

APPENDIX

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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**No. 20-60301
Summary Calendar**

FELICIA ROBINSON,

Plaintiff–Appellant,

versus

WEBSTER COUNTY, MISSISSIPPI; WEBSTER COUNTY
SHERIFF’S DEPARTMENT; TIM MITCHELL, IN HIS
OFFICIAL CAPACITY; TIM MITCHELL, IN HIS INDIVIDUAL
CAPACITY; SANTANA TOWNSEND,

Defendants–Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:19-CV-121

Before KING, SMITH, and WILSON, *Circuit Judges.*

PER CURIAM:*

* Pursuant to 5TH CIRCUIT RULE 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE

Felicia Robinson appeals the district court's Rule 12(c) dismissal of her 42 U.S.C. § 1983 claims premised on alleged Fourteenth Amendment violations. She also challenges the district court's denial of her motion to strike various Webster County defenses, premised on judicial estoppel. We agree with the district court and affirm.

While the relevant precedent is clear and requires our affirmance, we acknowledge that the facts of this matter, as alleged by Robinson, are unsettling. According to Robinson's complaint, Webster County Sheriff Tim Mitchell released Daren Patterson from jail for a weekend furlough. Sheriff Mitchell allowed the release despite knowing Patterson's propensity for violence, particularly towards Robinson, his wife. The night of his release, Patterson verbally and physically abused Robinson while at Robinson's home. Around 9:23 p.m., Robinson called Santana Townsend, a Webster County Sheriff's Department dispatcher, for help. Because Robinson is related to Townsend, she called Townsend's personal cell phone rather than 9-1-1 or the sheriff's department.

Despite Robinson's request for help, Townsend did not send a deputy to Robinson's home to retrieve Patterson. Instead, Townsend gave the phone to another prison trusty to speak to Patterson. After the call, Patterson became angrier. Around midnight, Patterson attacked Robinson, punching her repeatedly until she blacked out. Patterson then poured "Liquid Fire" drain cleaner over Robinson's nearly naked body, resulting in severe burns. Robinson escaped and drove to the hospital where she received extensive medical treatment before being

transferred to a burn center. Patterson returned to the Webster County Jail.

As a result of these events, Robinson filed this action against Webster County, the Webster County Sheriff's Department, Sheriff Mitchell (in his individual and official capacity), Dispatcher Townsend (in her official capacity), and Patterson. In her complaint, Robinson asserted eighteen counts, including various § 1983 and state law claims. Patterson did not file a responsive pleading, and the clerk entered default against him. The remaining parties filed answers and affirmative defenses.

Sheriff Mitchell (in his official capacity), Dispatcher Townsend, the Webster County Sheriff's Department, and Webster County also moved jointly for judgment on the pleadings, contending Mitchell and Townsend should be dismissed as duplicate official-capacity defendants. The Webster County Sheriff's Department filed a second motion for judgment on the pleadings, contending it should be dismissed as an improper defendant not amenable to suit. Webster County also filed a second motion for judgment on the pleadings, contending Robinson's claims against it failed as a matter of law. Sheriff Mitchell (in his individual capacity) moved for judgment on the pleadings, asserting qualified immunity. Finally, Robinson moved to strike various defenses presented by Webster County, including that Patterson was not in its custody at the time of the subject incident.

The district court addressed the parties' motions in a single order and memorandum opinion. In its order and opinion, the district court denied Robinson's motion to strike and granted dismissal to all parties except Patterson. The district court agreed that Robinson's claims against Sheriff Mitchell (in his official capacity) and

Dispatcher Townsend were duplicative of Robinson's claims against Webster County. The court also agreed that the Webster County Sheriff's Department lacked the capacity to be sued. The court ultimately concluded that each of Robinson's § 1983 claims failed as a matter of law. Having determined that Robinson's federal claims failed as a matter of law, the court declined to retain supplemental jurisdiction over Robinson's state law claims.¹

On appeal, Robinson asserts the district court erred (1) by finding defendants did not have a special relationship with Robinson for purposes of § 1983, (2) by declining to apply the state-created danger theory, and (3) by declining to apply the doctrine of judicial estoppel as requested in Robinson's motion to strike. Robinson also contends that the district court should retain supplemental jurisdiction over Robinson's state law claims if this action is remanded.

We review de novo a district court's grant of a Rule 12(c) motion. *Machete Prods., LLC v. Page*, 809 F.3d 281, 287 (5th Cir. 2015). "A motion brought pursuant to Rule 12(c) is designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts." *Id.* (quoting *Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 312 (5th Cir. 2002)). The standard for Rule 12(c)

¹ Dispatcher Townsend also filed a pro se Answer and Counterclaim, and Robinson filed a motion for judgment on the pleadings as to Dispatchers Townsend's counterclaim. The district court dismissed Robinson's motion without prejudice when it declined to exercise supplemental jurisdiction over the remaining state law claims.

and Rule 12(b)(6) motions is the same. *In re Great Lakes Dredge & Dock Co.*, 624 F.3d 201, 209–210 (5th Cir. 2010). That is, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* at 210 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Otherwise, the complaint warrants dismissal. “In deciding whether the complaint states a valid claim for relief, we accept all well-pleaded facts as true and construe the complaint in the light most favorable to the plaintiff.” *Id.* (citing *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008)).

To state a valid claim for relief under § 1983, “a plaintiff must (1) allege a violation of a right secured by the Constitution or laws of the United States and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law.” *James v. Texas Collin County*, 535 F.3d 365, 373 (5th Cir. 2008) (internal quotation marks and citation omitted). As this Court has previously recognized, “[t]he right to be protected by the state from private violence is limited and rests on substantive due process.” *Doe v. Columbia-Brazoria Indep. Sch. Dist.*, 855 F.3d 681, 688 (5th Cir. 2017) (citation omitted). As a general rule, a state’s “failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.” *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 197 (1989). But there is an exception to this rule, which applies when the state—or in this case, the county—creates a “special relationship” with a citizen, requiring it to protect that citizen from harm. *Doe ex rel. Magee v. Covington Cnty. Sch. Dist. ex rel. Keys*, 675 F.3d 849, 855–56 (5th Cir. 2012)(en banc). Several other circuits have also adopted a second exception known as

the “state-created danger” theory, applicable when the state affirmatively created or exacerbated a dangerous situation that led to a person’s injury. *See Kovacic v. Villarreal*, 628 F.3d 209, 214 (5th Cir. 2010). But this Court has declined to join our sister circuits in recognizing that theory on several occasions.² *See, e.g., Keller v. Fleming*, 952 F.3d 216, 226–27 (5th Cir. 2020); *Columbia-Brazoria*, 855 F.3d at 688; *Covington*, 675 F.3d at 865; *Kovacic*, 628 F.3d at 214.

Here, Robinson’s claims are premised on an act of private violence. She contends that Webster County, via Sheriff Mitchell, violated her Fourteenth Amendment due process rights by releasing Patterson from jail and permitting him to terrorize her. While Robinson recognizes that under the general rule the county is not liable for Patterson’s violent acts against her, Robinson contends that the district court erred by (1) finding Webster County did not have a special relationship with her and (2) declining to apply the state-created danger theory. Based on our precedent, we must disagree.

Robinson first asserts that she has a special relationship with the county because the county effectively limited her liberty by releasing Patterson from jail. But this does not suffice to create a special relationship between Robinson and the county. Under the special relationship theory, “[t]he affirmative duty to

² “Although we have not recognized the [state-created danger] theory, we have stated the elements that such a cause of action would require[:] . . . ‘[1] the defendants used their authority to create a dangerous environment for the plaintiff and [2] that the defendants acted with deliberate indifference to the plight of the plaintiff.’” *Covington*, 675 F.3d at 865 (quoting *Scanlan v. Texas A&M Univ.*, 343 F.3d 533, 537–38 (5th Cir. 2003)).

protect arises not from the [s]tate's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf." *DeShaney*, 489 U.S. at 200. In her complaint, Robinson does not allege that the county restricted her ability to act on her own behalf. It follows that the district court correctly concluded that the special relationship theory does not apply here.

Robinson next asserts the district court should have applied the state-created danger theory. As Robinson recognizes, however, this Court has "repeatedly noted" the unavailability of the [state-created danger] theory in this circuit." *Columbia-Brazoria*, 855 F.3d at 688 (citation omitted). The district court correctly declined to stray from circuit precedent. And we decline as well. *See In re Hidalgo Cnty. Emergency Serv. Found.*, 962 F.3d 838, 841 (5th Cir. 2020).

Accordingly, Robinson's § 1983 claims fail as a matter of law, and the district court correctly dismissed them. *See DeShaney*, 489 U.S. at 197. We do not address the district court's denial of Robinson's motion to strike because the dismissal of her claims renders it moot. Likewise, we do not address the district court's decision not to retain supplemental jurisdiction over Robinson's remaining state law claims because Robinson premised that request on this action being remanded.

AFFIRMED.

FELICIA ROBINSON PLAINTIFF

WEBSTER COUNTY
MISSISSIPPI, WEBSTER
COUNTY SHERIFF'S
DEPARTMENT, TIM
MITCHELL, SANTANA
TOWNSEND, and DAREN
PATTERSON

Felicia Robinson initiated this action on June 17, 2019, by filing her Complaint [1] against Webster County, Mississippi, the Webster County Sheriff's Department, former Webster County Sheriff Tim Mitchell (in his official and individual capacity), former Webster County Dispatcher Santana Townsend (in her official and individual capacity), and her husband, Daren Patterson. Presently before the Court is a Motion to Strike [31] filed by Robinson, as well as multiple Motions for Judgment on the Pleadings filed by various parties [18, 20, 22, 26, 35]. Each of the motions is ripe for review.¹

¹Robinson also filed a Motion for Setting of Hearing on Pending Motions [50], requesting that the Court allow the parties an

Factual and Procedural Background

In May 2018, Daren Patterson was arrested by the Webster County Sheriff's Department for assaulting a police officer and for possession of methamphetamine. After failing to post bond, Patterson remained in the custody of the Webster County Sheriff's Department until November 2018.²

According to Robinson's Complaint [1], while Patterson was in the custody of the Webster County Sheriff's Department, Webster County Sheriff Tim Mitchell appointed Patterson as a trusty of the jail. During Patterson's period of incarceration, on September 1, 2018, Sheriff Mitchell granted Patterson a "weekend jail pass." During that weekend, Patterson was involved in an altercation with Robinson, his wife, at a pool hall in Eupora, Mississippi. According to Robinson, Patterson assaulted her and attempted to kill her by running over her with his vehicle. As a result of that incident, Patterson was charged by the Eupora Police Department with leaving the scene of an accident. Robinson further avers that Sheriff Mitchell was aware of this incident. Patterson was granted an additional "jail furlough" by Sheriff Mitchell on October 11, 2018. No altercations occurred during Patterson's October 11, 2018 furlough.

Sheriff Mitchell again granted Patterson a "weekend

opportunity to make oral arguments in connection with the pending motions. The Court finds that the issues raised in the motions can be adequately addressed without a hearing. No hearing will be held, and the Motion [50] is denied.

² Patterson had previously been convicted of a felony drug possession in January 2014 and was sentenced to serve four years in MDOC custody and four years on post-release supervision. The May 2018 arrest occurred while Patterson was on supervised release.

pass” on the weekend of November 2, 2018. Robinson contends that, during the November 2, 2018 weekend pass, Patterson subjected her to “malicious and sadistic” abuse. Specifically, Robinson alleges that on the afternoon of November 2, 2018, Patterson threw a beer can at her, punched her in the face, and threatened to burn down her home. Later that evening, Patterson allegedly punched a hole in the wall of Robinson’s home and subjected her to verbal and physical abuse, causing Robinson to fear for her life. At approximately 9:23 p.m. that night, Robinson made a call to Dispatcher Santana Townsend, who was a dispatcher with Webster County at the time, seeking law enforcement assistance. Robinson purportedly placed the call to Dispatcher Townsend’s cell phone, rather than the general phone number for the Webster County Sheriff’s Department, because she had a personal relationship with Dispatcher Townsend.³ Dispatcher Townsend did not dispatch law enforcement to Robinson’s residence but instead placed another trusty on the phone to speak to Patterson to calm him down. Patterson became even more agitated following the phone conversation and never left Robinson’s residence. Law enforcement was never dispatched to Robinson’s home.

At approximately 12:30 a.m. the following morning, Patterson, while still in an enraged state, purportedly threw Robinson on the bathroom floor, punched her repeatedly, and poured “Liquid Fire” on her in an apparent attempt to burn her alive. After a struggle, Robinson eventually escaped from Patterson and tried to travel to the hospital to seek treatment for her injuries, which included significant burns. She was unable to leave

³ As noted in her *pro se* Answer and Counterclaim [25], Dispatcher Townsend disputes that this phone call ever occurred.

the residence without Patterson, and she traveled to the hospital with Patterson in the passenger seat of her vehicle. When Robinson and Patterson arrived at the hospital in the early morning hours of November 3, 2018, Robinson received extensive medical treatment for her injuries and was later transferred to a burn treatment center in Brandon, Mississippi. Patterson eventually returned to the Webster County Jail and was released from custody sometime later.

Robinson initiated this action on June 17, 2019, by filing her Complaint [1] against Webster County, the Webster County Sheriff's Department, Sheriff Mitchell, Dispatcher Townsend, and Patterson. Robinson's Complaint sets forth eighteen different counts, including various Section 1983 and state law claims, and requests compensatory and punitive damages. In the first ten counts of her Complaint, Robinson asserts a litany of state law claims, including claims for assault, battery, false imprisonment, and intentional infliction of emotional distress against Patterson; failure to supervise an inmate and negligent infliction of emotional distress claims against Webster County, the Webster County Sheriff's Department, Sheriff Mitchell, and Dispatcher Townsend; and a gross negligence claim against Webster County, the Webster County Sheriff's Department, and Dispatcher Townsend in her representative capacity. Robinson also asserts various Section 1983 claims. Specifically, she asserts claims against Patterson for violations of her Fourteenth, Fourth, and Eighth Amendment rights, as well as separate claims against Webster County and the Webster County Sheriff's Department on the basis that those entities are liable for Patterson's purported violations of her constitutional rights. Robinson also

asserted a claim for failure to train and supervise against Webster County, the Webster County Sheriff's Department, and Sheriff Mitchell. Dispatcher Townsend responded to Robinson's Complaint by filing a pro se Answer and Counterclaim [13], asserting that many allegations in Robinson's Complaint are false and constitute defamation of character. Although Patterson was served with process on June 20, 2019, he has not filed an answer or any other responsive pleading in this cause, and the Clerk has entered a default against him.

