Appendix A (A.1)

[DO NOT PUBLISH]

In the United States Court of Appeals For the Eleventh Circuit

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No. 22-13577

Non-Argument Calendar

JOHNNIE DEMOND JACKSON,

Plaintiff-Appellant,

versus

SHERIFF KEVIN R. SPROUL,
LT CARLA WATSON,
PHOEBE PUTNEY HOSPITAL,
NURSE AUDREY JOINER,
NURSE LYNN MONTGERARD,

Defendants-Appellees,

CPT JERROMA WILLIAMS, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 1:21-cv-00028-LAG-TQL

Before JORDAN, NEWSOM, and ABUDU, Circuit Judges.

PER CURIAM:

Johnnie Jackson, proceeding *pro se*, appeals the district court's order granting summary judgment in favor of Sheriff Kevin Sproul, Shirley Adams, Carla Watson, and Dominique Kendricks (collectively the "jail officers"), as well as in favor of Phoebe Putney Memorial Hospital ("PPMH"), Lynn Montgerard, Audrea Joiner, Escolethia Miller, and Sherryl Haugabrook (collectively the "medical providers"), on his 42 U.S.C. § 1983 claims. After responding to the motions for summary judgment, Mr. Jackson filed motions to supplement the record, which the district court denied. On appeal Mr. Jackson argues that the court erred in granting summary judgment for the jail officers and medical providers on his § 1983 claims alleging deliberate indifference as to food and medical needs, denial of access to mail, failure to train nurses, and retaliation. He also contends that the court erred in denying his motion to supplement the record, pursuant to Fed. R. Civ. P. 15.

We review *de novo* a district court's grant of summary judgment and construe all facts and draw all reasonable inferences in favor of the non-moving party. *See Burton v. Tampa Hous. Auth.*, 271 F.3d 1274, 1276-77 (11th Cir. 2001). We review the denial of a motion to supplement for abuse of discretion. *See Shipner v. E. Air Lines, Inc.*, 868 F.2d 401, 407 (11th Cir. 1989).

A party who fails to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual findings and legal conclusions, if the party was informed of the time period for objecting and the consequences on appeal for failing to object. *See* 11th Cir. R. 3-1. However, in the absence of a proper objection, we may review the issue for plain error if necessary in the interests of justice. *See id.*

Pro se pleadings are held to a less stringent standard than attorney-drafted pleadings and are, therefore, liberally construed. *See Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). The leniency afforded *pro se* litigants with liberal construction does not give a court license to act as *de facto* counsel or permit it to rewrite an otherwise deficient pleading to sustain an action. *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168-69 (11th Cir. 2014). "[I]ssues not briefed on appeal by a *pro se* litigant are deemed abandoned." *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (citation omitted). An appellant fails to adequately brief a claim when he does not "plainly and prominently raise it." *Sapuppo v. Allstate Floridian*

(11th Cir. 1987) (same); *Farina v. Mission Inv. Tr.*, 615 F.2d 1068, 1076 (5th Cir. 1980) (same).

Here, the district court did not abuse its discretion in denying Mr. Jackson's motions to supplement the record because he failed to show excusable neglect. He did not, for example, explain why he was unable to submit his evidence with his declarations. Further, Fed. R. Civ. P. 15(d) is inapplicable because summary judgment motions are not pleadings. *See* Fed. R. Civ. P. 7(a).

AFFIRMED.

Pro Se
Johnnie Demond Jackson

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In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-13577

JOHNNIE DEMOND JACKSON,

Plaintiff-Appellant,

versus

SHERIFF KEVIN R. SPROUL,
LT CARLA WATSON,
PHOEBE PUTNEY HOSPITAL,
NURSE AUDREY JOINER,
NURSE LYNN MONTGERARD,

Defendants-Appellees,

CPT JERROMA WILLIAMS, et al.,

Defendants.

Appendix "B" (B.1)

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 1:21-cv-00028-LAG-TQL

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

Before JORDAN, NEWSOM, and ABUDU, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The "Motion for Reconsideration," construed as a Petition for Panel Rehearing, is DENIED. FRAP 35, IOP 2.

Pro se Johnnie Demond Jackson

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JOHNNIE DEMOND JACKSON,	:	
Plaintiff,	:	
v.	:	CASE NO.: 1:21-CV-28 (LAG) (TQL)
SHERIFF KEVIN R. SPROUL, *et al.*,	:	
Defendants.	:	

ORDER

Before the Court are the Magistrate Judge's Reports and Recommendations (R&Rs) issued on August 2 and 4, 2022 (Docs. 223, 224), and Plaintiff's Objections to each R&R (Docs. 225, 226). For the reasons below, Plaintiff's Objections (Docs. 225, 226) are **OVERRULED**, and the R&Rs (Docs. 223, 224) are **ACCEPTED** and **ADOPTED**.

BACKGROUND

Pro se Plaintiff Johnnie Demond Jackson initiated this 42 U.S.C. § 1983 action on February 10, 2021, alleging that his constitutional rights were violated during his pretrial detention at the Dougherty County Jail. (Doc. 1). Plaintiff brings claims against Sherriff Kevin Sproul, Lt. Shirley Adams, Lt. Carla Watson, Lt. Dominique Kendricks (the County Defendants), Nurses Escolethia Miller, Lynn Montgerard, Audrea Joiner, Sherryl Haugabrook, and Phoebe Putney Memorial Hospital (the Hospital Defendants). The County Defendants filed a Motion for Summary Judgment on January 19, 2022. (Doc. 153). The Hospital Defendants filed a separate Motion for Summary Judgment on January 27, 2022. (Doc. 156). On August 2, 2022, the Magistrate Judge issued the first R&R, recommending that the Court grant the County Defendants' Motion in its entirety. (Doc. 223 at 18). The Magistrate Judge issued the second R&R on August 4, 2022, recommending that the Court also grant the Hospital Defendants' Motion in its entirety. (Doc. 224 at 14). Plaintiff timely filed Objections to both R&Rs. (Docs. 225, 226).

STANDARD OF REVIEW

District courts have a "duty to conduct a careful and complete review" to determine "whether to accept, reject, or modify" a magistrate judge's order and recommendations. *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam) (citation omitted). The Court reviews *de novo* dispositive portions of the R&Rs to which Plaintiff objects. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). Unobjected-to portions of the R&Rs and non-dispositive orders are reviewed for clear error. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). A party objecting to an R&R "must clearly advise the district court and pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009) (per curiam). But when an objection is "[f]rivolous, conclusive, or general," the Court need not consider it. *Id.* at 1361 (citation omitted).

DISCUSSION

In his Objection to the first R&R, Plaintiff objects to the Magistrate Judge's recommendation that the Court grant summary judgment on his deliberate indifference claim against Defendant Kendricks. (Doc. 226 at 1). After reviewing Plaintiff's sworn declaration, Defendant Kendricks' affidavit, and Plaintiff's medical records, the Magistrate Judge concluded that, "[v]iewing the facts in the light most favorable to Plaintiff as the nonmoving party, Plaintiff was seen in the medical department by a nurse on July 15, 2020, after suffering an injury to his left arm." (Doc. 223 at 16–17). Although "[x]-rays and a doctor's visit were to be scheduled thereafter," Plaintiff "did not receive x-rays of his arm until weeks later." (*Id.* at 17). Defendant Kendricks claimed that when he came to Plaintiff's cell to take him to the follow-up appointment with medical during the afternoon of July 15, 2020, Plaintiff refused to walk to the back of his cell and kneel for the placement of handcuffs and leg irons, which were required due to Plaintiff "caus[ing] so many disruptions" in the jail. (Doc. 153-6 ¶¶ 4–5). After Plaintiff refused a second order from Defendant Kendricks, Defendant Kendricks "spoke with the nurse on duty [and] explain[ed] that Plaintiff refused to cooperate, so he would not be taken to medical" at that time. (*Id.* ¶¶ 6–7). Plaintiff disputed Defendant Kendricks' account, asserting that, after his initial morning visit to medical, "no one came to say anything to me about anything having

anything whatsoever to do with medical." (Doc. 166 at 6). Thus, crediting Plaintiff's version of events, Plaintiff "did not refuse medical treatment on July 15, 2020, and no jail personnel spoke to him about returning to medical that day." (Doc. 223 at 17). Plaintiff noted Defendant Kendricks' rank and position as "Building Supervisor" and asserted that Defendant Kendricks "was responsible for getting [him] to medical." (Doc. 166 at 6). The Magistrate Judge found that this supposition was not sufficient "to establish that Defendant Kendricks was aware of yet disregarded a serious medical condition or worsening of Plaintiff's condition." (Doc. 223 at 17). Accordingly, the Magistrate Judge correctly held that Plaintiff had not established that Defendant Kendricks was deliberately indifferent to Plaintiff's serious medical condition. (*See id.*).

In his Objection, Plaintiff first argues that he "provided proof of a fracture in his elbow [that was] more than de minimis." (Doc. 226 at 1). He also contends that he was "scheduled for medical x rays and a physician visit and it never came nor was [he] notified." (*Id.*). Neither of Plaintiff's arguments address the reasons why the Magistrate Judge concluded that Plaintiff failed to show Defendant Kendricks violated his constitutional rights. The Magistrate Judge did, in fact, accept that Plaintiff's injured arm was a serious medical need, but he found that Plaintiff did not show that Defendant Kendricks knew or should have known "of any condition suffered by Plaintiff that required additional medical attention." (Doc. 223 at 17). Plaintiff does not address this failing in his Objection. Furthermore, Plaintiff did not show that any delay in treatment exacerbated his injury or caused additional complications, as required to show a constitutional violation based on a delay in medical treatment. *See Visage v. Woodall*, 798 F. App'x 406, 410 (11th Cir. 2020) (per curiam) (citing *Taylor v. Adams*, 221 F.3d 1254, 1259–60 (11th Cir. 2000)). Thus, Plaintiff has failed to establish a genuine issue of material fact remains as to Defendant Kendricks' deliberate indifference to his serious medical need.

