

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11 Case
)	
WELLPATH HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 24-90533 (ARP)
)	
Debtors.)	(Jointly Administered)
)	
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**OBJECTION OF COBB COUNTY, GEORGIA, AND COBB COUNTY SHERIFF TO
PROPOSED STIPULATION AND AGREED ORDER REGARDING THE SHANNON
PLAINTIFFS’ OBJECTION WITH RESPECT TO HENRIETTA SMITH
(Relates to Docket No. 1213)**

TO THE HONORABLE ALFREDO R. PÉREZ,
UNITED STATES BANKRUPTCY JUDGE:

Cobb County, Georgia (the “County”), and the Cobb County Sheriff (the “Sheriff”), (collectively, the “Objectors”) file this Objection to the proposed *Stipulation and Agreed Order Regarding the Shannon Plaintiffs’ Objection* (Docket No. 1213). This Objection is directed to the above-styled stipulation only as it relates to the Smith Lawsuit, defined below.

In support of this Objection, the County would respectfully show the Court as follows:

I. PRELIMINARY STATEMENT²

1. The Sheriff and Wellpath are parties to the Medical Care Agreement, pursuant to which Wellpath and its employees have provided medical and mental health services to persons incarcerated in the Sheriff’s custody. One such person, Nicole Smith,

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/Wellpath>. The Debtors’ service address for these chapter 11 cases is 3340 Perimeter Hill Drive, Nashville, Tennessee 37211.

² Certain capitalized terms used in this Preliminary Statement are defined below.

died tragically by her own hand. Ms. Smith's three surviving children brought suit against Wellpath, three Wellpath employees, and six officers and deputies of the Sheriff.

2. The Medical Care Agreement grants the County, the Sheriff, and their respective employees a broad right of indemnity against Wellpath for expenses and losses incurred as a result of acts or omissions by Wellpath's employees in the course of providing services under the Medical Care Agreement.

3. The Debtors advised the Objectors that, in the Debtors' opinion, Wellpath does not owe a duty of indemnification to the Objectors and their employees in the Smith lawsuit. The Debtors also expressed their intent to conclude the Stipulation with the Plaintiffs in the Smith lawsuit stating that the automatic stay, as interpreted and extended by this Court, does not bar the Plaintiffs from proceeding against the County Co-Defendants.

4. The Stipulation as to Smith Lawsuit rests on an incorrect interpretation of the Objectors' indemnity right. It exposes the Debtors' estates to a substantial and unjustifiable risk that the Objectors will assert a large administrative expense claim against the Debtors, representing the Objectors' contractual claim for indemnification from Wellpath. Moreover, by removing the protective stay with regard to the County Co-Defendants but preserving the stay as to Wellpath and its employees, the Stipulation as to Smith Lawsuit would create a situation that is not only inconsistent but profoundly unfair to the Sheriff and his employees. If the Court is inclined to interpret or modify the automatic stay to permit the plaintiffs to proceed against the County Co-Defendants, the Court should also permit the County Co-Defendants to seek and obtain discovery against Wellpath and its employees. Without this relief, the County Co-Defendants could not defend themselves adequately. Simple fairness requires no less.

5. As proposed, the Stipulation as to Smith Lawsuit is not in the best interests of the Debtors' estates and would leave the County Co-Defendants unable to prepare and

assert an adequate defense. For these reasons, the Court should decline approval of the Stipulation as to Smith Lawsuit or at least allow the County Co-Defendants to conduct discovery of Wellpath and its employees as may be appropriate in the preparation of the County Co-Defendants' defense.

II. BACKGROUND

A. The Medical Care Agreement

6. The Sheriff and Wellpath, LLC ("Wellpath"), a debtor and debtor-in-possession in these chapter 11 cases, are parties to an *Agreement for Inmate Medical Care at the Cobb County Adult Detention Center* (as amended and renewed, the "Medical Care Agreement") dated as of April 23, 2020.^{3 4} The Medical Care Agreement has been renewed periodically, most recently in December 2024 to remain in effect through June 30, 2025, as set forth therein.

7. Pursuant to the Medical Care Agreement, Wellpath contracted to provide medical services at the Cobb County Adult Detention Center (the "CCADC"), including medical treatment, staffing, supplies and pharmaceuticals to inmates at the on-site infirmary at the CCADC. In November 2021, the parties amended the Medical Care Agreement to add comprehensive mental health services to the scope of services provided by Wellpath.

8. The Medical Care Agreement gives the County, the Sheriff, and their employees, agents, and other representatives a contractual right of indemnity against

³ The original Medical Care Agreement was executed by Neil Warren in his official capacity as then-Sheriff of Cobb County, Georgia. The amendments and renewals were executed by Craig Owens in his official capacity as current Sheriff of Cobb County, Georgia.

⁴ A true and correct excerpt of the Medical Care Agreement showing the relevant provisions is attached hereto as **Exhibit A**.

Wellpath for any losses resulting from the acts or omissions of Wellpath or its employees, agents, contractors or other representatives. Specifically, the Agreement provides that

[Wellpath] shall defend, indemnify and hold harmless the Sheriff, the County, and the Sheriff and the County's elected and appointed officials, officers, boards, commissions, employees, representatives, contractors, servants, agents and volunteers ... from and against any and all claims, suits, actions, judgments, injuries, damages, losses, expenses, and liability of any kind whatsoever, including but not limited to attorneys' fees and other legal expenses, ... to the extent caused by or resulting from negligence, recklessness, or intentionally wrongful conduct by [Wellpath], or any employee, servant, agent, subcontractor, or volunteer of [Wellpath] or any of its subcontractors.

(Med. Care Agreement § 6.3 at p. 31.) This contractual right of indemnity does not “negate, abridge or otherwise reduce” any statutory, common law, or other right of contribution or indemnity that any party may also have. (Med. Care Agreement § 6.3 at p. 31.) Further, the contractual right of indemnity survives expiration or termination of the Medical Care Agreement. (Med. Care Agreement § 6.3 at p. 31.)

9. In addition, the Medical Care Agreement includes specific obligations regarding insurance that Wellpath is required to maintain. Wellpath is obligated to

procure and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with performance of the services hereunder by [Wellpath], its agents, representatives, employees, or subcontractors.

(Med.Care Agreement art. VI.A. at p. 28.) Further, the County, the Sheriff, and their employees, agents, and other representatives must be covered as additional insureds for, among other things, “liability arising out of activities performed by or on behalf of [Wellpath]” on general liability insurance policies. (Med. Care Agreement art. VI.D. i) at p. 29.)

10. The indemnification and insurance provisions quoted above have remained in effect and unchanged through all amendments and renewals of the Medical Care Agreement.

B. The Smith Lawsuit

11. On May 14, 2024, Henrietta Smith as next friend of H.K. and N.S., and Nickeil Bethea-Smith (the "Plaintiffs") filed a Complaint⁵ (the "Complaint") commencing a civil action (the "Smith Lawsuit") in the United States District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:24-cv-02102-TWT, against Wellpath, three Wellpath employees, and six employees of the Sheriff: Major Stacey Banes, Captain Kara Padgett, Sergeant Amanda Brown, Deputy Stacey Kelly, Deputy Octavia Keitt, and Deputy Daniele Cathey (the "County Co-Defendants") (Docket Sheet⁶ at p. 5.)

12. On July 16, 2024, Major Banes, Captain Padgett, and Sergeant Brown filed a motion to dismiss the federal law claims on the grounds of qualified immunity. (Docket Sheet at p. 6.)

13. On July 16, 2024, Deputy Kelly, Deputy Keitt, and Deputy Cathey filed an Answer to the Complaint. (Docket Sheet at p. 6.)

14. On July 18, 2024, the District Court ordered all discovery stayed pending resolution of the motion to dismiss. (Docket Sheet at p. 6.)

15. On November 12, 2024, Wellpath filed a Notice of Filing Bankruptcy and Automatic Stay. (Docket Sheet at p. 7.) As of January 30, 2025, the docket sheet reflects that the District Court has not ruled on the motion to dismiss, discovery continues to be

⁵ A true and correct copy of the Complaint is attached hereto as **Exhibit B**.

⁶ A true and copy of the docket sheet in the Smith Lawsuit, retrieved via PACER Systems on January 30, 2025 (the "Docket Sheet"), is attached hereto as **Exhibit C**.

stayed, and no entries have been made on the docket sheet since November 2024. (Docket Sheet at pp. 6-7.)

C. The Chapter 11 Cases

16. On November 11, 2024, the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court.

17. On November 12, 2024, the Debtors filed the *Debtors' Emergency Motion for Entry of Interim and Final Orders to Enforce the Automatic Stay or in the Alternative Extend the Automatic Stay to Non-Debtor Defendants* (Docket No. 17) (the "Stay Extension Motion"). In the motion, the Debtors asserted that the Court should extend the automatic stay to certain non-Debtor defendants, on the grounds that these parties hold indemnity rights against the Debtors. The indemnity rights create an identity of interest with the Debtors, such that a judgment against one of the non-Debtor defendants was effectively a judgment against the Debtors. (Stay Extension Motion at pp. 12-15.)

