

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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June 18, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 22-11599-AA

Case Style: Curtis Hunter v. Lieutenant Morris, et al

District Court Docket No: 5:19-cv-00491-MTT

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

REHG-1 Ltr Order Petition Rehearing

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11599

CURTIS HUNTER,

Plaintiff-Appellant,

versus

RIVERBEND CORRECTIONAL FACILITY, et al.,

Defendants,

LIEUTENANT MORRIS,
In his/her individual and official capacity,
TAMMY BAILEY,
THE GEO GROUP INC,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 5:19-cv-00491-MTT

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

Before NEWSOM and GRANT, 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 Petition for Panel Rehearing also is DENIED. FRAP 40.

* This order is being entered by a quorum pursuant to 28 U.S.C. § 46(d).

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11599

Non-Argument Calendar

CURTIS HUNTER,

Plaintiff-Appellant,

versus

RIVERBEND CORRECTIONAL FACILITY, et al.,

Defendants,

LIEUTENANT MORRIS,

In his/her individual and official capacity,

TAMMY BAILEY,

THE GEO GROUP INC,

APPENDIX K

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 5:19-cv-00491-MTT

Before NEWSOM, GRANT, and EDMONDSON, Circuit Judges.

PER CURIAM:

Curtis Hunter, proceeding *pro se*,¹ appeals the district court's final judgment in favor of defendants in his civil action brought under 42 U.S.C. § 1983. On appeal, Hunter challenges the district court's orders (1) dismissing Hunter's claims against Dr. Steven Niergarth; (2) extending the time to file dispositive motions; (3) denying Hunter's motions to compel and to stay discovery; and (4) granting summary judgment in favor of The GEO Group, Inc. ("GEO") and Lieutenant Marcus Morris on Hunter's Eighth Amendment failure-to-protect and conditions-of-confinement claims.² No reversible error has been shown; we affirm.

¹ We read liberally appellate briefs filed by *pro se* litigants. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). We also construe liberally *pro se* pleadings. *See Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

² Construed liberally, Hunter's appellate brief raises no substantive challenge to the district court's grant of summary judgment in favor of GEO and

I.

Briefly stated, this civil action arises out of a physical altercation among inmates on 10 December 2017, while Hunter was incarcerated at Riverbend Correctional Facility (“Riverbend”): a prison owned and operated by GEO. An initial fight broke out between members of two different gangs, after which the instigating inmate was placed in restraints. Following the initial incident, Lieutenant Morris ordered inmates secured in their dormitory units.

Shortly thereafter, a second fight erupted between members of the two gangs. Hunter was not a member of either gang. Nevertheless, Hunter says he intervened in the fight to try to calm the situation. During the incident, Hunter slipped on a wet area of the tiled floor, fell, and injured his right knee.

Hunter was first examined by the medical staff at Riverbend and was later referred to a private orthopedist, Dr. Niergarth. Hunter visited Dr. Niergarth three times between January and March 2018. Hunter was released from custody on 18 May 2018.

In December 2019, Hunter filed this civil action under 42 U.S.C. § 1983. Pertinent to this appeal, Hunter’s amended complaint asserted a claim against Dr. Niergarth for deliberate indifference to a serious medical need, in violation of the Eighth Amendment. Hunter also asserted Eighth Amendment claims (1) against

Tammy Bailey on Hunter’s Eighth Amendment claim for deliberate indifference to a serious medical need. That claim is thus not properly before us on appeal.

GEO³ and Lieutenant Morris for failure to protect him from bodily harm and (2) against GEO for hazardous conditions of confinement.

In December 2020, the district court granted Dr. Niergarth's motion to dismiss, concluding that Hunter had failed to state a plausible claim for relief under the Eighth Amendment.

On 7 April 2022, the district court granted GEO and Lieutenant Morris's motion for summary judgment. In the same order, the district court denied Hunter's outstanding motions to compel and to stay discovery.

II.

A. Dismissal of Claims against Dr. Niergarth

We review *de novo* a district court's dismissal for failure to state a claim, accepting all properly alleged facts as true and construing them in the light most favorable to the plaintiff. *See Butler v. Sheriff of Palm Beach Cty.*, 685 F.3d 1261, 1265 (11th Cir. 2012).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). To state a plausible claim for relief, plaintiffs must go beyond merely pleading the "sheer possibility" of unlawful activity by a defendant; plaintiffs must offer "factual content that

³ Hunter's amended complaint named Riverbend as a defendant. GEO was later substituted as the proper party.

allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

To state an Eighth Amendment claim for deliberate indifference to a serious medical need, a plaintiff must allege facts sufficient to demonstrate two things: (1) “an objectively serious medical need” and (2) “that prison officials acted with deliberate indifference to that need.” *See Keohane v. Fla. Dep’t of Corr. Sec’y*, 952 F.3d 1257, 1266 (11th Cir. 2020). A prison official acts with deliberate indifference when he “(1) had subjective knowledge of a risk of serious harm, (2) disregarded that risk, and (3) acted with more than gross negligence.” *Wade v. McDade*, 67 F.4th 1363, 1374 (11th Cir. 2023) (emphasis omitted).

The Eighth Amendment does not mandate that medical care for prisoners be “perfect, the best obtainable, or even very good.” *See Hoffer v. Sec’y, Fla. Dep’t of Corr.*, 973 F.3d 1263, 1271 (11th Cir. 2020). We have stressed that “medical treatment violates the Eighth Amendment only when it is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.” *See id.* (brackets omitted).

In his amended complaint, Hunter alleged these facts, which we accept as true and construe in Hunter’s favor. On 11 January 2018, Dr. Niergarth took x-rays of Hunter’s knee, provided Hunter with a stabilizing knee brace, and directed Hunter to return in one month. On 9 February, Dr. Niergarth took more x-rays and ordered an MRI on Hunter’s knee.

On 7 March, Dr. Niergarth discussed the MRI results with Hunter. Dr. Niergarth diagnosed Hunter with a tibial plateau fracture: an injury that could be fixed only by total knee replacement. Dr. Niergarth, however, told Hunter that he was too young for a total knee replacement and that such a procedure would last only ten years. Hunter says Dr. Niergarth then had Hunter return the stabilizing brace, provided no other brace, crutches, or pain medicine, and failed to refer Hunter to another orthopedic surgeon for a second opinion.

For purposes of this appeal, we accept that Hunter's knee injury constitutes an objectively serious medical need. Hunter, however, has failed to allege facts showing plausibly that Dr. Niergarth's medical care was so grossly incompetent, inadequate, or conscience-shocking that it rose to the level of an Eighth Amendment violation. That Hunter disagrees with Dr. Niergarth's medical opinions about Hunter's candidacy for a total knee replacement and about the continuing need for a stabilizing knee brace is insufficient to establish an Eighth Amendment violation. *See Keohane*, 952 F.3d at 1266 ("[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 fails to support a claim of cruel and unusual punishment." (brackets omitted)).

The district court committed no error in dismissing -- for failure to state a claim -- Hunter's deliberate-indifference claim against Dr. Niergarth.

B. Motions for Extension of Time

Hunter next contends that the district court abused its discretion by twice granting GEO and Lieutenant Morris an extension of time to file a motion for summary judgment. We disagree.

To the extent Hunter argues that the district court erred in granting an extension absent a showing of excusable neglect, that argument is without merit. We have said that “[a] timely motion to extend is reviewed for good cause, not excusable neglect, . . . and should be liberally granted absent a showing of bad faith or undue prejudice.” *See Lizarazo v. Miami-Dade Corr. & Rehab. Dep’t*, 878 F.3d 1008, 1012 (11th Cir. 2017) (quotation and citation omitted, alteration adopted); *see also* Fed. R. Civ. P. 6(b) (“When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . if the court acts, or if a request is made, before the original time or its extension expires[.]”).

GEO and Lieutenant Morris twice moved for a 14-day extension of time to move for summary judgment. GEO and Lieutenant Morris asserted that they had worked diligently to prepare their summary-judgment motion. About the first request, GEO and Lieutenant Morris also stated that an extension was necessary due to outstanding discovery issues and a pending hearing scheduled the day after the then-deadline for filing dispositive motions.

Because each extension request was made before the applicable deadline then-in-effect for filing dispositive motions, the requests were subject to good-cause review. The record supports a finding that good cause existed to grant the requested extensions. In addition, nothing evidences that the motions for extension were

filed in bad faith or resulted in undue delay or prejudice. The district court abused no discretion in granting GEO and Lieutenant Morris's motions for extensions of time.

C. Motions to Compel Discovery and to Stay Discovery

We next reject Hunter's arguments challenging the district court's denial of his motions to compel discovery and to stay discovery. We begin with some background.

In June 2021, Hunter moved for sanctions based in part on GEO's purported failure to produce specific prison surveillance videos. The district court conducted a hearing on Hunter's sanctions motion and ordered GEO to file a verified statement addressing the availability of the requested video evidence. GEO produced a sworn affidavit from an investigator at Riverbend confirming that GEO had provided all available videos to Hunter. On 24 August 2021, the district court denied Hunter's motion for sanctions. In doing so, the district court rejected Hunter's assertion that GEO had been untruthful about the availability of the requested video evidence.

One week later, Hunter filed the motion to compel discovery at issue. In his motion, Hunter sought to compel the production of the same video evidence that was central to Hunter's earlier sanctions motion. Given that the district court had already rejected Hunter's arguments about GEO's failure to produce additional video evidence, the district court committed no error in denying Hunter's later-filed motion to compel that same evidence.

Nor did the district court err in denying Hunter's motion to stay discovery: a motion filed two months *after* the close of discovery and two weeks *after* GEO and Lieutenant Morris moved for summary judgment.

We reject Hunter's contention that the district court violated his due process rights (1) by ruling on his motion to compel and his motion to stay discovery several months after the motions were filed, or (2) by ruling on Hunter's motions on the same day the district court granted summary judgment in favor of Defendants. Hunter has failed to demonstrate that the timing or manner of the district court's rulings deprived him of a constitutionally-protected interest or constituted constitutionally inadequate process. *See Worthy v. Phenix City, Ala.*, 930 F.3d 1206, 1223 (11th Cir. 2019).

D. Summary Judgment

Hunter next challenges the district court's grant of summary judgment in favor of GEO and Lieutenant Morris on Hunter's Eighth Amendment conditions-of-confinement and failure-to-protect claims.

We review *de novo* the district court's grant of summary judgment. *See Holloman v. Mail-Well Corp.*, 443 F.3d 832, 836 (11th Cir. 2006). "Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, presents no genuine issue of material fact and compels judgment as a matter of law in favor of the moving party." *Id.* at 836-37.

1. Conditions of Confinement

To establish an Eighth Amendment violation, a prisoner must satisfy both an objective and a subjective component. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994). In a conditions-of-confinement context, a prisoner satisfies the objective component by showing an “extreme” condition that posed an “unreasonable risk of serious damage to his future health or safety.” *See Swain v. Junior*, 958 F.3d 1081, 1088 (11th Cir. 2020) (quotations omitted). “[T]o satisfy the ‘subjective component,’ the prisoner must show that the prison official acted with deliberate indifference.” *Id.* at 1088-89. “A prison official acts with deliberate indifference when he knows of and disregards an excessive risk to inmate health or safety.” *Id.* at 1089 (quotations omitted). “[T]he 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.” *Farmer*, 511 U.S. at 837. Deliberate indifference requires a defendant to have “acted with more than gross negligence.” *See Wade*, 67 F.4th at 1374 (emphasis in original).

Hunter has failed to present evidence sufficient to satisfy either the objective or subjective component of his conditions-of-confinement claim against GEO. Hunter argues chiefly that GEO knew about the condensation on the floor and failed to remedy it. But Hunter has not shown that the alleged condensation on the floor rose to the level of an “extreme” condition that posed an “objectively intolerable risk of harm.” *See Swain*, 958 F.3d at 1088.

Nor has Hunter presented evidence that would support a reasonable inference -- or evidence demonstrating that prison

officials in fact drew the inference -- that the complained-of condition posed a substantial risk of serious harm. To the extent prison officials knew about the alleged condensation on the floor or about a possible risk of a slip-and-fall, the alleged failure to remedy the situation is something more akin to negligence. Hunter has thus failed to demonstrate a sufficiently culpable state of mind to trigger Eighth Amendment liability.

2. Failure to Protect

Hunter also contends that GEO and Lieutenant Morris exhibited deliberate indifference for his safety by failing to respond adequately to the 10 December 2017 altercation and by failing to implement appropriate policies and procedures for addressing inmate gang violence.

“To survive summary judgment on a deliberate indifference failure-to-protect claim, a plaintiff must produce sufficient evidence of (1) a substantial risk of serious harm; (2) the defendant’s deliberate indifference to that risk; and (3) causation.” *Mosley v. Zachery*, 966 F.3d 1265, 1270 (11th Cir. 2020) (quotation and brackets omitted). “[A] prison official violates the Eighth Amendment in [a failure-to-protect] context only when a substantial risk of harm, of which the official is subjectively aware, exists and the official does not respond reasonably to the risk.” *Id.* at 1276.

About Hunter’s claim against Lieutenant Morris, Hunter has failed to present evidence sufficient to show that Lieutenant Morris was subjectively aware of a substantial risk of harm to Hunter arising from the 10 December 2017 incident. Hunter was not a

member of either of the gangs involved in the initial altercation. Nor has Hunter shown that he was targeted for gang violence. The record supports the district court's determination that Lieutenant Morris's efforts to control the situation were reasonable and demonstrated no deliberate indifference to a known risk.

