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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

TERRI CARLISLE, Plaintiff, v. DOUGLAS COUNTY, Oregon; CORRECT CARE SOLUTIONS, LLC; JOHN HANLIN; MIKE ROOT; STEVEN BLUM, M.D.; NURSE DOE; MEDICAL ASSISTANT DOE; CORRECTIONAL OFFICER DOE(S), Defendants.	Case No.: 6:17-cv-00837-AA PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ORAL ARGUMENT REQUESTED

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LR 7-1(a) CERTIFICATION

Counsel for Plaintiff, Terri L. Carlisle, certifies that, in compliance with LR 7-1, the parties have made a good-faith effort through telephone conference to resolve this motion and have been unable to do so.

MOTIONS

Pursuant to Federal Rules of Civil Procedure 56, Plaintiff makes the following motions:

1. Plaintiff moves this court for an order granting summary judgment or partial summary judgment against Defendant Steven Blum, M.D., on her First Claim for Relief for violating 42 U.S.C. § 1983 and her Eighth Amendment rights.

2. Plaintiff moves this court for an order granting summary judgment or partial summary judgment against Defendant Correct Care Solutions, LLC, on her Third Claim for Relief for violating 42 U.S.C. § 1983 and her Eighth Amendment rights.

INTRODUCTION

Due to Defendant Correct Care Solutions and Dr. Steven Blum's medical care decisions, Plaintiff, Terri Carlisle, was forced to endure excruciating pain for over two months without any medical attention despite repeated requests for help. Plaintiff brings these motions for summary judgment because undisputed facts in the record make clear that Defendants' decision to take away Ms. Carlisle's pain medication; failure to provide the subsequent treatment for Ms. Carlisle's chronic and severe pain; and, Defendants' repeated refusals to alleviate her pain despite repeated requests were made with deliberate indifference to her serious medical needs and in violation of her Eighth Amendment right to medical care.

STATEMENT OF FACTS

Summary of Facts

Terri Lynn Carlisle, a 57-year-old woman, began a 6-month sentence at the Douglas County Jail ("the Jail") on February 9, 2015, for multiple DUII charges. She arrived with a prescription for gabapentin to treat chronic nerve pain[1]. Her primary care physician, Dr. Layne Jorgenson, first prescribed gabapentin to Ms. Carlisle approximately 10 years prior to her incarceration to treat severe nerve pain associated with her peripheral neuropathy diagnosis.

In 2015, Defendant Correct Care Solutions, LLC, ("Correct Care") contracted with Defendant Douglas County to provide medical services to the Jail. Defendant Dr. Steven Blum was the Jail's medical director for Correct Care at that time. Dr. Blum approved the continuation of Ms. Carlisle's gabapentin on February 12, 2015, only to abruptly discontinue the medication approximately three and half months later without any alternative pain treatment. Dr. Blum simultaneously discontinued Ms. Carlisle's access to over-the-counter pain medication, Motrin,[2] leaving Ms. Carlisle with no treatment for her severe, chronic pain.

Acting pursuant to Correct Care's policy—to automatically terminate medications upon an accusation of hoarding—Dr. Blum discontinued and refused to re-prescribe Ms. Carlisle's prescription pain medication and over-the-counter Motrin access. Dr. Blum did not offer Ms. Carlisle alternative medication or any other treatment for her chronic, severe nerve pain at any time during the approximately two months of Ms. Carlisle's remaining sentence. Dr. Blum

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[1] Gabapentin is a nerve pain and anticonvulsant medication. https://labeling.pfizer.com/ShowLabeling.aspx?id=630. The brand name of the drug is Neurontin. Both names are used interchangeably in the record to refer to the same medication. (Simon Decl. Ex. A p. 4 (*Carlisle Dep*. 44:3-9).); (Simon Decl. Ex. B p. 2 (*Dicke Dep*. 40:5-13).); (Simon Decl. Ex. C p. 11 (*Blum Dep*. 59:12-19).)

[2] Motrin is the brand name for the drug ibuprofen, a nonsteroidal anti-inflammatory drug that is used for treating pain and is available without a prescription.

failed to provide any treatment to Ms. Carlisle despite: (1) her complaints of severe pain to staff; (2) a communication from her outside prescribing physician asking that she be put back on her gabapentin; or (3) his knowledge of her nerve pain diagnosis and the pain commonly associated with it. Dr. Blum's acts and failures to act were done with knowledge of and complete disregard for Ms. Carlisle's suffering.

Ms. Carlisle's severe pain was left completely untreated from June 1, 2015 until her release on August 4, 2015.

Ms. Carlisle's Personal and Medical Background

On February 5, 2015, Terri Carlisle was sentenced to 6 months in jail for three DUII convictions.[3] At the time of her DUII arrests, Ms. Carlisle was suffering from extraordinary personal pain and struggling with alcoholism. Ms. Carlisle, a recovering alcoholic with extended lengths of sobriety, relapsed after finding her dead brother, who had just committed suicide.[4] As Ms. Carlisle testified, part of what pushed her to drink around the time of her arrests was "finding [her] brother with a bullet hole in his forehead and an open bottle of tequila on the counter."[5]

Ms. Carlisle entered the custody of the Jail on February 9, 2015, when she was 57 years old.[6] She arrived with a prescription medication for nerve pain associated with peripheral neuropathy called gabapentin.[7] The prescription was for 300 mg QID (four times a day at regular intervals).[8]

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[3] Simon Decl. Ex. D, E (*DOUGLAS COUNTY 000776; DOUGLAS COUNTY 000769*).
[4] Simon Decl. Ex. F p. 1 (*TCAR VVC 009*).
[5] Simon Decl. Ex. A p. 19 (*Carlisle Dep.* 121:8-11).
[6] Simon Decl. Ex. E (*DOUGLAS COUNTY* 00769).
[7] Simon Decl. Ex. C pp. 22-23 (*Blum Dep*. 75:12-18, 76:18-25).
[8] Simon Decl. Ex. C pp. 23, 40 (*Blum Dep*. 76:20-21; *Blum Dep. Ex.* 43); Ex. G p. 2 (*Joint Facts* ¶ 4).

