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' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' SECOND AMENDED MOTION FOR CLASS CERTIFICATION

INTRODUCTION

Plaintiffs Xavier Larry Goodwin and Raymond Wright, Jr., bring this lawsuit under 42 U.S.C. § 1983 to challenge policies, practices, and customs that cause the unlawful, widespread, and automatic arrest and incarceration of indigent people who cannot afford to pay fines and fees to magistrate courts in Lexington County, South Carolina (the "County"). The arrests are based on warrants unsupported by probable cause, and those arrested are incarcerated without court hearings on their ability to pay or representation by counsel. On behalf of themselves and a proposed Class of similarly situated indigent people, Mr. Goodwin and Mr. Wright assert claims for prospective relief against Defendants under the Fourteenth, Sixth, and Fourth Amendments to the U.S. Constitution.

On April 17, 2018, following this Court's Opinion and Order [ECF No. 84] denying Defendants' motion for summary judgment on Plaintiffs' prospective-relief claims, Mr. Goodwin and Mr. Wright filed a Second Amended Motion for Class Certification, asking the Court to certify the following Class: "All indigent people who currently owe, or in the future

will owe, fines, fees, court costs, assessments, or restitution in cases handled by Lexington County magistrate courts." *See* ECF No. 86. Plaintiffs supported the motion with a memorandum and factual documentation showing that they satisfy the elements required for class certification under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. *See* ECF No. 86–1 at 20–31.

Rather than address the merits of Plaintiffs' request for class certification, Defendants' Memorandum in Opposition to [Plaintiffs'] Second Amended Motion for Class Certification ("Defendants' Response") asks this Court to postpone its certification decision until the Court has ruled on the issues raised in both Defendants' first Motion for Summary Judgment on [Plaintiffs'] Declaratory and Injunctive Relief Claims ("First Summary Judgment Motion") [ECF No. 29]—which Defendants claim is "still pending" before the court—and Defendants' Motion for Reconsideration [ECF No. 87] of the portion of the Court's Opinion and Order denying Defendants' First Summary Judgment Motion.[1] ECF No. 89 at 1. Defendants' Response concludes by asking the Court to "permit a short period of time . . . to address the merits of the class certification motion[,]" should Defendants' First Summary Judgment Motion be denied. *Id.* at 4.

This Court should reject Defendants' requests for further delay of the timely and efficient adjudication of this action, which seeks to address the ongoing and widespread violation of basic constitutional rights of indigent people in Lexington County. Instead, the Court should promptly certify the proposed Class for two overarching reasons.

[1] Defendants have additionally filed a Supplemental Motion for Reconsideration, which seeks correction of the portions of the Opinion and Order denying summary judgment to Defendant Lexington County on Plaintiffs' Sixth Amendment damages claim. ECF No. 88. The Supplemental Motion for Reconsideration is not relevant to the issues addressed in this brief.

First, Defendants fail to provide any valid reason that the Court should postpone ruling on Plaintiffs' Second Amended Motion for Class Certification. Notwithstanding Defendants' mischaracterization of the procedural history of this case, the Court in its Opinion and Order unequivocally denied Defendants' First Summary Judgment Motion, and that motion is *not* pending. Furthermore, as addressed in a separate brief filed today, the Motion for Reconsideration must be denied because Defendants fail to meet well-established standards under Federal Rules of Civil Procedure 54(b) and 59(e) required for reconsideration of the portion of the Opinion and Order denying Defendants' First Summary Judgment Motion. *See* ECF No. 93. The Court should therefore deny Defendants' request to postpone class certification on the basis of either Defendants' First Summary Judgment Motion or Motion for Reconsideration.

