THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-02941-CMA-STV

RYAN PARTRIDGE,

Plaintiff,

v.

JOE PELLE, in his official capacity as Boulder County Sheriff;
BRUCE HAAS, in his individual and official capacity as the administrator of the Boulder County Jail and Division Chief of the Boulder County Sheriff's Office;
JEFF GOETZ, in hid individual and official capacity as the administrator of the Boulder County Jail and Division Chief of the Boulder County Sheriff's Office;
SHANE MCGURK, in his individual and official capacity as the Corrections Program Coordinator for the Boulder County Jail Mental Health Program;
T. SMITH, in his individual and official capacity;
KARMEN KOGER, in her individual and official capacity;
THOMAS GROFF, in his individual and official capacity;
PAMELA LEVETT, in her individual and official capacity;
AMANDA TAYLOR, in her individual and official capacity;
ERIK CONTRERAS, in his individual and official capacity;
CHRISTOPHER MECCA, in his individual and official capacity;
DEBBIE STEVENS, in her individual and official capacity;
ROBERT HICKS, in his individual and official capacity;
DAN NEWCOMB, in his individual and official capacity;
CHUCK SISNEROS, in his individual and official capacity;
GREGORY CLEM, in his individual and official capacity;
CHRISTIAN BERRINGER, in his individual and official capacity;
DALE GREENE, in his individual and official capacity;
VILI MAUMAU, in his individual and official capacity;
ANTHONY HOLLONDS, in his individual and official capacity;
MERGEN MITTLEIDER, in her individual and official capacity; and
LYDIA MITCHELL, in her individual and official capacity,

Defendants.

SHERIFF'S DEFENDANTS' MOTION TO DISMISS

Defendants Joe Pelle, Bruce Haas, Jeff Goetz, Shane McGurk, T. Smith, Karmen Koger, Thomas Groff, Pamela Levett, Erik Contreras, Christopher Mecca, Debbie Stevens, Robert Hicks, Dan Newcomb, Chuck Sisneros, Gregory Clem, Christian Berringer, Dale Greene, Vili Maumau, Anthony Hollonds, and Lydia Mitchell (together "Sheriff's Defendants") under Fed. R. Civ. P. 12(b)(6) move to dismiss the claims against them. In support, the Sheriff's Defendants state as follows:

Efforts to Comply with CMA Civ. Practice Standard 7.1D and D.C.Colo.LCivR. 7.1(a)

On February 27, 2018, counsel for the Sheriff's Defendants notified Plaintiff's counsel that the Sheriff's Defendants intended to file this motion and specifically explained the grounds for the motion. Plaintiff's counsel did not indicate that they intend to amend their complaint in response and stated they will oppose the motion.

Background

During 2016, the time period relevant to the Complaint, Plaintiff Ryan Partridge was arrested and incarcerated at the Boulder County Jail (the "Jail") on two separate occasions. (Compl. [Doc. #1] ¶¶ 19, 33-34.) Partridge suffers from schizophrenia, a mental illness with symptoms including psychosis, auditory and visual hallucinations, delusions, and paranoia. (*Id.* ¶ 33.) Partridge's symptoms manifested in different ways, at different times, and in a wide variety of ways. His behavior at the jail included "acting bizarrely" (*id.* ¶ 19); "stand[ing] at the door of his cell and star[ing] out into space" (*id.* ¶ 21); asking a deputy if he was there to kill him (*id.* ¶ 23); jamming his food tray into his jail cell door so that it could not be closed (*id.* ¶ 24); chanting (*id.* ¶ 29); forcing himself to vomit (*id.* ¶ 32); talking to himself in an accent (*id.* ¶¶ 35, 37); submitting nonsensical

writings (*id.* ¶¶ 39, 40); not sleeping (*id.* ¶ 42); roaring like an animal (*id.* ¶ 52); refusing to put on clothes, speak, or leave his cell (*id.* ¶ 59); sleeping for an entire day, covering his body with a blanket, and not moving (*id.* ¶ 59); jumping up, screaming nonsense, and rushing toward his cell door (*id.* ¶ 60); and violent outbursts, including assaults on deputies in the jail (*id.* ¶ 18, 53-54).

At times, Partridge's illness resulted in him engaging in self-harm or attempts at self-harm. In particular, Partridge alleges that he attempted to gouge his eyes on March 22 and again on March 28, 2016. (Compl. ¶¶ 27-28.) He also alleges that he attempted suicide by jumping off the railing on the second-floor of the jail on November 1, 2016 (*id.* ¶ 45), and that he attempted to jump from the second floor again on December 1, 2016 (*id.* ¶ 52). On December 17, Partridge used his bare hands to gouge his eyes while in his cell, causing injuries that left him blind. (*Id.* ¶¶ 1, 76.)

On other occasions, Partridge's symptoms were not as severe. For example, after participating in a restoration to competency program in May, Partridge was out of jail for three months. (*Id.* ¶¶ 33-34.) Likewise, on November 17—exactly one month before Partridge's eye injury—a doctor from the Colorado Mental Health Institute at Pueblo ("CMHIP") found Partridge competent to proceed in a criminal sentencing hearing. (*Id.* ¶ 50.) At the December 1 hearing, a judge allegedly sentenced Partridge to six months of work release in the Jail—a sentence he was serving on December 17. (*Id.*)

During Partridge's multiple but intermittent stays in the jail, the interactions between jail deputies and Partridge sometimes involved physical altercations. For

example, on two occasions, deputies forcibly placed Partridge in a restraint chair to prevent him from harming himself. (Compl. ¶¶ 28, 32.) On five other occasions, Partridge resisted commands of deputies and was ultimately physically restrained by jail deputies. (*Id.* ¶¶ 24, 27, 53, 57, 60.)

In his Complaint, Partridge alleges that various individuals and entities are responsible for the incidents of self-harm or attempted self-harm prior to December 17. Further, he alleges that all individuals and entities are responsible for the December 17 self-harm incident. Partridge also alleges the deputies involved in physical altercations with him used excessive force. Finally, he alleges that Pelle, Haas, and Goetz are liable as supervisors of the other defendants. As shown below, the Court should dismiss all of these claims.

STANDARD OF REVIEW

Under Rule 12(b)(6), "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While this "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.*; *see also Twombly*, 550 U.S. at 555. A complaint that tenders "naked assertions" devoid of "further factual enhancement" is insufficient to withstand a Rule 12(b)(6) motion to dismiss and should be dismissed by the court. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 557).

Because the Court must assume that the factual allegations in the complaint are true for the purposes of a 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555 (citations omitted). Importantly, "the tenant that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678.

ARGUMENT

I. Partridge failed to allege facts to support his first claim for relief.

Partridge's first claim for relief is a deliberate indifference claim based on an incident in February or March of 2016 in which Partridge claims he suffered injuries to his head, mouth, and teeth when he intentionally struck his head against a toilet in his cell. (Compl. ¶¶ 3, 21.)