Ms. Carlisle's prescribing physician prior to her incarceration was Dr. Layne Jorgenson. Dr. Jorgenson diagnosed Ms. Carlisle with peripheral neuropathy and had prescribed gabapentin to her for associated pain since at least 2007.[9] Dr. Jorgenson first diagnosed Ms. Carlisle with neuropathy because "[s]he was complaining of pain into her legs, I believe she was having some color changes in the skin that – that's typical – or the symptoms of neuropathy, just painful extremities."[10]

Ms. Carlisle's peripheral neuropathy is a chronic medical condition consisting of irreversible nerve damage and associated nerve pain that has been treated with daily pain medication for the last decade.[11] It is commonly known among doctors who prescribe gabapentin for neuropathy, that the underlying nerve damage that causes Ms. Carlisle's pain is irreversible, so when untreated, the nerve pain symptoms reoccur.[12] While Ms. Carlisle and Dr. Jorgenson had tried multiple medications for her neuropathy pain, she had the best results with gabapentin.[13]

Dr. Blum, the medical director at the Jail and only physician serving the Jail during Ms. Carlisle's 2015 incarceration, ordered that Ms. Carlisle be given her gabapentin while incarcerated.[14] During the intake process, Ms. Carlisle also responded to a screening questionnaire on which she described her neuropathy pain as a 5 out 10 "moderate pain" level while being treated.[15]

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[9] Simon Decl. Ex. H p. 6 (*Jorgenson Dep*. 37:5-13).
[10] Simon Decl. Ex. H p. 2 (*Jorgenson Dep*. 13:19-25).
[11] Simon Decl. Ex. H pp. 4-5, 6 (*Jorgensen Dep*. 31:23-32:18, 37:5-20).
[12] Simon Decl. Ex. H pp. 10-11, 12 (*Jorgenson Dep*. 44:23-45:15, 46:4-9).
[13] Simon Decl. Ex. H pp. 7, 8-9, 15 (*Jorgenson Dep*. 40:5-18, 41:24-42:19, *Jorgenson Dep. Ex.* 73 p. 3); Ex. I pp. 2-3, 6 (*Mendelson Dep*. 29:16-30:17, *Mendelson Dep*. Ex. 75 p. 3).
[14] Simon Decl. Ex. C pp. 23, 40 (*Blum Dep*. 76:12-21; *Blum Dep. Ex.* 43).
[15] Simon Decl. Ex. B p. 8 (*Dicke Dep*. Ex. 41 p. 2); Ex. C p. 22 (*Blum De*p. 75:12-18).

Ms. Carlisle received her gabapentin four times a day without incident until May 31, 2015.[16] During that time, she was a member of work crew.[17] On work crew, Ms. Carlisle left the Jail to perform supervised labor jobs in the community.[18] She was given her second noon dose of gabapentin in a small envelope to carry on her person with her to her work crew assignments.[19] She would take it at the appropriate time while under the supervision of a corrections officer. *Id.*

On May 31, 2015, officers performed a search of Ms. Carlisle's and her cellmates' cell.[20] According to a report generated about the search, an unspecified inmate was suspected of hoarding medication. *Id.* It remains unclear who was the suspected inmate. *Id.*[21] During their search, officers found several items in Ms. Carlisle's personal tub and space "a pencil shapener [sic], a pair of fingernail clippers, salt in the finger of a glove, and several ibuprofen, dss and gabapentin tablets."[22]

Ms. Carlisle asserts she had one gabapentin pill that she had forgotten to take that day due to a work crew cancellation.[23] She set the pill envelope she was given in the morning aside in her things on May 31, 2015, because work crew did not go out that day. *Id.* She subsequently forgot to take the noon dose at the proper time. *Id*. Ms. Carlisle's accounting of events is not disputed, as no witness recalled more than one gabapentin pill being found in Ms. Carlisle's cell.[24]

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[16] Simon Decl. Ex. G p. 2 (*Joint Facts* ¶ 7).
[17] Simon Decl. Ex. G p. 2 (*Joint Facts* ¶ 8).
[18] Simon Decl. Ex. G p. 2 (*Joint Facts* ¶ 8).
[19] Simon Decl. Ex. A p. 5 (*Carlisle Dep*. 64:8-14); Ex. B pp. 4, 5 (*Dicke Dep*. 56:14-19, 57:16-21).
[20] Simon Decl. Ex. K p. 6 (*Case Dep*. Ex. 29)
[21] Simon Decl. Ex. J p. 2 (*Shaver Dep.* 29:9-19).
[22] Simon Decl. Ex. K p. 6 (*Case Dep*. Ex. 29)
[23] Simon Decl. Ex. A pp. 5-6 (*Carlisle Dep.* 64:15-65:6).
[24] Simon Decl. Ex. J p. 3 (*Shaver Dep.* 30:9-12); Ex. K p. 2 (*Case Dep.* 31:3-10); Ex. L p. 2 (*Dean Dep.* 46:2-4).

Ms. Carlisle was charged with "misuse of authorized medication" and other violations.[25] The Jail sanctioned Ms. Carlisle to disciplinary housing in Hold 1, a cell in the Intake/Booking area of the Jail.[26] Ms. Carlisle was placed in Hold 1 at 8:53 pm on May 31, 2015.[27] Carlisle recalled that "when they opened the door, the smell about knocked [her] on [her] fanny."[28] The cell is approximately 11'9" wide and 16'10" deep with 12 bunks stuffed inside.[29] There is an open toilet within two and half feet of some of the bunks.[30] Inmates in Hold 1 eat their food in these tight quarters, sitting on their bunks or standing.[31] At times, Ms. Carlisle was confined with up to 11 women, some of who had menstrual blood-soiled clothing and women who were vomiting and having diarrhea.[32] At no time while she was in Hold 1 was Ms. Carlisle taken out to shower.[33] Ms. Carlisle suffered these conditions for approximately five days.[34]

Dr. Blum's Knowledge of Ms. Carlisle's Neuropathy and Gabapentin

Dr. Blum was the medical director and only treating physician at the Jail in 2015.[35] Dr. Blum worked for the Jail's medical services contractor, Correct Care, and was responsible

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[25] Simon Decl. Ex. K p. 6 (*Case Dep*. Ex. 29)
[26] Simon Decl. Ex. K p. 6 (*Case Dep*. Ex. 29); Ex. A p. 37 (*Carlisle Dep.* Ex. 66); Ex. M p. 3 (*Moore Expert Report* p. 3).
[27] Simon Decl. Ex. A p. 37 (*Carlisle Dep.* Ex. 66)
[28] Simon Decl. Ex. A p. 18 (*Carlisle Dep.* 113:20-23); Ex. J pp. 4-5 (*Shaver Dep.* 51:24-52:4).
[29] Simon Decl. Ex. M p. 4 (*Moore Expert Report* p. 4).
[30] Simon Decl. Ex. K pp. 4, 5 (*Case Dep*. 53:10-13, 54:7-9); Ex. M p. 7 (*Moore Expert Report* p. 7).
[31] Simon Decl. Ex. K p. 3 (*Case Dep.* 52:10-13).
[32] Simon Decl. Ex. A pp. 12-13, 14 (*Carlisle Dep*. 99:23-100:4, 104:1-9); Ex. M p. 5 (*Moore Expert Report* p. 5).
[33] Simon Decl. Ex. A pp. 16, 17 (*Carlisle Dep.* 110:10-15, 111:8-13).
[34] Simon Decl. Ex. A p. 37 (*Carlisle Dep.* Ex. 66)
[35] Simon Decl. Ex. C pp. 2, 4 (*Blum Dep.* 12:11-16, 20:11-18).