Second, Defendants have failed to argue, much less show, that Plaintiffs do not satisfy the elements required for class certification under Rule 23(a) and (b)(2), and Defendants have therefore waived the opportunity to do so. Defendants could have addressed the elements of class certification in their Response but instead chose to rehash arguments concerning mootness and federal court abstention under the *Younge*r doctrine that Defendants have already briefed numerous times elsewhere. Defendants have provided no justification that would warrant modifying or suspending court rules to grant Defendants an additional opportunity to put forth arguments Defendants elected to forgo in their Response. Defendants have thus waived the right to address the merits of class certification, and this Court should deny Defendants' request for extra time in which to file an additional response.

It bears noting that Defendants' most recent request for delay is now the second time Defendants have sought to postpone this Court's resolution of class certification questions on

the basis of arguments raised in the First Summary Judgment Motion. On July 21, 2017, Mr. Goodwin and Mr. Wright filed an Amended Motion for Class Certification, to which Defendants responded with an opposition memorandum seeking postponement of a ruling on the motion until after resolution of the First Summary Judgment Motion and an extension of time to file a substantive response to the Rule 23 elements addressed by Plaintiffs. *See* ECF Nos. 21, 30. More than eight months have passed, and Defendants now raise nearly identical arguments in an effort to further delay this Court's determination of whether Mr. Goodwin and Mr. Wright may pursue prospective-relief claims on behalf of a proposed Class for serious and ongoing violations of basic constitutional rights. *Compare* ECF No. 30 *with* ECF No. 89. Defendants' repeated efforts to delay this Court's decision are contrary to the core principle of Federal Rule of Civil Procedure 1, which requires the "just, speedy, and inexpensive determination of every action and proceeding."

Accordingly, this Court should resolve Plaintiffs' Second Amended Motion for Class Certification based on the record before the Court. Because Mr. Goodwin and Mr. Wright satisfy each element required for class certification under Rule 23(a) and (b)(2), class certification should be granted.

ARGUMENT

A. Defendants fail to provide any valid justification for the Court to postpone ruling on class certification.

Defendants request that the Court hold in abeyance Plaintiffs' Second Amended Motion for Class Certification on two grounds: (1) that a motion for summary judgment concerning Plaintiffs' prospective-relief claims "is still pending" and (2) that Defendants have elected to pursue a Motion for Reconsideration of this Court's Opinion and Order squarely denying that same summary judgment motion. ECF No. 89 at 1. These arguments are meritless and simply

seek to further delay the timely, just, and efficient resolution of this litigation. The Court should squarely reject Defendants' request for delay for two reasons.

First, Defendants' assertion that the First Summary Judgment Motion [ECF No. 29] is "still pending" before the Court is patently incorrect. *See* ECF No. 89 at 1. In the March 29, 2018 Opinion and Order, the Court ruled on Defendants' First Summary Judgment Motion, concluding unequivocally that "Defendants' motion for partial summary judgment as to declaratory and injunctive relief is DENIED without prejudice, ECF No. 29." ECF No. 84 at 29 (emphasis supplied). Thus, the First Summary Judgment Motion is not pending before the Court, and the status of that motion does not provide any reason for this Court to delay resolution of Plaintiffs' Second Amended Motion for Class Certification.

Second, as explained in more detail in a separately-filed memorandum opposing Defendants' Motion for Reconsideration, Defendants fail to meet the standard required under either Rule 54(b) or Rule 59(e) for reconsideration of this Court's denial of the First Summary Judgment Motion.[2] Rules 54(b) and 59(e) permit reconsideration "only in [three] very narrow circumstances: (1) to accommodate an intervening change in controlling law, (2) to account for new evidence . . . , or (3) to correct a clear error of law or prevent manifest injustice." *In re: Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 269 F. Supp. 3d 685, 691 (D.S.C. 2017) (addressing standard for reconsideration of final judgments under Rule 59(e) and quoting *Hill v. Braxton*, 277 F.3d 701, 708 (4th Cir. 2002)); *see also Carlson v. Boston Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017) (recognizing that standard for reconsideration of interlocutory orders under Rule 54(b) "closely resembles the standard applicable to" Rule 59(e) motions). Defendants do not show that any of these three

