No. _____

In the Supreme Court of the United States

SAUNDRA RHODES,

Petitioner,

V.

JESSICA GIFFORD,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the circuit court err in affirming an award of attorney's fees in excess of $800,000 where the Appellee received only a nominal verdict of one-dollar and no punitive damages and no declaratory or injunctive relief in a case that has zero impact on the legal landscape?

2. Did the circuit court err in affirming an award of costs under 42 U.S.C. § 1988 in excess of those taxable costs recoverable under 28 U.S.C. § 1920 and Rule 54(d), FRCP, which is directly contrary to the "clear rule" announced by the U.S. Supreme Court in 2019 in *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S.Ct. 873 (2019)?

LIST OF PARTIES TO THE PROCEEDING

All the parties to the proceeding are set forth fully in the caption.

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The Petitioner Saundra Rhodes respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is included at App. 1 through App. 5. The opinions of the district court are unpublished and are included at App. 8 through App. 43.

JURISDICTION

The Fourth Circuit Court of Appeals filed its decision on December 19, 2024. (App. 1-5). Thereafter, on January 2, 2025, the Petitioner filed a timely Petition for Panel Rehearing and Rehearing En Banc. The Fourth Circuit Court of Appeals entered an order denying Petitioner's petition for rehearing on January 14, 2025. (App. 6-7). This Court has jurisdiction under 28 U.S.C. § 1524(1) to review the circuit court's decision on a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

None. This appeal involves the application of 42 U.S.C. § 1988(b).

STATEMENT OF THE CASE

This litigation arises out of an action filed by the Respondent Jessica Gifford (also referred to as Jane Doe-4) against Horry County and the Horry County Police Department ("HCPD"), Saundra Rhodes, Scott Rutherford, William Squires, Thomas Delpercio, and Dale Buchanan. The Respondent alleged negligence/gross negligence claims against Horry County and HCPD related to the alleged inappropriate actions of former detective Troy Allen Large and claims pursuant to 42 U.S.C. § 1983 against the individual Defendants.

Three of the individually named Defendants were dismissed July 9, 2019, during the course of pre-trial litigation as a result of a negotiated settlement agreement (Rutherford, Squires, and Buchanan). The Defendant Delpercio was dismissed voluntarily by the Plaintiff on October 27, 2017. The Defendant Horry County was also voluntarily dismissed prior to the beginning of the trial.

The case was tried before a jury from May 2, 2022 through May 9, 2022. The jury returned a verdict in

favor of the Respondent against the HCPD in the amount of $500,000 in actual damages as to the state law claim brought pursuant to the South Carolina Tort Claims Act. As to the federal claim, the jury returned a verdict against the Petitioner Saundra Rhodes for one dollar in nominal damages, with no punitive damages awarded.

The Respondent filed a motion for attorney's fees and costs pursuant to 42 U.S.C. § 1988. The Appellee sought attorney's fees of $878,467.80 and costs of $23,848.37.

On March 29, 2023, the district court entered an order granting the Respondent's motion for attorney's fees and costs. The district court ruled: "Gifford's motion for attorneys' fees in the amount of $878,467.80, less the billing for more than two attorneys at a deposition, is **GRANTED**, her motion for costs, less her expert fees and expenses and the $47 filing fee, is **GRANTED**." (App. 43). However, the district court made no decision as to what those deductions are, and hence, a sum certain in attorney's fees and costs has not been entered into the district court's record.

The remaining Defendants, including the Petitioner Rhodes, subsequently filed a timely appeal to the Fourth Circuit Court of Appeals.

In a *per curiam* decision, the circuit court affirmed the award of attorney's fees in excess of $800,000 as

well as an award of all costs. (App. 1-5). Without providing any analysis of the issues, the circuit court ruled that "the district court did not err in awarding attorney's fees, reasonable litigation expenses, and costs to Gifford." (App. 4).

The Petitioner then filed a petition for rehearing *en banc*, which was summarily denied. (App. 6-7).

REASONS FOR GRANTING THE PETITION

I. The circuit court erred in affirming an award of attorney's fees in excess of $800,000 where the Respondent received only a nominal verdict of one dollar and no punitive damages and no declaratory or injunctive relief in a case that has zero impact on the legal landscape.

The Petitioner Saundra Rhodes, who is a former police chief, appealed the district court's award of over $800,000 in attorney's fees under 42 U.S.C. § 1988(b) in a case where the jury held her liable for a one-dollar verdict under a § 1983 supervisory liability theory. In summary fashion, the circuit court ruled "that the district court did not err in awarding attorney's fees, reasonable litigation expenses, and costs to Gifford." (App. 4). In so ruling, the circuit court failed to correctly apply well-established precedent from this Court and from the circuit courts. Without providing any legal analysis, the circuit court affirmed an award of attorney's fees in excess of $800,000 where the Respondent received only a nominal verdict of one-dollar and no punitive damages and no declaratory or injunctive relief in a case having zero impact on the legal landscape. In effect, by means of a *per curiam* opinion, the circuit court allowed an attorney's fees award that is ***more than 800,000 times*** **the one-dollar nominal verdict** to stand – an award that is

simply unprecedented in the Fourth Circuit or any other jurisdiction.

The attorney's fees award in this case is governed by this Court's decision in *Farrar v. Hobby*, 506 U.S. 103 (1992), in which it was held that "[i]n some circumstances, even a plaintiff who formally 'prevails' under § 1988 should receive no attorney's fees at all." 506 U.S. at 115. As this Court counseled, "[a] plaintiff who seeks compensatory damages but receives no more than nominal damages is often such a prevailing party." 506 U.S. at 115. This Court further explained that "[i]n a civil rights suit for damages, however, the awarding of nominal damages also highlights the plaintiff's failure to prove actual, compensable injury." *Id*. Therefore, "[w]hen a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, *the only reasonable fee is usually no fee at all*." *Id*. (Emphasis added).

Importantly, in the case at bar, the Respondent sued only for money damages.[1] In her Complaint, the

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[1] While the Respondent recovered a verdict of $500,000 against the Defendant Horry County Police Department ("HCPD"), that recovery was made solely on the state law negligence claim brought pursuant to the South Carolina Tort Claims Act. (App. 44-47). However, the HCPD as a matter of law cannot be held liable for attorney's fees pursuant to the Tort Claims Act. *See*, *Knoke v. South Carolina Department of Parks, Recreation and Tourism*, 324 S.C. 136, 478 S.E.2d 256, 260 (1996). Moreover, that verdict was not recovered against the Petitioner Rhodes. The attorney's fees

Respondent's prayer was for actual, consequential, and punitive damages. She never sought any declaratory or injunctive relief.

As the Fourth Circuit has recognized, "[i]f the plaintiff only seeks monetary damages, the purpose of the lawsuit is likely to obtain monetary damages, and the appropriate comparison is between the amount of damages sought and the measure of damages awarded." *Pitrolo v. County of Buncombe*, 589 Fed. Appx. 619, 630 (4th Cir. 2014). Accordingly, "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Id.*, *citing Farrar*, 506 U.S. at 114. In fact, as this Court opined in *Farrar*, "a substantial difference between the judgment recovered and the recovery sought suggests that the victory is in fact purely technical." *Farrar*, 506 U.S. at 121.

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are only recoverable against Rhodes based on the one-dollar nominal verdict. *See*, *Kentucky v. Graham*, 473 U.S. 159, 164 (1985) (Supreme Court held that § 1988 authorized the payment of fees only by "the party legally responsible for relief on the merits"). Moreover, the Respondent's success on the state law negligence claim may not be used to augment her recovery against Rhodes. *See*, *Johnson v. City of Aiken,* 278 F.3d 333, 338 (4th Cir. 2002) ("*Graham* teaches us that Clark's status as a nonparty on the state law assault claim protects him from § 1988 liability arising from that claim. Accordingly, the district court erred in basing Clark's § 1988 liability on Johnson and Vickers' success against the City on the state law assault claim").

The district court, nonetheless, relied on three so-called "O'Connor factors" from Justice O'Connor's concurrence in *Farrar* in making its unprecedented award of over $800,000 in fees. However, the district court's application of those factors is riddled by numerous errors of law where the court failed to properly apply existing precedent from this Court and the Fourth Circuit. The circuit court erred in failing to correct these errors.

The first factor requires a comparison of the relief sought to the relief obtained. In the leading case of *Mercer v. Duke University*, 401 F.3d 199 (4th Cir. 2005), this Court described the first factor as one "of primary importance in all cases where a court is asked to award fees to the prevailing party – the extent of the relief obtained by the plaintiff." 401 F.3d at 204. "When considering the extent of the relief obtained, we must compare the amount of the damages to the amount awarded." *Id*. Strangely, the district court found this factor weighed in favor of the Respondent because, in its view, the Respondent only sought nominal damages from the jury. The district court specifically writes: "[A]s Gifford notes, absent from the trial strategy here was a high demand for monetary damages. In fact, Gifford's counsel declined to ask for any specific amount of actual monetary losses at trial." (App. 16).[2] That was a clear error of

[2] That error was later repeated in the same order where the district court writes: "Gifford never asked for a particular

law as demonstrated by the Respondent's counsel's closing argument where he asked the jury for at least $1.2 million in actual damages on the § 1983 claim and also suggested the sum of $7.2 million for a punitive damages award. (App. 49-52).[3] That is in

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amount of money for her constitutional claims against Rhodes." (App. 33).

