IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

THE NATIONAL FEDERATION OF THE BLIND OF VIRGINIA, et al.,

Plaintiffs,

v. Case No. 3:23-cv-127

VIRGINIA DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

BRIEF IN SUPPORT OF MOTION TO DISMISS ON BEHALF OF DEFENDANT PRANAY GUPTA, M.D.

COMES NOW Defendant Pranay Gupta, M.D. ("Dr. Gupta), by counsel, pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, and moves the Court to enter an Order dismissing with prejudice this action against Dr. Gupta. In support, Dr. Gupta states as follows:

FACTUAL BACKGROUND

The National Federation of the Blind of Virginia and seven individuals (referred to collectively herein as "Plaintiffs") filed a Twelve Count Complaint (Doc. 1) against numerous individual and corporate Defendants stemming from the care rendered to the individual Plaintiffs while incarcerated with the Virginia Department of Corrections ("VDOC"). Pl's. ¶¶ 1-75. In sum, Plaintiffs allege that Defendants violated their constitutional rights and/or were negligent by failing to accommodate and provide necessary medical treatment concerning their visual impairment. *Id.* at ¶¶1-5.

The sole claims against Dr. Gupta are found in Counts Eight (violation of the Eighth Amendment to the U.S. Constitution and 42 U.S.C. § 1983) and Twelve (negligence) of Plaintiffs'

Complaint stemming from his involvement in the care rendered to a single Plaintiff, William Stravitz ("Stravitz"). *Id.* at ¶¶ 239-247, 333-343, & 368-374. The facts are as follows:

- Stravitz claims that he suffers from vision loss due to cataracts that were initially diagnosed in the Fall of 2021. *Id.* at ¶ 239.
- In March 2022, Dr. Gupta[1] examined Stravitz, diagnosed him with cataracts, and told Stravitz that he would schedule him for surgery to have the cataracts removed. *Id*. at ¶ 240.
- Stravitz submitted multiple requests to Defendant VDOC to see the surgeon. *Id*. at ¶ 241.
- Although Stravitz was scheduled to see Dr. Gupta on August 9, 2022, Defendant VDOC did not give Stravitz the prerequisite PCR Covid-19 test thereby resulting in Dr. Gupta's refusal to see Stravitz. *Id.* at ¶ 242.
- When Stravitz tested negative for Covid-19 on September 20, 2022, Defendant VDOC did not take Stravitz to see Dr. Gupta. *Id.* at ¶ 243.
- Despite Stravitz's inquiries about a new appointment, the Co-Defendants have not scheduled Stravitz's follow-up appointment with Dr. Gupta or taken any action to get him surgery for his cataracts. *Id*. at ¶¶ 244-45.
- Likewise, the Co-Defendants have not provided Stravitz with eyeglasses because he is going to undergo surgery. *Id*. at ¶ 246.

[1] Dr. Gupta is not employed by nor does he work for the corporate Defendants identified in this action. He is a private practitioner in Colonial Heights. In fact, the caption of the Complaint identifies that the action is against Dr. Gupta "in his individual capacity." *See* Compl.

- Stravitz claims that his vision has become progressively worse as he awaits surgery, which has allegedly led to increased discomfort, mental anguish, and emotional distress. *Id*. at 247.

In Count Eight for the alleged Violation of Stravitz's Civil Rights under the Eighth Amendment, Stravitz claims that he has cataracts that constitute a serious medical condition that jeopardizes his vision, and that Dr. Gupta acted with deliberate indifference to his needs by refusing to provide surgical treatment for his cataracts. *Id*. at ¶¶ 333-43. As a result, Stravitz claims that he suffers from further vision loss, physical discomfort, depression, anxiety, mental anguish, emotional distress and future harm and undetermined pecuniary losses. *Id.* at ¶¶ 339, 343.

