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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

OCT 30 2017

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Administrative Law Judge

SC Court of Appeals

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears,* #281967, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118... Appellants ,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2017-002086

PETITION FOR REHEARING

Francis Ackerman, et al. submit their Petition for Rehearing in this case, contending the Court of Appeals overlooked or misapprehended the following points in its October 17, 2017 dismissal of the appeal.

* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

1. S.C. Code §1-23-610(A)(1) applies where a party seeks review of an ALC final decision.

2. Charlotte-Mecklenburg Hosp. v. DHEC relied on Mid-State Distributors, Inc. v. Century Importers, Inc. and Good v. Hartford Accident & Indem. Co. to explain the meaning of "finality", which should be applied to the ALC rulings.

3. The ALC ruling that it did not have to carry out the Court of Appeals' remand may cause inmate(s) to lose the right to have the ALC consider the issue specified in the remand, which is a distinct branch of the case, and thus the ALC ruling is "final" for purposes of appealability.

4. The ALC ruling that it did not have contested case jurisdiction may cause inmate(s) to lose the right to have the ALC consider the issue specified in the remand from the Court of Appeals, which is a distinct branch of the case, and thus the ALC ruling is "final" for purposes of appealability.

5. The ALC ruling that it did not have jurisdiction because of the pending appeal to the Court of Appeals of the ALC June 13, 2017 remand to SCDC may cause inmate(s) to lose the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of the case, and thus the ALC ruling is "final" for purposes of appealability.

6. The ALC ruling that it could not hear attorney's fees until there is a determination (by SCDC) as to the "official results obtained", would cause a loss of the due process right to have an impartial adjudicator calculate back wages, could effectively dispose of the back wage calculations phase of the case, and eliminate or prejudice the claim for back wages, and thus the ALC ruling is "final" for purposes of appealability.

7. The ALC ruling that it would not at this point determine the motion for

appointment of a Special Referee may cause a loss of the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of the case, and thus the ALC ruling is "final" for purposes of appealability.

8. The ALC ruling that counsel had a "vested contract" to a contingent fee did not state that inmate(s) also acquired vested rights, or that those rights included the §15-77-300 fee, which may effectively dispose of the attorney fee branch of the case and/or prejudice the right to pursue the attorney fee claim under §15-77-300, and thus the ALC ruling is "final" for purposes of appealability.

9. The ALC ruling that attorney fee petitions are remedial and the current version of §15-77-300 can be applied retroactively would operate to nullify or substantially prejudice the vested fee contract rights to have the original 1985 version of §15-77-300 apply, and thus the ALC ruling is "final" for purposes of appealability.

10. The ALC ruling that, even if §15-77-300, 2010 version, is not retroactive, the ALC can still use it to "clarify" what §15-77-300 originally intended would cause the vested fee contract rights to have the 1985 version of §15-77-300 apply to be lost, and thus the ALC ruling is "final" for purposes of appealability.

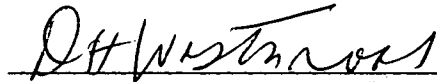
11. The ALC ruling that under the current version of §15-77-300 the Court cannot grant attorney fees greater than the contingent fee would cause the vested fee contract rights to have the original version of §15-77-300 apply, to be lost, and thus the ALC ruling is "final" for purposes of appealability.

12. The ALC ruling that you determine attorney fees by considering the 6

(common law) factors, and then if necessary, consider the lodestar; and the ruling that the lodestar is the enhancement; would result in miscalculation of attorney fees and divest the right under Layman to claim attorney fees as therein determined, and thus the ALC ruling is "final" for purposes of appealability.

13. The ALC ruling that there is a question of law as to whether or not litigation in the ALC is a "civil action" under §15-77-300 would prevent an attorney fee claim for the ALC litigation, and thus the ALC ruling is "final" for purposes of appealability assuming the ALC decides it is not a civil action.

Respectfully submitted,



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Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378, Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461, Terrell Buchanan, #277262, Christopher Bush, #300690, Rudy Cassady, #238732, Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333, Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284, Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678, Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153, Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775, Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427, James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897, Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996, Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237, John Moultrie, #276527, Martin Muntaqim, #142282, Tony Pitts, #280579, Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472, Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043, Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381, Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324, James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866, Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890, Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768, John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911, Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047, Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868, Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682, Taurus Bowman, #252745,

Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveau, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears,* #281967, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118... Appellants,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2017-002086

MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING

* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

This appeal was filed on October 5, 2017. The parties did not brief the appeal before the Court of Appeals issued its order dismissing the appeal on October 17, 2017. The Court dismissed the appeal as interlocutory, citing S.C. Code Ann. §14-3-330 (2016) (Setting forth the categories of judgments from which an appeal may be taken); and S.C. Code Ann. §14-8-200(a) (2016) (Defining the appellate jurisdiction of the Court of Appeals to include **final** decisions of an administrative law judge with the same scope of review as the Supreme Court would apply in a similar case).

Pursuant to SCACR 221(a), Ackerman* contends the Court of Appeals' order overlooked or misapprehended the following points.

1. S.C. Code §1-23-610(A)(1) applies in cases where a party seeks to obtain review of an ALC final decision (Charlotte-Mecklenburg Hosp. v. DHEC 387 S.C. 265, 266, 692 S.E. 2d 894 (S.C., 2010)).

2. In Charlotte-Mecklenburg Hosp., 387 S.C. at 267, the Court relied on two cases, among others, to explain the meaning of "finality": Mid-State Distributors, Inc. v. Century Importers, Inc. 310 S.C. 330, 426 S.E. 2d 777, 780-781 (S.C., 1993) (Regarding issue of appealability of denial of motion to dismiss for lack of personal jurisdiction, held, there is no finality in the denial, and defendant can still show lack of personal jurisdiction at trial); and Good v. Hartford Accident & Indem. Co. 201 S.C. 32, 21 S.E. 2d 209, 212 (S.C., 1942) (Regarding issue of appealability of trial court's rulings, the Court approved principles that a final order or decree must dispose of the cause, or a distinct branch thereof, or operate to divest some right in such a manner as

* "Ackerman" refers to Francis Ackerman, et al., all inmates in this Appellate Case No. 2017-002086.

to put it out of court).

3. The ALC believed it did not have to carry out the Court of Appeals' remand* because the ALC only has appellate jurisdiction and the Court of Appeals' remand is dictum (Sept. 7, 2017 transcript with notice of appeal, pp. 7-9).

