.50	\$647.50
59	Garcia, Joaquin Ramos	5102P0571115	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$232.50	\$232.50
60	Garcia, Pedro Luis	2016A3210800402	Lexington Magistrate Court	2606-Sex / Sex Offender Registry Violation, fail to register - 1st offense	Criminal	2/2/2017	Pled Guilty	2/2/2017-00:00	Failure to Comply	\$2,800.00	\$2,800.00
61	Gillis, Matthew Joseph	32484GU	Irmo Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Criminal	8/9/2016	Pled Guilty	3/9/2017-00:00	Failure to Comply	\$0.00	\$0.00
62	Goodwin Jr, Charles E	5102P0392599	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/3/2017	TIA Guilty Bench Trial	03/03/2017-00:00	Failure to Comply	\$647.50	\$647.50
63	Gowans, Coury Lamar	85455GV	Cayce-West Columbia Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/21/2017	TIA Guilty Bench Trial	3/21/2017-00:00	Failure to Comply	\$647.50	\$0.00

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
64	Graves, Takayus Donall	22701FY	Swansea Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	6/13/2016	Guilty Bench Trial	3/27/2017-00:00	Failure to Comply	\$0.00	\$0.00
65	Greene, Lucius W Jr	2.01616E+13	Irmo Magistrate Court	0657-Traffic / Reckless Driving	Traffic	2/14/2017	TIA Guilty Bench Trial	2/15/2017-00:00	Archived Bench Warrant	\$440.00	\$0.00
66	Grier, Brandon Kelly	50900FF	Traffic Court	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	3/8/2017	TIA Guilty Bench Trial	03/09/2017-00:00	Failure to Comply	\$440.00	\$440.00
67	Grier, Brandon Kelly	5102P0406854	Swansea Magistrate Court	2326-Littering / Littering, 15 to 500 lbs. or 27 to 100 cu. Ft.	Criminal	11/17/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$460.00	\$0.00
68	Griffin, Austin Riley	5102P0406888	Swansea Magistrate Court	0701-Traffic / Driving without a license - 1st offense	Traffic	3/23/2017	TIA Guilty Bench Trial	3/23/2017-00:00	Failure to Comply	\$232.50	\$232.50
69	Gunter, Kyle Lance	5102P0871601	Traffic Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	Traffic	2/28/2017	TIA Guilty Bench Trial	2/28/2017-00:00	Failure to Comply	\$1,270.00	\$1,270.00
70	Gunter, Kyle Lance	5102P0871601	Traffic Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	Traffic	2/28/2017	TIA Guilty Bench Trial	03/01/2017-00:00	Failure to Comply	\$1,270.00	\$1,270.00
71	Hall, Derek Quinton Reginald	2.01616E+13	Irmo Magistrate Court	2143-Traffic / Window tinting or suncreening, operating vehicle in violation of regulations	Traffic	2/14/2017	TIA Guilty Bench Trial	2/15/2017-00:00	Failure to Comply	\$440.00	\$0.00
72	Haltiwanger, Wesley	5102P0406082	Irmo Magistrate Court	2492-Traffic / Unauthorized soliciting for ride, employment, etc. on highway	Criminal	2/7/2017	TIA Guilty Bench Trial	2/7/2017-00:00	Failure to Comply	\$232.50	\$232.50
73	Hancock, Steven Allen	5102P0566582	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	3/22/2017	TIA Guilty Bench Trial	03/22/2017-00:00	Failure to Comply	\$232.50	\$232.50
74	Harris, Junel Tamia	5102P0561693	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	12/15/2016	Guilty Bench Trial	2/2/2017-00:00	Failure to Comply	\$647.50	\$0.00
75	Harris, Secedrick Bernard	5102P0406993	Irmo Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/7/2017	TIA Guilty Bench Trial	2/8/2017-00:00	Failure to Comply	\$666.93	\$305.93
76	Harrison, Joye N	4102P0428285	Irmo Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	9/13/2016	Pled Nolo Contendere	2/7/2017-00:00	Failure to Comply	\$666.93	\$516.93

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
77	Harrison, Kimball Underwood	327525	Lexington Magistrate Court	320011034-Ordinance / Restraint and Confinement	Criminal	2/22/2017	Pled Guilty	3/23/2017-00:00	Failure to Comply	\$792.00	\$492.00
78	Harris-Ulmer, Justn Jakel	5102P0406158	Cayce-West Columbia Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Criminal	2/21/2017	Guilty Bench Trial	3/30/2017-00:00	Failure to Comply	\$500.00	\$500.00
79	Henerey, James	32279GU	Lexington Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Criminal	12/21/2016	Pled Guilty	3/23/2017-00:00	Failure to Comply	\$666.93	\$0.00
80	Henry, Daniel Wesley	5102P0571961	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	2/9/2017	TIA Guilty Bench Trial	02/09/2017-00:00	Failure to Comply	\$232.50	\$232.50
81	Hernandez Mendez, Jose	5102P0873791	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	3/2/2017	TIA Guilty Bench Trial	03/02/2017-00:00	Failure to Comply	\$232.50	\$232.50
82	Hernandez-Ortega, Francisco	5102P0408152	Irmo Magistrate Court	2053-Traffic / Driving while privilege to drive is suspended and person is not licensed	Traffic	2/21/2017	TIA Guilty Bench Trial	2/21/2017-00:00	Failure to Comply	\$232.50	\$232.50
83	Hicks, Walter Limann	5102P0406155	Cayce-West Columbia Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Criminal	2/21/2017	TIA Guilty Bench Trial	2/21/2017-00:00	Failure to Comply	\$615.00	\$0.00
84	Hopper, Michael Caughman	36512FK	Cayce-West Columbia Magistrate Court	0657-Traffic / Reckless Driving	Traffic	3/21/2017	TIA Guilty Bench Trial	3/21/2017-00:00	Failure to Comply	\$440.00	\$0.00
85	Hornsby, Ramona Violet	5102P0869860	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic			02/07/2017-00:00	Failure to Comply	\$647.50	\$647.50
86	Hurley, Randall Gordan	5102P0567100	Traffic Court	624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/2/2017	TIA Guilty Bench Trial	03/02/2017-00:00	Failure to Comply	\$647.50	\$647.50
87	Iglesias, Jeffery John	5102P0871562	Traffic Court	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	1/31/2017	TIA Guilty Bench Trial	02/01/2017-00:00	Failure to Comply	\$440.00	\$440.00
88	Iguit, Juan	5102P0570752	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$128.75	\$0.00
89	Jackson, Alphonzo	2.01716E+13	Lexington Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic			3/21/2017-00:00	Failure to Comply	\$647.50	\$647.50

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
90	Jackson, James R	5102P0871844	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/22/2017	TIA Guilty Bench Trial	03/22/2017-00:00	Failure to Comply	\$647.50	\$647.50
91	Jackson, Johnny Edward	2016A3210201832	Irmo Magistrate Court	3813-Domestic / Domestic Violence, 3rd degree	Criminal			2/21/2017-00:00	Failure to Comply	\$5,237.50	\$5,237.50
92	James, Danny Leverne Jr	2016A3210500011	Batesburg-Leesville Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	4/14/2016	Pled Guilty	2/7/2017-00:00	Failure to Comply	\$159.65	\$109.65
93	James, Rhonda Jenee	36483FK	Cayce-West Columbia Magistrate Court	2559-Traffic / Failure to maintain proof of insurance in motor vehicle	Traffic	1/24/2017	Pled Guilty	3/30/2017-00:00	Failure to Comply	\$239.48	\$239.48
94	Jeffcoat, Lisa Ann	5102P0570181	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	1/31/2017	TIA Guilty Bench Trial	02/01/2017-00:00	Failure to Comply	\$647.50	\$647.50
95	Johnson, Brian Alan	5102P0404538	Irmo Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	8/23/2016	Pled Guilty	2/7/2017-00:00	Failure to Comply	\$666.93	\$0.00
96	Johnson, Lauren Elizabeth	85329EF	Lexington Magistrate Court	0240-Alcohol / Sale of beer or wine to a minor, under 21, 1st offense	Criminal	8/10/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$478.95	\$453.95
97	Johnson, Russell M	2017A3210200088	Lexington Magistrate Court	0528-Shoplifting / Shoplifting, value \$2,000 or less	Criminal	3/8/2017	TIA Guilty Bench Trial	3/8/2017-00:00	Failure to Comply	\$2,125.00	\$0.00
98	Johnson, Russell M	5102P0390772	Oak Grove Magistrate Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. Offense	Criminal	2/23/2017	TIA Guilty Jury Trial	2/23/2017-00:00	Failure to Comply	\$2,100.00	\$2,100.00
99	Johnson, Russell M	5102P0390773	Oak Grove Magistrate Court	2559-Traffic / Failure to maintain proof of insurance in motor vehicle	Traffic	2/23/2017	TIA Guilty Jury Trial	2/23/2017-00:00	Failure to Comply	\$232.50	\$232.50
100	Johnson-Green, Tiffany Michell	4102P0426032	Swansea Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/23/2017	TIA Guilty Bench Trial	3/23/2017-00:00	Failure to Comply	\$647.50	\$0.00
101	Jordan Jr, Nathaniel Gean	5102P0389018	Traffic Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	Traffic	3/3/2017	TIA Guilty Bench Trial	03/03/2017-00:00	Failure to Comply	\$2,100.00	\$2,100.00

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
102	Kenley, Evan Jerrill	4102P0143864	Irmo Magistrate Court	2073-Traffic / Operating vehicle on highway without registration and license due to delinquency	Traffic	2/16/2016	Guilty Bench Trial	2/21/2017-00:00	Failure to Comply	\$244.63	\$84.26
103	Kenley, Evan Jerrill	4102P0143865	Irmo Magistrate Court	2559-Traffic / Failure to maintain proof of insurance in motor vehicle	Traffic	2/16/2016	Guilty Bench Trial	2/21/2017-00:00	Failure to Comply	\$244.63	\$244.63
104	Kimmell, Angel Marie	3207970	Lexington Magistrate Court	320011034-Ordinance / Restraint and Confinement	Criminal	2/22/2017	TIA Guilty Bench Trial	2/22/2017-00:00	Failure to Comply	\$1,087.50	\$1,087.50
105	Kimmell, Angel Marie	3207971	Lexington Magistrate Court	320011061-Ordinance / Inoculation, certificate, tags	Criminal	2/22/2017	TIA Guilty Bench Trial	2/22/2017-00:00	Failure to Comply	\$1,087.50	\$1,087.50
106	Kuers, William Frederick	5102P0407129	Irmo Magistrate Court	2103-Traffic / Speeding, more than 25 mph over the speed limit	Traffic	2/7/2017	Pled Guilty	2/7/2017-00:00	Failure to Comply	\$458.35	\$308.35
107	Kuers, William Frederick	5102P0407130	Irmo Magistrate Court	2166-Traffic / Failure to return license plate and registration upon loss of insurance - 1st offense	Traffic	2/7/2017	Pled Guilty	2/7/2017-00:00	Failure to Comply	\$244.63	\$244.63
108	Kuers, William Frederick	5102P0407131	Irmo Magistrate Court	3243-Traffic / Expired vehicle license	Traffic	2/7/2017	Pled Guilty	2/7/2017-00:00	Failure to Comply	\$239.48	\$239.48
109	Ladson, Charlie Christopher	28236GB	Irmo Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/14/2017	TIA Guilty Bench Trial	3/14/2017-00:00	Failure to Comply	\$647.50	\$647.50
110	Lakes, Mavaries Antonio	4102P0425841	Swansea Magistrate Court	1223-Report / Giving false information to law enforcement, fire dept. or rescue dept.	Criminal	7/5/2016	Guilty Bench Trial Credit Time Served	2/16/2017-00:00	Failure to Comply	\$50.00	\$50.00
111	Lanning, Ryan Lonnie	5102P0408986	Lexington Magistrate Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Criminal	3/8/2017	Pled Guilty	3/22/2017-00:00	Failure to Comply	\$127.00	\$0.00
112	Lewis, Joey Lee	32284GU	Lexington Magistrate Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Traffic	2/15/2017	TIA Guilty Bench Trial	2/15/2017-00:00	Failure to Comply	\$1,270.00	\$0.00
113	Lopez Reyes, Gonzalo	5102P0406712	Lexington Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/23/2017	TIA Guilty Bench Trial	2/23/2017-00:00	Failure to Comply	\$647.50	\$647.50

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
114	Lovett, John R Jr	36515FK	Cayce-West Columbia Magistrate Court	2485-Traffic / Operating or permitting operation of vehicle which is not registered and licensed.	Traffic	3/21/2017	TIA Guilty Bench Trial	3/21/2017-00:00	Failure to Comply	\$232.50	\$0.00
115	Lumpkin, Nikeisha lunna	5102P0571107	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$155.00	\$155.00
116	Lykes, Dairen Travell	5102P0575271	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/14/2017	TIA Guilty Bench Trial	03/15/2017-00:00	Failure to Comply	\$647.50	\$647.50
117	Martin, Tony Anthony Jr	2016A3220500239	Lexington Magistrate Court	0750-School / Enticing enrolled child from attendance in public or private school	Criminal			3/6/2017-00:00	Failure to Comply	\$50.00	\$50.00
118	Mcgrady, Laikin Danielle	2016A3210800633	Lexington Magistrate Court	3469-Breach / Obtain signature or prop. Under false pretenses, value \$2,000 or less	Criminal	3/8/2017	Pled Guilty	3/8/2017-00:00	Failure to Comply	\$2,125.00	\$0.00
119	Mclean, William Dean	5102P0572139	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	1/31/2017	TIA Guilty Bench Trial	02/01/2017-00:00	Failure to Comply	\$232.50	\$0.00
120	Miles, Dakota Allen	29640GU	Swansea Magistrate Court	3428-Malicious / Malicious injury to tree, house; trespass upon real property, injury value \$2,000 or less	Criminal	12/15/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$50.00	\$50.00
121	Mitchell, Rick Tracy Jr	34821HA	Irmo Magistrate Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Criminal	2/7/2017	TIA Guilty Bench Trial	2/8/2017-00:00	Failure to Comply	\$1,270.00	\$1,270.00
122	Montero, Alfonso Jimenez	5102P0874368	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	3/9/2017	TIA Guilty Bench Trial	03/09/2017-00:00	Failure to Comply	\$232.50	\$0.00
123	Morrison, Matthew Jay Dee	4102P0424491	Swansea Magistrate Court	2492-Traffic / Unauthorized soliciting for ride, employment, etc. on highway	Traffic	3/23/2017	TIA Guilty Bench Trial	3/23/2017-00:00	Failure to Comply	\$0.00	\$0.00
124	Moultrie, James Jarrell	5102P0576702	Traffic Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Traffic	3/28/2017	TIA Guilty Bench Trial	3/29/2017-00:00	Failure to Comply	\$765.00	\$615.00
125	Murray, Glinnis Daishon	5102P0878409	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/28/2017	TIA Guilty Bench Trial	3/29/2017-00:00	Failure to Comply	\$647.50	\$647.50

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
126	Myers, Reginald Tridell	5102P0570756	Traffic Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$1,270.00	\$0.00
127	Neal, Melissa Ann	5102P0406618	Lexington Magistrate Court	0528-Shoplifting / Shoplifting, value \$2,000 or less	Criminal	10/12/2016	Guilty Bench Trial	3/23/2017-0:00	Failure to Comply	\$1,030.00	\$0.00
128	Neal, Melissa Ann	32-07716	Swansea Magistrate Court	320011034-Ordinance / Restraint and Confinement	Criminal	10/20/2016	Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$250.00	\$0.00
129	Neal, Melissa Ann	4102P0143950	Swansea Magistrate Court	320015437-Ordinance / Accumulation and Storage of Solid Waste	Criminal	9/15/2016	Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$287.50	\$0.00
130	Neal, Melissa Ann	4102P0143950	Swansea Magistrate Court	320015437-Ordinance / Accumulation and Storage of Solid Waste	Criminal	9/15/2016	Guilty Bench Trial	2/16/2017-00:00	Archived Bench Warrant	\$287.50	\$0.00
131	Neal, William Benjamin	5102P0406617	Lexington Magistrate Court	0528-Shoplifting / Shoplifting, value \$2,000 or less	Criminal	10/12/2016	Pled Guilty	3/23/2017-00:00	Failure to Comply	\$1,030.00	\$0.00
132	Nelson, Anita Renee	33943GU	Batesburg-Leesville Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/2/2017	TIA Guilty Jury Trial	2/14/2017-00:00	Failure to Comply	\$647.50	\$0.00
133	Nichols, Thomas Matthew	2.01616E+13	Irmo Magistrate Court	2101-Traffic / Speeding, more than 10 but less than 15 mph over the speed limit	Traffic	12/13/2016	Pled Guilty	2/21/2017-00:00	Failure to Comply	\$76.88	\$0.00
134	Nickels, Eric A	5102P0406994	Irmo Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/7/2017	TIA Guilty Bench Trial	2/8/2017-00:00	Failure to Comply	\$647.50	\$0.00
135	Nowlin, Brittany Megan	2.01616E+13	Lexington Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Traffic	2/2/2017	TIA Guilty Bench Trial	2/2/2017-00:00	Failure to Comply	\$615.00	\$0.00
136	Oliphant, Cosmo Leterrance	32498GU	Irmo Magistrate Court	2108-Traffic / Pedestrian on controlled access highway	Traffic	11/15/2016	Pled Nolo Contendere	2/22/2017-00:00	Failure to Comply	\$239.48	\$239.48
137	Ollis, Jennifer	2.01616E+13	Irmo Magistrate Court	2485-Traffic / Operating or permitting operation of vehicle which is not registered and licensed.	Traffic	3/7/2017	TIA Guilty Bench Trial	3/8/2017-00:00	Failure to Comply	\$232.50	\$232.50
138	Ollis, Jennifer	2.01616E+13	Irmo Magistrate Court	2460-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	3/7/2017	TIA Guilty Bench Trial	3/8/2017-00:00	Failure to Comply	\$440.00	\$440.00

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
139	Ollis, Jennifer	2.01616E+13	Irmo Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/7/2017	TIA Guilty Bench Trial	3/8/2017-00:00	Failure to Comply	\$647.50	\$647.50
140	Osbia, Devante	4102P0428373	Irmo Magistrate Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	Criminal	12/13/2016	Pled Guilty	2/21/2017-00:00	Failure to Comply	\$0.00	\$0.00
141	Owens, Jaclyn Nicole	5102P0407758	Oak Grove Magistrate Court	0528-Shoplifting/ Shoplifting, value \$2,000 or less	Criminal	1/4/2017	TIA Guilty Bench Trial	2/17/2017-00:00	Failure to Comply	\$2,125.00	\$2,125.00
142	Page, Lisa	2016A3210202033	Batesburg-Leesville Magistrate Court	3813-Domestic / Domestic Violence, 3rd degree	Criminal			2/13/2017-00:00	Failure to Comply	\$5,237.50	\$5,237.50
143	Partin, Sharon Lorine	32-07885	Swansea Magistrate Court	320011034-Ordinance / Restraint and Confinement	Criminal	3/7/2017	TIA Guilty Bench Trial	3/7/2017-00:00	Failure to Comply	\$1,087.50	\$1,087.50
144	Peeples, Eric Justin	2016A3210700131	Irmo Magistrate Court	3422-Breach / Breach of trust with fraudulent intent, value \$2,000 or less	Criminal	1/3/2017	Pled Guilty	3/21/2017-00:00	Failure to Comply	\$0.00	\$0.00
145	Pena, Matthew Justin	2.01716E+13	Lexington Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Criminal	2/2/2017	TIA Guilty Bench Trial	2/2/2017-00:00	Failure to Comply	\$615.00	\$615.00
146	Peterson Jr, Granison Dwight	5102P0873494	Traffic Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Traffic	3/14/2017	TIA Guilty Bench Trial	03/15/2017-00:00	Failure to Comply	\$615.00	\$615.00
147	Pontoon, Shakur Oneal	4102P0427505	Irmo Magistrate Court	0659-Drugs / Possession of 28g (1 oz) or less of marijuana or 10g or less of hash - 1st offense	Criminal	6/7/2016	Pled Guilty	3/8/2017-00:00	Failure to Comply	\$638.60	\$0.00
148	Pough, Phyllis Ann	J080038	Cayce-West Columbia Magistrate Court	0670-FRAUDULENT CHECK	Criminal	2/28/2017	TIA Guilty Bench Trial	2/28/2017-00:00	Failure to Comply	\$200.00	\$0.00
149	Prince, Garrett Blake	21119FY	Irmo Magistrate Court	2108-Traffic / Pedestrian on controlled access highway	Traffic	11/15/2016	Pled Nolo Contendere	2/15/2017-00:00	Failure to Comply	\$239.48	\$239.48
150	Ramirez, Rene Jamenez	5102P0466584	Traffic Court	0622-Disorderly / Public disorderly conduct	Criminal	2/21/2017	TIA Guilty Bench Trial	2/23/2017-00:00	Archived Bench Warrant	\$257.50	\$257.50

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
151	Ray, Daquain Montrell	2016A3210202030	Batesburg-Leesville Magistrate Court	3415-Malicious / Malicious injury to animals, personal property, injury value \$2,000 or less	Criminal	11/17/2016	Pled Guilty	3/9/2017-00:00	Failure to Comply	\$556.00	\$0.00
152	Reaves, Edward Douglas	2016A3210201429	Oak Grove Magistrate Court	3813-Domestic / Domestic Violence, 3rd degree	Criminal	2/9/2017	Pled Nolo Contendere	2/8/2017-00:00	Failure to Comply	\$50.00	\$50.00
153	Reese, Ashton James	29927GU	Irmo Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	11/1/2016	Pled Nolo Contendere	2/15/2017-00:00	Failure to Comply	\$412.00	\$412.00
154	Richards-Gartee, Judith Elizabeth	32881GU	Cayce-West Columbia Magistrate Court	0622-Disorderly / Public disorderly conduct	Criminal	3/21/2017	TIA Guilty Bench Trial	3/21/2017-00:00	Failure to Comply	\$257.50	\$257.50
155	Richburg, Danielle Rebecca	5102P0575653	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$647.50	\$647.50
156	Rojas, David Hernandez	5102P0869870	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	2/7/2017	TIA Guilty Bench Trial	02/07/2017-00:00	Failure to Comply	\$232.50	\$232.50
157	Roof, Shanna Danielle	20162350001108	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/9/2017	TIA Guilty Bench Trial	02/09/2017-00:00	Failure to Comply	\$647.50	\$0.00
158	Rose, Joseph Wayne	5102P0405074	Swansea Magistrate Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Traffic	5/23/2017	Guilty Bench Trial	3/22/2017-00:00	Failure to Comply	\$1,270.00	\$1,270.00
159	Rose, Thomas Eddie	2017A3210600017	Cayce-West Columbia Magistrate Court	3419-Larceny / Petit or Simple Larceny - \$2,000 or less	Criminal	3/28/2017	Guilty Bench Trial	3/28/2017-00:00	Failure to Comply	\$500.00	\$500.00
160	Salvador Palonino, Melisa	5102P0872793	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	2/28/2017	TIA Guilty Bench Trial	03/01/2017-00:00	Failure to Comply	\$232.50	\$232.50
161	Scott, Ryan Charles	5102P0408452	Swansea Magistrate Court	2054-DUS / Driving under suspension, license suspended for DUI - 1st offense	Traffic	3/23/2017	TIA Guilty Bench Trial	3/23/2017-00:00	Failure to Comply	\$647.50	\$0.00
162	Secret, Donald Zeb III	5102P0406998	Irmo Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/7/2017	TIA Guilty Bench Trial	2/8/2017-00:00	Failure to Comply	\$647.50	\$0.00

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
163	Sharpe, Zachariah Josph	5102P0570792	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$647.50	\$647.50
164	Sharpe, Zachariah Josph	5102P0872785	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/28/2017	TIA Guilty Bench Trial	03/01/2017-00:00	Failure to Comply	\$647.50	\$647.50
165	Shealy, Breanna Rochelle	5102P0405057	Swansea Magistrate Court	0622-Disorderly / Public disorderly conduct	Criminal	10/4/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$0.00	\$0.00
166	Shepherd, Stephanie Lorainne	29641GU	Swansea Magistrate Court	0701-Traffic / Driving without a license - 1st offense	Traffic	10/20/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$232.50	\$232.50
167	Singletary, Julius Lavan	5102P0575859	Traffic Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Traffic	2/21/2017	TIA Guilty Bench Trial	02/21/2017-00:00	Failure to Comply	\$1,270.00	\$1,270.00
168	Snyder, Caleb	2016A3210900032	Oak Grove Magistrate Court	3414-Assault / Assault & Battery 3rd degree	Criminal	1/27/2017	Pled Nolo Contendere	2/21/2017-00:00	Failure to Comply	\$50.00	\$50.00
169	Spires, Emily Suzette	20172350005721	Traffic Court	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	3/28/2017	TIA Guilty Bench Trial	3/29/2017-00:00	Failure to Comply	\$440.00	\$440.00
170	Spires, James Allen	5102P0567048	Traffic Court	3798-DUS / Driving under suspension, license not suspended for DUI - 3rd or sub. offense	Traffic	3/3/2017	TIA Guilty Bench Trial	03/03/2017-00:00	Failure to Comply	\$2,100.00	\$2,100.00
171	Stasium, Justin Benjamin II	4102P0408363	Irmo Magistrate Court	2120-Traffic / Animals and certain vehicles on controlled access highways	Traffic	2/7/2017	TIA Guilty Bench Trial	2/8/2017-00:00	Failure to Comply	\$0.00	\$0.00
172	Summers, Jeffery C Jr	20162350001063	Traffic Court	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	11/17/2016	Pled Nolo Contendere	3/24/2017-00:00	Failure to Comply	\$453.20	\$453.20
173	Taylor, Robert Michael	5102P0391941	Traffic Court	0622-Disorderly / Public disorderly conduct	Traffic	11/15/2016	Pled Guilty	3/24/2017-00:00	Failure to Comply	\$159.65	\$109.65
174	Taylor, Ronald Montee	32-07729	Swansea Magistrate Court	320011034-Ordinance / Restraint and Confinement	Criminal	10/20/2016	Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$287.50	\$287.50
175	Taylor, Voight Brandon	5102P0878417	Traffic Court	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	3/28/2017	TIA Guilty Bench Trial	3/29/2017-00:00	Failure to Comply	\$440.00	\$440.00
176	Tenahua, Florentina Galindo	5102P0873465	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	2/14/2017	TIA Guilty Bench Trial	02/14/2017-00:00	Failure to Comply	\$232.50	\$0.00

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
177	Thigpen, John Thomas	5102P0251126	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	7/28/2016	Pled Guilty	3/24/2017-00:00	Failure to Comply	\$666.93	\$566.93
178	Thoman, Dustin James	36686FK	Cayce-West Columbia Magistrate Court	0622-Disorderly / Public disorderly conduct	Criminal	3/28/2017	TIA Guilty Bench Trial	3/28/2017-00:00	Failure to Comply	\$257.50	\$257.50
179	Thompson, Henry Douglas	5102P0575631	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$647.50	\$647.50
180	Torres, Lucid	5102P0576293	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	3/9/2017	TIA Guilty Bench Trial	03/09/2017-00:00	Failure to Comply	\$232.50	\$0.00
181	Turner, Jason	SCFC16244	Swansea Magistrate Court	1683-Fire / Regulation of fires on certain lands Chapter violation - 1st offense	Criminal	3/23/2017	TIA Guilty Bench Trial	3/23/2017-00:00	Failure to Comply	\$0.00	\$0.00
182	Villacobos, Refugio Flores	5102P0573286	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	2/2/2017	TIA Guilty Bench Trial	2/3/2017-00:00	Archived Bench Warrant	\$232.50	\$0.00
183	Villalobos Maroto, Miguel	5102P0872116	Traffic Court	0701-Traffic / Driving without a license - 1st offense	Traffic	3/7/2017	TIA Guilty Bench Trial	03/07/2017-00:00	Failure to Comply	\$232.50	\$0.00
184	Villella, Justin Brian	2017A3210600018	Cayce-West Columbia Magistrate Court	1223-Report / Giving false information to law enforcement, fire dept. or rescue dept.	Criminal	3/28/2017	TIA Guilty Bench Trial	3/28/2017-00:00	Failure to Comply	\$465.00	\$0.00
185	Waddell, Donald Wilson	5102P0406640	Lexington Magistrate Court	3211030110(B)-Ordinance / Burning unapproved materials	Traffic	12/21/2016	Pled Guilty	3/23/2017-00:00	Failure to Comply	\$103.00	\$0.00
186	Waddell, Donald Wilson	5102P0406641	Lexington Magistrate Court	3211030110(B)-Ordinance / Burning unapproved materials	Criminal	12/21/2016	Pled Guilty	3/23/2017-00:00	Failure to Comply	\$103.00	\$0.00
187	Wallace, Decema Shamika	58684EP	Irmo Magistrate Court	2054-DUS / Driving under suspension, license suspended for DUI - 1st offense	Traffic	10/4/2016	Pled Nolo Contendere	2/15/2017-00:00	Failure to Comply	\$666.93	\$0.00
188	Walling, Monica Jeannine	2016A3210800640	Lexington Magistrate Court	0528-Shoplifting / Shoplifting, value \$2,000 or less	Criminal	2/22/2017	TIA Guilty Bench Trial	2/22/2017-00:00	Failure to Comply	\$2,125.00	\$0.00
189	Washington, Denzell Octavis	34590HA	Swansea Magistrate Court	3419-Larceny / Petit or Simple Larceny - \$2,000 or less	Traffic	12/8/2015	TIA Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$1,440.00	\$1,440.00

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
190	Watson, Cornelius Jr	2.01616E+13	Swansea Magistrate Court	2083-Traffic / Parking in handicapped parking space	Traffic	2/16/2017	TIA Guilty Bench Trial	2/16/2017-00:00	Failure to Comply	\$1,000.00	\$1,000.00
191	Webb, Malissa Ruth	5102P0385058	Swansea Magistrate Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Traffic	11/18/2016	Guilty Bench Trial	2/17/2017-00:00	Failure to Comply	\$1,270.00	\$1,270.00
192	Welch, Ray Charles Richard	2016A3210500101	Swansea Magistrate Court	3466-Vehicle / Poss., conceal, sell., or dispose of stolen vehicle, value \$2,000 or less	Criminal	9/15/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$2,130.00	\$2,130.00
193	White, Darius Norman	5102P0570230	Traffic Court	0174-DUS / Driving under suspension, license not suspended for DUI - 2nd offense	Traffic	3/1/2017	TIA Guilty Bench Trial	03/01/2017-00:00	Failure to Comply	\$1,270.00	\$1,270.00
194	White, Darius Norman	5102P0570231	Traffic Court	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	3/1/2017	TIA Guilty Bench Trial	03/01/2017-00:00	Failure to Comply	\$440.00	\$440.00
195	White, James Joseph	5102P0571098	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$647.50	\$647.50
196	White, Kendrick	2016A3210200617	Swansea Magistrate Court	3813-Domestic / Domestic Violence, 3rd degree	Criminal	12/16/2016	Pled Nolo Contendere	3/31/2017-00:00	Failure to Comply	\$50.00	\$50.00
197	Whitt, Sherman Oneal	5102P0575447	Traffic Court	2054-DUS / Driving under suspension, license suspended for DUI - 1st offense	Traffic	3/7/2017	TIA Guilty Bench Trial	03/07/2017-00:00	Failure to Comply	\$647.50	\$647.50
198	Whitted, Christopher L	5102P0872817	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	3/1/2017	TIA Guilty Bench Trial	03/01/2017-00:00	Failure to Comply	\$647.50	\$647.50
199	Williams Jr, Alfred C	5102P0570794	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	2/8/2017	TIA Guilty Bench Trial	02/08/2017-00:00	Failure to Comply	\$647.50	\$647.50
200	Williams, Charles Jermaine	2017A3210800025	Lexington Magistrate Court	3422-Breach / Breach of trust with fraudulent intent, value \$2,000 or less	Criminal	3/8/2017	TIA Guilty Bench Trial	3/8/2017-00:00	Failure to Comply	\$2,125.00	\$2,125.00
201	Williams, Dejonta Vincent	G151910	Traffic Court	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	Traffic	2/17/2015	Pled Guilty	3/24/2017-00:00	Failure to Comply	\$458.35	\$208.35

	Name	Case Number	Court Agency	Charge Code - Charge Description	Case Type	Disposition Date	Disposition	Begin Date	Description	Fines/ Costs	Balance Due
202	Williams, Justin Oneal	5102P0393411	Traffic Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	11/29/2016	Pled Nolo Contendere	3/24/2017-00:00	Failure to Comply	\$666.93	\$666.93
203	Williford, Timothy Edward	4102P0425823	Swansea Magistrate Court	0624-DUS / Driving under suspension, license not suspended for DUI - 1st offense	Traffic	9/6/2016	Pled Guilty	2/16/2017-00:00	Failure to Comply	\$647.50	\$647.50
204	Wilson, Mark David	20172350005258	Traffic Court	0660-Alcohol / Open container of beer or wine in motor vehicle	Criminal	3/9/2017	TIA Guilty Bench Trial	03/09/2017-00:00	Failure to Comply	\$257.50	\$0.00
205	Wintson, Geaorge Lawrence Jr	5102P0875552	Traffic Court	0657-Traffic / Reckless Driving	Traffic	3/28/2017	TIA Guilty Bench Trial	3/29/2017-00:00	Failure to Comply	\$440.00	\$440.00

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Twanda Marshinda Brown, et al,	)	Civil Action No.
	)	
Plaintiffs,	)	3:17-1426-MBS-SVH
	)	
v.	)	
	)	
Lexington County, South Carolina, et al.,	)	
Defendants.	)	
	)	
	)	
	)	
_____	)	

**EXHIBIT 1 TO  
MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
Affidavit of Colleen Long**



b. Amy Marie Palacios

Court records indicate that on November 10, 2016, Ms. Palacios was tried in her absence in the Central Traffic Court and found guilty of DUS, 1st offense, as stated in Paragraph 260 of the Amended Complaint.

She was sentenced to pay a fine of \$647.50 or serve 30 days in jail.

On November 15, 2016, no appearance or payment by Ms. Palacios having occurred, the Central Traffic Court issued a bench warrant ordering that she be arrested and jailed. The bench warrant required Ms. Palacios to pay \$647.50 or be jailed for 30 days for her conviction on the charge of DUS, 1st offense. The bench warrant was served on February 25, 2017, and she was jailed that day. She was released on March 17, 2017. With time off for good behavior, her service of this jail sentence satisfied the charge against her. She continues to owe the Central Traffic Court a \$25 non-suspendable cost related to her conviction for DUS, 1st offense.

c. Cayeshia Johnson

Court records indicate that on August 21, 2016, Ms. Johnson was issued tickets charging her with five traffic offenses and one misdemeanor offense: (1) uninsured motor vehicle fee violation, 1st offense; (2) operating a motor vehicle without license in possession; (3) improper start of vehicle; (4) violation of beginner permit; (5) failure to return license plate and registration upon loss of insurance, 1st offense; and (6) simple possession of marijuana, as stated in Paragraph 220 of the Amended Complaint. The tickets provided notice of a trial date on September 22, 2016. On that date, she was tried in her absence and sentenced to a total fine of \$1,287.50 or jail for 80 days on the offenses numbered (1), (2) and (6) above. With regard to the offenses numbered (3), (4) and (5), she was sentenced to fines totaling \$905, but not to jail time.

On September 26, 2016, the Central Traffic Court issued a bench warrant ordering the arrest and jailing of Ms. Johnson, who had not appeared or paid the fine. The bench warrant was served on her on February 14, 2017. She was jailed that day and released on April 9, 2017. With credit for good behavior, her service of this jail sentence satisfied the charges against her that involved the alternate sentence of jail time. She still owes Lexington County \$905 for the charges of improper start of vehicle, violation of beginner permit, and failure to return license plate and registration upon loss of insurance. The fines for those offenses are not enforceable by jail sentence, but instead are enforced under S.C. Code Ann. §§ 56-25-10, et seq., the Nonresident Violations Compact ("NRVC"), under which the summary court notifies DMV of such unsatisfied charges, and the driver's license is suspended until the fines are paid. Ms. Johnson also has a \$100 amount outstanding in "non-suspendable mandatory costs.

d. Sasha M. Darby

Court records indicate that on August 23, 2016, Ms. Darby was tried by Judge Adams and found guilty of assault/assault and battery 3rd degree, and sentenced to a fine of \$1,000 or 30 days in jail. Ms. Darby paid some of the fine. As of December 8, 2016, the balance due on the sentence was \$680 or 20 days in jail. A bench warrant was issued on that day. Ms. Darby was

arrested and jailed on March 28, 2017, and released on April 17, 2017. Her service of this jail sentence satisfied the charge against her.

e. Nora Ann Corder

On May 17, 2017, Ms. Corder was tried in her absence and found guilty of (1) DUS, 1st offense; (2) violation of temporary license plate for vehicle to be registered in another state; and (3) uninsured motor vehicle fee violation, 1st offense. The sentences for the three offenses were a total of 90 days in jail, suspended upon payment of a total of \$1,320. three bench warrants pertaining to the same charges were issued that same day. She was arrested and jailed on May 26, 2017 and released on July 19, 2017. Her service of this jail sentence satisfied the charges against her.

f. Raymond Wright, Jr.

On July 26, 2016, Mr. Wright pled guilty to the charge of DUS, 1st offense. He was sentenced to pay \$666.93 in fines and fees. A payment plan of \$50 per month was set up, and Mr. Wright made 5 payments of \$50, the last of which was made on November 26, 2016. After he failed to make payments, a Rule to Show Cause was issued on March 20, 2017, requiring him to appear on April 19, 2017, and was ordered to make a \$100 payment by 4/28/2017 or a Bench Warrant be issued for 10 days in jail or the balance of \$416.93. No such payment was made, and a bench warrant was issued on May 2, 2017. He was arrested and jailed on July 25, 2017 and was released on August 1, 2017. His service of this jail sentence satisfied the DUS, 1st offense, charge against him.

g. Xavier Goodwin

On April 4, 2017, Mr. Goodwin was found guilty of DUS, third offense, and was sentenced to pay a fine of \$2,100 and serve 90 days in jail. He was given credit for some time already served. He was released on April 6, 2017. The jail part of his sentence has been satisfied.

On May 5, 2017, having been released from jail, Mr. Goodwin signed a payment plan requiring him to make payments of \$100 per month, starting on June 5, 2017. He has not made any payments pursuant to that plan, and as a result is subject to a bench warrant and arrest for that failure.

FURTHER AFFIANT SAYETH NOT.

Colleen Long  
Colleen Long

SWORN TO BEFORE ME THIS 18

DAY OF August, 2017.

Soi B. Hayes (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 8.30.22

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Twanda Marshinda Brown, <i>et al.</i> ,  Plaintiffs,  v.  Lexington County, South Carolina, <i>et al.</i> ,  Defendants.	Civil Action No. 3:17-cv-01426-MBS-SVH
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**DECLARATION OF RAYMOND WRIGHT, JR.,**  
**IN SUPPORT OF PLAINTIFFS' OPPOSITION TO**  
**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, RAYMOND WRIGHT, JR., declare as follows:

1. I am indigent and disabled.
2. In July 2016, I was stopped and ticketed for driving under a suspended license, 1st offense ("DUS-1").
3. When I appeared in the Lexington County Central Traffic Court ("Central Traffic Court") on July 26, 2016, I pled guilty to the charge of DUS, 1st offense without being informed of my rights and without the assistance of counsel. The judge sentenced me to pay \$666.93.
4. After being sentenced, the judge asked me if I could pay the full \$666.93 that day. I told him that I could not afford to pay. The judge did not ask me any other questions about my ability to pay or whether I received any form of needs-based, means-tested public assistance. At that time, I was receiving food assistance through SNAP.

5. The judge told me that I would have to pay \$50 each month toward the full amount that I owed. The judge also stated that if I did not make these payments, I would be arrested and jailed.

6. It was very difficult to pay \$50 each month to the Central Traffic Court because my wife was unemployed and my Social Security Disability Insurance income of \$547 per month was the only source of income for my family, which included my wife and two granddaughters.

7. I made five payments of \$50 each to the Central Traffic Court, but I could not afford to make any more payments after December 7, 2016.

8. I appeared for a show cause hearing before the Central Traffic Court on April 19, 2017. The judge did not inform me that I had the right to request the assistance of a court-appointed attorney. He also did not inform me that I had the right to seek a waiver of any fees related to the application for a public defender due to financial hardship. The judge did not discuss with me about waiving my right to counsel. He did not ask me any questions to determine whether I was knowingly, voluntarily, and intelligently waiving my right to counsel.

9. I explained to the judge that I could not afford to pay the amount I owed to the Central Traffic Court. I explained to the judge that I owed taxes, had additional bills to pay, and needed to buy groceries to feed my family.

10. The judge told me that I had to pay the full \$416.93 that I owed the court within ten days or I would be arrested and jailed. The judge did not ask me about my financial circumstances or ability to pay.

11. I had brought bills and other documentation with me to show the court that I was in debt and could not afford to pay the court, but the judge told me that he did not want to see any of the documents.

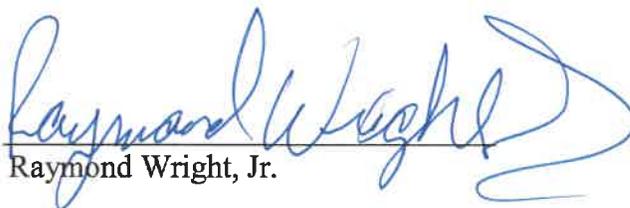
12. I asked the judge whether I could make partial payments until the full amount was paid off. The judge told me that the court would only accept full payment of the amount I owed the Central Traffic Court.

13. I was unable to pay the \$416.93 that I owed the Central Traffic Court by April 29, 2017, ten days after the show cause hearing.

14. I was also unable to pay the \$416.93 that I owed the Central Traffic Court before being arrested and incarcerated on July 25, 2017.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Leesville, South Carolina on this 8th day of September, 2017.

By:

  
Raymond Wright, Jr.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Twanda Marshinda Brown, et al,	)	Civil Action No.
	)	
Plaintiffs,	)	3:17-1426-MBS-SVH
	)	
v.	)	
	)	
Lexington County, South Carolina, et al.,	)	
Defendants.	)	
	)	
	)	
	)	
_____	)	

**EXHIBIT 1 TO  
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT  
Memorandum of Chief Justice Donald W. Beatty to Magistrates and Municipal Judges,  
September 15, 2017**



# The Supreme Court of South Carolina

DONALD W. BEATTY  
CHIEF JUSTICE

POST OFFICE BOX 3543  
SPARTANBURG, SOUTH CAROLINA 29304-3543  
TELEPHONE: (864) 596-3450  
FAX: (864) 596-2202  
EMAIL: dbeatty@sccourts.org

## MEMORANDUM

**To:** Magistrates and Municipal Judges  
**From:** Chief Justice Donald W. Beatty  
**Subject:** Sentencing Unrepresented Defendants to Imprisonment  
**Date:** September 15, 2017

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It has continually come to my attention that defendants, who are neither represented by counsel nor have waived counsel, are being sentenced to imprisonment. This is a clear violation of the Sixth Amendment right to counsel<sup>1</sup> and numerous opinions of the Supreme Court of the United States.<sup>2</sup> All defendants facing criminal charges in your courts that carry the possibility of imprisonment must be informed of their right to counsel and, if indigent, their right to court-appointed counsel prior to proceeding with trial. Absent a waiver of counsel,<sup>3</sup> or

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<sup>1</sup> The right to counsel under the Sixth Amendment to the United States Constitution applies in state courts through the Due Process Clause of the Fourteenth Amendment. U.S. Const. amend. VI; U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 14.

<sup>2</sup> See *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (holding that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at trial); *Scott v. Illinois*, 440 U.S. 367 (1979) (concluding that the Sixth and Fourteenth Amendments to the United States Constitution require that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense); *Alabama v. Shelton*, 535 U.S. 654 (2002) (ruling that a defendant who receives a suspended or probated sentence to imprisonment has a constitutional right to counsel).

<sup>3</sup> See *Faretta v. California*, 422 U.S. 806, 835 (1975) (providing a criminal defendant "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open'" (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942))).

the appointment of counsel for an indigent defendant, summary court judges **shall not** impose a sentence of jail time, and are limited to imposing a sentence of a fine only for those defendants, if convicted. When imposing a fine, consideration should be given to a defendant's ability to pay. If a fine is imposed, an unrepresented defendant should be advised of the amount of the fine and when the fine must be paid. This directive would also apply to those defendants who fail to appear at trial and are tried in their absence.

I am mindful of the constraints that you face in your courts, but these principles of due process to all defendants who come before you cannot be abridged.

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Twanda Marshinda Brown, <i>et al.</i> ,  Plaintiffs,  v.  Lexington County, South Carolina, <i>et al.</i> ,  Defendants.	Civil Action No. 3:17-cv-01426-MBS-SVH
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**DECLARATION OF TOBY J. MARSHALL IN SUPPORT OF  
PLAINTIFFS’ OPPOSITION TO DEFENDANTS’  
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT**

I, Toby J. Marshall, declare as follows:

1. I am a member of the law firm of Terrell Marshall Law Group PLLC (“Terrell Marshall”) and co-counsel for Plaintiffs in this case. I am a member in good standing of the bar of the State of Washington, and have been admitted to this Court *pro hac vice*. I respectfully submit this declaration pursuant to Federal Rule of Civil Procedure 56(d) (“Rule 56(d)”) in support of Plaintiffs’ Opposition to Defendants’ Supplemental Motion for Summary Judgment. The matters required to be addressed by Rule 56(d) are detailed below. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called to do so.

2. Defendants’ Supplemental Motion for Summary Judgment argues that Plaintiffs’ prospective relief claims are mooted by a recent memorandum from Chief Justice Donald W. Beatty of the Supreme Court of South Carolina (“Chief Justice’s Memorandum”). The memorandum addresses the sentencing of unrepresented defendants to imprisonment. *See* Dkt.

No. 40–1. Defendants essentially argue that as a result of the memorandum, they have voluntarily ceased all of the unconstitutional conduct alleged in Plaintiffs’ operative complaint, including but not limited to (1) incarcerating people for nonpayment of court fines and fees without first holding a hearing on the individual’s ability to pay and the adequacy of available alternatives to incarceration and without making a finding that nonpayment was willful; (2) failing to afford indigent people assistance of court-appointed counsel when sanctioned with actual incarceration for nonpayment of court-ordered legal financial obligations, when facing sentences for incarceration suspended upon the payment of fines and fees, and when enforcing the incarceration term of a suspended incarceration sentence; and (3) arresting people pursuant to warrants that are based solely on a report of failure to pay court-ordered legal financial obligations and thus are unsupported by probable cause of a criminal offense or probation violation.

3. The only evidence Defendants have put forward in support of their assertion of voluntary cessation is the memorandum from Chief Justice Beatty. *See generally* Dkt. No. 40.

4. Conversely, in support of their response to Defendants’ supplemental motion for summary judgment, Plaintiffs submit the Declaration of Eric R. Nusser, which addresses the compilation and analysis of publicly-available records indicating that:

- a. the Lexington County magistrate courts are continuing to issue bench warrants ordering the arrest and incarceration of indigent people for nonpayment of money owed to the court without providing pre-deprivation ability-to-pay hearings prior to incarceration; and
- b. the Lexington County Sheriff’s Department is continuing to enforce bench warrants issued by the Lexington County magistrate courts for

nonpayment of money owed to the court by arresting and incarcerating indigent people if the individual person does not pay the full amount of money owed, which is listed on the bench warrant.

5. Even if the Court were to determine that the aforementioned records are not sufficient to justify denying Defendants' motion, the records sufficiently demonstrate that additional discovery into Defendants' current policies, practices, and procedures, as well as their individual and collective responses to the Chief Justice's Memorandum, will help Plaintiffs raise genuine, triable issues of material fact regarding their declaratory and injunctive relief claims.

6. Due to the early timing of Defendants' motion in this litigation, Plaintiffs have had no opportunity to perform the formal discovery necessary to respond to Defendants' allegation of voluntary cessation. As a result, Plaintiffs are unable to present additional facts essential to justify Plaintiffs' opposition to Defendants' motion.

**A. Exchange of Initial Disclosures**

7. Plaintiffs have worked with Defendants to meet all requirements to make initial disclosures under the Federal Rules of Civil Procedure and the District of South Carolina Local Rules.

8. On June 1, 2017, Plaintiffs filed their responses to Local Rule 26.01 Interrogatories concurrently with the filing of the Class Action Complaint. *See* Dkt. No. 3.

9. On August 7, 2017, counsel for all parties participated in a Rule 26(f) conference. *See* Dkt. No. 32-1 at 1.

10. On August 17, 2017, Defendants filed their responses to Local Rule 26.01 Interrogatories. *See* Dkt. No. 28.

11. On August 23, 2017, Plaintiffs and Defendants jointly filed a Rule 26(f) Report, *see* Dkt. No. 32, and concurrently filed Joint Responses Pursuant to Local Rule 26.03 and Rule 26(f). *See* Dkt. No. 32–1.

**B. Plaintiffs have served Defendants with Requests for Production of documents concerning Defendants’ ongoing conduct but have not yet received responses.**

12. On October 6, 2017, Plaintiffs served their first set of Requests for Production on Defendants Lexington County and Robert Madsen. Attached hereto as Exhibit A is a true and accurate copy of Plaintiffs’ First Set of Requests for Production of Documents and Things Propounded to Defendants Lexington County, South Carolina, and Robert Madsen.

13. Also on October 6, 2017, Plaintiffs served their first set of Requests for Production on Defendant Bryan Koon. Attached hereto as Exhibit B is a true and accurate copy of Plaintiffs’ First Set of Requests for Production of Documents and Things Propounded to Defendant Bryan Koon.

14. On October 10, 2017, Plaintiffs served their first set of Requests for Production on Defendants Gary Reinhart, Rebecca Adams, and Albert J. Dooley, III. Attached hereto as Exhibit C is a true and accurate copy of Plaintiffs’ First Set of Requests for Production of Documents and Things Propounded to Defendants Gary Reinhart, Rebecca Adams, and Albert J. Dooley, III.

15. Defendants have not responded to any of Plaintiffs’ discovery requests.

16. Plaintiffs’ discovery requests are designed to uncover information directly relevant to determining whether Defendants continue to engage in actions that violate the rights of indigent defendants in Lexington County’s magistrate courts. Thus, the requests are likely to assist Plaintiffs in raising genuine, triable issues of material fact.

17. For example, Plaintiffs have asked for production of documents to determine whether Defendant Lexington County is continuing to inadequately fund the Lexington County Public Defender's Office. *See* Exhibit A at Requests for Production ("RFPs") Nos. 9, 25, 28.

18. Likewise, Plaintiffs have asked for production of documents to determine whether Robert Madsen is still failing to allocate the funding and resources necessary to ensure proper representation of indigent people facing trial and incarceration in the Lexington County magistrate courts. *See id.* at RFPs Nos. 5–9, 24–25, 28.

19. Plaintiffs have also asked for production of documents to determine the number and kind of active bench warrants that have been issued by the Lexington County magistrate courts, which can be served at any time and result in the immediate arrest and incarceration in the Lexington County Detention Center. *See* Exhibit B at RFPs Nos. 22–27, 29, 32–34; *see also* Exhibit C at RFPs Nos. 3, 20, 38–40, 43, 45.

20. Plaintiffs' discovery requests also seek production of documents to determine whether the Lexington County Sheriff's Department is continuing to arrest and incarcerate indigent people in the Detention Center pursuant to those bench warrants without providing ability-to-pay hearings or access to legal representation. *See* Exhibit B at RFPs Nos. 4, 32–33.

21. Plaintiffs have further asked for production of any documents relating to changes in Defendants' policies, practices, procedures, instructions, guidance or training in response to the Chief Justice's Memorandum. *See* Exhibit A at RFPs Nos. 29–31; *see also* Exhibit B at RFPs Nos. 39–40; *see also* Exhibit C at RFPs Nos. 48–49. These requests are designed to determine whether Defendants have actually taken any steps to voluntarily cease their unconstitutional actions in response to the memorandum and if so, the extent of those steps.

22. For example, Plaintiffs are seeking to determine whether Defendants Lexington County and Madsen are now providing adequate funding and allocation of resources for legal representation to indigent criminal defendants during court proceedings. *See* Exhibit A at RFPs Nos. 29–31.

23. Plaintiffs also seek to determine whether Defendants Adams and Dooley are now providing adequate notice to indigent people of their right to counsel and to provide pre-deprivation ability-to-pay hearings prior to incarceration. *See* Exhibit C at RFPs Nos. 6–9, 15, 25–26.

24. Plaintiffs further seek to determine whether Defendant Koon has stopped enforcing bench warrants that are based solely on a report of failure to pay court-ordered legal financial obligations to the Lexington County magistrate courts. *See* Exhibit B at RFPs Nos. 39–40.

25. These discovery requests and others are targeted, relevant, and necessary for clarifying the facts relating to Plaintiffs’ declaratory and injunctive relief claims, and are thus likely to assist Plaintiffs in raising genuine, triable issues of material fact.

**C. Plaintiffs seek to conduct depositions of Defendants concerning their ongoing conduct.**

26. Due to the early nature of Defendants’ motion, Plaintiffs have not had an opportunity to conduct any depositions in this matter.

27. Once they receive complete answers to their discovery requests along with responsive documents, Plaintiffs will request an opportunity to depose Defendant Lexington County regarding its current and future funding of the Lexington County Public Defender’s Office.

28. Plaintiffs also request an opportunity to depose Defendant Robert Madsen regarding the allocation of resources necessary for providing representation to indigent people facing incarceration for money owed to Lexington County magistrate courts; his receipt and/or knowledge of the Chief Justice's Memorandum; and whether any steps have been taken in response to the memorandum to ensure that indigent people receive adequate representation by court-appointed counsel before incarceration for nonpayment of money owed to Lexington County magistrate courts.

29. Plaintiffs will also request an opportunity to depose Defendants Reinhart, Adams, and Dooley regarding the policies, practices, and procedures of the Lexington County magistrate courts to provide indigent people notice of their right to counsel and to provide pre-deprivation ability-to-pay hearings prior to incarceration; their receipt and/or knowledge of the Chief Justice's Memorandum; whether any steps have been taken in response to that memorandum to ensure that the policies, practices, and procedures of the magistrate courts sufficiently provide indigent people notice of their right to counsel and pre-deprivation ability-to-pay hearings prior to incarceration; and whether the magistrate courts are continuing to issue bench warrants that order the arrest and incarceration of indigent people for nonpayment of money owed to the magistrate courts.

30. Plaintiffs will also request an opportunity to depose Defendant Koon regarding his current and future enforcement of bench warrants issued by the Lexington County magistrate courts; whether any steps have been taken in response to Chief Justice Beatty's memorandum to ensure that the enforcement of these bench warrants does not result in the unconstitutional incarceration of indigent people in the Lexington County Detention Center; and whether the

Sheriff's Department is continuing to enforce bench warrants issued by the Lexington County magistrate courts for nonpayment of money owed.

**D. The documents and testimony obtained through discovery will likely create genuine issues of material fact.**

31. Based on information already obtained by Plaintiffs through public sources, it is likely that the aforementioned discovery will assist Plaintiffs in creating genuine, triable issues of material fact on the following questions: (a) whether Defendants have actually ceased all of the allegedly unlawful conduct detailed in the Amended Complaint following the issuance of the Chief Justice's Memorandum; and (b) whether Defendants no longer have the capacity and authority to engage in the allegedly unlawful conduct detailed in the Amended Complaint following the issuance of the Chief Justice's Memorandum.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Seattle, Washington on this 12th day of October, 2017.

By:   
Toby J. Marshall, WSBA #32726

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS PROPOUNDED TO DEFENDANTS  
LEXINGTON COUNTY, SOUTH CAROLINA, AND ROBERT MADSEN**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the following First Set of Requests for Production of Documents (collectively, the "First Requests for Production") are propounded to you and your attorneys of record. These First Requests for Production are intended to draw upon the combined knowledge of you, your agents, and your attorneys.

1. Requests for Production of Documents

Pursuant to Rule 34, you are directed to provide a written response to these Requests for Production of Documents and produce and make available for inspection and copying all of the documents requested herein in their original state and condition at the offices of Terrell Marshall Law Group PLLC, 936 North 34th Street, Suite 300, Seattle, Washington, 98103, thirty (30) days after service of this request, or at such other time and place as may be mutually agreed upon by the parties. Deliver each document produced in a manner that preserves its sequential relationship with other documents being produced, including the file folder and folder tab associated with its file location, and if not apparent on the folder or tab, accompanied by identification of the person or department from whose files it was taken and such additional

source information as is necessary to enable the parties to determine the document's original pre-production location.

When documents are produced pursuant to these First Discovery Requests, the documents are to be produced in a manner so that the particular request to which they are responsive can be readily identified.

These Requests for Production of Documents are continuing in nature. In accordance with Rule 26, you are requested to supplement your responses to these requests in the event that new or additional information within their scope becomes known to you.

If any document is withheld under a claim of privilege, please:

- a. Identify such document with sufficient particularity as to author(s), addressee(s), recipient(s), and subject matter and contents to allow the matter to be brought before the court;
- b. State the nature of the privilege(s) asserted; and
- c. State in detail the factual basis for the claim of privilege.

## I. DEFINITIONS

Throughout these Discovery Requests, including the definition of terms, the words used in the masculine gender include the feminine, and the words used in the singular include the plural. Wherever the word "or" appears herein, the meaning intended is the logical inclusive "or" — that is, "and/or." Wherever the word "including" appears, the meaning intended is "including but not limited to."

As used throughout these Discovery Requests, the following terms have the following indicated meanings:

1. “ACCUSED PERSON” means a person who is being or has been prosecuted in a LEXINGTON COUNTY MAGISTRATE COURT on charges that allow for the imposition of LFOs upon conviction.

2. “ALL” means “EVERY” and includes “EACH” and “ANY,” and vice versa.

3. “BENCH WARRANT” refers to a warrant of arrest issued by LEXINGTON COUNTY MAGISTRATE COURTS to order the arrest and incarceration of an ACCUSED PERSON.

4. “COMPLAINT” refers to the operative complaint filed by PLAINTIFFS in this proceeding.

5. “CORRESPONDENCE” includes ALL letters, telegrams, notices, messages, or other WRITTEN COMMUNICATIONS or memoranda, including electronic communications, or other records of conversations, meetings, conferences or other oral communications.

6. “DATE” shall mean the exact day, month, and year if ascertainable or, if not, the best approximation, including ANY known relationship to other events.

7. The term “DOCUMENT” or “WRITTEN COMMUNICATION” means all written or graphic matter, however produced, or reproduced, of EVERY kind and description in YOUR actual or constructive possession, custody, care or control. This includes the complete original (or complete copy if the original is not available) and EACH non-identical copy regardless of origin or location. “DOCUMENT” is intended to have the same meaning as in Civil Rule 34, including, without limitation: writings, CORRESPONDENCE, electronic mail (email) messages and attachments, Internet messages, intranet messages, text messages, Twitter™ messages, messages or postings on social networking websites (including but not limited to websites such as Facebook™ and MySpace™), blog postings, web pages, voicemails,

data and files sent from, received by or stored on smartphones, tablets or other mobile computing devices (including but not limited to Blackberry™, iPhone™, Android™, iPad™, Galaxy Tab™, Velocity Micro Cruz™ and HP TouchPad™), facsimiles, books, pamphlets, periodicals, reports, blueprints, sketches, laser discs, magnetic discs, flash drives, magnetic strips, microfiche, invoices, statements, minutes, purchase orders, contracts, vouchers, checks, charge slips, expense account reports, hotel charges, receipts, working papers, memoranda, messages, notes, envelopes, business records, financial statements, agreements, leases, drawings, graphs, charts, drafts, maps, surveys, plats, statistical records, cost sheets, calendars, appointment books, diaries, time sheets or logs, telephone records or logs, facsimile logs, photographs, sound tapes or recordings, films, tapes, computer printouts and ANY other data, including without limitation, data stored electronically or by other technical means for use with computers or otherwise from which information can be obtained or translated through detection devices into reasonably usable form, or ANY other tangible thing that constitutes or contains matters contained within the scope of Civil Rule 26(b). If a DOCUMENT has been prepared in several copies which are for ANY reason not identical, or if the original identical copies are no longer identical by reason of subsequent notation or other modification of ANY kind whatsoever, including but not limited to notations on the backs of pages thereto, EACH non-identical copy is a separate DOCUMENT. DOCUMENTS shall also include ELECTRONICALLY STORED INFORMATION (“ESI”) and ANY electronically stored data on magnetic or optical storage media as an “active” file or files (readily readable by one or more computer applications or forensics software); ANY “deleted” but recoverable electronic files on said media; ANY electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM

slack] or residual data left on the hard drive after new data has overwritten some but not all of previously stored data).

8. “DEFENDANTS” means LEXINGTON COUNTY, South Carolina, Gary Reinhart, Rebecca Adams, Albert John Dooley, III, Bryan Koon, and Robert Madsen, and DEFENDANTS’ attorneys, and ANY employees, agents, or PERSONS working on DEFENDANTS’ behalf, and if applicable, DEFENDANTS’ subsidiaries, predecessors or assignors, as well as ANY directors, officers, employees, agents, partners, or PERSONS acting on behalf of DEFENDANTS.

9. “IDENTIFY” when referring to a DOCUMENT or WRITTEN COMMUNICATION means to state:

- a. The description of such DOCUMENTS or writings in sufficient detail in order to enable them to be identified by subpoena duces tecum;
- b. The title and EACH subtitle thereof;
- c. The DATE and number of pages thereof;
- d. A brief summary of the contents;
- e. The author, EACH addressee, and the distribution list thereof;
- f. The IDENTITY of EACH PERSON who witnessed, or was in a position to witness said communication;
- g. The DATE on which the document was prepared or signed;
- h. The physical location of the document and the name and address of its custodian or custodians;
- i. The IDENTITY of EACH document referenced by this document;

j. The source of (or the IDENTITY of EACH PERSON who supplied) ANY information contained therein; and

k. If ANY such document was, but is no longer in YOUR possession or subject to YOUR control, what disposition was made of it and the reason for its disposition.

10. “IDENTIFY” when referring to a meeting means, for EACH such MEETING, to state:

- a. The date and hour when held;
- b. The address where held;
- c. The IDENTITY of EACH PERSON who represented YOU at EACH MEETING or conference;
- d. The IDENTITY of ANY other PERSON present; and
- e. EACH action taken, decision made, agreement reached or topic discussed at the MEETING or conference.

11. “IDENTIFY” when referring to oral communications means to state, with respect thereto, ANY communication or portion thereof between ANY two or more PERSONS that is not or was not recorded, including, but not limited to, telephone conversations, face-to-face conversations, meetings, and conferences. State the PERSONS involved, the DATE, the setting, and the circumstances.

12. “IDENTIFY” or “IDENTITY” when referring to a person means to state:

- a. His/her full name;
- b. His/her present residence address;
- c. His/her present residence telephone number;
- d. His/her present business address;

e. If his/her present residence or business address is unknown, state his/her last known residence address and residence telephone number, his/her last known business affiliation and business address, and ANY information YOU have that might reasonably lead to the discovery of his/her present whereabouts; and

f. With respect to PERSONS who are not natural PERSONS, state the last known complete address, including zip code, the last known complete telephone number, including the area code, of its headquarters, and its nearest or local office or agent.

13. “INDIVIDUAL,” “PERSON,” or “PERSONS” shall mean natural PERSONS, proprietorships, sole proprietorships, corporations, nonprofit corporations, municipal corporations, local, state, federal or foreign governments or governmental agencies, political subdivisions, general or limited partnerships, business trusts, trusts, estates, clubs, groups, unincorporated associations, or other business or public organizations.

14. “INTERGOVERNMENTAL AGREEMENT” means an agreement between LEXINGTON COUNTY and any other unit of government RELATING TO: (a) the arrest of ACCUSED PERSONS; (b) the use of LEXINGTON COUNTY jail facilities to incarcerate INDIVIDUALS convicted of crimes charged by any other unit of government.

15. “LEXINGTON COUNTY” means Defendant Lexington County, South Carolina, including but not limited to Lexington County’s council members, employees, representatives, agents, commissioners, administrators, and PUBLIC DEFENDERS; Lexington County’s attorneys; and any PERSONS acting on behalf of Lexington County.

16. “LEXINGTON COUNTY MAGISTRATE COURT” or “MAGISTRATE COURT” means any magistrate court operating within Lexington County, including but not limited to the magistrate court divisions of Batesburg-Leesville Magistrate Court, Cayce-West

Columbia Magistrate Court, Irmo Magistrate Court, Lexington Magistrate Court, Lexington Central Traffic Court, Oak Grove Magistrate Court, Swansea Magistrate Court, and the Bond Court located at the Lexington County Detention Center.

17. “LEXINGTON COUNTY SHERIFF’S DEPARTMENT” or “SHERIFF’S DEPARTMENT” means ANY employee, representative, agent, commissioner, or administrator of the LEXINGTON COUNTY SHERIFF’S DEPARTMENT or Lexington County Detention Center, including but not limited to Defendant Bryan Koon, law enforcement officers, guards, courthouse security, attorneys, volunteers, or staff.

18. “LFOs” means legal financial obligations imposed by a LEXINGTON COUNTY MAGISTRATE COURT as part of a criminal or traffic sentence and includes fines, fees, assessments, penalties, costs, and restitution.

19. “PLAINTIFFS” means Plaintiffs, Plaintiffs’ attorneys, and ANY employees, agents, or PERSONS working on behalf of Plaintiffs.

20. “PUBLIC DEFENDER” means an attorney employed by the Lexington County Public Defender’s Office or appointed, assigned, or provided by LEXINGTON COUNTY or the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina to represent an ACCUSED PERSON.

21. “PUBLIC DEFENSE CASE” means a case in which a PUBLIC DEFENDER has been appointed to represent an ACCUSED PERSON.

22. “PUBLIC DEFENSE SERVICES” means the services performed by a PUBLIC DEFENDER and his or her staff members for the purpose of providing legal representation to an ACCUSED PERSON.

23. “RELATING TO” or “REFERRING TO” (including other verb tenses of those terms) means describing, evidencing, constituting, reflecting, showing, comprising, considering, concerning, discussing, regarding, setting forth, studying, analyzing, commenting upon, recommending, alluding to, or mentioning, in whole or in part.

24. “SHOW CAUSE HEARING” means any LEXINGTON COUNTY MAGISTRATE COURT hearing at which the court considers the allegation that an ACCUSED PERSON has not paid previously imposed LFOs, including but not limited to hearings for ACCUSED PERSONS in custody for failure to pay LFOs, and other similar proceedings, conducted in a LEXINGTON COUNTY MAGISTRATE COURT.

25. “YOU” and “YOUR” means Defendants LEXINGTON COUNTY and Robert Madsen, LEXINGTON COUNTY’S attorneys, LEXINGTON COUNTY’S employees, representatives or agents, and any PERSONS acting on behalf of LEXINGTON COUNTY.

## **II. RELEVANT TIME PERIOD**

Unless otherwise stated, the relevant time period for these discovery requests is from June 1, 2014 to the present.

## **III. REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce ALL CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, LEXINGTON COUNTY MAGISTRATE COURTS, or revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS:

- a. Scott Whetstone, Lexington County Council Member
- b. Paul Lawrence Brigham, Jr., Lexington County Council Member
- c. Darrell Hudson, Lexington County Council Member

- d. Debra B. Summers, Lexington County Council Vice Chairman
- e. Bobby C. Keisler, Lexington County Council Member
- f. Erin Long Bergeson, Lexington County Council Member
- g. Phillip Heyward Yarborough, Lexington County Council Member
- h. Ned Randall Tolar, Lexington County Council Member
- i. M. Todd Cullum, Lexington County Council Chairman
- j. Joe Mergo, III, Lexington County Administrator
- k. Chris Folsom, Lexington County Deputy Administrator
- l. Jim Eckstrom, Lexington County Treasurer

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 2:** Please produce ALL CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, or revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS:

- a. Robert Madsen, Eleventh Circuit Public Defender
- b. Sally J. Henry, Deputy Public Defender
- c. Samuel Richardson Hubbard, III, Eleventh Circuit Solicitor
- d. Donnie Meyers, Former Eleventh Circuit Solicitor
- e. ANY other PERSON who served as a Lexington County Council Member, Administrator, Treasurer, Public Defender, or Solicitor at any point from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 3:** Please produce ALL CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS; ALL letters or WRITTEN COMMUNICATIONS that the following INDIVIDUALS received from ACCUSED PERSONS REFERRING OR RELATING TO LFOs; and ALL WRITTEN COMMUNICATIONS that the following INDIVIDUALS sent in response to those letters:

- a. Hon. Gary Reinhart, Magistrate and former Chief Magistrate
- b. Hon. Rebecca Adams, Chief Magistrate
- c. Hon. Albert J. Dooley, III, Associate Chief Magistrate
- d. Hon. Bradley S. Melton, Magistrate
- e. Hon. Gary S. Morgan, Magistrate
- f. Hon. Scott Whittle, Magistrate
- g. Hon. Matthew Johnson, Magistrate
- h. Hon. Arthur L. Myers, Magistrate
- i. Hon. Brian N. Buck, Magistrate
- j. Ed Lewis, Chief Court Administrator
- k. Colleen Long, Deputy Court Administrator
- l. Lisa Comer, Lexington County Clerk of Court

m. ANY other PERSON who served as a Lexington County Magistrate, Court Administrator, or Clerk of Court at any point from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 4:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that LEXINGTON COUNTY prepared, reviewed, used, or provided to others regarding LFOs and BENCH WARRANTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 5:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that attorneys or staff of the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina and the Lexington County Public Defender's Office prepared, reviewed, used, or provided to others regarding LFOs, including but not limited to all such documents pertaining to the representation of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 6:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the training of PUBLIC DEFENDERS in the representation

of ACCUSED PERSONS, including but not limited to proceedings involving the imposition or collection of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 7:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO monitoring or supervising PUBLIC DEFENDERS in the representation of ACCUSED PERSONS, including but not limited to proceedings involving the imposition or collection of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 8:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the responsibilities of PUBLIC DEFENDERS concerning inmates incarcerated in the Lexington County Detention Center.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 9:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the funding of PUBLIC DEFENDERS for the representation of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 10:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, or procedures of the Lexington County Solicitor's Office regarding LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 11:** Please produce ALL forms used by the Lexington County Public Defender's Office to assess the ability of ACCUSED PERSONS to pay LFOs at any time, including in connection with sentencing hearings and SHOW CAUSE HEARINGS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 12:** Please produce ALL DOCUMENTS used by the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina and the Lexington County Public Defender's Office to assess the eligibility of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 13:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, or procedures of the Circuit Public

Defender for the Eleventh Judicial Circuit of South Carolina and the Lexington County Public Defender's Office regarding any application fees, charges, or costs imposed on ANY individual applying for representation by a PUBLIC DEFENDER, including but not limited to ACCUSED PERSONS, and ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, or procedures of the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina and the Lexington County Public Defender's Office regarding waiver of those charges, fees, or costs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 14:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the revenue generated by imposing any public defender application fees, charges, or costs on ANY individual who has applied for representation by a PUBLIC DEFENDER at any stage of a case arising out of criminal or traffic charges prosecuted in the LEXINGTON COUNTY MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 15:** Please produce ALL DOCUMENTS IDENTIFYING (a) the ACCUSED PERSONS who have applied for representation by the Lexington County Public Defender's Office, (b) whether EACH such ACCUSED PERSON was approved for representation, (c) the LEXINGTON COUNTY MAGISTRATE COURT in which the ACCUSED PERSON faced a charge, and (d) the charge type.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 16:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the number of ACCUSED PERSONS who have been denied representation by the Lexington County Public Defender's Office, and ALL DOCUMENTS REFERRING OR RELATING TO the reasons for those denials, the Lexington County magistrate court in which the individual faced a charge, and the charge type.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 17:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Twanda Brown (listed in various court records as Twanda M. Brown, Twanda Marshinda Brown, Twanda Loshonda Brown, and Tawanda Brown), including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 18:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Sasha Darby, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 19:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Cayeshia Johnson, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 20:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Amy Palacios, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 21:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Xavier Goodwin, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 22:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Raymond Wright, Jr., including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 23:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Nora Corder, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 24:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the caseload of EACH PUBLIC DEFENDER, the number of hours worked by that PUBLIC DEFENDER annually, the number of hours worked annually by that PUBLIC DEFENDER on cases in the LEXINGTON COUNTY MAGISTRATE COURT, and the amount of time spent on each case in the MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 25:** Please produce ALL contracts for public defense services entered into between LEXINGTON COUNTY and ANY PUBLIC DEFENDER who has provided PUBLIC DEFENSE SERVICES for ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 26:** Please produce ALL DATA and reports in YOUR possession REFERRING OR RELATING TO LFOs, including but not limited to information YOU have provided to external entities such as the South Carolina Office of Court Administration, South Carolina Supreme Court, South Carolina Attorney General's Office, South Carolina Commission on Indigent Defense, and South Carolina Commission on Prosecution Coordination.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 27:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the amount of money collected by LEXINGTON COUNTY, any LEXINGTON COUNTY MAGISTRATE COURT, or by the LEXINGTON COUNTY SHERIFF'S DEPARTMENT as a result of LFOs imposed on defendants in MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 28:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO YOUR decisions regarding budgeting for the operation of the Lexington County Public Defender’s Office, including but not limited to reports, analyses, and communications regarding actual or projected revenue, sources of revenue, and expenditures.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 29:** Please produce ALL DOCUMENTS, including but not limited to emails, letters, memoranda, or other WRITTEN COMMUNICATIONS, REFERRING OR RELATING TO the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, “Sentencing Unrepresented Defendants to Imprisonment.” *See* ECF No. 40–1.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 30:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that LEXINGTON COUNTY prepared, reviewed, used, or provided to others in response to the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, “Sentencing Unrepresented Defendants to Imprisonment.” *See* ECF No. 40–1.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 31:** Please produce ALL DOCUMENTS

REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that attorneys or staff of the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina and/or the Lexington County Public Defender's Office prepared, reviewed, used, or provided to others in response to the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, "Sentencing Unrepresented Defendants to Imprisonment." See ECF No. 40-1.

**ANSWER:**

DATED this 6th day of October, 2017.

Respectfully submitted by,

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

s/ Susan K. Dunn

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# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS PROPOUNDED  
TO DEFENDANT BRYAN KOON**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the following First Set of Requests for Production of Documents (collectively, the "First Requests for Production") are propounded to you and your attorneys of record. These First Requests for Production are intended to draw upon the combined knowledge of you, your agents, and your attorneys.

1. Requests for Production of Documents

Pursuant to Rule 34, you are directed to provide a written response to these Requests for Production of Documents and produce and make available for inspection and copying all of the documents requested herein in their original state and condition at the offices of Terrell Marshall Law Group PLLC, 936 North 34th Street, Suite 300, Seattle, Washington, 98103, thirty (30) days after service of this request, or at such other time and place as may be mutually agreed upon by the parties. Deliver each document produced in a manner that preserves its sequential relationship with other documents being produced, including the file folder and folder tab associated with its file location, and if not apparent on the folder or tab, accompanied by identification of the person or department from whose files it was taken and such additional

source information as is necessary to enable the parties to determine the document's original pre-production location.

When documents are produced pursuant to these First Discovery Requests, the documents are to be produced in a manner so that the particular request to which they are responsive can be readily identified.

These Requests for Production of Documents are continuing in nature. In accordance with Rule 26, you are requested to supplement your responses to these requests in the event that new or additional information within their scope becomes known to you.

If any document is withheld under a claim of privilege, please:

- a. Identify such document with sufficient particularity as to author(s), addressee(s), recipient(s), and subject matter and contents to allow the matter to be brought before the court;
- b. State the nature of the privilege(s) asserted; and
- c. State in detail the factual basis for the claim of privilege.

## I. DEFINITIONS

Throughout these Discovery Requests, including the definition of terms, the words used in the masculine gender include the feminine, and the words used in the singular include the plural. Wherever the word "or" appears herein, the meaning intended is the logical inclusive "or" — that is, "and/or." Wherever the word "including" appears, the meaning intended is "including but not limited to."

As used throughout these Discovery Requests, the following terms have the following indicated meanings:

1. “ACCUSED PERSON” means a person who is being or has been prosecuted in a LEXINGTON COUNTY MAGISTRATE COURT on charges that allow for the imposition of LFOs upon conviction.

2. “ALL” means “EVERY” and includes “EACH” and “ANY,” and vice versa.

3. “BENCH WARRANT” refers to a warrant of arrest issued by LEXINGTON COUNTY MAGISTRATE COURTS to order the arrest and incarceration of an ACCUSED PERSON.

4. “COMPLAINT” refers to the operative complaint filed by PLAINTIFFS in this proceeding.

5. “CORRESPONDENCE” includes ALL letters, telegrams, notices, messages, or other WRITTEN COMMUNICATIONS or memoranda, including electronic communications, or other records of conversations, meetings, conferences or other oral communications.

6. “DATE” shall mean the exact day, month, and year if ascertainable or, if not, the best approximation, including ANY known relationship to other events.

7. The term “DOCUMENT” or “WRITTEN COMMUNICATION” means all written or graphic matter, however produced, or reproduced, of EVERY kind and description in YOUR actual or constructive possession, custody, care or control. This includes the complete original (or complete copy if the original is not available) and EACH non-identical copy regardless of origin or location. “DOCUMENT” is intended to have the same meaning as in Civil Rule 34, including, without limitation: writings, CORRESPONDENCE, electronic mail (email) messages and attachments, Internet messages, intranet messages, text messages, Twitter™ messages, messages or postings on social networking websites (including but not limited to websites such as Facebook™ and MySpace™), blog postings, web pages, voicemails,

data and files sent from, received by or stored on smartphones, tablets or other mobile computing devices (including but not limited to Blackberry™, iPhone™, Android™, iPad™, Galaxy Tab™, Velocity Micro Cruz™ and HP TouchPad™), facsimiles, books, pamphlets, periodicals, reports, blueprints, sketches, laser discs, magnetic discs, flash drives, magnetic strips, microfiche, invoices, statements, minutes, purchase orders, contracts, vouchers, checks, charge slips, expense account reports, hotel charges, receipts, working papers, memoranda, messages, notes, envelopes, business records, financial statements, agreements, leases, drawings, graphs, charts, drafts, maps, surveys, plats, statistical records, cost sheets, calendars, appointment books, diaries, time sheets or logs, telephone records or logs, facsimile logs, photographs, sound tapes or recordings, films, tapes, computer printouts and ANY other data, including without limitation, data stored electronically or by other technical means for use with computers or otherwise from which information can be obtained or translated through detection devices into reasonably usable form, or ANY other tangible thing that constitutes or contains matters contained within the scope of Civil Rule 26(b). If a DOCUMENT has been prepared in several copies which are for ANY reason not identical, or if the original identical copies are no longer identical by reason of subsequent notation or other modification of ANY kind whatsoever, including but not limited to notations on the backs of pages thereto, EACH non-identical copy is a separate DOCUMENT. DOCUMENTS shall also include ELECTRONICALLY STORED INFORMATION (“ESI”) and ANY electronically stored data on magnetic or optical storage media as an “active” file or files (readily readable by one or more computer applications or forensics software); ANY “deleted” but recoverable electronic files on said media; ANY electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM

slack] or residual data left on the hard drive after new data has overwritten some but not all of previously stored data).

8. “DEFENDANTS” means LEXINGTON COUNTY, South Carolina, Gary Reinhart, Rebecca Adams, Albert John Dooley, III, Bryan Koon, and Robert Madsen, and DEFENDANTS’ attorneys, and ANY employees, agents, or PERSONS working on DEFENDANTS’ behalf, and if applicable, DEFENDANTS’ subsidiaries, predecessors or assignors, as well as ANY directors, officers, employees, agents, partners, or PERSONS acting on behalf of DEFENDANTS.

9. “IDENTIFY” when referring to a DOCUMENT or WRITTEN COMMUNICATION means to state:

- a. The description of such DOCUMENTS or writings in sufficient detail in order to enable them to be identified by subpoena duces tecum;
- b. The title and EACH subtitle thereof;
- c. The DATE and number of pages thereof;
- d. A brief summary of the contents;
- e. The author, EACH addressee, and the distribution list thereof;
- f. The IDENTITY of EACH PERSON who witnessed, or was in a position to witness said communication;
- g. The DATE on which the document was prepared or signed;
- h. The physical location of the document and the name and address of its custodian or custodians;
- i. The IDENTITY of EACH document referenced by this document;

j. The source of (or the IDENTITY of EACH PERSON who supplied) ANY information contained therein; and

k. If ANY such document was, but is no longer in YOUR possession or subject to YOUR control, what disposition was made of it and the reason for its disposition.

10. “IDENTIFY” when referring to a meeting means, for EACH such MEETING, to state:

- a. The date and hour when held;
- b. The address where held;
- c. The IDENTITY of EACH PERSON who represented YOU at EACH MEETING or conference;
- d. The IDENTITY of ANY other PERSON present; and
- e. EACH action taken, decision made, agreement reached or topic discussed at the MEETING or conference.

11. “IDENTIFY” when referring to oral communications means to state, with respect thereto, ANY communication or portion thereof between ANY two or more PERSONS that is not or was not recorded, including, but not limited to, telephone conversations, face-to-face conversations, meetings, and conferences. State the PERSONS involved, the DATE, the setting, and the circumstances.

12. “IDENTIFY” or “IDENTITY” when referring to a person means to state:

- a. His/her full name;
- b. His/her present residence address;
- c. His/her present residence telephone number;
- d. His/her present business address;

e. If his/her present residence or business address is unknown, state his/her last known residence address and residence telephone number, his/her last known business affiliation and business address, and ANY information YOU have that might reasonably lead to the discovery of his/her present whereabouts; and

f. With respect to PERSONS who are not natural PERSONS, state the last known complete address, including zip code, the last known complete telephone number, including the area code, of its headquarters, and its nearest or local office or agent.

13. "INDIVIDUAL," "PERSON," or "PERSONS" shall mean natural PERSONS, proprietorships, sole proprietorships, corporations, nonprofit corporations, municipal corporations, local, state, federal or foreign governments or governmental agencies, political subdivisions, general or limited partnerships, business trusts, trusts, estates, clubs, groups, unincorporated associations, or other business or public organizations.

14. "INTERGOVERNMENTAL AGREEMENT" means an agreement between LEXINGTON COUNTY and ANY other unit of government RELATING TO: (a) the arrest of ACCUSED PERSONS; (b) the use of LEXINGTON COUNTY jail facilities to incarcerate INDIVIDUALS convicted of crimes charged by ANY other unit of government.

15. "LEXINGTON COUNTY" means Defendant Lexington County, South Carolina, including but not limited to Lexington County's council members, employees, representatives, agents, commissioners, administrators, and PUBLIC DEFENDERS; Lexington County's attorneys; and ANY PERSONS acting on behalf of Lexington County.

16. "LEXINGTON COUNTY MAGISTRATE COURT" or "MAGISTRATE COURT" means ANY magistrate court operating within Lexington County, including but not limited to the magistrate court divisions of Batesburg-Leesville Magistrate Court, Cayce-West

Columbia Magistrate Court, Irmo Magistrate Court, Lexington Magistrate Court, Lexington Central Traffic Court, Oak Grove Magistrate Court, Swansea Magistrate Court, and the Bond Court located at the Lexington County Detention Center.

17. “LEXINGTON COUNTY SHERIFF’S DEPARTMENT” or “SHERIFF’S DEPARTMENT” means ANY employee, representative, agent, commissioner, or administrator of the LEXINGTON COUNTY SHERIFF’S DEPARTMENT or Lexington County Detention Center, including but not limited to Defendant Bryan Koon, law enforcement officers, guards, courthouse security, attorneys, volunteers, or staff.

18. “LFOs” means legal financial obligations imposed by a LEXINGTON COUNTY MAGISTRATE COURT as part of a criminal or traffic sentence and includes fines, fees, assessments, penalties, costs, and restitution.

19. “PLAINTIFFS” means Plaintiffs, Plaintiffs’ attorneys, and ANY employees, agents, or PERSONS working on behalf of Plaintiffs.

20. “PUBLIC DEFENDER” means an attorney employed by the Lexington County Public Defender’s Office or appointed, assigned, or provided by LEXINGTON COUNTY or the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina to represent an ACCUSED PERSON.

21. “PUBLIC DEFENSE CASE” means a case in which a PUBLIC DEFENDER has been appointed to represent an ACCUSED PERSON.

22. “PUBLIC DEFENSE SERVICES” means the services performed by a PUBLIC DEFENDER and his or her staff members for the purpose of providing legal representation to an ACCUSED PERSON.

23. “RELATING TO” or “REFERRING TO” (including other verb tenses of those terms) means describing, evidencing, constituting, reflecting, showing, comprising, considering, concerning, discussing, regarding, setting forth, studying, analyzing, commenting upon, recommending, alluding to, or mentioning, in whole or in part.

24. “SHOW CAUSE HEARING” means ANY LEXINGTON COUNTY MAGISTRATE COURT hearing at which the court considers the allegation that an ACCUSED PERSON has not paid previously imposed LFOs, including but not limited to hearings for ACCUSED PERSONS in custody for failure to pay LFOs, and other similar proceedings, conducted in a LEXINGTON COUNTY MAGISTRATE COURT.

25. “YOU” and “YOUR” means Defendant Bryan Koon, YOUR attorneys, employees, representatives or agents, and any PERSONS acting on behalf of YOU.

## **II. RELEVANT TIME PERIOD**

Unless otherwise stated, the relevant time period for these discovery requests is from June 1, 2014, to the present.

## **III. REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce ALL non-privileged CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, or revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS:

- a. Sheriff Bryan Koon
- b. Former Sheriff James Metts
- c. Chief Gregg Shockley, Chief Deputy
- d. Major Bob Rolin, Major of Administration
- e. Major Kevin Jones, Detention Bureau Commander

- f. Captain Mark Joyner, Judicial Services Commander
- g. Captain Lee Marshall, Commander of Administration
- h. Lieutenant Cain Mayrant, Booking and Support Services Division Manager
- i. ANY PERSON working in the Warrant Division
- j. Vinton D. Lide, General Counsel
- k. ANY other PERSON who served in ANY of the above positions at ANY point  
from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 2:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, used, or provided to others regarding LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 3:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used in relation to providing hearings or other proceedings in the Bond Court at the Lexington County Detention Center to individuals arrested pursuant to a BENCH WARRANT issued by ANY LEXINGTON COUNTY MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 4:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used regarding the arrest, booking, incarceration, or release of persons incarcerated in the Lexington County Detention Center for non-payment of LFOs imposed by ANY LEXINGTON COUNTY MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 5:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Twanda Brown (listed in various court records as Twanda M. Brown, Twanda Marshinda Brown, Twanda Loshonda Brown, and Tawanda Brown), including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 6:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Twanda Brown while in the custody of the LEXINGTON COUNTY

SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 7:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Sasha Darby, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 8:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Sasha Darby while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 9:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Cayeshia Johnson, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 10:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Cayeshia Johnson while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 11:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Amy Palacios, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 12:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Amy Palacios while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 13:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Xavier Goodwin, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 14:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Xavier Goodwin while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications or other health-related

items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 15:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Raymond Wright, Jr., including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 16:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Raymond Wright, Jr. while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 17:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Nora Corder, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 18:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Nora Corder while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 19:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO money collected from ACCUSED PERSONS who owe LFOs to LEXINGTON COUNTY MAGISTRATE COURTS by LEXINGTON COUNTY, LEXINGTON COUNTY MAGISTRATE COURTS, or the LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 20:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the amount of money received by the LEXINGTON COUNTY SHERIFF'S DEPARTMENT from LEXINGTON COUNTY or any other governmental entity as a result of the SHERIFF'S DEPARTMENT'S collection of LFOs imposed on ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 21:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the amount of money received by the LEXINGTON COUNTY SHERIFF'S DEPARTMENT from LEXINGTON COUNTY or any other governmental entity as a result of the execution of BENCH WARRANTS issued by the MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 22:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO databases, reports, or analyses created by the LEXINGTON COUNTY SHERIFFS DEPARTMENT for the purposes of maintaining or tracking BENCH WARRANTS issued by the LEXINGTON COUNTY MAGISTRATE COURTS for non-payment of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 23:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY agreements between the LEXINGTON COUNTY MAGISTRATE COURTS and the LEXINGTON COUNTY SHERIFF'S DEPARTMENT to execute BENCH WARRANTS ordering the arrest or incarceration of ACCUSED PERSONS for non-payment of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 24:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY INTERGOVERNMENTAL AGREEMENTS between the LEXINGTON COUNTY SHERIFF'S DEPARTMENT and ANY other governmental entity to execute BENCH WARRANTS ordering the arrest or incarceration of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 25:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY INTERGOVERNMENTAL AGREEMENTS between the LEXINGTON COUNTY SHERIFF'S DEPARTMENT and ANY other governmental entity to accept and incarcerate persons in the Lexington County Detention Center pursuant to bench warrants ordering the arrest or incarceration of those persons for non-payment of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 26:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used related to the receipt, retention, dissemination, and/or execution of BENCH WARRANTS issued by LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 27:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used regarding the receipt, retention, dissemination, and/or execution of BENCH WARRANTS issued by ANY court other than LEXINGTON COUNTY MAGISTRATE COURTS, including but not limited to municipal courts.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 28:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used in relation to providing copies of BENCH WARRANTS to persons arrested by

the SHERIFF'S DEPARTMENT pursuant to a BENCH WARRANT, or to persons already incarcerated in the Detention Center on a separate charge.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 29:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used in relation to providing ACCUSED PERSONS arrested pursuant to a BENCH WARRANT the option of paying LFOs listed on the BENCH WARRANT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 30:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used regarding the collection of LFOs from or on behalf of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 31:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received,

reviewed, or used regarding the payment of money collected by the SHERIFF'S DEPARTMENT from or on behalf of ACCUSED PERSONS to the LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 32:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used regarding the booking, incarceration, or release of persons jailed in the Lexington County Detention Center pursuant to BENCH WARRANTS issued by LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 33:** Please produce ALL data constituting or containing booking information for ALL ACCUSED PERSONS incarcerated in the Lexington County Detention Center pursuant to BENCH WARRANTS issued by LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 34:** Please produce ALL data kept for the purposes of maintaining, tracking, or executing BENCH WARRANTS issued for non-payment of LFOs by the LEXINGTON COUNTY MAGISTRATE COURTS, regardless of whether the BENCH WARRANT for which the data kept is currently active or has already been executed.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 35:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the daily cost of housing an inmate in the Lexington County Detention Center. The term “daily cost” in this request refers to the total cost of housing and maintaining an inmate in the Detention Center without regard to what entities are responsible for the various costs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 36:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO any payments made by ANY governmental entity other than LEXINGTON COUNTY toward the cost of housing and maintaining inmates in the Lexington County Detention Center.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 37:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF’S DEPARTMENT prepared, received, reviewed, or used regarding attorney visitation with inmates inside the Lexington County Detention Center.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 38:** Please produce ALL non-privileged CORRESPONDENCE, including emails, letters, and memoranda, or any other DOCUMENTS REFERRING OR RELATING TO inmate visitation by Toby J. Marshall, Eric R. Nusser, Susan Dunn, the ACLU, the ACLU of South Carolina, or ANY person representing or affiliated with ANY of these persons or organizations.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 39:** Please produce ALL DOCUMENTS, including but not limited to emails, letters, memoranda, or other WRITTEN COMMUNICATIONS, REFERRING OR RELATING TO the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject “Sentencing Unrepresented Defendants to Imprisonment.” *See* ECF No. 40–1.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 40:** Please produce ALL DOCUMENTS

REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, reviewed, used, or provided to others regarding the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, "Sentencing Unrepresented Defendants to Imprisonment." See ECF No. 40-1.

**ANSWER:**

DATED this 6th day of October, 2017.

Respectfully submitted by,

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

s/ Susan K. Dunn  
Susan K. Dunn, (Fed. Bar #647)  
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*Attorneys for Plaintiffs*

# EXHIBIT C

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Twanda Marshinda Brown, <i>et al.</i> ,  Plaintiffs,  v.  Lexington County, South Carolina, <i>et al.</i> ,  Defendants.	Civil Action No. 3:17-cv-01426-MBS-SVH
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**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS PROPOUNDED TO DEFENDANTS  
GARY REINHART, REBECCA ADAMS, AND ALBERT J. DOOLEY, III**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the following First Set of Requests for Production of Documents (collectively, the "First Requests for Production") are propounded to you and your attorneys of record. These First Requests for Production are intended to draw upon the combined knowledge of you, your agents, and your attorneys.

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Pursuant to Rule 34, you are directed to provide a written response to these Requests for Production of Documents and produce and make available for inspection and copying all of the documents requested herein in their original state and condition at the offices of Terrell Marshall Law Group PLLC, 936 North 34th Street, Suite 300, Seattle, Washington, 98103, thirty (30) days after service of this request, or at such other time and place as may be mutually agreed upon by the parties. Deliver each document produced in a manner that preserves its sequential relationship with other documents being produced, including the file folder and folder tab associated with its file location, and if not apparent on the folder or tab, accompanied by identification of the person or department from whose files it was taken and such additional

source information as is necessary to enable the parties to determine the document's original pre-production location.

When documents are produced pursuant to these First Discovery Requests, the documents are to be produced in a manner so that the particular request to which they are responsive can be readily identified.

These Requests for Production of Documents are continuing in nature. In accordance with Rule 26, you are requested to supplement your responses to these requests in the event that new or additional information within their scope becomes known to you.

If any document is withheld under a claim of privilege, please:

- a. Identify such document with sufficient particularity as to author(s), addressee(s), recipient(s), and subject matter and contents to allow the matter to be brought before the court;
- b. State the nature of the privilege(s) asserted; and
- c. State in detail the factual basis for the claim of privilege.

## I. DEFINITIONS

Throughout these Discovery Requests, including the definition of terms, the words used in the masculine gender include the feminine, and the words used in the singular include the plural. Wherever the word "or" appears herein, the meaning intended is the logical inclusive "or" — that is, "and/or." Wherever the word "including" appears, the meaning intended is "including but not limited to."

As used throughout these Discovery Requests, the following terms have the following indicated meanings:

1. “ACCUSED PERSON” means a person who is being or has been prosecuted in a LEXINGTON COUNTY MAGISTRATE COURT on charges that allow for the imposition of LFOs upon conviction.

2. “ALL” means “EVERY” and includes “EACH” and “ANY,” and vice versa.

3. “BENCH WARRANT” refers to a warrant of arrest issued by LEXINGTON COUNTY MAGISTRATE COURTS to order the arrest and incarceration of an ACCUSED PERSON.

4. “COMPLAINT” refers to the operative complaint filed by PLAINTIFFS in this proceeding.

5. “CORRESPONDENCE” includes ALL letters, telegrams, notices, messages, or other WRITTEN COMMUNICATIONS or memoranda, including electronic communications, or other records of conversations, meetings, conferences or other oral communications.

6. “DATE” shall mean the exact day, month, and year if ascertainable or, if not, the best approximation, including ANY known relationship to other events.

7. The term “DOCUMENT” or “WRITTEN COMMUNICATION” means all written or graphic matter, however produced, or reproduced, of EVERY kind and description in YOUR actual or constructive possession, custody, care or control. This includes the complete original (or complete copy if the original is not available) and EACH non-identical copy regardless of origin or location. “DOCUMENT” is intended to have the same meaning as in Civil Rule 34, including, without limitation: writings, CORRESPONDENCE, electronic mail (email) messages and attachments, Internet messages, intranet messages, text messages, Twitter™ messages, messages or postings on social networking websites (including but not limited to websites such as Facebook™ and MySpace™), blog postings, web pages, voicemails,

data and files sent from, received by or stored on smartphones, tablets or other mobile computing devices (including but not limited to Blackberry™, iPhone™, Android™, iPad™, Galaxy Tab™, Velocity Micro Cruz™ and HP TouchPad™), facsimiles, books, pamphlets, periodicals, reports, blueprints, sketches, laser discs, magnetic discs, flash drives, magnetic strips, microfiche, invoices, statements, minutes, purchase orders, contracts, vouchers, checks, charge slips, expense account reports, hotel charges, receipts, working papers, memoranda, messages, notes, envelopes, business records, financial statements, agreements, leases, drawings, graphs, charts, drafts, maps, surveys, plats, statistical records, cost sheets, calendars, appointment books, diaries, time sheets or logs, telephone records or logs, facsimile logs, photographs, sound tapes or recordings, films, tapes, computer printouts and ANY other data, including without limitation, data stored electronically or by other technical means for use with computers or otherwise from which information can be obtained or translated through detection devices into reasonably usable form, or ANY other tangible thing that constitutes or contains matters contained within the scope of Civil Rule 26(b). If a DOCUMENT has been prepared in several copies which are for ANY reason not identical, or if the original identical copies are no longer identical by reason of subsequent notation or other modification of ANY kind whatsoever, including but not limited to notations on the backs of pages thereto, EACH non-identical copy is a separate DOCUMENT. DOCUMENTS shall also include ELECTRONICALLY STORED INFORMATION (“ESI”) and ANY electronically stored data on magnetic or optical storage media as an “active” file or files (readily readable by one or more computer applications or forensics software); ANY “deleted” but recoverable electronic files on said media; ANY electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM

slack] or residual data left on the hard drive after new data has overwritten some but not all of previously stored data).

8. “DEFENDANTS” means LEXINGTON COUNTY, South Carolina, Gary Reinhart, Rebecca Adams, Albert John Dooley, III, Bryan Koon, and Robert Madsen, and DEFENDANTS’ attorneys, and ANY employees, agents, or PERSONS working on DEFENDANTS’ behalf, and if applicable, DEFENDANTS’ subsidiaries, predecessors or assignors, as well as ANY directors, officers, employees, agents, partners, or PERSONS acting on behalf of DEFENDANTS.

9. “IDENTIFY” when referring to a DOCUMENT or WRITTEN COMMUNICATION means to state:

- a. The description of such DOCUMENTS or writings in sufficient detail in order to enable them to be identified by subpoena duces tecum;
- b. The title and EACH subtitle thereof;
- c. The DATE and number of pages thereof;
- d. A brief summary of the contents;
- e. The author, EACH addressee, and the distribution list thereof;
- f. The IDENTITY of EACH PERSON who witnessed, or was in a position to witness said communication;
- g. The DATE on which the document was prepared or signed;
- h. The physical location of the document and the name and address of its custodian or custodians;
- i. The IDENTITY of EACH document referenced by this document;

j. The source of (or the IDENTITY of EACH PERSON who supplied) ANY information contained therein; and

k. If ANY such document was, but is no longer in YOUR possession or subject to YOUR control, what disposition was made of it and the reason for its disposition.

10. “IDENTIFY” when referring to a meeting means, for EACH such MEETING, to state:

- a. The date and hour when held;
- b. The address where held;
- c. The IDENTITY of EACH PERSON who represented YOU at EACH MEETING or conference;
- d. The IDENTITY of ANY other PERSON present; and
- e. EACH action taken, decision made, agreement reached or topic discussed at the MEETING or conference.

11. “IDENTIFY” when referring to oral communications means to state, with respect thereto, ANY communication or portion thereof between ANY two or more PERSONS that is not or was not recorded, including, but not limited to, telephone conversations, face-to-face conversations, meetings, and conferences. State the PERSONS involved, the DATE, the setting, and the circumstances.

12. “IDENTIFY” or “IDENTITY” when referring to a person means to state:

- a. His/her full name;
- b. His/her present residence address;
- c. His/her present residence telephone number;
- d. His/her present business address;

e. If his/her present residence or business address is unknown, state his/her last known residence address and residence telephone number, his/her last known business affiliation and business address, and ANY information YOU have that might reasonably lead to the discovery of his/her present whereabouts; and

f. With respect to PERSONS who are not natural PERSONS, state the last known complete address, including zip code, the last known complete telephone number, including the area code, of its headquarters, and its nearest or local office or agent.

13. “INDIVIDUAL,” “PERSON,” or “PERSONS” shall mean natural PERSONS, proprietorships, sole proprietorships, corporations, nonprofit corporations, municipal corporations, local, state, federal or foreign governments or governmental agencies, political subdivisions, general or limited partnerships, business trusts, trusts, estates, clubs, groups, unincorporated associations, or other business or public organizations.

14. “INTERGOVERNMENTAL AGREEMENT” means an agreement between LEXINGTON COUNTY and any other unit of government RELATING TO: (a) the arrest of ACCUSED PERSONS; (b) the use of LEXINGTON COUNTY jail facilities to incarcerate INDIVIDUALS convicted of crimes charged by any other unit of government.

15. “LEXINGTON COUNTY” means Defendant Lexington County, South Carolina, including but not limited to Lexington County’s council members, employees, representatives, agents, commissioners, administrators, and PUBLIC DEFENDERS; Lexington County’s attorneys; and any PERSONS acting on behalf of Lexington County.

16. “LEXINGTON COUNTY MAGISTRATE COURT” or “MAGISTRATE COURT” means any magistrate court operating within Lexington County, including but not limited to the magistrate court divisions of Batesburg-Leesville Magistrate Court, Cayce-West

Columbia Magistrate Court, Irmo Magistrate Court, Lexington Magistrate Court, Lexington Central Traffic Court, Oak Grove Magistrate Court, Swansea Magistrate Court, and the Bond Court located at the Lexington County Detention Center.

17. “LEXINGTON COUNTY PUBLIC INDEX” or “PUBLIC INDEX” means the “Lexington County Eleventh Judicial Circuit Public Index,” which can be accessed at the Web address: <http://publicindex.sccourts.org/Lexington/publicindex/>. The PUBLIC INDEX was last accessed at this address on October 5, 2017.

18. “LEXINGTON COUNTY SHERIFF’S DEPARTMENT” or “SHERIFF’S DEPARTMENT” means ANY employee, representative, agent, commissioner, or administrator of the LEXINGTON COUNTY SHERIFF’S DEPARTMENT or Lexington County Detention Center, including but not limited to Defendant Bryan Koon, law enforcement officers, guards, courthouse security, attorneys, volunteers, or staff.

19. “LFOs” means legal financial obligations imposed by a LEXINGTON COUNTY MAGISTRATE COURT as part of a criminal or traffic sentence and includes fines, fees, assessments, penalties, costs, and restitution.

20. “PLAINTIFFS” means Plaintiffs, Plaintiffs’ attorneys, and ANY employees, agents, or PERSONS working on behalf of Plaintiffs.

21. “PUBLIC DEFENDER” means an attorney employed by the Lexington County Public Defender’s Office or appointed, assigned, or provided by LEXINGTON COUNTY or the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina to represent an ACCUSED PERSON.

22. “PUBLIC DEFENSE CASE” means a case in which a PUBLIC DEFENDER has been appointed to represent an ACCUSED PERSON.

23. “PUBLIC DEFENSE SERVICES” means the services performed by a PUBLIC DEFENDER and his or her staff members for the purpose of providing legal representation to an ACCUSED PERSON.

