UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

DERRICK DEAN COFFELT,

Plaintiff,

v.

SARAH LAPHAN, Manager Marion County Jail Health Services,

Defendant.

Case No. 6:20-cv-00849-AC

FINDINGS AND RECOMMENDATION

ACOSTA, Magistrate Judge:

Introduction

Plaintiff Derrick Dean Coffelt ("Coffelt"), an inmate in the custody of Marion County Jail ("MCJ") and appearing *pro se*,[1] filed this action under 42 U.S.C. § 1983 ("Section 1983") against

[1] Coffelt proceeds *pro se* in this action, thus the court "must consider as evidence in his opposition to summary judgment all of [Coffelt's] contentions offered in motions and pleadings, where such contentions are based on personal knowledge and set forth facts that would be admissible in evidence, and where [Coffelt] attested under penalty of perjury that the contents of the motions of pleadings are true and correct." *Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004) (citing

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Defendant Sarah Laphan ("Laphan"), the manager of Marion County Jail Health Services, alleging Laphan violated his constitutional right under the Eighth Amendment to be free from cruel and unusual punishment. Presently before the court is Laphan's motion for summary judgment. For the following reasons, the court recommends that Laphan's motion be granted.

I. Background

Coffelt was housed at MCJ from August 24, 2019, to November 22, 2019, and again beginning on December 4, 2019. (Decl. of Sergeant Matt Davis in Support of Def.'s Mot. Summ. J. ("Davis Decl."), at 2, 4, ECF No. 16.) Between August 24, 2019 and December 28, 2020, Coffelt submitted eleven grievances. (Davis Decl. ¶ 11.) At the time of the events alleged, Coffelt was in pre-trial custody for Marion County Circuit Court case number 19CR56101. While he was in pretrial custody, an information was filed against him on March 5, 2020, as part of case 20CR14436 in Marion County Circuit Court. Then, on June 30, 2020, Coffelt was sentenced in case 19CR56101.[2]

During September and October 2019, Coffelt filled out a medical request form[3] "stating [he] was having mental health problems." (*Id.*) In the request, Coffelt listed his diagnoses as

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McElyea v. Babbitt, 833 F.2d 196, 197 (9th Cir. 1987); *Johnson v. Meltzer*, 134 F.3d 1393, 1399–1400 (9th Cir. 1998) (stating verified motions are admissible to oppose summary judgment). Accordingly, the court relies, on Coffelt's verified pleadings and Laphan's verified pleadings to summarize the relevant facts.

[2] At time defendant's motion was fully briefed, case 20CR14436 had yet to go to trial. As of July 28, 2021, Coffelt's jury trial in Case 20CR14436 was set for August 18–20, 2021 before Judge J. Channing Bennett in Marion County Circuit Court. In an abundance of caution, the court applies the more generous pretrial detainee standard.

[3] It is unclear from the complaint how many medical request forms Coffelt filed during this timeframe.

Post-Traumatic Stress Disorder, depression, anxiety, borderline personality traits, and antisocial personality disorder. (*Id.*) In response, he was told, "You do not have a mental health problem, you have an alcohol problem." (*Id.*) Unsatisfied with this response, Coffelt completed a grievance form but did not receive a response. (*Id.;* Coffelt Decl. Supp. of Compl. ("Coffelt Resp."), at 1, ECF No.19.) Coffelt then filed a grievance about the lack of response and again did not receive a reply. (Compl., at 4.) Next, Coffelt filed a tort claim notice, after which he was permitted to see a medical provider. (*Id.*) Coffelt alleges the length of time that passed between his completion of the medical request form and his meeting with the health services staff member caused him "serious mental suffering and emotional distress." (*Id.*)

On February 20, 2020, Coffelt completed a medical request to be treated for an STD after his wife informed him that she had passed one on to him. (*Id.*) The following day, Coffelt felt sick and requested medical attention, but was denied treatment until he filed a grievance later that day. (*Id.*, at 4; Compl., Exs. A–B, at 6–7.) At that point, Health Services took Coffelt's temperature, which Coffelt recalls being over 101 degrees. (Compl., at 4*;* Compl., Ex. A,[4] at 6.) Health services offered him Tylenol or Ibuprofen "and told [him] to go about [his] day." (Compl., at 4.) Coffelt alleges that he was subsequently unable to get out of bed for almost one week, and that eventually, others in his cell block also fell ill. (*Id.*) Coffelt explains he "recently found out shortly after, my neighbor with the name Ketchum, was placed on quarantine for coronavirus." (*Id.*) Coffelt appears to believe his illness was COVID-19 and alleges, "if they had taken my medical issues seriously, this spreading wouldn't have happened." (*Id.*)

[4] Exhibit A shows a Grievance Form that is difficult to read, but when read together with the facts alleged by Coffelt in the complaint, the date on this form appears to be February 21, 2020.

