[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10607

D.C. Docket No. 1:17-cv-01819-TWT

DENNIS QUINETTE,

Plaintiff - Appellee,

versus

DILMUS REED,
CHIEF LYNDA COKER,
CHIEF DEPUTY MILTON BECK,
COLONEL DONALD BARTLETT,
COLONEL LEWIS ALDER, et al.,

Defendants - Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

(February 21, 2020)

Before WILSON and GRANT, Circuit Judges, and MARTINEZ,* District Judge.

PER CURIAM:

This case arises out of an altercation between Cobb County Detention Center officer Dilmus Reed and inmate Dennis Quinette in which Reed allegedly caused the fracture of Quinette's hip by pushing him with two hands onto the floor of his cell. Quinette brought 42 U.S.C. § 1983 claims against Reed and his supervisors and a state law assault and battery claim against Reed alone. The district court denied the defendants' motion to dismiss the complaint. The court's order had the effect of denying qualified immunity on the federal claims and official immunity on the state law claim to all defendants. The officers appeal that denial. We affirm the district court's denial of qualified and official immunity to Reed, but reverse the district court's denial of qualified immunity based on supervisory liability.

I. FACTUAL AND PROCEDURAL BACKGROUND

The incident occurred at the Cobb County Detention Center, where 54-year-old Quinette was detained in a video-monitored cell.[1] He had recently been arrested and was in the process of being booked into the detention center. Quinette

* Honorable Jose E. Martinez, United States District Judge for the Southern District of Florida, sitting by designation.

[1] In reviewing the district court's denial of the motion to dismiss, we accept the complaint's well-pled allegations as true and construe them in the light most favorable to Quinette. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012). Accordingly, we recite the facts as Quinette has alleged them.

was housed in an intake cell; detention center officers planned to move him to the general jail population after his booking was completed. While in the intake cell, Quinette stood at the cell door for several minutes, hoping to get a jailer's attention so that he could make a phone call. As Reed opened the cell door and brought another inmate into the cell, Quinette asked for Reed's help. Quinette can be heard saying "excuse me" on the video recording of the intake cell.

Quinette "remained respectful and polite, never banging loudly on the cell door or window, never yelling, and never causing any sort of disturbance." Instead of helping Quinette, Reed shut the door on him. Quinette placed his hand on the window of the cell door as it closed. He exerted no "force or pressure" on the window and did not prevent the door from closing. At that point, Quinette was "not resisting any officer," "not presenting a threat of any kind," and "not causing a disturbance." After the cell door made contact with the doorframe, Reed reopened it and stepped into the cell. Then, without warning, Reed shoved Quinette with two hands. The shove threw Quinette backwards, where he fell hard onto the cell floor. He howled and curled up in pain. His hip was broken in the fall.

Reed walked away as Quinette lay motionless on the cell floor. A minute later, he returned, attempting to drag Quinette to his feet. Quinette again howled in

pain, unable to stand. Reed berated Quinette, leaning over him and yelling, "[y]ou tried to rush me!"

For approximately an hour, Quinette remained on the concrete floor as medical staff and jailers attempted to treat him. Emergency medical personnel then took him to the emergency room, where he was diagnosed with a broken hip.

Reed was terminated from his position after an internal affairs investigation into this incident concluded that he had failed to comply with the Cobb County Sheriff's Office's policies and procedures. During the investigation, Reed acknowledged that he had used more force than was necessary. This was the twelfth investigation into Reed's conduct while he was working at the Cobb County Detention Center. In six of the investigations, Reed was found to have violated Cobb County Sheriff's Office policy; three involved the use of excessive force on inmates. Quinette alleges that the defendants who were part of the jail's supervisory staff ("Supervisor Defendants") "turned a blind eye" to Reed's actions despite their knowledge of his violations of detention center policy, thus "ensur[ing] that . . . Reed would ultimately cause a serious injury to an inmate." In two of the three investigations into Reed's excessive use of force, the Cobb County Sheriff's Office disciplined Reed after finding that he had indeed used excessive force. The Sheriff's Office did not terminate him until after the incident with Quinette.

Quinette sued Reed and the Supervisor Defendants, bringing claims under 42 U.S.C. § 1983 against all the defendants, as well as a state law assault and battery claim against Reed alone. The defendants moved to dismiss the lawsuit, claiming that they were entitled to qualified and official immunity. With their motion to dismiss, the defendants filed a copy of a video of the incident recorded in the holding cell. The district court denied Reed qualified immunity because his alleged use of force violated Quinette's clearly established constitutional right. The court denied the Supervisor Defendants qualified immunity and determined that, under the facts as alleged, they could be held liable for the constitutional violations. Finally, the district court denied Reed official immunity under Georgia law because he allegedly acted with malice. All defendants appealed.

II. STANDARD OF REVIEW

We review *de novo* the denial of a motion to dismiss on qualified or official immunity grounds, applying the same standard as did the district court. *See Bailey v. Wheeler*, 843 F.3d 473, 480 (11th Cir. 2016). In doing so, we accept the facts alleged in the complaint as true and draw "all reasonable inferences in the plaintiff's favor." *Keating v. City of Miami*, 598 F.3d 753, 762 (11th Cir. 2010).

In reviewing a motion to dismiss, we are generally limited to the pleadings themselves. Fed. R. Civ. P. 12(b)(6). But we may also consider those "documents incorporated into the complaint by reference, and matters of which a court may

take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). The complaint in this case references video footage from the camera in the intake cell. A document or thing is incorporated by reference into a complaint where (1) it is central to the plaintiff's claim, (2) its contents were alleged in the complaint, and (3) no party questions those contents. *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). Here, all three factors are met, so we consider the video footage. Where a video in evidence "obviously contradicts [the nonmovant's] version of the facts, we accept the video's depiction instead of [the nonmovant's] account," *Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1315 (11th Cir. 2010), and "view[] the facts in the light depicted by the videotape," *Scott v. Harris*, 550 U.S. 372, 380-81 (2007).

III. LEGAL ANALYSIS

This case is an interlocutory appeal from the district court's decision denying Reed and the Supervisor Defendants qualified and official immunity. As an initial matter, we address whether we have jurisdiction to hear this interlocutory appeal. Because the district court has not entered a final order in this case, the scope of the appeal is narrow. *See Harris v. Bd. of Educ. of Atlanta*, 105 F.3d 591, 594 (11th Cir. 1997). This Court has jurisdiction to review an interlocutory appeal from the denial of qualified immunity pursuant to 28 U.S.C. § 1291. *Mitchell v. Forsyth*, 472 U.S. 511, 526-27 (1985). We likewise have jurisdiction to review an

interlocutory appeal from the denial of official immunity under Georgia law. *Griesel v. Hamlin*, 963 F.2d 338, 341 (11th Cir. 1992). Because we have jurisdiction, we now address the merits of the defendants' arguments regarding qualified and official immunity.

A. Reed's Two-Handed Shove Despite Quinette's Compliance and Non-Resistance Violated the Fourth or Fourteenth Amendment.

Qualified immunity provides complete protection for government officials sued in their individual capacities where their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity ensures "that before they are subjected to suit, officers are on notice their conduct is unlawful." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (internal quotation marks omitted). An officer is entitled to qualified immunity where his actions would be objectively reasonable to a reasonable officer in the same situation. *Anderson v. Creighton*, 483 U.S. 635, 638-41 (1987). We are mindful that officers face "facts and circumstances [that] are often 'tense, uncertain and rapidly evolving,' thereby requiring 'split-second judgments' as to how much force is necessary." *See Garczynski v. Bradshaw*, 573 F.3d 1158, 1167 (11th Cir. 2009) (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)).

To assert a qualified immunity defense, an officer must have been "acting within the scope of his discretionary authority when the allegedly wrongful acts

occurred." *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002) (internal quotation marks omitted). Here, it is undisputed that Reed was acting in his discretionary authority.

We conduct a two-step inquiry to determine whether a defendant is entitled to qualified immunity. The court must determine (1) "whether the facts alleged show the officer's conduct violated a constitutional right," and (2) "whether the right was clearly established" at the time of the alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (internal quotation marks omitted). We need not address these steps in sequential order. *See id.* at 236.

We start by identifying the "precise constitutional violation" at issue. *Baker v. McCollan*, 443 U.S. 137, 140 (2007). The allegations in the complaint establish that Quinette was in a holding cell at the Cobb County Detention Center, awaiting completion of the booking process before being transferred into the general detention center population.

Quinette's allegations support a conclusion either that at the time of the incident he was still being seized, in which case we would analyze his claim under the Fourth Amendment, or that his pretrial detention had begun, in which case we would analyze his claim under the Fourteenth Amendment. In this Circuit, "[t]he precise point at which a seizure ends (for purposes of the Fourth Amendment coverage) and at which pretrial detention begins (governed until conviction by the

Fourteenth Amendment) is not settled." *Hicks v. Moore*, 422 F.3d 1246, 1253 n.7 (11th Cir. 2005). We need not delineate that point now, because even though the district court concluded that the Fourteenth Amendment applied, Quinette has pled facts that support a violation of either the Fourth or the Fourteenth Amendment. In *Kingsley v. Hendrickson*, the Supreme Court clarified that to prove an excessive force claim in violation of the Fourteenth Amendment, a "pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable." 135 S. Ct. 2466, 2473 (2015). This objective reasonableness standard mirrors the standard an arrestee must meet to plead a violation of the Fourth Amendment. *See Graham*, 490 U.S. at 397 (stating that in an excessive force case "the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them" (internal quotation marks omitted)). So we turn to the question of whether Reed's force was objectively reasonable.

We gauge whether force is objectively unreasonable "from the perspective of a reasonable officer on the scene." *Kingsley*, 135 S. Ct. at 2473. We employ the following factors to guide our analysis: (1) the relationship between the need for the use of force and the amount of force used; (2) the extent of the plaintiff's injury; (3) any effort made by the officer to temper or to limit the amount of force; (4) the severity of the security problem at issue; (5) the threat reasonably perceived

by the officer; and (6) whether the plaintiff was actively resisting. *Id.* (citing *Graham*, 490 U.S. at 386).

Every *Graham* factor weighs in Quinette's favor. The first factor is the most significant here: the allegations establish that Reed had no need to use *any* force on the non-resistant Quinette. According to the complaint, at the time of the incident in question, Reed had closed the door on Quinette, and the door was ready to latch. Quinette stood calmly at the door to the prison cell. He remained "respectful and polite, never banging loudly on the cell door or window, never yelling, and never causing any sort of disturbance." Reed nevertheless reopened the door, took a step inside the prison cell, and, using two hands, shoved Quinette onto the floor. Reed argues that he used this force against Quinette because he feared that Quinette's fingers would be caught in the closing door. But that reason does not hold up: Quinette alleges that Reed had already closed the door, so that it made contact with the door frame and was ready to be latched, before Reed reopened it and pushed Quinette.

On the second and third factors, Quinette's injuries were severe, and Reed made no effort to temper the amount of force used. Quinette suffered a broken hip from Reed's two-handed shove. According to the complaint, Reed never asked Quinette to step away from the door. And rather than temper the force used, Reed stepped into the push, making it all the more forceful. When interviewed as part of

the investigation into the incident, Reed allegedly admitted that the reason he used so much force was because he was angry at Quinette.

As to the fourth and fifth factors, the severity of the threat posed and the threat reasonably perceived by Reed, whatever security threat was posed by unsecured but unresisting inmates in an intake cell did not justify, under the facts alleged here, Reed's two-handed shove. Quinette himself posed no threat to Reed; he remained non-resistant, non-belligerent, and polite. Nor did a security situation at the detention center create exceptional, exigent circumstances. Immediately before Reed's shove, Quinette and his cellmates were safely contained behind a closed door that had just struck the latch. Yet Reed deliberately re-opened the closed door, stepped into the cell, and physically engaged Quinette with no warning.

Reed argues that Quinette threatened him by placing a hand on the cell door. We see it differently, for two reasons. First, the complaint alleges that Quinette used no force or pressure and neither attempted to nor actually prevented the door from closing; Reed succeeded in closing the door all the way, to the point where it made contact with the strike plate and could have latched. Second, Reed's violent shove was disproportionate to any threat posed by a prisoner's hand simply touching a door. Even if Quinette's hand was reasonably perceived as a threat, once Reed had closed the door, that threat ceased to exist.

Reed also argues that the presence of other inmates gave rise to a threat. He asserts that "there were at least two inmates outside the cell door, two unrestrained inmates inside the cell with Plaintiff (also standing near the unsecured door), and no additional officers or deputies in sight." Appellants' Br. at 10-11. By contrast, Quinette's complaint alleges that there was only one inmate in the cell with him at the time of the altercation.

The video footage of the cell—which we may consider because it was properly incorporated by reference into the complaint—shows that there were two other inmates in the cell with Quinette at the time of the altercation (one previously in the cell, and one brought into the cell immediately before the incident). The video also shows there were people outside the cell, but it does not reveal whether they were inmates, jailers, or other personnel. Nor is it clear whether, if those individuals were inmates, they were unrestrained, or in what way they might have posed a threat to Reed as he closed the cell door. So while the video overrides the complaint regarding how many inmates were inside the cell, it does not confirm Reed's account about any threat reasonably posed by persons outside the cell.[2]

[2] At the motion to dismiss stage, we cannot accept Reed's assertions that there were inmates outside the cell door who might pose a threat and that there were no additional officers or deputies in sight because we are limited to the plausible allegations in the complaint and any inferences that may reasonably be drawn from them, along with the video. *See Keating*, 598 F.3d at 762 (recognizing that at the denial of the motion to dismiss stage, our review is generally "limit[ed] . . . to the four corners of the complaint").

The presence of two other unrestrained inmates inside the cell does not render Reed's use of force reasonable. As the video shows, none of the inmates was resistant or belligerent. They were contained within an intake cell where the door had closed and struck the latch. There is no basis for us to conclude that their presence justified Reed's conduct.

On the sixth factor, Quinette never resisted Reed. Reed said nothing to Quinette: he gave no commands, warnings, instructions, or responses to Quinette's polite "excuse me," and request for help. There was nothing to resist.

In sum, every *Graham* factor supports the conclusion that Reed "used force that was plainly excessive, wholly unnecessary, and, indeed, grossly disproportionate." *Lee*, 284 F.3d at 1198. Reed's application of a two-handed shove to a non-resistant detainee, with sufficient force to knock that detainee to the ground and to break his hip, constituted unreasonable force in violation of Quinette's constitutional right under the Fourth or Fourteenth Amendment.

Because Reed's conduct violated Quinette's constitutional right to be from the use of excessive force, we next consider whether that constitutional right was "clearly established" at the time of the violation. We conclude that it was.

