No. 24-1461

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CHRISTIAN JAMES LAURIA,
Plaintiff-Appellant,

v.

C.O. LIEB; C.O. FORSICKA; and C.O. RICH GERBER,
Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Pennsylvania, No. 2-22-cv-486
Before the Hon. Maureen P. Kelly, Magistrate Judge

OPENING BRIEF OF APPELLANT

Elena S. Meth
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
160 East Grand Avenue, 6th Fl.
Chicago, IL 60611
(312) 503-0913
elena.meth@macarthurjustice.org

Devi M. Rao
Christine A. Monta
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3308
christine.monta@macarthurjustice.org

Counsel for Appellant

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INTRODUCTION

Christian Lauria was brutally assaulted by three corrections officers while being processed for intake at the Allegheny County Jail. The officers then placed Mr. Lauria in a restraint chair for somewhere between nearly five and eleven hours, all the while rejecting his repeated requests for medical attention. As a result of this brutality and lack of prompt medical treatment, Mr. Lauria sustained a broken orbital floor beneath his left eye socket, an injury that required surgery and implementation of mesh under his eye.

Mr. Lauria attempted to use the jail's grievance system to lodge a complaint against the officers who attacked him. Using his housing unit's standard process, Mr. Lauria placed his grievance through the door slot of his cell, relying on a corrections officer to pick it up and deliver it to the jail's grievance box. Although his grievance was taken, Mr. Lauria received no response. After waiting months, Mr. Lauria filed a *pro se* lawsuit against the officers alleging that they violated his constitutional rights by using excessive force against him and failing to provide him with adequate medical care. He twice asked the court to appoint counsel

for him because he couldn't understand the "legal jargin" [sic] being used in the case, AA28; AA46, but the court denied these requests.

At summary judgment, Defendants argued, for the first time, that Mr. Lauria failed to exhaust his administrative remedies because they had no record of his having filed a grievance. In his opposition to summary judgment, Mr. Lauria stated, as he had in his original and amended complaints, that he had submitted a grievance but had not received a response. He also provided the additional explanation about having placed the grievance through his door slot, relying on an officer to pick it up and file it in the appropriate box.

The district court acknowledged Mr. Lauria's explanation but concluded that it could not consider it because he failed to sign his pleadings under penalty of perjury—a technical legal requirement that neither the district court nor opposing counsel ever informed Mr. Lauria he was obligated to satisfy. Having excluded Mr. Lauria's explanation from consideration, the district court concluded that Mr. Lauria failed to present evidence showing that the jail's grievance process was unavailable to him and thus failed to establish a genuine issue of material fact that he exhausted his administrative remedies.

In doing so, the district court violated a fundamental precept recognized by this Court and the overwhelming majority of its sister circuits: that courts should not grant summary judgment against *pro se* prisoner-plaintiffs without notifying them of Federal Rule of Civil Procedure 56's evidentiary requirements and what they need to do to meet them. Specifically, the court neglected to inform Mr. Lauria that his factual assertions—which he presented three times during the course of the litigation—must be signed under penalty of perjury to be considered at the summary judgment stage.

Had it been presented in the proper form, Mr. Lauria's plausible and uncontested explanation of what happened raised a genuine issue of fact regarding whether the administrative exhaustion process was unavailable to him, such that he was entitled to sue under 42 U.S.C. § 1983 on the issues contained in his complaint. The court erred in ruling against Mr. Lauria—a *pro se* prisoner untrained in the law—based on a failure to comply with Rule 56's evidentiary requirements without notifying him of those requirements first or giving him a meaningful opportunity to bring his materials into compliance.

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983. The district court entered a final order granting summary judgment against Mr. Lauria on February 6, 2024. AA16 (Memo. Op., at 12); AA2 (Judgment). Mr. Lauria timely appealed on March 7, 2024. AA1 (Notice of Appeal). This Court has jurisdiction under 28 U.S.C. § 1291.

ISSUE PRESENTED

Whether the district court erred in granting summary judgment against Mr. Lauria on exhaustion grounds, where Mr. Lauria presented a plausible and uncontested explanation that the jail's grievance process was unavailable to him under *Ross v. Blake*, 578 U.S. 632, 642 (2016), but the district court disregarded that explanation on the ground that Mr. Lauria did not present it under penalty of perjury—despite having neither informed Mr. Lauria of Rule 56's requirement that factual assertions must be sworn to be considered nor provided him a meaningful opportunity to correct the defect in the technical form of his summary judgment materials.

STATEMENT OF RELATED CASES

There are no prior or related cases.

STATEMENT OF THE CASE

I. Factual Background[1]

A. Mr. Lauria is assaulted by corrections officers, then strapped to a restraint chair for hours.

Mr. Lauria was booked into the Allegheny County Jail ("ACJ") on the morning of March 18, 2021, as a pre-trial detainee. AA37 (Am. Compl., at 5); ECF 62-1 at 1. That same morning, Officer Daniel Lieb and Sergeant Richard Gerber took Mr. Lauria to the intake shower area. As Mr. Lauria began undressing, the two officers, joined by Officer David Forsicka, assaulted Mr. Lauria for "no right reason." ECF 63 at 1; ECF 69 at 2. The officers knocked Mr. Lauria unconscious, then Lieb held him down and stepped on the side of his face with his boot. AA21 (Compl., at

[1] The facts here are primarily drawn from the summary judgment record and the district court's recitation of facts, which itself drew from allegations in both of Mr. Lauria's complaints. Additional relevant facts are drawn from other of Mr. Lauria's pleadings, which the district court noted but did not consider because they were in the form of unsworn statements. However, as described more fully below, the district court erred in failing to provide Mr. Lauria notice of Rule 56's requirement for turning these allegations into evidence. Once such mandatory notice is provided on remand, these allegations will be converted into a verified complaint and constitute proper summary judgment evidence.

5).[2] While he was still unconscious and pinned to the ground, the officers tasered Mr. Lauria in his chest. *Id*.

Although Mr. Lauria, still unconscious, posed a threat to no one, the officers strapped him into a restraint chair in nothing but his soiled underwear and left him there for somewhere between nearly five and eleven hours. AA21 (Compl., at 5) (alleging 11 hours); AA37 (Am. Compl., at 5) (alleging 11 hours); ECF 43 (alleging "10 plus hours"); ECF 54 at 2 (Defendants' answer stating "four and three quarters hours"); ECF 69-7

[2] Mr. Lauria's original complaint named as defendants Officers Lieb, Forsicka, and Mike Carr. AA17–19 (Compl., at 1–3). On May 2, 2023, Mr. Lauria moved for leave to amend the complaint to add Sergeant Gerber as a defendant. ECF 48. Per the district court's prior order instructing that a motion to amend must include a copy of the proposed amended complaint, ECF 39, Mr. Lauria included a proposed amended complaint adding Sergeant Gerber, ECF 48-1. Mr. Lauria's proposed amended complaint made the same allegations as his original complaint but "omit[ted] some of the details." AA6 (Memo. Op., at 2 n.2). The district court granted Mr. Lauria's motion and directed the clerk to file Mr. Lauria's proposed amended complaint. ECF 49.

Although an amended complaint generally supersedes any prior complaints, it is clear that Mr. Lauria intended only to add Sergeant Gerber as a defendant and that, in submitting an amended complaint per the court's instruction, his omission of some of the factual details was not intended to disavow them. As such, the district court relied on the details in Mr. Lauria's initial complaint as well as his amended complaint in recounting Mr. Lauria's factual allegations. AA5–6 (Memo. Op., at 1–2 & n.2). This brief does the same.

(report claiming four hours 45 minutes). Video footage captured the officers strapping Mr. Lauria into the restraint chair but did not capture the actual assault. *See* AA9 (Memo. Op., at 5 n.3).

Defendants' version of the lead-up to the encounter differed widely from Mr. Lauria's. They contended that Mr. Lauria was attempting to injure them and himself, and that they needed to assault and restrain him to protect themselves and him. AA6–7 (Memo. Op., at 2–3). As a result, the officers admitted they used force against Mr. Lauria, but contended that the force was reasonable in light of the situation. AA7 (Memo. Op., at 3). It is undisputed, however, that Mr. Lauria was severely injured after the assault, and that defendant officers were unharmed. AA8–9 (Memo. Op., at 4–5); ECF 58-7.

B. After being denied prompt and effective medical attention at ACJ, Mr. Lauria eventually is sent to a hospital and undergoes surgery to repair broken bones under his eye resulting from the officers' assault.

When Mr. Lauria regained consciousness, he begged for medical attention—he was bruised, bloody, and had sustained an eye injury—but Sergeant Gerber "replied no" and instructed a nurse to "just leave him." ECF 62-1 at 1; *see* AA43–44 (Pl.'s Brief in Opp., at 2–3); ECF 43. Mr. Lauria remained strapped in the restraint chair for nearly two hours

before an ACJ physician's assistant evaluated his injuries. ECF 69-6 at 2 (9:50 a.m. entry)); *see* ECF 69-7 at 2 (restraint chair began at 8:00 a.m.).

