

STATE OF MAINE
KENNEBEC, SS

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

v.

KENNEBEC COUNTY, and MAINE

COUNTY COMMISSIONERS

ASSOCIATION,

Defendants.

**APPEAL FROM DENIAL OF ACCESS
TO PUBLIC RECORDS (1 M.R.S. §409(1))**

The Human Rights Defense Center (“HRDC”) appeals the denial of access to public records by Kennebec County, a political subdivision of the State of Maine, and Maine County Commissioners Association, an instrumentality of Maine counties, pursuant to 1 M.R.S. §409(1) as follows:

INTRODUCTION

1. This is a challenge to the decision by Kennebec County and the Maine County Commissioners Association to keep secret public records documenting the terms under which civil cases against it were resolved.
2. HRDC was established in 1990 as an advocacy organization dedicated to addressing problems in the criminal legal system. HRDC carries out its mission, in part, by acquiring information about the operations of jails, prisons, police departments, and sheriffs’ departments, and then disseminating that information to the public through reports and through its monthly magazines, *Prison Legal News* and *Criminal Legal News*.

3. In June 2021, HRDC requested disclosure of records from Kennebec County, under Maine's public records law, concerning the settlement of a claim against Kennebec County and the Kennebec County Sheriff's Office, including documents showing the amounts paid to resolve the claim.
4. The payment of money from the public fisc is an important matter of public concern, which is of interest both to taxpayers generally and to those connected to the criminal justice system more specifically. As such, documentation concerning payments and terms of payment by public entities to private parties to resolve legal claims are almost always subject to disclosure under state public records laws.
5. Kennebec County, and its agents, responded by producing the complaint, answer, and a general release. They did not produce—and still have not produced—the settlement agreement reflecting the terms of payment and other contract terms associated with resolving the case.

PARTIES AND JURISDICTION

6. HRDC is a Washington state non-profit, charitable corporation headquartered in Florida. HRDC publishes an internationally-distributed monthly journal called *Prison Legal News*, which contains news and analysis about prisons, jails, and other detention facilities, prisoners' rights, court opinions, management of prison facilities, prison conditions, and other matters pertaining to the rights of incarcerated individuals, as well as a second magazine, *Criminal Legal News*, which reports on developments in criminal law related to prosecutors, policing, and sentencing. Since 1990, HRDC has reported on news, court decisions, settlements, and other developments relating to the civil and human rights of people involved with the criminal legal system in the United States and abroad. HRDC's publications have thousands of subscribers, and its website receives hundreds of thousands

of visitors monthly. Its work is supported through subscriptions, charitable donations, and (occasionally) attorney fees from successful litigation.

7. Kennebec County is a political subdivision of the State of Maine, with a county seat in Augusta.
8. Maine County Commissioners Association is an instrumentality of Maine counties under 30-A M.R.S. §909. It operates the Maine County Commissioners Association Self-Funded Risk Management Pool (“Risk Pool”), which insures Maine counties, including Kennebec County, for, among other things, liability related to claims against employees.
9. The Superior Court has jurisdiction over this action pursuant to 1 M.R.S. §409(1) and other applicable law.
10. Venue is proper in Kennebec County pursuant to 14 M.R.S. §505.

PRIORITY OF FOAA APPEAL

11. This FOAA case has statutory priority such that it “may be advanced on the docket and receive priority over other cases when the court determines that the interest of justice so require” pursuant to 1 M.R.S. §409(1).

RIGHT TO INSPECT AND COPY JAIL SETTLEMENT RECORDS UNDER FOAA

12. The purpose of the FOAA is to promote transparency in government by, inter alia, making records of the transaction of governmental business “open to public inspection.” 1 M.R.S. §401.
13. The Legislature declared that the FOAA “shall be liberally construed and applied to promote its underlying purposes and policies. . . .” 1 M.R.S. §401.
14. Under Maine law, “a corollary to such liberal construction of the Act, is necessarily a strict construction of any exceptions to the required public disclosure.” *Guy Gannett Pub. Co. v.*

Univ. of Maine, 555 A.2d 470, 471 (Me.1989) (quoting *Moffett v. City of Portland*, 400 A.2d 340, 348 (Me. 1979)).

15. The FOAA guarantees to every person the right to request that an agency make public records available for inspection and copying. 1 M.R.S. §408-A.
16. The FOAA recognizes that “public proceedings exist to aid in the conduct of the people’s business,” and the records of actions from such proceedings “be open to public inspection.” 1 M.R.S. §401; *Citizens Commc'ns Co. v. Att'y Gen.*, 2007 ME 114, ¶ 9, 931 A.2d 503, 505.
17. The burden of proving “just and proper cause for the denial of a FOAA request” falls on the government entity denying the request. *See MaineToday Media v. State of Maine*, 2013 ME 100, ¶ 9, 82 A.3d 104.
18. If a court determines, after a trial de novo “with taking of evidence and other testimony as determined necessary,” that a refusal to permit inspection and copying “was not for just and proper cause” the court shall enter an order for disclosure. *See* 1 M.R.S. §409(1).
19. Because of their recognition of the compelling public interest in keeping a watchful eye on how political subdivisions spend taxpayer money, and how political subdivision manage risk by documenting and analyzing actions that result in unforeseen expenditures of taxpayer funds, settlement documents, including material prepared as a part of settlement negotiations, are not privileged from disclosure under FOAA. *See Citizens Commc'ns Co. v. Att'y Gen.*, 2007 ME 114, ¶ 12, 931 A.2d 503, 506 (holding that Maine FOAA does not provide for an exemption shielding disclosure of draft settlement documents).
20. The interest in public access to settlement documents related to the criminal legal system is particularly compelling because of the authority granted to officers in that system to restrict the liberty of people within the state. Public awareness of whether government entities, such as Kennebec County and the Maine County Commissioners Association, are engaged in

effective oversight and risk mitigation related to its criminal legal system serves as a vital check on corruption and malfeasance—an interest at the core of FOAA’s purpose.

FACTS

AFANADOR V. KENNEBEC COUNTY, ET AL.

21. On July 6, 2020, Jonathan Afanador filed suit against Kennebec County and Nathan Willhoite, a Kennebec County jail guard, in U.S. District Court in Maine, accusing Officer Willhoite of using excessive force and accusing Kennebec County of failing to provide adequate training and supervision of Officer Willhoite.
22. Mr. Afanador is a Black man, and he accused Officer Willhoite of using pepper spray against him without justification and referring to him by an opprobrious racial epithet. Mr. Afanador further accused Officer Willhoite of placing him in isolation and not permitting him an opportunity to remove the pepper spray from his skin.
23. Mr. Afanador accused Kennebec County of knowing that Officer Willhoite had a history of behaving in a racially discriminatory manner and that it did not take appropriate steps to address this problem.
24. On or about March 3, 2021, Kennebec County and Officer Willhoite agreed to a pretrial settlement of Mr. Afanador’s federal civil rights case.
25. On March 3, 2021, Mr. Afanador signed a document entitled “GENERAL RELEASE AND AGREEMENT TO DEFEND, INDEMNIFY, AND HOLD HARMLESS,” in which he agreed to “knowingly and voluntarily release and forever discharge” any known or unknown claims he might presently or in the future have against Office Willhoite, Kennebec County, and the Maine County Commissioners Association Self-Funded Risk Management Pool, in exchange for “One Dollar and Other Good and Valuable Consideration.”

26. Mr. Afanador further agreed not to disparage or discredit Officer Willhoite or Kennebec County, or to repeat any derogatory rumors or comments about them.
27. Mr. Afanador agreed to hold the facts of the settlement “in strict and complete confidence” and not to disclose the actual amount of the consideration given to anyone, with some limited exceptions.
28. On April 7, 2021, Kennebec County, Officer Willhoite, and Mr. Afanador stipulated to dismissal of Mr. Afanador’s federal civil rights case with prejudice and without costs, interest, or attorney’s fees for any party.
29. On May 3, 2021, the Portland Press Herald reported that Kennebec County and Mr. Afanador had reached a settlement. The newspaper reported that lawyers representing the parties in the case either did not respond to inquiries, or else said that they could not talk about the case. A copy of the May 3 article is attached as EXHIBIT 1.
30. The newspaper reported that the manager of the county’s insurer, an employee of the Maine County Commissioners Association, said that the settlement amount is \$30,000.
31. The newspaper reported that the Kennebec County Sheriff said that Officer Willhoite did a great job while he was employed by Kennebec County but that he no longer worked there.

MAY 7 FOAA REQUEST

32. On May 5, 2021 HRDC learned of the settlement and dismissal of Mr. Afanador’s case from the article in the Portland Press Herald, including that the parties seemed determined to keep the terms of settlement secret by, for example, refusing to discuss the settlement with the press.
33. On May 7, 2021, HRDC filed a FOAA request with Kennebec County seeking records related to *Afanador v. Kennebec County et al.*

34. Specifically, HRDC asked for records sufficient to show the names of all parties involved, the case or claim number, and jurisdiction in which the case was brought, the date of resolution, the amount of money involved in the resolution, and to whom the money was paid.
35. HRDC also specifically requested the “settlement agreement . . . that resolved the case.” A copy of the May 7 request is attached as EXHIBIT 2.

MAY 20 FOAA RESPONSE

36. On May 20, 2021, Kennebec County responded to the FOAA request. A copy of that response is attached as EXHIBIT 3.
37. In its response, Kennebec County denied access to documents that are not considered public records, without identifying any documents that it was withholding as excluded from the definition of public records.
38. In its response, Kennebec County also indicated that it was denying the request as to any documents “privileged, protected, or not subject to public disclosure” without identifying any documents allegedly covered by privilege or the referencing the applicable privileges themselves.
39. Kennebec County produced four documents along with its May 20 response: Mr. Afanador’s federal civil rights complaint; Kennebec County’s answer to that complaint; Officer Willhoite’s answer to that complaint; and a copy of the General Release and Agreement to Defend, Indemnify, and Hold Harmless executed by Mr. Afanador on March 3, 2021. Copies of these documents are identified as Attachments A-D to EXHIBIT 3.

