

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

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**JASON HACKER,**

**Plaintiff,**

**v.**

**Case No. 3:14-00063-JWD-EWD**

**N. BURL CAIN, *et al.*,**

**Defendants.**

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**STATEMENT OF INTEREST OF THE UNITED STATES**

Plaintiff Jason Hacker alleges that officials at the Louisiana Department of Public Safety and Corrections (“DOC”) and Louisiana State Penitentiary at Angola (“Angola”) violated the Eighth Amendment by withholding medically necessary surgery to remove his cataracts as a result of a DOC and Angola policy to deem cataract surgery “elective” despite actual knowledge of its medical necessity. Plaintiff further alleges that Angola and the DOC referred him to private medical providers for his health care needs but deliberately refused to authorize the surgery prescribed by those providers for financial reasons and because his condition was not, in Defendants’ view, life-threatening. Without taking a position on the factual accuracy of Plaintiff’s claims, the United States files this Statement of Interest to assist the Court in evaluating Plaintiff’s Motion in Limine and related issues. It is the position of the United States that: (1) a State must ensure that the prisoners in its custody receive constitutionally adequate medical treatment, regardless of whether it contracts with private providers to deliver that treatment; (2) where prisoners have objectively serious medical needs that require attention, a

State cannot consciously disregard the consistent medical judgments and recommendations of the physicians with whom it contracts; and (3) a State may not escape its duty to provide constitutionally necessary medical care by labeling that care “elective,” if in fact treatment is necessary to address an objectively serious medical need.

### **INTEREST OF THE UNITED STATES**

The United States has authority to file this Statement of Interest pursuant to 28 U.S.C. § 517, which permits the Attorney General to attend to the interests of the United States in any case pending in federal court.<sup>1</sup> The United States, acting through the Civil Rights Division of the U.S. Department of Justice, has an interest in this matter because the alleged unconstitutional correctional practices at Angola fall within the Civil Rights Division’s enforcement authority. Specifically, the Civil Rights Division enforces the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 et seq., which allows it to investigate and remedy unconstitutional conditions of confinement imposed by state and local governments pursuant to a pattern or practice of civil rights violations.

The United States has a broad interest in ensuring that prisoners receive constitutionally adequate medical care under the Eighth Amendment of the U.S. Constitution. To that end, the Department of Justice has previously exercised its CRIPA authority to investigate jurisdictions for issues similar to those present in this case, including litigation involving Angola.<sup>2</sup> As this

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<sup>1</sup> The full text of 28 U.S.C. § 517 is as follows: “The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

<sup>2</sup> See, e.g., Letter from Thomas E. Perez, Assistant Att’y Gen. of the United States, U.S. Dep’t of Justice, to Carlos A. Gimenez, Mayor, Miami-Dade Cnty. (Aug. 24, 2011), [https://www.justice.gov/sites/default/files/crt/legacy/2011/08/29/Miami-Dade\\_findlet\\_8-24-11.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/08/29/Miami-Dade_findlet_8-24-11.pdf) (finding that the Miami-Dade County Jail failed to provide detainees with appropriate medical and mental health care, including screening, chronic care, and access to services for acute needs); Letter from Loretta King, Acting Assistant Att’y Gen. of the United States, U.S. Dep’t of Justice, to Marlin N. Gusman, Sheriff, Orleans Parish Sheriff’s Office (Sept. 11, 2009), [http://www.justice.gov/crt/about/spl/documents/parish\\_findlet.pdf](http://www.justice.gov/crt/about/spl/documents/parish_findlet.pdf) (finding that the Orleans Parish

Court is aware, it has become common practice for states to contract with private health care providers for correctional medical care, particularly given the wide range of prisoners' medical needs. It is also common practice for states to classify the health care needs of prisoners according to medical urgency, and provide care accordingly. The United States has an interest in ensuring that when a state contracts with private health care providers to provide medical care to prisoners, it ensures that prisoners receive care that meets Eighth Amendment standards.