[3] During closing arguments, the Respondent's counsel initially suggested $1.2 million as an award on the state law claim against Horry County Police Department. (App. 49). Then with respect to the federal claim against Rhodes, he stated:

> The second category is civil rights damages. That's not so easy. That is a tough one. Because in that category you, Ladies and Gentlemen, are to place a value on the constitutional right that was taken from Ms. Gifford. And the law relies on you, Ladies and Gentlemen, within your collective wisdom to place a value on that constitutional right being snatched away. And I don't envy that task. And I'm not going to suggest what that number should be other than it's certainly at least equal to this [reference made to demonstrative showing $1.2 million of actual damages].

(App. 49-50). Thereafter, the Respondent's counsel turned to punitive damages by stating:

> Let's take seven times 52 weeks. $20,000 times 52 weeks a year times seven years would be some number, I don't -- $7.2 million. I submit that's an appropriate punitive damages number that will send the right message to the 46 county-wide police departments that we all rely on for our safety.

(App. 51).

addition to $1.2 million requested on the state tort claim against HCPD. (App. 49). Notably, the term "nominal damages" was not mentioned during the closing arguments. Therefore, the district court's findings on the first factor are clearly in error and contrary to what actually was presented to the jury by way of a damages demand. Accordingly, the first factor weighs heavily in favor of denying the attorney's fees award.

Significantly, this case is no different from *Farrar* where the jury was asked to return a multi-million-dollar verdict on the constitutional claim and the verdict ended up being one dollar. There is no palpable difference between the $17 million demand in *Farrar* and the $8.4 million demand (actual and punitive demands combined) in the case at bar. They are both exorbitant when compared to the one-dollar verdicts received in both cases. The result in *Farrar*, therefore, should be the result here – "no fee at all." Instead, the lower court – in contravention to this Court's decision in *Farrar* – awarded in excess of $800,000 in attorney's fees for a one-dollar nominal verdict.

The district court, as affirmed by the circuit court, also erred in finding that the second and third "O'Connor factors" weigh in favor of the Appellee. The district court relied solely on the Fourth Circuit's decision in *Mercer, supra*, which was a landmark Title IX decision which the court noted several times includes a "first-of-its-kind liability determination." 401 F.3d at 207. In addressing the second factor in

Mercer, the Fourth Circuit found that "the legal issue on which Mercer prevailed is an important one. Mercer's case established that the contact-sports exemption does not permit a school to discriminate against women that the school has allowed to participate in contact sports. Mercer's case was the first to so hold, and it will serve as guidance for other schools facing the issue." 401 F.3d at 206. *See also*, *Pitrolo v. County of Buncombe*, 589 Fed. Appx. 619, 630 (4th Cir. 2014) ("the case should be significant to the body of civil rights law because it is novel, establishes important precedent, or otherwise advances the law"); *Kane v. Lewis*, 675 Fed. Appx. 254 (4th Cir. 2017) (as to the second factor, courts often "focus[] on whether the plaintiff's victory altered the legal landscape").

Similarly, as to the third factor, the Fourth Circuit found that the case served a public purpose because "Mercer's case was important in that it marked a milestone in the development of the law under Title IX. The case likewise serves a significant public purpose, by furthering Title IX's goal of eliminating discrimination in educational institutions." *Mercer*, 401 F.3d at 207-208. *See also*, *Pitrolo,* 589 Fed. Appx. at 631 ("a civil rights plaintiff's case must be somewhat extraordinary to justify an award of attorney's fees if the jury awarded no or only nominal damages and the plaintiff failed to request other relief or obtained none").

The present case could not be more different than *Mercer*. Quite simply, the Respondent's case was not novel or groundbreaking or a "first-of-its-kind" or extraordinary. It is a § 1983 supervisory liability claim regarding sexual misconduct of an employee. In addressing both the second and third factors, the Respondent insisted that her victory was "novel" because the district court explained that constructive knowledge is sufficient to prove a supervisory liability claim. Yet, that represents a complete misunderstanding of existing precedent on supervisory liability claims. There are literally dozens of supervisory liability claims in this circuit predating this trial where the Fourth Circuit and the district courts have held that supervisory liability may be premised on the supervisor's actual or constructive knowledge. That has been the law *since at least 1994* (if not earlier), when the Fourth Circuit decided *Shaw v. Stroud*, 13 F.3d 791 (4th Cir. 1994), where the court described the three elements of a supervisory liability claim, including the first element requiring "that the supervisor had actual *or constructive knowledge* that his subordinate was engaged in conduct that posed 'a pervasive and unreasonable risk' of constitutional injury to citizens like the plaintiff." 13 F.3d at 799. (Emphasis added). Since 1994, there have been literally over a hundred decisions by the Fourth Circuit and the district courts within the Circuit recognizing that constructive knowledge is sufficient to satisfy the first prong of a supervisory liability claim. Contrary to the Respondent's claim, the case at bar did not establish

that law. This case is not novel or unusual or extraordinary – certainly not in the way that *Mercer* made a "first-of-its-kind liability determination." *Mercer*, 401 F.3d at 207.

Likewise, this case does not create any deterrent effect. Of note, the jury also rejected an award of punitive damages – despite the Respondent's counsel's request for $7.2 million in punitive damages during closing argument. (App. 51) As circuit courts, including the Fourth Circuit, have recognized, the fact that the jury did not award any punitive damages actually weighs substantially against a finding that the verdict serves a deterrent effect. *See*, *McAfee v. Boczar*, 738 F.3d 81, 94 (4th Cir. 2013) ("[t]he jury's forbearance of a punitive damages award, however, reveals that deterrence and vindication may not be so important here. The point of punitive relief is to 'punish what has occurred and to deter its repetition.' Because the jury did not approve punitive damages, the court's reliance on deterrence and vindication in its calculation of McAfee's success is substantially undermined"). *Maul v. Constan*, 23 F.3d 143, 146-147 (7th Cir. 1994) (recognizing that "an award of punitive damages in addition to compensatory damages was 'strong evidence of public purpose'" yet the denial of punitive damages weighed against award of attorney's fees); *Cartwright v. Stamper*, 7 F.3d 106 (7th Cir. 1993) (same).

In *Mercer*, the Fourth Circuit recognized that the O'Connor factors "help separate the usual nominal-

damage case, which warrants no fee, from the unusual case that does warrant an award of attorney's fees." *Mercer*, 401 F.3d at 204. The district court did not identify anything unusual or extraordinary about this case. It is one of dozens of supervisory liability decisions. No novel law was established. No one is citing this case. Indeed, in the two-plus years since issued, the district court's decisions have not been cited even one time by another judge or court. In short, a fair and reasoned analysis of the "O'Connor factors" and this Court's holding from *Farrar* indisputably demonstrate that this case, like *Farrar*, is one where "the only reasonable fee is usually no fee at all." *Farrar*, 506 U.S. at 115.

It should not be overlooked that the district court, as affirmed by the circuit court, ordered the Petitioner Rhodes (who is the only § 1983 defendant) to pay attorney's fees in an amount ***more than 800,000 times*** the nominal damage award of one-dollar, in the absence of any other affirmative relief including declaratory or injunctive relief. ***That is unprecedented in the Fourth Circuit or any other circuit***. In *McAfee v. Boczar*, 738 F.3d 81 (4th Cir. 2013), the Fourth Circuit lamented the award of attorney's fees that was approximately 109 times the verdict received. To that point, the Fourth Circuit wrote:

> The Supreme Court has rejected the proposition that a § 1988 fee award must invariably be proportionate to the amount of

> damages a civil rights plaintiff actually recovers. In *Rivera,* the Court affirmed an attorney's fee award of $245,456, which was slightly in excess of seven times the plaintiff's recovery of compensatory and punitive damages, amounting to $33,350. In this case, however, we cannot ignore the pronounced disproportionality between the verdict for less than $3000, and the fee award more than 100 times that amount. Such a disparity may well be unprecedented in this Circuit, notwithstanding *Mercer,* which affirmed an award of attorney's fees amounting to almost $350,000 on a verdict for nominal compensatory damages of just $1. The plaintiff in *Mercer,* though, was also found entitled to $2,000,000 in punitive damages, rendering the fee award a fraction -- not a multiple -- of the damages obtained.

738 F.3d at 94. (Citations omitted).[4]

As referenced in *McAfee*, this Court issued a pre-*Farrar* decision in *City of Riverside v. Rivera*, 477 U.S. 561 (1986), where the Court "reject[ed] the proposition that fee awards under § 1988 should necessarily be proportionate to the amount of damages a civil rights

[4] The Fourth Circuit in *McAfee* explained by footnote that the original punitive damages award of $2 million awarded by the jury in *Mercer* was vacated on the basis that punitive damages are not recoverable in a private action under Title IX. *McAfee*, 738 F.3d at 94, n.10.

plaintiff actually recovers." 477 U.S. at 574. Notably, *Rivera* was not a nominal damages case like *Farrar* or the case at bar. *Rivera* still acknowledged, nonetheless, that "[t]he amount of damages a plaintiff recovers is certainly relevant to the amount of attorney's fees to be awarded under § 1988." *Id*.

While this Court did not adopt a "proportionality" test *per se* in *Rivera* where there was not a nominal damages award, it is submitted that such a test would be appropriate and necessary, as this case demonstrates, to ensure fundamental fairness in adjudicating an attorney's fees award where there is an award of nominal damages only. In essence, this Court left some leeway or discretion in *Farrar* by using the term "usually" in stating "[w]hen a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, the only reasonable fee is *usually* no fee at all." *Farrar*, 506 U.S. at 115. (Emphasis added). Yet, some degree of proportionality is needed, as this case shows. Certainly, under any sense of proportionality, an attorney's fees award that is more than 800,000 times the one-dollar nominal verdict is not proportional and should not be permitted to stand.

