No. 18-1868

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Troy Lamont Moore, Sr.,

Plaintiff-Appellant,

v.

C.O. Saajida Walton,

Defendant-Appellee.

On Appeal from a Final Judgment of the
United States District Court for the Eastern District of Pennsylvania
Case No. 2:14-cv-03873, Judge Eduardo C. Robreno

OPENING BRIEF FOR PLAINTIFF-APPELLANT TROY MOORE

Jonathan Dame
Yiyang Wang
Student Counsel

Esthena Barlow
D.C. Bar No. 90000252
Madeline Meth
Brian Wolfman
GEORGETOWN LAW APPELLATE
COURTS IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 661-6746

Counsel for Appellant Troy Moore

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Introduction

On September 16, 2013, Troy Moore, Sr., was sitting on his footlocker when the toilet in his cell erupted so violently that it covered him in human waste from across the room. His eight-and-a-half-by-thirteen-foot cell quickly flooded with an inch of wastewater. Correctional Officer Saajida Walton was on rounds in Moore's unit. Within minutes, she came to the cell door, saw Moore soiled in sewage, but turned away. Despite hearing Moore cry out for help, Walton left him locked in that cell for the next eight hours even as his toilet continued to overflow. It was not until new officers came on shift that he was allowed to leave and clean himself.

Acting without a lawyer while still incarcerated, Moore sued within a year to vindicate the constitutional rights Walton violated that night. In his original complaint, he misspelled Walton's name as "Walden" after jail officials provided it orally. Once he fixed the error, the district court found he had good cause for not timely serving Walton—but then legally erred in analyzing whether his amended complaint related back to the original. In light of that error, and because the record indisputably establishes that Walton violated Moore's clearly established Eighth Amendment rights, this Court should reverse and instruct the district court to enter judgment in Moore's favor as to liability.

Jurisdictional Statement

The district court had jurisdiction under 28 U.S.C. § 1331 and issued a final order granting summary judgment in favor of Appellee Saajida Walton, the only remaining defendant, on March 28, 2018. Add. 13. Appellant Troy Moore filed a notice of appeal on April 6, 2018. Add. 15. This Court has jurisdiction under 28 U.S.C. § 1291.

Issues

The question that this Court directed Moore's counsel to answer is as follows:[1]

1. Should the district court's decision granting summary judgment in favor of Walton on statute-of-limitations grounds be vacated because the district court's relation-back analysis under Federal Rule of Civil Procedure 15(c)(1)(C) appears to look to the period "before the statute of limitations had run" instead of the period provided by Federal Rule of Civil Procedure 4(m)? J.A. 224-25 (Moore Opp'n to Walton Mot. Summ. J.); Add. 12 (Dist. Ct. Op.).

We also address the following issues:

2. Did the district court err in holding that Moore's amended complaint was untimely under Rule 15(c)(1)(C) even though, as the district court found, there was good cause for extending the period for service under Rule 4(m)

[1] We have removed the citations from this Court's question and slightly revised the wording and capitalization. The substance of the question is unchanged.

through the time Walton was served? J.A. 224-25 (Moore Opp'n to Walton Mot. Summ. J.); Add. 12 (Dist. Ct. Op.).

3. Did the district court err in denying Moore's motion for summary judgment where undisputed facts show Walton knowingly ignored Moore's dangerous exposure to human waste for hours without justification? J.A. 133, 137 (Moore Third Mot. Summ. J.); Add. 6-9, 12 (Dist. Ct. Op.).

Related Cases and Proceedings

This Court has never ruled on this case. The case is related to *Moore v. Walton*, No. 16-cv-242 (E.D. Pa. filed Jan. 19, 2016). In an order entered February 10, 2016, the district court closed that case after finding it had apparently been opened in error in response to the filing of the amended complaint in this case. Counsel are aware of no other related case or proceeding.

Statement of the Case

I. Factual background

On September 16, 2013, Troy Moore was incarcerated in the Philadelphia Industrial Correctional Center (PICC). J.A. 165-66 (Moore Dep.). At approximately 11:15 p.m., Moore was sitting on his footlocker getting ready for bed when, from the opposite side of the room, "the water in the toilet absolutely exploded" and "cover[ed]" him in raw sewage. J.A. 172-73. The toilet overflowed so violently that it splashed defecation on the walls four feet off the ground. *Id.* Discharge from this explosion immediately

contaminated Moore's eyes and mouth, causing him to experience chest pain and shortness of breath. J.A. 172, 181. Before long, he vomited. J.A. 181.

Saajida Walton, who worked at the jail as a correctional officer, was on duty that night. J.A. 178 (Moore Dep.); J.A. 242 (Moore Decl.). Five minutes after Moore's toilet exploded, Walton "looked at [Moore], acknowledged [Moore]," and then "turned her head and proceeded with her rounds." J.A. 242 (Moore Decl.). For the next hour, Moore stood in a flood of sewage one inch deep, banging on his cell door for Walton's assistance. J.A. 176-77, 183 (Moore Dep.); J.A. 249 (Rodriquez Decl.); J.A. 247 (Johnson Decl.). Walton responded by "acting like she couldn't hear" him. J.A. 176-77 (Moore Dep.). Eventually, he stopped calling for help because he was "in distress" and "had to … lay down" to calm himself and alleviate his chest pain. J.A. 177.

Walton never helped Moore. Instead, she took two other actions. She brought an inmate out of his cell to mop the floor outside of Moore's door. J.A. 178 (Moore Dep.). And she allowed the inmates in a neighboring cell to exit the cell to clean themselves and their unit. J.A. 177. Meanwhile, Moore was not let out of his cell until approximately 7:30 the next morning, thirty minutes after Walton went off shift and eight hours after he first found himself covered in human excrement. J.A. 176 (Moore Dep.); J.A. 142 (Moore Third Mot. Summ. J.).

In the days and weeks that followed, Moore's health suffered. He experienced violent vomiting, diarrhea, and severe headaches. J.A. 182, 185 (Moore Dep.). He also developed a fungal infection on his feet and patches

of rashes all over his body. J.A. 182 (Moore Dep.); J.A. 56-59 (Moore First Mot. Summ. J.). And the incident triggered Moore's preexisting post-traumatic stress disorder stemming from his time in the Marine Corps. J.A. 57 (Moore First Mot. Summ. J.); J.A. 244 (Moore Decl.); J.A. 171 (Moore Dep.).

Moore filed an internal grievance on the day of the incident and two more the following month. J.A. 52-54 (Moore First Mot. Summ. J.). At the time, he did not know Walton's name, so he tried to ascertain her identity from jail authorities. J.A. 257 (Tr. of Hr'g on Mot. Dismiss). They provided her name orally, and based on how the name sounded, Moore believed it was spelled "Walden." *Id.*

II. Procedural background

a. On June 23, 2014, acting without a lawyer while still incarcerated, Moore filed a lawsuit under 42 U.S.C. § 1983 alleging he was subjected to unconstitutional conditions of confinement. J.A. 14, 19 (Compl.). The complaint named Prison Commissioner Louis Giorla, "Major Martin" (later identified as Claudette Martin), "Corrections Officer Walden" (later identified as Saajida Walton), and "McGrogan, RN Medical Nurse" (later identified as Margaret McGrogan). J.A. 14 (Compl.); J.A. 39 (Moore First. Mot. Summ. J.). After approving Moore's application to proceed *in forma pauperis*, the district court directed the U.S. Marshals Service to serve the defendants. J.A. 2. (Docket Entries). The summonses issued to "Walden" and "Major Martin" were returned unexecuted. J.A. 3 (Docket Entries).

Moore filed a motion to compel production of video footage of the incident, repair reports for his cell, and relevant medical records. Moore Mot. Compel 1, ECF 4. The district court held a status conference and ordered the City to preserve the requested evidence. J.A. 102, 105 (Tr. of Dec. 3, 2015). But it did not direct the City to produce that evidence to Moore, ordering the defendants to first take Moore's deposition and file motions for summary judgment. J.A. 105.

At the same status conference, an attorney for the City who was representing Defendant Giorla told the court that the City had been unable to identify "Walden" or "Major Martin." J.A. 107-08 (Tr. of Dec. 3, 2015). In response, the court asked Moore what he knew about these defendants. J.A. 108. Moore explained that "Walden" was an "older female," who works "the graveyard shift" on "G2 of PICC Prison in Philadelphia" and was on duty the night of the incident. *Id.* He also provided a description of "Major Martin." *Id.* The district court then asked whether the City was "tak[ing] into account those [employees] who may have retired," to which the attorney responded, "I know the process is looking through who was working at the time of the incident." J.A. 109.

Although there is no evidence Martin was ever served, the City filed a motion for summary judgment on her behalf several months later, arguing that she had no personal involvement in the incident. Defs.' Mot. Summ. J. 5, ECF 21. Giorla and McGrogan also moved for summary judgment. J.A. 5

(Docket Entries). The district court granted those motions, Dist. Ct. Order Dec. 18, 2015, ECF 42, an order Moore does not appeal.

In April 2015, the court directed the City to deliver to Moore the records it had ordered preserved months earlier. J.A. 86 (Tr. of Apr. 6, 2015). The records provided by the City displayed an electronic log of events from the night of the incident, with numerous entries by "Walton_S." J.A. 49-51 (Moore First Mot. Summ. J.). As for the video evidence, however, the jail's warden provided a declaration claiming that despite conducting an "exhaustive search," "any video of [Moore's] cell and the area surrounding it ha[d] been destroyed." Bryant Decl. 1, ECF 31.

On December 17, 2015, the district court dismissed the claim against "Walden" without prejudice because she had not been served. J.A. 98 (Op. Granting Other Defs.' Mots. Summ. J.). The court made no reference to the alternate spelling of "Walton" that appeared in the records and subsequently filed papers. *See* J.A. 41 (Moore First Mot. Summ. J.); Moore Second Mot. Summ. J. 3, 5, ECF 38.

b. In January 2016, Moore filed an amended complaint with the same factual and legal allegations but naming "Corrections Officer S. Walton." J.A. 115. The district court docketed the complaint on February 10, 2016. *Id.*

Even with the correct spelling, the challenges serving Walton continued. A summons was issued immediately for "C.O. S. Walton" and forwarded to the U.S. Marshals. J.A. 7 (Docket Entries). That summons was never returned, and the district court eventually extended the time for service. *Id.*; J.A. 129.

