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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
DANIEL D. HALL, CIRCUIT COURT JUDGE

Appellate Case No. 2015-00-2057
Trial Court Number 2013-CP-23-2017

ISIAH JAMES, JR ET AL; OF WHOM
GEORGE LEE TOMLIN IS APPELLANT,

VS.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS [SCDC], RESPONDENT,

RECEIVED

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SC Court of Appeals

SUPPLEMENTAL RECORD

S/ George Lee Tomlin
GEORGE LEE TOMLIN, 166361
RCI, CA-22, POB 2039
RIDGELAND, S.C. 29936

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Isiah James, #96883,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 05-ALJ-04-00739-AP

ORDER
GRIEVANCE NO: RCI 133-05

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court pursuant to the notice of appeal filed by Appellant on August 26, 2005. In his grievance, Appellant specifically requests "the prevailing wages at the rate of eleven to fourteen dollars", overtime pay, and return of all funds removed for room and board and victim assistance.

The Department denied Inmate's grievances at the Step 1 and Step 2 levels based on their finding that Appellant is not an "employee" of Kwalu as defined in Section 24-3-430.

DISCUSSION

The Court's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Court's appellate jurisdiction in inmate appeals is limited to state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id. However, the South Carolina Supreme Court recognizes a limited Administrative Law Court jurisdictional exception "where inmate claims deprivation of property interest." Slezak v. SC Dep't of Corr., 361 S.C. 327, 330, 605 S.E.2d 506, 507 (2004) (citing Wicker v. SC Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004)). This case involves an inmate claiming deprivation of a property interest. The facts of this case are similar to the facts in Wicker. Therefore, this Court has jurisdiction over this appeal.

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FILED

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SC ADMIN LAW COURT

"Room and Board" and "Victim Assistance"

Appellant requests that he be reimbursed for the wages deducted for room and board and victim assistance. He claims these deductions were made in violation of Article 12, Section 2 of the South Carolina Constitution. However, these deductions are allowed and required by S.C. Code Ann. § 24-3-40 (Supp. 2004). Therefore, he will not be reimbursed for the wages deducted for room and board and victim assistance.

ORDER

IT IS THEREFORE ORDERED that the Department determine from its records the number of hours Appellant was paid a training wage for hours worked in the Prison Industries System.

IT IS FURTHER ORDERED that the Department calculate the wages owed to Inmate at the prevailing wage (\$5.25 per hour) and pay Appellant the difference between the wages owed and the wages paid within thirty (30) days of the date of this Order.

AND IT IS SO ORDERED.


Carolyn C. Matthews
Administrative Law Judge

February 7, 2006
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the parties or their attorney(s).
This 16th day of March 2006
By Amelia F. Dupont
Judicial Law Clerk

The South Carolina Court of Appeals

South Carolina Department of
Corrections,

Respondent,

v

George Lee Tomlin,

Appellant.

The Honorable James C. Williams, Jr.
Jasper County
Trial Court Case No. 2006-CP-27-00109
2006-CP-27-00176

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GENERAL COUNSEL

ORDER GRANTING MOTION FOR COSTS

The Court has carefully considered Appellant's Motion for Costs. Pursuant to Rule 222, SCACR, the Court hereby grants Appellant costs in the amount of \$304.88.

J.

John D. Stets
Jasper D. Currier A.J.

Columbia, South Carolina

Daniel G. Pieper I would deny the motion.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

Isiah James, Jr. and
George Lee Tomlin,

Plaintiffs,

vs.

South Carolina Department of
Corrections (SCDC),

Defendant.

AFFIDAVIT OF
DEBRA LONG

Civil Action Number:
2013-CP-23-02017

PERSONALLY APPEARED before me, the undersigned who first being duly sworn deposes and states as follows:

1. That your deponent has worked for the South Carolina Department of Corrections (SCDC) for approximately 16 years and is currently employed as a Fiscal Analyst II.
2. That your deponent is familiar with the payment and/or processing of inmate wages under various programs.
3. That the South Carolina Department of Corrections maintains certain financial records relative to inmate financial transactions, including deposits into individual inmates' E. H. Cooper Trust Fund accounts (Cooper accounts), long term savings accounts, and payroll during the normal course of business/ operations.

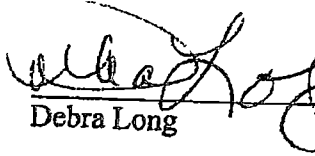
4. That your deponent has personally reviewed the Administrative Law Court Order of Administrative Law Judge Carolyn C. Matthews dated February 7, 2006 and filed March 6, 2006.

5. That your deponent has personally reviewed pertinent SCDC financial records and work assignment records relative to Isiah James, Jr. (SCDC #96883).

6. That upon information and belief, SCDC records indicate that James was hired on a clean-up crew as a custodial worker under the prison industries program on or about January 13, 2000 and he remained in that position until approximately June 2000. That the records further indicate that on or about June 12, 2000 James was hired as a material cutter at Kwalu. That based on a review of the relevant records relating to Isiah James, Jr. (SCDC #96883) it does not appear that James was ever paid a "training wage" for his work in either of these positions. That, upon information and belief, SCDC discontinued the practice of paying inmates a "training wage" of \$0.25-\$0.75 per hour on or approximately July 1, 1999 which is before James began working in the prison industries program at Ridgeland Correctional Institution.

7. That based on the above, it does not appear that James is due any additional compensation for the time period alleged based Administrative Law Judge Carolyn Matthews Order requiring SCDC to determine the number of hours James was paid a "training wage" and pay James the difference between same and the amount he was actually paid.

Further affiant sayeth not.

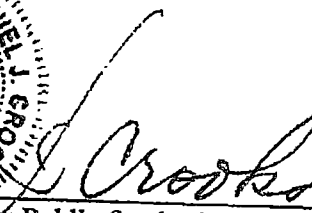

Debra Long

December 3, 2014

SWORN TO BEFORE ME

This 3rd day of December, 2014




Notary Public for the State of South Carolina

My Commission Expires June 7, 2023

Daniel J. Crooks III
Notary Public, State of South Carolina
My commission expires June 7, 2023

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
Civil Action No. 2013CV2322917

Isiah James, Jr., and
George Lee Tulin,

Plaintiff(s),

-VERSUS-

SUPPLEMENTAL COMPLAINT

South Carolina Department of
Corrections [SCDC],

Defendant

TO: Russell W. Warden, Jr., Esq.
CLAWMAN, BARTON & WARDEN, PA.
14 Lavinia Avenue (29603)
POB 18224
Greenville, S.C. 29603

Plaintiff Isiah James, Jr., alleges, complains, litigates, sues, supplements and amends complaint (where the "Plaintiff's" ninth cause of action to the extent it asserts violation of their Federal "due process right" was summarily dismissed by the Federal Court (Judge)) on 3-18-14. See 2014 WL 1036233; and for cause(s) of action set forth:

17. Plaintiff James submitted the 7 May 2014 request under South Carolina Freedom of Information Act (SCFOIA) to the Inspector General's Office of defendant for the 12-13-13 random drug testing random drug testing of James, according to SCDC's policy GA-93.03(4.1): "A.5" "list of names of inmates to be tested" and defendant has failed to respond in any manner; wherefore, James seeks declaratory judgment relief herein S.C. Public Interest Foundation v. City of Greenville, 2014 WL 2737560 (S.C. App. 2014);

FOR THE FORTHCOMING CAUSE OF ACTION

18. Plaintiff James was subjected to institutional lock-down from 21 January 2014 until 1 April 2014 by defendant where he alleges, asserts and claims

isolation(s) of the 5th, 8th and 14th [equal and unusual punishment, equal protection and due process violation(s)], *Hutto v. Finney*, 40 S.Ct. 2545, 2569 (1978), amendment right(s) under the United States Constitution as associated with/therein the sixth cause of action--its agent(s) and servant(s) administered inhumane condition(s) during the period which consisted of (a) diet where he was forced or subjected to bag meals (breakfast, lunch, dinner (supper)); it is discriminatory and contrary to nutri-leaf policy of special management unit (SMU) (SP-22.12[27.1]) "Alternative Meal Service" (Nutri-leaf); (b) mailroom access (incoming mail); plaintiff asserts there was delay in delivery of incoming mail; (c) mailroom access (outgoing mail). James stresses that he was subjected to denial of access to Ridgeland's mailroom for the purpose of forwarding necessary outgoing mail which had to be processed directly through the mailroom during the unreasonable lock-down period set forth above herein; there is the unlawful practice of SCDC's officer(s) handling United States Postal Mail which is unauthorized and the handling of prisoner's mail should be handled by mailroom personnel(s); (d) recreation--plaintiff James alleges that there was a lack of twenty-four (24) hours lock-down in a cell, alone, with a cell-mate without one (1) hour day recreation daily during the lock-down period and it was discriminatory and contrary to the equal protection clause, *Slezak v. SCDC*, 645 S.E.2d 506 (2004), for prisoners who are assigned to disciplinary detention get their one (1) hour recreation daily; (e) living conditions (cell assignment); plaintiff claims that the cruel and unusual punishment clauses(s) of South Carolina and United States Constitution(s) both prohibit double celling when one is subjected to 24 hours lock-down period(s); *Slezak*,

(f) shower(s), plaintiff claims upon the violation of the equal protection clause where he was subjected to the lock-down without the benefit(s) of shower(s) every two (2) days as prisoner(s) who are assigned to disciplinary detention (AD) are allowed showers regularly; (g) library, he endured the unreasonable lock-down without the benefit of library and again, prisoner(s) who are subjected to disciplinary detention do their time with library services(s); (h) law library, there was denial of actual access to

the court during the lock-down period for James was denied access to law library and was subjected to violation of the equal protection clause for prisoner(s) who are subjected to DD and granted access to court(s) and law library, Hendricks v. SDC, 335 S.E.2d 1st (2001); this Court and defendant(s) should know the denial of access to court(s), there is due process violation(s) (i) visitation, James's visitation privileges were denied arbitrary and capricious during the lock-down period contrary to due process clause; (i) telephone (access), plaintiff's telephone privilege(s) were denied arbitrary and capricious and his equal protection clause right(s) was violated by denial of visit(s), where other prisoner(s) were allowed visitation privilege(s);

The 4 day of December 2014.

RCI, CI-52, PDB 2014
Ridgeland, S.C. 29936

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'Supplemental (Amended) Complaint' and attachment(s) to be mailed, postage prepaid, to defendant's attorney, who is set forth above herein this 5 day of December 2014.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Isiah James, Jr. and George Lee Tomlin,)
Plaintiffs,)
vs.)
South Carolina Department of Corrections,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

**DEFENDANT'S ANSWER
TO PLAINTIFFS'
AMENDED COMPLAINT**

Civil Action Number:
2013-CP-23-02017

{Jury Trial Requested}

The defendant, by way of Answer to the Plaintiffs' Amended Complaint, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. That except as is expressly admitted, modified, or explained herein, each and every allegation of the Plaintiffs' Amended Complaint is denied and strict proof thereof is demanded.

