

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

Twanda Marshinda Brown, et al.,	)	C/A No. 3:17-1426-MBS-SVH
	)	
Plaintiffs,	)	
	)	<b>Joint Responses Pursuant to</b>
v.	)	<b>Local Rule 26.03 and FRCP 26(f)</b>
	)	
Lexington County, South Carolina, et al.,	)	
	)	
Defendants.	)	

The following persons participated in the Rule 26(f) conference on August 7, 2017:

Susan K. Dunn, Nusrat J. Choudhury, Toby J. Marshall, and Eric R. Nusser, representing the Plaintiffs, by teleconference.

William H. Davidson, II, and Kenneth P. Woodington, representing the Defendants, by teleconference.

At the conference, the parties agreed to propose the attached Consent Amended Scheduling Order.

In addition, the parties submit the following information in response to Local Rule 26.03 and FRCP 26(f).

**A. Local Rule 26.03 Queries**

**1. Short Statement of the Facts**

**a. Plaintiffs**

Plaintiffs bring this case on their own behalf, seeking damages for their arrest and incarceration in the Lexington County Detention Center (“Detention Center”). Plaintiffs Goodwin and Wright also bring this case on behalf of similarly situated indigent people who face the threat of future arrest and incarceration for non-payment of fines, fees, and costs imposed by Lexington County magistrate courts (“magistrate courts”) as a result of misdemeanor convictions, seeking declaratory and injunctive relief.

Plaintiffs are all indigent people who pled guilty or were convicted of traffic violations or other misdemeanor crimes in magistrate courts located in Lexington County. Plaintiffs were

sentenced by these courts to pay fines and fees, and/or to be incarcerated if they could not pay fines and fees. When Plaintiffs were unable to pay these debts as a result of their poverty, they were arrested and incarcerated in the Detention Center pursuant to magistrate court bench warrants for periods of time ranging from 7 to 63 days. Plaintiffs allege the lack of access to legal representation in court proceedings, the lack of due process, and the arrest and incarceration over legal financial obligations they were or are unable to pay violated their Fourteenth, Sixth, and Fourth Amendment rights under the United States Constitution.

**b. Defendants**

This case presents several sets of distinct circumstances, which vary according to the circumstances of each of the individual Plaintiffs. There are no policies, either written or unwritten, that govern the outcome of the individual cases of the Plaintiffs. Each case is determined on its own facts.

Pertinent facts regarding the specific cases of the individual Plaintiffs have been set forth in the affidavit of Colleen Long, ECF No. 29-2.

**2. Fact Witnesses**

**a. Plaintiffs**

**i. Plaintiff Twanda Brown**

Ms. Brown is expected to testify regarding her poverty; the traffic citations she received; the magistrate court proceeding in which she was sentenced to pay more than \$2,400 in fines and fees; her inability to pay those fines and fees as a result of her poverty; her arrest and incarceration for 63 days in the Detention Center due to nonpayment of magistrate court fines and fees; the constitutional violations she suffered; and the physical, emotional, and financial toll her incarceration has taken on her and her family.

**ii. Plaintiff Sasha Darby**

Ms. Darby is expected to testify regarding her poverty; the misdemeanor citation she received; the magistrate court proceeding at which she was convicted and sentenced to pay \$1,000 in fines and fees; her inability to pay those fines and fees as a result of her poverty; her arrest and incarceration for 20 days in the Detention Center due to nonpayment of magistrate court fines and fees; the constitutional violations she suffered; and the physical, emotional, and financial toll her incarceration has taken on her and her family.