A second summons was returned unexecuted because the City "need[ed] more info." Second Walton Summons, ECF 48. After nine months, the district court ordered Moore to provide Walton's first name. J.A. 130. The court's order included this footnote: "The City of Philadelphia has indicated that [the] only individual with a similar name is Saajida Walton who was employed as a correctional officer from July 7, 2008 to April 5, 2014." *Id.* Moore confirmed that "Saajida Walton" was the person he intended to serve. J.A. 131 (Moore Statement). The district court extended the time for service for sixty more days and issued a new summons with her full name. J.A. 7 (Docket Entries).

Nonetheless, the U.S. Marshals failed to serve Walton for five more months. They returned a summons unexecuted on January 23, 2017. J.A. 7 (Docket Entries). Even though the City had just recently "indicated" that a single individual with the name "Saajida Walton" had been "employed as a correctional officer" during the relevant time period, J.A. 130 (Dist. Ct. Order Nov. 2, 2016), the unexecuted summons contained this note: "Phila Law Dept. has no identifiable Record of Individual. CANNOT ACCEPT. We do not ascertain legal info from HR in these instances." Third Walton Summons, ECF 54. The district court extended the time for service for another sixty days. Dist. Ct. Order Mar. 3, 2017, ECF 56. It simultaneously denied a request from Moore for a court-appointed attorney. *Id.*

c. The U.S. Marshals eventually served Walton on May 2, 2017. J.A. 8 (Docket Entries). An attorney from the City quickly filed a motion to dismiss

on her behalf. Walton Mot. Dismiss, ECF 59. Walton noted that the statute of limitations ran before Moore filed the amended complaint. *Id.* at 4. She further asserted that Moore's amended complaint did not relate back under Federal Rule of Civil Procedure 15(c)(1)(C) because Moore "did not in any way notify [her] of this lawsuit within the timeframe provided by Rule 4(m) – 90 days." *Id.* at 7. Meanwhile, Moore moved for summary judgment, arguing he was entitled to judgment as a matter of law on his Eighth Amendment claim. J.A. 133.

The district court held a hearing on Walton's motion to dismiss on July 24, 2017. J.A. 251. Still representing himself, Moore explained that he had "pursued all avenues to serve the defendant in a timely manner," noting that he sought information from the "prison," the "human resources department," and the "right-to-know office." J.A. 256. He also protested that jail supervisors "knew exactly who [he] was referring to" throughout. J.A. 262. Moore did not learn the correct spelling of Walton's full name until November 2016, despite these extensive efforts. J.A. 263; J.A. 130 (Dist. Ct. Order Nov. 2, 2016).

The district court denied the motion to dismiss on the ground that Moore had good cause for not serving Walton earlier. J.A. 265-66 (Tr. of Hr'g on Mot. Dismiss). It held that Moore had "made good faith efforts to learn the proper spelling of the defendant's name; and that, for no fault of his own, he was unable to do so within the time provided for in this rule." *Id.* The court found it "credible that the plaintiff made a number of attempts, through

court administrators, to straighten out the name." J.A. 266. The mistake was "simply a spelling error" that the City and the other jail officials sued "provided no assistance in correcting, until the time had run out." *Id.* Based on that good-cause finding, the district court held that the period for service should extend beyond ninety days, until Walton was served. *Id.* In the process, it implicitly rejected the argument advanced by Walton that she "would be prejudiced by having to defend a claim that's now over four years old." J.A. 265.

Walton moved for summary judgment. Walton Mot. Summ. J., ECF 65. She renewed the argument the court had just rejected, contending Moore's complaint was untimely. *Id.* at 5-8. She also sought summary judgment on the merits of Moore's Eighth Amendment claim. *Id.* at 8. She contended that no violation occurred and that, in any event, she was entitled to qualified immunity because there was "no clearly established rule of which [she] could have been aware regarding how she needed to respond to the overflowing toilet in Plaintiff's cell." *Id.* at 11. Walton responded to Moore's motion for summary judgment in a footnote, arguing Moore had "adduced no evidence of record to support his claim." *Id.* at 2 n.1.

The district court granted Walton's motion for summary judgment. Add. 13. First, it held she was not entitled to qualified immunity on Moore's Eighth Amendment claim. Add. 9. Noting "the 'particular weight' given to exposure to human waste" in the Eighth Amendment analysis, the court concluded that Moore's evidence made out a violation of clearly established

law. *Id.* Nevertheless, the court granted Walton's motion on statute-of-limitations grounds, despite having ruled otherwise on the motion to dismiss, and without acknowledging its earlier finding that good cause existed to extend the Rule 4(m) period until the time Walton was served.[2] Because it found that the record contained "no evidence" that Walton knew or should have known about the lawsuit "before the statute of limitations had run" and because Moore "failed to show that Walton had either actual notice or constructive notice within the required 120 day period under Rule 15(c)," the court held that Moore's amended complaint did not relate back to his original, timely filed complaint. Add. 10, 12.[3]

Summary of Argument

I. Moore's amended complaint was timely. Although he filed the amended complaint after the statute of limitations ran, the amended complaint relates back to his original pleading under Federal Rule of Civil Procedure 15(c)(1)(C).

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[2] In conducting this analysis, the court mistakenly said that the events happened on June 16, 2013, not the actual dates, September 16 and 17, 2013. This mistake is unrelated to the legal error that led the district court to grant summary judgment to Walton.

[3] The default period within which a plaintiff must serve a defendant is currently ninety days. Fed. R. Civ. P. 4(m). At the time Moore filed his original complaint, the default period was 120 days. Fed. R. Civ. P. 4 advisory committee's note to 2015 amendment. This distinction does not bear on the correct disposition of this appeal, so we refer to the default period as a ninety-day period throughout the remainder of the brief unless we are quoting.

For a complaint to relate back under Rule 15(c)(1)(C), a newly added defendant must receive adequate notice of the lawsuit "within the period provided by Rule 4(m)." Rule 4(m) provides a plaintiff ninety days to serve a defendant and requires a court to extend that period if good cause to do so exists. Because the district court failed to recognize that Rule 15 incorporates the good-cause extension of the Rule 4(m) period that it granted to Moore, it improperly analyzed the timeliness of Moore's complaint. Under the correct reading of Rule 15, Moore filed his amended complaint on time.

II. Correcting the district court's timeliness error requires reversal of the denial of Moore's summary-judgment motion. His amended complaint is not only timely, but he is entitled to judgment on liability as a matter of law. Because Walton did not contest the facts established by Moore, they must be accepted as true. Based on those facts, any reasonable jury would conclude that Walton violated the Constitution in two separate ways. First, Walton flatly ignored a substantial risk of serious harm to Moore when she denied him access to basic sanitation for hours after his toilet erupted and covered him in human waste. This was textbook deliberate indifference. And as any reasonable officer would have recognized, Moore had a clearly established right not to be subjected to such conditions by a prison guard who knew the risks. Second, and independently, Walton wantonly forced Moore to endure humiliation and suffering for no penological purpose, which also violated clearly established law at the core of the Eighth Amendment.

Standard of Review

This Court reviews the district court's resolution of cross-motions for summary judgment de novo. *Stradford v. Sec'y Pa. Dep't of Corr.*, 53 F.4th 67, 73 (3d Cir. 2022). "Summary judgment is appropriate when, drawing all reasonable inferences in favor of the nonmoving party, 'the movant shows that there is no genuine dispute as to any material fact,' and thus the movant 'is entitled to judgment as a matter of law.'" *Id.* (quoting *Thomas v. Cumberland County*, 749 F.3d 217, 222 (3d Cir. 2014)).

This Court reviews the district court's embedded good-cause determination for abuse of discretion. *Ayres v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 568 (3d Cir. 1996).

Argument

I. The amended complaint is timely because it relates back to the original complaint.

Moore's amended complaint is timely. He filed his original complaint within the two-year statute of limitations, and his amended complaint relates back under Federal Rule of Civil Procedure 15.

The district court concluded otherwise because it misinterpreted Rule 15. Under Rule 15(c)(1)(C), for an amended complaint adding a new party to relate back to an earlier pleading, the new defendant must receive adequate notice of the lawsuit "within the period provided by Rule 4(m) for serving the summons and complaint." Fed. R. Civ. P. 15(c)(1)(C). Rule 4(m), in turn, specifies that by default a defendant must be served within ninety days, but

that "if the plaintiff shows good cause," then the court "must extend the time period for service for an appropriate period." Fed. R. Civ. P. 4(m).

Instead of evaluating whether Moore adequately put Walton on notice "within the period provided by Rule 4(m)," the district court asked whether he had done so within "120 day[s]" of filing the original complaint. Add. 12. That was error. Rule 15(c)(1)(C) references the entire Rule 4(m) period and thus incorporates any extensions authorized for "good cause." Here, the district court extended the period for service until Walton received the complaint. Because Moore adequately put Walton on notice within that longer period, his amended complaint naming Walton relates back.

A. Rule 15(c)(1)(C) incorporates any extensions of the time for service under Rule 4(m).

Rule 15(c)'s reference to Rule 4(m) incorporates the entire period provided by the latter rule. That includes not only the mandatory ninety days but any extensions too. Rule 15(c)'s text makes this clear. It does not require the new defendant to receive notice of the lawsuit "within 90 days." It requires the new defendant to receive notice of the lawsuit "within the period provided by Rule 4(m)" for service, which can stretch past ninety days if the district court extends it. Fed. R. Civ. P. 15(c)(1)(C); *see* Fed. R. Civ. P. 4(m).

The Advisory Committee on Civil Rules had this reading in mind. In 1991, the Committee noted that when changing the naming of a party, Rule 15 "allows not only the 120 days specified in that rule, but also any additional

time resulting from any extension ordered by the court pursuant to that rule, as may be granted." Fed. R. Civ. P. 15 advisory committee's note to 1991 amendment. This Court has cited this comment favorably to suggest that the period for satisfying the requirements of Rule 15(c)(1)(C) "may be longer" than the default ninety days when the Rule 4(m) period is extended. *Lundy v. Adamar of N.J., Inc.*, 34 F.3d 1173, 1181 n.12 (3d Cir. 1994).