Ackerman contends the ALC has jurisdiction and is duty bound to carry out the Court of Appeals' remand order (Muller v. Myrtle Beach Golf & Yacht Club 313 S.C. 412, 414-415, 438 S.E. 2d 248 (S.C., 1993) (Once remittitur is sent down from Supreme Court, Circuit Court "acquires jurisdiction" to enforce the judgment, and is "vested with jurisdiction" to determine attorney fees); Prince v. Beaufort Mem. Hosp. 392 S.C. 599, 709 S.E. 2d 122, 125 (S.C. App., 2011) (Appellate court's mandate is "jurisdictional", and trial court has duty to follow appellate court's directions); SCDSS v. Basnight 346 S.C. 241, 250-251, 551 S.E. 2d 274, 279 (S.C. App., 2001); and Ackerman v. McMillan 324 S.C. 440, 443, 477 S.E. 2d 267, 268 (S.C. App., 1996)).

On June 13, 2017, the ALC remanded this case back to SCDC (remand attached). Now, the ALC believes it does not have jurisdiction to carry out the Court of Appeals' remand.

Ackerman submits the Court of Appeals overlooked the point that the ALC ruling may cause Ackerman to lose the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of this case (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford

* The remand in Ackerman required the ALC to consider "...Inmates' grievances on the merits" (Ackerman, et al. v. SCDC 415 S.C. 412, 782 S.E. 2d 757, 762 (S.C. App., 2016)).

Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling is "final" for purposes of appealability.

4. The ALC stated it did not have contested case, but only appellate jurisdiction (Sept. 7, 2017 transcript, p. 10).

Ackerman contends the ALC has appellate and contested case jurisdiction (ALC Rule 2(E) ("Contested case" means a hearing required by due process); ALC Rule 51 (Jurisdiction for Special Appeals is based on Al-Shabazz v. State 338 S.C. 354, 527 S.E. 2d 742, 750 (S.C., 2000) (Due process requirements apply to interests within the Fourteenth Amendment's protection of liberty and property); Wicker v. SCDC 360 S.C. 421, 602 S.E. 2d 56, 58 (S.C., 2004) (Prevailing wage statute creates interest protected by Fourteenth Amendment which cannot be denied without due process, and these cases are reviewable by the ALC); J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, p. 74) (ALC can have both contested case and appellate jurisdiction).

Ackerman submits the Court of Appeals overlooked the point that the ALC ruling may cause Ackerman to lose the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of this case (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling is "final" for purposes of appealability.

5. The ALC stated it did not have jurisdiction because of the pending appeal to the Court of Appeals of the ALC's June 13, 2017 remand to SCDC (Sept. 7, 2017 transcript, pp. 4, 7, 12, 24-25).

Ackerman contends the ALC retains jurisdiction notwithstanding the appeal of the ALC remand (Jackson v. Speed 326 S.C. 289, 486 S.E. 2d 750, 761 (S.C.,

1997) (Notice of appeal divests lower court of jurisdiction only of the order being appealed); SCACR 205 (After notice of appeal, lower court retains jurisdiction over matters not affected by the appeal); Jackson v. Speed, 486 S.E. 2d at 761 (Jurisdiction retained for attorney fees); Wayne Smith Const. Co., Inc. v. Wolman, Duberstein & Thompson 294 S.C. 140, 149, 363 S.E. 2d 115, 120 (S.C. App., 1987) (Jurisdiction retained for attorney fees); Parker v. Shecut 340 S.C. 460, 492-493, 531 S.E. 2d 546 (S.C. App., 2000) (Jurisdiction retained for contract damages); Grosshuesch v. Cramer 377 S.C. 12, 659 S.E. 2d 112, 122 n. 7 (S.C., 2008) (Different subject matters in lower court and on appeal).

Ackerman submits the Court of Appeals overlooked the point that the ALC ruling may cause Ackerman to lose the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of this case (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling is "final" for purposes of appealability.

6. The ALC stated he did not think he could hear attorney's fees until there is a determination as to the "official results obtained" (Sept. 7, 2017 transcript, p. 12). The ALC's June 13, 2017 Gatewood remand, attached, was for SCDC to determine the "beneficial results obtained", presumably meaning back wage calculations.

Ackerman contends due process requires that an impartial adjudicator determine the "beneficial results obtained" (Due process clause of the South Carolina and United States Constitutions; Art. I, Section 22 of the South Carolina Constitution; Ross v. MUSC 492 S.C. 62, 72 (S.C., 1997) (Due process in administrative matters requires impartial adjudicator); Al Shabazz v. State, 527 S.E.

2d at 750, 753; J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, pp. 66-67).

Further, due process would exclude SCDC as a back wage adjudicator, since it would be a conflict of interest for SCDC to determine its own damages, and SCDC has developed a "will to win" over the course of 13 years contesting liability in these cases (Ross v. MUSC 492 S.C. at 72) ("Will to win" demonstrates partiality by an administrative adjudicator).

Ackerman submits that the Court of Appeals overlooked the point that the due process right to have an impartial adjudicator calculate back wages would be lost if SCDC performed that task (Good v. Hartford Accident & Indem. Co.). Moreover, given SCDC's "will to win" and partiality, the ALC's ruling and remand to SCDC may effectively dispose of the back wage calculations phase of the case, and eliminate or prejudice the claim for back wages (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling was "final" for purposes of appealability.

7. The ALC stated it would not at this point determine the motion for appointment of a Special Referee (Sept. 7, 2017 transcript, p. 7).

Ackerman contends the ALC, or a Special Referee, should calculate back wages, interest, attorney fees, and other matters (Layman, et al. v. State of South Carolina, et al. 376 S.C. 434, 658 S.E. 2d 320, 324, 333-335 (S.C., 2008) (Supreme Court remanded attorney fees request to the Circuit Court to determine entitlement to attorney fees under §15-77-300, with the amount of such fees to be based in part on "the benefit obtained" and other factors to enhance the lodestar with a multiplier). See also, S.C. Code §14-11-60, SCRCP 53(b), and

ALC Rule 68, which Ackerman contends allow for appointment of a Special Referee in this case. See motion, attached hereto.

Ackerman submits the Court of Appeals overlooked the point that Ackerman may lose the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of this case (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling is "final" for purposes of appealability.