Moreover, Hunter cannot show that his knee injury was caused by Lieutenant Morris's purported deliberate indifference. Instead, Hunter participated voluntarily in the altercation and -- while attempting to kick a fellow inmate -- slipped and fell on an area of the floor that Hunter says was known to collect condensation. In other words, Hunter's injuries were caused by his own conduct, not by Lieutenant Morris's response (or lack thereof) to the situation.

The district court also concluded reasonably that GEO was entitled to summary judgment on Hunter's failure-to-protect claim. To prevail on an Eighth Amendment claim against a private company performing a state function -- like GEO -- a plaintiff must show that the company "advanced a policy or custom of deliberate indifference that led to the violation of [the plaintiff's] constitutional right." *See Ireland v. Prummell*, 53 F.4th 1274, 1289 (11th Cir. 2022) (quotations and emphasis omitted). "[T]o demonstrate a policy or custom, it is 'generally necessary to show a persistent and wide-spread practice.'" *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004); *see also Ireland*, 53 F.4th at 1290 ("[P]roof of a single incident of unconstitutional activity is not sufficient to demonstrate a policy or custom for purposes of § 1983 liability.").

22-11599

Opinion of the Court

13

Hunter has identified no persistent or widespread “policy or custom” that led to his injury. To the extent Hunter contends that the prison was routinely understaffed, we have said that prison understaffing does not rise to the level of an Eighth Amendment violation absent evidence of a “deliberate intent to inadequately staff” the facility. *See McDowell*, 392 F.3d at 1291.

We affirm the district court’s grant of summary judgment in favor of defendants.

AFFIRMED.

APPEAL, PRO SE

**U.S. District Court [LIVE AREA]
Middle District of Georgia (Macon)
CIVIL DOCKET FOR CASE #: 5:19-cv-00491-MTT
Internal Use Only**

HUNTER v. RIVERBEND CORRECTIONAL FACILITY, et al
 Assigned to: CHIEF DISTRICT JUDGE MARC T
 TREADWELL
 Case in other court: Eleventh Circuit Court of Appeals,
 20-11910-CC
 Eleventh Circuit Court of Appeals.
 20-13432-DD
 Eleventh Circuit Court of Appeals,
 21-10260-GG
 Eleventh Circuit Court of Appeals,
 22-11599-AA

Date Filed: 12/11/2019
 Date Terminated: 04/03/2022
 Jury Demand: Both
 Nature of Suit: 440 Civil Rights: Other
 Jurisdiction: Federal Question

Cause: 42:1983 Civil Rights Act

Date Filed	#	Docket Text
12/11/2019	<u>1</u>	COMPLAINT against All Defendants, filed by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 12/11/2019)
12/11/2019	<u>2</u>	MOTION for Leave to Proceed in forma pauperis Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 12/11/2019)
12/11/2019	<u>3</u>	Consent Form (28 USC 636(c)(1)) sent to CURTIS HUNTER (ggs) (Entered: 12/11/2019)
02/10/2020	<u>4</u>	ORDER GRANTING <u>2</u> Motion for Leave to Proceed in forma pauperis. The § 1983 claims against Defendant Riverbend Correctional Facility are DISMISSED. The § 1983 claims against the officers in their official capacities for damages are barred by sovereign immunity and are likewise DISMISSED. Any claims against Riverbend Medical Department are DISMISSED. The remaining potential claims are against Defendants Riverbend Correctional Facility for negligence, against Defendant Lieutenant Morris in his official and individual capacities for negligence, against Defendant Morris in his individual capacity under § 1983 for failure to protect, and against Defendant Niergarth for negligence. Those claims shall proceed for further factual development. Ordered by US DISTRICT JUDGE MARC THOMAS TREADWELL on 2/10/2020. (kat) (Entered: 02/10/2020)
02/10/2020	<u>5</u>	ORDER DIRECTING SERVICE. The Court ORDERS service on the Defendants by the United States Marshal Service. Ordered by US DISTRICT JUDGE MARC THOMAS TREADWELL on 2/10/2020. (kat) (Entered: 02/10/2020)

02/11/2020	<u>6</u>	USM 285 Process Receipt and Return ISSUED for MORRIS, STEVEN NEIGARTH, RIVERBEND CORRECTIONAL FACILITY (Attachments: # <u>1</u> USM 285 NEIGARTH, # <u>2</u> USM 285 RIVERBEND CORRECTIONAL FACILITY)(ggs) (Entered: 02/11/2020)
02/18/2020	<u>7</u>	USM 285 Process Receipt and Return MAILED for MORRIS, STEVEN NEIGARTH, RIVERBEND CORRECTIONAL FACILITY (ggs) (Entered: 02/18/2020)
02/24/2020	<u>8</u>	MOTION for Reconsideration re <u>4</u> Order dismissing claims against Riverbend Facility, Officer Morris and Riverbend Medical Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 02/24/2020)
03/04/2020	<u>9</u>	AMENDED <u>1</u> Complaint against All Defendants by CURTIS HUNTER (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 03/04/2020)
03/11/2020	<u>10</u>	NOTICE of Attorney Appearance by MATTHEW F BOYER on behalf of MORRIS Attorney MATTHEW F BOYER added to party MORRIS(pty:dft) (BOYER, MATTHEW) (Entered: 03/11/2020)
03/11/2020	<u>11</u>	WAIVER OF SERVICE Returned Executed by MORRIS. as to MORRIS (BOYER, MATTHEW) (Entered: 03/11/2020)
03/12/2020	<u>12</u>	NOTICE of proposed Waivers of Service by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 03/12/2020)
04/18/2020	<u>13</u>	ANSWER to <u>9</u> Amended Complaint/Petition by MORRIS with Jury Demand. Related document: <u>9</u> Amended Complaint/Petition filed by CURTIS HUNTER. (BOYER, MATTHEW) (Entered: 04/18/2020)
04/18/2020	<u>14</u>	MOTION to Dismiss Party RIVERBEND CORRECTIONAL FACILITY Filed by RIVERBEND CORRECTIONAL FACILITY. (Attachments: # <u>1</u> Memorandum in Support)(BOYER, MATTHEW) (Entered: 04/18/2020)
04/22/2020	<u>15</u>	ORDER DENYING as moot <u>8</u> Motion for Reconsideration. ORDER re <u>9</u> Amended Complaint: After screening, the claims against Riverbend Correctional Facility for deliberate indifference to inmates' safety and deliberate indifference to serious medical needs shall proceed for further factual development. The Court ORDERS service on Defendant Riverbend Correctional Facility by the United States Marshal Service. The claims against all individual Defendants in their official capacities, against Riverbend Medical Department, against Bailey, and against the unnamed nurse are DISMISSED without prejudice. The only remaining claims are the Eighth Amendment claims against Defendant Riverbend Correctional Facility for deliberate indifference to inmate safety and deliberate indifference to serious medical needs; against Defendant Morris in his individual capacity for deliberate indifference to inmate safety; and against Defendant Niergarth in his individual capacity for deliberate indifference to serious medical needs. Ordered by US DISTRICT JUDGE MARC THOMAS TREADWELL on 4/22/2020 (kat) (Entered: 04/22/2020)
04/24/2020	<u>16</u>	USM 285 Process Receipt and Return UNEXECUTED for STEVEN NEIGARTH (ggs) (Entered: 04/24/2020)
04/24/2020	<u>17</u>	USM 285 Process Receipt and Return ISSUED (PERSONAL SERVICE) for DR. STEVEN NEIGARTH. (ggs) (Entered: 04/24/2020)

04/28/2020	<u>18</u>	USM 285 Process Receipt and Return ASSIGNED to Deputy USM for personal service for STEVEN NEIGARTH. (ggs) (Entered: 04/28/2020)
05/01/2020	<u>19</u>	USM 285 Process Receipt and Return EXECUTED for STEVEN NEIGARTH (ggs) (Entered: 05/01/2020)
05/13/2020	<u>20</u>	RESPONSE filed by CURTIS HUNTER re <u>14</u> MOTION to Dismiss Party RIVERBEND CORRECTIONAL FACILITY (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 05/13/2020)
05/19/2020	<u>21</u>	MOTION to Dismiss Complaint re <u>9</u> Amended Complaint/Petition : by STEVEN NEIGARTH filed by ANGIE DOAN. (Attachments: # <u>1</u> Memorandum in Support of MTD, # <u>2</u> DISREGARD THIS ATTACHMENT - TO BE FILED AS A SEPARATE DOCKET ENTRY. Def's Answer to Ptf's Amended Complaint, # <u>3</u> DISREGARD THIS ATTACHMENT - TO BE FILED AS A SEPARATE DOCKET ENTRY. Def's Motion Stay)(DOAN, ANGIE) Modified on 5/20/2020 to edit docket text. (ggs). (Entered: 05/19/2020)
05/20/2020		Notice of Deficiency (related document(s): <u>21</u> Motion to Dismiss Complaint filed by STEVEN NEIGARTH); Defendant's Answer to Plaintiff's Amended Complaint and Defendant's Motion to Stay are pulled in as attachments to this document instead of being filed as separate docket entries. Please file the Answer and Motion to Stay as separate docket entries using the applicable events. No need to refile the Motion to Dismiss.(ggs) (Entered: 05/20/2020)
05/20/2020	<u>22</u>	ANSWER to <u>9</u> Amended Complaint/Petition by STEVEN NEIGARTH with Jury Demand. Related document: <u>9</u> Amended Complaint/Petition filed by CURTIS HUNTER.(DOAN, ANGIE) (Entered: 05/20/2020)
05/20/2020	<u>23</u>	MOTION to Stay Proceedings re <u>21</u> MOTION to Dismiss Complaint re <u>9</u> Amended Complaint/Petition : by STEVEN NEIGARTH filed by ANGIE DOAN.(DOAN, ANGIE) (Entered: 05/20/2020)
05/20/2020	<u>24</u>	NOTICE OF INTERLOCUTORY APPEAL as to <u>15</u> Order on Motion for Reconsideration, by CURTIS HUNTER. Transcript Order Form due by 6/8/2020 (NO TRANSCRIPTS) (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 05/20/2020)
05/20/2020	<u>25</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re: <u>15</u> Order on Motion for Reconsideration, <u>24</u> Notice of Interlocutory Appeal JudgeAppealed: Marc T. Treadwell. Court Reporter: N/A. Fee: NOT PAID. (ggs) (Entered: 05/20/2020)
05/20/2020		Pursuant to F.R.A.P 11(c) the Clerk of the District Court for the Middle District of Georgia certifies that the record is complete for purposes of this appeal re: <u>24</u> Notice of Interlocutory Appeal. The entire record on appeal is available electronically. (ggs) (Entered: 05/20/2020)
05/21/2020	<u>26</u>	This is a text only entry; no document issued. ORDER GRANTING <u>23</u> Motion to Stay. Ordered by US DISTRICT JUDGE MARC THOMAS TREADWELL on 5/21/2020. (wbm) (Entered: 05/21/2020)
05/26/2020	<u>27</u>	USCA Case Number 20-11910-CC re <u>24</u> Notice of Interlocutory Appeal filed by CURTIS HUNTER. (ggs) (Entered: 05/26/2020)

06/02/2020	<u>28</u>	MOTION for Leave to Amend <u>1</u> Complaint Filed by CURTIS HUNTER.(ggs) (Entered: 06/02/2020)
06/04/2020	<u>29</u>	ORDER re <u>28</u> MOTION to Amend/Correct <u>1</u> Complaint filed by CURTIS HUNTER. Hunter is ORDERED to file his proposed amended complaint no later than June 17, 2020. If Hunter asserts state law negligence claims in that amended complaint, he shall describe his attempts to comply with any applicable ante litem notice requirements. If the Defendants file a response brief, they shall do so within twenty-one days of the date of service of the proposed amended complaint. Ordered by US DISTRICT JUDGE MARC THOMAS TREADWELL on 6/4/2020. (kat) (Entered: 06/04/2020)
06/04/2020	<u>30</u>	SECOND Amended <u>1</u> Complaint against MORRIS, STEVEN NEIGARTH, RIVERBEND CORRECTIONAL FACILITY, RIVERBEND MEDICAL DEPARTMENT, TOMMY BAILEY by CURTIS HUNTER (Attachments: # <u>1</u> Envelope)(ggs) Text modified on 6/15/2020 (kat). Modified on 8/5/2020 to note that this document is the Second Amended Complaint. (ggs). (Entered: 06/04/2020)
06/22/2020	<u>31</u>	MANDATE of USCA DISMISSING appeal for lack of jurisdiction as to <u>24</u> Notice of Interlocutory Appeal filed by CURTIS HUNTER (ggs) (Entered: 06/22/2020)
06/23/2020	<u>32</u>	RESPONSE filed by MORRIS, RIVERBEND CORRECTIONAL FACILITY, RIVERBEND MEDICAL DEPARTMENT re <u>28</u> MOTION to Amend/Correct <u>1</u> Complaint (BOYER, MATTHEW) (Entered: 06/23/2020)
06/24/2020	<u>33</u>	RESPONSE filed by STEVEN NEIGARTH re <u>28</u> MOTION to Amend/Correct <u>1</u> Complaint (DOAN, ANGIE) (Entered: 06/24/2020)
07/01/2020	<u>34</u>	DISREGARD - REFILED AT TAB 35 - REPLY to Response filed by STEVEN NEIGARTH re <u>21</u> MOTION to Dismiss Complaint re <u>9</u> Amended Complaint/Petition : (Attachments: # <u>1</u> Exhibit, # <u>2</u> Affidavit)(DOAN, ANGIE) Modified on 7/6/2020 (ggs). (Entered: 07/01/2020)
07/02/2020		Notice of Deficiency (related document(s): <u>34</u> Reply to Response to Motion filed by STEVEN NEIGARTH); Generic descriptions of exhibits (i.e. Exhibit, Exhibit A, etc.) are not permitted. Document must be re-filed to include a description of exhibit(s). (ggs) (Entered: 07/02/2020)
07/06/2020	<u>35</u>	REPLY to Response filed by STEVEN NEIGARTH re <u>21</u> MOTION to Dismiss Complaint re <u>9</u> Amended Complaint/Petition : (Attachments: # <u>1</u> Exhibit Plaintiff's Response to Motion to Dismiss, # <u>2</u> Exhibit Steven Neigarth, D.O.'s Declaration)(DOAN, ANGIE) (Entered: 07/06/2020)
07/20/2020	<u>36</u>	MOTION to Clarify the Record Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 07/20/2020)
07/23/2020	<u>37</u>	RESPONSE filed by CURTIS HUNTER re <u>21</u> MOTION to Dismiss Complaint re <u>9</u> Amended Complaint/Petition. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Envelope)(ggs) (Entered: 07/23/2020)
08/04/2020) <u>38</u>	MOTION for Extension of Time to Complete Discovery Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Envelope)(ggs) (Entered: 08/04/2020)