The physician's assistant reported that Mr. Lauria had a "large periorbital edema," or swelling, around his left eye, a tender nasal bridge, a nose bleed that was dripping blood onto to his lower chest, and multiple abrasions to the back of his neck and right side of his head. ECF 69-6 at 2. She also reported that he was "pale" and complained of pain. *Id.* The physician's assistant cleaned Mr. Lauria's face and ordered him Tylenol and an ice pack. *Id.* Other than this brief encounter, Mr. Lauria received no medical attention while in the restraint chair and no treatment for his injured eye from ACJ personnel. *Id.*; *see* AA43 (Pl.'s Brief in Opp., at 2).[3]

For the next several days, Mr. Lauria repeatedly asked Defendants as well as other corrections officers at ACJ for additional medical

[3] On two occasions, a nurse checked the tightness of Mr. Lauria's restraints while he was in the restraint chair but did not provide any medical treatment. *See* ECF 69-6 at 2–3; AA43 (Pl.'s Brief in Opp., at 2). Although Defendants asserted below that Mr. Lauria was "seen by medical personnel" on two additional occasions while in the restraint chair, ECF 69 at 4, the document to which Defendants cite shows that those two entries were made at 11:13 and 11:28 *p.m.*, not a.m., ECF 69-6 at 4. Moreover, those entries reflect only that Mr. Lauria received a mental health screening, not that he received any medical treatment or evaluation of his physical injuries. *Id.*; *see* AA8 (Memo. Op., at 4) (describing mental health staff encounters).

attention. AA21 (Compl., at 5). Finally, after Mr. Lauria "pleaded with a sergeant to listen," he was taken to a hospital on March 22, 2021—four days after the assault. *Id.* At the hospital, doctors diagnosed Mr. Lauria with an orbital floor fracture under his left eye. *Id.*; ECF 58-4; ECF 58-5. Doctors sent him home with topical steroids and a recommendation to follow up. ECF 58-4. A month later, Mr. Lauria underwent surgery to insert mesh under his eye to repair his orbital floor fracture. ECF 58-5; AA37 (Am. Compl., at 5). Mr. Lauria continues to incur ongoing medical expenses as a result of his injuries. AA37 (Am. Compl., at 5).

II. Procedural Background

Mr. Lauria submitted an administrative grievance concerning the officers' assault on him via ACJ's grievance procedure but did not receive a reply. AA38–39 (Am. Compl., at 6–7); AA22–23 (Compl., at 6–7). Mr. Lauria eventually filed a *pro se* lawsuit under 42 U.S.C. § 1983 against ACJ and the individual officers involved. AA17 (Compl.); AA33 (Am. Compl.). Mr. Lauria alleged two constitutional violations: first, that the force used was constitutionally excessive; and second, that Defendants were deliberately indifferent to his serious medical needs. AA19–21 (Compl., at 3–5); AA35, AA37 (Am. Compl., at 3, 5).

Defendants moved to dismiss Mr. Lauria's claims. ECF 18. The district court granted the motion with respect to ACJ but denied it as to the individual Defendants, concluding that Mr. Lauria both "plausibly state[d] a claim" that the officers' "admittedly 'substantial' use of force" was constitutionally excessive, and "plausibly claim[ed] that Defendants were deliberately indifferent to his serious medical needs." ECF 35 at 2, 7.[4] In doing so, the court observed that there was "no dispute that [Mr. Lauria] had a serious medical need as a result of the alleged physical assault" but "did not receive medical care for his fractured orbital floor bone for 5 days." ECF 35 at 7. The case then proceeded to discovery.

At the start of discovery, Mr. Lauria moved for appointment of counsel to help him litigate his case. AA28 (Motion to Appoint Counsel). He explained that he couldn't understand the "legal jargin" [sic] being used in the case and was unable to "obtain certain information [he] need[s]" through discovery on his own. *Id.* The district court denied Mr. Lauria's request, concluding that "[n]othing in the record indicates that Plaintiff is incapable of presenting his case" and that Mr. Lauria "has

[4] The parties consented to have the case resolved by a magistrate judge. *See* ECF 2; ECF 29.

demonstrated his ability to file pleadings and motions." AA30 (Order Denying Appointment of Counsel, at 2).

Following discovery, Defendants moved for summary judgment.[5] ECF 68. Relevant here, Defendants argued, for the first time, that Mr. Lauria had failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). ECF 68 at 1. In support, Defendants attached an affidavit from ACJ's Deputy Warden attesting that she had searched ACJ's database from the period between Mr. Lauria's arrival at ACJ on March 18, 2021, and his discharge on May 20, 2021, and did not find any grievances filed by him in that timeframe. ECF 69-8 at 2–3. Defendants also argued that there was no dispute of material fact on Mr. Lauria's constitutional claims and that they were entitled to qualified immunity on Mr. Lauria's claims concerning their use of the restraint chair and use of force. ECF 70 at 9–10.

In his opposition to the motion, Mr. Lauria stated—as he had in both his original and amended complaints—that he did submit a grievance but never received an answer. AA42, AA45 (Pl.'s Brief in Opp.,

[5] Mr. Lauria also filed a motion for partial summary judgment, ECF 62, which the district court denied, AA16 (Memo. Op., at 12). Mr. Lauria does not appeal that denial.

at 1, 4); *see* AA38–39 (Am. Compl., at 6–7); AA22–23 (Compl., at 6–7). Mr. Lauria further explained that, because he was in segregated housing, he could not personally submit the grievance, as he was handcuffed whenever he left his cell and "not permitted to have anything in his hands." AA42 (Pl.'s Brief in Opp., at 1). Thus, pursuant to his housing unit's procedure, he placed his grievance in the "door slot," relying on an officer to collect and submit it to the appropriate grievance box. *Id.*; *see id.* at 4 ("I put in a grievance which was never answered. I couldn't physically put it in the grievance box because I was in segregated housing…. I could only put all paperwork in the door slot where COs took it and did what they pleased with it"). Defendants did not contest Mr. Lauria's explanation regarding his thwarted attempt to submit a grievance. *See* ECF 72 at 1.

While the parties' cross-motions for summary judgment were pending, Mr. Lauria renewed his request for appointment of counsel. AA46 (Renewed Motion to Appoint Counsel). He explained again that he doesn't "speak Legal Jargin" [sic], he "only ha[s] a high school education and no legal education," and he was "ignorant" as to trial procedure. AA46 (Renewed Motion to Appoint Counsel, at 1). The district court again

denied his request, concluding that there was "no need for counsel" because "there is nothing that Plaintiff is required to do in the prosecution of his claims" given that discovery was complete and the summary judgment motions were "fully-briefed" and "pending for the Court's consideration." AA49 (Order Denying Renewed Motion to Appoint Counsel, at 2).

The district court granted Defendants summary judgment on the ground that Mr. Lauria failed to exhaust his administrative remedies. AA12–15 (Memo. Op., at 8–11). The court acknowledged Mr. Lauria's uncontested explanation that he included in his complaints and opposition to summary judgment—namely, that he *had* submitted a grievance and relied on corrections staff to put it in the appropriate box—but concluded that it could not consider that explanation as evidence because Mr. Lauria did not sign those pleadings under penalty of perjury. AA14–15 (Memo. Op., at 10–11). Accordingly, in the absence of admissible evidence countering the Deputy Warden's affidavit, the court concluded that Mr. Lauria failed to "demonstrate that the grievance process was unavailable to him" and thus that there was "a genuine issue

of material fact that he properly exhausted his administrative remedies." AA15 (Memo. Op., at 11).

Having so concluded, the court did not reach the merits of Mr. Lauria's constitutional claims or Defendants' assertion of qualified immunity. AA12, AA16 (Memo. Op., at 8 n.4, 12). This appeal followed.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's grant of summary judgment. *Giles v. Kearney*, 571 F.3d 318, 322 (3d Cir. 2009). A court may grant summary judgment only when, taking the evidence of the non-movant as truth and drawing "all justifiable inferences in . . . favor" of the nonmoving party, the record "shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (quoting Fed. R. Civil P. 56(c)). "Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally." *Id.* This Court also reviews *de novo* a district court's determination of failure to exhaust. *Small v. Camden County*, 728 F.3d 265, 268 (3d Cir. 2013).[6]

[6] Because exhaustion is a threshold issue, "judges may resolve factual disputes relevant to the exhaustion issue without the

SUMMARY OF ARGUMENT

The district court erred in granting summary judgment against Mr. Lauria on the ground that he failed to exhaust his administrative remedies because ACJ had no record of his having filed a grievance. Mr. Lauria stated on multiple occasions throughout the litigation that he did, in fact, submit an administrative grievance but never received an answer. Mr. Lauria also explained that the only way for him submit the grievance while in ACJ's segregation unit was to put the grievance through his door slot of his cell, relying on an officer to take it and submit to the proper grievance box.

Had these plausible and uncontested assertions been presented in proper evidentiary form, they would have created a genuine issue of material fact as to whether ACJ's administrative process was

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participation of a jury." *Small*, 728 F.3d at 271. When a district court "elects to resolve factual disputes regarding exhaustion," it must provide the parties "notice and an opportunity to respond," which includes at a minimum "an opportunity to submit materials relevant to exhaustion that are not already before it." *Paladino v. Newsome*, 885 F.3d 203, 211 (3d Cir. 2018). Any such factual findings are then reviewed for clear error. *Hardy v. Shaikh*, 959 F.3d 578, 585 (3d Cir. 2020). Here, however, the district court did not reach the point of making factual findings on exhaustion, having concluded that Mr. Lauria failed to raise a genuine dispute of fact as to whether he exhausted administrative remedies. Accordingly, the *de novo* standard applies to the exhaustion issue here.

functionally unavailable to him. The district court, however, declined to consider Mr. Lauria's explanations because they were not in the form of a verified complaint or sworn affidavit, although Mr. Lauria was never informed, by either the court or opposing counsel, that factual assertions must be sworn to be considered at summary judgment. Nor was he given any opportunity to correct the technical defect—obvious to the court but not to a *pro se* prisoner—and resubmit his explanation under penalty of perjury before summary judgment was entered against him.

