

No. _____

IN THE
Supreme Court of the United States

JAMES DARYL WEST,
Petitioner,

v.

SABRINA SCHULTZ, ET AL.,
Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals for the Eleventh Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11541

JAMES DARYL WEST,

Plaintiff-Appellant,

versus

SABRINA SCHULTZ,

Food Service Employee,

DIANN SPRATT,

Food Service,

WEXFORD HEALTH SOURCES, INC.,

a corporation,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:16-cv-00694-SPC-NPM

Before LUCK, LAGOA, and ABUDU, Circuit Judges.

PER CURIAM:

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James West has had chronic pain since a prison bus accident in 1999. By 2014, West was incarcerated at Charlotte Correctional Institution. While at Charlotte Correctional, West saw five different Wexford Health Sources, Inc. medical providers—Dr. Carmello Berrios, Nurse Karen Blankenship, Dr. Howard Wetterer, Nurse Bonnie LaRosa, and Dr. Ronald Hemphill—who implemented a treatment plan for his chronic pain that included taking x-rays, diagnosing his various injuries in his back, right knee, and right foot, and giving him pain medicine, a cane, analgesic balm, and temporary medical passes limiting his required work. West worked in the food service unit at Charlotte Correctional where his supervisors—Diann Spratt and Sabrina Schultz—required him to cut vegetables while sitting on an upside-down trashcan and carry heavy bags of vegetables.

West sued Wexford, his medical providers, and his food service supervisors under 42 U.S.C. section 1983. He brought a municipal liability claim against Wexford for having a policy or custom that was deliberately indifferent to his necessary medical care, in violation of his Eighth Amendment right to be free from cruel and unusual punishment. He brought deliberate indifference claims against his medical providers, alleging that they violated the Eighth Amendment because they should have ordered more diagnostic testing or treatment. And he brought similar deliberate indifference claims against his food service supervisors, alleging that they violated the Eighth Amendment because their orders to sit on the trashcan and lift heavy bags caused him unnecessary pain.

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The district court dismissed West's claim against Ms. Schultz—the food service supervisor—for lack of service of process because the district court ordered two specially appointed process servers and the United States Marshals Service to serve Ms. Schultz four times over several years but none of them were successful. The district court also dismissed West's claims against the medical providers for failure to state an Eighth Amendment claim because West did not plausibly allege facts showing that they were deliberately indifferent to his serious medical needs. Following discovery, the district court granted Wexford's and Ms. Spratt's motions for summary judgment. There was no evidence, the district court explained, that Wexford had a policy or custom that was deliberately indifferent to West's medical needs or that Ms. Spratt's orders caused West any more pain than he was already experiencing from his 1999 bus accident.

The district court entered judgment for the defendants, and West appealed. After careful review, and with the benefit of oral argument, we affirm.

FACTUAL BACKGROUND

West alleged these facts in his fourth amended complaint. In September 1999, he began serving his prison sentence. Before his incarceration, he already had two surgeries on his right knee. Those injuries were exacerbated in October 1999, when West was

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involved in a prison bus accident. After the accident, West had constant pain in his back, right knee, and right foot.

Pre-Fall Medical Care

The pain continued through October 2014, when West was moved to Charlotte Correctional. Wexford was the medical provider at the prison, and West saw its providers throughout the summer and fall of 2015.

In June 2015, West saw Dr. Berrios and told him about his chronic pain. In response, Dr. Berrios ordered x-rays on West's knee, and gave him prescription ibuprofen, analgesic balm, a cane, and temporary medical "passes for restricted activity, light duty, limited standing, no bending, [and no] lifting over [fifteen] pounds."

After seeing Dr. Berrios, West put in another treatment request for his chronic pain. This time he saw Nurse Blankenship and told her that he wanted the x-rays Dr. Berrios ordered and for her to issue a bed-rest medical pass that would get him out of his food service job. She re-ordered the x-rays but declined to issue any additional medical passes. West saw Dr. Berrios again, and he diagnosed West with "osteoarthritis, degenerative joint disease, and chronic pain." West requested additional diagnostic testing, but Dr. Berrios denied his request. Dr. Berrios told West that Wexford had a policy restricting necessary medical care.

Despite his diagnosis and medical passes, West was still required to work in Charlotte Correctional's food service unit. Ms. Schultz and Ms. Spratt—as West's supervisors—were aware

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that he had medical passes limiting his ability to bend over and lift heavy objects. But they made West sit on an upside-down trashcan to cut vegetables. And they made him lift bags of vegetables weighing over fifteen pounds.

Post-Fall Medical Care

West's chronic pain was particularly severe on June 27, 2015, before he started the day's work in the food service unit, so he put in another treatment request and was taken to Nurse LaRosa. Nurse LaRosa gave him ibuprofen and analgesic balm. Afterward, West went to the food service unit, where he was ordered to move a seventy-five-pound bag of vegetables. When he picked up the bag, he fell and experienced even more pain than normal. He could not get up, so he was taken out of the food service unit in a wheelchair and sent back to Nurse LaRosa. But Nurse LaRosa concluded that "nothing ha[d] changed" from the previous visit that morning, so she declined to provide West with any additional treatment.

Two days later, on June 29, 2015, West put in another treatment request for his pain and saw Nurse Blankenship. He told Nurse Blankenship about his recent fall, but she refused to provide West more treatment because she believed he "was lying about his accident."

A month later, in August 2015, West put in another treatment request for his pain. Again, he saw Nurse LaRosa, who readjusted his knee brace after concluding it was too tight but declined to order more diagnostic testing. That same month, West

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requested treatment again for his chronic pain. This time he saw Dr. Wetterer, who also declined to order additional diagnostic testing and did not refill West's prescriptions for "[m]otrin, [p]rednisone, [or p]nerenegan." Like Dr. Berrios, Dr. Wetterer told West that Wexford had a policy restricting necessary medical care.

West's last medical provider at Charlotte Correctional was Dr. Hemphill, who treated West three more times for his chronic pain. First, in October 2015, Dr. Hemphill ordered more x-rays on West's right knee and ordered new x-rays on his right foot but declined to order any x-rays on West's back. Second, Dr. Hemphill reviewed the x-ray results, "gave [West] painkillers," diagnosed him with "osteophytosis of the medial compartment and patellofemoral joint," but declined to offer additional diagnostic testing. At the last visit, in November 2015, West again requested diagnostic testing, but Dr. Hemphill again declined. Like the other doctors, Dr. Hemphill told West that Wexford had a policy restricting necessary medical care.

PROCEDURAL HISTORY

West's Complaint and the District Court's Order Dismissing West's Claim Against Ms. Schultz

In 2016, West filed a pro se complaint, which brought section 1983 claims against his medical providers (Dr. Berrios, Nurse Blankenship, Dr. Wetterer, Nurse LaRosa, and Dr. Hemphill),

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Wexford, Ms. Spratt, and Ms. Schultz. West was allowed to proceed in forma pauperis.

Because of his in forma pauperis status, the district court appointed Charlotte Correctional's warden and assistant warden to serve process on the defendants on May 16, 2018. The defendants were successfully served except for Ms. Schultz. So, the district court ordered the Florida Department of Corrections to provide Ms. Schultz's last known address. Once the Department complied, the district court ordered the Marshals Service to try to serve Ms. Schultz again on November 20, 2018. When the second attempt failed, the district court ordered the Marshals Service to serve Ms. Schultz for the third time on February 16, 2021. After the third attempt failed, the district court dismissed West's claim against Ms. Schultz without prejudice.

West moved to reinstate the dismissed claim because he found an additional address for Ms. Schultz. The district court granted his motion, vacated its previous dismissal, and ordered the Marshals Service to try to serve Ms. Schultz for the fourth time. When the fourth attempt failed, the district court dismissed West's claim again. West tried to reinstate the claim a second time, but the district court denied the motion, explaining that "[Ms.] Schultz . . . ha[d] not been served with process, despite multiple attempts over several years."

The District Court's Order Dismissing West's Claims Against the Medical Providers

An attorney representing West filed the fourth amended complaint. In that complaint—the operative one—West brought Eighth Amendment deliberate indifference claims against the medical providers, alleging that they violated his Eighth Amendment right to be free from cruel and unusual punishment because they were deliberately indifferent to his serious medical needs. He brought a municipal liability claim against Wexford, alleging that it had a policy or custom that was deliberately indifferent to his necessary medical care, in violation of his Eighth Amendment right. And he brought a claim against Ms. Spratt, alleging that she violated the Eighth Amendment because her orders to sit on the trashcan and lift heavy bags were deliberately indifferent to West's pain.

The medical providers moved to dismiss West's complaint for failure to state a claim, which the district court granted. The district court dismissed West's claims against his medical providers because West failed to plausibly allege that they violated the Eighth Amendment. The district court explained that the allegations that the medical providers denied West additional diagnostic testing and treatment amounted to a difference of opinion on the right way to treat West's pain, which was not deliberate indifference. And Nurse Blankenship's and Nurse LaRosa's refusal to treat West after his fall in the food service unit was not deliberate indifference because they did not believe that West was injured, and thus, West

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had not alleged that they were subjectively aware of his serious medical needs.

The District Court's Order Granting Wexford's and Ms. Spratt's Motions for Summary Judgment

After discovery ended, Wexford and Ms. Spratt moved for summary judgment, arguing that there was no genuine dispute as to any material fact and that they were entitled to judgment as a matter of law. The district court agreed and granted their motions. As to Wexford, the district court explained that “[t]here [w]as no evidence” that Wexford had a policy or custom of denying necessary medical care. In fact, the district court pointed to Wexford’s official policies, which required the company to provide necessary medical care, and the testimony of Wexford’s providers, who declared that they never denied necessary treatment to cut costs.

As to Ms. Spratt, the district court concluded that there was no evidence that her orders—to cut vegetables while sitting on an upside-down trashcan and to carry bags of vegetables—caused an injury to West. The summary judgment evidence, the district court explained, showed that West’s chronic pain was caused by the bus accident in 1999 and Ms. Spratt’s orders did not cause West any additional pain beyond what he had already been experiencing from the accident.

STANDARD OF REVIEW

Three standards of review govern this appeal. First, for the dismissal for failure to serve process, we review for an abuse of discretion. *See Rance v. Rocksolid Granit USA, Inc.*, 583 F.3d 1284, 1286

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(11th Cir. 2009). Second, for the dismissal for failure to state a claim, we review de novo, “accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff.” *Butler v. Sheriff of Palm Beach Cnty.*, 685 F.3d 1261, 1265 (11th Cir. 2012) (quotation omitted). “To survive a motion to dismiss [for failure to state a claim], a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted).

Third, we review a district court’s summary judgment de novo, “draw[ing] all inferences and review[ing] all evidence in the light most favorable to the non-moving party.” *Moton v. Cowart*, 631 F.3d 1337, 1341 (11th Cir. 2011). To grant summary judgment, the movant must show “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

DISCUSSION

We divide our discussion into three parts. First, we consider the district court’s dismissal of the claim against Ms. Schultz for failure to serve process. Second, we address the district court’s dismissal of the Eighth Amendment deliberate indifference claims against the medical providers for failure to state a claim. And third, we discuss the district court’s summary judgment for Wexford and

Ms. Spratt on West's municipal liability and deliberate indifference claims.

Dismissal of the Claim Against Ms. Schultz for Failure to Serve Process

West contends that the district court abused its discretion by dismissing his claim against Ms. Schultz for failure to serve process. He argues the district court did not make reasonable efforts to serve Ms. Schultz before dismissing the claim.

Federal Rule of Civil Procedure 4(m) provides that “[i]f a defendant is not served within [ninety] days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). “But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.*

When a pro se plaintiff is proceeding “in forma pauperis,” the district court must order the Marshals Service or “a person specially appointed by the court” to serve process on the defendants. *See* Fed. R. Civ. P. 4(c)(3). An incarcerated plaintiff proceeding “in forma pauperis” can show “good cause” to extend the deadline to serve process “for an appropriate time” when the Marshals Service or a specially appointed person cannot serve process within the initial ninety-day period. *See Rance*, 583 F.3d at 1288. But once an appropriate time has lapsed and the defendant still cannot be served process despite “reasonable effort[s]” to do so, the district court may dismiss the claim under Rule 4(m). *See Richardson v. Johnson*, 598 F.3d 734, 740 (11th Cir. 2010).

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Here, West—an incarcerated plaintiff proceeding in forma pauperis—filed his initial complaint on September 2, 2016. As required by Rule 4(c), the district court first appointed Charlotte Correctional’s warden and assistant warden to serve Ms. Schultz on May 16, 2018. *See* Fed. R. Civ. P. 4(c). Once the wardens notified the district court that they were unable to serve her, the district court ordered the Florida Department of Corrections to provide Ms. Schultz’s last known address. When the Department did so, the district court ordered the Marshals Service to try to serve process on her on November 20, 2018. When the second attempt failed, it ordered the Marshals Service to try a third time on February 16, 2021. After the third attempt failed, the district court dismissed West’s claim without prejudice on May 10, 2021—1,711 days after filing his initial complaint. When West moved to reinstate his claim after finding a new address for Ms. Schultz, the district court granted the motion, vacated the prior dismissal, and ordered the Marshals Service to try—for the fourth time—to serve process on Ms. Schultz. When the fourth attempt failed, the district court dismissed West’s claim again.

That is, the district court ordered Ms. Schultz’s former employer to provide her last known address and ordered both specially appointed process servers and the Marshals Service to serve Ms. Schultz four different times over 2,088 days from when the complaint was originally filed—almost two thousand days over the initial ninety-day service period provided by Rule 4(m). *See* Fed. R. Civ. P. 4(m). That’s more than enough “reasonable effort” to support dismissal under Rule 4(m). *See Richardson*, 598 F.3d at 740.

