UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

SONNY DAVIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:23-cv-00030-JRS-MJD
	)	
JORDAN ASHBA, et al.,	)	
	)	
Defendants.	)	

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff Sonny Davis is an Indiana Department of Correction ("IDOC") prisoner who filed this action alleging constitutional violations of his Eighth Amendment and First Amendment rights related to treatment by Centurion Health of Indiana, LLC ("Centurion") and IDOC staff while he was housed at Wabash Valley Correctional Facility ("Wabash Valley"). Dkt. [27]. Upon screening of the complaint, the Court allowed Mr. Davis to proceed on *Monell* claims, First Amendment retaliation claims, and Eighth Amendment medical deliberate indifference claims against medical defendants Counselor Sarah Clarke and Centurion ("Medical Defendants"), and Eighth Amendment conditions of confinement and excessive force claims against Warden Vanihel, Commissioner Carter, Sergeant Ashba, Captain Wadhawan, Officer Shepard, Officer Wainman, Officer Jobe, and Officer Stevenson ("IDOC Defendants"). Dkt. [43]. Both sets of Defendants have moved for summary judgment. Dkts. [66, 73].

Counselor Clarke moves for summary judgment contending that she administered appropriate follow-up care pursuant to her medical judgment. Defendant Centurion moves for summary judgment contending that that they did not maintain polices or practices that contributed to Mr. Davis' constitutional violations. IDOC Defendants argue that they lacked personal

involvement in any Eighth Amendment claims because they relied on the medical professionals' orders, that Mr. Davis was not subjected to objectively serious conditions of confinement, that Mr. Davis was not subjected to excessive force by officers when sprayed with fogger spray, and that all IDOC defendants are subject to qualified immunity. For the reasons that follow, Defendants' motions for summary judgment, dkts. [66, 73], are **GRANTED in part and DENIED in part**.

I.
Standard of Review

A motion for summary judgment asks the Court to find that a trial is unnecessary because there is no genuine dispute as to any material fact and, instead, the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). When reviewing a motion for summary judgment, the Court views the record and draws all reasonable inferences from it in the light most favorable to the nonmoving party. *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the fact-finder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). A court only has to consider the materials cited by the parties, *see* Fed. R. Civ. P. 56(c)(3); it need not "scour the record" for evidence that might be relevant. *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 573−74 (7th Cir. 2017) (cleaned up).

A party seeking summary judgment must inform the district court of the basis for its motion and identify the record evidence it contends demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Whether a party asserts that a fact is undisputed or genuinely disputed, the party must support the asserted fact by citing to particular parts of the record, including depositions, documents, or affidavits. Fed. R. Civ. P. 56(c)(1)(A). Failure to properly support a fact in

opposition to a movant's factual assertion can result in the movant's fact being considered undisputed, and potentially in the grant of summary judgment. Fed. R. Civ. P. 56(e).

II.
Factual Background

Because Defendants have moved for summary judgment under Rule 56(a), the Court views and recites the evidence in the light most favorable to Mr. Davis and draws all reasonable inferences in his favor. *Khungar*, 985 F.3d at 572–73.

A. Parties and Claims

At all relevant times, Mr. Davis was an inmate incarcerated at Wabash Valley. Dkt. 68-1 at 11-12 (Davis' Deposition).

Centurion is a private company that has contracted with IDOC to provide medical care to inmates. Dkt. 19 at 1 (Centurion Defendants' Answer). Sarah Clarke was a mental health professional employed by Centurion and contracted to perform services within Wabash Valley during the time in question. Dkt. 74-3 at 2. Mr. Davis was one of her assigned patients. *Id.*

At all relevant times, the following IDOC defendants, Warden Vanihel, Sergeant Ashba, Captain Wadhawan, Officer Shepard, Officer Wainman, Officer Jobe, and Officer Stevenson, were prison employees at Wabash Valley; and Commissioner Carter was the head of the IDOC. Dkt. 27 at 1-2 (Amended Complaint).

Mr. Davis brings claims against both the Medical Defendants and the eight aforementioned IDOC Defendants. Dkt. 27. Mr. Davis alleges that Centurion maintains policies or practices that permitted Counselor Clarke to disregard his suicidal thoughts and deprive Mr. Davis of his bedding. *Id.* at ⁋⁋ 5, 9. Further, he alleges that Counselor Clarke was deliberately indifferent to his serious medical needs and retaliated against him when she ordered his clothes and bedding removed, and that she intentionally wanted to see him suffer. *Id.* at ⁋⁋ 7, 11.

Mr. Davis alleges the following claims relating to the IDOC Defendants: 1) Warden Vanihel, Sergeant Ashba, Officer Shepard, Officer Wainman, Officer Jobe, and Officer Stevenson subjected Mr. Davis to unconstitutional conditions of confinement including the denial of a mattress or blanket despite cold temperatures and insects within his cell; and 2) Sergeant Ashba and Captain Wadhawan subjected Mr. Davis to excessive force while Officer Shepard and Officer Wainman failed to intervene and fabricated conduct reports to justify the use of OC spray, and Commissioner Carter and Warden Vanihel were deliberately indifferent to widespread practices that condoned the use of excessive force at Wabash Valley. Dkt. 43 at 3 (Amended Screening Order).

B. Relevant IDOC Policies

Mental Health professionals at Wabash Valley had the ability to issue appropriate mental health orders to place inmates on suicide watch and reasonably limit their access to materials presenting a risk of self-harm while incarcerated. Dkt. 74-3 at 5. Further, they could report to officers when inmates were in possession of prohibited items contrary to their mental health status. *Id*. However, they did not have the authority or means to personally enforce medical mental health orders through IDOC correctional officers, direct specific cell assignment, or control the specific conditions of a cell such as temperature. *Id.* at 6.

Pursuant to Wabash Valley suicide watch protocols, correctional officers would check inmates who were on "close observation" status every fifteen minutes to assess their physical and mental status and record their observations. Dkt. 74-5.

Counselor Clarke wrote in an email on January 26, 2022, to other IDOC staff "Suicide watch can be done on the range in the offender's regular cell. It is often preferrable to do it this way to prevent misuse of [mental health] for these kind of reasons." Dkt 78-1 at 5.