2. That the defendant denies committing any act(s) and/or omission(s) which would provide the basis of a cognizable claim. That further, it is denied that the defendant in any way committed any act(s) and/or omission(s) which would constitute a violation of the plaintiffs' civil rights, either secured by the Federal Constitution and/or the Constitution of the State of South Carolina. That it is further denied that the defendant in any way committed any act(s) and/or omission(s) which would give rise to liability to the plaintiffs under state law. That it is further denied that the defendant has violated any rights of the plaintiffs, and it is denied that there are any unlawful and/or unconstitutional policies and/or procedures in place at the South Carolina Department of Corrections [SCDC]. That it is denied the defendant has in any way violated the applicable provisions of the Freedom of Information Act [FOIA]. That the allegations of the

Plaintiff's Amended Complaint are denied and strict proof thereof is demanded.

3. That as to the plaintiff's twelfth cause of action, consisting of paragraphs seventeen (17) and eighteen (18) of the Plaintiffs' Complaint, as well as the applicable subparts thereto, said allegations are denied and strict proof thereof is demanded.

FOR A SECOND DEFENSE

4. That it is denied the Defendant, South Carolina Department of Corrections, is an entity for purposes of suit.

FOR A THIRD DEFENSE

5. That the allegations of the Plaintiffs' Amended Complaint fail to state a claim upon which relief can be granted.

FOR A FOURTH DEFENSE

6. That the plaintiffs have suffered no constitutional deprivation as a result of any alleged act(s) and/or omission(s) by the defendant. That at all times alleged in the Plaintiffs' Amended Complaint, the defendant was performing acts and functions which were reasonably consistent with the rights of the plaintiffs. That the defendant pleads and asserts immunity as a matter of law as a defense to the plaintiffs' claim.

FOR A FIFTH DEFENSE

7. That at all times alleged in the Plaintiffs' Amended Complaint, the defendant acted within the proper bounds of its discretion, and the defendant alleges it is entitled to discretionary immunity.

FOR A SIXTH DEFENSE

8. That the defendant at all times acted in good faith and without ill will and/or

malice toward the plaintiffs. That the defendant therefore pleads and asserts good faith immunity as a complete and absolute bar and/or defense to any recovery by the plaintiffs from the defendant.

FOR A SEVENTH DEFENSE

9. That the defendant at no time violated any clearly established constitutional rights of the plaintiffs. That the defendant therefore pleads and asserts qualified immunity as a bar and/or defense to the plaintiffs' claims, and further, the defendant pleads and asserts qualified immunity as an immunity from this suit.

FOR AN EIGHTH DEFENSE

10. That the allegations of the Plaintiffs' Amended Complaint fail to state a cause of action upon which relief may be granted.

FOR A NINTH DEFENSE

11. That the defendant pleads and asserts the South Carolina Tort Claims Act as a complete and absolute defense and bar to the claim(s) set forth in the Plaintiffs' Amended Complaint. That the defendant specifically pleads and asserts all statutes of limitations, conditions of recovery, limitations of recovery, exclusions from liability, and caps on damages as are set forth in the South Carolina Tort Claims Act. That further, the defendant specifically pleads, but without limitation, the provisions of S.C. Code Ann. § 15-78-60(1)(2)(3)(4)(5)(20)(21)(23) and (25).

FOR A TENTH DEFENSE

12. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-30 as a complete and absolute bar and/or defense to the claims set forth in the Plaintiffs' Amended Complaint.

FOR AN ELEVENTH DEFENSE

13. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-100 as a bar and/or defense to the allegations set forth in the Plaintiffs' Amended Complaint.

FOR A TWELFTH DEFENSE

14. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-110 as a bar and/or defense to the allegations set forth in the Plaintiffs' Amended Complaint.

FOR A THIRTEENTH DEFENSE

15. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-120 as a bar and/or defense to the allegations set forth in the Plaintiffs' Amended Complaint.

FOR A FOURTEENTH DEFENSE

16. That to the extent the injuries and/or damages alleged by the plaintiffs were caused by the plaintiffs' own negligence, the defendant pleads and asserts the comparative fault of the plaintiffs as a bar to any recovery by the plaintiffs from the defendant. That the defendant pleads and asserts the comparative fault of the plaintiffs as a complete and absolute bar to any recovery by the plaintiffs from the defendant. That alternatively, the defendant pleads and asserts the comparative fault of the plaintiffs in mitigation of any alleged damages sought to be recovered by the plaintiffs from the defendant.

FOR A FIFTEENTH DEFENSE

17. That to the extent the damages and/or injuries alleged by the plaintiffs were due to, occasioned by, and/or caused by intervening act(s) and/or omission(s) on the part of some individual(s) and/or entity(ies) not under the control of the defendant, the defendant pleads and asserts same as a bar to any recovery by the plaintiffs from the defendant.

FOR A SIXTEENTH DEFENSE

18. That to the extent the Plaintiffs' Amended Complaint may be interpreted to allege that they were not properly and/or lawfully detained, the defendant pleads and asserts probable cause as a bar and/or defense to the allegations of the Plaintiffs' Amended Complaint.

FOR A SEVENTEENTH DEFENSE

19. That to the extent the allegations and/or damages in the Plaintiffs' Amended Complaint were caused by the conduct of other persons and/or entities not under the control of the defendant, such intervening acts and/or actions are asserted as a complete and absolute bar to any recovery by the plaintiffs from the defendant.

FOR AN EIGHTEENTH DEFENSE

20. That to the extent the plaintiffs failed to timely institute this action in accordance with the applicable statute of limitations, the defendant pleads and asserts the statute of limitations as a bar to any recovery by the plaintiffs from the defendant.

FOR A NINETEENTH DEFENSE

21. That to the extent the plaintiffs failed to exhaust any and all available administrative remedies, the defendant pleads and asserts same as a complete and absolute defense and/or bar to this action.

FOR A TWENTIETH DEFENSE

22. That to the extent the plaintiffs seek injunctive relief, the defendant pleads and asserts that the plaintiffs are not entitled to any such relief.

FOR A TWENTY-FIRST DEFENSE

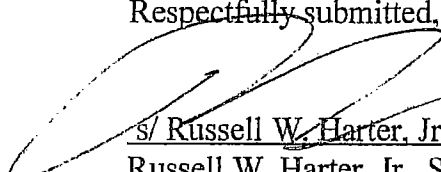
23. That the defendant pleads and asserts the Public Duty Doctrine and/or Public Duty

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Rule as a bar and/or defense to the claims set forth in the Plaintiffs' Amended Complaint.

Wherefore, the defendant prays as follows:

1. That the Complaint and/or Amended Complaint of the plaintiffs be dismissed.
2. That the defendant be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,



s/ Russell W. Harter, Jr.

Russell W. Harter, Jr., SC Bar #2778
Chapman, Harter & Harter, PA
14 Lavinia Avenue (29601)
Post Office Box 10224
Greenville, South Carolina 29603
864/233-4500 *Phone*
864/232-1710 *Fax*
rwhjr@chhlaw.net
ATTORNEY FOR DEFENDANTS

December 19, 2014

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Isiah James, Jr. and George Lee Tomlin,

Plaintiffs,

vs.

The South Carolina Department of
Corrections,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C/A No.: 2013-CP-23-02017

**DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

Defendant, South Carolina Department of Corrections, by and through undersigned counsel, hereby moves this Court for an order granting Summary Judgment in its favor pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the following grounds:

- I. The plaintiffs have failed to set forth a claim upon which relief can be granted.
- II. The allegations of Plaintiffs' Complaint fail to establish any negligence and/or gross negligence on behalf of this defendant.
- III. The South Carolina Department of Corrections did not breach any duty of care owed to the plaintiffs.
- IV. Plaintiffs have failed to establish any gross negligence pursuant to S.C. Code Ann. §15-78-60(25).
- V. Plaintiffs have failed to establish that any acts and/or omissions on behalf of this defendant were the proximate cause of any damages alleged by the plaintiffs.
- VI. Upon information and belief, the Administrative Law Court retains jurisdiction over 2013-CP-23-02017 in regards to the plaintiff's claims concerning wages and compensation.
- VII. The Court of Common Pleas lacks subject matter jurisdiction.
- VIII. S.C. Code Ann. § 1-23-505, et. seq.

IX. The plaintiffs do not have a cause of action arising under the South Carolina Freedom of Information Act.

X. The allegations set forth in Plaintiffs' Complaint do not give rise to a deprivation of Plaintiff James's constitutional rights arising under the South Carolina Constitution.

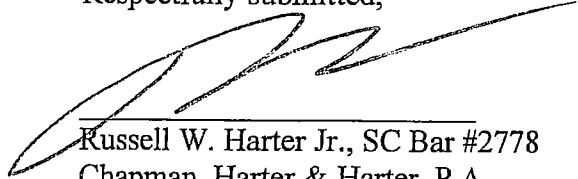
XI. That the lockdown referred to in Plaintiff James's Supplemental Complaint was valid, reasonable, and in accordance with South Carolina Department of Corrections policies, procedures, and/or regulations.

XII. Plaintiff James fails to allege and/or demonstrate any damages that would be proximately caused by any alleged interference or delay concerning his mail. That further, any alleged interference or delay concerning plaintiff's mail is not a violation of state law in a prison environment.

XIII. Furthermore, it is particularly noted, that Plaintiff James makes no assertion of any violation of any federally protected right as to his mail or access to courts.

This motion is supported by the South Carolina Rules of Civil Procedure, and the common and statutory law of South Carolina. In addition, this motion is based upon the pleadings in this case, the affidavits and other documents attached hereto, and any other information that is properly before the Court at the time of any hearing on this motion. This motion will be further supported by a memorandum of law submitted prior to or at the time of any scheduled hearing.

Respectfully submitted,



Russell W. Harter Jr., SC Bar #2778
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ATTORNEY FOR DEFENDANT

Greenville, South Carolina
May 29, 2015.

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2013-CP-23-02017

Isiah James, Jr. and)
George Lee Temlin,)

Plaintiffs,)

-versus-

South Carolina Department)
of Corrections (SCDC),)

Defendants)

NOTICE AND MOTION FOR PARTIAL SUMMARY
JUDGMENT IV CAUSE OF ACTION LIA-
BILITY

TO: Russell Harter, Jr.
POB 10224 (20603)
Greenville, S. C.

