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-HEH

VIRGINIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

PLAINTIFF WILLIAM STRAVITZ'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS ON BEHALF OF DEFENDANT PRANAY GUPTA, M.D.

INTRODUCTION

Plaintiff William Stravitz has pled sufficient facts to allege both an Eighth Amendment deliberate indifference claim, and a medical malpractice claim against Dr. Gupta. In addition, contrary to Dr. Gupta's assertions, Mr. Stravitz need not provide an expert witness certification to comply with the Virginia Medical Malpractice Act's procedural requirements because Mr. Stravitz brings his state law, medical malpractice claim in federal court. Finally, this Court should exercise its supplemental jurisdiction over Mr. Stravitz's state law claim against Dr. Gupta because the medical malpractice claim and the Eighth Amendment claim—over which this Court has original jurisdiction—"form part of the same case or controversy," 28 U.S.C. § 1367(a), and Dr. Gupta has failed to identify exceptional circumstances such that this Court could decline to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)(4).

STATEMENT OF FACTS

Plaintiffs National Federation of the Blind of Virginia and seven individual prisoners incarcerated by the Virginia Department of Corrections ("VODC") filed suit challenging

inaccessible services and deficient medical treatment in violation of their constitutional rights and applicable federal and state disability civil rights laws. *See generally* Compl. ¶¶ 1–5. The claims against Defendant Dr. Pranay Gupta are found in Counts Eight and Twelve of the Complaint. *Id.* at ¶¶ 239–47, 333–43, 368–74.

Plaintiff William Stravitz is a visually impaired prisoner currently housed at Deerfield Correctional Center. *Id.* at ¶¶ 45, 49. Mr. Stravitz's vision loss is caused by cataracts that were initially diagnosed in the fall of 2021. *Id.* ¶ 239. Mr. Stravitz's diagnosis was subsequently confirmed by Defendant Dr. Gupta, who told him that he would schedule him for surgery to have his cataracts removed. *Id.* at ¶ 240. Mr. Stravitz has submitted multiple requests to schedule his cataract surgery since March 2022, but has yet to see a surgeon. *Id.* at ¶ 241.

Mr. Stravitz has yet to receive either a follow-up appointment with Defendant or any action to remove his cataracts. *Id.* at ¶ 244–45. Mr. Stravitz's vision is progressively deteriorating while he awaits surgery, which has caused him increased physical discomfort, mental anguish, and emotional distress. *Id.* at ¶ 247.

STANDARD OF REVIEW

A party moving to dismiss a complaint pursuant to Rule 12(b)(6) bears the burden of demonstrating that the plaintiff's claims are legally insufficient, and that the plaintiff has stated no claim for relief that is plausible on its face. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A complaint need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Ray v. Roane*, 948 F.3d 222, 226 (4th Cir. 2020) (alteration in original) (quoting *Tobey v. Jones*, 706 F.3d 379, 387 (4th Cir. 2013)). In considering a Rule 12(b)(6) motion, the court must "accept as true all of the factual allegations contained in the complaint and draw all reasonable inferences in favor of the plaintiff." *King v. Rubenstein*, 825

F.3d 206, 212 (4th Cir. 2016). The court must also "construe the complaint 'liberally so as to do substantial justice.'" *Bd. Of Trs. v. Four-C-Aire, Inc.*, 929 F.3d 135, 152 (4th Cir. 2019) (quoting *Hall v. DIRECTV, LLC*, 846 F.3d 757, 765 (4th Cir. 2017)). The court does not "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses" through a Rule 12(b)(6) motion. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999).

ARGUMENT

I. Plaintiff Stravitz Alleges Sufficient Facts to State an Eighth Amendment Deliberate Indifference Claim

An Eighth Amendment claim for deliberate indifference to serious medical needs requires a plaintiff to show: (1) that their medical needs were serious—the objective prong; and (2) that the defendant knew about and ignored "an excessive risk to [the] inmate['s] health or safety"—the subjective prong. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Dr. Gupta argues that Mr. Stravitz has failed to establish both prongs of this deliberate indifference test. Br. in Supp. of Mot. to Dismiss on Behalf of Def. Pranay Gupta, M.D. ("Def.'s Mot.") at 4–7. Dr. Gupta misstates the applicable law and relevant facts. Under the proper legal standard, Mr. Stravitz's allegations are more than sufficient to satisfy the Eighth Amendment standard.