A. Elements of a deliberate indifference claim

"Prison and jail officials, as well as the municipal entities that employ them, cannot absolutely guarantee the safety of their prisoners." *See Cox v. Glanz*, 800 F.3d 1231, 1247-48 (10th Cir. 2015). Claims based on self-harm, such as jail suicides, are considered and treated as claims based on the failure of jail officials to provide medical care for those in their custody. *Barrie v. Grand Cty.*, 119 F.3d 862, 866 (10th Cir.1997). Such claims "must be judged against the 'deliberate indifference to serious medical needs' test of *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)." *Id.* at 867. Accordingly, Partridge's Fourteenth Amendment claims of deliberate indifference under 42 U.S.C. § 1983 require him to establish that: (1) objectively, the alleged deprivation was sufficiently serious to constitute a deprivation of constitutional

dimension; and (2) subjectively, the prison officials had a sufficiently culpable state of mind. *Self v. Crum*, 439 F.3d 1227, 1230-31 (10th Cir. 2006).

The first prong is met if the deprivation is "sufficiently serious," that is, "if it 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." *See Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1315 (10th Cir. 2002) (quoting *Hunt v. Uphoff*, 199 F.3d 1220, 1224 (10th Cir. 1999)). The second prong is met if a defendant knows of and disregards an excessive risk to an inmate's health or safety. *See id*. The defendant must be "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and he must also draw the inference." *See id.* (quoting *Garrett v. Stratman*, 254 F.3d 946, 949-50 (10th Cir. 2001). This standard is akin to "recklessness in the criminal law." *Farmer v. Brennan*, 511 U.S. 825, 861 (1994) (Thomas, J., concurring). In the context of self-harm, "the rigorous deliberate indifference standard requires knowledge that an inmate is suicidal or a risk so obvious and substantial that knowledge can be inferred." *Gaston v. Ploeger*, No. 05-3461, 2007 WL 1087281, at *9 (10th Cir. Apr. 12, 2007). "The threshold for obviousness is very high." *Id.* at *7.

B. Element that Partridge failed to allege

Partridge failed to plead specific allegations against Defendants McGurk, Levett, Pelle, and Haas that meet the second element of the deliberate indifference standard.[1]

[1] Amanda Taylor is also named as a defendant in the First, Fifth, and Tenth Claims for relief, but Ms. Taylor was not employed by the Sheriff or Boulder County and is therefore not represented by the Boulder County Attorney.

Partridge claims that collective and unspecified "defendants" took certain actions that constituted deliberate indifference to his February/March self-harm incident. (Compl. ¶¶ 93-105.) General allegations against unspecified defendants are insufficient to state a claim for relief. Section 1983 "liability must be predicated on an individual defendant's personal involvement in the constitutional violation." *Glaser v. City & Cty. of Denver*, No. 13-1165, 2014 WL 308552, at *10 (10th Cir. Jan. 29, 2014). "In § 1983 cases, defendants often include the government agency and a number of government actors sued in their individual capacities. Therefore it is particularly important in such circumstances that the complaint make clear exactly *who* is alleged to have done *what* to *whom* . . ." *Robbins v. Okla.*, 519 F.3d 1242, 1249-50 (10th Cir. 2008). In such cases, "plaintiff's facile, passive-voice showing that his rights 'were violated' will not suffice." *Glaser*, 2014 WL 308552, at *10 (quoting *Pahls v. Thomas,* 718 F.3d 1210, 1225 (10th Cir. 2013). Further, "more active-voice yet undifferentiated contention that 'defendants' infringed his rights" is likewise insufficient. *Id*.

Like Partridge's generalized allegations against unspecified defendants, the specific fact allegations against the defendants named in Partridge's first claim are insufficient to state a deliberate indifference claim. All of the specific allegations against McGurk in the Complaint relate to actions that McGurk took in December 2016—nearly eight months *after* the alleged self-harm incident. (Compl. ¶¶ 61, 81, 85.) No fact allegations support a claim that McGurk knew in February or March 2016 that Partridge was at imminent risk of self-harm or that McGurk ignored that risk.

The only specific allegation against Levett that could have taken place before the tooth breaking incident is that "[o]n February 25, 2016, Deputy Foster contacted mental health worker Defendant Pamela Levett and reported Mr. Partridge was psychotic and should be on 'house alone' status." (*Id.* ¶ 22.) Even assuming that Levett received this report immediately prior to the tooth breaking incident, this information is insufficient to show an obvious and substantial danger that Partridge would imminently commit self-harm. *See Gaston*, 2007 WL 1087281, at *9. The mere fact that Partridge suffered from mental illness and had sporadic psychotic episodes did not mean he was at imminent risk of self-harm. *See Norman v. Randolph*, No. 14-6109, 2015 WL 221613, at *1 (10th Cir. Jan. 16, 2015) (periodic paranoid delusions not necessarily an indication of suicide risk). Moreover, because the date of the alleged incident is not specified in the Complaint, it is at best unclear whether assessment and treatment was provided by jail staff between the report from Deputy Foster and the tooth breaking incident. In sum, for both of these individual defendants, Partridge provides no specific allegations showing that they were aware of facts from which the inference could be drawn that Partridge was about to strike his face against the toilet in his cell. *See Olsen*, 312 F.3d at 1315.

Further, allegations in the Complaint show that the Jail did not ignore Partridge's mental health condition or risks of imminent self-harm when they presented themselves. For example, Partridge alleges that jail staff placed him in the Special Management Module at the jail on March 3 because of his psychotic behavior. (Compl. ¶ 24.) On March 7, 2016, Partridge was seen by a mental health worker at the jail. (*Id.* ¶ 25.) The following day, he was seen by a psychiatrist and prescribed anti-psychotic medication.

(*Id.*; *see also* ¶ 33.) He was seen again by a mental health worker and a nurse on March 22, and then taken to Boulder Community Hospital on March 28. (Compl. ¶¶ 29, 31). A mental health worker at the jail saw him on March 29 and ultimately placed him in a restraint chair to prevent self-harm. (*Id.* ¶ 32.) Thus, even Partridge's generalized claim that unspecified defendants failed to examine or provide treatment to him (*see id.* ¶¶ 99-100) is contradicted by specific fact allegations in the Complaint.

Pelle and Haas are named in the first claim only in their official capacities. Because, as shown above, Partridge has failed to plead facts showing an underlying constitutional violation, his official capacity claims must also be dismissed. *See Camuglia v. City of Albuquerque*, 448 F.3d 1214, 1223 (10th Cir. 2006) ("A municipality may not be held liable where there was no underlying constitutional violation by any of its officers." (internal quotation marks omitted)).

II. Partridge failed to plead facts sufficient to support his fifth claim for relief.

Partridge's fifth claim for relief is a deliberate indifference claim based on the allegation that on November 1 he attempted suicide by jumping off the second floor railing at the jail. (Compl. ¶ 45.)

A. Elements of deliberate indifference.

The elements of deliberate indifference are specified in section I(A) above and are the same in this claim.