West counters that the dismissal was improper because the district court never explicitly found that there were “reasonable effort[s]” made to serve Ms. Schultz. *See Id.* But the district court need not use magic words to exercise its discretion to dismiss West’s claim under Rule 4(m). Instead, we can “infer . . . implied factual findings that are consistent with” the district court’s “explicit factual findings and conclusion[s.]” *United States v. \$242,484.00*, 389 F.3d 1149, 1154 (11th Cir. 2004) (en banc) (collecting cases inferring implied factual findings); *see also United States v. Watkins*, 13 F.4th 1202, 1213–14 (11th Cir. 2021) (same). In its order dismissing West’s claim against Ms. Schultz, the district court went through the reasonable efforts that had been made to try to serve Ms. Schultz. Still, the district court ordered the Marshals Service to make another final attempt before dismissing West’s claim for the second time. By recounting the reasonable efforts to serve Ms. Schultz in its dismissal order and by ordering another attempt to serve Ms. Schultz before dismissing the claim a second time, we can infer that the district court impliedly found that “reasonable effort[s]” were made to serve Ms. Schultz. *See Richardson*, 598 F.3d at 740. Based on its implied finding, the district court was within its discretion to dismiss West’s claim against Ms. Schultz under Rule 4(m).¹ *See id.*

¹The district court properly dismissed West’s claim against Ms. Schultz without prejudice for failure to serve process. *See Fed. R. Civ. P. 4(m)*; Adam N. Steinman, *Federal Practice and Procedure* § 1137 (4th ed. Apr. 2025 Update) (“It is worth emphasizing that Rule 4(m) does not permit dismissals with prejudice.”). Although the final judgment was entered against West with prejudice,

Dismissal of the Deliberate Indifference Claims Against the Medical Providers

Next, West argues that the district court erred in dismissing his Eighth Amendment deliberate indifference claims against the medical providers—Dr. Berrios, Nurse Blankenship, Dr. Wetterer, Dr. Hemphill, and Nurse LaRosa. This argument fails for two reasons.

First, “[w]hile we read briefs filed by pro se litigants liberally, issues not briefed on appeal by a pro se litigant are deemed abandoned.” *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (quotation and emphasis omitted). Because West did not appeal the dismissal of his claims against the medical providers in his initial brief, those claims have been abandoned. *See id.* Indeed, West’s intent could not have been clearer—he left out the medical providers as parties in his notice of appeal. *Cf. Osterneck v. E.T. Barwick Indus.*, 825 F.2d 1521, 1529 (11th Cir. 1987) (dismissing an appeal against parties not named in the notice of appeal because the notice of appeal “expressly name[d] some . . . opponents but fail[ed] to include [the] other[s]”). He cannot resurrect his abandoned claims against the medical providers in a supplemental brief. *See United States v. Levy*, 379 F.3d 1241, 1242–43 (11th Cir. 2004) (collecting

our review of the record shows that the district court dismissed West’s claim against Ms. Schultz *without prejudice* consistent with Rule 4(m). *See Fed. R. Civ. P. 4(m)*. With that understanding of the record, we affirm the district court’s dismissal of the claim without prejudice.

cases explaining that arguments raised for the first time in “supplemental briefs” are abandoned).²

Second, even if West had not abandoned his deliberate indifference claims against the medical providers, we agree with the district court that West failed to state a claim. The Eighth Amendment prohibits inflicting “cruel and unusual punishment[.]” U.S. Const. amend. VIII. “A prison official violates the Eighth Amendment’s prohibition against cruel and unusual punishment if [he or she] is deliberately indifferent to” an inmate’s serious medical needs. *Lane v. Philbin*, 835 F.3d 1302, 1307 (11th Cir. 2016); *see also*

² The dissenting opinion says that applying, in this case, our “longstanding” rule “that an appellant who does not raise an issue in his opening brief may not do so . . . in a supplemental brief,” *United States v. Durham*, 795 F.3d 1329, 1330 (11th Cir. 2015) (en banc), arguably raises due process concerns because appointed counsel filed the supplemental brief. But “[a] plaintiff in a civil case has no constitutional right to counsel.” *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999). So, it does not violate his constitutional rights to give him more process—appointed counsel and the opportunity to file a supplemental brief—than he is due. In any event, West’s appeal was not “poorly presented,” as the dissenting opinion claims. In fact, we initially denied his motion to appoint counsel because “exceptional circumstances” did not warrant it. *See id.* The only reason we appointed counsel was because a member of our court selected West’s appeal for oral argument (based on his briefing) and our rules do not permit pro se prisoners to argue their own appeals. At that point, counsel had to be appointed. The bottom line is, with full briefing, appointed counsel, another round of supplemental briefing, and oral argument, there are no due process concerns—arguable or otherwise. *See Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (“The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.” (quotation omitted; alteration adopted)).

Estelle v. Gamble, 429 U.S. 97, 104 (1976). To state a deliberate indifference claim, an inmate must show (1) an objectively serious medical need, (2) that the prison official was subjectively aware of, but was deliberately indifferent to, the serious medical need, and (3) causation. See *Marbury v. Warden*, 936 F.3d 1227, 1233 (11th Cir. 2019); *Stalley v. Cumbie*, 124 F.4th 1273, 1284 (11th Cir. 2024) (noting that the first element is “objective” while the second element is “subjective”).

The first and third elements are fairly straightforward. The first element—an objectively serious medical need—requires the inmate to show a medical need “that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” See *Taylor v. Hughes*, 920 F.3d 729, 733 (11th Cir. 2019) (quotation omitted). And the third element—causation—requires the inmate to show that the prison official’s deliberate indifference caused the inmate’s alleged injury. See *Goebert v. Lee County*, 510 F.3d 1312, 1326 (11th Cir. 2007).

The second element—deliberate indifference—has three requirements. See *Stalley*, 124 F.4th at 1284. The inmate must show that (1) “the official was subjectively aware that the inmate was at risk of serious harm[,]” (2) “the official disregarded that risk[,]” and (3) the official acted with “subjective recklessness as used in the criminal law.” *Wade v. McDade*, 106 F.4th 1251, 1255 (11th Cir. 2024) (en banc) (quoting *Farmer v. Brennan*, 511 U.S. 825, 839 (1994)). To show criminally reckless conduct, the inmate must

demonstrate that the official “actually knew his conduct—his own acts or omissions—put the [inmate] at substantial risk of serious harm.” *Id.* (quotation omitted). But even if the official “actually knew of” the risk, the official “cannot be found liable . . . if he responded reasonably to th[e] risk.” *Id.* (quotation omitted). Focusing the inquiry on criminal recklessness ensures that only “those who inflict punishment” will be liable under “the Eighth Amendment.” *See id.* at 1259 (quotation omitted).

Because criminal recklessness requires actual knowledge that a prison official’s own conduct puts an inmate at risk of serious harm, an inmate does not meet this element by showing that a prison official “should have known” about a risk of serious harm. *Id.* at 1257. Nor can an inmate meet this element by showing that a prison official knew that a preexisting injury—not the official’s own conduct—put the inmate at risk of a serious harm. *Id.* at 1258–61. And “[m]ere negligence in diagnosing or treating a medical condition” is not enough to show deliberate indifference. *Adams v. Poag*, 61 F.3d 1537, 1543 (11th Cir. 1995).

For example, in *Estelle*, an inmate alleged that prison doctors were deliberately indifferent to his serious medical needs because they only treated his back pain with “rest, muscle relaxants[,] and pain relievers.” 429 U.S. at 107. The inmate argued that the prison doctors should have taken more x-rays and provided additional treatments. *Id.* The Supreme Court concluded that the inmate failed to show an Eighth Amendment violation. *Id.* at 107–08. The Court explained that “[a] medical decision not to order an [x]-ray,

or like measures, does not represent cruel and unusual punishment.” *Id.* at 107. The Court made clear that decisions not to provide “additional diagnostic techniques or forms of treatment” are “matter[s] for medical judgment” that can be, “[a]t most . . . medical malpractice,” but not an Eighth Amendment violation. *Id.*

With this framework in mind, we begin with West’s claims against the doctors and then address his claims against the nurses.

Claims Against the Doctors

Drs. Berrios, Wetterer, and Hemphill treated West throughout the summer and fall of 2015. In June, West initially complained to Dr. Berrios about the pain in his back, right knee, and right foot. Dr. Berrios ordered x-rays on West’s knee and gave him prescription ibuprofen, analgesic balm, a cane, and temporary medical “passes for restricted activity, light duty, limited standing, no bending, [and no] lifting over [fifteen] pounds.” Dr. Berrios diagnosed West with “osteoarthritis, degenerative joint disease, and chronic pain” but did not order more diagnostic testing. In August, West complained to Dr. Wetterer about the same pain, but Dr. Wetterer did not order additional diagnostic testing and declined to refill West’s prescriptions for “[m]otrin, [p]rednisone, and [p]nerengan.” Finally, in October and November, West saw Dr. Hemphill three different times, and during those visits Dr. Hemphill ordered more x-rays on West’s right knee and foot, diagnosed West with “osteophytosis of the medial compartment and patellofemoral joint,” gave West “painkillers,” but declined to do more diagnostic testing on West’s back.

Based on these facts, West has failed plausibly to allege an Eighth Amendment violation for deliberate indifference. As the Supreme Court explained in *Estelle*, the doctors' alleged failure to order "additional diagnostic" testing and more "forms of treatment" were "matter[s] for medical judgment" that did not constitute deliberate indifference. See 429 U.S. at 107; see also *Adams*, 61 F.3d at 1545 ("[A]s *Estelle* teaches, the question of whether governmental actors should have employed additional diagnostic techniques or forms of treatment is a classic example of a matter for medical judgment and therefore not an appropriate basis for grounding liability under the Eighth Amendment." (quotation omitted)); *Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 1989) (explaining that "a simple difference in medical opinion" cannot constitute deliberate indifference). Thus, the district court did not err in dismissing West's deliberate indifference claims against the doctors.

West counters that he still plausibly alleged that the doctors violated the Eighth Amendment because the doctors told him that Wexford had a policy of restricting necessary medical care. While we have explained that a medical provider violates the Eighth Amendment when he knows an inmate needs medical treatment but declines to provide it "for non-medical reasons," see *Ancata v. Prison Health Svcs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985), that is not what West alleged here. West did not allege that the doctors knew he needed additional diagnostic testing or treatment and withheld it because of Wexford's policy. The existence of the policy, without alleging that the doctors intentionally refused to

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provide medical care they knew was necessary because of the policy, did not amount to an Eighth Amendment violation. *See Stalley*, 124 F.4th at 1286–87 (explaining that *Ancata* did not apply where there was no evidence showing the government officials “intentional[ly] refus[ed] medical care that they knew was necessary” (quotation omitted)). In other words, the policy is irrelevant if it was unconnected to the medical reason why the doctors refused to order more testing and treatment.

Claims Against the Nurses

Nurses Blankenship and LaRosa also saw West in the summer of 2015 for pain in his back, right knee, and right foot. In early June, West first complained to Nurse Blankenship that the x-rays Dr. Berrios ordered had not been done, so she ordered them again at West’s request. But she did not give him additional medical passes or order more testing. Next, West saw Nurse LaRosa for the same pain on the morning of his fall, and she gave him ibuprofen and analgesic balm. He then went to work, fell, and returned to Nurse LaRosa, who declined to provide him additional treatment because she concluded “nothing ha[d] changed” since the morning visit. Two days later, West saw Nurse Blankenship, complaining of the same pain from his recent fall, but she declined to treat him because she believed he “was lying about his accident.” Finally, in August, West saw Nurse LaRosa again for his pain; she readjusted his knee brace after concluding it was too tight but declined to offer him more diagnostic testing and treatment.

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This too fails plausibly to allege an Eighth Amendment violation. First, in addition to what the doctors provided, the nurses treated West's pain by ordering x-rays, giving him medicine, and adjusting his knee brace. Like with the doctors, the nurses' failures to order "additional diagnostic" testing and more "forms of treatment" were "matter[s] for medical judgment" that did not constitute deliberate indifference. *See Estelle*, 429 U.S. at 107; *see also Adams*, 61 F.3d at 1545; *Waldrop*, 871 F.2d at 1033. And second, the nurses declining to treat West after his fall was not deliberate indifference because, as alleged, they did not subjectively believe that West needed additional treatment. *See Wade*, 106 F.4th at 1255. Nurse Blankenship, as alleged in the fourth amended complaint, thought West "was lying about his accident[,]” and Nurse LaRosa thought "nothing ha[d] changed" between the first and second visits on the day of West's fall. Because the nurses "w[ere not] subjectively aware that [West] was at risk of serious harm," they could not be deliberately indifferent to his pain. *See id.* Thus, the district court did not err in dismissing West's Eighth Amendment claims against the two nurses.

Citing *Goebert*, the dissenting opinion says that West had an objectively apparent need for medical care and Nurse Blankenship and Nurse LaRosa should be charged with constructive knowledge of that need. But *Goebert* is inapposite. There, we charged the jailer with constructive knowledge because he was willfully blind to the pregnant plaintiff leaking amniotic fluid for days. 510 F.3d at 1318. The need for medical attention was apparent and obvious even to a lay person. Here, though, West's knee and back pain was not

nearly as apparent and obvious as a pregnant mother whose water broke. And, unlike the jailer in *Goebert*, Nurse Blankenship and Nurse LaRosa did not “ignore[West’s] daily requests for aid.” See *id.* at 1328. Nurse Blankenship ordered x-rays at West’s request. And Nurse LaRosa gave West medicine and balm, and adjusted his knee brace, when West complained of pain.

Granting Wexford’s Motion for Summary Judgment on West’s Municipal Liability Claim

West argues that the district court erred in granting Wexford’s motion for summary judgment on his municipal liability claim, arguing that he provided sufficient evidence for a reasonable jury to conclude that Wexford had a policy or custom that was deliberately indifferent to his necessary medical care. We disagree.

“A private entity, like Wexford, that contracts to provide medical services to inmates performs traditional state functions and, therefore, is treated as a municipality for purposes of [section] 1983[.]” *Roy v. Ivy*, 53 F.4th 1338, 1347 (11th Cir. 2022). While a municipality cannot be held vicariously liable for its employee’s constitutional violation, a municipality “may be held liable under [section] 1983 if its policy or custom causes the” violation of the inmate’s constitutional right. *Id.* (citations omitted). So to plausibly allege a municipal liability claim, the inmate must show: “(1) that his constitutional rights were violated; (2) that the [municipality] had a custom or policy that constituted deliberate indifference of that constitutional right; and (3) that the policy or custom

caused the violation.” See *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004) (quotation omitted).

To meet the second element, the inmate can point to an official municipal policy that is facially unconstitutional because it permits deliberate indifference to a constitutional right. See *Ireland v. Prummell*, 53 F.4th 1274, 1289 (11th Cir. 2022). Absent a facially unconstitutional policy, the inmate must show a “pervasive” custom of deliberate indifference that is “longstanding and widespread.” *Craig v. Floyd County*, 643 F.3d 1306, 1310 (11th Cir. 2011) (quotation omitted). “A single incident” is not “pervasive” enough “to be a custom.” *Id.* (quotation omitted). So, to show a pervasive custom that meets the second element, “a pattern of similar constitutional violations . . . is ordinarily necessary.” *Id.* (quotation omitted).