A. Mr. Stravitz's cataracts are a serious medical condition because Dr. Gupta diagnosed them as mandating surgery.

Defendant Dr. Gupta disputes that Mr. Stravitz's cataracts are sufficiently serious to give rise to a deliberate indifference claim. *See* Def.'s Mot. at 5. Dr. Gupta argues that a medical need is only serious enough when the condition "places the inmate at a substantial risk of serious harm" including "permanent disability, or a condition for which lack of treatment perpetuates severe pain." *Id.* (quoting *Caudill v. Sw. Va. Reg'l Jail Auth.*, No. 21cv00606, 2023 WL 1219176 at *4 (W.D. Va. Jan. 31, 2023)). Dr. Gupta is mistaken.

The objective component of a deliberate indifference claim is "satisfied by a serious medical condition." *Gordon v. Schilling*, 937 F.3d 348, 357 (4th Cir. 2019) (citing *Scinto v. Stansberry*, 841 F.3d 219, 225 (4th Cir. 2016)). Contrary to Dr. Gupta's assertions, a medical condition is serious when it has "been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Iko v. Shreve*, 535 F.3d 225, 241 (4th Cir. 2008); *see also, e.g.*, *Hixson v. Moran*, 1 F.4th 297, 302 (4th Cir. 2021); *Gordon v. Schilling*, 937 F.3d 348, 357 (4th Cir. 2019); *Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 210 (4th Cir. 2017); *Scinto*, 841 F.3d at 225, 228; *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014). Severe pain and disability are not required to demonstrate a sufficiently serious medical need. *Iko*, 535 F.3d at 241. Since *Iko*, all that is required is that the plaintiff be "diagnosed by a physician as mandating treatment." *Id.* (quoting *Henderson v. Sheahan*, 196 F.3d 839, 846 (7th Cir.1999)); *see also, e.g.*, *Gross v. Dudley*, No. 3:21-cv-805-HEH, 2022 WL 16922819, at *3, 5 (E.D. Va. Nov. 14, 2022) (Hudson, J.) (applying *Iko* standard); *Meade v. Hicks*, No. 3:21CV222-HEH, 2022 WL 433004, at *3 (E.D. Va. Feb. 11, 2022) (Hudson, J.) (same).

The Fourth Circuit has applied the *Iko* standard to find a serious medical need in cases not involving either permanent disability or severe pain. *See, e.g.*, *Mays v. Sprinkle*, 992 F.3d 295, 300, 303–04 (relying on *Iko* to find a serious medical need where a pre-trial detainee appeared to be intoxicated such that it was obvious that he needed medical attention);[1] *DePaola v. Clarke*, 884 F.3d 481, 486, 488 (4th Cir. 2018) (applying *Iko* standard to find serious medical

[1] Although *Mays* involved a pretrial detainee and not a convicted prisoner, it is nevertheless apposite, as the Fourth Circuit applies an identical Eighth Amendment standard to such cases. *See Mays*, 922 F.3d at 299 (citing *Belcher v. Oliver*, 898 F.2d 32, 35 (4th Cir. 1990)).

need in case involving serious mental health issues).[2] Therefore, it is not difficult for a plaintiff with a diagnosis such as Mr. Stravitz's to satisfy the relatively "low threshold" of the objective prong of a deliberate indifference claim. *Thomas v. Walthall*, No. 3:20-CV-446-HEH, 2020 WL 7074145, at *5 (E.D. Va. Dec. 2, 2020) (Hudson, J.).

Dr. Gupta erroneously relies on cases that apply pre-*Iko* conceptions of the objective prong for deliberate indifference. *See* Def.'s Mot. at 5–6 (citing *Caudill*, 2023 WL 1219176, at *4; *Gary v. Wang*, No. 7:14-cv-00103, 2015 WL 1276906, at *1 (W.D. Va. Mar. 20, 2015)).[3] Not only do these cases apply the wrong standard, but they are unpublished decisions from a sister district and are, therefore, not binding on this Court.

Applying the *Iko* standard here, Mr. Stravitz's cataracts are a serious medical need because Defendant Dr. Gupta diagnosed him as requiring cataract surgery. *See* Compl. ¶ 240. Dr. Gupta does not dispute this diagnosis in his Motion to Dismiss, *see* Def.'s Mot. at 6, nor could he because the Court must take the facts alleged in the Complaint as true, *King*, 825 F.3d at 212. Thus, Mr. Stravitz alleges sufficient facts to satisfy the objective prong of an Eighth Amendment deliberate indifference to serious medical needs claim.

