

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2015-002057

RECEIVED

MAR 01 2017

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Daniel D. Hall, Circuit Court Judge

Case No.: 2013-CP-23-02017

Isiah James, Jr. and George Lee Tomlin, Plaintiffs,
of whom George Lee Tomlin is the

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

**SUPPLEMENTAL
RECORD ON APPEAL**

George Lee Tomlin
Ridgeland Correctional Institution
CA-22, POB 2039
Ridgeland, South Carolina 29936
Appellant, *Pro Se*

Carly H. Davis, Esquire
Russell W. Harter, Jr., Esquire
Chapman, Harter & Harter, P.A.
14 Lavinia Avenue
Post Office Box 10224 (29603)
Greenville, South Carolina 29601
Telephone: (864) 233-4500
Attorneys for Respondent

INDEX

South Carolina Court of Appeals Order Granting Costs.....	1
United States District Court Order Dated January 13, 2014.....	2
United States District Court Order Dated March 18, 2014.....	4
Circuit Court Order Dated August 31, 2015 Issued by Judge Hall.....	7
United States District Court Report and Recommendation Dated January 30, 2014	19
United States District Court Report and Recommendation Dated September 25, 2013	31
Plaintiffs' Summons and Complaint Filed April 11, 2013	39
Notice of Removal Filed July 15, 2013	48
Amended Complaint Filed July 17, 2013	58
Answer to Amended Complaint Filed July 17, 2013.....	64
Isiah James's Supplemental Complaint Filed December 4, 2014.....	71
Answer to Supplemental/ Amended Complaint Filed December 22, 2014	74
Plaintiffs' Motion for Summary Judgment	81
Plaintiff James's Memorandum of Law in Support of Summary Judgment with Attachments, Specifically Administrative Law Court Order Issued by The Honorable Carolyn C. Matthews on February 7, 2006.....	87
Defendant's Motion for Summary Judgment Filed June 3, 2015	99
Affidavit of Debra Long Regarding James Dated December 3, 2014	103
Affidavit of Debra Long Regarding Tomlin Dated December 3, 2014	106
Certificate of Counsel	121

The South Carolina Court of Appeals

South Carolina Department of
Corrections,

Respondent,

v

George Lee Tomlin,

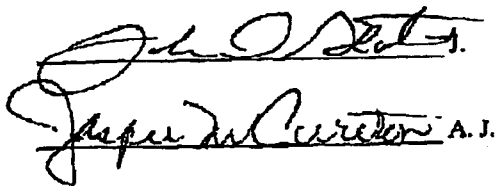
Appellant.

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

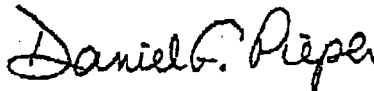
ORDER GRANTING MOTION FOR COSTS

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.


Jasper M. Currier A. J.

Columbia, South Carolina


Daniel G. Pieper

I would deny the
motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Isaiah James, Jr., and George Lee Tomlin,	)	
	)	
Plaintiffs,	)	
	)	C/A No.: 1:13-cv-1936-TLW
vs.	)	
	)	
South Carolina Department of Corrections,	)	
	)	
Defendant.	)	
_____	)	

ORDER

Plaintiffs Isiah James, Jr. and George Lee Tomlin ("Plaintiffs"), two state prisoners proceeding *pro se*, originally filed this action in the Court of Common Pleas for Greenville County, South Carolina. (Doc. #1). The South Carolina Department of Corrections ("Defendant") filed a notice of removal on July 15, 2013, that purports to remove the action. (Doc. #1). Thereafter, Plaintiff James filed two motions to remand the case to state court, asserting that he intended to bring only state causes of action. (Docs. #11, 17, 18). The matter now comes before this Court for review of the Report and Recommendation ("the Report") filed on September 25, 2013, by Magistrate Judge Shiva V. Hodges, (Doc. #23), to whom this case was previously assigned. In the Report, the Magistrate Judge recommends remand of both Plaintiffs' cases to state court. (Id.). Plaintiff Tomlin filed objections to the Report on October 7, 2013, (doc. #25), and Defendant filed objections to the Report on October 25, 2013. The Court has reviewed the objections. In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections.... The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which

an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

The Magistrate Judge analyzed, in significant detail, the issues that were before her. However, Defendant South Carolina Department of Corrections first objected to the remand after the Report was filed. Thus, Defendant's objections were not before the Magistrate Judge. After careful consideration and in light Plaintiff Tomlin's and Defendant's objections to the Report, this Court remands this action to the Magistrate Judge for reconsideration of the issues raised in the objections and for issuance of a report and recommendation if appropriate. It is hereby **ORDERED** that this action is **REMANDED** to the Magistrate Judge for reconsideration in light of the objections to the Report.

IT IS SO ORDERED.

s/Terry L. Wooten
Chief United States District Judge

January 13, 2014
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Isaiah James, Jr., and George Lee Tomlin,	)	
	)	
Plaintiffs,	)	
	)	C/A No.: 1:13-cv-1936-TLW
vs.	)	
	)	
South Carolina Department of Corrections,	)	
	)	
Defendant.	)	
_____	)	

ORDER

Plaintiffs Isiah James, Jr. and George Lee Tomlin ("Plaintiffs"), two state prisoners proceeding *pro se*, originally filed this action in the Court of Common Pleas for Greenville County, South Carolina. (Doc. #1). The South Carolina Department of Corrections ("Defendant") filed a notice of removal on July 15, 2013, that purports to remove the action. (Doc. #1). Thereafter, Plaintiff James filed two motions to remand the case to state court, asserting that he intended to bring only state causes of action. (Docs. #11, 17, 18). Magistrate Judge Shiva V. Hodges filed a Report and Recommendation on September 25, 2013, recommending that this action be remanded to state court. (Doc. #23). After the Report and Recommendation issued, Plaintiff Tomlin filed an objection but did not address federal jurisdiction. (Doc. #25). Defendant filed objections arguing that "[t]he 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." (Doc. #29). In light of the objections to the Report and Recommendation, this Court remanded the action to the Magistrate Judge for reconsideration. (Doc. #45).

The Magistrate Judge filed a second Report and Recommendation ("the Report") on January 30, 2014. In the Report, the Magistrate Judge recommends the District Court (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), and (3) decline to exercise supplemental jurisdiction over the remaining state-law claims in light of James' clarification that he intends to rely solely on state law. Plaintiff James filed a document captioned as objections to the Report on February 28, 2014. However, this objection does not raise any specific issues that impact this Court's accepting the Report. Notably, James has filed motions asking that his case be remanded to state court. He asserts his claims are based only in state law. Neither the Defendant nor Plaintiff Tomlin filed objections to the January 30, 2014 Report.

The Court has reviewed the objections. In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections.... The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, *de novo*, the Report and the objections. After careful review, the Court hereby **ACCEPTS** the Report. (Doc. # 47).

Plaintiff James' document, characterized as an objection, (Doc. #53), is **OVERRULED**. For the reasons articulated by the Magistrate Judge, the Plaintiffs' ninth cause of action is **DISMISSED** to the extent it asserts due process violations. The Plaintiffs' third, fourth, fifth, seventh, eighth, tenth, and eleventh causes of action are **REMANDED** to state court pursuant to 28 U.S.C. § 1441(c)(2). The Court declines to exercise supplemental jurisdiction of the remaining claims, and thus the remaining claims are also **REMANDED** to state court. In light of the Court's ruling, Plaintiff James' July 26, 2013 Motion to Remand, (Doc. #11), and August 22, 2013 Motion to Remand, (Doc. #17), are **GRANTED**. Plaintiff Tomlin's Motion to Compel and Motion for Extension of Time, (Docs. #19, 22), Defendant's Motion for Summary Judgment (Doc. #32), and Plaintiff James' Motion for Extension of Time, Motion to Appoint Counsel, and Motion for Recusal (Doc. #38), are terminated as moot in light of the Court's ruling.

IT IS SO ORDERED.

s/Terry L. Wooten
Chief United States District Judge

March 18, 2014
Columbia, South Carolina

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

ORDER

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2015 AUG 31 PM 4 46

This matter came before the Court on July 24, 2015. The plaintiffs appeared *pro se* and the defendant appeared through its counsel, Russell W. Harter, Jr., of the firm Chapman, Harter & Harter. The matter before me at this time involves a Motion for Summary Judgment filed on behalf of the defendant on June 3, 2015 and the Plaintiffs' Motion for Partial Summary Judgment as to the plaintiffs' Fourth Cause of Action filed on July 13, 2015.

NATURE OF CLAIMS

The plaintiffs in this action allege numerous claims arising out of different subjects and circumstances. Plaintiff James asserts in his Amended and Supplemental Complaint thirteen (13) different Causes of Action. Plaintiff Tomlin appears to assert two (2) Causes of Action, which are included in the Third and Fourth Causes of Action referred to in the Amended Complaint.

In Plaintiff James's First Cause of Action, he requests that the Court declare SCDC's earned work credit policy OP-21.07 unconstitutional, and in plaintiff's Second Cause of Action he requests that said policy be declared an *ex post facto* law. Plaintiff James's Third and Fourth Causes of Action relate to James's claim for wages in connection with a previously filed grievance, which was appealed. James's Fifth Cause of Action relates to his claim for eligibility

for work release. James's Sixth and Thirteenth Causes of Action relate to institutional lockdowns at SCDC. James's Seventh Cause of Action relates to allegations concerning the actions of an adjustment committee on or about April 21, 1980 and March 24, 1982, which he alleges regarding an unprocessed grievance. James's Eighth, Tenth, Eleventh, and Twelfth Causes of Action relate to FOIA requests, and James's Ninth Cause of Action relates to a claim related to SCDC's use of videoconference in determining parole eligibility. Plaintiff Tomlin's claims relate to the Third and Fourth Causes of Action wherein Tomlin alleges entitlement to wages and to costs related to the issuance of an Order of the South Carolina Department of Appeals dated November 23, 2010.

At the time of the hearing, counsel for the defendant presented an outline to the court to summarize the allegations of the various Causes of Action of the Plaintiffs. The various Causes of Action will be discussed and addressed to the extent they are related by subject matter.

In support of the Defendant's Motion for Summary Judgment, numerous affidavits have been filed by SCDC, addressing the plaintiffs' various claims. The plaintiffs have not submitted any affidavits, either in support of their motion or in opposition to the defendant's motion.

