

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2024-000592
Case No. 2020-CP-02-2238

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SC Court of Appeals

Cassiopia Rhoads, ...

Respondent-Appellant,

v.

Aiken County Sheriff's Office, ...

Appellant-Respondent.

RECORD ON APPEAL - VOLUME I
(pp. 1-462)

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE CIRCUIT COURT

Cassiopia Rhoads,

Case No. 2020-CP-02-02238

Plaintiff,

vs.

**ORDER DISMISSING
DEFENDANTS SOUTHERN HEALTH
PARTNERS, INC. AND ROBERT J.
WILLIAMS, M.D.**

Southern Health Partners, Inc.; Robert J. Williams, M.D.; Michael E. Hunt, in his official and representative capacity as Aiken County Sheriff; and Aiken County, operating as the Aiken County Detention Center,

Defendants.

This matter is before the Court upon a Motion to Dismiss pursuant to Rule 41 of the South Carolina Rules of Civil Procedure seeking to dismiss Defendant Southern Health Partners, Inc. (“SHP”) and Dr. Robert J. Williams, M.D. (“Dr. Williams”) from this action. Plaintiff’s counsel consented to the motion. While the remaining Defendants Michael E. Hunt, in his official and representative capacity as Aiken County Sheriff (“Michael Hunt”) and Aiken County, operating as the Aiken County Detention Center (“Aiken County”) declined to sign a Stipulation of Dismissal, they have not filed an objection to this Motion.

Defendant SHP, with Plaintiff’s consent, has represented to the Court that the above-captioned action is settled and should be dismissed with prejudice and forever ended as between Plaintiff and SHP. Further, Defendant Dr. Williams, with Plaintiff’s consent, represents that Plaintiff has agreed to dismiss with prejudice and without payment and forever end this action as between Plaintiff and Dr. Williams. The action against the remaining Defendants is still pending and is set for trial.

I find and conclude it is undisputed that the action filed by Plaintiff against Defendants SHP and Dr. Williams has ended.

THEREFORE, it is HEREBY ORDERED that SHP and Dr. Williams are hereby dismissed from this action with prejudice as set forth hereinabove. This Order does not apply to the action pending as against Defendants Michael Hunt and Aiken County.

IT IS SO ORDERED.

The Honorable Courtney Clyburn Pope
Chief Administrative Judge, Second Judicial Circuit

October _____, 2023
Aiken, South Carolina



Aiken Common Pleas

Case Caption: Cassiopia Rhoads VS Aiken County Sheriffs Office

Case Number: 2020CP0202238

Type: Order/Dismissal

It is so ordered

Eugene C. Griffith, Jr. 2154

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Cassiopia Rhoads,	)	Civil Action No.: 2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER RELATING TO
	)	POST-TRIAL MOTIONS
Aiken County Sheriff's Office,	)	
	)	
Defendant.	)	

This matter comes before the Court via post-trial motions filed by both parties. In accordance with S.C. Code Ann. § 15-35-400 and Rules 36, 37(c), and 68 of the South Carolina Rules of Civil Procedure, Plaintiff seeks an award of interest and costs stemming from her prior, unaccepted Offer of Judgment (“OOJ”), which was filed in this matter on March 31, 2022. In accordance with and Rule 37(c) of the South Carolina Rules of Civil Procedure and relating to requests to admit that the Defense denied, Plaintiff also requests the Defendant be directed to pay the expense Plaintiff incurred in having Dr. Edward C. O’Bryan testify at the trial of this case. As discussed below, Plaintiff’s motions are granted.

Plaintiff’s motion for the Court to take judicial notice of multiple occurrences under the South Carolina Tort Claims Act (TCA), S.C. Code Ann. §15-78-10 *et seq.*, and Defendant’s motions for new trial and JNOV pursuant to Rules 50(b) and 59(a) SCRCF are denied.

Defendant’s motions to reduce the verdict pursuant to the TCA cap on damages and for a set-off will be addressed via separate order.

I. Plaintiff’s Offer of Judgment

On March 31, 2022, Plaintiff filed an Offer of Judgment to Defendant in the amount of \$250,000.00. Defendant did not accept the Offer of Judgment. The case proceeded to trial the week of October 9, 2023. On October 13, 2023, an Aiken County jury rendered a verdict finding one or

more employees of the Defendant Aiken County Sheriff's Office had been grossly negligent and, through such acts and omissions, proximately caused injury to Plaintiff. The jury awarded \$950,000.00 in actual damages. Thus, by a total of \$700,000.00, the verdict vastly exceeded the Offer of Judgment that Plaintiff filed more than a year and half earlier.

In South Carolina, the authority for offers of judgment arises from both statutory law and the South Carolina Rules of Civil Procedure. S.C. Code Ann. § 15-35-400(B) provides:

Consequences of Non-Acceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment;

Rule 68(b), SCRPC provides in relevant part:

If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment

Neither Rule 68, SCRPC nor S.C. Code Ann. § 15-35-400 address government entities at all, and the plain and unambiguous terms require costs and interest to be added to the verdict in this case. “There is a basic presumption that the legislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects.” Whitner v. State, 328 S.C. 1, 6 492 SE2d 777, 779 (1997). Further, “When statutory terms are clear and unambiguous on their face, there is no room for construction and courts must apply the statute according to its literal meaning.” Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 SE2d 177, 179. (1994). “Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s

operation.” Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Recently, in Garrison v. Target Corp., 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) the Supreme Court found that both the rule and the statute expressly provide for a party to recover eight percent on the entire amount of the recovery. In reaching this decision, the Court recognized the unique posture of an offer of judgment and its underlying aims of promoting fairness and reasonable compromise without a trial. Id. Thereby, solidifying the administrative and mandatory nature of awarding the offer of judgment penalty in this context. Id.

In contrast to Defendant’s argument, that “S.C. Code Ann. §15-35-400 is not applicable to Tort Claims Act cases,” the Plaintiff presented the Court with a summary, taken from the online public indexes, demonstrating many of South Carolina’s governmental entities, themselves, routinely file offers of judgment pursuant to S.C. Code Ann. §15-35-400 and Rule 68 SCRPC.

Further, the right of a party to such interest “is not affected by rights of discount or, offset claimed by the opposing party.” Butler Contr., Inc. v. Court St., LLC, 369 S.C. 121, 134, 631 SE2d 252, 259. (2006). Therefore, any offset or reduction due to statutory cap on damages or offsets from the settling co-defendants does not affect the Plaintiff’s right to OOF interest. The interest is calculated on the verdict amount, but the amount of the judgment.

Plaintiff’s Offer of Judgment to Defendant was filed on March 31, 2022, and expired on April 20, 2022, while the settlement with the medical defendants did not occur until mediation in July of 2023. Thus, at the time the Offer of Judgment expired, Defendant did not know that there would ever be a set-off and could not have factored the set-off into its decision to reject the offer of judgment. Additionally, Plaintiff did not have the benefit of any proceeds from the settlement with the medical defendants until many months later. Given that the plain language of Rule 68

and S.C. Code Ann. §15-35-400 speaks only to “the amount of the verdict or award,” it would appear the design of both the rule and the statute is to encourage litigants to accept settlement offers and/or demands.

Pursuant to the aforementioned statute and the rule of civil procedure, Plaintiff is entitled to an award of eight percent (8%) interest on the \$300,000 judgment (as discussed in a separate order, the judgment entered will reflect the cap set forth in the SCTCA), calculated from the time period running from March 31, 2022 to present, which equals **\$37,478.40**. Plaintiff is also entitled to recover “administrative, filing, or other court costs” as provided in Rule 68 SCRCF, from March 31, 2022 to present. An itemization of Plaintiff’s administrative, filing, or other court costs was attached as an exhibit to Plaintiff’s motion and demonstrated this amount to total **\$16,056.83**.

I find that the Plaintiff’s motion for an award of interest and costs stemming from her April 8, 2022 filed *Offer of Judgment* is granted. The Court hereby awards **\$53,535.23** in interest and costs (the sum of the aforementioned \$37,478.40 and \$16,056.83 amounts) be assessed to the Defendant, in addition to and separate and distinct from the final jury award following any set-off from other settling defendants and/or reduction pursuant to the caps set forth in the TCA.

II. Costs for Dr. O’Bryan’s Testimony

Plaintiff moves this Court for an Order awarding reimbursement of the costs incurred in having to prove facts denied by the Defense in its response to two of Plaintiff’s requests for admission (RFAs). More specifically, Plaintiff seeks an award of costs for having to bring Dr. Edward C. O’Bryan to trial to testify as to causation. Via RFAs submitted pursuant to Rule 36, SCRCF, Plaintiff asked the Defendant to admit facts speaking directly to causation, which the Defendant denied via responses dated November 29, 2021. Those requests and the Defense’s responses were:

RFA NO. 1: Admit that, more likely than not and considering all of the information now available, Cassi Rhoads was suffering from an infectious mass on the right side of her head during at least some of the time of her detainment at the Aiken County Detention Center in May and early June of 2019.

RESPONSE #1: Denied. The Plaintiff was diagnosed at Aiken Regional Medical Center with Osteomyelitis with subgaleal and epidural abscesses.

RFA NO. 6: Admit that a delay in the diagnosis and treatment of an infectious mass on the right side of Cassi Rhoads' head proximately caused injury to Cassi.

RESPONSE #6: Denied.

As a result of those denials, it was necessary for the Plaintiff to litigate causation and to present Dr. O'Bryan as an expert witness at trial. Dr. O'Bryan's trial testimony, which was uncontradicted, demonstrated the truth of the matters presented in both of the requests for admission cited above. This is directly supported by the jury's verdict, which specifically found that Defendant's gross negligence proximately caused the Plaintiff's injury. Having presided over the trial and the evidence presented, the Court finds that the verdict in Plaintiff's favor necessarily indicated the jury determined: (1) Plaintiff was suffering from an infectious mass on the side of her head during at least some of the time of her detainment at the Aiken County Detention Center in May and early June of 2019; and (2) a delay in the diagnosis and treatment of an infectious mass on the side of Plaintiff's head proximately caused injury.

Rule 37(c), SCRCP (*with emphasis added*) provides:

Expenses on Failure to Admit. If a party fails to admit the genuineness of any document **or the truth of any matter as requested under Rule 36**, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. **The court shall make the order** unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the

failure to admit.

As an exhibit to her motion, Plaintiff presented an invoice from Dr. O'Bryan showing the Plaintiff having incurred a \$6,000 expense in order to have Dr. O'Bryan testify at trial.¹ Having presided over the trial, thus being aware of Dr. O'Bryan's experience and education, and having seen the effectiveness of his testimony, I find Dr. O'Bryan's hourly rate of \$400/hour and time spent in this matter to be fair, reasonable, and commiserate with his knowledge, experience, education, and the apparent time he put into his work as an expert witness in this matter. I find that the cost of his trial testimony (the \$6,000 invoice) was a reasonable expense flowing from the Defendant's failure to admit the two above-cited requests to admit regarding causation. I also find that the Plaintiff sufficiently demonstrated the truth of the two requests for admission regarding causation.

I further find that, pursuant to Rule 37(c), SCRCP, the Plaintiff is entitled to an award reimbursing her for these expenses. As such, I find that the Plaintiff is entitled to an order directing the Defense to pay \$6,000.00 to reimburse her the expense resulting from the Defendant's denial of the above requests for admission.

III. Judicial Notice of Multiple Occurrences

Plaintiff's motion for the Court to take judicial notice of multiple occurrences pursuant to the TCA is denied.

IV. Defendant's Motions for a New Trial and JNOV

Defendants motion for a judgment notwithstanding the verdict (JNOV) and/or new trial absolute pursuant to Rules 50(b) and 59(a), SCRCP are denied.

¹ In fact, Dr. O'Bryan's invoice totaled \$8,042.60, but indicates that, as a courtesy, he reduced the fee charged down to \$6,000.00.

When a verdict is reached, the finding of the jury will not be disturbed unless the record fails to disclose any evidence which reasonably supports the jury's verdict. Hutson v. Cummins Carolinas, Inc., 280 S.C. 552, 556 314 SE2d 19, 22. (Ct. App. 1984).

“In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt.” Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 429-430, 314 S.E.2d 439, 440. (1994).

After extensive oral argument from both sides, during trial, the Court ruled that a duty was owed the Plaintiff by the Defendant and subsequently charged the jury with that duty by explaining that “Aiken County Sheriff's Office has a duty to safely confine, supervise and maintain the custody of inmates,” before further charging the jury on “Affirmative Defenses” and “Governmental Immunity,” explaining to the jury that the Defendant was entitled to the affirmative defense of sovereign immunity and could only be held liable under the S.C. Tort Claims Act “for acts of gross negligence.” See Charge to Jury, “Duty Owed to Plaintiff” and “Governmental Immunity.” Those charges were based in part on S.C. Code Ann. §24-5-10 and S.C. Code Ann. §15-78-60(25). The high burden of proving gross negligence with regard to confining, supervising and maintaining the custody of inmates was thoroughly and properly explained to the jury.

Defendant's jail administrator contradicted Defendant's arguments about the duty Defendant owed the Plaintiff. The jail administrator testified that the Defendant would owe an inmate like the Plaintiff a duty to act, regardless of the inmate being treated by medical staff, if there was something external that was blatantly obvious.

The Plaintiff presented evidence through multiple witnesses (many of whom were the Defendant's own employees/agents) and numerous exhibits, through which the jury could reasonably find that the Defendant had breached its duty to the Plaintiff in a grossly negligent manner.

IT IS SO ORDERED!

<judicial e-signature and date on page following>



Aiken Common Pleas

Case Caption: Cassiopia Rhoads VS Southern Health Partners Inc , defendant, et al

Case Number: 2020CP0202238

Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
 Cassiopia Rhoads,	)	
	)	Civil Action No. 2020-CP-02-2238
Plaintiff,	)	
	)	
v.	)	ORDER REDUCING VERDICT TO
	)	STATUTORY CAP
Aiken County Sheriff's Office,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court on certain of the post-trial motions filed by the Defendant Aiken County Sheriff's Office and by the Plaintiff Cassiopia Rhoads. Specifically, the Defendant moves that the verdict in favor of the Plaintiff be reduced to the statutory cap of \$300,000 in accordance with Section 15-78-120(a)(1) of the South Carolina Tort Claims Act and that the Court apply the set-off under the common law and Section 15-38-50 for the amount in settlement funds received by the Plaintiff from other settling parties. The Plaintiff, on the other hand, moves for the Court to determine the number of "occurrences" and to conclude that the jury found three occurrences, thereby entitling the Plaintiffs to a judgment totaling \$900,000. Based on the Court's review of the motions and the applicable law, the Court grants the Defendant's motions and denies the Plaintiff's motion as addressed below.

LEGAL ANALYSIS

I. Set-Off of Settlement Amount Paid by Settling Defendant

South Carolina law recognizes that a trial court possesses "jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide

justice between the parties." *Smalls v. South Carolina Department of Education*, 339 S.C. 208, 528 S.E.2d 682, 688 (Ct. App. 2000). The South Carolina Court of Appeals has explained that "the reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid him. Or differently stated, it is almost universally held that there can be only one satisfaction for an injury or wrong." *Id.* The Court of Appeals in *Smalls* concluded:

Equity dictates Department be given a credit for the amount paid by the settling parties and thus, a double recovery is avoided. The settlement amount represents, in effect, the portion of total damages attributable to [the settling defendant].

528 S.E.2d at 688-689. *See also, Rutland v. South Carolina Department of Transportation*, 390 S.C. 78, 700 S.E.2d 451 (Ct. App. 2010).

In *Ellis v. Oliver*, 335 S.C. 106, 515 S.E.2d 268 (Ct. App. 1999), the Court of Appeals explained that "[a]pplication of the settlement credit was statutorily mandated in this case. S.C. Code Ann. § 15-38-50 grants the court no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors." 515 S.E.2d at 272.

The Plaintiff has represented to the Court that she settled her claims against Southern Health Partners for an undisclosed sum which the settling parties claim is confidential. The Plaintiff also does not dispute that the Defendant is entitled to a set-off of the settlement amount. In accordance with the Court of Appeals' decision in *Huck v. Oakland Wings, LLC*, 422 S.C. 430, 813 S.E.2d 288 (Ct. App. 2018), the settlement amount has now been disclosed to the Court and to the Defendant's counsel. The Court finds that the Defendant is entitled to a set-off under the common law and Section 15-38-50 of the entire amount paid by Southern Health Partners. However, as dictated by the Court of Appeals in *Smalls*, the set-off amount is to be assessed prior to applying the statutory caps. Because the Court is reducing the verdict to \$300,000 as addressed

below, there is no need to disclose the total of the set-off, but it suffices to state that the set-off does not reduce the judgment to below the \$300,000 cap.

II. Reduction to Statutory Cap of \$300,000

The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Section 15-78-120 of the Tort Claims Act establishes the monetary caps or limits on a governmental entity's liability for money damages. Section 15-78-120(a) provides that "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence." S.C. Code Ann. § 15-78-120(a).

In *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), the Court of Appeals, using mandatory language, states: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding \$300,000." 607 S.E.2d at 716. (Emphasis added). In compliance with that self-executing and mandatory duty, the Court rules that the verdict in favor of the Plaintiff is hereby reduced to the monetary cap of \$300,000 in accordance with Section 15-78-120(a)(1).

III. Multiple Occurrences

In her motion, the Plaintiff requests that the Court find that she has proven a total of three "occurrences" under the Tort Claims and that the judgment be reduced only to \$900,000. The Court is not persuaded by this argument.

In adjudicating the Plaintiff's motion, the Court has examined whether the Plaintiff has pled and proven multiple "occurrences" such that the judgment entered may exceed \$300,000. The

term “occurrence” means “an unfolding sequence of events which proximately flow from a single act of negligence.” S.C. Code Ann. § 15-78-30(g).

In her motion, the Plaintiff alleges that she proved during the trial three acts of gross negligence which she describes as follows: “(1) Lt. Whitaker relating to her failure to correct the medical staff’s misunderstanding about self-harm; (2) Lt. Riddell relating to his failure to respond in any way to the concerns raised by Dep. Kelley; and (3) the supervisory staff within the ACSO for failure to ensure that their ‘boots on the ground’ deputies understood how administrative grievances were to be filed.” However, the Verdict Form, as agreed to by the Plaintiff, does not reflect any such findings by the jury. The Verdict Form asked only the following question of the jury: “Do you find that any employee of the Aiken County Sheriff’s Office was grossly negligent and, through such acts or omissions, proximately caused injury to Cassiopia Rhoads?” While the jury responded in the affirmative, the jury was not asked and did not state which acts or omissions constituted gross negligence nor the conduct of which employee constituted gross negligence.

In *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), the Supreme Court ruled that “[i]f [plaintiff] alleges multiple occurrences, that is, that there was more than a single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence.” 694 S.E.2d at 544. In the case at bar, however, the Plaintiff has not satisfied her burden of proof in demonstrating that there were multiple occurrences or the amount of the loss, if any, attributable to each occurrence. As was the case in *Chastain*, the jury was not asked for the type of information that this Court needs to apply the monetary caps for multiple occurrences. As the Supreme Court made clear in *Chastain*, it is the Plaintiff’s responsibility to provide a verdict form bearing the information necessary to prove her case and support the judgment, if she seeks a judgment in excess of the \$300,000 cap.

Clearly, a trial judge may not speculate as to the jury's verdict, particularly on questions that jury was never asked to answer on the Verdict Form. *Chastain* makes that clear. As indicated above, in this case, the jury was not asked to state on the Verdict Form whether it found multiples acts of gross negligence, and the Court declines to speculate as to any such findings. Based on the absence of that necessary information from the jury to determine whether there were multiples acts or omissions that gave rise to multiple “occurrences,” the Court cannot award more than one cap of \$300,000, just as the trial court in *Chastain* was compelled to reduce the verdict to one cap of \$300,000 under similar circumstances.

IT IS, THEREFORE, ORDERED that the Plaintiff’s Motion for a Determination of Multiple Occurrences is denied.

IT IS FURTHER ORDERED that the Defendant’s Motion for Reduction of Verdict to the Statutory Cap and for Set-Off of Amounts Paid by Settling Parties is hereby granted and the \$950,000 verdict in the Plaintiff's favor is reduced to \$300,000, and judgment in that amount is hereby entered.

AND IT IS SO ORDERED.

EUGENE C. GRIFFITH, JR.
Presiding Judge,
Second Judicial Circuit



Aiken Common Pleas

Case Caption: Cassiopia Rhoads VS Southern Health Partners Inc , defendant, et al

Case Number: 2020CP0202238

Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2024-03-12 05:43:42 page 6 of 6

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
 Cassiopia Rhoads,	)	
	)	Civil Action No. 2020-CP-02-2238
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING DEFENDANT’S
	)	MOTION TO ALTER OR AMEND
Aiken County Sheriff’s Office,	)	ORDER AND JNOV MOTION
	)	
Defendant.	)	
_____	)	

This matter came before the Court on the Motion to Alter or Amend Order and/or Motion to Reconsider filed by the Defendant Aiken County Sheriff’s Office. In its motion, the Defendant argues that the Court failed to address its defense that the Plaintiff’s gross negligence cause of action is barred by operation of Section 15-78-70(d) of the South Carolina Code as a result of the settlement entered in this action between the Plaintiff and the Southern Health Partners Defendants (“SHP Defendants”). Upon further consideration, the Court agrees that that particular defense, which was raised at directed verdict and against in the JNOV motion, has not been addressed.

The Court then advised the parties on May 20, 2024, that after further review and consideration of the Section 15-78-70(d) defense, the Court would grant reconsideration and the JNOV motion in the Defendant Sheriff Office’s favor. On May 22, 2024, the Plaintiff filed a motion requesting a hearing on this issue before a final order was issued. The Court granted that motion, received further briefing on the issue, and held a hearing on June 13, 2024, with counsel for both parties present. After full consideration of the motions filed, the arguments made by the parties at trial and at the June 13, 2024 hearing, and the written submissions of the parties, the Court hereby grants the Defendant’s Motion to Alter or Amend Order and/or Motion to Reconsider

and further grants a JNOV in favor of the Defendant Aiken County Sheriff's Office for the reasons discussed in this Order.

LEGAL ANALYSIS

At both the directed verdict stage and in its post-trial motions, the Defendant Sheriff's Office argued that the Plaintiff's cause of action for gross negligence is barred by operation of Section 15-78-70(d) of the South Carolina Code, as a result of the settlement entered in this action between the Plaintiff and the SHP Defendants. Section 15-78-70(d) states: "A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence." S.C. Code Ann. § 15-78-70(d).

As the record reflects per a stipulation of the parties, the Plaintiff settled this action against the SHP Defendants following mediation and prior to trial. At trial, the Defendant Sheriff's Office moved for a directed verdict on the basis that the Plaintiff's gross negligence cause of action is barred by virtue of that settlement and then renewed that motion by way of its JNOV motion. Specifically, the Defendant Sheriff's Office argues that the prior settlement in this same civil action for the same occurrence constitutes a complete bar to any further action by the Plaintiff against the Defendant Sheriff's Office pursuant to Section 15-78-70(d) of the South Carolina Tort Claims Act. This Court agrees.

Section 15-78-70(d) has been previously interpreted by the South Carolina Supreme Court in the case of *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002). That case arose out of a motor vehicle accident. The at-fault driver was employed at the time of the accident by Berkeley County although he was driving his personal vehicle. The plaintiff in *Wade* initially sued only the driver individually and reached a settlement. Following that settlement, the plaintiff then

sued Berkeley County, which raised Section 15-78-70(d) as a bar to that action. The Supreme Court ultimately concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Therefore, because the settlement with the driver individually was not in an action under the Tort Claims Act, the Supreme Court concluded that Section 15-78-70(d) was not applicable. The Supreme Court emphasized that, when the settlement was reached,

[N]o action [under the Tort Claims Act] has been initiated, nor had any claim been filed, against County. At the time of the settlement, Wade had only initiated an action against Pierce in his individual capacity, not against County as Pierce's employer. Accordingly, at the time Wade and Pierce executed the settlement document, there were no actions "under this chapter." Wade and Pierce's settlement did not invoke the provisions of § 15-78-70(d) barring Wade from further action against County.

559 S.E.2d at 589.

The Supreme Court in *Wade*, nonetheless, explained the scope of Section 15-78-70(d). The Court held that "to invoke the provisions of § 15-78-70(d), there must be a settlement or judgment in an action under the Act or a settlement of a claim under the Act." 559 S.E.2d at 588-589. Therefore, if there is a settlement in an action brought under the Tort Claims Act, Section 15-78-70(d) may be invoked as a bar to any further proceedings or recovery against a governmental entity arising out of the same occurrence.

The Court finds the bar of Section 15-78-70(d) applies to this case. There is no dispute that the Plaintiff brought suit simultaneously against all Defendants, including the Defendant Sheriff's Office as well as the SHP Defendants, which were named as parties in the original Complaint. The suit was brought pursuant to the Tort Claims Act in that the Plaintiff asserted a negligence/gross negligence cause of action against all Defendants, and as discussed above, the Tort Claims Act is the exclusive means by which the Defendant Sheriff's Office, as a governmental entity, may be

sued in tort. The Plaintiff also cited the Tort Claims Act in her Complaint. *See* Complaint, ¶¶ 4-5. All of the Defendants, including the SHP Defendants, also cited Tort Claims Act defenses in their Answers, with the Plaintiff never moving to strike those defenses. *See*, SHP Answer, ¶ 83, Sheriff's Office Answer, ¶¶ 51-52, 57. Thus, it is indisputable that the Plaintiff brought this action under the Tort Claims Act.

There is likewise no dispute that the Plaintiff settled with the Defendant SHP. A release has been executed, and the SHP Defendants have been dismissed from this action with prejudice. Unlike *Wade*, however, there were not separate suits filed. The Plaintiff did not settle with the SHP Defendants and then sue the Sheriff's Office in a separate action. To the contrary, the settlement occurred within the confines and context of this very Tort Claims Act case. As the Sheriff's Office argues, this is the very scenario described by the Supreme Court in *Wade* where the bar of Section 15-78-70(d) may be invoked.

At the directed verdict stage, the Plaintiff argued that the limitations provided by Section 15-78-70(d) are not applicable in this case because the settlements are with non-governmental defendants that fall outside of the Tort Claims Act. The Court adopted that reasoning in denying the directed verdict. The Court has now reconsidered that ruling and finds that the bar of Section 15-78-70(d) applies to this case for the following reasons.

First, the precise language of Section 15-78-70(d) is as follows:

A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

S.C. Code Ann. § 15-78-70(d). Contrary to the Plaintiff's position, there is no requirement that the settlement or judgment must be with another governmental party. There is no language to that effect in the statute, and if that were the intent of the General Assembly, such language could have been included. What is required is that the settlement must occur within the context

of an action brought pursuant to the Tort Claims Act. In *Wade, supra*, the Supreme Court examined that very question and concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Thus, if there is a settlement is effected within the context of an action filed pursuant to the Tort Claims Act, Section 15-78-70(d) applies.¹

The present case is indisputably an action brought pursuant to the Tort Claims Act for the reasons discussed above. The suit was brought pursuant to the Tort Claims Act in that the Plaintiff has asserted a gross negligence cause of action against the Sheriff's Office, and the Tort Claims Act is the exclusive means by which the Sheriff's Office may be sued in tort. See, S.C. Code Ann. § 15-78-200.

Additionally, to the extent that the interpretation of Section 15-78-70(d) may be unclear as the Plaintiff appears to suggest, it is important to recognize that the Tort Claims Act includes its own rules of statutory construction, including Section 15-78-20(f), which states: "The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, *must* be liberally construed *in favor of limiting the liability of the State.*" S.C. Code Ann. § 15-78-20(f). (Emphasis added). Thus, the limitation on liability as set forth in Section 15-78-70(d) must be liberally construed in favor of limiting the liability of the State and its political subdivisions as

¹ In her supplemental brief, the Plaintiff suggests that the settlement with the SHP Defendants is not a settlement of a "claim" brought pursuant to the Tort Claims Act. The Plaintiff argues that SHP is not a governmental entity and hence has not brought a "claim" against SHP pursuant to the Tort Claims Act. However, Section 15-78-70(d) applies to "[a] settlement or judgment in an action *or* a settlement of a claim under this chapter." (Emphasis added). The use of the disjunctive "or" is important. Section 15-78-70(d) is applicable to the settlement of an "action" or the settlement of a "claim." Within the context of the Tort Claims Act, the General Assembly has used the terms "action" and "claim" in such manner to indicate that an "action" pertains to a matter in suit and a "claim" pertains to a matter prior to suit being filed. See *e.g.*, S.C. Code Ann. § 15-78-90(b) ("Whether or not the claim is filed, the claimant is entitled to institute an action against the appropriate agency or political subdivision").

mandated by Section 15-78-20(f) and the supporting case law. *See, Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"); *Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990) (same).

Finally, the Plaintiff's position disregards or is otherwise inconsistent with the well-settled rule of statutory construction that "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196, 198 (2002). The Court finds that the reason that the General Assembly adopted Section 15-78-70(d) was to be read and applied *in pari materia* with Section 15-78-100(c) of the Tort Claims Act, which reads: "In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined." S.C. Code Ann. § 15-78-100(c). Section 15-78-100(c) requires that a jury return a special verdict specifying the proportional liability of each joint tortfeasor, both governmental and non-governmental. The reason for this is clear and supported by constitutional principles: the government and the taxpayers are not jointly and severally liable and instead are only liable for its own proportioned share of liability. The right to apportioned fault under Section 15-78-100(c) is lost, however, if a joint tortfeasor is able to settle out of the litigation. That is the reason that Section 15-78-70(d) was enacted with and must be read *in pari materia* with Section 15-78-100(c). Contrary to the Plaintiff's argument, the General Assembly did not deny a plaintiff's or claimant's right to settle with less than all alleged joint tortfeasors, but if the plaintiff or claimant does settle with a joint tortfeasor, that then bars any further recovery from a governmental entity because the governmental entity has lost the critical right to apportionment. As the current case

demonstrates, if Section 15-78-70(d) is read in any other manner than what the Defendant argues, a plaintiff or claimant may settle with the primary wrongdoer (here Southern Health Partners) for less than its share of the total liability and then attempt to hold the governmental entity for damages based on a greater degree of fault than it would otherwise have, thereby resulting from the loss of its right of apportionment under Section 15-78-100(c). That was clearly not the intent of the General Assembly in enacting both Section 15-78-70(d) and Section 15-78-100(c) and the statutory scheme that was created for allowing qualified but not unlimited liability for governmental entities. *See, Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564, 570 (1990) (recognizing the “legislative objectives” of the Tort Claims Act are “relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government”). To reiterate, the Section 15-78-70(d) was not enacted by the General Assembly to have no purpose, meaning, or application. As the Supreme Court spelled out in *Wade*, Section 15-78-70(d) is intended to apply in the scenario before this Court in the case at bar.²

The Plaintiff further disputes that the settlement with the SHP Defendants was “by reason of the same occurrence.” The term “occurrence” means “an unfolding sequence of events which proximately flow from a single act of negligence.” S.C. Code Ann. § 15-78-30(g). In *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011), which is the leading case on the application of the “occurrence” language in the Tort Claims Act, our Supreme Court explained that the number of “occurrences” is not tied to the number of acts of

² The Court is also not persuaded by the Plaintiff’s reliance on the case of *Chester v. South Carolina Department of Public Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010), in which the Supreme Court ruled that Section 15-78-100(c) does not authorize a court to join co-tortfeasors who had settled pre-suit. This Court notes that that ruling in *Chester* is consistent with the scenario in *Wade*. Notably, however, the Supreme Court did not reference Section 15-78-70(d) nor address its meaning or application in *Chester*, and the Court did not preclude the proper application of Section 15-78-70(d) as was previously outlined in *Wade*.

negligence. 712 S.E.2d at 406 (“we do not adopt a bright-line test based on the existence of multiple acts of negligence”). As *Boiter* further instructs, multiple acts of negligence may give rise to a single occurrence. The Supreme Court, in fact, recognized that “[i]n many situations, negligent acts from more than one entity would still equal but one occurrence.” 712 S.E.2d at 407. This case presents that very scenario. Here, the Defendant Sheriff’s Office was sued for its alleged failure to provide appropriate medical care for the Plaintiff. While the Sheriff’s Office’s liability was not premised on vicarious liability for the acts or omissions of the SHP Defendants, the Plaintiff alleged that the Sheriff’s Office should have sought additional care for the Plaintiff, including a referral to the hospital, in light of the insufficiencies in the care provided by the SHP Defendants. The Court agrees with the Defendant that any gross negligence by the Sheriff’s Office is part of the same “unfolding sequence of events” proximately flowing from the acts or omissions by the SHP Defendants in its provision of medical care. In effect, from a causation standpoint, if the medical care provided by the SHP Defendants had met the standard of care and the Plaintiff had been properly cared for, there would have been no breach of duty on the part of the Sheriff’s Office. The liability of all Defendants was inextricably linked, and as a result, this Court agrees that the liability of the SHP Defendants and the Sheriff’s Office arose out of the same occurrence, thereby making Section 15-78-70(d) applicable.

In sum, after careful consideration of the issue, the Court concludes that the Defendant Aiken County Sheriff’s Office is entitled to the dismissal of the Plaintiff’s gross negligence cause of action on the basis of Section 15-78-70(d).

IT IS, THEREFORE, ORDERED that the Motion to Alter or Amend Order and/or Motion to Reconsider filed by the Defendant Aiken County Sheriff’s Office is granted.

IT IS FURTHER ORDERED that the Defendant’s JNOV motion is hereby granted for the reasons stated herein, and the judgment and the Orders previously entered by the Court

addressing the parties' post-trial motions are vacated. The Plaintiff's gross negligence cause of action against the Defendant Aiken County Sheriff's Office is dismissed with prejudice.

AND IT IS SO ORDERED.

EUGENE C. GRIFFITH, JR.
Presiding Judge,
Second Judicial Circuit



Aiken Common Pleas

Case Caption: Cassiopia Rhoads VS Southern Health Partners Inc , defendant, et al

Case Number: 2020CP0202238

Type: Order/Amend

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2024-08-19 13:22:30 page 10 of 10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Cassiopia Rhoads,	)	Civil Action No.: 2020-CP-02-0223
Plaintiff,	)	
	)	Order Denying Defendant's Motion to Reconsider
v.	)	
	)	
Aiken County Sheriff's Office,	)	
<u>Defendant.</u>	)	

This matter came before the Court on Plaintiff's Motion to Reconsider filed pursuant to Rule 59(e) SCRPC. Plaintiff requests reconsideration of the Court's Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion dated August 19, 2024.

Upon review of the Plaintiff's Motion for Reconsideration, this Court finds that issues raised are consistent with of all prior memoranda and oral arguments. This Court is aware that these issues have been thoroughly briefed and argued vigorously in person. These arguments were previously addressed by the Court in detail.

This Court finds that an additional hearing for arguments is unnecessary and would not assist the Court in its decision. I respectfully deny the Plaintiff's motion to reconsider the Order dated August 19, 2024.

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Presiding Judge
Second Judicial Circuit

September____, 2024
Newberry, South Carolina



Aiken Common Pleas

Case Caption: Cassiopia Rhoads VS Southern Health Partners Inc , defendant, et al
Case Number: 2020CP0202238
Type: Order/Case Settled

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2024-09-19 14:56:23 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Cassiopia Rhoads,

Plaintiff,

vs.

Aiken County Sheriff's Office,

Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-02-02238

VERDICT FORM

Check "Yes" or "No" to the following question:

1. Do you find that any employee of the Aiken County Sheriff's Office was grossly negligent and, through any such acts or omissions, proximately caused injury to Cassiopia Rhoads?

☒ Yes (which means you have found in favor of the Plaintiff)

☐ No (which means you have found in favor of the Defendant)

If you answered "Yes" for Question 1 and therefore found in favor of the Plaintiff, please answer the additional question below. If you answered "No" for Question 1 and therefore found in favor of the Defendant, you should stop deliberations and have the foreperson sign the form.

If you answered "Yes" to Question 1, also answer the following question:

2. Please state the total amount of damages (including both economic damages and non-economic damages) sustained by Cassiopia Rhoads:

\$ 950,000

FILED October 13, 2023

Robert J. White
C.C.P. & G.S.

Charles Plouffe
Deputy Clerk

PLEASE SIGN AND DATE.

Cristina Rhodes
Foreperson

October 13, 2023
Date

Please let the bailiffs know when you have finished your deliberations.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	CIVIL ACTION NUMBER_____
	)	
CASSIOPIA RHOADS	)	
Plaintiff	)	
	)	NOTICE OF INTENT TO FILE SUIT
	)	
V.	)	
	)	
SOUTHERN HEALTH PARTNERS, INC.	)	
Defendant	)	
	)	

Plaintiff CASSIOPIA RHOADS, does hereby submit this Notice of Intent to File Suit, pursuant to the requirements of S.C. Code Ann. § 15-79-125 and seek a jury trial on claims of medical malpractice and the negligence acts of the Defendants.

1. ADVERSE PARTIES

The adverse parties to this action are, upon information and belief, SOUTHERN HEALTH PARTNERS, INC., a Delaware corporation with its principal place of business in Chattanooga, Tennessee.

2. SHORT AND PLAIN STATEMENT OF FACTS SHOWING THAT THE PARTY FILING THE NOTICE IS ENTITLED TO RELIEF

The Plaintiff, CASSIOPIA RHOADS, is a citizen and resident of Aiken County, South Carolina. She files this notice of his intent to file a lawsuit for medical malpractice and negligence to recover for pain and suffering, medical expenses, and all other damages offered at law.

SOUTHERN HEALTH PARTNERS, INC. (hereinafter “SHP”), contracted with AIKEN COUNTY, SOUTH CAROLINA to provide reasonably necessary medical care for inmates and detainees at the Aiken County Detention Center in cooperation with the AIKEN COUNTY SHERIFF’S OFFICE during the time period between July 1, 2018 and June 30, 2019. SHP by and through its employees and agents is solely responsible for any medical malpractice occurring and agreed to indemnify the other Defendants in any lawsuit in the Health Service Agreement entered into by the parties.

Rhoads was incarcerated on or about May 3, 2019, at the Aiken County Detention Center where she remained through June 4, 2019.

At the time she entered the facility, she had no injuries or symptoms of infection. After being incarcerated, Rhoads developed an infection in the side of her head that worsened during her time in custody. Ultimately an abscess the size of a softball was removed from the side of her skull along with a similarly sized portion of her skull that was infected. Defendants, by and through their agents and employees who were working at and employed for Defendants failed to diagnose and recognize the symptoms of Rhoads’ infection or convey the symptoms of Ms. Rhoads’ condition to appropriate healthcare providers. Rhoads showed symptoms, observed and documented by Defendants’ employees and agents, and reported in writing by Ms. Rhoads, of worsening health issues including headache, fever, unusual sensation throughout the body, problems with coordination and movement, trouble walking, general weakness of the muscles in both the arms and legs that worsened, feeling nauseated or vomiting, and feeling very tired and sluggish. Earlier diagnosis and treatment through the recognition of the obvious infection and need for a

short course of oral antibiotic treatment would have prevented the need for Rhoads' surgery. In addition to the initial surgery, it is believed Rhoads will have to undergo a second surgery to replace that portion of her skull that got removed. To date, Rhoads has incurred at least \$341,730.79 in medical expenses.

As a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, Ms. Rhoads has suffered and will continue to suffer: permanent physical injury and impairment, pain and suffering, loss of enjoyment of life, impairment of health, mental and emotional anguish expenditure of money for medical expenses, therapies and other ancillary medical and health-related services and other damages as may be proven at trial.

3. STANDARD INTERROGATORIES- *Rule 33(b) SCRPC*

The standard interrogatories required by the South Carolina Rules of Civil Procedure is attached hereto as EXHIBIT A. PLAINTIFF is providing answers to Standard Interrogatories as EXHIBIT B.

4. AFFIDAVIT OF EXPERT.

The affidavit of an expert specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at this time is attached hereto pursuant to S.C. Code Ann. § 15-36-100 (EXHIBIT C)

This 11th Day of May, 2020

S/Robert T. Homlar

SC Bar Number: 71657

Attorney for Plaintiff

Robert T. Homlar P.C.

601 North Belair Square, Suite 14

Evans, Georgia 30809
706-831-0859
robert@homlarlaw.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	CIVIL ACTION NUMBER_____
	)	
CASSIOPIA RHOADS	)	
Plaintiff	)	
	)	NOTICE OF INTENT TO FILE SUIT
	)	
V.	)	
	)	
SOUTHERN HEALTH PARTNERS, INC.	)	
Defendant	)	
	)	

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to respond to the Notice of Intent to File Suit in this action, of which a copy is herewith served upon you.

PLEASE TAKE NOTICE that the original of the Summons, Complaint and Notice of Filing was filed in the Office of the Clerk of Court for Aiken, South Carolina on the 11th day of May 2020.

This 11th Day of May, 2020

S/Robert T. Homlar
 SC Bar Number: 71657
 Attorney for Plaintiff
 Robert T. Homlar P.C.
 601 North Belair Square, Suite 14
 Evans, Georgia 30809
 706-831-0859
 robert@homlarlaw.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	CIVIL ACTION NUMBER_____
	)	
CASSIOPIA RHOADS	)	
Plaintiff	)	
	)	STANDARD INTERROGATORIES FOR
	)	THE NOTICE OF INTENT
V.	)	
	)	
SOUTHERN HEALTH PARTNERS, INC.	)	
Defendant	)	

TO DEFENDANT SOUTHERN HEALTH PARTNERS, INC. ABOVE NAMED:

The Plaintiff in the captioned case requests that the Defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

- (1) Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
- (2) Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.
- (3) In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.
- (4) Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
- (5) Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.
- (6) List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

(7) For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

(8) If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

This 11th day of May, 2020

S/Robert T. Homlar

SC Bar Number: 71657

Attorney for Plaintiff

Robert T. Homlar P.C.

601 North Belair Square, Suite 14

Evans, Georgia 30809

706-831-0859

robert@homlarlaw.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	CIVIL ACTION NUMBER_____
	)	
CASSIOPIA RHOADS	)	
Plaintiff	)	<i>PLAINTIFF'S RESPONSES TO</i>
	)	<i>STANDARD INTERROGATORIES FOR</i>
	)	<i>THE NOTICE OF INTENT</i>
V.	)	
	)	
SOUTHERN HEALTH PARTNERS, INC.	)	
Defendant	)	
	)	

The Plaintiff in the captioned files this response to the Standard Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

(1) Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

-Cassio pia Rhoads-Leath Correctional Institution, 2809 Airport Rd. Greenwood, SC 29649
-expected to testify as to her injuries and treatment as well as her condition before and after the incident which is the subject of this action.

-Jean Rhoads-2211 Rush Street, North Augusta, SC 29841
-expected to testify as to the injuries of Cassio pia Rhoads. She took photos of the Plaintiff's head.

-“Nurse Donna” at Aiken County Detention Center
-Plaintiff's condition and treatment

-“Nurse Malinda” at Aiken County Detention Center
-Plaintiff's condition and treatment

- “Nurse Sherry” at Aiken County Detention Center
-Plaintiff's condition and treatment

-“Doctor Williams” at Aiken County Detention Center

- Plaintiff's condition and treatment
- James Daniel Dillon Jr. MD at Neuroscience Center at Aiken Regional Medical Center
410 University Parkway, Suite 1520, Aiken, SC 29801
 - medical treatment provided to the Plaintiff
- Alfonso Gay MD with Aiken Regional Medical Center
 - medical treatment provided to the Plaintiff
- Carey Hindman MD with Aiken Regional Medical Center
 - medical treatment provided to the Plaintiff
- Lance Hoover MD with Aiken Regional Medical Center
 - medical treatment provided to the Plaintiff
- Jonathan Lenartz CRNA with Aiken Regional Medical Center
 - medical treatment provided to the Plaintiff
- Joseph Olawole Ogunsulire MD with Aiken Regional Medical Center
 - medical treatment provided to the Plaintiff
- Stefan Ploch MD with Aiken Regional Medical Center
 - medical treatment provided to the Plaintiff
- Robert Searles DO with Aiken Regional Medical Center
 - medical treatment provided to the Plaintiff
- Jose Vazquez, MD, Chief, Division of Infectious Diseases at Medical College of Georgia/Augusta University, 1120 15th Street, AE 3029, Augusta, GA 30912
 - causation of Plaintiff's condition and need for treatment brought about by actions of Defendants
- As may be applicable, unknown other nurses and physicians at Aiken County Detention Center, Aiken Regional Medical Center as identified through records in the possession and control of the Aiken County Detention Center
- Unknown Sheriff's Office Employees of Aiken County Detention Center
- Unknown employees of Southern Health Partners

-No recorded statements have been taken from any witness. Dr. Vazquez provided an Affidavit, a copy of which is provided.

(2) Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: The Plaintiff's counsel has the following related to this lawsuit:

-Photos of plaintiff's head right after surgery

-Health Services Agreement between Aiken and Southern Health Partners

-Medical Inmate Grievance Records from Aiken County Detention Center

-Aiken County Detention Center Policies and Procedures

-Aiken County Detention Center Inmate Rules

-Plaintiff's medical records obtained from

-Southern Health Partners

-Aiken Regional

-Aiken County Detention Center

-Southern Health Partners Policy and Procedure Manual for Health Services in Jail (Effective Date: April 1, 2015)

(3) In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

RESPONSE: Plaintiff was treated primarily by James Daniel Dillon Jr. MD at Neuroscience Center at Aiken Regional Medical Center 410 University Parkway, Suite 1520, Aiken, SC 29801 and other physicians at Aiken Regional Medical Center (302 University Pkwy, Aiken, SC 29801). To date, Rhoads has incurred at least \$341,730.79 in medical expenses for treatment provided by Aiken Regional Medical Center.

(4) Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE: None are known to Plaintiff.

(5) Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

RESPONSE: Other than medical expenses as outlined above, Plaintiff has not incurred any economic damages.

(6) List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE: Jose Vazquez, MD, Chief, Division of Infectious Diseases at Medical College of Georgia/Augusta University, 1120 15th Street, AE 3029, Augusta, GA 30912

(7) For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Plaintiff incorporates by reference the summaries provided above and the affidavit provided herewith.

This 11th day of May, 2020

S/Robert T. Homlar

SC Bar Number: 71657

Attorney for Plaintiff

Robert T. Homlar P.C.

601 North Belair Square, Suite 14

Evans, Georgia 30809

706-831-0859

robert@homlarlaw.com

AFFIDAVIT OF JOSE A. VAZQUEZ

PERSONALLY appeared before me, the Affiant, Jose A. Vazquez, MD, FACP, FIDSA, who first being duly sworn deposes and testifies as to the following:

(1)

I am over 18, legally competent, and I make this affidavit based upon medical records and other records provided to me as well as my background, education, training, and experience.

(2)

I am a medical doctor in the State of Georgia.

(3)

I am Board Certified by the American Board of Internal Medicine for, and my practice areas are, Internal Medicine and Infectious Disease.

(4)

I am licensed by the Georgia Composite Medical Board to practice medicine in the State of Georgia

(5)

I am a Professor of Medicine at the Medical College of Georgia/Augusta University where I am the Chief of the Division of Infectious Diseases with clinical interests in chronic wound infections, antifungal susceptibility, antifungal resistance mechanisms and the rapid diagnosis of fungal infections.

(6)

I have been the Chief of the Division of Infectious Diseases since 2013 at the Medical College of Georgia/Augusta University.

(7)

I have specialized technical knowledge regarding the issue of Ms. Rhoad's condition, diagnosis and treatment.

(8)

My specialized technical knowledge and training may assist the trier of fact in this case.

(9)

My active practice of medicine includes the evaluation and treatment of internal medicine and infectious disease and other issues similar to those for which Ms. Rhoads sought treatment.

(10)

My credentials qualify me to identify a negligent act or omission committed by the Defendants' employees and agents.

(11)

I have actual professional knowledge and experience in the area of internal medicine and infectious disease as the result of having been regularly engaged in the active practice of internal medicine and infectious disease for at least three of the last five years immediately preceding the opinions rendered below.

(12)

I am aware of the degree of care and skill ordinarily exercised by members of the medical profession under the same or similar circumstances as it relates to the care and treatment of patients such as Ms. Rhoads. This knowledge is based upon my education, training, and experience.

(13)

I have been provided with medical records I am informed are from Aiken Regional Hospital and Aiken County Detention Center pertaining to Cassiopia Rhoads.

(14)

I have been informed of certain facts, that in addition to the records that I reviewed, form the basis for my opinion in this case as follows:

(14)(a)

Ms. Rhoads was incarcerated at the Aiken County Detention Center on May 3, 2019.

(14)(b)

While in custody she made multiple multiple reports of and was observed by healthcare providers demonstrating headache, fever, unusual sensation throughout the body, problems with coordination and movement, trouble walking, feeling nauseated or vomiting, and feeling very tired and sluggish.

(14)(c)

When initially arrested, Ms. Rhoads was medically assessed and determined to be asymptomatic with no medical issues associated with her head.

(14)(d)

On May 10, 2019, Ms. Rhoads was observed by a nurse laying on the floor and complained that her head hurt.

(14)(e)

On May 11, 2019, Ms. Rhoads requested medical attention through a self-serve kiosk in the jail reporting "I HAVE A HUGE ABCESS (sic) ON THE SIDE OF MY HEAD THAT KEEPSGETTING (sic) BIGGER"

(14)(f)

On May 16, 2019, Ms. Rhoads requested medical attention through a self-serve kiosk in the jail reporting "I AM HAVING REALLY AD (sic) PAIN IN MY EAR AND FEVER"

(14)(g)

On May 20, 2019, Ms. Rhoads requested medical attention through a self-serve kiosk in the jail reporting "I HAVE A FKUID (sic) LIKE SCAK ON SIDE OF MY HEAD, ABOVE MY EAR. MY EAR ACHES AND IM (sic) STILL FIGHTING A FEVERE (sic) AND SEVERE HED (sic) PRESSURE. MY EYES WATER CONSTANTLY AND I HAVE SEVERE NAUSEA N (sic) VOMMITTING. I ALSO FEEL DIZZY AND CANT (sic) FOCUS MY EYES WHEN I STAND UP. THE WHOLE RIGHT SIDE OF MY FACE IS SWOLLEN AND VERY PAINFUL. I HAVE NOT BEEN ABLE TO GET OUT OF BED FOR 4 PLUS DAYS ON THE EXCEPTION OF SHOWERING. PLEASE HELP ME AND SEND MOTRIN"

(14)(h)

On May 21, 2019, Ms. Rhoads requested medical attention through a self-serve kiosk in the jail reporting "I HAVE FLUID UNDER MY SKIN ABOUT MY R EAR. BEEN THERE FOR 4 PLUS DAYS, WHOLE SIDE OF FACE IS SWOLLEN AND HAVE PLACED SEVERAL SICK CALLS AND HAVE NOT BEEN SEEN YET. I AM IN SEVERE PAIN AND PRESSURE IN MY HEAD."

(14)(i)

On May 28, 2019, at approximately 2:44 P.M., Ms. Rhoads fainted and complained of pain in her right face.

(14)(j)

On May 28, 2019, at approximately 3:10 P.M., Doctor Williams gave a verbal order a nurse to have a CT scan done of Ms. Rhoads' head for the purposes of ruling out a "contusion to brain."

(14)(k)

By May 28, 2019, the abscess on Ms. Rhoads' head had swollen to the approximate size of a softball and her forehead was full of fluid.

(14)(l)

On June 2, 2019, at approximately 3:30 P.M., Ms. Rhoads was found passed out in a prone position with the left side of her head on the ground.

(14)(m)

On June 2, 2019, at approximately 6:30 P.M., Ms. Rhoads complained of feeling "weird" and needed to vomit to a nurse. She complained of feeling like she had "needles poking in her head" on the right side.

(14)(n)

While in custody, based on the records, Ms. Rhoads was never provided any medical treatment other than Tylenol, Ibuprofin, and Amoxil.

(14)(o)

On June 2, 2019, at approximately 7:30 PM Ms. Rhoads was taken to the Aiken Regional Medical Center hospital by jail officials.

(14)(p)

At the hospital, Ms. Rhoads temperature was taken and registered 102.5 degrees Fahrenheit.

(14)(q)

During the time period while in custody, Ms. Rhoads' temperature was only taken on one occasion at a "sick call" and it registered 100.9 degrees Fahrenheit.

(14)(r)

On June 4, 2019, Ms. Rhoads was "released" from the custody of the Aiken County Detention Center.

(14)(s)

On June 5, 2019, Ms. Rhoads underwent a craniotomy, surgical opening into the skull, and diagnosed with epidural abscess and osteomyelitis due to methicillin-resistant staphylococcus aureus (MRSA) at Aiken Regional Medical Center.

(15)

The healthcare professionals and health care facility involved failed to properly recognize the signs and symptoms of an infection developing in Ms. Rhoads skull and failed to render appropriate treatment to her.

(16)

Had Ms. Rhoads' condition been properly identified and treated she would have likely only required a course of antibiotics for treatment and would not have had to undergo surgery.

(17)

I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

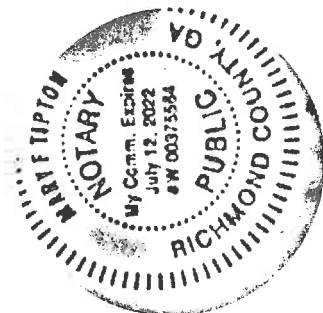
Sworn to and Subscribed before me this

29 day of April, 2020

Notary Public for State of South Carolina/Georgia

My Commission expires: 7/12/2022

Jose A. Vazquez
Jose A. Vazquez, MD, FACP, FIDSA



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Cassiopia Rhoads

Plaintiff,

vs.

Southern Health Partners, Inc.; Robert J.
Williams, M.D.; Michael E. Hunt., in his
official and representative capacity as Aiken
County Sheriff; and Aiken County, operating
as the Aiken County Detention Center,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Civil Action No.:

SUMMONS

TO: THE ABOVE-NAMED DEFENDANTS.

YOU ARE HEREBY SUMMONED and required to Answer the Complaint, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office at 924 Gervais Street, Columbia, SC 29201, within thirty (30) days from the service hereof, exclusive of the date of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default may be rendered against you for the relief demanded in the pleading.

November 17, 2020
Columbia, South Carolina

HHP LAW GROUP, LLC

s/ Francis M. Hinson, IV

Francis M. "Brink" Hinson, IV (SC Bar # 74917)
924 Gervais Street
Columbia, SC 29201
803.400.8277 (office)
803.845.4900 (facsimile)
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—and—

WUKELA LAW FIRM

Patrick J. McLaughlin (SC Bar # 73675)
403 Second Loop Rd.
Florence, SC 29505
843.669.5634 (office)
803.669.5150 (facsimile)
Patrick@wukelalaw.com

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Cassiopia Rhoads	)	Civil Action No.:
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Southern Health Partners, Inc.; Robert J.	)	COMPLAINT
Williams, M.D.; Michael E. Hunt., in his	)	(Jury Trial Demanded)
official and representative capacity as Aiken	)	
County Sheriff; and Aiken County, operating	)	
as the Aiken County Detention Center,	)	
	)	
Defendants.	)	

With regard to the aspect of this pleading sounding in medical negligence, Plaintiff has completed all pre-suit filing requirements of South Carolina Code § 15-79-125, including the filing of a Notice of Intent to File Suit (C/A No.: 2020-NI-02-00008) and all the matters associated therewith. Further, in accordance with S.C. Code § 15-36-100, Plaintiff's Notice of Intent to File Suit contained a contemporaneous filing of affidavit of merit, a copy of which is also attached hereto.

The Plaintiff, complaining of the Defendants, hereby alleges as follows:

PREFACE

Cassiopia Rhoads (hereinafter sometimes referred to as "Cassi") brings this action against the Southern Health Partners (hereinafter sometimes referred to as "SHP") and its medical staff, agents, and employees, who failed to properly screen, monitor, and otherwise treat her during a stay at Aiken County Detention Center (hereinafter sometimes referred to as the "ACDC") from May 3, 2019 until June 3, 2019. Plaintiff also brings this action against SHP and its corporate administrators, directors, and other personnel for their failure to ensure proper training and

failure to ensure/follow/supervise proper policies and procedures as described herein and for SHP's regular and routine practice of failing to ensure proper training of the guards within the jails where it the company serves as the facilities' medical provider. Plaintiff also brings this action against Dr. Robert J. Williams. Plaintiff also brings this action against Michael E. Hunt in his official and representative capacity as Aiken County Sheriff (hereinafter sometimes referred to as "Hunt") and his agents/employees for failing to ensure proper training, failing to ensure/follow/supervise proper policies and procedures and other failures as described herein. Plaintiff also brings this action against Aiken County, as the owner and operator of the Aiken County Detention Center (hereinafter sometimes referred to as the "County"), and its agents/employees for failing to properly screen, failing to ensure proper training, failing to ensure/follow/supervise proper policies and procedures and other failures as described herein. Plaintiff brings claims against all Defendants for negligence, gross negligence, and recklessness based on a breach of duty in the care and custody of Cassi during her time at ACDC.

PARTIES, JURISDICTION AND VENUE

1. At all times relevant to this Complaint, Cassiopia ("Cassi") Rhoads was a citizen and resident of the County of Aiken, South Carolina.

2. Defendant Southern Health Partners, Inc. (hereinafter sometimes referred to as "SHP") is a legal entity that operates and does business in Aiken County, South Carolina through a contract to provide medical services and operate/administer the medical services program at Aiken County Detention Center. Defendant SHP is liable for the negligent acts and omissions of its employees, servants, and/or agents under the doctrines of *respondeat superior* and non-delegable duty and for any failures of the medical services program at Aiken County Detention Center through their contractual obligations. SHP contracted to conduct business in Aiken County and subsequently conducted business in Aiken County. For the purposes of this action, the Plaintiff

alleges that all nurses/healthcare providers and other employees/agents involved in providing health care/medical services at the ACDC were doing so within the scope of their employment and/or apparent agency and as such, Defendant SHP is liable for the acts and omissions of these employees and/or agents under the doctrines of *respondeat superior*, master and servant, agency, apparent agency and other types of vicarious liability.

3. Defendant Robert J. Williams, M.D. (hereinafter sometimes referred to as “Dr. Williams” or “Defendant Williams”), at the time of the events giving rise to this action and still today, was a physician licensed and practicing medicine in South Carolina. At all times relevant hereto, Defendant Williams, was acting within the course and scope of his respective employment, agency and/or apparent agency with SHP and as such the above-named employing Defendant SHP is liable for the acts and omissions of these employees and/or agents under the doctrines of *respondeat superior*, master and servant, agency, apparent agency and other types of vicarious liability. Defendant Williams contracted to conduct business in Aiken County and subsequently conducted business in Aiken County by entering into a contract to provide health care and/or medical services at the ACDC. Specifically, Defendant Williams entered into a contract with Defendant SHP to be the responsible physician and medical director/medical team director for the ACDC.

4. Defendant Michael E. Hunt (hereinafter sometimes referred to as “Defendant Hunt” or “Hunt”) is the duly elected sheriff of Aiken County and as such, in his official and representative capacity is a governmental agency and/or political subdivision of the State of South Carolina as defined in S.C. Code 15-78-10 *et seq* and has facilities located in the county of Aiken, South Carolina. At all times mentioned in this complaint, Defendant County owned and/or operated the Aiken County Detention Center and acted or carried on its business by and through its agents, servants, and/or employees. During the time period set out in the complaint, these employees

were operating within the scope of their officially assigned and/or compensated duties and had a duty to provide medical care and treatment to persons confined/detained in their custody pursuant to South Carolina law, regulations and standards.

5. Defendant Aiken County, operating as the Aiken County Detention Center, is a governmental agency and/or political subdivision of the State of South Carolina as defined in S.C. Code 15-78-10 *et seq* and has facilities located in the county of Aiken, South Carolina (hereinafter sometimes referred to as “Aiken County” or “County”). At all times mentioned in this complaint, Defendant County owned and/or operated the Aiken County Detention Center and acted or carried on its business by and through its agents, servants, and/or employees. During the time period set out in the complaint, these employees were operating within the scope of their officially assigned and/or compensated duties and had a duty to provide medical care and treatment to persons confined/detained in their custody pursuant to South Carolina law, regulations and standards.

6. The Plaintiff brings her claims pursuant to the common law and other relevant statutory provisions of the South Carolina Code. Venue is proper in Aiken County as the events which give rise to this litigation occurred therein.

7. As Defendants contracted to conduct business in Aiken County and subsequently conducted business in Aiken County, and as the events that give rise to this action occurred in Aiken County, this Court has jurisdiction and venue is properly laid.

FACTS

Background Facts

8. SHP has submitted sworn testimony to South Carolina courts stating that “SHP’s sole business is jail health care services.”

9. SHP has submitted sworn testimony to South Carolina courts stating that because the company's sole business is jail health care services, "this allows SHP to be very familiar with state jail standards."

10. At all times relevant to the operative facts of this case, *Minimum Standards for Local Detention Facilities in South Carolina*, 7/26/2013 version (hereinafter "MSSC"), set for standards applicable to the operation of South Carolina detention centers.

11. That SHP is "very familiar" with the MSSC.

12. SHP has submitted sworn testimony to South Carolina courts stating that "SHP has expended significant time and resources in creating and updating its policy manual to best address the needs of its unique patient population."

13. SHP has submitted sworn testimony to South Carolina courts stating that SHP "utilizes the National Commission on Correctional Health Care (NCCHC), along with the American Correctional Association (ACA) standards, as a basis for its policies, procedures, and operations."

14. Aiken County Sheriff's Office operates the Aiken County Detention Center (hereinafter sometimes referred to as "the ACDC").

15. At all times relevant to this action, the *Minimum Standards for Local Detention Facilities in South Carolina*, 7/26/2013 version (hereinafter "MSSC") applied to the operation and administration of the ACDC.

16. At all times relevant to this action, the authority to establish and enforce the MSSC was created by statute, specifically S.C. Code 24-9-10 *et seq.*

17. At all times relevant to this action, the MSSC imposed certain minimum standards that must be met in the operation and administration of the ACDC.

18. At all times relevant to this action, the minimum standards imposed by the MSSC included minimum standards for the provision of medical services and the operation/administration of the medical services program at ACDC.

19. Aiken County was and is charged by law with the responsibility of obtaining and providing reasonably necessary medical care for inmates or detainees of the ACDC.

20. At all times relevant to this action, the MSSC required that the ACDC have a written agreement or arrangement with a licensed or certified physician and/or medical authority for the review and approval of the facility's medical services.

21. At all times relevant to this action, Aiken County made known to SHP that they desired to provide health care to inmates at the ACDC in accordance with applicable law.

22. At all times relevant to this action, Aiken County made known to SHP that the County desired to provide health care to inmates at ACDC in accordance with the MSSC.

23. At all times relevant to this action, SHP knew that Aiken County desired to provide health care to inmates at the ACDC in accordance with applicable law.

24. At all times relevant to this action, SHP knew that Aiken County desired to provide health care to inmates at the ACDC in accordance with the MSSC.

25. At all times relevant to this action, SHP acknowledged that Aiken County desired to provide health care to inmates at the ACDC in accordance with applicable law.

26. At all times relevant to this action, SHP acknowledged that Aiken County desired to provide health care to inmates at the ACDC in accordance with the MSSC.

27. At all times relevant to this action, SHP understood that Aiken County was only entering into an agreement with SHP to promote the objective of providing health care to inmates at the ACDC in accordance with applicable law.

28. At all times relevant to this action, SHP understood that Aiken County was only entering into an agreement with SHP to promote the objective of providing health care to inmates at the ACDC in accordance with the MSSC.

29. At all times relevant to this action, SHP acknowledged that Aiken County was only entering into an agreement with SHP to promote the objective of providing health care to inmates at the ACDC in accordance with applicable law.

30. At all times relevant to this action, SHP acknowledged that Aiken County was only entering into an agreement with SHP to promote the objective of providing health care to inmates at the ACDC in accordance with the MSSC.

31. At all times relevant to this action, applicable law held that failure to meet the MSSC could result in a shutdown/closure of the facility.

32. At all times relevant to this action, the MSSC required that the ACDC have a written agreement or arrangement with a licensed or certified physician or medical authority for the review and approval of the facility's medical services.

33. On or about July 10, 2013, Defendant SHP contracted with Aiken County (hereinafter sometimes referred to as "the Contract") for the provision of medical services at the ACDC.

34. SHP entered into that contract to provide Aiken County with health care for inmates at the ACDC in accordance with applicable law.

35. SHP entered into that contract to provide Aiken County with health care for inmates at the ACDC in accordance with the MSSC.

36. Pursuant to SHP policies and procedures and the MSSC, by entering into contract with Aiken County, SHP was the Responsible Health/Medical Authority at ACDC.

37. SHP understood that a failure to provide health care to inmates under that contract in accordance with the MSSC could result in the ACDC being shut down/closed.

38. That initial contract between SHP and Aiken County has been renewed every year since the original July 10, 2013 contract.

39. Although the fee charged and price structure may have changed from time to time, the Contract between SHP and Aiken County was renewed on an annual basis from 2013 through at least the end of 2019.

40. That the basic duties and responsibilities of SHP to provide health care to inmates at ACDC in accordance with applicable law and the MSSC have not changed over the life of their contractual relationship with Aiken County.

41. Pursuant to the contract described above and upon information and belief, SHP entered into a contract with Dr. Williams to provide physician services for SHP at ACDC.

42. That by entering that contract, Dr. Williams was agreeing to serve as the “responsible physician” for the ACDC.

43. That by entering that contract, Dr. Williams was agreeing to serve as SHP’s “medical director” at the ACDC.

44. Pursuant to the contract between Dr. Williams and SHP, Dr. Williams contracted to perform his duties at the ACDC “in compliance with relevant national and local standards for the universal precautions and the general delivery of correctional care in [the ACDC], including compliance with NCCHC standards.”

45. That the MSSC are some of the “local standards” that Dr. Williams was required to perform his duties in compliance with.

46. In bidding and agreeing to provide services to Aiken County, SHP represented that the medical services it provided to the ACDC would comply with state jail standards and any other applicable standards.

47. By nature of its role at the ACDC, SHP was required to maintain and otherwise ensure that all aspects of the medical care and medical program at the ACDC complied with the MSSC.

48. Through the contracts described above, SHP was responsible for the medical care of Cassiopia Rhoads at the ACDC from the time of her booking and physical placement into the facility on or about May 3, 2019, through her release/transfer from the ACDC on or about June 3, 2019.

49. Through the contracts described above, Dr. Williams was responsible for the medical care of Cassiopia Rhoads at the ACDC from the time of her booking on or about May 3, 2019, through her release/transfer from the ACDC on or about June 3, 2019.

50. Through the contracts described above, SHP had a duty to provide medical personnel and support personnel reasonably necessary for the rendering of health care services to Cassiopia Rhoads at the ACDC.

51. Through the contracts described above, SHP had a duty to provide the ACDC with a responsible physician (sometimes referred to by SHP as the “medical director”) who would, among other things, be responsible for developing all related policies and procedures for medical services and for medical procedures.

52. SHP had a duty to develop and implement or approve written standard operating procedures for, among other things,

- a. receiving screening;
- b. non-emergency medical services;
- c. emergency medical services;
- d. deciding the emergency nature of illness or injury;
- e. first aid;
- f. chronic care;

g. convalescent care;

53. Dr. Williams had a duty to approve the written standard operating procedures described above.

54. SHP had a duty to develop and implement or approve written policies to ensure adequate medical attention for those inmates requesting it, aka “sick call.”

55. As Medical Director and Responsible Physician for the ACDC, Defendant Williams had the responsibility of ensuring that the provision of medical services at the ACDC was done in compliance with all relevant national and local standards for universal precautions and the general delivery of correctional health care, including compliance with NCCHC standards and compliance with the Minimum Standards for Local Detention Facilities in South Carolina.

56. SHP’s trains correctional officers (“COs”) that they are the “eyes and ears” of the medical staff.

57. SHP trains COs to report “out of the ordinary” issues.

58. As the responsible health/medical authority under contract to provide health care at the ACDC, SHP had a duty to ensure that ACDC’s COs were properly trained on all medical matters relating to their position as COs at the ACDC.

59. As the Responsible Physician/Medical Director for the ACDC, Defendant Williams had a duty to ensure that ACDC’s COs were properly trained on all medical matters relating to their position as COs at the ACDC.

60. A component of the position of a CO at the ACDC includes regular monitoring and reporting of any signs of any injury, sickness or medical issues of inmates which may require medical attention.

61. It was the duty of Defendants SHP and Williams to ensure that the ACDC's COs were properly trained on how to monitor/report inmates for signs of any injury, sickness or medical issue which may require medical attention.

62. Defendants SHP and Williams failed to ensure that ACDC's COs were properly trained on how to monitor/report inmates for signs of any injury, sickness or medical issue which may require medical attention.

63. Defendants SHP and Williams made no reasonable effort to ensure ACDC's COs were properly trained on how to monitor/report inmates for signs of any injury, sickness or medical issue which may require medical attention.

64. As a result of Defendants SHP and Williams' failure to ensure that ACDC's COs were properly trained on how to monitor/report inmates for signs of any injury, sickness or medical issue which may require medical attention, an injury/illness/medical issue that Cassiopia Rhoads suffered while incarcerated at ACDC was improperly/inadequately/insufficiently diagnosed and/or treated as described below.

65. Defendants Hunt and Aiken County had a duty under the law to obtain and provide reasonably necessary medical care to Cassiopia Rhoads during her time at the ACDC.

66. Defendants Hunt and Aiken County failed to meet that duty in failing to properly/adequately/sufficiently diagnose/treat an injury/illness/medical issue that Cassiopia Rhoads suffered while incarcerated at ACDC.

67. Defendants Hunt and Aiken County have a duty under the law to ensure that the ACDC's COs were properly trained on how to monitor/report inmates for signs of any injury, sickness or medical issue which may require medical attention.

68. Defendants Hunt and Aiken County failed to ensure that ACDC's COs were properly trained on how to monitor/report inmates for signs of any injury, sickness or medical issue which may require medical attention.

69. Defendants Hunt and Aiken County made no reasonable effort to ensure ACDC's COs were properly trained on how to monitor/report inmates for signs of any injury, sickness or medical issue which may require medical attention.