B. Clearly Established Law Demonstrates that Reed's Conduct Was Unconstitutional.

Reed argues that even if he used excessive force, he did not violate clearly established law. A right is clearly established when a reasonable officer would

know that his conduct violates that right. *See Coffin v. Brandau*, 642 F.3d 999, 1013 (11th Cir. 2011) (en banc). We are concerned with whether the officer had "fair warning" that his conduct would violate the right in question. *Id.* (internal quotation marks omitted). A plaintiff can demonstrate that "the contours of the right were clearly established" to the officer in several ways. *Loftus v. Clark-Moore*, 690 F.3d 1200, 1204 (11th Cir. 2012) (internal quotation marks omitted). One way is by pointing to "earlier case law from the Supreme Court, this Court, or the highest court of the pertinent state that is materially similar to the current case and therefore provided clear notice of the violation." *Long v. Slaton*, 508 F.3d 576, 584 (11th Cir. 2007). For an excessive force violation, the analysis is necessarily fact-specific; prior cases need not involve mirror-image factual circumstances to clearly establish that force was excessive. *See Hope*, 536 U.S. at 741 ("officials can still be on notice that their conduct violates established law even in novel factual circumstances"); *Graham*, 490 U.S. at 396 (requiring "careful attention to the facts and circumstances of each particular case").

Alternatively, a plaintiff may rely on the "obvious clarity rule": a "narrow exception" to the "rule requiring particularized case law to establish clearly the law in excessive force cases." *Priester v. City of Riviera Beach*, 208 F.3d 919, 926 (11th Cir. 2000); *see Oliver v. Fiorino*, 586 F.3d 898, 908 (11th Cir. 2009). To fall within this exception, a plaintiff must identify conduct so egregious that it clearly

violated a constitutional right "even in the total absence of case law" to guide us. *See Lewis v. City of W. Palm Beach*, 561 F.3d 1288, 1292 (11th Cir. 2009). Under this exception, the question we ask is "whether application of the excessive force standard would inevitably lead every reasonable officer in the Defendants' position to conclude the force was unlawful." *Priester*, 208 F.3d at 926-27 (alterations adopted) (internal quotation marks omitted).

With this framework in mind, we conclude that at the time of the incident in this case the defendants were on notice that applying force on a non-resisting pretrial detainee "violate[d] clear federal law." *Long*, 508 F.3d at 584.

Reed relies on this Court's decision in *Cockrell v. Sparks* to support his argument that the law did not clearly establish the unconstitutional nature of his conduct. 510 F.3d 1307 (11th Cir. 2007). Like this case, *Cockrell* involved a § 1983 claim brought by an incarcerated inmate who was shoved by a deputy. But two factors distinguish *Cockrell* from this case. First, Cockrell was making a disturbance: he was "banging on the door to his cell with his shoe" and "shouting at the deputy." *Id.* at 1310. Second, the defendant deputy faced an evolving security situation; another inmate had unsuccessfully attempted suicide, and to comply with jail policy, the deputy needed to move the suicidal inmate to the "drunk tank" where Cockrell was housed. *Id.* at 1309. The deputy moved Cockrell to the neighboring cell. While the deputy tended to the suicidal inmate,

Cockrell began shouting, banging on the door, and yelling at the deputy. *Id.* at 1309-10. The deputy left the suicidal inmate, went to Cockrell's cell, told him to shut up, and gave him an open-handed shove. *Id.* at 1310. We affirmed the grant of summary judgment in that case because "Cockrell was creating a disturbance" and the deputy "legitimately needed to quiet Cockrell" because of "the need to relocate the inmate who had attempted suicide." *Id*. at 1311. But even then, we described it as a "close question." *Id*. Neither factor exists in this case, however. Here, Quinette was only ever "respectful and polite, never banging loudly on the cell door or window, never yelling, and never causing any sort of disturbance." And no security situation, analogous to that posed by the suicidal inmate in *Cockrell*, created a legitimate need for Reed to apply force.

While *Cockrell* does not help us resolve this case, our other precedent does. Our decision in *Hadley v. Gutierrez* established that a single punch to a non-resisting detainee constitutes excessive force. 526 F.3d 1324, 1330 (11th Cir. 2008). In *Hadley*, the detainee had previously, while under the influence of cocaine, run around a Publix supermarket yelling and knocking items off shelves. *Id.* at 1327. But at the time the officer punched him, he was subdued, compliant, and non-resistant. *Id.* We held that where a detainee is not resisting arrest, gratuitous use of force—even a single punch—is excessive. *Id.* at 1330. We have articulated the same principle in the Fourteenth Amendment context. *See, e.g.*,

Danley v. Allen, 540 F.3d 1298, 1309 (11th Cir. 2008) (under the Fourteenth Amendment, "[o]nce a prisoner has stopped resisting there is no longer a need for force, so the use of force thereafter is disproportionate to the need"), *overruled on other grounds as recognized in Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010).

We have said that law is clearly established for the purposes of qualified immunity where "'Y Conduct' is unconstitutional in 'Z Circumstances.'" *Vinyard v. Wilson*, 311 F.3d 1340, 1351 (11th Cir. 2002). *Hadley* established that a single blow—"Y Conduct" —is unconstitutional where a detainee is non-resistant— "Z Circumstances." Here, too, there was a single blow to a non-resistant detainee. Given this clearly established law, no objectively reasonable officer in Reed's position would think it lawful to shove a non-resisting detainee to the ground. Because we conclude that *Hadley* and *Danley* put Reed on notice that his conduct violated Quinette's constitutional right, it is unnecessary for us to explore whether the conduct was egregious enough to fall within the parameters of the "obvious clarity rule."

C. Supervisory Liability

We next turn to whether Reed's supervisors may be held liable for his conduct. In this Circuit, a supervisor may be held responsible under 42 U.S.C. § 1983 for constitutional violations committed by subordinates where either (1) the

supervisor personally participated in the constitutional violation, or (2) there is a causal connection between the supervisor's actions and the constitutional violation. *Mathews v. Crosby*, 480 F.3d 1265, 1270 (11th Cir. 2007). None of Reed's supervisors personally participated in Quinette's injury, so we look to whether there is a causal connection between their actions and the alleged constitutional violation.

The standard we employ is "extremely rigorous." *Kerr v. Miami-Dade Cty.*, 856 F.3d 795, 820 (11th Cir. 2017) (quoting *Braddy v. Fla. Dep't of Labor & Emp't Sec.*, 133 F.3d 797, 802 (11th Cir. 1998)). A plaintiff establishes a causal connection where "a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he fails to do so." *Brown v. Crawford*, 906 F.2d 667, 671 (11th Cir. 1990). Those deprivations "must be obvious, flagrant, rampant and of continued duration" in order to provide meaningful notice. *Id.*

Here, assuming the supervisors were on notice of a need to correct Reed's behavior, given his history of misconduct, they did not "fail[] to do so." *Id.* The facts alleged in the complaint show that the Cobb County Sherriff's Office *did* investigate the complaints against Reed and *did* discipline him for the instances of misconduct that were substantiated.

The complaint identified three previous excessive-force allegations. All three were investigated, and two were substantiated. Both resulted in formal discipline. Reed was given a written reprimand for his first substantiated violation and was also required to undergo a course in "defensive tactics." For his second substantiated violation, he received a written reprimand and was required to undergo "counseling related to the proper response to verbal abuse from inmates." In addition to these incidents, two other (non–excessive-force) substantiated investigations resulted in suspensions—a one-day suspension for misrepresentation and a two-day suspension for treating certain favored inmates differently than others. And of course, Reed was fired because of the abuse at issue in this case.

The supervisors likely could have (and, as it turns out, should have) done more to discipline Reed—but given the discipline imposed, their conduct did not violate clearly established law. In *City of Escondido v. Emmons*, the Supreme Court emphatically instructed lower courts "not to define clearly established law at a high level of generality." 139 S. Ct. 500, 503 (2019). In other words, the "precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018). Here, to deny the Supervisor Defendants qualified immunity, we must conclude that they were on notice that a failure to punish a subordinate's misconduct with sufficient severity (or anything besides

termination)—as opposed to a failure to investigate or provide discipline at all—was a violation of clearly established law that could expose them to personal liability.

We cannot reach this conclusion. In this Circuit, the published excessive-force cases imposing supervisory liability appear to all involve supervisors who took *no* action when aware of their subordinate's unlawful conduct. *See, e.g.*, *Danley*, 540 F.3d at 1315 (supervisors "did not discipline known incidents, and did not conduct additional training despite knowledge that pepper spray was being improperly used on a regular basis by jailers and that inmates were being denied proper treatment after spraying incidents"); *Valdes v. Crosby*, 450 F.3d 1231, 1244 (11th Cir. 2006) (warden took no action in response to evidence of widespread beatings and torture by prison guards); *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1442 (11th Cir. 1985) (supervisor "failed to take corrective steps although he was aware of police use of unlawful, excessive force").

Here though, the supervisors *did* investigate and act when they became aware of Reed's misconduct. While reasonable minds may disagree about the level of discipline necessary to prevent further misconduct, the sanctions imposed here were real—up to and including suspension. Thus, even in the light most favorable to Quinette, his claim bears distinct differences from the circumstances present in *Danley*, *Valdes*, and *Fundiller*.

The case of *Depew v. City of St. Marys*, 787 F.2d 1496, 1497 (11th Cir. 1986) is no benefit to Quinette either. Initially, *Depew* involves municipal liability, not supervisory liability, and that case does not reveal whether the officer who used excessive force was the same officer who was disciplined. And the discipline imposed in *Depew*, in any event—a verbal reprimand, was *de minimis* compared to the discipline imposed on Reed. We decline to stretch *Depew* to fit the extremely rigorous standard required here.

Because our caselaw does not lead to a conclusion that Supervisor Defendants violated clearly established law, they may not be held liable for Reed's unconstitutional conduct.

D. State Law Claim

We turn now to Quinette's state law claim. Georgia state officials and employees are immune from liability for damages under the doctrine of official immunity—except where "they act with actual malice or with actual intent to cause injury in the performance of their official functions." Ga. Const. art. 1, § II, para. IX(d). Because it is undisputed that Reed was acting in his official capacity at the time of the incident, to overcome official immunity Quinette's complaint must show that Reed acted with actual malice or intent to cause injury. The district court correctly concluded that Quinette sufficiently alleged that Reed acted with actual malice by shoving Quinette.

Under Georgia law, "actual malice" is "a deliberate intention to do wrong, [that] does not include implied malice, i.e., the reckless disregard for the rights or safety of others." *Murphy v. Bajjani*, 647 S.E.2d 54, 60 (Ga. 2007) (internal quotation marks omitted). A deliberate intention to do wrong is "the intent to cause the harm suffered by the plaintiff[]." *Id.*

Here, under the facts alleged, there is no question that Reed intended to cause harm to Quinette. Reed intentionally reopened the closed cell door, stepped forward, and applied force without any apparent reason on a non-resistant detainee. Such a use of force—without any conceivable justification—manifests "a deliberate intention to do wrong" and defeats Reed's official immunity. *Id.*

Although one would not expect Reed's shove to lead to the serious harm that Quinette ultimately suffered, the unexpected extent of Quinette's injury does not neutralize, let alone immunize, Reed's initial misconduct. Put differently, the harm intended by Reed was the unjustified shove itself; that Quinette unexpectedly broke his hip further along the causal chain is irrelevant to our official immunity analysis. Consistent with this conclusion, the longstanding rule in Georgia is that "a tortfeasor takes a plaintiff in whatever condition he finds him." *AT Sys. Se., Inc. v. Carnes*, 613 S.E.2d 150, 153 (Ga. 2005) (quoting *Coleman v. Atlanta Obstetrics & Gynecology Group*, 390 S.E.2d 856 (Ga. 1990)). And, more particularly, a

wrongdoer "must bear the risk that his liability will be increased" depending on the actual physical condition of his victim. *Id*.

Under Georgia law, a "factfinder may infer from evidence that a defendant acted with actual malice." *Lagroon v. Lawson*, 759 S.E.2d 878, 883 (Ga. Ct. App. 2014). Given the facts alleged in this complaint, a jury could properly conclude that Reed acted with "actual malice." We therefore affirm the denial of official immunity.

IV. CONCLUSION

We affirm the district court's denial of qualified and official immunity to Reed, but reverse and remand to the district court with instructions to dismiss Quinette's supervisory liability claim.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

WILSON, Circuit Judge, concurring in part and dissenting in part:

I concur in the affirmance of the district court's denial of qualified and official immunity to Reed. However, I would affirm the district court's denial of qualified immunity based on supervisory liability. Accepting Quinette's allegations as true, Reed's extensive history of using excessive force toward inmates was sufficient to put the supervisors on notice of his misconduct, and was sufficiently blatant to require them to act.

First, Quinette alleges that Reed was the subject of an internal affairs investigation in 2005. An inmate with a colostomy bag accused Reed of using excessive force by twisting the inmate's waist cuffs, causing his colostomy bag to rupture. There were no eyewitnesses or video recordings of this incident. It was determined that there was no violation of department policy, and no disciplinary action was taken against Reed.

Quinette further alleges that Reed was the subject of a second internal affairs investigation in 2006. There, Reed shoved a restrained inmate—face first—onto the floor, lacerating the inmate's lip to such a degree that he needed stitches and went to the hospital. This incident was captured on video. The internal affairs investigation concluded that Reed had used excessive force, issued him a written reprimand, and required him to complete a refresher course on defensive tactics.

Quinette alleges that Reed was subject to a *third* internal affairs investigation in 2009. There, Reed placed an inmate into a headlock and attempted to pull that inmate to the floor. Because the inmate was chained to a group of inmates, Reed pulled the entire group back and forth during the altercation. This incident was captured on video. The internal affairs investigation concluded that Reed used excessive force, gave him another written reprimand, and required him to receive counseling regarding appropriate responses to inmates' "verbal abuse."

Quinette alleges that all of the supervisors were aware that Reed had a history of excessive use of force. Specifically, he alleges that defendant Alder personally requested the 2006 internal affairs investigation, and defendants Coker, Beck, and Bartlett were notified of the investigation. He further alleges that Coker conducted the 2009 internal affairs investigation into excessive force; that Beck, Bartlett, Alder, Prince, and Craig were present at the hearing; and that Warren was appraised of its results. Quinette also alleges that, in the course of the 2009 investigation, some supervisors reviewed Reed's personnel file, which included the 2005 and 2006 reports of excessive force, as well as other instances in which Reed was found to have violated department policy. In addition, in 2014, Quinette alleges, defendants Prince, Warren, Beck, Bartlett, and Craig again reviewed Reed's personnel file for the purposes of an internal affairs investigation into Reed's pattern of using "racial epithets, profanity, and threats towards inmates"

and his "continued propensity to los[e] his temper with inmates." The complaint further alleges that, in 2015, defendants Craig, Prince, Beck, and Warren once again reviewed Reed's personnel file for the purposes of yet another internal affairs investigation into Reed's behavior—this time for alleged favoritism towards inmates and violations of detention center policy.