for implementing their policies.[36] According to the contract between Dr. Blum and Correct Care, failure to adhere to Correct Care policies was cause for termination.[37]

Dr. Blum understood that failure to treat Ms. Carlisle's peripheral neuropathy would lead to pain. Dr. Blum testified that he has treated "countless" patients with peripheral neuropathy.[38] Dr. Blum testified that gabapentin was "commonly" used to treat neuropathy, including peripheral neuropathy.[39] Dr. Blum also testified that peripheral neuropathy symptoms include pain.[40] According to Dr. Blum, medical intervention is warranted for pain when it affects a patient's function or "quality of life."[41]

When discussing diagnosing the condition, Dr. Blum explained that nerve conduction studies can be used as diagnostic tools and "other times you just go by the subjective symptoms and their history."[42] Dr. Blum testified that "for typical cases," a doctor would "probably not" need a nerve conduction study when making a neuropathy diagnosis.[43] He explained that was because "symptoms are clear," and you can initially rely on the patient's description of symptoms. *Id*.

When Dr. Blum was asked to review Ms. Carlisle's medical files from the Jail, he was able to tell that Ms. Carlisle was taking gabapentin for neuropathy.[44] Dr. Blum also understood

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[36] Simon Decl. Ex. C. p.3 (*Blum Dep.* 19:22-25).
[37] Simon Decl. Ex. C pp. 5, 41 (*Blum Dep.* 30:13-16; *Blum Dep. Ex.* 49).
[38] Simon Decl. Ex. C p. 18 (*Blum Dep.* 67:8-15).
[39] Simon Decl. Ex. C pp. 12, 17 (*Blum Dep*. 60:9-22, 66:5-18); Ex. H p. 3 (*Jorgenson Dep.* 15:14-16).
[40] Simon Decl. Ex. C pp. 15, 23 (*Blum Dep.* 64:18-23, 76:1-3).
[41] Simon Decl. Ex. C pp. 20-21 (*Blum Dep.* 72:25-73:19).
[42] Simon Decl. Ex. C pp. 16-17 (*Blum Dep.* 65:24-66:4).
[43] Simon Decl. Ex. C p. 19 (*Blum Dep.* 68:7-19).
[44] Simon Decl. Ex. B pp. 7, 15 (*Dicke Dep. Ex*. 41 p.1, 42 p. 5); Ex. C pp. 11-14 (*Blum Dep.* 59:22-62:2),

that Ms. Carlisle was diagnosed with peripheral neuropathy since at least 2011.[45] When looking specifically at the Jail's intake screening form, Dr. Blum could see that Ms. Carlisle's neuropathy caused her "moderate" pain while treated with gabapentin.[46] Looking at Ms. Carlisle's medical records that were faxed to the Jail, Shandall Dicke, R.N. ("Nurse Dicke"), the supervising nurse at the Jail, assumed Ms. Carlisle's neuropathy caused her pain "because she had a medication for it."[47] On February 12, 2015, Dr. Blum reviewed Ms. Carlisle's gabapentin prescription and ordered that, while in custody, Ms. Carlisle take gabapentin by mouth four times a day.[48]

While in the Jail, Ms. Carlisle received gabapentin four times a day without incident until May 31, 2015.[49]

Dr. Blum's Decision to Take Away Ms. Carlisle's Pain Medication

On June 1, 2015, Dr. Blum entered an order to discontinue Ms. Carlisle's gabapentin prescription and Motrin access.[50] On the discontinue order, Dr. Blum wrote "(hoarding)" [51] and

[45] Simon Decl. Ex. C pp. 32-33 (*Blum Dep.* 88:19-89:7).
[46] Simon Decl. Ex. B p. 8 (*Dicke Dep. Ex.* 41 p. 2); Ex. C p. 22 (*Blum Dep.* 75:12-18).
[47] Simon Decl. Ex. B p. 3 (*Dicke Dep.* 41:9-12).
[48] Simon Decl. Ex. C pp. 23, 40 (*Blum Dep.* 76:20-21; *Blum Dep.* Ex. 43).
[49] Simon Decl. Ex. G p. 2 (*Joint Facts* ¶ 7).
[50] Simon Decl. Ex. C pp. 24-25 (*Blum Dep.* 79:20-80:12).
[51] Dr. Blum defined medication hoarding to mean "when the inmates don't take the medications when they're given and then they try to hide them or collect them." (Simon Decl. Ex. C p. 5 (Blum Dep 43:18-21).) The Jail's inmate manual defines: "Nuisance contraband as any property you have accumulated in excess of the authorized amount." (Simon Decl. Ex. A p. 27 (Carlisle Dep. Ex. 55 p. 6).) Under Dr. Blum and The Jail's definitions of hoarding, an inmate can be found hoarding when holding just one pill of prescribed medication, as long as that pill is unauthorized. Ms. Carlisle testified that she knew that holding medication without using it, or saving it up was considered hoarding, with the exception of the medication she was allowed to take with her while on work crew. (Simon Decl. Ex. A p. 3 (Carlisle Dep. 35:2-12).) If Ms. Carlisle's account is taken as true, the additional pill she kept to take at noon was authorized. It is unclear under any definition in this case whether possessing an authorized pill for several hours longer than usual because of a mistake is hoarding.

testified that hoarding precipitated his decision to discontinue Ms. Carlisle's gabapentin.[52] Dr. Blum did not discontinue Ms. Carlisle's medication for any individualized medical reason, but instead testified that he was concerned about general risks that are presented by hoarding broadly.[53] Dr. Blum could not recall any specific security risk posed by Ms. Carlisle and he had no reason to believe that she was abusing her medication. *Id.*