In Count Twelve for alleged negligence, Stravitz claims that Dr. Gupta's aforementioned actions breached the standard of care owed to Stravitz thereby entitling him to monetary damages for mental anguish and emotional distress. *Id.* at ¶¶ 368-374. Because of this claim, Dr. Gupta sent a letter to Plaintiffs' counsel on March 13, 2023 requesting they comply with § 8.01-20.1 of the *Code of Virginia* by producing the statutorily required expert certification within ten (10) business days. A copy of the correspondence is attached hereto as Exhibit A. As such, Plaintiff had until March 27, 2023 to comply with Virginia law. On March 20, 2023, Plaintiffs responded by stating that an expert witness certification was not required pursuant to the *Federal Rules of Civil Procedure* due to the Fourth Circuit's holdings in *Pledger* and *Zupko*. A copy of Plaintiffs' correspondence is attached hereto as Exhibit B.

All allegations against Dr. Gupta as set forth in Plaintiffs' Complaint must be dismissed with prejudice because: (1) the Complaint fails to allege facts sufficient to support an Eighth Amendment violation against Dr. Gupta; (2) the Complaint fails to allege facts sufficient to support a cause of action for negligence; and (3) Plaintiffs failed to comply with § 8.01-20.1 of the *Code*

of Virginia. Even if Court denies the Rule 12(b)(6) Motion to Dismiss, it should decline to exercise jurisdiction over the pendent state law negligence cause of action.

STANDARD OF REVIEW

"Pursuant to the Prison Litigation Reform Act ("PLRA"), this Court must dismiss any action filed by a prisoner if the Court determines the action (1) 'is frivolous' or (2) 'fails to state a claim for which relief may be granted."' *Gray v. English*, 2023 U.S. Dist. LEXIS 27282, at *2 (E.D. Va. 2023). A motion to dismiss under Rule 12(b)(6) tests the Complaint's legal and factual sufficiency. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677-80, 129 S. Ct. 1937, 1948-50 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554-63, 127 S. Ct. 1955, 1965-70 (2007). In ruling on a motion to dismiss, the court must construe the facts and reasonable inferences "in the light most favorable to the nonmoving party." *Massey v. Ojanit*, 759 F.3d 343, 347 (4th Cir. 2014). Still, Stravitz must allege "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1965. Likewise, the Court need not "accept legal conclusions drawn from the facts," or "unwarranted inferences, unreasonable conclusions, or arguments." *E. Shore Markets, Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000).

I. Count Eight of the Complaint fails to allege any facts which establish that Dr. Gupta violated Stravitz's Eighth Amendment rights or § 1983.

For an inmate to assert an Eighth Amendment claim, the inmate must allege facts sufficient to "demonstrate a deliberate indifference to a serious medical need." *Caudill v. Sw. Va. Reg'l Jail Auth.*, 2023 U.S. Dist. LEXIS 16077 (W.D. Va. 2023). There are two prongs that need to be met for a plaintiff to survive a motion to dismiss: a subjective and an objective prong. *Id*. at *11-13. To satisfy the subjective "deliberate indifference" prong, a plaintiff is required to "assert facts sufficient to form an inference that 'the [defendant] in question subjectively recognized a

substantial risk of harm' and 'that the [defendant] in question subjectively recognized that his or her actions were inappropriate in light of that risk.'" *Gray*, 2023 U.S. Dist. LEXIS 27282, at *8. General knowledge of facts that create a substantial risk of harm is insufficient. *Id.* at *7-8; *see also Caudill*, 2023 U.S. Dist. LEXIS 16077, *12 (it is not sufficient to meet the standard if the defendant should have recognized it). Rather, a plaintiff must plead facts to support that the defendant had actual knowledge of and disregarded the excessive risk to the inmate, and drew an inference that serious harm existed. *Id*. at *7. "Deliberate inference is a very high standard—a showing of mere negligence will not meet it." *Id*. (citations omitted). "The treatment must be so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *Thomas v. Stephens*, 2011 U.S. Dist. LEXIS 43354, at *10 (W.D. Va. 2011). Deliberate indifference is generally demonstrated by intent or reckless disregard. *Id.* at *10-11.