JUNE 16 FOAA FOLLOW UP

40. On June 16, 2021, HRDC reached out to counsel for Kennebec County reiterating their request for the settlement agreement between Mr. Afanador and Kennebec County or, in the alternative, an explanation for why their request was being denied. A copy of this email request and the response from Kennebec County is attached as EXHIBIT 4.
41. Kennebec County responded on June 16 that “the settlement agreement was included in our response.”
42. HRDC replied on June 16 that the Portland Press Herald had reported the existence of a \$30,000 settlement, and that HRDC was requesting “any agreement related to” what was reported in the article. HRDC pointed out that the document provided only referenced a \$1 settlement.
43. Kennebec County replied on June 16 that the General Release “is the only document which contains the terms of the settlement.”

REQUEST TO THE MAINE COUNTY COMMISSIONERS ASSOCIATION

44. On June 18, 2021, HRDC sent a follow-up request to the Risk Pool, an agent of Kennebec County for purposes of the *Afanador* settlement, seeking documents in its possession related to payments in connection with *Afanador v. Kennebec County et al.* A copy of this follow-up request is attached as EXHIBIT 5.
45. In a series of email responses between June 18-21, 2021, Malcolm Ulmer responded on behalf of Maine County Commissioners Association, that the General Release (indicating that the case was being dismissed in exchange for “one dollar and other valuable consideration”) was the only settlement agreement, but that the actual settlement amount was \$30,000. The Maine County Commissioners Association did not produce any additional documents. A copy of this email exchange is attached as EXHIBIT 6.

JULY 2 CONFIRMATION LETTER

46. HRDC has made public records requests for records related to litigation in nearly every state in the country, and it has litigated denial of access to records in numerous states.
47. In HRDC's experience, governments do not settle lawsuits without generating a significant number of documents related to the terms of settlement, and insurance companies and risk pools do not make payments to settle lawsuits without documentation of the amount of settlement.
48. In particular, the amount paid to settle case is typically reflected in a settlement agreement signed by all parties.
49. Also, insurance companies and risk pools typically maintain accounting records of amounts paid to cover settlements, and these payment amounts are also typically included in emails and cover letters sent among individuals at the insurance company or risk pool and the parties to the settlement.
50. Finally, material prepared as a part of settlement negotiations are not privileged from disclosure under FOAA. *See Citizens Commc'ns Co. v. Att'y Gen.*, 2007 ME 114, ¶ 12, 931 A.2d 503, 506 (holding that Maine FOAA does not provide for an exemption shielding disclosure of draft settlement documents).
51. In light of this, HRDC sent a confirmation letter to Kennebec County and the Risk Pool on July 2, 2021 requesting that they perform an adequate search for documents and produce all responsive documents. A copy of this letter is attached as EXHIBIT 7.
52. The letter requested that Kennebec County and the Risk Pool "provide all responsive documents by Friday, July 9, 2021." If a complete response was not provided by that date, HRDC stated it would "interpret the failure as a denial or refusal pursuant to 1 M.R.S. § 409(1) and proceed accordingly."

53. On July 3, 2021, Kennebec County responded that the “Release” document produced “is the only document that contains the terms of the settlement, refers to the terms of settlement, or otherwise relates to the terms of the settlement.” Kennebec County’s attorney offered to review his files for additional responsive documents. No mention was made of any Kennebec County officials reviewing their files or emails for additional responsive documents. A copy of this email is attached as EXHIBIT 8.
54. On July 6, 2021, the Maine County Commissioners Association responded that “the signed release” was “the only settlement release document.” A copy of this email is attached as EXHIBIT 9.
55. No additional documents were received from either Kennebec County or Maine County Commissioners Association. Accordingly, as of July 9, 2021, HRDC interpreted the failure to respond as a denial of access to records under FOAA.
56. Kennebec County did not agree to settle a federal civil rights lawsuit for \$30,000, and the Risk Pool did not pay \$30,000 to effectuate that settlement, without recording that amount and the purpose for which it was being paid, in a document of some type. Claiming otherwise is evidence of bad faith sufficient to support an award of attorney’s fees pursuant to 1 M.R.S. §409(4).
57. Kennebec County and the Maine County Commissioners Association have not performed an adequate search for responsive documents as required under FOAA.
58. Kennebec County and the Maine County Commissioners Association have not disclosed all documents responsive to HRDC’s request and they have established no just and proper cause for having withheld the missing records.
59. Kennebec County and the Maine County Commissioners Association have not justified the withholding of any particular documents under a recognized FOAA exemption.

COUNT I
FAILURE TO DISCLOSE RESPONSIVE RECORDS WITHOUT JUST AND PROPER
CAUSE

60. Plaintiff realleges and incorporates by reference the forgoing paragraphs of this Appeal as if fully set forth herein.
61. Kennebec County and the Maine County Commissioners Association did not disclose all public records responsive to HRDC's FOAA request without just and proper cause in violation of FOAA.
62. Kennebec County and the Maine County Commissioners Association performed an inadequate search for responsive records.
63. Kennebec County and the Maine County Commissioners Association improperly withheld responsive records that are not exempt from disclosure under FOAA.

CONCLUSION

HRDC respectfully requests that the Court grant this appeal and enter judgment for Plaintiff and enter:

- A. an order for disclosure of responsive records pursuant to 1 M.R.S. §409(1);
 - B. an order that Kennebec County and the Maine County Commissioners Association conduct an adequate search for any and all documents discussing the settlement of *Afanador v. Kennebec County, et al.*;
 - C. an order for disclosure of an exceptions log for any withheld documents;
 - D. an award to the HRDC its costs and reasonable attorney's fees pursuant to 1 M.R.S. §409(4);
- and
- E. such other and further relief as the Court deems just and proper.

Dated at Portland, this 27th day of July, 2021, and respectfully submitted,

/s/ Zachary L. Heiden

Zachary L. Heiden (Maine Bar No. 9476)

/s/ Emma E. Bond

Emma E. Bond (Maine Bar No. 5211)

American Civil Liberties Union of Maine Foundation

PO Box 7860

Portland, Maine 04112

(207) 619-6224

zheiden@aclumaine.org

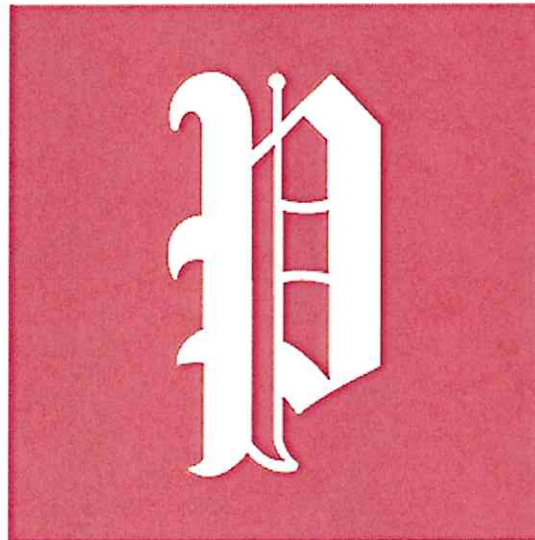
Exhibit 1

Kennebec County settles excessive force lawsuit against jail guard

pressherald.com/2021/05/03/kennebec-county-settles-excessive-force-lawsuit-against-jail-guard/

By Megan Gray

May 3, 2021



Kennebec County has settled a federal lawsuit brought by a man who said a jail guard used pepper spray on him and then assaulted him while he was confined in 2019.

Jonathan Afanador [filed his excessive force complaint in the U.S. District Court of Maine in July](#). He sued the county and the individual guard, and both filed responses later that month that admitted to some basic facts in the complaint but denied most of the claims. The parties then filed a dismissal in court last month, and lawyers representing them either did not respond to inquiries or said they could not talk about the case. The manager of the county's insurer said the settlement amount is \$30,000.

Sheriff Ken Mason said Nathan Willhoite no longer works at the Kennebec County Correctional Facility. Willhoite resigned his part-time position there and now works for another law enforcement agency, Mason said, although he did not answer a question about which one.

"There was no disciplinary action taken on Officer Willhoite," Mason said. "Officer Willhoite did a great job for us while he was here."

Attorney John Wall, who represented Willhoite, did not respond to multiple inquiries about the case. Attorney Peter Marchesi, who represented the county, provided a signed copy of the release of claims in response to a public records request but said he was not in a position to speak about the case. Malcolm Ulmer, the manager of the Maine County Commissioners Association Risk Pool, confirmed the amount of the settlement.

Attorney Matthew Morgan, who represented Afanador, said he could not talk about the case or comment on the existence of a settlement. The signed release includes clauses for confidentiality and non-disparagement.

The lawsuit centers on an incident on Aug. 18, 2019. The complaint says Afanador was awaiting trial at the jail at that time, and Willhoite and another officer removed him from his cell during a "full floor shakedown." The other officer directed a racial slur at Afanador in front of Willhoite. The complaint identifies Afanador as Black but does not indicate the race of either guard.

"This was not the first time Afanador experienced the use of racial slurs at KCCF," the complaint states.

The complaint says Afanador was standing against a wall and reading a book when Willhoite grabbed his arm and pepper sprayed him directly in the face. Willhoite then spun Afanador around, slammed his chest against a table and pinned his arm behind him. The complaint says Afanador was placed in isolation and did not receive medical attention until the next day.