On March 17, 2020, Coffelt requested a physical to investigate his worsening symptoms of depression, anxiety, and PTSD. (*Id.*, at 3.) He also requested vision care to replace the contacts he had been wearing since his admission to the jail eight months earlier. (*Id.*) Coffelt was denied a physical on April 1, 2020, and completed a grievance on April 3, 2020, and insists that he was never given a copy of the final grievance as necessary for an appeal. (*Id.*) A medical provider was sent to his cell "to question [him] for 1 minute," which Coffelt claims is inadequate. (*Id.*)

II. The Marion County Jail Administrative Remedy Program

OAR Chapter 291 provides the policies for the Oregon Department of Corrections, including Grievance System procedures for inmates. Inmates at MCJ receive adult-in-custody ("AIC") handbooks that outline the jail's five-step grievance procedure. (Mot. at 5; Davis Decl., Ex. B ("Handbook"), at 15, ECF No. 16.) Additional copies of the procedure are available upon request. (Davis Decl. 2.) Examples of grievable issues listed in the Handbook include broad aspects of confinement such as, "telephone, mail, and visiting procedures," "medical care," "food service," and "conditions of confinement." (Handbook 15.) First, inmates are to attempt to resolve the problem verbally with a deputy. (*Id.*) If discussion with the deputy does not resolve the problem, the inmate has thirty days from the date of the incident to move to the second step: request and submit a grievance form. (*Id.*) The form instructs inmates to follow the rules in the handbook. (Davis Decl., Ex. C ("Inmate Grievance Form May 14, 2020"), ECF. No. 16.) The handbook instructs inmates to include in the grievance "details of the location, involved staff and witnesses, the approximate date and time of the event being grieved and an explanation of what relief or remedy they are seeking." (Handbook 15.) The form also instructs inmates to complete

the blanks in the "Reason for Grievance" section and the space provided for explaining the grievance along with identifying information. (Inmate Grievance Form May 14, 2020.) The form contains spaces for the deputy, supervisor, and administrator to respond if the inmate seeks further review of the grievance and responses. (Handbook 15; *see* Inmate Grievance Form May 14, 2020.)

The Oregon Administrative Rules ("OAR") and the Handbook specify a timeline for the grievance process with set deadlines for both the inmates and the jail staff. The OAR requires inmates to submit grievances and appeals within fourteen calendar days from the date of the incident or response. OR. ADMIN. R. 291–109–0205 (2021). Responses are to be sent to inmates within thirty-five "calendar days from the date the grievance was accepted by the institution coordinator," except when further review is required, in which case inmates "will be notified that the department will respond within an additional [fourteen] calendar days." OR. ADMIN. R. 291–109–0205 (2021). Throughout the process, the grievance coordinator is required to log the grievances and responses, and to keep copies of both on file. OR. ADMIN. R. 291-171-0030 (2021).

The Handbook provides a more specific and truncated timeline for the grievance process. In Marion County Jail, once the involved employee receives the grievance, they are allotted seven days to respond to and return the grievance to the inmate. (*Id.*) If the inmate is not satisfied with the employee's response, the inmate may move to the third step: submit a written appeal to the employee's supervisor within seven days. (*Id.*) The supervisor is then required to respond to and return the grievance within seven days of the receipt of the inmate's appeal. (*Id.*) If the inmate is unsatisfied with the supervisor's response, the inmate may move to the fourth step:

submit a written appeal to the lieutenant. (*Id.*) The lieutenant then has seven days to respond to and return the grievance. (*Id.*) Finally, if the inmate is unsatisfied with the lieutenant's response, the inmate may, within seven days, "submit a written request for review to the Jail Commander or their designee." (*Id.*) That request "must be in writing,[] on a separate document from the original grievance," and must include a copy of the grievance the inmate is requesting the Jail Commander review. (*Id.*) The Jail Commander then has fourteen days to respond and return the response to the inmate. (*Id.*)