SUMMARY JUDGMENT STANDARD

Defendant moves for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Rule 56(c) of the South Carolina Rules of Civil Procedure provides in pertinent part:

The judgment sought shall be rendered forthwith in the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

A party opposing a properly supported motion for Summary Judgment may not rest on mere allegations or denials of his pleadings, but must set forth or point to specific facts showing that there is a genuine issue of material fact. *See, e.g. Baughman v. A.T.&T. Co.*, 306 S.C. 101, 117, 410 S.E.2d 537, 547 (1991) (bald allegations deemed insufficient to create a genuine issue of fact.) When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

JAMES'S FIRST, SECOND, AND FIFTH CAUSES OF ACTION.

James, in his Complaint, in his First, Second, and Fifth Causes of Action complains of SCDC policies that relate to earned work credits and eligibility for work release. Nowhere does James come forward with any valid arguments to support his claim that SCDC's policies that relate to earned work credits and/or work release are unconstitutional or that they have been misapplied to him. SCDC is necessarily vested with the authority to implement and apply policies that relate to earned work credits for inmates and their eligibility for work release. James has failed to point to specific facts and/or law to support these Causes of Action. James has further failed to make a showing sufficient to create a genuine issue of material fact, as to these various claims to defeat summary judgment.

JAMES'S THIRD AND FOURTH CAUSES OF ACTION

In the Third and Fourth Causes of Action, James alleges that he is entitled to wages in connection with participation in the Prison Industries Program. James bases his claims on an Order issued by the Administrative Law Court on February 7, 2006 [Docket No. 05-ALJ-04-

00739-AP]. In that Order, Administrative Law Judge Carolyn Mathews heard the plaintiff's grievance and issued an Order stating as follows:

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.

This ALC Order was not filed until March 6, 2006. Thereafter, SCDC and James both appealed the Administrative Law Court's decision to the Circuit Court for the Fourteenth Judicial Circuit. In connection with that appeal, Circuit Judge James C. Williams, Jr. issued an Order dated November 3, 2006 granting SCDC's appeal and denying James's appeal. On page two of its Order, the Court stated:

With James' consent and agreement, this Court REMANDS the determination of the applicable "prevailing wage" for James' prison industries labor back to the ALC.

The circuit court went on to say in its Order:

This Court concludes, contrary to the ALC's analysis and ruling, that the hourly rate of \$5.25 does not represent the "prevailing wage" for the labor James provided to the prison industries project operated by SCDC's, DOI at RCI.

The court further said:

In its analysis of James' prevailing wage" claim, the ALC ignored the opinion of our Supreme Court in Atkins and the companion case to Wicker.

Thereafter, James appealed to the South Carolina Court of Appeals, and in an unpublished opinion number 2010-UP-251 filed April 26, 2010, the Court of Appeals reversed in part, affirmed in part, and vacated in part the Order of Judge Williams. In the Court of Appeals'

Opinion the history of James's claim is discussed and the Court makes clear reference to the fact that in the Circuit Court, with the consent of James, the prevailing wage issue was remanded to the ALC. Importantly, there is no part of the opinion that directs SCDC to pay James at any prevailing wage rate and there is no ruling that establishes a "prevailing wage" rate.

The fact is that James's claims set forth in the Third and Fourth Causes of Action relate to matters that were the subject of a grievance filed by James over wages. That grievance resulted in an appeal to the Administrative Law Court, an appeal to the Circuit Court in civil action 06-CP-27-130 and 176, and a further appeal to the South Carolina Court of Appeals, as discussed above.

James's recourse and/or remedy as to his wage claim, if any, is to return to those tribunals, not to file this separate suit. In light of the other proceedings in the Administrative Law Court, the Circuit Court of Jasper County, and the Court of Appeals related to this very same issue, this Court would lack subject matter jurisdiction of James's wage issue dispute. Again, James cannot file this new action to ask this Court to address those claims he raised and litigated in other courts and in other proceedings.

However, with respect to the actual merits of James's wage loss claim and in further support of its Motion for Summary Judgment, SCDC submitted an affidavit dated December 3, 2014 from Debra Long, Fiscal Analyst II. In her affidavit, Ms. Long states that she has reviewed SCDC's financial records and work assignment records related to Isiah James, and based on those records it appears that James was hired on a cleanup crew as a custodial worker under the prison industries program on or about January 13, 2000 and that he remained in that position until approximately June of 2000. The affidavit of Debra Long goes on to explain that SCDC discontinued the practice of paying inmates a training wage on July 1, 1999, which was before

James began working in the prison industry program at Ridgeland Correctional Institution. Based on that information, her affidavit recites that James does not appear to be due any compensation based on the wording of Judge Matthew's Administrative Law Court Order. Notwithstanding the issue of subject matter jurisdiction, it therefore appears from the Affidavit of Debra Long that James is not entitled to any additional compensation, from SCDC.

Further, as to James's Third and Fourth Causes of Action, there is no Order and/or ruling that James is entitled to any compensation or payments for wages. Therefore, to the extent the Third and/or Fourth Causes of Action asks the Court to declare that James is entitled to any payment of a judgment, or as a judgment creditor, James has failed to provide evidence to support any such claim.

JAMES'S SIXTH AND THIRTEENTH CAUSES OF ACTION.

In James's Sixth and Thirteenth Causes of Action he alleges that he was subjected to an institutional lockdown beginning May 22, 2011 and another institutional lockdown on January 21, 2014. He complains about the conditions of his confinement during those lockdowns.

In support of its Motion for Summary Judgment, SCDC submitted the Affidavit of Warden Leverne Cohen. The Affidavit of Warden Cohen provides the surrounding circumstances of the lockdowns. The institutional lockdown on May 22, 2011 resulted after an inmate was stabbed in the neck in a gang-related incident. That inmate had to be airlifted to a hospital. The Affidavit of Warden Cohen states that the institution was placed on lockdown so that the gang-related stabbing could be investigated and so that gang members could be identified, removed, and separated.

Warden Cohen also states in his Affidavit that an institutional lockdown was initiated on January 21, 2014 in response to weapons and ammunition found in the unit where inmate James was being housed. The entire unit had to be searched and secured.

The Affidavit of Warden Cohen further details that pursuant to SCDC policies and procedures during institutional lockdowns precautions are taken to secure the facility and as a result, inmate showers were delayed; however, inmates had access to water in their cells. The Affidavit of Warden Cohen further points out that all inmates are afforded an opportunity to exercise through the in-cell exercise program, that mail is hand-delivered to inmates, that inmates have access to legal materials that are delivered to their cell, and that institutional lockdowns are necessary from time to time to secure safety for inmates and staff.

It appears that the institutional lockdowns on May 22, 2011 and January 21, 2014 were reasonable and appropriate under the circumstances as are outlined in Warden Cohen's Affidavit.

It is necessarily incumbent upon SCDC administrators and staff to take measures to maintain and restore order in prison facilities, and inmate James has failed to provide any evidence that the institutional lockdowns in question were not necessary for security reasons.

I find that as to James's claim in his Sixth and Thirteenth Causes of Action there is no genuine issue of any material fact to support James's claim.

JAMES'S EIGHTH, TENTH, ELEVENTH, AND TWELFTH CAUSES OF ACTION INVOLVING FOIA REQUESTS.

James asserted separate Causes of Action related to FOIA Requests dated March 20, 2013; April 25, 2013; May 4, 2013; and May 27, 2014.

As to James's asserted claim related to the Eighth Cause of Action under FOIA, the South Carolina Department of Corrections submitted in support of its motion the Affidavit of Janice Kenealy, a supervisor of the inmate records management system. From the Affidavit of

Janice Kenealy it appears that she received a request for information from the plaintiff on March 27, 2013, and she then contacted the Office of General Counsel for permission and/or clarification as to James's request. Ms. Kenealy was advised that James was requesting SCDC Form 19-69 and she received approval to produce that form to him. Ms. Kenealy's Affidavit shows that on March 29, 2013, she checked with central records and it appears that she could not locate the paperwork at that time. Ms. Kenealy then contacted Ridgeland Correctional Institution and directed that the requested paperwork be provided to inmate James. It does not appear from the record that SCDC was able to find documentation to confirm that the requested information was provided to the plaintiff at that time; however, the record is clear that the requested information was provided to James on July 10, 2015 and James acknowledges receipt of that information at this hearing.

As to James's Tenth Cause of Action he makes reference to a FOIA request dated April 25, 2013 requesting information concerning the random selection drug test list for dates July 27, 2006 and September 7, 2006. In response to this claim, SCDC has provided Affidavits from Angela Harden of the Office of Inspector General and Alice Mascio, the Division Director of Visitation and Inmate Drug Testing. It appears from these affidavits that no such request was ever received, but in any event the Affidavit of Alice Mascio confirms that the random list is only maintained for a short period of time. Alice Mascio's affidavit further confirms that the plaintiff's request for the random drug information list back in 2006 would not have been available at the time of his request, if made, in 2013.

As to James's Eleventh Cause of Action concerning a FOIA request dated May 3, 2013 regarding SCDC's disruptive lockdown policy, the defendant provided the Affidavit of N. Dayne Haile, Administrative Coordinator of the South Carolina Department of Corrections. The

Affidavit of Dayne Haile and the attachment to her affidavit confirms that on May 16, 2013 SCDC responded to inmate James and informed him that inmates are not allowed to view Restricted policies. James was further informed that Non-Restricted and/or Limited policies could be viewed at the institution law library at RCI. It is clear that SCDC responded to James's request dated May 4, 2013.

James's Twelfth Cause of Action relates to an alleged FOIA Request dated May 7, 2014. In response to this claim, SCDC provided the Affidavit of Dayne Haile which indicates that no request for such information was received by the Office of General Counsel or the Director's Office. The alleged request of May 7, 2014 by James apparently requests a list of inmates subject to random drug tests on December 13, 2013. Even if that request were submitted it would appear that based on the Affidavit of Alice Mascio that SCDC would not likely have that information given the time frame involved.

Inmate James has presented no arguments and/or affidavits to specifically contradict the affidavits and documentation presented by SCDC concerning James's claims for FOIA requests in his Eighth, Tenth, Eleventh, and Twelfth Causes of Action and SCDC's responses. I find that James is not entitled to any additional documents and/or relief in connection with any alleged FOIA claims.

TOMLIN'S THIRD AND FOURTH CAUSES OF ACTION.

Tomlin has come forward with no evidence to support any assertion that he is entitled to any wages from SCDC. Tomlin does, however, assert the position that he was awarded costs of \$304.88 by Order of the South Carolina Court of Appeals dated November 23, 2010. The Affidavit of Debra Long confirms that upon a review of Tomlin's Cooper account, payment of costs of \$304.88 was not previously credited to Tomlin's account. It appears from the Affidavit

of Debra Long that on November 13, 2014, during the pendency of this action, a payment was processed for that amount into the Cooper Account of George Lee Tomlin. Further, based on the Affidavit of Debra Long there are no additional monies and/or payments due to George Lee Tomlin by and/or from the South Carolina Department of Corrections. Inmate Tomlin has not come forward with any evidence to refute that position and/or conclusion.