C. Mr. Davis' Mental Health Treatment prior to April 7, 2022

On October 6, 2021, prior to the events at issue in this case, Mr. Davis reported that he was suicidal to his telehealth psychologist. Dkt. 78-1 at 103. As a result, Mr. Davis was put on close suicide watch; however, he refused to discuss suicidal ideation further due to his fear that his medical records could be subpoenaed in future litigation. *Id*. Later, Mr. Davis complained about being on close suicide watch and requested to be moved back to his cell, stating "you know this isn't good for me. You know I don't need this," when Counselor Clarke performed her observations of him. *Id*.

On January 26, 2022, Caseworker Gonthier, a non-party to this case, wrote to Counselor Clarke, Jerry Snyder, and Chris Holcomb,

> Just now offender Davis got off the phone with his attorney in the holding cell when he asked me to come speak with him. Davis proceeded to tell me to move him from the B500 range because he's in a situation. I'm assuming that he's talking about Yarber and Ashba taking the huge bag of hooch out of his cell yesterday. But he told me that if he needs to yell "suicidal" then it's a guarantee that he'll be moved. I advised him that I didn't have a place to move him. He said "we'll see."

Dkt. 78-1 at 6.

On or about April 5, 2022, Dr. Steven Bonner, a non-party to this case and psychiatrist employed by Centurion at Wabash Valley, conducted a routine telemedicine appointment to perform psychiatric medication management with Mr. Davis. Dkt. 74-2 at 2. Before the appointment, Mr. Davis was prescribed the medications Abilify, Cogentin, and Effexor. Dkt. 74-2 at 1-4.

During the appointment, Dr. Bonner identified that Mr. Davis was diagnosed exclusively with anti-social personality disorder and was not exhibiting signs of bipolar disorder or schizophrenia, for which he had been taking medication. *Id*. at 3. Due to his determination that Mr. Davis did not present with these other mental health disorders and that the benefits of discontinuing

this unnecessary medication outweighed the harm, Dr. Bonner discontinued Mr. Davis prescriptions for Cogentin and Abilify and recommended that Mr. Davis increase his dose of Effexor to alleviate stress and anxiety. Dkts. 74-2 at 4-6, 74-4 at 1.

Mr. Davis became angry at Dr. Bonner's suggestion and requested to be taken off all medications. Dkt. 74-2 at 6. Absent circumstances not present here, Mr. Davis could not be forced to take medication, even if prescribed by a medical professional at the prison. *Id.* In response to Mr. Davis' protests, Dr. Bonner agreed to discontinue all medication. *Id.* Although discontinuing this medication could cause antidepressant discontinuation syndrome, Mr. Davis was at extremely low risk for this condition due to the low dosage he had been prescribed, which could not even be tapered because the Effexor pills could not be split in half, and his age. *Id.* at 6-7.

On April 29, 2022, after the incidents giving rise to this lawsuit, Dr. Bonner again met with Mr. Davis, and Mr. Davis eventually agreed that Effexor was helpful and allowed the doctor to resume the prescription and increase his dosage. *Id.* at 8.

D. April 7, 2022, Incidents

On April 7, 2022, at 8:30 A.M., Mr. Davis and Counselor Clarke met for a routine mental health session. Dkts. 74-2 at 2, 74-4 at 5. During the meeting, they discussed the recent discontinuation of his medication and his larger goals, and Mr. Davis reported that he was experiencing no signs of withdrawal or thoughts of self-harm. *Id.*

However, later that night, Mr. Davis started a fire in his cell and was removed to "strip cell"" while a nurse conducted a visit. Dkt. 74-4 at 7. When correctional officers attempted to place Mr. Davis back in his normal cell block later that night, he stated that he was suicidal, that he would cut his wrist if placed back in his previous cell block, and that the "voices have returned." *Id.* The nurse contacted an on-call mental health professional about next steps, and they advised

that since Counselor Clarke had just seen Mr. Davis, he could be placed back in his cell without suicide watch. *Id.* at 8.

After officers returned Mr. Davis to his cell at approximately 3:11 AM, he was observed in his cell with a t-shirt tied around his neck which caused redness and mild discoloration on his lips. Dkt. 74-4 at 10, dkt. 68-1 at 42, 61. The incident caused Mr. Davis no other injuries, and the marks subsided shortly thereafter. Dkt. 68-1 at 72.

E. April 8-9, 2022, Use of Force Incidents

On the morning of April 8, 2022, Counselor Clarke learned of Mr. Davis' placement on temporary suicide watch, and she ordered "close observation" with prescribed garments of a suicide smock, also called a suicide kimono, for clothing, and she ordered that his bedding and mattress were to be given only during sleeping hours, 9:00 PM to 7:00 AM. Dkt. 74-3 at 4. Mr. Davis' access to these items was limited due to his history of setting fires with these items and to prevent him from further self-harm attempts with his clothing. *Id*. Counselor Clarke believed that Mr. Davis' attempt with his shirt was not reflective of sincere suicidal ideation but rather, lack of impulse control. *Id.*

Mr. Davis testified and acknowledged that he did have the option to receive bedding every night while on suicide watch. Dkt. 68-1 at 53. However, he began refusing his mattress because he claimed that officers were using the need to remove the mattress each morning as pretext to assault him. *Id.* He also acknowledged that the temperature within Wabash Valley was set via IDOC facility guidelines. *Id.* at 63.