### **FACTUAL BACKGROUND**

On January 30, 2014, Plaintiff Jason Hacker, a prisoner at Angola, filed suit against the former warden at Angola, former Governor of Louisiana, the Louisiana DOC, and various prison officials (collectively, "Defendants").<sup>3</sup> Plaintiff brought an Eighth Amendment claim pursuant to 42 U.S.C. § 1983, alleging that Defendants failed to provide him with constitutionally adequate medical care for his serious medical condition, and claims under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, alleging that Defendants failed to accommodate Plaintiff's disability.<sup>4</sup> On June 6, 2016, the Court denied both Plaintiff's and Defendants' motions for summary judgment, finding that questions of fact pertaining to all the legal issues in the litigation remained.<sup>5</sup> This Statement of Interest deals solely with questions of law raised by Plaintiff's Eighth Amendment claims.

Plaintiff's complaint alleges that Defendants were deliberately indifferent to his serious medical needs by denying him medically necessary cataract surgery for his deteriorating vision<sup>6</sup>

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Sheriff's Office failed to provide Orleans Parish Prison detainees with constitutional levels of medical and mental health care); Letter from John R. Dunn, Assistant Att'y Gen. of the United States, U.S. Dep't of Justice, to Buddy Roemer, Governor, Louisiana (finding that Angola prison failed to provide adequate medical care for its prisoners) (May 13, 1991), <http://www.clearinghouse.net/chDocs/public/PC-LA-0006-0001.pdf>.

<sup>3</sup> Compl., at 2–6.

<sup>4</sup> Second Am. Compl., at 11–12.

<sup>5</sup> See *Hacker v. Cain*, No. CV31400063JWDEWD, 2016 WL 3167176, at \*3, 17 (M.D. La. June 6, 2016).

<sup>6</sup> Mem. Supp. Pl.'s Mot. Summ. J., at 21.

while he was a prisoner at Angola.<sup>7</sup> He was examined by the in-house physicians at Angola, who noticed he had severe cataracts and referred him to private ophthalmologists on contract with the prison.<sup>8</sup> The specialists who evaluated Plaintiff recommended cataract removal surgery for his condition at least twelve times.<sup>9</sup> They also specifically informed Defendants on numerous occasions that Plaintiff needed surgery “as soon as possible.”<sup>10</sup>

Cataract surgeries are not performed at Angola but are referred to outside medical providers.<sup>11</sup> Prisoners at Angola who receive a referral for surgery from an outside provider cannot get the surgery unless it is approved by DOC.<sup>12</sup> DOC, therefore, has the ultimate authority in determining whether an inmate receives physician-recommended surgery.<sup>13</sup> It was not until Plaintiff filed this lawsuit that Defendants scheduled him for cataract removal in one of his eyes, and almost a year later, the second eye.<sup>14</sup>

Plaintiff alleges that Defendants have a policy and practice of categorizing cataract surgery as “elective” in order to delay surgery, thereby denying prisoners constitutionally adequate care while they wait for medically necessary treatment and potentially exposing them to long-term harm as a result.<sup>15</sup> Plaintiff points to LDPSC Health Care Policy No. HC-16, which classifies “elective” medical treatments to include both “cosmetic” and “medically necessary” procedures.<sup>16</sup> Through this policy, according to Plaintiff, Defendants categorize a wide array of medical procedures used to treat serious medical conditions, including cataract removal surgery,

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<sup>7</sup> Statement of Undisputed Facts, at 2-3.

<sup>8</sup> *Id.*

<sup>9</sup> Mem. Supp. Pl.’s Mot. Summ. J. at 1; 25.

<sup>10</sup> *Id.*

<sup>11</sup> Statement of Undisputed Facts, at 2, 3-4 (“Dr. Collins [stated] ... ‘I, as former Medical director of LSP, do not perform surgery on site, nor do the physicians approve or deny appointments/surgery for specialty clinics and off-site clinics. If any type of surgery is approved by the specialty clinic, the same will notify LSP of the surgery date and time and LSP Security will be notified to arrange transportation.’”)

<sup>12</sup> Second Am. Compl., at 5-7.

<sup>13</sup> *Id.*

<sup>14</sup> Mem. Supp. Pl.’s Mot. Summ. J., at 7.

<sup>15</sup> *Id.* at 23–30.

