UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JAC'QUANN (ADMIRE) HARVARD, *et al*.,	)	
Plaintiffs,	)	
v.	)	Case No.: 4:19-cv-00212-MW-CAS
MARK S. INCH, *et al*.,	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' DISPOSITIVE MOTION TO DISMISS CLAIMS ASSERTED BY PLAINTIFFS J.H., ANGEL MEDDLER, JEROME BURGESS, AND JAMES KENDRICK, JR., AND PARTIALLY DISPOSITIVE MOTION TO DISMISS CLAIMS BY PLAINTIFFS ADMIRE HARVARD, JUAN ESPINOSA, AND JOHNNY HILL

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I. INTRODUCTION

Defendants fundamentally misunderstand this case. The claims in Plaintiffs' First Amended Complaint (Complaint) stem from one overarching policy and practice: Defendants lock people in their cells for 22 hours or more a day and deprive them of normal human contact, environmental stimulation, and exercise, a practice that experts refer to as "isolation" and that is increasingly recognized worldwide as torture. Defendants' emphasis on Plaintiffs' individual experiences as a result of this policy and practice is a futile attempt to reframe this case as a challenge to a series of distinct incidents. That is not the case Plaintiffs have pleaded.

In fact, Plaintiffs assert that Defendants' use of isolation subjects them and the class they seek to represent to a substantial risk of serious harm; that Defendants are aware of this risk; and that Defendants, through their failure to take reasonable actions, have demonstrated deliberate indifference to this risk. Plaintiffs also allege that this same practice discriminates against people with disabilities. These are not scattershot accusations. Rather, Plaintiffs sufficiently and specifically allege system-wide conditions in isolation throughout the Florida Department of Corrections and draw a clear line between these facts and the elements of their constitutional and statutory claims. Plaintiffs have more than "nudged their claims across the line from conceivable to plausible[.]" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Although Defendants vainly attempt to dispose of this case under the standing doctrine, Plaintiffs have met their pleading burden. Their Complaint provides a detailed outline as to how Defendants' isolation policy and practice has subjected Plaintiffs and a putative class of about 10,000 people in isolation to a substantial risk of serious harm.

Similarly unavailing is Defendants' argument, premised on their atomization of Plaintiffs' claims, that the Prison Litigation Reform Act (PLRA) requires dismissal of this action. On the contrary, Plaintiffs exhausted all available administrative remedies.

Finally, Defendants' attempt to shoehorn class certification arguments and baseless arguments for a motion to strike into their motion to dismiss should be seen for what it is: a distraction. Class certification arguments are inappropriate at this early stage of the litigation, and the proper vehicle for striking pleadings is through a motion to strike. Indeed, the Court should disregard these ill-timed arguments, as Plaintiffs have satisfied their initial pleading burden and all threshold requirements.

The Court should deny Defendants' Motion to Dismiss, ECF 28-1, and allow this case to proceed.

II. SUMMARY OF KEY ALLEGATIONS

At its core, this action challenges Defendants Mark Inch's and the Florida Department of Corrections' (collectively, "Defendants") systemic, statewide policy

and practice of isolating people, alone or with a cellmate, for an average of 22 hours or more per day in cells smaller than the average parking space. ECF 13 ¶¶ 57-59. Plaintiffs bring this action on behalf of themselves and a putative class of all people who are or will be in isolation in the Florida Department of Corrections (FDC). Defendants deprive them of basic human needs—normal human contact, environmental stimulation, and exercise—and subject them to oppressive security measures. ECF 13 ¶¶ 59, 83, 84. Defendants use different names for isolation, but whether under the guise of Close Management, Maximum Management, Administrative Confinement, or Disciplinary Confinement, the deprivations are the same. ECF 13 ¶¶ 2, 75-83.

In all types of isolation, people must eat, sleep, and defecate in their small, barren cells, which are drab, grimy, and often in disrepair. ECF 13 ¶¶ 43, 85, 86, 108. They rarely if ever communicate normally with others; all communication generally occurs while restrained or through physical barriers. ECF 13 ¶¶ 90-99. Defendants limit, or completely deny, isolated individuals' access to radios, reading materials, education, and communal worship, forcing them into idleness. ECF 13 ¶¶ 100-06. Because isolation cells are so small, the only opportunities for people to engage in some movement—or be exposed to more than a modicum of natural light—are when Defendants infrequently move them to outdoor cages resembling dog kennels. ECF 13 ¶¶ 108-12. Adding to the deprivations of basic human needs,

Defendants subject them to leg and arm restraints, cell and strip searches, and punishment in the form of confiscating clothing, bedding, mattresses, and hygiene items, which aggravate the trauma of being locked in a tiny cell around the clock. ECF 13 ¶¶ 113-23.

Plaintiffs contend that the cumulative effect of these conditions exposes them and class members to a substantial risk of serious harm. ECF 13 ¶ 59. They have experienced acute psychological and physical harms that are consistent with experts' findings that isolation "can be as clinically distressing as physical torture." ECF 13 ¶¶ 60-69. Such consequences include repeated attempts at suicide by cutting or hanging, hallucinations and delusions, loss of mobility, and blindness. ECF 13 ¶¶ 15, 21, 27, 33-34, 37-40, 42, 45, 49, 51-52. Defendants know that isolation is inconsistent with contemporary standards of decency but refuse to eliminate or even limit its use. ECF 13 ¶¶ 59, 124.

Plaintiffs also allege that Defendants discriminate against people with disabilities in their use of isolation. ECF 13 ¶¶ 151-59. Despite Defendants' knowledge that isolation worsens mental health symptoms, they refuse to increase people's access to out-of-cell time, social interaction, environmental stimulation, and mental health treatment to accommodate their psychiatric disabilities. ECF 13 ¶¶ 15, 27, 45, 51, 152-55. Defendants routinely place or keep people in isolation for disability-related behaviors, failing to ensure that the people they isolate are in the

most integrated setting appropriate to meet their needs. ECF 13 ¶¶ 16, 25, 158. Isolation is also inherently ill-equipped to address the needs of people with chronic health care issues or physical disabilities, leading Defendants to deny them equal access to medical care and mobility devices. ECF 13 ¶¶ 34, 37, 40, 44, 52, 157. Defendants also fail to assist people with disabilities with their activities of daily living in their cramped cells. ECF 13 ¶ 157.

III. STANDARD OF REVIEW

Defendants have moved to dismiss this action for lack of subject matter jurisdiction under Rule 12(b)(1), and for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. On a motion under Rule 12(b)(1), the court's inquiry is limited to whether Plaintiffs have "sufficiently alleged a basis of subject matter jurisdiction." *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990). A complaint survives Rule 12(b)(6) scrutiny if it contains factual allegations that on their face "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Under both Rule 12 standards, the Court must "accept as true the facts as set forth in the complaint and draw all reasonable inferences in the plaintiff's favor." *West v. Warden*, 869 F.3d 1289, 1296 (11th Cir. 2017); *McElmurray v. Consol. Govt. of Augusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007).

IV. DEFENDANTS' ARGUMENT THAT THE COMPLAINT VIOLATES RULE 8(a)(2) FAILS BECAUSE PLAINTIFFS ALLEGE FACTS THAT PLAUSIBLY SUPPORT THEIR CLAIMS

Defendants' first contention is that the Complaint does not comply with Federal Rule of Civil Procedure 8(a)(2). ECF 28-1 at 5. It misses the mark. Rule 8 merely requires "a short and plain statement of the claim" that is "plausible on its face"—one that "calls for enough fact to raise a reasonable expectation that discovery will reveal evidence" of the constitutional and statutory violations alleged. *Twombly*, 550 U.S. at 555-56. Dismissal under Rule 8(a)(2) is appropriate only "where it is *virtually impossible* to know which allegations of fact are intended to support which claim(s) for relief." *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1325 (11th Cir. 2015) (internal quotation marks and citation omitted). Here, Plaintiffs' factual allegations are clearly tied to each of their claims.