For example, in *Craig*, a detainee had a brain injury that went undiscovered for nine days while he was in jail. *Id.* at 1309. During those nine days, the detainee saw several private medical providers working at the jail who gave the detainee painkillers rather than ordering a computed tomography scan that would have discovered the brain injury earlier. See *id.* The detainee brought a deliberate indifference claim against the company that employed the providers, alleging it had an unconstitutional policy of denying necessary computed tomography scans for cost reasons. See *id.* The district court granted summary judgment for the company because the detainee failed to provide any other instance of the company denying necessary medical care for cost reasons. *Id.* We affirmed,

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explaining that “[a] single incident of a constitutional violation is insufficient to prove a policy or custom even when the incident involves several employees.” *See id.* at 1312. Because the detainee relied solely “on his own experience,” we held that there was insufficient “proof of a policy or custom” and, thus, his municipal liability claim failed. *See id.*

West’s municipal liability claim against Wexford fails for the same reason. West did not provide any summary judgment evidence that Wexford had “a policy or custom” of denying necessary medical care. *See id.* Wexford’s official written policies were not facially unconstitutional because the policies required Wexford employees to provide “medically necessary” care. And like the detainee in *Craig*, West failed to provide another instance, outside “his own experience,” of Wexford denying necessary medical care to any other inmates. *See id.* Without any evidence showing a “longstanding and widespread” Wexford policy or custom of denying necessary medical care, the district court properly granted Wexford’s motion for summary judgment. *See id.*

In response, West asserts that his pro se first amended complaint was a sworn statement that provided sufficient evidence for a reasonable jury to conclude that Wexford had an official policy or custom that was deliberately indifferent to his necessary medical care. Specifically, West points to the allegations in the first amended complaint that the medical providers told him during his medical appointments that Wexford had a policy or custom of denying necessary medical care.

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While a verified, operative complaint may be offered by a party as summary judgment evidence, *see Roy*, 53 F.4th at 1348, the problem for West is that his first amended complaint became a “legal nullity” after it was amended. *See Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016) (“[T]he second amended complaint . . . superseded the former pleadings; the original pleadings were abandoned by the amendment,” rendering the “first amended complaint . . . a legal nullity.” (internal quotation omitted, alterations adopted)); *Dresdner Bank AG v. M/V OLYMPIA VOYAGER*, 463 F.3d 1210, 1215 (11th Cir. 2006) (concluding that the original complaint and its attachments could not be used against the plaintiff at a bench trial because “that pleading was wholly superseded by the amended complaint which proceeded under a different theory”); *Proctor & Gamble Def. Corp. v. Bean*, 146 F.2d 598, 601 n.7 (5th Cir. 1945) (“An amended pleading which is complete in itself and does not refer to or adopt a former pleading as a part of it, supersedes the former pleading. The original pleading is abandoned by the amendment[] and is no longer a part of the pleader’s averments against his adversary.” (quotation omitted)); *accord King v. Doogan*, 31 F.3d 344, 346 (5th Cir. 1994) (explaining that a plaintiff could not rely on a verified complaint as summary judgment evidence because that complaint was superseded by an unverified amended complaint). So it could not be used as summary judgment evidence.

West urges us to adopt the Fourth Circuit’s approach in *Goodman v. Diggs*, 986 F.3d 493 (4th Cir. 2021). There, the pro se plaintiff offered his original verified complaint as summary

judgment evidence, even though the operative, amended complaint was unverified. *Id.* at 496, 498. The district court “ignor[ed]” the original “verified complaint[]” and granted the defendant’s motion for summary judgment. *See id.* at 497. The Fourth Circuit reversed the decision because, it explained, a verified complaint can be considered as summary judgment evidence and an amended complaint only supersedes the previous one “for pleading purposes,” but not for evidentiary purposes. *Id.* at 497–98 (emphasis omitted). The district court erred, the Fourth Circuit concluded, in ignoring the original verified complaint because that complaint retained its “evidentiary value” even after the amendment. *See id.* at 498–99 (emphasis omitted).

Even if we adopted the Fourth Circuit’s approach, it would not help West. That’s because the district court, when considering a summary judgment motion, “need consider *only* the cited materials.” *See* Fed. R. Civ. P. 56(c)(3) (emphasis added). District “judges ‘are not like pigs, hunting for truffles,’” so they “are not required to ferret out delectable facts buried in a massive record.” *Cf. Chavez v. Sec’y Fla. Dep’t of Corrs.*, 647 F.3d 1057, 1061 (11th Cir. 2011) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)). Unlike the pro se plaintiff in *Goodman*, West never asked the district court to consider his first amended complaint as summary judgment evidence in response to Wexford’s motion for summary judgment. Instead, he attached an affidavit, along with twenty-seven other attachments to his response—all of which the district court considered—but not his first amended complaint. And notably, his affidavit and attachments did not show that Wexford had a policy or

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custom of denying necessary medical care. The district court did not err in failing to consider evidence that was not in “the cited materials” for summary judgment. *See* Fed. R. Civ. P. 56(c)(3).

Beyond the allegations in his first amended complaint, West argues that Wexford’s review policy—in which a secondary medical provider reviews the necessity of diagnostic testing or treatment that a primary medical provider recommends—supports a “reasonable inference” that Wexford had a facially unconstitutional policy denying necessary medical care to cut costs. But Wexford’s review policy cannot support West’s municipal liability claim because this policy did not “cause[]” West’s alleged Eighth Amendment violation. *See McDowell*, 392 F.3d at 1289. The review policy was never triggered in West’s case because, as the evidence showed, his medical providers never recommended additional diagnostic testing or treatment that needed to be reviewed.

Finally, West points to Wexford’s contract with the Florida Department of Corrections that required the Department to pay Wexford per inmate at the prison, meaning that Wexford was incentivized to keep down the average cost per inmate. The contract, West contends, supports a reasonable inference that Wexford had an unconstitutional policy or custom of denying necessary medical care to cut costs.

But pointing to cost pressures alone is not sufficient to show an unconstitutional policy or custom. *See Craig*, 643 F.3d at 1312. The detainee in *Craig* made the same cost-pressure argument that the private company in that case was incentivized to “us[e] the least

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costly means of treating” inmates. *See id.* Yet the detainee did not provide another instance outside of “his experience alone” that the company denied necessary medical care due to the cost pressure, so we rejected his argument and concluded he provided insufficient proof of an unconstitutional “policy or custom.” *Id.* We reject West’s argument for the same reason. He has not provided another instance outside of “his experience alone” that Wexford’s contract with the Department caused the denial of necessary medical care for costs reasons. *See id.*

For its part, the dissenting opinion quotes reports from 2009, 2004, and “dating back to 2000,” showing that Wexford initially reduced spending by maintaining lower health care staffing levels and that the company used inadequate medical record keeping, postponed specialty clinical visits, and had serious performance issues. The dissenting opinion also cites an article with the number of malpractice claims against Wexford from 2008 to 2012. But the reports and article do not show a pervasive pattern of Wexford refusing to treat patients with knee and back pain.

First, the reports are from six-to-fifteen years before West was treated by Wexford medical providers. They say nothing about the pattern of medical care Wexford provided in the years before West was transferred. Indeed, the bulk of the information in the dissenting opinion is focused on the initial period, in 2000, when the state moved to a private prison health-care system—which is fifteen years before the allegations in our case. A six-to-fifteen-year gap is not a pattern and it is not pervasive.

Second, even if the reports were from the relevant period, they are not connected to West's allegations that the medical providers improperly treated his knee and back pain. The reports talk about staffing levels, record keeping, and postponed visits. But here the summary judgment evidence showed that West had numerous visits with five different medical providers during the summer of 2015, including twice on the day he fell. And the evidence showed the medical providers kept records of West's numerous visits.

Third, as to performance and malpractice issues, the Supreme Court has held that, alone, they are insufficient to show deliberate indifference. As Justice Thurgood Marshall explained in *Estelle*, evidence that a medical provider "has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Estelle*, 429 U.S. at 106.

Granting Ms. Spratt's Motion For Summary Judgment on West's Deliberate Indifference Claim

Finally, West argues that the district court erred in granting Ms. Spratt's motion for summary judgment on his Eighth Amendment deliberate indifference claim against her. Specifically, West contends that a reasonable jury could conclude that Ms. Spratt was

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deliberately indifferent to West's pain while working in the food service unit.

Because West brought an Eighth Amendment deliberate indifference claim against Ms. Spratt, we apply the same legal standards that we did when evaluating his Eighth Amendment claims against the medical providers. *See Wade*, 106 F.4th at 1253, 1255 (explaining that the Supreme Court's decision in *Farmer* applied to deliberate indifference claims in a case involving prison medical providers); *Farmer*, 511 U.S. at 832–33 (providing the legal standards for an Eighth Amendment deliberate indifference claim in a case involving non-medical prison officials). “A prison official violates the Eighth Amendment's prohibition against cruel and unusual punishment if he is deliberately indifferent to a substantial risk of serious harm to an inmate who suffers injury.” *Lane*, 835 F.3d at 1307. Thus, to establish an Eighth Amendment deliberate indifference claim against Ms. Spratt, West had to present evidence for a reasonable jury to conclude: (1) that West faced “a substantial risk of serious harm”; (2) Ms. Spratt's “deliberate indifference to that risk”; and (3) “causation.” *Id.* (quotation omitted). As to the third element, in particular, West had to show that Ms. Spratt's deliberate indifference caused his alleged injury. *See Goebert*, 510 F.3d at 1326; *see also Cox v. Nobles*, 15 F.4th 1350, 1358 (11th Cir. 2021) (“Third, and finally, the plaintiff must demonstrate causation—that the constitutional violation caused her injuries.”).

Here, West has not presented sufficient evidence for a reasonable jury to conclude that Ms. Spratt's orders to sit on the

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trashcan and carry bags of vegetables caused West any more pain than he was already experiencing due to the 1999 bus accident. The evidence showed that West was already in severe and constant pain before he started working in the food service unit, and that he experienced the same pain long after he stopped working in the food service unit. But West did not present any summary judgment evidence that Ms. Spratt's orders exacerbated his preexisting injuries. Without sufficient evidence that Ms. Spratt's orders caused West additional pain, he has failed to show a genuine issue of fact on the causation element of his deliberate indifference claim. *See Lane*, 835 F.3d at 1307; *Goebert*, 510 F.3d at 1326.

Pushing back, West argues that his medical expert's report provided sufficient evidence for a reasonable jury to conclude that Ms. Spratt's orders injured him. But looking closely at the report, West's medical expert explained that West's preexisting injuries were aggravated by his fall on June 27, 2015, which occurred when Ms. Schultz, not Ms. Spratt, ordered West to move a heavy bag of vegetables. Ms. Spratt's timesheets confirmed that she was not working that day. So West cannot rely on the medical expert's report as summary judgment evidence supporting his claim against Ms. Spratt.

West also asserts that his fellow inmates' affidavits and his sworn statement in response to interrogatories provided sufficient evidence for a reasonable jury to conclude that Ms. Spratt's orders caused him unnecessary pain in violation of the Eighth Amendment. Specifically, the other inmates swore in their affidavits that

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they observed West in pain when Ms. Spratt ordered him to cut vegetables on an upside-down trashcan, and West explained in his responses to interrogatories that he was in pain when Ms. Spratt ordered him to carry heavy bags of vegetables.

But the summary judgment evidence showed that West was already in constant and severe pain before he even started working under Ms. Spratt. That chronic pain was caused by his preexisting injuries from the 1999 bus accident, not Ms. Spratt's orders. So the general statements about West's pain while working in the food service unit did not provide sufficient evidence for a reasonable jury to conclude that Ms. Spratt's orders caused West additional pain than what he was already experiencing from his preexisting injuries.

CONCLUSION

In sum, we affirm the dismissal without prejudice of West's claim against Ms. Schultz for failure to serve process, the dismissal with prejudice of West's claims against the medical providers for failure to state a claim, and the summary judgment for Wexford and Ms. Spratt.

AFFIRMED.

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ABUDU, Circuit Judge, Dissenting in part:

I agree with the Majority Opinion in dismissing the claims against Sabrina Schultz for failure to perfect service of process,¹ and in the dismissal of James West’s Eighth Amendment claims against many of the medical providers. However, I otherwise conclude that West set forth a prima facie Eighth Amendment claim against Nurses Karen Blankenship and Bonnie LaRosa. Moreover, because a longstanding and widespread custom or policy as it pertains to a national for-profit prison company necessarily requires geographically broader considerations regarding its policies and customs, West satisfied his burden to overcome summary judgment in favor of Wexford Health Sources, Inc. (“Wexford”). Finally, the record also demonstrates that Diann Spratt’s actions foreseeably exacerbated West’s preexisting chronic pain, precluding summary judgment in her favor.

I. DISMISSAL OF MEDICAL PROVIDERS

At the motion-to-dismiss stage, a complaint survives Rule 12(b)(6) dismissal if its well-pleaded allegations, accepted as true, permit the reasonable inference that a defendant violated the plaintiff’s constitutional rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In the Eighth Amendment context, a plaintiff must allege that

¹ As the Majority Opinion recounts, the district court took multiple reasonable efforts to effectuate service on Defendant Schultz, and West’s case had already been pending for almost five years. The dismissal was without prejudice, and West had an opportunity to present “good cause” for failing to serve Schultz if, for example, she was evading service. FED. R. CIV. P. 4(m).

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(1) he suffered from a serious medical need, (2) the defendant knew of and disregarded a substantial risk of serious harm, and (3) the disregard caused injury. See *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Goebert v. Lee Cnty.*, 510 F.3d 1312, 1326–27 (11th Cir. 2007). The deliberate indifference inquiry has both objective and subjective components. See *Stalley v. Cumbie*, 124 F.4th 1273, 1283 (11th Cir. 2024). At the pleading stage, a plaintiff need only plausibly allege that the defendant knew of and disregarded a substantial risk to the inmate’s health. See *Iqbal*, 556 U.S. at 678; *Wade v. McDade*, 106 F.4th 1251, 1257 (11th Cir. 2024) (*en banc*).