**OTHER CLAIMS REFERENCED IN THE AMENDED AND/OR
SUPPLEMENTAL COMPLAINT.**

The Amended and/or Supplemental Complaint makes reference to alleged federal claims; however, in prior proceedings in the United States District Court and in the Court of Common Pleas of Greenville County, any such federal claims have been disposed of and/or dismissed and/or waived.

Specifically, as to the Plaintiffs' Ninth Cause of Action, the United States District Court dismissed that claim to the extent it asserted any due process violations. James has failed to create any genuine issue of material fact to support that claim based on state law.

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
FILED JULY 13, 2015.**

The plaintiffs filed a Motion for Partial Summary Judgment on July 13, 2015 which I have considered. The Plaintiffs' Motion for Partial Summary Judgment relates specifically to the Fourth Cause of Action in the Amended Complaint, and I find as a matter of law that the Plaintiffs' Motion for Partial Summary Judgment should be denied for the reasons stated above and specifically for the reasons stated in granting summary judgment to the defendant as to the Plaintiffs' Fourth Cause of Action.

CONCLUSION

To the extent the plaintiffs' claims are based on any prior Order of Court, or on common or statutory law, their alleged claims cannot survive summary judgment based on the record before me.

Also, if and to the extent the Plaintiffs' Complaint can be interpreted as to attempt to allege any claims that are subject to the South Carolina Tort Claims Act, the provisions of the South Carolina Tort Claims Act provide for immunity and limitations of liability which would bar and/or preclude James and Tomlin from any recovery for any tort claim. S.C. Code Ann. § 15-78-60 (2) provides for immunity of administrative action or inaction; (3) provides immunity for the execution, enforcement, or implementation of court Orders; (4) provides immunity for the adoption, enforcement, and/or compliance of written policies; (5) provides immunity for the exercise of an employee's exercise of discretion or judgment; (21) provides immunity related to the decision, implementation, release, and/or discharge of a prisoner; and (25) provides for immunity related to the supervision, protection, control, or confinement of a prisoner except upon a showing of gross negligence. There is absolutely no evidence in this record that would support a showing of gross negligence and/or any actions by SCDC to obviate the immunity granted under S.C. Code Ann. § 15-78-60 for any tort claim.

After giving due and careful consideration to the claims set forth in the Plaintiffs' Complaint, and after considering all of the evidence properly before me, I find that there is no genuine issue of any material fact, and SCDC is entitled to Judgment as a matter of law as to all of the claims and causes of action outlined above.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for Summary Judgment is granted as to all causes of action and the Plaintiffs' Amended and Supplemental Complaints are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' Motion for Partial Summary Judgment is denied.

IT IS SO ORDERED THIS 21st **DAY OF** August, 2015.



The Honorable Daniel D. Hall
Circuit Court Judge

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

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.

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. [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”).

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.”).

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

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.

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

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

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.”**

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

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”) filed a notice of removal on July 15, 2013, that purports to remove the action. [Entry #1]. This matter comes before the court on the motions of Plaintiff James seeking remand to state court. [Entries #11, #17]. Defendant’s response deadline has passed and the motions are, therefore, ripe for disposition. Also before the court are Plaintiff Tomlin’s motions to compel [Entry #19] and for extension of time [Entry #22].

Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(d), this case has been referred to the undersigned for all pretrial proceedings. For the reasons that follow, it is recommended that the court grant the motions to remand to the Court of Common Pleas for Greenville County, South Carolina, and deny the remaining motions as moot.

I. Factual and Procedural Background

In Plaintiffs' state court complaint, Plaintiff James alleges: (1) a denial of earned work credits [Entry #1-1 at ¶¶ 1–5]; (2) an unconstitutional prison disciplinary conviction [*id.* at ¶ 5]; (3) unconstitutional prison policies regarding earned work credits [*id.* at ¶ 5–6], work release laws [*id.* at ¶ 9], and parole hearing procedures [*id.* at ¶ 13]; (4) unconstitutional prison conditions [*id.* at ¶ 10]; (5) a state court judgment against Defendant that should be enforced [*id.* at ¶¶ 7–8]; and (6) claims under the South Carolina Freedom of Information Act (“SCFOIA”) [*id.* at ¶¶ 13, 15, 16]. In addition to monetary damages, Plaintiff James seeks expungement of the challenged prison disciplinary conviction, restoration of good time credits, a declaration that he is “work release eligible,” and enforcement of the state court judgment against Defendant. [*Id.* at ¶¶ 8, 9; *see also Id.* at 5].

Plaintiff Tomlin alleges the issuance of a state court judgment against Defendant on November 23, 2010, associated with a wage retention case. [*Id.* at ¶ 7]. Plaintiff Tomlin also asserts a violation of his rights associated with parole hearings. [*Id.* at ¶ 13]. This Plaintiff seeks monetary damages [*id.* at 5] and enforcement of the alleged state court judgment in the wage retention case. [*Id.* at ¶ 8].

On July 26, 2013, Plaintiff James filed a motion to remand this case to state court. [Entry #11]. The motion appeared to indicate that Plaintiff James intended to pursue only state law causes of action in this case. *Id.* Because Plaintiff Tomlin did not sign the motion, the court issued an order directing both Plaintiffs to indicate whether they intend to raise federal claims in this case, and whether they desire remand of this case to state

court. [Entry #15]. On August 22, 2013, Plaintiff 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]. Answers to Plaintiff James' 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]. Plaintiff 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 to either of Plaintiff James' motions to remand the case to state court.

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

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”).

B. Analysis

Federal courts are courts of limited jurisdiction, *see Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994), and a district court is charged with ensuring that all cases before it are properly subject to such jurisdiction. *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998). Generally, a case can be filed in federal district court if there is diversity of citizenship under 28 U.S.C. § 1332, or if there is federal question jurisdiction under 28 U.S.C. § 1331. The removal statute, 28 U.S.C. § 1441, allows a state court defendant to remove a case to a federal district court, if the state court action could have been originally filed there. *See Darcangelo v. Verizon Communications, Inc.*, 292 F.3d 181, 186 (4th Cir. 2002). The removing defendant has the burden of establishing subject-matter jurisdiction, *Mulcahey v. Columbia Organic Chemicals Co., Inc.*, 29 F.3d 148, 151 (4th Cir. 1994), and a district court may sua sponte remand a case to state court if federal jurisdiction is lacking. *Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 196 (4th Cir. 2008).

The Supreme Court has commanded that when considering removal jurisdiction, federal courts must “scrupulously confine their own jurisdiction to the precise limits which the statute has defined.” *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 109 (1941) (internal citations omitted). In addition, “[r]emoval statutes must be strictly construed against removal,” *Scott v. Greiner*, 858 F. Supp. 607, 610 (S.D.W. Va. 1994),

and a federal court must “resolve all doubts about the propriety of removal in favor of retained state court jurisdiction.” *Marshall v. Manville Sales Corp.*, 6 F.3d 229, 232 (4th Cir. 1993); *see also Palisades Collections LLC v. Shorts*, 552 F.3d 327, 333–34 (4th Cir. 2008); *Mulcahey*, 29 F.3d at 151 (“If federal jurisdiction is doubtful, a remand is necessary.”).

It is well settled that a federal question must be presented on the face of a plaintiff’s complaint to satisfy federal question jurisdiction. *Harless v. CSX Hotels, Inc.*, 389 F.3d 444, 450 (4th Cir. 2004) (discussing the well-pleaded complaint rule). Further, a plaintiff may avoid federal jurisdiction by exclusively relying on state law. *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987). In the present case, Plaintiffs’ amended state court complaint references the United States Constitution. [Entry #1-1 at ¶¶5, 10]. However, Plaintiff James has filed two motions for remand of this case to state court and special interrogatories indicating that he brings all of his claims solely under the laws and constitution of South Carolina. [Entry #’s 11, 17, 18]. “In response to a motion to remand, Defendant has the burden of establishing that removal was proper.” *No Regrets Properties, Inc. v. Neighborhood Sports Pub Concepts, Inc.*, C/A No. 6:10-1024-JMC, 2011 WL 2294195, at *1 (D.S.C. June 8, 2011) (citing *Mulcahey*, 29 F.3d at 151). In this case, Defendant failed to file a response in opposition to either of Plaintiff James’ motions.

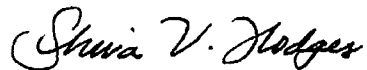
While it is unclear whether Plaintiff James mistakenly referenced the United States Constitution in his state court complaint, or decided to abandon his federal claims, the court is not divested of subject-matter jurisdiction in this case. *See Harless*, 389 F.3d

at 448 (holding post-removal amendment of a complaint to eliminate federal claims did not divest a federal court of jurisdiction). However, even where subject-matter jurisdiction is retained, the district judge has discretion to remand a complaint to state court where, as in this case, a plaintiff alleges claims “couched purely in terms of state [] law.” *Id* at 450; *see also Reinhart v. City of Brevard*, 826 F. Supp. 2d 887 (W.D.N.C. 2011). In addition, although Plaintiff Tomlin indicates a desire to assert federal claims in this action [Entry #20], he originally chose state court as his forum for doing so. Because Plaintiff James asserts only state law causes of action, and the state court has concurrent jurisdiction to hear any federal claims raised by Plaintiff Tomlin, *see Tafflin v. Levitt*, 493 U.S. 455, 458–59 (1990) (holding “state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States”); *Felder v. Casey*, 487 U.S. 131, 139 (1988) (finding that state courts possess concurrent jurisdiction over § 1983 litigation), the undersigned recommends that this matter be remanded to state court.

III. Conclusion and Recommendation

For the foregoing reasons, it is recommended that the district judge grant Plaintiff James’ motions to remand [Entries #11, #17], and remand this matter to state court. It is further recommended that Plaintiff Tomlin’s motions to compel and for extension be terminated as moot. [Entries #19, #22].

IT IS SO RECOMMENDED.



September 25, 2013
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.”**

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

ISIAH JAMES, JR. AND
GEORGE LEE TOMLIN,

Plaintiffs,)

-versus-

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS (SCDC),

Defendant.)

IN THE COURT OF COMMON PLEAS

S U M M O N S

2013-CP-23- 02017

ENTERED COMPUTER

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2013 APR 11 P 2:19

TO: DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to answer the complaint for Declaratory Judgment(s), 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 entered against you for the relief sought therein.

