APPENDIX

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APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2669

JOSE MONTANEZ,
Appellant

v.

PAULA PRICE, Health Care Administrator SCI-Huntingdon; RAJINDER MAHLI, SCI-Huntingdon; GABRIELLE NALLEY, Physician's Assistant SCI-Huntingdon; NURSE MEL; DR. VERNON PRESTON, SCI-Rockview; RICHARD ELLERS, Healthcare Administrator SCI-Rockview; DR. DAVID EDWARDS, SCI-Smithfield; MARY PATTON, SCI-Smithfield; C. WAKEFIELD, Superintendent SCI-Smithfield; N. DAVIS, Registered Nursing Supervisor SCI-Huntingdon; JOHN RIVELLO; WELLPATH CARE; STATE OF PENNSYLVANIA

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3:22-cv-01267)
District Judge: Honorable Robert D. Mariani

Argued on September 24, 2024

Before: KRAUSE, BIBAS, and AMBRO, Circuit Judges

(Opinion filed: October 8, 2025)

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OPINION OF THE COURT

KRAUSE, *Circuit Judge*.

The protections afforded by the Eighth Amendment, the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act (RA), 29 U.S.C. § 701 *et seq.*, do not stop at the prison gates. So when an inmate, whether counseled or pro se, claims that prison officials ignored his serious medical needs and failed to accommodate his disability, the courthouse doors must be open for a fair hearing. That was not the case for Appellant Jose Montanez, whose claims were dismissed with prejudice even though his complaint, liberally construed, states an Eighth Amendment claim against several defendants in their individual capacities, a claim under the RA against Wellpath Care LLC, and a claim under both the ADA and RA against the Commonwealth of Pennsylvania. As to his other claims, Montanez's pleading was insufficient, but his briefs in opposition to the defendants' motions to dismiss make clear that amendment would not have been futile, so the District Court erred by not granting him leave to amend. We will therefore affirm the District Court in part, reverse in part, and remand with instructions to allow Montanez to amend his complaint in accordance with this opinion.

I. Factual and Procedural History[1]

On August 28, 2021, Jose Montanez stood up in his cell at SCI-Huntingdon and suddenly collapsed, his body numb from the chest down. Lying on the cell floor, Montanez alerted a nearby guard to his condition, and

[1] Evidence adduced in discovery may not support or may affirmatively disprove the allegations in Montanez's complaint. In reviewing the dismissal of a complaint, however, we must accept the allegations as true. *Stringer v. Cnty. of Bucks*, 141 F.4th 76, 84, 90 (3d Cir. 2025). We therefore recount the facts below as set forth in the complaint, drawing all reasonable inferences in Montanez's favor, as required at this stage. *Id.*

the guard soon returned with another prison officer. Montanez was then forced to "drag his body over to the cell door" before he was eventually taken to the medical unit in a wheelchair by Appellee Nurse Melanie Wagman. App. 37.

Once in the medical unit, Nurse Wagman took Montanez's vitals and felt around his legs. She then phoned Appellee Dr. Rajinder Mahli, who instructed her to move Montanez from his third-floor cell to a cell on the first floor and said he would evaluate Montanez the next day. When Montanez—still paralyzed from the waist down—learned that he would not be evaluated or treated until the next day, he asked to be taken to the hospital, but Nurse Wagman responded, "you're not going to the hospital," and laughed at the request. App. 38. Nurse Wagman then wheeled Montanez to the door of his new cell, where she ordered him to "get out of the wheelchair," offering him no assistance, forcing him to drag his limp body "across [his] cell to the bed," and leaving him "exhausted and in so much pain." App. 38.

The next day, Dr. Mahli came to examine Montanez, but he, too, did not enter the cell, and ordered Montanez to "walk for him." App. 38. Montanez was still unable to stand, let alone walk, so he again dragged his paralyzed body across the cell floor as Dr. Mahli watched. And when Montanez informed Dr. Mahli that he was also involuntarily urinating on himself, Dr. Mahli simply "nodded" and "walked off," doing nothing to help Montanez with his sudden paralysis or incontinence. App 38-39.

Montanez was then left alone in his cell in this condition—paralyzed from his chest to his feet and uncontrollably urinating on himself—for another three days before receiving medical attention. At that point,

Montanez was finally given an MRI that revealed spinal cord stenosis and spinal cord edema, requiring expedited back surgery in September 2021. Following surgery, Montanez was transferred to a private rehabilitation facility.

A mere two weeks into rehabilitation and still unable to stand, Montanez was returned to detention, this time to the infirmary of a different Pennsylvania state prison, SCI-Rockview. There, he continued his recovery until he took a serious fall that caused him intense pain in his spine. Nonetheless, the doctor on staff, Appellee Dr. Vernon Preston, refused to give him adequate pain medication. An x-ray revealed that Montanez had herniated a disc in his back in the fall, but SCI-Rockview's Healthcare Administrator, Appellee Richard Ellers, "lied" to his doctor "about the results of the x-ray" to delay his treatment. App. 39.

Two months later, Montanez was transferred back to SCI-Huntingdon, where he continued to suffer mobility issues and intense discomfort from his recent spinal surgery and subsequent spinal injury. So he requested certain accommodations, including a double mattress to control his back pain while sleeping, a cane or crutches to facilitate walking, stronger medication for pain management, and access to physical therapy. Those requests were repeatedly denied by prison personnel.

Eventually, Montanez looked to the courts for relief, filing a pro se complaint[2] in the United States District Court for the Middle District of Pennsylvania that

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[2] Montanez filed an initial complaint in August 2022 and an amended complaint, removing one defendant and adding another, in January 2023. For ease of reference, we will refer to the second filing as the "Complaint."

sought compensatory and injunctive relief. The Complaint asserted claims under the Eighth Amendment, Title II of the ADA (Title II), 42 U.S.C. § 12132, and Section 504 of the RA (Section 504), 29 U.S.C. § 794. The defendants fell into two categories: (1) the Commonwealth of Pennsylvania and seven of its employees (collectively, the Commonwealth Defendants),[3] and (2) Wellpath Care LLC (Wellpath), a private company contracted by the Commonwealth to provide medical services in its prisons, and four Wellpath employees (collectively, the Medical Defendants).[4]

What Montanez was permitted to say about these defendants and the facts supporting his claims,

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[3] The Commonwealth Defendants include the Pennsylvania Department of Corrections (Commonwealth) and (1) Paula Price, the Health Care Administrator at SCI-Huntingdon; (2) Melanie Wagman, a nurse at SCI-Huntingdon; (3) SCI-Rockview Healthcare Administrator Richard Ellers; (4) Mary Patton, an employee at SCI-Smithfield; (5) SCI-Smithfield Superintendent C. Wakefield; (6) N. Davis, the registered nurse supervisor at SCI-Huntingdon; and (7) SCI-Huntingdon Superintendent John Rivello (collectively, the Individual Commonwealth Defendants)

[4] The Medical Defendants include Wellpath and (1) Dr. Rajinder Mahli; (2) Physician Assistant (PA) Gabrielle Nalley; (3) Dr. Vernon Preston; and (4) Dr. David Edwards (collectively, the Individual Medical Defendants). Although the Individual Medical Defendants are private contractors employed by a large, for-profit company, their work within the state prison system makes them state actors subject to suit under 42 U.S.C. § 1983. *See West v. Atkins*, 487 U.S. 42, 55 (1988). Unlike the Individual Commonwealth Defendants, however, the Individual Medical Defendants cannot assert qualified immunity. *Sanchez v. Oliver*, 995 F.3d 461, 467 & n.1 (5th Cir. 2021) (holding that Wellpath employees working in state facilities are "categorically ineligible for qualified immunity"); *Tanner v. McMurray*, 989 F.3d 860, 862 n.1, 870 (10th Cir. 2021) (same); *Davis v. Buchanan Cnty.*, 11 F.4th 604, 622 (8th Cir. 2021) (similar); *Clark v. Walker*, 865 F.3d 544, 550-51 (7th Cir. 2017) (similar).

however, was strictly limited. At the time, the Middle District required pro se prisoners bringing civil rights claims to file their actions using a specific, court-issued complaint form. That document, entitled "FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA," directed the filer, under the "statement of claim" section, to "[d]escribe how each defendant is involved, including dates and places," and to do so "as briefly as possible." App. 33, 36. And by "briefly," it meant within the twelve lines provided, or, if prisoners needed to say more, they could "[a]ttach no more than three extra sheets." *Id.* at 36. Montanez complied, filling out all twelve lines and writing out exactly three additional pages of allegations.

Not surprisingly, both the Commonwealth Defendants and the Medical Defendants then moved to dismiss the Complaint, arguing the allegations were insufficient to state a claim. Montanez's briefs in opposition to those motions included over 50 pages with new factual allegations about the ordeal he allegedly endured at SCI-Huntingdon, SCI-Rockview, and SCI-Smithfield since becoming paralyzed in 2021. But to no avail. The District Court granted the Commonwealth and Medical Defendants' motions to dismiss in full. Limiting its consideration to the "facts . . . expressly set forth in the . . . [C]omplaint," the Court concluded that Montanez failed to state an Eighth Amendment claim because he did not "allege facts from which it can reasonably be inferred that" any defendant "exhibited a deliberate indifference to his medical needs." App. 8 n.3, 22. It also dismissed Montanez's disability law claims on the grounds that Montanez failed to plausibly allege (1) that he was denied access to a covered

program, service, or activity, as required to state a claim under Title II or Section 504, *see* 42 U.S.C. § 12132; 29 U.S.C. § 794; or (2) that any defendant acted with deliberate indifference toward his right to be free from disability discrimination, as required to claim compensatory damages under those statutes. Finally, the District Court denied Montanez's request for leave to amend, concluding that amendment "would be futile based on the factual and legal defects identified in" the Complaint. App. 29.

Montanez timely appealed and is now represented by counsel.

II. Jurisdiction and Standard of Review

The District Court had jurisdiction under 28 U.S.C. § 1331 and this Court has jurisdiction under 28 U.S.C. § 1291. We review an order granting a motion to dismiss de novo, meaning we "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Kedra v. Schroeter*, 876 F.3d 424, 440-41 (3d Cir. 2017) (quoting *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008)). Because Montanez's Complaint was filed pro se, we also must construe it "liberally" and hold it to "less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Finally, we review a district court's denial of leave to amend for abuse of discretion and its determination of futility de novo. *U.S. ex rel. Schumann v. Astrazeneca Pharms. L.P.*, 769 F.3d 837, 849 (3d Cir. 2014).

III. Discussion

Montanez raises three claims on appeal. He contends that the District Court erred by: (1) dismissing his Eighth Amendment claims; (2) dismissing his disability law claims under Title II and Section 504; and (3) dismissing the Complaint with prejudice rather than granting him leave to amend. We address each claim in turn.

A. Eighth Amendment

The Eighth Amendment requires prisons to provide humane conditions of confinement, including adequate food, shelter, clothing, and—as relevant to this appeal—medical care. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Estelle*, 429 U.S. at 104. An Eighth Amendment claim for inadequate medical care has both objective and subjective elements: A prisoner "must show (i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." *Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003).

As for the first element, a medical need is sufficiently serious if it is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth Cnty. Corr. Institutional Inmates v. Lanzaro (MCCII)*, 834 F.2d 326, 347 (3d Cir. 1987) (internal quotation omitted). As for the second, a prison official acts with "deliberate indifference" if he knows of the serious medical need yet disregards it by failing to act reasonably. *Farmer*, 511 U.S. at 837. That knowledge can be inferred from circumstantial evidence, including the obviousness of the serious health need, *id.* at 842, and we have found deliberate indifference in various contexts, "including

where (1) prison authorities deny reasonable requests for medical treatment, (2) knowledge of the need for medical care is accompanied by the intentional refusal to provide it, (3) necessary medical treatment is delayed for non-medical reasons, and (4) prison authorities prevent an inmate from receiving recommended treatment for serious medical needs," *Pearson v. Prison Health Serv.*, 850 F.3d 526, 538 (3d Cir. 2017).

Mere negligence, however—even if it constitutes medical malpractice—falls short of deliberate indifference. *Rouse v. Plantier*, 182 F.3d 192, 197 (3d Cir. 1999). So does mere disagreement between the prisoner and medical personnel over the proper course of treatment. *Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004).