In the Objection to the Magistrate Judge's second R&R regarding the Hospital Defendants' Motion for Summary Judgment, Plaintiff asserts that he "has provided clear and convincing evidence . . . to deny summary judgment" and that he "objects on the grounds of [i]mpertenant, redundant and scandal" as to each of his claims against the

Hospital Defendants. (Doc. 225 at 1–2). Plaintiff argues that "a specialist Dr. Womack and his associate found a fracture in [Plaintiff's] elbow as is in evidence with this Honorable Court," so "the [Hospital] [D]efendants should not be granted summary judgment in this case and this case should go to [j]ury [t]rial." (*Id.* at 2). Again, Plaintiff's Objection does not address the Magistrate Judge's reasoning and fails to explain how any aspect of the R&R is factually or legally incorrect. The Magistrate Judge explained that "if, as Plaintiff asserts, neither Defendant Miller nor Joiner were told Plaintiff refused additional treatment and neither of these Defendants saw Plaintiff after his initial visit on July 15, 2020, neither Defendant could have been aware of any worsening condition or ongoing need for medical attention." (Doc. 224 at 9). The Magistrate Judge also found that Plaintiff "failed to establish that any delay in treatment exacerbated his conditions." (*Id.*). The Court therefore finds the Magistrate Judge correctly determined that Plaintiff failed to establish a deliberate indifference claim against the Hospital Defendants.

Plaintiff does not object to the remaining portions of the Magistrate Judge's R&Rs. Accordingly, the Court has reviewed the rest of the R&Rs for clear error and finds none therein. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a).

CONCLUSION

Upon a careful and complete review of the record, the Court finds that the Magistrate Judge's findings and conclusions are supported by substantial evidence and that the correct legal standards were applied. Accordingly, Plaintiff's Objections (Docs. 225, 226) are **OVERRULED**, and the Magistrate Judge's Reports and Recommendations (Docs. 223, 224) are **ACCEPTED** and **ADOPTED** as the Orders of the Court. The County Defendants' Motion for Summary Judgment (Doc. 153) and the Hospital Defendants' Motion for Summary Judgment (Doc. 156) are **GRANTED**.

SO ORDERED, this 14th day of September, 2022.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT

APPENDIX "L 1"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JOHNNIE DEMOND JACKSON, Plaintiff, VS. SHERIFF KEVIN SPROUL, *et al.*, Defendants.	:	**1 : 21-CV-28 (LAG)**

ORDER and RECOMMENDATION

Pending is a Motion for Summary Judgment filed on behalf of Defendants Montgerard, Joiner, Miller, Haugabrook, and Phoebe Putney Memorial Hospital, and Plaintiff's Motion for Settlement Conference. (Docs. 156, 221). Plaintiff was notified of the filing of Defendants' Motion for Summary Judgment, advised of his obligations under the law, and directed to respond thereto within thirty (30) days. (Doc. 159). Plaintiff has responded to Defendants' motion. (Doc. 169). Defendants have filed a reply. (Doc. 184).

RECOMMENDATION

Plaintiff filed this action in February 2021, and several of Plaintiff's pending cases were ordered consolidated into this action. (Doc. 1); *Jackson v. Dougherty County Jail, et al.*, No. 1 : 20-CV-198 (M.D.Ga.)(LAG); *Jackson v. Trent, et al.,* No. 1 : 21-CV-08 (M.D.Ga.)(LAG); *Jackson v. Dougherty County Georgia, et al.,* No. 1 : 20-CV-249 (M.D.Ga.)(LAG); *Jackson v. Adams, et al.,* No. 1 : 21-CV-09 (M.D.Ga.)(LAG). The Court directed Plaintiff to file a recast Complaint on the proper form, along with a

complete motion to proceed *in forma pauperis*, and Plaintiff ultimately complied with this directive. (Docs. 8, 27). The Court granted Plaintiff's Motion to Proceed *in forma pauperis* and allowed certain claims to go forward by Order dated May 26, 2021. (Doc. 34). Based on Plaintiff's subsequent objection, which was construed to be a motion to amend his complaint, the Court withdrew its May 26, 2021 Order and Recommendation and issued a new Order and Recommendation, granting Plaintiff's Motion to Amend. (Doc. 59). All motions to amend filed prior to the June 4, 2021 Amended Complaint were denied as moot, and the June 4, 2021 Amended Complaint was deemed the operative complaint. (Docs. 8, 39, 59, 74). The Court allowed certain claims to go forward, and after the adoption of the Recommendation issued on November 9, 2021 and the dismissal of certain claims based on a lack of exhaustion, the following claims remain pending:

- Failure to provide adequate medical treatment against Defendants Miller, Joiner, and Kendrick
- First Amendment mail interference claims against Defendants Adams and Watson
- Conditions of confinement claims against Defendant Sproul pertaining to the provision of inadequate nutrition
- Retaliation claims against Defendants Miller, Montgerard, and Haugabrook (identified as "Haugabrooks" in Plaintiff's Amended Complaint)
- Claims concerning the alleged failure to provide adequate medical treatment against Phoebe Putney Memorial Hospital

(Docs. 129, 202).

Defendants Ostrander, Green, Trent, Gilbert, and Boges were dismissed by Order dated

March 2, 2022. (Doc. 202).

BACKGROUND

Plaintiff's claims arise out of events occurring during his confinement as a pretrial detainee at the Dougherty County Jail beginning on or about July 14, 2020. In the claims that remain and pertain to the Defendants on whose behalf this summary judgment is brought, Plaintiff alleges that Defendants Miller and Joiner were deliberately indifferent to Plaintiff's medical needs regarding his elbow, that Defendants Montgerard, Miller, and Haugabrook retaliated against Plaintiff for requesting medical treatment by instructing other officers to issue Plaintiff a disciplinary report, and that Phoebe Putney Memorial Hospital has a policy of providing substandard care to inmates of the Dougherty County Jail, and/or has failed to adequately train or supervise medical professionals contracted to provide care at the jail. (Doc. 59).

ANALYSIS

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

As the parties moving for summary judgment, Defendants have the initial burden to demonstrate that no genuine issue of material fact remains in the case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604 (11th Cir. 1991). The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the record, including pleadings, discovery materials, and affidavits, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S. at 323. "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . grant summary judgment if the motion and supporting materials - including the facts considered undisputed - show that the movant is entitled to it." Fed. R. Civ. P. 56(e)(3). Defendants have supported their motion with their affidavits, portions of Plaintiff's medical records, and discovery documents. (Docs. 156-3 –156-11).

1. Defendants Miller and Joiner – medical treatment

In the deliberate indifference to a serious medical need claim that was allowed to proceed against Defendants Miller and Joiner, Plaintiff states that these Defendants falsified medical records to show that Plaintiff refused x-rays for his arm. (Doc. 39, pp. 7-10). Plaintiff alleges that his arm was injured when an officer slammed and punched his arm in the cell door tray flap on July 15, 2020, and that Defendant Miller told Plaintiff he would receive x-rays for his arm on that same day. *Id.* Plaintiff claims that he did not

receive an x-ray until months later. *Id.*

In her affidavit, Defendant Miller states that she is a registered nurse, employed by Phoebe Putney Memorial Hospital to provide medical services to inmates at the Dougherty County Jail. (Doc. 156-5, ¶¶ 2, 6). According to Defendant Miller, Plaintiff submitted a medical inquiry on September 13, 2020 stating that his arm was "popin [sic] in and out of place", and Miller saw Plaintiff at sick call later that day. *Id.* at ¶ 8. Miller obtained an order from a physician for an x-ray of Plaintiff's left arm/elbow, which took place on September 16, 2020. *Id.* at ¶¶ 8-9. Plaintiff submitted additional medical inquiries in October and December 2020 and March 2021 regarding his arm, and Defendant Miller placed Plaintiff on the sick call list to be seen by a physician's assistant or a physician each time. *Id.* at ¶¶ 10-13.

Defendant Joiner states in her affidavit that she is a registered nurse, employed by Phoebe Putney Memorial Hospital to provide medical services to inmates at the Dougherty County Jail. (Doc. 156-6, ¶¶ 2, 6). Joiner states that Plaintiff was examined by Nurse Wade following an altercation on July 15, 2020, and that when Joiner later attempted to get Plaintiff to go to the medical office to be examined by a physician, Plaintiff refused. *Id.* at ¶¶ 7-9.