COME NOW plaintiffs (James, Jr., I. and Temlin, S.L.) move for partial summary judgment on IV cause of action liability on the grounds:

1. Rule 56(c) set forth, "A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. See South Carolina Rules of Civil Procedure (SCRPC)"
2. Witness(es)' attorney(s) have filed 6-11-15 Motion to Quash and Motion etc. against issued subpoena(es) mentioning, "orders would speak for themselves" (p. 2, para. 2)*
3. Plaintiffs attached excerpt(s) from Federal Court in removal proceeding; it set set forth, "(4) declaratory relief to James' and Temlin's collection of a state court judgment;" (p. 2 of 12)

See also Liberty Mut. Ins. Co. v. Wetzel, 424 U.S. 737, 96 S.Ct. 1202, 1207 (1976); Mickle v. Blackmon, 177 S.E.2d 548, 549 (1970); Gethran v. Brown, 566 S.E.2d 548, 553, 559 (S.C. App. 2002).

*See Doc v. Bishop of Charleston, 754 S.E.2d 494, 498 (2014) ("As a general rule, judgments are to be construed like other written instruments. The determinative factor is the intent of the Court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself.")

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

C/A No. 2013-CF-23-02017

ISIAH JAMES, JR. AND)
GEORGE LEE TAYLOR,)

Plaintiffs,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF CORRECTIONS (SCDC),)

Defendant.)

PLAINTIFFS' MEMORANDUM (MEMO) AND
RESPONSE TO AGENCY'S MOTION FOR
SUMMARY JUDGMENT AND/OR MOTION
TO DISMISS

To: Russell W. Harter, Jr.
P.O. Box 10224 (29603)
Greenville, SC

Herein James submits memo in this action which went before the Court on 7-24-15 by motion for summary judgment by SCDC (herein Agency); motion to quash witness(es)' subpoenas, etc for Roger H. Young, Circuit Court Judge, Carolyn G. Matthews, ALJ and Ralph King Anderson, III, ALJ by their attorney and plaintiffs' motion for summary judgment in part (liability 4th cause of action); the Court granted the motion to quash witness(es)' subpoenas supposedly based on "orders would speak for themselves" (p. 2 Motion to Quash, etc.) Cf. Doe v. Bishop of Charleston, 754 S.E.2d 494, 499 (2014) ("As a general rule, judgments are to be construed like other written instruments.").

Plaintiffs filed verified complaint for declaratory judgments and amended complaint. Griffir Plumbing & Heating Co. v. JJ & Gould-

ing, Inc., 570 S.E.2d 197, 233 (2000); see also Rule 9(c) of South Carolina Rules of Civil Procedure (SCRPC) notes, "it is sufficient to aver judgment or decision" Their initial pleadings represent affidavits of Tomlin and James and are sufficient to withstand SCDC's motion for summary judgment where pertinent facts are in dispute. See Ward v. State, 538 S.E. 2d 245, 246 (2000) wherein it stated, "the failure to exhaust administrative remedies goes to the prematurity of the case, not subject matter jurisdiction."

Of course, plaintiffs filed grievance(s) with the Agency. James's grievance stated, "I want to be paid all my back wages" and about pay at "50¢ per hour". See Inmate Grievance Application and step 1, RCI-0133-05. But see Terrence v. SCDC, 646 S.E.2d 866 (2007) ("Plaintiff could not maintain their declaratory judgment claim because they were required to pursue their claim through DQC's internal grievance procedure".) "The ALC determined, however, James was entitled to prevailing wages of \$5.25 per hour and ordered the Department to pay James within thirty days the difference between the wage owed and the wages previously paid" which is found on p. 2 in SCDC v. James, Cr. Cr. No. 2010-WP-251 (filed 4-26-2010)

So how does SCDC determine no final judgment was entered concerning the 4th cause of action and why has Debra Long submitted an untimely affidavit in support of SCDC's motion for summary judgment and/or motion to dismiss. See Woodard v. West

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vacc. 460 S.E.2d 392 (1995) (The High Court stressed for specific teaching, "Proper procedure for raising lack of subject matter jurisdiction prior to trial is to file motion to dismiss for lack of subject matter jurisdiction rather than motion for summary judgment.") See also SCDC v. James, 2010 WL 10079906 and note where he filed a motion to dismiss before Judge Williams about Agency's out-of-time appeal.

The Agency's 5-29-15 'motion for summary judgment' pointed to the 4th cause of action 'prevailing wage(s)' claim, the ALC retains jurisdiction over lawsuit for declaratory judgment. The defendant's motion for summary judgment goes on, "VII. The Court of Common Pleas lacks subject matter jurisdiction." Id. If SCDC claims this Court does not have jurisdiction, why does it allow an employee for the Agency (Debra LONG) who has been employed for the Agency in excess of fifteen (15) years to submit an untimely affidavit. West v. Gladney, 533 S.E.2d 334 ().

It should have been submitted 9-10 years ago before ALJ Carolyn C. Matthews when it could have considered before the inadequate award judgment. Again, the election of remedies is procedural, has not anything to do with jurisdiction and/or subject matter jurisdiction what-so-ever. More, SCDC failed to assert exclusivity in 7-17-13 answer in the United States District Court and 12-19-14 answer in this Court. See Sabb v. S.C. State University, 567 S.E. 233, 234 n. 2 (2002); Woodard v. Westvaco, supra, citing George v. Speaks, 9 S.E.2d 437, 444 (1949) ('procedural rather than jurisdictional').

Because James engaged enormous, deep focus on the jurisdictional law set out in Limehouse v. Husley, 744 S.E.2d 561, 569 (2013); he missed or overlooked where party (HUSLEY) failed to 'Answer' complaint in United States District Court after it was removed from Charleston County Circuit Court so he filed a flawed default motion in Greenville County Circuit Court which was denied in September 2014 by Judge Stikwell. The Magistrate Judge Hedges interpreted correctly what plaintiffs sought in 3rd & 4th cause(s) of action(s). Bucker v. Standard Supply Co., Inc., 311 S.E.2d 728, 729 (1984).

Which defined: Under South Carolina law, a judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money. Also see State v. Slocumb, 770 S.E.2d 436, 439 (S.C. App. 2015) where Court of Appeals pointed "Although review of Slocumb's burglary sentence was directed to the circuit court from the Federal Court rather than one of our state appellate courts, we find the circuit court was likewise bound by the district court's directive." So 3-13-14 'Order of Remand' had law of case(s), res adjudicata and stans decisis effect, along with SCDC v. Cartrette, 694 S.E.2d 19 (S.C. App. 2010) decision or effect.

Further, in SCDC v. Cartrette the Court of Appeals stressed, "the ALC reversed the Department's refusal to pay Cartrette the prevailing wage and found the prevailing wage was \$5.25." 694 S.E. 2d 19, 20 (S.C. App. 2010) More, "the question of the prevailing wage to which Cartrette is entitled has been remanded to the ALC

2
for further proceedings." Cartrette and Tomlin are companion cases, the same. It is ruled by the Appeal Court the "Department failed to file and serve its notice of appeal within thirty (30) days from service of the Final Order." SCDC v. James, supra. So there was an inadequate and/or insufficient award to James compared to a new trial nisi vs. new trial remittitur.

Furthermore, where SCDC set forth and argued at 7-24-15 hearing that there was no action on remand from Jasper County Circuit Court. This is inaccurate and mis-leading; appellants had consolidated hearing(s) and oral argument(s) in Jasper County Appeal Court. See also SCDC v. James, 2010 WL 10079906, p. --- :

The Department filed the notice of appeal on April 20, 2006, appealing all nine ALC orders referenced in the Order of Clarification.

The co-appellant Ernie T. Roseboro, 273339 v. SCDC, Docket No. 05-ALJ-04-00776-AP which was disposed of or ruled on by Ralph King Anderson, III, after remand on 1-12-07 demonstrated or showed order after remand. See 1-12-07 order or part annexed herein. There is the contract excerpt(s) "for lead man" at \$5.50 an hour. See Judy v. Martin, 674 S.E.2d 151 (2009); Auto-Owners, Ins. v. Rhodes, 748 S.E.2d 781, 787 (2013) (elements of justiciable controversy). The Earning and Deduction Statement of 6-15-2001 stated \$5.50 an hour. James maintains that it was from 1-6-00 to (appx.) 4-15-00 where he was paid 50¢ an hour and he should have received the prevailing wage(s).

He trained to become a press operator who made the relevant furniture part(s) (legs, backs, etc. for table(s) and/or chairs) which was assembled to be furniture and he was a team assembler. The Bureau of Labor Statistics shows what wage, he should have been paid. The 'Answer to Second Set of Interrogatories' response to various job description(s) of which he was assigned to bending and engaged in research and development of creating, design and procedure of processing and improved bending technique. See Brown v. Moore discovery response and other document(s). Sections 15-53-40 and 15-53-50 of S.C. Code Ann. (2014) See also section 15-53-20 of the Code.

The 1st and 2nd cause(s) of action(s) make reference where from 12-13-83 to 7-17-85 James was assigned to the then Dutchman Correctional Institution (DCI) (See SCDC's Record Summary Report of 1-13-99) and he was assigned 2F5 Earn Work Credit(s) (EWC's) so his custody and EWC's were reduced upon the transfer; he recalls a 2018 max-out date upon inquiry. The transfer was not requested by James although he did request counsel in the title 1983 action. James v. Lecke et al., no 739 F.2d 31 (CA4 11-14-84).

He filed step I, grievance no. R01-0003-11 which was granted in part on step II appeal as "Your projected release date has moved from 12/12/23 to 5/18/23." (See 2-15-12 step II decision) There was the 903 ticket (infraction) conviction which the Agency asserted justified the non-reinstatement of 2F5 EWC's that should

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had been 2F7 EWC's, for in 1997 he was receiving 2F7 credit(s)
"Canteen Operator" Also see History of EWC Assignment document
when SCDC changed classification policy and retroactively appli-
ed it contrary to Art. I sec. 4 of South Carolina Constitution
ex post facto clause..

So even the granting of the grievance set forth above here-
in wrongfully calculated EWC's. Summary judgment should be denied
on cause(s) of action(s) 2, 10 & 12. Plaintiff James has already
submitted 5-3-07 document from Inspector General where SCDC denied
SCFOIA request relevant thereto SCDC policy GA-03.03(2.1)(4.1) ("List
of Names of Inmates") The SCFOIA request was renewed in the 10th
cause of action and 12th cause of action was just a continuing
SCFOIA request about a different testing but same subject matter
(list).

The 7-20-15 Affidavit of Alice V. Mascio contradicts the 5--
3-2007 response concerning 2006 SCFOIA request. Mascio attest-
ed "only maintains a copy of current week's random list and
the pries week though possibly have two prior weeks at the most
at any given time." (paragraph 5) Again summary judgment should
be denied on 1st cause of action and judge trial should engage on
the constitutionality of 993 infraction conviction and expungement
request.

