

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

**LESTER J. SMITH, JR.,**

**Plaintiff,**

**V.**

**WARDEN CLINTON PERRY, *et al.*,**

**Defendants.**

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**NO. 5:22-cv-00044-TES-TQL**

**ORDER AND RECOMMENDATION**

*Pro se* Plaintiff Lester J. Smith, Jr., a prisoner in Macon State Prison in Oglethorpe, Georgia, has filed the present civil rights complaint under 42 U.S.C. § 1983, Compl., ECF No. 1, along with a motion for leave to proceed *in forma pauperis* (“IFP”). Mot. for Leave to Proceed *In Forma Pauperis*, ECF No. 2; Prisoner Trust Fund Account Statement, ECF No. 7. Additionally, Plaintiff has filed an emergency motion for medical care, ECF No. 4, a motion for a preliminary injunction, ECF No. 5, a motion to compel the defendants to provide him with paperwork to support his IFP motion, ECF No. 6, a motion for this case to go directly before the United States District Judge, ECF No. 8, an emergency motion to compel the defendants to invoke lockdown procedures against members of a gang, ECF No. 9, and another motion for medical care, ECF No. 10.

Plaintiff’s motion for leave to proceed *in forma pauperis*, motion for the case to go directly to the District Judge, and motion to compel present preliminary matters, and thus, they are addressed first. As to those filings, Plaintiff’s motion to proceed *in forma pauperis*

(ECF No. 2) is **GRANTED**, it is **RECOMMENDED** that the motion for this case to be heard directly by the District Judge (ECF No. 8) be **DENIED**, and Plaintiff's motion to compel (ECF No. 6) is **DENIED AS MOOT**.

Following the discussion of these motions, this order and recommendation turns to the preliminary review of this case. On that review, Plaintiff will be permitted to proceed for further factual development on the following claims: (1) a deliberate indifference to safety claim against Warden Tamaji Smith and Deputy Wardens of Security Sales and Peter Eady based on the physical attacks on Plaintiff by gang members; (2) a deliberate indifference to safety claim against Lieutenant Whitehead based on Plaintiff's exposure to the two fires and against Lieutenant Soldana based on his exposure to the second fire; (3) an excessive force claim against Unit Manager Knight, Sergeant Tullis, and Sergeant Brown for spraying Plaintiff with a chemical agent without justification; (4) a deliberate indifference to a serious medical need claim against Whitehead, Eady, and Doe for failing to get Plaintiff medical attention following the November 26, 2021 attack; (5) a deliberate indifference to a serious medical need claim against Dr. Cowens for failure to provide follow-up care after the November 26, 2021 attack; and (6) a conditions of confinement claim against Unit Manager Knight, Warden Smith, and Sergeant Tullis based on Plaintiff being prevented from showering for a period of time. It is **RECOMMENDED** that all of Plaintiff's remaining claims be **DISMISSED WITHOUT PREJUDICE** as discussed in detail below.

Finally, having addressed the merits of Plaintiff's complaint, this order and recommendation discusses Plaintiff's pending motions seeking preliminary injunctive

relief requiring that he be given medical attention (ECF Nos. 4 & 10) and ordering defendants to take actions against members of a particular gang (ECF Nos. 5 & 9). For the reasons discussed below, it is **RECOMMENDED** that these motions be **DENIED**.

### **MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

The district courts may authorize the commencement of a civil action without prepayment of the normally required fees if the plaintiff shows that he is indigent and financially unable to pay the filing fee. *See* 28 U.S.C. §1915(b). A prisoner seeking to proceed IFP under this section must provide the district court with both (1) an affidavit in support of his claim of indigence and (2) a certified copy of his prison “trust fund account statement (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint.” *Id.*

Federal law prohibits a prisoner from bringing a civil action in federal court *in forma pauperis*, however,

if [he] has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). This is known as the “three strikes provision.” Under § 1915(g), a prisoner incurs a “strike” any time he has a federal lawsuit or appeal dismissed on the grounds that it is frivolous or malicious or fails to state a claim. *Medberry v. Butler*, 185 F.3d 1189, 1193 (11th Cir. 1999). If a prisoner incurs three strikes, his ability to proceed *in forma pauperis* in federal court is greatly limited: leave may not be granted unless the prisoner alleges an “imminent danger of serious physical injury.” *Id.*

A review of court records on the Federal Judiciary's Public Access to Court Electronic Records ("PACER") database reveals that Plaintiff has filed multiple lawsuits in federal court and that at least three of his appeals have been dismissed as frivolous. *See Smith v. Dozier*, Appeal No. 18-13318-C (11th Cir. Nov. 8, 2018) (three-judge panel dismissing appeal as frivolous); *Smith v. Warden*, Appeal No. 12-14201 (11th Cir. Feb. 8, 2013) (same); *Smith v. Warden*, Appeal No. 12-13178 (11th Cir. Feb. 5, 2013) (same). Thus, Plaintiff may not proceed *in forma pauperis* in this action unless he can show that he qualifies for the "imminent danger" exception in § 1915(g). *Medberry*, 185 F.3d at 1193.

To invoke this exception, a prisoner must allege specific facts that describe "an ongoing serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury." *Sutton v. Dist. Atty's Office.*, 334 F. App'x 278, 279 (11th Cir. 2009). Complaints of past injuries are not sufficient. *See Medberry*, 185 F.3d at 1193. Vague and unsupported claims of possible dangers likewise do not suffice. *White v. State of Colorado*, 157 F.3d 1226, 1231 (10th Cir. 1998). The exception is only to be applied in "genuine emergencies," when (1) "time is pressing," (2) the "threat or prison condition is real and proximate," and (3) the "potential consequence is a serious physical injury." *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002).

In this case, Plaintiff asserts that he fears for his life at Macon State Prison because of violence from a particular gang, which has been allowed to go on unchecked due in part to understaffing and poor supervision. Attach. to Compl. 1, ECF No. 1-18. As a result of these conditions, Plaintiff has been attacked by gang members on two occasions, both assaults requiring treatment at the hospital. *Id.* In particular, Plaintiff has been targeted by

members of the Good Fellas gang, who assaulted Plaintiff and held him at knife point in the second attack, which is discussed in detail in the factual allegations section below. *Id.* at 2. During the second attack, the gang members told Plaintiff that they would kill him if he spoke about the incident, and Plaintiff continues to fear violence from these gang members. *Id.*

Moreover, Plaintiff is aware of a number of murders, stabbings, and assaults at the prison, and he has personally witnessed such events. *Id.* Among other things, Plaintiff asserts that former warden Clinton Perry was stabbed by inmates in the segregation unit. *Id.* Nothing has been done to correct the violence in the prison despite staff being aware of the situation. *Id.* at 3. In light of these allegations, the undersigned concludes that Plaintiff has sufficiently alleged an imminent danger of serious physical injury to qualify Plaintiff for the exception to the three strikes rule. Therefore, Plaintiff's motion to proceed *in forma pauperis* (ECF No. 2) is now **GRANTED**.

Plaintiff is, however, still obligated to eventually pay the full balance of the filing fee, in installments, as set forth in § 1915(b). The district court's filing fee is not refundable, regardless of the outcome of the case, and must therefore be paid in full even if Plaintiff's complaint is dismissed prior to service. For this reason, the **CLERK** is **DIRECTED** to forward a copy of this Order to the business manager of the facility in which Plaintiff is incarcerated so that withdrawals from his account may commence as payment towards the filing fee, as explained below.

I. Directions to Plaintiff's Custodian

Because Plaintiff has now been granted leave to proceed *in forma pauperis* in the above-captioned case, it is hereby **ORDERED** that the warden of the institution wherein Plaintiff is incarcerated, or the Sheriff of any county wherein he is held in custody, and any successor custodians, each month cause to be remitted to the **CLERK** of this Court twenty percent (20%) of the preceding month's income credited to Plaintiff's trust account at said institution until the \$350.00 filing fee has been paid in full. The funds shall be collected and withheld by the prison account custodian who shall, on a monthly basis, forward the amount collected as payment towards the filing fee, provided the amount in the prisoner's account exceeds \$10.00. The custodian's collection of payments shall continue until the entire fee has been collected, notwithstanding the dismissal of Plaintiff's lawsuit or the granting of judgment against him prior to the collection of the full filing fee.

## II. Plaintiff's Obligations Upon Release

An individual's release from prison does not excuse his prior noncompliance with the provisions of the PLRA. Thus, in the event Plaintiff is hereafter released from the custody of the State of Georgia or any county thereof, he shall remain obligated to pay those installments justified by the income to his prisoner trust account while he was still incarcerated. The Court hereby authorizes collection from Plaintiff of any balance due on these payments by any means permitted by law in the event Plaintiff is released from custody and fails to remit such payments. Plaintiff's complaint may be dismissed if he is able to make payments but fails to do so or if he otherwise fails to comply with the provisions of the PLRA.