At approximately 10:00 AM on April 8, Counselor Clarke observed that Mr. Davis was in possession of a blanket, mattress, socks, and underwear, which were not allowed pursuant to his

suicide watch orders. *Id*. at 5. She advised correctional officers of the suicide watch directives and that the items in his possession were not allowed. *Id.*

Mr. Davis alleges two incidents of excessive force, one on April 8 and another on April 9. Dkt. 43. Mr. Davis alleges that the officers in question intentionally targeted him to purposefully assault him. Dkt. 68-1 at 18. On April 8, according to an IDOC report, Correctional Officer Shepard gave Mr. Davis an order to submit to mechanical hand restraints, and he refused. Dkt. 68-3 at 2. Sgt. Ashba responded and gave Mr. Davis another command to submit to the hand restraints, and he again refused. *Id.* Sgt. Ashba then administered a one second burst of MK-9 Fogger, and Mr. Davis then submitted his hands for restraints without incident. *Id.* He was then provided a decontamination shower and seen by medical with no injuries. *Id.*

The video of this incident supports this recounting of events. Video evidence shows Officer Shepard engaging Mr. Davis in conversation and attempting to get him to comply with his order for restraints. Dkt. 72, Exhibit F at 00:02:50-00:04:34 (Video Footage). Eventually, Sgt. Ashba also attempted to convince Mr. Davis to submit to restraints, but he was unsuccessful. *Id*. For more than four minutes, the slot to Mr. Davis' cell remained open for Mr. Davis to voluntarily consent to mechanical restraints while the officers continued to discuss the issue with him; however, he still failed to do so. *Id.* at 00:02:50-00:07:13. Although Mr. Davis shoved numerous items through the slot during that time including his legal paperwork and what appeared to be a blanket, he never fully presented his hands until after the officers utilized fogger spray. *Id*. Eventually, Sgt. Ashba deployed the fogger in one brief spurt, and shortly thereafter, Mr. Davis presented his hands for restraints. *Id.* at 00:08:26-00:08:32.

Video evidence from the following day, April 9, shows Sgt. Ashba and Officer Wainman approaching Mr. Davis' cell and again requesting that Mr. Davis to submit to restraints. Dkt. 72,

Exhibit I at 00:00:51-00:01:20. Sgt. Ashba testified that he explained to Mr. Davis several times that due to his behavior, he was not allowed to keep his mattress throughout the day, but would receive it at bedtime. Dkt. 68-4 at 3. Officer Wainman testified, "We told him that if he did not cuff up that we would have to spray him to gain compliance. He did not cuff up after repeated orders to cuff up. We nearly begged him to cuff up. Ultimately, he told us to spray him, so Sgt. Ashba sprayed him, and then he cuffed up for me. If I recall correctly, I was the one who cuffed him up." Dkt. 68-4 at 9.

Mr. Davis alleges that the officers never gave him the order to cuff up, which he states is further proven by the video evidence which shows that the slot to his cell door remained closed the entire time on April 9. Dkt. 68-1 at 18. Although the video shows that the slot to Mr. Davis' cell remained closed, the officers can be seen speaking intermittently through the door with Mr. Davis for approximately three and a half minutes before Sgt. Ashba decided to use fogger spray. Dkt. 72, Exhibit I at 00:00:00-00:04:01. Mr. Davis testified that during that time, Sgt. Ashba told him that IDOC staff are the "biggest gang" and that if Mr. Davis was truly suicidal, "come out and resist, and he [Sgt. Ashba] will bang my [Mr. Davis'] head off the round until it explode." Dkt. 68-1 at 23. In the video, Sgt. Ashba can be seen opening the window and deploying the fogger for approximately ten seconds before then closing the window, leaving Mr. Davis in the cell with the spray. Dkt. 72, Exhibit I at 00:04:03-00:04:13. Mr. Davis testified he was left in the cell for ten minutes following the spray. Dkt. 68-1 at 64. He alleges that during that time, he was choking and could not breathe. *Id.* The video shows that Mr. Davis was kept in the cell approximately for four minutes before he was removed for a decontamination shower. Dkt. 72, Exhibit I at 00:04:13-00:08:14.

For the incident on April 9, Mr. Davis was issued a conduct report for his refusal to obey orders. Dkt. 68-1 at 55. However, after further review, the violation was dismissed. Dkt. 78-1 at 58.[1]

F. April 8-9, 2022—Self-Harm Incidents—through April 13, 2022

While on suicide watch, correctional officers monitored Mr. Davis' status from outside his cell every fifteen minutes and made notations on his behavior, appearance, and mood. Dkt. 74-5. From April 8 to the termination of his suicide watch on April 13, 2022, officers reported only two instances in which Mr. Davis' behavior, appearance, mood, or mental status were anything other than "good" or "ok." *Id*. During this incident that encompassed the 10:30 PM notation and the 10:45 PM notation on April 8, officers observed blood on Mr. Davis and called the on-duty nurse to Mr. Davis' holding cell. Case No. 2:22-cv-00172-JPH-MKK, Dkt. 29-1 at 16-17.[2] Once the nurse arrived, she observed Mr. Davis "in no active distress." When she approached, Mr. Davis stated, "I'm refusing medical, I bit my nut sack, and that's not something you want to see." *Id.* The officer then marked Mr. Davis' physical condition as 'good' but his behavior as 'bad'. *Id.* The only other incident of note was on April 11 when Mr. Davis reported a spider bite at approximately 6:30 PM. Dkt. 74-5 at 10. The issue was reported to medical, and he received a topical ointment to treat the reaction within the hour. Dkt. 74-4 at 18.

On April 11, Counselor Clarke issued another Adult Mental Health Order, reducing Mr. Davis' status to close observation in a holding cell. Dkt. 68-2 at 4.

[1] The Court observes that IDOC included incident reports about the April 8 incident in support of its motion for summary judgment but failed to provide any incident reports for the April 9 incident.

[2] The Court takes judicial notice of the evidence in this related civil matter, as that action regarded Mr. Davis' discontinuation of medication by Dr. Bonner in April of 2022 and his subsequent mental health condition, and the record in that matter contains facts and relevant documents that arose out of the same series of events discussed in this order.

On the night of April 11 leading into the morning of April 12, Mr. Davis refused his mattress during the evening time, and then changed his mind at approximately midnight and stated he did want his mat. Dkt. 68-2 at 3. Because officers were performing other duties during that time, it took until 3:00 AM until they were able to provide his mat to him. *Id.*

Mr. Davis testified that the temperatures were "freezing" within his cell and that he was shivering while housed under suicide watch in his suicide kimono because of cold air from the air conditioning. Dkt. 68-1 at 16. However, in his deposition, Mr. Davis stated that he knows IDOC has a policy requiring the temperature of the facility to remain within a certain range. *Id*. at 64. Further, there is no evidence in the record that Mr. Davis ever complained of cold temperatures in his cell during his confinement on suicide watch. Officer Wainman testified that all holding cells are air conditioned via an input where air comes in and output where air comes out to ensure the cells receive proper airflow. Dkt. 68-4 at 11.