The inclusion of a "proportionality" benchmark is not necessarily novel. The Fourth Circuit itself in *Sheppard v. Riverview Nursing Center, Inc.*, 88 F.3d 1332 (4th Cir. 1996), read *Farrar* as suggesting that "considerations of proportionality should guide the decision whether to award fees." 88 F.3d at 1335.

Sheppard, however, is a Title VII case and applies proportionality in that context, as do a few other circuit courts. *See also*, *Norris v. Sysco Corp.*, 191 F.3d 1043 (9th Cir. 1999) (Title VII case); *Garcia v. City of Houston*, 201 F.3d 672 (5th Cir. 2000) (Title VII case). However, there is no reason that a proportionality test should not also apply in the context of a § 1983 case.

With the issuance of a writ of certiorari, the Court has the opportunity to expand on its holding in *Farrar* and to provide further guidance to lower courts as to circumstances where "no fee" is dictated for an award of nominal damages only – that is, in the absence of punitive damages and declaratory and injunctive relief, as in the case at bar. The Court is further urged to adopt a proportionality test to satisfy fundamental fairness and to prevent what occurred in this case, where a § 1983 defendant has been found liable for an attorney's fees award that is more than 800,000 times the one-dollar nominal verdict. That is not only unprecedented but is also not proportional to the success achieved.

In sum, with the nominal verdict of one-dollar returned by the jury, the Respondent clearly did not prove her entitlement to any of the relief actually requested, particularly in the absence of punitive damages, declaratory relief, injunctive relief, or even a novel development in the law. The most she can claim is a moral or "technical" victory as the jury did not find the Petitioner Rhodes caused actual damage

to the Respondent. In other words, the only "success" enjoyed by the Respondent is "the moral satisfaction of knowing" that a federal jury concluded that her rights had been violated. *Farrar,* 506 U.S. at 114. However, as this Court made clear in *Farrar*, that "success" carries no entitlement to attorney's fees and/or costs under § 1988. As was the result in such controlling cases as *Farrar* and others cited herein, the attorney's fees award in this case should be reversed as the only reasonable fee in this case is "no fee at all." In the alternative, if the Court is unwilling to reduce the attorney's fees to "no fee," then the Court should either reduce the attorney's fees awarded based on the limited degree of success, as the Fourth Circuit did in *McAfee*, or remand with instructions that the district court reduce the attorney's fees to an amount properly commensurate with the limited degree of success achieved by the Respondent.

II. The circuit court erred in affirming an award of costs under 42 U.S.C. § 1988 in excess of those taxable costs recoverable under 28 U.S.C. § 1920 and Rule 54(d), FRCP, which is directly contrary to the "clear rule" announced by the U.S. Supreme Court in *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S.Ct. 873 (2019).

The district court, as affirmed by the circuit court, also erred in awarding costs under § 1988 in excess of those taxable costs recoverable under 28 U.S.C. § 1920 and Rule 54(d), FRCP. The district court failed to

apply the "clear rule" announced by this Court in *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S.Ct. 873 (2019). Instead, the district court relied on pre-*Rimini* case law from the Fourth Circuit Court of Appeals – case law that is no longer valid given the *Rimini* decision. On appeal, the circuit court committed the same error. Without any analysis, the circuit court affirmed the district court's award of costs.

Importantly, in *Rimini*, this Court established a "clear rule" as follows: "A statute awarding 'costs' will not be construed as authorizing an award of litigation expenses beyond the six categories listed in §§ 1821 and 1920, absent an explicit statutory instruction to that effect." 139 S.Ct. at 878. This Court further ruled that "Section 1821 and 1920 create a default rule and establish a clear baseline against which Congress may legislate. Consistent with that default rule, some federal statutes simply refer to 'costs.' In those cases, federal courts are limited to awarding the costs specified in §§ 1821 and 1920." 139 S.Ct. at 877. Further explaining, this Court states: "If, for particular kinds of cases, Congress wants to authorize awards of expenses beyond the six categories specified in the general costs statute, Congress may do so. … But absent such express authority, courts may not award litigation expenses that are not specified in §§ 1821 and 1920." *Id.* As overlooked by the courts below, the *Rimini* decision overrules any previous decisions where courts have allowed prevailing parties to recover "reasonable litigation expenses" under § 1988, including the Fourth Circuit's decision in *Daly v. Hill*,

790 F.2d 1071 (4th Cir. 1986), on which the district court relied.

Recently, in fact, the Tenth Circuit also recognized that *Rimini* "hold[s] that the authorization in 42 U.S.C. § 1988 to award 'full costs' does not provide the 'explicit statutory authority' required to award costs, including expert witness fees, beyond those provided by §§ 1920 and 1821." *Alfwear, Inc. v. Mast-Jaegermeister US, Inc.*, 2023 WL 8232072, *5 (10th Cir. 2023). That is the crux of the Petitioner Rhodes' position. Under the "clear rule" announced in *Rimini*, costs may not be awarded under § 1988 to the prevailing party except for the taxable costs allowed for the six categories listed in §§ 1821 and 1920. The one exception created by Congress is for § 1981 cases where the statute says, "the court, in its discretion, may include expert fees as part of the attorney's fee." 42 U.S.C. § 1988(c). There are no other exceptions for the award of costs or expenses – as part of the attorney's fees or otherwise – that have been explicitly authorized by Congress under § 1988.

To recap, there is no "explicit statutory authority" in § 1988 that allows for the award of non-taxable costs as claimed by the Respondent. The Respondent, in fact, made no attempt to point out any such explicit language in § 1988 to support the district court's award of the "other costs" claimed, including meals, hotels, air travel, mileage, parking fees, computer or audio-visual equipment, COVID masks, and "background investigation." Quite clearly, none of

those items are taxable as costs under 28 U.S.C. § 1920 and Rule 54(d), FRCP, and as a result, those costs should not have been awarded against the Petitioner Rhodes. A writ of certiorari should be issued, and that clear error of law should be reversed.

CONCLUSION

For the foregoing reasons, the Petitioner Saundra Rhodes submits that the Petition for Writ of Certiorari should be granted. The Court is respectfully requested to reverse the district court's award of attorney's fees and costs under 42 U.S.C. § 1988 and remand for entry of an award of "no fee at all" consistent with *Farrar*. In the alternative, if the Court is unwilling to reduce the attorney's fees to "no fee," then the Court is requested to either reduce the attorney's fees awarded based on the limited degree of success under the proportionality test, as what occurred in such cases as *McAfee, supra*, or remand with instructions that the district court reduce the attorney's fees to an amount properly commensurate or proportional with the limited degree of success achieved by the Respondent. Additionally, the Court is requested to remand with direction that the Respondent is entitled only to those costs taxable under 28 U.S.C. § 1920 and Rule 54(d), FRCP, in accordance with this Court's holding in *Rimini*.

Respectfully Submitted,

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April 14, 2025

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1471

JESSICA GIFFORD,

Plaintiff-Appellee,

v.

HORRY COUNTY POLICE DEPARTMENT; SAUNDRA RHODES,

Defendants-Appellants,

And

HORRY COUNTY, SOUTH CAROLINA; SCOTT RUTHERFORD; THOMAS DELPERCIO; WILLIAM SQUIRES; DALE BUCHANAN,

Defendants.

Appeal from the United States District Court for the District of South Carolina, at Florence.

Mary G. Lewis, District Judge. (4:16-cv-031236-MGL)

Submitted: October 23, 2024 Decided: December 19, 2024

Before WILKINSON and WYNN, Circuit Judges, and FLOYD, Senior Circuit Court Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Andrew F. Lindemann, LINDEMANN LAW FIRM, P.A., Columbia, South Carolina; Samuel F. Arthur, III, AIKEN BRIDGES ELLIOTT TYLER & SALEEBY, P.A., Florence, South Carolina; Lisa A. Thomas, RICHARDSON PLOWDEN & ROBINSON, P.A., Myrtle Beach, South Carolina, for Appellants. Kathleen C. Barnes, BARNES LAW FIRM, LLC, Hampton, South Carolina; James B. Moore, III, Scott C. Evans, EVANS MOORE, LLC, Georgetown, South Carolina, for Appellee.

PER CURIAM:

Jessica Gifford filed suit against the Horry County Police Department ("HCPD") and Saundra Rhodes (collectively, Appellants), and several other parties with whom Gifford settled her claims prior to trial. Gifford asserted causes of action against HCPD for negligence in violation of the South Carolina Tort Claims Act, and against Rhodes for violation of her constitutional rights pursuant to 42 U.S.C. § 1983. The jury found for Gifford on both claims, awarding her $500,000 against HCPD and a nominal judgment against Rhodes. After the judgment, Appellants filed a Fed. R. Civ. P. 59(e) motion seeking, inter alia, a remittitur in the award against HCPD, and Gifford filed a motion for attorney's fees, reasonable litigation expenses, and costs under 42 U.S.C. § 1988. The district court denied Appellants' Rule 59(e) motion and granted in part Gifford's requests for fees and costs. On appeal, Appellants challenge both orders. We affirm.

We review the district court's order dismissing HCPD's Rule 59(e) motion for abuse of discretion. *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403, 407 (4th Cir. 2010). The district court may grant a Rule 59(e) motion "if the movant shows either (1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or a manifest

injustice." *Id.* The purpose of Rule 59(e) is to "permit[] a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings." *Id.* Based on our review of the record, we conclude that the district court did not abuse its discretion in denying Appellants' postjudgment motion.