B. Element that Partridge failed to allege.

Partridge failed to plead specific allegations against Defendants Contreras, Mecca, Stevens, McGurk, Levett, Pelle, and Goetz that meet the second element of the

deliberate indifference standard. He alleges that this group of defendants is liable for the injuries resulting from this suicide attempt because they were allegedly deliberately indifferent to the risk of suicide. However, Partridge failed to allege specific facts that demonstrate a claim against each of the individual Defendants. Like his first claim for relief, Partridge makes general claims against a group of defendants rather than identifying individuals. (*See* Compl. ¶¶ 135-140.) As shown below, none of the specific fact allegations against the individual defendants support a deliberate indifference claim.

All of the specific allegations against McGurk relate to actions that McGurk took in December 2016—a month after the alleged self-harm incident. (*Id.* ¶¶ 61, 81, 85.) No fact allegations support a claim that McGurk knew on November 1 that Partridge was at imminent risk of self-harm.

Similarly, the only allegations against Levett prior to November 1 are that: 1) on February 25 Deputy Foster reported to Levett that Partridge was psychotic and should be on "house alone" status" (*id.* ¶ 22); 2) on September 9, Partridge reported to Levett that he knew the judge could hear his thoughts; that he wanted to make his mother his puppet; that he may have some delusions, and that he was speaking in an Irish accent (*id* ¶ 37).[2] These facts fail to demonstrate that it should have been obvious to Levett that Partridge would attempt suicide months later.

[2] Partridge alleges that on an unspecified date Partridge's mother contacted Levett and said Partridge was retreating into his own mind and she was scared for him. (Compl. ¶ 51.) However, it appears from the context of the Complaint that this contact took place sometime after November 17. (*See id.* ¶ 50.) Partridge also alleges that he met with Levett the day after his suicide attempt. (*Id.* ¶ 47.)

The only specific deliberate indifference allegations against Deputies Mecca and Stevens are that they were working in the living unit in which Partridge was staying on November 1 and that they "released" Partridge to walk on the second tier of the unit. (Compl. ¶ 45.) No specific fact allegation in the Complaint shows that Mecca or Stevens were aware of an obvious and substantial risk that Partridge would attempt suicide.

Partridge alleges that Deputy Contreras was also working in the housing unit where Partridge was living on November 1. (*Id.*) However, Partridge further alleges that Contreras observed that, prior to the suicide attempt, Partridge was "pacing in the day room and talking to himself; that he is known to be delusional, and often talks to himself, and that he had refused to take his medicine that morning." (*Id.*) While Contreras may have been aware that Partridge exhibited symptoms of mental illness, none of these alleged observations show an obvious risk of suicide. *See Cox*, 800 F.3d at 1237, 1249-51 (10th Cir. 2015) (no deliberate indifference to risk of suicide when inmate indicated he was paranoid, heard voices, and was diagnosed with paranoid schizophrenia).

In sum, no specific allegations in the Complaint show that McGurk, Levett, Mecca, Stevens, or Contreras were aware of an obvious risk that Partridge would attempt suicide. Further, Pelle and Goetz are named in the fifth claim only in their official capacities. Because Partridge has failed to plead facts showing an underlying constitutional violation, his official capacity claims must also be dismissed. *See Camuglia*, 448 F.3d at 1223.

III. Partridge failed to plead facts sufficient to support his tenth claim for relief.

Partridge alleges deliberate indifference against all 22 defendants[3] in his tenth claim for relief, which is also based on a deliberate indifference theory. In particular, Partridge alleges that on December 17 he gouged his eyes using his own fingers and Defendants are liable because they failed to prevent this self-harm.

A. Elements of deliberate indifference.

The elements of deliberate indifference are discussed in section I(A) above and are the same for this claim.

B. Element that Partridge failed to allege.

Partridge failed to plead specific facts showing all Defendants meet the second element of the deliberate indifference standard. With the exception of a few more specific allegations against Defendants Smith, Berringer, and Greene, Partridge alleges general actions by an unspecified group of defendants rather than pointing to the actions of any individual defendants. Because Partridge named so many defendants, it would be inefficient and page-consuming to address the specific allegations against all of the defendants in narrative form. Accordingly, the Sheriff's Defendants have included Appendix 1, which identifies the specific allegations against the jail deputies who were not present at the jail on December 17. Partridge's failure to allege facts supporting deliberate indifference for specific groups of defendants is shown below.

[3] Mergen Mittleider was not a Sheriff's employee and is represented by other counsel.

1. *Jail deputies who encountered Partridge during his stays in the jail but were not present on December 17 were not deliberately indifferent to Partridge's serious medical needs.*

The defendants listed in Appendix 1 are deputies who worked in the jail, had minimal contact with Partridge, and were not alleged to be at the jail during the December 17 incident. To establish liability for deliberate indifference, a plaintiff must show that a defendant was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Craig v. Eberly,* 164 F.3d 490, 495 (10th Cir. 1998). Further, the plaintiff must show that the prison official disregarded the specific risk of harm actually claimed. *Martinez v. Beggs,* 563 F.3d 1082, 1089 (10th Cir. 2002); *see Estate of Hocker v. Walsh*, 22 F.3d 995, 1000 (10th Cir. 1994) (plaintiffs required to show deliberate indifference to specific risk of suicide, not merely general risk posed by intoxication). Partridge failed to allege facts that show it was obvious to these individual defendants that Partridge would harm himself on December 17 or that any of these defendants could have taken some action prior to December 17 to prevent his self-harm.

Partridge may claim that the Defendants in Appendix 1 are nevertheless responsible for Partridge's injury because they failed to ensure that Partridge received specialized treatment for his mental health condition, such as involuntary medication, 24-hour supervision, or hospitalization. (*See* Compl. ¶¶ 82, 88.) However, the Constitution does not "affirmatively create a right to mental health services or treatment." *Shook v. Bd. of Cty. Comm'rs of El Paso*, No. 02-cv-00651-RPM, 2006 WL 1801379, at *5 (10th Cir. June 28, 2006). Accordingly, "[j]ails are not required to offer

treatment or alter their custody procedures for every psychological problem exhibited by prisoners." *Id.* at *7. Instead, the Tenth Circuit recognizes two types of conduct constituting deliberate indifference. "First, a medical professional may fail to treat a serious medical condition properly." *Sealock v. Colorado*, 218 F.3d 1205, 1211 (10th Cir. 2002). Second, "deliberate indifference occurs when prison officials prevent an inmate from receiving treatment or deny him access to medical personnel capable of evaluating the need for treatment." *Id.* The first type of conduct is inapplicable to the Defendants in Appendix 1, and Partridge has failed to allege facts that support the second theory.