Legal Standard

I. Summary Judgment Standard

Summary judgment is appropriate where the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a) (2019). The moving party must establish the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party establishes the absence of a genuine issue of material fact, the non-moving party can only defeat summary judgment by going beyond the allegations in the complaint to demonstrate a genuine issue for trial. *Id.* at 324. A party cannot defeat a summary judgment motion by relying on the allegations set forth in the complaint, unsupported conjecture, or conclusory statements. *Hernandez v. Spacelabs Medical, Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003). Summary judgment thus should be entered against "a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

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To determine whether summary judgment is proper, the court must view the evidence in the light most favorable to the nonmoving party. *Bell v. Cameron Meadows Land Co.*, 669 F.2d 1278, 1284 (9th Cir. 1982). All reasonable doubt as to the existence of a genuine issue of fact should be resolved against the moving party. *Hector v. Wiens*, 533 F.2d 429,432 (9th Cir. 1976). However, deference to the nonmoving party has limits. The nonmoving party cannot defeat a motion for summary judgment with unsupported conjecture or conclusory statements, or by relying on allegations in the complaint. *Hernandez*, 343 F.3d at 1112. "Mere allegations or denials" are insufficient to meet the nonmoving party's burden to show a genuine issue of material fact to defeat a motion for summary judgment. *Gasaway v. Northwestern Mut. Life Ins. Co.*, 26 F.3d 957, 960 (9th Cir. 1994). Therefore, where "the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574,587 (1986) (internal quotation marks omitted).

II. *Pro Se* Litigants

The court construes a *pro se* litigant's filings liberally. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A *pro se* party involved in civil litigation, however, is held to the same standards in responding to a motion for summary judgment and "should not be treated more favorably than parties with attorneys of record." *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986); *see also Warden v. Robinson*, 2014 WL 252308, at *5 (D. Ariz. Jan. 23, 2014) ("A *pro se* litigant is held to the same standard in responding to a motion for summary judgment as a represented party."). Additionally, "[i]t is not the district court's job to sift through the record to find admissible evidence in support of a non-moving party's case." *Claar v. Burlington N.R.R.*, 29 F.3d 499, 504 (9th Cir. 1994) (quoting *Celotex*, 477 U.S. at 324). Therefore, when a plaintiff

makes assertions but does not identify specific evidence in the record to support those assertions, the court is not required to search for it. *See F.T.C. v. Stefanchik*, 559 F.3d 924, 929 (9th Cir. 2009) (citation omitted) ("A non-movant's bald assertions or a mere scintilla of evidence in his favor are both insufficient to withstand summary judgment.").

Discussion

Coffelt asserts three Eighth Amendment claims under Section 1983 against Laphan based on an alleged denial and delay of medical care. (Compl., at 1–4.) In Claim One, Coffelt alleges he was denied a physical and vision services, which led to "mental suffering, emotional distress, possible vision damage, possible physical health damage in general." (Compl. at 3.) In Claim Two, Coffelt alleges he was denied medical services after submitting medical requests completed on February 20, 2020 and February 21, 2020. (Compl. at 4.) He contends, "if they had taken my medical issues seriously, this spreading [of COVID-19 in E block] wouldn't have happened." (*Id.*) In Claim Three, he alleges the length of time that passed before he met with a health services provider caused him "serious mental suffering and emotional distress." (*Id.*) Laphan moves for summary judgment, arguing that Coffelt failed to exhaust his available administrative remedies and failed to show that any policy, custom, or practice of Laphan's caused Coffelt's injuries, and asserting Laphan's qualified immunity.

I. Failure to Exhaust Administrative Remedies

Before filing a suit under Section 1983, the Prison Litigation Reform Act of 1995 ("PLRA") requires inmates to exhaust all available administrative remedies. *Woodford v. Ngo*, 548 U.S. 81, 85 (2006). Exhaustion must be proper, meaning the "grievant must use all steps the prison holds out, enabling the prison to reach the merits of the issue." *Griffin v. Arpaio*, 557 F.3d

1117, 1119 (9th Cir. 2009) (citing 42 U.S.C. § 1997(e)(a)). To properly exhaust administrative remedies, inmates must proceed through the highest levels with the Grievance System prior to filing an action in court. *Woodford*, 548 U.S. at 95.

Procedural rules are not defined by the PLRA, but rather by a prison's specific grievance requirements. *Jones v. Bock*, 549 U.S. 199, 218 (2007). Mandating exhaustion allows "prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being hailed into court. *Id.* at 204.