Plaintiff's medical records submitted by Defendants show that he was seen in the medical department on July 15, 2020 and he complained that his left elbow was fractured. (Doc. 156-3, p. 56). In the midst of talking, yelling, and cursing, Plaintiff refused to move his left arm or squeeze with his left hand. *Id.* at pp. 107, 170. The medical records reflect that Plaintiff later refused to return to medical to see the physician, and that officers were

unable to get Plaintiff to sign the refusal of treatment form due to Plaintiff "acting out". *Id.* at pp. 55, 170. Plaintiff submitted medical inquiries to be seen by medical for his arm in September 2020, was placed on the sick call list, and his arm was x-rayed on September 16, 2020, with findings of "[n]o fracture, dislocation, or significant arthropathy of the left elbow . . . No acute osseous abnormality". *Id.* at pp. 29, 195, 196, 220. Plaintiff ultimately underwent an MRI that showed he had "no significant elbow ligamentous or tendon abnormality. Small amount of elbow joint fluid. Mild peripheral elbow joint degenerative change." *Id.* at p. 217.

In a sworn declaration, Plaintiff states that he was denied medical care in the form of x-rays on July 15, 2020 and that Defendants Miller and Joiner "violated policy" in relying on the statements of Defendant Kendricks that Plaintiff was refusing medical care. (Doc. 148, pp. 1-3). Plaintiff asserts that medical records showing that Nurse Wade examined him on July 15, 2020, as opposed to Defendant Miller, and that Plaintiff refused medical care were fabricated by Defendants Miller and Joiner. *Id.* at pp. 1-4. In his sworn response to the other Defendants' summary judgment motion, Plaintiff maintains that after he was returned to his cell on July 15, 2020, and x-rays had been scheduled, no one came to his cell or said anything to him about returning to medical. (Doc. 166, p. 6). According to Plaintiff "no one came to say anything to me about anything having whatsoever to do with medical". *Id.*

In his unsworn declaration filed in response to these Defendants' summary judgment motion, Plaintiff again states that Defendants Miller and Joiner, along with others, fabricated his refusal of medical care and thereby deprived him of necessary

medical care for his elbow/arm. (Doc. 169). Plaintiff maintains that these Defendants violated jail policy and thereby were deliberately indifferent to his serious medical needs, in that they did not personally observe or hear Plaintiff refuse medical care but relied on Defendant Kendricks' statements that he could not get Plaintiff to sign a refusal form. *Id.* The Court notes that the discs submitted by Plaintiff in support of his claims show only x-ray and MRI images for his spine and elbow, with no accompanying explanation or written results. (Doc. 6).

It is well established that prison personnel may not subject inmates to "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). "To show that a prison official acted with deliberate indifference to serious medical needs, a plaintiff must satisfy both an objective and a subjective inquiry. First, a plaintiff must set forth evidence of an objectively serious medical need. Second, a plaintiff must prove that the prison official acted with an attitude of 'deliberate indifference' to that serious medical need." *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003) (internal citations omitted). "[D]eliberate indifference has three components: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence." *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999).

"Mere incidents of negligence or malpractice do not rise to the level of constitutional violations. Nor does a simple difference in medical opinion between the prison's medical staff and the inmate as to the latter's diagnosis or course of treatment support a claim of cruel and unusual punishment." *Harris v. Thigpen*, 941 F.2d 1495,

1505 (11th Cir. 1991) (citations omitted).

Viewing the facts in the light most favorable to Plaintiff as the nonmoving party, Plaintiff was seen in the medical department by a nurse on July 15, 2020, after suffering an injury to his left arm. X-rays and a doctor's visit were to be scheduled thereafter. He did not receive x-rays of his arm until weeks later, and Plaintiff did not sign a refusal of medical care form on that day. According to Plaintiff, he did not refuse medical treatment on July 15, 2020, and neither Defendant Miller nor Joiner followed up with Plaintiff to see if he had in fact refused medical care.

"Prison officials must have been deliberately indifferent to a known danger before we can say that their failure to intervene offended 'evolving standards of decency', thereby rising to the level of a constitutional tort. The known risk of injury must be 'a strong likelihood, rather than a mere possibility'". *Brown v. Hughes*, 894 F.2d 1533, 1537 (11th Cir. 1990) (quoting *Estelle* , 429 U.S. 97 and *Edwards v. Gilbert*, 867 F.2d 1271, 1276 (11th Cir. 1989)).

Plaintiff has failed to establish that Defendants Miller and Joiner were aware of yet disregarded a serious medical condition or worsening of Plaintiff's condition. To the contrary, viewing the facts in the light most favorable to the Plaintiff, Plaintiff was seen by Defendant Miller and scheduled for x-rays and a physician consultation, and Plaintiff has not come forth with any facts showing that Miller and Joiner were aware of any condition suffered by Plaintiff that required additional medical attention. The Jail records submitted by Defendants show that Plaintiff did not submit a medical inquiry seeking attention for his arm until September 13, 2020. (Doc. 156-3, p. 196).

Plaintiff maintains that neither Defendant Miller nor Joiner checked with Plaintiff to see if he had in fact refused medical care, and that this failure was a violation of jail policy. However, if such inaction violated a jail policy, a policy violation does not establish a deliberate indifference claim. *Taylor v. Adams,* 221 F.3d 1254, 1259 (11th Cir. 2000) ("failure to follow procedures does not, by itself, rise to the level of deliberate indifference because doing so is at most a form of negligence"). Moreover, if, as Plaintiff asserts, neither Defendant Miller nor Joiner were told Plaintiff refused additional treatment and neither of these Defendants saw Plaintiff after his initial visit on July 15, 2020, neither Defendant could have been aware of any worsening condition or ongoing need for medical attention. Plaintiff has failed to present anything more than conclusory allegations that his medical records were somehow "fabricated" by these Defendants and what purpose such fabrication would serve.

Finally, Plaintiff has failed to establish that any delay in treatment exacerbated his conditions. "[D]elay in medical treatment must be interpreted in the context of the seriousness of the medical need, deciding whether the delay worsened the medical condition, and considering the reason for the delay." *Hill v. DeKalb RYDC*, 40 F.3d 1176, 1189 (11th Cir. 1994), *overruled in part on other grounds*, *Hope v. Pelzer*, 536 U.S. 730 (2002). "An inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of delay in medical treatment to succeed." *Id.* at 1188.

2. Defendants Montgerard, Miller, and Haugabrook – retaliation

In his retaliation claims against Defendants Montgerard, Miller, and Haugabrook,

Plaintiff maintains that these Defendants instructed other officers to issue Plaintiff a disciplinary report when Plaintiff sought medical treatment for his chest pain and/or sought additional information about his medical condition. (Doc. 39, pp. 17-18; Doc. 59, p. 24).

"The First Amendment forbids prison officials from retaliating against prisoners for exercising the right of free speech." *Farrow v. West*, 320 F.3d 1235, 1248 (11th Cir. 2003). In order to state a claim for retaliation, the Plaintiff "must establish first, that his speech or act was constitutionally protected; second, that the defendant's retaliatory conduct adversely affected the protected speech; and third, that there is a causal connection between the retaliatory actions and the adverse effect on speech." *Bennett v. Hendrix*, 423 F.3d 1247, 1250 (11th Cir. 2005). The prisoner "must show that, as a subjective matter, a motivation for the defendant's adverse action was the prisoner's [protected speech]." *Jemison v. Wise*, 386 F. A'ppx 961, 965 (11th Cir. 2010); *Smith v. Governor for Alabama*, 562 F. A'ppx 806, 815 (11th Cir. 2014).

For purposes of the preliminary screening of Plaintiff's claims, the Court assumed that Plaintiff had engaged in protected activity in seeking medical care and/or medical records. (Doc. 59, p. 24). Defendants have continued to rely on this assumption for purposes of their summary judgment motion. (Doc. 156-1, p. 13).

Defendants Montgerard, Miller, and Haugabrook state in their affidavits that they never asked or instructed an officer to discipline Plaintiff and never retaliated against Plaintiff. (Doc. 156-4, ¶¶ 30-32; Doc. 156-5, ¶¶ 14-16; Doc. 156-7, ¶¶ 9-11). Defendant

Montgerard further states that nurses at the jail have no authority to discipline inmates. (Doc. 156-4, ¶ 29).

Plaintiff has offered nothing beyond his conclusory allegations to establish that Defendants Montgerard, Miller, and Haugabrook retaliated against him by having jail officers issue a disciplinary report. "An inmate's conclusory allegations, taken alone, are insufficient to support a retaliation claim." *Booth v. Bobbit,* 2020 WL 4281119, *4 (M.D.Ga. 2020) (MTT). Plaintiff's conclusory allegations of retaliation are insufficient support for the retaliation claim, and any causal connection between Defendants Montgerard, Miller, and Haugabrook and the disciplinary report at issue "is too tenuous to survive a motion for summary judgment." *Pittman v. Tucker,* 213 F. A'ppx 867, 872 (11th Cir. 2007).

As further established by Defendant Montgerard's affidavit testimony and unrefuted by Plaintiff, these Defendants had no authority regarding the discipline of inmates, and "[w]here the defendant is not the decision-maker, there is no causal connection between the [protected speech] and the [adverse event]." *Goins v. Weilenman*, 2009 WL 2224637, *4 (S.D.Ga. 2009). Contrary to Plaintiff's assertions that these Defendants directed that a disciplinary report be issued against him, documentation submitted by Plaintiff shows that Sgt. Trent directed Officer Nixon to issue a disciplinary report to Plaintiff in November 2020 after it was determined that Plaintiff had lied about having chest pains to access the medical staff for other purposes. (Doc. 147-1, pp. 50-52).