This 25 day of March 2013.

Isiah James, Jr.
Isiah James, Jr., 96883
RCI, CA-52, POB 2030
Ridgeland, S. C. 29936

George L. Tomlin
George L. Tomlin, 166361
RCI, GB-22, POB 2030
Ridgeland, S. C. 29936

000039

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23- 02017

Isiah James, Jr., RCI, CA)
52, POB 2039, Ridgeland,)
S. C. 29936;)
George Lee Towlin, RCI, GB)
22, POB 2039, Ridgeland,)
S. C. 29936.)

Plaintiffs,)

-versus-

South Carolina Department
of Corrections (SCDC),)
444 Broad River Road,)
POB 21787, Columbia,)
S. C. 29221-1787,)

Defendant.)

COMPLAINT FOR DECLARATORY
JUDGMENT(S), SOUTH CAROLINA
FREEDOM OF INFORMATION ACT (SCFOIA) AND
ETC.

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
JUL 11 P 2:19

Plaintiff(s) Isiah James, Jr. and George Lee Towlin 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 crimes 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 245 EWC's from January 1998 untill 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 904 on or about 10-10-06, he filed a preempt (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 (ALC); the ALC 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 (2006) decision; plaintiff James claims that there was also a property 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 judgment should grant or issue against his 903 conviction - chain of custody document is flawed (unreliable); a declaratory judgment should issue that under Furtick decision since James's right to appeal 903 was frustrated and denied as defendant uti-

like 903 to deprive James of level 2F5 EWC's that should
had been 2F7 EWC's from 10-10-2006 until present or 2F7
EWC's from 1997 to present; he requests that the Court declara-
res 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 in-
junctive relief (in form of annulment 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 re-
lief pertinent to issue based on fact incorporated, paraphrased
and reiterated from paragraphs 1-5 herein;

FOR THIRD CAUSE OF ACTION

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

Where, 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) judgment(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 these judgment(s); he has annexed here to one relevant judgment(s) from the ALC of 3-24-66;

Plaintiff George L. Tomlin asserts that he was issued an 11-23-10 judgment or 'Order Granting Motion For Costs' associated with an appeal of the wage retention case from/in S. C. Court of Appeals and he is a judgment creditor with regard(s) to the appeal; he requests further herein that this Court declare his right(s) with regard(s) to the "costs in the amount of \$344.88" (see attachments) as to whether he is entitled to payment forthwith along with the associated interest;

FOR FOURTH CAUSE OF ACTION
674 SE2d 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 judgment(s) which are currently on remand to the pertinent Court(s) as to should the judgment(s) be enforced in whole and/or part;

FOR FIFTH CAUSE OF ACTION
Work Release Laws

9. Defendant amended and/or superseded SCDC policy 08-01.04 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 command-

ed in sections 16-23-400(c) and 17-25-45(B) 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 humane 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; he requests that this Court declares his right(s) which is 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;

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 keener and proper.

This 26 day of March 2013.

15/ *Isiah James, Jr.*
Isiah James, Jr., 96883

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

s/ *Isiah James, Jr.* 3-26-13

Anthony L. Duvenary, #228855
Appellant,
vs.
South Carolina Department of Corrections,
Respondent.

Docket No. 05-ALJ-04-00771-AP
ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 103-05

Bruce Whitehead, #177931
Appellant,
vs.
South Carolina Department of Corrections,
Respondent.

Docket No. 05-ALJ-04-00774-AP

ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 224-05

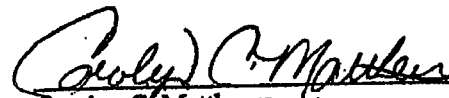
Alfred Singleton, #137469,
Appellant,
vs.
South Carolina Department of Corrections,
Respondent.

Docket No. 05-ALJ-04-00832-AP
ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 95-05

These orders were signed on February 7, 2006, but were not filed and served on the parties until March 6, 2006. By letter dated March 14, 2006, the Department of Corrections asked for clarification of the order to reflect that 30 days from the date of service as the deadline for compliance. To avoid any further confusion, and to give the Department adequate time to complete its work, it is hereby ORDERED that the relief ordered in each case shall be completed by April 24, 2006, thirty days from the file date of this order. Upchurch v. Upchurch, 367 S.C. 16, 624 S.E.2d 643 (2006) states that "the effective date of an order is not when it is signed by the judge, but when it is entered. . . ." citing Bowman v. Richland Mem. Hosp. 335 S.C. at 93, 515 S.E.2d at 261.

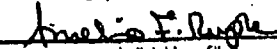
AND IT IS SO ORDERED.


Carolyn C. Matthews
Administrative Law Judge

March 24, 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 party(ies) or their attorney(s).

This 24th day of March 2006

By: 
Judicial Law Clerk

The South Carolina Court of Appeals

South Carolina Department of
Corrections,

Respondent,

v.

George Lee Tomlin,

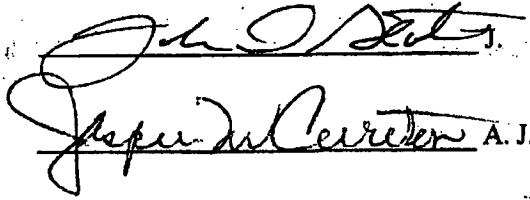
Appellant.

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

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.


_____. A. J.

Columbia, South Carolina



I would deny the
motion.

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).

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

2013-06-20 13:10:28

RECEIVED

JUN 20 2013

INSURANCE RESERVE FUND
CLAIMS DEPARTMENT

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ISIAH JAMES, JR. AND
GEORGE LEE TOWNE,

Plaintiffs,

S U M M O N S

-versus-

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS (SCDC).

Defendant.

2013-CP-23-02017

JUN 20 11 P 2 20

TO: DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to answer the complaint for Declaratory Judgment(-), SOFOIA and et al. 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 entered against you for the relief sought therein.

This 25th day of March 2013.

Isiah James, Jr., 04883
RCI, CA-52, 008 2010
Ridgeland S. C. 29836

George L. Towne
Rt 100 E. 166301
Box 2. 29836
Ridgeland S. C. 29836

2013 JUN 12 PM 2:24
RECEIVED

000051

2013-08-20 13:10:26

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
CLAIMS 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 or 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 due process clause(s) of South Carolina and United States Constitution(s) and a declaratory judgement should grant or issue against his 903 conviction and 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

2013-06-20 13:10:49

BWC's that should had been 2F7 BWC's from 10-10-2006 until present or 2F7 BWC'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

2013-06-20 13:10:50

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:

2013-08-20 13:10:50

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 judgment 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."

2013-06-20 13:10:51

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/ Isiah James, Jr.

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,	)	1:13-cv-01936-TLW-SVH
	)	
-vs-	)	CERTIFICATE OF SERVICE
	)	
South Carolina Department of	)	
Corrections,	)	
	)	
Defendant.	)	

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

STATE OF SOUTH CAROLINA)

)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

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

ISIAH JAMES, JR AND
GEORGE LEE TOMLIN.

Plaintiffs.

vs.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS [SCDC].

Defendant.

ENTERED COMPUTER

AMENDED COMPLAINT

AND REC. 17 PM 1:49

JW

FOR NINTH CAUSE OF ACTION
AMENDED COMPLAINT

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

The Beqkd shall grant hearings and permit arguments and appearances by counsel or any individual before it 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 6-28-1988; 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, § 3] of S. C. and [XIV Amendment] of U. S. Constitution(s) as they seek a declaratory judgment of due process right(s) to in person parole release hearing 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 declared:

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 30-4-10 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 ~~argue~~ respectfully that this Court grants declaratory judgment(s) for the various cause(s) of action.

This 27th day of May 2013

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

s/ *George Lee Tomlin*
George Lee Tomlin, 165351
RCI, GR-22, POB 2039
Ridgeland, S. C. 29936

Plaintiff Isiah James, Jr., affirms under penalty of perjury that the fact(s) set forth above herein are true and correct.

Plaintiff George Lee Tomlin affirms under penalty of perjury that the fact(s) set forth above herein are true and correct.



Richland County Sheriff's Department JUN 13 2013

**AFFIDAVIT OF SERVICE
or NON-SERVICE**

Date Entered: 06/12/2013
File Number: C201305810
DSS Number: 0
Foreign Case #:
Court Date: 01/01/1900

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Date _____

Plaintiff

George Lee Tomlin, #166361 RCI, GB-13 PO Box 2039 Coosawatchie, SC 29936
Phone: Work:

Defendant(s)

SCDC 4444 Broad River Rd Columbia, SC 29210
Phone: Work:

PERSONALLY APPEARED Before Me W. A. Ducote, duty sworn says that he/she served, or attempted to serve, the following civil paper(s):

Summons & Complaint

on the defendant, SCDC, as follows:

() By personally handing the process to the defendant at _____, SC
(Street) (City)
on _____
(Date/Time)

() By handing the process to _____ at _____
(Name of Person Served/Relationship) (Street)
_____ SC on _____, a person of suitable age and discretion then residing in
(City) (Date/Time)
the defendant's usual place of abode.

(X) By handing the process to TINA Kellert / OFFICE OF GENERAL COUNSEL, the registered corporate agent or officer of the company at
4444 BROAD RIVER RD, SC on 6/17/13 (10:06AM)
(Name of Person Served/Company Name) (Street) (City) (Date/Time)
and leaving him/her a copy.

() WAS UNABLE to locate and serve the above process on the defendant, after diligent efforts by checking the City/Telephone Directory, and going to the address given for the defendant, and by questioning persons in the vicinity of the address.
THE PROCESS IS RETURNED UNEXECUTED.

() COMMENTS: _____

Deponent knows the person served to be the defendant and Deponent is not a party to the action.
SWORN TO Before me this

17 day of June, 2013

Kenneth Coleman

W. A. Ducote
Deputy Sheriff, Richland County

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES August 11, 2014
P.O. Box 143 Columbia, SC 29202
Office: (803) 576-3151 Fax: (803) 576-1898

000060

STATE OF SOUTH CAROLINA)

)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

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

ISIAH JAMES, JR AND
GEORGE LEE TOMLIN,

Plaintiffs.

vs.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS [SCDC],

Defendant.