It was, and still is, Correct Care's policy to immediately discontinue medications for which inmates were accused of hoarding except in the rare event that the medication was a so-called "critical" medication.[54] Dr. Blum testified that "critical" medications constituted "the minority of cases."[55] Only if the medication was "critical" would Dr. Blum consider an alternative plan for distribution that would protect against risks of hoarding to the institution.[56] For example, medication could be crushed and put in water so the medication could not be hidden in the cheek or under the tongue. *Id.* Dr. Blum understood examples of "critical" medications to include drugs that keep patients "from going psychotic" or "heart medication." *Id.* According to Dr. Blum the "majority" of medications are discontinued.[57]

Dr. Blum described reasons for a policy like Correct Care's included to prevent trading between inmates, prevent others from taking the medication who could have an adverse reaction, and to prevent overdose.[58]

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[52] Simon Decl. Ex. B p. 29 (*Dicke Dep.* Ex. 45); Ex. C p. 25 (*Blum Dep.* 80:10-12); Ex. G p. 3 (*Joint Facts* ¶ 10).
[53] Simon Decl. Ex. C p. 34 (*Blum Dep.* 90:11-24).
[54] Simon Decl. Ex. B. p. 6 (*Dicke Dep.* 60:11-24); Ex. C pp. 8-10 (*Blum Dep*. 45:10-47:9, 47:16-18); Ex. G p. 3 (*Joint Facts* ¶ 11); Ex. N p. 5 (*Blum Resp. to Interrog. No.* 10).
[55] Simon Decl. Ex. C pp. 9, 26 (*Blum Dep.* 46:23-25, 82:2-10).
[56] Simon Decl. Ex. C pp. 9-10 (*Blum Dep.* 46:21-47:8).
[57] Simon Decl. Ex. C p. 26 (*Blum* 82:6-9).
[58] Simon Decl. Ex. C pp. 6-7 (*Blum Dep.* 43:22-44:12).

With respect to Ms. Carlisle's medications, Dr. Blum described that at the time he discontinued her gabapentin, he was aware of the medication and the reason Ms. Carlisle was taking it.[59] Dr. Blum decided the policy required that her medication be discontinued, but he admitted that he did not physically meet with Ms. Carlisle to determine her pain level, did not consider giving her a warning, and did not discuss alternative administration methods that would ensure she took her medication as directed.[60] Dr. Blum testified:

> Q. And it was only – I think you used the word, but we can look back, but it was the only very rarest situations where you would continue medication if an inmate was found hoarding?
>
> A. Right. I would say the minority of cases – in general, they are stopped, but every case is individually looked at, of course, since I'm writing the order, but the majority we do stop them. There's exceptions to that rule.
>
> Q. And so when you say every case is individually looked at, you didn't look at Ms. Carlisle before you decided to discontinue her hoarding – discontinue her Neurontin due to hoarding. Right?
>
> A. Well, I don't know if I looked at her physically, but I knew what the medication was and what the indication was for. So in that case I – in that respect I did review it, but as far as did I – I don't know that I physically called her in if that's what you're asking.
>
> Q. Yeah.
>
> A. I didn't. I don't believe I did.
>
> Q. To determine, you know, how much pain she was in, for example?
>
> A. Correct.
>
> Q. Okay. Did you offer Ms. Carlisle any other treatment before ending her medication?
>
> A. Up until this point, it -- no.

[59] Simon Decl. Ex. C p. 26 (*Blum Dep.* 82:16-18).
[60] Simon Decl. Ex. C pp. 27-28 (*Blum Dep.* 82:16-83:14).

> Q. Okay. And did you consider giving Ms. Carlisle a warning about hoarding before discontinuing her medication?
>
> A. No.
>
> Q. And when you talked about critical medications, you talked about crushing medications up and putting it in a liquid to – to make it harder to hide. Did you discuss any other means of administering the same medication before ending it?
>
> A. I don't remember doing so.

Id.

Dr. Blum's Repeated Refusals to Treat Ms. Carlisle's Neuropathy Pain

Ms. Carlisle repeatedly requested that she be provided her medication for nerve pain in writing and through verbal request to staff at the Jail.[61] There are two written communications between Ms. Carlisle or a representative and Dr. Blum. On Thursday, June 4, 2015, Ms. Carlisle submitted a healthcare request form which stated: "For four days I have been miserable with stabbing, burning foot neuropathy. I am asking you to please re-issue my Neurontin. Thank you."[62] On Monday, June 8, 2015, Dr. Blum responded to the request: "We cannot restart that because of hoarding."[63] Dr. Blum testified that what Ms. Carlisle wrote in her request "can be a symptom of neuropathy."[64] He also testified that there are medications other than gabapentin that would treat the symptoms Ms. Carlisle described, but he did not offer any to her in response to her request.[65] Dr. Blum also testified that gabapentin "can improve things" for people experiencing the symptoms Ms. Carlisle described on her request form.[66]

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[61] Simon Decl. Ex. A p. 21 (*Carlisle Dep.* 139:17-23).
[62] Simon Decl. Ex. B p. 30 (*Dicke Dep.* Ex. 46).
[63] Simon Decl. Ex. B p. 30 (*Dicke Dep. Ex*. 46); Ex. C pp. 28-29 (*Blum Dep.* 84:22-85:7).
[64] Simon Decl. Ex. C p. 29 (*Blum Dep.* 85:8-16).
[65] Simon Decl. Ex. C pp. 29-30 (*Blum Dep.* 85:17-86:12).
[66] Simon Decl. Ex. C p. 30 (*Blum Dep.* 86:13-16).

On June 22, 2015, Ms. Carlisle's physician in the community, Dr. Layne Jorgenson, wrote to Dr. Blum: "For medical reasons, the above named patient [Terri L Carlisle] needs to take her Neurontin medication as directed. If you need additional information, please feel free to contact our office."[67] Dr. Blum testified that he received and reviewed Dr. Jorgenson's letter on June 30, 2015.[68] Dr. Blum did not reach out to Dr. Jorgenson for more information.[69] Dr. Blum testified that after receiving Dr. Jorgenson's communication, he decided to keep Ms. Carlisle's medication discontinued, again citing only generalized risks to the Jail, not specific to Ms. Carlisle.[70] Dr. Blum testified that general risks outweighed Ms. Carlisle's specific and significant pain needs. *Id.*

On July 9, 2015, Nurse Dicke, the supervising nurse, spoke with Ms. Carlisle.[71] Dr. Blum was not present.[72] A notation in Ms. Carlisle's medical chart about this conversation reads: "Refused to be seen on Dr. call if Gabapentin was not going to be re-prescribed."[73] While Dr. Blum testified at his deposition that had Ms. Carlisle met with him, he would have discussed other treatment options to make Ms. Carlisle "more comfortable," he also admitted that he never actually contemplated giving an alternative treatment to Ms. Carlisle.[74] Indeed, neither Dr. Blum nor Nurse Dicke ever offered any alternative treatment to Ms. Carlisle.[75]