3. Defendant Phoebe Putney Memorial Hospital – failure to train/supervise

In his claims against Phoebe Putney Memorial Hospital, Plaintiff claims that the hospital is responsible for providing medical care for Jail inmates and that the hospital is liable for medical staff's deliberate indifference based on a failure to train and supervise. (Doc. 39, pp. 23-24). In his Amended Complaint, Plaintiff appears to rely on alleged inmate deaths to establish liability on the part of Phoebe Putney Memorial Hospital. *Id.*; Doc. 59, p. 31.

As noted in its Order reviewing Plaintiff's operative Amended Complaint, hospitals may be considered state actors and held responsible for constitutional violations under § 1983. *See Wofford v. Glynn Brunswick Mem. Hosp.,* 864 F.2d 117, 118 (11th Cir. 1989) (actions of public hospital authority created under Georgia law "constitute state acts within the meaning of § 1983"). Such an entity may only be liable "if such constitutional torts result from an official government policy, the actions of an official fairly deemed to represent government policy, or a custom or practice so pervasive and well-settled that it assumes the force of law." *Denno v. Sch. Bd. of Volusia Cnty.,* 218 F.3d 1267, 1276 (11th Cir. 2000). Municipalities and their agencies are not subject to liability on the basis of *respondeat superior*, as only direct liability may be imposed. *Monell v. Department of Social Servs.,* 436 U.S. 658, 690 (1978).

An entity's deliberate indifference can also be shown by "continued adherence to an approach that [policymakers] know or should know has failed to prevent tortious conduct" or by "the existence of a pattern of tortious conduct by inadequately trained employees". *Board of County Comm'rs v. Brown,* 520 U.S. 397, 407-08 (1997). To establish deliberate indifference based on a failure to train, "a plaintiff must present some evidence that the [entity] knew of a need to train and/or supervise in a particular area and

the [entity] made a deliberate choice not to take any action". *Gold v. City of Miami,* 151 F.3d 1346, 1350 (11th Cir. 1998).

Defendant Montgerard states in her affidavit that Phoebe Putney does not have an official policy or custom of providing substandard, inadequate, or delayed medical care to inmates at the Jail. (Doc. 156-4, ¶¶ 32-35). Plaintiff has not come forth with evidence of a pattern of conduct by Phoebe Putney employees that the hospital knew provided a basis for a need to train, and which the hospital made a deliberate choice to ignore.

Plaintiff points to three (3) alleged inmate deaths over a multi-year period and his own alleged elbow injury as evidence of the hospital's failure to train its employees, in addition to allegations that Jail medical staff failed to follow Jail policies. (Doc. 39, pp 24, 26; Doc. 169, p. 7). However, Plaintiff does not provide any evidence that Phoebe Putney had notice of a pattern of conduct by its employees that required additional training. "[W]ithout notice of a need to train or supervise in a particular area, a municipality is not liable as a matter of law for any failure to train and supervise." *Knight through Kerr v. Miami-Dade County*, 856 F.3d 795, 820 (11th Cir. 2017). Furthermore, while a supervising officer can be held liable for a failure to train subordinates, and a history of widespread abuse can put the supervisor on notice of the need for corrective action, "one incident will not suffice; rather, the deprivations that constitute widespread abuse sufficient to notify the supervising official must be obvious, flagrant, rampant, and of continued duration, rather than isolated occurrences." *Id.*

Conclusion

Based on Plaintiff's failure to create a genuine issue of material fact as to whether

Defendants Miller or Joiner acted with deliberate indifference to a serious medical condition, whether Defendants Montgerard, Miller, or Haugabrook retaliated against Plaintiff, or as to whether Defendant Phoebe Putney Memorial Hospital failed to adequately train and supervise employees providing medical care to Dougherty County Jail inmates, it is the recommendation of the undersigned that these Defendants' Motion for Summary Judgment be **GRANTED**. (Doc. 156).

Objections

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to the recommendations herein, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination as to those portions of the Recommendation to which objection is made; all other portions of the Recommendation may be reviewed by the District Judge for clear error. Any objection is limited in length to TWENTY (20) PAGES. *See* M.D. Ga. L.R. 7.4.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however,

the court may review on appeal for plain error if necessary in the interests of justice."

ORDER

Plaintiff's Motion for Settlement Conference is **DENIED**. (Doc. 221).

SO ORDERED and RECOMMENDED, this 4th day of August, 2022.

s/ ***Thomas Q. Langstaff***
UNITED STATES MAGISTRATE JUDGE

Pro Se
Johnnie Demond Jackson

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JOHNNIE DEMOND JACKSON,	:	
	:	
Plaintiff,	:	
	:	
VS.	:	
	:	**1 : 21-CV-28 (LAG)**
SHERIFF KEVIN SPROUL, *et al.*,	:	
	:	
Defendants.	:	

RECOMMENDATION

Pending is a Motion for Summary Judgment filed on behalf of Defendants Sproul, Adams, Watson, and Kendricks, otherwise identified by defense counsel as the Dougherty County Defendants. (Doc. 153). Plaintiff was notified of the filing of Defendants' Motion for Summary Judgment, advised of his obligations under the law, and directed to respond thereto within thirty (30) days. (Doc. 154). Plaintiff has responded to Defendants' motion. (Doc. 166). Defendants have filed a reply. (Doc. 179).

Plaintiff filed this action in February 2021, and several of Plaintiff's pending cases were ordered consolidated into this action. (Doc. 1); *Jackson v. Dougherty County Jail, et al.*, No. 1 : 20-CV-198 (M.D.Ga.)(LAG); *Jackson v. Trent, et al.*, No. 1 : 21-CV-08 (M.D.Ga.)(LAG); *Jackson v. Dougherty County Georgia, et al.*, No. 1 : 20-CV-249 (M.D.Ga.)(LAG); *Jackson v. Adams, et al.*, No. 1 : 21-CV-09 (M.D.Ga.)(LAG). The Court directed Plaintiff to file a recast Complaint on the proper form, along with a complete motion to proceed *in forma pauperis*, and Plaintiff ultimately complied with this directive. (Docs. 8, 27). The Court granted Plaintiff's Motion to Proceed *in forma*

pauperis and allowed certain claims to go forward by Order dated May 26, 2021. (Doc. 34). Based on Plaintiff's subsequent objection, which was construed to be a motion to amend his complaint, the Court withdrew its May 26, 2021 Order and Recommendation and issued a new Order and Recommendation, granting Plaintiff's Motion to Amend. (Doc. 59). All motions to amend filed prior to the June 4, 2021 Amended Complaint were denied as moot, and the June 4, 2021 Amended Complaint was deemed the operative complaint. (Docs. 8, 39, 59, 74). The Court allowed certain claims to go forward, and after the adoption of the Recommendation issued on November 9, 2021 and the dismissal of certain claims based on a lack of exhaustion, the following claims remain pending:

- Failure to provide adequate medical treatment against Defendants Miller, Joiner, and Kendricks
- First Amendment mail interference claims against Defendants Adams and Watson
- Conditions of confinement claims against Defendant Sproul pertaining to the provision of inadequate nutrition
- Retaliation claims against Defendants Miller, Montgerard, and Haugabrooks
- Claims concerning the alleged failure to provide adequate medical treatment against Phoebe Putney Memorial Hospital

(Docs. 129, 202).

Defendants Ostrander, Green, Trent, Gilbert, and Boges were dismissed by Order dated March 2, 2022. (Doc. 202).

BACKGROUND

Plaintiff's claims arise out of events occurring during his confinement as a pretrial detainee at the Dougherty County Jail beginning on or about July 14, 2020. In the claims that remain and pertain to the Dougherty County Defendants, Plaintiff alleges that Defendant Kendrick (identified as Defendant "Kendricks" in Defendants' Motion for Summary Judgment) was deliberately indifferent to Plaintiff's medical needs regarding an x-ray, that Defendants Adams and Watson violated Plaintiff's First Amendment rights by interfering with Plaintiff's legal and personal mail, and that Defendant Sproul is responsible for unconstitutional conditions of confinement in regard to provision of inadequate nutrition. (Doc. 59).

ANALYSIS

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

As the parties moving for summary judgment, Defendants have the initial burden to demonstrate that no genuine issue of material fact remains in the case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604 (11th Cir. 1991). The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the record, including pleadings, discovery materials, and affidavits, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S. at 323. "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . grant summary judgment if the motion and supporting materials - including the facts considered undisputed - show that the movant is entitled to it." Fed. R. Civ. P. 56(e)(3). Defendants have supported their motion with their affidavits, portions of Plaintiff's jail records, and documentation regarding jail procedures. (Docs. 153-3 – 153-6).

In their Motion for Summary Judgment, Defendants assert that they are entitled to the protection of qualified immunity, in that Plaintiff has failed to establish a constitutional violation. They also contend that they are entitled to Eleventh Amendment immunity.

Qualified immunity

Defendants assert that they are entitled to the protection of qualified immunity regarding Plaintiff's claims brought against them in their individual capacities. "Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that

the right was clearly established at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011).

Inasmuch as qualified immunity is an affirmative defense, the "public official must first prove that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred." *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir.2002). "To determine whether an official was engaged in a discretionary function," federal courts look to see whether the challenged actions "fell within the employee's job responsibilities." *Crosby v. Monroe Cnty.*, 394 F.3d 1328, 1332 (11th Cir. 2004) (internal citation omitted).

