APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[filed December 8, 2020]

FAYE STRAIN, as guardian of Thomas Benjamin Pratt, Plaintiff - Appellant, v. VIC REGALADO, in his official capacity, et al., Defendants - Appellees and BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY, Defendant.	No. 19-5071 (D.C. No. 4:18-CV-00583-TCK-FHM) (N.D. Okla.)

ORDER

Before **HARTZ, MATHESON**, and **CARSON**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court:
Christopher M. Wolpert, Clerk
/s/ Christopher M. Wolpert, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

[filed October 9, 2020]

FAYE STRAIN, as guardian of Thomas Benjamin Pratt, Plaintiff - Appellant, v. VIC REGALADO, in his official capacity, et al., Defendants - Appellees and BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY, Defendant.	No. 19-5071

Appeal from the United States District Court
for the Northern District of Oklahoma
(D.C. No. 4:18-CV-00583-TCK-FHM)

Robert Blakemore (Daniel Smolen with him on the brief), Smolen & Roytman, Cincinnati, Ohio, for Plaintiff-Appellant Faye Strain.

Sean Snider (Micah B. Cartwright with him on the brief), Johnson Hanan Vosler Hawthorne & Snider, Oklahoma City, Oklahoma, for Defendants-Appellees Armor Correctional Health Services, Inc., Curtis McElroy, D.O., Patricia Deane, LPN, and Kathy Loehr, LPC.

Before **HARTZ, MATHESON**, and **CARSON**, Circuit Judges.

CARSON, Circuit Judge.

The Fourteenth Amendment prohibits deliberate indifference to a pretrial detainee's serious medical needs. Disagreement about course of treatment or mere negligence in administering treatment do not amount to a constitutional violation. Rather, to state a claim for deliberate indifference, a plaintiff must allege that an official acted (or failed to act) in an objectively unreasonable manner and with subjective awareness of the risk. Indeed, the word deliberate makes a subjective component inherent in the claim.

Pretrial detainee Thomas Pratt exhibited alcohol withdrawal symptoms while in a county jail. Healthcare providers diagnosed and treated Mr. Pratt's symptoms, but their course of treatment proved ineffective. Plaintiff Faye Strain, as Mr. Pratt's guardian, sued. Although Plaintiff's alleged

facts suggest that Defendants may have underestimated the extent of Mr. Pratt's symptoms, Plaintiff's allegations do not rise to the high level of deliberate indifference. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court's dismissal of Plaintiff's federal claims, as well as its decision not to exercise supplemental jurisdiction over Plaintiff's remaining state law claims.

I.

Officials at the Tulsa County Jail (the Jail) booked Mr. Pratt into the Jail on December 11, 2015.[1] The next morning, Mr. Pratt expressed that he was experiencing alcohol withdrawal and submitted a request for detox medication. An Armor nurse conducted a drug and alcohol withdrawal assessment of Mr. Pratt that afternoon. During the assessment, Mr. Pratt stated that he had habitually drank fifteen-to-twenty beers per day for the past decade. Staff admitted Mr. Pratt to the Jail's medical unit, conducted a mental health assessment, and documented his withdrawal symptoms.

On December 13, Armor staff placed Mr. Pratt on seizure precautions, which dictated that staff check his vital signs every eight hours. Armor staff also placed Mr. Pratt on Librium medication to treat his alcohol withdrawal symptoms at an undetermined time. Around 2 a.m. on December 14, Nurse Patricia

[1] The Tulsa County Sheriff's Office contracted with Defendant Armor Correctional Health Services (Armor) to provide medical and mental health services to inmates at the Jail. The parties do not dispute that all individual healthcare professionals who interacted with Mr. Pratt were agents of Armor and thus state actors subject to the strictures of the Fourteenth Amendment.

Deane conducted a withdrawal assessment, which revealed worsening symptoms. Nurse Deane observed vomiting, severe tremors, acute panic states, and disorientation. Plaintiff alleged that Mr. Pratt's symptoms showed he was suffering from delirium tremens.[2] Despite the severity of Mr. Pratt's symptoms, and against an assessment tool's direction, Nurse Deane did not contact a physician. Nurse Deane also failed to check Mr. Pratt's vitals or perform any additional assessments.[3] But someone, presumably a nurse practitioner at the request of Nurse Deane, switched Mr. Pratt from Librium to Valium shortly after Nurse Deane's assessment.

About eight hours later, at 10:30 a.m. on December 14, Dr. Curtis McElroy examined Mr. Pratt. Dr. McElroy noticed a two-centimeter cut on Mr. Pratt's forehead and a pool of blood in his cell. Dr. McElroy, aware of Mr. Pratt's earlier symptoms from his medical records, observed Mr. Pratt's disoriented state, but did not send Mr. Pratt to the hospital or provide more care. Dr. McElroy recorded that Mr. Pratt received his first dose of Valium that morning. Another Armor nurse encountered Mr. Pratt later that afternoon and noted that he needed assistance with daily living

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[2] "According to the National Institutes of Health, delirium tremens is a severe form of alcohol withdrawal that involves sudden and severe mental or nervous system changes." Kindl v. City of Berkley, 798 F.3d 391, 397 (6th Cir. 2015) (internal quotation marks and citation omitted).

[3] About ninety minutes later, another Armor staff member tried to check Mr. Pratt's vital signs but could not do so because he would not sit still. Armor staff did not record any vital signs for Mr. Pratt from December 14 until he left the Jail early on December 16.

activities. Again, Armor staff did not escalate Mr. Pratt's level or place of care.

The next morning, Kathy Loehr, a licensed professional counselor (LPC), conducted a mental health evaluation of Mr. Pratt. Mr. Pratt reported that he was detoxing from alcohol and appeared shaky. LPC Loehr observed that Mr. Pratt struggled to answer questions and determined the cut on his forehead appeared unintentional. LPC Loehr declined to seek more care for Mr. Pratt.

That afternoon, Dr. McElroy again assessed Mr. Pratt and noted that he was underneath the sink in his cell with a cut on his forehead. Another Armor nurse observed Mr. Pratt around midnight on the morning of December 16, but he would not get up, so she did not check his vitals. Just before 1 a.m., a detention officer found Mr. Pratt lying motionless on his bed and called for a nurse. An Armor nurse responded immediately, initiated cardiopulmonary resuscitation, and called a medical emergency. First responders soon resuscitated Mr. Pratt and rushed him to a hospital. Mr. Pratt had suffered a cardiac arrest. The hospital later discharged Mr. Pratt with a seizure disorder and other ailments that left him permanently disabled.

Plaintiff Faye Strain, as guardian of Mr. Pratt, sued Armor, Nurse Deane, LPC Loehr, Dr. McElroy, and Tulsa County Sheriff Vic Regalado in his official capacity (collectively, Defendants) for Mr. Pratt's treatment at the Jail.

Plaintiff asserted claims for deliberate indifference to Mr. Pratt's serious medical needs under 42 U.S.C. § 1983 against all Defendants, as well as related state law claims. The district court dismissed all of

Plaintiff's federal claims and declined to exercise supplemental jurisdiction over her state law claims. Plaintiff now appeals.

II.

We review de novo the district court's dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Strauss v. Angie's List, Inc., 951 F.3d 1263, 1266 (10th Cir. 2020). To survive a Rule 12(b)(6) motion, Plaintiff's complaint must allege sufficient facts to state a claim for relief plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (explaining that a claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

We review the district court's decision declining to exercise supplemental jurisdiction for an abuse of discretion. Robey v. Shapiro, Marianos & Cejda, L.L.C., 434 F.3d 1208, 1213 (10th Cir. 2006).

III.

We consider whether the district court erred by dismissing Plaintiff's federal claims under a standard for deliberate indifference that included both an objective and a subjective component. Plaintiff contends we should analyze her claims under a purely objective standard given the Supreme Court's decision in Kingsley v. Hendrickson, 576 U.S. 389 (2015). She also argues that the district court abused its discretion by declining to exercise supplemental jurisdiction over her related state law claims. We reject Plaintiff's arguments and hold that deliberate indifference to a pretrial detainee's serious medical needs includes both an objective and a subjective component, even

after Kingsley. We also conclude that Plaintiff failed to allege sufficient facts to support her deliberate indifference claims and that the district court did not err by declining to exercise supplemental jurisdiction over her remaining state law claims.

A.

The Supreme Court first recognized a § 1983 claim for deliberate indifference under the Eighth Amendment, which protects the rights of convicted prisoners. Estelle v. Gamble, 429 U.S. 97, 104 (1976) (holding that deliberate indifference to a convicted prisoner's serious medical needs constitutes cruel and unusual punishment in violation of Eighth Amendment). We later granted pretrial detainees access to the claim under the Fourteenth Amendment. Garcia v. Salt Lake Cty., 768 F.2d 303, 307 (10th Cir. 1985) (holding that, although the Eighth Amendment protects the rights of convicted prisoners and the Fourteenth Amendment protects the rights of pretrial detainees, pretrial detainees are "entitled to the degree of protection against denial of medical attention which applies to convicted inmates"). And we apply the same deliberate indifference standard no matter which amendment provides the constitutional basis for the claim. Estate of Hocker by Hocker v. Walsh, 22 F.3d 995, 998 (10th Cir. 1994) (holding that a pretrial detainee's Fourteenth Amendment "claim for inadequate medical attention must be judged against the deliberate indifference to serious medical needs test of Estelle" (internal quotation marks and citation omitted)).

To state a cognizable claim, Plaintiff "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." McBride v. Deer, 240 F.3d 1287, 1289 (10th Cir. 2001)

(quoting Estelle, 429 U.S. at 106)). This standard includes both an objective component and a subjective component. Clark v. Colbert, 895 F.3d 1258, 1267 (10th Cir. 2018). To establish the objective component, "the alleged deprivation must be 'sufficiently serious' to constitute a deprivation of constitutional dimension." Self v. Crum, 439 F.3d 1227, 1230 (10th Cir. 2006) (quoting Farmer v. Brennan, 511 U.S. 825, 834 (1994)). "A medical need is [objectively] serious if it is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Clark, 895 F.3d at 1267 (alteration in original and citation omitted). The subjective component requires Plaintiff to establish that a medical "official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [s]he must also draw the inference." Mata v. Saiz, 427 F.3d 745, 751 (10th Cir. 2005) (alteration in original) (quoting Farmer, 511 U.S. at 837).

Plaintiff argues that the Supreme Court's Kingsley decision alters the standard for pretrial detainees' Fourteenth Amendment claims. In Kingsley, the Court held that a plaintiff may establish an excessive force claim under the Fourteenth Amendment based exclusively on objective evidence. Kingsley, 576 U.S. at 397 (explaining that "the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one"). But Kingsley did not address the standard for deliberate indifference to serious medical needs. And the circuits are split on whether Kingsley eliminated the subjective component of the deliberate indifference standard by extending to Fourteenth

Amendment claims outside the excessive force context.[4] Although we have continued to apply a two-prong test, we have not yet addressed Kingsley head-on. See, e.g., Clark, 895 F.3d at 1269 (declining to

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[4] The Fifth, Eighth, and Eleventh Circuits have declined to extend Kingsley to deliberate indifference claims. Whitney v. City of St. Louis, 887 F.3d 857, 860 n.4 (8th Cir. 2018) (holding that "Kingsley does not control because it was an excessive force case, not a deliberate indifference case"); Dang ex rel. Dang v. Sheriff, Seminole Cty., 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) (declining to apply Kingsley to a deliberate indifference claim because "Kingsley involved an excessive- force claim, not a claim of inadequate medical treatment due to deliberate indifference," so Kingsley "does not actually abrogate or directly conflict with our prior precedent" (internal quotation marks and citations omitted)); Alderson v. Concordia Par. Corr. Facility, 848 F.3d 415, 419 n.4 (5th Cir. 2017) (noting that "the Fifth Circuit has continued to . . . apply a subjective standard post-Kingsley"). Other courts, including the Third Circuit, have expressed doubts about the application of Kingsley, but declined to address the issue. See Moore v. Luffey, 767 F. App'x 335, 340 n.2 (3d Cir. 2019) (unpublished) (acknowledging that the plaintiff did not cite any binding authority "applying Kingsley to a claim of deliberate indifference to a detainee's serious medical needs," but declining to address whether to apply a new standard in this case).