[2] Plaintiffs file a Memorandum in Opposition to Defendants' Motion for Reconsideration and Defendants' Supplemental Motion for Reconsideration concurrently with this brief. ECF No. 93.

circumstances apply to the Opinion and Order's denial of the First Motion for Summary Judgment. Instead, Defendants argue only that the Opinion and Order "misapprehended" Defendants' position in that motion. ECF No. 87–1 at 7–8. However, mere misapprehension is insufficient to justify reconsideration. Rather, reconsideration requires "patent misunderstanding or misapprehension," which "occurs *only* where such error was *indisputably obvious* and apparent from the face of the record." *South Carolina v. United States*, 232 F. Supp. 3d 785, 799 (D.S.C. 2017) (emphasis supplied).

In the Motion for Reconsideration, Defendants assert that "the [Opinion and] Order did not address or discuss certain filings made by Defendants." ECF No. 87–1 at 1. Defendants then briefly repeat arguments made in their briefing related to the First Summary Judgment Motion—namely, that this Court should abstain from exercising jurisdiction over Mr. Goodwin's prospective-relief claims under *Younger v. Harris*, 401 U.S. 37 (1971), and that Mr. Wright's claims are moot because "the criminal cases of all Plaintiffs except Goodwin are now ended." *Id.* at 1, 6. Defendants also "refer the Court to the [relevant] memoranda." *Id.* at 6 (referencing ECF Nos. 29–1, 35, 39).

Contrary to Defendants' assertion, the Opinion and Order makes clear that the Court did not "misapprehend[]" Defendants' arguments, but was, in fact, well aware of them. Indeed, the Opinion and Order recites in detail each argument made by Defendants in support of the First Summary Judgment Motion. *See* ECF No. 84 at 11–12, 14 (addressing, inter alia, Defendants' assertions that Plaintiffs' prospective-relief claims are moot because "criminal proceedings against six of the seven Plaintiffs have concluded" and that *Younger* abstention applies due to a purportedly "ongoing state criminal proceeding" against Mr. Goodwin). Thus, Defendants fail to

show any "patent . . . misapprehension" in the Opinion and Order that would warrant reconsideration. *South Carolina v. United States*, 232 F. Supp. 3d at 799.

Additionally, as addressed more thoroughly in Plaintiffs' brief in opposition to the Motion for Reconsideration, the Court properly denied Defendants' First Summary Judgment Motion because Defendants' arguments in support of that motion are without merit. *See* ECF No. 93 at 11–13. Specifically, as the Opinion and Order recognized, none of the three "exceptional circumstances" required for *Younger* abstention apply to Mr. Goodwin's claims for prospective relief. *See* ECF No. 84 at 13–14. And, although Mr. Wright's individual prospective-relief claims became moot after he filed them, he is nonetheless allowed to pursue prospective relief on behalf of the proposed Class under the *Gerstein* rule, a well-established exception to the mootness doctrine, for claims that are "inherently transitory." *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991); *see also* ECF No. 84 at 13–14 (addressing application of the *Gerstein* rule to Mr. Wright's claims).

Thus, the Opinion and Order properly denied Defendants' First Motion for Summary Judgment and Defendants fail show that reconsideration of that portion of the Opinion and Order is warranted. Because there is no valid reason to delay the Court's resolution of Plaintiffs' Second Amended Motion for Class Certification, this Court should deny Defendants' request to hold resolution of that motion in abeyance.

B. The Court should deny Defendants' request for extra time to file an additional response to the Second Amended Motion for Class Certification.

