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

PLAINTIFFS' MEMORANDUM IN SUPPORT OF AMENDED MOTION FOR CLASS CERTIFICATION

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I. INTRODUCTION

Lexington County, South Carolina, is home to a modern-day debtors' prison. Each year, hundreds of indigent people, if not more than a thousand, are arrested and incarcerated simply because they lack the means to pay fines and fees for traffic citations and other low-level offenses imposed by Lexington County magistrate courts. Once arrested, these people never see a judge, never have a hearing, and never receive the advice of counsel. Rather, they are taken to the Lexington County Detention Center ("Detention Center") and forced to spend weeks or even months in jail. Indeed, at this very moment, scores of indigent people are locked inside the Detention Center for no reason other than their poverty.

A few months ago, Plaintiff Xavier Larry Goodwin received a traffic ticket that resulted in the imposition of $2,163 in magistrate court fines and fees. Starting June 5, 2017, Mr. Goodwin was required to pay a minimum of $100 per month toward this debt until it is satisfied in full. Mr. Goodwin is indigent and struggling to support himself, his wife, and his children following his release from nearly three months in jail and the loss of his home. Although he recently secured employment and was able pay $100 by June 23, 2017, Mr. Goodwin and his family remain homeless and he cannot afford to pay the monthly payment that was due on July 5, 2017. Thus, Mr. Goodwin faces an imminent and substantial threat of being arrested and jailed.

Similarly, Plaintiff Raymond Wright, Jr., received a traffic ticket that resulted in the imposition of $666.93 in magistrate court fines and fees. Mr. Wright is indigent, disabled and unemployed. His only income is from monthly disability insurance payments, which he uses to help support his wife, daughter, and two grandchildren who live with him. Mr. Wright was able to make five $50 monthly payments toward his debt in 2016; however, he is unable to pay the remaining $416.93 he owes. Thus, Mr. Wright also faces an imminent and substantial threat of

being arrested and jailed.

Plaintiffs Goodwin and Wright bring this action on behalf of themselves and the following proposed 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." Mr. Goodwin and Mr. Wright seek to remedy ongoing violations of the Fourteenth, Sixth, and Fourth Amendments to the United States Constitution. Those violations include lack of due process, denial of equal protection of the laws, failure to provide assistance of counsel, and unreasonable seizure.

Five of the Defendants in this action contribute to these ongoing violations in one or more ways.[1] Defendants Rebecca Adams and Albert J. Dooley, III, for example, are responsible for administering the operation of magistrate courts in Lexington County. In their official capacities as the final administrative policymakers for those courts, Defendants Adams and Dooley oversee, enforce, and sanction the systemic misuse of payment bench warrants by Lexington County magistrate courts—warrants that call for the arrest and incarceration of indigent people who are unable to pay their outstanding magistrate court fines and fees in full. Defendants Adams and Dooley also oversee, enforce, and sanction standard operating procedures for magistrate courts that routinely deprive these indigent people of ability-to-pay hearings and the assistance of counsel before lengthy incarceration.

Defendant Bryan Koon is the chief law enforcement officer of the Lexington County Sheriff's Department ("LCSD") and the chief administrator of the Detention Center. In his official capacity as Sheriff, Defendant Koon executes payment bench warrants and jails indigent people who are unable to pay their outstanding magistrate court fines and fees in full. Defendant

[1] Defendant Gary Reinhart is the only defendant who is not sued for declaratory and injunctive relief by Plaintiffs Goodwin and Wright. He is sued in his individual capacity by six plaintiffs in this action solely for damages for past conduct during his tenure as the chief administrative policymaker for Lexington County's magistrate courts.

Koon also sanctions the systemic misuse of payment bench warrants.

Defendant Lexington County is a municipal governmental entity. Lexington County has a longstanding policy and custom of failing to adequately fund public defense. This custom is so pervasive and widespread as to be authorized by policymaking officials. Indeed, the County's final decision-maker has made a deliberate decision not to provide the funds necessary to ensure that indigent people in the County's magistrate courts or Detention Center receive assistance of counsel when incarcerated or facing the threat of incarceration.

Defendant Robert Madsen is the Circuit Public Defender for the Eleventh Judicial Circuit in South Carolina, which includes Lexington County. In his official capacity as Circuit Public Defender and as a final decision-maker for Lexington County, Defendant Madsen fails to adequately fund or allocate the resources necessary for public defense in Lexington County magistrate courts. As a result of Defendant Madsen's actions, indigent people are routinely deprived of assistance of counsel when they face incarceration in the Detention Center for nonpayment of magistrate court fines and fees or the imposition of a jail sentence suspended on the condition of payment.

Certification of the Class is appropriate under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The proposed Class is so numerous that joinder of all members is impracticable. There is commonality between the claims of Plaintiffs Goodwin and Wright and those of the Class, all of which are based on the uniform, ongoing actions of Defendants, and raise factual and legal issues that can be resolved at once for the entire Class. There is also typicality among the claims because they arise from the same courses of conduct and are based on the same legal and equitable theories. Plaintiffs and their counsel will adequately and zealously represent the interests of the Class. Finally, Defendants are acting or refusing to act on

grounds that apply generally to the Class, making final declaratory or injunctive relief appropriate as to the Class as a whole. For these reasons, Plaintiffs Goodwin and Wright respectfully ask the Court to grant their motion.