On the other hand, the Second, Seventh, and Ninth Circuits have extended Kingsley to the deliberate indifference context. Miranda v. Cty. of Lake, 900 F.3d 335, 352 (7th Cir. 2018) (concluding, "along with the Ninth and Second Circuits, that medical-care claims brought by pretrial detainees under the Fourteenth Amendment are subject only to the objective unreasonableness inquiry identified in Kingsley"); Gordon v. Cty. of Orange, 888 F.3d 1118, 1124 (9th Cir. 2018) (relying on the "broad wording of Kingsley" to extend its holding to Fourteenth Amendment deliberate indifference claims); Darnell v. Pineiro, 849 F.3d 17, 34–35 (2d Cir. 2017) (overruling a case applying the subjective test to a deliberate indifference claim to apply a purely objective standard in the context of conditions of confinement claims; further "concluding that deliberate indifference should be defined objectively for a claim of a due process violation" (id. at 35)).

address whether Kingsley displaced our precedent regarding a pretrial detainee's deliberate indifference claims). We do so today.

We decline to extend Kingsley to Fourteenth Amendment deliberate indifference claims for several reasons. First, Kingsley turned on considerations unique to excessive force claims: whether the use of force amounted to punishment, not on the status of the detainee. Next, the nature of a deliberate indifference claim infers a subjective component. Finally, principles of *stare decisis* weigh against overruling precedent to extend a Supreme Court holding to a new context or new category of claims.

First, we recognize that Kingsley involved an excessive force claim, not a deliberate indifference claim. By its own words, the Supreme Court decided that "an objective standard is appropriate in the context of excessive force claims brought by pretrial detainees pursuant to the Fourteenth Amendment"—nothing more, nothing less. Kingsley, 576 U.S. at 402. Although the Court did not foreclose the possibility of extending the purely objective standard to new contexts, the Court said nothing to suggest it intended to extend that standard to pretrial detainee claims generally or deliberate indifference claims specifically. Id. at 395 (explaining that the question before the Court "concerns the defendant's state of mind with respect to whether his use of force was 'excessive'" and concluding "*with respect to that question* that the relevant standard is objective not subjective" (emphasis added)). So whether Kingsley applies to Fourteenth Amendment claims outside the excessive force context is not readily apparent from that opinion.

Even though both causes of action arise under the Fourteenth Amendment, a pretrial detainee's cause of action for excessive force serves a different purpose than that for deliberate indifference. The excessive force cause of action "protects a pretrial detainee from the use of excessive force that amounts to punishment." Id. at 397 (quoting Graham v. Connor, 490 U.S. 386, 395 n.10 (1989)). The deliberate indifference cause of action does not relate to punishment, but rather safeguards a pretrial detainee's access to adequate medical care. Garcia, 768 F.2d at 307. Excessive force requires an affirmative act, while deliberate indifference often stems from inaction. Castro v. Cty. of Los Angeles, 833 F.3d 1060, 1069 (9th Cir. 2016) (en banc). Although "punitive intent may be inferred from affirmative acts that are excessive in relationship to a legitimate government objective, the mere failure to act does not raise the same inference." Id. at 1086 (Ikuta, J., dissenting) (reasoning that "the Kingsley standard is not applicable to cases where a government official fails to act" because "a person who unknowingly fails to act—even when such a failure is objectively unreasonable—is negligent at most" and "the Supreme Court has made clear that liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process"). Because the two categories of claims protect different rights for different purposes, the claims require different state-of-mind inquiries.

Indeed, Kingsley relies on precedent specific to excessive force claims. The Court reasoned that the Due Process Clause is particularly concerned with improper punishment of pretrial detainees. Kingsley, 576 U.S. at 398 (citing Graham, 490 U.S. at 395 n.10 (concluding that "the Due Process Clause protects a

pretrial detainee from the use of excessive force that amounts to punishment")). And pretrial detainees should receive greater protection against excessive force than convicted criminals because the government lacks the same legitimate penological interest in punishing those not yet convicted of a crime. Id. at 398–99. So a pretrial detainee may prevail on an excessive force claim "in the absence of an expressed intent to punish" if an official's actions "appear excessive in relation to [a legitimate government] purpose." Id. at 398 (quoting Bell v. Wolfish, 441 U.S. 520, 561 (1979) (considering only objective evidence to determine "whether particular restrictions and conditions accompanying pretrial detention amount to punishment in the constitutional sense of that word" (id. at 538))). Throughout the Kingsley opinion, the Court's "focus on 'punishment'" provides the basis for removing the subjective requirement from a pretrial detainee's excessive force claims. Id. (providing excessive force examples in which purely objective evidence showed that the government's punitive actions were intentional, even if the motivation behind those actions was not to punish). But the Court has never suggested that we should remove the subjective component for claims addressing inaction. Castro, 833 F.3d at 1086 (Ikuta, J., dissenting). Thus, the force of Kingsley does not apply to the deliberate indifference context, where the claim generally involves inaction divorced from punishment.[5]

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[5] We also recognize a distinction between claims against medical professionals and law enforcement officers. Rife v. Okla. Dep't of Pub. Safety, 854 F.3d 637, 647 (10th Cir. 2017) ("Our court applies specialized standards to deliberate indifference claims against medical professionals."). Kingsley addressed claims against law enforcement officers, not medical providers, which

Next, we observe that a deliberate indifference claim presupposes a subjective component. After all, deliberate means "intentional," "premeditated," or "fully considered." Black's Law Dictionary 539 (11th ed. 2019). And as an adjective, "deliberate" modifies the noun "indifference." Chicago Manual of Style § 5.79 (16th ed. 2010) ("An adjective that modifies a noun element usually precedes it."). So a plaintiff must allege that an actor possessed the requisite intent, together with objectively indifferent conduct, to state a claim for *deliberate* indifference.

To that end, the Supreme Court previously rejected a request to adopt a "purely objective test for deliberate indifference." Farmer, 511 U.S. at 839. Instead, deliberate indifference requires an official to subjectively disregard a known or obvious, serious medical need. Id. at 837 (explaining that "deliberate indifference [lies] somewhere between the poles of negligence at one end and purpose or knowledge at the other" (id. at 836)). So an official's intent matters not only as to what the official did (or failed to do), but also why the official did it. Id. at 839 (explaining that a deliberate indifference claim focuses "on what a defendant's mental attitude actually was").

An excessive force claim, on the other hand, does not consider an official's "state of mind with respect to the proper *interpretation* of the force." Kingsley, 567 U.S. at 396 (emphasis in original). So the Supreme Court distinguished deliberate indifference cases—where an official's subjective intent behind objectively indifferent conduct matters—from the distinct class of cases involving excessive force, which does not require that an official subjectively intended for force to be

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further distinguishes this case.

excessive. Farmer, 511 U.S. at 835 (explaining that the "application of the deliberate indifference standard is inappropriate in one class of prison cases: when officials stand accused of using excessive physical force" (internal quotation marks and citation omitted)). Removing the subjective component from deliberate indifference claims would thus erode the intent requirement inherent in the claim. Id.; see also Kingsley, 576 U.S. at 408 (Scalia, J., dissenting) (warning that the Fourteenth Amendment's "Due Process Clause is not a font of tort law to be superimposed upon that state system" (internal quotation marks and citation omitted)).

Finally, the Supreme Court has cautioned against reaching the resolution that Plaintiff seeks. Extending Kingsley to eliminate the subjective component of the deliberate indifference standard in the Tenth Circuit would contradict the Supreme Court's rejection of a purely objective test in Farmer and our longstanding precedent. Agostini v. Felton, 521 U.S. 203, 237 (1997) ("We reaffirm that if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." (internal quotation marks, alterations, and citation omitted)). Although other circuits have relied on the "broad language" of Kingsley to apply a purely objective standard to Fourteenth Amendment deliberate indifference claims, see supra note 4, we choose forbearance. R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 386 n.5 (1992) ("It is of course contrary to all traditions of our jurisprudence to consider the law on this point conclusively resolved

by broad language in cases where the issue was not presented or even envisioned.").

At no point did Kingsley pronounce its application to Fourteenth Amendment deliberate indifference claims or otherwise state that we should adopt a purely objective standard for such claims, so we cannot overrule our precedent on this issue. United States v. White, 782 F.3d 1118, 1126–27 (10th Cir. 2015) (holding that one "panel of this court cannot overrule the judgment of another panel absent en banc consideration or an intervening Supreme Court decision that is contrary to or invalidates our previous analysis" (citation omitted)).[6] We therefore join our sister circuits that have declined to extend Kingsley to deliberate indifference claims and will apply our two-prong test to Plaintiff's claims.

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[6] Plaintiff also contends that we recently applied a purely objective test for the mistreatment of a pretrial detainee outside the excessive force context. Colbruno v. Kessler, 928 F.3d 1155, 1163 (10th Cir. 2019) (applying the Kingsley standard to claims against law enforcement officers who *punished* a pretrial detainee by publicly displaying his nude body through the public areas of a hospital). Even if not a classic excessive force case, Colbruno may otherwise be categorized as a conditions of confinement case. Id. at 1162 (reiterating that a "detainee may not be *punished* prior to an adjudication of guilt in accordance with due process of law" (quoting Bell, 441 U.S. at 535 (emphasis added)). And because that case dealt with the appropriateness of punishment, we saw fit to apply the Kingsley standard to the plaintiff's claims. Id. at 1163; see also Kingsley, 576 U.S. at 405 (Scalia, J., dissenting) (explaining that Bell endorsed this proposition "in the context of a challenge *to conditions of a confinement*" (emphasis in original)). In any event, Colbruno did not address deliberate indifference, so it does not influence our analysis in this case.

B.

We next consider whether Plaintiff stated a claim for deliberate indifference against any Defendant. Plaintiff contends that Defendants ignored obvious and substantial risks to Mr. Pratt's health as he experienced serious alcohol withdrawal- related symptoms, including delirium tremens. Defendants, on the other hand, contend that Plaintiff alleged Mr. Pratt received, at worst, negligent care, which does not rise to the high level of deliberate indifference. Perkins v. Kan. Dep't of Corr., 165 F.3d 803, 811 (10th Cir. 1999) (holding that the "negligent failure to provide adequate medical care, even one constituting medical malpractice, does not give rise to a constitutional violation").

Here, we must determine whether Plaintiff alleged facts supporting the notion that Mr. Pratt's condition of delirium tremens was so obvious that any Defendant should have recognized it and escalated the course of treatment accordingly.[7] Although Plaintiff alleged that Mr. Pratt's symptoms provided an "obvious" indication of delirium tremens, that allegation is conclusory. Khalik v. United Air Lines, 671 F.3d 1188, 1191 (10th Cir. 2012) (explaining that "in examining a complaint under Rule 12(b)(6), we will disregard conclusory statements and look only to whether the remaining, factual allegations plausibly suggest the defendant is liable"). Rather, Plaintiff's factual allegations

[7] Defendants do not contest whether Mr. Pratt's condition created an objectively serious medical need, but focus their arguments on the subjective component of Plaintiff's deliberate indifference claims. See Thompson v. Upshur Cty., 245 F.3d 447, 457 (5th Cir. 2001) (stating that "delirium tremens is a serious medical need").

suggest that Defendants diagnosed Mr. Pratt with a less severe case of alcohol withdrawal and at least attempted to treat Mr. Pratt's symptoms. See Quintana v. Santa Fe Cty. Bd. of Comm'rs, No. 19-2039, 2020 WL 5087899, at *4 (10th Cir. Aug. 28, 2020) (concluding that "characteristics common to many intoxicated individuals," including frequent vomiting, "do not present an obvious risk" (internal quotation marks, alterations, and citation omitted)). To be sure, whether Mr. Pratt received some care does not foreclose the possibility of a deliberate indifference claim, Oxendine v. Kaplan, 241 F.3d 1272, 1277 n.7 (10th Cir. 2001), but an individual "who merely disagrees with a diagnosis or a prescribed course of treatment does not state a constitutional violation." Perkins, 165 F.3d at 811.

To begin with, Armor staff admitted Mr. Pratt to the Jail's medical unit the day he complained of alcohol withdrawal symptoms. Staff also conducted multiple assessments of Mr. Pratt that same day and continued to assess Mr. Pratt throughout his stay in the medical unit. Although Armor policy dictated that staff should check Mr. Pratt's vitals every eight hours, Plaintiff alleges that staff repeatedly failed to check his vitals and delayed providing heightened care. Mata, 427 F.3d at 757 (acknowledging that a failure to follow policy may "provide circumstantial evidence that a prison health care gatekeeper knew of a substantial risk of serious harm," but "published requirements for health care do not create constitutional rights"); see also Collins v. Al-Shami, 851 F.3d 727, 731–32 (7th Cir. 2017) (holding that a jail doctor was not deliberately indifferent for failing to monitor a detainee's vitals for signs of delirium tremens, in

violation of policy, because healthcare providers can rely on "more qualitative indicators of acute withdrawal").