8. The ALC stated that counsel had a "vested contract" to a contingent fee (Sept. 7, 2017 transcript, pp. 15-16).

Ackerman contends that counsel and all inmates who signed the 2004 fee contract (attached) acquired vested contract rights, entitling them to the \$15-77-300 (original 1985 version) fee, or the 40% contingent fee, whichever is greater (Sept. 14, 2004 fee contract, containing two methods of fee calculation, \$15-77-300 and contingent fee; Vested contract rights: 16B Am Jur 2d (2009); Const. Law, §747; 16A C.J.S. (2015), Const. Law, §472; Black's Law Dict., Rev. Fourth Ed., p. 1735; United States Trust Co. of New York v. New Jersey 431 U.S. 1, 97 S. Ct. 1505, 1515 note 14, 1516 note 17; Catawba Indian Tribe of South Carolina v. South Carolina 372 S.C. 519, 642 S.E. 2d 751, 756 (S.C., 2007); Wilkinson ex rel Wilkinson v. Palmetto State Transp. Co. 638 S.E. 2d 109, 116 (S.C. App., 2006); First of America Bank v. Netsch 651 N.E. 2d 1105, 1113 (Ill., 1995); Entitlement to greater of \$15-77-300 fee or contingent fee: Albunio, et al. v. City of New York, et al. 11 N.E. 3d 1104, 1108-1110 (Ct. of App. N.Y., 2014)).

Ackerman submits the Court of Appeals overlooked the points that the ALC ruling did not state that Ackerman also acquired vested rights, or that those

rights included the §15-77-300 fee as well. This may effectively dispose of the attorney fee branch of the case, and/or prejudice the right to pursue the attorney fee claim under §15-77-300 (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling is "final" for purposes of appealability.

9. The ALC stated attorney fee petitions are remedial, and §15-77-300, current version, can be applied retroactively (Sept. 7, 2017 transcript, pp. 13, 15-16).

Ackerman contends the original 1985 version of §15-77-300 applies, per the 2004 fee contract, and the current version does not apply and is not remedial. First, the current version would violate the presumption against retroactive application of statutes (Kirven v. Central States Health & Life 409 S.C. 30, 760 S.E. 2d 794, 799 (S.C., 2014)). It would also materially limit the vested contract rights under the 2004 fee contract (Edwards v. SLED 395 S.C. 571, 720 S.E. 2d 462, 466-467 (S.C., 2011); Fernandez-Vargas v. Gonzales 548 U.S. 30, 126 S. Ct. 2422, 2428 (2006); and First of America Bank v. Netsch, 651 N.E. 2d at 1113).

Moreover, the 2010 amendments to §15-77-300 are not remedial because they create no new remedy (Edwards v. SLED, 720 S.E. 2d at 466); and they create a different fee liability for the agency than under original §15-77-300 (Carolina Chemicals, Inc. v. SCDHEC 351 S.E. 2d 575, 578-579 (S.C. App., 1986)).

The current version of §15-77-300 would also materially alter and divest vested fee contract rights, which are "property" under the Constitution, and thus violate due process (United States Trust Co. of New York v. New Jersey, 97 S. Ct. at 1516 note 16; Coombes v. Getz 285 U.S. 434, 52 S. Ct. 435, 438

(1932); and Jefferson Disposal Co. v. Jefferson Parrish 603 F. Supp. 1125, 1136 (ED La., 1985)).

The current version of §15-77-300 would also substantially impair the fee contract by altering the reasonable expectations of the contract parties (Kirven, 760 S.E. 2d at 800), since the parties are presumed to have adopted the fee contract terms in reliance on the original version of §15-77-300 to govern a later fee petition (United States Trust Co. of New York v. New Jersey, 97 S. Ct. at 1515 note 14, 1516 note 17).

In addition, the current version of §15-77-300 would also materially alter the fee contract terms (Harleysville Mut. Inc. Co. v. South Carolina 401 S.C. 15, 736 S.E. 2d 651, 658 (S.C., 2012); and the rights and obligations of the contract parties, and legal effect of the contract (Superior Motors, Inc. v. Winnebago Ind., Inc. 359 F. Supp. 773, 777 (D.S.C., 1973)).

Finally, application of the 2010 amendments to §15-77-300 would breach a legislatively-created contract in original §15-77-300 (United States Trust Co. of New York v. New Jersey, 97 S. Ct. at 1515 note 14; Layman, et al. v. State of South Carolina, et al. 368 S.C. 631, 630 S.E. 2d 265, 268 (S.C., 2006)).

Ackerman submits the Court of Appeals overlooked the point that the ALC ruling would operate to nullify or substantially prejudice the vested fee contract rights to have the 1985 version of §15-77-300 apply (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling is "final" for purposes of appealability.

10. The ALC stated, even if §15-77-300, 2010 version, is not retroactive, the ALC can still use it to "clarify" what §15-77-300 "originally intended", based on Duvall v. State Budget & Control Board 377 S.C. 36, 659 S.E. 2d 125,

130 (S.C., 2008) (Sept. 7, 2017 transcript, pp. 20-21).

Ackerman contends that §15-77-300, 1985 original version applies, and the 2010 amendments to §15-77-300 do not apply. See authorities, paragraph 9. Also, in Duvall, the amendment itself stated it was a clarification of, rather than a change to, existing law.

Ackerman submits the Court of Appeals overlooked the point that here, there are vested fee contract rights that original §15-77-300 would apply, which rights would be lost if the 2010 amendments "clarified" what §15-77-300 originally intended (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling is "final" for purposes of appealability.

11. The ALC stated, under the current version of §15-77-300, the ALC cannot grant attorney fees greater than the contingent fee (Sept. 7, 2017 transcript, p. 13).

Ackerman contends §15-77-300, 1985 version, applies, and the 2010 amendments do not apply. See authorities, paragraph 9.

Ackerman submits the Court of Appeals overlooked the point that here, there are vested fee contract rights that original §15-77-300 will apply, which rights would be lost if the current version of §15-77-300 were applied (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling is "final" for purposes of appealability.

12. The ALC stated you determine the attorney fee by considering the six (common law) factors, and then if necessary, consider a lodestar. The ALC also stated the lodestar is the enhancement (Sept. 7, 2017 transcript, p. 18).

Ackerman contends that under Layman, 658 S.E. 2d at 332-335, the ALC was incorrect. The lodestar is calculated first, and then the Court may enhance the lodestar with a multiplier based on one or more of the common law factors (Id.).

Ackerman submits that the Court of Appeals overlooked the point that the ALC ruling would result in miscalculation of attorney fees, and divest the right under Layman to claim attorney fees as calculated therein (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman submits the ALC ruling is "final" for purposes of appealability.