18. On November 12, 2024, the Court entered the *Amended Interim Order Enforcing the Automatic Stay* (Docket No. 69), granting the Stay Extension Motion on an interim basis, with a final hearing set for December 5, 2024.

19. The December 5 hearing was later reset for December 11, 2024 (Docket No. 261), and again reset for January 14, 2025. (Docket No. 310.)

20. On January 10, 2025, the Debtors filed the *Debtors' Omnibus Reply in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders to Enforce the Automatic Stay or in the Alternative Extend the Automatic Stay to Non-Debtor Defendants* (Docket No. 897). In the Omnibus Reply, the Debtors reiterated their argument that an indemnity obligation by the Debtors to a non-debtor co-defendant creates an identity of interest, which justifies extending the automatic stay to the non-debtor co-defendant. (See Omnibus Reply at pp. 14-17.)

21. In the Omnibus Reply, the Debtors argued that an “absolute indemnity” obligation, in the sense of an unqualified or unconditional duty to indemnify, is not required in order to create an identity of interest. (See Omnibus Reply at pp. 7-8, 15-16.) Instead, as the Debtors point out, an identity of interest arises, supporting the extension of the automatic stay to a non-debtor co-defendant, if it is *possible* that the co-defendant may invoke a contractual right of indemnity against the debtor:

[T]he Fourth Circuit clarified it had “found that a stay was authorized under 11 U.S.C. § 362(a)(3) because [the third-party defendant] **might** seek indemnification from [the debtor] for any damages it had to pay, thus implicating the debtor’s property.” See *In re A.H. Robins Co. Inc.*, 828 F.2d 1023, 1025 (4th Cir. 1987); see also *In re LTL MANAGEMENT, LLC*, 638 B.R. 291, 312 (Bankr. D.N.J. 2022) (“The Fourth Circuit’s use of the word “might” suggests that conditional indemnification is sufficient to trigger extension of automatic stay”).

(Omnibus Reply at pp. 15-16) (emphasis in original).

22. However, the Debtors went on to state their opinion categorically, and without support, that the County Co-Defendants in the Smith Lawsuit have no indemnity claim against the Debtors:

The Debtors submit that they owe no indemnification obligations to Cobb County or its employees in connection with the Henrietta Smith Case. Thus, the Henrietta Smith Case should not be stayed as to such defendants.

(Omnibus Reply at p. 39 n.50.)

23. On January 14, 2025, following a lengthy hearing, the Court entered the *Stipulated and Agreed Amended Order (I) Enforcing the Automatic Stay on a Final Basis With Respect to Certain Actions, (II) Enforcing the Automatic Stay on an Interim Basis With Respect to Certain Actions, (III) Extending the Automatic Stay on an Interim Basis to Certain Actions Against Non-Debtors, (IV) Setting a Final Hearing for the Interim Relief Granted Herein, and (V) Granting Related Relief* (Docket No. 962). Among other relief, the

January 14 order continued the automatic stay with respect to “[a]ny claims or causes of action that have been or may be asserted against any of the Debtors’ current clients or customers or their current or former employees” on an interim basis to and including February 18, 2025.

24. On January 30, 2025, counsel for the Debtors advised counsel for the Objectors that the Debtors’ position on the County Co-Defendants’ indemnity rights in the Smith Lawsuit as stated in the Omnibus Reply had not changed (i.e., that there is no indemnity right), and that the Debtors intended to execute and submit for the Court’s approval a stipulation in accordance with the Debtors’ view.

25. On January 31, 2025, the Debtors filed the *Stipulation and Agreed Order Regarding the Shannon Plaintiffs’ Objection* (Docket No. 1213) (the “Stipulation”). The Stipulation states that automatic stay, as interpreted or extended by this Court, “does not extend to claims or causes of action against certain non-debtors in the Lawsuit as listed in **Exhibit A** attached hereto.” (Stip. at p. 1.) The Smith Lawsuit is included in the list of lawsuits to which the Stipulation applies. (Stip. Exh. A at p. 15.)

III. OBJECTION TO THE STIPULATION

A. The Debtors Owe a Duty To Indemnify the County Co-Defendants in the Smith Lawsuit.

26. The Debtors have erroneously concluded that they have no duty to indemnify the County Co-Defendants in the Smith Lawsuit. The clear language of the indemnity, quoted above, requires Wellpath to “defend, indemnify and hold harmless the Sheriff, the County, and the Sheriff and the County’s ... employees ... [from harm] to the extent caused by or resulting from negligence, recklessness, or intentionally wrongful conduct by [Wellpath], or any employee, servant, agent, subcontractor, or volunteer of [Wellpath] or any of its subcontractors.” (Med. Care Agreement § 6.3 at p. 31.)

27. In the Complaint, the Plaintiffs allege numerous instances of wrongful conduct on the part of Wellpath or its employees, including the following:

- That Wellpath abruptly stopped Ms. Smith's psychiatric medications and failed to prescribe her new appropriate medication (Complaint at p.23);
- That Wellpath neglected to place her on constant watch (though she was alleged to be acutely suicidal) (Complaint at p.25);
- That Wellpath failed to issue a medical order that she could not have mesh underwear. (Complaint at p.23);

Ms. Smith then killed herself with mesh underwear. (Complaint at p. 5.) If any of the above allegations against Wellpath prove true, the County Co-Defendants would be entitled to indemnification for the Smith lawsuit, and they would be entitled to assert a claim against Wellpath based on the company's contractual insurance obligation. At this very early stage in the Smith Lawsuit, before any discovery has been taken, the Debtors can have no rational basis for concluding categorically that Wellpath has no indemnity duty in connection with the litigation.

28. Moreover, the Debtors' case-by-case indemnity analysis in the Omnibus Reply is internally inconsistent. The Debtors say they owe no indemnification duty in the Smith Lawsuit. (Omnibus Reply at p. 39 n.50.) Yet, just seven pages earlier, in discussing a different lawsuit⁷ against different employees of the Sheriff, the Debtors state confidently that the same indemnity provision in the same Medical Care Agreement **does** require Wellpath to indemnify the Sheriff's employees:

⁷ This section of the Omnibus Reply refers to a civil action styled *O'Neal, et al. v. Wellpath LLC, et al.*, Civil Action File No. 24-A-2129 in the State Court of Cobb County, Georgia (the "Capes Case"). In that lawsuit, two Cobb County Sheriff's Deputies, Dodou M. Jones and Andelson Maxim, were named as co-defendants with Wellpath.

Although Dodou M. Jones and Andelson Maxim are not the Debtors' employees, the Debtors understand that they are employees of Cobb County, Georgia, a customer of the Debtors. Pursuant to the terms of the agreement between the Debtors and the county (as amended, modified, or supplemented from time to time, the "Cobbs [sic] County Agreement"), the Debtors have indemnification obligations to the county and the claims with respect to such employees could be tendered to the Debtors. See Cobb County Agreement, § 6.3 ("To the fullest extent permitted by law, [Wellpath] shall defend, indemnify and hold harmless the Sheriff, the County, and the Sheriff and the County's elected and appointed officials, officers, [and] employees . . . from and against any and all . . . liability of any kind whatsoever, . . . to the extent caused by . . . [Wellpath]. . ."). Thus, a sufficient identity of interest exists between the Debtors and the three Non-Debtor Defendants in the Capes Case.

(Omnibus Reply at p. 32.) The Debtors offer no support for their radically different interpretations of the same contractual language in the two instances.

29. The Debtors' position is also inconsistent and incompatible with their position on the application of the stay to the Debtors' employees. The Debtors have consistently asserted that all litigation against their employees should be stayed. (See, e.g., Omnibus Reply at pp. 6, 13, 20, 22, 24, 26, 27, 31). The Debtors' rationale for including their employees within the protection of the automatic stay is the Debtors' obligations to indemnify the employees and to maintain insurance naming the employees as additional insureds. (Omnibus Reply at p. 6.) The Debtors assert that the indemnity and insurance relationships give the Debtors and their employees an identity of interest, such that a judgment against an employee is tantamount to a judgment against the Debtors. Therefore, according to the Debtors, extension of the automatic stay to the employees is appropriate. (Omnibus Reply at p. 6.) However, the very same considerations apply in the same way to the County, the Sheriff, and their respective employees, including the County Co-Defendants. The Medical Care Agreement requires Wellpath to indemnify the County, the

Sheriff, and their respective employees and to maintain insurance policies that name indemnified parties as additional insureds. Accordingly, the automatic stay should apply to actions against the County Co-Defendants to the same extent as it applies to the Debtors' employees.