ENTERED COMPUTER

AMENDED COMPLAINT

2013 JUN 17 PM 1:49
JW

FOR NINTH CAUSE OF ACTION
AMENDED COMPLAINT

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

The Court shall grant hearings and permit arguments and appearances by counsel or any individual before it 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 6-26-1988; 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, § 3] of S. C. and [XIV Amendment] of U. S. Constitution(s) as they seek a declaratory judgment of due process right(s) to in person parole release hearing 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 declared:

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 SCD's Inspector General for Random Selection list discussed in SCD's policy GA-03.03(2.1)(4.1)&(4.2) for 7-27-2005 and 9-7-2006;

FOR ELEVENTH CAUSE OF ACTION
(SCFOIA)

16. Plaintiff James executed 4 May 2013 request under SCFOIA of section 30-4-10 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 respectfully that this Court grants declaratory judgment(s) for the various cause(s) of action.

This 27th day of May 2013.

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

George Lee Tomlin
George Lee Tomlin, 165361
RCI, GA-22, POB 2039
Ridgeland, S. C. 29936

Plaintiff Isiah James, Jr., affirms under penalty of perjury that the fact(s) set forth above herein are true and correct.

s/ Isiah James, Jr.

Plaintiff George Lee Tomlin affirms under penalty of perjury that the fact(s) set forth above herein are true and correct.

s/ George Tomlin



Richland County Sheriff's Department JUN 13 2013

AFFIDAVIT OF SERVICE
or NON-SERVICE

Date Entered: 06/12/2013
File Number: C201305810
DSS Number: 0
Foreign Case #:
Court Date: 01/01/1900

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Date _____

Plaintiff

George Lee Tomlin, #166361 RCI, GB-13 PO Box 2039 Coosawatchie, SC 29936
Phone: Work:

Defendant(s)

SCDC 4444 Broad River Rd Columbia, SC 29210
Phone: Work:

PERSONALLY APPEARED Before Me W.D. DUCOTE, duty sworn says that he/she served, or attempted to serve, the following civil paper(s):

Summons & Complaint

Handed
2013 JUN 17 PM 1:42
JUL 17 PM 1:42

on the defendant, SCDC, as follows:

() By personally handing the process to the defendant at _____, SC
on _____, (Date/Time) _____ (Street) _____ (City)

() By handing the process to _____ at _____, SC on _____, a person of suitable age and discretion then residing in
(Name of Person Served/Relationship) (Street) (City) (Date/Time)
the defendant's usual place of abode.

(X) By handing the process to TINA Kelleff / OFFICE OF General Counsel, the registered corporate agent or officer of the company at
4444 BROAD RIVER RD, SC on 6/17/13 (10:06 AM) and leaving him/her a copy.
(Name of Person Served/Company Name) (Street) (City) (Date/Time)

() WAS UNABLE to locate and serve the above process on the defendant, after diligent efforts by checking the City/Telephone Directory, and going to the address given for the defendant, and by questioning persons in the vicinity of the address.
THE PROCESS IS RETURNED UNEXECUTED.

() COMMENTS: _____

Deponent knows the person served to be the defendant and Deponent is not a party to the action.
SWORN TO Before me this

17 day of June, 2013

Kenneth Coleman

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES August 11, 2014
P.O. Box 143 Columbia, SC 29202
Office: (803) 576-3151 Fax: (803) 576-1898

W.D. DUCOTE
Deputy Sheriff, Richland County

000063

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.

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

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

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

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

**CERTIFICATE OF SERVICE
BY
UNITED STATES POSTAL SERVICE**

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

The undersigned hereby certifies that the defendant's Answer to the plaintiffs' Complaint was served on the pro se plaintiffs this 17th day of July, 2013 by United States Postal Service, addressed as follows and with proper postage affixed thereto:

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

George Lee Tomlin, #166361
RCI, GB-13, POB 2039
Ridgeland, SC 29936

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

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2013CS2202017

Isiah James, Jr., and
George Lee Tomlin,

Plaintiff(s),

-VERSUS-

SUPPLEMENTAL COMPLAINT

South Carolina Department of
Corrections [SCDC],

Defendant.

TO: Russell W. Harter, Jr., Esq.
CHAPMAN, HARTER & HARTER, PA
14 Lavinia Avenue (29601)
POB 10224
Greenville, S.C. 29603

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. WICKENSIMER
2014 DEC 4 AM 8 28

Plaintiff Isiah James, Jr., alleges, complains, litigates, sues, supplements and amends complaint (where the "Plaintiffs' 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 1096293; and for cause(s) of action set forth:

FOR TWELFTH CAUSE OF ACTION

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): [5.4.5] "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 2737550 (S.C. App. 2014);

FOR THE THIRTEENTH 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

violation(s) of the 5th, 8th and 14th [cruel and unusual punishment, equal protection and due process violation(s)], *Hutto v. Finney*, 98 S.Ct. 3565, 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) (OP-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 total of twenty-four (24) hours lock-down in a cell, along 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*, 685 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 clause(s) of South Carolina and United States Constitution(s) both prohibit double cabling when one is subjected to 24 hours lock-down period(s); Slezak.

(f) shower(s), plaintiff claims again 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 (NO) 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 service(s); (h) law library, there was denial of actual access to

the court during the lockdown 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 PD are granted access to court(s) and law library. Hendricks v. SCDC, 886 S.E.2d 181 (2008); 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 lockdown period contrary to due process clause; (ii) 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).

Isiah James, Jr.

Isiah James, Jr., 96883
ICI, CA-52, BOX 2039
Ridgeland, S.C. 29936

CERTIFICATE OF SERVICE

The undersigned hereby certifies that
he has caused true and correct
copies of the 'Supplemental (Amended) ' *Corrected*
'Complaint' and attachment(s) to be mailed,
postage prepaid, to defendant's
attorney, who is set forth above.
Herein this 20 day of November
2014.

Isiah James, Jr.

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
FILED - CLERK OF COURT
GREENVILLE CO. S.C.
CLERK OF COURT

2014 DEC 22 PM 1 11

**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

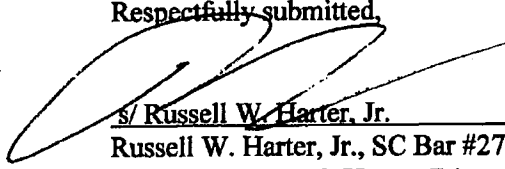
23. That the defendant pleads and asserts the Public Duty Doctrine and/or Public Duty

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.

South Carolina Department of Corrections,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

BY

UNITED STATES POSTAL SERVICE

Civil Action Number:
2013-CP-23-02017

The undersigned hereby certifies that service of the **DEFENDANT'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT** was made on the *pro se* plaintiffs this 19th day of December, 2014 by United States Postal Service, addressed as follows and with proper postage affixed thereto:

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

George Lee Tomlin, #166361
RCI, GB-13, POB 2039
Ridgeland, SC 29936



Jennifer L. Greene, Paralegal to
Russell W. Harter, Jr.
Chapman, Harter & Harter, PA
14 Lavinia Avenue (29601)
Post Office Box 10224
Greenville, South Carolina 29603
864/233-4500 Phone
864/232-1710 Fax
jgreene@chhlaw.net

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

NOTICE AND MOTION FOR PARTIAL SUM-
MARY JUDGMENT IN CAUSE OF ACTION
LIABILITY

-VERSUS-

Defendant.)

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
JUL 13 1965
JUL 13 9 22 AM '65

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 Rule of Civil Procedure (SCRCP)

2. Witness(es)' attorney(s) have filed 6-11-15 Motion to Quash and Motion etc. against issued subpoena(s) mentioning "orders would speak for themselves" (p. 2 para. 2)*
3. Plaintiffs attach excerpt(s) from Federal Court in removalal proceeding; it set forth "(4) declaratory relief to James' and Tomlin's collection of a state court judgment;" (p. 2 of 12)

See also Liberty Mut. Ins. Co. v. Wetzel, 424 U.S. 737, 95 S.Ct. 1202, 1207 (1976); Mickle v. Blackmen, 177 S.E.2d 548, 549 (1970); Oethran v. Brown, 566 S.E.2d 548, 553, 559 (Ga. App. 2002)

* See Dee 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.")

ENTERED COMPUTER

Scanned

This 28th day of June 2015.

/s/ *Isiah James, Jr.*

Isiah James, Jr., 96883
Rt 1, GA-52, POB 2039
Ridgeland, S. C. 29936

/s/

George Lee Tomlin

George Lee Tomlin, 166361
Rt 1, GA-22, POB 2039
Ridgeland, S. C. 29936

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'Notice and Motion for Partial Summary Judgment etc.' and attachment(s) to be mailed, postage prepaid, to defendant's attorney whose identity and address are set forth above herein this 30th day of June 2015.

s. *Isiah James, Jr.*

JAMES, JR., ISIAH - FBI # 761741T10 SID# SC00213675 SCDC # 94883 (CONTINUED)
6/19/79 MIDLANDS R&E INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
LAUNDRY ROOM ATTENDA	01/08/98	0/ 0/ 0		3F5
CANTEEN OPERATOR	04/23/97	12/19/97	INSTIT TRANSFER	2F5
CANTEEN OPERATOR	01/21/97	01/22/97	INMATE REQUEST	2F7
CANTEEN OPERATOR	03/14/95	1/20/97	CUSTODY REVIEW	3F7
WARDKEEPER ASSISTANT	02/07/95	3/13/95	INMATE REQUEST	5F7
SENIOR PRESS OPERATO	09/21/93	1/11/95	INSTIT TRANSFER	2F5
CANTEEN OPERATOR	01/12/93	9/20/93	INMATE REQUEST	3F7
LIBRARIAN/BOOKMOBILE	04/13/92	1/ 8/93	INSTIT TRANSFER	2F6
LIBRARIAN/BOOKMOBILE	10/16/91	4/12/92	PROMOTION	2F7
LIBRARIAN/BOOKMOBILE	08/14/91	10/ 6/91	LOCKUP-INVESTIGATION	2F7
LIBRARIAN/BOOKMOBILE	04/06/91	8/13/91	PROMOTION	2F7
TEACHER ASSISTANT	01/11/90	4/ 5/91	PROMOTION	3F5
PROFESSIONAL PERSONN	06/20/89	1/10/90	PROMOTION	2F5
ELECTRONICS REPAIR H	01/24/89	6/19/89	PROMOTION	5F5
CUSTODIAL WORKER	12/21/88	1/23/89	PROMOTION	7F5
TEACHER ASSISTANT	04/05/88	12/15/88	AUTO-INST. TRANSFER	3F5
TEACHER ASSISTANT	10/25/85	9/15/86	INMATE REQUEST	3F5
TEACHER AIDE	07/19/85	10/24/85	PROMOTION	5F5
SENIOR TEACHER ASST.	05/23/85	7/17/85	INSTIT TRANSFER	2F5
CLASSROOM LEADER	10/26/84	5/22/85	PROMOTION	3F5
CLASSROOM LEADER	02/29/84	4/17/84	INSTIT TRANSFER	3F5
TEACHER AIDE	01/10/84	2/28/84	PROMOTION	5F5
SENIOR TEACHER ASST.	08/31/83	12/13/83	INSTIT TRANSFER	2F5
TEACHER ASSISTANT	09/14/82	8/30/83	INMATE REQUEST	3F5
TEACHER AIDE	06/29/82	9/13/82	PROMOTION	5F5
TITLE CHANGED TO 053	08/07/79	9/12/79	TERM CODE CHG TO 13 OR 14	7F7

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

28 June 2015

Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville, South Carolina 29601

Re: James et al. v. SCRC
2013CP2302017

7-24-15 @ 9:30 am 'Motion Hearings'

2015 JUL 13 AM 9 22
PAUL B. WICKENSIMER
CLERK OF COURT
GREENVILLE CO. S.C.

Dear Clerk:

We are requesting herein that our consolidated motion be set for hearing with the other parties' motions. Thank you for the attention in this matter.