Although Partridge makes the broad allegation that all of the Defendants "did nothing" in response to Partridge's mental illness, that allegation is contradicted by the specific facts alleged in the Complaint. Partridge alleges that he was in contact with mental health counselors, nurses, and psychiatrists multiple times during his stays at the jail. (*See* Compl. ¶¶ 25, 26, 29, 32, 33, 41, 55, 75.) Partridge also had several opportunities for evaluation and treatment outside of the jail, such as the Boulder Community Hospital emergency room on March 28 (*id.* ¶ 31), participation in the RISE return to competency program on May 12 (*id.* ¶ 33), and a four-month period when he was out of jail and free to seek whatever evaluation and treatment he chose. (*Id.* ¶¶ 33-34).

Significantly, a CMHIP doctor, Dr. Ort, evaluated Partridge at the jail on October 27. (*Id.* ¶ 41.) Partridge does not allege that Dr. Ort ordered specialized treatment or found that Partridge was in danger of serious self-harm. Instead, the opposite was the

case because Dr. Ort found Partridge competent on November 17. (*Id.* ¶ 50.) In fact, despite the numerous instances of and opportunities for professional evaluation and treatment, Partridge does not allege that any metal health program or medical professional instructed the Appendix 1 Defendants that Partridge was in need of additional health treatment or that immediate steps must be taken to prevent Partridge's future self-injury. These allegations further demonstrate that the Appendix 1 defendants were not deliberately indifferent to Partridge's risk of self-harm. *See Vega v. Davis,* No. 16-1028, 2016 WL 7448067, at *5 (10th Cir. Dec. 28, 2016) (No deliberate indifference when a psychological review of inmate indicated no current mental health issues or risk of suicide.)

Accordingly, Partridge failed to allege facts showing that the deputies who encountered Partridge at the jail but were not present on December 17 were deliberately indifferent to his serious medical needs.

2. *Mental health counselor Pam Levett and Mental Health Program Coordinator Shane McGurk were not deliberately indifferent to Partridge's serious medical needs.*

Much like Partridge's claims against the deputies discussed in subsection (1) above, the allegations with respect to Levett and McGurk are based on various encounters with Partridge or information they had about him prior to December 17. Partridge does not allege that Levett and McGurk were present on December 17 or even that they had direct contact with Partridge in the days leading up to the incident. The specific fact allegations against Levett and McGurk fail to establish that they knew of an excessive risk to Partridge's health and safety and disregarded that risk. *See*

Olsen, 312 F.3d at 1315.

The Complaint identifies Levett as a "jail mental health counselor." (Compl. ¶ 55.) Although the allegations show that Levett was aware Partridge suffered from mental illness, no specific fact allegation establishes that she was aware that Partridge was at imminent risk of self-harm on December 17. *See Shook v. Bd. of Cty. Comm'rs of El Paso*, 543 F.3d 597, 605 (10th Cir. 2008) ("Not all mentally ill people are suicidal . . ."); *Estate of Hocker*, 22 F.3d at 1000 (knowledge that inmate was intoxicated does not suggest specific risk of suicide). At a meeting with Partridge on September 20, Levett saw evidence that he suffered from delusions and spoke with an Irish accent. (Compl. ¶ 37.) On December 3, Levett expressed concern that Partridge was "going to decompensate quickly" and noted that he can "go downhill quickly and become in a severe mental state." (*Id.* ¶ 55.) Partridge's mother contacted Levett on an unspecified date (*id.* ¶ 37) and on December 10 (*id.* ¶ 58) and expressed concern for Partridge's safety and well-being. None of these facts are sufficient to establish that it should have been obvious to Levett that Partridge would injure himself on December 17.

The Complaint identifies McGurk as the "Corrections Program Coordinator for the Boulder County Jail." (*Id.* ¶ 56.) The allegations in the Complaint show that McGurk was aware that Partridge was mentally ill and McGurk was seeking additional treatment for Partridge. Specifically, Partridge alleges that McGurk went to court on December 6, 2016, and requested that the court order Partridge to the Colorado Mental Health Institute at Pueblo ("CMHIP") for a competency evaluation. (*Id.* ¶ 56.) Additionally, McGurk requested that Partridge be "bumped to the top of the list for his safety and staff

safety." (*Id.*)

McGurk also submitted an affidavit to the state court on December 16 that outlined Partridge's need for urgent psychiatric treatment. (*Id.* ¶ 61.) McGurk indicated in the affidavit that he was "increasingly concerned" with Partridge's behavior, that his "condition has deteriorated and will continue to deteriorate," that he is "a danger to himself and/or others and his condition is serious enough to warrant an evaluation." (*Id.*) The affidavit allegedly included a statement indicating that Partridge had previously attempted to gouge his own eyes. (*Id.* ¶ 81.)

Although these allegations show that McGurk was concerned for Partridge's safety due to his deteriorating mental health, they fail to show that McGurk consciously disregarded a risk that Partridge would injure himself with his bare hands on December 17. *See Martinez*, 563 F.3d at 1089 ("the subjective component requires the prison official to disregard the risk of harm claimed by the prisoner.") McGurk attempted to address Partridge's mental health condition and the generalized potential for self-harm by trying to get him admitted to CMHIP and requesting that he be moved to the top of CMHIP's admittance list. (Compl. ¶¶ 56, 61.)

Partridge may argue that the severity of his symptoms should have suggested to McGurk that he take additional actions to provide Partridge with more rapid or different mental health treatment, but such an argument "removes the subjective inquiry from the deliberate indifference test." *Self*, 439 F.3d at 1233. Even assuming that Partridge's behavior during his time at the jail would have led a medical professional to conclude that Partridge was in immediate need of specialized treatment to prevent serious self-

harm, McGurk's "failure to connect-the dots is by itself insufficient to establish a culpable state of mind." *Id.* at 1235. This is because an "official's failure to alleviate a significant risk that he should have perceived but did not . . . cannot . . . be condemned as the infliction of punishment." *Farmer*, 511 U.S. at 838.

Accordingly, Partridge has failed to allege facts showing that Levett or McGurk's actions constitute deliberate indifference.

3. Jail deputies Smith and Berringer and Nurse Greene were not deliberately indifferent to Partridge's serious medical needs.

Partridge's allegations against Smith, Berringer, and Greene are more specific than the allegations against the other defendants in his tenth claim for relief. In particular, Partridge alleges that he "lay for hours" with blood on his face but that Smith, Berringer, and Greene "determined Mr. Partridge did not need immediate medical attention." (Compl. ¶ 194; *see also* ¶ 69.) Thus, the relevant legal question for determining whether the allegations against these defendants are sufficient to meet the subjective component of the deliberate test is: "were the symptoms such that a prison employee knew the risk to the prisoner and chose (recklessly) to disregard it?" *Martinez*, 563 F.3d at 1089. The specific allegations in this case show that the answer is "no."