Here, Montanez's spinal cord stenosis and edema (which caused paralysis requiring surgery), his sudden incontinence, and the herniated disc he suffered after falling at SCI-Rockview easily qualify as serious medical needs. *See, e.g.*, *Durham v. Kelley*, 82 F.4th 217, 222, 229 (3d Cir. 2023) (lumbar stenosis is a serious medical need); *Spruill*, 372 F.3d at 236 (back condition that caused both "excruciating pain" and multiple falls was serious medical need); *McDaniel v. Syed*, 115 F.4th 805, 816, 832-33 (7th Cir. 2024) (prisoner with "spine and incontinence issues, resulting in significant back pain and difficulty controlling urination," had serious medical needs). Thus, Montanez's ability to state a claim for inadequate medical care turns on whether he has sufficiently pleaded deliberate indifference to any of these serious medical needs.

i. The Medical Defendants

a) *The Individual Medical Defendants*

The District Court concluded that Montanez did not plausibly allege that any Individual Medical Defendant was deliberately indifferent to his health needs. That determination, at least as it pertains to Dr. Mahli, was simply incorrect.

According to the Complaint, Dr. Mahli, despite knowing that Montanez was suddenly paralyzed and uncontrollably urinating on himself, provided *no* medical treatment and instead abandoned Montanez in this state for three days. Taken as true, these allegations do not represent mere disagreement with Dr. Mahli's "medical judgment" or a particular "course of treatment." *Montanez v. Price*, No. 3:22-CV-1267, 2023 WL 5435616, at *9-*10 (M.D. Pa. Aug. 23, 2023). Rather, where "knowledge of the need for medical care is accompanied by the intentional refusal to provide that care," as alleged here, "the deliberate indifference standard has been met." *MCCII*, 834 F.2d at 346 (citation modified). That standard can also be met by a defendant abandoning a prisoner in a condition that unreasonably exposes him to "the threat of tangible residual injury," as may be inferred from the allegations in the Complaint against Dr. Mahli. *Spruill*, 372 F.3d at 235 (quoting *MCCII*, 834 F.2d at 346).

On top of stating an Eighth Amendment claim against Dr. Mahli for inadequate medical care, the Complaint adequately pleads a second type of Eighth Amendment violation. Construing Montanez's pro se Complaint "liberally, as we must," *Durham*, 82 F.4th at 230, the facts alleged against Dr. Mahli—deserting Montanez in his cell with nothing to do but drag his urine-soaked, paralyzed body around his cell floor for

three days before help arrived—are also sufficient to make out an unsanitary conditions-of-confinement claim, *see Taylor v. Riojas*, 592 U.S. 7, 8 (2020) (per curiam) (forcing prisoner to live in his excrement for six days obviously violated the Eighth Amendment); *Young v. Quinlan*, 960 F.2d 351, 365 (3d Cir. 1992) ("It would be an abomination of the Constitution to force a prisoner to live in his own excrement for four days . . . .").

Yet while the Complaint states an Eighth Amendment claim against Mahli, it fails to state such a claim, even when liberally construed, against the remaining Individual Medical Defendants—namely, Dr. Preston, Dr. Edwards, and PA Nalley. As to these defendants, the Complaint alleges (1) that Dr. Preston denied Montanez "proper or adequate pain medication" after he fell and herniated his disc; (2) that PA Nalley refused to give him a double mattress (which Montanez believed would help his back pain), denied him "stronger pain medication," "lied to [him]" about being referred to physical therapy, and allowed him to "walk around without a cane or crutches"; and (3) that Dr. Edwards denied his requests for "stronger pain medication and a double mattress," and refused to order an MRI for Montanez's left hip. App. 39-40. But those allegations reflect differences in judgment between Montanez and these medical personnel about appropriate medical treatment, or at most amount to medical malpractice, neither of which is cognizable under the Eighth Amendment. *Estelle*, 429 U.S. at 106; *Spruill*, 372 F.3d at 235.

b) *Wellpath*

The District Court correctly determined that Montanez failed to state a claim under § 1983 against

Wellpath. The Complaint mentions Wellpath once, alleging merely that it is the "entity contracting the medical staff who is also in this case." App. 40. But Wellpath cannot be held vicariously liable for the acts of its employees—Dr. Mahli, Dr. Preston, Dr. Edwards, and PA Nalley—under a theory of respondeat superior. *See Natale*, 318 F.3d at 583-84. Rather, like municipalities, private corporations under contract to provide prison health services are liable only if their policies or customs caused the constitutional violation. *See id.*; *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). Because Montanez does not tie any of the alleged Eighth Amendment violations back to Wellpath's policies or customs, he has failed to state a claim against that entity.

* * *

In sum, the District Court erred by dismissing Montanez's Eighth Amendment claim against Dr. Mahli. While it correctly determined that Montanez's three-and-a-half-page, handwritten Complaint failed to state Eighth Amendment claims against Dr. Preston, Dr. Edwards, PA Nalley, and Wellpath, the District Court erred in dismissing those claims with prejudice. Instead, as discussed further below, Montanez should have been granted an opportunity to amend. *See infra* Section III.C.

ii. The Commonwealth Defendants

The District Court properly dismissed Montanez's Eighth Amendment claims insofar as Montanez sought damages against the Commonwealth and the Individual Commonwealth Defendants in their official capacities. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). It erred, however, in its treatment of the

Individual Commonwealth Defendants in their personal capacities.

a) *Nurse Wagman*

The District Court dismissed Montanez's Eighth Amendment claim against Nurse Wagman, reasoning that the allegations against her "amount[] to a mere disagreement with [the] medical treatment" she provided. *Montanez*, 2023 WL 5435616, at *7. Not so.

After Montanez collapsed and lost sensation from the chest down, Nurse Wagman allegedly provided no medical treatment other than briefly feeling around Montanez's legs. Nor did she try to diagnose Montanez's sudden paralysis. Instead, according to the Complaint, she laughed at his request to go to the hospital and, after transporting him to his new first-floor cell, did not help him into his cell and bed. As even the Commonwealth acknowledged at oral argument, assuming the truth of Montanez's allegations, Nurse Wagman simply "dumped him in [his] cell," leaving Montanez to drag his limp body as he crawled across his cell floor. Oral Arg. Transcript 35:18. The Commonwealth itself "[could]n't defend [that] decision to make him crawl," Oral Arg. Transcript 37:3-4, which unnecessarily exposed Montanez "to the possible risks of a permanent disability or . . . serious injury," *Spruill*, 372 F.3d at 237.

That is textbook deliberate indifference. Such conduct, as described, "entails the obduracy and wantonness that is proscribed by the Eighth Amendment" and is thus sufficient to state a claim against Nurse Wagman. *Pearson*, 850 F.3d at 537, 541 (holding that a prisoner's claim that a nurse forced him "to crawl to a wheelchair despite indicating that he was unable to walk" created a genuine issue of fact as to whether the

nurse "acted with deliberate indifference" to the prisoner's serious medical needs).

b) *Non-Medical Prison Officials*

Non-medical personnel generally will not be found deliberately indifferent for purposes of an Eighth Amendment inadequate-medical-care claim unless they have "a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner." *Spruill*, 372 F.3d at 236. Put differently, when a "prisoner is under the care of medical experts . . . , a non-medical prison official will generally be justified in believing that the prisoner is in capable hands." *Id.*

Here, it is undisputed that Ellers, Price, Rivello, Wakefield, and Patton are not medical personnel, and that Montanez was under the care of medical professionals during his time at FCI-Huntingdon and FCI-Rockview. So to sustain his Eighth Amendment claims against those five individuals, Montanez had to allege that they had "reason to believe or (actual knowledge)" that the medical staff were "mistreating (or not treating)" him. *Id.* Even Montanez concedes that he failed to make such allegations as to four of the five, namely, Price, Rivello, Patton, and Wakefield.[5]

Ellers is a different story. According to the Complaint, although Montanez's x-ray after the fall showed that he had herniated a disc in his back, Ellers knew and "lied about the results of the x-ray," misinforming Montanez's doctors that the results were negative and thus preventing Montanez from receiving timely

[5] Similarly, although Davis is a medical professional at SCI-Huntingdon, Montanez concedes that he failed to include any specific allegations as to Davis in the Complaint.

treatment. App. 39. Those allegations, taken as true, are sufficient to show that Ellers had "actual knowledge . . . that prison doctors or their assistants [were] mistreating (or not treating)" Montanez's serious medical need. *Spruill*, 372 F.3d at 236; *see also Rouse*, 182 F.3d at 197 (deliberate indifference sufficiently pleaded where defendant knew of plaintiff-prisoner's "need for medical treatment" and prevented him "from receiving [that] treatment" for "a non-medical reason").

The District Court thus erred in dismissing the Eighth Amendment claims against Wagman and Ellers. And although it correctly determined that Montanez had failed to state claims against the other Individual Commonwealth Defendants, those claims, too, should not have been dismissed with prejudice. *See infra* Section III.C.

B. Disability Law Claims

For decades, the ADA and the RA have served as "twin pillars of federal disability discrimination law," working in tandem to "secure the rights of individuals with disabilities to independence and full inclusion in American society." *Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 109-10 (3d Cir. 2018). Functionally, the ADA and the RA impose the "same prohibition," but they cover different entities. *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 159 (2017). Along with proscribing discriminatory animus, both statutes also impose on covered entities an affirmative obligation to make "reasonable accommodations" for persons with disabilities so that they can meaningfully access their programs, services, and activities. *Alexander v. Choate*, 469 U.S. 287, 301 (1985); *see Tennessee v. Lane*, 541 U.S. 509, 532-33 (2004). As then-Judge Jackson has

observed, this duty is at its apex in the prison context "because inmates necessarily rely totally upon [prisons] for all of their needs while in custody and do not have the freedom to obtain such services (or the accommodations that permit them to access those services) elsewhere." *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 269 (D.D.C. 2015).

i. Who Can Be Sued Under Title II and Section 504

Here, the District Court dismissed Montanez's Title II and Section 504 claims against all of the defendants—the Individual Commonwealth Defendants, the Individual Medical Defendants, the Commonwealth, and Wellpath. In reviewing that decision, we consider first which defendants, if any, are subject to suit under either statute.

As relevant here, Title II of the ADA prohibits a "public entity" from discriminating against disabled people, including by denying them equal access to their "services, programs, or activities." 42 U.S.C. § 12132. "Public entity" includes "(A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority." *Id.* § 12131(1).

Section 504, in contrast, reaches only recipients of "[f]ederal financial assistance." 29 U.S.C. § 794(a). This "covers those who receive the aid" directly from the federal government or indirectly through another recipient of that aid. *U.S. Dep't of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 606-07 (1986); see 28 C.F.R. § 42.540(e) ("Recipient means any . . . public or private entity . . . to which Federal financial assistance is

extended directly or through another recipient . . . ."). "[F]ederal financial assistance," in turn, includes federal grants, loans, non-procurement contracts, and "reimbursement through Medicare and Medicaid." *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 217 (2022); *see* 28 C.F.R. § 42.540(f) (defining "Federal financial assistance" as "any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), . . . or any other arrangement by which" the recipient receives federal funds, services, or property); 34 C.F.R. § 104.3(h) (similar); 45 C.F.R. § 84.10 (similar). And the purpose for which that financial assistance was intended is irrelevant because a recipient of federal financial assistance must comply with Section 504 in "*all* of [their] operations," not just the program or activity receiving the funding. 29 U.S.C. § 794(b) (emphasis added); *see* Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, § 4, 102 Stat. 28, 29-30 (1988).

Given these limitations, the Individual Commonwealth and Individual Medical Defendants are not subject to suit in their personal capacities. [6] Neither state employees nor contractors are "public entities," so they cannot be sued under Title II. *See Emerson v. Thiel Coll.*, 296 F.3d 184, 189 (3d Cir. 2002) (per curiam) (dicta); *see also Stanek v. St. Charles Cmty. Unit Sch. Dist. No. 303*, 783 F.3d 634, 644 (7th Cir. 2015); *Garcia v. S.U.N.Y. Health Scis. Ctr.*, 280 F.3d 98, 107 (2d Cir. 2001). And because "the individual defendants do not

[6] Although individuals can be sued for damages in their official capacities under Section 504 and Title II, these claims are simply treated as if they are against the public entity or recipient of federal funds that employs the individual. *Durham v. Kelley*, 82 F.4th 217, 224 n.11, 227 & n.33 (3d Cir. 2023).

receive federal aid," they also cannot be liable under Section 504. *Emerson*, 296 F.3d at 190.

The Commonwealth, on the other hand, is a public entity and receives federal funds, so it is a proper defendant under both Title II and Section 504. *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) ("State prisons fall squarely within the statutory definition of 'public entity.'"); *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 288-93 (3d Cir. 2019) (allowing Title II and Section 504 claims against the Commonwealth to proceed).