But Plaintiff failed to allege what other treatment Defendants should have provided or how transferring Mr. Pratt to a hospital would have produced a better outcome. Rice ex rel. Rice v. Corr. Med. Servs., 675 F.3d 650, 672 (7th Cir. 2012) (holding that jail officials were not deliberately indifferent by seeking to treat a detainee in-house because nothing "suggests that the result necessarily would have been different had the care been provided at a private facility"). By Plaintiff's own allegations, Defendants provided several physical and mental health assessments to Mr. Pratt, placed him on two forms of medication, and kept him under routine observation. These allegations do not evidence deliberate indifference.[8]

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[8] We also observe that Plaintiff only provided specific arguments about the named, individual Defendants in the argument section of her brief. Becker v. Kroll, 494 F.3d 904, 913 n.6 (10th Cir. 2007) (explaining that an "issue or argument insufficiently raised in the opening brief is deemed waived" (citing Fed. R. App. P. 28(a)(9)(A)). To the extent that Plaintiff sought to maintain a deliberate indifference claim against Armor for the actions of other staff members, we conclude that the district court properly dismissed any such claims.

Although Plaintiff alleged that Armor staff failed to check Mr. Pratt's vitals on different occasions, those allegations did not amount to deliberate indifference because Plaintiff did not allege facts showing that those staff members knew of and consciously disregarded Mr. Pratt's serious medical needs. See Williams v. Kelso, 201 F.3d 1060, 1065 (concluding that even if providers had instructions to check an inmate's vital signs every four-to-six hours, failure to do so does not constitute deliberate indifference without knowledge of a serious medical need). And Plaintiff chose not to address on appeal whether these failures constituted an unconstitutional policy or custom, so Plaintiff waived this

As to Nurse Deane, Plaintiff's allegations are limited to her withdrawal assessment of Mr. Pratt around 2 a.m. on December 14. In her briefing, Plaintiff addresses her claim against Nurse Deane in a single, conclusory paragraph that fails to expressly apply the subjective component standard. Specifically, Plaintiff does not explain how the complaint alleges Nurse Deane's subjective awareness of serious medical needs. We therefore conclude that Plaintiff waived this argument and uphold the district court's dismissal of Plaintiff's federal claim against Nurse Deane. See United States v. Walker, 918 F.3d 1134, 1151 (10th Cir. 2019) (explaining that the "briefing- waiver rule applies equally to arguments that are inadequately presented in an opening brief," such as those "presented only in a perfunctory manner" (internal quotation marks and citations omitted)); Burrell v. Armijo, 603 F.3d 825, 835 (10th Cir. 2010) (declining to address "issues nominally raised but inadequately briefed" (citation omitted)).

As to Dr. McElroy, Plaintiff alleged that he too failed to adequately treat Mr. Pratt's obvious symptoms of delirium tremens, beginning with his first assessment on December 14. Specifically, Plaintiff alleged that Dr. McElroy knew someone had found Mr. Pratt on the floor of his cell and observed a pool of blood on the floor, a cut on Mr. Pratt's forehead, vomiting, and disorientation. Even so, Dr. McElroy did not send Mr. Pratt to a hospital or provide more care. Dr. McElroy, however, determined that the two-

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issue. Becker, 494 F.3d at 913 n.6. Thus, without an individual claim against an Armor agent, Plaintiff failed to state a federal claim against Armor for the reasons we discuss in this section. See infra pp. 19–23.

centimeter cut on Mr. Pratt's forehead did not point to more serious medical needs and recorded that Mr. Pratt received his first dose of Valium that morning.

Plaintiff's contention that administering Valium was an inadequate treatment goes to the efficacy of treatment, not deliberate indifference. Compare Collins, 851 F.3d at 729–30 (determining that medical providers were not deliberately indifferent where a jail doctor thought a pretrial detainee was suffering from delirium tremens and treated him with Librium at the jail for ten days even though the detainee's condition did not improve), with Lancaster v. Monroe Cty., 116 F.3d 1419, 1425 (11th Cir. 1997) (reasoning that "a total failure to obtain medical treatment for [a detainee] amounted to deliberate indifference" because jail staff, who had actual notice that a detainee had a history of seizures and "could go into delirium tremens" while in custody, failed to monitor him), overruled on other grounds, Jacoby v. Thomas, No. 18-14541-C, 2019 WL 5697879, at *1 (11th Cir. Oct. 16, 2019). Plaintiff's assertion that Dr. McElroy should have sent Mr. Pratt to a hospital rather than attempt to treat him in-house likewise fails to evidence deliberate indifference. Murphy v. Wexford Health Sources Inc., 962 F.3d 911, 916–17 (7th Cir. 2020) (concluding that a provider's decision to deviate from the applicable standard of care by treating an inmate in the prison's healthcare unit rather than transfer him to "an appropriate hospital setting" suggests negligence rather than deliberate indifference). Even if Mr. Pratt required heightened treatment, Plaintiff again failed to allege that his symptoms were known or obvious to Dr. McElroy. Mata, 427 F.3d at 751 ("Where the necessity for treatment would not be obvious to a lay

person, the medical judgment of the physician, even if grossly negligent, is not subject to second-guessing.”).

Our precedent is clear that “a misdiagnosis, even if rising to the level of medical malpractice, is simply insufficient under our case law to satisfy the subjective component of a deliberate indifference claim.” Self, 439 F.3d at 1234. We cannot “freely substitute [our] judgment” for Dr. McElroy’s or otherwise second-guess his course of treatment with the benefit of hindsight. Redmond v. Crowther, 882 F.3d 927, 938 (10th Cir. 2018) (quoting Whitley v. Albers, 475 U.S. 312, 322 (1986)); see also Graham, 490 U.S. at 396 (explaining that courts do not judge the constitutionality of particular actions “with the 20/20 vision of hindsight”). Although Plaintiff disagreed with Dr. McElroy’s course of treatment, her factual allegations did not establish deliberate indifference. Johnson v. Leonard, 929 F.3d 569, 576 (8th Cir. 2019) (reasoning that a “mere difference of opinion over matters of expert medical judgment or a course of medical treatment fails to rise to the level of a constitutional violation” (citation omitted)); see also Quintana, 2020 WL 5087899, at *4. We thus conclude that the district court correctly dismissed Plaintiff’s federal claim against Dr. McElroy.

As to LPC Loehr, Plaintiff’s allegations are limited to her mental health evaluation of Mr. Pratt on the morning of December 15. Plaintiff alleged that LPC Loehr observed symptoms of delirium tremens and provided no care to address these symptoms. Specifically, Plaintiff alleged that LPC Loehr noticed Mr. Pratt struggled to answer questions and determined the cut on his forehead appeared unintentional. Based on her evaluation, LPC Loehr did not seek additional care for Mr. Pratt.

Again, Plaintiff questions LPC Loehr's professional judgment and the adequacy of her evaluation. See Duffield v. Jackson, 545 F.3d 1234, 1239 (10th Cir. 2008) (reasoning that an "allegation that [her] examination was cursory does not sufficiently allege deliberate indifference rather than mere medical malpractice"). But Plaintiff did not allege facts indicating that LPC Loehr—a counselor, not a medical doctor—knew or should have known that Mr. Pratt was suffering from delirium tremens and needed heightened care. See Clark, 895 F.3d at 1267. To the contrary, LPC Loehr determined that Mr. Pratt could answer at least some of her questions and did not appear to be a danger to himself. Cf. Spears v. Ruth, 589 F.3d 249, 254 (6th Cir. 2009) (recognizing "that a detainee lying face down, unresponsive and exhibiting symptoms of delirium tremens showed medical need sufficient for lay people to recognize he needed medical attention"). Thus, LPC Loehr's evaluation likewise failed to amount to deliberate indifference. We therefore conclude that the district court correctly dismissed Plaintiff's federal claim against LPC Loehr.

As to Sheriff Regalado, Plaintiff's arguments are based wholly on the existence of an underlying constitutional violation by one of the named, individual Defendants. We typically "will not hold a municipality liable for constitutional violations when there was no underlying constitutional violation by any of its officers." Olsen v. Layton Hills Mall, 312 F.3d 1304, 1317–18 (10th Cir. 2002) (internal quotation marks, brackets, and citation omitted). Nor did Plaintiff allege a systemic failure, under which the combined actions of multiple officials could constitute a constitutional violation even if no one individual's actions were sufficient. Garcia, 768 F.2d at 310. And any alleged

process failures at the Jail are not connected to alcohol withdrawal or a failure to treat Mr. Pratt's symptoms. See Thompson v. Upshur Cty., 245 F.3d 447, 462 (5th Cir. 2001) (observing that "cases do not clearly establish that sheriffs must provide medical training on the dangers posed by [delirium tremens], only that they not have policies in place that preclude serious medical needs, like [delirium tremens], from being met"). Accordingly, we conclude that the district court correctly dismissed Plaintiff's federal claim against Sheriff Regalado.

Although Plaintiff's claims may smack of negligence, we conclude that they fail to rise to the high level of deliberate indifference against any Defendant. Thus, the district court correctly dismissed Plaintiff's federal claims in full.[9]

C.

Finally, Plaintiff contends that the district court abused its discretion by declining to exercise supplemental jurisdiction over her related state law claims. The doctrine of supplemental jurisdiction is "a doctrine of discretion, not of plaintiff's right." United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726

[9] Plaintiff also argues that the district court incorrectly applied a heightened pleading standard to her claims by finding that she did not "establish" the subjective prong of the deliberate indifference analysis. Plaintiff's argument appears to rest on the district court's application of the two-prong deliberate indifference test, instead of the purely objective test preferred by Plaintiff. We reject Plaintiff's argument advocating for a purely objective test, so we must also reject this argument. See supra Part III(A). Even if the district court did not use the most precise wording, the court's analysis made clear that it applied the appropriate Rule 12(b)(6) standard at the motion to dismiss stage.

(1966). "Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." Id.; see also 28 U.S.C. § 1367(c)(3) (permitting a district court to decline supplemental jurisdiction over a state law claim if "the district court has dismissed all claims over which it has original jurisdiction"). As a result, the district court, upon dismissing Plaintiff's federal claims, did not abuse its discretion by declining to exercise supplemental jurisdiction over her state law claims.

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE NORTHERN DISTRICT OF OAKLAHOMA

[filed August 6, 2019]

FAYE STRAIN, as Guardian of THOMAS BENJAMIN PRATT,	)	
Plaintiff,	)	
v.	)	Case No. 18-CV-583-TCK-FHM
VIC REGALADO, in his official capacity; BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY; ARMOR CORRECTIONAL HEALTH SERVICES, INC., CURTIS MCELROY, D.O., PATRICIA DEANE, LPN; AND KATHY LOEHR, LPC,	)	
Defendants.	)	

OPINION AND ORDER

Before the Court are Motions to Dismiss filed by Vic Regalado, in his official capacity, Armor Correctional Health Services, Inc., Kathy Loehr, Curtis

McElroy and Patricia Deane. Docs. 12, 14, 15, 16 and 28. Plaintiff Faye Strain objects to all of the motions.

I. Introduction

On August 25, 2017, Plaintiff, as guardian of Thomas Benjamin Pratt, filed suit against these defendants in 17-CV-488-CVE-FHM. Doc. 2. In her Amended Complaint, Plaintiff asserted claims for:

- cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments pursuant to 42 U.S.C. § 1983 against defendants McElroy, Deane, Loehr and an unidentified nurse, and against Sheriff Regalado in his official capacity, as well as municipal liability against Armor;
- negligence against Armor, McElroy, Deane and Loehr; and
- cruel and unusual punishment in violation of Article II § 9 of the Oklahoma Constitution against all defendants.

Id. at 20-26.[1]

On March 1, 2018, the Court dismissed the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). *Id.* Doc. 39. The Court concluded Count One of Plaintiff's Complaint—the Eighth Amendment claim—"was drafted in precisely the fashion *Robbins* proscribes, *i.e.*, it is a § 1983 claim against a government agency and a

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[1] The Amended Complaint alleged that Sheriff Glanz and ARMOR had "failed to take reasonable steps to alleviate the substantial risks to inmate health and safety, in deliberate indifference to Mr. Pratt's physical health, mental health, and safety, in deliberate indifference to Plaintiff's serious medical needs." Doc. 2 at 20, ¶60.

number of individual government actors—referred to collectively as 'defendant'—that fails to specify who is alleged to have done what to whom. Dkt. # 1, at 21-22." *Id.* at 11. The Court further stated:

> Under *Robbins* . . . count one of plaintiff's complaint fails to provide the individual defendants with fair notice as to the basis of the claim against them, to which they are entitled under Fed. R. Civ. P. 8(a)(2). Moreover, even assuming, *arguendo*, that count one of plaintiff's complaint does provide fair notice to defendants, it nevertheless fails to state a claim for an Eighth Amendment violation because it does not allege that any defendant disregarded a risk to Pratt, intentionally denied or delayed his access to medical care, or interfered with his treatment once it was prescribed.