The lawsuit also says Willhoite acted "despite the absence of any physical danger and the presence of multiple other corrections officers."

The incident was captured on video. Responses filed by the county and by Willhoite admitted that the officer used pepper spray on Afanador, who was standing when the officers had ordered everyone to sit, and then "attempted to restrain" him. But they denied most other claims.

The original complaint also said Willhoite had a history of alleged racist and violent comments. However, Morgan said Monday that was an error, and the comments were incorrectly attributed to Willhoite.

Mason, the sheriff, also said law enforcement and corrections officers in Kennebec County maintain "high levels of professionalism" under increased scrutiny.

"We will continue to serve as safely and effectively as possible, prioritizing earning the public trust despite the negativity we encounter on a far too common basis," Mason wrote in an email.

Afanador, 26, is no longer listed as an inmate at the Kennebec County Correctional Facility. A Maine Department of Corrections database indicates that he was sentenced in May 2020 to four-and-a-half years in prison for two counts of aggravated drug trafficking.

Note: This article was updated Tuesday, May 4, to correct Malcolm Ulmer's job title.

Comments are not available on this story.

© 2021

Exhibit 2

From: [FOIA General Mailbox](#)
To: contact@kennebecda.com
Subject: Public Records Request from the Human Rights Defense Center
Date: Friday, May 7, 2021 10:42:47 AM
Attachments: [Kennebec County \(DA\) - HRDC Records Request - 5-7-21.pdf](#)
[image001.png](#)

Dear Public Records Coordinator,

Attached, please find a public records request from the Human Rights Defense Center; the text of this request is duplicated in the body of this message.

Re: Request for Settlement Agreement in Afanador v. Kennebec County et al

The Human Rights Defense Center (HRDC) makes this request pursuant to the Maine Freedom of Access Act, 1 M.R.S.A §§ 400 - 414.

HRDC is seeking records related to the Afanador v. Kennebec County et al case brought forth in the US District Court of Maine in July 2020 (case no. 1:20-cv-00235-JDL). Specifically, HRDC requests all litigation and pre-litigation settlements against Kennebec County and the Kennebec County Sheriff's Department and/or its subdivisions, employees, or agents where Kennebec County, its subdivisions, and/or its insurers agreed to pay \$1,000 or more to resolve a claim or claims against it. These payments include but are not limited to settlements, damages, attorney fee awards, and sanctions, irrespective of the identity of the plaintiff or claimant. HRDC requests the following records, provided in electronic native format where possible, and otherwise in electronic format pursuant to 1 M.R.S.A § 408-A. Please note that our requests encompass any documents within the definition of the term "writing" as defined in 1 M.R.S.A § 402.

1. Records sufficient to show for claims or cases brought against Kennebec County and/or the Kennebec County Sheriff's Department, or settled pre-litigation, against Kennebec County and/or any of its subdivisions, agents, or employees in which payments in relation to the Afanador v. Kennebec County et al case brought forth in the US District Court of Maine:
 - The name of all parties involved;
 - The case or claim number;
 - The jurisdiction in which the case or claim was brought (e.g., US District Court for the District of Maine, Maine Superior Court, etc.);
 - The date of resolution;
 - The amount of money involved in the resolution and to whom it was paid,
2. For each case or claim detailed above:
 - The complaint or claim form and any amended versions;
 - The verdict form, final judgment, release, settlement agreement, consent decree, or other writing that resolved the case.

The Maine Freedom of Access Act requires determination of whether these records may be disclosed, and specific reasons why any material requested, or portions thereof, are exempt from disclosure, within ten days from receipt of this request. It also requires that you promptly notify us of this determination, and of the estimated date and time when the records will be produced. If any records responsive to this request are denied in part, please release all segregable portions of those records.

Please contact me via email, FOIA@humanrightsdefensecenter.org, should you require any additional information. Thank you for your time and attention in this matter.

Sincerely,

Samantha Beauvais

*Public Records Manager &
Development Coordinator*

[Human Rights Defense Center](#)

[Prison Legal News](#)

M: 561-305-4643

 Please consider the environment before printing this e-mail

Exhibit 3

WHEELER & AREY, P.A.
ATTORNEYS AND COUNSELORS AT LAW
Twenty-Seven Temple Street
Waterville, Maine 04901
TELEPHONE 207-660-9201
FAX 207-660-9202

May 20, 2021

TRANSMITTED VIA EMAIL ONLY

Samantha Beauvais
Human Rights Defense Center

Re: FOA Request – Kennebec County

Dear Ms. Beauvais:

Please be advised that this office serves as general counsel for Kennebec County, Maine. We are in receipt of your Freedom of Access Request sent May 7, 2021, to Kennebec County, the Kennebec County District Attorney's Office, the Kennebec County Sheriff's Office, and the Kennebec County Correctional Facility. We understand that you are requesting the settlement agreement in the matter of Afanador v. Kennebec County, et al, in addition to other information regarding that claim.

First, to the extent that your request seeks information in the form of documents which are not considered public records under the Maine Freedom of Access Act, or to the extent that your request seeks information which is otherwise privileged, protected, or not subject to public disclosure, your request is respectfully denied.

Without waiving the denial, and while expressly reserving each and every objection which may be applicable to your request, the following documents responsive to your request are enclosed:

1. Complaint in Jonathan Afanador v. Kennebec County, et al (Docket No. 1:20-cv-00235-JDL)
2. Answer of Defendant Kennebec County
3. Answer of Defendant Nathan Willhoite
4. General Release and Agreement to Defend, Indemnify, and Hold Harmless

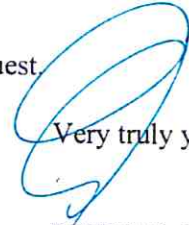
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CASSANDRA S. SHAFFER
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cshaffer@wheelerlegal.com

Samantha Beauvais
Re: FOA Request
May 20, 2021
Page Two

I trust that these enclosures satisfy your request.



Very truly yours,

PETER T. MARCHESI

PMT/dc

Encs.

CC: John Wall, Esq. (via email)
Robert Devlin (via email)
Kenneth Mason (via email)
Bryan Slaney (via email)
Maeghan Maloney, DA (via email)

Exhibit 3

Attachment A

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JONATHAN AFANADOR, individually,)	
)	
Plaintiff,)	
)	
v.)	
)	
KENNEBEC COUNTY, a municipality of)	Civil No. _____
the State of Maine,)	
)	
&)	
)	
NATHAN WILLHOITE, Corrections)	
Officer at Kennebec County Correctional)	
Facility, in his individual and official)	
capacity.)	
)	
Defendants.)	

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, Jonathan Afanador, by and through undersigned counsel, and hereby complains against Defendants Kennebec County, including Kennebec County Sheriff's Office and Kennebec County Correctional Facility, and Corrections Officer Nathan Willhoite, as follows:

INTRODUCTION

1. This is a civil rights case challenging the use of excessive force by Corrections Officer Nathan Willhoite ("Corrections Officer Willhoite") against Plaintiff Jonathan Afanador ("Afanador"), and the failure of Kennebec County and its subdivisions, Kennebec County Sheriff's Office ("KCSO") and Kennebec County Correctional Facilities ("KCCF"), to train and supervise Corrections Officer Willhoite.

PARTIES

2. Plaintiff Jonathan Afanador (“Afanador”) is currently an inmate at KCCF.
3. Defendant Kennebec County is a municipality of the state of Maine.
4. KCCF is a detention center located at 115 State Street, Augusta, ME 04330. KCCF is operated by the KCSO and is a subdivision of Kennebec County.
5. KCSO is a subdivision of Kennebec County.
6. Corrections Officer Willhoite, sued in his official and individual capacity, was a correctional officer at KCCF at all times relevant to this Complaint.

JURISDICTION

7. This action seeks to vindicate rights guaranteed by the Fourteenth Amendment of the United States Constitution, and it is brought pursuant to 42 U.S.C. § 1983.
8. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under federal law. Jurisdiction is also authorized pursuant to 28 U.S.C. § 1343(a)(3).
9. Pursuant to 28 U.S.C. § 1367(a), this Court possesses supplemental jurisdiction over state law claims under the Maine Civil Rights Act, 5 M.R.S. §§ 4681-85, and the Maine Tort Claims Act, 14 M.R.S. §§ 8101-8118.
10. Venue in this Court is proper under 28 U.S.C. § 1391(b) because the events giving rise to this action occurred within this judicial district and because the Defendants are subject to personal jurisdiction in this District.

STATEMENT OF FACTS

11. Afanador is a black man.

12. Afanador was held as a pretrial detainee at KCCF at all times relevant to this Complaint.
13. On August 18, 2019, a “full floor shakedown” was being conducted on Afanador’s block. Corrections Officer Willhoite and Corrections Officer Brunelle unlocked Afanador’s cell and removed him. Corrections Officer Brunelle called Afanador a “nigger” before removing him from the cell and in front of Correction Officer Willhoite. This was not the first time Afanador experienced the use of racial slurs at KCCF.
14. Inmates, including Afanador, were sitting and/or standing outside of their respective cells during the shakedown. Afanador was standing against a wall and reading a book.
15. The inmates were ordered to sit. Corrections Officer Willhoite began walking toward Afanador, passing other inmates who were also standing, as he drew his can of oleoresin capsicum spray (“OC spray”) from his duty belt. Corrections Officer Willhoite continued walking toward Afanador with his OC spray already in-hand as he confronted Afanador.
16. Despite the absence of any physical danger and the presence of multiple other corrections officers, Corrections Officer Willhoite grabbed Afanador’s left arm and deployed his OC spray directly into Afanador’s face. Corrections Officer Willhoite then spun Afanador around by his left arm and slammed Afanador’s chest against the table while pinning his arm behind him.
17. Afanador was led away in handcuffs and placed in isolation.
18. Afanador was not immediately decontaminated and did not receive medical attention until the next day.
19. The assault on Afanador by Corrections Officer Willhoite was captured by KCCF video cameras.