Respectfully requested,

/s/

Isiah James, Jr., 96883
RCI, GA-52, PCB 2039
Ridgeland, S. C. 29936

Isiah James, Jr., 96883
Ridgeland Correctional Institution
Charleston, A Room 52
P.O. Box 2039
Ridgeland, SC 29936



CHARLESTON SC 294
TUE 30 JUN 2015 PM

TO: HON. PAUL B. WICKENSIMER
GREENVILLE COUNTY CLERK OF COURT
305 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA

Legal MAIL

29601

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE, CO. S.C.

IN THE COURT OF COMMON PLEAS

Isiah James, Jr., et al.,

PAUL D WICKENSIMMER

CASE NO.

2013CP2302017

☐ Plaintiff

2015 JUL 13 AM 9 22

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

South Carolina Department of
Corrections (SCDC)

☐ Defendant.

Plaintiff's Attorney:

Pro Se. Bar No. Isiah James, Jr. 96883

Address: RCT, CA-52, POB 2039
Ridgeland, SC 29936

phone:

fax:

e-mail:

other:

Defendant's Attorney:

Russell Harter, Jr., PCB 10224
Address: Greenville, SC 29603

e-mail:

other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: 15 mins. Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

6-28-15
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☒ Other: Inmate vs. State agency

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE:

SCCA.253 (11-03)

000086

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
Civil Action no 2013CP23-02017

Isiah James, Jr. and
George Lee Tomlin,
Plaintiffs,

MEMO

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 DEC 4 AM 8 28

VS
South Carolina Department
of Corrections (SCDC),
Defendant.

ENTERED COMPUTER

TO: Russell Harter, Jr., Esq
14 Laynia Avenue
Greenville, SC 29601

Plaintiff Isiah James, Jr., makes and submits this memo in support of the consolidated motion for summary judgment on declaratory judgment(s) claim(s) which are properly considered under the third (3rd) and fourth (4th) causes of action in the complaint and he set forth herein the relevant job description(s), training and prevailing wage(s) aspect(s) thereof. According to the record(s) in his possession he was first employed at KWAU on 1-6-00.

He was assigned to the clean-up crew which consisted of janitorial service(s) work generally; it was on 2-2-02K when he began what he identifies herein as job training #1 (pipe washer); he started job training #2 on 3-15-

Scanned

000087

¥2K which was beginning of the profession set forth below herein while he engaged employment set forth herein. He was paid 50¢ an hour way below the relevant prevailing training wage and it was clearly in violation of Wicker v.

SLDC, 602 SE.2d 56 (2002) See attachment pp. 1-2

(A summary of employment history along with the 5-18-00 Earning and Deduction Statement).

James request herein that this Court declares according to Wicker the prevailing training wage of the Federal minimum wage is ¥2K at \$5.25 an hour where he worked for fourteen (14) weeks. ALJ Matthews' Order, Docket No. 05-ALT-04-0739-AP set forth "that the Department calculate the wages owed to Inmate at the prevailing wage (\$5.25 per hour) and pay Appellant the difference between the wage paid within thirty (30) days of the date of this order." (See pp. 3-6 attachments) Lowe v. Bell House Inc., 328 SE.2d 301, 74 N.C. App 196 (N.C. App. 1985)

The difference difference would be four dollars and seventy-five (\$4.75 an hour). This times 40 hours a week equal \$190.00. \$190.00 x 14 weeks = \$2,660.00. Plaintiff asks for summary judgment on the training wage entitlement in part declaratory judgment on damages set forth above herein forthwith. When James appealed the filed 3-26-2006 Order of ALJ Matthews to South Carolina Court of Appeals. The court of appeals mentioned, "compliance deadlines set forth in Final Order." (p.2) SCAC v. James, Unpublished

Opinion No. 2010-UP-251 (filed 4-26-10), 2010 WL 10079906.

But see SCDC v. Cortrette, 694 S.E.2d 18, 22 (S.C. App. 2010) ("consequently, the circuit court erred in denying Cortrette time-and-a-half pay for overtime work without first determining whether non-inmate worker performing the same work in the same locality receive time-and-a-half for overtime.") More, the Cortrette decision set forth, "the question of the prevailing wage to which Cortrette is entitled has been remanded to the ALC for further proceedings." Ibid at 22 James seeks summary judgment on the proper prevailing wage for his job (employment) description [press operator]. (p. 6 attachment)

Kawlu produced all types of furniture with special high-tech design(s) or feature(s) whereby very little wood was used in manufacturing. Specifically, he annexes hereto the 'Occupational Employment & Wage Estimates Low-Country Non-Metropolitan Statistical Area' by Specified Year' (p. 7 attachment). Plaintiff's job description fits the Team Assemblers criteria and more; although he was a press operator which consisted of heating plastic tube(s), pipe(s) and/or etc. in hot oil, oven(s) and/or heating mechanism(s); then inserting, placing plastic pipe(s), material(s) and etc. in mold to make the part (furniture (chair) leg, back, table leg, back or etc.) by placing part in mold and blow air pressure in plastic material to form, make part.

He also engaged in development and research whereby

he was successfully in developing the technique whereby Kwalu Furniture no longer utilizes hot oil in processing of plastic parts but developed with machines, etc. the drying heating formation of furniture parts.

Again, he was employed from 1981 to 2002; he asks herein \$16 dollars an hour as the prevailing wage, interests and any benefits associated with being ruled an employee of Kwalu. See 2-15-02 p. 8.

This 19 day of November 2014

Isiah James, Jr.

Isiah James, Jr., 96283
BCE, CA52, POB 2039
Bridgeland, S.C. 29936

CERTIFICATE OF SERVICE

DATED, MAILED, SIGNED to defendant's attorney who is set forth above herein this 20 day of November 2014.

Isiah James, Jr.

DATES
(2 Weeks Pay Period)

HOURLY(S)

Y2K

O. T. HOUR(S)

TOTAL

1-6-00
to
(exp.) 4-15-00

2.	5-16	80	3	83
3.	6-1	73.75		73.75
4.	6-16	80	1.25	81.25
5.	7-1	80	13.25	93.25
6.	7-14	74.5		74.5
7.	8-1	58		58
8.	8-16	80	12.25	92.25
9.	9-1	80	22.5	102.5
10.	9-15	80	20	100
11.	9-29	80	.75	80.75
12.	10-16	74		74
13.	11-1	80	6	86
14.	11-16	80	17.75	97.75
15.	12-1	80	20	100
16.	12-15	70		70

2001

17.	1-1-01	58		58
18.	1-16	26.5		26.5
19.	2-1	56		56
20.	2-16	73.5		73.5
21.	3-1	80	4.5	84.5
22.	3-16	60.5		60.5
23.	3-30	58		58
24.	4-16	66		66
25.	5-1			
26.	5-16	65		65
27.	6-1	66.5		66.5 @ \$5.5
28.	6-15	74.5		74.5
29.	7-1	63.5		63.5
30.	7-16	35.5		35.5
31.	8-1	43.5		43.5
32.	8-16	50.25		50.25
33.	8-31	65		65
34.	9-14	67		67
35.	10-1	59.5		59.5
36.	10-16	26.5		26.5

2002

37.	1-16-02	55		55 @ \$5.25
38.	2-1	80	19	99
39.	2-15	75		75

000091

P.CSTKT

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 09/18/00**

SCOC ID 00086883 JAMES, JR., ISIAH

LOCATION : 0442 RIDGELAND CORR INST

PLANT CODE : 078 KNALL FURNITURE - RIDGELA

HOURS WORKED: 83.00 HOURLY RATE: \$ 25

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					.00
GROSS PAY		444.81			
FEDERAL TAX		88.74			
FICA		34.03			
STATE TAX		10.23			
OTHER CG DEDUCTIONS		.00			
NET PAY			387.81		387.81
PGM FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			88.98	278.93
PGM FEE: ROOM/BOARD	SC DEPT. OF CORRECTIONS (RM 4			111.23	167.70
CASH FOR INMATE	E. H. COOPER TRUST FUND			123.21	44.49
				111.23	

overtime hours worked. Instead, sections 24-3-315 and 24-3-430(E) require that inmate workers receive comparable compensation and prohibit inmate workers from displacing non-inmate workers. These provisions appear to support Cartrette's argument for overtime pay. Failure of the Department's contracts with PIP sponsors to provide inmate workers with time-and-a-half pay for overtime hours when their non-inmate counterparts receive it would create an impermissible and unfair advantage for inmate labor over private labor. Moreover, any failure on the Department's behalf to pay inmates time-and-a-half overtime pay when non-inmate workers receive it for comparable work in the same area contradicts the Department's obligation under section 24-3-315.⁶ Consequently, the circuit court erred in denying Cartrette time-and-a-half pay for overtime work without first determining whether non-inmate workers performing the same work in the same locality receive time-and-a-half pay for overtime.⁷

In addition, we observe section 24-3-430(D) requires inmates receive the "prevailing wage" paid to their non-inmate peers for comparable work. However, the question of the prevailing wage to which Cartrette is entitled has been remanded to the ALC for

6. In its petition for rehearing, the Department declares the majority's analysis of section 24-3-430's provision of a prevailing wage for inmate labor "obviously overlooked the explicit intent of our General Assembly" regarding inmate labor. The Department cites section 24-3-310 of the South Carolina Code (2007), which indicates the purposes of inmate labor include self-maintenance, reimbursement of the State, restitution, and child support. In our opinion, these purposes harmonize with the General Assembly's mandate that inmate labor not unfairly compete with non-inmate labor. See §§ 24-3-315 & -430(E); see also *Adkins*, 360 S.C. at 418, 602 S.E.2d at 54 (finding the overall purpose of these statutes "is to prevent unfair competition"). By statute, seventy percent or more of each inmate worker's pay is diverted for restitution, victim's programs, child support, room and board, or taxes. S.C.Code Ann. § 24-3-40 (2007). Increased pay, including overtime pay, for inmate workers ultimately benefits the Department by increasing the funds available to relieve the burden of inmate housing and care; benefits crime victims, both directly through fulfillment of inmates' restitution obligations and indirectly by funding state agencies that provide victim assis-

Further proceedings. We nonetheless have jurisdiction to consider whether the prevailing wage language of section 24-3-430(D) entitles Cartrette to overtime pay because the issue remanded concerned the proper hourly rate, only. However, because we have found section 24-3-315 resolves Cartrette's dispute, we need not address this argument. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 618, 518 S.E.2d 591, 598 (1999) (holding appellate court need not discuss remaining issues when decision on prior issue disposes of appeal).