13. The ALC stated there is a question of law as to whether or not litigation in the ALC is a "civil action" under §15-77-300 (Sept. 7, 2017 transcript, p. 26).

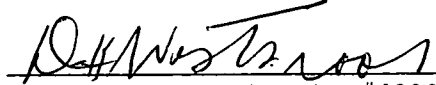
Ackerman contends that litigation in the ALC for judicial review of SCDC wage denial is a "civil action" under §15-77-300 (McDowell v. SCDSS 304 S.C. 537, 543, 405 S.E. 2d 830, 833 (S.C., 1991) (Agency typically "presses its claim" in judicial review actions); Al-Shabazz v. State, 527 S.E. 2d at 750, 754 (Inmates may seek judicial review in ALC of SCDC final decisions); Wicker v. SCDC, 602 S.E. 2d at 58 (Due process requires judicial review in ALC of SCDC wage denial claims); and Ross v. MUSC 435 S.E. 2d 877, 878 note 2 (Proceeding under APA is civil action for purposes of attorney fee recovery)).

Ackerman submits that the Court of Appeals overlooked the point that the ALC ruling would prevent the claim for attorney fees for the ALC litigation on judicial review of SCDC wage denials (Mid-State Distributors, Inc. v. Century Importers, Inc.; Good v. Hartford Accident & Indem. Co.). Thus, Ackerman

submits the ALC ruling is "final" for purposes of appealability.*

For the reasons stated herein, Ackerman requests that the petition for rehearing be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "D. Westbrook", is written over a horizontal line.

Douglas H. Westbrook, #6039

23 Broad St.

Charleston, SC 29401

(843) 853-9600

Attorney for Francis Ackerman, et al.

* Assuming the ALC decides it is not a civil action.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Francis Ackerman, #266928, Malik)
Aljalil, #219551, Linso Allen, #269378,)
Michael Benninger, #264212, Fredrick)
Brown, #289602, Timothy Brown,)
#238461, Terrell Buchanon, #277262,)
Christopher Buch, #200690, Rudy)
Cassady, #238732, Sheldon Clark,)
#264772, Zawaski Cobb, #187136,)
Kamathene Cooper, #145333,)
Gladstone Cummings, #267450, Patrick)
Curtis, #175139, Quintin Daniels,)
#196284, Curtis Davis, #238776,)
Heyward Dempsey, #134171, Phillip)
Denney, #240678, Paul Durham,)
#219573, Jerome Durham, #270393,)
Keith Eigner, #299153, Bernard Felder,)
#122099, Jermaine Garriett, #191274,)
Dennis Goff, #177506, Gregory Grant,)
#109656, Nelson Hampton, #286427,)
James Hartmant, #219770, Gary Hayes,)
#263985, Michael Hood, #279897,)
Nikia Law, #260855, Stephen Lease,)
#137016, Harry Leonard, #249996,)
Herbert McFadden, #184297, Michael)
McFarland, #266870, Earl Mack,)
#216237, John Moultri, #276527, Matin)
Muntaqim, #266870, Tony Pitts,)
#280597, Germaine Pringle, #250390,)
Gene Richardson, #93614, Dennis)
Richey, #233472, Ignacio Rivera,)
#300424, Vondell Sanders, #241308,)
James Sartler, #235043, Joseph)
Schmitz, #173987, Arthur Scott,)
#251957, Jerome Scott, #153381,)
Roosevelt Scott, #275631, Archie)
Simmons, #161419, Robert Smith,)
#199324, James Williams, #282929,)
Gary Bryant, #258972, Harlon Edger,)
#261866, Johnny Holden, #245199,)
Don Hughes, #256862, Michael Key,)
#266890, Archie Lee, #226354, Isaac)
Richardson, #232574, Larkland)
Richards, #281768, John Wojcik,)

Docket No. 07-ALJ-04-0444-A-AP

ORDER OF REMAND

FILED

June 13, 2017

SC ADMIN. LAW COURT

#219463, James Bogan, #288111, Larry)
 Burke, #281911, Jammie Gaymon,)
 #208922, David Harrell, #260004, Jeff)
 Stinson, #260047, Ricky Libby,)
 #274681, Alain Lareua, #128014,)
 Quentin Baker, #297868, Frank Corley,)
 #292975, James Jackson, #267718,)
 Quintin Linen, #238553, Thomas Miles,)
 #246763, Chauncy Orr, #177069,)
 Isaiah Scott, #228008, Eric Youmous,)
 #281091, Derek Carter, #275938,)
 Willie Hare, #256641, Ernest Miller,)
 #235474, Robert Norris, #266101,)
 Ronald Simmons, #267937, Samuel)
 Simmons, #302393, William Thomas,)
 #272501, Anthony Murphy, #295893,)
 Anthony Murray, #237867, Johnny)
 Hayes, #267910, Roy Morris, #288777,)
 Daniel Dewey, #276678, Nehemiah)
 Greene, #243339, Leroy Choice,)
 #113990, James McFadden, #235419,)
 Francis Prioleau, #268813, Darrell)
 Rochester, #146731, Wilbur Jordan)
 #292264, Alvin Stewart, #278595,)
 Kevin Poston, #266083, Kevin Smith,)
 #272440, Donald Robinson, #277520,)
 Douglas Bude, #263537, Willie Elder,)
 #246208, Rogelio Zavala, #245106,)
 Dennis Knight, #286981, Jacob Beach,)
 #301270, Francis Ackerman, #266928,)
 Darrin Miller, #259593, Edward Bryant,)
 #255998, Sherman Austin, #20028,)
 Michael Baylor, #265682, Taurus)
 Bowman, #252745, Kenneth Carter,)
 #243538, Calvin Drummond, #236322,)
 David Feggins, #287157, Terry)
 Ferguson, #299080, Willie House,)
 #257820, Peter Jenkins, #257321, Percy)
 Martin, #270035, James Murray,)
 #165487, Stephone Simmons, #300422,)
 Larry McClam, #282972, Tyrone Aiken,)
 #244428, Tyrone Aiken, #248367,)
 Frank Anderson, #282800, Ronald)
 Brewer, #285756, Keith Brown,)
 #295762, Pete Bryant, #242370,)
 Michael Busques, #191961, Richard)