West’s complaint satisfied that standard with respect to Nurses Blankenship and LaRosa.² He alleged that both were aware of his chronic orthopedic and inflammatory pain, which had been

² Although the Majority contends that West cannot resurrect his claims against the medical providers in a supplemental brief, the Opinion nevertheless addresses the merits of those claims. It is important to note, however, that we appointed counsel precisely to assist West in developing arguments the Court believed warranted fuller treatment, and we directed that counsel file a supplemental brief toward that end. Counsel complied by submitting a comprehensive “supplemental opening brief” that ensured that West presented all the issues available to him on appeal. For the court to recruit and appoint counsel for their legal acumen and then leave them stuck with a poorly presented *pro se* appeal seems not only unfair, but arguably raises separate due process concerns regarding the purpose of a “supplemental” brief, which is understood as “supplying something additional; adding what is lacking.” *Supplemental*, BLACK’S LAW DICTIONARY (12th ed. 2024); see generally *United States v. Cordero*, 7 F.4th 1058, 1065 n.7 (11th Cir. 2021) (accepting additional arguments court-appointed counsel raised in a supplemental briefing, noting counsel had *also* adopted the defendant’s *pro se* arguments).

repeatedly documented in his medical records, and that each deliberately refused to examine him after a workplace injury. According to the complaint, West was brought to the medical unit by wheelchair following a fall while carrying a heavy bag of vegetables. Nurse LaRosa told him “nothing ha[d] changed,” refused to examine him, and declined to document the sick call visit. Two days later, Nurse Blankenship refused to examine West “in spite of his swollen knee and obvious pain,” accused him of “lying about his accident,” and threatened him with confinement “if he continued.” Blankenship additionally declined to provide any pain relief or treatment. Both Blankenship and LaRosa knew of West’s chronic condition yet denied even minimal evaluation or treatment.

Those allegations, taken as true, describe conduct far more serious than negligence or a difference in medical opinion. The operative complaint plausibly alleges the kind of deliberate inaction the Eighth Amendment forbids—refusal to treat an inmate who has an obvious injury and well-known chronic pain. *See Farrow v. West*, 320 F.3d 1235, 1247 (11th Cir. 2003) (quoting *McElligott v. Foley*, 182 F.3d 1248, 1258 n.6 (11th Cir. 1999) (finding deliberate indifference where “although [the plaintiff’s] needs were not so serious that a delay of a day or so would have been constitutionally intolerable, the weeklong delays he endured, a jury could conclude, were the product of deliberate indifference.”)).

The Majority Opinion rejects West’s deliberate indifference claim by adopting the defendants’ asserted disbelief that West was injured. The Majority Opinion explains that the nurses refused to

treat West because they subjectively believed that he did not need treatment. However, our circuit precedent rejects that interpretation. As we discussed in *Goebert*, the issue is not whether they had *subjective* knowledge, but whether they had *constructive* knowledge. 510 F.3d at 1328 (citing *United States v. Baxter Int'l, Inc.*, 345 F.3d 866, 902 (11th Cir. 2003)). Specifically, “[a] party that willfully blinds itself to a fact . . . can be charged with constructive knowledge of that fact.” *Id.* The Eighth Amendment’s protections do not depend on whether a medical provider claims disbelief in an inmate’s pain when the condition is objectively apparent. *Id.*

This duty is continuous: prior evaluations, limited interventions, or single instances of care do not necessarily fulfill the obligation when the underlying condition is ongoing. Like the repeated failures in *Goebert*, where the incarcerated person’s daily complaints essentially went unaddressed over an extended period, each request for care triggers a renewed duty to respond. 510 F.3d at 1328. Here, West’s complaint plausibly alleges that the nurses repeatedly failed to meet that duty. A patient in a wheelchair with a visibly swollen knee and chronic joint issues presents precisely the kind of serious medical need that gives rise to a duty to provide care—whether it be a more in-depth inquiry into the source of the pain, necessary additional medical treatment, or some other medical attention that does not summarily discount West’s complaints. Accordingly, the allegations, liberally construed, go beyond negligence or disagreement about proper treatment; they describe the kind of deliberate inaction that *Goebert* recognizes as actionable under the Eighth Amendment. *Id.*

Applying that standard, the complaint adequately alleges that both Blankenship and LaRosa possessed at least constructive knowledge of West's serious condition and consciously disregarded it by refusing to examine or document his injury. That is sufficient to withstand a Rule 12(b)(6) motion. *See Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004) (finding that "[w]hen the need for treatment is obvious, medical care which is so cursory as to amount to no treatment at all may amount to deliberate indifference." (quoting *Mandel v. Doe*, 888 F.2d 783, 789 (11th Cir. 1989))); *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985) (recognizing that denial of care for non-medical reasons constitutes deliberate indifference). A reasonable factfinder could conclude that, based on inferences from these allegations, the risk to West's health was obvious, the nurses willfully blinded themselves to that risk, and such disregard was improper. *See also Hicks v. Middleton*, 141 F.4th 1174, 1180 (11th Cir. 2025) ("It is the function of a jury to weigh the evidence, make credibility determinations, and draw any legitimate inferences from the facts."); *cf. Goebert*, 510 F.3d at 1327.

By contrast, the allegations concerning Drs. Berrios, Wetterer, and Hemphill are different in kind. Those doctors examined West, ordered x-rays, and prescribed medication, though they declined to approve further specialist referrals. Their treatment decisions—however limited—suggest they exhausted the remedies available to them under Wexford's medical policies, which constrained the scope of care they could authorize and deliver. In that sense, their conduct reflects adherence to institutional, albeit unconstitutional, restrictions rather than personal disregard for

West's condition. Under our precedent, prison officials are not liable under the Eighth Amendment when they respond reasonably to risks within the confines of institutional policy. *See Ancata*, 769 F.2d at 705; *McElligott*, 182 F.3d at 1258; *Wade*, 106 F.4th at 1255. Accordingly, for these doctors, the appropriate inquiry is not individual culpability but whether Wexford's cost-containment policies themselves imposed unconstitutional limits on medical decisions. *See Ancata*, 769 F.2d at 705 (noting that policy-driven medical denials may give rise to municipal or corporate liability); *Thomas v. Cook Cnty. Sheriff's Dep't*, 604 F.3d 293, 304 (7th Cir. 2010) (same).

In sum, while the other medical personnel arguably followed the limits of their authority under Wexford's system, Nurses Blankenship and LaRosa went further—they refused outright to evaluate or treat an obviously injured patient. Under our precedent, those allegations suffice to state an Eighth Amendment claim. The district court's dismissal of the claims against them at the pleading stage was, therefore, improper.

II. SUMMARY JUDGMENT IN FAVOR OF WEXFORD AND SPRATT

The Majority Opinion affirms the district court's grant of summary judgment in favor of Wexford by framing West's claim as one grounded in his disagreement with the medical providers' judgment, and in favor of Spratt on the ground that West's complaints pertained to a preexisting condition. In addition to misstating the nature of West's claims and the extent of evidence introduced, the Majority Opinion too narrowly defines what constitutes

a “pervasive custom,” especially given how states now deliver medical care in prisons. Moreover, as to Spratt, the Majority Opinion curtails the full scope of Eighth Amendment protections, which necessarily do reach acts that unduly exacerbate a preexisting condition, thus increasing the seriousness of the medical need for treatment.

A. *Wexford’s Corporate Policy and Pattern of Conduct*

Over the past decade, states have increasingly outsourced their correctional health care systems to large, for-profit providers.³ These companies, like Wexford, operate across multiple states and within numerous facilities, often under standardized contracts and uniform cost-control policies. As a result, patterns of failures flowing from a single provider’s customs or practices may manifest

³ See Natalia Pires de Vasconcelos, *The Constitutive Contradictions of Prison Health Care in the United States*, PETRIE-FLOM CTR. (Apr. 18, 2025), [<https://perma.cc/X77W-FQBM>]; Micaela Gelman, *Mismanaged Care: Exploring the Costs and Benefits of Private vs. Public Healthcare in Correctional Facilities*, 95 N.Y.U. L. REV. 1386, 1391 (2020) (examining the structural deficiencies in the privatization of correctional healthcare, arguing that the market factors required for successful privatization—such as choice, competition, and responsiveness to consumer preferences—are absent in the correctional healthcare sector); Brian Nam-Sonestein, *Cut-Rate Care: The Systemic Problems Shaping Correctional Healthcare*, PRISON POL’Y INITIATIVE (Feb. 2025), [<https://perma.cc/K34J-ZGVA>] (describing systemic incentives and cost-control mechanisms that undermine incarcerated people’s access to healthcare); *Florida Justice Institute Case Forces Change in Prison Health Care Policy*, FUNDING FLA. LEGAL AID (Sept. 26, 2018), [<https://perma.cc/A3HD-75UR>] (describing FJI’s successful litigation that compelled the Florida Department of Corrections to reform its prison health care policies).

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across several institutions over several years, rather than within the confines of one facility or finite period of time.⁴

Unlike the plaintiff in *Craig v. Floyd County*, West submitted extensive materials showing that Wexford's treatment practices reflected a systemic pattern, not an isolated lapse, which impacted him beyond just a single incident, but instead impacted his ongoing experiences at the prison over a consistent period of time. 643 F.3d 1306, 1310 (11th Cir. 2011). This included independent, state-generated reports and public records documenting a pattern of Wexford's cost-based medical decisions and failures throughout Florida's correctional system.

First, West offered reports from the Florida Department of Corrections ("FDC") and the Florida legislature detailing longstanding deficiencies in Wexford's performance dating back to 2000, including repeated contract terminations for "serious performance issues." Those reports explained that the State's transition to privatized prison health care "was difficult," as litigation delayed implementation and prompted mass staff resignations. To meet contractual savings targets, vendors—including Wexford—"initially reduced spending by maintaining lower health care staffing levels," which, according to FDC staff, "led to serious performance

⁴ See, e.g., Peyton Holahan, *The Perils of Privatization: Exploring the Side Effects of Privatized Correctional Health Care in Favor of a Public Delivery Model*, 29 WASH. & LEE J. C.R. & SOC. JUST. 329, 334 (2023); Cary Aspinwall, Briana Bailey & Sachi McClendon, *This Company Promised to Improve Health Care in Jail. Dozens of Its Patients Have Died.*, MARSHALL PROJECT (July 30, 2024), [<https://perma.cc/VY47-ARC9>].

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issues in both contracts.” This parallels West’s allegation that Wexford’s cost-driven policies limited clinicians from providing timely follow-up care or an examination after his fall.

Additionally, West submitted reports from 2004 and 2009 that the Florida Legislature’s Office of Program Policy Analysis and Government Accountability published. Those reports maintained that the “quality of Wexford’s health care had been problematic,” identifying “repeated deficiencies,” and that Wexford’s corrective actions were not maintained. According to state auditors, inspections at Everglades, Dade, Broward, and Homestead correctional institutions, as well as the South Florida Reception Center, often showed “repeated deficiencies and a deteriorated level of service to the extent that the clinical quality of care required immediate action by the contractor.” The issues cited included “inadequate medical record keeping, insufficient staffing, and postponement of specialty clinical visits.” Those systemic deficiencies mirror West’s own allegations: repeated postponements of follow-up evaluations, perfunctory examinations, and refusals by LaRosa and Blankenship to reevaluate him after ongoing complaints of pain.⁵

⁵ West also submitted an article about a case against Wexford in Illinois wherein an inmate, upon arrival at Stateville Correctional Center, “received inadequate medical care and was denied [a] second surgery.” An Illinois jury found that Wexford had a policy of denying elective surgeries in its provision of services to those incarcerated in the Illinois Department of Corrections’ Northern Reception and Classification Center. See *Hall v. Funk*, No. 1-14-cv-6308, 2019 WL 1239707, at *1 (N.D. Ill. Mar. 18, 2019), *appeal dismissed*, *Hall v. Wexford Health Sources, Inc.*, No. 19-1692, 2020 WL 6156604 (7th Cir. Feb. 24, 2020). While the case involved a different jurisdiction, the finding that

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West included another article, updated in 2015, around the time of his accident, that FDC had awarded a new contract to Wexford to provide medical care to inmates in nine institutions in South Florida. The article specifically noted that Wexford had “1,092 malpractice claims . . . from aggrieved inmates from Jan. 1, 2008, through 2012.” While not itself dispositive, this evidence supports a reasonable inference that complaints of substandard care under Wexford’s administration were widespread and recurring, suggesting that systemic performance issues were not confined to a single facility or incident.⁶

The Majority Opinion contends that West’s evidence of a pattern and practice of Wexford denying inmates necessary medical treatment deemed too costly is too remote to be relevant in the instant case. Yet, many of the allegations giving rise to West’s

Wexford’s centralized policies contributed to treatment denial for financial reasons lends contextual support to West’s claim that his own care was restricted by similar corporate directives rather than individualized medical judgment.

⁶ Although *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), holds that inadvertent failures or negligent medical care do not, by themselves, constitute deliberate indifference, West’s evidence does not rest on mere negligence or a single lapse. Rather, he documented a decade-long pattern of systemic deficiencies under Wexford’s administration—including repeated contract terminations for poor performance, chronic understaffing, and widespread delays in care across multiple facilities. These longstanding and recurrent failures go well beyond ordinary medical misjudgment and support a reasonable inference that Wexford’s policies and practices reflected deliberate indifference to inmates’ serious medical needs, consistent with *Estelle*.

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complaint occurred in 2015, so the record necessarily includes data that reaches back several years from that date. Moreover, evidence of a “pattern and practice” may span a significant period of time. See *Lucente v. County of Suffolk*, 980 F.3d 284, 309 (2d Cir. 2020) (“[P]laintiffs have presented sufficient evidence to create a genuine dispute of material fact as to the existence of an ongoing discriminatory policy by Suffolk County over several years (*arguably decades*) of ignoring and/or inadequately addressing the defendant’s sexual misconduct with female inmates.” (emphasis added)).

The temporal proximity of those reports compared to when West received inadequate treatment is not diminished simply because he presented a Wexford trend dating back over 20 years. If anything, the longevity of Wexford’s policy, coupled with the treatment West received, viewed in the light most favorable to him, presents a fact question, not a legal one to be disposed of at the summary judgment stage. See *Vineyard v. County of Murray*, 990 F.2d 1207, 1212–13 (11th Cir. 1993) (evidence that the county’s longstanding policies on supervision, training, and discipline were the moving force behind deputies’ excessive force was sufficient to present a jury question, which would necessarily preclude summary judgment); see also *Brown v. City of Clewiston*, 848 F.2d 1534, 1543 (11th Cir. 1988) (Hatchett, J., dissenting) (explaining that where an individual “has demonstrated the existence of a material factual dispute regarding . . . [a] policy . . . [f]actual disputes of this nature are precisely the types of disputes which district courts should refrain from resolving on motions for summary judgment”). Overall, West’s evidence paints a consistent picture:

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Wexford's cost-containment and staffing practices were systemic and not facility-specific, longstanding, and repeatedly found to compromise patient care. A reasonable jury could thus conclude that Wexford's corporate directives—not the isolated judgment of individual clinicians—were the moving force behind the constitutional deprivation he alleges.