For the foregoing reasons, we reverse the circuit court's decision concerning overtime pay and remand this issue to the ALC for a determination of whether the Department failed to pay Cartrette at the time-and-a-half rate for the hours he worked in excess of forty per week. In the event of such a failure, we instruct the ALC to determine the rate of compensation to which Cartrette was entitled, the number of overtime hours that were underpaid, and the amount the Department owes Cartrette for his labor.

II. Remaining Issues

With regard to Cartrette's remaining issues, we affirm based upon the following authorities:

tance; and benefits inmates' minor children by increasing the amount available for child support. We believe that in crafting these statutes, our General Assembly carefully balanced its desire to maximize inmates' financial contributions against the need to ensure inmate workers do not supplant non-inmate workers in the labor force.

7. We note with some consternation that despite its persistent arguments against paying Cartrette time-and-a-half for overtime under Cartrette's theories of entitlement, the Department admits in its petition for rehearing that applicable federal regulations "required [the Department] to pay Cartrette time-and-a-half for his overtime labor." (emphasis supplied) Furthermore, despite the fact the record in this case appears to reflect a failure to pay overtime at the time-and-a-half rate, the Department repeatedly asserts for the first time in its petition for rehearing that it did pay Cartrette time-and-a-half overtime pay for his work on Kwalu projects "on numerous and diverse occasions." We are troubled that these assertions, which might have led to a speedy disposition of this issue before the ALC, escaped counsel's attention for so long.

1. As to the circuit court's remand to the ALC for determination of the prevailing wage: *Condon, Inc. v. Bd. of Zoning Appeals, City of N. Charleston*, 328 S.C. 173, 178, 498 S.E.2d 342, 344 (1997) (preventing an appellant from arguing on appeal an issue conceded in the trial court); *Bowman v. Bowman*, 357 S.C. 146, 160, 591 S.E.2d 664, 661 (Ct.App.2004) (holding a party cannot seek and receive a particular result at trial and then challenge it on appeal).

2. As to whether Cartrette was an employee of the private sponsor: S.C.Code Ann. § 24-3-40(A) (2007) ("Unless otherwise provided by law, the employer of a prisoner authorized to work . . . in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections."); *Williams v. S.C. Dep't of Corr.*, 372 S.C. 255, 258-59, 641 S.E.2d 885, 887 (2007) (holding a prison industries program sponsor is not an employer of inmates because the sponsor does not exclusively control the payment of inmate wages and finding agreement among other jurisdictions that examined this issue).

3. As to whether Cartrette is entitled to reimbursement of monies deducted from his pay for room and board because he was double-billed for this cost: Rule 210(h), SCACR (limiting appellate review to facts appearing in the record on appeal); *State v. Mitchell*, 330 S.C. 189, 199, 498 S.E.2d 642, 647 (1998) (placing on appellant the burden of presenting a sufficient record to allow appellate review).

4. As to whether Cartrette is entitled to reimbursement of monies deducted from his pay for room and board because the deduction was unconstitutional: S.C. Const. art. XII, § 2 ("The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates."); S.C.Code Ann. § 24-3-40 (2007) (allocating portions of inmates' wages for restitution, the State Office of Victim Assistance, child support, room and board, and inmate use); *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414

(2002) ("An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute.").

5. As to whether Cartrette is entitled to reimbursement of monies deducted from his pay for victim's assistance because inmate wages are outside the funds available for appropriations by the General Assembly: S.C.Code Ann. § 24-3-40 (2007) (allocating portions of inmates' wages for restitution, the State Office of Victim Assistance, child support, room and board, and inmate use); S.C.Code Ann. § 16-3-1260 (2003) (requiring persons convicted of criminal acts to reimburse the State and directing such payments to be made from inmate wages to the State Office of Victim Assistance); S.C.Code Ann. § 16-3-1290 (2003) (establishing Victim's Compensation Fund from which State Office of Victim Assistance may pay victims' claims).

CONCLUSION

We find sections 24-3-315 and 24-3-430(D) entitle inmate workers in a PIP to pay and working conditions comparable to those enjoyed by workers in private industry, including time-and-a-half pay for overtime hours worked. Accordingly, we reverse the circuit court's decision on this issue and remand to the ALC for additional proceedings consistent with this opinion. For the foregoing reasons, we affirm the circuit court's decision on the remaining issues.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

GEATHERS, J., concurs.

PIEPER, J., concurring in part and dissenting in part.

I concur in the majority's conclusion to affirm the decision to remand to determine a prevailing wage. I also concur in the determination that the inmate is not an employee of the private sponsor or entitled to reimbursement for room and board and other costs. However, I respectfully dissent as to any finding that the inmate is entitled to overtime pay. Section 24-3-430 establishes

3

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

)
)
)
)
)
)
)
)

ORDER

GRIEVANCE NO: RCI 133-05

Respondent.

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.

DISCUSSION

FILED

MAR - 6 2006

SC ADMIN LAW COURT

"Room and Board" and "Victim Assistance"

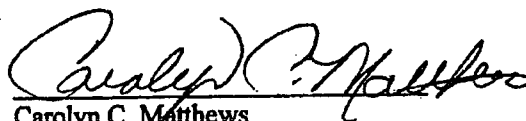
Appellant requests that he be reimbursed for the wages deducted for room and board and victim assistance. He claims these deductions were made in violation of Article 12, Section 2 of the South Carolina Constitution. However, these deductions are allowed and required by S.C. Code Ann. § 24-3-40 (Supp. 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 party(ies) or their attorney(s).

This 1st day of March 2006
By: Paula F. Ruple
Judicial Law Clerk

JAMES, JR., ISIAH - FBI # 761741T10 SID# SC00213675 SCDC # 96883 (CONTINUED)
6/19/79 MIDLANDS R&E INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
LAUNDRY ROOM ATTENDA	01/08/98	0/ 0/ 0		3F5
CANTEEN OPERATOR	04/23/97	12/19/97	INSTIT TRANSFER	2F5
CANTEEN OPERATOR	01/21/97	4/22/97	INMATE REQUEST	2F7
CANTEEN OPERATOR	03/14/95	1/20/97	CUSTODY REVIEW	3F7
WARDKEEPER ASSISTANT	02/07/95	3/13/95	INMATE REQUEST	5F7
SENIOR PRESS OPERATO	09/21/93	1/11/95	INSTIT TRANSFER	2F5
CANTEEN OPERATOR	01/12/93	9/20/93	INMATE REQUEST	3F7
LIBRARIAN/BOOKMOBILE	04/13/92	1/ 8/93	INSTIT TRANSFER	2F6
LIBRARIAN/BOOKMOBILE	10/16/91	4/12/92	PROMOTION	2F7
LIBRARIAN/BOOKMOBILE	08/14/91	10/ 6/91	LOCKUP-INVESTIGATION	2F7
LIBRARIAN/BOOKMOBILE	04/06/91	8/13/91	PROMOTION	2F7
TEACHER ASSISTANT	01/11/90	4/ 5/91	PROMOTION	3F5
PROFESSIONAL PERSONN	06/20/89	1/10/90	PROMOTION	2F5
ELECTRONICS REPAIR H	01/24/89	6/19/89	PROMOTION	5F5
CUSTODIAL WORKER	12/21/88	1/23/89	PROMOTION	7F5
TEACHER ASSISTANT	04/05/88	12/15/88	AUTO-INST. TRANSFER	3F5
TEACHER ASSISTANT	10/25/85	9/15/86	INMATE REQUEST	3F5
TEACHER AIDE	07/19/85	10/24/85	PROMOTION	5F5
SENIOR TEACHER ASST.	05/23/85	7/17/85	INSTIT TRANSFER	2F5
CLASSROOM LEADER	10/26/84	5/22/85	PROMOTION	3F5
CLASSROOM LEADER	02/29/84	4/17/84	INSTIT TRANSFER	3F5
TEACHER AIDE	01/10/84	2/28/84	PROMOTION	5F5
SENIOR TEACHER ASST.	08/31/83	12/13/83	INSTIT TRANSFER	2F5
TEACHER ASSISTANT	09/14/82	8/30/83	INMATE REQUEST	3F5
TEACHER AIDE	06/29/82	9/13/82	PROMOTION	5F5
TITLE CHANGED TO 053	08/07/79	9/12/79	TERM CODE CHG TO 13 OR 14	7F7

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

**OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES
LOW COUNTRY NON-METROPOLITAN STATISTICAL AREA
By Specified Year**