20. Corrections Officer Willhoite was a known bad apple by Kennebec County, KCCF, and KCSO before he ever assaulted Afanador.
21. In particular, Kennebec County was put on notice that Corrections Officer Willhoite made racist and violent statements about and towards inmates as early as September 4, 2018.
22. In public court filings, Diedre Digiacomio, a former KCCF corrections officer, notified Kennebec County that Corrections Officer Willhoite stated while on duty at KCCF that “all black people look alike.”
23. Kennebec County was also notified that Corrections Officer Willhoite stated about an inmate who attempted hanging himself that it “wouldn’t have mattered if he died, he’s an inmate.”
24. Kennebec County was also notified that Corrections Officer Willhoite bragged about slamming an inmate into a wall.
25. Kennebec County was also notified that Corrections Officer Willhoite purposefully antagonized an inmate on another occasion by calling him names.
26. Kennebec County was also notified that Corrections Officer Willhoite had inappropriate conversations about hurting animals while at work.
27. Kennebec County was notified of all the issues in Paragraphs 22-26 before Corrections Officer Willhoite assaulted Afanador on August 18, 2019.
28. Kennebec County failed to take appropriate remedial action and fire Willhoite to avoid future instances of racist and violent behavior after receiving these warnings.

FIRST CAUSE OF ACTION

**Violation of 42 U.S.C. § 1983—Use of Excessive Force in Violation of the Fourteenth
Amendment of the United States Constitution
(Corrections Officer Willhoite in his official and individual capacities)**

29. Plaintiff Jonathan Afanador reasserts and realleges the allegations in paragraphs 1-28.
30. Corrections Officer Willhoite, while acting under color of state law, deliberately, purposefully, and knowingly used excessive force against Afanador that was objectively unreasonable in violation of the Fourteenth Amendment of the United States Constitution and which amounted to pretrial punishment of Afanador.
31. Corrections Officer Willhoite maliciously and with forethought applied excessive force for the purpose of causing harm to Afanador.
32. The use of force deprived Afanador of his clearly established due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution. *See, e.g., Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015); *Jennings v. Jones*, 499 F.3d 2, 16 (1st Cir. 2007).
33. Corrections Officer Willhoite's excessive use of force amounted to punishment and deprived Afanador of his rights under the 14th Amendment.
34. Corrections Officer Willhoite's excessive use of force was made with an express intent to harm and/or was excessive in relation to any purportedly legitimate reason for the use of force.
35. Corrections Officer Willhoite's use of excessive force caused harm to Afanador, including injuries to his eyes, pain and suffering, and other physical and emotional harm.

SECOND CAUSE OF ACTION

**Violation of 5 M.R.S. § 4682(1-A)—Excessive Force in Violation of Article I, Sections 1, 6,
and 6-A of the Maine Constitution
(Officer Willhoite in his official and individual capacities)**

36. Plaintiff Jonathan Afanador reasserts and realleges the allegations in paragraphs 1-35.
37. Corrections Officer Willhoite subjected Afanador to excessive force in violation of the “safety” provision of Article I, Section 1, of the Maine Constitution, which protects Afanador’s “inherent and unalienable right[]” to “safety.”
38. Corrections Officer Willhoite subjected Afanador to excessive force in violation of Article I, Section 6, of the Maine Constitution, which protects the “[r]ights of persons accused” not to “be deprived of life, liberty, property or privileges,” and in violation of Section 6-A, which protects the right to “due process.”
39. Corrections Officer Willhoite’s use of excessive force caused harm to Afanador, including injuries to his eyes, pain and suffering, and other physical and emotional harm.

THIRD CAUSE OF ACTION
Assault (Use of Excessive Force)
(Officer Willhoite in his official and individual capacities)

40. Plaintiff Jonathan Afanador reasserts and realleges the allegations in paragraphs 1-39.
41. Corrections Officer Willhoite caused offensive physical contact to Afanador when he used the OC spray without provocation, slammed Afanador’s chest to the table, and twisted his arm behind his back.
42. Corrections Officer Willhoite’s use of excessive force amounted to assault and punishment
43. Corrections Officer Willhoite’s use of excessive force exceeded his discretion in performing his official government duties.
44. Corrections Officer Willhoite’s use of excessive force caused harm to Afanador, including injuries to his eyes, pain and suffering, and other physical and emotional harm.

FOURTH CAUSE OF ACTION
Failure to Train/Supervise Corrections Officer Willhoite—42 U.S.C. § 1983
(Kennebec County)

45. Plaintiff Jonathan Afanador reasserts and realleges the allegations in paragraphs 1-44.
46. At all times relevant to this Complaint, Afanador had a Constitutional right to be free from being subjected to excessive force by correctional officers at KCCF.
47. With deliberate indifference to the rights of Afanador, Kennebec County encouraged, tolerated, ratified, and/or acquiesced in a dangerous environment of correctional officers using excessive force against inmates by failing to conduct sufficient training, discipline, or supervision; specifically, with regard to Corrections Officer Willhoite.
48. In addition, the use of excessive force was such a widespread custom and practice at KCCF at all times relevant to this Complaint that it had the force of a policy or law.
49. Final policy makers at Kennebec County failed to fire Corrections Office Willhoite after his racist remarks and violence towards inmates was made known.
50. Afanador did not know and had no reason to know that the deliberately indifferent actions and/or omissions and/or customs and practices of Kennebec County were the cause of his injuries and the violations of his Constitutional rights.
51. Afanador was in-fact injured by Kennebec County's deliberate indifference to the violations of his constitutional rights and/or the decisions of final policy makers at Kennebec County.
52. As a result of Kennebec County's actions and/or inactions, Afanador suffered damages, including but not limited to physical injuries, pain, and suffering.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Jonathan Afanador, respectfully prays that this Honorable Court:

53. Enter judgment in his favor awarding compensatory and punitive damages, plus pre-judgment and post-judgment interest;
54. Award him reimbursement costs of suit, including reasonable attorney fees and other litigation costs incurred in bringing this action pursuant to 42 U.S.C. § 1983 or 5 M.R.S. § 4683;
55. Grant such further relief as the Court may deem just and proper.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL CLAIMS IN HIS COMPLAINT SO TRIABLE AS OF RIGHT.

Dated: July 6, 2020

/s/ Matthew D. Morgan

MATTHEW D. MORGAN, ESQ.

Bar Number: 5044

Attorney for Plaintiff

McKee Law, LLC, P.A.

133 State Street

Augusta, Maine 04330

(207) 620-8294

E-mail: mmorgan@mckeelawmaine.com

Exhibit 3

Attachment B

UNITED STATES DISTRICT COURT
District of Maine

JONATHAN AFANADOR,)	
Plaintiff)	Docket No. 1:20-cv-00235-JDL
)	
v.)	
)	
KENNEBEC COUNTY and NATHAN)	
WILLHOITE,)	
Defendants)	
)	

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT KENNEBEC COUNTY

NOW COMES Defendant Kennebec County, by and through undersigned counsel, and hereby responds to the allegations contained in Plaintiff's Complaint as follows:

AFFIRMATIVE DEFENSES

- A. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.
- B. Plaintiff has not suffered any compensable damages resulting from the claims alleged in Plaintiff's Complaint.
- C. Plaintiff's damages, if any, were directly and proximately caused by the acts and/or omissions of an individual and/or entity other than this Defendant.
- D. Plaintiff's damages, if any, were directly and proximately caused by a legally sufficient superseding/intervening cause.
- E. Plaintiff has failed to mitigate his damages as required by law.
- F. This Defendant is entitled to immunity, including all immunities available under the Maine Tort Claims Act.

G. Plaintiff's claims are barred by provisions of the Prison Litigation Reform Act, including but not limited to 42 U.S.C. § 1997e(a) and/or 42 U.S.C. § 1997e(e).

H. Tort claims contained in Plaintiff's Complaint are barred for failure to comply with conditions precedent to the maintenance of this lawsuit, including, without limitation, the notice requirements of 14 M.R.S. § 8107.

ANSWER

Introduction

1. This Defendant denies the specific violations alleged against it. This Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and therefore denies same.

Parties

2. This Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore denies same.

3. This Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

4-6. This Defendants admits the allegations contained in these paragraphs of Plaintiff's Complaint.

Jurisdiction

7. The allegations contained in this paragraph of Plaintiff's Complaint do not require a response.

8. The allegations contained in this paragraph of Plaintiff's Complaint do not require a response. To the extent a response is required, this Defendant agrees that this Court has jurisdiction over these claims.

9. The allegations contained in this paragraph of Plaintiff's Complaint do not require a response. To the extent a response is required, this Defendant agrees that at this time, this Court has supplemental jurisdiction over these claims.

10. The allegations contained in this paragraph of Plaintiff's Complaint do not require a response. To the extent a response is required, this Defendant agrees that venue is proper in the United States District Court for the District of Maine.

Statement of Facts

11. This Defendant admits the allegations contained in this paragraph of Plaintiff's Complaint.

12. This Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore denies same.

13. This Defendant admits that on August 18, 2019, a shakedown search was being conducted on Afanador's block. Afanador's cell was unlocked, and Afanador exited the cell. This Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and therefore denies same.

14. This Defendant admits that inmates, including Afanador, were sitting and/or standing near tables in the day area and Afanador was standing against a wall with a book. This Defendant

is without sufficient knowledge or information so as to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and therefore denies same.