Cassi's Incarceration and Subsequent Injury

70. Cassi Rhoads was placed into the ACDC on or about May 3, 2019.

71. On or about May 4, 2019, Cassi was seen by SHP staff who placed on her on "monitoring" for drug withdrawals.

72. SHP medical records dated May 7, 2019 document that Defendant Williams ordered 600mg ibuprofen for Cassi noting a "knot to (R) side of head."

73. Via record dated May 11, 2019, Cassi complained of having "a huge abcesss on the side of my head that keeps getting bigger and hurts real bad. I need my tooth pulled or some antibiotics." Under the "officer findings" of that record, it states: "Will be seen at next available sick call. Nurse Malinda." That record notes a "resolution date" of "5/12/2019 12:22:00 AM," "resolved by: B" and "status: CLOS."

74. SHP medical records dated May 13, 2019 document that Defendant Williams ordered 500 mg Amoxil and 800mg ibuprofen for Cassi.

75. Via record dated May 16, 2019, Cassi complained of "having really [b]ad pain in my ear and fever." Under the "officer findings" of that record, it states: "Put you on sick call list. Nurse Donna." That record notes a "resolution date" of "5/18/2019 6:28:00 PM," "resolved by: B" and "status: CLOS."

76. SHP medical records document that on May 17, 2019 Cassi's "(R) head has knot."

77. SHP medical records dated May 19, 2019, document that Cassi is “on Amoxicillin & IBU.”

78. SHP medical records dated May 23, 2019 document that Cassi “c/o swelling (R) parietal scalp...note small hematoma to (R) parietal scalp...contusion to (R) scalp...warm compress” and that Defendant Williams ordered Tylenol 500mg for Cassi.

79. Via record dated May 20, 2019, Cassi complained “I have a fluid sack on side of my head, above my ear. My ear aches and I’m still fighting a fevere [sic] and severe hed [sic] pressure. My eyes water constantly and I have severe nausea n vomiting [sic]. I also feel dizzy and cant focus my eye when I stand up. The whole right side of my face is swollen and very painful. I have not been able to get out of bed for 4 plus days on the exception of showering. Please help me and send motrin.” Under the “officer findings” of that record, it states: “Will be seen at next available sick call. Nurse Malinda.” That record notes a “resolution date” of “5/20/2019 11:24:00 PM,” “resolved by: B” and “status: CLOS.”

80. Via record dated May 21, 2019, Cassi complained “I have fluid under my skin above my R ear. Been there for 4 plus days, whole side of face is swollen and have placed several sick calls and have not been seen yet. I am in severe pain and pressure in my head.” Under the “officer findings” of that record, it states: “Will be seen at next available sick call. Nurse Malinda.” That record notes a “resolution date” of “5/21/2019 10:48:00 PM,” “resolved by: B” and “status: CLOS.”

81. SHP medical records dated May 22, 2019, show that Cassi was seen for complaints of “(R) head has knot.” The records note that “patient c/o knot to (R) side of head area was hard...area now has a soft center, patient request to be seen by doctor request some Tylenol for pain.” The record notes that Cassi was advised she would be placed “on doctor’s list as well...”

82. Via a record dated May 24, 2019, Cassi complained “I have been taken off all pain meds and still have yet too have seen the diff.” Under the “officer findings” of that record, it states: “Ms Rhoads, the dentist has not been in. Nurse Donna.” That record notes a “resolution date” of “5/21/2019 9:51:00 PM,” “resolved by: B” and “status: CLOS.”

83. SHP medical records dated May 28, 2019 document that SHP responded to an “emergency call to B-Max 1, inmate fainted. Inmate c/o (R) side of face swollen,” that Defendant Williams was notified and issued a verbal order “to order a CT scan of head. R/O contusion to brain” + order for Ibuprofen 800mg.

84. SHP medical records dated May 29, 2019 document that Cassi requested Tylenol “for pain to (R) side of head” and that Tylenol 500mg was given.

85. SHP medical records dated May 31, 2019 document that Cassi complained of increased “pain from (R) side of temple protrusion” and was Tylenol 500mg.

86. SHP medical records dated June 2, 2019 document that around 3:30 pm “medical emergency to Bravo Pod, inmate passed out (fainted). Inmate found prone position head turned to right; left side of head on ground...Inmate stated she did not know what happened, she just felt ‘weird.’” Temp was 98.8. “Inmate & pod officer was informed that inmate has to have a buddy in place when she was getting up, she can’t get up alone.”

87. SHP medical records dated June 2, 2019 document that around 6:30 pm “emergency call to Bravo, inmate vomiting. Inmate stated she feels ‘weird’ and the need to vomit. Witnessed yellow bile in toilet (moderate amount)...temp now 102.8. Inmate still feeling dizzy and feels like ‘needles poking in her head” (pointing to right side of head). Inmate skin coloring pale. Inmate stated her (R) gland swollen. Felt (R) side of her neck, has large pea size lump in neck, below jaw line. Notified Lt. to send inmate to ARMC. Inmate has an appointment for CT scan on Wed. 6/5.”

88. Medical records document that Cassi presented at the Aiken Regional Medical Center (“ARMC”) at approximately 8:20 pm, having been transported by the Aiken County Sheriff’s Office, where she “reports swelling to the right side of face x1 month. Also reports fever and n/v today...” Her temp at the time was 102.2. Exam noted a “large boggy lesion over R temple.”

89. Medical records dated June 2, 2019 document that a head CT performed on Cassi showed “there is a cortical bony erosion of a portion of the right anterior parietal bone, image 23 which could represent a destructive bone lesion or osteomyelitis. External to this abnormal bone there is a large amount of frontal parietal scalp swelling with a scald fluid collection, seroma versus abscess, measuring approximately 9.7 x 2.2 cm. Due to this collection, there is a loculated low-density region, axial images 20-21 which could represent epidural abscess, 2.6 x 0.7cm. Superior to the level of abnormal bone, there is an intracranial extra-axial fluid-density collection, axial image 25, 3.2 x 2.3 cm which could represent extra-axial mass or abscess.”

90. As a result of the above exams, Cassi was admitted to ARMC and a neurological consult was requested, with the assessment/plan being that she had epidural abscess and needed further diagnostic studies.

91. By June 5, 2019, Cassi had been diagnosed with Osteomyelitis with subgaleal and epidural abscesses, transferred to ICU and underwent a right parietal craniectomy for abscess, right.

92. Medical records dated June 7, 2019 document that Cassi was diagnosed with “severe sepsis – due to Osteomyelitis with subgaleal and epidural abscesses, was being administered broad spectrum antibiotics by IV and in the ICU.

93. Ultimately, Cassi stayed at ARMC until July 8, 2019. After discharge back to the ACDC, SHP records document that Cassi “has a horseshoe shaped scar/stitches on R [right] side of head behind ear.”

94. The Defendants SHP and Williams deviated and departed from the prevailing and accepted standards of medical care by way of, including but not limited to, the following:

- a. by failing to properly work up, diagnose and treat the medical condition of Cassi in a timely manner;
- b. by failing to perform proper medical screening;
- c. by failing to recognize the serious nature to Cassi's medical condition and failing to provide/seek the appropriate care in a timely manner;
- d. by failing to have in place proper policies and procedures to ensure patients like Cassi were properly monitored and their conditions reported by COs and if such policies and procedures were in place then failing to enforce such policies and procedures;
- e. in any other manner of failing to adhere to the proper standard of care as may be learned through discovery of this case;
- f. in such other and further particulars as the evidence adduced in discovery and trial may disclose;

95. The Defendants SHP and Williams were negligent, grossly negligent and reckless in:

- a. failing to perform a proper receiving screening or initial intake screen at the time of Cassi's booking into the ACDC;
- b. Failing to perform a proper health appraisal of Cassi within fourteen (14) days
- c. failing to properly train the COs at the ACDC;
- d. failing to have adequate standard operating procedures and/or training at the ACDC for receiving screening or initial intake screen on new detainees;
- e. failing to have adequate standard operating procedures and/or training at the ACDC for on non-emergency medical services;
- f. failing to have adequate standard operating procedures and/or training at the ACDC for emergency medical and dental services;
- g. failing to have adequate standard operating procedures and/or training at the ACDC for deciding the emergency nature of illness or injury;
- h. failing to have adequate standard operating procedures and/or training at the ACDC for dental screening, hygiene, examination and treatment;

- i. failing to have adequate standard operating procedures and/or training at the ACDC for first aid;
- j. failing to have adequate standard operating procedures and/or training at the ACDC for chronic care;
- k. failing to have adequate standard operating procedures and/or training at the ACDC for convalescent care;
- l. failing to have adequate standard operating procedures and/or training at the ACDC for medical preventative maintenance;
- m. failing to have adequate standard operating procedures and/or training at the ACDC for sick calls.
- n. failing to provide medical services program at the ACDC that was in compliance with the Minimum Standards for Local Detention Facilities in South Carolina;
- o. failing to provide a medical services program at the ACDC that was in compliance with NCCHC standards;
- p. failing to abide by the terms of SHP's Contract with the ACDC;
- q. failing to follow SHP's own policies and procedures;
- r. failing to regularly and routinely follow standard quality assurance practices such as conducting reviews/audits of critical incidents to ensure that the medical program at ACDC was sufficient to meet the legal requirement of providing reasonable necessary care to inmates at ACDC;
- s. in such other and further particulars as the evidence adduced in discovery and trial may disclose.

96. The Defendants Hunt and Aiken County was negligent, grossly negligent, and reckless by way of, including but not limited to, the following:

- a. by failing to recognize the serious nature to Cassi's medical condition and failing to provide/seek the appropriate care in a timely manner;
- b. by failing to have in place proper policies and procedures to ensure patients like Cassi were properly monitored and their conditions reported by COs and if such policies and procedures were in place then failing to enforce such policies and procedures;

- c. failing to perform a proper receiving screening or initial intake screen at the time of Cassi's booking into the ACDC;
- d. Failing to perform a proper health appraisal of Cassi within fourteen (14) days
- e. failing to properly train the COs at the ACDC;
- f. failing to have adequate standard operating procedures and/or training at the ACDC for receiving screening or initial intake screen on new detainees;
- g. failing to have adequate standard operating procedures and/or training at the ACDC for on non-emergency medical services;
- h. failing to have adequate standard operating procedures and/or training at the ACDC for emergency medical and dental services;
- i. failing to have adequate standard operating procedures and/or training at the ACDC for deciding the emergency nature of illness or injury;
- j. failing to have adequate standard operating procedures and/or training at the ACDC for dental screening, hygiene, examination and treatment;
- k. failing to have adequate standard operating procedures and/or training at the ACDC for first aid;
- l. failing to have adequate standard operating procedures and/or training at the ACDC for chronic care;
- m. failing to have adequate standard operating procedures and/or training at the ACDC for convalescent care;
- n. failing to have adequate standard operating procedures and/or training at the ACDC for medical preventative maintenance;
- o. failing to have adequate standard operating procedures and/or training at the ACDC for sick calls.
- p. failing to provide medical services program at the ACDC that was in compliance with the Minimum Standards for Local Detention Facilities in South Carolina;
- q. failing to provide a medical services program at the ACDC that was in compliance with NCCHC standards;
- r. failing to ensure that SHP met their duties under the contract with the ACDC;

- s. failing to ensure that SHP's followed their own policies and procedures;
- t. failing to ensure that SHP provided a medical services that adhered to and was in compliance with the with the Minimum Standards for Local Detention Facilities in South Carolina;
- u. failing to regularly and routinely follow standard quality assurance practices such as conducting reviews/audits of critical incidents to ensure that the medical program at ACDC was sufficient to meet the legal requirement of providing reasonable necessary care to inmates at ACDC;
- v. in such other and further particulars as the evidence adduced in discovery and trial may disclose.

97. As a direct and proximate result of the Defendants' negligent, grossly negligent, careless, reckless and wanton actions and omissions set forth above, Cassi Rhoads suffered injury.

98. Had Defendants acted within the standard of care and not been negligent, grossly negligent and/or reckless, Cassi more likely than not, would not have suffered the extent of the injury she has suffered which has resulted in permanent disfigurement and the need for future medical treatment.

99. The injuries, harms and losses to Cassi were the direct and proximate result of and were caused and occasioned by the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness on the part of all Defendants, in action in a negligent, grossly negligent, reckless, willful and/or wanton fashion, and with, with regard to the medical-related issues described above, in failing to possess and exercise that degree of medical training, competency, and skill ordinarily and customarily possessed and exercised by physicians and other healthcare professionals under similar circumstances and thereby rendered inappropriate medical care to Cassi by deviating from and falling below the prevailing and acceptable standards of care in one or more of the particulars outlined above.

FOR A FIRST CAUSE OF ACTION
(Personal Injury)
(Negligence / Gross Negligence / Recklessness / Medical Malpractice)
(Against All Defendants)

100. The Plaintiff incorporates by reference all previous paragraphs above as if repeated herein.

101. As a direct and proximate result of the negligence, gross negligence, carelessness, and recklessness of the Defendants, Cassi suffered from severe injuries which have resulted in her injury, pain and suffering and permanent disfigurement, as a result of which Plaintiff is entitled to recover actual and consequential damages to compensate for pain and suffering, medical expenses, mental anguish, loss of earnings capacity, loss of enjoyment of life, and other damages pursuant to South Carolina law.

102. As a direct and proximate result of the departure from the professional standards of care by Defendants, Cassi suffered from severe injuries which have resulted in her injury, pain and suffering and permanent disfigurement, as a result of which Plaintiff is entitled to recover actual and consequential damages to compensate for pain and suffering, medical expenses, mental anguish, loss of earnings capacity, loss of enjoyment of life, and other damages pursuant to South Carolina law.

103. Plaintiff is also entitled to recover a sum of punitive damages to punish and deter these Defendants and others like them from similar conduct in the future.

104. All damages should be in an amount determined by a jury in this action.

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices)
(Against Southern Health Partners Only)

105. Plaintiff incorporates by reference all previous paragraphs above as if repeated herein.

106. Upon information and belief, Defendant SHP entered into contracts with other county detention centers throughout South Carolina and in other states that were substantially similar to the contract that SHP entered into regarding the ACDC.

107. Upon information and belief, Defendant SHP made material representations to ACDC and other county detention centers throughout South Carolina and in other states that Defendant SHP would:

- a. Create and utilize site-specific policies and procedures manual for the medical program;
- b. Would have site-specific policies and procedures manual for the medical program that refer to and/or utilize NCCHC standards;
- c. Would have site-specific policies and procedures manual for the medical program that comply with SC detention standards;
- d. Would conduct and utilize Risk Management and Quality Assurance processes which would review/investigate/audit the care given at the facility which would help promote patient safety and avoid future adverse and/or possible near miss clinical events;
- e. Would document critical incidents and deaths so that adequate risk management and quality assurance processes could be performed;
- f. Would provide training for correctional officers;

108. SHP made those representations to ACDC and other county detention centers throughout South Carolina and in other states to differentiate themselves from competitors in what SHP has described in sworn testimony to South Carolina courts as the “highly competitive business” of “provision of jail health services.”

109. The contract into which Defendant SHP entered with the ACDC provided that Defendant SHP would be responsible for training the detention centers' security officers/guards on medical matters related to their jobs.

110. Upon information and belief, the contracts into which Defendant SHP entered with other detention centers provided that Defendant SHP would be responsible for training the detention centers' security officers/guards on medical matters related to their jobs.

111. The contract into which Defendant SHP entered with the ACDC provided that Defendant SHP would be responsible for administrative supervision over the medical program to ensure that the material representations SHP had made regarding their provision of medical services at ACDC would be met.

112. Upon information and belief, the contract into which Defendant SHP entered with other detention centers provided that Defendant SHP would be responsible for administrative supervision over the medical program to ensure that the material representations SHP had made regarding their provision of medical services at ACDC would be met.

113. Upon information and belief, Defendant SHP mislead ACDC, as well as other detention centers, into believing that the company would make effort to providing training the detention centers' security officers/guards on medical matters related to their jobs. Defendant SHP's engaged in a regular and routine practice of misrepresenting the company's intentions with regard to training guards.

114. Upon information and belief, Defendant SHP did not undertake reasonable efforts to provide training to the security officers/guards on the medical matters related to their jobs. Upon information and belief, SHP's failure to make reasonable efforts to train officers/guards occurred not only at the ACDC but at other detention centers throughout South Carolina and in other states.

115. Upon information and belief, Defendant SHP engaged in a regular and routine practice of not making reasonable efforts to provide training to guards.

116. Upon information and belief, Defendant SHP engaged in a regular and routine practice of misleading county and detention center administrators as to the company's intentions with regard to training guards.

117. Defendant SHP's representations that the company would provide training to the detention centers' security officers/guards on the medical matters related to their jobs involved false and/or misleading statements. These statements had a tendency to deceive and/or mislead ACDC and other detention centers as to the services that Defendant SHP would provide and intended to provide to the detention centers.

118. Upon information and belief, Defendant SHP mislead ACDC, as well as other detention centers, into believing that the company would make effort to:

- a. Create and utilize site-specific policies and procedures manual for the medical program;
- b. have site-specific policies and procedures manual for the medical program that refer to and/or utilize NCCHC standards;
- c. have site-specific policies and procedures manual for the medical program that comply with SC detention standards;
- d. conduct and utilize Risk Management and Quality Assurance processes which would review/investigate/audit the care given at the facility which would help promote patient safety and avoid future adverse and/or possible near miss clinical events;
- e. document critical incidents and deaths so that adequate risk management and quality assurance processes could be performed;

119. Upon information and belief, Defendant SHP did not undertake reasonable efforts to:

- a. Create and utilize site-specific policies and procedures manual for the medical program;
- b. have site-specific policies and procedures manual for the medical program that refer to and/or utilize NCCHC standards;
- c. have site-specific policies and procedures manual for the medical program that comply with SC detention standards;
- d. conduct and utilize Risk Management and Quality Assurance processes which would review/investigate/audit the care given at the facility which would help promote patient safety and avoid future adverse and/or possible near miss clinical events;
- e. document critical incidents and deaths so that adequate risk management and quality assurance processes could be performed;

120. Upon information and belief, Defendant SHP engaged in a regular and routine practice of misleading county and detention center administrators as to the company's intentions with regard to creating and utilizing site-specific policies and procedures manual for the medical program; having site-specific policies and procedures manual for the medical program that refer to and/or utilize NCCHC standards; having site-specific policies and procedures manual for the medical program that comply with SC detention standards; conducting and utilizing Risk Management and Quality Assurance processes which would review/investigate/audit the care given at the facility which would help promote patient safety and avoid future adverse and/or possible near miss clinical events; documenting critical incidents and deaths so that adequate risk management and quality assurance processes could be performed. These statements had a tendency to deceive

and/or mislead ACDC and other detention centers as to the services that Defendant SHP would provide and intended to provide to the detention centers

121. The aforementioned misrepresentations and related failure to undertake reasonable efforts are unfair, offensive to public policy, immoral, and/or unethical.

122. Defendant SHP's routine practice of inducing county administrations and detention centers into contracts that included the above material representations that, in actuality, SHP would not undertake reasonable efforts to provide, constitutes an unfair method of competition.

123. Upon information and belief, Defendant SHP represented to ACDC, as well as to other detention centers throughout South Carolina and other states, that the company would provide medical services in compliance with NCCHC standards and in compliance with the Minimum Standards for Local Detention Facilities in South Carolina.

124. Upon information and belief, Defendant SHP mislead ACDC and other county detention centers into believing that the company would provide medical services in compliance with NCCHC standards and in compliance with the Minimum Standards for Local Detention Facilities in South Carolina. Defendant SHP engaged in a regular and routine practice of misrepresenting the company's intentions with regard to compliance with these standards.

125. Upon information and belief, Defendant SHP did not undertake reasonable efforts to provide medical services in compliance with NCCHC standards and in compliance with the Minimum Standards for Local Detention Facilities in South Carolina. Upon information and belief, SHP's failure to provide medical services in compliance with NCCHC standards and with the Minimum Standards for Local Detention Facilities in South Carolina occurred not only at the ACDC but at other detention centers throughout South Carolina and in other states.

126. Upon information and belief, Defendant SHP engaged in a regular and routine practice of misleading county and detention center administrators as to the company's intentions with regard

to the provision of medical services in compliance with NCCHC standards and in compliance with the Minimum Standards for Local Detention Facilities in South Carolina.

127. Defendant SHP's representations that the company would provide medical services in compliance with NCCHC standards and in compliance with the Minimum Standards for Local Detention Facilities in South Carolina involved false and/or misleading statements. These statements had a tendency to deceive and/or mislead ACDC and other detention centers as to the services that Defendant SHP would provide and intended to provide to the detention center.

128. The aforementioned misrepresentations and related failure to undertake reasonable efforts to provide medical services in compliance with NCCHC standards and in compliance with the Minimum Standards for Local Detention Facilities in South Carolina are unfair, offensive to public policy, immoral, and/or unethical.

129. Defendant SHP's routine practice of inducing county administrations and detention centers into contracts for the provision of medical services by utilizing false representations that the company would provide medical services in compliance with NCCHC standards and in compliance with the Minimum Standards for Local Detention Facilities in South Carolina constitutes an unfair method of competition.

130. Defendant SHP's actions and inactions described herein constitute unfair trade practices under the South Carolina Unfair Trade Practices Act (S.C. Code § 39-5-10 *et seq.*).

131. As a result of Defendant SHP's conduct described herein, including its unfair or deceptive practice relating to its failure to undertake reasonable efforts to train security officers/guards and its failure undertake reasonable efforts to provide medical services that would be in compliance with NCCHC standards and in compliance with the Minimum Standards for Local Detention Facilities in South Carolina, Plaintiff has suffered actual, ascertainable damages.

132. Defendant SHP's unfair and deceptive trade practices have an impact on the quality of care provided at the ACDC and numerous county detention centers, Defendant SHP's unlawful trade practices have an adverse impact on the public interest.

133. Defendant SHP's unfair or deceptive practices have the potential for repetition. Upon information and belief, the unfair or deceptive practices have occurred not only with regard to ACDC but at detention centers throughout South Carolina and in other states where Defendant SHP does business.

134. Due to Defendant SHP's unfair or deceptive practices described and complained of herein, the Estate of Adam Crow has sustained ascertainable pecuniary losses.

135. In addition to actual damages, Plaintiff is entitled to recover a sum of punitive and treble damages to punish and deter Defendant SHP and others like it from similar conduct in the future. Plaintiff is also entitled to attorneys' fees and costs.

136. All damages should be in an amount determined by a jury in this action.

FOR A THIRD CAUSE OF ACTION
(Simple Negligence, Gross Negligence and/or Recklessness)
(Against All Defendants)

137. The Plaintiff incorporates by reference all previous paragraphs above as if repeated herein.

138. Many of the actions described above were merely non-medical, administrative, ministerial, and/or acts of routine care that should been performed by these Defendants and in no way required medical judgement and/or specialized training or knowledge to know that they should have been done.

139. As described above, the acts of failing to have in place proper policies and procedures to ensure that inmates like Cassi Rhoads suffering from visible injuries get adequate and necessary medical care; failing to enforce policies and procedures; failing to train officers/guard on matters

related to their job; and failing to conduct operations in accordance with the applicable standards were merely non-medical, administrative, ministerial, and/or actions that should been performed by these Defendants and in no way required medical judgement and/or specialized training or knowledge to know that they should have been done.

140. An ordinary layperson without the aid, guidance or explanation of expert testimony could understand that the deviations described herein were a failure of the duty(ies) that Defendants owed to Cassi Rhoads.

141. Therefore, these failures were not acts of “professional malfeasance” or “medical malpractice” but rather they were acts and omissions of simple negligence, gross negligence and/or recklessness.

142. All damages should be in an amount determined by a jury in this action.

WHEREFORE, Plaintiff, respectfully prays for judgment against all Defendants for all actual damages, consequential damages and punitive damages in an amount to be determined by a jury at the trial of this action, as well such other and further relief as this Honorable Court shall deem just and proper.

November 17, 2020
Columbia, South Carolina

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ATTACHMENT A

AFFIDAVIT OF JOSE A. VAZQUEZ

PERSONALLY appeared before me, the Affiant, Jose A. Vazquez, MD, FACP, FIDSA, who first being duly sworn deposes and testifies as to the following:

(1)

I am over 18, legally competent, and I make this affidavit based upon medical records and other records provided to me as well as my background, education, training, and experience.

(2)

I am a medical doctor in the State of Georgia.

(3)

I am Board Certified by the American Board of Internal Medicine for, and my practice areas are, Internal Medicine and Infectious Disease.

(4)

I am licensed by the Georgia Composite Medical Board to practice medicine in the State of Georgia

(5)

I am a Professor of Medicine at the Medical College of Georgia/Augusta University where I am the Chief of the Division of Infectious Diseases with clinical interests in chronic wound infections, antifungal susceptibility, antifungal resistance mechanisms and the rapid diagnosis of fungal infections.

(6)

I have been the Chief of the Division of Infectious Diseases since 2013 at the Medical College of Georgia/Augusta University.

(7)

I have specialized technical knowledge regarding the issue of Ms. Rhoad's condition, diagnosis and treatment.

(8)

My specialized technical knowledge and training may assist the trier of fact in this case.

(9)

My active practice of medicine includes the evaluation and treatment of internal medicine and infectious disease and other issues similar to those for which Ms. Rhoads sought treatment.

(10)

My credentials qualify me to identify a negligent act or omission committed by the Defendants' employees and agents.

(11)

I have actual professional knowledge and experience in the area of internal medicine and infectious disease as the result of having been regularly engaged in the active practice of internal medicine and infectious disease for at least three of the last five years immediately preceding the opinions rendered below.

(12)

I am aware of the degree of care and skill ordinarily exercised by members of the medical profession under the same or similar circumstances as it relates to the care and treatment of patients such as Ms. Rhoads. This knowledge is based upon my education, training, and experience.

(13)

I have been provided with medical records I am informed are from Aiken Regional Hospital and Aiken County Detention Center pertaining to Cassiopia Rhoads.

(14)

I have been informed of certain facts, that in addition to the records that I reviewed, form the basis for my opinion in this case as follows:

(14)(a)

Ms. Rhoads was incarcerated at the Aiken County Detention Center on May 3, 2019.

(14)(b)

While in custody she made multiple multiple reports of and was observed by healthcare providers demonstrating headache, fever, unusual sensation throughout the body, problems with coordination and movement, trouble walking, feeling nauseated or vomiting, and feeling very tired and sluggish.

(14)(c)

When initially arrested, Ms. Rhoads was medically assessed and determined to be asymptomatic with no medical issues associated with her head.

(14)(d)

On May 10, 2019, Ms. Rhoads was observed by a nurse laying on the floor and complained that her head hurt.

(14)(e)

On May 11, 2019, Ms. Rhoads requested medical attention through a self-serve kiosk in the jail reporting "I HAVE A HUGE ABCESS (sic) ON THE SIDE OF MY HEAD THAT KEEPSGETTING (sic) BIGGER"

(14)(f)

On May 16, 2019, Ms. Rhoads requested medical attention through a self-serve kiosk in the jail reporting "I AM HAVING REALLY AD (sic) PAIN IN MY EAR AND FEVER"

(14)(g)

On May 20, 2019, Ms. Rhoads requested medical attention through a self-serve kiosk in the jail reporting "I HAVE A FKUID (sic) LIKE SCAK ON SIDE OF MY HEAD, ABOVE MY EAR. MY EAR ACHES AND IM (sic) STILL FIGHTING A FEVERE (sic) AND SEVERE HED (sic) PRESSURE. MY EYES WATER CONSTANTLY AND I HAVE SEVERE NAUSEA N (sic) VOMMITTING. I ALSO FEEL DIZZY AND CANT (sic) FOCUS MY EYES WHEN I STAND UP. THE WHOLE RIGHT SIDE OF MY FACE IS SWOLLEN AND VERY PAINFUL. I HAVE NOT BEEN ABLE TO GET OUT OF BED FOR 4 PLUS DAYS ON THE EXCEPTION OF SHOWERING. PLEASE HELP ME AND SEND MOTRIN"

(14)(h)

On May 21, 2019, Ms. Rhoads requested medical attention through a self-serve kiosk in the jail reporting "I HAVE FLUID UNDER MY SKIN ABOUT MY R EAR. BEEN THERE FOR 4 PLUS DAYS, WHOLE SIDE OF FACE IS SWOLLEN AND HAVE PLACED SEVERAL SICK CALLS AND HAVE NOT BEEN SEEN YET. I AM IN SEVERE PAIN AND PRESSURE IN MY HEAD."

(14)(i)

On May 28, 2019, at approximately 2:44 P.M., Ms. Rhoads fainted and complained of pain in her right face.

(14)(j)

On May 28, 2019, at approximately 3:10 P.M., Doctor Williams gave a verbal order a nurse to have a CT scan done of Ms. Rhoads' head for the purposes of ruling out a "contusion to brain."

(14)(k)

By May 28, 2019, the abscess on Ms. Rhoads' head had swollen to the approximate size of a softball and her forehead was full of fluid.

(14)(l)

On June 2, 2019, at approximately 3:30 P.M., Ms. Rhoads was found passed out in a prone position with the left side of her head on the ground.

(14)(m)

On June 2, 2019, at approximately 6:30 P.M., Ms. Rhoads complained of feeling "weird" and needed to vomit to a nurse. She complained of feeling like she had "needles poking in her head" on the right side.

(14)(n)

While in custody, based on the records, Ms. Rhoads was never provided any medical treatment other than Tylenol, Ibuprofin, and Amoxil.

(14)(o)

On June 2, 2019, at approximately 7:30 PM Ms. Rhoads was taken to the Aiken Regional Medical Center hospital by jail officials.

(14)(p)

At the hospital, Ms. Rhoads temperature was taken and registered 102.5 degrees Fahrenheit.

(14)(q)

During the time period while in custody, Ms. Rhoads' temperature was only taken on one occasion at a "sick call" and it registered 100.9 degrees Fahrenheit.

(14)(r)

On June 4, 2019, Ms. Rhoads was "released" from the custody of the Aiken County Detention Center.

(14)(s)

On June 5, 2019, Ms. Rhoads underwent a craniotomy, surgical opening into the skull, and diagnosed with epidural abscess and osteomyelitis due to methicillin-resistant staphylococcus aureus (MRSA) at Aiken Regional Medical Center.

(15)

The healthcare professionals and health care facility involved failed to properly recognize the signs and symptoms of an infection developing in Ms. Rhoads skull and failed to render appropriate treatment to her.

(16)

Had Ms. Rhoads' condition been properly identified and treated she would have likely only required a course of antibiotics for treatment and would not have had to undergo surgery.

(17)

I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

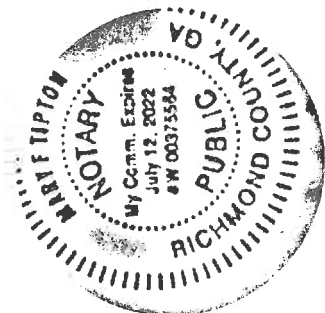
Sworn to and Subscribed before me this

29 day of April, 2020

Notary Public for State of South Carolina/Georgia

My Commission expires: 7/12/2022

Jose A. Vazquez
Jose A. Vazquez, MD, FACP, FIDSA



STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Cassiopia Rhoads,)
Plaintiff,)

Civil Action No. 2020-CP-02-2238

v.)

Southern Health Partners, Inc.;)
Robert J. Williams, M.D.; Michael E. Hunt,)
in his official and representative capacity as)
Aiken County Sheriff; and Aiken County,)
operating as the Aiken County)
Detention Center,)
Defendants.)

**ANSWER OF DEFENDANTS
SHERIFF MICHAEL E. HUNT
AND AIKEN COUNTY
(Jury Trial Requested)**

The Defendants Michael Hunt, in his official and representative capacity as the Sheriff of Aiken County, and Aiken County (collectively referred to as “Aiken Defendants”), reserving all rights pursuant to the Motion to Make More Definite and Certain and Motion to Strike previously filed, answer the Plaintiff’s Complaint as follows:

FOR A FIRST DEFENSE

1. The Plaintiff’s Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted. The Aiken Defendants reserve their right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. The Aiken Defendants deny each and every allegation of the Plaintiff’s Complaint not hereinafter specifically admitted, qualified, or explained.

3. The allegations set forth in the “Preface” of the Plaintiff’s Complaint are a description of the Plaintiff’s action. The Aiken Defendants deny any and all liability under the statutory and common law as referenced.

4. As to the allegations set forth in Paragraph 1 of the Plaintiff’s Complaint, the Aiken Defendants lack sufficient information to admit or deny those allegations, and therefore, deny those allegations at this time.

5. As to the allegations set forth in Paragraph 2 of the Plaintiff’s Complaint, the Aiken Defendants admit only that the Defendant Southern Health Partners, Inc. is a Delaware corporation that does business in Aiken County and provides correctional health care services at the Aiken County Detention Center pursuant to a Health Services Agreement entered with Aiken County on July 1, 2018. The Aiken Defendants further admit that the Defendant Southern Health Partners, Inc. is legally responsible for the acts or omissions of its employees engaged in providing correctional health care services at the Aiken County Detention Center. The remaining allegations are legal conclusions to which no response is required.

6. As to the allegations set forth in Paragraph 3 of the Plaintiff’s Complaint, the Aiken Defendants admit that the Defendant Robert J. Williams, M.D. is a physician licensed to practice in the State of South Carolina and served as the Medical Director for Southern Health Partners, Inc. providing medical services for inmates and detainees at the Aiken County Detention Center. The remaining allegations are legal conclusions to which no response is required.

7. As to the allegations set forth in Paragraph 4 of the Plaintiff’s Complaint, the Aiken Defendants admit that the Defendant Michael Hunt is the duly elected Sheriff of Aiken County and has authority over the operation of the Aiken County Detention Center. The remaining allegations are legal conclusions to which no response is required.

8. As to the allegations set forth in Paragraph 5 of the Plaintiff's Complaint, the Aiken Defendants admit only that Aiken County is a political subdivision of the State of South Carolina. All remaining allegations of Paragraph 5 are denied.

9. As to the allegations set forth in Paragraphs 6 and 7 of the Plaintiff's Complaint, the Aiken Defendants admit that venue properly lies in Aiken County. All remaining allegations of Paragraphs 6 and 7 are denied.

10. As to the allegations set forth in Paragraphs 8 and 9 of the Plaintiff's Complaint, the Aiken Defendants lack sufficient information to admit or deny those allegations as alleged, and as a result, deny those allegations.

11. The allegations set forth in Paragraph 10 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

12. As to the allegations set forth in Paragraphs 11, 12, and 13 of the Plaintiff's Complaint, the Aiken Defendants lack sufficient information to admit or deny those allegations as alleged, and as a result, deny those allegations.

13. The allegations set forth in Paragraph 14 of the Plaintiff's Complaint are admitted.

14. The allegations set forth in Paragraph 15 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

15. As to the allegations set forth in Paragraph 16 of the Plaintiff's Complaint, the Aiken Defendants crave reference to S.C. Code Ann. § 24-9-10, *et seq.*

16. The allegations set forth in Paragraphs 17, 18, and 19 of the Plaintiff's Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

17. As to the allegations set forth in Paragraphs 20 through 30 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

18. The allegations set forth in Paragraph 31 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

19. As to the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the "Minimum Standards for Local Detention Facilities in South Carolina" for the specific language contained therein.

20. As to the allegations set forth in Paragraphs 33 through 40 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

21. As to the allegations set forth in Paragraphs 41 through 44 of the Plaintiff's Complaint, the Aiken Defendants lack sufficient information to admit or deny those allegations as alleged. Further answering, the Aiken Defendants admit that the Defendant Robert J. Williams, M.D. served as the Medical Director for Southern Health Partners, Inc. providing medical services for inmates and detainees at the Aiken County Detention Center.

22. The allegations set forth in Paragraph 45 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

23. As to the allegations set forth in Paragraph 46 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

24. The allegations set forth in Paragraph 47 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

25. With specific reference to the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018, the allegations set forth in Paragraphs 48 and 49 of the Plaintiff's Complaint are admitted.

26. As to the allegations set forth in Paragraphs 50 through 55 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

27. The allegations set forth in Paragraphs 56 and 57 of the Plaintiff's Complaint are denied as stated.

28. As to the allegations set forth in Paragraphs 58 and 59 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

29. As to the allegations set forth in Paragraph 60 of the Plaintiff's Complaint, the Aiken Defendants admit that correctional officers are trained to report medical issues with inmates or detainees to the medical staff on duty.

30. As to the allegations set forth in Paragraph 61 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

31. The allegations set forth in Paragraphs 62, 63, and 64 of the Plaintiff's Complaint are denied as stated.

32. The allegations set forth in Paragraph 65 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

33. The allegations set forth in Paragraph 66 of the Plaintiff's Complaint are denied.

34. The allegations set forth in Paragraph 67 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

35. The allegations set forth in Paragraphs 68 and 69 of the Plaintiff's Complaint are denied.

36. As to the allegations set forth in Paragraph 70 of the Plaintiff's Complaint, the Aiken Defendants admit that the Plaintiff was booked into the Aiken County Detention Center on May 3, 2019.

37. As to the allegations set forth in Paragraphs 71 through 89 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the Plaintiff's medical records as maintained by the Defendant Southern Health Partners for the contents of those records.

38. As to the allegations set forth in Paragraph 90 of the Plaintiff's Complaint, the Aiken Defendants admit that the Plaintiff was transport to Aiken Regional Medical Center on June 3, 2019. Further answering, the Aiken Defendants crave reference to the Plaintiff's medical records as maintained by Aiken Regional Medical Center for the contents of those records.

39. As to the allegations set forth in Paragraphs 91 and 92 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the Plaintiff's medical records as maintained by Aiken Regional Medical Center for the contents of those records.

40. As to the allegations set forth in Paragraph 93 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the Plaintiff's medical records as maintained by the Defendant Southern Health Partners for the contents of those records.

41. The allegations set forth in Paragraphs 94 and 95 of the Plaintiff's Complaint are directed at other Defendants and do not implicate the Aiken Defendants. Those allegations are denied to the extent that they implicate or suggest any liability on the part of the Aiken Defendants.

42. The allegations set forth in Paragraph 96 of the Plaintiff's Complaint, including all subparts, are denied.

43. The allegations set forth in Paragraphs 97 through 99 of the Plaintiff's Complaint are denied.

44. As to the allegations set forth in Paragraph 100 of the Plaintiff's Complaint, the Aiken Defendants repeat and reiterate the corresponding responses of this Answer as if fully repeated herein verbatim.

45. The allegations set forth in Paragraphs 101 through 104 of the Plaintiff's Complaint are denied.

46. As to the allegations set forth in Paragraph 105 of the Plaintiff's Complaint, the Aiken Defendants repeat and reiterate the corresponding responses of this Answer as if fully repeated herein verbatim. The Aiken Defendants object to the jumbling of causes of action.

47. The allegations set forth in Paragraphs 106 through 136 of the Plaintiff's Complaint are directed at the Defendant Southern Health Partners, Inc. only and do not implicate the Aiken

Defendants. Those allegations are denied to the extent that they do implicate or suggest any liability on the part of the Aiken Defendants.

48. As to the allegations set forth in Paragraph 137 of the Plaintiff's Complaint, the Aiken Defendants repeat and reiterate the corresponding responses of this Answer as if fully repeated herein verbatim. The Aiken Defendants object to the jumbling of causes of action.

49. The allegations set forth in Paragraphs 138 through 142 of the Plaintiff's Complaint are denied.

50. The Aiken Defendants deny the allegations and relief sought as set forth in the prayer of the Plaintiff's Complaint.

FOR A THIRD DEFENSE

51. The Aiken Defendants assert the defense of sovereign immunity, pursuant to the terms of the South Carolina Tort Claims Act, including but not limited to the definition of "loss" as set forth in S.C. Code Ann. § 15-78-30(f), the damages caps set forth in S.C. Code Ann. § 15-78-120, and the bar on the recovery of punitive damages, pre-judgment interest, and attorney's fees.

FOR A FOURTH DEFENSE

52. The Aiken Defendants are immune from suit pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically S.C. Code Ann. §§ 15-78-60(1), (2), (3), (4), (5), (6), (17), (20), (23), and (25).

FOR A FIFTH DEFENSE

53. The Aiken Defendants are entitled to absolute immunity under *Long v. Seabrook* and its progeny.

FOR A SIXTH DEFENSE

54. The Plaintiff's causes of action are barred or subject to a reduction of recovery by the Plaintiff's own comparative negligence or comparative fault, including but not limited to her failure to use reasonable care to protect himself from harm. In the alternative, the Plaintiff's recovery should be reduced by the Plaintiff's proportion of fault.

FOR A SEVENTH DEFENSE

55. The Plaintiff's claims are barred, in whole or in part, by operation of the public duty rule.

FOR AN EIGHTH DEFENSE

56. To the extent an affirmative defense, the Aiken Defendants plead that S.C. Code Ann. § 24-9-10, *et seq.*, does not provide for nor give rise to a private right of action.

FOR A NINTH DEFENSE

57. The Aiken Defendants plead that any damages alleged to have been caused by employees of the Sheriff of Aiken County and/or Aiken County, which are specifically denied, must be apportioned between the Defendants and all other tortfeasors, pursuant to S.C. Code Ann. § 15-78-100(c).

FOR A TENTH DEFENSE

58. To the extent punitive damages may be sought by the Plaintiff, which is denied, the Aiken Defendants demand a bifurcated jury trial pursuant to S.C. Code Ann. § 15-32-520 and further asserts the limitations or caps on an award of punitive damages pursuant to S.C. Code Ann. § 15-32-530.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Michael Hunt, in his official and representative capacity as the Sheriff of Aiken County, and Aiken County

pray that the Complaint be dismissed with prejudice; for the costs of this action; and for such other and further relief as the Court deems just and proper.

LINDEMANN & DAVIS, P.A.

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*Counsel for Defendants Michael E. Hunt, in his
official and representative capacity as Aiken County
Sheriff, and Aiken County*

February 4, 2021

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Cassiopia Rhoads,

Plaintiff,

v.

Southern Health Partners, Inc.;
 Robert J. Williams, M.D.; Michael E. Hunt,
 in his official and representative capacity as
 Aiken County Sheriff; and Aiken County,
 operating as the Aiken County
 Detention Center,

Defendants.

Civil Action No. 2020-CP-02-2238

**DEFENDANT HUNT'S OBJECTION TO
 PLAINTIFF'S OFFER OF JUDGMENT**

The Defendant Michael E. Hunt, in his official and representative capacity as Aiken County Sheriff, hereby objects to Plaintiff's Offer of Judgment. On March 31, 2022, the Plaintiff filed an Offer of Judgment pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCF, in this action. In that Offer of Judgment, the Plaintiff claims that if the offer is not accepted, she will seek to recover pre-judgment interest and allowable costs in accordance with S.C. Code Ann. § 15-35-400 and Rule 68, SCRCF. The Defendant Hunt objects to this assertion and the Offer of Judgment as prejudgment interest is not recoverable against a governmental entity or official pursuant to S.C. Code Ann. § 15-78-120(b). Furthermore, Rule 68, SCRCF, is inapplicable to governmental agencies or officials. Therefore, this Offer of Judgment is improper and should be stricken.

By way of background, S.C. Code Ann. § 15-35-400 was enacted as part of Act 32 of 2005. Section 18 of Act 32 reads: "The provisions of this act do not affect any right, privilege,

or provision of the South Carolina Tort Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.” Section 18 was then codified as part of the Tort Claims Act. S.C. Code Ann. § 15-78-220 provides: “The provisions of Act 32 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.” See, S.C. Code Ann. § 15-78-220. Thus, the provisions of Act 32, including S.C. Code Ann. § 15-35-400, are inapplicable to cases brought pursuant to the South Carolina Tort Claims Act. Additionally, S.C. Code Ann. § 15-35-400 conflicts with a specific section of the South Carolina Tort Claims Act, as S.C. Code Ann. § 15-78-120(b) provides that a Tort Claims Act defendant is not liable for pre-judgment interest. If the General Assembly had intended for pre-judgment interest to be recoverable under S.C. Code Ann. § 15-35-400 against a governmental entity, then S.C. Code Ann. § 15-78-120(b) would have been amended to reflect that exception. It was not, which clearly reflects the legislative intent that S.C. Code Ann. § 15-35-400 is not applicable to Tort Claims Act cases.¹

¹ Since 2006, the General Assembly has also demonstrated by their consideration of proposed amendments to the Tort Claims Act that S.C. Code Ann. § 15-35-400 and Rule 68(b) do not apply under current law to Tort Claims Act cases. As part of comprehensive bills seeking to amend the Tort Claims Act which were debated but not enacted during the past several sessions of the General Assembly, the amendments under consideration include an amendment to S.C. Code Ann. § 15-78-120(b) to make a variation of S.C. Code Ann. § 15-35-400 and Rule 68(b) applicable to governmental entities sued under the Tort Claims Act. See e.g., Bill S. 81, § 6 (introduced in the Senate during 2021 session); Bill S. 386, § 6 (introduced in the Senate during 2019 session). This legislative activity further reflects that an amendment to the Tort Claims Act – which has not been enacted to date – would be necessary to make S.C. Code Ann. § 15-35-400 and Rule 68(b) applicable to Tort Claims Act cases such as the case at bar.

Rule 68, SCRCP, was amended in 2006 to adopt certain language and provisions from S.C. Code Ann. § 15-35-400. Rule 68(b), however, is not and cannot be construed as applicable to governmental officials or entities sued under the Tort Claims Act. Otherwise, Rule 68(b) would be in direct conflict with S.C. Code Ann. § 15-78-120(b) and also would be unconstitutional.² Section 4 of Article V of the South Carolina Constitution requires that procedural rules must be subordinate to statutory law. That constitutional provision states: “The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts.” *See*, S.C. Const., art. V, § 4. (Emphasis added). In construing this provision, the Supreme Court in *Stokes v. Denmark Emergency Medical Services*, 315 S.C. 263, 433 S.E.2d 850 (1993), explained that “[t]he clause ‘subject to the statutory law’ establishes the intent to subordinate to the General Assembly the Court's rulemaking power in regard to practice and procedure.” 433 S.E.2d at 852. *See also*, *Marichris v. Derrick*, 384 S.C. 345, 682 S.E.2d 301, 305 (Ct. App. 2009) (“A rule of civil procedure may not limit the provisions of a statute”). Consequently, Rule 68(b) cannot be read as creating liability for pre-judgment interest where statutory law, namely S.C. Code Ann. § 15-78-120(b), provides for sovereign immunity for pre-judgment interest and where the General Assembly has expressly provided that S.C. Code Ann. § 15-35-400 is not applicable to governmental officials or entities sued under the Tort Claims Act. Therefore, in order to be constitutional, Rule 68(b) must be read as not being applicable to Tort Claims Act cases including the present case.

² The Note to the 2006 Amendment for Rule 68 provides: “This amendment makes this provision consistent with S.C. Code Ann. § 15-35-400, which became effective July 1, 2005.” The intent, therefore, was not to make Rule 68 broader in scope or application than S.C. Code Ann. § 15-35-400. If S.C. Code Ann. § 15-35-400 is not applicable to a particular case, then Rule 68(b) is also not applicable to that case.

Based on this discussion, the Defendant Hunt objects to the Plaintiff's Offer of Judgment as unenforceable and improper, as prejudgment interest cannot be sought from a governmental entity or official.

LINDEMANN & DAVIS, P.A.

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*Counsel for Defendants Michael E. Hunt, in his
official and representative capacity as Aiken County
Sheriff and Aiken County*

April 8, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Cassiopia Rhoads,)
Plaintiff,)

Civil Action No. 2020-CP-02-2238

v.)

**NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

Southern Health Partners, Inc.;)
Robert J. Williams, M.D.; Michael E. Hunt,)
in his official and representative capacity as)
Aiken County Sheriff; and Aiken County,)
operating as the Aiken County)
Detention Center,)
Defendants.)

TO: FRANCIS M. HINSON, IV AND PATRICK J. McLAUGHLIN
COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Michael E. Hunt, in his official and representative capacity as Aiken County Sheriff, and Aiken County, operating as the Aiken County Detention Center (“Aiken Defendants”) will move before the Presiding Judge of the Second Judicial Circuit at the Aiken County Judicial Center, Aiken, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 56, SCRCF, granting summary judgment to the Aiken Defendants and dismissing the Plaintiff's Complaint with prejudice.

The Aiken Defendants’ motion is based upon the following grounds:

1. The Plaintiff cannot prove each of the elements of her gross negligence claims, including a legal duty of care owed to the Plaintiff by the Aiken Defendants and a breach of any

such legal duty of care by the Aiken Defendants amounting to gross negligence. Specifically, as a matter of law, the Aiken Defendants did not owe a legal duty of care for their non-medically trained detention officers or security staff to second-guess or override the medical decision-making of the clinicians (doctor and nurses) who were providing care and treatment to the Plaintiff for her medical conditions and seek a different or alternative course of care or treatment.

2. The Plaintiff's claims are governed by the South Carolina Tort Claims Act. The Aiken Defendants are entitled to absolute sovereign immunity pursuant to S.C. Code Ann. §§ 15-78-60(4), (5), (6), (17), and (20). The Aiken Defendants are entitled to sovereign immunity for any alleged failure to adopt written policies or to enforce written policies.

3. The Plaintiff has failed to present any competent, admissible evidence demonstrating that any written policies in place at the Aiken County Detention Center as applicable to the Plaintiff's confinement were deficient at all or alternatively so to rise to the level of gross negligence. The Plaintiff has also failed to present any competent, admissible evidence demonstrating that the Aiken Defendants owed a duty to adopt medical-based policies as described in Paragraph 96 of the Plaintiff's Complaint separate and apart from the policies adopted and implemented by Southern Health Partners, including its "Policy and Procedure Manual for Health Services in Jails at the Aiken County Detention Center" (Bates numbered SHP-Rhoads 00594-00650).

4. The Plaintiff has failed to present any competent, admissible evidence demonstrating that the Minimum Standards for Local Detention Facilities in South Carolina establish a legal duty of care or that the Aiken Defendants failed to comply with any material term or provision in the Minimum Standards for Local Detention Facilities in South Carolina which proximately caused any harm to the Plaintiff.

5. The Plaintiff has failed to present any competent, admissible evidence demonstrating that South Carolina law requires a medical service program in a local detention facility to comply with NCCHC standards or that the Aiken Defendants failed to comply with any material term or provision of the NCCHC standards which proximately caused any harm to the Plaintiff.

6. As a matter of law, the Aiken Defendants may not be held liable in tort for the failure to enforce contractual terms. The Plaintiff has also failed to present any competent, admissible evidence demonstrating that the Aiken Defendants failed to enforce any material contractual terms with Southern Health Partners.

7. The Plaintiff has failed to present any competent, admissible evidence demonstrating that South Carolina law requires as a legal duty that the Aiken Defendants “follow standard quality assurance practices” as alleged in Paragraph 96(u) of the Complaint.

8. The Plaintiff has failed to present any competent, admissible evidence demonstrating that the Aiken Defendants failed to properly perform a initial intake or medical intake screening at the time of the Plaintiff’s booking as alleged in Paragraph 96(c) of the Complaint or that the intake procedures proximately caused her any harm.

9. The Plaintiff has failed to present any competent, admissible evidence demonstrating that the Aiken Defendants failed to properly perform a “proper health appraisal” within 14 days of the Plaintiff’s admission as alleged in Paragraph 96(d) of the Complaint or that any alleged failure proximately caused her any harm.

10. The Plaintiff has failed to present any competent, admissible evidence demonstrating that the Aiken Defendants failed to properly train the detention officers as alleged in Paragraph 96(e) of the Complaint or that any alleged failure proximately caused her any harm.

11. The Plaintiff's claims against the Aiken Defendants are barred by operation of S.C. Code Ann. § 15-78-70(d), as a result of the settlement entered in this action between the Plaintiff and the Defendants Southern Health Partners, Inc. and Robert J. Williams, M.D.

The Aiken Defendants also reserve the right to seek the enforcement of the Consent Stipulation of Partial Dismissal with Prejudice entered by the parties and dated June 14, 2023.

The Aiken Defendants' motion is based upon the pleadings filed in this case; a memorandum of law to be filed; the depositions taken in this action (excerpts to be filed); the rules of court, and such other matters as may be properly presented to the Court at or before the time of the hearing.

LINDEMANN LAW FIRM, P.A.

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*Counsel for Defendants Michael E. Hunt , in his
 official and representative capacity as Aiken County
 Sheriff; and Aiken County, operating as the Aiken
 County Detention Center*

September 28, 2023

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Cassiopia Rhoads,

Plaintiff,

vs.

Southern Health Partners, Inc.; Robert J.
Williams, M.D.; Michael E. Hunt, in his
official and representative capacity as Aiken
County Sheriff; and Aiken County, operating
as the Aiken County Detention Center,

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-02-02238

**PLAINTIFF’S PRE-TRIAL BRIEF
AND REQUEST FOR PRE-TRIAL
HEARING *IN LIMINE***

**TO: PRESIDING JUDGE AND ATTORNEY ANDREW F. LINDEMANN, ATTORNEY
FOR AIKEN COUNTY DEFENDANTS**

The Plaintiff, pursuant to Rule 16(c) of the South Carolina Rules of Civil Procedure, submits
this pre-trial brief for the Court’s to review and consideration.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

This action was commenced through the filing of a Summons and Complaint on November 17, 2020. The Complaint alleges negligence, gross negligence, recklessness, medical malpractice cause of action against all Defendants and an unfair trade practices claim against Defendant Southern Health Partners. Plaintiff resolved all claims against Defendant Southern Health Partners (“SHP”) and Defendant Williams (collectively “SHP Defendants”) at a mediation held on or about July 20, 2023. A motion is pending to dismiss the SHP Defendants, which was filed by their counsel on September 14, 2023. Plaintiff consents to that motion. Therefore, the sole remaining claims are the negligence/gross negligence/recklessness causes of action against Defendants Hunt.¹

¹ In a motion for summary judgement filed September 29, 2023, the Aiken County Defendants argue they reserve the right “to seek the enforcement of the Consent Stipulation of Partial Dismissal with Prejudice *entered by the parties and dated June 14, 2023. Motion*, p.4. While the Plaintiff *offered* a

This case arises from Plaintiff's detention at the Aiken County Detention Center (ACDC) from her booking into ACDC on May 3, 2019 through June 2, 2019, when she was finally transported to Aiken Regional Medical Center's emergency department. Plaintiff was transported to hospital due to her health having deteriorated so greatly that it had become a medical emergency.

That emergency medical condition, documented through hospital records, shows Plaintiff had developed a "large boggy lesion over [her right] temple." Medical records document the abscess on the right side of Plaintiff's head had grown to "approximately 9.7 x 2.2cm" in size, had destroyed a large portion of her skull, and was so extensively invading her brain that it was causing a "right-to-left-midline shift" (meaning that Plaintiff's brain had been forcefully pushed to one side by the invasion of the infectious mass into her skull):



stipulation of dismissal as to Defendant Aiken County on June 8, 2023, Plaintiff is unaware of any consent/acceptance by Aiken County Defendants until September 28, 2023, when counsel for the Aiken County Defendants asked Plaintiff's counsel if Plaintiff would still be willing to enter into a stipulation and Plaintiff's counsel replying Plaintiff would still stipulate as had previously been offered in the proposed *Consent Stipulation of Partial Dismissal with Prejudice*. See Exhibit 11 to *Plaintiff's Response in Opposition to Aiken County Defendants' Motion for Summary Judgment* filed June 12, 2023. As such, throughout this brief, Plaintiff frequently refer to Aiken County Defendants as "Defendant Hunt" due to the representations from defense counsel that the conditions of the proposed consent stipulation being acceptable to all.

Plaintiff was ultimately diagnosed with a subgaleal abscess, an epidural abscess, osteomyelitis (a bone infection), and sepsis. Plaintiff required neurosurgery to remove the infectious mass, and, because the abscess had become so large and invasive due to the failure of the Plaintiff to receive adequate medical treatment in a timely manner, a substantial portion of the Plaintiff's skull had to be removed:



“Inmate Grievance Records” produced by Defendant Hunt memorialize the Plaintiff pleading through ACDC’s “kiosk system” for medical care as her condition worsened, up until the day she was placed in B-Max on the afternoon of May 24, 2019 (and no longer had access to the jail’s kiosk system). Those complaints were:

- 1) May 11, 2019: “I have a huge abcess on the side of my head that keeps getting bigger and hurts real bad I need my tooth pulled or some antibiotics.
- 2) May 16, 2019: “I’m having really [b]ad pain in my ear and fever.”
- 3) May 20, 2019: “I have a fluid like sack on side of my head, above my ear, my ear aches and I’m still fighting a [fever] and severe [head] pressure. My eyes water constantly [*sic*] and I have severe nausea n vomiting. I also feel dizzy and can’t focus my eyes when I stand up. The whole right side of my face is swollen and very painful. I have not been able to get out of bed for 4 plus days on the exception of showering. Please help me and send motrin.”
- 4) May 21, 2019: “I have fluid under my skin above my R ear. Been there 4 plus

days, whole side of face is swollen and have placed several sick calls and have not been seen yet. I am in severe pain and pressure in my head.”

- 5) May 24, 2019: “I have been taken off all pain meds and still have yet to have seen the [Dentist].”

Plaintiff’s deteriorating health is also documented through medical records produced by Defendant SHP documenting multiple incidents involving falls, loss of consciousness, and hallucinations by the Plaintiff during her May-June 2019 detention at ACDC.

Testimony from both fellow inmates and ACDC Correctional Officers (“COs”) establish that the Plaintiff’s deteriorating health was visible and obvious, as was the growth of the abscess on the side of her head, with ACDC correctional staff testifying that the abscess was visible and the size of “a grapefruit.” ACDC correctional staff have testified to complaining to both the medical staff at ACDC (who were agents/employees of third-party contract medical provider Defendant SHP), as well as supervisory correctional staff. Those complaints resulted in medical staff communicating to ACDC correctional staff that they believed the cause of Plaintiff’s health issues to be the result of Plaintiff “self-inflicting,” a “diagnosis” that does not appear in any jail or medical records and that the complaining ACDC correctional staff knew to be false.

Despite all the above, the Plaintiff’s health was allowed to deteriorate for nearly three weeks, resulting in the injuries discussed above. In short, Plaintiff alleges Defendant Hunt was negligent/grossly negligent/reckless in failing to provide Plaintiff adequate medical care.

FACTS AND ISSUES IN CONTROVERSY

The Plaintiff is informed and believes that the facts and issues in controversy will be the following:

1. **Liability**: Liability is disputed by Defendant Hunt.
2. **Causation**: Plaintiff has pled actual and consequential damages to compensate for medical

expenses, pain and suffering, permanent disfigurement, mental anguish, loss of earnings capacity, loss of enjoyment of life, and other damages pursuant to South Carolina law.

3. **Other Issues:**

a) Pending and potential motions:

- Defendant Hunt has filed motions for summary judgment and a motion to amend his answer.
- SHP Defendants have filed a motion for partial dismissal.
- Plaintiff has filed a motion to exclude/strike/limit expert witness testimony of Thomas Fowlkes and
- Plaintiff anticipates filing a motion *in limine* to address evidentiary concerns.
- Plaintiff anticipates filing a motion for the Court to determine the Defendant's spoliation of evidence.
- At the deposition of Capt. Nick Gallam, taken on September 28, 2023, the existence of certain discoverable and highly relevant materials (namely an Inmate Handbook, Field Training Manual, Training Materials, and Policies on which Defendant's expert will rely) were revealed – materials that, to date, have not been provided in discovery. If the aforementioned materials are not provided by day's end, Plaintiff anticipates filing a motion to compel.

b) Plaintiff anticipates submitting proposed jury *voir dire* prior to the start of trial.

c) Plaintiff anticipates submitting proposed jury charges prior to the close of trial.

4. **Witnesses:** Witnesses named by Plaintiff that may be called for trial:

- a) Cassiopia "Cassi" Rhoads: the Plaintiff (currently in SCDC custody, *Order of Transport* already signed)
- b) Kellie Collins: fellow detainee at ACDC (currently in SCDC custody, *Order of Transport* already signed)
- c) Quereyanna Lincoln: fellow detainee at ACDC (currently in SCDC custody, *Order of Transport* already signed)
- d) Ashley Carver: fellow detainee at ACDC (no longer in detained or incarcerated)
- e) Mary Joyner: fellow detainee at ACDC (no longer in detained or incarcerated)
- f) Kimberly Haven Kelley: former ACDC correctional officer (subpoenaed for trial)

- g) Carla Hill: ACDC correctional officer (subpoenaed for trial)
 - h) Lisa Bauer: ACDC correctional officer (subpoenaed for trial)
 - i) Tonetta Buggs: ACDC correctional officer (subpoenaed for trial)
 - j) Chanate Buchanan: ACDC correctional officer (subpoenaed for trial)
 - k) Nick Gallam: ACDC Jail Administrator, Aiken Co. designee for testimony regarding procurement issues and surveillance videos at ACDC (t subpoenaed for trial)
 - l) Jessica Whitaker: former ACDC correctional officer
 - m) Erik Riddell: former ACDC correctional officer
 - n) Edward C. O'Bryan, M.D.: designated medical expert witness for Plaintiff
 - o) Marshall A. White, M.D.: designated medical expert witness for Plaintiff
 - p) Aubrey Land: designated correctional expert witness for Plaintiff
 - q) Any other individual identified in discovery by any party
5. **Exhibits**: The parties have agreed to the authenticity of all potential documents/records that may be submitted as evidence in this matter but reserve the right to oppose the admissibility of any such exhibits. Plaintiff intends to share proposed exhibits via a Dropbox file. While reserving the right to utilize any materials exchanged in discovery as exhibits, those proposed exhibits represent the materials believed at this time to be most likely used during the course of trial.
6. **Settlement Negotiations**: The Plaintiff filed an *Offer of Judgment* against Defendant Hunt in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) on March 31, 2022, noting within the offer that acceptance would result in Plaintiff dismissing Defendant Aiken County as well. The Aiken County Defendants filed an "Objection" to the *Offer of Judgment* on April 8, 2022. Mediation was conducted in this matter on July 20, 2023. That mediation was successful in resolving the claims against the SHP Defendants but an impasse was reached as to the Aiken County Defendants.

<signature on page following>

October 4, 2023
Columbia, South Carolina

Respectfully submitted,

/s/ Francis M. Hinson IV

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Counsel for the Plaintiff

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	C. A. NO: 2020-CP-02-02238
Cassiopia Rhoads, Plaintiff, vs. Southern Health Partners, Inc.; Robert J. Williams, M.D.; Michael E. Hunt., in his official and representative capacity as Aiken County Sheriff; and Aiken County, operating as the Aiken County Detention Center, Defendant(s).	PLAINTIFF'S RESPONSE IN OPPOSITION TO AIKEN COUNTY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO: DEFENDANT MICHAEL E. HUNT, IN HIS OFFICIAL AND REPRESENTATIVE CAPACITY AS AIKEN COUNTY SHERIFF, AIKEN COUNTY AND THEIR ATTORNEY, ANDREW F. LINDEMANN

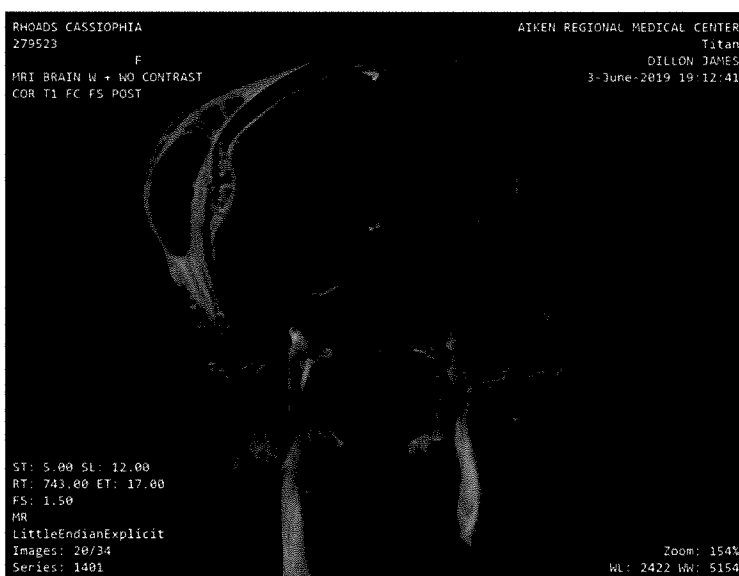
YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, responds in opposition to Defendant Michael E. Hunt, in his official and representative capacity as Aiken County Sheriff ("Hunt") and Aiken County, collectively "Aiken County Defendants," second motion for summary judgement filed September 29, 2023. These Defendants previously filed a motion for summary judgment on March 7, 2023. Plaintiff responded to that first motion with a *Response in Opposition to Aiken County Defendants' Motion for Summary Judgment*, which was filed June 12, 2023. In opposition to this second motion for summary judgment, Plaintiff incorporates by reference all arguments and exhibits contained in her June 12th response.

STATEMENT OF THE CASE

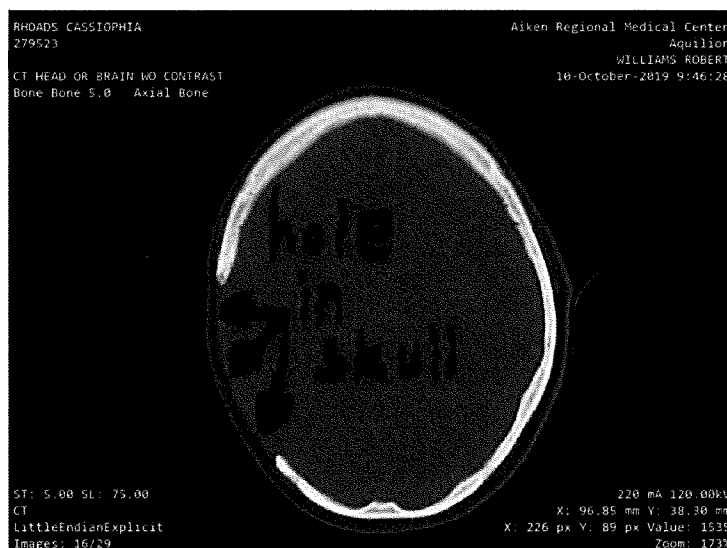
This case involves the adequacy (or rather the inadequacy) of medical care provided to the Plaintiff during her detention at the Aiken County Detention Center ("ACDC") that spanned from

May 3, 2019 through June 2, 2019, at which point she was finally transported to Aiken Regional Medical Center's emergency department for appropriate care. Plaintiff was transported to the hospital due to her health having been allowed to deteriorate into a dire medical emergency.

That emergency medical condition, documented throughout hospital records, show Plaintiff had developed a "large boggy lesion over [her right] temple." Medical records document the abscess on the right side of Plaintiff's head had grown to "approximately 9.7 x 2.2cm" in size, had destroyed a large portion of her skull, and was so extensively invading her brain that it was causing a "right-to-left-midline shift" (meaning that Plaintiff's brain had been forcefully pushed to one side by the invasion of the infectious mass into her skull):



Plaintiff was ultimately diagnosed with a subgaleal abscess, an epidural abscess, osteomyelitis (a bone infection), and sepsis. Plaintiff required neurosurgery to remove the infectious mass, and, because the abscess had become so large and invasive due to the Defendants' failure to ensure that Plaintiff received adequate medical treatment, a substantial portion of the Plaintiff's skull required removal:



Defendant Hunt's¹ "Inmate Grievance Records" memorialize the Plaintiff repeatedly pleading through the ACDC's "kiosk system" for medical care as her condition worsened, up until the day Plaintiff lost access to the jail's kiosk system when she was placed in B-Max (solitary confinement) on May 24, 2019. Those complaints were:

- 1) May 11, 2019: "I have a huge abcess on the side of my head that keeps getting bigger and hurts real bad I need my tooth pulled or some antibiotics."
- 2) May 16, 2019: "I'm having really [b]ad pain in my ear and fever."
- 3) May 20, 2019: "I have a fluid like sack on side of my head, above my ear, my ear aches and I'm still fighting a [fever] and severe [head] pressure. My eyes water constantly and I have severe nausea n vomiting. I also feel dizzy and can't focus my eyes when I stand up. The whole right side of my face is

¹ In the September 29th motion, the Aiken County Defendants argue they reserve the right "to seek the enforcement of the Consent Stipulation of Partial Dismissal with Prejudice ***entered by the parties and dated June 14, 2023.*** *Motion*, p.4. While the Plaintiff ***offered*** a stipulation of dismissal as to Defendant Aiken County on June 8, 2023, Plaintiff is unaware of any consent/acceptance by Aiken County Defendants until September 28, 2023, when counsel for the Aiken County Defendants asked Plaintiff's counsel if Plaintiff would still be willing to enter into that stipulation and Plaintiff's counsel relayed Plaintiff would still stipulate as offered in the ***proposed Consent Stipulation of Partial Dismissal with Prejudice.*** See Exhibit 11 to *Plaintiff's Response in Opposition to Aiken County Defendants' Motion for Summary Judgment* filed June 12, 2023. As such, Plaintiff will refer to Aiken County Defendants as "Defendant Hunt" in this brief, due to the representations from defense counsel that the conditions of the consent stipulation as to Defendant Aiken County is acceptable and the Aiken County Defendants wish to so consent.

swollen and very painful. I have not been able to get out of bed for 4 plus days on the exception of showering. Please help me and send motrin.”

- 4) May 21, 2019: “I have fluid under my skin above my R ear. Been there 4 plus days, whole side of face is swollen and have placed several sick calls and have not been seen yet. I am in severe pain and pressure in my head.”
- 5) May 24, 2019: “I have been taken off all pain meds and still have yet to have seen the [dentist].”

Exhibit 1.

Plaintiff’s deteriorating health is also documented through medical records produced by Defendant SHP, evidencing multiple incidents involving falls, loss of consciousness, and hallucinations by the Plaintiff during her May to June 2019 detention at the ACDC.

Testimony from both fellow inmates and ACDC Correctional Officers (“CO”) establish that the Plaintiff’s deteriorating health was visible and obvious, as was the growth of the massive abscess on the side of her head, which has been described as the size of “a grapefruit.” ACDC COs have testified to complaining to both the medical staff at ACDC (who were agents/employees of third-party contract medical provider Defendant SHP) and supervisory correctional staff. Those complaints resulted in medical staff communicating to ACDC correctional staff that the cause of Plaintiff’s visible and obvious deteriorating health was the Plaintiff “self-inflicting,” (a “diagnosis” that does not appear in anywhere in the jail or medical records and that the complaining ACDC correctional staff knew to be, and relayed to their supervisors, false).