Next, we review for abuse of discretion the district court's order granting attorney's fees, reasonable litigation expenses, and costs. *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 186 (4th Cir. 2013) (reviewing award of attorney's fees); *Country Vintner of N.C., LLC v. E. & J. Gallo Winery, Inc.*, 718 F.3d 249, 254 (4th Cir. 2013) (reviewing award of costs). We review the district court's conclusion that Gifford was entitled to attorney's fees de novo. *See Johannssen v. Dist. No. 1-Pac. Coast Dist., MEBA Pension Plan*, 292 F.3d 159, 178 (4th Cir. 2002) (questions of law arising in course of attorney's fee determination are reviewed de novo), *abrogated on other grounds by Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 128 (2008)). We have reviewed the record and the relevant legal authorities and conclude that the district court did not err in awarding attorney's fees, reasonable litigation expenses, and costs to Gifford.

Accordingly, we affirm the district court's orders. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED.

FILED: January 14, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1471
(4:16-cv-03136-MGL

JESSICA GIFFORD,

Plaintiff-Appellee,

v.

HORRY COUNTY POLICE DEPARTMENT; SAUNDRA RHODES,

Defendants-Appellants,

and

HORRY COUNTY, SOUTH CAROLINA; SCOTT RUTHERFORD; THOMAS DELPERCIO; WILLIAM SQUIRES; DALE BUCHANAN,

Defendants.

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Wynn, and Senior Judge Floyd.

For the Court

/s/ Nwamaka Anowi, Clerk

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

JESSICA GIFFORD,	§	
Plaintiff,	§	
	§	
vs.	§	C/A NO. 4:16-cv-03136-MGL
	§	
HORRY COUNTY	§	
POLICE DEPARTMENT	§	
and SAUNDRA RHODES,	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS, AS PROVIDED HEREIN

I. INTRODUCTION

Plaintiff Jessica Gifford (Gifford) filed this lawsuit in the Horry County Court of Common Pleas against Defendants the Horry County Police Department (HCPD) and Saundra Rhodes (Rhodes) (collectively, Defendants), along with several other defendants, who have since been dismissed.

Rhodes was the Chief of HCPD during the relevant time period. Gifford alleged violations of her constitutional rights against Rhodes, 42 U.S.C. § 1983, and a state law claim of negligence/gross negligence against HCPD.

Defendants removed the case to this Court. The Court has federal-question jurisdiction over Gifford's federal claim pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over her state claim in accordance with 28 U.S.C. § 1367.

Pending before the Court is Gifford's motion for attorneys' fees and costs. Having considered the motion, the response, the replies, the record, and the relevant law, the Court will grant Gifford's motion for attorneys' fees and costs, as modified herein.

II. FACTUAL AND PROCEDURAL HISTORY

Gifford's negligence/gross negligence claim against HCPD, as well as her constitutional claim against Rhodes, relate to the illegal and inappropriate actions of HCPD's former detective, Troy Allen Large (Large).

The jury in this matter rendered a verdict in favor of Gifford on both her negligence claim against HCPD, in the amount of $500,000, and her constitutional claim against Rhodes, in the amount of one dollar.

Gifford subsequently filed a motion for attorneys' fees and costs, Defendants filed a response in opposition to the motion, and Gifford filed a reply in support of the motion. The motion seeks attorneys' fees and costs only as to Gifford's constitutional claim against Rhodes.

Thereafter, Gifford filed documentation of her costs, Defendants filed their objections, and Gifford filed a reply. The parties also briefed the Court on the untimeliness of Gifford's motion.

The Court, now having been fully briefed on all the relevant issues, is prepared to adjudicate Gifford's motion.

III. DISCUSSION AND ANALYSIS

A. Whether Gifford is entitled to her request for an award of attorneys' fees

1. Whether the Court will excuse the untimeliness of Gifford's motion

Before the Court considers the merits of Gifford's request for attorneys' fees, it must first deal with the untimeliness of it.

Federal Rule of Civil Procedure 54 governs motions for attorneys' fees as well as the time within which such motions for fees must be filed. Rule 54(d)(2)(B) provides that, "[u]nless a statute or a court order provides otherwise, the motion [for attorneys' fees] must[ ] be filed no later than [fourteen] days after the entry of judgment." Fed. R. Civ. P. 54(d)(2)(B).

Nevertheless, "[t]he . . .[C]ourt may, for good cause, extend the . . . deadline 'on motion made after the time has expired if the party failed to act because of excusable neglect.'" *SlepTone Entm't Corp. v. Karaoke Kandy Store, Inc.*, 782 F.3d 313, 316 (6th Cir. 2015) (quoting Fed. R. Civ. P. 6(b)(1)(B)); *see also Allen v. Murph*, 194 F.3d 722, 723-24 (6th Cir. 1999) (noting that, when a party failed to timely file its motion for attorneys' fees and failed to request an enlargement of the time period before such time expired, "the district court could permit a late filing only if the delay was the result of 'excusable neglect.'" (quoting Fed. R. Civ. P. 6(b)(1)(B)).

Judgment was entered in ths (sic) case on May 11, 2022. Thus, Gifford's motion for attorneys' fees were due on May 25, 2022. But, she failed to file them until June 3, 2022, nine days late.

Gifford contends she has established good cause to excuse her late filing on her motion. Defendants disagree.

Ironically, as an aside, the Court notes Defendants' response to the motion was due on June 17, 2022. Having been granted two extensions of time with the consent of Gifford, however, Defendants waited until July 15, 2022 to file their response, twenty-eight days after it was originally due and forty-two days after Gifford filed the motion.

"Because Congress has provided no other guideposts for determining what sorts of neglect will

be considered 'excusable,' [the Supreme Court has] conclude[d] that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993). "These include . . . the danger of prejudice to the [non-movant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id*.

Considering the factors set forth in *Pioneer Inv. Services Co.*, there is no danger of prejudice to Defendants in the Court's excusing Gifford's counsel's nine-day delay in filing her motion for attorneys' fees. The length of the delay and its potential impact on judicial proceedings are negligible.

The reason for the delay Gifford's counsel gives is that they had another six-day trial that immediately followed this one. Then, they state, when they returned to their offices, in preparing their motion, they were required to assemble the billing records of multiple attorneys.

Gifford's counsel do not dispute that the delay was within their control, but there is no evidence of any bad faith. For these reasons, the Court concludes the untimeliness of Gifford's motion for attorneys'

fees was the result of excusable neglect, and will thus be excused.

2. Whether Gifford is entitled to any award of attorneys' fees

According to Gifford, she is entitled to attorneys' fees under 42 U.S.C. § 1988(b). Section 1988(b) provides, in relevant part, that, "[i]n any action or proceeding to enforce a provision of section[ ] . . . 1983, . . . the [C]ourt, in its discretion, may allow the prevailing party . . .a reasonable attorney's fee as part of the costs[,]" *Id*.

Defendants oppose Gifford's claim of attorneys' fees. Alternatively, they request the Court award a substantially reduced amount.

"The purpose of § 1988 is to ensure effective access to the judicial process for persons with civil rights grievances. Accordingly, a prevailing plaintiff should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (citations omitted) (internal quotation marks omitted). The "special circumstances" exception is inapplicable here.

"Congress enacted [Section] 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process." *City of Riverside v. Rivera*, 477 U.S. 561,

576 (1986). "These victims ordinarily cannot afford to purchase legal services at the rates set by the private market." *Id*. Thus, "they are unable to present their cases to the courts." *Id*. (citation omitted) (internal quotation marks omitted).

As per 1988(b), Gifford must be a "prevailing party" to recover any attorneys' fees. Both parties agree she is the prevailing party in this matter. And, they both rely on *Farrar v. Hobby*, 506 U.S. 103 (1992), in support of their position as to whether Gifford is entitled to an award of attorneys' fees.

Each of the parties, however, highlights only the portion of *Farrar* that seemingly supports their positions. Nevertheless, the Court must find and cite to the law that supports the correct outcome.

Defendants center their argument around the portion of the *Farrar* opinion stating that, "[w]hen a plaintiff recovers only nominal damages . . . ,the only reasonable fee is usually no fee at all." *Farrar*, 506 U.S. at 115. Based on this, they contend Gifford is entitled to no award of attorneys' fees.

But, "[b]ecause the Court in *Farrar* held that plaintiffs recovering only nominal damages usually or often will not be entitled to an award of attorney's fees, it is clear that such plaintiffs will at least sometimes be entitled to a fee award." *Mercer v. Duke University*, 401 F.3d 199, 203 (4th Cir. 2005). Thus, the Fourth Circuit has rejected any argument that *Farrar* automatically precludes attorneys' fee

awards in all nominal-damage cases. See, *e.g.*, *Clark v. Sims*, 28 F.3d 420, 425 (4th Cir.1994) (remanding fee award in nominal-damage case for reconsideration in light of plaintiff's limited success).

As the Fourth Circuit has observed, "[a]lthough the majority opinion in *Farrar* provides little guidance for courts considering whether an award of attorney's fees is warranted [in cases in which only nominal damages are awarded], Justice O'Connor in a separate concurring opinion addressed the question in more detail." *Mercer*, 401 F.3d at 203 "Justice O'Connor recognized . . . that not all nominal damages awards are de minimis. Nominal relief does not necessarily a nominal victory make." *Id*. at 204 (citation omitted) (internal quotation marks omitted).

As such, Section 1988 serves as "a tool that ensures the vindication of important rights, even when large sums of money are not at stake, by making attorney's fees available under a private attorney general theory." *Farrar*, 506 U.S. at 122 (O'Connor, J., concurring).

Justice O'Connor "suggested that when determining whether attorney's fees are warranted in a nominal-damages case, courts should consider '[1] the extent of relief, [2] the significance of the legal issue on which the plaintiff prevailed, and [3] the public purpose served by the litigation'" *Id*. (quoting *Farrar*, 506 U.S. at 122 (O'Connor, J., concurring).