08/05/2020	<u>39</u>	ORDER GRANTING in part and DENYING in part <u>28</u> Motion to Amend/Correct; and DENYING <u>36</u> Motion to Clarify the Record. The Court ORDERS service on Defendant Bailey by the United States Marshal Service. If Plaintiff files a response to the pending motion to dismiss, that response shall be filed no later than August 20, 2020. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 8/5/2020. (kat) (Entered: 08/05/2020)
08/07/2020	<u>40</u>	USM 285 Process Receipt and Return ISSUED for TAMMY BAILEY (ggs) (Entered: 08/07/2020)
08/10/2020	<u>41</u>	RESPONSE filed by MORRIS, RIVERBEND CORRECTIONAL FACILITY re <u>38</u> MOTION for Extension of Time to Complete Discovery (BOYER, MATTHEW) (Entered: 08/10/2020)
08/13/2020	<u>42</u>	USM 285 Process Receipt and Return MAILED for TAMMY BAILEY. (ggs) (Entered: 08/13/2020)
08/17/2020	<u>43</u>	REPLY to Response filed by CURTIS HUNTER re <u>38</u> MOTION for Extension of Time to Complete Discovery (Attachments: # <u>1</u> Exhibit A - Interrogatories and Request for Production for Defendant Morris, # <u>2</u> Exhibit B - Interrogatories and Request for Production for Defendant Riverbend Correctional Facility, # <u>3</u> Envelope)(ggs) (Entered: 08/17/2020)
08/20/2020	<u>44</u>	NOTICE - Anti-Litig Notice by CURTIS HUNTER (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 08/20/2020)
08/20/2020	✓ <u>45</u>	RESPONSE filed by CURTIS HUNTER re <u>21</u> MOTION to Dismiss Complaint re <u>9</u> Amended Complaint/Petition. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 08/20/2020)
08/20/2020	<u>46</u>	RESPONSE filed by CURTIS HUNTER re <u>14</u> MOTION to Dismiss Party RIVERBEND CORRECTIONAL FACILITY (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 08/20/2020)
08/31/2020	<u>47</u>	ORDER DENYING <u>38</u> Motion for Extension of Time to Complete Discovery. To the extent Hunter's reply brief can be construed as a motion for sanctions, that motion <u>43</u> is DENIED. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 8/31/2020. (kat) (Entered: 08/31/2020)
09/02/2020	✓ <u>43</u>	MOTION to Compel Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Affidavit, # <u>3</u> Exhibit Plaintiff's First Interrogatories and Request for Production of Documents for Defendant Morris, # <u>4</u> Exhibit Plaintiff's First Interrogatories and Request for Production of Documents for Defendant Riverbend Correctional Facility, # <u>5</u> Exhibit Correspondence regarding discovery to defendants dated 7/16/2020, # <u>6</u> Exhibit Cover letter to defendants dated 7/16/2020, # <u>7</u> Envelope)(ggs) (Entered: 09/02/2020)
09/08/2020	<u>49</u>	NOTICE OF INTERLOCUTORY APPEAL as to <u>39</u> Order on Motion to Amend/Correct, Order on Motion for Miscellaneous Relief, by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 09/08/2020)
09/08/2020	<u>50</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re: <u>39</u> Order on Motion to Amend/Correct, Order on Motion for Miscellaneous Relief, <u>49</u> Notice of Interlocutory Appeal Judge Appealed: Marc T. Treadwell.

		Court Reporter: N/A. Fee: NOT PAID. (ggs) (Entered: 09/08/2020)
09/09/2020	<u>51</u>	ANSWER to <u>30</u> Amended Complaint/Petition, by TAMMY BAILEY with Jury Demand. Related document: <u>30</u> Amended Complaint/Petition, filed by CURTIS HUNTER.(BOYER, MATTHEW)Attorney MATTHEW F BOYER added to party TAMMY BAILEY(pty:dft) (Entered: 09/09/2020)
09/09/2020	<u>52</u>	RESPONSE filed by TAMMY BAILEY, MORRIS, RIVERBEND CORRECTIONAL FACILITY re <u>48</u> MOTION to Compel (BOYER, MATTHEW) (Entered: 09/09/2020)
09/15/2020	<u>53</u>	USCA Case Number 20-13432-DD re <u>49</u> Notice of Interlocutory Appeal filed by CURTIS HUNTER. (ggs) (Entered: 09/15/2020)
09/16/2020	<u>54</u>	USM 285 Process Receipt and Return EXECUTED for TAMMY BAILEY, WAIVER OF SERVICE Returned Executed as to TAMMY BAILEY (ggs) (Entered: 09/16/2020)
09/30/2020	<u>55</u>	ORDER DENYING <u>48</u> Motion to Compel. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 9/30/2020. (kat) (Entered: 09/30/2020)
10/06/2020	<u>56</u>	ORDER GRANTING <u>14</u> Motion to Dismiss Party Riverbend Correctional Facility (construed as Motion to Substitute The GEO Group, Inc.). Defendant The GEO Group, Inc. SHALL file a responsive pleading within 21 days. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 10/6/2020. (kat) (Entered: 10/06/2020)
10/08/2020	<u>57</u>	ANSWER to <u>30</u> Amended Complaint/Petition, by THE GEO GROUP INC with Jury Demand. Related document: <u>30</u> Amended Complaint/Petition, filed by CURTIS HUNTER.(BOYER, MATTHEW) Modified on 10/8/2020 to correct filing party. (ggs). (Entered: 10/08/2020)
10/08/2020		Notice of Deficiency (related document(s): <u>57</u> Answer to Amended Complaint filed by THE GEO GROUP INC, MORRIS, TAMMY BAILEY); Other (enter description). The Answer is on behalf of THE GEO GROUP INC only, although Defendants MORRIS and TAMMY BAILEY, were also selected as filing parties. NO NEED TO REFILE - docket entry corrected by case manager.(ggs) (Entered: 10/08/2020)
11/04/2020	<u>58</u>	MANDATE of USCA DISMISSING appeal as to <u>49</u> Notice of Interlocutory Appeal filed by CURTIS HUNTER. (ggs) (Entered: 11/04/2020)
11/05/2020	<u>59</u>	REPLY to Defendant's Answer and Counterclaim re <u>30</u> Amended Complaint, <u>57</u> Answer to Amended Complaint. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 11/05/2020)
12/01/2020	<u>60</u>	ORDER GRANTING <u>21</u> MOTION to Dismiss Complaint re <u>9</u> Amended Complaint/Petition by STEVEN NEIGARTH. Hunter's deliberate indifference claim and, to be safe, any possible negligence claim, against Niergarth are DISMISSED without prejudice. Because all motions to dismiss have been resolved, the stay on discovery is LIFTED. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 12/1/2020. (kat) (Entered: 12/01/2020)
12/01/2020	<u>61</u>	SCEDULING/DISCOVERY ORDER: Discovery to be complete by 5/30/2021. Dispositive and <i>Daubert</i> motions due by 6/29/2021. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 12/1/2020.

		(Attachments: # <u>1</u> Rule 26 - highlighted)(kat) (Entered: 12/01/2020)
12/31/2020	<u>62</u>	Initial Disclosure by CURTIS HUNTER (Attachments: # <u>1</u> Envelope)(tam) (Entered: 12/31/2020)
12/31/2020		Notice of Deficiency (related document(s): <u>62</u> Notice (Other) filed by CURTIS HUNTER); Pursuant to Local Rule 5.1 Discovery is not filed in the Middle District of Georgia.(tam) (Entered: 12/31/2020)
01/22/2021	<u>63</u>	NOTICE OF INTERLOCUTORY APPEAL as to <u>60</u> Order on Motion to Dismiss Complaint as to Defendant DR. STEVEN NEIGARTH, by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 01/22/2021)
01/22/2021	<u>64</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re: <u>60</u> Order on Motion to Dismiss Complaint, <u>63</u> Notice of Interlocutory Appeal JudgeAppealed: Marc T. Treadwell. Court Reporter: N/A. Fee: IFP. (ggs) (Entered: 01/22/2021)
01/25/2021	<u>65</u>	USCA Case Number 21-10260-GG re <u>63</u> Notice of Interlocutory Appeal filed by CURTIS HUNTER. (ggs) (Entered: 01/25/2021)
03/22/2021		Pursuant to F.R.A.P 11(c) the Clerk of the District Court for the Middle District of Georgia certifies that the record is complete for purposes of this appeal re: <u>63</u> Notice of Interlocutory Appeal. The entire record on appeal is available electronically. (ggs) (Entered: 03/22/2021)
03/22/2021	<u>66</u>	MANDATE of USCA DISMISSING appeal as to <u>63</u> Notice of Interlocutory Appeal filed by CURTIS HUNTER. (Attachments: # <u>1</u> Cover Letter)(ggs) (Entered: 03/22/2021)
03/24/2021	<u>67</u>	Discovery Order Memorandum sent to parties.(ggs) (Entered: 03/24/2021)
04/02/2021	<u>68</u>	NOTICE of Change of Address (Attachments: # <u>1</u> Envelope)(tam) (Entered: 04/02/2021)
04/05/2021	<u>69</u>	Discovery Status Report by TAMMY BAILEY, MORRIS, RIVERBEND MEDICAL DEPARTMENT, THE GEO GROUP INC.(BOYER, MATTHEW) (Entered: 04/05/2021)
04/06/2021	<u>70</u>	NOTICE Notice to Take Deposition by TAMMY BAILEY, MORRIS, THE GEO GROUP INC (BOYER, MATTHEW) (Entered: 04/06/2021)
04/06/2021		Notice of Deficiency (related document(s): <u>70</u> Notice (Other) filed by THE GEO GROUP INC, MORRIS, TAMMY BAILEY); Pursuant to Local Rule 5.1 Discovery is not filed in the Middle District of Georgia. Notices and/or certificates of service pertaining to discovery matters are not to be filed.(ggs) (Entered: 04/06/2021)
06/01/2021	<u>71</u>	MOTION for Sanctions Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Letter dated 5/17/2021, # <u>3</u> Envelope addressed to Curtis Hunter, # <u>4</u> Certified Mail Receipt, # <u>5</u> Interrogatories and Request for Production, # <u>6</u> Certificate of Service, # <u>7</u> Envelope)(ggs) (Entered: 06/02/2021)
06/15/2021	<u>72</u>	RESPONSE filed by TAMMY BAILEY, MORRIS, THE GEO GROUP INC re <u>71</u> MOTION for Sanctions (Attachments: # <u>1</u> Exhibit A - Responses to Plaintiff's First Interrogatories and Request for Production to Defendant Tammy Bailey, # <u>2</u> Exhibit B - Curtis Hunter's 5/2/21 Letter to Matthew Boyer, # <u>3</u> Exhibit C -