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Butler, #162467, Gary Davis, #106144,)
 Anthony English, #238474, Kerian)
 Etheredge, #236635, James Evans,)
 #267837, Jose Flores, #240563, Robert)
 Garrett, #291096, Reginald Geddis,)
 #183851, Richard Graham, #228235,)
 Gary Grooms, #283860, Wayne Harlan,)
 #245705, Johnny Hayes, #267910,)
 Steven Hickenbottom, #196263,)
 Alfred Joyner, #260442, Donald Lyles,)
 #296135, Henry Baker, #263398,)
 Thomas Carter, #249362, Thomas)
 Butler, #257552, Bobby Williams,)
 #261486, Ray Wells, #173651, Rodney)
 Pressley, #177947, Keith Kelly,)
 #257556, Maxie Gamble, #254413,)
 James Enriquez, #215539, Perry)
 Deveaux, # 109601, James Wells,)
 # 180458, Cedric Martino, #291396,)
 Donald McAteer, #292961, Robert)
 Wydman, #260331, Anthony Wright,)
 #214007, Derrick Williams, #272958,)
 Kenneth White, #228409, James)
 Trumper, #247429, Jeffrey Spears,)
 #281697, Timothy Smith, #296539,)
 Davis Sims, #278067, Virgil Simpson,)
 #281888, Edward Simpson, #220017,)
 Kenneth Simmons, #278911, George)
 Shine, #292391, Ralph Sellers, #164295,)
 Laron Richardson, #258786, Frank)
 Patterson, #283098, Tony McNeil,)
 #235846, Larry McClam, #282972,)
 Lavanza Mack, #189340, Raymond)
 Livingston, #277133, Nicholas)
 Lambrose, #215080, Joseph Kelsey,)
 #217218, Keith Eugene, no number,)
 Chuck Jackson, #266425, James Foye,)
 #211523, Timothy Inman, #151123,)
 Marvin Gilbert, #273934, Demetrius)
 Wheeling, #264976, Leon Wilson,)
 #155867, Jeffrey Tevis, #216442,)
 Darryel Beasley, #222388, Curtis)
 Thompson, #266448, Baron Cobbs,)
 #280479, James Tino, #145030, Harold)
 Roberson, #117001, Ray Gadsen,)
 #187527, Tony Witt, #242918,)

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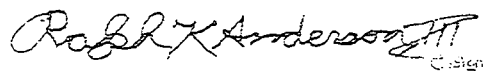
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Jonathan Singleton, #287670, Joe	)
Pannell, #89592, Charles Graham,	)
#294453, Lazarus Brannon, #227847,	)
Darrell Williams, #219730, Wilbert	)
Mills, #244004, Howard Grant,	)
#255473, Timothy Wilson, #261971,	)
Rodney Elliott, #251337, Henry	)
Rivers, #219118,	)
	)
Appellants,	)
	)
vs.	)
	)
South Carolina Department of Corrections,	)
	)
Respondent.	)

This matter is before the South Carolina Administrative Law Court (Court or ALC) on remand from the South Carolina Court of Appeals (Court of Appeals). The case originally came before the ALC on an appeal filed by multiple inmates (Appellants) concerning the Prevailing Wage Statute. The Court denied the appeal, stating that Appellants failed to timely file their grievances. The Court of Appeals subsequently reversed and remanded the cases for processing of the grievances. *See Ackerman, et al. v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), *cert. denied* (May 30 2017). Accordingly,

IT IS THEREFORE ORDERED that these cases are remanded to the South Carolina Department of Corrections for consideration of Appellants' grievances on the merits in keeping with the Court of Appeals decisions in *Ackerman* and *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 785 S.E. 2d 60 (2016).

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

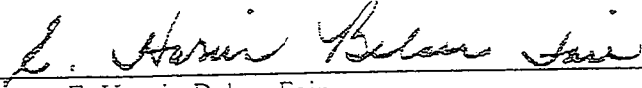
June 13, 2017
Columbia, South Carolina

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CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

June 13, 2017
Columbia, South Carolina

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Fred Gatewood, #289775,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 07-ALJ-04-0517-A-AP

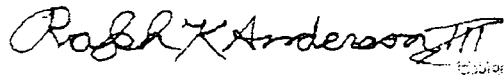
ORDER OF REMAND

This matter is before the South Carolina Administrative Law Court (Court or ALC) on remand from the South Carolina Court of Appeals (Court of Appeals). Fred Gatewood (Appellant) participated in prison industries, and his case was one of 197 consolidated cases regarding wages. The Court of Appeals reversed the ALC's conclusion that S.C. Code § 24-1-295 (2007) applied retroactively to inmate gross wages earned prior to August 1, 2007. In addition, the Court of Appeals remanded the issue of Appellant's entitlement to costs, attorney's fees, prejudgment interest, and post-judgement interest.

Because the determination of attorney's fees encompasses several factors, including the beneficial results obtained,¹ this matter shall be held in abeyance pending the outcome of the grievance hearings on the wage cases arising from both this case and *Ackerman, et al. v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), *cert. denied* (May 30 2017). Accordingly,

IT IS THEREFORE ORDERED that the grievance is remanded to the South Carolina Department of Corrections for processing as set forth in *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 785 S.E. 2d 60 (2016), *cert. denied* (May 30, 2017).

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

June 13, 2017
Columbia, South Carolina

¹ See S.C. Code Ann. § 15-77-300 (B) (2016).

FILED

June 13, 2017

SC ADMIN. LAW COURT

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CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

June 13, 2017
Columbia, South Carolina

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STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Fred Gatewood, #289775,	)	Dock. No. 07-ALJ-04-00517-AP
	)	
Appellant,	)	
	)	
vs.	)	MOTION AND MEMORANDUM FOR
	)	APPOINTMENT OF SPECIAL
South Carolina Department	)	REFEREE
of Corrections,	)	
	)	
Respondent.	)	
_____	)	

Inmate Fred Gatewood requests the Court to appoint a Special Referee in this case, as follows.

I. BACKGROUND

On July 5, 2007, Gatewood and other inmates by counsel filed a Motion to Appoint Special Master to calculate back wages, deductions and other matters "in the event Appellants' grievances are upheld". On March 9, 2016, the Court of Appeals held that §24-1-295 did not apply retroactively to Gatewood's pre-August 1, 2007 work and remanded for ALC reconsideration of the issue of attorney's fees and other matters. On May 30, 2017, the Supreme Court denied SCDC's petition for certiorari. Gatewood contends he is now the prevailing party, and submits his motion for appointment of a Special Referee to calculate back wages, deductions, and the like.