Every circuit to address the question has concluded that Rule 15(c)(1)(C) means what it says and thus incorporates any extensions issued under Rule 4(m). *See, e.g.*, *McGraw v. Gore*, 31 F.4th 844, 851-52 (4th Cir. 2022) (citing *Robinson v. Clipse*, 602 F.3d 605, 608 (4th Cir. 2010)); *McGuire v. Turnbo*, 137 F.3d 321, 325 (5th Cir. 1998); *Jackson v. Herrington*, 393 F. App'x 348, 353 (6th Cir. 2010); *Rodriguez v. McCloughen*, 49 F.4th 1120, 1122-23 (7th Cir. 2022); *see also Lee v. Airgas Mid-S., Inc.*, 793 F.3d 894, 897 n.3 (8th Cir. 2015).

Though this Court has not squarely addressed the effect of good-cause extensions on Rule 15(c)(1)(C), its caselaw supports this reading. In *Urrutia v. Harrisburg County Police Department*, 91 F.3d 451 (3d Cir. 1996), the Court found that because an incarcerated plaintiff proceeding *in forma pauperis* cannot effect service until the district court completes the screening process under 28 U.S.C. § 1915, the period for satisfying the requirements of Rule 15(c)(1)(C) must be suspended during the same timeframe. *Id.* at 453-54. In other words, this Court has already recognized that when the deadline for service is extended, the time limit in Rule 15(c)(1)(C) is extended as well. *See Discenza v. Hill*, 221 F. App'x 109, 111 & n.2 (3d Cir. 2007) (citing *Urrutia* to

support the proposition that tolling the period for service under Rule 4(m) extends the period for meeting the relation-back requirements in Rule 15(c)).

The district court misread Rule 15. It focused on whether Moore put Walton on notice within Rule 4(m)'s default period. That overlooked the extension it granted to Moore, which Rule 15 incorporates, as just explained. And as we now show, applying the correct time period, Moore's amended complaint relates back.[4]

B. Moore complied with Rule 15(c)(1)(C).

Moore's amendment changed the spelling of Walton's name but arose out of the same conduct, transaction, or occurrence set out in his original complaint (as Walton has acknowledged, *see* Appellee Original Resp. Br. 14 n.3). Under these circumstances, properly analyzing whether the amended complaint relates back under Rule 15(c)(1)(C) requires correctly identifying the Rule 4(m) period. Because the district court failed to recognize Rule 15 incorporates extensions provided under Rule 4(m), its relation-back analysis was fatally flawed.

That ruling must be reversed because Moore has satisfied Rule 15(c)(1)(C)'s requirements. First, the "period provided by Rule 4(m)"

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[4] The district court also observed that Walton did not have notice of the lawsuit within the statute of limitations. Add. 10. Rule 15(c)(1)(C) previously required a newly added defendant to receive adequate notice within the statute of limitations. But today, the limitations period does not affect the Rule 15(c)(1)(C) analysis if the Rule 4(m) period extends later. *See* Fed. R. Civ. P. 15 advisory committee's note to 1991 amendment.

extended until the day Walton was served because the district court did not abuse its discretion by finding good cause to extend Moore's period for service. Fed. R. Civ. P. 15(c)(1)(C). Second, within that Rule 4(m) period, Walton "received such notice of the action that [she] will not be prejudiced in defending on the merits." *Id.* Finally, within the same period, Walton "knew or should have known that the action would have been brought against [her], but for a mistake concerning [her] identity." *Id.*

1. The period provided by Rule 4(m) extended until Walton was served.

The period provided by Rule 4(m) extended through the day that Walton received the amended complaint because the district court found good cause justified Moore's delay in serving her. After Walton was served, she moved to dismiss, arguing that the amended complaint did not relate back because she was served outside the period provided by Rule 4(m). Walton Mot. Dismiss at 6-7, ECF 59. But the district court denied her motion. It found that Moore's diligent efforts to serve her and the City's frustration of his attempts justified an extension of the period for service. J.A. 265-66 (Tr. of Hr'g on Mot. Dismiss).

The "primary focus" of the good-cause determination is "the plaintiff's reasons" for failing to serve the defendant on time. *See MCI Telecomms. Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1097 (3d Cir. 1995). A plaintiff who shows "good faith" and "some reasonable basis for noncompliance" often qualifies for an extension. *Dominic v. Hess Oil V.I. Corp.*, 841 F.2d 513, 517 (3d

Cir. 1988); *MCI*, 71 F.3d at 1097 (equating "good cause" and "excusable neglect"). The good-cause exception "protect[s] diligent plaintiffs who, though making every effort to comply with the dictates of the rule, nonetheless exceed" the time limit. *Green v. Humphrey Elevator & Truck Co.*, 816 F.2d 877, 880 (3d Cir. 1987). Furthermore, courts do not hold lapses attributable to the U.S. Marshals Service against a plaintiff proceeding *in forma pauperis*. *Sellers v. United States*, 902 F.2d 598, 602 (7th Cir. 1990); *see Young v. Quinlan*, 960 F.2d 351, 359 (3d Cir. 1992), *superseded by statute on other grounds as recognized in Nyhuis v. Reno*, 204 F.3d 65, 71 n.7 (3d Cir. 2000).

The district court did not abuse its discretion when it found that Moore had good cause for providing the U.S. Marshals with Walton's full name when he did. Crediting Moore's account that he "made a number of attempts, through court administrators, to straighten out the name," the court concluded that Moore "made good faith efforts to learn the proper spelling of [Walton's] name" and that his failure to serve her earlier was attributable to "no fault of his own." J.A. 266 (Tr. of Hr'g on Mot. Dismiss). Moore's mistake was "simply a spelling error" that the other jail officials he sued "provided no assistance in correcting, until the time had run out." *Id.* Because the district court found good cause existed, it was required to extend the period for service. Fed. R. Civ. P. 4(m).

The district court made its good-cause finding against the backdrop of a record that readily establishes the reasonableness of Moore's actions. He filed this lawsuit while incarcerated and without an attorney. He made every

effort to use the resources available to him in prison. J.A. 256 (Tr. of Hr'g on Mot. Dismiss). Meanwhile, the City was willfully unhelpful. Despite abundant evidence that officials knew exactly who Moore was trying to sue, J.A. 257-58, 266, and despite the City's attorney's in-court assurances that officials were attempting to locate Walton, J.A. 109 (Tr. of Dec. 3, 2015), Moore was unable to ascertain her full name until the district court obtained it. Further, even though the record shows "S. Walton" matched the name of only one city employee, J.A. 130 (Dist. Ct. Order Nov. 2, 2016), the City pleaded ignorance regarding her identity until after the statute of limitations expired, Third Walton Summons, ECF 54. Moreover, the U.S. Marshals took more than eight months to return the summons to "S. Walton" unexecuted. J.A. 7 (Docket Entries). During that timeframe, while the Marshals were purportedly tracking down Walton, Moore tried to reach out through his aunt to get information that could help effect service. Second Walton Summons, ECF 48. And even with Walton's full name, the Marshals required five more months to locate her. It was not an abuse of discretion for the district court to excuse Moore's inability to serve Walton and extend the time for service.

Finally, this Court should uphold the extension of the Rule 4(m) period even if it concludes that good cause did not exist. Rule 4(m) gave the district court discretion to extend the service period "even in the absence of good cause." *Boley v. Kaymark*, 123 F.3d 756, 758 (3d Cir. 1997). Had the district court found no good cause, it then would have had the opportunity to grant

a discretionary extension. *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1307-08 (3d Cir. 1995). Even if this Court concludes that the district court abused its discretion in finding good cause, it should take its previous tack of "view[ing] the district court's decision to extend time as an exercise of its discretion" and affirm the extension. *MCI*, 71 F.3d at 1098. In the end, whether the Court upholds the district court's good-cause finding or construes the extension as an exercise of discretionary authority, the "period provided by Rule 4(m) for serving the summons and complaint" incorporated into Rule 15 extended until Walton was served.[5]

2. Walton received adequate notice of Moore's lawsuit.

Within the period provided by Rule 4(m), Walton "received such notice of" Moore's lawsuit that she "will not be prejudiced in defending on the merits." Fed. R. Civ. P. 15(c)(1)(C)(i).

Walton had actual notice of the lawsuit within the requisite time period. As already explained, by concluding that Moore had established good cause and denying Walton's motion to dismiss, the district court extended the Rule 4(m) period for service up to the day she was served. It necessarily follows that she received notice within the Rule 4(m) period. *Urrutia v. Harrisburg Cnty. Police Dep't*, 91 F.3d 451, 460-61 (3d Cir. 1996).

[5] At the very least, this Court should not reverse the district court's extension of the period for service. Instead, if it concludes that good cause did not exist, it should remand so the district court can consider whether a discretionary extension is appropriate.

The notice Walton received did not prejudice her under Rule 15. The "emphasis" of this inquiry is on notice, *Nelson v. County of Allegheny*, 60 F.3d 1010, 1014 (3d Cir. 1995), and the "prejudice issue is closely dependent on the outcome of [the] notice inquiry," *Singletary v. Pa. Dep't of Corr.*, 266 F.3d 186, 194 (3d Cir. 2001); *see also* 6A *Federal Practice and Procedure* § 1498.1 (3d ed.) (updated Aug. 19, 2022). Indeed, the "amount of prejudice a defendant suffers" under Rule 15 is a "direct effect of the type of notice" received. *Singletary*, 266 F.3d at 194 n.3. Rule 15's prejudice inquiry primarily contemplates situations where a defendant receives informal or constructive notice. Those circumstances demand a more rigorous prejudice analysis because the form of notice might not allow a defendant to prepare adequately. *Id.* Here, however, Walton had actual notice through personal service, the "ideal circumstance under which to commence legal proceedings against a person." *Greene v. Lindsey*, 456 U.S. 444, 449 (1982). The form of notice she received was not a source of prejudice.