On August 15, 2019, Webster County, the Webster County Sheriff's Department, Sheriff Mitchell, and Dispatcher Townsend filed a joint Motion for Judgment on the Pleadings [18] seeking dismissal of all duplicate official capacity claims against Sheriff Mitchell and Dispatcher Townsend. Webster County Sheriff's Department also moved for dismissal on the basis that it lacks capacity to be sued [20]. Webster County filed a separate Motion for Judgment on the Pleadings seeking dismissal of all claims against it [22], arguing that Robinson's Section 1983 claims fail as a matter of law and that the Court should decline to exercise supplemental jurisdiction over the state law claims or, alternatively, also grant judgment in its favor on those claims. Sheriff Mitchell filed a separate Motion for Judgment on the Pleadings [35], contending he is entitled to qualified immunity.

Additionally, Robinson filed a Motion for Judgment on the Pleadings as to Dispatcher Townsend's Counterclaim [26]. Finally, Robinson filed a Motion to Strike [31], arguing that Webster County should be judicially estopped from contending that Patterson was not in its custody at the time of the subject incident.

Analysis and Discussion

As set forth above, Robinson’s Motion to Strike [31] and the various Motions for Judgment on the Pleadings [18, 20, 22, 26, 35] are currently before the Court. The Court will address each of the pending Motions in turn.

I. Robinson’s Motion to Strike

Rule 12(f) of the Federal Rules of Civil Procedure places upon district courts the authority to “strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” FED. R. CIV. P. 12(f). “[M]otions to strike defenses are generally disfavored and rarely granted.” *Blount v. Johnson Controls, Inc.*, 328 F.R.D. 146, 148 (S.D. Miss. 2018) (quoting *Solis v. Bruister*, 2012 WL 776028, *7 (S.D. Miss. Mar. 8, 2012)). A defense should be stricken only when it “cannot, as a matter of law, succeed under any circumstance.” *U.S. v. Renda*, 709 F.3d 472, 479 (5th Cir. 2013).

In her Motion [31], Robinson contends that, pursuant to the doctrine of judicial estoppel, the Court should strike Webster County’s defense that Patterson was illegally released and not in the County’s custody on the night of the subject incident. Robinson also argues that Webster County should be estopped from making this argument in its briefs and other filings with the Court. Robinson’s Motion specifically concerns the following two statements contained in Webster County’s Answer to the Complaint:

19. Patterson never posted bond. While out of jail, he held the status of an escapee. He was not in the custody of Webster County.

...

EIGHTH DEFENSE

Patterson's release was illegal. It was not the act of Webster County. It is not attributable to Webster County under state or federal law.

Robinson argues that Webster County should be judicially estopped from contending that Patterson was not in its custody at the time of the subject incident due to the content of the Notice of Criminal Disposition which it filed in Patterson's state court criminal case, *State of Mississippi v. Daren Patterson*, Webster County Circuit Court Cause No. CR2013-041. Specifically, Robinson relies upon the Notice of Criminal Disposition's indication that Robinson was confined in the Webster County Jail at all times from May 30, 2018 to November 20, 2018. Robinson argues that "[b]y way of [the] Notice of Criminal Disposition, which is signed by the Circuit Clerk and bears the Seal of the Circuit Court, the County represents that Daren Patterson was 'confined' in the 'Webster County Jail' from '5/30/2018 to 11/20/2018.'" Stated differently, Robinson argues that because Webster County in the Notice of Criminal Disposition represented that Patterson's dates of confinement included the date on which the subject incident occurred, Webster County should be prohibited from now taking the position that Patterson was not in its custody and control when he committed the purported assault. According to Robinson, Webster County's defenses on this point "are insufficient as a matter of law pursuant to the doctrine of judicial estoppel because they assert legal positions contrary to one previously asserted by the County in the matter of *State of Mississippi v. Daren*

Patterson[.]”

“Judicial estoppel is a common law doctrine that prevents a party from assuming inconsistent positions in litigation.” *Kane v. National Union Fire Ins. Co.*, 535 F.3d 380, 385 (5th Cir. 2008) (citations omitted). “The purpose of the doctrine is to protect the integrity of the judicial process by preventing parties from playing fast and loose with the courts to suit the exigencies of self interest.” *Id.* (quoting *In re Superior Crewboats, Inc.*, 374 F.3d 330, 334 (5th Cir. 2004)) (additional citations omitted). In order for judicial estoppel to operate, three particular requirements must be met: “(1) the party is judicially estopped only if its position is clearly inconsistent with the previous one; (2) the court must have accepted the previous position; and (3) the non-disclosure must not have been inadvertent.” *Id.* at 385-86 (quoting *Superior Crewboats*, 374 F.3d at 335). Importantly, “[b]ecause the rule is intended to prevent improper use of judicial machinery, judicial estoppel is an equitable doctrine invoked by a court at its discretion[.]” *New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) (citations omitted); see also *Admiral Ins. Co., Inc. v. Arrowood Indem. Co.*, 471 B.R. 687, 708 (N.D. Tex. 2012) (citing *Hall v. GE Plastic Pac. PTE, Ltd.*, 327 F.3d 391, 396 (5th Cir. 2003)) (“Judicial estoppel is an equitable doctrine, and the decision whether to invoke it is within the court’s discretion.”).

As an initial point, the Court is not persuaded that the content of the Notice of Criminal Disposition is inconsistent with Webster County’s position in this case. Robinson has not emphasized, and the Court has not located, any language in the Notice of Criminal Disposition wherein Webster County specifically

represented that no furloughs were granted during Patterson's period of incarceration. Rather, the Notice of Criminal Disposition simply lists dates of confinement. This particular section of the Notice of Criminal Disposition contains no warranty that the period of confinement was continuous, and the Court finds no reason to imply that such a representation was made by Webster County. Therefore, the fact that Patterson was granted a furlough during the period of his confinement does not necessarily render Webster County's position in this case inconsistent with the Notice of Criminal Disposition filed in the criminal case. Thus, the Court finds that Robinson has not established that the first element of judicial estoppel.

The Court also notes that the application of the judicial estoppel doctrine on these facts would not achieve equity. The content of the Notice of Criminal Disposition does not affect the amount of control which Webster County maintained over Patterson at the time of the subject incident. In other words, whether Webster County possessed any control whatsoever over Patterson on the night in question is completely unaffected by the content of the Notice of Criminal Disposition. It is undisputed that Patterson was in Webster County's custody prior to the night in question, that he was released from custody for a period of time which included the night in question, and that he later returned to custody. The actual control, or lack thereof, that Webster County exercised over Patterson, rather than the content of a Notice of Criminal Disposition in a state court proceeding, should govern the issue of liability in this case. *See U.S. ex rel. Long v. GSDM Idea City, L.L.C.*, 798 F.3d 235, 272 (5th Cir. 2015) (emphasizing district courts' discretion as to whether to

apply judicial estoppel); *Reed v. City of Arlington*, 650 F.3d 571, 574 (5th Cir. 2011) (additional citation omitted) (“[D]ifferent considerations may inform [judicial estoppel’s] application in specific factual contexts.”). Robinson’s attempt to utilize the content of the Notice of Criminal Disposition in the present manner constitutes an effort to obtain an unfair result through a technicality. *See Pegg v. Steel Dynamics, Inc.*, 2018 WL 1247874, *4 (N.D. Miss. Mar. 9, 2018) (declining to apply judicial estoppel when defendant’s argument was “insufficient to establish that the Plaintiff intended to obtain an unfair advantage, or to take advantage of the judicial system.”); *King v. Cole’s Poultry, LLC*, 2016 WL 7191701, *5 (N.D. Miss. Dec. 12, 2016) (refusing to apply judicial estoppel on the basis that party “appear[ed] to be attempting to utilize the equitable doctrine of judicial estoppel to escape liability in an inequitable manner.”); *Sherman v. Wal-Mart Associates, Inc.*, 550 B.R. 105, 110 (N.D. Tex. Apr. 25, 2016) (“Finding no threat to the integrity of the judicial system, the Court declines to apply judicial estoppel in this case.”).

Ultimately, as noted above, the purpose of the judicial estoppel doctrine is to protect the integrity of the court judicial process by preventing parties from obtaining an unfair advantage by taking inconsistent positions in litigation. *Kane*, 535 F.3d at 385. The integrity of the judicial process will not be undermined by the Court’s refusal to apply judicial estoppel on these facts. In fact, the Court’s refusal to apply the doctrine under these circumstances will achieve fairness and will allow the liability analysis to be determined by the underlying facts, rather than a procedural technicality. The Court declines to apply judicial estoppel, and Robinson’s Motion to Strike

[31] is therefore denied.

II. Motions for Judgment on the Pleadings

Rule 12(c) of the Federal Rules of Civil Procedure authorizes a party to move for judgment on the pleadings. FED. R. CIV. P. 12(c). “A Rule 12(c) motion may dispose of a case when there are no disputed material facts and the court can render a judgment on the merits based on the substance of the pleadings and any judicially noted facts.” *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 734 (5th Cir. 2019).

“A motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure is subject to the same standard as a Rule 12(b)(6) motion to dismiss.” *Salts v. Moore*, 107 F.Supp.2d 732, 735 (N.D. Miss. 2000). Accordingly, “[t]he central issue is whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief.” *In re Katrina Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (citations omitted). Stated differently, “the issue is not whether the plaintiff will ultimately prevail, but whether it is entitled to offer evidence to support its claims.” *Oceanic Exploration Co. v. Phillips Petroleum Co. ZOC*, 352 F. App’x 945, 950 (5th Cir. 2009) (citing *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007)). The Court will “accept well-pleaded facts as true and construe the complaint in the light most favorable to the plaintiff, but . . . [will] not accept as true ‘conclusory allegations, unwarranted factual inferences, or legal conclusions.’” *Id.* (citing *Ferrer*, 484 F.3d at 780).

A. Motions for Dismissal of Improper Defendants [18, 20]

Through two separate Motions for Judgment on the Pleadings [18, 20], the Defendants jointly contend that the Court should dismiss all official capacity claims against

Sheriff Mitchell and Dispatcher Townsend and further contend that the Court should dismiss each of Robinson's claims against the Webster County Sheriff's Department. Robinson did not respond to either of these motions.

Unlike suits against officers in their personal capacities, suits brought against officers in the official capacities "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Monell v. N.Y.C. Dep't of Social Svcs.*, 436 U.S. 658, 690 n. 55, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Estate of Manus v. Webster Cty., Miss.*, 2014 WL 1285946, at *2 (N.D. Miss. Mar. 31, 2014) (reversed in part on other grounds) (quoting *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985)). Therefore, "the dismissal of allegations against municipal officers in their official capacities is proper when the allegations duplicate claims against the governmental entity itself." *Id.* (citing *Castro Romero v. Becken*, 256 F.3d 349, 355 (5th Cir. 2001)).

Because Robinson makes no distinction between her claims against Sheriff Mitchell and Dispatcher Townsend and her claims against Webster County, her claims as to Sheriff Mitchell and Dispatcher Townsend in their respective official capacities are duplicative of her claims against Webster County. For these reasons, Robinson's official capacity claims against Sheriff Mitchell and Dispatcher Townsend are dismissed.

The Defendants also contend that Webster County Sheriff's Department is not a separate legal entity subject to suit, warranting dismissal of all claims against it. The

Defendants aver that, rather than the Sheriff's Department, Webster County is the appropriate defendant as to all claims related to the conduct of the Webster County Sheriff's Department or any of its officials because the Sheriff's Department is an extension of the County itself pursuant to well-settled Mississippi law.

The capacity of a Sheriff's Department to be sued is governed by state law. Fed. R. Civ. P. 17(b)(3). Although the Mississippi Code authorizes suit against "[e]very municipality of this state[,]" it does not authorize suit against a municipality's police or sheriff's department. Miss. Code Ann. § 21-17-1(1); *Jackson v. City of Gulfport*, 2017 WL 651956, *2 (S.D. Miss. Feb. 16, 2017). In other words, "a [sheriff's] department is not a separate legal entity that may be sued. Rather, it is an extension of the city." *Id.*; see also *Brown v. Thompson*, 927 So.2d 733, 737 (Miss. 2006) (holding that a sheriff's department does not enjoy a separate legal existence apart from the county in which it operates and is therefore not subject to suit); *Stovall v. City of Hattiesburg*, 2010 WL 1908313, at *1-2 (S.D. Miss. May 17, 2010) (dismissing the Hattiesburg Police Department as a defendant because the City of Hattiesburg was the appropriate defendant).

In accordance with this well-settled authority, the Court finds that Webster County Sheriff's Department lacks the capacity to be sued. Webster County, not the Webster County Sheriff's Department, is the proper entity against which Robinson's claims should be made. The Webster County Sheriff's Department is not a proper defendant in this action and is therefore dismissed.