Partridge alleges that on December 17 at 7:45 p.m., "Deputy Smith had noticed that Mr. Partridge had blood on his cheek." (Compl. ¶ 70.) "Deputy Smith was with Nurse Dale Greene who also saw the blood. Nurse Greene determined that he didn't believe it required immediate attention." (*Id.*) Around 9 p.m. on December 17, Berringer passed by Partridge's door and "noticed he had dried blood on the side of his face that

appeared to come from the corner of his eye." (*Id.* ¶ 69.) He spoke to Smith, who told him it had been like that before. (*Id.*)

At around 10 p.m., Berringer and Smith noticed a significant amount blood and fluid coming from Partridge's left eye and that his eye was swollen. (*Id.* ¶ 71.) Partridge then stood and Berringer and Smith noticed both eyes were swollen and bleeding. (*Id.*) At that point, they arranged to extract Partridge from his cell to get medical help. (*Id.* ¶¶ 72-73.) He was wheeled to the jail medical unit and later transferred to Boulder Community Hospital. (*Id.* ¶ 75.)

The alleged failure of Berringer, Smith, and Greene to take immediate emergency action at 7:45 or 9 p.m. in response a small amount of blood on Partridge's cheek does not constitute deliberate indifference. To establish liability for deliberate indifference, a plaintiff must show that a defendant was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Craig,* 164 F.3d at 495. A small amount of dried blood is not an indicator of an urgent medical need. *See Martin v. Gentile*, 849 F.2d 863, 871 (4th Cir. 1988) (cut over eye that had stopped bleeding was not an injury serious enough to require immediate medical attention); *Youmans v. Gagon*, 626 F.3d 557, 566-67 (11th Cir. 2010) ("Significant, sustained bleeding . . . is a far greater indicator of a need for urgent medical care than the mere presence of cuts and bruises . . . ."); *Bailey v. Feltmann*, 810 F.3d 589, 594 (8th Cir. 2016) (rejecting a deliberate indifference claim in the absence of "profuse bleeding"). Accordingly, Partridge failed to allege specific facts showing Berringer, Smith, and Greene were deliberately indifferent to Partridge's

medical needs on December 17.

4. Pelle, Goetz, and Haas were not deliberately indifferent to Partridge's serious medical needs.

Pelle, Goetz, and Haas are named in the tenth claim only in their official capacities. (*See* Compl. ¶ 193.) Because Partridge has failed to plead facts showing an underlying constitutional violation, his official capacity claims must also be dismissed. *See Camuglia*, 448 F.3d at 1223. Moreover, because Haas retired in June 2016 (Compl. ¶ 12), he is not a proper official capacity defendant for an incident that took place almost six months after he retired.

IV. Partridge failed to plead facts supporting his thirteenth claim for relief.

Partridge's thirteenth claim for relief is an individual capacity supervisory liability claim against Pelle,[4] Haas, and Goetz under § 1983, presumably arising out of the incidents of alleged deliberate indifference discussed in subsections I, II, and III above.[5]

A. Elements of § 1983 supervisory liability for deliberate indifference.

A plaintiff arguing for the imposition of supervisory liability must show an "affirmative link" between the supervisor and the constitutional violation. *Cox*, 800 F.3d at 1248. Establishing such a link involves three related prongs: "(1) personal involvement, (2) sufficient causal connection, and (3) culpable state of mind." *Id.* (citing *Dodds v. Richardson*, 614 F.3d 1185, 1195 (10th Cir. 2010)). To meet the third prong in cases of self-harm such as suicide, "in order for any defendant . . . to be found to have

[4] The caption of the Complaint erroneously specifies that Pelle is named only in his official capacity as Boulder County Sheriff.

[5] The thirteenth claim for relief does not identify any particular incidents that are the basis of the claim.

acted with deliberate indifference, he needed first to have knowledge that the specific inmate at issue presented a substantial risk of suicide." *Cox*, 800 F.3d at 1250.

B. Elements Partridge fails to allege.

The allegations in the Complaint fail to establish the third element of supervisory liability. Partridge does not allege that Pelle, Haas, or Goetz had knowledge that Partridge was going to attempt suicide or other self-harm. Instead, Partridge only alleges that they failed to train and supervise the other defendants to "recognize the symptoms of severe mental illness and initiate an appropriate medical intervention for a detainee [*sic*] exhibiting those symptoms." (Compl. ¶ 221.) Partridge's failure to train theory is identical to the supervisory liability theory advanced and rejected in *Cox. See* 800 F.3d at 1239 (plaintiff claimed "the Sheriff's alleged failure to properly train and supervise Jail employees . . ." as the basis for supervisory-liability for a jail suicide). Moreover, as shown in sections I-III above, Partridge has failed to establish that *any* jail employee had knowledge that Partridge was at imminent risk of suicide or self-harm. Thus, Pelle, Haas, and Goetz could not have possessed such knowledge. *See id.* at 1252. Accordingly, Partridge's supervisory liability claim should be dismissed.

V. The individual defendants are entitled to qualified immunity from Partridge's deliberate indifference claims.

A. Elements of qualified immunity

Partridge alleged deliberate indifference to serious medical needs as the basis for his first, fifth, tenth, and thirteenth claims for relief. The individual defendants are entitled to qualified immunity to those claims. "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct

does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). When a defendant asserts qualified immunity as an affirmative defense, the plaintiff must establish (1) that a constitutional violation occurred, and (2) that the violated law was "clearly established" at the time of the alleged misconduct. *King v. Patt*, No. 12-4107, 2013 WL 1926344, at *4 (10th Cir. May 10, 2013) (citing *Bowling v. Rector*, 584 F.3d 956, 964 (10th Cir. 2009)). When a court is considering qualified immunity, it does not have to first determine if there is a constitutional violation before deciding whether there is clearly established law that the reasonable officer should know. *See Pearson*, 555 U.S. at 236.

A clearly established law "must be 'particularized' to the facts of the case." *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). "Otherwise, '[p]laintiffs would be able to convert the rule of qualified immunity ... into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.'" *Id.* (quoting *Anderson*, 483 U.S. at 639). "[T]here must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains." *Whitington v. Lawson*, No. 10-1299, 2011 WL 2144549, at *2 (10th Cir. June 1, 2011) (quoting *Zia Trust Co. ex rel. Causey* v. Montoya, 597 F.3d 1150, 1155 (10th Cir.2010)). The pertinent question is "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation." (internal quotation marks omitted). *Whitington*, 2011 WL 2144549, at *2.

B. Elements Partridge failed to allege

Partridge's deliberate indifference claim fails under both elements of the qualified immunity analysis. First, as discussed in Sections I, II, III, and IV above, Partridge failed to sufficiently assert facts that support a violation of federal law. Second, no Supreme Court or Tenth Circuit case establishes particularized facts showing that any of the Defendants' conduct was unlawful.

With regard to the first and tenth claims for relief, Defendants have been unable to find *any* Tenth Circuit or Supreme Court case specifying the constitutional obligations of jail deputies, nurses, or mental health workers regarding incidents of self-harm that are not suicide. Partridge does not allege that Defendants failed to initiate suicide prevention protocols in response to Partridge's behavior. Instead, Partridge claims Defendants should have gone beyond suicide protocols and taken steps to prevent Partridge from suddenly harming himself with his bare hands. However, "jailers are neither obligated nor able to watch every inmate at every minute of every day." *Gaston,* 2007 WL 1087281, at *8. Because no Supreme Court or Tenth Circuit case establishes a constitutional requirement with respect to self-harm, the individual Defendants are entitled to qualified immunity.

