UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

MAURA O'NEILL, AS ADMINISTRATOR OF THE ESTATE OF MADELYN E. LINSENMEIR,
PLAINTIFF

v.

CITY OF SPRINGFIELD, MOISES ZANAZANIAN, REMINGTON MCNABB, SHEILA RODRIGUEZ, HAMPDEN COUNTY SHERIFF'S DEPARTMENT AND JOHN/JANE DOES NOS. 1-5,
DEFENDANTS

CIVIL ACTION NO. 3:20-CV-30036

DEFENDANTS, HAMPDEN COUNTY SHERIFF'S DEPARTMENT AND JOHN/JANE DOES NOS. 1-5'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

In accordance with Fed. R. Civ. P. 12(b)(1) and 12(b)(6), the defendants, Hampden County Sheriff's Department (the "HCSD") and John/Jane Does Nos. 1-5 (hereinafter collectively referred to as "HCSD Defendants") hereby submit this Memorandum of Law in Support of their Motion to Dismiss.

I. Introduction

Count II, brought against the HCSD pursuant to the Americans with Disabilities Act (the "ADA"), must be dismissed both because 1) the facts as plead in the Complaint do not state a claim for violation of Title II of the ADA, and 2) the HCSD, as an agency of the Commonwealth of Massachusetts, is immune from suit under the Eleventh Amendment to the Constitution of the United States and the ADA's abrogation of the States' sovereign immunity is not valid as to the class of conduct addressed through the Complaint.

Counts III and IV, brought against John/Jane Does Nos. 1-5, must be dismissed for numerous reasons, the most striking of which is that the sparsely-plead, conclusory allegations in

the Complaint regarding these unnamed, totally-undescribed defendants do not come close to satisfying the pleading standards under Fed. R. Civ. P. 8 or the applicable United States Supreme Court rulings as to the minimal requirements for pleading a valid cause of action. Finally, as the federal claims are not valid, this Court should decline to exercise supplemental jurisdiction over Count IV, a state law claim.

II. Relevant Facts

It is acknowledged that, in considering a Motion to Dismiss pursuant to Rule 12(b)(1) or 12(b)(6), the Court must accept as true the facts as plead in the Complaint, including all reasonable inferences. *Toledo v. Sanchez*, 454 F.3d 24, 30 (1st Cir. 2006). The relevant facts, as alleged in the Complaint, are as follows. The plaintiff, Maura O'Neill, is the administrator of the estate of Madelyn E. Linsenmeir, which estate was formed under the laws of the State of Vermont. Compl. ¶ 4. The plaintiff's decedent, Madelyn Linsenmeir, passed away on October 7, 2018 at the age of 30 years from illness arising from an infected heart valve. Compl. ¶ 1. Madelyn had developed substance use disorder after using opioids in high school and struggled with her addiction for the rest of her life. Compl. ¶ 13. People with a history of intravenous substance use, such as opioid injection, are at elevated risk of condition called infective endocarditis, the condition that led to Madelyn's death. Compl. ¶ 20.

In August of 2018, Madelyn began a course of substance abuse treatment at the Brattleboro Memorial Hospital and the Brattleboro Retreat in Brattleboro, Vermont. Compl. ¶ 17. On or about August 20, 2018, Madelyn stopped going to the treatment facility in Vermont and her family did not know where she was. Compl. ¶ 18. By late September, Madelyn was suffering from infective endocarditis. Compl. ¶ 20. On September 29, 2018, Madelyn was arrested by the Springfield Police Department (the "SPD") in Springfield, Massachusetts.

Compl. ¶ 25.

Madelyn remained in the custody of the SPD until she was transferred to the Western Massachusetts Regional Women's Correctional Center (the "WCC") on September 30, 2018. Compl. ¶58. The WCC is located in Chicopee, Massachusetts and is operated by the Hampden County Sheriff's Department (the "HCSD"). Compl. ¶ 9. In September of 2018, the WCC had in place a detoxification protocol for opioid users, which included the administration of methadone, buprenorphine, or Librium and vitamin B complex, depending on the particular situation of the patient. Compl. ¶¶ 63, 66. Patients who were determined to have abused opioids and who were pregnant were provided methadone to treat withdrawal symptoms. Compl. ¶ 63. Patients who were determined to have abused opioids and who were already on a methadone or buprenorphine protocol, received those medications to continue treating their withdrawal. Compl. ¶ 63. On September 30, 2018, upon admission to the WCC, Madelyn went through the WCC's medical intake process and was diagnosed with, among other things, alcohol abuse and opioid abuse. Compl. ¶ 65. The medical staff at the WCC prescribed the WCC's detoxification protocol and was prescribed chlordiazepoxide (Librium) and vitamin B complex to treat her withdrawal symptoms. Compl., ¶ 66. Madelyn was also provided with ice and ibuprofen. Compl., ¶ 66.