During a suicide watch visit with Counselor Clarke on April 12, Mr. Davis reported, "I'm ready to go back to my cell. I have legal work they won't give me while I'm on this… I can just come back down here once I get my legal mail. I'll be back down here later." Dkt. 74-4 at 21. *Id*. When asked why he would be returning to his holding cell, Mr. Davis stated, "I chose to come down here last week, and I can choose to come down here again." *Id.* Counselor Clarke wrote in her medical notes that this could indicate that he was not truly suicidal but simply stating he was suicidal for secondary gain. *Id.*

On April 13, Counselor Clarke released Mr. Davis from suicide watch after noting "no clinical risk factors," including no recent suicidal behavior or ideation, no recent impulsivity, no lack of future orientation or plans, and no affective instability or lability. Dkt. 74-4 at 23.

III.
Discussion

A. First Amendment Claims Against Counselor Clarke

To succeed on his First Amendment retaliation claims against Counselor Clarke, Mr. Davis must come forward with evidence sufficient to allow a reasonable jury to conclude that: (1) he engaged in protected First Amendment activity; (2) he suffered a deprivation that would likely deter future First Amendment activity; and (3) the protected activity was a motivating factor in Counselor Clarke's decision to take the allegedly retaliatory action. *Taylor v. Van Lanen*, 27 F.4th 1280, 1284 (7th Cir. 2022). If Mr. Davis does so, the burden shifts to the defendants to show that the deprivation would have occurred even if Mr. Davis had not engaged in protected activity. *Manuel v. Nalley*, 966 F.3d 678, 680 (7th Cir. 2020). If that showing can be made, the burden shifts back to Mr. Davis to demonstrate that the proffered reason is pretextual or dishonest. *Id*. Counselor Clarke does not dispute that Mr. Davis engaged in protected First Amendment activity by filing his previous civil action, so the Court focuses on the second and third elements.

Although his placement on suicide watch may have been a deprivation, Mr. Davis has presented no evidence that Counselor Clarke's actions were motivated by his previous litigation. "The motivating factor [element] amounts to a causal link between the activity and the unlawful retaliation." *Id.* Mr. Davis conflictedly argues that both Counselor Clarke's reluctance to place him on suicide watch and later, the conditions she subjected him to while on suicide watch were both retaliatory acts for his previous legal filings. Dkt. 78 at 8-9. First, there is no evidence that any of her decisions were at all motivated by Mr. Davis' previous litigation. *White v. City of Chicago*, 829 F.3d 837, 841 (7th Cir. 2016) (nonmovant receives the "benefit of reasonable inferences from the evidence, but not speculative inferences in his favor" (cleaned up)). Rather, the undisputed evidence reflects that Counselor Clarke was reluctant to place Mr. Davis on suicide watch because

Mr. Davis had a documented history of numerous instances where he used suicide watch placement for secondary gain. Dkt 78-1 at 6, 80, 103. Medical professionals are "entitled to deference in treatment decisions" based on "professional judgment," *Sain v. Wood*, 512 F.3d 886, 894–95 (7th Cir. 2008). Her decision to require a suicide smock and bedding removal were based on his previous history of setting fires and using those items for self harm. No reasonable juror would find that these treatment decisions were driven by retaliatory motive. And any allegations that she fabricated records to support these decisions have no support in the record. Thus, Counselor Clarke is entitled to summary judgment on Mr. Davis' First Amendment retaliation claim.

B. *Monell* Claims Against Centurion

Mr. Davis alleges that he suffered a constitutional injury because of Centurion's customs or practices related to (1) bedding and clothing policies for inmates under suicide watch and (2) allowing staff to have discretion when placing an inmate on suicide watch. Thus, his claim against Centurion may only proceed under the theory of liability outlined in *Monell v. Dep't. of Social Services*, 436 U.S. 658 (1978).

Private corporations acting under color of state law—including those that contract with the state to provide essential services to prisoners—are treated as municipalities for purposes of Section 1983. *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021). Centurion cannot be held liable under the common-law theory of respondeat superior for its employees' actions. *Howell v. Wexford Health Sources, Inc.*, 987 F.3d 647, 653 (7th Cir. 2021).

To prevail on a claim against Centurion, Mr. Davis must first show that he was deprived of a federal right, and then he must show that the deprivation was caused by a Centurion custom or policy or failure to implement a needed policy. *Dean*, 18 F.4th at 235. As the Seventh Circuit has explained:

> There are at least three types of municipal action that may give rise to municipal liability under § 1983: (1) an express policy that causes a constitutional deprivation when enforced; (2) a widespread practice that is so permanent and well-settled that it constitutes a custom or practice; or (3) an allegation that the constitutional injury was caused by a person with final policymaking authority. Inaction, too, can give rise to liability in some instances if it reflects a conscious decision not to take action.

Id. Because Mr. Davis does not allege that an express policy is unconstitutional or that his injury was caused by a policymaker, his claim falls under category two.

Further, a "pivotal requirement" for any practice or custom claim is a showing of widespread constitutional violations. *See Hildreth v. Butler*, 960 F.3d 420, 426 (7th Cir. 2020). While it is not "impossible" for a plaintiff to demonstrate a widespread practice or custom with evidence limited to personal experience, "it is necessarily more difficult . . . because 'what is needed is evidence that there is a true municipal policy at issue, not a random event.'" *Id.* at 426–27 (quoting *Calhoun v. Ramsey*, 408 F.3d 375, 380 (7th Cir. 2005)). "If a municipality's action is not facially unconstitutional, the plaintiff 'must prove that it was obvious that the municipality's action would lead to constitutional violations and that the municipality consciously disregarded those consequences." *Dean*, 18 F.4th at 235. "[*C*]*onsiderably more proof than the single incident will be necessary in every case* to establish both the requisite fault on the part of the municipality, and the causal connection between the policy and the constitutional deprivation." *Id.* (cleaned up) (emphasis in *Dean*).