Moreover, case law regarding inmate suicide does not establish particularized facts showing a constitutional violation regarding any of Partridge's deliberate indifference claims. No Supreme Court case has established a right to the proper implementation of adequate suicide prevention protocols, let alone protocols for prevention of self-harm. *See Taylor v. Barkes*, 135 S.Ct. 2042, 2044 (2015). Further, in

the Tenth Circuit, "for any defendant . . . to be found to have acted with deliberate indifference, he needed to first have knowledge that the specific inmate at issue presented a substantial risk of suicide." *Cox*, 800 F.3d at 1249-51.

Cox demonstrates that Partridge's allegations fall short of the qualified immunity standard. In *Cox*, the plaintiff alleged that an inmate filled out a jail intake form indicating that he felt paranoid, heard voices, and felt nervous or depressed. *Id.* at 1237. Although the form indicated these answers meant further mental health assessment should take place, there was "no indication in the record that any Jail employee referred [the inmate] to the facility's mental-health team for follow-up care." *Id.* Further, the inmate told a jail nurse that he had had mental health treatment and hospitalization in the past for paranoid schizophrenia. *Id.* He also filed a medical request indicating that he needed to speak with someone about "problems." *Id.* The inmate hanged himself in the jail three days after his health screening. *Id.*

Significantly, the Court found that the plaintiff's allegations that health care professionals in the jail "were deliberately indifferent to [the inmate's] serious mental health care needs" were insufficient to show that those professionals "possessed sufficient knowledge that would permit them to conclude that [the inmate] presented a substantial risk of suicide." *Id.* at 1252. The Court concluded that the inmate's "observable symptoms were susceptible to a number of interpretations; suicide may well have been one possibility, but the facts known to those with whom he interacted did not establish that it was a substantial one." *Id.* at 1253.

As discussed in the Background section above, although Partridge exhibited episodes of suicidal or self-harming behavior over an eleven-month period where he was in and out of the jail, he cannot point to an instance where he presented a threat or indication of imminent self-harm to which any of the individuals failed to respond. For example, Partridge does not claim he informed any of the defendants that he planned to hit is head against the toilet in his cell, nor does he claim any Defendant witnessed such behavior and failed to stop it. Regarding his alleged suicide attempt, he does not claim that he made any statements or took any actions that made it obvious he was about to attempt suicide.

Regarding his eye injury, Partridge's allegation that Defendants were deliberately indifferent to a risk that Partridge would self-harm by gouging his eyes are based on alleged incidents that took place more than eight months prior to the injury. Specifically, the Complaint points to:

- A statement to unidentified deputes in "early 2016" that the CIA was telling him to "dig out his eyes" and an allegation that he "unsuccessfully attempted to do so." (Compl. ¶ 20.)
- An incident on March 22 in which two deputies saw Partridge attempting to gouge his eyes. (*Id.* ¶¶ 27-28.) Notably, when they witnessed the behavior, they immediately placed him in a restraint chair. (*Id.* ¶ 28.) The jail arranged for a hospital visit a few days later. (*Id.* ¶ 30-31).
- While at Boulder Community Hospital on March 28 Partridge attempted to gouge out his eyes. (*Id.* ¶ 31.)

No Supreme Court or Tenth Circuit law establishes that an individual who is aware of the facts like the above must take special preventative measures months later to prevent self-harm.

Moreover, between the March incidents and the December injury, Partridge had been through a restoration to competency program (Compl. ¶ 33), had been out of jail for four months, at which time he was free to receive any mental health treatment he cared to, and had been evaluated and deemed competent by a doctor. (*Id.* ¶¶ 33-34, 41, 50.) No Supreme Court or Tenth Circuit law particularized to the facts of the case finds that jail personnel must assume that an inmate's treatment or opportunities for treatment failed and thus the inmate remains at substantial risk of self-harming behavior. This is especially true when an inmate had been found competent by a psychiatrist. (*See id.* ¶¶ 41, 50.)

Partridge's theory, at least in part, is based on allegations that Defendants had a constitutional obligation to provide involuntary mental health treatment to Partridge, such as forcible administration of anti-psychotic medication. (*Id.* ¶¶ 82-84.) However, no Supreme Court or Tenth Circuit case clearly establishes a constitutional right to involuntary mental health treatment in a county jail to prevent a risk of self-harm. In fact, under Colorado law, involuntary mental health treatment must be provided by a facility designated or approved by the executive director of the Colorado Department of Human Services to provide such treatment. Colo. Rev. Stat. § 27-65-107(1)(c); *see* § 27-65-102(6) and (7). The jail is not one of those designated facilities. (*See https://www.colorado.gov/pacific/cdhs/mental-health-emergency-holdinvoluntary-*

commitment.) The fact that the jail is not authorized by state law to provide involuntary treatment is evidence defendants' conduct was objectively reasonable. *See Roska ex. rel. Roska v. Peterson*, 328 F.3d 1230, 1251 (10th Cir. 2003) (in considering the objective legal reasonableness of the state officer's actions, "one relevant factor is whether the defendant relied on a state statue, regulation, or official policy that explicitly sanctions the conduct in question.")

Further, the premise underlying the duty to provide treatment of mental illness "is that the state may not deliberately fail to provide necessary medical treatment *when it is desired by the detainee*." *Bee v. Greaves*, 744 F.2d 1387, 1395 (10th Cir. 1984) (emphasis in original). "This constitutional requirement cannot be turned on its head to mean that if a competent individual chooses not to undertake the risks or pains of a potentially dangerous treatment, the jail may force him to accept it. Absent legitimate government objectives . . . involuntary medication may itself amount to unconstitutional punishment." *Id.*

Jail personnel face similar challenges with respect to other methods of preventing self-harm, such as a restraint chair. While jail employees may use a restraint chair to prevent imminent self-harm, they cannot use it for punishment. *Blackmon v. Sutton*, 734 F.3d 1237, 1242-43 (10th Cir. 2013); *see Youngberg v. Romeo*, 457 U.S. 307, 316, 324 (1992) (mentally impaired individual has right to freedom from bodily restraint). Thus, while the incidents in March 2016 may have shown it was possible that Partridge's mental illness would lead to an attempt at future self-harm, preventative measures such a restraint chair were not a viable option until the potential for imminent

harm was much more apparent.

In sum, no Supreme Court or Tenth Circuit case shows that the specific actions taken by each individual defendant violated clearly established law. Thus, all individual defendants are entitled to qualified immunity.

VI. The individual defendants are entitled to qualified immunity from Partridge's excessive force claims.

In addition to his deliberate indifference claims, Partridge alleges excessive force claims against individual defendants and groups of defendants involved in seven separate physical altercations that took place while Partridge was at the jail. These include Partridge's second, third, fourth, sixth, seventh, eighth, and ninth claims for relief. As shown below, all of the defendants are entitled to qualified immunity from these claims.