Even if this Court applied the incorrect standard Dr. Gupta advocates, Mr. Stravitz's allegations would nevertheless satisfy the objective prong of the Eighth Amendment standard. Mr. Stravitz alleges that his vision is "getting progressively worse, leading to increased discomfort, mental anguish, and emotional distress." Compl. ¶ 247. He further alleges that his

---

[2] The Fourth Circuit has also applied the *Iko* standard in several unpublished decisions. *See, e.g.*, *Overman v. Wang*, 801 F. App'x 109, 111 (4th Cir. 2020); *Drakeford v. Mullins*, 678 F. App'x 185, 186 (4th Cir. 2017); *Johnson v. Fields*, 616 F. App'x 599, 601 (4th Cir. 2015); *Lowery v. Bennett*, 492 F. App'x 405, 411 (4th Cir. 2012) (quoting *Iko*, 535 F.3d at 241).

[3] Dr. Gupta also cites, but does not quote from, *Villarreal v. Dixon*, No. 3:19CV447, 2021 WL 2689840 (E.D. Va. June 30, 2021), *aff'd*, No. 21-7075, 2021 WL 6116846 (4th Cir. Dec. 27, 2021), Def.'s Mot at 5, which sets forth the correct *Iko* standard, *Villarreal*, 2021 WL 2689840, at *3.

cataracts will "jeopardize[] his vision" such that failure to treat them will cause "further vision loss, physical discomfort, depression [and] anxiety." *Id.* ¶¶ 335, 339. The failure to treat Mr. Stravitz's cataracts will cause vision loss, the very "permanent disability" that Dr. Gupta incorrectly suggests is required to state a serious medical need. *See* Def.'s Mot at 5–6 (citing *Caudill*, 2023 WL 1219176 at *4). Thus, Mr. Stravitz's medical needs are sufficiently serious to state an Eighth Amendment claim under either standard.

Dr. Gupta also notes that "it is unlikely that cataracts constitute a serious medical need" based on unpublished opinions in which district courts express skepticism over whether cataracts are a serious medical need. Def.'s Mot. at 5–6 (citing *Wang*, 2015 WL 1276906, at *1; *Thomas v. Stephens*, No. 7:10-CV-00090, 2011 WL 1532150, at *4 (W.D. Va. Apr. 4, 2011); *Hurt v. Mahon*, No. 1:09CV958, 2009 WL 2877001, at *2 (E.D. Va. Aug. 31, 2009)). While the Fourth Circuit has not ruled on whether cataracts constitute a serious medical need, multiple Circuit Courts have concluded that cataracts and the vision loss that they cause are sufficiently serious. *See, e.g.*, *Colwell v. Bannister*, 763 F.3d 1060, 1067 (9th Cir. 2014); *Cobbs v. Pramstaller*, 475 F. App'x 575, 580 (6th Cir. 2012); *Koehl v. Dalsheim*, 85 F.3d 86, 88 (2d Cir. 1996).

B. Dr. Gupta was deliberately indifferent to Mr. Stravitz's serious medical need when he failed to provide Mr. Stravitz with medically necessary treatment.

Under the subjective prong of an Eighth Amendment deliberate indifference claim, a plaintiff must show that the defendant "knows of and disregards an excessive risk to inmate health or safety." *Jackson v. Lightsey*, 775 F.3d. at 178 (quoting *Farmer*, 511 U.S. at 837). As the Fourth Circuit has explained, "prison doctors violate the Eighth Amendment if they decline to provide the level of care they deem medically necessary." *Goodman v. Johnson*, 524 F. App'x 887, 889 (4th Cir. 2013). The failure to respond to an inmate's known medical needs "raises an inference of deliberate indifference to those needs." *Id.* (citing *Sosebee v. Murphy*, 797 F.2d 179,

182 (4th Cir. 1986)); *see also Makdessi v. Fields*, 789 F.3d 126, 129 (4th Cir. 2015) (acknowledging that "prison officials may not simply bury their heads in the sand and thereby skirt liability" in holding that the subjective prong may be proven through circumstantial evidence).