The Fourth Circuit employed these three factors in *Mercer* to consider whether the plaintiff, who received only nominal damages, was nonetheless entitled to an award of attorneys' fees under section 1988. In doing so, it stated that "[w]e believe that the factors set forth by Justice O'Connor help separate the usual nominal-damage case, which warrants no fee award, from the unusual case that does warrant an award of attorney's fees." *Id*.

Gifford, not surprisingly, highlights Justice O'Connor's concurrence, and discusses these three factors, in support of her argument she is entitled to attorneys' fees. Defendants fail to provide any argument as to Justice O'Connor's framework.

The first consideration, "the extent of relief" factor, examines "the difference between the amount recovered and the damages sought[.]" *Jones v. Lockhart*, 29 F.3d 422, 424 (8th Cir. 1994). In *Jones*, the Eight (sic) Circuit, finding that this factor weighed in favor of granting of attorneys' fees, stated that, "although there is a discrepancy between the amount of damages sought and the amount recovered ($860,000 sought, $2 recovered), it pales in comparison to the discrepancy presented in *Farrar* ($17,000,000 sought, $1 recovered)." *Id*.

Turning to this case, as Gifford notes, absent from the trial strategy here was a high demand for monetary damages. In fact, Gifford's counsel declined to ask for any specific amount of actual monetary

losses at trial. And, she neglected to offer any evidence of any actual monetary damages incurred for medical and/or mental health treatment.

Instead, according to Gifford, "counsel recognized throughout the trial that, due to the unique nature of this case, the focus of the civil rights claim was squarely on the vindication of the constitutional right of a young woman who was coerced into engaging in a sexual act with a deviant law enforcement officer who was almost three times her age." Gifford's Reply at 5.

In addition, counsel for Gifford requested and presented to the Court a nominal damages jury charge. Thus, evidently, recovery of a large sum of money was neither the theme, the trial strategy, nor the goal of Gifford's case against Rhodes.

Consequently, it seems to the Court that the jury's favorable nominal damage verdict, which underscores that Rhodes is liable to Gifford for Large's unconstitutional, unlawful, and unwanted, sexual touching and/or sexual assault of her, is exactly the relief Gifford was seeking. *See Farrar*, 506 U.S. at 121 (O'Connor, J. concurring) ("[A]n award of nominal damages can represent a victory in the sense of vindicating rights even though no actual damages are proved.")

Besides, because Gifford failed to provide any evidence of actual damages, the jury's award of just nominal damages is perfectly understandable.

All things considered, the Court is unable to say the nominal damages award in this case is fatal to Gifford's request for attorneys' fees. In fact, she got what she wanted: judgment against Rhodes saying Rhodes had violated her constitutional rights. Therefore, this factor weighs in favor of Gifford's request for attorneys' fees.

The second factor to consider is "the significance of the legal issue on which the plaintiff prevailed." *Id*. at 122. "This factor is concerned with the general legal importance of the issue on which the plaintiff prevailed." *Mercer*, 401 F.3d at 206. The constitutional right that is the subject of Gifford's constitutional claim is the right to bodily integrity.

Over 130 years ago, the Supreme Court opined that "[n]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

As Gifford aptly states, she "established at trial that [Rhodes] was legally responsible for the unconstitutional and unlawful acts of her subordinate officer who violated [her] Fourteenth Amendment right to bodily integrity." Gifford's Reply at 7.

Inasmuch as "[n]o right is held more sacred[ ]" than Gifford's right to bodily integrity, *Union Pac. R. Co.*, 141 U.S. at, 251, and the jury found that Rhodes is liable for Large's violation of that right, Gifford succeeded on a significant legal issue. Accordingly the second factor is Justice O'Connor's concurrence in *Farrar* also weighs in favor of granting Gifford's request for attorneys' fees.

"The final factor [the Court] must consider is whether the litigation served a public purpose, as opposed to simply vindicating [Gifford's] individual rights." *Mercer*, 401 F.3d at 207. Gifford's "success might be considered material if it also accomplished some public goal other than occupying the time and energy of counsel, court, and client." *Farrar*, 506 U.S. at 121–22 (O'Connor, J., concurring).

Gifford contends that "[t]he jury's finding in this case sends a message to the current executive staff of the Horry County Police Department and to every county-wide law enforcement agency in the state that they cannot turn a blind eye to evidence of predatory and unconstitutional behavior by one of their own officers." Gifford's Reply at 8-9. According to Gifford, "[t]his is particularly true when the predatory behavior by officers threatens the 'most sacred' of our Constitutional rights, as it did in this case." *Id* at 9.

The evidence in the record overwhelmingly shows that Rhodes knew, or should have known, about

Large's misbehavior and misconduct. But she failed to adequately address it.

Although the monetary award for Rhodes's constitutional violation is nominal, the verdict against her for her constitutional violation is huge. And, it will likely reverberate across the law enforcement agencies of this state for years to come with the resounding message that the top brass must be diligent in monitoring and appropriately responding to their officers' unconstitutional misbehavior and misconduct.

Thus, because the Court is of the strong opinion that Gifford's civil rights claim against Rhodes serves an important public purpose, this factor also weighs in favor of Gifford's request for attorneys' fees.

So, all three of Justice O'Connor's considerations favor a conclusion that Gifford is entitled to an award of attorneys' fees. But, for how much?

3. Whether Gifford's is entitled to an award for attorneys' fees in the amount of $878,467.80

Gifford seeks attorneys' fees in the amount of $878,467.80. Here is a breakdown:

Attorney/Paralegal	Hours	Rate	Total
James B. Moore III, Esq.	690.40	$450	$310,680.00
Scott C. Evans, Esq.	605.11	$450	$272,299.50
Amy Lawrence, Esq.	465.752	$400	$186,300.80
Justin Lovely, Esq.	108.125	$400	$43,250.00
Sarah Austin, Esq.	144.5	$250	$36,125.00
Julie Long, Paralegal	238.5	$125	$29,812.50
Total hours for Attorneys	2,013.887		
Total fees for Attorneys and Paralegal			$878,467.80

"In calculating an award of attorney's fees, a court must first determine a lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate." *Robinson v. Equifax Information Services, LLC*, 560 F.3d 235, 243-44 (4th Cir. 2009). When deciding what constitutes a "reasonable" number of hours and rate, the Fourth Circuit has instructed that the Court's discretion should be guided by the following twelve factors:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in

> pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Barber v. Kimbrell's Inc, 577 F.2d 216, 226 n. 28 (4th Cir.1978).

Although the Court considers all of the factors, they need not be strictly applied in every case inasmuch as all of the factors are not always applicable. *See E.E.O.C. v. Service News Co.*, 898 F.2d 958, 965 (4th Cir. 1990) (stating that seven of the twelve factors were inapplicable in the matter).

Gifford has supplied the Court with time records and affidavits substantiating her request for attorneys' fees, along with an in depth discussion of the relevant above-listed factors. Defendants addressed just a few of those considerations.

a. "the time and labor expended"

This consideration weighs in favor of granting Gifford's petition for attorneys' fees.

"[T]he fee applicant bears the burden of . . . documenting the appropriate hours expended and hourly rates." *Hensley*, 461 U.S. at 437. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Id*. at 433.

Gifford contends, during the six years her lawsuit was pending, her "counsel submitted significant briefing on several complex and important constitutional legal issues that go to the heart of the protections guaranteed by the Fourteenth Amendment, developed an extensive factual record, identified, prepared, and presented highly qualified expert witnesses, identified and interviewed a series of fact witnesses, and zealously represented [Gifford] over [six] days of jury trial." Gifford's Motion at 7.

According to the affidavits of two of Gifford's counsel, they "participated in twelve depositions, multiple hearings, and motions in this matter since 2016. To date, there are [240] ECF filings in this case. . . . The pretrial and trial work was voluminous, extensive, and laborious." Scott E. Evan's Affidavit ¶ 4; James B. Moore III's Affidavit ¶ 4. Counsel also participated in three mediations.

Gifford, "has not sought compensation for considerable time that would otherwise ordinarily be billable in the course of representation to a private client, such as time for communications including

regular telephone conferences with opposing counsel, regular correspondence and emails with opposing counsel, and regular correspondence and emails with co-counsel." Gifford's Motion at 6.

"Additionally, for a majority of the hours expended in discovery and depositions, [Gifford's] Counsel reduced the number of hours . . .to evenly distribute the time between the [other] cases handled by her attorneys during parts of this litigation." *Id.*

"Plaintiff's counsel, of course, is not required to record in great detail how each minute of [her or] his time was expended. But at least counsel should identify the general subject matter of [her or] his time expenditures." *Hensley*, 461 U.S. at 437. Gifford's counsel has done so here.

Defendants lodge several objections to the amount of time Gifford claim for attorneys' fees. The Court will address them in the order Defendants raised them.

First, in a footnote, Defendants argue that "the Court has been given insufficient information by [Gifford] to identify fees attributable to work on the state law claim." Defendants' Response at 6 n.2. But, they neglect to develop the argument. Consequently, this "perfunctory and undeveloped claim [by Defendants is deemed] waived." *Russell v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 396 n. * (4th Cir. 2014).

Besides, inasmuch as both Gifford's state claim and constitution claim concern the supervisory liability for Large's misbehavior and misconduct, and both arise from the same related and interconnected nucleus of operative facts such that they are somewhat inextricably connected, it appears to the Court that it would be impossible to separate the fees for the two separate claims.

Second, Defendants complain of Gifford's counsel "claiming the fees for three and sometimes four and five lawyers for the same task[ ]" without justification. Defendants' Response at 10.

There is no per se rule the Court is aware of that sets forth the maximum number of attorneys one should have participating in trials, depositions, or other case-related matter. On some tasks, such as legal research and trial preparation, billing by multiple attorneys is both common and expected.