That was error. This Court has recognized that, before a court may enter summary judgment against a *pro se* prisoner-plaintiff, the plaintiff must be informed "of the contours of Rule 56 and of the specific consequences for failure to" present one's assertions in the form of an opposing affidavit. *Renchenski v. Williams*, 622 F.3d 315, 340 (3d Cir. 2010). Although *Renchenski* specifically arose in the context of a district court converting a motion to dismiss into a motion for summary judgment, rather than in the more typical case where the plaintiff is responding to a summary judgment motion filed by defendants, its ruling cannot be confined to the conversion context. The rationales for the notice requirement—the unintuitive nature of the summary judgment process,

combined with the unique impediments faced by *pro se* prisoners—apply any time a *pro se* prisoner is attempting to defeat summary judgment, regardless of whether the motion he is opposing was originally styled a motion to dismiss or a motion for summary judgment.

Indeed, the vast majority of Circuits—the Second, Fourth, Sixth, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits—have all held that *pro se* prisoner litigants must be provided notice of Rule 56's evidentiary requirements in the more typical context in which a *pro se* prisoner is opposing a summary judgment motion filed by defendants. *See infra*, p. 27 (citing cases). Two other Circuits—the Fifth and Tenth—have also held that, even if notice of Rule 56's evidentiary requirements is not required *ex ante*, a district court errs if it fails to provide a *pro se* litigant a meaningful opportunity to correct technical defects in the form of his summary judgment materials, such as resubmitting under penalty of perjury factual assertions that, if in the proper form, would be sufficient to defeat summary judgment. *See infra*, pp. 34–36 (discussing cases).

Here, the district court neither provided Mr. Lauria notice that his explanation regarding his grievance must be submitted under penalty of perjury, nor gave him a meaningful opportunity to correct the form of his

summary judgment materials once the court noticed the defect. By failing to do either before granting summary judgment against Mr. Lauria, the district court erred. The court's penalizing Mr. Lauria for failing to comply with Rule 56's evidentiary requirements was particularly unfair given that Mr. Lauria had twice requested appointment of counsel to help him navigate the civil procedural rules but was told he was capable of representing himself. This Court should reverse.

ARGUMENT

I. The District Court Erred In Granting Defendants Summary Judgment On The Ground That Mr. Lauria Failed To Exhaust His Administrative Remedies.

A. Mr. Lauria's explanation, had it been considered, raised a genuine issue of fact as to whether ACJ's administrative remedies were not "available" to him.

The Prison Litigation Reform Act ("PLRA") requires prisoner-plaintiffs to exhaust "available" administrative remedies before filing a federal lawsuit challenging the conditions of their confinement. 42 U.S.C. § 1997e(a). The law both from the Supreme Court and this Court is clear: plaintiffs need not exhaust *unavailable* remedies. *Ross v. Blake*, 578 U.S. 632, 642 (2016); *Hardy v. Shaikh*, 959 F.3d 578 (3d Cir. 2020). Failure to exhaust is an affirmative defense under the PLRA; plaintiffs are not required to plead exhaustion, or any arguments excusing non-

exhaustion, in their complaints. *Jones v. Bock*, 549 U.S. 199, 216–17 (2007). Rather, the ultimate burden to both plead and prove failure to exhaust falls on the defendant. *Rinaldi v. United States*, 904 F.3d 257, 268 (3d Cir. 2018).

The mere existence of a grievance process does not make it "available." Rather, to be "available," grievance procedures must be "capable of use" to obtain "some relief for the action complained of." *Ross*, 578 U.S. at 642 (citing *Booth v. Churner*, 532 U.S. 731, 737 (2001)). The Supreme Court has set out several examples of when a prison's administrative procedures would be rendered unavailable, including, as relevant here: when prison officials thwart prisoners from taking advantage of the grievance system through "machination, misrepresentation, or intimidation," and when the system is so opaque that "no ordinary prisoner can discern or navigate it." *Id*. at 643–44. Seen as either an example of a system he was thwarted from accessing or an opaque system, Mr. Lauria's uncontested explanation concerning his attempt to file a grievance raises a genuine issue as to unavailability.

Actions taken by officers that interfere with or otherwise prevent a plaintiff from utilizing the grievance process can constitute thwarting;

thwarting need not involve intentional conduct—such as threats or intimidation—by corrections officers. *See Hardy*, 959 F.3d at 585 ("We have long recognized that misleading, as well as clearly erroneous statements can render a grievance process unavailable."). For example, in *Robinson v. Superintendent Rockview SCI*, 831 F.3d 148 (3d Cir. 2016), this Court held that a prisoner-plaintiff was thwarted from accessing the grievance process when the prison "failed to timely (by its own procedural rules) respond to his grievances." *Id.* at 153–54; *see also Brown v. Croak*, 312 F.3d 109, 113 (3d Cir. 2002) (grievance procedure unavailable after officials incorrectly told prisoner-plaintiff he had to wait for the termination of an investigation to pursue his claim).

Particularly relevant to this case, this Court has recognized that if a prison system loses a plaintiff's grievances, the grievance system is rendered unavailable. In *Paladino v. Newsome*, 885 F.3d 203 (3d Cir. 2018), the Court reversed the district court's grant of summary judgment on exhaustion grounds where, although the prison's records contained no grievance forms relating to the plaintiff's assault, the plaintiff testified at his deposition that he submitted several grievances about the issue. *Id.* at 209. This created a material issue as to whether the prison

grievance system was unavailable to the plaintiff; after all, this Court noted, "it is not unheard of for a grievance form to be lost." *Id.* at 210; *see also id.* at 210 n.38 (citing *Dole v. Chandler*, 438 F.3d 804, 809–13 (7th Cir. 2006) (holding that prisoner exhausted available administrative remedies when his grievance was lost, and the prison's grievance system did not provide a method of verifying grievances were received)).[7]

That is exactly the situation Mr. Lauria finds himself in. Because Mr. Lauria was in segregated housing, he submitted a grievance the only way he could—by placing it in the "door slot" of his cell and relying on an officer to collect and submit it to the appropriate grievance box. AA42 (Pl.'s Brief in Opp., at 1). This Court recognized in *Paladino* that Mr. Lauria's explanation that he submitted a grievance—which was

[7] This Court's decisions are consistent with broader authority holding that a prison grievance system is unavailable when prison officials interfere with prisoners' ability to use and access the relevant forms. *See, e.g.*, *Gayle v. Benware,* No. 08 Civ. 8017(RMB)(FM), 2009 WL 2223910, at *5 (S.D.N.Y. July 27, 2009) (officers' failure to provide grievance form while plaintiff was in solitary "prevented him from" filing and complaint thus cannot be dismissed for failure to exhaust); *O'Connor v. Featherston,* No. 01 Civ. 3251(HB), 2002 WL 818085, at *8 (S.D.N.Y. Apr. 29, 2002) (non-exhaustion may be excused if "an inmate makes a reasonable attempt to exhaust his administrative remedies, especially where it is alleged that corrections officers failed to file the inmate's grievances or otherwise impeded or prevented his efforts").

apparently lost or misplaced after that—is enough to raise a material factual dispute regarding exhaustion. After all, "it is not unheard of for a grievance form to be lost," and if it is, the plaintiff exhausted such procedures as were available to him. *Paladino*, 885 F.3d at 210.

Not only was Mr. Lauria thwarted from accessing the prison grievance system, but the process was entirely opaque about what else, if anything, Mr. Lauria was supposed to do after submitting a grievance and never hearing back. *Williams v. Correction Officer Priatno*, 829 F.3d 118, 124 (2d Cir. 2016), addressed the same type of situation. There, the plaintiff gave a grievance form to a corrections officer to forward to the grievance office, as the plaintiff was required to do by the prison's grievance rules. *Id.* at 120–21. A week later, however, the plaintiff learned that the prison superintendent never received that form. *Id.* at 121. When the plaintiff brought suit to challenge the same misconduct, the defendants argued that the plaintiff failed to appeal the grievance that was never filed with the grievance office. *Id.* at 123.

The Second Circuit rejected that argument, concluding that the process only contemplated "appeals of grievances that are actually filed." *Id.* at 124. For a prisoner like the plaintiff, whose grievance was never

filed even though he submitted it to prison officials, the process was "prohibitively opaque, such that no inmate could actually make use of it." *Id.* at 126; *see also Medina v. Napoli*, 725 F. App'x 51, 53 (2d Cir. 2018). The Seventh Circuit has likewise recognized that where (1) a prisoner "followed procedure" in submitting a grievance, (2) "prison officials were responsible for the mishandling of his grievance," and (3) the procedures do not "give[] . . . instructions on how to proceed" in that circumstance, the grievance procedure is unavailable. *Dole*, 438 F.3d at 811.