II. BACKGROUND

A. Lexington County is home to a modern-day debtors' prison.

1. Lexington County relies on the collection of substantial fines and fees from indigent defendants under threat of incarceration.

Defendant Lexington County is a municipal governmental entity located in the central part of South Carolina. According to 2015 U.S. Census figures, 14.2 percent of Lexington County's nearly 274,000 residents were living in poverty—a 14.5 percent increase from 2012. *See* Amended Class Action Complaint ("Am. Complaint") ¶¶ 38, 58. This recent increase has hit Black and Latino residents the hardest, with 26.1 percent of Black residents and 27.7 percent of Latino residents living in poverty. *Id.* ¶ 39. Comparatively, only 10.7 percent of Lexington County's white residents are poor. *Id.* Stark racial disparities in poverty rates in neighboring Richland County are comparable. *Id.* ¶¶ 38–39. Under the circumstances, a significant portion of the residents of Lexington County and surrounding areas who are cited for traffic violations and other low-level offenses are likely to suffer from poverty, particularly if they are Black or Latino. *Id.* ¶ 40.

Despite these statistics, Lexington County relies heavily on the collection of fines and fees from traffic and other misdemeanor convictions as a critical source of General Fund revenue. *Id.* ¶¶ 41–46. In particular, the County relies on fines and fees generated by the Central Traffic Court and six district magistrate courts spread throughout the County. *Id.* ¶ 43. Magistrate courts in South Carolina are courts of limited jurisdiction. *Id.* ¶ 42. In Lexington County, the magistrate courts have county-wide territorial jurisdiction over certain categories of

criminal and traffic offenses. *Id*. These courts routinely sentence people to the payment of hefty fines and fees for misdemeanor traffic and criminal cases. *Id.* ¶ 89.

Each year, Lexington County sets ambitious projections for General Fund revenue from the collection of fines and fees paid by defendants in traffic and misdemeanor criminal cases. *Id*. ¶ 43. The County's magistrate courts deliver. *See id*. ¶ 45. In fiscal year 2015–2016, for example, the magistrate courts collected a total of $1,420,154 in revenue. *Id*. ¶ 46. Of that amount, the Central Traffic Court generated more than $1,000,000 and the Irmo Magistrate Court generated more than $122,000. *Id*. Thus, these two courts together produce the lion's share of fines and fees revenue for the County's General Fund from traffic and criminal cases. *Id*.

2. Lexington County magistrate courts routinely impose significant fines and fees on indigent defendants and then issue bench warrants ordering the arrest and incarceration of those who are unable to pay.

Defendants Adams and Dooley administer operations for the Lexington County magistrate courts as, respectively, Chief Judge and Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County. Am. Complaint ¶¶ 80–87. In those capacities, Defendants Adams and Dooley oversee, enforce, and sanction standard operating procedures that routinely deprive indigent people of ability-to-pay hearings and the assistance of counsel before subjecting them to lengthy incarceration for nonpayment of magistrate court fines and fees. *Id*. ¶ 88, 102–109. Specifically, the magistrate court system follows two general policies: the Default Payment Policy and the Trial in Absentia Policy. *Id*. ¶¶ 88–109. Both policies involve the widespread misuse of payment bench warrants to arrest and incarcerate indigent people in violation of their constitutional rights. *Id*. ¶¶ 92, 104.

a. The Default Payment Policy is routinely implemented when defendants are unable to fully pay fines and fees at sentencing.

When an indigent defendant appears in a Lexington County magistrate court to answer

for traffic or other misdemeanor charges, the magistrate judge will usually take a plea and, if that plea is not guilty, hold a bench trial. Am. Complaint ¶¶ 189, 191, 194. Where the indigent defendant pleads guilty or is otherwise convicted but cannot afford to pay the full amount of fines and fees imposed at sentencing, the Default Payment Policy goes into effect. *Id*. ¶¶ 88–98.

Under the Default Payment Policy, indigent people are ordered to make installment payments, usually on a monthly basis in steep amounts beyond their financial means. *Id*. ¶ 90. When an indigent defendant fails to pay in the time or amount required, a standard payment bench warrant is issued ordering the arrest and jailing of the defendant for a specified number of days unless the full amount of fines and fees owed is paid. *Id*. ¶ 92. Indigent defendants are routinely arrested and incarcerated for weeks to months at a time pursuant to these payment warrants. *See id*. ¶¶ 12, 124–28, 136. At no point before the warrant is executed is the indigent defendant brought before a judge for a hearing to inquire into 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. *Id*. ¶ 96. Likewise, at no point before the warrant is executed is the defendant notified of the right to request court-appointed counsel, despite facing incarceration for nonpayment. *Id*. ¶ 97.

b. <u>The Trial in Absentia Policy is routinely implemented when defendants do not appear on misdemeanor charges</u>.