**MOTION TO HAVE CASE HEARD BY DISTRICT JUDGE**

Plaintiff has filed a motion asking that these proceedings go directly before the United States District Judge instead of being assigned to the undersigned United States Magistrate Judge. Mot., ECF No. 8. In this motion, Plaintiff notes that his complaint alleges imminent danger and that he has submitted emergency filings calling for prompt review of his claims. *Id.* at 1. Plaintiff therefore asserts that he does not consent to the assignment of this case to this magistrate judge for screening. *Id.* Instead, he believes it should be assigned directly to the district judge. *Id.*

Plaintiff goes on to say that he is facing “severe and life threatening retaliatory conduct from the defendants,” who are also being sued in a separate action relating to his denial of medical treatment. *Id.* In furtherance of this argument, Plaintiff contends that an inmate who had tested positive for Covid-19 has been placed in Plaintiff’s cell with him in order to subject Plaintiff to bodily harm. *Id.* Plaintiff also asserts that the defendants planted drugs on him on February 2, 2022. *Id.* at 2.

Plaintiff attached to his motion a statement that he submitted to a guard regarding his allegation that drugs were planted on him (ECF No. 8-1); an affidavit asserting that he has been denied incentive meals because of filing grievances and legal actions (ECF No. 8-2); an affidavit stating that he has been served a dinner tray by another inmate and that he is frequently given a regular tray instead of his doctor ordered diet tray (ECF No. 8-3); an affidavit asserting that Covid-19 protocols are not observed, that one of the defendant’s daughters refused to serve Plaintiff a meal tray because Plaintiff was suing that defendant, and that officials at the prison are embezzling federal funds (ECF No. 8-4); an

affidavit regarding an incident wherein an inmate who had previously assaulted Plaintiff was allowed to be near Plaintiff and that Plaintiff's assailants have not been punished (ECF No. 8-5); an affidavit from another inmate regarding retaliation by prison staff (ECF No. 8-6); two grievances that Plaintiff filed (ECF Nos. 8-7 & 8-8); letters Plaintiff submitted seeking information and medical assistance (ECF Nos. 8-9 & 8-10); and an indigent supplies request form (ECF No. 8-11).

This case was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72, which authorize such referrals for all pretrial matters other than dispositive motions. This referral is appropriate, and nothing in Plaintiff's motion or the attachments thereto provide any basis for having this case go directly to the District Judge without the involvement of the undersigned. Thus, it is **RECOMMENDED** that this motion be **DENIED**.

### **MOTION TO COMPEL**

Plaintiff has also filed a motion to compel the defendants to provide him with the documents he needs to support his motion to proceed IFP. Mot. to Compel, ECF No. 6. Plaintiff has submitted his prisoner trust fund account statement, and his motion to proceed IFP has been granted, as discussed above. Thus, his motion to compel the defendants to provide him with this documentation is **DENIED AS MOOT**.

### **PRELIMINARY REVIEW OF PLAINTIFF'S COMPLAINT**

#### **I. Standard of Review**

Because Plaintiff is a prisoner "seeking redress from a governmental entity or [an] officer or employee of a governmental entity," the Court is required to conduct a

preliminary review of Plaintiff's complaint. See 28 U.S.C. § 1915A(a) (requiring the screening of prisoner cases) & 28 U.S.C. § 1915(e) (regarding *in forma pauperis* proceedings). When performing this review, the district court must accept all factual allegations in the complaint as true. *Brown v. Johnson*, 387 F.3d 1344, 1347 (11th Cir. 2004). *Pro se* pleadings are also “held to a less stringent standard than pleadings drafted by attorneys,” and thus, *pro se* claims are “liberally construed.” *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). Still, the Court must dismiss a prisoner complaint if it “(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. §1915A(b).

A claim is frivolous if it “lacks an arguable basis either in law or in fact.” *Miller v. Donald*, 541 F.3d 1091, 1100 (11th Cir. 2008) (internal quotation marks omitted). The Court may dismiss claims that are based on “indisputably meritless legal” theories and “claims whose factual contentions are clearly baseless.” *Id.* (internal quotation marks omitted). A complaint fails to state a claim if it does not include “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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The factual allegations in a complaint “must be enough to raise a right to relief above the speculative level” and cannot “merely create[] a suspicion [of] a legally cognizable right of action.” *Twombly*, 550 U.S. at 555 (first alteration in original). In other words, the complaint must allege enough facts “to raise a reasonable expectation that discovery will reveal evidence” supporting a claim. *Id.* at 556. “Threadbare recitals of the elements of a

cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

To state a claim for relief under §1983, a plaintiff must allege that (1) an act or omission deprived him of a right, privilege, or immunity secured by the Constitution or a statute of the United States; and (2) the act or omission was committed by a person acting under color of state law. *Hale v. Tallapoosa Cty.*, 50 F.3d 1579, 1582 (11th Cir. 1995). If a litigant cannot satisfy these requirements or fails to provide factual allegations in support of his claim or claims, the complaint is subject to dismissal. *See Chappell v. Rich*, 340 F.3d 1279, 1282-84 (11th Cir. 2003).

## II. Factual Allegations

In his complaint, Plaintiff asserts that he is a prisoner in Macon State Prison, where there is a high incidence of violence. Compl. 11, ECF No. 1. Over the course of 2019 and 2020, there have been at least ten murders, including one witnessed by Plaintiff wherein an inmate apparently was assaulted and then bled to death due to lack of medical attention. *Id.* Plaintiff asserts that all of the named defendants are aware of the dangerous conditions, breaches of security, and lack of proper medical care at Macon State Prison. *Id.* Moreover, he contends that the United States Department of Justice has begun an investigation into the Georgia Department of Corrections for the conditions in Georgia’s prisons. *Id.*

Plaintiff’s complaint arises from his own experience as a victim of this violence. *Id.* at 7. Initially, he was stabbed multiple times by five gang members in July 2020. *Id.* As a result of this assault, Plaintiff sustained a severed finger and stab wounds in his torso and arms, which required him to be hospitalized and undergo surgical procedures. *Id.* On his

return to Macon State Prison, Plaintiff was taken to the segregation unit and later placed in involuntary protective custody. *Id.* His attackers were taken to segregation, but some of them were released back into the general population. *Id.* Those individuals committed more assaults, and in December 2020, they killed another inmate. *Id.*

Thereafter, Plaintiff was also returned at some point to the general population, and on November 26, 2021, he was attacked a second time by members of the Good Fellas gang. *Id.* at 8. Generally, Plaintiff asserts that Georgia Department of Corrections Commissioner Timothy Ward, Warden Tamaji Smith, and Deputy Wardens of Security Sales<sup>1</sup> and Peter Eady are responsible for the safety of prisoners and staff at Macon State Prison and are aware of the violent nature of the Good Fellas gang, but they refuse to classify the Good Fellas as a security threat group (“STG”), even though the Good Fellas were identified as such from 2012 through 2017 and are currently responsible for violence, murders, and extortion within the prison. *Id.* at 13.

Around the time of the attack, Plaintiff’s dorm was left unattended for an hour or more at a time on a daily basis due to staffing shortages. *Id.* at 8. And on that day, no staff had been in the building for around an hour. *Id.* Plaintiff and two members of the Good Fellas gang were locked inside a cell, and a third gang member got a knife from another inmate, which he brought back to the cell and slid under the door to the other two gang members. *Id.* During the attack, the gang members beat Plaintiff for ten to fifteen minutes

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<sup>1</sup>Plaintiff has not provided Deputy Warden of Security Sales’ first name.

and then held him at knife point. *Id.* They also threatened to kill him if he spoke about the incident to anyone. *Id.*

When an officer returned to the dorm, the gang member who had gotten the knife asked the officer to open the cell door from the control desk, which the officer did. *Id.* At that point, Plaintiff was robbed of some of his belongings and was forced to clean himself up at knife point. *Id.* As a result of this attack, Plaintiff fears for his life because he believes that members of the Good Fellas gang, who have not been punished for their assault on him, may act on their threats against him. *Id.*

Following the attack, Plaintiff left the building, and Lieutenant Whitehead and Lieutenant John Doe came to take Plaintiff to a lockdown cell. *Id.* at 9. Initially, officials filled out an incident report falsely stating that Plaintiff had been moved to segregation because he refused housing. *Id.* at 11. Plaintiff, however, asserts that he was moved because of the assault. *Id.* In this regard, he notes that, when an inventory of his belongings was made, the staff member wrote “put on door” as the reason for the inventory, which Plaintiff asserts meant that he was forced to leave the building by his attackers. *Id.*

When he was moved, Plaintiff had been bleeding from the mouth and head, and he asked Whitehead and Doe for medical attention, but they refused his request and placed him in a cell in the segregation unit. *Id.* at 9. That night, Plaintiff drifted in and out of consciousness, eventually losing consciousness completely. *Id.* When that happened, Plaintiff’s cellmate notified the guard, who in turn alerted Whitehead and Doe, as well as Deputy Warden of Security Eady.

Whitehead, Doe, and Eady came to Plaintiff's cell and ordered him to approach the cell door so that he could be handcuffed. *Id.* Plaintiff, however, was still unconscious, and thus, could not get up and walk. *Id.* The three men then came into the cell, picked Plaintiff up off of the floor, and put handcuffs on him. *Id.* The manner in which they handcuffed Plaintiff was painful, and he regained consciousness during this time. *Id.* At this point, Plaintiff was bleeding heavily from the mouth and head, and he again requested medical attention, but Whitehead, Doe, and Eady left Plaintiff in the cell without getting him medical care. *Id.*

The next day, Plaintiff wrote an emergency grievance requesting medical care, which he put outside his door. *Id.* at 10. A guard saw the request that afternoon and notified his superior officers. *Id.* Deputy Warden McKenzie then saw the grievance, looked at Plaintiff, and called for medical help. *Id.* McKenzie indicated that no one had told her about the assault on Plaintiff when she had come on duty for her shift. *Id.*

Upon being taken to the medical unit, Plaintiff was immediately sent to the Crisp County Hospital emergency room where he was treated for head trauma, severe internal soft tissue damage, and jaw pain. *Id.* On his release, Plaintiff was given instructions for follow-up treatment, including pain medications, to be administered by the prison medical staff, specifically Dr. Cowens, but as of December 11, 2021, he had received no such follow-up care. *Id.* at 10, 22.