Id. The Court concluded that the Section 1983 claim failed because the facts alleged did not establish the prison officials "intentionally denied or delayed access to medical care or intentionally interfered with the treatment once prescribed." *Id.*

The Court declined to exercise supplemental jurisdiction over Plaintiff's remaining claims for common-law negligence against Armor, McElroy, Deane and Loehr and violation of Article II § 9 of the Oklahoma State Constitution. *Id.* at 11-12.

Plaintiff refiled the case on November 13, 2018. Case No. 18-CV-583-TCK-FHM. Doc. 2.[2] The

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[2] The newly-filed case was originally assigned to Judge Eagan, who recused. Doc. 3.

Complaint asserts identical claims against the same defendants.[3] The Factual Allegation section of the Complaint is virtually identical to the Factual Allegation section of the Complaint in the previously-filed case, except that, in each claim for relief, it recites the names of individual defendants McElroy, Deane, Loehr and "the unidentified nurse who encountered Mr. Pratt at approximately 3:44 a.m. on December 14, 2015." The Complaint also adds one new factual allegation, specifically:

> 59. In February 2015 an auditor/nurse hired by Tulsa County/TCSO, Angela Mariani, issued a report focused on widespread failures by Armor Correctional Health Services, Inc. to abide by its $5 million annual contract with the County. Mariani also wrote three (3) memos notifying TCSO that ARMOR failed to staff various medical positions in the Jail and recommending that the county withhold more than $35,000 in payments. Her report shows that Jail medical staff often failed to respond to inmates' medical needs and the ARMOR failed to employ enough nurses and left top administrative positions unfilled for months. Meanwhile, medical staff did not report serious incidents including inmates receiving the wrong medication and a staff member showing up "under the influence."

Id. at 21.

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[3] In a footnote, Plaintiff states that she "refiled this case pursuant to Oklahoma's 'savings statute,'" 12 Okla. Stat. § 100.

Defendants have again filed Motions to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

II. Applicable Law

In considering a motion to dismiss under Rule 12(b)(6), a court must determine whether the claimant has stated a claim upon which relief may be granted. A motion to dismiss is properly granted when a complaint provides no more than "labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint must contain enough "facts to state a claim to relief that is plausible on its fact," and the factual allegations "must be enough to raise a right to relief above the speculative level." *Id.* (citations omitted). "Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Id.* at 562.

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, "a plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (internal quotations omitted). For the purpose of making the dismissal determination, a court must accept as true all the well-pleaded allegations, even if doubtful in fact, and must construct the allegations in the light most favorable to the claimant. *Id.* at 555; *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 120, 1215 (10th Cir. 2007); *Moffett v. Haliburton Energy Servs., Inc.*, 291 F.3d 1227, 1231 (10th Cir. 2002).

III. Allegations of the Complaint

Plaintiff Faye Strain is the duly appointed guardian and mother of Thomas Benjamin Pratt. Doc. 2, ¶ 1. Pratt was booked into the Tulsa County Jail on December 11, 2015. *Id.*, ¶15. On December 12, 2015, at 7:39 a.m., Pratt submitted a medical sick call note requesting to speak to a nurse about "detox meds." *Id.* At 12:10 p.m., he submitted a second sick call note, stating:

> MY NAME IS TOMMY PRATT I CAME IN YESTERDAY AND STARTED HAVING WITHDRAWLS [sic] I NEED TO TRY AND GET SOME DETOX MEDS
>
> THANKYOU

Id. At 1:05 p.m., Nurse Karen Canter, an employee of defendant Armor—a private corporation responsible, in part, for providing medical and mental health services to Pratt while he was in custody of the Tulsa County Sheriff's Office ("TCSO")—conducted a drug and alcohol assessment of Pratt. *Id.* Pratt advised the nurse that he had a habit of drinking 15-20 beers for at least the previous ten years. *Id.* The assessment tool indicates that he was experiencing constant nausea, frequent dry heaves and vomiting, moderate tremors, anxiety, restlessness, drenching sweats and severe diffuse aching of joints and muscles. *Id.* at 5-6. Based on this assessment, he was placed on a "Librium protocol" and "seizure precautions" were ordered. *Id.* at 6. At 1:48 p.m., Pratt was admitted to the jail's medical unit, where Nurse Gracie Beardon, an Armor employee and agent of TCSO, conducted a "mental health infirmary admission assessment." *Id.* at 7. Nurse Beardon noted that Pratt was nauseated, slumped over, anxious, fearful, and "unsteady on his

feet," and that he posed a "risk for injury" due to his detoxification and "high blood pressure." *Id.*

On December 13, 2015, Pratt was again placed on seizure precautions, which included an order that his vital signs be taken every eight hours. *Id.* On December 14, 2015, at approximately 2:08 a.m., Nurse Patricia Deane conducted another drug and alcohol assessment of Pratt. *Id.* The assessment tool indicated that he was experiencing constant nausea, frequent dry heaves and vomiting, severe tremors even with arms not extended, "acute panic stats as seen in severe or acute schizophrenic reactions," restlessness, drenching sweats, continuous hallucinations and disorientation for "place or person." *Id.*

On December 14, 2015, at approximately 3:44 a.m., an unidentified ARMOR employee attempted to take Pratt's vital signs. *Id.* at 8. The ARMOR employee noted that when he/she encountered Pratt, he was "tearing up" his cell and deliriously stating that he was "locked in the store." *Id.* In a note dated December 14, 2015, and placed in the Armor medical chart, defendant Curtis McElroy, D.O., stated:

> Pt seen and evaluated. Came in 12/11/15 with alcohol abuse and placed on Librium protocol for alcohol withdrawal. Pt switched to valium and received first dose this morning. Pt reported to be found on floor pulling up tile with approximately 2cm forehead laceration. Small, < 1 cm laceration left lateral elbow area and a laceration < 1 cm on right mid right posterior forearm. Some scratches on dorsum of nose. No other facial injury. Pt awake, confused, talking about what movie are

> we watching tonight. No history of witnessed fall or pt inflicting injury to himself. Pool of blood under sink in cell.

Id. at 8-9.

Nurse Margarita Brown, an ARMOR employee, encountered Pratt in the medical unit at around 4:07 p.m. on December 14. *Id.* at 11. Nurse Brown reported that he was "angry," "anxious" and confused;" and was staring and "reaching into space." She noted that he lacked judgment and had "impaired short term memory" and charted that he needed assistance with "activities of daily living." On December 15, 2015, Licensed Professional Counselor Kathy Loehr conducted an initial mental health evaluation of Pratt. *Id.* at 11-12. Pratt reported that he was "detoxing from alcohol." *Id.* at 12. Loehr charted that Pratt "present[ed] with a wound on his forehead from a self inflicted injury yesterday" and that the wound "[a]ppear[ed] unintentional" as Pratt was "detoxing and did not appear oriented yesterday." *Id.* She noted his memory, insight, judgment and concentration were "poor." *Id.* In a "Medical Sick Call" noted dated December 15, 2015, Dr. McElroy noted Pratt was reported to "have been found underneath sink [in his cell] with laceration [on] mid forehead." *Id.* at 12-13.

On December 16, 2016, at approximately 12 a.m., Nurse Lee Ann Bivins, an Armor employee, observed that Pratt "would not get up . . . ." *Id.* at 13. However, she did not check Pratt's vital signs. *Id.* Just before 1 a.m., a detention officer discovered Pratt lying on his bed and not moving; he called for a nurse. *Id.* Upon entering Pratt's cell, she found that he had no pulse or respiration and was completely unresponsive. *Id.* She initiated CPR and called a "medical emergency"

at around 1:00 a.m. *Id.* Shortly thereafter, first responders arrived and continued CPR. *Id.* Pratt was resuscitated at around 1:15 a.m. and was rushed to St. John Medical Center in Tulsa. *Id.*

According to the EMSA Report, Pratt had suffered a cardiac arrest. *Id.* the EMSA report also stated that the Jail medical staff reported Pratt had hit his head "four days ago" and had been non-verbal and lethargic ever since; Pratt had been going through withdrawals and been on suicide watch; and he had a large hematoma to his forehead from his fall "four days ago." *Id.* at 13-14.

Pratt was admitted to the hospital, where he remained until January 1, 2016. *Id.* at 14. Upon discharge, he was diagnosed with cardiopulmonary arrest secondary to presumed seizure during incarceration; acute renal failure secondary to hypotension and Rhabdomyolysis; Todd's paralysis; agitation; anoxic brain injury and AKI: secondary to hypotension and rhabdomyolysis; hyponatremia; transaminitis: acute; and head laceration: acute. *Id.*

Before Pratt was admitted to the jail on December 11, 2015, he had no history of seizure disorder, brain damage or severe mood swings. *Id.* Since suffering from untreated brain injury and delirium tremens which led to cardiac arrest/severe seizures at the Jail, he has been permanently disabled. *Id.* He continues to suffer from severe seizure disorder, memory loss, extreme mood swings and anger and verbal/communication delays/deficits. *Id.* he is now unable to work and has been homeless at times. He requires assistance with everyday life activities. He is incapable of safely living on his own. *Id.*

The Complaint alleges there are longstanding, systemic deficiencies in the Jail's medical and mental health care services, about which Former Sheriff Stanley Glanz knew. *Id.* at 15. Plaintiff alleges that in 2007, the National Commission on Correctional Health Care ("NCCHC") audited the Jail and concluded there were numerous deficiencies in the care provided to inmates, including failure to address health care needs in a timely manner. *Id.* In 2009, the Oklahoma State Department of Health cited TCSO for violation of the Oklahoma Jail Standards in connection with the suicide death of an inmate with schizophrenia. *Id.* at 15-16. In August 2009, the American Correctional Association ("ACA") conducted a "mock audit" of the Jail, which revealed that the Jail was non-compliant with "mandatory health standards" and suggested "substantial changes. *Id.* at 16. In response, the Jail Administrator sought input and recommendations from Elizabeth Gondles, Ph.D., the ACA's medical director/medical liaison. *Id.* On October 9, 2009, Dr. Gondles generated a report which identified issues and suggested improvements ("Gondles Report"). *Id.* The issues included understaffing of medical personnel; deficiencies in "doctor/PA coverage; lack of health services oversight and supervision; failure to provide new health staff with formal training; delays in inmates receiving necessary medication; nurses failing to document the delivery of health services; systemic nursing shortages; failure to provide timely health appraisals to inmates and 313 health-related grievances within the previous 12 months. *Id.* Dr. Gondles concluded that many of the issues were a result of the lack of understanding of correctional healthcare issues by jail administration and contract oversight and monitoring of the private provider. *Id.* at 17. She "strongly

suggest[ed] that the Jail Administrator establish a central Office Bureau of Health Services" to be staffed by a TCSO-employed Health Services Director ("HSD"). *Id.* However, TCSO did not implement the recommendations in the Gondles Report. *Id.*[4]

The Complaint also alleges that the NCCHC conducted a second audit of the Jail's health services program in 2010, at the conclusion of which it placed the Tulsa County Jail on probation. *Id.* at 17-18. The NCCHC found numerous serious deficiencies with the health services program, including:

- The [Quality Assurance] multidisciplinary committee does not identify problems, implement and monitor corrective action, nor study its effectiveness.
- There have been several inmate deaths in the past year . . . . The clinical mortality reviews were poorly performed.

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[4] The Complaint also alleges that on October 28, 2010, Assistant District Attorney Andrea Wyrick sent an email to TCSO's Risk Manager, Josh Turley, voicing concerns about "whether the Jail's medical provider, CHMO, a subsidiary of CHC, was complying with its contract." Doc. 2 at 17. Plaintiff stated: "Ms. Wyrick further made an ominous prognosis: 'This is very serious, especially in light of the three cases we have now—what else will be coming? It is one thing to say we have a contract . . . to cover medical services . . . It is another issue to ***ignore any and all signs we receive of possible [medical] issues*** or violations of our agreement with [CHC] for [health] services in the jail. The bottom line is, ***the sheriff is statutorily . . . obligated to provide medical services.***" (emphasis added). Neither CHMO nor CHC is a defendant in this case and this allegation appears to be unrelated to the defendants (including Armor) in this case.

- The responsible physician does not document his review of the RN's health assessments.
- The responsible physician does not conduct clinical chart reviews to determine if clinically appropriate care is ordered and implemented by attending health staff;
- [D]iagnostic tests and specialty consultations are not completed in a timely manner and are not ordered by the physician;
- If changes in treatment are indicated, the changes are not implemented;
- When a patient returns from an emergency room, the physician does not see the patient, does not review the ER discharge orders, and does not issue follow-up orders as clinically needed; and
- "potentially suicidal inmates [are not] checked irregularly, not to exceed 15 minutes between checks. (*sic*). Training for custody staff has been limited. Follow up with the suicidal inmates has been poor."