B. Webster County and Tim Mitchell's Motions for Judgment on the Pleadings [22, 35]

In its separate Motion for Judgment on the Pleadings [22], Webster County seeks judgment in its favor on all Section 1983 claims asserted against it. Sheriff Mitchell also filed his own Motion [35], arguing that all claims asserted against him in his individual capacity should be dismissed pursuant to the qualified immunity doctrine. As discussed below, the same issue is dispositive as to both of these motions, so the Court will address them jointly.

a. Section 1983 Claims

“Regarding Section 1983, the United States Supreme Court has held that the statute’s ‘very purpose . . . was to interpose the federal courts between the States and the people, as guardians of the people’s federal rights—to protect the people from unconstitutional action under color of state law.’” *Alexander v. McAdams*, 2017 WL 5642328, *3 (N.D. Miss. Apr. 18, 2017) (quoting *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, L.Ed.2d 705 (1972)) (emphasis in original). In order to state a claim under Section 1983, a plaintiff must “(1) allege he has been deprived of a right secured by the United States Constitution or the laws of the United States; and (2) demonstrate that the alleged violation was committed by a person acting under color of state law.” *Weeks v. Thompson*, 2007 WL 316261, *2 (N.D. Miss. Jan. 31, 2007) (citing *Cornish v. Correctional Services Corp.*, 402 F.3d 545, 549 (5th Cir. 2005)).

Undoubtedly, different standards are applicable to a Section 1983 claim against a municipality and an individual capacity claim against a law enforcement officer. *See Weeks*, 2007 WL 316261, at *2 (“Municipal liability under section 1983 requires proof of (1) a policymaker, (2) an official policy, and (3) a violation of constitutional rights whose ‘moving force’ is the policy or custom.”); *Mangieri*

v. Clifton, 29 F.3d 1012 (5th Cir. 1994) (holding that law enforcement officers are entitled to qualified immunity “unless it is shown that, at the time of the incident, [the officer] violated a clearly established constitutional right.”). Nevertheless, whether seeking to impose liability against a municipality or an individual officer, a Section 1983 plaintiff must first allege that she has been deprived of a right secured by the United States Constitution or federal law. *Victoria W. v. Larpenter*, 369 F.3d 475, 482 (5th Cir. 2004) (holding that in order to establish a Section 1983 claim, there must be “a deprivation of a right secured by federal law[.]”). If the plaintiff has not been deprived of a federal constitutional or statutory right, there can be no viable Section 1983 claim. *Id.* In their separate Motions, both Webster County and Sheriff Mitchell assert that Robinson has not properly stated a Section 1983 claim because she has not alleged a deprivation of a right secured by the United States Constitution or federal law.

As set forth above, Robinson’s Complaint sets forth Section 1983 claims related to purported violations of her Fourteenth, Fourth, and Eighth Amendment rights. The Court will address each of these allegations in turn.

i. Fourteenth Amendment Claims

The Due Process Clause of the Fourteenth Amendment provides that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. Concerning the scope of the clause, “[t]here can be no dispute that the Fourteenth Amendment includes as a liberty interest ‘a right to be free from . . . unjustified intrusions on personal security.’” *Bright for Doe v. Tunica Cty. Sch. Dist.*, 2017 WL 3996409, *5 (N.D. Miss. Sept. 11, 2017) (quoting *Ingraham v. Wright*, 430 U.S. 651, 673, 97 S. Ct. 1401, 51

L. Ed. 2d 711 (1977)).

Although the Due Process Clause provides a general protection from unjustified intrusions on personal security, “a state official has no constitutional duty to protect an individual from private violence.” *McClendon v. City of Columbia*, 305 F.3d 315, 324 (5th Cir. 2002) (citing *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 197, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989)). Stated differently, “a State’s failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.” *Rivera v. Houston Indep. Sch. Dist.*, 349 F.3d 244, 247 (5th Cir. 2003) (citing *DeShaney*, 489 U.S. at 197). Nevertheless, “some courts have allowed two possible exceptions to that general rule . . . ∴ (1) when the state has a ‘special relationship’ with the citizen, such as when the state takes the person into custody or otherwise limits the person’s freedom to act on his or her own behalf; and (2) when the state has created the danger that led to the person’s injury[.]” *Id.* at *28-29 (citing *DeShaney*, 489 U.S. at 195-96, 109 S. Ct. 998) (additional citations omitted).

Robinson first contends the general prohibition of Section 1983 liability based upon private violence is altogether inapplicable because, even though he was an inmate, Patterson was a state actor at the time of the incident. In other words, she alleges that her injuries were not caused by private violence. In support of this theory, Robinson contends that “Patterson operated as a ‘willful participant in joint activity with the State or its agents’ (1) when he left the Webster County Jail with the express permission of Sheriff Mitchell, who had actual knowledge of his penchant for harming Mrs. Robinson and (2) by virtue of him serving as a trusty, which made him a

quasi-employee of the County.”

Other district courts in the Fifth Circuit have declined to deem a party a state actor for Section 1983 purposes simply due to an unrelated relationship with the state. *See, e.g., Allard v. Quinlan Pest Control Co. Inc.*, 2011 WL 5025149, *5 (N.D. Tex. Sept. 14, 2011) (“District courts in this circuit have . . . held that a private, independent contractor does not become a state actor by virtue of being hired by the state.”); *Hatton v. Henderson Cty. Jail*, 2009 WL 2744896, slip op., *6 (E.D. Tex. Aug. 24, 2009) (holding that a construction company hired by a county jail which employed an inmate as a trusty was not a state actor); *Plummer v. Valdez*, 2006 WL 2713784, slip op., *2 (N.D. Tex. Sept. 21, 2006) (holding that a private company providing products for sale to inmates was not a state actor). Robinson cites no authority in support of her position that an individual becomes a state actor merely because of an unrelated relationship with the state, and the Court sees no reason to effectively expand the definition of a state actor for Section 1983 purposes under these particular circumstances.⁴

Further supporting this finding, the Fifth Circuit has previously found the general rule prohibiting the imposition of liability due to private violence applicable under similar facts. *See McClendon*, 305 F.3d at 324. In *McClendon*, a City of Columbia police detective, after learning that an altercation was likely to ensue between the confidential informant and one of his targeted suspects, loaned a gun to a confidential informant so that the informant could protect himself. *Id.* at 319. After the

⁴ This contention is more appropriately categorized as an argument in support of the state-created danger theory, which the Court will address at length below.

confidential informant shot and injured the targeted suspect using the gun provided to him by the detective, the suspect filed suit against, among others, the City of Columbia. *Id.* The Fifth Circuit ultimately affirmed the district court's ruling that the underlying facts did not give rise to a constitutional violation because, even though he utilized a state-provided weapon, the confidential informant was a private actor for Section 1983 purposes at the time he inflicted the injury. *Id.* at 324.⁵

The Court finds *McClendon* persuasive on this issue. In *McClendon*, the confidential informant was arguably acting in furtherance of an objective of the State when he was involved in the altercation giving rise to the purported constitutional violation as he was seeking to obtain information for utilization by the State. The Fifth Circuit nevertheless deemed him a private actor for Section 1983 purposes. Here, Patterson was undoubtedly not acting to further any purpose of the State at the time he inflicted the injuries upon Robinson. Other than the fact that he was on furlough, Patterson had no connection to Webster County whatsoever. Though he had been named a trusty at the Webster County Jail, Robinson's Complaint makes no allegation that Patterson was acting in furtherance of any duties related to that position at the relevant time. Thus, even taking all of Robinson's allegations as true, the Court finds that Patterson was acting in his private capacity at the time of the subject incident and, therefore, that Robinson was subjected to private violence.

Because Robinson was subjected to private violence,

⁵ Other authorities also support this finding. *See, e.g., O'Meara v. Pearl River Cty. Jail*, 2009 WL 801728, *1 (S.D. Miss. Mar. 25, 2009) (holding that an inmate who committed assault while in custody remained a private citizen for Section 1983 purposes).

the Fourteenth Amendment provides her with no protection unless she establishes that an exception to the general rule is applicable. *Rivera*, 349 F.3d at 247. Robinson argues in favor of both the “special relationship” exception and the state-created danger exception.

Regarding the “special relationship” exception, the Supreme Court has held that “in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals.” *DeShaney*, 489 U.S. at 198. “When the state, through the affirmative exercise of its powers, acts to restrain an individual’s freedom to act on his own behalf ‘through incarceration, institutionalization, or other similar restraint of personal liberty,’ the state creates a ‘special relationship’ between the individual and the state which imposes upon the state a constitutional duty to protect that individual from dangers, including, in certain circumstances, private violence.” *McClendon*, 305 F.3d at 324 (citing *DeShaney*, 498 U.S. at 200). The Fifth Circuit has consistently expressed the narrow scope of the “special relationship” exception, having only previously extended it to circumstances where the state has incarcerated a prisoner, involuntarily committed an individual to an institution, or placed a child in foster care. *Doe v. Covington Cty. Sch. Dist.*, 675 F.3d 849, 855-56 (5th Cir. 2012) (quoting *DeShaney*, 489 U.S. at 199-200, 109 S. Ct. 998). The purpose of the exception is to place a duty upon the State when it has imposed a limitation upon an “individual’s freedom to act on his own behalf.” *Id.* at 856.

Arguing in favor of the applicability of the “special relationship” exception, Robinson avers that “the County, acting in deference to the interests of their inmate/trusty (*i.e.*, Patterson), effectively took Mrs. Robinson’s liberty

under terms that provided no realistic means of escape while giving her no means of providing for her own care or safety.” Despite this assertion, Robinson’s Complaint makes no claim that Webster County acted in any way to restrict her liberty or freedom to act on her own behalf. Although Robinson alleges that Dispatcher Townsend acted negligently by failing to dispatch a deputy to her home following her call to Robinson, Dispatcher Townsend’s failure to do so did not create a “special relationship” between Robinson and the County. In fact, the Fifth Circuit has previously declined to extend the “special relationship” exception when a city employee failed to dispatch law enforcement to a particular location after receiving a request to do so. *Beltran v. City of El Paso*, 367 F.3d 299, 302 (5th Cir. 2004) (refusing to recognize a “special relationship” where a 911 operator received a call from a domestic abuse victim and stated that the police would be sent to the victim’s residence but never actually did so). Thus, regardless of whether Dispatcher Townsend acted improperly by failing to dispatch law enforcement to Robinson’s home, her failure to do so did not create a “special relationship” between Webster County and Robinson.

Taking each of Robinson’s allegations as true, Webster County did not impose any restriction on Robinson’s ability to act on her own behalf. Although Patterson, a private individual, was purportedly in an enraged state at her residence, Robinson maintained liberty to flee or take other steps to protect herself. In light of these facts, along with the “special relationship” exception’s narrow applicability, the Court declines to apply it in this context.

Robinson also argues in favor of the state-created danger theory. The state-created danger theory derives

from the following language of the Supreme Court's opinion in *DeShaney*:

While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them. That the State once took temporary custody of Joshua does not alter the analysis, for which it returned him to his father's custody, it placed him in no worse position than that in which he would have been had in not acted at all . . .

DeShaney, 489 U.S. at 201. Courts have relied upon this language for the proposition that “a state actor may be liable under § 1983 if the state actor created or knew of a dangerous situation and affirmatively placed the plaintiff in that situation.” *Bright*, 2017 WL 3996409, at *7 (quoting *Covington Cty. Sch. Dist.*, 675 F.3d at 864); *see also Cook v. Hopkins*, 2019 WL 5866683, *5 (5th Cir. Nov. 8, 2019) (citing *Bustos v. Martini Club Inc.*, 599 F.3d 458, 466 (5th Cir. 2010)) (noting that, pursuant to the state-created danger theory, the state is liable “if it created or exacerbated the danger of private violence against an individual.”).

This Court has recently noted the extensive number of circuits across the country that have recognized the state-created danger theory as a basis for a due process claim. *Id.* at *7, n. 5 (citations omitted) (“Since *DeShaney*, the Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, and D.C. Circuits have recognized the existence of the state-created danger theory.”). However, while the Fifth Circuit has previously outlined the applicable test for the state-created danger theory, it has never adopted

the theory. *Morin v. Moore*, 309 F.3d 316, 321-22 (5th Cir. 2002) (“In order to recover under the state-created danger theory, we assume that a plaintiff would have to show, at a minimum, that: (1) the state actors created or increased the danger to the plaintiff and (2) the state actors acted with deliberate indifference.”). The Fifth Circuit has actually declined to adopt the state-created danger theory on multiple occasions. *See, e.g., Keller v. Fleming*, --- F.3d ---, 2020 WL 831757, at *7 (5th Cir. Feb. 20, 2020) (“[T]he Fifth Circuit has never recognized [the] ‘state-created-danger’ exception.”); *Doe v. Columbia-Brazoria Indep. Sch. Dist.*, 855 F.3d 681, 688 (5th Cir. 2017) (“Panels [in this circuit] have repeatedly noted the unavailability of the [state-created danger] theory.”). Thus, although the state-created danger theory is recognized by most circuits across the country, it has never been recognized as a viable theory for recovery in the Fifth Circuit.

Robinson acknowledges that the state-created danger theory is not viable in the Fifth Circuit but urges the Court to apply the theory, asserting that the underlying facts “should be persuasive enough for the Court of Appeals to adopt this cause of action.” The Court notes that the facts alleged by Robinson, including both Sheriff Mitchell’s alleged knowledge as to Patterson’s violent propensity prior to granting furlough to Patterson and Dispatcher Townsend’s failure to dispatch law enforcement to Robinson’s home and the failure to train aspect associated therewith, appear to fall squarely within the parameters of the state-created danger theory. Taking Robinson’s allegations as true, the conduct of Sheriff Mitchell and/or Dispatcher Townsend arguably created or at least exacerbated the potential for private

violence. Nevertheless, while the Court is certainly sympathetic to Robinson’s position, as the allegations of her Complaint would likely be enough to survive judgment on the pleadings on the state-created danger theory, this Court is duty bound to follow Fifth Circuit precedent. *See, e.g., Miss. ex rel. Hood v. Entergy Miss., Inc.*, 2012 WL 3704935, *7 n. 6 (S.D. Miss. Aug. 25, 2012) (“This court is duty bound . . . to follow Fifth Circuit precedent as it is written[.]”). Therefore, regardless of this Court’s view on whether the state-created danger theory should be adopted, it must follow Fifth Circuit precedent. Accordingly, the Court declines to apply the state-created danger theory in this case.

