

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TEMEKA STROZIER, LATESHA
DIXON, JEWEL RENFROE,
CRYSTAL PHILLIBERT, PEACHES
DESIR, and EBONY BOSWELL,
Plaintiffs,

CIVIL ACTION NO.
1:22-cv-3342-TRJ-CMS

v.

MELODY MADDUX, in her official
capacity as the Sheriff of DeKalb
County, Georgia,
Defendant.

FINAL REPORT AND RECOMMENDATION AND ORDER

Plaintiffs Temeka Strozier, LaTasha Dixon, Jewel Renfore, Crystal Phillibert, Peaches Desir, and Ebony Boswell (collectively referred to herein as “Plaintiffs”) complain in this lawsuit that Defendant Melody Maddox (“Defendant” or “Sheriff Maddox”), who is sued in her official capacity as the Sheriff of DeKalb County, Georgia, violated (1) Title VII of the Civil Rights Act of 1964 (“Title VII”) by allowing Plaintiffs to work in a sexually hostile work environment at the DeKalb County Jail and not reasonably responding to the ongoing issues in this environment and (2) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (the “Equal Protection Clause”) by allowing Plaintiffs to work in this environment. This matter is before the Court on Defendant’s Motion for

Summary Judgment [Doc. 93] and Plaintiffs' Motion for Leave to File Surreply to Defendant's Response in Support of Defendant's Motion for Summary Judgment [Doc. 120]. For the reasons stated below, I **GRANT** Plaintiffs' Motion for Leave to File Surreply to Defendant's Response in Support of Defendant's Motion for Summary Judgment [Doc. 120] and will recommend that Defendant's Motion for Summary Judgment [Doc. 93] be **GRANTED IN PART AND DENIED IN PART**.

I. PROCEDURAL BACKGROUND AND PRELIMINARY MATTERS¹

On August 18, 2022, Plaintiffs commenced this action against Sheriff Maddox with the filing of their Complaint. [Doc. 1, Compl.]. As mentioned above, the Complaint includes a cause of action under Title VII (Count I) and a cause of action under the Equal Protection Clause (Count II). Following an extensive discovery period, Defendant moved the Court for summary judgment. [Doc. 93]. Plaintiffs have filed a Response in Opposition to Defendant's Motion for Summary Judgment,

¹ For purposes of this Report and Recommendation, unless otherwise indicated, citations to the record are made to the CM/ECF heading at the top of the page cited; citations to deposition pages are to the actual page number of the hardcopy deposition transcript.

and Defendant has filed a Reply in Support of Her Motion for Summary Judgment. [Docs. 111, 117].

Plaintiffs move the Court for leave to file a surreply to Defendant's Reply in Support of Her Motion for Summary Judgment. [Doc. 120]. Plaintiffs assert that Defendant improperly raises new arguments in her reply brief regarding the evidence Plaintiffs must proffer to sustain their claims. [*Id.* at 1]. Plaintiffs seek leave to file a surreply to explain why the new arguments are legally and factually incorrect. [*Id.* at 2–4].

Defendant opposes Plaintiffs' motion, stating that the Court should deny it because the arguments Plaintiffs identify as "new arguments" are simply extensions of arguments Defendant made in her initial brief in support of her summary judgment motion and responses to arguments made by Plaintiffs in response to the summary judgment motion. [Doc. 121 at 1, 3–5]. Defendant thus argues that Plaintiffs have not established unusual circumstances that warrant the filing of a surreply. [*Id.* at 5]. Defendant alternatively argues that if the Court grants Plaintiffs leave to file a surreply, the Court should grant Defendant leave to file a surresponse in opposition to Plaintiffs' surreply. [*Id.* at 1, 5].

Plaintiffs have already filed their proposed surreply as an attachment to their motion seeking leave to file the surreply. [Doc. 120-1]. Likewise, Defendant has

already filed her proposed surreply as an attachment to her response to Plaintiffs' motion. [Doc. 121-1]. To ensure that the Court is fully informed of the parties' respective arguments and the relevant legal authorities, I exercise my discretion to permit the filing of the proposed surreply and the proposed surreply and will consider both documents in evaluating Defendant's summary judgment motion. Accordingly, I **GRANT** Plaintiffs' Motion for Leave to File Surreply to Defendant's Response in Support of Defendant's Motion for Summary Judgment [Doc. 120].

II. SUMMARY JUDGMENT STANDARD

Summary judgment is authorized when “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). The party seeking summary judgment bears the burden of demonstrating the absence of a genuine dispute as to any material fact. *See Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Bingham, Ltd. v. United States*, 724 F.2d 921, 924 (11th Cir. 1984). The movant carries this burden by showing the court that there is “an absence of evidence to support the nonmoving party's case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The court must view the evidence and all factual inferences in the light most favorable to the nonmoving party. *Adickes*, 398 U.S. at 158–59.