15. This Defendant admits that the inmates were ordered to sit. This Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and therefore denies same.

16. This Defendant admits that Corrections Officer Willhoite sprayed Afanador with OC spray. This Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and therefore denies same.

17. This Defendant admits that Afanador was led away in handcuffs in placed in an observation cell. This Defendant is without sufficient knowledge or information so as to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and therefore denies same.

18. This Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

19. This Defendant admits that the incident was captured by KCCF video cameras.

20-28. This Defendants denies the allegations contained in these paragraphs of Plaintiff's Complaint.

First Cause of Action – Violation of 42 U.S.C. § 2093 – Use of Excessive Force
(Corrections Officer Willhoite)

29. This Defendant repeats and reasserts the responses provided to Paragraphs 1 through and including 28 of Plaintiff's Complaint as if fully set forth herein.

30-35. This Defendant denies the allegations contained in these Paragraphs of Plaintiff's Complaint.

Second Cause of Action – Violation of 5 M.R.S. § 4682(1-A) – Excessive Force
(Officer Willhoite)

36. This Defendant repeats and reasserts the responses provided to Paragraphs 1 through and including 35 of Plaintiff's Complaint as if fully set forth herein.

37-39. This Defendant denies the allegations contained in these Paragraphs of Plaintiff's Complaint.

Third Cause of Action – Assault/Use of Excessive Force
(Corrections Officer Willhoite)

40. This Defendant repeats and reasserts the responses provided to Paragraphs 1 through and including 39 of Plaintiff's Complaint as if fully set forth herein.

41-44. This Defendant denies the allegations contained in these Paragraphs of Plaintiff's Complaint.

Fourth Cause of Action – Violation of 42 U.S.C. § 2093 – Failure to Train/Supervise
(Kennebec County)

45. This Defendant repeats and reasserts the responses provided to Paragraphs 1 through and including 44 of Plaintiff's Complaint as if fully set forth herein.

46. No response is required to the allegations contained in this paragraph of Plaintiff's Complaint.

47-52. This Defendant denies the allegations contained in these paragraphs of Plaintiff's Complaint.

Prayer for Relief

53-55. This Defendants denies the allegations contained in these paragraphs of Plaintiff's Complaint.

WHEREFORE, Defendant Kennebec County prays for judgment in its favor on all counts of Plaintiff's Complaint, plus costs, interest, and attorneys fees.

Dated: July 28, 2020

/s/ Peter T. Marchesi
Peter T. Marchesi, Esq.

/s/ Cassandra S. Shaffer
Cassandra S. Shaffer, Esq.

Wheeler & Arey, P.A.
Attorneys for Defendant Kennebec County
27 Temple Street
Waterville, ME 04901

UNITED STATES DISTRICT COURT
District of Maine

JONATHAN AFANADOR,)	
Plaintiff)	Docket No. 1:20-cv-00235-JDL
)	
v.)	
)	
KENNEBEC COUNTY and NATHAN)	
WILLHOITE,)	
Defendants)	
)	

CERTIFICATE OF SERVICE

I, Peter T. Marchesi, hereby certify that:

- Answer and Affirmative Defenses of Defendant Kennebec County

has been served this day on Plaintiff by filing with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

Matthew D. Morgan, Esq.	<i>mmorgan@mckeelawmaine.com</i>
-------------------------	----------------------------------

Dated: July 28, 2020

/s/ Peter T. Marchesi
Peter T. Marchesi, Esq.
Wheeler & Arey, P.A.
Attorneys for Defendant Kennebec County
27 Temple Street
Waterville, ME 04901

Exhibit 3

Attachment C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JONATHAN AFANADOR,

Plaintiff,

vs.

KENNEBEC COUNTY and NATHAN
WILLHOITE,

Defendants

Civil No. 20-00235-JDL

**ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES AND DEMAND FOR
JURY TRIAL (DEFENDANT NATHAN WILLHOITE)**

Defendant Nathan Willhoite, by and through counsel, hereby responds to the Plaintiff's Complaint as follows:

INTRODUCTION

1. The allegations contained in this paragraph of the Plaintiff's Complaint constitute assertions of law to which no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

PARTIES

2. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

3. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

4. The Defendant admits Kennebec County operates the Kennebec County Correction Facility located on State Street in Augusta, Maine. The remaining allegations

contained in this paragraph of the Plaintiff's Complaint constitute assertions of law to which no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

5. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

6. The Defendant admits he is a correction officer who works at the Kennebec County Correction Facility. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

JURISDICTION

7. The allegations contained in this paragraph of the Plaintiff's Complaint constitute assertions of law to which no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

8. The allegations contained in this paragraph of the Plaintiff's Complaint constitute assertions of law to which no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

9. The allegations contained in this paragraph of the Plaintiff's Complaint constitute assertions of law to which no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

10. The allegations contained in this paragraph of the Plaintiff's Complaint constitute assertions of law to which no response is required. Alternatively, the Defendant is without

sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

STATEMENT OF FACTS

11. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

12. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

13. The Defendant admits he and other corrections officers conducted a search of the cells in the Plaintiff's unit on August 18, 2019. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

14. The Defendant admits that contrary to the directions of the corrections officers, the Plaintiff was standing while the other inmates were sitting. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

15. The Defendant admits that corrections officers directed the inmates to sit and that the Plaintiff, contrary to those directions, remained standing. The Defendant further admits that he approached the Plaintiff when the Plaintiff failed to comply with verbal directions to sit down. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

16. The Defendant admits that he took the Plaintiff's arm in his hand. The Defendant further admits that when the Plaintiff pulled away he deployed his OC spray. The Defendant

further admits that he attempted to restrain the Plaintiff. The Defendant denies the remaining allegations contained in this paragraph of Plaintiff's Complaint.

17. The Defendant admits that other corrections officers escorted the Plaintiff from the unit. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

18. The Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

19. The Defendant denies that an assault occurred and, therefore, denies the allegations contained in this paragraph of Plaintiff's Complaint.

20. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

21. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

22. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

23. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

24. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

25. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

26. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

27. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

28. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

FIRST CAUSE OF ACTION

Violation of 42 U.S.C. § 1983 – Use of Excessive Force in Violation of the Fourteenth Amendment of the United States Constitution
(Corrections Officer Willhoite in his official and individual capacities)

29. The Defendant repeats his responses to the preceding paragraph of Plaintiff's Complaint.

30. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

31. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

32. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

33. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

34. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

35. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

SECOND CAUSE OF ACTION

Violation of 5 M.R.S. § 4682(1-A) – Excessive Force in Violation of Article I, Section 1, 6, and 6-A of the Maine Constitution
(Officer Willhoite in his official and individual capacities)

36. The Defendant repeats his responses to the preceding paragraph of Plaintiff's Complaint.

37. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

38. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

39. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

THIRD CAUSE OF ACTION
Assault (Use of Excessive Force)
(Officer Willhoite in his official and individual capacities)

40. The Defendant repeats his responses to the preceding paragraph of Plaintiff's Complaint.

41. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

42. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

43. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

44. The Defendant denies the allegations contained in this paragraph of Plaintiff's Complaint.

FOURTH CAUSE OF ACTION
Failure to Train/Supervise Corrections Officer Willhoite – 42 U.S.C. § 1983
(Kennebec County)

45. The Defendant repeats his responses to the preceding paragraph of Plaintiff's Complaint.

46. The allegations contained in this paragraph of the Plaintiff's Complaint are offered to support claims that are not asserted against this Defendant; therefore, no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a

belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

47. The allegations contained in this paragraph of the Plaintiff's Complaint are offered to support claims that are not asserted against this Defendant; therefore, no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

48. The allegations contained in this paragraph of the Plaintiff's Complaint are offered to support claims that are not asserted against this Defendant; therefore, no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

49. The allegations contained in this paragraph of the Plaintiff's Complaint are offered to support claims that are not asserted against this Defendant; therefore, no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

50. The allegations contained in this paragraph of the Plaintiff's Complaint are offered to support claims that are not asserted against this Defendant; therefore, no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

51. The allegations contained in this paragraph of the Plaintiff's Complaint are offered to support claims that are not asserted against this Defendant; therefore, no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a

belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

52. The allegations contained in this paragraph of the Plaintiff's Complaint are offered to support claims that are not asserted against this Defendant; therefore, no response is required. Alternatively, the Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and, accordingly, denies same.

AFFIRMATIVE DEFENSES

1. The Defendant has at all times acted in good faith and without knowledge that his conduct violated any clearly established constitutional or statutory rights of the Plaintiff.

2. The Defendant's conduct did not violate any clearly established constitutional or statutory rights of the Plaintiff.

3. No reasonable person would have known that the Defendant's conduct violated any clearly established constitutional or statutory rights of the Plaintiff.

4. To the extent that the Plaintiff endeavors to make a state claim grounded in tort, the Defendant reserves the right to demonstrate that the claim is barred by Plaintiff's failure to comply with the notice provisions of the Maine Tort Claims Act, 14 M.R.S. § 8107 and 8108.

5. To the extent that the Plaintiff endeavors to make a state claim grounded in tort, the claim is barred by the personal immunity provisions provided to the Defendant by the Maine Tort Claims Act, 14 M.R.S. § 8111.

6. To the extent that the Plaintiff's Complaint seeks to impose liability on the Defendant in his representative capacity, the Complaint fails to state a claim upon which relief may be granted.

7. The conduct of the Plaintiff was the sole or a contributing cause of any injuries or damages he may have sustained, which bars or reduces the claims pursuant to comparative fault.

8. The Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

9. The Plaintiff's claims are barred for the reason that the Defendant is not liable under a theory of *respondeat superior* or vicarious liability for the actions of his employer's agents or employees.