The same is true here. ACJ's grievance policy is silent as to what a prisoner should do when they submit a grievance but do not receive a response—it explains only how to file a grievance, when a prisoner can file a grievance, and how long it should take staff to respond to a grievance. *See* ECF 69-8 at 6–7. For a person in Mr. Lauria's shoes, whose grievance was properly submitted but apparently never processed, it is unclear what else, if anything, he was supposed to do, and as a result the regulations "are so opaque and confusing that they were, 'practically speaking, incapable of use.'" *Williams*, 829 F.3d at 126; *see also Dole*, 438 F.3d at 810 ("[W]hen a grievance meets all the [grievance procedure's]

written requirements, it cannot be dismissed because of a requirement on which the administrative rulebook is silent." (cleaned up)).

In sum, Mr. Lauria's explanation raised a genuine issue of fact that the grievance process was unavailable to him, either because Defendant officers thwarted his attempts to exhaust ACJ's grievance process or because the process was opaque insofar as it was not clear what he was supposed to in the circumstance where he submits a grievance and it is never received. Indeed, the district court appeared to accept as much—the court did not dispose of Mr. Lauria's claims because they were not persuasive, nor would it have had any basis to, as Mr. Lauria's explanation was both plausible and uncontested.

Instead, the district court noted, for the first time in the litigation, that Mr. Lauria's statements had not been made under penalty of perjury and thus could not be considered as evidence in his favor. AA14–15 (Memo. Op., at 10–11). But neither the district court nor opposing counsel ever informed Mr. Lauria, a *pro se* prisoner, that he would need to submit his explanation under penalty of perjury for it to be considered on summary judgment, nor did the district court give Mr. Lauria a

meaningful opportunity to put his materials in the proper form. For the reasons explained below, that was error.

B. The district court erred in disregarding Mr. Lauria's explanation because it was not signed under penalty of perjury, where Mr. Lauria—a *pro se* prisoner—was never informed that factual assertions must be signed under penalty of perjury to constitute competent Rule 56 evidence.

This Court has emphasized the importance of district courts instructing *pro se* prisoner litigants as to the requirements of Federal Rule of Civil Procedure 56—and specifically, its procedures for supporting factual positions with sworn affidavits. In *Renchenski v. Williams*, 622 F.3d 315, 340 (3d Cir. 2010), this Court held that when converting a motion to dismiss into a motion for summary judgment, district courts must inform *pro se* prisoner-plaintiffs of the requirements under Rule 56—including the utility of an opposing affidavit—and what happens when those requirements are not met.

In so holding, this Court discussed and relied on the D.C. Circuit's opinion in *Neal v. Kelly*, 963 F.2d 453 (D.C. Cir. 1992), in which that court reasoned that "[a] district court cannot properly act on a motion for summary judgment without giving the opposing party a reasonable opportunity to submit affidavits that contradict" the other side's evidence

and this "[r]easonable opportunity presupposes notice," including "knowledge of the consequences of not making use of" sworn affidavits. *Id.* at 456 (quoting *Lewis v. Faulkner*, 689 F.2d 100, 102 (7th Cir. 1982)). This Court in *Renchenski* observed that "the effect of a failure to file a[n] . . . affidavit in opposition" is "particularly important in the pro se prisoner context," and noted that "[s]everal other circuits" have "required district courts and governmental defendants to inform pro se prisoner-plaintiffs of the contours of Rule 56 and of the specific consequences for failure to submit an opposing affidavit." 622 F.3d at 340. (citing cases from the Second, Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits). Thus, this Court "agree[d] with the majority of [its] sister circuits" and held that *pro se* prisoners facing a converted summary judgment motion must receive "a copy of Rule 56 and a short summary explaining its import that highlights the utility of" submitting factual assertions in the form of an affidavit. *Id.*

Although *Renchenski* arose in the context of a Rule 12(b)(6) motion to dismiss being converted into a Rule 56 motion for summary judgment, its reasoning applies with equal force to the situation where a *pro se* prisoner-plaintiff must respond to a summary judgment motion filed by

the defendants. Indeed, as *Renchenski* recognized, the majority of circuits have long required district courts to ensure, before "act[ing] on a motion for summary judgment," that *pro se* prisoner-plaintiffs have notice of Rule 56's requirements and the consequences of failing to counter the defendant's affidavits with their own affidavits. *Id.* at 340 (quoting *Neal*, 963 F.2d at 456); *see Graham v. Lewinski*, 848 F.2d 342, 344 (2d Cir. 1988); *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975); *United States v. Ninety-Three Firearms*, 330 F.3d 414, 427–428 (6th Cir. 2003); *Lewis v. Faulkner*, 689 F.2d at 102; *Rand v. Rowland*, 154 F.3d 952, 956–59 (9th Cir. 1998) (en banc); *Brown v. Shinbaum*, 828 F.2d 707, 708 (11th Cir. 1987); *Hudson v. Hardy*, 412 F.2d 1091, 1093 (D.C. Cir. 1968). All of the cases cited above recognized the rule in the more typical context where the prisoner-plaintiff must respond to a Rule 56 motion filed by the defendant, rather than a motion to dismiss being converted into a Rule 56 motion, and *Renchenski*'s reliance on these cases and their reasoning signifies that its holding regarding notice is not limited to the conversation context.

Nor would it make sense to draw a line between the conversion context and the more typical Rule 56 context, requiring notice in the

former context but not in the latter. As the en banc Ninth Circuit has explained, the Rule 56 notice requirement for *pro se* prisoner-plaintiffs is grounded in two rationales: the "unique handicaps" *pro se* prisoners face, combined with the "uniqueness of the summary judgment motion." *Rand*, 154 F.3d at 956, 958. Those rationales apply with equal force whether the *pro se* prisoner is responding to a summary judgment motion the defendants themselves filed or one that the court has converted from a motion to dismiss.

Summary judgment, which has "no counterpart" in criminal proceedings with which *pro se* prisoners might be more familiar, runs contrary to "the lay litigant's intuition . . . that his or her claim will proceed to trial" following the complaint and answer. *Id.* at 957; *see Lewis*, 689 F.2d at 102 ("This aspect of federal civil practice is contrary to lay intuition."). It is far from "obvious to a layman" that, to survive a motion for summary judgment, he "must file his own affidavits contradicting his opponent's," *id.*, and that "in response to the [defendant's] motion for summary judgment he cannot rely on papers already filed," *Graham*, 848 F.2d at 344. As such, courts have recognized that it is unreasonable and unrealistic to impute to *pro se* litigants—

much less *pro se* prisoners—"an instinctual awareness that the purpose of a motion for summary judgment is to head off a full-scale trial by conducting a trial in miniature, on affidavits, so that not submitting counter affidavits is the equivalent of not presenting any evidence at trial." *Lewis*, 689 F.2d at 102; *see also Rand*, 154 F.3d at 957 (same).

Add to this the unique hardships of incarceration. Not only are most *pro se* prisoners "[u]nschooled in the intricacies of civil procedure," *id.*, but they face special obstacles by virtue of their incarceration that *pro se* litigants who are not incarcerated do not face. These include "limited . . . access to legal materials" and limitations in "their ability to interview witnesses and seek out evidence" necessary to defeat summary judgment. *Id.* at 958. Additionally, the "reality of incarceration" is that "prisoners are not at liberty to seek out representation" and are often "unable to retain counsel even if they ha[ve] the financial means to do so." *Id.* (citing *Jacobsen v. Filler*, 790 F.2d 1362, 1364 n.4 (9th Cir. 1986)); *see Brock v. Hendershott*, 840 F.2d 339, 343 (6th Cir. 1988) (observing that prisoners "often have little choice in proceeding on their own behalf"); *Jacobsen*, 790 F.2d at 1364 n.4 (a prisoner's "choice of self-representation is less than voluntary").

It is these "twin infirmities of imprisonment and proceeding without counsel" that make the Rule 56 notice requirement especially important in cases involving *pro se* litigants who are incarcerated. *Rand*, 154 F.3d at 958; *see Hudson*, 412 F.2d at 1095 (grounding the notice rule in the "handicaps resulting from detention and indigency"). Those "twin infirmities"—and the unintuitive nature of summary judgment practice—exist any time a *pro se* prisoner faces an impending summary judgment ruling, regardless of whether that ruling follows an original summary judgment motion or a converted one.

Moreover, given these unique attributes of *pro se* prisoners and the summary judgment context, courts have recognized that it is not sufficient simply to direct *pro se* prisoner-plaintiffs to the language of Rule 56. Rather, "for notice to be adequate, it must explain the *consequences* of a Rule 56 motion"—*i.e.*, that, if granted, it ends the case—as well as "the effect of a failure to file a[n] . . . affidavit in opposition." *Renchenski*, 622 F.3d at 340; *see also Rand*, 154 F.3d at 960 (notice must "be phrased in ordinary, understandable language" and inform the *pro se* prisoner, among other things, that failure to "file counter-affidavits" may "result in the entry of summary judgment against him," which means his

"case will be over"); *Graham*, 848 F.2d at 344 (deeming it "inequitable" to "expect an incarcerated pro se [prisoner] to know," based on the language of Rule 56 alone, that "in response to the State's motion for summary judgment he cannot rely upon the papers already filed" but must "file his own affidavits"); *Neal*, 963 F.2d at 456 (requiring "a short and plain statement that any factual assertion in the movant's affidavits will be accepted by the district judge as being true unless the plaintiff submits his own affidavits . . . contradicting the assertion"); *Roseboro*, 528 F.2d at 310 (notice must be in a form "sufficiently understandable to one in [a *pro se* prisoner's] circumstances fairly to apprise him of what is required" in terms of counter-affidavits (quoting *Hudson*, 412 F.2d at 1091)).