The Complaint is separated into distinct sections corresponding with each element of Plaintiffs' claims. ECF 13 Sections V.B.-G. (cruel and unusual conditions); A., H. (deliberate indifference); I. (no legitimate penological purpose); J. (disability discrimination). Contrary to Defendants' contention, ECF 28-1 at 5, the Eleventh Circuit expressly permits Plaintiffs' method of adopting all factual allegations into each cause of action. *Weiland*, 792 F.3d at 1324. The Complaint is not a "shotgun" pleading.

A. The Academic, Scientific, and Professional Research and Recommendations in the Complaint Support Plaintiffs' Eighth Amendment Claim

Defendants argue that Plaintiffs' allegations in Section V.A. of the Complaint are "unnecessary and inflammatory." ECF 28-1 at 6. Although styled as a motion to dismiss, this appears to be a motion to strike certain paragraphs from the Complaint under Federal Rule of Civil Procedure 12(f). Defendants did not properly bring this motion. Even if they did, a motion to strike should not be granted "unless the matter 'has no possible relation to the controversy, may confuse the issues, or otherwise prejudice a party.'" *Smith v. Wal-Mart Stores, Inc.*, No. 1:11-CV-226-MP-GRJ, 2012 WL 2377840, at *1-2 (N.D. Fla. June 25, 2012) (quoting *Reyher v. Trans World Airlines, Inc.*, 881 F. Supp. 574, 576 (M.D. Fla. 1995)). Defendants allege none of these bases for relief, nor could they.

All authorities cited in Section V.A. relate directly to Plaintiffs' Eighth Amendment claim, for which Plaintiffs must show that the deprivations in isolation are "objectively, sufficiently" serious and subject them to a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 834, 847 (1994). This analysis is grounded in contemporary standards because the Eighth Amendment "draws its meaning from the evolving standards of decency that mark the progress of a maturing society." *Thomas v. Bryant*, 614 F.3d 1288, 1304 (11th Cir. 2010) (quoting *Hudson v. McMillan*, 503 U.S. 1, 8 (1992)).

The academic research and historical sources in Section V.A. detail experts' findings that isolation causes serious health consequences, demonstrating that the deprivations in isolation are sufficiently serious and subject people to a substantial risk of harm. *See, e.g.*, ECF 13 ¶ 61. The allegations about the reforms implemented by other jurisdictions and recommendations for reform by numerous professional organizations demonstrate that Defendants' use of isolation is inconsistent with contemporary standards. ECF 13 ¶ 74. Indeed, the Supreme Court has routinely considered these types of sources in its Eighth Amendment analyses. *See, e.g.*, *Ford v. Wainwright*, 477 U.S. 399, 407 (1986) (incorporating the views of a 17th century writer and the practices of other states into its discussion of why the Eighth Amendment prohibited executing an insane person); *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (finding that juvenile death sentences violated the Eighth Amendment based in part on the findings in academic studies); *see also Baze v. Rees*, 553 U.S. 35, 67 (2008) ("[A]n inmate challenging a method of execution should point to a well-established scientific consensus.") (Alito, J., concurring).

B. Plaintiffs' Allegations are Specific and Well Supported

Defendants' next argument, that Plaintiffs' allegations lack specificity, also proceeds from their mischaracterization of this case. Plaintiffs challenge conditions that subject them to a substantial risk of serious harm, not specific incidents. To demonstrate the risk of harm, Plaintiffs make general allegations about the

conditions, restrictions, and security measures in all types of isolation. But, counter to Defendants' assertions, Plaintiffs specifically allege that Defendants use isolation in "nearly all FDC prisons throughout the state," and that Defendants subject all people, including Plaintiffs, in all types of isolation to the same policies and practices. ECF 13 ¶¶ 75, 82, 177. Plaintiffs also allege in considerable detail how isolation has impacted each of them. ECF 13 ¶¶ 13-53. Defendants have not explained why Plaintiffs' general allegations about the conditions in isolation require dismissal of their claims. No such basis exists.[1]

Defendants' assertion that Plaintiffs' allegations are unsupported or conclusory, requiring dismissal, is also unfounded. ECF 28-1 at 7–8. Defendants pluck sentences from the Complaint out of context. For example, they focus on one sentence alleging that Defendants fail to accommodate Plaintiff Harvard's disability and fail to protect her from harm, ECF 28-1 at 7, but ignore all other allegations specifically describing her disability, the harms she suffers, and her need for individualized mental health treatment as a reasonable accommodation for her

[1] Defendants also argue that Plaintiffs do not distinguish between practices and policies in the Complaint. The significance of this distinction is unclear, but they do in fact do so. *Compare* ECF 13 ¶ 103 ("*Based on the written policies*, FDC prohibits people in Maximum Management from possessing non-religious books for the first six months"), *with* ¶ 120 ("FDC responds to minor behavioral problems with a *practice* known as 'property restriction.'") (emphasis added).

disability. ECF 13 ¶¶ 13, 15, 152. Each of Plaintiffs' assertions is similarly well supported.[2]

Similarly, Plaintiffs' use of some "conclusory statements," as Defendants allege, ECF 28-1 at 8 n.1, provides no basis for dismissal.[3] They have pleaded ample facts to show that discovery will lead to more details about Defendants' conduct, which is all that is required. *Twombly*, 550 U.S. at 555-56.

In sum, Defendants offer no legal support for their argument that Rule 8 mandates dismissal of Plaintiffs' detailed and well-pleaded Complaint.

V. DEFENDANTS' CONTENTION THAT THIS CASE SHOULD BE DISMISSED FOR LACK OF STANDING IS INCORRECT BECAUSE PLAINTIFFS' ALLEGATIONS MEET ARTICLE III'S REQUIREMENTS FOR THEIR INDIVIDUAL AND CLASS CLAIMS

Plaintiffs have adequately pleaded Article III standing to bring this action. A plaintiff must show that: 1) she has "suffered an 'injury in fact'" that is "concrete and particularized" and "actual or imminent;" 2) there is a "causal connection

[2] Defendants ignore that Paragraph 110, for example, is supported by Paragraphs 36 and 37, which allege that Plaintiff Burgess is losing mobility because he cannot meaningfully participate in recreation due to his disability. Paragraph 151 precedes seven paragraphs of specific factual allegations describing disability discrimination. Paragraph 160, alleging that other prison systems have properly integrated people with disabilities, is supported by Paragraph 73 describing reform efforts by other states.

[3] The fact that Paragraph 126 is pleaded "on information and belief" provides no support for Defendants' argument. *See Leisure Founders, Inc. v. CUC Int'l, Inc.*, 833 F. Supp. 1562, 1574 (S.D. Fla. 1993) (noting that plaintiffs may allege facts on "information and belief" where the subject matter is "peculiarly within the adverse party's knowledge").

between the injury and the conduct complained of;" and 3) the injury will be "redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). If seeking injunctive relief, she must also demonstrate "a real and immediate—as opposed to a merely conjectural or hypothetical—threat of *future* injury." *Wooden v. Bd. of Regents of Univ. Sys. of Ga.*, 247 F.3d 1262, 1284 (11th Cir. 2001) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)).