10. The Plaintiff's claims are barred for the reason that the Defendant's actions do not constitute deliberate indifference or conduct which is shocking to the conscience.

11. The Plaintiff's claims are barred for the reason that the allegations in the Complaint allege simple negligence and the conduct complained of is not the type contemplated under 42 U.S.C. § 1983.

12. The Plaintiff's claims are barred, in whole or in part, by the doctrine of immunity.

13. The Plaintiff's claims are barred, in whole or in part, by the doctrine of qualified immunity.

14. To the extent that the Plaintiff seeks injunctive or declaratory relief, he has no standing.

15. The Plaintiff has adequate remedies under State law, and therefore no action lies under 42 U.S.C. § 1983 in the Maine Constitution or the United States Constitution.

16. The Plaintiff's Complaint, in whole or in part, fails to state justiciable claims.

17. The Defendant reserves the right to demonstrate that the Plaintiff has failed to mitigate damages.

18. The Defendant cannot be held liable for the alleged damages associated with conditions that pre-existed the events alleged in the Complaint.

19. The Defendant cannot be held liable for the acts of others or for intervening or superseding causes.

20. To the extent that the Plaintiff endeavors to make a state claim grounded in tort, the claim is capped by the personal exposure limit provided to the Defendant by the Maine Tort Claims Act. 14 M.R.S. § 8104-D.

JURY DEMAND

Pursuant to Local Rule 38 and Federal Rule of Civil Procedure 38(b), the Defendant requests a trial by jury on all claims and issues properly tried to a jury.

WHEREFORE, Defendant Nathan Willhoite demands judgment in his favor with regard to all claims of the Plaintiff's Complaint, including an award of costs and attorneys' fees, if appropriate, and such other relief as the Court deems just.

Dated at Portland, Maine this 29th day of July, 2020.

Attorneys for Defendant Nathan Willhoite
MONAGHAN LEAHY, LLP
95 Exchange Street, P.O. Box 7046
Portland, ME 04112-7046
(207) 774-3906
jwall@monaghanleahy.com

BY: /s/ John J. Wall, III
John J. Wall, III

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2020, I electronically filed **Answer to Complaint and Affirmative Defenses and Demand for Jury Trial (Defendant Nathan Willhoite)** using the CM/ECF system, which will provide notice to me and all other counsel of record.

Dated at Portland, Maine this 29th day of July, 2020.

Attorneys for Defendant Nathan Willhoite
MONAGHAN LEAHY, LLP
95 Exchange Street, P.O. Box 7046
Portland, ME 04112-7046
(207) 774-3906
jwall@monaghanleahy.com

BY: /s/ John J. Wall, III
John J. Wall, III

Exhibit 3

Attachment D

GENERAL RELEASE AND AGREEMENT TO DEFEND, INDEMNIFY AND HOLD
HARMLESS

The undersigned, **JONATHAN AFANADOR**, (hereinafter referred to as "Releasor"), for the sole consideration of **One Dollar and Other Good and Valuable Consideration** paid to him, the receipt of which is acknowledged, does release and forever discharge **NATHAN WILLHOITE, KENNEBEC COUNTY and MAINE COUNTY COMMISSIONERS ASSOCIATION SELF-FUNDED RISK MANAGEMENT POOL**, his, their or its agents, servants, officers, officials, and employees (hereinafter referred to as "Releasees") and all other persons, firms, associations, corporations, employees, contractors, attorneys, obligors, and any other person or entity of and from all claims, demands, actions, or causes of action of every sort or nature whatsoever which Releasor now has, has in the past had, or may in the future have, from the beginning of time to the day of the date of these presents, including, without any limitation whatsoever on the generality of the foregoing, all claims, demands, actions, or causes of action, which were, are or could have been set forth in a certain civil action presently pending in the United States District Court for the District of Maine entitled "Jonathan Afanador v. Kennebec County and Nathan Willhoite," and bearing Docket No. 1:20-cv-00235-JDL.

Releasor knowingly and voluntarily releases and forever discharges, to the full extent permitted by law, Releasees of and from any and all claims, known and unknown, asserted and unasserted, Releasor may have against Releasees as of the date of execution of this Agreement including, but not limited to, any alleged violation of:

- Title VII of the Civil Rights Act of 1964, as amended;
- The Civil Rights Act of 1991;
- Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- The American with Disabilities Act of 1990, as amended;
- The Constitution of Maine;
- Maine Human Rights Act and its regulations;
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance;
- Any claim for costs, fees, attorneys' fees, or other expenses, as a "prevailing party" or otherwise.

Confidentiality. Releasor further agrees to hold the fact of this settlement, and the terms hereof, including without limitation, the amount of the consideration given to Releasor, in strict and complete confidence and not to disclose the same to any person or entity, except as expressly provided herein. Releasor represents that he has not heretofore divulged or disclosed any of the information which is made confidential by this agreement. In addition, Releasees shall be entitled to recover attorneys fees and costs of litigation incurred in efforts to enforce this agreement, in addition to any equitable relief available to Releasees. Notwithstanding the foregoing, this provision shall not be construed to prohibit Releasor from divulging information regarding the amount or terms of the settlement, as may be required in a specific circumstance described below in Paragraphs (a) through (c):

(a) to an attorney, accountant, or other person who needs the information in order to perform a necessary professional service, provided that such attorney, accountant or other agent requiring this information is aware of and adheres to the confidentiality requirements herein;

(b) to any federal, state or local authority which requires the information for any governmental purpose;

(c) in order to comply with any court order or subpoena, provided that sufficient notice of the order or subpoena is provided to Releasees so as to allow Releasees a reasonable opportunity to seek relief or protection from the order or subpoena.

Non-Disparagement. Releasor represents and agrees that he will not in any way disparage or discredit Releasees or any of them, or make or solicit any comments, statements, or the like (including, without limitation, the repetition or distribution of derogatory rumors, allegations, negative reports, or comments) that may be considered to be derogatory or detrimental to the good name or reputations of Releasees or any of them. In the event Releasor violates this provision, Releasor acknowledges that Releasees or any of them have the right to institute an action Releasor for any damages, including the reimbursement of reasonable attorneys fees incurred in connection the enforcement of this provision. It is understood that the rest of this agreement would, nevertheless, remain in full force and effect.

Releasor further acknowledges:

(1) That no promises or agreements other than as set forth herein have been made as or in consideration for this release and that the signing of this release has not been induced by any representations of the parties released, or by anyone in their behalf, concerning the nature, extent or duration of the injuries or damages sustained, or any other matter;

(2) That the Releasees have denied liability in whole, and that the payment acknowledged in this release was made without admission of liability which is expressly denied, and which payment was received in discharge, compromise, settlement and satisfaction of all actions, causes of action, claims and demands heretofore described.

This release shall bind the Releasor, his heirs, next of kin, personal representatives, successors or assigns and shall inure to the benefit of the parties released, their heirs, next of kin, personal representatives, successors or assigns.

No Bar. The Releasor further agrees that this release shall not be pleaded as a bar to any claim or suit by releasees against releasor or in bar of any claims for contribution in any other action.

Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement or any particular application thereof shall not be deemed to affect or impair in any manner the validity, legality, or enforceability of any other provision of this Agreement, and this Agreement

shall continue in full force and effect and shall be interpreted so as to implement as nearly as possible the intention of the Parties in the absence of such provision or application.

Waiver of Breach. The waiver by Releasees of a breach of any provision of this Agreement shall not operate or be construed as a continuing waiver or as consent to or waiver of any subsequent breach of this Agreement.

Agreement to Defend, Indemnify, and Hold Harmless. Further, in consideration of the payment of the aforementioned sum of money, Releasor agrees to satisfy all liens, subrogation interests or claims of any doctor, hospital, insurance carrier, non-profit hospital and medical service organization, state or governmental agency, or any other person, firm or corporation, which have been made or may be made in the future against the consideration described herein, or against any Releasee. Releasor further agrees to hold harmless, and to defend and indemnify Releasees and any of them, to the fullest extent possible, from any suits, claims, judgments, costs or expenses of any kind arising from any such lien, subrogation interest or claim.

The parties have considered the interests of Medicare in resolving this case. Releasor has represented that he is not eligible for Medicare and that he has not received Medicare payments for any reason. Releasor understands that Releasees are relying on that representation. Releasor understands and agrees that he is solely responsible to satisfy any claims made by Medicare, CMS or MSPRC for any payments in any way related to the claims which are the subject of this General Release, including without limitation, any claims for past or future payments, attorneys' fees and penalties. Without in any way limiting the other indemnification provisions in this release, Releasor agrees to fully defend and indemnify Releasees for any claims made by Medicare, CMS or MSPRC.

Further, in the event that Releasor is or was a Medicaid or MaineCare recipient, Releasor acknowledges and represents, and understands that Releasees and each of them rely upon such acknowledgment and representation, that Releasor has complied with the requirements of 22 M.R.S. § 14.

Full Understanding and Voluntary Acceptance. Releasor hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise, adjustment, and settlement of any and all claims, demands, actions, or causes of action, disputed or otherwise, arising from the accident, casualty, occurrence, fact, facts, circumstance, or circumstances referred to hereinabove and any consequent damages arising therefrom, and for the express purpose of precluding forever any further or additional claims, demands, actions, or causes of action, which Releasor now has or may in the future have against Releasees from the beginning of time to the day of the date of these presents.

Assistance of Counsel. Releasor acknowledges that he has had the assistance of independent counsel of his choosing, or has had the opportunity to have had such assistance, for the purpose

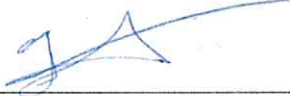
of obtaining advice and assistance regarding the settlement which is the subject of this Release and Indemnification Agreement, and for the purpose of understanding the terms of this General Release and Indemnification Agreement.