Reed's history of "obvious, flagrant, [and] rampant" use of excessive force and related conduct, such as using racial epithets, profanity, and threats, and losing his temper with inmates provided meaningful notice to the supervisors that they needed to correct a constitutional violation. *See Brown v. Crawford*, 906 F.2d 667, 671 (11th Cir. 1990). Indeed, of the three prior, separate investigations into Reed's excessive use of force, two involved pushing an inmate to the floor. Three of those internal affairs investigations were for using excessive force against restrained inmates. Quinette has sufficiently alleged that each of the supervisors was aware of Reed's history of using excessive force, yet they failed to do anything to "remedy the situation." *See Danley v. Allen*, 540 F.3d 1298, 1315 (11th Cir. 2008), *abrogated on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662 (2009), *as recognized by Randall v. Scott*, 610 F.3d 701, 709 (11th Cir. 2010).

Accepting the complaint's well-pleaded allegations as true and construing them in the light most favorable to Quinette, the supervisors knew of the danger that Reed presented and took no action to appropriately supervise or discipline

him. The district court correctly determined that they were involved in internal affairs investigations involving Reed in varying capacities, and each of them failed to adequately discipline, supervise, or train Reed.

Since Quinette has sufficiently alleged that the supervisors violated his clearly established constitutional rights, I would conclude that they are not entitled to qualified immunity.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DENNIS QUINETTE, Plaintiff, v. DILMUS REED, et al., Defendants.	CIVIL ACTION FILE NO. 1:17-CV-1819-TWT

OPINION AND ORDER

This is a civil rights action. It is before the Court on the Defendants' Motion to Dismiss [Doc. 24]. For the reasons set forth below, the Defendants' Motion to Dismiss [Doc. 24] is DENIED.

I. Background

The Plaintiff Dennis Quinette is a former inmate at the Cobb County Detention Center (the "Detention Center").[1] This case arises out of an injury that the Plaintiff allegedly sustained as the result of being shoved by the Defendant Dilmus Reed, a former Cobb County Sheriff's Office employee who worked at the Detention Center. The Defendants Chief Lynda Coker, Chief Deputy Milton Beck, Colonel Donald Bartlett, Colonel Lewis Alder, Colonel Janice Prince, and Colonel Roland Craig were members of the command staff at

[1] First Am. Compl. ¶ 13.

the Detention Center during the events underlying this lawsuit.[2] The Defendant Sheriff Neil Warren was the Cobb County Sheriff and was tasked with operating the Detention Center.[3] These Defendants are collectively referred to as the "Command Staff Defendants."

On May 28, 2015, the Plaintiff was in custody at the Detention Center. The Plaintiff alleges that he had recently been arrested and was undergoing the booking and intake process at the jail.[4] At the time of this incident, the Plaintiff was housed in an intake holding cell.[5] According to the Plaintiff, Reed opened the door to his cell at 7:04 AM to escort another inmate into the cell.[6] As Reed was placing the other inmate in the cell, the Plaintiff stood in front of the cell door and attempted to get Reed's attention.[7] According to the Plaintiff, he wanted to make a phone call, and had stood at the cell door for a few minutes to try to get Reed's attention to request to do so. The Plaintiff alleges that he respectfully attempted to flag down Reed, but Reed ignored him and started to close the cell door.[8] As the cell door was closing, the Plaintiff placed his hand on

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2 *Id.* ¶¶ 3-8.

3 *Id.* ¶ 9.

4 *Id.* ¶ 14.

5 *Id.* ¶ 15.

6 *Id.* ¶ 17.

7 *Id.* ¶ 19.

8 *Id.* ¶ 21.

the window of the cell door.[9] According to the Plaintiff, he did not touch the door with any force or try to prevent Reed from closing the door, and the door began to latch closed.[10]

Nevertheless, despite the Plaintiff's calm and non-threatening demeanor, Reed allegedly opened the door, took one large step forward, and, without warning, forcefully thrust the Plaintiff with two hands toward the back of the holding cell.[11] The Plaintiff was thrown across the cell, landed on his left hip, and began screaming in pain.[12] Reed, ignoring the Plaintiff's screams, closed the cell door and walked away.[13] Reed did nothing to attend to the Plaintiff's injury.[14] Instead, he returned to the cell multiple times and made several attempts to pull the Plaintiff up off the floor.[15] Another officer then reported the incident to medical officials at the Detention Center, and a nurse arrived to attend to the Plaintiff seven minutes after he was thrown to the floor.[16] The

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9 *Id.* ¶ 23.

10 *Id.* ¶¶ 24-26.

11 *Id.* ¶ 35.

12 *Id.* ¶ 39.

13 *Id.* ¶ 40.

14 *Id.* ¶ 44.

15 *Id.* ¶¶ 45-53.

16 *Id.* ¶ 57.

Plaintiff was ultimately transported to an emergency room, where he was diagnosed with a broken hip.[17] This entire incident was captured on video.[18]

Reed was subsequently investigated for this incident.[19] He admitted during an internal affairs investigation that he "stepped into" the push, making it more forceful.[20] According to the Plaintiff, Reed also admitted that he used this amount of force because he was mad at the Plaintiff.[21] Reed claimed that he used this force against the Plaintiff because he feared that the Plaintiff's fingers would get caught in the closing door.[22] The internal affairs investigation ultimately concluded that Reed failed to comply with the policies and procedures of the Cobb County Sheriff's Office by utilizing an unreasonable and unnecessary amount of force against the Plaintiff.[23] Reed was then terminated from Cobb County Sheriff's Office.[24]

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[17] *Id.* ¶ 58.

[18] *Id.* ¶ 18. This video was manually filed with the Court. [Doc. 22]. The gratuitous, unprovoked, and malicious violence of Reed can only be appreciated by watching the tape.

[19] *Id.* ¶ 59.

[20] *Id.* ¶ 42.

[21] *Id.* ¶ 60.

[22] *Id.* ¶ 61.

[23] *Id.* ¶ 65.

[24] *Id.* ¶ 66.

According to the Plaintiff, Reed had a lengthy disciplinary history during his time with the Cobb County Sheriff's Office. He had previously been the subject of twelve internal affairs investigations, and six of those investigations were concluded to be "founded."[25] Three of those investigations were for use of excessive force.[26] The Plaintiff alleges that many of the Command Staff Defendants were involved in these prior disciplinary actions and had knowledge of Reed's history.[27] However, despite this history, Reed was not terminated from his position until the incident in question occurred.[28]

On May 19, 2017, the Plaintiff filed this action. In his First Amended Complaint, the Plaintiff alleges two claims against Reed. First, he asserts a claim under 42 U.S.C. § 1983 for the use of excessive force in violation of the Fourth and Fourteenth Amendments. Second, he asserts a state law claim for assault and battery. The Plaintiff asserts a claim for violation of 42 U.S.C. § 1983 for supervisory liability against the Command Staff Defendants in their individual capacities. The Defendants now move to dismiss.

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[25] *Id.* ¶ 68.

[26] *Id.*

[27] *Id.* ¶¶ 98, 107, 119.

[28] *Id.* ¶ 70.

II. Legal Standard

A complaint should be dismissed under Rule 12(b)(6) only where it appears that the facts alleged fail to state a "plausible" claim for relief.[29] A complaint may survive a motion to dismiss for failure to state a claim, however, even if it is "improbable" that a plaintiff would be able to prove those facts; even if the possibility of recovery is extremely "remote and unlikely."[30] In ruling on a motion to dismiss, the court must accept the facts pleaded in the complaint as true and construe them in the light most favorable to the plaintiff.[31] Generally, notice pleading is all that is required for a valid complaint.[32] Under notice pleading, the plaintiff need only give the defendant fair notice of the plaintiff's claim and the grounds upon which it rests.[33]

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[29] *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); FED. R. CIV. P. 12(b)(6).

[30] *Bell Atlantic v. Twombly*, 550 U.S. 544, 556 (2007).

[31] *See Quality Foods de Centro America, S.A. v. Latin American Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 994-95 (11th Cir. 1983); *see also Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (7th Cir. 1994) (noting that at the pleading stage, the plaintiff "receives the benefit of imagination").

[32] *See Lombard's, Inc. v. Prince Mfg., Inc.*, 753 F.2d 974, 975 (11th Cir. 1985), *cert. denied*, 474 U.S. 1082 (1986).

[33] *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007).

III. Discussion

A. Section 1983 Claims

The Defendants first argue that they are entitled to qualified immunity. Qualified immunity exempts an officer from section 1983 liability under certain circumstances.[34] To be entitled to qualified immunity in the Eleventh Circuit, an officer must show that he was acting within the scope of his discretionary authority at the time of the alleged wrongful acts.[35] Once the officer has proved that he was within the scope of his discretionary authority, the Plaintiff must show that the officer violated "clearly established statutory or constitutional rights of which a reasonable person would have known."[36] In order to establish that a reasonable officer would have known of a right, a plaintiff must show development of law in a "concrete and factually defined context" such that a reasonable officer would know that his conduct violated federal law.[37] Two questions are central to the qualified immunity defense. First, the Court must

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[34] *See* Pearson v. Callahan, 555 U.S. 223, 231 (2009).

[35] *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002). The parties agree that Reed was acting within the scope of his discretionary authority. Defs.' Mot. to Dismiss, at 10 n.4; Pl.'s Br. in Opp'n to Defs.' Mot. to Dismiss, at 16 n.7.

[36] *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

[37] *Jackson v. Sauls*, 206 F.3d 1156, 1164-65 (11th Cir. 2000).

determine whether there was a violation of a constitutional right.[38] Second, the Court must then determine whether the right was clearly established.[39]

1. Constitutional Violation

First, the Court must determine whether the Defendants committed a constitutional violation."Claims involving the mistreatment of arrestees or pretrial detainees in custody are governed by the Fourteenth Amendment's Due Process Clause instead of the Eighth Amendment's Cruel and Unusual Punishment Clause, which applies to such claims by convicted prisoners."[40] "In deciding whether force deliberately used against a pretrial detainee is constitutionally excessive in violation of the Fourteenth Amendment, 'the

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[38] *Hope v. Pelzer*, 536 U.S. 730, 736-42 (2002).

[39] *Lee*, 284 F.3d at 1194.

[40] *Cottrell v. Caldwell*, 85 F.3d 1480, 1490 (11th Cir. 1996). There is some question as to whether the Fourth Amendment or Fourteenth Amendment governs this analysis. The Fourth Amendment protects arrestees from excessive force during an arrest, while the Fourteenth Amendment protects a pretrial detainee from excessive force. *See Howell v. Houston Cty., Ga.*, No. 5:09-CV-402, 2011 WL 3813291, at *13 (M.D. Ga. Aug. 26, 2011).The Eleventh Circuit has indicated that "the precise point at which a seizure ends (for purposes of Fourth Amendment coverage) and at which pretrial detention begins (governed until a conviction by the Fourteenth Amendment) is not settled in this Circuit." *Hicks v. Moore*, 422 F.3d 1246, 1253 n.7 (11th Cir. 2005). Some confusion exists among courts as to what constitutional provision applies at different stages of the criminal justice process. *Howell*, 2011 WL 3813291 at *13. The Eleventh Circuit has not provided a clear standard to govern this question in close cases. *Id.* However, since the Plaintiff had been in custody for some period of time when this incident took place, the Court finds that the Fourteenth Amendment should govern this analysis. *See id.* at *13-*19 (analyzing a broad range of case law and determining that the Fourteenth Amendment governed an excessive force claim by a detainee who was undergoing the intake process at a jail).

pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable.'"[41]

Objective reasonableness turns on the individual facts and circumstances of a particular case.[42] This determination must be made from the perspective of a reasonable officer on the scene, and "[a] showing of the officer's state of mind or subjective awareness that the force was unreasonable is not required in this analysis."[43] The use of force is reasonable only if "a reasonable officer would believe that this level of force is necessary in the situation at hand."[44] Several factors are relevant to this determination, including "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount

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[41] *Shuford v. Conway*, 666 F. App'x 811, 815-816 (11th Cir. 2016) (quoting *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015)). The standard previously used by the Eleventh Circuit to determine whether a defendant used excessive force in violation of the Fourteenth Amendment, which required that the plaintiff prove that the defendant applied the force maliciously or sadistically to cause harm, has been abrogated by the Supreme Court's decision in *Kingsley v. Hendrickson* in 2015. In *Kingsley*, the Supreme Court held that "a pretrial detainee must show only that the force . . . used against him was objectively unreasonable." *Kingsley*, 135 S. Ct. at 2473.

[42] *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015).

[43] *Shuford*, 666 F. App'x at 816.

[44] *Lee v. Ferraro*, 284 F.3d 1188, 1197 (11th Cir. 2002) (quoting *Willingham v. Loughnan*, 261 F.3d 1178, 1186 (11th Cir. 2001)).

of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting."[45]

Accepting the Plaintiff's factual allegations as true, the Court concludes that Reed's use of force was objectively unreasonable. According to the Plaintiff's allegations, Reed, without warning, forcefully shoved the Plaintiff to the floor when the Plaintiff was merely touching the cell door window as it closed. Under the factors provided by the Supreme Court and the Eleventh Circuit as guidance on this question, the Court concludes that Reed used excessive force when he shoved the Plaintiff. As to the first factor, the relationship between the need for the use of force and the amount of force used, the amount of force utilized was disproportionate to the need for force. The Plaintiff, a 54 year old man who was not as physically dominant as Reed, was merely touching the window of his cell door. Even if Reed needed to respond with some type of force to have the Plaintiff move away from the door, the violent shove that Reed used was out of proportion with the force needed to resolve the situation.

Second, Reed made no effort to temper or limit the amount of force used. Reed never verbally directed the Plaintiff to back away from the door, and did not begin with a light amount of force. Instead, Reed immediately, and without warning, forcefully shoved the Plaintiff away from the door. Reed also admitted

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[45] *Shuford*, 666 F. App'x at 816 (quoting *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015)).

that he stepped into the shove so as to add more force.[46] According to the Plaintiff, Reed made no attempt to peacefully resolve the situation before using force against him. Therefore, this factor weighs in favor of finding a constitutional violation.

As to the third and fourth factors, under the facts alleged, there was no severe security problem involved in this incident, and no reasonable threat existed. Although it may have been necessary for Reed to make the Plaintiff step away from the closing door, this did not present a serious risk of security to Reed or the Detention Center. The Plaintiff was merely touching the door, attempting to get Reed's attention. Thus, a reasonable officer would not perceive the threat presented to be serious. Finally, there is no indication that the Plaintiff was actively resisting. Under the facts alleged, Reed gave the Plaintiff no warning or instructions at all that the Plaintiff could have resisted in the first place, nor did the Plaintiff engage in any physical acts that could be construed as resisting. Instead, Reed immediately shoved the Plaintiff away from the door without warning. Given these factors, the Court determines that Reed's actions were objectively unreasonable and in violation of the Plaintiff's Fourteenth Amendment right to be free from excessive force.