Despite all the above, the Plaintiff’s health was allowed to deteriorate, resulting in the injuries discussed above. Plaintiff alleges Defendant Hunt was negligent/grossly negligent/reckless in failing to provide Plaintiff adequate medical care.

Defendant Hunt contracted with Defendant Southern Health Partners to provide the medical care at the ACDC. That contract was entered into through a procurement process in compliance with South Carolina law, involving publicly published requests for proposals (RFPs)

and the submission of bids in response to the published RFPs. The RFP for the medical services contract at the ACDC specifically imposed minimum qualifications and compliance requirements upon the medical services provider. Discovery demonstrates that Defendant SHP blatantly and obviously refused to meet many of the minimum qualifications and compliance requirements pursuant to that RFP that Defendant Hunt considered “material” to the agreement, yet Defendant Hunt took no action either at the time of Defendant SHP’s failures to meet the minimum qualification and compliance requirements, nor after being confronted with Defendants SHP’s failures to so comply.

LEGAL STANDARD

Summary judgment is a drastic remedy which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Once a Rule 56 motion has been made, the evidence and its reasonable inferences must be viewed in the light most favorable to the non-moving party. Id. At 115, 545.

Summary judgment is appropriate when the pleadings, deposition, affidavits, and discovery on file show there is no genuine issue of material fact. “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” Flemming v. Rose, 350 S.C. 488 at 493-494 (2002).

Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Conner v. City of Forest Acres, 348 S.C. 454, 462; 560 S.E.2d 606, 610 (2002) (citing Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994) and Rule 56(c), SCRCP). In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all inferences which can be reasonably drawn from

the evidence must be viewed in the light most favorable to the nonmoving party. Id. Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. Conner at 462, 610 (citing Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112; 410 S.E.2d 537, 543 (1991)).

In ruling on motions for summary judgment, the Court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. Nolte v. Gibbs International, Inc., 335 S.C.72, 515 S.E.2d 101 (S.C. Ct. App. 1999). For the purposes of summary judgment, the moving party has the burden of proving no material fact exists. Strother v. Lexington County Recreation Comm’n, 332 S.C. 54 (1998). Summary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is dispute as to the conclusions to be drawn from those facts. Gilliland v. Elmwood Properties, 301 S.C. 295, 299; 391 S.E.2d 577, 579 (1990) (citing Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp., 278 S.C. 195, 196; 293 S.E.2d 706, 707 (1982)).

Summary judgment is inappropriate when more than one inference can be drawn from the evidence when it is viewed in the light most favorable to the non-moving party. Fickling v. City of Charleston, 372 S.C. 597; 643 S.E.2d 110 (2007). When the evidence is susceptible to more than one reasonable inference, it should be submitted to the jury. Quesinberry v. Rouppasong, 331 S.C. 589; 503 S.E.2d 717 (1998). To ensure substantial justice to the parties, the pleadings must be liberally construed. Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991).

If any triable factual issues exist, those issues must go to the jury. Rothrock v. Copeland, 305 S.C. 402 (1991).

ARGUMENT

- 1) **Defendant Hunt owed the Plaintiff a legal duty and there is a material question of fact as to whether Defendant Hunt was grossly negligent in breaching that duty.**

“An affirmative legal duty to act may be created by statute, contract relationship, status, property interest, or some other special circumstance.” Arthurs ex rel. Estate of Munn v. Aiken Cnty., 346 S.C. 97, 103 (2001).

South Carolina law specifically proscribes Defendant Hunt’s legal duty to the Plaintiff via two separate statutes:

The sheriff shall have custody of the jail in his county and, if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer **shall receive and safely keep in prison any person delivered or committed to either of them**, according to law.

S.C. Code §24-5-10, emphasis added.

The governmental entity is not liable for a loss resulting from...responsibility or duty including but not limited to **supervision, protection, control, confinement, or custody of any...inmate...except when the responsibility or duty is exercised in a grossly negligent manner.**

S.C. Code §15-78-60(25), emphasis added.

The legal duty of Defendant Hunt to the Plaintiff is further established by the Constitutions of the United States and South Carolina, both of which prohibit “cruel and unusual punishment.” See 8th Amendment to United States Constitution and Article I, Section 15 of South Carolina Constitution.²

As Defendant Hunt argues in his March 7th motion for summary judgment, “the persons operating the Aiken County Detention Center are employees of the Sheriff and not employees of

² As a pre-trial detainee, Plaintiff had not been adjudicated guilty of a crime and could not be subjected to any form of “punishment.” Staton v. Arcer, 2023 U.S. Dist. LEXIS 147363, *11, fn.3 (D.S.C. 2023) (citing to City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244 (1983) and Martin v. Gentile, 849 F.2d 863, 870 (4th Cir. 1988)). The Fourth Circuit has found that “a prisoner’s right to adequate medical care and freedom from deliberate indifference to medical needs has been clearly established by the Supreme Court and this Circuit since at least 1976 and, thus, was clearly established at the time of the events in question.” Tarashuk v. Givens, 53 F.4th 154, 163 (4th Cir. 2022) (quoting Scinto v. Stansberry, 841 F.3d 219, 236 (4th Cir. 2016)).

the County,” and Defendant Hunt is solely responsible for the care and custody of persons in the ACDC. *March 7th Motion*, p.2-3.

Defendant Hunt attempts to avoid the clear statutory duty he had to the Plaintiff by arguing that “as a matter of law, the Aiken Defendants did not owe a legal duty of care for their non-medically trained detention officers or security staff to second-guess or override the medical decision-making of the clinicians (doctor and nurses) who were providing care and treatment to the Plaintiff for her medical conditions and seek a different or alternative course of care or treatment.” *September 29th Motion*, p.2. That statement is contrary to the law according to the United States Supreme Court, which has specifically found that the State cannot contract away “its constitutional duty to provide adequate medical treatment to those in its custody.” West v. Atkins, 487 U.S. 42, 56 (1988). The non-delegable nature of this duty is recognized by the State of South Carolina through the two statutes cited above.³

In the context of governmental entity liability, the South Carolina Supreme Court has defined gross negligence as “a relative term and means the absence of care that is necessary under the circumstances,” specifically finding that “gross negligence is ordinarily a mixed question of law and fact.” Jinks v. Richland County, 355 S.C. 341, 345 (2003) (internal citations omitted). Ordinarily, a mixed question of law and fact is for the jury. Rogers v. Atlantic Coast Line R.R. Co., 222 S.C. 66, 72 (1952). When the evidence supports but one reasonable inference, the question becomes a matter of law for the court, but in determining summary judgment, the court must

³ The Fourth Circuit has specifically found a state actor can be liable when a reasonable official would have known their conduct in failing to properly assess and transport a detainee for adequate medical care could give rise to a Fourteenth Amendment violation, even when that detainee has received medical care from a trained medical professional. *See Tarashuk* and Cooper v. Dyke, 814 F.2d 941 (4th Cir. 1987).

construe inferences arising from the evidence against the moving party. Clyburn v. Sumter County Sch. Dist. #17, 317 S.C. 50, 53, 451 S.E.2d 885 (1994).

In this case, there is ample evidence giving rise to reasonable inferences that there was an absence of care that was necessary under the circumstances by ACDC's staff.

Both former inmates and correctional staff at ACDC have given sworn testimony that the Plaintiff was receiving such inadequate medical care that she engaged in a "peaceful protest" on May 24, 2019, refusing to return to her room after rec time and instead demanding to be taken to the hospital.

Mary Joyner, who was an inmate at ACDC during the time in question, provided a written statement, that she verified as being truthful and accurate during her deposition, where she explained the May 24, 2019 "peaceful protest" and what led to it:

I observed Cassi **repeatedly ask for help about the growth on the side of her head. In the second half of May, on a near daily basis, Cassi asked and pleaded with ACDC correctional officers to take her to the hospital.** She often cried out in pain and openly complained about the pain she was experiencing. One day, at the end of recreation time, **Cassi engaged in a "peaceful protest" in which she said that she would not go back to her cell and would only go to a hospital. Instead of taking her to a hospital, the guards place Cassi in "lock down."** I recall being very sad that no one would help Cassi and worrying what would happen to her.

Exhibit 2, Joyner written statement, emphasis added.

Kimberly "Haven" Kelley, a former correctional officer at the ACDC, similarly described the Plaintiff's dire need of adequate medical care leading to the May 24, 2019 "peaceful protest":

In May of 2019, the growth on the side of Cassie's head grew into a **tremendous deformity, which caused her head and face to become grossly misshapen.** Eventually, the growth/abscess distorted her face so significantly, that her face **looked as if she had been badly beaten with a bat.** One could not even glance at Cassie without immediately noticing the gigantic abscess.

One day, at the end of recreation time, Cassie engaged in a "peaceful protest" in which she said she would not go back to her cell and would only go to a hospital. However, Cassie was not taken to a hospital but, instead, was placed in B-Max (female isolation)...

Exhibit 3, *Kelley written statement*, emphasis added.

ACDC records show Defendant Hunt's reaction to that peaceful protest on May 24, 2019, was not to provide any medical care, rather the Plaintiff was punished by being placed in B-Max for "15 D/S." ACDC Cpl. Tonetta Buggs explained "D/S" was "Disciplinary Segregation," a classification Dep. Kelly specifically described as inmates "can't make complaints about their situation." **Exhibit 4**, *Deposition of Cpl. Tonetta Buggs*, p.64, l.13-21 and **Exhibit 3**, *Deposition of Kelley*, p.29, l.17 – p.31, l.2.

The Plaintiff has testified that the reality was, once she was placed in B-Max, she had no kiosk access by which to request medical care:

Q: When you were in B-Max, **you still had access to the kiosk, right?**

A: **No, sir.**

Q: You – you – what do you mean, you don't have access to the kiosk?

A: Whenever you're in B-Max, **you are not allowed to go out in general population at all, and the kiosk is in general population at the officer's desk. You cannot come out the door of B-Max at all.**

Q: But they can – you still had the right to go do a sick call request, right?

A: We couldn't have a pencil or anything.

Q: So did you try to do a sick call when you were in B-Max?

A: I talked to the nurses every time they came through. I wasn't in a position to be able to do sick call.

Exhibit 5, *Deposition of Cassiopia Rhoads*, p.134, l.4-20, emphasis added.

Plaintiff's testimony is supported by the actual inmate grievance records, as there were half a dozen grievances before she was placed in B-Max and **no** grievances **after** Plaintiff was placed in B-Max on May 24, 2019. **Exhibit 1.**

Dep. Kelley described the failure of Defendant Hunt to provide the Plaintiff with the adequate care necessary under the circumstances:

On numerous occasions, I tried to advocate for Cassie and personally asked the medical staff to arrange to have Cassie seen at a hospital. I even went so far as to personally assist Cassie in submitting a medical request on the kiosk at B-Pod (female housing unit), ensuring that I included as much detail about her physical appearance and detailing her symptoms as she narrated to me how she was feeling. **After having made this request several times, I began voicing my concerns to my supervisory team and even offered to take Cassie to Aiken Regional Medical Center on my day off of work but was told that Cassie didn't need to be seen at a hospital...**

I recall being very sad and outraged that no one would help Cassie and increasingly worried about what would happen to her...

That **blatant and stoic refusal** of both the medical staff contracted by Aiken County Sheriff's Office Detention Division and the jail's supervisory staff to **acknowledge and properly treat Cassie** during this period of her incarceration in 2019 ultimately **led to my decision to leave law enforcement all together in January of 2020.**

Exhibit 3, Kelley written statement, emphasis added.

After describing how Defendant Hunt completely abdicated to medical any responsibility whatsoever to making sure inmates receive reasonably adequate medical care, Kelley was examined about her thoughts on that subject:

Q: So, do you disagree with the idea that the licensed nurses and physicians should make the decisions on medical care instead of unlicensed correctional officers?

A: **Under certain circumstances, absolutely, because it falls under deliberate indifference when the medical department won't send someone out and you clearly see that they're in need of medical attention that they're not providing adequately.**

Exhibit 3, Deposition of Kelley, p.49, l.10-18, emphasis added.

The above evidence and testimony creates reasonable inferences of material questions of fact as to whether Defendant Hunt provided adequate care that was necessary under the circumstances that should be submitted to a jury.

- 2) **Defendant Hunt is not entitled to immunity under the South Carolina Tort Claims Act for his gross negligence to the Plaintiff.**

South Carolina law specifically recognizes that the “State, an agency, a political subdivision, and a governmental entity **are liable for torts in the same manner and to the same extent as a private individual under like circumstances**, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.” S.C. Code §15-78-40, emphasis added.

“The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense.” Steinke v. S.C. Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999).

Under the “Exceptions to waiver of immunity” section, the S.C. Tort Claims Act states that “the governmental entity is not liable for a loss resulting from” and proceeds to list forty (40) exceptions. S.C. Code 15-78-60. Defendant Hunt argues five of those exceptions entitle him to immunity:

- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide police or fire protection;
- (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;
- (20) an act or omission of a person other than an employee including but not limited to the criminal actions of third parties.

September 29th Motion, p.2, ¶2, citing to S.C. Code §15-78-60(4-6), (17) and (20).

Noticeably absent from Defendant Hunt’s motion and argument is the sole exception to the SCTCA’s waiver of immunity **controlling all other exceptions in this case**:

(25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any...**inmate...except when the responsibility or duty is exercised in a grossly negligent manner.**
S.C. Code §15-78-60(25), *emphasis added*.

The fact that Defendant Hunt leaves subsection 25 out of his motion and argument is damning, as the South Carolina Supreme Court has held numerous times, “when an exception containing the gross negligence standard applies, **that same standard will be read into any other applicable exception.**” *Steinke v. SCDLLR*, 336 S.C. 373 (S.C. 1999); *Etheredge v. Richland School Dist. 1*, 330 S.C. 447, 463 (Ct. App. 1998) *cert. granted on other grounds*, April 8, 1999 (when an action is brought alleging gross negligence by a governmental entity pursuant to an exception contained in Section 15-78-60, all other applicable exceptions must be read in light of the exception containing the gross negligence standard).

In other words, not only does subsection 25 apply to this case given the facts and allegations, but South Carolina case law requires that all the exceptions Defendant Hunt **did** bother to cite and argue **must** incorporate the gross negligence standard imposed by S.C. Code 15-78-60(25). *Etheredge v. Richland School Dist. 1*, 330 S.C. 447, 463 (Ct. App. 1998).

In *Etheredge*, the trial court had originally granted summary judgment to the School District on several of the exceptions to the waiver of immunity under S.C. Code §15-78-60. In reversing the trial court, the *Etheredge* court specifically found:

Where an action is brought against a governmental entity for injuries or death allegedly caused to a student by the entity’s gross negligence in the exercise of its duty of supervision, protection and control of the students in its custody in accordance with subsection (25) of 15-78-60, **all other subsections of 15-78-60 providing exceptions to the waiver of governmental immunity, must be read in light of subsection (25), which provides an exception to immunity where the governmental entity exercises its responsibilities or duties in a grossly negligent manner.**

Etheredge at 463, 246, emphasis added. See Jackson v. S.C. Dept. of Corr., 301 S.C. 125, 390 S.E.2d 467 (Ct. App. 1989).

Etheredge creates an “exception to the exception” via the gross negligence standard for which the allegations of the complaint, along with the discovery to date, creates reasonable inferences of questions of material fact to require submission of the case to a jury.

“Gross negligence is the intentional, conscious failure to do something which one ought to do or the doing of something which one ought not to do.” Etheredge at 454-455.

Since Etheredge states that the gross negligence “exception to the exception” applies, the Plaintiff has a valid claim **even if** the only conduct she can prove is Defendant Hunt’s “conscious failure to do something which one ought to do.”

As there are questions of material fact as to whether Defendant Hunt was grossly negligent in his “supervision, protection, control, confinement, or custody of” the Plaintiff, Defendant Hunt’s conduct in this case is not excepted from the waiver of immunity under the SCTCA due to S.C. Code §15-78-60(25) and Etheredge.

3) There is a material question of fact as to whether the policies and procedures at ACDC were insufficient to rise to gross negligence.

Defendant Hunt argues that the Plaintiff “has failed to present any competent, admissible evidence demonstrating that any written policies in place at the Aiken County Detention Center as applicable to the Plaintiff’s confinement were deficient at all or alternatively so to rise to the level of gross negligence. The Plaintiff has also failed to present any competent, admissible evidence demonstrating that the Aiken Defendants owed a duty to adopt medical-based policies as described in Paragraph 96 of the Plaintiff’s complaint separate and apart from the policies adopted and implemented by Southern Health Partners, including its “Policy and Procedure Manual for Health

Services in Jails at Aiken County Detention Center (Bates numbered SHP-Rhoads 00594-00650).”
September 29th Motion, p.2, ¶3.

Defendant Hunt’s argument ignores the testimony of Dep. Kelley, who explained that the standard operating procedure of ACDC was that care being provided (or not provided) by SHP’s medical staff simply could not be challenged:

Q: Don’t you think it’s the policy of the detention center and the best practice to not send inmates to the hospital if it’s not medically necessary?

A: **The jail’s policy is strictly to leave that to the decision of medical staff.**

Q: Well, if somebody was having a medical emergency, the jail staff could call and ambulance, couldn’t they?

A: No.

Q: So, you’re telling me that if somebody – okay. You weren’t a supervisor, were you?

A: No, I was not.

Q: Okay. So, you’re going to sit her today and tell me that **none of the supervisors or any of the correctional officers that work at the Aiken County Detention Center have the authority to call an ambulance if an inmate was having a medical emergency?**

A: My understanding was that **the only ones allowed to make that determination was Medical**. So, if there was a medical emergency, we would contact Medical, they would come and make the determination on whether or not to send them out EMS. Now –

Q: Who told you that?

[omitted discussion between counsel]

A: **That was the policy of the Aiken County Detention Center.** We could not make a determination on whether or not someone needed to be sent out EMS unless Medical made that decision, or in the event that Medical was not available or present to be able to make that decision.

Q: **Who told you that?**

A: **That’s in the Aiken County Detention Center Policies and Procedures, Standard Operating Procedures.**

Q: So, you read it in the Aiken County Policy and Procedure Manual?

A: Yes, sir.

Q: All right. **Any other source for your belief of that?**

A: **Lieutenant Riddell, Captain Gallam, Lieutenant Whitaker.**

Q: Captain Gallam?

A: Yeah.

Q: Okay, **they all told you that?**

A: **Yeah. When you're complaining that an inmate needs to be sent out to the hospital and their response is always, "Well, we can't do that unless Medical decides to do that," I mean, that's pretty cut and clear.**

Q: All right. Any other policies that you think of that interfered with the medical care of the inmates in the jail?

A: Other than we can't make any determination or go to Medical directly if we feel like an inmate needs medical care? No.

Exhibit 3, *Deposition of Kelley*, p.46, l.25 – p.49, l.9, emphasis added.

Despite asking Defendant Hunt to identify “each and every rule, regulation, code, policy, by-law or other document of any association, licensing authority, accrediting authority or other private or public body which you, or your attorneys, may use at trial in defense of the allegations contained in the Complaint” (IROG No. 9) and to produce “all codes, laws, standards, policies, or regulations upon which you have relied or intend to rely upon in connection with this case” (RFP No. 23) via written discovery requests, Defendant Hunt failed to identify or produce a single one of his policies in response to those discovery requests.

ACDC Jail Administrator Capt. Nick Gallam specifically testified that SHP and its medical staff was required to provide healthcare services at ACDC in compliance with the *Minimum Standards for Local Detention Facilities in South Carolina* (MSSC), the National Commission on Correctional Health Care (NCCHC) Standards and the American Correctional Standards (ACA).

Exhibit 6, *September 28, 2023 Deposition of Capt. Nick Gallam*, p.73, l.15-23.

The MSSC states that “these regulations have been prepared and adopted for the purpose of establishing minimum standards for the operation, administration, and design of detention facilities...The development of these standards has not been an arbitrary or discretionary procedure. Various agencies and organizations involved in local corrections in South Carolina were solicited and asked for comments on these standards. Various national standards developed by professional organizations such as the American Correctional Association, the National Sheriffs’ Association, and the American Medical Association, as well as sound management principles were the fundamental guides for the development of these standards.” §1002 MSSC.

South Carolina Code §24-9-10 *et seq.* provides the statutory authority for the establishment and enforcement of the MSSC, providing standards be established by the South Carolina Association of Counties and adopted by the South Carolina Department of Corrections, with a “Jail and Prison Inspection Division” being established under the Department of Corrections. S.C. Code §24-9-10 *et seq.*

The MSSC specifically requires that “each facility shall have a written manual of all policies and procedures for the operation of the facility,” that each policy and procedure should be reviewed annually and updated as needed, and “documentation of these reviews shall be maintained. These policies and procedures shall be made readily available to all personnel.” §1021 MSSC. The MSSC explicitly requires written policies and procedures for:

- 2051 = Responsible Physician
- 2052 = Medical Procedures
- 2053 = Screening
- 2054 = Emergencies
- 2055 = Sick Call
- 2055 = Health Appraisal

During his 30(b)(6) deposition, Capt. Gallam testified:

Q: Earlier you said that the medical, the minimum standards in the state of South Carolina apply to facilities, correct?

A: Yes.

Q: So that means that Aiken County is required under the minimum standards to offer to comply with the provisions of the minimum standards related to the provision of medical services, is that right?

A: Yes, sir. Yes, sir.

Q: And one of the ways in which you do that is you contract with a provider and ask them to do it, right?

A: Yes.

Q: So but isn't there – but the whether the – but the provider itself, **the minimum standards from a matter of law don't apply to the provider, right, they apply to the facility –**

A: Correct.

Exhibit 6, 30(b)(6) Deposition of Capt. Nick Gallam, p.90, l.11 – p.91, l.3, emphasis added.

Both the NCCHC and ACA Standards have similar requirements for written policies and procedures on these topics.

Despite all of the above, Defendant Hunt's response to a discovery request specifically asking Defendant Hunt to identify his policies and procedures for providing medical care at ACDC was:

INTERROGATORY NO. 26: Identify by title and/or description, every policy, procedure, process, protocol, guideline, manual and/or form that was created, reviewed and/or approved for use in providing medical care at ACDC and who/when such review and/or approval took place.

RESPONSE #26: None.

*Defendant Hunt's August 10, 2021 Answers to Interrogatories, IROG#26.*⁴

⁴ In response to this same discovery request, Defendant Aiken County answered that "any responsive information would need to be obtained from the Aiken County Sheriff." *Defendant Aiken County's May 25, 2021 Answers to Interrogatories, IROG No. 27.*

Contrary the MSSC requirement that all written policies and procedures, including those governing medical services, be readily available to all personnel, numerous ACDC correctional officers have testified to never having seen SHP's "Policy and Procedure Manual for Health Services in Jail" or SHP's "Inmate Medical Services Information and Resources Guide for Correctional Officers." See **Exhibit 7**.⁵

Defendant Hunt finally produced policies & procedures on October 4, 2023, after Plaintiff's counsel specifically had to ask Capt. Gallam during his "expert" deposition to identify ACDC policies and procedures "pertinent to the issues in the Rhoads case." However, Capt. Gallam admitted that **there is no written policy instructing COs what they should do if there are concerns about the medical care an inmate was or was not receiving**, but that there is an "unwritten" one. **Exhibit 6**, *September 28th Deposition of Gallam*, p.25, l.12 – p.26, l.21 and p.80, l.12-25. Nor does there appear to be any written policy within the 142 pages of policies and procedures Defendant Hunt just produced supporting Capt. Gallam's testimony that supervisory level correctional staff may override medical.⁶ **Exhibit 6**, *September 28th Deposition of Gallam*, p.30, l.9-12.

All of the above is competent evidence of reasonable inferences of questions of material fact that Defendant Hunt's written policies in place at the Aiken County Detention Center as applicable to the Plaintiff's confinement were deficient and grossly negligent.

4) Defendant Hunt's own "expert" and jail administrator has admitted that the provision of medical services at ACDC had to comply with the

⁵ *Deposition of Cpl. Carla Hill*, p.44, l.22 and p.48, l.7-20; *Deposition of Sgt. Natasha Rivers*, p.71, l.5-7; *Deposition of Dep. Lisa Bauer*, p.48, l.22 – p.49, l.10; *Deposition of Lt. Jessica Whitaker*, p.16, l.4 – p.17, l.5; *Deposition of Dep. Chanate Buchanan*, p.18, l.12 – p.19, l.8; *Deposition of Myra Hamilton-Carree*, p.22, l.2-14; *Deposition of Cpl. Tonetta Buggs*, p.49, l.22 – p.50, l.4; *Deposition of Sgt. Tamara Erikson*, p.41, l.1-6; *30(b)(6) Deposition of Capt. Nick Gallam*, p.46, l.9-15.

⁶ An "unwritten" policy regarding the provision of medical care violates §1021(b) MSSC.

MSSC and NCCHC pursuant to the contract, that ACDC had a duty to assure quality control of the healthcare, that Defendant Hunt was aware SHP was failing to adhere to material terms of the contract and did nothing, thus creating material questions of fact as to whether Defendant Hunt grossly negligent in this matter.

Defendant Hunt argues that the Plaintiff “has failed to present any competent, admissible evidence demonstrating that the MSSC establish a legal duty, that South Carolina law required compliance with NCCHC standards,” that ACDC had duty to follow standard quality assurance practices, etc. *September 29th Motion*, p.2, ¶¶4-9.

As already discussed above, Capt. Gallam has testified that the provision of medical services at ACDC had to comply with the MSSC and NCCHC. In providing that testimony, Capt. Gallam admitted that the reason for that required compliance was to ensure adequate care was being provided to inmates like the Plaintiff.

Q: And the reason that those standards are put into that contract, in essence, is to – and effort to provide adequate and appropriate medical care to inmates, correct?

A: To provide an adequate and quality health care program for the inmate population. Yes, sir.

Exhibit 6, *September 28, 2023 Deposition of Capt. Nick Gallam*, p.74, 1.8-14.

Capt. Gallam further testified to knowing that SHP denied they had to comply with those standards meant to ensure adequate and quality health care, and that Defendant Hunt took no action despite that knowledge:

Q: Are you aware that in this litigation Southern Health Partners denied that it had to comply with those standards?

A: Yes, sir. You pointed that out at my first deposition.⁷

⁷ During his 30(b)(6) deposition, Capt. Gallam was examined about SHP’s denial to a specific request for admission that SHP had to provide medical services at ACDC in compliance with the MSSC and asked if those denials concerned him, to which he answered “Yes, it does.” **Exhibit 6**, *30(b)(6) Deposition of Capt. Nick Gallam*, p.55, 1.3-14.

Q: Upon learning that SHP had denied that they had to comply with those standards, was any action taken?

A: No, sir.

Exhibit 6, September 28, 2023 Deposition of Capt. Nick Gallam, p.74, l.22 – p.75, l.5.

All the standards (MSSC, NCCHC, and ACA) require a 14-day health appraisal be conducted on an inmate. Capt. Gallam specifically testified that auditing the 14-day health appraisals was the sole way in which they checked that SHP was in compliance with these standards meant to ensure adequate and quality healthcare for inmates:

Q: Did y'all – y'all meaning the detention center administration. Do you review Southern Health Partners in any formal way through the course of a year or through the course of contact?

A: Yes, sir.

Q: The – really, the major thing that we look at is whether or not – or, I guess, one part of that would be, is, we looked at – to see whether or not they're up-to-date on their history and physicals. That's a requirement through minimum standards that requires them to do a history and physical within 14 days. So, we would spot check those, print out, you know, people who had been there for 20 days and go see if, you know – you know, have them show us in the chart where those were at.

[omitted testimony]

Q: Did you ever look to see if a history and physical was done on Ms. Cassie Rhoads during her approximately month long detention?

A: I can't – I didn't necessarily spot check that one, no, sir.

Q: **If there wasn't one done at any point during her May, June detention, that would be inappropriate, wouldn't it?**

A: **Yes, sir, as long as it wasn't within that 14 days.**

Q: Besides looking at the compliance with – so, the 14-day history and physical, that's part of the minimum standards, correct?

A: Yes, sir.

Q: **And was there any other way that y'all evaluated or graded SHP's performance besides spot checking to see if the – SHP's compliance with that 14-days history and physical requirement?**

A: **No, sir.**

Exhibit 6, *September 28, 2023 Deposition of Capt. Nick Gallam*, p.78, l.14 – p.80, l.1, emphasis added.

Nurse Brandi Galloway, Defendant SHP's Medical Team Director during the Plaintiff's May-June 2019 detention, testified that there was no 14-day history and physical within the medical file SHP had produced in this case, which went back over a year prior to the May-June 2019 detention. **Exhibit 8**, *Deposition of Brandi Galloway*, p.137, l.3 – p.138, l.4. Defendant SHP also admitted that they do not have a completed "Admission Data / History and Physical Form" for the Plaintiff. *See* Defendant SHP's Responses to Plaintiff's Sixth Requests for Admission, RFA No. 16.

During his deposition, Plaintiff's expert, Edward O'Bryan, MD, MBA, CPE testified as to the importance a properly conducted 14-day health assessment could have played in preventing the extent of harm to the Plaintiff:

Q: If a – are you familiar with the concept in correctional health care of basically there being two types of – of health care screenings? You have, one, a receiving screening right at the time the person comes into the facility, and then, two, you have a follow-up screening that's supposed to be done within 14 days?

A: Yes.

Q: Okay. **Was a 14-day screening ever done on Cassie?**

A: **No.**

Q: Okay.

A: Yeah. The 14-day is typically called the "History and Physical." But, yeah, it's –

Q: But when Mr. Long asked you some questions about how Cassie had never **disclosed these prior abscesses she had, is that something that may have been disclosed through a proper – for lack of a better way, I'll say medical interview that's involved in a 14-day health screening?**

A: **Yes.**

Exhibit 9, *Deposition of Edward O'Bryan, MD, MBA, CPE*, p.235, l.1 – 21, emphasis added.

In short, there is ample competent, admissible evidence on these issues creating material questions of fact, much of which comes from Defendant Hunt's own testimony.

5) There is a material question of fact as to whether Defendant Hunt was grossly negligent in failing to properly train ACDC detention officers.

Defendant Hunt similarly argues that the Plaintiff "has failed to present any competent, admissible evidence demonstrating that the Aiken Defendants failed to properly train the detention officers" at ACDC. *September 29th Motion*, p.2, ¶10.

Capt. Gallam testified that ACDC correctional staff are trained that medical can be overridden at the supervisory level:

Q: Does any of the training for new correctional officers include any medical – medical matters of any sort?

A: We talk about emergency procedures.

Q: Okay. Are new correctional officers taught to rely on medical?

A: Yes.

Q: Are there situations where they are empowered to override medical?

A: We allow that to happen at the supervisory level.

Exhibit 6, September 28, 2023 Deposition of Capt. Nick Gallam, p.30, l.2-12.

Capt. Gallam later testified that both Lt. Erik Riddell and Lt. Jessica Whitaker would have had the power to overstep medical if they believed it prudent to do so. **Exhibit 6, September 28, 2023 Deposition of Capt. Nick Gallam**, p.42, l.7-19.

Despite that testimony, when Cpl. Hill took her concerns about the medical care being provided the Plaintiff to Lt. Whitaker, her testimony supports the reasonable inference that Whitaker was not adequately trained that she had the authority override medical:

Q: Is there anything you can think of about Cassi or this incident **that you think is important**, that I've missed, but you think that we should know about?

A: On the – on the day that I had asked Bauer to look at Cassiopia and think what – she what she thought and let me know, **I'd also talked to Lieutenant**

Whitaker due to my concern about how much swelling there was. And Lieutenant Whitaker stated that she would talk to medical to find out what was going on.

Q: And I meant to ask you about that because I think what Bauer told Mr. Hinson yesterday was when she came back and confirmed to you that she like she could see swelling, that you – you – Bauer says you asked her, “Well, will you say something to Whitaker, too?” Is that correct? **Did you ask her to report to Whitaker, too, that she saw it, and – and it didn’t appear to be self-inflicted to her, either?**

A: Yes, sir.

Q: Did Whitaker – **did you report to Whitaker that Nurse Donna was telling you it was self-inflicted?**

A: **Yes, sir.**

Q: Did – did **Whitaker express to you an opinion about that at all?**

A: She said, “Are you sure that you’re keeping a close watch on her?” I stated I was. I talked to all the inmates that was in the cell with her at the time. Everybody said the same thing. **“Ms. Hill, she’s not doing this. She’s barely eating because her head hurt so bad.”**

[omitted testimony]

Q: And leading up to that day, whenever it was, **was there a growing concern leading up to that day, with you, about what was happening with Cassi?**

A: **There was, and any time I talked to medical, they would always say, “She has to submit a sick call on the kiosk.”**

Exhibit 10, Deposition of Hill, p.54, 1.7 – 56, 1.9, emphasis added.

Dep. Kelley testified similarly:

Q: Did you ever raise any of these issues up the chain of command?

A: **I did.**

Q: What kind of issues did you raise up the chain of command?

A: **Complaints that I felt like they weren’t doing what they should have been doing to assist an inmate. Obviously, with Cassi Rhoads, I brought that issue up to Lieutenant Riddell, I brought that issue up to Lieutenant Whitaker, and their response was, “We cannot overstep Medical. If Medical doesn’t want to send her out, we can’t force them to do so.”**

Exhibit 3, *Deposition of Kelley*, p.89, l.24 – p.90, l.7, emphasis added.

These examples from discovery are “competent, admissible evidence demonstrating that the Aiken Defendants failed to properly train the detention officers” at ACDC and enough to create reasonable inferences of material questions of fact that Defendant Hunt was grossly negligent in training ACDC correctional staff.

6) Plaintiff’s claims are not barred by S.C. Code §15-78-70(d).

Finally, Defendant Hunt argues he cannot be sued because Plaintiff settled with the SHP Defendants, basing his argument on S.C. Code §15-78-70(d), which states in relevant part:

SECTION 15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(d) A settlement or judgment in an action **or a settlement of a claim under this chapter** constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence. S.C. Code §15-78-70(d), emphasis added.

Plaintiff has not settled a single claim brought under Chapter 78 of Title 15, as she has not settled any claim under the SCTCA against any governmental entity or employee.

This very argument Defendants attempt was rejected by the South Carolina Supreme Court in Wade v. Berkley County, 348 S.C. 224 (2002). In Wade, the South Carolina Supreme Court allowed a plaintiff to proceed with suing the County **after** settling a claim against the county employee “in his individual capacity,” noting that seemed to circumvent the policy of the Act:

...which is to protect employees from person liability for torts committed while acting within the scope of employment...Nevertheless, our construction of the statute is limited by its legislative history.

Wade at 230-231.

If S.C. Code §15-78-70(d) did not prohibit suit against a county in a situation involving prior settlement **with a governmental employee**, it is simply not credible to argue it prohibits the Plaintiff’s claims against Defendant Hunt after settlement with a private corporation.

CONCLUSION

Based on the above, and such other argument and evidence that may be presented to the Court at any hearing, the Plaintiff respectfully requests the Defendants' motion for summary judgment be DENIED and this case allowed to be tried on its merits with all questions of fact submitted to a jury for their consideration.

Respectfully Submitted,

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ATTORNEYS FOR THE PLAINTIFF

Florence, SC
October 5, 2023

Exhibit 1

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Medical	257889
Inmate:	133513	RHOADS, CASSIOPIA STARR B
Grievance Status:	CLOS	
File Date:	5/11/2019 8:09:00 PM	
Subject:	MEDICAL/SICK CALL/SICK CALL - PAGE 2/NEED TO SEE A DENTIST	
Level:	MedStaff	
Resolution Date:	5/12/2019 12:22:00 AM	
Resolved By:	B	
Status:	CLOS	

Inmate Statement:

I HAVE A HUGE ABCESSS ON THE SIDE OF MY HEAD THAT KEEPSGETTING BIGGER AND HURTS REAL BAD I NEED MY TOOTH PULLED OR SOME ANTIBIOTIOCS

Officer Review:**Officer Findings:**

WILL BE SEEN AT NEXT AVAILABLE SICK CALL
NURSE MALINDA

ELECTRONICALLY FILED - 2023 Oct 05 12:46 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202238

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Medical	258419
Inmate:	133513	RHOADS, CASSIOPIA STARR B
Grievance Status:	CLOS	
File Date:	5/16/2019 8:09:00 PM	
Subject:	MEDICAL/SICK CALL/SICK CALL - PAGE 2/EARACHE	
Level:	MedStaff	
Resolution Date:	5/18/2019 6:28:00 PM	
Resolved By:	B	
Status:	CLOS	

Inmate Statement:

I AM HAVING REALLY AD PAIN IN MY EAR AND FEVER

5/19/19
On Amoxicillin
& IBU 88

Officer Review:**Officer Findings:**

PUT YOU ON SICK CALL LIST. NURSE DONNA

ELECTRONICALLY FILED - 2023 Oct 05 12:46 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202238

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Medical	258658
Inmate:	133513	RHOADS, CASSIOPIA STARR
Grievance Status:	CLOS	B
File Date:	5/20/2019 4:09:00 PM	
Subject:	MEDICAL/SICK CALL/ABSCESS (MAY APPEAR TO BE A BITE)	
Level:	MedStaff	
Resolution Date:	5/20/2019 11:24:00 PM	
Resolved By:	B	
Status:	CLOS	

Inmate Statement:

I HAVE A FKUID LIKE SACK ON SIDE OF MY HEAD, ABOVE MY EAR. MY EAR ACHES AND IM STILL FIGHTING A FEVERE AND SEVERE HED PRESSURE. MY EYES WATER CONSTANTLY AND I HAVE SEVERE NAUSEA N VOMITTING. I ALSO FEEL DIZZY AND CANT FOCUS MY EYES WHEN I STAND UP. THE WHOLE RIGHT SIDE OF MY FACE IS SWOLLEN AND VERY PAINFUL. I HAVE NOT BEEN ABLE TO GET OUT OF BED FOR 4 PLUS DAYS ON THE EXCEPTION OF SHOWERING. PLEASE HELP ME AND SEND MOTRIN

Officer Review:**Officer Findings:**

WILL BE SEEN AT NEXT AVAILABLE SICK CALL
NURSE MALINDA

ELECTRONICALLY FILED - 2023 Oct 05 12:46 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202238

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Medical	258793
Inmate:	133513	RHOADS, CASSIOPIA STARR
Grievance Status:	CLOS	B
File Date:	5/21/2019 9:33:00 PM	
Subject:	MEDICAL/SICK CALL/ABSCESS (MAY APPEAR TO BE A BITE)	
Level:	MedStaff	
Resolution Date:	5/21/2019 10:48:00 PM	
Resolved By:	B	
Status:	CLOS	

Inmate Statement:

I HAVE FLUID UNDER MY SKIN ABOVE MY R EAR. BEEN THERE FOR 4 PLUS DAYS, WHOLE SIDE OF FACE IS SWOLLEN AND HAVE PLACED SEVERAL SICK CALLS AND HAVE NOT BEEN SEEN YET. I AM IN SEVERE PAIN AND PRESSURE IN MY HEAD.

Officer Review:**Officer Findings:**

WILL BE SEEN AT NEXT AVAILABLE SICK CALL
NURSE MALINDA

ELECTRONICALLY FILED - 2023 Oct 05 12:46 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202238

INMATE GRIEVANCE RECORD

Grievance Type: ID:	Medical	259078
Inmate:	133513	RHOADS, CASSIOPIA STARR
Grievance Status:	CLOS	B
File Date:	5/24/2019 11:37:00 AM	
Subject:	MEDICAL/MEDICAL GRIEVANCE/I HAVE NOT BEEN SEEN BY A DENTIST	
Level:	MedStaff	
Resolution Date:	5/24/2019 5:51:00 PM	
Resolved By:	B	
Status:	CLOS	

Inmate Statement:

I HAVE BEEN TAKEN OFF ALL PAIN MEDS AND STILL HAVE YET TOO HAVE SEEN THE DIFF

Officer Review:**Officer Findings:**

MS RHOADS, THE DENTIST HAS NOT BEEN IN. NURSE DONNA

Exhibit 2

Mary Joyner
Rhoads v. Southern Health Partners, Inc., et al.

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3/10/2023

ELECTRONICALLY FILED - 2023 Oct 05 12:46 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202238

Cassiopia Rhoads,	)	UNITED STATES
	)	DISTRICT COURT
PLAINTIFF,	)	
	)	DISTRICT OF
vs.	)	SOUTH CAROLINA
	)	
Southern Health Partners,	)	AIKEN DIVISION
Inc., Robert J. Williams,	)	
M.D., Brandi Galloway,	)	Civil Action Number:
Donna Wright, Chanate	)	8:22-cv-1409-SAL-JDA
Buchanan, Tonetta Buggs,	)	
Tamara Erikson, Erik	)	
Riddell, and Jessica	)	
Whitaker,	)	
	)	
DEFENDANTS.	)	
_____	)	
Cassiopia Rhoads,	)	STATE OF
	)	SOUTH CAROLINA
PLAINTIFF,	)	
	)	COUNTY OF AIKEN
vs.	)	
	)	Case Number:
	)	2020-CP-02-02238
Southern Health Partners,	)	
Inc.; Robert J. Williams,	)	
M.D.; Michael E. Hunt, in	)	
his official and	)	
representative capacity as	)	
Aiken County Sheriff; and	)	DEPOSITION OF
Aiken County, operating as	)	MARY JOYNER
the Aiken County Detention	)	
Center,	)	
	)	
DEFENDANTS.	)	
_____	)	

DATE: Friday, March 10th, 2023

TIME: 9:38 a.m.

LOCATION: Via Videoconference - All Parties Remote

Reported by
Cara-Leigh V. Richardson

1 Q: Okay. And you said you got, I guess, picked up or
2 arrested in March of 2019 for violating your
3 probation?

4 A: Right.

5 Q: So, how long did you stay at Aiken County Detention
6 Center in 2019?

7 A: Ninety-three days, I was there from March 1st until
8 June 3rd, which is the day after Cassi was actually
9 taken to the hospital.

10 Q: Okay. And then, are you still on probation?

11 A: No, they gave me time served for that.

12 Q: So, do you have any -- have you been arrested since
13 June of 2019?

14 A: No, my record's been clear.

15 Q: And you don't attend any sort of probation at this
16 time?

17 A: I do not.

18 Q: And do you have any mandatory drug testing that you
19 do?

20 A: I don't.

21 Q: And do you have any sort of -- so, you don't have
22 any interaction with the legal system at the
23 moment?

24 A: I don't.

25 Q: Okay. Do you know Cassi Rhoads?

1 MR. HINSON: I AM NOT.

2 MR. LONG: YEAH, I DIDN'T THINK YOU WOULD BE,
3 BUT I JUST WANTED TO CONFIRM IT.

4 MR. LONG CONTINUES:

5 Q: So, you have your statement there in front of you.
6 Do you have any other documents?

7 A: No, I just have the statement with me today.

8 Q: Okay. How did it come, how did it come about for
9 you to sign that statement?

10 A: Well, I just -- really, I just gave my story and
11 made sure that I checked it, made sure that it was
12 my story, that it was accurate. And that was
13 pretty much it. I was pretty straight forward.

14 Q: Let me ask you a couple more questions to drill
15 down on that a little bit. Okay?

16 Who initially -- I assume someone contacted
17 you about doing the statement, right? Or did you
18 reach out to somebody and say you wanted to do a
19 statement?

20 A: I'm pretty sure Brink's the first person who called
21 me.

22 Q: Okay. When you say, "Brink," you mean Brink
23 Hinson?

24 A: Yeah.

25 Q: Okay. Did you know him before he called you?

1 Q: Okay. How tall was she or how tall is she?

2 A: I think she's just a little taller than me. And
3 I'm five-five, five-four.

4 Q: And would you describe her as a thin or heavy
5 person?

6 A: Well, to start with, when I met her, she was --
7 she, she's skinny, but I mean, she's not -- she
8 doesn't look fragile or she didn't to start with.

9 Q: What do you mean, "...to start with"?

10 A: Honestly, she looked like she suddenly developed
11 cancer and was going through chemo over the course
12 of the time that she was there.

13 Q: And how does ---

14 A: Her color was gone. The brightness was gone from
15 her face. Like, the one thing you remember about
16 Cassi when you meet her is the way that she lights
17 up. She's one of those types of people; her whole
18 face lights up. She can make somebody else smile.

19 That all left. She turned this really -- she
20 turned sickly-colored, a yellowish, grayish,
21 whatever. It was not a natural colored. You could
22 tell something was wrong with her. She started
23 losing weight, and she just looked kind of haggard.
24 She was tired.

25 Q: And how old is Cassi?

1 It's a little -- you go unconscious. Your body
2 just suddenly hits the floor.

3 Q: I want to ask you. Okay, this was in her cell.
4 Okay?

5 A: Mm-hmm.

6 Q: Did you see any of that? Did you see her fall?

7 A: I heard the commotion.

8 Q: You heard the commotion?

9 A: Right.

10 Q: Did you walk over to the cell?

11 A: Oh, no. When things like that happen, everybody
12 immediately has to go back to their bunks for your
13 safety, because medical staff has to come in and
14 everything. It's just an issue.

15 Q: Okay. And did you ---

16 A: But I did see her immediately after she -- the
17 incident, and you could -- people who do that tend,
18 tend to get this really pale color, like, just
19 blood falls from their face, and that's what she
20 looked like.

21 Q: Well, when you -- so, after this incident happened,
22 and this was on the 8th, are you telling me that
23 she was allowed to leave her cell and walk around
24 out in the common area and went by your bunk?

25 A: No, I could just see her after they put her back in

1 Q: Very clearly you do?

2 A: Mm-hmm.

3 Q: Did you watch it? Did you see it?

4 A: Oh, yeah, everybody saw it. It was -- I, I don't
5 -- I considered it a peaceful protest. She wasn't
6 like obnoxious. She essentially took a chair -- it
7 was at the end of her rec, when everyone was
8 supposed to go back to cells. She was trying to
9 get medical help. Essentially, she took a chair
10 and sat it down in front of the, the CO's desk, and
11 said she wasn't going to go back to her cell until
12 they got her medical attention. She said that
13 something was wrong.

14 And do you know what they did to her for that?
15 They hid her out of sight instead of getting her
16 help. They didn't even acknowledge it.

17 Q: All right. So, was your bunk closer to the guard
18 desk or was it further away, or in the middle?

19 A: I mean, I just -- I had a really clear view of it.
20 I was kind of -- not directly above it. It's like,
21 if you've got the desk here, I was in a bed like
22 right here.

23 Q: Okay.

24 A: I mean, I could see. All I had to do is sit up in
25 bed, and I could see the CO sitting at the desk.

1 Q: All right. Did Mr. Hinson suggest the term
2 peaceful protest to you, or did you describe it
3 that way to him?

4 A: No, that, that's my way of describing it. I wanted
5 to make it very clear that she didn't act violent.
6 She wasn't vulgar. She just wanted help, and
7 nobody was listening to her. She could have died.

8 Q: Okay.

9 A: And they still weren't listening to her, even
10 though we were trying to -- I still don't
11 understand. We were really confused as to why
12 nobody would bother to help her.

13 Q: All right. So then, as a result of that, she was
14 punished and put in B-Max, right? Lockdown?

15 A: Yep.

16 Q: So, she would have been on the other side of the
17 wall, right?

18 A: Right. She basically would've been in a cell that,
19 like it's a cluster of cells within a giant room,
20 where they have a shower and a phone in the room.

21 Q: So, my understanding from Cassi's deposition,
22 correct me if I'm wrong on this, what you remember.
23 Tell me what you remember.

24 My understanding is that Cassi was supposed to
25 stay in B-Max until June the 7th, but they let her

STATEMENT OF MARY JOYNER

1. I, Mary Joyner, am over the age of eighteen (18) and have personal knowledge of the matters contained herein, which are stated to the best of my knowledge and recollection.

2. I was held at the Aiken County Detention Center ("ACDC") from March through June of 2019. In May and June of that same year, Cassiopia "Cassi" Rhoads and was also held as a detainee in the ACDC. During this time, I personally observed and interacted with Cassi.

3. During her detainment, Cassi developed a large growth on the right side of her head. I am not in the medical profession and do not know what exactly the growth was or what was causing it, but I do know that it grew larger and larger over the course of several weeks and eventually became something that was very large and comparable to a softball-sized protrusion on the right side of her head.

4. I could not look at Cassi without immediately noticing this tremendous deformity, which was had caused her head and face to become misshapen and was rather gross to look at. During much of the month of May, I simply could look at Cassi and tell she was ill. Her skin was pale and she just looked sick – you did not have to be a doctor or a nurse to know that something was wrong with Cassi.

5. I observed Cassi repeatedly ask for help about the growth on the side of her head. In the second half of May, on a near daily basis, Cassi asked and pleaded with the ACDC's correctional officers to take her to the hospital. She often cried out in pain and openly complained about the pain she was experiencing. One day, at the end of recreation time, Cassi engaged in a "peaceful protest" in which she said that she would not go back to her cell and would only go to a hospital. Instead of taking her to a hospital, the guards placed Cassi in "lock down." I recall being very sad that no one would help Cassi and worrying what would happen to her

6. Cassi was finally taken to the hospital in early June, which was more than a week after the growth on the side of her head had become quite large and even longer since she had started complaining and asking for help about it.

October 26, 2021



Mary Joyner

Plaintiffs Exhibit

Mary Joyner 6

3/10/2023

cvr

Exhibit 3

Kimberly Haven Kelley
Rhoads v. Southern Health Partners, Inc., et al.

Page 1
3/10/2023

Cassiopia Rhoads,	)	UNITED STATES
	)	DISTRICT COURT
PLAINTIFF,	)	
	)	DISTRICT OF
vs.	)	SOUTH CAROLINA
	)	
Southern Health Partners,	)	AIKEN DIVISION
Inc., Robert J. Williams,	)	
M.D., Brandi Galloway,	)	Civil Action Number:
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	)	
DEFENDANTS.	)	
_____	)	
Cassiopia Rhoads,	)	STATE OF
	)	SOUTH CAROLINA
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his official and	)	
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Aiken County Sheriff; and	)	DEPOSITION OF
Aiken County, operating as	)	KIMBERLY HAVEN KELLEY
the Aiken County Detention	)	
Center,	)	
	)	
DEFENDANTS.	)	
_____	)	

DATE: Friday, March 10th, 2023

TIME: 11:36 a.m.

LOCATION: Via Videoconference - All Parties Remote

Reported by
Cara-Leigh V. Richardson

1 A: A violent offender with no known institutional
2 behavior problems, yes.
3 Q: He would wear red?
4 A: I believe so, yes.
5 Q: Okay. What color did Cassi Rhoads wear?
6 A: She was in red.
7 Q: Do you know why?
8 A: I believe she was on disciplinary detention the
9 first little bit that she was there, if I'm not
10 mistaken.
11 Q: Once you came off of disciplinary detention,
12 wouldn't you switch back to orange?
13 A: Yes.
14 Q: Okay. All right. When you're in B-Max, that was
15 behind the door, behind the officer's table, right?
16 A: Correct.
17 Q: And I think you just told me that in B-Max, they
18 had their own shower, their own telephone, and
19 their own table for eating meals?
20 A: Correct.
21 Q: And so, those inmates, were they allowed to come
22 out of that B-Max area while they were in B-Max?
23 A: Depending on the classification, some were and some
24 were not. They didn't necessarily have their own -
25 - each of them have their own shower. The four of

1 them shared a specific shower and phone that was in
2 that area, and you had four separate cells.

3 Q: Right.

4 A: What they did not have access to was the kiosk,
5 where they could order canteen items and/or request
6 medical, unless they were escorted out or their
7 classification permitted them to come out in the
8 day area while the rest of the pod was on lockdown.

9 Q: Yeah. So, wouldn't Cassi Rhoads, when she went to
10 B-Max for barricading, she would've been behind
11 that wall the entire time, right?

12 A: Correct.

13 Q: So, when she showered or she was allowed to use the
14 telephone, she would've still been behind that
15 wall, correct?

16 A: Yes.

17 Q: So, the inmates inside the B-Pod, they could not
18 have seen her with their eyes, could they?

19 A: Yes, they could have.

20 Q: How?

21 A: There's glass. There's windows you can see into
22 the B-Max area.

23 Q: So, you could see into the cells of the B-Max area?

24 A: Yes.

25 Q: Where would they go to the bathroom, the people in

1 day off, because they were not, they were not
2 treating her adequately.

3 Q: Let me break that down a little bit. So, in the
4 complaints that you made, over 20 complaints that
5 you made while you were working in Aiken, who did
6 you make those to?

7 A: Most often, Lieutenant Riddell.

8 Q: Okay. And did you ever attempt to speak to any of
9 the other lieutenants that were there?

10 A: Lieutenant Whitaker.

11 Q: So, you made complaints to Whitaker, too?

12 A: Yes.

13 Q: How about Captain Gallam, or any other supervisors
14 there?

15 A: Not to my recollection. Solomon, before Solomon
16 was terminated, Lieutenant Solomon.

17 Q: So, tell me the kind of things that you say you
18 complained about?

19 A: The inability -- so, a lot of the times when --
20 say, we had inmates that were housed in B-Max that
21 needed to make medical requests. We were told that
22 we were not allowed to give them the paper medical
23 request forms anymore, that they had to use the
24 kiosk.

25 If you have an inmate housed in B-Max that is

1 on disciplinary segregation and wearing a striped
2 uniform, they cannot come out of that cell unless
3 there are two officers present, one of them being a
4 supervisor at minimum.

5 So, if there's no supervisor available to come
6 and restrain that inmate and escort them out to use
7 the kiosk, then that inmate has to go without
8 medical care. They have to go without canteen.
9 They can't make complaints regarding their
10 situation. They can't speak to classification
11 about their classification level or anything.

12 And I didn't agree with that, so my complaint
13 was, you know, either we need to put a kiosk in
14 that area where they are able to access it, or
15 allow them to fill out paper medical request forms.

16 But the problem with that was, if they're on
17 segregation back there, they're not supposed to
18 have pens in the rooms.

19 So, we would have these small, I believe they
20 were flex pens that the inmates would be given to
21 be able to write stuff down, and then they would
22 have to immediately give it back. And that was
23 always an issue as well, because then you have to
24 worry about whether or not they're going to give
25 you back that pen that you just handed them, or if

1 they're going to try to use it as a weapon. So, it
2 was, it was a very broken system.

3 Q: Okay. So, I understand. Any other complaints that
4 you made, other than the ones that you just told me
5 about, that relate to B-Max?

6 A: That relate to B-Max?

7 Q: Because that's what you just explained to me,
8 general complaints about the way B-Max was set up,
9 right?

10 A: Yes.

11 Q: And was that also true for the other -- I assume
12 there's a C-Max and a A-Max and a D-Max, right?

13 A: So, in C-Pod, there was no kiosk, I don't believe,
14 in the, the high max area, which would've been
15 C-Pod 1, I think.

16 Because there were four sections of C-Pod.
17 It's like a big circle for the most part, or more
18 like a stop sign, I guess. But there were four
19 separate sections. So, one was like a mental
20 health, one was disciplinary segregation, and the
21 other two were high-medium, which was a step
22 between general population and the disciplinary
23 segregation. So, those areas had a kiosk. I don't

24 ---

25 Q: Well, my question is, did you complain about the

1 A: Most of it, yes.

2 Q: And then did you -- so, how ---

3 A: So, I gave my verbal statement to Mr. Hinson, and
4 he typed up what I stated. He sent it to me to
5 review. I made some alterations and added to it.

6 Q: What changes and additions did you make?

7 A: I'm looking at the document now, sorry.

8 Q: Sure.

9 A: From six down -- Number 6, in that statement, where
10 it says, "On numerous occasions, I tried to
11 advocate for Cassi and personally asked the medical
12 staff to arrange to have Cassi seen at a hospital,"
13 everything from there down is my words.

14 Q: And what about the second page? Paragraphs, 8, 9,
15 10, and 11, did you type those or did Mr. Hinson?

16 A: I did, I did type those as well, yes.

17 Q: Are you sure about that?

18 A: Yes, I'm reading through it. Yeah. Yeah. Those
19 are my words, except for Number 10, that paragraph.

20 Q: Did you have access to Ms. Joyner's statement when
21 you did yours?

22 A: Who?

23 Q: Mary Joyner?

24 A: No.

25 Q: Do you know who Mary Joyner is?

1 A: Yes.

2 Q: Did you think that Brandi tried to do best for the
3 inmates?

4 A: I think Brandi tried to keep from breaking company
5 policy while still providing adequate care to the
6 inmates.

7 Q: I don't understand what you mean by, "...breaking
8 company policy"? What company ---

9 A: So, the policies that were in place as far as like
10 inmate medical care goes. Medical was the only
11 ones allowed to make the determination on whether
12 or not to send someone to the hospital.

13 So, a lot of the times, like we would, we
14 would -- you know, officers would be like, "This
15 person needs to go to the hospital," and they would
16 be like, "Well, we can't send them out, because we
17 don't feel like that's medically necessary."

18 Brandi, I like Brandi personally. I just, I
19 don't feel like they were, they were always doing
20 what they should be doing for the inmates, but
21 again, they had policies, so.

22 Q: Do you think that inmates need to go to the
23 hospital when it's not medically necessary?

24 A: No.

25 Q: Don't you think it's the policy of the detention

1 center and the best practice to not send inmates to
2 the hospital if it's not medically necessary?

3 MR. HINSON: OBJECT TO THE FORM.

4 A: The jail's policy is strictly to leave that to the
5 decision of medical staff.

6 Q: Well, if somebody was having a medical emergency,
7 the jail staff could call an ambulance, couldn't
8 they?

9 A: No.

10 Q: So, you're telling me that if somebody -- okay.
11 You weren't a supervisor, were you?

12 A: No, I was not.

13 Q: Okay. So, you're going to sit here today and tell
14 me that none of the supervisors or any of the
15 correctional officers that work at the Aiken County
16 Detention Center have the authority to call an
17 ambulance if an inmate was having a medical
18 emergency?

19 A: My understanding was that the only ones allowed to
20 make that determination was Medical. So, if there
21 was a medical emergency, we would contact Medical,
22 they would come and make the determination on
23 whether or not to send them out EMS. Now, ---

24 Q: Who told you that?

25 MR. HINSON: LET HER FINISH HER ANSWER. LET HER

1 FINISH HER ANSWER.

2 MR. LONG: I THOUGHT SHE WAS FINISHED.

3 MR. HINSON: OKAY.

4 A: That was the policy of the Aiken County Detention
5 Center. We could not make a determination on
6 whether or not someone needed to be sent out EMS
7 unless Medical made that decision, or in the event
8 that Medical was not available or present to be
9 able to make that decision.

10 Q: Who told you that?

11 A: That's in the Aiken County Detention Center
12 Policies and Procedures, Standard Operating
13 Procedures.

14 Q: So, you read it in the Aiken County Policy and
15 Procedure Manual?

16 A: Yes, sir.

17 Q: All right. Any other source for your belief of
18 that?

19 A: Lieutenant Riddell, Captain Gallam, Lieutenant
20 Whitaker.

21 Q: Captain Gallam?

22 A: Yeah.

23 Q: Okay, they all told you that?

24 A: Yeah. When you're complaining that an inmate needs
25 to be sent out to the hospital and their response

1 is always, "Well, we can't do that unless Medical
2 decides to do that," I mean, that's pretty cut and
3 clear.

4 Q: All right. Any other policies that you think of
5 that interfered with the medical care of the
6 inmates in the jail?

7 A: Other than we can't make any determination or go to
8 Medical directly if we feel like an inmate needs
9 medical care? No.

10 Q: So, do you disagree with the idea that the licensed
11 nurses and physicians should make the decisions on
12 medical care instead of the unlicensed correctional
13 officers?

14 A: Under certain circumstances, absolutely, because it
15 falls under deliberate indifference when the
16 medical department won't send someone out and you
17 clearly can see that they're in need of medical
18 attention that they're not providing adequately.

19 Q: How many times did Cassi Rhoads interact with a
20 nurse or a doc?

21 A: I was not working the pod for the majority of the
22 time that she was incarcerated, so I can't answer
23 that question.

24 Q: Do you know how many times her temperature was
25 checked during that period of time?

1 A: I don't. Again, I was not working in the pod at
2 that time, so I cannot answer that question.

3 Q: Okay. Do you know -- All right. Did you ever
4 speak to any of the nurses? Did you ever speak to
5 Dr. Williams about Cassi Rhoads or any other
6 inmate?

7 A: I'm fairly certain I was the officer that escorted
8 her to the medical clinic whenever he saw her in
9 probably like the first or second week that she was
10 there, I think, at that time.

11 Q: You remember that?

12 A: Yes. I don't recall what he said about the, the
13 issue. I remember being very frustrated when he
14 just gave her an antibiotic and Tylenol, and told
15 her to go lay down.

16 Q: So, you're telling me that you took Cassi Rhoads to
17 see Dr. Williams on the day that she saw him?

18 A: I'm fairly certain that I was the officer that
19 escorted her down there, yes.

20 Q: And would you have done that in your role as escort
21 officer?

22 A: Yes.

23 Q: And would you have stood in the room when the
24 evaluation was going on?

25 A: I would've stood in the doorway where I had a

1 visual of the inmate, yes.

2 Q: Did you hear their conversation?

3 A: Yeah. I mean, they were only maybe eight to 10
4 feet away from me.

5 Q: Okay, so tell me what they said.

6 A: He prescribed her antibiotics and Tylenol, and told
7 her to go lay down.

8 Q: What did she say to him?

9 A: She said that it hurts her a lot and that she was
10 starting to have issues with seeing clearly and
11 felt that she needed to go out and see a doctor.

12 Q: Tell me exactly how it happened. You walked her in
13 the room. Tell me everything that you remember.

14 A: She walked in the room, sat down on the table. He
15 asked her what was going on, and she said that she
16 had an abscess on the side of her face that was
17 getting bigger and bigger every day. It was
18 causing her a lot of pain, that there were times
19 when she would get up and she was dizzy, and she
20 was having trouble seeing, that she thought it was
21 infected.

22 And he said -- he started kind of touching
23 around the area. He said that the center was kind
24 of soft, so he was pretty certain there was an
25 infection in there, so he would -- was going to

1 give her some antibiotics and Tylenol, and she

2 should go lay down and try a warm compress to see

3 if that helped with the pain.

4 Q: Okay. Any other times that you remember taking her

5 to see a nurse?

6 A: Taking her to see a nurse? No.

7 Q: Escorting her in your role as escort.

8 A: No.

9 Q: Okay. Do you have a -- how do you know he

10 prescribed her an antibiotic?

11 A: That's what he said he was going to do while we

12 were in the room.

13 Q: Okay. And then after that was over, did you escort

14 her back to her cell?

15 A: I escorted her back to B-Pod. Typically, when

16 you're escorting an inmate to or from a unit, you

17 escort them to the sallyport, remove the

18 restraints, and then the officer will, once you've

19 left, will come out and search the inmate back into

20 the unit. By search, I mean they conducted a frisk

21 search of the inmate.

22 Q: Did you have other interactions with Dr. Williams

23 ---

24 A: No.

25 Q: --- while you worked there?

1 Q: Okay. Did you have access to an employee handbook?

2 A: Yes.

3 Q: Okay. Did that employee handbook include a
4 grievance system?

5 A: Not that I'm aware of.

6 Q: All right. Was there a mechanism in place for you
7 to be able to raise any issues that you had
8 directly to either the jail administrator or to the
9 administration of the sheriff's department?

10 A: I could request to speak with them. That doesn't
11 necessarily mean that your request was granted. In
12 general, they would harp on the fact that we needed
13 to follow the chain of command as they state.

14 So, if I have a concern or a grievance that I
15 would like to state, then I would go to, first a
16 corporal. If the corporal didn't resolve it, then
17 a sergeant, and then finally to the shift
18 commander, who would then either resolve the
19 situation or bring it up to the appropriate
20 personnel.

21 Q: All right. Did you ever raise any of these issues
22 up the chain of command?

23 A: I did.

24 Q: What kind of issues did you raise up the chain of
25 command?

1 A: Complaints that I felt like they weren't doing what
2 they should have been doing to assist an inmate.
3 Obviously, with Cassi Rhoads, I brought that issue
4 up to Lieutenant Riddell, I brought that issue up
5 to Lieutenant Whitaker, and their response was, "We
6 cannot overstep Medical. If Medical doesn't want
7 to send her out, we can't force them to do so."

8 Q: All right. Did you ever go above Lieutenant
9 Riddell or above Lieutenant Whitaker with the
10 issue?

11 A: I cannot recall whether or not I did go to Captain
12 Gallam or not. I believe he also had an
13 administrative lieutenant. I can't remember his
14 name. He was promoted while I was there. I can
15 recall what he looks like for the most part, but I
16 can't recall his name.

17 Q: Who are you referring to, a deputy jail
18 administrator?

19 A: I believe so, yes.

20 Q: All right. Did you ever raise any of these issues
21 with that individual?

22 A: I can't recall specifically whether I did or not.

23 Q: All right. Did you ever go to Sheriff Hunt with
24 any complaints?

25 A: No. Sheriff Hunt did not -- Sheriff Hunt didn't

1 Q: Yes, ma'am; I'm sorry. Let me ask that question
2 again. My question is, the week prior to the 24th
3 of May, so I'm looking at, essentially, the week
4 from around the 12th of May through the 18th of
5 May, within that week, had the abscess on the side
6 of Ms. Rhoads' head become visibly evident by that
7 time?

8 A: Yes.

9 Q: And, Ms. Kelley, I want to make sure I understand.
10 Did you report concerns to Nurse Donna Wright and
11 separately to Nurse Brandi Galloway about your
12 belief about Ms. Rhoads' health and her condition?

13 A: Yes.

14 Q: And just generally speaking, what did you relate to
15 Ms. Wright and Ms. Galloway?

16 A: That I was concerned that it was talked going to be
17 -- turning into MRSA or M-R-S-A, that she was
18 complaining that she couldn't see very well, that
19 her eyes were hurting, that her jaw was hurting,
20 her mouth was hurting. She was feeling dizzy.

21 And if I recall correctly, I actually got
22 backlash from my supervisor because I had gone
23 directly to Medical instead of allowing the inmate
24 to submit medical requests through the kiosk like
25 we were supposed to.

1 Q: Who was the supervisor that gave you, as you put
2 it, backlash?

3 A: Lieutenant Riddell.

4 Q: And were you told it was okay to advocate for a
5 patient inmate if you had concerns about what
6 Medical was or wasn't providing for them?

7 MR. LINDEMANN: OBJECT TO THE FORM.

8 A: No, I was not allowed to advocate for an inmate
9 unless they -- at all, honestly. We weren't
10 supposed to overstep Medical.

11 Q: Ms. Kelley, were there CCTVs, closed circuit
12 television cameras, within the facility?

13 A: Absolutely.

14 Q: Would there have been closed circuit television
15 cameras within B-Pod?

16 A: Several.

17 Q: And were there closed circuit television cameras
18 even within B-Max, one or more at least?

19 A: There were at least two.

20 Q: And was the resolution -- did you ever have the
21 occasion to work the control room where all those
22 cameras fed into multiple screens?

23 A: Yes.

24 Q: And was the resolution so good on those cameras
25 that you would be able to zoom in and see things?

1 A: Do I believe that there was -- there could have
2 been a better process for this?

3 Q: Well, I guess my question is, do you believe it was
4 a reasonable process? Do you believe it was a good
5 process for people in B-Max where they could
6 request access to medical care, or was it a
7 difficult and unreasonable process that had been
8 created for them?

9 MR. LONG: OBJECTION.

10 MR. LINDEMANN: OBJECT TO THE FORM.

11 A: I believe that there could have been a better way
12 to do that. Understandably, for the individuals
13 that are on disciplinary segregation, some of them
14 are actually quite dangerous and have proven
15 themselves to be dangerous; therefore, I don't
16 believe that the process of needing to have a
17 supervisor present and restraining them anytime
18 they're being escorted out of their segregation
19 area is unreasonable. No, I do not.

20 As far as them having to be escorted to the
21 kiosk in that manner, I believe for those
22 individuals, they should have made it possible for
23 us to use a paper medical request form while they
24 were housed in those cells. I think that, that
25 should have been the proper procedure instead of us

1 having to wait for a supervisor to be available,
2 along with another officer, and them having to be
3 restrained in order for them to be escorted to the
4 kiosk to make their requests.

5 Q: And so, were there times where it wasn't
6 logistically feasible for someone in B-Max to make
7 a medical request?

8 A: Yes.

9 Q: Ms. Kelley, I just want to show you one quick
10 thing. Well, I want to mark your statement while I
11 put this up real quick.

12 PLAINTIFF'S EXHIBIT NUMBER 1

13 IDENTIFIED FOR THE RECORD

14 MR. HINSON CONTINUES:

15 Q: Ms. Kelley, I'm going to share my screen. Is my
16 screen sharing with you the Statement of Kimberly
17 Haven Kelley?

18 A: Yes.

19 Q: All right. Just generally, what are we looking at
20 here? What is what we'll have marked as Exhibit 1
21 to your deposition today?

22 A: What are we looking at? That's my statement.

23 Q: Just generally speaking, this is a statement. Is
24 this statement truthful and accurate to the best of
25 your recollection and knowledge?

Plaintiffs Exhibit

K. Haven Kelley 1

3/10/2023

cvr

STATEMENT OF KIMBERLY "HAVEN" KELLEY

1. I, Kimberly "Haven" Kelley, am over the age of eighteen (18) and have personal knowledge of the matters contained herein, which are stated to the best of my knowledge and recollection.

2. Although I am no longer employed at the Aiken County Detention Center ("ACDC"), I worked as a correctional officer at the ACDC for approximately three years. My tenure as a guard at the ACDC included a time when Cassiopia "Cassie" Rhoads was held as a detainee in May and June of 2019.

3. Early on during her detainment, Cassie developed a large abscess on the right side of her head. I am not in the medical profession and do not know what exactly the abscess was or what was causing it, but I do know that it grew larger and larger over the course of several weeks and eventually became something that was very large and comparable to a baseball-sized protrusion on the right side of her head. The protrusion appeared to expand and grow practically every day, so much so that it was impossible not to notice it.

4. During much of the month of May, I could simply look at Cassie and tell she was ill. Her skin was pale and she just looked sick – one did not have to be a doctor or a nurse to know that something was seriously wrong with Cassie. I recall other detainees/inmates voicing their concerns about Cassie's health.

5. I observed Cassie repeatedly ask for help about the abscess on the side of her head. In the second half of May, on a near daily basis, Cassie asked and pleaded to be taken to a hospital. She often cried out in pain and openly complained about the pain she was experiencing.