Plaintiff has suffered permanent damage to his mouth as a result of the delay in his medical treatment. *Id.* at 12. He also continues to have pain from internal injuries due to not being given any follow-up care or pain medications. *Id.* In particular, Plaintiff has

permanent disfigurement of his left hand, bodily scarring, and severe headaches. *Id.* Plaintiff has notified medical staff both verbally and in writing, but he has not received any further medical care despite having a visibly swollen neck, torso, and head, as well as cuts and bruises. *Id.* Thirty days after the assault, Plaintiff continued to suffer from sharp head pains, which have not been evaluated despite his repeated requests for medical care. *Id.*

On his return from the hospital following the November 26, 2021, attack, Plaintiff was taken directly to Tier 1 segregation where he remained through the time that he drafted the complaint. *Id.* at 14, 22. During that time, Plaintiff had to rely on his cellmates to help him move around because the assault had aggravated an existing lower back problem caused by disc disease. *Id.* at 22. This was problematic because his cellmates were not required to do anything to physically help another prisoner. *Id.*

For inmates in segregation, it was the policy of Warden Smith, Unit Manager Knight, Sergeant Tullis, and unnamed CERT members that, if both cellmates did not go to the shower and strip naked prior to going in, none of the inmates in that cell could shower. *Id.* at 14. On December 8, 2021, inmate Jakari Daniel was placed into Plaintiff's cell without any of his belongings. *Id.* Because he did not have his things, Daniel refused to shower, which meant that Plaintiff was also not permitted to shower. *Id.* at 14-15. During this time, Daniel repeatedly asked Smith, Knight, and Tullis, as well as other prison staff, for his things so that he could shower, but his requests were denied. *Id.* at 15.

Plaintiff suffers from skin conditions relating to untreated hepatitis C virus ("HCV") and folliculitis. *Id.* at 24. Because of not being able to shower, Plaintiff has developed hives and sores on his body. *Id.* Plaintiff has asked to be seen in medical on multiple

occasions and has asked Tullis for a medical request form, but he has just been told that there are no medical request forms available. *Id.* As a result, Plaintiff wrote medical requests on regular paper. *Id.* Plaintiff was eventually able to get a medical request form from another prisoner, which Plaintiff completed and submitted to medical. *Id.* Plaintiff also sent a copy of this form to Andrew Koelz, an attorney who is representing Plaintiff in a different civil case. *Id.* Despite his multiple requests, Plaintiff has not received any medical services. *Id.*

In addition to being unable to shower and left in a cell with a cellmate who also could not shower, the staff refused to provide Plaintiff with any cleaning supplies to allow him to clean inside the cell. *Id.* at 15. Plaintiff also contends that, while Covid-19 was at its most prevalent, prison officials were not in compliance with guidelines from the Centers for Disease Control. *Id.* In addition to not being given cleaning supplies, inmates were not allowed to practice social distancing. *Id.*

On December 14, 2021, Daniel got into an altercation wherein he apparently refused to comply with orders given by Knight, Tullis, and Sergeant Brown. *Id.* at 16. During this incident, Daniel also spat on Knight. *Id.* at 18. As a result of Daniel's actions, Knight ordered that a chemical agent be sprayed into Daniel's and Plaintiff's cell. *Id.* at 16, 18. At this time, Plaintiff was in the cell and had been compliant with all orders given by the officers, but he was not removed from the cell before the chemicals were sprayed inside it. *Id.* at 16. Thus, Plaintiff also was subjected to the chemical agent, despite having done nothing wrong. *Id.* Plaintiff asserts that Brown and other officers are trained not to obey illegal commands by superior officers and that Brown should have refused to spray the

chemical agent into the cell because Plaintiff was in there and had not done anything to warrant being sprayed. *Id.* at 20.

After the chemical agent was sprayed into their cell, Plaintiff and Daniel were made to stand outside the cell in handcuffs until the medical staff arrived to look them over. *Id.* at 19. Plaintiff asserts that a “nurse fabricated a mark on Plaintiff and was unaware that the mark she allegedly saw was from Plaintiff’s November 26, 2021, injury.” *Id.* It is unclear what Plaintiff means by this statement. *See id.* At some point while they were waiting on medical staff, Smith, Sales, and Eady came to the area, but Plaintiff does not say anything about what happened after they arrived. *Id.* at 16.

Thereafter, Knight, Tullis, and Brown put Plaintiff and Daniel back into the cell without having it cleaned or decontaminated in any way. *Id.* Remaining in the contaminated cell aggravated Plaintiff’s bronchitis, made it difficult for him to eat or sleep, and caused him to have burning eyes and a continuous cough for days. *Id.* Plaintiff also believes that Knight, Tullis, and Brown failed to submit an incident report related to the altercation because they were attempting to hide the fact that it had happened. *Id.* at 19. After it occurred, Plaintiff asked Knight and Tullis to give him a witness statement form, but they denied his request. *Id.* Plaintiff then wrote to Warden Smith about what had happened. *Id.*

That night, Tullis ordered that Plaintiff’s and Daniel’s dinner trays be withheld, and Knight said, “I’m going to make sure y’all starve.” *Id.* at 16. Plaintiff also generally asserts that inmates are allowed to pass out food, which he says is a violation of Georgia Department of Corrections policy. *Id.*

Plaintiff asserts that he believes that his cellmate, Jakari Daniel, is affiliated with the Good Fellas gang and that the prison staff has conspired with the Good Fellas to harm Plaintiff. *Id.* at 17. In this regard, Plaintiff notes that Daniel came to segregation with a homemade knife and that he was able to keep it because staff intentionally did not search Daniel when moving him to Plaintiff's cell. *Id.* Moreover, Daniel has smoked some kind of drug in the cell. *Id.* Because Daniel has previously lashed out at officials, the defendants do not stop Daniel from using drugs despite their awareness of the situation. *Id.*

Plaintiff generally alleges that officials at the Macon State Prison are known to lie in reports to outside investigators to try to cover up various incidents. *Id.* at 19. Because of this, officers from Macon State Prison were previously prosecuted by the United States Department of Justice in a matter involving former CERT staff and administrators. *Id.* Plaintiff appears to be referring to *United States v. Hinton*, Case No. 5:13-cr-00032-MTT-CHW, in which several CERT members were found guilty of, among other things, obstructing justice by falsifying reports of incidents between officers and inmates.<sup>2</sup>

At this point in the complaint, Plaintiff switches focus to address issues he has encountered with filing grievances at Macon State Prison. Compl. 20, ECF No. 1. Following the incident with the chemical agent being sprayed in the cell, Plaintiff attempted to submit a grievance on the matter to Counselor Williams, who told Plaintiff, "I'm not taking any more of your stupid grievances." *Id.* Plaintiff asserts that Williams'

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<sup>2</sup>Plaintiff refers to the case as *United States v. Rushin* and indicates that it took place in 2015 or 2016. Delton Rushin was one of the CERT members prosecuted in *United States v. Hinton*. Moreover, an appeal from *Hinton* resulted in a published opinion, *United States v. Rushin*, 844 F.3d 933 (11th Cir. 2016).

refusal to take his grievance violated Plaintiff's First Amendment rights as well as the Georgia Department of Corrections grievance policy. *Id.* Plaintiff acknowledges that another counselor subsequently took Plaintiff's grievance on this matter. *Id.*

On January 4, 2022, Counselor Boyle also refused to accept two of Plaintiff's grievances. *Id.* at 21. Boyle stated that he would not accept the grievances because Plaintiff already had two pending grievances. *Id.* Plaintiff asserts that Boyle's statement was in error and that Boyle was intentionally misapplying Commissioner Ward's two-grievance policy. *Id.* Two days later, another counselor accepted the two grievances that Plaintiff had tried to submit to Boyle. *Id.*

With regard to the above-mentioned two grievance limit, Plaintiff asserts that Commissioner Ward has a policy that provides that an inmate may only have two to three grievances pending at the institutional level at any given time. *Id.* at 27. Plaintiff asserts that this policy is unconstitutional because he has been forced to drop grievances in order to submit new grievances. *Id.* Additionally, the policy imposes a ten-day deadline within which inmates are required to file any grievances. *Id.* Plaintiff asserts that the policy violates his constitutional rights because it prevents him from pursuing multiple grievances and because it inhibits his ability to exhaust his administrative remedies so that he may properly present his claims to the courts. *Id.*

Next, Plaintiff again shifts his focus, this time to address his diet. *Id.* at 25. On this point, Plaintiff asserts that Commissioner Ward and John and Jane Doe defendants are responsible for the diet provided to Plaintiff. *Id.* Plaintiff alleges that the John and Jane

Doe defendants are “educated in dietician studies or should be” and include any individuals who participate in setting his daily diet. *Id.*