24. “RELATING TO” or “REFERRING TO” (including other verb tenses of those terms) means describing, evidencing, constituting, reflecting, showing, comprising, considering, concerning, discussing, regarding, setting forth, studying, analyzing, commenting upon, recommending, alluding to, or mentioning, in whole or in part.

25. “SHOW CAUSE HEARING” means any LEXINGTON COUNTY MAGISTRATE COURT hearing at which the court considers the allegation that an ACCUSED PERSON has not paid previously imposed LFOs, including but not limited to hearings for ACCUSED PERSONS in custody for failure to pay LFOs, and other similar proceedings, conducted in a LEXINGTON COUNTY MAGISTRATE COURT.

26. “YOU” and “YOUR” means Defendants Gary Reinhart, Rebecca Adams, and/or Albert J. Dooley, III, YOUR attorneys, employees, representatives or agents, and ANY PERSONS acting on behalf of YOU.

## **II. RELEVANT TIME PERIOD**

Unless otherwise stated, the relevant time period for these discovery requests is from June 1, 2014, to the present.

## **III. REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce ALL CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, or revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS:

- a. Hon. Gary Reinhart, Magistrate Judge and former Chief Judge for Administrative Purposes of the Summary Courts of Lexington County
- b. Hon. Rebecca Adams, Chief Judge for Administrative Purposes of the Summary Courts of Lexington County, and former Associate Judge for Administrative Purposes of the Summary Courts of Lexington County
- c. Hon. Albert J. Dooley, III, Associate Chief Judge for Administrative Purposes of the Summary Courts of Lexington County
- d. Hon. Bradley S. Melton, Magistrate Judge
- e. Hon. Gary S. Morgan, Magistrate Judge
- f. Hon. Scott Whittle, Magistrate Judge
- g. Hon. Matthew Johnson, Magistrate Judge
- h. Hon. Arthur L. Myers, Magistrate Judge
- i. Hon. Brian N. Buck, Magistrate Judge
- j. Ed Lewis, Chief Court Administrator
- k. Colleen Long, Deputy Court Administrator
- l. Lisa Comer, Lexington County Clerk of Court
- m. ANY other PERSON who served as a Lexington County Magistrate Judge, Court Administrator, or Clerk of Court at ANY point from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 2:** Please produce ALL CORRESPONDENCE, including letters, between the following INDIVIDUALS and ACCUSED PERSONS that REFERS OR RELATES TO LFOs:

- a. Hon. Gary Reinhart, Magistrate Judge and former Chief Judge for Administrative Purposes of the Summary Courts of Lexington County
- b. Hon. Rebecca Adams, Chief Judge for Administrative Purposes of the Summary Courts of Lexington County, and former Associate Judge for Administrative Purposes of the Summary Courts of Lexington County
- c. Hon. Albert J. Dooley, III, Associate Chief Judge for Administrative Purposes of the Summary Courts of Lexington County
- d. Hon. Bradley S. Melton, Magistrate Judge
- e. Hon. Gary S. Morgan, Magistrate Judge
- f. Hon. Scott Whittle, Magistrate Judge
- g. Hon. Matthew Johnson, Magistrate Judge
- h. Hon. Arthur L. Myers, Magistrate Judge
- i. Hon. Brian N. Buck, Magistrate Judge
- j. Ed Lewis, Chief Court Administrator
- k. Colleen Long, Deputy Court Administrator
- l. Lisa Comer, Lexington County Clerk of Court
- m. ANY other PERSON who served as a Lexington County Magistrate Judge, Court Administrator, or Clerk of Court at ANY point from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 3:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, received, reviewed, used, or provided to others regarding LFOs and BENCH WARRANTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 4:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, received, reviewed, used, or provided to others regarding assessments of the financial circumstances of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 5:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY training provided to or received by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS regarding assessments of the financial circumstances of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 6:** Please produce ALL DOCUMENTS Constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to ACCUSED PERSONS for the purpose of giving notice of the constitutional right to be represented by a PUBLIC DEFENDER.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 7:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY training provided to or received by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS regarding the constitutional right of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER and to receive notice of that right.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 8:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used or provided to ACCUSED PERSONS for the purpose of giving notice of ANY fees or charges that may or would be imposed in relation to

an application for representation by a PUBLIC DEFENDER or to have such fees or charges waived.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 9:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY training provided to or received by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS for notifying ACCUSED PERSONS of ANY fees or charges that may be imposed in relation to an application for representation by a PUBLIC DEFENDER or to have such fees or charges waived.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 10:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used or provided to ACCUSED PERSONS for the purpose of giving notice of the constitutional right to a jury trial.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 11:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY training provided to or received by the judges or staff

of the LEXINGTON COUNTY MAGISTRATE COURTS regarding the constitutional right of ACCUSED PERSONS to a jury trial.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 12:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, or used in providing notice to ACCUSED PERSONS of alleged non-payment of LFOs owed to a LEXINGTON COUNTY MAGISTRATE COURT as a result of a conviction, including a conviction from a trial in absentia.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 13:** Please produce ALL DOCUMENTS provided by judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to ACCUSED PERSONS to provide notice of alleged nonpayment of LFOs owed to a LEXINGTON COUNTY MAGISTRATE COURT as a result of conviction, including a conviction from a trial in absentia, with such notice including, but not limited to, ANY and ALL letters RELATING TO a “Failure to Comply,” “Failure to Pay,” “Contempt,” and/or “Rule to Show Cause.”

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 14:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the training provided to or received by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS regarding the provision of notice to ACCUSED PERSONS of alleged non-payment of LFOs owed to a LEXINGTON COUNTY MAGISTRATE COURT imposed as a result of a conviction, including a conviction from a trial in absentia.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 15:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY monitoring or supervision conducted of the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to ensure that ACCUSED PERSONS are notified of their constitutional rights to be represented by a PUBLIC DEFENDER, to receive a jury trial, and to have their financial circumstances assessed by a judge before they are incarcerated for non-payment of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 16:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY

MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to giving “Faretta Warnings” to ACCUSED PERSONS, including but not limited to giving a “Faretta Warning” to an individual convicted in his or her absence or whose case is listed in the LEXINGTON COUNTY PUBLIC INDEX as having a disposition of “TIA Guilty Bench Trial.”

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 17:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to Scheduled Time Payment Agreements with ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 18:** Please produce one exemplar of EACH form DOCUMENT designed to be used by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS in relation to Scheduled Time Payment Agreements with ACCUSED PERSONS. If different judges or staff at the different divisions of the MAGISTRATE COURTS currently or previously used different form DOCUMENTS in relation to Scheduled Time Payment Agreements with ACCUSED PERSONS, please also produce one exemplar of EACH of those DOCUMENTS from EACH division of the MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 19:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to SHOW CAUSE HEARINGS scheduled for ACCUSED PERSONS who owe LFOs to the MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 20:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to hearings held in the Bond Court at the Lexington County Detention Center for individuals who have been arrested pursuant to BENCH WARRANTS issued by the MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 21:** Please produce ALL DOCUMENTS in YOUR possession constituting or containing policies, practices, procedures, instructions,

guidance, training materials, or other documents prepared, reviewed, or used by the Lexington County Solicitor's Office regarding LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 22:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY agreements between the LEXINGTON COUNTY MAGISTRATE COURTS and the LEXINGTON COUNTY SHERIFF'S DEPARTMENT to execute BENCH WARRANTS ordering the arrest or incarceration of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 23:** Please produce ALL DOCUMENTS in YOUR possession constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents prepared, reviewed, or used by the Lexington County Detention Center regarding LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 24:** Please produce one exemplar of EACH form DOCUMENT designed to be used by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to assess the ability of ACCUSED PERSONS to pay LFOs at ANY time, including in connection with trials, sentencing hearings, and SHOW CAUSE HEARINGS.

If different judges or staff at the different divisions of the MAGISTRATE COURTS currently or previously used different form DOCUMENTS to assess the ability of ACCUSED PERSONS to pay LFOs at ANY time, including in connection with trials, sentencing hearings, and SHOW CAUSE HEARINGS, please also produce one exemplar of EACH of those DOCUMENTS from EACH division of the MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 25:** Please produce one exemplar of EACH form DOCUMENT designed to be used by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to assess the eligibility of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER. If different judges or staff at the different divisions of the MAGISTRATE COURTS currently or previously used different form DOCUMENTS to assess the eligibility of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER, please also produce one exemplar of EACH of those DOCUMENTS from EACH division of the MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 26:** Please produce ALL DOCUMENTS used by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to assess the eligibility of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 27:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Twanda Marshinda Brown (listed in various court records as Twanda M. Brown, Twanda Brown, Twanda Loshonda Brown, and Tawanda Brown), including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 28:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Sasha Monique Darby, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 29:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Cayeshia Cashel Johnson, including but not limited to court files, documents relating to indigent status, audio recordings or

transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 30:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Amy Marie Palacios, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 31:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Xavier Larry Goodwin, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 32:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Raymond Wright, Jr., including

but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 33:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Nora Ann Corder, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 34:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the collection of money from ACCUSED PERSONS to satisfy LFOs owed to LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 35:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the transmission of money collected from ACCUSED PERSONS who owed LFOs in LEXINGTON COUNTY MAGISTRATE COURT cases to

LEXINGTON COUNTY, THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT, and/or  
ANY other entities or persons, including state entities.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 36:** Please produce ALL DOCUMENTS  
REFERRING OR RELATING TO the financial operation of the LEXINGTON COUNTY  
MAGISTRATE COURTS, including but not limited to reports, budgets and analyses of actual or  
projected revenue, sources of revenue, expenditures, costs, payments, disbursements, refunds,  
wages, bonuses, investments, and interest income.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 37:** Please produce ALL data and reports in  
YOUR possession REFERRING OR RELATING TO LFOs, including but not limited to  
information YOU have provided to external entities such as the South Carolina Office of Court  
Administration, South Carolina Supreme Court, South Carolina Attorney General's Office,  
South Carolina Commission on Indigent Defense, and South Carolina Commission on  
Prosecution Coordination.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 38:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO BENCH WARRANTS issued by the LEXINGTON COUNTY MAGISTRATE COURTS, including but not limited to letters, e-mails, and other CORRESPONDENCE, and information contained in electronic databases, reports, or analyses.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 39:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to BENCH WARRANTS for the arrest and incarceration of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 40:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others for the purpose of giving notice to ACCUSED PERSONS that they are at risk of a BENCH WARRANT issued for non-payment of LFOs and/or nonappearance in court.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 41:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others for the purpose of giving notice to ACCUSED PERSONS that a BENCH WARRANT has been issued for their arrest and incarceration for non-payment of LFOs and/or nonappearance in court.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 42:** Please produce ALL DATA and reports in YOUR possession REFERRING OR RELATING TO LFOs, including but not limited to information YOU have provided to external entities such as the South Carolina Office of Court Administration, South Carolina Supreme Court, South Carolina Attorney General's Office, South Carolina Commission on Indigent Defense, and South Carolina Commission on Prosecution Coordination.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 43:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO databases, reports, or analyses created by judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS for the purposes of maintaining and/or tracking BENCH WARRANTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 44:** Please produce ALL data kept for the purposes of maintaining, tracking, or enforcing Scheduled Time Payment Agreements between ACCUSED PERSONS and the LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 45:** Please produce ALL data kept for the purposes of maintaining, tracking, enforcing, or recalling BENCH WARRANTS issued against ACCUSED PERSONS by the LEXINGTON COUNTY MAGISTRATE COURTS, regardless of whether the BENCH WARRANT for which the data kept is currently active or has already been executed.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 46:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others for the purpose of inputting, interpreting, clarifying, construing, reading, or explaining information found in the LEXINGTON COUNTY PUBLIC INDEX.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 47:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others regarding the current or former usage of the following “Action Types” in the LEXINGTON COUNTY PUBLIC INDEX:

- a. Archived Bench Warrant
- b. Archived Commitment
- c. Archived Court Summons
- d. Archived Discharge
- e. Archived Document
- f. Archived Failure to Appear/Comply/Pay
- g. Archived Faretta Warnings
- h. Archived Guilty Plea Information
- i. Archived Rule to Show Cause
- j. Archived STP Agreement
- k. Archived Unpaid Fine Notice
- l. Bench Trial
- m. Bench Warrant / Arrest Warrant Recalled
- n. Bench Warrant Served

- o. Commitment Order Issued
- p. Failure to Comply
- q. Failure to Comply Letter Issued
- r. Faretta Warnings
- s. Motion/Motion to Lift Bench Warrant
- t. Order/DMV
- u. Rule to Show Cause
- v. Scheduled Time Payment
- w. Show Cause Hearing Bond Court
- x. Show Cause Hearing No Documents
- y. Show Cause Hearing Variable Document
- z. Show Cause Hearing with Document

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 48:** Please produce ALL DOCUMENTS, including but not limited to emails, letters, memoranda, or other WRITTEN COMMUNICATIONS, REFERRING OR RELATING TO the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, “Sentencing Unrepresented Defendants to Imprisonment.” *See* ECF No. 40–1.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 49:** Please produce ALL DOCUMENTS

REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in response to the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, “Sentencing Unrepresented Defendants to Imprisonment.” See ECF No. 40–1.

**ANSWER:**

DATED this 10th day of October, 2017.

Respectfully submitted by,

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

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**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

<p>TWANDA MARSHINDA BROWN; SASHA MONIQUE DARBY; CAYESHIA CASHEL JOHNSON; AMY MARIE PALACIOS; NORA ANN CORDER; and XAVIER LARRY GOODWIN and RAYMOND WRIGHT, JR., on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>LEXINGTON COUNTY, SOUTH CAROLINA; GARY REINHART, in his individual capacity; REBECCA ADAMS, in her official and individual capacities as the Chief Judge for Administrative Purposes of the Summary Courts in Lexington County and in her official capacity as the Judge of the Irmo Magistrate Court; ALBERT JOHN DOOLEY, III, in his official capacity as the Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County; BRYAN KOON, in his official capacity as the Lexington County Sheriff; and ROBERT MADSEN, in his official capacity as the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Case No. 3:17-cv-01426-MBS-SVH</p> <p style="text-align: center;"><b>CLASS ACTION SECOND AMENDED COMPLAINT</b></p> <p style="text-align: center;">(Violation of Rights under the Fourteenth, Sixth, and Fourth Amendments to the U.S. Constitution)</p> <p style="text-align: center;"><b>JURY TRIAL REQUESTED</b></p>
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**INTRODUCTION**

1. Defendant Lexington County (“the County”) is home to a modern-day debtors’ prison. Impoverished people are routinely arrested and incarcerated for their inability to pay fines and fees imposed by the County’s magistrate courts in traffic and misdemeanor criminal

cases. Each year, hundreds, if not more than one thousand, of the poorest residents of the County and its surrounding areas are deprived of their liberty in the Lexington County Detention Center (“Detention Center”) for weeks and even months at a time for no reason other than their poverty and in violation of their most basic constitutional rights.

2. Plaintiffs Twanda Marshinda Brown, Sasha Monique Darby, Cayeshia Cashel Johnson, Amy Marie Palacios, Nora Ann Corder, Xavier Larry Goodwin, and Raymond Wright, Jr. are indigent people, who are victims of the ongoing and widespread constitutional violations occurring in Lexington County. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright were arrested and incarcerated in the Detention Center for a period of time ranging from seven to 63 days because they could not afford to pay magistrate court fines and fees that provide revenue to the County. At the time they filed their respective claims in this action, Plaintiffs Goodwin and Wright faced an imminent threat of arrest and incarceration because they could not afford to pay fines and fees owed to Lexington County magistrate courts. Plaintiff Goodwin continues to face such an imminent threat because he remains unable to pay money owed to a Lexington County magistrate court.

3. Ms. Brown was arrested on a Saturday morning at home, in front of her children, and was incarcerated for 57 days because she could not pay \$1,907.63. Ms. Darby was arrested at her mother’s house and incarcerated for 20 days because she could not pay \$680. Ms. Johnson was arrested at a traffic stop and incarcerated for 55 days because she could not pay \$1,287.50. Ms. Palacios was arrested at a traffic stop and incarcerated for 21 days because she could not pay \$647.50. Mr. Goodwin was arrested at a traffic stop and incarcerated for 63 days because he could not pay \$1,710. Ms. Corder was arrested when she went to court to challenge an eviction action stemming from her poverty and was incarcerated for 54 days because she could not afford

to pay \$1,320. Mr. Wright was arrested and was incarcerated for 7 days because he could not afford to pay \$416.93.

4. Plaintiffs' arrests and incarcerations were not isolated incidents. Lexington County relies on the collection of fines and fees imposed on defendants in traffic and criminal cases in the County's magistrate courts as a critical source of General Fund revenue. Year after year, the County projects it will collect substantial revenue in the form of magistrate court fines and fees despite the fact that the percentage of the County's population living in poverty increased 14.5% from 2012 to 2015, according to U.S. Census estimates.

5. Over time, the generation of County revenue through magistrate court fines and fees has given rise to a system that routinely deprives indigent people of their rights under the U.S. Constitution. This system was established and is perpetuated by the County and the following state officials: Defendant Rebecca Adams, the Chief Judge for Administrative Purposes of the Summary Courts in Lexington County; Defendant Albert John Dooley, III, the Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County; Defendant Gary Reinhart, who served as Chief Judge for Administrative Purposes of the Summary Courts in Lexington County prior to June 28, 2017; Defendant Bryan "Jay" Koon, the Lexington County Sheriff; and Defendant Robert Madsen, the Circuit Public Defender for the Eleventh Judicial Circuit in South Carolina, who also acts on behalf of Lexington County.

6. As the administrative policymakers for Lexington County magistrate courts, Defendants Adams and Dooley oversee, enforce, and sanction two unwritten policies and practices that are the standard operating procedure in these courts: the **Default Payment Policy** and the **Trial in Absentia Policy**. Both of these policies and practices lead directly to the arrest and incarceration of indigent people, who cannot afford to pay magistrate court fines and fees,

without any pre-deprivation court hearing concerning their ability to pay and without court-appointed counsel to help defend against incarceration. Prior to June 28, 2017, when Defendant Adams was appointed to replace Defendant Reinhart as the Chief Judge for Administrative Purposes of the Summary Courts in Lexington County, Defendants Reinhart and Adams oversaw, enforced, and sanctioned the Default Payment and Trial in Absentia Policies.

7. Under the Default Payment Policy, Lexington County magistrate courts routinely order the arrest and jailing of people who cannot afford to make payments toward court fines and fees in traffic and misdemeanor criminal cases. When an indigent person is unable to pay in full at sentencing, the magistrate court imposes a payment plan requiring steep monthly payments that are usually beyond the individual's financial means. If the indigent person fails to pay in the amount of time required by the payment plan, the magistrate court issues a bench warrant that orders law enforcement to arrest and jail the individual unless the full amount owed is paid before booking in the Detention Center ("payment bench warrant").

8. Similarly, under the Trial in Absentia Policy, Lexington County magistrate courts routinely order the arrest and jailing of indigent people who cannot afford to pay fines and fees imposed through trials and sentencing proceedings held in their absence. The County's magistrate courts routinely ignore requests for continuances by indigent people who are ticketed for traffic or misdemeanor offenses and who contact the court to explain why they cannot appear on the date and time of their scheduled hearing. Rather, regardless of the reason for the defendant's absence, Lexington County magistrate courts proceed without the defendant, impose a conviction in absentia, and sentence the defendant to a term of incarceration suspended on the payment of fines and fees. Without affording the defendant notice of the sentence, magistrate

courts swiftly issue a bench warrant ordering law enforcement to arrest and jail the individual unless the full amount owed is paid before booking.

9. Defendant Koon, the chief law enforcement officer of the Lexington County Sheriff's Department ("LCSD") and the chief administrator of the Detention Center, oversees and directs the arrest and incarceration of indigent people who are subjected to bench warrants issued under the Default Payment and Trial in Absentia Policies. Under his direction and supervision, LCSD officers execute payment bench warrants at people's homes, during traffic and pedestrian stops, and elsewhere, including by enlisting other law enforcement agencies to locate debtors. Defendant Koon oversees and enforces a standard operating procedure by which people arrested on bench warrants, including indigent people, are transported to the Detention Center and incarcerated there for weeks to months at a time unless they can pay the full amount of fines and fees owed before booking, such as by raising money through phone calls from the jail to family and friends. Indigent people who are unable to pay remain in jail without ever seeing a judge, having a hearing, or receiving the advice of counsel.

10. As the administrative leadership of Lexington County's magistrate courts, Defendants Adams and Dooley are aware, or should be aware, that the Default Payment and Trial in Absentia Policies result in the persistent, widespread, and routine arrest and incarceration of indigent people for nonpayment of court fines and fees without pre-deprivation ability-to-pay hearings or representation by counsel. Defendants Adams and Dooley make a deliberate administrative decision not to correct this longstanding and pervasive practice through any written policy. As an exercise of their administrative authority, Defendants Adams and Dooley also make a deliberate decision not to increase the size of magistrate court dockets, require additional hours of court operation, or request additional County funding for magistrate court

operations in order to ensure that magistrate courts conduct pre-deprivation ability-to-pay hearings before ordering the arrest and incarceration of indigent people who are unable pay outstanding fines and fees in full. Finally, Defendants Adams and Dooley make a deliberate administrative decision not to require or permit indigent people booked in jail on bench warrants to be brought to the Bond Court located adjacent to the Detention Center or to the original magistrate court that issued the bench warrant for a post-deprivation ability-to-pay hearing and appointment of counsel to guard against continued unlawful incarceration. Likewise, prior to June 28, 2017, while Defendants Reinhart and Adams served as the final administrative policymakers of Lexington County's magistrate courts, they engaged in the same acts and omissions detailed above in an exercise of their administrative authority.

11. The Lexington County Council and Defendant Madsen, as the final policymakers for the provision of indigent defense in the County's magistrate courts, routinely and systemically deprive indigent people of the right to assistance of counsel when they face incarceration for nonpayment of magistrate court fines and fees. Defendants Lexington County and Madsen make the deliberate decision to provide grossly inadequate funding for indigent defense in Lexington County magistrate courts. Indeed, Defendants Lexington County and Madsen provide *less than half* the amount of funding provided for public defense by South Carolina counties of comparable population size. Defendants Lexington County and Madsen also make the deliberate decision not to assign public defenders to represent indigent people facing incarceration for nonpayment; not to assign public defenders in magistrate court proceedings that lead to sentences of incarceration suspended on payment of fines and fees; not to assign public defenders to staff the Bond Court to represent indigent people arrested on bench warrants for nonpayment; and not to assign public defenders to meet with indigent people

incarcerated in the Detention Center under bench warrants. Instead, Defendants Lexington County and Madsen acquiesce to the longstanding, persistent, widespread, and routine absence of public defenders in Lexington County magistrate courts, particularly in cases that may and do lead to the incarceration of indigent people for nonpayment of magistrate court fines and fees.

12. The arrest and jailing of indigent people for nonpayment of court fines and fees they cannot afford, including Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright, is the result of deliberate decisions, actions, omissions, and longstanding policies, practices, customs, and standard operating procedures established, overseen, and sanctioned by Defendants Lexington County, Reinhart, Adams, Dooley, Koon, and Madsen. Indigent people who lack the financial means to pay the full amount of fines and fees owed to Lexington County magistrate courts are routinely arrested and incarcerated for weeks and months at a time without being afforded a pre-deprivation ability-to-pay hearing, notice of the right to request counsel, or the assistance of a court-appointed attorney to help defend against incarceration. None of the Plaintiffs who were arrested and incarcerated for nonpayment of court fines and fees were provided a hearing on their ability to pay, informed of their right to request court-appointed counsel, or appointed counsel before being arrested and jailed for nonpayment of court fines and fees despite prima facie evidence of their indigence.

13. Through their deliberate acts and omissions, Defendants have established a system that relies on arrest and incarceration to elicit payment toward magistrate court fines and fees rather than providing people with notice of a failure-to-pay charge (for example, through an order to show cause), summoning them to magistrate court for an ability-to-pay hearing, providing notice of their right to request an attorney, and appointing counsel to represent those for whom there is prima facie evidence of indigence, including evidence of receipt of needs-

based public assistance and income around or below the relevant Federal Poverty Guideline.

This unlawful system involves the routine misuse of bench warrants, which South Carolina law and the South Carolina Supreme Court have made clear are to be used for the sole purpose of bringing to court a defendant who previously failed to appear—not to coerce indigent people to pay fines and fees they cannot afford under the threat of lengthy incarceration.

14. Defendants’ conduct has violated, and continues to violate, rights that are clearly established by the U.S. Constitution. The Fourteenth Amendment prohibits the incarceration of a person for nonpayment of court fines, fees, costs, assessments, or restitution without first holding a court hearing on the individual’s ability to pay and the adequacy of readily available alternatives to incarceration and making a finding that nonpayment was willful. The Sixth Amendment requires affording indigent defendants the assistance of court-appointed counsel when sanctioned with actual incarceration for nonpayment of a court-ordered legal financial obligation, when facing a sentence of incarceration suspended upon the payment of fines and fees, and when the incarceration term of a suspended incarceration sentence is enforced. The Sixth Amendment also prohibits systemic deficiencies in the funding, staffing, and assignment of cases to public defenders that result in the denial of the right to counsel to indigent defendants. The Fourth Amendment prohibits arresting people based on warrants that are unsupported by probable cause of a criminal offense or probation violation, as is the case when a warrant is based solely on a report that the defendant has failed to pay a court-ordered legal financial obligation.

15. The longstanding, routine, and widespread practice of arresting and jailing indigent people who owe fines and fees to Lexington County magistrate courts has instilled fear and panic among the poorest residents of the County and surrounding region. Indigent people

who owe money to Lexington County feel pressured to divert funds for basic necessities—food, medication, utilities, rent, and transportation—to avoid jail and the devastating impact of incarceration on their families, loved ones, jobs, and housing.

16. Defendants continue to engage in acts and omissions that directly and proximately cause the arrest and jailing of people who owe fines and fees to the County’s magistrate courts despite their awareness of the longstanding, persistent, widespread, and routine deprivation of the constitutional rights of debtors, including indigent people.

17. As a result, at the time they filed their respective claims in this action, Plaintiffs Goodwin and Wright, who were indigent and owed fines and fees to Lexington County magistrate courts, faced an imminent and substantial threat that they would be arrested and incarcerated for nonpayment of magistrate court fines and fees in violation of their Fourteenth, Sixth, and Fourth Amendment rights. Even today, Plaintiff Goodwin continues to face such a threat because he remains unable to pay money owed to a Lexington County magistrate court. Plaintiffs Goodwin and Wright bring this action under 42 U.S.C. § 1983 to vindicate their constitutional rights and to seek declaratory and injunctive relief against Defendants on behalf of themselves and a class of similarly situated impoverished people.

18. The actions, omissions, policies, practices, customs, and standard operating procedures of Defendants Lexington County, Reinhart, Adams, Dooley, and Koon directly and proximately caused Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright to be deprived of their liberty for extended periods of time, violated their Fourteenth, Sixth, and Fourth Amendment rights, and caused them to suffer humiliation, anxiety, stress, emotional distress, sleeplessness, disturbed sleep, hunger, loss of employment, physical pain, serious illness, hospitalization, and other irreparable injury from being incarcerated in unsanitary jail

conditions without adequate medical attention and separated from their families and loved ones. Accordingly, Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright bring this action under 42 U.S.C. § 1983 to vindicate their individual rights and to seek damages for the violations they suffered.

### **PARTIES<sup>1</sup>**

19. Plaintiff Twanda Marshinda Brown is a 40-year-old indigent woman who resides in Columbia, South Carolina. Ms. Brown is the mother of seven children and the sole provider for her three youngest children, who are in secondary school. She also provides financial support to her two older sons.

20. Plaintiff Sasha Monique Darby is a 27-year-old indigent woman who resides in Fall River, Massachusetts. Ms. Darby is the mother of a four-year-old child for whom she provides financial support.

21. Plaintiff Cayeshia Cashel Johnson is a 27-year-old indigent woman who resides in Myrtle Beach, South Carolina. Ms. Johnson is the mother and principal provider for four young children, all of whom are under eight years old.

22. Plaintiff Amy Marie Palacios is a 40-year-old indigent woman who resides in Lexington, South Carolina. Ms. Palacios is the mother of three children and the principal provider for her two younger daughters.

23. Plaintiff Nora Ann Corder is a 53-year-old indigent woman who resides in Lexington, South Carolina. Ms. Corder is homeless.

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<sup>1</sup> Plaintiffs make the allegations in this Complaint based on personal knowledge as to all matters in which they have had personal involvement and on information and belief as to all other matters.

24. Plaintiff Xavier Larry Goodwin is a 31-year-old indigent man who resides in Columbia, South Carolina. Mr. Goodwin and his wife have two young daughters, and he is the family's principal financial provider. Mr. Goodwin is also the father of two sons for whom he provides financial support.

25. Plaintiff Raymond Wright, Jr., is a 46-year-old indigent and disabled man who resides in Leesville, South Carolina. Mr. Wright and his wife support a household of five, which includes his daughter and two granddaughters.

26. Defendant Lexington County, South Carolina, is a municipal governmental entity whose policies, practices, and customs were, and continue to be, a moving force behind the constitutional violations described in this Complaint. The County, through the Lexington County Council, adopts ambitious projections for County revenue generation through the collection of fines and fees in traffic and misdemeanor criminal cases in magistrate courts located in its territorial jurisdiction. Furthermore, the County contracts with Defendant Madsen for public defense services in the County's magistrate courts, and has delegated to him final policymaking authority for the County's provision of indigent defense. Defendants Lexington County and Madsen deliberately, systematically, and routinely deprive indigent people of the right to assistance of counsel to defend against unlawful incarceration for nonpayment of magistrate court fines and fees. The County is also aware of and causes, authorizes, condones, ratifies, approves, participates in, or knowingly acquiesces to the longstanding, persistent, widespread, and routine absence of public defenders from Lexington County magistrate court proceedings that result in the imposition of actual or suspended incarceration sentences on indigent people. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright pursue individual damages claims against Defendant Lexington County. Plaintiffs Goodwin and

Wright also sue the County for declaratory and injunctive relief on behalf of themselves and the proposed class.

27. Defendant Gary Reinhart, a state actor, served as the Chief Judge for Administrative Purposes of the Summary Courts in Lexington County from as early as 2004 to June 27, 2017 by order of the Chief Justice of the Supreme Court of South Carolina. In April 2015, the Governor of South Carolina reappointed, and the Senate confirmed, Defendant Reinhart to his current four-year term as a magistrate court judge. During his tenure as Chief Judge, Defendant Reinhart's administrative responsibilities included establishing and instituting standard operating procedures applicable to all Lexington County magistrate courts, including procedures concerning the collection of fines and fees; designating the hours of operation of those courts and determining their nighttime and weekend schedules; assigning cases to magistrate court judges across the County; coordinating the planning of budgets for Lexington County magistrate courts; administering the County Bond Court; and requesting County funding for magistrate court operations. Defendant Reinhart oversaw, enforced, and sanctioned the Default Payment Policy, the Trial in Absentia Policy, the policy of denying individuals arrested on bench warrants an ability-to-pay hearing in the Bond Court or the magistrate court that issued the bench warrant, and other written and unwritten policies, practices, and standard operating procedures that directly caused the arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees without any pre-deprivation ability-to-pay hearing or representation by court-appointed counsel to defend against unlawful incarceration. Defendant Reinhart resides in this District and this Division. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright pursue damages claims against Defendant Reinhart in his individual capacity for actions taken in the exercise of his administrative authority.

28. Defendant Adams, a state actor, serves as the Chief Judge for Administrative Purposes of the Summary Courts in Lexington County, a position to which she was appointed on June 28, 2017 by order of the Chief Justice of the Supreme Court of South Carolina. From December 20, 2013 to June 27, 2017, Defendant Adams served as the Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County by order of the Chief Justice of the Supreme Court of South Carolina, a position in which she exercised the administrative responsibilities of the Chief Judge in the event that Defendant Reinhart was absent or disabled. In April 2015, the Governor of South Carolina reappointed, and the Senate confirmed, Defendant Adams to her current four-year term as a magistrate court judge. As the Chief Judge, she oversees, enforces, and sanctions the Default Payment Policy, the Trial in Absentia Policy, the policy of denying individuals arrested on bench warrants an ability-to-pay hearing in Bond Court or the magistrate court that issued the bench warrant, and other written and unwritten policies, practices, and standard operating procedures that directly cause the arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees without any pre-deprivation ability-to-pay hearing or representation by court-appointed counsel to defend against unlawful incarceration. Defendant Adams resides in this District and this Division. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright pursue damages claims against Defendant Adams in her individual capacity for actions taken in the exercise of her administrative authority. On behalf of themselves and the proposed class, Plaintiffs Goodwin and Wright sue Defendant Adams in her official capacity for declaratory and injunctive relief for ongoing constitutional violations resulting from the exercise of her administrative authority.

29. Defendant Adams also serves as the judge of the Irmo Magistrate Court. In her judicial capacity, Defendant Adams routinely sentences indigent people to pay fines and fees according to payment plan terms they cannot afford; routinely fails to inform people of their right to request court-appointed counsel and to seek waiver of the \$40 public defender application fee on the basis of financial hardship; routinely fails to appoint counsel to represent indigent people incarcerated for nonpayment; and routinely fails to ensure that any waiver of the right to counsel is knowing, voluntary, and intelligent. Defendant Adams also routinely issues bench warrants ordering the arrest and incarceration of indigent people for nonpayment of fines and fees without any pre-deprivation ability-to-pay hearing and without affording them court-appointed counsel. Plaintiff Goodwin pursues a declaratory relief claim against Defendant Adams in her official capacity for her judicial actions.

30. Defendant Dooley, a state actor, has served since June 28, 2017 as the Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County by order of the Chief Justice of the Supreme Court of South Carolina. On April 2015, the Governor of South Carolina reappointed, and the Senate confirmed, Defendant Dooley to his current four-year term as a magistrate court judge. As the Associate Chief Judge, Defendant Dooley exercises the administrative responsibilities of the Chief Judge in the event that Defendant Adams is absent or disabled. He oversees, enforces, and sanctions the Default Payment Policy, the Trial in Absentia Policy, the policy of denying individuals arrested on bench warrants an ability-to-pay hearing in Bond Court or the magistrate court that issued the bench warrant, and other written and unwritten policies, practices, and standard operating procedures that directly cause the arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees without any pre-deprivation ability-to-pay hearing or representation by court-appointed

counsel to defend against unlawful incarceration. Defendant Dooley resides in this District and this Division. On behalf of themselves and the proposed class, Plaintiffs Goodwin and Wright sue Defendant Dooley in his official capacity for declaratory and injunctive relief for ongoing constitutional violations resulting from the exercise of his administrative authority.

31. Defendant Bryan Koon, a state actor, is the elected Lexington County Sheriff, the chief law enforcement officer of the LCSD, and the chief administrator of the Detention Center. In his administrative capacity, Defendant Koon oversees and enforces the execution of bench warrants issued by Lexington County magistrate courts against people charged with nonpayment of fines and fees. Under his direction and supervision, LCSD officers execute bench warrants at people's homes, during traffic and pedestrian stops, and elsewhere, including by enlisting other law enforcement agencies to locate debtors. Defendant Koon enforces a standard operating procedure by which people, including indigent people, are arrested on bench warrants and incarcerated in the Detention Center unless they can pay the full amount owed before booking, such as by raising money through phone calls to family and friends. Defendant Koon resides in this District and this Division. On behalf of themselves and the proposed class, Plaintiffs Goodwin and Wright sue Defendant Koon in his official capacity for declaratory and injunctive relief for ongoing constitutional violations connected to the exercise of his enforcement and administrative authority.

32. Defendant Robert Madsen, who is both a state and local actor, is the Circuit Public Defender for the Eleventh Judicial Circuit in South Carolina, which includes Lexington County. Under South Carolina law, Defendant Madsen contracts with Lexington County to provide public defense services in the County's magistrate courts. Defendant Madsen is responsible for requesting County funding for the provision of indigent defense in Lexington

County's magistrate courts, General Sessions Court, and Family Court. Defendant Madsen is also responsible for spending money appropriated by Lexington County, the state, and other sources to ensure the provision of public defense to indigent people in Lexington County magistrate courts. The County has delegated to Defendant Madsen final policymaking authority for the County's provision of indigent defense. Defendant Madsen deliberately, systematically, and routinely deprives indigent people of the right to assistance of counsel to defend against unlawful incarceration for nonpayment of magistrate court fines and fees in Lexington County. Defendant Madsen is also aware of and causes, authorizes, condones, ratifies, approves, participates in, or knowingly acquiesces to the longstanding, persistent, widespread, and routine absence of public defenders from Lexington County magistrate court proceedings that result in the imposition of actual or suspended incarceration sentences on indigent people. These actions can be fairly attributed to Lexington County; in the alternative, Defendant Madsen engages in this conduct as a state actor. Defendant Madsen resides in this District and this Division. On behalf of themselves and the proposed class, Plaintiffs Goodwin and Wright sue Defendant Madsen in his official capacity as a final County policymaker for damages and declaratory and injunctive relief. In the alternative, on behalf of themselves and the proposed class, Plaintiffs Goodwin and Wright sue Defendant Madsen in his official capacity as a state actor for declaratory and injunctive relief.

33. Defendants undertook all of the acts set forth in this Complaint under color of state law.

#### **JURISDICTION AND VENUE**

34. This is a Complaint under 42 U.S.C. § 1983 for damages and declaratory and injunctive relief based on past and ongoing civil rights violations committed by Defendants

Lexington County, Reinhart, Adams, Koon, and Madsen, in violation of the Fourteenth, Sixth, and Fourth Amendments to the U.S. Constitution.

35. This Court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C. §§ 1331 and 1343(a)(3).

36. An actual, ongoing controversy exists within this Court's jurisdiction. The Court is therefore authorized to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

37. Venue is proper in this Court under 28 U.S.C. § 1391(b), (c), and (d) because this judicial district is where a substantial part of the events or omissions giving rise to the claim occurred and where Defendants Lexington County, Reinhart, Adams, Koon, and Madsen reside.

### **FACTUAL ALLEGATIONS**

#### **A. Lexington County's Reliance on Magistrate Court Fines and Fees for General Fund Revenue**

38. Recent years have witnessed a rise in poverty among residents of Lexington County and its surrounding areas. According to U.S. Census figures, the County's poverty rate jumped 14.5% from 2012 to 2015. U.S. Census figures also show that poverty rates increased in neighboring Richland County by 4% from 2012 to 2015.

39. Black and Latino residents of the County have been hardest hit. In 2015, 26.1% of Black residents and 27.7% of Hispanic and Latino residents lived in poverty compared to only 10.7% of white residents. Similarly, in neighboring Richland County in 2015, 22.4% of Black residents and 24.1% of Hispanic and Latino residents lived in poverty compared to only 10.8% of white residents.

40. Given these figures, a significant number of people living in and around Lexington County who are charged with traffic and misdemeanor criminal cases in the County's magistrate courts are likely to suffer from poverty, particularly if they are Black or Latino.

41. Nevertheless, Lexington County relies heavily on magistrate court fines and fees from traffic and misdemeanor criminal cases as a critical source of General Fund revenue.

42. Magistrate courts in South Carolina are courts of limited jurisdiction. All magistrate judges located in Lexington County have county-wide territorial jurisdiction over certain categories of criminal and traffic offenses, and certain civil claims.

43. Lexington County sets ambitious projections for General Fund revenue from the collection of fines and fees from defendants in traffic and misdemeanor criminal cases in the County's magistrate courts, which include the Central Traffic Court and six district magistrate courts—Irmo Magistrate Court, Lexington Magistrate Court, Swansea Magistrate Court, Cayce-West Columbia Magistrate Court, Oak Grove Magistrate Court, and Batesburg-Leesville Magistrate Court.

44. The Lexington County Council is the County's final policymaker concerning the establishment of annual General Fund revenue projections and the appropriation of County funds. Each year, the County Council considers requests for County funding and adopts the Lexington County annual budget. The County's approved annual budget documents final decisions concerning the appropriation of funding for magistrate judge salaries, magistrate court operations, and public defender services in Lexington County courts.

45. The County's annual budget also documents projected revenue from the collection of fines and fees from defendants in traffic and misdemeanor criminal cases in magistrate courts. According to the Lexington County fiscal year 2017-2018 Requested Budget,

the Central Traffic Court “generates substantial revenue from traffic violations, criminal fines and weight violations,” and the district magistrate courts are expected to “generate revenue from Criminal and Traffic cases.”

46. Together, the Central Traffic Court and district magistrate courts collected \$1,420,154 in revenue from traffic and criminal fines for the County General Fund in fiscal year 2015-2016. Of that amount, the Central Traffic Court alone generated over \$1 million and the Irmo Magistrate Court generated more than \$122,000. Thus, the Central Traffic Court and Irmo Magistrate Court generate the lion’s share of traffic and criminal fines and fees funneled into the County’s General Fund.

**B. Failure to Provide Public Defense to Indigent People in Lexington County Magistrate Court Traffic and Criminal Cases**

47. Defendants Lexington County and Madsen have a constitutional duty to operate a public defense system that provides the assistance of counsel to indigent people facing incarceration in cases handled by magistrate courts in Lexington County.

48. Through their actions, omissions, practices, policies, standard operating procedures, and customs, the County and Defendant Madsen systemically and routinely deprive indigent people of the right to assistance of counsel to defend against unlawful incarcerations ordered by Lexington County magistrate courts for nonpayment of fines and fees.

49. Under South Carolina law, Lexington County contracts with Defendant Madsen, the Circuit Public Defender for South Carolina’s Eleventh Judicial Circuit, to provide public defender services for the County’s magistrate courts, General Session Court, and Family Court.

50. Under South Carolina law, Defendant Madsen is responsible for seeking, and the County is responsible for providing, resources for public defender services in the County’s

magistrate courts. Defendant Madsen submits annual requests for funding to Defendant Lexington County and meets with County officials to justify budgetary requests.

51. Under South Carolina law, Defendant Madsen also exercises final decision-making authority over the expenditure of resources appropriated by Lexington County for public defender services. Defendant Madsen is the final decision-maker on whether public defenders are assigned to serve indigent defendants in magistrate court proceedings and in the Bond Court.

52. According to the South Carolina Commission on Indigent Defense website, “South Carolina’s Public Defender System is a county-based system.” County funding for public defense is critical to ensure that public defenders are appointed to represent indigent people in magistrate courts in each county.

53. Although the South Carolina General Assembly provides some annual funding for public defender services in each county, that amount is not intended to provide sufficient funding to ensure public defense in each county’s General Sessions Court, Family Court, and magistrate courts. To the contrary, the South Carolina public defender funding scheme requires counties to provide additional funding to ensure assistance of counsel in those courts.

54. Moreover, Defendant Madsen remits to Lexington County any state money he receives for public defender services in Lexington County because all of the employees assigned by Defendant Madsen to perform public defender services in Lexington County magistrate courts are County employees under South Carolina law.

55. Defendants Lexington County and Madsen have made, and continue to make, the deliberate decision to inadequately fund public defender services for indigent people facing incarceration in magistrate court cases.

56. Lexington County allocated only \$514,306 for public defender services in fiscal year 2015-2016 and only \$543,932 in fiscal year 2016-2017. The amount of funding requested by Defendant Madsen and provided by Lexington County for public defense is entirely inadequate to provide public defense in Lexington County magistrate courts.

57. Lexington County provides less than half of the funding for public defender services that counties of comparable population size provide, which demonstrates the gross inadequacy of the County's funding for public defender services in magistrate courts.

58. According to U.S. Census estimates, Lexington County had a population of 273,843 in 2015, while York County had a slightly smaller population of 240,076 and Spartanburg County had a slightly larger population of 291,240. Lexington County provided only \$514,306 for public defender services in fiscal year 2015-2016, whereas both York County and Spartanburg County provided more than double that amount for the same time period: York County allocated \$1,369,721 and Spartanburg County allocated \$1,116,169.

59. A comparison of the ratio of county to state funding for public defender services in Lexington County and counties of comparable size further underscores the gross inadequacy of Lexington County's funding for indigent defense. In fiscal year 2015-2016, Lexington County provided only 50% of the amount received from the state for public defender services, while York County provided 155% of the amount received in state funding and Spartanburg County provided 101%.

60. Defendants Lexington County and Madsen have made, and continue to make, a deliberate decision to prioritize the collection of public defender application fees over the provision of assistance of counsel to indigent people facing incarceration in magistrate court cases. Defendants Lexington County and Madsen have established a county-wide policy,

practice, and custom of requiring indigent people to pay an up-front \$40 fee at the time they apply for court-appointed representation and of failing to inform indigent people that they may seek a court waiver of the fee based on financial hardship.

61. As a result, on those rare occasions that an indigent person requests court-appointed counsel at an initial appearance in a traffic or criminal case in Lexington County magistrate court, it is standard operating procedure that the individual is directed to leave court and to travel to the office of the Lexington County Clerk of Court or to the Lexington County Public Defender's Office in order to pay the \$40 fee and submit the application for a public defender. This practice dissuades indigent people from applying for a public defender to help defend against incarceration in magistrate court cases.

62. As a result of the policies, practices, and customs of Defendants Lexington County and Madsen, only one public defender is assigned to represent indigent defendants in cases handled by the County's magistrate courts. This level of staffing is entirely inadequate in light of the volume of magistrate court cases in which indigent people face incarceration, as discussed in paragraphs 331 to 336 below.

63. As a result of the policies, practices, and customs of Defendants Lexington County and Madsen, no public defender is present in court, or otherwise available for appointment, to represent an indigent person when a Lexington County magistrate court conducts critical proceedings in which the Sixth Amendment affords a right to counsel. Public defenders are entirely absent from magistrate court proceedings in which indigent people are sentenced to "fine or jail," or to incarceration suspended upon payment pursuant to a Scheduled Time Payment Agreement. Public defenders are also entirely absent from any show cause

hearings that may occur in magistrate court, at which indigent people are sanctioned with incarceration for nonpayment of fines and fees.

64. As a result of the policies, practices, and customs of Defendant Lexington County and the actions, omissions, policies, practices, customs, and standard operating procedures of Defendant Madsen, no public defender is present in the Bond Court to represent indigent people who have been booked on bench warrants because they could not pay the amount of fines and fees specified on the face of the warrant. Nor is any public defender assigned to interview people booked in the Detention Center on magistrate court bench warrants, which would facilitate the identification of indigent people who have been incarcerated without the assistance of counsel or an ability-to-pay hearing.

65. Defendants Lexington County and Madsen, through their officers, representatives, and employees, have known of the structural deficiencies of their public defense system for many years.

66. In April 2016, the American Civil Liberties Union Foundation of South Carolina (“ACLU-SC”), the American Civil Liberties Union (“ACLU”), and the National Association of Criminal Defense Lawyers (“NACDL”) catalogued the deficiencies with indigent defense in South Carolina summary courts and specifically highlighted the lack of counsel for indigent people facing incarceration for nonpayment of fines and fees in magistrate court cases. *See* American Civil Liberties Union Foundation of South Carolina, et. al., Summary Injustice: A Look at Constitutional Deficiencies in South Carolina’s Summary Courts 7, 13–14 (2016) (“Summary Injustice Report”).

67. The Summary Injustice Report received extensive media coverage in South Carolina and particularly in the Lexington County area.

68. On April 2, 2016, *The Post and Courier* drew attention to the Summary Injustice Report, highlighting “[t]he dearth of lawyers for the indigent” in South Carolina summary courts.

69. On April 4, 2016, *The State* reported that the Summary Injustice Report “paints a bleak picture of what can happen to poor and unrepresented defendants in the state’s lower courts where often no lawyer is present, cases are sometimes prosecuted by police and thousands face criminal charges that can send them to jail for 30 days with a criminal record.” *The State* also highlighted the finding that these courts “often fail to inform defendants of their right to counsel and refuse to provide counsel to the poor at all stages of the criminal process.”

70. On April 5, 2016, *South Carolina Radio Network* reported on the Summary Injustice Report’s finding that summary courts “often rush[] through trials without allowing the state’s poorest residents to understand their rights to an attorney or sometimes even disregarding those individuals when they do.”

71. That same day, the *Washington Post* covered the Summary Injustice Report and highlighted that “South Carolina’s magistrate and municipal courts are often deprived of counsel, resulting in de facto debtors’ prisons across the state.”

72. In January 2017, NACDL issued a follow-up report that further confirmed the findings of the Summary Injustice Report. *See* National Association of Criminal Defense Lawyers, et al., *Rush to Judgment: How South Carolina’s Summary Courts Fail to Protect Constitutional Rights* (2017) (“Rush to Judgment Report”).

73. On January 21, 2017, the *Post and Courier* published an article detailing the findings of the Rush to Judgment Report as a “Top Story.”

74. Defendants Lexington County and Madsen know or should know that the inadequacies in the provision of indigent defense in South Carolina summary courts identified in the Summary Injustice Report and the Rush to Judgment Report apply to Lexington County magistrate courts.

75. Despite knowing about deficiencies in their system for public defense in Lexington County magistrate courts, Defendants Lexington County and Madsen have failed, and continue to fail, to take reasonable steps to protect the constitutional right to counsel of indigent people.

76. In 2016, Defendant Madsen presented a budget request to the County Council for a “jail attorney” to provide representation to inmates in the Detention Center on charges issued by the General Sessions Court. That request did not seek funding to represent indigent people in Lexington County magistrate courts even though it was made after the Summary Injustice Report had exposed the lack of counsel for indigent defendants in South Carolina summary courts. Defendant Madsen has not requested any County funding for the representation of indigent people incarcerated in the Detention Center because they cannot afford to pay fines and fees specified on magistrate court bench warrants.

77. The policies, practices, and customs described in the preceding paragraphs constitute the policy of Defendant Lexington County because the failure to adequately fund public defense in Lexington County magistrate courts is a decision of the Lexington County Council, the County’s final policymaker with respect to budgeting decisions.

78. The policies, practices, and customs described in the preceding paragraphs also constitute the policy of Defendant Lexington County because the failure to provide public defense to indigent people facing actual or suspended incarceration sentences in traffic and

criminal cases handled by Lexington County magistrate courts is longstanding, persistent, widespread, and so common and well-settled as to constitute a custom that fairly represents municipal policy.

79. The policies, practices, and customs described in the preceding paragraphs also constitute the policy of Lexington County because the County has delegated to Defendant Madsen final policymaking authority for the County's provision of indigent defense. Defendant Madsen is aware, or should be aware, that there is a longstanding, persistent, and widespread failure to provide public defense to indigent people facing incarceration for nonpayment of fines and fees in traffic and criminal cases handled by Lexington County magistrate courts, and that this is due to grossly inadequate County funding, the requirement that indigent people pay an up-front \$40 fee with each public defender application, and the failure to staff public defenders in magistrate court proceedings. Defendant Madsen causes, authorizes, condones, ratifies, approves, participates in, or knowingly acquiesces in these illegal policies, practices, and customs. Defendant Madsen's actions and inactions were, and continue to be, deliberately indifferent to the clearly established Sixth Amendment rights of indigent people.

**C. Defendants Reinhart, Adams, Dooley, and Koon Oversee, Enforce, and Sanction the Widespread and Routine Arrest and Incarceration of Indigent People Who Cannot Afford to Pay Magistrate Court Fines and Fees**

80. Defendants Adams, Dooley, and Reinhart are the current and former final administrative policymakers for Lexington County magistrate courts.

81. From at least 2004 to June 27, 2017, Defendant Reinhart served as the Chief Judge for Administrative Purposes of the Summary Courts in Lexington County and Defendant Adams served as the Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County. Since June 28, 2017, Defendant Adams has served as Chief Judge, and Defendant Dooley has served as the Associate Chief Judge.

82. On June 28, 2017, the South Carolina Supreme Court issued its most recent Order on Chief Judges for Administrative Purposes of the Summary Courts (“2017 Order”). The 2017 Order grants Defendant Adams significant administrative responsibility over magistrate court policy, procedure, and practice.

83. The 2017 Order generally empowers Defendant Adams to convene quarterly meetings of the County’s magistrate and municipal court judges to “formulate uniform procedures in the county summary court system.” It also explicitly tasks Defendant Adams with the responsibility to establish a county-wide procedure “to ensure that court generated revenues are collected, distributed, and reported in an appropriate and timely manner” and to “[r]eport to the Office of Court Administration any significant or repetitive non-compliance by any summary court judge in the county concerning the Chief Judge’s execution” of this and other duties.

84. The 2017 Order also requires Defendant Adams to administer the County’s Bond Court, determine the nighttime and weekend schedules of county magistrate courts, designate the hours of operation of the County’s magistrate courts, assign cases to magistrate court judges across the County, coordinate the planning of budgets for Lexington County magistrate courts, and request County funding for magistrate court operations.

85. The 2017 Order requires Defendant Dooley to carry out all of the administrative responsibilities of the Chief Judge in the event she is absent or disabled and to accept any administrative duties assigned by Defendant Adams.

86. The 2017 Order is substantively identical to prior orders of the South Carolina Supreme Court issued from 2014 to January 2017, which addressed Chief Judges for Administrative Purposes of the Summary Courts. These prior orders granted Defendant Reinhart the same administrative responsibilities as those now held by Defendant Adams, and granted

Defendant Adams the same administrative responsibilities as those now held by Defendant Dooley.

87. Together, Defendants Reinhart, Adams and Dooley have exercised, and Defendants Adams and Dooley continue to exercise, their administrative authorities to oversee, enforce, and sanction standard operating procedures across Lexington County magistrate courts that directly cause the arrest and incarceration of indigent people for nonpayment of fines and fees in violation of their basic constitutional rights.

**1. Default Payment Policy**

88. Prior to June 28, 2017, Defendants Reinhart and Adams oversaw, enforced, and sanctioned the Default Payment Policy, which has become an unwritten, standard operating procedure in Lexington County magistrate courts. Defendants Adams and Dooley currently oversee, enforce, and sanction the Default Payment Policy.

89. Lexington County magistrate courts routinely sentence people to the payment of hefty fines and fees for traffic and criminal cases. When an indigent person cannot afford to pay in full at sentencing, the County's magistrate courts impose a payment plan, known as a Scheduled Time Payment Agreement, rather than reducing the sentence to an amount the individual can afford to pay or exploring other alternatives to payment and incarceration.

90. Under the Default Payment Policy, magistrate court judges in Lexington County do not inquire into financial ability to pay when imposing fines and fees on an indigent defendant and setting the terms of a Scheduled Time Payment Agreement. At most, a judge may ask if a defendant is employed. But magistrate court judges routinely fail to ask whether the defendant appearing before them has steady employment, the amount of any income, household size, expenses, the needs of financial dependents, or other financial responsibilities, including child

support. Many judges do not even ask whether a defendant is employed, disabled, or otherwise unable to work. Instead, if a defendant cannot pay the full amount of fines and fees at sentencing, Lexington County magistrate court judges impose a Scheduled Time Payment Agreement that requires steep monthly payment amounts untailored to the needs of the individual and often entirely beyond the person's financial means.

91. Under the Default Payment Policy, every indigent defendant whom the magistrate court places on a Scheduled Time Payment Agreement is charged an additional statutory court collection fee of three percent of the total amount of fines and fees for each offense.

92. Under the Default Payment Policy, when an indigent person fails to pay in the time or amount required by the Scheduled Time Payment Agreement, magistrate courts routinely issue a bench warrant that orders law enforcement to arrest and incarcerate the individual unless the full amount owed, including the collection fee, is paid.

93. Upon information and belief, Defendants Adams and Dooley are aware of, and sanction the use of, magistrate court forms and procedures that implement the Default Payment Policy. Likewise, upon information and belief, Defendants Reinhart and Adams were aware of, and sanctioned the use of, magistrate court forms and procedures that implemented the Default Payment Policy while Defendant Reinhart served as Chief Judge.

94. When imposing a Scheduled Time Payment Agreement, magistrate courts require the defendant to sign a form that sets forth the payment schedule and includes the following statement: "Failure to appear as directed or failure to comply with the terms set forth in this payment schedule will result in BENCH WARRANT/COMMITMENT being issued for my arrest and denial of any future requests for a scheduled time payment."

95. The Scheduled Time Payment Agreement form does not explain that before being arrested and incarcerated for nonpayment of court fines and fees, all people have a constitutional right to an ability-to-pay hearing and indigent people also have the right to the assistance of court-appointed counsel to defend against incarceration. Moreover, under the Default Payment Policy, Lexington County magistrate judges and court staff routinely fail to explain these rights to indigent people before requiring them to sign Scheduled Time Payment Agreements.

96. At no point before issuing a bench warrant for the arrest and incarceration of a debtor under the Default Payment Policy does a magistrate court judge hold a hearing to inquire about the reasons for the defendant's nonpayment, the defendant's ability to pay, or the availability of alternatives to payment and incarceration that would adequately achieve the goal of punishment and deterrence.

97. At no point before issuing a bench warrant for the arrest and incarceration of a debtor under the Default Payment Policy does a magistrate court judge notify the individual of the right to request court-appointed counsel or the right to request waiver of any public defender application fee. Likewise, at no point before issuing such a bench warrant does a magistrate court judge appoint counsel to represent indigent people who face incarceration for nonpayment.

98. Lexington County magistrate court judges routinely reference the Default Payment Policy when adjudicating individual traffic and criminal cases.

99. For example, when imposing sentences as a judge in the Irmo Magistrate Court, Defendant Adams routinely threatens indigent defendants with arrest and jail if they do not pay court fines and fees according to payment plan terms imposed by the court.

100. On one occasion, Defendant Adams sentenced a defendant to 30 days in jail suspended upon the payment of \$500 for a breach of trust offense, ordered the defendant to make

monthly payments of \$100, and threatened, “Make sure you pay that. If not, I’ll have a bench warrant in 30 days for your arrest.”

101. On another occasion, Defendant Adams ordered a defendant to pay a non-waivable court cost of \$100 on two shoplifting charges and warned, “Don’t make me send [the officer] to get you for \$100. Because I will.”

## **2. Trial in Absentia Policy**

102. Prior to June 28, 2017, Defendants Reinhart and Adams oversaw, enforced, and sanctioned the Trial in Absentia Policy, which has become an unwritten standard operating procedure in Lexington County magistrate courts and leads to the routine conduct of trials and sentencing proceedings in traffic and criminal cases without even having defendants present in court. Defendants Adams and Dooley currently oversee, enforce, and sanction the Trial in Absentia Policy.

103. Lexington County magistrate courts routinely ignore or deny requests for a continuance when an indigent person who has been ticketed for a traffic or misdemeanor criminal offense contacts the court to request a new court date and to explain the reason for the request. Instead, Lexington County magistrate courts proceed without the defendant, impose a conviction in absentia, and sentence the person in absentia to a term of incarceration suspended on the payment of fines and fees.

104. Under the Trial in Absentia Policy, Lexington County magistrate courts do not ensure that the individual who has been tried and sentenced in absentia has actual notice of the conviction and sentence imposed. Instead, within a week of the date on which the sentence was imposed, the magistrate court issues a bench warrant that orders law enforcement to arrest and incarcerate the individual for a specified number of days unless the full amount of fines and fees

owed is paid. Significantly, the purpose of the bench warrant is not to secure the individual's appearance in court; rather, its purpose is to elicit payment or, if payment is not received, to incarcerate the person.

105. At no point before issuing a bench warrant ordering the arrest and incarceration of a debtor under the Trial in Absentia Policy does a magistrate court judge hold a hearing to determine whether the individual can afford to pay the fines and fees imposed or whether there are alternatives to payment or incarceration that would serve the court's interest in punishment and deterrence.

106. At no point before issuing a bench warrant ordering the arrest and incarceration of a debtor under the Trial in Absentia Policy does a magistrate court judge notify the individual of the right to request court-appointed counsel or the right to request waiver of any public defender application fee. Likewise, at no point before issuing such a bench warrant does a magistrate court judge appoint counsel to represent indigent people who face incarceration for nonpayment.

107. Magistrate court judges and court staff routinely reference the Trial in Absentia Policy.

108. For example, at the end of a typical Central Traffic Court docket, court staff will call out each case in which a defendant has not appeared, hold a trial in absentia, and then announce that the defendant has been convicted and sentenced to a "fine or jail" sentence. The court staff person announces that the absent defendant is expected to pay the full amount of fines and fees within a specific amount of time and that if payment is not received, the court will issue a bench warrant ordering the arrest and jailing of the individual.

109. Upon information and belief, even when magistrate court staff fail to announce in open court that defendants in traffic and criminal cases will be tried and sentenced in absentia,

magistrate court judges and court staff routinely conduct such trials outside the presence of the public and sentence the absent defendants to pay the full amount of fines and fees within a specific amount of time. If the payment is not received, the courts will issue a bench warrant ordering the arrest and jailing of the individual.

**3. The Default Payment and Trial in Absentia Policies Result from the Exercise of Administrative Authority by Defendants Reinhart, Adams, and Dooley**

110. Prior to June 28, 2017, Defendants Reinhart and Adams oversaw, enforced, and sanctioned the Default Payment and Trial in Absentia Policies through the exercise of their administrative responsibility for establishing uniform procedures in Lexington County magistrate courts, including a county-wide procedure for the collection of magistrate court fines and fees “in an appropriate and timely manner.”

111. Since June 28, 2017, Defendants Adams and Dooley oversee, enforce, and sanction the Default Payment and Trial in Absentia Policies through the exercise of those same administrative responsibilities.

112. From at least 2004 to the first half of 2017, Defendant Reinhart, in his administrative capacity, exercised oversight authority over magistrate court judges and court staff who operated Lexington County magistrate courts. During that time, under the direction and supervision of Defendants Reinhart and Adams, magistrate judges and court staff implemented the Default Payment and Trial in Absentia Policies. Defendants Reinhart and Adams directed magistrate court staff to alert magistrate judges when people failed to pay pursuant to the terms of Scheduled Time Payment Agreements or did not appear in court on traffic or criminal charges, both of which triggered the issuance of bench warrants under the Default Payment and Trial in Absentia Policies.

113. Since June 28, 2017, Defendants Adams and Dooley, in their administrative capacities, exercise oversight authority over approximately nine magistrate court judges and 24 court staff who operate Lexington County magistrate courts. Under the direction and supervision of Defendants Adams and Dooley, magistrate judges and court staff implement the Default Payment and Trial in Absentia Policies. Defendants Adams and Dooley direct magistrate court staff to alert magistrate judges when people have failed to pay pursuant to the terms of Scheduled Time Payment Agreements or have not appeared in court on traffic or criminal charges, both of which trigger the issuance of bench warrants under the Default Payment and Trial in Absentia Policies.

114. Defendants Adams and Dooley have made, and continue to make a deliberate decision not to correct through any written policy the longstanding, pervasive, and widespread practice of arresting and incarcerating indigent people for nonpayment of fines and fees without pre-deprivation ability-to-pay hearings or representation by court-appointed counsel, which is the result of the Default Payment and Trial in Absentia Policies.

115. The 2017 Order and prior, substantively identical orders concerning Chief Judges for Administrative Purposes of the Summary Courts require the Chief Judge and Associate Chief Judge for Lexington County magistrate courts to report significant or repetitive non-compliance by any magistrate court judge concerning policies and procedures overseen and enforced by the Chief Judge, including those relating to the collection of magistrate court fines and fees. Defendants Reinhart, Adams, and Dooley have not reported to the Office of Court Administration any noncompliance with any county-wide policies, practices, and standard operating procedures concerning the collection of magistrate court fines and fees “in an appropriate and timely manner.”

116. Defendants Reinhart and Adams exercised, and Defendants Adams and Dooley currently exercise, the administrative authority to increase the size of magistrate court dockets, to require additional hours of magistrate court operation, to require magistrate judges to work on evenings and weekends, and to request additional County funding for magistrate court operations. They have made and/or continue to make a deliberate decision not to use any of these administrative powers to ensure that magistrate court judges and staff under their supervision expend the time and resources required to afford pre-deprivation ability-to-pay hearings and representation by court-appointed counsel to indigent people facing incarceration for nonpayment.

117. The Default Payment and Trial in Absentia Policies squarely contradict South Carolina law and directives from the Supreme Court of South Carolina that permit the use of bench warrants only for the purpose of securing a defendant's appearance in court. South Carolina Code Section 22-5-115 governs magistrate court criminal matters and provides: "If the defendant fails to appear before the court . . . a bench warrant may be issued for his arrest." South Carolina Code Section 38-53-70 further provides: "If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant." A November 14, 1980 Order of the Supreme Court of South Carolina makes clear that "bench warrants . . . are to be used only for the purpose of bringing a defendant before a court which has already gained jurisdiction over that defendant by previous service of a valid charging paper." Moreover, a Memorandum dated November 24, 1980 from John Patrick, the Assistant Director of the South Carolina Office of Court Administration, to Magistrate and Municipal Judges transmitted the South Carolina Supreme Court's Order concerning bench

warrants and stated that “bench warrants . . . are to be used only for the purpose of bringing a defendant before a court.”

118. Even the South Carolina Summary Court Judges Bench Book, which is promulgated by the South Carolina Office of Court Administration and used to train magistrate judges, defines a bench warrant as “a form of process to be used to bring a defendant back before a particular court on a particular charge for a specific purpose after the court has acquired jurisdiction over the defendant on that particular charge by virtue of a previously served proper charging paper.” The Bench Book makes clear that the purpose of a bench warrant is to bring a defendant to court, even when the warrant is issued against a defendant who, “under sentence, fails to properly pay a fine” or a defendant who did not appear in court, was tried in absentia, and “must now be brought before the court to comply with the sentence.” *See* South Carolina Judicial Department, Summary Judges Benchbook, “Criminal,” Chapter C, “Warrants.”

119. As the administrative leadership responsible for coordinating between Lexington County magistrate courts and the Office of Court Administration, Defendants Adams and Dooley know, or should know, that the Default Payment and Trial in Absentia Policies involve the routine misuse of bench warrants to elicit fine and fee payments and to incarcerate indigent people rather than to bring defendants to court, contrary to South Carolina law and directives from the Supreme Court of South Carolina and the Office of Court Administration. Likewise, during Defendant Reinhart’s tenure as Chief Judge, Defendants Reinhart and Adams knew, or should have known, that the Default Payment and Trial in Absentia Policies involved such misuse of bench warrants.

120. In their administrative capacities under South Carolina law, Defendant Reinhart remitted, and Defendant Adams currently remits, to the Lexington County Treasurer’s Office the

finances and fees collected by the Central Traffic Court and six district magistrate courts. Defendant Reinhart was aware, or should have been aware, that the fines and fees he collected and remitted to the Lexington County Treasurer included payments made by indigent people who were under duress because they faced arrest and incarceration for nonpayment of magistrate court fines and fees under the Default Payment Policy or the Trial in Absentia Policy. Likewise, Defendant Adams is aware, or should be aware, that the fine and fees she collects and remits to the Lexington County Treasurer includes payments made by indigent people who were under duress because they faced arrest and incarceration for nonpayment of magistrate court fines and fees under the Default Payment Policy or Trial in Absentia Policy.

**4. Defendant Koon Enforces the Arrest and Incarceration of Indigent People for Unpaid Fines and Fees**

121. It is the standard operating procedure for Lexington County magistrate courts to transmit to the Warrant Division of the LCSD all bench warrants issued under the Default Payment and Trial in Absentia Policies.

122. Defendant Koon is the chief law enforcement officer of the LCSD and the chief administrator of the Detention Center.

123. Under South Carolina law, Defendant Koon has the authority and ongoing responsibility to execute bench warrants and to incarcerate people who have been arrested in the Detention Center. Rule 30(c) of the South Carolina Rules of Criminal Procedure grants Defendant Koon “the continuing duty . . . to make every reasonable effort to serve bench warrants and to make periodic reports to the court concerning the status of unserved warrants.” Under Section 23-15-50 of the South Carolina Code, “[t]he sheriff or his deputy shall arrest all persons against whom process for that purpose shall issue from any competent authority commanding such person to be taken into custody or requiring him to give bond, with security.”

124. Under Defendant Koon's direction and supervision, LCSD officers in the Warrant Division are required to locate and arrest the individuals named in bench warrants issued under the Default Payment and Trial in Absentia Policies. LCSD officers are often tasked with going to the home address of the individual, which is identified on the face of the warrant. They are also instructed to conduct bench warrant checks at traffic and pedestrian stops.

125. Under Defendant Koon's direction and supervision, LCSD officers seek and obtain the assistance of other law enforcement agencies in South Carolina in locating people who are the subject of bench warrants. Upon information and belief, the LCSD has an agreement with the Richland County Sheriff Department ("RCSD") by which RCSD officers go to the homes of Richland County residents who are the subject of Lexington County magistrate court bench warrants, execute those warrants, and detain the arrestees in the Richland County Jail for up to 72 hours before LCSD officers transport the arrestees to the Detention Center. LCSD has a similar agreement with the Horry County Sheriff's Department.

126. Under South Carolina Code Section 22-5-210, LCSD officers are required to provide an arrestee with the bench warrant used to effect the arrest. Whether by providing the arrestee with a copy of the bench warrant and/or through verbal explanation, LCSD officers under the direction and supervision of Defendant Koon inform people arrested on bench warrants that the only way to avoid incarceration is to pay in full the fines and fees identified on the face of the warrant before booking.

127. Under Defendant Koon's direction and supervision, when people arrested on a bench warrant are brought to the Detention Center, Detention Center staff explain to them that they must either pay the entire amount of the fines and fees identified on the bench warrant or serve the full term of incarceration identified on the bench warrant. Detention Center staff

frequently serve a copy of the bench warrant on the arrested individual and explain that early release is possible for good time served at the rate of one day of credit for every two days in jail.

128. Under Defendant Koon's direction and supervision, it is a Detention Center standard operating procedure that if a person arrested on a bench warrant is unable to pay the full amount of the balance due identified on the face of the bench warrant before being booked in jail, he or she is incarcerated for approximately two-thirds of the time listed on the bench warrant. It is a standard operating procedure for Detention Center officers to begin the booking process as soon as they can verify that an arrestee is unable to pay the full amount of fines and fees identified on the face of the bench warrant.

129. Any payments made toward magistrate court fines and fees at the Detention Center are forwarded by Detention Center staff to the magistrate court that issued the bench warrant.

**5. The Lack of Judicial Process After the Arrest and Incarceration of Indigent People for Nonpayment of Fines and Fees Results from the Exercise of Administrative Authority by Defendants Reinhart and Adams and the Actions of Defendant Koon**

130. At no point after the issuance of a bench warrant and *before* an individual is booked in the Detention Center on a bench warrant does a Lexington County magistrate court hold a hearing to determine whether the individual's nonpayment of fines and fees was willful or the result of inability to pay, notify the individual of the right to counsel, or appoint counsel to represent the individual at no cost to assist in defending against incarceration for nonpayment.

131. At no point *after* an individual is booked in the Detention Center on a bench warrant does a Lexington County magistrate court hold a hearing to determine whether the individual's nonpayment of fines and fees was willful or the result of financial inability to pay,

provide notice of the right to counsel to the individual, or appoint counsel at no cost to the individual to assist in defending against incarceration for nonpayment.

132. Pursuant to South Carolina law, the 2017 Order, and prior orders of the South Carolina Supreme Court concerning Chief Judges for Administrative Purposes of the Summary Courts, Defendants Reinhart, Adams, and Dooley have determined, and/or currently determine the schedule, staffing, policies, procedures, and practices of the Lexington County Bond Court, which is located in a building adjacent to the Detention Center.

133. In the exercise of their administrative authority over the Bond Court, Defendants Reinhart, Adams, and Dooley, have made, and continue to make, a deliberate decision not to require or even permit the Bond Court to review the cases of indigent people arrested and jailed on magistrate court bench warrants under the Default Payment and Trial in Absentia Policies. Defendants Reinhart, Adams, and Dooley have elected to understaff the Bond Court and limit its hours of operation such that the Bond Court does not have the resources to afford hearings to people arrested and jailed on magistrate court bench warrants under the Default Payment and Trial in Absentia Policies.

134. In the exercise of their administrative authority over magistrate court case assignments and hours of operation, Defendants Reinhart, Adams, and Dooley have made, and/or continue to make, a deliberate administrative decision not to require or permit indigent people booked in jail on bench warrants to be brought to the original magistrate court that issued the bench warrant for a post-deprivation ability-to-pay hearing and appointment of counsel to guard against continued unlawful incarceration.

135. Under the direction and supervision of Defendant Koon, neither LCSD officers who transport bench warrant arrestees to the Detention Center nor Detention Center staff who

book or detain these people bring them to the Bond Court (or any magistrate court) for an ability-to-pay hearing or inform them of their right to request the assistance of court-appointed counsel to defend against unlawful incarceration.

136. As a result of the exercise of administrative authority by Defendants Reinhart, Adams and Dooley, and the deliberate acts of Defendant Koon, indigent people targeted for fine and fee collection through magistrate court bench warrants are jailed for weeks to months at a time simply because of their inability to pay the full amount of fines and fees identified on the bench warrant between the time of their arrest and before being booked in the Detention Center. Other indigent people are able to avoid incarceration only by forgoing basic necessities, begging their families and friends for money, and quickly selling their possessions in order to pay their debts in full.

**D. The Effects of Defendants' Policies, Practices, Customs, Acts, Omissions and Standard Operating Procedures on the Named Plaintiffs**

**1. Twanda Marshinda Brown**

137. Twanda Marshinda Brown is a single mother of seven children, five of whom live with her. She is the sole provider for her three youngest children, who are in secondary school, and also provides financial support to her two older sons.

138. Ms. Brown lives in poverty. She works whenever she can find employment, but struggles to earn enough money to pay for rent, electricity, food, clothing, transportation, and other necessities for herself and her family.

139. Ms. Brown qualifies for needs-based public assistance in the form of Medicaid and Section 8, the federal housing subsidy program for low-income residents. She has relied on housing obtained with Section 8 assistance since at least 2015.

140. In 2016, Ms. Brown worked at Burger King and earned an annual income far below \$24,250, the 2016 federal poverty guideline for a four-person household.

141. On March 15, 2016, Ms. Brown borrowed her niece's car to drive a friend home even though she does not have a license to drive. On her way home, Ms. Brown was stopped and ticketed by an LCSD officer for driving on a suspended license (DUS, 2nd offense) and for driving with "no tag light." The tickets instructed Ms. Brown to appear in the Irmo Magistrate Court on April 12, 2016.

142. On April 12, 2016, Ms. Brown appeared before Defendant Adams in the Irmo Magistrate Court.

143. Ms. Brown did not know, and Judge Adams did not inform her, that she had the right to request the assistance of a court-appointed attorney before pleading guilty, and the right to seek a waiver of any public defender application fees due to financial hardship.

144. Without being informed of her rights and without the assistance of counsel, Ms. Brown pled guilty to the charges of DUS, 2nd offense, and driving with no tag light.

145. Judge Adams sentenced Ms. Brown to \$237.50 in fines and fees for the driving with no tag light offense. She also sentenced Ms. Brown to \$2,100 in fines and fees for the DUS, 2nd offense, even though the maximum penalty under South Carolina law is \$600, 60 days of imprisonment, or both.

146. Judge Adams asked Ms. Brown if she had any money to pay that day. When Ms. Brown responded that she did not, Judge Adams stated that Ms. Brown would be required to pay \$100 each month toward her fines and fees.

147. Ms. Brown was scared. She knew that she could not afford to pay \$100 each month to the court and still support her family. Ms. Brown told Judge Adams that she could afford to pay only \$50 a month.

148. Judge Adams replied that a \$50 monthly payment was not enough. Ms. Brown recalls that Judge Adams said, “I don’t care what happens. Your payment is going to be on the 12th. I want my money on the 12th.”

149. Ms. Brown tried to explain her financial responsibilities related to her children. Judge Adams replied, “I don’t care if you have 1, 2, 3, 4, 5, 6, or 7 kids.”

150. Judge Adams threatened to jail Ms. Brown for 90 days if she did not make a \$100 payment each month to the Irmo Magistrate Court.

151. Judge Adams did not ask Ms. Brown about her income, assets, expenses, dependents or other financial obligations. Nor did Judge Adams ask whether Ms. Brown received any form of needs-based, means-tested public assistance.

152. The conduct and statements of Judge Adams terrified Ms. Brown. She left court fearing that if she missed a monthly payment to the court, she would be arrested and jailed.

153. After the hearing, Ms. Brown went to the payment window outside the courtroom. There she was given a “Trial Information and Plea Sheet.” Neither the judge nor any court staff explained the contents of the document to Ms. Brown. Ms. Brown provided her current mailing address and phone number on the document. Ms. Brown does not remember placing a check mark next to the appropriate statement on the Trial Information and Plea Sheet to indicate that she wished to plead guilty to the offenses charged or waive her right to counsel.

154. At the payment window, a staff member of the Irmo Magistrate Court Clerk’s Office also provided Ms. Brown with two Scheduled Time Payment Agreements. The staff

person explained to Ms. Brown that a payment of \$100 was due on the twelfth of each month and asked Ms. Brown to sign the documents. The staff person did not explain the other contents of the documents to Ms. Brown or provide copies of the documents to take home.

155. Ms. Brown signed the Scheduled Time Payment Agreements as instructed.

156. According to the terms of the Scheduled Time Payment Agreement, Ms. Brown was required to pay \$2,163 in fines and fees for the DUS, 2nd offense, and \$244.63 in fines and fees for the driving with no tag light offense. The total amount due for each offense included a three percent collection fee.

157. Ms. Brown was not informed by the judge, court staff, or the Scheduled Time Payment Agreements that if her financial circumstances changed in the future and she was unable to pay the \$100 required each month, she could request a court hearing on her ability to pay and alternatives to incarceration. Rather, the Scheduled Time Payment Agreement included the following paragraph: “Failure to appear as directed or failure to comply with the terms set forth in this payment scheduled will result in a BENCH WARRANT/COMMITMENT being issued for my arrest and denial of any future requests for a scheduled time payment.”

158. After her hearing in the Irmo Magistrate Court, Ms. Brown faced difficulty making payments to the court while also financially supporting herself and her family. Nevertheless, because she feared that Judge Adams would jail her if she missed a payment, Ms. Brown made payments to the Irmo Magistrate Court her highest priority.

159. Ms. Brown made payments of \$100 to the Irmo Magistrate Court on the following dates: May 12, 2016; June 13, 2016; July 12, 2016; August 30, 2016; and October 4, 2016. These payments satisfied Ms. Brown’s fines and fees for the offense of driving with no tag light and contributed toward her fines and fees for the DUS, 2nd offense.

160. Despite her best efforts, Ms. Brown could not afford to make payments toward her court fines and fees after October 4, 2016. Ms. Brown's income was diminished because she needed to reduce her hours at Burger King in order to take care of her son, who had an accident that required him to undergo a major surgery.

161. Around the same time, the Burger King franchisee for whom Ms. Brown worked was not properly paying her. On numerous occasions in 2016, Ms. Brown faced difficulty cashing her paychecks from the Burger King franchisee because they bounced. The franchisee failed to correct the problem, and Ms. Brown left her job at Burger King in December 2016 to look for a new job that would provide consistent income.

162. During January 2017, Ms. Brown made significant efforts to find a new job and requested an extension of time to pay her electricity bills, which she could not afford to pay.

163. On January 12, 2017, Judge Adams issued a bench warrant ordering the arrest and jailing of Ms. Brown for nonpayment of fines and fees imposed for the DUS, 2nd offense. The warrant stated that Ms. Brown had a "sentence imposed/balance due of \$1,907.63 or 90 days" and that she would be jailed "until he/she shall be thereof discharged by due course of law."

164. In early February 2017, Ms. Brown secured temporary employment at McIntyre Food Products, where she packaged food sent to fast-food restaurants. Ms. Brown was grateful to have secured a job and hoped to resume her payments to the Irmo Magistrate Court after receiving her first paycheck on February 20, 2017. She also expected to be promoted to a permanent position with an hourly rate increase on that day.

165. On Saturday, February 18, 2017, at around seven o'clock in the morning, two RCSD officers came to Ms. Brown's home in the City of Columbia. When Ms. Brown realized

the officers were there for her arrest, she sent her youngest child to take out the trash so that he would not see her being handcuffed and arrested.

166. When Ms. Brown opened the front door, an officer informed her that there was a bench warrant for her arrest.

167. The officers arrested Ms. Brown and transported her to the Alvin S. Glenn Detention Center in Richland County. At the jail, Ms. Brown was served with the bench warrant issued by the Irmo Magistrate Court, which required her to pay \$1,907.63 or serve 90 days in jail.

168. Ms. Brown could not afford to pay \$1,907.63 and did not know anyone who could lend her the money to secure her release.

169. Ms. Brown was incarcerated for three nights in the Alvin S. Glenn Detention Center. On February 21, 2017, she was transported to the Detention Center.

170. At the Detention Center, a guard informed Ms. Brown that she would have to serve 63 days of a 90-day sentence.

171. Ms. Brown was ultimately released on April 15, 2017. She was incarcerated for a total of 57 days—three days in the Alvin S. Glenn Detention Center and 54 days in the Detention Center. Ms. Brown believes she was released earlier than expected because she earned additional credit toward her time by cleaning the jail.

172. Ms. Brown's incarceration was devastating for her and her children. She was extremely distressed to be separated from her children, including her thirteen-year-old son. Ms. Brown cried every day out of concern for her children.

173. As a result of her 57-day-long incarceration, Ms. Brown was separated from her family, including her three teenage sons. Ms. Brown also missed her son's seventeenth birthday

and her granddaughter's first birthday, could not be with her family when her cousin died, and spent her fortieth birthday in the jail, away from her family.

174. While she was incarcerated, Ms. Brown suffered from a severe migraine which caused her eyelids and face to swell, but did not receive any medication. Ms. Brown also lost her job at McIntyre Food Products, where she was supposed to be promoted to a permanent position with an hourly rate increase.

175. Following her release from jail, Ms. Brown is struggling to find paid work and to pay bills incurred while she was incarcerated.

## **2. Sasha Monique Darby**

176. Sasha Monique Darby is the single mother of a four-year old son for whom she provides financial support.

177. Ms. Darby suffers from Post-Traumatic Stress Disorder ("PTSD") as a result of abuse and assault she experienced as a child.

178. Ms. Darby lives in poverty. While in Massachusetts in 2015, she received needs-based public assistance in the form of Medicaid, the Supplemental Nutrition Assistance Program ("SNAP"), and Temporary Assistance to Needy Families ("TANF").

179. Ms. Darby and her son moved to South Carolina from Massachusetts in the spring of 2015 to be close to her mother and extended family.

180. Following her move to South Carolina, Ms. Darby struggled to find employment and financially support herself and her son. In 2016, she worked in several low-wage jobs, including as a forklift driver, but earned an annual income of around \$11,770, the 2016 federal poverty guideline for a one-person household.

181. At first, Ms. Darby's mother was able to help by providing child care for her son while Ms. Darby was looking for work or was at work. After suffering complications related to diabetes, Ms. Darby's mother could no longer provide child care.

182. Because Ms. Darby could not afford child care, in June 2015, she made the difficult decision to send her son to live with his paternal grandmother in Massachusetts. Ms. Darby continued to provide financial support for her son after he moved back to Massachusetts.

183. From January 2016 to early August 2016, Ms. Darby lived with a roommate in order to make ends meet, but the arrangement did not work out as she had hoped.

184. On August 4, 2016, the day on which Ms. Darby was supposed to move out of the apartment, her roommate demanded an additional payment of \$200, which Ms. Darby believed was unjustified. Ms. Darby and her roommate got into a heated argument. Ms. Darby saw her roommate raise a hand and thought her roommate was going to hit her. Because she suffers from PTSD, Ms. Darby felt threatened. Out of fear, Ms. Darby responded by hitting her roommate first. Ms. Darby's roommate called the police in response.

185. Two officers came to the apartment and issued Ms. Darby a ticket charging her with assault and battery in the third degree and requiring her to appear in the Irmo Magistrate Court on August 23, 2016.

186. Ms. Darby appeared in the Irmo Magistrate Court on August 23, 2016.

187. Before Ms. Darby entered the courtroom, an officer handed her a "Trial Information and Plea Sheet" and instructed her to "check a box."

188. The Trial Information and Plea Sheet indicated that an application for a court-appointed attorney required a "\$40 non-refundable fee." Because she did not have \$40, Ms. Darby placed a check mark next to the statement, "I waive my right to have an attorney present."

189. The Trial Information and Plea Sheet also indicated that Ms. Darby could plead no contest, guilty, or not guilty. Because there was no one to help her, Ms. Darby placed a mark next to the option for “Not guilty” and went into the courtroom.

190. Ms. Darby provided her mother’s permanent home address as her contact information on the Trial Information and Plea Sheet, along with her own personal cell phone number. Ms. Darby had been staying with her aunt and her mother following the termination of her apartment share in August 2016 and received mail at her mother’s home.

191. When Ms. Darby’s name was called, Judge Adams read the Trial Information and Plea Sheet and said, “So you didn’t want a lawyer? Trial’s about to start now.”

192. Judge Adams did not inform Ms. Darby that she had the right to request the assistance of a court-appointed attorney and the right to seek waiver of any fees related to the application for a public defender due to financial hardship.

193. Moreover, Judge Adams did not engage in a colloquy with Ms. Darby to determine whether any waiver of the right to counsel was knowing, voluntary and intelligent. Judge Adams did not inform Ms. Darby of the benefits of being represented by counsel, the risks of proceeding pro se, or the potential penalties if she was found guilty. As a result, Ms. Darby did not make a knowing, voluntary or intelligent waiver of the right to counsel.

194. Judge Adams held a trial on the charge of assault and battery in the third degree. Ms. Darby did not know how to cross-examine a witness or take other steps to represent herself.

195. Judge Adams found Ms. Darby guilty of assault and battery in the third degree.

196. Judge Adams asked Ms. Darby whether she wanted to serve 30 days in jail or pay a fine. Because Ms. Darby did not want to go to jail, she stated that she would pay a fine. Judge Adams did not, however, inform Ms. Darby of the amount that she would have to pay.

197. Judge Adams asked Ms. Darby if she had the money to pay the fine. Ms. Darby was confused because she did not know how much the fine would be. She informed Judge Adams that she had some money.

198. Judge Adams asked Ms. Darby where she worked, but asked no further questions about Ms. Darby's financial circumstances.

199. At no point did Judge Adams tell Ms. Darby the amount of the fine imposed, ask whether Ms. Darby could pay that amount, or ask questions about Ms. Darby's income, assets, expenses, dependents, or other financial obligations. Nor did Judge Adams ask whether Ms. Darby received any form of needs-based, means-tested public assistance.

200. Ms. Darby left the courtroom and went to the payment window. There, she was informed that she was sentenced to pay \$1,000 in fines and fees. Ms. Darby was shocked. She could not afford to pay \$1,000.

201. Ms. Darby returned to the courtroom and waited for Judge Adams to speak with her. When Judge Adams called her back to the bench, Ms. Darby requested a payment plan and indicated that she could afford to pay \$100 to \$120 a month. Ms. Darby knew that paying more than \$100 per month would be difficult for her, but she sought to show Judge Adams that she would try her best to pay the fine as soon as possible.

202. Judge Adams said that the monthly payment amount Ms. Darby proposed was not enough and ordered Ms. Darby to pay \$150 a month.

203. At the payment window, Ms. Darby paid \$200 toward the \$1000 fine. She signed a Scheduled Time Payment Agreement to pay the \$800 balance and an additional three percent collection fee of \$30. According to the Scheduled Time Payment Agreement, Ms. Darby was

required to pay \$150 each month from September 23, 2016 through January 23, 2017, and to make a final \$80 payment on February 23, 2017.

204. Ms. Darby was not informed by the judge, court staff, or the Scheduled Time Payment Agreement that if her financial circumstances changed in the future and she was unable to pay the \$150 required each month, she could request a court hearing on her ability to pay and alternatives to incarceration. Rather, the Scheduled Time Payment Agreement included the following paragraph: “Failure to appear as directed or failure to comply with the terms set forth in this payment scheduled will result in a BENCH WARRANT/COMMITMENT being issued for my arrest and denial of any future requests for a scheduled time payment.”

205. Following her trial and sentencing in the Irmo Magistrate Court, Ms. Darby had difficulty making the \$150 payment due to the court on September 23, 2016. Nevertheless, she made a \$150 payment on October 4, 2016.

206. Ms. Darby could not make further payments because she fell into significant financial distress in the fall of 2016.

207. In November 2016, Ms. Darby found herself facing additional childcare costs. Starting that month, Ms. Darby was required to spend \$180 every two weeks for her son’s daycare. She was also saving money to visit her son in Massachusetts because, at that time, she had not seen him since the Mother’s Day weekend in May 2016 when she had last been able to afford a trip to Massachusetts.

208. On December 8, 2016, Judge Adams issued a bench warrant ordering the arrest and immediate jailing of Ms. Darby for nonpayment of fines and fees on the offense of assault and battery in the third degree.

209. On March 28, 2017, Ms. Darby went to her mother's house to help support a family member who was scheduled to be transported to a mental health facility. Ms. Darby was pregnant at that time.

210. The mental health facility personnel came to the house accompanied by two law enforcement officers. One officer recognized Ms. Darby and asked for her identification. The officer ran her name and informed Ms. Darby that there was a warrant for her arrest.

211. Ms. Darby was surprised. She had not received a notice from the Irmo Magistrate Court charging her with nonpayment, and her mother had not received any mail from the Irmo Magistrate Court addressed to Ms. Darby.

212. The officers arrested Ms. Darby and transported her to the Detention Center.

213. At the Detention Center, Ms. Darby was provided a copy of the bench warrant. It indicated that she was required to pay a balance of \$680 toward her sentence for assault and battery in the third degree or serve 20 days in jail.

214. Ms. Darby could not afford to pay \$680, and did not know anyone who could lend her the money to secure her release.

215. Ms. Darby was ultimately released on April 17, 2017. She was incarcerated in the Detention Center for 20 days.

216. Ms. Darby's 20-day-long incarceration was devastating for her. Ms. Darby missed her first prenatal care appointment and was extremely distressed that she could not talk to her four-year-old son who lives in Massachusetts during the entire duration of her incarceration.

217. While she was incarcerated, Ms. Darby did not get enough food to eat or proper medical care related to her pregnancy.

218. While incarcerated, Ms. Darby feared she would lose her job because she could not report to work.

219. During her incarceration, Ms. Darby's landlord initiated eviction proceedings, which ultimately caused her to lose her home in May 2017. Ms. Darby also lost her job as a forklift driver due to her inability to report to work while incarcerated.

220. Because she would be homeless if she stayed in South Carolina, Ms. Darby moved to Massachusetts to live with family.

221. Ms. Darby is struggling to find paid work and to pay bills incurred while she was incarcerated.

### **3. Cayeshia Cashel Johnson**

214. Cayeshia Cashel Johnson is a single mother and the principal provider for her four children, all of whom are under the age of eight.

215. Ms. Johnson lives in poverty. She works multiple part-time jobs and struggles to earn enough money to pay for rent, electricity, food, clothing, transportation, and other necessities to support herself and her family.

216. Ms. Johnson receives needs-based public assistance in the form of Medicaid and food assistance through SNAP.

217. In 2016, Ms. Johnson's annual income was far below \$28,410, the 2016 federal poverty guideline for a five-person household.

218. On August 21, 2016, Ms. Johnson got into a minor car accident in Lexington County when driving her mother's car. At the time, Ms. Johnson was driving from Columbia to Myrtle Beach with a friend.

219. Shortly after the accident, an LCSD patrol car arrived at the scene. The officer asked Ms. Johnson for her driver's license. Ms. Johnson answered truthfully that she had a valid driver's license but that it was not with her at the time.

220. The officer issued Ms. Johnson tickets charging her with five traffic offenses and one misdemeanor offense: (1) uninsured motor vehicle fee violation, 1st offense; (2) operating a motor vehicle without license in possession; (3) improper start of vehicle; (4) violation of beginner permit; (5) failure to return license plate and registration upon loss of insurance, 1st offense; and (6) simple possession of marijuana.

221. The tickets notified Ms. Johnson that she was required to appear in court on September 22, 2016, and provided the address of the Central Traffic Court.

222. When Ms. Johnson returned to Myrtle Beach, her mother was upset about the accident and would no longer allow Ms. Johnson to drive her car. Ms. Johnson could not arrange for transportation to travel to Lexington for her court hearing from Myrtle Beach, which is approximately three hours away by car.

223. About a week before the scheduled hearing, Ms. Johnson called the Central Traffic Court and spoke to a staff person. Ms. Johnson informed the court staff person that she could not attend the court hearing because she lives in Myrtle Beach and could not find transportation to get to and from Lexington in light of her childcare and employment responsibilities. Ms. Johnson explained that she had called everyone she knew to ask for help in traveling to Lexington, but had not been able to secure transportation.

224. The court staff person informed Ms. Johnson that lack of transportation was not a valid reason for missing a court hearing and that her case would be tried in her absence.

225. Ms. Johnson asked the court staff person about arranging a payment plan for the fines on the tickets. The court staff person told Ms. Johnson, “The only way to have a payment plan is to talk to the judge.”

226. The court staff person explained that the judge was in the middle of a hearing. Ms. Johnson provided the court staff person both her work number and cell phone number. The court staff person assured Ms. Johnson that the court would contact her.

227. No staff person or judge of the Central Traffic Court called Ms. Johnson to respond to her request for continuance and a payment plan.

228. On September 22, 2016, the Central Traffic Court tried Ms. Johnson in her absence and found her guilty of all six charges.

229. Ms. Johnson did not receive any notice that she had been tried in absentia, convicted of one misdemeanor and five traffic offenses, sentenced to serve jail time or pay fines and fees for three offenses, and sentenced to pay fines and fees for three offenses.

230. On September 26, 2016, the Central Traffic Court issued a bench warrant ordering the arrest and immediate jailing of Ms. Johnson. The bench warrant required Ms. Johnson to pay \$1,287.50 or be jailed for 80 days for her conviction on the charges of uninsured motor vehicle fee violation, 1st offense, operating a motor vehicle without license in possession, and simple possession of marijuana.

231. On February 13, 2017, Ms. Johnson was a passenger in a car driven by her cousin. They were near Ms. Johnson’s mother’s house in Myrtle Beach when local police stopped the car because of a broken taillight.

232. The officer asked for Ms. Johnson’s driver’s license. The officer informed her that there was a bench warrant for her arrest from Lexington County.

233. The officer arrested Ms. Johnson immediately. Ms. Johnson explained that her children were waiting for her at home with her mother. The officer nevertheless handcuffed Ms. Johnson and took her to the local jail, the J. Reuben Long Detention Center in Horry County, where she was incarcerated for one night.

234. The next morning, on February 14, 2017, two officers from Lexington County transported Ms. Johnson to the Detention Center. At the Detention Center, Ms. Johnson was served with the bench warrant.

235. The bench warrant was the first notice Ms. Johnson had received that she had been convicted of uninsured motor vehicle fee violation, 1st offense, operating a motor vehicle without license in possession, and simple possession of marijuana. It was also the first notice she received regarding the requirement to pay the Central Traffic Court \$1,287.50 or serve 80 days in jail.

236. Ms. Johnson asked the officer who had given her the bench warrant, “Is this the amount I need to get out?” Ms. Johnson recalls that the officer responded, “Yes, that’s the amount or the days.”

237. Ms. Johnson could not afford to pay \$1,287.50 and did not know anyone who could lend her the money to secure her release.

238. Ms. Johnson was ultimately released on April 9, 2017. She was incarcerated for a total of 55 days—one night in the J. Reuben Long Detention Center and 54 days in the Detention Center.

239. Ms. Johnson’s 55-day-long incarceration was devastating for her and her four children. Ms. Johnson was extremely distressed to be separated from her four children for eight

long weeks. Likewise, because Ms. Johnson's family was located hours away in Myrtle Beach, they were unable to visit her during the entire eight weeks of her incarceration.

240. While she was incarcerated, Ms. Johnson also suffered from severe headaches for which she received insufficient medical attention.

241. While incarcerated, Ms. Johnson feared that she would lose the three part-time jobs that she held before her arrest due to her inability to report to work. Upon her release, Ms. Johnson discovered that she lost all three jobs, which had provided critical financial support to her and her children, as a result of her incarceration.

242. Following her release from jail, Ms. Johnson struggled to find paid work and to pay bills incurred while she was incarcerated. She ultimately found employment in low-wage jobs but still struggles to support her family financially.

243. Upon her release from the Detention Center, Ms. Johnson discovered that she still owes Lexington County \$905 for the charges of improper start of vehicle, violation of beginner permit, and failure to return license plate and registration upon loss of insurance.

244. Ms. Johnson received a letter from the Central Traffic Court indicating that she also owes \$100 "non-suspendable mandatory costs," which were due on May 15, 2017.

245. Ms. Johnson does not have the money to pay \$905 for the outstanding tickets or \$100 in mandatory costs.

#### **4. Amy Marie Palacios**

246. Amy Marie Palacios is a single mother and the principal provider for herself and her two teenage daughters.

247. In 2016, Ms. Palacios moved to South Carolina in order to live closer to her extended family.

248. Ms. Palacios lives in poverty. She works whenever she can find employment but struggles to earn enough money to support herself and her family.

249. In 2016, Ms. Palacios earned an annual income below \$20,090, the federal poverty guideline for a three-person household in that year.

250. Ms. Palacios' driver's license was suspended in or around June 2015 because she had neglected to pay the fine for a speeding ticket incurred that year. Shortly thereafter, Ms. Palacios moved to California.

251. When Ms. Palacios returned to South Carolina in May 2016, she paid the fines on the 2015 speeding ticket, contacted the Department of Motor Vehicles ("DMV") to find out exactly how much she owed in reinstatement fees, and began saving money in earnest to pay those fees and reinstate her driver's license. Her ability to reinstate her license was delayed, however, in part because of miscommunication between different DMV offices.

252. On October 28, 2016, Ms. Palacios was a passenger in a car driven by a friend who was pregnant. When her friend felt sick and could no longer drive, they pulled over and switched places. A few minutes later, Ms. Palacios was stopped by state troopers at a roadblock.

253. The state troopers ran the names of Ms. Palacios and her friend for warrants. One of the troopers discovered that Ms. Palacios' driver's license was suspended. Ms. Palacios explained that she had driven only because her friend was pregnant and had suddenly become too ill to drive. Ms. Palacios also explained that she was working toward getting her driver's license reinstated but could not afford to pay the reinstatement fee.

254. The officer ticketed Ms. Palacios for driving on a suspended license (DUS, 1st offense). The ticket notified Ms. Palacios that she was required to appear in court on November 10, 2016 and provided the address of the Central Traffic Court.

255. Before her court date, Ms. Palacios discovered she would be unable to attend the hearing due to work. Ms. Palacios worked twelve hours a day, five to six days a week, as a restaurant server with only one break between 3:00 p.m. and 5:00 p.m.

256. On November 9, 2016, Ms. Palacios called the Central Traffic Court to ask how to request a different court date. She explained to a court staff person that she could not attend the court hearing because she was scheduled to work at the restaurant during the time of the hearing and could not secure time off or find anyone to replace her during her shift.

257. The court staff person explained to Ms. Palacios that her manager could fax an affidavit to the court explaining her situation. Ms. Palacios asked what would happen if she did not attend the hearing. The court staff person assured her, "As long as you fax that over, you should be ok." The staff person said that the judge would review the papers and notify her of the decision.

258. That same day, Ms. Palacios faxed to the Central Traffic Court an affidavit from her employer that explained that Ms. Palacios would not be able to attend court due to work. The affidavit stated: "I Jorge Gomez Manager @ El Jimador Mexican Restaurant state that Amy Palacios is scheduled to work on 11/10/2016 & cannot attend court date scheduled for 11/10/2016. Ms. Palacios would like to request an extension for this date to avoid any future issues. If you have any Questions, Please call me." The affidavit provided Mr. Gomez's contact information.

259. Neither Ms. Palacios nor her employer received a call or written notice from the court in response to her request for a new court date. Because the court staff person of the Central Traffic Court had assured her that the court would follow up with her, Ms. Palacios did not check on the status of her case.

260. On November 10, 2016, Ms. Palacios was tried in her absence in the Central Traffic Court and found guilty of DUS, 1st offense.

261. Ms. Palacios did not receive any notice that she had been tried in absentia, convicted of a traffic offense, and sentenced to serve jail time or pay fines and fees for the offense.

262. On November 15, 2016, the Central Traffic Court issued a bench warrant ordering the arrest and immediate jailing of Ms. Palacios. The bench warrant required Ms. Palacios to pay \$647.50 or be jailed for 30 days for her conviction on the charge of DUS, 1st offense.

263. Around 1:00 a.m. on February 25, 2017, after work, Ms. Palacios had dinner with a close friend who was staying at a local motel. Another friend who was at the dinner agreed to drive Ms. Palacios home.

264. Several minutes after the friend pulled her car out of the parking lot of the motel, an LCSD patrol car stopped the vehicle for not having a proper, visible tag.

265. Unbeknownst to Ms. Palacios, the driver's license of the friend who was giving her a ride had been suspended. While the officers issued a ticket for driving on a suspended license to the friend, Ms. Palacios made calls to find someone who could drive her home.

266. One of the officers asked Ms. Palacios for her identification. When Ms. Palacios told the officer that her license had been suspended, the officer asked for another valid form of identification. Ms. Palacios provided her South Carolina state identification card.

267. The officer ran Ms. Palacios' name and discovered an outstanding bench warrant.

268. The officers transported Ms. Palacios to the Detention Center.

269. Before being booked in the Detention Center, Ms. Palacios asked why there was a bench warrant for her arrest. An officer informed her that the bench warrant was related to the

October 2016 charge against her for DUS, 1st offense. The officer explained, “So either you do 30 days in jail or you pay a fine of \$647.50. These are your options.”

270. Ms. Palacios was confused. She asked, “So I can pay to get out?” The officer responded that she was correct.

271. This discussion of the bench warrant was the first notice Ms. Palacios received that she had been convicted of DUS, 1st offense. It was also the first notice she received regarding the requirement to pay the Central Traffic Court \$647.50 in fines and fees or serve 30 days in jail.

272. Ms. Palacios could not afford to pay \$647.50 and did not know anyone who could lend her the money to secure her release.

273. Ms. Palacios was never served a copy of the bench warrant.

274. When she arrived at the Detention Center, Ms. Palacios also asked the officer whether she would be seen in the Bond Court. The officer responded, “No. When you have a bench warrant, you don’t go to the Bond Court. Either you pay the fine or you sit for 30 days.”

275. Ms. Palacios was ultimately released on March 18, 2017, after serving 21 days in the Detention Center.

276. Ms. Palacios’ 21-day incarceration was devastating for her and her family. Ms. Palacios was extremely distressed to be separated from her daughters, and missed the opportunity to take her fifteen-year-old daughter to the DMV for her driving test.

277. While incarcerated, Ms. Palacios feared that she would lose her job as a server at El Jimador. Upon her release, Ms. Palacios discovered that she lost her job, which had provided critical financial support for her and her daughters, as a result of her incarceration.

278. While she was incarcerated, Ms. Palacios also suffered from high blood pressure, for which she received insufficient medical attention.

279. Ms. Palacios continues to owe the Central Traffic Court a \$25 non-suspendable cost related to her conviction for DUS, 1st offense.