Id. at 18. Former Sheriff Glanz read only the first two or three pages of the 2010 NCCHC Report and is unaware of any changes in policies or practices in response to the Report. *Id.*

The Complaint also alleges that over a period of many years, Tammy Harrington, R.N., the former Director of Nursing at the Jail, observed and documented many concerning deficiencies in the delivery of health care services to inmates, including chronic failure to triage inmates' requests for medical and mental health assistance; a chronic lack of

supervision of clinical staff; and repeated failure of medical staff to alleviate known and significant deficiencies in the health services program at the Jail. *Id.* at 18-19. On September 29, 2011, the United States Department of Homeland Security's Office of Civil Rights and Civil Liberties ("CRCL") reported its findings in connection with an audit of the Jail's medical system pertaining to the United States Immigration and Customs Enforcement detainees. *Id* at 19. The report stated that "CRCL found a prevailing attitude among clinic staff of indifference . . . ;" "Nurses are undertrained. Not documenting or evaluating patients properly.'" "Found one case clearly demonstrates a lack of training, perforated appendix due to lack of training and supervision;" "Found two … detainees with clear mental/medical problems that have not seen a doctor;" '[Detainee] has not received his medication despite the fact that detainee stated was on meds at intake;" "TCSO medical clinic is using a homegrown system of records that 'fails to utilize what we have learned in the past 20 years." *Id.*

Director Harrington did not observe any meaningful change in health care policies or practices at the Jail after the ICE-CRCL Report was issued. *Id.* On the contrary, less than 30 days after the report was issued, on October 27, 2011, another inmate, Elliott Earl Williams, died at the Jail as a result of truly inhumane treatment and reckless medical neglect which defies any standard of human decency. *Id.* A federal jury has since entered a verdict holding Sheriff Regalado liable in his official capacity for the unconstitutional treatment of Mr. Williams. *Id.* In the wake of the Williams death, which was fully investigated by TCSO, former Sheriff Glanz made no meaningful improvements to the medical system,

evidenced by the fact that another inmate, Gregory Brown, died due to grossly deficient care just months after Williams. *Id.* at 19-20.

On November 18, 2011, AMS-Roemer, the Jail's own retained medical auditor, issued a report finding multiple deficiencies in the Jails medical delivery system, including "[documented] deviations [from protocols which] increase the potential for preventable morbidity and mortality." *Id.* at 20. AMS-Roemer commented on no less than six inmate deaths, finding deficiencies in the care provided to each. *Id.* Sheriff Glanz did little, if anything to address the systemic problems identified in the AMS-Roemer Report, and AMS-Roemer continued to find serious deficiencies in the delivery of care at the Jail, including delays for medical staff and providers to get access to inmates, no sense of urgency attitude to see patients, or have patients seen by providers, failure to follow NCCHC guidelines "to get patients to providers," and "[n]ot enough training or supervision of nursing staff." *Id.*

In November 2013, BOCC/TCSO/Former Sheriff Glanz retained ARMOR as the new private medical provider. However, this step has not alleviated the constitutional deficiencies with the medical system. *Id.*

IV. Analysis

A. 42 U.S.C. § 1983 Claim

Count One of the Complaint alleges that all defendants deprived Pratt of his Eighth Amendment right to be free from cruel and unusual punishment, as their deliberate indifference to his medical needs caused the permanent disabilities from which he now suffers. Doc. 2 at 21. "The Eighth Amendment, which

applies to the States through the Due Process Clause of the Fourteenth Amendment, prohibits the infliction of 'cruel and unusual punishments' on those convicted of crimes." *Wilson v. Seiter*, 501 U.S. 294, 296-97. As a result, "[p]rison officials have a duty under the Eighth Amendment to provide humane conditions of confinement," including "adequate food, clothing, shelter, and *medical care*." *Farmer v. Brennan*, 511 U.S. 825, 825 (1994) (emphasis added).

However, "in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be repugnant to the conscience of mankind." *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976). Accordingly, "a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment," and "[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Id.* at 106. Rather, "[i]n order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence *deliberate indifference to serious medical needs*. It is only such indifference that can offend 'evolving standards of decency' in violation of the Eighth Amendment." *Id.* (emphasis added).

The Tenth Circuit has held that in order to plead a viable Eighth Amendment claim in a prisoner case, a plaintiff must allege:

> (1) "actual knowledge of the specific risk of harm [to the detainee] . . . or that the risk was so substantial or pervasive that knowledge can be inferred;" (2) "fail[ure]

> to take reasonable measures to avert the harm;" and that (3) "failure to take such measures in light of [the] knowledge, actual or inferred, justifies liability for the attendant consequences of [the] conduct, even though unintended."

Estate of Hocker by Hocker v. Walsh, 22 F.3d 995, 1000 (10th Cir 1994) (citing *Berry v. City of Muskogee*, 900 F.2d 1489, 1498 (10th Cir. 1990). *See also Cox v. Glanz*, 800 F.3d 1231, 1248 (10th Cir. 2015). "The subjective component requires showing the prison official 'knew [the inmate] faced a substantial risk of harm and disregarded that risk by failing to take reasonable measures to abate it.'" *Redmond v. Crowther*, 882 F3d 927, 939-40 (10th Cir. 2018) (quoting *Martinez v. Beggs*, 563 F.3d 1082, 1088-89 (10th Cir. 2009)). "The subjective prong is met if prison officials "intentionally deny[] or delay[] access to medical care or intentionally interfere[] with the treatment once prescribed.'" *Id.* at 940 (citing *Estelle v. Gamble*, 429 U.S. 97, 104-105 (1975)). However, "a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment." *Estelle*, 429 U.S. at 2912. Nor does disagreement in medical judgment. *Id.* at 107.

Notwithstanding its minor revisions, the Complaint in this case suffers the same fatal flaw as the Amended Complaint in the earlier case: Taken as true, the facts alleged establish that Pratt received medical treatment, although Plaintiff challenges its efficacy. For instance, on December 12—the day after Pratt was booked into Jail—he was seen by a nurse who conducted a "mental health infirmary admission assessment" and was admitted to the Jail's medical

unit (Complaint ¶ 18). According to the Complaint, on December 11, 2015, he was placed on Librium protocol for alcohol withdrawal. *Id.*, ¶ 26. He was switched to valium on December 14, 2015. *Id.* Thus, although the allegations arguably state a claim for negligence, they do no establish that defendants *intentionally* denied or delayed access to treatment or intentionally interfered with the treatment once prescribed. Accordingly, the Eighth Amendment claim is subject to dismissal in its entirety. *See Estelle*, *supra.*

B. Common Law Negligence and Oklahoma Constitutional Claims

Plaintiff's remaining claims for common-law negligence against Armor, McElroy, Deane and Loehr (Count Two) and violation of Article II § 9 of the Oklahoma Constitution against all defendants (Count Three) arise under Oklahoma law. Pursuant to 28 U.S.C § 1367(a), a federal court may exercise supplemental jurisdiction over claims related over which it has original jurisdiction. However, § 1367(c)(3) "expressly permits a district court to decline to exercise supplemental jurisdiction over any remaining state-law claims," and the Tenth Circuit has "repeatedly recognized that this is the preferred practice." *Gaston v. Ploeger*, 297 Fed. Appx. 738, 746 (10th Cir. 2008) (citations omitted). Accordingly, the Court declines to exercise supplemental jurisdiction over plaintiff's remaining state law claims.

V. Conclusion

Defendants' Motions to Dismiss—Docs. 12, 14, 15, 16 and 28—are hereby granted.

ENTERED this 6th day of August, 2019.

/s/ Terence C. Kern
United State District Judge
Terence C. Kern

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OAKLAHOMA

[filed November 13, 2018]

<table>
<tr><td>(1) FAYE STRAIN, as Guardian of THOMAS BENJAMIN PRATT,

Plaintiff,

vs.

(1) VIC REGALADO, in his official capacity;
(2) BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY;
(3) ARMOR CORRECTIONAL HEALTH SERVICES, INC.,
(4) CURTIS MCELROY, D.O., PATRICIA DEANE, LPN; and
(6)KATHY LOEHR, LPC,

Defendants.</td><td>)
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Jury Trial Demanded

Attorney Lien Claimed</td></tr>
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COMPLAINT

COMES NOW the Plaintiff Faye Strain ("Plaintiff") as guardian of Thomas Benjamin Pratt ("Mr. Pratt"),[1] and for her Complaint against Defendants alleges and states as follows:

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[1] Plaintiff has refiled this case pursuant to Oklahoma's "savings statute". *See* 12 Okla. Stat. § 100; *Eastom v. City of Tulsa,* 783 F.3d 1181, 1184 (10th Cir. 2015) (holding that Oklahoma's "savings statute" applies to claims filed under 42 U.S.C. § 1983). This Court filed a Judgment dismissing the original action without prejudice on March 27, 2018, pursuant to an Opinion and Order filed on March 1, 2018. *See* 17-CV-488 (N.D. Okla.) (Dkt. ## 39 and 40). Respectfully, Plaintiff asserts that the Court's decision to dismiss the initial action was erroneous and contrary to applicable law. In particular, the Court dismissed the first action, in primary part, based on the holding that the legal counts in Plaintiff's initial Complaint impermissibly included collective allegations (i.e., used the term "Defendants") in violation of the Tenth Circuit's opinion in *Robbins v. Oklahoma,* 519 F.3d 1242, 1247 (10th Cir. 2008). *See Strain v. Regalado,* No. 17-CV-0488-CVE- FHM, 2018 WL 1123876, at *5 (N.D. Okla. Mar. 1, 2018). Nevertheless, it is permissible to use the collective term, "Defendants", so long as allegations make a "distinction as to what acts are attributable to whom…." *Robbins*, 519 F.3d at 1250. *See also Bledsoe v. Jefferson Cty., Kansas,* No. 16-2296-DDC-GLR, 2017 WL 3334641, at *14 (D. Kan. Aug. 4, 2017) ("[T]he Tenth Circuit never has adopted blanket prohibition against collective allegations.").

In *Cox v. Glanz*, this Court rejected Former Sheriff Stanley Glanz's "collective allegations" arguments and denied his motion to dismiss, holding and reasoning as follows:

> Glanz questions the factual allegations underlying the policies, practices, or customs identified by plaintiff, but the Court may not disregard the well- pleaded allegations of the complaint in ruling on a motion to dismiss. … Glanz also complains that plaintiff uses the term "defendants" when describing the alleged conduct, and that the allegations of the first amended complaint are too vague to give him notice of the claims against him.

PARTIES

1. Plaintiff Faye Strain is the duly appointed guardian of Mr. Pratt. Plaintiff is also Mr. Pratt's mother.

2. Defendant Vic Regalado ("Sheriff Regalado" or "Regalado") is the current Sheriff of Tulsa County, Oklahoma, residing in Tulsa County, Oklahoma and acting under color of state law. Defendant Regalado is sued purely in his official capacity. It is well-established, as a matter of Tenth Circuit authority, that a § 1983 claim against a county sheriff in his official capacity "is the same as bringing a suit against the

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> Id. at 8–9. However, plaintiff has described the alleged conduct of each defendant with sufficient specificity to give Glanz and the other defendants notice of the claims against them, and ***plaintiff's use of the term "defendants" is appropriate when the first amended complaint is considered as a whole.***

No. 11-CV-0457-CVE-FHM, 2011 WL 6740293, at *4 (N.D. Okla. Dec. 22, 2011) (emphasis added). Respectfully, Plaintiff asserts that, in dismissing the initial action, the Court viewed the language of Plaintiff's legal causes of action in isolation and did not consider the Complaint "as a whole". Read as a whole, the Complaint in the first action was highly detailed and set out, with specificity, the allegedly unlawful conduct of each individual defendant. It appears that the Court did not consider the Factual Allegations portion of the Complaint when holding that the Constitutional claims, in isolation, violated *Robbins.* Although the Complaint in the first action "contain[ed] multiple claims against multiple defendants," when read as a whole, "*there [wa]s* <u>*no confusion*</u> *as to whom the allegation[s] were asserted against." Briggs v. Johnson,* 274 F. App'x 730, 736 (10th Cir. 2008) (emphasis added). Moreover, the allegations in the first action sufficiently "differentiate[d] between the actions taken by individual Defendants and actions allegedly taken by the [County]…." *Bark v. Chacon,* No. 10-CV-01570-WYD-MJW, 2011 WL 1884691, at *5 (D. Colo. May 18, 2011) (distinguishing *Robbins*).

county." *Martinez v. Beggs*, 563 F.3d 1082, 1091 (10th Cir. 2009). *See also Porro v. Barnes*, 624 F.3d 1322, 1328 (10th Cir. 2010); *Bame v. Iron Cnty.*, 566 F. App'x 731, 737 (10th Cir. 2014). As Tulsa County Sheriff, Regalado is, in essence, a governmental entity. As Tulsa Sheriff, in his official capacity, Sheriff Regalado is responsible for County/Tulsa County Sheriff's Office ("TCSO") rules, regulations, policies, practices, procedures, and/or customs, including the policies, practices, procedures, and/or customs that violated Mr. Pratt's rights as set forth in this Complaint. Sheriff Regalado is the successor in office to former Sheriff Stanley Glanz ("Former Sheriff Glanz").