<sup>16</sup> *Id.* at 15.

as “elective.”<sup>17</sup> Plaintiff alleges that Defendants have a practice of delaying all treatments deemed “elective” even if in an individual case the particular treatment is medically necessary.<sup>18</sup> Plaintiff alleges he was told by an Angola physician that he would not receive surgery because it was not a “life or death emergency.”<sup>19</sup> Plaintiff alleges that at least thirty other prisoners who were recommended for cataract extraction surgery at Angola prison have reportedly experienced excessive delays before receiving cataract surgery, or are still waiting for the surgery.<sup>20</sup> Plaintiff further alleges that other prisoners have waited years for cataract removal surgery, with some periods of delay exceeding ten years.<sup>21</sup>

Defendants deny acting with deliberate indifference by arguing that Plaintiff was always under constant medical supervision.<sup>22</sup> Defendants assert that Plaintiff received a “plethora of multiple sick calls and visit[s] to EKL-LSU eye clinic related to cornea eye test[s], blurry vision, and cataracts examinations,” and that his medical care included “updating prescriptions for plaintiff’s eye glasses, referral to specialists, changes/restrictions in his work duty status and completion of cataract removal surgery in both eyes when access to a surgical facility was obtained.”<sup>23</sup> Defendants also argue that, because cataract removal surgery is not performed at Angola, Defendants met their constitutional obligations by referring Plaintiff to private medical providers.<sup>24</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Defs.’ Mem. Opp’n. Summ. J. Hacker ARP. Ex. 4, at 6.

<sup>20</sup> See Pl.’s Letter to Hon. John W. deGravelles, Judge, at 2–7.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> See *Hacker v. Cain*, No. CV31400063JWDEWD, 2016 WL 3167176, at \*15 (M.D. La. June 6, 2016).

<sup>23</sup> Defs.’ Mem. Opp’n Summ. J., at 6, 9.

<sup>24</sup> Mem. Supp. Pl.’s Mot. in Limine, at 4.

## DISCUSSION

Denial of necessary and adequate medical care constitutes cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. *See Estelle v. Gamble*, 429 U.S. 97, 103 (1976). To prove an Eighth Amendment violation, Plaintiff must satisfy two elements. First, he must show that he has an objectively serious medical need. *See id.* at 104. Second, he must show that prison officials exhibited deliberate indifference to that need, meaning they knew there was a substantial risk of harm to Plaintiff if that need was not met, yet they consciously disregarded that risk. *See id.* at 106; *Farmer v. Brennan*, 511 U.S. 825, 837 (1970).

An “objectively serious medical need” is “one that 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.” *Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004). An objectively serious medical need exists if the failure to treat a prisoner’s condition “pos[es] a substantial risk of serious harm.” *Mounce v. Doe*, 2014 WL 2587698, at \*25 (E.D. La. June 10, 2014). Numerous courts have held that cataracts requiring corrective surgery fall squarely within the ambit of an objectively serious medical need. *See, e.g., Colwell v. Bannister*, 763 F.3d 1060, 1067–68 (9th Cir. 2014); *Cobbs v. Pramstaller*, 475 F. App’x 575, 580 (6th Cir. 2012); *Rylee v. U.S. Bureau of Prisons*, 343 F. App’x 865, 866 (4th Cir. 2009); *Boring v. Sanders*, 2013 WL 4080308, at \*8 (M.D. Pa. Aug. 13, 2013); *Morris v. Corr. Med. Servs., Inc.*, 2012 WL 5874477, at \*3 (E.D. Mich. Nov. 20, 2012). This is especially true when cataract removal surgery is necessary to prevent imminent blindness, as was the case for Plaintiff. *See Campbell v. Fry*, 1990 WL 15601, at \*1 (4th Cir. 1990); *Davis v. Gusman*, 2009 WL 1604590, \*7 (E.D. La. June 4, 2009); *Padichit v. Unknown Cook County Officials*, 2006 WL 1897518, \*2 (S.D. Ill. July 11, 2006). Here, Plaintiff alleges that numerous clinicians both within and outside Angola

diagnosed him with severe cataracts, and referred him for cataract removal surgery on multiple occasions. Defendants concede that Plaintiff's cataracts also caused him to experience loss of vision. There appears to be no legitimate dispute that Plaintiff exhibited an objectively serious medical need.