The core question, then, is whether Wexford's policies of limiting medical treatment were the motivating factor for why the medical providers denied West medical treatment for his "serious medical need." *Farrow*, 320 F.3d at 1243. If the evidence supports an inference that Wexford's corporate policies constrained its providers from making independent, patient-specific decisions, then those policies themselves could constitute deliberate indifference. A policy need not expressly forbid treatment to be unconstitutional; it suffices if it effectively prevents medical professionals from exercising individualized clinical judgment to address serious medical needs. *Cf. Johnson v. Lewis*, 83 F.4th 1319, 1329–30 (11th Cir. 2023) (reversing summary judgment where prison medical staff delayed treatment despite a valid prescription, noting that the Department of Corrections' policies, as applied, effectively constrained physicians from exercising independent professional judgment and could support a finding of deliberate indifference).

The Seventh Circuit, as an example, recognized this important point in *Glisson v. Indiana Dep't of Corr.*, 849 F.3d 372 (7th Cir. 2017) (*en banc*). In *Glisson*, a chronically ill incarcerated person received care from a private medical contractor, Corizon. *Id.* at

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374–75. While individual providers assessed him and occasionally made medical decisions, the contractor deliberately failed to implement centralized treatment protocols, did not ensure that his medical history was promptly reviewed, and ignored clear indicators of malnutrition and acute renal failure. *Id.* at 375–78. These policy choices constrained providers from making fully informed, patient-specific decisions—just as decisions here suggest Wexford’s policies may have limited staff from exercising independent judgment to treat West’s serious medical needs. *Id.* at 376–80. The court emphasized that the private contractor’s failure to implement individualized treatment coordination could itself reflect deliberate indifference, noting that “[t]here is no magic number of injuries that must occur before [a defendant’s] failure to act can be considered deliberately indifferent.” *Id.* at 382.

To be sure, cost-awareness alone does not establish deliberate indifference. However, where, as here, an incarcerated person presents evidence that a national contractor applied uniform cost-containment measures that displaced individualized medical judgment, summary judgment in favor of the contractor is inappropriate. West’s evidence, spanning multiple reports, investigations, and documented litigations, raises a genuine factual dispute as to whether Wexford’s corporate practices prioritized cost over care. The question of whether this evidence establishes an unconstitutional pattern is not for us to resolve at summary judgment but for a factfinder. *Hicks*, 141 F.4th at 1180. Accordingly, summary judgment on this claim was improper.

B. Spratt Was Not Entitled to Summary Judgment because the Eighth Amendment Prohibits Conduct That Exacerbates a Prisoner's Known Medical Condition.

Finally, the Majority Opinion overlooks the evidence demonstrating that being forced to sit for hours on an upside-down trash can caused West additional pain beyond his already-documented chronic conditions. The Eighth Amendment prohibits not only the denial of medical care but also deliberate indifference to actions or conditions that exacerbate an inmate's known medical condition. *See Estelle*, 429 U.S. at 104–05 (“We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ . . . proscribed by the Eighth Amendment.” (citation omitted)); *LaMarca v. Turner*, 995 F.2d 1526, 1535 (11th Cir. 1993) (“[T]o demonstrate an official’s deliberate indifference, a plaintiff must prove that the official possessed knowledge both of the infirm condition and of the means to cure that condition, ‘so that a conscious, culpable refusal to prevent the harm can be inferred from the defendant’s failure to prevent it.’” (citation omitted)). In *Wade*, we recognized that the critical question under the Eighth Amendment is “whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial ‘risk of serious damage to his future health.’” 106 F.4th at 1258 (quoting *Farmer*, 511 U.S. at 843).⁷ To

⁷ Although *Wade* described the risk as to a prisoner’s “future health,” the case involved an inmate with epilepsy whose medical needs were present upon incarceration. 106 F.4th at 1258 (quoting *Farmer*, 511 U.S. at 843 (citation omitted)). That makes the Court’s focus on officials’ awareness of risk directly

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prevail, a plaintiff asserting a deliberate indifference claim must show: (1) a substantial risk of serious harm, (2) the defendant's deliberate indifference to that risk, and (3) causation—that the defendant's conduct actually caused the alleged harm. *See Farmer*, 511 U.S. at 832–33; *Lane v. Philbin*, 835 F.3d 1307, 1311 (11th Cir. 2016); *Goebert*, 510 F.3d at 1326. The Majority Opinion concludes that West failed to provide evidence showing that Spratt's orders caused him additional pain beyond his preexisting chronic injuries. However, the record, viewed in West's favor, contains evidence that satisfies each element of the deliberate indifference standard and precludes summary judgment.

First, to demonstrate substantial risk of serious harm, West declared in his sworn interrogatories that sitting on an upside-down trash can caused him pain and numbness. West's fellow inmates corroborated his account. According to the people who lived and worked with West, he used a cane to walk and being forced to sit on a trash can visibly and significantly intensified his pain. Dameon Haynes, an incarcerated person who worked as a cook in the Food Service detail, "witnessed inmate West in obvious pain sitting on a garbage can and not a chair" on more than one occasion. Elijah West, who lived in the same dorm as West and worked with him in the food service, explained "I never heard West refuse to work, he did what his medical conditions would allow him to do, despite the pain he was suffering from Schultz and

applicable to West, whose chronic conditions were exacerbated by the defendants' actions.

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Spratt, knowing the pain he was in still forced him to chop the vegetables while sitting in the awkward position.” Michael Nungester, a former morning cook who worked in food service with West, said he saw West forced to sit on an upside-down garbage can and that West was “obviously in pain.” This testimony establishes that the condition—sitting for prolonged periods on an inverted trash can—posed a substantial and obvious risk of serious harm to someone with West’s chronic back condition.

The same evidence also supports the inference that Spratt knew of and disregarded this substantial risk. West’s visible distress and repeated requests for proper seating made the risk apparent. His need for accommodations was documented in his medical file, and Spratt’s continued insistence that he work while sitting on the trash can demonstrates conscious disregard rather than inadvertence. Under *Farmer*, deliberate indifference is satisfied when a prison official knows of and disregards an excessive risk to inmate health. 511 U.S. at 832–33. Here, the combination of West’s visible pain, his documented restrictions, and Spratt’s continued orders to work in that posture supports a reasonable jury finding that Spratt subjectively recognized and ignored the risk.

The record also supports a causal link between Spratt’s conduct and West’s increased pain. West’s expert, Dr. Joseph Rashkin, produced a report that noted that West’s pain was “aggravated by bending over, sitting, driving, or other postures which cause strain to the back.” During his examination, Dr. Rashkin observed that West had “difficulty with posture or any activities such as stooping,

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lifting, sitting, and coming up right after sitting,” and that “[s]itting appears to provoke pain.” West also submitted a book chapter from two medical textbooks regarding osteoarthritis pain when sitting. The chapter on osteoarthritis highlighted that sitting in certain chairs “may worsen symptoms,” and instructed people with osteoarthritis to use “straight-backed chairs with relatively high seats (such as kitchen or dining room chairs”) when seated. Upside-down trash cans do not have backs, let alone straight backs. Second, West provided a textbook chapter on lower back pain, which included information that low back pain is caused by conditions such as herniated discs. The textbook instructed that a person with such conditions should avoid environments that stress the back and that movement “intensifies the pain” from herniated discs. The conditions Spratt imposed—prolonged sitting on a backless, uneven surface—are precisely those that medical literature identifies as exacerbating osteoarthritis and lower back pain.

While West’s chronic pain predated his food-service assignment, the Eighth Amendment inquiry focuses not on the origin of his injury but on whether Spratt’s conduct knowingly increased the severity of his suffering. *See Estelle* 429 U.S. at 104–05; *LaMarca*, 995 F.2d at 1535. A reasonable factfinder could determine that Spratt’s order materially worsened West’s condition, and that she acted with deliberate indifference by disregarding a risk apparent from West’s visible pain and documented medical limitations. Accordingly, Spratt was not entitled to summary judgment. Viewing the record in the light most favorable to West, a jury could conclude

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that Spratt's conduct went beyond mere negligence; rather, it could constitute deliberate indifference.⁸

III. CONCLUSION

For these reasons, I concur in part but respectfully dissent from the Majority's disposition of West's claims against Nurses Blankenship and LaRosa, as well as from the grant of summary judgment in favor of Wexford and Spratt.

⁸ Studies have shown that one of the most difficult aspects of living with chronic pain is the denial of that suffering. See Melina Nicola et al., *Invalidation of Chronic Pain: A Thematic Analysis of Pain Narratives*, Disability & Rehabilitation (July 10, 2019), [<https://perma.cc/QC5L-9FJM>]. Even seemingly minor postural changes can transform a dull ache into sharp or radiating pain. with chronic pain describe their experiences as ranging from a buzz under the skin to a lightning-bolt strike, or from the sensation of a bug crawling to multiple bee stings all in the same area. These descriptions illustrate why a jury could find that forcing West to sit on an upside-down trash can, given his known condition, foreseeably intensified his suffering. Imogene Munday et al., *'Barbed Wire Wrapped Around My Feet': Metaphor Use in Chronic Pain*, 25 BRIT. J. HEALTH PSYCH. 814 (2020), [<https://perma.cc/R28B-XNGE>].

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JAMES DARYL WEST,

Plaintiff,

v.

Case No.: 2:16-cv-694-SPC-NPM

SABRINA SCHULTZ, DIANA
SPRATT and WEXFORD HEALTH
SOURCES, INC.,

Defendants.

OPINION AND ORDER¹

Before the Court are Defendant Diana Spratt's Motion for Summary Judgment ([Doc. 286](#)) and Defendant Wexford Health Sources, Inc.'s Motion for Summary Judgment ([Doc. 287](#)).

Background

This is a civil rights case filed by James Daryl West, a prisoner of the Florida Department of Corrections (FDOC). According to the Fourth Amended Complaint, West was involved in a bus accident in 1999. Since then, he has experienced pain in his back, knee, and right foot. From June 10, 2015, to July

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

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15, 2015, West was assigned to work in food service at Charlotte Correctional Institution, and Spratt and Sabrina Schultz were two of West's supervisors. Wexford contracted with FDOC to provide medical care to the inmates at Charlotte CI.

During West's incarceration, Wexford-employed doctors and nurses treated West for osteoarthritis but denied West's repeated requests for MRI tests and referrals to specialists. The medical staff also periodically issued West medical passes limiting his activity. While working in food service on June 27, 2015, West attempted to move a heavy bag of zucchini (the parties dispute the precise weight, but it was apparently between 45 and 75 pounds), the bag fell on him, and he was injured.

In his Fourth Amended Complaint, West accused FDOC officials of violating his Eighth Amendment rights by making him perform tasks that exacerbated his pain and contravened his medical passes, and he accused medical staff and Wexford of deliberate indifference to his serious medical needs for failing to provide him adequate treatment. Three of West's claims survived Defendants' challenges under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#): his conditions-of-confinement claims against Spratt and Schultz, and his deliberate-indifference claim against Wexford. The Court later dismissed the claim against Schultz under Rule 4(m) for lack of service of process. Spratt and Wexford now move for summary judgment.

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Legal Standard

Summary judgment is appropriate only when the Court is satisfied that “there is no genuine issue as to any material fact” and the moving party is entitled to judgment as a matter of law. [FED. R. CIV. P. 56\(c\)](#). The initial burden falls on the movant, who must identify the portions of the record “which it believes demonstrate the absence of a genuine issue of material fact.” [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323 (1986). A genuine issue of material fact exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248 (1986). To defeat summary judgment, the non-movant must “go beyond the pleadings, and present affirmative evidence to show that a genuine issue of material facts exists.” [Porter v. Ray](#), 461 F.3d 1315, 1320 (11th Cir. 2006).

In reviewing a motion for summary judgment, the Court views the evidence and all reasonable inferences drawn from it in the light most favorable to the non-movant. [See Battle v. Bd. of Regents](#), 468 F.3d 755, 759 (11th Cir. 2006). But “[a] court need not permit a case to go to a jury...when the inferences that are drawn from the evidence, and upon which the non-movant relies, are ‘implausible.’” [Mize v. Jefferson City Bd. of Educ.](#), 93 F.3d 739, 743 (11th Cir. 1996).

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Discussion

A. Wexford Health

Wexford is a private company that provided healthcare to inmates at Charlotte Correctional under contract with FDOC. As such, Wexford “is treated as a municipality for purposes of § 1983 claims.” *Brennan v. Headley*, 807 F. App’x 927, 937 (11th Cir. 2020). Wexford can only be liable if “the alleged constitutional harm is the result of a custom or policy.” *Id.* “A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality, and a custom is a practice that is so settled and permanent that it takes on the force of law.” *Id.* (cleaned up).

In addition to identifying a custom or policy, West must “show that the municipal action was taken with the requisite degree of culpability, that is, with deliberate indifference to its known or obvious consequences.” *Denham v. Corizon Health, Inc.*, 675 F. App’x 935, 943 (11th Cir. 2017) (internal quotation marks and citations omitted). West therefore cannot rely on a generalized policy of denying specialized care—he must prove Wexford had a deliberate intent to deny specialized care to inmates. See *McDowell v. Brown*, 392 F.3d 1283, 1291 (11th Cir. 2004).

Proof of causation is also essential. West “must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.”

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Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown, 520 U.S. 397, 404 (11th Cir. 1997). The standard of proof is intentionally onerous for plaintiffs because “imposing liability without proof that a specific policy caused a particular violation would equate to subjecting the municipality to respondeat superior liability—a result never intended by section 1983.” *Gold v. City of Miami*, 151 F.3d 1346, 1351 n.10 (11th Cir. 1998).

West’s burden is heightened even more because of the type of constitutional deprivation he alleges. Mere medical malpractice or “a simple difference in medical opinion between the prison’s medical staff and the inmate as to the latter’s diagnosis or course of treatment does not support a claim of deliberate indifference.” *Melton*, 841 F.3d at 1224. Nor does the exercise of medical judgment by a care provider. *Hernandez v. Sec’y Fla. Dep’t of Corr.*, 611 F. App’x 582, 584 (11th Cir. 2015). “When a prisoner has received medical attention, courts are reluctant to second-guess medical judgments even if there is a dispute over the adequacy of treatment.” *Brennan v. Headley*, 807 F. App’x 927, 935 (11th Cir. 2020). “Rather, medical treatment violates the Eighth Amendment only when it is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.” *Id.* (cleaned up).