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[67] Simon Decl. Ex. B p. 31 (Dicke Dep. Ex. 47).
[68] Simon Decl. Ex. C pp. 30-31 (Blum Dep. 86:23-87:17).
[69] Simon Decl. Ex. C p. 32 (Blum Dep. 88:3-5).
[70] Simon Decl. Ex. C p. 33, 34-35 (Blum Dep. 89:13-19, 90:11-91:3).
[71] Simon Decl. Ex. A p. 8 (Carlisle 86:7-10); Ex. C p. 53 (Blum Dep. Ex. 51).
[72] Simon Decl. Ex. C p. 39 (Blum 97:3-11).
[73] Simon Decl. Ex. C p. 53 (Blum Dep. Ex. 51).
[74] Simon Decl. Ex. C p. 36-37, 39 (*Blum Dep.* 92:19-93:2, 97:6-11).
[75] Simon Decl. Ex. A p. 20 (Carlisle Dep. 138:8-18).

Ms. Carlisle testified that she made repeated verbal requests seeking treatment for her severe pain caused by her peripheral neuropathy.[76] Neither Dr. Blum nor any other medical staff attempted to speak with Ms. Carlisle about treating her neuropathy pain or related symptoms before July 9, 2015.[77] And at no point after July 9, 2015, did Dr. Blum attempt to communicate with Ms. Carlisle.[78]

The nerve pain associated with Ms. Carlisle's neuropathy was untreated for approximately 2 months: from June 1, 2015, until her release from jail on August 4, 2015.[79] During her deposition, Ms. Carlisle described her pain:

> For the remainder of the two months I was in there it felt like someone was jamming an ice pick in the ends of my toes every single day, every second, all day and all night. I had trouble walking. My feet were burning, tingling. It was excruciating pain.[80]

The Jail gave Ms. Carlisle her gabapentin upon release and her pain quickly began to subside.[81]

STANDARD OF REVIEW

Summary judgment is proper and required when the entirety of the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue of material fact requiring the consideration of a fact-finder. Fed R. Civ. Pro. 56(c); *Celotex Corp v. Catrett*, 477 U.S. 317 (1986). When there is no dispute of fact, the moving party is entitled to judgment as a matter of law. *Id*. When considering summary judgment, the court "must draw all justifiable inferences in favor of the nonmoving party, including questions of credibility and of the weight to be accorded particular evidence." *Masson v. New Yorker*

[76] Simon Decl. Ex. A pp. 7, 11, 21 (Carlisle Dep. 84:16-18, 94:18-23, 139:15-19).
[77] Simon Decl. Ex. A p. 21 (Carlisle Dep. 139:8-14).
[78] Simon Decl. Ex. C p. 38 (Blum Dep. 96:13-18).
[79] Simon Decl. Ex. B p. 5 (Dicke Dep. 57:5-13).
[80] Simon Decl. Ex. A p. 10 (Carlisle Dep. 92:12-17).
[81] Simon Decl. Ex. A p. 9 (Carlisle Dep. 91:2-19).

Magazine, Inc., 501 U.S. 496, 520 (1991) (citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 255 (1986)). Plaintiff Terri Carlisle is entitled to summary judgment because Defendants Dr. Blum and Correct Care summarily terminated her medication for her severe, chronic nerve pain on May 31, 2015 and failed to offer any alternative for the remainder of her incarceration, leaving her to suffer in pain for two months without treatment. Even when making all inferences in Defendants' favor, this is true. There is no dispute that: (1) Defendants knew that Ms. Carlisle needed medication for her severe, chronic nerve pain; (2) Defendants nevertheless stopped Ms. Carlisle's medication based on accusations of hoarding; and (3) Defendants never provided an alternative treatment.

PLAINTIFF'S FIRST MOTION

42 U.S.C. § 1983 creates a private right of action against individuals who, acting under color of state law, violate federal constitutional or statutory rights. *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 "is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (citing *Baker v. McCollan*, 443 U.S.137, 144 (1979).

A. It is undisputed that Dr. Blum was acting under the color of state law.

A private actor's conduct qualifies as state action for purposes of § 1983 if any of the following four situations occur: (1) the private actor performs a public function; (2) the private actor engages in joint activity with a state actor; (3) the private actor is subject to governmental compulsion or coercion; or (4) there is a governmental nexus with the private actor. *See Gorenc v. Salt River Project Agr. Imp. and Power Dist.*, 869 F.2d 503, 506–08 (9th Cir. 1989). In the instance of a private medical actor contracting with a public institution, like a county jail, all four scenarios likely occur.

Courts have repeatedly found state action by private medical doctors providing inmate care in jails and prisons under contract with the local government. *See, e.g., West v. Atkins,* 487 U.S. 42, 54 (1988) (holding that a part-time private doctor, under contract with a local government to provide prison medical care, acted "under color of state law" because his conduct was "fairly attributable to the State" in that he was fulfilling a traditional government function, thus making him liable for an unconstitutional denial of medical care under § 1983). The same is true even when that physician only works part-time. *Id.* Dr. Blum's role as the sole physician at the Jail providing medical services all of the inmates in custody is the same traditional government function—medical care for incarcerated patients—as was reviewed in *West.* There is no doubt that Dr. Blum is a state actor for purposes of § 1983 and Defendants have not asserted otherwise.

B. Dr. Blum violated Ms. Carlisle's Eighth Amendment right to adequate medical care while incarcerated.

It is settled law that the Eighth Amendment instills upon the government an "obligation to provide medical care" to inmates in custody. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Depriving an inmate of basic medical care is "incompatible with the concept of human dignity and has no place in civilized society." *Brown v. Plata*, 563 U.S. 493, 511 (2011).

To state a claim under 42 U.S.C. § 1983 for a violation of the Eighth Amendment based on denial of medical care in prison, a plaintiff must show "deliberate indifference to [her] serious medical needs." *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing *Estelle*, 429 U.S. at 104). The degree to which a plaintiff is harmed by such deliberate indifference need not be "substantial." *Id.* at 1096 (citing *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992) *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997)). A plaintiff must demonstrate that: (1) she had a serious medical need, and (2) defendant's response

to that need was deliberately indifferent. *Id.* Stopping a medication necessary to treat a chronic pain condition without providing an alternative is deliberate indifference proscribed by the Eighth Amendment. *Lavender v. Lampert*, 242 F.Supp.2d 821, 848 (D.Or. 2002). Moreover, when pain medication is discontinued or reduced in conjunction with disciplinary responses, causing an increase in pain, this court has said such actions "cannot be other than 'unnecessary and wanton infliction of pain,' the very touchstone of an Eighth Amendment violation." *Id*.

