UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Twanda Marshinda Brown, *et al.*, Plaintiffs, v. Lexington County, South Carolina, *et al.*, Defendants.	Civil Action No. 3:17-cv-01426-MBS-SVH

PLAINTIFFS' MEMORANDUM IN SUPPORT OF SECOND 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, if they cannot pay the full amount owed, they are taken to the Lexington County Detention Center ("Detention Center") and forced to spend weeks or even months in jail in violation of their rights under the Fourteenth, Sixth, and Fourth Amendments to the U.S. Constitution. Plaintiffs Xavier Larry Goodwin and Raymond Wright, Jr. bring claims for declaratory and injunctive relief under 42 U.S.C. § 1983 to challenge the policies, practices, and customs that cause the unlawful, widespread, and automatic arrest and incarceration of indigent people who cannot pay money to Lexington County magistrate courts. This motion requests that the Court certify a proposed Class and separately requests that the Court approve undersigned counsel to serve as class counsel.

Plaintiff Xavier Larry Goodwin received a traffic ticket that resulted in the imposition of $2,163 in magistrate court fines and fees with monthly payments of $100 due starting on June 5, 2017. Mr. Goodwin is indigent and struggles to support himself, his wife, and his children following his release in April 2017 from nearly three months in jail and the related loss of his home. Although Mr. Goodwin secured employment and was able pay $100 by June 23, 2017, Mr. Goodwin has been unable to afford additional payments because he continues to struggle financially and his family remains homeless. Thus, Mr. Goodwin is at substantial risk 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 with monthly payments due starting on July 26, 2016. Mr. Wright is indigent, disabled and unemployed. His only income is from monthly disability insurance payments, which he has used to help support his family. Mr. Wright was able to make five $50 monthly payments toward his debt in 2016; however, at the time he filed his claims in this action on July 21, 2017, he was unable to pay the remaining $416.93 owed. Thus, at the time his claims were added to this action, Mr. Wright also faced a substantial risk of being arrested and jailed.[1]

Plaintiffs Goodwin and Wright bring claims for prospective relief 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 Fourteenth, Sixth, and Fourth Amendment rights. Those violations include lack of due process, denial of equal protection of the law, failure to provide assistance of counsel, and unreasonable seizure.

All but one of the Defendants in this action contribute to these ongoing violations in one or more ways.[2] Defendants Rebecca Adams and Albert J. Dooley, III, for example, are responsible for administering the operation of magistrate courts in Lexington County. In their

[1] Mr. Wright brought his claims in the Amended Class Action Complaint on July 21, 2017. ECF No. 20. Approximately five days later, Mr. Wright was arrested for nonpayment of the money he owed to a Lexington County magistrate court, and he was jailed for seven days. *See* Long Decl. (ECF No. 29–2) ¶ 3f; Wright Decl. (ECF No. 35–2) ¶ 14. The Second Amended Class Action Complaint, filed on October 19, 2017, is currently the operative pleading in this action. ECF No. 48.

[2] 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 all named Plaintiffs in this action solely for damages for past conduct taken during his tenure as the chief administrative policymaker for Lexington County's magistrate courts.

exercise of administrative authority, 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 engage in administrative conduct by which they maintain 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 and the chief administrator of the Lexington County Detention Center. In the exercise of his administrative responsibilities, Defendant Koon 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 sanctions and oversees the misuse of payment bench warrants and the jailing of indigent people who are unable to pay their outstanding magistrate court fines and fees in full upon arrest.

Defendant Lexington County ("the County") is a municipal governmental entity that maintains a longstanding policy and custom of failing to adequately provide public defense in the County's magistrate courts. This custom is so pervasive and widespread as to be authorized by the County's final policymakers, which include Robert Madsen, the Circuit Public Defender for the Eleventh Judicial Circuit in South Carolina.[3] Indeed, the County's final policymakers have made a deliberate decision not to provide the funds or to assign the staff necessary to operate a

[3] Plaintiffs named Madsen as a Defendant on two claims in the Second Amended Complaint. *See* EFC No. 48 ¶¶ 462–77 (Claim Two), ¶¶ 495–503 (Claim Five). Plaintiffs are going to voluntarily dismiss their claims against Madsen because they concede that these claims are duplicative of those against the County due to the fact that Madsen was sued solely in his official capacity as a County final policymaker for provision of indigent defense in the County's magistrate courts.

public defense system that ensures the provision of counsel to indigent people before they are incarcerated for money they cannot pay to magistrate courts. This is true of Madsen even though he is responsible under state law for allocating resources and staff to ensure adequate public defense in the County's courts, but fails to adequately fund or allocate the resources necessary for public defense in the County's magistrate courts. As a result of the County and Madsen's actions, indigent people are routinely deprived of the assistance of counsel before being incarcerated when they cannot pay fines and fees to the County's magistrate courts.