According to the Complaint, on or about September 30 or October 1, 2018 Madelyn asked for medical attention from "WCC staff, including defendants John/Jane Doe Nos. 1-5." Compl., ¶ 67. The Complaint provides no information as to the identities of John/Jane Doe Nos. 1-5, other than that they "are employees of the WCC who are not yet identified." Compl., ¶ 10. The Complaint does not provide any individualized information about the John/Jane Doe defendants, such as their genders, the jobs they perform at the WCC (such as correctional staff,

medical staff), any personal, descriptive information, such as apparent age or other features of their appearances. Compl., ¶¶ 12-86. The Complaint does not provide any information as to the other WCC staff whom Madelyn allegedly asked for medical attention. Compl., ¶ 67. The Complaint alleges that Madelyn repeatedly told WCC staff that she was "sick" but that she was not suffering from opiate withdrawal ("dope sick"). Compl., ¶ 67. The "Allegations" portion of the Complaint includes no allegation that Madelyn suffered any symptoms of opiate withdrawal during her time at the WCC. Compl., ¶¶ 12-86. The Complaint alleges that "WCC staff members told Madelyn that the situation was her own fault for using drugs." Compl., ¶ 67. The Complaint provides no information as to which WCC staff members allegedly said this to Madelyn and whether any of them were the unidentified John/Jane Doe Nos. 1-5. Compl., ¶¶ 12-86.

The Complaint alleges that, between October 2 and the morning of October 4, 2018, other detainees told WCC staff on multiple occasions that Madelyn was ill and needed medical attention." Compl., ¶ 69. The Complaint provides no information whatsoever as to which WCC staff members allegedly were told this and whether any of them were the unidentified John/Jane Doe Nos. 1-5. Compl., ¶¶ 12-86. The Complaint alleges that, between October 1 and October 4, 2018, Madelyn continued to receive the medications described above and also underwent a tuberculosis and STD screening. Compl., ¶ 70. On the morning of October 4, 2018, WCC medical staff visited Madelyn's cell to evaluate Madelyn's cellmate. Compl., ¶ 71. WCC medical staff also observed Madelyn at this time, recognized that she was "in severe distress," called a "medical emergency," and had Madelyn transported to Baystate Medical Center via ambulance. Compl., ¶¶ 71, 72. Madelyn remained at Baystate Medical Center until her death on October 7, 2018. Compl., ¶ 74. The Complaint alleges that her death was caused by her heart

infection. Compl., ¶ 75. The "Allegations" portion of the Complaint includes no allegation that opiate withdrawal caused her death. Compl., ¶¶ 12-86.

III. Standard of Review

Where subject matter jurisdiction is challenged, the party asserting jurisdiction bears the burden of demonstrating the existence of federal subject matter jurisdiction. *Skwira v. United States*, 344 F.3d 64, 71 (1st Cir. 2003); *Lopez-Davila v. Acting Comm'r of Soc. Sec*., 39 F. Supp. 3d 184, 185 (D. Mass. 2014). Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, a complaint must be dismissed if the court lacks subject matter jurisdiction, that is, where the Court lacks the statutory authority or constitutional power to adjudicate the case. Fed. R. Civ. 12(b)(1).

The standard for reviewing the sufficiency of a complaint is set forth in *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007):

> While a complaint attacked by a … motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions. … Factual allegations must be enough to raise a right to relief above the speculative level based on the assumption that all the allegations in the complaint are true.

Twombly, 550 U.S. at 555 (internal citations omitted). Under this standard, the plaintiff is required to allege specific facts supporting her claims; conclusory or speculative claims are not sufficient. What is required to survive a Rule 12(b)(6) motion are factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief, in order to "reflect Rule 8(a)(2)'s threshold requirement that the 'plain statement' possess[es] enough heft to 'show that the pleader is entitled to relief." *Twombly*, 550 U.S. at 557 (rejecting the traditional "no set of facts" standard set forth in *Conley v. Gibson*, 355 U.S. 41, 78 (1957)). A complaint must contain allegations of fact that rise above the "speculative level," or the merely possible or conceivable.