Ultimately, “[t]o state a Fourteenth Amendment due process claim under Section 1983, ‘a plaintiff must first identify a protected life, liberty or property interest and then prove that governmental action resulted in a deprivation of that interest.’” *Little v. Miss. Dep’t of Pub. Safety Bureau of Narcotics*, 2017 WL 2999141, *9 (N.D. Miss. July 13, 2017) (quoting *Baldwin v. Daniels*, 250 F.3d 943, 946 (5th Cir. 2001)). Because Robinson has not pled a protected life, liberty, or property interest of which she has been deprived, she has not alleged a violation of her Fourteenth Amendment due process rights. Her Section 1983 claims related to a purported Fourteenth Amendment fail as a matter of law.

ii. Fourth Amendment Claims

Robinson also asserts Section 1983 claims based upon Fourth Amendment violations, contending that her Fourth Amendment rights were violated when Robinson attempted to seize her person, attempted to prohibit her from leaving her own home, and abused her. “The Fourth Amendment provides that ‘[t]he right of the people to be

secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .’ The Amendment guarantees the privacy, dignity, and security of persons against certain arbitrary and invasive acts by officers of the Government or those acting at their direction.” *Skinner v. Railway Labor Executives’ Ass’n*, 489 U.S. 602, 613-14, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989) (citing *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 528, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967)) (additional citations omitted). “Although the Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on his own initiative, the Amendment protects against such intrusions if the private party acted as an instrument or agent of the Government.” *Id.* at 614 (citations omitted).

Like her Fourteenth Amendment claims, Robinson’s Fourth Amendment claims fail as a matter of law because, as the Court finds above, the injuries which were inflicted upon her were inflicted by a private party. Other than a generalized statement that Patterson was “at all material times controlled by an agency of the State[,]” Robinson has not alleged that Patterson was acting as an instrument or agent of Webster County. As set forth above, the Court finds the fact that Patterson was appointed as a trusty by Sheriff Mitchell irrelevant to the analysis, as Patterson was not acting in his furtherance of his duties as a trusty when he was released on furlough. Therefore, regardless of the conduct in which Patterson engaged, a Fourth Amendment search or seizure did not occur, and she cannot survive the present Motions as to her Fourth Amendment claims.

Ultimately, in order to survive a motion for judgment

on the pleadings as to a Section 1983 claim, a plaintiff must allege a deprivation of a right secured by the Constitution or by federal law. *Baker v. McCollan*, 443 U.S. 137, 140, 99 S. Ct. 2689, 61 L. Ed. 2d 433 (1979) (“The first inquiry in any § 1983 suit . . . is whether the plaintiff has been deprived of a right secured by the Constitution and the laws.”). Because Robinson has not pled a deprivation of a federal constitutional or statutory right, her Section 1983 claims fail as a matter of law and are therefore dismissed.

iii. Eighth Amendment Claims

In addition to her Fourteenth and Fourth Amendment claims, Robinson’s Complaint also asserts Section 1983 claims based upon purported Eighth Amendment violations, specifically on the basis that “as a state actor, Patterson had the duty to refrain from beating Mrs. Robinson senseless and dousing her nearly naked body with sulfuric acid.” In its Motion, Webster County also seeks dismissal of Robinson’s Eighth Amendment claims. In her Response, Robinson does not address Webster County’s argument and appears to abandon her Eighth Amendment claims altogether. Because the Eighth Amendment provides protection to an individual only after a conviction and since she was never convicted of any crime, Robinson’s Eighth Amendment claims also fail as a matter of law. See, e.g., *Gonzalez-Rivera v. Mota*, 2008 WL 11411970, *5 n.1 (W.D. Tex. Aug. 14, 2008) (citing *Carlton v. Fearneyhough*, 2008 WL 686595, *2 (5th Cir. 2008)) (“The Eighth Amendment applies only to persons convicted of crimes and is inapplicable to plaintiff’s excessive force claim.”). Robinson’s Section 1983 claims based upon the Eighth Amendment are therefore dismissed.

b. State Law Claims

Webster County also requests that the Court decline to exercise supplemental jurisdiction over Robinson’s myriad of state law claims. Pursuant to 28 U.S.C. § 1367(c), district courts may decline to exercise supplemental jurisdiction over a claim if “(1) the claim raises a novel or complex issue of state law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.” *Seals v. Mississippi*, 998 F.Supp.2d 509, 526-27 (N.D. Miss. 2014). In making its determination as to whether to exercise supplemental jurisdiction, “the court is guided by the . . . statutory factors as well as the common law factors of judicial economy, convenience, fairness, and comity.” *Id.* at 527 (citing *Mendoza v. Murphy*, 532 F.3d 342, 346 (5th Cir. 2008)). In the Fifth Circuit, “the general rule is that a court should decline to exercise jurisdiction over remaining state-law claims when all federal-law claims are eliminated before trial[.]” *Id.* (quoting *Brookshire Bros. Holding, Inc. v. Dayco Prod. Inc.*, 554 F.3d 595, 602 (5th Cir. 2009)); *see also Sahlein v. Red Oak Capital, Inc.*, 2015 WL 736340, *2 (N.D. Miss. Feb. 20, 2015) (citations omitted) (“[T]he Fifth Circuit has stated that its general rule is to decline to exercise jurisdiction over pendent state-law claims when all federal claims are dismissed or otherwise eliminated from a case prior to trial.”).

Having determined that Robinson’s federal claims fail as a matter of law, the Court, in accordance with the general rule in the Fifth Circuit, declines to exercise

supplemental jurisdiction over the pending state law claims. The only federal claims not dismissed as a result of this Order are the claims asserted against Patterson, for which default has been entered due to his failure to file a responsive pleading. Thus, all federal claims have been eliminated either via adverse judgment through this Order or through the entry of a procedural default, and the Fifth Circuit's general rule therefore supports declining to exercise supplemental jurisdiction.

The Court's decision to decline to exercise supplemental jurisdiction is particularly warranted in this case, in light of the fact that this action was only recently instituted and no discovery has yet been conducted by the parties. The parties therefore will not suffer any real harm as a result of the dismissal of the state law claims *without prejudice*. The Court will not exercise jurisdiction over Robinson's state law claims.⁶

Conclusion

For the reasons set forth in detail above, Robinson's Motion for Hearing [50] and Motion to Strike [31] are DENIED. The Defendants' Motions for Judgment on the Pleadings concerning improper parties [18, 20] are GRANTED. All official capacity claims against Sheriff Mitchell and Dispatcher Townsend, as well as all claims against the Webster County Sheriff's Department, are dismissed *with prejudice*. Webster County and Sheriff Mitchell's Motions for Judgment on the Pleadings [22, 35]

⁶ The Court notes that Robinson filed a Motion for Judgment on the Pleadings as to Dispatcher Townsend's counterclaim for defamation of character [26]. Because the counterclaim is a state law claim and in light of the Court's foregoing decision to decline to exercise supplemental jurisdiction, the Motion will be dismissed *without prejudice*.

are GRANTED as to all federal claims asserted by Robinson. All federal claims asserted by Robinson against Webster County, Sheriff Mitchell, and/or Dispatcher Townsend are dismissed *with prejudice*. The Court declines to exercise supplemental jurisdiction over all state law claims asserted by Robinson, and those claims are therefore dismissed without prejudice. Robinson's Motion for Judgment on the Pleadings as to Dispatcher Townsend's Counterclaim [26] is dismissed *without prejudice*. The Court retains jurisdiction solely as to Robinson's claims against Patterson for which default has been entered.

SO ORDERED, this the 11th day of March, 2020.

/s/Sharion Aycock

UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

FELICIA ROBINSON

PLAINTIFF

V.

CIVIL ACTION
NO. _____

WEBSTER COUNTY,
MISSISSIPPI; WEBSTER
COUNTY SHERIFF'S
DEPARTMENT; TIM
MITCHELL; SANTANA
TOWNSEND; DAREN
PATTERSON;

AND

JOHN DOES 1-30, being
those persons, firms,
corporations, or other
entities who are in any way
responsible to the Plaintiff
for the damages and
injuries sustained herein,
and whose identities are at
this time unknown, but will
be added by amendment
when ascertained

JURY TRIAL
DEMANDED

DEFENDANTS

COMPLAINT

COMES NOW the Plaintiff, FELICIA ROBINSON, by and through counsel, who files this Complaint against the Defendants, WEBSTER COUNTY, MISSISSIPPI; WEBSTER COUNTY SHERIFF’S DEPARTMENT; TIM MITCHELL; SANTANA TOWNSEND; DAREN PATTERSON; and JOHN DOES 1-30, and would show unto the Court as follows, *to wit*:

* * * * *

PRELIMINARY STATEMENT

1. This is a federal civil-rights/state tort-claims action brought by Felicia Robinson against Webster County, Mississippi; the Webster County Sheriff’s Department; former Sheriff Tim Mitchell; former dispatcher Santana Townsend; and Daren Patterson, who was a pretrial detainee/inmate¹ at the Webster County Jail.

2. On September 1, 2018, Patterson was released from jail on a weekend furlough by Sheriff Tim Mitchell. That evening, Patterson tried to kill Mrs. Robinson, who is his wife, by pursuing her with a car as she ran. The Eupora Police Department prepared an incident report and informed Sheriff Mitchell accordingly. Nevertheless, Sheriff Mitchell released Patterson for another weekend furlough on November 2, 2018, knowing full well that

¹ Hereinafter, the word “inmate” includes pretrial detainees and persons convicted of crimes.

Patterson would return to his wife and terrorize her.

3. On November 2, 2018, the furloughed Patterson punched a hole in the wall of Mrs. Robinson's house. In response, she called Townsend for help. However, instead of dispatching a deputy to retrieve the belligerent Webster County inmate, Townsend gave the phone to another inmate to speak to Patterson. After talking with the other inmate, Patterson seethed with unbridled fury until he drenched Mrs. Robinson's nearly naked body with sulfuric acid, causing sixteen (16) second- and third-degree burns.

PARTIES

4. The Plaintiff, FELICIA ROBINSON ("Mrs. Robinson" or "Plaintiff") is an adult resident citizen of Webster County, Mississippi.

5. Defendant WEBSTER COUNTY, MISSISSIPPI ("Webster County" or "County") is a political subdivision of the State of Mississippi. At all material times, the County acted under color of law. The County may be served with process by delivering a copy of the Summons and Complaint to the Hon. Russell Turner, Chancery Clerk of Webster County, Mississippi, 16 East Fox Avenue, Eupora, Mississippi 39744.

6. Defendant WEBSTER COUNTY SHERIFF'S DEPARTMENT ("WCSD") is an agency of Webster County. At all material times, WCSD acted under color of law. WCSD may be served with process by delivering a copy of the Summons and Complaint to Sheriff pro tempore Andy McCants (or whomever may have been appointed Sheriff by the time of service), 321 East Gould Avenue, Eupora, Mississippi 39744.

7. Defendant TIM MITCHELL (“Sheriff Mitchell”) is an adult resident citizen of Webster County, Mississippi. From January 1, 2012, through June 12, 2019, Sheriff Mitchell was the duly elected Sheriff of Webster County, acting under color of law. He is awaiting sentencing for crimes that he committed while serving as the Webster County Sheriff. Until he is sentenced, Sheriff Mitchell may be served with process at 760 Hobby Road, Eupora, Mississippi 39744.

8. Defendant SANTANA TOWNSEND (“Townsend”) is an adult resident citizen of Webster County, Mississippi. At all material times, she was a dispatcher for WCSO who acted under color of law. Townsend has since been terminated from her duties. Townsend may be served with process at 120 West Figgatt Avenue, Eupora, Mississippi 39744.

9. Defendant DAREN PATTERSON (“Patterson”) is an adult resident citizen of Webster County, Mississippi. Patterson may be served with process at the Chickasaw County Jail, 130 Lancaster Circle, Houston, Mississippi 38851.

10. Defendants JOHN DOES 1-30 are those persons, firms, corporations or other entities who are in any way responsible to the Plaintiff for the damages she has sustained and whose identities are at this time unknown but will be added by appropriate amendments when ascertained.

JURISDICTION AND VENUE

11. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and civil rights jurisdiction under 28 U.S.C. § 1343 for causes of action arising under the

Fourth, Eighth, and Fourteenth Amendments to United States Constitution. The federal causes of action are brought pursuant to 42 U.S.C. § 1983. Plaintiff seeks declaratory judgment pursuant to 28 U.S.C. § 2202. Plaintiff also seeks attorney's fees pursuant to 42 U.S.C. § 1988. This Court has supplemental jurisdiction over all state law claims referenced herein pursuant to 28 U.S.C. § 1367. Plaintiff requests injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

12. Regarding her claims made pursuant to the Mississippi Tort Claims Act (Miss. Code Ann. §§ 11-46-1, *et seq.*) ("MTCA"), Plaintiff served the requisite written notices to the Webster County Chancery Clerk (via certified mail) and to Sheriff Mitchell and Sheriff *pro tempore* Andy McCants (both via personal delivery) on or before March 11, 2019.² Plaintiff may now file suit because more than ninety-five (95) days have elapsed since these letters were delivered. See Miss. Code Ann. § 11-46-11 (3)(a) & (b).³ Therefore, sovereign immunity is waived

² See Exhibit "1" (Redacted Tort Claims Letter) and Exhibit "2" (Proof of Service), incorporated herein by reference and made a part hereto.

³ Miss. Code Ann. § 11-46-11 reads in pertinent part:

(3) (a) ... [F]iling a notice of claim within the required one-year period will toll the statute of limitations for ninety-five (95) days from the date the chief executive officer of the state entity or the chief executive officer or other statutorily designated official of a political subdivision receives the notice of claim.

(b) No action whatsoever may be maintained by the claimant until ... the tolling period expires...."

subject to the provisions of the MTCA.