To satisfy the objective "serious medical need" prong, a plaintiff must plead facts to support that the plaintiff had a serious medical need such that the harm inflicted or the deprivation suffered was sufficiently serious. *Villarreal v. Dixon*, 2021 U.S. Dist. LEXIS 123206, *9 (E.D. Va. 2021). "A medical need serious enough to give rise to a constitutional claim involves a condition that places the inmate at a substantial risk of serious harm **usually loss of life or permanent disability, or a condition for which lack of treatment perpetuates severe pain**." *Caudill*, 2023 U.S. Dist. LEXIS, at *12-13 (emphasis added). Thus, an inmate must allege facts to support "a serious or significant physical or emotional injury resulting from the challenged conditions." *Gray*, 2023 U.S. Dist. LEXIS 27282, at *7. In fact, District Courts have held that it is unlikely that cataracts constitute a serious medical need. *See e.g.*, *Gary v. Wang*, 2015 U.S. Dist. LEXIS 34933 (W.D. Va. 2015) (the plaintiff failed to establish a serious medical need or the physician's deliberate indifference when the plaintiff did not inform the physician he was

experiencing eye pain from his cataracts); *Thomas*, 2011 U.S. Dist. LEXIS 43354 (cataracts essentially never cause permanent blindness and his cataracts did not cause blindness); *Hurt v. Mahan*, 2009 U.S. Dist. LEXIS 79295 (E.D. Va. 2009) (it is doubtful that a cataract is a serious medical need to support an Eighth Amendment violation).

When a plaintiff fails to meet either of these prongs, dismissal of the claim is warranted. *See e.g., Caudill*, 2023 U.S. Dist. LEXIS 16077, at *8-16 (dismissal was granted when neither prong was met after an inmate's broken arm was handcuffed behind his back); *Gray*, 2023 U.S. Dist. LEXIS 27282, at *4-9 (dismissal was granted when exposure to extreme temperatures in a prison cell did not meet either of the prongs); *Barnes v. Mullins*, 2021 U.S. Dist. LEXIS 157892, * 1-12, 15-20 (W.D. Va. 2021) (dismissal was granted when the private physician's assistant diagnosed the inmate's back pain and gave recommendations for treatment, but the prison officials did not follow the recommendations and for this reason (and others) the claim did not rise to the level of deliberate indifference)[2]; *Hurt*, 2009 U.S. Dist. LEXIS 79295 (dismissal was granted when neither prong was met).

In the instant action, Plaintiffs failed to plead facts sufficient to meet either the subjective or the objective prong. Pursuant to Plaintiff's Complaint, Dr. Gupta diagnosed Stravitz with cataracts, told him that he would schedule surgery to have them removed, and when the pre-operative measurements and consent visit date came, Co-Defendant VDOC had not given Stravitz a Covid-19 test, as a result of which Dr. Gupta had to cancel that appointment. After Co-Defendant VDOC gave Stravitz the Covid-19 test, VDOC allegedly did not take Stravitz to see Dr. Gupta and Co-Defendant VDOC has allegedly not scheduled the surgery. There is nothing

[2] The instant case is analogous to the *Barnes* case because here, as there, Dr. Gupta was a consulted medical specialist who could only make treatment recommendations—he is not in a position to interact with Stravitz under the same circumstances or freedom as a private citizen.

about these facts to suggest that Dr. Gupta knew that VDOC would not test Stravitz for Covid-19 prior to the pre-op visit, that Stravitz would not return after his Covid-19 test was taken in September 2020, or that he even had any ability to control (or even involvement with) the rescheduling of Stravitz's appointment or surgery thereafter. Likewise, there is nothing about these facts to support that requiring a Covid-19 test prior to an outside medical appointment is inappropriate or would somehow shock the conscience. In fact, in this continued health crisis, it is a routine practice for healthcare providers to request Covid-19 tests prior to office visits or surgery to protect the patient, the treating healthcare providers, and the other patients that may be waiting to be seen. As such, the Complaint fails to allege facts sufficient to establish that Dr. Gupta knew of and disregarded a substantial risk of harm to Stravitz that would meet the "deliberate indifference" standard.