Id. at 555, 557, 570.

The United States Supreme Court clarified and confirmed the revised pleading standard in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The Court stated: "As the Court held in *Twombly* … the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. … A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

IV. Argument

A. Count II, brought pursuant to Title II of the ADA, must be dismissed because this Court lacks subject matter jurisdiction over the claim.

Count II of the Complaint alleges that the HCSD violated the plaintiff's decedent's rights under Title II of the ADA. The United States Supreme Court has considered the issue of Eleventh Amendment sovereign immunity in the context of a claim pursuant to Title II of the ADA and set forth the analysis courts must apply, "on a claim-by-claim basis," to determine whether a particular claim brought pursuant to Title II of the ADA is barred by the Eleventh Amendment. *United States v. Georgia*, 546 U.S. 151, 159 (2006). Applying the analysis set forth in *Georgia*, it is clear that the claims brought against the HCSD in Count II of the Complaint are barred by the Eleventh Amendment to the United States Constitution and its protection of the states' sovereign immunity and, therefore, this Court lacks subject matter jurisdiction as to Count II.

The Supreme Court's "step-by-step analysis for Title II claims" set forth in *Georgia* requires that this Court

> 'determine … on a claim-by-claim basis, (1) which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such misconduct violated Title II but

> did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid.'

Buchanan v. Maine, 469 F.3d 158, 172 (1st Cir. 2006) quoting *Georgia*, 546 U.S. at 159 (2006). The first step is to determine whether the HCSD's alleged conduct violated Title II. *Id*. "If the State's conduct does not violate Title II, the court does not proceed to the next step in the analysis. The claim ends. *Id*. citing *Toledo v. Sanchez*, 454 F.3d 24, 31-40 (1st Cir. 2006).

a. The plaintiff, through the Complaint, does not state a valid claim that the HCSD violated Title II of the ADA.

The plaintiff's claim under Title II of the ADA appears to be based in two theories. The first theory is that the medical treatment that Madelyn received at the HCSD was so inadequate as to constitute a violation of the ADA. Compl. ¶ 100. The second theory is that the HCSD failed to make a reasonable accommodation for Madelyn by providing her with a "medically adequate detoxification program." Compl. ¶ 101. It appears that the detoxification protocol that the plaintiff would have preferred is "opioid replacement therapy, such as methadone." Compl. ¶ 63.

i. The plaintiff cannot prevail on her claim that the medical treatment Madelyn received at the HCSD violated Title II.

Medical care in the correctional setting does fall within the coverage of the ADA. *Kiman v. N.H. Dep't of Corr*., 451 F.3d 274, 284 (1st Cir 2006). However, "there is a limited basis for a challenge to medical treatment decisions if and only if the challenge is framed within a larger theory of disability discrimination." *Buchanan*, 469 F.3d at 176. The First Circuit has

> described two situations in which a challenge based on a treatment decision might be made: (1) the treatment decision was so unreasonable as to be arbitrary and capricious, raising an implication of pretext for some discriminatory motive, and (2) if not pretextual, the treatment decision was based on stereotypes of the disabled rather than an individualized inquiry as to the plaintiff's conditions.

Id. citing *Kiman*, 451 F.3d at 284-85. The plaintiff fails to state a claim under either situation.

In the Complaint, the plaintiff correctly alleges that Madelyn was an inmate at the WCC for a period of less than four full days, arriving on September 30, 2018 and leaving via ambulance for Baystate Medical Center on the morning of October 4, 2018. Compl. ¶¶ 61, 71-72. The plaintiff's own allegations in the Complaint establish that, during this short time at the WCC, Madelyn received extensive, daily, and appropriate medical attention and/or monitoring, including:

1) a full medical screening upon her arrival, including the correct diagnosis of Madelyn as someone suffering from opiate abuse disorder (Compl. ¶ 65);
2) being placed on a detoxification protocol, including daily administration of the drug Librium and vitamin B complex to treat Madelyn's likely withdrawal symptoms, along with ice and ibuprofen to treat her knee pain (Compl. ¶¶ 66, 70);
3) screening for tuberculosis and STD (Compl. ¶ 70);
4) daily medical monitoring in the unit through daily medical rounds by medical staff (Compl. ¶ 70);
5) observation and examination in her cell on the morning of October 4, 2018, resulting in the discovery of Madelyn's serious illness, the immediate call for a medical emergency, and Madelyn being rushed to Baystate Medical Center via ambulance (Compl. ¶¶ 71-72).