A. Plaintiffs Have Sufficiently Alleged Individual Standing

Each of the seven named Plaintiffs has alleged standing to bring her or his claims under the Eighth and Fourteenth Amendments, Americans with Disabilities Act (ADA), and Rehabilitation Act. With respect to injury and causation, Defendants' isolation policy and practice subjects Plaintiffs to a substantial risk of harm. ECF 13 ¶¶ 13-16 (Harvard); 18-21 (J.H.); 23-28 (Meddler); 30-34 (Espinosa); 36-40 (Burgess); 42-45 (Kendrick); 47-53 (Hill); *see also Brown v. Plata*, 563 U.S. 493, 506 n.3 (2011) (acknowledging that the exposure to a risk of harm is a constitutional injury). Defendants have also injured Plaintiffs Harvard, Meddler, Espinosa, Burgess, Kendrick, and Hill through their denial of reasonable accommodations, ECF 13 ¶¶ 152, 153, 156; denial of equal access to programs, service, and activities, ECF 13 ¶ 157; or failure to house them in the most integrated setting appropriate to meet their needs, ECF 13 ¶¶ 27, 50, 158.

Plaintiffs have requested that Defendants develop a plan to eliminate the substantial risk of serious harm and cease their discriminatory conduct, demonstrating the redressability of their injuries. ECF 13 ¶ 204. Without injunctive relief, Plaintiffs are certain to suffer future harm. ECF 13 ¶¶ 181, 191, 202; *see also Thomas*, 614 F.3d at 1319 (holding that injunctive relief was necessary to prevent future risk of harm to the plaintiff from FDC's use-of-force policy); *Bonner v. Chambers Cnty.*, No. 3:04-CV-01229-WKW, 2006 WL 1731135, at *4 (M.D. Ala. 2006) (finding that "prisoners have standing for injunctive relief where they allege a contemporary violation that is likely to continue") (citing *Farmer*, 511 U.S. at 825).

Plaintiffs Harvard and Meddler have standing even though Defendants moved them out of isolation after Plaintiffs filed their original complaint. ECF 13 ¶¶ 13 (Harvard "is receiving in-patient psychiatric treatment but still is technically assigned to Close Management"); 26 (Meddler was released from isolation after over three years). Their standing relates back to the date they filed the original complaint, at which time they were both still in isolation. ECF 1 ¶¶ 13, 23. Defendants' reliance on *Focus on the Family v. Pinellas Suncoast Transit Authority*, 344 F.3d 1263 (11th Cir. 2003), to argue otherwise is misplaced. In *Focus*, the court explained that standing is assessed at the time the original complaint is filed. *Id.* at 1275. It does not hold, as Defendants suggest, ECF 28-1 at 12, n.2, that standing must be

reassessed every time an amended complaint is filed. So long as the allegations involve the same "conduct, transaction, or occurrence" challenged in the original complaint, standing remains intact. *Focus on the Family*, 344 F.3d at 1275; *Dunn v. Dunn*, 148 F. Supp. 3d 1329, 1334-35 (M.D. Ala. 2015) (holding plaintiffs still had standing, even though the amended complaint reflected they had been released from prison since the original complaint was filed, because the challenged prison conditions had not changed). The isolation policy and practice at issue remains unchanged, so the amended complaint did not disturb Plaintiffs Harvard's and Meddler's standing.

Even if standing were assessed solely on the basis of the allegations in the amended complaint, Plaintiffs Harvard and Meddler have met their burden. They demonstrate that they continue to suffer from a real and immediate threat of future injury from Defendants' isolation policy and practice. *See Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1334 (11th Cir. 2013). Specifically, Plaintiff Harvard alleges that although she is currently hospitalized, she remains assigned to Close Management, and Defendants returned her directly to isolation the 20 other times she was hospitalized. ECF 13 ¶¶ 13, 15. Plaintiff Meddler alleges that she has a history of receiving multiple minor disciplinary infractions and Defendants have threatened to send her back to isolation if she receives another infraction for any reason. ECF 13 ¶¶ 25-27. These facts show that the likelihood of future injury

"is not contingent upon events that are speculative." *Houston*, 733 F.3d at 1337. The cases Defendants cite, on the other hand, involve situations where there was no likelihood of future injury. *Lyons*, 461 U.S. at 109-10 (holding that plaintiff did not have standing because there was no realistic threat he would again be illegally choked); *O'Shea v. Littleton*, 414 U.S. 488, 498 (1974) (concluding that plaintiffs lacked standing because they failed to show they would be subject to the defendant's policies through future arrests); *cf. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181-82 (2000) (finding plaintiffs had standing because they avoided recreational use of a river due to fear of pollution by defendant).

B. Plaintiffs Have Sufficiently Alleged Standing to Bring Their Class Claims

Plaintiffs do not dispute that standing is a "threshold issue." ECF 28-1 at 10-11. Several of the cases Defendants cite are inapposite, though, because they analyze standing at the class certification stage or later when the plaintiffs carried a higher burden of proof. *See Prado-Steiman v. Bush*, 221 F.3d 1266, 1280 (11th Cir. 2000); *Griffin v. Dugger*, 823 F.2d 1476, 1484 (11th Cir. 1987); *Blum v. Yaretsky*, 457 U.S. 991, 996 (1982). At this juncture, however, Plaintiffs need only allege that they and members of the putative class "suffer the same injur[ies]." *Schojan v. Papa Johns Int'l, Inc.*, No. 8:14-CV-1218-T-33MAP, 2014 WL 6886041, at *4 (M.D. Fla. Dec. 8, 2014) (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 216 (1974)).

Plaintiffs have met this pleading burden. They bring this case on behalf of all people subject to Defendants' statewide, systemic isolation policy and practice, no matter at which prison they are housed or whether they are in Administrative Confinement; Close Management I, II, or III; Disciplinary Confinement; or Maximum Management. ECF 13 ¶¶ 75, 83. Plaintiffs allege that in each type of isolation Defendants subject people to oppressive security measures and restrict access to visits, phone calls, exercise, social interaction, reading materials, hygiene items, and personal property. ECF 13 ¶ 82. Plaintiffs also allege that although there may be differences in the severity of these restrictions, "it is only by a matter of degree": even the least restrictive form of isolation subjects people to "substantial harm."[4] ECF 13 ¶ 82. As a result, Plaintiffs allege that they, and all members of the putative class, suffer the same serious risk of physical and psychological harm. ECF 13 ¶¶ 2, 75, 83, 177.

Defendants erroneously contend that Plaintiffs do not challenge a "uniform, state-wide policy" and that each of their claims is "institution- and often inmate-specific." ECF 28-1 at 14. To support this argument, Defendants again dissect Plaintiffs' claims into discrete incidents and focus on inconsequential minutiae.[5] In

[4] Defendants cite to differences in restrictions in each type of isolation, ECF 28-1 at 9-10, but Plaintiffs plainly allege that Defendants do not follow these policies. ECF 13 ¶ 82.

[5] Defendants also misstate that no named Plaintiffs allege that they are in Disciplinary Confinement. *See* ECF 13 ¶¶ 13, 25.

so doing, Defendants confuse "allegations" with "claims" for relief. *See Twombly*, 550 U.S. at 570 (noting that complaint must allege "only enough *facts* to state a *claim* to relief that is plausible on its face") (emphasis added). Plaintiffs' *claims* are that Defendants violate their constitutional and statutory rights through Defendants' statewide isolation policy and practice. The number of times, for example, that Plaintiff J.H. was taken to an exercise cage, or the number of hours Plaintiff Meddler received education services, are factual allegations illustrating deprivations of basic human needs, not stand-alone claims for relief.