With regard to his diet, Plaintiff maintains that, when he entered the Georgia Department of Corrections in 2008, he was relatively healthy insofar as he did not have, for example, high blood pressure or diabetes. *Id.* According to Plaintiff, the prison diet menu is “disingenuous,” and contains unhealthy items including processed meat, canned fruits and vegetables, and heavy starches. *Id.* As a result of his diet, Plaintiff has now been diagnosed as pre-diabetic and he has high blood pressure. *Id.* Due to the unhealthy diet that he has been provided, Plaintiff has been prescribed multivitamins, fish oil, and vitamin D-3. *Id.*

In addition to the provided meals, the defendants use the prison’s commissary to sell foods high in sodium and sugar. *Id.* at 26. On this point, Plaintiff asserts that Smith, Sales, and Eady “subject Plaintiff to an intentional array of unhealthy foods” by failing to stock healthier options in the commissary despite those healthier options not presenting any security risk. *Id.*

Plaintiff goes on to make a general allegation that Defendant Officer Cross conspired with Tullis, Knight, and Smith to deny Plaintiff his constitutional rights. *Id.* at 28. Moreover, Cross “worked daily with defendants to carry out non-procedural regimens of GDOC policies and rules, and violations of Plaintiff’s rights.” *Id.*

Moving forward to another incident, Plaintiff asserts that, on December 29, 2021, Knight, Smith, Sales, Eady, Tullis, Cross, Whitehead, and Soldana were deliberately indifferent to his safety. *Id.* In particular, Plaintiff again asserts that the defendants allowed

inmate workers to pass out meals to other inmates, which is supposed to be a job for staff to do. *Id.* Moreover, the inmate workers passing out the trays were doing so unsupervised, and one inmate did not receive his meal. *Id.* That inmate started a fire because he was angry about not getting any food. *Id.* No staff were present in the dorm at that time, and the building, including Plaintiff's cell, became filled with smoke because the ventilation system in the cells does not work. *Id.*

Whitehead and other staff members were seen looking inside the building where the smoke was increasing, but these staff members just walked away. *Id.* at 29. Only after more than two hours did any staff return to the building. *Id.* Plaintiff subsequently filed an emergency grievance asking Tullis, Knight, and Sales for medical treatment due to smoke inhalation, but his request was denied. *Id.*

Later that same day, another inmate started a fire in the cell directly above Plaintiff's cell.<sup>3</sup> *Id.* No staff were present at that time, and smoke again filled up the building and cells. *Id.* Eventually, a staff member arrived with a fire extinguisher to put out the burning items that had fallen in front of Plaintiff's cell door. *Id.* Plaintiff again requested medical attention for smoke inhalation, and his request was again denied. *Id.* Plaintiff asserts that Soldana, Whitehead, and two other guards were present during the second fire.<sup>4</sup> *Id.* Whitehead subsequently refused to provide Plaintiff with a medical request form. *Id.* at 30.

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<sup>3</sup>Plaintiff does not say why this inmate started a fire.

<sup>4</sup>This appears to contradict Plaintiff's statement in the previous paragraph that no staff were present during the fire.

Since the fires, Plaintiff has experienced sporadic coughing and choking due to smoke inhalation. *Id.*

In his final sections of the complaint, Plaintiff asserts that Warden Smith refused to sell legal pads in the prison commissary for a period of several months. *Id.* Smith apparently blamed supply chain shortages for the lack of legal pads, but all other commissary items remained available. *Id.* Additionally, Plaintiff asserts that, at the beginning of January 2022, Smith announced that no mail would go out or be distributed that month because the only mailroom employee was sick with Covid-19.<sup>5</sup>

Plaintiff contends that Smith's actions were done in retaliation for the United States Department of Justice launching an investigation into the Georgia Department of Corrections. *Id.* at 31. Moreover, by imposing these restrictions, Smith prevents prisoners in Macon State Prison from reaching out to Department of Justice officials and the court system. *Id.* Plaintiff asserts that Smith's acts also constitute retaliation against Plaintiff and that Smith further retaliated against Plaintiff "by denying Plaintiff's factual and correct statements delineated in his grievances." *Id.*

Plaintiff's factual allegations raise a number of potential issues that fall under the general subjects of deliberate indifference to safety, excessive force, deliberate indifference

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<sup>5</sup>Some mail apparently was sent out from the prison during this time, as Plaintiff's complaint was marked "mailed Jan. 6, 2022," Attach. to Compl., ECF No. 1-17, and was docketed in this Court on January 24, 2022. It is not clear when Plaintiff actually put the complaint in the hands of prison officials. In this regard, Plaintiff dated his signature on the complaint December 12, 2021, but within his statement of facts, Plaintiff refers to incidents that occurred after that date, such as the December 29, 2021 fires, and the announcement at the beginning of January that no mail would go out that month.

to a serious medical need, unconstitutional conditions of confinement, First Amendment claims, and diet related claims.<sup>6</sup> These claims are discussed in turn below.

### III. Plaintiff's Claims

#### A. Deliberate Indifference to Safety and Failure to Protect

Plaintiff asserts that he was first stabbed in an assault in July 2020 and then again in November 2021 by members of the Good Fellas gang. Related to this, Plaintiff has also alleged that certain defendants have failed to classify the Good Fellas as a security threat group (“STG”) and have failed to punish Plaintiff’s attackers after the stabbing, essentially allowing these gang members to engage in uncontrolled violence. In a different set of incidents, Plaintiff asserts that fires were set in his dorm building twice in one day, resulting in him experiencing smoke inhalation. Additionally, Plaintiff asserts that he believes that his cellmate may be a member of the Good Fellas and that officials have conspired with the Good Fellas to harm Plaintiff. These allegations implicate potential claims for deliberate indifference to safety or failure to protect.

To state an Eighth Amendment claim for deliberate indifference to safety or failure to protect, a prisoner must allege facts to show the existence of a prison condition that is extreme and poses an unreasonable risk to the prisoner’s health or safety. *See Chandler v.*

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<sup>6</sup>Throughout his complaint, Plaintiff makes a number of assertions that the defendants violated various prison policies or operating procedures. “Prison regulations and Standard Operating Procedures do not confer federal rights to prisoners that may be enforced or redressed in a § 1983 action.” *Jones v. Schofield*, No. 1:08-CV-7 WLS, 2009 WL 902154, at 3 (M.D. Ga. Mar. 30, 2009). Thus, this order and recommendation is concerned with whether Plaintiff’s constitutional rights have been violated, rather than whether any prison policy was violated.

*Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004). Additionally, the prisoner must allege facts to show that the defendant acted with deliberate indifference to the condition, which requires that the defendant knew that an excessive risk to health or safety existed but disregarded that risk. *Id.* at 1289-90. If the defendant took action that reasonably responded to the risk, the defendant will not be held liable, even if the harm was not averted. *Id.* at 1290.

The United States Supreme Court has recognized that “prison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners.” *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (quoting *Cortes-Quinones v. Jiminez-Nettleship*, 842 F.2d 556, 558 (1st Cir. 1988)). In this regard, “occasional, isolated attacks by one prisoner on another may not constitute cruel and unusual punishment, [but] confinement in a prison where violence and terror reign is actionable.” *Purcell ex rel. Estate of Morgan v. Toombs Cty.*, 400 F.3d 1313, 1320 (11th Cir. 2005) (quoting *Woodhous v. Virginia*, 487 F.2d 889, 890 (4th Cir. 1973)). Thus, to establish deliberate indifference based on a generalized risk of harm, a plaintiff must allege facts showing “that serious inmate-on-inmate violence was the norm or something close to it.” *Id.* at 1322.

#### 1. Stabbing Incidents and Classification of Good Fellas

Plaintiff asserts that he was stabbed during an attack in July 2020 and again in November 2021. These allegations indicate that Plaintiff was in a dangerous situation, insofar as he was housed in conditions in which he was exposed to a group of gang members who wanted to do him harm. Plaintiff does not include any allegations to show that any of the defendants had specific knowledge that Plaintiff was likely to be attacked

either time. And while the first stabbing arguably could have created some notice that Plaintiff was a target, almost a year and a half passed between the two incidents, and Plaintiff does not assert that any of the defendants was specifically aware of a danger to Plaintiff with regard to the second attack based on the first attack or for any other reason.

Nevertheless, Plaintiff's allegations arguably may indicate the possibility that the situation at Macon State Prison was so generally violent that the defendants should have known that the situation was dangerous. In this regard, Plaintiff asserts that there were numerous murders and even more violent assaults, particularly from members of the Good Fellas gang. Moreover, on the occasions when Plaintiff was attacked, the dorm was left unattended by officers, which arguably may have increased the possibility of danger, especially if levels of violence were known to be high.

Plaintiff directs this claim generally at Commissioner Timothy Ward, Warden Tamaji Smith, and Deputy Wardens of Security Peter Eady and Sales. In particular, Plaintiff designates these defendants as being responsible for not designating the Good Fellas as an STG and not punishing them when they harmed Plaintiff. It is not clear that these specific actions themselves amounted to deliberate indifference or contributed to the purportedly unsafe nature of the prison, but they may be relevant to whether these defendants were deliberately indifferent to the violence at Macon State Prison.