When an indigent defendant is unable to appear or otherwise does not appear in court to answer for the charges alleged on a citation, Lexington County magistrate courts routinely proceed without the defendant, hold a bench trial, impose a conviction in absentia, and sentence the person to a term of incarceration suspended on the payment of fines and fees. Am. Complaint ¶¶ 92–109. Typically, within a week of the date on which the sentence was imposed, a payment bench warrant is issued ordering the arrest and jailing of the defendant for a specified number of

days unless the full amount of fines and fees owed is paid. *Id*. ¶ 104. Indigent defendants are routinely arrested and incarcerated for weeks to months at a time pursuant to these payment warrants. *See id*. ¶¶ 12, 124–28, 136. At no point before the warrant is executed is the indigent defendant brought before a judge for a hearing to inquire into 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. *Id*. ¶ 105. Likewise, at no point before the warrant is executed is the defendant notified of the right to request court-appointed counsel, despite facing incarceration for nonpayment. *Id*. ¶ 106.

c. The Default Payment and Trial in Absentia Policies are contrary to the law of South Carolina.

The Default Payment and Trial in Absentia Policies squarely contradict South Carolina law and directives from the Supreme Court of South Carolina, both of which permit the use of bench warrants only for the purpose of securing a defendant's appearance in court. Am. Complaint ¶ 117. For example, 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 likewise makes clear that "bench warrants . . . are to be used only for the purpose of bringing a defendant before a court." Am. Complaint ¶ 117. And a memorandum from John Patrick, the Assistant Director of the South Carolina Office of Court Administration to Magistrate and Municipal Judges dated November 24, 1980, explained and transmitted the South Carolina Supreme Court's Order concerning the proper use of bench warrants. *Id*.

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." Am. Complaint ¶ 118 (quoting South Carolina Judicial Department, Summary Judges Benchbook, Chapter C, "Warrants."). 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." *Id*. (quoting South Carolina Judicial Department, Summary Judges Benchbook, Chapter C, "Warrants.").

d. Lexington County magistrate courts issue more than a thousand payment bench warrants per year in accordance with the Default Payment and Trial in Absentia Policies, resulting in the arrest and incarceration of hundreds of indigent people.

Lexington County magistrate court records demonstrate the widespread use of payment bench warrants to coerce fine and fee payments. Am. Complaint ¶ 402. Each time a payment bench warrant is issued, the issuing court enters a notation of "Failure to Comply" or "Archived Bench Warrant" in the applicable case record. Papachristou Decl. ¶¶ 4–12. A search of online records from the period of February 1 to March 31, 2017, shows that Lexington County magistrate courts recorded such a notation in 204 cases corresponding to 183 separate individuals. *Id*. ¶ 17. If payment bench warrants are issued at the same rate throughout the year, more than 1,000 people annually are subjected to bench warrants for nonpayment of fines and fees imposed by Lexington County magistrate courts. *Id*. ¶ 19.

When a payment bench warrant is issued under the Default Payment or Trial in Absentia

Policies, it is transmitted to the warrant division of the Lexington County Sheriff's Department for execution. Am. Complaint ¶ 122. When the LCSD executes the warrant, it transports the arrested person to the Lexington County Detention Center. *Id*. ¶¶ 125, 127. A review of online Detention Center records confirms that the routine use of payment bench warrants results in the widespread arrest and incarceration of indigent people. *Id*. ¶ 411.

For example, during the four-week period from May 1 to May 28, 2017, Lexington County incarcerated 95 people under a primary charge listed as either "Magistrate Court Bench Warrant" or "Magistrate/Municipal Court Bench Warrant." Nusser Decl. ¶ 4.[2] The largest total number of people incarcerated under such a charge on any given day was 63, and the average daily total was 43. *Id*. ¶¶ 10–11. These inmates owed fines and fees of between $232.50 and $3,470.00, with the average debt being $960.60. *Id*. ¶¶ 13–14.

Based on this information, it is fair to estimate that hundreds of indigent people are incarcerated each year on bench warrants issued for nonpayment of fines and fees imposed in Lexington County magistrate courts. Am. Complaint ¶ 414. The average number of people jailed under such warrants on any given day during the sampled four-week period amounted to 7.22 percent of the total inmate population. *Id*. In 2015, 12,100 people were booked in the Detention Center, and in 2016 the total number was 10,980. *Id*. Assuming that 10,000 people are booked in the Detention Center in 2017, it is likely that more than 700 will be incarcerated on a bench warrant issued for nonpayment of magistrate court fines and fees this year alone. *Id*.

[2] Because the Detention Center uses the notation "Magistrate/Municipal Court Bench Warrant" on certain occasions, it is possible that one or more of the 95 individuals was arrested on a municipal court bench warrant. Nusser Decl. ¶ 7. But a review of publicly available, online case records indicates that at least 57 of the 95 individuals identified were arrested on a bench warrant issued by a Lexington County magistrate court. *Id*. The issuing courts for the other 38 individuals could not be determined based on online court records. *Id*.

B. Defendants are collectively responsible for ongoing violations of the constitutional rights of Plaintiffs Goodwin and Wright, and members of the Class.