30. Given the very real possibility that Wellpath will be subjected to indemnity exposure in the Smith Lawsuit for any expenses or losses incurred by the County Co-Defendants, and that such an indemnity obligation would constitute an administrative expense of the Debtors' estates under section 503(b)(1)(A) of the Bankruptcy Code, the Stipulation as to Smith Lawsuit makes no sense from the Debtors' point of view. It is not in the best interests of the Debtors' estate for the Court to approve the Stipulation as to Smith Lawsuit, and the Debtors have not given the Court any justification for why it should be approved.

B. If the Court Is Inclined To Allow the Smith Lawsuit To Proceed Against the County Co-Defendants, the Court Should Also Allow the County Co-Defendants To Proceed With Discovery Against Wellpath and Its Employees.

31. The Stipulation as to Smith Lawsuit would interpret or modify the automatic stay to permit the Plaintiffs to go forward against the County Co-Defendants, but would keep the stay in effect for actions against Wellpath and its employees. This would place the County Co-Defendants at an unfair disadvantage in defending against the Plaintiffs' claims. As noted above, no discovery has been conducted in the Smith Lawsuit. The County Co-Defendants need discovery of Wellpath and its employees to fully develop and prepare their defense. Allowing necessary discovery of Wellpath and its employees would not subject the Debtors to significant additional expense or disrupt the Debtors' reorganization efforts in any meaningful way. On the other hand, denying the County Co-Defendants the right to pursue discovery will seriously hamper their ability to defend themselves in the Smith Lawsuit. See

In re Sonnax Indus., Inc., 907 F.2d 1280, 1286 (2d Cir. 1990) (in making decision on request for relief from automatic stay in litigation context, court should consider “impact of the stay on the parties and the balance of harms”). As the balance of harms in this instance strongly favors allowing discovery, if the Court thinks it best to let the Smith Lawsuit proceed against the County Co-Defendants, at a minimum the Court should also permit the County Co-Defendants to take discovery of Wellpath and its employees.

IV. CONCLUSION

32. For the foregoing reasons, the Objectors request that the Court decline to approve the Stipulation as to Smith Lawsuit or, in the alternative, condition approval of the Stipulation on an interpretation or modification of the automatic stay that would allow the County Co-Defendants to proceed with discovery of Wellpath and its employees in the Smith Lawsuit; and grant such other and further relief to which the Objectors may be justly entitled.

Dated: January 31, 2025

Respectfully submitted,

/s/ Jeff P. Prostok

Jeff P. Prostok

State Bar No. 16352500

VARTABEDIAN HESTER & HAYNES, LLP

301 Commerce Street, Suite 3635

Fort Worth, TX 76102

Telephone: (817) 214-4990

Email: jeff.prostok@vhh.law

ATTORNEYS FOR COBB COUNTY,
GEORGIA, AND THE COBB COUNTY
SHERIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via the Court's ECF system to all parties authorized to receive electronic notice in this case on this 31st day of January, 2025.

/s/ Jeff P. Prostok
Jeff P. Prostok

EXHIBIT A

MEDICAL CARE AGREEMENT

**AGREEMENT FOR INMATE MEDICAL CARE AT THE
COBB COUNTY ADULT DETENTION CENTER**

This Agreement for Inmate Medical Care at the Cobb County Adult Detention Center (“Agreement”) made by and between Neil Warren, in his official capacity as Sheriff of Cobb County and his predecessor (hereinafter referred to as “Sheriff”), funding approval having been granted by the Cobb County Board of Commissioners as part of the Sheriff’s annual budget, and Wellpath, LLC, a limited liability company hereinafter referred to as the “Provider.” The Sheriff and Provider may be referred to individually as “Party,” or collectively, as “Parties.” The Effective Date of this Contract shall be as defined in Section 2.0.

WITNESSETH:

WHEREAS, the duly-elected Sheriff, by virtue of their office, is the official designated to have charge of the Cobb County Adult Detention Center (“CCADC” or “Jail”);

WHEREAS, the Sheriff is required by law to ensure that inmates confined at the CCADC are provided reasonable access to medical care and, accordingly, is authorized to enter into contracts for medical and mental health services;

WHEREAS, in order to fulfill that obligations, the Sheriff maintains space known as the Infirmary Services Main Medical Clinic (the “Infirmary”) at the CCADC, at which on-site medical treatment is provided to inmates;

WHEREAS, the Sheriff seeks to fulfill that legal obligation by contracting with Provider to provide medical services at the Jail, including medical treatment, staffing, supplies and pharmaceuticals to inmates and at the on-site Infirmary at the CCADC (“Medical Services”), to manage and administer the operations of said Infirmary, and to cooperate with and assist the Mental Health Service Provider (as defined below), including through mental health screenings and referrals as further explained herein;

WHEREAS, the Sheriff also desires for Provider to coordinate access to any necessary medical or healthcare services for inmates that are not available at the on-site Infirmary;

NOW, THEREFORE, in consideration of the promises and the agreements and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

I. Definitions

The following terms shall have the meanings set forth below:

- 1.1 “Infirmary” means those certain sites at the CCADC where medical or clinical services are made available to CCADC and/or jail inmates, and which may include areas within or outside of the area known as the Infirmary Services Main Medical



V. Access and Confidentiality

- 5.1 Jail Access and Security. Provider agrees to exercise security measures in compliance with Sheriff's Policies and Procedures. Employees of Provider shall be subject to a security clearance in order to obtain a building pass that allows for unescorted access into the Jail. Cobb County Sheriff and/or his designees reserve(s) the right to restrict access to any of Provider' employees to the Jail or any other Sheriff-controlled facilities.
- 5.2 Confidentiality. Provider acknowledges that it may receive confidential information of the County or inmate in Provider's care, and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, contractors, and/or staff to likewise protect such confidential information. The Provider agrees that confidential information it receives or such reports, information, opinions, or conclusions that Provider creates under this Contract shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the Sheriff. Provider shall exercise reasonable precautions to prevent the unauthorized disclosure and use of information whether specifically deemed confidential or not. Provider acknowledges that the Sheriff's and County's disclosure of documentation is governed by Georgia's Open Records Act (the "Act"), and Provider will obtain the Sheriff's authorization prior to releasing any information pursuant to the Act. Provider further acknowledges that, if Provider submits records containing trade secret information and if Provider wishes to keep such records confidential, Provider must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

VI. Insurance and Indemnification

A. Requirement:

Provider shall procure and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with performance of the services hereunder by the Provider, its agents, representatives, employees, or subcontractors.

B. Minimum Limits of Insurance:

Provider shall maintain insurance policies with coverage and limits no less than:

- i) Commercial General Liability: \$1,000,000 combined single limit per occurrence for comprehensive coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage for premises/operations, products/completed operations, independent contractors and contractual liability (specifically covering the indemnity). This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on "an occurrence" basis ("claims made" coverage is not acceptable).

- ii) Commercial Automobile Liability (owned, non-owned and hired): \$1,000,000 combined single limit per occurrence and for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
- iii) Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the State of Georgia and Employers Liability of \$1,000,000 per occurrence or disease.
- iv) Commercial Umbrella or Excess Liability Coverage: \$2,000,000 in liability excess coverage per occurrence above the contracts stated minimum coverage limits for Commercial General Liability, Commercial Automobile Liability, and the Workers' Compensation and Employers Liability policies of insurance. This may be satisfied by having the underlying liability limits that equal or exceed the combined amount of the underlying liability limits and umbrella coverage.
- v) Professional Liability (Errors and Omissions) Coverage: \$1,000,000 per claim and in the aggregate.
- vi) The making of progress payments to the Provider shall not be construed as relieving the Provider or its subcontractors or insurance carriers from providing the coverage described herein for responsibility for loss or direct physical loss, damage or destruction occurring prior to final acceptance of the services.

C. Deductibles and Self-Insured Retention

Any deductibles or self-insurance retentions must be declared to the Sheriff to ensure the financial solvency of the Provider. Provider shall pay all deductibles and be liable for all claims, losses and damages for which it self-insures.

D. General Liability, Automobile Liability, and Umbrella/Excess Insurance

The policies are to contain, or be endorsed to contain, the following provisions:

- i) Additional Insured Requirement. The Sheriff and Cobb County, its elected and appointed officials, officers, boards, commissions, officers, employees, representatives, servants, volunteers and agents (hereinafter referred to as "Insured Party" or "Insured Parties") are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Provider; products and completed operations of the Provider, premises owned, leased, or used by the Provider; and automobiles owned, leased, hired, or borrowed by the Provider. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Provider to provide liability insurance coverage to the any Insured Party for claims asserted against such Insured Party for its sole negligence. The general liability policy or endorsement regarding additional insured shall apply to ongoing and completed operations.