The SCDC's Record Summary Report of 1-13-99 shows James
classified as "V" which means unclassified and before violent and
non-violent classification; it is a small thing for in 1978 there

was only misdemeanor(s) and felony(ies) who were all eligible for work release placement under SCDC policy(ies) and he was a convicted felon who was eligible for work release under SCDC policy based on his minimum sentence of ten (10) years. The 5th cause of action raises (question) legislative intent associated with armed robbery and manslaughter being work release eligible under S.C. Code Ann. (2010) sections 17-25-45(D) and 24-13-125.

Which one is a general or specific statutory law? Are all these laws general laws or whether they are all specific law(s) for work release eligibility and placement? Summary judgment should be denied and matter set for judge trial after adequate, complete and proper discovery. The 6th and 13th causes of action(s) raise South Carolina unconstitutional condition(s) of confinement. Slezak v. SCDC, 605 S.E.2d 506 (2004). He submits the 'step 2' response in RCI-0284-12. The Agency engaged institutional lockdowns on more than one occasion. This is a case where SCDC's motion for summary judgment should be denied.

James needs a complete and adequate discovery of which he has not had the opportunity to engage; he did address a letter to the Corrections and penology Committee (see copy) about 2014 lockdown session which mirrored 1-27-14 letter to Agency's Director of SCDC to which he received no response. The Agency has failed to provide the disruptive lock-down policy in the 11th cause of action; the Court should grant declaratory relief provided in SCFOIA law(s)

Wherefore, the Court should deny the Agency's motion for

summary judgment and grant plaintiffs' motion for summary judgment-in part.

This 29 day of July 2015.

Respectfully submitted,

/s/

Isiah James, Jr., 96883
RCI, CA-63, POB 2039
Ridgeland, SC 29936

/s/

George Lee Tomlin 166
RCI, CA-- , POB 2039
Ridgeland, SC 29936

2013-06-20 13:10:26

RECEIVED

JUN 20 2013

INSURANCE RESERVE FUN
CLAIMS DEPARTMENT

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ISIAH JAMES, JR. AND
GEORGE LEE TOWLIN,

Plaintiffs,

-versus-

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS (SCDC).

Defendant.

S U M M O N S

2013-CP-23-02017

JUN 11 P 2:20

TO: DEFENDANT(S):

Sheff
YOU ARE HEREBY SUMMONED and required to answer the com-
plaint for Declaratory Judgment (-), SCFOIA and etc. which is
herewith served upon you; you must respond in writing to
the said complaint and serve a copy of your answer on the
plaintiff(s) at the address(es) below within thirty (30) days
after the summons service upon the defendant if you fail
to answer said complaint, judgment by default will be enter-
ed against you for the relief sought therein.

This 25 day of March 2013.

Lorah James, Jr.

Isiah James, Jr., 06883
RCI, CA-52, DOB 0330
Ridgeland S. C. 29836
George L. Towlin
707 GA. 2, 166301
Ridgeland S. C. 29830

2013 JUN 12 PM 2:24
RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Isiah James, Jr., et al..

Plaintiffs,

vs.

South Carolina Department of
Corrections (SCDC),

Defendant:

IN THE COURT OF COMMON PLEAS
Civil Action No. 2013-CP-23-02017

AMENDED COMPLAINT

RECEIVED

JUN 20 2013

INSURANCE RESERVE FUN
AIMS DEPARTMENT

Plaintiff(s) Isiah James, Jr. and George Lee Tomlin complain, litigate and sue defendant and they allege:

FOR FIRST CAUSE OF ACTION

1. Defendant SCDC did authorized, gave and/or ordered the administrative transfer on or about 19 December 1997 of plaintiff Isiah James, Jr. from Goodman Correctional Institution (GCI) to Ridgeland Correctional Institution (RCI) which resulted in change of earned work credit(s) (EWC's) from level 2 for 5 (2F5) to level 3 for 5 (3F5); he maintains that he can show evidence where on 1-20-1997; he was on 2F7 EWC's as his inmate/prisoner employment of canteen operator/helper - assistant;
2. Plaintiff filed a 6-2-11 grievance about the reduction in EWC's and defendant's agent(s) and/or servant(s) denied the step 1 grievance which contained other gripes about unjust reduction in EWC's over the past three (3) decades; so he proceeded to grievance (step 2 appeal) which was granted in part on 2-5-12;
3. The granted grievance (step II-appeal) authorized reinstatement of level 2F5 from January 1998 until fall (10 October 2006 and wrongfully calculated EWC's; stopping and suspending grant of EWC's based on an unconstitutional 903 disciplinary (ticket) of 10-10-2006 when plaintiff was convicted of 903 on or about 10-10-06; he filed a prompt (timely) grievance step I which was denied; he exercised the right to appeal (step II) and it was rejected so he took appeal to Administrative Law Court (ACL); the ACL denied appeal, claiming no liberty or property interest(s) at stake;
4. When plaintiff appealed to South Carolina Court of Appeals, the court of appeals denied James pauper status, noting no liberty interest which is in conflict with the Furtick v. SCDC, 649 S.E.2d 35, (2008) decision; plaintiff James claims that there was also a property interest in the 903 appeal;
5. James stresses that 903 conviction is unconstitutional and contrary to due process clause(s) of South Carolina and United States Constitution(s); and a declaratory judgement should grant or issue against his 903 conviction chain of custody document is flawed (unreliable); a declaratory judgement should issue that under Furtick decision supra James's right to appeal 903 was frustrated and denied as defendant utilize 903 to deprive James of level 2F5

EMC's that should had been 2F7 EMC's from 10-10-2006 until present or 2F7 EMC's from 1997 to present; he requests that the Court declares SCDC policy OP-21.07 Earned Work Credits unconstitutional as applied to plaintiff James;

FOR SECOND CAUSE OF ACTION
Judy v. Martin

6. If for some reason, this Court fails to acknowledge and rule on paragraphs 1-5 entitlement(s) to declaratory and injunctive relief (in form of expungement of 903 ticket); plaintiff claims that SCDC policy OP-21.07 is an ex post facto policy - (law) and he is entitled to declaratory and injunctive relief pertinent to issue based on facts incorporated, paraphrased and reiterated from paragraphs 1-5 herein;

FOR THIRD CAUSE OF ACTION

7. Plaintiff alleges that he and other (prisoners) are judgement creditors with reference thereto discussion set forth below herein as there were wage retention grievance(s) filed against defendant SCDC in 2005 and prior thereto which resulted in judgement(s) against defendant SCDC (judgement debtor) in March 2006 from the Administrative Law Court (ALC);

More, plaintiff (appellant-grievant) and (co-appellant(s)-grievants) appealed the wage retention case(s) (appeals) to South Carolina Court of Appeals and South Carolina Supreme Court where they obtained favorable appellate court(s) judgement(s) see SCDC v. Cartrette, 722 S.E.2d 805 (2012) and plaintiff and (other prisoners) request that this Court declares their rights with regards to theses judgement(s); he has annexed hereto one relevant judgement(s) from the ALC of 3-24-06;

Plaintiff George L. Tomlin asserts that he was issued an 11-23-10 judgement or "Order granting Motion for Cost" associated with an appeal of the wage retention case from/in S.C. Court of Appeals and he is a judgement creditor with regard(s) to the appeal; he requests further herein that this Court declares his right(s) with regard(s) to the "Cost in the amount of \$304.88 (see attachments) as to whether he is entitled to payment forthwith along with the associated interest;

FOR FOURTH CAUSE OF ACTION
674 S.E.2d 151 (2009)

8. Plaintiffs James, Tomlin and other(s) request that this Court declares their right(s) with aspect(s) of judgment(s) annexed hereto and the appeals of the relevant judgement(s) which are currently on remand to the pertinent Court(s) as to should the judgement(s) be enforced in whole and/or part;

FOR FIFTH CAUSE OF ACTION
Work Release Laws

9. Defendant amended and/or supplemented SCDC policy OP-21.04 to implement work release eligibility for violent offenders (i.e. armed robbery and/or voluntary manslaughter) in accordance with legislative enactment(s) section 24-13-125; SCDC failed to consider and apply where the General Assembly commanded in section 16-23-400(c) and 17-25-45 (D) such offenders who

should/would be work release eligible; the SCDC policy set forth in this claim; it was amended in 2011 so plaintiff James requests that this Court declares that he is work release eligible under the latter statutory law(s) as he serves currently a sentence for voluntary manslaughter and armed robbery;

FOR SIXTH CAUSE OF ACTION

10. Plaintiff James was subjected to institutional lockdown status at Ridgeland Correctional Institution (RCI) from 5-22-11 to 6-7-11 when he filed a grievance step 1 of 7-3-11; it was returned unprocessed-the grievance claimed violation(s) of James's 5th, 8th and 14th amendments right(s) under The United States Constitution by defendant(s), its agent(s) and/or servant(s); it addressed in human condition(s) that he was subjected to during Charleston 'A' (CA) Unit lockdown:

- diet
- mailroom access(incoming mail)
- mailroom access (outgoing mail);
- recreation;
- living condition (cell assignment);
- shower(s)
- library
- law library;
- visitation;
- telephone (access)
- etc.;

FOR SEVENTH CAUSE OF ACTION

11. Plaintiff James was subjected to Adjustment Committee (AC) action on or about 4-21-80 and 3-24-82 where he lost 90 plus days of goodtime-he requested the goodtime be restored according to SCDC policy OP-21-.09(14.22) - he filed a 7-1-12 grievance which was unprocessed; he filed an 8-26-12 grievance appeal procedure and it was unprocessed on 9-6-12; pertinent thereto SCDC policy OP-21.09(14.22);

FOR EIGHTH CAUSE OF ACTION

South Carolina Freedom of Information Act (SCFOIA)

12. Plaintiff executed a 3-20-13 request under SCFOIA of section 30-4-10 of South Carolina Code Ann. (2012) to SCDC's Inmates, Record(s) office for "document of final disposition" which would show actual loss of goodtime for disciplinary ticket of 4-21-1980;

Amended Complaint
FOR NINTH CAUSE OF ACTION

13. Defendant SCDC, its agent(s) and servant(s) engage currently and since 1995 parole eligibility hearing(s) via video-conference; plaintiffs James and Tomlin request that this Court declares their rights(s) with reference to section 24-21-50 of S.C. Code Ann. (1988) which commanded:

The Board shall grant hearings and permit arguments and appearances by counsel or any individual before it at any such hearing while considering any case for parole, pardon or any form of clemency provided for under law.