3. Defendant Board of County Commissioners of Tulsa County ("BOCC") is a statutorily-created governmental entity. 57 Okla Stat. § 41 provides that "[e]very county, by authority of the *board of county commissioners* and at the expense of the county, *shall have a jail* or access to a jail in another county *for the safekeeping of prisoners lawfully committed*." (emphasis added). BOCC must discharge its responsibilities to the Tulsa County Jail ("Jail") in a constitutional manner. BOCC is properly sued under the provisions of the Oklahoma Governmental Tort Claims Act ("GTCA").

4. Defendant Armor Correctional Health Services, Inc. ("ARMOR") is a foreign corporation doing business in Tulsa County, Oklahoma and was at all times relevant hereto responsible, in part, for providing medical and mental health services and medication to Mr. Pratt while he was in the custody of TCSO. ARMOR was additionally responsible, in part, for creating and implementing policies, practices, and protocols that govern the provision of medical

and mental health care to inmates at the Jail, and for training and supervising its employees. ARMOR was, at all times relevant hereto, endowed by Tulsa County with powers or functions governmental in nature. As such, ARMOR became an agency or instrumentality of the state and subject to its Constitutional limitations.

5. Defendant Curtis McElroy, D.O. ("Dr. McElroy") was at all times relevant hereto, an employee and/or agent of ARMOR/TCSO, who was, in part, responsible for overseeing Mr. Pratt's health and well-being, and assuring that Mr. Pratt's medical/mental health needs were met, during the time he was in the custody of TCSO. At all times pertinent, Dr. McElroy was acting within the scope of his employment and under color of State law. Dr. McElroy is being sued in his individual capacity.

6. Defendant Patricia Deane, LPN ("Nurse Deane"), was, at all times relevant hereto, an employee and/or agent of ARMOR/TCSO, who was, in part, responsible for overseeing Mr. Pratt's health and well-being, and assuring that Mr. Pratt's medical/mental health needs were met, during the time he was in the custody of TCSO. At all times pertinent, Nurse Deane was acting within the scope of her employment and under color of State law. Nurse Deane is being sued in her individual capacity.

7. Defendant Kathy Loehr ("Ms. Loehr"), was, at all times relevant hereto, an employee and/or agent of ARMOR/TCSO, who was, in part, responsible for overseeing Mr. Pratt's health and well-being, and assuring that Mr. Pratt's medical/mental health needs were met, during the time he was in the custody of TCSO. At all times pertinent, Ms. Loehr was acting

within the scope of her employment and under color of State law. Ms. Loehr is being sued in her individual capacity.

JURISDICTION AND VENUE

8. The acts giving rise to this lawsuit occurred in Tulsa County, State of Oklahoma, within this judicial district.

9. Prior to bringing the initial case, Plaintiff complied with the tort claim notice provisions of the Oklahoma Government Tort Claim Act ("GTCA"), 51 O.S. § 151, *et seq* by notifying Defendants of her intent to file state law claims in connection with the events and injuries described herein. The GTCA process has been exhausted. This initial action was timely brought pursuant to 51 O.S. § 157.

10. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343 to secure protection of, and to redress deprivations of, rights secured by the Fourth and Fourteenth Amendments to the United States Constitution as enforced by 42 U.S.C. § 1983, which provides for the protection of all persons in their civil rights and the redress of deprivation of rights under color of law.

11. The jurisdiction of this Court is also invoked under 28 U.S.C. § 1331 to resolve a controversy arising under the Constitution and laws of the United States, particularly the Eighth and/or Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

12. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367, since the claims form part of the

same case or controversy arising under the United States Constitution and federal law.

13. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

FACTUAL ALLEGATIONS

A. Facts Regarding Mr. Pratt

14. Mr. Pratt was booked into the Jail on December 11, 2015. Mr. Pratt was placed in a general population pod, J-16.

15. At 7:39am on December 12, 2015, Mr. Pratt submitted a medical sick call note, through the Jail's electronic kiosk system, requesting to speak to a nurse about "detox meds". This is clear evidence that by early in the morning of December 12, Mr. Pratt was going into alcohol withdrawal. In any event, this kiosk request was not responded to until two days later.

16. At 12:19pm on December 12, Mr. Pratt submitted a second kiosk request, as follows:

> MY NAME IS TOMMY PRATT I CAME IN YESTERDAY AND STARTED HAVING WITHDRAWLS [sic] I NEED TO TRY AND GET SOME DETOX MEDS
>
> THANKYOU

17. At approximately 1:05pm on December 12, 2015, Nurse Karen Canter, an employee of Defendant ARMOR and agent of TCSO acting under color of state law and within the scope of her employment, conducted a drug and alcohol withdrawal assessment

of Mr. Pratt. As part of this assessment, Mr. Pratt indicated that he had a serious alcohol problem. In particular, Mr. Pratt advised Nurse Canter that he had a habit of drinking 15- 20 beers a day for "at least" the past ten (10) years. The assessment tool further indicates that Mr. Pratt was experiencing: *"constant nausea, frequent dry heaves and vomiting"*, moderate tremors, anxiety, restlessness, "drenching sweats" and "severe diffuse aching of joints/muscles."

18. At approximately 1:48pm on December 12, Mr. Pratt was admitted to the Jail's medical unit. Upon admission, Nurse Gracie Beardon, an employee of Defendant Armor and agent of the TCSO acting under color of state law and within the scope of her employment, conducted a "mental health infirmary admission assessment." Nurse Beardon noted that Mr. Pratt's admitting diagnosis was "Detox". Nurse Beardon additionally noted that, upon admission, Mr. Pratt was nauseated, slumped over, anxious, fearful and "unsteady on his feet". Nurse Beardon specifically acknowledged that Mr. Pratt posed a ***"risk for injury"*** due to his detoxification and "high blood pressure".

19. On December 13, 2015, Mr. Pratt was placed on seizure precautions, which included an order that his vital signs be taken every eight (8) hours.

20. At approximately 2:08am on December 14, 2015, another drug and alcohol withdrawal assessment was conducted. This time, the assessment was done by Nurse Patricia Deane, an employee of Defendant ARMOR and agent of the TCSO acting under color of state law and within the scope of her employment. This December 14 drug-and- alcohol withdrawal assessment clearly indicated that Mr. Pratt's

symptoms were worsening and becoming ever more severe. In this regard, the December 14 assessment tool indicates that Mr. Pratt was experiencing: ***"constant nausea, frequent dry heaves and vomiting"***, ***"severe" tremors*** *"even with arms not extended"*, ***"acute panic states as seen in severe delirium or acute schizophrenic reactions"***, restlessness, *"drenching sweats"*, ***"continuous hallucinations"*** and disorientation for "place/or person".

21. This assessment indicated that Mr. Pratt was suffering from delirium tremens, a life-threatening condition related to alcohol withdrawal, which typically requires immediate hospitalization. *See, e.g., Speers v. County of Berrien,* 196 F. App'x 390, 395 (6th Cir. 2006) ("***delirium tremens is a serious medical condition, which generally requires immediate hospitalization...***"); *Thompson v. Upshur Cnty., Tex,* 245 F.3d 447, 457 (5th Cir. 2001) ("delirium tremens is a serious medical need"); *Deaton v. McMillin,* No. 3:08-CV-763-DPJ-FKB, 2012 WL 393053, at *2-3 (S.D. Miss. Feb. 6, 2012).

22. To any moderately trained medical professional, it would be obvious that Mr. Pratt was suffering from delirium tremens. Nevertheless, despite the obvious severity and emergent nature of Mr. Pratt's deteriorating condition, he was not sent to a hospital or even seen by a physician. Indeed, Nurse Deane did not contact a physician, despite the fact that the assessment tool itself mandated that she do so. At this point, Mr. Pratt's detoxification was not being supervised by a physician, as required by Armor policy/National Commission on Correctional Healthcare ("NCCHC") standards. No vital signs were taken. No blood tests were performed. Nurse Deane was

deliberately indifferent to Mr. Pratt's serious medical needs.

23. At approximately 3:44am on December 14, 2015, an unidentified ARMOR employee, acting within the scope of his/her employment and under color of state law, attempted to take Mr. Pratt's vital signs. This ARMOR employee noted that when he/she encountered Mr. Pratt he was ***"tearing up"*** his cell and deliriously stating that he was ***"locked in the store".*** Mr. Pratt was so disoriented and panicked that he could not sit still to have his vitals taken. Again, these were clear symptoms of delirium tremens, an emergent and life-threatening condition, requiring immediate hospitalization. It was apparent that Mr. Pratt's withdrawal-related psychosis was getting worse to the point that he posed an imminent threat of self-harm. Still, the ARMOR employee did nothing to assist Mr. Pratt. He was not taken to a hospital. He was not restrained. He did not see a physician or psychiatrist. He was not placed on suicide watch. No blood tests were performed. Rather, Mr. Pratt was left to his own devices, while in the throes of a dangerous withdrawal-related mental breakdown (likely, delirium tremens), alone in a cell. This, too, was deliberate indifference to a serious medical need.

24. Despite the fact that Mr. Pratt was to have his vital signs taken every eight (8) hours, the ARMOR employees responsible for this task never once recorded a complete set of vital signs for Mr. Pratt. ***No vital signs <u>at all</u> were recorded on December 14, 15 or 16.*** This failure not only violated policy and protocol, but substantively deprived Mr. Pratt's "caretakers" at the Jail of necessary information in monitoring his condition. Indeed, frequent vital signs are

essential in monitoring the health and assessing the needs of patients with delirium tremens. ARMOR's inability or refusal to take the minimal step of assessing vital signs is additional evidence of deliberate indifference to Mr. Pratt's serious medical needs.

25. There are two "Medical Sick Call Notes", dated December 14, 2015, in the "official" Armor medical chart, which were purportedly recorded by Dr. Curtis McElroy. Assuming that Dr. McElroy did see Mr. Pratt on December 14, as represented in the notes, the information in those notes provides additional evidence of deliberate indifference.

26. According to the "December 14" note, Dr. McElroy saw Mr. Pratt at around 10:30am. In the December 14 note, Dr. McElroy states:

> Pt seen and evaluated. Came in 12/11/15 with alcohol abuse and placed on Librium protocol for alcohol withdrawal. Pt switched to valium and received first dose this morning. Pt reported to be found on floor pulling up tile with approximately 2cm forehead laceration. Small, < 1cm laceration left lateral elbow area and a laceration < 1cm on right mid right posterior forearm. Some scratches on dorsum of nose. No other facial injury. Pt awake, ***confused, talking about what movie are we watching tonight.*** No history of witnessed fall or pt inflicting injury to himself. ***Pool of blood under sink in cell.***

(emphasis added). The information that Mr. Pratt, who was known to be detoxing, was found on the floor, with a "pool of blood" under the sink, and

"pulling up tile" after suffering some sort of head injury, would be information that even a layperson would recognize as an emergency medical situation. Further, there was additional information, in the medical record, from earlier that morning, that Mr. Pratt was continuously vomiting, hallucinating, suffering from severe tremors and was in an acute panic state. All of this evidence pointed to delirium tremens.

27. Assuming Dr. McElroy did see Mr. Pratt at 10:30am on December 14, it was obvious that Mr. Pratt was experiencing life-threatening withdrawal (delirium tremens) and/or brain injury, and needed to be transferred immediately to a licensed acute care facility. Dr. McElroy's failure to send Mr. Pratt to a hospital evinces deliberate indifference to his serious and obvious medical and mental health needs. Indeed, Dr. McElroy's failure to send Mr. Pratt to the hospital under these conditions was a violation of the minimal standards of the NCCHC (J-G-06), which TCSO and Armor have adopted as policy. In addition, Dr. McElroy did not provide Mr. Pratt with any neurological diagnostics or consult, despite the obvious need. And Dr. McElroy did not refer Mr. Pratt to a psychiatrist, despite the obvious need. He did not order vital signs be taken or that Mr. Pratt's blood be tested. These failures too are evidence of deliberate indifference to Mr. Pratt's serous medical and mental health needs.