Similarly, the Complaint fails to allege facts that Stravitz suffered a serious medical need. Although Stravitz asserts that he has cataracts that are progressive, interfere with his vision, and cause him discomfort, none of the alleged facts demonstrate that Stravitz would suffer from a permanent or life-threatening condition, or that he was in severe pain. In fact, paragraph 240 of the Complaint asserts that the cataracts can be "removed" with surgery. If the cataracts can be removed, the only logical conclusion that can be drawn is that Stravitz has not and will not suffer a permanent injury due to any alleged delay in surgery. In fact, several District Courts have previously held that cataracts are not a serious medical need and dismissed plaintiffs' complaints for failing to meet the objective prong.

Because Plaintiffs failed to plead facts sufficient to support the subjective or the objective prongs, Stravitz's claim against Dr. Gupta for violation of his Eighth Amendment Rights must be dismissed with prejudice.

II. Count Twelve of the Complaint fails to allege any facts which establish that Dr. Gupta was negligent.

Even in the light most favorable to Plaintiffs, the Complaint fails to allege facts sufficient to support a cause of action against Dr. Gupta for negligence arising from the care and treatment rendered by him to Stravitz. As a preliminary matter, the allegations set forth in the Twelfth Claim for Relief: Negligence (paragraphs 368 through 374) are simply legal conclusions and, thus, dismissal is proper under *Twombly*. 550 U.S. at 555, 127 S.Ct. at 1965.

Equally important, Plaintiffs' failure to assert a cause of action against Dr. Gupta for medical malpractice pursuant to the Virginia Medical malpractice Act ("VMMA") is fatal to Stravitz's claim against him. *See Washington v. Brooks*, 2021 U.S. Dist. LEXIS 207146, *1-11 (E.D. Va. 2021). The Eastern District of Virginia's (Richmond Division) holding in *Washington* is particularly instructive in the instant action. *See Id*. In *Washington*, the plaintiff inmate filed an action against several defendants asserting that they were negligent in treating and responding to the plaintiff's medical emergencies. *Id.* at *2. Specifically, the plaintiff alleged that the "[d]efendants' failure to administer immediate medical attention following his hypoglycemic attacks exacerbated his conditions . . . Further, he states that '[d]efendants' delay in providing plaintiff with diabetic shoes and physical therapy restricted him to a wheelchair for approximately seventeen months." *Id.* at *8-9. The plaintiff also claimed that the defendants failed to provide "adequate nutrition," and "access to medical care." *Id.* *9-10. After finding that all of the allegations involved a delay in administering medical treatment or "denial of access to medical care" to an individual patient, the District Court held that the allegations fall "within the scope of medical malpractice." *Id.* at *9-10. Because the plaintiff filed a claim for negligence and "fail[ed] to allege that [the defendants] acted negligently outside the scope of medical malpractice as defined

by the VMMA," the District Court held that the plaintiff failed to state a claim and dismissed the negligence claim with prejudice. *Id.* at *11.

The facts alleged in *Washington* are similar to the instant action. Stavitz's claims against Dr. Gupta stem from the care and treatment rendered to Stravitz and for the alleged delay in surgery to have his cataracts removed, these allegations give rise to a medical malpractice action under the VMMA and not a simple negligence action as pled in Plaintiffs' Complaint. Following this Court's holding in *Washington*, the proper remedy is to dismiss the negligence action against Dr. Gupta with prejudice.

Even if this Court were not inclined to dismiss the negligence actions for the reasons stated above, dismissal of the Twelfth Count remains proper because the facts, as alleged, do not give rise to a negligence claim. In order to establish a *prima facia* case for Stravitz's negligence claim, Stravitz is required to set forth facts to support the following: (i) the existence of a legal duty from Dr. Gupta to Stravitz; (ii) the applicable standard of care, (iii) that Dr. Gupta breached the standard of care, and (iv) that Dr. Gupta's breach proximately caused injury to Stravitz. *Raines v. Lutz*, 231 Va. 110, 113, 341 S.E.2d 194 (1986); *Didato v. Strehler*, 262 Va. 617, 627, 554 S.E.2d 42 (2001). The failure to establish **any** of these elements is fatal to any cause of action under the VMMA. Simple negligence requires proof of "heedlessness, inattention [or] inadvertence." *Green v. Ingram*, 269 Va. 281, 292, 608 S.E.2d 917, 923 (2005).