As to Smith, Eady, and Sales, these defendants, by nature of their positions at Warden and Deputy Wardens at Macon State Prison, would presumably be in the prison on a near daily basis and would be tasked with keeping the prisoners safe. Thus, coupled with Plaintiff's allegations that there was nearly constant violence in the prison, it appears

reasonable to presume that these defendants knew about dangerous conditions in the prison and may have been deliberately indifferent to them. Plaintiff will therefore be allowed to proceed for further factual development on his deliberate indifference to safety claims against Smith, Eady, and Sales relating generally to violence in the prison created by the Good Fellas and specifically to Plaintiff being attacked by gang members on two occasions.

Commissioner Ward, however, would not be at Macon State Prison on a day-to-day basis, and Plaintiff has put forth no factual allegations regarding Ward's actual knowledge of the situation in the prison. Although Plaintiff asserts that he wrote to Ward on one or more occasions, this does not show that Ward was actually aware of any particular conditions in the prison. Plaintiff also asserts that there is a Department of Justice investigation relating to the Georgia prison system, but his allegations do not show that this investigation is specific to Macon State Prison or that it somehow has put Ward on notice of the level of violence in Macon State Prison. Given the lack of allegations demonstrating such knowledge, Plaintiff has not alleged facts showing that Commissioner Ward was deliberately indifferent to the violence at Macon State Prison. Thus, it is **RECOMMENDED** that this claim be **DISMISSED WITHOUT PREJUDICE** as to Commissioner Ward.

## 2. Fires

Plaintiff also asserts that his health and safety were put at risk because, in one day, two fires were set inside Plaintiff's building. It appears that this may have been a dangerous situation that created an unreasonable risk of harm to Plaintiff, as the building, including Plaintiff's cell, filled up with smoke, causing Plaintiff to experience a cough and choking

symptoms. The question, then, is whether any named defendant was aware of, and deliberately indifferent to, a risk of harm. On this claim, Plaintiff names Unit Manager Knight, Warden Smith, Deputy Wardens Sales and Eady, Sergeant Tullis, Officer Cross, Lieutenant Whitehead, and Lieutenant Soldana.

Plaintiff asserts that the first fire was set because an inmate was angry that he did not receive a meal when they were being passed out by other inmates. Plaintiff seems to be suggesting that the defendants should have known the situation was potentially dangerous insofar as the inmates were passing out food unsupervised, but Plaintiff presents no factual support to show that inmates passing out food was known to cause any sort of danger. As to the second fire, Plaintiff does not explain why it was set or provide any information to suggest that any defendant knew it might be set. Thus, Plaintiff has not asserted any facts to suggest that any of the named defendants was aware of a risk of harm from inmates setting fires before the fires were actually set on that day.

Plaintiff does assert, however, that after the first fire was started, Lieutenant Whitehead looked through the window, saw that there was a fire burning, and turned around and walked away and that no one came back to the dorm for two hours. Accepting these allegations as true, Whitehead seemingly would have known that there was a risk of danger from a fire burning inside the dorm, and he may have been deliberately indifferent to that danger by walking away and not getting help. Thus, Plaintiff will be permitted to proceed for further factual development on a deliberate indifference to safety claim against Whitehead with regard to the first fire.

As to the second fire, Plaintiff initially asserts that no staff was present when the fire was started, but then he states that Whitehead and Soldana were present for the second fire. Plaintiff provides no further allegations regarding their presence and any action or inaction on their part. Although Plaintiff's allegations here are minimal, accepting them as true and construing them in Plaintiff's favor, he appears to assert that the two officers were present but that the fire was allowed to continue until the building was filled with smoke, suggesting the possibility that they were deliberately indifferent to a risk of harm in connection with the second fire. Accordingly, Plaintiff will also be permitted to proceed for further factual development on his deliberate indifference to safety claim against Lieutenant Whitehead and Lieutenant Soldana based on the second fire.

Because Plaintiff has not alleged any facts showing that any of the other defendants was aware of, and deliberately indifferent to, a risk of harm, he has not stated a claim against them. Therefore, it is **RECOMMENDED** that this claim be **DISMISSED WITHOUT PREJUDICE** as to Unit Manager Knight, Warden Smith, Deputy Wardens Sales and Eady, Sergeant Tullis, and Officer Cross.

### 3. Cellmate

Plaintiff contends that he has been housed with his cellmate Jakari Daniel, who Plaintiff believes may be a member of the Good Fellas. He further contends that prison officials have conspired with the Good Fellas to harm Plaintiff. In support of this claim, Plaintiff asserts that Daniel came into his cell with a homemade knife that guards did not take from him and that Daniel has gotten away with using drugs in their cell.

Plaintiff does not, however, assert any facts to show that Daniel is actually a member of the Good Fellas or that Daniel has presented any danger to Plaintiff whatsoever. Instead, this appears to be purely speculation on Plaintiff's part. Moreover, although Plaintiff alleges that Daniel had a homemade knife, he makes no allegations that Daniel attempted to use the knife on Plaintiff or has otherwise attempted to harm Plaintiff in any way. Similarly, Plaintiff's allegations that officials have conspired with Good Fellas members also appear to be purely speculative. Therefore, it is **RECOMMENDED** that this claim be **DISMISSED WITHOUT PREJUDICE** for failure to state a claim.

B. Excessive Force

Plaintiff contends that Knight, Tullis, and Brown used excessive force against him when they sprayed a chemical agent into his cell during an altercation with Plaintiff's cellmate. Eighth Amendment excessive force claims have both an objective and subjective component, and the plaintiff has the burden of establishing both. *Hudson v. McMillian*, 503 U.S. 1, 8 (1992). To satisfy the subjective prong, the plaintiff must demonstrate that the defendant acted with a malicious and sadistic purpose to inflict harm. *Id.* at 6. To satisfy the objective prong, the plaintiff must show that "the alleged wrongdoing was objectively 'harmful enough' to establish a constitutional violation." *Id.* at 8 (citing *Wilson v. Seiter*, 501 U.S. 294, 303 (1991)).

The key inquiry is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010) (quoting *Hudson*, 503 U.S. at 7). When the use of force is malicious or sadistic, "contemporary standards of decency always are violated . . . whether or not

significant injury is evident.” *Id.* (ellipses in original) (quoting *Hudson*, 503 U.S. at 9). “In determining whether the force was applied maliciously and sadistically to cause harm, courts consider: ‘a) the need for the application of force; b) the relationship between the need and the amount of force that was used; c) the extent of the injury inflicted upon the prisoner; d) the extent of the threat to the safety of staff and inmates; and e) any efforts made to temper the severity of a forceful response.’” *Bowden v. Stokely*, 576 F. App’x 951, 953 (11th Cir. 2014) (per curiam) (quoting *Fennell v. Gilstrap*, 559 F.3d 1212, 1217 (11th Cir. 2009)). Continued exposure to pepper spray residue may be “part of the continuum of [a plaintiff’s] excessive force claim.” *Williams v. Rickman*, 759 F. App’x 849, 852 (11th Cir. Jan. 2, 2019) (per curiam) (citations omitted).

Plaintiff does not argue that the use of force was unreasonable with respect to Daniel, but instead asserts that there was no need to use any force against Plaintiff because he was, at all times, in compliance with the officers’ instructions. Thus, Plaintiff contends that the officers should have removed him from the cell before spraying the chemical agent. Moreover, Plaintiff asserts that he continued to be exposed to the chemical agent when he was put back into his cell without it being cleaned or decontaminated.

It appears possible that Plaintiff’s exposure to the chemical agent may have been reasonable if the officers could not have removed Plaintiff from the situation before they sprayed Daniel. At this stage of the proceeding, however, the Court must accept Plaintiff’s allegations as true and construe them in his favor. Applying this standard, it seems that the officers may have knowingly sprayed Plaintiff with the chemical agent without

justification. Plaintiff will therefore be allowed to proceed for further factual development on his excessive force claim against Knight, Tullis, and Brown.

C. Deliberate Indifference to a Serious Medical Need

Plaintiff asserts that Lieutenant Whitehead, Lieutenant John Doe, and Deputy Warden of Security Eady failed to get him medical attention in the hours following the November 26, 2021, attack. He also alleges that Dr. Cowens has not provided him with medical care despite such care being ordered by hospital doctors. Plaintiff further contends that he has developed hives and sores on his skin from not showering and that Tullis would not provide Plaintiff with a medical request form. Additionally, Plaintiff alleges that he after he and Daniel were sprayed with a chemical agent, they were put back into the contaminated cell, which has aggravated Plaintiff's bronchitis, made it difficult for him to eat or sleep, and caused him to have burning eyes and a continuous cough for days. Plaintiff also asserts that he was not provided with medical care following the fires. These allegations all implicate potential claims for deliberate indifference to a serious medical need.

In order to state such a claim, a prisoner must allege facts to show that he had a medical need that was objectively serious and that the defendant was deliberately indifferent to that need. *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003). A serious medical need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Hill v. Dekalb Reg'l Youth Det. Ctr.*, 40 F.3d 1176, 1187 (11th Cir. 1994)

(quotation marks and citation omitted). Further, the condition must be one that would pose a “substantial risk of serious harm” if left unattended. *Farrow*, 40 F.3d at 1243.