13. This Court has personal jurisdiction over the parties because each Defendant may be found in this State, because the causes of action accrued in this judicial district, and because personal jurisdiction would not violate the traditional notions of fair play and substantial justice.

14 Venue is appropriate in the Northern District of Mississippi pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and because at least one defendant may be found here.

FACTS COMMON TO ALL COUNTS

Background Information

15. For years, Mrs. Robinson has been subject to psychological manipulation and physical abuse from her husband, Patterson. Throughout their turbulent relationship, she has vacillated from wanting his approval to wanting to be free from his oppressive behavior to being afraid for her very life – often experiencing these emotions at the same time. Occasionally, Mrs. Robinson would stand up for herself. Often, though, she would assume the position of his punching bag.

16. On January 10, 2014, Patterson was convicted of felony possession of cocaine (second offense). He was sentenced to eight (8) years in the custody of the Mississippi Department of Corrections (“MDOC”), with four (4) years to serve in prison and four (4) years on post-release supervision. As a condition of his post-release supervision, Patterson was prohibited from breaking any laws of this State or consuming alcohol or drugs.

Figure 1 – Exhibit A to Exhibit 1
(Sentencing Order for Daren Patterson)

IT IS, THEREFORE, ORDERED that the defendant, DAREN PATTERSON, be and he is hereby sentenced to serve a term of EIGHT (8) YEARS with the Mississippi Department of Corrections. After the defendant has served a period of FOUR (4) YEARS the Mississippi Department of Corrections is hereby ordered to place him in a program of post-release supervision pursuant to Section 47-7-34 of the Mississippi Code of 1972 for a period of FOUR (4) YEARS, provided the defendant has abided by all of the rules and regulations of the Mississippi Department of Corrections during his period of incarceration. The defendant is ordered to pay a fine in the amount of \$500 and all court costs, fees, and assessments in this cause all to be paid within ONE (1) YEAR of the date of release from incarceration.

17. Patterson was released from prison in January 2018. On May 29, 2018, while on probation, Patterson caused bodily harm to Officer Casey Henderson of the Eupora Police Department (“Officer Henderson”). Patterson also had methamphetamine on his person. Patterson was arrested and placed in the Webster County Jail.

Figure 2 – Exhibit B to Exhibit 1
(Indictment of Daren Patterson – 2018)

COUNT I
DAREN PATTERSON

On or about May 29, 2018 in Webster County, Mississippi, and within the jurisdiction of this Court, did willfully, unlawfully, feloniously and purposely, knowingly or recklessly caused bodily injury to Casey Henderson, a Law Enforcement Officer, while he was acting within the scope of his duty, office or employment, in violation of Section 97-3-7(1)(a)(b) and (14) of the Mississippi Code of 1972, as amended, constituting a common plan or scheme or related series of acts or transactions, and against the peace and dignity of the State of Mississippi, and that;

COUNT II
DAREN PATTERSON

On or about May 29, 2018 in Webster County, Mississippi, and within the jurisdiction of this Court, did willfully, unlawfully, feloniously and knowingly or intentionally possess one-tenth (0.1) gram or more but less than two (2) grams of Methamphetamine, a Schedule II Controlled Substance, in violation of Section 41-29-139(c)(1)(B) of the Mississippi Code of 1972, as amended, constituting a

common plan or scheme or related series of acts or transactions, and against the peace and dignity of the State of Mississippi, and that;

18. On July 10, 2018, the Eupora Municipal Court conducted a preliminary hearing. The Court set bond at \$10,000 for the charge of assaulting a police officer.

Figure 3 – Exhibit C to Exhibit 1
(Order Binding Daren Patterson)

Having heard the evidence at preliminary hearing, the court finds that there is adequate and substantial probable cause to believe that the defendant has committed the felony crime charged. The defendant ***Daren Patterson***, is hereby bound over to the action of the Webster County Grand Jury on the charge of ***Simple Assault on Police Officer*** and ordered to appear before the Circuit Court of Webster County at 9:00 A.M. on the 14th day of January 2018 to await the action of the Grand Jury. Defendant's bond, returnable to Webster County Circuit Court, is fixed at \$10,000.00.

19. Patterson never posted bond. Therefore, Patterson remained in the legal and physical custody of the WCSD from May 30, 2018, to November 20, 2018.

Figure 4 – Exhibit D to Exhibit 1
(Notice of Criminal Disposition)

V. Dates Confined 05/30/2018 to 11/20/2018 _____
 _____ to _____
 _____ to _____
 Released on Bond Pending Appeal _____ to _____
 Currently Housed In WEBSTER COUNTY JAIL, _____

20. On or before September 1, 2018, Sheriff Mitchell made Patterson a trusty at the Webster County Jail. Patterson was given special responsibilities and privileges by virtue of being a trusty.

21. On November 20, 2018, Patterson's post-release supervision was revoked due to his May 29, 2018, arrest. He was sentenced to serve the remaining four years of his 2014 sentence in prison.

Figure 5 – Exhibit E to Exhibit 1
(Order Revoking Post-Release Supervision)

ORDERED

that the Four (4) Years of Post Release Supervision in this cause be and hereby is revoked and the Defendant, **DAREN PATTERSON**, is ordered to serve the said Four (4) Years in the custody of the Mississippi Department of Corrections.

SO ORDERED AND ADJUDGED on this, the 20th day of November, 2018.

_____/s/_____
 George M. Mitchell, Jr.
 Circuit Court Judge

September 2018 (Abusive Incident #1)

22. On September 1, 2018, while Patterson was still being held in pretrial detention at the Webster County Jail, Sheriff Mitchell authorized Patterson to enjoy an unsupervised weekend jail pass. Sheriff Mitchell released Patterson even though he knew that Patterson had recently caused bodily injury to a police officer and, as such, that Patterson posed a threat to the health and safety of innocent citizens.

23. During this unsupervised weekend pass, Patterson returned to Mrs. Robinson. For all the reasons listed above, Mrs. Robinson felt that she had no choice but to tough it out for a few days.

24. That night, at or about 8:52 p.m., the wholly unsupervised and highly intoxicated Patterson became involved in a public altercation with Mrs. Robinson at a pool hall in Eupora, Mississippi. This altercation culminated with Patterson hitting Mrs. Robinson in the face and attempting to run over her with a car while she fled on foot. Mrs. Robinson suffered physical pain and psychological harm as a result of Mr. Patterson's reprehensible behavior.

Figure 6 – Exhibit G to Exhibit 1
(Incident Report)

The crowd in the parklot on Dunlap were yelling Darren Patterson tried to run over Felica Robinson with her vehicle. I had Officer Brandon Chaille run the tag on that white Impala through Webster 911. The tag came back to Felica Robinson. I asked several people that was in the crowd which

were yelling, did they see who was driving the car. One of the person respond, "I didn't see who was driving but someone told me that Mr. Patterson was driving. He tried to run over Felica Robinson. Mrs. Robinson and Mr. Patterson ran through the parking lot of the Mason Hall." Officer Chaille tried to locate Mr. Patterson and Mrs. Robinson but was not successful. I removed the beer and liquor from the vehicle.

Figure 7 – Exhibit H to Exhibit 1
(Statement of Plaintiff)

[...] up then he took gun down. So I then turned around for 1 sec. with my back turned I knew he was gonna try & run me over so then I hear my car zooming my way he was in it coming I stepped in front of a truck then boom he tried to run me over and hit a mailbox. I Felicia Robinson backed up all way to my Church him & his dad walking trying to get me till I saw a car a at Liberty Church I flagged it down & jumped in it.

I have read this statement consisting of ____ page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

/s/Felicia Robinson

Signature of person making
voluntary statement

25. Patterson was subsequently charged with leaving the scene of an accident by the Eupora Police Department on September 4, 2018. Sheriff Mitchell was notified about this incident.

Figure 8 – Exhibit I to Exhibit 1
(Criminal Affidavit)

IN THE NAME AND BY THE
AUTHORITY OF THIS
MUNICIPALITY:

I, Sgt. Lawrence Caradine, being duly sworn, make this affidavit that Darren Patterson, the DEFENDANT, on or about the 1st day of September, 2018, and within the jurisdiction of this Municipality, did willfully and unlawfully while driving a 2003 Chevrolet Impala, hit a mailbox Dunlap Street, the property of Marcquell Patterson, and ran away from the vehicle at the scene of the accident, against the peace and dignity of the City of Europa, Mississippi.

Charge: Leaving the Scene of an Accident
[63-3-403]

_____/s/_____
AFFIANT

AFFIANT Sworn to and subscribed
before me this 4th day of September, 2018.

October 2018 (Interregnum)

26. On October 11, 2018, Sheriff Mitchell gave Patterson a second unsupervised jail furlough. However, this pass was for only one night. The time-constrained Patterson did not assault Mrs. Robinson during this furlough.

November 2018 (Abusive Incident #2)

27. On Friday, November 2, 2018, Sheriff Mitchell gave Patterson a third unsupervised jail furlough for a weekend celebration. As such, the Sheriff gave Patterson a full weekend pass just as he had done in September. Sheriff Mitchell placed no apparent restriction on Patterson's conduct other than to require him to return to jail on the morning of Sunday, November 4, 2018. This gave Patterson a full day on Saturday to sleep off any Friday night debauchery. Sheriff Mitchell did this despite knowing full well of Patterson's predisposition toward violence.

28 Sheriff Mitchell knew or should have known that Patterson would drink excessively and behave wantonly during his weekend celebration without the hassle of having to return to jail the next morning. Sheriff Mitchell also knew or should have known that Patterson would spend his weekend of unbridled revelry with his wife – the very woman whom the previously intoxicated Patterson had tried to kill only two months before. Nevertheless, Sheriff Mitchell, acting with reckless disregard for the health and safety of Mrs. Robinson, gave Patterson an unsupervised weekend furlough.

29. During this unsupervised weekend pass, Patterson returned to Mrs. Robinson, who felt even more helpless than before. After all, the County and WCSD law enforcement officers who had possessed actual knowledge

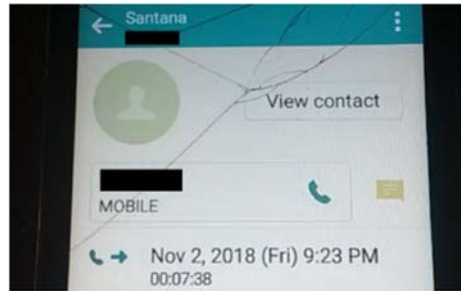
of Patterson's propensity for violence toward her were the very ones who had just set Patterson free. She felt trapped.

30. On November 2-3, 2018, while on this unsupervised weekend pass, Patterson engaged in a pattern of malicious and sadistic abuse toward Mrs. Robinson.

31. At approximately 1:00 pm on November 2, 2018, while they were visiting a pool hall in Eupora, Mississippi, Patterson threw a beer can at Mrs. Robinson and punched her in the face. Later that day, after they had returned to Mrs. Robinson's home, Patterson threatened to burn down her house. Patterson then screamed at her saying, "I hate you, you [expletive] [expletive]." Throughout the evening, Patterson was verbally and physically abusive. He even busted a hole in a wall of Mrs. Robinson's home.

32. At 9:23 p.m. that night, shortly after the enraged Patterson had busted a hole in the wall of her house, Mrs. Robinson frantically called Townsend, a WCSD dispatcher, for help. Mrs. Robinson already had Townsend's cell phone number because they are related. Knowing that Townsend would be at work, Mrs. Robinson felt confident that Townsend would send a deputy to retrieve the out-of-control Patterson. However, instead of sending a deputy to Mrs. Robinson's home to collect the County's violent inmate, Townsend gave the phone to another inmate/trusty who spoke to Patterson. The two trusties talked for approximately seven minutes.

Figure 9 – Exhibit J to Exhibit 1
(Phone Call to Santana Townsend)



33. Aside from Townsend handing the phone to another trusty, none of the Official Defendants⁴ made any attempt whatsoever to assist Mrs. Robinson, even though Patterson was an inmate in their legal and physical custody who should have been retrieved immediately. In fact, after the inmates had finished talking, Townsend failed to keep Mrs. Robinson on the phone. She also failed to dispatch a deputy to aid Mrs. Robinson.

34. After the phone call ended, Patterson became even more enraged. For the next three hours, Patterson's anger grew more intense and insatiable.

35. At approximately 12:30 a.m. on November 3, 2018, Patterson threw Mrs. Robinson on the bathroom floor of her home and punched her repeatedly until she blacked out. Then, Patterson poured "Liquid Fire" drain cleaner, containing sulfuric acid (*i.e.*, the primary component of battery acid), over Mrs. Robinson's nearly naked body,

⁴ The Official Defendants comprise the County, the WCSO, and any Defendant (known or unknown) who was a county employee at the times specified herein.

causing severe corrosive burns to her face, neck, chest, arms, and legs.

Figure 10 – Exhibit K to Exhibit 1
(MSDS for Liquid Fire)

Composition/Information on Ingredients

Ingred Name: SULFURIC ACID (SARA 302/313)
(CERCLA). BP: 535F, 279C. SPEC GRAV:
1.835.

36. After being burned alive, the nearly naked Mrs. Robinson, escaped to the adjacent home of Mr. Johnny Lucas. Patterson chased after her. After she arrived at Mr. Lucas's house, Patterson grabbed Mrs. Robinson by her hair, forced her to return to her house, and tried to throw her into the shower — all while refusing to take her to the hospital. Mrs. Robinson attempted to leave, but Patterson resisted her efforts. However, Mrs. Robinson grabbed her keys and found a way to escape to her car. Before she could drive away, Patterson forcibly jumped into the car and insisted on going with her to the local hospital. Obviously, he wanted to intimidate Mrs. Robinson from detailing to hospital staff what had just transpired.

37. The parties arrived at the North Mississippi Medical Center-Eupora/Webster County Hospital ("NMMC/WCH") at approximately 1:16 a.m. Because the traumatized Mrs. Robinson was being shadowed by her abusive husband, she diffidently stated to the hospital staff that she was "cleaning and slipped and fell in a chemical called 'liquid fire.'" However, the sheer extent of Mrs. Robinson's burns demonstrate that these injuries resulted from far more than a mere slip-and-fall. In fact, her neck damage was so severe, that emergency room

staff had to intubate her.