- ii) Primary Insurance Requirement. The Provider's insurance coverage shall be primary and noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of the Provider's insurance and shall not contribute with it.
- iii) Reporting Requirement. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.

E. Workers' Compensation and Employers Liability Coverage

The Provider shall have and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services by the Provider, its agents, representatives, employees or subcontractors. The insurer shall agree to waive all rights of subrogation against the Sheriff or County and its officers, officials, employees and volunteers for losses arising from the work performed by the Provider for the Sheriff

F. Waiver of Subrogation

The insurers shall agree under each policy of insurance required by this Agreement to waive all rights of subrogation against the Insured Parties for losses arising from work performed by the Provider for the Sheriff or County.

G. All Coverages

- i) Notice Requirement. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' (10 day's for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the Sheriff. Sheriff reserves the right to accept alternate notice terms and provisions provided they meet the minimum requirements under Georgia law. In the event a policy is suspended, voided, or reduced in coverage or in limits, Provider shall provide the County with 30 days' written notice.
- ii) Acceptability. The insurance to be maintained by Provider must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurers with a minimum AM Best's Policyholder's Rating of "A" or better and with a financial rating of Class VIII or greater.
- iii) Failure of Insurers. The Provider shall be responsible for any delay resulting from the failure of any insurer to furnish proof of coverage in the prescribed form.

H. Verification of Coverage

Provider shall furnish the Sheriff with certificates of insurance evidencing all coverages required by this Agreement. The certificates for each insurance policy are to be signed by a person

authorized by that insurer to bind coverage on its behalf. The certificates shall be furnished at or prior to the time the time this Agreement is submitted to the Sheriff for execution, and must be received and approved by the Sheriff before any work commences. The Sheriff reserves the right to require complete, certified copies of all required insurance policies at any time. The Provider shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

I. Subcontractors

Provider shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the Insured Parties as additional insureds. Provider shall be responsible for the work products and actions of all subcontractors. All subcontractors are subject to approval by the Sheriff. Subcontractors must comply with the same insurance requirements as the Provider. Subcontractors must comply with the requirements of the Georgia Security and immigration compliance Act as set forth in this Agreement.

- 6.1 Verification. Provider shall require and verify from any independent contractor with which it contracts in order to carry out and fulfill all or any part of its duties herein the same insurance coverage as set out in this Section as applicable.
- 6.2 Property Insurance. Sheriff, through County, will maintain insurance on CCADC and all County-owned property contained therein for fire and casualties. Provider will be responsible for insuring or retaining any losses to any of its personal property.
- 6.3 Indemnification. Provider covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. To the fullest extent permitted by law, the Provider shall defend, indemnify and hold harmless the Sheriff, the County, and the Sheriff and the County's elected and appointed officials, officers, boards, commissions, employees, representatives, contractors, servants, agents and volunteers (individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, expenses, and liability of any kind whatsoever, including but not limited to attorneys' fees and other legal expenses, ("Liabilities") to the extent caused by or resulting from negligence, recklessness, or intentionally wrongful conduct by Provider, or any employee, servant, agent, subcontractor, or volunteer of Provider or any of its subcontractors. This indemnity obligation does not include Liabilities caused by or resulting from the acts or omissions of an Indemnified Parties, or any of them. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to the party or person described in this Section. In any and all claims against the Indemnified Parties, or any of them, by an employee of the Provider or its subcontractors, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Provider, or its subcontractors, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend and hold harmless the and Indemnified Parties shall survive the expiration or termination of this Agreement provided that the claims are based upon or arise out of acts or omissions that occurred during the performance of this Agreement.

- 6.4 Notice of Claims. Each party shall notify the other if any Inmate brings a claim against it arising out of matters related to this Agreement.

VII. Independent Contractor Relationship

- 7.1 Independent Contractors. This Agreement is not intended to create nor shall be construed to create any relationship between Sheriff and Provider other than that of independent contractor entities contracting for the purpose of effecting this Agreement. Neither party nor any of their representatives shall be construed to be the agent, employer, employee or representative of the other.
- 7.2 No Interference. Nothing in this Agreement shall be construed to interfere with or in any way affect any Provider's obligation to exercise independent medical judgment in rendering health care services to Inmates (including, but not limited to, medical management decisions and protocols).

VIII. Termination

8.1 Generally.

Provider or Sheriff may terminate this Agreement pursuant to the following provisions:

- (a) Provider may terminate this Agreement if Sheriff fails to make a non-disputed payment required under this Agreement within ninety (90) days after written notice from Provider to Sheriff that payment was not made when due.
- (b) Except for payment disputes or late payment, either party may terminate this Agreement upon a non-monetary material breach of this Agreement by the other party which is not cured within thirty (30) days after the non-breaching party shall have given the breaching party written notice of such breach.
- (c) The Sheriff may terminate this Agreement at any time for convenience or due to lack of funding, upon one-hundred and eighty (180) days' written notice to Provider. Provider may terminate this Agreement without cause upon one hundred eighty (180) days' prior written notice to Sheriff.
- (d) Either party may immediately terminate this Agreement upon initiation of bankruptcy proceedings by or against the other party.
- (e) In accordance with O.C.G.A. 36-60-13(b), this Agreement will terminate immediately and absolutely at such time as funds are no longer available to satisfy the obligations of Sheriff or County.
- (f) Upon termination for any reason, Provider shall cooperate and assist with the transition to a new medical services provider so as to avoid any reasonable

EXHIBIT B

COMPLAINT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HENRIETTA SMITH as next friend of)
H.K. and N.S, and)
NICKEIL BETHEA-SMITH,)
)
Plaintiffs,)
)
v.)
)
STACEY BAINS,)
KARA PADGETT,)
AMANDA BROWN,)
STACEY KELLY,)
OCTAVIA KEITT,)
DANIELE CATHEY,)
JERONIA BOWDEN,)
TIARRA CARTER,)
CARYN FORBES, and)
WELLPATH, LLC)
)
Defendants.)

COMPLAINT

This case is brought by Plaintiffs Nickeil Bethea-Smith, H.K., and N.S. the three surviving children of Nicole Smith, against six deputies of the Cobb County Sheriff, the medical provider at the Cobb County jail, Wellpath, LLC, and three Wellpath employees. This case arises from Nicole Smith’s tragic suicide while incarcerated in the Cobb County detention center. This case demonstrates systemic and callous indifference by each Defendant to the known risk of self-harm by Ms. Smith.

Allegations common to all counts

1. Plaintiff Nickeil Bethea-Smith is the adult surviving child of Nicole Smith.
2. Plaintiffs H.K. and N.S. are the two surviving minor children of Nicole Smith. This case is brought on their behalf by their grandmother, Plaintiff Henrietta Smith as next friend.
3. Nicole Smith was a pretrial detainee and was incarcerated as a result of her arrest and pending criminal charges.
4. At the time Ms. Smith committed suicide, she had been incarcerated at the detention center for almost eight months.
5. On April 5, 2022, Ms. Smith attempted to commit suicide by tying a sheet around her neck.
6. After that suicide attempt, jail staff placed Ms. Smith on a form of suicide watch called “close observation.”
7. Although Ms. Smith’s incarceration was called “close observation,” the interior of Ms. Smith’s cell could only be viewed through a small window in the door.
8. On April 9, 2022, and thereafter, Ms. Smith began refusing her prescribed psychiatric medications.

9. Throughout her entire time in the jail, Ms. Smith routinely refused her medication.
10. Inmates held in close observation are not allowed access to clothing, linens, personal hygiene products, or any item that could be used to commit suicide.
11. Inmates on close observation are generally only allowed to possess an anti-suicide safety smock and a mattress.
12. Nevertheless, jail policy states that inmates on close observation were to be given mesh underwear during their menstrual cycles.
13. Inmates on suicide watch were not allowed to wear underwear at any other time.
14. The type of mesh underwear used by the Cobb County Detention Center to be given to inmates on suicide watch during their menstrual cycles is not designed to prevent suicide.
15. Instead, the detention center dispenses underwear to individuals on suicide watch that is advertised by the manufacturer as “strong enough to withstand 50 institutional washings.”
16. On April 11, 2022, Ms. Smith was able to use the mesh underwear supplied to her to create a ligature tied around her neck.

17. A jailer discovered that suicide attempt after finding Ms. Smith with the underwear tied around her neck during a routine wellness check.
18. Ms. Smith's April 11 suicide attempt clearly demonstrated that the mesh underwear supplied to inmates on suicide watch, and to Ms. Smith specifically, was dangerous and gave those inmates a clear means to commit suicide.
19. Next, on May 13, 2022, Ms. Smith again attempted suicide by tying underwear around her neck.
20. The underwear used by Ms. Smith was the same type of mesh underwear Ms. Smith used on April 11.
21. This time, Ms. Smith was discovered when another inmate looked into the window of Ms. Smith's cell door and alerted a guard that Ms. Smith was attempting to commit suicide.
22. Jail staff found Ms. Smith with mesh underwear used as a ligature around her neck, and the knot was sufficiently tight that Defendant Brown had to cut the underwear off using a pair of scissors she kept on her person.
23. Ms. Smith's blood oxygen level was low, and her lips and fingers had become discolored.
24. Ms. Smith appeared to have lost consciousness as a result of the ligature and had a dark mark around her neck where the underwear had been tied.