II. LAW

(A) Due Process

The requirements of procedural due process apply to deprivation of interests encompassed by the Fourteenth Amendment (Al Shabazz v. State 527 S.E. 2d at 750). In Wicker v. SCDC 602 S.E. 2d at 58, the S.C. Supreme Court found

that the prevailing wage statute, §24-3-430(D), creates an interest encompassed by the Fourteenth Amendment's protection of liberty and property which cannot be denied without due process.

The South Carolina Constitution, Article I, Section 22, states as follows:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication.

In Ross v. MUSC 492 S.E. 2d 62, 72 (S.C., 1997), the Supreme Court stated that the purpose of S.C. Constitution, Article I, Section 22, is to:

ensure adjudications are conducted by **impartial** administrative bodies. See Babcock v. Office of Audits, supra note 7 (due process requires impartial decisionmaker). Partiality exists where, among others, an adjudicator either has ex parte information as a result of prior investigation or has developed, by prior involvement with the case, a "will to win".

(B) S.C. Code §14-11-60 and SCRCP 53(b)

S.C. Code §14-11-60 and SCRCP 53(b) allow a Circuit Court judge to appoint a Special Referee to decide a matter upon agreement of the parties, and in default and foreclosure cases. The Circuit Court may also direct a reference "in all other actions" as to some or all causes of action. Moreover, ALC Rule 68 allows the Administrative Law Court to apply the South Carolina Rules of Civil Procedure to resolve questions not raised by the ALC rules. There is no known ALC rule addressing appointment of Special Referees.

III. DISCUSSION

(A) Reasons to Appoint Special Referee

The initial reason to appoint a Special Referee is to comply with due process in the calculation of Gatewood's back wages. On June 13, 2017, the ALC

issued an order of remand to SCDC for "processing" to determine the "beneficial results obtained", apparently meaning Gatewood's back wages due. However, if SCDC calculates back wages, deductions and the like, in effect SCDC will be determining its own damages. In such circumstances, SCDC would not be an impartial adjudicator as required by due process. Moreover, Gatewood submits that SCDC's litigation of this matter since 2004 demonstrates its "will to win" to avoid paying statutory wages, and thus, its partiality (Ross v. MUSC).

Second, these calculations will require back wage, deductions, interest and tax computations for Gatewood from 2004 to 2009. Gatewood submits that the computations will require the skills and objectivity of a Special Referee, preferably a Certified Public Accountant or tax attorney.

(B) SCDC Responsibilities

Gatewood requests the Court to issue an order requiring SCDC to perform the following responsibilities:

1. Within 30 days after appointment of the Special Referee, submit to the Special Referee and counsel for the parties all documents relevant to Gatewood's wage calculations, including but not limited to Gatewood's "Exhibit F" documents (containing Gatewood's pay dates, pay rates, hours worked and pay amounts);* pay stubs and time cards; dates and hours worked, pay dates, pay rates, and pay amounts; and deductions, including but not limited to, child

* SCDC has indicated Exhibit F may have incorrect information after a certain date. Gatewood contends Exhibit F, as an SCDC document, is prima facie evidence of the information stated therein.

support, victim assistance, court orders for same, and deductions for security and prison industry overhead, including health, safety and welfare of Gatewood.

2. Within the 35-60 day period following file date of the Special Referee's calculations and payment order, if the order has not been appealed by a party:

(a) SCDC shall make payment in the amounts owed under the order as follows: (1) to Gatewood's prison account if he has one, and if not, a prison account should be opened in his name and payment made, and obtain a written receipt signed by Gatewood acknowledging receipt of said funds into his prison account. If Gatewood cannot have a prison account, or otherwise accept funds, SCDC shall notify the Special Referee and both counsel of that fact and cooperate with Gatewood and counsel to have the funds sent to a person or persons of Gatewood's choice; (2) to Gatewood's counsel for any attorney fees and costs owed by SCDC to counsel; and (3) to the Special Referee for SCDC's portion, and Gatewood's portion, of the Special Referee fee owed;

(b) When the payments in (a) are made to Gatewood, SCDC shall submit a written accounting to Gatewood for all payments SCDC makes per the Special Referee's order; and submit the written accounting, and a copy of Gatewood's signed receipt of funds into his prison account, to the Special Referee and to both parties' counsel;

(c) SCDC shall also provide Gatewood's current prison location and address to the Special Referee and both parties' counsel.

(C) Special Referee Responsibilities

Gatewood requests the Court to issue an order requiring the Special Referee to perform the following responsibilities:

1. Gross Wages. Calculate Gatewood's gross wages from 2004 to 2009 at \$4 per hour based on the budget provisos for that period, and §24-1-295. The prevailing wage should apply for July 2007, and should be at least \$12.06 per hour based on the 2004 estimates of economist Joe Benich in the record (Gatewood v. SCDC App. Case No. 2014-001199 (Op. No. 5389, 3-9-16, p. 10; SR p. 865; SC App, p. 1225).*

2. Statutory Deductions. For 2004 to June 30, 2007, calculate deductions per the budget provisos from gross wages as follows:

(a) 20% for court-ordered restitution, or 10% for Victim Compensation Fund if no court-ordered restitution or court-ordered restitution has been satisfied;

(b) 10% for room and board. See Gatewood v. SCDC Op. p. 10.

For July 1, 2007 to July 31, 2007, calculate deductions per §24-3-40(A) from gross wages as follows:

(a) 20% for court-ordered restitution, or 10% to State Office of Victim Assistance and 10% retained by SCDC for services to crime victims if restitution has not been court-ordered or if court-ordered restitution has been satisfied;

* "SR" denotes the ALC 1st Supplemental Record on Appeal in Ackerman, et al. v. SCDC Dock. No. 07-ALJ-04-00444, etc., dated May 6, 2011. "SC App." denotes the Appendix in Ackerman, et al. v. SCDC Sup. Ct. App. Case No. 2016-000829.

(b) 35% for court-ordered or agreed upon child support obligation, or 25% for room and board if no child support obligation;

(c) 10% set aside for Gatewood, plus another 10% if no child support, plus another 10% in interest bearing account for Gatewood (not deductions);

(d) balance to pay Gatewood's federal and state taxes;

(e) any balance to Gatewood (not a deduction). Gatewood, p. 10.