Defendants' actions taken within their role as law enforcement officers establish that they were acting within their discretionary authority. "Discretionary authority" includes "all actions of a governmental official that (1) were undertaken pursuant to the performance of his duties, and (2) were within the scope of his authority." *Jordan v. Doe*, 38 F.3d 1559, 1566 (11th Cir. 1994). These "objective circumstances . . . compel the conclusion that [Defendants'] actions were undertaken pursuant to the performance of [their] duties and within the scope of his authority." *Sims v. Metropolitan Dade County*, 972 F.2d 1230, 1236 (11th Cir. 1992). "[W]here . . . it is undisputed that government officials were acting within their discretionary authority, the burden is on the plaintiff to demonstrate that qualified immunity is not appropriate." *Hicks v. Ferrero*, 241 F. A'ppx 595, 597 (11th Cir. 2007).

"To [show that qualified immunity is not appropriate], the plaintiff must demonstrate (taking all the facts in the light most favorable to [him]) the following two

things: (1) that the defendant violated [his] constitutional rights, and (2) that, at the time of the violation, those rights were clearly established". *Gaines v. Wardynski*, 871 F.3d 1203,1208 (11th Cir. 2017).

1. Defendant Sproul: nutrition

In his remaining claim against Defendant Sproul, Plaintiff alleges that he was provided with inadequate food while housed in segregation and lost "40-50 pounds". (Doc. 59, p. 20). In his verified Amended Complaint, Plaintiff states that the practice at the jail was to provide inmates "like 1200" calories per day. (Doc. 39, p. 22). In a subsequently filed declaration, Plaintiff states that he was housed in the isolation unit at the Dougherty County Jail between June 10, 2020 and January 9, 2021, and that during this time period his weight dropped from 206 pounds to 167 pounds as a result of food deprivation. (Doc. 143, p. 1)[1]. Plaintiff maintains that inmates held in isolation were provided with smaller and/or less nutritious portions as a means of discipline.

In his affidavit, Defendant Sproul states that the Dougherty County Sheriff's Office contracts with Trinity Food Services to provide inmate meals, and that Trinity employs dieticians who approve the menus and portions for inmate meals. (Doc. 153-4, ¶¶ 3-4). Inmate meals provide more than 2000 calories per day. *Id.* at ¶ 5. Sproul attributes any weight loss suffered by Plaintiff while he was confined in disciplinary detention to Plaintiff not eating the meals or the meals being healthier than those provided outside of detention. *Id.* at ¶ 7. In Plaintiff's jail medical records, Plaintiff was reported to be "well-nourished and well developed" upon examination by a physician on November 20, 2020.

[1] Plaintiff signed Document 143, but inserted his declaration "under penalty of perjury that the foregoing is true and correct" on page 3 of Document 143, thereby rendering the preceding text a sworn statement. (Doc. 143).

(Doc. 153-3, p. 62).

In his sworn response to Defendants' Motion for Summary Judgment, Plaintiff maintains that the portions of food provided to inmates in segregation are inadequate, based in part on information from a former jail kitchen worker, an ex-girlfriend of Plaintiff, who allegedly quit because the jail "was not feeding inmates enough". (Doc. 166, p. 12)[2].

In his sworn declaration, Plaintiff maintains that he lost weight during his confinement in isolation at the Dougherty County Jail, between July 2020 and January 2021 due to food deprivation. (Doc. 143, pp. 1-2). Plaintiff states that he complained about the food and portions through food service inquiries, and that Chief Ostrander responded that he was contacting "portion control" about his complaints. *Id.* at p. 2.

Plaintiff has also previously filed certain of Defendant Sproul's interrogatory responses, in which Defendant Sproul states that inmate meals are supposed to be 2000 calories, that Plaintiff at times was housed in the isolation unit at the jail between July 2020 and January 2021, and that the jail provided Nutraloaf to inmates in isolation from some time in 2015 through February 8, 2020. (Doc. 143-1, pp. 18-19).

In order to establish an Eighth Amendment claim based on deliberate indifference to conditions of confinement, Plaintiff must meet both an objective and a subjective standard. *Chandler v. Cosby,* 379 F.3d 1278, 1289 (11th Cir. 2004).[3] "Generally

[2] Plaintiff signed Document 166, but inserted his declaration "under penalty of perjury that the foregoing is true and correct" on page 14 of Document 143, thereby rendering the preceding text a sworn statement. (Doc. 166).

[3] Although Plaintiff brought his claims as a pretrial detainee, and his conditions of confinement claims are therefore governed by the Fourteenth Amendment's Due Process Clause rather than the Eighth Amendment's Cruel and Unusual Punishment Clause, "the applicable standard is the same, so decisional law involving prison inmates applies equally to cases involving arrestees or pretrial detainees." *Cottrell v. Caldwell,* 85 F.3d 1480, 1490 (11th Cir. 1996).

speaking, prison conditions rise to the level of an Eighth Amendment violation only when they involve the wanton and unnecessary infliction of pain." *Id.* Initially, the prisoner must show that, objectively, the condition is sufficiently serious, and "at the very least show [the condition] poses an unreasonable risk of serious damage to his future health or safety". *Helling v. McKinney,* 509 U.S. 25, 33 (1993). The Eighth Amendment guarantees that prisoners will not be "deprive[d] . . . of the minimal civilized measure of life's necessities." *Rhodes v. Chapman,* 452 U.S. 337, 347 (1981).

Secondly, the prisoner must show that the defendant official acted with deliberate indifference to the condition. *Farmer v. Brennan,* 511 U.S. 825, 835 (1994). The official must "know[] of and disregard[] an excessive risk to inmate health and safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837.

Viewing the facts regarding nutrition in the light most favorable to Plaintiff as the non-moving party, Plaintiff lost at least thirty (30) pounds while confined in isolation at the Dougherty County Jail between June 2020 and January 2021, which he attributes to the meals provided to isolation inmates. Although Plaintiff contends that the meals provided to inmates in isolation were nutritionally lacking, he has offered no description of the meals provided and no explanation as what and how much was served, other than stating that he was not provided fruits. Plaintiff has generally provided only his conclusory allegations that the meals were lacking in nutrition. In order to defeat summary judgment, a nonmoving party's "affidavit cannot be conclusory". *United States v. Stein,* 881 F.3d 853, 856 (11th Cir. 2018). "[C]onclusory allegations without specific supporting facts have no probative value" in determining a summary judgment motion.

Leigh v. Warner Bros., Inc., 212 F.3d 1210, 1217 (11th Cir. 2000), *internal citations omitted.*

To the extent that Plaintiff relies on Defendant Sproul's discovery responses to establish that he provided Nutraloaf to inmates in isolation, the discovery responses to which Plaintiff points show that the jail provided Nutraloaf in isolation only up until February 8, 2020, well before the time Plaintiff was confined in isolation. Doc. 143-1, p. 19. Plaintiff has not refuted this showing with competent summary judgment evidence.

"The Constitution requires that prisoners be provided reasonably adequate food. A well-balanced meal, containing sufficient nutritional value to preserve health, is all that is required." *Hamm v. DeKalb County,* 774 F.2d 1567, 1575 (11th Cir. 1985), *internal citations omitted.* Defendant Sproul has established, and Plaintiff has failed to refute, that meals provided to Plaintiff while he was confined in isolation were constitutionally sufficient. Moreover, Plaintiff has failed to establish that Defendant Sproul was aware of any insufficiency that rose to the level of an excessive risk to Plaintiff's health and safety, and disregarded this risk. *Farmer*, 511 U.S. at 837.

2. Defendants Adams and Watson – mail interference

In his mail interference claim that was allowed to go forward, Plaintiff alleges in his verified Amended Complaint that Defendants Adams and Watson interfered with his outgoing personal and legal mail, refusing to allow him to write letters to certain individuals and entities. (Doc. 59, p. 10). Specifically, Plaintiff maintains that Defendants Adams and Watson prohibited him from writing letters to the media and the post office, and he asserts that his mail was being read based on his ability to re-open the envelopes provided by the Jail, presumably for his legal mail. (Doc. 39, pp. 14, 15). The Court notes

that Plaintiff's access to the courts claims were dismissed, and only his claims that Defendants violated his First Amendment free speech rights by interfering with his personal and legal mail were allowed to proceed. (Docs. 59, 74). Plaintiff claims that he wanted to write to the media to obtain video footage of his June 2020 arrest, and that he wanted to write to the Post Office to verify whether Sheriff Sproul had received his letters. (Doc. 39, pp. 14-16).