This Statement of Interest focuses on the second element of the analysis: whether Defendants exhibited unconstitutional deliberate indifference to Plaintiff's objectively serious medical needs. To exhibit deliberate indifference in violation of the Eighth Amendment, a prison official must be "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Easter v. Powell*, 467 F.3d 459, 463 (5th Cir. 2006) (citing *Farmer*, 511 U.S. at 837). The plaintiff must show that "jail officials were actually aware of the risk, yet consciously disregarded it." *Lawson v. Dallas Cnty.*, 286 F.3d 257, 262 (5th Cir. 2002) (citing *Farmer*, 511 U.S. at 837). The Fifth Circuit has held that a prisoner can demonstrate deliberate indifference "by showing that a prison official refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Rogers v. Boatright*, 709 F.3d 403, 410 (5th Cir. 2013). Of particular relevance to this case, deliberate indifference may also be shown when prison officials deny a prisoner treatment appropriately identified by medical professionals as necessary for the treatment of an objectively serious medical need. *See Payne v. Lynaugh*, 843 F.2d 177, 178 (5th Cir. 1988); *Vanderhoff v. Prentice*, 251 F. App'x 861, 862 (5th Cir. 2007).

**I. The State must ensure that the prisoners in its custody receive constitutionally adequate medical treatment, regardless of whether it contracts with private providers to deliver that treatment.**

Angola's policy to refer its prisoners in need of cataract removal surgery to an outside provider does not relieve Angola of its constitutional duty to ensure its prisoners receive constitutionally adequate medical care. State prisons have an affirmative duty to provide access to constitutionally adequate medical care to the prisoners in their custody, regardless of whether the institution chooses to provide the actual care itself. *See West v. Atkins*, 487 U.S. 42, 56 (1988). When a state entity contracts with a private provider, both the state and the private provider must satisfy constitutional requirements. Private contractors who fall short of those obligations may be sued in their own right. *Id.* at 57 (holding that prisoner could sue private physician contractor for failing to schedule a necessary ankle surgery); *see also Rosborough v. Management & Training Corp.*, 350 F.3d 459, 460 (5th Cir. 2003) (holding that prisoner could sue private prison for the constitutional violations of its employees).

Conversely, where a state chooses to use private providers to assist in meeting its constitutional obligations, the state is liable for the private provider's unconstitutional actions when the state is aware of those actions and fails to correct them.<sup>25</sup> *See Jatoi v. Hurst-Eules-Bedford Hosp. Auth.*, 807 F.2d 1214, 1220–21 (5th Cir. 1987) (holding state liable for discrimination where a state hospital, managed by a private board of directors, restricted a physician's surgery privileges on account of his alienage and national origin); *Boman v. Birmingham Transit Co.*, 280 F.2d 531, 535 (5th Cir. 1960) (holding City of Birmingham liable for private bus company's unconstitutional policy of requiring Black passengers to sit in the back

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<sup>25</sup> We do not suggest that states are constitutionally or otherwise liable for the medical malpractice of private providers who provide medical care to prisoners in state custody.

of buses where city had issued ordinance delegating to private bus companies authority to promulgate regulations governing seating on public buses).

Therefore, the mere fact that a state prison contracts with private medical providers to provide care to prisoners cannot by itself insulate it from liability under the Eighth Amendment. *See, e.g., King v. Kramer*, 680 F.3d 1013, 1020-21 (7th Cir. 2012) (holding that where a county contracts with a private provider for prisoner medical services, the county is liable for the provider's constitutional violations whether or not it entrusts final decision-making authority over prisoner care to the provider); *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1250 (6th Cir. 1989) (holding county sheriff liable for policies of private medical provider used to deliver medical care to prisoners where those policies caused a prisoner harm in violation of the Eighth Amendment); *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 703 (11th Cir. 1985) (holding that prisoner stated claim for deliberate indifference against county and sheriff where medical care at county jail had been contracted to private entity). The state cannot shift its constitutional duties to a private party in this manner because, as the *West* court stated, "if this were the basis for delimiting § 1983 liability, the state will be free to contract out all services which it is constitutionally obligated to provide and leave its citizens with no means for vindication of those rights, whose protection has been delegated to 'private' actors, when they have been denied." *West*, 487 U.S. at 56, n. 14. Therefore, "[c]ontracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody." *Id.* at 56.