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[46] First Am. Compl. ¶ 42.

2. Clearly Established Law

Next, the Court must determine whether this constitutional right was clearly established. "In this circuit, the law can be 'clearly established' for qualified immunity purposes only by decisions of the U.S. Supreme Court, Eleventh Circuit Court of Appeals, or the highest court of the state where the case arose."[47] "This inquiry is limited to the law at the time of the incident, as 'an official could not be reasonably expected to anticipate subsequent legal developments.'"[48] Although *Kinglsey's* objective reasonableness standard governs the analysis of the existence of a constitutional violation, it does not govern this Court's analysis of whether the unlawfulness of Reed's conduct was clearly established at the time it occurred, since *Kingsley* was decided after this incident occurred.[49] "Instead, in order to determine whether the clearly

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[47] *Jenkins v. Talladega City Bd. of Educ.*, 115 F.3d 821, 826 n.4 (11th Cir. 1997).

[48] *Shuford v. Conway*, 666 F. App'x 811, 817 (11th Cir. 2016) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

[49] *Jacoby v. Baldwin Cty.,* 666 F. App'x 759, 765 (11th Cir. 2016) ("While *Kingsley*'s objective unreasonableness standard governs the existence of a constitutional violation, that decision was issued after the restraint chair incident took place, so it plays no part in our determining whether the unlawfulness of Rowell and Keers' conduct was clearly established at the time it occurred."); *see also Belcher v. City of Foley*, 30 F.3d 1390, 1400 n.9 (11th Cir. 1994) ("[Cases] . . . decided after the conduct in this case occurred . . . could not have clearly established the law at the time of the conduct in this case.").

established requirement is met in this case, we look to pre-*Kingsley* case law, which applied the old 'sadistic or malicious' standard for excessive force."[50]

A constitutional right can be clearly established in three ways: "(1) case law with indistinguishable facts clearly establishing the constitutional right; (2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right; or (3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law."[51] The Plaintiff, admitting that there is no indistinguishable case law on point, argues that this constitutional right was clearly established under the second and third methods.[52] The Plaintiff also argues that this right is clearly established under a *per se* rule for violations of the Eighth and Fourteenth Amendments.[53] The Court agrees that this right was clearly established.

As to the second method, the Plaintiff has not shown that a broad principle within the Constitution, statutes, or case law provides the necessary precedent to clearly establish this right.[54] Instead, the Plaintiff only points to

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[50] *Jacoby*, 666 F. App'x at 765.

[51] *Shuford*, 666 F. App'x at 817 (citing *Lewis v. City of W. Palm Beach*, 561 F.3d 1288, 1291-92 (11th Cir. 2009)).

[52] Pl.'s Br. in Opp'n to Defs.' Mot. to Dismiss, at 17.

[53] *Id.*

[54] *See Lewis v. City of W. Palm Beach, Fla.*, 561 F.3d 1288, 1292 (11th Cir. 2009) ("Here, case law does not provide the necessary precedent, either specifically or through broad principles, to clearly establish the right.").

the excessiveness and egregiousness of Reed's conduct, which is relevant to the third inquiry, not this inquiry. Even assuming that Reed's conduct was totally egregious, this argument fails to identify a broad principle that can be discerned from the Constitution, statutes, and case law that would have put the Defendants on notice of the unconstitutionality of Reed's conduct. The Plaintiff does not identify a broad principle at all that would have put the Defendants on notice of this right. Therefore, the Plaintiff fails to establish that this right was clearly established under this second method.

Consequently, the Plaintiff must utilize the third method for proving that a right is clearly established. Thus, only if Reed's conduct was "so egregious and unacceptable so as to have blatantly violated the Constitution would qualified immunity be unavailable" to him.[55] The Plaintiff's allegations satisfy this burden. "[T]o come within this narrow exclusion, 'plaintiff must show that the official's conduct was so far beyond the hazy border between excessive and acceptable force that the official had to know he was violating the Constitution even without case law on point.'"[56] "This standard is met when every reasonable officer would conclude that the excessive force used was plainly unlawful."[57]

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55 *Id.*

56 *Id.* (quoting *Smith v. Mattox*, 127 F.3d 1416, 1419 (11th Cir. 1997)).

57 *Id.*

Accepting the Plaintiff's allegations as true, Reed's egregious conduct meets this standard. Reed's push, which was totally unprovoked, was "so far beyond the hazy border between excessive and acceptable force" that he must have known that it was plainly unconstitutional. According to the Plaintiff, the cell door had already begun to latch closed, and the Plaintiff merely placed his hands on the window of the cell door to get Reed's attention. Reed then reopened the door, and in a fit of anger, violently thrust the Plaintiff toward the floor without warning.[58] Reed then stood over him, falsely claiming that the Plaintiff had "rushed" him. This conduct was egregious enough and far enough beyond the "hazy border" between excessive and acceptable force that Reed must have known that he was violating the Plaintiff's constitutional rights.[59] Reed's conduct was "so violent and harsh to be considered an egregious violation of a constitutional right."[60] The cell door had already latched closed and the Plaintiff presented no security threat. Any reasonable officer, under the facts alleged, would conclude that the force used by Reed was plainly unlawful. Therefore,

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[58] Reed's allegations are supported by a surveillance video recording of the incident [Doc. 22].

[59] *See Lee v. Ferraro*, 284 F.3d 1188, 1199-1200 (11th Cir. 2002) (concluding that officer who was physically abusive toward non-aggressive arrestee blatantly violated the Constitution and was not entitled to qualified immunity); *Smith v. Mattox*, 127 F.3d 1416, 1419 (11th Cir. 1997) (denying qualified immunity to officer who broke the arm of an individual complying with the officer's orders).

[60] *Lewis*, 561 F.3d at 1292.

since Reed's conduct was a blatant violation of the Constitution, qualified immunity is unavailable to him.

Alternatively, this right was also clearly established under a *per se* rule for defeating qualified immunity. Ordinarily, a plaintiff must show both: (1) that a constitutional or statutory right has been violated, and (2) that this right was clearly established.[61] However, the Eleventh Circuit has provided that, "[f]or claims of excessive force in violation of the Eighth or Fourteenth Amendments . . . a plaintiff can overcome a defense of qualified immunity by showing only the first prong, that his Eighth or Fourteenth Amendment rights have been violated."[62] The Eleventh Circuit created this rule because the subjective element required to establish an excessive force violation of the Eighth or Fourteenth Amendment "is so extreme that every conceivable set of circumstances in which this constitutional violation occurs is clearly established to be a violation of the Constitution."[63]

Therefore, the Plaintiff can overcome a qualified immunity defense if he shows that Reed's actions amount to a constitutional violation under the pre-*Kingsley* standard. Under the pre-*Kingsley* standard, a jailor's use of force

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[61] *Fennell v. Gilstrap*, 559 F.3d 1212, 1216 (11th Cir. 2009).

[62] *Id.* at 1216-17.

[63] *Id.* at 1217 (quoting *Danley v. Allen*, 540 F.3d 1298, 1310 (11th Cir. 2008)).

violates the Fourteenth Amendment if it "shocks the conscience."[64] The use of force "shocks the conscience" if it is applied "maliciously or sadistically for the very purpose of causing harm," instead of in a good faith effort to maintain discipline.[65] In determining whether force was applied maliciously and sadistically to cause harm in violation of the Fourteenth Amendment, the Eleventh Circuit considers the following factors: "a) the need for the application of force; b) the relationship between the need and the amount of force that was used; c) the extent of the injury inflicted upon the prisoner; d) the extent of the threat to the safety of staff and inmates; and e) any efforts made to temper the severity of a forceful response."[66] And, in considering these factors, the Court must "give a wide range of deference to prison officials acting to preserve discipline and security, including when considering decisions made at the scene of a disturbance."[67]

For similar reasons that Reed's conduct was so egregious as to have clearly violated the Constitution, his conduct also "shocks the conscience." The Plaintiff's factual allegations show that Reed did not use this force in a good-faith effort to maintain or restore discipline, since the Plaintiff did not represent

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[64] *Id.* at 1217 (quoting *Danley v. Allen*, 540 F.3d 1298, 1307 (11th Cir. 2008)).

[65] *Bozeman v. Orum*, 422 F.3d 1265, 1271 (11th Cir. 2005).

[66] *Fennell*, 559 F.3d at 1217 (citing *Cockrell v. Sparks*, 510 F.3d 1307, 1311 (11th Cir. 2007)).

[67] *Cockrell*, 510 F.3d at 1311.

a threat to security.[68] Instead, taking the Plaintiff's allegations as true, Reed acted maliciously and sadistically and with the purpose of causing harm to the Plaintiff. Reed applied force because he was "mad" at the Plaintiff.[69] As the surveillance video shows, the Plaintiff had created no disturbance, and presented no threat to the security of Reed or the Detention Center, since the door had already closed. Under these circumstances, no reasonable officer would have believed that such a use of force was necessary to maintain discipline in the jail. Instead, taking the Plaintiff's allegations as true, Reed, angered at the Plaintiff, applied force against him in an effort to cause harm. Therefore, the Plaintiff has adequately alleged that Reed acted maliciously and sadistically.

And, taking the factors listed above into account further supports the conclusion that Reed's force was applied maliciously and sadistically. As to the first two factors, the need for force was low, and the amount of force applied was disproportionate to that need. The Plaintiff, an older man who was smaller than Reed, merely touched the window of the cell door as it closed. This presented little need for the use of force because the Plaintiff's actions did not represent a risk of danger to staff or other inmates. As to the third factor, the extent of injury inflicted, the Plaintiff suffered a broken hip that required a trip to the

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[68] *Fennell*, 559 F.3d at 1217.

[69] First Am. Compl. ¶ 60.

emergency room.[70] As to the fourth factor, the extent of the threat to the safety of staff and inmates, the Plaintiff presented no serious threat to the staff or other inmates. As the surveillance video shows, the Plaintiff patiently stood by the cell door, and as it closed, placed his hand on the window. This presented no real threat to others that would require Reed to act in such a manner. Finally, as to the fifth factor, Reed made no effort to temper the severity of his forceful response. According to the Plaintiff, Reed was completely unprovoked, and gave the Plaintiff no warning before applying force. Reed also made no effort to peacefully resolve the situation. Instead, he immediately utilized a forceful shove, and then failed to summon medical attention. Therefore, each of these factors points to the conclusion that Reed's conduct shocks the conscience.

In *Cockrell v. Sparks*, the Eleventh Circuit applied these factors in a similar situation and concluded that an officer, who opened a cell door and shoved a drunk inmate to the floor, used reasonable force under the pre-*Kingsley* standard.[71] However, in that case, which the Eleventh Circuit noted was a "close" case, the inmate was drunk, banging on the cell door, and distracting officers from attending to another inmate who had attempted

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[70] The Eleventh Circuit has noted that this factor "may be outweighed by the officer's inability to reasonably anticipate the severity of the injury." *Fennell*, 559 F.3d at 1219. Reed may not have been able to reasonably anticipate that his conduct would break the Plaintiff's hip. Regardless, the other "shock the conscience" factors still weigh in favor of finding a constitutional violation under this standard.

[71] *Cockrell v. Sparks*, 510 F.3d 1307, 1311 (11th Cir. 2007).

suicide.[72] *Cockrell* is distinguishable because the inmate there, who was loudly banging on the cell door, had created a disturbance while the officers needed to deal with the other inmate's suicide attempt. As the court explained, "[t]hat the minimal force was used to quiet Cockrell to care for another inmate in need of medical attention, instead of for some other reason, also weighs against a finding of excessive force."[73] Unlike the officer in *Cockrell*, Reed had no legitimate reason to use force against the Plaintiff, and did not use force in a good-faith effort to maintain discipline. And, unlike the officer in *Cockrell*, who "immediately summoned medical assistance" and thereby "temper[ed] the severity of [the] forceful response," Reed never himself summoned medical attention, and instead stood over the Plaintiff, accusing him of rushing the door. Thus, since this case is distinguishable from the "close" case presented in *Cockrell*, the Court finds that Reed's actions meet the shock the conscience standard and the Plaintiff can defeat qualified immunity under this *per se* rule.

3. Supervisory Liability

The Defendants also move to dismiss the Plaintiff's claim against the Command Staff Defendants for supervisory liability.[74] Under section 1983 "[e]very person who, under color of any statute, ordinance, regulation, custom,

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[72] *Id.*

[73] *Id.* at 1312.

[74] Defs.' Mot. to Dismiss, at 21.

or usage, of any State . . . *subjects, or causes to be subjected*, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured."[75] It "is well established in this circuit that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability."[76] Supervisory liability under section 1983 "occurs either when the supervisor personally participates in the alleged unconstitutional conduct or when there is a causal connection between the actions of a supervising official and the alleged constitutional deprivation."[77]

> A causal connection may be established when: 1) a "history of widespread abuse" puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he or she fails to do so; 2) a supervisor's custom or policy results in deliberate indifference to constitutional rights; or 3) facts support an inference that the supervisor directed subordinates to act unlawfully or knew that subordinates would act unlawfully and failed to stop them from doing so.[78]

The "standard by which a supervisor is held liable in [his] individual capacity for the actions of a subordinate is extremely rigorous."[79] "The deprivations that

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[75] 42 U.S.C. § 1983 (emphasis added).

[76] *Hartley v. Parnell*, 193 F.3d 1263, 1269 (11th Cir. 1999) (internal quotation marks omitted).

[77] *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003).

[78] *Valdes v. Crosby*, 450 F.3d 1231, 1237 (11th Cir. 2006) (citing *Cottone*, 326 F.3d at 1360).

[79] *Cottone*, 326 F.3d at 1360 (internal quotation marks omitted).

constitute widespread abuse sufficient to notify the supervising official must be obvious, flagrant, rampant and of continued duration, rather than isolated occurrences."[80]

The Plaintiff does not allege that the Command Staff Defendants personally participated in this incident. Instead, the Plaintiff argues that there is a causal connection between the Command Staff Defendants and the Plaintiff's injury due to their failure to "adequately discipline, supervise, and train Defendant Reed in the proper use of force with inmates, in controlling his temper around inmates, and in following the policies of [the Detention Center] and the Cobb County Sheriff's Office as well as Georgia law."[81] The Court concludes that the Plaintiff has sufficiently alleged the existence of this causal connection between the Command Staff Defendants and the Plaintiff's injury to state a claim for supervisory liability under section 1983.

According to the Plaintiff's factual allegations, Reed had an extensive disciplinary history during his employment with the Cobb County Sheriff's Office, and the Command Staff Defendants played active roles in this disciplinary history as his supervisors. Reed was the subject of twelve internal affairs

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80 *Brown v. Crawford*, 906 F.2d 667, 671 (11th Cir. 1990).