If an inmate files suit without first exhausting their administrative remedies, defendants may move for summary judgment under a failure to exhaust defense. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014). "Failure to exhaust under the PLRA is 'an affirmative defense that the defendant must plead and prove.'" *Id.* (quoting *Jones*, 549 U.S. at 204). Defendants have the burden of producing evidence to prove administrative remedies are available and the inmate failed to exhaust those remedies. *Id.* Once the defendant carries this burden, the inmate must provide evidence showing existing and generally available administrative remedies are effectively unavailable to him. *Albino*, 747 F.3d at 1172; *see, e.g.*, *Andres v. Marshall*, 867 F.3d 1076 (9th Cir. 2017) (when prison officials improperly failed to process prisoner's timely-filed grievance, prisoner was deemed to have exhausted administrative remedies; exhaustion is measured at the time the action is filed); *Nunez*, 591 F.3d at 1224–26 (where warden mistakenly cited to wrong Bureau of Prisons program statement in response to grievance and misled inmate into pursuing erroneous course of action for exhaustion). If, when viewed in the light most favorable to the inmate, the evidence shows an excused failure to exhaust, the defendant is not entitled to summary judgment under Rule 56. *Id.* at 1171–72.

In his first claim, Coffelt alleges he filed a grievance after being denied a physical, but that he was never given a copy of the grievance with the response so he could move to subsequent steps of the appeal process. (Compl. 3.) He also alleges the medical supervisor denied him further care. (*Id.*) As evidence, Coffelt includes a grievance form presumably connected with the claim, though due to the quality of the copy the words on the grievance are difficult to make out. (Claim, Ex. D.)

Though Coffelt did not appeal the April 3, 2020 grievance associated with Claim One, he conveyed his frustration with the lack of response to this grievance in a May 29, 2020 letter to Commander Larson in which he appealed his May 14, 2020 grievance. (Davis Decl., Ex. C, ECF No. 16, at 3.) The Commander did not address the April 3, 2020 grievance or the lack of response in his reply. (Davis Decl., Ex. C, ECF No. 16, at 1.) Coffelt's letter did not constitute a procedurally proper appeal of that particular grievance and it was untimely, but, the court notes, Coffelt alleges the proper process was unavailable to him at the time because necessary responses were withheld.

In his second claim, Coffelt alleges he requested medical care on February 20, 2020, and February 21, 2020, but was denied care until he filed a grievance. (Compl. 4.) As support, Coffelt includes the grievance form he filed prior to receiving medical attention. (Claim, Ex. B.) There is no indication Coffelt received a response. (*Id.*) If Coffelt did not receive a response, he could not have proceeded to the second step of the grievance process, much less exhaust the administrative process.

As for his third claim, Coffelt alleges he filed a medical request for mental health care but was given an inadequate response. (Compl. 4; Coffelt Resp., ¶ 3.) He filed a grievance about

the lack of response but received no response to that grievance. (Compl. 4; Coffelt ., ¶ 3.) Coffelt contends he then filed a notice of tort claim and afterwards was given the medical care he sought. (Compl. 4.) The claim alleges the delay caused him harm. (Compl. 4.)

In response to Coffelt's allegations that he was not given copies of his grievances, Laphan counters "[i]f that were true, he could have requested an additional copy or submitted a grievance regarding the issue." (Mot. 6; *see also* Davis Decl. 3, ¶ 14–15). Coffelt responds his mother did attempt to obtain copies of the grievances on his behalf, both from DPSST and Marion County, though she has yet to hear from the latter. (Coffelt Resp., at 2.) Laphan replies that Coffelt failed to produce evidence supporting his allegations and points to Coffelt's failure to show he submitted a request for a copy of his grievance and to include in his declaration attempts to get copies of his grievances by asking a deputy or otherwise. (Reply in Support of Def.'s Mot. for Summ. J. ("Reply"), at 4, ECF No. 21.) Laphan points to the Davis Declaration (ECF No. 16) and the attached response from the Jail Commander (*id.*, Exh. C) as evidence Coffelt "knows how to exhaust the grievance process, but simply chose not to do so." (Reply at 4.) Coffelt's own declaration explains "[t]he proper" way to appeal grievances to the commander, including details not offered in the Manual. (Coffelt Decl. ¶¶ 2, 3, 4, 5, 6, 10, 11.)