In light of the above allegations, the plaintiff cannot make a claim that treatment decisions were so unreasonable as to be *arbitrary and capricious*. To the contrary, the treatment decisions as described by the plaintiff, from the established withdrawal protocols already in place to treat inmates with substance use disorder, through the correct diagnosis of opiate use disorder, the daily administration of drugs to address potential withdrawal, to the recognition of Madelyn's medical emergency and immediate call for an ambulance and hospitalization, the various

treatment decisions were made based on regular and accurate assessments of Madelyn's specific condition and those decisions demonstrate the specific attention that the WCC staff paid to the particular needs of inmates with substance use disorder.

The medical treatment Madelyn received, as alleged by the plaintiff, demonstrates that WCC medical staff made an individualized inquiry into Madelyn's condition regularly throughout her short stay and the resulting treatment decisions were based on that inquiry. Plaintiff's conclusory allegations of discrimination, deprivation of access to medical programs, and deliberate indifference to serious medical needs (Compl. ¶ 100) are not enough to sustain a cause of action under Title II of the ADA. *See Ruffin v. Cichon*, 2017 U.S. Dist. LEXIS 151522; 2017 WL 4150921 (D.Maine 2017) citing *Ashcroft*, 556 U.S. at 678 ("plaintiff must affirmatively allege facts that identify the manner by which the defendant subjected the plaintiff to a harm for which the law affords a remedy"). This is especially the case when, as here, the factual allegations in the body of the Complaint directly contradict the conclusory allegations in the ADA count (Count II).

The plaintiff may disagree with some or all of the medical decisions that were made. Indeed, the plaintiff's clear position, repeated throughout the Complaint, is not that there was no medical treatment, but that the medical treatment that was indisputably provided to Madelyn at the WCC was inappropriate or inadequate (*see e.g.* Compl. ¶¶ 64, 70, 76, 78, 85, 100, 101). The law is clear: "[t]he ADA does not create a remedy for medical malpractice." *Kiman*, 451 F.3d at 284 quoting *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996). See also *Buchanan*, 469 F.3d 158, 172 ("the ADA does not set a standard of care for services") citing *Cercpac v. Health & Hosps. Corp*., 147 F.3d 165, 168 (2d Cir. 1998) ("[T]he [Rehabilitation Act and ADA] do not guarantee any particular level of medical care for disabled persons ….") and *Fitzgerald v. Corr.*

Corp. of Am., 403 F.3d 1134, 1144 (10th Cir. 2005) ("[P]urely medical decisions … do not ordinarily fall within the scope of the ADA or the Rehabilitation Act."); *Boldiga v. Fed. Bureau of Prisons*, 2015 U.S. Dist. LEXIS 71684 at *22 (D. Mass 2015) (allegations of inadequate treatment of disability and denial of medical care not sufficient to support an ADA cause of action) citing *Wilbon v. Michigan Department of Corrections*, 2015 U.S. Dist. LEXIS 27352, 2015 WL 1004707, at *10 ("a prisoner pursuing an ADA claim based on exclusion from a 'prison service, program, or activity' or of discrimination because of his disability, cannot rely solely on incompetent treatment for medical problems and expect to prevail under the ADA").

The plaintiff also cannot prevail on her apparent position that the HCSD staff "were deliberately indifferent to [Madelyn's] serious medical needs." (Compl. ¶ 100) and that that deliberate indifference creates an ADA claim. The Complaint's language is obviously referring to the U.S. Supreme Court's standard for cruel and unusual punishment under the Eighth Amendment to the United States Constitution in the context of prison medical care. See *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). However, this standard is inapplicable in a situation, such as this, where the allegations of the Complaint recite an extensive course of medical treatment, as set forth above, and the clear thrust of the Complaint, as also set forth above, is not that treatment was not provided, but that the treatment that was provided was not the correct or appropriate treatment. See *Watson v. Caton*, 984 F.2d 537, 540 (1st Cir. 1993) ("The courts have consistently refused to create constitutional claims out of disagreements between prisoners and doctors about the proper course of a prisoner's medical treatment, or to conclude that simple medical malpractice rises to the level of cruel and unusual punishment.")

ii. <u>The plaintiff cannot prevail on her claim that the HCSD failed to provide a reasonable accommodation to Madelyn</u>.