As for Wellpath, the results are mixed. There is no question that it cannot be sued under Title II. Even though Wellpath contracts with the Commonwealth to perform a traditional government function—providing medical services to state prisoners—that alone is not enough to transform a private corporation into an "instrumentality of a State." 42 U.S.C. § 12131(1); *see Edison v. Douberly*, 604 F.3d 1307, 1309-10 (11th Cir. 2010) (concluding that a private prison management corporation operating a state prison is not a public entity); *Green v. City of New York*, 465 F.3d 65, 78-79 (2d Cir. 2006) (holding that a private hospital providing services pursuant to a municipal contract is not a public entity). So the ADA claim against Wellpath was properly dismissed.

But unless and until discovery establishes otherwise, Wellpath remains a proper defendant on the Section 504 claim. Montanez's Complaint alleges that, on "information and belief, SCI-Huntingdon [and the] Pennsylvania Department of Corrections receive[] federal funding," App. 44, and that Wellpath is the "Medical Contractor at SCI-Huntingdon," App. 35. Thus, liberally construed, the Complaint alleges that Wellpath is an indirect recipient of federal funds. *See Smith v.*

Nat'l Collegiate Athletic Ass'n, 266 F.3d 152, 161 & n.7 (3d Cir. 2001) (explaining that "an entity may receive federal financial assistance indirectly and still be considered a recipient for purposes of Title IX," which "prohibits discrimination based on disability in substantially the same terms" as Section 504). Wellpath disputes this point, but that cannot be resolved at the motion-to-dismiss stage, where we must accept the allegations as true.[7] *See Stringer v. Cnty. of Bucks*, 141 F.4th 76, 84, 90 (3d Cir. 2025). As it currently stands, Wellpath is a proper defendant under Section 504. See 29 U.S.C. § 794(b)(3)(A)(ii) (requiring a "corporation . . . or other private organization . . . which is principally engaged in the business of providing . . . health care" to refrain from disability discrimination in "all of [its]

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[7] On the one hand, in its answering brief, Wellpath represented that it does not "receive federal funds." Medical Appellees' Answering Br. 20 n.2. On the other hand, that statement conflicts with court filings and government websites that indicate Wellpath directly receives federal financial assistance. *See, e.g.*, U.S. Dep't of Agric., *Distance Learning & Telemedicine Grants FY 2023*, at 4, https://perma.cc/5Y5S54A5 (awarding "Wellpath, LLC" a federal grant); *see also Vanderklok v. United States*, 868 F.3d 189, 205 n.16 (3d Cir. 2017) (explaining that we can take judicial notice of "publicly available [information] on government websites"). In advance of oral argument, this Court advised the parties to be prepared to address this issue. But oral argument did not bring clarity. Instead, Wellpath's counsel, after initially representing that Wellpath has never directly or indirectly received federal funds of any kind, then acknowledged that she could not explain the public documents to the contrary and that she had not, in fact, investigated the matter. And after representing that she would follow up with her client and submit supplemental briefing, she failed to do so, requiring us, two weeks later, to formally order Wellpath to submit that briefing. What Wellpath then provided also failed to engage, much less resolve, the conflict between its blanket denials and the public records.

operations" if it directly or indirectly receives any "Federal financial assistance").

ii. Montanez States Disability Law Claims Against the Commonwealth and Wellpath

Except for causation, the substantive standards for determining liability under Section 504 and Title II are identical, and the same remedies are available under both Acts.[8] *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 275 (3d Cir. 2014); 29 U.S.C. § 794a (authorizing injunctive relief and money damages) 42 U.S.C. § 12133 (same). To state a claim for disability-based discrimination, a plaintiff must show that: (1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs, or other activities for which a public entity is responsible, or was otherwise subjected to discrimination by a public entity; (4) by reason of his disability. *Harberle v. Troxell*, 885 F.3d 170, 178 (3d Cir. 2018). In this case, the District Court erred in dismissing the disability law claims against the Commonwealth and Wellpath because the Complaint establishes a prima facie case of disability discrimination.

We agree with the District Court that the first two elements are satisfied. Montanez, like all state prisoners, is a qualified individual covered by Title II and Section 504. *Durham*, 82 F.4th at 225. And a "disability" is any "physical or mental impairment that substantially limits one or more major life activities," 42 U.S.C. § 12102(1)(A), which includes, among other things,

[8] "[U]nder the RA, the disability must be the sole cause of the discriminatory action, while the ADA only requires but-for causation." *Durham*, 82 F.4th at 226. This distinction is irrelevant here, however, because the Complaint establishes causation under either standard.

"caring for oneself, . . . sleeping, walking, standing," *id.* § 12102(2)(A), and "the operation of a major bodily function," such as "functions of the . . . bladder," *id.* § 12102(2)(B). So Montanez's spinal cord stenosis, spinal edema, incontinence, and herniated disc undoubtedly qualify as disabilities. *See Durham*, 82 F.4th at 225 ("lumbar stenosis" is a disability).

As to the third element, however, we cannot agree with the District Court's conclusion that Montanez "wholly fails to allege that he was denied or excluded from any services, programs, or activities." *Montanez*, 2023 WL 5435616, at *11. The phrases "service, program, or activity" under Title II and "program or activity" under Section 504 are "extremely broad in scope and include[] anything a public entity does." *Furgess*, 933 F.3d at 289 (quoting *Disability Rts. N.J., Inc. v. Comm'r, N.J. Dep't of Hum. Servs.*, 796 F.3d 293, 301 (3d Cir. 2015)); *see also* 29 U.S.C. § 794(b)(1)(A) (defining "program or activity" under Section 504 as "all of the operations of . . . a department, agency, . . . or other instrumentality of a State"). Under this "all-encompassing" definition, *Yeskey v. Com. of Pa. Dep't of Corr.*, 118 F.3d 168, 170 (3d Cir. 1997), *aff'd sub nom. Yeskey*, 524 U.S. 206, the Complaint plausibly alleges that Montanez was denied equal access to at least three different programs or services.

First, health care is a quintessential service prisons must provide to prisoners. *See Yeskey*, 524 U.S. at 210. True, as the Commonwealth points out, failure to provide adequate medical care to a disabled inmate does not, on its own, give rise to liability under the ADA or RA.[9] *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir.

[9] Of course, because Title II gives disabled individuals a cause of action whenever they are denied equal access to "the services,

1996) ("[T]he [ADA] would not be violated by a prison's simply failing to attend to the medical needs of its disabled prisoners. . . . The ADA does not create a remedy for medical malpractice."). But Montanez alleges not merely that he was denied specific medical care *for his disabilities*. Rather, according to the Complaint, Montanez had to drag his paralyzed body on two different occasions to get access to medical care—once to get access to the medical unit on the day he became paralyzed, and again the next day to reach Dr. Mahli, who refused to enter his cell to examine him. Put differently, Montanez alleges he was denied meaningful access to "medical care*" because of his disabilities*, which is cognizable under Section 504 and Title II. *See United States v. Georgia*, 546 U.S. 151, 157 (2006).

Second, the necessities for hygiene, including, showers, sinks, and toilets, are basic services prisons must provide. *See id.* at 155, 157; *Furgess*, 933 F.3d at 289-90. According to Montanez's Complaint, he was abandoned in his cell for at least three days, paralyzed and urinating on himself, neither able to reach a toilet nor given an alternative way to relieve himself with dignity. This is a textbook example of a disabled prisoner being denied access to fundamental prison service. *See McDaniel*, 115 F.4th at 823 ("In a prison, qualifying programs and activities include meals, medical care, showers, toilets, and the like."); *Shaw v. Kemper*, 52 F.4th 331, 334 (7th Cir. 2022) ("We have no difficulty concluding that a handicapped-accessible toilet for

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programs, or activities of a public entity" because of their disability or "subjected to discrimination by any such entity," if a prison's failure to provide treatment was fueled by discriminatory animus toward a prisoner's disability, that would give rise to liability under the ADA. 42 U.S.C. § 12132.

disabled prisoners amounts to a service, the denial of which could establish a claim under either statute.").

Third, given that all people need sleep, providing prisoners with accessible beds and "appropriate and adequate bedding . . . are 'services' of" a prison. *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1224 n.44 (9th Cir. 2008); *see Hall v. Higgins*, 77 F.4th 1171, 1181 (8th Cir. 2023) ("[A j]ail's toilets, beds, and medical care are a 'service' under the ADA."). Here, Montanez alleges that, on the first day of his paralysis, Nurse Wagman, rather than helping him to his bed or providing him with a handicap-accessible sleeping arrangement, simply dumped him in his cell and forced him to drag his paralyzed body across the floor and into his bed. And when he returned to SCI-Huntingdon after herniating a disc while recovering from major back surgery, his back condition—coupled with the lack of adequate pain medication—caused significant pain whenever he lay on his single mattress. That, in turn, interfered with his ability to sleep. But his requests for an accommodation, such as a double mattress, were repeatedly denied. So construing the Complaint liberally, Montanez adequately pleaded that he could not access a bed on the same basis as "able-bodied inmates" and was denied a reasonable accommodation necessary for him to sleep without significant pain—"just like able-bodied inmates" could. *Furgess*, 933 F.3d at 291.

A plaintiff can meet the fourth element of a prima facie case—discrimination "by reason of his disability"—by showing invidious discrimination or a failure to provide reasonable accommodations. *Harberle*, 885 F.3d at 179-80. Montanez proceeds down the second path, arguing persuasively that the Commonwealth and Wellpath had an obligation to reasonably accommodate his disabilities and that its repeated failure to

do so was the reason he could not meaningfully access various prison services.

The duty to accommodate is triggered when a disabled person's need for an accommodation becomes known, either because (1) he requests an accommodation or (2) his disability and concomitant need for an accommodation are open and apparent. *See Chisolm v. McManimon*, 275 F.3d 315, 330 (3d Cir. 2001); *Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1197-98 (10th Cir. 2007) (collecting cases). Here, once Montanez suddenly became paralyzed, his disability and resulting limitations were obvious to prison staff, including Dr. Mahli and Nurse Wagman. And during his second stint at FCI-Huntingdon, his accommodation requests, including for mobility aids and a double mattress or other bedding accommodations, "were repeatedly refused." *Durham*, 82 F.4th at 226. So the Commonwealth and Wellpath had an affirmative duty to accommodate Montanez, and its failure to do so was "tantamount to denying [him] access" to those prison services "on the same basis as other inmates." *Id.*

In sum, a prison's "toilets, beds, and medical care are a 'service'" or program under Title II and Section 504, and Montanez has adequately pleaded that he was denied access to all three by reason of his disability. *Hall*, 77 F.4th at 1181. The Complaint therefore states a Title II and Section 504 claim against the Commonwealth and a Section 504 claim against Wellpath, and the dismissal of those claims was error.

iii. Montanez Has Pleaded Entitlement to Compensatory Damages

To recover compensatory damages for a Section 504 or Title II violation, a plaintiff must plead, in addition to the elements of a prima facie case, that the

discrimination was "intentional" in the sense that it was more than mere disparate impact. *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 261-62 (3d Cir. 2013). Deliberate indifference satisfies this requirement, which, in the disability law context, consists of (1) knowledge that the plaintiff's federally protected right to be free from disability discrimination was likely to be violated, and (2) "failure to act despite that knowledge." *Id.* at 263-65 (emphasis omitted); *see also Furgess*, 933 F.3d at 292.

Montanez's Complaint sufficiently pleads that various prison and medical staff had the requisite knowledge yet failed to act. According to the Complaint, for instance, Nurse Wagman knew Montanez was paralyzed but abandoned him on the floor of his cell, and Dr. Mahli—despite knowing that Montanez could neither stand nor walk and was involuntarily urinating on himself—took no steps to assist or accommodate Montanez. Likewise, Price, PA Nalley, and Dr. Edwards allegedly knew of Montanez's disabilities but denied his requests for accommodations and did not provide him with any alternatives. These allegations, if proven, amount to deliberate indifference. *See Durham*, 82 F.4th at 226 (prisoner with "lumbar stenosis" pleaded deliberate indifference by alleging that "[h]e made numerous prison officials aware that he . . . needed a cane to walk[] and was in severe pain without it" but "was continuously denied his cane and shower accommodations"); *Furgess*, 933 F.3d at 292 (prisoner successfully pleaded Commonwealth was deliberately indifferent by alleging medical and prison staff "knew that [he] required a handicapped-accessible shower" and they "did not provide him with any accommodation that would allow him to shower" for months).

The Commonwealth contends that it cannot be liable for any Title II and Section 504 violations of the Medical Defendants because they are contractors, not government employees. But that misapprehends the reach of those remedial statutes. As our sister circuits have consistently recognized and as we hold today,[10] both their text and purpose confirm the Commonwealth's obligation to ensure compliance with Title II and Section 504 even when it contracts out the operation of their programs, services, or activities to third parties.

