



Relevant to this Order, the Parties note the absence of any South Carolina Supreme Court precedent construing the definition of “earnable compensation” in S.C. Code Ann. § 9-1-10(8) or construing the provisions related to the payments not subject to deduction as stated in S.C. Code Ann. § 9-1-1020. Because the construction of these South Carolina statutes, as amended, will be determinative of each of the claims Plaintiff (“Luce”) asserts, the Parties have requested this Court certify the question of whether the wages at issue in this action are subject to deductions for contributions to the South Carolina Retirement System (“SCRS”).

## **II. LEGAL STANDARD**

S.C. App. Ct. R. 244(a) states, in relevant part:

The Supreme Court in its discretion may answer questions of law certified to it by any federal court of the United States or the highest appellate court or an intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court when it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

Rule 244(b) requires the certification order to set forth “the questions of law to be answered, all findings of fact relevant to the questions certified, and a statement showing fully the nature of the controversy in which the questions arose.”

## **III. NATURE OF THE CONTROVERSY**

Luce initiated this action on behalf of himself and all others similarly situated (the “Putative Class”), by the filing of a Complaint against Lexington County Health Services District, Inc. (“LCHSD”) and two (2) of its officers or managers, Brian D. Smith (“Smith”) and Lynn Coggins (“Coggins”) (collectively the “LCHSD Defendants”). Luce brings four causes of action on behalf of himself and the Putative Class, including claims for declaratory relief under 28 U.S.C. § 2201 and

Fed. R. Civ. P. 57; for injunctive relief; a claim under 42 U.S.C. § 1983; and for relief under the South Carolina Payment of Wages Act (“SCPWA”), S.C. Code Ann. §§ 41-10-10, *et seq.*

This case arises out of Luce’s allegations that the LCHSD Defendants have an unlawful policy of withholding and diverting certain wages to the South Carolina Public Employee Benefits Authority (“PEBA”) for use by SCRS. SCRS is a defined-benefit retirement plan for employees of state agencies and other local subdivisions of government that have joined SCRS. Employers of SCRS members are required to withhold SCRS contributions from those employees’ “earnable compensation[.]” S.C. Code Ann. § 9-1-10(8) (defining “earnable compensation”); *see generally id.* §§ 9-1-10, *et seq.* (the Retirement Act). PEBA, into which the SCRS was incorporated in 2012, administers SCRS.

As it relates to this Motion, Luce, an LCHSD employee, alleges he regularly “agreed to work weekends, holidays, night shifts, 24-hour shifts, call, and other undesirable work because [LCHSD] offers and incentivizes Luce and other professionals employed at [LCHSD] to do so with the promise of pay in addition to their salary base, e.g., premium pay, call pay, and shift differentials.” ECF No. 24, Am. Compl. ¶ 23. He claims LCHSD has withheld a percentage of those payments—which he contends do not constitute “earnable compensation”—to divert to PEBA for use by the SCRS. *Id.* ¶¶ 24, 26-27. Defendants dispute Luce’s allegation that these payments are excluded from “earnable compensation” and assert that they have, at all times, had reasonable grounds for believing their practices complied with applicable law, regulations, and guidance from SCRS and PEBA. ECF No. 28, Answer to Am. Compl. ¶¶ 23-24, 26-27, 98.

#### **IV. STIPULATED FACTS**

As noted, the Parties have filed a Joint Stipulation of Facts pursuant to Fed. R. Civ. P. Rule 16(c)(2)(C). The Court adopts the stipulated facts as undisputed and incorporates these facts by reference herein.

#### **V. QUESTION OF LAW TO BE ANSWERED**

S.C. Code Ann. § 9-1-1020 provides the statutory mandate for employers to deduct SCRS contributions from members' earnable compensation. "Earnable compensation" is defined as "the full rate of compensation that would be payable to a member if the member worked the member's full normal working time; when compensation includes maintenance, fees, and other things of value the board shall fix the value of that part of the compensation not paid in money directly by the employer." *Id.* § 9-1-10(8)(a). S.C. Code Ann. § 9-1-1020 states: "Payments for unused sick leave, single special payments at retirement, bonus and incentive-type payments, or any other payments not considered a part of the regular salary base are not compensation for which contributions are deductible."

The merits of Luce's claims, as well as the claims of any putative class this Court may certify, are dependent on whether earnings such as the Wages in Controversy, as defined in the Parties' Joint Stipulation of Facts, are subject to mandatory employer deductions under S.C. Code Ann. § 9-1-1020. The Parties and this Court have not identified any controlling authority construing the above-referenced language in S.C. Code Ann. § 9-1-1020. Likewise, the Parties and this Court are aware of only two South Carolina controlling authorities discussing the definition of "earnable compensation" under S.C. Code Ann. § 9-1-10(8), but neither decision touches upon the issue posed in this action. *See Kennedy v. S.C. Ret. Sys.*, 549 S.E.2d 243 (S.C. 2001) (construing the 1978 amendment to the SCRS statute and addressing the inclusion of unused annual leave in the average

final compensation calculation); *Duvall v. S.C. Budget & Control Bd.*, 659 S.E.2d 125 (S.C. 2008) (construing the 1978, 1986, and 2005 amendments to the SCRS statute and addressing again the inclusion of unused annual leave in the average final compensation calculation).

Accordingly, this Court respectfully requests the South Carolina Supreme Court answer the following certified question:

Are the Wages in Controversy, as defined in the Joint Stipulation of Facts, Luce and other Putative Class Members earned during employment with LCHSD “earnable compensation” subject to employer deductions under S.C. Code Ann. § 9-1-1020?

## VI. CONCLUSION

For the reasons set forth above, the Court certifies the foregoing question to the South Carolina Supreme Court. The Clerk of Court is directed to forward a copy of this order to the South Carolina Supreme Court under this Court’s official seal, together with the Amended Complaint, ECF No. 24; the LCHSD Defendants’ Answer to the Amended Complaint, ECF No. 28; the Parties’ Joint Stipulation of Facts, including Exhibits A-D, ECF No. 62-1, -2, -3, -4, and -5, to include the sealed document filed at ECF No. 65; and any other portions of the record the South Carolina Supreme Court may request.

**IT IS SO ORDERED.**

Signed this 25th day of July, 2024, in Columbia, South Carolina.

s/ Mary Geiger Lewis  
MARY GEIGER LEWIS  
UNITED STATES DISTRICT JUDGE



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**Other Orders/Judgments**

3:22-cv-03898-MGL Luce v.  
Lexington County Health  
Services District, Inc. et al

JURY, STAYED

U.S. District Court

District of South Carolina

**Notice of Electronic Filing**

The following transaction was entered on 7/25/2024 at 4:02 PM EDT and filed on 7/25/2024

**Case Name:** Luce v. Lexington County Health Services District, Inc. et al

**Case Number:** 3:22-cv-03898-MGL

**Filer:**

**Document Number:** 66

**Docket Text:**

**Certification of Issue to State Court, granting [62] Joint MOTION For Order Certifying Questions of Law to the South Carolina Supreme Court filed by Brian D. Smith, Lexington County Health Services District, Inc., Lynn Coggins. Signed by Honorable Mary Geiger Lewis on 7/25/2024. (mdea )**

**3:22-cv-03898-MGL Notice has been electronically mailed to:**

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