Indeed, courts have held that even providing notice about the need to counter a summary judgment motion with "evidence" is insufficient if the notice does not also explain that, to be considered, the "evidence" must be in the form of a sworn affidavit or verified complaint. In *Brown*, for example, the Eleventh Circuit held that notice provided to a *pro se* prisoner-plaintiff that he could submit "pleadings and any documents or other evidence" in opposition to the defendant's motion for summary judgment was insufficient because it did not "specify that the evidence

must be in the form of sworn affidavits," nor did it inform the plaintiff that without properly submitted evidence, final judgment may be entered in favor of defendant without a full trial. 828 F.2d at 708.

Similarly, in *Pledger v. Lynch*, 5 F.4th 511 (4th Cir. 2021), the Fourth Circuit held that the district court's notice was inadequate because, although it outlined the summary judgment standard and advised that the plaintiff "must set forth specific facts showing that there is a genuine issue for trial," it did not inform him "that he could submit affidavits or other material" nor that his failure to do so "might result in the entry of summary judgment against him." *Id.* at 525–26 (quoting *Roseboro*, 528 F.2d at 310); *see also First-Citizens Bank & Trust Co., Inc. v. Brannon*, 722 F. App'x 902, 906 (11th Cir. 2018) (finding notice inadequate where, although it "generally reference[d] the need to submit 'affidavits or other materials,'" it did not specify that the plaintiff's statements, "to be considered at summary judgment, must be in the form of a sworn affidavit or a declaration made under penalty of perjury").

Only one Circuit—the Fifth—has explicitly rejected the notice requirement for *pro se* prisoner-plaintiffs, but it did so in a one-page per curiam decision based on a misreading of the Sixth and Ninth Circuits'

rules. In *Martin v. Harrison County Jail*, 975 F.2d 192 (5th Cir. 1992) (per curiam), the Fifth Circuit recognized that the Second, Fourth, Seventh, Eleventh, and D.C. Circuits have all held that district courts must provide *pro se* litigants "notice of the potential consequences of a summary judgment motion and the right to submit opposing affidavits," but stated that the Sixth and Ninth Circuits "have rejected this argument." *Id.* at 193 & n.1 (citing *Brock*, 840 F.2d at 343, and *Jacobsen*, 790 F.2d at 1364–67). The Fifth Circuit then "adopt[ed] the rule of the Sixth and Ninth Circuits" and concluded that the *pro se* prisoner-plaintiff in that case was not entitled to notice. *Id.*

Martin, however, misread the Sixth and Ninth Circuit decisions. Contrary to *Martin*'s assertion, those courts have not "rejected" the Rule 56 notice requirement altogether. *Id.* at 193. Rather, they have simply declined to extend the requirement to *nonprisoner* litigants. *See Rand*, 154 F.3d at 956 (noting that *Jacobsen* "approved of *Hudson*'s fair notice requirement" but "refused to apply the rule to pro se nonprisoners," and that the Court in 1988 "adopted a bright-line rule" requiring notice in all *pro se* prisoner cases); *Ninety-Three Firearms*, 330 F.3d at 427–28 (explaining that *Brock* expressly distinguished between

prisoner and nonprisoner litigants and indicated that, while nonprisoners are not entitled to notice, *pro se* prisoners are).

Both courts, however, have expressly held that *pro se prisoner*-plaintiffs—who face "unique handicaps" such as limited access to legal materials, *Rand*, 154 F.3d at 958, and "often have little choice in proceeding on their own behalf," *Brock*, 840 F.2d at 343—*are* entitled to notice of Rule 56's evidentiary requirements and the consequences of failing to put factual assertions in the proper form. Had *Martin* "adopt[ed] the rule of the Sixth and Ninth Circuits" faithfully, it would have held that the *pro se* prisoner-plaintiff in that case was entitled to notice. 975 F.2d at 193.

Moreover, although the Fifth Circuit has not adopted the majority notice rule, it has held that a district court can abuse its discretion if it fails to afford a *pro se* litigant a "meaningful opportunity to remedy the obvious defects in his summary judgment materials," such as presenting previously unsworn allegations in a "properly sworn affidavit." *Barker v. Norman*, 651 F.2d 1107, 1128–29 (5th Cir. 1981). In *Barker*, as here, a *pro se* nonprisoner litigant made "specific and nonconclusory" allegations that, had they been "introduced [in] a properly verified affidavit," would

have "been sufficient to raise a genuine issue of material fact" and thus defeat summary judgment. *Id.* at 1128. The district court nevertheless granted summary judgment, concluding that the plaintiff failed to present evidentiarily "competent controverting materials." *Id.* at 1129; *see id.* at 1118. The Fifth Circuit reversed, holding that, under the circumstances, the district court abused its discretion in failing to afford the plaintiff a "meaningful opportunity to remedy the defects in his summary judgment materials." *Id.* at 1129.

The Tenth Circuit has held the same. In *Jaxon v. Circle K Corp.*, 773 F.2d 1138 (10th Cir. 1985), a *pro se* nonprisoner litigant submitted material that "would preclude the grant of summary judgment" against him "if that material were in the proper form." *Id.* at 1139. Because the plaintiff's material was "unsworn," however, the district court granted summary judgment on the ground that he failed to support his claims "by even a scintilla of evidence." *Id.* (cleaned up). The Tenth Circuit reversed, holding that the district court abused its discretion by failing to give the plaintiff a "meaningful opportunity to remedy the obvious defects in his summary judgment materials" by presenting his allegations in the form of an affidavit or verified complaint. *Id.* at 1140 (quoting *Barker*, 651 F.2d

at 1128–29); *see also Reynoldson v. Shillinger*, 907 F.2d 124, 126 (10th Cir. 1990) (describing *Jaxon* as requiring courts to ensure *pro se* plaintiffs "an opportunity to remedy defects potentially attributable to their ignorance of federal law and motions practice"). The Court found support for its holding in the out-of-circuit cases recognizing a Rule 56 notice requirement for *pro se* litigants. *See Jaxon*, 773 F.2d at 1140 (citing *Lewis*, *Roseboro*, and *Hudson*).

Here, Mr. Lauria made "specific and nonconclusory" assertions that he submitted a grievance the only way he could—by placing it in the door slot of his cell for a corrections officer to retrieve and submit to the appropriate box. *Barker*, 651 F.2d at 1128; *see* AA23 (Compl., at 7); AA39 (Am. Compl., at 7); AA42, AA45 (Pl.'s Brief in Opp., at 1, 4). Had those uncontested assertions been presented in "the proper form," such as a sworn affidavit or verified complaint, *Jaxon*, 773 F.2d at 1139, they would have "been sufficient to raise a genuine issue of material fact" as to whether ACJ's grievance process was unavailable to him, *Barker*, 651 F.2d at 1128; *see supra*, Section I.A.

Yet, the district court never alerted Mr. Lauria that his explanation—which he provided three times during the course of the

litigation—must be provided under penalty of perjury for the court to consider it at summary judgment.[8] Nor did the court give Mr. Lauria a "meaningful opportunity to remedy the obvious defects in his summary judgment materials," *Barker*, 651 F.2d at 1128—something that Mr. Lauria could have easily accomplished by resubmitting the exact same explanation under penalty of perjury, had he known this was required. Instead, the court simply disregarded Mr. Lauria's plausible and uncontested explanation on the ground that it was "unsworn" and thus not "competent evidence." AA12, AA14–15 (Memo. Op., at 8, 10–11 (citation omitted)). By granting summary judgment against Mr. Lauria without giving him either notice that his explanation must be under

[8] Although the district court issued several orders over the nearly two years of litigation, none provided Mr. Lauria notice that his factual assertions must be in the form of affidavits or sworn under penalty of perjury to be considered "evidence," nor that failing to do so could result in summary judgment for the defendants. For example, although the district court issued a written order instructing that "[a]ny motion for summary judgment on plaintiff's behalf . . . must comply with Local Rule 56," ECF 40 at 1, that order did not specify what "comply[ing] with Local Rule 56" entailed, nor does Local Rule 56 itself instruct litigants that their factual assertions must be in the form of affidavits or signed under penalty of perjury to be considered by the court, Local Rules of Court, United States District Court Western District of Pennsylvania, LCvR 56, 32–33. Available at https://www.pawd.uscourts.gov/sites/pawd/files/lrmanual20181101.pdf.

penalty of perjury or an opportunity to resubmit it as such, the district court erred.