6. On numerous occasions, I tried to advocate for Cassie and personally asked the medical staff to arrange to have Cassie seen at a hospital. I even went so far as to personally assist Cassie in submitting a medical request on the kiosk in B-Pod (female housing unit), ensuring that I included as much detail about her physical appearance and detailing her symptoms as she narrated to me how she was feeling. After having made this request several times, I began voicing my concerns to my supervisory team and even offered to take Cassie to Aiken Regional Medical Center on my day off of work but was told that Cassie didn't need to be seen at a hospital.

7. I recall being very sad and outraged that no one would help Cassie and increasingly worried about what would happen to her.

8. In May of 2019, the growth on the side of Cassie's head grew into a tremendous deformity, which caused her head and face to become grossly misshapen. Eventually, the growth/abscess distorted her face so significantly that her face looked as if she had been badly beaten with a bat. One could not even glance at Cassie without immediately noticing the gigantic abscess.

9. One day, at the end of recreation time, Cassie engaged in a "peaceful protest" in which she said that she would not go back to her cell and would only go to a hospital. However, Cassie was not taken to a hospital but, instead, was placed in B-Max (female isolation). In isolation, Cassie was housed in rather unsanitary conditions. The other detainees housed in B-Max would frequently clog their sinks or toilets to flood the area (which would cause the fetid water to flow into Cassie's cell), screamed excessively at all hours of the day and night, and even threw urine and feces.

10. More than a week after the growth on the side of her head had become shockingly large and even longer since it had become quite evident and since she had started complaining and asking for help about it, Cassie was finally taken to the hospital in early June of 2019.

11. The blatant and stoic refusal of both the medical staff contracted by the Aiken County Sheriff's Office Detention Division and the jail's supervisory staff to acknowledge and properly treat Cassie during this period of her incarceration in 2019 ultimately led to my decision to leave law enforcement all together in January of 2020.

November 15th, 2021

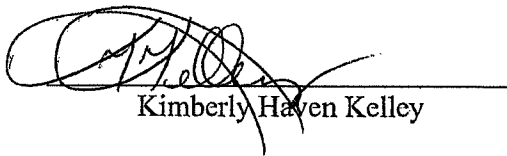

Kimberly Haven Kelley

Exhibit 4

Zoom Video Deposition

1

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF AIKEN) COURT OF COMMON PLEAS
3
4 Cassiopia Rhoads,) 2020-CP-02-02238
5 Plaintiff,)
6 vs.) Zoom Video Deposition
7 Southern Health Partners, Inc.;)
8 Robert J. Williams, M.D.;)
9 Michael E. Hunt, in his official)
10 and representative capacity as)
11 Aiken County Sheriff; and Aiken)
12 County, operating as the Aiken)
13 County Detention Center,)
14 Defendants.)

14 DEPONENT: Tonetta Buggs
15 DATE: November 18, 2022
16 TIME: 1:31 p.m.
17 LOCATION: Via Remote Videoconference for All Parties
18 REPORTED BY: Kathy Owens-Hays, Court Reporter
19
20
21
22
23
24
25

KATHLEEN OWENS-HAYS COURT REPORTING
Phone (843) 260-7693 Email: Kmohcr@outlook.com

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Zoom Video Deposition

10

1 A I'm a corporal.

2 Q Okay. And how long have you been a corporal,
3 ma'am?

4 A Since 2015. Or --

5 Q Okay --

6 A -- may --

7 Q All right.

8 A 2015.

9 Q Was -- when did you start with Aiken County?

10 A 2007, of May.

11 Q Was Aiken County your first job in correctional
12 profession?

13 A Yes. Yes.

14 Q Had you ever worked any law enforcement or
15 correctional job before Aiken County?

16 A I just worked at Woodside Security, that was it.
17 But that was just allowing cars to come in and out of
18 a -- a neighborhood.

19 Q Okay. Would it be fair to say that when you got
20 your job with Aiken County, they hired you on and
21 then they sent you to the Criminal Justice Academy to
22 get your training?

23 A That's correct.

24 Q Okay. And that criminal justice training you
25 went through at the Criminal Justice Academy would be

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Zoom Video Deposition

11

1 the basic detention training?

2 A Correct.

3 Q And that's about a three-week course. Does that
4 sound right?

5 A Correct.

6 Q And when you went there for your training, they
7 gave you materials, like a student manual?

8 A Yes.

9 Q Okay. And then, at the conclusion of that
10 training, you had to pass a test?

11 A Correct. That manual was more like a study
12 guide.

13 Q Okay. Well, and I'll show you -- can you see
14 that document on the screen, ma'am?

15 A Yes.

16 Q Okay. So -- so this is, like, the -- as you can
17 see, this is the table of contents for the Basic
18 Detention Student Manual. Does that look familiar to
19 the type of manual you got when you went through your
20 training -- the types of things you were trained on?

21 A It's been so long ago, it's -- some of this
22 looks familiar. Is this -- are you referring to at
23 the jail or the Academy?

24 Q This would be at the Academy, ma'am. This is
25 the -- I'll tell you that this is the Basic Detention

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Zoom Video Deposition

12

1 Student Manual that the Criminal Justice Academy puts
2 out.

3 MR. LINDEMANN: Object to the form.

4 A I can't remember.

5 Q But it --

6 A It's been so long.

7 Q Sure. I can appreciate that. I'm gonna call
8 this out a little bit, what -- just kind of look at
9 some of the things that they --

10 A Okay.

11 Q -- they have listed here. So you can see, like
12 right here, they talk about training -- training --
13 for lack of better phrase, I'll say cadets --
14 training cadets on legals, the legal issues that they
15 have working in the correctional facilities. Do you
16 recall getting training on Legals?

17 A Yes.

18 Q Okay. And then things like -- you can see right
19 here, Booking and Admissions. Do you recall getting
20 trained on bookings and admissions?

21 A I can't recall that one.

22 Q Okay. How about Ethics in Detention, do you
23 recall being trained on ethics in detention?

24 A I can't recall. I'm not saying I didn't, but I
25 just don't remember.

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Zoom Video Deposition

13

1 Q I -- that's -- that's okay. Classification of
2 Inmates, do you recall being trained on how to
3 classify inmates?

4 A I can't recall.

5 Q How about, let's see, Medical and Mental Health
6 Issues, do you recall being trained on that?

7 A I can't recall.

8 Q Okay. How about Report Writing, do you recall
9 them teaching you about report writing?

10 A Oh. That one sounds familiar.

11 Q Okay. How about Emergency Procedures, do you
12 recall being trained on emergency procedures?

13 A Can't recall that one.

14 Q How about Drug Identification and Substance
15 Abuse?

16 A Don't recall that one.

17 Q Okay. At the end of your course you had to take
18 a test, and if you passed the test, you got
19 certified; right?

20 A That is correct.

21 Q And did you pass your test, ma'am?

22 A I did.

23 Q Very good. Did you do it on the first go-round?

24 A I did.

25 Q Okay. And then, as a result of you passing that

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Zoom Video Deposition

14

1 test, you were certified as a Class II Law
2 Enforcement Officer; right?

3 A Correct.

4 Q Okay. Have you ever -- so, I think you told me
5 a little bit ago, that you started with Aiken County
6 in 2005. Is that right?

7 A 2007 --

8 Q 2007.

9 A -- in May.

10 Q Okay. So, fair to say, your training at the CJA
11 would've been back around then?

12 A Yeah.

13 Q Okay. Have you been through any -- any more
14 training at the Criminal Justice Academy, since that
15 time?

16 A No.

17 Q Okay. But you have to -- you have to continue
18 to get training annually to maintain your law
19 enforcement certification.

20 A That is --

21 Q Correct?

22 A That is correct.

23 Q Okay. And I guess -- do you do those remotely,
24 or do they do them there, in-house at Aiken County?

25 A They're in-house.

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Zoom Video Deposition

15

1 Q Okay. Do y'all have somebody who's responsible
2 for that there?

3 A We do.

4 Q Who is that, ma'am?

5 A His name is Lieutenant DeBord.

6 Q How long has Lieutenant DeBord been doing that?

7 A Oh, wow. I don't know how long. He was here
8 before me.

9 Q Okay. Fair enough.

10 Some of the things that they teach about at the
11 Criminal Justice Academy, when they teach legals,
12 is -- go to page 59, here -- all right -- or actually
13 58 -- it's something called deliberate indifference.
14 Do you recall being taught about deliberate
15 indifference when you went through your training,
16 ma'am?

17 A Yes, that sounds familiar.

18 Q And so that case right there, that the CJA cites
19 to, is a 2006 case to explain what deliberative
20 indifference is, and it's the Short v. Smoot case.
21 And they explain it as, "Something less than acts or
22 omissions for the very purpose of causing harm or
23 with knowledge that harm will result." So, in other
24 words, something less than you actually causing the
25 harm to the person, or having knowledge that harm

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Zoom Video Deposition

16

1 will result, is deliberate indifference. Does that
2 jibe with what your understanding of deliberative
3 indifference is, ma'am?

4 MR. LINDEMANN: Object to the form.

5 A Yes.

6 Q Okay.

7 A They go over that a lot here. I don't remember
8 that being taught at the Academy. Not saying it
9 wasn't, but I -- we definitely hear it a lot here.

10 Q Okay. Fair enough. And do you understand that
11 that term is -- y'all talk about that term, because
12 it relates to situations where the facility or -- or
13 the folks working there could be held liable,
14 civilly?

15 A Correct.

16 Q Okay. There is -- they also teach as deliberate
17 indifference at the Academy, this case from 1976 -- a
18 Supreme Court case, Estelle versus Gamble, and how
19 that discussed liability for inadequate medical care.
20 Do you remember getting trained, either at the
21 Academy or since then, about the idea that providing
22 inadequate medical care could create liability on
23 behalf of the facility or the guards?

24 A That is correct.

25 MR. LINDEMANN: Object to the form.

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17

1 Q I'm sorry. What was your answer, ma'am?

2 A That's correct.

3 Q Okay. And would it be fair to say that,
4 pursuant to the training that you've received --
5 either at the CJA or over the years, there at Aiken
6 County -- that you're aware that if an inmate has a
7 medical need that could harm them, and the facility
8 or the folks at the facility are deliberately
9 indifferent to helping the inmate with that need,
10 they can be violating that inmate's constitutional
11 rights?

12 MR. LINDEMANN: Object to the form.

13 MR. LONG: Objection.

14 A Yes.

15 Q Okay. This case, Ms. Buggs, is about an inmate
16 named Cassie Rhoads. Do you remember Cassie?

17 A I do.

18 Q Okay. And specifically, I -- Cassie was in
19 there from May -- from May of June 2019, and she --
20 she wound up having several instances where she was
21 falling, losing consciousness; and the documentation
22 shows repeated complaints she made over this stay
23 that ultimately culminated in early June, with her
24 having to be taken to the hospital, because things
25 had gotten so bad. And essentially what it was, was

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1 MR. LINDEMANN: -- the form.

2 Q -- if -- if that's --

3 MR. LONG: Objection.

4 Q -- if that's -- if that's the avenue that
5 Medical was taking to these complaints, and it's
6 being taken up the chain of command with the -- with
7 the County staff, to get to Medical, and nothing's
8 happening, do you think it's unreasonable for
9 somebody with something like that growing on the side
10 of their head, to make a peaceful protest and say,
11 doggone it, I'm not going back to my cell, you guys
12 need to take me to the hospital?

13 MR. LINDEMANN: Object to the form.

14 MR. LONG: Objection.

15 A I can't speculate on why she would do it.

16 Q Well, Ms. Buggs, is that something that, if you
17 were in this situation, that you would think was a
18 reasonable thing to do to try to get medical care?

19 MR. LINDEMANN: Object to the form.

20 MR. LONG: Objection.

21 A Would I do that? Is that what you're asking me?

22 Q If you're in that same situation --

23 A Right.

24 Q -- and you've -- you've made complaints, you've
25 filled out your sick calls the way you're supposed

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1 to, you know that the guards believe that something's
2 going on with you, you know that they've complained
3 to their lieutenants, you know that Medical knows
4 about it, and nobody's -- nobody's doing anything for
5 you, would you think that it's reasonable for you to
6 do that?

7 MR. LINDEMANN: Object to the form.

8 MR. LONG: Objection.

9 A I would call my family and have them to look
10 into it. That's what -- how I would handle it.
11 That's just my opinion on how I would handle it.

12 Q Okay. Were you aware that once Cassie got taken
13 to the hospital, that they did a test on that thing
14 from her head and they found out it was MRSA?

15 A No.

16 Q If you guys have an inmate that's infected with
17 MRSA, are there certain procedures and protocols
18 y'all are supposed to do to, like, sterilize the cell
19 that that person was in, or the things they may have
20 been around?

21 A Right. And they're supposed to be by theirself,
22 so that no one else gets it.

23 Q And if that happened, if y'all were notified
24 that she had had -- this thing -- this infection had
25 been caused by MRSA, and y'all had to go in and --

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Zoom Video Deposition

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1 A -- DRB Board?

2 Q The DRB Board? So --

3 A Correct.

4 Q -- is that part of your job, or was that --

5 A That is --

6 Q -- that just something you were doing at that
7 time?

8 A That's part of my job with Classification.

9 Q Okay.

10 A Also, in the rule sheet that I spoke of, the
11 inmates are aware that if they're not happy with
12 their punishment, they have the right to appeal.

13 Q Okay. And the punishment she received on that
14 was, I think you said 15 -- it was 15 DS. So what
15 does that mean?

16 A Disciplinary segregation. That means she was in
17 B-Max. B-Max, you can have -- you can get -- no
18 canteen, just your basic hygiene items, your uniform.
19 Disciplinary detention, you get slightly different
20 things. So it just depends on the status -- the
21 severity of the punishment.

22 Q Okay. Is there any mechanism for her to get out
23 of B-Max to be -- to be released back to the general
24 pod, prior to the 15 days, if she doesn't appeal?

25 A Yeah. It's -- when her punishment is -- is up,

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Exhibit 5

Cassiopia Rhoads,	)	In the United States
	)	District Court
Plaintiff,	)	District of South
v.	)	Carolina
	)	Aiken Division
Southern Health Partners,	)	
Inc., Robert J. Williams,	)	Case No.: 8:22-cv-
M.D., Brandi Galloway,	)	1409-SAL-JDA
Donna Wright, Chanate	)	
Buchanan, Tonetta Buggs,	)	
Tamara Erikson, Erik	)	
Riddell, and Jessica	)	Video Deposition
Whitaker,	)	
Defendants.	)	of
	)	
Cassiopia Rhoads,	)	Cassiopia Rhoads
	)	
Plaintiff,	)	
v.	)	
	)	State of South
Southern Health Partners,	)	Carolina
Inc.; Robert J. Williams,	)	County of Aiken
M.D.; Michael E. Hunt, in	)	
his official and	)	2020-CP-02-02238
representative capacity as	)	
Aiken County Sheriff; and	)	
Aiken County, operating as	)	
the Aiken County Detention	)	
Center,	)	
Defendants.	)	

Date: January 4, 2023

Time: 10:20 a.m.

Location: Leath Correctional Institution, 2809 Airport
Road, Greenwood, South Carolina

Reported by
Julie C. Taradash

1 Q In your -- do you believe it to be a pretty serious
2 charge?

3 A It's one of the serious charges there, yes, sir.

4 Q Okay. And so you plead guilty to it, right?

5 A Yes, sir.

6 Q And what was your punishment?

7 A I was put in B-Max. It was supposed to be for 15
8 days, but I think they let me out like a day or two
9 early.

10 Q Okay. Did you spend the rest of your time before
11 you went to the hospital in B-Max?

12 A The day that they let me out of B-Max was the day
13 that they took me to the hospital, but they had
14 released from B-Max back into population in a cell
15 outside of B-Max. And then they took me to the
16 hospital that night.

17 Q Gotcha. Okay. So tell me what happened on this
18 charge with barricading?

19 A I went and talked to Ms. Buchanan and asked her to
20 get me medical help. "I need to go to the
21 hospital." I told her I wasn't going back in the
22 room. And so she put me in B-Max. Well, she
23 called -- she called the people, and they put me in
24 B-Max.

25 Q So you went and told -- who is Ms. Buchanan?

1 A Yes, sir.

2 Q And then you were put in B-Max?

3 A Yes, sir.

4 Q Okay. When you were in B-Max, you still had access
5 to the kiosk, right?

6 A No, sir.

7 Q You -- you -- what do you mean, you don't have
8 access to the kiosk?

9 A Whenever you're in B-Max, you are not allowed to go
10 out in general population at all, and the kiosk is
11 in general population at the officers' desk. You
12 cannot come out the door of B-Max at all.

13 Q But they can -- you still had the right to go do a
14 sick call request, right?

15 A We couldn't have a pencil or anything.

16 Q So did you try to do a sick call when you were in
17 B-Max?

18 A I talked to the nurses every time they came
19 through. I wasn't in a position to be able to do a
20 sick call.

21 Q Who else was in B-Max with you?

22 A There was three other people, and it's three
23 different cells. But nobody was in the room with
24 me.

25 Q Okay. All right. Let's look at a couple of

Exhibit 6

In the United States District Court
District of South Carolina
Aiken Division

Case No.: 8:22-cv-1409-SAL-JDA

Cassiopia Rhoads,	)	
	)	
Plaintiff,	)	
	)	Zoom Video Conference
v.	)	30(b)(6) Deposition
	)	
Southern Health	)	of
Partners, Inc., Robert	)	
J. Williams, M.D.,	)	Designee of Aiken
Brandi Galloway, Donna	)	County, Captain Nick
Wright, Chanate	)	Gallam
Buchanan, Tonetta Buggs,	)	
Tamara Erikson, Erik	)	
Riddell, and Jessica	)	
Whitaker,	)	
	)	
Defendants.	)	

Date: Tuesday, December 13, 2022

Time: 2:00 p.m.

Location: All parties appeared remotely in the
State of South Carolina

Reported by
Sallye D. Nelson

1 A I would agree with that. Yes, sir.

2 EXAMINATION RESUMED BY MR. MCLAUGHLIN:

3 Q Okay. One of -- I think I told you earlier, one of
4 the things that we can do in discovery is ask,
5 request for admission, and this was one of the
6 request for admissions that we asked of Southern
7 Health Partners. Number four, admit that when
8 providing medical services in South Carolina
9 detention facilities, SHP is required to provide
10 those medical services in compliance with the
11 minimum standards for local detention centers in
12 South Carolina. They denied that; does that
13 concern you?

14 A Yes, it does.

15 Q As a jail administrator in South Carolina, do you
16 believe that Southern Health Partners has to
17 provide medical services in compliance with the
18 minimum standards?

19 MR. LONG: Objection.

20 A Yes.

21 EXAMINATION RESUMED BY MR. MCLAUGHLIN:

22 Q In answering the complaint in this case, Southern
23 Health Partners responded that the minimum
24 standards are -- were not binding on SHP, its
25 employees, or its doctors. Does Aiken County

1 MR. MCLAUGHLIN: I was --

2 MR. LINDEMANN: Hold on.

3 MR. MCLAUGHLIN: I was ask -- I was asking
4 that one question, and I was, I was curious for --
5 for that one question. I don't know that -- I
6 didn't intend to -- to go into deep personal
7 things. It just came out when we were talking, and
8 that's why I asked it. So --

9 MR. LINDEMANN: Well, go ahead and ask that
10 one question then, and you're --

11 MR. MCLAUGHLIN: If -- If --

12 MR. LINDEMANN: -- so ask your --

13 MR. MCLAUGHLIN: -- if I can.

14 MR. LINDEMANN: -- question, that will resolve
15 the issue.

16 FURTHER EXAMINATION BY MR. MCLAUGHLIN:

17 Q If I can, If I can recall it, Captain Gallam, I
18 believe what I was asking you was after we had
19 talked about the information we had discovered in
20 this case, essentially where your folks there at
21 the jail tried to raise -- raise an alarm about
22 what was going on with Cassie and had basically
23 when it was raised with Southern Health Partners,
24 Southern Health Partners folks had said, "Oh, she's
25 doing it to herself." And I believe what I had

1 asked you was did you ever ask your folks, well,
2 why didn't we just take her, you know? To -- to
3 hell with what Southern Health Partners says, if it
4 -- if it got to that point where our own folks were
5 saying this is bad, and Southern Health Partners is
6 trying to blame it on her, and our own folks are
7 telling us it ain't her, something's going on with
8 her, why didn't we just take her? I believe that's
9 what I was asking.

10 MR. LINDEMANN: All right. And let me --

11 MR. MCLAUGHLIN: Okay.

12 MR. LINDEMANN: Let me state, let me state my
13 objection before you answer. That is beyond the
14 scope of the notice, so obviously the corporate or
15 the -- the governmental entity will not be bound by
16 this particular answer, and I would also state an
17 objection to the form, but go ahead and answer,
18 Captain.

19 MR. LONG: Objection too. Thanks.

20 A You know, I would -- I would say that we heavily
21 rely on our medical provider to give us -- because
22 we are not medical practitioners, we rely on their
23 judgement on medical care, and I believe that's
24 what we did on this case.

25 FURTHER EXAMINATION RESUMED BY MR. MCLAUGHLIN:

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF Aiken

4 CASSIOPIA RHOADS,

5 Plaintiff,

6 vs. CASE NO.: 2020-CP-02-02238

7 SOUTHERN HEALTH PARTNERS, INC.; ROBERT J. WILLIAMS, M.D.;
8 MICHAEL E. HUNT, IN HIS OFFICIAL AND REPRESENTATIVE
9 CAPACITY AS AIKEN COUNTY SHERIFF; AND AIKEN COUNTY,
10 OPERATING AS THE AIKEN COUNTY DETENTION CENTER,

11 Defendants.

12 D E P O S I T I O N

13
14 WITNESS: NICHOLAS GALLAM

15 DATE: Thursday, September 28, 2023

16 TIME: 1:12 p.m.

17 LOCATION: Aiken Center for the Arts
18 122 Laurens Street, SW
Aiken, South Carolina 29801

19
20 TAKEN BY: Attorney for the Plaintiff

21 REPORTED BY: Robin Dunn
22 South Carolina Court Reporter

23

24

25

1 A -- based on evidence that they have
2 collected. It's not only used for self harm. It's
3 also used for combative folks.

4 Q Looking at these policies and procedures
5 here that we've marked -- the index for which we've
6 marked as Exhibit 2, are there any that you intend
7 to come discuss at the trial of this case?

8 A I mean, I think my standpoint would be,
9 I'll be more than welcome to discuss any that I'm
10 asked questions upon, not me necessarily making it a
11 point to discuss.

12 Q Okay. Well, are there any that you
13 believe sitting here today that are -- that are
14 pertinent to the issues in the Rhoads case, any
15 policies and procedures?

16 A Since you've brought it up, emergency
17 restraint chair. Supervision of hospital inmates --
18 hospitalized inmates.

19 Q What number is that?

20 A 316.

21 Q Right.

22 A Admissions and intake procedures,
23 admissions and booking procedures, release and
24 transfer procedures, inmate orientation, inmate
25 classification procedures, inmate disciplinary

1 procedures, report procedures. I would imagine
2 training would be applicable, since there was a
3 claim of failure to train. And medical emergency
4 plan. And possibly the 614, post order for B pod.

5 Q What about 500, records. Section 500,
6 subject, records, what is that policy?

7 A Just our records management, mainly
8 dealing with our records personnel and how we
9 maintain records.

10 Q Okay. Does it include how recordkeeping
11 should be done with the shift log, or whatever the
12 term is?

13 A Yeah. I believe there is continuous log
14 references in that policy and -- about the inmate
15 record.

16 Q Okay. And are these something that if we
17 request Mr. Lindemann by e-mail in the next couple
18 of days, you can get to him shortly so we can get a
19 written copy of these particular policies and
20 procedures?

21 A Yes, sir.

22 MR. HINSON: Andrew, is that agreeable?

23 MR. LINDEMANN: Yeah. It's not a problem
24 at all.

25 MR. HINSON: All right. Thank you.

1 A Yes, sir.

2 Q Does any of the training for new
3 correctional officers include any medical -- medical
4 matters of any sort?

5 A We talk about emergency procedures.

6 Q Okay. Are new correctional officers
7 taught to rely on medical?

8 A Yes.

9 Q Are there situations where they are
10 empowered to override medical?

11 A We allow that to happen at the supervisory
12 level. You know, we -- we do not want, you know,
13 our correctional officers making those decisions.
14 You know, and there's ACA standards that clearly,
15 you know, states that non-clinicians should not be
16 making clinician decisions.

17 So, we rely -- you know, and we -- we
18 empower our folks to, you know, if you see
19 something, say something. And we -- we allow them
20 to run that through their chain of command. And,
21 say, ten times out of ten, you know, a detention
22 officer calls their supervisor and says, hey,
23 I've -- I've got an issue with Nick Gallam. He's
24 throwing up. He's, you know, spitting up blood.
25 He's, you know, continually complaining about a

1 deliberate indifference, training on what deliberate
2 indifference is?

3 A I mean, I'd -- I'd go back to what I said
4 earlier. We do legals training. I'm wanting to say
5 there is. I'm just not 100 percent sure.

6 Q The -- a minute ago -- I want to shift
7 gears for just a second, Captain. Sorry to jump
8 around a little bit. We were talking about the
9 ability or empowerments to overstep or override
10 medical, and you had said at the sergeant level,
11 that can be done, correct?

12 A Yes.

13 Q And, so, in other words -- well, as the
14 various folks that have been deposed in this case,
15 would Rydell, he would have the power to overstep
16 medical if he believed it prudent?

17 A Yes, sir.

18 Q Okay. What about Whitaker?

19 A Yes, sir.

20 Q And talking about standards and the ACA
21 standards, I think you mentioned something called --
22 you said the core standards. Is that correct?

23 A Core jail standards, yes, sir.

24 Q Core jail standards. Is that the same as,
25 different from, or do you not know, as something

1 A I mean, I would imagine it's going to be
2 the -- the requirements of the contract with
3 Southern Health Partners.

4 Q Okay. Was -- was SHP essentially fired or
5 just their contract wasn't renewed?

6 A We just went through the procurement
7 process. The contract had expired. And we put it
8 out to bid.

9 Q Did they bid again?

10 A Yes, sir.

11 Q And was there concern in the bidding
12 process that they were not doing a good job meeting
13 the requirements?

14 A No, sir.

15 Q And the requirements of the contract that
16 was in place in 2019 was that SHP and its staff
17 would provide healthcare services at the Aiken
18 County Detention Center in compliance with the
19 minimum standards, the NCCHC, and the AC standards,
20 correct?

21 A The AC standards. What are those?

22 Q The ACA. I'm sorry.

23 A Yes.

24 Q And if -- if Southern Health Partners and
25 its healthcare providers didn't provide medical

1 services in compliance with those three standards,
2 minimum standards, NCCHC, and ACA standards -- a lot
3 of acronyms.

4 A Yeah.

5 Q That would -- they wouldn't be filling
6 their end of the bargain correct?

7 A Yes, sir.

8 Q And the reason that those standards are
9 put into that contract, in essence, is to -- an
10 effort to provide adequate and appropriate medical
11 care to inmates, correct?

12 A To provide an adequate and quality
13 healthcare program for the inmate population. Yes,
14 sir.

15 Q And to comply with the standards helps to
16 ensure that medical care will be provided that's
17 adequate and appropriate quality, as you put it, for
18 the detainees and inmates.

19 A Yes, sir.

20 MR. LINDEMANN: Object to the form.

21 BY MR. HINSON:

22 Q Are you aware that in this litigation,
23 Southern Health Partners denied that it had to
24 comply with those standards?

25 A Yes, sir. You pointed that out at my

1 first deposition.

2 Q Upon learning that SHP had denied that
3 they had to comply with those standards, was any
4 action taken?

5 A No, sir.

6 Q The -- the decision to transport someone
7 to a hospital -- a detainee to a hospital,
8 ultimately, that has to go through the detention
9 center staff, not medical, correct?

10 A Yes.

11 Q If detention center -- if medical wanted
12 to transfer them, y'all could ultimately say, no, we
13 don't have the staff right now to do it, or whatever
14 it may be. That decision ultimately is made by
15 y'all.

16 A It is, but, I mean, that would never
17 happen.

18 Q What do you mean?

19 A If -- if -- once again, we rely on our
20 medical contractors to tell us, you know, what
21 medical care somebody needs. And, so, if they said
22 this person needs to go to the hospital, then
23 they're going to the hospital.

24 Q How often a year do y'all take somebody?
25 Do you have an estimate on average? I mean, are we

1 sick-call request.

2 Q Okay. Well, if -- if somebody put in a
3 sick-call request and said, I'm not receiving
4 adequate medical care, you would have to perform, to
5 the best of your ability, a review of whether or not
6 you believe there's a basis that that may be
7 occurring.

8 A Yes, sir. And, you know, the first thing
9 I would start at was, have they submitted any type
10 of sick-call.

11 Q Would you have the ability to look at the
12 medical record if you --

13 A Yes.

14 Q Okay. Did y'all -- y'all meaning the
15 detention center administration. Do you review
16 Southern Health Partners in any formal way through
17 the course of a year or through the course of a
18 contract?

19 A Yes, sir.

20 Q How is that done?

21 A The -- really, the major thing that we
22 look at is whether or not -- or, I guess, one part
23 of that would be, is, we looked at -- to see whether
24 or not they're up-to-date on their history and
25 physicals. That's a requirement through minimum

1 standards that requires them to do a history and
2 physical within 14 days. So, we would spot check
3 those, print out, you know, people who had been
4 there for 20 days and go see if, you know -- you
5 know, have them show us in the chart where those
6 were at.

7 Q And were there times where a history and
8 physical was not done within 14 days as required?

9 A Yeah. And, you know, those were, you
10 know, off by a day or two. Very rarely was it that,
11 you know, something was longer than, you know, 15,
12 16 days.

13 Q Did you ever look to see if a history and
14 physical was done on Ms. Cassie Rhoads during her
15 approximately month long detention?

16 A I can't -- I didn't necessarily spot check
17 that one, no, sir.

18 Q If there wasn't one done at any point
19 during her May, June detention, that would be
20 inappropriate, wouldn't it?

21 A Yes, sir, as long as it wasn't within that
22 14 days.

23 Q Besides looking at the compliance with --
24 so, the 14-day history and physical, that's part of
25 the minimum standards, correct?

1 A Yes, sir.

2 Q And was there any other way that y'all
3 evaluated or graded SHP's performance besides spot
4 checking to see the -- SHP's compliance with that
5 14-day history and physical requirement?

6 A No, sir.

7 MR. HINSON: Captain Gallam, that may be
8 all I have for you. Let me --

9 We can go off the record.

10 (A short break transpired.)

11 BY MR. HINSON:

12 Q Captain Gallam, earlier when I was asking
13 you about, you know, what a guard, correctional
14 officers, should -- should do if he or she had
15 concern about the medical treatment an inmate
16 detainee was or was not receiving and if there was a
17 policy on that. And, I believe, your response was
18 something to the effect that there isn't a written
19 policy; is that correct?

20 A Yes, sir.

21 Q That begs the question, then. Is there an
22 unwritten policy?

23 A Yeah. I mean, I would venture to say,
24 yes. You know, we stress to our staff that one of
25 their major responsibilities is to provide basic --

Exhibit 7

State of South Carolina	)	
	)	
County of Aiken	)	
	)	
Cassiopia Rhoads,	)	2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
v.	)	Deposition
	)	
Southern Health Partners,	)	of
Inc.; Robert J. Williams,	)	
M.D.; Michael E. Hunt, in	)	Deputy Carla Hill
his official and	)	
representative capacity as	)	
Aiken County Sheriff; and	)	
Aiken County, operating as	)	
the Aiken County Detention	)	
Center,	)	
	)	
Defendants.	)	

Date: March 16, 2022

Time: 12:02 p.m.

Location: Via Remote Videoconference for All Parties

Reported by
Cindy H. Patterson

1 any observations or interactions you had with her?

2 And I'm -- I'm saying that with knowing you just

3 talked -- said you talked to them about, "I don't

4 think it's self-inflicting because we don't see

5 it." Was that you offering that to them, or did

6 they ever ask you for that type of information?

7 A I responded back to what she had stated to me.

8 Q She wasn't asking you whether or not you thought

9 it, but she told you that, and you felt the need to

10 speak up and say, "I don't think that's the case"?

11 A No, sir. That -- that's exactly how I felt, is

12 that I never --

13 Q But that -- that's how that --

14 A Yes.

15 Q Would it be fair to say that's how that happened?

16 A Yes, sir.

17 Q Okay. This is Plaintiff's Production 1366 to 1369.

18 This is from a Southern Health Partners Policy and

19 Procedure Manual for Health Services in Jail. Have

20 you ever seen any Southern Health Partners policies

21 and procedure manuals, Ms. Hill?

22 A No, sir.

23 Q They talk in here about critical incident stress

24 debriefings, that that's "a process that prevents

25 or limits the development of post-traumatic stress

1 Partners come and talk to you to try to obtain
2 information to fill out a report or to do some type
3 of post-incident review to see whether or not they
4 can identify things that maybe could've been done
5 differently?

6 A No, sir.

7 Q This is Plaintiff's Production 1748 to 1751, and
8 these are just the first four pages, Ms. Hill, of a
9 manual that Southern Health Partners has called,
10 "Inmate Medical Services Information and Resource
11 Guide for Correctional Officers." It's a CO manual
12 that Southern Health Partners puts out, and it has
13 -- deals with things like communication being key,
14 suicide prevention, medical screening, MRSA." Have
15 you ever seen a Southern Health Partners manual
16 that --

17 A No, sir.

18 Q -- gives you, as a CO, information about things
19 like this?

20 A No, sir.

21 Q Okay.

22 MR. MCLAUGHLIN: We've been going about an
23 hour and 15 minutes, Ms. Hill. Why don't we
24 take a short little five-minute break? I
25 think I'm -- I'm -- I'm getting close to being

State of South Carolina	)	
	)	
County of Aiken	)	
	)	
Cassiopia Rhoads,	)	2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
v.	)	Deposition
	)	
Southern Health Partners,	)	of
Inc.; Robert J. Williams,	)	
M.D.; Michael E. Hunt, in	)	Deputy Natasha Rivers
his official and	)	
representative capacity as	)	
Aiken County Sheriff; and	)	
Aiken County, operating as	)	
the Aiken County Detention	)	
Center,	)	
	)	
Defendants.	)	

Date: March 16, 2022

Time: 9:33 a.m.

Location: Via Remote Videoconference for All Parties

Reported by
Cindy H. Patterson

1 this is Plaintiff's Production 1366 to 1369. And
2 this is -- these are a four -- this is a four-page
3 excerpt from the Policy and Procedure Manual for
4 Health Services in Jail that Southern Health
5 Partners has. Have you ever seen any of Southern
6 Health Partners policies and procedure manuals?

7 A No.

8 Q Okay. This particular one talks about a -- you can
9 see it here -- "Critical Incident Stress
10 Debriefing." Then at the highlighted part right
11 there, you can see "Critical Incident Stress
12 Debriefing is a process that prevents or limits the
13 development of post-traumatic stress in people
14 exposed to critical incidents." Have you ever been
15 involved at all in any critical incident stress
16 debriefing with anybody from Southern Health
17 Partners for any critical incidents that have
18 occurred --

19 A Not that I --

20 Q -- at Aiken County?

21 A Not that I recall, no.

22 Q And you see down here under -- On-Site Critical
23 Incident Review and Morbidity-Mortality Review
24 talks about, "To ensure good communication between
25 the medical staff and the correctional officers, a

State of South Carolina	)	
	)	
County of Aiken	)	
	)	
Cassiopia Rhoads,	)	20-CP-02-2238
	)	
Plaintiff,	)	
	)	
v.	)	Deposition
	)	
Southern Health	)	Of
Partners, Inc.; Robert	)	
J. Williams, M.D.;	)	Deputy Lisa Bauer
Michael E. Hunt, in his	)	
official and	)	
representative capacity	)	
as Aiken County Sheriff;	)	
and Aiken County,	)	
operating as the Aiken	)	
County Detention Center,	)	
	)	
Defendants.	)	

Date: March 15, 2022

Time: 12:03 p.m.

Location: Via Remote Zoom Video and Teleconference for
All Parties

Reported by

Diane Marie Hendricks

1 "barricading"?

2 MR. LINDEMANN: Object to the form.

3 A I can't answer for anybody else, but it depends
4 on what they're actually doing as to whether it
5 would be considered that.

6 Q Okay.

7 A If they're just refusing to leave, I believe that
8 is a different circumstance. But, if they are
9 trying to keep something between you and them
10 from getting them to leave, that's where I would
11 say that they are barricading.

12 Q And, Ms. Bauer, I'm going to show you another
13 document here. This document is entitled "Inmate
14 Medical Services Information and Resource Guide
15 for Correctional Officers." And this document --
16 again, while I'm not going to make an exhibit to
17 today's deposition, but I'll identify it for --
18 by the Bates stamp. And if -- if you're
19 wondering, I -- when I say "Bates stamp," I'm
20 talking about this number down here in the bottom
21 right-hand corner. But I'll identify it by Bates
22 stamp as well. It's the 27-page document. It
23 begins with SHP Rhoads 000651, and it goes all
24 the way to SHP Rhoads 000677. Have you ever seen
25 the Inmate Medical Services Information and

1 Resources Guide for Correctional Officers? Have
2 you ever seen this document before?

3 A Not to my recollection.

4 Q Okay. And so, to the best of your knowledge,
5 this was not something that anyone from Southern
6 Health Partners or anyone from the Aiken County
7 Detention Center ever provided you a copy of or
8 made you aware of at the time you started working
9 at the Aiken County Detention Center?

10 A I don't believe so.

11 Q And likewise, if I asked you where that document
12 might be held and kept maintained at the Aiken
13 County Detention Center, I would presume you
14 probably couldn't tell me where you'd go to find
15 it then; is that fair?

16 A That would be fair.

17 Q Besides Deputy Hill in that occasion that we
18 talked about earlier on a date that you can't
19 specifically recall when it was, did anybody at
20 the Aiken County Detention Center ever ask you to
21 keep a close eye on Ms. Rhoads, or to watch Ms.
22 Rhoads, or -- or to observe her with any
23 heightened level? Did that ever take place?

24 A I don't believe so.

25 Q And were you working at the time Ms. Rhoads was

State of South Carolina	)	
	)	
County of Aiken	)	
	)	
Cassiopia Rhoads,	)	20-CP-02-2238
	)	
Plaintiff,	)	
	)	
v.	)	Deposition
	)	
Southern Health	)	Of
Partners, Inc.; Robert	)	
J. Williams, M.D.;	)	Lieutenant Jessica
Michael E. Hunt, in his	)	Whitaker
official and	)	
representative capacity	)	
as Aiken County Sheriff;	)	
and Aiken County,	)	
operating as the Aiken	)	
County Detention Center,	)	
	)	
Defendants.	)	

Date: March 15, 2022

Time: 1:39 p.m.

Location: Via Remote Zoom Video and Teleconference for
All Parties

Reported by

Diane Marie Hendricks

1 way?

2 A No.

3 Q And let me show you another document, Ms.

4 Whitaker. And I am going to put up on the screen

5 a document entitled "Inmate Medical Services

6 Information and Resource Guide for Correctional

7 Officers" from Southern Health Partners, and this

8 is SHP Rhoads 000651 through SHP Rhoads 000677.

9 And I'm happy to scroll through these 27 pages if

10 you'd like, but looking here, the title page,

11 table of contents -- is this a document you've

12 ever seen before?

13 A No. No.

14 Q And then, suffice it to say, if I asked you: Do

15 you know if this document existed and was

16 maintained at the Aiken County Detention Center,

17 and, if so, where it was kept, is it fair to say

18 you would not know the answer to that question?

19 A I would not.

20 Q Okay. So you don't have any knowledge of this

21 particular document being kept, maintained, and

22 made available to you as a correctional officer

23 at the Aiken County Detention Center?

24 A I don't know if it was there.

25 Q Okay. And so, until today, you have not, to your

1 recollection, ever been shown the Inmate Medical
2 Services Information and Resource Guide for
3 Correctional Officers from Southern Health
4 Partners; is that fair?

5 A I don't believe I have. No.

6 Q Did anybody from Southern Health -- I -- well,
7 I'm sorry. I already asked you that. Ms.
8 Whitaker, did you ever, in your time working at
9 Aiken County Detention Center, did you ever do
10 work as a -- in the capacity of doing intake --
11 in-taking new detainees?

12 A Yes.

13 Q And when you would do that, would there be a --
14 kind of a -- a -- a general screening of the --
15 of the detainee's condition? Physical condition?

16 A Yes.

17 Q And so, if in that screening, if you noticed
18 anything that was potentially concerning,
19 anything out of the ordinary: A cut, a severe
20 bruise, a large protrusion on their head, on
21 their elbow, is that something that you would
22 notify medical of?

23 A Yes.

24 Q And, is that something, if you noticed some sort
25 of physical injury or abnormality, would you also

State of South Carolina	)	
	)	
County of Aiken	)	
	)	
Cassiopia Rhoads,	)	2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
v.	)	Deposition
	)	
Southern Health Partners,	)	of
Inc.; Robert J. Williams,	)	
M.D.; Michael E. Hunt, in	)	Deputy Chanate
his official and	)	Buchanan
representative capacity as	)	
Aiken County Sheriff; and	)	
Aiken County, operating as	)	
the Aiken County Detention	)	
Center,	)	
	)	
Defendants.	)	

Date: March 16, 2022

Time: 2:00 p.m.

Location: Via Remote Videoconference for All Parties

Reported by
Cindy H. Patterson

1 Q Okay. Has anybody with Southern Health Partners
2 explained to you that as a CO, you're the -- you're
3 the eyes and ears of the medical staff?

4 A No.

5 Q Anybody with Southern Health Partners ever told you
6 as a CO that they want you to report out-of-the-
7 ordinary issues to them?

8 A No.

9 Q Anybody with Southern Health Partners ever told you
10 to expect communication from your nurses?

11 A No.

12 Q This is Plaintiff's Production 1748 to 1751. These
13 are -- this is the -- the cover and then the first
14 three pages of a manual that Southern Health
15 Partners has, called "Inmate Medical Services
16 Information and Resource Guide for Correctional
17 Officers." And you can see, if you flip over to
18 the next page where the table of contents are, that
19 they talk about communication being key. They talk
20 about booking sick or injured inmates, medical
21 screening, intake information, suicide prevention,
22 MRSA, all -- all these topics listed there. And
23 then they give a little introduction about, "It is
24 imperative" -- such as right here. It talks about
25 how "correctional officers need to be in-serviced

1 as to the services the medical department provides,
2 as well as basic instructional information in
3 relation to medical services overall."

4 So that's the introduction to this manual, and
5 that's what it's for. Have you ever seen a
6 Southern Health Partners manual at all geared
7 towards instructing you as a CO?

8 A No. I haven't.

9 Q Okay. This is Plaintiff's -- excuse me --
10 Plaintiff's 1366 to 1369. These are excerpts from
11 a policy and procedure manual by Southern Health
12 Partners, called "Policy and Procedure Manual for
13 Health Services in Jails." And it has a section
14 right here talking about Critical Incident Stress
15 Debriefing. And it explains that, "Critical
16 incident stress debriefing is a process that
17 prevents or limits the development of post-
18 traumatic stress in people exposed to critical
19 incidents."

20 Then it -- down here, it talks about On-Site
21 Critical Incident Review/Morbidity-Mortality
22 Review. And it talks about this process of going
23 in and looking at critical incidents after they
24 have happened between the medical staff and the
25 correctional officers and the purpose of it being

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT
)
Cassiopia Rhoads,) Case No: 2020-CP-02-02238
)
Plaintiff,)
)
v.)
)
Southern Health Partners,) Inc.; Robert J. Williams,) MD; Michael E. Hunt, in)
his official and) representative capacity)
as Aiken County Sheriff;) and Aiken County,)
operating as the Aiken) VIDEOCONFERENCE
County Detention Center,) DEPOSITION OF
)
Defendants.) Myra Constance Hamilton-Carree

Date: Thursday, March 17, 2022

Time: 11:21 a.m.

Location: Via Remote Videoconference for All Parties

Reported by:
Darlene Pastel, CVR-CM

1 (Plaintiff's Exhibit No. 1 marked for identification.)

2 Q (MR. HINSON) Ms. Hamilton, I'm going to share
3 another document with you. This is a document
4 that's Bates stamped SHP - Rhoads 000651, and it's
5 a 27-page document, and it goes all the way down to
6 SHP - Rhoads 000677. And it is entitled Inmate
7 Medical Services Information and Resource Guide for
8 Correctional Officers.

9 Have you ever seen this document before?

10 A No, sir.

11 Q Did anybody from Southern Health Partners or the
12 jail ever make you aware of this document's
13 existence that you recall?

14 A Not that I can recall.

15 Q And I presume then you would not be aware of where
16 this document might be kept or maintained either on
17 the computer system or the shelves of the Aiken
18 County Detention Center; is that correct?

19 A Yes, sir.

20 Q All right. So until this morning, until just a few
21 moments ago when I showed you this document, you
22 don't recall ever being shown this document; is
23 that correct?

24 A Correct.

25 Q All right. And, Ms. Hamilton, I'm going to share

Zoom Video Deposition

1

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF AIKEN) COURT OF COMMON PLEAS
 3
 4 Cassiopia Rhoads,) 2020-CP-02-02238
 5 Plaintiff,)
 6 vs.) Zoom Video Deposition
 7 Southern Health Partners, Inc.;)
 8 Robert J. Williams, M.D.;)
 9 Michael E. Hunt, in his official)
 10 and representative capacity as)
 11 Aiken County Sheriff; and Aiken)
 12 County, operating as the Aiken)
 13 County Detention Center,)
 14 Defendants.)

14 DEPONENT: Tonetta Buggs
 15 DATE: November 18, 2022
 16 TIME: 1:31 p.m.
 17 LOCATION: Via Remote Videoconference for All Parties
 18 REPORTED BY: Kathy Owens-Hays, Court Reporter
 19
 20
 21
 22
 23
 24

25 KATHLEEN OWENS-HAYS COURT REPORTING
 Phone (843) 260-7693 Email: Kmohcr@outlook.com

1 Q Okay. At any point in time, Ms. Buggs, were you
2 ever made aware by anybody with the County -- any
3 other CO staff or anybody with Medical -- that there
4 was an issue with this thing on Cassie's head, and
5 they wanted y'all, the CO staff, to monitor it to see
6 if this thing was getting bigger, or changing?

7 A I don't recall that.

8 Q Okay.

9 A And -- can I add?

10 Q Sure.

11 A So, my office is, like, in the men's dorm. I
12 don't work on the floor -- if that makes sense. So,
13 a lot of stuff that may have been going on with
14 Rhoads, I wouldn't know, because I wasn't a deputy at
15 the time. I was in another department, if that makes
16 sense. That's why I'm kind of confused on the
17 questions, 'cause I don't -- don't work around her
18 like that.

19 Q All right.

20 A If that makes sense.

21 Q Fair enough. Yes, ma'am.

22 Show you -- this is a document that Southern
23 Health Partners has, called Inmate Medical Services
24 Information and Resource Guide for Correctional
25 Officers. I would propose to you, this is like some

1 kind of little policy and procedure, or resource
2 guide manual, that Southern Health Partners has for
3 COs. Have you ever seen such a thing?

4 A I've never seen this.

5 Q Okay. Have you ever received any training from
6 Southern Health Partners, at all?

7 A No.

8 Q They -- they have -- they have forms that they
9 do when they have these things called "critical
10 incidents." And so, to fill out these forms, one
11 would suspect there would be some type of
12 investigation to be able to fill these things out.
13 Did anybody -- are you aware of anyone with Southern
14 Health Partners medical staff talking to any of the
15 correctional staff about what happened with Cassie,
16 to be able to investigate this incident?

17 A No.

18 Q Are you aware of Southern Health Partners ever
19 doing that for any type of critical emergency medical
20 incident that has occurred at the jail, while
21 Southern Health Partners have been providing medical
22 services there?

23 A I've never heard of this.

24 Q Okay. Okay. Yeah, that share screen should be
25 down now; is that right?

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF AIKEN)

COURT OF COMMON PLEAS

3 Cassiopia Rhoads,)

2020-CP-02-02238

4 Plaintiff,)

5 vs.)

Zoom Video Deposition

6 Southern Health Partners, Inc.;)

7 Robert J. Williams, M.D.;)

8 Michael E. Hunt, in his official)

and representative capacity as)

9 Aiken County Sheriff; and Aiken)

County, operating as the Aiken)

County Detention Center,)

10 Defendants.)

11
12
13
14 DEPONENT: Tamara Erikson

15 DATE: November 18, 2022

16 TIME: 12:02 p.m.

17 LOCATION: Via Remote Videoconference for All Parties

18 REPORTED BY: Kathy Owens-Hays, Court Reporter

19
20
21
22
23
24 KATHLEEN OWENS-HAYS COURT REPORTING

25 Phone (843) 260-7693 Email: Kmohcr@outlook.com

1 Q This is a document that Southern Health Partners
2 puts out, Inmate Medical Services Information and
3 Resource Guide for Correctional Officers. Have you
4 ever seen such a manual from Southern Health Partners
5 for you guys, as correctional officers, to refer to?

6 A I have not seen it.

7 Q Okay. They also have some things that they --
8 they classify as "critical incidents" that -- they
9 have these little reports that they say they do for
10 critical incidents. Has -- did anybody from Southern
11 Health Partners ever come around and interview you,
12 at all, to talk to you about Cassie?

13 A Not to my recollection, they did not.

14 Q Okay. Did anybody with -- with Aiken County
15 ever come around and interview you to talk about
16 Cassie, notwithstanding any conversations you may
17 have had about this lawsuit?

18 A Not to my recollection.

19 Q Okay. If -- Ms. Erikson, if an inmate is
20 complaining of a medical issue, and they're doing the
21 sick calls like they should, and Medical's been told
22 about the issue, but for whatever reason, Medical
23 isn't addressing it with them, do they have any other
24 recourse other than trying to do something like what
25 Cassie did, staging a peaceful protest?

In the United States District Court
District of South Carolina
Aiken Division

Case No.: 8:22-cv-1409-SAL-JDA

Cassiopia Rhoads,	)	
	)	
Plaintiff,	)	
	)	Zoom Video Conference
v.	)	30(b)(6) Deposition
	)	
Southern Health	)	of
Partners, Inc., Robert	)	
J. Williams, M.D.,	)	Designee of Aiken
Brandi Galloway, Donna	)	County, Captain Nick
Wright, Chanate	)	Gallam
Buchanan, Tonetta Buggs,	)	
Tamara Erikson, Erik	)	
Riddell, and Jessica	)	
Whitaker,	)	
	)	
Defendants.	)	

Date: Tuesday, December 13, 2022

Time: 2:00 p.m.

Location: All parties appeared remotely in the
State of South Carolina

Reported by
Sallye D. Nelson

1 of-charge and can be accomplished with onsite
2 trainers, as well as paper, computer online
3 training. So part of what Ms. Hairsine was selling
4 Aiken County on was their ability to train COs,
5 right?

6 MR. LONG: Objection.

7 A Yes, sir.

8 EXAMINATION RESUMED BY MR. MCLAUGHLIN:

9 Q Okay. Captain Gallam, were you aware about SHP
10 having a manual specifically for COs?

11 A No, sir.

12 Q We -- we've shown it to every -- every one of your
13 guards that we've interviewed, and they've never
14 seen it before, so or have you ever seen it before?

15 A No, sir.

16 Q Okay.

17 MR. LONG: Objection.

18 EXAMINATION RESUMED BY MR. MCLAUGHLIN:

19 Q If -- if anybody, as the guy who runs the jail, if
20 Southern Health Partners had an instruction manual
21 for correctional officers and they told you about
22 it, would you want to take a look at it to see if
23 it's something maybe I ought to share with my
24 folks?

25 MR. LONG: Objection.

Exhibit 8

1 A Abscesses are, but not a growing abscess on a side
2 of a head, no.

3 Q Earlier, Mr. Long asked you about whether a history
4 and physical -- the 14-day history and physical
5 would be needed if the patient has had one in the
6 past year.

7 A Uh-huh.

8 Q Looking through Exhibit 1, which spans records
9 going back more than a year from May 2019, do you
10 see any indication that a history and physical was
11 done on Ms. Rhoads?

12 A I mean, I would have to -- I don't recall seeing
13 one.

14 Q Take a -- take a minute to go through that --

15 A Okay.

16 Q -- record, and let me know if you see a history and
17 physical ever being done on Ms. Rhoads in the year
18 -- in the -- prior to her May and June 2019
19 detention.

20 A No. I don't -- I don't see one back in 2018. No.
21 I don't see one in here.

22 Q Okay. So if a history and physical was not done
23 within the prior year of Ms. Rhoads' May 3rd, 2019,
24 detention at the Aiken County Detention Center, do
25 you agree that a history and physical should be

1 done within 14 days of her commitment to the
2 facility?

3 A Yes. That was -- we -- a history and physical
4 should be done at least yearly.

5 Q The CT scan that Mr. Long asked you about earlier
6 -- and he pointed out the record from SHP Rhoads
7 34, which is written about 30 minutes before the
8 decision's made to transfer the patient to the
9 detention center. That note at 6:30 p.m.
10 indicates, "Inmate has an appointment for a CT scan
11 Wednesday, June 5th." Besides that note made just
12 before Ms. Rhoads was taken to Aiken Regional, do
13 you see any other note in this medical record
14 indicating that a CT scan had been scheduled for
15 her and when it was to take place?

16 A No. I didn't see any other note.

17 Q All right.

18 MR. HINSON: All right. Thank you, Ms.

19 Galloway. I got nothing more at this time.

20 Well, I got one more question.

21 Q What -- what would you consider normal respiratory
22 rate for a patient? Like what range would be high,
23 and what range would be low?

24 A Low side, 12. High side -- well, normal, 12 to 20.

25 Q So 20 would be the -- the high end of normal in --

Exhibit 9

Cassiopia Rhoads,	)	In the United States
	)	District Court
Plaintiff,	)	District of South
v.	)	Carolina
	)	Aiken Division
Southern Health Partners,	)	
Inc., Robert J. Williams,	)	Case No.:
M.D., Brandi Galloway,	)	8:22-cv-1409-SAL-JDA
Donna Wright, Chanate	)	
Buchanan, Tonetta Buggs,	)	
Tamara Erikson, Erik	)	
Riddell, and Jessica	)	
Whitaker,	)	
Defendants.	)	
	)	
Cassiopia Rhoads,	)	State of South
	)	Carolina
Plaintiff,	)	County of Aiken
v.	)	
	)	Case No.:
Southern Health Partners,	)	2020-CP-02-02238
Inc.; Robert J. Williams,	)	
M.D.; Michael E. Hunt, in	)	
his official and	)	
representative capacity as	)	
Aiken County Sheriff; and	)	
Aiken County, operating as	)	Video Deposition
the Aiken County Detention	)	of
Center,	)	Edward O'Bryan, MD,
Defendants.	)	MBA, CPE

Date: March 31, 2023
Time: 10:36 a.m.
Location: Nexsen Pruet, LLC, 205 King Street, Suite
400, Charleston, South Carolina

Reported by
Julie C. Taradash

1 Q If a -- are you familiar with the concept in
2 correctional health care of basically there being
3 two types of -- of health care screenings? You
4 have, one, a receiving screening right at the time
5 the person comes into the facility, and then, two,
6 you have a follow-up screening that's supposed to
7 be done within 14 days.

8 A Yes.

9 MR. LINDEMANN: Object to the form.

10 Q Okay. Was a 14-day screening ever done on Cassie?

11 A No.

12 Q Okay.

13 A Yeah. The 14-day is typically called the "History
14 and Physical." But, yeah, it's --

15 Q But when Mr. Long asked you some questions about
16 how Cassie had never disclosed these prior
17 abscesses she had, is that something that may have
18 been disclosed through a proper -- for lack of a
19 better way, I'll say a medical interview that's
20 involved in a 14-day health screening?

21 A Yes.

22 Q Okay.

23 MR. MCLAUGHLIN: Dr O'Bryan, thank you very
24 much. That's all the questions I have. Mr.
25 Long or Mr. Lindemann may have some follow-ups

Exhibit 10

Deputy Carla Hill
Rhoads v. Southern Health Partners, Inc., et al.

Page 1
3/16/2022

State of South Carolina	)	
	)	
County of Aiken	)	
	)	
Cassiopia Rhoads,	)	2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
v.	)	Deposition
	)	
Southern Health Partners,	)	of
Inc.; Robert J. Williams,	)	
M.D.; Michael E. Hunt, in	)	Deputy Carla Hill
his official and	)	
representative capacity as	)	
Aiken County Sheriff; and	)	
Aiken County, operating as	)	
the Aiken County Detention	)	
Center,	)	
	)	
Defendants.	)	

Date: March 16, 2022

Time: 12:02 p.m.

Location: Via Remote Videoconference for All Parties

Reported by
Cindy H. Patterson

1 Q Can you explain that to me?

2 A Medical was saying that she was self-inflicting,
3 and I had never seen her bang her head or hit her
4 head on the floor or the wall, and I asked Bauer --
5 I said, "Deputy Bauer, you've been doing this for a
6 while, also. Will you look and see if you think
7 that it's being self-inflicted and see if you see
8 any -- anything that would make you think that she
9 was doing this herself?"

10 Q At -- at the time you asked her to look at Cassi,
11 was there something visibly going on that you could
12 look at Cassi and see that something was not right
13 with her?

14 A Yes. She was very swollen.

15 Q And when you say "very swollen," I can see you
16 right now. Can you point to -- to where on Cassi
17 that she was swollen?

18 A (Indicates.) It was from here to here.

19 Q And if you can compare the size of that swelling to
20 an everyday object -- a -- a golf ball, a baseball,
21 a grapefruit, an orange, anything that could give
22 us a relative idea of how big the swelling was, are
23 you able to do that at all?

24 A Probably the size of a grapefruit.

25 Q Do you have any idea when that was?

1 A That was -- I don't know the exact date, but it was
2 close to the time that she was sent out.

3 Q And how quick -- well, let me -- I'll tell you
4 what, I'm going to show you -- I'm going to share
5 my screen real quick.

6 All right. You should have in front of you
7 ACDEPO 0182. Can you see that image?

8 A Yes, sir.

9 Q Okay. I'm -- I'm going to make it take up the
10 whole screen a little bit. Ms. -- Ms. Hill, I'll
11 tell you, if you can see -- you see a date on it
12 right there? June 2nd, 2019, at 23:06:38? This is
13 a CT scan of Cassi's head that was done the -- the
14 night that she went to Aiken Regional Medical
15 Center. And I would explain to you that this --
16 this white that you see right here is skull, and so
17 this section that you see right here is the growth,
18 what -- what ultimately was diagnosed as an abscess
19 on Cathy -- or Cassi, excuse me. Looking at that
20 image right there, does that appear to be the type
21 of swelling that Cassi was visibly showing to you
22 when you asked Deputy Bauer to take a look at her?

23 A Yes, sir.

24 Q And then I will show you -- these are MRIs, which
25 show a little bit more detail. So this is a ACDEPO

1 183. And so this would have been -- you see on
2 this one, this one is taken the next day, and you
3 could see -- you can kind of make out that's a
4 human head a little bit more than you can on the
5 CT. Would you agree with that?

6 A Yes, sir.

7 Q You can kind of see -- like, see, right there, the
8 ear right there, and then the spinal column going
9 down kind of like that? You can actually see the
10 brain in there. Does that image right there --
11 that area that is sticking out, does that look like
12 the type of swelling that Cassi had on her when you
13 asked Bauer to take a look at her?

14 A Yes, sir.

15 Q And then the same would go for -- this is 184.
16 It's another MRI that was done on the same day.
17 And once again, that area right there sticking out,
18 does that appear to be the same type of swelling
19 that you observed when you asked Bauer to take a
20 look at her?

21 A Yes, sir.

22 Q Ms. Hill, what was -- how long -- or how did it get
23 that bad? Over what period of time? Did it happen
24 very quickly, or was it something to where you
25 could see it getting larger and larger over several

1 days?

2 A You could tell that it was getting --

3 MR. LINDEMANN: Object to the form. Object to
4 the form. (To the deponent) Go ahead and
5 answer.

6 A You could tell that it was -- it stayed like a
7 knot, and then, all of a sudden, it started getting
8 larger.

9 Q And you made a comment earlier that one of the
10 things that spurred you to ask Bauer to look at it
11 was that medical was saying Cassi was self-
12 inflicting. So -- so -- so the medical staff was
13 saying that Cassi was doing this to herself?

14 A Yes, sir. That's what they told me.

15 Q Who told you that? What -- what person -- and
16 throughout this depo I may refer to people as
17 "Southern Health Partners" or "SHP" or something
18 like that. When I say that, I mean any of the
19 nurses there at the detention center, Dr. Williams,
20 any other doctors who filled in, or any corporate
21 or regional representatives from Southern Health
22 Partners that -- that you may have ever come into
23 contact with. But who was it with -- with medical
24 that told you that?

25 A Nurse Donna.

1 Q Did -- did she at all explain to you why she felt
2 that Cassi was doing this to herself?

3 A No, sir. She just told me that she was self-
4 inflicting. And I had never seen her -- like I
5 said, I'd never seen her hit her head on the walls,
6 never seen her hit her head on the floors. I'd
7 never seen her hit her head anywhere.

8 Q And y'all have inmates that do that?

9 A Yes, sir. We do.

10 Q And, in fact, if -- if y'all catch an inmate doing
11 -- engaging in that type of self-harm behavior,
12 y'all would -- y'all would document it somehow,
13 wouldn't you?

14 A Yes, sir. We would.

15 Q All right. I want to go and look at -- all right.
16 We're going to look at ACDEPO -- I believe this is
17 9 to 12. So this is a one, two, three -- four-page
18 document that is -- is memorializing an incident
19 that occurred -- let's see -- you see right there,
20 on May 8th, 2019, at 4:02 in the afternoon? Would
21 that be right?

22 A Yes, sir.

23 Q And the description of this incident is that the
24 inmate stated she fell?

25 A Yes, sir.

1 Q -- above your ear at the back of your head, and
2 then you moved it all the way to the front on the
3 right side; is that right?

4 A Correct.

5 Q Okay. She said she has "not been able to get out
6 of bed for four-plus days" -- do you -- "except for
7 showering." Do you remember there being a period
8 of time where -- where Cassi pretty much just
9 stayed in bed?

10 A Yes. And she said that getting up made her head
11 hurt worse, and she -- she would fall back over.
12 So she was just staying -- she actually made a
13 pallet on the floor and was sleeping on the floor.

14 Q And if I understand what you're telling me, she did
15 that because it -- she would have problems when she
16 stood -- when she got up?

17 A Yes, sir.

18 MR. LINDEMANN: Object to the form.

19 Q So -- so to try to fight the -- whatever effect she
20 was feeling from this, she was actually sleeping on
21 the floor?

22 A Yes, sir.

23 Q Did -- was medical aware -- was there any -- was
24 medical aware of that?

25 A Yes, sir.

1 when she first came in and was having the issues,
2 they're going to tell you because they're not going
3 to want to be in a pod with someone who they think
4 might be a little bit not right.

5 Q That's right. If -- if they've got somebody
6 banging their head on the wall in the cell, they
7 don't want to be locked up with them, do they?

8 A No, sir.

9 Q That makes sense. And did you -- did you let Nurse
10 Donna know that? Like, "Listen, I ain't -- I ain't
11 a nurse, but I'm telling you I don't -- she's not
12 self-inflicting or we'd be seeing it"?

13 A Yeah. And I -- I told -- I told Nurse Donna -- I
14 said, "I've never seen her do this to herself."

15 Q This is ACDEPO 32, Ms. Hill. This is another one
16 of those nursing notes, medical records, from
17 Southern Health Partners. And I pulled it up to
18 show -- this top part right here, you can see it's
19 from 5/28/19 at 2:44 p.m. Would that appear to be
20 the nursing note Nurse Donna wrote about the -- the
21 incident that you documented?

22 A I -- again, I can't say who wrote it because I've
23 never seen this before. It's not a form we use.

24 Q Okay. If I tell you that that's a nursing note
25 that Nurse Donna wrote, would it appear that those

1 Q Okay. The -- the thing we talked about, I think,
2 very early on in the deposition, Ms. Hill, about
3 that time that Ms. Bauer came to -- to relieve you
4 and you kind of asked her to give you -- to take a
5 look at Cassi and give -- give you her opinion on
6 it, you were careful in -- in not relaying to Bauer
7 what you wanted her to find, weren't you?

8 A I was.

9 Q And would it be fair to say you did that because
10 you wanted her unbiased, uninfluenced opinion just
11 looking at Cassi of whether or not she could look
12 at her and tell something was wrong?

13 A Yes.

14 Q And --

15 A Like I said --

16 Q Go ahead.

17 A We were -- I wanted her to see if she was seeing
18 any bruising or cuts or something that I wasn't
19 seeing, to where it would -- to where it would be
20 like a self-inflicted wound or from her hitting her
21 head, you know, because I just wasn't seeing it,
22 and I -- I didn't want to be responsible for
23 missing something that important.

24 Q And -- and I can appreciate that. And -- and I
25 think when you were describing it to me earlier,

1 legitimately cared about them.

2 Q Ms. Hill, this is the one chance that -- that I get
3 to talk to you before this thing goes to trial, if
4 it goes to trial. And -- and lawyers often aren't
5 -- aren't the best things in the world. We
6 sometimes can miss the question that's right in
7 front of us, that maybe we should ask. Is there
8 anything you can think of about Cassi or this
9 incident that you think is important, that I've
10 missed, but you think that we should know about?

11 A On the -- on the day that I had asked Bauer to look
12 at Cassiopia and think what -- she what she thought
13 and let me know, I'd also talked to Lieutenant
14 Whitaker due to my concern about how much swelling
15 there was. And Lieutenant Whitaker stated that she
16 would talk to medical to find out what was going
17 on.

18 Q And I meant to ask you about that because I think
19 what Bauer told Mr. Hinson yesterday was when she
20 came back and confirmed to you that she felt like
21 she could see the swelling, that you -- you --
22 Bauer says you asked her, "Well, will you say
23 something to Whitaker, too?" Is that correct? Did
24 you ask her to report to Whitaker, too, that she
25 saw it, and -- and it didn't appear to be self-

1 inflicted to her, either?

2 A Yes, sir.

3 Q Did Whitaker -- did you report to Whitaker that
4 Nurse Donna was telling you it was self-inflicted?

5 A Yes, sir.

6 Q Did -- did Whitaker express to you an opinion about
7 that at all?

8 A She said, "Are you sure that you're keeping a close
9 watch on her?" I stated I was. I talked to all
10 the inmates that was in the cell with her at the
11 time. Everybody said the same thing. "Ms. Hill,
12 she's not doing this. She's barely eating because
13 her head hurts so bad."

14 Q And she was -- like, Bauer explained she had like a
15 sheet or a towel or something that she was wrapping
16 around her head. Do you remember that?

17 A I do not remember it, but I would not be surprised.

18 Q Okay. And I know it's hard to remember dates and
19 times and stuff, but if you had to put this
20 conversation you had with Bauer and with Whitaker
21 in line with that incident we know that you were
22 involved with in B-Max on 5/28, would you put it
23 before then or after then?

24 A Right before then, not long before then. If it was
25 not the same day, it was the day before.

1 Q Okay.

2 A Yeah. But it was, I mean, very close. Very close.

3 Q I understand, yes, ma'am. And leading up to that
4 day, whenever it was, was there a growing concern
5 leading up to that day, with you, about what was
6 happening with Cassi?

7 A There was, and any time I talked to medical, they
8 would always say, "She has to submit a sick call on
9 the kiosk."

10 Q So you're telling -- you've got concerns, as we --
11 as we get towards those days when you asked Bauer
12 to look at it?

13 A Uh-huh.

14 Q And you're expressing those concerns to the
15 Southern Health Partners people, and they're
16 telling you, "She needs to go through the kiosk"?

17 A Yes, sir.

18 Q Okay. All right. Ms. Hill, have you understood
19 all my questions?

20 A Yes, sir.

21 Q Have you answered them truthfully and accurately to
22 the best of your ability?

23 A Yes, sir.

24 Q Okay.

25 MR. MCCLAUGHLIN: Thank you very much. I

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Cassiopia Rhoads,)
)
Plaintiff,)

Civil Action No. 2020-CP-02-2238

v.)

Southern Health Partners, Inc.;)
Robert J. Williams, M.D.; Michael E. Hunt,)
in his official and representative capacity as)
Aiken County Sheriff; and Aiken County,)
operating as the Aiken County)
Detention Center,)

**NOTICE OF MOTION AND
MOTION TO EXCLUDE EXPERT
WITNESS/MOTION IN LIMINE**

Defendants.)
)
_____)

TO: FRANCIS M. HINSON, IV AND PATRICK J. MCLAUGHLIN,
COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Michael E. Hunt, in his official and representative capacity as Aiken County Sheriff; and Aiken County (hereafter referred to as “ACDC Defendants”), will move before the Presiding Judge of the Second Judicial Circuit at the Aiken County Judicial Center, Aiken, South Carolina, at such time and place as may be set by the Court, for an Order in limine, excluding the Plaintiff’s expert witness, Aubrey Land, from testifying at the trial of this case scheduled for the week of October 9, 2023.

In her answer to interrogatories, the Plaintiff identifies Aubrey Land as an expert witness as follows: “Mr. Land is a former law enforcement official with experience in corrections. Mr. Land will testify that the detention center personnel responsible for Ms. Rhoads' safety and care

during her detention in May-June 2019 were negligent, grossly negligent, reckless, and/or wanton.”

"The admission of expert testimony is governed by Rule 702, SCRE, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. The South Carolina Supreme Court has recognized that "expert testimony receives additional scrutiny relative to other evidentiary decisions." *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169, 175 (2010). In fulfilling its "gatekeeping" duties, a trial court is required to make "three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony." *Id.* "First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Id.* Second, "while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter." *Id.* "Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable." *Id.* The Supreme Court in *Watson* further explained that "[e]xpert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. Thus, only after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate." *Id.*

In 2009, the Supreme Court also confirmed that the trial court's gatekeeping role under Rule 702 applies not only to scientific opinions but also to "nonscientific (or experienced based) expert

testimony." *State v. White*, 382 S.C. 265, 676 S.E.2d 684, 686 (2009). The Supreme Court expressly rejected the contention that the reliability of nonscientific expert testimony goes only to the weight and not the admissibility of the evidence. *Id.* In *White*, the Supreme Court stressed that "[r]eliability is a central feature of Rule 702 admissibility." *Id.* The Court further explained as follows:

[T]he trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702, whether the evidence is scientific or nonscientific. In the discharge of its gatekeeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact. *The familiar evidentiary mantra that a challenge to evidence goes to "weight, not admissibility" may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.*

White, 676 S.E.2d at 689. (Emphasis added).