Defendants are therefore responsible for ensuring that the prisoners in their custody are actually receiving constitutionally adequate medical care. This responsibility means that Defendants must either provide that care directly, or ensure that private providers under contract

render that care. If Plaintiff's allegations are true, Defendants did neither, despite actual knowledge of Plaintiff's objective serious medical needs. Defendants did not provide cataract surgery to Plaintiff in-house, and waited almost two years—after Plaintiff filed suit—to approve the cataract surgery prescribed by ophthalmologists with whom Defendants contracted. As Plaintiff alleges, during the time that he waited for cataract surgery, his vision worsened, he became blind, and, as a result, suffered severe physical and emotional harm.

**II. State prisons may not substitute their judgment for the consistent medical judgment of physicians in determining the medical care that prisoners will receive.**

Plaintiff alleges that he was referred for cataract surgery at least twelve times, but did not receive surgery until he filed this lawsuit. Other prisoners in need of cataract surgery reportedly had similar experiences, and some are still waiting for surgery.<sup>26</sup> Defendants respond that Plaintiff did in fact receive medical care throughout the time he was waiting for surgery—they point to Plaintiff's various sick calls, eyeglass prescription refills and visits to specialists at LSU for additional surgery referrals.

As a preliminary matter, the mere provision of some medical treatment, which the State knows to be incorrect, does not meet a prison's Eighth Amendment obligation to provide constitutionally adequate medical care. *See Fuller v. Harris Cnty.*, 137 F. App'x 677, 679 (5th Cir. 2005) (holding that prisoner stated Eighth Amendment claim where prison officials gave him antibiotics instead of sending him to hospital for scheduled post-surgery follow-up examination, causing him to need an amputation of the leg that had undergone surgery.) Prisons are obligated to provide constitutionally adequate treatment that is appropriate and medically indicated. *See Easter*, 467 F.3d at 464 (holding that nurse violated Eighth Amendment rights of prisoner with history of heart attacks by failing to administer heart medication when he came to

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<sup>26</sup> See Pl.'s Letter to Hon. John W. deGravelles, Judge, at 2–7.

infirmity with severe chest pain, instead sending him to pharmacy to refill prescription, and, when pharmacy was closed, sending him back to his cell with no treatment). The Fifth Circuit has made clear that “intentionally treating [a prisoner] incorrectly” is a violation of the Eighth Amendment. *Id.* at 464. Prisons may not choose a course of medical care simply because it is easier or cheaper to provide than what is medically necessary and required by the Eighth Amendment. *See Ancata*, 769 F.2d at 705; *West v. Keve*, 571 F.2d 158, 162 (3d Cir. 1978) (holding that providing a prisoner with “easier and less efficacious treatment” than required demonstrated deliberate indifference).

The important consideration under the Eighth Amendment is not whether *any* kind of medical care was provided, but rather whether the level of care provided was constitutionally adequate. *See Estelle*, 429 U.S. at 103-06; *De’Lonta v. Johnson*, 708 F.3d 520, 526 (4th Cir. 2013). Plaintiff alleges that there was never any question that the correct course of treatment for him was cataract removal surgery, and that this is not the medical care he received for almost two years. The undisputed facts include that Plaintiff had a well-documented history of worsening cataracts and surgery referrals that demonstrate Defendants’ actual knowledge of his medical needs.<sup>27</sup> *See Easter*, 467 F.3d at 464; *Woodall v. Foti*, 648 F.2d 268, 270-71 (5th Cir. 1981). Plaintiff received surgery referrals from ophthalmologists at LSU, Orleans Charity Hospital, and the Earl K. Long Eye clinic.<sup>28</sup> In October 2012, Plaintiff was referred to LSU Hospital for cataract removal surgery.<sup>29</sup> In April 2013, when Plaintiff was seen by a specialist again, an LSU ophthalmologist indicated that he needed cataract removal surgery “as soon as possible,” and that cataracts were the reason Plaintiff was going blind.<sup>30</sup> Plaintiff’s vision

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<sup>27</sup> Statement of Undisputed Facts, at 2-3.

<sup>28</sup> *See* Defs.’ Mem. Opp’n. Summ. J. Hacker ARP. Ex. 4, at 4-5; Second Am. Compl., at 4.

<sup>29</sup> Statement of Undisputed Facts, at 3.