		Memo regarding how to Mail Discovery, # <u>4</u> Exhibit D - Letter to Plaintiff of 5/27/21 in response to Plaintiff's 1st letter, # <u>5</u> Exhibit E - Emails confirming mailing)(BOYER, MATTHEW) (Entered: 06/15/2021)
06/21/2021		NOTICE OF SETTING HEARING. Status Conference (re discovery) set for 6/30/2021 at 9:15 AM in Macon before CHIEF DISTRICT JUDGE MARC T TREADWELL. Hearing will occur IN-PERSON . Counsel, parties, and members of the public and press should review Standing Order 2021-06, available on the court's website, regarding courthouse entrance procedures due to COVID-19. Interested parties may obtain dial information by emailing macon.ecf@gAMD.uscourts.gov. (kat) (Entered: 06/21/2021)
06/25/2021	<u>73</u>	MOTION for Extension of Time to File to file their Motion for Summary Judgment. by TAMMY BAILEY, THE GEO GROUP INC filed by MATTHEW F BOYER.(BOYER, MATTHEW) (Entered: 06/25/2021)
06/29/2021	<u>74</u>	This is a text only entry; no document issued. ORDER GRANTING <u>73</u> Motion for Extension of Time. Dispositive motions due by 7/13/2021. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 6/29/2021. (wbm) (Entered: 06/29/2021)
07/01/2021	<u>75</u>	Minute Order for proceedings held before CHIEF DISTRICT JUDGE MARC T TREADWELL: Status (Discovery) Conference held on 6/30/2021. Discovery to be complete by 9/3/2021. Dispositive and Daubert motions due by 10/3/2021. (Court Reporter Darlene Fuller.) (kat) (Entered: 07/01/2021)
07/14/2021	<u>76</u>	RESPONSE to Court Order filed by TAMMY BAILEY, MORRIS, THE GEO GROUP INC re <u>75</u> Set/Reset Scheduling Order Deadlines,, Status Conference, (Attachments: # <u>1</u> Affidavit Affidavit of Michael McRae)(BOYER, MATTHEW) (Entered: 07/14/2021)
07/19/2021	<u>77</u>	RESPONSE filed by CURTIS HUNTER re <u>73</u> MOTION for Extension of Time to File to file their Motion for Summary Judgment. (Attachments: # <u>1</u> Envelope)(ans) (Entered: 07/19/2021)
07/20/2021	<u>78</u>	REPLY to Response filed by TAMMY BAILEY, MORRIS, THE GEO GROUP INC re <u>73</u> MOTION for Extension of Time to File to file their Motion for Summary Judgment. (BOYER, MATTHEW) (Entered: 07/20/2021)
08/24/2021	<u>79</u>	ORDER DENYING <u>71</u> Motion for Sanctions. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 8/24/2021. (kat) (Entered: 08/24/2021)
08/31/2021	✓ <u>80</u>	MOTION to Compel Discovery Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Brief, # <u>3</u> Exhibit 1 - Interrogatories and Request for Production of Documents for Defendant Morris, # <u>4</u> Exhibit 2 - Interrogatories and Request for Production of Documents for Defendant Riverbend, # <u>5</u> Exhibit 3 - Interrogatories and Request for Production of Documents for Defendant Tammy Bailey, # <u>6</u> Exhibit 4 - Document Requests and Interrogatories Dated: 5/25/2020, # <u>7</u> Exhibit 5 - Affidavit of Michael McRae and Photographs, # <u>8</u> Envelope)***scanned as received*** (hdw) (Entered: 08/31/2021)
10/01/2021	<u>81</u>	MOTION for Extension of Time to File to file Motion for Summary Judgment. by TAMMY BAILEY, MORRIS, THE GEO GROUP INC filed by MATTHEW F BOYER.(BOYER, MATTHEW) (Entered: 10/01/2021)

A

		News Report, # <u>15</u> Exhibit B2 - New Article, # <u>16</u> Exhibit B3 - GDC Lockdown Update, # <u>17</u> Exhibit B4 - Google Search of Georgia Lockdowns, # <u>18</u> Exhibit B5 - Ware State Prison Staffing News Infomation, # <u>19</u> Envelope)(hdw) (Entered: 12/28/2021)
01/06/2022	<u>93</u>	REPLY to Response filed by TAMMY BAILEY, MORRIS, THE GEO GROUP INC re 83 MOTION for Summary Judgment (BOYER, MATTHEW) (Entered: 01/06/2022)
04/07/2022	<u>94</u>	ORDER DENYING <u>80</u> Motion to Compel; DENYING <u>88</u> Motion to Stay; and GRANTING <u>83</u> Motion for Summary Judgment. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 4/7/2022. (kat) (Entered: 04/07/2022)
04/08/2022	<u>95</u>	JUDGMENT (ggs) (Entered: 04/08/2022)
05/09/2022	<u>96</u>	NOTICE OF APPEAL as to <u>94</u> Order on Motion to Compel, Order on Motion for Summary Judgment, Order on Motion to Stay, <u>95</u> Judgment by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 05/09/2022)
05/09/2022	<u>97</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re: <u>96</u> Notice of Appeal, <u>94</u> Order on Motion to Compel, Order on Motion for Summary Judgment, Order on Motion to Stay, <u>95</u> Judgment JudgeAppealed: Marc T. Treadwell. Court Reporter: N/A. Fee: NOT PAID. (ggs) (Entered: 05/09/2022)
05/11/2022	<u>98</u>	USCA Case Number 22-11599-AA re <u>96</u> Notice of Appeal filed by CURTIS HUNTER. (ggs) (Entered: 05/11/2022)
05/20/2022	<u>99</u>	MOTION to Clarify the Record Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 05/20/2022)
05/31/2022	<u>100</u>	TRANSCRIPT INFORMATION FORM by CURTIS HUNTER. re <u>96</u> Notice of Appeal NO TRANSCRIPTS ORDERED (Attachments: # <u>1</u> Envelope)(ggs) (Entered: 05/31/2022)
05/31/2022	<u>101</u>	ORDER re <u>99</u> Motion to Clarify the Record. To the extent that Hunter seeks to appeal in forma pauperis, he must file an application that states the issues he intends to present on appeal and argue the good faith basis for doing so. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 5/31/2022. (kat) (Entered: 05/31/2022)
06/01/2022	<u>102</u>	MOTION for Leave to Appeal in forma pauperis Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Exhibit MMonetary Determination (Alabama Dept of Labor), # <u>2</u> Exhibit Payroll Summary, # <u>3</u> Envelope)(ggs) (Entered: 06/01/2022)
06/03/2022	<u>103</u>	ORDER DENYING <u>102</u> Motion for Leave to Appeal in forma pauperis. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 6/3/2022. (kat) (Entered: 06/03/2022)
06/09/2022	104 <u>104</u>	MOTION for Reconsideration re <u>103</u> Order on Motion for Leave to Appeal in forma pauperis Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Envelope)(ggs) (Entered: 06/09/2022)
06/09/2022		REMARK: Docket Sheet mailed to CURTIS HUNTER (ggs) (Entered: 06/09/2022)

10/01/2021	82	This is a text only entry; no document issued. ORDER GRANTING <u>81</u> Motion for Extension of Time. Dispositive and <i>Daubert</i> motions due by 10/17/2021. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 10/1/2021 (bwr) (Entered: 10/01/2021)
10/18/2021	83	MOTION for Summary Judgment by TAMMY BAILEY, MORRIS, THE GEO GROUP INC filed by MATTHEW F BOYER. (Attachments: # <u>1</u> Statement of Material Facts Statement of Material Facts, # <u>2</u> Memorandum in Support Brief in Support of Motion for Summary Judgment, # <u>3</u> Exhibit A - Declaration of Marcus Morris, # <u>4</u> Exhibit B - Deposition of Curtis Hunter, # <u>5</u> Exhibit C -Declaration of Tammy Bailey)(BOYER, MATTHEW) (Entered: 10/18/2021)
10/18/2021	84	NOTICE Conventional Filing by TAMMY BAILEY, MORRIS, THE GEO GROUP INC re <u>83</u> MOTION for Summary Judgment (BOYER, MATTHEW) (Entered: 10/18/2021)
10/18/2021	85	EXHIBIT(S) <i>D to Motion for Summary Judgment</i> by TAMMY BAILEY, MORRIS, THE GEO GROUP INC re <u>83</u> MOTION for Summary Judgment (BOYER, MATTHEW) (Entered: 10/18/2021)
10/19/2021	86	NOTICE to Pro Se Party of Motion for Summary Judgment re: <u>83</u> MOTION for Summary Judgment. (hdw) (Entered: 10/19/2021)
10/25/2021		REMARK: Exhibits E and F were filed in Digital Evidence Vault. (hdw) (Entered: 10/25/2021)
10/27/2021	87	MOTION for Reconsideration as to 82 ORDER GRANTING <u>81</u> Motion for Extension of Time. Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(hdw) Modified on 11/1/2021 to edit event (hdw). (Entered: 10/27/2021)
11/02/2021	88	MOTION to Stay Discovery Filed by CURTIS HUNTER. (Attachments: # <u>1</u> Envelope)(hdw) (Entered: 11/02/2021)
11/04/2021	89	ORDER DENYING <u>87</u> MOTION for Reconsideration as to 82 ORDER GRANTING <u>81</u> Motion for Extension of Time. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 11/4/2021. (kat) (Entered: 11/04/2021)
12/06/2021	90	ORDER re <u>83</u> MOTION for Summary Judgment filed by THE GEO GROUP INC, MORRIS, TAMMY BAILEY. The Court will consider any response filed by Hunter within twenty (20) days of receipt of this Order. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 12/6/2021. (kat) (Entered: 12/06/2021)
12/20/2021	91	RESPONSE to Court Order filed by CURTIS HUNTER re <u>90</u> Order, (Attachments: # <u>1</u> Plaintiff Declaration in Support of His Response to Court Order, # <u>2</u> Envelope)(hdw) (Entered: 12/20/2021)
12/28/2021	92	RESPONSE filed by CURTIS HUNTER re <u>83</u> MOTION for Summary Judgment (Attachments: # <u>1</u> Declaration, # <u>2</u> Statement of Material Facts, # <u>3</u> Statement of the Case, # <u>4</u> Documents in Dispute, # <u>5</u> Exhibit A1 - Medical Document, # <u>6</u> Exhibit A2 - Wikipedia Xray, # <u>7</u> Exhibit A3 - Medical Infomation, # <u>8</u> Exhibit A4 - Medical Infomation, # <u>9</u> Exhibit A5 - Medical Term Defined, # <u>10</u> Exhibit A6 - TKRA Definition, # <u>11</u> Exhibit A7 - Images of TKRA, # <u>12</u> Exhibit A8 - Medical Term for TKRA, # <u>13</u> Exhibit A9 - Medical History, # <u>14</u> Exhibit B1 -

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

CURTIS HUNTER,)
Plaintiff,)
v.) CIVIL ACTION NO. 5:19-CV-491 (MTT)
RIVERBEND CORRECTIONAL)
FACILITY, *et al.*,)
Defendants.)

SCHEDULING ORDER

A. Time for Discovery

The time for discovery in this case shall expire May 30, 2021. Initial disclosures are due on or before December 31, 2020.

In the event that one or all parties believe that a greater time for discovery is needed, the party or parties must file a written motion for extension of time, accompanied by a proposed order for the Court, wherein good cause will be shown for the requested extension.

B. Expert Witnesses

1. Designation of Experts

The Plaintiff must disclose the identity of any expert witness on or before March 1, 2021.

The Defendant must disclose the identity of any expert witness on or before March 31, 2021.

2. Expert Reports

Expert reports shall comply with Federal Rule of Civil Procedure 26(a)(2)(B).

C. Motions to Compel Discovery

While written motions to compel discovery may be properly filed, the Court requests that the parties initially refrain from filing such motions, and instead contact Kim A. Tavalero, Courtroom Deputy (478-752-0717) to schedule a telephone conference to discuss any discovery issues.

D. Motions to Amend the Pleadings or to Join Parties

All Motions seeking to amend the pleadings or to join parties or claims to the current action shall be filed no later than January 30, 2021.

E. Dispositive Motions

The parties agree that all Dispositive Motions will be filed no later than June 29, 2021.

F. Daubert Motions

Daubert motions must be filed on or before June 29, 2021.

SO ORDERED, this 1st day of December, 2020.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF GEORGIA
475 MULBERRY STREET
P. O. BOX 65
MACON, GEORGIA 31202-0065

CHAMBERS OF

MARC T. TREADWELL

JUDGE

TELEPH
ONE: 478-752-3500
TELEPHONE: 478-752-3500
TELECOPIER: 478-752-3502

DISCOVERY ORDER MEMORANDUM

TO: All Counsel and Pro Se Parties

FROM: Judge Marc T. Treadwell

DATE: March 24, 2021

RE: 5:19cv491-MTT
Hunter v. Riverbend Correctional Facility, et al

As described in the Rules 16/26 Order, it is now time for the attorneys and pro se parties to submit a report on the status of discovery.

To prepare the report you must first discuss with all counsel and any pro se parties, either in person or by telephone, any discovery issues. The report should summarize the status of both written discovery and depositions. The report should also address any expert discovery issues.

This report must be filed with the Court within ten (10) days of the date of this order. The attorneys and any pro se parties must cooperate in the preparation of the report. The report may be filed jointly or severally. If any attorney or pro se party believes that it would be appropriate to have a telephone conference with the Court to discuss any discovery issues, contact Kim Tavalero, Courtroom Deputy (478-752-0717), to schedule a telephone conference.

APPENDIX C

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

CURTIS HUNTER,)
v.)
Plaintiff,) Civil Action No.:
) 5:19-cv-00491-MTT
LIEUTENANT MORRIS, et al.)
Defendants)

DEFENDANTS' MOTION FOR EXTENSION OF TIME

COME NOW, Defendants The GEO Group, Inc., Tammy Bailey, and Lieutenant Marcus Morris and respectfully submit this Motion for Extension of Time in which to file their Motion for Summary Judgment.