Mr. Stravitz was first diagnosed with cataracts in fall 2021. Compl. ¶ 239. In March 2022, Defendant Dr. Gupta verified that diagnosis and told Mr. Stravitz that he would schedule him for surgery to remove the cataracts. *Id.* ¶ 240. While Mr. Stravitz has repeatedly requested to be scheduled for that surgery, he has not been scheduled for that surgery as of April 2023—more than a year after the visit with Dr. Gupta and nearly eighteen months after his initial diagnosis. *Id.* ¶ 241. Dr. Gupta implies that his failure to schedule Mr. Stravitz for surgery after the March 2022 follow-up appointment lies with Defendant VDOC and its employees, all while disclaiming knowledge of their actions. Def.'s Mot. at 6–7. But these are disputes of material fact that cannot be resolved on a motion to dismiss.

Dr. Gupta also treats his refusal to see Mr. Stravitz following VDOC's failure to provide him with a COVID-19 PCR test as if it were the sum total of Mr. Stravitz's deliberate indifference claim against him. *See id.* at 7. However, the gravamen of Mr. Stravitz's complaint against Dr. Gupta is that he was part of the ongoing failure to provide him with cataract surgery. Defendants—including Dr. Gupta—knew that Dr. Gupta had recommended that Mr. Stravitz receive surgery to remove his cataracts. Defendants—including Dr. Gupta,—knew of and disregarded the substantial risk of harm that such a delay would cause to Mr. Stravitz. Compl. ¶¶ 336, 339.

Relying on *Barnes v. Mullins*, No. 7:20-cv-00635, 2021 WL 3719130 (W.D. Va. Aug. 20, 2021), Dr. Gupta also argues that he is not liable for the failure to provide Mr. Stravitz

constitutionally adequate medical care because he is only a "consulted medical specialist who could only make treatment recommendations" and could not interact with Mr. Stravitz in the "same circumstances or freedom as a private citizen" because Mr. Stravitz is incarcerated. Def.'s Mot. at 6 n.2. *Barnes* is readily distinguishable. There, the court dismissed the plaintiff's claim because it amounted to a disagreement between patient and physician, not because of the doctor's consultant status. *Barnes*, 2021 WL 3719130, at *2. Moreover, a medical provider, such as Dr. Gupta, is liable under the Eighth Amendment as soon as he "assumes the state's constitutional obligation" by treating prisoners. *Conner v. Donnelly*, 42 F.3d 220, 224 (4th Cir. 1994) This is because prisoners like Mr. Stravitz "cannot obtain medical care on their own." *Id.* (citing *Estelle v. Gamble*, 429 U.S. 97, 103–104 (1976)). Dr. Gupta's inability to interact with Mr. Stravitz as he would a non-incarcerated patient does not absolve him from liability—it extends liability through his assumption of the state's obligation to provide Mr. Stravitz with constitutionally adequate health care. *See id.*; *see also Conner*, 42 F.3d at 224 (holding that state's obligation to treat prisoners under Eighth Amendment attached to unaffiliated private physician when he treated prisoner).

Taken as true, the allegations establish the subjective prong of Mr. Stravitz's Eighth Amendment deliberate indifference claim. Dr. Gupta diagnosed Mr. Stravitz with cataracts, said that he would schedule him for cataract surgery, and failed to do so for over a year so far. *Id.* ¶¶ 240–41. That failure has contributed to the ongoing violation of Mr. Stravitz's Eighth Amendment rights and the worsening of his cataracts. *Id.* ¶¶ 336, 339. This failure to respond to Mr. Stravitz's medical needs "raises an inference of deliberate indifference to those needs." *Goodman*, 524 F. App'x. at 889; *see also Jackson*, 775 F. 3d at 178. This is sufficient to survive a motion to dismiss.

If, however, this Court is inclined to dismiss Mr. Stravitz's Eighth Amendment deliberate indifference claim, he respectfully requests leave to amend.

II. Mr. Stravitz alleges sufficient facts to state a medical negligence claim against Dr. Gupta

A. Mr. Stravitz need not use the specific term "medical malpractice" or invoke the VMMA to state a medical negligence claim against Dr. Gupta.