The only evidence of Mr. Davis has presented of a policy or practice that caused Counselor Clarke to deny him medical care is an IDOC policy stating:

> The following shall not be imposed: 1) corporal punishment. 2) confinement in disciplinary segregation without the opportunity for at least one (1) hour of exercise outside the immediate living quarters five (5) days per week, unless the Department finds and documents that this opportunity will jeopardize the safety of the offender, others, or the security of the facility. Major changes in heating/ lighting/ ventilation. Restrictions on authorized or issued clothing…unless these privileges are abused.

Dkt 78-1 at 3.

First, this policy is an IDOC policy rather than Centurion policy. Second, the record includes no documentary evidence of a formal Centurion policy or protocol that may have caused Counselor Clarke to deny Mr. Davis medical care, sufficient conditions, or bedding. In his deposition, Mr. Davis testified that he knows IDOC has a policy requiring the temperature of the facility to remain within a certain range. Dkt. 68-1 at 64. And further, although this policy designates that no restrictions should be made on clothing unless these privileges are abused, the uncontested evidence is that Mr. Davis attempted to prepare a makeshift noose with his t-shirt, requiring clothing restrictions as part of his suicide precautions. These circumstances required that restrictions were imposed on the items Mr. Davis could possess to ensure his safety. No evidence supports a conclusion that such a policy caused the Eighth Amendment violations Mr. Davis is pursuing in this case. Centurion is entitled to summary judgment.

C. Claims Against Warden Vanihel and Commissioner Carter

Analyzing Mr. Davis' claims relating to IDOC policies against Warden Vanihel and Commissioner Carter, summary judgment must still be granted. Mr. Davis claims that Warden Vanihel and Commissioner Carter either endorsed or promogulated policies and practices that encouraged excessive force against inmates. Dkt. 78 at 5. Warden Vanihel and Commissioner Carter seek summary judgment on the grounds that claims against them are barred pursuant to the Eleventh Amendment, and not personally involved in or responsible for any alleged excessive force against Mr. Davis. Dkt. 67 at 12, 25-26.

The Eleventh Amendment bars private lawsuits in federal court against a state that has not consented. *Joseph v. Board of Regents of University of Wisconsin System*, 432 F.3d 746, 748 (7th Cir. 2005). An agency of the state enjoys that same immunity. *Nuñez v. Indiana Dep't of Child*

Services, 817 F.3d 1042, 1044 (7th Cir. 2016); see also *Moore v. State of Ind.*, 999 F.2d 1125, 1128-1129 (7th Cir. 1993) (citing *Pennhurst*, 465 U.S. at 100). This prohibition extends to policy-or-practice claims. *Joseph*, 432 F.3d at 748-49 ("The Court has been clear, however, that Monell's holding applies only to municipalities and not states or states' departments.") (citing *Will v. Michigan Dep't. of State Police*, 491 U.S. 58, 70 (1989)). Likewise, "state officials in their official capacities are also immune from suit under the Eleventh Amendment." *Joseph*, 432 F.3d at 748. There are three exceptions to the Eleventh Amendment bar. *Nuñez*, 817 F.3d at 1044. First, a state may waive its sovereign immunity and consent to suit in federal court. *Id*. at 1044--46. Second, Congress may abrogate a state's sovereign immunity through an "unequivocal exercise" of valid legislative power through Section 5 of the Fourteenth Amendment. *Id*. Third, the Eleventh Amendment does not bar suits against state officials in their official capacities if the only relief sought is prospective injunctive relief for ongoing violations of federal law. *Nuñez*, 817 F.3d at 1044; *Ex Parte Young*, 209 U.S. 123, 159--60 (1908).

Although it seems Mr. Davis attempts to bring claims pursuant to the third exception, the only injunctive relief he requests is "any use of chemicals be recorded any time that option is available and that it is authorized with sufficient justification for its use." Dkt. 27 at 6. Critical to this request, however, Mr. Davis is now housed at New Castle facility away from Warden Vanihel and Wabash Valley. See *Lehn v. Holmes*, 364 F.3d 862, 871 (7th Cir. 2004) ("[W]hen a prisoner seeks injunctive relief for a condition specific to a particular prison is transferred out of that prison, the need for relief, and hence the prisoner's claim, become moot."); *Higgason v. Farley*, 83 F.3d 807, 811 (7th Cir. 1996).

And Mr. Davis has pointed to no policy at Wabash Valley or IDOC which violates federal law related to the use of force for inmates on suicide watch. To hold these defendants liable

personally, Mr. Davis would have to demonstrate that Warden Vanihel and Commissioner Carter knew the other IDOC defendants used excessive force on inmates on suicide watch and that, despite this knowledge, personally allowed Mr. Davis and other inmates to face a serious risk of harm. *Petties v. Carter,* 836 F.3d 722, 728 (7th Cir. 2016). Mr. Davis has not designated evidence that Warden Vanihel or Commissioner Carter knew that the classification of suicide watch allowed inmates to be assaulted, much less that they knew this classification was likely to result in constitutional violations. Plaintiff is the nonmoving party, so he receives "the benefit of conflicting evidence and reasonable inferences." *Stockton v. Milwaukee County*, 44 F.4th 605, 614 (7th Cir. 2022). That said, he must "produce evidence sufficient to establish [the] element[s] essential to" his claim. *Id.* He has not adduced any such evidence. As such, summary judgment is **GRANTED** for Commissioner Carter and Warden Vanihel.

D. Eighth Amendment Claims against Counselor Clarke

The Eighth Amendment's prohibition against cruel and unusual punishment imposes a duty on the states, through the Fourteenth Amendment, "to provide adequate medical care to incarcerated individuals." *Boyce v. Moore*, 314 F.3d 884, 889 (7th Cir. 2002) (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). "Prison officials can be liable for violating the Eighth Amendment when they display deliberate indifference towards an objectively serious medical need." *Thomas v. Blackard*, 2 F.4th 716, 721–22 (7th Cir. 2021). "Thus, to prevail on a deliberate indifference claim, a plaintiff must show '(1) an objectively serious medical condition to which (2) a state official was deliberately, that is subjectively, indifferent.'" *Johnson v. Dominguez*, 5 F.4th

818, 824 (7th Cir. 2021) (quoting *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 662 (7th Cir. 2016)).