**iii. Plaintiff Cayeshia Johnson**

Ms. Johnson is expected to testify regarding her poverty; the misdemeanor citation she received; her inability to attend the trial at which she was convicted in her absence and sentenced to pay \$1,200 in fines and fees or spend 80 days in jail; her efforts to secure a new trial date; her inability to pay those fines and fees as a result of her poverty; her arrest and incarceration for 55 days in the Detention Center due to nonpayment of magistrate court fines and fees; the constitutional violations she suffered; and the physical, emotional, and financial toll her incarceration has taken on her and her family.

iv. Plaintiff Amy Palacios

Ms. Palacios is expected to testify regarding her poverty; the traffic citation she received; her inability to attend the trial at which she was convicted in her absence and sentenced to pay \$647.50 in fines and fees or spend 30 days in jail; her efforts to secure a new trial date; her inability to pay those fines and fees as a result of her poverty; her arrest and incarceration for 21 days in the Detention Center due to nonpayment of magistrate court fines and fees; the constitutional violations she suffered; and the physical, emotional, and financial toll her incarceration has taken on her and her family.

v. Plaintiff Nora Corder

Ms. Corder is expected to testify regarding her poverty; the traffic citations she received; her experience of appearing in court numerous times for trial on these citations due to continuances by the officer who cited her; her inability to attend the trial at which she was convicted in her absence of all charges and sentenced to pay \$1,320 in fines and fees or spend 90 days in jail; her inability to pay those fines and fees as a result of her poverty; her arrest and incarceration for 54 days in the Detention Center due to nonpayment of magistrate court fines and fees; the constitutional violations she suffered; and the physical, emotional, and financial toll her incarceration has taken on her.

vi. Plaintiff Xavier Goodwin

Mr. Goodwin is expected to testify regarding his poverty; the traffic citations he received; his inability to attend the trial at which he was convicted in his absence and sentenced to pay \$1,710 in fines and fees or spend 90 days in jail; his inability to pay those fines and fees as a result of his poverty; his arrest and incarceration for 63 days in the Detention Center due to nonpayment of magistrate court fines and fees; the constitutional violations he suffered; and the physical, emotional, and financial toll his incarceration has taken on him and his family; the magistrate court proceeding in which he was sentenced to pay \$2100 for a traffic citation; his continuing inability to pay those fines and fees; the constitutional violations he continues to suffer.

vii. Plaintiff Raymond Wright, Jr.

Mr. Wright is expected to testify regarding his poverty; the traffic citations he received; the trial at which he was convicted and sentenced to pay \$666.93 in fines and fees or spend 30 days in jail; his inability to pay those fines and fees as a result of his poverty; his arrest and incarceration for 7 days in the Detention Center due to nonpayment of magistrate court fines and fees; his emergency hospitalization while incarcerated in the Detention Center as the result of inadequate medical attention; the constitutional violations he suffered; and the physical, emotional, and financial toll his incarceration has taken on him and his family.

viii. Class Members

Members of the proposed Class are expected to testify regarding their poverty; receiving misdemeanor and traffic citations; the magistrate court proceedings at which they were convicted for traffic and misdemeanor offenses; the magistrate court proceedings at which they were sentenced to pay fines and fees or incarceration; their inability to pay magistrate court fines and fees as a result of their poverty; their arrest and incarceration in the Lexington County Detention Center due to nonpayment of magistrate court fines and fees; the constitutional violations they suffered and continue to suffer; and the physical, emotional, and financial toll their incarceration has taken on them and their families.

ix. Defendant Gary Reinhart

Mr. Reinhart is expected to testify regarding the policies, practices, customs, and standard operating procedures of the Lexington County magistrate courts related to hearings and trials for criminal defendants charged with misdemeanors and traffic offenses; the appointment of counsel; the imposition and collection of legal financial obligations (“LFOs”), including through Scheduled Time Payment (“STP”) Agreements with criminal defendants, show cause hearings, and the issuance of bench warrants; and other practices, procedures, and courses of conduct giving rise to the constitutional violations alleged in this matter.

x. Defendant Rebecca Adams

Ms. Adams is expected to testify regarding the policies, practices, customs, and standard operating procedures of the Lexington County magistrate courts related to conducting trials for criminal defendants charged with misdemeanors and traffic offenses; the appointment of counsel; imposition and collection of LFOs, including through STP Agreements with criminal defendants, show cause hearings, and the issuance of bench warrants for non-payment of LFOs; and other practices, procedures, and courses of conduct giving rise to the constitutional violations alleged in this matter.