Isiah James, Jr., is serving a parole sentence for offense(s) which occurred in October 1978 whereas George Lee Tomlin is serving a parole sentence for offense(s) which occurred 6-28-88; it is their contention(s) that section 24-21-50 stands for a meaningful in person parole release hearing under the due process clause(s) (Art. I, sec. 3) of S.C. and (14th Amendment) of U.S. Constitution(s) as they seek a declaratory judgement of due process right(s) to in person parole release hearings as opposed to video-conference parole release hearing(s);

14. Defendant SCDC implemented a meaningless procedure, program and/or etc. in response to section 24-21-710(E) of S.C. Code Ann. (1996) which commanded:

The Department of Corrections may install, maintain, and operate a two-way closed circuit television system in one or more correctional institutions of the department that confines persons eligible for parole.

FOR TENTH CAUSE OF ACTION
(SCFOIA)

15. Plaintiff James executed 4-25-13 request under SCFOIA of section 30-4-10 of South Carolina Code Ann. (2012) to SCDC's Inspector General for "Random Selection" list discussed in SCDC's policy GA-03.03(2.1)(4.1)&(4.2) for 7-27-2006 and 9-7-2006;

FOR ELEVENTH CAUSE OF ACTION
(SCFOIA)

16. Plaintiff James executed 4 May 2013 request under SCFOIA of section 30-3-10 of South Carolina Code Ann. (2012) to Director William Byars for the disruptive lock-down policy, administrative order and/or etc.;

PRAYER FOR RELIEF

"Plaintiffs pray that this Court grants awards of actual damages in excess of ten-thousand (\$10,000.00) dollars; plaintiff James requests declaratory judgment(s) on all relevant cause(s) of action set forth above herein -- expungement of 903, award of restoration of 90 plus days statutory goodtime and such just and further relief that this Court deems kosher and proper.

This 26 day of March 2012."

Plaintiffs seek declaratory judgement(s) relevant to additional cause(s) of action(s). This 27 day of May 2013.

s/

Isiah James, Jr.
Isiah James, Jr., 96883
RCI, CA-52, POB 2039
Ridgeland, S.C. 29936

Plaintiff affirms under penalty of perjury that the fact(s) set forth above herein are true.

s/

s/

George Lee Tomlin
George Lee Tomlin 166361
RCI GB-13, POB 2039
Ridgeland, S.C. 29936

Plaintiff affirms under penalty of perjury that the fact(s) set forth above herein are true.

s/

George Lee Tomlin

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Isiah James, Jr. and George Lee Tomlin,)

Plaintiffs,)

-vs-)

South Carolina Department of
Corrections,)

Defendant.)

1:13-cv-01936-TLW-SVH

NOTICE OF REMOVAL
(In re: 2013-CP-23-02017)

TO: THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA,
GREENVILLE COUNTY COURT OF COMMON PLEAS

YOU WILL PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 1441 and § 1446,
the defendant, by and through its undersigned attorney, hereby requests the removal of
jurisdiction of this action from the Court of Common Pleas for the Thirteenth Judicial
Circuit, State of South Carolina, County of Greenville where it is now pending, to the United
States District Court for the District of South Carolina.

As grounds for this removal, defendant would show as follows:

1. That the above-named plaintiffs filed this action on June 12, 2013 in the Court
of Common Pleas for Greenville County, South Carolina, designated as Civil Action No.
2013-CP-23-02017. That a copy of the Summons and Amended Complaint is attached hereto
as "Exhibit A."

2. That, upon information and belief, the defendant was served on or about June
17, 2013 (no more than 30 days prior to this date).

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3. That the District Court of the United States has original jurisdiction of this action by virtue of the fact that one or more federal claims are asserted. That, upon information and belief, the plaintiffs assert claims against the defendant for violation of rights under the United States Constitution.

4. That, upon information and belief, this action is removable to the U. S. District Court on the grounds that this action involves civil claims arising under the Constitution and the laws of the United States pursuant to 28 U.S.C. Section 1331, 28 U.S.C. Section 1343, 28 U.S.C. 1441, and 28 U.S.C. Section 1443.

5. That the defendant alleges that the federal question claims against the defendant require resolution of substantial questions of federal laws which are in dispute.

6. That, upon information and belief, this Notice of Removal is being filed timely and a copy of this Notice is being filed with the Clerk of Court for Greenville County, South Carolina.

7. That, upon information and belief, the within action is not related to any other matter (either civil or criminal) currently filed in this District.

WHEREFORE, the defendant prays that further proceedings in the Court of Common Pleas of Greenville County, South Carolina, be discontinued and that the said Civil Action No. 2013-CP-23-02017 pending in the Court of Common Pleas for Greenville County, South Carolina, be removed to the United States District Court for the District of South Carolina, and that such Court assume full jurisdiction of such matter as is provided by law.

Respectfully submitted,

CHAPMAN, HARTER & HARTER, P.A.

s/ Russell W. Harter, Jr.

Russell W. Harter, Jr., Fed. No. 1753

14 Lavinia Avenue

Post Office Box 10224

Greenville, SC 29603

864/233-4500

864/232-1710 (fax)

E-mail: rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANT

July 15, 2013

Greenville, South Carolina

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Isiah James, Jr. and George Lee Tomlin,)

Plaintiffs,)

-vs-)

South Carolina Department of
Corrections,)

Defendant.)

1:13-cv-01936-TLW-SVH

CERTIFICATE OF SERVICE

I hereby certify that I the undersigned attorney for the defendant in the within action did on this the 15th day of July, 2013, serve the party(ies) listed hereinbelow with copies of **Notice of Removal and, Responses to Rule 26.01 Interrogatories** by placing copies of same in an envelope(s) addressed as below, proper postage affixed thereto.

Isiah James, Jr., #96883
RCI, CA-52, POB 2039
Ridgeland, S. C. 29936

George Lee Tomlin, #166361
RCI, GB-13, POB 2039
Ridgeland, S. C. 29936

S/ Russell W. Harter, Jr.
Russell W. Harter, Jr., Fed. No. 1753
Chapman, Harter & Harter, P.A.
Post Office Box 10224
Greenville, SC 29603
864/233-4500; 864/232-1710 (fax)
E-mail: rwhjr@chhlaw.net
ATTORNEY FOR DEFENDANT

②

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Isiah James, Jr. and George Lee Tomlin,)

Plaintiffs,)

-vs-)

South Carolina Department of
Corrections,)

Defendant.)

1:13-cv-01936-TLW-SVH

NOTICE OF REMOVAL
(In re: 2013-CP-23-02017)

TO: THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA,
GREENVILLE COUNTY COURT OF COMMON PLEAS

YOU WILL PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 1441 and § 1446, the defendant, by and through its undersigned attorney, hereby requests the removal of jurisdiction of this action from the Court of Common Pleas for the Thirteenth Judicial Circuit, State of South Carolina, County of Greenville where it is now pending, to the United States District Court for the District of South Carolina.

As grounds for this removal, defendant would show as follows:

1. That the above-named plaintiffs filed this action on June 12, 2013 in the Court of Common Pleas for Greenville County, South Carolina, designated as Civil Action No. 2013-CP-23-02017. That a copy of the Summons and Amended Complaint is attached hereto as "Exhibit A."

2. That, upon information and belief, the defendant was served on or about June 17, 2013 (no more than 30 days prior to this date).

125

2

3. That the District Court of the United States has original jurisdiction of this action by virtue of the fact that one or more federal claims are asserted. That, upon information and belief, the plaintiffs assert claims against the defendant for violation of rights under the United States Constitution.

4. That, upon information and belief, this action is removable to the U. S. District Court on the grounds that this action involves civil claims arising under the Constitution and the laws of the United States pursuant to 28 U.S.C. Section 1331, 28 U.S.C. Section 1343, 28 U.S.C. 1441, and 28 U.S.C. Section 1443.

5. That the defendant alleges that the federal question claims against the defendant require resolution of substantial questions of federal laws which are in dispute.

6. That, upon information and belief, this Notice of Removal is being filed timely and a copy of this Notice is being filed with the Clerk of Court for Greenville County, South Carolina.

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Respectfully submitted,

CHAPMAN, HARTER & HARTER, P.A.

s/ Russell W. Harter, Jr.
Russell W. Harter, Jr., Fed. No. 1753
14 Lavinia Avenue
Post Office Box 10224
Greenville, SC 29603
864/233-4500
864/232-1710 (fax)
E-mail: rwhjr@chhlaw.net
ATTORNEY FOR DEFENDANT

July 15, 2013

Greenville, South Carolina

2
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Isiah James, Jr. and George Lee Tomlin,)

Plaintiffs,)

-vs-)

South Carolina Department of)
Corrections,)

Defendant.)

1:13-cv-01936-TLW-SVH

CERTIFICATE OF SERVICE

I hereby certify that I the undersigned attorney for the defendant in the within action did on this the 15th day of July, 2013, serve the party(ies) listed hereinbelow with copies of **Notice of Removal and, Responses to Rule 26.01 Interrogatories** by placing copies of same in an envelope(s) addressed as below, proper postage affixed thereto.

Isiah James, Jr., #96883
RCI, CA-52, POB 2039
Ridgeland, S. C. 29936

George Lee Tomlin, #166361
RCI, GB-13, POB 2039
Ridgeland, S. C. 29936

S/ Russell W. Harter, Jr
Russell W. Harter, Jr., Fed. No. 1753
Chapman, Harter & Harter, P.A.
Post Office Box 10224
Greenville, SC 29603
864/233-4500; 864/232-1710 (fax)
E-mail: rwhjr@chhlaw.net
ATTORNEY FOR DEFENDANT

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Isiah James, Jr. and George Lee Tomlin,)
)
Plaintiffs,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Defendant.)

**DEFENDANT'S ANSWER TO
PLAINTIFFS' COMPLAINT**

Civil Action Number:
1:13-cv-01936-TLW-SVH

{Jury Trial Requested}

The defendant, by way of Answer to the plaintiffs' Complaint, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. That except as is expressly admitted, modified, or explained herein, each and every allegation of the plaintiffs' Complaint is denied and strict proof thereof is demanded.
2. That the defendant denies committing any act(s) and/or omission(s) which would provide the basis of a cognizable claim. That further, it is denied that the defendant in any way committed any act(s) and/or omission(s) which would constitute a violation of the plaintiffs' civil rights, either secured by the Federal Constitution and/or the Constitution of the State of South Carolina. That it is further denied that the defendant in any way committed any act(s) and/or omission(s) which would give rise to liability to the plaintiffs under state law. It is further denied that the defendant has violated any rights of the plaintiffs, and it is denied that there are any unlawful and/or unconstitutional policies and/or procedures in place at the South Carolina Department of Corrections [SCDC]. That it is denied the defendant has in any way violated the applicable provisions of the Freedom of Information Act [FOIA]. That the allegations of the plaintiff's Complaint are denied and strict proof thereof is demanded.