An official acts with deliberate indifference when he or she “knows of and disregards an excessive risk to inmate health and safety.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Additionally, the disregard of risk must be “by conduct that is more than mere negligence.” *Bingham v. Thomas*, 654 F.3d 1171, 1176 (11th Cir. 2011). “Conduct that is more than mere negligence includes: (1) grossly inadequate care; (2) a decision to take an easier but less efficacious course of treatment; and (3) medical care that is so cursory as to amount to no treatment at all.” *Id.* A prison official “who delays necessary treatment for non-medical reasons may exhibit deliberate indifference.” *Id.* Finally, “[a]n Eighth Amendment violation may also occur when state officials knowingly interfere with a physician’s prescribed course of treatment.” *Id.*

#### 1. Following November 26 Attack

Plaintiff alleges that Whitehead and Doe removed Plaintiff to segregation following the November 26, 2021 attack, when Plaintiff had been bleeding from the head and mouth. Despite Plaintiff’s requests, they refused to get him medical attention. Then, Whitehead, Doe, and Eady all responded when Plaintiff was unconscious later that night and again refused to get him medical care. When Plaintiff ultimately was taken to medical the next day, he was promptly sent to the hospital for treatment for his injuries.

These facts are sufficient to allege that he had a serious medical need. Moreover, insofar as Whitehead, Doe, and Eady could see that Plaintiff had been bleeding and knew that he had lost consciousness, but refused him medical attention, Plaintiff’s allegations are

sufficient to suggest that they were deliberately indifferent to Plaintiff's serious medical needs. Thus, Plaintiff will be allowed to proceed for further factual development on his claim that Whitehead, Doe, and Eady were deliberately indifferent to his serious medical needs by failing to get him medical attention following the November 26, 2021 attack.

With regard to the Doe defendant, however, fictitious party pleading, *i.e.*, bringing claims against John Doe defendants, is generally only permitted in federal court when the plaintiff's description of the defendant is so specific that the party may be identified for service even though his or her actual name is unknown. *See Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010). Here, Plaintiff does not provide any identifying information regarding this defendant, other than that he was a lieutenant. Although it is possible that Plaintiff may be able to identify this defendant through discovery, no service can be made on the Lieutenant John Doe defendant at this time. If Plaintiff is able to identify Lieutenant Doe through discovery, he may move to have this defendant served at that time.

## 2. Follow-Up Care

Plaintiff asserts that he needed follow-up care after he left the hospital in November 2021. In this regard, Plaintiff alleges that the hospital doctors prescribed such care, although Plaintiff does not specify what care was called for, other than pain medications. Regardless, Plaintiff also contends that he continues to experience sharp head pains, headaches, and other pains throughout his body for which he has not received any medical attention. Given the purportedly brutal nature of the attack and that the hospital doctors

apparently ordered some sort of follow-up care, Plaintiff has arguably presented enough facts to suggest that he had a serious medical need.

With regard to whether a defendant was deliberately indifferent to that need, Plaintiff alleges only that Dr. Cowens was aware of the follow-up orders and failed to provide Plaintiff any care. These allegations are quite minimal, and it remains to be seen whether Plaintiff will actually be able to demonstrate that Dr. Cowens was aware of, and deliberately indifferent to, any serious medical need. Nevertheless, at this stage of the proceeding, it appears possible that Plaintiff may have a claim against Cowens based on the alleged facts. Thus, Plaintiff will be permitted to proceed for further factual development on his deliberate indifference to a serious medical need claim against Dr. Cowens for failing to provide Plaintiff with any follow-up care after his attack.

### 3. Skin Issues

Plaintiff also asserts that he has certain skin conditions that have gotten worse because of his inability to shower while in segregation. In this regard, he contends that he has sores and hives on his skin. This could possibly amount to a serious medical need.

Plaintiff has not, however, asserted facts showing that any named defendant has been deliberately indifferent to this need. In particular, Plaintiff has alleged generally that he asked to be allowed to shower and that Tullis failed to give Plaintiff a medical request form, but Plaintiff has not alleged facts showing that any of the defendants was specifically aware of Plaintiff's skin issues that have the potential to cause Plaintiff serious harm and has ignored any such risk of harm. Therefore, Plaintiff has not asserted a claim on which relief may be granted, and it is **RECOMMENDED** that his deliberate indifference to a

serious medical need claim based on skin issues be **DISMISSED WITHOUT PREJUDICE**.

4. Contaminated Cell

Plaintiff also asserts that he was put into a contaminated cell following the exposure to a chemical agent, which has aggravated Plaintiff's bronchitis, made it difficult for him to eat or sleep, and caused him to have burning eyes and a continuous cough for days. In this regard, Plaintiff's allegations are minimal, but he has arguably alleged a serious medical need insofar as he says that being exposed to the chemical agent has caused him health issues.

Plaintiff does not, however, set forth any facts to show that a named defendant was deliberately indifferent to this need. In particular, Plaintiff asserts that, after the chemicals were sprayed, he and Daniel were both looked over by medical staff, and he does not assert that this evaluation revealed any problem. With regard to issues that Plaintiff says arose after he was returned to the contaminated cell, Plaintiff does not set forth any facts to show that any particular defendant was aware of these issues and was deliberately indifferent to them. On this point, Plaintiff's general allegations that he requested medical attention do not demonstrate that any particular defendant was deliberately indifferent to Plaintiff's needs. Accordingly, it is **RECOMMENDED** that any deliberate indifference to a serious medical need claim based on continued exposure to the chemical agent be **DISMISSED WITHOUT PREJUDICE** for failure to state a claim.

5. Smoke Inhalation

Plaintiff also asserts that he was denied medical attention following the fires in his dorm. In this regard, Plaintiff asserts that he continued to have a cough and choking symptoms after the fires. This arguably could show a serious medical need. Nevertheless, Plaintiff again has not demonstrated that any defendant was deliberately indifferent to that need. In particular, Plaintiff has not alleged any facts showing that any of the defendants actually knew that Plaintiff had a serious medical need relating to the smoke inhalation, either on that day or subsequently. Accordingly, it is **RECOMMENDED** that his deliberate indifference claim as to smoke inhalation be **DISMISSED WITHOUT PREJUDICE**.

D. Conditions of Confinement

Plaintiff contends that the conditions in segregation were unconstitutional. Particularly, Plaintiff points to his not being able to shower for an extended period of time and to unsafe conditions during Covid-19 including a lack of social distancing and cleaning supplies.

Conditions of confinement can constitute an Eighth Amendment violation when two elements are present. The first element is objective, requiring that the act or omission be “sufficiently serious” insofar as it subjects the prisoner to a “substantial risk of serious harm.” *Id.* at 834. The second element is subjective, requiring the defendant to have “acted with deliberate indifference to the inmates’ health or safety.” *Hope v. Pelzer*, 536 U.S. 730, 738 (2002) (internal quotation marks omitted). The required state of mind may be inferred where the risk of harm is obvious. *Id.* at 738.

1. Showers

Plaintiff asserts that he was prevented from showering for some period of time. In addition to the general lack of hygiene, Plaintiff alleges that he suffers from skin conditions that were exacerbated by the inability to shower. These allegations are sufficient to suggest the possibility of a serious deprivation with a potential risk of harm. Moreover, Plaintiff alleges that Smith, Knight, and Tullis were all responsible for the policy that prevented him from showering. Plaintiff will, therefore, be permitted to proceed for further factual development on his conditions of confinement claim against Smith, Knight, and Tullis relating to their policy preventing Plaintiff from taking a shower for an extended period of time.

## 2. Covid-19 Precautions

Plaintiff also alleges that the conditions were unsanitary insofar as he was denied cleaning supplies and was unable to practice social distancing. In this regard, Plaintiff provides no information regarding what the defendants knew about these conditions or the manner in which any particular defendant was allegedly deliberately indifferent to any risk of harm from the conditions. Accordingly, it is **RECOMMENDED** that Plaintiff's conditions of confinement claim relating to a failure to comply with Covid-19 safety protocols be **DISMISSED WITHOUT PREJUDICE** for failure to state a claim.

## E. First Amendment Claims

Plaintiff includes several allegations regarding his ability to file grievances and legal claims. In this regard, he alleges that Counselor Williams refused to take his grievance on one occasion. He also contends that Counselor Boyle refused to take his grievance based on a two-grievance limit imposed by Commissioner Ward, which Plaintiff also says is

unconstitutional. Additionally, Plaintiff asserts that Warden Smith refused to stock legal pads for a period of time and announced that no mail would go out in January 2020.

1. Grievances

Generally, there is no constitutional right to a grievance procedure, although it has been recognized that an inmate has a First Amendment right to file grievances, which may be violated if prison officials retaliate against the prisoner for doing so. *See Wildberger v. Bracknell*, 869 F.2d 1467, 1468 (11th Cir. 1989). On this point, Plaintiff appears to be asserting that Counselor Williams and Counselor Boyle prevented him from filing grievances, but Plaintiff goes on to acknowledge that other counselors accepted the grievances that these counselors refused, so he actually was able to file his grievances. Moreover, Plaintiff does not allege facts showing that he was retaliated against for filing these grievances or that he was otherwise harmed by the temporary inability to file them. Thus, it is **RECOMMENDED** that any claims against Counselor Williams and Counselor Boyle based on their refusal to accept his grievances on one occasion each be **DISMISSED WITHOUT PREJUDICE** for failure to state a claim.

2. Two-Grievance Limit

Plaintiff makes general allegations that the two-grievance limit is unconstitutional because it denies him the right to file grievances for multiple violations at once. In the context of exhaustion, the Eleventh Circuit has held that the two-grievance limit does not render the grievance process unavailable. *Pearson v. Taylor*, 665 F. App'x 858, 868 (11th Cir. 2016). Thus, it does not appear that this limitation would be considered to unconstitutionally prevent Plaintiff from filing grievances.