25. Jail staff then transported Ms. Smith to the hospital for emergency treatment.
26. At the hospital, Ms. Smith declined treatment and was discharged the same evening and taken back to the jail.
27. Ms. Smith committed suicide days later on May 19, 2022, after jail staff gave Ms. Smith another pair of mesh underwear. This gave Ms. Smith the opportunity to, as she had the two times before, use the mesh underwear as a ligature to strangle herself.
28. All Defendants reside within the Atlanta Division of the Northern District of Georgia.
29. All actions referenced in this lawsuit occurred within Cobb County, Georgia.

Count I

30. This count is alleged against Defendants Stacey Kelly and Octavia Keitt and incorporates all previous factual allegations.
31. At the time of Ms. Smith's death, Defendants Kelly and Keitt were each employed as detention officers by the Cobb County Sheriff's Office.
32. Defendants Kelly and Keitt previously worked the same unit of the jail in which Ms. Smith was incarcerated.

33. After Ms. Smith attempted suicide on May 13, 2022, Defendant Kelly worked the following shift in the unit housing Ms. Smith.
34. After Ms. Smith's May 13 suicide attempt, both Defendants Kelly and Keitt were informed during shift change that Ms. Smith had attempted to commit suicide by using the mesh underwear and that, under no circumstances, should Ms. Smith be allowed to possess mesh underwear.
35. After that May 13 suicide attempt, the prohibition against giving Ms. Smith mesh underwear was written on a whiteboard in the office of the unit in which Ms. Smith was housed.
36. That whiteboard was commonly used to provide instructions on inmate care and was one of the means to communicate supervisor directives to jail personnel working the upcoming shifts. Detention officers such as Kelly and Keitt were expected to read the directives posted to the whiteboard.
37. Defendants Kelly and Keitt also knew that Ms. Smith remained suicidal following her May 13 suicide.
38. Ms. Smith made statements to Defendants Kelly and Keitt indicating that she was suicidal.
39. Defendants Kelly and Keitt learned during shift change that Ms. Smith was suicidal.

40. Both Defendants Kelly and Keitt knew that giving Ms. Smith a pair of mesh underwear created a substantial risk that Ms. Smith would use the underwear to kill herself in the same way that she had attempted twice before.
41. Despite this knowledge, on May 19, Defendant Kelly gave Ms. Smith a pair of mesh underwear when Ms. Smith requested it.
42. Defendant Kelly then told Defendant Keitt that Ms. Smith had requested mesh underwear and that Defendant Kelly had given underwear to Ms. Smith.
43. Defendants Kelly and Keitt each knew that Ms. Smith remained suicidal, had attempted to commit suicide twice using mesh underwear, that they received an order that Ms. Smith was not allowed to possess mesh underwear, and that Ms. Smith was alone in her cell with a new pair of mesh underwear.
44. In response, Defendants Kelly and Keitt did nothing to intervene to prevent Ms. Smith's continued access to the mesh underwear.
45. At 6:00 a.m. on May 19, Defendant Keitt found Ms. Smith lying on the floor of her cell with the underwear tied around her neck.

46. Defendants Kelly and Keitt were deliberately indifferent to a serious risk of harm to Ms. Smith in violation of the Fourteenth Amendment of the United States Constitution.

Count II

47. This count is alleged against Defendants Kelly and Keitt and incorporates all previous allegations.
48. The directive not to allow Ms. Smith to possess mesh underwear was communicated to Defendants Kelly and Keitt through multiple channels, including being written on a whiteboard used to provide instructions to detention officers, and being directly communicated to them by supervisors.
49. Defendants Kelly and Keitt had no discretion to deviate from that directive.
50. Defendants Kelly and Keitt's failure to follow these directives constituted a negligent breach of the ministerial duty imposed upon them in violation of Ga. Const., art. I, § II, ¶ IX (d).

Count III

51. This count is alleged against Defendant Danielle Cathey and incorporates the allegations set forth in ¶¶ 1–29.

52. Each deputy assigned to Ms. Smith's housing unit was obligated by official policy to perform wellness checks on Ms. Smith in 12-minute intervals.
53. The Sheriff's policy requires that, when performing a wellness check, a deputy must visually confirm that the inmate is alive, breathing, not attempting any form of self-harm, and not in the midst of a medical emergency.
54. Deputies have no authority to deviate from the policy requiring routine wellness checks.
55. After Ms. Smith tied the mesh underwear around her neck on May 19th and laid down in her cell, Defendant Cathey performed a round of wellness checks in the housing unit.
56. When performing wellness checks, deputies are required to scan a unique code outside of each cell door as a means of verifying that the cell checks were done.
57. Defendant Cathey then walked the housing unit, scanned the codes outside of each cell door, and scanned the door to Ms. Smith's cell twice.
58. Defendant Cathey did not actually look into Ms. Smith's cell and could not see Ms. Smith.

59. Had Defendant Cathey looked into Ms. Smith's cell, she would have seen Ms. Smith lying on the floor with underwear wrapped around her neck.
60. Because Defendant Cathey failed to perform the required wellness check, Ms. Smith was not discovered until about 14 minutes later when Defendant Kelly performed a subsequent wellness check and discovered Ms. Smith unresponsive, lying on the floor with underwear wrapped around her neck.
61. If Defendant Cathey had performed a wellness check as required by official policy, she would have seen Ms. Smith with the mesh underwear around her neck in time to save her life.
62. Cathey's actions constituted a negligent breach of her ministerial duty, subjecting her to liability by operation of Art I, Sec. II, Para IX (d).

Count IV

63. This count is alleged against Defendant Amanda Brown and incorporates the allegations set forth in ¶¶ 1–29. This count is pled in the alternative to Counts I and II.
64. Defendant Brown was employed as a sergeant and was a supervisor in the unit housing Ms. Smith.
65. As the supervisor on duty, Defendant Brown oversaw three deputies in that unit.

66. Sgt. Brown was the supervisor on duty on May 13 when Ms. Smith attempted to commit suicide.
67. Sgt. Brown was one of the responding officers to Ms. Smith's May 13 suicide attempt and personally witnessed Ms. Smith's loss of consciousness, the blue color of her lips and fingers, and the tightness of the ligature around her neck.
68. Defendant Brown was the supervisor of the outgoing shift on May 18, 2022, prior to the time Ms. Smith committed suicide.
69. As supervisor of the outgoing shift, Sgt. Brown was responsible for ensuring that the oncoming shift knew that Ms. Smith was not allowed to possess mesh underwear.
70. Defendant Brown did not brief the oncoming shift of Defendants Kelly and Keitt or Deputy Cathey that Ms. Smith was not permitted to receive mesh underwear.
71. Defendant Brown knew that Sgt. Bergman was the supervisor of the oncoming shift on May 18.
72. Defendant Brown knew that Sgt. Bergman did not work any shift at the jail between May 13 and May 18, and Bergman's first shift after returning from annual leave was May 18.

73. Defendant Brown had a duty to brief Sgt. Bergman on all relevant information concerning the inmates' health and safety during shift change.
74. Defendant Brown knew that no email had been sent to jail staff informing them that Ms. Smith was not allowed to possess mesh underwear and that Sgt. Bergman would not have received any such information in her work email.
75. Defendant Brown knew that there was no written management directive issued concerning Ms. Smith and her prior suicide attempts.
76. Defendant Brown did not brief Sgt. Bergman on any of the events related to Ms. Smith's prior suicide attempts, or the prohibition on Ms. Smith receiving mesh underwear while on suicide watch.
77. Defendant Brown knew that the prohibition on mesh underwear had never been memorialized in the written Pass On Log, which contains information communicated between shifts.
78. Defendant Brown knew that no directive had been issued by Defendant Bains or any other supervisor concerning Ms. Smith's receipt of mesh underwear.

79. Defendant Brown knew that the whiteboard in the office outside the pod did not specify that Ms. Smith was not permitted to receive mesh underwear.
80. Defendant Brown knew that the close observation form kept in Ms. Smith's housing unit did not contain a prohibition on Ms. Smith's receipt of mesh underwear.
81. Defendant Brown's failures to notify the oncoming shifts personnel constituted deliberate indifference under the Fourteenth Amendment because Defendant Brown knew that Ms. Smith previously attempted to commit suicide, that the mesh underwear would be provided to Ms. Smith as a matter of routine practice, and knew that the oncoming shift did not know about the prohibition on providing mesh underwear to Ms. Smith.