81 First Am. Compl. ¶ 165.

investigations.[82] Six of those investigations were determined to be "founded."[83] Three of those investigations involved the use of excessive force.[84]

First, the Plaintiff alleges that Reed was the subject of an internal affairs investigation in 2005. There, according to the Plaintiff, an inmate with a colostomy bag accused Reed of using excessive force by twisting the inmate's waist cuffs so that his colostomy bag ruptured.[85] There was no video recording or eyewitness of this alleged incident.[86] This allegation was determined to be unfounded, and no disciplinary action was taken against Reed.[87] Then, in 2006, the Plaintiff alleges that Reed was the subject of another internal investigation involving the use of excessive force. There, Reed was booking an inmate into the Detention Center when the inmate made a comment that angered Reed.[88] The inmate at that time was restrained in waist chain cuffs.[89] Reed, angered by the

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82 *Id.* ¶ 68.

83 *Id.*

84 *Id.* ¶ 69. One of those allegations of excessive force was determined to be "unfounded." *Id.*

85 *Id.* ¶¶ 72-73.

86 *Id.* ¶ 74.

87 *Id.* ¶¶ 81-82.

88 *Id.* ¶ 84.

89 *Id.* ¶ 85.

comment, slammed the restrained inmate's face onto the floor.[90] The inmate was sent to the hospital and received stitches.[91] This incident was recorded on video.[92] Reed was found to have violated department policies by using excessive force, and was given a written reprimand.[93]

Next, the Plaintiff alleges that in 2009 the Command Staff Defendants conducted another internal investigation into the use of excessive force by Reed.[94] This investigation resulted from an incident where Reed attempted to "slam" a restrained inmate to the ground with a headlock, while that inmate was chained to a group of other inmates.[95] Reed was angry at the inmate for cursing at him.[96] Reed, by slamming the inmate to the ground, pulled the entire group of inmates back and forth.[97] It was ultimately determined that Reed used excessive force.[98] During this investigation, the Command Staff Defendants reviewed Reed's entire personnel file, and became aware of his history of losing

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90 *Id.* ¶ 87.

91 *Id.* ¶ 88.

92 *Id.* ¶ 89.

93 *Id.* ¶ 90.

94 *Id.* ¶ 132.

95 *Id.* ¶ 145.

96 *Id.* ¶¶ 93, 145.

97 *Id.* ¶ 94.

98 *Id.* ¶¶ 96, 145.

his temper and using violence against inmates.[99] This included reviewing both the 2005 and 2006 reports of excessive force by Reed.[100] The Plaintiff alleges that Colonel Alder was personally involved in this investigation, and that Chief Coker, Chief Deputy Beck, and Colonel Bartlett were aware of the investigation.[101] During this investigation, these Command Staff Defendants were also made aware of several other instances where Reed violated department policy.[102] Nonetheless, according to the Plaintiff, the Command Staff Defendants did not terminate Reed or assign him different duties.[103] Instead, they issued a reprimand and required Reed to undergo informal counseling.[104]

The Plaintiff further alleges that Reed was the subject of yet another internal affairs investigation in 2014. There, Reed was alleged to have engaged in conduct unbecoming of an officer.[105] This conduct included a "pattern" of use of "racial epithets, profanity, and threats towards inmates," along with Reed's

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99 *Id.* ¶¶ 134-35.

100 *Id.* ¶ 135.

101 *Id.* ¶ 135.

102 *Id.* ¶ 136.

103 *Id.* ¶¶ 137-38.

104 *Id.* ¶ 139.

105 *Id.* ¶¶ 142-146.

"continued propensity to los[e] his temper with inmates."[106] During this investigation, Colonel Prince, Sheriff Warren, Chief Deputy Beck, Colonel Bartlett, and Colonel Craig reviewed Reed's entire personnel file, including the previous incidents involving Reed using excessive force and losing his temper.[107] After this investigation, the Command Staff Defendants merely issued a verbal reprimand to Reed.[108] They did not terminate Reed or assign him different duties.[109] Instead, they allowed him to continue working as a jailor in the Detention Center.[110]

And, in May 2015, Reed was once again the subject of an internal affairs investigation. This investigation involved allegations of favoritism toward inmates and violations of department policy.[111] Specifically, Reed allowed segregation inmates to remain outside of segregation longer than Detention Center policy allowed, and also allowed a favored inmate out of his cell in violation of Detention Center policy.[112] These actions resulted in a fight between

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106 *Id.* ¶ 155. This conduct included a wide range of profane language and inappropriate conduct directed at both inmates and a nurse at the Detention Center. *See id.* ¶ 102.

107 *Id.* ¶¶ 143-45.

108 *Id.* ¶ 149.

109 *Id.* ¶ 147.

110 *Id.* ¶ 148.

111 *Id.* ¶ 152.

112 *Id.* ¶ 117.

segregation inmates.[113] Colonel Craig, Colonel Prince, Chief Deputy Beck, and Sheriff Warren participated in the investigation, and Sheriff Warren conducted the hearing.[114] Once again, these Command Staff Defendants reviewed Reed's entire personnel file, including the previous internal affairs investigations.[115] On May 18, 2015, ten days before the incident underlying this action occurred, the Command Staff Defendants suspended Reed for 16 hours for violating these policies.[116] The Plaintiff alleges that a number of other internal affairs investigations into Reed's conduct were conducted over the course of his employment.[117]

These allegations are sufficient to state a claim for supervisory liability under section 1983. Taken together, these allegations show that Reed exhibited a history of widespread abuse that should have put the Command Staff Defendants on notice of the need to correct the alleged deprivations.[118] The Plaintiff alleges that each of the Command Staff Defendants participated in internal affairs investigations into Reed's conduct, where they should have

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[113] *Id.* ¶ 118.

[114] *Id.* ¶ 119.

[115] *Id.* ¶¶ 153-54.

[116] *Id.* ¶ 116. Reed's suspension was scheduled for June 1-2, 2015. However, he never served his scheduled suspension because the incident involving the Plaintiff occurred first, resulting in Reed's termination. *Id.* ¶ 120.

[117] *Id.* ¶¶ 110-20.

[118] *See Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003).

become aware of Reed's extensive disciplinary history of violence toward inmates. According to the Plaintiff, the supervisors involved in each of those investigations familiarized themselves with Reed's personnel file, including his disciplinary history. Accepting these allegations as true, the Command Staff Defendants knew of the danger that Reed presented, but took no action to appropriately supervise or discipline him. Instead, the Command Staff Defendants provided Reed with verbal and written reprimands, and never assigned him different duties. According to the Plaintiff's allegation, the Plaintiff's injury was not an isolated incident, but instead part of a pattern of abuse by Reed, of which the Command Staff Defendants were aware.[119] The Plaintiff alleges that all of the Command Staff Defendants were involved in these internal affairs investigations in varying capacities, and each of them failed to take action to adequately discipline, supervise, or train Reed.[120] This

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[119] *See Valdes v. Crosby*, 450 F.3d 1231, 1244 (11th Cir. 2006) ("[I]nmate abuse at the hands of guards was not an isolated occurrence, but rather occurred with sufficient regularity as to demonstrate a history of widespread abuse at FSP.").

[120] First Am. Compl. ¶¶ 162-65. There may be some question as to whether each of the individual Command Staff Defendants actually possessed the authority to train, discipline, terminate, or otherwise supervise Reed. If an individual Defendant did not possess that authority over Reed, the causal connection between that Defendant's failure to act and the Plaintiff's injury would be broken. However, the Plaintiff has alleged that each Command Staff Defendant failed to adequately discipline, supervise, and train Reed. At this stage of the proceedings, where the Court accepts the Plaintiff's factual allegations as true, the Court finds that it is appropriate to deny the motion to dismiss. This question will be more appropriate to address at the summary judgment phase.

failure to act by the Command Staff Defendants constitutes the necessary causal connection between the Command Staff Defendants and the Plaintiff's injury to state a claim for supervisory liability.[121]

Furthermore, the Command Staff Defendants are not entitled to qualified immunity on this issue. The Eleventh Circuit has provided that it is clearly established "that a supervisor could be held responsible under 42 U.S.C. § 1983 for constitutional violations committed by subordinates if the supervisor personally participated in the constitutional violation or if there was a causal connection between the supervisor's actions and the alleged constitutional

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[121] *See id.* at 1239-44 (concluding that supervising officer's knowledge of widespread instances of abuse and excessive force at a prison was enough to create the causal connection needed for supervisory liability); *see also McCreary v. Parker*, 456 F. App'x 790, 793 (11th Cir. 2012) (concluding that supervisor's "alleged knowledge of the increasing frequency of inmate-on-inmate violence, Judge Edelstein's report, and allegations that inmates had repeatedly complained to Parker about being quartered with dangerous inmates and Parker's failure to correct same notwithstanding his ability to do so" was sufficient to impose supervisory liability); *Danley v. Allen*, 540 F.3d 1298, 1315 (11th Cir. 2008) ("This Court has long recognized that supervisors are liable for the excessive force and the deliberate indifference of their employees where the supervisors received numerous reports of prior misconduct of that nature by those same employees and did nothing to remedy the situation."); *cf. Cottone v. Jenne*, 326 F.3d 1352, 1361-62 (11th Cir. 2003) (concluding that the plaintiffs did not establish the necessary causal connection when the complaint failed to allege that the supervisors had any knowledge of the subordinate officers' "failure to monitor inmates" or that the subordinate officers "had any past history, or even one prior incident, of failing to monitor inmates" and that the "supervisors were not on any notice of [the subordinate officers'] unconstitutional conduct so as to put the supervisors on notice of the need to correct or to stop the[ir] conduct . . . by further training or supervision").

deprivation."[122] Accepting the Plaintiff's allegations as true, Reed's extensive history of using excessive force and violence toward inmates was sufficient to put the Command Staff Defendants on notice of his misconduct and was sufficiently blatant to require them to act.[123] Therefore, since the Plaintiff has alleged that the Command Staff Defendants violated his clearly established constitutional rights, they are not entitled to qualified immunity.[124]

B. State Law Claim

Next, the Defendants move to dismiss the Plaintiff's state law claim. In Count II, the Plaintiff asserts claims for assault and battery under O.C.G.A. §§ 51-1-13 and 51-1-14 against Reed.[125] The Defendants move to dismiss these claims, arguing that the claims are barred by sovereign immunity and official immunity.[126]

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[122] *Williams v. Santana*, 340 F. App'x 614, 617 (11th Cir. 2009).

[123] *See id.* at 618 ("Taking Williams's allegations as true, as we must do at this stage of the proceedings, the numerous prior incidents involving Barazal's use of force were sufficient to put Parker on notice of misconduct that was sufficiently 'obvious, flagrant, rampant and of continued duration' to require him to act.").

[124] *Id.* at 618 ("Williams alleges that Parker failed to respond to these prior incidents of misconduct by providing Barazal with increased training or supervision; thus, Williams has alleged the necessary causal connection to hold Parker liable in his supervisory capacity. Because Barazal has alleged that Parker violated his clearly established constitutional rights, the district court did not err in denying qualified immunity at the motion to dismiss stage of the proceedings.").

[125] First Am. Compl. ¶¶ 126-28.

[126] Defs.' Mot. to Dismiss, at 23-27.

First, the Defendants argue that state law claims brought against Reed in his official capacity are barred by sovereign immunity.[127] Under Georgia law, "the constitutional doctrine of sovereign immunity forbids [Georgia] courts to entertain a lawsuit against the State without its consent."[128] This sovereign immunity extends to suits against the state, its departments and agencies, and its officers acting in their official capacities.[129] "The sovereign immunity provided in the Georgia Constitution to the state or any of its departments or agencies also applies to Georgia's counties."[130] "Sovereign immunity is not an affirmative defense that the governmental defendants must establish."[131] Rather, the Plaintiff has the burden of establishing that sovereign immunity does not bar his claim.[132] The Plaintiff argues that the state has waived its sovereign immunity in this context through the Georgia bond statutes, and that "he should be permitted to proceed against the bond of the sheriff and his deputies."[133]

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127 *Id.* at 24.

128 *Lathrop v. Deal*, 301 Ga. 408 (2017).

129 *Id.*

130 *Presnell v. Paulding Cty, Ga.*, 454 F. App'x 763, 769 (11th Cir. 2011) (citing *Gilbert v. Richardson*, 264 Ga. 744, 747 (1994)).

131 *Scott v. City of Valdosta*, 280 Ga. App. 481, 484 (2006).

132 *See id.* ("[Sovereign Immunity] is a privilege, subject to waiver by the State, and which the party seeking to benefit from the waiver must show.").

133 Pl.'s Br. in Opp'n to Defs.' Mot. to Dismiss, at 27-28.

O.C.G.A. § 15-16-5 states that sheriffs must provide a $25,000 bond "conditioned for the faithful accounting for all public and other funds or property coming into the sheriffs' or their deputies' custody, control, care, or possession."[134] Similarly, O.C.G.A. § 15-16-23 states that each deputy must provide a $5,000 bond "conditioned upon the faithful accounting for all public and other funds or property coming into the deputy's custody, control, care, or possession."[135] These statutes waive sovereign immunity for the official actions of a sheriff when sued on the sheriff's bond.[136] In such a situation, the plaintiff's recovery is limited to the amount of the applicable bond.[137] And, "a bond given under the authority of a statute 'can provide no more protection than that which is required by [the] statute.'"[138] Thus, actions against a sheriff's bond under these statutes are limited to those dealing with the sheriff's faithful accounting of public funds and other funds or property in his or her possession. The state has not waived sovereign immunity as to other types of actions brought against sheriffs and their deputies in their official capacities. For this reason, the Plaintiff's state law claim for assault and battery against Reed in his official

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134 O.C.G.A. § 15-16-5.

135 O.C.G.A. § 15-16-23.

136 *Pelka v. Ware Cty., Ga.*, CV 516-108, 2017 WL 4398652, at *5 (S.D. Ga. Sept. 29, 2017) (citing *Cantrell v. Thurman*, 231 Ga. App. 510, 514 (1998)).

137 *Id.* (citing *Meeks v. Douglas*, 112 Ga. App. 742, 745 (1965)).

138 *Lord v. Lowe*, 318 Ga. App. 222, 226 (2012).

capacity is barred by sovereign immunity because it does not involve the faithful accounting of public funds or property.

The Defendants next argue that the Plaintiff's state law claim against Reed in his individual capacity is barred by official immunity.[139] Under Georgia law, "[i]ndividual government employees are shielded by official immunity from damages suits unless the plaintiff can establish that the official negligently performed a ministerial act or performed a discretionary act with malice or an intent to injure."[140] "Official immunity . . . is applicable to government officials and employees sued in their individual capacities."[141]

The parties agree that Reed was performing a discretionary act. Therefore, the Plaintiff will need to show actual malice to overcome official immunity.[142] "In the context of official immunity, 'actual malice requires a deliberate intention to do wrong and denotes express malice or malice in fact.'"[143] "Actual malice requires more than harboring bad feelings about another."[144] "While ill will may be an element of actual malice in many factual situations, its

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139 Defs.' Mot. to Dismiss, at 25-27.