Defendants' contention that Plaintiffs cannot challenge specific conduct, such as escort chairs and group therapy partitions, unless it occurs at the prisons at which Plaintiffs are located, ECF 28-1 at 14, is a distortion of standing in an Eighth Amendment case seeking injunctive relief. Plaintiffs reiterate that this case does not rest on specific events or practices; their claim is that the cumulative effect of all conditions in isolation subjects *all* persons in isolation to the same substantial risk of serious harm, to which Defendants have been deliberately indifferent. *See Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014) (in statewide prison medical care case, noting that "every inmate suffers exactly the same constitutional injury when he is exposed to a single statewide [prison] policy or practice that creates a substantial risk of serious harm."). Plaintiffs may allege harms that have happened to others, but not themselves, to demonstrate Defendants' deliberate indifference to

a risk of harm. *Starr v. Baca*, 652 F.3d 1202, 1209-12 (9th Cir. 2011) (holding the plaintiff sufficiently alleged deliberate indifference after recounting violent incidents that happened to other incarcerated people but not him); *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983) (finding that "repeated examples of negligent acts" against non-plaintiffs that disclose a pattern of misconduct may demonstrate deliberate indifference). To the extent Plaintiffs allege facts not specifically tied to them, these facts show how Defendants' isolation policy and practice exposes them and all people in isolation to ongoing risk and are not a basis for dismissal on standing grounds.

In essence, Defendants' attack on Plaintiffs' standing is a premature argument that Plaintiffs fail to meet Rule 23(a)'s commonality and typicality requirements. *Bohlke v. Shearer's Foods, LLC*, No. 9:14-CV-80727, 2015 WL 249418, at *2-3 (S.D. Fla. Jan. 20, 2015) (explaining that even though the court should consider standing, it is premature to consider the requirements of Rule 23(a) at the pleadings stage); 7B Wright, Miller & Kane, *Federal Practice & Procedure* § 1798 (3d ed. 2005) ("Compliance with Rule 23 prerequisites theoretically should not be tested by a motion to dismiss for failure to state a claim or by a summary-judgment motion."). The question of, for example, whether named plaintiffs at certain prisons can represent a class including people incarcerated at other prisons, or with different disabilities, to challenge a systemic policy and practice is a question for class

certification, not a motion to dismiss. *See, e.g.*, *Braggs v. Dunn*, 317 F.R.D. 634, 660-61 (N.D. Ala. Nov. 25, 2016) (analyzing whether differing mental health needs and conditions at multiple prisons destroyed commonality and typicality); *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005) (analyzing whether differences in the named plaintiffs' and class members' disabilities destroyed commonality and typicality).

VI. DEFENDANTS' ASSERTION THAT PLAINTIFFS' CLAIMS ARE IMPROPERLY JOINED FAILS BECAUSE THEY STEM FROM THE SAME SYSTEMIC POLICY AND PRACTICE

Defendants argue that Plaintiffs do not meet the elements of Federal Rule of Civil Procedure 20(a)(1) for joinder of claims because the Complaint alleges different facts for each Plaintiff. ECF 28-1 at 15-16. But Plaintiffs' allegations support permissive joinder. Joinder is "strongly encouraged" under a "liberal" standard to avoid multiple lawsuits whenever possible. *Alexander v. Fulton Cnty., Ga.*, 207 F.3d 1303, 1323 (11th Cir. 2000), *overruled on other grounds by Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003) (quoting *United Mine Workers v. Gibbs*, 282 U.S. 715 (1966)). Defendants challenge only whether Plaintiffs' claims "arise from the same transaction, occurrence, or series of transactions or occurrences." ECF 28-1 at 15. They do. ECF 13 ¶¶ 57, 59 (alleging a systemic isolation policy and practice that serves as the basis for each of Plaintiffs' claims).

The factual differences that Defendants highlight, ECF 28-1 at 16, are immaterial. *See Alexander*, 207 F.3d at 1324 (holding joinder was appropriate due to plaintiffs' core allegation of systemic race discrimination despite the different effects of that discrimination); *Bernstein, v. R&B Amusements Inc.*, No. 3:16-CV-00073-MCR-EMT, 2016 WL 9229843, at *1 (N.D. Fla. May 9, 2016) (finding joinder appropriate due to core allegation of defendants' misappropriation of images despite defendants' speculation of "highly divergent legal and factual issues" related to the plaintiffs' individual contracts). For that reason, joinder of Plaintiffs' claims serves the interest of judicial economy by eliminating multiple suits challenging the same systemic policy and practice, and is therefore proper.

VII. DEFENDANTS' MOTION TO DISMISS IS UNFOUNDED BECAUSE PLAINTIFFS HAVE STATED CLAIMS FOR RELIEF

A. Plaintiffs Adequately Allege Cruel and Unusual Conditions of Confinement under the Eighth and Fourteenth Amendments to the United States Constitution

Plaintiffs have sufficiently alleged an Eighth Amendment claim. In a conditions of confinement case, Plaintiffs must allege that prison officials are: 1) subjecting them to a deprivation that is "objectively, sufficiently serious," causing a substantial risk of serious harm, and 2) acting with a "sufficiently culpable state of mind" by demonstrating deliberate indifference to Plaintiffs' health or safety. *Farmer*, 511 U.S. at 834 (internal quotation marks omitted). Defendants do not

question whether Plaintiffs have adequately pleaded deliberate indifference, only whether the conditions in isolation are "cruel and unusual" within the meaning of the Eighth Amendment.

There is "no static test" for determining whether Plaintiffs are suffering an objective deprivation of sufficient seriousness. *Chandler v. Baird*, 926 F.2d 1057, 1064 (11th Cir. 1991) (internal quotation marks omitted). Conditions "alone or in combination" may deprive incarcerated people "the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981). When conditions of confinement "have a mutually enforcing effect that produces the deprivation of a single, identifiable human need," they may establish an Eighth Amendment violation "in combination" when each would not do so alone. *Wilson v. Seiter*, 501 U.S. 294, 304-05 (1991).

Because the question of whether an Eighth Amendment violation has occurred is "fact-intensive," *Chandler*, 926 F.2d at 1064, courts generally refuse to dismiss Eighth Amendment claims at the pleading stage. *See, e.g., Palakovic v. Wetzel*, 854 F.3d 209, 225-26 (3d Cir. 2017); *Meriwether v. Faulkner*, 821 F.2d 408, 417 (7th Cir. 1987). Still, Plaintiffs clearly alleged their core Eighth Amendment claim. No matter what label FDC chooses, it "confines and isolates people in their cells for an average of 22 or more hours a day" and subjects them "to deprivations of human contact, environmental stimulation, and exercise, layered with oppressive and

unnecessary security measures." ECF 13 ¶ 75. Plaintiffs support this allegation with details of how being isolated for 22 hours or more per day results in those deprivations. ECF 13 ¶¶ 90-99 (deprivation of normal human contact), 100-07 (deprivation of environmental stimulation), 108-12 (deprivation of exercise).

Contrary to Defendants' assertion, ECF 28-1 at 42-43, Plaintiffs also clearly alleged that the *cumulative effect* of the deprivations "subjects people to a substantial risk of serious psychological and physiological harm." ECF 13 ¶ 75; *see also* ECF 13 ¶¶ 57, 59, 83, 84, 90. In short, Plaintiffs have sufficiently pleaded an objective deprivation of sufficient seriousness.