The court's treatment of Mr. Lauria's exhaustion claims—and apparent expectation that he would intuitively grasp the need to present his explanation in the form of sworn statements, without any notice of that technical legal requirement—was particularly problematic given that Mr. Lauria requested counsel twice due to his inability to understand "legal jargin" [sic] and his "ignorance" of procedural rules, but was told both times that he could adequately represent himself. *See supra*, pp. 10–13. Indeed, in his second motion requesting counsel, Mr. Lauria emphasized that there were disputed facts in the case and that he needed assistance to know how to dispute them properly. AA46–47 (Renewed Motion to Appoint Counsel, at 1–2) (noting that the case turned on "conflicting testimony" and that, without an understanding of procedural rules, his effort to contest credibility "would be more of a debate than an examination"). For the district court to deny Mr. Lauria counsel on the ground that he was "[]capable of presenting his case," AA49 (Order Denying Appointment of Counsel, at 2), and then turn around and penalize him for failing to understand and comply with the

technical procedural requirements he was seeking assistance with, is troubling and unfair to say the least.

In sum, the district court erred in failing to inform Mr. Lauria—a *pro se* incarcerated plaintiff who had repeatedly told the court he needed assistance understanding the rules—that he should file sworn affidavits to contest Defendants' factual assertions, lest summary judgment be granted against him. This error was prejudicial to Mr. Lauria: with the required notice, he would have incorporated his exhaustion evidence into the appropriate form, which in turn would have raised disputed material issues as to exhaustion. *See supra*, Section I.A. As such, the district court's grant of summary judgment on exhaustion grounds was improper.

CONCLUSION

This Court should reverse the district court's grant of summary judgment in favor of Defendants and remand for further proceedings.

Dated: July 12, 2024

Respectfully submitted,

s/ Christine A. Monta

Elena S. Meth
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
160 East Grand Avenue, 6th Fl.
Chicago, IL 60611
(312) 503-0913
elena.meth@macarthurjustice.org

Devi M. Rao
Christine A. Monta
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3308
christine.monta@macarthurjustice.org

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a), I certify that this brief complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 8,489 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: July 12, 2024

/s/ Christine A. Monta

CERTIFICATE OF BAR MEMBERSHIP

Pursuant to Third Circuit Local Appellate Rule 28.3(d), the undersigned counsel hereby certifies that I have been admitted before the bar of the United States Court of Appeals for the Third Circuit, and that I am a member in good standing of the court.

Dated: July 12, 2024

/s/ Christine A. Monta

CERTIFICATE OF VIRUS SCAN

Pursuant to the Third Circuit Local Appellate Rule 31.1(c), I hereby certify that a virus detection program was performed on this electronic brief/file using Sophos, version 2023.2.2.1, last updated July 12, 2024 and that no virus was detected.

Dated: July 12, 2024

/s/ Christine A. Monta

CERTIFICATE OF IDENTICAL COMPLIANCE OF BRIEFS

Pursuant to the Third Circuit Local Appellate Rule 31.1(c), I hereby certify that the text of the electronic brief is identical to the text in the hard, paper copies of the brief.

Dated: July 12, 2024

/s/ Christine A. Monta

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2024, I electronically filed the foregoing *Opening Brief of Appellant* with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 12, 2024

/s/ Christine A. Monta

No. 24-1461

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CHRISTIAN JAMES LAURIA,
Plaintiff-Appellant,

v.

C.O. LIEB; C.O. FORSICKA; and C.O. RICH GERBER,
Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Pennsylvania, No. 2-22-cv-486
Before the Hon. Maureen P. Kelly, Magistrate Judge

APPELLANT'S APPENDIX, VOL. I of II (pp. 1-16)

Elena S. Meth
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
160 East Grand Avenue, 6th Fl.
Chicago, IL 60611
(312) 503-0913
elena.meth@macarthurjustice.org

Devi M. Rao
Christine A. Monta
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington, DC 20002
(202) 869-3308
christine.monta@macarthurjustice.org

Counsel for Appellant

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Form 1A

Notice of Appeal to a Court of Appeals From a Judgment of a District Court

United States District Court for the Western
District of Pennsylvania
Docket Number 2:22-CV-00486-MPK

Christian James Lauria, Plaintiff

v.

C.O. Liebetal, Defendant

Notice of Appeal

Christian Lauria (name all parties taking the appeal)* appeal to the United States Court of Appeals for the 3rd Circuit from the final judgment entered on 2.6.2024 (state the date the judgment was entered).

(s) _____
Attorney for Christian Lauria
Address: SCI Houtzdale 209 Institution Dr.
Houtzdale, PA 16698-1000

[***Note to inmate filers:*** *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration with this Notice of Appeal.*]

* See Rule 3(c) for permissible ways of identifying appellants.

Ref: 5024726 pg 6 of 8 for CHRISTIAN LAURIA

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

CHRISTIAN JAMES LAURIA, Plaintiff, v. C.O. LIEB; C.O. FORSICKA; and C.O. RICH GERBER, Defendants.	)	Civil Action No. 22-486 Magistrate Judge Maureen P. Kelly Re: ECF Nos. 62 and 68

JUDGMENT

AND NOW, this 6th day of February, 2024, IT IS HEREBY ORDERED that judgment is entered in favor of Defendants C.O. Lieb, C.O. Forsicka, and C.O. Rich Gerber, and against Plaintiff Christian James Lauria.

BY THE COURT:

MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

cc: Christian James Lauria
KC6631
SCI Houtzdale
P.O. Box 1000
29 Institution Drive
Houtzdale, PA 16698-1000

All counsel of record via CM/ECF.

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

CHRISTIAN JAMES LAURIA, Plaintiff, v. C.O. LIEB; C.O. FORSICKA; and C.O. RICH GERBER, Defendants.	)	Civil Action No. 22-486 Magistrate Judge Maureen P. Kelly Re: ECF Nos. 62 and 68

ORDER

AND NOW, this 6th day of February, 2024, IT IS HEREBY ORDERED that the Motion for Summary Judgment filed on behalf of Defendants C.O. Lieb, C.O. Forsicka, and C.O. Rich Gerber, ECF No. 68 is granted.

IT IS FURTHER ORDERED that the Motion for Partial Summary Judgment filed on behalf of Plaintiff Christian James Lauria, ECF No. 62, is denied.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if any party wishes to appeal from this Order he or she must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed. R. App. P., with the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219.

BY THE COURT:

Maureen P. Kelly

MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

cc: Christian James Lauria
KC6631
SCI Houtzdale
P.O. Box 1000
29 Institution Drive
Houtzdale, PA 16698-1000

All counsel of record via CM/ECF.

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

CHRISTIAN JAMES LAURIA, Plaintiff, v. C.O. LIEB; C.O. FORSICKA; and C.O. RICH GERBER, Defendants.	)	Civil Action No. 22-486 Magistrate Judge Maureen P. Kelly Re: ECF Nos. 62 and 68

MEMORANDUM OPINION

Plaintiff Christian James Lauria ("Plaintiff") is an inmate incarcerated at the State Correctional Institution at Houtzdale ("SCI-Houtzdale"). Plaintiff brings this action arising out of allegations that officials at the Allegheny County Jail used excessive force and denied him medical care in violation of his constitutional rights. ECF No. 5.

Presently before the Court is Plaintiff's Motion for Partial Summary Judgment, ECF No. 62, and Defendants' Motion for Summary Judgment, ECF No. 68. For the reasons that follow, the Plaintiff's motion is denied, and the Defendants' motion is granted.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff alleges that on March 18, 2021, he was assaulted by Defendants Corrections Officers Lieb, Forsicka, and Gerber during processing in the intake area of the Allegheny County Jail ("ACJ").[2] ECF No. 50 at 4-5. After the altercation, Plaintiff was placed in a restraint chair

[1] In accordance with the provisions of 28 U.S.C. § 636(c)(1), the parties voluntarily consented to having a United States Magistrate Judge conduct all proceedings in this case, including the entry of a final judgment. ECF Nos. 2, 29, and 86.

[2] Plaintiff's initial Complaint alleges that Defendants Lieb, Forsicka, and Corrections Officer Carr assaulted him, "punched [him] unconscious," and that Lieb held Plaintiff down with this boot on Plaintiff's face. ECF No. 4 at 4-6.

for several hours. Plaintiff sustained a broken orbital floor fracture that eventually required surgery and the implantation of mesh under his eye. Id. Plaintiff alleges that the force used was excessive and that Defendants were deliberately indifferent to his serious medical needs. Plaintiff seeks an award of compensatory and punitive damages, as well as a declaratory judgment related to his entitlement to damages. Id.

Defendants admit that "force was used by correctional officers on March 18, 2021 in the shower area of the ACJ Intake Department," and that Plaintiff was placed in a restraint chair for four and three quarters hours. ECF No. 54 ¶¶ 8, 11. Defendants contend that the force applied was reasonable and necessary to protect themselves from Plaintiff's attempts to injure them and to protect Plaintiff from self-injury. Further, Defendants state they were not deliberately indifferent to Plaintiff's medical needs. Id. ¶¶ 9, 19. Thus, Defendants deny that they engaged in any conduct that violated Plaintiff's constitutional rights. Id. ¶¶ 17, 20.

Discovery is complete and at this stage of the litigation, the parties accounts of the incident at issue differ.

Through written statements and a Use of Force Occurrence Report, Defendants assert that the use of force was necessary because Plaintiff threatened self-harm, threw items at them, and took a fighting stance to assault Lieb after being instructed to don a suicide prevention gown. ECF No. 69-2 at 6-7.