#### **5. Nora Ann Corder**

280. Nora Ann Corder lives in poverty. She works whenever she can find employment, but struggles to earn enough money to pay for housing, electricity, food, clothing, transportation, and other necessities.

281. Ms. Corder receives needs-based public assistance in the form of food assistance through SNAP.

282. In 2016, Ms. Corder's annual income was far below \$12,060, the 2016 federal poverty guideline for a one-person household. That year, Ms. Corder was unemployed for a significant period of time and incurred significant legal expenses related to housing.

283. Due to financial hardship in 2016, Ms. Corder could not afford to pay for car insurance and her insurance policy lapsed.

284. In July 2016, a South Carolina Highway Patrol Officer issued Ms. Corder a citation for failure to return her license plate and registration upon the loss of insurance. Ms. Corder removed the license plates from her car and surrendered her driver's license at the officer's request.

285. The citation ultimately resulted in a \$230 fine and the suspension of Ms. Corder's driver's license.

286. Ms. Corder regained employment at a shipping warehouse, but could not afford to pay the \$230 fine, the cost of reinstating car insurance, or the \$100 driver's license reinstatement

fee required by the DMV. Ms. Corder could not seek reinstatement of her driver's license without paying these costs.

287. As a consequence, Ms. Corder's driver's license remained suspended. Ms. Corder continued to drive to work, however, in order to keep her job at a shipping warehouse, which was located around 18 miles from her rural home.

288. Ms. Corder had no reasonable means of getting to work other than driving her car. She feared that she would be fired if she failed to report to work due to lack of transportation. Ms. Corder also feared that loss of her job—her only source of income—would lead her deeper into poverty and debt, and prevent her from ever paying her court fines and fees and the costs required to reinstate her driver's license.

289. On January 27, 2017, Ms. Corder was pulled over by a Lexington County Sheriff's Deputy near her home and issued three separate citations: (1) DUS, 1st offense; (2) violation of temporary license plate for vehicle to be registered in another state; and (3) uninsured motor vehicle fee violation, 1st offense. The citations required Ms. Corder to appear in the Lexington Magistrate Court on February 15, 2017.

290. The deputy also impounded Ms. Corder's car.

291. Ms. Corder could not afford to pay to release her car from impound. As a result, she lost her car, which was her sole source of transportation from her rural home to work and court.

292. On February 15, 2017, Ms. Corder appeared in the Lexington Magistrate Court. Before the hearing began, the deputy who issued the tickets informed Ms. Corder that she owed a total of \$1,320 in fines and fees.

293. The deputy asked Ms. Corder what she had “gotten done.” Ms. Corder was unsure what the deputy was referring to, but she explained that she did not have the money to pay the tickets, get her license or automobile insurance reinstated, or to get her car out of impound.

294. The deputy told Ms. Corder that he would “get a continuance” until the following month for her to “take care” of what she needed to take care of. Ms. Corder did not request the continuance or understand what a continuance was, but she did not believe she could challenge the officer’s handling of the case. The deputy did not provide Ms. Corder explicit instructions concerning what she should do before the next hearing date.

295. In February 2017, Ms. Corder lost her job because she could not arrange for transportation to and from work. She had sought assistance from neighbors and acquaintances, but was unable to secure transportation, in part, because she worked the night shift and needed to be picked up at around five o’clock in the morning.

296. On March 22, 2017, Ms. Corder appeared in the Lexington Magistrate Court as required. Before the hearing began, the same deputy asked her what actions she had taken since she last came to court.

297. Ms. Corder explained that she was unemployed and could not afford to reinstate her driver’s license or car insurance. She also explained that she had not obtained car insurance because she could not afford to get her car out of impound. The deputy stated that if she could reinstate her driver’s license and car insurance, he would drop certain charges or ask the court to reduce the amount Ms. Corder would have to pay in fines and fees.

298. The deputy informed Ms. Corder that he would continue the hearing to the following month so she could reinstate her driver’s license. Ms. Corder told the deputy that she

did not know how she was going to do that because she was unemployed and in significant financial distress. Nonetheless, the deputy continued the trial date a second time, rather than permitting the case to proceed before a magistrate judge.

299. Ms. Corder did not request the continuance, but again did not believe she could challenge the deputy's decision.

300. In late March 2017, Ms. Corder began working at a Waffle House. The distance from her rural home to work was too far to walk and there was no public transportation, so Ms. Corder paid neighbors and acquaintances \$10 to \$15 per workday for rides to and from the restaurant..

301. Although she worked full-time, Ms. Corder only earned around \$290 each week, remained indigent, and faced difficulty paying for rent, utilities, and other basic necessities.

302. From March 2017 to May 2017, Ms. Corder received needs-based public assistance in the form of SNAP food assistance.

303. Due to her significant period of unemployment in 2017 and low wages from Waffle House, Ms. Corder earned a projected annual income far less than \$12,060, the 2017 federal poverty guideline for a one-person household.

304. Despite her poverty, Ms. Corder sought to pay the outstanding \$230 court fine stemming from the 2016 ticket for failure to return her license plate and registration upon the loss of insurance.

305. On April 19, 2017, Ms. Corder appeared in the Lexington Magistrate Court as required for a third time concerning the January 2017 traffic tickets. At court, Ms. Corder paid the outstanding \$230 fine.

306. Before the hearing began, the same deputy questioned Ms. Corder about what actions she had taken since her last appearance in court.

307. Ms. Corder informed the deputy that she still could not afford to reinstate her driver's license or car insurance, but that she had recently secured a job at Waffle House. The deputy indicated that he would again continue the trial to the following month, but that it was the last time he would do so. The deputy informed Ms. Corder that her next court date would be May 17, 2017. Again, Ms. Corder did not request the continuance.

308. Ms. Corder had appeared in the Lexington Magistrate Court, as required, on three separate days for a court hearing on the January 2017 traffic citations. At no point on any of these three days did any Lexington County magistrate court judge speak to Ms. Corder, instruct her on how to prepare for a continued court hearing, or inform her of her right to request the assistance of a court-appointed attorney, the right to seek waiver of any public defender application fees due to financial hardship, or the right to a jury trial on the charges against her.

309. Likewise, the deputy, who repeatedly informed Ms. Corder that her court hearing would be continued to a subsequent date, did not instruct her on how to prepare for her continued court hearing. Nor did he inform Ms. Corder of her rights concerning counsel or her right to a jury trial on any of the three occasions in which she appeared in court.

310. On May 17, 2017, Ms. Corder was unable to secure transportation to attend the fourth Lexington Magistrate Court hearing concerning her January 2017 traffic tickets. At the time, Ms. Corder lived around nine miles from court. She could not walk to court from her home and did not have access to any reasonable means of public transportation to make the trip.

311. That same day, the Lexington Magistrate Court tried Ms. Corder in her absence and found her guilty of all three charges.

312. Ms. Corder did not receive any notice that she had been tried in absentia, convicted of three traffic offenses, and sentenced to serve jail time or pay fines and fees for the three traffic offenses.

313. On or around May 17, 2017, the Lexington Magistrate Court issued a bench warrant ordering the arrest and immediate jailing of Ms. Corder. Upon information and belief, the bench warrant required Ms. Corder to pay \$1,320 or be jailed for 90 days for her conviction on the charges of DUS, 1st offense, violation of temporary license plate for vehicle to be registered in another state, and uninsured motor vehicle fee violation, 1st offense.

314. Ms. Corder feared that she would be arrested for the three traffic citations, even though she had been unable to appear in court on May 17, 2017 due to lack of transportation. Several days after the scheduled hearing, Ms. Corder called the Lexington County Sheriff's Department and was informed that a bench warrant had been issued for her arrest.

315. Ms. Corder called the Lexington Magistrate Court to explain that she had been unable to secure transportation to court and asked what she could do. A clerk informed her that she was required to pay \$1,320 or turn herself in for arrest.

316. Ms. Corder explained to the clerk that she had only recently gained employment and could not afford to pay \$1,320, but could pay the total amount due in five or six installments.

317. The clerk informed Ms. Corder that she was not permitted to pay in installments. The clerk told Ms. Corder that she had to pay \$1,320 in full or would be arrested.

318. At the same time that Ms. Corder sought to prevent arrest and incarceration for unpaid magistrate court fines and fees, she faced eviction from her home because she could not afford to pay rent.

319. On May 26, 2017, Ms. Corder went to the Lexington Magistrate Court to file forms to fight the eviction action. Shortly after her arrival, a deputy of the Lexington County Sheriff's Department handcuffed and arrested Ms. Corder.

320. Ms. Corder was transported to the Detention Center and booked.

321. Ms. Corder could not afford to pay \$1,320 prior to being booked and did not know anyone who could lend her the money to secure her release.

322. Ms. Corder was ultimately released on July 19, 2017. She was incarcerated for a total of 54 days.

323. Ms. Corder's 54-day-long incarceration has been devastating for her. Because she was incarcerated, she was unable to report to work and lost her job. She suffered emotional distress from the loss of her physical liberty as well as the knowledge that she would be homeless and unemployed upon her release from jail.

#### **6. Xavier Larry Goodwin**

322. Xavier Larry Goodwin is the principal provider for a household of four people: his two teenage daughters, his wife, and himself. He also pays \$232 each week—around \$12,000 a year—in child support for two sons with whom he does not live.

323. Mr. Goodwin lives in poverty. He struggles to financially support himself and his family through his work as a welder and machine operator.

324. Mr. Goodwin qualifies for needs-based public assistance in the form of Medicaid.

325. In 2016, Mr. Goodwin earned an annual income around \$32,570, the federal poverty line for a six-person household.

326. On July 15, 2016, Mr. Goodwin received five traffic tickets during a traffic stop: (1) DUS, 2nd offense; (2) uninsured motor vehicle fee violation, 1st offense; (3) seatbelt violation; (4) temporary license plate – time limit to replace; and (5) use of license plate other

than for vehicle which issued. The tickets instructed Mr. Goodwin to appear in the Central Traffic Court on August 9, 2016.

327. On August 9, 2016, Mr. Goodwin was unable to appear in court due to work. Mr. Goodwin called the Central Traffic Court during his morning break. Because he thought he had already missed the court hearing, Mr. Goodwin asked the court staff person, “Is there anything that can be done so I can reappear or reschedule the court date?” The court staff person told Mr. Goodwin, “It’s best if you just come down here and see what can be done.” The Central Traffic Court is open on Monday through Friday from 8:00 a.m. to 5:00 p.m. Mr. Goodwin could not go to the court that day because of his work schedule.

328. On August 9, 2016, Mr. Goodwin was tried in his absence in the Central Traffic Court and found guilty of all five charges.

329. Mr. Goodwin did not receive any notice that he had been tried in absentia, convicted of five traffic offenses, sentenced to serve jail or pay fines and fees for two of the offenses, and sentenced to pay fines and fees for the other three offenses.

330. On August 10, 2016, the Central Traffic Court issued a bench warrant ordering the arrest and immediate jailing of Mr. Goodwin. The bench warrant required Mr. Goodwin to pay \$1,710 or be jailed for a total of 90 days for his conviction on the charges of DUS, 2nd offense and uninsured motor vehicle fee violation, 1st offense.

331. On February 2, 2017, Mr. Goodwin was stopped by an LCSD patrol car a block away from his home.

332. One of the officers asked Mr. Goodwin for his driver’s license, registration, and proof of insurance. Mr. Goodwin gave the officer the vehicle registration and proof of insurance and explained that he did not have a driver’s license.

333. The officers discovered there was an outstanding bench warrant for Mr. Goodwin's arrest. They returned to Mr. Goodwin's car and asked him to step out of the car and put his hands behind his back.

334. The officers told Mr. Goodwin that he was being arrested on a bench warrant. They also issued him a ticket for DUS, 3rd offense. The ticket notified him that he was required to appear in the Irmo Magistrate Court on April 4, 2017.

335. Mr. Goodwin was transported to the Detention Center. At the Detention Center, Mr. Goodwin was served with the bench warrant. This bench warrant was the first notice Mr. Goodwin had received that he had been convicted of DUS, 2nd offense, and uninsured motor vehicle fee violation, 1st offense. It was also the first notice he received regarding the requirement to pay the Central Traffic Court \$1,710 in fines and fees or to serve 90 days in jail.

336. The following morning, on February 3, 2017, Mr. Goodwin was taken to the Bond Court for a hearing on the DUS, 3rd offense charge from the previous day. The Bond Court judge did not inform Mr. Goodwin of his right to request the assistance of court-appointed counsel or his right to seek waiver of any public defender application fee. Nor did the judge appoint counsel to represent Mr. Goodwin as an indigent person facing incarceration for nonpayment of magistrate court fines and fees. The Bond Court judge did not address the Central Traffic Court bench warrant that was the basis for his arrest and incarceration.

337. On April 4, 2017, the officer who had issued Mr. Goodwin the DUS, 3rd offense ticket on February 2, 2017 came to the Detention Center and transported Mr. Goodwin to the Irmo Magistrate Court for a hearing.

338. On their way to court, Mr. Goodwin asked the officer whether he could request a public defender. The officer suggested that the screening process could take a long time and that

Mr. Goodwin's incarceration in the Detention Center could be extended as a result. Mr. Goodwin feared the prospect of spending additional time in jail and did not ask any further questions about requesting a public defender.

339. Judge Adams of the Irmo Magistrate Court heard Mr. Goodwin's case.

340. Mr. Goodwin did not know, and the judge did not inform him, that he had the right to request the assistance of a court-appointed attorney before pleading guilty and the right to seek a waiver of any fees related to the application for a public defender due to financial hardship.

341. Without being informed of his rights and without the assistance of counsel, Mr. Goodwin pled guilty to the charge of DUS, 3rd offense.

342. Judge Adams sentenced Mr. Goodwin to 90 days in jail and \$2,100 in fines and fees. The judge credited the time Mr. Goodwin had already spent incarcerated in the Detention Center toward the jail portion of the sentence. She also said something to the effect of: "You are not gonna make a payment, which I think will happen. I'm gonna issue a bench warrant faster than you can turn your head."

343. Judge Adams instructed Mr. Goodwin to return to court to set up a payment plan within 30 days of his release from jail. She threatened to have him arrested and incarcerated if he failed to do so.

344. Mr. Goodwin was transported back to the Detention Center after the court hearing.

345. Mr. Goodwin was ultimately released from the Detention Center on April 6, 2017 and transported to the Alvin S. Glenn Detention Center in Richland County to serve time on a bench warrant issued by the Upper Township Magistrate Court in Richland County.

346. On April 26, 2017, Mr. Goodwin was released from the Alvin S. Glenn Detention Center.

347. Mr. Goodwin was incarcerated for a total of 63 days in the Detention Center for nonpayment of fines and fees to the Central Traffic Court. His incarceration was devastating for him and his family. Mr. Goodwin was extremely distressed to be separated from his family. He was unable to be with his daughter on her eleventh birthday or with his wife on their wedding anniversary.

348. Mr. Goodwin was housed in a dorm in the Detention Center that was very hot and had significant mold growth on the walls due to a leaky roof and ceiling. Mr. Goodwin suffered from a cold and severe headaches as a result of the fans used to circulate air in the dorm because the air conditioner was broken.

349. While incarcerated, Mr. Goodwin feared that he would lose the job he had held for thirteen years and his home. Upon his release, he discovered that he had lost both.

350. Following his release from the Alvin S. Glenn Detention Center, Mr. Goodwin has struggled to find a job he can get to without driving and to earn enough money to get himself and his family back on their feet.

351. On May 5, 2017, Mr. Goodwin went to the Irmo Magistrate Court to establish a payment plan for the \$2,100 fine owed to the Irmo Magistrate Court. The court staff person at the payment window gave Mr. Goodwin a piece of paper and said, "This is your copy. I need for you to sign and date this back copy. Your first payment will start in June." The Scheduled Time Payment Agreement was already completed and required Mr. Goodwin to make a monthly payment of \$100 starting on June 5, 2017. It also indicated that Mr. Goodwin was being charged a three percent collection fee.

352. Mr. Goodwin explained to the court staff person that he had just been released from jail and did not have a job. Nevertheless, she required him to sign the Scheduled Time Payment Agreement, which required Mr. Goodwin to pay \$100 each month.

353. Mr. Goodwin signed the Scheduled Time Payment Agreement.

354. Mr. Goodwin eventually obtained a job as a heavy machine operator earning about \$280 weekly.

355. Even with this job, however, Mr. Goodwin remains indigent. He and his family do not have a home and struggle financially to pay for basic necessities. Mr. Goodwin incurred significant debts during his incarceration, which he is obligated to repay. On top of the fines and fees he owes to the Irmo Magistrate Court for the DUS, 3rd offense, Mr. Goodwin owes fines and fees for three additional traffic charges for which he was tried and convicted in absentia by the Central Traffic Court in July 2016, court costs on all five offenses adjudicated in that court, and more than \$10,000 for past due child support.

356. Despite his best efforts, Mr. Goodwin remains unable to pay according to the terms of the Scheduled Time Payment Agreement and constantly fears that he will again be arrested and incarcerated.

357. Mr. Goodwin could not afford to pay his first installment of \$100 by June 5, 2017 as required by the Scheduled Time Payment Agreement. He ultimately was able to pay \$100 by June 23, 2017 only by prioritizing payment to the Irmo Magistrate Court over paying child support.

358. Mr. Goodwin could not afford to pay \$100 on July 5, 2017 as required by the Scheduled Time Payment Agreement because of his limited income and significant debts, including child support and court debt. He has still not been able to make this \$100 payment.

359. Mr. Goodwin faces an imminent and substantial risk that the Irmo Magistrate Court will issue a bench warrant ordering law enforcement officers to arrest and book him in the Detention Center unless he can pay \$2,063—the entire balance owed for the DUS, 3rd offense.

**7. Raymond Wright, Jr.**

360. Raymond Wright, Jr., is a disabled man. Along with his wife, he provides for a household of five, which includes his daughter and two granddaughters.

361. Mr. Wright lives in poverty. He has been disabled and largely unemployed since a 1991 workplace accident required his left leg to be amputated. Mr. Wright’s sole source of income is Social Security Disability Insurance (“SSDI”) in the amount of \$547 per month. Although his wife had been steadily employed, her unemployment from July 2016 to June 2017 caused their household to experience even greater financial hardship.

362. Mr. Wright’s driver’s license was suspended in or around 2014 because he could not afford to pay court fines and fees.

363. On July 1, 2016, Mr. Wright was pulled over by a South Carolina Highway Patrol officer and ticketed for DUS, 1st offense, which instructed him to appear in the Central Traffic Court on July 26, 2016.

364. On July 26, 2016, Mr. Wright appeared in the Central Traffic Court as required.

365. Mr. Wright did not know, and the judge did not inform him, that he had the right to request the assistance of a court-appointed attorney before pleading guilty and the right to seek a waiver of any fees related to the application for a public defender due to financial hardship.

366. Without being informed of his rights and without the assistance of counsel, Mr. Wright pled guilty to the charge of DUS, 1st offense. The judge sentenced him to pay \$666.93 in fines and fees.

367. The judge asked Mr. Wright if he could pay in full that day. Mr. Wright explained that his only income was from SSDI and that he could not afford to pay.

368. Mr. Wright informed the judge that he had brought bills and other documents showing his inability to pay with him to court. The judge did not look at these documents, inquire about their contents, or ask Mr. Wright any other questions about his income, assets, expenses, dependents or other financial obligations. Nor did the judge ask whether Mr. Wright received any form of needs-based, means-tested public assistance. At the time of the hearing, however, Mr. Wright received needs-based, means-tested public assistance in the form of food assistance through SNAP.

369. Instead, the judge required Mr. Wright to pay \$50 per month toward the full amount due, and informed Mr. Wright that if he did not make these payments, he would be jailed.

370. Mr. Wright faced difficulty paying \$50 each month to the Central Traffic Court while supporting his family on his SSDI income. With great effort, he made payments of \$50 to the Central Traffic Court on the following dates: July 26, 2016; August 29, 2016; October 3, 2016; October 28, 2016; and December 7, 2016.

371. In order to make these payments, however, Mr. Wright was forced to cut back on buying groceries and other basic necessities for himself, his wife and granddaughters. During this time, Mr. Wright's wife was unemployed.

372. Despite his best efforts, Mr. Wright could not afford to make payments toward fines and fees owed to the Central Traffic Court after December 7, 2016.

373. In April 2017, Mr. Wright received a letter summoning him to appear before the Central Traffic Court for a show cause hearing.

374. On April 19, 2017, Mr. Wright appeared in the Central Traffic Court as required.

375. Before hearing Mr. Wright's case, the Central Traffic Court judge made a general announcement that all defendants had a right to an attorney. The judge did not, however, inform Mr. Wright that he had the right to request the assistance of a court-appointed attorney and the right to seek waiver of any fees related to the application for a public defender due to financial hardship.

376. Nor did the judge engage in a colloquy with Mr. Wright to determine whether any waiver of the right to counsel was knowing, voluntary, and intelligent. The judge did not inform Mr. Wright of the benefits of being represented by counsel, the risks of proceeding pro se, or the potential penalties if he was found guilty. As a result, Mr. Wright did not make a knowing, voluntary or intelligent waiver of the right to counsel.

377. He explained to the judge that he was not able to make further payments to the court due to financial hardship, that his only income was a limited amount of SSDI, and that his wife was unemployed. Mr. Wright also explained that he had just lost his home because he could not afford to pay the mortgage and that he owed taxes, had additional bills to pay, and needed to buy groceries to feed his family of four.

378. The judge informed Mr. Wright that he would be jailed if he did not pay the full \$416.93 balance due to the court within ten days.

379. The judge did not ask Mr. Wright any questions about his financial circumstances. Although Mr. Wright brought documentation to demonstrate his inability to pay with him to court, the judge told Mr. Wright that he did not want to see any of the documents.

380. Mr. Wright asked if he could make partial payments until he fully paid the outstanding fines and fees. The judge informed him that the court would only accept payment of the full amount owed.

381. Despite his best efforts, Mr. Wright was unable to pay his balance of \$416.93 to the Central Traffic Court by April 29, 2017, which was ten days after the show cause hearing.

224. On May 2, 2017, the Central Traffic Court issued a bench warrant ordering the arrest and immediate jailing of Mr. Wright for nonpayment of fines and fees imposed for the DUS, 1st offense. The bench warrant alleged that Mr. Wright had failed to comply with the court's order to pay \$100 by April 28, 2017. The bench warrant ordered law enforcement to arrest and jail Mr. Wright for 10 days unless he paid \$416.93—the entire balanced owed for the DUS, 1st offense.

382. In June 2017, Mr. Wright's wife obtained employment after being out of work for ten months. But Mr. Wright remained indigent. His SSDI income and his wife's wages together were insufficient to support the couple's five-person household. Mr. Wright and his wife struggled to provide housing, utilities, food, transportation, and other basic necessities for themselves and his daughter and two granddaughters.

383. Mr. Wright suffered significant stress and illness from living in fear that he would be arrested and incarcerated for his inability to pay fines and fees to the Central Traffic Court. Mr. Wright experienced panic attacks and shortness of breath. He was eventually hospitalized for two days because he unexpectedly lost consciousness due to stress and anxiety from fear that he would be imminently arrested and jailed because he could not afford to pay money owed to the Central Traffic Court.

384. On the morning of July 25, 2017, Mr. Wright was arrested pursuant to the Central Traffic Court bench warrant for failure to pay. Because Mr. Wright was unable to pay \$416.93, which was the entire amount of his debt to the Central Traffic Court, he was booked in the Detention Center.

385. When Mr. Wright was booked in jail, Detention Center staff confiscated medication in his possession. Mr. Wright informed the staff that he needed to take the medication before every meal to treat a stomach condition.

386. Despite being on notice that Mr. Wright required his medication before meals, Detention Center staff failed to properly provide Mr. Wright his medication from July 25 through July 27 2017. As a result, Mr. Wright experienced severe stomach pain, acid reflux, diarrhea, high blood pressure, and loss of consciousness from July 27 through July 31, 2017.

387. While incarcerated in the Detention Center, Mr. Wright also requested help from jail staff to treat pain he was experiencing from a cracked tooth. But Detention Center staff did not provide adequate or proper medication to treat his pain. Mr. Wright also developed a rash on his skin from the extremely hot water with which he was required to shower.

388. On the evening of July 31, 2017, Mr. Wright experienced severe pain, diarrhea and blood in his stool due to the failure of jail staff to provide him proper medication for his stomach condition over the previous days. Mr. Wright was so ill, he blacked out twice. On one occasion, he hit his head and face on the brick wall and concrete floor after passing out due to illness. Mr. Wright suffered large, painful contusions on his head as a result.

389. Mr. Wright was subsequently transported to the Lexington Medical Center emergency room. He was treated for dangerously low blood pressure and provided a blood

transfusion because he had lost so much blood in his stool. Mr. Wright received his medical care while restrained to his hospital bed in handcuffs and chains.

390. On August 1, 2017, a Lexington County Sheriff's Department officer informed Mr. Wright, who remained in the Lexington Medical Center emergency room, that he was released from the jail. Mr. Wright had been incarcerated for seven days.

391. Mr. Wright was admitted to the hospital, and continued to suffer from stomach pain, acid reflux, diarrhea, blood in his stool, and pain from contusions on his head.

392. Mr. Wright remained hospitalized for three more days. Mr. Wright's treating physician informed him that he was suffering from severe intestinal inflammation.

393. As a result of his 7-day long incarceration, Mr. Wright suffered from severe illness and serious health complications, including intestinal inflammation, stomach pain, acid reflux, diarrhea, blood in his stool, high and low blood pressure, and painful contusions on the head because Mr. Wright was incarcerated in the Detention Center, rather than at liberty to take needed stomach medication as required. Furthermore, because of his 7-day-long incarceration, Mr. Wright was separated from his wife and family and suffered severe emotional distress and anxiety from the loss of his physical liberty.

#### **8. Allegations Common to Numerous Plaintiffs**

394. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright would not have been booked in the Detention Center if they had been able to pay the entire amount of the court fines and fees identified on the face of the magistrate court bench warrants used to arrest them before being booked in the Detention Center.

395. Likewise, at the time they filed their respective claims, in this action Plaintiffs Goodwin and Wright would not have faced an imminent and substantial risk of arrest and incarceration in the Detention Center for nonpayment of magistrate court fines and fees if they

could have afforded to pay the entire amount of fines and fees they owed to Lexington County magistrate courts. Moreover, Plaintiff Goodwin continues to face an imminent and substantial risk of arrest and incarceration for money owed to a Lexington County magistrate court, and would not face such a threat if he could pay his outstanding debt to the Irmo Magistrate Court in full.

396. Plaintiffs were not afforded ability-to-pay hearings when their fines and fees were imposed by Lexington County magistrate courts.

397. No Lexington County magistrate court inquired into the financial ability of Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright to pay the fines and fees identified on the bench warrants used to arrest them, their efforts to secure resources, or alternatives to incarceration. No Lexington County magistrate court determined that Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright willfully failed to pay court fines; that these Plaintiffs made inadequate efforts to secure resources to pay; or that alternatives to incarceration and payment were inadequate—whether before issuing the bench warrants, after these Plaintiffs were arrested, or after these Plaintiffs were booked in the Detention Center.

398. At no point after being arrested on the bench warrants were Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright taken to appear before a Lexington County magistrate judge in the Bond Court located adjacent to the Detention Center or in the original magistrate court that issued the bench warrant for a determination as to the propriety of incarceration.

399. At no point before or after being incarcerated in the Detention Center under magistrate court bench warrants were Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright notified of their right to request the appointment of counsel to defend

against incarceration for the underlying offense charged or noncompliance with a court order to pay fines and fees. Likewise, at no point before or after being incarcerated were Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright informed of the right to request waiver of the \$40 public defender application fee. And at no point did any of the Lexington County magistrate court judges engage in a colloquy with Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright to ensure that any waiver of the right to request appointment of counsel, whether written or oral, was knowing, voluntary, and intelligent.

400. At no point before or after being incarcerated in the Detention Center under magistrate court bench warrants were Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright afforded representation by court-appointed counsel in order to defend against incarceration despite prima facie evidence of their indigence.

401. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright suffered humiliation, anxiety, stress, emotional distress, disturbed sleep and other irreparable injury from being handcuffed, arrested, jailed, separated from their families and loved ones, and incarcerated for periods of time ranging from seven to 63 days.

402. Plaintiffs Brown, Darby, Johnson, and Palacios were incarcerated in a very cold dorm in the Detention Center. Detention Center staff provided insufficient clothing for each Plaintiff and only a thin blanket despite the very low temperature.

403. Plaintiffs Goodwin, Corder, and Wright were subjected to discomfort from hot and unsanitary jail conditions.

404. As a direct result of their unlawful incarceration, Plaintiffs Brown, Darby, Johnson, Palacios, Corder, and Goodwin lost needed income and employment.

405. At the time they filed their respective claims in this action, neither Plaintiff Goodwin nor Plaintiff Wright had any ongoing or pending proceedings in any Lexington County magistrate court. Although Mr. Goodwin owes fines and fees to the Irmo Magistrate Court, that court has entirely concluded proceedings concerning the DUS, 3rd offense for which Mr. Goodwin was convicted and sentenced to fines and fees. Similarly, although at the time he filed his claim, Mr. Wright owed fines and fees to the Central Traffic Court, that court had entirely concluded proceedings concerning the DUS, 1st offense for which Mr. Wright was convicted and sentenced to fines and fees.

406. No Lexington County magistrate court inquired into the financial ability of Plaintiffs Goodwin and Wright to pay the fines and fees they owed to Lexington County magistrate courts at the time they filed their respective claims in this action, their efforts to secure resources, or alternatives to incarceration. No Lexington County magistrate court has determined that Plaintiffs Goodwin and Wright willfully failed to pay these court fines and fees, that these Plaintiffs made inadequate efforts to secure resources to pay, or that alternatives to incarceration and payment are inadequate.

407. Likewise, no Lexington County magistrate court has inquired into the financial ability of Plaintiff Goodwin to pay the fines and fees he currently owes to the Irmo Magistrate Court, his efforts to secure resources, or alternatives to incarceration. No Lexington County magistrate court has determined that Plaintiff Goodwin willfully failed to pay these court fines and fees, that he made inadequate efforts to secure resources to pay, or that alternatives to incarceration and payment are inadequate.

408. With respect to the magistrate court fines and fees he owed at the time he filed his claims in this action, Plaintiff Wright had not been informed by any Lexington County

magistrate court of his right to request the appointment of counsel to defend against incarceration for the underlying offenses charged or noncompliance with a court order to pay fines and fees. Nor had he been appointed counsel by any Lexington County magistrate court judge for such a defense. Likewise, no Lexington County magistrate court judge informed Plaintiff Wright of the right to request waiver of the \$40 public defender application fee, or engaged in a colloquy with him to ensure that any waiver of the right to request appointment of counsel, whether written or oral, was knowing, voluntary, and intelligent.

409. With respect to the magistrate court fines and fees he currently owes, Plaintiff Goodwin has not been informed by any Lexington County magistrate court of his right to request the appointment of counsel to defend against incarceration for the underlying offenses charged or noncompliance with a court order to pay fines and fees. Nor has he been appointed counsel by any Lexington County magistrate court judge for such a defense. Likewise, no Lexington County magistrate court judge has informed Plaintiff Goodwin of the right to request waiver of the \$40 public defender application fee, or engaged in a colloquy with him to ensure that any waiver of the right to request appointment of counsel, whether written or oral, was knowing, voluntary, and intelligent.

410.

**E. Evidence of Widespread Arrest and Jailing of Indigent People for Nonpayment of Magistrate Court Fines and Fees**

411. Magistrate court records obtained through public records requests and available on the South Carolina Judicial Department's online Case Records Search system ("Public Index") demonstrate the widespread use of bench warrants by Lexington County magistrate courts to coerce fine and fee payments.

412. The Public Index allows public searches for information concerning traffic and criminal cases handled by Lexington County magistrate courts, including the Central Traffic Court, Irmo Magistrate Court, Lexington Magistrate Court, Swansea Magistrate Court, Cayce-West Columbia Magistrate Court, Oak Grove Magistrate Court, and Batesburg-Leesville Magistrate Court. A Public Index case record provides, among other information, the name of the defendant, case number, the name of the court and judge handling the case, the date on which the case was filed, a description of the offense charged, the date on which the case was disposed, and the type of disposition.

413. A Public Index case record also includes an “Action” tab that contains information about whether the defendant is on a Scheduled Time Payment Agreement and the date of any required payments. A court may notate the “Action” tab with the term “Failure to Comply” or the term “Archived Bench Warrant,” among other things.

414. A Public Index case record also includes a “Financials” tab that identifies whether any fines and fees imposed as part of the sentence for an offense remain outstanding. It also provides the date(s) and amount(s) of any payments that have been made.

415. A review of the Central Traffic Court bench warrants and corresponding Public Index case records pertaining to Plaintiffs Johnson, Palacios, Goodwin, and Wright shows that the date of the bench warrant issued against each of these Plaintiffs corresponds with the date of a “Failure to Comply” or “Archived Bench Warrant” notation in the “Action” tab of the applicable Public Index case record.

416. Similarly, a review of the Irmo Magistrate Court bench warrants and corresponding Public Index case records pertaining to Plaintiffs Brown and Darby shows that the

date of each bench warrant corresponds with the date of a “Failure to Comply” notation in the “Action” tab of the applicable Public Index case record.

417. Consequently, the issuance of a bench warrant by the Central Traffic Court, Irmo Magistrate Court, or any other Lexington County magistrate court is documented by the entry of a “Failure to Comply” or “Archived Bench Warrant” notation with the date of the bench warrant in the applicable Public Index case record.

418. A search of Public Index case records for Lexington County magistrate courts reveals that between February 1, 2017 and March 31, 2017, the courts entered a “Failure to Comply” or “Archived Bench Warrant” notation in 204 cases corresponding to 183 different individuals. Therefore, between February 1, 2017 and March 31, 2017, around 183 people were at risk of being arrested, or ultimately were arrested, under a bench warrant issued for nonpayment of fines and fees owed to a Lexington County magistrate court.

419. If bench warrants are issued at the same rate throughout the year, this two-month estimate suggests that bench warrants are issued against more than 1,000 people each year for nonpayment of fines and fees owed to a Lexington County magistrate court.

420. A review of online Detention Center records demonstrates that the use of bench warrants to coerce payments toward magistrate court fines and fees results in the widespread arrest and incarceration of indigent people.

421. The Detention Center produces a daily list of all inmates. This online list identifies the name of each inmate, the “Primary Charge,” the “Arrest Date,” and the “Booking Agency.” Individual records associated with each inmate are also available online and provide more detailed information, including any additional charges and any outstanding “FINES AND COSTS.”

422. A review of these records for the period beginning May 1, 2017 and ending May 28, 2017 shows that, over the course of those four weeks, 95 people were incarcerated for a primary charge listed as either “Magistrate Court Bench Warrant” or “Magistrate/Municipal Court Bench Warrant.” The largest total number of people incarcerated under either primary charge on any given day was 63, and the average daily total was 43. The inmates for whom the unpaid balance of fines and costs were posted on the Detention Center’s online record owed between \$232.50 and \$3,470.00, with an average debt amount of \$960.60.

423. It is fair to estimate that hundreds of indigent people, if not more than one thousand, are incarcerated each year on bench warrants issued for nonpayment of fines and fees imposed by Lexington County magistrate courts. On average, the number of people jailed under such warrants on any given day during the four-week period amounted to 7.22% of the total inmate population. In 2015, the total number of people booked in the Detention Center was 12,100, and in 2016 the total number was 10,980. Assuming that 10,000 people in total are booked in the Detention Center in 2017, it is highly likely that more than 700 will be incarcerated on a bench warrant issued for nonpayment of magistrate court fines and fees.

424. As a result of the policies, practices, and customs of Defendants Lexington County and Madsen, and the failures, acts, omissions, policies, practices, and standard operating procedures of Defendants Reinhart, Adams, Dooley, Koon and Madsen, indigent people are routinely arrested and jailed for nonpayment of fines and fees owed to Lexington County magistrate courts in violation of their most basic constitutional rights.

425. At the time Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright were arrested and jailed, Defendants were on notice that indigent people were routinely arrested and incarcerated in the Detention Center for nonpayment of magistrate court fines and

fees without first being afforded pre-deprivation ability-to-pay hearings or representation by counsel, in violation of the Sixth and Fourteenth Amendments.

426. Defendants were also on notice that Lexington County magistrate court judges, including Defendant Adams, routinely sought to obtain written waivers of the right to counsel from indigent people before a plea proceeding or trial on standard forms without adequately informing them of their rights or engaging in any colloquy to determine whether any waivers were knowing, voluntary, and intelligent.

427. Defendants Lexington County and Madsen were also on notice that their underfunding of public defense in magistrate courts and staffing decisions had led to the absence of public defenders from Bond Court proceedings and magistrate court proceedings leading to incarceration or the imposition of suspended incarceration sentences.

428. Defendants were also on notice that indigent people were routinely arrested and incarcerated in the Detention Center on bench warrants unsupported by probable cause of criminal conduct in violation of the Fourth Amendment.

### **CLASS ALLEGATIONS**

429. Plaintiffs Goodwin and Wright bring this case as a class action on behalf of themselves and all others similarly situated for the purpose of asserting declaratory and injunctive relief claims on a common basis.

430. A class action is a superior means, and the only practicable means, by which Plaintiffs Goodwin and Wright and the proposed class members can challenge Defendants' common courses of conduct in relation to the routine and widespread incarceration of indigent people for nonpayment of fines and fees in Lexington County magistrate court cases.

431. This action is brought, and may properly be maintained, as a class action under Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.

432. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a).

433. Plaintiffs Goodwin and Wright seek to represent the following defined class (the “Class”): “All indigent people who currently owe, or in the future will owe, fines, fees, court costs, assessments, or restitution in cases handled by Lexington County magistrate courts.”

434. The Class is sufficiently numerous such that joinder of all members is impracticable. Hundreds, if not thousands, of indigent people currently owe fines, fees, court costs, assessments, or restitution in cases handled by Lexington County magistrate courts, and these numbers will continue to grow.

435. Class members are subjected to the ongoing policies, practices, customs, standard operating procedures, acts, and omissions of Defendants discussed in this Complaint. To the extent they are not currently incarcerated, Class members (including Plaintiff Goodwin currently, and Plaintiff Wright, at the time he filed his claims) face a substantial and imminent threat of being arrested and incarcerated for nonpayment of magistrate court fines and fees without a pre-deprivation ability-to-pay hearing, notice of the right to request court-appointed counsel to defend against incarceration, notice of the right to request a waiver of the \$40 public defender application fee, or the assistance of counsel.

436. As discussed above, a search of online court records indicates that Lexington County magistrate courts collectively issued 204 bench warrants charging at least 183 people with nonpayment of fines and fees between February 1, 2017 and March 31, 2017. It is estimated that hundreds, if not thousands, of indigent people have been the subjects of bench warrants issued under the Default Payment and Trial in Absentia Policies during the past few years. Many of these warrants likely remain unexecuted, placing hundreds of indigent people, if

not thousands, at substantial and imminent risk of arrest and incarceration for nonpayment without the notice and process required by law.

437. Defendants maintain records with the names, case numbers, and bench warrant dates of those who owe fines, fees, court costs, assessments, or restitution in cases handled by Lexington County magistrate courts.

438. Joinder of all Class members is also impracticable because many members are unaware that their rights under the U.S. Constitution have been violated or that they are entitled to seek redress in court. Members of the Class also lack the means to retain an attorney to represent them in a civil rights lawsuit. Finally, many Class members are likely to avoid bringing individual claims because they fear retaliation and reprisal, including arrest and incarceration, by one or more Defendants. There is no appropriate avenue for the protection of the Class members' constitutional rights other than a class action.

439. The class members share a number of common questions of law and fact, including, but not limited to:

- a. Whether Defendant Koon, his deputies, and officers of cooperating law enforcement agencies routinely arrest members of the Class on payment bench warrants;
- b. Whether Defendant Koon and his deputies routinely incarcerate for extended periods of time members of the Class who are arrested on payment bench warrants when they cannot pay all fines and fees identified on the faces of those warrants;
- c. Whether Defendant Koon and his deputies routinely fail to bring members of the Class before Lexington County magistrate court judges after executing payment bench warrants, even when members are jailed for extended periods of time;
- d. Whether members of the Class are routinely denied the assistance of counsel before being incarcerated in the Detention Center on payment bench warrants;

- e. Whether Defendant Adams is a state actor in her capacity as Chief Judge for Administrative Purposes of the Summary Courts in Lexington County;
- f. Whether Defendant Adams is sufficiently connected to and responsible for ongoing violations of the constitutional rights of Class members to due process and equal protection of the law;
- g. Whether Defendant Adams is sufficiently connected to and responsible for ongoing violations of the constitutional right of Class members to assistance of counsel;
- h. Whether Defendant Adams is sufficiently connected to and responsible for ongoing violations of the constitutional right of Class members to be free from unreasonable seizures;
- i. Whether Defendant Dooley is a state actor in his capacity as Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County;
- j. Whether Defendant Dooley is sufficiently connected to and responsible for ongoing violations of the constitutional rights of Class members to due process and equal protection of the law;
- k. Whether Defendant Dooley is sufficiently connected to and responsible for ongoing violations of the constitutional right of Class members to assistance of counsel;
- l. Whether Defendant Dooley is sufficiently connected to and responsible for ongoing violations of the constitutional right of Class members to be free from unreasonable seizures;
- m. Whether Defendant Koon is a state actor in his capacity as Lexington County Sheriff;
- n. Whether Defendant Koon is sufficiently connected to and responsible for ongoing violations of the constitutional rights of Class members to due process and equal protection of the law;
- o. Whether Defendant Koon is sufficiently connected to and responsible for ongoing violations of the constitutional right of Class members to assistance of counsel;
- p. Whether Defendant Koon is sufficiently connected to and responsible for ongoing violations of the constitutional right of Class members to be free from unreasonable seizures;

- q. Whether Defendant Koon sanctions the misuse of payment bench warrants against members of the Class;
- r. Whether Defendant Lexington County has a practice of inadequately funding public defense for people charged with traffic and other misdemeanor offenses handled in the County's magistrate courts;
- s. Whether Defendant Lexington County's practice of inadequately funding public defense for indigent people facing incarceration for nonpayment of magistrate court fines and fees is the result of a deliberate decision by the Lexington County Council as the County's final policymaker for budgetary appropriations for public defense in the County's magistrate courts;
- t. Whether Defendant Lexington County's practice of inadequately funding public defense for indigent people facing incarceration for nonpayment of magistrate court fines and fees is so pervasive and well-settled as to constitute Lexington County custom with the force of law;
- u. Whether Defendant Lexington County's policymakers have actual or constructive knowledge of the County's custom of failing to adequately fund public defense and acquiesce in that custom;
- v. Whether Defendant Madsen is a state actor in his capacity as Circuit Public Defender;
- w. Whether Defendant Madsen is sufficiently connected to and responsible for ongoing violations of the constitutional right of Class members to assistance of counsel;
- x. Whether Defendant Madsen is a final policymaker concerning Lexington County's provision of indigent defense in magistrate courts;
- y. Whether Defendant Madsen fails to adequately fund public defense for indigent people who face the threat of incarceration in the County's magistrate courts;
- z. Whether Defendant Madsen fails to adequately allocate resources for the public defense of Class members being incarcerated in the Detention Center for failure to pay court fines and fees;
- aa. Whether the right to be free from unreasonable seizures is routinely violated in relation to the arrest and jailing of Class members on payment bench warrants;

- bb. Whether members of the Class are routinely deprived of their right to an ability-to-pay hearing before or after being arrested on payment bench warrants;
- cc. Whether the right to assistance of counsel is routinely violated in relation to the arrest and jailing of Class members on payment bench warrants;
- dd. Whether the right to due process is routinely violated in relation to the arrest and jailing of Class members on payment bench warrants; and
- ee. Whether the right to equal protection of the law is routinely violated in relation to the arrest and jailing of Class members on payment bench warrants.

440. Plaintiffs Goodwin and Wright's claims are typical of the claims of the Class because all claims arise from the same common courses of conduct by Defendants. Like the other Class members, at the time they filed their respective claims in this action, Mr. Goodwin and Mr. owed fines and fees to at least one Lexington County magistrate court, could not afford to pay according to the terms of their Scheduled Time Payment Agreements, and faced a substantial and imminent risk of being arrested and incarcerated for nonpayment. Mr. Wright was subsequently arrested and incarcerated for nonpayment of fines and fees owed to the Central Traffic Court. Additionally, Mr. Goodwin continues to owe money to the Irmo Magistrate Court, cannot afford to pay, and faces a substantial and imminent risk of being arrested and incarcerated for nonpayment. Indeed, Mr. Goodwin has been previously arrested and incarcerated for nonpayment of fines and fees owed to the Central Traffic Court.

441. Plaintiffs Goodwin and Wright seek declaratory and injunctive relief under legal theories that are the same as those on which all members of the Class will rely.

442. At the time they filed their respective claims in this action, Plaintiffs Goodwin and Wright suffered and faced a substantial and imminent risk of continuing to suffer harms that are typical of the harms Class members have suffered and are continuing to suffer. Moreover,

Plaintiff Goodwin continues to face a substantial and imminent risk of continuing to suffer harms that are typical of the harms experienced by Class members.

443. Plaintiffs Goodwin and Wright have a strong personal interest in the outcome of this action, have no conflicts of interest with members of the Class, and will fairly and adequately protect the interests of the Class.

444. By developing and maintaining policies, practices, standard operating procedures, acts, and omissions that result in the routine and widespread arrest and incarceration of people for nonpayment of fines and fees owed in Lexington County magistrate court cases, Defendants have acted or refused to act on grounds that apply generally to the Class, and final injunctive relief or corresponding declaratory relief is appropriate with respect to the Class as a whole.

445. The named Plaintiffs are represented by the American Civil Liberties Union Foundation, the American Civil Liberties Union Foundation of South Carolina, and Terrell Marshall Law Group PLLC (“Terrell Marshall”). All counsel are experienced civil rights attorneys who have litigated a range of complex class action lawsuits and have knowledge of the relevant constitutional and statutory law.

446. Plaintiffs’ counsel also have extensive knowledge of the widespread constitutional violations occurring in Lexington County and outlined in this Complaint based on a months-long investigation involving court observation, review of public records, and numerous interviews with witnesses, inmates, and families. Plaintiffs’ counsel have studied Lexington County budget documents, court records from numerous Lexington County magistrate courts, and Detention Center online records in order to understand Defendants’ policies, practices, standard operating procedures, and customs as they relate to federal constitutional requirements.

447. Plaintiffs' counsel at the ACLU have served as lead counsel in similar federal lawsuits bringing constitutional challenges to revenue generation and debt-collection systems in violation of the rights of indigent people to notice, process, and counsel. *See Kennedy v. Biloxi*, 1:15-cv-348-HSO-JCG (S.D. Miss. Oct. 21, 2015); and *Thompson v. DeKalb County*, No. 1:15-cv-280 (N.D. Ga. Jan. 29, 2015). Plaintiffs' counsel at Terrell Marshall served as lead counsel, with the ACLU Foundation as co-counsel, in a state lawsuit bringing similar constitutional claims. *See Fuentes v. Benton County*, No. 15-2-02976-1 (Wash. Superior Court, Yakima Cty. Oct. 7, 2015). Plaintiffs' counsel at Terrell Marshall have also served as lead counsel in a federal lawsuit bringing constitutional challenges to inadequate public defense. *Wilbur v. Mount Vernon*, No. C11-1100RSL (W.D. Wash. April 15, 2014).

448. Plaintiffs' counsel have the resources, expertise, and experience to prosecute this action. Plaintiffs' counsel know of no conflicts among members of the Class or between the attorneys and members of the Class.

449. Defendants have acted or refused to act on grounds generally applicable to the Class such that final injunctive relief and corresponding declaratory relief are appropriate to the Class as a whole.

### **DEMAND FOR JURY TRIAL**

450. Plaintiffs request a trial by jury.

**CLAIM ONE**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**  
**Incarceration Without Pre-deprivation Ability-to-Pay Hearing**  
(in violation of the Due Process and Equal Protection Clauses of the  
Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983,  
by Plaintiffs Goodwin and Wright against Defendants Adams, Dooley,  
and Koon, in their official capacities)

451. Plaintiffs re-allege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

452. This claim is brought by Mr. Goodwin and Mr. Wright on behalf of themselves and the members of the Class.

453. The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution have long prohibited the imprisonment of people for nonpayment of court-imposed fines or restitution without a pre-deprivation inquiry by a judge into the person's ability to pay, efforts to secure resources to pay and, if the person lacks the ability to pay despite having made reasonable efforts to acquire resources, the adequacy of any alternatives to incarceration. Courts are prohibited from jailing people for nonpayment without conducting such an inquiry and making at least one of the following findings: (1) the individual's nonpayment was willful; (2) the individual failed to make sufficient efforts to acquire the resources to pay; or (3) the individual was unable to pay, despite having made sufficient efforts to acquire resources, but alternative methods of achieving punishment or deterrence are inadequate.

454. Plaintiff Goodwin suffered a violation of his clearly established right to a pre-deprivation ability-to-pay hearing when he was arrested and incarcerated in the Detention Center for 63 days because he could not afford to pay fines and fees owed to the Central Traffic Court. Before his lengthy incarceration, Mr. Goodwin was not afforded a pre-deprivation judicial inquiry into, or findings of fact on, his ability to pay, his efforts to secure resources, or the adequacy of readily available alternatives to incarceration.

455. Plaintiff Goodwin is indigent and owes \$2,063 in fines and fees to the Irmo Magistrate Court, a Lexington County magistrate court under the administrative supervision of Defendants Adams and Dooley. Mr. Goodwin is unable to pay the \$100 payment due on July 5, 2017 as required by the Scheduled Time Payment Agreement imposed on him. Mr. Goodwin faces a substantial and imminent risk that, without being afforded a pre-deprivation ability-to-

pay hearing, a bench warrant for nonpayment will be issued and Defendant Koon will arrest and incarcerate him in the Detention Center on that warrant.

456. At the time he filed his claims in this action, Plaintiff Wright was indigent and owed \$416.93 in fines and fees to the Central Traffic Court, a Lexington County magistrate court under the administrative supervision of Defendants Adams and Dooley. A Lexington County magistrate judge ordered Mr. Wright to pay in full by April 29, 2017, and threatened Mr. Wright with incarceration if he did not do so. But that judge did not first consider or make factual findings concerning Mr. Wright's ability to pay, his efforts to secure resources, and the adequacy of alternatives to incarceration in achieving punishment and deterrence. Mr. Wright was unable to pay \$416.93 by the date imposed by the judge and remains unable to pay. A bench warrant was issued to order his incarceration unless he could pay the full amount due. At the time he filed his claims in this action, Mr. Wright faced a substantial and imminent risk that, without being afforded a pre-deprivation ability-to-pay hearing, Defendant Koon would arrest and incarcerate him in the Detention Center. Indeed, just days after filing his claims, Mr. Wright was arrested and incarcerated in the Detention Center for nonpayment of money owed to the Central Traffic Court.

457. For all relevant purposes, all individuals processed for commitment to the Detention Center for unpaid fines, fees, costs, assessments or restitution imposed by Lexington County magistrate courts are similarly situated with respect to their right to due process of law. There exists no legitimate governmental reason to jail individuals who are unable to pay the full amount of outstanding monetary penalties for traffic or misdemeanor criminal offenses, while permitting individuals who have the financial means to pay fines, fees, costs, assessments, and restitution to avoid being jailed for the same offenses.

458. In their official, administrative capacities, Defendants Adams and Dooley are sufficiently connected to, and responsible for, ongoing violations of the rights of Plaintiffs Goodwin and Wright, and members of the Class, to due process and equal protection of the law. In their exercise of administrative responsibility for the establishment of uniform policies and procedures for the timely and appropriate collection of court fines and fees in Lexington County, Defendants Adams and Dooley oversee, enforce, and sanction the Default Payment and Trial in Absentia Policies. The Default Payment and Trial in Absentia Policies have become unwritten standard operating procedures in Lexington County magistrate courts, and directly and proximately lead to the routine and widespread use of bench warrants to arrest and incarcerate indigent people for nonpayment of court fines and fees without any pre-deprivation ability-to-pay hearing. Moreover, Defendants Adams and Dooley have failed, and continue to fail, to exercise their administrative authority to correct the Default Payment and Trial in Absentia Policies.

459. In his official capacity as Lexington County Sheriff and chief administrator of the Detention Center, Defendant Koon is also sufficiently connected to, and responsible for, ongoing violations of the constitutional rights of Plaintiffs Goodwin and Wright, and members of the Class. By supervising, controlling, and directing LCSD officers and Detention Center staff who execute bench warrants issued under the Default Payment and Trial in Absentia Policies, Defendant Koon effects the arrest and incarceration of people for nonpayment of fines, fees, costs, assessments, or restitution without necessary pre-deprivation ability-to-pay hearings and judicial findings concerning the reasons for nonpayment. Mr. Goodwin, Mr. Wright, and members of the Class face a substantial and imminent risk of being arrested and incarcerated

under bench warrants for nonpayment of fines and fees. Defendant Koon is responsible for executing and enforcing any such bench warrants.

460. The ongoing conduct of Defendants Adams, Dooley and Koon places Plaintiffs Goodwin and Wright at continuing and foreseeable risk of being arrested and incarcerated for nonpayment of fines and fees without any pre-deprivation court hearing on their ability to pay despite prima facie evidence of their indigence. Mr. Goodwin and Mr. Wright seek prospective declaratory and injunctive relief on behalf of themselves and members of the Class because they and the members have no plain, adequate, or complete remedy at law to prevent future injury caused by confinement in jail in violation of their constitutional rights.

461. The ongoing conduct of Defendants Adams, Dooley and Koon violates 42 U.S.C. § 1983. Defendants Adams, Dooley and Koon act under color of state law and their conduct creates a real, imminent, and substantial threat that Plaintiffs Goodwin and Wright, and members of the Class will be arrested and jailed in violation of their due process and equal protection rights.

**CLAIM TWO  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Failure to Afford Assistance of Counsel

(in violation of the Sixth Amendment to the U.S. Constitution and  
42 U.S.C. § 1983, by Plaintiffs Goodwin and Wright against Defendant  
Lexington County and Defendants Madsen, Adams,  
Dooley, and Koon, in their official capacities)

462. Plaintiffs re-allege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

463. This claim is brought by Plaintiffs Goodwin and Wright on behalf of themselves and the members of the Class.

464. The Sixth Amendment to the U.S. Constitution affords all indigent people a right to the assistance of court-appointed counsel at no cost when they face actual incarceration for nonpayment of fines, fees, court costs, assessments, or restitution, regardless of whether incarceration is imposed through criminal contempt procedures or the implementation of a sentence of incarceration previously suspended upon the condition of payment of monetary penalties.

465. Plaintiff Goodwin suffered a violation of his clearly established right to counsel when he was arrested and incarcerated in the Detention Center for nonpayment of fines and fees owed to the Central Traffic Court without being informed of his right to request counsel, informed of his right to request waiver of the \$40 public defender application fee, and appointed counsel as an indigent person facing incarceration for nonpayment, despite prima facie evidence of his indigence.

466. Plaintiff Goodwin is indigent and owes \$2,063 in fines and fees to the Irmo Magistrate Court, a Lexington County magistrate court under the administrative supervision of Defendants Adams and Dooley. Mr. Goodwin is unable to pay the \$100 payment which was due on July 5, 2017 as required by the Scheduled Time Payment Agreement imposed by Defendant Adams. Mr. Goodwin faces a substantial and imminent risk that without being afforded the assistance of counsel, Defendant Adams will issue a bench warrant ordering his arrest and incarceration for nonpayment and Defendant Koon will arrest and incarcerate him in the Detention Center on that warrant.

467. At the time he filed his claims in this action, Plaintiff Wright was indigent and owed \$416.93 in fines and fees to the Central Traffic Court, a Lexington County magistrate court under the administrative supervision of Defendants Adams and Dooley. The Central Traffic

Court issued a bench warrant ordering the immediate arrest and incarceration of Mr. Wright, and did not afford him counsel prior to issuing the warrant. At the time he filed his claims Mr. Wright faced a substantial and imminent risk that without being afforded the assistance of counsel, the Central Traffic Court would enforce the warrant and Defendant Koon would arrest and incarcerate him in the Detention Center on that warrant. Indeed, just days after filing his claims, Mr. Wright was arrested and incarcerated in the Detention Center for nonpayment of money owed to the Central Traffic Court.

468. The policies, practices, customs, standard operating procedures, acts and omissions of Defendants Lexington County and Madsen directly and proximately cause ongoing violations of the right to counsel, and Plaintiffs Goodwin and Wright, and members of the Class face an imminent and substantial threat of having that right violated.

469. As the County's final policymakers for the provision of public defense in Lexington County magistrate courts, the Lexington County Council and Defendant Madsen routinely and systematically deprive indigent people of the right to court-appointed counsel at no cost when facing incarceration for nonpayment of court fines and fees by providing grossly inadequate funding for indigent defense in Lexington County magistrate courts. The Lexington County Council and Defendant Madsen either know, or should know, when making final decisions to inadequately fund public defense in these courts that public defenders are routinely not assigned to provide any representation to indigent people facing suspended or actual incarceration for nonpayment of magistrate court fines and fees. Defendant Lexington County and Defendant Madsen's policy of grossly underfunding public defense in Lexington County magistrate courts therefore reflects deliberate indifference to the Sixth Amendment rights of Plaintiffs Goodwin and Wright, and members of the Class.

470. Defendant Madsen also makes deliberate decisions when requiring the payment of an up-front \$40 fee with each application for a public defender; when failing to assign public defenders to represent indigent people facing incarceration for nonpayment; when failing to assign public defenders to represent indigent people sentenced by magistrate courts to incarceration suspended on payment of fines and fees; when failing to assign public defenders to staff the Bond Court to represent indigent people arrested on bench warrants for nonpayment; and when failing to assign public defenders to meet with indigent people incarcerated in the Detention Center under bench warrants. As the County's final policymaker for the provision of indigent defense, Defendant Madsen is aware, or should be aware, that such decisions result in the longstanding, persistent, and widespread failure to provide public defense to indigent people facing incarceration for nonpayment of fines and fees in traffic and criminal cases in Lexington County magistrate courts. Defendant Madsen causes, authorizes, condones, ratifies, approves, participates in, or knowingly acquiesces in these illegal policies, practices, and customs. Defendant Madsen's actions and inactions are deliberately indifferent to the clearly established Sixth Amendment rights of Plaintiffs Goodwin and Wright, and members of the Class.

471. The failure to provide public defense to indigent people facing actual or suspended incarceration sentences in traffic and misdemeanor criminal cases in Lexington County magistrate courts is so longstanding, persistent, widespread, common, and well-settled as to constitute a custom with the force of law. Lexington County has acquiesced to this custom, and it fairly represents municipal policy.

472. In their official, administrative capacities, Defendants Adams and Dooley are sufficiently connected to, and responsible for, ongoing violations of the right to counsel of Plaintiffs Goodwin and Wright, and members of the Class.

473. In their exercise of administrative responsibility for the establishment of uniform policies and procedures for the timely and appropriate collection of magistrate court fines and fees in Lexington County, Defendants Adams and Dooley oversee and enforce the Default Payment and Trial in Absentia Policies as standard operating procedures in Lexington County magistrate courts. These policies routinely lead to the arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees without notice of the right to request counsel, without notice of the risk of proceeding without counsel, without notice of the right to request waiver of the \$40 public defender application fee, and without affording court-appointed counsel to defend indigent people from incarceration for nonpayment of fines and fees. The enforcement of the Default Payment and Trial in Absentia Policies by Defendants Adams and Dooley places Plaintiffs Goodwin and Wright, and members of the Class, at substantial and imminent risk of arrest and incarceration for nonpayment of magistrate court fines and fees without the assistance of counsel in violation of the Sixth Amendment.

474. Moreover, Defendants Adams and Dooley make deliberate decisions to exercise their administrative authority to enforce, oversee, and sustain a standard operating procedure by which judges accept so-called written “waivers” of the right to counsel through the use of Trial Information and Plea Sheets without engaging in the colloquy necessary to ensure that any waiver of the right to counsel is knowing, intelligent, and voluntary. These deliberate decisions place Plaintiffs Goodwin and Wright, and members of the Class, at substantial and imminent risk of violation of the Sixth Amendment right to counsel.

475. In his official capacity, Defendant Koon is sufficiently connected to, and responsible for, ongoing violations of the right to counsel of Plaintiffs Goodwin and Wright, and members of the Class. By supervising, controlling, and directing LCSD officers and Detention

Center staff who execute bench warrants issued under the Default Payment and Trial in Absentia Policies, Defendant Koon effects the arrest and incarceration of indigent people for nonpayment of fines, fees, costs, assessments or restitution without the assistance of counsel. Mr. Goodwin, Mr. Wright, and members of the Class face a substantial and imminent threat of being subjected to bench warrants for nonpayment of fines and fees, and Defendant Koon is responsible for executing and enforcing any such bench warrants.

476. The ongoing policies, practices, customs, standard operating procedures, acts, and omissions of Defendants Lexington County, Madsen, Adams, Dooley and Koon place Plaintiffs Goodwin and Wright, and members of the Class, at a continuing and foreseeable risk of being arrested and incarcerated in the Detention Center for nonpayment of fines and fees without the benefit of representation by court-appointed counsel. Mr. Goodwin and Mr. Wright seek prospective declaratory and injunctive relief on behalf of themselves and members of the Class because they and the members have no plain, adequate, or complete remedy at law to prevent future injury caused by confinement in jail in violation of their Sixth Amendment rights.

477. The conduct of Defendants Lexington County, Madsen, Adams, Dooley, and Koon violates 42 U.S.C. § 1983. Defendants act under color of state law and their conduct creates a real, imminent, and substantial threat that Plaintiffs Goodwin and Wright, and members of the Class will be arrested and jailed in violation of their Sixth Amendment right to counsel.

**CLAIM THREE  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Unconstitutional Seizure

(in violation of the Fourth Amendment to the U.S. Constitution and  
42 U.S.C. § 1983 by Plaintiffs Goodwin and Wright against  
Defendants Adams, Dooley, and Koon, in their official capacities)

478. Plaintiffs re-allege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

479. This claim is brought by Mr. Goodwin and Mr. Wright, on behalf of themselves and members of the Class.

480. The Fourth Amendment prohibits unreasonable seizures, including arrest and incarceration without probable cause or legal authority.

481. In their official, administrative capacities, Defendants Adams and Dooley are sufficiently connected to, and responsible for, ongoing violations of the rights of Plaintiffs Goodwin, Wright, and members of the Class to freedom from unreasonable seizures.

482. Defendants Adams and Dooley are sufficiently connected to, and responsible for, ongoing violations of the constitutional right of Class members, including Mr. Goodwin and Mr. Wright, to be free from unreasonable seizures. In their exercise of administrative authority, Defendants Adams and Dooley place Plaintiffs Goodwin and Wright, and members of the Class at substantial and imminent risk of violation of their right to be free from unreasonable seizures. Defendants Adams and Dooley oversee, enforce, and sanction the Default Payment Policy, which directly and proximately causes the issuance of bench warrants against people solely because they failed to make payments toward magistrate court fines and fees according to the terms of a Scheduled Time Payment Agreement. Those bench warrants are routinely used to arrest and incarcerate people even though they are unsupported by probable cause that the subject of the warrant has committed a crime. This was the case, for example, with Plaintiffs Brown and Darby, both of whom were arrested and incarcerated solely for nonpayment of magistrate court fines and fees.

483. In his official capacity, Defendant Koon is sufficiently connected to, and responsible for, ongoing violations of the constitutional right of Class members, including Plaintiffs Goodwin and Wright, to be free from unreasonable seizures. Defendant Koon places

Plaintiffs Goodwin and Wright, and members of the Class at substantial and imminent risk of violation of their right to be free from unreasonable seizures because he directs and oversees LCSD officers who execute bench warrants issued against people under the Default Payment Policy solely because they have failed to pay according to the terms of a payment plan.

484. The ongoing conduct of Defendants Adams, Dooley, and Koon places Plaintiffs Goodwin and Wright, and members of the Class at a substantial and imminent risk of being arrested and incarcerated under a bench warrant lacking legal authority or probable cause. Mr. Goodwin and Mr. Wright seek prospective declaratory and injunctive relief on behalf of themselves and members of the Class because they and the members have no plain, adequate, or complete remedy at law to prevent future injury caused by confinement in jail in violation of their Fourth Amendment rights.

485. The ongoing conduct of Defendants Adams, Dooley, and Koon violates 42 U.S.C. § 1983. Defendants Adams, Dooley and Koon act under color of state law and their conduct creates a real, imminent, and substantial threat that Plaintiffs Goodwin and Wright, and members of the Class will be arrested in violation of their Fourth Amendment right to be free from unreasonable seizures.

**CLAIM FOUR  
FOR DAMAGES**

Incarceration Without Pre-deprivation Ability-to-Pay Hearing  
(in violation of the Due Process and Equal Protection Clauses of the  
Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983by  
Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright  
against Defendants Reinhart, Adams, and Koon,  
in their individual capacities)

486. Plaintiffs re-allege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

487. This claim is brought by Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright.

488. The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution have long prohibited the imprisonment of people for nonpayment of court-imposed fines or restitution without a pre-deprivation inquiry by a judge into the person's ability to pay, efforts to secure resources to pay and, if the person lacks the ability to pay despite having made reasonable efforts to acquire resources, the adequacy of any alternatives to incarceration. Courts are prohibited from jailing people for failure to pay without conducting such an inquiry and making at least one of the following findings: (1) the individual's nonpayment was willful; (2) the individual failed to make sufficient efforts to acquire the resources to pay; or (3) the individual was unable to pay, despite having made sufficient efforts to acquire resources, but alternative methods of achieving punishment or deterrence are inadequate.

489. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright suffered a violation of the clearly established right to a pre-deprivation ability-to-pay hearing when they were arrested and incarcerated in the Detention Center for periods of time ranging from seven to 63 days, or suffered the imminent threat of incarceration, because they could not afford to pay fines and fees owed to Lexington County magistrate courts. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright were not afforded any pre-deprivation judicial inquiry into or findings of fact on, their ability to pay, their efforts to secure resources, or the adequacy of readily available alternatives to incarceration.

490. For all relevant purposes, all individuals processed for commitment to the Detention Center for unpaid fines, fees, costs, assessments, or restitution imposed by Lexington County magistrate courts are similarly situated with respect to their right to due process of law.

There exists no legitimate governmental reason to jail individuals who are unable to pay the full amount of outstanding monetary penalties for traffic or misdemeanor offenses, while permitting individuals who have the financial means to pay fines, fees, costs, assessments and restitution to avoid being jailed for the same offenses.

491. In their individual capacities and as an exercise of their administrative responsibility for the establishment of uniform policies and procedures for the timely and appropriate collection of magistrate court fines and fees in Lexington County, Defendants Reinhart and Adams directly and proximately caused violations of the named Plaintiffs' right to a pre-deprivation ability-to-pay hearing. Defendants Reinhart and Adams oversaw, enforced, and sanctioned the Default Payment and Trial in Absentia Policies. Both policies directly and proximately led to the routine and widespread issuance of bench warrants that were used to arrest and incarcerate the named Plaintiffs without any pre-deprivation judicial inquiry into or findings of fact on ability to pay, efforts to secure resources, or the adequacy of readily available alternatives to incarceration.

492. In his individual capacity as the chief law enforcement officer of the LCSD and the chief administrator of the Detention Center, Defendant Koon directly and proximately caused violations of the named Plaintiffs' right to a pre-deprivation ability-to-pay hearing. Defendant Koon oversees and directs LCSD officers and Detention Center staff who arrest and incarcerate people subjected to bench warrants issued under the Default Payment and Trial in Absentia Policies. Defendant Koon enforces a standard operating procedure by which people arrested on bench warrants, including indigent people, are transported to the Detention Center and incarcerated unless they can pay the full amount of fines and fees owed before booking. This standard operating procedure established, enforced and sanctioned by Defendant Koon directly

and proximately led to the arrests and incarceration, or the imminent threat of arrest and incarceration, of the named Plaintiffs without any pre-deprivation judicial inquiry into, or findings of fact on, their ability to pay, efforts to secure resources, or the adequacy of readily available alternatives to incarceration.

493. The actions and conduct of Defendants Reinhart, Adams, and Koon in violating the rights of Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright to a pre-deprivation ability-to-pay hearing also constitute violations of 42 U.S.C. § 1983. Defendants Reinhart, Adams, and Koon were acting under color of state law when they violated these Plaintiffs' rights to due process and equal protection of the law.

494. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright seek damages from Defendants Koon, Reinhart, and Adams, in their individual capacities for the humiliation, anxiety, stress, emotional distress, hunger, sleeplessness, disturbed sleep, physical pain, serious illness, hospitalization, and other irreparable injury they suffered for being jailed, forcibly separated from their family and loved ones, and detained in unsanitary jail conditions without enough food to eat for periods ranging from seven to 63 days, or from the imminent threat of being jailed under such conditions.

**CLAIM FIVE  
FOR DAMAGES**

Failure to Afford Counsel

(in violation of the Sixth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, by Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright against Defendants Lexington County; Defendant Madsen, in his official capacity as a County official; and Defendants Reinhart and Adams, in their individual capacities)

495. Plaintiffs re-allege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

496. This claim is brought by Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright.

497. The Sixth Amendment to the U.S. Constitution affords all indigent people a right to the assistance of court-appointed counsel at no cost when they face actual incarceration for nonpayment of fines, fees, court costs, assessments, or restitution, regardless of whether incarceration is imposed through criminal contempt procedures or the implementation of a sentence of incarceration previously suspended upon the condition of payment of monetary penalties.

498. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright suffered a violation of the Sixth Amendment right to counsel when they were arrested and incarcerated in the Detention Center for nonpayment of magistrate court fines and fees without being informed of the right to request counsel, informed of the right to request waiver of the \$40 public defender application fee, and appointed counsel as an indigent person facing incarceration for nonpayment, despite prima facie evidence of indigence.

499. Defendant Lexington County directly and proximately caused the violation of the right of Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright to counsel by developing and maintaining a policy, practice, and custom of grossly underfunding public defense that demonstrated deliberate indifference to the right to counsel of indigent people facing incarceration for nonpayment of magistrate court fines and fees. As the County's final policymakers for the provision of public defense in Lexington County magistrate courts, the Lexington County Council and Defendant Madsen made the deliberate decision to provide grossly inadequate funding for indigent defense in Lexington County magistrate courts during the time period relevant to the incarceration of Plaintiffs without counsel. The Lexington County

Council and Defendant Madsen already knew, or should have known, when they made final decisions to inadequately fund public defense in these courts that public defenders would not be assigned to represent indigent people facing suspended or actual incarceration sentences for nonpayment of magistrate court fines and fees. Defendants Lexington County and Madsen's policy of grossly underfunding public defense in Lexington County magistrate courts therefore reflects deliberate indifference to Plaintiffs' right to counsel under the Sixth Amendment.

500. Through policy, practice, and custom, Defendant Lexington County also directly and proximately caused the violation of the right of Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright to counsel by adopting, and acquiescing to, the following policies, practices, and customs that demonstrate deliberate indifference to the right to counsel of indigent people facing incarceration for nonpayment of magistrate court fines and fees: (1) requiring an up-front \$40 application fee from indigent people seeking public defenders; (2) making a deliberate decision not to assign public defenders to represent indigent people facing incarceration for nonpayment in magistrate court cases; (3) making a deliberate decision not to assign public defenders to represent indigent people sentenced by magistrate courts to incarceration suspended on payment of fines and fees; (4) making a deliberate decision not to assign public defenders to represent indigent people when the incarceration portion of a suspended sentence is implemented in a magistrate court case; (5) making a deliberate decision not to assign public defenders to staff the Bond Court to represent indigent people arrested on bench warrants for nonpayment; and (6) making a deliberate decision not to assign public defenders to meet with indigent people incarcerated in the Detention Center under bench warrants. As the County's final policymaker for the provision of indigent defense, Defendant Madsen was aware, or should have been aware, that such decisions have led to the longstanding,

persistent, and widespread failure to provide public defense to indigent people facing incarceration for nonpayment of fines and fees in traffic and misdemeanor criminal cases in Lexington County magistrate courts. On behalf of Lexington County, Defendant Madsen caused, authorized, condoned, ratified, approved, participated in, or knowingly acquiesced in these illegal policies, practices, and customs. Defendant Madsen's actions and inactions were deliberately indifferent to the clearly established Sixth Amendment rights of indigent people.

501. In their individual capacities and as an exercise of their administrative responsibility for the establishment of uniform policies and procedures for the timely and appropriate collection of magistrate court fines and fees in Lexington County, Defendants Reinhart and Adams directly and proximately caused the violation of the right of Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright to counsel under the Sixth Amendment. Defendants Reinhart and Adams oversaw and enforced the Default Payment and Trial in Absentia Policies. Both policies directly and proximately led to the routine and widespread issuance of bench warrants that were used to incarcerate the named Plaintiffs for nonpayment of fines and fees to Lexington County magistrate courts without notice of the right to request counsel, without notice of the right to request waiver of the \$40 public defender application fee, and without being afforded court-appointed counsel as people who faced incarceration, despite prima facie evidence of indigence. Additionally, in their administrative capacities, Defendants Reinhart and Adams endorse the use of Trial Information and Plea Sheets that encourage, sanction, and ratify a standard operating procedure by which magistrate court judges accept so-called written "waivers" of the right to counsel without engaging in a colloquy to ensure that any waiver of the right to counsel is knowing, intelligent, and voluntary.

502. The actions and conduct of Defendants Lexington County, Madsen, Reinhart and Adams in violating Plaintiffs' right to counsel under the Sixth Amendment also constitute a violation of 42 U.S.C. § 1983. Each of these Defendants was acting under color of state law when their policies, practices, customs, standard operating procedures, and omissions violated Plaintiffs' right to counsel.

503. Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright seek damages from Defendants Lexington County, Madsen (in his official capacity as a County official), Reinhart (in his individual capacity for his administrative conduct), and Adams (in her individual capacity for her administrative conduct) for the humiliation, anxiety, stress, emotional distress, hunger, sleeplessness, disturbed sleep, physical pain, serious illness, hospitalization and other irreparable injury they suffered for being jailed, forcibly separated from their family and loved ones, and detained in unsanitary jail conditions without enough food to eat for periods ranging from seven to 63 days.

**CLAIM SIX  
FOR DAMAGES**

Unreasonable Seizure

(in violation of the Fourth Amendment to the U.S. Constitution and  
42 U.S.C. § 1983, by Plaintiffs Brown, Darby, and Wright against  
Defendants Reinhart, Adams,  
and Koon, in their individual capacities)

504. Plaintiffs re-allege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

505. This claim is brought by Plaintiffs Brown, Darby and Wright.

506. The Fourth Amendment prohibits unreasonable seizures, including arrest and incarceration without probable cause or legal authority.

507. The arrests and incarceration of Plaintiffs Brown, Darby, and Wright violated their Fourth Amendment right to freedom from unreasonable seizures because the arrests and incarceration were carried out under bench warrants based solely on nonpayment of fines and fees, which were unsupported by probable cause that Ms. Brown, Ms. Darby, or Mr. Wright had committed a crime.

508. Neither Ms. Brown nor Ms. Darby were arrested and jailed following a show cause hearing or contempt proceeding at which a court considered information other than the fact that Ms. Brown and Ms. Darby missed payments required by the Scheduled Time Payment Agreements in their cases.

509. Despite the fact that Mr. Wright appeared at a show cause hearing in the Central Traffic Court concerning his nonpayment of court fines and fees, the court failed to inquire into, or make findings of fact on, his ability to pay, efforts to secure resources, or the adequacy of readily available alternatives to incarceration. Mr. Wright was ultimately arrested and incarcerated pursuant to the court's directive that he be jailed for ten days unless he paid the full amount of money owed to the Central Traffic Court.

510. As a result, the LCSD officers who arrested and transported Ms. Brown, Ms. Darby, and Mr. Wright to the Detention Center had no particularized and objective basis to believe that Ms. Brown, Ms. Darby, or Mr. Wright had committed any criminal offense.

511. The arrests that led to the incarceration of Plaintiffs Brown, Darby, and Wright were arrests for which probable cause was required.

512. The detentions of Plaintiffs Brown, Darby, and Wright following their arrest for nonpayment of magistrate court fines and fees were unreasonable seizures under the Fourth Amendment.

513. The seizures of Plaintiffs Brown, Darby, and Mr. Wright were excessive and unreasonable in their duration and scope.

514. It was clearly established before the arrest and incarceration of Plaintiffs Brown, Darby, and Darby that seizing and detaining Ms. Brown, Ms. Darby, and Mr. Wright simply because they did not have money to pay fines and fees would violate their clearly established rights. Defendants Reinhart and Adams had fair warning that their conduct would violate the Fourth Amendment and no reasonable officer could have believed that the seizures or incarceration of Ms. Brown, Ms. Darby, and Mr. Wright were reasonable.

515. In their individual capacities and in an exercise of their administrative authority, Defendants Reinhart and Adams directly and proximately caused violations of Plaintiffs Brown Darby, and Wright's right to freedom from unreasonable seizures. Defendants Reinhart and Adams oversaw, enforced, and sanctioned the Default Payment Policy, and that conduct directly and proximately caused the issuance of bench warrants against Ms. Brown, Ms. Darby, and Mr. Wright for nonpayment of magistrate court fines and fees when they did not pay according to the terms of their Scheduled Time Payment Agreements. Those bench warrants were used to arrest and incarcerate Ms. Brown, Ms. Darby, and Mr. Wright, but were unsupported by probable cause that Ms. Brown, Ms. Darby, or Mr. Wright had committed a crime.

516. Moreover, Defendants Reinhart and Adams have failed to exercise their administrative authority to correct the longstanding and pervasive Default Payment Policy through any written policy and to train Lexington County magistrate judges on how to ensure respect for the Fourth Amendment right when issuing bench warrants for the collection of magistrate court fines and fees.

517. In his individual capacity as the chief law enforcement officer of the LCSD and the chief administrator of the Detention Center, Defendant Koon directly and proximately caused violations of the rights of Plaintiffs Brown, Darby, and Wright to freedom from unreasonable seizures. Defendant Koon oversaw and directed LCSD officers who arrested Plaintiffs Brown, Darby, and Wright on payment bench warrants issued under the Default Payment Policy, which were not supported by probable cause of criminal activity. This standard operating procedure established, enforced, and sanctioned by Defendant Koon directly and proximately led to the arrests and incarceration of Plaintiffs Brown, Darby, and Wright without probable cause of criminal activity.

518. The actions and conduct of Defendants Reinhart, Adams, and Koon in violating the rights of Plaintiffs Brown, Darby, and Wright to be free from unreasonable seizures under the Fourth Amendment also constitute a violation of 42 U.S.C. § 1983. Defendants Reinhart, Adams and Koon were acting under color of state law when they violated Plaintiffs' Fourth Amendment rights.

519. Plaintiffs Brown, Darby, and Wright seek damages from Defendants Reinhart, Adams, and Koon in their individual capacities for the humiliation, anxiety, stress, emotional distress, hunger, sleeplessness, disturbed sleep, and other irreparable injury they suffered for being jailed, forcibly separated from their family and loved ones, and detained in unsanitary and cold jail conditions without enough food to eat for periods ranging from seven to 57 days.

**CLAIM SEVEN  
FOR DECLARATORY RELIEF**

Incarceration Without Pre-deprivation Ability-to-Pay Hearing  
(in violation of the Due Process and Equal Protection Clauses of the  
Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983,  
by Plaintiff Goodwin against Defendant Adams, in her official capacity)

520. Plaintiffs re-allege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

521. This claim is brought by Mr. Goodwin.

522. The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution have long prohibited the imprisonment of people for nonpayment of court-imposed fines or restitution without a pre-deprivation inquiry by a judge into the person's ability to pay, efforts to secure resources to pay and, if the person lacks the ability to pay despite having made reasonable efforts to acquire resources, the adequacy of any alternatives to incarceration. Courts are prohibited from jailing people for nonpayment without conducting such an inquiry and making at least one of the following findings: (1) the individual's nonpayment was willful; (2) the individual failed to make sufficient efforts to acquire the resources to pay; or (3) the individual was unable to pay, despite having made sufficient efforts to acquire resources, but alternative methods of achieving punishment or deterrence are inadequate.

523. Plaintiff Goodwin is indigent and owes \$2,063 in fines and fees to the Irmo Magistrate Court. Mr. Goodwin is unable to pay the \$100 payment that was due on July 5, 2017 as required by the Scheduled Time Payment Agreement imposed on him by Defendant Adams. Mr. Goodwin faces a substantial and imminent risk that without affording him a pre-deprivation ability-to-pay hearing, Defendant Adams will issue a bench warrant ordering his arrest and incarceration for nonpayment and Defendant Koon will arrest and incarcerate him in the Detention Center on that warrant.

524. For all relevant purposes, all individuals processed for commitment to the Detention Center for unpaid fines, fees, costs, assessments or restitution imposed by Lexington County magistrate courts are similarly situated with respect to their right to due process of law. There exists no legitimate governmental reason to jail individuals who are unable to pay the full amount of outstanding monetary penalties for traffic or misdemeanor criminal offenses, while permitting individuals who have the financial means to pay fines, fees, costs, assessments, and restitution to avoid being jailed for the same offenses.

525. As a judge on the Irmo Magistrate Court, Defendant Adams is sufficiently connected to, and responsible for, ongoing violations of Plaintiff Goodwin's right to due process and equal protection of the law. In her official capacity and in an exercise of her judicial authority, Defendant Adams routinely orders the arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees without affording them any pre-deprivation ability-to-pay hearings, just as she did in the cases of Plaintiffs Brown and Darby. Moreover, Defendant Adams sentenced Plaintiff Goodwin to pay fines and fees according to a Scheduled Time Payment Agreement, and Mr. Goodwin is unable to afford the required payments. Mr. Goodwin thus faces a substantial and imminent risk of being arrested and incarcerated for nonpayment of the magistrate court fines and fees that he owes without a pre-deprivation ability-to-pay hearing.

526. The ongoing conduct of Defendant Adams places Plaintiff Goodwin at continuing and foreseeable risk of being arrested and incarcerated for nonpayment of fines and fees without any pre-deprivation court hearing on his ability to pay despite prima facie evidence of his indigence. Mr. Goodwin seeks prospective declaratory relief because he has no plain,

adequate, or complete remedy at law to prevent future injury caused by confinement in jail in violation of his constitutional rights.

527. The ongoing conduct of Defendant Adams violates 42 U.S.C. § 1983. Defendant Adams acts under color of state law and her conduct creates a real, imminent, and substantial threat that Plaintiff Goodwin will be arrested and jailed in violation of his due process and equal protection rights.

**CLAIM EIGHT**  
**FOR DECLARATORY RELIEF**  
Failure to Afford Assistance of Counsel  
(in violation of the Sixth Amendment to the U.S. Constitution  
and 42 U.S.C. § 1983, by Plaintiff Goodwin  
against Defendant Adams, in her official capacity)

528. Plaintiffs re-allege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

529. This claim is brought by Plaintiff Goodwin.

530. The Sixth Amendment to the U.S. Constitution affords all indigent people a right to the assistance of court-appointed counsel at no cost when they face actual incarceration for nonpayment of fines, fees, court costs, assessments, or restitution, regardless of whether incarceration is imposed through criminal contempt procedures or the implementation of a sentence of incarceration previously suspended upon the condition of payment of monetary penalties.

531. Plaintiff Goodwin is indigent and owes \$2,163 fines and fees to the Irmo Magistrate Court. Mr. Goodwin is unable to pay the \$100 payment that was due on July 5, 2017 as required by the Scheduled Time Payment Agreement imposed by Defendant Adams. Mr. Goodwin faces a substantial and imminent risk that without affording him the assistance of counsel, Defendant Adams will issue a bench warrant ordering his arrest and incarceration for

nonpayment and Defendant Koon will arrest and incarcerate him in the Detention Center on that warrant.

532. As the judge of the Irmo Magistrate Court, Defendant Adams is sufficiently connected to, and responsible for, ongoing violations of Plaintiff Goodwin's right to counsel. In her official capacity and in an exercise of her judicial authority, Defendant Adams routinely fails to notify indigent people of the right to request counsel and the risks of proceeding without counsel, fails to notify them of the right to request waiver of the \$40 public defender application fee, and fails to appoint counsel to represent them at no cost before ordering their arrest and incarceration for nonpayment of fines and fees, despite prima facie evidence of their indigence. Finally, Defendant Adams routinely fails to engage in any colloquy to ensure that the act of signing a Trial Information and Plea Sheet confirms a knowing, voluntary, and intelligent waiver of the right to counsel.

533. The ongoing policies, practices, customs, standard operating procedures, acts, and omissions of Defendant Adams place Plaintiff Goodwin at a continuing and foreseeable risk of being arrested and incarcerated in the Detention Center for nonpayment of fines and fees without the benefit of representation by court-appointed counsel.

534. Mr. Goodwin seeks prospective declaratory relief because he has no plain, adequate, or complete remedy at law to prevent future injury caused by confinement in jail in violation of his Sixth Amendment rights.

535. The conduct of Defendant Adams violates 42 U.S.C. § 1983. Defendant Adams acts under color of state law and her conduct creates a real, imminent, and substantial threat that Plaintiff Goodwin will be arrested and jailed in violation of his Sixth Amendment right to counsel.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

- Assume jurisdiction over this action;
- Certify the Class under Rule 23 of the Federal Rules of Civil Procedure;
- Award the following relief:
  - A declaration that Defendants Adams and Dooley, acting in their administrative capacities, and Defendant Koon are violating Class members' Fourteenth Amendment right to due process and equal protection of the law by sustaining policies, practices, and standard operating procedures that result in the arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees without a pre-deprivation judicial inquiry into, and findings of fact on, ability to pay, efforts to secure resources, and the adequacy of readily available alternatives to incarceration.
  - A declaration that Defendants Adams and Dooley, acting in their administrative capacities, and Defendant Koon are violating Class members' Sixth Amendment right to counsel by sustaining policies, practices, and standard operating procedures that result in the arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees without notice of their right to request the appointment of counsel to defend against incarceration for nonpayment; without notice of the right to request waiver of any \$40 public defender application fee; without ensuring that any waiver of these rights is knowing, voluntary, and intelligent; and without providing assistance of counsel.
  - A declaration that Defendants Lexington County and Madsen are violating Class members' Sixth Amendment right to counsel by routinely and systematically depriving indigent people of the right to court-appointed counsel when they face incarceration for nonpayment of magistrate court fines and fees, including through the failure to adequately fund indigent defense in Lexington County magistrate courts and the failure to assign public defenders to staff magistrate courts proceedings.
  - A declaration that Defendant Adams violates Plaintiff Goodwin's Fourteenth Amendment right to an ability-to-pay hearing by ordering or effecting the arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees without first affording a pre-deprivation judicial inquiry into, and findings of fact on, ability to pay, efforts to secure resources, and the adequacy of readily available alternatives to incarceration.

- A declaration that Defendant Adams violates Plaintiff Goodwin's Sixth Amendment right to counsel by ordering or effecting the arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees without affording notice of the right to request appointment of counsel to defend against incarceration and notice of the right to request waiver of the \$40 public defender application fee; without ensuring that any waiver of these rights is knowing, voluntary, and intelligent; and without appointing counsel to defend Plaintiff Goodwin as an indigent person facing incarceration for nonpayment.
- A declaration that Defendants Adams and Dooley, acting in their administrative capacities, and Defendant Koon are violating Class members' Fourth Amendment right to freedom from unreasonable seizure by sustaining policies, practices, and standard operating procedures that result in indigent people being arrested and incarcerated on bench warrants based on nonpayment of magistrate court fines and fees and without probable cause of criminal activity.
- An order and judgment permanently enjoining Defendants Adams, Dooley, Koon, Lexington County, and Madsen from enforcing the above-described unconstitutional policies and practices.
- Award compensatory damages to the Plaintiffs Brown, Darby, Johnson, Palacios, Goodwin, and Wright in an amount to be determined at trial, including damages for deprivation of liberty, mental anguish, emotional distress, hunger, sleeplessness, disturbed sleep, illness, and loss of income;
- Award Plaintiffs attorneys' fees, costs, and expenses of all litigation pursuant to 42 U.S.C. § 1988; and
- Afford any such other and further relief as the Court may deem just and proper.

DATED this 17th day of October, 2017.

Respectfully submitted by,

s/ Susan K. Dunn

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c. Even if Defendants Reinhart, Adams and/or Koon established “policies,” which is admitted without conceding, and only for the sake of argument, Plaintiffs’ damage claims for any such actions would be barred by legislative immunity.

d. As a matter of law, Lexington County could not have created the policies alleged by Plaintiffs to exist with regard to matters occurring in the adjudicated cases of individuals.

e. Plaintiffs’ damage claims against Lexington County based on underfunding of the public defender system are barred for lack of causation, because even if public defender systems did not exist, a magistrate would still be able to appoint counsel for indigent persons from members of the bar.

f. Plaintiffs’ damage claims against Defendant Madsen, made only against him in his official capacity as a county official, are made against the County itself, and should be dismissed as duplicative.

The bases for this motion are set forth in the accompanying memorandum, as well as any other documents and filings properly before the Court in this case, or of which the Court may take notice.

Because this is a dispositive motion, it is exempt from the consultation requirements of Local Rule 7.02.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

*BY: s/ Kenneth P. Woodington*

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Columbia, South Carolina

October 31, 2017



## FACTS

Claim 4: Regarding this claim, Plaintiff allege that the defendant magistrates did not afford them pre-incarceration hearings on their ability to pay the fines that were alternative parts of their sentences. Plaintiffs further claim, with no supporting evidence at all, that the Magistrates' decisions were the result of alleged unwritten policies. Second Amended Complaint, ¶¶ 8, 492.

Claim 5: Regarding this claim. Plaintiffs allege that the Defendant magistrates did not inform them “of the right to request counsel, . . . the right to request waiver of the \$40 public defender application fee, and [the right to] appointed counsel as an indigent person facing incarceration for nonpayment, despite prima facie evidence of indigence.” Second Amended Complaint, ¶ 498. Plaintiffs also claim that “Lexington County directly and proximately caused the violation of the right of Plaintiffs . . . to counsel by developing and maintaining a policy, practice, and custom of grossly underfunding public defense. . . .” *Id.*, ¶ 499. Finally, Plaintiffs claim that Public Defender Madsen in his official capacity as a county officer is also culpable for making “the deliberate decision to provide grossly inadequate funding for indigent defense in Lexington County magistrate courts. . . .” *Id.*

Claim 6: In this claim, three Plaintiffs seek damages from two of the magistrate judges and from the Lexington County Sheriff, alleging that their “arrests and incarceration . . . violated their Fourth Amendment right to freedom from unreasonable seizures because the arrests and incarceration were carried out under bench warrants based solely on nonpayment of fines and fees.” *Id.*, ¶ 507.

The Second Amended Complaint alleges that there were “two unwritten policies and practices that are the standard operating procedure in these [magistrate] courts. . . .” Second

Amended Complaint, ¶ 6. The Second Amended Complaint goes so far as to give these alleged policies names invented by Plaintiffs’ counsel, to wit, “the Default Payment Policy and the Trial in Absentia Policy.” *Id.* However, there is no evidence that such policies actually exist, or that they could exist as a matter of law. These capitalized names for policies not shown to exist or be capable of existence are products of Plaintiffs’ counsels’ own imaginations. Plaintiffs also purport to identify a “policy of denying individuals arrested on bench warrants an ability-to-pay hearing in Bond Court or the magistrate court that issued the bench warrant. . . .” *Id.* ¶ 27.<sup>1</sup>

**ARGUMENT**

Because the Plaintiffs’ damage claims and the Defendants against whom those claims are asserted are varied and subject to a variety of defenses, those defenses are summarized in the chart below:

<b>Defense</b>	<b>Claim(s) to which defense applies</b>	<b>Defendants asserting the defense</b>
<i>Heck v. Humphrey</i> and <i>Rooker-Feldman</i>	All	All
Judicial immunity	All	Reinhart, Adams, Dooley, Koon
Legislative immunity	All	Reinhart, Adams, Dooley, Koon (assuming without conceding that they engaged in legislative activity by making policies)
Absence of legal authority	All	All
Absence of causation	Claim 5	Lexington County
Claim against Defendant Madsen	Claim 5	Madsen

<sup>1</sup> Plaintiffs also allege that “Defendants Lexington County and Madsen have established a county-wide policy, “practice, and custom of requiring indigent people to pay an up-front \$40 fee at the time they apply for court-appointed representation and of failing to inform indigent people that they may seek a court waiver of the fee based on financial hardship.” However, the \$40 fee is mandated by S.C. Code Ann. § 17-3-30. Finally, Plaintiffs allege that there are “policies, practices, and customs of Defendants Lexington County and Madsen, [resulting in] only one public defender [being] assigned to represent indigent defendants in cases handled by the County’s magistrate courts.” Amended Complaint, ¶ 62.

in his official capacity is duplicative		
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- 1. If Plaintiffs’ damage claims were to be recognized, such a result would necessarily imply that their criminal convictions are invalid, and therefore those claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).**

Plaintiffs’ damage claims present issues which could have been raised in the criminal proceedings and which if successful, could have had led to the invalidations of their convictions or sentences, including their imprisonment on bench warrants. Those issues were not raised during any point in their criminal cases, and Plaintiffs’ convictions and sentences have never been overturned.<sup>2</sup> As a result, and as will be shown in more detail below, their damage claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) as well as by the *Rooker-Feldman* doctrine.<sup>3</sup>

The first of the three damage claims, Claim 4, raises due process concerns, among other things. Due process violations can invalidate a state court conviction. *See, e.g., Lee v. State of Miss.*, 332 U.S. 742, 745 (1948). Claim 5 raises Sixth Amendment claims based on alleged failure to afford counsel. These claims also can lead to invalidation of a conviction. *See, e.g., Custis v. United States*, 511 U.S. 485, 494 (1994)(failure to appoint counsel for an indigent defendant was subject to collateral attack in habeas corpus). The third and last damage claim, which is based on unreasonable seizure under the Fourth Amendment, also involves claims that can invalidate convictions. *See, e.g., Mapp v. Ohio*, 367 U.S. 643 (1961).

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<sup>2</sup> Plaintiff Goodwin, whose criminal case is still active and will remain active until his sentence is completed, could raise those grounds in that proceeding, including the possibility of raising them in advance of the issuance of the issuance of a bench warrant.

<sup>3</sup> *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

*Heck v. Humphrey*, 512 U.S. 477 (1994) holds that a Section 1983 plaintiff cannot bring a damage suit under that statute where a judgment in favor of the plaintiff “would necessarily imply the invalidity of his conviction or sentence.” *Id.* at 486. As summarized by the Court,

[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

512 U.S. at 486–87 [footnote omitted]. Plaintiffs have not proven, and cannot prove, that their criminal cases had any of the kinds of favorable terminations listed by the Court.

*Heck* has been applied to claims similar or identical to all three of the damage claims asserted by the Plaintiffs in the present case. It should be noted that the rule in *Heck* applies not only to the original conviction, but also to challenges that would render imprisonment or sentences invalid. *Id.*

**a. Due process claims.**

Plaintiffs claim that their due process rights were violated by their imprisonment for nonpayment of court imposed fines or restitution without a pre-deprivation inquiry by a judge into their ability to pay and other related matters. Second Amended Complaint, Claim 4, ¶ 489. However, the Supreme Court has expressly held that due process claims are among those barred by the rule in *Heck*. *See, e.g., Edwards v. Balisok*, 520 U.S. 641 (1997)(due process damage claim, if successful, would imply invalidity of disciplinary hearing and sanctions). *See also, e.g., Green v. Horry Cty.*, No. 4:17-CV-01304-RBH, 2017 WL 4324843, at \*1 (D.S.C. Sept. 29, 2017), citing *Mayfield v. King*, No. CA 0:10-1487-JFA-PJG, 2010 WL 4929124, at \*1 (D.S.C.

Nov. 30, 2010) (finding *Heck* barred Plaintiff's § 1983 action alleging “that the defendants have violated his due process rights and that he has been maliciously and falsely imprisoned”).

The conclusion is inescapable that if Plaintiffs’ due process challenges were to succeed, it would imply that their imprisonment for nonpayment of court imposed fines or restitution without a pre-deprivation inquiry rendered their imprisonment invalid. As a result, the principles of *Heck* bar Plaintiffs’ damage claims based on due process.

**b. Right to counsel claims**

In Claim 5, certain Plaintiffs seek damages for the failure to afford counsel. In Paragraph 498 of the Second Amended Complaint, it is alleged that those Plaintiffs “suffered a violation of the Sixth Amendment right to counsel when they were arrested and incarcerated in the Detention Center for nonpayment of magistrate court fines and fees without being informed of the right to request counsel, informed of the right to request waiver of the \$40 public defender application fee, and appointed counsel as an indigent person facing incarceration for nonpayment, despite prima facie evidence of indigence.”

Such claims are also barred by *Heck*. As noted earlier, a Sixth Amendment violation will invalidate a conviction. *See, e.g., Custis v. United States*, 511 U.S. 485, 494 (1994). Such invalidations are so frequent as to be routine. As a result of the fact that a Sixth Amendment violation will invalidate a conviction, courts have applied *Heck* to bar damage claims based on alleged Sixth Amendment violations. *See, e.g., Carver v. Cty.*, No. CV 1:16-2528-TMC, 2016 WL 4771287, at \*2 (D.S.C. Sept. 14, 2016)( claim that amounted to denial of counsel, if found to have merit, would call into question the validity of his conviction, and was barred by *Heck*); *Kilbane v. Huron Cty. Comm'rs*, No. 3:10 CV 2751, 2011 WL 1666928, at \*2 (N.D. Ohio May

3, 2011)(“Plaintiff’s assertion he was denied counsel raises a claim which, if found to have merit, would call into question the validity of his conviction”).

**c Unreasonable seizure claims.**

The Fourth Circuit has held that “§ 1983 actions seeking damages for unconstitutional arrest or confinement imposed pursuant to legal process—claims most analogous to the common-law tort of malicious prosecution—must allege and prove a termination of the criminal proceedings favorable to the accused, such claims do not accrue until a favorable termination is obtained.” *Brooks v. City of Winston-Salem, N.C.*, 85 F.3d 178, 183 (4th Cir. 1996), citing *Heck*, 512 U.S. at 484 n.6. None of the Plaintiffs in this case have alleged or proven a favorable termination of the criminal proceedings in the course of which they were arrested. As a result, *Heck* and its progeny bar Plaintiffs’ damage claims based on unreasonable seizures of their persons.

**d. Conclusion regarding *Heck v. Humphrey***

For the foregoing reasons, all Defendants respectfully submit that the principles of *Heck v. Humphrey* operate as a complete bar to all damage claims asserted by Plaintiffs. While this in itself is a sufficient defense to the damage claims, the remainder of this memorandum discusses additional alternative reasons that would support the dismissal of the damage claims.<sup>4</sup>

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<sup>4</sup> Defendants’ counsel are aware that the Fourth Circuit has limited *Heck* in some situations. *Wilson v. Johnson*, 535 F.3d 262 (4th Cir.2008). However, this Court, in a decision affirmed by the Fourth Circuit, has held that *Heck* continues to apply where, as here, “the facts directly invoke the Supreme Court’s concerns about the ability of criminal defendants to collaterally attack their convictions through a civil suit.” *Groves v. City of Darlington, S.C.*, 2011 WL 825757, at \*3 (D.S.C. 2011), aff’d, 457 F. App’x 230 (4th Cir. 2011), cert. denied, 567 U.S. 917 (2012). Similarly, in *Addison v. S.C. Dep’t of Corr.*, 2011 WL 5877017, at \*3 (D.S.C. 2011), report and recommendation adopted, 2011 WL 5876915 (D.S.C. 2011), it was held that “Since Plaintiff acknowledges that he is disputing the Judgment and Commitment Order from the Court of General Sessions, the decision of the United States Court of Appeals for the Fourth Circuit in *Wilson v. Johnson*, 535 F.3d 262 (4th Cir.2008), is not applicable because Plaintiff’s

**2. Plaintiffs' damage claims are also barred by the *Rooker-Feldman* doctrine.**

In addition to being barred by *Heck v. Humphrey*, Plaintiffs' damage claims are also barred by the *Rooker-Feldman* doctrine. As summarized by the Fourth Circuit, that doctrine applies when "the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court's decision itself. *Davani v. Virginia Dep't of Transp.*, 434 F.3d 712, 713 (4th Cir. 2006). The *Rooker-Feldman* doctrine "divests the district court of jurisdiction where entertaining the federal claim should be the equivalent of an appellate review of [the state court] order." *Jordahl v. Democratic Party of Virginia*, 122 F.3d 192, 202 (4th Cir. 1997). *Heck* precludes damage claims where a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence and the *Rooker-Feldman* doctrine serves a similar function, precluding claims that effectively require a federal court to review and reverse a state court judgment. As a result, both doctrines have been applied in cases such as this to preclude damage claims by convicted persons.

The nature of Plaintiffs' damage claims as amounting effectively to challenges to their convictions and sentences has been discussed at length above. Under such circumstances, it has been held that *Rooker-Feldman* applies independently of the principles of *Heck v. Humphrey*. For instance, in *Jones v. Cumberland Cty. Municipality*, 2015 WL 3440254, at \*5 (E.D.N.C. 2015), report and recommendation adopted, 2015 WL 3440258 (E.D.N.C. 2015), the court reached the following conclusions:

The injuries plaintiff alleges in this case result from alleged improprieties in the state court criminal proceedings, namely, imposition of an excessive fine and term of imprisonment. Matters

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incarceration is not the result of an erroneous calculation of a sentence by a state corrections department."

relating to these state criminal proceedings are not appropriately brought before this court because a determination of plaintiff's claims in his favor would necessarily require this court to find that the state court proceedings produced an improper result and possibly as well that they were prosecuted in an improper matter. The *Rooker-Feldman* doctrine prohibits this court from making such a determination. Plaintiff, of course, retained access to the state courts for pursuit of such claims. The claims should accordingly be dismissed.

*Accord, e.g., Shahid v. Borough of Eddystone*, 2012 WL 1858954, at \*9 (E.D. Pa. 2012), *aff'd*, 503 F. App'x 184 (3d Cir. 2012), cert. denied, 134 S.Ct. 92 (2013)(federal court may not consider a claim that would require either determining that the state court judgment was erroneously entered or reversing it). Accordingly, Plaintiffs' damage claims should be dismissed under the *Rooker-Feldman* doctrine for lack of subject matter jurisdiction.