Nor did the timing of the notice Walton received cause prejudice. The only delay that can prejudice a defendant for purposes of Rule 15(c) is the period between when the statute of limitations expires and when the defendant receives notice. *Singletary*, 266 F.3d at 195 n.3 (noting that a defendant's "failure to prepare a defense" after receiving notice is not legitimate prejudice). This Court is reluctant to find prejudice based on delay alone. *See, e.g.*, *Urrutia*, 91 F.3d at 461; *Boley v. Kaymark*, 123 F.3d 756, 759 (3d Cir. 1997); *DeRienzo v. Harvard Indus., Inc.*, 357 F.3d 348, 357 (3d Cir. 2004);

Cureton v. NCAA, 252 F.3d 267, 273 (3d Cir. 2001). Instead, prejudice from delay "must be actual, not hypothetical." *Urrutia*, 91 F.3d at 461. For that reason, findings of prejudice are "limited to circumstances in which delay impaired a defendant's ability to defend." *Boley*, 123 F.3d at 759. Specifically, a newly added party must show that she was "unfairly denied [an] opportunity to present facts or evidence which [she] would have presented had the amendments been timely." *Urrutia*, 91 F.3d at 461 (citing *Bechtel v. Robinson*, 886 F.2d 644, 652 (3d Cir. 1989)). In closely related contexts, this Court has also considered whether the new party had ample opportunity to participate in discovery. *See DeRienzo*, 357 F.3d at 357 (applying Rule 15(c)(1)(A)); *Bechtel*, 886 F.2d at 652 (applying Rule 15(a)).

Walton has not demonstrated that the twenty months that elapsed between the end of the limitations period and service have prejudiced her in any way. At no point in this lawsuit has she pointed to anything specific. Rather than submitting an affidavit or any other evidence indicating prejudice, she has relied on delay alone. Appellee Original Resp. Br. 19. But there is nothing inherently prejudicial about requiring someone to defend against a personal-injury lawsuit within four years of the events that gave rise to it. In fact, many jurisdictions provide statutes of limitations of four years or longer for this type of action. *E.g.*, Fla. Stat. Ann. § 95.11(3)(a); Me. Rev. Stat. Ann. tit. 14, § 752. Walton's bare invocation of the passage of time is insufficient to show actual prejudice. *See Urrutia*, 91 F.3d at 461.

And here, the record indicates Walton has suffered no prejudice. The district court ordered preservation of the most relevant evidence, J.A. 4 (Docket Entries), so she cannot claim that records she needs have been destroyed. Though video of her misconduct is not available, that has been true throughout, because the City failed to produce it when ordered. Bryant Decl. 1, ECF 31. The delay did not deprive Walton of access to it. Further, after denying her motion to dismiss, the district court gave Walton the opportunity to take discovery. J.A. 266 (Tr. of Hr'g on Mot. Dismiss). She declined to take Moore's deposition and did not claim she required any other evidence. J.A. 267. Her disinterest in additional discovery indicates that she believed her lawyers—who had represented other city defendants since the outset—had adequately represented her interests. And in any event, she cannot blame Moore for her lack of participation once she received notice. *See Singletary*, 266 F.3d at 195 n.3.

Perhaps for these reasons, the district court already implicitly rejected Walton's conclusory assertion of prejudice. At the hearing on her motion to dismiss, her attorney contended that "she would be prejudiced by having to defend a claim that's now over four years old." J.A. 265. The district court—which was in the best position to assess prejudice, *see Lesko v. Owens*, 881 F.2d 44, 51 n.8 (3d Cir. 1989)—denied her motion even in the face of this argument.

3. When Walton was served, she must have known that Moore's lawsuit would have been brought against her but for a spelling mistake.

Within the period provided by Rule 4(m), Walton "knew or should have known" that Moore's lawsuit "would have been brought against [her], but for a mistake concerning [her] identity." Fed. R. Civ. P. 15(c)(1)(C)(ii). The amended complaint described the district court's earlier dismissal of the lawsuit where Walton's name was spelled "Walden" and explained the amendment was made to correct this error. J.A. 119. On receipt of this document, Walton must have known that Moore intended to file the complaint against her originally.

II. Moore is entitled to summary judgment on his Eighth Amendment claim.

The district court's misreading of Rule 15(c)(1)(C) led it to grant Walton's motion for summary judgment and deny Moore's. And, as we explain below, the Eighth Amendment does not provide an alternative basis for either ruling. Moore is entitled to summary judgment on liability. Walton is not.

To prevail on a summary-judgment motion, the movant must establish that no genuine dispute of fact exists and that he is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). If he bears the burden at trial, he first must show that he can make out his claim even if all inferences from the evidence are construed in the nonmovant's favor. *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999). Once the movant makes his initial showing, the burden shifts

to the nonmovant. To resist summary judgment, she must then "do more than simply show that there is some metaphysical doubt" as to the movant's facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007). She must "set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A failure to contest the movant's facts allows the court to consider them undisputed. Fed. R. Civ. P. 56(e)(2).

As the district court noted, Moore's facts are undisputed. Add. 12 (Dist. Ct. Op.). Walton barely responded to his showing. *See* Walton Mot. Summ. J., ECF 65. She opposed summary judgment in a footnote. *Id.* at 2 n.1. She did not contest Moore's version of events. She did not introduce evidence that could lead a jury to reject his story. Instead, Walton argued only that what happened was not a clearly established Eighth Amendment violation.

That is fatal to Walton's case. Based on the evidence in the record, any reasonable jury would find that Walton violated Moore's clearly established Eighth Amendment rights in two independent ways. First, Walton was deliberately indifferent to conditions of confinement that posed a substantial risk of serious harm to Moore. Second, Walton subjected Moore to suffering and humiliation for no penological purpose.[6]

[6] The strength of Moore's evidence also establishes that the district court correctly denied Walton's motion for summary judgment on the merits of Moore's Eighth Amendment claim.

A. Walton is not entitled to qualified immunity because she failed to respond to a serious risk to Moore's health.

Qualified immunity shields officials from suit unless two things are true. First, the defendant must have violated the Constitution. Second, the right at issue must have been clearly established such that it "would have been clear to a reasonable person that her conduct was unlawful." *Williams v. Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 557 (3d Cir. 2017). Because no genuine dispute of fact exists on either prong, Moore is entitled to judgment on his Eighth Amendment claim as a matter of law.

1. Walton violated the Eighth Amendment.

The Eighth Amendment requires prison officials to "provide humane conditions of confinement." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). A claim that an official has violated that right has two components. First, the objective component requires a plaintiff to show that his circumstances are "objectively, sufficiently serious," such that he is denied "the minimal civilized measure of life's necessities." *Id.* at 834 (quotation marks omitted). If a plaintiff demonstrates that "he is incarcerated under conditions posing a substantial risk of serious harm," he surmounts this bar. *Id.* Second, the subjective component requires a plaintiff to show that the prison official has a "sufficiently culpable state of mind," a standard that is satisfied when the official exhibits "deliberate indifference" to an excessive risk of harm. *Id.*

a. Moore's direct exposure to human waste posed a substantial risk of serious harm.

Prison officials must provide a "minimal civilized measure" of sanitation to the people they house. *Tillery v. Owens*, 907 F.2d 418, 426 (3d Cir. 1990). When a prison cell is so unsanitary that it places the person inside it at substantial risk of serious harm, that condition violates the objective component of the Eighth Amendment. *See Mammana v. Fed. Bureau of Prisons*, 934 F.3d 368, 374 (3d Cir. 2019). A risk becomes intolerable when exposing someone to that level of danger against their will "violates contemporary standards of decency." *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

Human waste carries infectious diseases and poses other health risks that are sufficiently serious to violate the Eighth Amendment. *Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020) (per curiam); *Brooks v. Warden*, 800 F.3d 1295, 1304-05 (11th Cir. 2015); *Shannon v. Graves*, 257 F.3d 1164, 1168 (10th Cir. 2001). Direct contact with feces and urine is particularly serious. *See, e.g.*, *Fruit v. Norris*, 905 F.2d 1147, 1150-51 (8th Cir. 1990); *Johnson v. Lewis*, 217 F.3d 726, 732-33 (9th Cir. 2000); *McCord v. Maggio*, 927 F.2d 844, 848 (5th Cir. 1991); *cf. Martin v. Gearhart*, 712 F. App'x 179, 187 (3d Cir. 2017) (no objectively serious deprivation where no allegation of "physical contact with urine or feces"). In *Fruit*, for example, the Eighth Circuit held that being ordered to "work in a shower of human excrement without protective clothing and equipment" for approximately ten minutes was serious enough to violate the objective component of the Eighth Amendment, given the risks of contracting disease.

See 905 F.2d at 1150-51. Moreover, exposing a person to human waste implicates the principles of humanity and dignity at the core of Eighth Amendment law. *See, e.g.*, *Young v. Quinlan*, 960 F.2d 351, 365 (3d Cir. 1990), *superseded by statute on other grounds as recognized in Nyhuis v. Reno*, 204 F.3d 65, 71 n.7 (3d Cir. 2000); *DeSpain v. Uphoff*, 264 F.3d 965, 974 (10th Cir. 2001).

For these reasons, this Court has observed that exposure to human waste carries "particular weight in the conditions calculus." *Martin*, 712 F. App'x at 187 (quoting *DeSpain*, 264 F.3d at 974); *see also McKeithan v. Beard*, 322 F. App'x 194, 202 & n.10 (3d Cir. 2009); *Pressley v. Miller*, No. 21-2826, 2022 WL 17414866, at *2-3 (3d Cir. Dec. 5, 2022).

The unsanitary conditions inside Moore's cell placed him at substantial risk of serious harm. When the water in his toilet first exploded, discharge contaminated Moore's eyes and mouth and "cover[ed]" him in raw sewage. J.A. 172 (Moore Dep.). This direct contact with human waste without protective gear immediately placed Moore's health at a risk serious enough to implicate the Eighth Amendment. *See Fruit*, 905 F.2d at 1150-51; *Shannon*, 257 F.3d at 1168. This risk only grew as Moore spent more than eight hours in his cell while the toilet constantly overflowed, covering the entire floor with an inch of sewage. J.A. 175, 183 (Moore Dep.).

Furthermore, Moore endured serious medical consequences from the exposure. In the days and weeks that followed, he suffered from violent vomiting, diarrhea, and severe headaches; contracted a fungal infection on his feet; and developed patches of rashes all over his body. J.A. 182, 185

(Moore Dep.). He also experienced a recurrence of symptoms of a preexisting post-traumatic stress disorder. J.A. 171 (Moore Dep.); J.A. 244 (Moore Decl.); J.A. 56-59 (Moore First Mot. Summ. J.). These ailments underscore the seriousness of the risk Moore faced. *See Porter v. Pa. Dep't of Corr.*, 974 F.3d 431, 441 (3d Cir. 2020) (holding that evidence of physical harm buttressed a finding of objectively serious risk).

