

**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' RESPONSE TO DEFENDANTS' MOTION TO STAY DEFENDANTS'  
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT**

**INTRODUCTION**

This civil rights lawsuit has been on file for only five months, and Plaintiffs are still awaiting responses to their first discovery requests. Though the factual record is entirely undeveloped, Defendants have filed three separate motions for summary judgment. In an unusual procedural move, Defendants now seek to stay the Court's resolution of the second of those three motions—an effort to prevent Plaintiffs from gathering evidence that will bolster their claims. Plaintiffs respectfully ask the Court to deny Defendants' request and to strike the motion for summary judgment at issue, which rests on the unfounded assertion that Defendants have voluntarily ceased their unlawful conduct. In addition, Plaintiffs respectfully ask the Court to declare that it will not rule on a motion for summary judgment based on voluntary cessation until the factual record is sufficiently developed.

## STATEMENT OF RELEVANT FACTS

Plaintiffs filed this lawsuit on June 1, 2017, challenging Defendants' operation of a modern-day debtor's prison. *See* Dkt. No. 1. From the inception of this action, Plaintiffs assert claims under the U.S. Constitution on behalf of a proposed class of hundreds of indigent people who face an imminent and ongoing risk of arrest and incarceration because they cannot afford to pay money to Lexington County magistrate courts. *See id.*

The case has been active for less than six months, yet Defendants have already filed three motions for summary judgment. *See* Dkt. No. 29, 40, 50. In the second of those motions, which Defendants refer to as a "supplemental" motion for summary judgment on Plaintiffs' declaratory and injunctive relief claims, Defendants argue that Plaintiffs' prospective relief claims are moot because Defendants have voluntarily ceased their unlawful conduct. Dkt. No. 40 at 2–3. Plaintiffs oppose the motion, noting that Defendants have failed to present any evidence of voluntary cessation, let alone evidence sufficient to meet the "formidable burden" of demonstrating it is "absolutely clear" Defendants' conduct could not reasonably be expected to recur. Dkt. No. 43 at 17 (quoting *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000)). Instead, Defendants rest their motion entirely on a short memorandum from South Carolina's Chief Justice, which simply reiterates longstanding legal principles concerning the right to counsel and encourages judges to assess a defendant's ability to pay when imposing fines and fees. *See* Dkt. Nos. 40, 41. In response, Plaintiffs presented public records showing that Defendants' unlawful conduct is continuing despite the Chief Justice's admonishments. *See* Dkt. No. 43 at 25–27; *see also* Dkt. No. 43–1. Plaintiffs also requested time under Rule 56(d) of the Federal Rules of Civil Procedure to conduct the discovery necessary to gather additional evidence to defend against Defendants' premature effort to secure

judgment as a matter of law on Plaintiffs' prospective relief claims. Dkt. No. 43 at 27–31; *see also* Dkt. No. 43–2.

Rather than reply to Plaintiffs' brief, Defendants have taken the odd approach of filing a motion to stay their own supplemental motion for summary judgment. *See* Dkt. No. 49. Defendants readily acknowledge the existence of disputed issues of material fact regarding their allegation of voluntary cessation. Specifically, Plaintiffs identify “a number of Lexington County magistrate court cases in which . . . the directives of Chief Justice Beatty were not followed,” but Defendants maintain these records “are not probative of anything” and “do not provide sufficient information to show what actually happened.” *Id.* at 2. Defendants also acknowledge that “extensive discovery” may be necessary to resolve the issues that they themselves raised in their supplemental motion. *See id.* at 1, n.1. Nevertheless, Defendants propose that their motion be stayed for an indefinite period of time, while reserving the right to reassert the motion if they fail to secure summary judgment on the prospective relief claims through another pending motion or if they secure additional facts to support their allegation of voluntary cessation. *See id.* at 3.

In a separate brief filed one day later, Defendants also ask the Court to stay Plaintiffs' discovery requests as to all Defendants and all claims. *See* Dkt. No. 51.

### **ARGUMENT**

The rules of civil procedure are meant to be “employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1. In this case, however, Defendants have abused those rules in two ways. First, Defendants have filed serial motions for summary judgment without a factual record on which to

determine the existence of genuine issues of material fact. And second, Defendants have sought to keep Plaintiffs from gathering information that will allow them to prove their claims and overcome any legal defenses.

Discovery and development of the record will assist both the parties and the Court in resolving issues on summary judgment, including the issue Defendants prematurely raised in the supplemental motion and apparently intend to raise again at a later date—Defendants’ alleged cessation of the unlawful conduct that has given rise to a modern-day debtor’s prison in Lexington County. Moreover, the interests of judicial economy are best served by a consolidated motion at the close of discovery rather than the piecemeal approach Defendants have thus far taken in this case. Indeed, it would be unfair and prejudicial to allow Defendants to reinstate the supplemental motion before Plaintiffs have been given an opportunity to gather documents and depose Defendants. As Plaintiffs explained in opposition to the supplemental motion, the presumption in favor of granting time to conduct discovery under Rule 56(d) is strong in a case like this where Defendants seek judgment as a matter of law before responding to any discovery requests. *See* Dkt. No. 43 at 27–28.

### **CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully ask the Court to deny the motion to stay Defendants’ supplemental motion for summary judgment (Dkt. No. 49), and to strike the supplemental motion for summary judgment (Dkt. No. 40). In addition, Plaintiffs respectfully ask the Court to declare that it will not rule on a motion for summary judgment based on Defendants’ alleged voluntary cessation until the factual record is sufficiently developed.

Plaintiffs will respond separately to Defendants' motion to stay discovery and ask that the Court allow discovery to proceed.

DATED this 13th day of November, 2017.

Respectfully submitted by,

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