YEAR	OCC CODE	OCCUPATIONAL TITLE	AREA EMPLOYMENT	WAGE ESTIMATES					
				ENTRY		MEAN		EXPERIENCED	
				HOURLY	ANNUAL	HOURLY	ANNUAL	HOURLY	ANNUAL
FURNITURE ASSEMBLERS									
51-2092 Team Assemblers									
Work as part of a team having responsibility for assembling an entire product or component of a product. Team assemblers can perform all tasks conducted by the team in the assembly process and rotate through all or most of them rather than being assigned to a specific task on a permanent basis. May participate in making management decisions affecting the work. Includes team leaders who work as part of the team.									
1999	51-2092*	Team Assemblers	23,240	\$8.94	\$18,600	\$ 11.66	\$24,260	\$13.24	\$27,540
2000	51-2092*	Team Assemblers	26,670	\$9.10	\$18,930	\$ 12.69	\$26,390	\$14.43	\$30,020
2001	51-2092*	Team Assemblers	24,380	\$9.63	\$20,040	\$ 13.07	\$27,190	\$14.24	\$29,620
2002	51-2092*	Team Assemblers	25,480	\$9.82	\$20,420	\$ 13.31	\$27,680	\$14.63	\$30,430
2003	51-2092*	Team Assemblers	25,540	\$9.88	\$20,540	\$ 13.05	\$27,150	\$14.14	\$29,410
2004	51-2092*	Team Assemblers	28,620	\$10.09	\$20,990	\$ 13.24	\$ 27,530	\$15.17	\$31,540
2005	51-2092*	Team Assemblers	31,450	\$10.08	\$20,970	\$ 13.22	\$ 27,500	\$15.28	\$31,780
2006	51-2092	Team Assemblers	900	\$10.47	\$21,780	\$ 12.47	\$ 25,940	\$14.45	\$30,050
2007	51-2092	Team Assemblers	770	\$10.32	\$21,460	\$ 12.32	\$ 25,620	\$13.92	\$28,960
51-7011 Cabinetmakers and Bench Carpenters									
Cut, shape, and assemble wooden articles or set up and operate a variety of woodworking machines, such as power saws, jointers, and mortisers to surface, cut, or shape lumber or to fabricate parts for wood products.									
1999	51-7011*	Cabinetmakers and Bench Carpenters	2,400	\$7.05	\$14,670	\$ 8.96	\$18,640	\$10.37	\$21,570
2000	51-7011*	Cabinetmakers and Bench Carpenters	1,260	\$7.70	\$16,010	\$ 10.10	\$21,010	\$12.27	\$25,520
2001	51-7011*	Cabinetmakers and Bench Carpenters	1,080	\$8.26	\$17,180	\$ 10.85	\$22,570	\$13.21	\$27,480
2002	51-7011*	Cabinetmakers and Bench Carpenters	1,400	\$8.72	\$18,140	\$ 11.25	\$23,410	\$13.37	\$27,800
2003	51-7011*	Cabinetmakers and Bench Carpenters	1,300	\$9.67	\$20,120	\$ 11.80	\$24,550	\$13.33	\$27,720
2004	51-7011*	Cabinetmakers and Bench Carpenters	1,500	\$9.32	\$19,380	\$ 11.82	\$ 24,590	\$13.76	\$28,620
2005	51-7011*	Cabinetmakers and Bench Carpenters	1,290	\$9.77	\$20,320	\$ 12.24	\$ 25,460	\$14.06	\$29,250
2006	51-7011	Cabinetmakers and Bench Carpenters	1,390	N/A	N/A	N/A	N/A	N/A	N/A
2007	51-7011	Cabinetmakers and Bench Carpenters	30	\$14.10	\$29,330	\$ 16.01	\$ 33,290	\$18.67	\$38,840

SOURCE The Bureau of Labor Statistics
http://www.bls.gov/oes/current/oes_sc.htm

NOTES:

N/A - DATA NOT AVAILABLE

LOW COUNTRY NON-METROPOLITAN STATISTICAL AREA did not become a statistical area until 2006. (Includes Beaufort, Colleton, Georgetown, Hampton, Jasper, and Williamsburg counties.)

* - SOUTH CAROLINA STATEWIDE data provided for Low Country Non-Metropolitan data.

000097

PACSTMT

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 02/18/02**

SODC ID 00086883 JAMES JR, ISIAH

LOCATION : 0442 RIDGELAND CORR INST

PLANT CODE : 378 KWALEY FURNITURE - RIDGELA

HOURS WORKED: 75.00 HOURLY RATE: 9.25

TRANSACTION DESCRIPTION	PAYEE	DEBIT AMOUNT	CREDIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					1,463.23
GROSS PAY		383.75			
FEDERAL TAX		15.88			
FICA		30.13			
STATE TAX		7.83			
OTHER CG DEDUCTIONS		00			
NET PAY			339.81		1,803.04
PGM FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			78.75	1,724.29
PGM FEE: ROOM/BOARD	SC DEPT. OF CORRECTIONS (RM 8			88.44	1,635.85
CASH FOR INMATE	E. H. COOPER TRUST FUND			123.24	1,512.61

860000

00

		FILED-CLERK OF COURT
		GREENVILLE CO. S.C.
STATE OF SOUTH CAROLINA	PAUL B. WICKENS	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	2015 JUN 3	AM 9 11
Isiah James, Jr. and George Lee Tomlin,	)	C/A No.: 2013-CP-23-02017
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANT'S MOTION
	)	FOR SUMMARY JUDGMENT
The South Carolina Department of	)	
Corrections,	)	
	)	
Defendant.	)	

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.

ENTERED COMPUTER

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.

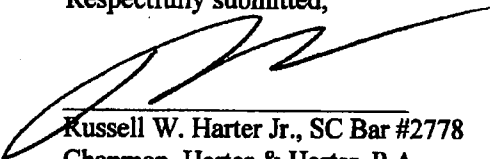
XI. That the lockdown referred to in Plaintiff James's Supplemental Complaint was valid, reasonable, and in accordance with South Carolina Department of Corrections policies, procedures, and/or regulations.

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
Chapman, Harter & Harter, P.A.
14 Lavinia Avenue (29601)
Post Office Box 10224
Greenville, SC 29603
Telephone: (864) 233-4500
Facsimile: (864) 232-1710
E-Mail: rwhjr@chhlaw.net
ATTORNEY FOR DEFENDANT

Greenville, South Carolina
May 29, 2015.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) CIVIL ACTION NO.: 2013-CP-23-02017

Isiah James, Jr. and George Lee Tomlin,)

Plaintiffs,)

vs.)

South Carolina Department of
Corrections,)

Defendants.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 JUN 3 PM 9 11

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I, as paralegal to Russell W. Harter, Jr., attorney for defendant, in the within action, on this the 29th day of May, 2015, served plaintiffs listed hereinbelow in the above-captioned matter with copy of Defendant's Motion for Summary Judgment, with attachments, by placing copies of same in an envelope(s) addressed as below, proper postage affixed thereto.

Mr. George Lee Tomlin
166361
RCI-GB-13
P. O. Box 2039
Ridgeland, South Carolina 29936

Mr. Isiah James, Jr.
#96883
RCI, CA-52
PO Box 2039
Ridgeland, South Carolina 29936

Patthy N. Harter

Paralegal to Russell W. Harter, Jr.
Chapman, Harter & Harter, P.A.
14 Lavinia Avenue
Post Office Box 10224
Greenville, SC 29603
864/233-4500
864/232-1710 (fax)
E-mail: rwhjr@chhlaw.net

ENTERED COMPUTER

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.

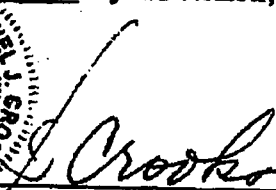

Debra Long

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, 20 23

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

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

2014 DEC 5 P 4: 38

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 pertinent SCDC financial records relative to George Lee Tomlin, SCDC # 166361.

Scanned

ENTERED COMPUTER

Documents Filed Pursuant to SCRCP 5(e)

By Judge: McIntosh

Hearing Date: 12/4/14

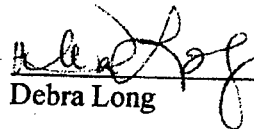
000106

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.

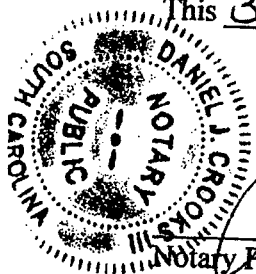
Further affiant sayeth not.

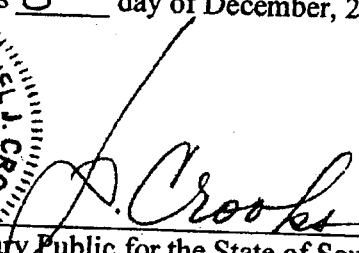

Debra Long

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, 20 23

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

Attachment A

ACCOUNT	GLASS AMOUNT	Note
3005870640 APPELLANT COSTS 11/05/2014	0.00	304.88
Sum 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. 141283606

11-24
1210

Date:
11/05/2014

Agency: N040 - DEPARTMENT OF CORRECTIONS

Phone: 803-896-1907

THREE HUNDRED FOUR USD and 88/100

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

CONTINGENCIES ACCOUNT
WELLS FARGO BANK, NA

304.88

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

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

Wednesday, December 2014

SCDC INMATE FINANCIAL SYSTEM
E. H. COOPER

12/03/14

ACCOUNT SUMMARY

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

CURR LOC: 0442 RIDGELAND

TYPE OF FREEZE : NONE

AMOUNT OF FREEZE: 0.00

CASH WITHDRAWALS: 0.00

CANTEEN PURCHASE: 0.00

TEXT :

SUSPENSE DTE.....:

REST. HOLD AMOUNT: 0.00

LAST UPDATE : INPEHCPY

DATE: 12/06/11

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

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								
	PAYDET	00166361	20000117	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE								
	PAYDET	00166361	20000131	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE								
	PAYDET	00166361	20000214	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE								
	PAYDET	00166361	20000228	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE								
	PAYDET	00166361	20000313	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE								
	PAYDET	00166361	20000327	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE								
	PAYDET	00166361	20000410	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE								
	PAYDET	00166361	20000424	18.25	18.25	24034571	14.00	19990325	REG
	TOTAL PAY DATE								
	PAYDET	00166361	20000508	18.25	18.25	24034571	14.00	19990325	REG

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

				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					

REPORT NO. 01
12/03/14 PAGE 3
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	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				

PAYDET 00166361 20010813
 TOTAL PAY DATE
 REPORT NO. 01
 12/03/14 PAGE 4
 PROGRAM: INPTAPDT

pay166361

18.25

18.25
18.25

24034571

14.00

19990325

REG

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

				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					

REPORT NO. 01
12/03/14 PAGE 5
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	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					

**END
OF
FILING**

Scanned

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2015-002057

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Daniel D. Hall, Circuit Court Judge

Case No.: 2013-CP-23-02017

RECEIVED

MAR 01 2017

SC Court of Appeals

Isiah James, Jr. and George Lee Tomlin, Plaintiffs,
of whom George Lee Tomlin is the

Appellant,

v.

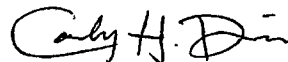
South Carolina Department of Corrections,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent hereby certifies that the Designation of Matter contains all materials proposed to be included in the Supplemental Record on Appeal. Upon information and belief, all materials designated are relevant to this appeal and in accordance with Court rules.

Respectfully submitted,



Carly H. Davis, SC Bar #100112
Russell W. Harter, Jr., SC Bar #2778
Chapman, Harter & Harter, P.A.
14 Lavinia Avenue
Post Office Box 10224 (29603)

Greenville, South Carolina 29601
Telephone: (864) 233-4500
Attorneys for Respondent

February 28, 2017
Greenville, South Carolina