As discussed in detail below, Plaintiffs Goodwin and Wright satisfy each of the elements of Rule 23(a) of the Federal Rules of Civil Procedure—numerosity, commonality, typicality, and adequacy—show that the proposed Class is ascertainable, and demonstrate that class-wide treatment is appropriate under Rule 23(b)(2). The proposed Class is so numerous that joinder of all members is impracticable. Plaintiffs have alleged and submitted evidence demonstrating that there is commonality between the claims of Plaintiffs Goodwin and Wright and those of the proposed 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 proposed Class. Members of the proposed Class are ascertainable using objectively determinable criteria. Finally, Defendants are acting or refusing to act on grounds that apply generally to the proposed 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 people under threat of incarceration.

Defendant Lexington County is a municipal governmental entity that relies on magistrate court fines and fees as a crucial revenue source even as the percentage of County residents living in poverty has risen in recent years. According to 2015 U.S. Census figures, 14.2 percent of the County's nearly 274,000 residents were living in poverty—a 14.5 percent increase from 2012. *See* Second Amended Class Action Complaint (ECF No. 48) ¶¶ 38, 58. This 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 revenue. *Id.* ¶¶ 41–46. In particular, the County relies on fines and fees generated by the Central Traffic Court and six district magistrate courts located throughout the County. *Id.* ¶ 43. Magistrate courts in South Carolina are courts of limited jurisdiction. *Id*. ¶ 42. In Lexington County, magistrate courts have county-wide territorial jurisdiction over certain categories of criminal and traffic offenses and routinely impose hefty fines and fees. *Id*. ¶¶ 42, 89.

Each year, Lexington County sets ambitious projections for General Fund revenue from the collection of fines and fees paid for traffic and misdemeanor violations. *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 County 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 fine and fee revenue for the County's General Fund from traffic and criminal cases. *Id.*

2. Under the administrative direction of Defendants Adams and Dooley, Lexington County magistrate courts routinely misuse bench warrants to collect unpaid fines and fees from indigent people who face unlawful arrest and incarceration.

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. ECF No. 48 ¶¶ 80–87. Under pressure to generate County revenue, Defendants Adams and Dooley have prioritized fine and fee collection over the protection of indigent people's rights. In their deliberate exercise of administrative authority, Defendants Adams, Dooley, and Koon maintain standard operating procedures that lead to the 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. *Id.* ¶¶ 88–109. Specifically, these administrators maintain two policies: the Default Payment Policy and the Trial in Absentia Policy. *Id.* 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 indigent people are unable to make installment payments toward fines and fees.

When an indigent defendant appears in a Lexington County magistrate court to answer for a traffic or misdemeanor charge, the magistrate judge will usually take a plea and, if that plea is not guilty, hold a bench trial. *See* ECF No. 48 ¶¶ 189, 191, 194. Where an 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 person fails to pay in the time or amount required, a standard payment bench warrant is automatically issued ordering the arrest and jailing of the individual for a specified number of days unless the full amount of fines and fees owed is paid. *Id*. ¶ 92. Indigent people 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 nonpayment, the individual'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 individual notified of the right to request court-appointed counsel, despite facing incarceration for nonpayment. *Id*. ¶ 97.

b. The Trial in Absentia Policy is routinely implemented when indigent people cannot pay fines and fees imposed due to nonappearance in magistrate court.

When an indigent defendant is unable to appear or otherwise does not appear in magistrate court to answer for a traffic or misdemeanor charge, 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. ECF No. 48 ¶¶ 102–109. Typically, within a week of the date on which the sentence is imposed, a payment bench warrant is automatically issued ordering the arrest and jailing of the individual for a specified number of days unless the full amount of fines and fees owed is paid. *Id*. ¶ 104. Indigent people 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 person brought before a judge for a hearing to inquire into the reasons for nonpayment, the individual'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 individual 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 South Carolina law.