140 *Glass v. Gates*, 311 Ga. App. 563, 574 (2011).

141 *Stone v. Taylor*, 233 Ga. App. 886, 888 (1998).

142 *Merrow v. Hawkins*, 266 Ga. 390, 391 (1996).

143 *Peterson v. Baker*, 504 F.3d 1331, 1339 (11th Cir. 2007) (quoting *Adams v. Hazelwood*, 271 Ga. 414 (1999)).

144 *Adams v. Hazelwood*, 271 Ga. 414, 415 (1999).

presence alone cannot pierce official immunity; rather, ill will must also be combined with the intent to do something wrongful or illegal."[145] "[M]alice in this context means badness, a true desire to do something wrong."[146] And, "'actual intent to cause injury' means 'an actual intent to cause harm to the plaintiff, not merely an intent to do the act purportedly resulting in the claimed injury.'"[147] The Supreme Court of Georgia has noted that an officer who uses force intentionally and without justification acts with the actual intent to cause injury.[148]

The Plaintiff's allegations meet this burden. As discussed above, Reed applied force against the Plaintiff maliciously and sadistically, and not in a good faith effort to maintain security at the Detention Center. Reed, who was mad at the Plaintiff, shoved him intentionally and without justification. This push was unprovoked and unjustified. Thus, under Georgia law, he acted with ill will and the intent to cause an injury.[149] The Plaintiff has adequately alleged that Reed

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145 *Id.*

146 *Peterson*, 504 F.3d at 1339.

147 *Id.* (quoting *Kidd v. Coates*, 271 Ga. 33 (1999)).

148 *Kidd v. Coates*, 271 Ga. 33 (1999) (quoting *Gardner v. Rogers*, 224 Ga. App. 165, 169 (1996)).

149 *Id.*

acted with actual malice, and Reed is not entitled to official immunity as to the Plaintiff's state law claim.[150]

IV. Conclusion

For the reasons stated above, the Defendants' Motion to Dismiss [Doc. 24] is DENIED.

SO ORDERED, this 18 day of January, 2018.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

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[150] *See, e.g.*, *Tabb v. Veazey*, No. 1:05-cv-1642, 2007 WL 951763, at *12 (N.D. Ga. Mar. 28, 2007) (concluding that an officer acted with actual malice when he hit the plaintiff with the butt of a handgun several times before placing him in handcuffs).

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10607-JJ

DENNIS QUINETTE,

Plaintiff - Appellee,

versus

DILMUS REED,
CHIEF LYNDA COKER,
CHIEF DEPUTY MILTON BECK,
COLONEL DONALD BARTLETT,
COLONEL LEWIS ALDER, et al.,

Defendants - Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON and GRANT, Circuit Judges, and MARTINEZ,* District Judge.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

* Honorable Jose E. Martinez, United States District Judge for the Southern District of Florida, sitting by designation.

ORD-46

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DENIS QUINETTE,

Plaintiff,

v.

DILMUS REED, CHIEF LYNDA COKER, CHIEF DEPUTY MILTON BECK, COLONEL DONALD BARTLETT, COLONEL LEWIS ALDER, COLONEL JANICE PRINCE, COLONEL ROLAND CRAIG, and SHERIFF NEIL WARREN

Defendants.

Civil Action
File No. 1:17-cv-01819-TWT

FIRST AMENDED COMPLAINT

On May 28, 2015, Defendant Dilmus Reed, then a jailer at the Cobb County Detention Center ("CCDC"), violently shoved Plaintiff Denis Quinette into a jail cell, causing Plaintiff to fall and suffer a broken hip. Plaintiff had not done anything to justify this use of violence and Defendant Reed was fired for his actions.

This was not Defendant Reed's first disciplinary action. Defendant Reed had been the subject of twelve prior internal affairs investigations, and was found to have violated policy six times – twice for excessive force.

Despite the clear warning signs, it took Defendant Reed violently breaking an inmate's hip before his superiors finally deemed Defendant Reed too dangerous to supervise inmates.

This is an action for money damages brought pursuant to O.C.G.A. §§ 51-1-13 and 51-1-14, as well as 42 U.S.C. §§ 1983 and 1988 and the Fourth and Fourteenth Amendments to the United States Constitution, against Defendant Reed for his unnecessary use of violence against Plaintiff. In addition, this is an action for supervisory liability against the Cobb County Sheriff and CCDC command staff who failed to adequately terminate, discipline, or train Defendant Reed after an extensive disciplinary history, including two verified incidents of unwarranted violence against inmates, and who created a custom, pattern, and practice that allowed jailers to ignore written policies and to receive no retribution or punishment for violating those policies.

Parties, Jurisdiction, and Venue

1. Plaintiff is a natural person and citizen of the United States of America, residing in Cobb County, Georgia, and is of full age.
2. Defendant Dilmus Reed is an individual who was, at all times relevant to the allegations in this complaint, an employee of the Cobb County Sheriff's Office, employed at the CCDC, acting under color of law.

3. Defendant Chief Lynda Coker is an individual who was, at all times relevant to the allegations in this complaint, an employee of the Cobb County Sheriff's Office, employed at the CCDC as a member of command staff, acting under color of law.
4. Defendant Chief Deputy Milton Beck is an individual who was, at all times relevant to the allegations in this complaint, an employee of the Cobb County Sheriff's Office, employed at the CCDC as a member of command staff, acting under color of law.
5. Defendant Colonel Donald Bartlett is an individual who was, at all times relevant to the allegations in this complaint, an employee of the Cobb County Sheriff's Office, employed at the CCDC as a member of command staff, acting under color of law.
6. Defendant Colonel Lewis Alder is an individual who was, at all times relevant to the allegations in this complaint, an employee of the Cobb County Sheriff's Office, employed at the CCDC as a member of command staff, acting under color of law.
7. Defendant Colonel Janice Prince is an individual who was, at all times relevant to the allegations in this complaint, an employee of the Cobb County Sheriff's Office, employed at the CCDC as a member of command staff, acting under color of law.

8. Defendant Colonel Roland Craig is an individual who was, at all times relevant to the allegations in this complaint, an employee of the Cobb County Sheriff's Office, employed at the CCDC as a member of command staff, acting under color of law.

9. Defendant Sheriff Neil Warren is an individual who was, at all times relevant to the allegations in this complaint, Sheriff of Cobb County, tasked with operating the CCDC and a member of the CCDC command staff, acting under color of law.

10. This action is brought pursuant to 42 U.S.C. §§1983 and 1988, as well as the Fourth and Fourteenth Amendments of the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§1331, 1343, and the aforementioned constitutional and statutory provisions.

11. All the parties herein are subject to the personal jurisdiction of this Court.

12. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) and N.D.L.R. 3.1B(3) because the event giving rise to this claim occurred in Cobb County, Georgia, which is situated within the district and divisional boundaries of the Atlanta Division of the Northern District of Georgia,

Facts

13. On or about May 28, 2015, Plaintiff was in custody at the Cobb County Detention Center.

14. Plaintiff had recently been arrested and was going through the intake and booking process when this incident occurred.

15. According to CCDC records, Plaintiff was housed in Intake Holding Cell #10. Plaintiff was still in the intake are of the jail and had not yet been transported into general population.

16. At the time, the CCDC had begun but not completed the intake and booking process.

17. At approximately 7:04 a.m., Defendant Reed opened the door to Intake Holding Cell #10 to escort another inmate[1] into the cell.

18. This entire incident was captured on video.

19. As Defendant Reed was allowing the other inmate in to the cell, Plaintiff was standing in front of the cell door hoping to get a jailer's attention.

[1] The term "inmate" here is used in its colloquial sense. It should not be taken as a representation regarding the status of a person in custody in terms of whether the custody is governed by the Fourth or Fourteenth Amendments.

20. Plaintiff had been standing at the door to the cell for a few minutes hoping to flag down a jailer to make a phone call, and Plaintiff can be heard on the video saying, "excuse me," to Defendant Reed when Defendant Reed opened the cell door.

21. While Plaintiff had been hoping to flag down a jailer, he nevertheless remained respectful and polite, never banging loudly on the cell door or window, never yelling, and never causing any sort of disturbance.

22. Rather than addressing Plaintiff's concern or question, Defendant Reed started to close the door on Plaintiff.

23. When Defendant Reed started to close the door, Plaintiff placed his hand on the window in the center of the door as it was closing.

24. Plaintiff did not use any force or pressure in placing his hand on the window, he was not pushing on the window, and he was not preventing Defendant Reed from closing the door.

25. In fact, the door can be heard making contact with the frame in the video recording of the incident, demonstrating that Defendant Reed was not prevented from closing the door.

26. Or, more specifically, the latch can be heard making contact with the strike plate.

27. At that point, since Plaintiff was not pushing on the window or applying any pressure to the window at all, and since Defendant Reed had the door closed so far that the latch was in contact with the strike plate, Defendant Reed was not impeded or prevented from closing the door in any way.

28. Defendant Reed easily could have finished closing the door and walked away.

29. At that point, Plaintiff was not resisting any officer.

30. At that point, Plaintiff was not presenting a threat of any kind to anybody – jailer, inmate, or otherwise.

31. At that point, Plaintiff was not causing a disturbance.

32. At that point, Plaintiff was not pushing on the door to the cell or applying any force or pressure to the door of the cell, and no reasonable person could have believed that he was pushing on the cell door or trying to get out of the cell.

33. At that point, Plaintiff's hand was on the glass window of the cell door and was therefore visible to Defendant Reed, who was standing on the other side of the door.

34. Because Plaintiff's hand was on the glass window of the cell door, and because the door was closed almost all the way (the latch was

already in contact with the strike plate), no reasonable person could believe that Plaintiff's hand was in danger of being injured by the door

35. Then, rather than pushing the door the final few millimeters required for the latch to engage and the door to be shut and secured, Defendant Reed opened the door all the way, took one large step forward, and with two hands forcefully thrust Plaintiff toward the back of the cell.

36. Immediately before Defendant Reed thrust Plaintiff across the cell, Plaintiff had put his hands up in a submissive posture.

37. Prior to thrusting Plaintiff across the cell, Defendant Reed gave Plaintiff no warning of any sort. Defendant Reed did give Plaintiff any instruction, direction, command, order, or any other indication that Plaintiff was doing anything wrong.

38. It is also notable that Defendant Reed was a more physically imposing person than Plaintiff. Plaintiff was then 54 years old and was quite visibly not a particularly strong or physically dominant individual. Defendant Reed, in contrast, presented a bullishly strong figure.

39. Plaintiff was thrown to the floor and landed on his left hip. In the video, Plaintiff can be heard screaming in pain.

40. Ignoring Plaintiff's screams, Defendant Reed slammed the door and walked away.

41. Doctors would later determine that Plaintiff had suffered an "acute left subcapital hip fracture" – a broken hip.

42. Defendant Reed would acknowledge during the ensuing internal affairs investigation that he "stepped into" pushing Plaintiff. In other words, Defendant Reed did not push Plaintiff while standing in one place; he stepped into Plaintiff's space and heaved Plaintiff forcefully across the cell.

43. Defendant Reed would also later acknowledge that he should not have stepped into the shove, and that this level of force was not necessary.

44. Over the next hour after the incident, Defendant Reed did nothing to mitigate the effects of Plaintiff's severe injury.

45. Defendant Reed returned to the cell after a minute or so while Plaintiff was still lying on his side in pain.

46. Defendant stood over Plaintiff, grabbed Plaintiff's arms, and tried to pull Plaintiff off the ground. Plaintiff was unable to stand since his hip was broken.

47. Defendant Reed can also be heard in the video loudly proclaiming to Plaintiff that he had pushed Plaintiff because "You tried to rush me!" When Plaintiff protested this account, Defendant Reed leaned over Plaintiff and yelled, "Yes you did! Yes you did!"

48. Defendant Reed thus attempted to cover up his illegal use of force by creating a false justification for the use of violence and by intimidating Plaintiff in an attempt to force him to agree with Defendant Reed's false account, all while Plaintiff was lying on the ground writhing in pain.

49. Defendant Reed then left the cell, escorting another inmate, at which point another jailer, Sergeant Peipmeier, stood over Plaintiff demanding, "so what's your malfunction today?"

50. Defendant Reed re-entered the cell about a minute later, walked over to where Plaintiff was still lying on the ground, and continued to argue with Plaintiff about whether he had pushed Plaintiff to the ground.

51. Defendant Reed then, again, grabbed Plaintiff's arms to try to drag Plaintiff to his feet. Plaintiff again began screaming in pain.

52. Defendant Reed stopped trying to drag Plaintiff to his feet and Plaintiff rolled slowly onto his stomach while visibly in extreme pain. Plaintiff can be seen in the video writhing and screaming in pain.

53. Defendant Reed then stood over Plaintiff for another few minutes arguing that Plaintiff had pushed the door to the holding cell.

54. Plaintiff can be heard in the video screaming in pain and telling Defendant Reed that he can't get up. Defendant Reed can be heard saying, "Yes you can. Yes you can."

55. Plaintiff can then be heard saying, "I can't bend my leg;" Defendant Reed can be heard scoffing, "Yeah, right."

56. At no point did Defendant Reed attempt to get medical attention for Plaintiff.

57. Ultimately, Sergeant Peipmeier left the cell to report the incident to medical, and a nurse arrived more than seven minutes after Plaintiff was thrown to the ground.

58. Over the next hour, medical staff and jailers entered and exited the cell, trying to determine how to treat Plaintiff. After about an hour, an ambulance crew finally arrived to take Plaintiff to the emergency room where he was diagnosed with a broken hip.

59. Defendant Reed was investigated after the incident.

60. When Defendant Reed was interviewed in conjunction with the internal affairs investigation, he acknowledged that he had used such an amount of force against Plaintiff because he was mad at Plaintiff.

61. Defendant Reed further claimed that he used such force against Plaintiff out of a fear that Plaintiff's fingers would be caught in the door.

62. Of course, Plaintiff's hand was on the window, not next to the latching mechanism, so Defendant Reed's claimed justification for his use of force is contradicted by the video.

63. Moreover, Defendant Reed already had the door's latch in contact with the strike plate when he decided to re-open the door, so it would have been factually impossible for Plaintiff's fingers to get caught in the door.

64. Defendant Reed ultimately acknowledged that he used more force than was necessary

65. The internal affairs inspection concluded as follows:

> On May 28, 2015, you [Defendant Reed] failed to comply with the policies, procedures, rules, and regulations of the Cobb County Sheriff's Office when you utilized an unreasonable and unnecessary amount of force against Inmate Denis Quinette (SOID # 000210119). Your failure to maintain proper decorum resulted in Inmate Quinette being pushed to

> the ground resulting in physical injuries that required medical attention and admittance to the hospital for care. Your behavior resulted in a conflict of interest with this agency based on your infractions of established policy and procedures.