xi. Defendant Albert J. Dooley, III

Mr. Dooley is expected to testify regarding the policies, practices, customs, and standard operating procedures of the Lexington County magistrate courts related to conducting trials for criminal defendants charged with misdemeanors and traffic offenses; the appointment of counsel; imposition and collection of LFOs, including through STP Agreements with criminal defendants, show cause hearings, and the issuance of bench warrants for non-payment of LFOs; and other practices, procedures, and courses of conduct giving rise to the constitutional violations alleged in this matter.

xii. Defendant Bryan Koon

Mr. Koon is expected to testify regarding the policies, practices, customs, and standard operating procedures of the Lexington County Sheriff's Department and Detention Center related to the execution of bench warrants issued by the Lexington County magistrate courts for non-payment of LFOs and the booking and incarceration of people arrested on those warrants; the collection of LFOs from arrestees; the remission of money collected from arrestees to Lexington County and magistrate courts; and other practices, procedures, and courses of conduct giving rise to the constitutional violations alleged in this matter.

xiii. Defendant Robert Madsen

Mr. Madsen is expected to testify regarding the policies, practices, customs, and standard operating procedures of the Lexington County Public Defender's Office and the Office of the Eleventh Judicial Circuit of South Carolina related to the lack of representation of criminal defendants in Lexington County magistrate courts; the funding for and expenditures of the Lexington County Public Defender's Office; the imposition and collection of public defender application fees ; the assignment of public defenders to represent indigent people in court; the assignment of public defenders to meet with indigent people incarcerated in the Lexington County Detention Center; and other practices, procedures, and courses of conduct giving rise to the constitutional violations alleged in this matter.

xiv. Current and Former Members of the Lexington County Council

Current and former members of the Lexington County Council are expected to testify regarding the policies, practices, customs, and standard operating procedures of Lexington County related to funding for the Lexington County Public Defender's Office; the provision of court-appointed representation to indigent defendants in Lexington County magistrate courts; the imposition and collection of LFOs from defendants in magistrate court cases involving criminal and traffic offenses; and the generation of Lexington County revenue from collection of magistrate court LFOs.

xv. Current and Former Employees of Lexington County

Current and former employees of Lexington County are expected to testify regarding the policies, practices, customs, and standard operating procedures of Lexington County related to funding for the Lexington County Public Defender's Office; the provision of court-appointed representation to indigent defendants in Lexington County magistrate courts; the imposition and collection of LFOs from defendants in magistrate court cases involving criminal and traffic offenses; and the generation of Lexington County revenue from collection of magistrate court LFOs.

xvi. Current and Former Employees of Lexington County Magistrate Courts

Current and former employees of Lexington County magistrate courts are expected to testify regarding the policies, practices, customs, and standard operating procedures of Lexington County magistrate courts related to hearings and trials for criminal defendants charged with misdemeanors and traffic offenses; the appointment of counsel; the imposition and collection of legal financial obligations ("LFOs"), including through Scheduled Time Payment ("STP") Agreements with criminal defendants, show cause hearings, and the issuance of bench warrants; and other practices, procedures, and courses of conduct giving rise to the constitutional violations alleged in this matter.

xvii. Current and Former Employees of the Lexington County Sheriff's Department

Current and former employees of the Lexington County Sheriff's Department are expected to testify regarding the policies, practices, customs, and standard operating procedures of the Lexington County Sheriff's Department and Detention Center related to the execution of bench warrants issued by the Lexington County magistrate courts for non-payment of LFOs and the booking and incarceration of people arrested on those warrants; the collection of LFOs from arrestees; the remission of money collected from arrestees to Lexington County and magistrate courts; and other practices, procedures, and courses of conduct giving rise to the constitutional violations alleged in this matter.

xviii. Current and Former Employees of the Lexington County Public Defender's Office

Current and former employees of the Lexington County Public Defender's Office are expected to testify regarding the policies, practices, customs, and standard operating procedures of the Lexington County Public Defender's Office related to the lack of representation of criminal defendants in Lexington County magistrate courts; the funding for and expenditures of the Lexington County Public Defender's Office; the imposition and collection of public defender application fees ; the assignment of public defenders to represent indigent people in court; the assignment of public defenders to meet with indigent people incarcerated in the Lexington

County Detention Center; and other practices, procedures, and courses of conduct giving rise to the constitutional violations alleged in this matter.