As to Gifford's having three attorneys at trial, inasmuch as the Court observed the three of them to have fully participated and have been fulled (sic) engaged in all aspects of the trial, it is not up to the Court to say it was unnecessary to have them all there. After all, it seems improper to question Gifford's use of multiple attorneys, which likely contributed to her proving her case against Rhodes.

The Court has carefully reviewed Gifford's counsel's billing records as to this issue and finds the

hours listed for multiple attorneys to be reasonable. There is just one caveat, however.

In several instances, Gifford bills for more than two attorneys at a deposition. Absent is any explanation as to why more than two attorneys were necessary. The Court, therefore, will not approve any fees for more than two attorneys at a deposition.

Third, Defendants question the awarding of attorneys' fees for attorneys not listed on the Court's docket. According to Defendants, Gifford "attempts to claim attorney's fees for two attorneys who are not even identified by this Court as counsel of record. Justin Lovely and Sarah Austin have never filed a notice of appearance, appeared at any matter in this litigation, nor signed any pleadings or motions on behalf of [Gifford]." Defendants' Response at 10.

But why does Defendant fail to cite to any legal support for the proposition that the Court should refrain from awarding attorneys' fees for these two attorneys? And, why has the Court been unable to locate any? The answer seems obvious: there is none. Thus, this argument appears to be unmoored to any legal authority.

Fourth, Defendants protest Justin Lovely's presence at Large's bond hearing although "Large is not a party to this lawsuit, and his bond hearing addressed no allegations against. . . Rhodes." *Id.* at 10-11. This argument does not merit discussion. Of course, Large's criminal liability for his misbehavior and misconduct when he was employed by Rhodes is

related to her civil liability here. Thus, it was proper for Gifford's counsel to bill for this.

Fifth, Defendants also dispute the hours charged for Justin Lovely's meeting with an identified potential witness for Gifford, who was not called at trial. But, surely Rhodes's counsel would, and likely has, billed for meeting with a potential witness they failed to call to trial. The Court is unable to fathom anything improper about that.

Sixth, Defendants contend it is inappropriate to award attorneys' fees to Justin Lovely's and Sarah Austin's participation in an intensive weekend client preparation session on June 24-26, 2019. According to Defendants, "[t]his case . . . was not tried in 2019, and neither of these attorneys tried it." *Id*. at 11.

But, Defendants well know the trial was originally scheduled for the summer of 2019; and it was proper for these two attorneys to help prepare the case for trial, even if they did not actually try the case. Preparing exhibits and witnesses are just two examples of this.

b. the novelty and difficulty of the questions raised

This consideration also weighs in favor of granting Gifford's request for attorneys' fees.

Proving that Rhodes was liable for a constitutional violation against Gifford was particularly demanding.

> To establish supervisory liability against . . . Rhodes for a constitutional violation, . . . Gifford must prove by a preponderance of the evidence:
>
> > (1) that . . . Rhodes had (a) actual or (b) constructive knowledge, which is defined as knowledge that one using reasonable care or diligence should have, that . . . Large was engaged in conduct that posed an unreasonable risk of constitutional injury to citizens such as . . . Gifford;
> >
> > (2) that . . . Rhodes's response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive conduct; and
> >
> > (3) that there was an affirmative causal link between . . . Rhodes' inaction and the constitutional injury suffered by . . . Gifford.

Jury Charge at 13-14. Nevertheless, although notoriously difficult, Gifford's counsel overcame Rhodes's qualified immunity and other motion for summary judgment claims and convinced the jury to find Rhodes had violated Gifford's constitutional rights.

c. the skill required to properly perform the legal services rendered

This factor, too, weighs in favor of the Court's granting Gifford's motion for attorneys' fees.

Again, this was a notoriously difficult and complex case. And, hats off to counsel for each party for performing so well.

As Gifford points out in her motion,

> The issues in the trial presented sophisticated legal questions that had to be proven to both the Court and communicated to the jury. Did . . . Large violate Jessica's 14th Amendment right to bodily integrity? Was the sexual assault consensual as . . . Rhodes's alleged? Did . . . Rhodes have actual or constructive knowledge that . . . Large was engaged in conduct that posed a risk of constitutional injury to the Plaintiff? Was her response to this knowledge adequate? At
> each turn, Plaintiff was successful.

Gifford's Motion at 9. And, she was successful, in large part, thanks to her highly skilled attorneys.

d. the attorney's opportunity costs in pressing the instant litigation

This factor weighs in favor of Gifford's fee request, too.

Given the amount of time counsel expended on this case, a total of 2,013.887 hours, it is obvious counsel worked on this case at the exclusion of others. And, because Gifford's counsel took this case on a contingent basis, there was no guarantee of the amount of payment, if any, they would receive in payment. Consequently, Gifford's counsel's opportunity costs were quite high.

e. the customary fee for like work

This factor also favors Gifford's request.

"[D]etermination of the hourly rate will generally be the critical inquiry in setting the reasonable fee, and the burden rests with the fee applicant to establish the reasonableness of a requested rate." *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990) (citation omitted) (internal quotation marks omitted). "In addition to the attorney's own affidavits, the fee applicant must produce satisfactory specific evidence of the 'prevailing market rates in the relevant community for the type of work for which he seeks an award." *Id.* (citation omitted) (internal quotation marks omitted).

"Examples of the type of specific evidence that [the Fourth Circuit has] held is sufficient to verify the prevailing market rates are affidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community." *Robinson*, 560 F.3d at 245.

"Although the determination of a market rate in the legal profession is inherently problematic, as wide variations in skill and reputation render the usual laws of supply and demand largely inapplicable, the [Supreme] Court has nonetheless emphasized that market rate should guide the fee inquiry." *Id*. (citation omitted) (internal quotation marks omitted) (footnote omitted).

The Court has provided the per-hour-rates Gifford's counsel seeks in this action above. They range from $250 to $450. Gifford has provided evidence in the form of affidavits from two other highly respected members of the South Carolina bar, who litigate civil rights cases and attest to the outstanding abilities of Gifford's counsel. They support these rates.

Given this, along with the Court's own experience and knowledge of the market, the Court concludes these fees are reasonable. As such, it rejects Defendants' arguments to the contrary.

Although Defendants maintain that Gifford "presents no fee agreement showing that she agreed

to any of the claimed rates," Response in Opposition at 7, Gifford's counsel took this case on a contingency basis. So, of course, there is no such fee agreement.

f. the attorney's expectations at the outset of the litigation

This factor favors the granting of Gifford's attorneys' fees request, as well.

Gifford states that "Counsel took this case with complete uncertainty as to the outcome and aware that few cases survive summary judgment and are successfully tried to verdict under 42 U.S.C. § 1983." Gifford's Motion at 10. And, she is correct.

In the Court's experience, most all Section 1983 cases are dismissed at either the motion to dismiss or the motion for summary judgment stage. Few survive past that. But, this one did. That is a huge credit to Gifford's counsel.

According to Gifford, "Counsel was dedicated to the notion that if Plaintiff was successful at trial, a finding of a 42 U.S.C. § 1983 violation against . . . Rhodes was well worth the uncertainty of the outcome." *Id*.

g. the time limitations imposed by the client or circumstances

This factor is inapplicable to the facts of this case.

h. the amount in controversy and the results obtained

This factor favors Gifford.

As discussed above, Gifford never asked for a particular amount of money for her constitutional claim against Rhodes. Instead, it appears she sought to have her claim for the harm done to her be acknowledged. And it was, with both a unanimous jury verdict finding a constitutional violation by Rhodes, and a Court that wholly agrees with the jury's determination.

i. the experience, reputation and ability of the attorney

This factor heavily favors the granting of Gifford's motion as to both the number of hours billed, with the exception noted above, and the rate requested.

Counsel for both Gifford and Defendants did an outstanding job representing their clients at trial. They also all enjoy a great reputation and are a credit to the South Carolina Bar.

Gifford's attorneys are experienced in the field of civil rights litigation, which was evidenced at each step of this litigation. And, their reputations are sterling.

The Court has reviewed the many papers that Gifford's counsel submitted to the Court, heard their arguments, and closely observed their conduct at trial and their mastery of the subject matter. The Court finds their abilities in this area of the law to be unsurpassed.

j. the undesirability of the case within the legal community in which the suit arose

This consideration weighs in Gifford's favor, too.

This case has all of the marks of an undesirable case. The facts that had to be proven were, to put it mildly, disgusting.

Although Gifford argued she had been harmed, as noted above, she had no medical bills to support her claims. Only a few very skilled group of attorneys would take on a case such as this, and even fewer would not only survive a motion for summary judgment, but also win a verdict on the constitutional claim.

k. the nature and length of the professional relationship between attorney and client

This factor has no bearing on the Court's consideration of Gifford's motion.

Gifford filed this lawsuit on September 16, 2016. Her relationship began shortly before that, in August 2016. Scott E. Evan's Affidavit ¶ 4; James B. Moore III's Affidavit ¶ 4. The trial concluded a little over five and a half years later, on May 9, 2022.

The relationship between Gifford and her counsel commenced because of her need for representation in this matter. There is no indication that, with the end of this case, their relationship will continue.

l. attorneys' fees awards in similar cases

This factor weighs in favor of Gifford's requested rate and the number of hours charged.

The Court has reviewed the cases Gifford set forth and considered its own experience in complex and difficult matters such as this. As such the Court is of the opinion that the attorneys' fees, both the rates and the number of hours that Gifford seeks, with the exception noted above, are comparable to those fees awarded in similar actions.