Defendant Adams testifies in her affidavit that she serves as the Legal Liaison and secondary Custodian of Records for the Dougherty County Sheriff's Office, and that Plaintiff has been incarcerated multiple times in the Dougherty County Jail. (Doc. 153-3, p. 1). In regard to inmate mail, inmates who qualify as indigent and are proceeding *pro se* in litigation are provided with paper, pens, and envelopes, as well as postage for legal mail. *Id.* at p. 3. Defendant Adams initially told Plaintiff she needed more proof as to his *pro se* status after he filed his first lawsuit, and Plaintiff was later certified by the Court as proceeding *pro se*. *Id.*

Plaintiff complained to Defendant Adams about the lack of indigent postage for media outlets, the Post Office, medical providers, and family members, and the Jail eventually agreed to pay for mail directed to his medical providers because Plaintiff was trying to gather evidence for his civil case. *Id.* at p. 4. The Jail did not pay postage for mail directed to media outlets, the Post Office, or family members "because that mail was not reasonably related to Plaintiff's prosecution of his civil case or his defense of his criminal case. Those envelopes were returned to Plaintiff unopened." *Id.* All non-legal mail was required to be on postcards so that the Jail could ensure that it contained no contraband or illegal communication. *Id.* Plaintiff was not prevented from sending mail to

media outlets, the Post Office, or his family, but this mail was not classified as "legal mail", meaning it could not be contained in a sealed envelope and the jail did not pay for postage. *Id.* Defendant Adams "never read or tampered with any of Plaintiff's legal mail. [She is] not even involved in processing inmate mail . . . [and] only sees copies of envelopes that are mailed out." *Id.*

Defendant Watson, the Custody Services Lieutenant for the Dougherty County Jail, oversees *pro se* inmates' legal mail, providing them with supplies and making sure the mail is sent out. (Doc. 153-5, ¶¶ 2, 4). Defendant Watson testifies in her affidavit that no legal mail sits overnight before being mailed out, and that she has "never opened, read, or tampered with any of Plaintiff's outgoing legal mail." *Id.* at ¶¶ 12-13. Incoming legal mail is opened in the presence of the receiving inmate to verify that there is no contraband in the envelope, a process of which Defendant Watson is not a part. *Id.* at ¶ 14. Watson never prohibited Plaintiff from communicating with the media, the Post Office, or his family members, but merely instructed him that he could not use his *pro se* supplies to do so. *Id.* at ¶ 15.

According to the Inmate Handbook for the Dougherty County Jail Facility,

> [i]nmates . . . are allowed to correspond with any individual of their choice unless they have been restricted by the Jail Administration or Court Official. . . Legal or Governmental correspondences are considered privileged mail and may be opened and inspected for contraband only in the inmate's presence. Non-privileged mail (regular) mail, both incoming and outgoing will be subject to inspection. . . Both incoming and outgoing regular mail are restricted to postcards only. Pre-stamped postcards are available through the commissary and are included in indigent packages. Any outgoing mail other than postcards will not be accepted for delivery.

> . . .
>
> The "postcard only" rule does not apply to incoming/outgoing legal mail, which will be processed as usual. Indigent inmates who are "pro se" will be provided adequate envelopes/stamps for their legal correspondence.
>
> . . .
>
> . . . Any inmate who has been declared indigent and who thereafter shows no money credited to his/her account is eligible to receive the following once per month: (6) Postal Stamps, (6) envelopes, Sufficient writing paper, and (1) pen.

(Doc. 153-3, pp. 110-112).

Defendant Adams states in her affidavit that jail policy restricting non-legal mail to postcards is in place to restrict contraband and to ensure that mail contains no disruptive or illegal communication. *Id.* at p. 4.

In his sworn declaration included in his response to Defendants' summary judgment motion, Plaintiff maintains that all of his "dealings" with Defendants Adams and Watson involved legal mail, and that Defendant Watson did not provide him with pro se supplies to write to the media, the post office, or to family. (Doc. 166, pp. 13-14). Plaintiff maintains that "all of my written affairs were strictly legal business". *Id.* at p. 14. Plaintiff further alleges that he was allowed to use *pro se* postage and materials to send mail to a media outlet once, so he should be allowed to do so thereafter. *Id.* at p. 13.

"The First Amendment, as incorporated by the Fourteenth Amendment, prohibits states from abridging the freedom of speech. Mail is one medium of free speech, and the right to send and receive mail exists under the First Amendment." *Al-Amin v. Smith,* 511 F.3d 1317, 1333 (11th Cir. 2008). "[A] prison regulation may impinge . . . freedom of

speech if the Court determines that 'it is reasonably related to legitimate penological interests'". *Prison Legal News v. Champman,* 2013 WL 1296367, at *3 (M.D.Ga.) (CAR), *quoting Turner,* 482 U.S. at 89.

Under *Turner*, a prison regulation that allegedly abridges free speech must be examined to determine 1) the valid and rational connection between the regulation and the asserted legitimate governmental interest; 2) whether there are alternative means of exercising the constitutional right; 3) any effect accommodating the right would have on guards and inmates; and 4) the absence or existence of ready alternatives. *Turner*, 482 U.S. at 89.

Viewing the facts in the light most favorable to Plaintiff, Defendants Adams and Watson would not allow Plaintiff to designate correspondence to the media, to family members, and to the post office as legal mail, which would have enabled Plaintiff to send said correspondence using *pro se* indigent legal materials. Plaintiff's non-legal correspondence was limited to postcards, per jail policy.

Pursuant to Defendant Adams' affidavit testimony, the jail defined legal mail as being "reasonably related to Plaintiff's prosecution of his civil case or his defense of his criminal case". (Doc. 153-3, p. 4). In a response to an inquiry from Plaintiff, jail officials explained to Plaintiff that legal mail "includes correspondence to the courts or an attorney. It does not include correspondence to the media, family, or other government agencies such as the Post Office. For those, you would have to use a post card." *Id.* at p. 90.

Plaintiff was allowed to correspond with his family, the media, and the Post Office using post cards. Defendants did not prevent Plaintiff from mailing anything to his

family, the media, or the Post Office, but did not allow him to do so using postage and supplies designated for use in legal mailing. Plaintiff was free to mail anything he wanted to on a postcard, which either he paid for or was part of what was provided to indigent inmates per jail policy. Plaintiff has not come forth with sufficient facts to overcome Defendants' summary judgment showing that they did not restrict his free speech rights regarding mail.

3. Defendant Kendricks – medical treatment

In the deliberate indifference to a serious medical need claim that was allowed to proceed against Defendant Kendricks, Plaintiff states that Kendricks falsified medical records to show that Plaintiff refused x-rays for his arm. (Doc. 39, pp. 6-10). Plaintiff alleges that his arm was injured when an officer slammed and punched his arm in the cell door tray flap on July 15, 2020, and that Defendant Kendricks knew Plaintiff required medical treatment but failed to ensure Plaintiff received treatment. Plaintiff claims that he did not receive an x-ray until months later. *Id.*

In his affidavit, Defendant Kendricks states that he is a lieutenant with the Dougherty County Sheriff's Office and was the supervisor over Plaintiff's pod on July 15, 2020. (Doc. 153-6, ¶¶ 2-3). On the morning of July 15, 2020, Plaintiff was on handcuff and leg iron restrictions, meaning that he had to be placed in handcuffs and leg irons whenever he was escorted through the Jail, due to his having "caused so many disruptions" in the Jail. *Id.* at ¶ 4. When the nurse called for Plaintiff to be brought to medical on the afternoon of July 15, 2020, Plaintiff refused to walk to the back of his cell, face the wall, and kneel for the placement of handcuffs and leg irons by Defendant

Kendricks, saying that no one was going to handcuff him. *Id.* at ¶ 5. After Plaintiff refused a second order from Defendant Kendricks, Kendricks told the nurse on duty that Plaintiff refused to cooperate "so he would not be taken to medical". *Id.* at ¶¶ 6-7. Kendricks could not get Plaintiff to sign a refusal of treatment form because Plaintiff "was acting out". *Id.* at ¶ 8. Kendricks did not believe Plaintiff's behavior warranted a disciplinary report, but states that he should have written a security report, and that Plaintiff did not appear to be in serious need of medical care. *Id.* at ¶¶ 9-10.

Plaintiff's medical records submitted by Defendants show that he was seen in the medical department on July 15, 2020 after a dry tasing incident, and he complained that his left elbow was fractured. (Doc. 153-3, p. 44). In the midst of "continuously cursing [and] talking loud", Plaintiff refused to move his left arm or squeeze with his left hand. *Id.* The medical records reflect that Plaintiff later refused to return to medical to see the physician, and that Kendricks reported he was unable to get Plaintiff to sign the refusal of treatment form due to Plaintiff "acting out". *Id.* Plaintiff submitted medical inquiries to be seen by medical for his arm in September 2020, was placed on the sick call list, and his arm was x-rayed on September 16, 2020, with findings of "[n]o fracture, dislocation, or significant arthropathy of the left elbow . . . No acute osseous abnormality". *Id.* at pp. 51, 52-53. After further medical inquiries, Plaintiff was examined by an outside specialist, who found that an MRI showed he had "no significant injury" to his elbow. *Id.* at pp. 57, 58, 71-73, 75-76.

In a sworn declaration, Plaintiff states that he did not refuse medical care on July 15, 2020, and asserts that Defendant Kendricks fabricated his statements that Plaintiff

refused medical treatment. (Doc. 148, pp. 1-4). In his sworn response to Defendants' summary judgment motion, Plaintiff maintains that after he was returned to his cell on July 15, 2020, and x-rays had been scheduled, no one came to his cell or said anything to him about returning to medical. (Doc. 166, p. 6). According to Plaintiff "no one came to say anything to me about anything having whatsoever to do with medical". *Id.*

It is well established that prison personnel may not subject inmates to "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). "To show that a prison official acted with deliberate indifference to serious medical needs, a plaintiff must satisfy both an objective and a subjective inquiry. First, a plaintiff must set forth evidence of an objectively serious medical need. Second, a plaintiff must prove that the prison official acted with an attitude of 'deliberate indifference' to that serious medical need." *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003) (internal citations omitted). "[D]eliberate indifference has three components: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence." *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999).

"Mere incidents of negligence or malpractice do not rise to the level of constitutional violations. Nor does a simple difference in medical opinion between the prison's medical staff and the inmate as to the latter's diagnosis or course of treatment support a claim of cruel and unusual punishment." *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) (citations omitted).