The plaintiff's allegation that the HCSD failed to provide a reasonable accommodation to

Madelyn through its alleged failure to "provide her with a medically adequate detoxification program" (Compl. ¶ 101) also does not succeed in creating a claim under Title II of the ADA. Again, the focus on the adequacy of the treatment provided (in this case Librium rather than methadone – Compl. ¶¶ 63, 66) turns this into a medical malpractice claim and, as set forth above, "[t]he ADA does not create a remedy for medical malpractice." *Kiman*, 451 F.3d at 284 quoting *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996).

Furthermore, this approach fails because there is no allegation that Madelyn (or anyone acting on her behalf) ever requested that she be placed on methadone. "[T]he ADA's reasonable accommodation requirement usually does not apply unless triggered by a request." *Kiman*, 451 F.3d at 283 quoting *Reed v. LePage Bakeries, Inc.*, 244 F.3d 254, 261 (1st Cir 2001). The only exception to this is a situation where the need for the accommodation is obvious. *Id*. The plaintiff cannot claim that, in this case, the need was obvious. Indeed, the plaintiff has alleged that Madelyn actually reported to staff that she was *not* suffering from withdrawal. Compl. ¶ 67.

For all the foregoing reasons, the allegations in the Complaint make out, at best, a claim for medical malpractice, and certainly do not support a claim under Title II of the ADA. Without a valid claim under Title II of the ADA, "the court does not proceed to the next step in the analysis. The claim ends." *Buchanan*, 469 F.3d at 172 citing *Toledo*, 454 F.3d 31-40.

b. Even if this Court were to find a valid claim here pursuant to Title II, this Court would still lack subject matter jurisdiction to hear the claim due to the Commonwealth's sovereign immunity.

Under the Supreme Court's required analysis, even if this Court were to find that the HCSD violated Title II, this Court would then have to determine whether the misconduct also violated the Fourteenth Amendment or, if it did not, "whether Congress's abrogation of sovereign immunity as to that class of conduct is nevertheless valid." *Georgia*, 546 U.S. at 159.

i. The Complaint does not state a claim for a violation of the Eighth Amendment prohibition on cruel and unusual punishment through deliberate indifference to a serious medical need.

The first of these two questions is answered easily in the negative. In a case such as this, alleging inadequate medical care in the context of a correctional institution, the plaintiff could only make out a constitutional claim for violation of the Fourteenth Amendment by stating a valid claim for violation of the Eighth Amendment prohibition of cruel and unusual punishment by showing deliberate indifference to a serious medical need. See *Georgia*, 546 U.S. at 157 citing *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1947) (the Due Process Clause of the Fourteenth Amendment incorporates the Eighth Amendment's guarantee against cruel and unusual punishment). As already explained above, and in more detail in this section, the plaintiff's allegations of regular medical treatment provided to Madelyn defeats any claim for deliberate indifference and so the plaintiff cannot make out a constitutional violation.

The Eighth Amendment's prohibition against cruel and unusual punishment includes an inmate's right to adequate medical care. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). In order for an inmate to establish that his right to adequate medical care has been violated, however, the inmate must allege "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle*, 429 U.S. at 103-04; *see also Ruiz-Rosa v. Rullan*, 485 F.3d 150, 156 (1st Cir. 2007); *Torraco v. Maloney*, 923 F.2d 231, 234 (1st Cir. 1991). The deliberate indifference standard is a challenging one, and a showing of mere negligence is insufficient. *See Estelle*, 429 U.S. at 104, 106 ("[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment … "); *see also McElligott v. Foley*, 182 F.3d 1248, 1256 (11th Cir. 1999) (holding that failure to diagnose an inmate's colon cancer did not constitute deliberate

indifference, even though it could be deemed extremely negligent). Indeed, "inadvertent failures to provide medical care, even if negligent, do not sink to the level of deliberate indifference. In order to establish deliberate indifference, the complainant must prove that the defendants had a culpable state of mind and intended wantonly to inflict pain." *DesRosiers v. Moran*, 949 F.2d 15, 19 (1st Cir. 1991). "While this mental state can aptly be described as 'recklessness' it is not recklessness in the tort-law sense, but in the appreciably stricter criminal-law sense, requiring actual knowledge of impending harm, easily preventable." *Id*. The Supreme Court held long ago that deliberate indifference is manifested by conduct that "offends evolving standards of decency," *Estelle*, 429 U.S. at 106, and the First Circuit has found that deliberate indifference "defines a narrow band of conduct" in which the care provided is "so inadequate as to shock the conscience," *Feeney v. Corr. Med. Servs., Inc.*, 464 F.3d 158, 162 (1st Cir. 2006) (*quoting Estelle*, 429 U.S. at 106-06).