As an example of the total fee award, in *Mercer v. Duke University*, 301 F. Supp. 2d 454 (M.D.N.C. 2004), the district court awarded the plaintiff $349,243.96 in attorneys' fees, *id*. at 470, although she received "only one dollar in compensatory damages[,]" *id*. at 457. The decision was later affirmed by the Fourth Circuit: *Mercer v. Duke University*, 401 F.3d at 212.

Adjusted for inflation, that $349,243.96 would equal $567,314.00 in today's dollars. *See* https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=349%2C243.96&year1=200103&year2=202302, Jan.2004 to February 2023 (last visited March 29, 2023).

* * * * *

The total of attorneys' fees the Court is awarding in this case are quite substantial. But, the Court is of the firm opinion they are appropriate.

Given the malfeasance proven in this case, it is extremely important that cases such as this be filed. And, "although [Rhodes] had the right to play hardball in contesting [Gifford's]claims, it is also appropriate that [Rhodes] bear the cost of [her unsuccessful] strategy." *Burgess v. Premier Corp.*, 727 F.2d 826, 841 (9th Cir. 1984).

The attorneys in this case billed for a total of 2,013.887 hours in this case. Thus, if just one attorney had billed that time, assuming forty hours of billing each week, it would have taken her/him a little over fifty weeks, or almost a year, to prepare for and try this case to verdict. Alone. Given the complexity and difficulty of this case, this seems like a reasonable amount of time to prepare for and try a case such as this.

"When plaintiff prevails on only some of the claims made, the number of hours may be adjusted

downward; but where full relief is obtained, the plaintiff's attorney should receive a fully compensatory fee, and in cases of exceptional success, even an enhancement." *Rum Creek Coal Sales, Inc v. Caperton*, 31 F.3d 169, 174–75 (4th Cir. 1994) (citations omitted) (internal quotation marks omitted).

Given the Court's discussion above regarding Gifford's requested rate and number of hours billed, the Court concludes her request to be reasonable. Her counsel prevailed on all of her claims here. Therefore, they are fully entitled to "a fully compensatory fee." *Id*.

B. Whether Gifford is entitled to recover reasonable expenses

As an initial matter, the Court must address the untimeliness of Gifford's request for costs. Defendants note in their objections to Gifford's bill of cost that Local Civil Rule 54.03 provides that "A bill of costs shall be filed within the time limits set for Fed. R. Civ. P. 54(d)(2)(B) for applications for attorney's fees. Noncompliance with this time limit shall be deemed a waiver of any claim for costs."

But then, Local Civil Rule 1.02 states that, "[f]or good cause shown in a particular case, the [C]ourt may suspend or modify any Local Civil Rule." The Court is of the opinion that, just as Gifford has shown excusable neglect/good cause for her late filing of her motion for attorneys' fees, she has, based on

the same reasons, shown excusable neglect/good cause for the filing of her untimely request for costs.

Gifford states she "is entitled to recover reasonable expenses in the amount of $23,848.37 as a part of the attorneys' fees award pursuant to 42 U.S.C. § 1988." Gifford's Motion at 13. Gifford maintains "[a]ll [her claimed] expenses were incurred in the course of litigation[,] . . . were necessary for the successful resolution of the case. . . . [and] are normally charged by Evans Moore, LLC and Lovely Law Firm to clients for payment and were accrued in the course of providing legal services for [her]." Id. at 14.

Defendants, on the other hand, maintain she is entitled only to "costs taxable under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d)." Defendants' Response at 11 (citation omitted) (internal quotation marks omitted). According to Defendants, "[t]he only taxable costs that the Plaintiff may recover are . . . "

> (1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) Docket fees under section 1923 . . . ;

> [and] (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828[.]

Id. at 11-12 (quoting 28 U.S.C. § 1920).

But, "[t]he great weight of authority in this circuit and others clearly establishes that a prevailing plaintiff is entitled to compensation for reasonable litigation expenses under § 1988." *Daly v. Hill*, 790 F.2d 1071, 1084 (4th Cir. 1986). This includes "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988). "Consequently," according to the Fourth Circuit, "the district court err[s] as a matter of law in evaluating the expense request . . . under 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d)." *Daly*, 790 F.2d at1084.

Although Gifford originally sought reimbursement on expert fees, in her Reply, she stated that "it appears there is conflicting authority as to whether expert fees are taxable in cases brought pursuant to 42 U.S.C. § 1983." Gifford's Reply at 16. *Compare Warfield v. City of Chicago*, 733 F. Supp. 2d 950, 955 (N.D. Ill. 2010) ("[B]ecause [the expert] was an expert reasonably used in this case, his fees are recoverable."), *with Corral v. Montgomery Cnty.*, 91 F. Supp. 3d 702, 721 (D. Md.

2015) ("[T]he terms of Section 1988 do not permit compensation for expert witness fees[ ]" in a Section 1983 action). "As such, . . . [Gifford] has elected to remove expert case expenses from the Itemized Expense Sheet and Bill of Costs." Gifford's Reply at 16.

Gifford initially failed to provide any documentation for her claimed costs. But, she has now filed it. She also submitted affidavits from her counsel attesting to the accuracy of the cost request. *See*, *e.g.*, Affidavit of James B. Moore III ¶ 9 ("(To the best of my knowledge, the time entries and case costs submitted . . . are a true and accurate representation of the work performed in this case and the costs paid by Evans Moore, LLC and Lovely Law Firm to fund this matter.").

Gifford notes that she "voluntarily limited her request to only those costs incurred after May 2019 although the case was litigated from 2016 through 2022 at significant expense." Giffords's Reply re Documentation ¶ 6.

Defendants have set forth several objections to Gifford's expense request.

First, they object to the request for payment of the expenses of Gifford's experts. And, although Gifford insists she is entitled to reimbursement for these expenses, she fails to provide any cases in which a court has granted such a request in a case

such as this. The Court has been unable to find any such cases either.

Further, inasmuch as Section 1988 appears not to provide for the reimbursement of expert fees, it seems to be incongruous to say it would allow for the payment of expert expenses. *See* 42 U.S.C. § 1988 ("In awarding an attorney's fee . . . to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee."). Thus, the Court will not award payment of these costs.

Defendants object to the payment of a $47 filing fee, too. It appears that fee was charged in error. Thus, the Court will direct the Clerk of Court to reimburse that fee to Gifford.

Defendants also object to the expense of $1,798.50 for a trial transcript and $1,272.65 for photocopies, stationery, envelopes, and postage. But, the Court deems those costs as proper.

Defendants' other objections do not merit discussion.

Defendants fail to object to Giffords's other claims for costs for which she provides "No Record." Thus, the Court will rely on Gifford's counsel's affidavits as a sufficient basis on which to award those costs. It has no reason to disbelieve counsel's sworn statements on the matter.

Except for the expert fees and expenses and the $47 filing fee, the Court is persuaded that all the other costs Gifford seeks are "reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell*, 852 F.2d at 771. Thus, in light of Gifford's requests for costs, the documentation, and Gifford's counsel's affidavits, the Court will grant Gifford's request for costs, less the expert fees and expenses and the $47 filing fee.

C. Whether Gifford is entitled to an award of post judgment interest

Gifford moves the Court to award post-judgment interest on all amounts awarded in this action. Defendants fail to address this request. Therefore, they have waived any argument they might have against this award. See *Russell*, 763 F.3d at 396 n. * (noting that failure to present legal arguments waives the argument).

"In contrast to the district court's discretion in the awarding of pre-judgment interest, federal law mandates the awarding of post-judgment interest." *Quesinberry v. Life Ins. Co. of North America*, 987 F.2d 1017, 1031 (4th Cir. 1993).

Under federal law, post-judgment interest "shall be allowed" and "shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury

yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." 28 U.S.C. § 1961(a).

Accordingly, Gifford is entitled to an award of post-judgment interest.

IV. CONCLUSION

In light of the foregoing discussion and analysis, Gifford's motion for attorneys' fees in the amount of $878,467.80, less the billing for more than two attorneys at a deposition, is **GRANTED**, her motion for costs, less her expert fees and expenses and the $47 filing fee, is **GRANTED**, and her request for post-judgment interest is **GRANTED**.

The Clerk of Court shall refund the $47 filing fee to Gifford.

IT IS SO ORDERED.

Signed this 29th day of March 2023, in Columbia, South Carolina.

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

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

JANE DOE-4,	§	
Plaintiff,	§	
	§	
vs.	§	C/A NO. 4:16-3136-MGL
	§	
HORRY COUNTY	§	
POLICE DEPARTMENT	§	
and SAUNDRA RHODES,	§	
Defendants.	§	

JURY VERDICT

I. AS TO DEFENDANT HORRY COUNTY POLICE DEPARTMENT

We, the Jury, unanimously find as follows as to Plaintiff Jessica Gifford's negligence claim against Defendant Horry County Police Department:

Please check one of the two options below:

1. ✓ We, the Jury, unanimously find in favor of Plaintiff Jessica Gifford.

OR

_____ **We, the Jury, unanimously find in favor of Defendant Horry County Police Department.**

If you find for Defendant Horry County Police Department, you have completed your deliberations as to this defendant and can move to Question No. 4.

If you answer Question No. 1 in favor of Plaintiff Jesscia Gifford, also answer Question Nos 2 and 3:

2. **Please state the amount of damages sustained by Plaintiff Jesscia Gifford as a result of the negligence of Defendant Horry County Police Department.**
   $ 500,000 Damages.

3. **Having been charged on the law of occurrences, state the number of occurrences, more probably than not, that are supported by the facts and evidence in this case: 3 .**

II. AS TO DEFENDANT SAUNDRA RHODES

We, the Jury, unanimously find as follows as to Plaintiff Jessica Gifford's constitutional claim against Defendant Saundra Rhodes:

Please check one of the two options below:

4. ✓ We, the Jury, unanimously find in favor of Plaintiff Jessica Gifford.