Moreover, Plaintiff does not present any argument to show that the limitation has actually violated his constitutional rights in any particular way, such as by showing that the limitation has violated his right of access to the courts. Indeed, to do so, Plaintiff would have to allege facts showing that he was denied access to the courts and that the denial of access resulted in an actual injury. *See Lewis v. Casey*, 518 U.S. 343, 349 (1996). Plaintiff does not set forth any facts showing that the two-grievance limit has actually hindered his ability to present any claims to the courts.

Additionally, although Plaintiff mentions his right to equal protection, a plaintiff bringing an equal protection claim must prove either that he “has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment,” *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000), or that he “was treated differently than similarly situated person [and] the defendant unequally applied [a] facially neutral statute for the purpose of discriminating against [him].” *Strickland v. Alderman*, 74 F.3d 260, 264 (11th Cir. 1996). Plaintiff presents no allegations suggesting that he has been treated differently than any similarly situated person. Accordingly, it is also **RECOMMENDED** that his claim against Commissioner Ward based on the two-grievance limit be **DISMISSED WITHOUT PREJUDICE** for failure to state a claim.

### 3. Legal Pads and Mail

Plaintiff also points to the failure to stock legal pads in the commissary and the lack of mail in January 2022 as impositions on his First Amendment rights. These allegations could arguably implicate a potential claim for denial of his right of access to the courts. As

noted above, however, such a claim requires a plaintiff to allege that he was denied access to the courts and that the denial of access resulted in an actual injury. *See Lewis*, 518 U.S. at 349. Moreover, the injury must relate to prospective or existing litigation, such as “being prevented from presenting claims” while “in the pursuit of specific types of nonfrivolous cases: direct or collateral attacks on sentences and challenges to conditions of confinement.” *Wilson v. Blankenship*, 162 F.3d 1284, 1290 & n.10 (11th Cir. 1998).

Here, Plaintiff has not alleged any facts showing that he suffered any actual injury as a result of the lack of legal pads or the lack of mail. Moreover, Plaintiff has not alleged any facts to show how these two occurrences violated his constitutional rights in any other way. Plaintiff does assert that Smith took these actions in retaliation for an investigation by the Department of Justice, but Plaintiff provides no factual support, other than his own conclusory allegation, that this is the case. And even if it was true, this would not constitute an act of retaliation against Plaintiff, but against the Department of Justice.

Therefore, it is also **RECOMMENDED** that Plaintiff’s claims against Warden Smith based on the failure to stock legal pads for a time and the announcement that there would be no mail in January 2022 be **DISMISSED WITHOUT PREJUDICE** for failure to state a claim.

#### F. Diet Related Claims

Plaintiff also asserts claims relating to the lack of a healthy diet available at the prison. In this regard, Plaintiff names two or more John and Jane Doe defendants, as well as Commissioner Ward. Plaintiff also contends that Smith, Sales, and Eady provide only unhealthy options that are high in sodium and sugar in the commissary.

As discussed above, fictitious party pleading, *i.e.*, bringing claims against John Doe defendants, is generally only permitted in federal court when the plaintiff's description of the defendant is so specific that the party may be identified for service even though his or her actual name is unknown. *See Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010). Here, Plaintiff provides no information regarding the John and Jane Doe defendants to identify them for the purposes of this case. Thus, it does not appear that claims against these John and Jane Doe defendants would be proper.

Regardless, Plaintiff has not stated a claim against these defendants or against Commissioner Ward. On this point, the Eighth Amendment prohibits the infliction of cruel and unusual punishment by the government. To successfully plead an Eighth Amendment claim against a government actor, a prisoner must allege facts that meet both an objective and a subjective standard. *See Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004) (addressing the standard for proving an Eighth Amendment claim on the merits). In an imprisonment context, when the "punishment" at issue is alleged to be abusive conditions of confinement, the objective standard looks to whether those conditions were severe enough to rise to the level of cruel and unusual punishment.

The Supreme Court has recognized that prisons must provide basic life necessities, such as "adequate food, clothing, shelter, and medical care," *Farmer v. Brennan*, 511 U.S. 825, 832, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994), as well as "reasonable safety," *Helling v. McKinney*, 509 U.S. 25, 33, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993). But only "extreme" deprivations of those basic life necessities constitute Eighth Amendment violations. *Hudson v. McMillian*, 503 U.S. 1, 8–9, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992). Thus, a

prisoner must plead facts showing that the condition in question was objectively “extreme,” meaning that it “poses an unreasonable risk of serious damage to his future health or safety” that “society considers . . . to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk.” *Chandler*, 379 F.3d at 1289 (alteration accepted) (emphasis in original) (quotation marks omitted).

Here, Plaintiff makes only general allegations that the food provided is unhealthy because it contains processed meats, canned fruits and vegetables, and heavy starches. Plaintiff provides no specific information to show that the food provided to him is objectively extreme to the point that it poses an unreasonable risk of harm to Plaintiff’s health or safety. Moreover, even if he had made such a showing, Plaintiff does not allege facts demonstrating that Ward or the Doe defendants was subjectively aware of a risk of harm to Plaintiff and was deliberately indifferent to that risk of harm.

With regard to the commissary items, Plaintiff does not allege that he is forced to eat any of the unhealthy options provided by the commissary, nor does it appear that he is constitutionally entitled to be able to purchase healthy items at the commissary. *See Tokar v. Armontrout*, 97 F.3d 1078, 1083 (8th Cir. 1996) (stating that “we know of no constitutional right of access to a prison gift or snack shop”). Therefore, Plaintiff has not stated a claim for relief, and it is **RECOMMENDED** that Plaintiff’s diet related claims be **DISMISSED WITHOUT PREJUDICE**.

#### G. Officer Cross

Plaintiff asserts claims against Officer Cross, but other than a general allegation that Cross was deliberately indifferent to Plaintiff’s safety in connection with the fires discussed

above, Plaintiff's only allegations against this defendant are that Cross conspired with other officers and worked daily to violate Plaintiff's constitutional rights. These broad and generic allegations are not supported by any specific facts connecting Cross to Plaintiff's particular claims and do not show that Cross acted in any way that violated Plaintiff's constitutional rights. Thus, they do not state a claim upon which relief may be granted, and it is **RECOMMENDED** that Plaintiff's claims as to Officer Cross be **DISMISSED WITHOUT PREJUDICE**.

#### H. Former Warden Clinton Perry

Plaintiff also includes former Macon State Prison Warden Clinton Perry in his list of defendants, but he does not include allegations against Perry in his statement of facts. “[S]ection 1983 requires proof of an affirmative causal connection between the actions taken by a particular person under color of state law and the constitutional deprivation.” *LaMarca v. Turner*, 995 F.2d 1526, 1538 (11th Cir. 1993) (internal quotation marks and citations omitted). A district court properly dismisses a defendant where a prisoner, other than naming the defendant in the caption of the complaint, fails to state any allegations that connect the defendant with the alleged constitutional violation. *Douglas v. Yates*, 535 F.3d 1316, 1322 (11th Cir. 2008) (citing *Pamel Corp. v. P.R. Highway Auth.*, 621 F.2d 33, 36 (1st Cir. 1980)). Thus, it is **RECOMMENDED** that Plaintiff's claims against Clinton Perry be **DISMISSED WITHOUT PREJUDICE** for failure to state a claim.

#### IV. Conclusion

Thus, for the reasons set forth above, Plaintiff will be permitted to proceed for further factual development on the following claims: (1) a deliberate indifference to safety

claim against Warden Tamaji Smith and Deputy Wardens of Security Sales and Peter Eady based on the physical attacks on Plaintiff by gang members; (2) a deliberate indifference to safety claim against Lieutenant Whitehead based on Plaintiff's exposure to the two fires and against Lieutenant Soldana based on his exposure to the second fire; (3) an excessive force claim against Unit Manager Knight, Sergeant Tullis, and Sergeant Brown for spraying Plaintiff with a chemical agent without justification; (4) a deliberate indifference to a serious medical need claim against Whitehead, Eady, and Doe for failing to get Plaintiff medical attention following the November 26, 2021, attack; (5) a deliberate indifference to a serious medical need claim against Dr. Cowens for failure to provide follow-up care after the November 26, 2021, attack; and (6) a conditions of confinement claim against Unit Manager Knight, Warden Smith, and Sergeant Tullis based on Plaintiff being prevented from showering for a period of time. It is **RECOMMENDED** that all of Plaintiff's other claims be **DISMISSED WITHOUT PREJUDICE**.

### **MOTIONS FOR INJUNCTIVE RELIEF**

Plaintiff has filed four motions seeking injunctive relief. In the first such motion, Plaintiff asserts that he suffered "serious head trauma and internal soft tissue damage" in the November 26, 2021 attack. Mot. to Be Administered Medical Care, ECF No. 4. Plaintiff was taken to the hospital and released back to Macon State Prison with instructions for follow-up care. *Id.* Plaintiff has subsequently requested such care, but it has not been provided to him. *Id.* at 2. Plaintiff seeks an order requiring that he be provided follow-up treatment for his injuries. *Id.* at 3.