As the moving party, Laphan has the burden of producing evidence to prove administrative remedies were available to Coffelt and that he failed to exhaust those remedies. Laphan produced the Handbook and declarations, but neither address Coffelt's allegation that he did not receive responses. Laphan also does not address Coffelt's assertion that his mother attempted to obtain copies of the grievances on his behalf, and also fails to address Coffelt's repeated assertion that he did not receive the responses required as part of the administrative process for review of

grievances. Before Coffelt could appeal to the Jail Commander, as he did on May 29, 2020, the process outlined in the handbook requires he receive and include responses from the involved employee, the employee's supervisor, and the lieutenant, each in turn, as part of the appeal process. (Handbook, at 15; *see also* Davis Decl., Ex. C, at 1–2.) Further, the Handbook does not specify detainees must take additional steps to retrieve the responses to submitted grievances.

Thus, although Laphan produced a declaration from Sergeant Matt Davis to show Coffelt did not carry any grievance associated with these claims through the entire administrative process (Davis Decl. ¶¶ 14–15), Laphan did not show that the deputy provided responses to Coffelt's grievances as required by the administrative process outlined in the Handbook. OAR Rule 291-109-0250 requires the institution's grievance coordinator to "retain a file copy of grievances with pertinent document," yet Laphan did not produce the copies of Coffelt's grievances, despite their being eleven on file. (*See* Davis Decl. ¶ 11.) Laphan also failed to provide copies of the record showing the grievances and responses, or copies of receipts confirming the responses were given to Coffelt. *See* OR. ADMIN. R. 291-171-0030(1)(c), (2) (2021) (requiring the grievance coordinator to record receipt of responses to grievances and retain copies of responses to grievances for the file). Coffelt produced evidence that showed a lack of response, which rendered the administrative process unavailable to him. (Compl., Ex. B; Compl., Ex. D.)

When viewed in the light most favorable to Coffelt, the evidence shows an excused failure to exhaust, and Laphan is not entitled to summary judgment based on Coffelt's asserted failure to exhaust the administrative process. Because Laphan failed to provide evidence showing Coffelt failed to exhaust the administrative process for his claims, a genuine issue of material fact exists

and summary judgment cannot be granted based on failure to exhaust the administrative process. Accordingly, the court should not grant summary judgment on these grounds.

II. Eighth and Fourteenth[5] Amendment Claims

"Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions," such as the constitutional guarantee to procedural and substantive due process under the Fourteenth Amendment. *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977). Therefore, when a person has been charged and taken into custody, but not yet taken to trial, protection from punishment derives from the Fourteenth Amendment. U.S. Const. amend. XIV, § 1; *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) ("[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law."). These due process rights "are at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983). "[D]eliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, (1976) (citing *Gregg v. Georgia*, 428 U.S. 153, 173(1976) (joint opinion of Stewart, Powell, and Stevens, J.J.)

Absent a showing of an expressed intent to punish by prison officials, "if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Bell*, 441 U.S. at 539.

[5] Though Coffelt's Complaint does not state the Claims are alleged under the Fourteenth Amendment, Coffelt's Reply (ECF No. 19) points to the supporting caselaw in Exhibit C of the Davis Decl. (ECF No. 16) which contains various assertions about the Fourteenth Amendment rights of pretrial detainees.

A pretrial detainee's conditions-of-confinement claim is governed by a purely objective standard. *See Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018).[6] A pretrial detainee must therefore show that: (1) a particular defendant made an intentional decision with respect to the conditions under which the pretrial detainee was confined; (2) those conditions put him at substantial risk of suffering serious harm; (3) the defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in similar circumstances would have appreciated the high degree of risk—making the consequences of the defendant's conduct obvious; and (4) by not taking such measures, the defendant caused the detainee's injuries. *Id*. at 1125. With respect to the third element, the defendant's conduct must be objectively unreasonable, a test that "turns on the facts and circumstances of each particular case." *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015) (internal quotation marks omitted); *see also Castro v. Cnty. of L.A.*, 833 F.3d 1060, 1071 (9th Cir. 2016), cert. denied sub nom., *L.A. Cnty., Cal. v. Castro*, 137 S. Ct. 831 (2017) (mem.) (requiring the plaintiff "prove more than negligence but less than subjective intent—something akin to reckless disregard"). "A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." *Id*.