OR

___ We, the Jury, unanimously find in favor of Defendant Saundra Rhodes.

If you find for Defendant Saundra Rhodes, you have completed your deliberations and the foreperson should sign and date at the end of the verdict form.

If you answer Question No. 4 in favor of Plaintiff Jesscia Gifford, also answer Questions 5 and 6:

5. Please state the amount of actual or nominal damages as to Defendant Saundra Rhodes.

$ 1.00 Damages.

6. Do you find, by clear and convincing evidence, the Plaintiff Gifford is entitled to punitive damages against Defendant Rhodes?

Please check one of the two options below:

_____ Yes

OR

___✓___ **No**

If you answer "Yes," also answer Question No. 7.

If you answer "No," the foreperson should sign and date at the end of the verdict form.

7. Please state the amount of punitive damage as to Defendant Saundra Rhodes.

$_____**Punitive Damages.**

[redacted]

Signature of Jury Foreperson

[redacted]

Printed Name of Jury Foreperson

May 9, 2022

Today's Date

Closing Statement on Reply by Respondent's Counsel from pages 949-953 of Joint Appendix:

CLOSING STATEMENT

MR. EVANS: I DO WANT TO THANK THE HORRY COUNTY POLICE DEPARTMENT FOR SO APTLY TAKING UP THEIR FORMER EMPLOYEE'S DEFENSE OF, WHO THEY GOING TO BELIEVE. I DO WANT TO RESPOND TO A COUPLE OF THINGS THAT MS. THOMAS SAID.

MS. THOMAS SAID NOWHERE DID INVESTIGATOR DARRAH PUT IN HIS - - OR MS. THOMAS WANTED TO BRING UP INVESTIGATOR DARRAH'S STATEMENT TO SLED. AND I WOULD ASK THAT YOU LADIES AND GENTLEMEN READ THAT STATEMENT THAT HE MADE TO SLED WHERE HE TOLD SLED FIVE YEARS BEFORE HE TOOK THE STAND THAT HE WAS PREVENTED FROM DOING THAT CELLEBRITE DOWNLOAD.

ONE THING I WANT TO FINALLY PUT TO BED IS THIS ISSUE ABOUT MR. EVANS. AND THIS WILL BE THE LAST TIME WE EVER HEAR ABOUT HIM. LET'S MAKE ONE THING CLEAR. MR. ARTHUR JUST SAID THAT IF MR. EVANS HAD WARNED ABOUT - - OR IF SOMETHING HAD HAPPENED TO KAREN, HORRY COUNTY POLICE DEPARTMENT WOULD BE IN TROUBLE BECAUSE THEY WERE WARNED

ABOUT THAT. IF SOMETHING HAPPENED TO KEN EVANS' GRANDCHILDREN, HORRY COUNTY POLICE DEPARTMENT WOULD BE IN TROUBLE BECAUSE THEY WERE WARNED ABOUT THAT. WELL, WHAT MR. EVANS WARNS ABOUT IN THIS FIRST BULLET-POINT IS A FELONY. HE WARNED THAT ALLEN LARGE WAS DEVELOPING FELONY RELATIONSHIPS WITH THE WOMEN HE WAS TASKED TO INVESTIGATE, AND IT CONTINUED. IT CONTINUED WITH ERIN YOUNG. IT CONTINUED WITH LAUREN DUHAIME, CINDY KEITH, ERICA SAUNDERS, TAMARA HUGGINS, AND OUR CLIENT, JESSICA GIFFORD. THEY'VE GOT A PROBLEM BECAUSE THEY WERE WARNED.

THIS WHOLE ISSUE OF CONSENT IS NOT AN ISSUE BECAUSE EVEN IF ERIN YOUNG CONSENTED, THAT'S STILL A FELONY. ALLEN LARGE WAS INDICTED ON NINE COUNTS FOR HIS CONDUCT WITH THE WOMEN HE WAS TASKED TO INVESTIGATE. THEY WERE WARNED. THEY KNEW. NOBODY SEEMED TO TAKE UP MY CHALLENGE TO EVALUATE THE DAMAGES IN THIS CASE, BUT I'LL MENTION THAT BRIEFLY. ONE THING THAT -- OH, FINALLY ONE OTHER THING. CHIEF RHODES' LAWER BROUGHT UP SOMETHING WHEN SHE FIRST STOOD UP AND SAID, THE LAW IS NOT WHAT COULD CHIEF RHODES HAVE KNOWN BUT WHAT DID SHE KNOW.

I HAVE NEVER BEEN INVOLVED IN A SITUATION WHERE THERE'S SO MUCH DEBATE OVER WHAT IS RIGHT THERE IN BLACK AND WHITE. THE LAW, AS YOU WILL HEAR ON PAGE 13 FROM YOUR HONOR, IS WHAT SHOULD SHE HAVE KNOWN, S-H-O-U-L-D. BUT THE CHIEF'S COUNSEL STILL WANTS TO DEBATE WHAT IS RIGHT THERE IN BLACK AND WHITE.

NOW, DAMAGES ARE GOING TO BE BEFORE YOU, LADIES AND GENTLEMEN, THIS AFTERNOON. ONE THING THAT IS NOT GOING TO BE BEFORE YOU IS WHAT'S CALLED COLLECTIBILITY. WHERE A DAMAGES VERDICT IS GOING TO COME FROM IS NOT SOMETHING THAT YOU ARE TO CONSIDER.

THE ONLY THING THAT YOU ARE TO CONSIDER IS THE FULL MEASURE OF DAMAGES, AND THEY COME IN THREE CATEGORIES. THE FIRST ONE IS EASY. THAT IS THE CLAIM AGAINST THE HORRY COUNTY POLICE DEPARTMENT. THERE ARE FOUR OCCURRENCES. AND FOR EACH OCCURRENCE, YOU NEED NOT EXCEED $300,000. DON'T BOTHER. THERE ARE CERTAIN PARAMETERS YOU NEED NOT EXCEED. THAT WOULD BE $1.2 MILLION.

THE SECOND CATEGORY IS CIVIL RIGHTS DAMAGES. THAT'S NOT SO EASY. THAT IS A TOUGH ONE. BECAUSE IN THAT CATEGORY,

YOU, LADIES AND GENTLEMEN, ARE TO PLACE A VALUE ON THE CONSTITUTIONAL RIGHT THAT WAS TAKEN FROM MS. GIFFORD.

AND THE LAW RELIES ON YOU, LADIES AND GENTLEMEN, WITHIN YOUR COLLECTIVE WISDOM TO PLACE A VALUE ON THAT CONSTITUTIONAL RIGHT BEING SNATCHED AWAY. AND I DON'T ENVY THAT TASK. AND I'M NOT GOING TO SUGGEST WHAT THAT NUMBER SHOULD BE OTHER THAN IT'S CERTAINLY AT LEAST EQUAL TO THIS.

BUT WHAT'S FUNDAMENTALLY IMPORTANT IS THAT THERE BE SOME AWARD HERE. WITHOUT ANY AWARD IN THIS CATEGORY FOR THE CIVIL RIGHTS DAMAGES, THERE WILL NOT BE FULL JUSTICE AND THE CONSTITUTION WILL NOT BE VALIDATED.

THE FINAL CATEGORY OF DAMAGES IS THAT WHOLE OTHER CATEGORY OF DAMAGES THAT HAS NOTHING TO DO WITH JESSICA. THAT'S THE CATEGORY TO DETER FUTURE MISCONDUCT IN THE 46 COUNTY-WIDE POLICE DEPARTMENTS HERE IN THE STATE OF SOUTH CAROLINA. WE STAND ON THE CROSSROADS TODAY AND WE DETERMINE WHICH DIRECTION WE'RE GOING TO GO IN.

THERE'S A LOT OF NUMBERS RELEVANT TO THE MESSAGE THAT CAN BE SENT. THE NUMBER NINE. THERE WERE NINE COUNTS

RETURNED AGAINST ALLEN LARGE. THE NUMBER 88. THERE WERE 88 CHILD MOLESTERS WHO WENT FREE BECAUSE OF THE MISCONDUCT OF SAUNDRA RHODES.

LET'S START WITH THE NUMBER THAT WE KNOW THEY'RE COMFORTABLE WITH, THOUGH. HOW ABOUT $20,000? $20,000 A WEEK. WE KNOW THEY ARE COMFORTABLE WITH THAT BECAUSE THEY JUST DROPPED IT HERE IN THIS COURTROOM FOR DR. LYMAN TO SPEND THE WHOLE WEEK HANGING OUT WATCHING THE TRIAL, AND NOBODY FROM HORRY COUNTY COULD MAKE THE TRIP.

ANOTHER NUMBER THEY ARE COMFORTABLE WITH IS SEVEN. THEY ARE COMFORTABLE ALLOWING SEVEN YEARS TO GO BY WITH NO JUSTICE FOR JESSICA AND TO COME INTO THIS COURTROOM AND STILL SAY WE HAVE DONE EVERYTHING RIGHT AND WE DON'T NEED TO CHANGE A THING ABOUT THE WAY WE OPERATE .

LET'S TAKE SEVEN TIMES 52 WEEKS. $20,000 TIMES 52 WEEKS A YEAR TIMES SEVEN YEARS WOULD BE SOME NUMBER, I DON'T -- $7.2 MILLION. I SUBMIT THAT'S AN APPROPRIATE PUNITIVE DAMAGES NUMBER THAT WILL SEND THE RIGHT MESSAGES TO THE 46 COUNTY-WIDE POLICE DEPARTMENTS THAT WE ALL RELY ON FOR OUR SAFETY. THANK YOU, LADIES AND GENTLEMEN.