1. Ms. Carlisle's peripheral neuropathy, which caused her chronic and severe pain, is a serious medical need.

Courts have long understood serious medical needs to encompass any "injury that a reasonable doctor or patient would find important and worthy of comment or treatment." *McGuckin*, 974 F.2d at 1059 (citing *Estelle*, 429 U.S. at 104). A finding of seriousness can be made when a prisoner demonstrates that "failure to treat [her] condition could result in further significant injury or the unnecessary and wanton infliction of pain." *Id*. Courts may also look to whether a prisoner's condition significantly affects her daily activities, or causes chronic and substantial pain. *Id*.; *accord Lavender*, 242 F. Supp. 2d 821, 845 (D. Or. 2002) ("'the existence of chronic and substantial pain' itself demonstrates a 'serious' medical need").

An injury or condition that results in pain is broadly and consistently viewed by courts to be a serious medical need. *See, e.g., Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002) ("painful effects of pepper spray" satisfies the objective serious medical need requirement of Eighth Amendment claim); *Blackmore v. Kalamazoo County*, 390 F.3d 890, 899-900 (6th Cir. 2004) (pain caused by two-day delay in treating appendicitis that did not rupture was serious medical need); *Farrow v. West*, 320 F.3d 1235, 1244-45 (11th Cir. 2003) (gum pain from teeth cutting into gums for incarcerated patient who needed dentures was serious medical need); *Hayes v. Snyder*, 546 F.3d 516, 523 (7th Cir. 2008) (objective evidence of pain not necessary;

self-reporting may be only evidence). More specifically, courts evaluating Eighth Amendment claims understand pain associated with neuropathy as a serious medical need. *See, e.g., Brookes v. Shank*, 660 Fed.Appx 465 (6th Cir. 2016); *Ruley v. Corr. Corp. of Am.*, No. CIV. 11-36-ART, 2013 WL 1815039, at *4 (E.D. Ky. Apr. 29, 2013) (citing, in part, *Williams v. Guzman*, 346 F. Appx 102, 105 (7th Cir. 2009)); *see also*, *Lavender*, 242 F. Supp. 2d 821, 845, n.2 (D. Or. 2002) (chronic pain a serious medical need and defining chronic pain to include neuropathy).

It is undisputed that Ms. Carlisle had a longstanding neuropathy diagnosis, which caused her pain that warranted medical intervention. Not only was Ms. Carlisle diagnosed with peripheral neuropathy that required (and still requires) regular medical intervention through the use of gabapentin pain medication, but Dr. Blum was aware of her condition and need for treatment. Dr. Blum ordered the prescription upon Ms. Carlisle's entrance to the Jail, and records from the Jail, Correct Care, and Ms. Carlisle all show the medication's indication. Dr. Blum agreed at intake that Ms. Carlisle's condition warranted continuing treatment when he ordered that her prescription be continued. Consistent with the nature of her diagnosis, at no point during her incarceration did Ms. Carlisle's condition improve nor did her symptoms ameliorate. In fact, Ms. Carlisle's pain symptoms inevitably got worse when her medication was taken away. Ms. Carlisle described her neuropathy pain as "moderate" when treated and "stabbing, burning," "excruciating" pain when untreated. Defendants cannot dispute that Ms. Carlisle's medical need was serious.

2. The undisputed facts provide ample evidence of Dr. Blum's deliberate indifference to Ms. Carlisle's neuropathy pain.

Deliberate indifference is a subjective test. *Farmer v. Brennan*, 511 U.S. 825, 826 (1994). Deliberate indifference is "more than mere negligence" but "less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Id.* at 835. Deliberate

indifference can be shown "when prison officials deny, delay or intentionally interfere with medical treatment." *McGuckin*, 974 F.2d at 1059. There are two requirements a plaintiff must meet to establish a defendant was deliberately indifferent: (1) "a purposeful act or failure to respond to a prisoner's pain or possible medical need," and (2) "harm caused by the by the indifference." *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing *McGuckin*, 974 F.2d at 1060). Again, the harm plaintiff suffers does not have to be substantial. *Id.*

Dr. Blum was deliberately indifferent to Ms. Carlisle's serious medical needs numerous times from May 31, 2015 to August 4, 2015, when she finally left the Jail. Dr. Blum was deliberately indifferent when, knowing Ms. Carlisle suffered pain caused by neuropathy, he took away medication that alleviated that pain without providing any alternative treatment. Dr. Blum was deliberately indifferent when he ignored Ms. Carlisle's request for her medication to alleviate her "stabbing, burning foot neuropathy." Dr. Blum was deliberately indifferent when he ignored Dr. Jorgenson's request that Ms. Carlisle be put back on her gabapentin. And Dr. Blum was deliberately indifferent when he failed to provide any alternative treatment for her neuropathy pain.[82]

The facts show that for each of the above acts or failures to act, Dr. Blum was aware Ms. Carlisle was diagnosed with peripheral neuropathy, Dr. Blum was aware that Ms. Carlisle suffered pain associated with her neuropathy, Dr. Blum was aware that medication was indicated

[82] Defendants may argue that Ms. Carlisle refused treatment on July 9, 2015. The circumstances surrounding this visit by Ms. Dickie are anything but clear and undisputed. In fact, what is undisputed is that during the conversation, Ms. Carlisle requested her gabapentin and when that request was rejected, she terminated the conversation. Neither Ms. Dickie nor Dr. Blum discussed alternative therapies to manage her peripheral neuropath on July 9 or anytime thereafter. Even if the Court understands Ms. Carlisle to have refused medical treatment on July 9, 2015, it does not excuse Dr. Blum's deliberate indifference to her pain for the 39 days prior to that conversation.

for Ms. Carlisle's neuropathy pain, and Dr. Blum was aware there were multiple potential treatment options available for Ms. Carlisle. The above actions and failures to act, coupled with the knowledge of Ms. Carlisle's suffering is nothing short of cruel. These facts render Ms. Carlisle's two months of suffering entirely needless. Therefore, Defendants cannot dispute that Dr. Blum was deliberately indifferent to Ms. Carlisle's neuropathy pain.