[Signature]

FOR A SECOND DEFENSE

3. That it is denied the Defendant, South Carolina Department of Corrections, is an entity for purposes of suit.

FOR A THIRD DEFENSE

4. That the allegations of the plaintiffs' Complaint fail to state a claim upon which relief can be granted.

FOR A FOURTH DEFENSE

5. That the plaintiffs have suffered no constitutional deprivation as a result of any alleged act(s) and/or omission(s) by the defendant. That at all times alleged in the plaintiffs' Complaint, the defendant was performing acts and functions which were reasonably consistent with the rights of the plaintiffs. That the defendant pleads and asserts immunity as a matter of law as a defense to the plaintiffs' claim.

FOR A FIFTH DEFENSE

6. That at all times alleged in the plaintiffs' Complaint, the defendant acted within the proper bounds of its discretion, and the defendant alleges it is entitled to discretionary immunity.

FOR A SIXTH DEFENSE

7. That the defendant at all times acted in good faith and without ill will and/or malice toward the plaintiffs. That the defendant therefore pleads and asserts good faith immunity as a complete and absolute bar and/or defense to any recovery by the plaintiffs from the defendant.

FOR A SEVENTH DEFENSE

8. That the defendant at no time violated any clearly established constitutional rights of

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the plaintiffs. That the defendant therefore pleads and asserts qualified immunity as a bar and/or defense to the plaintiffs' claims, and further, the defendant pleads and asserts qualified immunity as an immunity from this suit.

FOR AN EIGHTH DEFENSE

9. That the allegations of the plaintiffs' Complaint fail to state a cause of action upon which relief may be granted.

FOR A NINTH DEFENSE

10. That the defendant pleads and asserts the South Carolina Tort Claims Act as a complete and absolute defense and bar to the claim(s) set forth in the plaintiffs' Complaint. That the defendant specifically pleads and asserts all statutes of limitations, conditions of recovery, limitations of recovery, exclusions from liability, and caps on damages as are set forth in the South Carolina Tort Claims Act. That further, the defendant specifically pleads, but without limitation, the provisions of S.C. Code Ann. § 15-78-60(1)(2)(3)(4)(5)(20)(21)(23) and (25).

FOR A TENTH DEFENSE

11. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-30 as a complete and absolute bar and/or defense to the claims set forth in the plaintiffs' Complaint.

FOR AN ELEVENTH DEFENSE

12. That the defendants plead and assert the provisions of S.C. Code Ann. § 15-78-100 as a bar and/or defense to the allegations set forth in the plaintiffs' Complaint.

FOR A TWELFTH DEFENSE

13. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-110 as a bar and/or defense to the allegations set forth in the plaintiffs' Complaint.

FOR A THIRTEENTH DEFENSE

14. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-120 as a bar and/or defense to the allegations set forth in the plaintiffs' Complaint.

FOR A FOURTEENTH DEFENSE

15. That to the extent the injuries and/or damages alleged by the plaintiffs were caused by the plaintiffs' own negligence, the defendant pleads and asserts the comparative fault of the plaintiffs as a bar to any recovery by the plaintiffs from the defendant. That the defendant pleads and asserts the comparative fault of the plaintiffs as a complete and absolute bar to any recovery by the plaintiffs from the defendant. That alternatively, the defendant pleads and asserts the comparative fault of the plaintiffs in mitigation of any alleged damages sought to be recovered by the plaintiffs from the defendant.

FOR A FIFTEENTH DEFENSE

16. That to the extent the damages and/or injuries alleged by the plaintiffs were due to, occasioned by, and/or caused by intervening act(s) and/or omission(s) on the part of some individual(s) and/or entity(ies) not under the control of the defendant, the defendant pleads and asserts same as a bar to any recovery by the plaintiffs from the defendant.

FOR A SIXTEENTH DEFENSE

17. That to the extent the plaintiffs' Complaint may be interpreted to allege that they were not properly and/or lawfully detained, the defendant pleads and asserts probable cause as a bar and/or defense to the allegations of the plaintiffs' Complaint.

FOR A SEVENTEENTH DEFENSE

18. That to the extent the allegations and/or damages in the plaintiffs' Complaint were

caused by the conduct of other persons and/or entities not under the control of the defendant; such intervening acts and/or actions are asserted as a complete and absolute bar to any recovery by the plaintiffs from the defendant.

FOR AN EIGHTEENTH DEFENSE

19. That to the extent the plaintiffs failed to timely institute this action in accordance with the applicable statute of limitations, the defendant pleads and asserts the statute of limitations as a bar to any recovery by the plaintiffs from the defendant.

FOR A NINETEENTH DEFENSE

20. That to the extent the plaintiffs failed to exhaust any and all available administrative remedies, the defendant pleads and asserts same as a complete and absolute defense and/or bar to this action.

FOR A TWENTIETH DEFENSE

21. That to the extent the plaintiffs seek injunctive relief, the defendant pleads and asserts that the plaintiffs are not entitled to any such relief.

FOR A TWENTY-FIRST DEFENSE

22. That the defendant pleads and asserts the Public Duty Doctrine and/or Public Duty Rule as a bar and/or defense to the claims set forth in the plaintiffs' Complaint.

Wherefore, the defendant prays as follows:

1. That the Complaint of the plaintiffs be dismissed.
2. That the defendant be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Russell W. Harter, Jr.

Russell W. Harter, Jr., Fed ID# 1753

Chapman, Harter & Harter, PA

14 Lavinia Avenue (29601)

Post Office Box 10224

Greenville, South Carolina 29603

864/233-4500 *Phone*

864/232-1710 *Fax*

rwhjr@chhlaw.net

ATTORNEY FOR DEFENDANTS

July 17, 2013
Greenville, SC

2
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Isiah James Jr.; and George Lee Tomlin,	)	C/A No.: 1:13-1936-TLW-SVH
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	REPORT AND RECOMMENDATION
South Carolina Department of	)	
Corrections, SCDC,	)	
	)	
Defendant.	)	
	)	

Isiah James Jr. and George Lee Tomlin ("Plaintiffs"), two state prisoners proceeding pro se, originally filed this matter in the Court of Common Pleas for Greenville County, South Carolina. [Entry #1-1]. The South Carolina Department of Corrections ("Defendant") removed the action to this court on July 15, 2013. [Entry #1]. On July 26, 2013 and August 22, 2013, James moved to remand the case to state court [Entry #11, #17]. Defendant did not file a response in opposition to the motions to remand.

The undersigned issued a report and recommendation ("R&R") on this case on September 25, 2013, recommending that this action be remanded to state court. [Entry #23]. After the R&R issued, Tomlin filed an objection, but it did not address federal jurisdiction. [Entry #25]. Defendant filed objections arguing that "The defendant, upon information and belief, neither waived federal court jurisdiction, nor consented to remand in light of Tomlin's continued assertion of some type of federal claims." [Entry #29]. This case returns to the undersigned pursuant to the order filed January 13, 2014, by the

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Honorable Terry L. Wooten directing the undersigned to reconsider the issues in light of the objections filed by Tomlin and Defendant after the R&R issued. [Entry #45]. For the reasons that follow, the undersigned again recommends that the court grant the motions to remand to the Court of Common Pleas for Greenville County, South Carolina.

I. Factual and Procedural Background

Plaintiffs set forth the following numbered causes of action in their complaint:¹ (1) Defendant's allegedly unconstitutional failure to correctly transfer James' earned work credits; (2) Defendant's alleged violation of the ex post facto clause regarding the policy referenced in the first cause of action; (3) injunctive relief related to James' and Tomlin's collection of a state court judgment; (4) declaratory relief related to James' and Tomlin's collection of a state court judgment; (5) Defendant's alleged failure to apply state statutory law to James' work release eligibility; (6) alleged unconstitutional conditions of confinement while James was in lockdown status; (7) wrongful loss of James' good time credit; (8) alleged failure to comply with a request by James pursuant to the South Carolina Freedom of Information Act (SCFOIA); (9) alleged violations of due process based on Defendant's denying James' and Tomlin's physical presence during their respective parole hearings; (10) alleged failure to comply with James' request pursuant to SCFOIA; and (11) alleged failure to comply with another request by James pursuant to SCFOIA. [Entry #1-1]. Liberally construed, of the 11 causes of action, Plaintiffs

¹ The only complaint attached to the removal notice is entitled "amended complaint." [Entry #1-1]. The undersigned refers to it herein as "complaint" for ease of reference.

arguably state federal claims in the first, second, sixth, and ninth causes of action. The remaining seven causes of action contain only state law claims.

(2) Defendant removed the case to this court on July 15, 2013. [Entry #1]. On July 26, 2013, James filed a motion to remand this case to state court. [Entry #11]. The motion appeared to indicate that James intended to pursue only state law causes of action in this case. *Id.* Because Tomlin did not also sign the motion to remand, the court issued an order directing both Plaintiffs to indicate whether they intended to raise any federal claims in this case, and whether they desire remand of this case to state court. [Entry #15]. On August 22, 2013, James filed a second motion for remand stating that his causes of action are pursued under the laws and constitution of South Carolina. [Entry #17]. James' answers to the court's interrogatories also indicate that he intends to rely solely on state law in asserting his claims in the present action, and that he desires remand of the case to state court. [Entry #18].² Tomlin's answers to the court's special interrogatories indicate that he intends to assert federal claims in this case and does not seek remand of the action to state court. [Entry #20]. Defendant did not file a response opposing either of James' motions to remand the case to state court.

On September 25, 2013, the undersigned issued an R&R recommending the case be remanded because (1) Defendant did not file any opposition to the motions to remand;

² In James' answer to the special interrogatories, he indicated "No" when asked whether he intended to assert federal claims, but added "Other than what is set forth in the complaint; there is right to appeal claim in other state court associated with action!" [Entry #18]. However, James clarified in his second motion to remand that he did not intend to assert federal claims. [Entry #17 at 2].

and (2) although Tomlin indicated in his interrogatories that he wished to assert federal causes of action, he chose to bring his claims in state court when he filed the complaint.

(2) [Entry #23].³ Tomlin objected to the R&R on October 7, 2013, but did not substantively address the court's recommendation to remand. [Entry #25]. On October 25, 2013, Defendant filed objections to the R&R arguing that it had not waived federal jurisdiction, but it failed to include any citation to authority or explanation for its failure to file a response to the motions to remand. [Entry #29].