The Supreme Court has "declined to set a general test for nonscientific testimony due to the multitude of challenges which may arise. Thus, this evidence must be evaluated on an *ad hoc* basis." *Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 735 S.E.2d 650, 656 (2012). The Supreme Court explained that "[t]he foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the *Council* factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony." *White*, 676 S.E.2d at 688. "We do not pretend to know the myriad of Rule 702 qualification and reliability challenges that could arise with respect to nonscientific expert evidence. Consequently, we offer no formulaic approach that will apply in the generality of cases." *Id.*

The Aiken Defendants object to the qualifications of Aubrey Land to offer any opinions in this action. Rule 702, SCRE, requires an expert to have "specialized knowledge" to assist the jury by way of "knowledge, skill, experience, training, or education." Land lacks the level of expertise and qualifications to be of any assistance to the jury. As addressed in more detail in the

attached deposition excerpts, Land has little formal education. He completed only the tenth grade although he did receive a GED. *See*, Land Dep., pp. 20-21. He never attended college as a student, but only received his law enforcement certifications at a community college because in Florida that is where such certifications are offered. *See*, Land Dep., pp. 21-22. His experience working in local detention facilities is minimal and not comparable to the Aiken County Detention Center. For only two years, from 1992 to 1994, Land worked as a deputy sheriff for Lafayette County, Florida (which he described as having a population of 5,000 to 6,000), where he split his duties 50-50 as a road deputy and a detention officer in the Lafayette County Jail. That facility had a capacity of “less than thirty inmates.” The facility was manned by a staff of eight or nine officers total. Land did not hold a supervisory position although on “most shifts” he would be the “officer in charge.” Shifts typically had two or three officers. Land had no training responsibilities in that position. The Lafayette County Jail had no in-house medical care. *See*, Land Dep., pp. 15-19. Land last used his corrections certification in 1996, and that certification lapsed by 2004. *See*, Land Dep., pp. 13-14. Land has no other experience with a local detention facility and no experience whatsoever in South Carolina. *See*, Land Dep., p. 18.

Land later worked for ten years from 2006 to 2016 for the inspector general for the Florida Department of Corrections, but that position did not involve inspections of local detention facilities. *See*, Land Dep., p. 15. In that position, he did some limited training at local detention facilities but that consisted of primarily Prison Rape Elimination Act (PREA) training and some “use of force” training. *See*, Land Dep., pp. 19-20. Land did not conduct or lead any medical-related training during his career. *See*, Land Dep., p. 20. Land has no specialized medical training other than “First Responder First Aid.” *See*, Land Dep., p. 20.

As the foregoing discussion of his qualifications reflects, Aubrey Land lacks any specialized knowledge or expertise with respect to the provision of medical care within local detention centers

in South Carolina or for that matters in any state. His educational level is the completion of the tenth grade. His work experience in local detention centers is limited to two years, and that occurred almost thirty years ago. His experience is in a facility that is not even remotely comparable to the Aiken County Detention Center. He holds no certifications in corrections and has not held any such certification for approximately twenty years. He has not been a supervisor or jail administrator. He has no experience on policy formulation or training on medical-related issues. Quite simply, he is not qualified and should not pass the Court's gatekeeping responsibility.

In addition, even if the Court found Land to be qualified, the opinions he has been identified to give are not proper nor reliable for an expert witness under Rules 702 and 704 based on controlling South Carolina case law. To reiterate, in answers to interrogatories, the Plaintiff states that "Mr. Land will testify that the detention center personnel responsible for Ms. Rhoads' safety and care during her detention in May-June 2019 were negligent, grossly negligent, reckless, and/or wanton." In his deposition, Land explained that his opinions are "all based around that conclusion, or that, that opinion [Plaintiff] did not receive proper healthcare." *See*, Land Dep., p. 23. He claims that his "professional opinion" is that "both Medical and Corrections Staff, or Detention Staff had an obligation to provide for her care." *See*, Land Dep., p. 23. As to specific opinions, he indicated: "Now as far as Whitaker is concerned, I have an opinion that she failed to provide the necessary care for Ms. Rhoads." *See*, Land Dep., p. 41. When asked for the basis for that opinion, Land testified: "Well, in my profession, we were told, if we knew something was wrong and we didn't do anything to try and help that person, then we were liable." *See*, Land Dep., p. 42. When asked whether a correctional officer has a duty to override the medical decision-making of medical personnel when the officer is aware that medical care is being provided, Land answered in the affirmative and based his opinion on his belief that officers "are held to that

standard because part of the Correctional Officer's duty of care is care, custody, control, supervision, and accountability of inmate in their custody." *See*, Land Dep., p. 42.

The Aiken Defendants submit that the opinions to be offered by Land are conclusory, are unsupported by any appropriate bases for an expert opinion, and are simply not reliable. Land is attempting to testify to his own understanding of the facts and then to offer his opinions both on the ultimate question for the jury and on the legal duty of care owed, the latter of which falls entirely within the province of the Court.¹

Likewise, Land's opinions are not proper under Rule 704 as discussed in such cases as *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (Ct. App. 2020), in which the Court of Appeals affirmed the exclusion of the plaintiff's expert on police investigations. As the Court of Appeals wrote:

The trial court properly discharged its gatekeeping role. As we have held, the issue of whether the arrest warrant lacked probable cause was not relevant to the jury's decision on Carter's false arrest claim. Even if it were, the expert's proffered testimony on probable cause was a legal conclusion. Generally, "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE. However, expert testimony on issues of law is rarely admissible. The common law and the federal rules of evidence forbid opinions on issues of law, except foreign law.

838 S.E.2d at 531. (Citations omitted). Specifically, as to the expert's opinion on the existence of probable cause, the Court of Appeals explained:

The opinion here was not helpful to the jury because it stated a legal conclusion and essentially told the jury what result to reach on the probable cause question. The concept of "probable cause" is a legal term of art carrying a specialized meaning distinct from everyday usage.

¹ *See, Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47 (1996) (under South Carolina law, the determination of the existence of a duty is solely the responsibility of the court); *Carson v. Adgar*, 326 S.C. 212, 486 S.E.2d 3, 5 (1997) ("[w]hether the law recognizes a particular duty is an issue of law to be decided by the court").

We agree with the trial court that the expert's opinion would not have assisted the jury. As the wise trial court well knew, allowing an "investigations" expert to define probable cause to the jury and apply his view of the facts to his definition of the law ran the risk of misleading the jury and telling them what their verdict should be, much like the "oath-helpers" of ancient times. It also risked treading on the trial judge's role as the sole source of the law in the trial, further confusing the jury (but not the judge).

838 S.E.2d at 531-532. (Citations omitted).

The same issue arose more recently in the case of *Hamilton v. Regional Medical Center*, ___ S.C. ___, ___ S.E.2d ___, 2023 WL 4919530 (Ct. App. 2023), which was decided by the Court of Appeals on August 23, 2023. In that case, the Court of Appeals affirmed the trial court's refusal to allow a defendant's nursing expert to offer an opinion as to whether the defendant was negligent or grossly negligent. As the Court of Appeals explained, "[i]n excluding opinion testimony in the form of a legal conclusion, courts have advanced such reasons as it allows a witness to tell the jury what verdict to reach, it tends to confuse jurors, and it increases the likelihood that jurors will look to the witness rather than the trial [court] for guidance as to the law." 2023 WL 4919530, *10. With specific reference to the term "negligence," the Court of Appeals wrote:

"[S]everal courts have held that the term 'negligence' conveys a legal conclusion and is therefore inadmissible." "With respect to negligence actions, an opinion phrased in terms of negligence itself, involving not only the formulation of a legal standard by the witness but also one substantially immune to exploration, seems calculated to confuse or mislead rather than assist the trier." "[T]he term 'negligence' in the common vernacular encompasses a much broader standard" than the legal definition. "While there are undoubtedly non-lawyers whose definition of the term 'negligent' more closely resembles the legal term, the conclusion is inescapable that the legal definition of the term has a separate meaning which is distinct from the common vernacular."

Id. (Citations omitted). The Court of Appeals then concluded:

The trial court did not abuse its discretion by preventing Regional from asking Hurley explicitly if Regional committed negligence or gross negligence. Asking Hurley that question would have been

asking her to form a legal conclusion, which would have been inadmissible. The fact that she is a nurse and not a lawyer or other legal expert does not make a difference; her answer could confuse the jury particularly because negligence could have a broader meaning outside of the legal definition. Accordingly, we affirm the trial court's prohibiting Hurley from testifying if she believed Regional was negligent or grossly negligent.

Id. (Citations omitted).

The same is true in the case at bar. For the reasons addressed at length in *Carter* and *Hamilton*, Aubrey Land, even if deemed qualified, should not be permitted to offer an opinion as to legal conclusions – the determination of the duty of care lies with this Court -- or to offer an opinion on the ultimate question as to whether any of the Defendant Hunt's employees acted with gross negligence. Moreover, as explained herein, Land's opinions are simply not reliable. In carrying out its required gatekeeping function, the Court is respectfully requested to exclude Aubrey Land as an expert witness.

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*Counsel for Defendants Michael E. Hunt, in his
 official and representative capacity as Aiken County
 Sheriff*

October 8, 2023

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
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COUNTY OF AIKEN) CASE NO. 2020-CP-02-2238

Cassiopia Rhoads,)
Plaintiff,)
-vs)
Southern Health Partners,)
Inc.; Robert J. Williams,)
M.D., Michael E. Hunt, in)
his official and)
representative capacity as)
Aiken County Sheriff, and)
Aiken County, operating as)
the Aiken County Detention)
Center)
Defendants.)

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

14 Cassiopia Rhoads,)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

Plaintiff,)
-vs)
Southern Health Partners,)
Inc.; Robert J. Williams,)
M.D., Brandi Galloway,)
Donna Wright, Chanate)
Buchanan, Tonetta Buggs,)
Tamara Erikson, Erik)
Riddell, and Jessica)
Whitaker,)
Defendants.)

23 DATE: Tuesday, September 19, 2023
24 TIME: 11:03 a.m.
25 LOCATION: VIA Zoom For All Parties
REPORTER: Lisa M. Kerns

1 A. Right, right. I mean that's the case that you, you
2 mentioned. That was also a 2018 case but all the
3 material in that case is, is gone. It was lost.

4 The Attorney was Myers, M-Y-E-R-S.

5 Q. The Attorney who retained you was named Myers?

6 A. Yes, that's correct.

7 Q. Okay. So, Mr. McLaughlin was not part of that
8 case?

9 A. To the best of my knowledge, no.

10 Q. All right. Any other South Carolina cases you're
11 aware of, whether they're on your List or not.

12 A. No, sir. Not that I can, can see. And I'm not a
13 hundred percent certain that it was a South
14 Carolina Case that, that I assisted. It was either
15 North or South where a lady was arrested over
16 visiting her brother and I, I assisted in that
17 Criminal Case.

18 Q. Mr. Land, what is your previous Corrections
19 experience?

20 A. Well, I started in Corrections in 1984 at Mayo
21 Corrections Institution with the Department of
22 Corrections. Within a year or two I was promoted
23 to Sergeant. Remained in that position until 1989.
24 I left the Agency and became self-employed. And I
25 also worked as a Reserve Deputy with the Lafayette

1 County Sheriff's Office at the Lafayette County
2 Jail. Went on to be both a full time Deputy. We
3 referred to it as a, as a Road Deputy and as a
4 Correctional Officer. Stayed there until '94.
5 Change of Sheriff. So I went to, back to Mayo
6 Correctional Institution in '94. Remained there
7 until I believe it was '96. I was hired by the
8 Live Oak Police Department as, as a Patrol Officer
9 and, and Detective. Ran the Swing County Drug Task
10 Force. 2006, I returned to Corrections as a Law
11 Enforcement Inspector. 2013, I was promoted to
12 Senior Law Enforcement Inspector.

13 Q. All right. Let me unpack that a little bit.
14 Lafayette County Sheriff's Office; where is that
15 located?

16 A. Mayo, Florida.

17 Q. And your work at, at Lafayette County Sheriff's
18 Office was as a Reserve Deputy?

19 A. Well I started off as a Reserve Corrections
20 Officer. I went on to get my cross-training into
21 Law Enforcement. I was certified at that time both
22 as a Correctional Officer and as a Law Enforcement
23 Officer.

24 Q. Certified by whom?

25 A. The North Florida Junior College. Which put on the

1 Course. And it was under the Criminal Justice
2 Standards and Training Commission that is run by
3 FDLE as part of the Department of Law Enforcement.

4 Q. All right. You still maintain those
5 Certifications?

6 A. No, they are my, my Corrections Certification has
7 lapsed. And my Law Enforcement Certification has
8 not been activated since 2016. That would be what,
9 six years. I have seven years to reactivate it and
10 I have no plan of doing that.

11 Q. When did your Corrections Certification lapse?

12 A. Let's see. Probably somewhere around 2004.
13 Because, it was supposed to have been maintained by
14 the Swing County Sheriff's Office. For whatever
15 reason they did not submit that to the Criminal
16 Justice Training Commission. Therefore after seven
17 years of inactivity, it expired.

18 Q. So, it expired in 2004 after seven years of
19 inactivity, is that what I'm hearing you say?

20 A. Yes, that would be about the right time. Could
21 have been 2003. But, could have been as late as
22 2004.

23 Q. So then the, the last time that you served in any
24 type of Corrections capacity would have been seven
25 years prior to that lapse in, what 1997?

1 A. Somewhere around '96, '90, yeah, somewhere around
2 '96 I believe --

3 Q. And how --

4 A. -- now .

5 Q. -- and, and what was your last employment in,
6 within the Corrections setting?

7 A. I believe it was the last day of November, 2016.

8 Q. And, and what, what was that employment? What was
9 your last position in Corrections?

10 A. Senior Law Enforcement Inspector. And if I may
11 elaborate on that just a little to help you out. I
12 was employed by the Florida Department of
13 Corrections for that ten year period from 2006 to
14 2016. The position I held did not require my
15 Corrections Certification to be activated. I
16 worked for the Office of the Inspector General, and
17 in that capacity, we worked every facet of
18 Corrections. We investigated incidents involving
19 Corrections Officers, Inmates, Administrators,
20 Policy Violations, Classification Issues. We were
21 pretty much so a catch-all for, for Corrections.

22 Q. So that, the ten years from 2006 to 2016, you were
23 working for Inspector General investigating various
24 aspects of Corrections within the Florida
25 Department of Corrections?

1 A. That would be correct.

2 Q. Did that job also require any type of
3 Investigations of Local Detention Centers?

4 A. It did not.

5 Q. All right. So let me be, let me make sure I'm real
6 clear on your timeline. When is the last time you
7 held any position in Local Corrections, essentially
8 Jails or Local Detention Centers?

9 A. That would have been 1996 on a full time basis.

10 Q. And what was that position you held in 1996?

11 A. Both a Corrections Officer and Road Deputy.

12 Q. And for what Agency was that?

13 A. The Lafayette County Sheriff's Office.

14 Q. In that particular jurisdiction, did the Sheriff
15 operate the Jail?

16 A. He did.

17 Q. And how big a Jail was it at the time?

18 A. Well --

19 Q. Or was it, what was its rated capacity?

20 A. I'm not a hundred percent sure. But it was less
21 than 30 Inmates. And did I say 1996 or 1994?

22 Q. You said 1996.

23 A. Okay. I, I misstated that. It was 1994.

24 Q. All right. And the, the Jail held less than 30
25 Inmates?

1 A. That is correct.

2 Q. How big is Lafayette County, or how big was it back
3 in 1994, if you can give me an idea?

4 A. There were approximately 5,000 people in the
5 County. It could have been as high as 6,000.

6 Q. Where in Florida is Lafayette County?

7 A. If you're familiar with Florida, I-10, I-75
8 Interchange. We were located West of that location
9 by approximately 25 miles.

10 Q. Okay. Is that considered the Panhandle?

11 A. No, it's pretty much North Florida, just before you
12 get, in matter of fact, the last storm that just
13 came through, Ida, was, came right through my
14 hometown.

15 Q. Okay. What is the County Seat?

16 A. Lafayette County.

17 Q. Yeah, what's the County Seat?

18 A. Oh, Mayo, Florida.

19 Q. How big was the Sheriff's Department, in terms --

20 A. When I was there --

21 Q. -- of number of Deputies or Corrections Officers?

22 A. Let's see, we had I believe nine, nine or ten
23 Corrections Officers, and we had eight full time
24 Deputies.

25 Q. Now you described yourself as both a Correctional

1 Officer and a Deputy, which one were you?

2 A. I held, I held both titles. I, I worked inside the
3 Jail and also worked on the road as well.

4 Q. And, can you give me sort of a breakdown of what a,
5 what portion of your work was as a Road Deputy
6 versus as a Correctional Officer?

7 A. Fifty-fifty.

8 Q. And you held that position for how long?

9 A. Almost two years.

10 Q. What were your job duties as a Correctional
11 Officer?

12 A. The care, custody and control supervision of
13 Inmates. Did transports. I was Housing Officer.
14 I did dispatch of calls and things of that nature.

15 Q. All right. And, did you hold any type of
16 Supervisory position?

17 A. In most, on most shifts, I would be the OIC, the
18 Officer in Charge.

19 Q. And, on shifts where you were the OIC, how many
20 Corrections Officers would be present?

21 A. Two, sometimes as many as three.

22 Q. The Facility that the actual Detention Center where
23 you worked, is that structure still being used
24 today?

25 A. It has been renovated I believe back in, I think it

1 was 1996 that they did a renovation of it. And
2 added additional housing space for Inmates.

3 Q. What actually is the name of that Facility?

4 A. It's the Lafayette County Jail.

5 Q. And what did they, while you were a Correctional
6 Officer there from '94 to '96; what, how did the
7 Lafayette County Jail provide medical care for
8 detainees?

9 A. We had no in-house medical. We relied on the local
10 EMS Units. If we had an Inmate that was in any
11 type of distress, we would call them. We also had
12 a Contract with a local Doctor in, in Lafayette
13 County. In most instances, we would have to
14 transport that Inmate to his office to be seen.

15 Q. Other than the two years that you had at the
16 Lafayette County Jail, do you have any other
17 experience in a Local Detention Center or Jail?

18 A. No.

19 Q. And I assume you've had no experience in a Local
20 Detention Center or Jail in the State of South
21 Carolina; is that correct?

22 A. You're correct.

23 Q. Okay. Other than work that you've done as an
24 Expert Witness for Litigation purposes, have you
25 done any type of Consulting or Training as far as

1 Local Detention Centers in the State of South
2 Carolina?

3 A. I have not.

4 Q. While you were employed at Lafayette County Jail,
5 did you serve in any type of Training capacity?

6 A. I did not.

7 Q. In your Law Enforcement career as a whole, have you
8 ever served in any type of Training capacity?

9 A. My last ten years as a, a Law Enforcement and
10 Senior Law Enforcement Inspector with the Office of
11 the Inspector General, I did Training at Local
12 Facilities. Most of that Training would be in
13 issues like PREA, the Prison Rape Elimination Act.
14 When that came out, that kind of fell underneath my
15 obligation. Our Correctional Staff was not aware
16 of it and I would go in and I would do Training
17 related to that. I also went in and did Training
18 on Use of Force type situations. The Agency had a
19 yearly Training process for all of our Corrections
20 Officers and I would be one of the Trainers that
21 would be called in during that, during the Training
22 Session to provide information related to new
23 changes, PREA issues, Use of Force issues, Use of
24 Force Policy.

25 Q. And PREA issues involves allegations of sexual

1 assault or harassment, correct?

2 A. Correct.

3 Q. Okay. I'm, have you ever provided any Training on
4 medical related issues to any Correctional
5 Employees?

6 A. I have not. We had, part of our yearly Training
7 was related to medical. Medical personnel would
8 come in and do that Training. I also took those
9 courses. I attended Training to, to ensure that
10 the Training Requirements as established by the
11 Department's Policy were being adhered to. So
12 that, you know, that was part of my obligation as a
13 Law Enforcement Inspector.

14 Q. All right. So you took Training on medical related
15 issues, but you never actually did the Training
16 yourself; is that correct?

17 A. I did not, most all of that was done by Medical
18 Personnel.

19 Q. Okay. Do you have any type of Medical Training?

20 A. The only thing I have is First Responder First Aid.

21 Q. But other than First Aid, you don't have any
22 Medical Training?

23 A. I do not.

24 Q. What is actually your educational background?

25 A. I have a GED Diploma. I got, I received that the,

1 like the first three months of my eleventh grade
2 year. I took the GED Test and passed it. So that
3 kind of ended my High School. Went on to North
4 Florida Junior College to where I was a, Certified
5 in Corrections. Later attended Law Enforcement
6 Cross Training at North Florida Junior College. I
7 had taken, Lord I'm, I would have to say several
8 thousand hours of Advanced Training, like Homicide
9 Investigation, Death Investigations, Use of Force
10 Training, Certified Instructor, Courtroom Demeanor,
11 Courtroom Preparation, Advanced Self Defense, and
12 that list goes on from there.

13 Q. All right. So, but as far as formal education
14 goes, you completed the tenth grade?

15 A. I completed the tenth grade and I received a GED
16 Diploma while I was still in High School.

17 Q. All right. And, the only College Courses that
18 you've taken are affiliated with Law Enforcement
19 Certifications; is that, did I hear you correctly
20 on that?

21 A. Both Law Enforcement and Corrections.

22 Q. Okay. But that was purely for Certifications; is
23 that correct?

24 A. You're correct.

25 Q. Okay. So you've never enrolled in any College as a

1 actual student; is that correct?

2 A. I have not.

3 Q. Mr. Land, what opinions are, have you formulated
4 with respect to the Cassi Rhoads Lawsuits?

5 A. Let me get to that real quick because I would like
6 to go through them.

7 Q. No, I, I don't, I'm, I'm basically, I'm not asking
8 me to read me your Report. I'm, I'm asking you to,
9 I mean I've read your Report. I'm asking you to
10 offer those opinions without reading them for me.
11 And it looks like you're looking at a computer
12 screen is that what you're looking at, a copy of
13 your --

14 A. Yeah, I have it --

15 Q. -- Report?

16 A. -- open. I'll, I'll look down. Where Cassi Rhoads
17 is concerned, both Medical Staff and Detention
18 Staff were aware that she had medical needs. They
19 saw her multiple times from early May 2019, to June
20 the 2nd, 2019. She had several medical issues as I
21 just said. She was seen by Medical multiple times.
22 And, she, she was not getting any better and there
23 was a requirement for her to, to receive treatment,
24 they allowed that to get worse and caused harm to
25 her.

1 Q. So, back to my original question. So, what is the,
2 the professional opinion that you're intending to
3 offer in this Case?

4 A. Well, my professional opinion is that both Medical
5 and, and Corrections Staff, or Detention Staff had
6 an obligation to provide for her care. In doing
7 so, they, they didn't document everything that they
8 seen. They, they withheld the Standard of Care
9 that was needed.

10 Q. Any other opinions?

11 A. I'm trying to think. It is all based around that
12 conclusion, or that, that opinion that she did not
13 receive proper healthcare. They were warned,
14 Corrections Staff, Detention Staff was told that
15 she was self-harming. The Correctional Staff
16 reputed that. They reported that up to their
17 Command Staff. Telling them that she was not
18 self-harming and that she needed to go to the
19 hospital for, for additional treatment, and that
20 was all ignored.

21 Q. All right. Let me, I'll come back to that in a
22 second and break that down a little bit. You
23 provided a Report for Federal Court; did you not?

24 A. Yes, sir.

25 Q. All right. And, the Report that was provided to

1 me, we don't need to make it an Exhibit, but it's
2 Bates Number Rhoads Land 001 through 0018 and
3 apparently it was signed by you on September 18th,
4 2022; is that correct?

5 A. That's correct.

6 Q. All right. And, did you receive any type of
7 assistance from anyone in preparing this Report?

8 A. The Report was prepared by me. It was based off of
9 the material that was provided to me. I submitted
10 it for editing and things of that nature and then
11 the Final Draft of my Report, I approved and
12 signed.

13 Q. When you say you submitted it for editing, who did
14 you submit it to for editing?

15 A. Well, and I may have misspoke on that. I submitted
16 it for more of a review. And if there was material
17 that, with, with all Reports that I do, I submit a
18 Draft Report. If there's things that I may have
19 not documented and the Attorneys believes that
20 would be relevant. They may submit something back
21 to me, asking me to, to look at such and such and,
22 possibly include that in my Report.

23 Q. And, when you say, the Attorney, who are you
24 referring to?

25 A. In this Case, it would have been Mr. McLaughlin.

1 Q. All right. And so, the Draft of your Report, that
2 was submitted to Mr. McLaughlin?

3 A. That is correct.

4 Q. And, were there any type of revisions that he made
5 to your Report?

6 A. That has been quite some time back, almost a year.
7 And with the amount of cases that I have, I, I
8 would suspect that there was suggestions made that
9 I looked at certain things and, and review that for
10 possibly editing but I can't, I can't say with a
11 hundred percent certainty that that is the case.

12 Q. So you do not review your Case File in getting
13 ready for this Deposition?

14 A. Trust me I have reviewed the Case File. I have
15 reviewed the, I went back over and reviewed all of
16 the depositions of the people that have been
17 deposed prior to this. I have reviewed the Minimum
18 Standards for South Carolina. I have reviewed my
19 Report. I've reviewed countless documents. I
20 probably spent, over the last three days, four
21 days, probably 30 hours in review.

22 Q. All right. And, in reviewing your Case File, did
23 you review any communications between yourself and
24 Plaintiff's Counsel?

25 A. I did not.

1 Q. Okay. Are you aware of any communications between
2 yourself and Plaintiff's Counsel that are in your
3 Case File?

4 A. I don't believe I have any of the emails saved in
5 my, in my Case File.

6 Q. Did you produce any emails in response to our
7 Subpoena?

8 A. No, because I normally don't keep them. Let's see.
9 I am not seeing any communications that I, that I
10 kept.

11 Q. And, why do you not keep communications?

12 A. I just never have.

13 Q. Well, that's not much of a reason. Why do you not
14 do it? Why have you never have then?

15 A. Well, going back to storage space and other things
16 of that nature and if I, if I do it on one case, I
17 need to do it on all of them and it would be added
18 expenditures and things of that nature. So, I, I
19 get a lot of emails and, and trying to remember
20 each and every one of them to, to put them into the
21 Case File. I just, I had elected not to do that.

22 Q. How is that you've maintained your files? Do you
23 maintain them in paper form or electronically?

24 A. Both.

25 Q. Okay. And, you believe that having to maintain

1 emails is gonna be an increase in your electronic
2 capacity?

3 A. Well, I know that it'll take up a lot of space.

4 Q. You think emails takes up a lot of space?

5 A. That's just my, that's my opinion. I, if I'm wrong
6 about doing that and it's brought to my attention
7 then I may, I may change the way that I do it, but
8 I get a lot of emails every day. And trying to
9 open up files and put them in there. It may not
10 take up a whole lot of space but it's gonna take up
11 a whole lot of, a whole lot of time.

12 Q. All right. And as, but as far as, as far as the
13 Rhoads Case is concerned, there were communications
14 between yourself and Mr. McLaughlin that you did
15 not retain; is that correct?

16 A. That is correct.

17 Q. And the, did those emails include an exchange of
18 comments regarding the Initial Draft of your
19 Report?

20 A. At this date I couldn't tell you that.

21 Q. Did you retain any copies of any type of revisions
22 or suggestions that he had made as far as revisions
23 or additions to your Report?

24 A. No, the only thing I maintained --

25 Q. -- did you maintain any previous Drafts of the

1 Reports?

2 A. I will, when I send a Draft out to an Attorney,
3 when I make corrections to it, I will save that as
4 a, my next Draft. And then when the Final Draft is
5 made, I will, I will replace the, the previous one.

6 Q. Are there any communications between yourself and
7 Plaintiff's Counsel that are, that were retained by
8 you and included in this Subpoena Response?

9 A. I don't believe there is any that was retained that
10 was put into my Subpoena Response. I have a few
11 emails from Mr. McLaughlin in the last day or two,
12 and that is like the Zoom Link, the Subpoena,
13 things of that nature.

14 Q. All right. Well, let me go back to where, where we
15 was ?

16 A. May, if, if we may, could I take about a five
17 minute break.

18 Q. Yeah, that will be fine. Just to, and, and let's
19 go off the record.

20 (Whereupon, a break was taken from
21 11:58 a.m. to 11:58 a.m., the following
22 proceedings were:)

23 BY MR. LINDEMANN:

24 Q. Mr. Land, I received last week an Affidavit that
25 was Filed in, in Federal Court, are you familiar

1 Q. -- destroyed those emails?

2 A. I have the one where I sent it to, the final copy,
3 the signed copy of it.

4 Q. All right. Have any emails where drafts were
5 exchanged and comments were made back and forth
6 between yourself and Plaintiff's Counsel?

7 A. No. The only one I see is the one where I sent it
8 along with my Disclosure of, of Cases.

9 Q. And what's the date of that email?

10 A. 9/11/23.

11 Q. Okay. So that is where you sent the actual final
12 signed version?

13 A. That is correct.

14 Q. All right. How about previous emails. Where, well
15 met me ask you this? Were there email
16 communications between yourself and Plaintiff's
17 Counsel prior to September 11, 2023, relative to
18 that Affidavit?

19 A. I'm sure there would probably be one. But, I don't
20 see it.

21 Q. And that's because you've already deleted it?

22 A. That would be correct.

23 Q. Have you ever been qualified, found qualified by a
24 Court, in any State, State or Federal Court, to
25 testify on local Corrections issues?

1 A. Yes. Be qualified in Alaska. I've been qualified
2 in, in Florida. Let's see. And there was one Jail
3 Case in, well I know that one settled. So I know
4 that I have in Florida and I have in Alaska.

5 Q. All right. And Alaska, was that State or Federal
6 Court?

7 A. State Court.

8 Q. And, that was on a Local Correctional Facility
9 issue?

10 A. Well, Alaska is a little different. The Facility
11 is run, or all the Jails in, in Alaska are run by
12 the Alaska Department of Corrections. They house
13 both Pre-Trial Detainees and Sentenced Inmates.

14 Q. The case that you had in Alaska, did that involve a
15 Pre-Trial Detainee or a Sentenced Inmate?

16 A. Pre-Trial.

17 Q. And was it a Medical related issue?

18 A. Yes.

19 Q. In Florida, how many times have you been found
20 qualified by, by a Court? Again, on Local
21 Detention issues.

22 A. That was one time.

23 Q. Do you recall the name of the case?

24 A. Not right offhand.

25 Q. Was it a Medical related issue?

1 A. Well, no, it was not. It was a, it was a Use of
2 Force Incident.

3 Q. What percentage of your Expert Witness work is on
4 behalf of Plaintiffs versus on behalf of, Law
5 Enforcement or Corrections?

6 A. I have only represented one Defendant, and that was
7 in a Prison Transport Case by a private vendor.

8 Q. And what State was that?

9 A. The Suit was Filed in Florida. The Defendant was a
10 Tennessee Transport Company.

11 Q. So with the exception of that one case, all of the
12 remainder of your work has been for, on the
13 Plaintiff's side?

14 A. That's correct. I have, I have offered my services
15 to the Florida Sheriff's Association. I've offered
16 it to the Florida Department of Corrections. To
17 the Tennessee Department of Corrections. And, I
18 have not, I have not received any request to assist
19 any of those.

20 Q. Do you know why that is?

21 A. I can speculate. Now, the Florida Sheriff's
22 Association, I've had one Attorney, two Attorneys,
23 excuse me, that have spoken with me and, and, and
24 told me that, if they had any more cases that they
25 would definitely be calling me. I don't know if

1 Providers with Southern Health Partners?

2 A. Yes, the Nursing Staff. And on one occasion she
3 was seen by Dr. Williams as well.

4 Q. Are you intending to offer opinions regarding the
5 quality of the Medical Care that she received?

6 A. I'm not gonna say that, I'm gonna offer an opinion
7 on the, the quality of care, but the lack thereof.
8 Because even the Nurses admit that they did not
9 document the size. They did not measure the size
10 of it. They don't know if it was growing as the
11 problem continued over, what about a 21, 25 day
12 period, and that they were claiming that she was
13 self-harming. I believe that was Nurse Donna that
14 made that Allegation that Ms. Rhoads was
15 self-harming, and there is no indication that she
16 was placed on self, Self-Harm Watch. Which would
17 be a requirement. And Medical Staff and
18 Corrections Staff would then be required to do
19 increase monitoring of her, to see if she was in
20 fact self-harming. And it was very obvious to the
21 Corrections Staff that she was in the care of, or
22 custody of and, and they told Ms. Donna, or, either
23 Ms. Hill or Ms. Kelly. I think it was Ms. Hill,
24 told her that she had seen no indication of
25 self-harm.

1 Q. Is, is there any evidence that any Correctional
2 Officer report, reported self-harming behavior by
3 Cassiopia Rhoads?

4 A. No, there was, the only thing that related to that
5 was, I believe, Ms. Donna telling her that Ms.
6 Rhoads was self-harming. And, and again, I think
7 it's Ms. Hill, I'd have to go back through the
8 notes. But Ms. Hill reputed that, that she had
9 witnessed anything of that nature. And Ms. Hill.

10 Q. Are you -- Go ahead. I'm sorry.

11 A. Ms. Hill and Officer, I'm gonna butcher her name,
12 anyway, when Ms. Hill asked one of the other
13 Officers to, to take a look at Cassidy and see if
14 she seen any signs that suggested that she was
15 self-harming and to let her know if there was
16 anything that she observed out of the normal. Both
17 Officers agreed that she appeared to be very ill.
18 They went to Lieutenant Whitaker with that. And,
19 and told them that she needed to, she needed more
20 Medical Care than what she was getting, that she
21 was very sick. And, I think Ms. Kelly even offered
22 to, to take her to a, to the Hospital on her day
23 off without charging the Department, or the Jail
24 for that service.

25 Q. All right. Let me go back to your original

1 opinion. Your opinion was about documentation of
2 Medical Records, correct?

3 A. Yes. It --

4 Q. All right.

5 A. And the, and the Medical documentation that, that
6 any of the Officers refuted that she was
7 self-harming. I'm not even sure that it's in the
8 Medical documentation that she was self-harming.

9 Q. Mr., Mr. Land, are you intending to offer any
10 opinions that the Correctional Staff again,
11 distinguishing them from the Medical Providers,
12 that the Correctional Staff had any responsibility
13 for the documentation of the Medical Records?

14 A. No, they were not responsible for documenting the
15 Medical Records.

16 Q. Okay. So, when you were critical of the quality of
17 the documentation of the Medical Records, that's
18 directed solely at Southern Health Partners and the
19 Medical Providers; is that correct?

20 A. That's correct.

21 Q. All right. And as far as the Correctional Staff,
22 are you offering any opinions or criticisms as to
23 the, the actions of the, the Security Staff?

24 A. As far as Kelley, Hill, and the other Deputies, I'm
25 drawing a blank on at this moment, they all did

1 what they were suppose to, and they reported it up
2 the Chain of Command up to Lieutenant Whitaker, who
3 would have been the Officer in Charge of, of the
4 shift. Now as far as Whitaker is concerned, I have
5 an opinion that, that she, she failed to provide
6 the necessary care for Ms. Rhoads.

7 Q. And, what do you base that on?

8 A. Well, in my profession, we were told, if we knew
9 something was wrong and we didn't do anything to
10 try and help that person, then we were liable. So
11 is knowing better and not doing it, is where you
12 get yourself in, into a situation. And then --

13 Q. Well let, let, let me, let me, let me drill down on
14 that. So, when you say, you were told, what are
15 you basing that on? Who told you that that's,
16 that's the Law?

17 A. Well, in, in all of my years as a Law Enforcement
18 and Correctional Officer, you were, you were told
19 about your Constitutional duty. That is in your
20 yearly training. That is in your initial training.
21 And you're warned about not providing the
22 necessities to a person that require it. And --

23 Q. You --

24 A. -- knowing better, and, and, and doing, and, and
25 failing to do it that you're putting yourself in a

1 position of Civil Liability.

2 Q. Do you believe that the Law requires a Correctional
3 Officer to override the Medical decisions made by
4 Medical Personnel when that Officer is aware that
5 Medical Care is being provided?

6 A. Well, yes. I believe that, that they are held to
7 that standard because part of the Corrections
8 Officer's duty is Care, Custody, Control,
9 Supervision, and Accountability of Inmates in their
10 Custody.

11 Q. And what's the base --

12 A. And --

13 Q. -- what's the basis for your belief that a
14 Correctional Officer is expected by Law to override
15 the decisions made by Medical Personnel?

16 A. Well, one, personally having done it on more than
17 one occasion. The fact that, even to Southern
18 Health Partners Contract, Southern Health Partners
19 documentation of duties and things of that nature.
20 It tells that the Correction Officer is supposed to
21 be the eyes and the ears of the Medical Department.
22 And, that is signed off on by the Sheriff and is
23 signed off on by the Chief Deputy over the Jail.

24 Q. Is, is there any evidence, sir, that the
25 Correctional Staff at the, Aiken County Detention

1 And again, whether they had access to it or not,
2 are you aware of anyone who actually did review the
3 Requests for Medical Care, anyone in the
4 Correctional Staff?

5 A. Yes.

6 Q. And who are you referring to?

7 A. That would be Deputy Kelley. Who actually entered
8 one of the Requests for Sick Call.

9 Q. Okay. Deputy Kelley assisted the Plaintiff in
10 entering a Kiosk Request, correct?

11 A. That was her testimony is that, Ms. Rhoads was not
12 able to, to go to the Kiosk. I believe that she
13 said she had not been able to get, get out of bed
14 for a period of time. That she dictated, that Ms.
15 Rhoads had dictated her request, and Ms. Kelley
16 actually went into the, to the Kiosk and entered
17 the information.

18 Q. My question was a little different than that, Mr.
19 Land. Are you aware of any member of the
20 Correctional Staff who actually reviewed Requests
21 for Medical Care after they were submitted to
22 Medical?

23 A. Okay. I misunderstood that last part. I do not
24 know that to be the case.

25 Q. All right. Are there any other opinions that you

1 intend to give regarding the actions or inactions
2 of the Correctional Staff at Aiken County Detention
3 Center that we have not already discussed?

4 A. No, sir. Or the, the only other thing I could say
5 is that have not read my actual opinions here today
6 to make sure that I've covered it all, but it is
7 covered in my Report.

8 Q. Well, you've, you said, how many hours did you
9 spend preparing for this Deposition?

10 A. I am certain that I have read for pretty close to
11 30 hours prior to.

12 Q. All right. And, you're not able, without referring
13 to your Report, to be able to testify as to the
14 opinions that you have formulated with respect to
15 these two Lawsuits?

16 A. Well, excuse me, without looking at my Report, I
17 wouldn't. I, I would prefer to look at my Report
18 and make sure that I have disclosed everything.

19 Q. But the answer to my question is no, that you can't
20 testify after 30 hours of preparation as to the
21 opinions you've formulated with respect to these
22 two Lawsuits without referring to Notes or your
23 Report?

24 A. Well --

25 Q. Is that your testimony?

1 A. Well, you asked me not to, to actually look at my
2 Report and, and testify from it, so it's possible
3 that I had not said everything related to that, and
4 I would say that my Report is accurate and that it
5 describes the opinions that, that I have
6 formulated.

7 Q. Well, let me ask one, one more time. What, are
8 there any additional opinions that you have not
9 already addressed with me in this Deposition,
10 regarding the Correctional Staff?

11 A. I don't believe so.

12 Q. When do you, what are you, your charges with
13 respect to this Litigation?

14 A. I charge \$275 an hour. That's what I contracted on
15 this one. \$150 an hour for travel. Deposition and
16 Court testimony, \$350 an hour.

17 Q. Are you aware, I think you testified earlier that,
18 that Ms. Rhoads was seen frequently by Medical
19 Providers. Specifically during her stay at the
20 Detention Center from May 3rd, 2019, to June 2nd,
21 2019. Do you know how many specific Medical
22 encounters she had?

23 A. I do have that written down. Bare with me for just
24 a second here. I believe that, the first request,
25 I believe, was submitted on the seventh. And she

1 Partners?

2 A. Correct. Not at this moment. Other than anything
3 that's documented in my Report.

4 Q. And you're not aware as you sit here of anything
5 documented in your Report as far as an ACA
6 Violation, other than the, what you just said about
7 an After Incident Investigation.

8 A. There are certainly things in the ACA that talks
9 about Healthcare and responsibilities and things of
10 that nature. I would have to review my Report to,
11 to offer anything further on that.

12 Q. You would agree with me the ACA does not include a
13 standard that authorizes Correctional Officers to
14 override the Medical decision making of Medical
15 Providers when they are aware that Medical Care is
16 being provided; you agree with that, correct?

17 A. I don't believe that there's anything in there that
18 specifically says that Officers should override
19 Medical Personnel. However, Best Practices, and I
20 am, and I'll be more than happy to give you more
21 than one example of when a Corrections Officer, or
22 an OIC, or some of the Correctional Administration
23 should do things of that nature.

24 Q. So, there's a different between what you're
25 referring to as ACA Standards and what you're

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
 Cassiopia Rhoads,	)	
	)	Civil Action No. 2020-CP-02-2238
Plaintiff,	)	
	)	
v.	)	
	)	
Southern Health Partners, Inc.;	)	DEFENDANT HUNT'S
Robert J. Williams, M.D.; Michael E. Hunt,	)	PRE-TRIAL BRIEF
in his official and representative capacity as	)	
Aiken County Sheriff; and Aiken County,	)	
operating as the Aiken County	)	
Detention Center,	)	
	)	
Defendants.	)	
_____	)	

The Defendants Michael E. Hunt, in his official and representative capacity as Aiken County Sheriff, hereby submits this Pre-Trial Brief in accordance with Rule 16(c), SCRPC.

1. A concise, non-argumentative statement of the facts of the case.

The Plaintiff Cassiopia Rhoads was a detainee at the Aiken County Detention Center (ACDC) from May 3, 2019 through June 2, 2019. On June 2, 2019, she was taken to the Aiken Regional Medical Center for treatment of an abscess that developed on the upper right side of her head.

The Plaintiff, who was a severe heroin and meth drug addict, had fallen prior to her arrest and incarceration on May 3, 2019. The medical screening done at intake at ACDC does not reflect any head injuries. The Plaintiff denies having any type of visible injuries to her head at intake, and as a result, there is no claim that ACDC personnel were grossly negligent in the intake process. By May 7, 2019, the Plaintiff's medical records first mentioned a "knot" on the right side of her head. The Plaintiff was going through heroin detox for the first ten days of her

incarceration and had contact with nurses on a daily basis during that time. In the next couple of weeks, the Plaintiff began to complain about the side of her head and she was seen on numerous occasions by medical personnel employed by the medical contractor, Southern Health Partners (SHP) which is a co-Defendant in this litigation. The Plaintiff was generally treated with pain medication and antibiotics. In total, over the course of the 30-day incarceration, the Plaintiff had in excess of twenty encounters with medical personnel. On May 23, 2019, the Plaintiff was examined by Dr. Robert Williams who diagnosed a small hematoma to the right scalp and directed that she receive warm compresses and continued pain medication. On May 24, 2019, the Plaintiff was charged with “barricading” for her refusal to follow orders to return to her cell. She was moved to a B-max cell. This is referred to as the “barricading incident” in the litigation, and the Plaintiff claims that she was making a “peaceful protest” to be taken to the hospital. ACDC records do not reflect any request for medical attention in association with that incident. Notably, the Plaintiff had just been seen by Dr. Williams the day before, and there was no change in her condition.

On May 28, 2019, there was an emergency call to medical because the Plaintiff had fainted. She was checked by Nurse Donna Wright and was cleared to remain in B-Pod. Nurse Wright did follow up with Dr. Williams following that incident, and Dr. Williams directed that a CT scan be ordered. The CT Scan was scheduled for June 5, 2019. On June 2, 2019, there was an additional incident in the mid-afternoon where the Plaintiff collapsed. She was checked again by Nurse Wright who cleared her to stay in B-Pod. A few hours later, there was an additional emergency where the Plaintiff began vomiting. At that point, the Plaintiff was transported at ARMC at the direction of SHP medical personnel.

The Plaintiff was ultimately diagnosed with a subgaleal abscess, an epidural abscess, and osteomyelitis. She underwent surgery to remove the abscess.

2. An objective statement of the facts in controversy.

The Plaintiff has alleged a cause of action for gross negligence against the Defendant Hunt in his official capacity. The parties do not appear to agree on the duty of care owed under South Carolina law, which presents a question of law for the Court and will impact the relevance of much of the evidence that may be presented in the case. Accordingly, the primary issues for trial include: (1) did the Defendant Hunt owe a legal duty of care for their non-medically-trained detention officers and security staff to second-guess or override the medical decision-making of the clinicians (SHP doctor and nurses) who were providing care and treatment to the Plaintiff for her medical conditions and to seek a different or alternative course of care or treatment; (2) did the Defendant's conduct rise to the level of gross negligence if a duty of care did exist as claimed; (3) can the Plaintiff prove legal foreseeability; and (4) can the Plaintiff prove causation-in-fact. There is also the additional defense of comparative negligence. There are also issues of fact in controversy regarding the recoverable damages and proximate cause for such damages.

3. The legal issues involved. This includes the law applicable to the cause of action and the defense.

The Defendant Hunt submits the following legal arguments in support of its pending Motion for Summary Judgment and potential directed verdict motions:

Legal Duty of Care

As for the elements of proving a claim for gross negligence, the Plaintiff must first establish that the Defendant owed a legal duty of care. It is well settled that "[w]hether the law recognizes a particular duty is an issue of law to be determined by the court." *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47, 49 (1996). The Plaintiff alleges that the Defendant Hunt owed a legal duty of care for their non-medically-trained detention officers and security staff to second-guess or override the medical decision-making of the clinicians (SHP doctor and nurses) who are providing care and treatment to the Plaintiff for her medical conditions and to seek a different or

alternative course of care or treatment. That is a question of law for this Court to decide.

In her memorandum in opposition to the Defendant Hunt's motion for summary judgment, the Plaintiff points to two statutes as creating a legal of duty of care, specifically Section 24-5-10 and Section 15-78-60(25). The Plaintiff is mistaken in both respects.

S.C. Code Ann. § 24-5-10

The Plaintiff contends that the Defendant Hunt is liable for the medical care received by detainees at the Aiken County Detention Center based upon Section 24-5-10, which states: "The sheriff shall have custody of the jail in his county and, if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, *according to law*." (Emphasis added). Notably, the Plaintiff never pled Section 24-5-10 as a basis for liability in her Complaint. Nonetheless, the Plaintiff's claim against Defendant Hunt based on Section 24-5-10 is barred by operation of the public duty rule, as is evident by the inclusion of the "according to law" language in Section 24-5-10. As the Supreme Court has explained, "[t]he public duty rule presumes statutes which create or define the duties of a public office have the essential purpose of providing for the structure and operation of government or for securing the general welfare and safety of the public. Such statutes create no duty of care towards individual members of the general public." *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579, 582 (2001). A plaintiff, therefore, has no right of action against a public officer or entity for breach of a duty owing to the public only, even though such plaintiff may have been injured by the breach of that public duty. *Summers v. Harrison Construction*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). "The public duty rule is a negative defense which denies an essential element of the plaintiff's cause of action: the existence of a duty of care to the individual plaintiff." *Arthurs*, 551 S.E.2d at 582. In other words, the public duty rule "is a rule of statutory construction, that is, a means of determining

whether the legislative body that enacted the statute or ordinance intended to create a private cause of action for its breach." *Id.* Hence, as the "according to law" language makes clear, Section 24-5-10 was not intended by the General Assembly to establish a specific duty of care owed by the Defendant Hunt and for which the Sheriff may be held liable under a negligence theory.

Moreover, Section 24-5-10 does not recognize or create a legal duty of care for non-medically-trained detention officers and security staff to second-guess or override the medical decision-making of the clinicians (SHP doctor and nurses) who are providing care and treatment to the Plaintiff for her medical conditions and seek a different or alternative course of care or treatment.

Finally, it is noteworthy that the liability provision of Section 24-5-10 – the language stating that "the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law" – pre-dates the Tort Claims Act and the waiver of sovereign immunity. The Defendant Hunt contends that the liability provision in S.C. Code Ann. § 24-5-10 was impliedly repealed by the adoption of the Tort Claims Act, which reinstated sovereign immunity then waived it with exceptions. In *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), the Supreme Court recognized that "exceptions [to the doctrine of sovereign immunity] that have been carved out by the legislature reflect a scattered patchwork of sovereign liability that lack continuity, logic or fairness." 329 S.E.2d at 742. S.C. Code Ann. § 24-5-10 is one example of the statutorily created "scattered patchwork of sovereign liability" referred to in *McCall*.

The Defendant Hunt's position is fully supported by well-settled case law. For instance, in *Robinson v. Metts*, 86 F.Supp.2d 557 (D.S.C. 1997), the federal district court ruled a similar sheriff's liability statute had been impliedly waived by the enactment of the Tort Claims Act. Section 23-13-10 stated, in pertinent part: "The sheriff shall in all cases be answerable for neglect

of duty or misconduct in office of any deputy.” S.C. Code Ann. § 23-13-10. However, in *Robinson*, the district court ruled that “§ 23-13-10 is not applicable to the present case because the statute was been repealed by implication with the enactment of the South Carolina Tort Claims Act.” 86 F.Supp.2d at 564. This Court in *Robinson* further reasoned that “if § 23-13-10 were to allow a cause of action against the Sheriff in the present case, it would be in direct conflict with the SCTCA.” *Id.*

By way of background, in response to the Supreme Court's abrogation of sovereign immunity in *McCall*, the General Assembly enacted the Tort Claims Act in 1986. With the Act, the legislature first reinstated sovereign immunity in full. Section 15-78-20(b) of the Tort Claims Act provides that “[t]he General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, *immunity from liability and suit for any tort except as waived by this chapter.*” S.C. Code Ann. § 15-78-20(b). (Emphasis added). The legislature then proceeded to set forth specific waivers and limitations on sovereign immunity as reinstated.

This historical background has been best summarized by the Supreme Court in its 1995 decision in *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995). The Supreme Court wrote:

Historically, all persons were barred from bringing tort claims against governmental entities. The doctrine of sovereign immunity began to come under fire as being “archaic and outmoded.” The legislature subsequently passed various exceptions to the doctrine. We noted, however, the exceptions reflected “a scattered patchwork of sovereign liability that lack[ed] continuity, logic or fairness.” Thus, in *McCall* we abolished the doctrine of sovereign immunity. In response to our decision in *McCall*, the legislature implemented a comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity. The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity.

455 S.E.2d at 690. (Citations omitted). In effect, as the Supreme Court summarizes in *Murphy*, in 1986, absolute sovereign immunity was restored by the General Assembly. That had the important effect of eliminating the "scattered patchwork of sovereign liability" that had been created by prior legislation passed to limit or ameliorate the effects of absolute sovereign immunity. The General Assembly then had a "clean slate" from that point forward on which to legislate the waivers and limitations to be placed on sovereign immunity. As of 1986, absolute sovereign immunity was no longer the law, but neither was the "scattered patchwork of sovereign liability" including the statute at issue, S.C. Code Ann. § 24-5-10. That "scattered patchwork" had been repealed.

The Supreme Court has explained that "[a] later statute on a given subject, not repealing an earlier one in terms, is not to be taken as a repeal by implication, unless it is plainly repugnant to the former, or unless it fully embraces the whole subject matter." *State v. Hood*, 181 S.C. 488, 188 S.E. 134, 136 (1936). There can be no question that the Tort Claims Act "fully embraces the whole subject matter" of governmental liability. The history set forth in *Murphy* shows that the Tort Claims Act was intended to reinstate sovereign immunity in full thereby eliminating the "scattered patchwork of sovereign liability" that preexisted it, which includes the liability provision in S.C. Code Ann. § 24-5-10. By fully embracing the whole subject matter, statutes including the liability provision in S.C. Code Ann. § 24-5-10 were impliedly repealed. This is likewise evident from the express language of the Tort Claims Act providing that "[n]otwithstanding any provision of law, this chapter, the South Carolina Tort Claims Act, is the *exclusive and sole remedy* for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200.

(Emphasis added).¹ The use of phrase "notwithstanding any provision of law" compels the conclusion that the Tort Claims Act is the exclusive and sole remedy regardless of any other provision of law, which would necessarily include the liability provision in S.C. Code Ann. § 24-5-10.

In addition to the *Robinson* case as discussed above, the federal courts have specifically looked at whether the Tort Claims Act impliedly repealed part of the "scattered patchwork of sovereign liability" referred to in *McCall*. Of particular significance is *Sadek v. Lambert*, 2014 WL 117671 (D.S.C. 2014), in which Judge Terry Wooten adopted a magistrate judge's report and agreed with the very analysis offered by the Defendant Hunt in the present case, except that Judge Wooten was addressing the implied repeal of S.C. Code Ann. § 16-5-60. Judge Wooten concluded that "the Tort Claims Act impliedly repealed § 16-5-60." 2014 WL 117671, *3. The federal court determined that S.C. Code Ann. § 16-5-60 is irreconcilable with the Tort Claims Act. The court recognized that "the Tort Claims Act expressly and completely restores sovereign immunity" which is "incapable of reconciliation with § 16-5-60's unlimited waiver of a county's immunity from suit based on wrongful acts of third parties." *Id.* Judge Wooten also explained that "the Tort Claims Act provides for limited liability of a governmental entity for the wrongdoing of its own employees whereas § 16-5-60 contrarily provides for unlimited and strict liability of a county for the acts of others. Such a result is contrary to both the plain language of the Tort Claims Act and the recorded legislative intent of the Act." *Id.* Ultimately, the federal court ruled "that § 16-5-60, enacted to provide strict liability of counties for constitutional torts committed by others, is repugnant to and therefore was impliedly repealed by the South Carolina

¹ Similarly, S.C. Code Ann. § 15-78-20(b) states that the Tort Claims Act is the "exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." S.C. Code Ann. § 15-78-20(b). The exceptions as set forth in S.C. Code Ann. § 15-78-70(b) have no applicability here.

Tort Claims Act's complete restoration of sovereign immunity and limited waiver for certain torts committed by governmental employees. The plaintiff's cause of action against York County under § 16-5-60 therefore fails to state a claim upon which relief can be granted." 2014 WL 117671, *6.²

As reflected by Judge Wooten's analysis in *Sadek* and Judge Duffy's analysis in *Robinson*, the position taken by the Defendant Hunt in the case at bar is a correct one. With the adoption of the Tort Claims Act and its restoration of sovereign immunity in full followed by a limited waiver, the "scattered patchwork of sovereign liability" from pre-Tort Claims Act times was wiped clean. The liability provision in S.C. Code Ann. § 24-5-10, as part of that archaic "scattered patchwork," was impliedly repealed. As S.C. Code Ann. § 15-78-200 makes clear with its use of phrase "notwithstanding any provision of law," the Tort Claims Act is the exclusive and sole remedy for any tort committed by a governmental entity and the liability provision in S.C. Code Ann. § 24-5-10 cannot co-exist with the Tort Claims Act by providing a different tort claim against the Defendant Hunt.

S.C. Code Ann. § 15-78-60(25)

The Plaintiff also relies on Section 15-78-60(25), which is an immunity provision in the Tort Claims Act, as creating a legal duty of care. That is clearly erroneous. In *Summers v. Harrison Construction*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989), the Court of Appeals held that "[t]he South Carolina Tort Claims Act does not create causes of action. Rather, it removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." 381 S.E.2d at 495. In *Arthurs*, the Supreme Court agreed that "[t]he TCA does not create

² Other federal judges have addressed the same issue and agree with Judge Wooten's analysis. See, *Doe v. Charleston County Sheriff's Office*, 2018 WL 4224063 (D.S.C. 2018) (Judge Richard Gergel); *Doe v. McGowan*, 2017 WL 659938 (D.S.C. 2017) (Judge Richard Gergel); *Mial v. Charleston County Sheriff's Department*, 2018 WL 4725288, adopted in 2018 WL 4701366 (D.S.C. 2018) (Judge Joseph F. Anderson, Jr.).

causes of action, but only removes the common law bar of sovereign immunity in certain circumstances.” *Arthurs*, 551 S.E.2d at 583. Thus, the Tort Claims Act, which does not create causes of action, certainly does not create nor establish any legal duty of care actionable under South Carolina law.

Other Bases for a Legal Duty

Remarkably, the Plaintiff also claims that the legal duty of care is created by both federal and state constitutional law. However, a tort duty of care is not established by constitutional law. To the extent that the Plaintiff is pursuing a constitutional duty of care against the Defendant Hunt, that has not been pled, and if actually pled in this action, it would be immediately removed to federal court because the Plaintiff already has a Fourteenth Amendment action pending in federal court, one in which she has sued five of the ACDC officers but not Sheriff Hunt officially. Notably, Sheriff Hunt officially is not a “person” amenable to suit under 42 U.S.C. § 1983.³

Likewise, the Plaintiff cannot rely on the South Carolina Constitution, which has also not been pled in the Plaintiff’s Complaint. However, even if the duty of care is provided in the South Carolina, which is denied, the Court of Appeals has already held that “the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute.” *Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255, 261 (Ct. App. 2019) (certiorari denied on May 28, 2021).⁴ Thus, the Plaintiff is precluded from recovering money damages for the alleged violation of the South Carolina Constitution.

³ The United States Supreme Court has clearly held that neither the state, nor a state official acting in his official capacity, are “persons” who may be sued under Section 1983. *Will v. Michigan State Police*, 491 U.S. 58 (1989). *See also, Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992) (finding that a sheriff in South Carolina is a state official and not a “person” under § 1983).

⁴ A petition for writ of certiorari was also denied by the United States Supreme Court on January 10, 2022. *See*, Orders List dated January 10, 2022 for United States Supreme Court.

Moreover, the Plaintiff has provided the Court with an incorrect explanation of the applicable federal law. The federal standard is deliberate indifference to serious medical needs. In *Miltier v. Beorn*, 896 F.2d 848 (4th Cir. 1990), the Fourth Circuit holds that a prisoner must show that such corrections officials (such as the ACDC officers) were personally involved with a denial of treatment, deliberately interfered with a prison physician's treatment, or tacitly authorized or were indifferent to the prison physician's misconduct. The Fourth Circuit has similarly explained that prison officials who are untrained in medicine are entitled to rely on the judgment of medical professionals. *See, Iko v. Shreve*, 535 F.3d 225, 242 (4th Cir. 2008).

Yet, the Plaintiff's case is premised on her argument that the ACDC officers, all non-medically trained personnel, should have overridden the medical decision-making of the SHP medical personnel and sought a different course of treatment for the Plaintiff – despite the fact that the Plaintiff was continuing to receive medical care from the SHP personnel. Not surprisingly, the Plaintiff has not offered a single case – from the Fourth Circuit or any other jurisdiction – where a court has ruled that corrections officers, knowing that an inmate is receiving medical treatment, should override the medical decision-making of the medical personnel and seek other care for the inmate.

In contrast, there are numerous federal cases that support the Defendant Hunt's position including the following additional authorities:

Pulliam v. Superintendent of Hoke Corrections, 2007 WL 4180743, *6 (M.D.N.C. 2007):

“The bottom line is that prison officials without medical training are responsible for seeing that prisoners are attended to by medical professionals. ***They are not responsible for determining the course of treatment or for overruling the opinions of those professionals.*** Here, rightly or wrongly, the medical professionals determined that Plaintiff's symptoms were not caused by asbestos exposure. It was not Webb, Groff, or Jacob's job to overrule them. Plaintiff has not stated any claim for relief against them.” (Emphasis added).

Lewis v. Hoke County, 2020 WL 5213929, *7 (M.D.N.C. 2020), *affirmed* 2022 WL 1641282 (4th Cir. 2022):

“It is also well settled that negligence or medical malpractice are not sufficient to establish deliberate indifference. *Estelle*, 429 U.S. at 105-06. “The bottom line is that prison officials without medical training are responsible for seeing that prisoners are attended to by medical professionals. They are not responsible for determining the course of treatment or for overruling the opinions of those professionals.” *Pulliam v. Super. of Hoke Correct.*, 1:05CV1000, 2007 WL 4180743, at *6 (M.D.N.C. Nov. 20, 2007) (unpublished).”

Tyson v. Gay, 2022 WL 15570697, *10 (E.D.N.C. 2022):

“Even if Gay actually had the authority to obtain outside medical care, because Gay is not alleged to be a medical provider, Gay generally is entitled to rely upon Nurse McLean's medical opinion. See *Iko*, 535 F.3d at 242 (“If a prisoner is under the care of medical experts ... a nonmedical prison official will generally be justified in believing that the prisoner is in capable hands.” (quotation omitted)); see also *Lewis v. Hoke Cnty.*, No. 1:17CV987, 2020 WL 5213929, at *7 (M.D.N.C. Sept. 1, 2020) (“[P]rison officials without medical training are responsible for seeing that prisoners are attended to by medical professionals. They are not responsible for determining the course of treatment or for overruling the opinions of those professionals.” (citation omitted)), report and recommendation adopted, No. 1:17CV987, 2022 WL 292928 (M.D.N.C. Feb. 1, 2022), *aff'd*, No. 22-6171, 2022 WL 1641282 (4th Cir. May 24, 2022).”

McCann v. Ogle County, 909 F.3d 881, 887-888 (7th Cir. 2018):

“Applying the same analysis to the Ogle County defendants, including the claims against Sheriff Beitel and Captain Kerwin, we reach the same conclusion. Neither individual was responsible for providing medical care to McCann. Rather, Sheriff Beitel and Captain Kerwin reasonably relied on Dr. Cullinan to determine the proper course of care for McCann and themselves took no steps to contribute to or detract from the treatment McCann received. The law allowed these officials to rely on Dr. Cullinan in this way. See *Berry*, 604 F.3d at 440 (underscoring that the law “encourages non-medical security and administrative personnel ... to defer to the professional medical judgments of the physicians and nurses treating the prisoners in their care without fear of liability for doing so”); see also *Miranda*, 900 F.3d at 343 (applying similar reasoning to reject allegations of inadequate medical care brought against non-medical jail officials). The district court, in short, was right to award summary judgment to these individual defendants.”

Berry v. Peterman, 604 F.3d 435, 440-441 (7th Cir. 2010):

“Berry failed to present sufficient evidence to support a reasonable jury finding that jail administrator Peterman acted with deliberate indifference. As a nonmedical administrator, Peterman was entitled to defer to the judgment of jail health professionals so long as he did not ignore Berry. See *Hayes v. Snyder*, 546 F.3d 516, 527–28 (7th Cir.2008); *Johnson v. Doughty*, 433 F.3d 1001, 1010–11 (7th Cir.2006); *Greeno v. Daley*, 414 F.3d 645, 655–56 (7th Cir.2005); *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir.2004). The undisputed facts show that Peterman met this standard. He consulted with the medical staff, forwarded Berry's concerns to the DOC, and timely responded to Berry's complaints. That he took no further action cannot be seen as

deliberate indifference. As a practical matter, it would be unwise to require more of a nonmedical staff member like Peterman. As *Hayes, Johnson, Greeno, Spruill*, and a host of other cases make clear, the law encourages non-medical security and administrative personnel at jails and prisons to defer to the professional medical judgments of the physicians and nurses treating the prisoners in their care without fear of liability for doing so. The district court properly granted summary judgment as to defendant Peterman.”

Spruill v. Giles, 372 F.3d 218, 236 (3d Cir. 2004):

“If a prisoner is under the care of medical experts (Dr. McGlaughlin and Brown in this case), a non-medical prison official will generally be justified in believing that the prisoner is in capable hands. This follows naturally from the division of labor within a prison. Inmate health and safety is promoted by dividing responsibility for various aspects of inmate life among guards, administrators, physicians, and so on. Holding a non-medical prison official liable in a case where a prisoner was under a physician's care would strain this division of labor. Moreover, under such a regime, non-medical officials could even have a perverse incentive *not* to delegate treatment responsibility to the very physicians most likely to be able to help prisoners, for fear of vicarious liability.”

In short, the Plaintiff may not rely on federal or state constitutional law to establish a legal duty of care, but even if she could, there is no federal or state constitutional duty for the ACDC officers to second-guess or override the medical decision-making of the medical clinicians.

Other Claimed Sources for Legal Duty

The Plaintiff also cannot show a legal duty of care based on the Minimum Standards for Local Detention Facilities in South Carolina, which have never been adopted as regulations, do not have the “force of law,” and cannot establish a legal duty. *See, Myrtle Beach Hospital, Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868, 871 (2000) (recognizing “[t]hese Minimum Standards have never been subject to the legislative scrutiny afforded regulations under the Administrative Procedures Act. Instead, they are merely the product of the County Association, adopted by the DOC, an executive agency. They cannot validly be viewed as expressing anything about legislative intent”).⁵

⁵ Under the Administrative Procedures Act (APA) and its supporting case law, the Minimum Standards for Local Detention Facilities in South Carolina expressly do not have the

Likewise, as the Supreme Court has explained, internal policies or guidelines do not establish a legal duty of care, although once a “legal duty” is established as a matter of law, internal policies or guidelines may be treated as evidence to assess the applicable “standard of care.” *See, Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011). In *Doe*, the Supreme Court held that [i]t follows that, if no duty has been established, evidence as to the standard of care is irrelevant. Only when there is a duty would a standard of care need to be established.” 711 S.E.2d at 912. In short, there is a significant difference between a “legal duty of care” and a “standard of care,” and accordingly, internal policies or guidelines cannot be admitted as evidence to establish a legal duty of care.

In sum, there is no legal duty of care, and for that reason, the Plaintiff’s gross negligence claim fails and summary judgment should be granted.

Proof of Gross Negligence

Nonetheless, even if the Court were to hold that there is a legal duty for the ACDC officers to second-guess or override the medical decision-making of the medical clinicians, the jury would need to determine whether the deputies’ conduct rose to the level of gross negligence, i.e., the absence of even slight care. Based on Section 15-78-60(25) of the Tort Claims Act, the Defendant Hunt is not liable for ordinary or simple negligence, and as a result, the Plaintiff is required to prove gross negligence by the Defendant in order to prevail.

Under South Carolina law, “[g]ross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” *Clyburn v. Sumter County School District No. 17*, 317 S.C. 50, 451 S.E.2d 885, 887 (1994). “Negligence is the failure to exercise due care, while gross negligence is the failure

force or effect of law. S.C. Code Ann. § 1-23-10(4) sets forth the APA’s definition of “regulation,” which provides in pertinent part that “[p]olicy or guidance issued by an agency other than in a regulation *does not have the force or effect of law.*” (Emphasis added).

to exercise slight care.” *Id.* Therefore, the key inquiry is whether the conduct at issue – the failure to second-guess or override the medical decision-making of the medical clinicians and take the Plaintiff to the hospital -- constitutes carelessness or mere inadvertence which is the hallmark of simple negligence, as opposed to willfulness and recklessness that qualifies as gross negligence. *See, Sturken v. Richland Oil Co.*, 248 S.C. 355, 150 S.E.2d 341, 343 (1966). *See also, Powell v. Shore*, 242 S.C. 403, 131 S.E.2d 155, 159 (1963) (Supreme Court describes "mere inadvertence" as "simple negligence"); *Jumper v. Goodwin*, 239 S.C. 508, 123 S.E.2d 857, 861 (1962) (same). A finding of gross negligence requires more than proof of an error or mistake. *See, Pilot Industries v. Southern Bell Telephone & Telegraph Co.*, 495 F.Supp. 356, 362 (D.S.C. 1979) ("[p]roof of error or mistake alone has been held to insufficient to make out a case of gross negligence"). As the Supreme Court has explained, the conduct required to demonstrate gross negligence requires a consciousness of wrongdoing. *Rogers v. Florence Printing Co.*, 233 S.C. 567, 106 S.E.2d 258, 264 (1958).

Accordingly, the Plaintiff will be required to show the absence of slight care. The evidence is undisputed that the Plaintiff received medical care, including over twenty medical encounters within a one-month span. The SHP medical encounters are pled in detail in the Plaintiff’s Complaint. *See, Complaint*, ¶¶ 70-88. There are no allegations that the correctional staff denied the Plaintiff medical care at the detention center or denied access to SHP personnel. The SHP witnesses all confirmed in their depositions that ACDC staff did not interfere with the medical care provided or needed nor denied any medical care directed by SHP. Hence, the Plaintiff cannot show the absence of slight care.

Further discussion is needed on the meaning of “gross negligence.” Citing the case of *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281, 283 (2003), the Plaintiff contends that gross negligence is defined as “a relative term and means the absence of care that is necessary

under the circumstances.” *See*, Plaintiff’s Response to Motion for Summary Judgment, p. 8. That is an *incorrect* definition of “gross negligence” and should not be considered by this Court in its analysis in this case.

The Defendant Hunt recognizes that that particular definition of “gross negligence” has been often cited by this State’s appellate courts, but when carefully examined, that definition is actually a definition of *simple or ordinary* negligence and not *gross* negligence. It is a lack of due care or “the absence of care that is necessary under the circumstances” that characterizes simple negligence. In other words, the definition at issue equates with the “absence of due care” and not the absence of slight care.

The Defendant Hunt’s position on this very point is fully supported by an analysis of the origins of that erroneous definition. Specifically, that definition has its origins in the case of *Hicks v. McCandlish*, 221 S.C. 410, 70 S.E.2d 629 (1952), where the Supreme Court wrote:

Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances, but the absence of this care alone, *whether called ‘gross’ or ‘ordinary’ negligence*, does not authorize the jury to give exemplary damages. We have held in many cases that *exemplary damages should not be awarded for mere gross negligence*, and that the element that distinguishes actionable negligence from wilful tort is inadvertence.