Recent Eighth Amendment jurisprudence demonstrates that Plaintiffs have met their burden to plead that the conditions in isolation are unconstitutional. In *Quintanilla v. Bryson*, 730 F. App'x 738, 746-47 (11th Cir. 2018), the Eleventh Circuit found that the plaintiff's allegations regarding the deprivation of exercise and normal human contact in isolation sufficiently stated an Eighth Amendment claim. Similarly, in *Hall v. Palmer*, No. 3:15-CV-824-J-39JRK, 2017 WL 4764345 (M.D. Fla. Oct. 20, 2017), a district court, rejecting the identical arguments made here, denied FDC's motion to dismiss a plaintiff's claim regarding denial of exercise and normal human contact in isolation. *See also Porter v. Clarke*, 923 F.3d 348, 357 (4th Cir. 2019), *as amended* (May 6, 2019) ("[S]everal courts have found—based on the empirical evidence set forth above—that solitary confinement poses an objective

risk of serious psychological and emotional harm to inmates, and therefore can violate the Eighth Amendment."); *Palakovic*, 854 F.3d at 225 (acknowledging "the robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement"); *Braggs v. Dunn*, 367 F. Supp. 3d 1340, 1355 (M.D. Ala. 2019) (noting that "extended placement in segregation poses a substantial risk of serious, potentially permanent psychological harm and decompensation"); *Shoatz v. Wetzel*, No. 2:13-CV-0657, 2016 WL 595337, at *9 (W.D. Penn. Feb. 12, 2016) (observing that "lack of adequate exercise, sleep, social isolation, and lack of environmental stimulation are seriously detrimental to a human being's physical and mental health").[6]

Defendants cite a string of cases about various prison conditions, ECF 28-1 at 41-42, that would apply only to their fiction of a case about discrete conditions.[7] In

[6] Defendants cite *Sheley v. Dugger*, 833 F.2d 1420, 1428-29 (11th Cir. 1987), for the proposition that "administrative segregation and solitary confinement do not, in and of themselves, constitute cruel and unusual punishment." ECF 28-1 at 41. This argument again mischaracterizes Plaintiffs' core claim. As *Sheley* and its Eleventh Circuit progeny make clear, an isolation cell is a form of punishment subject to scrutiny under the Eighth Amendment. *See Quintanilla*, 730 F. App'x at 746. The Court must examine the conditions in their totality to determine whether they pass constitutional muster.

[7] For example, *Overton v. Bazzetta*, 539 U.S. 126, 136-37 (2003), examined only restrictions on visitation; *Hunt v. Warden*, 748 F. App'x 894 (11th Cir. 2018), considered whether housing an incarcerated person in a non-handicap-accessible cell violated the ADA and Eighth Amendment; and *Mahon v. Tate*, No. 5:17CV182-MCR/CAS, 2018 WL 4113374, at *2-3 (N.D. Fla. July 20, 2018), addressed the singular issue of access to a law library. Similarly, *Newman v. Alabama*, 559 F.2d 283, 291 (5th Cir. 1977), held that the failure to provide a rehabilitation program, "by itself," does not violate the Eighth Amendment. None of these issues, standing alone, are what this case is about.

this case, though, Plaintiffs allege specific facts that illustrate the cumulative effect of the deprivations in isolation and Defendants' deliberate indifference to the resulting serious risk of harm. *See, e.g.*, ECF 13 ¶¶ 93-96 (allegations about inadequate contact with healthcare staff supports deprivation of normal human contact); 98 (allegation about visitation restrictions supports deprivation of normal human contact); 102, 103, 105 (allegations related to reading materials, jobs, and education support deprivation of environmental stimulation); 109-10 (allegations regarding conditions in outdoor exercise cages support deprivation of exercise); 138-39 (allegations about Defendants' failure to provide adequate healthcare to prevent known risk of harm support deliberate indifference). And Plaintiffs are not, as Defendants contend, "challenging the disciplinary decisions that led to their restrictive housing confinement or the length of confinement imposed." ECF 28-1 at 40.

B. Plaintiffs Adequately Allege Discrimination Under the ADA and Rehabilitation Act

Plaintiffs have adequately alleged disability discrimination claims under the ADA, 42 U.S.C. § 12131 *et seq.*, and Rehabilitation Act, 29 U.S.C. § 794 *et seq*. To state a claim under Title II of the ADA, Plaintiffs must allege that: 1) they are qualified individuals with a disability; 2) they were either excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or were otherwise discriminated against by such entity; and 3) that the

exclusion, denial of a benefit, or discrimination was by reason of their disability. *Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072, 1083 (11th Cir. 2007). The test under the Rehabilitation Act is the same. *Id.* at 1088 n.21. Defendants challenge only the sufficiency of Plaintiffs' allegations regarding the first and third prongs of this test.

Under the ADA, a "disability" is a physical or mental impairment that substantially limits one or more of an individual's major life activities. 42 U.S.C. § 12102(1). The term "substantially limits" must be "construed broadly in favor of expansive coverage," and this threshold determination "should not demand extensive analysis." 28 C.F.R. § 35.108(d)(1)(i)-(ii). Relevant to the allegations in the Complaint, "major life activities" include caring for oneself, seeing, hearing, eating, sleeping, walking, speaking, communicating, and the operation of bladder, neurological, brain, and endocrine functions. 42 U.S.C. § 12102(2). "In virtually all cases," certain impairments, including blindness, mobility impairments requiring the use of a wheelchair, diabetes, epilepsy, major depressive disorder, bipolar disorder, and schizophrenia, constitute a "disability" under the ADA because they inherently impose substantial limitations on major life activities. 28 C.F.R. § 35.108(d)(2)(ii)-(iii);[8] *Coker v. Enhanced Senior Living, Inc.*, 897 F. Supp. 2d 1366, 1375 (N.D. Ga. 2012); *see also Peters v. Baldwin Union Free Sch. Dist.*, 320 F.3d

[8] These regulations have legislative and hence controlling weight. *Shotz v Cates*, 256 F.3d 1077, 1079 n.2 (11th Cir. 2001).

164, 168 (2d Cir. 2003) ("A mental illness that impels one to suicide can be viewed as a paradigmatic instance of inability to care for oneself."); *Jones v. McDonald*, No. 17-CV-20153, 2018 WL 3629592, at *10-11 (S.D. Fla. June 12, 2018) (finding that insulin-dependent diabetes is automatically considered a disability under the ADA).

Contrary to Defendants' assertion, ECF 28-1 at 45, Plaintiffs sufficiently alleged impairments that substantially interfere with major life activities. Plaintiff Harvard has schizoaffective disorder, gender dysphoria, and bipolar disorder, substantially limiting her brain function and ability to care for herself. ECF 13 ¶¶ 13-15. Plaintiff Meddler has anxiety and mood disorders, substantially limiting her sleeping, brain function, and ability to care for herself. ECF 13 ¶¶ 23, 27. Plaintiff Espinosa has paranoid schizophrenia, major depressive disorder, bipolar disorder, throat tumors, and muteness, substantially limiting his speaking, eating, brain function, and ability to care for himself. ECF 13 ¶¶ 30, 32-33. Plaintiff Burgess has paralysis requiring the use of a wheelchair and urinary catheters, seizure disorder, and major depressive disorder, substantially limiting his walking, and bladder, brain, and neurological functions. ECF 13 ¶¶ 36-40. Plaintiff Kendrick has insulin-dependent diabetes, substantially limiting his eating, endocrine function, and ability to care for himself. ECF 13 ¶¶ 42, 44-45. Plaintiff Hill has depression, mood disorders, and blindness, substantially limiting his seeing, brain function, and ability to care for himself. ECF 13 ¶¶ 47, 42.