Viewing the facts in the light most favorable to Plaintiff as the nonmoving party,

Plaintiff was seen in the medical department by a nurse on July 15, 2020, after suffering an injury to his left arm. X-rays and a doctor's visit were to be scheduled thereafter. He did not receive x-rays of his arm until weeks later, and Plaintiff did not sign a refusal of medical care form on that day. According to Plaintiff, he did not refuse medical treatment on July 15, 2020, and no jail personnel spoke to him about returning to medical that day.

"Prison officials must have been deliberately indifferent to a known danger before we can say that their failure to intervene offended 'evolving standards of decency', thereby rising to the level of a constitutional tort. The known risk of injury must be 'a strong likelihood, rather than a mere possibility'". *Brown v. Hughes*, 894 F.2d 1533, 1537 (11th Cir. 1990) (quoting *Estelle* , 429 U.S. 97 and *Edwards v. Gilbert*, 867 F.2d 1271, 1276 (11th Cir. 1989)).

Plaintiff has failed to establish that Defendant Kendricks was aware of yet disregarded a serious medical condition or worsening of Plaintiff's condition. To the contrary, viewing the facts in the light most favorable to the Plaintiff, Defendant Kendricks never spoke to Plaintiff on the day in question about going back to medical, and Plaintiff has not come forth with any facts showing that Kendricks was aware of any condition suffered by Plaintiff that required additional medical attention.

As the Court finds no constitutional violations based on the facts provided, Defendants are entitled to qualified immunity. *Baltimore v. City of Albany, Ga.*, 183 F. A'ppx 891, 896 (11th Cir. 2006).

Eleventh Amendment immunity

To the extent that Plaintiff brings his claims against the Defendants in their official

capacities, the Eleventh Amendment bars Plaintiff's claims. A state is not considered a "person" subject to suit for money damages under § 1983, such that "neither a state nor its officials acting in their official capacities are 'persons' under § 1983". *Will v. Michigan Dep't. of State Police*, 491 U.S. 58 (1989). Thus, a suit brought against a defendant deputy sheriff in his official capacitiy is in reality a suit against the state and as such is not cognizable under § 1983. *Id.*; *Kinsey v. Thomas*, 2021 WL 3116822, n.4 (M.D.Ga. 2021) (CDL) (noting that for purposes of Eleventh Amendment immunity a Georgia county sheriff acted as an arm of the State); *Turquitt v. Jefferson County, Ala.*, 137 F.3d 1285, 1288-89 (11th Cir. 1998) (sheriff and his deputies act as officers of the State when supervising inmates and operating county jails); *Scruggs v. Lee,* 256 F. A'ppx 229, 231 (11th Cir. 2007) (sheriff's deputies entitled to Eleventh Amendment immunity in their official capacities).

Conclusion

Based on Plaintiff's failure to create a genuine issue of material fact as to whether Defendant Sproul provided inadequate nutrition to Plaintiff while confined in isolation, whether Defendants Adams and Watson violated Plaintiff's First Amendment rights as to his mail, and as to whether Defendant Kendricks acted with deliberate indifference to Plaintiff's serious medical needs, it is the recommendation of the undersigned that Defendants Sproul, Adams, Watson, and Kendricks' Motion for Summary Judgment (Doc. 153) be **GRANTED**.

Objections

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written

objections to the recommendations herein, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination as to those portions of the Recommendation to which objection is made; all other portions of the Recommendation may be reviewed by the District Judge for clear error. Any objection is limited in length to TWENTY (20) PAGES. *See* M.D. Ga. L.R. 7.4.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO RECOMMENDED, this 2nd day of August, 2022.

s/ ***Thomas Q. Langstaff***
UNITED STATES MAGISTRATE JUDGE

Appendix "C 1"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JOHNNIE DEMOND JACKSON,	:	
Plaintiff,	:	
VS.	:	**1 : 21-CV-28 (LAG)**
SHERIFF KEVIN SPROUL, *et al.*,	:	
Defendants.	:	

ORDER and RECOMMENDATION

Plaintiff filed this action in February 2021, and several of Plaintiff's pending cases were ordered consolidated into this action. (Doc. 1); *Jackson v. Dougherty County Jail, et al.*, No. 1 : 20-CV-198 (M.D.Ga.)(LAG); *Jackson v. Trent, et al.*, No. 1 : 21-CV-08 (M.D.Ga.)(LAG); *Jackson v. Dougherty County Georgia, et al.*, No. 1 : 20-CV-249 (M.D.Ga.)(LAG); *Jackson v. Adams, et al.*, No. 1 : 21-CV-09 (M.D.Ga.)(LAG). The Court directed Plaintiff to file a recast Complaint on the proper form, along with a complete motion to proceed *in forma pauperis*, and Plaintiff ultimately complied with this directive. (Docs. 8, 27). The Court granted Plaintiff's Motion to Proceed *in forma pauperis* and allowed certain claims to go forward by Order dated May 26, 2021. (Doc. 34). Based on Plaintiff's subsequent objection, which was construed to be a motion to amend his complaint, the Court withdrew its May 26, 2021 Order and Recommendation and issued a new Order and Recommendation, granting Plaintiff's Motion to Amend. (Doc. 59). All motions to amend filed prior to the June 4, 2021 Amended Complaint were denied as moot, and the June 4, 2021 Amended Complaint was deemed the operative complaint. (Docs. 8,

39, 59, 74). The Court allowed certain claims to go forward, and after the adoption of the Recommendation issued on November 9, 2021 and the dismissal of certain claims based on a lack of exhaustion, the following claims remain pending:

- Failure to provide adequate medical treatment against Defendants Miller, Joiner, and Kendrick
- First Amendment mail interference claims against Defendants Adams and Watson
- Conditions of confinement claims against Defendant Sproul pertaining to the provision of inadequate nutrition
- Retaliation claims against Defendants Miller, Montgerard, and Haugabrooks
- Claims concerning the alleged failure to provide adequate medical treatment against Phoebe Putney Memorial Hospital

(Docs. 129, 202).

Defendants Ostrander, Green, Trent, Gilbert, and Boges were dismissed by Order dated March 2, 2022. (Doc. 202). The Clerk is **DIRECTED** to update the docket accordingly.

Plaintiff's claims arise out of events occurring during his confinement as a pretrial detainee at the Dougherty County Jail beginning on or about July 14, 2020. In the claims that remain, Plaintiff alleges that Defendants Miller, Joiner and Kendrick were deliberately indifferent to Plaintiff's medical needs regarding an x-ray, that Defendants Adams and Watson violated Plaintiff's First Amendment rights by interfering with Plaintiff's legal and personal mail, that Defendant Sproul is responsible for unconstitutional conditions of confinement in regard to provision of inadequate nutrition, that Defendants Miller,

Montgerard, and Haugabrooks retaliated against Plaintiff, and that Phoebe Putney Memorial Hospital has a policy or custom of providing dangerously substandard or delayed care to inmates at the Dougherty County Jail. (Doc. 59).

RECOMMENDATION

Motion for injunctive relief

In a motion filed on November 16, 2021, Plaintiff seeks injunctive relief. (Doc. 131). Plaintiff seeks an injunction to ensure the provision of adequate medical care, nutrition, access to the courts, protection from retaliation, sanitation, and mail delivery. *Id.*

In order to obtain injunctive or declaratory relief, the Plaintiff must prove that: (1) there is a substantial likelihood that he will prevail on the merits; (2) he will suffer irreparable injury unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) the injunction, if issued, would not be adverse to the public interest. *Zardui-Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985); *Snook v. Trust Co. of Georgia Bank of Savannah, N.A.*, 909 F.2d 480, 483 (11th Cir. 1990). Injunctive relief will not issue unless the conduct at issue is imminent and no other relief or compensation is available. *Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987). "In this Circuit, a preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the 'burden of persuasion' as to the four requisites." *McDonald's Corp. v. Robertson,* 147 F.3d 1301, 1306 (11th Cir. 1998).

A review of the Plaintiff's motion reveals an inadequate basis for the issuance of

injunctive relief. Plaintiff has not established that he is entitled to injunctive relief in regard to his requests, i.e., that there is a substantial likelihood of success on the merits or resulting irreparable harm, or that no other relief is available to address his alleged injuries. Accordingly, it is the recommendation of the undersigned that Plaintiff's Motion for Preliminary Injunction/TRO be **DENIED**. (Doc. 131).

Motions for summary judgment

Plaintiff has filed multiple motions seeking the entry of summary judgment on his claims. (Docs. 143, 146, 147, 148, 149, 150). A review of these motions reveals that Plaintiff has failed to satisfy his burden of establishing that no genuine issues of material fact remain in this case. The party moving for summary judgment has the initial burden to demonstrate that no genuine issue of material fact remains in the case. *Celotex*, 477 U.S. at 325; *Clark v. Coats & Clark, Inc.*, 929 F.2d 604 (11th Cir. 1991). The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the record, including pleadings, discovery materials, and affidavits, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S. at 323. Plaintiff's summary judgment motions consist merely of a reiteration of his claims as set out in his Complaint, in addition to summary conclusions that the facts as alleged establish the violation of his constitutional rights. Accordingly, it is the Recommendation of the undersigned that the Plaintiff's motions for summary judgment be **DENIED**. (Docs. 143, 146, 147, 148, 149, 150). The Court notes that one of these motions pertains to claim that have been dismissed. (Docs. 146).