As a threshold issue, relying on *Washington v. Brooks*, No. 3:20CV88-HEH, 2021 WL 4975268, (E.D. Va. Oct. 26, 2021), Dr. Gupta erroneously maintains that Mr. Stravitz must specifically use the term "medical malpractice" in order to bring a medical negligence claim against Dr. Gupta.[4] Def.'s Mot. at 8–9. *Washington* does not stand for this proposition, and it is readily distinguishable. In *Washington*, the plaintiff simply alleged that the medical professionals in that case had "breached their duties to exercise reasonable care" and that "[a]s a direct and proximate result of [their] negligence . . . , [Plaintiff] suffered injuries, great physical pain, severe emotional distress, and mental anguish." 2021 WL 4975268, at *2 (quoting SAC ¶¶ 318, 320). Here, by contrast, Mr. Stravitz alleges that "Defendants had, among other duties, duties to exercise reasonable care with regard to the *provision of medical care* to Mr. Stravitz, *including prompt medical care and treatment for his cataracts*. Defendants breached this duty." Compl. ¶ 369 (emphasis added). Mr. Stravitz further alleges that "Defendants owed a duty to Mr. Stravitz *to treat him in accordance with recognized and acceptable standards of medical care, health care, nursing care, and treatment*." *Id.* 371 (emphasis added).

[4] Dr. Gupta also contends that "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*. Def.'s Mot. at 8. This argument is disingenuous. The manner in which Mr. Stravitz set forth his Twelfth Claim for Relief is how litigants allege a *count*—to determine whether plaintiffs have alleged sufficient factual matter, courts must examine the rest of the facts alleged in the complaint, which are incorporated into the count.

That Mr. Stravitz does not specifically invoke the VMMA or use the term "medical malpractice" is not fatal to his claim against Dr. Gupta. Mr. Stravitz need not specifically caption the claim "medical malpractice" to make it clear that this is a medical negligence claim—medical malpractice is a type of negligence and the allegations in Count 12 make clear that Dr. Gupta has a "dut[y] to exercise reasonable care with regard to the provision of medical care to Mr. Stravitz." *Id.* ¶ 369. This is sufficient to allege a medical malpractice claim against Dr. Gupta. *See Ray*, 948 F.3d at 226 ("A complaint need only give the defendant fair notice of what the claim is and the grounds upon which it rests.") (alterations omitted) (quoting *Tobey*, 706 F.3d at 387). Contrary to *Twombly* and *Iqbal*, Dr. Gupta attempts to impose a requirement that Mr. Stravitz specifically invoke the VMMA for his claim to proceed. But this is not the standard. Mr. Stravitz must merely allege sufficient facts to survive a motion to dismiss his medical malpractice claim—and he has done so here. *See Twombly*, 550 U.S. at 570.[5]

B. Mr. Stravitz alleges sufficient facts to state a medical negligence claim against Dr. Gupta

Under Virginia law, "[i]n medical malpractice cases, as in other negligence actions, the plaintiff must establish not only that the defendant violated the applicable standard of care, and was therefore negligent, he must also sustain the burden of showing that the negligent acts constituted a proximate cause of the injury or death."[6] *Dixon v. Sublett*, 809 S.E.2d 617, 620 (Va.

---

[5] In fact, Dr. Gupta understood Count 12 to be a medical malpractice claim, because he demanded an expert witness certification from Mr. Stravitz—a demand applicable only to medical malpractice claims under Virginia law. *See infra* Section III.

[6] Virginia law does not appear to require plaintiffs to establish a duty of care in medical malpractice actions. *See Dixon v. Sublett*, 809 S.E.2d 617, 620 (Va. 2018) (quoting *Brown v. Koulizakis*, 331 S.E.2d 440, 446 (Va. 1985)). If, however, this Court concludes that Mr. Stravitz must allege that Dr. Gupta owed Mr. Stravitz a duty of care, Mr. Stravitz has adequately alleged such a duty because Dr. Gupta undertook to treat Mr. Stravitz. Mr. Stravitz alleges that Dr. Gupta diagnosed Mr. Stravitz's cataracts and told Mr. Stravitz that he would schedule cataract surgery to get them removed. Compl. ¶ 240.

2018) (quoting *Brown v. Koulizakis*, 331 S.E.2d 440, 446 (Va. 1985)). Mr. Stravitz has pled sufficient facts to support each element of a medical malpractice claim against Dr. Gupta.