In the case of incarcerated prisoners with serious medical needs, failures to act, such as to provide medical care, may comprise a constitutional violation under § 1983 only if the plaintiff shows that the inaction was malicious or reflected the official's deliberate indifference to the welfare of the prisoner or inmate. *See* U.S. Const., amend. VIII; 42 U.S.C. § 1983; *Hasenfus v. LaJeunesse*, 175 F.3d 68, 71 (1st Cir. 1999). Moreover, the First Circuit has observed that, "[w]here a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law." *Layne v. Vinzant*, 657 F.2d 468, 474 (1st Cir. 1981) (*citing Westlake v. Lucas*, 537 F.2d 857, 860 (6th Cir. 1976)).

In this case, the plaintiff's own allegations demonstrate that Madelyn received daily medical care during her short stay at the WCC, including care specifically targeted to address her

substance use disorder, including any withdrawal, and medical care to address her infection, once that became apparent. To the extent that the allegations could be read as stating, with sufficient specificity, a claim that the medical care was inadequate or that medical staff did not recognize Madelyn's infection soon enough, those are negligence claims and do not state a constitutional claim under the Eight Amendment.

ii. The misconduct alleged in the Complaint is not of the type that would validate the abrogation of sovereign immunity.

The final consideration, then, is whether the alleged misconduct, even if it does not violate the Constitution, is of a type that validates "Congress's purported abrogation of sovereign immunity as to that class of conduct." *Georgia*, 546 U.S. at 159. The Supreme Court has held that Title II of the ADA validly abrogates sovereign immunity as to … some classes of state conduct that do not facially violate the Constitution but are prohibited by Title II in order to prevent and deter unconstitutional conduct.'" *Toledo*, 454 F.3d 31 quoting *Tennessee v. Lane*, 541 U.S. 509, 518, 529 (2004).

The analysis of whether the state conduct challenged in this instance validly abrogates sovereign immunity involves a three-pronged inquiry:

> (1) [F]irst, the court must identify with some precision the scope of the constitutional right at issue, (2) second, the court must determine whether Congress identified a history and pattern of unconstitutional conduct by the states with respect to that right, and (3) third, the legislation must be a congruent and proportional response to [the] history and pattern of unconstitutional discrimination.

Cox v. Mass. Dep't of Corr., 2018 U.S. Dist. LEXIS 55482, *26-*27 (D. Mass. 2018) quoting *Bd. Of Trustees of Univ. of Ala. V. Garrett*, 531 U.S. 356, 365 (2001) and *Toledo*, 454 F.3d at 39 (internal citations and quotation marks omitted).

In the context of prison medical care, the first two prongs have been identified as having

been satisfied, with the first prong identifying the constitutional right at issue as being the Eighth Amendment right of inmates to be free from deliberate indifference by prison officials to their serious medical needs. *Cox,* 2018 U.S. Dist. LEXIS 55482 at *36-*37. For the purposes of this motion only, the HCSD Defendants will adopt that position and focus on the third prong of the analysis, which requires a determination of whether the proposed remedy is "a congruent and proportional response to the history and pattern of unconstitutional discrimination." *Id*. at *37.

In order to answer this question, we must first determine what the plaintiff's proposed remedy is, or what behavior of the HCSD the plaintiff alleges must be proscribed in order to prevent or deter unconstitutional conduct. Due to the vague and conclusory language of the Complaint, answering this question is not an easy task. Reading the Complaint generously, however, it would appear that the conduct the plaintiff seeks to proscribe through the Title II claim can be identified as the two bases for the Title II claim, as already set forth above: 1) the allegedly inadequate medical care provided to Madelyn at the WCC (Compl. ¶ 100), and 2) the alleged failure by the HCSD to make a reasonable accommodation for Madelyn by providing her with a "medically adequate detoxification program" (Compl. ¶ 101). Neither of these is a congruent or proportional response to unconstitutional, deliberate indifference to serious medical needs. The first, at best, will deter the tort of medical negligence, not prevent unconstitutional deliberate indifference to serious medical needs. Likewise, the second will promote medically adequate detoxification programs over medically inadequate programs. Once again, this is, at best, an effort to deter medical negligence, not deliberate indifference. Therefore, these are not response, at all, to unconstitutional conduct, much less congruent responses.