The facts asserted in the Complaint are insufficient to allege a claim against Dr. Gupta for medical malpractice or negligence. For example, diagnosing cataracts, recommending surgery for cataract removal, setting up a pre-operative appointment, and then delaying surgery because Defendant VDOC did not administer a Covid-19 test prior to the pre-op appointment does not rise to the level of negligence. Further, Stravitz failed to allege that Dr. Gupta subsequently became aware that he had been administered a Covid-19 test in September, that Dr. Gupta refused to

reschedule Stravitz's appointment following that test, that Dr. Gupta failed to schedule Stravitz's surgery, that Dr. Gupta had any ability to control the Covid-19 testing at the prison, that Dr. Gupta had any ability to transfer Stravitz from the VDOC to his office for an appointment or to the surgery center for surgery, or that Dr. Gupta failed to transfer Stravitz to his office or the surgery center after his Covid-19 test was completed. In fact, Plaintiff's Complaint asserts that other Defendants were responsible for referral requests for diagnostic studies and specialty care, and assessing, approving, or denying prisoners' requests for accommodations, and that prisoners are expected to request their appointments with health care professionals to address a medical concern. Pl's Compl. ¶¶ 71-72, 101. There is simply nothing in the Complaint that establishes heedlessness, inattention or inadvertence (or, more importantly, a breach of the applicable standard of care) by Dr. Gupta pertaining to his care and treatment of Stravitz. Further, the Complaint fails to allege facts to support that he was injured by any act or omission by Dr. Gupta. According to the Complaint, Stravitz had cataracts for approximately five months before being examined by Dr. Gupta. Without such facts, which Plaintiffs could not possibly allege with straight faces, Stravitz's claim against Dr. Gupta for negligence fails and it should be dismissed with prejudice.

III. This Court should dismiss with prejudice Count Twelve due to Plaintiffs' failure to comply with § 8.01-20.1 of the *Code of Virginia*.

In Virginia, a plaintiff must pursue a medical malpractice action if the issue arises out of the care and treatment rendered to a patient. *Whittaker v. O'Sullivan*, 2022 U.S. Dist. LEXIS 142459, *12 (E.D. Va. August 2022). When a medical malpractice action is not filed in connection with a claim under the Federal Torts Claim Act, Virginia law requires a plaintiff to comply with § 8.01-20.1 of the *Code of Virginia*. Compare *id.* with *Zupko v. U.S.*, 2022 U.S. App. LEXIS 2464 (4th Cir. 2022) and *Pledger v. Lynch*, 2021 U.S App. LEXIS 21587 (4th Cir. July 21, 2021). Section 8.01-20.1 states

> Every motion for judgment . . . in a medical malpractice action, at the time the plaintiff requests service of process upon a defendant . . . shall be deemed a certification that the plaintiff has obtained from an expert witness whom the plaintiff reasonably believes would qualify as an expert witness pursuant to subsection A of § 8.01-581.20 a written opinion signed by the expert witness that, based upon a reasonable understanding of the facts, the defendant for whom service of process has been requested deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. This certification is not necessary if the plaintiff, in good faith, alleges a medical malpractice action that asserts a theory of liability where expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the jury's common knowledge and experience.

Va. Code Ann. § 8.01-20.1. This statute further sets forth that

> [u]pon written request of any defendant, the plaintiff shall, within 10 business days after receipt of such request, provide the defendant with a certification form that affirms that the plaintiff had obtained the necessary certifying expert opinion at the time service was requested or affirms that the plaintiff did not need to obtain a certifying expert witness opinion. . . If the plaintiff did not obtain a necessary certifying expert opinion at the time the plaintiff requested service of process on a defendant as required under this section, the court **shall impose sanctions according to the provisions of § 8.01-271.1 and may dismiss the case with prejudice**.