Here, Mr. Stravitz alleges that Dr. Gupta diagnosed Mr. Stravitz's cataracts and told Mr. Stravitz that he would schedule cataract surgery to get them removed. Compl. ¶ 240. Dr. Gupta breached his duty of care when he failed to schedule Mr. Stravitz's cataract surgery or otherwise ensure that Mr. Stravitz received follow-up care for his cataracts for nearly a year as of the date the Complaint was filed (and he still has not received the surgery), *id.* ¶ 245, which caused Mr. Stravitz's cataracts to worsen, *id.* ¶ 247. If Dr. Gupta had provided adequate follow-up care and worked to schedule cataract surgery for Mr. Stravitz, he would not have suffered (and continue to suffer) worsened blindness, physical discomfort, mental anguish and emotional distress, including concerns that he will lose his job in the law library as a result of his vision loss. *Id.* ¶¶ 159–61.

If, however, this Court is inclined to dismiss Mr. Stravitz's medical malpractice claim, he respectfully requests leave to amend.

III. Mr. Stravitz Does Not Need To Comply With the VMMA's Procedural Requirements in a Federal Court Action

Contrary to Dr. Gupta's assertions, Mr. Stravitz does not need to comply with the VMMA's procedural requirements to bring a medical malpractice claim in federal court. Dr. Gupta's argument ignores applicable U.S. Supreme Court and Fourth Circuit precedent and, instead, relies on an inapposite district court opinion that is readily distinguishable from this case. *See* Def.'s Mot. at 10–12.

Under the VMMA, a defendant in a medical malpractice case may request that the plaintiff "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." Va. Code. Ann. § 8.01-20.1. However, the Federal Rules of Civil Procedure govern civil actions in federal court. Fed. R. Civ. P. 1; *see also e.g.*, *Hanna v. Plumer*, 380 U.S. 460, 465 (1965) ("[F]ederal courts are to apply state substantive law and federal procedural law.") (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)); *Felder v. Casey*, 487 U.S. 131, 151 (1988)) (holding that *Erie* equally applies in cases involving supplemental jurisdiction).

To avoid wading into the "murky waters" of *Erie* and its complex choice-of-law rules, the Supreme Court has provided a simple two-part test for when a Federal Rule of Civil Procedure conflicts with an applicable state procedural rule. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398–99 (2010). First, a court must decide if a Federal Rule "answer[s] the question in dispute." *Pledger v. Lynch*, 5 F.4th 511, 518–19 (quoting *Shady Grove*, 559 U.S. at 398). If so, then the court must apply the Federal Rule over the state law, unless the Rule was adopted *ultra vires*, *i.e.*, outside of Congress's constitutional rulemaking power or the statutory authority provided by the Rules Enabling Act. *Id.* at 520–21 (citing *Shady Grove*, 559 U.S. at 398–99; *Hanna*, 380 U.S. at 471).

In *Andes v. United States*, No. 1:19-cv-00005, 2020 WL 3895780 (W.D. Va. July 10, 2020), the U.S. District Court for the Western District of Virginia applied a *Shady Grove* analysis to hold that Va. Code Ann. § 8.01-20.1—the VMMA's expert witness certification requirement—did not apply to a Virginia medical malpractice claim brought in federal court. *Id.* at *7–9. The court reasoned that the VMMA's expert certificate requirement conflicted with Federal Rule 11(b), "which sets forth implied certifications a party makes when filing a complaint." *Id.* at *8. Those implied certifications include that "the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for

further investigation or discovery." *Id.* (quoting Fed. R. Civ. P. 11(b)). By requiring a "written opinion signed by the expert witness," the Virginia law "attempts to add another implied certification." *Id.* Thus, the court concluded that the VMMA's expert certification requirement "does not apply in federal court and cannot serve as a basis for dismissing the plaintiff's Virginia-based medical malpractice claim pursuant to Rule 12." *Id.* at *9.

Citing *Andes*, the Fourth Circuit in *Pledger v. Lynch*, 5 F.4th 511 (4th Cir. 2021), recently held that a similar West Virginia expert certification requirement did not apply to the plaintiff's medical negligence claim brought under the Federal Tort Claims Act ("FTCA"). *Id.* at 519. Subsequently, the Fourth Circuit applied *Pledger* to vacate and remand a case in which the district court had dismissed the plaintiff's FTCA claims because he had failed to comply with VMMA's expert certification requirement. *See Zupko v. United States*, No. 20-2157, 2022 WL 256343 (4th Cir. Jan. 26, 2022).