**3. Plaintiffs' damage claims against the three magistrates and the sheriff are barred by judicial or quasi-judicial immunity.**

It is axiomatic that "a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself," *Stump v. Sparkman*, 435 U.S. 349, 355 (1978), quoting *Bradley v. Fisher*, 13 Wall. 335, 351 (1872). As recently summarized by this Court, this principle means that "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.' " (citation omitted)." *Ward v. Detective Daniel English*, No. CV 2:17-1795-HMH-SVH, 2017 WL 3575528, at \*2 (D.S.C. July 26, 2017), report and recommendation adopted sub nom. *Ward v. Daniel English*, No. CV 2:17-1795-HMH-SVH, 2017 WL 3535057 (D.S.C. Aug. 17, 2017). It can hardly be disputed that each decision reached by each defendant magistrate in each Plaintiff's case was made in the exercise of a judicial function, and clearly within the jurisdiction of each magistrate. As a result, Plaintiffs' damage

claims against the magistrates are barred by judicial immunity as well as by *Heck v. Humphrey* and the *Rooker-Feldman* doctrine.

Absolute quasi-judicial immunity also extends to non-judicial officers, such as the sheriff in this case, when “performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune.” *Reaves v. Rhodes*, 2011 WL 826358, at \*5 (D.S.C. 2011), report and recommendation adopted, 2011 WL 812413 (D.S.C. 2011), quoting *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir.1994). Specifically, *Reaves* holds that a sheriff is absolutely immune for arresting a plaintiff pursuant to a facially valid court order, and for enforcing facially valid court orders. As a result, Plaintiffs should not be heard to argue that Defendant Koon, in acting pursuant to the bench warrants, performed anything other than a quasi-judicial function for which he is entitled to quasi-judicial immunity.

**4. Even if the magistrates or the sheriff had created a “policy” governing the handling of cases such as those of the Plaintiffs, Plaintiffs’ damage claims against the three magistrates and the sheriff are barred by legislative immunity.**

Plaintiffs’ counsel are presumably well aware of the existence of judicial immunity as a bar to their damage claims. As a result, they attempt to get around that bar by asserting that the Defendants, including the magistrates and the sheriff, adopted alleged policies for the determination of cases such as those of the Plaintiffs. *See, e.g.*, Second Amended Complaint, ¶ 491 (magistrates); ¶ 492 (sheriff). In other words, Plaintiffs contend that such alleged policies (which do not in fact exist) were implemented by the magistrates and sheriff “[a]s the administrative policymakers for Lexington County magistrate courts. . . .” Second Amended Complaint, ¶ 6. In that way, Plaintiffs presumably are attempting to claim that the alleged actions of the magistrates and the sheriff are outside the scope of judicial immunity.

In order to avoid needless discovery on the point, the present motion assumes without conceding, and solely for the purpose of argument, that some sort of policies did in fact exist. However, even if the magistrates or the sheriff had created policies, which they did not, they still would be immune from damages in their individual capacities under the principle of absolute legislative immunity. *Supreme Court of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 734 (recognizing immunity for state judges acting in legislative capacity). *See also, e.g., Abick v. State of Mich.*, 803 F.2d 874, 877 (6th Cir. 1986)(state supreme court had legislative immunity for any suit relating to the promulgation of rules of practice and procedure).

**5. As a matter of law, no Defendant has the legal authority to create the policies alleged by Plaintiffs to exist with regard to matters occurring in the adjudicated cases of individuals.**

Defendant Lexington County does not argue that it, as opposed to the individual Defendants sued individually, possesses legislative immunity as a result of the alleged policies. *See, e.g., Berkley v. Common Council of Charleston*, 63 F.3d 295 (4th Cir.1995). However, as a matter of law, neither a county council nor any of the other Defendants has the authority to prescribe rules or policies for the determination of individual cases along the lines alleged by Plaintiffs.

The starting point for determining the existence of a municipal policy is state law. As the Supreme Court has held, “the identification of policymaking officials is a question of state law. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988). This issue is “is not a question of fact in the usual sense.” *Id.* In the present case, it is therefore necessary to determine whether any Defendant in this case has the authority to set uniform policies for the arrest and jailing of persons who allegedly cannot pay court fines, and for making decision about such arrests and

incarcerations. A review of state law makes it clear that there is, and can be, no such person among the Defendants in this case.

Article V, Sec. 26 of the Constitution of South Carolina provides that

The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law. The General Assembly shall provide for their terms of office and their civil and criminal jurisdiction. The terms of office must be uniform throughout the State.

Magistrates' courts are included within the unified judicial system of South Carolina. *Davis v. Cty. of Greenville*, 322 S.C. 73, 76, 470 S.E.2d 94, 96 (1996), citing *State ex rel McLeod v. Crowe*, 272 S.C. 41, 249 S.E.2d 772 (1978). As a result, "counties have no authority to alter the structure of the magisterial branch of the judicial system." *Id.* Under this structure, it is difficult to see how magistrates could possibly be held to have the power to establish county policy in any area. *Accord, e.g., Stepney v. Baker*, No. CIV A 808-3290-MBS, 2009 WL 2168868, at \*4 (D.S.C. July 17, 2009)("County magistrates and municipal court judges are judges in the State of South Carolina's unified judicial system").

In addition, the power to promulgate rules for practice and procedure in the courts of South Carolina is vested by the Constitution in the Supreme Court. Article V, Sec. 4 of the Constitution of South Carolina provides in pertinent part that

The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts.

Accordingly, only the Supreme Court of South Carolina has the legal authority to make rules for the administration of magistrates' courts and the practice and procedure in those courts. This truism was recently borne out by the September 15, 2017 memorandum of Chief Justice Beatty instructing magistrates as to how to proceed in cases involving issues similar to those raised by

Plaintiffs in the present case. The entire situation was summarized in a relatively recent South Carolina federal case:

Moreover, . . . the Lexington City Council cannot be held responsible for actions taken by the . . . the Magistrate's Court for Lexington County . . . . It can be judicially noticed that, in South Carolina, a county's authority over courts within its boundaries was abolished when Article V of the Constitution of the State of South Carolina was ratified in 1973. See Act No. 58, 1973 S.C. Acts 161; Article V, Section 1 of the Constitution of the State of South Carolina; and *State ex rel. McLeod v. Civil and Criminal Court of Horry County*, 265 S.C. 114, 217 S.E.2d 23, 24 (1975). Under the current version of Article V, Section 1, the Supreme Court of South Carolina, not . . . Lexington County, retains the sole authority to supervise magistrates' courts in Lexington County . . . . See *Spartanburg County Dept. of Social Services v. Padgett*, 296 S.C. 79, 370 S.E.2d 872, 875–876 & n. 1 (1988). By virtue of Article V, . . . the County of Lexington [does not] exercise administrative or supervisory authority over municipal courts, magistrates' courts, or courts of the State of South Carolina located within the geographical boundaries of Lexington County. Article V, § 1 of the South Carolina Constitution mandates a unified judicial system. Section 4 of the Judicial Article designates the Chief Justice of this Court as the administrative head of the unified judicial system and directs that this Court make rules governing the administration of all courts in this state. Further, this section provides that this Court shall promulgate rules governing practice and procedure in all courts subject to the statutory law.

*Dunbar v. Metts*, 2011 WL 1480279, at \*5 (D.S.C. 2011), report and recommendation adopted, 2011 WL 1480096 (D.S.C., 2011)(emphasis added)(footnotes omitted). As a result, there is no legal support for any claim that Lexington County had authority to make and implement policies as to how specific cases would be handled in magistrates' courts.

For the same reasons, that is, the vesting of rulemaking authority solely in the Supreme Court, the magistrates and the sheriff also could not have established the “policies” alleged by Plaintiffs.

**6. Plaintiffs’ damage claims against Lexington County based on underfunding of the public defender system are barred for lack of causation, because even if public defender systems did not exist, a magistrate would still be able to appoint counsel for indigent persons from members of the bar.**

Plaintiffs also allege that they have a claim for damages based on alleged underfunding of by the county of the public defender system. However, this claim lacks merit for the simple reason that even if public defender systems did not exist, a magistrate would still be able to appoint counsel for indigent persons from members of the bar. *See, e.g.*, S.C. Code Ann. § 17-3-10, which provides that “Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto.” In other words, even if the public defender were to be found to be underfunded, Plaintiffs cannot show that that underfunding was a proximate cause of their convictions. Moreover, if the magistrates had denied or failed to appoint counsel pursuant to § 17-3-10, they would have done so in the exercise of judicial functions. Accordingly, Plaintiffs do not have a damage claim against Lexington County for the alleged underfunding of the public defender system.<sup>5</sup>

**7. Plaintiffs’ damage claims against Defendant Madsen, made only against him in his official capacity as a county official, is a suit against the County itself, and should be dismissed as duplicative.**

Plaintiffs name Defendant Madsen, the public defender, in only one of the claims for damages, Claim 5. *See* Claim 5, description of persons sued and capacities, immediately following the claim heading. He is there named “in his official capacity as a County official.”

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<sup>5</sup> With respect to any damage claim based on the county’s or public defender’s alleged funding decisions regarding public defenders, those Defendants would show first that the public defender has no control over the amount of funding which his office receives from the county, and that, as discussed below, public defender Madsen is a duplicative defendant.

Assuming without conceding that this Defendant did indeed act in the capacity of a county official, this claim should nevertheless be dismissed as duplicative, because it is the equivalent of a suit against the County itself. *See, e.g., Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004)(district court correctly held that the § 1983 claim against Martin [a local government official] in his official capacity as Superintendent is essentially a claim against the Board and thus should be dismissed as duplicative); *Price v. Town of Atl. Beach*, 2015 WL 58115, at \*2 (D.S.C. 2015)( action against a defendant in his official capacity is treated under federal law as an action against the municipality, citing *Kentucky v. Graham*, 473 U.S. 159, 166, (1985). For these reasons, the damage claim against Defendant Madsen in his official capacity as a county official should be dismissed.<sup>6</sup>

### CONCLUSION

For the foregoing reasons, Defendants submit that their Motion for Summary Judgment on Damage Claims be granted, and all such claims dismissed.

*[Signature block is on following page]*

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<sup>6</sup> It is assumed without conceding that Defendant Madsen did indeed act as a county official, as Plaintiffs claim. If he is regarded as a state official, he would likewise be entitled to immunity from a damage claim brought against him in his official capacity. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70 (1989).

Respectfully submitted,

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ATTORNEYS for Defendants

Columbia, South Carolina

October 31, 2017

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Twanda Marshinda Brown, et al,	)	Civil Action No.
	)	
Plaintiffs,	)	3:17-1426-MBS-SVH
	)	
v.	)	<b>ANSWER OF GARY REINHART,</b>
	)	<b>REBECCA ADAMS AND ALBERT JOHN</b>
Lexington County, South Carolina, et al.,	)	<b>DOOLEY, III TO SECOND AMENDED</b>
Defendants.	)	<b>COMPLAINT</b>
	)	
	)	<b>JURY TRIAL REQUESTED</b>
	)	
_____	)	

Defendants Gary Reinhart, Rebecca Adams and Albert John Dooley, III, answering the Second Amended Complaint herein, allege and shows the following:

**FOR A FIRST DEFENSE**

1. The Second Amended Complaint fails to state a claim upon which relief can be granted as to these Defendants.

**FOR A SECOND DEFENSE**

2. Any allegation of the Second Amended Complaint not hereinafter admitted or qualified is denied. In addition, Judge Reinhart denies for lack of information all allegations of the Second Amended Complaint pertaining to individual cases handled by Judge Adams, and Judge Adams denies for lack of information all allegations of the Second Amended Complaint pertaining to individual cases handled by Judge Reinhart. Judge Dooley, who is not alleged to have handled the individual cases of any of the named Plaintiffs, denies for lack of information all allegations of the Second Amended Complaint pertaining to individual cases handled by

Judges Reinhart and Adams. Any admissions pertaining to those individual cases are made only on behalf of the Defendant magistrate who was assigned to the case.

3. Paragraph 1 is denied.

4. Answering Paragraphs 2 and 3, these Defendants would refer the Court to the pertinent court records for the best evidence of what occurred. Except as expressly admitted, Paragraphs 2 and 3 are denied.

5. The first sentence of Paragraph 4 is denied as stated. Answering the remainder of Paragraph 4, these Defendants would refer the Court to pertinent county records for records for the best evidence of what occurred. Except as expressly admitted, Paragraph 4 is denied.

6. Paragraph 5 is denied.

7. Paragraphs 6 through 8 are denied.

8. Paragraph 9 pertains to another Defendant, and as such requires no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

9. Paragraph 10 is denied.

10. Paragraph 11 pertains to other Defendants, and as such requires no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

11. The first two sentences of Paragraph 12 are denied. Answering the third and last sentence of Paragraph 12, these Defendants would refer the Court to pertinent county records for the best evidence of what occurred. Except as expressly admitted, Paragraph 12 is denied.

12. Paragraph 13 is denied.

13. The first sentence of Paragraph 14 is denied. The remainder of Paragraph 14 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

14. Paragraph 15 is denied for lack of information.

15. Paragraph 16 is denied.

16. Answering the first and second sentences of Paragraph 17, these Defendants would allege that Plaintiff Goodwin is subject to appropriate sanctions until he comes into compliance with outstanding legal requirements. The third sentence of Paragraph 17 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof..

17. Answering Paragraph 18, it is denied that these Defendants violated any legal rights of Plaintiffs. These Defendants deny for lack of information the allegations of Paragraph 18 pertaining to alleged adverse effects on Plaintiffs. The second and last sentence of Paragraph 18 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

18. Answering Paragraphs 19 through 25, these Defendants know only such information about the individual Plaintiffs as is to be found in county records. To the extent the allegations of those paragraphs set forth information not found in county records, such allegations are denied for lack of information.

19. Paragraph 26 pertains to other Defendants, and as such requires no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

20. The first two sentences of Paragraph 27 are admitted. Answering the third sentence of Paragraph 27, these Defendants would refer the Court to applicable statutes and other legal authorities for the best evidence of the duties of the Chief Judge for Administrative Purposes of the Summary Courts. The fourth sentence of Paragraph 27 is denied. The fifth sentence of Paragraph 27 is admitted. The sixth and seventh sentences of Paragraph 27 are merely descriptive of Plaintiffs' allegations, and require neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

21. The first three sentences of Paragraph 28 are admitted. The fourth sentence of Paragraph 28 is denied. The fifth sentence of Paragraph 28 is admitted. The sixth and seventh sentences of Paragraph 28 are merely descriptive of Plaintiffs' allegations, and require neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

22. The first sentence of Paragraph 29 is admitted. The second and third sentences of Paragraph 29 are denied. The fourth sentence of Paragraph 29 is merely descriptive of Plaintiff Goodwin's allegations, and require neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

23. The first two sentences of Paragraph 30 are admitted. Answering the third sentence of Paragraph 30, these Defendants would refer the Court to applicable statutes and other legal authorities for the best evidence of the duties of the Associate Chief Judge for Administrative Purposes of the Summary Courts. The fourth sentence of Paragraph 30 is denied. The fifth sentence of Paragraph 30 is admitted. The sixth sentence of Paragraph 30 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

24. Paragraphs 31 and 32 pertain to other Defendants, and as such require no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

25. Paragraph 33 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

26. Paragraph 34 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

27. Paragraphs 35 through 37 set forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

28. Answering Paragraphs 38 and 39, these Defendants would refer the Court to the census records therein cited for the best evidence of their contents. Except as expressly admitted, Paragraphs 38 and 39 are denied.

29. Paragraph 40, which is essentially speculative, is denied for lack of information.

30. Answering Paragraph 41, these Defendants would refer the Court to pertinent county records for the best evidence of the matters therein alleged. Except as expressly admitted, Paragraph 41 is denied.

31. Paragraph 42 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

32. Answering Paragraphs 43 through 46, these Defendants would refer the Court to the pertinent county records therein referenced for the best evidence of their contents. Except as expressly admitted, Paragraphs 43 through 46 are denied.

33. Paragraphs 47 through 65 pertain to other Defendants, and as such require no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

34. Answering Paragraphs 66 through 73, these Defendants would refer the Court to the documents therein referenced for the best evidence of their contents. Except as expressly admitted, Paragraphs 66 through 73 are denied.

35. Paragraphs 74 through 79 pertain to other Defendants, and as such require no response from these Defendants. To the extent, if any, that such allegations may attempt to

establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

36. Answering Paragraphs 80 through 86, these Defendants would refer the Court to the June 28, 2017 Order of Chief Justice Beatty, providing for Chief Judges for Administrative Purposes of the Summary Courts, for the best evidence of the matters alleged in those paragraphs.

37. Paragraph 87 is denied.

38. Paragraphs 88 through 90 are denied.

39. Answering Paragraph 91, it is admitted that the court collection fee is charged, but these Defendants would show that the fee is imposed by state law. The remainder of Paragraph 91 is denied. Except as expressly admitted, Paragraph 91 is denied.

40. Paragraphs 92 through 99 are denied.

41. Paragraphs 100 and 101 are denied for lack of information.

42. Paragraphs 102 through 105 are denied.

43. Answering Paragraph 106, these Defendants would show that in cases involving trial in absentia or the issuance of bench warrants, the criminal defendant is by definition not before the court, so the notification therein referenced is not possible. Except as expressly admitted, Paragraph 106 is denied.

44. Paragraphs 107 through 109 are denied.

45. Paragraphs 110 and 111 are denied.

46. Answering the first sentence of Paragraph 112, these Defendants would refer the Court to pertinent provisions of state law for the best evidence of the matters referenced therein. The remainder of Paragraph 112 is denied.

47. Answering the first sentence of Paragraph 113, these Defendants would refer the Court to pertinent provisions of state law for the best evidence of the matters referenced therein. The remainder of Paragraph 113 is denied.

48. Paragraph 114 is denied.

49. Answering the first sentence of Paragraph 115, these Defendants would refer the Court to pertinent provisions of state law for the best evidence of the matters referenced therein. The second sentence of Paragraph 115 is admitted, because these Defendants are not aware of any noncompliance of the type referenced therein. Except as expressly admitted, Paragraph 115 is denied.

50. Answering the first sentence of Paragraph 116, these Defendants would refer the Court to pertinent provisions of state law for the best evidence of the matters referenced therein. Answering the second sentence of Paragraph 116, these Defendants deny that they have the authority to make the kinds of decisions referenced therein. Except as expressly admitted, Paragraph 116 is denied.

51. Paragraph 117 is denied.

52. Answering Paragraph 118, these Defendants would refer the Court to pertinent provisions of state law and the Bench Book for the best evidence of the matters referenced therein. Except as expressly admitted, Paragraph 118 is denied.

53. Paragraph 119 is denied.

54. Answering the first sentence of Paragraph 120, these Defendants would refer the Court to pertinent provisions of state law for the best evidence of the matters referenced therein. The second and third sentences of Paragraph 120 are denied. Except as expressly admitted, Paragraph 120 is denied.

55. Paragraph 121 is denied.

56. Paragraphs 122 through 128 pertain to another Defendant, and as such require no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

57. Paragraph 129 is denied.

58. Answering Paragraphs 130 and 131, these Defendants deny that the kinds of hearings referenced therein are never held. The remainder of Paragraphs 130 and 131 are denied.

59. Answering Paragraph 132, these Defendants would refer the Court to pertinent provisions of state law for the best evidence of the matters alleged therein. Except as expressly admitted, Paragraph 132 is denied.

60. Paragraphs 133 and 134 are denied.

61. Paragraph 135 pertains to another Defendant, and as such requires no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

62. The first sentence of Paragraph 136 is denied. The second sentence of Paragraph 136 is denied for lack of information.

63. Paragraphs 137 through 140 are denied for lack of information.

64. Answering Paragraph 141, these Defendants would refer the Court to the ticket therein referenced for the best evidence of what occurred. Except as expressly admitted, Paragraph 141 is denied.

65. Paragraph 142 is admitted.

66. Paragraphs 143 and 144 are denied.

67. The first sentence of Paragraph 145 is admitted. Answering the second sentence of Paragraph 145, Judge Adams would advise that Plaintiff Brown was charged with driving under suspension, third offense, and was sentenced for that offense. Except as expressly admitted, Paragraph 145 is denied.

68. Paragraph 146 is denied.

69. The first two sentences of Paragraph 147 are denied for lack of information. The third sentence of Paragraph 147 is denied.

70. Paragraph 148 is denied.

71. Answering Paragraph 149, it is admitted that Judge Adams advised Ms. Brown, although not using the language in that paragraph, that she would require certain scheduled monthly payments in the amount of \$100 per month Except as expressly admitted, Paragraph 149 is denied.

72. Answering Paragraph 150, it is admitted that Judge Adams advised Ms. Brown of the possibility of incarceration if the fines were not paid according to the monthly schedule. Except as expressly admitted, Paragraph 150 is denied.

73. Answering Paragraph 151, it is admitted that Judge Adams did not specifically inquire into the matters therein alleged. However, Judge Adams did take into consideration Ms. Brown's ability to pay by setting the monthly payment at the low amount of \$100 per month. Except as expressly admitted, Paragraph 151 is denied.

74. Paragraph 152 is denied for lack of information.

75. Paragraph 153 is denied.

76. Paragraph 154 is denied.

77. Answering Paragraph 155, it is admitted that Ms. Brown signed the Scheduled Time Payment Agreement. Except as expressly admitted, Paragraph 155 is denied.

78. Answering Paragraph 156, these Defendants would refer the Court to the Scheduled Time Payment Agreement for the best evidence of its content. Judge Adams would advise that Plaintiff Brown was charged with driving under suspension, third offense, and was sentenced for that offense. Except as expressly admitted, Paragraph 156 is denied.

79. The first sentence of Paragraph 157 is denied. Answering the second sentence of Paragraph 157, these Defendants would refer the Court to the records therein referenced for the best evidence of their contents. Except as expressly admitted, Paragraph 157 is denied.

80. Paragraph 158 is denied.

81. Paragraph 159 is admitted.

82. Paragraphs 160 through 162 are denied for lack of information.

83. Answering Paragraph 163, these Defendants would refer the Court to the records therein referenced for the best evidence of their contents. Judge Adams would advise that Plaintiff Brown was charged with driving under suspension, third offense, and was sentenced for that offense. Except as expressly admitted, Paragraph 163 is denied.

84. Paragraphs 164 through 175 are denied for lack of information.

85. Paragraphs 176 through 185 are denied for lack of information.

86. Paragraph 186 is admitted.

87. Paragraph 187 is denied.

88. Answering the first sentence of Paragraph 188, these Defendants would refer the Court to the document referenced therein for the best evidence of its contents. The second sentence of Paragraph 188 is denied for lack of information.

89. Answering the first sentence of Paragraph 189, these Defendants would refer the Court to the document referenced therein for the best evidence of its contents. the second sentence of Paragraph 189 is denied.

90. Answering Paragraph 190, it is admitted that an address of some sort was entered on the Trial Information and Plea Sheet. The remainder of Paragraph 190 is denied for lack of information.

91. Paragraphs 191 and 192 are denied.

92. Answering the first two sentences of Paragraph 193, Judge Adams would show that she did engage in a colloquy with Ms. Darby regarding representation by counsel. The third sentence of Paragraph 193 is denied. Except as expressly admitted, Paragraph 193 is denied.

93. Paragraph 194 is denied.

94. Paragraph 195 is admitted.

95. Answering Paragraph 196, Judge Adams would show that she advised Ms. Darby that she had the option to pay a fine of \$1,000 or of serving 30 days in jail. Except as expressly admitted, Paragraph 196 is denied.

96. The first sentence of Paragraph 197 is admitted. The second sentence of Paragraph 197 is denied. Answering the third sentence of Paragraph 197, Judge Adams would show that Ms. Darby stated that she could pay the entire fine that day. Except as expressly admitted, Paragraph 197 is denied.

97. Answering Paragraph 198, it is admitted that Judge Adams asked Ms. Darby where she worked. It is further admitted that Judge Adams asked no other questions about Ms. Darby's ability to pay, because Ms. Darby had advised that she was able to pay the entire fine that day. Except as expressly admitted, Paragraph 198 is denied.

98. Answering Paragraph 199, it is denied that Judge Adams did not tell Ms. Darby the amount of the fine imposed. It is admitted that Judge Adams did not ask the referenced questions about Ms. Darby's ability to pay, because Ms. Darby had advised that she was able to pay the entire fine that day. Except as expressly admitted, Paragraph 199 is denied.

99. Paragraph 200 is denied.

100. The first two sentences of Paragraph 201 are admitted. Only so much of the third sentence of Paragraph 201 is admitted as alleges that Ms. Darby sought to show Judge Adams that she would try to pay the fine as soon as possible. Except as expressly admitted, Paragraph 201 is denied.

101. Only so much of Paragraph 202 is admitted as alleges that Ms. Darby was ordered to pay \$150 per month. Except as expressly admitted, Paragraph 202 is denied.

102. Paragraph 203 is admitted.

103. The first sentence of Paragraph 204 is denied for lack of information. Answering the second sentence of Paragraph 204, these Defendants would refer the Court to the document referenced therein for the best evidence of its contents. Except as expressly admitted, Paragraph 204 is denied.

104. The first sentence of Paragraph 205 is denied for lack of information. The second sentence of Paragraph 205 is admitted.

105. Paragraphs 206 and 207 are denied for lack of information.

106. Answering Paragraph 208, these Defendants would refer the Court to the bench warrant referenced therein for the best evidence of its contents. Except as expressly admitted, Paragraph 208 is denied.

107. Paragraphs 209 through 213 are denied for lack of information.

108. The first set of paragraphs numbered 214 through 221 (pp. 52-53) are denied for lack of information.

109. The second set of Paragraphs 214 through 219 (p. 53) are denied for lack of information.

110. The second set of Paragraphs 220 and 221 (pp. 53-54) are admitted.

111. Paragraph 222 is denied for lack of information.

112. Paragraphs 223 through 227 are denied.

113. Answering Paragraph 228, these Defendants would refer the Court to the pertinent court records for the best evidence of what occurred. Except as expressly admitted, Paragraph 228 is denied.

114. Answering Paragraph 229, Judge Reinhart would show that Ms. Johnson was given notice that her trial date would be September 22, 2016. Except as expressly admitted, Paragraph 229 is denied.

115. Answering Paragraph 230, these Defendants would refer the Court to the bench warrant referenced therein for the best evidence of what occurred. Except as expressly admitted, Paragraph 230 is denied.

116. Paragraphs 231 through 242 are denied for lack of information.

117. Answering Paragraphs 243 and 244, these Defendants would refer the Court to the pertinent court records for the best evidence of the matters therein alleged. Except as expressly admitted, Paragraphs 243 and 244 are denied.

118. Paragraph 245 is denied for lack of information.

119. Paragraphs 246 through 253 are denied for lack of information.

120. Answering Paragraph 254, these Defendants would refer the Court to the pertinent court records for the best evidence of what occurred. Except as expressly admitted, Paragraph 254 is denied.

121. Paragraph 255 is denied for lack of information.

122. Paragraphs 256 through 259 are denied.

123. Paragraph 260 is admitted.

124. Answering Paragraph 261, Judge Reinhart would show that Ms. Palacios was given notice that her trial date would be November 10, 2016. Except as expressly admitted, Paragraph 261 is denied.

125. Answering Paragraph 262, these Defendants would refer the Court to the bench warrant referenced therein for the best evidence of what occurred. Except as expressly admitted, Paragraph 262 is denied.

126. Paragraphs 263 through 278 are denied for lack of information.

127. Answering Paragraph 279, these Defendants would refer the Court to the pertinent court records for the best evidence of what occurred. Except as expressly admitted, Paragraph 279 is denied.

128. Paragraphs 280 through 321 are denied for lack of information.

129. The paragraphs numbered 222 and 223 on pp. 67-68 are denied for lack of information.

130. Paragraphs 322 through 325 are denied for lack of information.

131. Answering Paragraph 326, these Defendants would refer the Court to the pertinent court records for the best evidence of what occurred. Except as expressly admitted, Paragraph 326 is denied.

132. Answering Paragraph 327, Judge Reinhart would show that the pertinent records contain no evidence that the phone call referenced therein actually occurred. The remainder of Paragraph 327, except the reference to opening hours (which is admitted) is denied for lack of information. Except as expressly admitted, Paragraph 327 is denied.

133. Paragraph 328 is admitted. Neither Judge Reinhart nor Judge Adams presided over Mr. Goodwin's cases therein referenced.

134. Answering Paragraph 329, these Defendants would show that Mr. Goodwin was given notice that his trial date would be August 9, 2016. Except as expressly admitted, Paragraph 329 is denied.

135. Answering Paragraph 330, these Defendants would refer the Court to the bench warrant referenced therein for the best evidence of what occurred. Except as expressly admitted, Paragraph 330 is denied.

136. Paragraphs 331 through 333 are denied for lack of information.

137. The first sentence of Paragraph 334 is denied for lack of information. Answering the remainder of Paragraph 334, these Defendants would refer the Court to the ticket referenced therein for the best evidence of its contents. Except as expressly admitted, Paragraph 334 is denied.

138. Paragraphs 335 and 336 are denied for lack of information.

139. Paragraph 337 is admitted on information and belief.

140. Paragraph 338 is denied for lack of information.

141. Paragraph 339 is admitted.

142. Paragraphs 340 and 341 are denied.

143. Answering the first two sentences of Paragraph 342, these Defendants would refer the Court to pertinent court records for the best evidence of the matters therein alleged. The remainder of Paragraph 342 is denied.

144. The first sentence of Paragraph 343 is admitted. Answering the second sentence of Paragraph 343, it is admitted that Judge Adams advised Mr. Goodwin that incarceration was possible if he failed to comply with the payment plan, but it is denied that she “threatened” him.

145. Paragraphs 344 through 352 are denied for lack of information.

146. Paragraph 353 is admitted.

147. Paragraphs 354 is denied for lack of information.

148. Paragraph 355 is denied for lack of information. With respect to any amounts owed by Plaintiff Goodwin, these Defendants would refer the Court to the pertinent court records for the best evidence of the matters alleged therein. Except as expressly admitted, Paragraph 355 is denied.

149. Paragraph 356 is denied for lack of information.

150. Paragraphs 357 and 358 are denied for lack of information. With respect to any amounts paid by Plaintiff Goodwin, or owed by Plaintiff Goodwin, these Defendants would refer the Court to the pertinent court records for the best evidence of the matters alleged therein. Except as expressly admitted, Paragraphs 357 and 358 are denied.

151. Paragraph 359 is denied.

152. Paragraphs 360 through 362 are denied for lack of information.

153. Paragraphs 363 and 364 are admitted on information and belief.

154. Paragraph 365 is denied for lack of information.

155. Answering Paragraph 366, these Defendants would refer the Court to pertinent court records for the best evidence of the matters therein alleged. Except as expressly admitted, Paragraph 366 is denied.

156. Paragraphs 367 through 369 are denied for lack of information.

157. The first sentence of Paragraph 370 is denied for lack of information. Answering the remainder of Paragraph 370, these Defendants would refer the Court to pertinent court records for the best evidence of the matters therein alleged. Except as expressly admitted, Paragraph 370 is denied.

158. Paragraphs 371 and 372 are denied for lack of information.

159. Paragraph 373 is admitted.

160. Paragraphs 374 through 381 are denied for lack of information.

161. Answering the added Paragraph 224 on p. 77, these Defendants would refer the Court to the bench warrant therein referenced for the best evidence of its contents. Except as expressly admitted, that paragraph is denied.

162. Paragraphs 382 through 393 are denied for lack of information.

163. Answering Paragraph 394, these Defendants would show that Plaintiffs would not have been booked in the Detention Center if they had either paid the entire amount of the court fines and fees or attempted to make other arrangements. Except as expressly admitted, Paragraph 394 is denied.

164. Answering Paragraph 395, these Defendants would shown that Plaintiffs Goodwin and Wright would not have faced, or would not continue to face, alleged threats of arrest and incarceration Center if they had either paid the entire amount of the court fines and

fees or attempted to make other arrangements. Except as expressly admitted, Paragraph 395 is denied.

165. Paragraphs 396 and 397 are denied.

166. Answering Paragraph 398, these Defendants would show that on information and belief, none of the named Plaintiffs requested to be taken before a judge after being arrested on a bench warrant. Except as expressly admitted, Paragraph 398 is denied.

167. Paragraph 399 is denied.

168. Paragraph 400 through 404 are denied for lack of information.

169. Answering Paragraph 405, these Defendants would advise that Plaintiff Wright has no pending or ongoing proceedings in any Lexington County summary court. However, Mr. Goodwin still owes over \$2,100 in fines for his DUS, 3rd offense, and as a result, it is denied that the Irmo Magistrate Court has completely concluded its proceedings concerning the DUS, 3rd offense, for which Mr. Goodwin was convicted and sentenced to fines and fees. The third sentence of Paragraph 405 is admitted on information and belief.

170. Answering Paragraph 406, these Defendants would allege on information and belief that Plaintiffs Goodwin and Wright both agreed to pay the court fines and fees that were outstanding. Except as expressly admitted, Paragraph 406 is denied.

171. The first sentence of Paragraph 407 is denied on information and belief. Answering the second sentence of Paragraph 407, these Defendants would refer the Court to court records pertaining to the matters alleged therein, Except as expressly admitted, Paragraph 407 is denied.

172. The first sentence of Paragraph 408 is denied on information and belief. The second sentence of Paragraph 408 is admitted on information and belief. The third sentence of Paragraph 408 is denied on information and belief.

173. The first sentence of Paragraph 409 is denied on information and belief. The second sentence of Paragraph 409 is admitted on information and belief. The third sentence of Paragraph 409 is denied on information and belief.

174. Answering Paragraphs 410 through 418, these Defendants would refer the Court to the records therein referenced for the best evidence of their contents. Except as expressly admitted, Paragraphs 410 through 418 are denied.

175. Paragraph 419 consists of pure speculation, and is denied for lack of information.

176. Paragraph 420 is denied. The records do not disclose whether the persons in the records are indigent or not.

177. Answering Paragraphs 421 and 422, these Defendants would refer the Court to the records therein referenced for the best evidence of their contents. Except as expressly admitted, Paragraphs 421 and 422 are denied.

178. Answering Paragraph 423, these Defendants would refer the Court to the records therein referenced for the best evidence of their contents. These Defendants deny the inferences in Paragraph 423 which Plaintiff's counsel seek to draw from the records. Except as expressly admitted, Paragraph 423 is denied.

179. Paragraphs 424 through 428 are denied.

180. Paragraph 429 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright. and require neither admission nor denial. To the extent, if any, that such allegations may

attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

181. Paragraph 430 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

182. Paragraphs 431 and 432 are denied.

183. Paragraph 433 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

184. Paragraphs 434 and 435 are denied.

185. Answering Paragraph 436, these Defendants would refer the Court to the records therein referenced for the best evidence of their contents. These Defendants deny the inferences in Paragraph 436 which Plaintiff's counsel seek to draw from the records. Except as expressly admitted, Paragraph 436 is denied.

186. Paragraph 437 is admitted.

187. Paragraph 438 is denied for lack of information, except for the last sentence of that paragraph, which is denied.

188. Paragraph 439 is denied.

189. The first sentence of Paragraph 440 is denied. The remainder of Paragraph 440 is denied for lack of information.

190. Paragraph 441 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations

may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

191. Paragraphs 442 and 443 are denied for lack of information.

192. Paragraph 444 is denied.

193. Paragraphs 445 through 448 are admitted on information and belief.

194. Paragraph 449 is denied.

195. Paragraph 450, requesting a trial by jury, requires neither admission nor denial.

196. Answering Paragraph 451, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

197. Paragraph 452 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

198. Paragraph 453 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

199. The first sentence of Paragraph 454 is denied. The remainder of Paragraph 454 is denied for lack of information.

200. Answering Paragraphs 455 and 456, these Defendants would refer the Court to pertinent court records for the matters of record which are therein alleged. The remainder of Paragraphs 455 and 456 is denied for lack of information. Except as expressly admitted, Paragraphs 455 and 456 are denied.

201. The first sentence of Paragraph 457 is denied for lack of information. The second sentence of Paragraph 457 is denied.

202. Paragraph 458 is denied.

203. Paragraph 459 does not make allegations against these Defendants, and as such require no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

204. Paragraphs 460 and 461 are denied.

205. Answering Paragraph 462, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

206. Paragraph 463 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

207. Paragraph 464 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

208. Paragraph 465 is denied.

209. Answering Paragraphs 466 and 467, these Defendants would refer the Court to pertinent court records for the matters of record which are therein alleged. The remainder of Paragraphs 466 and 467 is denied for lack of information. Except as expressly admitted, Paragraphs 466 and 467 are denied.

210. Paragraphs 468 through 471 pertain to other Defendants, and as such require no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

211. Paragraphs 472 through 474 are denied.

212. Paragraph 475 pertains to another Defendant, and as such requires no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

213. The first sentence of Paragraph 476 is denied. The second sentence of Paragraph 476 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

214. Paragraph 477 is denied.

215. Answering Paragraph 478, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

216. Paragraph 479 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

217. Paragraph 480 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

218. Paragraphs 481 and 482 are denied.

219. Paragraph 483 pertains to another Defendant, and as such requires no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

220. The first sentence of Paragraph 484 is denied. The second sentence of Paragraph 484 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

221. Paragraph 485 is denied.

222. Answering Paragraph 486, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

223. Paragraph 487 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

224. Paragraph 488 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

225. Paragraphs 489 through 491 are denied.

226. Paragraph 492 pertains to another Defendant, and as such requires no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

227. Paragraph 493 is denied.

228. Paragraph 494 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

229. Answering Paragraph 495, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

230. Paragraph 496 is merely descriptive, and requires no response from these Defendants.

231. Paragraph 497 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

232. Paragraph 498 is denied.

233. Paragraphs 499 and 500 pertain to other Defendants, and as such require no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

234. Paragraphs 501 and 502 are denied.

235. Paragraph 503 is merely descriptive of the relief sought by Plaintiffs, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

236. Answering Paragraph 504, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

237. Paragraph 505 is merely descriptive, and requires no response from these Defendants.

238. Paragraph 506 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

239. Paragraphs 507 through 516 are denied.

240. Paragraph 517 pertains to another Defendant, and as such requires no response from these Defendants. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

241. Paragraph 518 is denied.

242. Paragraph 519 is merely descriptive of the relief sought by Plaintiffs, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

243. Answering Paragraph 520, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

244. Paragraph 521 is merely descriptive, and requires no response.

245. Paragraph 522 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

246. Answering Paragraph 523, these Defendants would refer the Court to pertinent court records for the matters of record which are therein alleged. The remainder of Paragraph 523 is denied for lack of information. Except as expressly admitted, Paragraph 523 is denied.

247. Paragraph 524 is denied.

248. The first two sentences of Paragraph 525 are denied. Answering the third sentence of Paragraph 525, it is admitted that Plaintiff Goodwin signed a Scheduled Time Payment Agreement. The remainder of Paragraph 525 is denied for lack of information.

249. The first sentence of Paragraph 526 is denied for lack of information. The second sentence of Paragraph 526 is denied.

250. Paragraph 527 is denied.

251. Answering Paragraph 528, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

252. Paragraph 529 is merely descriptive, and requires no response.

253. Paragraph 530 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

254. Answering Paragraph 531, these Defendants would refer the Court to pertinent court records for the matters of record which are therein alleged. The remainder of Paragraph 531 is denied for lack of information. Except as expressly admitted, Paragraph 531 is denied.

255. Paragraph 532 is denied.

256. Paragraph 533 is denied for lack of information.

257. Paragraphs 534 and 535 are denied.

258. Any remaining allegations of the Second Amended Complaint, including the Prayer for Relief on pp. 121-122, are denied.

**FOR A THIRD DEFENSE**

259. Plaintiffs' claims are barred by the United States Supreme Court's holding in *Heck v. Humphrey*.

**FOR A FOURTH DEFENSE**

260. Plaintiffs' claims are barred, in whole or in part, by operation of the *Rooker-Feldman* doctrine.

**FOR A FIFTH DEFENSE**

261. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

**FOR A SIXTH DEFENSE**

262. Plaintiffs' claims are barred, in whole or in part, by absolute legislative immunity.

**FOR A SEVENTH DEFENSE**

263. Plaintiffs' claims are barred, in whole or in part, by res judicata or claim preclusion.

**FOR AN EIGHTH DEFENSE**

264. The Plaintiff's claims are barred, in whole or in part, by collateral estoppel or issue preclusion.

**FOR A NINTH DEFENSE**

265. The acts of which Plaintiffs complain are the result of valid judicial orders.

**FOR A TENTH DEFENSE**

266. To the extent that there are still ongoing criminal prosecutions involving any of the Plaintiffs, including the enforcement and completion of Plaintiffs' sentences, this action is barred by the abstention doctrine of *Younger v. Harris*.

**FOR AN ELEVENTH DEFENSE**

267. Plaintiffs' claims are barred, in whole or in part, by judicial or quasi-judicial immunity.

**FOR A TWELFTH DEFENSE**

268. Injunctive relief against these Defendants is barred under the terms of 42 U.S.C. § 1983.

**FOR A THIRTEENTH DEFENSE**

269. Attorneys' fees against these Defendants are not authorized by 42 U.S.C. § 1988.

**FOR A TWELFTH DEFENSE**

270. These Defendants are immune from suit pursuant to the Eleventh Amendment of the United States Constitution.

**FOR A THIRTEENTH DEFENSE**

271. Some or all of Plaintiffs' claims are barred by the Doctrine of Sovereign Immunity.

**FOR A FOURTEENTH DEFENSE**

272. These Defendants at no time violated any clearly established statutory or constitutional rights which were known or should have been known to them and therefore are entitled to qualified immunity from suit.

**FOR A FIFTEENTH DEFENSE**

273. Some or all Plaintiffs have waived any claim they may have had to challenge some or all of the matters of which they complain.

**FOR A SIXTEENTH DEFENSE**

274. Some or all Plaintiffs are estopped from challenging some or all of the matters of which they complain.

**FOR A SEVENTEENTH DEFENSE**

275. The claims of some or all Plaintiffs are moot, in whole or in part.

**FOR AN EIGHTEENTH DEFENSE**

276. Some or all of the claims of some or all Plaintiffs no longer present an existing case or controversy.

**FOR A NINETEENTH DEFENSE**

277. The Court lacks subject matter jurisdiction over some or all of the claims in this action.

**FOR A TWENTIETH DEFENSE**

278. The damages alleged, if any, were proximately caused by intervening and/or superseding acts of parties beyond the control and unrelated to any actions or conduct of these Defendants.

WHEREFORE, having fully answered the Second Amended Complaint, these Defendants pray that the Second Amended Complaint be dismissed with prejudice, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

*BY: s/ Kenneth P. Woodington*

WILLIAM H. DAVIDSON, II, Fed. I.D. No. 425

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ATTORNEYS for Defendants Reinhart, Adams and  
Dooley

Columbia, South Carolina

November 1, 2017

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Twanda Marshinda Brown, et al,	)	Civil Action No.
	)	
Plaintiffs,	)	3:17-1426-MBS-SVH
	)	
v.	)	<b>ANSWER OF BRYAN KOON TO SECOND</b>
	)	<b>AMENDED COMPLAINT</b>
Lexington County, South Carolina, et al.,	)	
Defendants.	)	<b>JURY TRIAL REQUESTED</b>
	)	
	)	
	)	
_____	)	

Defendant Bryan Koon, answering the Second Amended Complaint herein, alleges and shows the following:

**FOR A FIRST DEFENSE**

1. The Second Amended Complaint fails to state a claim upon which relief can be granted as to this Defendant.

**FOR A SECOND DEFENSE**

2. Any allegation of the Second Amended Complaint not hereinafter admitted or qualified is denied.

3. Paragraph 1 is denied.

4. Answering Paragraphs 2 and 3, this Defendant would refer the Court to the pertinent court records for the best evidence of what occurred. Except as expressly admitted, Paragraphs 2 and 3 are denied.

5. The first sentence of Paragraph 4 is denied as stated. Answering the remainder of Paragraph 4, this Defendant would refer the Court to pertinent county records for records for the best evidence of what occurred. Except as expressly admitted, Paragraph 4 is denied.

6. Paragraph 5 is denied.

7. Paragraphs 6 through 8 pertain to other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

8. Answering the first two sentences of Paragraph 9, this Defendant would refer the Court to state statutes for the best evidence of his statutory duties, to which those sentences refer. Answering the third sentence of Paragraph 9, this Defendant only admits that the Sheriff's Department, pursuant to court orders and statutes, executes bench warrants which are valid on their face. Answering the fourth sentence of Paragraph 9, this Defendant would deny that the allegations of that sentence pertain to any action or inaction of this Defendant.

9. Paragraphs 10 and 11 pertain to other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

10. The first two sentences of Paragraph 12 are denied. Answering the third and last sentence of Paragraph 12, this Defendant would refer the Court to pertinent county records for the best evidence of what occurred. Except as expressly admitted, Paragraph 12 is denied.

11. Paragraph 13 is denied.

12. The first sentence of Paragraph 14 is denied. The remainder of Paragraph 14 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations

attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

13. Paragraph 15 is denied for lack of information.

14. Paragraph 16 is denied.

15. The first and second sentences of Paragraph 17 are denied for lack of information.

The third sentence of Paragraph 17 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

16. Answering Paragraph 18, it is denied that this Defendant violated any legal rights of Plaintiffs. This Defendant denies for lack of information the allegations of Paragraph 18 pertaining to alleged adverse effects on Plaintiffs. The second and last sentence of Paragraph 18 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

17. Answering Paragraphs 19 through 25, this Defendant knows only such information about the individual Plaintiffs as is to be found in county records. To the extent the allegations of those paragraphs set forth information not found in county records, such allegations are denied for lack of information.

18. Paragraphs 26 through 30 pertain to other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

19. Answering the first three sentences of Paragraph 31, this Defendant would refer the Court to state statutes for the best evidence of his statutory duties, to which those sentences refer. Answering the fourth sentence of Paragraph 31, this Defendant only admits that the Sheriff's Department, pursuant to court orders and statutes, executes bench warrants which are valid on their face. The fifth sentence of Paragraph 31, pertaining to this Defendant's residence, is admitted. The sixth sentence of Paragraph 31 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof..

20. Paragraph 32 pertains to another Defendant, and as such requires no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

21. Paragraph 33 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

22. Paragraph 34 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

23. Paragraphs 35 through 37 set forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

24. Answering Paragraphs 38 and 39, this Defendant would refer the Court to the census records therein cited for the best evidence of their contents. Except as expressly admitted, Paragraphs 38 and 39 are denied.

25. Paragraph 40, which is essentially speculative, is denied for lack of information.

26. Answering Paragraph 41, this Defendant would refer the Court to pertinent county records for the best evidence of the matters therein alleged. Except as expressly admitted, Paragraph 41 is denied.

27. Paragraph 42 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

28. Answering Paragraphs 43 through 46, this Defendant would refer the Court to the pertinent county records therein referenced for the best evidence of their contents. Except as expressly admitted, Paragraphs 43 through 46 are denied.

29. Paragraphs 47 through 65 pertain to other Defendants, and as such requires no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

30. Answering Paragraphs 66 through 73, this Defendant would refer the Court to the documents therein referenced for the best evidence of their contents. Except as expressly admitted, Paragraphs 66 through 73 are denied.

31. Paragraphs 74 through 79 pertain to one or more other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt

to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

32. Paragraphs 80 through 120 pertain to other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

33. Paragraph 121 is denied.

34. Answering Paragraph 122, this Defendant would refer the Court to state statutes for the best evidence of his statutory duties.

35. Paragraph 123 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

36. Answering Paragraphs 124 through 126, this Defendant would show that the actions referenced therein involve the execution of bench warrants which are valid on their face and are taken pursuant to court orders and statutes. Except as expressly admitted, Paragraphs 124 through 126 are denied.

37. Paragraphs 127 and 128 do not allege any action by this Defendant that affected any of the Plaintiffs in this case. As such, those paragraphs require neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

38. Paragraph 129 is denied.

39. Paragraphs 130 through 134 pertain to other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to

establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

40. Paragraph 135 does not allege any action by this Defendant that affected any of the Plaintiffs in this case. As such, that paragraph requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

41. Answering the first sentence of Paragraph 136, this Defendant would show that he has no discretion with regard to the matters alleged therein, and therefore denies the allegations of that sentence as applied to him. The second sentence of Paragraph 136 is denied for lack of information.

42. Paragraphs 137 through 143 are denied for lack of information.

43. Paragraphs 144 through 162 pertain to one or more other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

44. Answering Paragraph 163, this Defendant would refer the Court to the bench warrant therein referenced for the best evidence of its contents. Except as expressly admitted, Paragraph 163 is denied.

45. Paragraphs 164 through 175, which contain no allegations pertaining to this Defendant, are denied for lack of information.

46. Paragraphs 176 through 190, which contain no allegations pertaining to this Defendant, are denied for lack of information.

47. Paragraphs 191 through 204 pertain to one or more other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

48. Paragraphs 205 through 207, which contain no allegations pertaining to this Defendant, are denied for lack of information.

49. Answering Paragraph 208, this Defendant would refer the Court to the bench warrant therein referenced for the best evidence of its contents. Except as expressly admitted, Paragraph 208 is denied.

50. Paragraphs 209 through 221 on pp. 51-53 of the Second Amended Complaint, which contain no allegations pertaining to this Defendant, are denied for lack of information.

51. The second set of paragraphs numbered 214 through 221 (pp. 53-54), which contain no allegations pertaining to this Defendant, are denied for lack of information.

52. Paragraphs 222 through 229, which contain no allegations pertaining to this Defendant, are denied for lack of information.

53. Answering Paragraph 230, this Defendant would refer the Court to the bench warrant therein referenced for the best evidence of its contents. Except as expressly admitted, Paragraph 230 is denied.

54. Paragraphs 231 through 245, which contain no allegations pertaining to this Defendant, are denied for lack of information.

55. Paragraphs 246 through 261, which contain no allegations pertaining to this Defendant, are denied for lack of information.

56. Answering Paragraph 262, this Defendant would refer the Court to the bench warrant therein referenced for the best evidence of its contents. Except as expressly admitted, Paragraph 262 is denied.

57. Paragraphs 263 through 279, which contain no allegations pertaining to this Defendant, are denied for lack of information.

58. Paragraphs 280 through 312, which contain no allegations pertaining to this Defendant, are denied for lack of information.

59. Answering Paragraph 313, this Defendant would refer the Court to the bench warrant therein referenced for the best evidence of its contents. Except as expressly admitted, Paragraph 313 is denied.

60. Paragraphs 314 through 321, which contain no allegations pertaining to this Defendant, are denied for lack of information.

61. Answering the paragraph numbered 222 on pp. 67-68, this Defendant would refer the Court to pertinent jail records for the best evidence of what occurred. Except as expressly admitted, that Paragraph 222 is denied.

62. The paragraph numbered 223 on pp. 67-68 is denied for lack of information.

63. Paragraphs 322 through 329, which contain no allegations pertaining to this Defendant, are denied for lack of information.

64. Answering Paragraph 330, this Defendant would refer the Court to the bench warrant therein referenced for the best evidence of its contents. Except as expressly admitted, Paragraph 330 is denied.

65. Paragraphs 331 through 359, which contain no allegations pertaining to this Defendant, are denied for lack of information. To the extent, if any, that such allegations may

attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

66. Paragraphs 360 through 382, including the added Paragraph 224, do not make allegations against this Defendant, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

67. Answering Paragraphs 383 through 393, this Defendant would allege that he has no personal knowledge of the matters alleged therein, and would refer the Court to pertinent records of the Lexington County Detention Center for the best evidence of what occurred. Except as expressly admitted, Paragraphs 383 through 393 are denied.

68. Paragraphs 394 through 403 are denied for lack of information.

69. Paragraphs 404 through 410 do not make allegations against this Defendant, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

70. Answering Paragraphs 411 through 418, this Defendant would refer the Court to the records therein referenced for the best evidence of their contents. Except as expressly admitted, Paragraphs 411 through 418 are denied.

71. Paragraph 419 consists of pure speculation, and is denied for lack of information.

72. Paragraph 420 is denied. The records do not disclose whether the persons in the records are indigent or not.

73. Answering Paragraphs 421 and 422, this Defendant would refer the Court to the records therein referenced for the best evidence of their contents. Except as expressly admitted, Paragraphs 421 and 422 are denied.

74. Answering Paragraph 423, this Defendant would refer the Court to the records therein referenced for the best evidence of their contents. This Defendant denies the inferences in Paragraph 423 which Plaintiff's counsel seek to draw from the records. Except as expressly admitted, Paragraph 423 is denied.

75. Paragraphs 424 through 426 are denied.

76. Paragraph 427 does not make allegations against this Defendant, and as such requires no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

77. Paragraph 428 is denied.

78. Paragraph 429 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

79. Paragraph 430 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

80. Paragraphs 431 and 432 are denied.

81. Paragraph 433 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations

may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

82. Paragraphs 434 and 435 are denied.

83. Answering Paragraph 436, this Defendant would refer the Court to the records therein referenced for the best evidence of their contents. This Defendant denies the inferences in Paragraph 436 which Plaintiff's counsel seek to draw from the records. Except as expressly admitted, Paragraph 436 is denied.

84. Paragraph 437 is admitted.

85. Paragraph 438 is denied for lack of information, except for the last sentence of that paragraph, which is denied.

86. Paragraph 439 is denied.

87. The first sentence of Paragraph 440 is denied. The remainder of Paragraph 440 is denied for lack of information.

88. Paragraph 441 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

89. Paragraphs 442 and 443 are denied for lack of information.

90. Paragraph 444 is denied.

91. Paragraphs 445 through 448 are admitted on information and belief.

92. Paragraph 449 is denied.

93. Paragraph 450, requesting a trial by jury, requires neither admission nor denial.

94. Answering Paragraph 451, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

95. Paragraph 452 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

96. Paragraph 453 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

97. The first sentence of Paragraph 454 is denied. The remainder of Paragraph 454 is denied for lack of information.

98. Answering Paragraphs 455 and 456, this Defendant would refer the Court to pertinent court records for the matters of record which are therein alleged. The remainder of Paragraphs 455 and 456 is denied for lack of information. Except as expressly admitted, Paragraphs 455 and 456 are denied.

99. The first sentence of Paragraph 457 is denied for lack of information. The second sentence of Paragraph 457 is denied.

100. Paragraph 458 does not make allegations against this Defendant, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

101. The first two sentences of Paragraph 459 are denied. The third sentence of Paragraph 459 is denied for lack of information. Answering the fourth sentence of Paragraph

459, this Defendant only admits that the Sheriff's Department, pursuant to court orders and statutes, executes and enforces bench warrants which are valid on their face.

102. The first sentence of Paragraph 460 is denied. The second sentence of Paragraph 460 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

103. Paragraph 461 is denied.

104. Answering Paragraph 462, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

105. Paragraph 463 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

106. Paragraph 464 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

107. Paragraph 465 is denied.

108. Paragraphs 466 and 467 are denied for lack of information, except for the last sentence of Paragraph 467, which is admitted on information and belief.

109. Paragraphs 468 through 474 pertain to one or more another Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may

attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

110. The first sentence of Paragraph 475 is denied. Answering the second sentence of Paragraph 475, this Defendant only admits that the Sheriff's Department, pursuant to court orders and statutes, executes and enforces bench warrants which are valid on their face. The third sentence of Paragraph 475 is denied for lack of information, except that this Defendant admits that the Sheriff's Department, pursuant to court orders and statutes, executes and enforces bench warrants which are valid on their face. Except as expressly admitted, Paragraph 475 is denied.

111. The first sentence of Paragraph 476 is denied. The second sentence of Paragraph 476 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

112. Paragraph 477 is denied.

113. Answering Paragraph 478, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

114. Paragraph 479 is merely descriptive of the allegations of Plaintiffs Goodwin and Wright, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

115. Paragraph 480 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

116. Paragraphs 481 and 482 pertain to other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

117. Paragraphs 483 through 485 are denied.

118. Answering Paragraph 486, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

119. Paragraph 487 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

120. Paragraph 488 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

121. Paragraphs 489 through 491 pertain to other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

122. The first sentence of Paragraph 492 is denied. Answering the remainder of Paragraph 492, this Defendant only admits that the Sheriff's Department, pursuant to court orders and statutes, executes and enforces bench warrants which are valid on their face. Unless expressly admitted, Paragraph 492 is denied.

123. Paragraph 493 is denied.

124. Paragraph 494 is merely descriptive of the relief sought by Plaintiffs, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

125. Answering Paragraph 495, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

126. Paragraph 496 is merely descriptive, and requires no response from this Defendant.

127. Paragraph 497 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

128. Paragraphs 498 is denied.

129. Paragraphs 499 through 503 pertain to other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

130. Answering Paragraph 504, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

131. Paragraph 505 is merely descriptive, and requires no response from this Defendant.

132. Paragraph 506 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

133. Answering Paragraph 507, this Defendant only admits that the Sheriff's Department, pursuant to court orders and statutes, executes and enforces bench warrants which are valid on their face, and did so in the instances referenced in Paragraph 498. Unless expressly admitted, Paragraph 507 is denied.

134. Paragraph 508 sets forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

135. The first sentence of Paragraph 509 is denied for lack of information. Answering the second sentence of Paragraph 509, this Defendant would refer the Court to the pertinent court records for the best evidence of what occurred. Except as expressly admitted, Paragraph 509 is denied.

136. Answering Paragraph 510, this Defendant only admits that the Sheriff's Department, pursuant to court orders and statutes, executed and enforced a bench warrant which was valid on its face. Unless expressly admitted, Paragraph 510 is denied.

137. Paragraphs 511 through 514 are denied.

138. Paragraphs 515 and 516 pertain to other Defendants, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

139. Paragraphs 517 and 518 are denied.

140. Paragraph 519 is merely descriptive of the relief sought by certain Plaintiffs, and requires neither admission nor denial. To the extent, if any, that such allegations may attempt to

establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

141. Answering Paragraph 520, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

142. Paragraphs 521 through 527 pertain to another Defendant, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

143. Answering Paragraph 528, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

144. Paragraphs 529 through 535 pertain to another Defendant, and as such require no response from this Defendant. To the extent, if any, that such allegations may attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

145. Any remaining allegations of the Second Amended Complaint, including the Prayer for Relief on pp. 121-122, are denied.

**FOR A THIRD DEFENSE**

146. Plaintiffs' claims are barred by the United States Supreme Court's holding in *Heck v. Humphrey*.

**FOR A FOURTH DEFENSE**

147. Plaintiffs' claims are barred, in whole or in part, by operation of the Rooker-Feldman doctrine.

**FOR A FIFTH DEFENSE**

148. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

**FOR A SIXTH DEFENSE**

149. Plaintiffs' claims are barred, in whole or in part, by absolute legislative immunity.

**FOR A SEVENTH DEFENSE**

150. Plaintiffs' claims are barred, in whole or in part, by res judicata or claim preclusion.

**FOR AN EIGHTH DEFENSE**

151. The Plaintiff's claims are barred, in whole or in part, by collateral estoppel or issue preclusion.

**FOR A NINTH DEFENSE**

152. The acts of which Plaintiffs complain are the result of valid judicial orders, and do not result from any action or inaction by this Defendant.

**FOR A TENTH DEFENSE**

153. To the extent that there are still ongoing criminal prosecutions involving any of the Plaintiffs, including the enforcement and completion of Plaintiffs' sentences, this action is barred by the abstention doctrine of *Younger v. Harris*.

**FOR AN ELEVENTH DEFENSE**

154. Plaintiffs' claims are barred, in whole or in part, by judicial or quasi-judicial immunity.

**FOR A TWELFTH DEFENSE**

155. This Defendant is immune from suit pursuant to the Eleventh Amendment of the United States Constitution.

**FOR A THIRTEENTH DEFENSE**

156. Some or all of Plaintiffs' claims are barred by the Doctrine of Sovereign Immunity.

**FOR A FOURTEENTH DEFENSE**

157. This Defendant at no time violated any clearly established statutory or constitutional rights which were known or should have been known to him and therefore is entitled to qualified immunity from suit.

**FOR A FIFTEENTH DEFENSE**

158. Some or all Plaintiffs have waived any claim they may have had to challenge some or all of the matters of which they complain.

**FOR A SIXTEENTH DEFENSE**

159. Some or all Plaintiffs are estopped from challenging some or all of the matters of which they complain.

**FOR A SEVENTEENTH DEFENSE**

160. The claims of some or all Plaintiffs are moot, in whole or in part.

**FOR AN EIGHTEENTH DEFENSE**

161. Some or all of the claims of some or all Plaintiffs no longer present an existing case or controversy.

**FOR A NINETEENTH DEFENSE**

162. The Court lacks subject matter jurisdiction over some or all of the claims in this action.

**FOR A TWENTIETH DEFENSE**

163. The damages alleged, if any, were proximately caused by intervening and/or superseding acts of parties beyond the control and unrelated to any actions or conduct of these Defendants.

WHEREFORE, having fully answered the Second Amended Complaint, this Defendant prays that the Second Amended Complaint be dismissed with prejudice, and for such other and further relief as the Court deems just and proper.

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Columbia, South Carolina

November 2, 2017

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No.</p> <p>3:17-cv-01426-MBS-SVH</p>
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**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITY  
IN OPPOSITION TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT ON DAMAGES CLAIMS**

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## INTRODUCTION

The Plaintiffs in this case are indigent people who were arrested and incarcerated for periods of time ranging from seven to 63 days because they could not afford to pay fines and fees to the magistrate courts of Lexington County (“the County”) in traffic and misdemeanor cases. Despite prima facie evidence of their indigence, none of the Plaintiffs were afforded a pre-deprivation court hearing on their ability to pay, notice of the right to request counsel, or the assistance of a court-appointed attorney to defend against incarceration. Each suffered devastating consequences, including deprivation of liberty, separation from children and family, loss of employment, and emotional distress. Plaintiffs bring this action under 42 U.S.C. § 1983 to vindicate their rights under the Fourteenth, Sixth and Fourth Amendments to the U.S. Constitution, including through damages claims against Defendants Lexington County; Gary Reinhart and Rebecca Adams, the administrative leaders of the County’s magistrate courts; and Bryan Koon, the Lexington County Sheriff. Plaintiffs offer detailed allegations concerning how each Defendant directly and proximately caused Plaintiffs’ unlawful arrest and incarceration.<sup>1</sup>

Defendants have, for the third time, filed a motion for summary judgment without having responded to *any* discovery in this case.<sup>2</sup> Defendants’ most recent motion seeks judgment as a matter of law on Plaintiffs’ damages claims under *Heck v. Humphrey*, 512 U.S. 477 (1994), the *Rooker-Feldman* doctrine, judicial immunity, legislative immunity, lack of authority, and

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<sup>1</sup> Plaintiffs Xavier Larry Goodwin and Raymond J. Wright, Jr. also bring prospective relief claims and filed a timely motion for class certification to pursue such relief on behalf of a proposed class of similarly situated indigent people who face imminent unlawful arrest and incarceration. *See* Dkt. Nos. 21, 30, 36.

<sup>2</sup> Defendants’ First Motion for Summary Judgment on Plaintiffs’ prospective relief claims raises standing, mootness, and *Younger* abstention, and is fully briefed. *See* Dkt. No. 29, 35, 39. Defendants subsequently filed a premature Supplemental Motion for Summary Judgment on Plaintiffs’ prospective relief claims, which argued that Defendants have purportedly ceased the challenged conduct. Dkt. No. 40. Plaintiffs responded and submitted a declaration detailing discovery needed to oppose the motion. Dkt. Nos. 43, 43–1, 43–2. Rather than file a reply brief, Defendants first sought to stay consideration and then withdrew the motion altogether. Dkt. Nos. 49, 58, 61, 62.

proximate causation. Defendants have also filed a motion to stay all discovery.<sup>3</sup> Defendants thus ask this Court to deny Plaintiffs' damages claims as a matter of law while simultaneously seeking to prevent any discovery from being taken, including on issues of fact raised by Defendants' latest motion for summary judgment.

Only the rarest of circumstances justify summary judgment before discovery, and Defendants fail to meet their burden to justify such a grant here. Defendants' arguments are unsupported by law, contradicted by evidence, and procedurally defective. Under well-settled law, *Heck* does not apply because Plaintiffs had no access to habeas relief while incarcerated. Moreover, neither *Heck* nor *Rooker-Feldman* bar the damages claims because Plaintiffs challenge only post-sentencing procedures that led to their unlawful arrest and incarceration—not the guilty pleas, convictions, or sentences themselves. Defendants' assertion of judicial, quasi-judicial, and legislative immunity also fails because Defendants misconstrue Plaintiffs' claims as contesting the actions of judges and sheriffs in individual cases. But, in fact, Plaintiffs' claims target solely the administrative decisions, oversight, and policymaking by Defendants Reinhart and Adams (as the administrative leaders of Lexington County's magistrate courts) and Defendant Koon (as the administrative head of the Lexington County Sheriff's Department). Defendants fail to show immunity shields such conduct.

Finally, Plaintiffs have identified evidence to support their assertion that Defendants Reinhart, Adams, and Koon established the contested policies and that Lexington County's inadequate funding of indigent defense violated Plaintiffs' Sixth Amendment right to counsel.<sup>4</sup>

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<sup>3</sup> Dkt. No. 51. Concurrent with this memorandum, Plaintiffs will file a memorandum opposing Defendants' Motion to Stay Discovery and Scheduling Order Deadlines or For Protective Order.

<sup>4</sup> Plaintiffs have also named Defendant Robert Madsen, the Eleventh Circuit Public Defender, in their Sixth Amendment damages claim, but only for actions in his official capacity as the County's final policymaker for the provision of indigent defense. Dkt No. 48 ¶¶ 499–500. Plaintiffs agree that claim is functionally equivalent to

Because Defendants fail to offer any undisputed evidence to the contrary and there are triable issues of material fact, summary judgment is unwarranted on any of the asserted grounds.

This Court therefore has ample grounds for denying Defendants summary judgment under each of the asserted defenses when viewing the sparse factual record in the light most favorable to Plaintiffs, as is required at this stage. Should this Court determine otherwise, however, Plaintiffs have submitted a declaration under Federal Rule of Civil Procedure 56(d), which describes Plaintiffs' pending discovery requests and details the specific facts that are currently unavailable to Plaintiffs but are needed to oppose Defendants' motion.

Defendants' motion is part of a wasteful strategy of seeking summary judgment with no supporting facts while simultaneously trying to bar Plaintiffs from needed discovery—an approach contrary to the directive of Federal Rule of Civil Procedure 1 to advance the “just, speedy, and inexpensive” resolution of litigation. Plaintiffs respectfully request that this Court deny Defendants' motion for summary judgment on Plaintiffs' damages claims and permit this case to proceed to discovery. In the alternative, Plaintiffs request that the Court stay a decision and permit additional time for Plaintiffs to conduct discovery under Rule 56(d).

## I. STATEMENT OF FACTS

### A. Plaintiffs were arrested and incarcerated because they could not pay money to Lexington County's magistrate courts.

Plaintiffs are indigent people who were sentenced to pay fines and fees they could not afford to Lexington County magistrate courts. After being sentenced, Plaintiffs were arrested pursuant to bench warrants that ordered them to pay the entire amount owed or otherwise serve jail time. None of them could pay. Each was incarcerated without being given a court hearing to assess ability to pay or representation by court-appointed counsel to defend against incarceration.

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Plaintiffs' Sixth Amendment damages claim against Lexington County. Plaintiffs do not contest that there is no damages claim against Defendant Madsen in his individual capacity. *See* Dkt. No. 50–1 at 14–15.

1. Twanda Marshinda Brown

Ms. Brown is an indigent and single working mother. Brown Decl. ¶¶ 1–2. On April 12, 2016, she pled guilty in the Irmo Magistrate Court to driving on a suspended license, second offense (“DUS-2”), and to driving with no tag light. Papachristou Decl. Ex. A (Dkt. No. 21–9); Long Decl. (Dkt. No. 29–2) ¶ 3a; Brown Decl. ¶ 3. Without any assessment of her ability to pay, the court sentenced Ms. Brown to pay \$2,100 in fines and fees for DUS-2, \$237.50 for driving with no tag light, and a three percent collection fee. Brown Decl. ¶¶ 3–4. The court ordered her to pay \$100 each month even though Ms. Brown stated she could not pay that much. *Id.* ¶ 5.

Ms. Brown made five \$100 payments but could not afford to pay after October 4, 2016. Brown Decl. ¶ 8; Dkt. No. 29–2 ¶ 3a. On February 18, 2017, law enforcement officers arrested Ms. Brown at her home and in front of her children. Brown Decl. ¶ 10; Dkt. No. 29–2 ¶ 3a. At jail, she was served with a bench warrant issued by the Irmo Magistrate Court, which ordered her to pay \$1,907.63 or serve 90 days in jail. Brown Decl. ¶ 11; Dkt. No. 21–9 Ex. A.

Ms. Brown was unable to pay. Brown Decl. ¶ 12. She was incarcerated for 57 days. *Id.*; Dkt. No. 29–2 ¶ 3a. While incarcerated, Ms. Brown lost her job and was separated from her family. Brown Decl. ¶¶ 15–16. She missed her son’s seventeenth birthday and her granddaughter’s first birthday and could not be with her family when her cousin died. *Id.* ¶ 16.

2. Sasha Monique Darby

Sasha Monique Darby is an indigent and single working mother who suffers from Post-Traumatic Stress Disorder. Darby Decl. ¶¶ 1–3. On August 23, 2016, she was convicted of assault and battery in the third degree in the Irmo Magistrate Court. *Id.* ¶¶ 11, 16. Without any assessment of Ms. Darby’s ability to pay, the court ordered her to pay \$1,000 in fines and fees and a three percent collection fee. *Id.* ¶¶ 17–19. The court required payment of \$150 per month even though Ms. Darby said she could not afford to pay that much. *Id.* ¶¶ 18–19.

Ms. Darby made several payments but fell behind due to childcare costs and family needs. Darby Decl. ¶¶ 21–22; Dkt. No. 29–2 ¶ 3d. Ms. Darby was arrested on March 28, 2017. Darby Decl. ¶ 23; Dkt. No. 29–2 ¶ 3d. At jail, she was served with a bench warrant issued by the Irmo Magistrate Court, which ordered her to pay \$680 or serve 20 days in jail. Darby Decl. ¶ 24; Dkt. No. 21–11.

Ms. Darby was unable to pay. Darby Decl. ¶ 25. She was incarcerated for 20 days. *Id.*; Dkt. No. 29–2 ¶ 3d. Because of her incarceration, Ms. Darby was evicted from her home and lost her job. Darby Decl. ¶ 29. Pregnant at the time, Ms. Darby missed her first prenatal appointment and did not get enough food to eat while incarcerated. *Id.* ¶ 28.

3. Cayeshia Cashel Johnson

Ms. Johnson is an indigent and single working mother who lives in Myrtle Beach, South Carolina. Dkt. No. 48 ¶¶ 21, 214–15. On August 21, 2016, she was in a car accident in Lexington County. *Id.* ¶ 218; Dkt. No. 29–2 ¶ 3c. Ms. Johnson was ticketed for five traffic offenses and one misdemeanor and required to appear in the Central Traffic Court on September 22, 2016. Dkt. No. 48 ¶ 220; Dkt. No. 29–2 ¶ 3c.

Before her hearing, Ms. Johnson informed the Central Traffic Court that she could not secure transportation to court from Myrtle Beach, which is located three hours away. Dkt. No. 48 ¶ 223. She was not given a new court date. *Id.* ¶ 224. On September 22, 2016, the Central Traffic Court tried, convicted, and sentenced Ms. Johnson in her absence. Dkt. No. 29–2 ¶ 3c. The court sentenced her to serve jail time or pay fines and fees for three offenses. *Id.* Ms. Johnson was not notified of the convictions or sentences. Dkt. No. 48 ¶ 229.

On February 13, 2016, Ms. Johnson was arrested at a traffic stop. Dkt. No. 48 ¶ 231–33. At jail, she was served with a bench warrant issued by the Central Traffic Court, which ordered her to pay \$1,287.50 or spend 80 days in jail. *Id.* ¶ 235. Ms. Johnson was unable to pay. *Id.*

¶ 237. She was incarcerated for 55 days. *Id.* ¶ 238. Because of her incarceration, Ms. Johnson was separated from her four children, lost all three part-time jobs she held before her arrest, and suffered emotional distress and ill health while in jail. *Id.* ¶ 239–41.

4. Amy Marie Palacios

Ms. Palacios is an indigent and single working mother. Palacios Decl. ¶¶ 1–3. In October 2016, she was ticketed for driving on a suspended license (“DUS-1”) and was required to appear in the Central Traffic Court on November 10, 2016. *Id.* ¶ 5. Ms. Palacios could not attend court due to work. *Id.* ¶ 6. She requested a new court date and provided an affidavit from her employer explaining why she could not appear in court. *Id.* ¶¶ 7–10 & Ex. A.

On November 10, 2016, the Central Traffic Court tried, convicted, and sentenced Ms. Palacios in her absence, ordering her to pay \$647.50 or spend 30 days in jail. Dkt. No. 29–2 ¶ 3b. Ms. Palacios was not notified of the convictions or sentences. Palacios Decl. ¶¶ 11, 17.

On February 25, 2017, Ms. Palacios was arrested during a traffic stop. Palacios Decl. ¶¶ 12–14. Law enforcement officers informed her that the arrest was being executed under a bench warrant that required her to pay \$647.50 or spend 30 days in jail. *Id.* ¶ 15. Ms. Palacios was unable to pay. *Id.* ¶ 18. She was incarcerated for 21 days. *Id.* While incarcerated, Ms. Palacios lost her job, was separated from her children, and suffered ill health and emotional distress. Palacios Decl. ¶¶ 21–23.

5. Nora Ann Corder

Ms. Corder is an indigent person who works low-wage jobs. Corder Decl. ¶¶ 1–2, 6, 10. On January 27, 2017, she was ticketed for three traffic offenses, including DUS-1. *Id.* ¶ 7. Ms. Corder appeared in the Lexington Magistrate Court on three separate dates in February, March, and April 2017 to answer for the tickets, but no magistrate judge heard her case. *Id.* ¶ 12. Ms. Corder was directed to return to court on May 17, 2017, but could not appear due to lack of

transportation. *Id.* ¶¶ 13–14. On that day, the Lexington Magistrate Court tried, convicted, and sentenced Ms. Corder in her absence on the traffic offenses, ordering her to pay fines and fees or serve jail time. Dkt. No. 29–2 ¶ 3e. Ms. Corder called the Lexington Magistrate Court and was informed that she had to pay \$1,320 in full or turn herself in for arrest. Corder Decl. ¶ 17.

On May 26, 2017, Ms. Corder went to the Lexington Magistrate Court building to file forms to defend against an eviction proceeding that stemmed from her indigence. Corder Decl. ¶ 19. She was arrested under a bench warrant that required her to pay \$1,320 or spend 90 days in jail. *Id.*; Dkt. No. 29 – 2 ¶ 3e. Ms. Corder was unable to pay. Corder Decl. ¶ 20. She was incarcerated for 54 days. *Id.*; Dkt. No. 29–2 ¶ 3e. While incarcerated, Ms. Corder lost her job and her home. Corder Decl. ¶ 21.

6. Xavier Larry Goodwin

Mr. Goodwin is indigent and the principal provider for a family of four. Goodwin Decl. ¶ 1. He also pays child support for two additional children who do not live with him. *Id.* On July 15, 2016, Mr. Goodwin was ticketed for five traffic offenses and directed to appear in the Central Traffic Court on August 9, 2016. *Id.* ¶¶ 3–4. Mr. Goodwin informed the court that he could not appear on that date due to his work schedule. *Id.* ¶ 5. The Central Traffic Court tried, convicted, and sentenced Mr. Goodwin in his absence on all five offenses, ordering him to pay \$1,710 in fines and fees or to be jailed for 90 days. Dkt. No. 21–17. Mr. Goodwin was not notified of the convictions or sentences. Goodwin Decl. ¶ 8.

On February 2, 2017, Mr. Goodwin was arrested at a traffic stop. Goodwin Decl. ¶¶ 7–8. At jail, he was served with a bench warrant issued by the Central Traffic Court, which ordered him to pay \$1,710 or serve 90 days in jail. *Id.* ¶ 8; Dkt. No. 21–17. He was unable to pay. Goodwin Decl. ¶ 9. Mr. Goodwin was incarcerated for 63 days. *Id.* ¶ 12. While incarcerated, Mr. Goodwin lost his home and the job he had held for thirteen years, was separated from his

wife and children, and suffered emotional distress and headaches in jail. *Id.* ¶¶ 15–18. Mr. Goodwin was unable to be with his daughter on her eleventh birthday or with his wife on their wedding anniversary. *Id.* ¶ 17.

7. Raymond Wright, Jr.

Mr. Wright is an indigent and disabled man. Wright Decl. (Dkt. No. 35–2) ¶ 1. On July 26, 2016, he pled guilty to DUS-1 in the Central Traffic Court and was sentenced to pay \$666.93 in fines and fees. Dkt. No. 29–2 ¶ 3f. Without any assessment of Mr. Wright’s ability to pay, the Central Traffic Court ordered him to pay \$50 each month. *Id.*; Dkt. No. 35–2 ¶¶ 4–5. Mr. Wright made five payments but could not afford to pay after December 7, 2016 because of his limited disability benefits and his wife’s unemployment. Dkt. No. 29–2 ¶ 3f; Dkt. No. 35–2 ¶¶ 6–7.

Mr. Wright appeared in the Central Traffic Court for a show cause hearing on April 19, 2017. Dkt. No. 29–2 ¶ 3f; Dkt. No. 35–2 ¶ 8. Without any assessment of Mr. Wright’s ability to pay, the Central Traffic Court ordered Mr. Wright to pay \$416.93 within ten days. Dkt. No. 29–2 3f; Dkt. No. 35–2 ¶¶ 8–12. Mr. Wright could not afford to pay. Dkt. No. 35–2 ¶ 13. He was arrested on July 25, 2017 pursuant to a Central Traffic Court bench warrant that ordered him to pay \$416.93 or serve ten days in jail. Dkt. No. 29–2 ¶ 3f. Mr. Wright was unable to pay. Dkt. No. 35–2 ¶ 14. He was incarcerated for seven days. Dkt. No. 29–2 ¶ 3f.

**B. Defendants’ Policies and Practices**

Impoverished people are routinely arrested and incarcerated in Lexington County for inability to pay fines and fees in magistrate court cases. Dkt. Nos. 21–5 ¶¶ 6–14, 21–8 ¶¶ 14–20, 43–1 ¶¶ 4–17. These fines and fees serve as a critical source of County revenue.<sup>5</sup> The County

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<sup>5</sup> See Lexington County, S.C. General Fund Requested Budgets, Fiscal Year 2017–18 at 703, *available at* <http://www.lex-co.com/Departments/Finance/FY17-18/GeneralFundRequestedBudgets.pdf> (“Magistrate Courts

annually projects that it will collect substantial revenue in such fines and fees even though the percentage of the County’s population living in poverty increased 14.5% from 2012 to 2015.<sup>6</sup>

Over time, the generation of County revenue through magistrate court fines and fees has given rise to a system that routinely deprives indigent people of their constitutional rights. This system has been sustained by the County and the following officials: Defendants Gary Reinhart and Rebecca Adams, the administrative leaders of the County’s magistrate courts; Defendant Bryan Koon, the Lexington County Sheriff; and Defendant Robert Madsen, the Circuit Public Defender for the Eleventh Judicial Circuit, who acts on behalf of Lexington County.<sup>7</sup>

1. Defendants Gary Reinhart and Rebecca Adams, Chief Judge and Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County

Under Article V, Section 4 of the South Carolina Constitution, the Chief Justice of South Carolina appoints chief judges and associate chief judges for administrative purposes of the summary courts in each South Carolina county.<sup>8</sup> Defendant Gary Reinhart served as Chief Judge for Administrative Purposes of the Summary Courts in Lexington County from at least 2004

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throughout the county . . . generate revenue from Criminal and Traffic cases. All fines and assessments collected are . . . deposit[ed] . . . into the County General Fund . . .”) [hereinafter “Lexington County 2017-2018 Budget”]; *id.* at 706 (indicating that the Traffic Court “generates substantial revenue from traffic violations [and] criminal fines”) (emphasis supplied). This Court may “take judicial notice of information contained on state and federal government websites.” *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017) (noting that such judicial notice is “routinely take[n]”); *see also Mitchell v. Newsom*, No. 3:11-0869-CMC-PJG, 2011 WL 2162723, at \*3 n.1 (D.S.C. May 10, 2011) (taking judicial notice of information on county website).

<sup>6</sup> *See* Lexington County 2017-2018 Budget, *supra* note 5 at 698 (projecting collection of \$1,332,000 in traffic and criminal fines and fees from magistrate courts in Fiscal Year 2016-2017); U.S. Census Bureau, Lexington County, S.C. Community Facts, [https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15\\_5YR/S1701/0500000US45063](https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_5YR/S1701/0500000US45063) (showing increase in poverty rate from 12.4% in 2012 to 14.2% in 2015).

<sup>7</sup> Albert John Dooley III, the current Associate Chief Judge for Administrative Purposes of the Lexington County Summary Courts is sued for prospective relief only. *See* Dkt. No. 48 ¶ 30. His conduct is irrelevant to this motion.

<sup>8</sup> S.C. Const. art. V, § 4 (“The Chief Justice of the Supreme Court . . . shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State.”).

until June 28, 2017.<sup>9</sup> Defendant Rebecca Adams served as Associate Chief Judge from at least 2013 until June 28, 2017, at which point she replaced Defendant Reinhart as Chief Judge.<sup>10</sup>

On January 3, 2017, South Carolina Chief Justice Donald Beatty issued one of the orders appointing chief judges for administrative purposes of the summary courts in each South Carolina county (“January 2017 Order”).<sup>11</sup> Like previous and subsequent orders, the January 2017 Order grants chief judges significant administrative authority over magistrate courts. This includes the following responsibilities: to establish and oversee a county-wide procedure “to ensure that court generated revenues are collected, distributed, and reported in an appropriate and timely manner”; to convene judges to “establish uniform[] procedures in the county summary court system”; to administer the County’s Bond Court; to determine the hours and nighttime and weekend schedule of County magistrate courts; to assign cases to magistrate judges across the County; and to coordinate the planning of budgets for magistrate courts. January 2017 Order at ¶¶ 3, 5–6, 9–10, 15.<sup>12</sup> The associate chief judge carries out the administrative responsibilities of the chief judge in the event the chief judge is absent or disabled. *Id.* The associate chief judge is also required to accept any administrative duties that the chief judge assigns. *Id.*

In their exercise of administrative responsibilities for establishing uniform procedures for collecting fines and fees, Defendants Reinhart and Adams have overseen, enforced, and

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<sup>9</sup> See S.C. Sup. Ct. Order (Dec. 16, 2004) (“December 2004 Order”), available at <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2004-12-16-01> (appointing Defendant Reinhart Chief Judge for Administrative Purposes of the Lexington County Summary Courts). Defendant Reinhart was reappointed in subsequent orders until June 28, 2017. S.C. Sup. Ct. Order (June 28, 2017) (“June 2017 Order”), available at <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-06-28-01> (appointing Defendant Adams Chief Judge for Administrative Purposes of the Lexington County Summary Courts).

<sup>10</sup> See S.C. Sup. Ct. Order (Dec. 20, 2013) (“December 2013 Order”), available at <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2013-12-20-01> (appointing Defendant Adams Associate Chief Judge for Administrative Purposes of the Lexington County Summary Courts); June 2017 Order, *supra* note 9.

<sup>11</sup> S.C. Sup. Ct. Order (Jan. 3, 2017) (“January 2017 Order”), available at <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-01-03-01>.

<sup>12</sup> Previous and subsequent orders set forth the same duties and responsibilities of the chief judge and associate chief judge. See December 2013 Order, *supra* note 10; June 2017 Order, *supra* note 9.

sanctioned unwritten standard operating procedures in the Lexington County magistrate courts that directly and proximately caused Plaintiffs' unlawful arrest and incarceration. These procedures are described in Plaintiffs' Class Action Second Amended Complaint ("Second Amended Complaint") as the "Default Payment" and "Trial in Absentia" policies.

Under the Default Payment Policy, the County's magistrate courts order the arrest and incarceration of people who cannot afford to pay fines and fees in traffic and misdemeanor criminal cases. Dkt. No. 48 ¶¶ 88–101. When an indigent person is unable to pay in full at sentencing, the magistrate court imposes a payment plan requiring steep monthly payments beyond the person's financial means. *See, e.g.*, Brown Decl. ¶¶ 4–5, 7; Darby Decl. ¶¶ 18–20; Dkt. No. 35–2 ¶¶ 4–5. If the indigent person fails to pay in the amount of time required by the payment plan, the magistrate court issues a bench warrant that orders law enforcement to arrest and jail the person unless full payment is made before booking. Brown Decl. ¶¶ 8–12; Darby Decl. ¶¶ 21–25; Dkt. No. 35–2 ¶¶ 6–14. Plaintiffs Brown, Darby, and Wright were incarcerated under the Default Payment Policy solely for inability to pay. Brown Decl. ¶¶ 3–8, 12; Darby Decl. ¶¶ 11–25; Dkt. No. 35–2 ¶¶ 3–14.

Under the Trial in Absentia Policy, the County's magistrate courts order the arrest and incarceration of indigent people who cannot afford to pay fines and fees imposed through proceedings held in their absence. Dkt. No. 48 ¶¶ 102–09. When an indigent person does not appear in court, regardless of the reason for their absence, the magistrate court proceeds without the defendant and imposes a conviction and sentence to a term of incarceration suspended on the payment of fines and fees. *See, e.g.*, Palacios Decl. ¶¶ 6–10; Corder Decl. ¶¶ 12–14; Goodwin Decl. ¶¶ 5–6. Without notifying the defendant of the sentence, the magistrate court swiftly issues a bench warrant that orders law enforcement to arrest and jail the person unless full

payment is made before booking. Palacios Decl. ¶¶ 13–17; Corder Decl. ¶¶ 15–17; Goodwin Decl. ¶¶ 7–9. Plaintiffs Johnson, Palacios, Corder, and Goodwin were incarcerated under the Trial in Absentia Policy solely for inability to pay. Palacios Decl. ¶¶ 7–11, 18; Corder Decl. ¶¶ 12–17, 20; Goodwin Decl. ¶¶ 5–9; Dkt. No. 48 ¶¶ 8–10, 14.

In the standard operating procedure established and overseen by Defendants Reinhart and Adams, indigent people arrested on warrants issued under the Default Payment and Trial in Absentia Policies (“payment bench warrants”) are not afforded a pre-deprivation court hearing to assess ability to pay or representation by court-appointed counsel to defend against incarceration. Brown Decl. ¶¶ 11–13; Darby Decl. ¶¶ 24–26; Corder Decl. ¶¶ 17–20; Goodwin Decl. ¶¶ 8–12; Palacios Decl. ¶¶ 18–19; Dkt. No. 35–2 ¶¶ 8–14. Defendants Reinhart and Adams have made a deliberate decision not to require or permit the Bond Court or the original magistrate court that issued the payment bench warrant to hold ability-to-pay hearings for indigent people arrested on these warrants. Defendants Reinhart and Adams could do so by exercising their administrative authority to increase the size of magistrate court dockets, to require additional hours of magistrate court operation, to require magistrate judges to work on evenings and weekends, or to request County funding for magistrate court operations in order to make pre-deprivation ability-to-pay hearings mandatory. *See* January 2017 Order at ¶¶ 6, 9–10.

As the administrative leaders of Lexington County’s magistrate courts, Defendants Reinhart and Adams knew, or should have known, that magistrate court judges routinely misuse payment bench warrants to coerce payments and to incarcerate indigent people rather than bring them to court, contrary to South Carolina law.<sup>13</sup> Defendants Reinhart and Adams also failed to

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<sup>13</sup> South Carolina law makes clear that bench warrants are to be used *solely* to bring defendants to court. *See* S.C. Code § 22-5-115 (“If the defendant fails to appear before the court . . . a bench warrant may be issued for his arrest.”); S.C. Code § 38-53-70 (“If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant.”); Nov. 14, 1980 Order of the Supreme Court of

report such abuse to the South Carolina Office of Court Administration, despite their obligation to do so.<sup>14</sup>

## 2. Defendant Bryan Koon, Lexington County Sheriff

Defendant Bryan Koon has served as the Lexington County Sheriff since April of 2015.<sup>15</sup> In this role, he serves as the head of the Lexington County Sheriff's Department ("LCSD") and the chief administrator of the Detention Center.<sup>16</sup> Defendant Koon has the following administrative duties: managing the LCSD, including deputies and Detention Center staff;<sup>17</sup> setting enforcement priorities including for staff of the Warrant Division, which serves payment bench warrants;<sup>18</sup> negotiating relationships with other law enforcement agencies to execute payment bench warrants;<sup>19</sup> and training, supervising, and directing LCSD officers in the execution of payment bench warrants.<sup>20</sup> In the exercise of his administrative authority, Defendant Koon deliberately directed LCSD deputies to locate and arrest people named in

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South Carolina ("[B]ench warrants . . . are to be used *only* for the purpose of bringing a defendant before a court . . .") (emphasis supplied); S.C. Judicial Dep't, Summary Court Judges Benchbook, "Criminal," ch. C § 2, "Bench Warrants" (defining "bench warrant" as "a form of process to be used to bring a defendant back before a particular court on a particular charge for a specific purpose . . .") [hereinafter "Benchbook on Bench Warrants"].

<sup>14</sup> See January 2017 Order, *supra* note 11 at ¶ 17 (requiring Chief Judge to "[r]eport to the Office of Court Administration any significant or repetitive non-compliance by any summary court judge in the country concerning the Chief Judge's execution of the provisions of this Order").

<sup>15</sup> See Lexington County Sheriff's Department, Sheriff's Biography, <http://www.lex-co.com/sheriff/sheriff.aspx>.

<sup>16</sup> See Lexington County Sheriff's Department News Release, "Sheriff Koon Sworn in as 39th Sheriff of Lexington County," available at <http://www.lex-co.com/sheriff/media.aspx?mid=2308> (referring to Defendant Koon as the "County's chief law enforcement officer"); S.C. Const. art. V, § 24 (providing for each county's election of a sheriff as a "law enforcement official" and "administrative officer"); S.C. Code Ann. § 23-13-10 (describing sheriffs' power to appoint deputies and to "in all cases be answerable for neglect of duty or misconduct in office of any deputy"); *id.* § 24-5-10 (providing the sheriff as custodian and liable party for his county's jail).

<sup>17</sup> Lexington County 2017-2018 Budget, *supra* note 5 at 752 (describing Sheriff's role in LCSD Administrative Bureau).

<sup>18</sup> Lexington County Sheriff's Department, "Warrant and Civil Process," <http://www.lex-co.com/sheriff/divisions.aspx?did=wc>; see also Lexington County 2018-2018 Budget, *supra* note 5 at 752 (describing Sheriff's role in LCSD Administrative Bureau, which "provide[s] support to all law enforcement and detention center personnel by coordinating day-to-day operations" and "ensure[s] that the deputy sheriffs have the resources necessary to provide professional law enforcement service to the citizens of Lexington County").

<sup>19</sup> See S.C. Code Ann. §§ 23-20-20–23-20-40 (providing procedures for county law enforcement agencies to enter into mutual aid agreements).

<sup>20</sup> See S.C. Code Ann. § 23-15-50 (requiring deputies to "arrest all persons against whom process for that purpose shall issue from any competent authority").

payment bench warrants. Dkt. No. 48 ¶ 124. Defendant Koon also deliberately trained and supervised the deputies and Detention Center staff to book the arrested people in jail if they could not pay the amount of money identified on the face of the warrants. *Id.* Defendant Koon thus established and enforced a standard operating procedure that caused Plaintiffs to be arrested and incarcerated on payment bench warrants issued without any pre-deprivation court inquiry into their ability to pay or representation by counsel. *Id.* ¶¶ 124–28; Brown Decl. ¶¶ 10–13; Darby Decl. ¶¶ 23–26; Palacios Decl. ¶¶ 12–19; Corder Decl. ¶¶ 16–20; Goodwin Decl. ¶¶ 7–12.

### 3. Defendant Lexington County

Defendants Lexington County and Robert Madsen operate a public defense system that fails to provide counsel to indigent people who face incarceration in the County’s magistrate courts. Defendant Madsen has served as the Circuit Public Defender for the Eleventh Judicial Circuit in South Carolina since 2008.<sup>21</sup> Defendant Madsen and the Lexington County Council are the County’s final policymakers for the provision of indigent defense in County magistrate courts.<sup>22</sup> Defendant Madsen is responsible for seeking, and the County is responsible for providing, resources for public defense in magistrate courts.<sup>23</sup> State law requires the County to provide a minimum amount of funding for indigent defense each year.<sup>24</sup> Defendant Madsen

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<sup>21</sup> See S.C. Comm’n on Indigent Def. (“SCCID”), Circuit Public Defenders, <https://sccid.sc.gov/about-us/circuit-public-defenders> (indicating Defendant Madsen is the circuit public defender responsible for Lexington County); SSCID, Public Defenders: Robert M. Madsen, <https://sccid.sc.gov/about-us/county-public-defenders/bio/1545/robert-m-madsen> (indicating that Defendant Madsen has served as circuit public defender since August 2008).

<sup>22</sup> See Indigent Defense Act of 2007, S.C. Code Ann. § 17-3-5 (recognizing “Circuit public defender” to be “the head of a public defender office providing indigent defense representation within a given judicial circuit”); *id.* § 17-3-560 (requiring “[e]ach circuit public defender . . . [to] enter into an agreement with the appropriate county within the judicial circuit to administer the funds” for indigent defense in the county).

<sup>23</sup> See S.C. Code Ann. § 17-3-540 (requiring each county to pay for “[a]ll personnel costs” for staff appointed by circuit public defender “as necessary to provide adequate and meaningful” indigent defense); *id.* § 17-3-560 (requiring circuit public defender to spend county resources for indigent defense).

<sup>24</sup> See S.C. Code Ann. § 17-3-550 (“No county may appropriate funds for public defender operations in a fiscal year below the amount it funded in the immediate previous fiscal year.”).

makes final decisions over the expenditure of County resources for public defense services.<sup>25</sup>

And all personnel—attorneys and non-attorneys—are County employees under the supervision of Defendant Madsen.<sup>26</sup>

Defendants Lexington County and Madsen have deliberately decided to grossly underfund public defense in magistrate court cases. Lexington County allocated only \$543,932 for public defense in fiscal year 2015-2016 and only \$543,532 in fiscal year 2016-2017, which was *even less* than the preceding year. *See* Affidavit of J. Hugh Ryan, III (“Ryan Affidavit”) Ex. A at 2 & Ex. B at 2. In 2015-2016, the County provided *less than half* the funding for public defense that York and Spartanburg Counties, which are of comparable population size, each provided. *Id.* Ex. A.

4. Evidence of Widespread Arrest and Jailing of Indigent People for Nonpayment of Fines and Fees Owed to Lexington County Magistrate Courts

Public records demonstrate that Defendants Lexington County, Reinhart, Adams, Koon, and Madsen have established standard operating procedures under which indigent people, like Plaintiffs, are unlawfully arrested and incarcerated through the use of payment bench warrants when they cannot pay money to magistrate courts. Court records from February 1, 2017 to March 31, 2017 reveal that the County’s magistrate courts targeted 183 people with bench warrants for nonpayment of court fines and fees. Dkt. No. 21–8 ¶ 18; *see also id.* ¶¶ 13–17. If bench warrants are issued at the same rate throughout the year, this two-month estimate suggests

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<sup>25</sup> *See* S.C. Code Ann. § 17-3-520(B) (outlining the duties and powers of circuit public defenders); *id.* § 17-3-540 (permitting circuit public defender to “employ . . . staff as necessary to provide adequate and meaningful representation of indigent clients within the counties of the judicial circuit”).

<sup>26</sup> *See* S.C. Code Ann. § 17-3-540 (requiring any staff hired by circuit public defender “as necessary to provide adequate and meaningful representation” to be “employees of the administering county”); *id.* § 17-3-570(B) (requiring all “administrative, clerical, and paraprofessional personnel” hired by circuit public defender to be “employees of the administering county”).

that around 1,098 people were subjected to a bench warrant for nonpayment of fines and fees to a Lexington County magistrate court the previous year. *Id.* ¶ 19.

Online Detention Center records demonstrate that the use of payment bench warrants to coerce payments toward magistrate court fines and fees results in the widespread arrest and incarceration of people, including indigent people. Detention Center records from May 1, 2017 to May 28, 2017 reveal that 57 people were arrested and incarcerated on payment bench warrants issued by magistrate courts. Dkt. No. 21–5 ¶ 7; *see also id.* ¶¶ 2–6. Records from September 15, 2017 to October 9, 2017 also demonstrate that at least 57 inmates were incarcerated in the Lexington County Detention Center pursuant to payment bench warrants issued by magistrate courts, and that at least 40 of these people were not provided any court hearing, whether before or after arrest, at which a magistrate court could have considered the reasons for nonpayment, including ability to pay. Dkt. No. 43–1 ¶¶ 13, 20–22.

## II. AUTHORITY AND ARGUMENT

Defendants seek summary judgment on Plaintiffs’ damages claims on the following grounds: (1) Plaintiffs’ damages claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), Dkt. No. 50–1 at 4–7; (2) Plaintiffs’ damages claims are barred by the *Rooker-Feldman* doctrine, *id.* at 8–9; (3) Defendants Gary Reinhart and Rebecca Adams are shielded by judicial immunity, *id.* at 9–10; (4) Defendant Bryan Koon is shielded by quasi-judicial immunity, *id.* at 10; (5) Defendants Reinhart, Adams, and Koon are shielded by legislative immunity, *id.* at 10–11; (6) none of the named Defendants has authority to create the challenged policies as a matter of law, *id.* at 11–13; and (7) Plaintiffs cannot prove that Defendant Lexington County’s inadequate funding of indigent defense was the proximate cause of their injuries, *id.* at 14.<sup>27</sup>

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<sup>27</sup> Plaintiffs do not contest that the damages claim against Defendant Madsen in his official capacity as a Lexington County policymaker constitutes a claim against Lexington County itself. *See* Dkt. No 50–1 at 14–15.

Defendants fail to meet their summary judgment burden on each of the asserted grounds for three overarching reasons. First, neither *Heck*'s "favorable termination rule" nor the *Rooker-Feldman* doctrine bar Plaintiffs' damages claims when viewing the sparse factual record in the light most favorable to the non-moving party, as this Court must. Under well-settled law, *Heck* does not apply because Plaintiffs had no access to habeas relief while incarcerated. Moreover, neither *Heck* nor *Rooker-Feldman* bar the damages claims because Plaintiffs challenge only post-sentencing procedures that led to their unlawful arrest and incarceration. Plaintiffs are not seeking federal review of their underlying guilty pleas, convictions, or sentences (as required for *Rooker-Feldman* to apply), and Plaintiffs are not pursuing claims that necessarily imply the invalidity of those pleas, convictions, and sentences (as required for *Heck* to apply).

Second, Defendants fail to meet their summary judgment burden on the basis of judicial, quasi-judicial, and legislative immunity. Defendants misconstrue Plaintiffs' claims as contesting the actions of individual judges to issue payment bench warrants and of individual sheriff's deputies to execute those warrants. But Plaintiffs challenge solely the *administrative* decisions, oversight, and policymaking by Defendants Reinhart, Adams, and Koon. Defendants fail to show through undisputed evidence that this *administrative* conduct did not cause Plaintiffs' arrest and incarceration. Nor do Defendants identify authority for the proposition that judicial, quasi-judicial, or legislative immunity applies to such actions.

Third, Defendants raise additional arguments for summary judgment that must be denied because they concern genuine, triable issues of material fact. Plaintiffs have identified evidence showing that Defendants Reinhart, Adams, and Koon established and sustained the policies contested by Plaintiffs and that Lexington County's grossly inadequate funding of indigent defense violated Plaintiffs' Sixth Amendment right to counsel. The record fails to support

Defendants' contention that Plaintiffs cannot prove either point as a matter of law. Defendants' argument is thus premature, and summary judgment is unwarranted.

This Court therefore has ample reasons for denying Defendants' summary judgment motion in its entirety, and should permit this case to proceed to discovery. But should this Court determine otherwise, Plaintiffs seek relief under Federal Rule of Civil Procedure Rule 56(d) with respect to: Defendant Adams, Reinhart and Koon' assertion of immunity; all Defendants' contention that they lack authority to engage in the challenged conduct; and Defendant Lexington County and Koon's assertion of lack of causation. A grant of summary judgment before discovery is exceptionally rare, and Defendants have not responded to Plaintiffs' discovery requests. Plaintiffs have submitted a Rule 56(d) declaration that describes Plaintiffs' pending discovery requests and details specific facts that are unavailable to Plaintiffs but are needed to oppose Defendants' motion for summary judgment on the aforementioned grounds.

#### **A. Standard of Review**

A court may grant summary judgment pursuant to Federal Rule of Civil Procedure 56(a) only when the moving party "show[s] that there is no genuine dispute as to any material fact" and that it "is entitled to judgment as a matter of law." The party seeking summary judgment bears the initial burden of demonstrating there are no genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If this showing is made, the non-moving party must demonstrate specific, material facts that give rise to a genuine issue. *Id.* at 324.

Evidence presents a genuine issue of material fact when "a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Any inference drawn from the facts should be viewed in the light most favorable to the nonmoving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). A motion for summary judgment should be denied when "the nonmoving party has not had the opportunity to

discover information that is essential to his opposition.” *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 244 (4th Cir. 2002) (quoting *Anderson*, 477 U.S. at 250 n. 5).

**B. *Heck* does not bar Plaintiffs’ damages claims.**

Defendants assert that Plaintiffs’ damages claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because the claims “would necessarily imply that [Plaintiffs’] criminal convictions are invalid” and, therefore, Plaintiffs should have first secured decisions overturning their convictions and sentences. Dkt. No. 50–1, at 4. But Defendants fail to show that the claims meet either of the two requirements that must be met for *Heck* to bar Section 1983 claims by formerly incarcerated individuals.

First, the undisputed record shows that Plaintiffs were jailed for such short periods of time that they could not have pursued and obtained federal habeas relief while incarcerated—a prerequisite for the application of *Heck*. Second, *Heck* is inapplicable to Section 1983 claims challenging *post-sentencing* procedures, which is the case here. Plaintiffs’ claims concern the right to pre-deprivation ability-to-pay hearings, the right to counsel at those hearings, and the right to freedom from unreasonable seizures that occur when payment bench warrants used to arrest people are unsupported by probable cause. A judgment in Plaintiffs’ favor will not imply the invalidity of Plaintiffs’ guilty pleas, convictions, or sentences. Rather, it will establish that the post-sentencing procedures used to arrest and incarcerate Plaintiffs were unlawful. For both reasons, *Heck* does not bar Plaintiffs’ claims.

1. *Heck* is inapplicable because Plaintiffs had no practical access to habeas relief while in custody.

In *Heck*, the Supreme Court held that a plaintiff cannot bring a Section 1983 claim for damages “if success will necessarily imply the invalidity” of a conviction or sentence unless the plaintiff can show “that the conviction or sentence has already been invalidated.” 512 U.S. at

487. The U.S. Court of Appeals for the Fourth Circuit has established two clear requirements that must be met for the *Heck* rule to apply:

First, a judgment in favor of the plaintiff [*must*] necessarily imply the invalidity of [a plaintiff's] conviction or sentence. Second, the claim *must* be brought by a claimant who is either (i) currently in custody or (ii) no longer in custody because the sentence has been served, but nevertheless *could have practicably sought habeas relief while in custody*.