27. Additionally, assuming that Dr. McElroy saw Mr. Pratt at 10:30am on December 14, 2015, there is no explanation as to why he waited over eight (8) hours after Nurse Deane's dire assessment, and nearly seven (7) hours after the failed attempt to take Mr. Pratt's vital signs, to lay eyes on this patient. It

is unconscionable that Mr. Pratt was left to suffer in his cell for this period of time without even seeing a physician. Each passing hour was another lost opportunity to get Mr. Pratt to an emergency room to receive the level of care and assessment he obviously needed. With each passing hour without this ER-level care, Mr. Pratt was inching closer to a medical calamity that would alter the rest of his, and his family's, life.

28. Nurse Margarita Brown, an employee of Defendant ARMOR and agent of TCSO acting under color of state law and within the scope of her employment, encountered Mr. Pratt in the medical unit at around 4:07pm on December 14. Nurse Brown reported that Mr. Pratt was "angry", "anxious" and "confused"; and staring and "reaching into space." Nurse Brown further noted that Mr. Pratt lacked judgment and had "impaired short term memory." Lastly, Nurse Brown charted that Mr. Pratt needed assistance with "activities of daily living." Again, Mr. Pratt was not sent to the hospital in deliberate indifference to his serious medical needs.

29. The failures of the medical staff -- beginning with Nurse Deane's assessment and continuing through Dr. McElroy's dubious "evaluation" and Nurse Brown's observations -- to send Mr. Pratt to an emergency room for medical intervention, or even order neurological testing or a psychiatric visit, constitutes deliberate indifference. And this deliberate indifference was a proximate cause of Mr. Pratt's unnecessary and prolonged pain and suffering; continuing and permanent disability; and medical expenses.

30. At approximately 8:49am on December 15, 2015, Kathy Loehr, a purported "Licensed

Professional Counselor" or "LPC", conducted an initial mental health evaluation of Mr. Pratt. During the evaluation, Mr. Pratt reported that he was "detoxing from alcohol." Ms. Loehr observed that Mr. Pratt was "shaky" and had "difficulty following directions". Mr. Pratt was making "slow, shaky movements." Loehr charted that Pratt "present[ed] with a ***wound on his forehead from a self inflicted injury yesterday"*** and that the wound "[a]ppear[ed] unintentional" as Pratt was "detoxing and ***did not appear oriented yesterday***." Notably, Ms. Loehr was unable to complete her evaluation because Mr. Pratt had deteriorated to the point that he had ***"difficulty answering questions."*** Mr. Pratt was clearly still disoriented as he stated his mistaken belief that he was at a detox center and that it was Sunday (when, in fact, December 15, 2015 was a Tuesday). He appeared lethargic with poor eye contact. His ***memory, insight, judgment and concentration were*** all noted to be ***"poor".***

31. Despite Mr. Pratt's obvious signs and symptoms of brain injury, coupled with his ongoing struggle with the effects of delirium tremens, Ms. Loehr did not send Mr. Pratt to a hospital. Mr. Pratt was not seen by a physician. There is no indication that Ms. Loehr even contacted a physician. Instead, demonstrating disregard for the seriousness of the situation, Ms. Loehr ***educated*** Mr. Pratt ***"on getting clothes"*** and reportedly "encouraged vital signs to get medication." In other words, Ms. Loehr provided no care at all, and did nothing to assure that Mr. Pratt's emergent and life-threatening condition was appropriately addressed. This was deliberate indifference to a serious medical need.

32. There is also a "Medical Sick Call" note, dated December 15, 2015, recorded by Dr. McElroy, in the version of Mr. Pratt's chart later sent to Saint John. According to the December 15 note, which is time stamped at 3:40pm, Mr. Pratt was reported to ***"have been found underneath sink [in his cell] with laceration [on] mid forehead."*** Taking the December 15 note at face value, coupled with the known history of Mr. Pratt's symptoms of delirium tremens and/or brain injury, Dr. McElroy should have, again, sent Mr. Pratt to a hospital on December 15. His failure to do so was yet another instance of deliberate indifference to a serious medical need.

33. At approximately 12:00am on December 16, 2016, Nurse LeeAnn Bivins, an employee of Defendant ARMOR and agent of TCSO acting under color of state law and within the scope of her employment, observed that Mr. Pratt ***"WOULD NOT GET UP….."*** However, Nurse Bivins failed to check Mr. Pratt's vital signs, including his pulse and respiration.

34. Just before 1:00am on December 16, 2015, a TCSO Detention Officer ("D.O.") discovered Mr. Pratt "lying on [his] bed [and] not moving." The D.O. called for a nurse. Angela McCoy, a Licensed Practical Nurse (or "LPN"), an employee of Defendant ARMOR and agent of TCSO acting under color of state law and within the scope of her employment, responded. Upon entering Mr. Pratt's cell, Nurse McCoy found that he had ***no pulse or respiration***. He was ***completely unresponsive***. She initiated CPR and called a "medical emergency" at around 1:00am. Shortly thereafter, first responders from the fire department and EMSA arrived, and continued CPR. Through these measures, Mr. Pratt was resuscitated at around

1:15am, and was rushed to Saint John Medical Center in Tulsa.

35. According to the EMSA Report, Mr. Pratt had suffered a cardiac arrest. In pertinent part, the narrative portion of the EMSA Report states: (A) "Jail Medical Staff report '[Mr. Pratt] ***hit his head <u>4 days ago</u>, and has been <u>non-verbal</u> and lethargic ever since"*** ; (B) "Staff reports [Pratt] has been going through withdrawals, and been on suicide watch as well"; (C) "[Pratt] has a ***<u>large</u> hematoma*** to his forehead, that staff reports '[i]s from his ***fall 4 days ago'"***.

36. Mr. Pratt was admitted to Saint John, where he remained until January 1, 2016. Upon discharge, Mr. Pratt was diagnosed with: (A) cardiopulmonary arrest (PEA) secondary to presumed seizure during incarceration; (B) acute renal failure: Secondary to hypotension and Rhabdomyolysis; (C) Todd's paralysis; (D) agitation; (E) anoxic brain injury; (F) AKI: Secondary to hypotension and rhabdomyolysis; (G) hyponatremia; (H) transaminitis: Acute; and (I) Head laceration: Acute.

37. Before Mr. Pratt was admitted to the Jail on December 11, 2015, he had no history of seizure disorder, brain damage or severe mood swings. Since suffering from untreated brain injury and delirium tremens which led to cardiac arrest/severe seizures at the Jail, Mr. Pratt is permanently disabled. He continues to suffer from severe seizure disorder, memory loss, extreme mood swings and anger and verbal/communication delays/deficits. He is now unable to work and has been homeless at times. He requires assistance with everyday life activities. He is incapable of safely living on his own. Mr. Pratt is just

38 years old. At the time of his incarceration, and resulting injuries, Mr. Pratt was 35.

38. Mr. Pratt is permanently disabled and has incurred and will continue to incur lost wages and medical expenses. In addition, Mr. Pratt has suffered and will continue to suffer physical and mental pain and anguish. These injuries and damages are a direct and proximate cause of Defendants' deliberate indifference and negligence as described supra.

B. The Jail's Unconstitutional Health Care Delivery System / Policies and Customs

39. The deliberate indifference to Mr. Pratt's serious medical needs, his mental health and his safety, as summarized *supra*, was in furtherance of and consistent with: a) policies, customs, and/or practices which TCSO promulgated, created, implemented or possessed responsibility for the continued operation of; and b) policies, customs, and/or practices which ARMOR developed and/or had responsibility for implementing.

40. There are longstanding, systemic deficiencies in the medical and mental health care provided to inmates at the Tulsa County Jail. Former Sheriff Glanz has long known of these systemic deficiencies and the substantial risks they pose to inmates like Mr. Pratt but failed to take reasonable steps to alleviate those deficiencies and risks.

41. For instance, in 2007, the NCCHC, a corrections health accreditation body, conducted an on-site audit of the Jail's health services program. At the conclusion of the audit, NCCHC auditors reported serious and systemic deficiencies in the care provided to inmates, including failure to perform mental

health screenings, failure to fully complete mental health treatment plans, failure to triage sick calls, failure to conduct quality assurance studies, and failure to address health care needs in a timely manner. NCCHC made these findings of deficient care despite Former Sheriff Glanz's/TCSO's efforts to defraud the auditors by concealing information and falsifying medical records and charts.

42. Former Sheriff Glanz failed to change or improve any health care policies or practices in response to NCCHC's findings.

43. There is a long-standing failure to secure adequate mental health care, and to properly classify and protect inmates with obvious and serious mental health needs. For example, in 2009, TCSO was cited by the Oklahoma State Department of Health for violation of the Oklahoma Jail Standards in connection with the suicide death of an inmate with schizophrenia.

44. In August of 2009, the American Correctional Association ("ACA") conducted a "mock audit" of the Jail. The ACA's mock audit revealed that the Jail was non-compliant with "mandatory health standards" and "substantial changes" were suggested. Based on these identified and known "deficiencies" in the health delivery system at the Jail, the Jail Administrator sought input and recommendations from Elizabeth Gondles, Ph.D. ("Dr. Gondles"). Dr. Gondles was associated with the ACA as its medical director or medical liaison. After reviewing pertinent documents, touring the Jail and interviewing medical and correctional personnel, on October 9, 2009, Dr. Gondles generated a Report, entitled "Health Care Delivery Technical Assistance" (hereinafter, "Gondles

Report"). The Gondles Report was provided to the Jail Administrator, Michelle Robinette. As part of her Report, Dr. Gondles identified numerous "issues" with the Jail's health care system, as implemented by the Jail's former medical provider, CHC. After receiving the Gondles Report, Chief Robinette held a conference -- to discuss the Report -- with the Undersheriff, Administrative Captain and CHC/CHM.

45. Among the issues identified by Dr. Gondles, as outlined in her Report, were: understaffing of medical personnel due to CHM misreporting the average daily inmate population; (b) deficiencies in "doctor/PA coverage"; (c) a lack of health services oversight and supervision; (d) failure to provide new health staff with formal training; (e) delays in inmates receiving necessary medication; (g) nurses failing to document the delivery of health services; (h) systemic nursing shortages; (h) failure to provide timely health appraisals to inmates; and (i) 313 health-related grievances within the past 12 months. Dr. Gondles concluded that "[m]any of the health service delivery issues outlined in this report are a result of the ***lack of understanding of correctional healthcare issues by jail administration*** and contract oversight and monitoring of the private provider." Based on her findings, Dr. Gondles "strongly suggest[ed] that the Jail Administrator establish a central Office Bureau of Health Services" to be staffed by a TCSO-employed Health Services Director ("HSD"). According to Dr. Gondles, without such an HSD in place, TCSO could not properly monitor the competency of the Jail's health staff or the adequacy of the health care delivery system.

46. Nonetheless, TCSO leadership chose ***not*** to follow Dr. Gondles' recommendations. TCSO did ***not***

establish a central Office Bureau of Health Services nor hire the "HSD" as recommended. *Id.*

47. On October 28, 2010, Assistant District Attorney Andrea Wyrick wrote an email to Josh Turley, TCSO's "Risk Manager". In the email, Ms. Wyrick voiced concerns about whether the Jail's medical provider, Defendant CHMO, a subsidiary of CHC, was complying with its contract. Ms. Wyrick further made an ominous prognosis: "This is very serious, especially in light of the three cases we have now — what else will be coming? It is one thing to say we have a contract ... to cover medical services… It is another issue to ***ignore any and all signs we receive of possible [medical] issues*** or violations of our agreement with [CHC] for [health] services in the jail. The bottom line is, ***the Sheriff is statutorily ... obligated to provide medical services."*** (emphasis added).

48. NCCHC conducted a second audit of the Jail's health services program in 2010. After the audit was completed, the NCCHC placed the Tulsa County Jail on probation.

49. NCCHC once again found numerous serious deficiencies with the health services program. As part of the final 2010 Report, NCCHC found, inter alia, as follows: "The [Quality Assurance] multidisciplinary committee does not identify problems, implement and monitor corrective action, nor study its effectiveness"; "There have been several inmate deaths in the past year…. The clinical mortality reviews were poorly performed"; "The responsible physician does not document his review of the RN's health assessments"; "the responsible physician does not conduct clinical chart reviews to determine if clinically

appropriate care is ordered and implemented by attending health staff"; "…diagnostic tests and specialty consultations are not completed in a timely manner and are not ordered by the physician"; "if changes in treatment are indicated, the changes are not implemented…"; "When a patient returns from an emergency room, the physician does not see the patient, does not review the ER discharge orders, and does not issue follow- up orders as clinically needed"; and "… potentially suicidal inmates [are not] checked irregularly, not to exceed 15 minutes between checks. Training for custody staff has been limited. Follow up with the suicidal inmate has been poor."

50. Former Sheriff Glanz only read the first two or three pages of the 2010 NCCHC Report. Former Sheriff Glanz is unaware of any policies or practices changing at the Jail in response to 2010 NCCHC Report.