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. ECF No. 48 ¶ 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." ECF No. 48 ¶ 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." ECF No. 48 ¶ 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. ECF No. 48 ¶ 411. 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. (ECF No. 21–8) ¶¶ 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 one thousand 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. ECF No. 48 ¶ 121. When the Sheriff's Department executes the warrant, the Department transports the arrested person to the Detention Center. *Id.* ¶ 127. A review of online Detention Center records confirm that the routine use of payment bench warrants results in the widespread arrest and incarceration of indigent people. *Id.* ¶ 411.

For example, during the 24-day period from September 15 to October 9, 2017, Lexington County incarcerated 114 people under a primary charge listed as either "Magistrate Court Bench Warrant" or "Magistrate/Municipal Court Bench Warrant." Nusser Decl. (ECF No. 43–1) ¶ 9.[4] The average daily total number of people incarcerated under such a charge was 50. *Id.* ¶ 14. These inmates owed fines and fees of between $100 and $2,125, with an average debt of $912.57. *Id.* ¶¶ 18–19.

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 owed to Lexington County magistrate courts. ECF No. 48 ¶ 423. The average number of people jailed under such warrants on any given day during the sampled 24-day period from September to October 2017 amounted to 7.22 percent of the total inmate population. *Id.* Assuming that

[4] Because the Detention Center uses the notation "Magistrate/Municipal Court Bench Warrant" on certain occasions, it is possible that one or more of the 114 individuals was arrested on a bench warrant issued by a municipal court rather than a magistrate court. ECF No. 43–1 ¶ 12. But a review of publicly available, online case records indicates that at least 57 of the 114 individuals identified were arrested on a bench warrant issued by a Lexington County magistrate court. *Id.* ¶¶ 12–13. The issuing courts for the other 57 individuals could not be determined based on online court records. *Id.* ¶ 12.

around 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.*[5]

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

Indigent people who owe court fines and fees have critically important rights under the U.S. Constitution. 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 people are afforded the assistance of court-appointed counsel when sanctioned with actual incarceration for nonpayment of a court-ordered legal financial obligation, whether incarceration is implemented immediately after sentencing or when the incarceration portion of a suspended sentence is enforced against them. *See Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972); *Alabama v. Shelton*, 535 U.S. 654,

[5] It is reasonable to estimate that around 10,000 people will be incarcerated in the Detention Center in 2017 based on inmate population figures from previous years. In 2015, 12,100 people were booked in the Detention Center, and in 2016 the total number was 10,980. ECF No. 48 ¶ 423.

673–74 (2002). The Sixth Amendment also prohibits local governments from engaging in policies, practices, and customs that cause systemic deficiencies in funding, staffing, and assignment of cases to public defenders with the result that indigent people are deprived of court-appointed counsel. *See, e.g.*, *Miranda v. Clark Cty.*, 319 F.3d 465, 471 (9th Cir. 2003) (holding 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, all but one 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 proposed 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. As the administrators of the Lexington County magistrate courts, Defendants Adams and Dooley cause ongoing violations of the Fourteenth, Sixth, and Fourth Amendments.

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. *See, e.g.*, S.C. Sup. Ct. Order (June 28, 2017) ¶¶ 3–8, 12, 17.[6] 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. *See* S.C. Sup. Ct. Order (June 28, 2017).

As the administrative leadership responsible for establishing uniform procedures for collecting court fines and fees in cases handled by Lexington County magistrate courts, Defendants Adams and Dooley deliberately implement and enforce county-wide policies and practices seeking to elicit payment of these fines and fees through the Default Payment and Trial in Absentia Policies. As such, Defendants Adams and Dooley sanction and maintain the automatic issuance of bench warrants to arrest and incarcerate indigent people who cannot immediately pay money to County magistrate courts, 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

[6] *Available at* http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-06-28-01. 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.

Court Administration. *See* ECF No. 48 ¶¶ 6–8, 10, 113. Defendants Adams and Dooley 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. *Id*. ¶¶ 10, 116. 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. *Id.* Finally, Defendants Adams and Dooley make a deliberate decision to neither require nor ensure that indigent people booked in jail on payment bench warrants are 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.* ¶¶ 133–34.

Defendants Adams and Dooley thus make numerous deliberate, administrative decisions that continue the longstanding, pervasive, and widespread practice of arresting and incarcerating indigent people for nonpayment of magistrate court fines and fees without pre-deprivation ability-to-pay hearings or representation by court-appointed counsel. *Id*. ¶¶ 10, 114. 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 proposed Class members. *Id*. ¶¶ 6, 87, 458, 472–74, 481.