West acknowledges in his Fourth Amended Complaint that Wexford employees diagnosed the cause of his chronic pain (arthritis) with physical

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examinations and x-rays, treated it with oral medication and analgesic balm, and issued various medical passes to limit his physical activities. West alleges he requested alternative diagnostic testing—like MRIs—and referrals to specialists but Wexford employees declined because Wexford would not authorize costly non-emergency treatment.

In its Order on Defendants’ motions to dismiss, the Court found that although West failed to state a claim of deliberate indifference against any individual Wexford employee, he did plausibly allege “that a policy of restricting non-emergency medical treatment tied the hands of Wexford employees, prevented West from receiving more intensive treatment, and left him in severe pain.” (Doc. 237 at 18). But West cannot withstand summary judgment based on allegations alone. He must present evidence that satisfies the onerous standard of proof described above. After carefully reviewing the record, the Court finds that West has not met that standard.

West submitted policy documents from Wexford and FDOC, including FDOC Health Service Bulletins, Wexford’s Utilization Management Guidelines, and the contract between FDOC and Wexford. But they do not help West’s case. In fact, West specifically points to portions of these documents that contradict an official policy of denying care—for example: “Inmates who need specialized care that cannot be provided by the contractor will receive a specialty consultation appointment as clinically indicated.” (Doc.

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300-1 at 119). West claims Wexford employees violated those policies. But Wexford is only liable for its policies, not violations of its policies.

West also relies on depositions of Wexford employees, but they do not help his case either. West highlights this exchange during the deposition of nurse practitioner Karen Blankenship:

Q. Is it a true statement that Wexford wouldn't pay for certain treatments?

A. They don't pay for everything.

(*Id.* at 256). But when pressed on the issue, Blankenship clarifies that she is not aware of Wexford denying treatment due to costs:

Q. What are some things that Wexford wouldn't pay for?

A. Well, I really don't know about paying. See, I don't know that part. They don't okay a lot of treatments. They don't okay – they don't okay everything. But that doesn't mean they didn't want to – I don't know if they didn't want to pay for it. Of course, they didn't if they felt it was not needed.

Q. So what kind of things would they not okay?

A. I have seen very few MRIs go through. But as for saying that they didn't want to pay for them, that's presumptuous thinking. You know, I wouldn't say that about them.

Q. When you say you don't see MRIs go through –

A. I don't see very many. I haven't seen hardly any MRIs really.

Q. Does that mean when an MRI is requested and goes to Wexford for approval, you don't see them getting approved?

...

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A. I don't know all those. I just know on the ones that I have seen. I have hardly seen anything in the chart. I haven't seen a lot in the chart is what I'm saying.

(*Id.* at 256). West claims this testimony proves that Wexford does not pay for MRIs, but that is not what Blankenship said. In fact, she goes on to explain why MRIs are sometimes inadvisable—an MRI can find something that is not causing the patient problems and can prompt treatment the patient does not need. (See *Id.* at 257).

West deposed other Wexford employees that treated him, and they all denied that Wexford restricted non-emergency care.

Dr. Ronald Hemphill:

Q. Was there any training that ever discussed keeping costs down?

A. No. Wexford was really pretty good about, if it's necessary, you have to do it, but you have to show it's necessary. But if it's medically necessary, I can send a patient anywhere.

Q. Okay. So Wexford never made any mention of costs to you?

A. No, we weren't – no, huh-uh...

Q. Did you ever tell Mr. West that Wexford severely limits non-emergency care?

A. No, they can't do that, and they wouldn't do that...We had patients going out almost every day to different specialists or for different treatments when it's medically indicated, and the records will show that.

(*Id.* at 38-39).

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Dr. Howard Wetterer:

Q. When you working for Westford [sic], was there ever any difficulty in getting these sort of tests or follow up for specialists?

A. No. Never had any problems.

Q. Did you ever hear anything about a policy of denying non-emergency care for inmates?

A. By whom?

Q. Westford [sic].

A. No.

...

Q. Okay. Were there ever any inmates who asked for a specialist and you told them, no, because Westford [sic] wouldn't pay for it?

A. No. Of course not. Because that's not true.

(Id. at 355-56).

Bonnie LaRosa

Q. Have you ever told any inmate that they couldn't have a particular service because Wexford wouldn't pay for it?

A. Never.

...

Q. Has anyone from above you at Wexford ever mentioned to you keeping costs down or not spending too much money?

A. No.

(Id. at 380-81).

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West also recounts instances when a Wexford employee provided treatment, but not the treatment West wanted. Specifically, West complains that Hemphill and Berrios identified x-ray results as “abnormal” but did not order additional testing like an MRI. The evidence shows that was the result of the doctors’ medical judgment, not Wexford policy or custom.

Hemphill stated in his deposition that the x-rays confirmed his diagnosis that West suffered from arthritis, which was already being treated with prescription-strength Motrin. (*Id. at 27*). Hemphill also explained that he did not order an MRI or refer West to a specialist because neither was clinically indicated:

Q. Is there anything else that an MRI could detect that an x-ray wouldn’t?

A. No. MRIs are more for soft tissue things. The most common soft tissue things that come to mind would be tumors, either cancerous or noncancerous, soft tissues like complete ligament tears – although I already did the Drawer test. But if you had some ligaments that were torn and if I had a positive Drawer test, I could go ahead and order that and it would tell me how – if it was a partial tear or a full tear of the ligament. But those were normal tests.

Q. And what are the reasons not to give somebody an MRI?

A. One reason to not do an MRI is if you haven’t done the x-rays first, that’s one thing. You can’t just order an MRI. You can’t go into the ER in most places in the Unites States and get an MRI without first getting x-rays. It’s just bad medicine.

Q. Okay. Once the x-ray is done, what is the reason not to do an MRI?

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A. If you feel that you may have missed something and you want further evaluation for a soft tissue tumor, as I mentioned, if you feel there were ligament tears and nothing showed up in the x-ray, you could probably do an MRI. You certainly don't do an MRI for arthritis.

...

A...It would be contraindicated to let – to send him to a rheumatologist when he doesn't have a rheumatoid or, for example, a lupus arthritis...I mean, you wouldn't even send him to an orthopedic specialist. He could treat arthritis, but you don't send somebody to an orthopedic specialist when the guy ambulates in with no limp and no problems and then try to send him to somebody who will inject his knee or something. That's just malpractice.

(*Id.* at 24-25, 36).

Dr. Wetterer's testimony was similar to Hemphill's. He explained that a specialist would not have provided different treatment:

Q. Is there anything that a specialist can do for arthritis to help it?...

A. Recommend a non-steroidal anti-inflammatory. Motrin, Naproxen, Dolobid. Any of the non-steroidal anti-inflammatory agents. Or Tylenol if it's not a severe arthritis.

Q. Is there anything that a specialist can do that the regular doctor can't or wouldn't normally do?

A. For arthritis, that's all you can do.

(*Id.* at 355). Wetterer also explained an MRI might be appropriate when an x-ray *fails* to reveal a problem. (*Id.* at 354). In other words, a "normal" x-ray would more likely justify an MRI because an "abnormal" x-ray has potentially

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identified the cause of the patient's symptoms. Notably, none of the radiologists who reviewed West's x-rays recommended an MRI or any other additional tests. (*Id.* at 328-35). Clearly, Hemphill and Wetterer treated West in accordance with their shared understanding of the appropriate course of treatment for arthritis. They were not constrained by a policy or custom of Wexford.

West rebuts the medical opinions of Wetterer and Hemphill with a report by Dr. Joseph Rashkin. Rashkin evaluated West on August 29, 2019, and opined, "the lack and delay of medically necessary and indicated medical care in the form of diagnostic studies, appropriate medical consultation and care has significantly prolonged, worsened, and been detrimental to [West]'s state of ill being from the injury/accident of 06/27/2015." (*Id.* at 316). Rashkin recommended an MRI, though he applied somewhat circular logic to justify it:

My opinion that this is a permanent injury is based on the prolonged clinical complaints, positive physical findings of muscle spasm and pain, and abnormal MRI scan that needs to be obtained to be able to render an opinion of permanency because of the injuries described above from the accident of 06/27/2015 and also to be able to render reasonable and medically necessary treatment for the above described state of ill being.

(*Id.*) Rashkin's opinion establishes a difference of opinion among medical professionals about the proper course of treatment for West. But it does nothing to show that a Wexford policy or custom had a negative effect on the treatment West received.

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Finally, West submits a Health Care Study of the FDOC and several news articles about Wexford. The study shows the FDOC terminated two contracts with Wexford due to performance issues, but those issues are too attenuated from the facts of this case to have any significant probative value. FDOC terminated the first contract in 2005, about a decade before West's allegations. FDOC terminated the second contract because of issues surrounding mental health treatment Wexford provided at South Florida Reception Center. (*Id. at 277*). The news articles are largely cumulative of the study, and they also provide statistics and examples of malpractice cases filed against Wexford. They do not, however, establish a custom or policy of denying non-emergency care to inmates, much less a particular custom or policy that caused West a constitutional deprivation. (*See Id. at 300-11*).

West has not established a genuine issue of material fact in his claim against Wexford. West received the medical care his doctors believed was clinically indicated. There is no evidence of a Wexford policy or custom restricting non-emergency care. And there is no evidence that West's treating physicians altered or reduced the treatment West received due to any policy or custom of Wexford. Wexford is entitled to summary judgment.

B. Diana Spratt

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West asserts an Eighth Amendment claim based on deliberate indifference to conditions of confinement. To succeed on his claim against Spratt, West must satisfy objective and subjective criteria:

Under the objective component, the plaintiff must demonstrate “a substantial risk of serious harm.” [*Farmer v. Brennan*, 511 U.S. 825, 834 (1994)]...Under the subjective component, the plaintiff must prove “the defendants’ deliberate indifference” to that risk of harm by making three sub-showings: “(1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence.” [*Lane v. Philbin*, 835 F.3d 1302, 1307 (11th Cir. 2016)].

Swain v. Junior, 961 F.3d 1276, 1285 (11th Cir. 2020). In the workplace safety context, “prison officials are deliberately indifferent when they ‘knowingly compel convicts to perform physical labor which is beyond their strength, or which constitutes a danger to their lives or health, or which is unduly painful.’” *Lee v. Sikes*, 870 F. Supp. 1096, 1100 (S.D. Ga. 1994) (quoting *Ray v. Mabry*, 556 F.2d 881, 882 (8th Cir. 1977)). West must also “demonstrate causation—that the constitutional violation caused h[im] injuries.” *Cox v. Nobles*, 15 F.4th 1350, 1358 (11th Cir. 2021).

West alleged in his Fourth Amended Complaint that Spratt regularly required him to sit on a garbage can instead of a chair and carry 75-pound bags of vegetables despite knowledge that he was cane-dependent and had a medical pass limiting him to lifting no more than 15 pounds. The Court denied Spratt’s 12(b)(6) motion, finding West’s allegations sufficient to state a plausible claim.

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(Doc. 237). But at this stage of the case, the Court does not assume West's allegations are true. To survive Spratt's summary judgment challenge, West must present evidence on the objective element, the subjective element, and causation.

West first submits Spratt's deposition, discovery responses, and affidavit. Spratt did not remember much about her interactions with West, but she consistently states that she always honored medical passes. She did not recall seeing West sit on an upside-down trash can and explained that inmates who needed to sit during their food service shift were able to use the chairs in the nearby chow hall. Spratt denied she ever told West to sit on a trash can or carry something too heavy for him to lift.

West contradicts Spratt in his own affidavit. (Doc. 299-1 at 241). He also submits declarations from other inmates, stating they overheard Spratt tell West to sit on a garbage can while chopping vegetables. (*Id.* at 300-08). Thus, there is a genuine factual dispute as to whether Spratt ordered West to carry heavy bags of vegetables and sit on an upside-down trash can. However, there is no evidence in the record suggesting that sitting on an upside-down trash can created a substantial risk of serious harm to West. West thus fails to satisfy both the objective and subjective elements of that part of his claim.

As for the other part of West's claim, West could satisfy the objective and subjective elements by showing that Spratt ordered him to exceed a doctor-

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prescribed limitation on how much he could lift. Former FDOC classification officer Kara Williams listed the medical passes West was issued during his five-week stint in food service in 2015:

He had a – on 6/13 he had a no-work pass through 6/16. On 6/18 there was a lay-in pass through 6/22. On 6/23 the no-work pass was renewed through 6/26. On 6/25 there was a no prolonged standing for more than 15 minutes, a wrap for the knee, and walking exercises for strengthening. On 6/27 there was a pass for lay-in through 6/29 is what I'm aware of.

(*Id.* at 132). West broadly claims Spratt ordered him to lift heavy bags of vegetables in violation of his medical passes, but he does not identify any particular day Spratt made such an order. Also, the record does not appear to include any evidence that West was issued a medical pass limiting his carrying capacity while working in food service. West has submitted a few clinic notes from the relevant period, but they are mostly illegible. (*See, e.g., id.* at 158-59). These notes could theoretically prove that West had a pass limiting how much he could lift—neither party submitted deposition transcripts or other testimony interpreting or explaining those records. But even assuming West could prove that Spratt ordered him to lift a heavy bag of vegetables on a day he had a pass limiting his lifting capacity, West's claim fails on the causation element.

West fails to present evidence that Spratt caused him to suffer any injury. While West's allegations remain vague as to when Spratt ordered him

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to carry bags of vegetables, the parties agree that Spratt was not working when West fell on June 27, 2015. That is the only injury plausibly caused by West's food service work. West submits his x-ray results, a few pages of other medical records, and information printed from websites and copied from books pertaining to West's medical conditions.² None of that evidence suggests that any of his medical conditions were caused by his work in food service. In fact, West acknowledges that his pain started in 1999 and worsened over the years. (*Id.* at 240). Carrying heavy bags of vegetables and sitting on a trash can in 2015 could not have caused West's ailments. What is more, the Court finds it wildly implausible, and unsupported by any evidence, that five weeks in food service—minus the 14 days West was excused from work during that period—exacerbated West's conditions in any significant way.

West's only hope to show causation is Dr. Rashkin's report. Rashkin opines that a lack and delay of necessary medical care prolonged and worsened West's injury from the 6/27/2015 accident. But his report does not suggest West suffered any harm from sitting on a trash can or carrying vegetables on days he did not fall. Rashkin's report does not raise a genuine dispute over the causation element of this claim.

Spratt is entitled to summary judgment.