The current deadline for filing dispositive motions is June 29, 2021. Defendants have been diligently preparing their motion for summary judgment, but respectfully request a **fourteen day (14) day extension of the dispositive motion deadline, through July 13, 2021**, in which to do so. Defendants note that discovery issues in this matter are still outstanding, as the parties are set for a hearing on such issues on June 30, 2021. Defendants further submit that Plaintiff will not be prejudiced by a granting of Defendants' request for a short extension. No further requests for extension are anticipated at this time.

Respectfully submitted this 25th day of June 2021.

FREEMAN MATHIS & GARY, LLP

/s/ Matthew F. Boyer
MATTHEW F. BOYER
GEORGIA BAR NO. 141512

Attorney for Marcus Morris, Tammy Bailey and The GEO Group, Inc.

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the within and foregoing **Defendants'** **Request of Extension of Time** upon all parties to this matter by U.S. Mail to:

CURTIS HUNTER
P.O. Box 8382
Columbus, GA 31908

Respectfully submitted, this the 25th day of June 2021.

FREEMAN MATHIS & GARY, LLP

/s/ Matthew F. Boyer
MATTHEW F. BOYER
GEORGIA BAR NO. 141512
Attorney for Marcus Morris, Tammy Bailey, and The
GEO Group, Inc.

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court [LIVE AREA]

Middle District of Georgia

Notice of Electronic Filing

The following transaction was entered on 6/29/2021 at 11:24 AM EDT and filed on 6/29/2021

Case Name: HUNTER v. RIVERBEND CORRECTIONAL FACILITY, et al

Case Number: 5:19-cv-00491-MTT

Filer:

Document Number: 74 (No document attached)

Docket Text:

This is a text only entry; no document issued. **ORDER GRANTING** [73] Motion for Extension of Time. Dispositive motions due by 7/13/2021. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 6/29/2021. (wbnj) —————

5:19-cv-00491-MTT Notice has been electronically mailed to:

HUNTER S ALLEN, JR hallen@bsllaw.net

MATTHEW F BOYER mboyer@fmglaw.com, dmeacham@fmglaw.com

ANGIE DOAN adoan@bsllaw.net

5:19-cv-00491-MTT On this date, a copy of this document, including any attachments, has been mailed by United States Postal Service to any non CM/ECF participants as indicated below::

CURTIS HUNTER
PO BOX 8382
COLUMBUS, GA 31908

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION



MINUTE SHEET
OF COURT PROCEEDINGS

Date: 6/30/2021 Type of Hearing: Status (Discovery) Conference

Judge: Marc T. Treadwell Court Reporter: Darlene Fuller

Courtroom Deputy: Kim A. Tavalero Law Clerk: Will McDavid

Courtroom: A

Case Number: 5:19-cv-491 (MTT)

Curtis Hunter Counsel: Pro Se

v.

Riverbend Correctional Facility, et al Counsel: Matthew Boyer

Disclaimer: Contents of this Minute Sheet are for administrative purposes ONLY and are NOT meant as a substitution for the official court record. Attorneys should contact the court reporter and order a transcript if there are any questions as to the contents herein.

Court time for JS10/MJSTAR: 41 minutes

9:15 am Called to order. Identification of parties. Preliminary remarks by the Court.
Discussion regarding discovery. Discussion regarding videos.
The Court instructed Mr. Boyer, within 14 days, to provide a verified statement as to what efforts have been made to locate videos and what videos are and are not available.
Discussion regarding extending the discovery deadline.
The Court **ORDERED**:
 • Discovery to be completed by 9/3/2021.
 • Dispositive and *Daubert* motions are due 10/3/2021.

9:56 am Adjourned.

APPENDIX-F

U.S. District Court [LIVE AREA]

Middle District of Georgia

Notice of Electronic Filing

The following transaction was entered on 10/1/2021 at 2:09 PM EDT and filed on 10/1/2021

Case Name: HUNTER v. RIVERBEND CORRECTIONAL FACILITY, et al

Case Number: 5:19-cv-00491-MTT

Filer:

Document Number: 82 (No document attached)

Docket Text:

This is a text only entry; no document issued. ORDER GRANTING [81] Motion for Extension of Time. Dispositive and Daubert motions due by 10/17/2021. Ordered by CHIEF DISTRICT JUDGE MARC T TREADWELL on 10/1/2021 (bwr)

5:19-cv-00491-MTT Notice has been electronically mailed to:

HUNTER S ALLEN, JR hallen@bsllaw.net

MATTHEW F BOYER mboyer@fmglaw.com, dmeacham@fmglaw.com

ANGIE DOAN adoan@bsllaw.net

5:19-cv-00491-MTT On this date, a copy of this document, including any attachments, has been mailed by United States Postal Service to any non CM/ECF participants as indicated below::

CURTIS HUNTER
PO BOX 8382
COLUMBUS, GA 31908

APPENDIX F

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

CURTIS HUNTER,)
v.)
Plaintiff,)
v.)
RIVERBEND CORRECTIONAL)
FACILITY, *et al.*,)
Defendants.)
CIVIL ACTION NO. 5:19-cv-491 (MTT)

ORDER

Defendant Steven Niergarth moves to dismiss Plaintiff Curtis Hunter's claims for failure to state a claim. For the following reasons, that motion (Doc. 21) is **GRANTED**.

I. MOTION TO DISMISS STANDARD

The Federal Rules of Civil Procedure require that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To avoid dismissal pursuant to Rule 12(b)(6), a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the court [can] draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing Fed. R. Civ. P. 12(b)(6)). "Factual allegations that are merely consistent with a defendant's liability fall short of being facially plausible." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012) (internal quotation marks and citations omitted).

At the motion to dismiss stage, "all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the

APPENDIX- A

plaintiff." *FindWhat Inv'r Grp. v. FindWhat.com.*, 658 F.3d 1282, 1296 (11th Cir. 2011) (internal quotation marks and citations omitted). But "conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Wiersum v. U.S. Bank, N.A.*, 785 F.3d 483, 485 (11th Cir. 2015) (internal quotation marks and citation omitted). The complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555 (internal quotation marks and citation omitted). Where there are dispositive issues of law, a court may dismiss a claim regardless of the alleged facts. *Patel v. Specialized Loan Servicing, LLC*, 904 F.3d 1314, 1321 (11th Cir. 2018) (citations omitted). However, when a plaintiff is proceeding pro se, her pleadings may be held to a less stringent standard than pleadings drafted by attorneys and will be liberally construed. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

II. DISCUSSION

A. Facts

Hunter is a former inmate at Riverbend Correctional Facility and alleges that on December 10, 2017, he injured his knee during a fight in his dormitory. Doc. 30 at 4-5. He alleges he was then placed in administrative segregation, where he received no medical care until January 4, 2018. *Id.* at 5-6. He was finally sent to the prison's medical staff on January 4, 2018, and received X-rays on January 8, 2018. *Id.* at 6.

On January 11, 2018, Hunter was sent to an appointment with Defendant Dr. Niergarth, a private doctor for Oconee Orthopedics, LLC. *Id.* at 7. Niergarth took X-rays and gave Hunter a temporary brace. *Id.* On February 9, 2018, Hunter returned to Niergarth, who ordered an MRI. *Id.* After the MRI, Niergarth told Hunter that "a tibial plateau ha[d] shattered and dropped off 7mm that requires a total knee replacement." *Id.* However, Niergarth told him that he was too young to have that procedure, because

they only last ten years. *Id.* Niergarth also asked that Hunter return the knee brace. *Id.* Hunter alleges that he has experienced continued pain and instability in his right knee and that the condition of his left knee is worsening because he is having to use it to compensate for his injured right knee. *Id.* He also alleges that he requires at least \$57,000 to pay for physical therapy or rehabilitation. *Id.*

Hunter brought claims against the prison, prison staff, and Dr. Niergarth for deliberate indifference to serious medical needs in violation of the Eighth Amendment. *Id.* at 9. Niergarth now moves to dismiss, arguing (1) that he was not acting under color of law, (2) the claims are barred by sovereign immunity, (3) that Hunter fails to plausibly allege Niergarth exhibited deliberate indifference, and (4) that any state law negligence claims fail.¹ See generally Doc. 21-1.²

B. Analysis

1. Color of Law

First, Niergarth argues that "Hunter's claim under 42 U.S.C. § 1983 fails to allege any facts to show that an 'outside treating' orthopedist such as Dr. Niergarth is a government official acting under color of state law." Doc. 21-1 at 10. Notably, Niergarth does not argue this as a legal point, but a factual one. His brief does not mention any relevant law or standard for determining when someone is acting under color of law.

Liberally construed, Hunter's complaint alleges that officials at Riverbend, in the exercise of their duty to provide Hunter with medical care, scheduled an appointment with Niergarth. As a factual matter, that is enough. If Niergarth had made any legal

¹ Niergarth also argues that Hunter "wholly fails to demonstrate a causal connection between Dr. Niergarth's alleged indifference and Plaintiff's injury." Doc. 21-1 at 11. But he provides no analysis or support for that one-sentence argument, so the Court does not consider it.

² Niergarth also argues that the complaint fails to state a claim for negligence. However, as the Court has previously noted, Hunter withdrew his negligence claims. Although he has filed two amended complaints, neither the first nor second contain negligence claims. See Docs. 15 at 7 (screening Hunter's first amended complaint); 39 at 2 (construing second amended complaint).

arguments or provided any authority addressing the status of outside physicians, the Court would consider those arguments.³ But Niergarth did not, and he fails to show the claims against him should be dismissed on that ground.

2. Sovereign immunity

Second, Niergarth argues that Hunter “only seeks damages against Dr. Niergarth in his official capacity, which is barred by sovereign immunity.” Doc. 21-10 at 10 (citing *Edelman v. Jordan*, 415 U.S. 651, 658 (1974)).

That argument is baseless. In his first amended complaint (the one in effect when Niergarth filed his motion), Hunter stated that “Dr. Steven Niergarth is the outside treating orthopedic who diagnosed Plaintiff Right Knee as in need of a Total Knee Replacement . . . *He is being sued in his individual capacity and his official capacity* for his role in conspiring with Riverbend to not treat plaintiff.” Doc. 9 at 2 (emphasis added). The second amended complaint did not change that. Niergarth offers no support for his statement that Hunter did not bring individual-capacity claims, and that statement is clearly mistaken.

3. Deliberate Indifference

Third, Niergarth argues that Hunter failed to plausibly allege he was deliberately indifferent to Hunter’s knee issue. Doc. 21 at 11. “A prisoner’s Eighth Amendment right against cruel and unusual punishment by prison officials includes the right to be free

³ By contrast, Hunter did include authority in his brief. Doc. 45 at 1. He cites to *West v. Atkins*, 487 U.S. 42, 54 (1988). In that case, a consulting outside orthopedist under contract with a state-prison hospital to provide part-time treatment was held to be an official acting under color of law. The Court does not necessarily find the facts of this case perfectly analogous to that one; rather, the point is Niergarth’s cursory, unsupported argument provides no basis for granting his motion on color-of-law grounds.

In his reply brief, Niergarth responds by arguing he did not have a “medical service contract with Riverbend Correctional Facility and/or Riverbend Medical Department.” Doc. 35-2 at 2. Even assuming the truth of Niergarth’s contention that he treated Hunter without any form of contractual agreement with the Geo Group, he does not explain how that sort of factual argument is relevant at the motion to dismiss stage.

from deliberate indifference to serious medical needs." *Stewart v. Lewis*, 789 F. App'x 825, 828 (11th Cir. 2019) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)).

To state a claim for deliberate indifference to a medical need, the plaintiff must allege: (1) he had an objectively serious medical need; (2) the official was deliberately indifferent to that need; and (3) the official's deliberate indifference and the plaintiff's injury were causally related. *Hinson v. Bias*, 927 F.3d 1103, 1121 (11th Cir. June 14, 2019).

A plaintiff can show that the prison official acted with deliberate indifference by proving that the official (1) had subjective knowledge of a risk of serious harm and (2) disregarded that risk (3) by conduct that is more than mere negligence. See *Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004) (citation omitted). The plaintiff must plausibly allege that the defendant's response was "poor enough to constitute an unnecessary and wanton infliction of pain, and not merely accidental inadequacy, negligence in diagnosis or treatment, or even medical malpractice actionable under state law." *Taylor v. Adams*, 221 F.3d 1254, 1258 (11th Cir. 2000) (quotations omitted).

Hunter fails to plausibly allege that Niergarth acted with deliberate indifference. Taking Hunter's allegations as true, Niergarth saw him on three occasions. During the first visit, Niergarth took X-rays of his leg and gave him a stabilizer brace but refused Hunter's request for an MRI. Doc. 30 ¶ 18. Hunter does not claim that the X-ray missed anything an MRI would have revealed or even that an MRI was the appropriate diagnostic measure. At the most, Hunter alleges "a simple disagreement over a diagnosis or course of treatment," but such disagreements do not constitute deliberate indifference. *Chatham v. Adcock*, 334 F. App'x. 281, 288 (11th Cir. 2009). Further, Niergarth's ordering X-rays and providing him a knee brace are inconsistent with deliberate indifference.