Indigent defendants have critically important rights under the Constitution of the United States. For example, the Due Process and Equal Protection Clauses of the Fourteenth Amendment have long prohibited the imprisonment of people for the failure to pay court-imposed fines or restitution if the failure is due to an inability to pay. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983). Accordingly, courts must conduct a pre-deprivation inquiry into a person's ability to pay, efforts to secure resources to pay, and the adequacy of alternatives to incarceration before the person may be jailed for nonpayment of fines, fees, court costs, restitution or other court debts. *Id.* And courts are prohibited from jailing people for failure to pay without making at least one of the following findings: (1) the failure to pay 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. *Id.* at 672–73.

Furthermore, the Sixth Amendment requires that indigent defendants are afforded the assistance of court-appointed counsel when sanctioned with actual incarceration for nonpayment of a court-ordered legal financial obligation, when sentenced to a term of incarceration suspended upon the payment of fines and fees, and when the incarceration portion of a suspended sentence is enforced against them. *See Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972); *Shelton v. Alabama*, 535 U.S. 654 (2002). The Sixth Amendment also prohibits systemic deficiencies in funding, staffing, and assignment of cases to public defenders that result in the denial of the right to counsel to indigent defendants. *See, e.g.*, *Miranda v. Clark County*, 319 F.3d 465, 471 (9th Cir. 2003) (holding that a county could be liable for depriving the right to counsel based on resource allocation and case assignment policies); *Wilbur v. City of Mount*

Vernon, 989 F. Supp. 2d 1122, 1133 (W.D. Wash. 2013) ("The Court finds that the combination of contracting, funding, legislating, and monitoring decisions . . . caused the truncated case handling procedures that have deprived indigent criminal defendants [of Sixth Amendment rights].").

Finally, the Fourth Amendment prohibits unreasonable seizures and requires that an arrest warrant be supported by a judicial determination of probable cause that an individual has committed, is committing, or will commit a criminal offense. *United States v. Turner*, 933 F.2d 240, 244 (4th Cir. 1991) ("All seizures by the government must comport with the fourth amendment which guarantees freedom from 'unreasonable searches and seizures'" and provides "no Warrants shall issue, but upon probable cause." (quoting U.S. Const. amend. IV)). A warrant unsupported by probable cause is invalid and cannot be used to arrest an individual. *See Whiteley v. Warden, Wyo. State Penitentiary*, 401 U.S. 560, 564 (1971).

As explained below, five of the Defendants in this case are directly connected to, and responsible for, ongoing violations of one or more of these constitutional rights in relation to Plaintiffs Goodwin and Wright, and members of the Class. Specifically, these Defendants systemically and routinely deprive indigent people of the right to an ability-to-pay hearing before incarceration for nonpayment of fines and fees owed to Lexington County magistrate courts, the right to assistance of counsel to defend against unlawful incarceration, and the right to be free from seizures based on arrest warrants unsupported by probable cause of criminal activity.

1. <u>As the administrators of the Lexington County magistrate courts, Defendants Adams and Dooley cause ongoing violations of the Fourteenth, Sixth, and Fourth Amendments</u>.

By order of the South Carolina Supreme Court, Defendants Adams and Dooley exercise administrative responsibility over the Lexington County magistrate courts. Am. Complaint ¶¶ 28, 30. Among other things, Defendants Adams and Dooley establish and institute standard

operating procedures applicable to all of the County's magistrate courts, including procedures concerning the collection of fines and fees; designate the hours of operation of those courts and determine their nighttime and weekend schedules; assign cases to magistrate court judges across the County; coordinate the planning of budgets for the courts; administer the County Bond Court; and request County funding for magistrate court operations. *Id*. ¶ 27. Defendants Adams and Dooley also have oversight authority over nine magistrate court judges and 24 court staff who operate Lexington County magistrate courts. *Id*. ¶ 112.

Under the direction and supervision of Defendants Adams and Dooley, magistrate judges and court staff implement the Default Payment and Trial in Absentia Policies. *Id*. ¶ 111. Defendants Adams and Dooley direct court staff to alert magistrate judges when people have failed to pay monthly installments as ordered or have failed to appear in court on traffic or criminal charges, both of which routinely trigger the issuance of bench warrants under the Default Payment and Trial in Absentia Policies. *Id*. ¶ 112.

As the administrative leadership responsible for coordinating between Lexington County magistrate courts and the South Carolina 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 them to court, contrary to South Carolina law and directives from the Supreme Court of South Carolina and the Office of Court Administration. *Id*. ¶ 113. Nevertheless, Defendants Adams and Dooley make a deliberate decision not to correct 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. *Id*. ¶¶ 10, 114. Likewise, Defendants Adams and

Dooley make a deliberate decision not to use any of these administrative powers to ensure that magistrate court judges and staff under their supervision afford pre-deprivation ability-to-pay hearings and representation by court-appointed counsel to indigent people facing incarceration for nonpayment, which would require magistrate judges and court staff to spend additional time and resources to resolve traffic and misdemeanor criminal cases. *Id*. ¶¶ 10, 116. Finally, Defendants Adams and Dooley make a deliberate 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 the original magistrate court that issued the payment bench warrant for a post-deprivation ability-to-pay hearing and appointment of counsel to guard against continued unlawful incarceration. *Id*. ¶¶ 133, 135.