The fact that the topic of medical malpractice keeps arising in this discussion of an ADA claim is a clue to the fatal flaw in Count II that most eloquently argues for its dismissal for

failure to state a claim: Count II is, in fact, a medical malpractice claim masquerading as an ADA claim. It is, of course, the plaintiff's decision whether or not to bring a medical malpractice action and she undoubtedly had her strategic reasons for deciding not to do so. However, it is not her prerogative to bring the medical malpractice action anyway, but simply dress it up to appear to be an ADA claim. Count II should be dismissed both because this Court lacks subject matter jurisdiction to consider the claim and because the plaintiff fails, through Count II, to state a claim upon which relief may be granted.

B. Counts III should be dismissed for failure to state a valid constitutional claim and Counts III and IV should be dismissed as against the defendants John/Jane Doe Nos. 1-5 because the plaintiff has failed to adequately identify these defendants or to state a claim upon which relief must be granted.

As set forth above, the plaintiff has failed to adequately plead a claim pursuant to the Eighth Amendment and Count III should be dismissed for that reason. Furthermore, the naming of John/Jane Doe defendants is always problematic and is "generally not favored in the federal courts." *Paulinus Chidi Njoku v. Unknown Special Unit Staff*, 2000 U.S. App. LEXIS 15695 (2000). Indeed, one federal court suggested that "[r]ecent Supreme Court jurisprudence [*Twombly* and *Ashcroft*] seems to indicate that complaints naming unidentified parties as defendants should be dismissed." *Price v. Marsh*, 2013 U.S. Dist. LEXIS 137153 (2013). "Nowhere do the rules allow or even mention actions against unnamed defendants." *Id*. Fed. R. Civ. P. 10(a) requires that "[t]he title of the Complaint must name all the parties." Fed. R. Civ. P. 10(a). (Emphasis supplied.)

Here, the plaintiff has taken the use of John/Jane Doe defendants to a certainly impermissible extreme. "John/Jane Does Nos. 1-5 are employees of the WCC who are not yet identified." Compl. ¶ 10. This one line addressing five different, unnamed defendants, is the only information the plaintiff provides regarding these defendants in the entire, 23-page

Complaint. She does not provide their genders, any physical description, their jobs at the WCC, or even whether they are medical or correctional staff, this in spite of the fact that these five alleged individuals are named in two of the Complaint's four counts and are the sole defendants in one of the counts. These defendants are named only once in the substantive allegations of the Complaint, where they are mentioned as being part of a group of WCC staff from which Madelyn requested medical attention, with no allegation as to how these defendants did or did not respond. Comp., ¶ 67. The Complaint provides no hint as to why five of these WCC staff have been named as unidentified defendants, but the rest have not. The only mention of these defendants in the counts are vague and/or conclusory allegations. *See e.g.* Compl., ¶¶ 105, 107-110, and 113. The conclusory allegation that these five defendants were "aware of Madelyn Linsenmeir's serious medical need" is particularly frivolous. The plaintiff would have this Court believe that she does not know the names, jobs, or genders of these five defendants, nor does she have any other information to describe these defendants in any way, yet she does know what their subjective state of mind was over a period of four days in 2018.

This sparse pleading, providing almost no information about five, unnamed "defendants," is impermissible under Fed. R. Civ. P. 10(a), quoted above, requiring all parties to be named in the title of the Complaint, and it also violates the principles established by the Courts as to the minimal, acceptable pleading standards under Fed. R. Civ. P. 8(a).

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009).[1] In this case, the

[1] See also *Isles v. Doe*, No. 3:18-cv-632-J-32JRK, 2018 U.S. Dist. LEXIS 85234, at *4 (M.D. Fla. May 21, 2018) ("[F]ictitious-party pleading is not permitted in federal court," unless a plaintiff describes a John Doe defendant with

Complaint does not include enough factual matter to give the Court or the HCSD any idea who these alleged defendants are, much less how they could be liable for the misconduct alleged in the Complaint in purely conclusory terms.