**b. Defendants**

1. Defendants Gary Reinhart, Rebecca Adams and Albert J. Dooley, III

These three Defendants may testify regarding the case-specific nature of decisions of the Lexington County summary courts related to hearings and trials for criminal defendants charged with misdemeanors and traffic offenses; the specific facts of the individual Plaintiffs' cases handled by any of these three Defendants; the appointment of counsel and/or the waiver of the right to counsel; the imposition and collection of fines, including through Scheduled Time Payment ("STP") Agreements with criminal defendants, show cause hearings, and the issuance of bench warrants, and the absence of written or unwritten policies governing the determination of the Plaintiffs' individual cases.

2 Defendant Bryan Koon

Mr. Koon may testify to the facts concerning the execution of bench warrants issued by the Lexington County summary courts for non-payment of fines, and other matters that may require his testimony as this litigation develops.

3. Defendant Robert Madsen

Mr. Madsen is expected to testify regarding the funding for and expenditures of the Lexington County Public Defender's Office; the imposition and collection of public defender application fees; the assignment of public defenders to represent indigent people in court; the assignment of public defenders to meet with indigent people incarcerated in the Lexington County Detention Center; and other matters that require his testimony as this litigation develops.

4 Current and Former Members of the Lexington County Council

Current and former members of the Lexington County Council may testify regarding the funding for the Lexington County Public Defender's Office; the provision of court-appointed representation to indigent defendants in Lexington County summary courts; the imposition and collection of LFOs from defendants in magistrate court cases involving criminal and traffic offenses; and the generation of Lexington County revenue from collection of magistrate court LFOs.

5. Current and Former Employees of Lexington County

These individuals may testify regarding the funding for the Lexington County Public Defender's Office; the provision of court-appointed representation to indigent defendants in

Lexington County summary courts; the imposition and collection of LFOs from defendants in summary court cases involving criminal and traffic offenses; and the generation of Lexington County revenue from collection of magistrate court LFOs.

6 Current and Former Employees of Lexington County Summary Courts

These individuals may testify regarding the funding for the Lexington County Public Defender's Office; the provision of court-appointed representation to indigent defendants in Lexington County summary courts; the imposition and collection of LFOs from defendants in summary court cases involving criminal and traffic offenses; and the generation of Lexington County revenue from collection of magistrate court LFOs.

**3. Expert Witnesses**

**a. Plaintiffs**

The parties have not yet identified expert witnesses but have agreed to comply with the expert disclosure deadlines set forth in the Proposed Consent Amended Scheduling Order.

**b. Defendants**

The parties have not yet identified expert witnesses but have agreed to comply with the expert disclosure deadlines set forth in the Proposed Consent Amended Scheduling Order.

**4. Claims and Defenses**

**a. Plaintiffs**

Fourteenth Amendment – 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). *See, e.g., Bearden v. Georgia*, 461 U.S. 660 (1983); *Alexander v. Johnson*, 742 F.2d 117 (4th Cir. 1984).

Sixth Amendment – Failure to Afford Assistance of Counsel (in violation of the Sixth Amendment to the U.S. Constitution and 42 U.S.C. § 1983). *See, e.g., Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Scott v. Illinois*, 440 U.S. 367 (1979); *Shelton v. Alabama*, 535 U.S. 654 (2002).

Fourth Amendment – Unconstitutional Seizure (in violation of the Fourth Amendment to the U.S. Constitution and 42 U.S.C. § 1983). *See Brooks v. City of Winston-Salem, N.C.*, 85 F.3d 178, 184 (4th Cir. 1996) (“[T]he Fourth Amendment ‘requires that arrests be made based upon probable cause . . . .’”) (quoting *Taylor v. Waters*, 81 F.3d 429, 436 (4th Cir. 1996)).