Count V

82. This count is alleged against Defendant Kara Padgett and incorporates the allegations set forth in ¶¶ 1–29. This count is pled in the alternative to Counts I and II.
83. Defendant Padgett was employed by the Cobb County Sheriff's Office and held the rank of captain.

84. Defendant Padgett served as the detention center's watch commander on May 13, May 14, May 15, and May 18.
85. As watch commander, Defendant Padgett supervised Defendant Brown, Sgt. Bergman, and Defendants Kelly, Keitt, and Cathey.
86. As part of that responsibility, she and the other watch commanders were required to conduct a shift briefing at the beginning of their shift and complete the end-of-shift report for the entire jail, called the Supervisor Pass On Log.
87. The Pass On Log documents new and ongoing directives concerning inmates, which the oncoming shift commander relays at the shift briefing.
88. Defendant Padgett had a duty to include important information that occurred during her shift and any management directives that staff on other shifts would need to know.
89. Defendant Padgett was the watch commander when Ms. Smith attempted suicide on May 13.
90. Defendant Padgett was responsible for reviewing and reporting the incident to the commander and assistant commanders overseeing the jail.
91. Following the May 13 suicide attempt, Defendant Padgett received a copy of the incident report detailing Ms. Smith's use of mesh underwear

and approved the close observation request completed by Defendant Forbes on May 14.

92. Defendant Padgett knew that, under jail policies, the mesh underwear used by Ms. Smith in her suicide attempt was routinely supplied to women on suicide watch during their menstrual cycles.
93. Defendant Padgett knew that the close observation form, which would be placed in Ms. Smith's housing unit, did not prohibit her from receiving the underwear while on close observation.
94. Defendant Padgett knew that no directives concerning Ms. Smith's receipt of underwear while on close observation had been issued in the detention center's computerized "offender management system."
95. Defendant Padgett knew that no management directives were emailed by Defendant Bains, instructing staff not to give Ms. Smith the mesh underwear while she was on close observation.
96. Nevertheless, Defendant Padgett did not include a directive prohibiting Ms. Smith from receiving the underwear in the May 13, May 14, May 15, or May 18 Pass On Logs.
97. As a result, Defendant Kelly and Keitt did not know that they were prohibited from supplying the underwear to Ms. Smith on May 18.

98. Defendant Padgett's failure to issue and disseminate a management directive violated Ms. Smith's rights under the Fourteenth Amendment because it was deliberately indifferent to the risk that staff would follow jail policy and provide the underwear to Ms. Smith, who would again attempt suicide using the underwear.

Count VI

99. This count is alleged against Defendant Stacey Bains and incorporates the allegations set forth in ¶¶ 1–29. This count is pled in the alternative to Counts I and II.
100. Defendant Bains held the rank of major and was assigned to the detention center.
101. Defendant Bains had supervisory authority over Defendants Kelly, Keitt, and all other detention officers assigned to the unit in which Ms. Smith was incarcerated.
102. Prior to Ms. Smith's May 13 suicide attempt, Defendant Bains previously issued a directive concerning Ms. Smith's treatment at the jail and disseminated that management directive via email to all jail staff.
103. Defendant Bains acted as the liaison between the jail's command staff and the jail's medical and mental health providers.

104. After Ms. Smith's May 13 suicide attempt, Defendant Bains entered Ms. Smith's cell and found that Ms. Smith possessed multiple pairs of mesh underwear, in addition to the underwear she used in the suicide attempt.
105. Defendant Bains also knew that Ms. Smith attempted to commit suicide on April 11 by using the mesh underwear.
106. Defendant Bains knew that the mesh underwear was being supplied to women on suicide watch during their menstrual cycles.
107. Defendant Bains knew that no special instructions concerning Ms. Smith's receipt of underwear had been issued in the detention center's computerized "offender management system."
108. Defendant Bains knew the lack of a directive in the offender management system would make communicating a directive difficult and, therefore, it was necessary to promulgate the directive that Ms. Smith not receive mesh underwear through additional means.
109. Defendant Bains knew that the prior management directive she issued for Ms. Smith did not include any prohibition on Ms. Smith's receipt of mesh underwear.
110. Defendant Bains knew that the Pass On Log that memorialized all information communicated between incoming and outgoing shifts at the jail never indicated that Defendant Padgett or other watch commanders

- had discussed that Ms. Smith: (a) attempted suicide on May 13; (b) was not allowed to be given mesh underwear; (c) was acutely suicidal; or (d) had been routinely refusing her psychiatric medication.
111. The whiteboard in the office of Ms. Smith's unit did not indicate any limitation on the items that Ms. Smith was allowed to possess, and instead only indicated that Ms. Smith was on close observation status.
 112. Defendant Bains was responsible for creating inmate management directives and for disseminating those directives to detention officers.
 113. Following Ms. Smith's May 13 suicide attempt, Defendant Bains did not create any management directive informing detention staff that Ms. Smith was not permitted to have mesh underwear.
 114. Defendant Bains knew that jail policy allowed inmates on suicide watch to possess mesh underwear during their menstrual cycles.
 115. Defendant Bains knew that, if the jail policy were followed by detention officers, it was inevitable that Ms. Smith would continue to be allowed to possess mesh underwear.
 116. Despite two previous suicide attempts, Ms. Bains did nothing to ensure that each detention officer who worked in the unit knew that Ms. Smith was not permitted to possess mesh underwear.

117. Despite two previous suicide attempts, Ms. Bains did nothing to ensure that each detention officer who worked in the unit knew that Ms. Smith had previously attempted to use the mesh underwear to commit suicide.
118. The reason that Defendant Kelly provided mesh underwear to Ms. Smith was that no one informed her, through any channel, that Ms. Smith was not permitted to possess mesh underwear or that Ms. Smith had twice attempted to commit suicide using mesh underwear.
119. The reason that Defendant Keitt did not remove the mesh underwear from Ms. Smith's cell was that no one informed her, through any channel, that Ms. Smith was not permitted to possess mesh underwear or that Ms. Smith had twice attempted to commit suicide using mesh underwear.
120. Defendant Bains' deliberate indifference to the duty to issue a directive to detention officers prohibition them from supplying Ms. Smith with mesh underwear—knowing that it was the equivalent of giving a person on suicide watch a rope to hang themselves—made it inevitable that another deputy would give Ms. Smith the mesh underwear as a matter of routine practice. This indifference violated the Fourteenth Amendment of the United States Constitution.

Count VII

121. This count is alleged against Defendant Wellpath, LLC, and its employees Tierra Carter, Caryn Forbes, and Jeronia Bowden. This count incorporates the allegations set forth in ¶ 1–29.
122. Wellpath, LLC is a private Delaware corporation that provides medical services to the Cobb County detention center pursuant to a contract with the Cobb County Sheriff’s Office.
123. Defendant Forbes was a licensed master social worker employed by Wellpath, LLC.
124. Defendant Carter was a licensed master social worker employed by Wellpath, LLC.
125. Defendant Bowden was a licensed master social worker employed by Wellpath, LLC.
126. After Ms. Smith’s May 13 suicide attempt, Defendants Carter, Forbes, and Bowden each visited Ms. Smith in the jail for the purposes of providing mental health treatment.
127. On May 14, Ms. Smith told Defendant Forbes that the reason she attempted to kill herself was that her complaints about her medication had been ignored. Smith told Forbes that she was feeling hopeless and had started to work out a plan to kill herself again.

128. On May 15, Ms. Smith told Defendant Bowden that it was very likely that she would attempt to commit suicide again. Smith told Bowden that she had suicidal ideations and remained suicidal.
129. On May 16, Ms. Smith told Defendant Bowden that she had a plan and intent to commit suicide. Ms. Smith told Bowden that she planned to hang herself.
130. On May 17, Ms. Smith spoke with Defendant Bowden and continued to endorse suicidal ideations and had a plan and intent to commit suicide.
131. On May 18, a detention officer told Defendant Carter that Ms. Smith had stated that she planned to tell the mental health practitioners at the jail that she was no longer suicidal so that she could be removed from close observation and then, when moved to general population, commit suicide by hanging herself.
132. On May 18, Ms. Smith attempted to follow through with the plan that the deputy had warned Defendant Carter about. Smith told Defendant Carter that she was no longer suicidal and wished to be returned to general population.
133. Defendant Carter knew that Smith's claim that she was not suicidal was, in fact, a ruse to allow her to attempt to commit suicide.