Figure 11 – Exhibit L to Exhibit 1
(Emergency Room Chart)

Triage Quick, ED	Authored Date: 11/3/2018 1:16:00 AM Authored By: Weeks, Thelma
<u>Triage Documentation:</u>	
<u>Arrival Information:</u>	
• Reason for Visit	Chemical burns to face, torso, and extremities. Reports that she was cleaning and slipped and fell in chemical called “liquid fire.” States “like Drano” within 10 min of arrival to ER
• Language Spoken/Understood	English
• History Source	patient
• Arrived From	home
• Mode of Arrival	private automobile
• Means of Arrival	ambulatory
• Transport	ambulatory
Method	
• Accompanied By	spouse
<u>Results</u>	
<u>Interpretation:</u>	
• Interpretation of Lab Tests	No laboratory abnormalities of acute significance
• Radiology	ET Tube in good position
Results	
Interpretation	

<ul style="list-style-type: none"> • Radiology 	Radiologist
Results Interpreted	
by	
<ul style="list-style-type: none"> • Clinical Course 	<p>Poison control called and stated the liquid fire was similar in nature to Drano but stronger. States to rinse the body with copious amounts of water to flush the chemical off the body and then to apply wet to dry dressings. Patient remained hysterical, uncooperative due to pain. Due to the pain along with the burns to the throat/neck and mouth and concern that airway may be compromised, performed RSI and intubated the patient. Patient intubated successfully after one attempt. Called the JMS Burn Center at Central MS Medical Center in Jackson, MS and discussed with Beretta, PA who accepted the patient for Dr. Lineaweaver. Requested for EMS to obtain a helicopter for the patient and UMMC Flight crew in route. Patient remained stable while awaiting for transfer.</p>

38. Later that morning, Officer David Fonseca of the Eupora Police Department witnessed Patterson at the

hospital. Officer Fonseca wondered why a “state inmate” would be there. Upon seeing Deputy Tanner Pritchard of the WCSD at the hospital, Officer Fonseca asked the deputy if he was there to pick up Patterson. Deputy Pritchard replied that he had no idea that Patterson was there. Officer Fonseca relayed this information to his superior, Corporal Bradley Frost.

39. Coincidentally, while Corporal Frost was on patrol that morning, he was flagged down by Vanessa Watson, a family member of Mrs. Robinson, who alerted him that Patterson had poured chemicals on Mrs. Robinson. Corporal Frost accompanied Ms. Watson to Mrs. Robinson’s home and observed the burn spots on the bathroom floor, recording the same on his body cam. Later that day, Ms. Watson called Corporal Frost wanting to press charges; however, she never came to the station to sign the paperwork. Nevertheless, Corporal Frost did open an investigation into this aggravated assault.

Figure 12 – Exhibit M to Exhibit 1
(Offense Report)

On Saturday, November 3, 2018 during morning briefing Officer David Fonseca told me he saw Daren Patterson at the Webster County Hospital while doing a walk through. Officer Fonseca told me he recognized Daren as a state inmate and was wondering why he was at the Hospital. Officer Fonseca told me he saw Deputy Tanner Pritchard at the hospital and asked him if he was there to pick up Daren (aka Pap). Officer Fonseca said Deputy Pritchard said he did not know Daren was up there and that he was not there to get

him. Officer Fonseca said that Daren had burns on his hands and that his girlfriend Felicia Robinson had got burned really badly as well.

While on patrol, I Corporal Bradley Frost was flagged down by Felicia Robinson's family member Vanessa Watson who asked me to do a stand by for her at Felicia's house to look for some medicine and stated that she was scared Daren was over there. Vanessa stated that she thought Daren poured some chemicals on Felicia Robinson and she was air lifted to the burn center in Jackson. While at Felicia's house I noticed burn spots in the bathroom which is where Vanessa stated it happened. Vanessa called the Police Department later in the day after the stand by and stated she wanted an investigation started on Daren Patterson because he is trying to kill Felicia and something needs to be done.

I told Vanessa I would be happy to do a report and that I needed someone who was there to come to the Police Department and give a statement and I would get it started. No one showed up. I have bodycam footage of the standby call to Felicia's house.

40. After being stabilized by emergency room staff, Mrs. Robinson was airlifted that morning to the Merit Health Central burn treatment center in Brandon, Mississippi. There, Mrs. Robinson endured multiple

painful skin grafts over several weeks of hospitalization. She was discharged from the burn center on November 27, 2018. However, she has continued to receive burn grafts.

41. According to her November 27, 2018, medical report, Mrs. Robinson suffered no less than sixteen (16) second- and third-degree burns to her face, neck, chest, bilateral upper extremities, and bilateral lower extremities.

Figure 13 – Exhibit N to Exhibit 1
(Wound Assessment)

1. Rt face measures 14cmX13.2cm, pink with some necrotic tissue present, small amount of yellow drainage present.
2. Left side of face measures 2.5cmX3.4cm, pink, no drainage.
3. Neck measurements 12cmX13cm pink with necrotic tissue, yellow drainage.
4. Chest measurements 21cmX21cm , pink with some necrotic tissue, multiple graft sites, no drainage.
5. Right shoulder measurements 12cmX5cm pink graft site.
6. LUA non removable dressing.
7. LFA measures 24cmX6cm multiple scabbed areas.
8. RFA measures 14cmX7cm graft site, pink with eschar.
9. RUA measures 11.1cmX3cm area with 2 wounds scabbed.
10. Right hand measures 4.5cmX5cm

scabbed.

11. Right side abdomen measures 6cmX0.5cm scabbed
12. Right upper back measures 21cmX19cm pink graft donor sites
13. lower back measures 9.5cmX10 cm area with 3 scabbed wounds
14. Left posterior flank measures 1.8cmX3cm scabbed.
15. Left leg measures 76.5X26cm area with multiple burn wounds and two donor sites to lateral thigh, donor sites are pink, burn wounds are pink and scabbed.
16. Right leg measures 68cmX25cm area with multiple burn wounds that are pink/scabbed, 3 donor sites to lateral thigh and a graft below the anterior knee that has some eschar.

42. Mrs. Robinson has suffered other damages. She has suffered permanent disfigurement. She endured painful neck surgery on January 7, 2019, to repair trauma resulting from the altercation. In May 2019, she had surgery to repair her mouth. As of today, she has had at least nine (9) surgeries and/or skin grafts. Moreover, she has received speech therapy, occupational therapy, and physical therapy due to the sadistic abuse she suffered on November 2-3, 2018. To date, her health care providers have performed services valued at more than \$878,000.00.⁵ This figure is still climbing.

⁵ See Exhibit “3” –Redacted CMS conditional payment letter, incorporated herein by reference and made a part hereto. Mrs. Robinson received this letter from CMS several weeks after she had

Figure 14 – Exhibit O to Exhibit 1
(CMS Conditional Payment Letter)

Sum of Total Charges	\$878,956.61
Total Reimbursed Amount	\$134,837.22
Total Conditional Payments	\$133,588.38

43. In addition to experiencing severe burns and permanent disfigurement, Mrs. Robinson has incurred excruciating pain and psychological impairments as a result of this trauma. Having a prior history with depression and anxiety, the severe trauma has exacerbated her already fragile mental state. She receives counseling at Community Counseling Services in Eupora, Mississippi. She also incurred property damage as a result of Patterson’s violent behavior (*i.e.*, damage to her house).

44. On May 21, 2019, Patterson was indicted for aggravated assault and kidnapping by the Grand Jury of Webster County.⁶

Figure 15 – Exhibit 4
(Indictment of Daren Patterson – 2019)

COUNT I: DAREN PATTERSON
a/k/a “PAP”

On or about November 2, 2018, in Webster County, Mississippi, and within the jurisdiction of this Court, did willfully, unlawfully, feloniously and purposely or

served her Notice of Claim upon the Defendants.

⁶ See Exhibit “4” – Indictment of Daren Patterson, incorporated herein by reference and made a part hereto.

knowingly cause serious bodily injury to Felicia Robinson or did recklessly cause serious bodily injury under circumstances manifesting extreme indifference to the value of human life, in violation of Mississippi Code Section 97-3-7(2)(a)(i), as amended, constituting a common plan or scheme or related series of acts or transactions, and against the peace and dignity of the State of Mississippi, and that;

**COUNT II: DAREN PATTERSON
a/k/a “PAP”**

On or about November 2, 2018, in Webster County, Mississippi, and within the jurisdiction of this Court, did willfully, unlawfully, feloniously and without lawful authority and with or without intent to secretly confine, forcibly seize and confine, or inveigle or kidnap Felicia Robinson, a human being, with the intent to cause the said Felicia Robinson to be confined or imprisoned against her will, in violation of Section 97-3-53 of the Mississippi Code of 1972, as amended, constituting a common plan or scheme or related series of acts or transactions, and against the peace and dignity of the State of Mississippi.

45. In summary, the Official Defendants had actual notice that Patterson had assaulted Officer Henderson and that he had tried to kill Mrs. Robinson. As such, the Official Defendants knew that Patterson was a specific

and credible threat to the health and safety of the general public and, after September 1, 2018, to the health and safety of Mrs. Robinson in particular. Nevertheless, the Official Defendants recklessly disregarded these risks by allowing their inmate, Patterson, to roam free on multiple occasions.

46. Moreover, the Official Defendants, being fully cognizant of the risks to Mrs. Robinson in particular, acted with reckless disregard for her health and safety and with deliberate indifference to her constitutional rights when they allowed their inmate, Patterson, to roam free for a second weekend furlough on November 2, 2018. Even worse, after Mrs. Robinson had called the Official Defendants for help that night while Patterson was in the very act of terrorizing her, they did not even bother to retrieve their inmate. Instead, with reckless disregard for her health and safety and with deliberate indifference to her constitutional rights, the Official Defendants allowed Mrs. Robinson's life to remain in peril. These acts and omissions shock the conscience.

47. As a result, Mrs. Robinson has incurred severe, permanent, and extensive scarring over most of her body, as well as other severe physical and psychological impediments, the full extent of which may never fully be realized. She also has had her constitutional rights violated by persons acting under color of law.

MISSISSIPPI COMMON LAW CAUSES OF ACTION

Counts I. & II.

Assault and Battery (as to Patterson only)

48. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

49. “An assault occurs where a person (1) acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (2) the other is thereby put in such imminent apprehension. A battery goes one step beyond an assault in that a harmful contact actually occurs.” Whitten v. Cox, 799 So.2d 1 (Miss., 2000) (citations omitted).

50. In September 2018, Patterson battered Mrs. Robinson and then chased her with an automobile (*i.e.*, Count I). In November 2018, Patterson beat Mrs. Robinson and then poured sulfuric acid on her virtually naked body (*i.e.*, Count II).

51. The malicious acts of Patterson as described herein intended to cause a harmful or offensive contact with Mrs. Robinson, who in turn was placed in such imminent apprehension thereby. Moreover, Patterson caused this harmful contact to occur on these two occasions, as described herein.

52. As a direct and proximate result of Patterson’s assaults and batteries of Mrs. Robinson, as described herein, Mrs. Robinson has suffered immense and permanent physical and emotional damage.

Count III.

False Imprisonment (as to Patterson only)

53. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

54. The elements of a false imprisonment claim are “(1) detention of the plaintiff and (2) unlawfulness of that detention.” Richard v. Supervalu Inc., 974 So. 2d 944, 949 (Miss. App., 2008).

55. Patterson detained Mrs. Robinson unlawfully on November 2-3, 2018, when he performed the acts described herein.

56. As a direct and proximate result of this false imprisonment, Mrs. Robinson suffered immense and permanent physical and psychological damage.

Counts IV. & V.

Intentional Infliction of Emotional Distress (as to Patterson only)

57. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

58. Patterson inflicted severe emotional distress on Mrs. Robinson in September 2018 when he ran after her with a vehicle (*i.e.*, Count IV) and when he falsely imprisoned, beat, and subsequently burned her in November 2018 (*i.e.*, Count V).

59. Patterson's acts as described herein were without justification or reason. These acts evoked outrage or revulsion in a civilized society, shocking the conscience. These acts were directed at or intended to cause harm to Mrs. Robinson, who, in turn, suffered emotional distress that was foreseeable as a result of this intentional act. Cf. Pierce v. Cook, 992 So.2d 612 (Miss., 2008).

60. As a direct and proximate result of this intentional infliction of emotional distress, Mrs. Robinson suffered immense psychological damage.

Counts VI. & VII.

Failure to Supervise Inmate (MTCA)
(as to the County, WCSD, and Sheriff Mitchell and
Townsend in their representative capacities)

61. The preceding paragraphs are incorporated herein

by reference as if fully copied in words and figures.

62. Mrs. Robinson was engaged in no criminal behavior at any material time.

63. At all material times, Sheriff Mitchell and Townsend were acting in the course and scope of their duties. Therefore, *respondeat superior* applies to this count, making the County and WCSD liable for their negligent acts or omissions.

64. At all material times, Patterson was a ward of the County due to his detention at the Webster County Jail.

65. Like parents do with their wards (*i.e.*, their children), the County and the WCSD have the duty to supervise their wards (*i.e.*, their inmates). The County and the WCSD's duty to supervise inmates is ministerial and non-discretionary.

66. At all material times, the Official Defendants knew of Patterson's propensity to harm Mrs. Robinson and others. However, with reckless disregard for the safety and health of Mrs. Robinson and the other, the Official Defendants failed to act as reasonably prudent custodians/jailers by:

Count VI – Permitting Patterson to have an unsupervised weekend jail furlough in September 2018 even though they knew he had caused bodily injury to Officer Henderson in May 2018, only three months earlier; and by

Count VII – (a) Permitting Patterson to have an unsupervised weekend jail furlough in November 2018 even though they knew that Patterson had caused bodily injury to

Officer Henderson in May 2018 and that he had tried to kill Mrs. Robinson in September 2018 during his prior weekend jail furlough; and by (b) permitting Patterson to remain on unsupervised jail furlough in November 2018 even though Mrs. Robinson had called Townsend for help while Townsend was on duty as a WCSD dispatcher;

Cf. Stephens v. Miller, 970 So.2d 225, 227 (Miss. App., 2007).