We start with the text.[11] Title II's and Section 504's broad language—covering all public-entity "services,

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[10] *See, e.g.*, *Marks v. Colo. Dep't of Corr.*, 976 F.3d 1087, 1097-98 (10th Cir. 2020) (explaining that the state prison "farm[ing] out operations to others . . . would not prevent liability" under the ADA or RA); *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1065-67, 1074 (9th Cir. 2010) (concluding that "even in the absence of a regulation explicitly saying so," the "fairest reading" of Title II and Section 504 required state defendants to ensure private and local prison operators complied with both statutes because "a State cannot avoid its obligations under [either Act] by contracting with a third party to perform its functions"); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 286-87 (2d Cir. 2003) (holding that Section 504 imposes "supervisory liability" on states accepting federal funds to "guarantee that those it delegates to carry out its programs . . . compl[y] with" the RA).

[11] Title II states: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Section 504 likewise provides, in relevant part: "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794(a).

programs, or activities" and "any" federally funded "program or activity"—contains no exception when such programs, services, or activities are administered through contractors. Said differently, Congress wanted to give people with disabilities an affirmative right to access *all* covered programs and services no matter *how* or *through whom* the government or federally funded entity elects to deliver them. Regardless of the medium of delivery, those programs and services must be accessible to people with disabilities.

Congress's use of the "passive voice ('no qualified individual with a disability shall, by reason of such disability, be excluded . . .') only reinforces that conclusion." *A. J. T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 358 (2025) (Sotomayor, J., concurring) (quoting 42 U.S.C. § 12132). Here, both statutes "focus[] on an event" that constitutes a type of prohibited disability discrimination—a disabled person being excluded from participating in or being denied the benefits of a covered program, service, or activity because of their disability—"without respect to a specific actor." *Dean v. United States*, 556 U.S. 568, 572 (2009). This linguistic choice to "pull[] the actor off the stage" reflects Congress's "agnosticism" as to who does the excluding or denial of benefits—be they government employees or government contractors. *Bartenwerfer v. Buckley*, 598 U.S. 69, 75-76 (2023).

The second clause of Title II, which goes on to separately protect people from being "subjected to [disability] discrimination by any" public entity, 42 U.S.C. § 12132, demonstrates that "Congress knew how to write . . . a law" that cabined liability in the way the Commonwealth proposes and deliberately "did not do so" in the first clause of Title II. *Marietta Mem'l Hosp. Emp. Health Benefit Plan v. DaVita Inc.*, 596 U.S. 880, 887

(2022). Thus, as we recently observed as to Title II, covered entities "may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of . . . discriminating on the basis of disability." *Williams v. Sec'y Pa. Dep't of Corr.*, 117 F.4th 503, 548 (3d Cir. 2024) (citation modified); *see also* 28 C.F.R. § 35.130(b)(1) (prohibiting a public entity under Title II from discriminating on the basis of disability "directly or through contractual, licensing, or other arrangements"); 28 C.F.R. §§ 41.51(b)(1), 42.503(b)(1) (same for federal funding recipients under Section 504).

Finally, the Commonwealth's attempt to evade the language of the statutes would also undermine their goals. As "a remedial statute, meant to bring an end to discrimination against individuals with disabilities in all aspects of American life," the ADA "must be construed with all the liberality necessary to achieve [its] purpose[]." *Disabled in Action of Pa. v. Se. Pa. Transp. Auth.*, 635 F.3d 87, 94 (3d Cir. 2011).[12] Section 504, which we interpret in lockstep, must likewise be broadly construed to effectuate its remedial purpose of eliminating disability discrimination wherever federal funds are involved. 29 U.S.C. § 701(a)-(c); *see Yeskey*, 118 F.3d at 170 ("Congress has *directed* that Title II of the ADA be interpreted in a manner consistent with Section 504 . . . ."). And state prisons are quintessential covered entities under both statues: only the states—public entities that receive federal funds—have the

[12] *See also* 42 U.S.C. § 12101(b)(1) (explaining that the ADA's "purpose" is to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities").

power to incarcerate people in prisons within their borders.

Yet, as this case illustrates, states often contract with private companies to provide prison services and programs, including medical and mental health care, pharmaceutical services, drug treatment and substance abuse programs, transportation services, facility operations, vocational programs, food services, and security. *See* 28 C.F.R. pt. 35, App. A (effective Mar. 11, 2011). So if states could evade their statutory duties merely by outsourcing the operation of such programs, Title II and Section 504 would become dead letter within state prisons—an outcome antithetical to Congress's "unmistakabl[e]" intent to "include[] State prisons and prisoners within" the statutes' coverage. *Yeskey*, 524 U.S. at 209. And the Commonwealth's interpretation is not limited to the prison context. Under the Commonwealth's reading, a state could avoid complying with either statute and simultaneously insulate itself from liability simply by contracting out the operation of all its programs, services, and activities and burying its head in the sand. But as the statutory text and case law make clear, "Congress did not design the ADA or the RA so that a public entity could forever prevent a qualified individual with a disability from utilizing a service, program, or activity." *Hamer v. City of Trinidad*, 924 F.3d 1093, 1107 (10th Cir. 2019).

* * *

In short, whether or not they use contractors, states remain responsible for ensuring that disabled prisoners can access their prisons' services, programs, and activities on the same basis as non-disabled prisoners.

See Williams, 117 F.4th at 548.[13] And as applied here, that means the Commonwealth was "obligated to ensure that [Wellpath and its employees]— like all other State contractors—complie[d] with federal laws prohibiting discrimination on the basis of disability." *Castle v. Eurofresh, Inc.*, 731 F.3d 901, 910 (9th Cir. 2013). It was therefore error for the District Court to dismiss the ADA and RA claims against the Commonwealth and the RA claim against Wellpath. Those claims, including Montanez's request for compensatory damages, survive the motions to dismiss.

C. Leave to Amend

Federal Rule of Civil Procedure 15(a)(2) directs courts to grant motions for leave to amend "when justice so requires." So leave to amend should be liberally given unless amendment would be inequitable or futile. *Long v. Wilson*, 393 F.3d 390, 400 (3d Cir. 2004); Phillips, 515 F.3d at 245. And because courts have a special obligation to be "more forgiving of pro se litigants," *Garrett v. Wexford Health*, 938 F.3d 69, 92 (3d Cir. 2019), this Circuit has a "longstanding policy of allowing pro se plaintiffs to amend their complaints before the court rules upon defendants' motions to dismiss," *Roman v. Jeffes*, 904 F.2d 192, 196 n.8 (3d Cir. 1990) (collecting cases).

Despite correctly reciting this standard, the District Court nonetheless denied Montanez's request for leave

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[13] *See also* 28 C.F.R. § 35.152(a) (Title II applies to "public entities that are responsible for the operation or management of . . . correctional facilities . . . either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or in part . . . ."); 28 C.F.R. pt. 35, App. A ("If a prison is occupied by State prisoners and is inaccessible, the State is responsible under title II of the ADA.").

to amend, concluding that amendment "would be futile based on the factual and legal defects" in Montanez's Complaint. *Montanez*, 2023 WL 5435616, at *11. This was an abuse of discretion for two reasons.

First, the inadequacies in Montanez's pleading largely stemmed from the Middle District's own procedures. Montanez was required to file his complaint on the "FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA." App. 33. And at the time, that form instructed pro se prisoners to state "as briefly as possible the facts of your case," provided twelve lines on the form in which to do so, and warned that the prisoner could "[a]ttach no more than three extra sheets if necessary" to detail his allegations. App. 36-37. That constraint was particularly problematic for plaintiffs like Montanez, who were attempting to assert complex constitutional and statutory civil rights claims against numerous defendants based on conduct that occurred in different facilities.

Perhaps recognizing the due process implications of such a restriction, the Middle District has since eliminated the page limit.[14] But that change was too little, too late, for Montanez. By forcing him to state his claims in under four handwritten pages, the Court itself set him up for failure at the motion-to-dismiss stage, so Montanez should have the chance to amend

[14] The form now instructs prisoners to include "all the facts you consider important" and permits them to attach as many "additional pages [as] needed." U.S. Dist. Ct. for the Middle Dist. Pa., *Instructions for Filing a Complaint Pro Se*, at 8, https://perma.cc/3T8W-DWTQ

as to any potentially viable claims. *See* Fed. R. Civ. Pro. 15(a)(2).

Second, this is not a situation where amendment would be futile.[15] Leave to amend is futile if "the complaint, as amended, would fail to state a claim upon which relief could be granted." *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000). But as we explained above, even Montanez's artificially truncated Complaint stated cognizable claims under Title II, Section 504, and the Eighth Amendment against some defendants. Thus, granting him leave to amend to bolster these claims would not have been futile. *See Geness v. Cox*, 902 F.3d 344, 361 (3d Cir. 2018) (no futility if plaintiff has already stated a claim).

Plus, Montanez's briefs in opposition to the motions to dismiss included over 50 pages with additional factual allegations in support of his claims against all named defendants, including those defendants whom Montanez could not adequately discuss in his Complaint due to the page limit. Although these briefs cannot amend the Complaint directly, *see McArdle v. Tronetti*, 961 F.2d 1083, 1089 (3d Cir. 1992), they function, in effect, as a proffer of the additional allegations Montanez could make if permitted, *see Gordon v. Kartri Sales Co.*, No. 3:17-CV-00320, 2018 WL 1123704, at *3 (M.D. Pa. Mar. 1, 2018) (collecting cases where courts "granted leave to amend a pro se plaintiff's complaint whe[n] the plaintiff has introduced new facts in his opposition papers" that might be helpful for stating a claim). And that proffer makes clear that amendment

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[15] The District Court's failure to provide any substantive analysis supporting its futility conclusion also borders on an abuse of discretion. *See Cureton v. Nat'l Collegiate Athletic Ass'n*, 252 F.3d 267, 276 (3d Cir. 2001).

would not be futile. *Weaver v. Wilcox*, 650 F.2d 22, 27 (3d Cir. 1981) ("Pro se plaintiffs should be given an opportunity to amend their complaints unless it clearly appears that the deficiency cannot be overcome by amendment.").

Accordingly, denying Montanez leave to amend was an abuse of discretion and should be corrected on remand.

IV. Conclusion

Pro se complaints—however inartfully pleaded—must be carefully considered, for while prisoners surrender many liberties upon conviction, the right to access the courts and seek redress for constitutional and statutory violations is not one of them. We will therefore (1) reverse the District Court's dismissal of Montanez's Eighth Amendment claims against Dr. Mahli, Nurse Wagman, and Administrator Ellers, the Title II and Section 504 claims against the Commonwealth, and the Section 504 claim against Wellpath; (2) affirm the District Court's dismissal of the Eighth Amendment claims against the Commonwealth and Individual Commonwealth Defendants in their official capacities, the disability law claims against the Individual Commonwealth and Medical Defendants, and the ADA claim against Wellpath; and (3) remand with instructions to permit Montanez to amend his Complaint.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 23-2669

JOSE MONTANEZ,

Appellant

v.

PAULA PRICE, Health Care Administrator SCI-Huntingdon; et al.

(M.D. Pa. No. 3-22-cv-01267)

O R D E R

At the direction of the Court, the parties shall submit supplemental letter briefs of no more than five single-spaced pages by Wednesday, October 30, 2024, addressing:

1. Whether the Commonwealth is liable for violations of the Rehabilitation Act or Title II of the ADA caused by private contractors providing medical services to inmates within state prisons. *See Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010); *Henrietta D. v. Bloomberg*, 331 F.3d 261 (2d Cir. 2003).

The parties may, but need not, address:

2. The relevance, if any, of federal regulations for determining the extent of the Commonwealth's derivative liability under Title II of the ADA and the Rehabilitation Act. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024); *Yeskey v. Com. of Pa. Dep't of Corr.*, 118 F.3d

168 (3d Cir. 1997); 28 C.F.R. §§ 35.130, 35.152, 41.51; 28 C.F.R. § Pt. 35, App. A.

For the Court

s/Patricia S. Dodszuweit
Clerk

Dated: 10/17/2024 PM/

cc: All counsel of record

APPENDIX C

Patricia S. Dodszuweit
Clerk

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Samuel Weiss, Esq.

RE: Jose Montanez v. Paula Price, et al
Case Number: 23-2669
District Court Case Number: 3-22-cv-01267

Dear Counsel:

At oral argument in this matter, the parties should be prepared to discuss, among other things:

1. Whether the Medical or Commonwealth Defendants are subject to suit in their individual capacities under Title II of the ADA. *See Emerson v. Thiel Coll.*, 296 F.3d 184 (3d Cir. 2002); *Garcia v. S.U.N.Y. Health Scis. Ctr. of Brooklyn*, 280 F.3d 98 (2d Cir. 2001); *Alsbrook v. City of Maumelle*, 184 F.3d 999 (8th Cir.1999) (en banc).