<sup>30</sup> Defs.’ Mem. Opp’n. Summ. J. Collins Aff., at 3; Defs.’ Mem. Opp’n. Summ. J. Hacker ARP. Ex. 4, at 5.

continued to deteriorate over the course of the two years, and he became legally blind by May 2013.<sup>31</sup> All of the physicians who examined Plaintiff agreed that he required cataract removal surgery.<sup>32</sup>

Yet, like the defendants in *Baker v. Wilkinson*, Plaintiff alleges that DOC and Angola chose a “conservative” course of treatment for Hacker instead of what was medically indicated and constitutionally required. 635 F.Supp.2d 514, 521 (W.D. La. 2009) (holding that providing hemorrhoid medicine instead of prescribed surgery violated the Eighth Amendment). Plaintiff’s treatment was “incorrect” and therefore constitutionally inadequate because, similar to what the *Baker* court reasoned, even after LSU specialists referred him for surgery, Defendants continued him on a regimen of sick calls and eyeglass prescription updates instead of providing surgery, which clearly “ran counter to the physicians’ medical judgment,” *id.*, and resulted in significant medical consequences.

Despite contracts with outside medical providers such as LSU, Defendants remained personally involved in Plaintiff’s medical treatment because of their ultimate authority to approve the medical treatment received by prisoners under their care. Although Angola leaves to the private medical providers with which it contracts the “day to day operation[s]” of medical care for prisoners, as was the case in *Jatoi*, the DOC has kept for itself the ultimate authority to approve any recommended medical procedure before a prisoner can receive it. 807 F.2d at 1221. It was up to DOC to approve the surgery, yet it failed to do so until July 2014, after this lawsuit was filed.<sup>33</sup>

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<sup>31</sup> Statement of Undisputed Facts, at 3.

<sup>32</sup> *Id.* Notably, this case is not a matter of Plaintiff merely disagreeing with the treatment he received. See *Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006) (“[u]nsuccessful medical treatment, acts of negligence, or medical malpractice do not constitute deliberate indifference, nor does a prisoner’s disagreement with his medical treatment.”)

<sup>33</sup> See Second Am. Compl., at 9.

In sum, if a State chooses to contract with private medical providers for the health care services of prisoners, the State cannot disregard the consistent medical judgment of those providers and substitute its own non-medical judgment in delivering care for objectively serious medical needs. *See Lawson*, 286 F.3d at 263 (finding Eighth Amendment violation where jail policy allowed for only two dressing changes per day when treating physician had ordered prison nurses to provide paralyzed prisoner with three). If Plaintiff's allegations are true, Defendants ignored these consistent medical recommendations in violation of Plaintiff's Eighth Amendment rights, substituting their own judgment for that of the clinicians who Defendants contracted with to evaluate him.

**III. State prisons may not categorize a medical procedure as “elective” simply to avoid the provision of medical treatment required to meet prisoners’ objectively serious medical needs.**

According to the Complaint, Defendants categorized cataract surgery as an “elective” procedure as a way to delay constitutionally required medical care to prisoners at Angola.<sup>34</sup> Defendants’ policies dictate that “medically necessary elective procedures” will be provided “when medically necessary,” thereby providing no guidance on when such procedures must actually be provided.<sup>35</sup> Plaintiff alleges that, in practice, Defendants used this policy to categorize procedures in a way that resulted in lengthy delays that amounted to the outright denial of treatment for long periods of time.<sup>36</sup> As a result, Defendants sent Plaintiff on a repetitive loop: Plaintiff sought medical treatment at Angola. He was referred to specialists outside Angola, who referred him for surgery. The referral was sent to DOC for approval. DOC did not approve his surgery and instead sat on his referral. While waiting for his surgery to be scheduled, Plaintiff continued to seek medical care for his cataracts at Angola. Physicians at

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<sup>34</sup> Second Am. Compl., at 2.

<sup>35</sup> *See* LSP Health Care Policy No. HC-16; LDPSC Directive No. 13:030.

<sup>36</sup> Mem. Supp. Pl.’s Mot. Summ. J., at 15.