67. As a direct and proximate result of the Official Defendants' failure to supervise Patterson, as described herein, Mrs. Robinson suffered incalculable damage to her physical body and to her psychological and emotional wellbeing. She also suffered property damage to her house.

Count VIII.

Gross Negligence (MTCA)

(as to the County, the WCSD, and Townsend in her representative capacity)

68. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

69. On November 2-3, 2018, Townsend was at work at the Webster County Jail. Because she was at work within the time and place of her employment, she is presumed to have acted in the course and scope of her employment. See Miss. Code Ann. § 11-46-5 (3) ("For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.")

Therefore, *respondeat superior* applies to this count.

70. Townsend had a non-discretionary, ministerial duty to comply with the requirements set forth by the Mississippi Board of Emergency Telecommunicators Standards and Training and/or other standards established for emergency telecommunicators such as she. Specifically, Townsend had a duty to remain on the phone with Mrs. Robinson and/or to dispatch law enforcement officers to Mrs. Robinson's residence. She did neither, thereby breaching her duties. Townsend acted with reckless disregard for the health and safety of Mrs. Robinson when she handed the phone to an inmate instead of staying on the line or dispatching a deputy to Mrs. Robinson's house.

71. As the direct and proximate result of Townsend's gross and reckless breach of her duties as an emergency telecommunicator, which is imputed to the County and the WCSD by virtue of the MTCA, Patterson was permitted to wreak havoc upon the person and property of Mrs. Robinson, thereby causing her to suffer incalculable damage to her physical body and to her psychological and emotional wellbeing.

Counts IX. & X.

Negligent Infliction of Emotional Distress (MTCA)
(as to Webster County, the WCSD, and Sheriff Mitchell
and Townsend in their representative capacities)

72. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

73. The Official Defendants were grossly negligent by failing to supervise Patterson on September 1, 2018 and on November 2-3, 2018, and by ignoring Mrs. Robinson's call for help on November 2, 2018.

74. The Official Defendants' grossly negligent conduct was a substantial factor in causing Mrs. Robinson's emotional distress on both these occasions.

75. It was foreseeable that the Official Defendants' conduct would cause Mrs. Robinson emotional distress on both these occasions.

76. The Official Defendants behaved recklessly in September 2018 when they released Patterson after he had been incarcerated for causing bodily harm to a police officer. The Official Defendants behaved even more recklessly in November 2018 when they released Patterson after he had tried to kill Mrs. Robinson.

77. Mrs. Robinson suffered physical injury and mental anxiety due to being hit in the face and being chased with a car by Patterson on September 1, 2018 (*i.e.*, Count IX). She suffered physical injury and mental stress due to being severely abused and burned by Patterson on November 2-3, 2018 (*i.e.*, Count X).

78. Mrs. Robinson has demonstrated a physical manifestation of injury or demonstrable harm, whether it be physical or mental, that was reasonably foreseeable to the Official Defendants. Cf. American Bankers' Ins. Co. of Florida v. Wells, 819 So.2d 1196, 1208 (Miss., 2001). Furthermore, she has demonstrated that the Official Defendants' behavior was wanton, grossly careless, indifferent, or reckless. Cf. id. Therefore, the Official Defendants negligently inflicted emotional distress upon her. Cf. id.

79. As a direct and proximate result of the Official Defendants' negligent infliction of emotional distress, Mrs. Robinson has suffered incalculable damage to her psychological and emotional wellbeing.

FEDERAL LAW CAUSES OF ACTION

Additional Background Information Re: Custom or Usage

80. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

81. Pursuant to § 1983, the County and WCSD are responsible for any unconstitutional action that implemented or executed a policy statement, ordinance, regulation, or decision officially adopted and promulgated by WCSD's officers. See Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 690 (1978). Likewise, the County is responsible for any unconstitutional action that implemented or executed a custom or usage of the County even though said custom or usage may not have received formal approval by the County's official decision-making channels. See id. at 691.

82. "Municipal liability under 42 U.S.C. § 1983 requires proof of 1) a policymaker; 2) an official policy; 3) and a violation of constitutional rights whose moving force is the policy or custom." Rayborn v. Bossier Parish Sch. Bd., 881 F.3d 409, 416-17 (5th Cir., 2018) (internal citations and quotation marks omitted). "[T]he unconstitutional conduct must be directly attributable to the municipality through some sort of official action or imprimatur; isolated unconstitutional actions by municipal employees will almost never trigger liability." Rivera v. Houston Indep. Sch. Dist., 349 F.3d 244, 247 (5th Cir., 2003) (internal citations and quotations omitted).

83. At all material times, Sheriff Mitchell acted under color of law as the "final policymaker[] with respect to all law enforcement decisions" within the County. See Brooks v. George Cnty., 84 F.3d 157, 165 (5th Cir., 1996).

Thus, Sheriff Mitchell had the authority to adopt, promulgate, and ratify policy statements, ordinances, regulations, decisions, customs, or usages for implementation by WCSD employees and inmates. Likewise, Townsend and Patterson acted under color of law whenever they followed the policy statements, ordinances, regulations, decisions, customs, or usages that were adopted, promulgated, or ratified by Sheriff Mitchell.

84. On January 14, 2019, the Webster County Grand Jury issued multiple indictments against Sheriff Mitchell and Townsend for official corruption. Sheriff Mitchell pleaded guilty to some of these charges on June 12, 2019, prompting his immediate resignation. Although the criminal acts specified in the Mitchell/Townsend indictments may have no direct bearing upon Mrs. Robinson's damages, these crimes nevertheless point to an utter lack of institutional control at the WCSD during Sheriff Mitchell's tenure.

85. Sheriff Mitchell adopted, promulgated, or ratified one or more policy statements, ordinances, regulations, decisions, customs, or usages that gave Patterson multiple, unsupervised jail furloughs even though Sheriff Mitchell knew that Patterson was a threat to the public in general and, after September 1, 2018, to Mrs. Robinson in particular. These policy statements, ordinances, regulations, decisions, customs, or usages flowed from the lack of institutional control at the WCSD as evidenced by the Mitchell/Townsend indictments. Moreover, these policy statements, ordinances, regulations, decisions, customs, or usages were the moving forces behind the constitutional violations referenced herein.

86. As such, the unconstitutional conduct referenced

herein bears the imprimatur of Sheriff Mitchell's official approval or acquiescence. Therefore, such conduct is not "isolated" for the purposes of imputing municipal liability. Cf. Rivera, 349 F.3d at 247. Accordingly, the County is liable to Mrs. Robinson for these constitutional violations pursuant to Monell. Cf. id.

Counts XI. & XII.
Violations of Fourth, Eighth, and Fourteenth
Amendments (§ 1983)
(as to Patterson only)

87. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

88. Pursuant to the aforesaid policy statements, ordinances, regulations, decisions, customs, or usages that gave Patterson multiple, unsupervised jail furloughs, the Official Defendants provided "significant encouragement, either overt or covert" to Patterson by (1) releasing him from jail without bond on weekend passes and by (2) failing to retrieve him after Mrs. Robinson had called the Official Defendants for help. Cf. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Assn., 531 U.S. 288, 296 (2001). Likewise, Patterson operated as a "willful participant in joint activity with the State or its agents" (1) when he left the Webster County Jail with the express permission of Sheriff Mitchell, who had actual knowledge of his penchant for harming Mrs. Robinson and (2) by virtue of him serving as a trusty, which made him a quasi-employee of the County. Cf. id. Moreover, as an inmate/trusty who was in the legal and physical custody of the County, Patterson was at all material times "controlled by an agency of the State." Cf. id. Furthermore, Townsend's decision to seek assistance from another inmate or trusty after Mrs. Robinson had

called for help—instead of staying on the phone with Mrs. Robinson and dispatching a deputy to her house—further indicates how inmates or trustees such as Patterson were entwined with the execution of governmental policy. Cf. id.

89. As the result of this pervasive entwinement between inmates or trustees such as Patterson and the Official Defendants who supervised them, Patterson was a “state actor” for § 1983 purposes. Cf. id.

90. As a state actor, Patterson operated under color of law when he abused, terrorized, attempted to kill, and permanently disfigured Mrs. Robinson on September 1, 2018, (*i.e.*, Count XI) and November 2-3, 2018 (*i.e.*, Count XII). Cf. id. at 295 at n.2. (“If a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, the conduct also constitutes action ‘under color of state law’ for § 1983 purposes.”) In the process, Patterson violated the following constitutional rights of Mrs. Robinson:

- a. Fourth Amendment. Pursuant to the Fourth Amendment, which is incorporated to the States via the Fourteenth Amendment, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” Therefore, as a state actor, Patterson had the duty to refrain from (1) seizing (or attempting to seize) Mrs. Robinson’s person, (2) prohibiting her from leaving her own home, and (3) abusing her.
- b. Eighth Amendment. Pursuant to the Eighth Amendment, which is also incorporated to the

States via the Fourteenth Amendment, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Therefore, as a state actor, Patterson had the duty to refrain from beating Mrs. Robinson senseless and dousing her nearly naked body with sulfuric acid.

- c. Fourteenth Amendment. The Due Process Clause of the Fourteenth Amendment provides that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.” As such, Mrs. Robinson had a substantive due process right to be free from state-occasioned bodily harm. Therefore, as a state actor, Patterson had the duty to refrain from causing (or attempting to cause) bodily harm to Mrs. Robinson or restraining (or attempting to restrain) her liberty without due process of law.

91. Notwithstanding these constitutional duties, Patterson violated each of them while acting under color of law. Accordingly, he is liable to Mrs. Robinson pursuant to § 1983.

92. As a direct and proximate result of Patterson’s violation of Mrs. Robinson’s constitutional rights on September 1, 2018 (*i.e.*, Count XI), and November 2-3, 2018 (*i.e.*, Count XII), as described herein, Mrs. Robinson has suffered incalculable damage to her physical body and psychological and emotional wellbeing. She also incurred damage to her home and other property, the extent and amount of which will be adduced at trial.

Counts XIII. & XIV.Monell Claims for Patterson's § 1983 Violations
(as to Webster County and the WCSD)

93. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

94. When Sheriff Mitchell released Patterson from jail on September 1, 2018, for a weekend furlough, even though Patterson had assaulted Officer Henderson only a few months earlier, Sheriff Mitchell adopted, promulgated, or ratified one or more policy statements, ordinances, regulations, decisions, customs, or usages (a) giving inmates or trustees exceptionally broad latitude to do almost as they pleased and/or (b) giving Patterson multiple jail furloughs. Likewise, by releasing Patterson from jail on November 2, 2018, for another weekend pass, even though Patterson had tried to kill Mrs. Robinson during the previous weekend furlough in September 2018, Sheriff Mitchell advanced these policy statements, ordinances, regulations, decisions, customs, or usages even further.

95. As such, Sheriff Mitchell – *i.e.*, the chief policymaker for the County, see Brooks, 84 F.3d at 165 – adopted, promulgated, or ratified one or more policy statements, ordinances, regulations, decisions, customs, or usages that effectively gave Patterson carte blanche to do as he pleased during his weekend furloughs from jail.

96. Pursuant to these policy statements, ordinances, regulations, decisions, customs, or usages, Townsend declined to send a deputy to halt Patterson's furlough on November 2, 2018, even though she knew that Patterson was acting violently toward Mrs. Robinson. Instead, while acting pursuant to these policy statements, ordinances,

regulations, decisions, customs, or usages, which were the moving forces for her decision, Townsend merely directed another inmate to talk to Patterson. In turn, she ratified Patterson's violent behavior, giving him the tacit go-ahead to continue abusing Mrs. Robinson.

97. Therefore, the County and the WCSD are liable for Patterson's acts pursuant to Monell because the aforesaid policy statements, ordinances, regulations, decisions, customs, or usages of allowing Patterson to have multiple weekend furloughs – and to do as pleased while he was on these weekend furloughs – were the moving forces behind Patterson's sadistic abuse of Mrs. Robinson.

98. Mrs. Robinson has suffered permanent physical and psychological damage as the direct and proximate result of these violations of her constitutional rights, privileges, and immunities pursuant to the Fourth, Eighth, and Fourteenth Amendments. Therefore, Mrs. Robinson seeks redress from the County and the WCSD under § 1983.

Count XV.
Third Party Liability Due to Special Relationship
(§ 1983)⁷
(as to the Official Defendants)

99. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

100. If the Court denies the Plaintiff's Monell claims referenced above, then Mrs. Robinson pleads in the alternative that the County, WCSD, and Sheriff Mitchell

⁷ Much of the legal argument contained in the next two counts is taken word-for-word from Keller v. Attala Cnty., Civil Action No.: 1:16-Cv-136-SA-DAS, at *6-7 (N.D. Miss., 2018).

and Townsend (in their respective individual capacities) were in a special relationship with Mrs. Robinson and therefore had a constitutional obligation to protect her from their inmate, Patterson.

101. The Due Process Clause of the Fourteenth Amendment provides that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.”