2. Whether Wellpath LLC, as a private corporation that contracts with the Commonwealth to

provide medical services in state prisons, is subject to suit under Title II of the ADA or the Rehabilitation Act. Also, whether individual medical providers working with Wellpath are subject to suit under these statutes. *See Edison v. Douberly*, 604 F.3d 1307 (11th Cir. 2010); *Green v. City of New York*, 465 F.3d 65 (2d Cir. 2006); *Matthews v. Pennsylvania Dep't of Corr.*, 613 F. App'x 163 (3d Cir. 2015); *Wilkins-Jones v. County of Alameda*, 859 F. Supp. 2d 1039 (N.D. Cal. 2012).

3. Whether Wellpath LLC is a recipient of federal funds.

4. The extent to which the Commonwealth remains liable under Title II of the ADA and the Rehabilitation Act for the actions of private contractors providing medical services to inmates within state prisons. *See Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010); *Henrietta D. v. Bloomberg*, 331 F.3d 261 (2d Cir. 2003); 28 C.F.R. §§ 35.130, 35.152, 41.51.

5. Whether individual Medical Defendants were acting under color of state law for purposes of § 1983. *See West v. Atkins*, 487 U.S. 42 (1988); *Leshko v. Servis*, 423 F.3d 337 (3d Cir. 2005).

Very truly yours,
/s/ Patricia S. Dodszuweit
PATRICIA S. DODSZUWEIT
Clerk

By: /s/ Patrick A. McCauley, Jr.
Patrick A. McCauley, Jr.,
Calendar Clerk
267-299-4932

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSE MONTANEZ, Civil No. 3:22-cv-1267

Plaintiff (Judge Mariani)

v.

PAULA PRICE, et al.,

Defendants

MEMORANDUM

Plaintiff Jose Montanez ("Montanez"), an inmate confined at the State Correctional Institution, Huntingdon, Pennsylvania ("SCI-Huntingdon"), initiated this action pursuant to 42 U.S.C. § 1983. (Doc. 1). The matter is proceeding via an amended complaint. (Doc. 24). Named as Defendants are Healthcare Administrator Paula Price, Nurse Melanie Wagman, Registered Nurse Supervisor Davis, Healthcare Administrator R. Ellers, Superintendent Wakefield, Superintendent John Riviello, and Mary Patton (collectively, the "Commonwealth Defendants"), and WellPath, LLC, Dr. Preston, Dr. Rajinder Mahli, Dr. David Edwards, and Gabrielle Nalley, P.A.-C (collectively, the "Medical Defendants"). Presently pending before the Court are Defendants' motions to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6). (Docs. 27, 29). For the reasons set forth below, the Court will grant Defendants' motions.

I. Allegations of the Amended Complaint

On August 28, 2021, Montanez was in his cell when he attempted to stand up to use the bathroom. (Doc. 24, p. 4). Montanez alleges that his legs gave out when he

stood up, and he realized his body was numb. (*Id.* at pp. 4-5). Montanez notified an unidentified correctional officer who was walking by the cell. (*Id.* at p. 5). The correctional officer and Sergeant Bullick[1] then helped Montanez walk down the stairs. (*Id.*). Nurse Wagman was waiting with a wheelchair and wheeled Montanez to the medical department. (*Id.*). Once in the medical department, Montanez's vitals were checked, and Nurse Wagman examined his legs. (*Id.*). Nurse Wagman then called Dr. Malhi, who stated that Montanez should be moved to the first tier, and he would examine Montanez the next day. (*Id.* at pp. 5-6). Montanez alleges that he told Nurse Wagman he "needed to be taken to a hospital," but she denied his request. (*Id.* at p. 6). Nurse Wagman then wheeled Montanez to a cell, where he requested a grievance form from Sergeant Bullick. (*Id.*).

The following day, August 29, 2021, Dr. Malhi examined Montanez at his cell. (*Id.*). Montanez alleges that he was unable to walk, and he told Dr. Malhi that he was urinating on himself, but Dr. Mahli only nodded

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[1] Montanez does not list Sergeant Bullick as a Defendant in this action. Montanez's scant claims against Sergeant Bullick suffer from the same defects against the named Defendants, as articulated below. As such, to the extent that Montanez intended to name Sergeant Bullick as a Defendant, he is entitled to dismissal from this action. *See, e.g.*, *Ryle v. Fuh*, 820 F. App'x 121 , 123-24 (3d Cir. 2020) (affirming District Court's granting of defendant's motion to dismiss, and dismissal against some defendants *sua sponte*, where the Court dismissed the complaint with prejudice); *Coulter v. Unknown Prob. Officer*, 562 F. App'x 87, 89 (3d Cir. 2014) (affirming district court's *sua sponte* dismissal of non-moving defendant where the grounds raised by the moving defendants were common to all defendants and the plaintiff had an opportunity to respond to the moving defendants' arguments).

and walked off. (*Id.*). Montanez claims that he remained in his cell for three (3) days. (*Id.* at pp. 6-7).

On August 31, 2021, Montanez was transported to an outside hospital, University of Pittsburgh Medical Center ("UPMC") Altoona. (*Id.* at p. 7). While at the hospital, Montanez underwent an MRI which revealed he had spinal cord stenosis and spinal cord edema. (*Id.*). Thereafter, on September 10, 2021, Montanez underwent surgery. (*Id.*). On September 15, 2021, he was transferred to Encompass Health for physical therapy. (*Id.*).

On October 1, 2021, Montanez was transferred to the infirmary at the State Correctional Institution, Rockview, Pennsylvania ("SCI-Rockview"), and treated by Dr. Preston. (*Id.*). Montanez alleges that Dr. Preston "denied [him] proper or adequate pain medication even after falling and causing a herniated disk." (*Id.*) He alleges that Corrections Health Care Administrator Ellers "lied about the results of the X-ray taken after the fall," which he claims resulted in a delay of treatment. (*Id.*).

Montanez asserts that he returned to SCI-Huntingdon on November 12, 2021. (*Id.*). He alleges that Corrections Health Care Administrator Price "created a policy that I could not get access to her until a grievance was filed," which allegedly delayed his treatment. (*Id.*). Montanez then submitted a sick call slip. (*Id.*). Physician's Assistant Nalley purportedly replied to the sick call slip and denied Montanez's request for a double mattress and stronger pain medication, lied to him about his treatment, and allowed him to walk without a cane or crutches. (*Id.* at pp. 7-8).

On December 14, 2021, Dr. Edwards treated Montanez in the infirmary at SCIHuntingdon. (*Id.* at p. 8).

Montanez alleges that Dr. Edwards refused to prescribe stronger pain medication, refused a request for a double mattress, and should have ordered an MRI of his left hip. (*Id.*). He then asserts that Superintendent Wakefield "allowed the actions by Dr. Edwards," and "allow[ed] cold air to continue to blow into [his] cell during a snowy winter." (*Id.*).

Montanez alleges that WellPath "is being sued as a public entity contracting the medical staff" in this case. (*Id.*). Lastly, Montanez asserts that the Commonwealth of Pennsylvania "is being sued in accordance with the type of claims in this lawsuit[]."[2] (*Id.*).

Montanez alleges that Defendants did not render adequate medical care for his back pain in violation of his rights under the Eighth Amendment. He also brings claims under the Title II of the Americans with Disabilities Act ("ADA") and section 504 of the Rehabilitation Act ("RA") for the alleged denial of his post-surgery physical therapy. (*Id.* at pp. 11-12). For relief, Montanez requests a permanent single cell, to be

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[2] By Order dated February 14, 2023, the Commonwealth of Pennsylvania was dismissed from this action because it is not a "person" subject to suit under§ 1983. (Doc. 32). In response, Montanez argues that he is suing the Commonwealth of Pennsylvania for violating Title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act. (Docs. 37, 38). Montanez must plead four elements under Title II of the Americans with Disabilities Act against the Commonwealth: "(1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability." *Geness v. Cox*, 902 F.3d 344, 361 (3d Cir. 2018). As set forth herein, the Court finds that Montanez has not satisfied these elements. Thus, granting Montanez leave to amend his claims against the Commonwealth of Pennsylvania would be futile and cause undue delay.

moved to a facility that is closer to Philadelphia and that offers physical therapy for his legs, and $5,000,000 as compensation. (*Id.* at p. 13)

Defendants move to dismiss all claims pursuant to Rule 12(b)(6). The motions are fully briefed and ripe for resolution.[3]

II. Legal Standard

A complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(6) if it does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). The plaintiff must aver "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009).

"Though a complaint 'does not need detailed factual allegations, . . . a formulaic recitation of the elements of a cause of action will not do.'" *DelRio-Mocci v. Connolly Prop. Inc.*, 672 F.3d 241, 245 (3d Cir. 2012) (citing Twombly, 550 U.S. at 555). In other words, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Covington v. Int'l Ass'n of Approved Basketball Officials*, 710 F.3d 114, 118 (3d Cir. 2013) (internal citations and quotation marks omitted). A court "take[s] as true all the factual allegations in the Complaint and the reasonable inferences

[3] Montanez's briefs in opposition to Defendants' motions to dismiss contains facts that are not expressly set forth in the amended complaint. The Court may not consider such allegations because a complaint cannot be amended by way of an opposition brief. See *Pennsylvania ex rel. Zimmerman v. PepsiCo, Inc.*, 836 F .2d 173, 181 (3d Cir. 1988) ("[I]t is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.").

that can be drawn from those facts, but . . . disregard[s] legal conclusions and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ethypharm S.A. France v. Abbott Laboratories*, 707 F.3d 223, 231, n.14 (3d Cir. 2013) (internal citations and quotation marks omitted).

> *Twombly* and *Iqbal* require [a district court] to take the following three steps to determine the sufficiency of a complaint: First, the court must take note of the elements a plaintiff must plead to state a claim. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.

Connelly v. Steel Valley Sch. Dist., 706 F.3d 209, 212 (3d Cir. 2013).

"[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not show[n] - that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (internal citations and quotation marks omitted). This "plausibility" determination will be a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.*

However, even "if a complaint is subject to Rule 12(b)(6) dismissal, a district court must permit a curative amendment unless such an amendment would be inequitable or futile." *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 245 (3d Cir. 2008).

> [E]ven when plaintiff does not seek leave to amend his complaint after a defendant moves to dismiss it, unless the district court finds that amendment would be inequitable or futile, the court must inform the plaintiff that he or she has leave to amend the complaint within a set period of time.

Id.

III. The Commonwealth Defendants' Rule 12(b) Motion

A. Deliberate Indifference to Medical Needs

In the context of medical care, the Eighth Amendment "requires prison officials to provide basic medical treatment to those whom it has incarcerated." Rouse v. *Plantier*, 182 F .3d 192, 197 (3d Cir. 1999). To establish an Eighth Amendment deliberate indifference claim, a claimant must demonstrate "(i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." *Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003).

Deliberate indifference has been found "where the prison official (1) knows of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment." *Rouse*, 182 F.3d at 197. The "deliberate indifference" prong of the Eighth Amendment test requires that the defendant actually know of and disregard "an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Circumstantial evidence can establish subjective knowledge if it shows that the excessive risk was so obvious that the official must have

known about it. *See Beers-Capitol v. Whetzel*, 256 F.3d 120, 133 (3d Cir. 2001) (citing *Farmer*, 511 U.S. at 842). Moreover, "[i]f a prisoner is under the care of medical experts ... a non-medical prison official will generally be justified in believing that the prisoner is in capable hands." *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004). Accordingly, "absent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner, a non-medical prison official ... will not be chargeable with the Eighth Amendment scienter requirement of deliberate indifference." *Id.*

The second prong of the Eighth Amendment inquiry is whether the plaintiff's medical needs were serious. A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987). Not every condition is a serious medical need; instead, the serious medical need element contemplates a condition of urgency, namely, one that may produce death, degeneration, or extreme pain. See id. Moreover, because only egregious acts or omissions can violate this standard, mere medical malpractice cannot result in an Eighth Amendment violation. *See White v. Napoleon*, 897 F.2d 103, 108-10 (3d Cir. 1990); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976) ("medical malpractice does not become a constitutional violation merely because the victim is a prisoner").

Additionally, prison medical authorities are given considerable latitude in the diagnosis and treatment of inmate patients, *see Young v. Kazmerski*, 266 F. App'x 191, 194 (3d Cir. 2008), and a doctor's disagreement with the professional judgment of another doctor is not

actionable under the Eighth Amendment. *See White*, 897 F .2d at 108-10. Furthermore, it is well settled that an inmate's dissatisfaction with a course of medical treatment, standing alone, does not give rise to a viable Eighth Amendment claim. *See Brown v. Borough of Chambersburg*, 903 F.2d 274, 278 (3d Cir. 1990) ("[A]s long as a physician exercises professional judgment his behavior will not violate a prisoner's constitutional rights."); *see also Pearson v. Prison Health Servs.*, 850 F.3d 526, 535 (3d Cir. 2017) ("[W]hen medical care is provided, we presume that the treatment of a prisoner is proper absent evidence that it violates professional standards of care.").