70 S.E.2d at 631. (Emphasis added). The definition does not pre-date *Hicks*, and *Hicks* is the case that has been routinely cited in many Tort Claims Act cases for this erroneous definition.⁶ This definition represents a misreading of *Hicks* as is evident when the definition is read in the context of that case. In actuality, that definition describes simple or ordinary negligence, which is the absence of due care, i.e., “the care that is necessary under the circumstances.” Importantly, in *Hicks*, the Supreme Court was commenting on the type of negligence that did not support an

⁶ The *Jinks* case cited by the Plaintiff actually cites to *Hollins v. Richland County School District One*, 310 S.C. 486, 427 S.E.2d 654, 656 (1993), which in turn cited to *Hicks*. This erroneous definition of gross negligence can always be traced back to *Hicks*.

award of punitive damages. The Supreme Court explained that regardless of its name, gross negligence or ordinary negligence, the "absence of care that is necessary under the circumstances" will not support an award of punitive (or exemplary) damages. In fact, the Supreme Court explicitly stated that "exemplary damages should not be awarded for mere gross negligence." 70 S.E.2d at 631. As such, it is clear that the Supreme Court was describing what is today recognized as simple or ordinary negligence because, under today's law, gross negligence will support an award of punitive damages but simple negligence will not. *See, Cohen v. Allendale Coca-Cola Bottling Co.*, 291 S.C. 35, 351 S.E.2d 897, 900 (Ct. App. 1986) ("[s]imple negligence affords no basis for an award of punitive damages"); *Carter v. R.L. Jordan Oil Co., Inc.* 301 S.C. 84, 390 S.E.2d 367 (Ct. App. 1990) (same).

In short, the *Hicks* definition of "gross negligence" is not accurate in current jurisprudence. The "absence of care that is necessary under the circumstances" -- which *Hicks* states will not support an award of punitive damages -- is a definition of simple or ordinary negligence but certainly not gross negligence as those terms are currently used and understood. Thus, in adjudicating the issue of "gross negligence" in this case, the Court is urged to reject the erroneous definition from *Hicks*.

Failure to Train

If there is no legal duty, there is likewise no duty to train. The allegations regarding training should also be dismissed.

In addition, the Plaintiff has presented no evidence, including no expert testimony, that the Defendant Hunt failed to properly train the detention officers as alleged in Paragraph 96(e) of the Complaint or that any alleged failure proximately caused her any harm.

The Plaintiff has not and cannot point to any South Carolina appellate decision recognizing a failure to train cause of action under South Carolina law. As the federal district

court has recognized, "[i]t does not appear that South Carolina recognizes a claim for negligent training separate and apart from one for negligent supervision"). *Gainey v. Kingston Planation*, 2008 WL 706916, *7 (D.S.C. 2008). *See also, Holcombe v. Helena Chemical Co.*, 238 F.Supp.3d 767, 772 (D.S.C. 2017) ("negligent training is merely a specific negligent supervision theory by another name"). The Plaintiff, however, has not brought a negligent supervision claim.

Tort Claim to Enforce a Contract

The Plaintiff alleges that the Defendant Hunt may be held liable for negligence in failing to enforce the terms of the Health Services Agreement with Southern Health Partners dated July 1, 2018. The Plaintiff has failed to cite any authority for the proposition that a contract may be enforced in tort or that a legal duty of care exists to enforce a contract. South Carolina law provides that "[a] mere breach of contract is not actionable as a tort in South Carolina." *Toutman v. Facetglas, Inc.*, 281 S.C. 598, 316 S.E.2d 424, 426 (Ct. App. 1984). In order to enforce the terms of a contract, the proper cause of action would be for breach of contract, and if the Plaintiff claims to be an intended third-party beneficiary of that agreement, which she is not, her cause of action would still sound in contract, not tort.

In addition, even if a tort claim were proper, the Plaintiff has also failed to present any competent, admissible evidence demonstrating that the Defendant Hunt failed to enforce any material contractual terms with Southern Health Partners.

Application of S.C. Code Ann. § 15-78-70(d)

The Plaintiff's tort claim for gross negligence against the Defendant Hunt is barred by operation of Section 15-78-70(d) of the South Carolina Code, as a result of the settlement entered in this action between the Plaintiff and the SHP Defendants. Section 15-78-70(d) states: "A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a

complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.” S.C. Code Ann. § 15-78-70(d).

The Plaintiff has settled this action against the SHP Defendants. That settlement is memorialized by a signed Release, a copy of which has been denied in discovery to the Defendant Hunt but which will be submitted to the Court at the hearing (and will be either entered as a court exhibit or stipulated to). The Defendant Hunt moves for summary judgment on the basis that the Plaintiff’s tort claim is barred by virtue of that settlement. Specifically, the prior settlement in this same civil action constitutes a complete bar to any further action by the Plaintiff against the Defendant Hunt pursuant to Section 15-78-70(d) of the South Carolina Tort Claims Act.

Section 15-78-70(d) was interpreted by the South Carolina Supreme Court in the case of *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002). That case arose out of a motor vehicle accident. The at-fault driver was employed at the time of the accident by Berkeley County although he was driving his personal vehicle. The plaintiff in *Wade* initially sued only the driver individually and reached a settlement. Following that settlement, the plaintiff then sued Berkeley County, which raised Section 15-78-70(d) as a bar to that action. The Supreme Court ultimately concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Therefore, because the settlement with the driver individually was not in an action under the Tort Claims Act, the Supreme Court concluded that Section 15-78-70(d) was not applicable. The Supreme Court emphasized that, when the settlement was reached,

[N]o action [under the Tort Claims Act] has been initiated, nor had any claim been filed, against County. At the time of the settlement, Wade had only initiated an action against Pierce in his individual capacity, not against County as Pierce's employer. Accordingly, at the time Wade and Pierce executed the settlement document, there were no actions "under this chapter." Wade and Pierce's settlement

did not invoke the provisions of § 15-78-70(d) barring Wade from further action against County.

559 S.E.2d at 589.

The Supreme Court in *Wade*, nonetheless, explained the scope of Section 15-78-70(d). The Court held that "to invoke the provisions of § 15-78-70(d), there must be a settlement or judgment in an action under the Act or a settlement of a claim under the Act." 559 S.E.2d at 588-589. Therefore, if there is a settlement in an action brought under the Tort Claims Act, Section 15-78-70(d) may be invoked as a bar to any further proceedings or recovery against a governmental entity arising out of the same occurrence.

That is precisely what has occurred in the present case. There is no dispute that the Plaintiff brought suit simultaneously against all Defendants, including the current Defendants as well as the SHP Defendants, which were named as parties in the original Complaint. The suit was brought pursuant to the Tort Claims Act in that the Plaintiff has asserted the state law tort claim against all Defendants, and as discussed above, the Tort Claims Act is the exclusive means by which the Defendant Hunts and Aiken County, as governmental entities, may be sued in tort. The Plaintiff also cited to the Tort Claims Act in her Complaint. *See* Complaint, ¶¶ 4-5. All of the Defendants, including the SHP Defendants, also cited to Tort Claims Act defenses in their Answers, with the Plaintiff never moving to strike those defenses. *See*, SHP Answer, ¶ 83, Hunt Answer, ¶¶ 51-52, 57. Thus, it is beyond dispute that the Plaintiff brought this action under the Tort Claims Act.

There is likewise no dispute that the Plaintiff settled with the Defendant SHP. A release has been executed, and the SHP Defendants have been or are in the process of being dismissed from this action with prejudice. Unlike in *Wade*, however, there were not separate suits filed. The Plaintiff did not settle with the SHP Defendants and then sue the current Defendants in a separate action. To the contrary, the settlement occurred within the confines and context of this

very Tort Claims Act case. This is precisely the scenario described by the Supreme Court in *Wade* where the bar of Section 15-78-70(d) may be invoked. The Defendant Hunt, therefore, respectfully requests that this Court dismiss the Plaintiff's state tort claim on the basis of Section 15-78-70(d).

4. A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

The Defendant Hunt may use the following exhibits:

1. Shift Rosters for May 3, 2019-June 2, 2019
2. SHP Medical Records for Cassiopia Rhoads, May 3, 2019 to June 2, 2019
3. American Correctional Association Standard 1-CORE-4D-03
4. Logbook (05-03-19 to 06-03-19(Redacted)
(Bates numbered County-841 to County-979)
5. Jail Incident Report #JI201900691,
(Bates numbered County-054 to County-054)
6. Jail Incident Report #JI201900790,
(Bates numbered County-051 to County-053)
7. Jail Incident Report #JI201900808,
(Bates numbered County-044 to County-045 and County-050)
8. Jail Incident Report #JI201900816,
(Bates numbered County-042 to County-043)
9. Jail Incident Report #JI201900834,
(Bates numbered County-040 to County-041 and County-049)
10. Jail Incident Report #JI201900832,
(Bates numbered County-046 to County-048)
11. Southern Heath Partners Policy and Procedure Manual for Health Services in Jails
at the Aiken County Detention Center South Carolina,
(Bates numbered SHP - Rhoads 000594 to SHP - Rhoads 000650)

Witnesses are anticipated to include the following persons:

- (a) Nicolas Gallam

- (b) Lisa Bauer
- (c) Carla Hill
- (d) Tonetta Buggs
- (e) Chanate Buchanan
- (f) Jessica Whitaker
- (g) Erik Riddell
- (h) Brandi Galloway
- (i) Donna Wright
- (j) Thomas Fowlkes, M.D.
- (k) Robert Williams, M.D.

5. Any unusual problems relating to evidence to be introduced, such as “Business Records as Evidence Act,” hearsay, use of depositions, etc.

The Defendant Hunt has filed a Motion to Exclude Expert Witness/Limine to exclude Aubrey Land as an expert witness for the Plaintiff. The Court is referred to that motion for the legal analysis applicable thereto.

The Defendant Hunt also anticipates that the Plaintiff’s presentation of inmate witnesses will be repetitive and cumulative.

6. Any unusual question or matter which should be brought to the attention of the court.

None at this time.

7. A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.

The parties proceeded through mediation which was unsuccessful.

Respectfully submitted,

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*Counsel for Defendant Michael E. Hunt, in his
official and representative capacity as Aiken County
Sheriff*

October 8, 2023

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	C. A. NO: 2019-CP-02-02238
Cassiopia Rhoads, Plaintiff, vs. Southern Health Partners, Inc.; Robert J. Williams, M.D.; Michael E. Hunt., in his official and representative capacity as Aiken County Sheriff; and Aiken County, operating as the Aiken County Detention Center, Defendant(s).	CONSENT STIPULATION OF PARTIAL DISMISSAL WITH PREJUDICE AND SUBSTITUTION OF A PARTY

Now comes the Plaintiff and Defendant Michael Hunt, in his official and representative capacity as Aiken County Sheriff (“Defendant Hunt”) and Defendant Aiken County, who by the signatures of their respective counsel consent and stipulate to the following:

- 1) Plaintiff, along with Defendant Hunt, in his official and representative capacity as Aiken County Sheriff, and along with the Aiken County Sheriff’s Office agree to the substitution of the Aiken County Sheriff’s Office (“ACSO”) in the place of Defendant Hunt as a named party to this action, with the understanding that all prior filings and discovery made in the name of the Defendant Hunt are now made by the Defendant ACSO.
- 2) Defendant ACSO stipulates that it enjoyed all the rights and privileges to enforce the contract for health care services that Defendant Aiken County entered into with Defendant Southern Health Partners on its behalf and that Defendant ACSO is responsible for the operation of the Aiken County Detention Center (“ACDC”).

- 3) Plaintiff stipulates that, in this action, she is not asserting that ACSO is vicariously liable for the negligent or grossly negligent acts or omissions alleged to have been committed by Southern Health Partners and its employees and/or contractors.
- 4) Plaintiff maintains that the Defendant ACSO had an obligation to provide Plaintiff access to adequate medical care and treatment for serious medical needs during her detention spanning May 3 – June 2, 2019. The Defendant ACSO is not stipulating to this allegation as phrased and reserves the right to dispute it.
- 5) Plaintiff stipulates that if liability were to be found against Defendant ACSO and any damages awarded, such liability and damages would be controlled by the South Carolina Tort Claims Act and its liability requirement of “gross negligence” and its statutory cap limitations on actual damages and exclusion of punitive damages;
- 6) Plaintiff hereby dismisses, with prejudice, Defendant Aiken County from this action;
- 7) The parties to this stipulation agree that they shall bear their own costs and fees related to the matters resolved via this stipulation.

FOR PLAINTIFF:

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Columbia, SC
 October 8, 2023

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Cassiopia Rhoads,)
Plaintiff,)

Civil Action No. 2020-CP-02-2238

v.)

Southern Health Partners, Inc.;)
Robert J. Williams, M.D.; Michael E. Hunt,)
in his official and representative capacity as)
Aiken County Sheriff; and Aiken County,)
operating as the Aiken County)
Detention Center,)
Defendants.)

**ANSWER OF DEFENDANTS
SHERIFF MICHAEL E. HUNT
AND AIKEN COUNTY
(Jury Trial Requested)**

The Defendants Michael Hunt, in his official and representative capacity as the Sheriff of Aiken County, and Aiken County (collectively referred to as “Aiken Defendants”), reserving all rights pursuant to the Motion to Make More Definite and Certain and Motion to Strike previously filed, answer the Plaintiff’s Complaint as follows:

FOR A FIRST DEFENSE

1. The Plaintiff’s Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted. The Aiken Defendants reserve their right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. The Aiken Defendants deny each and every allegation of the Plaintiff’s Complaint not hereinafter specifically admitted, qualified, or explained.

3. The allegations set forth in the “Preface” of the Plaintiff’s Complaint are a description of the Plaintiff’s action. The Aiken Defendants deny any and all liability under the statutory and common law as referenced.

4. As to the allegations set forth in Paragraph 1 of the Plaintiff’s Complaint, the Aiken Defendants lack sufficient information to admit or deny those allegations, and therefore, deny those allegations at this time.

5. As to the allegations set forth in Paragraph 2 of the Plaintiff’s Complaint, the Aiken Defendants admit only that the Defendant Southern Health Partners, Inc. is a Delaware corporation that does business in Aiken County and provides correctional health care services at the Aiken County Detention Center pursuant to a Health Services Agreement entered with Aiken County on July 1, 2018. The Aiken Defendants further admit that the Defendant Southern Health Partners, Inc. is legally responsible for the acts or omissions of its employees engaged in providing correctional health care services at the Aiken County Detention Center. The remaining allegations are legal conclusions to which no response is required.

6. As to the allegations set forth in Paragraph 3 of the Plaintiff’s Complaint, the Aiken Defendants admit that the Defendant Robert J. Williams, M.D. is a physician licensed to practice in the State of South Carolina and served as the Medical Director for Southern Health Partners, Inc. providing medical services for inmates and detainees at the Aiken County Detention Center. The remaining allegations are legal conclusions to which no response is required.

7. As to the allegations set forth in Paragraph 4 of the Plaintiff’s Complaint, the Aiken Defendants admit that the Defendant Michael Hunt is the duly elected Sheriff of Aiken County and has authority over the operation of the Aiken County Detention Center. The remaining allegations are legal conclusions to which no response is required.

8. As to the allegations set forth in Paragraph 5 of the Plaintiff's Complaint, the Aiken Defendants admit only that Aiken County is a political subdivision of the State of South Carolina. All remaining allegations of Paragraph 5 are denied.

9. As to the allegations set forth in Paragraphs 6 and 7 of the Plaintiff's Complaint, the Aiken Defendants admit that venue properly lies in Aiken County. All remaining allegations of Paragraphs 6 and 7 are denied.

10. As to the allegations set forth in Paragraphs 8 and 9 of the Plaintiff's Complaint, the Aiken Defendants lack sufficient information to admit or deny those allegations as alleged, and as a result, deny those allegations.

11. The allegations set forth in Paragraph 10 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

12. As to the allegations set forth in Paragraphs 11, 12, and 13 of the Plaintiff's Complaint, the Aiken Defendants lack sufficient information to admit or deny those allegations as alleged, and as a result, deny those allegations.

13. The allegations set forth in Paragraph 14 of the Plaintiff's Complaint are admitted.

14. The allegations set forth in Paragraph 15 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

15. As to the allegations set forth in Paragraph 16 of the Plaintiff's Complaint, the Aiken Defendants crave reference to S.C. Code Ann. § 24-9-10, *et seq.*

16. The allegations set forth in Paragraphs 17, 18, and 19 of the Plaintiff's Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

17. As to the allegations set forth in Paragraphs 20 through 30 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

18. The allegations set forth in Paragraph 31 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

19. As to the allegations set forth in Paragraph 32 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the "Minimum Standards for Local Detention Facilities in South Carolina" for the specific language contained therein.

20. As to the allegations set forth in Paragraphs 33 through 40 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

21. As to the allegations set forth in Paragraphs 41 through 44 of the Plaintiff's Complaint, the Aiken Defendants lack sufficient information to admit or deny those allegations as alleged. Further answering, the Aiken Defendants admit that the Defendant Robert J. Williams, M.D. served as the Medical Director for Southern Health Partners, Inc. providing medical services for inmates and detainees at the Aiken County Detention Center.

22. The allegations set forth in Paragraph 45 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

23. As to the allegations set forth in Paragraph 46 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

24. The allegations set forth in Paragraph 47 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

25. With specific reference to the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018, the allegations set forth in Paragraphs 48 and 49 of the Plaintiff's Complaint are admitted.

26. As to the allegations set forth in Paragraphs 50 through 55 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

27. The allegations set forth in Paragraphs 56 and 57 of the Plaintiff's Complaint are denied as stated.

28. As to the allegations set forth in Paragraphs 58 and 59 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

29. As to the allegations set forth in Paragraph 60 of the Plaintiff's Complaint, the Aiken Defendants admit that correctional officers are trained to report medical issues with inmates or detainees to the medical staff on duty.

30. As to the allegations set forth in Paragraph 61 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the language of the Health Services Agreement entered between Southern Health Partners, Inc. and Aiken County on July 1, 2018.

31. The allegations set forth in Paragraphs 62, 63, and 64 of the Plaintiff's Complaint are denied as stated.

32. The allegations set forth in Paragraph 65 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

33. The allegations set forth in Paragraph 66 of the Plaintiff's Complaint are denied.

34. The allegations set forth in Paragraph 67 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

35. The allegations set forth in Paragraphs 68 and 69 of the Plaintiff's Complaint are denied.

36. As to the allegations set forth in Paragraph 70 of the Plaintiff's Complaint, the Aiken Defendants admit that the Plaintiff was booked into the Aiken County Detention Center on May 3, 2019.

37. As to the allegations set forth in Paragraphs 71 through 89 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the Plaintiff's medical records as maintained by the Defendant Southern Health Partners for the contents of those records.

38. As to the allegations set forth in Paragraph 90 of the Plaintiff's Complaint, the Aiken Defendants admit that the Plaintiff was transport to Aiken Regional Medical Center on June 3, 2019. Further answering, the Aiken Defendants crave reference to the Plaintiff's medical records as maintained by Aiken Regional Medical Center for the contents of those records.

39. As to the allegations set forth in Paragraphs 91 and 92 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the Plaintiff's medical records as maintained by Aiken Regional Medical Center for the contents of those records.

40. As to the allegations set forth in Paragraph 93 of the Plaintiff's Complaint, the Aiken Defendants crave reference to the Plaintiff's medical records as maintained by the Defendant Southern Health Partners for the contents of those records.

41. The allegations set forth in Paragraphs 94 and 95 of the Plaintiff's Complaint are directed at other Defendants and do not implicate the Aiken Defendants. Those allegations are denied to the extent that they implicate or suggest any liability on the part of the Aiken Defendants.

42. The allegations set forth in Paragraph 96 of the Plaintiff's Complaint, including all subparts, are denied.

43. The allegations set forth in Paragraphs 97 through 99 of the Plaintiff's Complaint are denied.

44. As to the allegations set forth in Paragraph 100 of the Plaintiff's Complaint, the Aiken Defendants repeat and reiterate the corresponding responses of this Answer as if fully repeated herein verbatim.

45. The allegations set forth in Paragraphs 101 through 104 of the Plaintiff's Complaint are denied.

46. As to the allegations set forth in Paragraph 105 of the Plaintiff's Complaint, the Aiken Defendants repeat and reiterate the corresponding responses of this Answer as if fully repeated herein verbatim. The Aiken Defendants object to the jumbling of causes of action.

47. The allegations set forth in Paragraphs 106 through 136 of the Plaintiff's Complaint are directed at the Defendant Southern Health Partners, Inc. only and do not implicate the Aiken

Defendants. Those allegations are denied to the extent that they do implicate or suggest any liability on the part of the Aiken Defendants.

48. As to the allegations set forth in Paragraph 137 of the Plaintiff's Complaint, the Aiken Defendants repeat and reiterate the corresponding responses of this Answer as if fully repeated herein verbatim. The Aiken Defendants object to the jumbling of causes of action.

49. The allegations set forth in Paragraphs 138 through 142 of the Plaintiff's Complaint are denied.

50. The Aiken Defendants deny the allegations and relief sought as set forth in the prayer of the Plaintiff's Complaint.

FOR A THIRD DEFENSE

51. The Aiken Defendants assert the defense of sovereign immunity, pursuant to the terms of the South Carolina Tort Claims Act, including but not limited to the definition of "loss" as set forth in S.C. Code Ann. § 15-78-30(f), the damages caps set forth in S.C. Code Ann. § 15-78-120, and the bar on the recovery of punitive damages, pre-judgment interest, and attorney's fees.

FOR A FOURTH DEFENSE

52. The Aiken Defendants are immune from suit pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically S.C. Code Ann. §§ 15-78-60(1), (2), (3), (4), (5), (6), (17), (20), (23), and (25).

FOR A FIFTH DEFENSE

53. The Aiken Defendants are entitled to absolute immunity under *Long v. Seabrook* and its progeny.

FOR A SIXTH DEFENSE

54. The Plaintiff's causes of action are barred or subject to a reduction of recovery by the Plaintiff's own comparative negligence or comparative fault, including but not limited to her failure to use reasonable care to protect himself from harm. In the alternative, the Plaintiff's recovery should be reduced by the Plaintiff's proportion of fault.

FOR A SEVENTH DEFENSE

55. The Plaintiff's claims are barred, in whole or in part, by operation of the public duty rule.

FOR AN EIGHTH DEFENSE

56. To the extent an affirmative defense, the Aiken Defendants plead that S.C. Code Ann. § 24-9-10, *et seq.*, does not provide for nor give rise to a private right of action.

FOR A NINTH DEFENSE

57. The Aiken Defendants plead that any damages alleged to have been caused by employees of the Sheriff of Aiken County and/or Aiken County, which are specifically denied, must be apportioned between the Defendants and all other tortfeasors, pursuant to S.C. Code Ann. § 15-78-100(c).

FOR A TENTH DEFENSE

58. To the extent punitive damages may be sought by the Plaintiff, which is denied, the Aiken Defendants demand a bifurcated jury trial pursuant to S.C. Code Ann. § 15-32-520 and further asserts the limitations or caps on an award of punitive damages pursuant to S.C. Code Ann. § 15-32-530.

FOR AN ELEVENTH DEFENSE

59. To the extent deemed an affirmative defense rather than a self-executing provision of the Tort Claims Act, the Plaintiff's claims against the Aiken Defendants are barred by operation of S.C. Code Ann. § 15-78-70(d), as a result of the settlement entered in this action between the Plaintiff and the Defendants Southern Health Partners, Inc. and Robert J. Williams, M.D.

FOR A TWELFTH DEFENSE

60. The Aiken Defendants allege that this action is barred, in whole or in part, by the defense of release or settlement.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Michael Hunt, in his official and representative capacity as the Sheriff of Aiken County, and Aiken County pray that the Complaint be dismissed with prejudice; for the costs of this action; and for such other and further relief as the Court deems just and proper.

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 Sheriff, and Aiken County*

October 10, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Cassiopia Rhoads,	)	Civil Action No.: 2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MEMORANDUM
	)	REGARDING S.C. CODE §15-78-70(d)
Aiken County Sherri's Office,	)	
	)	
Defendants.	)	

TO: HON. EUGENE C. GRIFFITH, JR., DEFENDANT AND ITS COUNSEL.

Defendant has asserted that, because the Plaintiff has settled with the Medical Defendants in this case, the Plaintiff's case is barred by S.C. Code §15-78-70(d). Plaintiff supplements her argument from Section 6 of her *Response in Opposition* (filed October 5, 2023) and argument made during trial with the following:

S.C. Code §15-78-70(d) states in relevant part:

SECTION 15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

- (a) **This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.** An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided in subsection (b).
- (d) A settlement or judgment in an action or a settlement of a claim **under this chapter** constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

S.C. Code §15-78-70(d), emphasis added.

Plaintiff has not settled a single claim brought under Chapter 78 of Title 15, as she has not settled any claim under the SCTCA against any governmental entity. There has been no settlement or judgment of any action under this chapter, as Plaintiff has not settled any action under the SCTCA.

None of Plaintiff's claims or causes of action against Defendants Southern Health Partners, Inc. and Robert J. Williams, M.D. can legally be considered as having been "under" Chapter 78, as S.C. Code §15-78-70(a) specifically states that "**this chapter** constitutes the **exclusive** remedy for any tort **committed by any employee of a governmental entity.**" S.C. Code §15-78-70(a), emphasis added.

"Exclusive" is defined as "excluding other from participation." (See *Merriam-Webster's Online Dictionary*, "Exclusive," www.meriam-webster.com, accessed October 11, 2023).

Consistent with that plain and ordinary definition and directly on point with the factual and legal status of the Medical Defendants in this case, S.C. Code §15-78-70 specifically states that a person "bringing an **action** against a governmental entity under the provisions **of this chapter**, **shall** name as a party defendant **only the agency or political subdivision for which the employee was acting.**" S.C. Code §15-78-70(c), emphasis added.

"Words must be given their plain and ordinary meaning without resort to subtle **or forced construction to expand the statutes operation.**" *State v. Gordon*, 414 S.C. 94, 98 (2015) (quoting *Sloan v. Hardee*, 371 S.C. 495, 499 (2007), emphasis added. As "the **exclusive** remedy available for any tort committed by a governmental entity, its employees or its agents," the language of the statute plainly states it was not a remedy available for any tort committed by the Medical Defendants.

Defendant's argument would have this Court resort to "forced construction to expand the statutes operation" to ignore the SCTCA's specific definition of who is an employee:

"employee"... **does not include an independent contractor** doing business with the State or a political subdivision of the State.

S.C. Code §15-78-30(c).

In direct violation of the statutory definition section of the SCTCA, the forced construction Defendant's argument would have this Court expand the availability of the SCTCA to an independent contractor, to say nothing of the public policy issues that would arise from allowing non-settling defendants to benefit at the expense of plaintiffs and those defendants who do settle. *See Kinghorn v. Sakakini*, 426 S.C. 147, 152 (Ct. App. 2019) ("It has long been the policy of the Court to encourage settlement in lieu of litigation...").

Further, Defendant's argument also ignores that the law recognizes that there can be multiple "occurrences" of negligence by multiple parties causing harm to plaintiff. *See Boiter v. South Carolina Department of Transportation and South Carolina Department of Public Safety*, 393 S.C. 123 (2011) and S.C. Code §15-78-30(g) (SCTCA defining "occurrence"). Plaintiff argues the evidence in this case shows that irrespective of any negligence committed by the Medical Defendants, the Defendant Sheriff's Office committed separate gross negligence which caused harm by failing to provide her the care necessary under the circumstances as Defendant Sheriff/Sheriff's Office knew at the time. "Two separate and independent of negligence," are separate occurrences, defeating Defendant's argument and entitling Plaintiff's case against Defendant ACSO to continue. *Id.*

Further, it should be noted that Defendant's position would create absurd results and discourage settlements. By way of example, supposed there were to be a three-vehicle wreck involving a plaintiff, Defendant No. 1 (by way of a vehicle operated by a private citizen), and Defendant No. 2 (by way of a vehicle operated by the employee of a governmental entity such as a city sanitation truck, Department of Corrections transport vehicle, county building inspector, etc.). Should the plaintiff driver settle with Defendant No. 1 (the private citizen), Defendant's position would require that Defendant No. 2 should be entitled to dismissed merely because of the settlement with Defendant No. 1 and that this should be so no matter Defendant No. 2's culpability

in the wreck and no matter how small the settlement with Defendant No. 1 may have been. If this were the law of South Carolina, it would discourage Plaintiff from settling with the private citizen. This is not and cannot be the law of the Palmetto State.

October 11, 2023
Columbia, South Carolina

Respectfully submitted,

/s/ Francis M. Hinson, IV

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Counsel for the Plaintiff

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	C. A. NO: 2020-CP-02-02238
Cassiopia Rhoads, Plaintiff, vs. Aiken County Sheriff's Office, Defendant(s).	PLAINTIFF'S POST-TRIAL MOTION REGARDING INTEREST AND COSTS AND TO PROHIBIT THE DEPOSITING OF FUNDS WITH THE COURT PENDING APPEAL

TO: HON. EUGENE C. GRIFFITH, JR., DEFENDANT AIKEN COUNTY SHERIFF'S OFFICE¹ AND THEIR ATTORNEY, ANDREW F. LINDEMANN

In accordance with Section 15-35-400 of the South Carolina Code of Laws and Rule 68 of the South Carolina Rules of Civil Procedure, Plaintiff seeks an award of interest and costs stemming from her prior, unaccepted Offer of Judgment ("OOJ"), which was filed in this matter on March 31, 2022. Additionally, Plaintiff requests this Court prohibit Defendant Aiken County Sheriff's Office (hereinafter "Defendant") from depositing funds into the Court pending any appeal.

In bringing these post-trial motions, Plaintiff would note the conduct of Defendant throughout this case and trial, wherein Defendant has argued: (1) it had no legal duty to inmates in its custody and control at the detention center; (2) it could sit back and refuse to settle while allowing a third party, private corporation to settle, then assert that the settlement by the private

¹ Plaintiff refers to the Aiken County defendants consistent with the consent stipulation and substitution of parties as agreed upon by the parties during trial.

corporation was the settlement of an action under the South Carolina Tort Claims Act and thus any further litigation against the separate governmental entity was barred; (3) requesting for the jury to be charged in a manner not in conformity with current South Carolina law, under claims of preserving the “record.”

In a case in which the uncontradicted medical expert testimony at trial explained that every day that passes without the Plaintiff having the necessary surgery to repair/protect the large hole in her skull, is a day the Plaintiff is unnecessarily at risk of dying from that large hole in her skull, the Defendant has defended this case under the constant threat it would appeal any result in the Plaintiff’s favor.

Accordingly, these motions seek to eliminate further prejudice to the Plaintiff that would result from Defendant being allowed to continue to engage in dilatory conduct via meritless appeals brought at no cost real cost to the Defendant.

BACKGROUND

On March 31, 2022, Plaintiff offered judgment to Defendant in the amount of \$250,000.00 Dollars. *See* Offer of Judgment, **Exhibit 1**. Defendant did not accept the Offer of Judgment, instead filing an *Objection to Plaintiff’s Offer of Judgment* on April 8, 2022. The case proceeded to trial the week of October 9, 2023, and, on October 13, 2023, an Aiken County jury rendered a verdict finding Defendant was grossly negligent and awarding \$950,000.00 in actual damages. That damages award vastly exceeds the Offer of Judgment filed more than a year and half earlier.

ARGUMENT

Pursuant to state statute and the South Carolina Rules of Civil Procedure, Plaintiff has a right to file an OJO against the Defendant and exercised this right. By virtue of a statutory mandate and our court rules, Defendant is subject to consequences for their decision to decline the offer of

judgment. Additionally, given the Defendant's conduct in contributing to the cause of Plaintiff's very serious physical injury and refusal to accept any responsibility throughout this civil litigation, it would be unfair and unjust to allow the Defendant to deposit judgment with the Court to avoid the accrual of legal interest pending any appeal.

I. Plaintiff's Offer of Judgment

In South Carolina, the authority for offers of judgment arises from both statutory law and the Rules of Civil Procedure.

Section 15-35-400(B) of the South Carolina Code (Supp. 2020) provides:

Consequences of Non-Acceptance.

If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer;

S.C. Code Ann. §15-35-400(B).

Similarly, Rule 68(b), SCRCP, provides in relevant part:

If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: . . . (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment

Rule 68(b), SCRCP.

The South Carolina Court of Appeals has specifically found that Rule 68(b) "is intended to encourage settlements and avoid prolonged litigation." Black v. Roche Biomedical Laboratories, a Div. of Hoffman-LaRoche, Inc., 315 S.C. 223, 227 (Ct. App. 1993). The South Carolina General Assembly has codified that goal through S.C. Code §15-35-400.

S.C. Code §15-35-400 came about as part of the “Tort Reform Act of 2005 Relating to Medical Malpractice,” which was approved by the Governor on April 4, 2005. The synopsis of that Act read in pertinent part that it was meant to amend the code of laws “by adding section 15-35-400, so as to provide for offers of judgment after commencement of a civil action based on contract or seeking the recovery of money damages and to provide for consequences of nonacceptance...” 2005 S.C. Acts 32.

The State is liable for torts in the same manner and to the same extent as a private individual under like circumstances. S.C. Code §15-78-40.

In enacting the Offer of Judgment statute, the General Assembly excluded all domestic actions, but did not exclude any Tort Claims Act defendants. *See* S.C. Code §15-35-400(A) (“*Except in domestic relations actions...*”). There is no bar to court assessments to be applied pursuant to Rule 68 or S.C. Code §15-35-400.

By order of the South Carolina Supreme Court dated January 5, 2006, Rule 68 SCRCPP was amended to “make this provision consistent with S.C. Code Ann. Section 15-35-400, which became effective July 1, 2005.” In re Amendments to S.C. Rules of Civil Procedure, 2006 S.C. LEXIS 157 (2006).

The plain language of S.C. Code §15-35-400 does not provide governmental entities with any exceptions to the consequences of a rejection of an offer of judgment. The Offer of Judgment statute was created after the Tort Claims Act, with Rule 68 being subsequently amended to

conform with the statute,² and neither the statute nor the rule³ carves out any governmental exceptions.

Rule 68 SCRPC and S.C. Code § 15-35-400 do not address the government at all, and their plain and unambiguous terms require costs and interest to be added to the verdict in this case.

“There is a basic presumption that the legislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted concerning related subjects.” Whitner v. State, 328 S.C. 1, 6 (1997).

“When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, (1994). “Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Recently, the Supreme Court of South Carolina in Garrison v. Target Corp., found that both the rule and the statute expressly provide for a party to recover eight percent on the entire amount **of a verdict** from the date of the offer to the entry of the judgment. 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) (emphasis added). In reaching this decision, the Court recognized the unique posture of an offer of judgment and its underlying aims of promoting fairness and

² In re Amendments to S.C. Rules of Civil Procedure, 2006 S.C. LEXIS 157 (2006). **Exhibit 5.**

³ Plaintiff notes that Rule 4 *SCRPC*, which contains specific requirements for service on the government, and Rule 55 *SCRPC*, which contains an exception for the government being held in default, both specifically address situations where the government is a party.

reasonable compromise without a trial. Id. Thereby, solidifying the administrative and mandatory nature of prejudgment interest in this context. Id.

In addressing OOJs and interest, courts have recognized that an award of interest “arises from a defense attorney’s strategic decision to reject an offer of settlement, and proceed to trial.” Therefore, an award of OOJ interest does not arise out of the actions of the underlying controversy and is not taxed to the defendant’s policy limits on liability as damages but is an expense associated with the “defense costs” and strategy of the case. Cox v. Peerless Insurance Co., 774 F.Supp. 83, 86 (1991 D.Conn.).

In contrast to Defendant’s argument, that “S.C. Code §15-35-400 is not applicable to Tort Claims Act cases,” a review of the public indexes throughout the state shows that is not the view of governmental entities throughout South Carolina. *See Exhibit 2.* South Carolina Tort Claims Act defendants routinely file offers of judgment pursuant to S.C. Code §15-35-400 and Rule 68, specifically, but not limited to:

- South Carolina Department of Public Safety
- South Carolina Department of Transportation
- South Carolina Department of Mental Health
- South Carolina Department of Education
- South Carolina School for the Deaf and Blind
- Hampton County
- Town of Fairfax Police Department
- Town of Fairfax
- Richland County

- Leon Lott, in his official capacity as Sheriff of Richland County
- Town of Allendale
- Berkeley County School District
- Allendale Barnwell Disabilities and Special Needs Board
- City of Charleston
- City of Charleston Police Department
- City of N. Charleston
- City of Columbia
- City of Gaffney
- City of Gaffney Police Department
- City of Spartanburg
- Spartanburg City Police Department
- Anderson County School District One
- Town of Williamston
- Williamston Public Safety Department
- Williamston Police Department
- Chesterfield County School District
- The Sheriff of Florence County⁴

⁴ This list of South Carolina governmental entities that have routinely filed offers of judgment was compiled by Plaintiff's review of the online public indexes and search for governmental entities filing of governmental entities filed offers of judgments in civil litigation. This litany of governmental entities who have utilized Rule 68 SCRPC and S.C. Code §15-35-400 offers of judgment is merely a sampling and not intended to represent an exhaustive list. Plaintiff would submit that the actual number of governmental entities filing offers of judgment is substantially larger.

That last governmental defendant listed above is a good example of the hypocrisy of this argument by Defendant, evidenced by the law firm who filed an Offer of Judgment on behalf of the Florence County Sheriff on September 21, 2020:

This Offer of Judgment is made for purposes specified in Rule 68, SCRPC, and is not to be construed either as an admission that the Defendant or any other individuals in any way related to the allegations in the Plaintiff's Complaint are liable or as an admission that the Plaintiff has sustained any injury or damage. The sole purpose of this Offer of Judgment is to save attorney fees, expenses, and costs. LINDEMANN, DAVIS & HUGHES, P.A. BY: <u>/s/ Joel S. Hughes</u> JOEL S. HUGHES #73708 5 Calendar Court, Suite 202 Post Office Box 6923 Columbia, South Carolina 29260 T: 803-881-8920 Email: joel@ldh-law.com Counsel for Defendant Columbia, South Carolina September 21, 2020	ONICALLY FILED - 2020 Sep 21 3:00 PM - FLORENCE - COMMON PLEAS - CASE#

In short, SCTCA defendants routinely and regularly file offers of judgment in TCA cases, directly contradicting the argument the Defendant makes to this Court.

Further, the right of a party to such interest "is not affected by rights of discount or offset claimed by the opposing party." Butler Contr., Inc. v. Court St., LLC, 369 S.C. 121, 134 (2006). Therefore, any offset or reduction due to statutory cap on damages or offsets from the settling co-defendants does not affect the Plaintiff's right to OOJ interest.

As Rule 68 plainly states:

(b) Consequences of Non-Acceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment; (2) if the offeror is a plaintiff, **eight percent interest computed on the amount of the**

verdict or award from the date of the offer to the entry of judgment; or (3) if the offeror is a defendant, reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment.

Rule 68(b) SCRCP, emphasis added.⁵

Nothing in the Rule or in S.C. Code §15-35-400 ever speaks to the calculation of interest being based on the amount of entry of the final entry of judgment, and only the term “the amount of the verdict or award” is used. Plaintiff’s Offer of Judgment to Defendant was filed on March 31, 2022, and expired on April 20, 2022, while the settlement with the medical defendants did not occur until mediation in July of 2023. Thus, at the time the Offer of Judgment expired, Defendant did not know that there would ever be a set off and could not have factored the setoff into its decision to reject the offer of judgment. Additionally, Plaintiff did not have the benefit of any proceeds from settlement with the medical defendants until many months later. Given that the plain language of Rule 68 and S.C. Code §15-35-400 speaks only to “the amount of the verdict or award,” it would appear the design of both the rule and the statute is to encourage litigants to accept settlement offers and/or demands.

Here, Plaintiff is entitled to an award of eight percent (8%) interest **on the verdict**, from the time period running from March 31, 2022 to present, which comes to **\$118,893.18**. Plaintiff is also entitled to recover “administrative, filing, or other court costs” as provided in Rule 68, SCRCP, from March 31, 2022 to present, which comes to **\$16,056.83**. An affidavit relating to the interest and costs is attached hereto as **Exhibit 3**.

⁵ This emphasized language mirrors the language of S.C. Code §15-35-400(B).

II. Depositing of Judgment with Court

Plaintiff also moves this Court for an Order prohibiting Defendant from depositing funds into the Court pending an appeal. Based solely on the number of times arguments were repeated by the Defendant “for the record,” it seems reasonably clear Defendant’s will appeal this matter. This is supported by the fact that this same Defendant is currently appealing a similar finding of gross negligence by an Aiken County jury against him, in which the jury awarded \$150,000.00, arguing that verdict is shockingly disproportionate indicative that the jury was moved or actuated by passion, caprice, prejudice or other considerations not found in the evidence. *See* Initial Brief of Appellant, *Owens v. Michael Hunt, in his official capacity, et al.*, Appellate Case No.: 2023-000009, p.22. **Exhibit 6.**

It is apparent that, so long as there is no real cost to this Defendant in doing so, it will appeal in order to avoid accountability for as long as possible. In the interest of justice and fairness, and to avoid any further unnecessary risk and/or injury to the Plaintiff, this Court should at least impose the costs for such conduct that the law provides.

Defendant has made no showing that they should be allowed to pay the verdict in this case into the Court and Defendant has made no showing that paying the verdict into the Court would serve any purpose other than delay with an unnecessary appeal.

The Supreme Court of South Carolina has held “[t]he granting of leave to deposit money with the Court pursuant to Rule 67, SCRPC is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.” South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006).

Recently, in denying a governmental defendant's motion to deposit funds with the Court in a SCTCA case that similarly resulted in head injury to the plaintiff, South Carolina Circuit Court Judge William H. Seals, Jr. explained:

Multiple South Carolina Circuit Courts have held that South Carolina Rule of Civil Procedure 67 does not provide an appealing party with an automatic right to deposit judgment fund with the court to avoid the accrual of post-judgment interest. *See Davis v. Agape Nursing Rehabilitation Center, Inc.*, No. 2016-CP-32-00950, 2018 WL 6582084, at *2 (S.C. Com.Pl. Nov. 30, 2018); *Hanna v. Boone*, 2010-CP-21-1044 (S.C.Com.Pl. Mar.6, 2013). Instead, the ability of the appealing party to deposit funds with the Court and stop the accrual of interest is a matter within the discretion of the Court, and factor specific to an individual case may be considered by the Court.

The Plaintiffs in this case **had the heightened burden of proving gross negligence**. A jury in Horry County determined that the Plaintiffs met this burden. **The jury also found that the injuries were very serious and life altering, as shown by an award well in excess of a single cap as established by the South Carolina Tort Claims Act**. Under these circumstances, this Court finds that it would be unconscionable and/or fundamentally unfair to allow the Defendant to avoid interest during the pendency of an appeal. For these reasons, the Defendant's motion is DENIED.

Wood v. Horry County School District, No. 2017-CP-26-6643 (S.C. Com.Pl. Aug.17, 2021), emphasis added. *See Exhibit 4*.

The defendant in Wood appealed that decision by Judge Seals, and the South Carolina Court of Appeals affirmed Judge Seals decision in a *per curiam* unpublished opinion. Wood v. Horry County Sch. Dist., 2023 S.C. App. Unpub. LEXIS 295 (Ct. App. 2023), **Exhibit 4**.

Similar to the plaintiff in Wood, this Plaintiff suffered a "very serious and life altering injury," resulting in an award "well in excess of a single cap as established by the South Carolina Tort Claims Act," that she too had to prove by the heightened burden of gross negligence. The Plaintiff did so in such convincing fashion, that the jury was out less than 45 minutes before returning the verdict and award in her favor.

The uncontradicted medical expert testimony of Dr. Edward O'Bryan established not only that the Plaintiff still suffers an injury today (i.e., she has a hole in her skull), but that future surgery (installing a protective plate over that hole in the skull) is necessary to fully make the Plaintiff whole. Dr. O'Bryan's uncontradicted medical expert testimony also established that the Plaintiff is at risk of serious/fatal injury every day that goes by until the aforementioned surgery is performed. As such, perhaps even more so than the facts in Wood, it would be "unconscionable and/or fundamentally unfair" to allow the Defendant to avoid the accrual of legal interest during the pendency of an appeal.

To allow the Defendant to stay the accrual of legal interest would serve to only incentivize the Defendant to further delay this matter and to pursue an appeal. Defendant failed to negotiate in good faith during litigation despite Plaintiff's desire to reach a compromise settlement by making an offer of judgment well less than the ultimate verdict.

In conversations between counsels well before trial, and before the medical defendants settled out of this case, Plaintiff's counsel relayed a willingness to settle with Defendant well less than that offer of judgment amount.

Despite those offers, Plaintiff never received a reasonable offer to settle this matter from the Defendant, with an offer the Friday before trial of \$20,000.00 being the sole offer made outside of mediation, despite clear and direct evidence of Defendant's gross negligence. This is perhaps best demonstrated by the testimony of multiple Aiken County Sheriff's Office employees who confirmed the obvious and visible distress the Plaintiff was in during the detention period in question and the concerns/complaints that Dep. Kimberly Kelley and Cpl. Carla Hill notified supervisory command staff about, only to have no action taken by that command staff.

By prohibiting Defendants from paying the verdict into the Court and allowing post-judgment interest to accrue at the legal rate of interest amount, Defendants are encouraged both to resolve this matter without a lengthy and unnecessary appeal and to negotiate in good faith in the future.

The goal of tort law is to make the Plaintiff whole. The jury reached their verdict and awarded the Plaintiff their award on October 13, 2023. An appeal of this matter could take years. The difference in the accrual of interest at a rate of less than the legal rate, given the size of the judgment in this case, would be substantial.

Plaintiff would respectfully request an Order that Defendants are prohibited from paying a deposit into the Court.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that offer of judgment interest and costs be added to the verdict as required by Rule 68 *SCRPC* and S.C. Code §15-35-400, and that the Court, in its discretion, prohibit the Defendant from paying the verdict into the Court.

Respectfully submitted,

/s/ Patrick J. McLaughlin

Patrick J. McLaughlin (SC Bar # 73675)

WUKELA LAW FIRM

P.O. Box 13057

Florence, SC 29504-3057

T: 843.669.5634

E: patrick@wukelalaw.com

-and-

Francis M. "Brink" Hinson, IV (SC Bar # 74917)

HHP LAW GROUP, LLC

924 Gervais Street

Columbia, SC 29201

T: 803.400.8277

E: brink@hhplawgroup.com

Counsels for the Plaintiff

Florence, SC
October 23, 2023

Exhibit 1

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Cassiopia Rhoads,

Plaintiff,

vs.

Southern Health Partners, Inc.; Robert J.
Williams, M.D.; Michael E. Hunt., in his
official and representative capacity as Aiken
County Sheriff; and Aiken County, operating
as the Aiken County Detention Center,

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-02-02238

**PLAINTIFF'S OFFER OF
JUDGMENT TO DEFENDANT
MICHAEL E. HUNT, IN HIS OFFICIAL
AND REPRESENTATIVE CAPACITY
AS AIKEN COUNTY SHERIFF**

**TO: DEFENDANT MICHAEL E. HUNT, IN HIS OFFICIAL AND
REPRESENTATIVE CAPACITY AS AIKEN COUNTY SHERIFF, AND HIS
COUNSEL, ANDREW F. LINDEMANN, ESQ.**

PLEASE TAKE NOTICE that, pursuant to Rule 68 of the South Carolina Rules of Civil Procedure and/or South Carolina Code § 15-35-400, Plaintiff hereby offers to take judgment from **DEFENDANT MICHAEL E. HUNT., IN HIS OFFICIAL AND REPRESENTATIVE CAPACITY AS AIKEN COUNTY SHERIFF**, in the amount of **two hundred fifty thousand dollars (\$250,000.00)**. Plaintiff makes this offer of judgment for the purposes specified in the aforementioned rule and statute and with the intent of, post-trial, seeking interest and costs incurred from the date of this offer of judgment.

Upon acceptance of this offer by Defendant, Plaintiff will also dismiss her causes of action and fully release DEFENDANT AIKEN COUNTY, OPERATING AS THE AIKEN COUNTY DETENTION CENTER, for all claims that have and could have brought in this action for the injuries/damages asserted by Plaintiff Cassiopia Rhoads.

If Defendant accepts this offer and gives notice thereof within the time prescribed by law, the Defendant may file this offer with an affidavit and notice of acceptance, and the Court is hereby

authorized to enter judgment in accordance herewith. If notice of acceptance is not given within twenty (20) days after notification, this offer will be deemed to have been withdrawn and Plaintiff shall continue with preparations for trial. If the Defendant fails to obtain a more favorable judgment than is offered herein to be accepted by Plaintiff, all permissible costs and interest incurred from the time of this offer will be assessed against the Defendant pursuant to Rule 68, SCRCP, and/or S.C. Code § 15-35-400.

March 31, 2022
Columbia, South Carolina

Respectfully submitted,

/s/ Francis M. Hinson, IV

Francis M. "Brink" Hinson, IV (SC Bar # 74917)

HHP LAW GROUP, LLC

924 Gervais Street

Columbia, SC 29201

T: 803-400-8277

E: brink@hhplawgroup.com

—and—

Patrick J. McLaughlin (SC Bar # 73675)

WUKELA LAW FIRM

403 Second Loop Rd.

Florence, SC 29505

T: 843-669-5634

E: patrick@wukelalaw.com

Counsel for the Plaintiff

Exhibit 2

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
Henry B. Davis,	)	
	)	Civil Action No. 2020-CP-21-0229
Plaintiff,	)	
	)	
v.	)	OFFER OF JUDGMENT
	)	
The Sheriff of Florence County,	)	
	)	
Defendant.	)	
_____	)	

TO: James M. Gilchrist, Jr., Esquire, Counsel For Plaintiff:

Pursuant to Rule 68(a), SCRPC, the Defendant hereby offers to allow judgment to be taken against it in the total amount of Twenty Five Thousand and No/100 Dollars (\$25,000.00), inclusive of all interest, tax, costs and any and all fees, attorney fees, or other rights of recovery accrued to date, in final resolution of any and all claims that have been brought or could have been brought against the Defendant or any employees in any way related to the allegations in the Plaintiff's Complaint, regardless of the relief sought.

If the Plaintiff accepts this Offer and gives notice of the acceptance within twenty (20) days of the date of this Offer, the Plaintiff may file this Offer with an Affidavit of Notice of Acceptance, and the Court is hereby authorized to enter judgment in accordance herewith. However, if the Notice of Acceptance is not filed within twenty (20) days of the date of this Offer, this Offer is deemed to be rejected and withdrawn, pursuant to Rule 68, SCRPC. Further, if the Plaintiff fails to obtain a more favorable judgment than this Offer, all costs incurred by the Defendant in any way related to the allegations in the Plaintiff's Complaint from the time of this Offer to the date of judgment will be taxed against the Plaintiff.

This Offer of Judgment is made for purposes specified in Rule 68, SCRCPP, and is not to be construed either as an admission that the Defendant or any other individuals in any way related to the allegations in the Plaintiff's Complaint are liable or as an admission that the Plaintiff has sustained any injury or damage. The sole purpose of this Offer of Judgment is to save attorney fees, expenses, and costs.

LINDEMANN, DAVIS & HUGHES, P.A.

Counsel for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

Deon Roberts and Tomica Bradley,

Plaintiff,

v.

Hampton County and Town of Fairfax Police
Department,

Defendants.

IN THE COURT OF COMMON PLEAS

OFFER OF JUDGMENT

Civil Action Number 2011-CP-03-312

FILED FOR RECORD

2023 JUN 22 AM 10:22

JAMES H. HARRIS, JR., S.C.

TO: DANIEL W. WILLIAMS, ATTORNEY FOR PLAINTIFF:

PURSUANT TO S. C. Code §15-35-400, defendants jointly make, through their undersigned attorneys, an Offer of Judgment to the plaintiffs, to settle the plaintiffs' causes of action and claims made and unmade, known and unknown, against these defendants and all other governmental entities, arising from the events which are the subject of this action, in the total and aggregate amount of One Hundred Seventy-Five Thousand (\$175,000.00) Dollars. Defendants make this offer pursuant to, and for the purposes set forth in, SCRCP 68, and this Offer of Judgment is not to be construed as an admission of liability on the part of any defendant or governmental entity, nor an admission that any plaintiff has sustained any damages.

This Offer of Judgment shall be deemed withdrawn if plaintiffs do not file and serve written notice of acceptance within twenty (20) days after the service of this Offer of Judgment, or prior to or on the tenth day before actual trial date, whichever is earlier. This Offer of Judgment shall not be admissible as evidence at trial except in a proceeding to determine costs.

If the Offerors ultimately obtain a verdict or determination at least as favorable as the rejected Offer herein, the Offerors shall move the Court to award any recoverable administrative, filing, and other costs incurred on the Offerors' behalves from the date of the

offer, and a reduction from the judgment or award of eight (8%) percent interest computed on the amount of the verdict or award from the date of the offer.

Respectfully submitted,

January 18, 2013

Bamberg, SC

By 
for

NESS & JETT, LLC

Norma A. T. Jett

Post Office Box 909

Bamberg, SC 29003

(803)245-5178

ATTORNEY FOR DEFENDANT TOWN OF
FAIRFAX POLICE DEPARTMENT

and

O. Edworth Liipfert, III

GRIFFITH, SADLER & SHARP, P.A.

Post Office Drawer 570

Beaufort, SC 29901

ATTORNEY FOR DEFENDANT HAMPTON
COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

I, an attorney for the defendant in the case of *Deon Roberts and Tomica Bradley v. Hampton County and Town of Fairfax Police Department*, Case No.: 2011-CP-03-312, do hereby certify my agent has served the foregoing document by mailing a copy of the same, with postage prepaid, by United States mail to the attorney(s) at the address(es) indicated as follows:

Daniel W. Williams, Esquire
Post Office Box 616
Barnwell, SC 29812

O. Edworth Liipfert, III, Esquire
Post Office Drawer 570
Beaufort, SC 29901

January 18, 2013
Bamberg, SC

By: Richard B. Ness
NESS & JETT, LLC
Richard B. Ness
Norma A. T. Jett
Alison D. Hood
P.O. Box 909
Bamberg, SC 29003
(803) 245-5178
Attorney for Defendant Fairfax

NESS & JETT, LLC
ATTORNEYS AT LAW
P.O. BOX 909
BAMBERG, SOUTH CAROLINA 29003

RICHARD B. NESS*
NORMA A. T. JETT

5384

*CERTIFIED CIRCUIT COURT MEDIATOR

2878 MAIN HIGHWAY
Telephone 803/245-5178
Telecopier 803/245-

JULIUS B. NESS
1916-1991

January 18, 2013

Honorable Elaine Sabb
Clerk of Court for Allendale County
Post Office Box 126
Allendale, SC 29810

Re: *Deon Roberts and Tomica Bradley v. Hampton County and Town of Fairfax*,
Case Number 2011-CP-03-312
and
Tomica Bradley and Deon Roberts v. Hampton County and Town of Fairfax
Case Number 2011-CP-03-313

Dear Ms. Sabb:

Enclosed for filing please find the original and one copy each of the Offer of Judgment in each of these matters. Please clock in and return the copies to me in the enclosed envelope. By copy of this letter, I am serving a copy of each item on each attorney of record. I thank you for your assistance.

Sincerely,


Norma A. T. Jett

cc:
Daniel W. Williams, Esquire
Post Office Box 616
Barnwell, SC 29812

O. Edworth Lipfert, III, Esquire
Post Office Drawer 570
Beaufort, SC 29901

FILED FOR RECORD
2013 JAN 22 AM 10:22
CLERK OF COURT
ALLENDALE COUNTY, S.C.

ELECTRONICALLY FILED - 2023 Oct 23 4:19 PM - AIKEN - COMMON PLEAS - CASE#2020CP0202238

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

IN THE COURT OF COMMON PLEAS

Tomica Bradley and Deon Roberts,

Plaintiff,

OFFER OF JUDGMENT

y.

Hampton County and Town of Fairfax Police)
Department,

Civil Action Number 2011-CP-03-313

Defendants.

TO: DANIEL W. WILLIAMS, ATTORNEY FOR PLAINTIFF:

PURSUANT TO S. C. Code §15-35-400, defendants jointly make, through their undersigned attorneys, an Offer of Judgment to the plaintiffs, to settle the plaintiffs' causes of action and claims made and unmade, known and unknown, against these defendants and all other governmental entities, arising from the events which are the subject of this action, in the total and aggregate amount of One Hundred Seventy-Five Thousand (\$175,000.00) Dollars. Defendants make this offer pursuant to, and for the purposes set forth in, SCRCF 68, and this Offer of Judgment is not to be construed as an admission of liability on the part of any defendant or governmental entity, nor an admission that any plaintiff has sustained any damages.

This Offer of Judgment shall be deemed withdrawn if plaintiffs do not file and serve written notice of acceptance within twenty (20) days after the service of this Offer of Judgment, or prior to or on the tenth day before actual trial date, whichever is earlier. This Offer of Judgment shall not be admissible as evidence at trial except in a proceeding to determine costs.

If the Offerors ultimately obtain a verdict or determination at least as favorable as the rejected Offer herein, the Offerors shall move the Court to award any recoverable administrative, filing, and other costs incurred on the Offerors' behalves from the date of the

offer, and a reduction from the judgment or award of eight (8%) percent interest computed on the amount of the verdict or award from the date of the offer.

Respectfully submitted,

January 18, 2013

Bamberg, SC

By: 
NESS & JETT, LLC
Norma A. T. Jett
Post Office Box 909
Bamberg, SC 29003
(803)245-5178
ATTORNEY FOR DEFENDANT TOWN OF
FAIRFAX POLICE DEPARTMENT

and

O. Edworth Liipfert, III
GRIFFITH, SADLER & SHARP, P.A.
Post Office Drawer 570
Beaufort, SC 29901
ATTORNEY FOR DEFENDANT HAMPTON
COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

I, an attorney for the defendant in the case of *Tomica Bradley and Deon Roberts v. Hampton County and Town of Fairfax Police Department*, Case No.: 2011-CP-03-313, do hereby certify my agent has served the foregoing document by mailing a copy of the same, with postage prepaid, by United States mail to the attorney(s) at the address(es) indicated as follows:

Daniel W. Williams, Esquire
Post Office Box 616
Barnwell, SC 29812

O. Edworth Liipfert, III, Esquire
Post Office Drawer 570
Beaufort, SC 29901

January 18, 2013
Bamberg, SC

By: 
NESS & JETT, LLC
Richard B. Ness
Norma A. T. Jett
Alison D. Hood
P.O. Box 909
Bamberg, SC 29003
(803) 245-5178
Attorney for Defendant Fairfax

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF ALLENDALE	)	CASE NUMBER: 2016-CP-03-158
	)	
LAQUINTON GRAY,	)	
	)	
Plaintiff,	)	
	)	OFFER OF JUDGMENT
Vs.	)	
	)	
SOUTH CAROLINA DEPT.	)	
OF TRANSPORTATION,	)	
	)	
Defendant.	)	
_____	)	

TO THE ABOVE-NAMED PLAINTIFF AND HIS ATTORNEY, H. WOODROW GOODING AND MARK B. TINSLEY:

PLEASE TAKE NOTICE THAT THE DEFENDANT, by and through its undersigned attorneys, without admitting liability and in an attempt to compromise and settle the Plaintiff's claim pursuant to Rule 68 of the *South Carolina Rules of Civil Procedure*, hereby offers the sum of Twenty Thousand Dollars and 00/100ths (\$20,000.00), including all costs, in full compromise and settlement of the Plaintiff's claims against the Defendant, and hereby offers to allow judgment to be taken against it for the sum of Twenty Thousand Dollars and 00/100ths (\$20,000.00), including all costs. The Plaintiff has twenty (20) days from the date indicated below to accept this offer; if written notice of acceptance is not given by the Plaintiff within the twenty (20) days specified, the offer is withdrawn, cannot be given in evidence and, if the Plaintiff fails to obtain a more favorable judgment than Twenty Thousand Dollars and 00/100ths (\$20,000.00), including all costs, the Plaintiff cannot recover costs herein and must pay the Defendant's costs of defense.

[Signature Page to Follow]

May 18, 2018

s/ Peden Brown McLeod, Jr.

Peden Brown McLeod, SC Bar No. 74967
McLeod Fraser & Cone LLC
Attorneys for the Defendant
SC Department of Transportation
111 E. Washington Street
Post Office Drawer 230
Walterboro, S. C. 29488
843-549-2516

I, LaQuinton Gray, accept the offer of judgment as stated above:

WITNESSES:

LAQUINTON GRAY

I, LaQuinton Gray, decline the offer of judgment as stated above:

WITNESSES:

LAQUINTON GRAY

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

) Civil Action Number: 2017-CP-40-04442

Kevin Richardson,

)

Plaintiff,

)

v.

)

AMENDED OFFER OF JUDGMENT

)

County of Richland and Leon Lott, in his
official capacity as Sheriff of Richland
County,

)

)

Defendants.

)

)

)

)

)

)

Pursuant to Rule 68(a) S.C.R.Civ.P. and S.C. Code Ann. §15-35-400, Defendants County of Richland and Leon Lott, in his official capacity as Sheriff of Richland County, hereby offer to allow judgment to be taken against them in the sum of Seven Thousand Five Hundred and NO/100 (\$7,500.00) Dollars, inclusive of costs accrued to date. This filing should not be construed as an admission of liability, which remains expressly denied. The offer contained herein will expire if not accepted within the period of time permitted by Rule 68 S.C.R.Civ.P. and S.C. Code Ann. §15-35-400.

CROWE LAFAVE, LLC

/s/Matthew C. LaFave

Matthew C. LaFave, Esq. SC Bar #75365

Post Office Box 1149

Columbia, South Carolina 29202

Phone: 803.724.5727

matt@crowelafave.com

ATTORNEY FOR THE DEFENDANT

February 27, 2019

IN THE COURT OF COMMON PLEAS
THE FIFTH JUDICIAL CIRCUIT

Bertine Castleberry,

Civil Action No.: 2018-CP-40-01499

Plaintiff,

V.

OFFER OF JUDGMENT

**South Carolina Department of
Transportation, Richland County
Department of Public Works, and City of
Columbia,**

Defendants.

TO THE PLAINTIFF, BERTINE CASTLEBERRY AND HER COUNSEL:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 68(a) of the South Carolina Rules of Civil Procedure, Defendant hereby offers to enter judgment in Plaintiff's favor in the amount of Fifteen Thousand and no/100 (\$15,000.00) Dollars. Should this offer not be accepted within twenty (20) days, it is deemed withdrawn and Defendant shall proceed with preparation for trial.

This offer is made only in an effort to avoid the otherwise unnecessary costs of preparing for trial of this case and further money spent on depositions.

Respectfully submitted,

MONTGOMERY WILLARD, LLC

s/Michael H. Montgomery

Michael H. Montgomery, SC Bar ID: 4034

Montgomery Willard, LLC

1002 Calhoun Street

Columbia, SC 29201

(803) 779-3500

**ATTORNEYS FOR SC DEPARTMENT OF
TRANSPORTATION**

Columbia, South Carolina
March 29, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	C/A NO.: 2018-CP-03-00071
	)	
Markeith Bradley,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	OFFER OF JUDGMENT
	)	(\$12,500.00)
	)	
Town of Allendale d/b/a	)	
Allendale Police Department,	)	
	)	
Defendant.	)	
_____	)	

To: Daniel W. Williams, Attorney for Plaintiff.

NOW COMES the Defendant Town of Allendale d/b/a Allendale Police Department, under and pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, and hereby offers to enter a compromise settlement, and settle all claims against the Plaintiff Markeith Bradley for the sum of Twelve Thousand Five Hundred and 00/100 (\$12,500.00) Dollars, inclusive of costs and attorney's fees. The terms and conditions of the Offer of Judgment by Defendant being that the Plaintiff may accept the offer pursuant to Rule 68 and give written notice thereof within the fourteen (14) day period set forth in Rule 68, and if the written notice of acceptance be not timely given this offer is deemed withdrawn, and evidence thereof is not admissible except in a proceeding to determine costs. If the Plaintiff fails to obtain a more favorable judgment, Defendant will demand the relief and costs set forth in said Rule.

This offer and any settlement and/or judgment entered hereunder are for the purposes of this action only, and shall not be used as any admission, or

constitute collateral estoppel, estoppel by judgment, or res judicata in any other proceeding.

Respectfully submitted,

LAW OFFICES OF CHRISTY L. SCOTT, LLC

By: s/Christy L. Scott
Christy L. Scott, Fed. Bar No. 6215
Post Office Box 1515, 108 Carn Street
Walterboro, SC 29488
(843) 782-4359
Email: cscott@lawofficeofchristyscott.com

ATTORNEY FOR DEFENDANT
Town of Allendale d/b/a
Allendale Police Department

May 22, 2019

Walterboro, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Ulysses Todman,

Plaintiff,

vs.

Sheriff Leon Lott, in his official capacity,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-40-00273

OFFER OF JUDGMENT

TO: W. LAMAR FLATT, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Pursuant to Rule 68(a) S.C.R.Civ.P. and S.C. Code Ann. §15-35-400, Defendant Sheriff Leon Lott, in his official capacity, hereby offers to allow judgment to be taken against him in the sum of Twelve Thousand Five Hundred and NO/100 (\$12,500.00) Dollars, inclusive of costs accrued to date and any payments heretofore made by and on behalf of Defendant. This offer will expire if not accepted within the period of time permitted by Rule 68 S.C.R.Civ.P. and S.C. Code Ann. §15-35-400. If this offer is not accepted and a judgment is returned in an amount less than this offer Defendant will seek recovery of all available costs in accordance with Rule 68(b)(1) S.C.R.Civ. P. as well as a reduction of said judgment in accordance with Rule 68(b)(3) S.C.R.Civ.P.

[SIGNATURE PAGE FOLLOWS]

RESPECTFULLY SUBMITTED,

s/Matthew C. LaFave
Matthew C. LaFave, SC BAR #75365
Robert D. Garfield, SC BAR #6557
CROWE LAFAVE, LLC
P.O. Box 1149
Columbia, SC 29202
803.724.5727 (Matt)
803.999.1225 (Robert)
matt@crowelafave.com
robert@crowelafave.com

ATTORNEY FOR DEFENDANT

This 17th Day of July 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	C.A. No.: 2019-CP-08-00548
	)	
Berkeley County School District,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S OFFER OF JUDGMENT
vs.	)	TO DEFENDANT MICHAEL
	)	GALLAGHER
Compass Municipal Advisors, LLC, South	)	
Carolina Association of Governmental	)	
Organizations, Burr & Forman, LLP f/k/a the	)	
McNair Law Firm, PA, Frannie Heizer, Brian	)	
Nurick, Michael Gallagher, and Brantley	)	
Thomas,	)	
	)	
Defendants.	)	
	)	

PLEASE TAKE NOTICE that the Plaintiff, by and through its respective undersigned counsel and pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, hereby offers the sum of Two Million Dollars and No Cents (\$2,000,000.00) to allow judgment to be taken against Defendant Michael Gallagher (herein "this Defendant"). If this Defendant rejects or does not accept this offer within twenty (20) days, the offer is deemed rejected and subjects this Defendant to possible exposure of costs and 8% interest on judgment from time of rejection or refusal of acceptance of this Offer of Judgment.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

s/Joshua S. Whitley

Joshua S. Whitley, Esquire

Smyth Whitley, LLC

SC Bar No.: 77824

S. Tyler Graves, Esquire

SC Bar No.: 103173

126 Seven Farms Drive, Suite 260

Charleston, South Carolina 29492

jwhitley@smythwhitley.com

tgraves@smythwhitley.com

Richard A. Harpootlian, Esquire

Phillip D. Barber, Esquire

Christopher Kenny, Esquire

Richard A. Harpootlian, P.A.

1310 Laurel Street

P.O. Box 1090

Columbia, SC 29202

rah@harpootlianlaw.com

pdb@harpootlianlaw.com

cpk@harpootlianlaw.com

Jeffrey A. Breit, Esquire

Breit Cantor Grana Buckner

600 22nd Street, Suite 402

Virginia Beach, Virginia

(757) 280-1101

jeffrey@breitlaw.com

*Counsel for Plaintiff, Berkeley County
School District*

October 1, 2020.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BARNWELL	)	C/A No.: 2016-CP-06-00310
	)	New C/A No.: 2019-CP-06-00479
Lelia Wright, a special needs person	)	
By and through her brother and	)	
Guardian, Lonnie J. Wright	)	DEFENDANT ALLENDALE BARNWELL
	)	COUNTIES DISABILITIES AND SPECIAL
	)	NEEDS BOARD'S OFFER TO
Plaintiff	)	CONFESS JUDGMENT
vs.	)	
	)	
Allendale Barnwell Disabilities and	)	
Special Needs Board and South	)	
Carolina Department of Disabilities	)	
And Special Needs,	)	
	)	
Defendants.	)	

TO: PHEOBE A. CLARK, ESQUIRE AND THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant Allendale Barnwell Counties Disabilities and Special Needs Board, by and through the undersigned Counsel, pursuant to Rule 68, SCRCF, hereby offers to allow judgment be taken against it in the amount of \$25,000.00.

This offer will remain open within Twenty (20) days after the date of service. If this offer is accepted within this time, Counsel for the Defendant will file the offer and notice of acceptance together with proof of service thereof to the Clerk of Court for Barnwell County for filing. If this offer is not accepted within Twenty (20) days after the date of service it shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs.

Moreover, if Plaintiff fails to obtain a favorable judgment or a judgment that exceeds \$25,000.00, Plaintiff cannot seek to recover costs, but must pay Defendant's costs from the date of this offer, which shall include but not be limited to, deposition and expert fees and costs.

October 14, 2020

MICHAEL P. HORGER, LLC
s/Michael P. Horger
Michael P. Horger, SC Bar #2633
Attorney for Defendant ABCDSNB
160 Centre Street
Orangeburg, SC 29115
mhorger@horgerlaw.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Charlayne Myers, Individually and as
Parent and Guardian for Ky. M.B (a
minor), and Ka. M.B. (a minor),

Plaintiffs,

v.

City Of Charleston Police Department,
City Of Charleston,

Defendants.