Id.; *see also* *Whittaker*, 2022 U.S. Dist. LEXIS 142459, at *12. District Courts have consistently dismissed plaintiffs' claims for failure to comply with § 8.01-20.1. *See, e.g.*, *Whittaker*, 2022 U.S. Dist. LEXIS 142459, at *12, *Villarreal*, 2021 U.S. Dist. LEXIS 123206, *13-14. It is only when the plaintiff files a cause of action under the Federal Torts Claim Act ("FTCA") that the Fourth Circuit has held that an expert certification is not required because the cause of action is a purely federal claim. *See Pledger*, 2021 U.S. App. LEXIS 21587, *13-20 (failure to comply with the West Virginia expert certification statute was not grounds for dismissal in an FTCA action); *Zupko*, 2022 U.S. App. LEXIS 2464, *1-2 (remanded the plaintiff's FTCA claims after they were dismissed for failure to obtain expert certification).

More recently, in *Whittaker*, the plaintiff filed a non-FTCA action against the medical defendants alleging they were negligent by, amongst other things, failing to provide medication to

the plaintiff. *Id*. The Eastern District of Virginia, Judge Gibney, held that the plaintiff did not certify that he had an expert witness, and the facts as alleged did not indicate that his claim fell within the "jury's common knowledge and experience." *Id.* at *13. Relying on § 8.01-20.1 and § 8.01-271.1 of the *Code of Virginia*, the District Court dismissed the plaintiff's action against the medical defendants for failure to comply with the expert witness opinion requirement. *Id.*

The Fourth Circuit's holdings in *Pledger* and *Zupko* are distinguishable and inapplicable in the instant action because Plaintiffs did not file their claims under the FTCA and, thus, Virginia's § 8.01-20.1 controls. The District Court solidified this distinction when the Court dismissed the plaintiff's action for failing to comply with the expert certification requirements in *Whittaker*, which was decided after the Fourth Circuit's opinions in *Pledger* and *Zupko*. At worst, Plaintiffs' position as stated in Exhibit B is an incorrect overstatement of the law, at best, it is an incomplete response suggesting (in a footnote) that Stravitz "in good faith, alleges a medical malpractice action that asserts a theory of liability where expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the jury's common knowledge and experience."

As counsel for Dr. Gupta pointed out to Plaintiffs' counsel in her March 29, 2023 letter seeking an actual expert certification or dismissal: "We cannot believe that your client has a good faith basis to so claim when the issue concerns the development of, progression of, medical significance of, detection and diagnosis of, and timeliness of surgical treatment for cataracts by the medical and surgical specialty of ophthalmology." A copy of that correspondence is attached hereto as Exhibit C. As Judge Gibney noted in *Whittaker*, "The exception is limited to "rare instances" when an expert is not necessary to establish the standard of care, whether the defendant breached the standard of care, and whether the breach caused the alleged harm. *Beverly Enters.-Va., Inc. v. Nichols*, 247 Va. 264, 267, 441 S.E.2d 1, 3, 10 Va. Law Rep. 995 (1994)." *Whittaker*, 2022 U.S. Dist. LEXIS 142459, at *12 (footnote omitted). Because Plaintiff has not complied

with Virginia's expert certification requirements, this Court should dismiss Plaintiffs' action against Dr. Gupta with prejudice as this Court did in *Whittaker* just seven months ago.[3]

IV. This Court should decline to exercise supplemental jurisdiction over the negligence claim in Count Twelve, and dismiss the Complaint against Dr. Gupta with prejudice.

Of the twelve claims filed against Defendants, only three counts pertain to state law negligence causes of actions against certain individual Defendants. *See* Pl's Compl. ¶¶ 353-74. As stated above, the only negligence claim against Dr. Gupta is found in Count Twelve. *Id.* at 368-74. Although, a District Court can exercise supplemental jurisdiction over pendant state law claims when it has jurisdiction over the federal claims that arise from the same case or controversy, it also has the right to decline the pendant state law claims, including negligence, pursuant to 28 U.S.C. § 1367. *Sawyer v. Stolle*, 2011 U.S. Dist. LEXIS 146230, *10 (E.D. Va. 2011) (citation omitted). "Pendent jurisdiction under 28 U.S.C. § 1367 is a doctrine of discretion, not of plaintiff's right." *Sawyer*, 2011 U.S. Dist. LEXIS 146230, at *11 (citations omitted). "The doctrine of pendant jurisdiction is thus a doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodates a range of concerns and values." *Id*. at *11. The District Courts should "deal with cases involving pendent claims 'in the manner that best serves the principles of economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine." *Id.* at *11-12. In fact, 28 U.S.C. § 1367(c) expressly allows the District Courts to decline to exercise supplemental jurisdiction if:

> (1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

[3] Despite our efforts to convince Plaintiffs' counsel of the error of their position, they persist in the belief that no expert certification is required. A copy of Plaintiffs' response letter is attached hereto as Exhibit D.