3. Dr. Blum's decision to withhold medication was patently unconstitutional because it was disciplinary in nature.

In the seminal Eighth Amendment medical care case, the U.S. Supreme Court acknowledged that the drafters of the Eighth Amendment were primarily concerned with proscribing "torture" and "other 'barbar[ous]' methods of punishment." *Estelle*, 429 U.S. at 102. The *Estelle* Court then recognized that a failure to provide basic necessities, including medical care, "may actually produce physical 'torture,'" one of "the evils of most immediate concern to the drafters of the Amendment." *Id.* at 103. When medication is withheld as a form of punishment, especially when the result is certain pain, it strikes at heart of the Eighth Amendment's key protections. *See Lavender*, 242 F.Supp.2d 821 (D. Or. 2002).

Withholding or reducing pain medication as punishment is a clear violation of the Eighth Amendment; it "goes beyond even the constitutional standard of unnecessary and wanton infliction of pain." *Lavender*, 242 F.Supp.2d at 847. In *Lavender*, the court held that the denial of plaintiff inmate's pain medication in conjunction with disciplinary action was a "particularly egregious" violation of the Eighth Amendment. *Id*. at 847. Lambert was an inmate in the custody of Oregon Department of Corrections. *Id*. at 825. Prior to being incarcerated he suffered irreparable injuries that caused chronic pain. *Id*. Mr. Lavender brought Eighth Amendment claims after prison medical staff repeatedly ignored or failed to appropriately treat Mr. Lavender's chronic pain with effective medication, despite numerous requests. *Id*. at 825-36.

Defendants moved for summary judgment asserting Mr. Lavender could not show deliberate indifference because at times staff attempted to treat his pain in some way. *Id.* at 842-43. The court concluded that the record demonstrated a violation of the plaintiff's Eighth Amendment right to medical care for his chronic pain and denied defendant's motion. *Id.* at 843-844.

In denying the defendants' motion, this court highlighted that plaintiff's pain was "long-term" and "unrelenting," yet doctors at the prison who knew plaintiff suffered such pain "still failed to provide continuous and effective pain-relieving medication." *Id*. at 848. Additionally, there were at least two instances where the plaintiff's pain medication was either discontinued or reduced in conjunction with disciplinary action. *Id*. The court called those instances "particularly egregious." *Id*. at 847. In one instance, plaintiff was sent to disciplinary segregation and "without examining plaintiff, [a doctor] cancelled all of his pain medication." *Id*. The court stated this about that medication discontinuation:

> "This incident not only demonstrates unnecessary and wanton infliction of pain; it appears that the infliction of pain was, by its very nature, punitive."

As this court aptly noted, such behavior is "the very touchstone of an Eighth Amendment violation." *Id*. at 848 (citing *Estelle*, 429 U.S. at 104).

What happened to Ms. Carlisle is eerily similar to what happened to the plaintiff in *Lavender.* Just like in *Lavender,* Ms. Carlisle suffered long-term, unrelenting pain. Just like in *Lavender,* those who took Ms. Carlisle's medication were aware she would suffer pain as a result. Just like in *Lavender,* the decision to cancel Ms. Carlisle's medication was made without any patient examination. And just like in the *Lavender* incidents discussed above, Ms. Carlisle's change in medication administration coincided with sanctions and a move to disciplinary housing. Dr. Blum was aware that Ms. Carlisle's neuropathy caused her pain, even when treated. Dr. Blum knew Ms. Carlisle's condition had persisted for years. Dr. Blum has treated

"countless" patients for neuropathy pain, including Ms. Carlisle. Therefore, Dr. Blum would have known that Ms. Carlisle's pain was worse when untreated, and that that pain was chronic and irreversible. In short, just like in *Lavender*, pain was the certain result of taking all pain medication away from Ms. Carlisle. In both *Lavender* and Ms. Carlisle's cases, the infliction of pain was so divorced from a medical decision and so clearly a punitive action that it amounted to nothing short of the very torture that our constitutional framers sought to proscribe.

PLAINTIFF'S SECOND MOTION

Counties and private entities acting under the color of state law are liable for Eighth Amendment violations under 42 U.S.C. § 1983. *See Monell v. Department of Social Servs. of NYC*, 436 U.S. 658, 690 (1978); *Tsao v. Desert Palace Inc.*, 698 F.3d 1128, 1139 (9th Cir. 2012). To make a § 1983 *Monell* claim against a private entity, a plaintiff must show: (1) the entity was acting under the color of state law, (2) the entity had customs or policies that were deliberately indifferent to her constitutional rights, and (3) the customs or policies were the moving force behind the constitutional violations. *See, e.g.*, *Gant v. Cty. of Los Angeles*, 772 F.3d 608, 617 (9th Cir. 2014) (citations omitted). When a plaintiff directly challenges a policy under § 1983, "the issues of fault and causation are straightforward," and "proof that the [entity's] decision was unconstitutional would suffice to establish that the [entity] itself was liable for the plaintiff's constitutional injury." *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1247-48 (9th Cir. 2016) (quoting *Bd. of Cty. Comm'rs of Bryan Cty., Okl. v. Brown*, 520 U.S. 397, 404-5 (1997)). Furthermore, policies are facially invalid when they implement blanket bans on effective treatments for inmates' serious medical needs. *See Fields v. Smith*, 653 F.3d 550, 557 (7th Cir. 2011) (finding a freeze-frame policy facially unconstitutional when it mandated that doctors refuse recommended hormone therapy to transgender prisoners who did not have a prescription

prior to their incarceration); *accord* Statement of Interest of the United States, *Diamond v. Owens*, 131 F.Supp.3d 1346, ECF No. 29 at 14 (M.D. Ga. 2015) ("Because GDOC's policy amounts to a blanket prohibition of certain treatments for certain inmates, without regard to an individual's medical needs or their progression over time, it does not pass constitutional muster, and must be struck down."). Correct Care's blanket rule requiring medical staff to indefinitely stop providing medically necessary prescription drugs upon a mere accusation of hoarding is plainly unconstitutional.

A. Correct Care acted under the color of state law when it adopted and required adherence to its automatic discontinuation policy in the Jail.

Just like Dr. Blum, Correct Care is a state actor for § 1983 liability purposes and Defendants have not argued otherwise. Courts regularly find that companies, like Correct Care, that contract with governments to provide medical care to inmates in prisons or jails do so under the color of state law. *See, e.g., Oyenik v. Corizon Health, Inc.*, 696 Fed.Appx. 792, 794 (9th Cir. 2017); *Shank v. Corizon Health Servs.*, 692 Fed.Appx 414 (9th Cir 2017). Douglas County contracts with Correct Care to provide comprehensive healthcare services to the Jail's inmate population in order to meet Douglas County's legal obligations to persons in its custody. Correct Care's actions are "fairly attributable to the state" for purposes of § 1983 *Monell* liability.