Plaintiff recently filed a second motion seeking medical care. Mot. for Medical Care, ECF No. 10. In this motion, Plaintiff reiterates that he has suffered from severe head pain following the attack. *Id.* at 1. Plaintiff notes that he was taken to Augusta State Medical Prison for an MRI on February 2, 2022, which showed no head fractures, but also showed severe degenerative disc disease in Plaintiff's lower back, which he says was aggravated by the November 26, 2021 attack. *Id.* Plaintiff also asserts that prison officials have retaliated against him because of his court filings and have planted marijuana on him. *Id.* at 1-2. Plaintiff asks for an emergency order requiring treatment for his head injuries, as well as a second opinion regarding his condition. *Id.* at 2. Plaintiff also wants to be taken to an outside hospital for treatment. *Id.*

Additionally, Plaintiff has filed a motion for injunctive relief requiring defendants to designate the Good Fellas as an security threat group because its members are responsible for excessive violence in the prison. Mot. for Preliminary Inj., ECF No. 5. Plaintiff further asserts that Macon State Prison is severely understaffed and, as a result, the staff acts negligently. *Id.* at 3.

Plaintiff has also filed a second motion seeking the same relief. Emergency Mot. to Compel, ECF No. 9. In this motion, Plaintiff describes an incident in which a member of the Good Fellas had access to Plaintiff and attempted to assault him while he was using the telephone.<sup>7</sup> *Id.* at 1-3. Plaintiff also makes general allegations that prison officials

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<sup>7</sup>To the extent that this motion sets forth new facts, it is not clear whether Plaintiff is attempting to amend his complaint to state a new claim based on this incident. If he is, however, it is not possible that Plaintiff would have had time to exhaust his administrative remedies with regard to this new incident, as Plaintiff dated the motion the same day that

sometimes go through the motions of performing their duties for the prison surveillance cameras. *Id.* at 3. He notes that the inmates who have attacked him in the past have not been punished for their actions. *Id.*

A temporary restraining order (“TRO”) or preliminary injunction is a drastic remedy used primarily to preserve the status quo rather than to grant most or all of the substantive relief sought in the complaint. *See, e.g., Cate v. Oldham*, 707 F.2d 1176, 1185 (11th Cir. 1983); *Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982).<sup>8</sup> Factors a movant must show to be entitled to such relief include: “(1) a substantial likelihood of ultimate success on the merits; (2) the TRO is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the TRO would inflict on the non-movant; and (4) the TRO would serve the public interest.” *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995) (per curiam).

With regard to his request for medical care, Plaintiff at this point has not shown a substantial likelihood of success on the merits. In particular, Plaintiff is only at the most preliminary stage and has not produced any evidence to support the conclusion that he has serious medical needs for which he has not been receiving appropriate medical attention. Moreover, Plaintiff has not shown that injunctive relief is necessary to prevent irreparable

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the incident occurred. Thus, to the extent that Plaintiff may have intended this as a new claim, it is **RECOMMENDED** that such claim be **DISMISSED WITHOUT PREJUDICE** for failure to exhaust his administrative remedies.

<sup>8</sup>The standard for obtaining a TRO is the same as the standard for obtaining a preliminary injunction. *See Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001) (per curiam); *Windsor v. United States*, 379 F. App’x 912, 916-17 (11th Cir. 2010) (per curiam).

injury. Indeed, despite his claims that he has received no follow up medical care, Plaintiff acknowledges that, in early February, he was taken for an MRI. Thus, it appears that he has, at least, received some medical attention. Plaintiff also has not shown that the threatened injury outweighs the potential harm of injunctive relief. In this regard, Plaintiff is asking the Court to interfere with decisions of prison staff and order them to take certain actions without having a full picture of the situation. For the same reason, Plaintiff has not shown that injunctive relief would serve the public interest.

Likewise, Plaintiff's request that the Court order prison officials to designate the Good Fellas as an STG or take any other actions with regard to members of this gang does not meet the standards for injunctive relief. As with his medical claims, Plaintiff has not demonstrated a likelihood of success on the merits as it is not yet clear whether the Good Fellas gang members are responsible for uncontrolled violence in the prison as Plaintiff contends they are. For the same reason, Plaintiff also has not demonstrated that injunctive relief is necessary to prevent irreparable harm.

Moreover, prison administrators "should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). Ordering prison officials to classify certain prisoners in a particular way would interfere with their decision-making in these matters. In light of the deference owed to prison officials in this regard, Plaintiff has not shown that the benefit of injunctive relief would outweigh the potential harm, or that injunctive relief is in the public interest. Therefore, because Plaintiff's motions seeking injunctive relief (ECF Nos.

4, 5, 9, & 10) all fall short of the requirements for preliminary injunctive relief, it is **RECOMMENDED** that these motions be **DENIED**.

### **RIGHT TO FILE OBJECTIONS**

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to any recommendation with the United States District Judge to whom this case is assigned **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Order and Recommendation. The parties may seek an extension of time in which to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. Any objection is limited in length to **TWENTY (20) PAGES**. *See* M.D. Ga. L.R. 7.4. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal conclusions to which no objection was timely made. *See* 11th Cir. R. 3-1.

### **ORDER FOR SERVICE**

For those reasons discussed above, it is hereby **ORDERED** that service be made on **DEFENDANTS WARDEN TAMAJI SMITH, DEPUTY WARDEN PETER EADY, DEPUTY WARDEN SALES, LIEUTENANT WHITEHEAD, UNIT MANAGER KNIGHT, SERGEANT TULLIS, SERGEANT BROWN, DOCTOR KENNETH COWENS, and LIEUTENANT SOLDANA**, and that they file an Answer, or other response as appropriate under the Federal Rules, 28 U.S.C. § 1915, and the Prison Litigation Reform Act. Defendants are also reminded of the duty to avoid unnecessary service expenses, and the possible imposition of expenses for failure to waive service.

### **DUTY TO ADVISE OF ADDRESS CHANGE**

During this action, all parties shall at all times keep the Clerk of this Court and all opposing attorneys and/or parties advised of their current address. Failure to promptly advise the Clerk of any change of address may result in the dismissal of a party's pleadings.

### **DUTY TO PROSECUTE ACTION**

Plaintiff must diligently prosecute his Complaint or face the possibility that it will be dismissed under Rule 41(b) for failure to prosecute. Defendants are advised that they are expected to diligently defend all allegations made against them and to file timely dispositive motions as hereinafter directed. This matter will be set down for trial when the Court determines that discovery has been completed and that all motions have been disposed of or the time for filing dispositive motions has passed.

### **FILING AND SERVICE OF MOTIONS, PLEADINGS, AND CORRESPONDENCE**

It is the responsibility of each party to file original motions, pleadings, and correspondence with the Clerk of Court. A party need not serve the opposing party by mail if the opposing party is represented by counsel. In such cases, any motions, pleadings, or correspondence shall be served electronically at the time of filing with the Court. If any party is not represented by counsel, however, it is the responsibility of each opposing party to serve copies of all motions, pleadings, and correspondence upon the unrepresented party and to attach to said original motions, pleadings, and correspondence filed with the Clerk of Court a certificate of service indicating who has been served and where (i.e., at what

address), when service was made, and how service was accomplished (i.e., by U.S. Mail, by personal service, etc.).

### **DISCOVERY**

Plaintiff shall not commence discovery until an answer or dispositive motion has been filed on behalf of Defendants from whom discovery is sought by Plaintiff. Defendants shall not commence discovery until such time as an answer or dispositive motion has been filed. Once an answer or dispositive motion has been filed, the parties are authorized to seek discovery from one another as provided in the Federal Rules of Civil Procedure. Plaintiff's deposition may be taken at any time during the time period hereinafter set out, provided that prior arrangements are made with his custodian. Plaintiff is hereby advised that failure to submit to a deposition may result in the dismissal of his lawsuit under Fed. R. Civ. P. 37 of the Federal Rules of Civil Procedure.

**IT IS HEREBY ORDERED** that discovery (including depositions and the service of written discovery requests) shall be completed within 90 days of the date of filing of an answer or dispositive motion by Defendants (whichever comes first) unless an extension is otherwise granted by the Court upon a showing of good cause therefor or a protective order is sought by Defendants and granted by the Court. This 90-day period shall run separately as to each Defendant beginning on the date of filing of each Defendant's answer or dispositive motion (whichever comes first). The scheduling of a trial may be advanced upon notification from the parties that no further discovery is contemplated or that discovery has been completed prior to the deadline.

Discovery materials shall not be filed with the Clerk of Court. No party shall be required to respond to any discovery not directed to him or served upon him by the opposing counsel/party. The undersigned incorporates herein those parts of the Local Rules imposing the following limitations on discovery: except with written permission of the Court first obtained, INTERROGATORIES may not exceed TWENTY-FIVE (25) to each party, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS under Rule 34 of the Federal Rules of Civil Procedure may not exceed TEN (10) requests to each party, and REQUESTS FOR ADMISSIONS under Rule 36 of the Federal Rules of Civil Procedure may not exceed FIFTEEN (15) requests to each party. No party is required to respond to any request which exceed these limitations.

#### **REQUESTS FOR DISMISSAL AND/OR JUDGMENT**

Dismissal of this action or requests for judgment will not be considered by the Court in the absence of a separate motion accompanied by a brief/memorandum of law citing supporting authorities. Dispositive motions should be filed at the earliest time possible, but no later than one hundred-twenty (120) days from when the discovery period begins.

**SO ORDERED AND RECOMMENDED**, this 4th day of March, 2022.

*s/ Thomas Q. Langstaff*  
United States Magistrate Judge