In the instant case, Defendants do not appear to challenge whether Montanez had a serious medical need. Rather, they assert that Defendants Patton, Davis, Wakefield, Ellers, and Price are entitled to dismissal because they were not personally involved in the alleged violations of Montanez's constitutional rights. (Doc. 28, pp. 7-10). They maintain further that all Commonwealth Defendants are entitled to dismissal because they did not demonstrate deliberate indifference to Montanez's medical needs. (*Id.* at pp. 10-12). The Court considers each argument in turn below.

1. Defendants Patton, Davis, Wakefield, Ellers, and Price

Under § 1983, individual liability may be imposed only if the state actor played an "affirmative part" in the alleged misconduct. *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005) (quoting *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1998)). Liability "cannot be predicated solely on the operation of *respondeat superior*." *Id.* In other words, defendants "must have personal involvement in the alleged wrongs ... shown

through allegations of personal direction or of actual knowledge and acquiescence." *Atkinson v. Taylor*, 316 F.3d 257, 271 (3d Cir. 2003); *Rode*, 845 F.2d at 1208. Moreover, the filing of a grievance, participation in "after-the-fact" review of a grievance, or dissatisfaction with the response to an inmate's grievance, does not establish the involvement of officials and administrators in any underlying constitutional deprivation. *See Pressley v. Beard*, 266 F. App'x 216, 218 (3d Cir. 2008) ("The District Court properly dismissed these defendants and any additional defendants who were sued based on their failure to take corrective action when grievances or investigations were referred to them."); *Brooks v. Beard*, 167 F. App'x 923, 925 (3d Cir. 2006) (holding that allegations that prison officials responded inappropriately to inmate's later-filed grievances do not establish the involvement of those officials and administrators in the underlying constitutional deprivation); *Ramos v. Pa. Dep't of Corr.*, No. 06-1444, 2006 WL 2129148, at *3 (M.D. Pa. July 27, 2006) ("[C]ontentions that certain correctional officials violated an inmate's constitutional rights by failing to follow proper procedure or take corrective action following his submission of an institutional grievance are generally without merit."); *Wilson v. Horn*, 971 F. Supp. 943, 947 (E.D. Pa. 1997) (noting that a complaint alleging that prison officials failed to respond to the inmateplaintiff's grievance does not state a constitutional claim), *aff'd*, 142 F.3d 430 (3d Cir. 1998); *see also Rode*, 845 F.2d at 1207 (concluding that where a defendant, after being informed of the violation through the filing of grievances, reports, or appeals, failed to take action to remedy the alleged wrong is not enough to show that the defendant had the necessary personal involvement); *Ayers v. Coughlin*, 780 F.2d 205, 210 (2d Cir. 1985) (concluding that a mere "linkage in the

prison chain of command" is not sufficient to demonstrate personal involvement for purposes of a civil rights action).

With respect to supervisory liability, there are two theories: "one under which supervisors can be liable if they established and maintained a policy, practice or custom which directly caused the constitutional harm, and another under which they can be liable if they participated in violating plaintiffs rights, directed others to violate them, or, as the persons in charge, had knowledge of and acquiesced in their subordinates' violations." *Santiago v. Warminster Twp.*, 629 F.3d 121, 129 n.5 (3d Cir. 2010 (quotation and alteration marks omitted)). As to the second theory, a plaintiff must show that each defendant personally participated in the alleged constitutional violation or approved of it. *See C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 173 (3d Cir. 2005); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). With respect to the first, "the plaintiff must establish that: (1) existing policy or practice creates an unreasonable risk of constitutional injury; (2) the supervisor was aware that the unreasonable risk was created; (3) the supervisor was indifferent to that risk; and (4) the injury resulted from the policy or practice." *Merring v. City of Carbondale*, 558 F. Supp. 2d 540, 547 (M.D. Pa. 2008) (citing *Sample v. Diecks*, 885 F.2d 1099, 1118 (3d Cir. 1989)).

As an initial matter, the Court notes that Montanez appears to have withdrawn his claims against Defendants Patton and Davis. The amended complaint does not identify Patton and Davis as Defendants and does not contain any factual averments against them. Accordingly, Defendants Patton and Davis will be dismissed from this action.

With respect to Defendant Riviello, the amended complaint lists him as a Defendant, but does not specify what role, if any, Superintendent Riviello played in the alleged denial of Montanez's rights. Under the most liberal construction, Montanez's amended complaint fails to state a claim for relief against Defendant Riviello. Based upon the above legal standards, it is clear that any claims against Defendant Riviello are subject to dismissal based on Montanez's failure to set forth any factual allegations against him in the amended complaint. Without such factual allegations, it is impossible to conclude that Defendant Riviello deprived Montanez of any constitutional rights. *See Hudson v. City of McKeesport*, 244 F. App'x 519, 522 (3d Cir. 2007) (affirming dismissal of defendant because complaint did not provide any basis for a claim against him).

Montanez alleges that Defendant Wakefield, in his role as Superintendent, "allowed the actions by Dr. Edwards. Therefore, allowing the policy of medical treatment being denied by medical staff ..." (Doc. 24, p. 8). As noted above, a plaintiff may establish supervisory liability if he demonstrates that a supervisor established and maintained a policy, practice, or custom that directly caused the constitutional harm. *Santiago*, 629 F.3d at 129 n.5. Montanez, however, has not demonstrated that Defendant Wakefield knew of any unreasonable risk and was indifferent to that risk by failing to implement such a policy. See Merring, 558 F. Supp. 2d at 547. The allegations of the amended complaint amount to a blanket invocation of vicarious liability. Moreover, Montanez failed to establish that Defendant Wakefield personally participated in any alleged constitutional violation or approved of it. *See C.N.*, 430 F.3d at 173.

Finally, Montanez seeks to hold Defendants Ellers and Price liable based upon their responses to his grievances. As noted above, these Defendants' participation in review of Montanez's grievances does not establish personal involvement in the alleged constitutional violations. *See Pressley*, 266 F. App'x at 218. For all the foregoing reasons, the Court will grant the Commonwealth Defendants' motion to dismiss.

2. The Commonwealth Defendants

Montanez next alleges that the Commonwealth Defendants demonstrated deliberate indifference to his medical needs. Defendants Price, Ellers, Wakefield, Riviello, and Bullick are not medical personnel. See *Thomas v. Dragovich*, 142 F. App'x 33, 39 (3d Cir. 2005) (noting that Health Care Administrators, such as Defendants Price and Ellers, "are undisputably administrators, not doctors"). The amended complaint confirms that Montanez was under the care of medical personnel. Because Defendants Price, Ellers, Wakefield, Riviello, and Bullick are not physicians, they cannot be considered deliberately indifferent "simply because they failed to respond directly to the medical complaints of a prisoner who was already being treated by the prison doctor." *Durmer v. O'Carroll*, 991 F.2d 64, 69 (3d Cir. 1991); *see also Foreman v. Bureau of Prisons*, No. 06-1274, 2007 WL 108457, at *4-5 (3d Cir. Jan. 16, 2007) (concluding that non-medical personnel were entitled to qualified immunity regarding inmate's Eighth Amendment claim that he was deprived of a specific shower chair). Montanez has not alleged that these Defendants had reason to believe or actual knowledge that his medical providers were mistreating or failing to treat him. *See Spruill*, 372 F.3d at 236.

With respect to Commonwealth Defendant Nurse Wagman, Montanez's inadequate medical care claim against her is subject to dismissal because it amounts to a mere disagreement with medical treatment. Montanez alleges that Wagman took him to the medical department in a wheelchair immediately after the August 28, 2021 incident. (Doc. 24, p. 6). Once in the medical department, Defendant Wagman examined Montanez and called Dr. Mahli. (*Id.* at pp. 5-6). Montanez contends that Dr. Mahli directed Defendant Wagman to move Montanez to the first tier and that he needed to be taken to the hospital. (*Id.* at p. 6). Montanez alleges that Defendant Wagman denied his request to be taken to the hospital, returned him to the housing unit, and placed him on the lower tier. (*Id.*). The following day, Dr. Mahli treated Montanez, and on August 31, 2021, he was transported to an outside hospital for further treatment. (*Id.* at pp. 6-7). Construing the allegations in the light most favorable to Montanez, the Court concludes that Montanez has failed to allege an Eighth Amendment medical care claim against Defendant Wagman. *See Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 330 (3d Cir. 2020) (noting that "a failure to eliminate all risk [does not] establish that the Government [has been] deliberately indifferent to [inmates'] serious medical needs"). The amended complaint demonstrates that Defendant Wagman had limited interaction with Montanez and immediately provided medical care to him. Montanez's belief that he should have received different treatment and should have been transported to an outside hospital constitutes a "mere disagreement as to the proper medical treatment," and is not an actionable Eighth Amendment claim. *Monmouth Cnty. Corr. Institutional Inmates*, 834 F.2d at 346.

Accordingly, the Court will grant the Commonwealth Defendants' motion to dismiss with respect to Montanez's Eighth Amendment claim.

B. Claims under the Americans with Disability Act and Rehabilitation Act

Montanez also alleges that Defendants violated Title 11 of the ADA as well as the Rehabilitation Act by failing to provide proper medical treatment. (Doc. 24, pp. 10-11). Title II of the ADA, "which prohibits a 'public entity' from discriminating against a 'qualified individual with a disability' on account of that individual's disability ... covers inmates in state prisons." *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 208 (1998) (quoting 42 U.S.C. §§ 12131, 12132). The Rehabilitation Act provides that "[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). The Third Circuit has explained that "[t]he substantive standards for determining liability under the Rehabilitation Act and the ADA are the same." *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 275 (3d Cir. 2014) (quoting *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 282-83 (3d Cir. 2012)). Therefore, to maintain a claim under either the ADA or the Rehabilitation Act, Montanez must demonstrate "that he is a qualified individual with a disability, who was precluded from participating in a program, service, or activity, or otherwise was subject to discrimination, by reason of his disability." *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 289 (3d Cir. 2019).

While the Third Circuit has not addressed the issue precedentially, most courts "have held that Title II does not authorize suits against government officers in their individual capacities." *Williams v. Hayman*, 657 F. Supp. 2d 488. 502 (D.N.J. 2008); *see also Bowens v. Wetzel*, 674 F. App'x 133, 136 (3d Cir. 2017) (noting that "the District Court could have properly followed the holdings of those circuits which have concluded that there is no individual damages liability under Title II of the ADA, which provides an additional basis to affirm the dismissal of this claim"); *Matthews v. Pa. Dep't of Corr.*, 613 F. App'x 163, 169-70 (3d Cir. 2015) (agreeing with the Second and Eighth Circuits that "Title II of the ADA does not provide for suits against state officers in their individual capacities"). Likewise, individuals who are employees of entities who receive federal funds are not subject to individual liability under the Rehabilitation Act. *See Olschefski v. Red Lion Area Sch. Dist.*, No. 1:12-cv-871, 2012 WL 6003620, at *8 (M.D. Pa. Nov. 30, 2012). Montanez, therefore, cannot maintain his ADA and Rehabilitation Act claims against the individual Defendants in their individual capacities.

The Court must next consider Montanez's claims against the individual Defendants in their official capacities. The official capacity claims for damages against the Commonwealth Defendants are treated as claims against the Department of Corrections ("DOC") because the real party in interest is the DOC. *See Rogers v. NJDOC*, No. 15-7005, 2021 WL 1050233, at *15 (D.N.J. Mar. 19, 2021).

Montanez seeks $5,000,000 as compensation. Punitive damages, however, are not available under Title 11 of the ADA and section 504 of the Rehabilitation Act. *See Bowers v. Nat'l Collegiate Athletic Ass'n*, 346 F.3d

402, 429 (3d Cir. 2003) (citing *Barnes v. Gorman*, 536 U.S. 181, 187 (2002)). To receive compensatory damages, Montanez must demonstrate "intentional discrimination under a deliberate indifference standard." *Furgess*, 933 F.3d at 288-89. The "definition of deliberate indifference in the ... ADA context is consistent with [the] standard of deliberate indifference in the context of § 1983 suits by prison inmates." *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 263 (3d Cir. 2013). Thus, to show deliberate indifference, Montanez must show that the DOC "(1) had 'knowledge that a federal protected right is substantially likely to be violated,' and (2) failed 'to act despite that knowledge.'" *Snider v. Pa. DOC*, 500 F. Supp. 3d 360, 2020 WL 7229817, at *19 (M.D. Pa. Dec. 8, 2020) (quoting *Geness v. Admin. Office of Pa. Courts*, 974 F.3d 263, 274 (3d Cir. 2020)). Montanez can show such a right was "substantially likely to be violated" by either "(1) alleging 'a failure to adequately respond to a pattern of past occurrences of injuries like [his]"; or (2) alleging facts that 'prove that the risk of ... cognizable harm was so great and so obvious that the risk and the failure ... to respond will alone support finding deliberate indifference." *Matthews v. Pa. Dep't of Corr.*, 827 F. App'x 184, 187 (3d Cir. 2020) (quoting *Haberle v. Troxell*, 885 F.3d 170, 181 (3d Cir. 2018)).