II. Discussion

A. Authority to Remand

This case has been referred to the undersigned pursuant to 28 U.S.C. § 636 and Local Civil Rule 73.02(B)(2)(e) (D.S.C.). There is a split of authority as to whether a magistrate judge has the authority to remand a matter to state court. At least one court in this district has addressed the issue in a published opinion and held that a magistrate judge did not have such authority. *See Long v. Lockheed Missiles & Space Co., Inc.*, 783 F. Supp. 249, 250 (D.S.C. 1992). Many federal circuit courts, addressing this matter in published opinions, have reached a similar result, holding that an order to remand is dispositive. *See Williams v. Beemiller, Inc.*, 527 F.3d 259, 264–66 (2d Cir. 2008); *Vogel v. U.S. Office Prods. Co.*, 258 F.3d 509, 514–17 (6th Cir. 2001); *In re U.S. Healthcare*, 159 F.3d 142, 145–46 (3d Cir. 1998). In light of the unsettled state of the law within this district as to whether remands are considered dispositive, a report and recommendation

³ The R&R did not find that removal was improper, but recommended remand based on the filings of Plaintiffs' filings and on Defendant's failure to oppose the motions.

has been prepared in this case. *See Jonas v. Unisun Ins. Co.*, No. 00-1217, 2000 WL 1350648, at *1 (4th Cir. Sept. 20, 2000) (noting that the Fourth Circuit “has not addressed whether a magistrate judge may issue an order of remand”).

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B. Analysis.

1. To the extent it alleges a denial of due process under the Fourteenth Amendment, Plaintiffs’ ninth cause of action should be summarily dismissed.

Plaintiffs’ ninth cause of action, to the extent it alleges a violation of Plaintiffs’ Fourteenth Amendment rights, should be summarily dismissed because: (1) Plaintiffs have already had an opportunity to litigate this issue in federal court, and (2) there is no federal liberty interest in parole hearings. Plaintiffs’ ninth cause of action alleges that their state and federal due process rights have been violated by Defendants’ failure to allow them to be physically present at their parole hearings. [Entry #1-1 at ¶¶ 13-14]. James has previously litigated in this court his alleged due process deficiencies related to his parole hearings. *See James v. Ozmint*, C/A No. 1:08-2256-TLW-SVH. Tomlin is currently litigating the alleged violation of his constitutional rights for being prohibited from personally appearing before the board during his parole hearings. *See Tomlin v. Cohen*, C/A No. 9:12-3258-MGL. Because the ninth cause of action has previously been and/or is currently being addressed by this court in previously-filed cases, these duplicate claims should be summarily dismissed in the interests of judicial economy and efficiency. *See Aloe Creme Labs., Inc. v. Francine Co.*, 425 F.2d 1295, 1296 (5th Cir.1970) (“The District Court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time.”).

2. Even if the court were to ignore Plaintiffs' previously-filed cases, it is clear that prisoners have no constitutional right to parole. See *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7 (1979); *Cooper v. S.C. Dep't of Probation, Parole and Pardon Services*, 661 S.E.2d 106, 110 (S.C. 2008) ("Parole is a privilege, not a right") (citation omitted). As discussed at length in the report and recommendation issued in Tomlin's pending case [C/A No. 9:12-3258-MGL at Entry #30], Plaintiffs' claim regarding their parole hearings does not set forth a violation of their federal constitutional rights. Therefore, to the extent it alleges violations of their federal constitutional rights, Plaintiffs' ninth cause of action should be summarily dismissed.

2. Claims that do not form part of the same case or controversy as those in the courts' original jurisdiction must be remanded.

Claims that do not form part of the same case or controversy as those over which the court has original jurisdiction must be remanded. "[T]he district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C.A § 1367(a). Therefore, the court must determine whether supplemental jurisdiction exists by evaluating whether Plaintiffs' claims are so related to the claims within the court's original jurisdiction to form part of the same case or controversy. It appears that the first, second, sixth, and ninth causes of action of the complaint contained potential federal claims over which the court had original jurisdiction. [Entry #1-1] However, none of these causes of action appear to form part of the same case or controversy as the third, fourth, fifth, seventh, eighth, tenth, or

(2) eleventh causes of action. *Id.* In such a case, the district court is now⁴ required to sever from the action all claims that are not within the court's original or supplemental jurisdiction. *See* 28 U.S.C. § 1441(c)(2) ("Upon removal of an action [pursuant to federal question jurisdiction], the district court shall sever from the action all claims [that are not within the district court's original or supplemental jurisdiction] and shall remand the severed claims to the State court from which the action was removed"); *see also*, 16 Moore's Federal Practice § 107.14(6)(a) (3rd ed. 2013) (noting that after the amendments to 28 U.S.C. § 1441, the district court is now required to remand the claims over which it does not have original or supplemental jurisdiction). Therefore, the undersigned recommends the district judge remand the third, fourth, fifth, seventh, eighth, tenth, and eleventh causes of action, as required under § 1441(c)(2).

3. The only remaining claims relate only to James, who swore to rely solely on state law, and the court should decline to retain supplemental jurisdiction of such claims.

If the district judge accepts the undersigned's recommendation regarding summarily dismissing the federal due process claim in the ninth cause of action and remanding the third, fourth, fifth, seventh, eighth, tenth, and eleventh causes of action, no further federal claims remain in the case. The remaining claims (first, second, and sixth) involve only James, who has signed a statement under penalty of perjury indicating that he intends to rely solely on state law. [Entry #17, #18]. Therefore, James has clarified that he intended to assert only state claims. It is permissible for a plaintiff to dismiss his

⁴ The statute authorizing removal of civil actions, 28 U.S.C. § 1441, was revised effective January 6, 2012.

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federal claims or amend the complaint to remove federal claims and seek remand. *See* 16 Moore's Federal Practice § 107.14(3)(b)(ii) (3rd ed. 2013). James has made clear that his intention is to pursue only state law claims. Therefore, the court interprets his filings as dismissing any federal claims that could be read as contained in his complaint. In *Harless v. CSX Hotels, Inc.*, 389 F.3d 444 (4th Cir. 2004), the Fourth Circuit upheld a district court's order granting a plaintiff's motion to amend the complaint to remove federal issues and to remand the remaining claims to state court. The Fourth Circuit affirmed the district court's finding that the plaintiff acted in good faith because "[w]hile [the plaintiff] clearly wanted to avoid federal jurisdiction, she also had substantive reasons for amending the pleadings." *Harless*, 389 F.3d at 448.

Although the court retains supplemental jurisdiction of state law claims that form part of the same case or controversy as the federal claims, "[a]s a practical matter . . . many district judges will exercise their discretion under the supplemental jurisdiction statute and dismiss the remaining claims." 16 Moore's Federal Practice § 107.14(3)(b)(ii) (3rd ed. 2013); *see also* 28 U.S.C. § 1367(c). Pursuant to 28 U.S.C. § 1367(c)(3), the district court may decline to exercise supplemental jurisdiction "if the district court has dismissed all claims over which it has original jurisdiction." *See also United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) ("Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well."); *United States ex rel. Scott v. Metropolitan Health Corp.*, 375 F.Supp.2d 626, 647 (W.D.Mich. 2005) ("[T]he strong federal custom . . . has

been to dismiss those claims in order to permit state courts to decide their own law, as is their prerogative.”); *see also* *AJP Group, Inc. v. Holmes*, C/A No. 4:13-611-RBH, 2013 WL 3148416, at *2 (D.S.C. June 18, 2013) (“Given that Plaintiff’s Complaint states no federal cause of action, the Court finds that the case should be remanded.”); *Morris v. Joe Gibson Automotive, Inc.*, Civ. A. No. 7:08-1739-HMH, 2008 WL 2705000 (D.S.C. July 9, 2008) (granting the plaintiff’s motion to amend to remove the sole federal claim, and granting the plaintiff’s motion to remand).

Here, the undersigned recommends that the court remand the remaining state claims. First, after failing to file an opposition to James’ motions to remand, Defendant filed an objection to the R&R that did not provide any authority as to why the court should retain federal jurisdiction and failed to identify which of Tomlin’s claims provided federal jurisdiction. Therefore, Defendant has not demonstrated that it has a strong interest in having the state law claims heard in federal court. On the other hand, James has filed two motions for remand, demonstrating his strong interest in having his claims heard in state court. Defendant’s failure to act or otherwise provide authority for its contention that the court retain jurisdiction should not be rewarded. *See* Local Civil Rule 7.06 (D.S.C.) (“... If no memorandum in opposition is filed within fourteen (14) days of the date of service, the Court will decide the matter on the record. . . .”)

Second, if the district judge accepts any of the recommendations contained herein, and most particularly the application of the revised removal statute, 28 U.S.C. § 1441(c)(2), that compels district courts to sever and remand claims that do not form part of the same case or controversy as those in its original jurisdiction, judicial efficiency

2 weighs strongly in favor of remand of the remaining state claims. If the court were to not remand, James would be forced to litigate claims simultaneously in state and federal courts, despite an absence of federal claims in his federal case. Given that this case is in its infancy, such a result does not promote judicial efficiency or protect federalism concerns. *See Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 816 (4th Cir. 2004) (en banc) (citing *Mulcahey v. Columbia Organic Chems. Co., Inc.*, 29 F.3d 148, 151 (4th Cir. 1994) (a district court is "obliged to construe removal jurisdiction strictly because of the 'significant federalism concerns' implicated.")).

Therefore, for the foregoing reasons, the undersigned recommends the district judge decline to retain jurisdiction over the remaining state law claims.

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends the district judge: (1) summarily dismiss Plaintiffs' ninth cause of action to the extent it asserts violations of their federal due process rights; (2) remand the third, fourth, fifth, seventh, eighth, tenth, and eleventh causes of action pursuant to 28 U.S.C. § 1441(c)(2), as these claims do not form part of the same case or controversy as the claims in the court's original jurisdiction; and (3) decline to exercise supplemental jurisdiction over the state-law claims that remain in light of James' clarification that he intends to rely solely on state law. If the district judge accepts this recommendation, James' motions to remand [Entry #11, #17] will be granted. All remaining motions shall remain in the record for consideration by the state court.

IT IS SO RECOMMENDED.

Shiva V. Hodges

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January 30, 2014
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."**

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

)
)
)
)
)
)
)
)
)
)

**AFFIDAVIT OF
DEBRA LONG**

Civil Action Number:
2013-CP-23-02017

Defendant.

4. That your deponent has personally reviewed pertinent SCDC financial records relative to George Lee Tomlin, SCDC # 166361.

5. That on or about November 13, 2014 the South Carolina Department of Corrections processed a payment of \$304.88 into the Cooper account of George Lee Tomlin (SCDC #166361). That the payment draft attached hereto as Exhibit A and incorporated by reference confirms the deposit/payment in that amount. That, upon information and belief, the payment of \$304.88 to Inmate Tomlin on or about November 13, 2014 was made to satisfy in full the Judgment in favor of Tomlin pursuant to the Order of The South Carolina Court of Appeals dated November 23, 2010 awarding costs in that amount.