134. The preceding information was documented in Ms. Smith's mental health treatment notes.
135. Defendants Bowden, Forbes, and Carter each reviewed each other's treatment notes and knew that Ms. Smith remained acutely suicidal each day following her May 13 suicide attempt.
136. Each time an inmate is placed under close observation, a copy of the form initiating close observation is kept in the inmate's housing unit to ensure that each deputy and mental health practitioner who interacts with that inmate is aware of any safety restrictions that have been enacted by either the deputies or mental health practitioners.
137. Defendant Forbes completed a new close observation form on April 14, 2022, which was kept in Ms. Smith's housing unit. Defendant Forbes and Defendant Padgett signed it.
138. The close observation form did not prohibit Ms. Smith from receiving mesh underwear, even though she attempted suicide twice using it.
139. The close observation form was the primary means by which the mental health staff could ensure communication with all staff assigned to Ms. Smith's housing unit.
140. Defendants Tiarra Carter, Caryn Forbes, and Jeronia Bowden each knew the following:

- a. Ms. Smith's prior psychiatric medication had been abruptly discontinued by Wellpath.
 - b. Ms. Smith was routinely refusing the newly prescribed medication because it made her symptoms worse and brought on other negative side effects.
 - c. Ms. Smith attempted to commit suicide on April 11 and May 13 using underwear provided to her while under close observation.
 - d. Ms. Smith had not been seen by the jail's psychiatrist or advanced practice registered nurse since her April 11 suicide attempt.
 - e. Ms. Smith remained acutely suicidal following her April 11 and May 13 suicide attempts.
 - f. Ms. Smith remained on close observation in the jail, but her housing had not been elevated to constant watch.
 - g. No directive had been issued preventing Ms. Smith from receiving the mesh underwear Ms. Smith previously attempted to use to kill herself.
 - h. Each had the power to amend the close observation form to include the restriction on receiving mesh underwear.
141. Defendants Carter, Forbes, and Bowden's failure to ensure that Ms. Smith did not receive mesh underwear was negligent under Georgia law.

142. Defendant Wellpath is liable for the actions of Defendants Carter, Forbes, and Bowden under the doctrines of respondeat superior and vicarious liability.

Count VIII

143. This count is alleged against Defendant Wellpath, LLC, and its employees Tiarra Carter, Caryn Forbes, and Jeronia Bowden. This count incorporates the allegations set forth in ¶ 1–29.

144. During the time period from May 14 to May 19, Ms. Smith remained under a form of suicide watch called “close observation.”

145. The most restrictive form of suicide watch available at the jail is called “constant watch.”

146. An inmate under constant watch is housed in a holding cell across from a staffed workstation in the infirmary where they can be continuously monitored by staff.

147. Inmates placed on constant watch must remain on constant watch until cleared by an outside treating facility and returned to the jail.

148. Any mental health practitioner, including Defendants Carter, Forbes, and Bowden could have elevated Ms. Smith’s level of suicide watch to constant watch.

149. Defendants Carter, Forbes, and Bowden each failed to elevate Ms. Smith's level of suicide watch to constant watch despite knowing that Ms. Smith was acutely suicidal.
150. Defendants Carter, Forbes, and Bowden each knew that Ms. Smith had been refusing prescribed medication and had repeatedly complained about the negative effects of the prescribed medication.
151. Based on their reviews of Ms. Smith's treatment notes, Defendants Carter, Forbes, and Bowden each knew that Ms. Smith was not scheduled for a follow-up with the advanced practice registered nurse until June 27, 2022.
152. Defendants Carter, Forbes, and Bowden each failed to ensure that Ms. Smith was seen by the jail's doctor or advanced practice registered nurse following her May 13 suicide attempt, despite knowing that Ms. Smith remained suicidal and regularly refused her medications.
153. The failure to elevate Ms. Smith's level of suicide watch and ensure that Ms. Smith's care was elevated constitutes a gross deviation from the standard of care applicable to Defendants Carter, Forbes, and Bowden and was negligent under Georgia law.

154. Defendant Wellpath is liable for the actions of Defendants Carter, Forbes, and Bowden under the doctrines of respondeat superior and vicarious liability under Georgia law.

Count IX

155. This count is alleged against all Defendants. This count incorporates all preceding allegations.

156. For all claims that arise under Georgia law, Plaintiffs seek attorneys' fees under O.C.G.A. § 13-6-11 on the basis of Defendants' bad faith.

Request for Relief

157. Plaintiffs request:

- a. Hold a trial by jury on all issues so triable;
- b. Award general and special damages to Plaintiffs for the value of Ms. Smith's life in an amount to be determined by a jury;
- c. Award punitive damages against each Defendant sued in their individual capacity;
- d. Award reasonable attorney's fees under 42 U.S.C. § 1988 and O.C.G.A. § 13-6-11;
- e. Award such other further relief to which Plaintiffs are legally entitled, whether explicitly pleaded or not.

Submitted on May 14, 2024.

G. Brian Spears

G. Brian Spears
Georgia Bar No. 670112

Jeff Filipovits

Jeff Filipovits
Georgia Bar No. 825553

Wingo F. Smith

Wingo F. Smith
Georgia Bar No. 147896

SPEARS & FILIPOVITS, LLC
315 W. Ponce de Leon Ave., Ste. 865
Decatur, Georgia 30030
404-905-2225
bspears@civil-rights.law
jeff@civil-rights.law
wingo@civil-rights.law

William Dixon James

William Dixon James
Georgia Bar No. 003989

WM. DIXON JAMES, P.C.
One Decatur Town Center
150 East Ponce de Leon Avenue
Suite 260
Decatur, Georgia 30030
(404) 373-0072
DixonJames@DixonJamesLaw.com

EXHIBIT C

DOCKET SHEET

**U.S. District Court
Northern District of Georgia (Atlanta)
CIVIL DOCKET FOR CASE #: 1:24-cv-02102-TWT**

Smith et al v. Bains et al
Assigned to: Judge Thomas W. Thrash, Jr
Cause: 42:1983 Civil Rights Act

Date Filed: 05/14/2024
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Henrietta Smith
as next friend
H.K.
as next friend
N.S.

represented by **George Brian Spears**
Spears & Filipovits, LLC
315 W Ponce de Leon Ave
Suite 865
Decatur, GA 30030
404-905-2225
Fax: 404-905-8216
Email: bspears@civil-rights.law
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey Filipovits
Spears & Filipovits, LLC
315 W Ponce de Leon Ave
Suite 865
Decatur, GA 30030
678-237-9302
Fax: 404-905-8216
Email: jeff@civil-rights.law
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William Dixon James
The Law Office of William Dixon James,
P.C.
150 East Ponce de Leon Avenue
Suite 260
Decatur, GA 30030
404-373-0072
Fax: 404-373-0062
Email: dixonjames@dixonjameslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Wingo F. Smith
Spears & Filipovits, LLC
315 W Ponce de Leon Ave
Suite 865
Decatur, GA 30030
404-905-2225
Fax: 404-880-3461
Email: wingo@civil-rights.law
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Nickeil Bethea-Smith

represented by **George Brian Spears**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey Filipovits
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William Dixon James
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Wingo F. Smith
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Stacey Bains

represented by **Hugh William Rowling , Jr.**
Office of Cobb County Attorney
Law Department
100 Cherokee Street
Suite 350
Marietta, GA 30090-7003
770-528-4000
Email:
H.William.Rowling@cobbcounty.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lauren S. Bruce
Cobb County Attorney's Office
Suite 350

100 Cherokee Street
Marietta, GA 30090
770-528-4000
Email: Lauren.Bruce@cobbcounty.org
ATTORNEY TO BE NOTICED

Defendant

Kara Padgett

represented by **Hugh William Rowling , Jr.**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lauren S. Bruce
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Amanda Brown

represented by **Hugh William Rowling , Jr.**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lauren S. Bruce
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Stacey Kelly

represented by **Jason C. Waymire**
Williams & Waymire LLC
Suite A, Building 400
4330 South Lee Street
Buford, GA 30518
678-541-0790
Fax: 678-541-0789
Email: jason@wmwlaw.com
ATTORNEY TO BE NOTICED

Defendant

Octavia Keitt

represented by **Jason C. Waymire**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Daniele Cathey

represented by **Jason C. Waymire**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jeronia Bowden

represented by **Jacob Colby Wilson**

Noland Law Firm, LLC
5400 Riverside Drive, Ste 205
Macon, GA 31210
478-621-4980
Email: jwilson@hallboothsmith.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Beth Boone
Hall Booth Smith
3528 Darien Highway
Ste 300
Brunswick, GA 31525
912-554-0093
Email: bboone@hallboothsmith.com
TERMINATED: 08/19/2024

Robin Esther Daitch
Hall Booth Smith, P.C. -Atl
1301 1st Avenue
Suite 100
Columbus, GA 31901
706-363-9774
Email: Rdaitch@hallboothsmith.com
ATTORNEY TO BE NOTICED

Tiffiny Montenegro
Hall Booth Smith - Brunswick
3528 Darien Highway
Ste 300
Brunswick, GA 31525
912-554-0093
Email: tmontenegro@hallboothsmith.com
TERMINATED: 08/19/2024