For these reasons, Defendants Adams and Dooley are connected to and responsible for ongoing violations of the constitutional rights of indigent people who owe magistrate court fines and fees, including Plaintiffs Goodwin and Wright, and Class members. *Id*. ¶¶ 6, 87.

2. As the chief law enforcement officer of Lexington County and chief administrator of the Detention Center, Defendant Koon causes ongoing violations of the Fourteenth, Sixth, and Fourth Amendments.

Defendant Koon is the chief law enforcement officer of the Lexington County Sheriff's Department and the chief administrator of the Detention Center. Am. Complaint ¶¶ 9, 31, 121–29, 136. In these capacities, Defendant Koon 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, including Plaintiffs Goodwin and Wright, and Class members. *Id*. Under Defendant Koon's direction and supervision, LCSD officers execute payment bench warrants at people's homes, during traffic and pedestrian stops, and elsewhere. *Id*. 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. *Id*. Indigent people who are unable to pay remain in jail without seeing a judge, having a hearing, or receiving the advice of counsel. *Id*. Thus, Defendant Koon is connected to and responsible for ongoing violations of the constitutional rights of indigent people who owe magistrate court fines and fees, including Plaintiffs Goodwin and Wright, and Class members. *Id*. ¶¶ 466, 474.

3. As the County's final policymakers for the provision of indigent defense, Defendants Lexington County and Madsen cause ongoing violations of the Sixth Amendment.

Defendants Lexington County and Madsen have a constitutional duty to operate a public defense system that provides assistance of counsel to indigent people facing incarceration in cases handled by Lexington County magistrate courts, including Plaintiffs Goodwin and Wright, and Class members. Am. Complaint ¶ 47. Despite this obligation, Defendants Lexington County and Madsen systemically and routinely deprive indigent people of the right to assistance of counsel to defend against unlawful incarceration ordered by Lexington County magistrate courts for nonpayment of fines and fees. *Id*. ¶ 48.

Under South Carolina law, Defendant 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. *Id*. ¶ 49. Defendant Madsen is responsible for seeking, and the County is responsible for providing, resources for public defender services in the County's magistrate courts. *Id*. ¶ 50. Defendant Madsen submits annual requests for funding to Defendant Lexington County and meets with County officials to justify budgetary requests. *Id*. Defendant Madsen also exercises final decision-making authority over the expenditure of resources appropriated by Defendant Lexington County for public defender services and is the final authority on whether public

defenders are assigned to serve indigent defendants in magistrate court proceedings and Bond Court. *Id.* ¶ 51.

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 for adequate public defense in all of the county's courts. *Id.* ¶ 53. County funding for public defense is therefore critical to ensuring that public defenders are appointed to represent indigent people in the County's courts, including magistrate courts. *Id.* ¶ 52.

Defendants Lexington County and Madsen have made, and continue to make, a deliberate decision to inadequately fund public defender services for indigent people facing incarceration in magistrate court cases involving misdemeanor traffic and criminal offenses. *Id.* ¶¶ 11, 55. In fact, Defendant Lexington County provides less than half the amount of funding for public defender services provided by South Carolina counties of comparable population size. *Id.* ¶¶ 11, 57. According to U.S. Census estimates, Lexington County had a 2015 population of 273,843 while York County had a slightly smaller population of 240,076 and Spartanburg County had a slightly larger population of 291,240. *Id.* ¶ 58. In fiscal year 2015-2016, Defendant Lexington County allocated only $514,306 for public defender services. *Id.* That same year, York County and Spartanburg County each provided more than double that amount with York County allocating $1,369,721 and Spartanburg County allocating $1,116,169. *Id.*

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 Defendant Lexington County's funding for indigent defense. *Id.* ¶ 59. In fiscal year 2015-2016, Lexington County provided only 50 percent of the amount received from the state for public defender services, while York County provided 155 percent of the amount received in state

funding and Spartanburg County provided 101 percent. *Id*.

As a result of the deliberate funding and resource allocation decisions 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. *Id*. ¶ 62. In light of the volume of magistrate court cases in which indigent people face incarceration, this level of staffing is entirely inadequate. *Id*. Consequently, no public defender is present in Lexington County magistrate court for the purpose of being appointed to represent an indigent person when a judge conducts critical proceedings that involve the imposition of a sentence of incarceration or a sentence that may lead to incarceration—proceedings in which the Sixth Amendment affords a right to counsel. *Id*. ¶ 63. Likewise, no public defender is present in the Bond Court adjacent to the Detention Center for immediate appointment to represent indigent people who were arrested and incarcerated on payment bench warrants. *Id*. ¶ 64. Nor is any public defender assigned to interview people booked in the Detention Center on magistrate court bench warrants, which would facilitate identifying indigent people who were incarcerated without being afforded representation by court-appointed counsel. *Id*.

For these reasons, the policies, practices, customs, standard operating procedures, acts and omissions of Defendants Lexington County and Madsen directly and proximately cause ongoing violations of the rights of indigent people to the assistance of counsel, including Plaintiffs Goodwin and Wright, and members of the Class. *Id* ¶ 459.