Headers for Convenience Only. The headers used in this General Release and Agreement to Defend, Indemnify and Hold Harmless are for convenience of reference only, and shall not be used to interpret the meaning of the provisions hereof.

IN WITNESS WHEREOF, Releasor has hereunto set his hand and seal, this 30th day of ~~February~~, 2021.
March JA

**CAUTION -- FINAL RELEASE
READ BEFORE SIGNING!!**

WITNESS


Jonathan Afanador, Releasor

STATE OF MAINE
Hood County, ss.

Dated: *March* ~~February~~ 3, 2021
JA

Personally appeared the above-named **Jonathan Afanador** Releasor, and under oath swore that the execution of this General Release and Indemnification Agreement was made knowingly, voluntarily, and was his free act and deed.

Joseph McKittrick
Notary Public, State of Maine
My Commission Expires January 22, 2026

Before me,

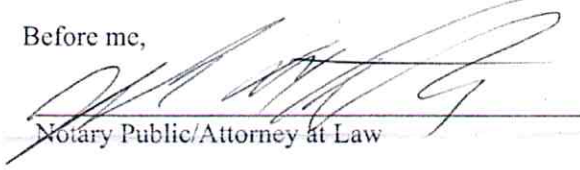

Notary Public/Attorney at Law

Exhibit 4

From: [Peter Marchesi](#)
To: [FOIA General Mailbox](#)
Subject: Re: FOA Request - Kennebec County
Date: Wednesday, June 16, 2021 3:45:49 PM

Ms. Beauvais,

The document provided to you is the only document which contains the terms of the settlement.

Peter Marchesi, Esq.

On Jun 16, 2021, at 3:17 PM, FOIA General Mailbox
<FOIA@humanrightsdefensecenter.org> wrote:

Hi Mr. Marchesi,

According to the Press Herald, there was a \$30,000 settlement between Mr. Afanador and Kennebec County (see attached). We are looking for any agreement related to what is reported in the attached article. The General Release provided by Ms. Campbell was only for one dollar.

Best regards,

Samantha Beauvais
*Public Records Manager &
Development Coordinator*
[Human Rights Defense Center](#)
[Prison Legal News](#)
M: 561-305-4643
<image001.png>

From: Peter Marchesi <peter@wheelerlegal.com>
Sent: Wednesday, June 16, 2021 2:25 PM
To: FOIA General Mailbox <FOIA@humanrightsdefensecenter.org>
Cc: Donna Campbell <dcamp@wheelerlegal.com>
Subject: Re: FOA Request - Kennebec County

Ms. Beauvais,

The settlement agreement was included in our response. You corresponded via e-mail with our paralegal, and you confirmed receipt with her. I'll ask her to forward to you directly the e-mail string.

Peter Marchesi

On Jun 16, 2021, at 12:06 PM, FOIA General Mailbox
<FOIA@humanrightsdefensecenter.org> wrote:

Dear Mr. Marchesi,

I would like to request clarification regarding your letter dated 5/20/21. HRDC specifically requested the settlement agreement between Jonathan Afanador (an inmate at KCCF) and Kennebec County, but it was not included in the documents you produced. You indicated that the request was denied "to the extent that your request seeks information which is otherwise privileged, protected or not subject to public disclosure." Settlement agreements between the county government and a citizen of the county are typically considered public records. It is unclear whether this was merely an oversight, or whether this is the document referenced by the denial.

I would like to reiterate HRDC's request for the settlement agreement. If you are denying the request because it is "privileged, protected, or not subject to disclosure" please let me know.

Thank you for your time and attention to this matter.

Best regards,

Samantha Beauvais
*Public Records Manager &
Development Coordinator*
[Human Rights Defense Center](#)
[Prison Legal News](#)
M: 561-305-4643
<image001.png>

From: FOIA General Mailbox
Sent: Friday, May 21, 2021 12:35 PM
To: Donna Campbell <dcamp@wheelerlegal.com>; FOIA General Mailbox <FOIA@humanrightsdefensecenter.org>
Subject: RE: FOA Request - Kennebec County

Thanks so much!

Best regards,

Samantha Beauvais
*Public Records Manager &
Development Coordinator*
[Human Rights Defense Center](#)
[Prison Legal News](#)
M: 561-305-4643
<image001.png>

From: Donna Campbell <dcamp@wheelerlegal.com>
Sent: Friday, May 21, 2021 9:31 AM
To: FOIA General Mailbox <FOIA@humanrightsdefensecenter.org>
Subject: RE: FOA Request - Kennebec County

Please accept my apologies. Those should have been attached with the letter. I have just sent them to you separately. Please let me know if you do not receive them.

Have a wonderful weekend!

From: FOIA General Mailbox <FOIA@humanrightsdefensecenter.org>
Sent: Friday, May 21, 2021 9:29 AM
To: Donna Campbell <dcamp@wheelerlegal.com>
Subject: RE: FOA Request - Kennebec County

Hello Donna,

Thank you for your response. Per paragraph three, there should be four documents enclosed. Can you please confirm if the documents will be sent separately? I didn't receive anything beyond the attached response letter.

Please advise.

Samantha Beauvais
*Public Records Manager &
Development Coordinator*
[Human Rights Defense Center](#)
[Prison Legal News](#)
M: 561-305-4643
<image001.png>

From: Donna Campbell <dcamp@wheelerlegal.com>
Sent: Friday, May 21, 2021 9:16 AM
To: FOIA General Mailbox <FOIA@humanrightsdefensecenter.org>
Subject: FOA Request - Kennebec County

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

<Beauvais 5 20 21.pdf>

<pressherald.com-Kennebec County settles excessive force lawsuit against jail guard.pdf>

Exhibit 5



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

June 18, 2021

Malcolm Ulmer
MCCA Risk Pool
4 Gabriel Drive, Ste 2
Augusta, ME 04330

Sent via email to: mlu@mainecounties.org

Request for Documentation of Payments Made to Jonathan Afanador

Dear Mr. Ulmer,

The Human Rights Defense Center (HRDC) makes this request pursuant to the Maine Freedom of Access Act, 1 M.R.S.A §§ 400 - 414.

HRDC is a non-profit dedicated to advocacy and education around criminal justice issues. Among other activities, HRDC publishes the journals *Prison Legal News* and *Criminal Legal News*.

Documents Requested:

HRDC requests any documents showing payments disbursed to Jonathan Afanador and/or attorney John Walls by Kennebec County, Nathan Willhoite, and/or the Maine County Commissioners Association Self-Funded Risk Management Pool from January 1, 2021 to present. This includes but is not limited to payment documentation related to the following case:

Afanador v. Kennebec County Case No: 1:20-cv-00235-JDL

If this request is denied in whole or part, please justify all denials by reference to specific exemptions. If any records responsive to this request are denied in part, release all segregable portions of those records. Additionally, please outline any administrative appeals process available.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the operation of Kennebec County and how local government manages taxpayer money. HRDC is a member of the news media and publishes two monthly magazines,

Prison Legal News and *Criminal Legal News*. This request is being made for news gathering purposes. This information is not being sought for commercial purposes.

Please contact me via email, FOIA@humanrightsdefensecenter.org, should you require any additional information. Thank you for your time and attention in this matter.

Sincerely,

A handwritten signature in black ink that reads "Samantha Beauvais". The signature is written in a cursive style with a large initial 'S' and a stylized 'B'.

Samantha Beauvais
Public Records Manager
HUMAN RIGHTS DEFENSE CENTER

Exhibit 6

From: [Malcolm L. Ulmer](#)
To: [FOIA General Mailbox](#)
Subject: Re: Public Records Request from the Human Rights Defense Center
Date: Monday, June 21, 2021 9:24:32 AM
Attachments: [image001.png](#)

Ms. Beauvais:

It is my understanding that Mr. Marchesi previously provided to you a copy of the signed release. That document is the actual agreement. I have already advised you that the settlement amount is \$30,000.

Regards,

Malcolm L. Ulmer
MCCA Risk Pool

From: FOIA General Mailbox [<mailto:FOIA@humanrightsdefensecenter.org>]
Sent: Monday, June 21, 2021, 8:17 AM
To: Malcolm L. Ulmer <m lu@mainecounties.org>
Subject: Public Records Request from the Human Rights Defense Center

Hi Mr. Ulmer,

Do you have a copy of the actual agreement that shows \$30,000?

Please advise.

Samantha Beauvais
*Public Records Manager &
Development Coordinator*
[Human Rights Defense Center](#)
[Prison Legal News](#)
M: 561-305-4643

 Please consider the environment before printing this e-mail

From: Malcolm L. Ulmer <m lu@mainecounties.org>
Sent: Friday, June 18, 2021 2:08 PM
To: FOIA General Mailbox <FOIA@humanrightsdefensecenter.org>
Subject: Re: Public Records Request from the Human Rights Defense Center

See attached.

From: FOIA General Mailbox [<mailto:FOIA@humanrightsdefensecenter.org>]
Sent: Friday, June 18, 2021, 1:50 PM
To: Malcolm L. Ulmer <m lu@mainecounties.org>, FOIA General Mailbox

[<FOIA@humanrightsdefensecenter.org>](mailto:FOIA@humanrightsdefensecenter.org)

Subject: Public Records Request from the Human Rights Defense Center

Hi Mr. Ulmer,

Thank you for your quick response. Mr. Marchesi at Wheeler Legal provided a general release that stated the settlement amount is \$1. Do you have any documentation that shows the \$30,000 amount?