On the second visit, roughly one month later, Niergarth ordered an MRI. Doc. 30 ¶ 19. On the third visit, roughly a month after the second, Niergarth allegedly diagnosed him with a severe tibial plateau injury that could only be fixed by total knee replacement. *Id.* ¶ 21. However, Niergarth told Hunter he was too young for a total knee replacement because they only last about ten years. *Id.* Niergarth also “took the stabilizer brace back” and “fail[ed] to give Hunter a medical knee brace to keep the injury from getting worse.” *Id.* Hunter alleges Niergarth should have referred him for a second opinion and given him a medical knee brace. *Id.* at 9.

Hunter does not allege facts indicating a second opinion was warranted, and Niergarth’s conclusion that a total knee replacement was not indicated appears to be nothing more than an exercise of professional judgment. That does not rise to the level of deliberate indifference.

4. Putative Negligence Claims

Finally, Niergarth argues that any state law medical negligence claims fail. *Id.* at 12-13. At the time Niergarth filed his motion, Hunter had filed his first amended complaint. In its order screening that complaint, the Court noted Hunter appeared to have withdrawn his negligence claims. See Doc. 15 at 5. However, the Court noted that if Hunter wished to file a negligence claim, he could file a second amended complaint “incorporating all claims he intends to pursue.” *Id.* Niergarth moved to dismiss before Hunter filed his second amended complaint, which also did not include any negligence claims. In that context, the Court understands why Niergarth’s brief addressed any potential negligence claims. He is correct that the first amended complaint “does not describe the duty owed him by Dr. Niergarth under the circumstances[,] . . . fails to allege any actions of Dr. Niergarth that fell below the standard of care and amounted to a breach of the duty owed him[,] . . . fails to allege

causation, . . . [and fails to] describe any injury he sustained as a result of Dr. Niergarth's actions or inaction." Doc. 21-1 at 12-13. Hunter's second amended complaint does not remedy those deficiencies; he still fails to allege a medical negligence claim.

In its order granting Hunter's motion to amend, the Court found the second amended complaint "does not include any state-law negligence claims." Doc. 39 at 2. It is perhaps a fine line between (i) finding the complaint does not even raise a putative negligence claim (as the Court did) and (ii) finding that a putative negligence claim should be dismissed for failure to state a claim (as Niergarth argues). But the Court continues to believe Hunter's second amended complaint simply did not include any putative negligence claims in any form.

III. CONCLUSION

For the reasons noted, Defendant Niergarth's motion to dismiss for failure to state a claim (Doc. 21) is **GRANTED**, and Hunter's deliberate indifference claim and, to be safe, any possible negligence claim, against Niergarth are **DISMISSED** without prejudice.

Because all motions to dismiss have been resolved, the stay on discovery is **LIFTED**.

SO ORDERED, this 1st day of December, 2020.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

ORDER

Pro se Plaintiff Curtis Hunter moves for sanctions based on the Defendants' late response to discovery requests. Doc. 71. In his brief, Hunter accused the Defendants' counsel of backdating a letter and faulted him for responding too late to a set of interrogatories and requests for production. *See generally* Doc. 71-1. On June 30, 2021, the Court held a hearing on that motion. Hunter never produced evidence that the Defendants' counsel backdated a letter. The Defendants' counsel admitted that Defendant Bailey's responses were 15 days late, but claimed the delay was not meant to impede Hunter's prosecution of this case. Doc. 72 at 2.

The specific sanctions Hunter requested were: to "strike from the Record" Bailey's responses to his interrogatories and requests for production, to prohibit evidence (he did not specify what evidence), to deem facts established (he did not specify which facts), and to deem Bailey's objections waived. But Bailey's responses are not a part of the "record" for purposes of any proceedings besides this motion, so there is no need to strike them (and, as Hunter was the one seeking discovery, it does not seem to be in his interest to "strike" those responses anyway). The requests to

APPENDIX II

deem facts established and prohibit evidence are too vague for the Court to evaluate. And for all three of those requests, Hunter does not identify any authority that allows the Court to grant that relief, nor would such relief seem justified in response to a relatively minor delay in producing responses to interrogatories and requests for production. Further, as the Defendants' counsel confirmed at the hearing, Bailey did not object to any of Hunter's interrogatories or requests for production, so there are no objections for Bailey to have waived.

At the hearing, Hunter took issue with the availability of video evidence. The Defendants' counsel confirmed that he had provided all available videos except one, but stated he was in the process of procuring and sending that one. Hunter also claimed the Defendants had failed to send him evidence from video cameras in the individual treatment rooms at the prison. The Defendants' counsel and Mr. McRae, an investigator for the GEO Group, asserted there were no video cameras in the treatment rooms. Hunter accused them of perjury.

The Court noted that Hunter had not conducted discovery on whether there were video cameras in the individual treatment rooms but ordered that Defendants' counsel file a verified statement describing what efforts had been made to locate videos and what videos are and are not available. See Doc. 75 at 1. Counsel provided an affidavit from Mr. McRae that confirmed that the Defendants had provided all available discovery. That affidavit included pictures of individual medical treatment rooms; those rooms did not have cameras. See generally Doc. 76-1.

The Court also extended discovery by more than three months so that Hunter would have adequate time to review the Defendants' production and to conduct all necessary discovery. Doc. 75 at 1.

The Court finds the Defendants' late responses were not willful or for an improper purpose and that any burden or prejudice they caused Hunter has been more than offset by the Court's Order extending discovery. Moreover, Hunter has not shown he is entitled to any of the specific sanctions he seeks. Nor has he shown any basis for his allegations the Defendants engaged in backdating or perjury.

For those reasons, Plaintiff Curtis Hunter's motion for sanctions (Doc. 71) is **DENIED**.

SO ORDERED, this 24th day of August, 2021.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

CURTIS HUNTER,)
Plaintiffs,)
v.) CIVIL ACTION NO. 5:19:cv-00491 (MTT)
LIEUTENANT MORRIS, et al.,)
Defendants.)

ORDER

Plaintiff Curtis Hunter filed this 42 U.S.C. § 1983 action against Defendants The GEO Group, Inc. ("GEO"), Health Services Administrator Tammy Bailey, and Lieutenant Marcus Morris asserting violations of his Eighth and Fourteenth Amendment rights stemming from his incarceration at Riverbend Correction Facility ("Riverbend").¹ Doc. 30. Defendants GEO, Bailey, and Lieutenant Morris moved for summary judgment on all claims. Doc. 83. For the reasons discussed below, Defendants' motion is **GRANTED**.

¹ The Fourteenth Amendment is implicated only to the extent that the Eighth Amendment claims are brought against state governmental actors. See *Tharpe v. Warden*, 834 F.3d 1323, 1345 n.6 (11th Cir. 2016) ("[T]he Eighth Amendment's protections against cruel and unusual punishment have been incorporated against the States through the Fourteenth Amendment.").

I. BACKGROUND²

Hunter was assigned to IB dormitory while incarcerated at Riverbend, a prison operated by GEO. Doc. 83-1 ¶¶ 1-2. At Riverbend, Hunter was allowed to leave his assigned dormitory for "pill call." Doc. 92 at 1. Lieutenant Morris was the shift officer in charge at Riverbend on December 10, 2017. Doc. 83-1 ¶ 1. On that day, two inmates housed in IB dormitory—one of whom Hunter alleges to be affiliated with the "Bloods" gang—entered the IA dormitory chow hall. Doc. 83-1 ¶ 3; 92 at 1. When a correctional officer refused to allow those two inmates to leave because they were not on the pill call list, a fight ensued between the "Bloods" and the "Muslims" resulting in one of the offending inmates being placed in restraints. Docs. 30 at 4; 83-1 ¶ 4.

After the initial altercation in IA dormitory, Lieutenant Morris ordered inmates secured in their dormitory units. Doc. 83-1 ¶ 6. There is no evidence that prison staff

² Unless otherwise stated, all facts are undisputed. Cognizant of Hunter's pro se status, following Defendants' motion for summary judgment, the Court advised Hunter of his duty to respond to a motion for summary judgment, including that he could not rely on the pleadings but instead must present evidence to establish a genuine issue of material fact and must provide his own statement of material facts and respond to Defendants'. Docs. 86: 90. Despite this notice, Hunter's response failed to meet these requirements. See Doc. 92-2. Not only did Hunter not respond to Defendants' asserted facts, but he failed to provide his own statement of material facts that cited to the record. *Id.* Rather, Hunter re-stated conclusory arguments from his complaint. *Id.* And by and large, Hunter has presented no evidence, outside of his own allegations, to support his claims. See *id.* Thus, Hunter has "fail[ed] to properly support an assertion of fact [and] fail[ed] to properly address Defendants' assertion of fact as required by [Fed. R. Civ. P.] 56(c)," and, accordingly, "the court may ... consider [those] facts undisputed for purposes of the motion" pursuant to Rule 56(e)(2). Moreover, pursuant to Local Rule 56, those material facts asserted by Defendants', "which [Hunter has] not specifically controverted by specific citation to particular parts of materials in the record," are deemed to be admitted. M.D. Ga. L.R. 56 ("All material facts contained in the movant's statement [of material facts] which are not specifically controverted by specific citation to particular parts of materials in the record shall be deemed to have been admitted, unless otherwise inappropriate."). However, the Court has still "review[ed] the movant's citations to the record to determine if there is, indeed, no genuine issue of material fact." *Reese v. Herbert*, 527 F.3d 1253, 1269 (11th Cir. 2008) (citation and quotation marks omitted). And despite the deficiencies in Hunter's response, because Hunter is proceeding pro se, and because summary judgment would lead to dismissal of his claims with prejudice, the Court has fully analyzed Hunter's claims for relief regardless of these failings and insufficiencies in his response. *United States v. 5800 SW 74th Ave.*, 363 F.3d 1099, 1101 (11th Cir. 2004). Therefore, if evidence in the record shows that a fact is disputed, the Court draws all justifiable inferences in Hunter's favor for purposes of summary judgment.

knew of any threats and “neither [Hunter] nor any other inmate attempted to notify the prison’s security staff” of the potential for violence in IB. Doc. 83-1 ¶ 8. Nonetheless, a fight did erupt in IB. Docs. 83-1 ¶ 10; 92 at 2. Hunter was one of sixteen inmates involved in this altercation, which lasted approximately one minute. Docs. 83-1 ¶ 11-12; 83-3 ¶ 17. During the incident, Hunter claims he slipped on condensation on a tiled area, fell, and injured his right knee. Doc. 92 at 2.

Lieutenant Morris and other prison staff entered IB dormitory approximately two minutes and thirty seconds after the first punch was thrown.³ Doc. 83-1 ¶ 13. Upon their arrival, several inmates were brandishing homemade weapons and refused Lieutenant Morris’s verbal instructions to disarm. *Id.* ¶¶ 13-14. Because the responding officers were outnumbered and did not carry weapons, Lieutenant Morris ordered them to leave the dormitory and monitor the situation through the windows.⁴ *Id.* ¶¶ 14-16. With his officers monitoring the inmates, Lieutenant Morris went to the main security office to call the Security Supervisor and request permission to activate the prison’s emergency response team. *Id.* ¶ 16. Unlike the officers who initially responded, the prison’s emergency response team possessed weapons and protective gear. *Id.* ¶¶ 15-16.

Because of his role in the fight, Hunter was placed in administrative segregation, where Hunter claims he received no medical care until January 4, 2018. Docs. 83-1 ¶ 18; 92 at 2. But in his “Declaration in Opposition to Defendants’ Motion for Summary

³ Hunter claims that it took forty-five minutes for officers to arrive, but video evidence disputes that. Doc. 92 at 2; *see also* Docs. 83-1 ¶ 11-12; 83-3 ¶ 5. Because the fight lasted only a minute, whether officers arrived in two and a half or forty-five minutes is of no consequence.

⁴ Specifically, the officers did not carry “OC spray, or other means by which to defend themselves (only certain supervisors carried OC spray, but no other weapon).” Doc. 83-1 ¶ 15 (citing Doc. 83-3 ¶ 15).

Judgment," Hunter asserts that he was treated at Riverbend Medical Department for his right knee injury: "on 12-10-17, 12-20-17, 1-4-18, 1-9-18 and for therapy sessions ... on 12-20-17." Doc. 92-1 ¶ 4. The latter version is corroborated by Hunter's own admissions elsewhere in the record that he was seen by a nurse in administrative segregation on December 10, 2017, and that he was seen by a physician assistant on December 20, 2017. Docs. 92 at 2; 83-3 at 58:1-9.

Hunter's medical records indicate that he was examined on the night of the incident, December 10, 2017; on December 15, 2017; and twice on December 20, 2017—once by Nurse Angela Newman and a second time by a physician assistant.⁵ Doc. 83-1 ¶¶ 20-23. Hunter was provided medication for his swelling and pain, as well as a right knee brace and crutches. *Id.* ¶¶ 22-23. Hunter, however, disputes—without citing any evidence in the record—that he was seen by anyone on December 15, 2017, and further claims never to have seen or been treated by Nurse Angela Newman. Doc. 92-3 at 3. But the record reflects that Hunter was seen again by Newman on January 3, 2018, and referred for an x-ray of his right knee. Doc. 83-1 ¶ 23. *Id.* Hunter does not dispute that he was referred for an x-ray or that the x-ray was done.