A. Elements of qualified immunity.

The elements of qualified immunity are set forth in section V(A) above.

B. Element that Partridge failed to allege.

For each excessive force claim, Partridge failed to allege facts demonstrating his claims meet the second element of qualified immunity. In particular, Partridge cannot show that these incidents of alleged excessive force violated clearly established law at the time of the incidents.

When a plaintiff alleges excessive force, the United States Supreme Court's direction to lower courts is that they not define clearly established law at a high level of generality. *Aldaba v. Pickens*, 844 F.3d 870, 872 (10th Cir. 2016). "The dispositive question is 'whether the violative nature of *particular* conduct is clearly established.'" *Id.*

(alteration in original) (quoting *Ashcroft v. al–Kidd*, 563 U.S. 731, 742 (2011)). Further, "[t]his inquiry 'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Id.* (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam)). In the Tenth Circuit, numerous cases have demonstrated the necessity of applying this concept of particularization to the determination of whether the law has been clearly established. *See, e.g. Aldaba*, 844 F.3d at 870 (qualified immunity found on remand after United States Supreme Court vacated 10th Circuit ruling of no qualified immunity); *Brown v. City of Colorado Springs*, No. 16-1206, 2017 WL 4511355, at *9 (10th Cir. Oct. 10, 2017); *White,* 137 S.Ct. at 551-52 (reversing the 10th Circuit and holding "[i]n the last five years, this Court has issued a number of opinions reversing federal courts in qualified immunity cases," recognizing that "qualified immunity is important 'to society as a whole,' ... and because as 'an immunity from suit,' qualified immunity 'is effectively lost if a case is erroneously permitted to go to trial.'" (quoting *Pearson*, 555 U.S. at 231, 129 S.Ct. 808)). As shown below, no Tenth Circuit or Supreme Court case shows that the particular conduct of the defendants violated clearly established law.

1. Defendants' conduct on March 3 did not violate clearly established law.

In his second claim for relief, Partridge alleges that Deputy Hollonds and Sergeant Groff violated his constitutional rights under the Fourth and Fourteenth Amendments by using excessive force. In particular, Partridge alleges that he was in the Disciplinary, Special Management, and Maximum Module at the jail on March 3 because of his psychotic behavior. (Compl. ¶ 24.) Hollonds opened Partridge's cell door

to hand him a food tray. (*Id.*) Partridge took the food tray, jammed it into the cell door so it could not be closed, and slipped out the door. (*Id.*) Hollonds allegedly reacted by punching Partridge in the face and wrestling him to the ground. Once on the ground, Hollonds punched him in the head. (*Id.*) After Hollonds was finally able to get Partridge back in the cell, a decision was made to move Partridge to a more secure cell. (*Id.*)

Several unnamed deputies began to take Partridge to another cell, but Partridge planted his feet and refused to continue walking. (*Id.*) Deputies pinned Partridge against a door and ordered him to stop resisting. (*Id.*) Groff used the drive-stun feature of the taser on Partridge. (*Id.*) Partridge alleges that he suffered unspecified "physical and emotional injuries" as a result of the incident. (*Id.* ¶ 114.)

Under the qualified immunity standard, the Court must determine if (1) Hollonds' decision to punch and take down a psychotic inmate attempting to escape from a cell in the high security area of the jail violated clearly established law; (2) Groff's decision to tase an inmate who had just attempted to escape, was being transferred to a more secure area, and was actively refusing to obey instructions violated clearly established law.

On March 3, Partridge was in the Boulder County jail because of an arrest for violating the conditions of probation and was therefore a pretrial detainee at the time of this incident. (Compl. ¶ 19.) Courts analyze use-of-force claims against pretrial detainees under the Fourteenth Amendment. *Kingsley v. Hendrickson*, __ U.S. __, 135 S.Ct. 2466, 2476 (2015). The Due Process Clause protects a pretrial detainee from the use of force that is objectively unreasonable. *Id.* at 2473. A court must make an

objective reasonableness determination "from the perspective of a reasonable officer on the scene . . . [not] with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989). In making this determination, the Tenth Circuit focuses on three factors: (1) the relationship between the amount of forced used and the need presented; (2) the extent of the injury inflicted; and (3) the motives of the state actor. *Porro v. Barnes*, 624 F.3d 1322, 1326 (10th Cir. 2010).

Even assuming that the sparse allegations in the Complaint against Hollonds stated an excessive force claim under this standard, no Tenth Circuit or Supreme Court case shows that Hollonds' specific actions violated clearly established law. In fact, the Tenth Circuit found no excessive force in a similar situation. *See Green v. Denning*, No. 11-3270, 2012 WL 759958, at *2 (10th Cir. Mar. 9, 2012) (When an inmate who is in the special management module due to bizarre behavior refuses an order to return to his cell, deputies who physically restrained the inmate and took him to the ground, slamming his head into the floor, did not use excessive force).

Likewise, the only allegation against Groff is that he used a taser against Partridge after he refused to transfer to another cell. No Tenth Circuit or Supreme Court case has found that any use of a taser on a detainee violates clearly established law. In fact, the Tenth Circuit has determined that "[t]he use of tasers in at least *some* circumstances—such as in a good faith effort to stop a detainee who is attempting to inflict harm on others—can comport with due process. *Porro*, 624 F.3d at 1329; *Hunter v. Young,*No. 06-3371, 2007 WL 1678060, at * (10th Cir. June 12, 2007) (use of taser is not per se unconstitutional when used to compel obedience by inmates); *see Caie v.*

West Bloomfield Twp., No. 11-1378, 2012 WL 2301648, at *4 (6th Cir. June 18, 2012) (single use of taser in drive-stun mode on intoxicated individual already taken to the ground but refusing officer's efforts to handcuff him was not excessive force). Thus, Hollands and Groff are entitled to qualified immunity.

2. Defendant Maumau's conduct on March 22 did not violate clearly established law.

Partridge's Third Claim for relief is an excessive force claim against Deputy Maumau. Specifically, Partridge alleges that on March 22 Partridge resisted entering his cell by placing his hands and arms in the door of his cell. (Compl. ¶ 27.) Deputy Maumau told Partridge to move back so the door would close and punched him in the chest. (*Id.*) Partridge refused to comply, and Maumau told Partridge he would tase him if he did not comply. (*Id.*) Maumau then used a taser on Partridge's fingers so that Partridge would remove them from the door. Partridge alleges he suffered unspecified "serious physical and emotional injuries" as a result of this incident. (*Id.* ¶ 123.) As detailed in subparagraph (B)(1) above, no Supreme Court or Tenth Circuit cases establishes that a single punch in the chest or use of a taser on an inmate who is refusing to enter his cell constitutes excessive force. Thus, Deputy Maumau is entitled to qualified immunity.