As an initial matter, Montanez does not assert that he was excluded from participating in any programs, services, or activities. To the extent Montanez claims that his rights under the ADA and Rehabilitation Act were violated because he was denied medical treatment for his disabilities, such a claim "is not encompassed by the ADA's prohibitions." *Iseley v. Beard*, 200 F. App'x 137, 142 (3d Cir. 2006); *see also Bryant v. Madigan*, 84 F.3d 246, 248 (7th Cir. 1996) (concluding

that the ADA "would not be violated by a prison's simply failing to attend to the medical needs of its disabled prisoners [because the] ADA does not create a remedy for medical malpractice").

As stated *supra*, in analyzing Montanez's Eighth Amendment claims, the Court concluded that Montanez had not met a similar deliberate indifference standard. Specifically, the Court noted that the Commonwealth Defendants, who are not medical personnel, were justified in relying on the expertise and care provided to Montanez by his medical providers. The Court concluded further that Montanez had not demonstrated that the Commonwealth Defendants had reason to believe or actual knowledge that his medical providers were mistreating or failing to treat him. Likewise, as the Court has concluded *supra*, Defendant Wagman did not demonstrate deliberate indifference to Montanez's medical needs. Thus, given the Court's previous conclusion, and because the "definition of deliberate indifference in the RA and the ADA context is consistent with [the] standard of deliberate indifference in the context of § 1983 suits by prison inmates," the Court reaches the same conclusion here. *Matthews*, 827 F. App'x at 188. The Court, therefore, will grant the Commonwealth Defendants' motion to dismiss with respect to Montanez's official capacity claims for compensatory damages pursuant to the ADA and the Rehabilitation Act.

IV. The Medical Defendants' Motion

A. Deliberate Indifference to Medical Needs

Montanez's amended complaint asserts a claim under § 1983, alleging violations of the Eighth Amendment's Cruel and Unusual Punishments Clause based

upon allegations that he received inadequate medical care. (Doc. 24).

In the context of prison medical care, the Eighth Amendment "requires prison officials to provide basic medical treatment to those whom it has incarcerated." *Rouse*, 182 F.3d at 197). Prison officials violate the Eighth Amendment "when they are deliberately indifferent to an inmate's serious medical need." *Dooley v. Wetzel*, 957 F.3d 366, 374 (3d Cir. 2020) (citing *Estelle*, 429 U.S. at 106). "[T]he concept of a serious medical need, as developed in Estelle, has two components, one relating to the consequences of a failure to treat and one relating to the obviousness of those consequences." *Colburn v. Upper Darby Twp.*, 946 F.2d 1017, 1023 (3d Cir. 1991). The "condition must be such that a failure to treat can be expected to lead to substantial and unnecessary suffering, injury, or death[,]" and "the condition must be one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Id.* (citation and internal quotation marks omitted).

The concept of "deliberate indifference" requires that the prison official actually knew of and disregarded "an excessive risk to inmate health or safety[.]" *Farmer*, 511 U.S. at 837). The United States Court of Appeals for the Third Circuit has found deliberate indifference when a "prison official: (1) knows of a prisoner's need for medical treatment and intentionally refuses to provide it; (2) delays necessary medical treatment based on a nonmedical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment." *Rouse*, 182 F.3d at 197 (citation omitted).

The Court concludes that, even if it were assumed that the amended complaint has alleged a serious medical need concerning Montanez's issues, the Court would still find that the amended complaint has not plausibly alleged that the Medical Defendants were deliberately indifferent to that need.

Montanez alleges that Dr. Mahli examined him the day after the incident and failed to respond to his complaints that he was urinating on himself. (Doc. 24, pp. 6-7). He alleges that Dr. Preston "denied [him] proper or adequate pain medication." (*Id.* at p. 7). Montanez alleges that Physician's Assistant Nalley refused to order a double mattress, which he believed he would help his back pain, denied him stronger pain medication, "lied to him" about being referred back to physical therapy, and allowed him to walk around without a cane or crutches. (*Id.* at pp. 7-8). He similarly alleges that Dr. Edwards failed to provide stronger pain medication, failed to order a double mattress, and failed to order an MRI of his left hip. (*Id.*).

Based on the allegations of the amended complaint, the Medical Defendants did not exhibit a wanton disregard of Montanez's medical needs, did not fail to provide any medical treatment, and did not deny any requests for medication.[4] Montanez simply disagrees with the Medical Defendants' medical judgment and prescription of certain medication. Such disagreement does not give rise to a constitutional claim given the considerable latitude afforded prison authorities in the treatment of prisoners. *See Spruill*, 372 F.3d at 235 (holding that "mere disagreement as to the proper medical treatment" is insufficient to state a constitutional

[4] Montanez does not allege that he failed to receive any medication. (See Doc. 24).

violation); *White v. Napoleon*, 897 F.2d 103, 110 (3d Cir. 1990) (doctor's choice of one drug over another is not actionable); *Gause v. Diguglielmo*, 339 F. App'x 132 (3d Cir. 2009) (dispute over choice of medication does not rise to the level of an Eighth Amendment violation). Rather, where there has been medical care, "we presume that the treatment of a prisoner is proper absent evidence that it violates professional standards of care." *Pearson*, 850 F.3d at 535.

Additionally, as case law indicates, a delay in a surgical procedure does not automatically rise to the threshold of deliberate indifference. In *Davis v. First Corr. Medical*, 589 F.Supp.2d 464 (3d Cir. 2008), where the plaintiff alleged that a delay in treatment constituted deliberate indifference, the Court held that while there may have been a delay in surgery due to diagnostic testing and scheduling, such a delay does not constitute deliberate indifference to the inmate's medical condition without a more serious allegation that the delay was due to non-medical reasons. Similarly, in the case at bar, while Montanez may aver that his surgery was delayed for approximately ten days, he fails to plead that the delay was "deliberate" or for "non-medical reasons." *See Durmer*, 991 F.2d at 68-69. Montanez's disagreement with the course of treatment is, as stated supra, an improper basis for a deliberate indifference claim.

In sum, Montanez fails to allege facts from which it can reasonably be inferred that the Medical Defendants exhibited a deliberate indifference to his medical needs. Therefore, the Court will dismiss Montanez's Eighth Amendment claims against the Medical Defendants for failure to state a claim upon which relief can be granted.

B. Claims against WellPath

Montanez also names as a Defendant, WellPath, a private company that contracts with correctional institutions to provide medical care to inmates. A private corporation such as WellPath, which is under contract to provide prison health services, may be liable under § 1983 only if that entity's policies or customs caused the alleged constitutional violation. *See Monell v. N. Y.C. Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978); *Natale*, 318 F.3d at 583-84. For such a claim to be plausible, the plaintiff "must identify [the] custom or policy, and specify what exactly that custom or policy was." *Mc Teman v. City of York*, 564 F.3d 636, 658 (3d Cir. 2009).

A plaintiff may also state a plausible basis for liability against an entity like WellPath by "alleging failure-to-supervise, train, or discipline ... [and alleging facts showing] that said failure amounts to deliberate indifference to the constitutional rights of those affected." *Forrest v. Parry*, 930 F.3d 93, 106 (3d Cir. 2019). In the context of a contract medical provider, the provider's "failure to train or supervise must amount to a policy or custom in disregard of an obvious risk that its employees or agents would commit constitutional violations." *Ponzini v. PrimeCare Med., Inc.*, 269 F. Supp. 3d 444, 526 (M.D. Pa. 2017), *aff'd in part, vacated in part on other grounds sub nom. Ponzini v. Monroe Cnty.*, 789 F. App'x 313 (3d Cir. 2019). Only in the narrowest of circumstances can a failure to train or supervise "said to be so obvious, that failure to do so could properly be characterized as deliberate indifference to constitutional rights even without a pattern of constitutional violations." *Id.* (quoting *Thomas v. Cumberland Cnty.*, 749 F.3d 217,223 (3d Cir. 2014) (internal citation and quotation marks omitted)). In the amended complaint, Montanez broadly alleges that

WellPath is a "medical contractor" and "a public entity contracting the medical staff." (Doc. 24, pp. 3, 8). Montanez does not tie any of the claimed violations of his constitutional rights to a WellPath policy or custom or to Well Path's failure to train, supervise, or discipline its staff. Accordingly, the amended complaint does not state a claim against WellPath and the official capacity claims against Wellpath will be dismissed.

C. Claims under the Americans with Disability Act and Rehabilitation Act

The Medical Defendants next argue that Montanez's ADA and Rehabilitation Act claims concerning their alleged failure to provide proper medical care is not cognizable against them because they are not proper defendants for a private cause of action under Title II of the ADA of the Rehabilitation Act. (Doc. 30, pp. 18-21). As such, the Medical Defendants contend that they should be dismissed from this action. (*Id.*)

As stated, Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Thus, in order "[t]o successfully state a claim under Title II of the ADA, a person 'must demonstrate: (1) he is a qualified individual; (2) with a disability; (3) [who] was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability.'" *Haberle*, 885 F.3d at 178- 79 (quoting *Bowers v. Nat'l Collegiate Athletic Ass'n*, 475 F.3d 524, 553 n.32 (3d Cir. 2007)).

Particularly relevant here is the third element—whether Montanez has alleged that he was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity. Montanez wholly fails to allege that he was denied or excluded from any services, programs, or activities. Additionally, Title II of the ADA defines "public entity" as follows: "(A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority[.]" 42 U.S.C. § 12131(1).

While a state prison falls within the statutory definition of a "public entity" as understood by Title II of the ADA, *see Yeskey*, 524 U.S. at 210, a private corporation contracting with that prison does not. *See Matthews*, 613 F. App'x at 170 (concluding, that for purposes of the ADA, "a private corporation is not a public entity merely because it contracts with a public entity to provide some service" (citation and internal quotation marks omitted)).

Additionally, an individual defendant, who is sued in his or her individual capacity, is not a "public entity" under Title II of the ADA. *See Bowens*, 674 F. App'x at 136 (affirming district court's dismissal of plaintiff's claim brought under Title II of the ADA, where plaintiff's amended complaint "sued state employees in their individual capacities" and "not any 'public entity' as the statute requires" (quoting 42 U.S.C. § 12132); *Matthews*, 613 F. App'x at 170 (finding that "Title II of the ADA does not provide for suits against state officers in their individual capacities").

Applying these principles here, the Court finds that Montanez's ADA and Rehabilitation Act claims against the Medical Defendants fail to state a claim upon which relief can be granted. The individual Medical Defendants—i.e., Defendants Preston, Mahli, Edwards, and Nalley-do not constitute public entities within the meaning of Title II of the ADA and, thus, are not subject to suit.

In addition, WellPath, the private corporation providing medical services to inmates, also does not constitute a public entity, even if Well Path contracts with the prison to provide such services. *See generally City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 610 (2015) (explaining that "[o]nly public entities are subject to Title II" of the ADA). Accordingly, for all of these reasons, the Court will grant the Medical Defendants' motion to dismiss to the extent that they argue that Montanez's amended complaint fails to state an ADA or Rehabilitation Act claim upon which relief can be granted.

V. Leave to Amend

When a complaint fails to present a prima facie case of liability, district courts must generally grant leave to amend before dismissing the complaint. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002); *Shane v. Fauver*, 213 F.3d 113, 116-17 (3d Cir. 2000). Specifically, the Third Circuit Court of Appeals has admonished that when a complaint is subject to dismissal for failure to state a claim, courts should liberally grant leave to amend "unless such an amendment would be inequitable or futile." *Phillips*, 515 F.3d at 245 (citing *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004)). The Court finds that granting further leave to amend would be futile based on the factual and legal

defects identified in Montanez's amended complaint. *See Jones v. Unknown D.O.C. Bus Driver & Transp. Crew*, 944 F.3d 478, 483 (3d Cir. 2019) (where inmate plaintiff "has already had two chances to tell his story . . . giving him further leave to amend would be futile.").

VI. Conclusion

Based on the foregoing, the Court will grant Defendants' motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docs. 27, 29).

A separate Order shall issue.