The cases cited by Defendants are inapposite. In *Pritchett v. Ellers*, 324 F. App'x 157, 159 (3d Cir. 2009), the plaintiff merely alleged his voice was "raspy," a condition that, unlike the impairments alleged by Plaintiffs, does not substantially interfere with even one major life activity. Moreover, *Pritchett* applies an "inappropriately high" standard that is no longer controlling. *See Mazzeo v. Color Resolutions Int'l., LLC*, 746 F.3d 1264, 1269 (11th Cir. 2014). It relies on *Toyota v. Motor Mfg., KY., Inc. v. Williams*, 534 U.S. 184, 198 (2002) (overturned due to legislative action), in the aftermath of which Congress broadened the ADA's coverage and made it significantly easier for plaintiffs to show they have a "disability." *Mazzeo*, 746 F.3d at 1269. *Forbes v. St. Thomas Univ., Inc.*, 768 F. Supp. 2d 1222, 1230 (S.D. Fla. 2010), actually confirms that some of the same disability-related symptoms Plaintiffs allege, like agitation, sleeping problems, depression and anxiety, could substantially interfere with a major life activity.

Defendants also argue that Plaintiffs did not claim "that they were placed in isolation or have remained in isolation because of a disability" or "that they have been subject to disparate treatment." ECF 28-1 at 45. But Plaintiffs do not bring a disparate treatment claim. And Plaintiffs repeatedly allege that Defendants discriminate against them by reason of their respective disabilities, including by retaining them in isolation for disability-related behaviors. *See, e.g.*, ECF 13 ¶¶ 16, 152, 158 (Harvard placed and retained in isolation for behaviors related to her

disability); 25, 152 (Meddler placed and retained in isolation for behaviors related to her disability); 31 (denial of accommodations to ensure Espinosa has equal access to use the phone); 52 (denial of accommodations to ensure Hill has equal access to reading materials and failure to modify restraint policies to ensure he can walk safely); 156 (failure to modify exercise policies for Burgess, Kendrick, and Espinosa); and 157 (denial of medical supplies and assistive devices to Espinosa and Hill); *see also United States v. Georgia*, 546 U.S. 151, 157 (2006) ("[I]t is quite plausible that the alleged deliberate refusal of prison officials to accommodate [the plaintiff's] disability-related needs in such fundamentals as mobility, hygiene, medical care, and virtually all other prison programs constituted 'exclu[sion] from participation in or . . . deni[al of] the benefits of' the prison's 'services, programs, or activities.' 42 U.S.C. § 12132[.]"); *Tennessee v. Lane*, 541 U.S. 509, 536-37 (2004) (Ginsburg, J., concurring) (explaining that discrimination under the ADA includes the failure to provide reasonable accommodations or modifications of policies and procedures); *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999) ("Unjustified isolation . . . is properly regarded as discrimination based on disability.").

Finally, Defendants contend, without citing any cases, that many of the Plaintiffs "have not identified an available reasonable accommodation." ECF 28-1 at 45. Plaintiffs have no such pleading or even evidentiary burden. *Nattiel v. Fla. Dep't of Corr.*, No. 1:15-CV-00150, 2017 WL 5774143, at *1 (N.D. Fla. Nov. 28,

2017) (finding that a specific demand for an accommodation is unnecessary when FDC knows about the person's disabilities); *Levy v. La. Dep't of Pub. Safety & Corr.*, 371 F. Supp. 3d 274, 285 (M.D. La. 2019) ("[I]t is axiomatic that the ADA and RA do not require a plaintiff to specifically request a certain accommodation in order to prevail on a claim of disability discrimination"); *Pierce v. D.C.*, 128 F. Supp. 3d 250, 269 (D.D.C. 2015) (concluding that the defendant's "insistence here that prison officials have no legal obligation to provide accommodations for disabled inmates unless the inmate specifically requests such aid . . . is untenable and cannot be countenanced").

VIII. DEFENDANTS' MOTION TO DISMISS SHOULD BE DENIED BECAUSE PLAINTIFFS HAVE EXHAUSTED ALL AVAILABLE ADMINISTRATIVE REMEDIES

Plaintiffs have exhausted all available administrative remedies by following the grievance procedures set forth in the Florida Administrative Code. Defendants' contention that Plaintiffs have not met the Prison Litigation Reform Act's (PLRA) requirements is incorrect.

A. The PLRA and the Florida Administrative Code Require Only General Notice of the Claims.

The purpose of the PLRA's exhaustion requirement, 42 U.S.C. § 1997e(a), is to allow the prison system a chance to investigate, discover, and correct its own errors. *Chandler v. Crosby*, 379 F.3d 1278, 1287 (11th Cir. 2004). It requires

plaintiffs, before bringing suit, to initiate grievances and appeal any denial of relief through all levels of review. *Bryant v. Rich*, 530 F.3d 1368, 1378 (11th Cir. 2008).

"[I]t is the prison's requirements, and not the PLRA, that defines the boundaries of proper exhaustion." *Jones v. Bock*, 549 U.S. 199, 218 (2007). Here, "[t]he only [FDC] requirements regarding the contents of grievances are that they must accurately state the facts and 'address only one issue or complaint.'" *Parzyck v. Prison Health Services, Inc.*, 627 F.3d 1215, 1219 (11th Cir. 2010) (citing the Florida Administrative Code); *see also* Fla. Admin. Code rr. 33-103.005(2)(b)2, 33-103.006(2)(c)-(g), and 33-103.007(4)(a)-(g).

"When the administrative rulebook is silent, a grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought." *Strong v. David*, 297 F.3d 646, 650 (7th Cir. 2002). Because FDC's rulebook does not impose a more taxing requirement, the grievance need not lay out any particular facts, articulate legal theories, or demand particular relief. *See id.* As in a notice pleading system, it must simply "object intelligibly to some asserted shortcoming." *Id; see also Johnson v. Testman*, 380 F.3d 691, 697 (2d Cir. 2004) ("Uncounselled inmates navigating prison administrative procedures without assistance cannot be expected to satisfy a standard more stringent than that of notice pleading.").

B. Plaintiffs' Grievances Satisfy the PLRA's Notice Pleading Requirements

Plaintiffs' exhausted grievances put Defendants on notice of the conduct at issue in this lawsuit. For Plaintiffs' Eighth Amendment claim, FDC's grievance rules simply required Plaintiffs to put Defendants on notice that isolation was causing them harm. *See Brown v. Sikes*, 212 F.3d 1205, 1207 (11th Cir. 2000) (holding that grievance procedures require plaintiffs to include "as much relevant information" as they reasonably can, but it does not require more).

For Plaintiffs' ADA and Rehabilitation Act claims, they only had to provide holistic and general notice that they had a disability-related problem to give Defendants a fair opportunity to investigate and take appropriate action to address it. *See, e.g.*, *Nattiel v. Tomlinson*, No. 1:15-CV-150-WTH-GRJ, 2017 WL 5799233, at *5 (N.D. Fla. July 13, 2017) (finding that plaintiff's assertion that he was sprayed with chemical agents even though his file said he was not supposed to be sprayed because of his medical conditions put FDC on notice of the "general basis" of his ADA claim), *report and recommendation adopted sub nom. Nattiel*, 2017 WL 5774143; *Slaughter v. Bryson*, No. 5:15-CV-90, 2018 WL 1400976, at *10 (S.D. Ga. Mar. 20, 2018) (concluding plaintiff exhausted his remedies on ADA claim where he alleged that uneven cracks in the sidewalk were a safety risk because he used a cane and walker and because correctional officers forced him to navigate the sidewalk without his cane and walker), *report and recommendation adopted sub*

nom. Slaughter v. Gramiak, No. 5:15-CV-90, 2018 WL 3536076 (S.D. Ga. July 23, 2018); *Hacker v. Cain*, No. 3:14-00063-JWD-EWD, 2016 WL 3167176, at *4, *18 (M.D. La. June 6, 2016) (finding that plaintiff's claim that he needed surgery for his declining vision was enough to notify the prison that he needed an accommodation so he could have equal access to the prison's services, programs, or activities). Significantly, Plaintiffs were not required to ask for a specific modification of policies to exhaust their remedies on the disability discrimination claim. *Nattiel*, 2017 WL 5774143, at *1; *Lewis v. Cain*, 324 F.R.D. 159, 166 (M.D. La. 2018).