B. Correct Care's policy of abruptly discontinuing inmate medication upon an accusation of hoarding was deliberately indifferent to Ms. Carlisle's Eighth Amendment right to medical care.

The parties agree that it is Correct Care's policy to discontinue medications when hoarding is suspected, except for the rare case where a medication was "critical." Furthermore, Dr. Blum made all final clinical decisions for the Jail, so he had final policymaking authority for purposes of medical care services provided to the Jail. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986); *Streit v. Cty. of Los Angeles*, 236 F.3d 552, 559 (9th Cir. 2001). Therefore,

Dr. Blum's consistent and repeated practice of terminating inmate medication upon an accusation of hoarding amounts to a policy that was deliberately indifferent to Ms. Carlisle's serious medical need. *See* Part B, *supra*.

1. Correct Care's policy is deliberately indifferent for the same reasons that Dr. Blum was deliberately indifferent.

The facts of this case reveal the constitutional deficiencies in Correct Care's policy. "Critical" medication is a narrow category, constituting the "minority" of cases. Under Correct Care's policy most medications are terminated. It is clear that the policy demands that jail doctors take away medications that patients are taking for serious medical needs. For proof, one need only look at Ms. Carlisle's suffering of severe pain, a serious medical need. The policy's constitutional deficiencies are not limited to the mandatory termination of medically necessary drugs. The policy also does not require that any alternative treatment be provided when a medication for a serious medical need is discontinued. The policy also allows doctors to deny pain medication to patients experiencing severe pain. Finally, the policy does not require any follow up, review, or oversight of patients who have had their medications taken away. Such infirmities create a variety of risks of harm, including sustained severe pain like the pain Ms. Carlisle suffered for two months.

Just as the acts—e.g., terminating medication, refusing to reinstate medication upon request—and omissions—e.g., failure to provide an alternative treatment for pain—in this case establish Dr. Blum's deliberate indifference, they also reveal the deliberate indifference enshrined in Correct Care's policy. Indeed, a finding that Dr. Blum acted with deliberate indifference while implementing Correct Care's policy demands that Correct Care also be found liable.

2. Correct Care's policy is deliberately indifferent because it is a blanket ban on medically necessary care.

Correct Care's automatic discontinuation policy can be characterized as a "freeze out" policy. A freeze out policy is a policy that enacts a blanket ban on medical care if some condition is met—here, the policy looks to an allegation of hoarding. Freeze out policies create the same barriers to constitutionally required medical care that are created by "freeze frame" policies. Freeze frame policies are policies that limit the care an inmate can receive while incarcerated to the care the inmate was receiving when they were first incarcerated. They "freeze" medications and treatments to those that the inmate was receiving when the inmate first entered the institution. Courts have rejected these policies because they create blanket bans on medically necessary care without regard for the individual needs of the inmate. Put simply, jails and prisons cannot institute blanket bans on medically necessary care without running afoul of the Eighth Amendment. Yet, that is exactly what Correct Care's policy does.

In *Hicklin v. Precynthe*, 2018 WL 806764, at *1 (E.D. Mo. February 9, 2018), a woman sued, *inter alia*, Corizon, LLC and officials working for the Missouri Department of Corrections (MDOC), for their deliberate indifference to her serious medical needs after denying her hormone therapy for her gender dysphoria pursuant to a "freeze-frame" policy. Medical professionals agreed that Ms. Hicklin needed hormone replacement therapy (HRT) but defendants refused the treatment, a decision that "rest[ed] solely" on the policy. *Id.* at *11. Corizon's and MDOC's policy deemed the initiation of HRT "not appropriate in a prison environment" because of purported safety and security risks. *Id.* at *6-7. The enshrined refusal of care was found to constitute deliberate indifference because it was "based on a blanket rule, rather than an individualized medical determination." *Id.* at *11. Similarly, in *Fields*, 653 F.3d 550 (7th Cir. 2011), the Seventh Circuit struck down the Wisconsin Department of Corrections'

HRT freeze-frame policy as facially unconstitutional because it applied "irrespective of an inmate's serious medical need or the DOC's clinic judgment." *Id.* at 559.

While Correct Care's policy does not freeze an inmate's care at the level they were receiving upon intake, the policy arbitrarily and categorically freezes out types of care that an inmate was previously receiving on a mere accusation that an inmate was hoarding. Just like the HRT freeze-frame policies that numerous courts have struck down, Correct Care's automatic discontinuation policy leaves no room for doctors to make individualized, clinical assessments in delivering patient care to inmates. Just as Ms. Carlisle experienced, the inevitable result is the harmful denial of treatment for serious medical needs and needless suffering. Such a policy cannot stand under the Eighth Amendment.

C. Correct Care's automatic discontinuation policy was the moving force that caused Ms. Carlisle's Eighth Amendment rights to be violated.

"For a policy to be the moving force behind the deprivation of a constitutional right, the identified deficiency in the policy must be closely related to the ultimate injury," and the plaintiff must establish "that the injury would have been avoided had proper policies been implemented." *Long v. Cty. of Los Angeles*, 442 F.3d 1178, 1190 (9th Cir. 2006) (citations omitted). Correct Care's policy of abruptly discontinuing medication following accusations of hoarding caused Ms. Carlisle to suffer unnecessary pain.

Dr. Blum, who was the only physician at the time Ms. Carlisle was incarcerated, has a contract with Correct Care that requires—under threat of termination—that he follow Correct Care's policies and procedures. As Blum confirmed in his deposition, Correct Care would send him policies to implement at the Jail where he was the medical director. Blum described Correct Care's automatic discontinuation policy in both his interrogatories and deposition. He also discussed how he would implement that policy, including against Ms. Carlisle. By enacting this

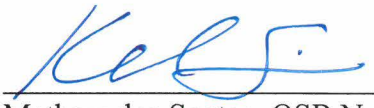
policy and then subsequently directing Dr. Blum to implement it, which he did consistently, Correct Care clearly created a direct causal link between the policy and the severe pain Ms. Carlisle suffered. Had Correct Care implemented an appropriate policy requiring a meaningful, individualized review of the inmate's medical history, the need of the medication, and, if terminated, an alternative treatment regime, Ms. Carlisle would not have needlessly suffered. Correct Care's policy, as implemented by Dr. Blum, is certainly the moving force behind Ms. Carlisle's injury and deprivation of constitutional rights.

CONCLUSION

For the reasons stated above, Ms. Carlisle respectfully requests that her motions for summary judgment be granted.

DATED: December 12, 2018.

ACLU FOUNDATION OF OREGON, INC.



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