*Covey v. Assessor of Ohio Cty.*, 777 F.3d 186, 197 (4th Cir. 2015) (internal quotation marks and citations omitted) (emphasis supplied).

The Fourth Circuit has “ma[de] clear that lawful access to federal habeas corpus is the touchstone of [the court’s] inquiry.” *Griffin v. Balt. Police Dep’t*, 804 F.3d 692, 697 (4th Cir. 2015) (emphasis supplied). Only individuals who are “in custody” may pursue a federal habeas suit challenging the legality of their incarceration under the U.S. Constitution. 28 U.S.C. § 2254(a). While a plaintiff who was in custody for “three decades” may be barred from bringing a Section 1983 claim, plaintiffs who had “only a few months to make a habeas claim . . . [or] at most a little over a year” are not. *Id.* at 697 (discussing *Covey*, 777 F.3d 191, 197–98, and *Wilson v. Johnson*, 535 F.3d 262, 263 (4th Cir. 2008)).

Here, it is undisputed that Plaintiffs were incarcerated for periods of time ranging from only seven to 63 days.<sup>28</sup> Consequently, Plaintiffs were “unable to pursue habeas relief because of insufficient time,” and *Heck* is “wholly inapplicable.” *Covey*, 777 F.3d at 198.<sup>29</sup> Defendants ignore this threshold requirement for *Heck*’s application and fail to meet their burden to address,

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<sup>28</sup> Dkt. No. 29–2 ¶ 3 (attesting that Mr. Wright was incarcerated for seven days, Ms. Darby for 20 days, Ms. Palacios for 21 days, Ms. Corder for 54 days, Ms. Johnson for 55 days, and Ms. Brown for 57 days); Goodwin Decl. ¶¶ 3, 5 (attesting that Mr. Goodwin was incarcerated for 63 days).

<sup>29</sup> Defendants appear to incorrectly argue that Plaintiff Goodwin’s damages claims concern a “criminal case that is still active.” Dkt. No. 50–1 at 4 n.2. Mr. Goodwin seeks damages for unlawful incarceration for 63 days for nonpayment of money owed to the Central Traffic Court stemming from July 2016 traffic tickets. *See* Dkt. 35–1 ¶ 5; Dkt. 48 ¶¶ 326–330, 333–336, 347. That case is not “active” and Mr. Goodwin cannot seek favorable termination of his conviction and sentence in the Central Traffic Court. Goodwin Decl. ¶¶ 7–12. Moreover, the Central Traffic Court case is separate from the Irmo Magistrate Court fines and fees Mr. Goodwin currently owes and cannot afford to pay, which gives rise to his claims for prospective relief. *See* Dkt. 35–1 ¶ 3; Dkt. 48 ¶¶ 322–59.

much less demonstrate, that it is met here. *See* Dkt. No. 50–1 at 4–7; *Wilson*, 535 F.3d at 268 (“[W]e do not believe that a habeas ineligible former prisoner seeking redress for denial of his most precious right—freedom—should be left without access to a federal court.”). *Heck* therefore does not bar Plaintiffs’ damages claims.

2. *Heck* is inapplicable because success on Plaintiffs’ damages claims would not invalidate Plaintiffs’ guilty pleas, convictions, or sentences.

Defendants’ invocation of *Heck* fails for a second reason: Plaintiffs’ damages claims do not call into question the validity of their guilty pleas, convictions, or sentences.

For *Heck* to apply, “a judgment in favor of the plaintiff [*must*] necessarily imply the invalidity of [a plaintiff’s] conviction or sentence.” *Covey*, 777 F.3d at 197 (emphasis supplied); *see also Nelson v. Campbell*, 541 U.S. 637, 647 (2004) (“[W]e were careful in *Heck* to stress the importance of the term ‘necessarily.’”). Plaintiffs do not contest their guilty pleas or convictions for traffic or misdemeanor offenses or even the fine-or-jail sentences imposed for those offenses. Their claims attack only the *post-sentencing procedures* used to arrest and incarcerate them for money they could not pay to magistrate courts. Success on these claims does not necessarily imply the invalidity of Plaintiffs’ guilty pleas, convictions, or sentences. Plaintiffs’ damages claims thus fall squarely within the category of Section 1983 claims challenging post-conviction procedures that courts have held are not barred by *Heck*. *See Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (permitting Section 1983 claim against parole-hearing procedures because success would entitle prisoners to new hearings without necessarily implying invalidity of convictions or sentences); *Skinner v. Switzer*, 562 U.S. 521, 534 (2011) (permitting Section 1983 claim seeking DNA testing because “[w]hile test results might prove exculpatory, that outcome is hardly inevitable . . . [as] results might prove inconclusive or they might further incriminate [him]”).

For example, Plaintiffs' Fourteenth Amendment claim challenges Plaintiffs' incarceration for nonpayment of court fines and fees without first being afforded court hearings on their ability to pay, efforts to secure resources, and the adequacy of alternatives to incarceration. Dkt. 48 ¶ 488. Success on this claim would demonstrate that Plaintiffs were deprived of their liberty for nonpayment of fines and fees through procedures that failed to comply with the requirements of *Bearden v. Georgia*, 461 U.S. 660 (1983). But success on this claim would *not* call into question the validity of Ms. Palacios' conviction for DUS-1, Mr. Wright's guilty plea to DUS-1, or any of the other Plaintiffs' guilty pleas or convictions.<sup>30</sup> Nor would it call into question the validity of the *sentences* imposed on Plaintiffs, which Defendants assert required each Plaintiff to serve jail time or, in the alternative, pay fines and fees.<sup>31</sup> Rather, success would establish the unlawfulness of the post-sentencing procedures used to incarcerate Plaintiffs as a means of enforcing those fine-or-jail sentences. This is because magistrate courts could have validly incarcerated Plaintiffs if the courts had properly provided pre-deprivation ability-to-pay hearings and determined that Plaintiffs willfully failed to pay or to make adequate efforts to secure resources. *See Bearden*, 461 U.S. at 668.

The same is true of Plaintiffs' Sixth Amendment right to counsel claim and the Fourth Amendment claim asserted by Plaintiffs Brown, Darby and Wright. *See* Dkt. No. 48 ¶¶ 495–503

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<sup>30</sup> There is a question of fact as to whether Ms. Brown pled guilty to DUS-2 (second offense) or DUS-3 (third offense). *Compare* Dkt. No. 29–2 ¶ 3a with Brown Decl. ¶ 3 and Dkt. No. 21–9 Ex. A. But this issue is not material to the question of whether *Heck* bars Ms. Brown's damages claims. Ms. Brown does not contest her guilty plea or plead any fact inconsistent with her guilt for driving on a suspended license. *See* Covey, 777 F.3d at 197 (recognizing that *Heck* does not apply "if (1) the conviction derives from a guilty plea," and "(2) the plaintiff does not plead facts inconsistent with guilt.").

<sup>31</sup> There is no dispute that Plaintiffs Johnson, Palacios, Corder, and Goodwin were sentenced in absentia to jail time or the payment of fines and fees for traffic and misdemeanor offenses. Dkt. No. 29–2 ¶¶ 3b, 3c, 3e, 3g. There is a factual dispute as to whether Plaintiffs Brown, Darby, and Wright, who appeared in court, were similarly given fine-or-jail sentences. Defendants' declaration states that these Plaintiffs were, while Plaintiffs attest that in court they were sentenced only to pay fines and fees. *Compare* Brown Decl. ¶ 3, Darby Decl. ¶ 17, Dkt. No. 35–2 ¶¶ 3, 5, with Dkt. No. 29–2 ¶¶ 3a, 3d, 3f. Regardless, in asserting damages claims, Plaintiffs Brown, Darby, and Wright do not challenge their sentences, but rather the post-sentencing procedures used to incarcerate them for inability to pay.

(Sixth Amendment), ¶¶ 504–19 (Fourth Amendment). Success on each claim would invalidate the procedures used to arrest and incarcerate Plaintiffs—not the validity of their guilty pleas, convictions, or fine-or-jail sentences. For example, if Plaintiffs had been properly appointed counsel to represent them against allegations of nonpayment, Plaintiffs could have been lawfully incarcerated upon a determination that they had the means to pay, but failed to do so. Likewise, if the payment bench warrants issued against them had been supported by probable cause, Plaintiffs Brown, Darby, and Wright could have been lawfully seized and transported to jail.

For similar reasons, numerous federal courts have held that *Heck* did not bar Section 1983 claims comparable to those asserted here. The U.S. Court of Appeals for the Sixth Circuit rejected the application of *Heck* to the claim of a former prisoner who challenged procedures that led to his incarceration for nonpayment of a fine because success meant “only that the failure to grant [the plaintiff] an indigency hearing was wrongful, not that the order committing him to jail was wrongful.” *Powers v. Hamilton Cty. Pub. Def. Comm’n*, 501 F.3d 592, 604 (6th 2007).<sup>32</sup> Similarly, a district court ruled in *Fant v. Ferguson* that *Heck* did not bar challenges to post-judgment fine and fee collection policies in Ferguson, Missouri:

A judgment in Plaintiffs’ favor would not necessarily demonstrate the invalidity of Plaintiffs’ underlying traffic convictions or fines, but only the City’s procedures for enforcing those fines. Nor would Plaintiffs’ success in this case ‘necessarily’ invalidate the fact or duration of their incarceration. Success would mean only a change in the City’s procedures prior to incarceration. Even if those procedures were changed, Plaintiffs may still have been found to have willfully refused to pay a fine they were capable of paying and thereafter lawfully incarcerated pursuant to constitutional procedures and conditions.

107 F. Supp. 3d 1016, 1028 (E.D. Mo. 2015). Nor did *Heck* bar damages claims in *Cain v. City of New Orleans*, where plaintiffs challenged New Orleans’ policy of jailing indigent people in an

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<sup>32</sup> See also *Powers*, 501 F.3d at 605 (finding that the plaintiff’s “incarceration is not necessarily invalid because [he] may have willfully refused to pay a fine he was capable of paying, rather than having been actually impecunious”).

effort to collect unpaid court costs without “sufficient inquiry into [their] good-faith ability to pay.” 186 F. Supp. 3d 536, 548 (E.D. La. 2016).<sup>33</sup>

Defendants ignore caselaw that is squarely on point. Instead, Defendants argue in conclusory fashion that *Heck* applies because claims concerning violations of due process, the right to counsel, and unreasonable search and seizure can “invalidate a state court conviction.” Dkt. No. 50–1 at 4. This generic argument fails to show that success on Plaintiffs’ specific challenges to post-sentencing procedures would “necessarily imply the invalidity” of Plaintiffs’ convictions or sentences as required for *Heck* to apply. *Covey*, 777 F.3d at 197 (emphasis supplied).<sup>34</sup> Moreover, the cases on which Defendants rely are wholly inapposite. For example, *Edwards v. Balisok* involved a state prisoner whose due process claim challenged the “deceit and bias” of a prison disciplinary hearing officer and, if successful, would necessarily invalidate the decision to revoke good time. 520 U.S. 641, 647–48 (1997).<sup>35</sup> And *Carver v. Cty.*, No. CV 1:16-2528-TMC, 2016 WL 4771287 (D.S.C. Sept. 14, 2016), and *Kilbane v. Huron Cty. Comm’rs*, No. 3:10 CV 2751, 2011 WL 1666928 (N.D. Ohio May 3, 2011), concerned the denial of counsel at proceedings leading to conviction, which are distinguishable from Plaintiffs’ challenge to denial of counsel in post-sentencing proceedings.<sup>36</sup> The one exception is *Brooks v.*

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<sup>33</sup> See also *Ray v. Judicial Corr. Servs.*, No. 2:12-CV-02819-RDP, 2013 WL 5428395, at \*8, 12–13 (N.D. Ala. Sept. 26, 2013) (finding *Heck* inapplicable to “procedural challenges . . .—e.g., the lack of an indigency hearing . . . and/or the lack of providing counsel prior to incarceration” that did not “attack[] the propriety of . . . confinement”).

<sup>34</sup> Defendants rely on cases that are distinguishable because they involved claims by prisoners that squarely targeted their convictions rather than post-sentencing procedures. See Dkt. 50–1 at 4 (citing *Lee v. Mississippi*, 332 U.S. 742, 745 (1948) (due process challenge to coerced confession forming the basis of conviction); *Custis v. United States*, 511 U.S. 485, 496 (1994) (prisoner “attacks his previous convictions . . . claiming the denial of effective assistance of counsel”); *Mapp v. Ohio*, 367 U.S. 643 (1961) (challenge to search that led to plaintiff’s conviction)).

<sup>35</sup> Defendants also rely on *Green v. Horry Cty.*, No. 4:17-cv-01304-RBH, 2017 WL 4324843 (D.S.C. Sept. 29, 2017), which is easily distinguishable. The damages claims in that case were barred by *Heck* because the plaintiff “allege[d] that his due process rights were violated when he pled guilty to a drug offense” and the plea was used against him in another conviction. *Id.* at \*1. Plaintiffs’ claims in no way attack their guilty pleas or convictions.

<sup>36</sup> See *Carver*, 2016 WL 4771287, at \*1 (considering pre-trial detainee’s claim of denial of legal materials and attorney contact information); *Kilbane*, 2011 WL 1666928, at \*1–2 (addressing claim failure to appoint counsel at a bench trial that led to conviction). Defendants cite other cases involving right to counsel claims that are similarly

*City of Winston-Salem*, 85 F.3d 178 (4th Cir. 1996), which actually supports Plaintiffs’ argument against application of *Heck* to Plaintiffs’ Fourth Amendment claim.<sup>37</sup>

Defendants thus fail to show that success on Plaintiffs’ damages claims would necessarily imply the invalidity of Plaintiffs’ convictions and sentences as required for *Heck* to apply.

**C. *Rooker-Feldman* does not apply because Plaintiffs do not attack their underlying guilty pleas, convictions, or sentences.**

Defendants contend that Plaintiffs’ damages claims are barred for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine, which prohibits “state-court losers” from “inviting district court review and rejection of those judgments.” *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Defendants make the same arguments as those raised in support of their assertion of *Heck*. See Dkt. No. 50–1 at 8 (claiming that Plaintiffs “challenge[]” their “convictions and sentences”). As described above, Defendants’ assertions misconstrue Plaintiffs’ claims. Plaintiffs do not contest their convictions or sentences; rather, Plaintiffs challenge the post-sentencing procedures used to arrest and incarcerate them for inability to pay money to courts. *Rooker-Feldman* simply does not apply to Plaintiffs’ claims.

The U.S. Court of Appeals for the Fourth Circuit has emphasized the narrowness of the *Rooker-Feldman* doctrine: “If [the plaintiff] is not challenging the state-court decision, the *Rooker-Feldman* doctrine does not apply.” *Davani v. Va. Dep’t of Transp.*, 434 F.3d 712, 718

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distinguishable because they involved challenges to convictions. See *Groves v. City of Darlington, S.C.*, No. 4:08-cv-00402-TLW-TER, 2011 WL 825757, at \*3 (D.S.C. 2011) (holding *Heck* applied to former prisoners “challeng[e] to] the underlying basis for their arrests and subsequent convictions”); *Addison v. S.C. Dep’t of Corr.*, No. 8:11-2705-CMC-JDA, 2011 WL 5877017, at \*3 (D.S.C. 2011) (holding that *Heck* applied because plaintiff challenged a “Judgment and Commitment Order” of a General Sessions Court).

<sup>37</sup> The U.S. Court of Appeals for the Fourth Circuit reasoned that *Heck* does not bar all unreasonable seizure claims:

We do not read *Heck* to compel a conclusion that all claims of unconstitutional seizure accrue only upon a termination of the criminal proceedings favorable to the § 1983 plaintiff . . . [A] charge that probable cause for a warrantless arrest was lacking, and thus that the seizure was unconstitutional, would not necessarily implicate the validity of a subsequently obtained conviction—at least in the usual case.

*Brooks*, 85 F.3d at 182.

(4th Cir. 2006) (recognizing that the U.S. Supreme Court’s decision in *Exxon* “undercut[] the broad interpretation of the *Rooker-Feldman* doctrine” that courts had previously applied). The *Rooker-Feldman* doctrine also does not apply where the “claim of injury rests not on the state court judgment itself, but rather on the alleged violation of [the plaintiff’s] constitutional rights by [the defendant].” *Washington v. Wilmore*, 407 F.3d 274, 280 (4th Cir. 2005).

Here, Plaintiffs’ claims do not invite federal court review and rejection of any magistrate court judgments accepting Plaintiffs’ guilty pleas, convicting them of traffic or misdemeanor offenses, or imposing fine-or-jail sentences.<sup>38</sup> And the undisputed record shows that Plaintiffs were *not* sentenced to incarceration for their traffic or misdemeanor offenses. *See* Dkt. No. 29–2 ¶ 3. Plaintiffs’ damages claims contest only the post-sentencing procedures used to arrest and incarcerate them when they could not pay money in violation of their rights to due process, equal protection, counsel, and freedom from unreasonable seizures. Because Plaintiffs’ claim of injury “rests not on the state court judgment itself” but on Defendants’ conduct leading to the violation of their constitutional rights, *Rooker-Feldman* does not apply. *Wilmore*, 407 F.3d at 280.

Numerous federal courts have rejected the application of *Rooker-Feldman* to similar claims with reasoning that has equal force here. In *Fant v. Ferguson*, for example, the doctrine did not bar claims challenging Ferguson’s practice of jailing people for failing to pay fines “[b]ecause Plaintiffs [did] not complain of injuries caused by the state court judgment, but rather by the post-judgment procedures employed to incarcerate persons who are unable to pay fines . . . .” 107 F. Supp. 3d at 1030. Similarly, in *Powers v. Hamilton County Public Defender Commission*, the court rejected application of *Rooker-Feldman* “because [the plaintiff did] not allege that he was deprived of his constitutional rights by the state-court judgment, but rather by

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<sup>38</sup> Defendants have not produced any Judgment imposing a conviction and/or sentence in any of Plaintiffs’ magistrate court cases, much less shown that the damages claims challenge decisions set forth in such documents.

the Public Defender’s conduct in failing to ask for an indigency hearing as a prerequisite to his incarceration.” 501 F.3d at 606; *see also Ray v. Judicial Corr. Servs.*, 2013 WL 5428395, at \*10–11 (*Rooker-Feldman* did not bar claims against “post-judgment probationary program” leading to jailing for inability to pay; because claims did not contest court decision “merits”).<sup>39</sup>

Because Plaintiffs do not invite federal court rejection of their convictions and sentences, *Rooker-Feldman* is inapplicable.

**D. Plaintiffs’ claims against Defendants Reinhart, Adams, and Koon for conduct in their administrative capacities are not barred by judicial, quasi-judicial, or legislative immunity.**

Defendants seek summary judgment on the damages claims against Defendants Adams, Reinhart, and Koon on the grounds that these defendants enjoy judicial, quasi-judicial, and legislative immunity. Dkt. No. 50–1 at 9–10. Defendants fail to carry their burden of establishing the justification for such absolute immunity. *See Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 432 (1993) (party asserting absolute immunity must establish basis for immunity).

Defendants’ general assertion of absolute judicial immunity rests on the premise that Plaintiffs are collaterally attacking individual magistrate court sentencing decisions or, in the alternative, legislative determinations by Defendants Reinhart, Adams, and Koon. Dkt. No. 50–1 at 9–11. But this premise is false. Plaintiffs challenge the exercise of *administrative* authority by Defendants Reinhart, Adams and Koon in establishing, enforcing, and sanctioning unwritten, post-sentencing policies and practices that caused Plaintiffs’ arrest and incarceration for inability to pay money to courts. Defendants fail to identify undisputed evidence in the record showing

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<sup>39</sup> Defendants rely on a single case to support dismissal under *Rooker-Feldman*. *See* Dkt. 50–1 at 8–9 (citing *Jones v. Cumberland Cty. Municipality*, No. 5:14-CV-550-FL, 2015 WL 3440254 (E.D.N.C. 2015)). But *Jones* is distinguishable because it concerned a plaintiff’s direct challenge to the “imposition of an excessive fine and term of imprisonment.” 2015 WL 3440254, \*5. By contrast, Plaintiffs do not contest their sentences; rather, Plaintiffs challenge only the post-sentencing procedures used to arrest and incarcerate them.

that Defendants never engaged in such conduct, or authority demonstrating that judicial, quasi-judicial, and legislative immunity applies to such administrative action.

Defendants do not meet their burden to show that Defendants Reinhart, Adams and Koon are immune from damages claims. Should this Court conclude otherwise, Plaintiffs request relief under Rule 56(d) to secure discovery relating to Defendants' assertion of immunity.

1. Defendants fail to demonstrate that Defendants Reinhart and Adams acted in a judicial, rather than administrative, capacity when engaged in the challenged conduct.

Absolute judicial immunity extends to damages claims against judges for actions taken in their judicial capacity. *Stump v. Sparkman*, 435 U.S. 349, 355–56 (1987). The “touchstone” for invoking judicial immunity is whether the claim concerns a judge’s “performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.” *Antoine*, 508 U.S. at 435–36 (internal citation and quotation marks omitted). But judicial immunity does *not* extend to actions taken in the “administrative . . . or executive functions that judges may on occasion be assigned by law to perform.” *Forrester v. White*, 484 U.S. 219, 227 (1988). Courts have thus denied judicial immunity to judges for administrative actions. *See Supreme Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 734–36 (1980) (denying immunity for judge’s enforcement of attorney code of conduct); *Forrester*, 484 U.S. at 229 (denying immunity for judge’s demotion and firing of a probation officer). On this basis, the U.S. Court of Appeals for the Sixth Circuit denied judicial immunity to a state court chief judge for ordering a moratorium on the issuance of writs to evict tenants during the holiday season. *Morrison v. Lipscomb*, 877 F.2d 463, 466 (6th Cir. 1989).

In arguing that Defendants Reinhart and Adams enjoy judicial immunity, Defendants wholly misconstrue Plaintiffs claims. Defendants assert that “each decision reached by each defendant magistrate in each Plaintiff’s case was made in the exercise of a judicial function,

clearly within the jurisdiction of each magistrate.” Dkt. No. 50–1 at 9. But Plaintiffs do not contest specific decisions by magistrate judges in any of their cases. Indeed, Plaintiffs have not sought damages for individual magistrate judges’ acts of accepting their guilty pleas, convicting them, or issuing bench warrants against them.<sup>40</sup> Rather, Plaintiffs seek damages against Defendants Reinhart and Adams *only* for actions taken in their administrative capacities as Chief Judge and Associate Chief Judge for Administrative Purposes of the Lexington County Summary Courts, actions that involved overseeing, enforcing, and sanctioning standard operating procedures leading to the arrest and incarceration of Plaintiffs when they could not afford to pay money to Lexington County magistrate courts.<sup>41</sup>

It is undisputed that under South Carolina law, Defendants Reinhart and Adams held, and Defendant Adams continues to hold, the following administrative responsibilities: establishing and overseeing a county-wide procedure for the collection of magistrate court fines and fees; convening magistrate judges to establish uniform procedures; administering the Lexington County Bond Court; determining magistrate court hours of operation and schedules; assigning cases to magistrate judges; and monitoring and reporting to state authorities procedural noncompliance by summary court judges in the County.<sup>42</sup> These duties are not “traditional

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<sup>40</sup> Had Plaintiffs pursued damages claims against individual magistrate judges for actions taken in their judicial capacity, Plaintiffs would have sued each of the judges who issued the bench warrants against them. *See* Dkt. No. 21–8 ¶ 4 and accompanying Exhibits A (21–9), C (21–11), E (21–13), G (21–15), and I (21–17) (identifying Judges Adams, Reinhart, and Brian Buck). But Plaintiff Goodwin alone sues Defendant Adams *for declaratory relief only* for actions taken in her judicial capacity, a claim that is not barred by judicial immunity or challenged in this motion. *See, e.g., Ward v. City of Norwalk*, No. 15-3018, 640 F. App’x 462, 467 (6th Cir. 2016) (“Section 1983 now implicitly recognizes that declaratory relief is available against judicial officers.”).

<sup>41</sup> It is undisputed that during the years leading up to Plaintiffs’ arrest and incarceration from February 2017 to July 2017, Defendant Reinhart served as the Chief Judge for Administrative Purposes of the Lexington County Summary Courts and Defendant Adams served as the Associate Chief Judge. *See* December 2004 Order, *supra* note 9; December 2013 Order, *supra* note 10; January 2017 Order, *supra* note 11. It is further undisputed that after June 28, 2017, Defendant Adams replaced Defendant Reinhart as Chief Judge and took over his administrative responsibilities. June 2017 Order, *supra* note 9.

<sup>42</sup> *See* January 2017 Order *supra* note 11 at ¶¶ 3, 5, 9–10, 15, 17; June 2017 Order *supra* note 9 at ¶¶ 3–5, 7, 11–12, 17, 19.

adjudicative task[s]” that warrant absolute immunity. *Consumers Union*, 446 U.S. at 734. Rather, because carrying out the duties “involve[s] supervising court employees and overseeing the efficient operation of a court,” these are administrative responsibilities to which judicial immunity does not apply. *Forrester*, 484 U.S. at 229; *Morrison*, 877 F.2d at 466. Plaintiffs seek damages against Defendants Reinhart and Adams because these Defendants exercised their administrative responsibilities in a manner that established and sanctioned the unwritten standard operating procedures resulting in Plaintiffs’ arrest and incarceration for nonpayment of fines and fees without pre-deprivation ability-to-pay hearings or representation by court-appointed counsel. Dkt. No. 48 ¶¶ 110–120.<sup>43</sup>

For example, Plaintiffs contest the decision of Defendants Reinhart and Adams not to require or permit the Bond Court or the magistrate court that issued payment bench warrants under the Default Payment and Trial in Absentia Policies to hold ability-to-pay hearings for indigent people arrested and jailed on these warrants. Dkt. No. 48 ¶ 133; January 2017 Order ¶¶ 3, 5. Plaintiffs further challenge that Defendants Reinhart and Adams could have made pre-deprivation ability-to-pay hearings mandatory by exercising their administrative authority to assign cases, increase the size of magistrate court dockets, require additional hours of magistrate court operation, and mandate magistrate judges to work on evenings and weekends. Dkt. No. 48 ¶ 116; January 2017 Order ¶¶ 3, 9–10. In their Fourth Amendment claims, Plaintiffs also challenge the failure of Defendant Reinhart and Adams, as the administrative leaders of the County’s magistrate courts, to report and correct magistrate judges’ routine misuse of bench warrants to coerce fine and fee payments and to incarcerate indigent people rather than to bring

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<sup>43</sup> Even without Defendants’ responses to Plaintiffs’ discovery requests, Plaintiffs have introduced evidence from hundreds of court and jail records supporting the allegation that unwritten Default Payment and Trial in Absentia Policies result in the widespread use of payment bench warrants to arrest and incarcerate people unless they pay the full the amount of fines and fees owed to the County’s magistrate courts. *See* Dkt. Nos. 21–5 through 21–8, 21–19.

defendants to court, contrary to South Carolina law and directives from the Supreme Court of South Carolina and the Office of Court Administration. Dkt. No. 48 ¶ 119; January 2017 Order ¶ 17.<sup>44</sup>

Defendants fail to point to *any* undisputed evidence establishing that judicial immunity shields Defendants Reinhart and Adams from claims that arise out of Defendants' administrative conduct. For example, Defendants fail to identify evidence showing that Defendants Reinhart or Adams (1) did not engage in the administrative functions detailed in the January 2017 Order; (2) did not exercise their administrative functions in a manner that established or sanctioned the alleged Default Payment and Trial in Absentia Policies; (3) did not fail to administratively monitor, report, and correct magistrate judges' routine misuse of bench warrants to coerce payments and to incarcerate indigent people; (4) were unable to exercise their administrative authority over the Bond Court, case assignment, and magistrate court hours and schedules to ensure that magistrate courts provide ability-to-pay hearings to people reported for nonpayment of fines and fees before arrest and incarceration on payment bench warrants.

Defendants thus fail to meet their summary judgment burden of demonstrating that judicial immunity bars Plaintiffs' damages claims against Defendants Reinhart and Adams.

2. Defendants fail to demonstrate that Defendant Koon acted in a quasi-judicial, rather than administrative, capacity when engaged in the challenged conduct.

Defendants assert that Defendant Koon is shielded from damages claims by quasi-judicial immunity. Dkt. No. 50–1 at 10. Defendants generically argue that non-judicial officers are immune from suit when “performing tasks . . . integral or intertwined with the judicial process”

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<sup>44</sup> See S.C. Code § 22-5-115 (“If the defendant fails to appear before the court . . . a bench warrant may be issued for his arrest.”); S.C. Code § 38-53-70 (“If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant.”); Nov. 14, 1980 Order of the Supreme Court of South Carolina (“[B]ench warrants . . . are to be used only for the purpose of bringing a defendant before a court which has already gained jurisdiction over that defendant . . . .”); see also Benchbook on Bench Warrants, *supra* note 13 (defining “bench warrant” as “a form of process to be used to bring a defendant back before a particular court on a particular charge for a specific purpose . . . .”).

and that such quasi-judicial immunity extends to sheriffs who conduct arrests pursuant to “facially valid court orders.” *Id.* (internal quotation marks and citations omitted).

Defendant Koon’s assertion of quasi-judicial immunity fails because it misconstrues the conduct targeted by Plaintiffs’ damages claims. Plaintiffs do not seek damages from Defendant Koon for arresting and incarcerating them pursuant to payment bench warrants, whether or not such warrants were facially valid.<sup>45</sup> Indeed Plaintiffs did not sue any of the deputies who arrested them or Detention Center staff who booked them in jail. Plaintiffs seek damages only for Defendant Koon’s exercise of administrative authority as the head of the Lexington County Sheriff’s Department to establish the standard operating procedures that directly and proximately caused Plaintiffs’ unlawful arrest and incarceration. Dkt. No. 48 ¶¶ 492–94, 517–19.

It is undisputed that Defendant Koon exercises numerous administrative responsibilities. These include leading the LCSD Administrative Bureau, which “provides direction and overall management” for the LCSD and coordinates the day-to-day operations of “all law enforcement and detention center personnel,”<sup>46</sup> including deputies in the Warrant and Civil Process Division who track and serve warrants.<sup>47</sup> Defendant Koon acts in an administrative capacity when determining enforcement priorities, allocating limited Sheriff’s Department resources among various LCSD divisions,<sup>48</sup> negotiating relationships with other law enforcement agencies to

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<sup>45</sup> Plaintiffs allege that the County’s magistrate courts improperly use bench warrants, which South Carolina law and directives permit “only for the purpose of bringing a defendant before a court . . . .” Dkt. No. 48 ¶ 117 (emphasis added) (quoting S.C. Supreme Court Order (Nov. 14, 1980)); *see also* S.C. Code Ann. §§ 22-5-115 & 38-53-70.

<sup>46</sup> *See* Lexington County 2017-2018 Budget, *supra* note 5 at 752.

<sup>47</sup> Lexington County Sheriff’s Department, “Warrant and Civil Process,” <http://www.lex-co.com/sheriff/divisions.aspx?did=wc>.

<sup>48</sup> *See* Lexington County 2017-2018 Budget, *supra* note 5 at 752 (recognizing Sheriff’s role in LCSD Administrative Bureau, which “ensure[s] that the deputy sheriffs have the resources necessary to provide professional law enforcement service . . . .”).

execute payment bench warrants,<sup>49</sup> and overseeing and directing LCSD deputies and Detention Center staff in the manner in which payment bench warrants are executed.<sup>50</sup> Plaintiffs' claims against Defendant Koon concern his exercise of these administrative duties to "enforce[] a standard operating procedure by which people, including indigent people, are arrested on payment bench warrants and incarcerated in the Detention Center unless they can pay the full amount owed before booking, such as by raising money through phone calls to family and friends." Dkt. No. 48 ¶ 31.

For example, Plaintiffs contest Defendant Koon's decision to prioritize the execution of payment bench warrants "at people's homes, during traffic and pedestrian stops, and elsewhere, including by enlisting other law enforcement agencies to locate debtors." Dkt. No. 48 ¶ 31. Plaintiffs also challenge Defendant Koon's decision to direct LCSD deputies and Detention Center staff to inform bench warrant arrestees that "the *only way* to avoid incarceration is to pay in full" the amount of money identified on a bench warrant. *Id.* ¶¶ 126–127 (emphasis supplied). Plaintiffs also contest Defendant Koon's direction to Detention Center staff to book people arrested on bench warrants "as soon as they can verify that an arrestee is unable to pay the full amount of fines and fees identified on the face of the bench warrant." *Id.* ¶ 128. Finally, Plaintiffs challenge Defendant Koon's direction, supervision, and training of LCSD deputies and Detention Center staff, who systematically fail to notify bench warrant arrestees of their right to

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<sup>49</sup> See S.C. Code Ann. §§ 23-20-20–23-20-40 (providing procedures for mutual aid agreements between county law enforcement offices).

<sup>50</sup> See S.C. Code Ann. § 23-15-40 (requiring sheriff and deputy to "serve, execute, and return every process, rule, order, or notice issued by any court of record in [South Carolina] . . ."); *id.* § 23-15-50 ("The sheriff or his deputy shall arrest all persons against whom process for that purpose shall issue from any competent authority . . ."); see also S. C. R. Crim. P. 30(c) ("It is the continuing duty of the sheriff, and of other appropriate law enforcement agencies in the county, to make every reasonable effort to serve bench warrants and to make periodic reports to the court concerning the status of unserved warrants.").

request counsel and to bring them to the Bond Court adjacent to the Detention Center, or any other magistrate court, for a hearing on ability to pay and representation by counsel. *Id.* ¶ 135.

Defendants do not identify undisputed evidence showing that Defendant Koon never exercises the administrative authority granted to him by law. Nor do Defendants point to undisputed evidence demonstrating that Defendant Koon never exercised administrative authority—including the authority to manage the LCSD, set enforcement priorities, allocate resources, oversee and train deputies and Detention Center staff, and negotiate relationships with other law enforcement agencies—to establish standard operating procedures leading to the unlawful arrest and incarceration of indigent people who cannot pay sums of money identified on payment bench warrants. Defendant Koon’s assertion of quasi-judicial immunity therefore rests on both a misunderstanding of the nature of Plaintiffs’ claims and a failure to identify evidence showing that the challenged conduct is shielded by such immunity.

Defendants therefore fail to meet their burden of demonstrating that Defendant Koon is entitled to quasi-judicial immunity from Plaintiffs’ damages claims.

3. Defendants Reinhart, Adams, and Koon fail to show that they acted in a legislative capacity when engaged in the challenged conduct.

Defendants contend that Defendants Reinhart, Adams, and Koon are further shielded from Plaintiffs’ damages claims by absolute legislative immunity. Dkt. No. 50–1 at 10–11. Defendants fail, however, to cite any facts or case law that would justify legislative immunity for the administrative conduct at issue.

The purpose of absolute legislative immunity “is to insure that the legislative function may be performed independently without fear of outside interference.” *Consumers Union*, 446 U.S. at 731 (internal citation omitted). When it extends to local legislators and non-legislative officials, legislative immunity is strictly limited to *functionally* legislative activity, which

“typically involve[s] the adoption of prospective, legislative-type rules” and “bear[s] the outward marks of public decisionmaking, including the observance of formal legislative procedures.”

*E.E.O.C. v. Washington Suburban Sanitary Comm’n*, 631 F.3d 174, 184 (4th Cir. 2011) (internal citations, quotation marks, and alterations omitted) (emphasis added); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (finding immunity because city council’s budget ordinance “bore all the hallmarks of traditional legislation”).

Defendants do not identify undisputed evidence demonstrating that Plaintiffs’ damages claims attack formal rulemaking or other legislative conduct that would merit legislative immunity. *See* Dkt. No. 50–1 at 10–11. Defendants cite only two inapposite cases. *See id.* (citing *Consumers Union*, 446 U.S. 719, and *Abick v. Michigan*, 803 F.2d 874 (6th Cir. 1986)). Both decisions are easily distinguishable because they involve claims challenging state supreme courts’ promulgation of formal rules. *See Consumers Union*, 446 U.S. at 734 (promulgation of professional conduct rules for attorneys); *Abick*, 803 F.2d at 878 (promulgation of state rules of practice and procedure).

By contrast, Plaintiffs do not challenge Defendants Reinhart, Adams, or Koon’s promulgation of formal rules or participation in any other formal legislative procedures. Rather, as discussed above, Plaintiffs challenge Defendants Reinhart and Adams’ exercise of administrative authority over fine and fee collection procedures, case assignment, the Bond Court, magistrate court hours of operation and schedules, and the monitoring and reporting to state authorities procedural noncompliance by the County’s magistrate courts. Plaintiffs also challenge Defendant Koon’s administrative decisions to prioritize bench warrant executions and his direction, training, and supervision of LCSD officers and Detention Center staff concerning what to tell people arrested on payment bench warrants, when to book them in jail, and when not

to transport them to Bond Court or the magistrate court that issued the warrant. Plaintiffs identify undisputed evidence in the record showing that Defendants have the authority to exercise such administrative functions, and Plaintiffs allege that these administrative actions established unwritten standard operating procedures that resulted in their unlawful arrest and incarceration. *See* Sections I.B.1 & I.B.2, *supra*. None of the specific conduct of Defendants Reinhart, Adams, and Koon alleged to have caused Plaintiffs' injuries "bear[s] the outward marks of public decisionmaking" or involves "the observance of formal legislative procedures." *Washington Suburban*, 631 F.3d at 184.<sup>51</sup> Defendants do not identify a single case establishing that legislative immunity applies to these administrative actions. *See* Dkt No. 50–1 at 10–11.

Defendants Reinhart, Adams, and Koon have thus failed to show that they are shielded by legislative immunity from Plaintiffs' damages claims.

4. Discovery will reveal specific facts necessary to Plaintiffs' opposition.

As demonstrated above, there is ample basis for this Court to deny Defendants Reinhart, Adams, and Koon judgment as a matter of law on Plaintiffs' damages claims on the basis of asserted immunities. The record is replete with evidence that, at a minimum, raises genuine questions of material fact as to whether judicial, quasi-judicial, and legislative immunity apply to claims against these Defendants' administrative conduct. But should this Court conclude otherwise, Plaintiffs respectfully request relief under Rule 56(d) to secure discovery necessary to raise genuine, triable issues of material fact regarding the assertion of immunity.

A nonmovant faced with contesting a motion for summary judgment may seek relief under Rule 56(d) when certain facts are unavailable. Rule 56(d) provides:

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<sup>51</sup> Legislative immunity is rarely asserted or applied to claims challenging the kind of administrative conduct alleged here. *See, e.g., Morrison*, 877 F.2d at 466 (finding in case where legislative immunity was not asserted that judge's order imposing a moratorium on the issuance of writs to evict tenants "was an administrative . . . act" to which "absolute immunity does not apply").

If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

The declaration in support of a request for Rule 56(d) relief must specify the reasons for additional discovery or otherwise notify the district court as to which specific facts are yet to be discovered. *See McCray v. Md. Dep't of Transp.*, 741 F.3d 480, 484 (4th Cir. 2014).

Rule 56(d) relief is “especially important when the relevant facts are exclusively in the control of the opposing party.” *Harrods Ltd.*, 302 F.3d at 246–47 (quoting 10B Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2741 (3d ed.1998)). Under this principle, a nonmovant’s request to conduct discovery under Rule 56(d) is “broadly favored and should be liberally granted.” *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor of Balt.*, 721 F.3d 264, 281 (4th Cir. 2013) (internal quotation marks omitted).

The presumption in favor of granting Rule 56(d) relief is strong here because Defendants filed a motion for summary judgment before any discovery beyond initial disclosures. Plaintiffs timely invoke Rule 56(d) because, without discovery, they “cannot present facts essential to justify [their] opposition.” Fed. R. Civ. P. 56(d). In support of this motion, Plaintiffs submit the Declaration of Nusrat Choudhury (“Choudhury Declaration”), which identifies specific facts concerning the scope of Defendants Reinhart, Adams, and Koon’s administrative responsibilities and the impact of their exercise of administrative authority that are yet to be discovered but are material to resolve whether immunity applies. *See McCray*, 741 F.3d at 484.

Specifically, as detailed in the Choudhury Declaration, Defendants have yet to respond to Plaintiffs’ Requests for Production (“RFPs”), which are designed to uncover information directly relevant to whether, and to what extent, the policies and practices alleged to have caused

Plaintiffs' unlawful arrest and incarceration are attributable to Defendants Reinhart, Adams, and Koon's administrative actions. Choudhury Decl. ¶¶ 14–26. These requests are likely to assist Plaintiffs in raising genuine, triable issues of material fact that would preclude summary judgment for Defendants based on judicial, quasi-judicial, or legislative immunity. *Id.* ¶ 17.

For example, Plaintiffs have asked for documents prepared by Defendants Reinhart and Adams, or provided by them to other magistrate judges and staff, concerning policies, procedures, instructions, guidance, and training on: the imposition of court fines and fees; use of payment bench warrants; assessment of defendants' financial circumstances; the appointment of counsel to indigent defendants; provision of notice to people alleged to have not paid fines and fees; the use of Scheduled Time Payment Agreements; the conduct of Show Cause Hearings; and the provision of Bond Court hearings for people arrested on payment bench warrants.

Choudhury Decl. ¶ 18. Ex. C at RFPs Nos. 3–4, 6–8, 12, 17, 19–20, 40–41, 47–49. These requests seek to determine whether Defendants Reinhart and Adams' exercise of administrative authority over fine and fee collection procedures, the Bond Court, magistrate court case assignment, and magistrate court hours of operation and schedules established the Default Payment and Trial in Absentia Policies and the policy prohibiting an ability-to-pay hearing in Bond Court or magistrate court for people arrested on payment bench warrants. Choudhury Decl. ¶ 19. These requests also seek to determine whether these Defendants exercised administrative authority by failing to report to state authorities and correct magistrates' routine misuse of bench warrants. *Id.* ¶ 20. And these requests seek to determine whether Defendants Reinhart and Adams' administrative actions proximately caused Plaintiffs' arrest and incarceration without pre-deprivation ability-to-pay hearings or representation by counsel. *Id.* ¶ 21.

Likewise, Plaintiffs seek documents prepared by Sheriff Koon concerning policies, procedures, instructions, guidance, and training on court fines and fees; the execution of bench warrants issued by magistrate courts; the booking, incarceration, and release of people jailed on bench warrants; the provision of Bond Court hearings to, and collection of money from, people arrested on bench warrants; the arrest, booking, incarceration, and release of people otherwise incarcerated for non-payment of magistrate court fines and fees; and attorney visitation in the Detention Center. Choudhury Decl. ¶ 22, Ex. B at RFPs Nos. 4, 26, 29–32, 37. These requests are designed to determine whether Defendant Koon’s exercise of administrative authority to set enforcement priorities, allocate resources, and oversee and train deputies and Detention Center staff enforced standard operating procedures that caused the arrest and incarceration of indigent people who could not pay the sums of money identified on payment bench warrants. Choudhury Decl. ¶ 23. These document requests also seek to determine whether such administrative conduct proximately caused Plaintiffs’ arrest and incarceration without any pre-deprivation ability-to-pay hearing or representation by court-appointed counsel. *Id.* ¶ 24.

Finally, Plaintiffs also seek the production of any agreements concerning the execution of bench warrants and the incarceration of people who owe magistrate court fines and fees between Lexington County magistrate courts and the LCSD, as well between the LCSD and other law enforcement agencies. Choudhury Decl. ¶ 25, Ex. B at RFPs Nos. 23–25; *id.* Ex. C at RFPs No. 22–23. Through these document requests, Plaintiffs seek to determine the relative responsibility of Defendants Reinhart, Adams, and Koon for the Default Payment and Trial in Absentia Policies, as well as the unwritten standard operating procedure by which indigent people arrested on payment bench warrants and incarcerated in the Detention Center are not notified of their right to counsel or transported by LCSD deputies or Detention Center staff to Bond Court or to

the original magistrate court that issued the warrant for an ability-to-pay hearing and representation by court-appointed counsel. Choudhury Decl. ¶ 26.

Furthermore, once Plaintiffs receive the documents to which they are entitled, Plaintiffs will request an opportunity to depose Defendants regarding the scope and exercise of Defendants' administrative responsibilities. Plaintiffs request to depose Defendants Reinhart and Adams regarding the exercise of their duties under the January 2017 Order to establish fine and fee collection procedures, administer the Bond Court, assign magistrate court cases, establish magistrate court hours of operation and schedules, and report to state authorities and correct procedural noncompliance by magistrate judges. Choudhury Decl. ¶ 32. Plaintiffs also request to depose Defendant Koon regarding the scope his duties and powers as the administrative head of the LCSD and Detention Center. *Id.* ¶ 33.

In sum, Plaintiffs' pending Requests for Production and intended depositions seek material information likely to assist Plaintiffs in raising genuine, triable issues of material fact on whether Defendants' administrative conduct caused Plaintiffs' unlawful arrest and incarceration. Because Defendants filed their motion for summary judgment before such discovery could be obtained, this Court should reserve decision on the motion and grant Plaintiffs time to conduct discovery to adduce relevant evidence to defend against Defendants' premature motion.<sup>52</sup>

**E. Defendants fail to demonstrate that questions of authority and causation merit resolution as matters of law at this early stage.**

Defendants argue that all Defendants lack authority to engage in the challenged conduct, and that the County and Defendant Madsen cannot, as a matter of law, be shown to proximately

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<sup>52</sup> Defendants argue in a separate motion that “[d]iscovery is not a prerequisite” to this Court’s consideration of whether immunity applies. Dkt. No. 51 at 3. But “even a party whose assertion of immunity ultimately proves worthy must submit to the burdens of litigation until a court becomes sufficiently informed to rule.” *Al Shimari v. CACI Int’l, Inc.*, 679 F.3d 205, 220 (4th Cir. 2012) (emphasis supplied). Discovery is necessary here where Defendants fail to establish immunity and the record lacks facts material to determining whether immunity applies. *See, e.g., id.* at 223 (denying immunity because defendants had “yet to establish their entitlement to it”); *Ray*, 2013 WL 5428395, at \*9 (denying judicial immunity on claims challenging administrative conduct).

cause a violation of the Sixth Amendment right to counsel. Dkt. No 50-1 at 11-14. Plaintiffs' evidence rebuts these assertions and Defendants fail to offer undisputed evidence to the contrary. Summary judgment is unwarranted on either of the asserted grounds. But should this Court conclude otherwise, Plaintiffs seek relief under Rule 56(d).

1. There are triable issues of fact as to whether Defendants lack authority to enforce the alleged unwritten policies that caused Plaintiffs' unlawful arrest and incarceration.

As a threshold matter, Defendants misconstrue Plaintiffs' damages claims against Defendants Reinhart, Adams, and Koon in their individual capacities as a claim against Lexington County. *See* Dkt. No. 50-1 at 11-13. Plaintiffs are not suing these state officials on a theory of municipal liability.<sup>53</sup> Nor do Plaintiffs "claim that Lexington County had authority to make and implement policies as to how specific cases would be handled in magistrates' courts." *Id.* at 13. Because Plaintiffs seek damages against Defendants Reinhart, Adams, and Koon in their individual capacities, it is irrelevant whether "the Lexington City Council cannot be held responsible for the actions taken by" the County's magistrate courts. Dkt. No. 50-1 at 13 (quoting *Dunbar v. Metts*, No. 2:10-1775-HMH-BHH, 2011 WL 1480279, at \*5 (D.S.C. 2011)).

Defendants further argue that "the magistrates and the sheriff also could not have established the 'policies' alleged by Plaintiffs" because "rulemaking authority" lies "solely in the Supreme Court." Dkt. No. 50-1 at 13. Defendants fail to support this assertion with undisputed evidence. While the Constitution of South Carolina vests the Supreme Court with the authority to "make rules governing the administration of all the courts of the State," it also explicitly permits the Chief Justice to delegate administrative authority to local Chief Judges "as he deems

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<sup>53</sup> *Monell* requires a Section 1983 action against a municipal entity to show that the constitutional violation resulted from a municipal "policy or custom." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). The *Monell* standard is inapplicable to Plaintiffs' claims against Defendants Reinhart, Adams, and Koon, who are sued in their individual capacities as state officials. Dkt. No. 48 ¶¶27-28, 31; *see Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("[T]o establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right.").

necessary to aid in the administration of the courts of the State.” S.C. Const. art. V, § 4.

Through the January and June 2017 Orders, Chief Justice Beatty granted broad administrative authority over summary courts to chief judges for administrative purposes, including Defendants Reinhart and Adams. Similarly, as described in Sections I.B.2 and II.D.2, *supra*, Defendant Koon has the authority to create and oversee standard operating procedures by allocating resources, setting enforcement priorities for the LCSD Warrant Unit, negotiating agreements with other law enforcement offices, and directing, training, and supervising deputies and Detention Center staff in how to execute and detain people named in payment bench warrants.

The facts available at this stage of the proceedings thus provide ample reasons to deny Defendants’ motion. To the extent this Court concludes otherwise, Plaintiffs respectfully request Rule 56(d) relief for discovery relating to the administrative authority of Defendants Reinhart, Adams, and Koon as set forth in the Choudhury Declaration. *See* Section II.D.4, *supra*.

2. There are triable issues of fact as to whether Defendant Lexington County merits summary judgment on Plaintiffs’ Fourth Amendment claim for “lack of causation.”

Defendants contend, without evidentiary support, that Plaintiffs’ damages claim against Defendants Lexington County and Madsen for inadequate provision of indigent defense fails as a matter of law because “even if public defender systems did not exist, a magistrate would still be able to appoint counsel for indigent persons from members of the bar.” Dkt. No. 50–1 at 14.<sup>54</sup> “Ordinarily, proximate cause cannot be determined on the basis of pleadings but instead requires a factual development at trial.” *Estate of Bailey v. Cty. of York*, 768 F.2d 503, 511 (3d Cir. 1985), *overruled on other grounds by DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489

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<sup>54</sup> Defendant Madsen’s conduct as a County final policymaker for provision of indigent defense in magistrate courts supports the Sixth Amendment damages claim against the County itself.

U.S. 189 (1989).<sup>55</sup> Regardless, Defendants’ argument flies in the face of Sixth Amendment requirements, evidence in the record, and numerous court decisions recognizing that inadequate government funding of indigent defense services can violate the right to counsel.

The Sixth Amendment right to counsel is “fundamental [and] essential to a fair [criminal] trial.” *Gideon v. Wainwright*, 372 U.S. 335, 343–44 (1963). The right extends to all state criminal proceedings involving incarceration, whether for felonies or misdemeanors. *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972) (actual incarceration); *Scott v. Illinois*, 440 U.S. 367, 373 (1979) (same); *Alabama v. Shelton*, 535 U.S. 654, 674 (2002) (suspended incarceration). The Sixth Amendment requires government to ensure representation to indigent defendants in such proceedings.<sup>56</sup> A local government’s inadequate funding and provision of indigent defense is a cognizable Sixth Amendment injury. *See, e.g., Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124, 1132 (W.D. Wash. 2013) (municipal policymakers’ “deliberate choices regarding the funding, contracting, and monitoring of the public defense system” violated Sixth Amendment).<sup>57</sup>

Evidence supports a claim of inadequate funding and provision of indigent defense against Defendants Lexington County and Madsen. These Defendants bear significant responsibility for providing and paying for court-appointed counsel to represent indigent

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<sup>55</sup> *See also Talkington v. Atria Reclamelucifers Fabrieken BV*, 152 F.3d 254, 264 (4th Cir. 1998) (“Proximate cause is generally a question of fact to be decided by the jury.”)

<sup>56</sup> *See Tucker v. State*, 394 P.3d 54, 62–63 (Idaho 2017) (“[I]t is the State’s obligation to provide constitutionally adequate public defense at critical stages of the prosecution.”); *Wilbur*, 989 F. Supp. 2d at 1134 (“Having chosen to operate a municipal court system, . . . defendants are obligated to comply with . . . the Sixth Amendment . . .”).

<sup>57</sup> *See also Church v. Missouri*, No. 17-CV-04057-NKL, 2017 WL 3383301, at \*1–2 (W.D. Mo. July 24, 2017) (Sixth Amendment claim challenging inadequate funding of public defense); *Tucker*, 394 P.3d at 63 (finding standing for Sixth Amendment right to counsel claim based on allegations of systemic inadequacies in public defense); *Kuren v. Luzerne Cty.*, 146 A.3d 715, 718 (Pa. 2016) (recognizing Sixth Amendment claim for “systemic violations of the right to counsel due to underfunding”); *Hurrell-Harring v. State*, 15 N.Y.3d 8, 22–23 (N.Y. 2010) (alleged “inadequate funding and staffing of indigent defense providers” sufficiently states Sixth Amendment claim).

defendants in magistrate court proceedings.<sup>58</sup> As the Eleventh Circuit Public Defender, Defendant Madsen must provide “adequate and meaningful representation [to] indigent [defendants] within the counties” of the Eleventh Circuit, which includes Lexington County. S.C. Code Ann. § 17-3-540(A).<sup>59</sup> The County must give funds to Defendant Madsen, who must use the funds along with state resources to hire, manage, and train staff to provide indigent defense services in the County’s courts. *See id.* § 17-3-540(B) (requiring each county to pay for staff appointed by circuit public defender “as necessary to provide adequate and meaningful” indigent defense).<sup>60</sup> Lexington County must provide a minimum amount of funding each year.<sup>61</sup>

Evidence that the County provides less than half the funding for indigent defense compared to counties of comparable population size suggests that Lexington County has funded indigent defense at a level grossly inadequate to ensure representation for indigent defendants in magistrate court cases. *See* Section I.B.3, *supra*; Ryan Aff. Exs. A & B. Plaintiffs Brown, Wright, and Darby were not assigned counsel and did not even see any public defenders in the courtroom when they appeared in court.<sup>62</sup> Plaintiffs were never visited by public defenders in Defendant Madsen’s employ after their arrest and incarceration.<sup>63</sup> This evidence supports the assertion that Defendant Madsen does not assign public defenders to serve the County’s magistrate courts or to meet with people arrested on payment bench warrants, which underscores that the County’s inadequate funding and Defendant Madsen’s allocation decisions fail to ensure representation for indigent defendants in magistrate court cases as required by law.

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<sup>58</sup> “South Carolina’s Public Defender System is a county-based system” and circuit public defenders “are responsible” for public defense in each county in their circuit. SCCID, Circuit Public Defenders, *supra* note 21.

<sup>59</sup> *See* SCCID, Public Defenders by County, <https://sccid.sc.gov/about-us/county-public-defenders>.

<sup>60</sup> *See also* S.C. Code Ann. § 17-3-560 (requiring circuit public defenders to “expend the funds received from the counties in the circuit” for “reimbursement to the administering county” to pay for staff).

<sup>61</sup> *See* S.C. Code Ann. § 17-3-550(B)(4) (“No county may appropriate funds for public defender operations in a fiscal year below the amount it funded in the immediate previous fiscal year.”).

<sup>62</sup> Brown Decl. ¶¶ 3, 6; Darby Decl. ¶¶ 12–15; Dkt. No. 35–2 ¶¶ 3, 8.

<sup>63</sup> *See* Brown Decl. ¶ 14; Darby Decl. ¶ 27; Goodwin ¶ 13; Palacios ¶ 20.

Defendants fail to cite facts showing that appointment of counsel from the private bar would fulfill their Sixth Amendment obligation to ensure adequate public defense. *See* Dkt. No. 50–1 at 14. Defendants also fail to point to undisputed evidence showing that the County’s inadequate funding of the Eleventh Circuit Public Defender’s Office *cannot* lead to inadequate defense for indigent people in magistrate court proceedings. *Id.* Because there are triable issues of material fact, summary judgment for the County and Defendant Madsen is unwarranted.

Finally, should this Court rule that there are no triable questions of material fact as to whether the County or Defendant Madsen’s conduct could violate Plaintiffs’ Sixth Amendment rights, Plaintiffs seek relief under Rule 56(d). Plaintiffs have requested discovery relating to these Defendants’ contracts, funding and budgeting for indigent defense services, as well as policies, procedures, practices, guidelines, and training materials concerning representation of people in proceedings involving imposition or collection of magistrate court fines and fees and meeting with people incarcerated on payment bench warrants. *See* Choudhury Decl. ¶¶ 27–28, Ex. A at RFPs Nos. 9, 25–28. These requests are targeted to determine whether the County’s and Defendant Madsen’s funding, resource allocation, case assignment, and training decisions proximately caused Plaintiffs to be incarcerated without representation by counsel despite prima facie evidence of indigence. *Id.* ¶ 27. Plaintiffs also seek to depose the County and Defendant Madsen regarding these matters. *Id.* ¶ 32. Plaintiffs’ pending requests seek material information likely to assist Plaintiffs in raising genuine, triable issues of material fact.

### III. CONCLUSION

For the foregoing reasons, Defendants fail to demonstrate they are entitled to summary judgment on Plaintiffs’ damages claims. Plaintiffs respectfully ask the Court to deny the motion. In the alternative, Plaintiffs ask the Court to stay its decision and to grant Plaintiffs relief under Rule 56(d) to conduct discovery for evidence to defend against Defendants’ premature motion.

DATED this 29th day of November 2017.

Respectfully submitted by,

s/ Susan K Dunn

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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**DECLARATION OF TWANDA MARSHINDA BROWN  
IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT ON DAMAGES CLAIMS**

I, Twanda Marshinda Brown, declare as follows:

1. I am indigent and rely on needs-based public assistance, including Medicaid and Section 8 housing assistance. I have relied on Section 8 housing assistance since 2015.

2. I am a single working mother. Since 2015, I have been the sole financial provider for my three youngest children and a financial provider for my two older sons.

3. In April 2016, I pled guilty in the Irmo Magistrate Court to driving on a suspended license, 2nd offense (“DUS-2”), and to driving with no tag light. The court sentenced me to pay \$2,100 for DUS-2 and \$237.50 for no tag light. The judge never asked about my ability to pay, income, or financial situation before or after sentencing me to pay these fines and fees. The judge also did not appoint a lawyer to help me or even inform me of my right to ask for a court-appointed lawyer to help me.

4. I could not afford to pay \$2,337.50, so the judge placed me on a payment plan. Even though I told the judge I could only afford to pay \$50 each month, the judge ordered me to

make monthly payments of \$100 and to pay a three percent collection fee on top of the total amount I owed. The judge did not ask me about my ability to pay, income, or financial situation before or after setting the terms of my payment plan.

5. I explained to the judge that I could not afford to pay the court \$100 each month because I had to support my children. The judge responded, “I don’t care if you have one, two, three, four, five, six, or seven kids.”

6. When I was in court, I did not know that I had a right to request the help of a court-appointed lawyer. I did not see any public defenders or other lawyers in the courtroom who were being appointed by the judge to represent poor people like me.

7. No one told me I could request to change my payment plan or to have a court hearing if my financial situation changed and I could not afford to pay \$100 each month.

8. I was able to make the first five payments, but I could not afford to continue paying \$100 a month after October 2016. At that time, I had to reduce my hours working at a Burger King in order to take care of my son, who had an accident and had to have surgery. At around that time, my employer was not properly paying me. I eventually had to look for a new job so that I could earn consistent income. I was unemployed for more than one month while looking for a new job.

9. I found a temporary position at McIntyre Food Products in February 2017. I expected to be given a permanent position and a raise on or around February 20, 2017.

10. On the morning of February 18, 2017, officers of the sheriff’s department came to my home and arrested me in front of my children. I sent my youngest child to take out the trash so that he would not see me being handcuffed and arrested.

11. I was taken to the Lexington County Detention Center. At jail, I was shown a warrant that ordered me to pay \$1,907.63 or spend 90 days in jail.

12. I could not afford to pay \$1,907.63, so I was incarcerated for 57 days. I was for three days in the Alvin S. Glenn Detention Center and 53 days in the Lexington County Detention Center.

13. After I was jailed, I was never taken to Bond Court or back to the Irmo Magistrate Court for a hearing on my ability to pay \$1,907.63 in fines and fees.

14. No one from the Lexington County Public Defender Office asked to meet with me while I was in the Lexington County Detention Center or the Alvin S. Glenn Detention Center.

15. I lost my job because I could not report to work while I was in jail.

16. I cried every day I was in jail because I missed my children and worried about during my incarceration, my son turned seventeen years old, my granddaughter turned one year old, and my cousin died. I was not able to be with my family for any of these important events.

17. After I was released from jail, I had a very difficult time finding work. I am still struggling to pay off the bills that piled up while I was incarcerated.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Columbia, South Carolina

on the 20<sup>th</sup> day of November, 2017.

By: Twanda M. Brown  
Twanda Marshinda Brown

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**DECLARATION OF SASHA MONIQUE DARBY**  
**IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO DEFENDANTS’**  
**MOTION FOR SUMMARY JUDGMENT ON DAMAGES CLAIMS**

I, Sasha Monique Darby, declare as follows:

1. I am indigent and homeless. I receive Medicaid, SNAP, and TANF.
2. I am a single mother of a four-year-old boy.
3. I suffer from Post-Traumatic Stress Disorder (“PTSD”) from being abused and assaulted as a child.
4. In 2015, I moved with my son to South Carolina from Massachusetts to be close to my mother and extended family.
5. After I moved to South Carolina, my mother initially looked after my son while I worked. But because my mother suffered from health problems due to diabetes, she could no longer care for my son. I could not afford to pay for childcare, so I had to send my son to live with his father’s mother back in Massachusetts.
6. Even after my son returned to Massachusetts during the summer of 2015, I sent money for his financial support while I worked in South Carolina.

7. In 2016, I worked as a forklift driver and in several other low paying jobs. That year, I earned around \$11,770.

8. From January to August 2016, I lived with a roommate in South Carolina to try to save money. But the housing situation did not work out and I had to move out.

9. When I was moving out of the apartment, my roommate demanded \$200 extra from me, and we got into an argument. I saw my roommate raise her hand and I thought she was going to hit me. Because of my PTSD, I felt threatened and hit my roommate.

10. My roommate called the police. The officer who came to the apartment gave me a ticket for assault and battery in the third degree.

11. I went to court on August 23, 2016. Before I entered the courtroom, someone handed me a piece of paper and told me to “check a box.”

12. The paper said I had to pay \$40 for a lawyer to represent me. Because I did not have \$40, I checked the box next to the sentence that said, “I waive my right to have an attorney present.” I did not believe I had a choice, however, because I did not have \$40. The judge did not ask me any questions about why I checked that box on the form, or what I understood or expected as a result of checking that box.

13. I did not understand, and no one told me, that I had the right to request the help of a lawyer or that I could ask the court to waive the \$40 fee for a court-appointed lawyer.

14. The judge did not explain to me how a lawyer could help me or the problems that I could face if I represented myself. The judge also did not tell me that I could be jailed if I was convicted or how long I could be jailed for.

15. When I was in court, I did not see any public defenders or other lawyers in the courtroom who were being appointed by the judge to represent poor people like me.

16. I represented myself and was convicted of assault and battery in the third degree.

17. The judge ordered me to pay \$1,000. The judge never asked me about my ability to pay, income, or financial situation before or after sentencing me to pay.

18. Because I could not afford to pay \$1,000, I asked to be put on a payment plan. I said I could afford to pay \$100 or \$120 per month. I knew it would be difficult for me to pay that much, but I wanted to show the judge I would try my best to pay as much as I could as soon as possible.

19. Instead, the judge told me that the amount I offered to pay was not enough. The judge ordered me to pay \$150 each month plus a \$30 collection fee on top of the total amount I owed.

20. No one told me I could request to change my payment plan or to have a court hearing if my financial situation changed and I could not afford to pay \$150 each month.

21. I paid \$200 at court. I also made payments of \$150 in September and October.

22. Starting in November 2016, I could not afford to pay \$150 each month because I had to spend \$180 every two weeks for my son's daycare.

23. On March 28, 2017, I was arrested at my mother's house. I was pregnant at that time.

24. I was taken to the Lexington County Detention Center. At jail, I was shown a bench warrant that ordered me to pay \$680 or spend 20 days in jail.

25. I couldn't afford to pay \$680, so I was incarcerated for 20 days.

26. After I was jailed, I was never taken to Bond Court or back to the Irmo Magistrate Court for a hearing on my ability to pay \$680 in fines and fees.

27. No one from the Lexington County Public Defender Office asked to meet with me while I was in jail.

28. In jail, I did not get enough food or medical care for my pregnancy, and I missed my first prenatal care appointment. I also could not talk to my son.

29. While I was in jail, my landlord started proceedings to evict me from my home, and I lost my job as a forklift operator.

30. When I was released from jail, I was homeless, so I moved back to Massachusetts near my son. I currently live in a shelter in New Bedford, Massachusetts.

31. I recently found work as a housekeeper and am trying to save money to get a place to live, but I am still struggling after losing my job and home due to my time in jail.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in New Bedford, Massachusetts on this 19<sup>th</sup> day of November, 2017.

By: Sasha Darby  
Sasha Monique Darby

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**DECLARATION OF AMY MARIE PALACIOS**  
**IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO DEFENDANTS’**  
**MOTION FOR SUMMARY JUDGMENT ON DAMAGES CLAIMS**

I, Amy Marie Palacios, declare as follows:

1. I am indigent and a single mother.
2. I am the primary financial provider for myself and my two teenage daughters.
3. From October 2016 to February 2017, I worked five or six days a week as a server at a restaurant, where my shifts were twelve hours a day. Although I worked hard to cover basic necessities for myself and my daughters, I struggled financially and remained indigent.
4. My driver’s license was suspended in 2015. During 2016, I worked to save up the money to pay the fine and reinstatement fee.
5. In October 2016, I was the passenger in a car driven by a friend, who was pregnant at the time. My friend felt sick and I offered to drive. Soon after, we were stopped at a roadblock and I got a ticket for driving under a suspended license, first offense (“DUS-1”). The

ticket informed me that I had to appear in court in Lexington on November 10, 2016. It provided the address of the Lexington County Central Traffic Court.

6. I could not go to court on November 10, 2016, because I was scheduled to work during the time of the hearing and could not secure time off or find a replacement to cover me during my shift.

7. On November 9, 2016, I called the court to explain that I could not come to court the following day. I asked a court staff person how to request a different court date. The court staff person told me that my manager could fax an affidavit to the court explaining my situation, and that the judge would review the papers and notify me of the decision.

8. I asked the court staff person what would happen if I could not attend court. The court staff person assured me, "As long as you fax that over, you should be OK."

9. That same day, I asked my manager to submit an affidavit to the court explaining that I could not appear due to work obligations. My manager agreed to provide an affidavit.

10. That same day, I faxed the court an affidavit from my manager, which explained that I would not be able to attend court on November 10, 2016, due to work. Attached hereto as Exhibit A is a true and accurate copy of the affidavit signed by my manager, which I faxed to the Central Traffic Court on November 9, 2016.

11. No one from the Central Traffic Court contacted me about my hearing.

12. On February 25, 2017, I needed a ride home after having dinner with a friend. Another friend agreed to drive me home. Police stopped my friend's car for not having a proper tag.

13. During the traffic stop, an officer asked for my identification. The officer ran my name for warrants and informed me that there was a bench warrant for my arrest.

14. The officers took me to the Lexington County Detention Center.

15. Before I was booked in jail, I asked an officer why there was a bench warrant for my arrest. The officer informed me that the bench warrant was related to my October 2016 DUS-1 charge. The officer explained, "So either you do 30 days in jail or you pay a fine of \$647.50. These are your options."

16. I was confused. I asked the officer, "So I can pay to get out?" The officer told me that was correct.

17. This discussion of the bench warrant was the first notice I received that I had been tried, convicted, and sentenced for DUS-1 in my absence.

18. I could not afford to pay \$647.50, so I was incarcerated for 21 days.

19. I was never taken to Bond Court or to the Lexington County Central Traffic Court for a hearing on my ability to pay \$647.50 in fines and fees either before or after being booked in jail.

20. No one from the Lexington County Public Defender Office asked to meet with me when I was in the Lexington County Detention Center.

21. I lost my job because I could not report to work while I was in jail.

22. While incarcerated, I suffered from high blood pressure but did not get proper medical attention.

23. While I was in jail, I also missed important events in my children's lives, including the chance to be with my fifteen-year-old daughter when she took her first driving test.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Lexington, South Carolina on this 17th day of November, 2017.

By:   
Amy Marie Palacios

# **EXHIBIT A**

11/9/16

I, JORGE GOMEZ Manager @  
EL Jimador Mexican Restaurant  
state that Amy Palacios  
is scheduled to work on  
11/10/16 & cannot attend  
court date scheduled for  
11/10/16. Ms. Palacios would  
like to request an extension  
for this date to avoid any  
future issues. If you have any  
questions please call me.

Thank You

Sincerely



(803) 785-0222

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**DECLARATION OF NORA ANN CORDER**  
**IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO DEFENDANTS’**  
**MOTION FOR SUMMARY JUDGMENT ON DAMAGES CLAIMS**

I, Nora Ann Corder, declare as follows:

1. I am indigent.
2. I need a car and the ability to drive in order to be able work and find jobs.
3. In 2016, I was unemployed for a significant period of time. As a result, I was indigent and suffered financial hardship. I was eligible for and received needs-based assistance, including food stamps through SNAP.
4. I was unable to afford my car insurance policy while I was unemployed and it was canceled as a result. In July 2016, I was ticketed for not having car insurance, which led to a \$230 fine and a suspension of my driver’s license.
5. I could not reinstate my driver’s license because I could not afford to pay the \$230 fine, the \$100 driver’s license reinstatement fee, or the cost of car insurance.
6. Later that year, I began working at a shipping warehouse that was located eighteen miles from my home. Because I worked twelve-hour shifts that ended very early in the

morning, I could not find anyone to drive me from my home to work, and there was no public transportation to get there. So, I had to drive myself to work.

7. In January 2017, I was stopped by a Lexington County Sheriff's Deputy and received three traffic tickets: one for driving under a suspended license ("DUS-1"); one for a temporary license plate violation; and one for driving without car insurance. The tickets informed me that I had to appear in court and provided the address of the Lexington Magistrate Court.

8. During the traffic stop, my car was also impounded.

9. I lost my job in February 2017 because I could not afford to get my car out of impound and had no other way to travel to work.

10. In March 2017, I started a new job at a Waffle House. I worked full time, but earned only \$290 per week. I also had to pay neighbors and other acquaintances \$10 to \$15 each workday to drive me to and from the Waffle House, which reduced the amount of money I had to pay for basic necessities.

11. From March to May 2017, I was indigent and received needs-based public assistance in the form of SNAP food assistance.

12. I went to the Lexington Magistrate Court for scheduled court hearings on my traffic tickets on three different occasions: February 15, 2017; March 22, 2017; and April 19, 2017. Each time I appeared in court, the officer who ticketed me requested that the case be continued to a later date. The officer told me he would drop the car insurance and driver's license charges if I obtained car insurance and paid to have my driver's license reinstated. On each of these dates, however, I told the officer I could not afford to get my car out of impound or pay the driver's license reinstatement fees.

13. When I went to court on April 19, 2017, the officer who ticketed me told me he was going to continue the case to May 17, 2017.

14. The Lexington Magistrate Court was located too far away from my rural home to walk and I could not find transportation from my home to court on May 17, 2017. There was also no public transportation in the area where I lived. As a result, I missed my court hearing on that date.

15. No one from the Lexington Magistrate Court contacted me about my hearing.

16. A few days later, I called the Lexington County Sheriff's Department. I was informed that there was a bench warrant for my arrest.

17. I called the Lexington Magistrate Court to explain that I had been unable to secure transportation to court on May 17, 2017. A clerk informed me that I was required to pay \$1,320 or to turn myself in for arrest. I explained that I had only recently secured a job and could not afford to pay the full amount, but I could pay in installments. The clerk told me I was not allowed to pay in installments, and that I would be arrested unless I paid \$1,320 in full.

18. During the same time that I learned there was a bench warrant for my arrest, I was also facing eviction from my home because I could not afford my rent.

19. On May 26, 2017, I went to the Lexington Magistrate Court to file forms to fight the eviction action against me. Shortly after I arrived in the courthouse, I was handcuffed, arrested, and taken to the Lexington County Detention Center.

20. I could not afford to pay \$1,320, so I was incarcerated for 54 days.

21. I lost my home because I could not fight the eviction action while I was in jail. I also lost my job because I could not report to work while I was in jail.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Lexington, South

Carolina on the 22 day of November, 2017.

By Nora Ann Corder  
Nora Ann Corder

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**DECLARATION OF XAVIER LARRY GOODWIN  
IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT ON DAMAGES CLAIMS**

I, Xavier Larry Goodwin, declare as follows:

1. In 2016, I was indigent and struggled to provide for myself and my family. I was the sole financial provider for myself, my wife, and our two daughters. I also paid child support for two sons who do not live with me.

2. I earned an annual income of around \$32,570 in 2016. My low income made it very difficult for me to meet my financial obligations to my family and to pay for child support.

3. On July 15, 2016, I was issued five traffic tickets during a traffic stop: one for driving under a suspended license, 2nd offense (“DUS-2”); one for uninsured motor vehicle fee violation, 1st offense (“uninsured vehicle-1”); one for seatbelt violation; one for not replacing my temporary license plate; and one for use of a license plate other than for the vehicle which issued.

4. The tickets instructed me to appear in the Lexington County Central Traffic Court on August 9, 2016.

5. I could not attend court on August 9, 2016, because I had to work that day. I called the court that morning during my 9:00 a.m. break to explain and see if anything could be done. A court staff person told me, "It is best if you just come down here and see what can be done."

6. Due to my work schedule, I was unable to go to the Central Traffic Court while it was open that day.

7. On February 2, 2017, I was stopped by officers of the Lexington County Sheriff's Department officers one block away from my home. The officers gave me a ticket for DUS, 3rd Offense ("DUS-3"). That ticket required me to appear in the Irmo Magistrate Court on April 4, 2017. The officers also informed me that there was a bench warrant for my arrest.

8. I was arrested and taken to the Lexington County Detention Center. At jail, I was shown a bench warrant stating that I had been convicted of DUS-2 and uninsured vehicle-1 on August 9, 2016 by the Lexington County Central Traffic Court. The bench warrant was the first notice I received that I had been tried and convicted of these two traffic offenses in my absence. The warrant ordered me to pay \$1,710 or spend 90 days in jail.

9. I could not afford to pay \$1,710, so I was incarcerated.

10. The next day, on February 3, 2017, I was taken to Bond Court. The judge did not address the Central Traffic Court bench warrant that ordered me to pay \$1,710 or spend 90 days in jail. The judge did not ask me about my ability to pay \$1,710 and did not inquire about my income or financial obligations. The judge did not inform me about my right to request a lawyer and did not explain that I could request a waiver of the \$40 public defender application fee. The judge did not appoint a lawyer to represent me.

11. After being booked in jail, I was never taken to the Lexington County Central Traffic Court for a hearing on my ability to pay \$1,710 in fines and fees. At no point before or

after I was booked in jail did any magistrate court in Lexington County hold a hearing on my ability to pay \$1,710 in fines and fees for DUS-2 and uninsured vehicle-1.

12. I was incarcerated in the Lexington County Detention Center from February 2 until April 6, 2017, a total of 63 days.

13. No one from the Lexington County Public Defender Office asked to meet with me at any point when I was in the Lexington County Detention Center.

14. On April 4, 2017, I was transported to the Irmo Magistrate Court for a hearing on the DUS-3 charge. The judge did not appoint a lawyer to represent me. I did not see any public defenders or other lawyers in the courtroom who were being appointed by the judge to represent poor people like me. I was transported back to jail immediately after the hearing.

15. Because I could not report to work while I was incarcerated, I lost both of my jobs, including my job at the recycling plant where I had worked for 13 years.

16. My family also lost our home because my wife could not afford to pay the mortgage without my income while I was in jail.

17. While I was in jail, I was separated from my family. I missed my daughter's 11th birthday and could not be with my wife on our wedding anniversary.

18. I also suffered emotional distress and headaches while I was in jail.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Colh, South Carolina on this 28 day of November, 2017.

By: Xavier Larry Goodwin

Xavier Larry Goodwin

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Twanda Marshinda Brown, <i>et al.</i> ,  Plaintiffs,  v.  Lexington County, South Carolina, <i>et al.</i> ,  Defendants.	Civil Action No. 3:17-cv-01426-MBS-SVH
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**DECLARATION OF NUSRAT J. CHOUDHURY IN SUPPORT OF  
PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT ON DAMAGES CLAIMS**

I, Nusrat J. Choudhury, declare as follows:

1. I am a senior staff attorney with the Racial Justice Program of the American Civil Liberties Union Foundation (“ACLU”) and the lead counsel for Plaintiffs in this case. I am a member in good standing with the New York State Bar Association and have been admitted to this Court *pro hac vice*. I respectfully submit this declaration pursuant to Federal Rule of Civil Procedure 56(d) (“Rule 56(d)”) in support of Plaintiffs’ Memorandum of Points and Authority in Opposition to Defendants’ Motion for Summary Judgment on Damages Claims. The matters required to be addressed by Rule 56(d) are detailed below. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called to do so.

2. Plaintiffs’ Class Action Second Amended Complaint (“Second Amended Complaint”) brings three damages claims against Defendants Gary Reinhart, Rebecca Adams, and Bryan Koon, in their individual capacities. *See* Dkt. No. 48 ¶¶ 486–94 (Claim Four concerns

incarceration without pre-deprivation ability-to-pay hearing in violation of Fourteenth Amendment), ¶¶ 495–503 (Claim Five concerns failure to afford counsel in violation of Sixth Amendment), ¶¶ 504–19 (Claim Six concerns unreasonable seizures in violation of Fourth Amendment). Plaintiffs’ damages claims challenge the exercise of administrative authority by Defendants Reinhart, Adams, and Koon in overseeing, enforcing, and sanctioning the unwritten, post-sentencing policies and practices that caused Plaintiffs’ arrest and incarceration for their inability to pay money to Lexington County’s magistrate courts. *See id.* ¶ 491–92, 501, 515–17.

3. Plaintiffs also bring a Sixth Amendment claim against Defendants Lexington County and Robert Madsen, in his official capacity as a County final policymaker for the provision of indigent defense in the County’s magistrate courts. *See* Dkt. No. 48 ¶¶ 495–503. Plaintiffs’ damages claim against Defendants Lexington County and Robert Madsen challenges deliberate decisions to underfund indigent defense services for the County’s magistrate courts, including through failing to request and grant sufficient funding to ensure adequate representation of indigent people facing incarceration as a result of proceedings in those courts. Plaintiffs’ damages claim also contests these Defendants’ deliberate decisions to allocate resources and manage, train, assign, and supervise staff in a manner that causes the systemic violation of the right to counsel of indigent people facing incarceration for money owed to Lexington County magistrate courts.

4. Defendants’ Motion for Summary Judgment on Damages Claims argues, *inter alia*, that Plaintiffs’ damages claims against Defendants Reinhart, Adams, and Koon are barred by judicial, quasi-judicial, and legislative immunity. Dkt. No. 50–1 at 9–11.

5. Defendants further argue that Defendants Reinhart, Adams, and Koon “could not have established the ‘policies’ alleged by Plaintiffs” because “rulemaking authority” lies “solely in the Supreme Court.” Dkt. No. 50–1 at 13.

6. In addition, Defendants’ motion argues that Plaintiffs’ damages claims against Defendants Lexington County and Madsen fail as a matter of law because Plaintiffs cannot show that Defendants’ inadequate funding and provision of indigent defense is the proximate cause of Plaintiffs’ injuries. Dkt. No. 50–1 at 14.

7. Due to the early timing of Defendants’ motion in this litigation, Plaintiffs not have had an opportunity to perform the formal discovery necessary to respond to Defendants’ assertions of immunity, lack of authority, and lack of causation. As a result, Plaintiffs are unable to present additional facts essential to justify Plaintiffs’ opposition to Defendants’ motion.

**A. Exchange of Initial Disclosures**

8. Plaintiffs have worked with Defendants to meet all requirements to make initial disclosures under the Federal Rules of Civil Procedure and the District of South Carolina Local Rules.

9. On June 1, 2017, Plaintiffs filed their responses to Local Rule 26.01 Interrogatories concurrently with the filing of the Class Action Complaint. *See* Dkt. No. 3.

10. On August 7, 2017, counsel for all parties participated in a Rule 26(f) conference. *See* Dkt. No. 32–1 at 1.

11. On August 17, 2017, Defendants filed their responses to Local Rule 26.01 Interrogatories. *See* Dkt. No. 28.

12. On August 23, 2017, Plaintiffs and Defendants jointly filed a Rule 26(f) Report, *see* Dkt. No. 32, and concurrently filed Joint Responses Pursuant to Local Rule 26.03 and Rule 26(f). *See* Dkt. No. 32–1.

**B. Plaintiffs have served Defendants with Requests for Production of documents concerning Defendants' ongoing conduct but have not yet received responses.**

13. On October 6, 2017, Plaintiffs served their first set of Requests for Production on Defendants Lexington County and Robert Madsen. Attached hereto as Exhibit A is a true and accurate copy of Plaintiffs' First Set of Requests for Production of Documents and Things Propounded to Defendants Lexington County, South Carolina, and Robert Madsen. November 6, 2017 was the deadline for Defendants Lexington County and Madsen to respond to these discovery requests.

14. Also on October 6, 2017, Plaintiffs served their first set of Requests for Production on Defendant Bryan Koon. Attached hereto as Exhibit B is a true and accurate copy of Plaintiffs' First Set of Requests for Production of Documents and Things Propounded to Defendant Bryan Koon. November 6, 2017 was the deadline for Defendant Koon to respond to these discovery requests.

15. On October 10, 2017, Plaintiffs served their first set of Requests for Production on Defendants Gary Reinhart, Rebecca Adams, and Albert J. Dooley, III. Attached hereto as Exhibit C is a true and accurate copy of Plaintiffs' First Set of Requests for Production of Documents and Things Propounded to Defendants Gary Reinhart, Rebecca Adams, and Albert J. Dooley, III. November 9, 2017 was the deadline for Defendants Reinhart, Adams, and Dooley to respond to these discovery requests.

16. Defendants have not responded to any of Plaintiffs' discovery requests.

17. Plaintiffs' discovery requests are designed to uncover information directly relevant to the following issues raised in Defendants' Motion for Summary Judgment on Damages Claims: 1) whether, and to what extent, the policies and practices alleged to have caused the unlawful arrest and incarceration of Plaintiffs are attributable to Defendants Reinhart,

Adams, and Koon’s exercise of administrative authority; 2) whether and to what extent Defendant Madsen or any other County official exercises final policymaking authority regarding the request and grant of County funding for indigent defense in the County’s magistrate courts and regarding the allocation of resources and management, training, assignment, and supervision of staff in magistrate court cases; and 3) whether the deliberate decisions of Defendant Madsen or any other County official or entity concerning the funding and provision of indigent defense in Lexington County magistrate courts directly and proximately caused inadequate provision of public defense and Plaintiffs’ unlawful arrest and incarceration. Thus, the requests are likely to assist Plaintiffs in raising genuine, triable issues of material fact.

18. For example, Plaintiffs have asked for the production of documents prepared by Defendants Reinhart and Adams, or provided by them to other magistrate court judges and staff, concerning policies, procedures, instructions, guidance, and training on: the imposition of court fines and fees; use of bench warrants; assessment of defendants’ financial circumstances; the appointment of counsel to indigent defendants; provision of notice to people alleged to have not paid fines and fees; the use of Scheduled Time Payment Agreements; the conduct of Show Cause Hearings; and the provision of Bond Court hearings for people arrested on bench warrants. *See* Exhibit C at Requests for Production (“RFPs”) Nos. 3–4, 6–8, 12, 17, 19–20, 40–41, 47–49.

19. These requests are designed to determine whether Defendants Reinhart and Adams’ exercise of administrative authority over fine and fee collection procedures, the Bond Court, magistrate court case assignment, and magistrate court hours of operation and schedules established the Default Payment and Trial in Absentia Policies and the policy prohibiting an ability-to-pay hearing in Bond Court or magistrate court for people arrested on payment bench warrants.

20. These document requests are also designed to determine whether Defendants Reinhart and Adams failed to report to state authorities and correct magistrates' routine misuse of bench warrants as an exercise of their administrative authority.

21. These document requests are also designed to determine whether such administrative conduct by Defendants Reinhart and Adams directly and proximately caused the arrest and incarceration of Plaintiffs without any pre-deprivation judicial inquiry into ability to pay or representation by court-appointed counsel to defend against incarceration.

22. Plaintiffs further seek the production of documents prepared by Defendant Koon concerning policies, procedures, instructions, guidance, and training on court fines and fees; the execution of bench warrants issued by magistrate courts; the booking, incarceration, and release of people jailed pursuant to bench warrants; the provision of Bond Court hearings to, and collection of money from, people arrested on bench warrants; the arrest, booking, incarceration, and release of people otherwise incarcerated for non-payment of magistrate court fines and fees; and attorney visitation in the Detention Center. *See* Exhibit B at RFPs Nos. 4, 26, 29–32, 37.

23. These requests are designed to determine whether Defendant Koon's exercise of administrative authority to manage the LCSD, set enforcement priorities, allocate resources, and oversee and train deputies and Detention Center staff enforced standard operating procedures that led to the arrest and incarceration of indigent people who could not pay the sums of money identified on payment bench warrants before being booked in the Detention Center.

24. These document requests are also designed to determine whether such administrative conduct by Defendant Koon directly and proximately caused Plaintiffs' arrest and incarceration without any pre-deprivation judicial inquiry into ability to pay or representation by court-appointed counsel.

25. Plaintiffs further seek the production of any agreements concerning the execution of bench warrants and the incarceration of people who owe magistrate court fines and fees between Lexington County magistrate courts and the LCSD, as well between the LCSD and other law enforcement agencies. *See* Exhibit B at RFPs Nos. 23–25, *and* Exhibit C at RFPs Nos. 22–23.

26. These requests are designed to determine the relative responsibility of Defendants Reinhart, Adams, and Koon for the Default Payment and Trial in Absentia Policies, as well as the unwritten standard operating procedure by which indigent people arrested on payment bench warrants are not notified of their right to counsel or transported by LCSD deputies or Detention Center staff to Bond Court or to the original magistrate court that issued the warrant for an ability-to-pay hearing and representation by court-appointed counsel.

27. Plaintiffs further seek the production of documents prepared, used, or provided to others by Defendants Lexington County and Madsen regarding budgetary decisions and the request and grant of funding for indigent defense in the County’s magistrate courts, and contracts for public defense services between the County and any public defender. *See* Exhibit A at RFPs Nos. 9, 25–28.

28. Plaintiffs also seek the production of documents prepared or used, reviewed, or provided to others by Defendants Lexington County and Madsen regarding policies, practices, procedures, instructions, guidance, and training on representation of accused persons at proceedings involving the imposition or collection of legal financial obligations (“LFOs”); public defenders’ assessment of accused persons’ ability to pay during convictions and show cause hearings; responsibilities of public defenders to meet with or represent inmates incarcerated in the Detention Center; waiver of public defender fees and charges; approval and

denial of requests for representation by a public defender; the number of hours worked annually by public defenders, and the time spent on each magistrate court case. *See* Exhibit A at RFPs Nos. 4–8, 10–16, 24.

29. These requests are designed to determine whether and to what extent Defendant Madsen or any other County official exercises final policymaking authority regarding the funding and provision of public defense services in the County’s magistrate courts, and whether the deliberate decisions and policies of Defendants Lexington County and Madsen proximately caused Plaintiffs’ arrest and incarceration without any pre-deprivation judicial inquiry into ability to pay or representation by court-appointed counsel.

30. All of the above discovery requests and others are targeted, relevant, and necessary for clarifying the facts relating to Plaintiffs’ damages claims, and are thus likely to assist Plaintiffs in raising genuine, triable issues of material fact.

**C. Plaintiffs seek to conduct depositions of Defendants concerning their ongoing conduct.**

31. Due to the early nature of Defendants’ motion, Plaintiffs have not had an opportunity to conduct any depositions in this matter.

32. Once they receive complete answers to their discovery requests along with responsive documents, Plaintiffs will request an opportunity to depose Defendants Reinhart and Adams regarding the scope and exercise of their administrative authority, including their responsibilities as Chief Judge and Associate Chief Judge for Administrative Purposes of the Summary Courts of Lexington County to establish fine and fee collection procedures, administer the Bond Court, assign magistrate court cases, establish magistrate court hours of operation and schedules, and to report to state authorities and correct procedural noncompliance by magistrate court judges.

33. Plaintiffs will also request an opportunity to depose Defendant Koon regarding the scope of his responsibilities and authority as the administrative head of the LCSD and Detention Center, and regarding the past exercise of his administrative duties to allocate LCSD's limited resources, to prioritize enforcement of bench warrants, and to direct his deputies and Detention Center staff in the manner in which they execute bench warrants.

34. Plaintiffs will also request an opportunity to depose Defendant Madsen regarding the scope of his responsibilities and authority to request, secure, and allocate Lexington County funding for indigent defense services in proceedings in the County's magistrate courts; the scope of his responsibilities and authority to make staffing and case assignment decisions related to the provision of court-appointed counsel to indigent people involved in magistrate court cases; and the past exercise of these administrative duties.

35. Plaintiffs will also request an opportunity to conduct a Rule 30(b)(6) deposition of Defendant Lexington County regarding the identity of any other policymakers involved in the County's past and current funding, budgetary, and allocation decisions relating to the provision of indigent defense services in magistrate courts.

**D. The documents and testimony obtained through discovery will likely create genuine issues of material fact.**

36. Based on information already obtained by Plaintiffs through public sources, it is likely that the aforementioned discovery will assist Plaintiffs in creating genuine, triable issues of material fact on whether, and to what extent, Defendants' exercise of administrative authority established unwritten standard operating procedures that caused Plaintiffs' unlawful arrest and incarceration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in New York City, New York on this 29th day of November, 2017.

By:   
Nusrat J. Choudhury, NYSBA #453802

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS PROPOUNDED TO DEFENDANTS  
LEXINGTON COUNTY, SOUTH CAROLINA, AND ROBERT MADSEN**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the following First Set of Requests for Production of Documents (collectively, the "First Requests for Production") are propounded to you and your attorneys of record. These First Requests for Production are intended to draw upon the combined knowledge of you, your agents, and your attorneys.

1. Requests for Production of Documents

Pursuant to Rule 34, you are directed to provide a written response to these Requests for Production of Documents and produce and make available for inspection and copying all of the documents requested herein in their original state and condition at the offices of Terrell Marshall Law Group PLLC, 936 North 34th Street, Suite 300, Seattle, Washington, 98103, thirty (30) days after service of this request, or at such other time and place as may be mutually agreed upon by the parties. Deliver each document produced in a manner that preserves its sequential relationship with other documents being produced, including the file folder and folder tab associated with its file location, and if not apparent on the folder or tab, accompanied by identification of the person or department from whose files it was taken and such additional

source information as is necessary to enable the parties to determine the document's original pre-production location.

When documents are produced pursuant to these First Discovery Requests, the documents are to be produced in a manner so that the particular request to which they are responsive can be readily identified.

These Requests for Production of Documents are continuing in nature. In accordance with Rule 26, you are requested to supplement your responses to these requests in the event that new or additional information within their scope becomes known to you.

If any document is withheld under a claim of privilege, please:

- a. Identify such document with sufficient particularity as to author(s), addressee(s), recipient(s), and subject matter and contents to allow the matter to be brought before the court;
- b. State the nature of the privilege(s) asserted; and
- c. State in detail the factual basis for the claim of privilege.

## I. DEFINITIONS

Throughout these Discovery Requests, including the definition of terms, the words used in the masculine gender include the feminine, and the words used in the singular include the plural. Wherever the word "or" appears herein, the meaning intended is the logical inclusive "or" — that is, "and/or." Wherever the word "including" appears, the meaning intended is "including but not limited to."

As used throughout these Discovery Requests, the following terms have the following indicated meanings:

1. “ACCUSED PERSON” means a person who is being or has been prosecuted in a LEXINGTON COUNTY MAGISTRATE COURT on charges that allow for the imposition of LFOs upon conviction.

2. “ALL” means “EVERY” and includes “EACH” and “ANY,” and vice versa.

3. “BENCH WARRANT” refers to a warrant of arrest issued by LEXINGTON COUNTY MAGISTRATE COURTS to order the arrest and incarceration of an ACCUSED PERSON.

4. “COMPLAINT” refers to the operative complaint filed by PLAINTIFFS in this proceeding.

5. “CORRESPONDENCE” includes ALL letters, telegrams, notices, messages, or other WRITTEN COMMUNICATIONS or memoranda, including electronic communications, or other records of conversations, meetings, conferences or other oral communications.

6. “DATE” shall mean the exact day, month, and year if ascertainable or, if not, the best approximation, including ANY known relationship to other events.

7. The term “DOCUMENT” or “WRITTEN COMMUNICATION” means all written or graphic matter, however produced, or reproduced, of EVERY kind and description in YOUR actual or constructive possession, custody, care or control. This includes the complete original (or complete copy if the original is not available) and EACH non-identical copy regardless of origin or location. “DOCUMENT” is intended to have the same meaning as in Civil Rule 34, including, without limitation: writings, CORRESPONDENCE, electronic mail (email) messages and attachments, Internet messages, intranet messages, text messages, Twitter™ messages, messages or postings on social networking websites (including but not limited to websites such as Facebook™ and MySpace™), blog postings, web pages, voicemails,

data and files sent from, received by or stored on smartphones, tablets or other mobile computing devices (including but not limited to Blackberry™, iPhone™, Android™, iPad™, Galaxy Tab™, Velocity Micro Cruz™ and HP TouchPad™), facsimiles, books, pamphlets, periodicals, reports, blueprints, sketches, laser discs, magnetic discs, flash drives, magnetic strips, microfiche, invoices, statements, minutes, purchase orders, contracts, vouchers, checks, charge slips, expense account reports, hotel charges, receipts, working papers, memoranda, messages, notes, envelopes, business records, financial statements, agreements, leases, drawings, graphs, charts, drafts, maps, surveys, plats, statistical records, cost sheets, calendars, appointment books, diaries, time sheets or logs, telephone records or logs, facsimile logs, photographs, sound tapes or recordings, films, tapes, computer printouts and ANY other data, including without limitation, data stored electronically or by other technical means for use with computers or otherwise from which information can be obtained or translated through detection devices into reasonably usable form, or ANY other tangible thing that constitutes or contains matters contained within the scope of Civil Rule 26(b). If a DOCUMENT has been prepared in several copies which are for ANY reason not identical, or if the original identical copies are no longer identical by reason of subsequent notation or other modification of ANY kind whatsoever, including but not limited to notations on the backs of pages thereto, EACH non-identical copy is a separate DOCUMENT. DOCUMENTS shall also include ELECTRONICALLY STORED INFORMATION (“ESI”) and ANY electronically stored data on magnetic or optical storage media as an “active” file or files (readily readable by one or more computer applications or forensics software); ANY “deleted” but recoverable electronic files on said media; ANY electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM

slack] or residual data left on the hard drive after new data has overwritten some but not all of previously stored data).

8. “DEFENDANTS” means LEXINGTON COUNTY, South Carolina, Gary Reinhart, Rebecca Adams, Albert John Dooley, III, Bryan Koon, and Robert Madsen, and DEFENDANTS’ attorneys, and ANY employees, agents, or PERSONS working on DEFENDANTS’ behalf, and if applicable, DEFENDANTS’ subsidiaries, predecessors or assignors, as well as ANY directors, officers, employees, agents, partners, or PERSONS acting on behalf of DEFENDANTS.

9. “IDENTIFY” when referring to a DOCUMENT or WRITTEN COMMUNICATION means to state:

- a. The description of such DOCUMENTS or writings in sufficient detail in order to enable them to be identified by subpoena duces tecum;
- b. The title and EACH subtitle thereof;
- c. The DATE and number of pages thereof;
- d. A brief summary of the contents;
- e. The author, EACH addressee, and the distribution list thereof;
- f. The IDENTITY of EACH PERSON who witnessed, or was in a position to witness said communication;
- g. The DATE on which the document was prepared or signed;
- h. The physical location of the document and the name and address of its custodian or custodians;
- i. The IDENTITY of EACH document referenced by this document;

j. The source of (or the IDENTITY of EACH PERSON who supplied) ANY information contained therein; and

k. If ANY such document was, but is no longer in YOUR possession or subject to YOUR control, what disposition was made of it and the reason for its disposition.

10. “IDENTIFY” when referring to a meeting means, for EACH such MEETING, to state:

- a. The date and hour when held;
- b. The address where held;
- c. The IDENTITY of EACH PERSON who represented YOU at EACH MEETING or conference;
- d. The IDENTITY of ANY other PERSON present; and
- e. EACH action taken, decision made, agreement reached or topic discussed at the MEETING or conference.

11. “IDENTIFY” when referring to oral communications means to state, with respect thereto, ANY communication or portion thereof between ANY two or more PERSONS that is not or was not recorded, including, but not limited to, telephone conversations, face-to-face conversations, meetings, and conferences. State the PERSONS involved, the DATE, the setting, and the circumstances.

12. “IDENTIFY” or “IDENTITY” when referring to a person means to state:

- a. His/her full name;
- b. His/her present residence address;
- c. His/her present residence telephone number;
- d. His/her present business address;

e. If his/her present residence or business address is unknown, state his/her last known residence address and residence telephone number, his/her last known business affiliation and business address, and ANY information YOU have that might reasonably lead to the discovery of his/her present whereabouts; and

f. With respect to PERSONS who are not natural PERSONS, state the last known complete address, including zip code, the last known complete telephone number, including the area code, of its headquarters, and its nearest or local office or agent.

13. “INDIVIDUAL,” “PERSON,” or “PERSONS” shall mean natural PERSONS, proprietorships, sole proprietorships, corporations, nonprofit corporations, municipal corporations, local, state, federal or foreign governments or governmental agencies, political subdivisions, general or limited partnerships, business trusts, trusts, estates, clubs, groups, unincorporated associations, or other business or public organizations.

14. “INTERGOVERNMENTAL AGREEMENT” means an agreement between LEXINGTON COUNTY and any other unit of government RELATING TO: (a) the arrest of ACCUSED PERSONS; (b) the use of LEXINGTON COUNTY jail facilities to incarcerate INDIVIDUALS convicted of crimes charged by any other unit of government.

15. “LEXINGTON COUNTY” means Defendant Lexington County, South Carolina, including but not limited to Lexington County’s council members, employees, representatives, agents, commissioners, administrators, and PUBLIC DEFENDERS; Lexington County’s attorneys; and any PERSONS acting on behalf of Lexington County.

16. “LEXINGTON COUNTY MAGISTRATE COURT” or “MAGISTRATE COURT” means any magistrate court operating within Lexington County, including but not limited to the magistrate court divisions of Batesburg-Leesville Magistrate Court, Cayce-West

Columbia Magistrate Court, Irmo Magistrate Court, Lexington Magistrate Court, Lexington Central Traffic Court, Oak Grove Magistrate Court, Swansea Magistrate Court, and the Bond Court located at the Lexington County Detention Center.

17. “LEXINGTON COUNTY SHERIFF’S DEPARTMENT” or “SHERIFF’S DEPARTMENT” means ANY employee, representative, agent, commissioner, or administrator of the LEXINGTON COUNTY SHERIFF’S DEPARTMENT or Lexington County Detention Center, including but not limited to Defendant Bryan Koon, law enforcement officers, guards, courthouse security, attorneys, volunteers, or staff.

18. “LFOs” means legal financial obligations imposed by a LEXINGTON COUNTY MAGISTRATE COURT as part of a criminal or traffic sentence and includes fines, fees, assessments, penalties, costs, and restitution.

19. “PLAINTIFFS” means Plaintiffs, Plaintiffs’ attorneys, and ANY employees, agents, or PERSONS working on behalf of Plaintiffs.

20. “PUBLIC DEFENDER” means an attorney employed by the Lexington County Public Defender’s Office or appointed, assigned, or provided by LEXINGTON COUNTY or the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina to represent an ACCUSED PERSON.

21. “PUBLIC DEFENSE CASE” means a case in which a PUBLIC DEFENDER has been appointed to represent an ACCUSED PERSON.

22. “PUBLIC DEFENSE SERVICES” means the services performed by a PUBLIC DEFENDER and his or her staff members for the purpose of providing legal representation to an ACCUSED PERSON.

23. “RELATING TO” or “REFERRING TO” (including other verb tenses of those terms) means describing, evidencing, constituting, reflecting, showing, comprising, considering, concerning, discussing, regarding, setting forth, studying, analyzing, commenting upon, recommending, alluding to, or mentioning, in whole or in part.

24. “SHOW CAUSE HEARING” means any LEXINGTON COUNTY MAGISTRATE COURT hearing at which the court considers the allegation that an ACCUSED PERSON has not paid previously imposed LFOs, including but not limited to hearings for ACCUSED PERSONS in custody for failure to pay LFOs, and other similar proceedings, conducted in a LEXINGTON COUNTY MAGISTRATE COURT.

25. “YOU” and “YOUR” means Defendants LEXINGTON COUNTY and Robert Madsen, LEXINGTON COUNTY’S attorneys, LEXINGTON COUNTY’S employees, representatives or agents, and any PERSONS acting on behalf of LEXINGTON COUNTY.

## II. RELEVANT TIME PERIOD

Unless otherwise stated, the relevant time period for these discovery requests is from June 1, 2014 to the present.