2. <u>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</u>.

Defendant Koon is the chief law enforcement officer of the Lexington County Sheriff's Department ("LCSD") and the chief administrator of the Detention Center. ECF No. 48 ¶¶ 9, 31,

122. In these capacities, Defendant Koon 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, including Plaintiffs Goodwin and Wright, and Class members. *Id*. ¶¶ 123–29. 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*. ¶¶ 9, 31, 124. 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*. ¶¶ 126–28, 130. Indigent people who are unable to pay remain in jail without seeing a judge, having a hearing, or receiving the advice of counsel. *Id*. ¶¶ 128, 131. 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 proposed Class members. *Id*. ¶¶ 475, 483.

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

Defendant Lexington County and Madsen have a constitutional duty to operate a public defense system that provides assistance of counsel to indigent people facing incarceration for nonpayment of money to Lexington County magistrate courts, including Plaintiffs Goodwin and Wright, and proposed Class members. ECF No. 48 ¶ 47. Despite this obligation, Defendant Lexington County and Madsen systemically and routinely deprive indigent people of the right to assistance of counsel to defend against unlawful incarceration as a result of Defendants Adams, Dooley, and Koon's standard operating procedures. *Id*. ¶ 48.

Under South Carolina law, public defense is administered through a "county-based system."[7] The South Carolina Indigent Defense Act of 2007 requires each county to appropriate annual funding for indigent defense in at least the amount provided during the previous year.[8] Robert Madsen, the Eleventh Circuit Public Defender, is the County's final policymaker for provision of indigent defense in all County courts. *See* Indigent Defense Act of 2007, 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 that county). Madsen is responsible for seeking, and the County is responsible for providing, resources for public defender services in the County's magistrate courts. *See id.* § 17-3-540 (indicating that circuit public defenders are responsible for seeking funding and hiring staff to ensure "adequate and meaningful representation" of indigent defendants); *id.* § 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.").

Pursuant to South Carolina law, Madsen submits annual requests for funding to Defendant Lexington County and meets with County officials to justify budgetary requests. ECF No. 48 ¶ 50.[9] Madsen also exercises final decision-making authority over the expenditure of resources appropriated by the County for public defender services and is the final authority on

[7] S.C. Comm'n on Indigent Def. ("SCCID"), SCCID Public Defenders, https://sccid.sc.gov/about-us/circuit-public-defenders (last visited March 15, 2018).

[8] *See* Indigent Defense Act of 2007, 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.").

[9] For example, in 2016, Madsen requested County funding for a "jail attorney" to represent people with felony charges. Lexington Cty., S.C. Council Budget Session Minutes (May 3, 2016) at 21, http://lexingtoncountysc.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=1319.

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.

Defendant Lexington County and Madsen have made, and continue to make, a deliberate decision to inadequately fund public defender services for indigent people facing incarceration for nonpayment of fines and fees to magistrate courts. *Id.* ¶¶ 11, 55. In fact, Defendant Lexington County provides less than half the amount of funding for public defender services provided by York and Spartanburg Counties, which are South Carolina counties of comparable population size. *Id.* ¶¶ 11, 57–58.[10] Defendant Lexington County allocated only $542,932 for public defender services in fiscal year 2015-2016, and only $543,532 in fiscal year 2016-2017. ECF No. 66 at 15; Ryan Aff. (ECF No. 66–6) Ex. A at 2 & Ex. B at 2. By comparison, York County provided more than double these amounts, allocating $1,369,721 in fiscal year 2015-2016 and $1,353,465 in fiscal year 2016-2017. *Id.* Spartanburg County also provided approximately double the amount of funding allocated by Defendant Lexington County for public defense with $1,116,169 appropriated in fiscal 2015-2016, and $998,035 appropriated in fiscal year 2016-2017. ECF No. 66–6 Ex. A at 1 & Ex. B at 1.

[10] According to 2015 U.S. Census estimates, Lexington County has a population of 273,843, while York County has a slightly smaller population of 240,076 and Spartanburg County has a slightly larger population of 291,240. ECF No. 48 ¶ 58.