Angola who examined Plaintiff would notice the severity of his cataracts and the worsening of his vision, and would send him for more surgery referrals. The loop continued. Indeed, Plaintiff alleges, a physician at Angola shed some light on why this was happening: Plaintiff was told that due to funding restrictions, he would not receive surgery unless it was a life-threatening matter.<sup>37</sup>

Prisons may not classify medically necessary treatment as “elective” as a way to avoid providing constitutionally adequate care. The classification of medical treatment as “elective” is irrelevant for purposes of determining whether the treatment is necessary to provide prisoners with constitutionally adequate medical care. *See, e.g., Johnson v. Bowers*, 884 F.2d 1053, 1056 (8th Cir. 1989); *Jones v. Johnson*, 781 F.2d 769, 771 (9th Cir. 1986); *Hathaway v. Coughlin*, 37 F.3d 63, 64-69 (2d Cir. 1994); *Garrett v. Elko*, 120 F.3d 261 (4th Cir. 1997); *Monmouth Cty. Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 n. 32 (3d Cir. 1987). Prisons have an obligation to provide constitutionally adequate medical care to prisoners when necessary. *See Estelle*, 429 U.S. at 103. A delay in treatment violates the Eighth Amendment where the delay was the result of the defendant’s deliberate indifference, and significant harm is suffered during the delay. *Easter*, 467 F.3d at 464–65; *Williams v. Certain Individual Emps. of Tex. Dep’t of Criminal Justice-Institutional Div. at Jester III Unit, Richmond, Tex.*, 480 F. App’x 251, 257 (5th Cir. 2010) (holding the delay of providing inmate plaintiff pain medications for almost sixteen hours could support a claim of deliberate indifference, in violation of the Eighth Amendment); *Stewart v. Guzman*, 555 F. App’x 425, 426, 431–32 (5th Cir. 2014) (holding inmate plaintiff’s allegations that prison officials delayed medical treatment for inmate’s asthma attacks on five occasions when prison officials were aware of inmate’s frequent attacks could support a claim of deliberate indifference, in violation of the Eighth Amendment). Excessive delays in medically

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<sup>37</sup> Defs.’ Mem. Opp’n. Summ. J. Hacker ARP. Ex. 4, at 6.

necessary treatment can run afoul of the Eighth Amendment. *See Williams*, 480 F. App'x. at 258. Moreover, the Eighth Amendment does not cover only *life-threatening* medical needs. *See Baker*, 635 F. Supp. 2d at 521. State prisons have an obligation to provide constitutionally adequate medical care for prisoners' *objectively serious* medical needs, and funding and other administrative concerns are not a justification for failing to meet Eighth Amendment standards. *See Newman v. Alabama*, 559 F.2d 283, 286 (5th Cir. 1977) ("compliance with constitutional standards may not be frustrated by legislative inaction or failure to provide the necessary funds").

If Plaintiff's allegations are true, Defendants' policy of categorizing certain medical procedures as "elective" caused excessive delays in the provision of necessary medical treatment, which resulted in the denial of that treatment. In turn, Plaintiff suffered harm while he waited for his surgery. According to Plaintiff, in the 813 days it took for DOC to schedule his procedure, he lost vision in both eyes.<sup>38</sup> Plaintiff alleges that his impaired vision resulted in a tear to his chest muscle during one of his work assignments, and the loss of a finger when a license plate machine chopped it off because he could not properly see.<sup>39</sup> During this time, Plaintiff's vision deteriorated to the point that he became legally blind, but he was still required to work in Angola's fields and machine shops.<sup>40</sup> Defendants' use of its policy deeming cataract surgeries "elective" allegedly led to deliberate delays, effectively denying in the provision of care to Plaintiff for almost two years, thereby causing his condition to worsen, and resulting in him suffering physical and other harm.<sup>41</sup>

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<sup>38</sup> Mem. Supp. Pl.'s Mot. Summ. J. at 7.

<sup>39</sup> Mem. Supp. Pl.'s Mot. Summ. J. at 1.

<sup>40</sup> Second Am. Compl., at 6-7.

<sup>41</sup> Second Am. Compl., at 6 (stating that Mr. Hacker experienced severe pain in his eyes when exposed to sunlight and made an emergency medical request on May 16, 2013 due to "pain and burning" in his eyes.)

## CONCLUSION

When a prisoner has an objectively serious medical need, a state does not meet its Eighth Amendment obligations by providing medical care that is constitutionally inadequate, incorrect, and against the consistent and repeated recommendations of medical professionals. Additionally, State actors are not relieved of their constitutional obligations merely by contracting with private providers. Accordingly, the Court should consider these constitutional standards in ruling on Plaintiff's motion in limine.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2016, I served the foregoing via the Court's CM/ECF system, which will automatically provide notice to all counsel of record.

/s/ Catherine Maraist  
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