As reflected in the report, in the minutes prior to 8:00 a.m., Officer Brown contacted Gerber to report that an inmate in the intake area of the jail threatened suicide. Gerber and Lieb entered the area to investigate, and Plaintiff identified himself as the inmate who threatened self-harm.

While still unconscious, Plaintiff alleges he was tased. After the assault, he was placed a restraint chair and denied medical assistance. Five days later, he was taken to the hospital and diagnosed with an orbital floor fracture. The injury required surgery and the implantation of mesh under Plaintiff's eye. Id. The Amended Complaint omits some of the details and alleges Defendant Gerber's participation in the incident.

Plaintiff was escorted to the shower area and ordered to don a "suicide prevention gown." Id. Plaintiff initially refused but agreed to comply when told that if he continued to refuse, he would be secured in a restraint chair to ensure his safety. Lauria began to remove his clothing, called Defendants names, and then threw cards stored in his pocket at Lieb. Gerber states that Lieb "began to defend himself by creating distance between himself and Lauria." Id. At that point, Lauria "took a fighting stance and stepped toward [Officer] Lieb." Id. Gerber describes the use of force as follows:

> Ofc. Lieb immediately defended himself utilizing multiple hand strikes to actively counter Laura's assault. I then took Laura to the ground and ordered him to place his hands behind his back. Lauria did not comply with these orders and continued his combative actions toward Ofc. Lieb and this writer. This reporting sergeant then utilized multiple hand strikes to Lauria's facial area and torso area to gain compliance and defend myself against Lauria's punches and kicks. This reporting sergeant then utilized my issued Taser and deployed two probes into Lauria's torso. Lauria stop[ped] fighting and rolled onto his stomach. This writer then followed up with a third point of contract to Lauria's lower back area. Responding staff assisted Ofc. Lieb and I, in getting Laura secured in handcuffs. Once Laura was secured, I handed the still picture camera to Ofc. Bender who began to record the incident. I then requested medical to the area to remove the Taser probes. However, both probes disconnected during the incident. Ofc. [t]hen began to systematically secure Lara into the emergency restrain chair under my direction. I assisted officers by tightening the lap belt and apply the right should restraint. Laura was then escorted to Cell H9. There, the restraints were checked and cleared for tautness after some adjustment. A 3-5 minute observation period was then conducted before this reporting sergeant conducted my on-camera debriefing. I then ordered all officers involved to stand down and generate reports.

Id. at 7.

Lieb's report corroborates Gerber's description of the incident and adds that "Medical cleared inmate Lauria." Id. at 9. Forsicka states that Plaintiff was "ordered to be placed in the restraint chair after the nurse removed the taser prong. He was rolled over and the taser prong had come out on its own therefore medical was not needed at that time." Id. at 10. Other responding

staff corroborate Lieb and and Gerber's version of the events for the portions of the incident they observed or participated. Id. at 4-5, 8-17.

Plaintiff's medical records show that at he was placed in a restraint chair was checked by a nurse prior to 8:32 a.m. ECF No. 69-6 at 3. Plaintiff was observed to have bruising and a physician assistant was contacted to conduct an assessment. He was examined by a physician assistant prior to 9:50 a.m. and reported pain, thirst, a need to use the bathroom, and stated that he had taken "benzos outside." Id. at 2. The physician assistant noted "large periorbital edema, tender nasal bridge/epistaxis present to lower chest, multiple abrasions R posterior/temporal areas, no active bleed." Id. He was assessed by ACJ mental health specialists later that day but was uncooperative. Id. at 4. The responding mental health staff member requested that Plaintiff be placed in close observation in Unit 5C, but no beds were available at the time. Id.

Plaintiff's account differs. He contends that he was a pretrial detainee at the time of the incident and was assaulted by Defendants and denied necessary medical attention. ECF No. 62-1. He states he was placed in a restraint chair "for sadistic and malicious reasons" despite being handcuffed and not moving or causing harm to anyone. Id. He requested medical attention but Gerber "replied no" and instructed an intake nurse to "just leave him." Id. Plaintiff complains that he was held in the restraint chair for "over 4 ½ hours." Id.

Plaintiff was seen in an emergency room on March 22, 2021, and evaluated for trauma to his left eye. ECF No. 58-4. Plaintiff was diagnosed with a left orbital floor fracture, treated with topical steroids, and discharged. Id. Three weeks later, Plaintiff underwent surgical repair of the fracture. ECF No. 58-5.

Plaintiff was issued a Class 1 Misconduct stemming from the incident. ECF No. 58-6. The issuing officer stated that Plaintiff "threw multiple cards at Ofc. Lieb while being strip searched to

be placed into a suicide prevention gown. [Plaintiff] began to resist and became combative while officers were securing him into handcuffs. [Plaintiff] was then placed into an emergency restraint chair before being secured into Cell H9." Id. Other than Plaintiff, no one was injured in the incident. ECF No. 58-7.

In accordance with the Court's scheduling order, Plaintiff filed a Motion for Partial Summary Judgment, Brief in Support, Addendum with exhibits, and Concise Statement of Material Facts. ECF Nos. 62-64. Defendants also filed a Motion for Summary Judgment, Concise Statement of Material Facts with exhibits, and Brief in Support. ECF Nos. 68-70. The parties have responded to the pending Motions for Summary Judgment, and the Court has received video evidence in support of Defendants' motion.[3] ECF Nos. 72, 74, 75.

Plaintiff filed correspondence complaining that he did not receive Defendants' filings in this matter. ECF No. 76. The Court provided copies to the Plaintiff and reminded Defendants of their obligation to serve Plaintiff in compliance with prison mail policies. ECF No. 77. In addition, the Court granted Plaintiff leave to file a supplemental response, if necessary. Id. Thereafter, Plaintiff filed a Motion for Ruling and stated that he had received "all the paperwork needed" and that he did not require any additional time to file a supplemental response. ECF No. 78.

The summary judgment motions are ripe for consideration.

II. LEGAL STANDARD

A. Motion for Summary Judgment

Under Federal Rule of Civil Procedure 56, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if it "might affect the

[3] The video depicts Plaintiff's placement in the restraint chair and records ACJ staff reports but does not include the alleged assault that occurred while Plaintiff was in a screened area removing his clothes.

outcome of the suit under the governing law" and a dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). See also Doe v. Abington Friends Sch., 480 F.3d 252, 256 (3d Cir. 2007) ("A genuine issue is present when a reasonable trier of fact, viewing all of the record evidence, could rationally find in favor of the non-moving party in light of his burden of proof.").

A party moving for summary judgment has the initial burden of showing the basis for its motion and must demonstrate that there is an absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by ... citing to particular parts of materials in the record, including depositions, documents ..., affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A). The burden then shifts to the non-movant to come forward with specific facts showing a genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986); Williams v. Borough of W. Chester, Pa., 891 F.2d 458, 460–61 (3d Cir. 1989) (the non-movant must present affirmative evidence—more than a scintilla but less than a preponderance—which supports each element of his claim to defeat a properly presented motion for summary judgment). To withstand a properly supported motion for summary judgment, the nonmoving party must identify specific facts and affirmative evidence that contradict the moving party. Anderson, 477 U.S. at 250. "[I]f the non-movant's evidence is merely 'colorable' or is 'not significantly probative,' the court may grant summary judgment." Messa v. Omaha Prop. & Cas. Ins. Co., 122 F. Supp. 2d 523, 528 (D.N.J. 2000) (quoting Anderson, 477 U.S. at 249-50)). "If reasonable minds

could differ as to the import of the evidence," however, summary judgment is not appropriate. See Anderson, 477 U.S. at 250-51.

"In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence 'is to be believed and all justifiable inferences are to be drawn in his favor.'" Marino v. Indus. Crating Co., 358 F. 3d 241, 247 (3d Cir. 2004) (quoting Anderson, 477 U.S. at 255)).

Finally, where cross-motions for summary judgment are pending, a district court "should consider cross-motions for summary judgment separately and apply the appropriate burden of production to each motion." Beenick v. LeFebvre, 684 F. App'x 200, 205 (3d Cir. 2017) (not precedential) (citing Lawrence v. City of Philadelphia, 527 F.3d 299, 310 (3d Cir. 2008)). "If upon review of cross motions for summary judgment [the court] find[s] no genuine dispute over material facts, then [the court] will order judgment to be entered in favor of the party deserving judgment in light of the law and undisputed facts." Iberia Foods Corp. v. Romeo, 150 F.3d 298, 302 (3d Cir. 1998) (citing Ciarlante v. Brown & Williamson Tobacco Corp., 143 F.3d 139, 145–46 (3d Cir. 1998)).

B. *Pro Se* Pleadings and Filings

Plaintiff is proceeding *pro se*, thus he is entitled to liberal reading of his pleadings and documents filed in opposition to the pending motion. Porter v. Pa. Dep't of Corr., 974 F.3d 431, 440 (3d Cir. 2020) (quoting Higgs v. Att'y Gen. of the U.S., 655 F.3d 333, 339 (3d Cir. 2011) ("[t]he obligation to liberally construe a pro se litigant's pleadings is well-established.")). If the court can reasonably read pleadings to state a valid claim on which the litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax, and sentence construction, or litigant's unfamiliarity with pleading requirements. Boag v.