For August 1, 2007 to 2009, pursuant to the March 9, 2016 Court of Appeals' decision, calculate deductions per §24-1-295 from gross wages as follows:

(a) any required deductions for security and prison industries overhead;

(b) 20% for court-ordered restitution, or 20% to S.C. Victims Compensation Fund if restitution has not been court-ordered or if court-ordered restitution has been satisfied;

(c) 35% for court-ordered or agreed upon child support obligation, or 25% for room and board if no child support obligation;

(d) 10% to Gatewood if no child support; another 10% to Gatewood; and another 10% held in interest bearing account for Gatewood (not deductions);

(e) balance to pay Gatewood's federal and state taxes;

(f) any balance to Gatewood (not a deduction). Gatewood, p. 10.

The Court of Appeals stated in its March 9, 2016 decision, page 16, note 14, it was "likely" that SCDC was already taking deductions for security and overhead from Gatewood's gross wages. If that proves true, Gatewood requests that he be credited for these improper deductions against any applicable

security/overhead deductions taken after August 1, 2007.

Gatewood contends SCDC incurred no expense for security/overhead. In its Court of Appeals brief, SCDC stated at page 25 that it was reimbursed by WTI for security and overhead and all expenses. Also, the 2004 deduction records Gatewood proposes for the record show only victim compensation and room and board deductions for inmates, but no deductions for security or prison industries overhead. If SCDC had no expense for these items, they should not be deductible from Gatewood's wages.

3. SCDC Payments Made. For Gatewood, deduct the wage amount SCDC previously paid, to arrive at the net back wage amount due.

4. Pre-Judgment Interest. For Gatewood, calculate and add to the net back wage due, pre-judgment interest at 8 3/4% from each pay date, based on the amount underpaid, that is, the amount that should have been paid (gross wages less statutory deductions), less the amount actually paid. Pre-judgment interest accrues per annum (S.C. Code §34-31-20(A)).

5. Post-Judgment Interest. For Gatewood, calculate and add post-judgment interest at 7.5%, compounded annually, from March 9, 2016, the Court of Appeals' opinion date. See, S.C. Code §34-31-20(B).

6. Attorney Fee. The attorney fee is either the \$15-77-300 fee or the 40% contingent fee, whichever is greater. The \$15-77-300 fee is determined by the Court. The Special Referee shall first calculate the "full 40% contingent fee amount" for Gatewood. Calculate Gatewood's total gross wages (para. 1) for all pay periods worked, before costs, and if approved by the Court, any statutory deductions are made (2004 Fee Contract). Then, subtract SCDC's total wage payments to Gatewood for all pay periods worked (para. 3). The result

is the "gross amount recovered" under the fee contract, before costs and statutory deductions, for Gatewood. Next, multiply the "gross amount recovered" by 40% to arrive at the "full 40% contingent fee amount" for Gatewood. The final step is to calculate the difference between the "full 40% contingent fee amount", and the \$15-77-300 fee amount, to arrive at the "portion of the full contingent fee amount" which Gatewood shall pay counsel from his recovery.

If the \$15-77-300 fee does not apply, the Special Referee shall calculate the "full 40% contingent fee amount" as stated above, however, the provision requiring Gatewood to pay counsel the difference between the "full 40% contingent fee amount" and the \$15-77-300 fee would not apply, and Gatewood would pay counsel the "full 40% contingent fee amount".

7. Attorney Costs. Section 15-77-300 costs will be determined by the Court. It is expected that costs will be the same whether assessed under \$15-77-300 or the contingent fee contract. If assessed under \$15-77-300, SCDC will pay costs. If assessed under the contingent fee contract, Gatewood will pay costs to counsel from Gatewood's recovery.

8. Special Referee Fee. The Special Referee shall also calculate Gatewood's share of the Special Referee's fee. This probably works out to 50% of the Special Referee's fee to do Gatewood's calculations alone, since S.C. Code §14-11-60 requires the Special Referee to be compensated "by the parties", presumably leaving 50% of the total Gatewood fee to be paid by SCDC, and 50% to be paid by Gatewood from his recovery.

9. Net Inmate Payment. The result should be the total back wages and interest net recovery for Gatewood.

10. Attorney Fee Interest. For Gatewood, calculate interest on any attorney fee award at 7.75%, compounded annually, from the date of such award.

11. No statutory deduction should be taken without verifiable written documentation in the record to support it.

12. In a Title VII action, the precise amount of back wages need not be determined (Hance v. Norfolk South. Ry. Co. 571 F 3d 511 (6 Cir., 2009); 45C Am Jur 2d (2012), Job Discrim., §2555). The back pay calculations may be based on a just and reasonable inference of the imprecise figure (Akouri v. State of Florida Dept. of Trans. 408 F 3d 1338 (11 Cir., 2005); 45C Am Jur 2d (2012), Job Discrim., §2555). Any ambiguity should be resolved against a discriminating employer (Hance v. Norfolk South. Ry. Co.), and when it is impossible to reconstruct the employment of each claimant, back pay equal to the maximum amount which could have been earned but for the discrimination is appropriate (U.S. v. City of Warren, Mich. 138 F 3d 1083 (6 Cir., 1998); 45C Am Jur 2d (2012), Job Discrim., §2555). One whose wrongful conduct has rendered difficult the ascertainment of precise damages cannot complain of the impreciseness. Thus, doubt regarding the certainty of damages is resolved against the wrongdoer (22 Am Jur 2d (2013), Damages, §343). Gatewood contends these rules should apply here.

13. Gatewood is currently in a county prison facility and apparently has no prison account. He requests instructions as to how he is to receive any back wage recovery. He apparently has a "county" account.

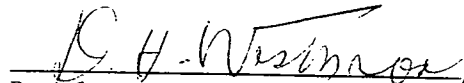
14. Gatewood's counsel requests permission to petition the Court for further instructions if the need arises.

15. Finally, the Special Referee should prepare and file a calculations and payment order incorporating the within suggestions and any others that the Court deems appropriate.

IV. CONCLUSION

For the above reasons, Gatewood respectfully requests appointment of a Special Referee in this matter, preferably a Certified Public Accountant or tax attorney. Gatewood also requests orders to SCDC and the Special Referee to perform the responsibilities discussed herein, and any others the Court may deem appropriate.