The Court assumes for purposes of the summary judgment motion that Mr. Davis' mental health condition was objectively serious. To avoid summary judgment, then, the record must allow a reasonable jury to conclude that Counselor Clarke acted with deliberate indifference—that is, that she "consciously disregarded a serious risk to Mr. Davis' health." *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 241 (7th Cir. 2021) (cleaned up).

Deliberate indifference requires more than negligence or even objective recklessness. *Id.* Rather, Mr. Davis "must provide evidence that an official actually knew of and disregarded a substantial risk of harm." *Petties*, 836 F.3d at 728.

Thus, Mr. Davis "must provide evidence that Counselor Clarke actually knew of and disregarded a substantial risk of harm." *Id.* "[A] jury can infer deliberate indifference when a treatment decision is 'so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment.'" *Dean*, 18 F.4th at 241 (internal citations omitted) (quoting *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006)). Additionally, "an inmate is not entitled to demand specific care and is not entitled to the best care possible…." *Arnett v. Webster*, 658 F.3d 742, 750−51 (7th Cir. 2011). Rather, inmates are entitled to "reasonable measures to meet a substantial risk of serious harm." *Id.* A court should "look at the totality of an inmate's medical care when considering whether that care evidences deliberate indifference to serious medical needs." *Petties*, 836 F.3d at 728. "The linchpin is a lack of professional judgment." *Campbell v. Kallas*, 936 F.3d 536, 545 (7th Cir. 2019).

Counselor Clarke is entitled to summary judgment for her response to Mr. Davis' suicidal ideation. Suicidal ideation is a serious medical condition, *Lisle v. Welborn*, 933 F.3d 705, 716 (7th

Cir. 2019). But no reasonable juror could conclude that Counselor Clarke was deliberately indifferent to a risk that Mr. Davis would commit suicide. Rather, as the Court noted regarding Mr. Davis' First Amendment claim, when Mr. Davis engaged in self-harm, Counselor Clarke chose to continue his placement on suicide watch for monitoring, despite the fact that one day earlier, he had stated to her that he was not having any urges to self-harm. Dkt. 74-3 at 2-3. This was also despite the fact that Mr. Davis at numerous times made statements that evinced that he used suicide watch for secondary gain, such as to get moved to various other cell blocks. Dkt. 78-1 at 6, 103. Accordingly, summary judgment is **GRANTED** for Counselor Clarke as to Mr. Davis' Eighth Amendment medical indifference claim.

E. Eighth Amendment Conditions of Confinement Claims against Sergeant Ashba, Officer Shepard, Officer Wainman, Officer Jobe, Officer Stevenson, and Counselor Clarke

Under the Eighth Amendment, "prisoners cannot be confined in inhumane conditions." *Thomas*, 2 F.4th at 720 (citing *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)). A conditions-of-confinement claim includes both an objective and subjective component. *Giles v. Godinez*, 914 F.3d 1040, 1051 (7th Cir. 2019). Under the objective component, a prisoner must show that the conditions were objectively serious and created "an excessive risk to his health and safety." *Id.* (cleaned up). Under the subjective component, a prisoner must establish that the defendants had a culpable state of mind — that they "were subjectively aware of these conditions and refused to take steps to correct them, showing deliberate indifference." *Thomas*, 2 F.4th at 720. Proving the subjective component is a "high hurdle" that "requires something approaching a total unconcern for the prisoner's welfare in the face of serious risks." *Donald v. Wexford Health Sources, Inc.*, 982 F.3d 451, 458 (7th Cir. 2020) (internal quotations omitted). Neither "negligence [n]or even gross negligence is enough[.]" *Lee v. Young*, 533 F.3d 505, 509 (7th Cir. 2008).

The Court need not analyze the subjective prong because Mr. Davis has not proven he was exposed to conditions that were objectively serious. Rather, nothing within the record reflects that the temperatures within Wabash Valley were anything outside the mandated range controlled by the centralized AC units, or that Mr. Davis was at excessive risk to his health and safety. To analyze whether cold temperatures are objectively serious, the Seventh Circuit has dictated that courts must consider factors including "the severity of the cold; its duration; whether the prisoner has alternative means to protect himself from the cold; the adequacy of such alternatives; as well as whether he must endure other uncomfortable conditions as well as cold." *Dixon v, Godinez*, 114 F.3d, 640, 644 (7th Cir. 2002) (providing examples of cases where inmates succeeded on Eighth Amendment claims where inmates had no clothes, bed, or bedclothing in mid-November; no clothing and a broken window with wind chill forty degrees below zero; and a malfunctioning heating system which exposed inmate to subzero air temperatures); *Henderson v. DeRobertis*, 940 F.2d 1055, 1058 (7th Cir. 1991).

Mr. Davis was subjected to these alleged conditions for a relatively short time, April 8 to 13. Although he only was clothed with a suicide kimono to protect him from these temperatures, this was necessary to prevent him from future suicide attempts after he had previously harmed himself with his t-shirt. There is also no evidence that the cold was severe enough to cause Mr. Davis any harm. Although Mr. Davis testified in his deposition that he was "freezing," he cited no physical harm (such as catching an illness) as a result of feeling cold. Dkt. 68-1 at 63-65 (when asked about physical harm he suffered, describing only issues related to his exposure to chemicals from the OC spray).

Finally, the only other condition Mr. Davis alleges he was subjected to were insects within his cell. A prisoner states a claim under the Eighth Amendment if there is a persistent pest

infestation that defendants have failed to reasonably address. *See, e.g. Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir. 1996) (finding that plaintiff stated constitutional claim where he alleged that cockroaches were "everywhere" in his cell for 16 months causing serious harm to his health). However, the record reflects only one incident where Mr. Davis reported a single spider bite which does not evince an infestation. Thus, this claim also fails on the objective prong. Further, he was provided ointment when he reported the spider bite. In light of the analysis of all the factors relevant to whether the cold temperatures were objectively serious, summary judgment must be **GRANTED** as to Eighth Amendment conditions of confinement claims against Sergeant Ashba, Officer Shepard, Officer Wainman, Officer Jobe, Officer Stevenson, and Counselor Clarke.