MacDougall, 454 U.S. 364 (1982); U.S. ex rel. Montgomery v. Brierley, 414 F.2d 552, 555 (3d Cir. 1969) (A "petition prepared by a prisoner ... may be inartfully drawn and should ... be read 'with a measure of tolerance'"); Freeman v. Dep't. of Corr., 949 F.2d 360 (10th Cir. 1991).

Even so, at the summary judgment stage of the proceedings, the Court need not credit bald assertions or legal conclusions unaccompanied by evidentiary support. Jones v. United Parcel Serv., 214 F.3d 402, 407 (3d Cir. 2000). "[A] pro se plaintiff is not relieved of his obligation under [Federal Rule of Civil Procedure] 56 to point to competent evidence in the record that is capable of refuting a defendant's motion for summary judgment." Dawson v. Cook, 238 F. Supp. 3d 712, 717 (E.D. Pa. 2017) (citation omitted). See also Boykins v. Lucent Techs., Inc., 78 F. Supp. 2d 402, 408 (E.D. Pa. 2000) ("merely because a non-moving party is proceeding pro se does not relieve him of the obligation under Rule 56(e) to produce evidence that raises a genuine issue of material fact"); Winfield v. Mazurkiewicz, No. 11-584, 2012 WL 4343176, at *1 (W.D. Pa. Sept. 21, 2012).

Because Plaintiff is a *pro se* litigant, this Court will consider the facts and make inferences where it is appropriate.

III. DISCUSSION

A. Defendants' Motion for Summary Judgment (ECF No. 68)

Defendants seek entry of summary judgment in their favor as to all claims asserted against them because Plaintiff failed to exhaust administrative remedies.[4] ECF No. 68, ECF No. 70 at 2-

[4] Defendants also assert as grounds for summary judgment: (1) the insufficiency of the evidence that Forsicka used force against the Plaintiff; (2) Gerber and Lieb did not use force that was objectively excessive under the circumstances; (3) Defendants Lieb and Gerber and had no control over the time Plaintiff remained in the restraint chair; (4) Plaintiff received medical care and thus Defendants were not deliberately indifferent to his serious medical needs; and (5) qualified immunity applies to Plaintiff's claims. The Court need not reach these additional grounds for relief because on the record presented, it cannot be disputed that Plaintiff failed to exhaust available administrative remedies. ECF No. 68.

3. Because there is no evidence that Plaintiff exhausted available administrative remedies, the Defendants' Motion for Summary Judgment is properly granted.

The Prison Litigation Reform Act ("PLRA") states that a prisoner cannot bring an action under Section 1983 "until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). This mandatory exhaustion requirement applies to "all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." Porter v. Nussle, 534 U.S. 516, 532 (2002). "Exhaustion is considered separately for each claim brought by an inmate, and if a complaint includes both exhausted and unexhausted claims, courts will dismiss the latter but not the former." Shifflett v. Korszniak, 934 F.3d 356, 364 (3d Cir. 2019).

The exhaustion requirement of the PLRA is one of "proper exhaustion." Woodford v. Ngo, 548 U.S. 81, 84 (2006). Failure to comply with the procedural requirements of the available grievance system will result in a claim being found procedurally defaulted. Id. at 90; Spruill v. Gillis, 372 F.3d 218, 227-32 (3d Cir. 2004); Robinson v. Superintendent Rockview SCI, 831 F.3d 148, 153 (3d Cir. 2016). In assessing default, the prison's grievance policy is what "define[s] the boundaries of proper exhaustion." Jones v. Bock, 549 U.S. 199, 218 (2007).

Failure to exhaust is an affirmative defense under the PLRA. Id. at 216. Thus, Defendants have the burden of proving that Plaintiff failed to exhaust his available administrative remedies. See, e.g., Rinaldi v. United States, 904 F.3d 257, 268 (3d Cir. 2018). The United States Court of Appeals for the Third Circuit has explained that if the defendant shows that the inmate failed to exhaust his administrative remedies, then "the inmate plaintiff bears the onus of producing evidence that the on-the-books remedies were in fact unavailable to him or her." West v. Emig, 787 F. App'x 812, 814 (3d Cir. 2019) (citing Rinaldi, 904 F.3d at 268). Absent a situation when

administrative remedies are not "available," a court may not excuse an inmate's failure to exhaust "irrespective of any 'special circumstances.'" Ross v. Blake, 578 U.S. 632, 639 (2016).

Defendants present the Declaration of the Deputy Warden for Operations at ACJ, signed under penalty of perjury. ECF No. 69-8. The Deputy Warden states that ACJ's Inmate Handbook is provided to every inmate upon admission to ACJ and describes the inmate grievance process. To comply, inmates must submit a written grievance within fifteen days from the event complained of. Once a grievance is submitted, it is recorded into a searchable database. As related to Plaintiff's claims, the Deputy Warden conducted a search for any grievance submitted by Plaintiff for the period March 18, 2021 through Plaintiff's release on May 20, 2021. No inmate grievances were located. Id. Defendants assert that Plaintiff's failure to submit a grievance requires dismissal of this action.

Plaintiff opposes summary judgment on this basis. In his unverified initial Complaint, his unverified Amended Complaint, and in his Brief in Opposition to Defendants['] Motion for Summary Judgment, Plaintiff states that he submitted a grievance and that ACJ officials "never answered." ECF No. 50 at 6-8; ECF No. 75 at 1. Plaintiff asserts he was in segregated housing. Pursuant to the procedure for his housing unit, he placed his grievance in the "door slot." ECF No. 75 at 1. At that point, he relied upon corrections officers to deliver his grievance to "the grievance box." Id. But Plaintiff's statements are not made under penalty of perjury pursuant to 28 U.S.C.A. § 1746 and therefore may not be considered by the Court.

The Third Circuit has clearly stated that "while an unsworn statement may be considered on summary judgment, an unsworn statement that has not been made under penalty of perjury cannot." United States ex rel. Doe v. Heart Sol., PC, 923 F.3d 308, 315 (3d Cir. 2019). Certainly, where the complaint is verified, the court may treat factual allegations in the complaint that are

based on personal knowledge as if they were made in an affidavit or declaration. Parkell v. Danberg, 833 F.3d 313, 320 n.2 (3d Cir. 2016) ("Because [statements in verified complaint and other court filings] were signed under penalty of perjury in accordance with 28 U.S.C. § 1746, we consider them as equivalent to statements in an affidavit."); Reese v. Sparks, 760 F.2d 64, 67 (3d Cir. 1985) (treating verified complaint as an affidavit in opposition to a motion for summary judgment). Here, however, Plaintiff did not sign his Complaint, his Amended Complaint, or his brief in opposition to summary judgment under penalty of perjury. Thus, the Court cannot consider the unsworn statements related to exhaustion as part of its summary judgment analysis.

On the record before the Court, Defendants have shown that there is no genuine dispute over whether Plaintiff failed to exhaust his administrative remedies for his claims arising out of the incident that occurred on March 18, 2021. In turn, Plaintiff has not met his burden to demonstrate that the grievance process was unavailable to him. Thus, Plaintiff has failed to establish a genuine issue of material fact that he properly exhausted his administrative remedies as required by the PLRA. Accordingly, summary judgment is properly entered in favor of all Defendants as to all claims asserted by Plaintiff.

B. Plaintiff's Motion for Partial Summary Judgment (ECF No. 62)

Plaintiff moves for summary judgment on his claims for the alleged excessive force and the denial of medical treatment in the immediate aftermath of the altercation at issue. ECF No. 62. Plaintiff asserts that the evidence is sufficient to establish that the use of force, including his placement in a restraint chair, was excessive and violated his constitutional rights. ECF No. 65. Plaintiff also contends that it is not disputed that Defendant Gerber delayed medical care for his injuries and was deliberately indifferent to his serious medical needs. Id. Thus, Plaintiff seeks entry of partial summary judgment in his favor. ECF No. 63.

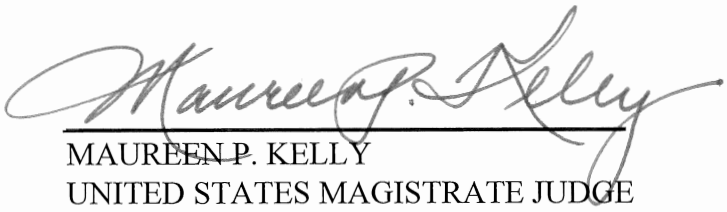
The Court does not reach the merits of Plaintiff's Motion for Partial Summary Judgment because, as explained above, the PLRA bars his claims due to Plaintiff's failure to exhaust available administrative remedies. Under these circumstances, the Plaintiff's Motion for Partial Summary Judgment must be denied.

IV. CONCLUSION

For these reasons, the Motion for Summary Judgment filed on behalf of Defendants C.O. Lieb, C.O. Forsicka, and C.O. Rich Gerber, ECF No. 68 is granted, and the Motion for Partial Summary Judgment filed by Plaintiff Christian James Lauria, ECF No. 62, is denied. An appropriate Order will be entered.

DATED: February 6, 2024

BY THE COURT:



MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

cc: Christian James Lauria
KC6631
SCI Houtzdale
P.O. Box 1000
29 Institution Drive
Houtzdale, PA 16698-1000

All counsel of record via CM/ECF.