51. Over a period of many years, Tammy Harrington, R.N., former Director of Nursing at the Jail, observed and documented many concerning deficiencies in the delivery of health care services to inmates. The deficiencies observed and documented by Director Harrington include: chronic failure to triage inmates' requests for medical and mental health assistance; a chronic lack of supervision of clinical staff; and repeated failures of medical staff to alleviate known and significant deficiencies in the health services program at the Jail.

52. On September 29, 2011, the U.S. Department of Homeland Security's Office of Civil Rights and Civil Liberties ("CRCL") reported its findings in connection with an audit of the Jail's medical system – pertaining to U.S. Immigration and Customs

Enforcement ("ICE") detainees -- as follows: "CRCL found a prevailing attitude among clinic staff of indifference…."; "Nurses are undertrained. Not documenting or evaluating patients properly."; "Found one case clearly demonstrates a lack of training, perforated appendix due to lack of training and supervision"; "Found two … detainees with clear mental/medical problems that have not seen a doctor."; "[Detainee] has not received his medication despite the fact that detainee stated was on meds at intake"; "TCSO medical clinic is using a homegrown system of records that 'fails to utilize what we have learned in the past 20 years".

53. Director Harrington did not observe any meaningful changes in health care policies or practices at the Jail after the ICE-CRCL Report was issued.

54. On the contrary, less than 30 days later the ICE-CRCL Report was issued, on October 27, 2011 another inmate, Elliott Earl Williams, died at the Jail as a result of truly inhumane treatment and reckless medical neglect which defies any standard of human decency. A federal jury has since entered a verdict holding Sheriff Regalado liable in his official capacity for the unconstitutional treatment of Mr. Williams.

55. In the wake of the Williams death, which was fully investigated by TCSO, Former Sheriff Glanz made no meaningful improvements to the medical system. This is evidenced by the fact that yet another inmate, Gregory Brown, died due to grossly deficient care just months after Mr. Williams.

56. On November 18, 2011 AMS-Roemer, the Jail's own retained medical auditor, issued its Report

to Former Sheriff Glanz finding multiple deficiencies with the Jail's medical delivery system, including "[documented] deviations [from protocols which] increase the potential for preventable morbidity and mortality." AMS-Roemer specifically commented on no less than six (6) inmate deaths, finding deficiencies in the care provided to each.

57. It is clear that Former Sheriff Glanz did little, if anything, to address the systemic problems identified in the November 2011 AMS-Roemer Report, as AMS- Roemer continued to find serious deficiencies in the delivery of care at the Jail. For instance, as part of a 2012 Corrective Action Review, AMS-Roemer found "[d]elays for medical staff and providers to get access to inmates," "[n]o sense of urgency attitude to see patients, or have patients seen by providers," failure to follow NCCHC guidelines "to get patients to providers," and "[n]ot enough training or supervision of nursing staff."

58. In November 2013, BOCC/TCSO/Former Sheriff Glanz retained ARMOR as the new private medical provider. However, this step has not alleviated the constitutional deficiencies with the medical system. Medical staff is still undertrained and inadequately supervised and inmates are still being denied timely and sufficient medical attention. Bad medical and mental health outcomes have persisted due to inadequate supervision and training of medical staff, and due to the contractual relationship between BOCC/TCSO/Former Sheriff Glanz and ARMOR (which provides financial disincentives for the transfer of inmates in need of care from an outside facility). Former Sheriff Glanz and ARMOR have known of the deficiencies, and the substantial risks posed to

inmates like Mr. Pratt, but have failed to take reasonable steps to alleviate the risks.

59. In February 2015 an auditor/nurse hired by Tulsa County/TCSO, Angela Mariani, issued a report focused on widespread failures by Armor Correctional Health Services, Inc. to abide by its $5 million annual contract with the County. Mariani also wrote three (3) memos notifying TCSO that ARMOR failed to staff various medical positions in the Jail and recommending that the county withhold more than $35,000 in payments. Her report shows that Jail medical staff often failed to respond to inmates' medical needs and that ARMOR failed to employ enough nurses and left top administrative positions unfilled for months. Meanwhile, medical staff did not report serious incidents including inmates receiving the wrong medication and a staff member showing up "under the influence."

60. As alleged herein, there are deep-seated and well-known policies, practices and/or customs of systemic, dangerous and unconstitutional failures to provide adequate medical and mental health care to inmates at the Tulsa County Jail. This system of deficient care -- which evinces fundamental failures to train and supervise medical and detention personnel -- created substantial, known and obvious risks to the health and safety of inmates like Mr. Pratt. Still, Sheriff Glanz and ARMOR have failed to take reasonable steps to alleviate the substantial risks to inmate health and safety, in deliberate indifference to Mr. Pratt's physical health, mental health, and safety; and, ultimately, in deliberate indifference to to his serious medical needs.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Deliberate Indifference to a Serious Medical Need in Violation of the Eighth and/or Fourteenth Amendment to the Constitution of the United States (42 U.S.C. § 1983)

A. The Underlying Violations of the Constitution

61. Plaintiff re-alleges and incorporate by reference paragraphs 1 to 60, as though fully set forth herein.

62. On information and belief, Mr. Pratt was not a convicted prisoner at the time of the events at issue. Nonetheless, in an abundance of caution, Plaintiff has pled this claim under the 14th and 8th Amendments to the United States Constitution.

63. As described herein (See Factual Allegations(A)), Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015, knew, or it was objectively obvious, that Mr. Pratt was at significant risk of serious injury and harm.

64. As described herein (See Factual Allegations(A)), Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015 disregarded these known or objectively obvious risks to Mr. Pratt's health and safety.

65. As described herein (See Factual Allegations(A)), Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015's

acts and/or omissions, including but not limited to their failure to provide Mr. Pratt with adequate medical and mental health supervision, assessment and treatment, and/or or to assure that Mr. Pratt received adequate medical and mental health supervision, assessment and treatment from qualified and capable providers, constitute deliberate indifference to Mr. Pratt's health and safety and resulted in his disability and significant injuries as stated herein.

66. As a direct and proximate result of Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015's conduct, Mr. Pratt experienced physical pain, severe emotional distress, mental anguish, and the damages alleged herein.

67. Mr. Pratt has incurred and will continue to incur medical expenses and lost wages as a proximate result of Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015's deliberate indifference.

68. The aforementioned acts and/or omissions of Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015 were reckless and/or accomplished with a conscious disregard of Mr. Pratt's rights, thereby entitling Plaintiff to an award of exemplary and punitive damages according to proof.

B. Official Capacity Liability (Sheriff Regalado)

69. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 68 as though fully set forth herein.

70. The aforementioned acts and/or omissions of Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015 in being deliberately indifferent to Mr. Pratt's health and safety and violating Mr. Pratt's civil rights were the direct and proximate result of customs, practices, and policies which TCSO promulgated, created, implemented and/or possessed responsibility for.

71. Such policies, customs and/or practices are specifically set forth in paragraphs 39-60, *supra.*

72. TCSO, through its continued encouragement, ratification, approval and/or maintenance of the aforementioned policies, customs, and/or practices; in spite of their known and obvious inadequacies and dangers; has been deliberately indifferent to inmates', including Mr. Pratt's, health and safety.

73. As a direct and proximate result of the aforementioned customs, policies, and/or practices, Mr. Pratt suffered injuries and damages as alleged herein.

C. Municipal Liability (ARMOR)

74. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 73 as though fully set forth herein.

75. ARMOR is a "person" for purposes of 42 U.S.C. § 1983.

76. At all times pertinent hereto, ARMOR was acting under color of state law.

77. ARMOR was endowed by Tulsa County with powers or functions governmental in nature, such that ARMOR became an instrumentality of the state and subject to its Constitutional limitations.

78. ARMOR was charged with implementing and assisting in developing the policies of TCSO with respect to the medical and mental health care of inmates at the Tulsa County Jail and have shared responsibility to adequately train and supervise their employees.

79. There is an affirmative causal link between the aforementioned underlying violations of the Constitution and the above-described customs, policies, and/or practices carried out by ARMOR.

80. ARMOR knew (either through actual or constructive knowledge), or it was objectively obvious, that these policies, practices and/or customs posed substantial risks to the health and safety of inmates like Mr. Pratt. Nevertheless, ARMOR failed to take reasonable steps to alleviate those risks in deliberate indifference to inmates', including Mr. Pratt's, serious medical and mental health needs.

81. ARMOR tacitly encouraged, ratified, and/or approved of the unconstitutional acts and/or omissions alleged herein.

82. There is an affirmative causal link between the aforementioned customs, policies, and/or practices and Mr. Pratt's injuries and damages as alleged herein.

SECOND CLAIM FOR RELIEF

Negligence

(Defendants ARMOR, McElroy, Deane and Loehr)

83. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 82 as though fully set forth herein.

84. ARMOR, McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015, owed a duty to Mr. Pratt, and all other inmates in custody at the Jail, to use reasonable care to provide inmates in need of medical attention with appropriate treatment.

85. ARMOR, McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015, breached that duty by failing to provide Mr. Pratt with prompt and adequate medical and mental health care despite Mr. Pratt's obvious needs.

86. ARMOR, McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015's breaches of the duty of care include, inter alia: failure to treat Mr. Pratt's serious health condition properly; failure to conduct appropriate medical and mental health assessments; failure to create and implement appropriate medical and mental health treatment plans; failure to promptly and adequately evaluate Mr. Pratt's health; failure to properly monitor Mr. Pratt's health; failure to provide access to medical and mental health personnel capable of evaluating and treating his serious health needs; failure to assure that Mr.

Pratt received necessary emergency care; and a failure to take precautions to prevent Mr. Pratt from injury.

87. As a direct and proximate result of ARMOR, McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015's negligence, Mr. Pratt experienced physical pain, severe emotional distress, mental anguish, and the damages alleged herein.

88. As a direct and proximate result of this negligence, Mr. Pratt has suffered, and will continue to suffer, real and actual damages, including medical expenses, mental and physical pain and suffering, emotional distress, lost wages and other damages in excess of $75,000.00.

89. ARMOR is vicariously liable for the negligence of its employees and agents.

90. ARMOR is also directly liable for its own negligence.

THIRD CLAIM FOR RELIEF

Violation of Article II § 9 and/or § 7 of the

Constitution of the State of Oklahoma

Cruel and Unusual Punishment and Deliberate Indifference

91. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 90, as though fully set forth herein.

92. Article II § 9 of the Oklahoma Constitution prohibits the infliction of cruel and unusual punishment. Under the Oklahoma Constitution's Due Process Clause, Article II § 7, the right to be free from

cruel and unusual punishment extends to pre-trial detainees, like Mr. Pratt, who have yet to be convicted of a crime (in addition to convicted prisoners who are clearly protected under Article II § 9).

93. The protections afforded to pre-trial detainees under the Oklahoma Constitution's Due Process Clause, Article II § 7, include the provision of adequate mental health care and protection from assault while in custody.

94. As set forth herein, Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015, knew, or it was obvious, that Mr. Pratt was at significant risk of serious injury and harm as set forth herein.

95. Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015 failed to provide adequate medical care, mental health care and supervision to Mr. Pratt while he was in the Tulsa County Jail.

96. Defendants McElroy, Deane, Loehr and the unidentified nurse who encountered Mr. Pratt at approximately 3:44am on December 14, 2015's acts and/or omission as alleged herein, including but not limited to their failure to provide Mr. Pratt with adequate medical and mental health supervision, assessment and treatment, and/or to assure that Mr. Pratt receive adequate medical and mental health supervision, assessment and treatment, constitute deliberate indifference to Mr. Pratt's health and safety and resulted in his disability and significant injuries as stated herein.

97. At all times relevant, the ARMOR personnel and detention personnel described in this Complaint were acting within the scope of their employment and under the direct control of TCSO and/or ARMOR.

98. TCSO and ARMOR's failure to supervise and provide adequate mental health care and protection to Mr. Pratt was the direct and proximate cause of Mr. Pratt's injuries, physical pain, severe emotional distress, mental anguish, and all other damages alleged herein.

PRAYER FOR RELIEF

99. WHEREFORE, based on the foregoing, Plaintiffs pray that this Court grant them the relief sought including, but not limited to, actual damages in excess of Seventy- Five Thousand Dollars ($75,000.00), with interest accruing from date of filing of suit, punitive damages[2] in excess of Seventy-Five Thousand Dollars ($75,000.00), reasonable attorney fees, and all other relief deemed appropriate by this Court.

Respectfully submitted,

/s/Daniel E. Smolen
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[2] In accordance with federal law, Plaintiff does not assert a claim for punitive damages against Defendant Regalado, in his official capacity, or the BOCC.