## III. REQUESTS FOR PRODUCTION OF DOCUMENTS

**REQUEST FOR PRODUCTION NO. 1:** Please produce ALL CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, LEXINGTON COUNTY MAGISTRATE COURTS, or revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS:

- a. Scott Whetstone, Lexington County Council Member
- b. Paul Lawrence Brigham, Jr., Lexington County Council Member
- c. Darrell Hudson, Lexington County Council Member

- d. Debra B. Summers, Lexington County Council Vice Chairman
- e. Bobby C. Keisler, Lexington County Council Member
- f. Erin Long Bergeson, Lexington County Council Member
- g. Phillip Heyward Yarborough, Lexington County Council Member
- h. Ned Randall Tolar, Lexington County Council Member
- i. M. Todd Cullum, Lexington County Council Chairman
- j. Joe Mergo, III, Lexington County Administrator
- k. Chris Folsom, Lexington County Deputy Administrator
- l. Jim Eckstrom, Lexington County Treasurer

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 2:** Please produce ALL CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, or revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS:

- a. Robert Madsen, Eleventh Circuit Public Defender
- b. Sally J. Henry, Deputy Public Defender
- c. Samuel Richardson Hubbard, III, Eleventh Circuit Solicitor
- d. Donnie Meyers, Former Eleventh Circuit Solicitor
- e. ANY other PERSON who served as a Lexington County Council Member, Administrator, Treasurer, Public Defender, or Solicitor at any point from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 3:** Please produce ALL CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS; ALL letters or WRITTEN COMMUNICATIONS that the following INDIVIDUALS received from ACCUSED PERSONS REFERRING OR RELATING TO LFOs; and ALL WRITTEN COMMUNICATIONS that the following INDIVIDUALS sent in response to those letters:

- a. Hon. Gary Reinhart, Magistrate and former Chief Magistrate
- b. Hon. Rebecca Adams, Chief Magistrate
- c. Hon. Albert J. Dooley, III, Associate Chief Magistrate
- d. Hon. Bradley S. Melton, Magistrate
- e. Hon. Gary S. Morgan, Magistrate
- f. Hon. Scott Whittle, Magistrate
- g. Hon. Matthew Johnson, Magistrate
- h. Hon. Arthur L. Myers, Magistrate
- i. Hon. Brian N. Buck, Magistrate
- j. Ed Lewis, Chief Court Administrator
- k. Colleen Long, Deputy Court Administrator
- l. Lisa Comer, Lexington County Clerk of Court

m. ANY other PERSON who served as a Lexington County Magistrate, Court Administrator, or Clerk of Court at any point from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 4:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that LEXINGTON COUNTY prepared, reviewed, used, or provided to others regarding LFOs and BENCH WARRANTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 5:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that attorneys or staff of the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina and the Lexington County Public Defender's Office prepared, reviewed, used, or provided to others regarding LFOs, including but not limited to all such documents pertaining to the representation of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 6:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the training of PUBLIC DEFENDERS in the representation

of ACCUSED PERSONS, including but not limited to proceedings involving the imposition or collection of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 7:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO monitoring or supervising PUBLIC DEFENDERS in the representation of ACCUSED PERSONS, including but not limited to proceedings involving the imposition or collection of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 8:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the responsibilities of PUBLIC DEFENDERS concerning inmates incarcerated in the Lexington County Detention Center.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 9:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the funding of PUBLIC DEFENDERS for the representation of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 10:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, or procedures of the Lexington County Solicitor's Office regarding LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 11:** Please produce ALL forms used by the Lexington County Public Defender's Office to assess the ability of ACCUSED PERSONS to pay LFOs at any time, including in connection with sentencing hearings and SHOW CAUSE HEARINGS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 12:** Please produce ALL DOCUMENTS used by the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina and the Lexington County Public Defender's Office to assess the eligibility of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 13:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, or procedures of the Circuit Public

Defender for the Eleventh Judicial Circuit of South Carolina and the Lexington County Public Defender's Office regarding any application fees, charges, or costs imposed on ANY individual applying for representation by a PUBLIC DEFENDER, including but not limited to ACCUSED PERSONS, and ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, or procedures of the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina and the Lexington County Public Defender's Office regarding waiver of those charges, fees, or costs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 14:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the revenue generated by imposing any public defender application fees, charges, or costs on ANY individual who has applied for representation by a PUBLIC DEFENDER at any stage of a case arising out of criminal or traffic charges prosecuted in the LEXINGTON COUNTY MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 15:** Please produce ALL DOCUMENTS IDENTIFYING (a) the ACCUSED PERSONS who have applied for representation by the Lexington County Public Defender's Office, (b) whether EACH such ACCUSED PERSON was approved for representation, (c) the LEXINGTON COUNTY MAGISTRATE COURT in which the ACCUSED PERSON faced a charge, and (d) the charge type.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 16:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the number of ACCUSED PERSONS who have been denied representation by the Lexington County Public Defender's Office, and ALL DOCUMENTS REFERRING OR RELATING TO the reasons for those denials, the Lexington County magistrate court in which the individual faced a charge, and the charge type.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 17:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Twanda Brown (listed in various court records as Twanda M. Brown, Twanda Marshinda Brown, Twanda Loshonda Brown, and Tawanda Brown), including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 18:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Sasha Darby, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 19:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Cayeshia Johnson, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 20:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Amy Palacios, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 21:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Xavier Goodwin, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 22:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Raymond Wright, Jr., including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 23:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Nora Corder, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, bench warrants, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 24:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the caseload of EACH PUBLIC DEFENDER, the number of hours worked by that PUBLIC DEFENDER annually, the number of hours worked annually by that PUBLIC DEFENDER on cases in the LEXINGTON COUNTY MAGISTRATE COURT, and the amount of time spent on each case in the MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 25:** Please produce ALL contracts for public defense services entered into between LEXINGTON COUNTY and ANY PUBLIC DEFENDER who has provided PUBLIC DEFENSE SERVICES for ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 26:** Please produce ALL DATA and reports in YOUR possession REFERRING OR RELATING TO LFOs, including but not limited to information YOU have provided to external entities such as the South Carolina Office of Court Administration, South Carolina Supreme Court, South Carolina Attorney General's Office, South Carolina Commission on Indigent Defense, and South Carolina Commission on Prosecution Coordination.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 27:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the amount of money collected by LEXINGTON COUNTY, any LEXINGTON COUNTY MAGISTRATE COURT, or by the LEXINGTON COUNTY SHERIFF'S DEPARTMENT as a result of LFOs imposed on defendants in MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 28:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO YOUR decisions regarding budgeting for the operation of the Lexington County Public Defender’s Office, including but not limited to reports, analyses, and communications regarding actual or projected revenue, sources of revenue, and expenditures.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 29:** Please produce ALL DOCUMENTS, including but not limited to emails, letters, memoranda, or other WRITTEN COMMUNICATIONS, REFERRING OR RELATING TO the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, “Sentencing Unrepresented Defendants to Imprisonment.” *See* ECF No. 40–1.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 30:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that LEXINGTON COUNTY prepared, reviewed, used, or provided to others in response to the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, “Sentencing Unrepresented Defendants to Imprisonment.” *See* ECF No. 40–1.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 31:** Please produce ALL DOCUMENTS

REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that attorneys or staff of the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina and/or the Lexington County Public Defender's Office prepared, reviewed, used, or provided to others in response to the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, "Sentencing Unrepresented Defendants to Imprisonment." See ECF No. 40-1.

**ANSWER:**

DATED this 6th day of October, 2017.

Respectfully submitted by,

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

s/ Susan K. Dunn

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*Attorneys for Plaintiffs*

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS PROPOUNDED  
TO DEFENDANT BRYAN KOON**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the following First Set of Requests for Production of Documents (collectively, the "First Requests for Production") are propounded to you and your attorneys of record. These First Requests for Production are intended to draw upon the combined knowledge of you, your agents, and your attorneys.

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source information as is necessary to enable the parties to determine the document's original pre-production location.

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- b. State the nature of the privilege(s) asserted; and
- c. State in detail the factual basis for the claim of privilege.

## I. DEFINITIONS

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As used throughout these Discovery Requests, the following terms have the following indicated meanings:

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2. “ALL” means “EVERY” and includes “EACH” and “ANY,” and vice versa.

3. “BENCH WARRANT” refers to a warrant of arrest issued by LEXINGTON COUNTY MAGISTRATE COURTS to order the arrest and incarceration of an ACCUSED PERSON.

4. “COMPLAINT” refers to the operative complaint filed by PLAINTIFFS in this proceeding.

5. “CORRESPONDENCE” includes ALL letters, telegrams, notices, messages, or other WRITTEN COMMUNICATIONS or memoranda, including electronic communications, or other records of conversations, meetings, conferences or other oral communications.

6. “DATE” shall mean the exact day, month, and year if ascertainable or, if not, the best approximation, including ANY known relationship to other events.

7. The term “DOCUMENT” or “WRITTEN COMMUNICATION” means all written or graphic matter, however produced, or reproduced, of EVERY kind and description in YOUR actual or constructive possession, custody, care or control. This includes the complete original (or complete copy if the original is not available) and EACH non-identical copy regardless of origin or location. “DOCUMENT” is intended to have the same meaning as in Civil Rule 34, including, without limitation: writings, CORRESPONDENCE, electronic mail (email) messages and attachments, Internet messages, intranet messages, text messages, Twitter™ messages, messages or postings on social networking websites (including but not limited to websites such as Facebook™ and MySpace™), blog postings, web pages, voicemails,

data and files sent from, received by or stored on smartphones, tablets or other mobile computing devices (including but not limited to Blackberry™, iPhone™, Android™, iPad™, Galaxy Tab™, Velocity Micro Cruz™ and HP TouchPad™), facsimiles, books, pamphlets, periodicals, reports, blueprints, sketches, laser discs, magnetic discs, flash drives, magnetic strips, microfiche, invoices, statements, minutes, purchase orders, contracts, vouchers, checks, charge slips, expense account reports, hotel charges, receipts, working papers, memoranda, messages, notes, envelopes, business records, financial statements, agreements, leases, drawings, graphs, charts, drafts, maps, surveys, plats, statistical records, cost sheets, calendars, appointment books, diaries, time sheets or logs, telephone records or logs, facsimile logs, photographs, sound tapes or recordings, films, tapes, computer printouts and ANY other data, including without limitation, data stored electronically or by other technical means for use with computers or otherwise from which information can be obtained or translated through detection devices into reasonably usable form, or ANY other tangible thing that constitutes or contains matters contained within the scope of Civil Rule 26(b). If a DOCUMENT has been prepared in several copies which are for ANY reason not identical, or if the original identical copies are no longer identical by reason of subsequent notation or other modification of ANY kind whatsoever, including but not limited to notations on the backs of pages thereto, EACH non-identical copy is a separate DOCUMENT. DOCUMENTS shall also include ELECTRONICALLY STORED INFORMATION (“ESI”) and ANY electronically stored data on magnetic or optical storage media as an “active” file or files (readily readable by one or more computer applications or forensics software); ANY “deleted” but recoverable electronic files on said media; ANY electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM

slack] or residual data left on the hard drive after new data has overwritten some but not all of previously stored data).

8. “DEFENDANTS” means LEXINGTON COUNTY, South Carolina, Gary Reinhart, Rebecca Adams, Albert John Dooley, III, Bryan Koon, and Robert Madsen, and DEFENDANTS’ attorneys, and ANY employees, agents, or PERSONS working on DEFENDANTS’ behalf, and if applicable, DEFENDANTS’ subsidiaries, predecessors or assignors, as well as ANY directors, officers, employees, agents, partners, or PERSONS acting on behalf of DEFENDANTS.

9. “IDENTIFY” when referring to a DOCUMENT or WRITTEN COMMUNICATION means to state:

- a. The description of such DOCUMENTS or writings in sufficient detail in order to enable them to be identified by subpoena duces tecum;
- b. The title and EACH subtitle thereof;
- c. The DATE and number of pages thereof;
- d. A brief summary of the contents;
- e. The author, EACH addressee, and the distribution list thereof;
- f. The IDENTITY of EACH PERSON who witnessed, or was in a position to witness said communication;
- g. The DATE on which the document was prepared or signed;
- h. The physical location of the document and the name and address of its custodian or custodians;
- i. The IDENTITY of EACH document referenced by this document;

j. The source of (or the IDENTITY of EACH PERSON who supplied) ANY information contained therein; and

k. If ANY such document was, but is no longer in YOUR possession or subject to YOUR control, what disposition was made of it and the reason for its disposition.

10. “IDENTIFY” when referring to a meeting means, for EACH such MEETING, to state:

- a. The date and hour when held;
- b. The address where held;
- c. The IDENTITY of EACH PERSON who represented YOU at EACH MEETING or conference;
- d. The IDENTITY of ANY other PERSON present; and
- e. EACH action taken, decision made, agreement reached or topic discussed at the MEETING or conference.

11. “IDENTIFY” when referring to oral communications means to state, with respect thereto, ANY communication or portion thereof between ANY two or more PERSONS that is not or was not recorded, including, but not limited to, telephone conversations, face-to-face conversations, meetings, and conferences. State the PERSONS involved, the DATE, the setting, and the circumstances.

12. “IDENTIFY” or “IDENTITY” when referring to a person means to state:

- a. His/her full name;
- b. His/her present residence address;
- c. His/her present residence telephone number;
- d. His/her present business address;

e. If his/her present residence or business address is unknown, state his/her last known residence address and residence telephone number, his/her last known business affiliation and business address, and ANY information YOU have that might reasonably lead to the discovery of his/her present whereabouts; and

f. With respect to PERSONS who are not natural PERSONS, state the last known complete address, including zip code, the last known complete telephone number, including the area code, of its headquarters, and its nearest or local office or agent.

13. "INDIVIDUAL," "PERSON," or "PERSONS" shall mean natural PERSONS, proprietorships, sole proprietorships, corporations, nonprofit corporations, municipal corporations, local, state, federal or foreign governments or governmental agencies, political subdivisions, general or limited partnerships, business trusts, trusts, estates, clubs, groups, unincorporated associations, or other business or public organizations.

14. "INTERGOVERNMENTAL AGREEMENT" means an agreement between LEXINGTON COUNTY and ANY other unit of government RELATING TO: (a) the arrest of ACCUSED PERSONS; (b) the use of LEXINGTON COUNTY jail facilities to incarcerate INDIVIDUALS convicted of crimes charged by ANY other unit of government.

15. "LEXINGTON COUNTY" means Defendant Lexington County, South Carolina, including but not limited to Lexington County's council members, employees, representatives, agents, commissioners, administrators, and PUBLIC DEFENDERS; Lexington County's attorneys; and ANY PERSONS acting on behalf of Lexington County.

16. "LEXINGTON COUNTY MAGISTRATE COURT" or "MAGISTRATE COURT" means ANY magistrate court operating within Lexington County, including but not limited to the magistrate court divisions of Batesburg-Leesville Magistrate Court, Cayce-West

Columbia Magistrate Court, Irmo Magistrate Court, Lexington Magistrate Court, Lexington Central Traffic Court, Oak Grove Magistrate Court, Swansea Magistrate Court, and the Bond Court located at the Lexington County Detention Center.

17. “LEXINGTON COUNTY SHERIFF’S DEPARTMENT” or “SHERIFF’S DEPARTMENT” means ANY employee, representative, agent, commissioner, or administrator of the LEXINGTON COUNTY SHERIFF’S DEPARTMENT or Lexington County Detention Center, including but not limited to Defendant Bryan Koon, law enforcement officers, guards, courthouse security, attorneys, volunteers, or staff.

18. “LFOs” means legal financial obligations imposed by a LEXINGTON COUNTY MAGISTRATE COURT as part of a criminal or traffic sentence and includes fines, fees, assessments, penalties, costs, and restitution.

19. “PLAINTIFFS” means Plaintiffs, Plaintiffs’ attorneys, and ANY employees, agents, or PERSONS working on behalf of Plaintiffs.

20. “PUBLIC DEFENDER” means an attorney employed by the Lexington County Public Defender’s Office or appointed, assigned, or provided by LEXINGTON COUNTY or the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina to represent an ACCUSED PERSON.

21. “PUBLIC DEFENSE CASE” means a case in which a PUBLIC DEFENDER has been appointed to represent an ACCUSED PERSON.

22. “PUBLIC DEFENSE SERVICES” means the services performed by a PUBLIC DEFENDER and his or her staff members for the purpose of providing legal representation to an ACCUSED PERSON.

23. “RELATING TO” or “REFERRING TO” (including other verb tenses of those terms) means describing, evidencing, constituting, reflecting, showing, comprising, considering, concerning, discussing, regarding, setting forth, studying, analyzing, commenting upon, recommending, alluding to, or mentioning, in whole or in part.

24. “SHOW CAUSE HEARING” means ANY LEXINGTON COUNTY MAGISTRATE COURT hearing at which the court considers the allegation that an ACCUSED PERSON has not paid previously imposed LFOs, including but not limited to hearings for ACCUSED PERSONS in custody for failure to pay LFOs, and other similar proceedings, conducted in a LEXINGTON COUNTY MAGISTRATE COURT.

25. “YOU” and “YOUR” means Defendant Bryan Koon, YOUR attorneys, employees, representatives or agents, and any PERSONS acting on behalf of YOU.

## **II. RELEVANT TIME PERIOD**

Unless otherwise stated, the relevant time period for these discovery requests is from June 1, 2014, to the present.

## **III. REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce ALL non-privileged CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, or revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS:

- a. Sheriff Bryan Koon
- b. Former Sheriff James Metts
- c. Chief Gregg Shockley, Chief Deputy
- d. Major Bob Rolin, Major of Administration
- e. Major Kevin Jones, Detention Bureau Commander

- f. Captain Mark Joyner, Judicial Services Commander
- g. Captain Lee Marshall, Commander of Administration
- h. Lieutenant Cain Mayrant, Booking and Support Services Division Manager
- i. ANY PERSON working in the Warrant Division
- j. Vinton D. Lide, General Counsel
- k. ANY other PERSON who served in ANY of the above positions at ANY point from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 2:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, used, or provided to others regarding LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 3:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used in relation to providing hearings or other proceedings in the Bond Court at the Lexington County Detention Center to individuals arrested pursuant to a BENCH WARRANT issued by ANY LEXINGTON COUNTY MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 4:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used regarding the arrest, booking, incarceration, or release of persons incarcerated in the Lexington County Detention Center for non-payment of LFOs imposed by ANY LEXINGTON COUNTY MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 5:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Twanda Brown (listed in various court records as Twanda M. Brown, Twanda Marshinda Brown, Twanda Loshonda Brown, and Tawanda Brown), including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 6:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Twanda Brown while in the custody of the LEXINGTON COUNTY

SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 7:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Sasha Darby, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 8:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Sasha Darby while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 9:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Cayeshia Johnson, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 10:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Cayeshia Johnson while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 11:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Amy Palacios, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 12:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Amy Palacios while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 13:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Xavier Goodwin, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 14:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Xavier Goodwin while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications or other health-related

items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 15:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Raymond Wright, Jr., including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 16:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Raymond Wright, Jr. while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 17:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Nora Corder, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 18:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO ANY medical attention requested by or given to Plaintiff Nora Corder while in the custody of the LEXINGTON COUNTY SHERIFF'S DEPARTMENT, including but not limited to medications, feminine hygiene products, or other health-related items requested or administered, services requested from or provided by the SHERIFF'S DEPARTMENT or medical staff, and ANY emergency services rendered.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 19:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO money collected from ACCUSED PERSONS who owe LFOs to LEXINGTON COUNTY MAGISTRATE COURTS by LEXINGTON COUNTY, LEXINGTON COUNTY MAGISTRATE COURTS, or the LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 20:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the amount of money received by the LEXINGTON COUNTY SHERIFF'S DEPARTMENT from LEXINGTON COUNTY or any other governmental entity as a result of the SHERIFF'S DEPARTMENT'S collection of LFOs imposed on ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 21:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the amount of money received by the LEXINGTON COUNTY SHERIFF'S DEPARTMENT from LEXINGTON COUNTY or any other governmental entity as a result of the execution of BENCH WARRANTS issued by the MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 22:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO databases, reports, or analyses created by the LEXINGTON COUNTY SHERIFFS DEPARTMENT for the purposes of maintaining or tracking BENCH WARRANTS issued by the LEXINGTON COUNTY MAGISTRATE COURTS for non-payment of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 23:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY agreements between the LEXINGTON COUNTY MAGISTRATE COURTS and the LEXINGTON COUNTY SHERIFF'S DEPARTMENT to execute BENCH WARRANTS ordering the arrest or incarceration of ACCUSED PERSONS for non-payment of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 24:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY INTERGOVERNMENTAL AGREEMENTS between the LEXINGTON COUNTY SHERIFF'S DEPARTMENT and ANY other governmental entity to execute BENCH WARRANTS ordering the arrest or incarceration of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 25:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY INTERGOVERNMENTAL AGREEMENTS between the LEXINGTON COUNTY SHERIFF'S DEPARTMENT and ANY other governmental entity to accept and incarcerate persons in the Lexington County Detention Center pursuant to bench warrants ordering the arrest or incarceration of those persons for non-payment of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 26:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used related to the receipt, retention, dissemination, and/or execution of BENCH WARRANTS issued by LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 27:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used regarding the receipt, retention, dissemination, and/or execution of BENCH WARRANTS issued by ANY court other than LEXINGTON COUNTY MAGISTRATE COURTS, including but not limited to municipal courts.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 28:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used in relation to providing copies of BENCH WARRANTS to persons arrested by

the SHERIFF'S DEPARTMENT pursuant to a BENCH WARRANT, or to persons already incarcerated in the Detention Center on a separate charge.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 29:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used in relation to providing ACCUSED PERSONS arrested pursuant to a BENCH WARRANT the option of paying LFOs listed on the BENCH WARRANT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 30:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used regarding the collection of LFOs from or on behalf of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 31:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received,

reviewed, or used regarding the payment of money collected by the SHERIFF'S DEPARTMENT from or on behalf of ACCUSED PERSONS to the LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 32:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used regarding the booking, incarceration, or release of persons jailed in the Lexington County Detention Center pursuant to BENCH WARRANTS issued by LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 33:** Please produce ALL data constituting or containing booking information for ALL ACCUSED PERSONS incarcerated in the Lexington County Detention Center pursuant to BENCH WARRANTS issued by LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 34:** Please produce ALL data kept for the purposes of maintaining, tracking, or executing BENCH WARRANTS issued for non-payment of LFOs by the LEXINGTON COUNTY MAGISTRATE COURTS, regardless of whether the BENCH WARRANT for which the data kept is currently active or has already been executed.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 35:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the daily cost of housing an inmate in the Lexington County Detention Center. The term “daily cost” in this request refers to the total cost of housing and maintaining an inmate in the Detention Center without regard to what entities are responsible for the various costs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 36:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO any payments made by ANY governmental entity other than LEXINGTON COUNTY toward the cost of housing and maintaining inmates in the Lexington County Detention Center.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 37:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, or training materials that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, received, reviewed, or used regarding attorney visitation with inmates inside the Lexington County Detention Center.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 38:** Please produce ALL non-privileged CORRESPONDENCE, including emails, letters, and memoranda, or any other DOCUMENTS REFERRING OR RELATING TO inmate visitation by Toby J. Marshall, Eric R. Nusser, Susan Dunn, the ACLU, the ACLU of South Carolina, or ANY person representing or affiliated with ANY of these persons or organizations.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 39:** Please produce ALL DOCUMENTS, including but not limited to emails, letters, memoranda, or other WRITTEN COMMUNICATIONS, REFERRING OR RELATING TO the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject "Sentencing Unrepresented Defendants to Imprisonment." See ECF No. 40-1.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 40:** Please produce ALL DOCUMENTS

REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that the LEXINGTON COUNTY SHERIFF'S DEPARTMENT prepared, reviewed, used, or provided to others regarding the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, "Sentencing Unrepresented Defendants to Imprisonment." See ECF No. 40-1.

**ANSWER:**

DATED this 6th day of October, 2017.

Respectfully submitted by,

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

s/ Susan K. Dunn  
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*Attorneys for Plaintiffs*

# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Twanda Marshinda Brown, <i>et al.</i> ,  Plaintiffs,  v.  Lexington County, South Carolina, <i>et al.</i> ,  Defendants.	Civil Action No. 3:17-cv-01426-MBS-SVH
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**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS PROPOUNDED TO DEFENDANTS  
GARY REINHART, REBECCA ADAMS, AND ALBERT J. DOOLEY, III**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the following First Set of Requests for Production of Documents (collectively, the "First Requests for Production") are propounded to you and your attorneys of record. These First Requests for Production are intended to draw upon the combined knowledge of you, your agents, and your attorneys.

1. Requests for Production of Documents

Pursuant to Rule 34, you are directed to provide a written response to these Requests for Production of Documents and produce and make available for inspection and copying all of the documents requested herein in their original state and condition at the offices of Terrell Marshall Law Group PLLC, 936 North 34th Street, Suite 300, Seattle, Washington, 98103, thirty (30) days after service of this request, or at such other time and place as may be mutually agreed upon by the parties. Deliver each document produced in a manner that preserves its sequential relationship with other documents being produced, including the file folder and folder tab associated with its file location, and if not apparent on the folder or tab, accompanied by identification of the person or department from whose files it was taken and such additional

source information as is necessary to enable the parties to determine the document's original pre-production location.

When documents are produced pursuant to these First Discovery Requests, the documents are to be produced in a manner so that the particular request to which they are responsive can be readily identified.

These Requests for Production of Documents are continuing in nature. In accordance with Rule 26, you are requested to supplement your responses to these requests in the event that new or additional information within their scope becomes known to you.

If any document is withheld under a claim of privilege, please:

- a. Identify such document with sufficient particularity as to author(s), addressee(s), recipient(s), and subject matter and contents to allow the matter to be brought before the court;
- b. State the nature of the privilege(s) asserted; and
- c. State in detail the factual basis for the claim of privilege.

## I. DEFINITIONS

Throughout these Discovery Requests, including the definition of terms, the words used in the masculine gender include the feminine, and the words used in the singular include the plural. Wherever the word "or" appears herein, the meaning intended is the logical inclusive "or" — that is, "and/or." Wherever the word "including" appears, the meaning intended is "including but not limited to."

As used throughout these Discovery Requests, the following terms have the following indicated meanings:

1. “ACCUSED PERSON” means a person who is being or has been prosecuted in a LEXINGTON COUNTY MAGISTRATE COURT on charges that allow for the imposition of LFOs upon conviction.

2. “ALL” means “EVERY” and includes “EACH” and “ANY,” and vice versa.

3. “BENCH WARRANT” refers to a warrant of arrest issued by LEXINGTON COUNTY MAGISTRATE COURTS to order the arrest and incarceration of an ACCUSED PERSON.

4. “COMPLAINT” refers to the operative complaint filed by PLAINTIFFS in this proceeding.

5. “CORRESPONDENCE” includes ALL letters, telegrams, notices, messages, or other WRITTEN COMMUNICATIONS or memoranda, including electronic communications, or other records of conversations, meetings, conferences or other oral communications.

6. “DATE” shall mean the exact day, month, and year if ascertainable or, if not, the best approximation, including ANY known relationship to other events.

7. The term “DOCUMENT” or “WRITTEN COMMUNICATION” means all written or graphic matter, however produced, or reproduced, of EVERY kind and description in YOUR actual or constructive possession, custody, care or control. This includes the complete original (or complete copy if the original is not available) and EACH non-identical copy regardless of origin or location. “DOCUMENT” is intended to have the same meaning as in Civil Rule 34, including, without limitation: writings, CORRESPONDENCE, electronic mail (email) messages and attachments, Internet messages, intranet messages, text messages, Twitter™ messages, messages or postings on social networking websites (including but not limited to websites such as Facebook™ and MySpace™), blog postings, web pages, voicemails,

data and files sent from, received by or stored on smartphones, tablets or other mobile computing devices (including but not limited to Blackberry™, iPhone™, Android™, iPad™, Galaxy Tab™, Velocity Micro Cruz™ and HP TouchPad™), facsimiles, books, pamphlets, periodicals, reports, blueprints, sketches, laser discs, magnetic discs, flash drives, magnetic strips, microfiche, invoices, statements, minutes, purchase orders, contracts, vouchers, checks, charge slips, expense account reports, hotel charges, receipts, working papers, memoranda, messages, notes, envelopes, business records, financial statements, agreements, leases, drawings, graphs, charts, drafts, maps, surveys, plats, statistical records, cost sheets, calendars, appointment books, diaries, time sheets or logs, telephone records or logs, facsimile logs, photographs, sound tapes or recordings, films, tapes, computer printouts and ANY other data, including without limitation, data stored electronically or by other technical means for use with computers or otherwise from which information can be obtained or translated through detection devices into reasonably usable form, or ANY other tangible thing that constitutes or contains matters contained within the scope of Civil Rule 26(b). If a DOCUMENT has been prepared in several copies which are for ANY reason not identical, or if the original identical copies are no longer identical by reason of subsequent notation or other modification of ANY kind whatsoever, including but not limited to notations on the backs of pages thereto, EACH non-identical copy is a separate DOCUMENT. DOCUMENTS shall also include ELECTRONICALLY STORED INFORMATION (“ESI”) and ANY electronically stored data on magnetic or optical storage media as an “active” file or files (readily readable by one or more computer applications or forensics software); ANY “deleted” but recoverable electronic files on said media; ANY electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM

slack] or residual data left on the hard drive after new data has overwritten some but not all of previously stored data).

8. “DEFENDANTS” means LEXINGTON COUNTY, South Carolina, Gary Reinhart, Rebecca Adams, Albert John Dooley, III, Bryan Koon, and Robert Madsen, and DEFENDANTS’ attorneys, and ANY employees, agents, or PERSONS working on DEFENDANTS’ behalf, and if applicable, DEFENDANTS’ subsidiaries, predecessors or assignors, as well as ANY directors, officers, employees, agents, partners, or PERSONS acting on behalf of DEFENDANTS.

9. “IDENTIFY” when referring to a DOCUMENT or WRITTEN COMMUNICATION means to state:

- a. The description of such DOCUMENTS or writings in sufficient detail in order to enable them to be identified by subpoena duces tecum;
- b. The title and EACH subtitle thereof;
- c. The DATE and number of pages thereof;
- d. A brief summary of the contents;
- e. The author, EACH addressee, and the distribution list thereof;
- f. The IDENTITY of EACH PERSON who witnessed, or was in a position to witness said communication;
- g. The DATE on which the document was prepared or signed;
- h. The physical location of the document and the name and address of its custodian or custodians;
- i. The IDENTITY of EACH document referenced by this document;

j. The source of (or the IDENTITY of EACH PERSON who supplied) ANY information contained therein; and

k. If ANY such document was, but is no longer in YOUR possession or subject to YOUR control, what disposition was made of it and the reason for its disposition.

10. “IDENTIFY” when referring to a meeting means, for EACH such MEETING, to state:

- a. The date and hour when held;
- b. The address where held;
- c. The IDENTITY of EACH PERSON who represented YOU at EACH MEETING or conference;
- d. The IDENTITY of ANY other PERSON present; and
- e. EACH action taken, decision made, agreement reached or topic discussed at the MEETING or conference.

11. “IDENTIFY” when referring to oral communications means to state, with respect thereto, ANY communication or portion thereof between ANY two or more PERSONS that is not or was not recorded, including, but not limited to, telephone conversations, face-to-face conversations, meetings, and conferences. State the PERSONS involved, the DATE, the setting, and the circumstances.

12. “IDENTIFY” or “IDENTITY” when referring to a person means to state:

- a. His/her full name;
- b. His/her present residence address;
- c. His/her present residence telephone number;
- d. His/her present business address;

e. If his/her present residence or business address is unknown, state his/her last known residence address and residence telephone number, his/her last known business affiliation and business address, and ANY information YOU have that might reasonably lead to the discovery of his/her present whereabouts; and

f. With respect to PERSONS who are not natural PERSONS, state the last known complete address, including zip code, the last known complete telephone number, including the area code, of its headquarters, and its nearest or local office or agent.

13. “INDIVIDUAL,” “PERSON,” or “PERSONS” shall mean natural PERSONS, proprietorships, sole proprietorships, corporations, nonprofit corporations, municipal corporations, local, state, federal or foreign governments or governmental agencies, political subdivisions, general or limited partnerships, business trusts, trusts, estates, clubs, groups, unincorporated associations, or other business or public organizations.

14. “INTERGOVERNMENTAL AGREEMENT” means an agreement between LEXINGTON COUNTY and any other unit of government RELATING TO: (a) the arrest of ACCUSED PERSONS; (b) the use of LEXINGTON COUNTY jail facilities to incarcerate INDIVIDUALS convicted of crimes charged by any other unit of government.

15. “LEXINGTON COUNTY” means Defendant Lexington County, South Carolina, including but not limited to Lexington County’s council members, employees, representatives, agents, commissioners, administrators, and PUBLIC DEFENDERS; Lexington County’s attorneys; and any PERSONS acting on behalf of Lexington County.

16. “LEXINGTON COUNTY MAGISTRATE COURT” or “MAGISTRATE COURT” means any magistrate court operating within Lexington County, including but not limited to the magistrate court divisions of Batesburg-Leesville Magistrate Court, Cayce-West

Columbia Magistrate Court, Irmo Magistrate Court, Lexington Magistrate Court, Lexington Central Traffic Court, Oak Grove Magistrate Court, Swansea Magistrate Court, and the Bond Court located at the Lexington County Detention Center.

17. “LEXINGTON COUNTY PUBLIC INDEX” or “PUBLIC INDEX” means the “Lexington County Eleventh Judicial Circuit Public Index,” which can be accessed at the Web address: <http://publicindex.sccourts.org/Lexington/publicindex/>. The PUBLIC INDEX was last accessed at this address on October 5, 2017.

18. “LEXINGTON COUNTY SHERIFF’S DEPARTMENT” or “SHERIFF’S DEPARTMENT” means ANY employee, representative, agent, commissioner, or administrator of the LEXINGTON COUNTY SHERIFF’S DEPARTMENT or Lexington County Detention Center, including but not limited to Defendant Bryan Koon, law enforcement officers, guards, courthouse security, attorneys, volunteers, or staff.

19. “LFOs” means legal financial obligations imposed by a LEXINGTON COUNTY MAGISTRATE COURT as part of a criminal or traffic sentence and includes fines, fees, assessments, penalties, costs, and restitution.

20. “PLAINTIFFS” means Plaintiffs, Plaintiffs’ attorneys, and ANY employees, agents, or PERSONS working on behalf of Plaintiffs.

21. “PUBLIC DEFENDER” means an attorney employed by the Lexington County Public Defender’s Office or appointed, assigned, or provided by LEXINGTON COUNTY or the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina to represent an ACCUSED PERSON.

22. “PUBLIC DEFENSE CASE” means a case in which a PUBLIC DEFENDER has been appointed to represent an ACCUSED PERSON.

23. “PUBLIC DEFENSE SERVICES” means the services performed by a PUBLIC DEFENDER and his or her staff members for the purpose of providing legal representation to an ACCUSED PERSON.

24. “RELATING TO” or “REFERRING TO” (including other verb tenses of those terms) means describing, evidencing, constituting, reflecting, showing, comprising, considering, concerning, discussing, regarding, setting forth, studying, analyzing, commenting upon, recommending, alluding to, or mentioning, in whole or in part.

25. “SHOW CAUSE HEARING” means any LEXINGTON COUNTY MAGISTRATE COURT hearing at which the court considers the allegation that an ACCUSED PERSON has not paid previously imposed LFOs, including but not limited to hearings for ACCUSED PERSONS in custody for failure to pay LFOs, and other similar proceedings, conducted in a LEXINGTON COUNTY MAGISTRATE COURT.

26. “YOU” and “YOUR” means Defendants Gary Reinhart, Rebecca Adams, and/or Albert J. Dooley, III, YOUR attorneys, employees, representatives or agents, and ANY PERSONS acting on behalf of YOU.

## **II. RELEVANT TIME PERIOD**

Unless otherwise stated, the relevant time period for these discovery requests is from June 1, 2014, to the present.

## **III. REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce ALL CORRESPONDENCE, including emails, between the following INDIVIDUALS and ANY other INDIVIDUAL REFERRING OR RELATING TO LFOs, BENCH WARRANTS, or revenue generated through cases prosecuted in LEXINGTON COUNTY MAGISTRATE COURTS:

- a. Hon. Gary Reinhart, Magistrate Judge and former Chief Judge for Administrative Purposes of the Summary Courts of Lexington County
- b. Hon. Rebecca Adams, Chief Judge for Administrative Purposes of the Summary Courts of Lexington County, and former Associate Judge for Administrative Purposes of the Summary Courts of Lexington County
- c. Hon. Albert J. Dooley, III, Associate Chief Judge for Administrative Purposes of the Summary Courts of Lexington County
- d. Hon. Bradley S. Melton, Magistrate Judge
- e. Hon. Gary S. Morgan, Magistrate Judge
- f. Hon. Scott Whittle, Magistrate Judge
- g. Hon. Matthew Johnson, Magistrate Judge
- h. Hon. Arthur L. Myers, Magistrate Judge
- i. Hon. Brian N. Buck, Magistrate Judge
- j. Ed Lewis, Chief Court Administrator
- k. Colleen Long, Deputy Court Administrator
- l. Lisa Comer, Lexington County Clerk of Court
- m. ANY other PERSON who served as a Lexington County Magistrate Judge, Court Administrator, or Clerk of Court at ANY point from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 2:** Please produce ALL CORRESPONDENCE, including letters, between the following INDIVIDUALS and ACCUSED PERSONS that REFERS OR RELATES TO LFOs:

- a. Hon. Gary Reinhart, Magistrate Judge and former Chief Judge for Administrative Purposes of the Summary Courts of Lexington County
- b. Hon. Rebecca Adams, Chief Judge for Administrative Purposes of the Summary Courts of Lexington County, and former Associate Judge for Administrative Purposes of the Summary Courts of Lexington County
- c. Hon. Albert J. Dooley, III, Associate Chief Judge for Administrative Purposes of the Summary Courts of Lexington County
- d. Hon. Bradley S. Melton, Magistrate Judge
- e. Hon. Gary S. Morgan, Magistrate Judge
- f. Hon. Scott Whittle, Magistrate Judge
- g. Hon. Matthew Johnson, Magistrate Judge
- h. Hon. Arthur L. Myers, Magistrate Judge
- i. Hon. Brian N. Buck, Magistrate Judge
- j. Ed Lewis, Chief Court Administrator
- k. Colleen Long, Deputy Court Administrator
- l. Lisa Comer, Lexington County Clerk of Court
- m. ANY other PERSON who served as a Lexington County Magistrate Judge, Court Administrator, or Clerk of Court at ANY point from June 1, 2014, to the present.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 3:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, received, reviewed, used, or provided to others regarding LFOs and BENCH WARRANTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 4:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, received, reviewed, used, or provided to others regarding assessments of the financial circumstances of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 5:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY training provided to or received by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS regarding assessments of the financial circumstances of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 6:** Please produce ALL DOCUMENTS Constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to ACCUSED PERSONS for the purpose of giving notice of the constitutional right to be represented by a PUBLIC DEFENDER.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 7:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY training provided to or received by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS regarding the constitutional right of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER and to receive notice of that right.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 8:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used or provided to ACCUSED PERSONS for the purpose of giving notice of ANY fees or charges that may or would be imposed in relation to

an application for representation by a PUBLIC DEFENDER or to have such fees or charges waived.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 9:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY training provided to or received by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS for notifying ACCUSED PERSONS of ANY fees or charges that may be imposed in relation to an application for representation by a PUBLIC DEFENDER or to have such fees or charges waived.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 10:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used or provided to ACCUSED PERSONS for the purpose of giving notice of the constitutional right to a jury trial.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 11:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY training provided to or received by the judges or staff

of the LEXINGTON COUNTY MAGISTRATE COURTS regarding the constitutional right of ACCUSED PERSONS to a jury trial.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 12:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, or used in providing notice to ACCUSED PERSONS of alleged non-payment of LFOs owed to a LEXINGTON COUNTY MAGISTRATE COURT as a result of a conviction, including a conviction from a trial in absentia.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 13:** Please produce ALL DOCUMENTS provided by judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to ACCUSED PERSONS to provide notice of alleged nonpayment of LFOs owed to a LEXINGTON COUNTY MAGISTRATE COURT as a result of conviction, including a conviction from a trial in absentia, with such notice including, but not limited to, ANY and ALL letters RELATING TO a “Failure to Comply,” “Failure to Pay,” “Contempt,” and/or “Rule to Show Cause.”

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 14:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the training provided to or received by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS regarding the provision of notice to ACCUSED PERSONS of alleged non-payment of LFOs owed to a LEXINGTON COUNTY MAGISTRATE COURT imposed as a result of a conviction, including a conviction from a trial in absentia.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 15:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY monitoring or supervision conducted of the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to ensure that ACCUSED PERSONS are notified of their constitutional rights to be represented by a PUBLIC DEFENDER, to receive a jury trial, and to have their financial circumstances assessed by a judge before they are incarcerated for non-payment of LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 16:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY

MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to giving “Faretta Warnings” to ACCUSED PERSONS, including but not limited to giving a “Faretta Warning” to an individual convicted in his or her absence or whose case is listed in the LEXINGTON COUNTY PUBLIC INDEX as having a disposition of “TIA Guilty Bench Trial.”

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 17:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to Scheduled Time Payment Agreements with ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 18:** Please produce one exemplar of EACH form DOCUMENT designed to be used by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS in relation to Scheduled Time Payment Agreements with ACCUSED PERSONS. If different judges or staff at the different divisions of the MAGISTRATE COURTS currently or previously used different form DOCUMENTS in relation to Scheduled Time Payment Agreements with ACCUSED PERSONS, please also produce one exemplar of EACH of those DOCUMENTS from EACH division of the MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 19:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to SHOW CAUSE HEARINGS scheduled for ACCUSED PERSONS who owe LFOs to the MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 20:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to hearings held in the Bond Court at the Lexington County Detention Center for individuals who have been arrested pursuant to BENCH WARRANTS issued by the MAGISTRATE COURT.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 21:** Please produce ALL DOCUMENTS in YOUR possession constituting or containing policies, practices, procedures, instructions,

guidance, training materials, or other documents prepared, reviewed, or used by the Lexington County Solicitor's Office regarding LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 22:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO ANY agreements between the LEXINGTON COUNTY MAGISTRATE COURTS and the LEXINGTON COUNTY SHERIFF'S DEPARTMENT to execute BENCH WARRANTS ordering the arrest or incarceration of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 23:** Please produce ALL DOCUMENTS in YOUR possession constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents prepared, reviewed, or used by the Lexington County Detention Center regarding LFOs.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 24:** Please produce one exemplar of EACH form DOCUMENT designed to be used by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to assess the ability of ACCUSED PERSONS to pay LFOs at ANY time, including in connection with trials, sentencing hearings, and SHOW CAUSE HEARINGS.

If different judges or staff at the different divisions of the MAGISTRATE COURTS currently or previously used different form DOCUMENTS to assess the ability of ACCUSED PERSONS to pay LFOs at ANY time, including in connection with trials, sentencing hearings, and SHOW CAUSE HEARINGS, please also produce one exemplar of EACH of those DOCUMENTS from EACH division of the MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 25:** Please produce one exemplar of EACH form DOCUMENT designed to be used by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to assess the eligibility of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER. If different judges or staff at the different divisions of the MAGISTRATE COURTS currently or previously used different form DOCUMENTS to assess the eligibility of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER, please also produce one exemplar of EACH of those DOCUMENTS from EACH division of the MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 26:** Please produce ALL DOCUMENTS used by the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS to assess the eligibility of ACCUSED PERSONS to be represented by a PUBLIC DEFENDER.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 27:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Twanda Marshinda Brown (listed in various court records as Twanda M. Brown, Twanda Brown, Twanda Loshonda Brown, and Tawanda Brown), including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 28:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Sasha Monique Darby, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 29:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Cayeshia Cashel Johnson, including but not limited to court files, documents relating to indigent status, audio recordings or

transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 30:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Amy Marie Palacios, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 31:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Xavier Larry Goodwin, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 32:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Raymond Wright, Jr., including

but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 33:** Please produce ALL DOCUMENTS in YOUR possession REFERRING OR RELATING TO Plaintiff Nora Ann Corder, including but not limited to court files, documents relating to indigent status, audio recordings or transcripts of court proceedings, citations, BENCH WARRANTS, transport orders, and jail records.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 34:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the collection of money from ACCUSED PERSONS to satisfy LFOs owed to LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 35:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO the transmission of money collected from ACCUSED PERSONS who owed LFOs in LEXINGTON COUNTY MAGISTRATE COURT cases to

LEXINGTON COUNTY, THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT, and/or  
ANY other entities or persons, including state entities.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 36:** Please produce ALL DOCUMENTS  
REFERRING OR RELATING TO the financial operation of the LEXINGTON COUNTY  
MAGISTRATE COURTS, including but not limited to reports, budgets and analyses of actual or  
projected revenue, sources of revenue, expenditures, costs, payments, disbursements, refunds,  
wages, bonuses, investments, and interest income.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 37:** Please produce ALL data and reports in  
YOUR possession REFERRING OR RELATING TO LFOs, including but not limited to  
information YOU have provided to external entities such as the South Carolina Office of Court  
Administration, South Carolina Supreme Court, South Carolina Attorney General's Office,  
South Carolina Commission on Indigent Defense, and South Carolina Commission on  
Prosecution Coordination.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 38:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO BENCH WARRANTS issued by the LEXINGTON COUNTY MAGISTRATE COURTS, including but not limited to letters, e-mails, and other CORRESPONDENCE, and information contained in electronic databases, reports, or analyses.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 39:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in relation to BENCH WARRANTS for the arrest and incarceration of ACCUSED PERSONS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 40:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others for the purpose of giving notice to ACCUSED PERSONS that they are at risk of a BENCH WARRANT issued for non-payment of LFOs and/or nonappearance in court.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 41:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others for the purpose of giving notice to ACCUSED PERSONS that a BENCH WARRANT has been issued for their arrest and incarceration for non-payment of LFOs and/or nonappearance in court.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 42:** Please produce ALL DATA and reports in YOUR possession REFERRING OR RELATING TO LFOs, including but not limited to information YOU have provided to external entities such as the South Carolina Office of Court Administration, South Carolina Supreme Court, South Carolina Attorney General's Office, South Carolina Commission on Indigent Defense, and South Carolina Commission on Prosecution Coordination.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 43:** Please produce ALL DOCUMENTS REFERRING OR RELATING TO databases, reports, or analyses created by judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS for the purposes of maintaining and/or tracking BENCH WARRANTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 44:** Please produce ALL data kept for the purposes of maintaining, tracking, or enforcing Scheduled Time Payment Agreements between ACCUSED PERSONS and the LEXINGTON COUNTY MAGISTRATE COURTS.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 45:** Please produce ALL data kept for the purposes of maintaining, tracking, enforcing, or recalling BENCH WARRANTS issued against ACCUSED PERSONS by the LEXINGTON COUNTY MAGISTRATE COURTS, regardless of whether the BENCH WARRANT for which the data kept is currently active or has already been executed.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 46:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others for the purpose of inputting, interpreting, clarifying, construing, reading, or explaining information found in the LEXINGTON COUNTY PUBLIC INDEX.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 47:** Please produce ALL DOCUMENTS constituting or containing policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others regarding the current or former usage of the following “Action Types” in the LEXINGTON COUNTY PUBLIC INDEX:

- a. Archived Bench Warrant
- b. Archived Commitment
- c. Archived Court Summons
- d. Archived Discharge
- e. Archived Document
- f. Archived Failure to Appear/Comply/Pay
- g. Archived Faretta Warnings
- h. Archived Guilty Plea Information
- i. Archived Rule to Show Cause
- j. Archived STP Agreement
- k. Archived Unpaid Fine Notice
- l. Bench Trial
- m. Bench Warrant / Arrest Warrant Recalled
- n. Bench Warrant Served

- o. Commitment Order Issued
- p. Failure to Comply
- q. Failure to Comply Letter Issued
- r. Faretta Warnings
- s. Motion/Motion to Lift Bench Warrant
- t. Order/DMV
- u. Rule to Show Cause
- v. Scheduled Time Payment
- w. Show Cause Hearing Bond Court
- x. Show Cause Hearing No Documents
- y. Show Cause Hearing Variable Document
- z. Show Cause Hearing with Document

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 48:** Please produce ALL DOCUMENTS, including but not limited to emails, letters, memoranda, or other WRITTEN COMMUNICATIONS, REFERRING OR RELATING TO the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, “Sentencing Unrepresented Defendants to Imprisonment.” *See* ECF No. 40–1.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 49:** Please produce ALL DOCUMENTS

REFERRING OR RELATING TO the policies, practices, procedures, instructions, guidance, training materials, or other documents that the judges or staff of the LEXINGTON COUNTY MAGISTRATE COURTS prepared, reviewed, used, or provided to others in response to the September 15, 2017, memorandum of Supreme Court of South Carolina Chief Justice Donald W. Beatty with the subject, “Sentencing Unrepresented Defendants to Imprisonment.” See ECF No. 40–1.

**ANSWER:**

DATED this 10th day of October, 2017.

Respectfully submitted by,

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

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*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Twanda Marshinda Brown, et al., etc.,	)	Civil Action No.
	)	
Plaintiffs,	)	3:17-1426-MBS-SVH
	)	
v.	)	<b>REPLY MEMORANDUM IN SUPPORT</b>
	)	<b>OF MOTION FOR SUMMARY</b>
Lexington County, South Carolina, et al.,	)	<b>JUDGMENT ON DAMAGE CLAIMS AND</b>
	)	<b>MOTION TO STAY DISCOVERY, ETC.</b>
Defendants.	)	
_____	)	

**STATEMENT**

Defendants submit this reply memorandum in support of their Motion for Summary Judgment on Damage Claims and Motion to Stay Discovery, etc., ECF Nos. 50 and 51, and in reply to Plaintiffs’ memoranda in opposition to those motions, ECF Nos. 66 and 67.

Plaintiffs’ filings in this case make clear that their desire is to bypass the normal, readily available, state court procedures for presenting Sixth Amendment and due process claims. There is no question that the substantive constitutional claims they are asking this Court to consider could have been raised in the course of direct appeals in state court. However, none of the present Plaintiffs have done that, nor have their counsel sought to file such appeals in the cases of any other persons who might be able to raise the same claims in state court. Instead, this action seeks wholesale federal declaratory and injunctive relief that runs contrary to *Younger v. Harris* as well as well-settled principles of justiciability. Their damage claims, for the most part, amount to no more than an attempt to evade judicial immunity via artfulness in contending that

individual judicial decisions somehow constitute a “policy.” These efforts should be rejected, and the issues raised by Plaintiffs should be presented in state courts in a proper case.

No matter how Plaintiffs try to frame their damage claims, those claims are in fact based on individualized judicial actions in each of their criminal cases. Those actions were taken by judges exercising judicial functions. Plaintiffs seek to engage in discovery, claiming that if the same results are reached in similar cases, that gives reason to think that there may be an unwritten policy underlying those decisions. However, Plaintiffs have not provided the slightest scintilla of evidence to support this speculation. Even if discovery were not barred at this stage of the case by the absolute immunities claimed by Defendants, Plaintiffs’ stated reasons for seeking discovery amount to nothing more than suspicion or speculation, which is not enough to “unlock the doors of discovery.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

Plaintiffs’ Memorandum in Opposition does not dispute that each Plaintiff who seeks damages was jailed through the operation of a bench warrant issued in order to enforce prior court orders and judgments in Plaintiffs’ criminal cases. Specifically, each such Plaintiff, except for Plaintiff Wright,<sup>1</sup> was originally given an alternative sentence of paying a fine or serving a specified jail term. When the fines were not paid, typically after each person had been given the

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<sup>1</sup> By way of clarification, Defendants would note that none of the named defendant magistrates imposed the convictions and bench warrants on Plaintiff Wright, Plaintiff Goodwin, or Plaintiff Corder. As shown by Exhibit 1, attached, the magistrates who acted in those cases were Judges Myers (Wright), Buck (Goodwin), and Melton (Corder), respectively. This lack of personal involvement is in itself sufficient reason why none of the named individual magistrates in this case are liable for alleged injuries to those three Plaintiffs.

Plaintiffs Brown and Darby and their counsel incorrectly assert that their original sentences only involved a fine. ECF No. 66 at 4; ECF No. 66-1 at 1; ECF No. 66-2 at 3, ¶ 17. In fact, the sentences of both included the alternative of a jail sentence as well. ECF No. 29-2 at 2, ¶3(a)(Brown—sentenced to 90 days in the alternative); *Id.* at 4-5 (Darby)(the sentence was for 20 days; in one place, there is a typographical error referencing 30 days, but the sentence was for 20 days, and that was what was served). See Exhibit 1, Attachments a and d.

alternative of making relatively small monthly payments, the sentencing judges then signed bench warrants, and the individuals were thereafter arrested. They then served the alternative sentences, that is, the jail terms.

Plaintiffs repeatedly assert that Defendants have “misconstrued” their claims, because, they assert, they are not “contesting the actions of judges and sheriffs in individual cases.” ECF No. 66 at 2 (page cites are to the original page numbers at the bottom of the document). In fact, however, and as a practical matter, that is all they are contesting in their damage claims. And far from “misconstruing” Plaintiffs’ arguments, Defendants have already stated that Defendants understand precisely what those arguments are: an attempt to squeeze judicial adjudications into the wholly-inapposite rule that administrative actions taken by judges are not subject to judicial immunity. Plaintiffs are also probably trying to cast this case into the mold of at least one case involving completely different facts. In *Foster v. City of Alexander City*, No. 3:15-CV-647-RCL-WC (M.D. Ala.)(Amended Complaint attached as Exhibit 2 hereto), where no judge was among the defendants, persons sentenced only to fines were subsequently jailed by actions of the city’s chief of police when they were unable to pay the fines. While this may have been a de facto city policy, there was no judicial action involved in the jailing of the individuals. Unlike the facts of the present case, in *Foster*, jail time was not part of the judicially-imposed sentence, nor was there any subsequent judicial action ordering incarceration, as is present here in the form of the bench warrants signed by the magistrates in each instance.

### **FACTS**

In view of the characterizations made by Plaintiffs in their most recent filing, it is appropriate to take a closer look at the “policies” they allege to exist.

The first of the two claimed policies is the so-called “Default Payment Policy.” Under that policy, Plaintiffs allege, “Lexington County magistrate courts routinely order the arrest and jailing of people who cannot afford to make payments toward court fines and fees in traffic and misdemeanor criminal cases.” Second Amended Complaint, ¶ 7. That alleged policy is further described as one under which “magistrate court judges in Lexington County do not inquire into financial ability to pay when imposing fines and fees on an indigent defendant and setting the terms of a Scheduled Time Payment Agreement. . . . Instead, if a defendant cannot pay the full amount of fines and fees at sentencing, Lexington County magistrate court judges impose a Scheduled Time Payment Agreement that requires steep [sic] monthly payment amounts untailed to the needs of the individual and often entirely beyond the person’s financial means.” *Id.*, ¶ 90. Finally, Plaintiffs assert that under that alleged policy, “when an indigent person fails to pay in the time or amount required by the Scheduled Time Payment Agreement, magistrate courts routinely issue a bench warrant that orders law enforcement to arrest and incarcerate the individual unless the full amount owed, including the collection fee, is paid.” *Id.* ¶ 92.

In connection with the second so-called policy, the “Trial in Absentia” policy, Plaintiffs allege that “Lexington County magistrate courts routinely order the arrest and jailing of indigent people who cannot afford to pay fines and fees imposed through trials and sentencing proceedings held in their absence.” *Id.*, ¶ 8. As described by Plaintiffs, this alleged “policy” involves routine trying in absentia those criminal defendants who do not appear on their scheduled trial dates, routinely denying or ignoring requests for continuances, and not ensuring that the individual who has been tried and sentenced in absentia has actual notice of the conviction and sentence imposed. *Id.*, ¶¶ 102, 103, 104.

Finally, it is alleged that the chief magistrates “also make a deliberate decision not to increase the size of magistrate court dockets, require additional hours of court operation, or request additional County funding for magistrate court operations in order to ensure that magistrate courts conduct pre-deprivation ability-to-pay hearings before ordering the arrest and incarceration of indigent people who are unable pay outstanding fines and fees in full.” *Id.*, ¶ 10. The same paragraph alleges that “Defendants Adams and Dooley make a deliberate administrative decision not to require or permit indigent people booked in jail on bench warrants to be brought to the Bond Court located adjacent to the Detention Center or to the original magistrate court that issued the bench warrant for a post-deprivation ability-to-pay hearing and appointment of counsel to guard against continued unlawful incarceration.” *Id.*, ¶ 10.

### ARGUMENT

**1. Plaintiffs have not shown, and cannot show, that their damage claims are based on anything other than actions to which judicial immunity applies.**

**a. Magistrates.**

In seeking to argue that the magistrates established “unwritten policies” for the determination of certain types of cases, Plaintiffs have not shown, or even attempted to show, why such policies, if they existed, would not still be an exercise of the judicial function. For this reason alone, their attempt to extricate their claims from the total bar of judicial immunity must fail. Their claims are nothing more than an artful attempt to characterize acts that are clearly judicial in nature as something else. Again, it cannot be disputed that in trying, convicting and sentencing criminal defendants, with jail time an alternative part of the sentences, and then taking further individualized judicial action to enforce the criminal judgments, the magistrates were exercising judicial functions. Those judicial actions were the cause of the incarcerations for which Plaintiffs seek damages. *See, e.g.*, Second Amended Complaint, ¶¶ 494, 503, 519

(“Plaintiffs . . . seek damages . . . for injuries] they suffered for being jailed. . .”). As the leading modern case on the subject holds, “The relevant cases demonstrate that the factors determining whether an act by a judge is a “judicial” one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.” *Stump v. Sparkman*, 435 U.S. 349, 362 (1978).

Plaintiffs cite only three cases for their attempt to apply the “administrative action” exception to judicial immunity. Each is clearly inapposite. Plaintiffs first cite *Forrester v. White*, 484 U.S. 219 (1988), a case involving a judge’s decision to dismiss a subordinate court employee, specifically, a probation officer. The Supreme Court unanimously held that it was “clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester.” 484 U.S.at 229. This holding stemmed from the Court’s distinction between judicial acts and acts that simply happen to have been done by judges:

When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges.

484 U.S. at 227. The present case bears no similarity to the employment decision involved in *Forrester*. Instead, the acts of the magistrates were the “paradigmatic judicial acts” of adjudicating cases before them.

Another case cited by Plaintiffs is *Morrison v. Lipscomb*, 877 F.2d 463 (6th Cir. 1989), a case with unusual facts which, like those in *Forrester*, are completely different from the facts of the present case. In *Morrison*, the chief administrative judge of a judicial district declared a districtwide moratorium on the issuance of writs of restitution during the holiday period from December 15, 1986 through January 2, 1987. A litigant who wished to obtain such a writ during

that period filed suit against the judge. The Sixth Circuit held that that action was administrative and not judicial. In the course of that holding, the court explained that the case did “not [involve] an adjudication between parties,” but instead was “a general order, not connected to any particular litigation.” 877 F.2d at 466. In addition, “[t]he order did not alter the rights and liabilities of any parties but, rather, instructed court personnel on how to process the petitions made to the court.” *Id.* Finally, the court noted that a litigant offended by a judicial action can, “in the vast majority of cases, appeal the court's decision to a higher court; here, no direct appeal is available. . . .” *Id.* In the present case, of course, the magistrates’ actions in the Plaintiffs’ individual cases did involve adjudications, which were connected to particular cases, and which were not only appealable through the state court appeal process, but which should have been appealed if Plaintiffs desired to challenge them.

The third and final case cited by Plaintiffs is *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719 (1980). The Supreme Court held in that case that the propounding the Virginia Code of Professional Responsibility by the Virginia Supreme Court “was not an act of adjudication but one of rulemaking.” 446 U.S. at 731. The Court further held, however, that

Disciplinary rules are rules of general application and are statutory in character. They act not on parties litigant but on all those who practice law in Virginia. They do not arise out of a controversy which must be adjudicated, but instead out of a need to regulate conduct for the protection of all citizens. It is evident that, in enacting disciplinary rules, the Supreme Court of Virginia is constituted a legislature.”

*Id.*, quoting a dissent in the lower court in the case, 470 F.Supp. at 1064. From this it can readily be seen that the present case, unlike *Consumers Union*, did not involve rules of general application, but instead “act[ed] on parties litigant[,]” and arose out of controversies that needed to be litigated. In other words, the case is clearly inapposite on its facts.

Even if *Consumers Union* had involved similar facts, however, it still does not help Plaintiffs, but instead fully supports Defendants’ hypothetical alternative contention that assuming without conceding that policies did exist, which Defendants vehemently deny, those who promulgated them would enjoy absolute legislative immunity, as already discussed by Defendants. ECF No. 50-1 at 10-11.

Plaintiffs contend (or more accurately, speculate) that chief magistrates may have declined to require ability-to-pay hearings prior to issuing bench warrants, or could have made such hearings mandatory. ECF No. 66 at 30. Again, however, Plaintiffs were jailed as the result of individualized judicial orders in each of their cases. Those individualized actions, and not any such alleged general “policies,” were the cause of the serving of jail time by Plaintiffs. And again, even if these procedures had been the result of “policies,” such policies would have been put into place in the exercise of either judicial or legislative functions.

**b. Sheriff Koon.**

Plaintiffs’ claims that Sheriff Koon should be held liable for damages as the result of alleged “policies” are, if anything, even more fanciful than the claim that the magistrates’ individualized judicial acts were taken pursuant to “policies.” Plaintiffs contend that Sheriff Koon is subject to suit in an administrative capacity in “determining enforcement priorities, allocating limited Sheriff’s Department resources among various LCSD divisions, negotiating relationships with other law enforcement agencies to execute payment bench warrants, and overseeing and directing LCSD deputies and Detention Center staff in the manner in which payment bench warrants are executed.” ECF No. 66 at 32-33. However, if a sheriff could be subjected to liability for reasons such as this, there would be no limit to the extent of such liability.

The reality is much simpler: when a court issues a bench warrant, the county sheriff is required by law to serve the warrants and make arrests. Plaintiffs cite the relevant statutes and court rules mandating the service of such process, ECF No. 66 at 33 n.50, apparently without recognizing the mandatory nature of the sheriff's duties in this regard. *See, e.g.*, S.C. Code Ann. § 23-15-40 (requiring the “sheriff or his regular deputy [to] serve, execute and return every process, rule, order or notice issued by any court of record in this State,” and making him subject to contempt of court for failure to do so); S.C. R. Crim. P. 30(c) (“It is the continuing duty of the sheriff, and of other appropriate law enforcement agencies in the county, to make every reasonable effort to serve bench warrants”). A sheriff cannot, as Plaintiffs claim, pick and choose which warrants he serves, or when and how he serves them, depending on a supposed evaluation by the Sheriff of whether an ability-to-pay hearing was part of the process. The proximate cause of Plaintiffs’ arrests and incarcerations was not any action of the sheriffs, but of the magistrates in the exercise of judicial functions exercised in enforcing the incarceration aspect of the original sentences. Not surprisingly, Plaintiffs’ four pages of argument on this point, ECF No. 31-34, are devoid of even a single case to support Plaintiffs’ expansive claim that the sheriff is liable for damages in this situation.<sup>2</sup>

**2. Even if policies existed, as Plaintiffs allege, they have not shown, and cannot show, that legislative immunity would not apply to the supposed policies, which, had they existed, would be general and prospective in nature.**

On the issue of legislative immunity, Plaintiffs try to have it both ways. On the one hand, they assert that Defendants are enforcing “unwritten policies.” On the other hand, they deny that the officials who promulgated the policies are entitled to legislative immunity. While such

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<sup>2</sup> Plaintiffs’ admission that they “do not seek damages from Defendant Koon for arresting and incarcerating them pursuant to payment bench warrants,” ECF No. 66 at 32, should be sufficient reason for dismissing him from this case.

policies have not been shown to exist anywhere other than in the minds of Plaintiffs' counsel, it is assumed solely for the purpose of argument on this point that such policies do in fact exist.

Under that assumption, the alleged policies would be covered by legislative immunity. The touchstone in determining whether such immunity exists is the presence of “prospective, legislative-type rules” of general application, *Scott v. Greenville Cty.*, 716 F.2d 1409, 1423 (4th Cir. 1983), as opposed to individualized determinations such as are involved, for instance, in deciding specific zoning requests or making employment decisions about specific individuals. *See also, e.g., S. Lyme Prop. Owners Ass'n, Inc. v. Town of Old Lyme*, 539 F. Supp. 2d 547, 559 (D. Conn. 2008)(“Defendants' actions in setting enforcement policies were more like the ‘kind of broad, prospective policymaking that is characteristic of legislative action.’”), quoting *Harhay v. Town of Ellington Bd. of Educ.*, 323 F.3d 206, 211 (2d Cir.2003). Legislative action is often characterized by the presence of formal legislative processes, as Plaintiffs point out. *See E.E.O.C. v. Washington Suburban Sanitary Comm’n*, 631 F.3d 174, 184 (4th Cir. 2011). If those processes are present, the courts will generally conclude without further examination that legislative immunity is present. However, the absence of formal processes does not defeat a claim of legislative immunity, because it is the enactment of general, forward-looking policies, and not the nature of the processes of their enactment, that is controlling. As held in *Youngblood v. DeWeese*, 352 F.3d 836, 840 (3d Cir. 2003), as amended (Feb. 11, 2004), the Court in *Bogan v. Scott-Harris*, 523 U.S. 44 (1998) did not require an act to be legislative in both “formal[ ] character” and substance in order to enjoy immunity. 352 F.3d at 840, citing *Bogan*, 523 U.S. at 55.

Plaintiffs also argue that the chief magistrates, Adams and Reinhart, should be held liable because they “have failed to exercise their administrative authority to correct the longstanding

and pervasive Default Payment Policy through any written policy. . . .” Second Amended Complaint, ¶ 516. However, the Supreme Court in *Consumers Union, supra*, specifically noted that failure to amend challenged rules would be as subject to legislative immunity as would the enactment of invalid rules. 446 U.S. at 734.

- 3. Plaintiffs have cited no authority in support of their claim that Lexington County or others should be liable in damages for any alleged failures to provide appointed counsel for indigent persons.**
  - a. Any alleged underfunding of a public defender system does not, as a matter of law, show proximate cause of any alleged injury.**

Defendants, and particularly Lexington County, have contended that a damage claim cannot be based on assertions that the public defender system was underfunded, because even if the public defender system were to be found to be underfunded, other counsel could have been appointed by the magistrates, and Plaintiffs cannot show that that underfunding of one source of appointed counsel was a proximate cause of their convictions. Plaintiffs’ response is terse indeed, comprising only one paragraph. ECF No. 50 at 42-43.

Under general tort law principles, “[p]roximate cause requires proof of causation in fact and legal cause. Causation in fact is proved by establishing the plaintiff’s injury would not have occurred “but for” the defendant’s [actions]” (citation omitted).” *Sartin v. McNair Law Firm PA*, 756 F.3d 259, 264 (4th Cir. 2014), quoting *Eadie v. Krause*, 381 S.C. 55, 671 S.E.2d 389, 393 (S.C.Ct.App.2008). As applied to the present case, Plaintiffs must therefore first show that they most probably would have been successful in avoiding criminal liability, or at least jail time, in the underlying criminal cases if representation by a public defender had been made available to them. *See id.* (in legal malpractice case, plaintiff must show that he most probably have been successful but for the alleged malpractice). Plaintiffs have not attempted to make such a showing, and could not possibly succeed even if they had tried. Again, they must show that the

absence of one particular type of appointed counsel, a public defender, was the proximate cause of their convictions and subsequent enforcement thereof, and this they cannot do.

Instead, Plaintiffs cite several cases as general authority for the unremarkable proposition that proximate cause is not necessarily decided prior to trial. *Id.* However, there are many situations in which it is held that the absence or presence of proximate causation is indeed determined as a matter of law. *See, e.g., Charleston Area Med. Ctr., Inc. v. Blue Cross & Blue Shield Mut. of Ohio, Inc.*, 6 F.3d 243 (4th Cir. 1993)(no proximate cause as a matter of law); *Childress v. City of Richmond, Va.*, 134 F.3d 1205, 1207 (4th Cir. 1998)(affirming district court's conclusion that as a matter of law the officers' filing of charges was not the proximate cause of the allegedly retaliatory actions by the City); *Jordan v. Allstate Ins. Co.*, No. 4:14-CV-03007-RBH, 2016 WL 4367080, at \*9 (D.S.C. Aug. 16, 2016), *aff'd*, 678 F. App'x 171 (4th Cir. 2017)(“[P]roximate cause for Plaintiff's alleged damages is lacking as a matter of law”). *Talkington v. Atria Reclamelucifers Fabrieken BV*, 152 F.3d 254, 264 (4th Cir. 1998); *Estate of Knight ex rel. Knight v. Hoggard*, 182 F.3d 908 (4th Cir. 1999)(unpublished)(“[b]ecause the evidence was simply insufficient to establish proximate cause, we conclude that the district court should have awarded judgment as a matter of law”); *Bias v. IPC Int'l Corp.*, 107 F.3d 865 (4th Cir. 1997)(unpublished)(presented with undisputed testimony, court concluded as a matter of law that certain events were insufficiently foreseeable ascribe proximate causation to a defendant).

Given that a court can indeed find that proximate causation is absent as a matter of law, this is a case in which such a rule would apply. Plaintiffs need to show that but for the alleged underfunding of public defenders' offices, their cases would have turned out differently. This they cannot do, both because there were other avenues available for the appointment counsel and

because they cannot show that the outcome of their cases would most probably have been different.

**b. No authority supports Plaintiffs' claims for damages against a local governing body for alleged failure to fund a public defender system.**

Plaintiffs have not cited a single case in which a judge or a local governing body has been held liable for damages when it was claimed that there had been a violation of the Sixth Amendment right to counsel. Instead, Plaintiffs assert only that “[a] local government’s inadequate funding and provision of indigent defense is a cognizable Sixth Amendment injury.” ECF No. 66 at 43. The primary authority cited for that point is *Wilbur v. City of Mount Vernon*, No. C11-1100RSL, 2011 WL 13101827, at \*1 (W.D. Wash. Oct. 17, 2011), but in that case the court noted in an earlier opinion that the “complaint seeks only declaratory and injunctive relief”.<sup>3</sup> Plaintiffs cite four other cases in two footnotes, ECF No. 43, nn. 56, 57, but none of those four involved damage claims either. *Tucker v. State*, 162 Idaho 11, 394 P.3d 54, 59 (2017)(“various forms of equitable relief”); *Church v. Missouri*, No. 17-CV-04057-NKL, 2017 WL 3383301, at \*11 (W.D. Mo. July 24, 2017)(“Plaintiffs seek prospective relief on behalf of themselves and [others]”); *Kuren v. Luzerne Cty.*, 146 A.3d 715, 718 (Pa. 2016)(issue was “whether a cause of action exists entitling a class of indigent criminal defendants to allege prospective, systemic violations of the right to counsel”); *Hurrell-Harring v. State*, 15 N.Y.3d 8, 930 N.E.2d 217 (2010)(declaratory and injunctive relief).

To the contrary, and quite coincidentally, the Fourth Circuit has held that the Town and County of Lexington cannot be held liable in damages for any denial of counsel. *Reed v. Town of Lexington*, 902 F.2d 1566 (4th Cir. 1990)(unpublished). The plaintiffs in that case argued that the

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<sup>3</sup> Plaintiffs cite a later order in the *Wilbur* case, but the order cited above describes the relief sought by the plaintiffs in that case.

Town or County of Lexington had a duty to provide counsel upon request. They also contended that the town and county acted negligently in failing to provide a system for appointment of counsel in Municipal or Magistrate's Court and in denying the public defender's office authority to represent indigents in Municipal and Magistrate's Court. The Fourth Circuit affirmed the dismissal of the case, holding that “None of the alleged wrongdoers, including the Lexington County magistrates, the Lexington Municipal Judge and the Lexington County Public Defender Corporation, are subject to the control of the Town or County of Lexington.” *Id.* at \*2.

Continuing, the Court held as follows:

Article V of the South Carolina Constitution creates a unified court system which operates under the jurisdiction of the Supreme Court of South Carolina. As the district judge correctly stated, the Lexington County magistrates are appointed by the Governor and are a part of the state's unified judicial system. S.C. Const. art. V, § 26; *State ex rel Mcleod v. Crowe*, 272 S.C. 41, 249 S.E.2d 772 (1978). Furthermore, magistrates have been declared judicial officers of the state and not the municipality or county. *State v. Cumbee*, 276 S.C. 207, 277 S.E.2d 146 (1981). Thus, as reasoned by the district judge, the magistrates are not subject to the control of the Town or County of Lexington, thereby precluding either of these municipal defendants from providing the relief requested.

*Id.* It appears that the Court’s rationale was that the magistrates were the actors who failed to provide appointed counsel, although if an action for damages had been brought against them, it undoubtedly would have been dismissed based on judicial immunity.

Similarly, and in greater detail, the Fifth Circuit has also held that a county official was not liable in damages for failing to provide legal services to him. *Hamill v. Wright*, 870 F.2d 1032 (5th Cir. 1989)(Director of the Domestic Relations Office[ ] had no legal duty to ensure that Hamill was provided with counsel[;] . . . That obligation [to appoint counsel] was upon the state district court judge”); 870 F.2d at 1037; the same case also held that the county itself was not liable for failure to provide appointed counsel, because “Texas law makes only state court

judges responsible for appointing attorneys for indigent criminal defendants. A county can exercise no authority over state court judges, as the latter are not county officials.” *Id.* These cases confirm Defendants’ contention that Lexington County cannot be held liable for any alleged failure to provide an adequate public defender system, because power to appoint counsel other than from the public defender’s office lay with the magistrates. Finally, several cases have reached the obvious conclusion that that judicial immunity protects a state judge from damage claims based on alleged deprivations of the right to counsel. *Martin v. Aubuchon*, 623 F.2d 1282, 1285 (8th Cir. 1980); *Banks v. Geary Cty. Dist. Court*, 645 F. App’x 713, 717 (10th Cir. 2016)(state judge “was clearly entitled to absolute immunity from suit” ” in case seeking damages from denial of appointment of counsel).

**4 Plaintiffs have not shown that *Heck v. Humphrey* does not apply.**

Defendants have previously submitted a detailed discussion of why *Heck v. Humphrey*, 512 U.S. 477 (1994) bars Plaintiffs’ claims. ECF No. 50-1 at 4-7. Plaintiffs’ response in this regard, as in others discussed above, is to try to fit this case into rules applied in cases with dissimilar facts. They attempt to claim that *Wilkinson v. Dotson*, 544 U.S. 74 (2005), which permitted a Section 1983 claim against parole-hearing procedures, should govern. However, *Heck* prohibits damage claims that would necessarily imply the invalidity of the conviction or sentence. *Wilkinson* holds, in fact, that “[i]n context, *Heck* uses the word ‘sentence’ to refer not to prison procedures, but to substantive determinations as to the length of confinement.” 544 U.S. at 83. The Court also cited and quoted *Muhammad v. Close*, 540 U.S. 749, 751, n. 1, which held that “the incarceration that matters under *Heck* is the incarceration ordered by the original judgment of conviction”. *Id.* (Emphasis added.) In other words, where, as here, Plaintiffs’ complaint pertains to the enforcement of the original judgments of conviction, cases involving

denial of parole or the revocation of probation are inapposite. Plaintiffs' challenge is to the enforcement of their original sentences. Those enforcement efforts are part and parcel of the original sentencing process, and are therefore not similar to cases involving parole-hearing procedures, which come into play only after the sentence has been put into place.

Plaintiffs assert that "magistrate courts could have validly incarcerated Plaintiffs if the courts had properly provided pre-deprivation ability-to-pay hearings and determined that Plaintiffs willfully failed to pay or to make adequate efforts to secure resources." ECF No. 66 at 22. However, they do not appear to realize that these claims effectively challenge the jail alternative of the sentence. It must be remembered that except for Plaintiff Wright, who was incarcerated by actions of a non-defendant magistrate, all of the Plaintiffs seeking damages were originally sentenced either to fines or in the alternative, jail sentences.<sup>4</sup> Plaintiffs have not cited a case which holds that any additional process is due when a person sentenced to incarceration is subsequently arrested and made to serve his or her jail term, and where the arrest did not involve the revocation of probation. The original sentence in *Bearden v. Georgia*, 461 U.S. 660 (1983), frequently cited by Plaintiffs, involved only monetary penalties and probation. The proceedings for which counsel was required to be present were probation revocation proceedings. Plaintiffs also cite *Powers v. Hamilton Cty. Pub. Def. Comm'n*, 501 F.3d 592, 604 (6th 2007), in support of their contention that their challenge does not implicate the validity of the original sentence. However, *Powers*, like *Bearden*, involved a probation revocation, and not a challenge to the enforcement of the original sentence.

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<sup>4</sup> While Plaintiffs contend that there is a question of fact as to whether Brown and Darby received alternative jail sentences, there is in fact no such question. *See* Exhibit 1, Attachments a and d, which show clearly on the face of the tickets that the alternative of jail time was part of the sentence. Plaintiffs have had copies of these tickets for months.

Plaintiffs also rely on *Fant v. City of Ferguson*, 107 F. Supp. 3d 1016, 1028 (E.D. Mo. 2015), but in that case the convictions resulted only in fines, not jail sentences. The jail sentences were added later, creating a claim that a hearing was required at the time incarceration was added to the penalty. Similarly, *Cain v. City of New Orleans*, 186 F. Supp. 3d 536 (E.D. La. 2016), also cited by Plaintiffs, involved only incarceration for nonpayment of court costs, which are not involved in the present case. Plaintiffs also cite *Ray v. Judicial Corr. Servs.*, 2013 WL 5428395 (N.D. Ala. 2013), but that case also only involved probation revocation issues. Finally, Plaintiffs cite *Wilson v. Johnson*, 535 F.3d 262 (4th Cir. 2008), an action involving decisions by prison administrators that were not part of the original sentence. However, as Defendants have already pointed out, ECF No. 50-1 at 7, n.4, post-*Wilson* cases in the Fourth Circuit and in this district indicate that the holding of that case does not extend to cases such as this, where the challenge would necessarily imply the invalidity of the original conviction and sentence, rather than some independent action occurring thereafter.

All told, Plaintiffs have not cited a single case in which parole, probation or other similar independent actions not related to the original sentence were not involved, and where the court was simply carrying out the original alternative sentence of incarceration. Regardless of what they claim to be asserting, through artful characterizations of their claims, any success by Plaintiffs on their damage claims would necessarily imply that the original convictions, or the original jail sentences, or both, were invalid. As a result, *Heck* bars their claims.

**5. Plaintiffs have not shown that the *Rooker-Feldman* doctrine does not apply.**

Defendants' position on the application of the *Rooker-Feldman* doctrine is similar to their position on *Heck v. Humphrey*. Plaintiffs' response is also similar to their arguments pertaining to *Heck v. Humphrey*. They cite three cases, *Fant, supra, Powers, supra, and Ray, supra*. ECF

No. 66 at 26-27, which have already been discussed above. Plaintiffs refer generally to two other cases, *Washington v. Wilmore*, 407 F.3d 274 (4th Cir. 2005) and *DaVani v. Va. Dep't. of Transp.*, 434 F.3d 712, 718 (4th Cir. 2006). Both merely hold that when the plaintiff is not challenging the state court decision, *Rooker-Feldman* does not apply. They provide no guidance pertinent to the specific facts of this case. Plaintiffs were jailed pursuant to criminal court convictions and to bench warrants enforcing the jail sentences that were part of those convictions. They did not appeal either through the state court appeals process. In pursuing their present damage claims, they asking for relief that would require this Court to hold that the state court judgment of conviction and/or sentence was erroneously entered.

**6. Plaintiffs have not shown that magistrates have authority to promulgate rules of the kind Plaintiffs claim to exist.**

Defendants have previously argued that the magistrates do not have the legal authority under state law to promulgate rules that effectively amount to rules of practice or procedure. As evidence, Defendants cited the September 15, 2017, Memorandum of Chief Justice Beatty, ECF No. 40-1, which directs the magistrates how to proceed when defendants who are neither represented by counsel nor have waived counsel, are being sentenced to imprisonment. Plaintiffs' response in opposition does not mention the Beatty memorandum, but instead insists that magistrates have the legal authority under state law to make policies that would lead to unconstitutional incarceration without representation by counsel or a waiver of such representation. ECF No. 66 at 41-42.<sup>5</sup>

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<sup>5</sup> Plaintiffs assert that Article V, Section 4 of the Constitution of South Carolina "explicitly [sic] permits the Chief Justice of South Carolina to delegate administrative authority to local Chief Judges "as he deems necessary to aid in the administration of the courts of the State." ECF No. 66 at 41-42. In fact, the full sentence reads as follows: "[The Chief Justice] shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State." While the Chief Justice has indeed cited this provision in the course of

As already pointed out above, any “policies” that would have the effects claimed by Plaintiffs, even if they existed, would be an exercise of either the judicial function or the legislative function. They would not be within the purview of a grant of administrative authority. In addition, they would be covered by the absolute immunities covering such actions.

**7. Plaintiffs have not made a showing that would entitle them to engage in discovery.**

Plaintiffs repeatedly complain that Defendants’ two pending motions were filed “prematurely.” However, as Defendants have previously pointed out on several occasions, Plaintiffs have not, at any appropriate time, shown why discovery is necessary with regard to the summary judgment motion pertaining to their claims for declaratory and injunctive relief. As for the summary judgment motion on the damage claims, it is the normal practice for defendants who claim absolute immunities to move for dismissal of the case prior to discovery, given that immunity from discovery is part of the immunity that is being claimed. *See, e.g., Mireles v. Waco*, 502 U.S. 9, 11 (1991)(“judicial immunity is an immunity from suit, not just from ultimate assessment of damages”). Plaintiffs’ failure to mention this core principle applicable in cases where absolute immunities are claimed is a failure that speaks volumes about their inability to overcome that principle.<sup>6</sup>

Defendants would first note, of course, that in light of Defendants’ invocation of various absolute immunities, of which immunity from discovery is a vital part, Plaintiffs should not be

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designating chief administrative judges, the provision does not explicitly refer to chief judges at any level, so Plaintiffs’ quotation of this provision is not accurate.

<sup>6</sup> Plaintiffs cite *Al Shimari v. CACI Int’l, Inc.*, 679 F.3d 205 (4th Cir. 2012), ECF No. 67 at 13 n.3, but that case involved the rather esoteric immunity set forth in *Mangold v. Analytic Servs., Inc.*, 77 F.3d 1442 (4th Cir. 1996). *Mangold* holds that private government contractors are immune from suit when (a) exercising discretion and (b) while acting within the scope of their employment. Merely to state that test is to show that it is subject to fact-intensive inquiries that are not present in a case such as this, where the magistrates unquestionably exercised judicial functions in the course of adjudicating Plaintiffs’ criminal cases.

permitted to conduct discovery at all.<sup>7</sup> But even if that bar to discovery did not exist, Plaintiffs' showing so far is too speculative to permit discovery. As Defendants have noted in previous filings and elsewhere in the present Memorandum, Plaintiffs have offered nothing to support their bald conclusions that the magistrates have created "unwritten policies." The absence of any evidence whatsoever to support the ephemeral contention that such policies exist means that the contention is nothing more than a creation of the imagination of Plaintiffs' counsel. The showing made so far by Plaintiffs is the very kind of showing that has been repeatedly held not to create a right to conduct discovery..

The starting point for any discussion of the availability of discovery is *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). There it was held that "Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." 556 U.S. at 678-79. A review of Plaintiffs' Second Amended Complaint, ECF No. 48, shows that with regard to the supposed existence of policies, that pleading contains "nothing more than conclusions." Paragraphs 88 through 109 of the Second Amended Complaint contain a number of allegations to the effect that similar cases are treated similarly by the magistrates, but any idea that they were therefore acting pursuant to one or more unwritten policies is purely conclusory and speculative. The fact that the speculation consumes 20 or more paragraphs, or that Plaintiffs have made up

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<sup>7</sup> The Choudhury Declaration, ECF No. 66-7, with nearly 80 pages of discovery requests attached, provides a fairly dramatic illustration of the burdens of litigation from the Defendants are protected as a result of absolute immunities.

Plaintiffs make the odd and illogical assertion that the Court's announcement that it would decide all pending motions at the same time somehow altered Defendants' expectations as to how the case would proceed. ECF No. 67 at 2. If the Court grants summary judgment on all claims, however, discovery will not be necessary.

names for the policies they claim to exist, does not render the existence of the policies any less speculative. As held in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), “[f]actual allegations must be enough to raise a right to relief above the speculative level.” While magistrate courts may reach similar results in the adjudication of similar cases, that fact does not logically give rise to an assumption that there must be some unwritten policy underlying those actions. There is no basis at all for making the logical jump to the conclusion that if cases are treated similarly, there must be an unwritten policy somewhere that mandates it. The far more plausible assumption would be that the magistrates acted consistently from case to case. Plaintiffs have not “nudged their claims across the line from conceivable to plausible. . . .” *Id.* at 570. In fact, it is probably stretching matters to conclude that their speculations are even reasonably conceivable.

In declining to permit discovery based on the kind of unsupported assumptions alleged by Plaintiffs, courts have elaborated on the above-quoted language from *Iqbal* and *Twombly*. See, e.g., *Bosarge v. Mississippi Bureau of Narcotics*, 796 F.3d 435, 443 (5th Cir. 2015)(plaintiff’s “suspicion alone is not enough” to permit discovery); *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007)(“[t]he factual allegations, assumed to be true, must do more than create speculation or suspicion of a legally cognizable cause of action”); *Pruitt v. Alba Law Grp., P.A.*, 2015 WL 5032014, at \*5 (D. Md. 2015)(plaintiff’s “bare suspicions are not enough”); *Dupree v. EMC Mortg. Corp.*, 2010 WL 11553160, at \*2 (E.D. Tex. 2010)(same when claim is “based strictly on Plaintiff’s speculation and suspicions”). Plaintiffs here have shown nothing more.

## CONCLUSION

For the foregoing reasons, Defendants reiterate that their Motion for Summary Judgment on Damage Claims be granted, all such claims dismissed, and that their Motion to Stay Discovery also be granted, if it is not entirely moot.

Respectfully submitted,

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ATTORNEYS for Defendants

Columbia, South Carolina

December 13, 2017

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

Twanda Marshinda Brown; Sasha ) C/A No.: 3:17-1426-MBS-SVH  
Monique Darby; Cayeshia Cashel )  
Johnson; Amy Marie Palacios; Nora )  
Ann Corder; and Xavier Larry Goodwin )  
and Raymond Wright, Jr., on behalf of )  
themselves and all others similarly )  
situated, )

Plaintiffs, )

vs. )

Lexington County, South Carolina; Gary )  
Reinhart, in his individual capacity; ) REPORT AND RECOMMENDATION  
Rebecca Adams, in her official and )  
individual capacities as the Chief Judge )  
for Administrative Purposes of the )  
Summary Courts in Lexington County )  
and in her official capacity as the Judge )  
of the Irmo Magistrate Court; Albert )  
John Dooley, III, in his official capacity )  
as the Associate Chief Judge for )  
Administrative Purposes of the )  
Summary Courts in Lexington County; )  
Bryan Koon, in his official capacity as )  
the Lexington County Sheriff; and )  
Robert Madsen, in his official capacity )  
as the Circuit Public Defender for the )  
Eleventh Judicial Circuit of South )  
Carolina, )

Defendants. )

Plaintiffs have been convicted of magistrate-level offenses in Lexington, South Carolina, and received assessments of fines and fees. Plaintiffs' cases include convictions for misdemeanor offenses such as simple possession of marijuana, assault and battery in the third degree, and traffic-level offenses such as driving on a suspended license and uninsured status. Plaintiffs are represented by the American Civil Liberties Union ("ACLU") and name as defendants Lexington County, the current and former judges for administrative purposes of the Lexington County summary courts, the county sheriff, and the county public defender (collectively "Defendants"). Plaintiffs request damages and declaratory and injunctive relief against Defendants for alleged constitutional violations, including lack of due process, denial of equal protection of the law, failure to provide assistance of counsel, and unreasonable seizure. Plaintiffs also seek certification pursuant to Fed. R. Civ. P. 23(a) and (b)(2) of a proposed class of "all indigent people who currently owe, or in the future will owe, fines, fees, court costs, assessments, or restitution in cases handled by Lexington County magistrate courts."

This matter comes before the court on the following motions: (1) Plaintiff's motion to certify class [ECF No. 21]; (2) Defendants' motion for summary judgment on Plaintiff's claims for declaratory and injunctive relief [ECF No. 29]; and (3) Defendants' motion for summary judgment on damages claims [ECF No. 50]. These matters having been fully briefed [ECF Nos. 30, 35, 36, 39, 66, 70], they are ripe for disposition.

All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(f) (D.S.C.). Because the motion for summary judgment is dispositive, this report and

recommendation is entered for the district judge’s consideration. For the following reasons, the undersigned recommends Plaintiff’s motion to certify class be denied, Defendants’ motion for summary judgment as to injunctive and declaratory relief be denied, and Defendants’ motions for summary judgment for damages be granted in part and denied in part.

I. Factual Background

The second amended complaint is the now operative complaint (“Complaint”). [ECF No. 48], which consists of 122 pages with 535 paragraphs of factual allegations and asserts eight counts.

A. Defendants

Lexington County is a municipal governmental entity whose policies, practices, and customs Plaintiffs allege deprived them of their constitutional rights. [Compl. ¶ 26].

Gary Reinhart, Rebecca Adams, and Albert John Dooley III (collectively “Judicial Defendants”) are South Carolina magistrates for Lexington County summary courts. Reinhart served as Chief Judge for Administrative Purposes of the Summary Courts in Lexington County until June 27, 2017. *Id.* at ¶¶ 27–30. Adams succeeded Reinhart as Chief Judge and was formerly the Associate Chief Judge. Dooley was appointed as Associate Chief Judge upon Adams’s promotion to Chief Judge. *Id.*

Bryan Koon is the elected Lexington County Sheriff, chief law enforcement officer for the Lexington County Sheriff’s Department (“LCSD”), and the chief administrator for the Lexington County Detention Center (“LCDC”). *Id.* at ¶ 30.

Robert Madsen is the Public Defender for the Eleventh Judicial Circuit of South Carolina that includes Lexington County. *Id.* at ¶ 32.

B. Plaintiffs

1. Twanda Marshinda Brown

On March 15, 2016, Twanda Marshinda Brown (“Brown”) was ticketed by an LCSD officer for driving on a suspended license (DUS, 2nd offense) and for driving with no tag light. *Id.* at ¶ 141. On April 12, 2016, Brown appeared before Judge Adams in the Irmo Magistrate Court and pled guilty to both charges, *id.* at ¶¶ 141, 142, 144, and was assessed \$237.50 for the tag light conviction and \$2,100 for the DUS, 2nd conviction. *Id.* at ¶ 145. Brown alleges she told Judge Adams she had no money to pay that day and that Judge Adams established a \$100/month payment schedule. *Id.* at ¶ 146. Brown alleges she stated she could not afford a monthly \$100 payment and that Judge Adams threatened to jail her for 90 days. *Id.* at ¶ 150. Brown made five payments of \$100 through October 4, 2016, which satisfied the fines and fees for the tag light conviction and contributed toward her fines and fees for the DUS, 2nd conviction. *Id.* at ¶ 159. After Brown failed to make any payments after October 4, 2016, *id.* at ¶ 160, Judge Adams issued a bench warrant on January 12, 2017, for her nonpayment on the DUS, 2nd conviction, *id.* at ¶ 163. The warrant stated that Brown had a “sentence imposed/balance due of \$1,907.63 or 90 days” and that she would be jailed “until he/she shall be thereof discharged by due course of law.” *Id.* Brown was arrested on the bench warrant on February 18, 2017, *id.* at ¶¶ 165–67, and was advised that she could pay \$1,907.63 or serve 90 days in jail. *Id.* Brown served 57 days in jail. *Id.* at ¶¶ 168, 171.

Brown claims she did not know, and that Judge Adams did not inform her, that she had the right to request the assistance of a court-appointed attorney before pleading guilty and the right to seek a waiver of any public defender application fees due to financial hardship. *Id.* at ¶ 143.

2. Sasha Monique Darby

On August 4, 2016, Sasha Monique Darby (“Darby”) was ticketed for assault and battery in the third degree after she hit her roommate. *Id.* at ¶¶ 184–85. She appeared in Irmo Magistrate Court on August 23, 2016, was given a “Trial Information and Plea Sheet,” and instructed to “check a box.” *Id.* at ¶¶ 186–87. Darby checked the statement, “I waive my right to have an attorney present,” *id.* at ¶ 188, and “Not guilty,” *id.* at ¶ 189.

Judge Adams found Darby guilty of assault and battery in the third degree, *id.* at ¶¶ 193–95, and asked her whether she wanted to serve 30 days in jail or pay a fine, *id.* 196. Darby stated that she would pay the fine, *id.* at ¶ 196, but after learning the fine was \$1,000, *id.* at ¶ 200, she returned to the courtroom and told Judge Adams she could only pay \$100 to \$120 a month. *Id.* at ¶¶ 201–02. Judge Adams ordered her to pay \$150 a month. *Id.* at 202. Darby paid \$200 on the date of the hearing and \$150 on October 4, 2016. *Id.* at 205. After Darby failed to make any further payments, *id.* at ¶¶ 205–06, a bench warrant issued for Darby on December 8, 2016. *Id.* at ¶ 208. Darby was arrested on the bench warrant on March 28, 2017. *Id.* at ¶¶ 209–12. Darby was advised that she could pay \$680 or serve 20 days in jail. *Id.* at ¶ 213. Darby served 20 days in jail. *Id.* at ¶ 215.

Darby alleges Judge Adams did not engage in a colloquy with her to determine whether her waiver of the right to counsel was knowing, voluntary, and intelligent. *Id.* at ¶ 193.

3. Cayeshia Cashel Johnson

After having an accident on August 21, 2016, while driving her mother's car, Cayeshia Cashel Johnson ("Johnson") was charged with simple possession of marijuana and the following traffic offenses: (1) operating a motor vehicle without license in possession; (2) improper start of vehicle; (3) violation of beginner permit; (4) failure to return license plate and registration upon loss of insurance, 1st offense; and (5) uninsured motor vehicle fee violation, 1st offense. *Id.* at ¶¶ 218–20.

Johnson alleges that the week before her court hearing on September 22, 2016, she called the Central Traffic Court and informed someone that she could not attend the hearing because she lived in Myrtle Beach and lacked transportation. *Id.* at ¶ 223. Johnson says she was told lack of transportation was not a valid reason for missing a court hearing and that her case would be tried in her absence. *Id.* at ¶ 224. Johnson states she inquired about arranging a payment plan for the fines, but was told she needed to talk to a judge about arranging a payment plan. *Id.* at ¶ 225. Johnson states she left her work and cell numbers and was allegedly assured that the court would contact her, but that no one did. *Id.* at ¶ 226–27.

On September 22, 2016, the Central Traffic Court tried Johnson in her absence and found her guilty of all six charges. *Id.* at ¶ 228. On September 26, 2016, a bench warrant issued for Johnson to pay \$1,287.50 or serve 80 days in jail. *Id.* at ¶ 230. On

February 13, 2017, Johnson was arrested in Myrtle Beach, *id.* at ¶¶ 231–33, and jailed for 55 days, *id.* at ¶ 238.

4. Amy Marie Palacios

Around June 2015, Amy Marie Palacios (“Palacios”) had her driver’s license suspended for failure to pay an earlier speeding ticket. *Id.* at ¶¶ 250–51. On October 28, 2016, she was stopped by state troopers at a roadblock and ticketed for driving on a suspended license (DUS, 1st offense). *Id.* at ¶¶ 253–54. The day before her November 10, 2016 court hearing, Palacios called the Central Traffic Court to request a different court date because of her work schedule. *Id.* at ¶ 256. Palacios was tried in her absence on November 10, 2016, and found guilty of DUS, 1st offense. *Id.* at ¶ 260. On November 15, 2016, a bench warrant issued, requiring payment of \$647.50 or 30 days in jail. *Id.* at ¶ 262. On February 25, 2017, Palacios was arrested on the bench warrant, *id.* at ¶¶ 263–68, and released after serving 21 days. *Id.* at ¶ 275.

5. Nora Ann Corder

In July 2016, Nora Ann Corder (“Corder”) was cited for failing to return her license plate and registration upon the loss of insurance, resulting in a \$230 fine and the suspension of her driver’s license. *Id.* at ¶¶ 284–85. On January 27, 2017, Corder was cited for driving under suspension (DUS, 1st offense), violation of temporary license plate for vehicle to be registered in another state, and uninsured motor vehicle fee violation, 1st offense, *Id.* at ¶ 289. Her car was impounded. *Id.* at ¶ 290.

Prior to her February 15, 2017 hearing, the deputy who issued the tickets asked Corder about her interim remedial efforts and had the judge continue the case until the

following month for Corder to “take care of what she needed to take care of.” *Id.* at ¶¶ 293–94. Prior to her March 22, 2017 hearing, Corder discussed her interim remedial efforts with the same deputy, who stated that if she could reinstate her driver’s license and car insurance, he would drop certain charges or ask the court to reduce the amount she would have to pay in fines and fees. *Id.* at ¶¶ 296–97. The deputy continued the hearing to April 19, 2017, to allow her to reinstate her driver’s license. *Id.* at ¶ 298. Before the April 19, 2017 hearing began, Corder paid the \$230 fine arising from the 2016 ticket for failing to return her license plate and registration upon loss of insurance. *Id.* at ¶¶ 304–05. Corder told the same deputy that she could not afford to reinstate her driver’s license or car insurance, but that she had recently secured a job. *Id.* at ¶ 307. The deputy indicated he would continue the trial a final time to May 17, 2017. *Id.*

Corder failed to appear on May 17, 2017, and was tried and found guilty in her absence, and a bench warrant issued for her arrest. *Id.* at ¶¶ 310–11, 313. She was arrested the following week when she appeared at the Lexington Magistrate Court with the intention of filing forms to forestall eviction for failing to pay rent. *Id.* at ¶ 319. She was jailed for 54 days in lieu of paying the \$1,320 fine. *Id.* at ¶¶ 321, 222.<sup>1</sup>

Corder claims she never requested a continuance and never spoke to the presiding judge, was not instructed on how to prepare for a continued court hearing, was not informed of the right to request the assistance of a court-appointed attorney, the right to

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<sup>1</sup> The two paragraphs between paragraphs 321 and 322 are numbered 223 and 223 in the Second Amended Complaint.

seek waiver of any public defender application fees due to financial hardship, or the right to a jury trial. *Id.* at ¶ 308.

6. Xavier Larry Goodwin

During a traffic stop on July 15, 2016, Xavier Larry Goodwin (“Goodwin”) was ticketed for (1) driving under suspension (DUS, 2nd offense); (2) uninsured motor vehicle fee violation, 1st offense; (3) seatbelt violation; (4) temporary license plate–time limit to replace; and (5) use of license plate other than the vehicle for which it was issued. *Id.* at ¶ 326. He was tried in his absence on August 9, 2016, and a bench warrant issued, requiring payment of \$1,710 or 90 days in jail for the convictions of DUS, 2nd offense and uninsured motor vehicle fee violation, 1st offense. *Id.* at ¶¶ 327–28, 330.

On February 2, 2017, Goodwin was stopped and ticketed for DUS, 3rd offense and served with the bench warrant requiring payment of \$1,710 or 90 days in jail. *Id.* at ¶¶ 331–35. At his bond hearing on the DUS, 3rd charge, Goodwin claims he was not informed of his right to request the assistance of court-appointed counsel or his right to seek waiver of a public defender application fee. *Id.* at ¶ 336. During his transport on April 4, 2017, for a hearing, Goodwin claims he asked the LCDC officer whether he could request a public defender. *Id.* at ¶¶ 337–38. Goodwin says the officer suggested that the screening process could take a long time and that his incarceration in LCDC could be extended as a result. *Id.* at ¶ 338. Goodwin pled guilty to DUS, 3rd offense, *id.* at ¶ 341, and was sentenced to \$2,100 and 90 days in jail, with instructions to set up a payment plan within 30 days, *id.* at ¶ 342–43. Goodwin was jailed at LCDC for 63 days for nonpayment of fines and fees, *id.* at ¶ 344–47, and on April 6, 2017, he was

transported to the detention center in Richland County to serve time on a Richland County bench warrant, *id.* at ¶ 345. After being released on April 26, 2017, he returned to the Irmo Magistrate Court on May 5, 2017, and signed a \$100/month payment plan. *Id.* at ¶¶ 346, 351–53. Goodwin made one payment. *Id.* at ¶ 357–58.

Goodwin alleges that Judge Adams did not inform him that he had the right to request the assistance of a court-appointed attorney before he pled guilty and the right to seek a waiver of any fees related to the application for a public defender due to financial hardship. *Id.* at ¶¶ 339–40.

7. Raymond Wright, Jr.

On July 1, 2016, Raymond Wright, Jr. (“Wright”), was stopped and ticketed for DUS, 1st offense. *Id.* at ¶ 363. He pled guilty on July 26, 2016, was fined \$666.93, *id.* at ¶ 366, and set up on a \$50/month payment plan, *id.* at ¶¶ 368–69. Wright made five payments. *Id.* at ¶ 370. He was summoned for a show cause hearing on April 19, 2017, at which the Central Traffic Court judge made a general announcement that all defendants had a right to an attorney. *Id.* at ¶¶ 373–75. Because Wright failed to pay the balance of \$416.93 within 10 days, a bench warrant issued on May 2, 2017, directing payment of \$416.93 or 10 days in jail. *Id.* at ¶ 224.<sup>2</sup> Wright was arrested on July 25, 2017, and released on August 1, 2017. *Id.* at ¶¶ 384, 390.

Wright states the judge did not advise him of the right to request the assistance of a court-appointed attorney and the right to seek waiver of any fees related to the application for a public defender due to financial hardship. *Id.* at ¶ 375.

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<sup>2</sup> The paragraph between 381 and 382 is numbered 224 in Plaintiff’s Complaint.

C. Claims

Because Plaintiffs’ claims vary by which Plaintiffs sue which Defendants for which causes of action, the court distills the Complaint into the following claims chart:

No.	Claim	Relief Sought	By	Against
1	Incarceration without pre-deprivation ability-to-pay hearing (Comp. ¶¶ 451–61)	Declaratory and Injunctive	Goodwin and Wright	Adams, Dooley, and Koon (official capacities)
2	Failure to afford assistance of counsel (Comp. ¶¶ 462–77)	Declaratory and Injunctive	Goodwin and Wright	Lexington County, Madsen, Adams, Dooley, and Koon (official capacities)
3	Unconstitutional seizure (Comp. ¶¶ 478–85)	Declaratory and Injunctive	Goodwin and Wright	Adams, Dooley, and Koon (official capacities)
4	Incarceration without pre-deprivation ability-to-pay hearing (Comp. ¶¶ 486–94)	Damages	All plaintiffs	Reinhart, Adams, and Koon (individual capacities)
5	Failure to afford assistance of counsel (Comp. ¶¶ 495–03)	Damages	All plaintiffs	Lexington County, Madsen (official capacity), Reinhart and Adams (individual capacities)
6	Unreasonable seizure (Comp. ¶¶ 504–19)	Damages	Brown, Darby, and Wright	Reinhart, Adams, and Koon (individual capacities)
7	Incarceration without pre-deprivation ability-to-pay hearing (Comp. ¶¶ 520–27)	Declaratory	Goodwin	Adams (official capacity)
8	Failure to afford assistance of counsel (Comp. ¶¶ 528–535)	Declaratory	Goodwin	Adams (official capacity)

## II. Discussion

### A. Jurisdiction of Prospective Relief Claims (Including all Class Claims)

As an initial matter, it appears to the undersigned that all requests for prospective relief in this case are now moot. *See Friedman's, Inc. v. Dunlap*, 290 F.3d 191, 197 (4th Cir. 2002) (holding that whether this court is “presented with a live case or controversy is a question [the court] may raise *sua sponte* since mootness goes to the heart of the Article III jurisdiction of the courts” (internal quotation marks omitted)); *see also United States v. Tejada-Revulcaba*, 675 F. App'x 393 (4th Cir. 2017) (finding that courts may raise the issue of mootness *sua sponte*).