This Court should find that Walton violated contemporary standards of decency when she placed Moore at substantial risk of contracting serious infectious disease by denying him access to basic sanitation for hours after unprotected exposure to human waste. *See Helling*, 509 U.S. at 36. Whether for eight hours or ten minutes, exposure of this character is serious enough to violate the objective component of the Eighth Amendment.

b. Walton was deliberately indifferent.

The subjective component of a conditions of confinement claim requires a prison official to have acted with deliberate indifference to inmate health or safety. *Farmer*, 511 U.S. at 834. An official is liable under this standard if she (1) knows the relevant facts, (2) infers that a substantial risk of serious harm exists, and (3) fails to respond reasonably. *See id.* at 837, 844-45.

Walton's conduct unequivocally demonstrates that she knew the relevant facts. Five minutes after Moore's toilet erupted, Walton "looked at [him], acknowledged [him]," and then "turned her head and proceeded with her rounds." J.A. 242 (Moore Decl.). Walton then "act[ed] like" she couldn't hear

Moore as he spent up to an hour "bang[ing]" on his door loudly enough for people in at least two other cells to hear him. J.A. 176-77 (Moore Dep.); J.A. 249 (Rodriquez Decl.); J.A. 247 (Johnson Decl.). Even if this were not proof enough, she also assigned an inmate to mop the area in front of Moore's door as sewage seeped out. J.A. 177-78 (Moore Dep.).

Any reasonable jury would conclude that Walton knew that Moore was at substantial risk of serious harm. A defendant's state of mind may be inferred from circumstantial evidence if the risk is obvious. *See, e.g.*, *Hamilton v. Leavy*, 117 F.3d 742, 747 (3d Cir. 1997). The seriousness of the risk posed by direct exposure to human waste would be obvious to any layperson. *See Fruit*, 905 F.2d at 1150-51*; McCord*, 927 F.2d at 848*; Brooks*, 800 F.3d at 1304-05; *Shannon*, 257 F.3d at 1168. This alone provides evidence that would compel a jury to conclude that Walton must have known Moore was at serious risk. But that's not all. Walton also allowed inmates in the neighboring cell to evacuate and clean their cell after their own toilet overflowed, demonstrating an awareness that exposure to human waste was putting the health of those inmates at risk. J.A. 177 (Moore Dep.); J.A. 249 (Rodriguez Decl.).

Finally, Walton's utter failure to address these circumstances was indisputably unreasonable. "[U]nexplained inaction" in the face of a serious risk of harm violates the Eighth Amendment. *See Clark v. Coupe*, 55 F.4th 167, 182 (3d Cir. 2022); *see also Patel v. Lanier County*, 969 F.3d 1173, 1190 (11th Cir. 2020). At no point did Walton help Moore. When her shift ended at 7:01 a.m.,

J.A. 142 (Moore Third Mot. Summ. J.), Moore was still covered in waste and confined to his cell, J.A. 176 (Moore Dep.). Rather than helping Moore, Walton "act[ed] like she couldn't hear" him as he cried for help. J.A. 176-77 (Moore Dep.). The actions she did take highlight the unreasonableness of her failure to take any actions to help Moore. While refusing even to acknowledge Moore, she evacuated his neighbors and allowed an inmate out of a different cell to keep the area *outside* Moore's door clean, all while Moore sat covered in raw sewage. No reasonable jury could conclude this conduct was a reasonable human's response to the conditions Moore faced.

2. Walton acted unreasonably in light of clearly established law.

To obtain qualified immunity, Walton must show that her "conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Beers-Capitol v. Whetzel*, 256 F.3d 120, 142 n.15 (3d Cir. 2001). She must demonstrate that "a reasonable person in her position at the relevant time could have believed … that her conduct comported with" the law. *Id.*

Walton enjoys no such defense. In light of her knowledge that Moore faced an excessive risk, she could not have reasonably concluded that failing to act would comply with the Constitution. As this Court's precedents make clear, the reasonableness of her response must be assessed from the perspective of an officer who knew the risk. And in any event, by 2013, any reasonable officer would have concluded that leaving a person covered in

human waste overnight posed a sufficiently serious risk of harm to implicate the Eighth Amendment. Thus, even if this Court's qualified-immunity analysis did not account for the fact that Walton knew the risk, and asked instead whether any reasonable officer would recognize the risk, Walton still could not prevail.

a. No reasonable officer who knew Moore faced an excessive risk could have concluded Walton acted reasonably.

The first step in determining whether an officer acts reasonably in light of clearly established law requires identifying the "specific right" that was allegedly violated. *Clark v. Coupe*, 55 F.4th 167, 181 (3d Cir. 2022). The right at issue must be defined "in light of the specific context of the case." *Peroza-Benitez v. Smith*, 994 F.3d 157, 165 (3d Cir. 2021). It must include sufficient factual detail for a reasonable officer to "determine how the relevant legal doctrine … will apply to the factual situation the officer confronts." *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam) (quoting *Saucier v. Katz*, 533 U.S. 194, 205 (2001)).

After defining the right at issue, this Court's second step is to determine "whether the violative nature of the [official's] particular conduct is clearly established." *Coupe*, 55 F.4th at 181 (emphasis omitted). In doing so, this Court must broaden its inquiry "beyond determining whether 'the very action in question has been held unlawful.'" *Id.* at 182 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). There need not be a case "directly on

point" so long as analogous precedents placed the question "beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). A constitutional rule may obviously apply to a new set of facts. *See Anderson*, 483 U.S. at 640.

Here, Moore seeks to vindicate his right not to be subjected to a breakdown in jail facilities that produce unsanitary conditions in his cell that seriously threaten his health. This right is defined at an appropriate level of generality "in light of the specific context of the case," *Peroza-Benitez*, 994 F.3d at 165, because it zeroes in on the "situation [Walton] confronted" and includes sufficient facts to answer the Eighth Amendment question conclusively, *Mullenix*, 577 U.S. at 13 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 199-200 (2004) (per curiam)).

By September 2013, this right was clearly established. *Farmer v. Brennan* makes clear that prison officials may not exhibit deliberate indifference to a "known risk to a prisoner's health for no justifiable reason." *Coupe*, 55 F.4th at 184 (citing *Farmer v. Brennan*, 511 U.S. 825, 843-45 (1994)). And this Court has long held that this principle applies to the risk of harm posed by unsanitary jail facilities. *Tillery v. Owens*, 907 F.2d 418, 426 (3d Cir. 1990); *Young v. Quinlan*, 960 F.2d 351, 365 (3d Cir. 1990), *superseded by statute on other grounds as recognized in Nyhuis v. Reno*, 204 F.3d 65, 71 n.7 (3d Cir. 2000); *see also Brooks v. Warden*, 800 F.3d 1295, 1303-04 (11th Cir. 2015) (citing cases decided before September 2013 from every regional circuit recognizing that "the deprivation of basic sanitary conditions can constitute an Eighth Amendment violation").

This clearly established law places "beyond debate" the illegality of Walton's failure to respond to the substantial risk of serious harm in the context presented by this case. *al-Kidd*, 563 U.S. at 741. Because Moore's right was clearly established in this context and Walton believed Moore faced a serious threat of harm, she could not also have reasonably believed she was acting lawfully by failing to respond. *See Beers-Capitol*, 256 F.3d at 142 n.15; *Thorpe v. Clarke*, 37 F.4th 926, 937-38 (4th Cir. 2022). Any reasonable officer would have recognized she could not flatly ignore a flooding toilet that was putting Moore's health at substantial risk. Put in this Court's precise terms, Walton "could not [reasonably] believe that her actions comported with clearly established law while also believing that there was an excessive risk to [Moore] and failing to adequately respond." *Beers-Capitol*, 256 F.3d at 143 n.15.

b. No reasonable officer could have failed to perceive the seriousness of the risk posed by direct exposure to human waste.

An alternative approach to assessing qualified immunity would ask whether an officer could have reasonably believed the risk Moore faced was insufficiently serious to implicate the Eighth Amendment. *See Est. of Ford v. Ramirez-Palmer*, 301 F.3d 1043, 1049-50 (9th Cir. 2002). But that contradicts this Court's mode of analysis, which accounts for the defendant-officer's knowledge that a substantial risk existed in evaluating reasonableness. *Coupe*, 55 F.4th at 183; *Beers-Capitol*, 256 F.3d at 142 n.15. It likewise conflicts

with other circuits' decisions holding that defendants are not entitled to qualified immunity so long as a genuine dispute of material fact exists as to whether the officers perceived the seriousness of the risk. *Thorpe*, 37 F.4th at 934-35; *Walker v. Benjamin*, 293 F.3d 1030, 1037, 1040 (7th Cir. 2002); *see also Miller v. Solem*, 728 F.2d 1020, 1025 (8th Cir. 1984); *Patel v. Lanier County*, 969 F.3d 1173, 1190-91, 1191 n.11 (11th Cir. 2020).

But even under an approach that ignores her awareness of the risk, Walton is not entitled to qualified immunity. Any reasonable officer would have recognized that direct exposure to raw sewage for more than eight hours was serious enough to violate the objective component of the Eighth Amendment.

It has long been clearly established that risks in prison can violate the Eighth Amendment as soon as they threaten a person's health. That remains true even if the point at which the risk becomes intolerable occurs after mere minutes. *See, e.g.*, *Fruit v. Norris*, 905 F.2d 1147, 1149-51 (8th Cir. 1990) (exposure to raw sewage for ten minutes); *Gordon v. Faber*, 973 F.2d 686, 687-88 (8th Cir. 1992) (exposure to freezing temperatures without adequate clothing for less than two hours); *Johnson v. Lewis*, 217 F.3d 726, 732 (9th Cir. 2000) (exposure to freezing temperatures without adequate clothing for five to nine hours); *see also McBride v. Deer*, 240 F.3d 1287, 1291 (10th Cir. 2001) (holding "the degree of filth endured" is "equally important" to the length of time unsanitary conditions persist). Furthermore, the courts of appeals have uniformly recognized that direct exposure to human waste is not only

indecent but poses an obvious and significant health risk. *See, e.g.*, *Fruit*, 905 F.2d at 1150-51 (plaintiffs faced prospect of "work[ing] in a shower of human excrement without protective clothing and equipment" for ten minutes); *Johnson*, 217 F.3d at 733 (plaintiffs forced to endure "prisoners wetting each other with urine" without access to sanitation); *Shannon v. Graves*, 257 F.3d 1164, 1168 (10th Cir. 2001) (plaintiffs forced to use blankets contaminated with sewage); *DeSpain v. Uphoff*, 264 F.3d 965, 974 (10th Cir. 2001) (plaintiff exposed to feces and urine via standing water in his cell); *McCord v. Maggio*, 927 F.2d 844, 848 (5th Cir. 1991) (plaintiff exposed to "filthy water contaminated with human waste, unquestionably a health hazard"); *see also Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020) (per curiam) (denying qualified immunity to prison officials who placed plaintiff in "cells teeming with human waste" in September 2013).