[6]The Ninth Circuit has not expressly extended the objective deliberate indifference standard to all claims by pretrial detainees of unconstitutional conditions of confinement, beyond denial of medical care, failure to protect, and excessive force claims, although *Gordon* suggests that it will. *See Gordon*, 888 F.3d at 1120, 1124 & n.2 (citing *Darnell v. Pineiro*, 849 F.3d 17, 36 (2d Cir. 2017) (extending objective deliberate indifference standard to all pretrial detainee conditions of confinement claims)); *see also Pitts v. Ige*, Case No. 18-00470 LEK-RT, 2019 WL 3294799, at *10 (D. Haw. July 22, 2019) (stating that deliberate indifference claims arising under the Fourteenth Amendment "are governed by a wholly objective standard").

Each of Coffelt's claims fail with respect to the first element. With respect to the first claim, Coffelt does not show any specific defendant made an intentional decision with respect to his physical or vision services. (*Id.*) With respect to the second claim, though Sarah Laphan was named in the complaint, Coffelt does not allege or establish she made an intentional decision with respect to the denial of medical services on these two occasions. Finally, with respect to the third claim, Coffelt does not allege a particular defendant made an intentional decision with respect to these conditions of confinement, though he does allege the "long struggle" "caused serious mental suffering and emotional distress." (Compl., at 4.) Nor does Coffelt establish Laphan failed to take reasonable available measure to abate the risk of serious mental suffering and emotional distress from the delay, nor does Coffelt establish the delay caused the detainees injuries by failing to take those reasonable measures.

Because Coffelt does not allege a particular defendant made an intentional decision with respect to the conditions under which he, as a pretrial detainee, was confined, this court considers his claims in light of *Monell v. N.Y. City Dep't of Soc. Servs*., 436 U.S. 658 (1978).

III. § 1983 Municipal Liability

A local government entity "may not be sued under [Section] 1983 for an injury inflicted solely by its employees or agents." *Monell*, 436 U.S. at 694. Rather, a government entity may be liable under section 1983 "only when the entity itself is a moving force behind the deprivation[.]" *Kentucky v. Graham*, 473 U.S. 159, 169 (1985) (citing *Polk Cnty. v. Dodson*, 454 U.S. 312, 326 (1981)) (internal quotation marks omitted). Put simply, "the entity's 'policy or custom' must have played a part in the violation of federal law." *Graham*, 473 U.S. at 169; *accord Monell*, 436 U.S. at 690–91 (holding a government entity may only be held liable for the actions

of individual officials when "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers," or the alleged deprivation was "visited pursuant to a governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels"). To state a claim, "[i]t is not sufficient for a plaintiff to identify a custom or policy, attributable to the municipality, that caused his injury. A plaintiff must also demonstrate that the custom or policy was adhered to with 'deliberate indifference'" to his constitutional rights. *Castro*, 833 F.3d at 1076. This standard is satisfied if a plaintiff pleads specific facts available to the municipal policymakers that "put them on actual or constructive notice that the particular omission is substantially certain to result in the violation of the constitutional rights of their citizens." *Id.*

Here, Coffelt names only Sarah Laphan, the manager of Marion County Jail Health Services, as an individual defendant acting under the color of state law, but he identifies no regulations, policy statements, or other officially or impliedly adopted decisions that may have given rise to the constitutional violations alleged. Coffelt's claims are not tied to specific instances of conduct and are unsupported by evidence sufficient to create a question of fact about whether the conduct in those instances was normative. *See, e.g.*, *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) (noting liability from an improper custom "may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy"). Coffelt also fails to identify any facts or evidence that establish Laphan or other unnamed actors adhered

to a custom or policy with "deliberate indifference." Accordingly, Coffelt fails to create a genuine issue of material fact regarding § 1983 municipal liability and Laphan's Motion should be granted.

IV. Qualified Immunity

Because Coffelt has failed to establish a genuine issue of material fact that a constitutional violation occurred, the court declines to address qualified immunity.

Conclusion

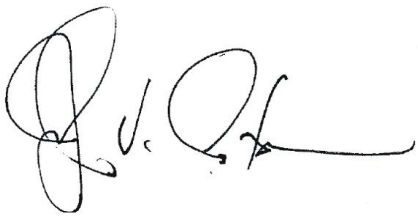
For the reasons stated, Defendant's Motion for Summary Judgment should be GRANTED.

Scheduling Order

Findings and Recommendation will be referred to a district judge. Objections, if any, are due fourteen (14) days from service of the Findings and Recommendation. If no objections are filed, the Findings and Recommendation will go under advisement on that date. If objections are filed, a response is due fourteen (14) days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

IT IS SO ORDERED.

DATED this 26th day of August, 2021.



JOHN V. ACOSTA
United States Magistrate Judge