The Local Civil Rules for the United States District Court for the District of South Carolina provide that "[a]ny memorandum or response of an opposing party must be filed . . . within fourteen (14) days of the service of the motion . . . . If no memorandum in opposition is filed . . . the Court will decide the matter on the record and such oral argument as the movant

may be permitted to offer, if any." Local Civ. Rule 7.06 (D.S.C.). "[S]uspen[sion] or modif[ication] of any Local Rule[]" may be permitted only on a showing of "good cause . . . ." Local Civ. Rule 1.02 (D.S.C.). Moreover, pursuant to Rule 1 of the Federal Rules of Civil Procedure, rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

Defendants were thus required to respond to Plaintiffs' arguments and evidence in support of the Second Amended Motion for Class Certification within fourteen days. *See* Local Civ. R. 7.06. Instead, Defendants made the deliberate decision to use their Response to request, without basis, postponement of the Court's resolution of class certification. Defendants have not made any showing of "good cause" that would warrant modification or suspension of the deadline and filing requirements imposed by this Court's Local Civil Rules. To the contrary, the present attempt to delay is Defendants' second effort to postpone this Court's resolution of the question of whether Mr. Goodwin and Mr. Wright have met the requirements for class certification. *See* ECF Nos. 30, 89. But Defendants have had more than eight months to consider whether Mr. Goodwin, Mr. Wright, and counsel for the proposed Class fail to satisfy the applicable elements of Rule 23, and there is no good cause for their failure to address the merits of Plaintiffs' Second Amended Motion for Class Certification in the time afforded by this Court's Local Civil Rules. Defendants' decision to choose this course of action amounts to a waiver of the right to address the merits of Plaintiffs' Second Amended Motion for Class Certification.

This Court should therefore firmly reject Defendants' requests to hold the Second Amended Class Certification Motion in abeyance and to permit Defendants to submit another response to that motion pending rejection of Defendants' Motion for Reconsideration. Granting

these requests would impede the "just, speedy, and inexpensive determination of" Plaintiffs' request for class certification and thereby the merits of Plaintiffs' claims. *See* Fed. R. Civ. P. 1. Instead, this Court should resolve the Second Amended Class Certification Motion by "decid[ing] the matter on the record" pursuant to Local Civil Rule 7.06.

C. Plaintiffs Goodwin and Wright satisfy the requirements for class certification.

1. The requirements of Rule 23(a) are satisfied.

Mr. Goodwin and Mr. Wright's Second Amended Motion for Class Certification readily meets the first prerequisite, numerosity, because the proposed Class is "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)). Publicly available court records show that Lexington County's magistrate courts target more than one thousand people with payment bench warrants each year. ECF No. 21–8 ¶ 19. Further, the Lexington County Sheriff's Department annually arrests and incarcerates hundreds of indigent people for nonpayment of magistrate court fines and fees. ECF No. 43–1 ¶¶ 7–11. Joinder of these individuals is impracticable, particularly in light of the inherently transitory nature of their claims challenging Defendants' conduct resulting in the automatic arrest and incarceration of indigent people for inability to pay money to the County's magistrate courts without a hearing on ability to pay or representation by court-appointed counsel and on the basis of warrants unsupported by probable cause. *See Cty. of Riverside*, 500 U.S. at 51–52. Additionally, the U.S. Court of Appeals for the Fourth Circuit has certified classes that are much smaller. *See, e.g.*, *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) (certifying class of 74 people).

The Second Amended Motion for Class Certification also meets the second prerequisite, commonality, because "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). Plaintiffs have identified at least 29 common questions of law and fact that apply to members of the proposed Class, including Mr. Goodwin and Mr. Wright, as a direct result of Defendants' uniform courses of conduct. *See* ECF No. 86–1 at 24–26. Given the existence of numerous common questions of law and fact, the commonality requirement is satisfied.

Mr. Goodwin and Mr. Wright also satisfy the third prerequisite for certification, which requires showing 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 v. Kiawah Island Inn Co., LLC*, 309 F.R.D. 370, 378 (D.S.C. 2015) (citation omitted). To demonstrate typicality, a named plaintiff's injuries should be "similar to the injuries suffered by the other class members." *McClain v. South Carolina Nat'l Bank*, 105 F.3d 898, 903 (4th Cir. 1997). Here, the claims of Plaintiffs Goodwin and Wright are typical of the claims of the proposed Class because all claims arise from Defendants' common courses of conduct, which routinely result in the automatic arrest and incarceration of indigent people for nonpayment of money to magistrate courts based on warrants unsupported by probable cause and without pre-deprivation ability-to-pay hearings and the assistance of court-appointed counsel. *See* ECF No. 86–1 at 5–9. Furthermore, all claims against a given Defendant are based on the same legal and equitable theories. *Id.* at 11–19.