These cases clearly established that Moore's circumstances were sufficiently serious to violate the Eighth Amendment. They put Walton on notice that exposing a prisoner to human waste, even for minutes or hours, poses a constitutionally intolerable health risk. Moreover, any reasonable officer would have recognized that leaving Moore saturated in human waste for no reason, even though the officer had the means to alleviate his grotesque, unhealthy circumstances immediately, would violate contemporary standards of humanity and decency. *See Hope v. Pelzer*, 536 U.S. 730, 738-39 (2002) (holding that the "obvious cruelty inherent" in their

actions should have provided defendants with "some notice that their alleged conduct violated" the Constitution).

The cases advanced by Walton below are easily distinguishable. None included allegations that human waste had contaminated the plaintiff's person. *See Mitchell v. Horn*, No. Civ.A.98-4742, 2005 WL 1060658, at *3 (E.D. Pa. May 5, 2005) (plaintiff placed in cell with human waste smeared on the walls); *Harris v. Fleming*, 839 F.2d 1232, 1234 (7th Cir. 1988) (plaintiff housed in roach-infested cell and denied toilet paper, soap, toothbrush, and toothpaste); *Stone-El v. Sheahan*, 914 F. Supp. 202, 206 (N.D. Ill. 1995) (plaintiff saw vermin, slept without a mattress, sometimes went without toilet paper, and objected that the prison was noisy and had poor ventilation). While the prisoners in those cases endured longer periods of deprivation, they did not face the same risks Moore did. As "the level of filthiness endured increases," "the length of time required before a constitutional violation is made out decreases." *Whitnack v. Douglas County*, 16 F.3d 954, 958 (8th Cir. 1994).

Walton cannot take refuge in cases holding that people can sometimes constitutionally be subjected to unpleasant conditions of confinement for multiple days. Moore was immediately placed at risk when human waste splashed onto his body, including directly in his eyes and mouth. That risk only grew as Walton denied Moore access to sanitation for eight hours despite his cries for help.

B. Walton independently violated clearly established law by wantonly subjecting Moore to suffering and humiliation for no penological purpose.

Walton violated Moore's clearly established Eighth Amendment rights in a second, independent way. This Court has recognized a distinct path to proving an Eighth Amendment violation aside from the analysis above. Prison officials violate the Eighth Amendment when they "inflict unnecessary and wanton pain on prisoners" and fail to provide any "plausible explanation for such measures." *Clark v. Coupe*, 55 F.4th 167, 184 (3d Cir. 2022).

Long before conditions-of-confinement claims emerged as a standalone doctrine, the Supreme Court held that the Eighth Amendment prohibits punishments that purposefully inflict unnecessary harm. *See Wilkerson v. Utah*, 99 U.S. 130, 136 (1879) (explaining that punishments marked by "unnecessary cruelty" are forbidden by the Eighth Amendment). In the conditions-of-confinement context, the Supreme Court has explained that conditions violate the Eighth Amendment when they wantonly inflict suffering yet are "totally without penological justification." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981); *see Hope v. Pelzer*, 536 U.S. 730, 737 (2002). This same principle is why, for example, a denial of medical care that "result[s] in pain and suffering which no one suggests would serve any penological purpose" violates the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). The "infliction of such unnecessary suffering is inconsistent with contemporary standards of decency." *Id.*

This Court has applied these principles to hold that officials who wantonly inflict humiliation or suffering without a legitimate penological purpose violate the Constitution. *See Thomas v. Tice*, 948 F.3d 133, 141 (3d Cir. 2020); *Chavarriaga v. N.J. Dep't of Corr.*, 806 F.3d 210, 228-29 (3d Cir. 2015); *Young v. Quinlan*, 960 F.2d 351, 364 (3d Cir. 1990), *superseded by statute on other grounds as recognized in Nyhuis v. Reno*, 204 F.3d 65, 71 n.7 (3d Cir. 2000); *White v. Napoleon*, 897 F.2d 103, 108-09, 112 (3d Cir. 1990). In *Chavarriaga*, for example, this Court held that forcing a woman to walk naked in front of male guards and inmates violated the Eighth Amendment because it was "a malicious act intended to humiliate her for no legitimate penological reason." 806 F.3d at 229. The Court also held that when the plaintiff was deprived temporarily of potable water, the intentional nature of the defendants' conduct transformed the condition from "tolerable, though uncomfortable" to "a prohibited inhumane deprivation." *Id.* at 228.

When a plaintiff alleges a violation of this sort, this Court denies qualified immunity to defendants who fail "to present evidence of *any* … penological interest" to justify conduct that wantonly causes suffering. *Tice*, 948 F.3d at 141; *Coupe*, 55 F.4th at 183 (denying qualified immunity because "imposing conditions that cause the 'wanton and unnecessary infliction of pain' ha[s] long violated the Eighth Amendment"). Although there may be room for debate as to the "exact quantum or nature of penological interest that is needed," the requirement that "at least *some* interest" exists has long been clearly established. *Tice*, 948 F.3d at 141.

Walton's utter lack of a penological purpose for abandoning Moore violated the Eighth Amendment and forecloses qualified immunity. Moore endured an intolerable level of suffering and humiliation when he was left soaked in human waste in a sewage-flooded cell overnight as others received assistance. Walton has introduced no evidence to suggest that she had a legitimate penological purpose for leaving him in that state. *See* Add. 12 (Dist. Ct. Op.). On the contrary, her other actions contradict the basis upon which any conceivable inference in her favor could be drawn. Whatever usual justifications may support keeping cells locked overnight, undisputed evidence shows that Walton opened two other cells to address the same toxic flood. Further, beyond just failing to respond, Walton "act[ed] like she couldn't hear" Moore's requests for help—evidence that she "malicious[ly] … intended to humiliate [Moore] for no legitimate penological reason." *Chavarriaga*, 806 F.3d at 229. This sort of "wanton" and "unnecessary" imposition of suffering and humiliation has long been held to qualify as "cruel and unusual," *Rhodes*, 452 U.S. at 345-46, so Walton cannot claim to have acted as a reasonable officer would.

Conclusion

This Court should reverse the district court's denial of Moore's motion for summary judgment and reverse the district court's grant of Walton's motion for summary judgment.

Respectfully submitted,

s/ Esthena Barlow

Jonathan Dame
Yiyang Wang
Student Counsel

Esthena Barlow
D.C. Bar No. 90000252
Madeline Meth
Brian Wolfman
GEORGETOWN LAW APPELLATE
COURTS IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 661-6746

Counsel for Appellant Troy Moore

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Certificate of Compliance

1. I certify that this document complies with Federal Rule of Appellate Procedure 32(g)'s type-volume limitations. In compliance with Rule 32(a)(7)(B), it contains 10,206 words, excluding the parts exempted by Rule 32(f) and Circuit Rule 32(e)(1), and it has been prepared in proportionally spaced typeface using Palatino Linotype, 14-point, in Microsoft Word 2019.

2. I certify that, on March 9, 2023, this brief was filed via CM/ECF. All participants in the case are registered CM/ECF users and will be served electronically via that system with this brief. Seven paper copies of this brief will also be filed with the Clerk of this Court.

3. In accordance with Local Rule 28.3(d), I certify that I am a member of the bar of the Third Circuit in good standing.

4. In accordance with Local Rule 31.1(c), I certify that (i) this brief has been scanned for viruses using Malwarebytes 4.5.23 and is free of viruses; and (ii) when paper copies are required by this Court, the paper copies will be identical to the electronic version of the brief filed via CM/ECF.

s/ Esthena Barlow
Esthena Barlow
Counsel for Plaintiff-Appellant

Addendum

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Addendum

Separately Bound Joint Appendix

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TROY LAMONT MOORE, SR.,	:	CIVIL ACTION
	:	NO. 14-3873
Plaintiff,	:	
	:	
v.	:	
	:	
LOUIS GIORLA, et al.	:	
	:	
Defendants.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J. March 28, 2018

Plaintiff, a Pennsylvania state prisoner, filed this pro se action under 42 U.S.C. § 1983 against prison officials. He alleges that the toilet in his cell violently overflowed, covering him with raw sewage, and that he was not permitted to leave his cell or clean himself off for approximately eight hours.

Plaintiff and the sole remaining Defendant have filed cross-motions for summary judgment. For the reasons that follow, the Court will grant Defendant's motion and deny Plaintiff's motion.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY[1]

Plaintiff Troy Lamont Moore, Sr. was imprisoned at the Philadelphia Industrial Correctional Center ("PICC"). He alleges that on September 16, 2013, while at PICC, the toilet in his cell overflowed repeatedly – and despite Plaintiff's requests, Correctional Officer Walton did not let Plaintiff out of that cell for at least eight hours, leaving him surrounded by raw sewage during that time. See Am. Compl., ECF No. 46.

On June 26, 2014, after exhausting his administrative remedies, Plaintiff filed a complaint against Philadelphia Prison Commissioner Louis Giorla, Major Claudette Martin, Nurse McGrogan, and another unnamed nurse under 42 U.S.C. § 1983. ECF No. 3. Plaintiff also named Correctional Officer "Walden" in the initial Complaint. However, as Plaintiff later learned, he should have named Officer "Walton" instead.[2]

After filing answers and conducting discovery, all defendants (except "Walden," who had not yet been served) filed motions for summary judgment. ECF Nos. 21, 24, 38. In a memorandum opinion, the Court granted Defendants' motions for

[1] The basic facts of this case are not disputed for the purposes of summary judgment. See Telephone Conference Tr. 3:22-7:10, Apr. 6, 2015, ECF No. 39.