III. AUTHORITY AND ARGUMENT

Discovery has yet to begin in this action, but Plaintiffs' attorneys have already gathered substantial evidence showing that Lexington County is home to a modern-day debtors' prison and that members of the proposed Class are routinely subjected to violations of their Fourteenth,

Sixth, and Fourth Amendment rights. Defendants have engaged, and continue to engage, in common courses of conduct that proximately cause one or more of these violations. Because Defendants are acting or refusing to act on grounds generally applicable to the proposed Class, final injunctive relief and corresponding declaratory relief are appropriate to the Class as a whole. Accordingly, Plaintiffs Goodwin and Wright respectfully ask the Court to certify this case as a class action in accordance with Rule 23(a) and (b)(2).

A. Plaintiffs Goodwin and Wright satisfy the requirements for class certification under Rule 23(a).

"District courts have wide discretion in deciding whether or not to certify a class and their decisions may be reversed only for abuse of discretion." *Central Wesleyan College v. W.R. Grace & Co.*, 6 F.3d 177, 185 (4th Cir. 1993); *see also Berry v. Schulman*, 807 F.3d 600, 608 (4th Cir. 2015) ("[W]e give 'substantial deference' to a district court's certification decision, recognizing that a 'district court possesses greater familiarity and expertise than a court of appeals in managing the practical problems of a class action.'" (citation omitted)). That said, "federal courts should 'give Rule 23 a liberal rather than restrictive construction, adopting a standard of flexibility in application which will in the particular case best serve the ends of justice for the affected parties and . . . promote judicial efficiency.'" *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 424 (4th Cir. 2003) (ellipses in original) (quoting *In re A.H. Robins*, 880 F.2d 709, 740 (4th Cir. 1989)).

Courts may not consider the sufficiency of the evidence as to elements of plaintiffs' claims on class certification. *Gunnells*, 348 F.3d at 428 (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974) ("We find nothing in either the language or history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action.")). Similarly, "[t]he likelihood of the plaintiffs'

success on the merits . . . is not relevant to the issue of whether certification is proper." *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006). "[C]ertification as a class action serves important public policy purposes. In addition to promoting judicial economy and efficiency, class actions also 'afford aggrieved persons a remedy if it is not economically feasible to obtain relief through the traditional framework of multiple individual . . . actions.'" *Gunnells*, 348 F.3d at 424 (citation omitted).

There are four prerequisites to class certification: numerosity of parties, commonality of factual or legal issues, typicality of claims, and adequacy of representation. Fed. R. Civ. P. 23(a); *see also Thorn*, 445 F.3d at 318. For the reasons set forth below, Plaintiffs Goodwin and Wright satisfy each of these requirements.

1. Plaintiffs Goodwin and Wright satisfy the numerosity requirement.

The first prerequisite for certification is for the proposed class "[t]o be so large that 'joinder of all members is impracticable.'" *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001) (quoting Fed. R. Civ. P. 23(a)(1)). No specific number is required. *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984). And "[w]here the relief sought for the class is injunctive and declaratory in nature even speculative and conclusory representations as to the size of the class suffice as to the requirement of many." *Doe v. Charleston Area Med. Ctr., Inc.*, 529 F.2d 638, 645 (4th Cir. 1975) (citation and internal marks omitted).

Such speculation is unnecessary here. According to publicly available court records, Lexington County magistrate courts annually target more than a thousand people with payment bench warrants, placing these people at risk of arrest and incarceration for nonpayment of fines and fees without the pre-deprivation ability-to-pay hearings required by law. Papachristou Decl. ¶ 19. Public records also show that the Lexington County Sheriff's Department arrests hundreds

of indigent people each year and incarcerates them for nonpayment of magistrate court fines and fees. During a recent four-week period, for example, Lexington County arrested at least 57 (and perhaps as many as 95) indigent people on magistrate court bench warrants and jailed them in the Detention Center because they could not afford fines and fees in the average amount of $960.60. Nusser Decl. ¶ 14.

Joinder of hundreds of indigent people who owe fines and fees to Lexington County magistrate courts is impracticable. Indeed, the Fourth Circuit has approved certification of classes that are much smaller. *See, e.g.*, *Brady*, 726 F.2d at 145 (holding "a class as large as 74 persons is well within the range appropriate for class certification"); *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967) (affirming certification of class of 18 African-American doctors in civil rights lawsuit against publicly-funded hospital).

In addition, joinder is also impracticable due to the transitory nature of the pre-deprivation claims Plaintiffs seek to litigate. Numerous Class members are at risk of future arrest and incarceration for nonpayment of debts they currently owe. Most of these members will have their fines and fees written off after spending several weeks or months in jail, rendering their claims for declaratory and prospective relief moot. In these circumstances, class certification is appropriate. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 51–52 (1991).

For these reasons, the numerosity requirement is satisfied.