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. ECF No. 48 ¶ 59. In fiscal year 2016-2017, Lexington County provided only 50 percent of the amount received from the state for public defender services in the County, while York County provided 145 percent of the amount received in state funding and Spartanburg County provided 85 percent. ECF No. 66–6 Ex. B.[11]

As a result of the deliberate funding and resource allocation decisions of Defendant Lexington County and Madsen, only one public defender is assigned to represent indigent defendants in cases handled by the County's magistrate courts. ECF No. 48 ¶ 62. In light of the volume of magistrate court cases in which indigent people face incarceration for nonpayment of fines and fees under the Default Payment and Trial in Absentia policies, this level of staffing is entirely inadequate to ensure that indigent people are afforded counsel when required by the Sixth Amendment. *Id.* Consequently, no public defender is present in the Bond Court adjacent to the Detention Center for immediate appointment to represent indigent people arrested and incarcerated on payment bench warrants resulting from the Default Payment and Trial in Absentia Policies. *Id.* ¶ 64. Nor is any public defender assigned to interview people booked in the Detention Center on payment bench warrants, which would facilitate identifying indigent people who were incarcerated for inability to pay money to magistrate courts without being afforded representation by court-appointed counsel. *Id.*

[11] Lexington County allocated $543,532 for indigent defense and received $1,079,989.07 from the state in fiscal year 2016-2017. ECF No. 66–6 Ex. B at 2. York County allocated $1,353,464.98 and received $930,505.88 from the state in fiscal year 2016-2017. *Id.* Spartanburg County allocated $998,035 and received $1,170,194.30 from the state. *Id.* at 1.

For these reasons, the policies, practices, customs, standard operating procedures, acts and omissions of Defendant Lexington County, including through the conduct of final County policymaker 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 proposed Class. *Id.* ¶ 468.

C. Procedural History

Plaintiffs originally filed the Class Action Complaint in this matter on June 1, 2017. ECF No. 1. The next day, Mr. Goodwin filed a timely Motion for Class Certification on behalf of himself and the proposed Class. ECF No. 5. On July 21, 2017, Plaintiffs filed an Amended Class Action Complaint, which added Mr. Wright's claims. ECF No. 20. That same day, Mr. Wright and Mr. Goodwin jointly filed a timely Amended Motion for Class Certification on behalf of themselves and the proposed Class. ECF No. 21.

On February 5, 2018, Magistrate Judge Shiva V. Hodges issued a Report and Recommendation ("the Report") that recommended, inter alia, denying Plaintiffs' Amended Motion for Class Certification solely because the Report concluded that Plaintiffs Goodwin and Wright's claims for prospective relief were moot due to actions taken by the Chief Justice of South Carolina, who is not a Defendant in this case. ECF No. 74 at 13. On March 28, 2018, the Court issued an Opinion and Order that declined to adopt the recommendations in the Report, including the recommendation to dismiss Plaintiffs' prospective relief claims as moot due to actions of the Chief Justice of South Carolina. ECF No. 84 at 29. The Opinion and Order also indicated that Plaintiffs' Amended Motion for Class Certification was denied without prejudice. *Id.* Because the Court has not yet addressed the facts and arguments relating to Plaintiffs' previous motions for class certification, Mr. Goodwin and Mr. Wright now respectfully submit this Second Amended Motion for Class Certification.

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 Lexington County, Adams, Dooley, and Koon 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 23(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 a plaintiff's claims on class certification. *Gunnells*, 348 F.3d at 428 ("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." (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974)). 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 (internal quotation marks and 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. The U.S. Court of Appeals for the Fourth Circuit has also required that members of the proposed class be "readily identifiable." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014). 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 one 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. ECF No. 21–8 ¶ 19. Public records also show that the Lexington County Sheriff's Department arrests hundreds of indigent people each year under these automatically-issued payment bench warrants and incarcerates them when they cannot pay money to the County's magistrate courts. During a 24-day period in September and October of 2017, for example, Lexington County arrested at least 57 (and perhaps as many as 114) indigent people on magistrate court bench warrants and jailed them in the Detention Center because they could not afford to pay fines and fees owed to the County's magistrate court in the average amount of $912.57. ECF No. 43–1 ¶ 12–13.

Joinder of hundreds of indigent people, and perhaps more than one thousand, who owe fines and fees to Lexington County magistrate courts is impracticable. Indeed, the U.S. Court of Appeals for 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 to the County's magistrate

courts. At any time between the filing of this motion and the Court's resolution of the class certification issues, members may be arrested and incarcerated. 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 Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 51–52 (1991) (recognizing exception to mootness for claims that "are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires[]").