102. While individuals have a substantive due process right to be free from state-occasioned bodily harm, state officials do not, as a general matter, have a constitutional duty of care to protect individuals from injuries caused by themselves or others. See DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs., 489 U.S. 189, 196-97 (1989) (“As a general matter, then, we conclude that a State’s failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.”). However, the Supreme Court has noted that this categorical rule is subject to at least one limited exception: A state may create a “special relationship” with a particular citizen, requiring the state to protect him from harm, “when the State takes a person into its custody and holds him there against his will.” Id. at 199-200. This “special relationship” arises when a person is involuntarily confined or otherwise restrained against his will pursuant to a governmental order or by the affirmative exercise of state power. Walton v. Alexander, 44 F.3d 1297, 1299 (5th Cir., 1995). The Supreme Court recognized that this special relationship exists when the state takes custody of a prisoner, Estelle v. Gamble, 429 U.S. 97, 103-04 (1976), or involuntarily commits someone to an institution. Youngberg v. Romeo, 457 U.S. 307, 315-16 (1982). The Fifth Circuit has extended the exception to

children in foster care, as well. Griffith v. Johnston, 899 F.2d 1427, 1439 (5th Cir., 1990).

103. By releasing Patterson from jail for a weekend furlough, even though he knew that Patterson had been violent toward Mrs. Robinson during the previous weekend furlough, Sheriff Mitchell – via a governmental order or the affirmative exercise of state power – adopted, promulgated, or ratified one or more policy statements, ordinances, regulations, decisions, customs, or usages that gave Patterson free reign while on his weekend jail furloughs. Acting pursuant to these policy statements, ordinances, regulations, decisions, customs, or usages, Townsend declined to send a deputy to interrupt Patterson’s weekend furlough even though Mrs. Robinson was in grave peril. Instead, by way of an affirmative exercise of state power, Townsend directed another inmate or trusty to speak to Patterson. Thus, Townsend doomed Mrs. Robinson to further confinement by Patterson and to the life-altering abuse that would continue to befall her.

104. Restated, the Official Defendants, acting in deference to the interests of their inmate/trusty (*i.e.*, Patterson), effectively took Mrs. Robinson’s liberty under terms that provided no realistic means of escape while giving her no means of providing for her own care or safety. Even when she got in the car to race to the hospital after being burned, Mrs. Robinson was involuntarily escorted by Patterson who spied on her in the hospital. This occurred due to the Official Defendants’ deliberate indifference and/or outrageous conduct. Therefore, Mrs. Robinson was, at all material times, in a special relationship with the Official Defendants, obligating them to protect her. Despite this, the Official Defendants failed

to protect Mrs. Robinson—even when they were put on direct notice of Patterson’s violent behavior while the same was being directed to her specifically.

105. Mrs. Robinson has suffered permanent physical and psychological damage as the direct and proximate result of these violations of her constitutional rights, privileges, and immunities pursuant to the Fourth, Eighth, and Fourteenth Amendment. Likewise, she also suffered property damage. Therefore, Mrs. Robinson seeks redress under § 1983 for the violations of her constitutional rights, privileges, and immunities by the Official Defendants while they acted under color of law.

Count XVI.

Third Party Liability Due to State Created Danger (§
1983)⁸
(as to the Official Defendants)

106. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

107. Likewise, if the Court denies the Plaintiff’s Monell claims referenced above, then Mrs. Robinson also pleads in the alternative that the County, WCSD, and Sheriff Mitchell and Townsend (in their respective individual capacities) created the danger that she faced.

108. Courts of Appeals from various circuits have extended the special relationship exception to situations

⁸ Plaintiff acknowledges that this cause of action is not currently recognized by the Court of Appeals for the Fifth Circuit. However, Plaintiff believes this fact pattern should be persuasive enough for the Court of Appeals to adopt this cause of action. Therefore, pursuant to Rule 11 of the Federal Rules of Civil Procedure, the undersigned counsel is presenting this legal theory in good faith, believing that this is a nonfrivolous argument for creating new law.

where the state created the danger. Although the Fifth Circuit has not adopted this theory, it has stated on numerous occasions the elements that such a cause of action would require if it were to recognize such a theory, *to-wit*: A plaintiff must show [1] the defendants used their authority to create a dangerous environment for the plaintiff and [2] that the defendants acted with deliberate indifference to the plight of the plaintiff.” See Doe v. Covington Cnty. Sch. Dist., 675 F.3d 849, 865 (5th Cir., 2012) (*en banc*). The Covington Court further states:

To establish deliberate indifference for purposes of state-created danger, the plaintiff must show that “[t]he environment created by the state actors must be dangerous; they must know it is dangerous; and ... they must have used their authority to create an opportunity that would not otherwise have existed for the third party's crime to occur.” Piotrowski v. City of Houston, 237 F.3d 567, 585 (5th Cir., 2001) (citation and internal quotation marks omitted); see also [McClendon v. City of Columbia], 305 F.3d 314, 326 n. 8 (5th Cir., 2002)] (“To act with deliberate indifference, a state actor must know of and disregard an excessive risk to the victim's health or safety.”) (internal quotation marks and alterations omitted). Critically, this court has explained that the “state-created danger theory is inapposite without a known victim.” [Rios v. City of Del Rio], 444 F.3d 417, 424 (5th Cir., 2006)] (citation and internal quotation marks omitted); see also

Lester v. City of Coll. Station, 103 Fed.Appx. 814, 815–16 (5th Cir., 2004) (“[E]ven if it is assumed that the state-created-danger theory applies, liability exists only if the state actor is aware of *an immediate danger facing a known victim.*”) (citing Saenz v. Heldenfels Bros., Inc., 183 F.3d 389, 392 (5th Cir., 1999)) (emphasis added).

Id.

109. Sheriff Mitchell had possessed actual knowledge that Patterson was a specific and credible threat to Mrs. Robinson’s health and safety even before he authorized Patterson’s release on or about November 2, 2018. In addition, Townsend had been telephoned about Patterson’s violent behavior toward Mrs. Robinson less than three hours before he poured sulfuric acid over Mrs. Robinson’s nearly naked body. Thus, Sheriff Mitchell and/or Townsend were aware of an immediate danger facing a known victim, *i.e.*, Mrs. Robinson.

110. Both Sheriff Mitchell and Townsend – and by extension, the County and the WCSD – had actual knowledge of the excessive risk to Mrs. Robinson’s health or safety. Nevertheless, they disregarded this risk to further one or more policy statements, ordinances, regulations, decisions, customs, or usages that allowed Patterson to have prodigious latitude while on weekend furloughs from jail. As such, the Official Defendants used their authority to create a dangerous environment for the Plaintiff, and they acted with deliberate indifference to her plight by turning a deaf ear to her cries for help. See id.

111. Restated, the Official Defendants recklessly created and then intentionally perpetuated the danger that caused Mrs. Robinson's constitutional violations even after they had learned that she was in immediate danger. This shocks the conscience.

112. Mrs. Robinson has suffered permanent physical and psychological damage as the direct and proximate result of the Official Defendants' decisions (a) to release Patterson from jail on an unsupervised weekend furlough and (b) to permit him to terrorize and disfigure her, all in violation of her constitutional rights, privileges, and immunities pursuant to the Fourth, Eighth, and Fourteenth Amendments. She has also suffered property damage. Therefore, Mrs. Robinson seeks redress under § 1983 for these violations of her constitutional rights, privileges, and immunities by the Official Defendants while they acted under color of law.

Count XVII.

Monell Claim for Failure to Train and/or Supervise
Employees or Inmates
(as to the County, WCSD, and Sheriff Mitchell in its
individual capacity)

113. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

114. The County, WCSD, and Sheriff Mitchell (in his individual capacity) failed to provide adequate and competent training or supervision to Townsend and/or to the John Doe Defendants referenced herein. Likewise, the County, WCSD, and Sheriff Mitchell failed to provide adequate and competent supervision to Patterson.

115. The County, WCSD, and Sheriff Mitchell were tasked with the non-delegable duty to formulate, oversee,

and implement official policies, procedures, practices, and customs that were to be carried out by County/WCSD employees and inmates in accordance with state and federal law. To that end, the County, WCSD, and Sheriff Mitchell needed to hire competent employees, train them to follow these policies, and supervise them accordingly. Likewise, the County, WCSD, and Sheriff Mitchell needed to supervise inmates like Patterson.

116. The training, hiring, or supervision procedures of the County, WCSD, and Sheriff Mitchell – the County’s chief law enforcement policy maker – were grossly inadequate. Sheriff Mitchell was deliberately indifferent in adopting a training, hiring, or supervision policy. Moreover, the inadequate training, hiring, or supervision policy directly caused the plaintiff’s injuries, as described herein. Cf. Benavides v. Cnty. of Wilson, 955 F.2d 968, 972 (5th Cir., 1992).

117. Restated, Sheriff Mitchell failed to train Townsend as to the proper procedures for assisting a victim seeking help with a belligerent inmate or trusty who was out on furlough. Upon information and belief, Sheriff Mitchell provided no training whatsoever to Townsend in this regard. Likewise, Sheriff Mitchell failed to supervise Townsend in the proper handling of calls from victims who were being terrorized by inmates or trustees on furlough. Moreover, he also failed to supervise Patterson. A causal connection exists between this lack of training or supervision and the violation of Mrs. Robinson’s rights. In fact, because the need for more or different training or supervision was so obvious, and the inadequacy so likely to result in violations of constitutional rights, this failure to train or supervise constituted deliberate indifference to Mrs. Robinson’s

constitutional rights. Cf. Peña v. City of Rio Grande City, 879 F.3d 613, 623 (5th Cir., 2018) (citing City of Canton v. Harris, 489 U.S. 378, 390 at n.10 (1989)); Benavides, 955 F.2d at 972.

118. As a direct and proximate result of the failure of the County, WCSD, and Sheriff Mitchell to develop, implement, and otherwise devise a proper policy of adequate employee training and supervision, the Plaintiff was deprived of certain constitutional rights, privileges, and immunities guaranteed by the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

119. Had such policies been implemented, the deprivations of civil rights as described herein would not have occurred because every employee of the aforesaid Defendants would have been trained in the proper procedures relating to the constitutional rights of persons similarly situated to the Plaintiff. They would have been supervised accordingly. Likewise, Patterson would have been supervised as well. Therefore, pursuant to § 1983, the County, WCSD, and Sheriff Mitchell are liable for the deprivation of the Plaintiff's civil rights as described herein, and by extension, for the damages occasioned thereby due to their failure to provide adequate training and/or supervision to Townsend, the John Doe Defendants, and/or Patterson.

Count XVIII.

Miscellaneous Relief

(As Webster County and WCSD only)

120. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

121. Plaintiff seeks entry of an order that would enjoin

the County and the WCSD from adopting, promulgating, ratifying, or implementing any policy statement, ordinance, regulation, decision, custom, or usage that would permit inmates or pretrial detainees to be released from jail for weekend passes without direct and continuous supervision unless a policy approved by this Court is put into place.

122. In addition, Plaintiff seeks entry of an order that would require the County and the WCSD to (a) provide adequate supervision to all employees and inmates to promote compliance with the Court's orders, and to (b) report to the Court on a periodic basis to ensure compliance.

123. Plaintiff also seeks an order requiring the County to indemnify Sheriff Mitchell, Townsend, and John Does 1-30 for any and all actions or omissions that occurred during the course and scope of their employment or while they acted under color of law in adherence to a policy statement, ordinance, regulation, decision, custom, or usage of the County as adopted, promulgated, or ratified by Sheriff Mitchell.

124. Finally, Plaintiff seeks an order declaring that each incident of negligence (*i.e.*, September 1, 2018, and November 2-3, 2018) be treated as a separate occurrence for the purposes of MTCA damage caps.

DAMAGES

125. The preceding paragraphs are incorporated herein by reference as if fully copied in words and figures.

126. As a direct and proximate result of the causes of action so referenced above, Mrs. Robinson has incurred severe, permanent, and extensive scarring over most of

her body, as well as other severe physical and psychological damages, the full extent of which may never fully be realized. Moreover, as a direct and proximate result of the causes of actions so referenced hitherto, Mrs. Robinson has had her constitutional rights violated by persons acting under color of law. Mrs. Robinson has incurred and/or will continue to incur pecuniary damages (such as medical charges as well as damages to her property), and non-pecuniary damages (such as severe pain and suffering, severe permanent disfigurement, severe emotional harm, etc.). She also seeks nominal damages, punitive damages (where applicable), prejudgment interest, post-judgment interest, court costs, and attorney's fees pursuant to § 1988.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays for Judgment against all Defendants, both known and unknown, jointly and severally, for:

1. Nominal damages in the amount of One (\$1) Dollar, plus
2. Compensatory damages in an amount greater than or equal to Thirty Million (\$30,000,000.00) Dollars; plus
3. Punitive damages against Sheriff Mitchell, Santana Townsend, Daren Patterson, and John Does 1-30 for claims filed against them in their individual capacities in amounts to be determined by the Court; plus
4. Reasonable attorney's fees pursuant to 42 U.S.C. § 1988; plus
5. All prejudgment and post-judgment interest; plus

6. All costs of this matter.

FURTHERMORE, The Plaintiff prays for:

1. An order declaring that the incidents of negligence (*i.e.*, September 1, 2018, and November 2-3, 2018) be treated as separate occurrences for the purposes of computing damages caps under the Mississippi Tort Claims Act; plus

2. An order requiring Webster County, Mississippi to indemnify former Sheriff Tim Mitchell, former dispatcher Santana Townsend, and John Does 1-30 for any and all actions or omissions that occurred during the course and scope of their employment or while they acted under color of law in accordance with a policy statement, ordinance, regulation, decision, custom, or usage of the County as adopted, promulgated, or ratified by Sheriff Mitchell; plus

3. An order requiring Webster County, Mississippi and the Webster County Sheriff's Department to:

a. Refrain from adopting, promulgating, ratifying, or implementing any policy statement, ordinance, regulation, decision, custom, or usage that would permit inmates or pretrial detainees to be released from jail for weekend passes without direct and continuous supervision unless a policy approved by this Court is put into place and followed;

b. Provide adequate supervision to all employees and inmates to promote compliance with the Court's orders; and

c. Report to the Court on a periodic basis to ensure compliance; plus

4. All general relief, whether legal or equitable, that this Court may deem meet and proper in the premises.

The Plaintiff demands a jury trial.

Respectfully submitted this 17th day of June 2019.

FELICIA ROBINSON

By: /s/Matthew D. Wilson
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