Framing Defendants' exhaustion argument is the still-mistaken assumption that Plaintiffs' claims are about discrete incidents. They urge the Court to apply a stringent standard more akin to that under Rule 12(b)(6) than the PLRA. They again atomize the Complaint, pervasively confusing factual assertions with claims for relief. ECF 28-1 at 27, 29, 34. But when Plaintiff Harvard raises the lack of gender dysphoria treatment, Plaintiff J.H. complains that he is deprived of an education, or Plaintiff Espinosa describes the need for a call button, for example, they are illustrating how Defendants' systemic isolation policy and practice leads to a risk of harm and disability discrimination, not raising individual claims for relief.

There is no support in § 1997e(a), or FDC's grievance rules, for Defendants' contention that each of these facts requires exhaustion. These procedures are not "intended to result in 'fact-intensive litigation' over whether every fact relevant to

the cause of action was included in the grievance." *Hooks v. Rich*, No. CV 605-065 2006 WL 565909, at *5 (S.D. Ga. Mar. 7, 2006) (citing *Goldsmith v. White*, 357 F. Supp. 2d 1336, 1340 (N.D. Fla. 2005)).

The cases Defendants cite are inapposite because, in those cases, the plaintiffs' grievances failed to include allegations central to the core *claims* they later pursued in court. *See, e.g.*, *Martinez v. Minnis*, 257 F. App'x 261, 265 n.5 (11th Cir. 2007) (affirming dismissal of retaliation claim where plaintiff's grievance provided no notice of alleged retaliatory action, only that the defendant placed him in the SHU "for personal reasons"); *Goldsmith*, 357 F. Supp. 2d at 1340 (affirming dismissal of claim of discrimination based on sexual orientation where plaintiff's grievance did not mention that he was gay or that his sexual orientation had anything to do with the challenged conduct); *Ortiz v. McBride*, 380 F.3d 649, 653-54 (2nd Cir. 2004) (affirming dismissal of Eighth Amendment claim where plaintiff orally complained about conditions of isolation to prison officials but his written grievance included facts relating only to the process by which he ended up in isolation); *Johnson v. Johnson*, 385 F.3d 503, 518 n.9 (5th Cir. 2004) (affirming dismissal of race-based equal protection claim where grievance contained no mention of race).

As delineated below, each Plaintiff exhausted at least one grievance that sufficiently put Defendants on notice of the Eighth Amendment and disability discrimination claims she or he brings in this suit.

1. Admire Harvard

Through grievance appeals 18-6-32696, ECF 29-3 at 183-90, and 18-6-32709, ECF 29-3 at 191-201, Plaintiff Harvard exhausted her administrative remedies on her Eighth Amendment and disability discrimination claims.[9]

Plaintiff Harvard notified Defendants that isolation was subjecting her to a substantial risk of serious harm. She stated that her prolonged isolation and sensory deprivation caused her "psychological damage" and "severe depression, stress, and anxiety" such that she had become addicted to cutting herself in isolation. ECF 29-3 at 193-94; *see also* ECF 29-3 at 184-85 (stating that isolation caused her mental torment, driving her to cut herself to avoid depression, stress, and anxiety).

Plaintiff Harvard also notified Defendants that she was experiencing disability discrimination. She provided "holistic and general" notice that she needed an accommodation by alleging that isolation was causing her mental health symptoms to worsen. *Hacker*, 2016 WL 3167176, at *18. She also notified Defendants that they were retaining her in isolation solely due to her disability, ECF 29-3 at 184-85, 192 (alleging that she had to serve time in isolation for "intentional self-injurious behavior" and suicidal ideation), in violation of the ADA's integration mandate. *Olmstead*, 527 U.S. at 597.

[9] Defendants concede that Plaintiff Harvard exhausted on claims based on visitation and phone privileges. ECF 28-1 at 2, 28, 46.

For these reasons, Defendants' argument that Plaintiff Harvard's grievances challenge her underlying disciplinary reports, not her conditions of confinement, ECF 28-1 at 27, is without merit. Finally, Defendants' assertion that Plaintiff Harvard's "request for relief in both grievance appeals appears satisfied" because she now resides at an in-patient facility, ECF 28-1 at 28, is wholly irrelevant for purposes of exhaustion.

2. J.H.

Plaintiff J.H., too, properly exhausted his remedies on his Eighth Amendment claim. In grievance appeal 19-6-12440 he alerted Defendants that being in isolation was subjecting him to a substantial risk of serious harm: "[b]eing in close management is having negative impacts on my mental health." ECF 29-5 at 3, 5, 7.

Defendants incorrectly maintain that J.H.'s claim is unexhausted because he was in Close Management II when he exhausted the grievance but in Close Management III at the time he filed this lawsuit. ECF 28-1 at 29. But as J.H. alleged in the Complaint, Defendants continued to subject him to the same severe restrictions. ECF 13 ¶ 19. No matter the label, J.H. was still in "isolation" as defined in the Complaint. ECF 13 ¶ 57.

Plaintiff J.H.'s exhausted grievance "accomplished § 1997e(a)'s purpose by alerting prison officials to the problem and giving them the opportunity to resolve it before being sued." *Parzyck*, 627 F.3d at 1219. He was "not required to initiate

another round of the administrative grievance process on the exact same issue each time" the label on his isolation changed. *Id.* "[F]urther grievances complaining of the same living situation would have been redundant." *Howard v. Waide*, 534 F.3d 1227, 1244 (10th Cir. 2008).

3. Angel Meddler

Plaintiff Meddler fulfilled FDC's grievance process through grievance appeal 18-6-43544. ECF 29-7 at 49-54. She notified Defendants that isolation was subjecting her to a substantial risk of serious harm when she said it "makes [her] feel like [she is] losing [her] sanity," and that she was "having a lot of depression" and declaring psychological emergencies in isolation. ECF 29-7 at 50, 52, 54. By establishing a link between her deteriorating mental health and isolation, she also alerted Defendants that they needed to accommodate her psychiatric disability. There is no requirement, as Defendants contend, for her to specify with any more detail the conditions leading to the harmful effects she experienced, nor is there a requirement to request specific services.

4. Juan Espinosa

Plaintiff Espinosa exhausted grievance appeal 19-6-07330, in which he put Defendants on notice of his Eighth Amendment and ADA claims. ECF 29-9 at 128-37.

Plaintiff Espinosa notified Defendants of the risk of harm and his need for an accommodation for his psychiatric disabilities when he alleged that being in isolation "24 hours a day" caused him "to be more stress[ed] and depressed," and made it difficult to manage his deteriorating mental health symptoms. ECF 29 at 130, 133-34. He also alerted prison officials that, because he was in isolation, he was deprived programming that would teach him communication skills and how to cope with the loss of his voice, ECF 29 at 130, 133, supporting his claim that Defendants were excluding him from participating in prison programs and services. Defendants admit that Plaintiff Espinosa exhausted claims related to his need for more programs to help with his recovery and communication. ECF 28-1 at 2, 33-34, 47.