6. That your deponent has further reviewed the work assignments and pay history of Inmate Tomlin (SCDC # 166361) for the time period of 2002 through 2008. That during this time period, Tomlin was paid either the state minimum wage (which, upon information and belief, increased from \$5.15 to \$6.55 during this time period) under Prison Industries Program or \$18.25 bi-weekly under Inmate State Pay depending on his work assignment at the time. That the documents attached hereto as Attachment B and incorporated by reference summarize the plaintiff's pay and/or earnings during this time period.

7. That based on my review of the SCDC financial records relative to Inmate Tomlin (SCDC #166361) it does not appear that there are any additional monies and/or payments due to George Lee Tomlin by the South Carolina Department of Corrections.

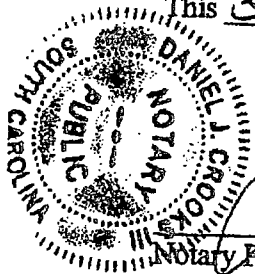
Further affiant sayeth not.

Debra Long
Debra Long

December 3, 2014

SWORN TO BEFORE ME

This 3rd day of December, 2014



D. Crooks
Notary Public for the State of South Carolina

My Commission Expires June 7, 20 23

Daniel J. Crooks III
Notary Public, State of South Carolina
My commission expires June 7, 2023

Attachment

A

ACCOUNT	DATE	AMOUNT	NOTE
3005870640 APPELLANT COSTS	11/05/2014	0.00	304.88
Sub-Total		0.00	304.88

For questions concerning this payment, please contact:
DEPARTMENT OF CORRECTIONS - 803-896-1907

CHECK CONTAINS A MULTI-COLORED PANTOGRAPH AND MICROPRINTING. BACK HAS A WATERMARK. HOLD AT AN ANGLE TO VIEW. VOID IF NOT PRESENT.

PURSUANT TO WARRANT OF
RICHARD ECKSTROM
COMPTROLLER GENERAL

STATE OF SOUTH CAROLINA
Office of State Treasurer

CURTIS M. LOFTIS, JR.
STATE TREASURER

NO. 141283608 11-24
1210

Date:
11/05/2014

Agency: N040 - DEPARTMENT OF CORRECTIONS
Phone: 803-896-1907
THREE HUNDRED FOUR USD and 88/100

304.88

Pay To: E. H. Cooper for Georger Tomlin #166
PO Box 21787
Columbia SC 29221

PAY--> \$*****304.88*

CONTINGENCIES ACCOUNT
WELLS FARGO BANK, NA

Curtis M. Loftis, Jr.
CURTIS M. LOFTIS, JR. STATE TREASURER

150

Wednesday, December 03, 2014

SCDC INMATE FINANCIAL SYSTEM

12/03/14

E. H. COOPER

ACCOUNT SUMMARY

ACCOUNT TYPE: I ACCOUNT ID: 166361
TOMLIN, GEORGE LEE

CURR LOC: 0442 RIDGELAND

TYPE OF FREEZE : NONE

SUSPENSE DTE.....:

AMOUNT OF FREEZE: 0.00

REST. HOLD AMOUNT: 0.00

CASH WITHDRAWALS: 0.00

LAST UPDATE : INFEHCPY DATE: 12/06/11

CANTEEN PURCHASE: 0.00

TEXT :

DATE	REF-NUM	TYPE	DEPOSIT	WITHDRWL	BALANCE
11/20/14	782724	CANTEEN PURC	0.00	29.15	1001.10
11/17/14	INMPAY	INMATE PAYRO	18.25	0.00	1030.25
11/14/14	782312	CANTEEN PURC	0.00	22.46	1012.00
* 11/13/14	2493583	DEPOSIT	304.88	0.00	1034.46
11/10/14	781936	COPIES	0.00	1.00	729.58
11/07/14	781933	RX COPAY	0.00	5.00	730.58
11/07/14	781932	CANTEEN PURC	0.00	6.47	735.58
11/06/14	INTEREST	INTEREST	0.67	0.00	742.05

PAGE: 0002

PF4=> MODIFY

ENTER=> DISPLAY

PF7=> FORWARD

PF8=> BACKWARD

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Attachment B

REPORT NO. 01
12/03/14 PAGE 1
PROGRAM: INPTAPDT

pay166361
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE PAYROLL TRANSACTION REPORT
FROM BACKUP TAPE
TRANSACTION FILE CONTAINS TRANSACTIONS
ERASED FROM ACTIVE RECORDS.

CODE	TYPE	SCDC ID	PAY DTE	PAY RATE	PAY AMT	ACCOUNT	WORKED TIME	DATE	PAY
	PAYDET	00166361	20000103	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
	PAYDET	00166361	20000117	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
	PAYDET	00166361	20000131	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
	PAYDET	00166361	20000214	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
	PAYDET	00166361	20000228	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
	PAYDET	00166361	20000313	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
	PAYDET	00166361	20000327	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
	PAYDET	00166361	20000410	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
	PAYDET	00166361	20000424	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
	PAYDET	00166361	20000508	18.25	18.25	24034571	14.00	19990325	REG

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TOTAL PAY DATE				pay166361				
PAYDET	00166361	20000522	18.25	18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE				18.25				
PAYDET	00166361	20000605	18.25	18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE				18.25				
PAYDET	00166361	20000619	18.25	18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE				18.25				
PAYDET	00166361	20000717	18.25	18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE				18.25				

REPORT NO. 01
12/03/14 PAGE 2
PROGRAM: INPTAPDT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE PAYROLL TRANSACTION REPORT
FROM BACKUP TAPE
TRANSACTION FILE CONTAINS TRANSACTIONS
ERASED FROM ACTIVE RECORDS.

CODE	TYPE	SCDC ID	PAY DTE	PAY RATE	PAY AMT	ACCOUNT	WORKED TIME	DATE	PAY
PAYDET	00166361	20000731	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20000814	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20000828	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20000911	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20000925	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20001009	18.25	18.25	24034571	14.00	19990325	REG	

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				pay166361	18.25				
TOTAL PAY DATE					18.25				
PAYDET	00166361	20001023	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20001106	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20001120	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20001204	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20001218	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20010101	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20010115	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20010129	18.25	18.25	24034571	14.00	19990325	REG	
TOTAL PAY DATE				18.25					

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE PAYROLL TRANSACTION REPORT
FROM BACKUP TAPE
TRANSACTION FILE CONTAINS TRANSACTIONS
ERASED FROM ACTIVE RECORDS.

CODE	TYPE	SCDC ID	PAY DTE	PAY RATE	PAY AMT	ACCOUNT	WORKED TIME	DATE	PAY
PAYDET		00166361	20010212	18.25	18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				

PAYDET	00166361	20010226	18.25	pay166361	18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010312	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010326	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010409	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010423	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010507	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010521	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010604	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010618	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010702	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010716	18.25		18.25	24034571	14.00	19990325	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20010730	0.00		0.01	24034571	0.00	20010730	RND
PAYDET	00166361	20010730	18.25		18.24	24034571	14.00	20010717	REG
TOTAL PAY DATE					18.25				

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PAYDET 00166361 20010813 18.25 18.25 24034571 14.00 19990325 REG
 TOTAL PAY DATE
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 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE PAYROLL TRANSACTION REPORT
 FROM BACKUP TAPE
 TRANSACTION FILE CONTAINS TRANSACTIONS
 ERASED FROM ACTIVE RECORDS.

CODE	TYPE	SCDC ID	PAY DTE	PAY RATE	PAY AMT	ACCOUNT	WORKED TIME	DATE	PAY
PAYDET		00166361	20010827	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE				18.25				
PAYDET		00166361	20010910	18.25	2.60	24034571	2.00	20010828	REG
	TOTAL PAY DATE				2.60				
PAYDET		00166361	20010924	0.00	0.01	21131181	0.00	20010924	RND
PAYDET		00166361	20010924	18.25	18.24	21131181	14.00	20010911	REG
	TOTAL PAY DATE				18.25				
PAYDET		00166361	20011008	18.25	18.25	21131181	14.00	20010904	REG
	TOTAL PAY DATE				18.25				
PAYDET		00166361	20011022	18.25	18.25	21131181	14.00	20010904	REG
	TOTAL PAY DATE				18.25				
PAYDET		00166361	20011105	18.25	18.25	21131181	14.00	20010904	REG
	TOTAL PAY DATE				18.25				
PAYDET		00166361	20011119	18.25	18.25	21131181	14.00	20010904	REG
	TOTAL PAY DATE				18.25				
PAYDET		00166361	20011203	18.25	18.25	21131181	14.00	20010904	REG
	TOTAL PAY DATE				18.25				
PAYDET		00166361	20011217	18.25	18.25	21131181	14.00	20010904	REG

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				pay166361	18.25				
TOTAL PAY DATE									
PAYDET	00166361	20011231	18.25	18.25	21131181	14.00	20010904	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20020114	18.25	18.25	21131181	14.00	20010904	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20020128	0.00	0.02	21131181	0.00	20020128	RND	
PAYDET	00166361	20020128	18.25	15.63	21131181	12.00	20020117	REG	
PAYDET	00166361	20020128	18.25	2.60	21131181	2.00	20020115	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20020129	0.00	0.02	21131181	0.00	20020128	RND	
PAYDET	00166361	20020129	18.25	15.63	21131181	12.00	20020117	REG	
PAYDET	00166361	20020129	18.25	2.60	21131181	2.00	20020115	REG	
TOTAL PAY DATE				18.25					

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INMATE PAYROLL TRANSACTION REPORT
FROM BACKUP TAPE
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ERASED FROM ACTIVE RECORDS.

CODE	TYPE	SCDC ID	PAY DTE	PAY RATE	PAY AMT	ACCOUNT	WORKED TIME	DATE	PAY
PAYDET	00166361	20020211	18.25	18.25	21131181	14.00	20020117	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20020225	18.25	18.25	21131181	14.00	20020117	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20020311	18.25	18.25	21131181	14.00	20020117	REG	
TOTAL PAY DATE				18.25					
PAYDET	00166361	20020325	18.25	18.25	21131181	14.00	20020117	REG	
TOTAL PAY DATE				18.25					

PAYDET	00166361	20020408	18.25	pay166361	18.25	21131181	14.00	20020117	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20020422	18.25		18.25	21131181	14.00	20020117	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20020506	18.25		18.25	21131181	14.00	20020117	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20020520	18.25		18.25	21131181	14.00	20020117	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20020603	18.25		18.25	21131181	14.00	20020117	REG
TOTAL PAY DATE					18.25				
PAYDET	00166361	20020617	18.25		18.25	21131181	14.00	20020117	REG
TOTAL PAY DATE					18.25				
TOTAL REPORT					1,170.60				
C750009	RECORDS WRITTEN FOR REPORT 01	---		237					