66. Defendants Warren, Craig, Prince, and Beck all signed onto and agreed with the conclusion of the internal affairs investigation, that Defendant Reed "utilized an unreasonable and unnecessary amount of force" against Plaintiff.

67. Defendant Reed was terminated for this attack.

Defendant Reed's Previous Disciplinary Incidents

68. Defendant Reed was the subject of twelve internal affairs investigations during his tenure with the CCDC. Six of those internal affairs investigations were concluded as "founded" or "sustained," meaning that Defendant Reed was found to have violated department policy six times before he was eventually terminated.

69. Most importantly here, three of those internal affairs investigations were for using excessive force against restrained inmates, with the first complaint being deemed "unfounded" because there was no evidence definitively supporting the inmate's account over Defendant Reed's, but the second and third were deemed "founded" because the incidents were captured on video.

70. Despite this lengthy history of department violations, losing his temper with inmates, and repeated incidents of excessive force, Defendant Reed was never terminated, nor was he adequately disciplined, supervised counseled, or trained. Instead, Defendant Reed was allowed to continue on in a position where he would be in control if inmates without direct supervision.

71. In other words, the supervisors at the CCDC turned a blind eye to Defendant Reed's repeated transgressions, creating a pattern of unchecked use of excessive force against inmates and ensuring that Defendant Reed would ultimately cause a serious injury to an inmate.

January 11, 2005 Excessive Force

72. On January 11, 2005, an inmate who had a colostomy bag filed a grievance with the CCDC that Defendant Reed had used excessive force against him.

73. The inmate complained that Defendant Reed had twisted the chains of the inmate's waist cuffs, which had the effect of rupturing the inmate's colostomy bag, causing extreme discomfort and some bleeding.

74. The encounter was not captured on video and there were no eyewitnesses other than the inmate and Defendant Reed.

75. The inmate reported in an inmate grievance that, during the incident, he told Defendant Reed that Defendant Reed was "bursting" the inmate's colostomy bag, and Defendant Reed told the inmate to "shut up" or "[his] colostomy bag wasn't all that would be busted," and rammed the inmate's head into a closed door.

76. The inmate did not threaten Defendant Reed, use force, or take any other action that would have justified a use of force by Defendant Reed.

77. Defendant Reed disputed the inmate's complaint, but Defendant Reed gave inconsistent versions of what occurred.

78. First, Defendant Reed wrote in his report: "I took hold of the back of his waist chains and escorted him to R-Pod. [The inmate] informed me that he had a colostomy bag, he did not say anything else to me after that. He did not ask for medical attention nor did he appear to be in any type of distress."

79. When interviewed during the internal affairs investigation, however, Defendant Reed claims that he never heard anything about a colostomy bag until he was informed later. Defendant Reed claimed that he did smell a foul odor while escorting the inmate, but that he did

not know the origin of the foul odor, and that the waist chain could have caused the bag to rupture.

80. Documents produced by the Cobb County Sheriff's Officer pursuant to an open record request do not contain the findings of the internal affairs investigation, though there is a notation that no CCDC officer was found to have violated department policy.

81. Since there was no video and there were no other witnesses, the complaint was essentially the inmate's word against Defendant Reed's.

82. Upon information and belief, therefore, no disciplinary action was taken against Defendant Reed in response to this incident.

83. Regardless, the complaint put Command Staff Defendants on notice that Defendant Reed had a propensity toward losing his temper and using violence towards inmates.

March 27, 2006 Excessive Force

84. On March 27, 2006, Defendant Reed was booking an inmate at the sally port of the CCDC when the inmate angered Defendant Reed with a comment, "you'll come in my restaurant and get drunk all the time but next time you won't leave that way."

85. The inmate was restrained in waist chain cuffs at the time.

86. The inmate did not threaten Defendant Reed, use force, or take any other action that would have justified a use of force by Defendant Reed.

87. In retaliation for the inmate's comment Defendant Reed slammed the handcuffed inmate face-first the floor..

88. The inmate suffered a severely lacerated lip and was sent to the hospital to receive stitches.

89. Unlike the 2005 incident, the 2006 incident was captured on video.

90. In the ensuing internal affairs investigation, Defendant Reed was found to have used excessive force in violation of the Cobb County Sheriff's Office's policies. Defendant was given only a written reprimand and required to go to a "refresher" on defensive tactics training; he was not suspended and he lost no pay.

September 9, 2009 Excessive Force

91. On September 9, 2009, Defendant Reed was escorting a group of inmates out of intake. The group of inmates were all handcuffed to each other in a "chain gang" configuration.

92. Defendant Reed was walking beside one inmate who was complaining about the size of his uniform. The inmate ultimately

cursed at Defendant Reed during this interaction, though the inmate did not threaten Defendant Reed, use force against Defendant Reed, or take any other action that would have justified the use of force by Defendant Reed.

93. After the inmate cursed at him, Defendant Reed grabbed the inmate's arm and grabbed the inmate in a headlock to take the inmate to the floor.

94. Because the inmate was chained to a group of inmates, the entire group was pulled back and forth and another deputy had to run over to release the inmate from the chain.

95. The incident was captured on surveillance video.

96. In the ensuing internal affairs investigation, Defendant Reed was found to have used excessive force in violation of the Cobb County Sheriff's Office's use of force and force management policies. Defendant was given a written reprimand and was to be given "counseling related to the proper response to verbal abuse from inmates" by Defendants Alder and Prince.

97. The internal affairs hearing was conducted by Defendant Coker. Command staff present at the hearing were Defendants Beck, Bartlett, Alder, Prince, and Craig. Defendant Warren was appraised of the

internal affairs investigation and its results, and he approved of the results. Defendants Coker, Beck, Bartlett, Alder, Prince, Craig, and Warren are hereinafter "Command Staff Defendants."

98. Again, after Defendant Reed used excessive force against a restrained inmate the only disciplinary action he received was a reprimand; he was not suspended and he lost no pay. Defendant Reed was also to be given informal "counseling related to the proper response to verbal abuse from inmates" by Defendants Alder and Prince.

99. On information and belief, this informal "counseling" contained no actual documentation, no written teaching materials, no lesson plan, and no testing at its conclusion; it was simply an informal conversation among Defendants Reed, Alder, and Prince.

2014 Conduct Unbecoming an Officer

100. Defendant Reed was found to have violated Cobb County Sheriff's Office's policies by using unprofessional and profane language toward inmates in late 2013 and 2014.

101. The internal affairs investigation was initiated because there were "excessive grievances" made against Defendant Reed between late 2013 and 2014.

102. Late 2013 and 2014 grievances against Defendant Reed included the following:

a. A nurse at the jail complained that Defendant Reed sat at a desk with his legs open and asked the nurse to "look at this" in a sexual nature. Defendant Reed confirmed this account to his superior.

b. An inmate complained that Defendant Reed came into his cell, noticed a Qu'ran, and said, "get that shit outta here."

c. An inmate stated that Defendant Reed "has talked about my girlfriend, my children, and my deceased father," and that Defendant Reed sent the inmate to a new Pod without socks or underwear, making the inmate leave behind his personal belongings and photographs "just to be nasty."

d. An inmate reported that Defendant Reed "comes to work like he has a vengance [sic] … He demoralizes us speaks about our wives."

e. An inmate stated that Defendant Reed "is harassing me all the time with ugly abusive language. He calls me nigger and bitch and makes comments about me that questions my sexual

orientation, queer, faggot, that kind of stuff. He is cruel and won't leave me alone."

f. An inmate stated that "Deputy Reed is verbally abusing me constantly, calling me 'nigger,' 'bitch,' 'pussy,' 'little girl,' and making references to my mother. He does this loudly in front of other inmates and as a result, I get humiliated and teased."

g. An inmate complained that when he tried to explain a discrepancy in a disciplinary report to Defendant Reed, Defendant Reed told the inmate to "get the fuck out of here."

h. An inmate reported asking Defendant Reed for new clothing and a hygiene kit because the inmate had been wearing the same clothes for seven days, and that Defendant Reed responded, "get the fuck out of my face and sit the fuck down."

i. A Muslim inmate complained that Defendant Reed told him that he could not have his Qu'ran on the table and "[his] religion is shit."

j. An inmate reported the Defendant Reed "curse[d] me out badly" and told the inmate "he runs this motherfucker."

k. An inmate filed a grievance stating that when he arrived in Defendant Reed's Pod, Defendant Reed "immediately started

threatening, antagonizing, basically singling me out and made a statement, 'I am DOC [Department of Corrections].' I asked him if he meant that as a threat. He responded, 'you'll see.'"

l. An inmate reported that Defendant Reed took the inmate's armband so that the inmate could not get his meals.

m. An inmate with a "two mat profile" (requires accommodation for medical issue) for a herniated disc filed a grievance because Defendant Reed "took the mat and call me a nigga he is very rude and disrespectful to inmates …"

n. An inmate reported that Defendant Reed came into his cell, accused the inmate of calling him a name, "then he call[ed] me a nigger."

o. An inmate complained, "[Defendant Reed has] been using his authority to make my time harder by talking about my mother and picking at me every time he comes in the dorm … [He] has no problem letting everyone know[] that he's going to pick on someone and belittle them in front of everyone!"

103. While Defendant Reed denied almost all the specific allegations in the specific grievances, Defendant Reed did acknowledge using profanity around inmates and the internal affairs adjudication found

the complaint as "sustained." The adjudication did not indicate exactly which of the 15+ grievances were deemed to be founded.

104. Defendant Reed also admitted that he had been previously counseled for his language at the jail by his supervisors.

105. As a result of the internal affairs investigation, Defendant was given only a verbal reprimand.

106. The internal affairs investigation was conducted by Lieutenant Mehling and Investigator Carter, and ultimately reviewed and closed without hearing by Defendant Prince.

107. Defendants Warren, Beck, Bartlett, and Craig were appraised of the investigation and its results, and approved of the results.

108. Yet again, after Defendant Reed demonstrated an inability to control his temper with inmates, the only disciplinary action he received was a verbal reprimand; he was not suspended, he lost no pay, and he remained allowed to oversee inmates without direct supervision.

109. Moreover, there was no counseling or training associated with the internal affairs finding.

Other Internal Affairs Investigations

110. Defendant Reed was given a one-day suspension when he failed to conduct a required headcount on April 17, 2000, then knowingly misrepresented that a headcount had been conducted.

111. In August of 2005, Defendant Reed was given a verbal reprimand for approaching a Bartow County citizen who had pulled over to ask for directions, displaying a badge to the citizen, and ordering the citizen to move – all because the citizen was delaying Defendant Reed's commute. The citizen reported that Defendant Reed was acting "irate" and that he had the demeanor of a person who was exhibiting symptoms of steroid abuse.

112. In September of 2005, Defendant Reed improperly had a Cobb County Police Department officer run a tag for him to determine the owner of an abandoned vehicle on his property. Defendant Reed's supervisor, Major Hunton, told Defendant Reed that running a GCIC search for personal reasons was improper, but no disciplinary action was taken.

113. In fact, pursuant to O.C.G.A. § 35-3-38(a), misuse of GCIC is a felony punishable by up to two years in prison. In failing to take action beyond telling Defendant Reed that misuse of GCIC is improper,

Command Staff Defendants thus turned a blind eye to Defendant Reed's criminal conduct.

114. Moreover, the GCIC Rules, enacted pursuant to Georgia law and articulated by Department of Human Services Office of Inspector General, mandate that all local agencies are *required* to have disciplinary procedures for the violations of GCIC rules, to take disciplinary action against an employee who violates the GCIC rules, and to report any such violations to the GCIC in writing.[2] By closing his eyes to Defendant Reed's clear violation of GCIC rules, Major Hunton ignored a criminal offense and violated GCIC rules in doing so.

115. In June of 2008, Defendant Reed was arrested on a Bartow County Probate Court bench warrant for failure to appear. Defendant Reed had been named guardian of a financial settlement awarded to his daughter after an accident, and he had forfeited the entire settlement by using it as collateral on a personal loan on which he defaulted. The court appearance Defendant Reed missed was associated with Defendant Reed's failure to file an annual return with

[2] *See Disciplinary Measures for Misuse of GCIC/NCIC Criminal Justice Information*, available at http://odis.dhs.ga.gov/ChooseCategory.aspx?cid=1396 (last visited 5/18/17); GCIC Rule 140-2-.09, available at https://gbi.georgia.gov/sites/gbi.georgia.gov/files/imported/vgn/images/portal/cit_1210/38/8/88224162GCIC%20Rules%202007%20Final.pdf (last visited 5/18/17).

the court, which would have revealed the forfeiting of the account. The internal affairs investigation into this matter was closed as "documentation only" and Defendant Reed was not disciplined.

116. On May 18, 2015, only ten days before the incident with Plaintiff here, Defendant Reed was suspended for 16 hours after he violated the rules concerning the supervision of inmates in segregation housing.

117. Specifically, Defendant Reed allowed segregation inmates to remain outside of segregation for longer than CCDC policy allowed and allowed a favored inmate out of his cell in violation of CCDC policy.

118. Defendant Reed's violations of policy resulted in a fight between segregation inmates and involving a Special Management Level 1 inmate (the highest and most dangerous level of inmate classification).

119. Defendants Beck, Craig, and Prince were present and participated in the internal affairs hearing, and Defendant Warren conducted the hearing and ultimately sent Defendant Reed the notice of his suspension.

120. Defendant Reed's suspension was scheduled for June 1 and 2, 2015, but Defendant Reed was never reached that point because the incident with Plaintiff and his termination occurred first.

COUNT I

Section 1983 – Excessive Force (Defendant Reed)

121. The preceding paragraphs are incorporated herein by reference as though fully set forth.

122. Defendant Reed used excessive force against Plaintiff in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution when he violently shoved Plaintiff to the ground, breaking Plaintiff's hip, while Plaintiff was not resisting any jailer, was not causing a disturbance, and did not pose a threat to any person.

123. Because the booking process was not complete and Plaintiff was still in a holding cell when the incident occurred, the Fourth Amendment governs the analysis and Defendant Reed's use of force was excessive and unreasonable under the Fourth Amendment.

124. In the alternative, if the use of force is examined under the Fourteenth Amendment, Defendant Reed's use of force was excessive and unreasonable under the Fourteenth Amendment.

125. Plaintiff claims damages for the injuries set forth above under 42 U.S.C. § 1983 against Defendant Reed for violations of Plaintiff's constitutional rights under color of law.

COUNT II
State Law – Assault and Battery (Defendant Reed)

126. The preceding paragraphs are incorporated herein by reference as though fully set forth.

127. Defendant Reed committed assault and battery against Plaintiff in violation of O.C.G.A. §§ 51-1-13 and 51-1-14 when he violently shoved Plaintiff to the ground, shattering Plaintiff's hip, while Plaintiff was not resisting any jailer and did not pose a threat to any person.