Defendant

Tiarra Carter

represented by **Jacob Colby Wilson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Beth Boone
(See above for address)
TERMINATED: 08/19/2024

Robin Esther Daitch
(See above for address)
ATTORNEY TO BE NOTICED

Tiffiny Montenegro

TERMINATED: 08/19/2024

Defendant

Caryn Forbes

represented by **Jacob Colby Wilson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Beth Boone
(See above for address)
TERMINATED: 08/19/2024

Robin Esther Daitch
(See above for address)
ATTORNEY TO BE NOTICED

Tiffany Montenegro
(See above for address)
TERMINATED: 08/19/2024

Defendant

Wellpath, LLC

represented by **Jacob Colby Wilson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Beth Boone
(See above for address)
TERMINATED: 08/19/2024

Robin Esther Daitch
(See above for address)
ATTORNEY TO BE NOTICED

Tiffany Montenegro
(See above for address)
TERMINATED: 08/19/2024

Date Filed	#	Docket Text
05/14/2024	<u>1</u>	COMPLAINT with Jury Demand filed by Nickeil Bethea-Smith, Henrietta Smith. (Filing fee \$405, receipt number AGANDC-13434393) (Attachments: # <u>1</u> Civil Cover Sheet)(bmr) Please visit our website at http://www.gand.uscourts.gov/commonly-used-forms to obtain Pretrial Instructions and Pretrial Associated Forms which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 05/14/2024)
05/14/2024	<u>2</u>	Electronic Summons Issued as to Stacey Bains, Jeronia Bowden, Amanda Brown, Tiarra Carter, Daniele Cathey, Caryn Forbes, Octavia Keitt, Stacey Kelly, Kara Padgett, Wellpath, LLC. (Attachments: # <u>1</u> Summons Caryn Forbes, # <u>2</u> Summons Daniele

		Cathey, # <u>3</u> Summons Jeronia Bowden, # <u>4</u> Summons Kara Padgett, # <u>5</u> Summons Octavia Keitt, # <u>6</u> Summons Stacey Bains, # <u>7</u> Summons Stacey Kelly, # <u>8</u> Summons Tiarra Carter, # <u>9</u> Summons Wellpath, LLC)(bmr) (Entered: 05/14/2024)
05/23/2024	<u>3</u>	WAIVER OF SERVICE Returned Executed by Henrietta Smith. Amanda Brown waiver mailed on 5/17/2024, answer due 7/16/2024; Daniele Cathey waiver mailed on 5/17/2024, answer due 7/16/2024; Octavia Keitt waiver mailed on 5/17/2024, answer due 7/16/2024; Stacey Kelly waiver mailed on 5/17/2024, answer due 7/16/2024; Kara Padgett waiver mailed on 5/17/2024, answer due 7/16/2024. (Smith, Wingo) (Entered: 05/23/2024)
05/28/2024	<u>4</u>	WAIVER OF SERVICE Returned Executed by Nickeil Bethea-Smith, Henrietta Smith. Stacey Bains waiver mailed on 5/17/2024, answer due 7/16/2024. (Filipovits, Jeffrey) Modified on 5/28/2024 (jkb). Incorrect document, Refiled at <u>5</u> . (Entered: 05/28/2024)
05/28/2024	<u>5</u>	WAIVER OF SERVICE Returned Executed by Nickeil Bethea-Smith, Henrietta Smith. Stacey Bains waiver mailed on 5/17/2024, answer due 7/16/2024. (Filipovits, Jeffrey) Modified on 5/29/2024 to edit text (jkb). (Entered: 05/28/2024)
06/03/2024	<u>6</u>	Return of Service Executed by Nickeil Bethea-Smith, Henrietta Smith. Wellpath, LLC served on 5/29/2024, answer due 6/20/2024. (Filipovits, Jeffrey) (Entered: 06/03/2024)
06/19/2024	<u>7</u>	ANSWER to <u>1</u> COMPLAINT with Jury Demand by Wellpath, LLC. Discovery ends on 11/18/2024.(Montenegro, Tiffany) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 06/19/2024)
06/25/2024	<u>8</u>	Return of Service Executed by Nickeil Bethea-Smith, Henrietta Smith. Tiarra Carter served on 6/10/2024, answer due 7/1/2024. (Filipovits, Jeffrey) (Entered: 06/25/2024)
07/01/2024	<u>9</u>	ANSWER to <u>1</u> COMPLAINT with Jury Demand by Tiarra Carter.(Montenegro, Tiffany) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 07/01/2024)
07/03/2024	<u>10</u>	Notice of Leave of Absence for the following date(s): August 8-15, 2024, by G. Brian Spears (Smith, Wingo) Modified on 7/5/2024 (bmr). (Entered: 07/03/2024)
07/16/2024	<u>11</u>	MOTION to Dismiss with Brief In Support by Stacey Bains, Amanda Brown, Kara Padgett. (Attachments: # <u>1</u> Brief Brief in Support of Motion to Dismiss)(Bruce, Lauren) (Entered: 07/16/2024)
07/16/2024	<u>12</u>	Joint MOTION to Stay <i>Discovery</i> with Brief In Support by Stacey Bains, Amanda Brown, Kara Padgett. (Attachments: # <u>1</u> Brief Brief in Support of Motion to Stay Discovery, # <u>2</u> Text of Proposed Order Proposed Order)(Bruce, Lauren) (Entered: 07/16/2024)
07/16/2024	<u>13</u>	ANSWER to <u>1</u> COMPLAINT with Jury Demand by Daniele Cathey, Octavia Keitt, Stacey Kelly.(Waymire, Jason) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 07/16/2024)
07/18/2024	<u>14</u>	ORDER granting Defendants' <u>12</u> Joint Motion to Stay Discovery. All discovery is STAYED pending resolution of the pending motion to dismiss. Signed by Judge Thomas W. Thrash, Jr. on 7/18/2024. (bgt) (Entered: 07/18/2024)
07/26/2024	<u>15</u>	JOINT PRELIMINARY REPORT AND DISCOVERY PLAN filed by Nickeil Bethea-Smith, Henrietta Smith. (Smith, Wingo) (Entered: 07/26/2024)

07/30/2024	16	RESPONSE in Opposition re 11 MOTION to Dismiss filed by Nickeil Bethea-Smith, Henrietta Smith. (Filipovits, Jeffrey) (Entered: 07/30/2024)
08/05/2024	17	WAIVER OF SERVICE Returned Executed filed by Jeronia Bowden. Jeronia Bowden served on 8/5/2024, answer due 10/4/2024. (Montenegro, Tiffany) Modified on 8/7/2024 (bmr). (Entered: 08/05/2024)
08/05/2024	18	WAIVER OF SERVICE Executed filed by Caryn Forbes. Caryn Forbes served on 8/5/2024, answer due 10/4/2024. (Montenegro, Tiffany) Modified on 8/7/2024 (bmr). (Entered: 08/05/2024)
08/13/2024	19	REPLY BRIEF re 11 MOTION to Dismiss filed by Stacey Bains, Amanda Brown, Kara Padgett. (Bruce, Lauren) (Entered: 08/13/2024)
08/14/2024		Submission of 11 MOTION to Dismiss to District Judge Thomas W. Thrash Jr. (bmr) (Entered: 08/14/2024)
08/19/2024	20	Certification of Consent to Substitution of Counsel. Robin Esther Daitch and Jacob Wilson replacing attorney Beth Boone and Tiffany Montenegro. (Daitch, Robin) Modified on 8/20/2024 (bmr). (Entered: 08/19/2024)
09/05/2024	21	Request for Leave of Absence for the following date(s): Nov. 15-25, 2024, Dec. 20, 2024-Jan. 2, 2025, by Wingo F. Smith. (Smith, Wingo) (Entered: 09/05/2024)
09/24/2024	22	Request for Leave of Absence for the following date(s): Nov. 20-Dec. 2, 2024, Dec. 20, 2024-Jan. 2, 2025, by Wingo F. Smith. (Smith, Wingo) (Entered: 09/24/2024)
10/04/2024	23	ANSWER to 1 COMPLAINT by Caryn Forbes.(Wilson, Jacob) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 10/04/2024)
10/04/2024	24	ANSWER to 1 COMPLAINT by Jeronia Bowden.(Wilson, Jacob) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 10/04/2024)
11/12/2024	25	NOTICE Of Filing Notice of Filing Bankruptcy and Automatic Stay by Wellpath, LLC (Daitch, Robin) (Entered: 11/12/2024)
11/15/2024		Submission of 25 Notice of Filing to District Judge Thomas W. Thrash Jr. (bmr) (Entered: 11/15/2024)
11/15/2024	26	NOTICE by Wellpath, LLC <i>Suggestion of Bankruptcy and Amended Notice of Stay</i> (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Daitch, Robin) (Entered: 11/15/2024)

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