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.*, 764 F.3d at 360. 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

suffer ongoing violations of their rights under the Fourteenth, Sixth, and Fourth Amendments to the U.S. Constitution because of common policies, practices, and customs maintained by Defendants Lexington County, Adams, Dooley, and Koon. *See* Section II.A, *supra*. Thus, answers to common questions of fact and law will drive the resolution of the claims of the proposed classes. The common questions include:

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 is responsible for providing adequate public defense for people facing incarceration of fines and fees owed to the County's magistrate courts.

s. Whether Madsen is a final policymaker concerning Lexington County's provision of indigent defense in magistrate courts;

t. Whether Madsen fails to adequately fund public defense for indigent people who face the threat of incarceration in the County's magistrate courts;

u. Whether 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;

v. Whether Defendant Lexington County has a policy, practice, and custom of failing to adequately fund public defense for people facing incarceration for nonpayment of fines and fees owed to the County's magistrate courts

due to the deliberate actions and conduct of Madsen concerning budgetary appropriations and resource allocation for public defense;

w. 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 custom with the force of law;

x. Whether Defendant Lexington County's policymakers, including Madsen, have actual or constructive knowledge of the County's custom of failing to adequately fund public defense and acquiesce in that custom;

y. 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;

z. 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;

aa. 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;

bb. Whether the right to due process is routinely violated in relation to the arrest and jailing of Class members on payment bench warrants; and

cc. 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.

See ECF No. 48 ¶ 439.

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 proposed 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) (internal quotation marks omitted).

"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 proposed Class because all claims arise from common courses of conduct of five Defendants, which result in the arrest and incarceration of indigent people under automatically-issued payment bench warrants when they cannot pay money to the County's 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 any of the specific Defendants 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) (internal 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 (internal citation and 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. (ECF No. 21–2) ¶¶ 2, 7; Dunn Decl. (ECF No. 21–3) ¶ 2; Marshall Decl. (ECF No. 21–4) ¶¶ 2, 5. Plaintiffs Goodwin and Wright are

represented by counsel at the American Civil Liberties Union Foundation, the American Civil Liberties Union Foundation of South Carolina, and Terrell Marshall Law Group PLLC. ECF No. 21–2 ¶¶ 11–13; ECF No. 21–3 ¶ 6; ECF No. 21–4 ¶¶ 10–11. The attorneys representing Mr. Goodwin and Mr. Wright have been appointed as class counsel in numerous actions. ECF No. 21–2 ¶¶ 2, 7; ECF No. 21–3 ¶ 2; ECF No. 21–4 ¶¶ 2, 5. 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 proposed Class, are dedicated to prosecuting those claims, and have the resources to do so. *See* ECF No. 21–2 ¶¶ 11–12; ECF No. 21–3 ¶ 6; ECF No. 21–4 ¶¶ 10–11.

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 (currently), Mr. Wright (at the time he filed his claims), and members of the proposed 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. ECF No. 48 ¶ 435. Mr. Goodwin and Mr. Wright seek to obtain prospective declaratory and injunctive relief that will ensure Defendants stop violating proposed Class members' rights under the Fourteenth, Sixth, and Fourth Amendments to the U.S. Constitution. *Id.* ¶¶ 451–85. 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. ECF No. 21–2 ¶ 13. For these reasons, the adequacy requirement is satisfied.

5. The Class members are readily identifiable.

The U.S. Court of Appeals for 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.* (internal quotation marks and citations 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 meeting the 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. 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 fines and fees to Lexington County magistrate courts. Defendants Adams and Dooley also exercise their administrative responsibility to 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 exercises his administrative responsibility to direct and enforce the use of payment bench warrants to jail indigent people who cannot afford to pay the full amount of debt identified on the face of the warrants before booking. Defendant Lexington County, through Madsen and other final policymakers for the County's provision of indigent defense magistrate courts, fails to adequately fund and to adequately allocate the resources necessary for public defense with the result that indigent people are routinely deprived of their right to counsel when incarcerated for money owed to County magistrate courts.

Furthermore, a judgment from the Court declaring that Defendants are violating the constitutional rights of proposed Class members and the entry of an injunction requiring Defendants to remedy those violations will apply equally to all proposed Class members. Accordingly, certification of the proposed 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 17th day of April, 2018.

Respectfully submitted by,

s/ Susan K. Dunn

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