[2] According to Plaintiff, the reason for Plaintiff's confusion was that he was provided the name of the correctional officer orally by another prison employee, which Plaintiff then attempted to spell phonetically. See Tr. of July 24, 2017 Hearing at 7:10-14.

summary judgment because they lacked personal involvement. ECF No. 42. The Court also dismissed the claims against a person identified as "Walden" without prejudice, considering that PICC had been unable to identify her, and that she had not been served. Id.

Plaintiff repeatedly attempted to serve "Walden," but the summons were returned to Plaintiff unexecuted, with notations that PICC could not identify her. See ECF Nos. 6, 48, 52, 54, 56. Eventually, after the U.S. Marshals were unable to contact or find "Walden" to effectuate service, they contacted PICC's human resources department, which furnished the Marshals with the correct spelling. Tr. of July 24, 2017 Hearing at 12:17-20. Thereby, Walden was identified as Officer Walton. See id. at 12-13.

Then, on February 10, 2016, Plaintiff filed his Amended Complaint against "S. Walton," alleging that Walton had ignored Plaintiff's requests to remove him from his cell after he was exposed to raw sewage coming from an overflowing toilet in his cell. ECF No. 46. On December 19, 2016, the Court ordered that the caption be amended to replace "S. Walton" with "Saajida Walton." ECF Doc. 52. On May 2, 2017, Plaintiff served Saajida Walton with a copy of the Amended Complaint. ECF Doc. 57.

II. LEGAL STANDARD

Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "A motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." Am. Eagle Outfitters v. Lyle & Scott Ltd., 584 F.3d 575, 581 (3d Cir. 2009) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986)). A fact is "material" if proof of its existence or nonexistence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

The Court will view the facts in the light most favorable to the nonmoving party. "After making all reasonable inferences in the nonmoving party's favor, there is a genuine issue of material fact if a reasonable jury could find for the nonmoving party." Pignataro v. Port Auth., 593 F.3d 265, 268 (3d Cir. 2010). While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the nonmoving party who must "set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 250.

The guidelines governing summary judgment are identical when addressing cross-motions for summary judgment. See Lawrence v. City of Phila., 527 F.3d 299, 310 (3d Cir. 2008). When confronted with cross-motions for summary judgment, "[t]he court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." Schlegel v. Life Ins. Co. of N. Am., 269 F. Supp. 2d 612, 615 n.1 (E.D. Pa. 2003) (alteration in original) (quoting 10A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2720 (3d ed. 1998)).

III. DISCUSSION

As noted above, the parties have filed cross-motions for summary judgment. The Court will address each motion in turn.

A. Defendant's Motion

Defendant argues that the statute of limitations bars Plaintiff's claim. In the alternative, she argues that she is entitled to qualified immunity. The Court will first address the issue of qualified immunity.

1. *Qualified Immunity*

When a defendant in a § 1983 action claims qualified immunity, a court must first determine if the plaintiff's allegations are sufficient to establish the violation of a federal constitutional or statutory right. Wilson v. Layne, 526 U.S. 603, 609 (1999), citing Conn v. Gabbert, 526 U.S. 286, 290 (1999). If the plaintiff's allegations meet this threshold, a court must next determine whether the right that the defendant's conduct allegedly violated was a clearly established one, about which a reasonable person would have known. Id. If the plaintiff's allegations fail to satisfy either inquiry, then a defendant is entitled to qualified immunity and dismissal of the case.

Qualified immunity is a legal determination to be made by the Court. Siegert v. Gilley, 500 U.S. 226, 232 (1991) (Deciding "this purely legal question permits courts expeditiously to weed out suits which fail the test without requiring a defendant who rightly claims qualified immunity to engage in expensive and time consuming preparation to defend the suit on its merits"). However, where the facts are in dispute, a court will submit the issue to the jury for factual determinations. Then, based on those determinations, a court determines whether the defendant is entitled to qualified immunity.

"[A] prison official violates the Eighth Amendment only when two requirements are met." Giblom v. Gillipsie, 435 Fed. Appx. 165, 168 (3d Cir. 2011) (quoting Farmer v. Brennan, 511 U.S. 825, 834 (1994)). "First, the deprivation alleged must be, objectively, sufficiently serious." Id. "[S]econd . . . a prison official must have a sufficiently culpable state of mind." Id. The objective component is narrowly defined: only "extreme deprivations" are sufficient to make out an Eighth Amendment claim. Hudson v. McMillian, 503 U.S. 1, 9 (1992). A prisoner must show that the condition, either alone or in combination with other conditions, deprived him or her of "the minimal civilized measure of life's necessities," or at least a "single, identifiable human need." Wilson v. Seiter, 501 U.S. 294, 304 (1991) (citing Rhodes v. Chapman, 452 U.S. 337, 347 (1981)).

These needs include "food, clothing, shelter, sanitation, medical care and personal safety." Griffin v. Vaughn, 112 F.3d 703, 709 (3d Cir. 1997). "[A] totality of the circumstances test must be applied to determine whether the conditions of confinement constitute cruel and unusual punishment." Tillery v. Owens, 907 F.2d 418, 427 (3d Cir. 1990). In determining whether the conditions of confinement amount to a constitutional violation, the "'circumstances, nature, and duration' of the conditions must be carefully considered" but

the "length of exposure . . . is often of prime importance." Martin v. Gearhart, 712 F. App'x 179, 186 (3d Cir. 2017) (quoting DeSpain v. Uphoff, 264 F.3d 965 (10th Cir. 2001)).

"Sanitation is one of the basic human needs recognized by eighth amendment cases," Peterkin v. Jeffes, 855 F.2d 1021, 1027 (3d Cir. 1988). Additionally, the Third Circuit has noted that "there is no doubt that 'exposure to human waste carries particular weight in the conditions calculus." Martin, 712 F. App'x at 187 (quoting DeSpain, 264 F.3d at 967).[3]

In this case, Plaintiff alleges that he was covered in raw sewage for approximately eight hours. See Am. Compl., ECF No. 46. Regarding the qualified immunity analysis, Defendant only contests whether the injury was sufficiently serious, and

[3] See also McBride v. Deer, 240 F.3d 1287, 1292 (10th Cir. 2001) (upholding Eighth Amendment claim given the "totality of the circumstances" where plaintiff alleged that he was forced to remain in feces-covered cell for a three-day period)); see also Despain, 264 F.3d at 974 (upholding Eighth Amendment claim where plaintiff alleged exposure to other inmates' urine and feces due to standing water from flooded toilets for thirty-six hours); Wheeler v. Walker, 303 Fed. App'x 365, 367-68 (7th Cir. 2008) (upholding Eighth Amendment claim where plaintiff alleged he was confined for two weeks in a roach-infested cell with a badly torn mattress, a urine and waste "encrusted" sink and toilet, and debris covering the floors, walls and sink); Henry v. Overmyer, No. 10-189 2013 WL 3177746, at *2 (W.D. Pa. June 24, 2013) (holding that prisoner had established a triable issue of fact for an Eighth Amendment claim where he alleged that he was forced to use a feces-stained mattress for twelve days); Woods v. Abrams, 2007 WL 2852525 at *12 (W.D. Pa. 2007) (observing that the plaintiff's allegations that the wall of his cell was covered with feces by a prior inmate "may assert an Eighth Amendment claim" but entering summary judgment since the plaintiff was issued cleaning supplies the next day and was not "required to remain in an unsanitary condition for an inordinate period of time").

whether Plaintiff's rights were clearly established. Considering the "particular weight" given to exposure to human waste, see Martin, 712 F. App'x at 187, there is a triable issue of fact regarding the violation alleged here. Therefore, Defendant is not entitled to qualified immunity at this stage of the proceedings. Accordingly, the Court proceeds to address the statute of limitations issue.

2. *Statute of Limitations*

Claims brought under § 1983 are subject to the state statutes of limitations governing personal injury actions. Garvin v. City of Phila., 354 F.3d 215, 220 (3d Cir. 2003) (citations omitted). Specifically, the Pennsylvania statute of limitations for personal injury actions, which is applicable in the instant case, is two years. Id. (citing 42 Pa. Cons. Stat. § 5524(7) (2003)).[4] Importantly, "parties to be brought in [or parties whose naming is to be changed] by amendment must have received notice of the institution of the action within 120 days following the filing of the action." Fed. R. Civ. P. 4(m).

In this case, the underlying events giving rise to Plaintiff's claims occurred on June 16, 2013. However, Plaintiff

[4] "The naming of a John Doe defendant in a complaint does not stop the statute of limitations from running or toll the limitations period as to that defendant." Garvin, 354 F.3d at 220 (citing Talbert v. Kelly, 799 F.2d 62, n.1 (3d Cir. 1986)).

did not serve Walton with a copy of the Amended Complaint until May 2, 2017, almost four years after the incident, and nearly two years after the statute of limitations had run. Accordingly, the statute of limitations bars Plaintiff's claim against Walton unless the Amended Complaint "relates back" to the initial Complaint under Rule 15(c) of the Federal Rules of Civil Procedure.

Such an amended pleading relates back where, among other requirements, the party to be brought in by amendment knew or should have known that the action would have been brought against him or her, "but for a mistake concerning the proper party's identity." Fed. R. Civ. P. 15(c). The core of the relation back inquiry is "what the prospective defendant knew or should have known" after the initial pleading was filed. Krupski v. Costa Crociere S. p. A., 560 U.S. 538, 548 (2010) (emphasis in original).

There is no evidence in the record that Walton knew or should have known of this action before the statute of limitations had run. Moreover, Plaintiff does not so contend. See generally Tr. of July 24, 2017 Hearing. Instead, Plaintiff's argument is that that the PICC, via Walton's supervisors, "knew exactly who [Plaintiff] was referring to," id. at 12:1-2, and had ample time to provide Walton's "true name." Id. at 6:1-8. Yet, even assuming that PICC had adequate notice that Walton was

the intended defendant, that does not establish that Walton herself had notice. Further, as explained below, any such notice that PICC had is not imputed to Walton.

The Third Circuit has recognized two methods of imputing notice to defendants under Rule 15(c): (i) the existence of a shared attorney between the original and proposed new defendant; and (ii) an identity of interest between these two parties. Additionally, Rule 15(c)(3)(B) requires that the party sought to be added knew or should have known that, but for a mistake, the plaintiff would have named him or her in the original complaint. Singletary v. Pennsylvania Dep't of Corr., 266 F.3d 186, 189 (3d Cir. 2001).