Id. at *12. In *Sawyer*, the plaintiff alleged Eighth and Fourteenth Amendment violations and state negligence claims against several defendants regarding the medical care and treatment rendered to him while an inmate. *Id.* at *1-2. The plaintiff alleged that the defendants failed to fill decedent's medications, which ultimately resulted in him falling and striking his head. *Id.* *7-8. Thereafter, the decedent collapsed and was seen by the infirmary and released back to his prison cell. *Id.* at *8. While in is cell, he became drowsy, was vomiting, and in distress. *Id.* at *9. The decedent was diagnosed with a brain hemorrhage, and died several days later. *Id.* Although the District Court had jurisdiction over the plaintiff's Civil Rights claims, it declined to exercise supplemental jurisdiction over the pendant state claims. *Id.* at *10. The District Court rationalized that

> trying Plaintiff's negligence claims alongside her § 1983 claims has the potential to substantially confuse the jury. **The standard of review applicable to each set of claims—deliberate indifference on the one hand, and negligence on the other—is apt to confuse any jury, no matter how clearly instructions are given. It is for this precise reason that other courts have found that negligence theories are 'inconsistent and incompatible' with civil rights claims for purposes of pendent jurisdiction.**

Id. at *12 (citations omitted) (emphasis added). Accordingly, the District Court dismissed the plaintiff's pendant state law claims pursuant to 28 U.S.C. § 1367(c).

In the instant action, Plaintiffs asserted the following federal question causes of action against Defendants: (1) violation of Title II of the Americans with Disabilities Act; (2) violation of Section 504 of the Rehabilitation Act; (3) violation of the Eighth Amendment to the U.S. Constitution; and (4) violation of the Fourteenth Amendment to the U.S. Constitution. The state law claim asserted against Dr. Gupta, which is the only state law claim at issue for purposes of this

Motion, is for negligence.[4] Adopting the District Court's holding in *Sawyer*, it is likely that a jury will have a difficult time separating the multiple federal question violations from the negligence cause of action. Each of these allegations have different elements of proof, which will do little more than confuse the jury. Further, in medical malpractice actions, the parties will rely heavily on medical expert opinion testimony which results in: presenting evidence that may be irrelevant in the federal question claims; would lengthen the number of days needed for trial;[5] and would alter the amount of damages that could be awarded in this action as Plaintiffs' claims against Dr. Gupta are limited to the VMMA cap set forth in § 8.01-581.15 of the *Code of Virginia*.[6] Thus, the negligence cause of action set forth in Count Twelve should be dismissed for these reasons.

WHEREFORE, for the foregoing reasons and those to be stated on brief and at oral argument, Defendant Pranay Gupta, M.D. respectfully requests that this Court grant his Motion to Dismiss and dismiss with prejudice Counts Eight and Twelve of the Complaint against him.

PRANAY GUPTA, M.D.

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[4] The remaining state law claims against other Defendants are for (1) violation of the Virginia with Disabilities Act, (2) breach of ministerial duty to procure accessible technology, (3) violation of the information technology accessible act (which Plaintiffs voluntarily dismissed), and (4) gross negligence. Allegations (1) through (3) are more closely aligned with the federal question allegations. However, the negligence and gross negligence causes of action are clearly outliers.

[5] Based on the experience of the undersigned, it is anticipated that trying only the negligence cause of action against Dr. Gupta would require at least two or three days.

[6] If Stravitz prevailed against Dr. Gupta, he would be limited to $2.55 million as a recovery.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March 2023, I filed the foregoing electronically with the Clerk of the Court using the CM/ECF system, with copies to the following attorneys:

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