Dr. Gupta attempts to cabin *Pledger* and *Zupko* by arguing that those decisions only apply to claims brought under the FTCA. Def.'s Mot. at 10. Dr. Gupta does not cite to any authority supporting this argument, *see id.*, and Plaintiffs have found none. Moreover, the Fourth Circuit's holding in *Pledger* that West Virginia's expert certification did not apply to the plaintiff's medical negligence claims under the FTCA did not rest on the fact that the tort claims were brought under a federal statute. Instead, the Fourth Circuit's holding, applying the *Shady Grove* analysis, rested on the fact that West Virginia's expert certificate requirement conflicted with Federal Rules of Civil Procedure 8, 11, and 12. *Pledger*, 5 F.4th at 519–21.

Dr. Gupta also argues that *Whittaker v. O'Sullivan*, No. 3:21cv474, 2022 WL 3215007 (E.D. Va. Aug. 9, 2022), controls the outcome in this case. Def.'s Mot. at 11–12. It does not. The plaintiff in *Whittaker* only argued (in a footnote) to his Oppositions to the medical defendants'

motions to dismiss that the VMMA's certification requirement applied only to wrongful death actions, not medical negligence claims. *See, e.g.*, Mem. of L. in Opp'n to Defs.' Mot. to Dismiss at 7 n.1, *Whittaker v. O'Sullivan*, No. 3:21cv474, (Jan. 11, 2022), ECF No. 62. The *Whittaker* plaintiff did not cite *Andes*, *Pledger*, *Zupko*, or *Shady Grove* in his briefs. Therefore, the issue of whether the VMMA's expert certification requirement conflicts with the Federal Rules—and the applicable case law holding that it does—was not before the court as it is here.

Thus, because the VMMA's expert witness certification requirement, Va. Code Ann. § 8.01-20.1, conflicts with Federal Rules 8, 9, 11, and 12, and these Rules are presumptively valid, *Pledger*, 5 F.4th at 521, it follows that the Federal Rules—not the VMMA's procedural requirements—govern Mr. Stravitz's claims against Dr. Gupta in federal court. *See id.*; *Andes*, 2020 WL 3895780, at *8; *Zupko*, 2022 WL 256343. The VMMA's expert certification requirement, therefore, cannot form the basis of a motion to dismiss an action in federal court.

IV. This Court Should Exercise Supplemental Jurisdiction Over Mr. Stravitz's Medical Malpractice Claim Against Dr. Gupta

This Court should exercise supplemental jurisdiction over Mr. Stravitz's state law medical malpractice claim against Dr. Gupta. Federal district courts have supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). This Court has original jurisdiction over Mr. Stravitz's Eighth Amendment claim against Dr. Gupta because that claim arises under the Constitution of the United States. 28 U.S.C. § 1331; Compl. ¶ 333–43. Because Mr. Stravitz alleges that Dr. Gupta's provision of medical care was both constitutionally deficient and negligent under state law, the claims "form part of the same case or controversy" over which this Court has jurisdiction. 28 U.S.C. § 1367(a).

Dr. Gupta argues that this Court should decline to exercise supplemental jurisdiction because of the potential for jury confusion in sorting through differing standards of proof for Mr. Stravitz's Eighth Amendment deliberate indifference claim and his state-law medical malpractice claim. Def.'s Mot. at 14–15. Dr. Gupta implicitly argues that this Court should exercise its power under 28 U.S.C. § 1367(c)(4), which allows it to decline to exercise supplemental jurisdiction when "in exceptional circumstances, there are other compelling reasons for declining jurisdiction." 28 U.S.C. § 1367(c)(4). Compelling reasons are those that lead a court to conclude that declining jurisdiction supports the values of supplemental jurisdiction, namely "convenience and fairness to the parties . . . and considerations of judicial economy, " *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995) (citing *Carnegie–Mellon Univ. v. Cohill*, 383 U.S. 343, 350 n.7 (1988)).