Defendants have submitted the September 15, 2017 memorandum from Chief Justice Donald W. Beatty of the South Carolina Supreme Court to South Carolina Magistrate and Municipal Judges, requiring that all defendants in the state facing criminal charges carrying possible imprisonment be fully informed of their right to counsel, and if indigent, their right to court-appointed counsel prior to trial. [ECF No. 40-1]. Chief Justice Beatty's memorandum further directed that absent a waiver of counsel or the appointment of counsel for indigent defendants:

summary court judges **shall not** impose a sentence of jail time, and are limited to imposing a sentence of a fine only for those defendants, if convicted. When imposing a fine, consideration should be given to a defendant's ability to pay. If a fine is imposed, an unrepresented defendant should be advised of the amount of the fine and when the fine must be paid. This directive would also apply to those defendants who fail to appear at trial and are tried in their absence.

*Id.* (emphasis in original). The memorandum on its face appears to moot all claims for prospective relief in this case. To the extent that Plaintiffs seek injunctive and declaratory

relief from future injury, their alleged injuries cannot be “conjectural” or “hypothetical[,]” *City of L.A. v. Lyons*, 461 U.S. 95, 101–02 (1983); “remote[,]” *Warth v. Seldin*, 422 U.S. 490, 507 (1975); “speculative[,]” *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 42–46 (1976); or “[a]bstract[,]” *O’Shea v. Littleton*, 414 U.S. 488, 494 (1974). Rather, they must be “certainly impending.” *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) (citation omitted). After Chief Justice Beatty’s instruction to magistrate and municipal courts, no future injury to Plaintiffs is impending, nor have Plaintiffs shown a substantial controversy of sufficient immediacy. *Super Tire Eng’g Co. v. McCorkle*, 416 U.S. 115, 122 (1974) (requiring allegations to show a substantial controversy of sufficient immediacy and reality to warrant declaratory relief).<sup>3</sup> Absent a showing of a live case or controversy,<sup>4</sup> the undersigned recommends that Plaintiffs’ prospective relief claims all be dismissed as moot. As Plaintiffs’ motion to certify class [ECF No. 21] relies on their claims for prospective relief, the undersigned also recommends it be denied.

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<sup>3</sup> Although Goodwin argues that he is still subject to being jailed for failure to pay fines, Plaintiffs have not indicated that Goodwin is subject to a live bench warrant, which information is easily ascertainable.

<sup>4</sup> The undersigned expects Plaintiffs to argue that Defendants have not met the heavy burden of showing that it is absolutely clear that the alleged wrongful behavior could not reasonably be expected to recur. *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000). However, the Fourth Circuit has held that a governmental entity’s change of policy renders a challenge moot when the governmental entity “has not asserted its right to enforce [the challenged policy] at any future time.” *Telco Commc’ns, Inc. v. Carbaugh*, 885 F.2d 1225, 1231 (4th Cir. 1989). Here, Chief Justice Beatty’s memorandum makes clear the policies of the state courts and the undersigned finds the complained-of conduct/policies cannot be reasonably expected to recur.

## B. Immunity

Immunity is a threshold issue that should be resolved early in a case. *Siegert v. Gilley*, 500 U.S. 226 (1991). Therefore, the undersigned first addresses immunity.

### 1. Judicial Immunity

Defendants argue that the Judicial Defendants are entitled to absolute judicial immunity. [ECF No. 50-1 at 3, 9]. A judicial officer in the performance of his or her duties has absolute immunity from suit. *Mireles v. Waco*, 502 U.S. 9, 12 (1991). Judicial immunity extends to judges of courts of limited jurisdiction, such as municipal and magistrate court judges. *Figueroa v. Blackburn*, 208 F.3d 435, 441–43 (3d Cir. 2000). Further, “[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority.” *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978). An exception to judicial immunity exists when a judge engages in nonjudicial acts, *i.e.*, actions not taken in the judge’s judicial capacity. *Id.*; *see Figueroa*, 208 F.3d at 440.

Plaintiffs argue that the Judicial Defendants are sued for actions they allegedly took in their administrative capacities as Chief Judges and Associate Chief Judges for Lexington County Summary Courts. A closer analysis of Plaintiffs’ argument reveals that Plaintiffs do not sue the Judicial Defendants for their actions, but only for alleged omissions, which Plaintiffs couch as “decisions” not to act in some way. Specifically, Plaintiffs state that Judicial Defendants “exercised their administrative responsibilities in a manner that established and sanctioned the unwritten standard operating procedures resulting in Plaintiffs’ arrest[s] and incarceration for nonpayment of fines and fees

without pre-deprivation ability-to-pay hearings or representation by court-appointed counsel.” [ECF No. 66 at 38]. Plaintiffs list the following administrative omissions: (1) the Judicial Defendants’ failure to make indigency hearings mandatory; (2) the Judicial Defendants’ failure to assign cases, increase the size of magistrate court dockets, require additional hours of magistrate court operation, and mandate magistrate judges to work on evenings and weekends to facilitate mandatory indigency hearings; and (3) the Judicial Defendants’ failure to report and correct the use of bench warrants to coerce fine and fee payments and to incarcerate indigent people. *Id.* The undersigned finds Plaintiffs’ argument unavailing.

The Fourth Circuit has noted “the important purpose served by the doctrine of judicial immunity, which has been described as protecting the public interest in having judges who are ‘at liberty to exercise their functions with independence and without fear of consequences.’” *King v. Myers*, 973 F.2d 354 (4th Cir. 1992) (quoting *Pierson v. Ray*, 386 U.S. 547, 554 (1967)). “Judicial immunity is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences.” *Town of Hopkins, S.C. v. Cobb*, 466 F. Supp. 1215, 1218 (D.S.C. 1979) (quotations omitted). The Supreme Court has warned that controversial issues are even more worthy of the protection of judicial immunity so that a judge may act without fear of suit:

Disagreement with the action taken by the judge . . . does not justify depriving that judge of his immunity. Despite the unfairness to litigants that sometimes results, the doctrine of judicial immunity is thought to be in the

best interests of “the proper administration of justice . . . [, for it allows] a judicial officer, in exercising the authority vested in him [to] be free to act upon his own convictions, without apprehension of personal consequences to himself.”

*Stump*, 435 U.S. at 363 (quotations omitted).

Under the facts of this case, the undersigned finds that Judicial Defendants are entitled to absolute judicial immunity. Plaintiffs’ argument that their damages claims against Judicial Defendants are for the “manner” in which they “exercised their administrative responsibilities” is undercut by their argument that the Judicial Defendants’ administrative “decisions” (i.e., omissions) had a direct impact on the criminal proceedings, thereby causing Plaintiffs damages. [ECF No. 66 at 38]. Further, the alleged administrative decisions Plaintiffs argue should have been made could only have been made by a judge, evidencing their judicial nature. The undersigned is not persuaded that an alleged decision, which can only be made by a judge and that affects the adjudication of a criminal proceeding, can be characterized as a non-judicial administrative decision such that the judge should be deprived of judicial immunity.

Plaintiffs provide no authority, either binding or merely persuasive, in which a court allowed suit based on a judge’s alleged failure to prescribe how other judges should perform their judicial functions. Allowing an action to proceed against the Judicial Defendants in this instance would virtually eliminate the doctrine of judicial immunity, as any disgruntled litigant could bypass the barrier of judicial immunity by simply suing the chief judge of a court. If, as Plaintiffs argue, a litigant may sue a chief administrative judge for a “decision . . . not to require” a judge issuing a warrant to hold specific

hearings, any disgruntled litigant may sue a court's chief judge for an alleged failure to require a specific hearing. If a chief administrative judge were liable for an alleged failure "to report and correct" the alleged improper procedures used by other judges of the court, any chief judge would be subject to suit for failure to report wrongs by a judge alleged by any disgruntled litigant. Plaintiffs' attempt to sue the Judicial Defendants for failing to prescribe specific details of how judges should perform judicial functions is a thinly-veiled attempt to circumvent judicial immunity. The undersigned finds the Judicial Defendants are entitled to absolute judicial immunity and recommends dismissal as to claims asserted against them.

## 2. Quasi-Judicial Immunity

Defendants argue that Koon is similarly shielded by the doctrine of quasi-judicial immunity. The doctrine of absolute quasi-judicial immunity has been adopted and made applicable to court personnel, including clerks of court, law enforcement officers, and others who enforce court orders, because of "the 'danger that disappointed litigants, blocked by the doctrine of absolute immunity from suing the judge directly, will vent their wrath on clerks, court reporters, and other judicial adjuncts[.]'" *Kincaid v. Vail*, 969 F.2d 594, 601 (7th Cir. 1992) (quoting *Scruggs v. Moellering*, 870 F.2d 376, 377 (7th Cir. 1989)). "Officials whose duties are comparable to those of judges or prosecutors" are, like judges, entitled to absolute immunity. *Ostrzenski v. Seigel*, 177 F.3d 245, 249 (4th Cir. 1999); see *Goldstein v. Moatz*, 364 F.3d 205, 213 (4th Cir. 2004).

Plaintiffs argue that they do not sue Koon for arresting and incarcerating them pursuant to the bench warrants, noting they have not sued the individual deputies that

arrested them. [ECF No. 66 at 40]. Instead, similar to their arguments concerning the Judicial Defendants, Plaintiffs argue that they sue Koon for his “exercise of administrative authority as the head of the [LCSD] to establish the standard operating procedures that directly and proximately caused Plaintiffs unlawful arrest and incarceration.” *Id.* Specifically, Plaintiffs complain of the following alleged actions of Koon: (1) to prioritize the execution of payment bench warrants at people’s homes, during traffic and pedestrian stops, and elsewhere, including by enlisting other law enforcement agencies to locate debtors; (2) to direct LCSD deputies and LCDC staff to inform bench warrant arrestees that the only way to avoid incarceration is to pay in full the amount of money identified on a bench warrant; (3) to direct LCDC staff to book people arrested on bench warrants as soon as they can verify that an arrestee is unable to pay the full amount of fines and fees identified on the face of the bench warrant; and (4) to direct, supervise, and train LCSD deputies and LCDC staff, who allegedly systematically failed to notify bench warrant arrestees of their right to request counsel and to a hearing on ability to pay and representation by counsel. *Id.* at 41–42.

Just as for the Judicial Defendants, allowing Plaintiffs to sue Koon in this matter would effectively abolish the doctrine of quasi-judicial immunity. Plaintiffs’ reasons for suing Koon is illustrative of the underlying reasons for the doctrine of quasi-judicial immunity, i.e., to prevent them from becoming a “lightning rod for harassing litigation aimed at judicial orders.” *Valdez v. City and County of Denver*, 878 F.2d 1285, 1289 (10th Cir. 1989) (internal quotes omitted) (finding sheriff and deputies absolutely immune for enforcing facially valid court order); *see also Fowler v. Alexander*, 478 F.2d

694, 696 (4th Cir. 1973) (finding jailer immune for confining plaintiff pursuant to order of court). Plaintiffs have not alleged Koon or his deputies committed any constitutional violation independently of their actions in executing court-ordered bench warrants. Plaintiffs have also failed to identify how any of Koon’s alleged administrative actions deprived them of their constitutional rights.

Therefore, the undersigned recommends Koon be dismissed from this case, as he is entitled to absolute quasi-judicial immunity.

### 3. Immunity for Injunctive Relief

To the extent the district judge finds that prospective relief is not moot as discussed *supra*, the immune defendants are also entitled to immunity from injunctive relief. The common law doctrines of judicial and quasi-judicial immunity do not extend to actions for declaratory or injunctive relief. *See Pulliam v. Allen*, 466 U.S. 522, 540-42 (1984). But the Federal Courts Improvement Act of 1996, Pub. L. No 104-317, 110 Stat. 3847 (1996), amended 42 U.S.C. § 1983 to bar injunctive relief against a judicial officer “for an act or omission taken in such officer’s judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable.” Neither the Supreme Court nor the Fourth Circuit has addressed whether § 1983 protects quasi-judicial actors, but the weight of authority has found immunity from such actions. *See Montero v. Travis*, 171 F.3d 757, 761 (2d Cir. 1999); *Roth v. King*, 449 F.3d 1272, 1286–87 (D.C. Cir. 2006); *Gilbert v. Ferry*, 401 F.3d 411, 414 n. 1 (6th Cir. 2005) (dicta); *Pelletier v. Rhode Island*, No. 07-186S, 2008 WL 5062162, at \*5–6 (D.R.I. Nov. 26, 2008); *Cannon v. South Carolina Dept. of Corrections*, 2008 WL 269519, at \*4 (D.S.C. Jan. 29, 2008); *Von*

*Staich v. Schwarzenegger*, No. 04-2167, 2006 WL 2715276 (E.D. Cal. Sept. 22, 2006). In light of the weight of authority above, the undersigned finds that Defendants are entitled to summary judgment on Plaintiffs' claims for injunctive relief against the Judicial Defendants and Koon and recommends those claims be dismissed.

C. Madsen

Defendants argue that suit against public defender Madsen in his official capacity is essentially a suit against Lexington County and he should be dismissed as duplicative. Plaintiffs concede that their damages claim against Madsen is functionally equivalent to their damages claim against Lexington County. [ECF No. 66, n.4].

Madsen is sued only in his official capacity. Official-capacity suits represent an alternative way of pleading an action against an entity of which an officer is an agent. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Here, the parties do not dispute that Madsen is an agent of Lexington County. Because Plaintiffs have asserted the same causes of action against Lexington County and Madsen, the claims against Madsen are duplicative, and the undersigned recommends Madsen be dismissed from the case.

D. Lexington County (Damages for Failure to Afford Assistance of Counsel)<sup>5</sup>

Defendants argue that Plaintiffs' damages claims against Lexington County based on underfunding of the public defender system are barred for lack of causation because a judge could appoint a member of the bar to represent an indigent person if the public defender system did not exist. [ECF No. 50-1]. In support, Defendants cite to S.C. Code

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<sup>5</sup> Plaintiffs' other damages claims are against immune or duplicative defendants, which the undersigned addressed, *supra*.

Ann. § 17-3-10, which provides in relevant part: “Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto.”

The undersigned finds that the statute does not address whether the court may appoint a member of the bar for indigent defendants and therefore is not relevant to causation. The undersigned recommends that Defendants’ motion for summary judgment on their damages claim against Lexington County for failure to afford assistance of counsel be denied without prejudice.

III. Conclusion

For the foregoing reasons, the undersigned recommends the court: (1) deny Plaintiffs’ motion to certify class [ECF No. 21]; (2) grant Defendants’ motion for summary judgment as to declaratory and injunctive relief [ECF No. 29]; and (3) deny Defendants’ motion for summary judgment as to Plaintiffs’ damages claim against Lexington County for failure to afford counsel and grant the motion as to all other claims [ECF No. 50].

IT IS SO RECOMMENDED.



February 5, 2018  
Columbia, South Carolina

Shiva V. Hodges  
United States Magistrate Judge

**The parties are directed to note the important information in the attached  
“Notice of Right to File Objections to Report and Recommendation.”**

### Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

<p>Twanda Marshinda Brown, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Lexington County, South Carolina, <i>et al.</i>,</p> <p>Defendants.</p>	<p>Civil Action No. 3:17-cv-01426-MBS-SVH</p>
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**PLAINTIFFS' OBJECTIONS TO MAGISTRATE JUDGE HODGES'  
FEBRUARY 5, 2018 REPORT AND RECOMMENDATION  
(ORAL ARGUMENT REQUESTED)**

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Pursuant to 28 U.S.C. § 636(b)(1), Rule 72(b)(2) of the Federal Rules of Civil Procedure, and Local Civil Rule 83.VII.08, Plaintiffs Twanda Marshinda Brown, Sasha Monique Darby, Cayeshia Cashel Johnson, Amy Marie Palacios, Nora Ann Corder, Xavier Larry Goodwin, and Raymond Wright, Jr. (collectively, “Plaintiffs”) respectfully submit the following objections to the Report and Recommendation issued by the Honorable United States Magistrate Judge Shiva V. Hodges on February 5, 2018 (“the Report”).

## I. INTRODUCTION

This action under 42 U.S.C. § 1983 (“Section 1983”) seeks to vindicate violations of the constitutional rights of Plaintiffs, indigent people subject to unlawful, poverty-based arrest and incarceration due to Defendants’ prioritization of revenue generation in the administration of fine and fee collection in Lexington County. After consideration of Defendants’ two motions for summary judgment and Plaintiffs’ Amended Motion for Class Certification, the Report recommends: denial of Plaintiffs’ prospective relief claims based on mootness and Section 1983’s bar on injunctive relief claims against judicial conduct; denial of Plaintiffs’ damages claims against individual Defendants based on judicial and quasi-judicial immunity; and denial of Plaintiffs’ request for class certification. All of these recommendations are founded on manifest errors of fact and law. And if adopted, they would halt Plaintiffs’ effort to vindicate ongoing and systemic constitutional rights violations before any discovery has taken place. Accordingly, this Court should decline the recommendations.<sup>1</sup>

First, the Report’s mootness finding entirely ignored undisputed evidence in the record of Defendants’ continued unlawful conduct and relies solely on the issuance of a two-paragraph

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<sup>1</sup> The Report also recommends dismissal of the claims against Defendant Robert Madsen, which are brought against him solely in his official capacity as the Eleventh Circuit Public Defender, and denial of Defendant Lexington County’s request for summary judgment on Plaintiffs’ damages claim for inadequate provision of indigent defense. ECF No. 74 at 20–21. Plaintiffs believe these recommendations should be adopted.

memorandum by a non-Defendant, to mistakenly conclude that Defendants' challenged conduct has ceased. That memorandum neither binds Defendants nor addresses the central constitutional violation in this case: the automatic arrest and incarceration of indigent people for failure to pay fines and fees without any court hearing or individualized determination that they were able to pay. The Report's mootness finding is thus based on errors of law and fact.

Second, Plaintiffs' claims against the individual Defendants challenge only administrative actions concerning the creation and enforcement of county-wide procedures that result in the automatic arrest and incarceration of indigent people without court hearings. Such conduct is squarely distinct from judicial or quasi-judicial conduct falling under Section 1983's bar against injunctive relief or the doctrine of judicial immunity. The Report's alternative basis for recommending denial of Plaintiffs' prospective relief claims and sole basis for recommending denial of Plaintiffs' damages claims are thus based on errors of law and a fundamental misunderstanding of Plaintiffs' claims.

Third, the Report failed to acknowledge Plaintiffs' request for time to conduct discovery for facts relevant to mootness and judicial immunity. The Report erred as a matter of law by failing to address Plaintiffs' timely request under Federal Rule of Civil Procedure 56(d) and supporting declarations detailing the discovery needed before recommending denial of Plaintiffs' claims on mootness and immunity grounds. Should this Court conclude the record does not show triable questions of fact on these issues, Plaintiffs respectfully request the opportunity to seek such discovery before the Court denies Plaintiffs' claims on mootness or immunity grounds.

Fourth, the Report erred as a matter of law by entirely failing to address Plaintiff Xavier Larry Goodwin's claims for declaratory relief against Defendant Rebecca Adams for actions in her judicial capacity. Neither Section 1983's bar against injunctive relief nor the doctrine of

judicial immunity apply to claims against judicial conduct that *only* seek declaratory relief.

These claims survive even if this Court were to adopt the challenged recommendations in full.

Fifth, the Report's recommendation to deny Plaintiffs' Amended Motion for Class Certification is based solely on the erroneous conclusion that Plaintiffs' prospective relief claims are either moot or barred by Section 1983. Because neither is true, this Court should grant Plaintiffs' motion and certify the proposed Class for the reasons sets forth in Plaintiffs' briefs.

Manifest errors of law and fact thus counsel strongly against this Court's denial of Plaintiffs' claims on any of the bases identified above. This Court should decline to adopt those recommendations and permit Plaintiffs the opportunity to vindicate their constitutional rights by denying Defendants' pending motions for summary judgment, granting Plaintiffs' motion for class certification, and permitting this action to proceed to discovery.

## II. BACKGROUND

The Plaintiffs in this case are indigent people who were arrested and incarcerated for seven days to more than two months because they could not afford to pay fines and fees to the magistrate courts of Lexington County ("the County"). Despite prima facie evidence of their indigence, Plaintiffs were arrested on bench warrants that issued automatically and without probable cause when Plaintiffs could not pay fines and fees ("payment bench warrants"), and Plaintiffs were incarcerated without hearings to determine their ability to pay, notice of the right to request counsel, or assistance of a court-appointed attorney to defend against incarceration. Each suffered devastating consequences, including deprivation of liberty, separation from children and family, and employment loss. And Plaintiffs are not alone. Throughout the County, hundreds if not thousands of impoverished people each year are arrested and incarcerated in violation of their constitutional rights when they cannot pay magistrate courts. Plaintiffs bring this action under 42 U.S.C. § 1983 to vindicate their rights under the Fourteenth,

Sixth, and Fourth Amendments to the U.S. Constitution through claims for prospective relief and damages against the County and government officials, whose deliberate decisions cause the automatic arrest and incarceration—without judicial hearings and representation by counsel—of indigent people who cannot pay money to magistrate courts.<sup>2</sup>

**A. The Automatic Arrest and Incarceration of Indigent People Who Cannot Pay Fines and Fees to Lexington County Magistrate Courts**

Even as the percentage of County residents living in poverty has risen in recent years, the County relies on magistrate court fines and fees as a crucial revenue source.<sup>3</sup> Under pressure to generate revenue, the County and the County’s magistrate court administrators have prioritized fine and fee collection over the protection of indigent people’s rights. Their deliberate decisions sustain unwritten standard operating procedures that lead to automatic arrest and incarceration of indigent people who cannot pay fines and fees for traffic and misdemeanor offenses, without any court hearing on their ability to pay or assistance of counsel to defend against incarceration.

Under the Default Payment Policy, indigent people sentenced to pay fines and fees for traffic and misdemeanor offenses are placed on steep monthly payment plans.<sup>4</sup> Under the Trial in Absentia Policy, indigent people who do not appear for scheduled traffic and misdemeanor hearings are automatically tried in their absence, convicted, and sentenced to jail time suspended on payment of fines and fees.<sup>5</sup> When indigent people miss payments, payment bench warrants

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<sup>2</sup> Plaintiffs Xavier Larry Goodwin and Raymond Wright, Jr. bring claims for prospective relief and, as discussed below, filed a timely motion for class certification to pursue such claims on behalf of a proposed class of similarly situated indigent people who face imminent arrest and incarceration. *See* ECF Nos. 21, 30, 36. All seven Plaintiffs bring claims for damages. *See* ECF No. 48 ¶¶ 468–519.

<sup>3</sup> *See* ECF No. 66 at 8–9, n.5 & n.6.

<sup>4</sup> *See, e.g.*, Brown Decl. (ECF No. 66–1) ¶¶ 4–5, 7; Darby Decl. (ECF No. 66–2) ¶¶ 18–20; Wright Decl. (ECF No. 35–2) ¶¶ 4–6.

<sup>5</sup> *See* Palacios Decl. (ECF No. 66–3) ¶¶ 6–13; Corder Decl. (ECF No. 66–4) ¶¶ 12–16; Goodwin Nov. 28, 2017 Decl. (ECF No. 66–5) ¶¶ 5–7.

issue automatically.<sup>6</sup> Under both procedures, indigent people are then arrested and incarcerated by deputies of the Lexington County Sheriff’s Department unless they can immediately pay their entire debts to magistrate courts. Before arrest and incarceration, indigent people are not afforded court-appointed representation, and no court holds an individualized hearing or makes a finding that these indigent people are able to pay, as required by *Bearden v. Georgia*, 461 U.S. 660 (1983). Such County-specific practices contradict South Carolina law, which directs that bench warrants be used solely to obtain a defendant’s presence in court.<sup>7</sup>

Plaintiffs offer detailed allegations concerning how the County and the following officials sustain this automatic arrest-and-incarceration system: Defendants Gary Reinhart, Rebecca Adams, and Albert John Dooley III—the administrators of the County’s magistrate courts; and Defendant Bryan Koon—the Lexington County Sheriff.<sup>8</sup>

1. Defendants Gary Reinhart, Rebecca Adams, and Albert John Dooley III: Administrators of Lexington County Summary Courts

It is undisputed that, during times relevant to this case, Defendants Reinhart and Adams served—and Defendants Adams and Dooley currently serve—as the Chief and Associate Chief Judges for Administrative Purposes of the Summary Courts in Lexington County by South

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<sup>6</sup> Defendants’ own declaration indicates that payment bench warrants were issued against each Plaintiff following nonpayment of fines and fees without any intervening court hearing or determination of ability to pay. *See* Long Decl. (ECF No. 29–2) ¶ 3.

<sup>7</sup> *See* S.C. CODE ANN. § 22-5-115 (“If the defendant fails to appear before the court . . . a bench warrant may be issued for his arrest.”); S.C. CODE ANN. § 38-53-70 (“If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant.”); S.C. Sup. Ct. Order (Nov. 14, 1980), *available at* <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=1980-11-14-01> (“[B]ench warrants . . . are to be used *only* for the purpose of bringing a defendant before a court . . . .”) (emphasis supplied); S.C. Judicial Dep’t, Summary Court Judges Benchbook, “Criminal,” ch. C § 2, “Bench Warrants,” *available at* <http://www.sccourts.org/summaryCourtBenchBook/displaychapter.cfm?chapter=CriminalC#C2> (defining “bench warrant” as “a form of process to be used to bring a defendant back before a particular court on a particular charge for a specific purpose . . . .”).

<sup>8</sup> Plaintiffs named the County and Madsen as defendants in their claims for declaratory and injunctive relief and damages for violation of the Sixth Amendment right to counsel. *See* ECF No. 48, ¶¶ 462–77 (injunctive and declaratory relief); *id.* ¶¶ 495–503 (damages). Plaintiffs sued Madsen only for actions in his official capacity as the County’s final policymaker for the provision of indigent defense. *Id.* ¶ 499–500. This claim is functionally equivalent to Plaintiffs’ Sixth Amendment claim against the County, and there are no claims against Madsen in his individual capacity. *See* ECF No. 50–1 at 14–15.

Carolina Supreme Court order.<sup>9</sup> In these roles, Defendants Reinhart and Adams have taken, and Defendants Adams and Dooley currently take, deliberate action to enforce the automatic arrest and incarceration of indigent people who cannot pay fines and fees to magistrate courts.

By Supreme Court order, Chief Judges for Administrative Purposes bear significant administrative authority over magistrate court procedures, including the power to: establish and oversee a county-wide procedure “to ensure that court generated revenues are collected, distributed, and reported in an appropriate and timely manner”; convene judges to establish “uniform procedures in the county summary court system”; administer the County’s Bond Court; determine the hours and schedules of County magistrate courts; assign cases to magistrate judges across the County; and coordinate the planning of magistrate court budgets.<sup>10</sup> None of these administrative duties involve the handling of individual cases. Associate Chief Judges carry out administrative responsibilities assigned by the chief judge and assume the chief’s duties if the chief judge is absent or disabled.<sup>11</sup>

In the exercise of their administrative responsibility for establishing uniform procedures for collecting court fines and fees, Defendants Adams and Dooley deliberately implement and enforce a county-wide practice seeking to elicit magistrate court revenue through the automatic issuance of payment bench warrants against indigent people who miss fine and fee payments (the

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<sup>9</sup> The Chief Justice of the Supreme Court of South Carolina is the “administrative head of the [state’s] unified judicial system,” and has the power to delegate administrative duties “as he deems necessary to aid in the administration of the courts of the State.” S.C. Const. art. V, § 4. The Chief Justice has delegated administrative authority to those appointed to serve as chief judges or associate chief judges “for administrative purposes” of the summary courts in each South Carolina county. *See, e.g.*, S.C. Sup. Ct. Order (June 28, 2017) [hereinafter “June 2017 Order”], available at <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-06-28-01>. “Summary courts” include both magistrate and municipal courts located in each South Carolina county.

These orders appointed Defendant Reinhart as Chief Judge for Administrative Purposes of the Summary Courts in Lexington County from at least 2004 until June 28, 2017. *See* ECF No. 66 at 9–10, n. 9 for discussion. Defendant Adams served as Associate Chief Judge from at least 2013 until June 28, 2017, when she replaced Defendant Reinhart as Chief Judge. *Id.* at 10 n. 10. Defendant Dooley then replaced Adams as the Associate Chief Judge. *Id.*

<sup>10</sup> *See, e.g.*, June 2017 Order, *supra* note 9, ¶¶ 3–8, 12, 17. Previous and subsequent orders set forth the same duties and responsibilities of the chief judge and associate chief judge. *See* ECF No. 66 at 10 n.12.

<sup>11</sup> *See* June 2017 Order, *supra* note 9.

Default Payment Policy) or are ordered to pay through trials in absentia (the Trial in Absentia Policy). They exercise their administrative authority to control magistrate court dockets, schedules, and hours of operation to deliberately exclude from routine court practice any hearings to determine the ability to pay of indigent people subject to payment bench warrants. Defendants Adams and Dooley neither require nor ensure magistrate courts that issue payment bench warrants or the Bond Court located adjacent to the County jail to hold ability-to-pay hearings for indigent people arrested on these warrants. Defendants Adams and Dooley also deliberately exclude from their requests for County funding for magistrate court operations any appropriations seeking to extend court hours of operation to enable magistrate courts to hold pre-deprivation ability-to-pay hearings for people reported for nonpayment of fines and fees.<sup>12</sup>

2. Defendant Bryan Koon: Lexington County Sheriff

Defendant Koon, in his roles as the administrator of the Lexington County Sheriff's Department ("LCSD") and the Lexington County Detention Center ("Detention Center"), also takes deliberate action to enforce the automatic arrest and incarceration of indigent people who cannot afford to pay fines and fees to magistrate courts. Defendant Koon's administrative duties include: managing the LCSD and its deputies, and Detention Center staff; setting enforcement priorities, including the execution of payment bench warrants; negotiating relationships with other law enforcement agencies to execute payment bench warrants outside the County; and training, supervising, and directing LCSD officers in the execution of payment bench warrants.<sup>13</sup>

In the exercise of his administrative authority, Defendant Koon deliberately directs LCSD deputies to locate and arrest people named in payment bench warrants.<sup>14</sup> Defendant Koon also

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<sup>12</sup> See ECF No. 48 ¶¶ 6–8, 10.

<sup>13</sup> See ECF No. 66 at 13–14 for discussion of the sources of Defendant Koon's powers and duties.

<sup>14</sup> ECF No. 48 ¶ 124.

deliberately trains and supervises deputies and Detention Center staff to book in jail people arrested on payment bench warrants who cannot immediately pay the entire amount of money identified on the face of the warrants.<sup>15</sup> Defendant Koon thus establishes and enforces a standard operating procedure that results in the automatic arrest and incarceration of indigent people without pre-deprivation inquiry by a court into their ability to pay or representation by counsel.<sup>16</sup>

3. Defendant Lexington County

Defendant Lexington County operates a public defense system that fails to provide counsel to indigent people before being subject to incarceration in magistrate court cases. Robert Madsen, the Eleventh Circuit Public Defender, is the County’s final policymaker for provision of indigent defense in County magistrate courts.<sup>17</sup> Madsen is responsible for seeking County funding for indigent defense in these courts and makes final decisions over expenditures to ensure “adequate and meaningful representation.”<sup>18</sup> State law requires the County to provide each year at least the same amount of funding appropriated for indigent defense the prior year.<sup>19</sup>

While prioritizing magistrate court revenue generation, the County has made the deliberate decision to grossly underfund indigent defense in magistrate courts. It provides *less than half* the funding for indigent defense provided by counties of comparable population size, and allocated less funding in 2016–2017 than in 2015–2016, in violation of state law.<sup>20</sup>

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<sup>15</sup> *Id.* ¶¶ 126–28.

<sup>16</sup> *Id.* ¶¶ 124–28; *see also* ECF Nos. 66–1 ¶¶ 10–13, 66–2 ¶¶ 23–26, 66–3 ¶¶ 12–19, 66–4 ¶¶ 16–20, –66-5 ¶¶ 7–12.

<sup>17</sup> *See* S.C. CODE ANN. § 17-3-5 (recognizing circuit public defender as “the head of a public defender office providing indigent defense representation within a given judicial circuit”); *id.* § 17-3-560 (requiring circuit public defender to “enter into an agreement with the appropriate county within the judicial circuit to administer the funds” for indigent defense in the county).

<sup>18</sup> *See* S.C. CODE ANN. § 17-3-520(B) (outlining duties and powers of circuit public defender); *id.* § 17-3-540 (staff hired by circuit public defender to provide “adequate and meaningful representation” to indigent defendants in a county are county employees); *id.* § 17-3-570(C) (staff hired by circuit public defenders are county employees).

<sup>19</sup> *See* S.C. CODE ANN. § 17-3-550 (“No county may appropriate funds for public defender operations in a fiscal year below the amount it funded in the immediate previous fiscal year.”).

<sup>20</sup> *See* ECF Nos. 66 at 15; *compare* Ryan Aff. (ECF No. 66–6) Ex. A at 2 *with id.* Ex B at 2.

**B. Plaintiffs' Arrest and Incarceration Under Defendants' Standard Operating Procedures**

As a result of Defendants' enforcement of county-wide standard operating procedures, Plaintiffs were unlawfully arrested and incarcerated for days to months because they could not pay money to the County's magistrate courts. Each Plaintiff suffered serious harms, and Plaintiff Goodwin continues to face a substantial risk of arrest and incarceration for inability to pay. The following facts are undisputed and established by evidence in the record.

1. Plaintiffs with Damages Claims

Twanda Marshinda Brown, an indigent and single working mother, was sentenced to pay \$2,237.50 to the Irmo Magistrate Court for two traffic tickets.<sup>21</sup> Because she could not pay in full, Ms. Brown was required to make \$100 monthly payments, even though she informed the court she could not afford to pay that much.<sup>22</sup> Ms. Brown made five payments, but was unable to pay more.<sup>23</sup> She was arrested and served with a bench warrant ordering her to pay \$1,907.63 in full or serve 90 days in jail.<sup>24</sup> Because she was unable to pay, Ms. Brown was incarcerated for 57 days, and consequently lost her job and was separated from her children.<sup>25</sup>

Sasha Monique Darby, an indigent and single working mother who suffers from Post-Traumatic Stress Disorder, was sentenced to pay \$1,000 to the Irmo Magistrate Court for a misdemeanor.<sup>26</sup> Because she could not pay in full, Ms. Darby was required to make \$150 monthly payments, even though she informed the court she could not afford to pay that much.<sup>27</sup>

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<sup>21</sup> ECF No. 66-1 ¶¶ 1-4; ECF No. 21-9 Ex. A; ECF No. 29-2 ¶ 3a.

<sup>22</sup> ECF No. 66-1 ¶¶ 4-5.

<sup>23</sup> *Id.* ¶ 8.

<sup>24</sup> *Id.* ¶¶ 10-11; ECF No. 29-2 ¶ 3a; ECF No. 21-9 Ex. A.

<sup>25</sup> ECF No. 66-1 ¶¶ 12, 15-16; ECF No. 29-2 ¶ 3a.

<sup>26</sup> ECF No. 66-2 ¶¶ 1-3, 16-17.

<sup>27</sup> *Id.* ¶¶ 18-19.

After making several payments, Ms. Darby fell behind due to childcare costs.<sup>28</sup> She was arrested and served with a bench warrant ordering her to pay \$680 in full or serve 20 days in jail.<sup>29</sup> Because she was unable to pay, Ms. Darby was incarcerated for 20 days, and consequently was evicted from her home, lost her job, and missed a prenatal appointment.<sup>30</sup>

Cayeshia Cashel Johnson, an indigent and single working mother, called the Central Traffic Court in advance of a hearing concerning traffic tickets and a misdemeanor charge to inform the court she was unable to secure transportation to court from her home in Myrtle Beach three hours away.<sup>31</sup> Rather than providing a new court date, the court tried, convicted, and sentenced Ms. Johnson in her absence.<sup>32</sup> Ms. Johnson was not notified of the convictions or sentences.<sup>33</sup> Months later, she was arrested and served with a bench warrant ordering her to pay \$1,287.50 in full or spend 80 days in jail.<sup>34</sup> Because Ms. Johnson was unable to pay, she was incarcerated for 55 days, and consequently lost her jobs and was separated from her children.<sup>35</sup>

Amy Marie Palacios, an indigent and single working mother, was unable to attend a Central Traffic Court hearing for a traffic ticket.<sup>36</sup> She called the court in advance, requested a new court date, and provided the court an affidavit from her employer explaining that she could not appear due to work.<sup>37</sup> Rather than provide a new court date, the court tried, convicted, and sentenced her in her absence.<sup>38</sup> Ms. Palacios was not notified of the conviction or sentence.<sup>39</sup>

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<sup>28</sup> *Id.* ¶¶ 21–22; ECF No. 29–2 ¶ 3d

<sup>29</sup> ECF No. 66–2 ¶¶ 23–24; ECF No. 21–11.

<sup>30</sup> ECF No. 66–2 ¶¶ 25, 28–30; ECF No. 29–2 ¶ 3d.

<sup>31</sup> ECF No. 48 ¶¶ 21, 214–15, 223.

<sup>32</sup> *Id.* ¶ 224; ECF No. 29–2 ¶ 3c.

<sup>33</sup> ECF No. 48 ¶ 229.

<sup>34</sup> *Id.* ¶¶ 231–36.

<sup>35</sup> *Id.* ¶¶ 237–41.

<sup>36</sup> ECF No. 66–3 ¶¶ 1–3, 5–6.

<sup>37</sup> *Id.* ¶¶ 7–10 & Ex. A.

<sup>38</sup> ECF No. 29–2 ¶ 3b.

Months later, Ms. Palacios was arrested and informed that arrest was pursuant to a bench warrant requiring her to pay \$647.50 or spend 30 days in jail.<sup>40</sup> Because she was unable to pay, she was incarcerated for 21 days, and consequently lost her job and was separated from her children.<sup>41</sup>

Nora Ann Corder, an indigent low-wage earner, appeared for three scheduled hearings at the Lexington Magistrate Court to answer for traffic tickets, but each time her case was continued at the ticketing officer's request.<sup>42</sup> Ms. Corder was unable to attend a fourth hearing due to lack of transportation and was automatically tried, convicted, and sentenced in her absence.<sup>43</sup> At the time, Ms. Corder was also facing eviction due to her indigence; when she attempted to file forms in defense of eviction, she was arrested at the courthouse under a bench warrant ordering her to pay \$1,320 or spend 90 days in jail.<sup>44</sup> Because she was unable to pay, she was incarcerated for 54 days, and consequently lost her job and her home.<sup>45</sup>

Xavier Larry Goodwin is indigent, the principal provider for a family of four, and has additional child support responsibilities.<sup>46</sup> Mr. Goodwin informed the Central Traffic Court in advance of a hearing for a traffic ticket that he could not appear due to his work schedule.<sup>47</sup> Rather than provide a new hearing date, the court tried, convicted, and sentenced Mr. Goodwin in his absence.<sup>48</sup> Mr. Goodwin was not notified of the conviction or sentence.<sup>49</sup> Months later, Mr. Goodwin was arrested and served with a bench warrant ordering him to pay \$1,710 or serve

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<sup>39</sup> ECF No. 66-3 ¶¶ 11, 17.

<sup>40</sup> *Id.* ¶¶ 12-15.

<sup>41</sup> *Id.* ¶¶ 18, 21-23.

<sup>42</sup> ECF No. 66-4 ¶¶ 1-2, 6-7, 12.

<sup>43</sup> *Id.* ¶¶ 13-14; ECF No. 29-2 ¶ 3e.

<sup>44</sup> ECF No. 66-4 ¶ 19; ECF No. 29-2 ¶ 3e.

<sup>45</sup> ECF No. 66-4 ¶¶ 20-21; ECF No. 29-2 ¶ 3e.

<sup>46</sup> ECF No. 66-5 ¶ 1.

<sup>47</sup> *Id.* ¶¶ 3-5.

<sup>48</sup> ECF No. 21-17 (Goodwin Bench Warrant); ECF No. 29-2 ¶ 3g.

<sup>49</sup> ECF No. 66-5 ¶ 8.

90 days in jail.<sup>50</sup> Because he was unable to pay, he was incarcerated for 63 days, and consequently lost his home and his job, and was separated from his wife and children.<sup>51</sup>

Raymond Wright, Jr., an indigent and disabled man, was sentenced in the Central Traffic Court to pay \$666.93 for a traffic ticket. Because he could not pay in full, he was required to make \$50 monthly payments.<sup>52</sup> After five payments, Mr. Wright could not afford to pay because of his limited income from disability benefits and his wife's unemployment.<sup>53</sup> During a hearing, the court refused to consider evidence of Mr. Wright's indigence and ordered him to pay \$419.93 within ten days.<sup>54</sup> Because he was unable to pay, Mr. Wright was arrested on a bench warrant and jailed for seven days.<sup>55</sup>

## 2. Plaintiffs Goodwin and Wright's Claims for Prospective Relief

At the time they filed their prospective relief claims, Mr. Goodwin and Mr. Wright faced a substantial risk of arrest and incarceration.<sup>56</sup> The Class Action Complaint included Mr. Goodwin's claims, based on money owed to the Irmo Magistrate Court.<sup>57</sup> Mr. Goodwin owes \$2,063 and must pay \$100 each month.<sup>58</sup> He is unable to pay, has missed payments, and faces a substantial risk of arrest and incarceration.<sup>59</sup> At the time his claims were filed in the Amended Class Action Complaint, Mr. Wright was the subject of an active warrant ordering his arrest and

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<sup>50</sup> *Id.* ¶¶ 7–8; ECF No. 21–17.

<sup>51</sup> ECF No. 66–5 ¶¶ 9, 12, 15–18.

<sup>52</sup> ECF No. 35–2 ¶¶ 1, 4–5; ECF No. 29–2 ¶ 3f.

<sup>53</sup> ECF No. 35–2 ¶¶ 6–7; ECF No. 29–2 ¶ 3f.

<sup>54</sup> ECF No. 35–2 ¶¶ 8–12; ECF No. 29–2 ¶ 3f.

<sup>55</sup> ECF No. 35–2 ¶ 13; ECF No. 29–2 ¶ 3f.

<sup>56</sup> *See* ECF No. 35–2 ¶¶ 13–14; ECF No. 48 ¶¶ 358–59, 455–56; ECF No. 35–1 (Goodwin Sept. 8, 2017 Decl.) ¶¶ 21–24.

<sup>57</sup> *See* ECF Nos. 5, 5–1.

<sup>58</sup> ECF No. 48 ¶¶ 358, 455; ECF No. 35–1 ¶¶ 21–24.

<sup>59</sup> *See* ECF No. 48 ¶ 455; ECF No. 35–1 ¶¶ 20–24.

incarceration unless he could pay \$416.93 in full.<sup>60</sup> Mr. Wright was subsequently arrested pursuant to the bench warrant and incarcerated for seven days because he was unable to pay.<sup>61</sup>

### C. Procedural History

Plaintiffs filed their Class Action Complaint on June 1, 2017 and moved for class certification the following day.<sup>62</sup> Plaintiffs' Amended Motion for Class Certification, filed on July 21, 2017, is currently pending before the court.<sup>63</sup> Although Plaintiffs served Defendants with discovery in October 2017, Defendants have not responded.<sup>64</sup> Defendants nonetheless filed three motions for summary judgment, one of which was subsequently withdrawn.<sup>65</sup>

On August 18, 2017, Defendants filed a Motion for Summary Judgment on Declaratory and Injunctive Relief Claims, seeking summary judgment on Mr. Goodwin and Mr. Wright's prospective relief claims on the bases of standing, mootness, and *Younger* abstention.<sup>66</sup> This motion has been fully briefed by the parties.<sup>67</sup>

On September 22, 2017, Defendants filed a Supplemental Motion for Summary Judgment on Declaratory and Injunctive Relief Claims ("Supplemental Summary Judgment Motion"), in which they argued that the prospective relief claims were moot on the basis of Defendants' voluntary cessation.<sup>68</sup> In support, Defendants offered only a memorandum by the Chief Justice of the South Carolina Supreme Court ("Chief Justice's Memorandum"), censuring summary

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<sup>60</sup> ECF No. 29-2 ¶ 3f.

<sup>61</sup> *Id.*

<sup>62</sup> ECF Nos. 1, 5. The Second Class Action Amended Complaint ("Second Amended Complaint"), filed on October 19, 2017, is currently the operative pleading in this case. *See* ECF No. 48.

<sup>63</sup> ECF No. 21.

<sup>64</sup> *See* ECF No. 66-7 ¶¶ 13-16.

<sup>65</sup> *See* ECF Nos. 29, 40, 50, 62.

<sup>66</sup> *See* ECF No. 29-1.

<sup>67</sup> *See* ECF Nos. 35, 35-1, 35-2, 39, 39-1, 39-2.

<sup>68</sup> *See* ECF No. 40 at 2.

courts for persistent Sixth Amendment violations.<sup>69</sup> Plaintiffs timely opposed and provided evidence showing that Defendants’ challenged conduct had not ceased but *increased* after the memorandum.<sup>70</sup> Plaintiffs also submitted a declaration under Federal Rule of Civil Procedure 56(d) requesting discovery on voluntary cessation.<sup>71</sup> Defendants withdrew the motion.<sup>72</sup>

Finally, on October 30, 2017, Defendants filed a Motion for Summary Judgment on Damages Claims, in which Defendants argued that: (1) Plaintiffs’ damages claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), and the *Rooker-Feldman* doctrine; (2) Defendants Reinhart, Adams, and Koon are entitled to absolute judicial, quasi-judicial, and legislative immunity; (3) all Defendants lack authority to set policies as a matter of law; and (4) Plaintiffs cannot prove Defendants’ conduct was the proximate cause of their injuries.<sup>73</sup> In opposition, Plaintiffs identified issues of fact that preclude summary judgment,<sup>74</sup> and submitted another Rule 56(d) declaration identifying discovery required before resolution of the immunity defenses.<sup>75</sup>

#### **D. Chief Justice’s Memorandum**

On September 15, 2017, the Chief Justice of the South Carolina Supreme Court issued a two-paragraph memorandum addressed to municipal and magistrate court judges concerning the “Sentencing [of] Unrepresented Defendants to Imprisonment.”<sup>76</sup> In the memorandum, the Chief Justice acknowledges that it has “continually” come to his attention that “defendants, who are neither represented by counsel nor have waived counsel, are being sentenced to imprisonment”

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<sup>69</sup> ECF No. 40–1 at 1.

<sup>70</sup> See ECF Nos. 43 at 12–13; 43–1 ¶¶ 14–16; 21–5 ¶ 11.

<sup>71</sup> Marshall Decl. (ECF No. 43–2).

<sup>72</sup> ECF No. 62.

<sup>73</sup> See generally ECF No. 50.

<sup>74</sup> See ECF Nos. 66, 66–1, 66–2, 66–3, 66–4, 66–5, 66–6.

<sup>75</sup> ECF No. 66–7.

<sup>76</sup> ECF No. 40–1.

by summary courts.<sup>77</sup> In the Chief Justice’s words, “[t]his is a clear violation of the Sixth Amendment right to counsel and numerous opinions of the Supreme Court of the United States.”<sup>78</sup> The memorandum cites caselaw of the U.S. Supreme Court and reminds judges:

Absent a waiver of counsel, or the appointment of counsel for an indigent defendant, summary court judges **shall not** impose a sentence of jail time, and are limited to imposing a sentence of a fine only for those defendants, if convicted.<sup>79</sup>

The Chief Justice suggests that, “[w]hen imposing a fine, consideration should be given to a defendant’s ability to pay.”<sup>80</sup> The memorandum concludes by reminding summary court judges that the “principles of due process . . . cannot be abridged.”<sup>81</sup>

**E. Evidence of Continued Violations Following the Chief Justice’s Memorandum**

Undisputed evidence in the record shows that after issuance of the Chief Justice’s Memorandum, Defendants’ unlawful procedures persisted, causing the automatic arrest and incarceration of indigent people unable to pay money to County magistrate courts.<sup>82</sup> According to court and Detention Center records, in the 24 days following issuance of the memorandum, the County’s magistrate courts issued 50 new payment bench warrants, and at least 57 people were incarcerated in the Detention Center after being arrested on payment bench warrants issued by a Lexington County magistrate court.<sup>83</sup> There is no evidence that these 57 inmates received an ability-to-pay hearing before being jailed.<sup>84</sup> Additionally, in the 24 days following the Chief Justice’s Memorandum, the average daily number of people incarcerated in the Detention Center

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<sup>77</sup> *Id.* at 1.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 1–2 (emphasis in original).

<sup>80</sup> *Id.* at 2.

<sup>81</sup> *Id.*

<sup>82</sup> *See* ECF No. 43–1.

<sup>83</sup> ECF No. 43–1 ¶¶ 2–6, 13.

<sup>84</sup> ECF No. 43–1 ¶ 23.

for nonpayment to a County magistrate court was 50 (7.48% of the jail population)—a figure *higher* than the 43, average daily number of people incarcerated for nonpayment during a 28-day period immediately *preceding* the filing of this suit (7.22% of the jail population).<sup>85</sup>

**F. Magistrate Judge Hodges’ Report and Recommendation**

On February 5, 2018, U.S. Magistrate Judge Shiva V. Hodges issued a Report and Recommendation regarding the pending motions in this case.<sup>86</sup> In the Report, Judge Hodges *sua sponte* recommended dismissal of Plaintiffs’ prospective relief claims as moot due to the issuance of the Chief Justice’s Memorandum.<sup>87</sup> The Report concluded: “After Chief Justice Beatty’s instruction to magistrate and municipal courts, no future injury to Plaintiffs is impending, nor have Plaintiffs shown a substantial controversy of sufficient immediacy.”<sup>88</sup> The Report found that the memorandum “makes clear the policies of the state court” and shows that “the complained-of conduct/policies cannot be reasonably expected to recur.”<sup>89</sup> The Report did not, however, address the undisputed evidence in the record—including court and jail records—demonstrating the continuation of Defendants’ challenged conduct. Noting that Plaintiffs seek class certification only as to claims for prospective relief, the Report further recommended that Plaintiffs’ Amended Motion for Class Certification also be denied as moot.<sup>90</sup>

The Report also recommended a grant of summary judgment on Plaintiffs’ damages claims to Defendants Adams, Reinhart, and Koon on the bases of judicial and quasi-judicial immunity.<sup>91</sup> The Report found that judicial immunity protects a judge’s “administrative

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<sup>85</sup> *Id.* ¶¶ 14–16; ECF No. 21–5 at ¶¶ 11–12.

<sup>86</sup> ECF No. 74.

<sup>87</sup> *Id.* at 12–13.

<sup>88</sup> *Id.* at 13.

<sup>89</sup> *Id.* at 13 n.4.

<sup>90</sup> *Id.* at 13.

<sup>91</sup> *Id.* at 14–19.

decisions (i.e., omissions) [that have] a direct impact on . . . criminal proceedings.”<sup>92</sup> It expressed concern that permitting Plaintiffs’ damages claims against Defendants Adams and Reinhart to proceed “would virtually eliminate the doctrine of judicial immunity” and would permit “any disgruntled litigant” to “simply su[e] the chief judge of a court” any time the chief judge, *inter alia*, “fail[ed] to report” a particular judge’s alleged wrongdoing.<sup>93</sup> The Report similarly concluded that permitting claims against Defendant Koon would “effectively abolish the doctrine of quasi-judicial immunity” and that “Plaintiffs. . . fail[] to identify how any of Koon’s alleged administrative actions deprived them of their constitutional rights.”<sup>94</sup>

Finally, the Report recommended dismissal of the prospective relief claims against Defendants Adams, Dooley, and Koon on the grounds that these claims concern judicial, rather than administrative, conduct,<sup>95</sup> but the Report failed to address Mr. Goodwin’s claims solely for declaratory relief against Defendant Adams for actions taken in her judicial capacity.<sup>96</sup>

### III. STANDARD OF REVIEW

A district court reviews *de novo* all portions of a magistrate judge’s recommendation to which a party has properly objected. *See* Fed. R. Civ. P. 72. The district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge,” or may “receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1). “De novo review of those portions of the magistrate’s report and findings to which a party timely objects is mandated by statute . . . and was crucial to

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<sup>92</sup> *Id.* at 16.

<sup>93</sup> *Id.* at 16–17.

<sup>94</sup> *Id.* at 18–19.

<sup>95</sup> *Id.* at 19–20,

<sup>96</sup> The Report also recommends denial of the County’s request for summary judgment on Plaintiffs’ damages claim challenging inadequate provision of indigent defense. *Id.* at 21. The Report did not, however, discuss or resolve Defendants’ request for judgment as a matter of law on the prospective relief claims under *Younger* or the damages claims under *Heck v. Humphrey*, *Rooker-Feldman*, and legislative immunity. Summary judgment is unwarranted under any of these doctrines for the reasons set forth in Plaintiffs’ underlying briefing.

the constitutionality of the Federal Magistrate Act, as amended.” *Taylor v. Farrier*, 910 F.2d 518, 520 (8th Cir. 1990); *see also* 12 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3070.2 (2d ed. 2017) (district judge “must not . . . rubber stamp” magistrate’s facts and legal conclusions when conducting de novo review).

A court may grant summary judgment only if the moving party “shows that there is no genuine dispute as to any material fact.” Fed. R. Civ. P. 56(a). “[S]ummary judgment will not lie if . . . a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the initial burden of showing there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Inferences from the facts are viewed in the light most favorable to the nonmoving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

A motion for summary judgment should generally be denied when “the nonmoving party has not had the opportunity to discover information that is essential to his opposition.” *Anderson*, 477 U.S. at 250 n.5; *see also Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 244 (4th Cir. 2002) (same). “Only in the rarest of cases may summary judgment be granted against a plaintiff who has not been afforded the opportunity to conduct discovery.” *Hellstrom v. U.S. Dep’t of Veterans Affairs*, 201 F.3d 94, 97 (2d Cir. 2000).

#### IV. ARGUMENT

The Report’s recommendations to deny Plaintiffs’ claims are based on manifest errors of law and fact and should be rejected by this Court for the following five reasons.

First, genuine issues of material fact preclude summary judgment on mootness grounds. Contrary to the Report’s finding, a single, brief memorandum by the Chief Justice of South Carolina neither binds any Defendants nor corrects the serious constitutional violations Plaintiffs challenge in this action. The Report also ignored undisputed evidence showing that Defendants’

administrative conduct enforcing the automatic arrest and incarceration of indigent people who cannot pay money to County magistrate courts has continued even following the memorandum. The Report therefore made critical errors of law and fact in concluding that “it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000).

Second, Plaintiffs’ prospective relief and damages claims against the individual Defendants’ administrative conduct falls squarely outside of Section 1983’s bar on injunctive relief claims and the application of judicial and quasi-judicial immunity. Plaintiffs’ claims confront county-wide standard operating procedures enforced by the individual Defendants in the exercise of their administrative responsibilities under state law—procedures that cause indigent people to be unlawfully arrested and incarcerated without any judicial proceedings whatsoever. These claims have nothing to do with the decisions of individual judges exercising discretion to resolve specific cases. The Report made errors of law and fact in concluding otherwise and recommending denial of Plaintiffs’ claims against the individual Defendants.

Third, the Report entirely failed to address the status of Mr. Goodwin’s declaratory-relief-only claims against Defendant Rebecca Adams for actions taken in her capacity as a judge. Neither judicial immunity nor Section 1983 shields a defendant from claims for declaratory relief against judicial conduct. The declaratory relief claims against Defendant Adams survive even if this Court concludes that Plaintiffs’ prospective relief claims are moot or barred by Section 1983, or that the individual Defendants have immunity from Plaintiffs’ damages claims.

Fourth, summary judgment at this early stage of the proceedings is wholly unwarranted when viewing the entire factual record and drawing any inferences in the light most favorable to Plaintiffs as the non-moving parties, as this Court is required to do. To the extent this Court

concludes there are no triable issues of fact concerning mootness or the application of immunities, Plaintiffs respectfully request additional time to conduct discovery under Federal Rule of Civil Procedure 56(d) as detailed in Plaintiffs' declarations identifying discovery needed to uncover facts essential to Plaintiffs' opposition to summary judgment.

Fifth, and finally, because the Report's recommendation to deny Plaintiffs' class certification is based solely on the erroneous conclusion that Plaintiffs' prospective relief claims are moot, this Court should grant Plaintiffs' Amended Motion for Class Certification.

**A. Summary Judgment for Defendants on Standing or Mootness Grounds is Unwarranted.**

The Report's recommendation to dismiss Plaintiffs' prospective claims as moot is based on critical errors of law. The Report incorrectly concluded that the Chief Justice's Memorandum eliminated the controversy between the parties despite the fact that it neither binds Defendants nor addresses the central unlawful conduct challenged in this case: the arrest and incarceration of indigent people for inability to pay money to courts without a pre-deprivation court hearing on ability to pay. The Report also fails to acknowledge evidence in the record raising questions of material fact as to whether Defendants' challenged conduct has continued following issuance of the memorandum—factual issues that preclude summary judgment or dismissal on mootness grounds. The Court should therefore permit Plaintiffs' prospective relief claims to proceed.

1. Plaintiffs' claims for prospective relief remain live following issuance of the Chief Justice's Memorandum.

As a threshold matter, Mr. Goodwin and Mr. Wright have standing to pursue claims for prospective relief despite the Report's conclusion that "no future injury to Plaintiffs is impending." ECF NO. 74 at 13. Standing is determined as of the commencement of a plaintiff's

claims. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 570 n.5 (1992).<sup>97</sup> A plaintiff has standing for prospective relief when “there is a substantial risk that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014). Mr. Goodwin and Mr. Wright faced a substantial risk of arrest and incarceration when they filed their claims. Mr. Wright could not pay his debt to a court and was the subject of a warrant ordering his arrest and incarceration unless he paid in full. ECF No. 29–2 ¶ 3f.<sup>98</sup> Mr. Goodwin owed money to a court and missed required monthly payments due to his indigence. ECF No. 35–1 ¶¶ 21–24; ECF No. 29–2 ¶ 3g. Mr. Goodwin remains unable to pay and faces risk of arrest and incarceration.<sup>99</sup>

In contrast to standing, the question of mootness focuses on whether events subsequent to the filing of an action have eliminated the controversy between the parties. *See Laidlaw*, 528 U.S. at 189. “[A] well-recognized exception to the mootness doctrine hold[s] that a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” *Porter v. Clarke*, 852 F.3d 358, 363 (4th Cir. 2017) (emphasis supplied). The U.S. Supreme Court requires courts to apply a “stringent” standard to assess mootness based on voluntary cessation. *Laidlaw*, 528 U.S. at 189. A defendant’s voluntary compliance may moot a case only when “it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Id.* at 190 (emphasis supplied).

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<sup>97</sup> *See also Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 51 (1991) (holding three plaintiffs added in second amended complaint had standing because they met the requirements when the pleading was filed); *Lynch v. Leis*, 382 F.3d 642, 647 (6th Cir. 2004) (holding plaintiff had standing when amended complaint added him to action).

<sup>98</sup> Mr. Wright’s substantial risk of arrest and incarceration for nonpayment at the time he brought his claims is underscored by the fact that shortly *after* filing the Amended Complaint and bringing a timely motion for class certification, he was in fact arrested and incarcerated for seven days, without a pre-deprivation court hearing on his ability to pay or representation by court-appointed counsel. ECF No. 29–2 ¶ 3f. These subsequent events do not moot his claims for prospective relief. *See* ECF No. 35 at 19–24 (discussing the *Gerstein* rule—the well-recognized exception to the mootness doctrine for inherently transitory claims—and its application to Mr. Wright).

<sup>99</sup> ECF No. 35–1 ¶ 20. The fact that Mr. Goodwin was previously incarcerated for 63 days when he could not pay magistrate court fines and fees underscores the substantial risk that he will again be arrested and incarcerated for inability to pay fines and fees pursuant to Defendants’ standard operating procedures. ECF Nos. 29–2 ¶ 3g, 66–5 ¶¶ 8–12.

Such a showing may be made when a defendant demonstrates entry “into an unconditional and irrevocable agreement that prohibits it from returning to the challenged conduct” or where it “has not asserted its right to enforce the challenged policy at any future time.” *Porter*, 852 F.3d at 364. It may also be made when evidence shows that “interim events have completely and irrevocably eradicated the effects of the alleged violation.” *Telco Commc’ns, Inc., v. Carbaugh*, 885 F.2d 1225, 1231 (4th Cir. 1989) (emphasis supplied). But dismissal is unwarranted “when a defendant retains the authority and capacity to repeat an alleged harm.” *Wall v. Wade*, 741 F.3d 492, 497 (4th Cir. 2014).

The Report’s conclusion that the Chief Justice’s Memorandum—a two-paragraph recitation of precedent on the Sixth Amendment right to counsel and a general recognition of the violation of this right—eliminates the parties’ controversy is erroneous for three reasons.

First, the Chief Justice’s Memorandum does not address two central constitutional violations challenged by the prospective relief claims Plaintiffs bring on behalf of themselves and the proposed class: (1) the ongoing, substantial risk that indigent people will be arrested based on warrants unsupported by probable cause; and (2) the ongoing, substantial risk that these indigent people will then be automatically incarcerated when they cannot pay in full their debts to County magistrate courts without any pre-deprivation court hearing involving consideration of ability to pay.<sup>100</sup> While the memorandum recommends that “consideration *should* be given to a defendant’s ability to pay” at the time a fine is imposed, ECF No. 40–1 at 2 (emphasis supplied), it does not even mention, much less enforce, the Fourteenth Amendment requirement that a person must be afforded an ability-to-pay hearing before incarceration for nonpayment of a fine. *See Bearden*, 461 U.S. at 674. Nor does the memorandum address the Fourth Amendment

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<sup>100</sup> See ECF No. 48 ¶¶ 451–61 (Claim One: incarceration without pre-deprivation ability-to-pay hearings, (Fourteenth Amendment)); *id.* ¶¶ 478–85 (Claim Three: arrest on bench warrants issued without probable cause (Fourth Amendment)).

requirement that arrest warrants be based on probable cause, or the widespread misuse of bench warrants in Lexington County to arrest indigent people for nonpayment of debts owed to magistrate courts. The Chief Justice’s Memorandum cannot moot Plaintiffs’ Fourth and Fourteenth Amendment prospective relief claims when it entirely fails to address the facts or law on which these claims are based. *See Powell v. McCormack*, 395 U.S. 486, 497 (1969) (even when “one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy.”).<sup>101</sup>

Second, the Chief Justice’s Memorandum does not bind Defendants’ exercise of administrative and policymaking authority to ensure that violations of Plaintiffs’ Fourteenth, Fourth, and Sixth Amendment rights cannot reasonably be expected to recur in Lexington County. The memorandum is anything but “an unconditional and irrevocable agreement that prohibits [Defendants] from returning to the challenged conduct.” *Porter*, 852 F.3d at 364. Nor is it a statement by any of the Defendants that they no longer “assert[ the] right to enforce the challenged policy at any future time.” *Id.*<sup>102</sup> The memorandum is not even addressed to the County or Defendant Koon and cannot control or modify their exercise of administrative or policymaking authority. For example, the Chief Justice’s Memorandum does not, and cannot, direct the County to increase funding for indigent defense from its current abysmal levels—

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<sup>101</sup> Nor does the Chief Justice’s Memorandum adequately address the Sixth Amendment violations at issue in this case. Although the memorandum recites well-established precedent on the Sixth Amendment right to counsel, it does not inform magistrate and municipal court judges that they are required under these precedents to appoint counsel to represent indigent defendants who default on payments toward fines and fees and face incarceration for nonpayment long after being sentenced to pay fines and fees.

<sup>102</sup> The Report erroneously relies on *Telco Commc’ns, Inc. v. Carbaugh*, 885 F.2d 1225, for the proposition that Defendants here have asserted that they will not enforced the challenged policies and practices. *See* ECF No. 74 at 13, n. 4. But *Telco* is inapposite. In that case, “interim events”—a U.S. Supreme Court ruling that rendered a state statute unconstitutional—“completely and irrevocably eradicated the effects of the alleged violation” because it eliminated the possibility of state prosecution challenged by the plaintiff on First Amendment grounds. 885 F.2d at 1231. Following the change in the statute’s legality, the government defendant in *Telco* “effectively conceded the unconstitutionality of the statute” and “ha[d] not asserted its right to enforce [the statute] at any future time.” *Id.* By contrast, the Chief Justice’s Memorandum does not “completely and irrevocably eradicate[] the effects of” Defendants’ challenged conduct because it is not authored by any of the Defendants and does not bind their exercise of administrative and policymaking authority in any way. *Id.*

around half the amount allocated by counties of comparable size—or to ensure that staff of the Eleventh Circuit Public Defender’s Office are assigned to County magistrate courts to represent indigent defendants facing incarceration for nonpayment of fines and fees. Nor does the Memorandum bind Defendants Adams and Dooley’s exercise of administrative authority to enforce the Default Payment and Trial in Absentia Policies, which sustain the automatic arrest and incarceration of indigent people in violation of the right to a pre-deprivation ability-to-pay hearing, the right to court-appointed counsel, and the right to freedom from arrest on warrants unsupported by probable cause. Although the memorandum was addressed to South Carolina municipal and magistrate court judges to remind them of Sixth Amendment precedent, it is not directed toward Defendants Adams and Dooley in their administrative capacities. Nor does it abrogate or modify their administrative or policymaking authority or even instruct them to exercise those authorities to establish county-wide practices that protect, rather than violate, Plaintiffs’ rights.

Third, the Chief Justice’s Memorandum does not eliminate the controversy between Mr. Goodwin and Defendant Adams, whom he sues in her capacity as a judge on the Irmo Magistrate Court for declaratory relief only. Mr. Goodwin seeks a declaration to prevent future injury caused by Defendant Adams’ illegally ordering his arrest and incarceration for nonpayment of fines and fees without first providing him a court hearing to assess the reasons for nonpayment. ECF No. 48 ¶¶ 520–27. The Chief Justice’s Memorandum does not ensure that Defendant Adams’ resort to automatic arrest and incarceration in response to Mr. Goodwin’s inability to pay cannot reasonably be expected to recur, both because it does not address the requirement to hold ability-to-pay hearings and because merely reminding Defendant Adams of constitutional requirements does not ensure she will not violate such requirements in the future.

The Chief Justice’s Memorandum thus in no way eliminates the controversy between the parties concerning Plaintiffs’ prospective relief claims. It inadequately addresses the facts and law giving rise to Plaintiffs’ claims under the Fourteenth, Fourth, and Sixth Amendments and does not bind Defendants’ administrative and policymaking conduct leading to the violation of these rights. Defendants thus “retain[] the authority and capacity to repeat [the] alleged harm,” and Plaintiffs’ prospective relief claims should not be dismissed as moot. *Wall*, 741 F.3d at 497.

2. Evidence in the record raises genuine questions of material fact concerning the continuation of Defendants’ unlawful conduct.

A case is not moot “if there is a reasonable likelihood that [plaintiffs] will again suffer the deprivation of . . . rights that gave rise to [the] suit.” *Honig v. Doe*, 484 U.S. 305, 318 (1988). The Report erred in concluding that “the complained-of conduct/policies cannot be reasonably expected [] to recur” without addressing evidence in the record showing Defendants’ challenged conduct continued after issuance of the Chief Justice’s Memorandum. ECF No. 74 at 13 n.4.

Magistrate court and Detention Center records show that in the 24 days following the issuance of the Chief Justice’s Memorandum, the County’s magistrate courts issued 50 new payment bench warrants, and at least 57 people were incarcerated in the Detention Center after being arrested on such warrants issued by a County magistrate court.<sup>103</sup> There is no evidence that any of these 57 inmates received an ability-to-pay hearing before or after being jailed.<sup>104</sup> This data suggests that Defendants continue to sustain county-wide, unwritten standard operating procedures that lead to the automatic arrest and incarceration of indigent people who cannot pay fines and fees in traffic and misdemeanor cases, without any court hearing on ability to pay.

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<sup>103</sup> ECF No. 43-1 ¶¶ 2-6, 13.

<sup>104</sup> ECF No. 43-1 ¶ 23.

Additionally, in the 24 days following the Chief Justice’s Memorandum, the average daily number of people incarcerated in the Detention Center for nonpayment to a County magistrate court was *higher* than the average daily number of people incarcerated for nonpayment to a County magistrate court during a 28-day period immediately *preceding* the filing of this suit.<sup>105</sup> This uncontroverted evidence suggests that Defendants’ challenged practices leading to the automatic arrest and incarceration of indigent people for inability to pay money to magistrate courts not only continued, but *increased* following the issuance of the Chief Justice’s Memorandum. Notably, Defendants provided no evidence indicating that they have *ceased* their challenged conduct, much less that it could not reasonably be expected to recur.

The Report thus made a manifest error of law by failing to address uncontroverted evidence of Defendants’ continued unlawful conduct before concluding that Plaintiffs’ prospective relief claims are moot. This Court should firmly reject the Report’s recommendation to dismiss the prospective relief claims as moot because there are genuine questions of material fact as to whether “it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Laidlaw*, 528 U.S. at 190.

**B. Defendants Adams, Dooley, Koon, and Reinhart Are Not Shielded from Suit by Section 1983 or Judicial or Quasi-Judicial Immunity.**

The Report made errors of law and fact in recommending summary judgment for Defendants on the prospective relief claims against Defendants Adams, Dooley, and Koon acting in their official capacities and the damages claims against Defendants Reinhart, Adams, and Koon acting in their individual capacities on the basis that Plaintiffs challenge judicial or quasi-judicial conduct. Both sets of claims contest purely administrative—not judicial—conduct of

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<sup>105</sup> *Id.* ¶¶ 14–16; ECF No. 21–5 at ¶¶ 11–12.

officials charged with administration of County magistrate courts, the LCSD, and the Detention Center. Section 1983 squarely permits such claims and judicial immunity simply does not apply.

1. Defendants Adams, Dooley, and Koon may be sued in their official capacities as administrators for prospective relief under *Ex Parte Young*.

The primary relief sought in this case is prospective in nature. Specifically, Mr. Goodwin and Mr. Wright, on behalf of themselves and the proposed Class, ask the Court (1) to declare Defendants Adams, Dooley, and Koon are violating their constitutional rights by sustaining procedures that cause the automatic arrest and incarceration of indigent people who cannot pay money to County magistrate courts and (2) to enjoin these Defendants from enforcing these unconstitutional policies and practices. ECF No. 48 at 120–21 (Prayer for Relief). These claims are brought against Defendants as state officials acting in their administrative capacities. ECF No. 48 ¶¶ 28, 30–31.

Under longstanding U.S. Supreme Court precedent, a plaintiff may sue a state actor in his or her official capacity for prospective relief to stop ongoing violations of federal law, including 42 U.S.C. § 1983. *Ex parte Young*, 209 U.S. 123 (1908). The doctrine of *Ex parte Young* applies where (1) the plaintiff challenges an allegedly unconstitutional policy or practice; (2) there is “some connection” between the defendant’s conduct and the enforcement of the unconstitutional policy or practice; and (3) the defendant acts as a state official when engaged in such conduct. *Id.* at 156–57; *see also Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218 (1964) (holding *Ex parte Young* allowed suit against school board engaging in conduct violative of constitutional rights); *Verizon Md. Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 646 (2002) (“[A] court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective” to determine that *Ex parte Young* applies.). The state official being sued must have

specific authority regarding the challenged policies and practices, and the prospect that the official will enforce the practice challenged must be ongoing. *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 330–31 (4th Cir. 2001) (Section 1983 claim).

Mr. Goodwin and Mr. Wright’s claims against Defendants Adams, Dooley, and Koon satisfy the requirements of the *Ex parte Young* doctrine. Plaintiffs challenge allegedly unconstitutional policies and practices that result in the systemic arrest and incarceration of indigent people on automatically-issued payment bench warrants without court hearings or the assistance of counsel. Defendants Adams and Dooley are responsible for administering magistrate court procedures, including those that enforce the collection of court-generated revenue. Likewise, Defendant Koon is responsible for administering the procedures of both the LCSD and the Detention Center, including the enforcement of policies and practices surrounding the execution of payment bench warrants and the incarceration of indigent people who cannot pay the face value of those warrants. And there is no dispute that these Defendants act as state officials in these administrative capacities. *See* ECF No. 54 ¶¶ 21, 23; ECF No. 55 ¶ 19.

A defendant cannot use immunity defenses to shield himself from a lawsuit brought against him in his official capacity. *See Kentucky v. Graham*, 473 U.S. 159, 166–67 (1985) (“An official in a personal-capacity action may . . . be able to assert personal immunity defenses” but “[i]n an official-capacity action, these defenses are unavailable.”).<sup>106</sup>

Because Plaintiffs’ prospective relief claims are against Defendants Adams, Dooley, and Koon in their official capacities as administrators, judicial and quasi-judicial immunity is unavailable as to those claims. *See Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1156 (10th Cir. 2011) (judicial immunity does not apply to claim properly brought under *Ex parte*

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<sup>106</sup> *See also Harrison v. Owens*, No. 8:11-2215-MGL, 2014 WL 1315189, at \*4 n.2 (D.S.C. March 28, 2014) (“[I]mmunity, either absolute or qualified, is a personal defense that is available only when officials are sued in their individual capacities.”)

*Young* against judge sued in his official capacity); *VanHorn v. Oelshlager*, 502 F.3d 775, 778–79 (8th Cir. 2007) (“absolute, quasi-judicial immunity only extends to claims against defendants sued in their individual—not official—capacities”). The Report erred in holding otherwise.<sup>107</sup>

2. By challenging only Defendants’ administrative conduct, Plaintiffs’ prospective relief claims fall outside Section 1983’s bar on injunctive relief claims against judicial conduct.

The Report concluded that, in the alternative to being rendered moot, Plaintiffs’ proposed class-claims for prospective relief against Defendants Adams, Dooley, and Koon should be dismissed because Section 1983, as amended by the Federal Courts Improvement Act of 1996 (“FCIA”), Pub. L. No. 104-317, 110 Stat. 3847, bars injunctive relief against judicial officers “for act[s] or omission[s] taken in such officer’s judicial capacity . . . .” ECF No. 74 at 19. This conclusion is erroneous. Plaintiffs do not challenge any judicial acts or omissions by these Defendants but instead contest their enforcement of county-wide policies in their administrative capacities. Section 1983’s bar on injunctive relief is inapplicable to Plaintiffs’ claims.

“[W]hether judges are proper defendants in a § 1983 action depends on whether they are acting as adjudicators or as administrators, enforcers, or advocates.” *Wolfe v. Strankman*, 392 F.3d 358, 365 (9th Cir. 2004). A judicial defendant’s “[a]dministrative decisions, even though they may be essential to the very functioning of the courts, [are] not . . . regarded as judicial acts.” *Forrester v. White*, 484 U.S. 219, 228 (1988). Rather, the “touchstone” for determining whether an action is taken in a judicial capacity is whether it involves “performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.” *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435–36 (1993). Similarly, a nonjudicial defendant will only be regarded as acting in a judicial (or quasi-judicial) capacity if he has “exercise[d] a discretionary judgment” that is “functional[ly] comparab[le]” to that of a judge.

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<sup>107</sup> See ECF No. 74 at 19 (“[T]he immune defendants are also entitled to immunity from injunctive relief.”).

*Id.* at 436. Plaintiffs’ claims against Defendants Adams, Dooley, and Koon challenge no such conduct.

*a. Defendants Adams and Dooley enforce unlawful county-wide policies under their administrative authority to ensure collection of court-generated revenue.*

In concluding that Defendants Adams and Dooley were acting in judicial capacities for the conduct challenged by Plaintiffs, the Report found that “Plaintiffs do not sue the Judicial Defendants for their actions, but only for alleged omissions . . . .” ECF No. 74 at 14. The Report also found that Plaintiffs challenge conduct that “had a direct impact on the[ir] criminal proceedings.” *Id.* at 16. Both of these findings are wrong and neither renders the administrative conduct of Defendants Adams and Dooley as “judicial.”

The Supreme Court of South Carolina gave Defendants Adams, Reinhart, and Dooley authority as Chief Judge or Associate Chief Judge for *Administrative* Purposes of the Summary Courts to establish standard policies and practices for Lexington County magistrate courts.<sup>108</sup> These Defendants are tasked with establishing and overseeing the collection of magistrate court fines and fees; establishing uniform court procedures; administering the bond court; setting magistrate court hours and schedules; assigning cases; and monitoring and reporting to state authorities procedural noncompliance by summary court judges.<sup>109</sup>

The Ninth Circuit in *Wolfe* held that the California Supreme Court’s Chief Justice was not entitled to absolute immunity when sued under Section 1983 “in his administrative capacity as Chair of the Judicial Council,” which was tasked with, *inter alia*, the “administration” and establishment of “practice and procedure[s]” for state courts. 392 F.3d at 364, 366. Defendants Adams, Reinhart, and Dooley are sued here for their exercise of similar administrative authority

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<sup>108</sup> See June 2017 Order, *supra* note 9.

<sup>109</sup> *Id.*

delegated to them by the Chief Justice under state law.<sup>110</sup> These duties are not “traditional adjudicative task[s]” that warrant absolute immunity. *Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 734 (1980). Rather, the duties “involve[] supervising court employees and overseeing the efficient operation of a court.” *Forrester*, 484 U.S. at 229. They are *administrative* duties to which Section 1983’s bar against injunctive relief does not apply.

Plaintiffs allege that in violation of these administrative responsibilities, Defendants Adams and Dooley establish and maintain county-wide policies and practices for the collection of fines and fees that deny indigent people constitutional rights to individualized pre-deprivation hearings, counsel, freedom from unreasonable seizure, and liberty. These policies and practices have resulted in (1) the automatic issuance of bench warrants calling for the arrest and incarceration of indigent people who miss payments toward fines and fees, and (2) a blanket refusal to provide ability-to-pay hearings to indigent people who are picked up on these warrants.

The Report erroneously mischaracterizes the conduct at issue as nothing more than “omissions.” ECF No. 74 at 14–15. But Plaintiffs’ prospective relief claims challenge *deliberate* administrative decisions that Defendants Adams and Dooley make in their administrative capacities—decisions to limit magistrate court dockets, schedules, and hours of operations as well as requests for County funding for court operations to exclude from magistrate court practice any hearings to determine the ability to pay of indigent people subject to payment bench warrants. ECF No. 48 ¶¶ 6–8, 10. As explained in more detail below, Plaintiffs have not yet had an opportunity to conduct any discovery, which will likely bolster these allegations.

The magistrate erred in suggesting that Plaintiffs must allege only affirmative conduct in support of claims for either prospective relief or damages. *See Avery v. Burke Cty.*, 660 F.2d

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<sup>110</sup> See June 2017 Order, *supra* note 9.

111, 114 (4th Cir. 1982) (“Official policy may be established by the omissions of supervisory officials as well as from their affirmative acts.”); *Luckey v. Harris*, 860 F.2d 1012, 1015 (11th Cir. 1988) (“Personal action by defendants individually is not a necessary condition of injunctive relief against state officers in their official capacity. All that is required is that the official be responsible for the challenged action.”); *Graham*, 473 U.S. at 166 (“[T]o establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right.”). Even if the actions at issue were properly characterized as omissions, they can nevertheless give rise to Section 1983 claims.

Contrary to the Report’s conclusion, the challenged conduct of Defendants Adams and Dooley does not occur during the adjudication of individual criminal proceedings and is not conduct that can only be taken by a judge. ECF No. 74 at 16. Indeed, the crux of Plaintiffs’ claims is that Defendants’ standard operating procedures have resulted in the unlawful failure to provide any judicial proceedings whatsoever to indigent people who are arrested and incarcerated on payment bench warrants. When a person does not pay fines and fees, bench warrants automatically issue and the person is subsequently arrested and incarcerated, sometimes for months. At no point in this process is there a court hearing or an individualized determination by a judge that the person willfully failed to pay. Discovery may even reveal that these automatic procedures are largely, if not entirely, carried out by clerks supervised by Defendants Adams and Dooley in their administrative capacities.

Moreover, the issuance of the Chief Justice’s Memorandum directly contradicts the conclusion that the conduct of Defendants Adams and Dooley, in carrying out the administrative duties delegated to them under state law by the Chief Justice, is “judicial.” Although Plaintiffs demonstrate that the memorandum does not show cessation of Defendants’ unlawful conduct, it

is clear the Chief Justice—in his capacity as the chief administrator of the state court system—tried to provide *some* guidance to lower court judges to prevent the violation of Sixth Amendment rights. There can be no serious argument against the conclusion that Defendants Adams and Dooley, to whom the Chief Justice has delegated administrative authority over the establishment of fine and fee collection procedures, are acting in an administrative capacity in maintaining a system that fails to comply with constitutional requirements in the course of those fine and fee collections.

Ultimately, the Report’s implication that the “omissions” of a court administrator must necessarily be “judicial” simply because the administrator is a judge and the conduct impacts defendants’ rights is patently incorrect. ECF No. 74 at 16. Under the Report’s reasoning, a chief administrative judge could physically prevent a person from receiving a constitutionally required hearing by deciding not to have the doors to the courthouse unlocked or by failing to pay the electric bill.<sup>111</sup> Although these “omissions” would affect the person’s constitutional rights, they are plainly administrative. Because Plaintiffs challenge conduct that has nothing to do with judges’ exercise of discretion to adjudicate individual cases, Plaintiffs’ prospective relief claims against Defendants Adams and Dooley do not fall within Section 1983’s bar on injunctive relief.

*b. Defendant Koon establishes unlawful standard operating procedures in his capacity as administrator of the LCSD and Detention Center.*

The Report recommended dismissal of prospective relief claims against Defendant Koon on the ground that Plaintiffs only challenge the “execut[ion of] court-ordered bench warrants” by

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<sup>111</sup> Notably, the orders that Chief Justice Beatty has issued to the chief judges of the magistrate courts make clear that chief judges are *administratively* responsible for establishing procedures and systems that “ensure . . . the constitutional and statutory rights of defendants . . . are being upheld” in relation to bail proceedings. June 2017 Order, *supra* note 9, ¶5. If a chief judge allowed the magistrate courts to forego such proceedings, that administrative action would undoubtedly violate the constitutional rights of accused persons being detained in the County’s Detention Center. In allowing indigent people to be arrested and incarcerated without any judicial hearings, Defendants Adams and Dooley are similarly violating the constitutional rights of Plaintiffs and proposed class members.

Defendant Koon or his deputies. ECF No. 74 at 19. But Plaintiffs’ allegations focus on Defendant Koon’s administrative role in establishing and enforcing the standard operating procedures followed by LCSD and Detention Center personnel in relation to the unlawful arrest and incarceration of indigent people on payment bench warrants. This includes directing employees to transport arrestees to the Detention Center and to incarcerate them for weeks or months—all without taking them to an appearance before a judge—unless they can pay to jail staff the fines and fees owed in full before booking. ECF No. 48 ¶ 492. Thus, contrary to the Report’s interpretation, Defendant Koon is sued for administrative conduct that extends well beyond the mere execution of bench warrants. Section 1983’s bar against injunctive relief claims therefore does not apply to the prospective relief claims against Defendant Koon.

3. Immunity defenses are inapplicable to the damages claims against Defendants Adams, Reinhart, and Koon, because the conduct at issue was administrative.

The Report also erred in holding that judicial or quasi-judicial immunity shields Defendants Adams, Reinhart, and Koon from Plaintiffs’ damages claims. As with Section 1983’s bar on injunctive relief claims, judicial immunity protects judges only for actions taken in a judicial capacity. *Stump v. Sparkman*, 435 U.S. 349, 355–56 (1987). Judicial immunity similarly does not extend to actions taken in the course of “administrative . . . or executive functions that judges may on occasion be assigned by law to perform.” *Forrester*, 484 U.S. at 227. Quasi-judicial immunity likewise does not extend to the actions of a nonjudicial defendant unless those actions are “functional[ly] comparab[le]” to that of a judge. *Antoine*, 508 U.S. at 436; *see also Burton v. Infinity Capital Mgmt.*, 862 F.3d 740, 748 (9th Cir. 2017) (“To be protected, the function performed must involve the exercise of discretion in resolving disputes.”). These limitations apply “even if the administrative function is essential to the legal system.” *Morrison v. Lipscomb*, 877 F.2d 463, 465 (6th Cir. 1989).

Under these standards, courts have denied judicial immunity to judges for damages claims against administrative conduct. *See Consumers Union*, 446 U.S. at 734–36 (denying immunity for judge’s enforcement of attorney code of conduct); *Forrester*, 484 U.S. at 229 (denying immunity for judge’s demotion and firing of probation officer). For example, the Sixth Circuit denied judicial immunity to a state court chief judge who ordered a moratorium on the issuance of eviction writs because that act was “administrative.” *Morrison*, 877 F.2d at 466.

In recommending dismissal of Plaintiffs’ damages claims against Defendants Adams and Reinhart, the Report concluded that the challenged conduct was performed in a judicial as opposed to administrative capacity. ECF No. 74 at 16. And in dismissing Plaintiffs’ claims against Defendant Koon, the Report concluded that a sheriff cannot be held liable for “executing court-ordered bench warrants.” *Id.* at 19. As explained above, these conclusions are erroneous and stem from a misunderstanding of Plaintiffs’ claims and allegations.

4. Permitting suit against Defendants’ unlawful conduct will not open the floodgates to lawsuits against judges engaging in judicial functions.

The Report asserts that allowing Plaintiffs to pursue claims against Defendants Adams, Reinhart, and Dooley will open the door for “any disgruntled litigant [to] sue a court’s chief [administrative] judge” whenever another judge “issuing a warrant [fails] to hold specific hearings.” ECF No. 74 at 16–17. This conclusion is plainly wrong.

The focus of Plaintiffs’ claims is on *systemic* policies and practices that violate constitutional rights, not the individual acts or omissions of judicial decision-makers resolving individual cases. Indeed, Defendants Adams, Reinhart, and Dooley enforce a system for collecting fines and fees that precludes individualized judicial determinations. This is not an issue of some judges occasionally failing to hold hearings to determine whether a person’s failure to pay fines and fees was due to indigence before ordering them to serve jail time. Under

the administrative authority of Defendants Adams, Reinhart, and Dooley, indigent people who default on required monthly payments or are tried in absentia for nonappearance in court are arrested on payment bench warrants and *never* brought before a magistrate court even though South Carolina law provides that bench warrants are to be used *only* for that purpose.<sup>112</sup> As a result, there are no hearings in which these indigent people can receive assistance of counsel and the ability-to-pay determinations required by law. Defendants are empowered with administrative authority over magistrate court fine and fee collection procedures and use that authority to violate constitutional rights as a matter of course. Claims against such conduct will not open the floodgates to vexacious litigation by people dissatisfied with how a judge sitting in a judicial capacity exercised discretion to resolve an issue or procedural matter in a specific case.

**C. Should the Court Find the Record Lacks Triable Questions of Fact as to Mootness or the Application of Judicial Immunity, Plaintiffs Merit Rule 56(d) Discovery.**

In recommending denial of Plaintiffs' claims on mootness and judicial immunity grounds, the Report ignored Plaintiffs' timely Rule 56(d) requests for discovery on whether Defendants have ceased their challenged conduct and whether Plaintiffs' claims against the individual Defendants concern administrative, rather than judicial or quasi-judicial, conduct. This was an error of law. Should this Court conclude that the existing record lacks triable issues of fact as to mootness or judicial immunity, such discovery is essential to Plaintiffs' opposition to summary judgment, and this Court should grant Plaintiffs' Rule 56(d) request for discovery.

A nonmoving party contesting a motion for summary judgment may seek relief under Rule 56(d) when certain facts are unavailable.<sup>113</sup> Allowing discovery is "especially important when the relevant facts are exclusively in the control of the opposing party." *Harrods Ltd.*, 302

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<sup>112</sup> See *supra*, note 7.

<sup>113</sup> Rule 56(d) provides that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition," the court may, inter alia, permit the requested discovery and defer considering the motion or deny it. Fed. R. Civ. P. 56(d).

F.3d at 246–47 (quoting 10B Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2741 (3d ed. 1998)). The presumption in favor of granting Rule 56(d) relief is strong when no discovery has taken place. See *McCray v. Md. Dep’t of Transp.*, 741 F.3d 480, 483 (4th Cir. 2014) (“Summary judgment before discovery forces the non-moving party into a fencing match without a sword or mask.”). In such circumstances, a nonmovant’s Rule 56(d) request is “broadly favored and should be liberally granted.” *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor of Balt.*, 721 F.3d 264, 281 (4th Cir. 2013).

Plaintiffs submitted a timely 56(d) declaration in response to Defendants’ now-withdrawn Supplemental Summary Judgment Motion. It specifically requests time to conduct discovery on whether Defendants ceased the challenged conduct following issuance of the Chief Justice’s Memorandum. See ECF No. 43 at 27–31; ECF No. 43–2. The declaration identifies specific facts yet to be discovered that are material to the Court’s determination of whether the prospective relief claims are moot, and cites Requests for Production and intended depositions likely to assist Plaintiffs in raising triable issues of material fact. ECF No. 43–2 ¶¶ 12–31.<sup>114</sup>

Similarly, Plaintiffs have put forward evidence that raises genuine questions of material fact and thus precludes summary judgment for the individual Defendants on Plaintiffs’ damages claims based on judicial and quasi-judicial immunity. See, e.g., ECF No. 66 at 36–40. “Disputed questions that arise with respect to claims of immunity” preclude summary judgment on that basis. *Al Shimari v. CACI Int’l, Inc.*, 679 F.3d 205, 220 (4th Cir. 2012) (denying pre-

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<sup>114</sup> For example, Plaintiffs have asked Defendants to produce any documents relating to changes in Defendants’ policies, practices, procedures, instructions, guidance, or training in response to the Chief Justice’s Memorandum. See ECF No. 43–2 Ex. A. at RFP Nos. 29–31, Ex. B at RFP Nos. 39–40, Ex. C. at RFPs Nos. 48–49. These requests are designed to determine whether Defendants have actually taken any steps to voluntarily cease their unconstitutional actions in response to the memorandum and if so, the extent of the steps.

discovery motion to dismiss on immunity grounds).<sup>115</sup> “Fundamentally, a court is entitled to have before it a proper record, sufficiently developed through discovery proceedings, to accurately assess any claim, including one of immunity. And even a party whose assertion of immunity ultimately proves worthy must submit to the burdens of litigation until a court becomes sufficiently informed to rule.” *Id.* (emphasis supplied). Plaintiffs submitted a timely Rule 56(d) declaration in response to Defendants’ Motion for Summary Judgment on Damages Claims, citing specific requested discovery that will elicit information to defeat summary judgment on the bases of judicial and quasi-judicial immunity. ECF No. 66–7.<sup>116</sup> Plaintiffs further requested an opportunity to depose Defendants Adams, Reinhart, Dooley, and Koon regarding the scope and exercise of their administrative responsibilities. ECF No. 66 at 40.

The Report erred as a matter of law by recommending dismissal of Plaintiffs’ claims on mootness and immunity grounds without addressing Plaintiffs’ timely requests for Rule 56(d) discovery on these issues. Should the Court conclude that the record does not present triable issues of fact as to mootness or immunity, this Court should grant Plaintiffs Rule 56(d) discovery to adduce additional, relevant evidence to defend against summary judgment on both grounds.

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<sup>115</sup> See also *Putney v. Likin*, 656 F. App’x 632, 638 (4th Cir. 2016) (district court abused its discretion by granting summary judgment on qualified immunity grounds “without addressing the discovery request”); *Kimblor v. Spear*, No. 1:16CV00047, 2017 WL 2963517, at \*2–3 (W.D. Va. July 11, 2017) (defendants failed to meet “their burden of showing there is ‘no genuine dispute as to any material fact’” regarding “defenses of statutory immunity and qualified privilege” where “defendants moved for summary judgment prior to any discovery, and . . . [plaintiff] made her Rule 56(d) motion immediately following . . .”); *Lion Boulos v. Wilson*, 834 F.2d 504, 507–08 (5th Cir. 1987) (discovery should proceed when an immunity claim turns partially on facts unavailable to the opposing party and when requests for production are narrowly tailored to uncover facts needed to rule on immunity).

<sup>116</sup> For example, Plaintiffs have asked Defendants Reinhart and Adams to produce documents concerning policies, procedures, instructions, guidance, and training on the imposition of court fines and fees; use of bench warrants; assessment of the financial circumstances of individuals who owe court fines and fees; and the appointment of counsel to indigent defendants. ECF No. 66–7 ¶ 18. Plaintiffs likewise have asked Defendant Koon to produce documents concerning policies, procedures, instructions, guidance, and training on court fines and fees; the execution of bench warrants issued by magistrate courts; and the arrest, booking, incarceration, and release of people incarcerated for non-payment of magistrate court fines and fees. *Id.* ¶ 22.

**D. Neither Section 1983 Nor Judicial Immunity Bar Mr. Goodwin’s Claims Solely for Declaratory Relief Against Defendant Adams for Conduct in Her Judicial Capacity.**

Neither Section 1983 nor the doctrine of judicial immunity bar claims against judges in their individual capacity for declaratory relief. *See Pulliam v. Allen*, 466 U.S. 522, 533–35 (1984) (judicial immunity does not apply to declaratory relief claims); FCIA (amending Section 1983 to limit injunctive relief against judges, but leaving declaratory relief available). The Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, created declaratory relief “as an alternative to the strong medicine of the injunction . . . .” *Steffel v. Thompson*, 415 U.S. 452, 466 (1974).

Mr. Goodwin brings two claims solely for declaratory relief against Defendant Adams for actions taken in her capacity as an Irmo Magistrate Court judge.<sup>117</sup> Mr. Goodwin seeks a declaration that Defendant Adams’s ongoing judicial conduct places him at continuing and foreseeable risk of being arrested and incarcerated for nonpayment without a pre-deprivation court hearing on his ability to pay and without the assistance of court-appointed counsel, despite prima facie evidence of his indigence. ECF No. 48 at 120–21 (Prayer for Relief).

These declaratory-relief-only claims are distinct from Mr. Goodwin and Mr. Wright’s prospective relief claims against Defendants Adams, Dooley, and Koon for administrative conduct sustaining county-wide practices causing the automatic arrest and incarceration of indigent people. The declaratory-relief-only claims remain live even if this Court were to find that the prospective relief claims are barred by Section 1983 and that immunity applies to damages claims against Defendants Reinhart, Adams, and Koon—neither of which is true.

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<sup>117</sup> *See* ECF No. 48 ¶¶ 520–27 (Claim Seven: seeking declaration that Defendant Adams violates Plaintiff Goodwin’s Fourteenth Amendment right to an ability-to-pay hearing by ordering the arrest and incarceration of indigent people who cannot pay fines and fees without providing pre-deprivation hearings on ability to pay), ¶¶ 528–35 (Claim Eight: seeking declaration that Defendant Adams violates Plaintiff Goodwin’s Sixth Amendment right to counsel by ordering the incarceration of indigent people without affording them assistance of counsel or obtaining a knowing, voluntary, and intelligent waiver of the right to counsel).

The Report erred in ignoring Mr. Goodwin’s declaratory-relief-only claims. These claims are not moot or barred by immunity, and this Court should permit them to go forward.

**E. The Court Should Rule on Plaintiffs’ Class Certification Motion.**

Mr. Goodwin and Mr. Wright filed a timely motion for class certification seeking permission to pursue three claims for injunctive and declaratory relief on behalf of themselves and a proposed Class of similarly situated people: “All indigent people who currently owe, or in the future will owe, fines, fees, court costs, assessments, or restitution in cases handled by Lexington County magistrate courts.” ECF No. 21 at 2. That motion is fully briefed. ECF Nos. 21–1, 30, 36. The Report recommended denial of the motion based solely on the conclusion that Plaintiffs’ claims for prospective relief are moot. *See* ECF No. 74 at 13. Because the recommendation as to mootness is based on manifest errors of law and fact, the Court should reject the recommendation to deny Plaintiffs’ class certification motion. The Court should conclude, for the reasons set forth in Plaintiffs’ briefs, that Plaintiffs meet the class certification requirements of in Federal Rule of Civil Procedure 23(a) and 23(b)(2). ECF No. 21–1. This Court should therefore certify the proposed Class under Rule 23(b)(2), appoint Mr. Goodwin and Mr. Wright as Class representatives, and appoint the ACLU Foundation, the ACLU of South Carolina Foundation, and Terrell Marshall Law Group PLLC as Class counsel.

**V. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs’ Amended Motion for Class Certification and deny Defendants’ motions for summary judgment. If the Court finds there are no triable issues of fact as to mootness or the application of immunity to Plaintiffs’ claims, Plaintiffs respectfully request discovery under Rule 56(d).

DATED this 2nd day of March 2018.

Respectfully submitted by,

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Twanda Marshinda Brown, et al., etc.,	)	Civil Action No. 3:17-1426-MBS
	)	
Plaintiffs,	)	<b>DEFENDANTS’ REPLY TO PLAINTIFFS’</b>
	)	<b>OBJECTIONS</b>
v.	)	<b>TO REPORT AND RECOMMENDATION</b>
	)	
Lexington County, South Carolina, et al.,	)	
	)	
Defendants.	)	
	)	

Defendants submit the following by way of reply to ECF No. 80, Plaintiffs’ Objections to Report and Recommendation.

The R & R accurately summarizes Plaintiffs’ factual and legal allegations for purposes of considering whether Plaintiffs’ claims for prospective relief should be granted. ECF No. 74 at 1-11. Simply stated, the magistrate court cases of all of the Plaintiffs except Goodwin have ended. The R & R correctly indicates that Plaintiff Goodwin’s case has not yet ended, noting that he has only made one payment of \$100, when the total amount owed by him was \$2,100. ECF No. 74 at 9, 10. Plaintiffs also point this out, ECF No. 80 at 28, and Defendants do not contend otherwise.

**ARGUMENT**

**1. The R & R correctly held that Plaintiffs’ damage claims against the three magistrates and the sheriff are barred by judicial or quasi-judicial immunity.**

**a. Judicial immunity (magistrates).**

The R & R correctly held that all of Plaintiffs’ claims against the magistrate are barred by judicial immunity. ECF No. 74 at 14-17. It is axiomatic that “a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension

of personal consequences to himself,” *Stump v. Sparkman*, 435 U.S. 349, 355 (1978), quoting *Bradley v. Fisher*, 13 Wall. 335, 351 (1872). As recently summarized by this Court, this principle means that “A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’ ” (citation omitted).” *Ward v. Detective Daniel English*, No. CV 2:17-1795-HMH-SVH, 2017 WL 3575528, at \*2 (D.S.C. July 26, 2017), report and recommendation adopted sub nom. *Ward v. Daniel English*, No. CV 2:17-1795-HMH-SVH, 2017 WL 3535057 (D.S.C. Aug. 17, 2017). It can hardly be disputed that each decision reached by each defendant magistrate in each Plaintiff’s case was made in the exercise of a judicial function, and clearly within the jurisdiction of each magistrate.

The R & R noted these general principles, ECF No. 74 at 14. It held that Plaintiffs are, in effect, suing the magistrates for omissions, which are listed on p. 15 of the R & R. The R & R further held that the complained-of omissions “could only have been made by a judge, evidencing their judicial nature. . . ., and that Plaintiffs had provided no authority permitting a suit “based on a judge’s alleged failure to prescribe how other judges should perform their judicial functions.” *Id.* at 16. For those and other reasons set forth at pp. 14-17 of the R & R, the Magistrate Judge held that the “Judicial Defendants are entitled to absolute judicial immunity,” and recommended dismissal of the claims against them. ECF No. 74 at 17.

Plaintiffs devote only one page of their 40-page objections to discussing judicial immunity for their damage claims against the magistrates. ECF No. 80 at 34-35.<sup>1</sup> There they rely primarily on only three cases for their attempt to apply the “administrative action” exception to

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<sup>1</sup> Page references are to the original page numbers of the document rather than to the ECF page numbers.

judicial immunity.<sup>2</sup> Each is clearly inapposite. Plaintiffs first cite *Forrester v. White*, 484 U.S. 219 (1988), a case involving a judge’s decision to dismiss a subordinate court employee, specifically, a probation officer. The Supreme Court unanimously held that it was “clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester.” 484 U.S.at 229. This holding stemmed from the Court’s distinction between judicial acts and acts that simply happen to have been done by judges:

When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges.

484 U.S. at 227. The present case bears no similarity to the employment decision involved in *Forrester*. Instead, the acts of the magistrates were the “paradigmatic judicial acts” of adjudicating cases before them.

Another case cited by Plaintiffs is *Morrison v. Lipscomb*, 877 F.2d 463 (6th Cir. 1989), a case with unusual facts which, like those in *Forrester*, are completely different from the facts of the present case. In *Morrison*, the chief administrative judge of a judicial district declared a districtwide moratorium on the issuance of writs of restitution during the holiday period from December 15, 1986 through January 2, 1987. A litigant who wished to obtain such a writ during that period filed suit against the judge. The Sixth Circuit held that that action was administrative and not judicial. In the course of that holding, the court explained that the case did “not [involve] an adjudication between parties,” but instead was “a general order, not connected to any

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<sup>2</sup> Plaintiffs add a reference to *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429 (1993), but that case held only that a court reporter is not absolutely immune from damages liability for failing to produce a transcript of a federal criminal trial. It is therefore also inapposite. Plaintiffs also cite the equally-inapposite case of *Burton v. Infinity Capital Mgmt.*, 862 F.3d 740 (9th Cir. 2017), in which the creditor’s counsel in a bankruptcy case was seeking to invoke quasi-judicial immunity.

particular litigation.” 877 F.2d at 466. In addition, “[t]he order did not alter the rights and liabilities of any parties but, rather, instructed court personnel on how to process the petitions made to the court.” *Id.* Finally, the court noted that a litigant offended by a judicial action can, “in the vast majority of cases, appeal the court's decision to a higher court; here, no direct appeal is available. . . .” *Id.* In the present case, of course, the magistrates’ actions in the Plaintiffs’ individual cases did involve adjudications, which were connected to particular cases, and which were not only appealable through the state court appeal process, but which should have been appealed if Plaintiffs desired to challenge them.

The third and final case cited by Plaintiffs is *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719 (1980). The Supreme Court held in that case that the propounding the Virginia Code of Professional Responsibility by the Virginia Supreme Court “was not an act of adjudication but one of rulemaking.” 446 U.S. at 731. The Court further held, however, that

Disciplinary rules are rules of general application and are statutory in character. They act not on parties litigant but on all those who practice law in Virginia. They do not arise out of a controversy which must be adjudicated, but instead out of a need to regulate conduct for the protection of all citizens. It is evident that, in enacting disciplinary rules, the Supreme Court of Virginia is constituted a legislature.”

*Id.*, quoting a dissent in the lower court in the case, 470 F.Supp. at 1064. From this it can readily be seen that the present case, unlike *Consumers Union*, did not involve rules of general application, but instead “act[ed] on parties litigant[,]” and arose out of controversies that needed to be litigated. In other words, the case is clearly inapposite on its facts.

Even if *Consumers Union* had involved similar facts, however, it still does not help Plaintiffs, but instead fully supports Defendants’ hypothetical alternative contention that assuming without conceding that policies did exist, which Defendants vehemently deny, those

who promulgated them would enjoy absolute legislative immunity, as discussed by Defendants in a previous filing, ECF No. 50-1 at 10-11, which is incorporated herein by reference.