In this case, neither method of imputing notice is applicable. First, Walton and the other defendants did not share an attorney prior to the running of the statute of limitations. Second, the Third Circuit has held that notice to an employer does not constitute notice to a non-managerial, staff-level employee. See id. at 200; see also Garvin, 354 F.3d at 227.

Additionally, equitable tolling does not apply in this case. For one, Plaintiff was aware that his initial attempts to serve Walton were returned unexecuted, and that PICC was at least claiming that it could not identify her. See ECF Nos. 6, 48, 52, 54, 56. Yet, Plaintiff did not request through discovery that PICC produce Walton's identity.

Because Plaintiff has failed to show that Walton had either actual notice or constructive notice within the required 120 day period under Rule 15(c), Plaintiff's Amended Complaint does not relate back to the date of the initial Complaint. Therefore, Plaintiff's § 1983 claims against Walton are barred by the statute of limitations.

B. Plaintiff's Motion

Plaintiff, in his motion, basically summarizes the case and contends that there is no genuine dispute of material fact. Thus, in Plaintiff's view, he is entitled to summary judgment in his favor. Although Plaintiff is correct that Defendant has not disputed the basic facts of this case, as discussed above, the statute of limitations bars his claims.

III. CONCLUSION

For the reasons set forth above, the Court will grant Defendant's Motion for Summary Judgment, but deny Plaintiff's Motion for Summary Judgment.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TROY LAMONT MOORE, SR.	:	CIVIL ACTION
	:	NO. 14-3873
Plaintiff,	:	
	:	
v.	:	
	:	
LOUIS GIORLA, et al.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this **28th** day of **March, 2018**, upon consideration of Plaintiff's Motion for Summary Judgment (ECF No. 60), Defendant's Motion for Summary Judgment (ECF No. 65), Plaintiff's response in opposition thereto (ECF No. 66), and for the reasons set forth in the accompanying memorandum opinion, it is hereby **ORDERED** as follows:

1. Plaintiff's Motion for Summary Judgment (ECF NO. 60) is **DENIED.**

2. Defendant's Motion for Summary Judgment (ECF No. 65) is **GRANTED.**

3. The clerk shall mark the case as closed.

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TROY LAMONT MOORE, SR.	:	CIVIL ACTION
	:	NO. 14-3873
Plaintiff,	:	
	:	
v.	:	
	:	
LOUIS GIORLA, et al.	:	
	:	
Defendants.	:	

JUDGMENT

AND NOW, this **28th** day of **March, 2018**, in accordance with the Court's Memorandum and accompanying Order, it is **ORDERED** that **JUDGMENT** is **ENTERED** in favor of Defendant against Plaintiff.

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT
CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

TELEPHONE
215-597-2995

April 18, 2018

Kate Barkman, Clerk of Court
United States District Court
2609 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1796

Re: Moore v. Giorla, et al.
E.D. Pa. No. 2-14-cv-03873

Dear Ms. Barkman:

Pursuant to Rule 4(d), Federal Rules of Appellate Procedure, and Rule 3.4, Third Circuit Local Appellate Rules, we are forwarding the attached notice of appeal from the District Court Memorandum Opinion (#67), Order (#68) and Judgment (#69) entered 3/28/18 which was filed with this office in error. See Rule 3(a)(1), Federal Rules of Appellate Procedure and Rule 3.4, Third Circuit Local Appellate Rules. **The notice was postmarked 4/6/18 and should be docketed as of that date.**

This document is being forwarded solely to protect the litigant's right to appeal as required by the Federal Rules of Appellate Procedure and Rule 3.4, Third Circuit Local Appellate Rules. Upon receipt of the document, kindly process it according to your Court's normal procedures. If your office has already received the same document, please disregard the enclosed copy to prevent duplication.

Pursuant to Rule 3(a)(1), Federal Rules of Appellate Procedure, a notice of appeal must be filed with the Clerk of the District Court. This Court may not act on an appeal until the notice has been docketed in the District Court and certified to this Court by the District Court Clerk.

Thank you for your assistance in this matter.

Very truly yours,

By: /s/ Patricia S. Dodszuweit
Clerk

PSD/tyw
Enclosure
cc: (Troy Lamont Moore, Sr.w/out enclosure)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TROY LAMONT MOORE, SR.,	:	CIVIL ACTION
	:	NO. 14-3873
Plaintiff,	:	
	:	
V.	:	
	:	
LOUIS GIORLA, et al.	:	
	:	
Defendants.	:	

NOTICE OF APPEAL

This is an appeal relating to the District Court decision dated 28 March 2018. The District Court has erred in deviating from its order dated 8 Feb 2016, regarding civil action No. 14-3873, Plaintiff Moore's claim against "Defendant Walden" was dismissed without prejudice in the order dated 18 Dec 2015. Plaintiff has now correctly identified this defendant as "Corrections Officer Saajida Walton". Judge Robreno noted in this order that the new civil action **[No. 16-0242]** was opened in error and instructed the clerk to close the action **[16-0242]** and the complaint shall be docketed as an amended complaint pursuant to action **[No. 14-3873]**. The court continued by stating the amended complaint is to be filed and the summons to be issued upon the defendant by the U.S. Marshals Service.

See attached reproduced order as [EXHIBIT A]

ARGUMENT

On 24 July 2017, the District Court ordered a telephone conference to consider Defendant Walton's motion to dismiss with the Honorable Judge Eduardo C. Robreno. Aaron Shotland, Esq. was to make the appropriate arrangements to make available, by telephone, Plaintiff/prisoner Troy Lamont Moore Sr. [inmate No. : MX-9664]. After hearing and reviewing opposing arguments, Judge Robreno [on record] ruled against Defendant Walton's motion on the grounds that Plaintiff Moore utilized every possible means to correctly identify Defendant Walton with due diligence and the statue of limitations was met. Refer to 8 Feb 2016 order **[EXHIBIT A]** and 14 June 2017 conference order **[EXHIBIT B]**, declaring the **[16-0242]** civil action was opened in error, shall be closed and the **[14-3873]** civil action shall stand as an amended complaint correctly identifying Defendant Walton.

Plaintiff Moore demands that the transcripts be transmitted to the 3rd Circut Court for inspection. **SEE ATTACHED REPRODUCED ORDER AS [EXHIBIT B].**

RELIEF

Wherefore, the Plaintiff prays that the 3rd Circut Court remands this action to the District Court with instruction to correct it's error of not being time barred and schedule for trial.

" EXHIBIT A "

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TROY LAMONT MOORE, SR. : CIVIL ACTION

v. :

CORRECTIONS OFFICER S. WALTON : NO. 16-0242

O R D E R

AND NOW, this 8 day of February 2016, because it appears that this complaint was opened in error[1], it is hereby ORDERED that the Clerk shall CLOSE this action, and plaintiff's complaint shall be docketed as an amended complaint in Civil Action No. 14-3873. The amended complaint is to be filed and the summons is to be issued. Service of the summons and the complaint is to be made upon the defendant by the U.S. Marshals Service.

BY THE COURT:

EDUARDO C. ROBRENO, J.

[1] In Civil Action No. 14-3873, plaintiff's claims against "Defendant Walden" were dismissed without prejudice in my Order dated December 18, 2015. Plaintiff has now correctly identified this defendant as "Corrections Officer S. Walton".

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TROY LAMONT MOORE, SR.	:	CIVIL ACTION
	:	
VS.	:	NO.: 14-CV-03873
	:	
LOUI9S GIORLA, ET AL.	:	

O R D E R

AND NOW, on this 14th day of **June, 2017,** it is hereby **ORDERED** that a telephone conference to consider Defendant's Motion to Dismiss (ECF No.: 59) will be held on **July 24, 2017 at 2:00 p.m. with the Honorable Eduardo C. Robreno. Aaron Shotland, Esquire, shall make the appropriate arrangements to make available, by telephone, plaintiff/prisoner Troy Lamont Moore, Sr. (Inmate No.: MX-9664). Once all parties are on the line, the call should be placed directly to the Judge's Chambers, on the date and time above, at 215-597-4073.**

IT IS SO ORDERED.

/s/ Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

CERTIFICATE OF SERVICE

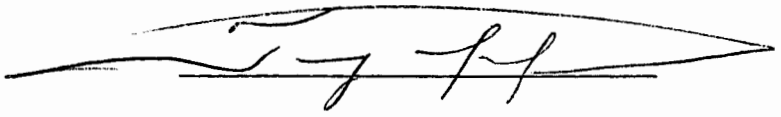
I, Troy L. Moore Sr., hereby certify that on 9 April 2018, I caused to be served a true and correct copy of the foregoing document titled Argument and Relief by Troy L. Moore to support motion for appeal to the following :

VIA U.S. MAIL :

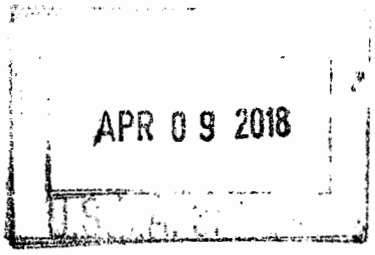
Aaron Shotland
City of Philadelphia Law Dept.
1515 Arch St., 14TH FL.
Phila, Pa. 19101

Respectfully Submitted,

Troy L. Moore Sr. (MX-9664)
SCI Forest CB-1030
Po Box 945
Marienville, Pa. 16239



APRIL 9, 2018



Office of the clerk
United States Court of Appeals
21400 U.S. Courthouse
601 Market Street
Philadelphia, Pa. 19106

INRE : MOORE V. GIORLA, et al.

CIVIL ACTION NO. 14-3873

Dear Clerk,

Enclosed please find a copy of notice of appeal along with a declaration to be filed timely. Please forward me the Informa Pauperis to complete and be filed. Thank you in advance for your time and consideration on the above stated matter.

Respectfully Submitted,

Troy L. Moore Sr. (MX-9664)
SCI Forest CA-1030
Po Box 945
Marienville, Pa. 16239

Inmate Name TROY L. MOORE SR. DC# MX-9664
Housing Unit: CA-1030
SCI Forest
PO Box 945
Marienville, PA 16239

INMATE
MAIL

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Office of the Clerk
United States Court of Appeals
21400 U.S. Courthouse
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Philadelphia, Pa. 19106

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