/s/ Robert D. Mariani
Robert D. Mariani
United States District Judge

Dated: August 23, 2023

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSE MONTANEZ, Civil No. 3:22-cv-1267

Plaintiff (Judge Mariani)

v.

PAULA PRICE, *et al.*,

Defendants

AND NOW, this 23RD day of August, 2023, upon consideration of Defendants' motions (Docs. 27, 29) to dismiss, and the parties' respective briefs in support of and in opposition to said motions, and for the reasons set forth in the accompanying Memorandum, IT IS HEREBY ORDERED THAT:

1. The motions (Docs. 27, 29) are GRANTED. The amended complaint (Doc. 24) is DISMISSED.
2. Plaintiff's motion (Doc. 37) to alter judgment is DISMISSED.
3. The Clerk of Court is directed to CLOSE this case.
4. Any appeal from this Order is DEEMED frivolous and not in good faith. *See* 28 U.S.C. § 1915(a)(3).

/s/ Robert D. Mariani
Robert D. Mariani
United States District Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSE MONTANEZ,	Civil No. 3:22-cv-1267
Plaintiff	(Judge Mariani)
v.	
PAULA PRICE, *et al.*,	
Defendants	

AND NOW, this 14th day of February, 2023, upon consideration of Defendants' motions (Docs. 10, 19) to dismiss the original complaint, and Plaintiff having subsequently filed an amended complaint (Doc. 24), and Defendants having filed motions (Docs. 27, 29) to dismiss the amended complaint, and since, as a matter of law, an amended complaint takes the place of the original complaint, effectively invalidating the original complaint, *see Palakovic v. Wetzel*, 854 F. 3d 209, 220 (3d Cir. 2017) ("in general, an amended pleading … supersedes the earlier pleading and renders the original pleading a nullity"), and any motion to dismiss challenging the original complaint is now moot, *see* 6 Charles Alan Wright, Arthur R. Miller & Mary Kate Kane, *Federal Practice & Procedure* § 1476 (3d ed. 1990) ("A pleading that has been amended … supersedes the pleading it modifies … Once an amended pleading is interposed, the original pleading no longer performs any function in the case and any subsequent motion made by an opposing party should be directed at the amended pleading"), IT IS HEREBY ORDERED THAT:

1. The amended complaint (Doc. 24) is accepted as filed and this matter shall proceed on the amended complaint.

2. In accordance with Federal Rule of Civil Procedure 4(c)(3), the Clerk of the Court is directed to SERVE a copy of the amended complaint (Doc. 24), notice of lawsuit and request to waive service of summons (form AO 398), waiver of the service of summons (form AO 399), and this Order on the newly named Defendants, Superintendent John Rivello and Wellpath Care. In the interests of efficient administrative judicial economy, the Court requests that Defendants waive service pursuant to Federal Rule of Civil Procedure 4(d).

3. If service is unable to be completed due to Plaintiff's failure to properly name the Defendants, or provide an accurate mailing address for the Defendants, Plaintiff will be required to correct this deficiency. Failure to comply may result in the dismissal of Plaintiff's claims against the Defendants pursuant to Federal Rule of Civil Procedure 4(m).

4. The Commonwealth of Pennsylvania is DISMISSED from this action. The Clerk of Court is directed to TERMINATE the Commonwealth of Pennsylvania as a party to this action. See *Nelson v. Dauphin Court Public Defender*, 381 F. App'x 127, 128 (3d Cir. 210) ("[N]o claim can be made against the Commonwealth of Pennsylvania, because it is not a 'person' subject to suit under section 1983.") (citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989)).

5. The pending motions (Docs. 10, 19) to dismiss the original complaint are DISMISSED as moot.

/s/ Robert D. Mariani
Robert D. Mariani
United States District Judge

APPENDIX G

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-2622

STEVEN DAVID VOGT,
Appellant

v.

JOHN E. WETZEL, Secretary of the Department of Corrections (Official & Individual Capacity); JOHN/JANE DOE (Mailroom Employee at S.C.I. Fayette) (Official & Individual Capacity)

On Appeal from the United States District Court for the Western District Pennsylvania
(D.C. Civil Action No. 2-17-cv-01407)
District Judge: Honorable Arthur J. Schwab

Before: KRAUSE, SCIRICA, and NYGAARD, *Circuit Judges*

ORDER

This matter is referred to the merits panel and the Clerk is instructed to appoint counsel to represent Appellant Vogt on appeal and set a briefing schedule at the appropriate time. In addition to any other issues that the parties may wish to raise, the parties are directed to address: (1) whether the District Court properly resolved the First Amendment claim on the

pleadings, *see Wolf v. Ashcroft*, 297 F.3d 305, 310 (3d Cir. 2002); and (2) if the First Amendment claim fails, whether Appellant retains a protected liberty or property interest for purposes of bringing a due process claim, *compare Bonner v. Outlaw*, 552 F.3d 673, 678 (8th Cir. 2009) *with Steffey v. Orman*, 461 F.3d 1218, 1223 (10th Cir. 2006); *see also Monroe v. Beard*, 536 F.3d 198, 209–10 (3d Cir. 2008).

By the Court,

s/ Richard L. Nygaard
United States Circuit Judge

Dated: February 11, 2020
JK/cc: Tadhg Dooley, Esq.
Kemal A. Mericli, Esq.
Daniel B. Mullen, Esq.
Steven David Vogt

APPENDIX H

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 19-2826

ALBERT B. KORB, Appellant

v.

SGT. HAYSTINGS; ET AL.

(W.D. Pa. Civ. No. 1:18-cv-00042)

Present: RESTREPO, PORTER and SCIRICA, *Circuit Judges*

Submitted are:

(1) By the Clerk for a determination under 28 U.S.C. § 1915(e)(2) or for summary action under Third Circuit L.A.R. 27.4 and I.O.P. 10.6;

(2) Appellant's motion for counsel;

(3) Appellant's argument in support of appeal;

(4) Appellant's motion to expedite;

(5) Appellant's second motion to expedite;

(6) Appellant's third motion to expedite; and

(7) Appellant's second argument in support of appeal

(8) Appellant's third argument in support of appeal

(9) Appellant's fourth argument in support of appeal; and

(10) *Appellant's fifth argument in support of appeal

in the above-captioned case.

Respectfully,
Clerk

ORDER

We decline to dismiss the appeal under 28 U.S.C. § 1915(e)(2) or take summary action under Third Circuit L.A.R. 27.4 and I.O.P. 10.6. Appellant's motion for appointment of pro bono counsel is granted. All other pending motions are denied.

The Clerk shall issue a briefing schedule after counsel in due course is secured. Among any other issues the parties wish to address in their briefs, they should discuss the following:

(1) Can the Court exercise appellate jurisdiction to review the District Court's March 18, 2019 order? *See* Fed. R. Civ. P. 58; Fed. R. App. 4(a)(7)(A); *cf. LeBoon v. Lancaster Jewish Cmty. Ctr. Ass'n*, 503 F.3d 217, 223 (3d Cir. 2007);

(2) Did the District Court err in dismissing Korb's claim against Sgt. Haystings with, rather than without, prejudice, based on a failure to exhaust institutional remedies? *See Garrett v. Wexford Health*, 938 F.3d 69, 81 (3d Cir. 2019), *cert. denied* 140 S. Ct. 1611 (May 18, 2020);

(3) Does the holding in *Pearson v. Secretary Department of Corrections*, 775 F.3d 598, 603 (3d Cir. 2015)—that "the PLRA is a statutory prohibition that tolls Pennsylvania's statute of limitations while a prisoner exhausts administrative remedies"—apply to a litigant's exhaustion during the pendency of his case?;

(4) The District Court dismissed the case below before we issued our decision in *Garrett v. Wexford Health*, 938 F.3d 69 (3d Cir. 2019), *cert. denied* 140 S. Ct. 1611 (May 18, 2020). Under *Garrett*, could the District Court have permissibly

construed one of Korb's pro se filings as a motion for leave to file a supplemental complaint under Federal Rule of Civil Procedure 15(d), based on his exhaustion of institutional remedies after filing suit? *See id.* at 81; *see also U.S. ex rel. Gadbois v. PharMerica Corp.*, 809 F.3d 1, 5-6 (1st Cir. 2015); and

(5) Should this Court's sua sponte amendment rule in civil rights cases be extended, such that District Courts in such cases must consider whether to grant, sua sponte, leave to file a supplemental complaint under Rule 15(d) prior to dismissing a complaint with prejudice? *See Garrett*, 938 F.3d at 82; *cf. Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002); *Shane v. Fauver*, 213 F.3d 113, 116 (3d Cir. 2000).

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: September 23, 2020
Tmm/cc: Michael H. McGinley
Michael P. Corcoran
Daniel B. Mullen
Albert B. Korb

APPENDIX I

Patricia S. Dodszuweit
Clerk

UNITED STATES COURT OF APPEALS
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790
Website: www.ca3.uscourts.gov

Telephone
215-597-2995

January 12, 2024

David M. Koller, Esq.
Michael J. Scarinci, Esq.

RE: Samantha Peifer v. Pennsylvania Board of Probation and Parole

Case Number: 23-1081

District Court Case Number: 2-21-cv-05432

Dear Counsel:

At the direction of the Court, the parties are hereby directed to submit supplemental letter briefs addressing whether, outside the retaliation context, a plaintiff can make out a prima facie case under Title VII and the PDA when involuntary, unpaid leave is followed by back pay and reinstatement. *See Burlington Northern and Santa Fe Railway Co. v. White*, 548 U.S. 53, 72-73 (2006); *Phelan v. Cook County*, 463 F.3d 773, 780–81 (7th Cir. 2006); *Crawford v. Carroll*, 529 F.3d 961, 972 (11th Cir. 2008); *Greer v. Paulson*, 505 F.3d 1306, 1318 (D.C. Cir. 2007); *Jackson v. UPS*, 548 F.3d 1137, 1141-42 (8th Cir. 2008). The parties should discuss, among other things, (1) whether involuntary, unpaid leave followed by back pay and reinstatement can constitute an "adverse employment action" under Title VII, (2)

whether parties can state a claim for failure to accommodate under *Young v. UPS*, 575 U.S. 206 (2015) when the alleged failure was only temporary, and (3) whether Peifer forfeited the argument that involuntary, unpaid leave constitutes an "adverse employment action" or failure to accommodate by failing to raise it before the District Court at summary judgment or in her opening brief on appeal.

Such letter briefs shall be no more than six pages, single-spaced, and shall be filed on or before January 22, 2024.

Very truly yours,

/s/ Patricia S. Dodszuweit
PATRICIA S. DODSZUWEIT
Clerk

By: /s/ Ashley M. Ritz
Ashley Ritz
Calendar Clerk
267-299-4947

APPENDIX J

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 22-1307

QUINTEZ TALLEY, Appellant

VS.

KERI MOORE; ET AL.

(W.D. Pa. Civ. No. 2:21-cv-00298)

Present: BIBAS, PORTER, and MORTGOMERY-REEVES, Circuit Judges

Submitted are:

(1) Appellant's "Motion for the Appointment of Standby Counsel, Alternatively an Injunction";

(2) Appellant's motion to have this appeal submitted to the Panel that issued the May 4, 2023 order in C.A. No. 20-1278;

(3) Appellant's motion for summary action;

4) By the Clerk for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2) or summary action pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6; and

(5) Appellant's argument in support of this appeal in the above-captioned case.

Respectfully,

Clerk

_____ORDER_____

Appellant's motion for summary action is denied (and summary action is not otherwise warranted), for this appeal appears to present a substantial question. *See* 3d Cir. I.O.P. 10.6. Appellant's motion to appoint

standby counsel (or, in the alternative, to enter an injunction) for the purpose of addressing mail issues that he was allegedly experiencing in 2022 is denied, as is his motion to have this appeal submitted to the panel of this Court that entered the May 4, 2023 order in his appeal in C.A. No. 20-1278. The Court, acting on its own motion, directs the Clerk to appoint a member of its bar to serve as amicus curiae on behalf of Appellant in this case. After amicus counsel is appointed, the Clerk shall issue a briefing schedule. In addition to any arguments the parties may wish to raise in their respective briefs, they are directed to address the following issue:

In Appellant's two administrative appeals from the rejection of Grievance No. 812151, he invoked the exception to the general rule that separate events should be addressed in separate grievances. *See* Dist. Ct. Dkt. No. 26-1, at 9, 12-13. But neither administrative appeal decision specifically addressed this argument. *See id.* at 11, 14. What effect, if any, do these points have in evaluating whether the District Court erred in its February 7, 2022 decision?

By the Court,

s/David J. Porter
Circuit Judge

Dated: September 3, 2025
nmb/cc: Quintez Talley
David R. Roth, Esq.
Tadhg Dooley, Esq.
Michael J. Scarinci, Esq