Defendant Bailey, the Health Services Administrator ("HSA") at Riverbend, received the x-ray order on January 3 and made the appointment the same day. Docs. 83-1 ¶ 19; 83-5 ¶ 10. As HSA, Bailey was responsible for oversight of the medical department's administrative tasks and functions, but she did not personally evaluate or

⁵ According to Defendant Bailey, "[o]n December 15, 2017, Hunter was seen by nurse Charles Coleman, RN ... Nurse Coleman prescribed Hunter acetaminophen for his pain complaints and advised Hunter to avoid strenuous activity, take his medication as needed, and return to the medical department if his condition persisted or worsened. The assessment was reviewed by Dr. Moore on December 18, 2017." Doc. 83-5 ¶ 7.

treat patients and could not order a specific course of treatment, medication, diagnostic evaluation, or accommodation. Doc. 83-1 ¶ 19. Such decisions were exclusively made by the medical providers at the prison, and Bailey was responsible only for “implementing, scheduling, or obtaining the treatment, testing, medication, or accommodations as prescribed by [those] professionals.” *Id.*

– On January 9, 2018, Physician Assistant Meresee examined Hunter and reviewed his x-ray. Doc. 83-1 ¶ 24. Meresee noted that Hunter’s x-ray revealed a minimally displaced, depressed tibial plateau and referred Hunter to be seen by Dr. Moore, an in-house physician at Riverbend.⁶ *Id.* On January 10, 2018, Moore examined Hunter and referred him to a private orthopedist. Doc. 83-1 ¶ 24. Bailey scheduled Hunter to be seen on January 11, 2018, at Oconee Orthopedics, LLC. Docs. 83-1 ¶ 24; 83-5 ¶ 12.

– On that date, additional x-rays revealed a 1mm impacted fracture of the tibia. Doc. 85 at 25. Hunter was placed in a knee brace and advised to remain in the brace at full extension for four weeks and to avoid weight-bearing until his follow-up appointment. *Id.*; Doc. 83-1 ¶ 24. Oconee Orthopedics recommended Hunter be housed in the infirmary to make that possible, but Hunter signed an acknowledgement “that he refused housing in the infirmary and to be non-weight bearing on his right knee.” Doc. 83-1 ¶ 25.

Hunter received additional treatment at the Riverbend Medical Department on January 12 and 16. *Id.* ¶ 25. On February 9, Hunter returned to Oconee Orthopedics and a MRI scan and physical therapy were ordered. *Id.* ¶ 26. Bailey scheduled

⁶ Hunter claims to have seen Physician Assistant Meresee on only one occasion, on December 20, 2017. Doc. 92-1 at 2. Nevertheless, Hunter admits he was seen and x-rayed on January 9. Doc. 92 at 2.

appointments for both orders the same day. *Id.* ¶¶ 26-27; 83-5 ¶ 18. Hunter began his physical therapy on February 16 and had the MRI on February 28. Docs. 83-1 ¶¶ 26-28; 83-5 ¶¶ 18-19. On March 1, Bailey scheduled Hunter's follow up appointment at Oconee Orthopedics. Doc. 83-1 ¶ 27. Hunter was seen there on March 30. *Id.* ¶ 28. Hunter was ordered to continue physical therapy, and he received twenty-one therapy sessions between February 16, 2018, and his release on May 18.⁷ *Id.* ¶¶ 26, 28. The day of his release, Hunter was provided a post-release discharge plan and advised to follow up with a primary care provider. *Id.* ¶ 28.

Following his discharge, Hunter filed this case and sought leave to proceed *in forma pauperis*. Docs. 1; 2. The Court granted that request, in part, and allowed some of Hunter's claim to proceed. Doc. 4. With the benefit of several motions to dismiss (Docs. 56; 60), only Hunter's Eighth Amendment claims against GEO, Bailey, and Lieutenant Morris remain. Those Defendants now move for summary judgment.⁸ Doc. 83.

⁷ Hunter's underwent physical therapy on February 16, February 23, February 27, March 2, March 6, March 9, March 13, March 16, March 20, March 23, March 27, April 3, April 6, April 10, April 13, April 17, May 1, May 8, May 11, May 15, and May 18, 2018. Doc. 83-1 ¶ 26.

⁸ Hunter's outstanding "Motion to Compel" (Doc. 80) and "Motion to Stay Discovery" (Doc. 88), pending resolution of the former, are without merit. In short, Hunter's motion takes issue with Defendants' failure to produce alleged video evidence. Doc. 80. Previously, however, Hunter moved for sanctions based on the Defendants' late response to discovery requests. Doc. 71. After a hearing on that motion, the Court ordered Defendants to file a verified statement describing what efforts had been made to locate videos and what videos were and were not available. See Doc. 75 at 1. Counsel provided an affidavit that confirmed that the Defendants had provided all available discovery. Doc. 76-1. That affidavit included pictures of individual medical treatment rooms; those rooms did not have cameras. See generally *id.* The Court also extended discovery by more than three months so that Hunter would have adequate time to review the Defendants' production and to conduct all necessary discovery. Doc. 75 at 1. Hunter's current motion merely raises issues that were already addressed in this Court's order denying his motion for sanctions. See Doc. 79. Moreover, several of Hunter's contentions are conclusively disproven by documents in the record, and where that is the case, the facts are considered undisputed. See *Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt

II. STANDARD

A court must 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 factual dispute is not genuine unless, based on the evidence presented, "a reasonable jury could return a verdict for the nonmoving party." *Info. Sys. & Networks Corp. v. City of Atlanta*, 281 F.3d 1220, 1224 (11th Cir. 2002) (quoting *United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1437 (11th Cir. 1991)); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The movant may support its assertion that a fact is undisputed by "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." Fed. R. Civ. P. 56(c)(1)(A). "When the *nonmoving* party has the burden of proof at trial, the moving party is not required to 'support its motion with affidavits or other similar material negating the opponent's claim[]' in order to discharge this 'initial responsibility.'" *Four Parcels of Real Prop.*, 941 F.2d at 1437-38 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Rather, "the moving party simply may 'show[]—that is, point[] out to the district court—that there is an absence of evidence to support the nonmoving party's case.'" *Id.* (alterations in original) (quoting *Celotex*, 477 U.S. at 324). Alternatively, the movant may provide "affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial." *Id.*

that version of the facts for purposes of ruling on a motion for summary judgment.") Accordingly, Hunter's motions (Docs. 80; 88) are DENIED.

The burden then shifts to the non-moving party, who must rebut the movant's showing "by producing ... relevant and admissible evidence beyond the pleadings." *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1315 (11th Cir. 2011) (citing *Celotex*, 477 U.S. at 324). The non-moving party does not satisfy its burden "if the rebuttal evidence 'is merely colorable, or is not significantly probative' of a disputed fact." *Id.* (quoting *Anderson*, 477 U.S. at 249-50). Further, where a party fails to address another party's assertion of fact as required by Fed. R. Civ. P. 56(c), the Court may consider the fact undisputed for purposes of the motion. Fed. R. Civ. P. 56(e)(2). However, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge[.] The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255.

III. DISCUSSION

GEO moves for summary judgment on Hunter's Eighth Amendment claims for failure-to-protect, conditions of confinement,⁹ and deliberate indifference to serious medical needs. Doc. 83. Lieutenant Morris likewise moves for summary judgment on Hunter's Eighth Amendment failure-to-protect-claim, and Bailey moves for summary judgment on Hunter's claim for deliberate indifference to serious medical needs. *Id.*

A. Hunter's Failure-to-Protect Claims Fail

GEO and Lieutenant Morris are entitled to summary judgment on Hunter's Eighth Amendment failure-to-protect claims. Although "prison officials have a duty ... to protect

⁹ Hunter's conditions-of-confinement claim against GEO was only raised in Hunter's response to Defendants' motion for summary judgment. Doc. 92 at 2. Nonetheless, Defendants' address the claim in their reply, Doc. 93 at 3-4, and out of an abundance of caution the Court will address that claim here.

prisoners from violence at the hands of other prisoners," not every instance of violence between inmates "translates into constitutional liability for prison officials responsible for the victim's safety." *Farmer v. Brennan*, 511 U.S. 825, 833-34 (1994) (alterations in original). It is only "[a] prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate [that] violates the Eighth Amendment." *Id.* at 828. "Merely negligent failure to protect an inmate from attack does not justify liability under Section 1983." *Brown v. Hughes*, 894 F.2d 1533, 1537 (11th Cir. 1990).

Rather, to survive summary judgment on an Eighth Amendment failure-to-protect claim an inmate must produce sufficient evidence of: (1) a substantial risk of serious harm; (2) deliberate indifference to that risk; and (3) causation. *Goodman v. Kimbrough*, 718 F.3d 1325, 1331 (11th Cir. 2013). To establish deliberate indifference in this context, a prisoner must show that prison officials subjectively knew of the substantial risk of serious harm and that the prison officials knowingly or recklessly disregarded that risk. *Id.* at 1332.

1. *Lieutenant Morris is Entitled to Summary Judgment*

Hunter fails to produce evidence as to each element of his failure-to-protect claim against Lieutenant Morris. First, Lieutenant Morris was not aware of any specific or general threat of violence against Hunter or any other inmate in IB dormitory following the initial altercation in IA dormitory. Doc. 83-1 ¶¶ 5, 8. And even assuming he was, it is unclear how this should have alerted Lieutenant Morris to any risks posed specifically to Hunter, given that Hunter was not a member of either gang. Doc. 83-4 at 27:11-18. In other words, Hunter has failed to show Lieutenant Morris "[was] aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed],"

and that Lieutenant Morris actually drew that inference. *Purcell v. Toombs Cnty.*, 400 F.3d 1313, 1319-20 (11th Cir. 2005) (internal quotation marks omitted).

Second, there is no evidence in the record that Lieutenant Morris failed to respond reasonably to the risks identified by Hunter after the initial altercation on December 10, 2017. See *Farmer*, 511 U.S. at 845 (explaining that “prison officials who act reasonably cannot be found liable”). To the contrary, the record indicates that Lieutenant Morris did the very thing Hunter claims he should have done: lock down the prison.¹⁰ Doc. 83-1 ¶ 4. Moreover, after the subsequent altercation in IB dormitory, Lieutenant Morris further instructed the responding officers to monitor the situation through windows outside the dormitory while he traveled to the main security office to request activation of the prison’s emergency response team. *Id.* ¶ 16.

Hunter claims Lieutenant Morris should have instead ordered the inmates to be confined or “locked down” to their individual beds. Doc. 92 at 1. But Hunter fails to proffer any evidence that by failing to do so, Lieutenant Morris acted unreasonably. In fact, it is undisputed that “[t]here is no prison policy or protocol requiring that all inmates be confined to their individual beds following an inmate altercation.” Doc. 83-1 ¶ 7. Instead, prison staff “are simply required to use their best judgment to take measures to deescalate tensions and prevent the further spread of disruptive behavior.” *Id.* As a result, Lieutenant Morris placed the inmate involved in the initial altercation in administrative segregation and ordered the other inmates to be separated and placed in their respective dormitories. *Id.* Lieutenant Morris testified that he “did not believe that

¹⁰ Hunter disputes “whether defendant Morris knew and failed to lockdown IA and IB dormitory after the fight between bloods and Muslims.” Doc. 92-2 ¶ 8. But Hunter cites nothing in the record to support this contention.

further measures were necessary at that time," and Hunter has not produced any evidence to the contrary.¹¹ Doc. 83-3 ¶ 10.

Nor is there evidence tending to establish Lieutenant Morris caused Hunter's knee injury. Hunter claims in conclusory fashion that Lieutenant Morris's "failure to lockdown resulted in the bloods attacking Muslims in IB dormitory" and his "fail[ure] to station officers to the dormitories to monitor suspicious activities or monitor the video cameras" caused his injuries. *Id.* Lieutenant Morris, however, testified that inmates are in fact monitored by security cameras, and officers are further required to make rounds within the building. Doc. 83-3 ¶ 3. And the record establishes that Lieutenant Morris did order inmates to be locked down in their individual dormitories. *Id.* ¶ 10. Most significantly, surveillance footage shows that Hunter voluntary joined the altercation which led to his injuries while many other inmates chose to remain uninvolved. Docs. 83-1 ¶ 9; 83 (Ex. E).

Finally, Hunter's arguments suggest that his failure to protect claim against Lieutenant Morris is really a supervisor liability claim against Morris or some unnamed Riverbend personnel. That is not the claim Hunter pled, but the Court addresses it nonetheless.

It is well established that supervisory officials are not vicariously liable under § 1983 for the unconstitutional acts of their subordinates. *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003) (internal quotation marks omitted). Instead, § 1983 liability

¹¹ In response to Defendants' motion for summary judgment, Hunter submitted two internet articles and a Georgia Department of Corrections ("GDC") press release concerning prison lockdowns. Docs. 92-14; 92-15; 92-16; 92-17. However, even if these materials were admissible, they do not dispute the fact that there is no policy to confine inmates to their beds or that tends to establish that Lieutenant Morris otherwise acted improperly.

arises only when either "the supervisor personally participates in the alleged unconstitutional conduct or when there is a causal connection between the actions of a supervising official and the alleged constitutional deprivation." *Id.* The causal connection may be established by showing that: (1) the supervisor had notice of a history of widespread abuse, which he neglected to correct; (2) the supervisor implemented a custom or policy that resulted in deliberate indifference to constitutional rights; or (3) the facts support an "inference that the supervisor directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so." *Id.* (internal quotation marks omitted).