The factual allegations of Count IV are equally sparse. The sole defendants against whom this count is directed are the five, unidentified John/Jane Does. The allegations against them in Count IV are impermissibly conclusory, alleging in a single sentence, unadorned by any factual grounds, that the unnamed defendants caused Madelyn's death. Compl., ¶ 113. "As the Court held in *Twombly* … the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. … A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

The extreme lack of detail with regard to these five, nameless, faceless, genderless "parties" suggests the possibility that these are not real individuals whose names are simply yet to be determined, but purely fictitious parties with no presently-identifiable, real-world counterpart, which fictitious parties are serving in the Complaint as placeholders for spots on the case caption, to be filled at a later date when additional defendants can be found. Regardless of the reason for the sparse pleading, Count III and Count IV should be dismissed as against these John/Jane Doe defendants and these defendants should be dismissed from the case.

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such particularity that he or she can be identified and served.") Citing *Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010) (affirming dismissal of a John Doe defendant where the plaintiff's complaint failed to identify or describe the individual "guard" allegedly involved); and *Williams v. DeKalb Cty. Jail*, 638 F. App'x 976, 976-77 (11th Cir. 2016) ("A fictitious name . . . , when the real defendant cannot be readily identified for service, is insufficient to sustain a cause of action.").

C. To the extent that the defendants, John/Jane Doe Nos. 1-5 are sued in their official capacity, Count III must be dismissed because they are not subject to suit under 42 U.S.C. § 1983.

The Complaint also does not provide any information as to whether the Jpohn/Jane Doe defendants are sued in their individual or official capacities. Considering, however, that the sole piece of factual information provided about these defendants is that they are "employees of the WCC" (Compl. ¶ 10), it appears that they are sued in their official capacities. State employees sued in their official capacities are not "persons" for the purposes of a claim brought under 42 U.S.C. §1983. Claims brought pursuant to §1983 are only cognizable against "persons." *See* 42 U.S.C. §1983. But state employees named in their official capacities are not persons within the meaning of the statute. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) ("We hold that neither a State nor its officials acting in their official capacities are 'persons' under §1983."). Therefore, Count II does not apply to these defendants and it should be dismissed for failure to state a claim upon which relief may be granted.

D. To the extent that the defendants, John/Jane Doe Nos. 1-5 are sued in their official capacity, Count IV must be dismissed against these defendants because they are not subject to suit on state law claims in federal court due to sovereign immunity.

The Eleventh Amendment to the United States Constitution provides that "the Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of a Foreign State." *U.S. Const. Am. XI*. "The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court." *Bd. Of Trustees of the Univ. of Ala. V. Garrett*, 531 U.S. 356, 363 (2001). The two exceptions to Eleventh Amendment sovereign immunity are where the state has waived its immunity to suit in federal court or Congress has abrogated that immunity. *Pagan v.*

Commonwealth of Puerto Rico, 991 F. Supp. 2d 343, 346 (2014).

State officers and employees sued in their official capacity are immune from lawsuits seeking money damages. *Ford Motor Co. v. Dep't of the Treas.*, 323 U.S. 459, 464 (1945) ("[W]hen the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants."). See also *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70-71 (1989); *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 120 (1984); *Edelman v. Jordan*, 415 U.S. 651, 663 (1974); *Whitney v. State of New Mexico, et al.*, 113 F. 3d 1170, 1172-73 (10th Cir. 1997). A suit against a state official "is not a suit against the official but rather is a suit against the official's office. … As such, it is no different from a suit against the State itself." *Will*, 491 U.S. at 71. Therefore, this Court lacks subject matter jurisdiction over the claim set forth in Count IV, and it should be dismissed.

V. Conclusion

For the foregoing reasons, the defendants, Hampden County Sheriff's Department and John/Jane Does Nos. 1-5 request that this Honorable Court grant their Motion to Dismiss and dismiss Counts II, III, and IV as against these defendants.

THE DEFENDANTS,
HAMPDEN COUNTY SHERIFF'S DEPT.
AND JOHN/JANE DOE NOS. 1-5,
By Their Attorney,

/s/ Thomas E. Day

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies of this document will be mailed, first-class mail, postage prepaid, to any unregistered participants on 5/4/2020.

/s/ Thomas E. Day
Thomas E. Day