F. Eighth Amendment Excessive Force Claims Against Sergeant Ashba and Captain Wadhawan, Officer Shepard, and Officer Wainman

Mr. Davis alleges that Defendants Sgt. Ashba and Captain Wadhawan used excessive force by authorizing the deployment of fogger spray or deploying fogger spray on at least two occasions. Dkt. 43 at 2. Further, he alleges Officers Shepard, Wainman, Jobe, and Stevenson allegedly failed to intervene when Mr. Davis was hit with chemical spray, and Officers Shepard and Wainman allegedly fabricated conduct reports to justify the use of fogger spray. *Id*.

"[W]henever prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson v. McMillian*, 503 U.S. 1, 6−7 (1992) (citing *Whitley v. Albers*, 475 U.S. 312, 320−21 (1986)).

As the Seventh Circuit has explained,

> The ultimate determination of the intent of the person applying the force in an excessive force claim involving prison security measures depends upon a number of factors, including: (1) the need for the application of force; (2) the relationship

> between the need and the amount of force that was used; (3) the extent of injury inflicted; (4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them; and (5) any efforts made to temper the severity of a forceful response.

McCottrell v. White, 933 F.3d 651, 663 (7th Cir. 2019) (internal citations omitted). In *Soto v. Dickey*, 744 F.2d 1260, 1270 (7th Cir. 1984), the Seventh Circuit concluded that prison officials do not run afoul of the Eighth Amendment if they use pepper spray after an inmate has disobeyed a direct order. It is, however, a violation of the Eighth Amendment if an officer uses "mace or other chemical agents in quantities greater than necessary or for the sole purpose of punishment or the infliction of pain." *Id.* at 1270.

Although a reasonable juror could not find that either Sergeant Ashba or Captain Wadhawan used excessive force against Mr. Davis for the April 8 incident, as to the April 9 incident, the Court agrees that there is a material dispute of facts that necessitate a denial of summary judgment. The summary judgment record contains video of both incidents. "[W]here a reliable videotape clearly captures an event in dispute and blatantly contradicts one party's version of the event so that no reasonable jury could credit that party's story, a court should not adopt that party's version of the facts for the purpose of ruling on a motion for summary judgment." *McCottrell*, 933 F.3d at 661 n.9 (citing *Scott v. Harris*, 550 U.S. 372, 380-81 (2007)). Mr. Davis alleges that the force he experienced was excessive for two reasons: 1) for the April 8 incident, Mr. Davis states he complied with all officer orders to relinquish his bedding materials yet was still sprayed; 2) for the April 9 incident, he alleges the officers failed to open up the cell port for Mr. Davis to cuff up until after he was sprayed. Dkt. 78 at 14-15.

The Court first discusses the April 8 incident by prong. The first factor—the need for the application of force—weighs in favor of the officers. The undisputed evidence shows that the

officers can be seen talking with Mr. Davis through his cell for more than four minutes with his cell port open to convince him to comply with cuffing up. Although Mr. Davis argues that he complied with officer commands, it is clear he never put his hands through the port until after the fogger spray was deployed. Dkt. 78 at 14-15. Written records of the incident from the IDOC staff members and the video both show that the sergeant and captain attempted to deescalate the situation with verbal commands prior to the eventual use of force on April 8. Sgt. Ashba's use of force on April 8 can be justified on the basis that Mr. Davis failed to comply to the order of cuffing up, which required him to use fogger spray. *Soto*, 744 F. 2d at 1270.

The second factor—the relationship between the need and the amount of force that was used—also weighs in favor of IDOC staff for the April 8 incident. On April 8, Sgt. Ashba deployed the spray for the express purpose of gaining Mr. Davis' compliance, which ultimately was successful. The physical encounter lasted approximately five seconds, and there is no evidence that Sgt. Ashba used more than a single burst of spray. *See Jackson v. Angus*, 808 F. App'x 378, 382 (7th Cir. 2020) (finding district court correctly found that there was no factual dispute on excessive force claim where "video footage show[ed] that tactical team officers used two short bursts of pepper spray on an inmate only after he disobeyed three direct orders to come out of his cell"); *Rice ex rel. Rice v. Correctional Medical Servs.*, 675 F.3d 650, 668 (7th Cir. 2012) (use of pepper spray justified when inmate refused to comply with order to step out of his cell).

The third factor—the extent of the injury—weighs in favor of the officers. Mr. Davis did not report any injuries or require medical attention after the April 8 incident. Mr. Davis has introduced no evidence related to any injury after the first use of fogger spray, and he was immediately removed from his cell and provided a decontamination shower. Dkt. 68-3 at 2. Mr.

Davis never made any sort of report or healthcare visit after he was sprayed relating to any injuries he may have sustained.

The fourth factor—the extent of the threat posed by the inmate to the safety of inmates and staff—weighs in favor of Mr. Davis. Within his suicide cell and without access to any items that could potentially cause him or others harm, the threat Mr. Davis posed to staff was relatively low.

The fifth factor—efforts to temper the severity of the force—weighs in favor of Sgt. Ashba. Video evidence shows that Sgt. Ashba only used a single short burst of fogger spray with the express purpose of gaining Mr. Davis' compliance. Once he complied, the officer promptly cuffed Mr. Davis and provided a decontamination shower.

In weighing the relevant factors and giving special consideration to the video, the Court finds that on April 8, Sgt. Ashba and Captain Wadhawan's use of force was applied in a good-faith effort to maintain discipline, not to cause harm. No reasonable jury could conclude otherwise. Officer Shepard and Officer Wainman cannot be found liable for failing to intervene if Sgt. Ashba and Captain Wadhawan's force was not excessive. Further, Mr. Davis has presented no evidence that the reports from this incident were forged or fabricated. Rather, the report prepared by defendant Shepard closely mirror the video evidence from that day. Accordingly, summary judgment is **GRANTED** for Sgt. Ashba, Capt. Wadhawan, Officer Shepard and Officer Wainman for the incident on April 8.