This, Hunter has not done. Although Hunter claims that on the date of the incident, Lieutenant Morris was "in charge of the total operation of the prison," he provides no basis for this conclusory allegation. Indeed, the fact that Lieutenant Morris was required to channel his request to activate the emergency response team through the Security Supervisor indicates this was not the case. Docs. 83-1 ¶ 16; 92 at 4. But even if Lieutenant Morris was in charge, Hunter proffers no evidence of past incidents at Riverbend that led to violence, that Lieutenant Morris was responsible for staffing, or that Lieutenant Morris directed any subordinate to act improperly.

Because Hunter presents no specific evidence tending to show that Lieutenant Morris acted with deliberate indifference to a known, substantial risk of serious harm to Hunter's safety, Lieutenant Morris's motion as to Hunter's failure-to-protect claim is **GRANTED.**

2. *GEO is Entitled to Summary Judgment*

GEO, as the commercial operator of Riverbend, is the "functional equivalent" of the government entity it serves by virtue of the state function GEO performs. *Buckner v. Toro*, 116 F.3d 450, 452 (11th Cir. 1997). As such, GEO receives the same protection from vicarious liability or *respondeat superior* claims as a traditional state actor. *Monell v. Dep't of Soc. Servs. of NY*, 436 U.S. 568, 691 (1978). For Hunter's failure-to-protect claim against GEO to survive, he must produce some evidence of: (1) a violation of his constitutional rights; (2) that GEO had a policy or custom that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the constitutional violation. *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004).

Liability may also be imposed in the absence of a policy that establishes appropriate procedures to ensure that a person's constitutional rights are not violated. See *Rivas v. Freeman*, 940 F.2d 1491, 1495 (11th Cir. 1991). In those circumstances, a plaintiff must show that the "policy of inaction" is the functional equivalent of a decision by the [entity] itself to violate the constitution." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 394-95 (1989) (O'Connor, J., concurring).

Here, Hunter essentially contends that GEO's staffing policy and policy of confining inmates to their dormitories were insufficient to safeguard his safety. Doc. 92. But as discussed, Hunter has not provided evidence of widespread violence. See *Purcell*, 400 F.3d at 1320 ("[O]ccasional, isolated attacks by one prisoner on another may not constitute cruel and unusual punishment, [but] confinement in a prison where violence and terror reign is actionable.") (internal quotation marks omitted). Nor can Hunter point to another occasion when GEO's alleged understaffing or lockdown-policy

contributed to or exacerbated an inmate's medical condition or endangered his safety. While Hunter has proffered material regarding understaffing at Ware State Prison, such evidence is irrelevant to alleged understaffing at Riverbend. Doc. 92-18. Simply put, this isolated incident is not evidence of a "persistent" or "widespread" policy of understaffing Riverbend such that inmate health or safety would be endangered.¹² See *McDowell*, 392 F.3d at 1291. Without such evidence, Hunter's claim fails, and GEO's motion with respect to the failure-to-protect claim is **GRANTED**.

B. Hunter's Deliberate Indifference to Serious Medical Needs Claims Fail

Bailey and GEO also move for summary judgment on Hunter's Eighth Amendment deliberate indifference to serious medical needs claims.¹³ Doc. 83. "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." *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003). Regarding the objective component, an inmate must prove an objectively serious medical need that, if left unattended, poses a substantial risk of serious harm. *Taylor v. Adams*, 221 F.3d 1254, 1258 (11th Cir. 2000) (internal quotation marks omitted). With respect to the subjective component, to survive summary judgment Hunter must produce evidence of: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere

¹² "[Hunter] cannot rely on a generalized policy of understaffing." See *Anderson v. City of Atlanta*, 778 F.2d 678, 687-88 (11th Cir. 1985). Rather, he must show GEO had a "deliberate intent" to inadequately staff Riverbend. *McDowell*, 392 F.3d at 1290-91. Hunter has not done that here.

¹³ Deliberately indifferent conduct includes: "(1) grossly inadequate care; (2) a decision to take an easier but less efficacious course of treatment; and (3) medical care that is so cursory as to amount to no treatment at all." *Melton v. Abston*, 841 F.3d 1207, 1223 (11th Cir. 2016). "A defendant who unreasonably fails to respond or refuses to treat an inmate's need for medical care or one who delays necessary treatment without explanation or for non-medical reasons may also exhibit deliberate indifference." *Id.*

February 12, 2018, which Bailey scheduled that same day. Doc. 83-5 ¶ 18. On February 16, 2018, Hunter began physical therapy and underwent an MRI on February 28. Doc. 83-1 ¶ 26. Bailey scheduled Hunter a follow-up appointment with a private orthopedist on March 1, 2018, which Hunter attended on March 30. Doc. 83-1 ¶¶ 26-28. Between February 16, 2018, and his release from Riverbend on May 18, Hunter received twenty-one physical therapy sessions. Doc. 83-1 ¶ 26. On the day of his release, Hunter was ultimately provided a post-release discharge plan and advised to follow up with a primary care provider. Doc. 83-5 ¶ 28.

In short, the only possible claim Hunter could have against Bailey is that she deliberately failed or delayed scheduling his medical treatment as ordered by his medical providers. However, the undisputed record shows that Bailey promptly scheduled Hunter's appointments after receiving orders to do so.¹⁶ Insofar as Hunter apparently disagrees with the course of his medical treatment at Riverbend, mere disagreement about the course of one's treatment is "a classic example of a matter for medical judgment" that does not give rise to an actionable claim of deliberate indifference. *Estelle v. Gamble*, 429 U.S. 97, 107 (1976); see also *Hamm v. DeKalb Cnty.*, 774 F.2d 1567, 1575 (11th Cir. 1985) ("Although [the prisoner] may have desired different modes of treatment, the care the jail provided did not amount to deliberate indifference." (alteration in original)).

To survive summary judgment, Hunter was required to present specific evidence that the response of Bailey "was poor enough to constitute 'an unnecessary and wanton

¹⁶ Without orders from a medical provider Bailey had no ability to schedule Hunter for additional treatment once he was discharged from treatment with Riverbend Medical Department on May 18, 2018. Doc. 83-5 ¶ 3.

negligence. *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999). Finally, as with any tort claim, Hunter must show that an injury was caused by the prison official's wrongful conduct. *Goebert v. Lee Cnty.*, 510 F.3d 1312, 1326 (11th Cir. 2007).

1. *Bailey is Entitled to Summary Judgment*

Assuming that Hunter had an objectively serious medical need, Hunter still does not satisfy the subjective knowledge element of his claim.¹⁴ Hunter's claim of inadequate medical care has two aspects. First, Hunter alleges a delay in receiving medical attention. Doc. 92 at 6. Second, Hunter contends that Bailey failed to schedule him for continued treatment following his release from Riverbend.¹⁵ *Id.*

But the record, including Hunter's own statements, refutes both of Hunter's conclusory allegations. Hunter was examined on the evening of the altercation; five days later on December 15, 2017; and twice on December 20. Doc. 83-1 ¶¶ 20-23. On January 3, 2018, Hunter was seen again, an x-ray was ordered, and Bailey made the appointment the same day. Doc. 83-5 ¶ 10. The x-ray was performed on January 9, 2018, and Hunter was referred to a physician, which Bailey scheduled for the next day. Doc. 83-5 ¶ 11. Hunter received orders for a MRI scan and physical therapy on

¹⁴ "A serious medical need is 'one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.'" *Youmans v. Gagnon*, 626 F.3d 557, 564 (11th Cir. 2010) (quoting *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1307 (11th Cir. 2009)). In this case, Hunter was diagnosed with a minimally displaced, depressed tibial plateau on January 9, 2018, and a meniscal tear on February 9, 2018. Doc. 83-1 ¶¶ 24, 26. Because this is undisputed, it is not necessary to discuss the internet materials—including Wikipedia images and internet searches regarding his diagnosis—that Hunter submitted in response to Defendants' motion. Docs. 92-5; 92-6; 92-7; 92-8; 92-9; 92-10; 92-11; 92-12; 92-13.

¹⁵ The Eleventh Circuit has not yet directly addressed the extent, if any, of the obligation to provide inmates with ongoing treatment after being released—although the court has indicated on at least two occasions the approach that it would take. See *Marsh v. Butler Cnty., Ala.*, 268 F.3d 1014, 1039 (11th Cir. 2001); see also *Johnson v. Florida*, 348 F.3d 1334 (11th Cir. 2003). Here, however, it is not necessary to address that issue because Hunter has not shown that Bailey acted with deliberate indifference.

infliction of pain,' and not merely accidental inadequacy, 'negligence in diagnosis or treatment,' or even 'medical malpractice' actionable under state law." *Taylor*, 221 F.3d at 1258 (quoting *Estelle*, 429 U.S. at 105). Hunter has failed to do that here.¹⁷

Accordingly, Bailey's motion for summary judgment is **GRANTED**.

2. *GEO is Entitled to Summary Judgment*

GEO also moves for summary judgment on Hunter's medical needs claim. Doc. 83. As discussed *supra*, GEO cannot be held vicariously liable for the acts of an agent, unless its policies or customs caused the constitutional violation in question. *Buckner* 116 F.3d at 452. Thus, Hunter must demonstrate that GEO's policy or failure to maintain a policy amounted to deliberate indifference to its known or obvious consequences, and a conscious decision not to act. *Bd. of Cnty. Comm'r's of Bryan Cnty.*, 520 U.S. at 407. Here, Hunter has pointed to no specific policy or lack thereof with respect to his medical care for which GEO may be held responsible. As such, Hunter's claim against GEO must fail and GEO's motion is **GRANTED**.

C. Hunter's Conditions-of-Confinement "Claim" Fails

In his summary judgment response, Hunter raises for the first time what could only be a condition-of-confinement claim. Doc. 92. Hunter says that GEO knew about building defects resulting in condensation on the floor and because the condensation caused him to fall GEO is liable for his knee injury. *Id.* at 2. Of course, Hunter's complaint does not allege a condition-of-confinement claim, but the Court nonetheless addresses the issue.

¹⁷ Hunter contends that Bailey failed to schedule him for a total knee replacement due to costs despite being ordered by an off-site medical provider. But Hunter testified that "there was nothing [the Doctor] could do ... because he said that I was too young to have [the] procedure." Doc. 92-3 at 5. This is confirmed by Hunter's medical records. Doc. 85 at 68.

It is well-established that even though “the Constitution does not mandate comfortable prisons,” a prisoner’s claim that the conditions of his confinement constitute cruel and unusual punishment may state a claim for relief under the Eighth Amendment. *Rhodes v. Chapman*, 452 U.S. 337, 345-46 (1981). To state an unconstitutional condition-of-confinement claim, a prisoner must show that the deprivations he suffers are objectively and sufficiently “serious” or “extreme” to constitute a denial of the “minimal civilized measure of life’s necessities.” *Thomas v. Bryant*, 614 F.3d 1288, 1304 (11th Cir. 2010); see also *Brooks v. Warden*, 800 F.3d 1295, 1303-04 (11th Cir. 2015). This standard is only met when the challenged conditions pose “an unreasonable risk of serious damage to [the prisoner’s] future health or safety,” *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004) (internal quotation marks omitted), or if society “considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk,” *Helling v. McKinney*, 509 U.S. 25, 36 (1993). The prisoner must also show that prison officials acted with deliberate indifference, i.e., that the officials knew that the challenged conditions posed an excessive risk to the prisoner’s health or safety but disregarded them. *Swain v. Junior*, 958 F.3d 1081, 1088-89 (11th Cir. 2020).

Even if GEO knew about the condensation, as Hunter contends, the failure to address it is at most negligent. *White v. Kimbrough*, 2013 WL 5436715, at *1 (N.D. Ga. Sept. 27, 2013) (holding conditions resulting in slip-and-fall were result of mere negligence and not actionable in § 1983). The floor condensation alone cannot pose an extreme or unreasonable risk of harm, as “[s]lippery floors constitute a daily risk faced by members of the public at large.” *Harvey v. Plowman*, 2012 WL 6135818, at *3 (N.D.

Fla. Nov. 7, 2012), *report and recommendation adopted*, 2012 WL 6138339 (N.D. Fla. Dec. 11, 2012). Consequently, “[s]lip and fall accidents do not give rise to federal causes of action.” *Wynn v. Ankoh*, 2006 WL 2583370, at *2 (M.D. Ga. Sept. 6, 2006); see also *Smith v. Brown*, 2012 WL 5392154, at *2 (N.D. Ga. Sept. 25, 2012), *report and recommendation adopted*, 2012 WL 5392114 (N.D. Ga. Nov. 5, 2012) (same); *Harvey*, 2012 WL 6135818, at *3 (same). Accordingly, GEO’s motion as to that claim is

GRANTED.

IV. CONCLUSION

For the reasons noted, Defendants’ motion for summary judgment (Doc. 83) is
GRANTED.

SO ORDERED, this 7th day of April, 2022.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11599

CURTIS HUNTER,

Plaintiff-Appellant,

versus

RIVERBEND CORRECTIONAL FACILITY, et al.,

Defendants,

LIEUTENANT MORRIS,

In his/her individual and official capacity,

TAMMY BAILEY,

THE GEO GROUP INC,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 5:19-cv-00491-MTT

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: September 29, 2023

For the Court: DAVID J. SMITH, Clerk of Court