The fourth prerequisite for certification is also met here because Mr. Goodwin and Mr. Wright will fairly and adequately protect the interests of the proposed Class. *See* Fed. R. Civ. P. 23(a)(4) & (g)(1). Mr. Goodwin and Mr. Wright have retained lawyers with significant experience in class action litigation and matters involving civil rights. *See* ECF No. 21–2 ¶¶ 2,

7; ECF No. 21–3 ¶ 2; ECF No. 21–4 ¶¶ 2, 5. These attorneys 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* ECF No. 21–2 ¶¶ 11–12; ECF No. 21–3 ¶ 6; ECF No. 21–4 ¶¶ 10–11. In addition, the claims that Mr. Goodwin and Mr. Wright bring against Defendants are coextensive with, and not antagonistic to, the claims asserted on behalf of the proposed Class. In the operative complaint, Mr. Goodwin and Mr. Wright allege the same injuries as the members of the proposed Class—imminent arrest and incarceration because of their inability to pay fines and fees to Lexington County magistrate courts—and seek to obtain prospective relief that will benefit all Class members equally. *See* ECF No. 48 ¶ 429–85.

Finally, the ascertainability requirement for class certification under Rule 23 is satisfied. *See EQT Prod.*, 764 F.3d at 358. The proposed Class is defined by 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.

2. The requirements of Rule 23(b)(2) are satisfied.

Mr. Goodwin and Mr. Wright's Second Amended Motion for Class Certification also meets the requirements of Rule 23(b). *See EQT Prod.*, 764 F.3d at 357 ("[T]he class action must fall within one of the three categories enumerated in [Federal Rule of Civil Procedure] 23(b)."). Mr. Goodwin and Mr. Wright seek certification under Rule 23(b)(2), which was specifically created for civil rights cases challenging a common course of conduct. *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 330 n.24 (4th Cir. 2006); *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). Rule 23(b)(2) certification is appropriate where "the party opposing the class has 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 v. Schulman*, 807 F.3d 600, 608 (4th Cir. 2015) (quoting Fed. R. Civ. P. 23(b)(2)).

Here, Mr. Goodwin and Mr. Wright have sufficiently alleged that each Defendant is acting, or refusing to act, on grounds generally applicable to all members of the proposed Class. Defendants Rebecca Adams and Albert John Dooley, III, engage in administrative conduct that maintains standard operating procedures involving the systemic misuse of payment bench warrants to automatically arrest and incarcerate indigent people for money owed to magistrate courts without pre-deprivation ability-to-pay hearings and without the assistance of court-appointed counsel. *See* ECF No. 48 ¶¶ 80–120. Defendant Bryan Koon takes deliberate action to enforce the automatic arrest and incarceration of indigent people who cannot afford to pay the full amount of unpaid fines and fees identified on the face of payment bench warrants before booking. *Id.* ¶¶ 121–29. Defendant Lexington County, by and through its final policymakers, fails to adequately fund or allocate the resources necessary for public defense in the County's magistrate courts. *Id.* ¶¶ 47–79.

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.

CONCLUSION

For the foregoing reasons, Plaintiffs Goodwin and Wright respectfully ask the Court: (1) to deny Defendants' request to postpone resolution of Plaintiffs' Second Amended Motion for Class Certification; (2) to deny Defendants' request for extra time to file an additional response to that motion; and (3) to grant Plaintiffs' Second Amended Motion for Class Certification.

DATED this 3rd day of May, 2018.

Respectfully submitted by,

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