² West also submitted a few more depositions of FDOC employees, but they contain no information relevant to his claim against Spratt.

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Accordingly, it is now

ORDERED:

Defendant Diana Spratt's Motion for Summary Judgment ([Doc. 286](#)) and Defendant Wexford Health Sources, Inc.'s Motion for Summary Judgment ([Doc. 287](#)) are **GRANTED**. West's claims are **DISMISSED with prejudice**. The Clerk is **DIRECTED** to enter judgment against Plaintiff and for Defendants, terminate any pending motions and deadlines, and close this case.

DONE and ORDERED in Fort Myers, Florida this February 23, 2022.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JAMES DARYL WEST,

Plaintiff,

v.

Case No: 2:16-cv-694-FtM-38NPM

RONALD HEMPHILL,
CARMELLO BERRIOS, KAREN
BLANKENSHIP, HOWARD
WETTERER, BONNIE
LAROSA, ROBERT
GILBREATH, SABRINA
SCHULTZ, DIANN SPRATT,
JULIE JONES, WEXFORD
HEALTH SOURCES, INC.,
KATHY CONNER, KARA
WILLIAMS and JAMES
LICATA,

Defendants.

OPINION AND ORDER¹

Before the Court are the Wexford Defendants' Omnibus Motion to Dismiss Fourth Amended Complaint ([Doc. 214](#)), Defendant Secretary Mark Inch's Motion to Dismiss Fourth Amended Complaint ([Doc. 215](#)), the Department Defendants' Omnibus Motion to Dismiss Fourth Amended

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

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Complaint (Doc. 216), Defendant Robert Gilbreath's Motion to Dismiss Fourth Amended Complaint (Doc. 217), and Plaintiff James Daryl West's responses in opposition (Doc. 218, Doc. 219, Doc. 220, Doc. 221).

Background

This is a civil rights case filed by James Daryl West, a prisoner of the Florida Department of Corrections (FDOC). The Court recounts the factual background as pled in West's Fourth Amended Complaint, which it must take as true to decide whether the complaint states plausible claims. *See Chandler v. Sec'y Fla. Dep't of Transp.*, 695 F.3d 1194, 1198-90 (11th Cir. 2012). West was involved in a bus accident in 1999. Since then, he has experienced pain in his back, knee, and right foot. Specifically, West suffered from the following conditions:

chronic strained lumbosacral ligament, lower back pain, chronic and intervertebral disc disorder, thoracolumbar, and lumbosacral lumbar disc disorder/hernia, lumbar spondylosis, right-sided sciatica and left sided muscle spasms, injury to the muscle, fascia, and tendon of his lower back, premature degenerative osteoarthritis, and localized secondary osteoarthritis of the right knee.

(Doc. 213 at 5-6).

West was incarcerated at Charlotte Correctional from October 3, 2014, to September 9, 2015. Wexford Health Sources, Inc. provided healthcare to inmates at Charlotte Correctional under contract with FDOC and employed the doctors and nurses who treated West during his incarceration there. While

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at Charlotte Correctional, Classification Supervisor James Licata assigned West to work in food service. West's supervisors—including Foodservice Director Robert Gilbreath and managers Sabrina Schultz and Diann Spratt—sometimes instructed West to sit on an upside-down garbage can and chop vegetables, which West claims exacerbated his injuries and caused him pain. They declined to provide West a chair despite multiple requests.

Dr. Carmello Berrios, Chief Health Officer at Charlotte Correctional, saw West for treatment of his pain on June 11, 2015. Berrios ordered x-rays of West's knee and diagnosed him with osteoarthritis, degenerative joint disease, and chronic pain in his knee. Berrios issued West ibuprofen, analgesic balm, and a cane, and he gave West "passes for restricted activity, light duty, limited standing, [and] no bending, pushing, or lifting over 15 pounds." ([Doc. 213 at 25](#)). On June 13, 2015, West was given "a bed rest lay-in pass, a restricted activity pass, a no work pass, and a no recreation pass" until June 16, 2015. ([Doc. 213 at 8](#)). Despite the end date, the pass was to stay in effect until West was x-rayed. On June 17, 2015, FDOC required West to return to work even though no x-ray had been performed.

X-rays were taken of West's knee on June 24, 2015. Berrios marked the x-ray results as "abnormal." ([Doc. 213 at 26](#)). On June 25, 2015, Karen Blankenship, an advanced registered nurse practitioner at Charlotte Correctional, saw West to discuss the x-rays and determine a treatment plan.

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West requested further testing and evaluation, but Blankenship did not order any. Nor did Blankenship give West a pass to excuse him from his food service assignment.

On June 27, 2015, West complained to food service manager Sabrina Schultz of knee pain. When Schultz told West he still needed to work his scheduled shift, West declared a medical emergency. He was then seen by Bonnie LaRosa, registered nurse at Charlotte Correctional. West rated his knee pain at 10/10 and requested further diagnostic testing, orthopedic appliances, and pain medication. LaRosa offered ibuprofen and analgesic balm.

After leaving sick call, West went back to work his food service assignment. Schultz instructed him to lift a 75-pound bag of vegetables. West was injured when he attempted to comply.² The Fourth Amended Complaint alleges two accounts of the injury. At paragraph 34, West claims that when he “attempted to lift the bag, he slipped and was then struck by the bag.” While at paragraph 315, West claims that when he “reached to pick up the bag, it toppled down and crashed down on [him], causing [him] to fall.” West could not get up, and two inmates lifted him into a wheelchair. Schultz did not write an incident report.

² Defendants question whether this incident occurred. For the purposes of deciding the motions to dismiss, the Court presumes that it did.

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On June 29, 2015, West sought treatment for injuries resulting from his June 27 fall, but Blankenship and LaRosa denied care. Blankenship accused West of lying about the incident, and LaRosa told him that nothing had changed.

On August 13, 2015, LaRosa and Dr. Howard Wetterer, Chief Health Officer at Charlotte Correctional,³ saw West for pain and numbness in his back, swelling and pain in his right knee and foot, and difficulty walking. Wetterer examined West's right leg and found it to be smaller and weaker than the left. West requested more testing and medication, but Wetterer declined. LaRosa examined West's leg and found that his bandage was too tight.

On October 14, 2015, Dr. Ronald Hemphill, Chief Health Officer at Charlotte Correctional, saw West for his ongoing pain. He examined West, gave him painkillers, and ordered x-rays of his knee and foot. Hemphill received the x-rays on October 29, 2015. They indicated West suffered from narrowing and osteophytosis of the medial compartment and patellofemoral joint and degenerative joint disease. Hemphill saw West again on November 21, 2015, for West's back, knee, and foot pain. West requested further testing and a consult with a specialist, but Hemphill declined.

³ West attributes the same "Chief Health Officer" title to Berrios, Wetterer, and Ronald Hemphill without explanation.

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West filed a *pro se* complaint on September 8, 2016. (Doc. 1). After an appearance by counsel on West's behalf and a couple amendments, the Court dismissed the Second Amended Complaint (Doc. 168) because it was a shotgun pleading. (Doc. 194). West filed his Third Amended Complaint (Doc. 195), then moved to amend so he could correct one claim and remove another. The Fourth Amended Complaint followed. It alleges 16 claims of deliberate indifference to his medical needs and conditions of confinement. Defendants move to dismiss the claims for failure to state a claim, failure to exhaust administrative remedy, and qualified immunity.

Legal Standard

When considering a motion to dismiss under Rule 12(b)(6), courts must accept all factual allegations in the complaint as true and view them in a light most favorable to the plaintiff. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The preferential standard of review, however, does not let all pleadings adorned with facts survive to the next stage of litigation. The Supreme Court has been clear on this point – a district court should dismiss a claim when a party does not plead facts that make the claim facially plausible. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when a court can draw a reasonable inference, based on facts pled, that the opposing party is liable for the alleged misconduct. See *Iqbal*, 556 U.S. at 678. This plausibility standard requires “more than a sheer possibility that a defendant

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has acted unlawfully.” *Id.* (citing *Twombly*, 550 U.S. at 557 (internal quotation marks omitted)). And a plaintiff must allege more than labels and conclusions amounting to a formulaic recitation of the elements of a cause of action. *Twombly*, 550 U.S. at 555.

West files his Fourth Amended Complaint under 42 U.S.C. § 1983. To state a § 1983 claim, a plaintiff must allege that (1) the defendant deprived him of a right secured under the Constitution or federal law, and (2) the deprivation occurred under color of state law. *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011) (citing *Arrington v. Cobb Cty.*, 139 F.3d 865, 872 (11th Cir. 1998)). In addition, a plaintiff must allege and establish an affirmative causal connection between the defendant’s conduct and the constitutional deprivation. *Marsh v. Butler Cty., Ala.*, 268 F.3d 1014, 1059 (11th Cir. 2001).

Discussion

A. Exhaustion of Administrative Remedies

Under the Prison Litigation Reform Act, before a prisoner may bring a § 1983 claim, he must exhaust available administrative remedies. 42 U.S.C. § 1997e. The purpose of administrative exhaustion “is to put the administrative authority on notice of all issues in contention and to allow the authority an opportunity to investigate those issues.” *Chandler v. Crosby*, 379 F.3d 1278, 1287 (11th Cir. 2004) (cleaned up). The PLRA requires “proper exhaustion,”

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which “demands compliance with an agency’s deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.”

Woodford v. Ngo, 548 U.S. 81, 90-91 (2006).

The Eleventh Circuit has established a two-step process for deciding a motion to dismiss for failure to exhaust administrative remedies:

First, the court looks to the factual allegations in the defendant’s motion to dismiss and those in the plaintiff’s response, and if they conflict, takes the plaintiff’s version of the facts as true. If, in that light, the defendant is entitled to have the complaint dismissed for failure to exhaust administrative remedies, it must be dismissed...If the complaint is not subject to dismissal at the first step, where plaintiff’s allegations are assumed to be true, the court then proceeds to make specific findings in order to resolve the disputed factual issues related to exhaustion. The defendants bear the burden of proving that the plaintiff has failed to exhaust his available administrative remedies. Once the court makes findings on the disputed issues of fact, it then decides whether under those findings the prisoner has exhausted his available administrative remedies.

Turner v. Burnside, 541 F.3d 1077, 1082-83 (11th Cir. 2008).

The Florida legislature delegated to FDOC the establishment of administrative remedies for aggrieved inmates. *Chandler*, 379 F.3d at 1287. FDOC created a three-step grievance process. To exhaust it, a prisoner must (1) file an informal grievance to the responsible staff member, (2) file a formal grievance with the warden’s office; and (3) appeal the formal grievance to the Secretary of the FDOC. *Id.* at 1288.

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West attached to his Fourth Amended Complaint a printout of his appeal records during his incarceration. (Doc. 213-1). The records log dozens of grievance appeals beginning in 2010. West also attached 5 informal grievances, 13 formal grievances, 15 secretary-level appeals, and FDOC's responses. (Doc. 213-1). Defendants challenge the grievances for not addressing the subject matter of this case and not identifying all Defendants. They also point out that some grievances and appeals were returned without action due to procedural defects.

After carefully reviewing the grievances, the Court finds that West exhausted his administrative remedies as to his medical care, being required to sit on an upside-down garbage can, and being ordered to carry a 75-pound bag of vegetables. While the grievances sometimes stray from the issues complained of here, they provided FDOC fair notice that West considered his medical treatment and working conditions unconstitutional. That remains true even if the Court disregards the grievances and appeals that were returned without action due to procedural defects. For example, Grievance No. 15-6-32735 complained of constant knee pain and requested additional medical treatment. Grievance Nos. 15-6-30011, 15-6-30017 and 15-6-29606 complained that West's working conditions caused him pain and violated his medical passes. And Grievance No. 15-6-29582 centers on West's July 27 injury while working in food service. West appealed all five of these grievances to the

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secretary level. Finally, West need not have identified all Defendants in his grievances. PLRA does not impose a “name all defendants” requirement. *Jonse v. Bock*, 549 U.S. 199, 217 (2007).

Given the purpose of administrative exhaustion—“to put the administrative authority on notice of all issues in contention and to allow the authority an opportunity to investigate those issues”—the Court finds that West satisfied the PLRA’s pre-suit conditions. *Chandler*, 379 F.3d at 1287. There is one exception. In his claims against Gilbreath and Schultz, West vaguely alleges he was required to return to work after being given a bed-rest pass. West does not identify *who* made him return to work, so it is unclear whether his claims against Gilbreath and Schultz are based on that allegation. Regardless, he did not mention this claim in his grievances. So to the extent West claims liability based on his return to work in violation of a bed-rest pass, that claim was not exhausted.

B. Pleading Sufficiency

West accuses Defendants of violating his rights under the Eighth Amendment to be free from cruel and unusual punishment. Specifically, he alleges deliberate indifference to his serious medical needs and conditions of confinement.

Only officials who personally participate in constitutional violations may be liable under § 1983. *Coleman v. Bowden*, 797 F. App’x 422, 427 (11th Cir.

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2019). Three Defendants did not personally participate in any of West’s alleged constitutional violations and can thus be dismissed at the outset. Julie Jones—whom West sued in her individual capacity—is the former Secretary of the FDOC.⁴ West does not allege any facts suggesting that Jones had knowledge of his medical treatment or working conditions, or that she directed his treatment in any way. Kathy Conner and Kara Williams were FDOC employees whose sole participation in the alleged facts was reviewing and responding to West’s grievances and appeals. Denying grievances, without more, does not support liability under § 1983. *Id.*; see also *Lee v. Mich. Parole Bd.*, 104 F. App’x 490, 493 (6th Cir. 2004) (“Section 1983 liability may not be imposed simply because a defendant denied an administrative grievance or failed to act based upon information contained in a grievance.”). Thus, the claims against Jones, Conner, and Williams—Counts 1, 2, and 9-12—are dismissed.

1. Deliberate Indifference to Serious Medical Need

“To prevail on a claim of deliberate indifference to serious medical need in violation of the [Eighth] Amendment, a plaintiff must show: ‘(1) a serious medical need; (2) the defendant[’s] deliberate indifference to that need; and (3) causation between that indifference and the plaintiff’s injury.’” *Youmans v.*

⁴ Current secretary Mark Inch was not substituted for Jones under [Federal Rule of Civil Procedure 25\(d\)](#) because Rule 25(d) only applies to a party sued in his or her official capacity.

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Gagnon, 626 F.3d 557, 563 (11th Cir.2010) (quoting *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1306–07 (11th Cir. 2009)).