Neither exceptional circumstances nor compelling reasons are present in this case. Dr. Gupta does not argue that it would be uneconomical, inconvenient, or unfair for this Court to exercise supplemental jurisdiction. *See* Def.'s Mot. at 14–15. Courts in this circuit routinely exercise supplemental jurisdiction over state-law medical malpractice claims alongside Eighth Amendment deliberate indifference claims. *See, e.g.*, *Bowman v. Johnson*, No. 3:08CV449–HEH, 2010 WL 1225693, at *5–6 (E.D. Va. Mar. 26, 2010) (Hudson, J.); *Johnson v. W. Va. Univ. Bd. of Governors*, No. 2:21-cv-00380, 2022 WL 908496, at *9 (S.D. W. Va. Mar. 28, 2022); *Brown v. Mitchell*, 308 F. Supp. 2d 682, 691 (E.D. Va. 2004); *Mitchell v. Ottey*, No. WDQ–14–3152, 2015 WL 2090649, at *4–5 (D. Md. May 4, 2015). Dr. Gupta does not give this Court any compelling reason not to do so in this case.

When exceptional circumstances are not present, district courts in this Circuit have concluded that supplemental jurisdiction is warranted, despite any potential for jury confusion.

See, e.g., *Battle v. S. C. Dept. of Corrs.*, No. 2:19-cv-576-TMC, 2019 WL 6999931, at *3 (D.S.C. Dec. 20, 2019) (holding that potential jury confusion did not warrant declining to exercise supplemental jurisdiction); *Winingear v. City of Norfolk*, No. 2:12cv560, 2013 WL 5672668, at *7 (E.D. Va. Oct. 16, 2013) (holding that judicial economy warranted continuance of supplemental jurisdiction over state law claims). In this case, it would be an inefficient use of scarce judicial resources to try the federal claim and state law claim against Dr. Gupta in separate proceedings, because both claims "form part of the same case or controversy" over which this Court has jurisdiction. 28 U.S.C. § 1367(a). Retaining the state law claims would be more convenient and economical, as the parties "would otherwise be forced to litigate two complementary claims that are premised on the same facts in separate forums, at great expense." *Winingear*, 2013 WL 5672668, at *7. Because "judicial economy, convenience and fairness to the parties are better served by the court's continued exercise of supplemental jurisdiction," this Court should retain supplemental jurisdiction over Mr. Stravitz' medical malpractice claim against Dr. Gupta. *Battle*, 2019 WL 6999931, at *3.

CONCLUSION

For the forgoing reasons, Plaintiffs respectfully request that this Court deny Defendant's Motion to Dismiss.

Respectfully submitted,

Eve L. Hill
Monica R. Basche (*pro hac vice*)
Evan Monod (*pro hac vice*)
Brown, Goldstein & Levy, LLP
120 E. Baltimore Street, Suite 2500
Baltimore, Maryland 21202
410.962.1030
ehill@browngold.com

mbasche@browngold.com
emonod@browngold.com

Vishal Agraharkar
Samantha Westrum
American Civil Liberties Union of Virginia
701 E. Franklin Street, Suite 1412
Richmond, Virginia 23219
804.644.8022
vagraharkar@acluva.org
swestrum@acluva.org

Rebecca Herbig
disAbility Law Center of Virginia
1512 Willow Lawn Drive, Suite 100
Richmond, Virginia 23230
804.225.2042
Rebecca.Herbig@dlcv.org

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April 2023, I filed the foregoing electronically with the Clerk of the Court using the CM/ECF system, with copies to the following attorneys:

Kenneth T. Roeber, Esq. (VSB No. 41850)
Michelle L. Warden, Esq. (VSB No. 77266)
Wimbish Gentile McCray & Roeber PLLC
8730 Stony Point Parkway, Suite 201
Richmond, VA 23235
804-655-4830– Telephone
804-980-7819 – Facsimile
kroeber@wgmrlaw.com
mwarden@wgmrlaw.com

Patrick Burns, Esq. (VSB No. 80188)
Gordon Rees Scully Mansukhani, LLP
1101 King Street, Suite 520
Alexandria, VA 22314
(202) 370-8003
Pburns@grsm.com

Counsel for Defendant VitalCore Health Strategies

Laura Maughan, Esq. (VSB No. 87798)
Assistant Attorney General
Office of the Virginia Attorney General
202 North 9th Street
Richmond, VA 23219
(804) 786-0030
lmaughan@oag.state.va.us

Counsel for Defendants Barry Marano, Darrell Miller, Harold Clarke, Kevin Punturi, Lakiesha Shaw, Lane Talbott, Larry Edmonds, Nurse Cynthia Lester, Officer D. Smith, Tammy Williams, and the Virginia Department of Corrections

Eve L. Hill