**b. Defendants**

Defendants' initial set of defenses has already been set forth in Defendants' Motion for Partial Summary Judgment, ECF No. 29. These defenses include mootness, lack of standing, the absence of a case or controversy, and the application of *Younger v. Harris* to bar all of Plaintiffs' claims for declaratory and injunctive relief.

With regard to the damage claims, Defendants will assert judicial immunity, *see, e.g., Stump v. Sparkman*, 435 U.S. 349 (1978); the absence of policies on which liability can be based, *see, e.g., Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), failure to state a claim on which relief may be granted, denial of liability and, depending on the ultimate relief sought by Plaintiffs, other affirmative defenses as set forth in the Defendants' Answers.

**5. Scheduling**

Scheduling is addressed in the Proposed Consent Amended Scheduling Order.

**6. Circumstances Affecting Time Frame**

Lead counsel for the Plaintiffs in this matter is scheduled to participate in trial in the Eastern District of Wisconsin during the last two weeks of February 2018.

Counsel for Defendants do not present have scheduling conflicts.

**7. Additional Information Requested in the Pre-Scheduling Order**

**a. Magistrate Judge**

The parties do not agree to consent to a trial before a United States Magistrate Judge.

**B. Additional 26(f) Responses**

**1. Nature and Basis of Claims**

The nature and basis of the claims in this case are discussed above in Items A.1. and A.4.

**2. Possibilities for Prompt Settlement**

The parties are unable to determine the prospects for settlement at this time but will reassess settlement prospects as discovery proceeds.

**3. Initial Disclosures**

The parties intend to make their initial disclosures on September 13, 2017, in accordance with the Proposed Consent Amended Scheduling Order.

**4. Preserving Discoverable Information**

The parties agree to preserve electronic and non-electronic discoverable information.

**5. Discovery Plan**

The parties stipulated to amend certain discovery deadlines. A Proposed Consent Amended Scheduling Order is being submitted the Court concurrently with this report.

Plaintiffs will seek discovery on topics including but not limited to Defendants' policies, practices, and customs related to the imposition and collection of LFOs; the arrest and incarceration of defendants for non-payment of LFOs; the funding and assignment of public defenders to represent defendants in magistrate courts; and the generation of County revenue through the collection of LFOs. Plaintiffs may depose the named Defendants as well as current and former members of the Lexington County Council.

The parties do not believe that modifications to ordinary procedures regarding claims of privilege or discovery limitations are necessary at this time.

Respectfully submitted by,

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SUSAN K. DUNN (Fed. Bar # 647)  
American Civil Liberties Union Foundation of  
South Carolina  
P.O. Box 20998  
Charleston, South Carolina 29413-0998  
Telephone: (843) 282-7953  
Facsimile: (843) 720-1428  
Email: sdunn@aclusc.org

NUSRAT J. CHOUDHURY, *Admitted pro hac vice*  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, New York 10004  
Telephone: (212) 519-7876  
Facsimile: (212) 549-2651  
Email: nchoudhury@aclu.org

TOBY J. MARSHALL, *Admitted pro hac vice*  
ERIC R. NUSSER, *Admitted pro hac vice*  
Terrell Marshall Law Group PLLC  
936 North 34th Street, Suite 300  
Seattle, Washington 98103  
Telephone: (206) 816-6603  
Facsimile: (206) 319-5450  
Email: tmarshall@terrellmarshall.com  
Email: eric@terrellmarshall.com

*Attorneys for Plaintiffs*

s/ Kenneth P. Woodington

WILLIAM H. DAVIDSON, II (Fed. Bar # 425)  
KENNETH P. WOODINGTON (Fed. Bar #4741)

DAVIDSON & LINDEMANN, P.A.  
1611 DEVONSHIRE DRIVE, 2ND FLOOR  
POST OFFICE BOX 8568  
COLUMBIA, SOUTH CAROLINA 29202-8568  
wdavidson@dml-law.com  
kwoodington@dml-law.com  
T: 803-806-8222  
F: 803-806-8855

*Attorneys for Defendants*