In the Eleventh Circuit, “[a] serious medical need is ‘one that has been diagnosed by a physician as mandating treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor’s attention.’” *Shaw v. Allen*, 701 F. App’x 891, 893 (11th Cir. 2017) (quoting *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003)). West alleges his medical conditions—listed above—constitute a serious medical need because they were painful. (Doc. 212 at 6, ¶ 30; Doc. 220 at 3). “Severe pain that is not promptly or adequately treated can...constitute a serious medical need depending on the circumstances.” *Melton v. Abston*, 841 F.3d 1207, 1222 (11th Cir. 2016). Interpreting West’s allegations in a light most favorable to him, the Court finds he plausibly alleged a serious medical need.

Next, West must plausibly allege that each Defendant was deliberately indifferent to his serious medical need. Deliberate indifference has three components: “(1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence.” *Bingham v. Thomas*, 654 F.3d 1171, 1176 (11th Cir. 2011) (internal quotation marks omitted). “Conduct that is more than mere negligence includes: (1) grossly inadequate care; (2) a decision to take an easier but less efficacious course of

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treatment; and (3) medical care that is so cursory as to amount to no treatment at all.” *Id.*

Mere medical malpractice or “a simple difference in medical opinion between the prison’s medical staff and the inmate as to the latter’s diagnosis or course of treatment does not support a claim of deliberate indifference.” *Melton*, 841 F.3d at 1224. Nor does the exercise of medical judgment by a care provider. *Hernandez v. Sec’y Fla. Dep’t of Corr.*, 611 F. App’x 582, 584 (11th Cir. 2015). “When a prisoner has received medical attention, courts are reluctant to second-guess medical judgments even if there is a dispute over the adequacy of treatment.” *Brennan v. Headley*, 807 F. App’x 927, 935 (11th Cir. 2020). “Rather, medical treatment violates the Eighth Amendment only when it is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.” *Id.* (cleaned up).

In evaluating claims of deliberate indifference, courts must judge each defendant separately and based on what that person knew. *Melton*, 841 F.3d at 1224.

a. Dr. Carmello Berrios (Count 4)

Berrios has not appeared in this case and thus has not moved to dismiss Count 4. But since West is proceeding *in forma pauperis*, the Court will review whether Count 4 states a claim on which relief can be granted. See 28 U.S.C. § 1915(e)(2) (“the court shall dismiss the case at any time if the court

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determines that...(B) the action...(ii) fails to state a claim on which relief may be granted”).

On June 11, 2015, Berrios examined West and diagnosed him with osteoarthritis, degenerative joint disease, and chronic knee pain. Berrios gave West ibuprofen, analgesic balm, and a cane, ordered x-rays of his knee, and gave him passes to limit his activity. When West told Berrios that Gilbreath was not honoring the restricted activity passes, Berrios said, “I have written all the passes authorized by the FDOC.” (Doc. 213 at 25). On June 24, 2015, Berrios told West that further treatment was “out of the question.” (Doc. 213 at 26).

Berrios did not deny West medical treatment. And contrary to West’s conclusory allegation, Berrios’s medical care was not so cursory as to amount to no care at all. Rather, West’s allegations demonstrate that Berrios exercised his medical judgment and instituted a treatment plan. West wanted more extensive treatment, but a difference in medical opinion does not give rise to a claim for deliberate indifference. “[A]s *Estelle* teaches, the question of whether government actors should have employed additional diagnostic techniques or forms of treatment ‘is a classic example of a matter for medical judgment’ and therefore not an appropriate basis for grounding liability under the Eighth Amendment.” *Adams v. Poag*, 61 F.3d 1537, 1545 (11th Cir. 1995) (quoting *Estelle v. Gamble*, 429 U.S. 97, 107 (1976)). The Court is guided by *Estelle* here

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and in deciding the remaining medical deliberate indifference claims. Count 4 is dismissed.

b. Karen Blankenship (Count 5)

West's claim against Blankenship stems from two days in June 2015. On June 25, Blankenship saw West to discuss his recent x-ray and determine a treatment plan. During the visit, West requested further testing and evaluation, but Blankenship did not order any. That shows a difference in medical opinion, not deliberate indifference.

On June 29, 2015, Blankenship declined to examine or treat West when he sought care for his June 27 fall because she thought West was lying about the accident. West explained in a grievance attached to the Fourth Amended Complaint that Blankenship "really believed that [he] was lying about being hurt in foodservice because there was no documentation in [his] medical jacket." ([Doc. 213-1 at 32](#)). Thus, Blankenship did not have subjective knowledge of a serious medical need on June 29. While Blankenship's disbelief might support a claim of negligence or medical malpractice, it is not deliberate indifference. Count 5 is dismissed.

c. Dr. Howard Wetterer (Count 6)

Wetterer examined West's knee on August 13, 2015. West wanted more diagnostic testing and medication, but Wetterer declined. West filed a grievance requesting an MRI. In response, Wetterer affirmed his assessment,

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noting that previous x-rays showed mild arthritis. (Doc. 213-1 at 40). These allegations demonstrate that Wetterer exercised his medical judgment and formed an opinion that was different than West's. That does not amount to deliberate indifference. Count 6 is dismissed.

d. Bonnie LaRosa (Count 7)

LaRosa saw West twice in 2015. On June 27, 2015, West rated his knee pain at a 10/10. LaRosa offered ibuprofen and an analgesic balm but rejected West's request for further diagnostic testing, orthopedic appliances, and pain medication. Then on August 13, 2015, West saw LaRosa with difficulty walking and a swollen knee. LaRosa examined West and determined the bandage was too tight. LaRosa's exercise of medical judgment, even if West disagreed with it, did not demonstrate deliberate indifference. Count 7 is dismissed.

e. Dr. Ronald Hemphill (Count 8)

Hemphill saw West twice in 2015. On October 14, 2015, Hemphill examined West, ordered x-rays of his knee and foot (but not his back), and gave West painkillers. Hemphill saw West again on November 21, 2015. West's only allegation from that visit is that Hemphill denied West's request to see a specialist and receive more examination and testing. Hemphill's refusal to offer West's preferred course of treatment was not deliberate indifference. Count 8 is dismissed.

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f. Wexford Health Sources, Inc. (Count 3)

Wexford is a private company that provided healthcare to inmates at Charlotte Correctional under contract with FDOC. As such, Wexford “is treated as a municipality for purposes of § 1983 claims.” *Brennan v. Headley*, 807 F. App’x 927, 937 (11th Cir. 2020). Wexford can only be liable if “the alleged constitutional harm is the result of a custom or policy.” *Id.* “A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality, and a custom is a practice that is so settled and permanent that it takes on the force of law.” *Id.* (cleaned up).

West alleges he did not receive his desired medical treatment from Berrios, Blankenship, LaRosa, and Wetterer because Wexford and FDOC would not authorize it. He claims that Berrios and Blankenship told him Wexford and FDOC restricted non-emergency care. Wexford argues West has not met his burden of proof that an offending policy or custom exists. But that argument is premature. At this stage, West merely needs to allege facts that make the existence of such a policy or custom plausible. West has done so.

Having found that West adequately alleged a policy or custom, the Court must decide whether the policy or custom plausibly caused a constitutional deprivation. West oversteps a bit by alleging that “WEXFORD’s blanket denial of WEST’s medically necessary evaluation” left his injuries “untreated.” (Doc.

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213 at 23). That does not comport with West's more specific allegations. Wexford employees evaluated West multiple times and provided West ongoing treatment. However, West has plausibly alleged that a policy of restricting non-emergency medical treatment tied the hands of Wexford employees, prevented West from receiving more intensive treatment, and left him in severe pain. The Court finds West's allegations sufficient to state a claim against Wexford for deliberate indifference.

The Court's ruling on this point is not inconsistent with dismissal of the claims against the individual Wexford employees. *Monell* liability can exist even if no employee is individually liable. *Barnett v. MacArthur* 956 F.3d 1291, 1301 (11th Cir. 2020). "Situations may arise where the combined actions of multiple officials or employees may give rise to a constitutional violation, supporting municipal liability, but were no one individual's actions are sufficient to establish personal liability for the violation." *Id.* (quoting *Fairley v. Luman*, 281 F.3d 913, 917 (9th Cir. 2002)). The Court dismisses West's claims against the individual employees because West did not plausibly allege that they had the requisite state of mind. That pleading failure does not undermine West's claim against Wexford.

2. Deliberate Indifference to Conditions of Confinement

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The requirements of an Eighth Amendment claim based on deliberate indifference to conditions of confinement are similar to those for medical indifference. A plaintiff must satisfy objective and subjective criteria:

Under the objective component, the plaintiff must demonstrate “a substantial risk of serious harm.” [*Farmer v. Brennan*, 511 U.S. 825, 834 (1994)]...Under the subjective component, the plaintiff must prove “the defendants’ deliberate indifference” to that risk of harm by making three sub-showings: “(1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence.” [*Lane v. Philbin*, 835 F.3d 1302, 1307 (11th Cir. 2016)].

Swain v. Junior, 961 F.3d 1276, 1285 (11th Cir. 2020).

West’s conditions-of-confinement claims are based on allegations that prison officials ignored his medical passes. Berrios diagnosed West with osteoarthritis, degenerative joint disease, and chronic knee pain and implemented a treatment plan that included limitations on certain physical activities. The Court finds it plausible that an official’s disregard of West’s prescribed limitations could create a substantial risk of serious harm. *See Shaw, supra* (“A serious medical need is ‘one that has been diagnosed by a physician as mandating treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor’s attention.’”).

a. James Licata (Count 13)

West sued Licata for assigning him to work in food service and denying two grievances. West does not allege that Licata knew of West’s medical

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conditions and limitations when he assigned West to food service. On June 30, 2015, West filed a grievance requesting a different work assignment. Licata denied the grievance because West was already scheduled to see the Institutional Classification Team about a job change. On July 15, 2015, West filed a grievance against Spratt for making him sit on an upside-down garbage can and chop vegetables. Licata denied the grievance because it accused Spratt of retaliating against him but did not identify any action that could be considered retaliation. (Doc. 213-1 at 55). These allegations do suggest deliberate indifference. Count 13 is dismissed.

b. Robert Gilbreath (Count 14)

West sues Gilbreath for ignoring West's medical passes and requiring West to sit on an upside-down garbage can and chop vegetables. West claims Gilbreath told him, "If you don't have a bed rest, lay-in pass, you will work or go to confinement for refusing to work" and "I don't care about your passes or cane." (Doc. 213 at 52). But West does not allege that Gilbreath actually made him work while a bed rest pass was in effect. And even if he did, West did not exhaust his administrative remedies for such a claim. What is more, sitting on an upside-down garbage can did not violate the limitations enumerated in West's medical passes: "Light duty, restricted activity, no standing over 15 minutes, no bending, pulling, or pushing, no lifting over 15 pounds, and the use of a cane." (Doc. 213 at 53). Because West does not allege that Gilbreath

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made him do anything in violation of his medical passes, Count 14 fails to state a claim.

c. Sabrina Schultz (Count 15)

Like Berrios, Schultz has not appeared in this case and thus has not moved to dismiss Count 15. But the Court will review whether Count 15 states a claim on which relief can be granted. *See 28 U.S.C. § 1915(e)(2), supra.*

West's claim against Schultz stems from June 27, 2015, when Schultz told him to sit on a garbage can and chop vegetables, then told him to carry a 75-pound bag of vegetables. West reminded Schultz that he was cane-dependent and was not supposed to lift more than 15 pounds, but to no avail. Schultz threatened West with confinement if he refused. When West attempted to lift the bag, he fell and exacerbated his preexisting injuries. The Court finds these allegations sufficient to state a claim for deliberate indifference.

d. Diann Spratt (Count 16)

West alleges that Spratt regularly required him to sit on a garbage can instead of a chair and carry 75-pound bags of vegetables, and that Spratt threatened to place West in confinement if he refused. West also alleges that Spratt knew he was cane-dependent and limited to lifting no more than 15 pounds. Ordering West to exceed his prescribed limitations created a

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substantial risk of serious harm. West has stated a claim for deliberate indifference against Spratt.

C. Qualified Immunity

The FDOC Defendants raise the defense of qualified immunity, which protects government officials from civil liability. *Howard v. Memnon*, 572 F. App'x 692, 696 (11th Cir. 2014). “To claim qualified immunity, a defendant must first show he was performing a discretionary function.” *Id.* “The burden then shifts to the plaintiff to show that: (1) the defendant violated a constitutional right; and (2) the right was clearly established at the time of the violation.” *Id.* A right is “clearly established” if a reasonable person would have known about it.

The allegations in the Fourth Amended Complaint establish that Schultz and Spratt were acting within their discretionary authority when they directed West's work in his food service assignment at Charlotte Correctional. The burden thus shifts to West to show violation of a clearly established constitutional right. The Court found above that Schultz and Spratt violated the Eighth Amendment by ordering him to carry 75-pound bags of vegetables against doctor's orders. The Court also finds that ordering West to greatly exceed the lifting limitations prescribed by Dr. Berrios was so obviously wrong that any reasonable official would have known it violated the Constitution. Thus, Schultz and Spratt are not shielded by qualified immunity—at least not

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at this stage of the case. After further development of the facts, this issue can be addressed at the summary judgment stage.

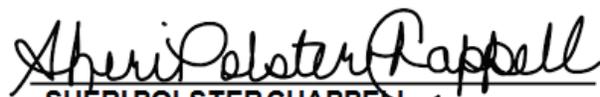
Accordingly, it is now

ORDERED:

1. The Wexford Defendants' Omnibus Motion to Dismiss Fourth Amended Complaint ([Doc. 214](#)) is **GRANTED in part and DENIED in part**.
2. Defendant Secretary Mark Inch's Motion to Dismiss Fourth Amended Complaint ([Doc. 215](#)) is **GRANTED**.
3. The Department Defendants' Omnibus Motion to Dismiss Fourth Amended Complaint ([Doc. 216](#)) **GRANTED in part and DENIED in part**.
4. Defendant Robert Gilbreath's Motion to Dismiss Fourth Amended Complaint ([Doc. 217](#)) is **GRANTED**.
5. Counts 1, 2, and 4-14 are **DISMISSED**.
6. The Clerk is **DIRECTED** to terminate all Defendants except Wexford Health Sources, Inc., Sabrina Schultz, and Diann Spratt.
7. Wexford and Spratt must answer the Fourth Amended Complaint on or before **February 11, 2021**. The Court will address service of process on Schultz in a separate order.

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DONE and **ORDERED** in Fort Myers, Florida on January 28, 2021.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record