2. There are numerous common questions of fact and law.

The second prerequisite for class certification is that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The existence of even a single common question will satisfy this requirement. *EQT Prod. Co. v. Adair,* 764 F.3d 347, 360 (4th Cir. 2014). The common question "must be of such a nature that its determination 'will resolve an issue that is central to the validity of each one of the claims in one stroke.'" *Id.* (quoting *Wal-Mart Stores,*

Inc. v. Dukes, 564 U.S. 338, 350 (2011)). "[S]emantic dexterity in crafting a common contention is not enough. Commonality instead 'requires the plaintiff to demonstrate that the class members have suffered the same injury[.]'" *Brown v. Nucor Corp.*, 785 F.3d 895, 909 (4th Cir. 2015) (quoting *Dukes*, 564 U.S. at 350). "Where the injuries complained of by named plaintiffs allegedly result from the same unlawful pattern, practice, or policy of the defendants, the commonality requirement is usually satisfied." *Moodie v. Kiawah Island Inn Co., LLC*, 309 F.R.D. 370, 377 (D.S.C. 2015) (citation omitted).

Members of the proposed Class, including Mr. Goodwin and Mr. Wright, are indigent people who owe fines and fees in cases handled by Lexington County magistrate courts. They face actual or imminent violations of their rights under the Fourteenth, Sixth, and Fourth Amendments to the United States Constitution. *See* Section II.A, *supra*. Those violations are a direct result of Defendants' uniform courses of conduct, which give rise to the following common questions of fact and law:

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 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 failing to adequately fund public defense for people charged with traffic and other low-level offenses handled in the County's magistrate courts;

s. Whether Defendant Lexington County's practice of failing to adequately fund 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 failing to adequately fund 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 Lexington County Detention Center for failure to pay 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 the 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.

Am. Complaint ¶ 430.

Finally, there are common questions as to whether the members of the proposed Class are entitled to declaratory and injunctive relief. Given the numerous common questions of fact and law, the commonality requirement is satisfied.

3. The claims of Plaintiffs Goodwin and Wright are typical of the claims of the Class.

The third prerequisite for certification is that the claims of the named plaintiffs are typical of the proposed class they seek to represent. Fed. R. Civ. P. 23(a)(3). "The typicality requirement is met if a plaintiff's claim arises from the same event or course of conduct that gives rise to the claims of other class members and is based on the same legal theory." *Moodie*, 309 F.R.D. at 378 (citation omitted). "The essence of the typicality requirement is captured by the notion that 'as goes the claim of the named plaintiff, so go the claims of the class.'" *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006) (quoting *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 340 (4th Cir.1998)).

"The Fourth Circuit has held that, in analyzing Rule 23(a)(3)'s typicality requirement, courts must identify a 'cognizable injury' held by the named plaintiffs 'similar to the injuries suffered by the other class members.'" *Noel v. Hudson Distrib. Servs., Inc.*, 274 F.R.D. 187, 191 (D.S.C. 2011) (quoting *McClain v. South Carolina Nat'l Bank*, 105 F.3d 898, 903 (4th Cir. 1997)). "Typicality does not require that every class representative have exactly the same claims as every member of the class." *Moodie*, 309 F.R.D. at 378.

The claims of Plaintiffs Goodwin and Wright are typical of the claims of the Class because all claims arise from common courses of conduct in which five Defendants engage,

which result in the arrest and incarceration of indigent people on payment bench warrants issued by Lexington County magistrate courts without pre-deprivation ability-to-pay hearings and the assistance of court-appointed counsel. *See* Section II.A, *supra*. Furthermore, all claims against a given Defendant are based on the same legal and equitable theories. *See* Section II.B, *supra*. If Plaintiffs Goodwin and Wright succeed in their claims and establish that the acts, omissions, courses of conduct, policies, practices, customs, and standard operating procedures of these five Defendants violate the law, that ruling and any accompanying injunctive relief will benefit every other member of the proposed Class. For these reasons, the typicality element is satisfied.

4. Plaintiffs Goodwin and Wright and their counsel will fairly and adequately protect the interests of the Class.

The fourth prerequisite for certification is a finding that the named plaintiff will fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23(a)(4) & (g)(1). The adequacy requirement "is 'a two-pronged inquiry, requiring evaluation of: (1) whether class counsel are qualified, experienced, and generally able to conduct the proposed litigation; and (2) whether Plaintiffs' claims are sufficiently interrelated with and not antagonistic to the class claims as to ensure fair and adequate representation.'" *Moodie*, 309 F.R.D. at 378 (quoting *Lott v. Westinghouse Savannah River Co., Inc.*, 200 F.R.D. 539, 561 (D.S.C. 2000)). With respect to the adequacy of counsel, the Court considers the work counsel has done to investigate the claims of the proposed class, counsel's experience in handling complex cases, counsel's knowledge of applicable law, and the resources counsel will commit to representing the Class. Fed. R. Civ. P. 23(g)(1)(A). With respect to plaintiffs, "[t]he analysis is intended 'to ensure that the parties are not simply lending their names to a suit controlled entirely by the class attorney.'" *Monroe v. City of Charlottesville*, 579 F.3d 380, 385 (4th Cir. 2009) (citations omitted). Where the lawsuit is complex, "such as one in which the defendant's liability can be established only after a great

deal of investigation and discovery by counsel against a background of legal knowledge, the representative need not have extensive knowledge of the facts of the case in order to be an adequate representative." *Gunnells*, 348 F.3d at 430 (citation and internal quotation marks omitted).