Respectfully submitted,


Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Fred Gatewood

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

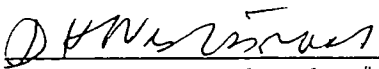
Fred Gatewood, #289775,)
)
 Appellant,)
)
vs.)
)
South Carolina Department)
of Corrections,)
)
 Respondent.)
_____)

Dock. No. 07-ALJ-04-00517-AP

CERTIFICATE OF SERVICE

I certify that on the 30 day of June , 2017, I mailed a copy of
Fred Gatewood's Motion and Memorandum for Appointment of Special Referee
to counsel of record for the S.C. Department of Corrections, as follows:

Lake E. Summers, Esquire
Malone, Thompson, Summers & Ott, LLC
339 Heyward St.
Suite 200
Columbia, SC 29201



Douglas H. Westbrook, #6039
23 Broad St.
Charleston, SC 29401
(843) 853-9600
Attorney for Fred Gatewood

DOUGLAS H. WESTBROOK
ATTORNEY AT LAW
23 BROAD STREET
CHARLESTON, SOUTH CAROLINA 29401
TELEPHONE: (843) 853-9600
FAX: (843) 577-2241

September 14, 2004

Mr. Darrell Williams
#219730
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Re: Collection of Wages Against SCDC and Williams
Technologies, Inc.; Supplement to August 27,
2002 Fee Agreement; Authorization to File a
Grievance and Proceed Through ALJ and Court
Channels

Dear Mr. Williams:

This will confirm our previous conversations concerning
the above captioned matter.

This letter will supplement our August 27, 2002 Fee Agree-
ment, and authorize me as class counsel in Williams, et al. v.
SCDC, et al., Case No. 02-CP-18-134, and Darrell Williams as
class representative, to file a grievance against SCDC for
collection of wages, and pursue that grievance on behalf of
the class through the Administrative Law Judge Division and
Courts, if necessary.

My attorney fee will be one third of any amount recovered
by the inmates by way of settlement, judgment, or otherwise,
whether before or after suit is filed. I may ask the Court,
in appropriate circumstances, to require the State to pay the
attorney fees in this case pursuant to S.C. Code 15-77-300.

The attorney fee does not include any costs which may be
incurred, which are the inmates' responsibility to pay, and
must be paid in advance at my election.

The above described 33 1/3 % contingent fee is based on
the gross amount recovered, before costs, and if approved by
the Court, any statutory deductions are made.

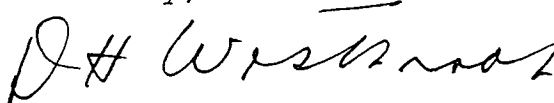
Mr. Darrell Williams
September 14, 2004
Page Two

This supplemental fee agreement covers handling the case at the grievance level only, plus appeal to the ALJ Division and Circuit Court. I retain the right to include any appeal beyond the Circuit Court in this contingent fee agreement, and if that occurs, the attorney fee will increase to 40% of any amount recovered, and the inmates will bear the cost of any appeal costs.

I also retain the right to withdraw from representing you and the inmates if, after further investigation and research, I determine there is questionable liability and/or damages, or there is no likely source of funds from which an award or attorney fee could be paid. In addition, if you discharge me as your lawyer, I will be entitled to compensation for my services up to the time of discharge.

If the above is agreeable, please sign (and have the below named other inmates sign) and date the blanks by your name(s), and return all sheets to me.

Sincerely,



Douglas H. Westbrook

DHW/

I have read the attached supplemental fee agreement dated September 14, 2004, and understand and agree that it, along with the August 27, 2002 fee agreement, constitutes the fee agreement for this case. I further agree to make prompt payment of any expenses required. I also understand that the outcome of any litigation is uncertain, and that no promises of success in the case have been made to me.



Darrell Williams
Class Representative



Signature

Sept 22-04

Date

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378, Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461, Terrell Buchanon, #277262, Christopher Bush, #300690, Rudy Cassady, #238732, Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333, Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284, Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678, Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153, Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775, Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427, James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897, Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996, Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237, John Moultrie, #276527, Matin Muntaqim, #142282, Tony Pitts, #280579, Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472, Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043, Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381, Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324, James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866, Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890, Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768, John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911, Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047, Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868, Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682, Taurus Bowman, #252745,

Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157,
* Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy
Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry
McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson,
#282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370,
Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony
English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores,
#240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham,
#228235, Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910,
Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135,
Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby
Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly,
#257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux,
#109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer,
#292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick Williams,
#272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears,*
#281967, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888,
Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph
Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony
McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond
Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith
Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman,
#151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson,
#155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson,
#266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001,
Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe
Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell
Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy
Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118... Appellants ,

v.

South Carolina Department of Corrections..... Respondent.

RECEIVED

Appellate Case No. 2017-002086

OCT 30 2017

SC Court of Appeals

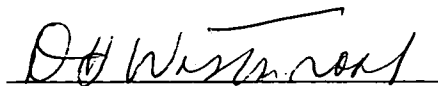
PROOF OF SERVICE

I certify that I have served Appellants' Petition for Rehearing, Memorandum, and attachments on the S.C. Department of Corrections by depositing a copy of these documents in the U.S. Mail, postage prepaid, on October 27, 2017,

* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

addressed to Lake Summers, Esquire, Malone, Thompson, Summers & Ott, LLC,
339 Heyward St., Suite 200, Columbia, SC 29201, attorney of record for Resp-
ondent S.C. Department of Corrections.

October 27, 2017.

A handwritten signature in black ink, appearing to read "D. Westbrook", is written over a horizontal line.

Douglas H. Westbrook, #6039

23 Broad St.

Charleston, SC 29401

(843) 853-9600

Attorney for Francis Ackerman, et al.

DOUGLAS H. WESTBROOK
ATTORNEY AT LAW
23 BROAD STREET
CHARLESTON, SOUTH CAROLINA 29401
TELEPHONE: (843) 853-9600
FAX: (843) 577-2241

October 27, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
OCT 30 2017
SC Court of Appeals

Re: Francis Ackerman, et al. v. SCDC
Appellate Case No. 2017-002086

Dear Ms. Kitchings:

Please find enclosed for filing with the Court the original signature copy and six additional copies of Appellants' Petition for Rehearing, Memorandum in Support, attachments, and Proof of Service, for the above case. I also enclose a check for \$25 for the filing fee.

By copy of this letter, I have this date served a copy of these documents on counsel for the Respondent Department of Corrections, Lake Summers.

Thank you for your assistance in this matter.

Sincerely,



Douglas H. Westbrook

DHW/
Encl.
cc: Lake Summers, Esquire

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Clerk of Court
S.C. Court of Appeals
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SC Court of Appeals

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