128. Plaintiff claims damages for the injuries set forth above under O.C.G.A. §§ 51-1-13 and 51-1-14 against Defendant Reed for violations of Plaintiff's rights under Georgia law.

COUNT III
Section 1983 – Supervisory Liability
(Command Staff Defendants, Individual Capacity)

129. The preceding paragraphs are incorporated herein by reference as though fully set forth.

130. Command Staff Defendants, at all times material hereto, were members of the command staff at the CCDC.

131. As members of the command staff, at all times material hereto, Command Staff Defendants had supervisory roles at the CCDC.

2009 Internal Affairs Investigation and Hearing (Excessive Force)

132. Command Staff Defendants played active roles in the internal affairs hearing and results regarding Defendant Reed's 2009 use of excessive force.

133. Within the 2009 internal affairs investigation and hearing, Command Staff Defendants reviewed Defendant Reed's entire personnel file.

134. Within the 2009 internal affairs investigation and hearing, Command Staff Defendants specifically reviewed Defendant Reed's previous internal affairs investigations.

135. When evaluating the 2009 internal affairs investigation for excessive force, Command Staff Defendants were therefore aware of Defendant Reed's history of losing his temper, his history of violence towards inmates, and his history of disregarding department policy and violating the law.

a. Command Staff Defendants were aware of the 2005 report of excessive force against Defendant Reed, as is set out above.

b. Command Staff Defendants were also aware of Defendant Reed's 2006 use of excessive force, verified by video, wherein Defendant

Reed slammed a restrained inmate's face to the floor sending the inmate to the hospital for stitches, as is set out above.

c. In fact, Defendant Alder was involved in and personally requested the 2006 internal affairs investigation, and Defendants Coker, Beck, and Bartlett were notified of the investigation at its outset.

136. When evaluating the 2009 internal affairs investigation for excessive force, Command Staff Defendants were also aware of Defendant Reed's history of disciplinary trouble as is summarized above in the section titled, "Other Internal Affairs Investigations," and which includes several other instances in which Defendant Reed violated department policy and committed criminal acts.

137. When evaluating the 2009 internal affairs investigation for excessive force, despite Command Staff Defendants' personal knowledge of these incidents, Command Staff Defendants did not terminate Defendant Reed's employment or assign Defendant Reed to different duties. Command Staff Defendants allowed Defendant Reed to keep working as a jailer.

138. When evaluating the 2009 internal affairs investigation for excessive force, despite Command Staff Defendants' personal

knowledge of these incidents, Command Staff Defendants allowed Defendant Reed to keep working as a jailer and specifically allowed Defendant Reed to oversee and control inmates without direct supervision.

139. Command Staff Defendants turned a blind eye to Defendant Reed's substantial history of violent acts against inmates, violations of department policy, criminal behavior, and a categorical inability to control his temper around inmates when Command Staff Defendants merely issued a reprimand and informal "counseling" for Defendant Reed's second verified violent attack on an inmate (his third overall).

140. By merely issuing a reprimand and informal "counseling" after a substantial history of violent acts against inmates, violations of department policy, criminal behavior, and a categorical inability to control his temper around inmates, Command Staff Defendants gave Defendant Reed reason to believe such conduct was tolerated or encouraged at the CCDC.

141. By merely issuing a reprimand and informal "counseling" after a substantial history of violent acts against inmates, violations of department policy, criminal behavior, and a categorical inability to control his temper around inmates, Command Staff Defendants failed

to adequately train, supervise, or discipline Defendant Reed with regard to the proper way to handle disagreements with inmates, how to manage his temper around inmates, or the improper use of force against inmates, virtually ensuring that Defendant Reed would again lose his temper around an inmate and cause a serious injury.

2014 Internal Affairs Investigation and Hearing

(Conduct Unbecoming an Officer)

142. Defendant Prince was the ultimate arbiter of the 2014 internal affairs matter regarding Defendant Reed's 2014 grievances by inmates. The internal affairs matter was closed without formal hearing by Defendant Prince.

143. Within the 2014 internal affairs matter, Defendants Prince, Warren, Beck, Bartlett, and Craig were aware of Defendant Reed's entire personnel file.

144. Within the 2014 internal affairs matter, Defendants Prince, Warren, Beck, Bartlett, and Craig were specifically aware of Defendant Reed's previous internal affairs investigations.

145. When evaluating the 2014 internal affairs investigation, Defendants Prince, Warren, Beck, Bartlett, and Craig were therefore aware of Defendant Reed's history of losing his temper, his history of

violence towards inmates, and his history of disregarding department policy and violating the law.

a. When evaluating the 2014 internal affairs investigation, Defendants Prince, Warren, Beck, Bartlett, and Craig were aware of the 2005 allegation of excessive force against Defendant Reed, as is set out above.

b. When evaluating the 2014 internal affairs investigation, Defendants Prince, Warren, Beck, Bartlett, and Craig were also aware of the 2006 allegation of excessive force against Defendant Reed which was deemed to be "founded," wherein Defendant Reed slammed a restrained inmate's face to the floor sending the inmate to the hospital for stitches, as is set out above.

c. When evaluating the 2014 internal affairs investigation, Defendants Prince, Warren, Beck, Bartlett, and Craig were also aware of the 2009 allegation of excessive force against Defendant Reed which was deemed to be "founded," wherein Defendant Reed tried to slam a restrained inmate to the ground with a headlock while the inmate was chained to another group of inmates, simply because the inmate said something that angered Defendant Reed, as is set out above.

146. When evaluating the 2014 internal affairs investigation, Defendants Prince, Warren, Beck, Bartlett, and Craig were also aware of Defendant Reed's history of disciplinary trouble and criminal activity as is summarized above in the section titled, "Other Internal Affairs Investigations," and which includes other instances in which Defendant Reed violated department policy and committed criminal acts.

147. When evaluating the 2014 internal affairs investigation, despite their personal knowledge of these incidents, Defendants Prince, Warren, Beck, Bartlett, and Craig did not terminate Defendant Reed's employment or assign Defendant Reed to different duties. Defendants Prince, Warren, Beck, Bartlett, and Craig allowed Defendant Reed to keep working as a jailer.

148. When evaluating the 2014 internal affairs investigation, despite their personal knowledge of these incidents, Defendants Prince, Warren, Beck, Bartlett, and Craig allowed Defendant Reed to keep working as a jailer and specifically allowed Defendant Reed to handle and control restrained inmates without direct supervision.

149. Defendants Prince, Warren, Beck, Bartlett, and Craig turned a blind eye to Defendant Reed's substantial history of violent acts against inmates, violations of department policy, criminal behavior, and a

categorical inability to control his temper around inmates when he merely issued a verbal reprimand for Defendant Reed's year-long campaign of verbal abuse against numerous inmates.

150. By merely issuing a verbal reprimand after a substantial history of violent acts against inmates, violations of department policy, criminal behavior, and a categorical inability to control his temper around inmates, Defendants Prince, Warren, Beck, Bartlett, and Craig gave Defendant Reed reason to believe such conduct was tolerated or encouraged at the CCDC.

151. By merely issuing a verbal reprimand after a substantial history of violent acts against inmates, violations of department policy, criminal behavior, and a categorical inability to control his temper around inmates, Defendants Prince, Warren, Beck, Bartlett, and Craig failed to adequately train, supervise, or discipline Defendant Reed with regard to the proper way to handle disagreements with inmates, how to manage his temper around inmates, or the improper use of force against inmates, virtually ensuring that Defendant Reed would again lose his temper around an inmate and cause a serious injury.

May 2015 Internal Affairs Investigation and Hearing (Favoritism to Inmates and Violation of Policy)

152. Defendants Craig, Prince, Beck, and Warren were present and active participants in the 2015 internal affairs matter regarding Defendant Reed's favoritism to inmates and violations of policy. The hearing was conducted by Defendant Warren.

153. Within the 2015 internal affairs matter, Defendants Warren, Craig, Prince, and Beck were aware of Defendant Reed's entire personnel file.

154. Within the 2015 internal affairs matter, Defendants Warren, Craig, Prince, and Beck were specifically aware of Defendant Reed's previous internal affairs investigations.

155. When evaluating the 2015 internal affairs investigation, Defendants Warren, Craig, Prince, and Beck were therefore aware of Defendant Reed's history of losing his temper, his history of violence towards inmates, and his history of disregarding department policy and violating the law.

a. When evaluating the 2015 internal affairs investigation, Defendants Warren, Craig, Prince, and Beck were aware of the

2005 allegation of excessive force against Defendant Reed, as is set out above.

b. When evaluating the 2015 internal affairs investigation, Defendants Warren, Craig, Prince, and Beck were also aware of the 2006 allegation of excessive force against Defendant Reed which was deemed to be "founded," wherein Defendant Reed slammed a restrained inmate's face to the floor sending the inmate to the hospital for stitches, as is set out above.

c. When evaluating the 2015 internal affairs investigation, Defendants Warren, Craig, Prince, and Beck were also aware of the 2009 allegation of excessive force against Defendant Reed which was deemed to be "founded," wherein Defendant Reed tried to slam a restrained inmate to the ground with a headlock while the inmate was chained to another group of inmates, simply because the inmate said something that angered Defendant Reed, as is set out above.

d. When evaluating the 2015 internal affairs investigation, Defendants Warren, Craig, Prince, and Beck were also aware of Defendant Reed's 2014 pattern of racial epithets, profanity, and

threats toward inmates, and Defendant Reed's continued propensity to lost his temper with inmates.

156. When evaluating the 2015 internal affairs investigation for excessive force, Defendants Warren, Craig, Prince, and Beck were also aware of Defendant Reed's history of disciplinary trouble and criminal activity as is summarized above in the section titled, "Other Internal Affairs Investigations," and which includes other instances in which Defendant Reed violated department policy and committed criminal acts.

157. When evaluating the 2015 internal affairs investigation, despite their personal knowledge of these incidents, Defendants Warren, Craig, Prince, and Beck did not terminate Defendant Reed's employment or assign Defendant Reed to different duties. Defendants Warren, Craig, Prince, and Beck allowed Defendant Reed to keep working as a jailer.

158. When evaluating the 2015 internal affairs investigation, despite their personal knowledge of these incidents, Defendants Warren, Craig, Prince, and Beck allowed Defendant Reed to keep working as a jailer and specifically allowed Defendant Reed to handle and control restrained inmates without direct supervision.

159. Defendants Warren, Craig, Prince, and Beck turned a blind eye to Defendant Reed's substantial history of violent acts against inmates, violations of department policy, criminal behavior, and a categorical inability to control his temper around inmates when he merely issued a verbal reprimand for Defendant Reed's year-long campaign of verbal abuse against numerous inmates.

160. By merely issuing 16-hour suspension after a substantial history of violent acts against inmates, violations of department policy, criminal behavior, and a categorical inability to control his temper around inmates, Defendants Warren, Craig, Prince, and Beck gave Defendant Reed reason to believe such conduct was tolerated or encouraged at the CCDC.

161. By merely issuing a 16-hour suspension after a substantial history of violent acts against inmates, violations of department policy, criminal behavior, and a categorical inability to control his temper around inmates, Defendants Warren, Craig, Prince, and Beck failed to adequately train, supervise, or discipline Defendant Reed with regard to the proper way to handle disagreements with inmates, how to manage his temper around inmates, or the improper use of force

against inmates, virtually ensuring that Defendant Reed would again lose his temper around an inmate and cause a serious injury.

2009, 2014, and 2015 Internal Affairs Investigations

162. During the 2009, 2014, and 2015 internal affairs investigations, adequate scrutiny of Defendant Reed's disciplinary history would have lead a reasonable supervisor to conclude that the plainly obvious consequence of the decision to allow Defendant Reed to keep working as a jailer and to handle and control restrained inmates without direct supervision would be the deprivation of an inmate's right to be free from the use of excessive force.

163. During the 2009, 2014, and 2015 internal affairs matters, Command Staff Defendants disregarded a known and obvious consequence of allowing Defendant Reed to keep working as a jailer and to handle and control restrained inmates without direct supervision – that Defendant Reed would again lose his temper and retaliate against inmates with excessive force.

164. As is outlined above, Command Staff Defendants failed to adequately discipline, supervise, and train Defendant Reed.

165. Command Staff Defendants failed to adequately discipline, supervise, and train Defendant Reed in the proper use of force with

inmates, in controlling his temper around inmates, and in following the policies of CCDC and the Cobb County Sheriff's Office as well as Georgia law.

166. A reasonable person in the position of Command Staff Defendants would understand that the failure to adequately discipline, supervise, and train Defendant Reed in in the proper use of force with inmates, in controlling his temper around inmates, and in following the policies of CCDC and the Cobb County Sheriff's Office as well as Georgia law would constitute deliberate indifference.

167. Command Staff Defendants deliberately turned a blind eye to Defendant Reed's repeated transgressions, creating a custom, pattern, and practice that allows officers to ignore written policies and receive no retribution or punishment for violating those policies, and that specifically allows officers to use excessive force against inmates without fear of retribution or punishment.

168. In their supervisory capacities, therefore, the actions of Command Staff Defendants were casually connected to Defendant Reed's use of excessive force against Plaintiff.

Prayer For Relief

WHEREFORE, Plaintiff prays that this Court issue the following relief:

1) That process issue in accordance with the law;
2) That the Court award Plaintiff compensatory and general damages in an amount to be determined by the jury against the Defendants, jointly and severally;
3) That the Court award Plaintiff punitive damages in an amount to be determined by the enlightened conscience of the jury against the Defendants;
4) That the Court award costs of this action, including attorneys' fees, to Plaintiff, pursuant to U.S.C. § 1988 and other applicable laws regarding such awards;
5) That the Court award Plaintiff such other and further relief as it deems just and necessary; and
6) That Plaintiff be granted a trial by jury.

This 19th Day of October, 2017

HORSLEY BEGNAUD, LLC

/s/ Mark Begnaud
Mark Begnaud
Georgia Bar No. 217641
mbegnaud@gacivilrights.com

Nathanael A. Horsley
Georgia Bar No. 367832
nhorsley@gacivilrights.com

750 Hammond Drive,
Building 12, Suite 300
Atlanta, Ga 30328
770-765-5559

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **First Amended Complaint** to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants:

H. William Rowling, Jr.
Assistant County Attorney
H.William.Rowling@cobbcounty.org
Lauren S. Bruce
Senior Associate County Attorney
Lauren.Bruce@cobbcounty.org
COBB COUNTY ATTORNEY'S OFFICE
100 Cherokee Street
Suite 350
Marietta, Ga 30090
770-528-4000

This 19th day of October, 2017.

/s/ Mark Begnaud
Mark Begnaud
Georgia Bar No. 217641
mbegnaud@gacivilrights.com

HORLSEY BEGNAUD LLC
750 Hammond Drive,
Building 12, Suite 300
Atlanta, Ga 30328
770-765-5559 (phone)
404-602-0018 (fax)