IN THE COURT OF COMMON PLEAS NINTH
JUDICIAL CIRCUIT

CASE NO.: 2020-CP-10-01570

OFFER OF JUDGMENT

TO: PLAINTIFFS AND PLAINTIFFS' COUNSEL

Pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCPP, Defendant City of Charleston ("Defendant") hereby makes the following Offer of Judgment to the Plaintiffs:

In consideration for a judgment against the Defendant in the amount of Fifty-Five Thousand and 00/100 Dollars (\$55,000.00), which would result in a payment by American Southern Insurance Company of \$55,000.00 under its Liability Policy at issue in this matter, Plaintiff will discharge any and all claims against the City of Charleston, City of Charleston Police Department, its agents and employees and American Southern Insurance Company for the damages allegedly sustained by Plaintiffs arising out of the circumstances described in Plaintiffs' Complaint. If this Offer of Judgment is not accepted within twenty days after notification of this offer or prior to or on the tenth day before the actual trial date, whichever date occurs first, this offer shall be considered rejected. However, Defendant reserves the right to withdraw this Offer of Judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to you or your client in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Pursuant to S.C. Code Ann. §

15-35-400(B) and SCRCP 68, if the Plaintiffs do not accept this Offer of Judgment and Defendant obtains a verdict or determination at least as favorable as this offer, Defendant shall seek to recover from the Plaintiffs: (1) any administrative, filing, or other court costs from the date of this offer until judgment; and (2) eight percent annual interest computed on the amount of the verdict or award from the date of this offer. However, by making this Offer of Judgment, Defendant does not waive its right to seek any remedies that may be available to it than those set forth in S.C. Code Ann. § 15-35-400 and SCRCP 68.

Within twenty days after notification, or at least ten days prior to the trial date, whichever date is earlier, the Plaintiffs or their attorney may file with the Clerk of Court a written acceptance of this Offer of Judgment and serve it upon Defendant in accordance with the South Carolina Rules of Civil Procedure.

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/ Payton D. Hoover

James H. Elliott, Jr. (SC Bar 13620)

Payton D. Hoover (SC Bar 75967)

235 MaGrath Darby Blvd., Ste. 100

Mt. Pleasant, SC 29464

Telephone: (843) 805-6550

Fax: (843) 805-6599

jelliott@richardsonplowden.com

phoover@richardsonplowden.com

**ATTORNEY FOR CITY OF
CHARLESTON.CITY OF CHARLESTON
POLICE DEPARTMENT**

March 24, 2021

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-08-00807

Kathryn W. McElveen,
Plaintiff,

vs.

Department of Transportation; Berkeley
County; and 200 River Landing Drive
Phase II Condominium Association, Inc.,
Defendants.

OFFER OF JUDGMENT

TO: WILLIAM E. APPLGATE, IV, ESQUIRE AND LIAM D. DUFFY, ESQUIRE, COUNSEL
FOR THE PLAINTIFF:

Defendant, City of Charleston, hereby makes an offer to allow a judgment to be taken against it in the amount of Two Hundred Fifty-two Thousand Five Hundred Dollars and 00/100 (\$252,500.00) Dollars. This offer is being made pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, which requires Plaintiff to give notice in writing of acceptance of this Offer within twenty (20) days of receipt of this Offer. If notice of acceptance is not given within the specified time, this Offer is deemed to have been withdrawn and cannot be given as evidence at trial. If the Plaintiff fails to obtain a more favorable judgment than the amount offered herein, she cannot recover costs but must pay all of Defendant's costs and/or a reduction of allowable interest for any judgment allowable under South Carolina law from the time of this Offer.

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: s/Phillip S. Ferderigos

Phillip S. Ferderigos

P.O. Drawer H

Charleston, SC 29402

211 King Street, Suite 300 (29401)

(843) 577-7700

pferderigos@barnwell-whaley.com

Counsel for Defendant City of Charleston

Dated: May 13, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

LAMAR ADKINS,

Plaintiff,

vs.

TOWN OF FAIRFAX AND TYLIEK
GILLISON,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL CASE NO.: 2020-CP-03-00300

**TOWN OF FAIRFAX'S OFFER
OF JUDGMENT**

TO: PLAINTIFF AND COUNSEL FOR THE PLAINTIFF:

Pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRPC, Defendant Town of Fairfax ("Defendant") hereby makes the following Offer of Judgment to the Plaintiff Lamar Adkins ("Plaintiff"):

In consideration for a judgment against the Defendant in the amount of Five Thousand and 00/100 Dollars (\$5,000.00), which includes all attorney fees and costs, Plaintiff will discharge any and all claims against Defendant Town of Fairfax, its employees and American Southern Insurance Company for the damages allegedly sustained by Plaintiff arising out of the circumstances described in Plaintiff's Complaint. This Offer is in addition to all other sums of money Plaintiff has received from other responsible parties or their insurance carriers, if any, for damages, including but not limited to: bodily injury, loss of consortium, property damage, physical pain, mental suffering, disability, attorney fees and costs. If this Offer of Judgment is not accepted within twenty days after notification of this offer or prior to or on the tenth day before the actual trial date, whichever date occurs first, this offer shall be considered rejected. However, Defendant reserves the right to withdraw this Offer of Judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving

notice to Plaintiff in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Pursuant to S.C. Code Ann. § 15-35-400(B) and SCRCP 68, if the Plaintiff does not accept this Offer of Judgment and Defendant obtains a verdict or determination at least as favorable as this offer, Defendant shall seek to recover from the Plaintiff: (1) any administrative, filing, or other court costs from the date of this offer until judgment; and (2) eight percent annual interest computed on the amount of the verdict or award from the date of this offer. However, by making this Offer of Judgment, Defendant does not waive its right to seek any remedies that may be available to it than those set forth in S.C. Code Ann. § 15-35-400 and SCRCP 68.

Within twenty days after notification, or at least ten days prior to the trial date, whichever date is earlier, the Plaintiff or his attorney may file with the Clerk of Court a written acceptance of this Offer of Judgment and serve it upon Defendant in accordance with the South Carolina Rules of Civil Procedure.

RICHARDSON PLOWDEN & ROBINSON, P.A.

S/ Payton D. Hoover

James H. Elliott, Jr. (SC Bar No. 13620)

Payton D. Hoover (SC Bar No. 75)

235 Magrath Darby Blvd, Ste. 100

Mt. Pleasant, SC 29464

Telephone: (843) 805-6550

Fax: (843) 805-6599

jelliott@richardsonplowden.com

PHOOVER@richardsonplowden.com

**ATTORNEYS FOR DEFENDANT TOWN OF
FAIRFAX**

June 17, 2021

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN) IN THE COURT OF COMMON PLEAS

Heather Gannon,)
Plaintiff,) C.A. No. 2020-CP-09-00132
vs.) **DEFENDANT CALHOUN COUNTY**
Calhoun County School District and) **SCHOOL DISTRICT'S OFFER OF**
South Carolina Department of Education,) **JUDGMENT TO PLAINTIFF**
Defendants.)

Pursuant to Rule 68, SCRPC, and South Carolina Code Section 15-35-400, Defendant Calhoun County School District, by and through its undersigned attorneys, hereby offers to allow judgment to be taken against it in regard to all allegations and claims alleged in the above-captioned case for a total sum of Two Thousand Dollars (\$2,000), inclusive of all claims, costs, alleged damages, and attorney's fees. If this offer of judgment is not accepted and the judgment finally obtained, if any, by Plaintiff is not more favorable than this offer, Defendant District will pursue any administrative, filing, or other court costs from the date of the offer until the entry of the judgment and reduction from the judgment or award of eight (8) percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment. If this offer is not accepted in writing within twenty days after service of the offer or ten days prior to the trial date, whichever date is earlier, it shall be deemed withdrawn and evidence of this offer is not admissible, except in a proceeding to determine costs.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/ Allen D. Smith

Allen D. Smith, S.C. Bar No. 15065
asmith@hmwlegal.com

Connie P. Jackson, S.C. Bar No. 9488
cjackson@hmwlegal.com

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendant Calhoun County School
District

December 16, 2021

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-00114
	)	
KATILYN JUST,	)	
	)	
Plaintiff,	)	
vs.	)	OFFER OF JUDGMENT
	)	
SOUTH CAROLINA DEPARTMENT OF	)	
PUBLIC SAFETY,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to Rule 68 of the South Carolina Rules of Civil Procedure and South Carolina Code Ann. § 15-35-400, Defendant South Carolina Department of Public Safety hereby offers to allow judgment to be taken against it in the amount of One Hundred Fifty Thousand Dollars and no/100 (**\$150,000.00**) to specifically satisfy all of the claims of Plaintiff Katilyn Just against it in this action including all attorneys' fees and costs. Should Plaintiff refuse the Offer of Judgment and thereafter recover an amount less than or equal to the Offer of Judgment, Defendant South Carolina Department of Public Safety will pursue all of its costs against Plaintiff and all relief provided by Rule 68, SCRPC and South Carolina Code Ann. § 15-35-400.

This Offer of Judgment is made for the purposes specified in Rule 68, SCRPC and is not to be construed as an admission that Defendant South Carolina Department of Public Safety is liable in this action or that this Plaintiff has suffered the damages prayed for in the Complaint.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
Telephone: (843) 727-0307
cniland@csvl.law

By: s/Caroline R. Niland
CAROLINE R. NILAND
State Bar No.: 100709
***Attorney for Defendant South Carolina
Department of Public Safety***

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2019-CP-10-03029
Miriam Washington Smith,	)	
	)	
Plaintiff,	)	OFFER OF JUDGMENT
	)	
vs.	)	
	)	
City of Charleston,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, Defendant hereby offers to allow judgment to be taken against it in this action in the amount of Seven Thousand Three Hundred Fifty and 00/100 (\$7,350.00). This offer of judgment is made for the purposes specified in Rule 68 and is not to be construed either as an admission that the Defendant is liable in this action or that the Plaintiff has suffered any damage.

HALIO & HALIO
Attorneys for Defendants

s/ Andrew S. Halio

ANDREW S. HALIO
S.C. Bar# 2459
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747
(843) 577-5200
Haliolaw@bellsouth.net

February 15, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CIVIL ACTION NO. 2020-CP-04-01745
	)	
Jennifer A. Gregg,	)	
	)	
Plaintiff,	)	
	)	OFFER OF JUDGMENT
v.	)	
	)	
Town of Williamston; Williamston Public	)	
Safety Department; Williamston Police	)	
Department; Anderson County School	)	
District One; Robert C. Maxwell, in his	)	
individual personal capacity,	)	
	)	
Defendants.	)	
_____	)	

TO: PLAINTIFF AND HER ATTORNEY, THOMAS M. CREECH, JR.:

Please be advised that pursuant to SCRCP 68, Defendant Anderson County School District One serves upon the Plaintiff an offer to allow judgment in the above-referenced matter for the sum of Five Thousand Dollars (\$5,000.00).

If Plaintiff accepts this Offer and gives notice thereof within twenty days of the date of service of this Offer, Plaintiff may file the Offer with an Affidavit of Notice of Acceptance, and the Court is hereby authorized to enter judgment in accordance herewith.

If the Notice of Acceptance is not given within twenty days of the service date stated below, the Offer is deemed to be withdrawn. Further, if Plaintiff fails to obtain a more favorable judgment than that offered herein, then all costs incurred by Defendant Anderson County School District One from the time of this Offer up to the date of judgment will be taxed against Plaintiff.

This Offer of Judgment is not and should not be construed as an admission by Defendant Anderson County School District One of any liability whatsoever, in this action or in any other action. The sole purpose of this Offer of Judgment is to save attorney time, expenses, and costs,

and in the event this Offer is not accepted. Defendant Anderson County School District One intends to defend vigorously this action at the trial of the case.

s/David A. Anderson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2020-CP-04-01745

Jennifer A. Gregg,	)
	)
Plaintiff,	)
	)
v.	)

OFFER OF JUDGMENT

Town of Williamston; Williamston	)
Public Safety Department; Williamston	)
Police Department; Anderson County	)
School District One; Robert C. Maxwell,	)
In his individual personal capacity;	)
	)
Defendants.	)

TO: PLAINTIFF AND HER ATTORNEY, THOMAS M. CREECH, JR.:

Please be advised that pursuant to SCRCP 68, Defendants Town of Williamston, Williamston Public Safety Department, Williamston Police Department, and Robert C. Maxwell, in his individual personal capacity serves upon the Plaintiff an offer to allow judgment in the above-referenced matter for the sum of Seven Thousand Dollars (\$7,000.00).

If Plaintiff accepts this Offer and gives notice thereof within twenty days of the date of services of this Offer, Plaintiff may file the Offer with an Affidavit of Notice of Acceptance, and the Court is hereby authorized to enter judgment in accordance herewith.

If the Notice of Acceptance is not given within twenty days of the service date stated below, the Offer is deemed to be withdrawn. Further if Plaintiff fails to obtain a more favorable judgment than that offered herein, then all costs incurred by Defendants Town of Williamston, Williamston Public Safety Department, Williamston Police Department, and

Robert C. Maxwell, in his individual personal capacity from the time of this Offer up to the date of judgment will be taxed against Plaintiff.

This Offer of Judgment is not and should not be construed as an admission by Defendants Town of Williamston, Williamston Public Safety Department, Williamston Police Department, and Robert C. Maxwell, in his individual personal capacity of any liability whatsoever, in this action or in any other action. The sole purpose of this Offer of Judgment is not save attorney time, expenses, and costs, and in the event this Offer is not accepted, Defendants Town of Williamston, Williamston Public Safety Department, Williamston Police Department, and Robert C. Maxwell, in his individual personal capacity intend to defend vigorously this action at the trial of the case.

LOGAN & JOLLY, L.L.P.


Stacey Todd Coffee, Esq.
Logan & Jolly, L.L.P.
1805 North Boulevard
Post Office Box 259
Anderson, SC 29622
coffee@loganandjolly.com
864-226-1910
864-226-1931 (facsimile)
Attorney for Defendants Town of
Williamston, Williamston Public Safety
Department, Williamston Police
Department, and Robert C. Maxwell, in
his individual personal capacity.

Anderson, South Carolina
Date: 3/22/22

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL
COUNTY OF LEXINGTON	)	CIRCUIT
	)	
Tara Walker,	)	
	)	CIVIL ACTION NO. 2021-CP-32-02270
Plaintiff,	)	
vs.	)	
	)	
South Carolina Department of Mental	)	
Health and Lexington County Community	)	DEFENDANT SCDMH OFFER OF
Mental Health Center,	)	JUDGMENT TO PLAINTIFF
	)	
Defendants.	)	

TO: COLIN SPANGLER, ESQUIRE, ATTORNEY FOR PLAINTIFF TARA WALKER

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Department of Mental Health, hereby offers to allows judgment to be taken against it, pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, in the amount of **Three Thousand Three Hundred Seventy and no/100 (\$3,770.00) Dollars** in order to resolve all claims asserted by the Plaintiff in the above-captioned matter.

If the undersigned does not receive a written acceptance within twenty (20) days after service of this Offer, or at least (10) days prior to the trial date, whichever is earlier, this offer shall be considered rejected, and Plaintiff shall be liable for costs and interests as set for in Rule 68(b) of the South Carolina Rules of Civil Procedure.

DAVIS FRAWLEY, LLC

/s/Matthew G. Rogers

Matthew G. Rogers, S.C. ID 104239

Patrick J. Frawley, S.C. ID 2118

140 East Main Street (29072)

PO Box 489

Lexington SC 29071-0489

(803) 359-2512

pat@oldcourthouse.com

mrogers@oldcourthouse.com

ATTORNEYS FOR SOUTH CAROLINA
DEPARTMENT OF MENTAL HEALTH

July 5, 2022
Lexington, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Jessica Condon, a biological parent and natural guardian of A.A., a minor child,

Plaintiff,

v.

Ronnie Lee Sires, in his individual capacity as an agent/employee of Chesterfield County School District, Harrison Goodwin, in his individual capacity as Superintendent of Chesterfield County School District; Chesterfield County School District; and the South Carolina Department of Education,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

C.A. No.: 2019-CP-13-00193

**CHESTERFIELD COUNTY SCHOOL
DISTRICT'S OFFER OF JUDGMENT**

Pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, Defendant Chesterfield County School District (hereinafter, the "District"), hereby offers to allow judgment to be taken against it in the amount of Seven Hundred and Fifty Thousand Dollars (\$750,000). This Offer of Judgment ["this Offer"] of Seven Hundred and Fifty Thousand Dollars (\$750,000), is inclusive of Plaintiff's damages and all costs and attorney's fees accrued and/or incurred as of the date of this Offer.

Further, this Offer is expressly contingent upon the Plaintiff's dismissal with prejudice of all claims whatsoever, whether known or unknown, against the above-named individual Defendants, Ronnie Lee Sires and Harrison Goodwin, whether in their individual or official capacities; and all other persons, agents, Board members, administrators, teachers, staff, attorneys, insurance carriers and their successors and assigns, whether previously named or unnamed in this action (hereinafter, collectively the "Released Parties"), so as to conclude this matter definitively. This Offer is also expressly contingent upon the Plaintiff's execution of a General Release which, among other matters: 1) provides that Plaintiff expressly agree that the

payment of the settlement funds cannot and will not be construed or represented by Plaintiff in any way as an admission of liability by the Released Parties; and 2) fully and forever releases the Released Parties from all possible liability for the conduct alleged in the Complaint.

This Offer by the District shall not in any way be considered an admission of liability on any of the Defendants' part. This Offer is made only in an effort to avoid the otherwise necessary costs of litigating this matter in preparation for trial. Should this Offer not be accepted within twenty (20) days, it is deemed withdrawn and the parties shall proceed with litigating the matter in preparation for trial.

If the District herein ultimately obtains a collective verdict or determination at least as favorable as the rejected Offer herein, the District shall move the Court for a reduction in the judgment as provided by Rule 68, and to award the District any recoverable administrative, filing, and other court costs, incurred on its behalf from the date of this Offer, plus such other and further relief as the Court deems just and appropriate.

In accordance with Rule 68, evidence of this Offer is not admissible in any proceeding except one to determine costs.

Respectfully Submitted,

DUFF | FREEMAN | LYON, LLC

By: s/David N. Lyon

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July 13, 2022
 Columbia, South Carolina

Attorneys for Chesterfield County School
 Defendants

and

DICKY LAW GROUP

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July 13, 2022
West Columbia, South Carolina

Attorney for Defendant Ronnie Lee Sires

SAVAGE, ROYALL & SHEHEEN, LLP

By: s/Vincent A. Sheheen

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July 13, 2022
Camden, South Carolina

Attorney for Defendant Harrison Goodwin

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CIVIL CASE NO. 2020-CP-26-4028
	)	
Thomas E. Collins,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT’S OFFER OF JUDGMENT
	)	
South Carolina Department of	)	
Public Safety,	)	
	)	
Defendant.	)	
_____	)	

TO: PLAINTIFF AND HIS COUNSEL:

Pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCP, Defendant South Carolina Department of Public Safety (“Defendant”) hereby makes the following Offer of Judgment to the Plaintiff Thomas E. Collins (“Plaintiff”):

In consideration for a judgment against the Defendant in the amount of One Hundred and Fifteen Thousand and 00/100 Dollars (\$115,000.00), which would result in a payment by American Southern Insurance Company of \$115,000.00 under its Liability Policy at issue in this matter, Plaintiff will discharge any and all claims against the Defendant, its agents and/or employees and American Southern Insurance Company for the damages allegedly sustained by Plaintiff arising out of the circumstances described in Plaintiff’s Complaint. If this Offer of Judgment is not accepted within twenty days after notification of this offer or prior to or on the tenth day before the actual trial date, whichever date occurs first, this offer shall be considered rejected. However, Defendant reserves the right to withdraw this Offer of Judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to you or your client in accordance with the service rules for motions and other pleadings outlined in the

South Carolina Rules of Civil Procedure. Pursuant to S.C. Code Ann. § 15-35-400(B) and SCRCP 68, if the Plaintiff does not accept this Offer of Judgment and Defendant obtains a verdict or determination at least as favorable as this offer, Defendant shall seek to recover from the Plaintiff:

- (1) any administrative, filing, or other court costs from the date of this offer until judgment; and
- (2) eight percent annual interest deducted from the amount of the verdict or award from the date of this offer.

However, by making this Offer of Judgment, Defendant does not waive its right to seek any remedies that may be available to it than those set forth in S.C. Code Ann. § 15-35-400 and SCRCP 68.

Within twenty days after notification, or at least ten days prior to the trial date, whichever date is earlier, the Plaintiff or his attorney may file with the Clerk of Court a written acceptance of this Offer of Judgment and serve it upon Defendant in accordance with the South Carolina Rules of Civil Procedure.

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Payton D. Hoover

Payton D. Hoover, Esquire, SC Bar No. 75967
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phoover@richardsonplowden.com

***Attorneys for Defendant, South Carolina Department of
Public Safety***

September 8, 2022
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2020-CP-10-04734
	)	
Michael Jennings and Susan Jennings,	)	
	)	
Plaintiffs,	)	OFFER OF JUDGMENT
	)	
vs.	)	
	)	
City of Charleston Police Department,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to Rule 68 of the South Carolina Rules of Civil Procedure and South Carolina Code Ann. § 15-35-400, Defendant City of Charleston Police Department hereby offers to allow judgment to be taken against it in the amount of One Hundred Twenty Thousand Dollars and no/100 (\$120,000.00) to specifically satisfy all of the claims of Plaintiffs Michael Jennings and Susan Jennings against it in this action including all attorneys' fees and costs. Should Plaintiffs refuse the Offer of Judgment and thereafter recover an amount less than or equal to the Offer of Judgment, Defendant City of Charleston Police Department will pursue all of its costs against Plaintiffs and all relief provided by Rule 68, SCRCF, and South Carolina Code Ann. § 15-35-400.

This Offer of Judgment is made for the purposes specified in Rule 68, SCRCF, and is not to be construed as an admission that Defendant City of Charleston Police Department is liable in this action or that these Plaintiffs have suffered the damages prayed for in the Complaint.

[SIGNATURE PAGE TO FOLLOW]

This 3rd day of October, 2022.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
Telephone: (843) 727-0307
cniland@csvl.law
kbrown@csvl.law

By: *s/Caroline R. Niland*
CAROLINE R. NILAND
State Bar No.: 100709
KIERRA N. BROWN
State Bar No.: 103143
***Attorneys for Defendant City of Charleston
Police Department***

ELECTRONICALLY FILED 10/03/22 02:30 PM FOR HARKESTON, DONALD W. POINEBEE, AKA, SEA 2022-00212884734

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DUSTIN BROACH,

Plaintiff,

Vs.

CITY OF NORTH CHARLESTON

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL CASE NO.: 2021-CP-10-04087

OFFER OF JUDGMENT

TO: Plaintiff and his counsel, Milton Stratos, II

Pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCP, Defendant City of North Charleston (“Defendant”) hereby makes the following Offer of Judgment to the Plaintiff:

In consideration for a judgment against the Defendant in the amount of Two-Hundred Thousand Dollars and 00/100 (\$200,000.00), which would result in a payment by American Southern Insurance Company under its Automobile Liability Policy at issue in this matter, Plaintiff will discharge any and all claims against the Defendant, its agents and/or employees and American Southern Insurance Company for the damages allegedly sustained by Plaintiff arising out of the circumstances described in Plaintiff's Complaint, including all medical expenses, costs, expenses and attorney fees.

If this Offer of Judgment is not accepted within twenty-days after notification of the offer or prior to or on the tenth day before the actual trial date, whichever date occurs first, the offer shall be considered rejected. However, Defendant reserves the right to withdraw the Offer of Judgment prior to his acceptance or prior to the date on which the offer would be considered rejected by giving notice to you or your client in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Pursuant to S.C. Code Ann. § 15-35-400(B) and SCRCP 68, if the Plaintiffs do not accept the Offer of Judgment and Defendant

obtains a verdict or determination at least as favorable as the offer, Defendant shall seek to recover from the Plaintiff: (1) any administrative, filing, or other court costs from the date of these offers until judgment; and (2) eight percent annual interest deducted from the amount of the verdict or award from the date of the offer. However, by making the Offer of Judgment, Defendant does not waive its right to seek any remedies that may be available to it than those set forth in S.C. Code Ann. § 15-35-400 and SCRPC 68.

Within twenty-days after notification, or at least ten days prior to the trial date, whichever date is earlier, the Plaintiff or his attorney may file with the Clerk of Court a written acceptance of these Offer of Judgment and serve it upon Defendant in accordance with the South Carolina Rules of Civil Procedure.

RICHARDSON PLOWDEN & ROBINSON, P.A.

/s/ Payton D. Hoover

James H. Elliott, Jr. (SC Bar No. 13620)

Payton D. Hoover (SC Bar No. 75967)

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Attorney for City of North Charleston

November 8, 2022
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ANDREW MURRAY and JESSIE WARD,

Plaintiffs,

vs.

SOUTH CAROLINA SCHOOL FOR THE
DEAF AND BLIND; SOUTH CAROLINA
DEPARTMENT OF EDUCATION,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL CASE NO.: 2022-CP-10-01150

DEFENDANTS' OFFER OF JUDGMENT

TO: PLAINTIFFS AND THEIR COUNSEL

Pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCPP, Defendants hereby make the following Offer of Judgment to the Plaintiffs ("Plaintiffs"):

In consideration for a judgment against the Defendants in the following amounts:

- 1) Fifty Thousand and 00/100 Dollars (\$50,000.00), which would result in a payment by American Southern Insurance Company of \$50,000.00 under its Liability Policy at issue in this matter, Plaintiff Andrew Murray will discharge any and all claims against the Defendants, their agents and/or employees and American Southern Insurance Company for the damages allegedly sustained by Plaintiff arising out of the circumstances described in Plaintiffs' Complaint, including but not limited to all past, present or future medical expenses, lost wages, physical pain and mental suffering.
- 2) Five Thousand and 00/100 Dollars (\$5,000.00), which would result in a payment by American Southern Insurance Company of \$5,000.00 under its Liability Policy at issue in this matter, Plaintiff Jessie Ward will discharge any and all claims against the Defendants,

their agents and/or employees and American Southern Insurance Company for the property damages allegedly sustained by Plaintiff arising out of the circumstances described in Plaintiffs' Complaint, including but not limited to property damage and loss of use.

If these Offers of Judgment are not accepted within twenty-days after notification of these offers or prior to or on the tenth day before the actual trial date, whichever date occurs first, these offers shall be considered rejected. However, Defendants reserve the right to withdraw these Offers of Judgment prior to their acceptance or prior to the date on which they would be considered rejected by giving notice to you or your clients in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Pursuant to S.C. Code Ann. § 15-35-400(B) and SCRCP 68, if the Plaintiffs do not accept these Offers of Judgment and Defendants obtain a verdict or determination at least as favorable as these offers, Defendants shall seek to recover from the Plaintiffs: (1) any administrative, filing, or other court costs from the date of these offers until judgment; and (2) eight percent annual interest deducted from the amount of the verdict or award from the date of these offers. However, by making these Offers of Judgment, Defendants do not waive their right to seek any remedies that may be available to it than those set forth in S.C. Code Ann. § 15-35-400 and SCRCP 68.

Within twenty-days after notification, or at least ten days prior to the trial date, whichever date is earlier, the Plaintiffs or their attorney may file with the Clerk of Court a written acceptance of these Offers of Judgment and serve it upon Defendants in accordance with the South Carolina Rules of Civil Procedure.

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/ Payton D. Hoover

James H. Elliott, Jr. (SC Bar No. 13620)

Payton D. Hoover (SC Bar No. 75967)

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ATTORNEYS FOR SOUTH CAROLINA

DEPARTMENT OF EDUCATION AND SC SCHOOL

FOR THE DEAF AND BLIND

December 16, 2022

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
William Bolchoz,	)	C/A No.: 2022-CP-40-00529
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT CITY OF COLUMBIA
	)	OFFER OF JUDGMENT
City of Forest Acres, City of Columbia,	)	
and South Carolina Department of	)	
Transportation,	)	
Defendant(s).	)	
	)	
	)	

TO: WILLIAM BOLCHOZ, the Plaintiff above named, by and through his attorneys of record:

NOW COMES THE CITY OF COLUMBIA, pursuant to Rule 68 of the *South Carolina Rules for Civil Procedure* as well as §15-35-400 of the *Code of Laws of South Carolina, 1976, as amended*, to hereby offer to allow judgment to be taken in the Plaintiff's favor in the amount of **EIGHTY-FIVE THOUSAND AND NO/100 (\$85,000.00) DOLLARS**.

Within twenty days after service of this offer of judgment or at least ten days prior to the trial date, whichever date is earlier, you may file a written acceptance of this offer of judgment. If the offer of judgment is not accepted within twenty days after notification, or prior to or on the tenth day before the actual trial date, whichever date occurs first, this offer shall be considered rejected and evidence thereof is not admissible except in a proceeding after trial to fix costs, interest, attorney's fees, and other recoverable monies.

If this offer of judgment is not accepted and the City of Columbia obtains a verdict or determination at least as favorable as this offer, the City of Columbia shall recover from you: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the

judgment and (2) reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment.

CITY OF COLUMBIA

BY:

**ATTORNEY FOR THE DEFENDANT, CITY
OF COLUMBIA**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHEROKEE

CASE NO. 2023-CP-11-00243

Upson S. Addison, Jr.,)
)
 Plaintiff,)
)
 v.)
)
 City of Gaffney Police Department by)
 and through the City of Gaffney and the)
 City of Gaffney,)
)
 Defendants.)
 _____)

OFFER OF JUDGMENT

TO: PLAINTIFF AND HIS ATTORNEY, JULIO A. ROSSINGTON:

Please be advised that pursuant to SCRCP 68, Defendants City of Gaffney Police Department by and through the City of Gaffney and the City of Gaffney serve upon the Plaintiff an offer to allow judgment in the above-referenced matter for the sum of Twenty Thousand Dollars (\$20,000.00).

If Plaintiff accepts this Offer and gives notice thereof within twenty days of the date of services of this Offer, Plaintiff may file the Offer with an Affidavit of Notice of Acceptance, and the Court is hereby authorized to enter judgment in accordance herewith.

If the Notice of Acceptance is not given within twenty days of the service date stated below, the Offer is deemed to be withdrawn. Further, if Plaintiff fails to obtain a more favorable judgment than that offered herein, then all costs incurred by Defendants from the time of this Offer up to the date of judgment will be taxed against Plaintiff.

This Offer of Judgment is not and should not be construed as an admission by Defendants of any liability whatsoever, in this action or in any other action. The sole purpose of this Offer of

Judgment is to save attorney time, expenses, and costs, and in the event this Offer is not accepted, Defendants intend to defend vigorously this action at the trial of the case.

LOGAN & JOLLY, LLP

Anderson County, South Carolina
Date: 8/25/23

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Daniela Isaza,

Plaintiff,

vs.

University of South Carolina, University of
South Carolina- Upstate, Spartanburg City
Police Department, and the City of
Spartanburg,

Defendants.

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-42-03230

OFFER OF JUDGMENT

TO: Scott Bradley, Attorney for Daniela Isaza

PLEASE TAKE NOTICE that the Defendant, City of Spartanburg and Spartanburg City Police Department, by and through their undersigned attorneys, without admitting liability and in an attempt to compromise and settle the Plaintiff's claim pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, hereby offers the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) including all costs, in full compromise and settlement of the Plaintiff's claim against these Defendants, (including any claim for loss of consortium by or on behalf of the Plaintiff's spouse), and hereby offers to allow judgment to be taken against it for the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) including all costs. The Plaintiff has twenty (20) days from the date indicated below to accept this offer; if written notice of acceptance is not given by the Plaintiff within the twenty (20) days specified, the offer is withdrawn, cannot be given in evidence and, if the Plaintiff fails to obtain a more favorable judgment than, including all costs, the Plaintiff cannot recover costs

herein and must pay the Defendant's costs of defense.

CLAWSON and STAUBES, LLC

s/Patrick L. "Trey" Still, III

Patrick L. "Trey" Still, III

Bar No.: 74875

200 E Broad Street, Suite 450

Greenville, South Carolina 29601

Phone: (864) 331-8940

Fax: (864) 232-2921

Email: cparks@clawsonandstaubes.com

Attorney for Defendants City of Spartanburg and
Spartanburg City Police Department

Greenville, South Carolina

August 25, 2023

Exhibit 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Cassiopia Rhoads,	)	Civil Action No.: 2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT REGARDING
	)	COSTS AND INTEREST
Aiken County Sheriff's Office,	)	
	)	
Defendant.	)	

1. My name is Francis M. Hinson, IV, although I typically go by "Brink," even in professional settings. I am over the age of eighteen and competent to make this affidavit. The following statements are based upon my personal knowledge, information, and belief.

2. After graduating from the University of South Carolina School of Law, I was admitted to the South Carolina Bar in 2006. After law school, I completed a judicial clerkship with Judge Ralph King Anderson, Jr. on the South Carolina Court of Appeals and I have been working in litigation, primarily personal injury litigation, ever since.

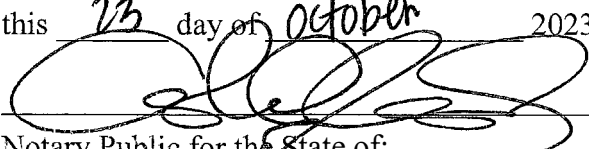
3. I serve as counsel for Plaintiff Cassiopia "Cassi" Rhoads in the above-captioned matter. I have been working on Cassi's claims since before the Summons and Complaint were filed. In my role as one of the lead litigators working on Cassi's case, I am familiar and knowledgeable both with the Offer of Judgment that was filed on March 31, 2022, as well as the costs/expenses that have been incurred in furtherance of the litigation.

4. The administrative, filing, and other court costs that have been incurred by the Plaintiff since the date of the filing of the Offer of Judgment currently total **\$16,056.83**. An itemization of these costs is included herewith as **Attachment A**. I would note that this list of costs does not include such things as fees from expert witnesses, travel expenses (such as meals and lodging), or graphics and foam board demonstratives used at trial, and that the list only includes the administrative, filing, and other court costs that have been incurred.

5. In preparing Plaintiff's motion relating to the consequences of the unaccepted Offer of Judgment that was filed back March 31, 2022 (and for which a vastly more favorable result was achieved at trial), I endeavored to calculate the interest owed in accordance with South Carolina Code § 15-35-400 and Rule 68, SCRCF. In order to determine this sum, I went to a several websites offering simple interest calculations. These websites required inputting the pertinent principal amount (\$950,000, which was the amount of the verdict), the interest rate (8%, which is the interest rate set by S.C. Code § 15-35-400(B), Consequences of NonAcceptance), and the length of time (571 days, which is the time spanning from March 31, 2022 to October 20, 2023). Upon inputting this information, all of the websites came back with the same (or within pennies of the same) result of **\$118,893.18**. A printout of one of these website calculations is included herewith as **Attachment B**.

FURTHER AFFIANT SAYETH NOT.


 Francis M. Hinson, IV

Subscribed and sworn to before me
 this 23 day of October, 2023.

 Notary Public for the State of:
 My commission expires: 2/19/2025

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Cassiopia Rhoads,

Plaintiff,

vs.

Aiken County Sheriff's Office,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) Civil Action No.: 2020-CP-02-02238
)

) **AFFIDAVIT REGARDING**
) **COSTS AND INTEREST**
)
)
)
)

Attachment 1

Expenses

Rhoads v. Aiken County Sheriff's Office

Civil Action No.: 2020-CP-02-02238

Plaintiff's Administrative, Filing, and Other Court Costs (March 31, 2022 - October 23, 2023)

<u>DATE</u>	<u>DESCRIPTION</u>	<u>Amount</u>
4/6/2022	Court Reporter Fee - Bauer and Whitaker	\$965.20
4/7/2022	Court Reporter Fee - River, Hall and Buchanan	\$1,582.62
7/1/2022	Filing Fee - Motion to Compel	\$31.74
7/25/2022	Filing Fee - Motion re Responses to RTAs	\$31.74
12/15/2022	Court Reporter Fee - Erikson and Buggs	\$616.50
1/3/2023	Court Reporter Fee - 30(b)(6) - Witness Nicholas Gallam	\$1,155.60
1/19/2023	Court Reporter Fee - Cassiopia Rhoads	\$1,130.74
1/25/2023	Court Reporter Fee - Erik Riddell	\$1,075.16
3/16/2023	Court Reporter Fee - Jennifer Hairsine	\$1,522.45
3/20/2023	Filing Fee - Motion to Compel Video from County	\$31.74
3/21/2023	Court Reporter Fee - Mary Joyner and Kimberly Kelley	\$630.83
3/29/2023	Court Reporter Fee - Dr. Thomas Fowlkes	\$1,868.13
4/5/2023	Court Reporter Fee - Aubrey Land	\$85.00
4/21/2023	Court Reporter Fee - Dr. Edward O'Bryan	\$844.56
4/28/2023	Court Reporter Fee - Dr. Marshall White	\$1,007.27
5/31/2023	Court Reporter Fee - Dr. Jason Junkins	\$538.90
6/8/2023	Court Reporter Fee - Sherry Shutters	\$859.90
7/28/2023	Court Reporter - 30(b)(1) re Videos - Nicholas Gallam	\$622.62
8/25/2023	Filing Fee - Order re Withdraw of Deposition Notice	\$31.74
9/7/2023	Process Service Fee - Subpoena to Dr. Fowlkes	\$45.00
9/8/2023	Filing Fee - Motion for Transport	\$31.74
9/11/2023	Filing Fee - Motion to Limit Testimony of Dr. Fowlkes	\$31.74
9/19/2023	Court Reporter Fee - Aubrey Land Depo Continued	\$198.40
10/5/2023	Court Reporter Fee - Nicholas Gallam as Expert Witness	\$1,022.29
10/6/2023	Filing Fee - Motion in Limine	\$31.74
10/8/2023	Filing Fee - Motion for Spoliation	\$31.74
10/20/2023	Filing Fee - Motion for Costs re O'Bryan	\$31.74
TOTAL		\$16,056.83

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Cassiopia Rhoads,

Plaintiff,

vs.

Aiken County Sheriff's Office,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) Civil Action No.: 2020-CP-02-02238
)

) **AFFIDAVIT REGARDING**
) **COSTS AND INTEREST**
)
)
)
)

Attachment 2

Interest Calculation

Simple Interest Calculator I = Prt

Simple Interest Calculator

Solve for: Interest (I) ▼

Where: $I = Prt$

Principal (P): \$

Rate (R): %
per year

Time (t):
days ▼

Clear

Calculate

Answer:

$I = \$ 118,893.18$

Equation:
 $I = Prt$

Calculation:

First, converting R percent to r a decimal
 $r = R/100 = 8\%/100 = 0.08$ per year,
putting time into years for simplicity,
 $571 \text{ days} \div 365 \text{ days/year} = 1.564384 \text{ years}$,
then, solving our equation

$I = 950000 \times 0.08 \times 1.564384 = 118893.184$
 $I = \$ 118,893.18$

The simple interest accumulated
on a principal of \$ 950,000.00
at a rate of 8% per year
for 1.564384 years (571 days) is \$ 118,893.18.

Share this Answer Link: [help](#)

Paste this link in email, text or social media.

https://www.calculatorsoup.com/calculators/financial/simple-interest-calculator.php?given_data=find_I&P=950%2C000.00&R=8&t=571&time_t=day+365&given_data_last=find_I&action=solve

[Get a Widget for this Calculator](#)

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Furey, Edward "Simple Interest Calculator I = Prt" at <https://www.calculatorsoup.com/calculators/financial/simple-interest-calculator.php> from CalculatorSoup, <https://www.calculatorsoup.com> - Online Calculators

Last updated: May 15, 2022

Calculator Use

Calculate simple interest on the principal only, $I = Prt$. Simple interest does not include the effect of compounding.

Simple Interest Formula

$I = Prt$

Where:

- P = Principal Amount
- I = Interest Amount
- r = Rate of Interest per year in decimal; $r = R/100$
- R = Rate of Interest per year as a percent; $R = r \times 100$
- t = Time Periods involved

Notes: Base formula, written as $I = Prt$ or $I = P \times r \times t$ where rate r and time t should be in the same time units such as months or years.

Time conversions that are based on day count of 365 days/year have 30.4167 days/month and 91.2501 days/quarter. 360 days/year have 30 days/month and 90 days/quarter.

Simple Interest Formulas and Calculations:

This calculator for simple interest-only finds I, the simple interest where P is the Principal amount of money to be invested at an Interest Rate R% per period for t Number of Time Periods. Where r is in decimal form; $r = R/100$. r and t are in the same units of time.

- Calculate Interest, solve for I
 - $I = Prt$
- Calculate Principal Amount, solve for P
 - $P = I / rt$
- Calculate rate of interest in decimal, solve for r
 - $r = I / Pt$
- Calculate rate of interest in percent
 - $R = r \times 100$
- Calculate time, solve for t
 - $t = I / Pr$

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Exhibit 4

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION 2017-CP-26-6643

LOGAN WOOD and SARAH WOOD,)

Plaintiffs,)

v.)

HORRY COUNTY SCHOOL DISTRICT,)

Defendant.)

ORDER

This matter is before the Court for consideration of the Defendant’s motion to deposit funds with this Court pending an appeal of the jury’s verdict. The Plaintiffs oppose this motion, asserting that the deposit of funds would be prejudicial to them. A hearing was held on this matter on August 10, 2021, during which time this Court heard from counsel for each party.

The South Carolina Supreme Court has held that “[t]he granting of leave to deposit money with the court pursuant to Rule 67, SCRCP is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.” South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006). Multiple South Carolina Circuit Courts have held that South Carolina Rule of Civil Procedure 67 does not provide an appealing party with an automatic right to deposit judgment funds with the court to avoid the accrual of post-judgment interest. See Davis v. Agape Nursing Rehabilitation Center, Inc., No. 2016-CP-32-00950, 2018 WL 6582084, at *2 (S.C.Com.Pl. Nov. 30, 2018); Hanna v. Boone, 2010-CP-21-1044 (S.C.Com.Pl. Mar. 6, 2013). Instead, the ability of an appealing party to deposit funds with the Court and stop the accrual of interest is a matter within

the discretion of the Court, and factors specific to an individual case may be considered by the Court.

The Plaintiffs in this case had the heightened burden of proving gross negligence. A jury in Horry County determined that the Plaintiffs met this burden. The jury also found that the injuries were very serious and life altering, as shown by an award well in excess of a single cap as established by the South Carolina Tort Claims Act. Under these circumstances, this Court finds that it would be unconscionable and/or fundamentally unfair to allow the Defendant to avoid interest during the pendency of an appeal. For these reasons, the Defendant’s motion is **DENIED**.

IT IS SO ORDERED.

William H. Seals, Jr.
 South Carolina Circuit Judge

August __, 2021
 Conway, South Carolina



Horry Common Pleas

Case Caption: Sarah Wood , plaintiff, et al VS Horry County School District

Case Number: 2017CP2606643

Type: Order/Deposit Money

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-08-16 11:14:54 page 3 of 3

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Wood v. Horry County Sch. Dist.

Court of Appeals of South Carolina

May 1, 2023, Submitted; June 21, 2023, Filed

Unpublished Opinion No. 2023-UP-244

Reporter

2023 S.C. App. Unpub. LEXIS 295 *; 2023 WL 4105395

Logan **Wood** and Sarah **Wood**, Respondents,
v. **Horry County** School District, Appellant.

Opinion

Notice: THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

Prior History: [*1] Appeal From Horry County. William H. Seals, Jr., Circuit Court Judge. Appellate Case No. 2021-000535.

Disposition: AFFIRMED.

Core Terms

occurrences, trial court, gross negligence, deposit, amount of the judgment, complain, special verdict form, question of fact, facts of a case, error of law, sum of money, interrogatory

Counsel: Joseph P. McLean, of Clarke Johnson Peterson & McLean, PA, of Florence; and Andrew F. Lindemann, of Lindemann Law Firm, P.A., of Columbia, both for Appellant.

Amy Suzanne Lawrence and Justin Michael Lovely, both of The Lovely Law Firm, of Myrtle Beach; Kathleen Chewing Barnes, of Barnes Law Firm, LLC, of Hampton; and James Bernice Moore, III and Scott Christopher Evans, both of Evans Moore, LLC, of Georgetown, all for Respondents.

Judges: KONDUROS and VINSON, JJ., and LOCKEMY, A.J., concur.

PER CURIAM: Horry County School District (HCSD) appeals the trial court's denial of its motions for judgment notwithstanding the verdict (JNOV) and to deposit the judgment amount with the clerk of court. On appeal, HCSD argues the trial court erred in (1) determining the jury found two occurrences of gross negligence under the South Carolina Tort Claims Act and failing to reduce the award to \$300,000 and (2) denying its motion to pay the amount of the judgment into court pursuant to Rule 67, SCRCF. We affirm.

1. We hold the trial court did not err in denying HCSD's motion for JNOV and refusing to reduce the award [*2] to \$300,000 because evidence in the record supported its ruling. See Dawkins v. Sell, 434 S.C. 572, 580, 865 S.E.2d 1, 5 (Ct. App. 2021) ("The trial court's ruling on a directed verdict or JNOV motion will be reversed only if the ruling is governed by an error of law or no evidence supports the ruling."). The trial court did not err in finding the jury could determine the number of occurrences because applying the facts of a case to the statutory definition of "occurrence" is a question of fact for the jury. See Boggero v. S.C. Dep't of Revenue, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015) ("[W]hether the facts of a case were correctly applied to a statute is a question of fact")

(quoting *Hopper v. Terry Hunt Constr.*, 373 S.C. 475, 749, 646 S.E.2d 162, 165 (Ct. App. 2007)); *S.C. Code Ann. § 15-78-30(g)* (2005) ("Occurrence' means an unfolding sequence of events which proximately flow from a single act of negligence.").

Moreover, evidence in the record supported the trial court's determination that the jury found two occurrences of gross negligence. The jury was instructed on the definition of occurrence and that each alleged act of gross negligence had to be "separate and independent" in order to find more than one occurrence. Additionally, the jury checked "yes" to two separate acts of gross negligence on the verdict form. Although the special verdict form did not specifically ask the jury to write down the number of occurrences, [*3] HCSD requested the removal of an interrogatory that would have asked the jury to make such a determination. We further hold HCSD may not now complain that the special verdict form lacked such an interrogatory. See *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) ("[A] party may not complain on appeal of error or object to a trial procedure which his own conduct has induced."); *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 350, 479 S.E.2d 67, 79 (Ct. App. 1996) (holding a party may not complain on appeal when it receives what it asked for at trial). 2. We hold the trial court did not abuse its discretion in denying HCSD's motion to deposit the judgment amount with the court. See *Rule 67, SCRCP* ("In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money . . . a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum"); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006) ("The granting of leave to deposit money with the court pursuant to *Rule 67, SCRCP* is a matter within the

discretion of the trial court and will not be overturned absent an abuse of that discretion."); *id.* ("An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support."); *S.C. Code Ann. § 34-31-20(B)* (2020) ("A money decree or judgment of a court enrolled [*4] or entered must draw interest according to law."); *Hunting v. Elders*, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct. App. 2004) ("[A] claimant is entitled to interest from the date of the rendition of the verdict, or post-judgment interest, as a matter of course.").

AFFIRMED.¹

KONDUROS and VINSON, JJ., and LOCKEMY, A.J., concur.

End of Document

¹ We decide this case without oral argument pursuant to *Rule 215, SCACR*.

Exhibit 5

In re Amendments to S.C. Rules of Civil Procedure

Supreme Court of South Carolina

January 5, 2006, Decided

No Number in Original

Reporter

2006 S.C. LEXIS 157 *

In re: Amendments to South Carolina Rules of Civil Procedure

Notice: THIS DECISION IS NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Core Terms

offeror, offeree, entry of judgment, offers, costs, amount of the verdict, percent interest, attorney's fees, superseded, effective, withdrawn, computed

Judges: Jean H. Toal, C.J., James E. Moore, J., E. C. Burnett, III, J., Costa M. Pleicones, J., Waller, J., not participating.

Opinion

ORDER

By order dated January 5, 2006 (copy attached), this Court adopted amendments to the South Carolina Rules of Civil Procedure and these amendments were submitted to the General Assembly pursuant to Art. V, § 4A, of the South Carolina Constitution. Since ninety days have passed since submission without rejection by the General Assembly, these amendments are effective immediately.

IT IS SO ORDERED.

/s/ Jean H. Toal, C.J.

/s/ James E. Moore, J.

/s/ John H. Waller, Jr., J.

/s/ E. C. Burnett, III, J.

/s/ Costa M. Pleicones, J.

Columbia, South Carolina

May 3, 2006

ORDER

Pursuant to Article V, § 4, of the South Carolina Constitution, the South Carolina Rules of Civil Procedure are hereby amended as provided in the attachment to this order. These amendments shall be submitted to the General Assembly as provided by Art. V, § 4A of the South Carolina Constitution.

IT IS SO ORDERED.

s/Jean H. Toal, C.J.

s/James E. Moore, J.

s/E. C. Burnett, III, J.

s/Costa M. Pleicones, J.

Waller, J., not participating.

Columbia, South Carolina

January 5, 2006

AMENDMENTS TO THE SOUTH CAROLINA

RULES OF CIVIL [*2] PROCEUDRE

Rule 68, SCRPC, is hereby amended as follows:

(a) Offer of Judgment. Any party in a civil action, except a domestic relations action, may file, no later than twenty days before the trial date, a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or to allow judgment to be taken against the offeror for a sum stated therein, or to the effect specified in the offer. Service of the offer of judgment shall be made as provided in these rules. Within twenty days after service of the offer of judgment or at least ten days prior to the trial date, whichever date is earlier, the offeree or his attorney may file a written acceptance of the offer of judgment. Upon the filing, the court shall immediately issue the judgment and the clerk shall enter the judgment as provided in the offer of judgment. If the offer of judgment is not accepted within twenty days after notification, or prior to or on the tenth day before the actual trial date, whichever date occurs first, the offer shall be considered rejected and evidence thereof is not admissible except in a proceeding after trial to fix costs, interest, [*3] attorney's fees, and other recoverable monies. Any offeror may withdraw an offer of judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to the offeree or his attorney as provided in these rules. Any offeror may file a subsequent offer of judgment in any amount which supersedes any earlier offer that was rejected by the offeree or withdrawn by the offer or, and, on filing and service, terminates any rights to interest or costs under the superseded offer. An offer is not considered rejected by a counter offer and shall remain effective until accepted, rejected, or withdrawn as provided in this subsection. All offers of judgment and any acceptance of offers of

judgment must be included by the clerk in the record of the case.

(b) Consequences of Non-Acceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount [*4] of the verdict or award from the date of the offer to the entry of judgment; or (3) if the offeror is a defendant, reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment.

(c) This rule shall not abrogate the contractual rights of any party concerning the recovery of attorney's fees or other monies in accordance with the provision of any written contract between the parties to the action.

Note to 2006 Amendment:

This amendment makes this provision consistent with S.C. Code Ann. Section 15-35-400, which became effective July 1, 2005.

End of Document

Exhibit 6

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2023-000009
Case No. 2017-CP-02-1413

Otis Owens, ... Respondent,

v.

Michael Hunt, in his Official Capacity as Sheriff
of Aiken County, Aiken County Sheriff's Office,
Aiken County Detention Center, and Aiken County, ... Appellants.

INITIAL BRIEF OF APPELLANTS

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Counsel for Appellants

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II. New Trial Absolute Motion

A. The trial court erred in denying the Appellants' Motion for New Trial Absolute on the basis that the verdict is unsupported by the evidence and is grossly excessive.

In the alternative to the arguments addressed above, the Appellants are entitled to a new trial absolute because the trial record is devoid of evidence supporting the jury's \$150,000 verdict in actual damages against the Appellants.

Otis Owens testified that during the search, Deputy Gibson squeezed his testicle. He testified that he had "excruciating pain" for a "couple of hours and then it subsided. (Tr. 747). He then experienced some additional pain in the testicle for about seven to ten days, and had no pain thereafter. (Tr. 747). Owens presented no evidence of medical specials, including any medical bills or out-of-pocket expenses. He also presented no evidence of any permanent impairment nor any evidence of future medical expenses. That is the extent of the properly admissible evidence of damages and does not support an award of \$150,000.

As discussed above, the trial court erred in allowing Owens – through his own testimony and questions by his counsel -- to present lay testimony that he developed a hydrocele that was proximately caused by Deputy Gibson's search on January 27, 2017. In the absence of that impermissible lay testimony, there is clearly not sufficient evidence of Owens' injuries, medical causation, and damages to support a verdict of \$150,000 in actual damages. Nonetheless, even with that evidence, there is still an insufficient record to support a verdict of \$150,000, and a new trial absolute should have been granted.

The Appellants also requested that the trial court grant a new trial absolute because the verdict of \$150,000, in addition to being unsupported by the evidence, is shockingly

disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence.

As the Supreme Court has explained, "[w]hen a party moved for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557, 558 (1993). "[W]hen the verdict is so grossly excessive ... that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge ... to set aside the verdict absolutely." *Id.*, citing *Easler v. Hejaz Temple*, 285 S.C. 348, 329 S.E.2d 753, 758 (1985).

As discussed above, the verdict of \$150,000 was not supported by the evidence presented. That demonstrates that the verdict is grossly excessive. In addition, the size of the jury's verdict demonstrates that the jury's verdict must have been the result of bias, prejudice, or other improper considerations, including an attempt to punish the Appellants, which an award of actual damages cannot do. The trial court abused its discretion in failing to set aside that verdict against the Appellants and grant a new trial absolute.

B. The trial court erred in allowing the Respondent to present lay testimony that he developed a hydrocele that was proximately caused by Deputy Gibson's pat down search on January 27, 2017.

The trial court erred in allowing Owens to present lay testimony that he developed a hydrocele that was proximately caused by Deputy Gibson's pat down search on January 27, 2017, and that error requires, at the very least, the granting of a new trial absolute. As discussed

CONCLUSION

Based on the foregoing discussion and analysis, the Appellants Michael Hunt, in his Official Capacity as Sheriff of Aiken County, Aiken County Sheriff's Office, Aiken County Detention Center, and Aiken County respectfully request that the Court reverse the orders issued by Circuit Court Judge Courtney Clyburn Pope denying the Appellants' motions for directed verdict, JNOV, and new trial absolute and remand for entry of judgment as a matter of law in favor of the Appellants, or alternatively, for a new trial absolute.

Respectfully submitted,

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BY: s/ Andrew F. Lindemann

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Counsel for Appellants

July 24, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Cassiopia Rhoads,	)	Civil Action No.: 2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MOTION
	)	FOR A DETERMINATION OF
Aiken County Sheriff's Office,	)	MULTIPLE OCCURRENCES
	)	
Defendant.	)	

TO: HON. EUGENE C. GRIFFITH, JR.

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel and pursuant to the South Carolina Rules of Civil Procedure and the South Carolina Tort Claims Act, moves this Honorable Court for an order taking judicial notice of a finding of three (or at minimum two) occurrences under the South Carolina Tort Claims Act (S.C. Code § 15-78-10, *et seq.*) and thus three (or two) applications of the monetary caps or limits on a governmental entity's liability as set forth in S.C. Code § 15-78-120(a).

FACTUAL BACKGROUND RELATED TO OCCURRENCES

During the trial of this case, spanning October 9-13, 2023, the evidence demonstrated three distinct ways in which the Defendant Aiken County Sheriff's Office ("ACSO"), by and through its employees, was grossly negligent with regard to Ms. Rhoads' detention/incarceration at the Aiken County Detention Center ("ACDC") spanning from May 3 through June 3, 2019. These occurrences are described and set forth below.

Occurrence No. 1

The evidence at trial demonstrated that Deputy Carla Hill was told by the detention center's medical staff that they had determined that self-harm was the reason for Ms. Rhoads' massively swollen head – which is to say that the medical staff believed Ms. Rhoads was intentionally banging her head against the wall, her bunk, a sink, or some other hard object. Dep. Hill's own

testimony demonstrated that she did not believe this to be accurate and undertook to ask other correctional officers, as well as Ms. Rhoads' fellow inmates, if they had seen Ms. Rhoads inflict self-harm. Dep. Hill testified that all of these inquiries came back in the negative – that no one had seen or had any reason to believe that Ms. Rhoads was self-harming. Deputy Hill testified that she took this information to her supervisor, Lieutenant Jessica Whitaker. However, there was no evidence that Lt. Whitaker did anything with this important information or otherwise undertook to correct the medical staffs' misinformation. Upon learning that the basis for medical staffs' diagnosis was incorrect (that they believed Ms. Rhoads' swollen head to be the result of self-harm when, actually there was no self-inflicted injury), it was incumbent upon Lt. Whitaker to see that the medical staff was made aware of this information so that they could change their diagnosis and prescribe a course of treatment that correctly reflected what was actually occurring. Plaintiff submits that this response (or lack thereof) by Lt. Whitaker constitutes an occurrence under the law of South Carolina.

Occurrence No. 2

At trial, the evidence presented demonstrated that, during Ms. Rhoads' detention at issue, Deputy Kimberly Kelley grew gravely concerned about Ms. Rhoads' health. Ms. Kelley testified that Ms. Rhoads was visibly very ill and, even as a layperson, could tell that she required much more medical treatment/care than what the detention center's medical staff was providing. Dep. Kelley described how sick Ms. Rhoads appeared and her fear that she would die in the detention center if additional medical treatment were not arranged. Dep. Kelley testified that she took these concerns to her supervisor, Lieutenant Erik Riddell. Further, she testified that Lt. Riddell responded by telling her, "stay in your lane," and effectively rejected her concerns outright. Dep. Kelley testified that Lt. Riddell's negative response to her concerns was so intense that she feared for her job security if she pushed the matter any further or went above Lt. Riddell on the chain of command. Upon learning Dep. Kelley's concerns about Ms. Rhoads' health, it was incumbent upon Lt. Riddell to make a reasonable inquiry into the validity of these concerns and to discuss

these concerns with the medical staff (and, if necessary, his supervisors) so that they could reevaluate and change their treatment plan. Plaintiff submits that this response (or lack thereof) by Lt. Riddell constitutes an occurrence under the law of South Carolina.

Occurrence No. 3

At trial, Captain Nicholas Gallam testified that one of the reasons the detention center's administrative staff (such as himself) was contemporaneously unaware of any concern about Ms. Rhoads' health was because she didn't complete an "administrative grievance" on the jail's computer kiosk system. Capt. Gallam testified that had Ms. Rhoads gone to the kiosk and clicked a particular drop-down box and navigated to a particular page to complete a particular administrative grievance form, he would have been made aware of the concern that the medical staff was not providing appropriate care and that she was gravely ill. Further, Capt. Gallam talked about the one-page document (printed both front and back) entitled "Inmate Rules and Regulations," which would have been provided to Ms. Rhoads at the time she was booked in the ACDC and that he claimed explained this process. However, a look into this document (attached hereto as **Exhibit 1**) demonstrates that the administrative process had a level complexity that would be difficult for a layperson, let alone one like Ms. Rhoads, who lacked in education and was also suffering from an infectious process that was destroying her skull and invading her brain. Capt. Gallam also testified that when one does not have access to the kiosk system (which would include Ms. Rhoads at the point she was placed in B-Max on May 24th), paper forms can be made available to detainees to complete grievances.

Seemingly, Capt. Gallam was saying that he blamed Ms. Rhoads for not going through what he considered the proper channels and implying that, had she done so, he would have taken action. However, the evidence demonstrated that the "boots on the ground" deputies were untrained or otherwise unaware of this administrative grievance process, for even the correctional officers who were concerned about Ms. Rhoads and trying to advocate for her (including Deputies Hill and Kelley) never informed her about this complicated process regarding how to navigate

through the morass of the kiosk computer system to file an administrative grievance, nor did they offer to provide her with physical paperwork to enter a grievance. Plaintiff submits that the Aiken County Sheriff's Office's failure to train its employees how the administrative grievance process operated constitutes an occurrence under the law of South Carolina.

LAW AND LEGAL ANALYSIS

The South Carolina Tort Claims Act limits liability for injury caused by an employee of a governmental organization to "three hundred thousand dollars because of loss arising from a single occurrence." S.C. Code § 15-78-120(a). The term "occurrence" is statutorily defined to mean "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code § 15-78-30(g).

More than a decade ago, the South Carolina Supreme Court found that multiple occurrences could exist when there were multiple and distinct negligent acts by different individuals, even if the individuals were all working for governmental entities and even if the occurrences resulted in a single injurious event to the plaintiff. In Boiter v. South Carolina Dept. of Transport., 393 S.C. 123, 712 S.E.2d. 401 (2011), the plaintiffs were seriously injured when the motorcycle on which they were riding collided at an intersection with a car. One of the proximate causes of the collision was that the bulb for the red light of the traffic signal that was applicable to the driver of the car had burned out earlier in the day. The plaintiffs alleged that, having received a telephone call about the redlight outage approximately one-and-a-half hours prior to the collision, the S.C. Department of Public Safety was grossly negligent for having failed to send an officer to direct traffic at the intersection. The plaintiffs also alleged that the S.C. Department of Transportation was grossly negligent for failing to implement an appropriate re-lamping policy to replace the light bulbs in the traffic signals before they burned out.

The Boiter court found that the jury could have returned a verdict for one of the alleged acts of negligence without returning a verdict for the other alleged act of negligence, and vice versa. Further, the court found that it was of no consequence that both acts/omissions of negligence

resulted in a same problem and same event (*i.e.*, a very dangerous intersection resulting in a collision between motorcycle and car) and the same damages (*i.e.*, the injuries that resulted from the collision).

In the present case, like in Boiter, the evidence of gross negligence by multiple employees of the Aiken County Detention Center are separate and distinct from one another. These separate acts of gross negligence are not an unfolding sequence of events – they are distinct negligent acts/omissions, each made on different dates, at different locations, and by different employees.

A determination as to the number of occurrences is one that can be made by the trial judge. Counsel for the Defendant agrees with this, for in a brief that he recently submitted to the South Carolina Court of Appeals, Defense Counsel recently stated:

The application of the monetary caps presents an issue of law for the court to decide.... The statutory definition of “occurrence” is complex and nuanced and frankly not one that can be easily understood or applied by a jury.... **Accordingly, the statutory definition of “occurrence” presents an issue of statutory construction, and that is an issue of law for the trial court to apply post-verdict after the jury has made its factual findings.** In essence, the “occurrence” issue presents a mixed question of law and fact.

Wood v. Horry County School District, Appellate Case No. 2021-00535, Case No. 2017-CP-26-6643, Brief of Appellant, filed by Andrew F. Lindemann on June 27, 2022, pp. 6-7, applicable pages attached hereto as **Exhibit 2**.

The distinct nature of the multiple acts of gross negligence were argued throughout the case. As discussed above, these included acts and omissions by: (1) Lt. Whitaker relating to her failure to correct the medical staff’s misunderstanding about self-harm; (2) Lt. Riddell relating to his failure to respond in any way to the concerns raised by Dep. Kelley; and (3) the supervisory staff within the ACSO for failure to ensure that their “boots on the ground” deputies understood how administrative grievances were to be filed. These separate and distinct acts of gross negligence were committed by different personnel and at different times – had slight care been exercised by any one of these ACSO employees at those separate and distinct occasions, more likely than not, the harm suffered by Plaintiff could and would have been avoided.

Accordingly, Plaintiff asks for a judicial determination of three (or at least two) occurrences of gross negligence having been demonstrated at trial.

October 23, 2023
Columbia, South Carolina

Respectfully submitted,

/s/ Francis M. Hinson, IV

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Aiken County Sheriff's Office Detention Division Inmate Rules and Regulations

ELECTRONIC FILING - Aiken County Detention Center - 2023 Oct 23 5:11 PM - Aiken - COMM PLAS - CASE#2023OC022238

1. MANAGEMENT

- The Sheriff and the Sheriff's staff manage this Detention Center.
- All Detention Center rules and staff directions must be obeyed. You must conduct yourself in an orderly manner with respect for the rights of others at all times.
- Federal laws, state laws and county ordinances will be enforced in the Detention Center.

2. HEADCOUNT/ROLL CALL

- At least four formal headcounts will be performed daily. (0700, 1300, 1900, 2300)
- You will be fully clothed in a complete Detention Center uniform and wearing your armband for all counts.
- No talking or movement during any headcount or roll call.
- Random headcounts will be conducted as deemed necessary by the Detention Center staff.

3. PERSONAL CLEANLINESS

- Showering is required everyday while in the Detention Center. If you refuse to maintain personal hygiene as required, you will be placed in disciplinary segregation or detention.
- Razors are given out on assigned days at least two times a week, for ten minutes, to general population.
- Razors must be returned to the housing unit deputy immediately after each use.
- Razors may not be used to shave heads.
- Tampering with razors will result in disciplinary action.
- Haircuts will be provided by contract personnel. You will need to submit proper paperwork to receive a haircut at your expense.
- Feminine hygiene items are available, (free of charge) for female inmates upon request. These items must be properly disposed of in plastic bags – do not place them in the toilet.
- Alteration of feminine hygiene products is prohibited.

4. CARE OF QUARTERS

- Cleaning materials are made available during recreation.
- Detention Center staff will perform cell inspections daily.
- A cleaning schedule will be posted in each housing unit. You will be required to clean as assigned.
- Cleaning supplies will not be stored in your cell/bunk area.
- You will not write or mark on walls.
- There will be no items attached to the walls, windows, ceilings, or bunks.
- No light fixture or air vent will be covered up.
- Beds will be made no later than 0530 and remain made until 2100 with all issued bed linen, unless you are housed inside a cell, then your bed will be made whenever you are not in it.
- Blankets and sheets will not have knots tied in them, nor will they be laid on a table and used as a tablecloth.
- All areas must be cleaned to the satisfaction of the shift commander or designee before recreation can begin.

5. LAUNDRY

- Twice per week you will exchange your Detention Center uniform, towel, and washcloth.
- Sheets will be exchanged once a week.
- Blankets will be exchanged every other week.
- Linen and uniforms are not to be turned in knotted, tied nor have markings.
- If you destroy any issued items, the price of the item(s) will be deducted from your commissary account and possible prosecution.

6. DRESS

- You will wear a proper fitting Detention Center issued uniform.
- You are to be fully clothed in your Detention Center uniform from 0500-2100.
- All under-shirts will be tucked inside the pants.
- The pants legs are to be rolled no higher than the ankles. Arms are to be through the sleeves and the sleeves will not be rolled.
- You are allowed to purchase undergarments. This includes T-shirts, socks, underwear and bra. All undergarments must be white in color and you are required to write your name or initials on the clothing. A marker will be issued to you and will be used in the presence of the deputy.
- Headgear such as "doo-rags", or head rags are NOT allowed.
- You will be provided a pair of shower shoes when admitted into the Detention Center. You must wear footware at all times. Exception: Inmate Workers will be allowed to wear issued shoes only while working in and outside the facility.

7. MEALS

- At meal times your housing unit deputy will instruct you to receive a food tray. After obtaining your tray and drink, you are to be seated at a table. No one is allowed back to the food cart to return his or her tray until everyone has received a tray.
- Once you receive your tray you must inspect it for completeness.
- No extra food trays or drinks will be given out.
- Food from facility meals, including milk, will not be stored in your cell/bunk area.
- Special diets will be provided for verified religious and medical reasons but must be approved through the medical staff (if medical) or the Chaplain (if religious).
- Under no circumstances may inmates share food. Unwanted food will be discarded – No Exceptions.

8. SEARCHES & INSPECTIONS

Searches or inspections of inmates, cells, property, etc. may be conducted at any time for health, safety or security reasons. All inmates must cooperate during these searches and/or inspections.

9. CLASSIFICATION, RECLASSIFICATION, AND REVIEWS

- After booking, male inmates will be placed in A Pod pending classification. Female inmates will be housed in B Pod assessment pending classification.
- All inmates will be classified according to the procedures established by the Detention Center Captain. Factors used to determine your classification include, but are not limited to, gender, prior record, nature of crime, institutional behavior, and pre or post trial status.
- While you are assigned to assessment, you will receive an orientation. The orientation is designed to explain to you the Detention Center's procedures and rules. Once you have been classified, you will be moved to a designated housing unit and assigned to a cell/bunk.
- You will be assigned by the Classification Officer to one of the following classification categories: Super Maximum, Maximum, Medium, or Minimum.
- You will not be denied proper classification because of biased based profiling.
- Classification review will be conducted periodically, or as a result of disciplinary action, sentencing, new offense, other new pertinent information, a change in mental health status, program or work record or by staff inmate request.
- You may request a reclassification every thirty days by completing a Classification Request on the kiosk.

10. TRANSFERS

- You may be transferred within the Detention Center for security, personal safety, medical, administrative or classification change at any time.
- You are not allowed to change cells or bunks without staff approval. Disciplinary actions will be imposed on anyone refusing to move when instructed, or anyone moving without proper authorization from staff.

11. DETENTION CENTER PROPERTY

Detention Center property will not be altered or destroyed. You may be prosecuted for destruction of Detention Center property and/or ordered to make restitution. You will be charged for the destruction or loss of issued property. All items provided by the Detention Center, such as razors, nail clippers, uniforms, linens etc. are to be returned in the same condition as received.

12. INMATE PROPERTY

- All inmate property will be placed in your issued plastic storage container, which will be stored in the provided area. You are allowed to store hygiene products only on the shelf. The shelf must be kept neat and clean in appearance.
- Any excess property that will not fit in your issued plastic container will be secured and placed in your personal property in Intake.
- If placed on disciplinary segregation all property will be retained by the housing unit deputy. If you are found guilty by a disciplinary review board, all property that is not authorized for recreation or in the cell, will be sealed up and stored in your property bin.
- Any personal property left at the Detention Center after your release must be claimed within 21 days or the items will be disposed of.
- Inmates may release property to outside parties by:
 - Outside party must request property at the Detention Center lobby and provide picture I.D.
 - Property release form must be completed by releasing inmate.

13. MEDICAL SERVICES

- Emergency medical care is available and provided to you at any time.
- Sick Call will be conducted on a daily basis. To be seen at Sick Call, you must complete an Inmate Sick Call Request under the Medical/Mental Health category on the kiosk. Outside medical care, such as private doctors, must be approved by the Detention Center Physician. You are responsible for the cost of such visits.
- Mental health, doctor and dentist screenings can be requested by completing a Sick Call Request on the kiosk.
- Stockpiling, exchanging, or altering pills and/or medications, or is strictly prohibited.
- You will receive a medical examination free of charge within the first fourteen (14) days of incarceration.

14. TELEPHONES

- All calls will be collect calls. All calls may be monitored and recorded except those to your legal counsel. Local and long distance calls will be charged all applicable rates and fees.
- Telephones will be turned off 15 minutes before lockdown, during meals, shift change, and for security purposes.
- If you make any phone calls to another person, which are considered to be harassing, you may be prosecuted and/or placed in the Disciplinary Segregation Unit, and your phone privileges revoked.
- Three way calls are prohibited.
- Any attempt to monopolize the telephone could result in the suspension of phone privileges and/or disciplinary action.
- The use of another inmate's pin number is prohibited.
- It is the inmate's responsibility to keep up with his/her pin number.