3. Defendant Mitchell's conduct on March 22 did not violate clearly established law.

In his fourth claim for relief, Partridge alleges that Sergeant Mitchell violated his constitutional rights under the Fourth and Fourteenth Amendments by using excessive force. In particular, Partridge alleges that, in response to Partridge's efforts to gouge his

eyes, jail deputies placed Partridge in a restraint chair and placed a spit sock over Partridge's head. (Compl. ¶ 28.) The only specific allegation against Mitchell is "Sergeant Mitchell tased Mr. Partridge." (*Id.*) Partridge claims that he suffered unspecified "serious physical an emotional injuries" as a result of the incident. (*Id.* ¶ 132.) No Supreme Court or Tenth Circuit case establishes that a single use of a taser on an inmate who is being restrained to prevent self-harm constitutes excessive force. Thus, Sergeant Mitchell is entitled to qualified immunity.

4. Defendants' conduct on March 29 did not violate clearly established law.

In his fifth claim for relief, Partridge alleges that Deputies Biggs, Vaughn, Mecca, Anderson, Sanchez, and Sergeant Knight violated his constitutional rights under the Fourth and Fourteenth Amendments by using excessive force. In particular, Partridge alleges that he was in his cell forcing himself to vomit and that jail mental health workers advised deputies that Partridge needed to be placed in a restraint chair. (Comp. ¶ 32.) The only allegation against Deputies Biggs, Vaughn, Mecca, Sanchez, and Sergeant Knight is that they "put on full riot gear." (*Id.*) Partridge additionally alleges that Deputy Anderson entered Partridge's cell, held his shield in front of him, and pinned Partridge against the wall while yelling "get down." (*Id.*) Partridge was then placed in a restraint chair. (*Id.*)

No Supreme Court or Tenth Circuit case establishes that dressing in "riot gear" or using a shield to push an inmate against a wall in these circumstances constitutes excessive force. Thus, this group of defendants is entitled to qualified immunity.

5. Defendants' conduct on December 2 did not violate clearly established law.

In his sixth claim for relief, Partridge alleges that Deputies Hicks and Newcomb and Sergeants Groff and Koger violated his constitutional rights under the Fourth and Fourteenth Amendments by using excessive force. Specifically, Partridge claims that on December 2 he swung at a deputy attempting to transport him to a visitation room. (Compl. ¶ 53.) Partridge's attack resulted in criminal charges against him that were later dismissed. (*Id.* ¶ 54.) Responding to the attack, Hicks and Newcomb allegedly punched Partridge in the face and he fell to the ground. (*Id.*) Once on the ground, Hicks hit Partridge on his back four or five times. (*Id.*) Groff and Koger tased Partridge. (*Id.*) Partridge alleges that after the incident he was bleeding from his head, nose, and mouth and that he was "covered in blood." (*Id.*) He further claims he suffered "serious physical and emotional injuries" as a result of the incident. (*Id.* ¶ 153.)

On December 1, a judge sentenced Partridge to work release and Partridge allegedly began to serve a six month sentence in the jail. (Compl. ¶ 50.) Accordingly, Partridge's status changed from a pretrial detainee to an inmate. As a result, Partridge's sixth claim is evaluated under the Eighth Amendment rather than the Fourth or Fourteenth as alleged in the Complaint. *See Kingsley*, 135 S.Ct. at 2475. The applicable test for an excessive force claim under the Eighth Amendment is "whether the force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986).

No Tenth Circuit or Supreme Court case clearly establishes that punches in the face and back and the use of a taser in response to an inmate assault on a jail deputy violates the Eighth Amendment. In fact, the allegations in the Complaint demonstrate that the use of force was in response to Partridge's threat to a deputy's safety and therefore not employed for the very purpose of causing harm.

6. Defendants' conduct on December 8 did not violate clearly established law.

In his seventh claim for relief, Partridge alleges that Deputies Sisneros, Palmer, Ubias, Gerhart, and Sergeants Koger and Groff violated his constitutional rights under the Fourth and Fourteenth Amendments by using excessive force. Specifically, Partridge alleges that on December 8 Partridge was being prepared for a visit with his parents. (Compl. ¶ 57.) Partridge placed his arms through a food port in the cell so he could be handcuffed. (*Id*.) After a handcuff was placed on one of his wrists, Partridge pulled it back through the food port so that only one arm was handcuffed. (*Id.*) In response Sisneros punched Partridge and Koger tased him. (*Id.*) Partridge then gave the handcuff back through the food port. (*Id.*) Partridge claims he suffered "serious physical and emotional injuries" as a result of the incident. (*Id.* ¶ 163.)

As further specified in subsection (5) above, no Tenth Circuit or Supreme Court case clearly establishes a punch and the use of a taser in response to an inmate forcibly pulling handcuffs into his cell violates the Eighth Amendment.

7. Defendants' conduct on December 16 did not violate clearly established law.

In his eighth claim for relief, Partridge alleges that Deputy Clem and Sergeants Koger and Groff violated his constitutional rights under the Fourth and Fourteenth

Amendments by using excessive force. Specifically, Partridge alleges that on December 16 he was lying naked and unmoving beneath a blanket in his cell. (Compl. ¶ 60.) Deputy Clem and Sergeants Koger and Groff opened Partridge's cell door. (*Id.*) Groff pulled away the blanket covering Partridge. (*Id*.) Partridge jumped up, screamed nonsense, and rushed toward the cell door. (*Id.*) Clem punched Partridge in the chest and Koger tased Partridge. (*Id.*) Partridge alleges he suffered "serious physical and emotional injuries" as a result of the incident. (*Id.* ¶ 173.)

As further specified in subsection (5) above, no Tenth Circuit or Supreme Court case clearly establishes a punch in the chest and the use of a taser in response to an inmate jumping up, screaming nonsense, and rushing toward and open cell door violates the Eighth Amendment.

8. Defendants' conduct on December 17 did not violate clearly established law.

In his ninth claim for relief, Partridge alleges that Deputy Smith and Sergeant Maumau violated his constitutional rights under the Fourth and Fourteenth Amendments by using excessive force. Specifically, Partridge alleges that, after Berringer and Smith noticed that Partridge's eyes were bleeding and swollen (Compl. ¶ 71), Maumau and Smith attempted to place handcuffs on Partridge so that they could extract him from his cell to obtain medical help (*id.* ¶¶ 72-73). Partridge did not comply with their efforts to place him in handcuffs. Smith slammed Partridge to the ground and Maumau tased him. (*Id*.) Partridge alleges he suffered "serious physical and emotional injuries" as a result of the incident. (*Id.* ¶ 183.)

As further specified in subsection (5) above, no Tenth Circuit or Supreme Court case clearly establishes that slamming an inmate to the ground and the use of a taser in response to an inmate resisting efforts to be placed in handcuffs so that he could be transported to receive medical attention violates the Eighth Amendment.

Conclusion

For the reasons stated above, the Court should dismiss all the claims against all of the Sheriff's Defendants.

Dated: March 12, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2018, I electronically filed the foregoing **SHERIFF'S DEFENDANTS' MOTION TO DISMISS** via U.S. District Court electronic filing service which will serve a true and correct copy upon the following

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