Conclusion

Accordingly, it is the recommendation of the undersigned that Plaintiff's Motions (Docs. 131, 143, 146, 147, 148, 149 & 150) be **DENIED**.

Objections

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to the recommendations herein, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination as to those portions of the Recommendation to which objection is made; all other portions of the Recommendation may be reviewed by the District Judge for clear error. Any objection is limited in length to **TWENTY (20) PAGES**. *See* M.D. Ga. L.R. 7.4.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

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Pro Se

Johnnie Demond Jackson

ORDER

Plaintiff's Motion to have the U.S. Marshal serve his motion seeking injunctive relief on the Defendants is **DENIED** as moot. (Doc. 130). Plaintiff's motion seeking to have a "person appointed by the court to take disposition" of this case is **DENIED**, as the Court finds no basis for the relief sought by Plaintiff. (Doc. 134).

In a series of motions in limine, Plaintiff appears to seek to exclude certain evidence he expects to be submitted by Defendants. (Docs. 163, 164, 165, 167). In ruling on dispositive motions, the Court will consider the admissibility of evidence presented by both Plaintiff and Defendants. The filing of separate motions addressing the admissibility of expected future evidence is unnecessary at this time, and to the extent Plaintiff's objections to future evidence are presented as pending motions, these motions are **DENIED**. (Docs. 163, 164, 165, 167). Plaintiff's Motion seeking independent examination of Document 6, Plaintiff's Notice of filing electronic exhibits, for hearsay, is also **DENIED**. (Doc. 172).

Plaintiff's motions to exceed the page limitation in his original response to Defendants' summary judgment motion filed on January 19, 2022 (Doc. 153) and Defendants' summary judgment motion filed on January 27, 2022 (Doc. 156) are **GRANTED**. (Docs. 173, 183). Plaintiff's Motion to stay unidentified responses until his motions for summary judgment have been ruled upon is **DENIED**. (Doc. 191).

Plaintiff has also filed motions seeking to supplement the file and for leave to file additional documents. (Docs. 174-177, 180, 181, 189, 190, 192, 205). These motions are

motion in Limine

Pro se Johnnie Dewand Jackson

Appendix "W 1"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JOHNNIE DEMOND JACKSON,	:	
Plaintiff,	:	
v.	:	CASE NO.: 1:21-CV-28 (LAG) (TQL)
SHERIFF KEVIN R. SPROUL, *et al.*,	:	
Defendants.	:	

ORDER

Before the Court are the Magistrate Judge's Order and Recommendation (O&R) (Doc. 209) and Plaintiff's Objection (Doc. 215). For the reasons explained below, Plaintiff's Objection is **OVERRULED**, and the O&R is **ACCEPTED** and **ADOPTED**.

BACKGROUND

Plaintiff Johnnie Demond Jackson initiated this 42 U.S.C. § 1983 action on February 10, 2021, alleging that his constitutional rights were violated during his pretrial detention at the Dougherty County Jail. (Doc. 1). The Court consolidated this case with four of Plaintiff's other pending § 1983 cases raising related claims on March 9, 2021. (*See* Doc. 8 at 3). Defendants subsequently moved to dismiss several of Plaintiff's claims for failure to exhaust administrative remedies, and the Court granted Defendants' Motion to Dismiss on March 2, 2022. (Doc. 68; Doc. 202 at 2–5). The following claims remain pending before the Court:

(1) Failure to provide adequate medical treatment claims against Defendants Miller, Joiner, and Kendrick;

(2) Mail interference claims against Defendants Adams and Watson;

(3) Conditions of confinement claim against Defendant Sproul based on the failure to provide adequate nutrition;

(4) Retaliation claims against Defendants Miller, Montgerard, and Haugabrooks; and

(5) Failure to provide adequate medical treatment claim against Phoebe Putney Memorial Hospital.

(Doc. 129 at 10; Doc. 202). On November 16, 2021, Plaintiff filed a Motion for Injunctive Relief. (Doc. 131). Plaintiff subsequently filed multiple Motions for Summary Judgment on January 10, 2022. (Docs. 143, 146–50). Plaintiff also filed supplemental Exhibits for his Motion for Summary Judgment against Defendant Kendrick and a Demand for Trial by Jury. (Docs. 144–45). After the Court granted Defendants an extension of time to respond, Defendants Haugabrooks, Miller, Montgerard, Joiner, and Phoebe Putney Memorial Hospital filed their Responses on January 31, 2022. (Docs. 160–62). Defendant Sproul filed his Responses on February 28, 2022. (Docs. 197–98).

The Magistrate Judge issued the instant O&R on March 17, 2022. (Doc. 209). Therein, the Magistrate Judge recommends that the Court deny all of Plaintiff's Motions for Summary Judgment. (*Id.* at 4–5). The Magistrate Judge also recommends that the Court deny a Motion for Preliminary Injunction that Plaintiff filed on November 16, 2021. (*Id.* at 3–4 (citing Doc. 131)). After receiving notice that Plaintiff had been transferred to the Jackson County State Prison, the Court mailed the Magistrate Judge's O&R to Plaintiff's new address on April 5, 2022. (Doc. 211; *see* Docket). Plaintiff timely filed an Objection on April 20, 2022.[1] (Doc. 215).

STANDARD OF REVIEW

District courts have "the duty to conduct a careful and complete review" to determine "whether to accept, reject, or modify" a magistrate judge's order and recommendation. *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam) (citation omitted). The Court reviews *de novo* the dispositive portions of a magistrate

[1] Although the Clerk of Court did not receive Plaintiff's Objection until April 25, 2022, Plaintiff signed his Objection on April 20, 2022. (*See* Doc. 215 at 2). Under the "prison mailbox rule," a pro se prisoner "is presumed to have submitted his [legal filing] on the day he signed it, absent evidence to the contrary." *Boatman v. Berreto*, 938 F.3d 1275, 1277–78 (11th Cir. 2019) (citation omitted). Thus, Plaintiff's Objection is timely.

judge's order and recommendation to which a party objects and reviews the rest for clear error. *See* 28 U.S.C. § 636(b)(1)(A), (C); Fed. R. Civ. P. 72(a), (b)(3). When a party's objections, however, are "[f]rivolous, conclusive, or general," the Court "need not" consider them. *United States v. Schultz*, 565 F.3d 1353, 1361 (11th Cir. 2009) (per curiam) (citation omitted). An objecting party "must clearly advise the district court and pinpoint the specific findings that the party disagrees with." *Id.* at 1360.

DISCUSSION

In the O&R, the Magistrate Judge explained that Plaintiff's Motions for Summary Judgments "consist merely of a reiteration of his claims as set out in his Complaint . . . [and] summary conclusions that the facts as alleged establish the violation of his constitutional rights." (Doc. 209 at 4). Thus, the Magistrate Judge concluded that "Plaintiff has failed to satisfy his burden of establishing that no genuine issues of material fact remain in this case" and Plaintiff's Motions should be denied. (*Id.*). In his Objection, Plaintiff argues that his Motions for Summary Judgment should not be dismissed because at the time he filed his Motions, Defendants "only supplied him with the regulation sized white legal envelopes" and all his filings "would not fit into the envelope . . . which caused [Plaintiff] to have to supplement" his motions. (Doc. 215 at 1). Plaintiff claims that Defendants "limited [his] filing supplies," which "obstructed" his "access to courts" and his ability to comply with the Federal Rules of Civil Procedure and Local Rules governing motions for summary judgment. (*Id.* at 1–2).

Plaintiff's first and second Motions for Summary Judgment on the claims against Defendant Sproul, including supporting exhibits, are 45 and 65 pages long, respectively. (*See* Docs. 143, 146). Plaintiff's Motion for Summary Judgment as to Defendants Haugabrooks, Miller, and Montegerard is 108 pages long, the Motion for Summary Judgment as to Defendants Miller, Joiner, and Kendrick—not including the 14 pages filed as supplemental exhibits against Defendant Kendrick—is 115 pages long, the Motion for Summary Judgment as to Defendants Adams and Watson is 138 pages long, and the Motion for Summary Judgment as to Defendant Phoebe Putney Memorial Hospital is 145 pages long. (*See* Docs. 147–50). In light of these voluminous filings, Plaintiff's claim that

Defendants obstructed his ability to file complete motions for summary judgment is incredible. Moreover, Plaintiff's Objection is "[f]rivolous, conclusive, [and] general," and does not "clearly advise" the Court of "the specific findings that [he] disagrees with." *See Schultz*, 565 F.3d at 1360–61 (citations omitted). Plaintiff's Objection fails to address the Magistrate Judge's reason for concluding the Motions should be denied—that Plaintiff has failed to establish no genuine issue of material fact remains. (Doc. 209 at 4).

Plaintiff does not object to the Magistrate Judge's recommendation that the Court deny his Motion for Preliminary Injunction. (*See id.* at 3–4). Accordingly, the Court has reviewed the rest of the O&R for clear error and finds none therein. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a).

CONCLUSION

Upon a careful and complete review of the record, Plaintiff's Objection (Doc. 215) is **OVERRULED**, and the Magistrate Judge's Order & Recommendation (Doc. 209) is **ACCEPTED** and **ADOPTED** as the Order of this Court. Plaintiff's Motion for Preliminary Injunction (Doc. 131) and Plaintiff's Motions for Summary Judgment (Docs. 143, 146–50) are **DENIED**.

SO ORDERED, this 26th day of April, 2022.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT

Additional material from this filing is available in the Clerk's Office.