With respect to the first element, Plaintiffs Goodwin and Wright have retained a competent and capable team of trial lawyers with significant experience in class actions and matters involving civil rights. *See* Choudhury Decl. ¶¶ 2, 7; Marshall Decl. ¶¶ 2, 5; Dunn Decl. ¶ 2. The attorneys representing Mr. Goodwin and Mr. Wright have been appointed as class counsel in numerous actions. *See id*. They have successfully litigated cases in both state and federal courts, often on behalf of thousands of people. *See id*. Finally, counsel for Mr. Goodwin and Mr. Wright have worked extensively to investigate the claims brought on behalf of the Class, are dedicated to prosecuting those claims, and have the resources to do so. *See* Choudhury Decl. ¶¶ 11–12; Marshall Decl. ¶¶ 10–11; Dunn Decl. ¶ 6.

With respect to the second element, the claims of Plaintiffs Goodwin and Wright against Defendants are coextensive with, and not antagonistic to, the claims asserted on behalf of the proposed Class. Indeed, Mr. Goodwin, Mr. Wright, and members of the Class have the same injuries in that they are indigent people who face actual or imminent arrest and incarceration because of their inability to pay fines and fees owed to Lexington County magistrate courts. Am. Complaint ¶ 426. Mr. Goodwin and Mr. Wright seek to obtain prospective declaratory and injunctive relief that will ensure Defendants stop violating Class members' rights under the Fourteenth, Sixth, and Fourth Amendments to the United States Constitution. Am. Complaint ¶¶ 422–76. If they are successful, the relief they obtain will benefit all Class members equally. Finally, Mr. Goodwin and Mr. Wright have demonstrated a commitment to prosecuting this

action vigorously on behalf of the Class. Choudhury Decl. ¶ 13. For these reasons, the adequacy requirement is satisfied.

5. The Class members are readily identifiable.

The Fourth Circuit has "repeatedly recognized that Rule 23 contains an implicit threshold requirement that the members of a proposed class be 'readily identifiable.'" *EQT Prod.*, 764 F.3d at 358 (quoting *Hammond v. Powell*, 462 F.2d 1053, 1055 (4th Cir. 1972)). "A class cannot be certified unless a court can readily identify the class members in reference to objective criteria." *Id.* "The plaintiffs need not be able to identify every class member at the time of certification. But '[i]f class members are impossible to identify without extensive and individualized fact-finding or 'mini-trials,' then a class action is inappropriate.'" *Id.* (citation omitted).

Plaintiffs Goodwin and Wright propose a definition of the Class that is based on objectively determinable criteria: (1) indigence and (2) an obligation to pay fines, fees, court costs, assessments, or restitution in one or more Lexington County magistrate court cases. As such, members of the Class are readily identifiable from documents in the possession of Defendants, including court records, bench warrant records, arrest records, booking records, and inmate rosters. Accordingly, the ascertainability requirement is satisfied.

B. Plaintiffs Goodwin and Wright meet the requirements for certification under Rule 23(b)(2).

In addition to the four requirements of Rule 23(a), "the class action must fall within one of the three categories enumerated in Rule 23(b)." *EQT Prod.*, 764 F.3d at 357 (quoting *Gunnells*, 348 F.3d at 423). Here, Plaintiffs Goodwin and Wright seek certification under Rule 23(b)(2), which was specifically created for civil rights cases challenging a common course of conduct. *Thorn*, 445 F.3d at 330; *see also* Fed. R. Civ. P. 23 advisory committee's note to 1966 Amendment, Subdivision (b)(2) (noting "various actions in the civil-rights field" are appropriate

for (b)(2) certification). Certification under Rule 23(b)(2) is appropriate where "the party opposing the class acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Berry*, 807 F.3d at 608 (quoting Fed. R. Civ. P. 23(b)(2)).

Each Defendant is acting or refusing to act on grounds generally applicable to all members of the Class. Defendants Adams and Dooley oversee, enforce, and sanction the systemic misuse of payment bench warrants to arrest and incarcerate indigent people who cannot afford to pay legal financial obligations to Lexington County magistrate courts. Defendants Adams and Dooley also maintain a magistrate court system that routinely deprives indigent people of pre-deprivation ability-to-pay hearings and the assistance of court-appointed counsel to defend against incarceration. Defendant Koon executes payment bench warrants and jails indigent people who cannot afford to pay the full amount of debt identified on the face of the warrants before booking. Defendant Lexington County fails to adequately fund public defense. And Defendant Robert Madsen similarly fails to adequately fund or allocate the resources necessary for public defense.

Furthermore, a judgment from the Court declaring that Defendants are violating the constitutional rights of Class members and the entry of an injunction requiring Defendants to remedy those violations will apply equally to all Class members. Accordingly, certification of the Class under Rule 23(b)(2) is appropriate.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs Goodwin and Wright respectfully ask the Court to certify the proposed Class under Rule 23(b)(2); appoint Xavier Larry Goodwin and Raymond Wright, Jr., as the Class representatives; and appoint the American Civil Liberties Union

Foundation, the American Civil Liberties Union Foundation of South Carolina, and Terrell Marshall Law Group PLLC as Class counsel.

DATED this 21st day of July, 2017.

Respectfully submitted by,

s/ Susan K. Dunn
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