5. Jerome Burgess

Through grievance appeal 19-6-10242, ECF 29-11 at 300-04, Plaintiff Burgess met the requirements of § 1997e(a) for his claims.

Regarding the Eighth Amendment, Plaintiff Burgess alleged that "[b]eing on c/m at this moment is making [his] disabilities worse," and explained that he was losing range of motion, getting urinary tract infections, and having seizures in his cell. ECF 29-11 at 303. These allegations notified prison officials that isolation was causing him physical harm. ECF 29-11 at 301, 303.

This grievance addressed disability discrimination as well. Plaintiff Burgess told Defendants about his disabilities (wheelchair dependent with only partial mobility, inability to urinate without a catheter, seizure disorder); that he needed modifications to isolation policies ("What I want is for this prison to change some of their [sic] policies for ADA inmates with disabilities while on c/m."); and that he was being denied the benefit of services ("I have continually been denied physical therapy" and cannot exercise). ECF 29-11 at 301, 303.

Though Plaintiff Burgess complied with the Florida Administrative Code, Defendants returned his grievance without action, incorrectly accusing him of grieving about more than one issue. ECF 29-11 at 302, 304. *See Johnson v. Meier*, 842 F. Supp. 2d 1116, 1119 (E.D. Wis. 2012); *Wilson v. Danforth*, CV 316-040, 2017 WL 9482468, at *4 (S.D. Ga. Dec. 19, 2017) (both finding that, in rejecting the plaintiff's grievances, the prison incorrectly interpreted its own grievance rules). In fact, Plaintiff Burgess grieved a single, identifiable issue: the cumulative effect of the conditions in isolation was making his disabilities worse. ECF 29-11 at 301. His grievance was entirely consistent with the core allegations in the Complaint. ECF 13 ¶¶ 59, 75, 151. The remedy he sought was clear: return him to the general population, or modify the isolation policies to accommodate his disabilities.

While § 1997e(a) requires incarcerated people to exhaust their *available* administrative remedies, it does not require them "to craft new procedures when

prison officials demonstrate . . . that they will refuse to abide by the established ones." *Turner v. Burnside*, 541 F.3d 1077, 1083 (11th Cir. 2008); *Ross v. Blake*, 136 S. Ct. 1850, 1859 (finding that "an administrative procedure is unavailable when . . . it operates as a simple dead end."). Once Defendants improperly returned Plaintiff Burgess's grievance, FDC's grievance procedure afforded him no further reprieve. *See Johnson*, 842 F. Supp. 2d at 1119 (finding that defendants wrongly concluded that the plaintiff violated the single-issue rule and because the plaintiff complied with the grievance rules he "was left with no further remedies under the inmate grievance system and met the requirements of the PLRA"). Undeterred, Plaintiff Burgess appealed the rejection of his grievance to the Office of the Secretary, explaining that he was grieving the cumulative effects of isolation. ECF 29-11 at 301. The Office of the Secretary also incorrectly rejected this appeal without addressing his underlying claims. ECF 29-11 at 302.

Because Defendants thwarted Plaintiff Burgess's attempt to exhaust his remedies, their actions "render[ed] administrative remedies 'effectively unavailable' such that exhaustion is not required under the PLRA." *Sapp v. Kimbrell*, 623 F.3d 813, 823 (9th Cir. 2010); *Burnett v. Jones*, 437 F. App'x 736, 741 (10th Cir. 2011) (holding that improper rejection of a grievance appeal excuses a plaintiff's failure to properly exhaust); *Turner*, 541 F.3d at 1083.

6. James W. Kendrick, Jr.

Plaintiff Kendrick exhausted his remedies with respect to his Eighth Amendment and disability discrimination claims.

In an informal grievance (Grievance Log No. 205-1902-0471), which Defendants omitted from their motion, Plaintiff Kendrick alleged that his "depression, anxiety, and suicidal thoughts [have] gotten worse and [have] become more regular and intense" since he was placed in isolation and that "his mental and physical health has and is deteriorating." Ex. A. at 2. He also explained that he was not receiving "proper professional mental health." Ex. A. at 3. Defendants "approved" this grievance. Ex. A. at 2.

Plaintiff Kendrick did not need to proceed further after Defendants approved his grievance. *Williams v. Dep't of Corr.*, 678 F. App'x 877, 881 (11th Cir. 2017) (holding that a plaintiff is not required to appeal from a grant of relief to exhaust his administrative remedies); *Harvey v. Jordan*, 605 F.3d 681, 685 (9th Cir. 2010). This approved grievance exhausted his claims related to a risk of harm and disability discrimination in isolation.

Plaintiff Kendrick also exhausted both his claims through grievance appeal 18-6-52194 (filed under seal, ECF 33 at 129-36), which Defendants narrowly, and misleadingly, construe. ECF 28-1 at 37. While Plaintiff Kendrick described a specific time a nurse administered an insulin injection through a "rusted out food

flap," he also apprised prison officials that "the practice of making close management inmates stick their arms through 'Rusted Out Food Flaps' is putting them at risk of further health problems." ECF 33 at 130, 134. He alleged that the practice of administering pre-loaded insulin syringes put him at risk of receiving the wrong dosage. ECF 33 at 135. This grievance notified prison administrators that isolation placed him at risk of physical harm and that this practice of insulin administration, which was unique to isolation, discriminated against people with disabilities.

7. Johnny Hill

Johnny Hill exhausted his administrative remedies through grievance appeal 19-6-14024. ECF 29-15 at 137-45.

He explained that being in isolation caused him major depression, hallucinations, suicidality, and hypertension, ECF 29-15 at 143-44, alerting prison officials that isolation was subjecting him to a substantial risk of harm and that he had disability-related problems. He also told them he needed mental health care that would be available to him if he were in the general population, notifying them that he was not receiving equal access to services, and that he needed an accommodation. ECF 29-15 at 143-44.

Defendants concede that Plaintiff Hill "has exhausted claims under the ADA and Rehabilitation Act for the modifications/accommodations he seeks in his

lawsuit." ECF 28-1 at 39. But then Defendants veer into an attack on the sufficiency of Plaintiff Hill's pleadings for an Eighth Amendment claim, contending that "[h]is specific allegations concern his ADA requests and the decision to confine him following his re-entry into prison." ECF 28-1 at 39. Defendants are wrong. Plaintiff Hill alleges in detail how Defendants' isolation policies and practices have subjected him to a substantial risk of serious harm. ECF 13 ¶¶ 49 (began experiencing major depression, hallucinations, and suicidal thoughts after placement in isolation); 51 (continues to experience severe symptoms arising from deteriorating mental health, including several suicide attempts); 52 (legal blindness caused by suicide attempt in isolation, putting him at risk of falling); *see also* Section VII.A., *supra*.

C. Dismissal for Non-Exhaustion is *Without* Prejudice

Plaintiffs' grievances plainly meet the general notice requirements of the PLRA. But should the Court find that Plaintiffs failed to properly exhaust on one or more claims, it should decline Defendants' invitation to dismiss these claims with prejudice. Dismissal for non-exhaustion is *without* prejudice. *Bryant*, 530 F.3d at 1379; *Harris v. Garner*, 216 F.3d 970, 979-80 (11th Cir. 2000).

IX. CONCLUSION

Defendants have failed to establish that dismissal is warranted. Therefore, Plaintiffs' respectfully ask the Court to deny Defendants' Motion to Dismiss, ECF 28-1.

Certificate of Word Limit: Under N.D. Fla Local Rule 7.1(F), I hereby certify that this memorandum contains 9,941 words.

Respectfully Submitted,

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