15. VISITATION

- Inmates in general population are allowed one (1) hour visit per week. You are allowed a total of three visitors per session. Any visitor under the age of eighteen (18) must be accompanied by an adult.
- In order to receive a visit you must complete an inmate visitation form. On this form you may list five (5) visitors which will be the only people that may visit. This form may be updated every ninety (90) days.
- All adult visitors must have a valid state/government issued picture identification, such as a driver's license, Military ID, State ID card, or passport.
- Children under the age of eighteen (18) may be required to produce a valid government or school issued I.D. (example: School I.D. or Social Security card).
- The Housing Unit Deputy has the visitation schedule.
- Proper attire will be worn by all visitors. No short-shorts see through tops or halters, etc.
- All visitors are subject to search by Detention Center staff.
- If family members are from a distance of 100 miles or greater and have a valid ID, they may be granted a one time special visit, if space is available. This must be arranged prior to, and approved by a shift commander.
- It is your responsibility to inform your visitors of your scheduled visitation day and time, as well as the visitation rules and regulations.
- Visitors must check in at the reception desk no later than fifteen (15) minutes prior to the start of your visitation time.
- Visitation may be canceled at any time for security reasons.

16. GAMES

- All games are to be played at the game tables located in the dayroom.
- Games are to be played quietly. No slapping of cards, checkers, etc. on the tables. No loud talking, laughter, or yelling across the dayroom.
- Gambling is prohibited.

17. MAIL

- All incoming mail must have a return address. Mail without a return address will be placed directly into your stored property.
- All incoming and outgoing mail will be inspected for contraband.
- Incoming mail from persons or organizations identified as "privileged" will only be opened in the presence of the inmate to whom it is addressed. The following officials or entities are considered privileged:
 - Officials of federal, state, and local courts;
 - All federal, state, and local officials;
 - Attorneys;
 - Detention Center officials
- Mail received from individuals sending privileged mail must be clearly marked with the return address of the official. Otherwise, the mail will be treated as routine.
- There will be no inmate to inmate correspondence without approval from the facility Captain or designee.
- You are to write your name, inmate number and the Detention Center's return address on all outgoing mail.
- All outgoing mail, with the exception of legal mail, will be turned into the housing unit deputy unsealed.
- Letters or cards containing any indecent or sexually orientated items, items not approved by Detention Center management or any items which can not be obtained through commissary will be confiscated and placed in your property. Mail for inmates incarcerated at the Aiken County Detention Center must be mailed to the following:

(Your name as it appears on your armband and inmate number)

Aiken County Detention Center
435 Wire Road
Aiken, SC 29801

- Oversized cards larger than 9" x 8" will not be accepted.
- Care Packages will not be accepted.
- The only funds authorized to be sent through the mail are money orders and cashiers checks.
- Money orders or cashier's checks must be made payable to you with your name, and inmate number written on it in the memo section. The sender's name and address must also be written on the money order or cashier's check for deposit into your account. No cash will be accepted. Cash and credit deposits can be made in Detention Center lobby.
- You may receive photos in the mail. The photos may not be erotic or pornographic in nature, or give the impression of being such. Photos can be no larger than 4" x 6" in size. Photos must be stored in your plastic storage container. No Polaroid pictures are permitted.
- You may receive new or used books mailed from an authorized bookstore. All books must meet listed criteria:
 - Only paperback books will be accepted.
 - Books are not to exceed 7" X 10" and must be no thicker 2".
 - Books may not be pornographic in nature or contain any information considered to be a breach of security.



Aiken County Sheriff's Office Detention Division

Inmate Rules and Regulations

ELECTRONICALLY FILED - 2023 Oct 23 5:19 PM - AIKEN - COMMON PLEAS - CASE#2020CP02022338

19. RULES FOR COMMISSARY

- All Commissary orders will be placed prior to the beginning of the week to ensure delivery that Wednesday.
- Canteen orders can be placed on the kiosk during recreation times.
- No refunds/credits will be given to you when released. If released from the Detention Center prior to receiving your commissary order, you may pick up your order(s) from the Detention Center Lobby Mon. - Fri., 8 am - 4 pm., within seven (7) days after your release.
- All inquiries or complaints on the commissary system should be submitted on an inmate request under the commissary category on the kiosk.
- All commissary items are to be stored in your plastic storage container.
- You are to remain in lockdown in your cell/bunk area during commissary distribution until called by the housing unit deputy.
- You are required to wear your armband, for identification purposes to receive your commissary items.
- Inmates assigned to Disciplinary Segregation/Detention will be allowed to order hygiene/writing material commissary only.
- Opened perishable items, to include juice in tumblers, will not be stored in your cell/bunk area.

20. INDIGENT FUNDS

If you are without funds for 14 days and have less than \$5.00 in your inmate account, you will receive an indigent kit on a weekly basis.

21. CONTRABAND

(Possessing or bringing contraband into the Detention Center is a violation of state law) contraband is considered as:

- Any item(s) found to be altered or used for a purpose other than what they were originally intended.
- Any item which details weapons or explosive manufacturing, or gives information which could aid in planning or attempting an escape, or producing any item which could injure another.
- Gang symbols or related items such as drawings, literature, signs, etc. which relates to gangs.
- Any item or article inside the Detention Center that was not issued, purchased from inmate commissary, allowed or approved for use by the Detention Center.
- Drugs not authorized by Medical for usage other than its intended purpose.
- Any items possessed in excess.

22. INMATE REQUESTS & GRIEVANCES

- If you have a problem or question, you must first contact your housing unit deputy. If the deputy cannot answer the question or concern, you may fill out an Inmate Request under the appropriate category on the kiosk. Do not submit multiple requests concerning the same issue. Repeated inmate requests will not be accepted.
- Only one grievance may be filed at any one time on a single incident or item of concern.
- The Housing Unit deputy will attempt to resolve your grievance. If unsuccessful, you have the right to file a grievance within five days of a grievable event. In order to file a grievance you must complete an Inmate Grievance under the appropriate category on the kiosk.
- You will have five working days after receipt of the notice of decision to appeal to the next level of command.
- Grievances, which are submitted to the Detention Center Captain, will be answered and the resolutions and decisions made will be final.
- Every attempt made for a resolution will be returned to you in writing.

23. RECREATION AND RELIGIOUS RULES

- Each Housing Unit will have its own recreation area. You will be able to utilize the outdoor recreation area, weather permitting, and upon staff approval.
- All exercise will be completed on the outside recreation yard.
- Religious programs will be arranged through the facility designee.
- Inmates are permitted to have scriptural or devotional books associated with their faith in their cell/bunk area. All books must meet criteria outlined in section 17 n and stored in accordance with section 12.

24. RULES OF CONDUCT

- You are not to approach another staff member with a request or question without your housing unit deputy's permission.
- You are to respect Detention Center staff, other inmates, and visitors to the Detention Center on official business. Detention Center staff is defined as any employee of the Aiken County Sheriff's Office or anyone contracted to provide services to inmates. This includes, but is not limited to, maintenance, medical, mental health, and commissary staff.
- No talking or movement after lights out.
- No horseplay.
- No sliding down stair rails or hanging on the stairs or railings.
- Harassment of Detention Center staff, in any form, (i.e. lewd comments, gestures, etc.) will not be tolerated.
- You have received an inmate identification armband that must remain on your right arm until you are released. You will not be allowed regular or special visitation privileges, nor will you be allowed to order or receive commissary without your armband. You must notify your housing unit deputy if your armband is damaged or lost. If your armband is taken off by you, damaged by you or lost, a charge of \$5.00 will be deducted from your inmate account.
- You will not touch any Detention Center staff or visitors.
- No yelling from one recreation yard to another.
- Transactions between inmates, to include services or favors for anything of value are prohibited.

25. DISCIPLINE

- Any Detention Deputy may, for violations of the Detention Center rules revoke privileges and/or place you in disciplinary segregation to face a formal disciplinary hearing.
- You may be charged criminally for violations of any state/federal law.
- Hearings will be conducted by a disciplinary review board. Members will be appointed by the Detention Center Captain. If you do not dispute the alleged violation(s), you may waive plea guilty and start your time immediately. If you wish to have a formal hearing, you will wait at least 24 hours, but no more than 72 hours.

26. CATEGORY OFFENSE/ SANCTIONS

There are three types of confinement that are related to the Disciplinary Process: Administrative Segregation, Disciplinary Segregation and Disciplinary Detention.

- Administrative Segregation: Assignment to Administrative Segregation may be requested by Detention Center staff, or a law enforcement officer. Assignment to Administrative Segregation will be utilized when the inmate's continued presence in the general population poses a serious threat to the life or property of that inmate, other inmates, staff members, or the public.
- Disciplinary Segregation: Disciplinary Segregation is the confinement of an inmate separated from the general population, as a result of a hearing before an impartial committee, in which the inmate has been found to have committed a rule violation. The inmate may be confined in this status, prior to a hearing, when deemed necessary by Detention staff, to ensure the safety and security of the facility, staff, inmates or others.
- Disciplinary Detention - Disciplinary detention is a status of confinement that requires separation from the facility's general population for inmates found guilty of violations of institutional rules.
- Category Offenses is as follows:

Category A:

- Murder or attempted murder
- Assault, physically harming or attempting to harm another person or throwing of bodily fluids
- Extortion; blackmail; bulldogging, or attempting to control the behavior of others through coercion, force, intimidation, threatening
- Engaging in any sexual act with another person or indecent exposure
- Escape, attempting or aiding an escape, or planning an escape
- Arson or setting any fire
- Tampering with or damaging any fire control or security monitoring devices
- Possession of any weapon or object intended for use as a weapon
- Possession or manufacturing of alcoholic beverages, unauthorized drugs, medications or drug paraphernalia or hoarding medications
- Possession of stolen property or theft of property, either that of the Detention Center or another person, to include another's identity for any reason.
- Any act of fraud, forgery, or deceit that results in personal gain
- Creating, participating, or inciting a riot
- Destruction of property belonging to the facility or another inmate
- Interfering with any lockdown procedure
- Refusing to leave or barricading yourself in any area of the facility
- Smoking, or in possession of any tobacco product or paraphernalia
- Giving or offering any official or staff member a bribe, or anything of value
- Flooding of any cell or area
- Damaging, defacing, exchanging, removing, or not displaying your assigned inmate identification band
- Smuggling contraband into the Detention Center
- Refusing to comply with or disrupting a search or inspection
- Attempting to commit or aiding others in the commission of any of the above acts

Sanctions:
Formal: The Disciplinary Review Board may impose any combination of the following sanctions:

- Confinement to a cell in disciplinary segregation/detention, receiving one hour of recreation on a daily basis, for up to thirty (30) days.
- Loss of Good Time.
- Loss of one or more privileges for up to thirty (30) days.
- Removal from program/work assignment and reclassification
- Filing of criminal and/or civil charges
- Required to pay restitution

Category B:

- Gambling
- Refusal to obey an order, either verbal or written
- Threatening bodily harm to any person
- Tattooing or possession of tattoo paraphernalia
- Violation of mail rules and regulations
- Violation of visitation rules and regulations
- Violation of conditions of inmate worker or work release status
- Fraternization; contact (physical or otherwise), or any attempt to fraternize
- Refusing to follow safety or sanitation regulations
- Self-Mutilation
- Unauthorized contacts with the public
- Making or submitting a false and/or malicious report/grievance
- Placing items on windows or obstructing view into any cell or area
- Intoxication or consumption of intoxicants.
- Habitual Offender of Category "C" offenses - Three reprimands of any offense within seven (7) days or three reprimands of the same offense over any time span
- Possession of gang paraphernalia
- Creating a major disturbance to include encouraging others to refuse to work
- Failure to comply with inmate count procedures or orientation (Disruptive)
- Possession of pornographic material
- Harassment of any kind
- Defacing Detention Center property
- Tampering with razors
- Crossing any yellow line without permission
- Attempting to commit or aiding others in the commission of any of the above acts.

Sanctions:
Formal: The Disciplinary Review Board may impose any combination of the following sanctions:

- Confinement to a cell in disciplinary segregation/detention, receiving one hour of recreation on a daily basis, for up to fifteen (15) days
- Loss of Good Time
- Loss of one or more privileges for up to fifteen (15) days
- Removal from program/work assignment and reclassification
- Filing of criminal and/or civil charges
- Required to pay restitution

Category C:

- Disorderly conduct to include offensive language and excessive noise
- Failure to keep your person or cell clean, to include making of beds by 0530
- Failure to participate in housing unit cleaning.
- Unauthorized use of the telephone
- Concealing meal or kitchen utensils, or failure to return food tray following a meal
- Unauthorized communication.
- Possession of any unauthorized clothing or bedding items
- Failure to be properly dressed in issued uniform, to include modification to uniform. Such as rolling up pants legs, sagging pants, etc
- Treating deputies, civilian staff, visitors, or other inmates with disrespect or discourtesy
- Stockpiling of commissary items
- Failure to comply with inmate count procedures or orientation (Non-Disruptive)
- Using razor to shave head
- Placing items on doors, walls, vents or light fixtures
- Being in an unauthorized area to include another's cell/bunk area (If assigned to a bottom tier cell or bunk, the upper tier of the housing unit will be considered an unauthorized area unless approved by the housing unit deputy).
- Using any equipment contrary to instructions or safety standards
- Modifying any issued or non-issued property or item
- Sharing of issued or non-issued items
- Sleeping on the floor in the cell or dayroom unless assigned
- Possession of any food items other than commissary items in cells/bunk area to include storing opened canteen items
- Theft of items from food carts
- Misuse of the kiosk machine, or violation of request/grievance procedures
- Attempting to commit or aiding others in the commission of any of the above acts, or not following any guideline/rule set forth by the Inmate Rules and Regulations

Sanctions:
Formal: The Disciplinary Review Board may impose any combination of the following sanctions:

- Confinement to a cell in disciplinary segregation/detention, receiving one hour of recreation on a daily basis, for up to seven (7) days
- Loss of Good Time
- Loss of one or more privileges for up to seven (7) days
- Removal from program/work assignment and reclassification
- Filing of criminal and/or civil charges
- Required to pay restitution

Informal: The Housing Unit Deputy may impose any combination of the following sanctions:

- Corrective Counseling
- Written Reprimand
- Confinement to your bunk for up to four (4) hours
- Loss of one or more privileges for up to three (3) days

Appeal Process: Inmates may appeal Category A, B, or C for which disciplinary action has been imposed by either the housing unit deputy or the Disciplinary Review Board. Appeals must be filed within 5 days of the disciplinary sanction being issued. Appeals of minor violations must be sent to the Shift Commander, who will make the final decision. Appeals of major violations and offenses must be sent to the Security Lieutenant. The Division Captain will make final decision in Disciplinary Appeals for major violation offenses. Internal sanctions do not preclude criminal charges.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2021-000535
Case No. 2017-CP-26-6643

Logan Wood and Sarah Wood, ... Respondents,

v.

Horry County School District, ... Appellant.

BRIEF OF APPELLANT

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Counsel for Appellant

The trial court committed several errors of law in its application of the monetary caps. First, the trial court erred in failing to recognize that the application of the monetary caps presents an issue of law for the court to decide. Second, the trial court erred in its conclusion that the jury in this case found two separate and independent "occurrences" as that term is defined under the Tort Claims Act. In actuality, the jury found two acts of gross negligence by the School District employees. (R. 22). The jury was not called upon to identify the number of "occurrences" or to determine whether there even were multiple "occurrences." Third, the trial court erred in failing to correctly interpret and apply the definition of "occurrence" under the Tort Claims Act to the findings of fact actually made by the jury on the verdict form.

In *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), this Court, using mandatory language, states: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding \$300,000." 607 S.E.2d at 716. Thus, the application of the monetary caps is a self-executing duty imposed on the trial court where, as here, the jury's verdict exceeds \$300,000.

The term "occurrence" means "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). The statutory definition of "occurrence" is complex and nuanced and frankly not one

that can be easily understood or applied by a jury. The trial judge would not disagree with that characterization; during the trial, the judge actually described the term "occurrence" as "slippery at best." (R. 293). Indeed, even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. *See, Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011); *Chastain v. Anmed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010).

Accordingly, the statutory definition of "occurrence" presents an issue of statutory construction, and that is an issue of law for the trial court to apply post-verdict after the jury has made its factual findings. In essence, the "occurrence" issue presents a mixed question of law and fact. *See, Charleston County Parks & Recreation Comm'n v Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995) (questions of statutory construction are a matter of law).

The trial court's approach to its self-executing duty to apply the statutory caps was a bit of a mixed bag. While the trial court did charge the jury on the Tort Claims Act definition of "occurrence," (R. 347), the court did not have the jury actually apply that definition to determine the number of "occurrences." The verdict form was given to the jury with no explanation of the special interrogatories asked or their legal significance. (R. 351-352). Charging the jury with the definition of "occurrence" which presents an issue of statutory construction

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant Horry County School District respectfully requests that the Court reverse the post-trial order of Circuit Court Judge William H. Seals, Jr. in part and order that the judgment in favor of Logan Wood be reduced to \$300,000. In addition, the Court is requested to reverse the Order denying the School District's Motion to Deposit Funds and provide instructions on remand to the effect that the School District is not required to pay post-judgment interest on the judgments that remain after remand.

Respectfully submitted,

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June 27, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN) **IN THE COURT OF COMMON PLEAS**

Cassiopia Rhoads,)
Plaintiff,) Civil Action No. 2020-CP-02-2238
v.)
Aiken County Sheriff's Office,)
Defendant.)
_____)

TO: THE HONORABLE EUGENE C. GRIFFITH, JR.

FRANCIS M. HINSON, IV AND PATRICK J. MCLAUGHLIN,
COUNSEL FOR PLAINTIFF

**NOTICE OF MOTION AND MOTION FOR JUDGMENT
NOTWITHSTANDING VERDICT, OR ALTERNATIVELY,
MOTION FOR NEW TRIAL ABSOLUTE
OR ALTERNATIVELY, MOTION FOR A REDUCTION OF VERDICT
TO THE STATUTORY CAP AND FOR SET-OFF OF
AMOUNTS PAID BY SETTLING PARTIES**

PLEASE TAKE NOTICE that the Defendant Aiken County Sheriff's Office hereby respectfully moves before the Honorable Eugene C. Griffith, Jr. at the Aiken County Judicial Center, Aiken, South Carolina, at such time and place as may be set by the Court, for an Order pursuant to Rule 50(b), SCRCP, granting judgment as a matter of law in favor of the Defendant notwithstanding the jury's verdict. Alternatively, the Defendant moves for a new trial absolute pursuant to Rule 59(a), SCRCP and pursuant to the thirteenth juror doctrine. If the foregoing motions are denied, the Defendant moves that the verdict in favor of the Plaintiff be reduced to the

monetary cap of \$300,000 in accordance with S.C. Code Ann. § 15-78-120(a)(1) and that the Court apply the set-off under the common law and S.C. Code Ann. § 15-38-50 for the undisclosed amount in settlement funds received by the Plaintiff from other settling parties. The Defendant reserves the right to supplement these motions with a supporting memorandum of law and also respectfully requests oral argument.

The grounds for the Defendant's post-trial motions are as follows:

I. Judgment Notwithstanding the Verdict (JNOV)

A. Lack of Proof or Showing of Each Element of Gross Negligence Claim

The Plaintiff has not proven each of the elements of her gross negligence claim. The elements of gross negligence are well-settled. In order to prove gross negligence under South Carolina law, a plaintiff must show "(1) the [defendant] owed him a duty to do or not do any of things alleged; (2) the [defendant] breached this duty; (3) [plaintiff] was injured; and (4) the [defendant's] breach of duty proximately caused this injury." *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408, 409 (Ct. App. 1994). "A [gross] negligence claim is insufficient if one of these elements is absent." *Id.* See also, *Lord v. D&J Enterprises, Inc.*, 407 S.C. 544, 757 S.E.2d 695, 702 (2014) ("[t]o prevail on a [gross] negligence claim, a plaintiff must establish duty, breach, causation, and damages").

As for the first element, the Plaintiff must first establish that the Defendant owed a legal duty of care. It is well settled that "[w]hether the law recognizes a particular duty is an issue of law to be determined by the court." *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47, 49 (1996).

The trial court charged the jury that the Defendant Sheriff's Office "has a duty to safely confine, supervise, and maintain the custody of inmates." See, Charge to Jury, "Duty Owed to Plaintiff." As is discussed further below, this charge is based on an error of law and failed to

properly or adequately instruct the jury as to the specific or particular legal duty arises from the facts of this case as alleged and presented by the Plaintiff. Based upon colloquy among counsel, the trial court informed counsel that he based this charge of the legal duty of care owed by the Defendant on Section 15-78-60(25), which is an immunity provision in the Tort Claims Act. That was in error. In *Summers v. Harrison Construction*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989), the Court of Appeals held that “[t]he South Carolina Tort Claims Act does not create causes of action. Rather, it removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act.” 381 S.E.2d at 495. In *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579 (2001), the Supreme Court agreed that “[t]he TCA does not create causes of action, but only removes the common law bar of sovereign immunity in certain circumstances.” 551 S.E.2d at 583. Thus, the Tort Claims Act, which does not create causes of action, does not create nor establish any legal duty of care actionable under South Carolina law.

The language in Section 15-78-60(25), where it refers to “supervision, protection, control, confinement, or custody,” was not intended by the General Assembly to establish any particular legal duty owed by the Defendant Sheriff’s Office or its employees operating the Aiken County Detention Center (ACDC). In fact, the very language in Section 15-78-60(25) does not specify any particular legal duty of care. However, even if such language could be construed as setting the parameters for the overarching or general types of duties that may be owed, that language certainly does not establish a specific or particular legal duty of care owed under the facts of this or any other case. At most (but certainly not conceded), that language could be construed as creating a public duty but even that would be a tremendous stretch. Nonetheless, if construed as stating the general parameters of the duties owed -- as stated in extreme generalities applicable to not only inmates but also at the same time to “students,” “patients,” and “clients” of governmental entities

– the public duty rule would bar its use to establish a specific or particular legal duty of care owed in this case. As the Supreme Court has explained, “[t]he public duty rule presumes statutes which create or define the duties of a public office have the essential purpose of providing for the structure and operation of government or for securing the general welfare and safety of the public. Such statutes create no duty of care towards individual members of the general public.” *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579, 582 (2001). A plaintiff, therefore, has no right of action against a public officer or entity for breach of a duty owing to the public only, even though such plaintiff may have been injured by the breach of that public duty. *Summers v. Harrison Construction*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). “The public duty rule is a negative defense which denies an essential element of the plaintiff’s cause of action: the existence of a duty of care to the individual plaintiff.” *Arthurs*, 551 S.E.2d at 582. In other words, the public duty rule “is a rule of statutory construction, that is, a means of determining whether the legislative body that enacted the statute or ordinance intended to create a private cause of action for its breach.” *Id.*

The Defendant Sheriff’s Office contends that the legal duty, if any, owed under South Carolina law would be limited to a duty for a corrections officer to see that inmates who appear to be ill or in need of medical attention are seen and attended to by medical professionals. That is the extent of any legal duty of care. The ACDC officers are not legally responsible for determining the diagnosis of any medical condition or the course of treatment or for overruling the opinions of the medical professionals or for seeking a different or alternative course of care or treatment. The officers have the right to rely on the expertise of the medical professionals.

As discussed at length during the trial, the Plaintiff alleges that the Defendant Sheriff’s Office owed a legal duty of care for their non-medically-trained detention officers and security staff to second-guess or override the medical decision-making of the clinicians (Southern Health

Partners' doctor and nurses) who were providing ongoing care and treatment to the Plaintiff for her medical conditions and to seek a different or alternative course of care or treatment. That is a question of law for this Court to decide. The Plaintiff never presented this Court with any authority establishing the legal duty of care owed under the allegations and evidence as presented. As argued at length and the Court observed on the record numerous times, the Plaintiff has not offered a single case – from any state or federal court – where a court ruled that corrections officers, knowing that an inmate is actually receiving medical treatment, should override the medical decision-making of the medical personnel and seek other care for the inmate.

While federal law does not establish the legal duty of care under state law, it should inform that analysis. Certainly, the Court should not find a legal duty of care under state law that would conflict with or cause the state actors to interfere with federal rights or otherwise violate the federal constitutional duty established for detention or corrections officers in this context. In *Miltier v. Beorn*, 896 F.2d 848 (4th Cir. 1990), the Fourth Circuit held that a prisoner must show that corrections officials (such as the ACDC officers) were personally involved with a denial of treatment, deliberately interfered with a prison physician's treatment, or tacitly authorized or were indifferent to the prison physician's misconduct. The Fourth Circuit has similarly explained that prison officials who are untrained in medicine are entitled to rely on the judgment of medical professionals. *See, Iko v. Shreve*, 535 F.3d 225, 242 (4th Cir. 2008).

The Defendant Sheriff's Office pointed this Court to numerous federal cases that support its position as to the applicable duty of care including the following authorities:

Pulliam v. Superintendent of Hoke Corrections, 2007 WL 4180743, *6 (M.D.N.C. 2007):

“The bottom line is that prison officials without medical training are responsible for seeing that prisoners are attended to by medical professionals. They are not responsible for determining the course of treatment or for overruling the opinions of those professionals. Here, rightly or wrongly, the medical professionals determined that Plaintiff's symptoms were not caused

by asbestos exposure. It was not Webb, Groff, or Jacob's job to overrule them. Plaintiff has not stated any claim for relief against them.” (Emphasis added).

Lewis v. Hoke County, 2020 WL 5213929, *7 (M.D.N.C. 2020), *affirmed* 2022 WL 1641282 (4th Cir. 2022):

“It is also well settled that negligence or medical malpractice are not sufficient to establish deliberate indifference. *Estelle*, 429 U.S. at 105-06. “The bottom line is that prison officials without medical training are responsible for seeing that prisoners are attended to by medical professionals. They are not responsible for determining the course of treatment or for overruling the opinions of those professionals.” *Pulliam v. Super. of Hoke Correct.*, 1:05CV1000, 2007 WL 4180743, at *6 (M.D.N.C. Nov. 20, 2007) (unpublished).”

Tyson v. Gay, 2022 WL 15570697, *10 (E.D.N.C. 2022):

“Even if Gay actually had the authority to obtain outside medical care, because Gay is not alleged to be a medical provider, Gay generally is entitled to rely upon Nurse McLean's medical opinion. See *Iko*, 535 F.3d at 242 (“If a prisoner is under the care of medical experts ... a nonmedical prison official will generally be justified in believing that the prisoner is in capable hands.” (quotation omitted)); see also *Lewis v. Hoke Cnty.*, No. 1:17CV987, 2020 WL 5213929, at *7 (M.D.N.C. Sept. 1, 2020) (“[P]rison officials without medical training are responsible for seeing that prisoners are attended to by medical professionals. They are not responsible for determining the course of treatment or for overruling the opinions of those professionals.” (citation omitted)), report and recommendation adopted, No. 1:17CV987, 2022 WL 292928 (M.D.N.C. Feb. 1, 2022), *aff'd*, No. 22-6171, 2022 WL 1641282 (4th Cir. May 24, 2022).”

McCann v. Ogle County, 909 F.3d 881, 887-888 (7th Cir. 2018):

“Applying the same analysis to the Ogle County defendants, including the claims against Sheriff Beitel and Captain Kerwin, we reach the same conclusion. Neither individual was responsible for providing medical care to McCann. Rather, Sheriff Beitel and Captain Kerwin reasonably relied on Dr. Cullinan to determine the proper course of care for McCann and themselves took no steps to contribute to or detract from the treatment McCann received. The law allowed these officials to rely on Dr. Cullinan in this way. See *Berry*, 604 F.3d at 440 (underscoring that the law “encourages non-medical security and administrative personnel ... to defer to the professional medical judgments of the physicians and nurses treating the prisoners in their care without fear of liability for doing so”); see also *Miranda*, 900 F.3d at 343 (applying similar reasoning to reject allegations of inadequate medical care brought against non-medical jail officials). The district court, in short, was right to award summary judgment to these individual defendants.”

Berry v. Peterman, 604 F.3d 435, 440-441 (7th Cir. 2010):

“Berry failed to present sufficient evidence to support a reasonable jury finding that jail administrator Peterman acted with deliberate indifference. As a nonmedical administrator, Peterman was entitled to defer to the judgment of jail health professionals so long as he did not

ignore Berry. See *Hayes v. Snyder*, 546 F.3d 516, 527–28 (7th Cir.2008); *Johnson v. Doughty*, 433 F.3d 1001, 1010–11 (7th Cir.2006); *Greeno v. Daley*, 414 F.3d 645, 655–56 (7th Cir.2005); *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir.2004). The undisputed facts show that Peterman met this standard. He consulted with the medical staff, forwarded Berry's concerns to the DOC, and timely responded to Berry's complaints. That he took no further action cannot be seen as deliberate indifference. As a practical matter, it would be unwise to require more of a nonmedical staff member like Peterman. As *Hayes*, *Johnson*, *Greeno*, *Spruill*, and a host of other cases make clear, the law encourages non-medical security and administrative personnel at jails and prisons to defer to the professional medical judgments of the physicians and nurses treating the prisoners in their care without fear of liability for doing so. The district court properly granted summary judgment as to defendant Peterman.”

Spruill v. Giles, 372 F.3d 218, 236 (3d Cir. 2004):

“If a prisoner is under the care of medical experts (Dr. McGlaughlin and Brown in this case), a non-medical prison official will generally be justified in believing that the prisoner is in capable hands. This follows naturally from the division of labor within a prison. Inmate health and safety is promoted by dividing responsibility for various aspects of inmate life among guards, administrators, physicians, and so on. Holding a non-medical prison official liable in a case where a prisoner was under a physician's care would strain this division of labor. Moreover, under such a regime, non-medical officials could even have a perverse incentive *not* to delegate treatment responsibility to the very physicians most likely to be able to help prisoners, for fear of vicarious liability.”

The foregoing authorities should inform this Court as to legal duty owed in the specific factual circumstances presented by this case. The applicable duty of care does not require the ACDC officers, all non-medically trained personnel, to have overridden the medical decision-making of the SHP medical clinicians and sought a different course of treatment for the Plaintiff.

In sum, the Plaintiff has not established a duty of care breached by the Sheriff's Office or its employees. The facts taken in a light most favorable to the Plaintiff establish that the Plaintiff was under the ongoing care of the SHP medical professionals from May 4, 2019 through June 2, 2019. She was seen on numerous occasions for checking her vitals during her ten days of detox, for medpass where she received her medications and had face-to-face encounters with SHP personnel at least twice a day, for numerous sick call visits, and for consultations at her cell after she required medical attention. She was also seen and evaluated by Dr. Robert Williams on May

23, 2019. Dr. Williams also received updates from the nurses after that date, and on May 28, 2019, he directed that a CT Scan be ordered, which was scheduled for June 5, 2019. The complete SHP medical records for May 3, 2019 through June 2, 2019 were admitted into evidence by the Plaintiff and have not been disputed as accurate. Those medical records, as indicated, show ongoing medical care by the SHP personnel and numerous medical encounters between the Plaintiff and SHP personnel. There was no evidence presented that the SHP medical staff was unaware of the Plaintiff's medical condition and appearance from May 4, 2019 through June 2, 2019. There is no evidence that any ACDC officers interfered with or denied the Plaintiff medical care that the clinicians believed was needed or appropriate. The correct legal duty of care allows the ACDC officers, knowing that the Plaintiff was receiving medical care, to rely on the professional judgment of the medical clinicians. The Plaintiff has not presented this Court with any legal authorities, including case law, suggesting that a different duty of care applies to the facts of this case.

The Plaintiff has also not presented any evidence that any alleged breach of the legal duty of care proximately caused the Plaintiff any harm. The Plaintiff has not shown any evidence that any ACDC officers interfered with or denied the Plaintiff medical care that the clinicians believed was needed or appropriate. The Plaintiff has not shown that any acts or omissions by any ACDC officers prevented the Plaintiff from receiving ongoing care from the SHP professionals or proximately caused a denial of medical care by the SHP professionals.

The case is premised entirely upon errors in the medical decision-making by the SHP clinicians, including diagnosis and treatment, but the legal duty does not require the ACDC officers to second-guess or override those decisions, and in fact, if there were such a duty, it would have serious public policy consequences and would likely require corrections officers to violate the

federal constitutional duty of care, which does not allow interference with the medical providers. Other similar public policy consequences would result if there is a legal duty of care requiring non-trained and unlicensed personnel to be called upon to make medical decisions, even if those decisions were limited to seeking out a different course of treatment or even a second opinion for an inmate. There is no legal duty recognized in this State nor in any jurisdiction for corrections staff to be legally required – mandated -- to take such steps. Medical decision-making, by law, is required to be made by qualified and educated persons who are duly licensed by the State. None of the ACDC officers at issue held any such licensure.

Moreover, even if the Court were to hold that there is a legal duty for the ACDC officers to second-guess or override the medical decision-making of the medical clinicians, the officers' conduct must rise to the level of gross negligence, i.e., the absence of even slight care. Based on Section 15-78-60(25) of the Tort Claims Act, the Defendant Sheriff's Office is not liable for ordinary or simple negligence, and as a result, the Plaintiff is required to prove gross negligence by the Defendant in order to prevail. Under South Carolina law, "[g]ross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." *Clyburn v. Sumter County School District No. 17*, 317 S.C. 50, 451 S.E.2d 885, 887 (1994). "Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care." *Id.* Therefore, the key inquiry is whether the conduct at issue – the failure to second-guess or override the medical decision-making of the medical clinicians and take the Plaintiff to the hospital -- constitutes carelessness or mere inadvertence which is the hallmark of simple negligence, as opposed to willfulness and recklessness that qualifies as gross negligence. *See, Sturken v. Richland Oil Co.*, 248 S.C. 355, 150 S.E.2d 341, 343 (1966). *See also, Powell v. Shore*, 242 S.C. 403, 131 S.E.2d 155, 159 (1963)

(Supreme Court describes "mere inadvertence" as "simple negligence"); *Jumper v. Goodwin*, 239 S.C. 508, 123 S.E.2d 857, 861 (1962) (same). A finding of gross negligence requires more than proof of an error or mistake. *See, Pilot Industries v. Southern Bell Telephone & Telegraph Co.*, 495 F.Supp. 356, 362 (D.S.C. 1979) ("[p]roof of error or mistake alone has been held to insufficient to make out a case of gross negligence"). As the Supreme Court has explained, the conduct required to demonstrate gross negligence requires a consciousness of wrongdoing. *Rogers v. Florence Printing Co.*, 233 S.C. 567, 106 S.E.2d 258, 264 (1958).

As discussed above, the evidence is undisputed that the Plaintiff received medical care, including over twenty medical encounters within a one-month span. The SHP medical encounters are pled in detail in the Plaintiff's Complaint. *See*, Complaint, ¶¶ 70-88. There are no allegations that the correctional staff denied the Plaintiff medical care at the detention center or denied access to SHP personnel. Even after the Plaintiff was placed into B-Max on May 24, 2019, she continued to be seen by the SHP personnel as documented in the medical records and the incident reports, including on May 24th, May 28th, May 29th, May 30th, May 31st, and June 2nd, as well as additional encounters twice a day during medpass when the Plaintiff received medication as she herself testified. The Plaintiff's case is premised on the alleged failure of the ACDC officers to take the Plaintiff to the hospital without SHP authorizing outside medical care. The Plaintiff herself testified that she never made a request, verbal or in writing, to Lt. Riddell or Lt. Whitaker, the shift supervisors at issue, for any type of medical assistance or to be taken to the hospital. Even if there is a legal duty, which is denied, the Plaintiff has not shown "conscious wrongdoing" or the "intentional, conscious failure" on the part of any ACDC officers. At most, the evidence shows a mistake or inadvertence or carelessness – likely based on the absence of any clear duty of care established by law (as the Court is well aware and himself commented did not exist in May/June

2019). Thus, the Defendant Sheriff's Office is entitled to a JNOV because the evidence, even taken in a light most favorable to the Plaintiff, does not support a finding of gross negligence or recklessness, that is, assuming a duty of care exists.

Finally, the Defendant Sheriff's Office raises some additional arguments about the legal duty question to ensure that this motion is complete and re-asserts the positions stated at the directed verdict stage. To the extent that the Court relied on Section 24-5-10 of the Code of Laws as establishing a legal duty, which is unclear on the record, the Defendant renews and incorporates herein the legal arguments establishing that Section 24-5-10 does not create a duty of law applicable to this case for several reasons. Section 24-5-10, which states: "The sheriff shall have custody of the jail in his county and, if he appoints a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, *according to law*." (Emphasis added). First, any claim against the Sheriff's Office based on Section 24-5-10 (which was never pled) is barred by operation of the public duty rule, as is evident by the inclusion of the "according to law" language in Section 24-5-10. Clearly, the General Assembly intended for any legal duties of care to be established elsewhere in the law. There is no other credible reading for the inclusion of the "according to law" language. Second, the second half of Section 24-5-10, specifically "if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law" is part of the "scattered patchwork of sovereign liability" that pre-dated *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), and the enactment of the Tort Claims Act, and which has been impliedly repealed by the Tort Claims Act, just like the other "sheriff's statute," Section 23-13-10. *See*,

Robinson v. Metts, 86 F.Supp.2d 557 (D.S.C. 1997).¹ Third, the reliance on the word “safely” is so general and ambiguous that it provides no clear guidance and actually creates a strict tort standard which is not the law. That point is addressed further below.

Additionally, the Plaintiff cannot show a legal duty of care based on the Minimum Standards for Local Detention Facilities in South Carolina, which have never been adopted as regulations, do not have the “force of law,” and cannot establish a legal duty. *See, Myrtle Beach Hospital, Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868, 871 (2000) (recognizing “[t]hese Minimum Standards have never been subject to the legislative scrutiny afforded regulations under the Administrative Procedures Act. Instead, they are merely the product of the County Association, adopted by the DOC, an executive agency. They cannot validly be viewed as expressing anything about legislative intent”).² Likewise, the only portions of the Minimum Standards in evidence do not establish any legal duty of care for the ACDC officers under the allegations and facts presented. The Minimum Standards do not address what duty, if any, a corrections officer has in dealing with an inmate who the officer knows is receiving ongoing medical treatment from the medical professionals.

Likewise, as the Supreme Court has explained, internal policies or guidelines do not establish a legal duty of care, although once a “legal duty” is established as a matter of law, internal policies or guidelines may be treated as evidence to assess the applicable “standard of care.” *See, Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011). In *Doe*, the Supreme Court

¹ For a full analysis on the implied repeal of the liability portion of Section 24-5-10, the Defendant relies on its pre-trial brief which is incorporated herein by reference.

² Under the Administrative Procedures Act (APA) and its supporting case law, the Minimum Standards for Local Detention Facilities in South Carolina expressly do not have the force or effect of law. S.C. Code Ann. § 1-23-10(4) sets forth the APA’s definition of “regulation,” which provides in pertinent part that “[p]olicy or guidance issued by an agency other than in a regulation *does not have the force or effect of law.*” (Emphasis added).

held that [i]t follows that, if no duty has been established, evidence as to the standard of care is irrelevant. Only when there is a duty would a standard of care need to be established.” 711 S.E.2d at 912. In short, there is a significant difference between a “legal duty of care” and a “standard of care,” and accordingly, standards, guidelines, and internal policies cannot be admitted as evidence to establish a legal duty of care.

Finally, the Plaintiff presented no expert testimony from a corrections expert as tendered and accepted by the Court to establish any standard of care. Even the one medical expert who testified, Dr. Edward O’Bryan, was not offered as an expert in correctional medicine and offered no opinions regarding the conduct of the ACDC officers nor any acts or omissions by any of the officers at issue. The Plaintiff identified Aubrey Land as a corrections expert but did not call him, likely because of the strength of the *Jones v. Council* motion in limine that was pending before the Court for a decision. The standard of care was not established by the Plaintiff.

In sum, based on the foregoing discussion, the Plaintiff has failed in her proof of each of the elements of her gross negligence claim, and accordingly, the Defendant’s JNOV motion should be granted on the numerous separate and independent bases addressed above.

B. Application of S.C. Code Ann. § 15-78-70(d)

The Plaintiff’s tort claim for gross negligence against the Defendant Sheriff’s Office is barred by operation of Section 15-78-70(d) of the South Carolina Code, as a result of the settlement entered in this action between the Plaintiff and the SHP Defendants. Section 15-78-70(d) states: “A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.” S.C. Code Ann. § 15-78-70(d).

The Plaintiff has settled this action against the SHP Defendants. That settlement is memorialized by a signed Release, a copy of which has been denied in discovery to the Defendant Sheriff's Office, but the parties did stipulate that there is a settlement. The Defendant Sheriff's Office moved for a directed verdict on the basis that the Plaintiff's tort claim is barred by virtue of that settlement and renews that motion by way of JNOV motion. Specifically, the prior settlement in this same civil action constitutes a complete bar to any further action by the Plaintiff against the Defendant Sheriff's Office pursuant to Section 15-78-70(d) of the South Carolina Tort Claims Act.

Section 15-78-70(d) was interpreted by the South Carolina Supreme Court in the case of *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002). That case arose out of a motor vehicle accident. The at-fault driver was employed at the time of the accident by Berkeley County although he was driving his personal vehicle. The plaintiff in *Wade* initially sued only the driver individually and reached a settlement. Following that settlement, the plaintiff then sued Berkeley County, which raised Section 15-78-70(d) as a bar to that action. The Supreme Court ultimately concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Therefore, because the settlement with the driver individually was not in an action under the Tort Claims Act, the Supreme Court concluded that Section 15-78-70(d) was not applicable. The Supreme Court emphasized that, when the settlement was reached,

[N]o action [under the Tort Claims Act] has been initiated, nor had any claim been filed, against County. At the time of the settlement, Wade had only initiated an action against Pierce in his individual capacity, not against County as Pierce's employer. Accordingly, at the time Wade and Pierce executed the settlement document, there were no actions "under this chapter." Wade and Pierce's settlement did not invoke the provisions of § 15-78-70(d) barring Wade from further action against County.

559 S.E.2d at 589.

The Supreme Court in *Wade*, nonetheless, explained the scope of Section 15-78-70(d). The Court held that "to invoke the provisions of § 15-78-70(d), there must be a settlement or judgment in an action under the Act or a settlement of a claim under the Act." 559 S.E.2d at 588-589. Therefore, if there is a settlement in an action brought under the Tort Claims Act, Section 15-78-70(d) may be invoked as a bar to any further proceedings or recovery against a governmental entity arising out of the same occurrence.

That is precisely what has occurred in the present case. There is no dispute that the Plaintiff brought suit simultaneously against all Defendants, including the current Defendants as well as the SHP Defendants, which were named as parties in the original Complaint. The suit was brought pursuant to the Tort Claims Act in that the Plaintiff has asserted the state law tort claim against all Defendants, and as discussed above, the Tort Claims Act is the exclusive means by which the Defendant Sheriff's Office and Aiken County, as governmental entities, may be sued in tort. The Plaintiff also cited the Tort Claims Act in her Complaint. *See* Complaint, ¶¶ 4-5. All of the Defendants, including the SHP Defendants, also cited Tort Claims Act defenses in their Answers, with the Plaintiff never moving to strike those defenses. *See*, SHP Answer, ¶ 83, Hunt Answer, ¶¶ 51-52, 57. Thus, it is beyond dispute that the Plaintiff brought this action under the Tort Claims Act.

There is likewise no dispute that the Plaintiff settled with the Defendant SHP. A release has been executed, and the SHP Defendants have been dismissed from this action with prejudice. Unlike in *Wade*, however, there were not separate suits filed. The Plaintiff did not settle with the SHP Defendants and then sue the current Defendants in a separate action. To the contrary, the settlement occurred within the confines and context of this very Tort Claims Act case. This is precisely the scenario described by the Supreme Court in *Wade* where the bar of Section 15-78-70(d) may be invoked.

At the directed verdict stage, the Plaintiff argued that the limitations provided by Section 15-78-70(d) are not applicable in this case because the settlements are with non-governmental defendants that fall outside of the Tort Claims Act. The Court adopted that reasoning in denying the directed verdict. The Plaintiff's position and the Court's ruling at directed verdict are flawed in several key respects.

First, the precise language of Section 15-78-70(d) is as follows:

A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

S.C. Code Ann. § 15-78-70(d). There is no requirement that the settlement or judgment must be with another governmental party. There is no language to that effect in the statute, and if that were the intent of the General Assembly, such language could have been included. What is required is that the settlement must occur within the context of an action brought pursuant to the Tort Claims Act. In *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002), the Supreme Court examined that very question and concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Thus, if there is a settlement in a Tort Claims Act case, Section 15-78-70(d) applies.

The present case is indisputably a case brought pursuant to the Tort Claims Act for the reasons discussed above. The suit was brought pursuant to the Tort Claims Act in that the Plaintiff has asserted a state law tort claim against the Sheriff's Office, and the Tort Claims Act is the exclusive means by which the Sheriff's Office may be sued in tort. *See*, S.C. Code Ann. § 15-78-200.

Additionally, to the extent that the Court finds that the interpretation of Section 15-78-70(d) may be unclear as the Plaintiff suggests, it is important to recognize that the Tort Claims Act

includes its own rules of statutory construction, including Section 15-78-20(f), which states: “The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, *must* be liberally construed *in favor of limiting the liability of the State.*” S.C. Code Ann. § 15-78-20(f). (Emphasis added). Thus, the limitation on liability as set forth in Section 15-78-70(d) must be liberally construed in favor of limiting the liability of the State as mandated by Section 15-78-20(f) and the supporting case law. *See e.g., Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990); *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998).

Finally, the Plaintiff’s position and the Court’s ruling at directed verdict flies in the face of the well-settled rule of statutory construction that “[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.” *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196, 198 (2002). The reason that the General Assembly adopted Section 15-78-70(d) was to be read and applied *in pari materia* with Section 15-78-100(c) of the Tort Claims Act, which reads: “In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined.” S.C. Code Ann. § 15-78-100(c). Section 15-78-100(c) requires that a jury return a special verdict specifying the proportional liability of each joint tortfeasor, both governmental and non-governmental. The reason for this is clear and supported by constitutional principles: the government and the taxpayers are not jointly and severally liable and instead are only liable for its own proportioned share of liability. The right to apportioned fault under Section 15-78-100(c) is lost, however, if a joint tortfeasor is able to settle out of the litigation. That is the reason that Section 15-78-70(d) was enacted with and must be read *in pari*

materia with Section 15-78-100(c). The General Assembly did not deny a plaintiff's or claimant's right to settle with less than all alleged joint tortfeasors, but if the plaintiff or claimant does settle with a joint tortfeasor, that then bars any further recovery from a governmental entity because the governmental entity has lost the critical right to apportionment. As the current case demonstrates, if Section 15-78-70(d) is read in any other manner than what the Defendant argues, a plaintiff or claimant may settle with the primary wrongdoer (here Southern Health Partners) for less than its share of the total liability and then attempt to hold the governmental entity for damages based on a greater degree of fault than it would otherwise have, thereby resulting from the loss of the right of apportionment under Section 15-78-70(d). That was clearly not the intent of the General Assembly in enacting both Section 15-78-70(d) and Section 15-78-100(c) and the statutory scheme that was created for allowing qualified but not unlimited liability for governmental entities.

In sum, the Defendant Sheriff's Office is entitled to the dismissal of the Plaintiff's gross negligence claim on the basis of Section 15-78-70(d).

II. New Trial Absolute

A. Court Did Not Correctly Charge the Particular Duty of Care Owed by the Defendant and its Officers

Under South Carolina law, it is well settled that “[a] trial court must charge the current and correct law.” *Stephens v. CSX Transportation*, 415 S.C. 182, 781 S.E.2d 534, 542 (2015). “Ordinarily, a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence.” *Id.*

As discussed above, the trial court charged the jury that the Defendant Sheriff's Office “has a duty to safely confine, supervise, and maintain the custody of inmates.” *See*, Charge to Jury, “Duty Owed to Plaintiff.” That charge, however, failed to properly or adequately instruct the jury as to the specific or particular legal duty arising from the facts of this case as alleged and presented

by the Plaintiff. In effect, with the duty of care stated with such generalities, the Court erroneously left it to the jury's whim to decide what the ACDC officers were required by law to do or not do under the facts as alleged and presented. A legal duty must be determined by the Court and should be based on existing authority, be it statutory or the common law. The legal duty should not be expressed in such general terms that the jury gets to decide what the law actually requires in a given set of circumstances. That does not allow for a fair, even-handed system of justice where similarly situated defendants are held to the same legal duties of care. If the applicable legal duty of care owed under a specific set of factual circumstances is left to a jury to decide, one jury may decide that ACDC officers were required to do X to satisfy the legal duty of care while another jury in another part of the state could conclude that detention officers are required to do Y (something entirely different) to satisfy the legal duty of care. That flies in the face of the clear precedent that mandates that "[w]hether the law recognizes a *particular duty* is an issue of law to be determined by the court." *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47, 49 (1996). (Emphasis added). Note that the case law does not say a "general duty" but rather a "particular duty." In *Carson v. Adgar*, 326 S.C. 212, 486 S.E.2d 3 (1997), the Supreme Court elaborated on that point:

Whether the law recognizes a particular duty is an issue of law to be decided by the court. In some circumstances, however, the question of whether a duty arises depends on the existence of particular facts. Where the existence or non-existence of a duty depends on facts, it is the duty of the court to instruct the jury as to the defendant's duty, or absence of duty, if either conclusion as to the facts is reached.

486 S.E.2d at 5. (Citation omitted). There are literally dozens of South Carolina cases holding that the trial court has the duty to instruct on the "particular duty" of care that is owed. Again, where the duty is expressed in generalities, as what occurred in this case, the jury is provided no guidance and is left to do what it thinks the law requires, but that is not the jury's role and that is contrary to due process and all notions of fundamental fairness. In short, where the trial court fails

to charge the “particular” duty of care owed, the jury does not receive the “current and correct law,” and the verdict cannot stand.

In this case, the Defendant Sheriff’s Office requested that the Court use its Request to Charge #7, which states:

I charge you that the legal duty of care that is owed by the Defendant Aiken County Sheriff’s Office is as follows:

The employees of the Sheriff’s Office are legally responsible for seeing that prisoners are attended to by medical professionals. They are not legally responsible for determining the diagnosis of any medical condition or the course of treatment or for overruling the opinions of the medical professionals.

That proposed charge states the legal duty of care with *particularity* as was required. If that is not the correct law, then the correct legal duty of care still needs to be charged with particularity for the allegations and facts presented. Simply instructing the jury that the duty is “to safely confine, supervise, and maintain the custody of inmates” provides no real guidance whatsoever. In fact, the term “safely,” as was discussed during trial, is so ambiguous that it could be construed however the jury wanted. In fact, the use of the word “safely” implies a strict tort standard. Jails and prisons are challenging and dangerous places, and if the legal duty requires that the inmates remain “safe” under any and all circumstances, that will make any injury by an inmate actionable. That is not the law nor should it be the law. If the Court does not conclude that the Defendant is entitled to a JNOV, the Defendant should at least receive a new trial absolute based on the charge given on the legal duty of care. The verdict should not be permitted to stand.

B. Closing Argument About Southern Health Partner’s Unwillingness to Pay For Hospital Care and its Ramifications

During the Plaintiff’s counsel’s closing argument, counsel showed a letterhead for Southern Health Partners that was not in evidence and was never addressed during testimony.

Counsel drew attention to the use of the word “affordable” in the slogan used by SHP and suggested to the jury that SHP had a financial reason not to send the Plaintiff to the hospital. That closing argument was highly prejudicial on several levels. First, the slogan was that of SHP who is not a Defendant in the case and for whose acts it was established and stipulated that the Sheriff’s Office bore no vicarious liability. Second, there was no evidence presented during the trial as to any obligation, by law or contract, for SHP to incur the costs of any hospitalization. The SHP contract is not in evidence. At no point, was the duty to pay for outside medical care raised as an issue with any witness. Third, the direct charge made by the Plaintiff against SHP is contrary to established South Carolina law holding that there is no obligation on the party of the Sheriff’s Office or Aiken County to pay for outside medical care required by pre-trial detainees. *See, Myrtle Beach Hospital, Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000). That is not the law for convicted inmates, some of which are also housed at ACDC. But for the Plaintiff, there is no legal duty for anyone, including SHP, to pay for the Plaintiff’s hospitalization, and certainly, there was no evidence to indicate otherwise. Finally, because the Plaintiff was claiming in excess of \$340,000 in hospital bills and another \$70,000 in future medical expenses, this improper closing argument was even more prejudicial because it implied to the jury that the Plaintiff’s hospital expenses were the Defendant’s responsibility regardless of fault and had not been paid, since those expenses were being claimed as damages in this litigation. In effect, it created an issue that was not raised during the trial or litigated by the parties. The insinuations by Plaintiff’s counsel were improper, deliberate, and planned and are deserving of a new trial absolute. The Court was asked to make a curative instruction and declined to do so.

C. Inadmissible Hearsay Evidence of Future Medical Costs

The trial court erred in allowing the Plaintiff, as a lay witness, to testify that the costs of her future medical care were \$70,000. The Plaintiff laid no foundation for that testimony. She did not even state the source of that information, and at any rate, the information – even if it came from a credible medical provider – was hearsay with no applicable exception. The testimony was clearly offered for the truth of the matter asserted. Under South Carolina law, in order for the Plaintiff to recover for the future costs of medical care or treatment, the Plaintiff must present expert testimony. Lay testimony is insufficient. *See, Roberson v. United States*, 2010 WL 4822325, *12 (D.S.C. 2010) (district court held that "[a]ny award of future medical expenses must be based upon something more than mere speculation" and "[i]n proving future medical expenses, the value of such care is established through expert testimony"). The jury was provided no foundation by which to judge that testimony, and it was inadmissible hearsay. In *Huntley v. Rite Aid of South Carolina, Inc.*, 339 S.C. 285, 529 S.E.2d 45 (Ct. App. 2000), the Court of Appeals found testimony of future medical expenses to be hearsay but concluded that there was no abuse of discretion because the testimony was offered by an expert who can rely on hearsay. In the case at bar, the hearsay testimony was offered by a lay person, namely the Plaintiff. Neither the Court nor the jury were advised as to the source of this information. In fact, in responses to interrogatories served on October 2, 2023, just a week before trial, the Plaintiff was asked for an “itemized statement of all damages” per the standard interrogatory. *See*, Rule 33(b)(5), SCRPC. The Plaintiff did not identify future medical costs of \$70,000 (nor any amount).³ The trial court erred in admitting that evidence of future medical expenses, and the Defendant was prejudiced thereby given the Plaintiff

³ The Plaintiff’s Responses to Defendant’s Interrogatories are in the record as a court exhibit.

claimed those expenses in her counsel's closing argument and the likelihood that those damages were included in the \$950,000 verdict.

D. Evidence that Plaintiff Checked Out of Hospital After Using Drugs

The Court erred in disallowing the Defendant's counsel from questioning both the Plaintiff and Dr. Edward O'Bryan regarding the fact that the Plaintiff checked herself out of Aiken Regional Medical Center against medical advice on July 7, 2019. The reason that the Plaintiff took that action was that she had used heroin and methamphetamine in the bathroom of her hospital room and subsequently failed a drug test, both of which she admitted and were not in dispute. The Court should have allowed cross-examination of both witnesses to explore how that impacted the Plaintiff's recovery, which was very much an issue in the case. That evidence would have also demonstrated that there was an alternative explanation for the deficits that she was claiming through her own lay testimony resulted from the injury.

E. Evidence that Plaintiff is Currently Incarcerated

The Court erred in not allowing the jury to learn that the Plaintiff was and remains incarcerated at the South Carolina Department of Corrections. The Court did allow evidence of incarceration at SCDC to be admitted for the Plaintiff's witnesses, but not for the Plaintiff herself. The fact that the Plaintiff remains incarcerated on the very charges for which she was in the Aiken County Detention Center and arrested by the Sheriff's Office was relevant and admissible to show bias against the Defendant and law enforcement and corrections in general. That bias impacts the Plaintiff's credibility. The Plaintiff was further allowed to testify as to her current condition and give the impression that she "has turned her life around" but able to hide the truth of her current incarceration which is certainly a significant part of her current condition.

III. Thirteenth Juror Doctrine

The Defendant moves for a new trial absolute as well based upon the Thirteenth Juror doctrine. "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the facts." *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 722 (Ct. App. 1996). "[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree." *Id.* "The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case." *Id.* As discussed above, the evidence presented in this case does not support the jury's verdict. Therefore, even if a JNOV is not granted, the Court should exercise its discretion and grant a new trial absolute for the reasons discussed herein.

IV. Set-Off of Settlement Amounts Paid by Settling Defendants

South Carolina law recognizes that a trial court possesses "jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties." *Smalls v. South Carolina Department of Education*, 339 S.C. 208, 528 S.E.2d 682, 688 (Ct. App. 2000). The South Carolina Court of Appeals has explained that "the reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid him. Or differently stated, it is almost universally held that there can be only one satisfaction for an injury or wrong." *Id.* The Court of Appeals in *Smalls* concluded:

Equity dictates Department be given a credit for the amount paid by the settling parties and thus, a double recovery is avoided. The settlement amount represents, in effect, the portion of total damages attributable to [the settling defendant].

528 S.E.2d at 688-689. *See also, Rutland v. South Carolina Department of Transportation*, 390 S.C. 78, 700 S.E.2d 451 (Ct. App. 2010).

It is well established that "[a] nonsettling defendant is entitled to credit for the amount paid by another defendant who settles." *Hawkins v. Pathology Associates of Greenville, P.A.*, 330 S.C. 92, 498 S.E.2d 395, 406 (Ct. App. 1998), *citing Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967); *Vaughn v. City of Anderson*, 300 S.C. 55, 386 S.E.2d 297 (Ct. App. 1989). "Therefore, before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury." *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188, 190 (Ct. App. 2012), *citing Hawkins v. Pathology Associates of Greenville, P.A.*, 330 S.C. 92, 498 S.E.2d 395, 406 (Ct. App. 1998). "When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." *Smith*, 724 S.E.2d at 190, *citing Ellis v. Oliver*, 335 S.C. 106, 515 S.E.2d 268, 271-72 (Ct. App. 1999). "Therefore, a plaintiff's claim for actual and punitive damages arising from the same injury is the same claim for purposes of setoff under section 15-38-50(1)." *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188, 191 (Ct. App. 2012).

In *Ellis v. Oliver*, 335 S.C. 106, 515 S.E.2d 268 (Ct. App. 1999), the Court of Appeals explained that "[a]pplication of the settlement credit was statutorily mandated in this case. S.C. Code Ann. § 15-38-50 grants the court no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors." 515 S.E.2d at 272.

The Plaintiff has represented to the Court that she settled her claims against the Defendants Southern Health Partners and Dr. Robert Williams for an undisclosed sum which the settling

parties claim is confidential. To date, neither the settling parties nor the Court has disclosed the settlement amount to counsel for the Defendant Sheriff's Office. The Court is requested to inquire of the settling parties as to the amounts paid in settlement and to direct that that information be made available to the Defendant's counsel per the Court of Appeals' decision in *Huck v. Oakland Wings, LLC*, 422 S.C. 430, 813 S.E.2d 288 (Ct. App. 2018). In application of South Carolina law, the Defendant Sheriff's Office is entitled to a set-off under the common law and S.C. Code Ann. § 15-38-50 for the sum of the settlement received by the Plaintiff from the settling Defendants.

V. Reduction to Statutory Cap of \$300,000

The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). *See also*, S.C. Code Ann. § 15-78-200 ("Notwithstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty").

Section 15-78-120(a)(1), which governs the limitation on liability under the Tort Claims Act, provides: "For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits: (1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved." S.C. Code Ann. § 15-78-120(a)(1).

As an alternative to the previous motions made for JNOV and new trial absolute, and subject to the requested set-off of settlement amounts, the Defendant Sheriff's Office requests that the judgment be reduced to the statutory cap of \$300,000 unless the set-off reduces the judgment

to below that amount (which is currently unknown because the Defendant's counsel has not been provided the amount of the settlement with the SHP Defendants).

Respectfully submitted,

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Counsel for Defendant
Aiken County Sheriff's Office

October 23, 2023

ORAL ARGUMENT REQUESTED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Cassiopia Rhoads,	)	Civil Action No.: 2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF’S MEMORANDUM
	)	SHOWING OFFER OF JUDGMENT
Aiken County Sheriff’s Office,	)	INTEREST IS TO BE CALCULATED
	)	ON THE VERDICT
Defendant.	)	

Introduction

Although prior Court of Appeals cases did state that the judgment is the figure to use when calculating interest on an offer of judgment, in the recent case of *Garrison v. Target Corp.*, the South Carolina Supreme Court unequivocally held the calculation of offer of judgment interest should be based “on the entire amount of the [jury’s] verdict,” even if that amount is being reduced by the trial court. 435 S.C. 566, 869 S.E.2d. 797 (2022). Accordingly, Defendant’s position that offer of judgment interest should be computed on the amount of the judgment is incorrect. As stated in Rule 68(b), SCRCP, S.C. Code §15-35-400(B), and the recent *Garrison* opinion, offer of judgment interest in the Rhoads case should be calculated on the jury’s verdict of \$950,000.

Argument

In an email dated February 13, 2024, Defendant’s wrote to this Honorable Court inaccurately stating:

Of particular significance, the Plaintiff improperly bases the calculation of the pre-judgment interest on the verdict of \$950,000, as opposed to the reduced judgment amount of \$300,000. That is in contravention to what the appellate courts ruled in such cases as *O’Shields v. Columbia Auto., LLC*, 435 S.C. 319, 867 S.E.2d 446, 459–60 (Ct. App. 2021) (“the final, posttrial award was the proper amount for computing offer of judgment interest”).

However, that particular holding from the *O’Shields* case has been expressly overturned (and the South Carolina Supreme Court has granted certiorari to review the *O’Shields* opinion). Although

the 2021 *O'Shields* court did state that the final post-trial award was the proper figure to utilize when computing offer of judgment interest, the case relied upon the Court of Appeals' finding in *Garrison v. Target Corp.*, 429 S.C. 324, 838 S.E.2d. 18 (Ct. App. 2020), which was subsequently overturned by *Garrison v. Target Corp.*, 435 S.C. 566, 869 S.E.2d. 797 (2022). As discussed below, the Supreme Court's opinion in *Garrison* overrules *O'Shields* and conclusively holds that it is the jury's award of damages (and not final, post-trial award/judgment that may result from remittitur, damage caps, etc.) that is the correct figure to utilize when calculating interest stemming from an unaccepted offer of judgment.

In *Garrison*, Plaintiff Denise Garrison brought suit after being injured in the parking lot of a Target store. During the course of litigation, Mrs. Garrison submitted a \$12,000 offer judgment, which the Defendant did not accept. The case went to trial and the jury awarded Mrs. Garrison \$100,000 in compensatory damages and an additional \$4.5 million in punitive damages. The trial court granted Target's JNOV motion, thereby striking the punitive damages award in its entirety, finding that the punitive award was based on passion, caprice, or prejudice. The trial court then based its calculation of offer of judgment interest solely on the \$100,000 judgment that was being entered and not on the total of \$4.6 million verdict (\$100,000 + \$4.5 million) that the jury had awarded. Mrs. Garrison appealed the Circuit Court's decision.

The Court of Appeals reinstated an award of punitive damages (determining that it was not the result of passion caprice, or prejudice), found that the statutory limit on punitive damages (established in S.C. Code § 15-32-530) had been waived because it had not been pled in Defendant's answer, but directed the lower court to lower the punitive award to conform to due process guidelines relating to punitive damages. The Court of Appeals further found that the calculation of interest on the unaccepted offer of judgment should look only at the final determination entered by the Circuit Court and not the jury's total award of damages. In short, the

Court of Appeals affirmed the trial court's calculation offer of judgment interest in a manner that ignored the amount of the jury's award and looked only at the judgment that was to be entered. Notably, the holding from the Court of Appeals' *Garrison* decision was the opinion on which the Court of Appeals relied upon in the *O'Shields* case to which the Defense points.

Our Supreme Court overturned the Court of Appeals, finding statutory limit on punitive damages had not been waived (that it was not an affirmative defense that needed to be pled) and directed the Circuit Court to reduce the punitive damages award to the guidelines set for in S.C. Code § 15-32-530. **Important to the matter at issue in the *Rhoads* case, the Supreme Court also overturned the Court of Appeals with regard to how calculate offer of judgment interest, finding that the calculation should not be based on the judgment amount that would ultimately be entered but should be calculated on the jury's total award of damages.** Going to great lengths to explain their reasoning, the Supreme Court held:

Denise Garrison argues the court of appeals erred in holding she is not entitled to eight percent interest on the entirety of her damages, including punitive damages, because both Rule 68, SCRCF, and section 15-35-400 (Supp. 2020), which govern the award of interest in the offer of judgment context, specifically state **the plaintiff is entitled to eight percent interest "on the amount of the verdict or award" from the date of the offer to the entry of judgment. We agree.**

Rule 68(b), SCRCF, provides in relevant part:

If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: ... (2) if the offeror is a plaintiff, eight percent interest **computed on the amount of the verdict or award** from the date of the offer to the entry of judgment....

Similarly, Section 15-35-400(B) states:

If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: ... (2) if the offeror is a plaintiff, eight percent interest computed **on the amount of the verdict or award** from the date of the offer....

S.C. Code Ann. § 15-35-400(B) (Supp. 2020). **We find the language of both the rule and the statute clearly and unambiguously provides that Denise is entitled to eight percent interest on the entire amount of the verdict, including punitive damages.** See *Sonoco Prods. Co. v. S.C. Dep't of Revenue*, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008) (“The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation.”). Indeed, we do not perceive any restriction in the rule or statute which prohibits the award of interest on punitive damages, and we refuse to impose such limitation here. See *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (“When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.”); *id.* at 85, 533 S.E.2d at 581 (“Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.”).

[....]

Therefore, **we hold [Plaintiff] is entitled to eight percent interest on the entirety of her damages award**, including punitive damages, pursuant to Rule 68, SCRPC.

Garrison at 585-87, 869 S.E.2d at 808-09 (emphasis added).

Further, both the aforementioned statute and the Rule of Civil Procedure set the time period for the calculation as “eight percent interest computed on the amount of the verdict or award **from the date of the offer to the entry of judgment.**” With Mrs. Rhoads’ \$250,000 offer of judgment having been filed on March 31, 2022, if the \$300,000 judgment were entered today, that would amount to 697 days having passed. A calculation of 8% on \$950,000 for the duration of 697 days equals \$145,128.76. See Exhibit No. 1.

Conclusion

In summary, the Supreme Court’s holding in *Garrison* expressly over-turned the prior Court of Appeals’ holdings in *Garrison* and in *O’Shields* and found that the jury’s verdict (not the post-trial judgment) is the correct figure on which to calculate interest stemming from an unaccepted offer of judgment. Thus, in this matter, the jury’s verdict of \$950,000 is the correct figure on which the interest from an unaccepted offer of judgment should be calculated, and, as of today’s date, that interest calculation totals \$145,128.76.

February 26, 2024
Columbia, South Carolina

Respectfully submitted,

/s/ Francis M. Hinson, IV

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Counsel for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
Cassiopia Rhoads,	)	Civil Action No.: 2020-CP-02-02238
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF’S MEMORANDUM
	)	SHOWING OFFER OF JUDGMENT
Aiken County Sheriff’s Office,	)	INTEREST IS TO BE CALCULATED
	)	ON THE VERDICT
Defendant.	)	

EXHIBIT 1

Calculation of Interest

Simple Interest Calculator I = Prt

Simple Interest Calculator

Solve for: Where: $I = Prt$ Principal (P): \$ Rate (R): %
per yearTime (t):

Clear

Calculate

Answer:

 $I = \$ 145,128.76$** **Equation:** **$I = Prt$ **Calculation:**

First, converting R percent to r a decimal
 $r = R/100 = 8\%/100 = 0.08$ per year,
 putting time into years for simplicity,
 $697 \text{ days} \div 365 \text{ days/year} = 1.909589$ years,
 then, solving our equation

$$I = 950000 \times 0.08 \times 1.909589 = 145128.764$$

$$I = \$ 145,128.76$$

The simple interest accumulated
 on a principal of \$ 950,000.00

Calculator Use

Calculate simple interest on the principal only, $I = Prt$. Simple interest does not include the effect of compounding.

Simple Interest Formula

 $I = Prt$

Where:

- P = Principal Amount
- I = Interest Amount
- r = Rate of Interest per year in decimal; $r = R/100$
- R = Rate of Interest per year as a percent;
 $R = r \times 100$
- t = Time Periods involved

Notes: Base formula, written as $I = Prt$ or $I = P \times r \times t$ where rate r and time t should be in the same time units such as months or years.

Time conversions that are based on day count of 365 days/year have 30.4167 days/month and 91.2501 days/quarter. 360 days/year have 30 days/month and 90 days/quarter.

Simple Interest Formulas and Calculations:

This calculator for simple interest-only finds I, the simple interest where P is the Principal amount of money to be invested at an Interest

at a rate of 8% per year
for 1.909589 years (697 days) is \$ 145,128.76.

How could this calculator be better?

Share this Answer Link: [help](#)

Paste this link in email, text or social media.

https://www.calculatorsoup.com/calculators/financial/simple-interest-calculator.php?given_data=find_I&P=950%2C000.00&R=8.0&t=697&time_t=day+365&given_data_last=find_I&action=solve

Get a Widget for this Calculator

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Furey, Edward "[Simple Interest Calculator \$I = Prt\$](#) " at <https://www.calculatorsoup.com/calculators/financial/simple-interest-calculator.php> from CalculatorSoup, <https://www.calculatorsoup.com> - Online Calculators

Last updated: May 15, 2022

Rate $R\%$ per period for t Number of Time Periods. Where r is in decimal form; $r=R/100$. r and t are in the same units of time.

- Calculate Interest, solve for I
 - $I = Prt$
- Calculate Principal Amount, solve for P
 - $P = I / rt$
- Calculate rate of interest in decimal, solve for r
 - $r = I / Pt$
- Calculate rate of interest in percent
 - $R = r * 100$
- Calculate time, solve for t
 - $t = I / Pr$

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