Best regards,

Samantha Beauvais

Public Records Manager &

Development Coordinator

[Human Rights Defense Center](#)

[Prison Legal News](#)

M: 561-305-4643



Please consider the environment before printing this e-mail

From: Malcolm L. Ulmer [<mlu@mainecounties.org>](mailto:mlu@mainecounties.org)

Sent: Friday, June 18, 2021 1:17 PM

To: FOIA General Mailbox [<FOIA@humanrightsdefensecenter.org>](mailto:FOIA@humanrightsdefensecenter.org)

Subject: Re: Public Records Request from the Human Rights Defense Center

Ms. Beauvais:

Thank you for your e-mail message shown below. It is my understanding that Wheeler & Arey, P.A. previously provided to you a copy of the settlement agreement in the matter of Afanador v. Kennebec County. The settlement amount is \$30,000.

Have a nice weekend.

Regards,

Malcolm L. Ulmer

MCCA Risk Pool

From: FOIA General Mailbox [<mailto:FOIA@humanrightsdefensecenter.org>]

Sent: Friday, June 18, 2021, 9:09 AM

To: mlu@mainecounties.org [<mlu@mainecounties.org>](mailto:mlu@mainecounties.org)

Subject: Public Records Request from the Human Rights Defense Center

Dear Mr. Ulmer,

Attached please find a public records request from the Human Rights Defense Center; the text of

this request is duplicated in the body of this message.

The Human Rights Defense Center (HRDC) makes this request pursuant to the Maine Freedom of Access Act, 1 M.R.S.A §§ 400 - 414.

HRDC is a non-profit dedicated to advocacy and education around criminal justice issues. Among other activities, HRDC publishes the journals *Prison Legal News* and *Criminal Legal News*.

Documents Requested:

HRDC requests any documents showing payments disbursed to Jonathan Afanador and/or attorney John Walls by Kennebec County, Nathan Willhoite, and/or the Maine County Commissioners Association Self-Funded Risk Management Pool from January 1, 2021 to present. This includes but is not limited to payment documentation related to the following case:

Afanador v. Kennebec County Case No: 1:20-cv-00235-JDL

If this request is denied in whole or part, please justify all denials by reference to specific exemptions. If any records responsive to this request are denied in part, release all segregable portions of those records. Additionally, please outline any administrative appeals process available.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the operation of Kennebec County and how local government manages taxpayer money. HRDC is a member of the news media and publishes two monthly magazines, *Prison Legal News* and *Criminal Legal News*. This request is being made for news gathering purposes. This information is not being sought for commercial purposes.

Please contact me via email, FOIA@humanrightsdefensecenter.org, should you require any additional information. Thank you for your time and attention in this matter.

Sincerely,

Samantha Beauvais
*Public Records Manager &
Development Coordinator*
[Human Rights Defense Center](#)
[Prison Legal News](#)
M: 561-305-4643

 Please consider the environment before printing this e-mail

Exhibit 7



PO Box 7860
Portland, ME 04112
(207) 774-5444
www.aclumaine.org

July 2, 2021

VIA REGULAR AND ELECTRONIC MAIL

Kennebec County c/o Peter Marchesi, Esq.
Wheeler and Arey
P.O. Box 376
Waterville, Maine 04903-0376

Malcolm Ulmer
Director of Operations
Maine County Commissioners Association Risk Pool
4 Gabriel Drive, Suite 2
Augusta, Maine 04330

Re: Human Rights Defense Center FOAA

Dear Mr. Marchesi and Mr. Ulmer:

The ACLU of Maine currently represents the Human Rights Defense Center in connection with their requests for public documents in the possession of Kennebec County and the Maine County Commissioners Association. It is my understanding that Mr. Marchesi is representing Kennebec County in this matter.

I am writing to follow up on emails exchanged among you both and Samantha Beauvais, the Public Records Manager for the Human Rights Defense Center, concerning their public records request.

Here is my understanding:

1. On May 7, 2021, the Human Rights Defense Center submitted a public documents request under Maine's Freedom of Access Act ("FOAA") to Kennebec County, seeking the settlement agreement and other case records regarding *Afanador v. Kennebec County* (ECF No. 1:20-cv-235-JDL);

2. In response, Kennebec County produced a copy of Mr. Afanador's federal complaint, a copy of Officer Wilhoite's answer, a copy of Kennebec County's answer, and a document entitled "GENERAL RELEASE AND AGREEMENT TO DEFEND, INDEMNIFY AND HOLD HARMLESS." Kennebec County's response also denied the request "to the extent that [the] request seeks information which is otherwise privileged, protected, or not subject to public disclosure." The response failed to state clearly whether any specific document was withheld pursuant to the denial;
3. The release states that Mr. Afanador had received, in exchange for his release and discharge, "One Dollar and Other Good and Valuable Consideration." Mr. Ulmer separately confirmed to Ms. Beauvais that the actual settlement amount paid to Mr. Afanador was \$30,000;
4. No documents were produced that show that \$30,000 was paid to Mr. Afanador, nor were any documents produced showing payment to any attorneys involved in the case;
5. In our experience, documentation of the amount of money involved in a settlement is typically reflected in a settlement agreement, signed by both parties;
6. On June 16, 2021, Ms. Beauvais, on behalf of the Human Rights Defense Center, reached out to "reiterate HRDC's request for the settlement agreement," explaining that the FOAA request was for "any agreement" related to the \$30,000 settlement between Mr. Afanador and Kennebec County. Ms. Beauvais noted that the General Release that had been provided "was only for one dollar;"
7. On behalf of Kennebec County, on June 16, 2021, Mr. Marchesi responded that "[t]he document provided to you is the only document which contains the terms of settlement."

However, you did not state whether there was any separate settlement agreement document that had been withheld from the production.

We believe that Kennebec County's FOAA response thus far is not in compliance with the FOAA. In our experience litigating and settling cases with county governments and other government entities, any damages awards or attorney fees paid out are reflected in a settlement agreement, which are typically executed in parallel with some version of a Release. Other documents that are potentially responsive to the FOAA request include accounting records, a copy of a cover letter that was sent with payment, emails between individuals in county government and officials in the sheriff's office, or memoranda suggesting that officers not engage in whatever conduct led to the filing of the litigation in the first place. None of these documents were provided or identified, leaving us to conclude that Kennebec County either performed an inadequate search or wrongly withheld responsive documents. Please provide all responsive documents by Friday, July 9, 2021, or we will interpret the failure as a denial or refusal pursuant to 1 M.R.S. § 409(1) and proceed accordingly.

Thank you, in advance, for your assistance.

Very truly yours,

/s/ Zachary L. Heiden

Zachary L. Heiden
Emma E. Bond
American Civil Liberties Union of Maine
Foundation
PO Box 7860
Portland, Maine 04112
207.619.6224

Exhibit 8

Re: Human Rights Defense Center FOAA follow-up

Peter Marchesi <peter@wheelerlegal.com>

Sat 7/3/2021 11:21 AM

To: Zach Heiden <heiden@aclumaine.org>

Cc: 'Malcolm L. Ulmer' <mlu@mainecounties.org>; Emma Bond <ebond@aclumaine.org>

EXTERNAL MESSAGE:

Zach,

Thank you for your e-mail and letter. I'll confirm, once again, that the document produced is the only document that contains the terms of the settlement, refers to the terms of the settlement, or otherwise relates to the terms of the settlement. The only documents that I have that would fit into any of these categories and have *not* produced are attorney client communications. The objection previously raised applies to those.

However, I will review my file to see if the cover letter forwarding the referenced settlement proceeds refers to the amount. I'm quite certain that it does not, but I will confirm this and let you know.

Take good care,

Peter

On Jul 2, 2021, at 4:45 PM, Zach Heiden <heiden@aclumaine.org> wrote:

Malcolm and Peter,
Please see attached.
Have a nice holiday,
Zach

Zachary L. Heiden*pronouns: he/him/his*

Chief Counsel

American Civil Liberties Union of Maine

PO Box 7860

Portland, ME 04112

■ office: [207-774-5444](tel:207-774-5444)■ direct: [207-619-6224](tel:207-619-6224)■ zheiden@aclumaine.orgwww.aclumaine.org

<HRDC FOAA_confirmation letter.pdf>

Exhibit 9

Re: Human Rights Defense Center FOAA follow-upMalcolm L. Ulmer <m lu@mainecounties.org>

Tue 7/6/2021 11:36 AM

To: Zach Heiden <heiden@aclumaine.org>Cc: Emma Bond <ebond@aclumaine.org>; Peter Marchesi <peter@wheelerlegal.com>**EXTERNAL MESSAGE:**

Zach:

Thanks for your e-mail message shown below. It is my understanding that Peter Marchesi, Esq. has already responded to your inquiry, but I am writing to ensure that you receive a separate response from the Risk Pool. I previously advised Samantha Beauvais that it is my understanding that the signed release provided to her by Mr. Marchesi is the only settlement release document and I also advised her of the settlement amount.

Regards,

Malcolm L. Ulmer
MCCA Risk Pool

From: Zach Heiden [<mailto:heiden@aclumaine.org>]**Sent:** Friday, July 2, 2021, 4:45 PM**To:** Peter Marchesi <peter@wheelerlegal.com>, Mal <m lu@mainecounties.org>**Cc:** Emma Bond <ebond@aclumaine.org>**Subject:** Human Rights Defense Center FOAA follow-upMalcolm and Peter,
Please see attached.
Have a nice holiday,
Zach**Zachary L. Heiden***pronouns: he/him/his*

Chief Counsel

American Civil Liberties Union of Maine

PO Box 7860

Portland, ME 04112

■ office: [207-774-5444](tel:207-774-5444)■ direct: [207-619-6224](tel:207-619-6224)■ zheiden@aclumaine.orgwww.aclumaine.org