Again, it should be recalled that Plaintiffs were jailed as the result of individualized judicial orders in each of their cases. Those individualized actions, and not any such alleged general “policies” (or failures to adopt “policies”), were the cause of the serving of jail time by Plaintiffs. And again, even if these procedures had been the result of “policies,” such policies would have been put into place in the exercise of either judicial or legislative functions.

Finally, while the damage claims against the magistrates and the sheriff are almost surely subject to dismissal based on the immunities discussed above and in the following paragraphs, those Defendants also submit that the damage claims against them are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) as well as by the *Rooker-Feldman* doctrine.<sup>3</sup> Defendants incorporate by reference the contentions set forth by Defendant Lexington County in the County’s Objections to Report and Recommendation, ECF No. 79 at 9-12.

**b. Quasi-judicial immunity (sheriff).**

With regard to Sheriff Koon, the R & R held that “Plaintiffs have not alleged Koon or his deputies committed any constitutional violation independently of their actions in executing court-ordered bench warrants. Plaintiffs have also failed to identify how any of Koon’s alleged administrative actions deprived them of their constitutional rights.” ECF No. 74 at 19.

In their objections, Plaintiffs argue nothing different from this. They contend that the sheriff should be liable for “establishing and enforcing the standard operating procedures followed by [Lexington County Sheriff’s Department] and Detention Center personnel in relation to the unlawful arrest and incarceration of indigent people on payment bench warrants.”

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<sup>3</sup> *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

ECF No. 80 at 34. However, this argument does not address the above-quoted holding in the R & R. If anything, Plaintiffs' objections merely confirm that the R & R accurately described Plaintiffs' contentions.

It is well settled that absolute quasi-judicial immunity extends to non-judicial officers, such as the sheriff in this case, when "performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." *Reaves v. Rhodes*, 2011 WL 826358, at \*5 (D.S.C. 2011), report and recommendation adopted, 2011 WL 812413 (D.S.C. 2011), quoting *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir.1994). Specifically, *Reaves* holds that a sheriff is absolutely immune for arresting a plaintiff pursuant to a facially valid court order, and for enforcing facially valid court orders. As a result, Plaintiffs should not be heard to argue that Defendant Koon, in acting pursuant to the bench warrants, performed anything other than a quasi-judicial function for which he is entitled to quasi-judicial immunity. The R & R should therefore be adopted on this point.

**2. The R & R correctly held that Plaintiffs' claims for prospective relief are moot.**

Simply stated, the R & R concluded that the September 15, 2017, memorandum from Chief Justice Beatty, requiring among other things that all defendants in the state facing criminal charges carrying possible imprisonment be fully informed of their right to counsel, has rendered moot the claims of the Plaintiffs for prospective relief. ECF No. 74 at 12-13. Anticipating Plaintiffs' response to this conclusion, the R & R added that the Beatty memorandum made it clear that the complained-of conduct is not likely to recur. ECF No. 74 at 13 n.4.

As the R & R anticipated, Plaintiffs do indeed attempt to argue that the Chief Justice's memorandum should not be held to render their claims moot. ECF No. 80 at 20-26. However, Plaintiff's argument on this point completely omits reference to the well-settled principle that

governmental actors are subject to a lighter burden in this regard. *See, e.g., Stauffer v. Gearhart*, 741 F.3d 574 (5th Cir. 2014):

In an ordinary case, subsequent events would have to make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. [ ] Stauffer's argument, however, ignores the lighter burden that government entities bear in proving that the challenged conduct will not recur once the suit is dismissed as moot. [ ]

[G]overnment actors in their sovereign capacity and in the exercise of their official duties are accorded a presumption of good faith because they are public servants, not self-interested private parties. Without evidence to the contrary, we assume that formally announced changes to official governmental policy are not mere litigation posturing.

741 F.3d at 582 (citations and internal quotation marks omitted). The state action involved in the present case, a directive issued by the Chief Justice of South Carolina, presents a particularly apropos situation for the application of the above rule, in the interest of federal-state comity. As one court has stated in a different context, “Nothing in . . . general principles of federalism, suggests that it is either necessary or appropriate in these circumstances for a federal court to hover over a state court that in presumed good faith seeks to discharge its responsibilities under the United States Constitution and relevant law. . . .” *Wilkinson v. Forst*, 717 F. Supp. 49, 52 (D. Conn. 1989). In fact, in at least one case, the federal issue was held to be moot, virtually without discussion, because of the promulgation of a rule by the Supreme Court of Georgia. *Attwell v. Nichols*, 608 F.2d 228, 230-231 (5th Cir. 1979), cert. denied, 446 U.S. 955 (1980).

To be sure, there are some instances in which government agencies, particularly executive agencies, have been held not to have provided sufficient evidence that the complained-of conduct will not recur. One such situation was illustrated in *Porter v. Clarke*, 852 F.3d 358, (4th Cir. 2017), cited by Plaintiffs at p. 22 of their objections, where it was held that “[i]n the context of litigation regarding the policies governing prisoners' conditions of confinement, in

particular, courts have refused to find a challenge to an abandoned policy or practice moot when the prison refuses either to “promise [ ] not to resume the prior practice [citations omitted] or to otherwise “unambiguously terminate[ ]” the challenged practice. . . .” 852 F.3d at 365. Plaintiffs also cite *Wall v. Wade*, 741 F.3d 492 (4th Cir. 2014), ECF No. 80 at 22, another case involving prison administration, but in that case, the defendants’ claim that the former policy would not be reinstated was unsupported by any evidence at all. In addition, the policy involved in *Wall* had changed three times in only a few years, a situation not present here.

Instead, the present case involves a pronouncement from the state’s Chief Justice, the head of the unified judicial system, about how magistrates are to handle specific issues pertaining to the constitutional rights of indigent criminal defendants. That pronouncement in September 2017 has been followed by extensive revisions to forms and procedures. Those revisions and other pronouncements from Court Administration were formalized by orders signed by Chief Justice Beatty in February 2018. *See* Ex. 1, attached, and discussed below.<sup>4</sup> This is not a situation in which magistrates would feel free to ignore the Chief Justice’s directions; indeed, if they were to do so, it is possible that they would be subjected to disciplinary action by the Chief Justice. Nor is this a situation in which the Chief Justice, a nonparty to this action, might be expected to reverse course after this litigation ends, especially in light of the extensive procedural revisions set forth in Exhibit 1.

Plaintiffs cite evidence during the first 24 days following the Chief Justice’s memorandum to the effect that the provisions of the memorandum had not yet been fully

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<sup>4</sup> Exhibit 1 is filed pursuant to 28 U.S.C. § 636(b)(1), which provides that a district court may “receive further evidence” in the course of considering objections to a Report and Recommendation. Everything in Exhibit 1 was finalized after the R & R was issued on February 5, 2018. In addition, Exhibit 1 consists completely of public documents that are subject to judicial notice. The existence of these policies should suffice to support a holding that discovery as to the implementation of the memorandum is not necessary.

implemented in that short timeframe. ECF No. 80 at 26. However, it was to be expected that it would take some time for the practical effects of the Chief Justice's memorandum to be understood and implemented by summary court judges. At the annual Mandatory Program for summary court judges on November 1, 2017, the office of court administration set forth the practical requirements of the Chief Justice's September 2017 Memorandum in considerable detail. *See* Exhibit 1, p. 1 (March 14, 2018, Court Administration memorandum outlining procedures discussed at that program). In addition to that 8-page memorandum, Chief Justice Beatty has recently, on February 23, 2018, signed two administrative orders further implementing those procedures, and promulgating a total of seven new or revised forms intended to insure that imprisonment does not occur unless the defendant is "informed of their right to counsel and, if indigent, their right to court-appointed counsel prior to proceeding with trial." September 15, 2017, memorandum at 1. For instance, on the third page of the March 14, 2018 Court Administration memorandum (p. 4 of Exhibit 1), under "Remedy for Nonpayment," the memorandum states, "Not imprisonment! No issuance of a bench warrant or rule to show cause!" The memorandum further notes that "If you want to incarcerate a Defendant in one of the above situations, he must be rescheduled and informed of his right to counsel. No TIA [trial in absentia] unless Defendant has waived counsel by conduct or affirmative waiver." *Id.* This part of the memorandum, as well as the accompanying forms, alleviate Plaintiffs' concern that indigent defendants might be arrested without probable cause or "automatically incarcerated." ECF No. 80 at 29. The remainder of the memorandum, as well as the additional orders of the Chief Justice and the revised forms, are all directed toward insuring that no one is incarcerated for summary-court-level offenses in the absence of being informed of the right to counsel in a meaningful manner.

In addition to claiming that their claims are not moot as a matter of law, Plaintiffs also argue that the Chief Justice’s memorandum does not, as a factual matter, fully address their concerns. They assert that the September memorandum “does not even mention, much less enforce, the Fourteenth Amendment requirement that a person must be afforded an ability-to-pay hearing before incarceration for nonpayment of a fine.” ECF No. 80 at 29. However, the recent implementing memorandum provides that

i. In any offense carrying a fine or imprisonment, the judge or magistrate hearing the case shall, upon a decision of guilty of the accused being determined and it being established that he is indigent at that time, set up a reasonable payment schedule for the payment of such fine, taking into consideration the income, dependents and necessities of life of the individual.

Memorandum of March 14, 2018, part of Exhibit 1, attached, third page (emphases in original). The same Memorandum later provides that “If after trial, Defendant has a jail sentence suspended upon payment of fine and Defendant does not pay the fine, the court must perform Bearden v. Georgia, 461 U.S. 660 (1983) analysis,” and then spells out in great detail the factors that must be considered in the requisite ability-to-pay hearing. *Id.*, seventh page. Also, and as noted earlier, the Court Administration memorandum expressly provides for ““Not imprisonment! No issuance of a bench warrant or rule to show cause!” Any concern of Plaintiffs that Chief Justice Beatty did not address Plaintiffs’ concerns in the present case are therefore unfounded.

In light of this very detailed and mandatory approach taken by Chief Justice Beatty and Court Administration, it simply cannot be said that the state’s judicial system is offering the revised procedures as part of some kind of temporary effort to render the present case moot, as Plaintiffs appear to imply. Based on these developments, and on the authorities cited above

involving official discontinuance of challenged actions, Defendants respectfully submit that the Magistrate Judge's recommendations should be adopted on this issue.

**3. Alternatively, Plaintiffs' claims for prospective relief should be dismissed on the grounds of mootness, absence of a case or controversy, and the application of *Younger v. Harris*, 401 U.S. 37 (1971).**

Defendants submit that while the developments discussed above are more than sufficient to render moot the claims of Plaintiffs for nonmonetary relief, those claims could also be dismissed on other grounds of mootness and absence of a case or controversy, or, in the case of Plaintiff Goodwin, whose case is still pending, based on *Younger v. Harris*, 401 U.S. 37 (1971). These grounds are set forth in detail in Defendants' Memorandum in Support of Motion for Summary Judgment on Declaratory and Injunctive Relief, ECF No. 29-1, and in Defendants' Reply Memorandum filed in support of that motion. ECF No. 39.

To summarize the above-referenced two memoranda, which are incorporated herein by reference, Defendants would show that it is uncontested that the criminal cases of all Plaintiffs except Goodwin are now ended. Plaintiffs' claim of a "substantial and imminent threat of being arrested and incarcerated for nonpayment of magistrate court fines and fees" is based on an assumption which the courts have consistently declined to entertain, that is, the assumption that a person will reoffend. To the contrary, it must instead be assumed that "[plaintiffs] will conduct their activities within the law and so avoid prosecution and conviction as well as exposure to the challenged course of conduct said to be followed by petitioners." *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974). *O'Shea*, a landmark case in the area of standing and case or controversy, is still in full force and effect today. *See, e.g., Simic v. City of Chicago*, 851 F.3d 734, 738 (7th Cir. 2017).

The claims of Plaintiff Goodwin, whose criminal case has not yet ended, cannot be asserted in this Court because they would require the court to insert itself into an ongoing criminal prosecution, in violation of the precepts of *Younger v. Harris, supra*. Accordingly, while the directives of Chief Justice Beatty and South Carolina Court Administration should suffice to warrant dismissal of Plaintiffs' claims for declaratory and injunctive relief, as the R & R recommends, the case could also be dismissed on the alternative grounds set forth above.

**4. The R & R correctly held that Plaintiffs' nonmonetary claims against the three magistrates and the sheriff are barred by judicial or quasi-judicial immunity.**

If this Court adopts the recommendation that Plaintiffs' claims for prospective relief are moot, it will not be necessary to address immunity issues in connection with those claims. While recognizing the possibility that the issue may not need to be addressed, the R & R concluded that those claims are in any event barred by the express language of 42 U.S.C. § 1983, as amended in 1996. ECF No. 74 at 19. That language provides that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." Plaintiffs have offered very little opposition to this conclusion. ECF No. 80 at 27-29. Such opposition as they do offer does not include any case in which a judge was a defendant.

Plaintiffs also make an argument, eight lines long, that they are suing the magistrates and the sheriff as administrators. However, that argument is unavailing, for the reasons set forth in Point 1 above and in the portions of the R & R referenced therein.

**5. The claims of Plaintiff Goodwin for declaratory relief are barred by abstention principles.**

On pp. 39 and 30 of Plaintiffs' Objections, it is argued that Plaintiff Goodwin's claims against Defendant Adams seek only declarative relief and therefore should be permitted to

continue. However, and while the R & R did not need to reach this issue, a request for declaratory relief under these circumstances is barred by the same principles applied in *Younger v. Harris*, 401 U.S. 37 (1971) to bar injunctive relief when a criminal proceeding is ongoing. *Samuels v. Mackell*, 401 U.S. 66 (1971). Mr. Goodwin, on May 5, 2017, signed a payment plan requiring him to make payments of \$100 per month, starting on June 5, 2017. Other than perhaps making the first \$100 payment, he has not made any payments pursuant to that plan, and as a result could be subject to further proceedings in his criminal case as a result of that failure. In other words, the criminal proceeding against him is undoubtedly still ongoing, and is therefore subject to abstention under *Younger* and *Samuels*.

**5. The R & R correctly recommended that class certification should be denied.**

Given that Plaintiffs' claims for declaratory and injunctive relief should be denied for several different reasons as set forth above, it follows that the Court should also adopt the recommendation that class certification should be denied. ECF No. 74 at 13.

**CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court adopt those portions of the Report and Recommendation that recommend dismissal of Plaintiffs' claims.

Respectfully submitted,

DAVIDSON, WREN & PLYLER, P.A.

*BY: s/ Kenneth P. Woodington*

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ATTORNEYS for Defendants

Columbia, South Carolina

March 23, 2018

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Twanda Marshinda Brown, et al,	)	Civil Action No.
	)	
Plaintiffs,	)	3:17-1426-MBS
	)	
v.	)	
	)	
Lexington County, South Carolina, et al.,	)	
Defendants.	)	
	)	
	)	
	)	
_____	)	

**EXHIBIT 1 TO DEFENDANTS' REPLY TO PLAINTIFFS' OBJECTIONS  
TO REPORT AND RECOMMENDATION**

**March 14, 2018 Memorandum of South Carolina Court Administration  
with attached Orders and updated or created forms**



**South Carolina Court Administration**  
South Carolina Supreme Court  
Columbia, South Carolina

TONNYA K. KOHN  
INTERIM DIRECTOR  
ROBERT L. MCCURDY  
ASSISTANT DIRECTOR

1220 SENATE STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
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EMAIL: [rmccurdy@sccourts.org](mailto:rmccurdy@sccourts.org)

**MEMORANDUM**

To: Summary Court Judges and Staff  
From: Renee Lipson, Staff Attorney  
Subject: Procedures for Disposition of UTTs/Warrants and the Right to Counsel  
Date: March 14, 2018

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Below is an outline of the procedures discussed at the Mandatory Program on November 1<sup>st</sup>, 2017. These procedures are in accordance with Chief Justice Beatty's September 15<sup>th</sup>, 2017 memorandum regarding sentencing unrepresented defendants to imprisonment. That memorandum is attached for your reference. Also attached are the following updated or created forms to be used with this process, as well as the Chief Justice's Orders of approval of the forms:

- SCCA/507A – Checklist for Magistrates and Municipal Judges
- SCCA/507B – Information Regarding Your Rights
- SCCA/519 – Summary Court Summons
- SCCA/520 – Notice of Trial in Absentia
- SCCA/521 – Notice of Defendant's Rights
- SCCA/522 – Bench Warrant after Trial in Absentia
- SCCA/523 – Bench Warrant after Failure to Appear

The procedures below are solely for defendants that are unrepresented by counsel and fail to appear on their court dates. If the defendant appears, they can be represented by counsel or the court may obtain a valid waiver of the right to counsel on the record. If a defendant appears in court with counsel, or waives their right to counsel, and is convicted, the defendant may be sentenced as prescribed by the charge convicted of, to include imprisonment if applicable.

For those courts who are on the S.C. Judicial Department's Case Management System, please note CMS will provide specific instructions on the business processing of trials in absentia upon the system's update, which is scheduled to be available for those courts on CMS by April 11, 2018. Please use the attached forms until the documents are implemented into CMS. For those courts that are not on CMS, please provide this memorandum and forms to your case management provider for implementation into their case management systems.

**Regular Traffic Offenses (NRVC eligible)** – if the Defendant fails to appear on his court date:

1. If the citation has been paid in full before the court date
  - a. Case is disposed as Forfeit Bond
  - b. Case is reported to DMV at the end of the day and reported to SLED at the end of the month
2. If the citation has not been paid before the court date
  - a. Trial in absentia
    - i. REMINDER: State must still prove case. Defendant is not to be automatically found guilty solely because he did not come to court.
    - ii. Defendant must have had notice of court date and that it would go forward without his presence (information on UTT)
  - b. If Defendant is found guilty, case is disposed as TIA Guilty Bench Trial
  - c. If Defendant is found not guilty, case is disposed as usual
  - d. Case is reported to DMV at the end of the day
  - e. Court generates NRVC and mails to Defendant
    - i. Defendant pays NRVC before court sends the NRVC to DMV
      1. Case is reported to SLED at the end of the month
    - ii. If Defendant does not pay, court sends NRVC to DMV and case is reported to SLED at the end of the month
      1. Defendant pays and court gives Defendant copy for DMV
      2. Defendant does not pay and DMV suspends license
        - a. Defendant then pays and court gives Defendant copy for DMV

**Field Booking/Field Arrest** – if the Defendant fails to appear on his court date:

1. Field Booking/Field Arrest
  - a. Defendant is issued ticket and told to come to court on a specific day
  - b. Defendant did not have a bond hearing
  - c. If Defendant does not appear, court can TIA defendant, but the sentence can only be a fine. No jail, no suspended sentence.
    - i. If the court is not willing to do fine only, Defendant MUST be rescheduled for another court date and informed of his right to counsel. Not TIA.
2. Trial in Absentia
  - a. REMINDER: State must still prove case. Defendant is not to be automatically found guilty solely because he did not come to court.
  - b. Defendant must have had notice of court date and that it would go forward without his presence (information on UTT)
  - c. If Defendant is found not guilty, case is disposed as usual
  - d. If Defendant is found guilty, case is disposed as TIA. Disposition is sent to DMV and SLED.
    - i. Defendant notified of TIA via court Notice of Trial in Absentia
    - ii. Case appears on public index as TIA – fine amount will be visible on public index
    - iii. Defendant can pay online, in person, or mail – case is complete.
  - e. After Conviction at TIA

- i. Defendant can request a post-trial hearing on the merits of the case, the amount of the fine, and his right to STP.
  - ii. Notice of Trial in Absentia (SCCA/520) will inform the Defendant of these rights.
  - iii. Defendant must contact the court to arrange a hearing to establish a payment plan.
  - iv. Defendant will not be arrested or required to pay anything at this hearing.
- f. Scheduled Time Payments (STP) – §17-25-350
  - i. In any offense carrying a fine or imprisonment, the judge or magistrate hearing the case **shall**, upon a decision of guilty of the accused being determined and it being established that he is indigent at that time, set up a **reasonable** payment schedule for the payment of such fine, taking into consideration the income, dependents and necessities of life of the individual.
  - ii. Such payments shall be made to the magistrate or clerk of court as the case may be until such fine is paid in full.
  - iii. Failure to comply with the payment schedule shall constitute contempt of court; however, imprisonment for contempt may not exceed the amount of time of the original sentence, and where part of the fine has been paid the imprisonment cannot exceed the remaining pro rata portion of the sentence. **NOT APPLICABLE IN THIS SITUATION – THERE IS NO UNDERLYING JAIL TIME.**
  - iv. No person found to be indigent shall be imprisoned because of inability to pay the fine in full at the time of conviction.
  - v. Entitlement to free counsel shall not be determinative as to defendant's indigency.
- g. Remedy for Nonpayment
  - i. Not imprisonment! No issuance of a bench warrant or rule to show cause!
  - ii. Refer the matter to the Department of Revenue/Set Off Debt.
  - iii. Conversion of unpaid criminal fines, surcharges, assessments, costs, fees, and/or restitution to a civil judgment within one year of the imposition of sentence – §17-25-323(C)
    1. Applicable to both magistrate and municipal courts
    2. Procedure in the memos section of the Bench Book (Memo dated November 18, 2013)
- h. This procedure applies to:
  - i. UTTs where Defendant was not taken into custody and did not have a bond hearing
  - ii. Zoning violations
  - iii. Animal control
  - iv. City/county ordinance summonses
  - v. Courtesy summonses
  - vi. If you want to incarcerate a Defendant in one of the above situations, he must be rescheduled and informed of his right to counsel. No TIA unless Defendant has waived counsel by conduct or affirmative waiver.

**Custodial Arrests** – if the Defendant fails to appear on his court date:

1. Main Issue
  - a. Defendants cannot be sentenced to jail time without being appointed, or waiving, counsel.
    - i. This procedure may provide the possibility of the defendant waiving his right to counsel.
2. Bond Hearing
  - a. The Bond Checklist (SCCA/507A) has been updated
    - i. After the judge goes through the checklist with the Defendant, the Defendant will acknowledge receiving his rights by initialing the designated areas on the checklist and signing the document.
      1. If the Defendant refuses to initial and sign the checklist, the bonding judge should so indicate on the document, but it would still be considered that the defendant received his right to counsel.
  - b. If indigent, Defendant shall be given instructions on how to apply for counsel
  - c. Defendant will be given trial date
  - d. Defendant will be given new form "Information Regarding Your Rights" (SCCA/507B)
  - e. All forms direct that as a condition of bond the Defendant is required to update the court of any change of address
3. Trial Date – Defendant fails to appear
  - a. Options
    - i. Reschedule
    - ii. Bench warrant for bond violation (§17-15-40)
  - b. Reschedule
    - i. Preferred method
      1. Policy underlying the Chief Justice's September 15, 2017 memo is to keep people out of jail unless their right to counsel is honored or waived.
    - ii. Defendant is sent the Summary Court Summons to Reschedule (SCCA/519) and Notice of Defendant's Rights (SCCA/521)
    - iii. Summons and the enclosure informs Defendant of possible TIA and waiver of right to counsel
    - iv. Gives Defendant new court date
    - v. Can also be used in the Field Arrest procedure
  - c. Bench Warrant for Bond Violation (SCCA/523)
    - i. To be used in the judge's discretion
      1. Consider whether Defendant is a danger to the community and/or if the charge carries a mandatory jail sentence
      2. Policy underlying the Chief Justice's September 15, 2017 memo is to keep people out of jail unless their right to counsel is honored or waived.
      3. To be used sparingly – not meant to be the primary means of getting Defendant into court if he misses his first court date
    - ii. Issue for bond violation for failure to appear, not the underlying offense
    - iii. Notify surety if applicable (§38-53-70)

- iv. Bench warrant states Defendant is to be brought before the judge within a reasonable time
  - 1. Sole purpose of the bench warrant is to direct law enforcement to bring the Defendant before the issuing court ASAP
- v. Bench warrant will be amended to no longer contain any disposition/sentence
- vi. Bench warrant is not a jail commitment
- d. When Defendant is Picked Up on Bench Warrant for Failure to Appear
  - i. If trial court is in session, take Defendant before that judge
    - 1. If not, bring Defendant before bond judge within 24 hours of arrest
  - ii. At hearing:
    - 1. Inform Defendant of indigent right to counsel
    - 2. Renew constitutional rights
    - 3. Personally serve Defendant with summons with new trial date
      - a. Coordinate with trial court to determine trial date – can be done through phone calls or email
    - 4. Release on original bond if possible
- e. Second Failure to Appear
  - i. If Defendant fails to appear a second time, TIA
    - 1. Judge must determine on the record if:
      - a. Defendant received proper notice of trial's time and place,
      - b. Defendant was warned trial would proceed in his absence, AND
      - c. Defendant waived his right to counsel by conduct
    - 2. REMINDER: State must still prove case. Defendant is not to be automatically found guilty solely because he did not come to court.
    - 3. If Defendant is found guilty, seal the sentence
      - a. No sentence is issued orally on the record.
      - b. Sealed sentence is required by law. It is not opened until Defendant is brought before the court.
    - 4. No sentence or money appears on the public index.
- f. Sealed Sentence
  - i. Notify Defendant of TIA and the existence of the sealed sentence by mail. Defendant will have to appear before the court to have sentence unsealed. OR
  - ii. Issue bench warrant to have Defendant brought before the court for opening of sealed sentence. (SCCA/522)
- g. State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981)
  - i. A sealed sentence does not become the judgment of the court until it is opened and read to the defendant.
  - ii. Judge that opens the sentence is the sentencing judge under the law
  - iii. The authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion.
  - iv. It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.

- v. The mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised.
  - 1. It should be stated on what basis the discretion was exercised.
- h. Notification of Sealed Sentence by Mail
  - i. Defendant calls and sets up date for sentencing hearing
  - ii. State and Victim must be notified of date of hearing
  - iii. Sentence is opened/unsealed
- i. When Defendant is Picked Up on Bench Warrant for Sentencing
  - i. If trial court is in session, take Defendant before that judge.
    - 1. If not, bring Defendant before bond judge within 24 hours of arrest – opening of sentence may be delayed a reasonable amount of time to notify state and allow Victim to attend court
  - ii. Open/unseal sentence
  - iii. IMPORTANT: If there is a victim in the case, victims' rights statutes must be complied with. Victim must be notified and has a right to be present.

### Sentencing Considerations

1. To be used in all types of cases where a fine is imposed – field arrests and custodial arrests
2. §22-3-800 Suspension of Imposition or Execution of Sentence in Certain Cases
  - a. Notwithstanding the limitations of §17-25-100 and §24-21-410, after a conviction or plea for an offense within a magistrate's jurisdiction the magistrate at the time of sentence may suspend the imposition or execution of a sentence upon terms and conditions the magistrate considers appropriate, including imposing or suspending up to 100 hours of community service, except where the amount of community service is established otherwise (examples: littering and DUI)
  - b. The magistrate shall not order community service in lieu of a sentence for offenses under Title 50, for offenses under §34-11-90, or for an offense of driving under suspension pursuant to §56-1-460 when the person's driver's license was suspended pursuant to the provisions of §56-5-2990.
  - c. The magistrate must keep records on the community service hours ordered and served for each sentence.
  - d. However, after a conviction or plea for drawing and uttering a fraudulent check or other instrument in violation of §34-11-60 within the magistrate's jurisdiction, at the time of sentence the magistrate may suspend the imposition or execution of a sentence only upon a showing of satisfactory proof of restitution.
  - e. When a minimum sentence is provided for by statute, except in §34-11-90, the magistrate may not suspend that sentence below the minimum sentence provided, and penalties under Title 50 may not be suspended to an amount less than \$25 unless the minimum penalty is a fine of less than that amount.
  - f. Nothing in this section may be construed to authorize or empower a magistrate to suspend a specific suspension of a right or privilege imposed under a statutory administrative penalty.
  - g. Nothing in this section may be construed to give a magistrate the right to place a person on probation.
3. §14-25-75 Judge May Suspend Sentences

- a. Any municipal judge may suspend sentences imposed by him upon such terms and conditions as he deems proper including, without limitation, restitution or public service employment.
4. After Sentencing
  - a. If after trial, Defendant has a jail sentence suspended upon payment of fine and Defendant does not pay the fine, the court must perform Bearden v. Georgia, 461 U.S. 660 (1983) analysis.
5. Bearden v. Georgia, 461 U.S. 660 (1983)
  - a. Courts may not ordinarily incarcerate an individual for nonpayment of a court-ordered legal financial obligation **unless** the court:
    - i. Holds a hearing;
    - ii. Makes a finding that the failure to pay was willful and not due to an inability to pay; and
    - iii. Considers alternative measures other than imprisonment
  - b. We recommend issuing a Rule to Show Cause (RTSC must be personally served – can attempt to mail RTSC first, but that is not deemed proper service if Defendant does not appear) to have the Defendant brought before the court. At the hearing, the defendant must be given a meaningful opportunity to explain:
    - i. Whether the amount allegedly owed is incorrect and
    - ii. The reason(s) for any nonpayment, including an inability to pay.
  - c. In determining whether the individual has shown an inability to pay, you should consider not only whether his net income is at or below the current Federal Poverty Guidelines, but also whether any of his income is derived from needs-based, means-tested public assistance, whether he has dependents, and the necessities of life of the individual.
  - d. Consideration should also be given to whether the individual is homeless, incarcerated, or resides in a mental health facility, whether there are permanent or temporary limitations on the individual's ability to earn more money, and whether the person owes other court-ordered legal financial obligations.
  - e. Be sensitive to the fact that the individual may have a constitutional right to counsel if a deferred sentence is likely to be imposed or the inability to pay defense is difficult to develop or present.
  - f. After hearing the evidence, you should make findings on the record that the individual received adequate prior notice of: the hearing date/time; that failure to pay fines and assessments was the issue; the defense of inability to pay; the opportunity to bring documents and other evidence of inability to pay; and that there was a meaningful opportunity to explain the failure to pay.
  - g. **If** you determine that incarceration must be imposed, you should make findings regarding:
    - i. The financial resources relied upon to conclude the nonpayment was willful; and/or
    - ii. Why alternative measures are not adequate to meet the State's interest in punishment and deterrence under the particular circumstances.

**Previously Issued Bench Warrants**

If the court has recalled previously issued bench warrants to evaluate the constitutionality of their issuance, the court must review the file of each case individually to determine if the bench warrant was issued properly. If the bench warrant was not properly issued, you may convert the judgment to set off debt. If the bench warrant was properly issued, it may be reissued.

2018-02-23-01

## The Supreme Court of South Carolina

RE: Checklist for Magistrates and Municipal Judges

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### ORDER

---

The judges of the Magistrate and Municipal Courts of South Carolina being a part of the unified judicial system, and pursuant to the provisions of Article V, Section 4, of the South Carolina Constitution,

IT IS ORDERED that the "Checklist for Magistrates and Municipal Judges" ( **SCCA/507A** ) and the "Information Regarding Your Rights" document ( **SCCA/507B** ), both bearing a revision date of 11/2017, both attached and made a part of this Order, shall be used in all Magistrate, Municipal, and General Sessions Court cases in which bond is set by a Magistrate or Municipal Court Judge, and at first appearances in those General Sessions Court cases where offenses are non-bailable by a Magistrate or Municipal Court Judge and require that bond be set by a Circuit Court Judge.

Magistrates and Municipal Judges shall attach the checklist and the informational document to the charging document (arrest warrant or uniform traffic ticket) at the bail proceeding or first appearance for non-bailable offenses. If the cases are transmitted to the Court of General Sessions, the checklist and the informational document shall be sent to the Clerk of Court with the charging paper and other papers pertaining to the case. If the case is within the trial jurisdiction of the Magistrate or Municipal Judge, the checklist and the informational document shall be attached to the charging paper and kept as a part of the case in the Magistrate or Municipal Court for a period of fifteen (15) years in the case of criminal non-traffic offenses. If the charging paper is issued for the offense of Driving Under the Influence (DUI), the checklist and informational document shall be attached to the charging paper and kept as a part of the case in the Magistrate and Municipal Court for a period of ten (10) years. If the charging paper is issued for any traffic offense other than DUI, the checklist and informational document shall be attached to the charging paper and kept as a part of the case in the Magistrate or Municipal Court for a period of five (5) years.

IT IS FURTHER ORDERED that all Magistrates and Municipal Judges must complete each section and have the defendant initial and sign the designated provisions of the "Checklist for Magistrates and Municipal Judges" and the "Information Regarding Your Rights" document, including the provision of the checklist advising defendants of the right to court-appointed counsel if indigent and instructions on how to obtain court-appointed counsel in each court's individual jurisdiction. A copy of the checklist and informational document must be provided to all defendants at their bond hearing or first appearance.

IT IS FURTHER ORDERED that the Chief Judge for Administrative Purposes of the Summary Courts in each county shall be responsible for supervising the Magistrates and Municipal Judges in that county in complying with this Order. The "Checklist for Magistrates and Municipal Judges" and the "Information Regarding Your Rights" document is available in the Judicial Department's Case Management System (CMS), or in those jurisdictions which do not participate in CMS, the checklist and informational document must be added to any other automated case management system, be requested in hard copy from South Carolina Court Administration, or may be reproduced locally on computer in the exact same format as the document approved by this Order. Any document created locally must first be submitted to and approved by South Carolina Court Administration prior to use in a bond hearing or first appearance.

The provisions of this Order are effective immediately and revoke and replace all previous Orders directing the use of the "Checklist for Magistrates and Municipal Judges."

s/Donald W. Beatty  
Donald W. Beatty  
Chief Justice

Columbia, South Carolina  
February 23, 2018

**JA 626**

## The Supreme Court of South Carolina

RE: Checklist for Magistrates and Municipal Judges

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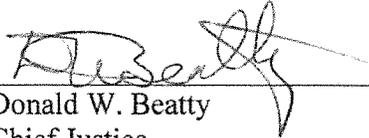
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IT IS FURTHER ORDERED that all Magistrates and Municipal Judges must complete each section and have the defendant initial and sign the designated provisions of the "Checklist for Magistrates and Municipal Judges" and the "Information Regarding Your Rights" document, including the provision of the checklist advising defendants of the right to court-appointed counsel if indigent and instructions on how to obtain court-appointed counsel in each court's individual jurisdiction. A copy of the checklist and informational document must be provided to all defendants at their bond hearing or first appearance.

IT IS FURTHER ORDERED that the Chief Judge for Administrative Purposes of the Summary Courts in each county shall be responsible for supervising the Magistrates and Municipal Judges in that county in complying with this Order. The "Checklist for Magistrates and Municipal Judges" and the "Information Regarding Your Rights" document is available in the Judicial Department's Case Management System (CMS), or in those jurisdictions which do not participate in CMS, the checklist and informational document must be added to any other automated case management system, be requested in hard copy from South Carolina Court Administration, or may be reproduced locally on computer in the exact same format as the

document approved by this Order. Any document created locally must first be submitted to and approved by South Carolina Court Administration prior to use in a bond hearing or first appearance.

The provisions of this Order are effective immediately and revoke and replace all previous Orders directing the use of the "Checklist for Magistrates and Municipal Judges."



---

Donald W. Beatty  
Chief Justice

February \_\_\_\_\_, 2018  
Columbia, South Carolina

Name of Defendant \_\_\_\_\_

Warrant/Ticket No. \_\_\_\_\_

County/Municipality of \_\_\_\_\_

Charges:	Trial Court:	
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CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND IS SET BY A JUDGE. Magistrates and municipal judges must also use the Checklist on those offenses, for which bond cannot be set by a summary court judge ("non-bailable"), that are GENERAL SESSIONS OFFENSES IN WHICH THEY ARE CONDUCTING FIRST APPEARANCES. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. **Defendant must initial where indicated, sign, and be provided a completed copy of this form.**

BAIL PROCEEDING/ FIRST APPEARANCE BEFORE A MAGISTRATE OR MUNICIPAL JUDGE  
(OFFENSES THAT ARE NON-BAILABLE BY A SUMMARY COURT JUDGE)

1. Form used at bail proceeding
 

<input type="checkbox"/> Bond Form I (personal recognizance)	<input type="checkbox"/> Bond Form II (surety, cash, percentage)
--	--

  
 None (Non-Bailable Offense) because  charge carries penalty of life or death; or  
 defendant charged with violent offense while bonded out on violent offense
  
2. \_\_\_\_\_ (Def. Initials) For cases in which bond was set, defendant was informed:
  - a. Warrant for arrest may be issued for violation of any condition of bail bond order.
  - b. His right and obligation to be present at trial and that trial may proceed in his absence if he fails to attend.
  - c. Failure to appear in court as required may result in institution of additional criminal charges. S.C. Code Ann. § 17-15-90 (2014). Failure to appear in connection with a felony, or while awaiting sentence after conviction, carries an additional penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, carries an additional penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above may result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
  
3. \_\_\_\_\_ (Def. Initials) For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
  - Orally  In writing {NOTE: Defendant must be informed of right both orally and in writing.}
  
4. \_\_\_\_\_ (Def. Initials) Defendant was informed of the right to trial by jury.

5. \_\_\_\_\_ (Def. Initials) In all general sessions cases, in all domestic violence cases, and in all magistrate or municipal cases in which the defendant is subject to a prison sentence, defendant was informed of the following:

- a. Charges against defendant and nature of the charges.
- b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
- c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court-appointed counsel if indigent (must meet guidelines set forth in Rule 602(b), SCACR) and instructions on how to obtain court-appointed counsel. In order to apply for court-appointed counsel, defendant is required to appear before \_\_\_\_\_ located at \_\_\_\_\_ for indigency screening. Defendant is responsible for a statutory fee of \$ \_\_\_\_\_ for indigency screening unless that fee is waived or reduced pursuant to §17-3-30(B).
- 6. \_\_\_\_\_ (Def. Initials) In all domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
- 7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.
- 8. Defendant is required to keep court notified of any change of address until final disposition of charge(s).

Appearance or  
Hearing Date: \_\_\_\_\_

\_\_\_\_\_  
Judge's Signature

\_\_\_\_\_  
Defendant's Signature

Defendant refused to sign.

### INFORMATION REGARDING YOUR RIGHTS

You have been charged with a criminal offense and if you are found guilty, you are facing serious consequences which may include payment of a fine, loss of your driver's license, and the possibility of a jail sentence. In addition, you may face increased penalties for later convictions, the loss of your right to possess firearms and/or ammunition, and your immigration status will be affected. You have important constitutional rights, including the right to representation by an attorney, but you may lose these rights or waive them if you do not act to protect these rights.

You have the right to hire an attorney to represent you in every case. If you cannot afford an attorney, you may be eligible for a free attorney. If you want a determination made as to whether you are qualified for a free lawyer, then it is your obligation to be screened at the location identified in Paragraph 5(c) of the Bond Checklist Form that you received after your Bond Hearing. If you do not hire an attorney or go to be screened, then you may be found to have waived your right to an attorney at your trial.

You also have the right to represent yourself. However, you should be aware that self-representation can be dangerous. For example, there may be certain factual or legal defenses to your charge that you are not aware of or legal issues related to the conduct of your trial or guilty plea that an attorney would know how to preserve for an appeal. If you exercise your right to proceed without a lawyer, then you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.

If convicted on the charge(s) filed against you and ordered to pay a fine, you may request a reasonable scheduled payment plan to pay the fine.

It is your obligation to keep up with your trial date and to obtain an attorney, either by hiring one or by being screened and found eligible for a court-appointed attorney prior to your trial date. If you do not appear at your trial with your attorney, you may be deemed to have waived your right to have an attorney represent you.

You are required to keep the court notified of any change of address until the completion of the case.

Signature of Defendant \_\_\_\_\_

Defendant Refused to Sign

# The Supreme Court of South Carolina

RE: Magistrate and Municipal Court Criminal Form Changes

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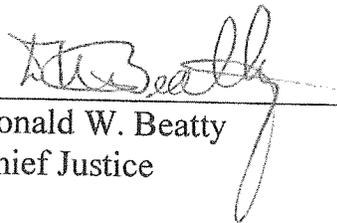
## ADMINISTRATIVE ORDER

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Pursuant to the provisions of South Carolina Constitution Article V § 4,

IT IS ORDERED that the revised or added SCCA/519 – Summary Court Summons, SCCA/520—Notice of Trial in Absentia, SCCA/521—Notice of Defendant's Rights, SCCA/522—Bench Warrant after Trial in Absentia, and SCCA/523—Bench Warrant after Failure to Appear, all bearing the revision date of 11/2017, are approved for use in the Magistrate and Municipal Courts of South Carolina.

These amended and new forms will be added to the Statewide Case Management System and made available online at the South Carolina Judicial Department's website, [www.sccourts.org](http://www.sccourts.org).

  
\_\_\_\_\_  
Donald W. Beatty  
Chief Justice

February 23, 2018  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA**

\_\_\_\_\_ COUNTY

\_\_\_\_\_  
\_\_\_\_\_, SC 29 \_\_\_\_\_

Defendant's Name: \_\_\_\_\_

Defendant's Address: \_\_\_\_\_  
\_\_\_\_\_, SC \_\_\_\_\_

**SUMMARY COURT SUMMONS**

STATE VS. \_\_\_\_\_  
CASE #(S) \_\_\_\_\_  
OFFICER \_\_\_\_\_  
AGENCY \_\_\_\_\_  
CHARGE \_\_\_\_\_

Please be advised that the above-referenced case(s) has been continued from its original trial date and is now scheduled to be heard on \_\_\_\_\_ at \_\_\_\_\_ AM/PM.

You are hereby summoned to appear on the above date in the

\_\_\_\_\_ Magistrate/Municipal Court  
\_\_\_\_\_ Address of Court  
\_\_\_\_\_, SC \_\_\_\_\_

IF YOU ARE UNABLE TO APPEAR FOR TRIAL ON THIS DATE, YOU MUST CONTACT THE COURT BEFORE THE TRIAL DATE TO RESCHEDULE. IF YOU DO NOT CONTACT THE COURT IN ADVANCE OR DO NOT APPEAR FOR THIS HEARING, YOUR TRIAL CAN BE HELD WITHOUT YOU. IN ADDITION, IF YOU DO NOT CONTACT THE COURT OR APPEAR FOR THIS HEARING YOU MAY BE FOUND TO HAVE WAIVED YOUR RIGHT TO AN ATTORNEY.

Please notify any witnesses you may have of the change in trial date.

\_\_\_\_\_  
JUDGE

\_\_\_\_\_ Magistrate/Municipal Court  
\_\_\_\_\_ Address of Court  
\_\_\_\_\_, SC \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

\_\_\_\_\_ COUNTY  
\_\_\_\_\_  
\_\_\_\_\_, SC 29 \_\_\_\_\_

NOTICE OF TRIAL IN ABSENTIA

Defendant Name: \_\_\_\_\_  
Defendant Address: \_\_\_\_\_  
\_\_\_\_\_, SC \_\_\_\_\_

RE: \_\_\_\_\_ Charges: \_\_\_\_\_

On \_\_\_\_\_, you did not appear for trial and were found guilty of the above charge. You were ordered to pay \_\_\_\_\_ as a result of your conviction.

You may choose to pay this amount in full by cashier's check, money order, cash or credit card in person or by mail or you can pay online at [www.sccourts.org/caseSearch/](http://www.sccourts.org/caseSearch/).

If you cannot pay the fine in full, then you must contact the court within five days to arrange a hearing to establish a reasonable payment plan for you.

You will not be arrested or required to pay anything at your hearing. However, if you do not appear at the hearing or you fail to pay the fine, a bench warrant may be issued for your arrest.

Remember, it is very important that you either pay the amount of money that you owe or contact the court to arrange a hearing within five days of the date of this letter.

\_\_\_\_\_  
JUDGE

\_\_\_\_\_ Magistrate/Municipal Court  
**Court Address:** \_\_\_\_\_  
\_\_\_\_\_, SC \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

## INFORMATION REGARDING YOUR RIGHTS

You have been charged with a criminal offense and if you are found guilty, you are facing serious consequences which may include payment of a fine, loss of your driver's license, and the possibility of a jail sentence. In addition, you may face increased penalties for later convictions, the loss of your right to possess firearms and/or ammunition, and your immigration status will be affected. You have important constitutional rights, including the right to representation by a lawyer, but you may lose these rights or waive them if you do not act to protect these rights.

You have the right to hire a lawyer to represent you in every case. If you cannot afford a lawyer, you may be eligible for a free lawyer. If you want a determination made as to whether you are qualified for a free lawyer, then it is your obligation to contact the court and ask for the procedure to be screened for appointment of counsel. If you do not hire a lawyer or go to be screened, then you may be found to have waived your right to a lawyer at your trial.

You also have the right to represent yourself. However, you should be aware that self-representation can be dangerous. For example, there may be certain factual or legal defenses to your charge that you are not aware of or legal issues related to the conduct of your trial or guilty plea that a lawyer would know how to preserve for an appeal. If you exercise your right to proceed without a lawyer, then you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.

If convicted on the charge(s) filed against you and sentenced to a fine, you may request a reasonable scheduled payment plan to pay the fine.

It is your obligation to keep up with your trial date and to obtain a lawyer, either by hiring one or by being screened and found eligible for a court-appointed lawyer prior to your trial date. If you do not appear at your trial with your attorney, you may be deemed to have waived your right to have an attorney represent you.

You are required to keep the court notified of any change of address until the completion of the case.

STATE OF SOUTH CAROLINA ) BENCH WARRANT  
\_\_\_\_\_ County ) \_\_\_\_\_  
\_\_\_\_\_ ) \_\_\_\_\_  
\_\_\_\_\_ ) Case Number  
\_\_\_\_\_, SC \_\_\_\_\_ ) \_\_\_\_\_

To any Lawful Constable or Officer:

WHEREAS: \_\_\_\_\_ the defendant, on \_\_\_\_\_, after given proper notice, failed to appear in court, was tried in his/her absence and convicted in this court of:

\_\_\_\_\_.

This order is to command you to take the defendant into custody. The jail is hereby commanded to take custody of the defendant and to safely keep the defendant and the defendant shall be BROUGHT BEFORE THE TRIAL COURT WHEN IT IS IN SESSION, OR IF NOT IN SESSION, BEFORE THE NEXT TERM OF BOND COURT FOR OPENING OF THE SEALED SENTENCE AND IMPOSITION OF SENTENCE. This shall be your good and sufficient warrant.

Witness: The due execution of this warrant on \_\_\_\_\_.

\_\_\_\_\_, Judge  
\_\_\_\_\_, Magistrate/Municipal Court  
\_\_\_\_\_, Address of Court  
\_\_\_\_\_, SC \_\_\_\_\_

This Bench Warrant is CERTIFIED FOR SERVICE in the  County /  Municipality of \_\_\_\_\_. The defendant is to be arrested and brought before me to be dealt with according to the law.

\_\_\_\_\_  
Signature of Judge Date

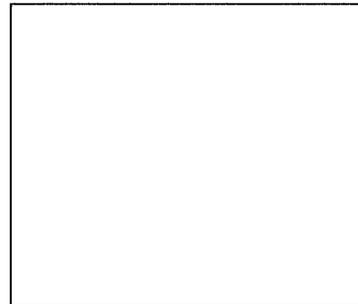
**OFFICER'S RETURN**

STATE OF SOUTH CAROLINA  
\_\_\_\_\_ County  
\_\_\_\_\_  
\_\_\_\_\_, SC \_\_\_\_\_

I hereby certify that pursuant to the command of the within warrant, I have placed the said \_\_\_\_\_ in the jail this day.

\_\_\_\_\_  
Officer's Name Date

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
DL#: \_\_\_\_\_  
State: \_\_\_\_\_  
Height: \_\_\_\_\_  
Weight: \_\_\_\_\_  
SSN: \_\_\_\_\_  
DOB: \_\_\_\_\_  
Sex: \_\_\_\_\_  
Race: \_\_\_\_\_



STATE OF SOUTH CAROLINA )  
\_\_\_\_\_ County )  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_, SC \_\_\_\_\_)

BENCH WARRANT

Case Number

To any Lawful Constable or Officer:

WHEREAS: \_\_\_\_\_ on \_\_\_\_\_ failed to appear in court in violation of the bond previously set by a judge for:

\_\_\_\_\_ This order is to command you to take the defendant into custody. The jail is hereby commanded to take custody of the defendant and to safely keep the defendant until the defendant is discharged by the court. This defendant shall be BROUGHT BEFORE THE COURT within 24 hours. This shall be your good and sufficient warrant.

Witness: The due execution of this warrant on \_\_\_\_\_.

\_\_\_\_\_, Judge  
\_\_\_\_\_, Magistrate/Municipal Court  
\_\_\_\_\_, Address of Court  
\_\_\_\_\_, SC \_\_\_\_\_

\_\_\_\_\_ This Bench Warrant is CERTIFIED FOR SERVICE in the  County /  Municipality of \_\_\_\_\_. The defendant is to be arrested and brought before me to be dealt with according to the law.

\_\_\_\_\_  
Signature of Judge Date

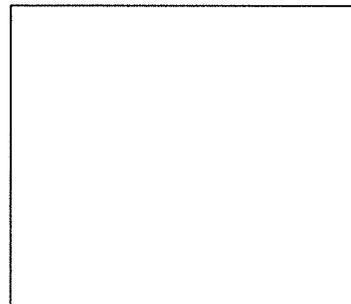
**OFFICER'S RETURN**

STATE OF SOUTH CAROLINA  
\_\_\_\_\_ County  
\_\_\_\_\_  
\_\_\_\_\_, SC \_\_\_\_\_

I hereby certify that pursuant to the command of the within warrant, I have placed the said \_\_\_\_\_ in the jail this day.

\_\_\_\_\_  
Officer's Name Date

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
DL#: \_\_\_\_\_  
State: \_\_\_\_\_  
Height: \_\_\_\_\_  
Weight: \_\_\_\_\_  
SSN: \_\_\_\_\_  
DOB: \_\_\_\_\_  
Sex: \_\_\_\_\_  
Race: \_\_\_\_\_





Adams,<sup>2</sup> and Albert John Dooley, III,<sup>3</sup> as former or current Judges for Administrative Purposes of the Summary Courts in Lexington County and the Irmo Magistrate Court (hereinafter “Judicial Defendants”); Defendant Bryan Koon as the Lexington County Sheriff (hereinafter “Koon”);<sup>4</sup> and Defendant Robert Madsen as the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina (hereinafter “Madsen”) (hereinafter collectively “Defendants”).<sup>5</sup> Plaintiffs allege violation of 42 U.S.C. § 1983 and of their constitutional rights under the Fourth, Sixth, and Fourteenth Amendments because they were denied the opportunity to have counsel appointed or otherwise informed of their rights. Plaintiffs seek class certification, damages, and declaratory and injunctive relief against Defendants.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to the United States Magistrate Judge Shiva V. Hodges for pretrial handling. This matter is now before the court on the Magistrate Judge’s Report and Recommendation filed on February 5, 2018, recommending that the court: (1) deny Plaintiffs’ motion to certify class, ECF No. 21; (2) grant Defendants’ motion for summary judgment as to declaratory and injunctive relief, ECF No. 29; (3) deny Defendants’ motion for summary judgment as to Plaintiffs’ damages claims against Lexington County for failure to afford counsel and grant the motion as to all other claims, ECF No. 50.

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<sup>2</sup> Defendant Rebecca Adams served as the Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County, South Carolina from December 20, 2013 to June 27, 2017. Second Amended Compl. ¶ 28. Defendant Adams currently serves as the Chief Judge for Administrative Purposes of the Summary Courts in Lexington County and as the Judge of the Irmo Magistrate Court. *Id.* ¶¶ 28-29.

<sup>3</sup> Defendant Albert John Dooley, III currently serves as the Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County, South Carolina. Second Amended Compl. *Id.* ¶ 30.

<sup>4</sup> Defendant Bryan Koon serves as the elected Lexington County Sheriff; the Chief Law Enforcement Office of the Lexington County Sheriff Department; and the Chief Administrator of the Detention Center. Second Amended Compl. ¶ 31.

<sup>5</sup> Defendant Robert Madsen, is the Circuit Public Defender for the Eleventh Judicial Circuit in South Carolina that includes Lexington County. Second Amended Compl. ¶ 32.

## I. FACTUAL BACKGROUND

Plaintiffs separately were arrested and incarcerated for a period ranging from seven to sixty-three days because they failed to pay magistrate court fees and fines. ECF No. 48, Second Amended Compl. ¶ 2.<sup>6</sup> Plaintiffs allege eight causes of actions against Defendants in their official and individual capacities. *Id.* ¶¶ 451-535. The relevant facts concerning each Plaintiff are as follows:

### 1. Twanda Marshinda Brown

On March 15, 2016, Plaintiff Twanda Marshinda Brown (hereinafter “Brown”) was ticketed by a Lexington County Sheriff’s Department (hereinafter “LCSD”) officer for driving on a suspended license (DUS, 2nd offense) and for driving with “no tag light.” *Id.* at ¶ 141. On April 12, 2016, Brown appeared before Defendant Adams in the Irmo Magistrate Court and pleaded guilty to both charges. *Id.* ¶¶ 142, 144. Defendant Adams sentenced Brown to \$237.50 in fines and fees for driving without tag lights and \$2,100 in fines and fees for the DUS, 2nd offense. *Id.* ¶ 145. Brown claims she advised Defendant Adams that she did not have any money to pay that day and that Defendant Adams created a payment schedule of \$100 each month. *Id.* ¶ 146. Brown informed Defendant Adams that she could afford to pay only \$50 a month, but Defendant Adams required Brown to pay \$100 each month. *Id.* ¶¶ 147, 148. Brown alleges that Defendant Adams threatened to jail her for 90 days if she did not make the \$100 payment each month. *Id.* ¶ 150. Brown made payments beginning on May 12, 2016 through October 4, 2016, which satisfied the court fines and fees for the tag light offense and contributed towards her fines and fees for the DUS, 2nd offense. *Id.* ¶ 159. After October 4, 2016, Brown could no longer afford to make payments and a bench warrant for nonpayment of court fines and fees was issued on January 12, 2017. *Id.* ¶¶ 160, 163.

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<sup>6</sup> The Second Amended Complaint filed on October 19, 2017, is the operative complaint in this case. ECF No. 48.

The bench warrant indicated that Brown had a “sentence imposed/balance due of \$1,907.63 or 90 days” and that Brown would be jailed “until he/she shall be thereof discharged by due course of law.” *Id.* ¶ 163. Brown was arrested on the bench warrant on February 18, 2017, and was informed that she could pay \$1,907.63 or serve 90 days in jail. *Id.* ¶ 165, 167. Brown served 57 days in jail and was released on April 15, 2017. *Id.* ¶ 171.

Brown alleges that she did not know nor did Defendant Adams inform her that she had the right to request the assistance of a court-appointed attorney before pleading guilty, and the right to seek a waiver of any public defender application fees due to financial hardship. *Id.* ¶ 143.

## 2. Sasha Monique Darby

On August 4, 2016, Sasha Monique Darby (hereinafter “Darby”) was ticketed for assault and battery in the third degree for hitting her roommate. *Id.* ¶ 184. Darby appeared in Irmo Magistrate Court and was handed a “Trial Information and Plea Sheet” along with instructions to “check a box.” *Id.* ¶¶ 186, 187. Darby alleges that because the “Trial Information and Plea Sheet” indicated that an application for a court-appointed attorney required a “\$40 non-refundable fee,” she placed a check mark next to the statement, “I waive my right to have an attorney present.” *Id.* ¶ 188. Darby also placed a check mark next to the option “not guilty.” *Id.* ¶ 189. Darby appeared before Defendant Adams who found Darby guilty of assault and battery in the third degree and asked her whether she wanted to serve 30 days in jail or pay a fine. *Id.* ¶¶ 195, 196. Darby indicated that she would pay a fine; however, after discovering that the fine would be \$1,000, she returned to the courtroom to speak with Defendant Adams. *Id.* ¶¶ 196, 200-01. Defendant Adams refused Darby’s proposed payment plan of \$100 to \$120 a month and ordered Darby to pay \$150 a month. *Id.* ¶¶ 201-02. Darby paid \$200 on the date of the court hearing and \$150 payment on October 4, 2017. *Id.* ¶¶ 203, 205. After October 4, 2017, Darby could not afford to make any further payments

and a bench warrant was issued for her arrest on December 6, 2016. *Id.* ¶¶ 206, 208. Darby was arrested on the bench warrant on March 28, 2017, and informed that she could pay \$680 or serve 20 days in jail. *Id.* ¶ 213. Darby served 20 days in jail and was released on April 17, 2017. *Id.* ¶ 215.

Darby alleges that Defendant Adams did not inform her that she had the right to request assistance of a court-appointed attorney and the right to seek waiver of any fees related to the application for a public defender due to financial hardship. *Id.* ¶ 192. Darby alleges that Defendant Adams did not engage in a colloquy with Darby to determine whether any waiver of the right to counsel was knowing, voluntary, and intelligent. *Id.* at 193. Moreover, Darby alleges that she was not informed that if her financial circumstances changed in the future or if she was unable to pay the \$150 required each month, that she could request a court hearing on her ability to pay and alternatives to incarceration. *Id.* at 204.

### 3. Cayeshia Cashel Johnson

On August 21, 2016, Cayeshia Cashel Johnson (hereinafter “Johnson”) was in a minor car accident while driving her mother’s car from Columbia to Myrtle Beach. *Id.* ¶ 218. Johnson was charged with simple possession of marijuana and the following five traffic offenses: (1) uninsured motor vehicle fee violation, 1st offense; (2) operating a motor vehicle without license in possession; (3) improper start of vehicle; (4) violation of beginner permit; and (5) failure to return license plate and registration upon loss of insurance, 1<sup>st</sup> offense. *Id.* ¶ 220. Johnson claims that one week before her court hearing on September 22, 2016, she called the Central Traffic Court and informed the court staff that she could not attend the hearing because she lives in Myrtle Beach and lacked transportation to Lexington County. *Id.* ¶¶ 221, 223. Johnson was advised that lack of transportation was not a valid reason for missing a court hearing and that her case would be tried

in her absence. *Id.* at 224. Johnson inquired on whether she could arrange for a payment plan for the fines and was told that “the only way to have a payment plan is to talk to the Judge.” *Id.* ¶ 225. Johnson claims she left her work and cell phone number and was assured that someone would contact her; however, Johnson did not receive a response. *Id.* ¶¶ 226, 227.

On September 22, 2016, the Central Traffic Court tried Johnson’s case in her absence and found her guilty of all six charges. *Id.* ¶ 228. On September 26, 2016, the Central Traffic Court issued a bench warrant for Johnson to pay \$1,287.50 or serve 80 days in jail for the following charges: (1) uninsured motor vehicle fee violation, 1st offense; (2) operating a motor vehicle without license in possession; and (3) simple possession of marijuana. *Id.* ¶ 230. On February 13, 2017, Johnson was arrested in Myrtle Beach and jailed for 55 days. *Id.* ¶¶ 231, 233, 238.

Johnson alleges that she did not receive any notice that she had been tried in absentia; and convicted for one misdemeanor and five traffic offenses, in which she was sentenced to serve jail time or pay fines for three of those offenses and sentenced to pay fines and fees on the other three offenses. *Id.* ¶ 229. Johnson claims she has an outstanding balance on three offenses in the amount of \$905 plus \$100 in mandatory costs with the Central Traffic Court. *Id.* ¶¶243-45.

#### 4. Amy Marie Palacios

Sometime in June 2015, Amy Marie Palacios (hereinafter “Palacios”) had her driver’s license suspended for failure to pay a speeding ticket incurred earlier that year. *Id.* ¶ 250. On October 28, 2016, Palacios was stopped by state troopers at a roadblock and ticketed for driving on a suspended license (DUS, 1st offense). *Id.* ¶¶ 252, 254. The day before her court hearing, Palacios contacted the Central Traffic Court to reschedule the hearing due to a conflict with her work schedule and was advised that her employer could fax an affidavit to the court explaining why she could not attend the hearing. *Id.* ¶¶ 256, 257. On the same day, Palacios’ employer faxed

an affidavit explaining her work schedule and requesting an extension. *Id.* ¶ 258. Palacios alleges that no one contacted her in response to her request to reschedule the hearing. *Id.* ¶ 259. On November 10, 2016, Palacios was tried in her absence in Central Traffic Court and found guilty of DUS, 1st offense. *Id.* ¶ 260. On November 15, 2016, the court issued a bench warrant requiring payment of \$647.50 or serve 30 days in jail. *Id.* ¶ 262. On February 25, 2017, Palacios was arrested on the bench warrant and served 21 days in jail. *Id.* ¶¶ 263, 275.

Palacios alleges that she did not receive any notice that she had been tried in absentia; convicted of a traffic offense; and sentenced to serve jail time or pay fines and fees for the offense. *Id.* ¶ 261.

#### 5. Nora Ann Corder

In July 2016, Nora Ann Corder (hereinafter Corder) was ticketed for neglecting to return her license plate and registration upon the loss of insurance. *Id.* ¶ 284. Corder was ordered to pay a \$230 fine and her driver's license was suspended. *Id.* ¶ 285. On January 27, 2017, Corder was ticketed by a LCSD Deputy for DUS, 1st offense; violation of temporary license plates for vehicle to be registered in another state; and uninsured motor vehicle fee violation, 1st offense. *Id.* ¶ 289. Her car was also impounded. *Id.* ¶ 290. On February 15, 2017, Corder appeared in the Lexington Magistrate Court and was asked by the Deputy who issued the tickets about what she had "gotten done." *Id.* ¶ 292, 293. Although Corder did not understand what the Deputy was referring to she explained, she did not have the money to pay the tickets to get her driver's license reinstated; car insurance; or get her car out of impound. *Id.* ¶ 292, 293. The Deputy sought a continuance on her case so that "she can take care of what she needed to take care of." *Id.* ¶ 294.

On March 22, 2017, Corder appeared in the Lexington Magistrate Court and spoke to the same Deputy about her inability to reinstate her driver's license and to obtain car insurance. *Id.* ¶

297. The Deputy advised her that if she could reinstate her driver's license and car insurance, he would drop certain charges or ask the court to reduce the amount she would have to pay in fines and fees. *Id.* The Deputy continued her case to April 19, 2017. *Id.* ¶ 298.

On April 19, 2017, Corder appeared in Lexington County Magistrate Court and paid the \$230 fine incurred in July 2016 for neglecting to return her license plate and registration upon the loss of insurance. *Id.* ¶ 305. Corder informed the Deputy that she had recently secured a new job and still could not afford to reinstate her driver's license or car insurance. *Id.* ¶ 307. The Deputy informed Corder that he would continue her case for the last time until May 17, 2017. *Id.*

On May 17, 2017, Corder failed to appear and was found guilty in her absence on all three charges. *Id.* ¶¶ 310-311. A bench warrant was issued for her arrest that required Corder to pay \$1,320 or serve 90 days in jail. *Id.* ¶ 313. Corder was arrested a week later after seeking to file a dispute on an eviction action in Lexington Magistrate Court. *Id.* ¶ 319. Corder was jailed for 54 days and released on July 19, 2017. *Id.* ¶ 223.

Corder claims that she was never instructed on how to prepare for a continued court hearing; was not informed of her right to request the assistance of a court-appointed attorney; nor informed of her rights concerning counsel or her right to jury trial on any of the three occasions in which she appeared in court. *Id.* ¶ 309. Moreover, Corder claims that she did not receive any notice that she had been tried in absentia; convicted of three traffic offenses; and sentenced to serve jail time or pay fines and fees for the three traffic offenses. *Id.* ¶ 312.

#### 6. Xavier Larry Goodwin

On July 15, 2016, Xavier Larry Goodwin (hereinafter "Goodwin") received five traffic tickets during a traffic stop: (1) DUS, 2nd offense; (2) uninsured motor vehicle fee violation, 1st offense; (3) seatbelt violation; (4) temporary license plate – time limit to replace; and (5) use of

license plate other than for vehicle which issued. *Id.* ¶ 326. On August 9, 2016, Goodwin was tried in his absence and found guilty on all five charges. *Id.* ¶ 328. On August 10, 2016, the Central Traffic Court issued a bench warrant requiring Goodwin to pay \$1,710 or serve 90 days on the charges of DUS, 2nd offense and uninsured motor vehicle fee violation, 1st offense. *Id.* ¶ 330.

On February 2, 2017, Goodwin was ticketed for DUS, 3rd offense and served with the bench warrant issued on August 10, 2016. *Id.* ¶¶ 331-335. A bond hearing was held on February 3, 2017, for his DUS, 3rd offense charge, in which Goodwin claims that he was not informed of his right to request the assistance of court-appointed counsel or his right to seek waiver of any public defender application fee. *Id.* ¶ 336. Goodwin also claims that during his transportation to the court, he asked a Lexington County Detention Center (hereinafter “LCDC”) officer whether he could request a public defender. *Id.* ¶ 338. The LCDC officer responded that the screening process could take a long time and that his incarceration could be extended as a result. *Id.* Goodwin pleaded guilty to the charge of DUS, 3rd offense and was sentenced by Defendant Adams to 90 days in jail and \$2,100 in fines and fees. *Id.* ¶¶ 341-42. Goodwin was directed to set up a payment plan within 30 days of his release from jail. *Id.* ¶ 343. Goodwin was detained at LCDC for 63 days for nonpayment of fines and fees and released on April 7, 2017. *Id.* ¶ 345-347. Upon being released, Goodwin was transported to the Alvin S. Glenn Detention Center in Richland County to serve time on bench warrant issued in Richland County and was released on April 26, 2017. *Id.*

On May 5, 2017, Goodwin returned to the Irmo Magistrate Court and established a \$100 monthly payment plan on the outstanding balance of \$2,100 in fines and fees. *Id.* ¶ 351. Goodwin alleges that he faces imminent and substantial risk that the Irmo Magistrate Court will issue a bench warrant for his arrest unless he pays \$2,063 – the outstanding balance owed for the DUS, 3rd offense conviction. *Id.* ¶ 359.

Goodwin claims that Defendant Adams did not inform him that he had the right to request the assistance of a court-appointed attorney before pleading guilty and the right to seek a waiver of any fees related to the application for a public defender due to financial hardship. *Id.*

7. Raymond Wright, Jr.

On July 1, 2016, Raymond Wright, Jr. (hereinafter “Wright”) was ticketed for DUS, 1st offense. *Id.* ¶ 363. Wright pleaded guilty on July 26, 2016, and was required to pay \$666.93 in fines and fees. *Id.* ¶ 336. He established a payment plan of \$50 per month and made payments from July 26, 2016 through December 7, 2016. *Id.* ¶¶ 369-70. After December 7, 2016, Wright could no longer afford to make payments and was summoned for a show cause hearing on April 19, 2017. *Id.* ¶¶ 373-74. At the hearing, Wright was informed that he would be jailed if he did not pay the full \$416.93 balance within 10 days. *Id.* ¶ 378. Wright was unable to pay the full balance and on May 2, 2017, the Central Traffic Court issued a bench warrant for his arrest requiring him to pay \$416.93 or serve 10 days in jail. *Id.* ¶ 381-382. On July 25, 2017, Wright was arrested and incarcerated for seven days until August 1, 2017. *Id.* ¶ 390.

Wright alleges that a Central Traffic Court Judge made a general announcement that all defendants had a right to an attorney. *Id.* ¶¶ 375. Wright alleges that the Judge<sup>7</sup> did not inform him that he had the right to request assistance of a court-appointed attorney and the right to seek waiver of any fees related to the application for a public defender due to financial hardship. *Id.* ¶ 375. Moreover, Wright alleges that the Judge did not engage in a colloquy with him to determine whether any waiver of the right to counsel was knowing, voluntary, and intelligent. *Id.* ¶ 376.

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<sup>7</sup> In Plaintiffs’ complaint, Plaintiff Wright does not specify the name of the presiding Judge.

## II. PROCEDURAL HISTORY

On June 1, 2017, Plaintiffs brought the present lawsuit against Defendants alleging numerous constitutional violations. ECF No. 1. On June 2, 2017, Plaintiff Goodwin filed a motion to certify class on behalf of himself and the other Plaintiffs. ECF No. 5.

On July 21, 2017, Plaintiffs filed an amended complaint against all Defendants.<sup>8</sup> ECF No. 20. An amended motion to certify class was also filed on July 21, 2017. ECF No. 21. In the amended motion to certify class, Plaintiff Goodwin and Wright, Jr., seek to be appointed as Class Representatives and to appoint the ACLU Foundation, the ACLU of South Carolina Foundation, and Terrell Marshall Law Group, PLLC, as Class Counsel. ECF No. 21 at 2-3. Plaintiff Goodwin and Wright also seek certification of the following Class: “All indigent people who currently owe, or in the future will owe, fines, fees, court costs, assessments, or restitution in cases handled by Lexington County Magistrate Court.” *Id.* at 2. Plaintiffs seek class certification only for purposes of Plaintiffs’ claims for declaratory and injunctive relief. *Id.*

On August 18, 2017, Defendants collectively filed a motion for partial summary judgment concerning Plaintiff’s claims for declaratory and injunctive relief.<sup>9</sup> ECF No. 29. Defendants argue that Plaintiffs’ claims for declaratory and injunctive relief are moot considering that six of the seven Plaintiffs’ sentences have been satisfied and no longer present a live case or controversy.

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<sup>8</sup> The amended complaint seeks to include allegations that Plaintiff Goodwin and Wright currently face an imminent threat of arrest and incarceration as they cannot afford to pay fines and fees due to Lexington County Magistrate Court. ECF No. 20 at 2. On August 17, 2017, Defendants filed an answer to Plaintiffs’ amended complaint. ECF Nos. 24, 25, 26, 27, and 28.

<sup>9</sup> The following five claims seek declaratory and injunctive relief: Cause of Action 1 for incarceration without pre-deprivation ability to pay hearing by Plaintiffs Goodwin and Wright; Cause of Action 2 for failure to afford assistance of counsel by Goodwin and Wright; Cause of Action 3 for unconstitutional seizure by Goodwin and Wright; Cause of Action 7 for incarceration without pre-deprivation ability to pay by Goodwin; and Cause of Action 8 for failure to afford assistance of counsel by Goodwin. ECF No. 20 at 91-118, First Amended Complaint. At the time, Defendants filed their motion Plaintiff’s First Amended Complaint was the operative complaint. On October 18, 2017, Plaintiffs filed a Second Amended Complaint and this complaint is the current operative complaint. ECF No. 48. Defendants filed answers to Plaintiffs’ Second Amended Complaint on November 1, 2017 and November 2, 2017, respectively. ECF Nos. 52, 53, 54, 55.

ECF No. 29-1 at 4. In support thereof, Defendants submitted an Affidavit from Colleen Long, employed as the Deputy Court Administrator for the Lexington County Summary Court, who provided the status of the seven Plaintiffs' as disclosed in the Lexington County records. ECF No. 29-2, Exhibit 1. Defendants argue that the Affidavit sets forth in detail that the criminal proceedings against the six of the seven Plaintiffs have concluded. ECF No. 29-1 at 3.

Moreover, Defendants argue that, with respect to remaining Plaintiff Goodwin, the doctrine of abstention set forth in *Younger v. Harris*, 401 U.S. 37 (1971), prohibits the court from intervening in his ongoing state criminal proceeding. ECF No. 29-1 at 6. Defendants contend that all three *Younger* requirements are satisfied in this case: (1) Plaintiff Goodwin's sentence for the DUS, 3rd offense has not been concluded; (2) violations of state traffic laws implicate an important state interest – the safety of its roadways; and (3) if a bench warrant is issued for Plaintiff Goodwin's arrest, he would have the adequate opportunity to raise some, if not all, of his current challenges in the context of the state proceeding. *Id.* at 7. Therefore, Defendants request that Plaintiff's claims for declaratory and injunctive relief be dismissed. *Id.* at 8.

Also on August 18, 2017, Defendants filed an opposition to Plaintiffs' motion to certify class. ECF No. 30. Defendants assert that the court's consideration of Plaintiffs' motion to certify class should be postponed until the issues raised in Defendants' summary judgment motion have been resolved. *Id.* at 1. Defendants argue that if "Defendants' summary judgment motion is granted on the issue of the absence of a case or controversy, it goes without saying that a class of such plaintiffs cannot be certified." *Id.* at 2. Defendants further argue that whether *Younger* abstention applies should be addressed prior to any determination of Plaintiffs' class certification. *Id.* at 2. In support of this argument, Defendants cite to case law that instruct district courts to reach the abstention issue first and then decide on the class certification. *Id.* at 3. Defendants contend that if

their summary judgment motion is granted “there is no need to consider class certification at all.”  
*Id.*

On September 11, 2017, Plaintiffs filed a response in opposition to Defendants’ motion for partial summary judgment, which included Affidavits from Plaintiffs Goodwin and Wright. ECF No. 35. Plaintiffs Goodwin and Wright assert the requirements for standing are satisfied because they present a live case and controversy. *Id.* at 19. Plaintiff Goodwin and Wright argue that when the complaint was filed they faced a real imminent threat of injury on being arrested upon nonpayment of court fees. *Id.* at 19-24. Thus, Plaintiff Goodwin and Wright contend they have standing to assert claims for declaratory and injunctive relief. *Id.* at 24. Plaintiff Goodwin further alleges that his claims are not moot because he still owes fines and fees to Lexington County Magistrate Court and therefore the court may proceed to certify the class on this basis alone. *Id.* Plaintiff Wright asserts that although he no longer owes fines and fees to Lexington County Magistrate Court, he can pursue his claims for prospective relief on behalf of the proposed class pursuant to *Gerstein v. Pugh*, 420 U.S. 103 (1975), which provides an exception to the mootness doctrine by way of allowing claims to remain live until the court certifies the class. ECF No. 35 at 25.

With respect to Defendants’ argument that Plaintiffs’ claims are barred by the *Younger* doctrine, Plaintiffs argue that Defendants mischaracterized the scope of the doctrine and incorrectly applied it to this case. *Id.* at 29. Plaintiffs claim that Defendants ignored the recent Supreme Court’s decision in *Sprint Communications, Inc. v. Jacobs*, 134 S. Ct. 584 (2013), that discussed the *Younger* abstention and federal court jurisdiction when applying the *Younger* doctrine. *Id.* at 30. Plaintiffs claim *Sprint* limited the application of *Younger* to three “exceptional circumstances” that do not apply to this case. *Id.* In applying *Younger*, Plaintiffs claim that (1)

there is no “ongoing state criminal proceeding” against Plaintiff Goodwin because he was convicted and sentenced with no further pending criminal proceedings at the present time, *id.* at 37; (2) the important state interests have been satisfied because Plaintiff Goodwin has already been convicted and sentenced to jail time for DUS, 3rd offense, *id.* at 38; and (3) Plaintiff Goodwin does not have the opportunity to raise his claims in state court. *Id.* Therefore, Plaintiffs request that the court deny Defendants’ motion for partial summary judgment. *Id.* at 39.

Defendants filed a reply on September 22, 2017, arguing that, even if Plaintiffs’ claims are categorized as “inherently transitory” under *Gerstein*, Plaintiffs’ claims do not overcome the *Younger* abstention principles. ECF No. 39 at 2. Defendants concede that Plaintiff Goodwin’s claim for declaratory and injunctive relief is the only claim that has standing, but is barred by the *Younger* doctrine. *Id.* at 4. Defendants maintain that the requirements of *Younger* have been satisfied and Plaintiffs have failed to meet their burden on this issue. *Id.* at 8-9. Defendants further argue that Plaintiff Goodwin still has an opportunity to raise his claims in the state court. *Id.* at 9-10.

On September 22, 2017, Defendants filed a supplemental motion in support of their motion for partial summary judgment on Plaintiffs’ claims for declaratory and injunctive relief. ECF No. 40. Defendants attached a Memorandum issued by Chief Judge Donald W. Beatty to Magistrate Judges and Municipal Judges on September 15, 2017, that provided as follows:

“Absent a waiver of counsel, or the appointment of counsel for an indigent defendant, summary court judges shall not impose a sentence of jail time, and are limited to imposing a sentence of a fine only for those defendants, if convicted. When imposing a fine, consideration should be given to a defendant’s ability to pay. If a fine is imposed, an unrepresented defendant should be advised of the amount of the fine and when the fine must be paid. This directive would also be apply to those defendants who fail to appear at trial and are tried in their absence.”

ECF No. 40, Exhibit 1.

Defendants argue that the Fourth Circuit has held that “a government entity’s change of policy renders a challenge moot when the government entity ‘has not asserted its right to enforce [the challenged policy] at any future time.’” *Id.* at 3. (citing *Porter v. Clarke*, 852 F.3d 358, 364 (4th Cir. 2017) (internal citations omitted)). Therefore, Defendants assert that the Chief Justice’s Memorandum renders moot Plaintiffs’ claims for declaratory and injunctive relief and those claims should be dismissed. ECF No. 40 at 4.

In response, Plaintiffs filed an opposition to Defendants’ supplemental motion on October 13, 2017. ECF No. 43. Plaintiffs argue that (1) Defendants must meet a heavy burden under the voluntary cessation doctrine to prove that the Chief Justice’s Memorandum moots Plaintiffs’ prospective relief claims, *id.* at 16; (2) Defendants fail to demonstrate that the County’s Magistrate Courts have terminated their conduct and that the conduct cannot reasonably be expected to recur, *id.* at 19; (3) evidence in the record raises questions of material fact concerning whether Defendants’ conduct continues to result in unlawful arrest and incarceration of indigent people who cannot pay money owed to the County’s Magistrate Courts, *id.* at 29-31; and (4) additional discovery is necessary to defend against Defendants’ premature motion, *id.* at 31-35.

On October 30, 2017, Defendants filed a motion to stay consideration of the supplemental motion pending a ruling on Defendants’ original motion for partial summary judgment filed on August 18, 2017. ECF No. 49. Defendants state that “Plaintiffs’ response to the motion indicates that discovery about the application in practice of the Chief Justice’s memorandum might be necessary in order to resolve the supplemental motion, which is not the case for the original motion.” *Id.* at 2-3. In addition, Defendants informed the court that South Carolina Court Administration has scheduled a training session for Summary Court Judges to ensure compliance with Chief Justice Beatty’s Memorandum and attached a copy of the training agenda. *Id.* at 1-2,

Exhibit 1. Defendants contend that this supplemental motion “could be taken up at a future time if necessary, if the original motion for summary judgment . . . is not granted, or if events following the training session clarify any questions about the implementation of Chief Justice Beatty’s memorandum.” *Id.* at 3.

In response, Plaintiffs requested that the court deny and strike Defendants’ supplemental motion for summary judgment on November 13, 2017. ECF No. 58 at 4. Plaintiffs further requested that the court allow discovery to proceed. *Id.* at 5. Defendants withdrew their supplemental motion and their motion to stay proceedings with leave to refile at a later time on November 21, 2017. ECF No. 62.

On October 31, 2017, Defendants filed a motion for summary judgment on Plaintiffs’ damages claims. ECF No. 50. Defendants argue that Plaintiffs’ causes of action numbered 4, 5, and 6 seeking damages should be dismissed for the following reasons: (1) if Plaintiffs’ claims were to be recognized, such result would necessarily imply that their criminal convictions are invalid, and therefore those claims are barred by *Heck v. Humphry*, 512 U.S. 477 (1994)<sup>10</sup> and by the *Rooker-Feldman* doctrine;<sup>11</sup> ECF No. 50-1 at 4-8; (2) Plaintiffs’ claims against the three Judicial Defendants and Defendant Sheriff Koon are barred by judicial or quasi-judicial immunity, *id.* at 9; (3) even if these Defendants “had created a ‘policy’ governing the handling of cases such as those of the Plaintiffs, Plaintiffs’ damage claims against [them] are barred by legislative

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<sup>10</sup> The Supreme Court in *Heck* held that “[w]hen a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” *Heck*, 512 U.S. at 487.

<sup>11</sup> *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). See *Davani v. Virginia Dept. of Transp.*, 434 F.3d 712, 717 (4th Cir. 2006) (noting that the *Rooker-Feldman* doctrine generally bars district courts from sitting in direct review of state court decisions. The prohibition extends not only to issues actually decided by a state court but also to those that are inextricably intertwined with questions ruled upon by a state court. A federal claim is inextricably intertwined with a state court decision if success on the federal claims depends upon a determination that the state court wrongly decided the issues before it.).

immunity,” *id.* at 10; (4) that, as a matter of law, Defendants have no authority to prescribe rules or policies for the determination of individual cases along the lines alleged by Plaintiffs’ claims, *id.* at 11; (5) Plaintiffs’ claims against Lexington County for the alleged underfunding of the public defender system are barred for lack of causation, because Magistrates can still appoint counsel for indigent persons from members of the bar, *id.* at 14; and (6) Plaintiffs’ damages claim against Defendant Madsen as public defender is a suit against the County itself and should be dismissed as duplicative, *id.* at 14.

On November 29, 2017, Plaintiffs filed a Memorandum of Points and Authorities in Opposition to Defendants’ Motion for Summary Judgment on Damages Claims along with Affidavits from all seven Plaintiffs. ECF No. 66. Plaintiffs argue that Defendants’ reliance on *Heck* is misplaced for two reasons: (1) Plaintiffs had no practical access to habeas relief while in custody, *id.* at 27; and (2) success on Plaintiffs’ damages claims does not invalidate Plaintiffs’ guilty pleas, convictions, or sentence, *id.* at 29. In addition, Plaintiffs argue that the *Rooker-Feldman* doctrine does not apply because Plaintiffs do not attack their underlying guilty pleas, convictions, or sentences. ECF No. 66 at 34. Instead, Plaintiffs’ damages claims dispute the “post-sentencing procedures used to arrest and incarcerate them when they could not pay money in violation of their rights to due process, equal protection, counsel, and freedom from unreasonable seizures.” *Id.*

With respect to judicial and quasi-judicial immunity, Plaintiffs contend that “Defendants fail to demonstrate that Defendants Reinhart and Adams acted in a judicial, rather than administrative, capacity when engaged in the challenged conduct.” *Id.* at 36. Plaintiffs assert that Plaintiffs’ damages claim against Defendant Reinhart and Adams are for their actions in their administrative capacities as Chief Judge and Associate Chief Judge for Administrative Purposes of the Lexington County Summary Courts and not in their judicial capacity. *Id.* at 37. Similarly,

Plaintiffs argue that their claims against Defendant Koon are not for arresting Plaintiffs, but for his “administrative authority as the head of the Lexington County Sheriff’s Department to establish standard operating procedures that directly and proximately caused Plaintiffs’ unlawful arrest and incarceration.” *Id.* at 40. Moreover, Plaintiffs argue that “Defendants Reinhart, Adams, and Koon fail to show that they acted in a legislative capacity when engaged in the challenged conduct.” *Id.* at 42. Based on these reasons, Plaintiffs request that Defendants’ motion for summary judgment on Plaintiffs’ damages claims be denied and the case proceed to discovery. *Id.* at 50-54.

Defendants filed a reply on December 13, 2017, maintaining that Plaintiffs’ claims are barred by judicial and quasi-judicial immunity. ECF No. 70 at 5-10. Defendants argue that Plaintiffs have failed to meet their burden on the application of *Heck* and the *Rooker-Feldman* Doctrine. *Id.* at 15-17. In addition, Defendants contend that Plaintiffs have not made a showing that would entitle them to engage in discovery. *Id.* at 19-21.

On February 5, 2018, the Magistrate Judge filed a Report and Recommendation recommending that the court: (1) deny Plaintiffs’ motion to certify class, ECF No. 21; (2) grant Defendants’ motion for summary judgment as to declaratory and injunctive relief, ECF No. 29; (3) deny Defendants’ motion for summary judgment as to Plaintiffs’ damages claims against Lexington County for failure to afford counsel and grant the motion as to all other claims, ECF No. 50. Pursuant to *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005), the parties were advised of the right to file objections to the Report and Recommendation and the possible consequences if they failed to timely file written objections to the Report and Recommendation. Both parties filed objections on March 2, 2018, ECF Nos. 79, 80, and filed replies on March 22, 2018 and March 23, 2018. ECF Nos. 81, 82.

### III. STANDARD OF REVIEW

#### A. Magistrate Judge’s Finding in Report and Recommendation

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with the court. *Matthews v. Weber*, 423 U.S. 261, 270 (1976). The court reviews *de novo* only those portions of a Magistrate Judge’s Report and Recommendation to which specific objections are filed, and reviews those portions which are not objected to – including those portions to which only “general and conclusory” objections have been made – for clear error. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Opriano v. Johnson*, 687 F.2d 44, 77 (4th Cir. 1982). The court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

#### B. Motion for Summary Judgment

Summary judgment should be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is “material” if proof of its existence or non-existence would affect the disposition of the case under the applicable law. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248-49 (1986). A genuine question of material fact exists where, after reviewing the record as a whole, the court finds that a reasonable jury could return a verdict for the nonmoving party. *Newport News Holding Corp. v. Virtual City Vision*, 650 F.3d 423, 434 (4th Cir. 2011).

In ruling on a motion for summary judgment, a court must view the evidence in the light most favorable to the non-moving party. *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 123-24 (4th Cir. 1990). The non-moving party may not oppose a motion for summary judgment with

mere allegations or denials of the movant's pleading, but instead must "set forth specific facts" demonstrating a genuine issue for trial. Fed. R. Civ. P. 56(e); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Shealy v. Winston*, 929 F.2d 1009, 1012 (4th Cir. 1991). All that is required is that "sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Anderson*, 477 U.S. at 249.

#### IV. DISCUSSION

##### A. Magistrate Judge's Report and Recommendation

1. Plaintiffs' motion to certify class and Defendants' motion for partial summary judgment as to declaratory and injunctive relief (ECF Nos. 21, ECF No. 29)

First, the Magistrate Judge found that Plaintiffs' claims for prospective, injunctive, and declaratory relief are moot. ECF No. 74 at 12. The Magistrate Judge determined that the Memorandum issued by Chief Justice Donald W. Beatty of the South Carolina Supreme Court addressed to all South Carolina Magistrate and Municipal Judges mooted Plaintiffs' claims, because "no future injury to Plaintiffs is impending, nor have Plaintiffs shown a substantial controversy of sufficient immediacy." *Id.* at 13 (citing *Super Tire Eng'g Co. v. McCorkle*, 416 U.S. 115, 122 (1974) (requiring allegations to show a substantial controversy of sufficient immediacy and reality to warrant declaratory relief)). The Magistrate Judge acknowledged that Plaintiff Goodwin is still subject to being jailed for failure to pay fines, but has not claimed that he is subject to a live bench warrant. ECF No. 74 at 13 n.3. The Magistrate Judge concluded that absent a showing of a live case or controversy, Plaintiffs' claims for prospective relief should be dismissed as moot, as well as Plaintiffs' motion for class certification being that it relies on claims for prospective relief.<sup>12</sup> *Id.* at 13. Therefore, the Magistrate Judge recommended that the court deny

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<sup>12</sup> Plaintiffs seek class certification only for purposes of Plaintiffs' claims for declaratory and injunctive relief. ECF No. 21 at 2.

Plaintiffs' motion to certify class, ECF No. 21, and grant Defendants' motion for partial summary judgment as to declaratory and injunctive relief, ECF No. 29.

2. Defendants' motion for summary on Plaintiffs' damages claims (ECF No. 50)

i. Judicial Defendants

Second, the Magistrate Judge found that all Judicial Defendants are entitled to absolute immunity. ECF No. 74 at 14. The Magistrate Judge noted that, although Plaintiffs contend that Judicial Defendants are sued for actions they took in their administrative capacities as Chief Judges and Associate Chief Judges, "a closer analysis of Plaintiffs' argument reveals that Plaintiffs do not sue the Judicial Defendants for their actions, but only for alleged omissions, which Plaintiffs couch as 'decisions' not to act in some way." *Id.* The Magistrate Judge found that "the alleged administrative decisions Plaintiffs argue should have been made could only have been made by a judge, evidencing their judicial nature." *Id.* at 16. As such, the Magistrate Judge "was not persuaded that an alleged decision, which can only be made by a judge and that affects the adjudication of a criminal proceeding, can be characterized as a non-judicial administrative decision such that the judge should be deprived of judicial immunity." *Id.* Thus, the Magistrate Judge determined that "allowing an action to proceed against the Judicial Defendants in this instance would virtually eliminate the doctrine of judicial immunity, as any disgruntled litigant could bypass the barrier of judicial immunity by simply suing the chief judge of a court." *Id.* The Magistrate Judge finds that Judicial Defendants are also entitled to immunity from injunctive relief. *Id.* at 19.

ii. Defendant Koon

Third, the Magistrate Judge found that Defendant Koon is entitled to quasi-judicial immunity. ECF No. 74 at 17. The Magistrate Judge noted that Plaintiffs assert "that they sue Koon

for his ‘exercise of administrative authority as the head of the [LCSD] to establish the standard operating procedures that directly and proximately caused Plaintiffs’ unlawful arrest and incarceration.’” *Id.* at 18. Specifically, the Magistrate Judge noted that “Plaintiffs have not alleged Koon or his deputies committed any constitutional violation independently of their action in executing court-ordered bench warrants . . . or how any of Koon’s alleged administrative actions deprived them of their constitutional rights.” *Id.* at 19. Therefore, the Magistrate Judge recommended that Defendant Koon be dismissed as he is entitled to absolute quasi-judicial immunity. *Id.*

iii. Defendant Madsen

Fourth, the Magistrate Judge recommends that Defendant Madsen be dismissed as duplicative. ECF No. 74 at 20. The Magistrate Judge found that Defendant Madsen is sued in his official capacity and that “official capacity suits represent an alternative way of pleading an action against an entity of which an officer is an agent.” *Id.* at 20 (citing *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)). The Magistrate Judge determined that “the parties do not dispute that Madsen is an agent of Lexington County.” *Id.* Therefore, the Magistrate Judge found that “because Plaintiffs have asserted the same causes of action against Lexington County and Madsen, the claims against Madsen are duplicative, and . . . Madsen should be dismissed.” *Id.* at 20.

iv. Defendant Lexington County

Fifth, the Magistrate Judge rejected Defendants’ argument that a damage claim for underfunding the public defender system against Lexington County is “barred based on the lack of causation because a judge could appoint a member of the bar to represent an indigent person if the public defender system did not exist.” *Id.* at 20. The Magistrate Judge reviewed S.C. Code Ann. § 17-3-10, which provides, in relevant part: “Any person entitled to counsel under the

Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless each person voluntarily and intelligently waives his right thereto.” ECF No. 74 at 21. The Magistrate Judge determined that “the statute does not address whether the court may appoint a member of the bar for indigent defendants and therefore is not relevant to causation.” *Id.* Therefore, the Magistrate Judge recommends that Defendants’ motion for summary judgment on their damages claim against Lexington County for failure to afford assistance of counsel be denied without prejudice. *Id.*

**B. Plaintiffs’ Objections to the Report and Recommendation**

Plaintiffs object to the Magistrate Judge’s Report and Recommendation on several grounds. ECF No. 80. First, Plaintiffs argue that their claims for prospective relief remain live following the issuance of Chief Justice’s Memorandum. *Id.* at 25. Plaintiffs claim there is undisputed evidence showing that after the issuance of Chief Justice Beatty’s Memorandum constitutional violations continue to occur against individuals who are arrested on bench warrants and do not receive an inability to pay hearing before the Magistrate Courts. *Id.* at 15, 18. Plaintiffs allege that the Chief Justice’s Memorandum does not address the following: (1) two central constitutional violations challenged by Plaintiffs based on the “ongoing, substantial risk that indigent people will be arrested based on warrants unsupported by probable cause,” and “the ongoing, substantial risk that these indigent people will then be automatically incarcerated when they cannot pay in full their debts to the County Magistrate Courts without any pre-deprivation court hearing involving consideration of ability to pay,” *Id.* at 29; (2) the Memorandum does not bind Defendants’ exercise of administrative and policymaking authority to ensure that violations of Plaintiffs’ constitutional amendment rights cannot be expected to recur in Lexington County;

and (3) the Memorandum does not eliminate the controversy between Plaintiff Goodwin and Defendant Adams “because it does not address the requirements to hold ability to pay hearings and because merely reminding Defendant Adams of constitutional requirements does not ensure she will not violate such requirements in the future.” *Id.* at 48. Thus, Plaintiffs assert there are issues of material fact that must be addressed with respect to the application of the Memorandum issued by Chief Justice Beatty. *Id.* at 33.

In addition, Plaintiffs object to the Magistrate Judge’s findings that the doctrines of judicial and quasi-judicial immunity shield claims against the Judicial Defendants and Defendant Koon. *Id.* at 34. Plaintiff argues that Defendant Adams, Dooley, and Koon may be sued in their official capacities as administrators under *Ex Parte Young*, which provides that “a plaintiff may sue a state actor in his or her official capacity for prospective relief to stop ongoing violations of federal law including 42 U.S.C. § 1983.” ECF No. 80 at 34. Plaintiff argues that *Ex Parte Young* is applicable to this case because Defendants Adam and Koon are responsible for administering procedures at Magistrate Courts and Defendant Koon is responsible for administering procedures at Lexington County Sheriff Department and the Detention Center. *Id.* at 35. Thus, Plaintiffs claim that these Defendants are state actors in their administrative capacity and are not entitled to immunity. *Id.* at 35-36.

Specifically, Plaintiffs argue they “do not challenge any judicial acts or omissions by these Defendants but instead contest their enforcement of county-wide policies in their administrative capacities.” *Id.* at 36. Plaintiffs noted that “whether judges are proper defendants in a § 1983 action depends on whether they are acting as adjudicators or as administrators, enforcers, or advocates.” ECF No. 80 at 36 (citing *Wolfe v. Strankman*, 392 F.3d 358, 365 (9th Cir. 2004)). Plaintiffs further noted that “a judicial defendant’s ‘[a]dministrative decisions, even though they may be essential

to the very functioning of the courts, [are] not . . . regarded as judicial acts.” ECF No. 80 at 36 (citing *Forrester v. White*, 484 U.S. 219, 228 (1988)). As such, Plaintiffs argue that their “prospective claims challenge deliberative administrative decisions that Defendants Adams and Dooley make in their administrative capacities - decisions to limit Magistrate Court dockets; schedules; and hours of operations as well as requests for County funding for court operations to exclude from Magistrate Court practice any hearings to determine the ability to pay of indigent people subject to payment bench warrants.” ECF No. 80 at 38. Therefore, “[b]ecause Plaintiffs challenge conduct that has nothing to do with judges’ exercise of discretion to adjudicate individual cases, Plaintiffs’ prospective relief claims Defendants Adams and Dooley do not fall within Section 1983’s bar on injunctive relief.” *Id.* at 40. Likewise, Plaintiffs argue Defendant Koon “is sued for administrative conduct that extends well beyond the mere execution of bench warrants,” and do not bar injunctive relief claims against Defendant Koon. *Id.* at 41.

Plaintiffs request that the court allow the case to proceed to Fed. R. Civ. P. 56(d)<sup>13</sup> discovery on whether the challenged conduct and whether Plaintiffs’ claims against the individual Defendants concern administrative, rather than judicial or quasi-judicial conduct. *Id.* at 43. Plaintiffs “request time to conduct discovery on whether Defendants ceased the challenged conduct following issuance of the Chief Justice’s Memorandum.” *Id.* at 44. In support thereof, Plaintiffs’ assert that they “have put forward evidence that raises genuine questions of material fact and thus precludes summary judgment for the individual Defendants on Plaintiffs’ damages claims based on judicial and quasi-judicial immunity.” *Id.* Moreover, Plaintiffs argue that they “have submitted a request for production of records concerning policies, procedures . . . and

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<sup>13</sup> Fed. R. Civ. P. 56(d) provides that “[i]f a nonmovant shows by affidavit or declaration that, for specific reasons, it cannot present facts essential to justify its opposition,” the court may, inter alia, permit the requested discovery and defer considering the motion or deny it. Fed. R. Civ. P. 56(d).

training on the imposition of court fines and fees . . . to defeat summary judgment on the basis of judicial and quasi-judicial immunity.” *Id.* at 45. Therefore, Plaintiffs argue the Magistrate Judge erred as a matter of law by not addressing Plaintiffs’ timely requests for Rule 56(d) discovery. *Id.*

Lastly, Plaintiffs claim that neither § 1983 nor judicial immunity bars Plaintiff Goodwin’s declaratory relief against Defendant Adam for conduct in her judicial capacity. *Id.* at 46. Plaintiff Goodwin asserts that Defendant Adam’s ongoing judicial conduct places him at continuing and foreseeable risk of being arrested and incarcerated for nonpayment without a pre-deprivation court hearing and his inability to pay without the assistance of court-appointed counsel. *Id.* at 46. Plaintiffs request that Defendants’ motion for summary judgment be denied and that the court rule on Plaintiffs’ motion for class certification. *Id.* at 47.

### **C. Defendant Lexington County Objections to the Report and Recommendation**

Defendant Lexington County contends that the Magistrate Judge erred in recommending dismissal of the claims against all Defendants except Lexington County. ECF No. 79 at 1. Defendant assert that only one of numerous grounds in its motion for summary judgment was discussed by the Magistrate Judge. *Id.* at 1. Defendant Lexington County argues that the “alleged failures to provide appointed counsel for indigent persons do not give rise to a cause of action for damages against the County.” *Id.* at 2. Defendants cite the following reasons: (1) any alleged underfunding of a public defender system does not, as a matter of law, show proximate cause of any alleged injury; (2) no authority supports Plaintiffs’ claims for damages against a local governing body for alleged failure to fund a public defender system; (3) the damage claims against Lexington County are barred by *Heck* and the *Rooker-Feldman* doctrine. *Id.* at 2-13. Therefore, Defendants request that the court decline to adopt the portion of the Magistrate Judge’s Report and Recommendation that declines to dismiss the damages claims against Lexington County. *Id.* at 13.

## D. Analysis

### 1. Defendants' Motion for Partial Summary Judgment as to Declaratory and Injunctive Relief

At issue in Defendants' motion for summary judgment is whether Chief Justice Beatty's Memorandum renders moot Plaintiffs' claims for declaratory and injunctive relief. "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Telco Commc'n, Inc. v. Carbaugh*, 885 F.2d 1225, 1230 (4th Cir. 1989). "There is, however, a well-recognized exception to the mootness doctrine holding that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Porter v. Clark*, 852 F.3d 358, 364 (4th Cir. 2017). This "exception 'traces to the principle that a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior.'" *Id.* To assert voluntary cessation, "a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Id.* (citing *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 190 (2000); *see also Telco*, 885 F.2d at 1231 (recognizing that "[j]urisdiction, however, may abate if there is no reasonable expectation that the alleged violation will recur and 'interim events have completely and irrevocably eradicated the effects of the alleged violation'")).

Defendants argue Plaintiffs' claims have been addressed by Chief Justice Beatty's Memorandum, which "effectively orders Summary Court Judges to provide the relief sought by Plaintiffs in this case, to the extent such relief was not already being provided." *See* ECF No. 39 at 2. Plaintiffs assert that there are genuine issues of material fact as to the compliance and implementation of the Memorandum in Magistrate Courts. *See* ECF No. 80 at 22. More specifically, Plaintiffs assert that "according to court and Detention Center records, in the 24 days

following issuance of the Memorandum, the County’s Magistrate Court issued 50 new payment bench warrants, and at least 57 people were incarcerated in the Detention Center after being arrested on payment bench warrants issued by a Lexington County Magistrate Court.” *Id.* at 22. After reviewing the record, the court finds there is an issue of material fact as to the application of Chief Justice Beatty’s Memorandum in Magistrate Court and whether the alleged conduct could not reasonably be expected to recur. Therefore, the court denies Defendants’ motion for summary judgment as to declaratory and injunctive relief.

**2. Defendants’ motion for summary judgment on Plaintiffs’ claims for damages.**

“As a general rule, judges acting in their judicial capacity are absolutely immune (in both their individual and official capacities) from suit for monetary damages under the doctrine of judicial immunity.” *Ingram v. Township of Deptford*, 858 F. Supp. 2d 386, 390 (D.N.J. 2012). “Quasi-judicial immunity is given only to public employees who perform judge-like functions and attaches when a public official’s role is functionally comparable to that of a judge.” *Id.* at 390. “Absolute immunity does not apply in every action against a judge or court personnel.” *Id.* “[T]he touchstone for the applicability of the doctrine of judicial immunity is ‘the performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.’” *Id.* “The Supreme Court has stated that judicial immunity does not protect the ‘administrative, legislative, or executive’ acts performed by judges.” *Id.* at 391. “Therefore, it [is] the nature of the function performed, not the identity of the actor who performed it, that informs [] [an] immunity analysis.” *Id.*

Upon reviewing the record, the court finds that there are genuine issues of material fact as to whether Defendants are entitled to judicial and quasi-judicial immunity. Plaintiffs assert that the challenged conduct was administrative in nature case and thus immunity does not apply. On the

other hand, Defendants argue that the doctrines of judicial and quasi-judicial immunity shield them because the challenged conduct pertains to ‘judicial acts’ performed in their official capacities as judges. The court finds that there are issues of material fact as to whether the challenged conduct is considered “administrative” or ‘judicial’ acts, as well as, to the scope of Defendants’ administrative duties in the Magistrate Court. Accordingly, Defendants’ motion for summary judgment as to Plaintiffs’ claims for damages is denied. The matter should proceed to discovery. *See Al Shimari v. CACI Intern, Inc.*, 679 F.3d 205, 220 (4th Cir. 2012) (“[D]isputed questions that arises with respect to claims of immunity are not the exception . . . fundamentally, a court is entitled to have before it a proper record, sufficiently developed through discovery proceedings, to accurately assess any claim, including one of immunity. And even a party whose assertion of immunity proves worthy must submit to the burdens of litigation until a court becomes sufficiently informed to rule.”).

## V. CONCLUSION

For the foregoing reasons, the court DECLINES to adopt the Magistrate Judge’s Report and Recommendation. Plaintiffs’ motion to certify class is DENIED without prejudice. ECF No. 21. Defendants’ motion for partial summary judgment as to declaratory and injunctive relief is DENIED without prejudice, ECF No. 29. Defendants’ motion for summary judgment on damages claim is DENIED without prejudice, ECF No. 50. This matter is recommitted to the Magistrate Judge further pretrial handling.

**IT IS SO ORDERED.**

s/ Margaret B. Seymour  
Margaret B. Seymour  
Senior United States District Court Judge

Dated: March 29, 2018

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Twanda Marshinda Brown, et al., etc., ) Civil Action No. 3:17-1426-MBS  
)  
Plaintiffs, )  
)  
v. ) **NOTICE OF APPEAL**  
)  
Lexington County, South Carolina, et al., )  
)  
Defendants. )  
\_\_\_\_\_ )

Notice is hereby given that Defendants Gary Reinhart, Rebecca Adams and Bryan Koon, in their individual capacities, in the above-captioned case hereby appeal to the United States Court of Appeals for the Fourth Circuit from the portion of the Opinion and Order (Entry 84) entered in this action on March 30, 2018, that declined to dismiss the damage claims against those three Defendants on the basis of judicial immunity and quasi-judicial immunity.

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Columbia, South Carolina

April 26, 2018

The grounds for this motion are set forth more fully in the memorandum in support filed herewith.

Respectfully submitted,

DAVIDSON, WREN & PLYLER, P.A.

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