However, for the incident on April 9, there is a genuine dispute of material fact, and summary judgment must be denied. For the first factor, viewing the evidence in a light most favorable to Mr. Davis, the need for the application of force appears to be low. On April 9, video evidence shows that officers spoke with Mr. Davis through the door of his cell while his cell port remained closed the entire time. Although the defendants argue that Mr. Davis refused their

commands to cuff up, without the port open, he was never allowed the opportunity to place his hands through the slot before the application of spray. Mr. Davis testified that he was never given orders to cuff up by the officers that day that day, and he argues that the closed port is further evidence that he was never given the opportunity to comply with orders. Dkt. 78 at 13-14. The Court agrees that these facts are materially disputed. How Mr. Davis could comply to an order to present his hands when he had no means to do so is vexing. And this dispute of fact is further bolstered by IDOCs own disciplinary staff's decision to dismiss all charges related to the April 9 incident after reviewing the video. In short, the record is conflicting as to the officer testimony of the event and what was evidenced in the video and documentary evidence for April 9. A reasonable juror could find that Sgt. Ashba did not need to use the force he utilized because Mr. Davis was never given the opportunity to comply. *Soto*, 744 F. 2d at 1270.

The second factor—the relationship between the need and the amount of force that was used—also weighs in favor of Mr. Davis for the April 9 incident. Viewing the evidence in a light most favorable to Mr. Davis, if he was not ever provided the opportunity to cuff up, there was little need to use the force that Sgt. Ashba employed. And Mr. Davis testified that Sgt. Ashba told him that IDOC staff are the "biggest gang" and that if Mr. Davis was truly suicidal, "come out and resist, and he [Sgt. Ashba] will bang my [Mr. Davis'] head off the round until it explode" directly before deploying the force. Dkt. 68-1 at 23. When Sgt. Ashba ultimately decided to use spray, he deployed the fogger within Mr. Davis' cell for more than ten seconds. Dkt. 72, Exhibit I at 00:04:03-00:04:13. He then closed the cuff port and left Mr. Davis in a haze of pepper spray for several minutes. To determine whether a use force was excessive, courts look to whether the amount of force was proportional to the need and whether it was done with malicious intent. Here, a reasonable jury could readily conclude that the force used on Mr. Davis on April 9 was done

"maliciously and sadistically for the very purpose of causing harm." *Santiago v. Walls*, 599 F.3d 749, 757 (7th Cir. 2010).

The third factor—the extent of the injury—weighs in favor of Mr. Davis. Although Mr. Davis has introduced no evidence of any injury related to the use of fogger spray for April 8, he reported that due to the prolonged period of time he was left in his cell after the fogger was deployed on April 9, he felt like he could not breathe. Dkt. 68-1 at 64.

The fourth factor—the extent of the threat posed by the inmate to the safety of inmates and staff—similarly weighs in favor of Mr. Davis. The threat Mr. Davis posed to staff was relatively low.

The fifth factor—efforts to temper the severity of the force—weighs in favor of Mr. Davis. Unlike the April 8 video evidence, which shows that Sgt. Ashba only used a single short burst of fogger spray with the express purpose of gaining Mr. Davis' compliance, on April 9, Sgt. Ashba made no effort to temper the severity of the force when he deployed his fogger for what a reasonable jury could find to be an excessive amount of time and failed to remove Mr. Davis from his cell for more than four minutes. Dkt. 72, Exhibit I at 00:04:13-00:08:14.

Unlike the incident on the previous day, there is a dispute of material fact as to whether Sgt. Ashba's use of fogger spray was excessive. Further, a reasonable juror could find that Officer Wainman, the subordinate officer present during the entire interaction, failed to intervene to prevent the use of force and fabricated his subsequent report to conform with IDOC's narrative of events. Dkt. 78-1 at 55. Accordingly, Sgt. Ashba and Officer Wainman's motion for summary judgment is **DENIED** as to Eighth Amendment claims from the incident on April 9.

IV.
Motion for Sanctions

Mr. Davis has moved for sanctions against all defendants, arguing that they failed to turn over crucial discovery information and interrogatory responses. Dkt. 83. A district court has "inherent authority to manage judicial proceedings and to regulate the conduct of those appearing before it, and pursuant to that authority may impose appropriate sanctions to penalize and discourage misconduct." *Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 776 (7th Cir. 2016) (citing *Chambers v. NASCO, Inc*., 501 U.S. 32, 46–50 (1991). "Any sanctions imposed pursuant to the court's inherent authority must be premised on a finding that the culpable party willfully abused the judicial process or otherwise conducted the litigation in bad faith." *Ramirez*, 845 F.3d at 776.

As all defendants correctly note, pursuant to the pretrial schedule, Mr. Davis was required to "confer or attempt to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action" before filing a motion to compel. Dkt. 24 at 6. Mr. Davis failed to confer with either set of defendants or file a motion to compel pursuant to the Federal Rules prior to initiating either of his sanction motions. Fed R. Civ. P. 37(a)(1). Accordingly, his original and renewed motion for sanctions, dkts. 56, 83, are **DENIED**.

V.
Conclusion

Medical Defendants' motion for summary judgment dkt. [73] is **GRANTED**.

IDOC Defendants' motion for summary judgment dkt. [66] is **GRANTED in part and DENIED in part**. It is **GRANTED** as to the incident on April 8. Sgt. Ashba and Officer Wainman's motion for summary judgment is **DENIED** as to the Eighth Amendment excessive force claims from the incident on April 9.

The **clerk is directed** to terminate Officer Shepard, Officer Jobe, Officer Stevenson, Frank Vanihel, Kuldip Wadhawan, Commissioner Robert Carter, Centurion, Mark Shepard, and Counselor Sarah Clarke from the docket.

The Court prefers that Mr. Davis be represented by counsel for the remainder of this action. The **clerk is directed** to send Mr. Davis a motion for assistance recruiting counsel with his copy of this Order. Mr. Davis has **30 days after the entering of this order**, to file a motion for counsel using this form motion or to inform the Court that he wishes to proceed pro se. Once the motion has been ruled on and counsel has been recruited, the magistrate judge is asked to schedule a telephonic status conference to discuss further proceedings.

Mr. Davis' Motions for Sanctions, dkts. [56, 83], is **DENIED**,

IT IS SO ORDERED.

Date: 3/10/2025

JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

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