Once the moving party has adequately supported its motion, the nonmoving party must come forward with specific facts that demonstrate the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The nonmoving party must “go beyond the pleadings” and present competent evidence designating “specific facts showing that there is a genuine issue for trial.” *Celotex*, 477 U.S. at 324. Generally, “[t]he mere existence of a scintilla of evidence” supporting the nonmoving party’s case is insufficient to defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

When considering motions for summary judgment, the court does not make decisions as to the merits of disputed facts. *See Anderson*, 477 U.S. at 249. Rather, the court only determines whether there are genuine issues of material fact to be tried. Applicable substantive law identifies those facts that are material and those that are not. *Id.* at 248. Disputed facts that do not resolve or affect the outcome of a suit will not properly preclude the entry of summary judgment. *Id.*

III. FACTS

Considering the foregoing summary judgment standard, I find the following facts for the purpose of resolving Defendant’s pending motion for summary judgment only.

A. The DeKalb County Jail

Between 2019 and 2022, the relevant time period for this lawsuit, the DeKalb County Jail (the “Jail”) housed approximately 1,552 pretrial and posttrial detainees under varying levels of security. [Doc. 94, Def.’s Stmt. of Mat. Facts “DSMF” ¶ 1; Doc. 114, Pls.’ Resp. to Def.’s Stmt. of Mat. Facts “PRSF” ¶ 1]. The Jail is eight stories high with higher-security inmates generally housed on higher floors. [Doc. 100, 30(b)(6) Deposition of Colonel Patravious Long “Long Dep.” at 75–76]. The Jail’s housing units are laid out with a walled-off observation post, referred to as a “tower,” in the middle of the area. [Doc. 102, Deposition of LaTasha Dixon Davis “Dixon Dep.” at 64–67]. Staff stationed in the tower use computers and look through windows to monitor the inmates in the housing unit, and activity is recorded in the computer system of the DeKalb County Sheriff’s Office (the “Sheriff’s Office”). [Id.]. Surrounding the tower is a hallway, called a “sallyport.” [Id.]. Across from the sallyport are “pods” where inmates are housed. [Id.]. Immediately inside the pod is a dayroom with tables and phone stations where inmates can roam during the day when they are not inside their cells. [Id. at 65–67]. The cells lie at the far end of the dayroom. [Id. at 67].

The cell doors at the Jail have standard locks that are similar in type and functionality to those used at other jails. [DMSF ¶ 2; PRSF ¶ 2]. Staff stationed in

the tower can lock or unlock and open or close the cell doors. [Doc. 101, Deposition of Peaches Desir “Desir Dep.” at 34–35]. Inmates are known to manipulate the locks on the cell doors by stuffing debris inside the catch of the lock, preventing the bolt from fully closing. [Dixon Dep. at 115; Doc. 105, Deposition of Crystal Phillibert “Phillibert Dep.” at 66; Doc. 107, Deposition of Jewel Renfroe “Renfroe Dep.” at 88]. To guard against this, the towers in each housing unit of the Jail contain hardware with lights that indicate when a particular cell door is unlocked. [Doc. 98, Deposition of Ebony Boswell “Boswell Dep.” at 124]. Additionally, Jail policy requires detention officers (“Officers”) to physically inspect the cell locks, clear any debris in them, and physically pull on each cell door at the end of their shift to ensure that each door has locked properly. [DMSF ¶ 3; PRSF ¶ 3].

If an Officer is unable to clear the debris or if a cell lock is damaged, there is a locksmith with an outside vendor who comes to the Jail to assist. [Boswell Dep. at 125–26]. As part of DeKalb County’s budgeting process, Sheriff Maddox requested additional funds from the DeKalb County Commission to replace cell locks throughout the Jail and upgrade monitoring equipment in all towers, but she received less than \$2 million for this purpose, which was only enough to perform these lock replacements and hardware upgrades on portions of the seventh and eighth

floors. [DMSF ¶ 4; PRSF ¶ 4; Long Dep. at 221–23; Doc. 96, Deposition of LoRandy Akies “Akies Dep.” at 30–32].

B. Plaintiffs’ Duties, Responsibilities, and Training

Five of the plaintiffs in this case—Dixon, Renfroe, Boswell, Strozier, and Phillibert—are former Officers at the Jail; the sixth plaintiff, Desir, is a former security technician (“Tech”) at the Jail.² [DSMF ¶ 6; PRSF ¶ 6]. Officers are responsible for the care, custody, and control of inmates, and they must move around their assigned housing unit and interact with inmates. [DSMF ¶¶ 7, 8; PRSF ¶¶ 7, 8]. Additionally, Officers are required to address and report inmate sexual misconduct. [DSMF ¶ 7; PRSF ¶ 7]. Techs, on the other hand, are stationed in housing unit towers. [DSMF ¶ 9; PRSF ¶ 9]. From that vantage point, they monitor inmate activity and record it in the Jail’s computer system, Odyssey. [DSMF ¶ 9; PRSF ¶ 9]. Pursuant to a special order that went into effect during part of the time that Plaintiffs were employed by the Sheriff’s Office, if a Tech observes inmate misconduct, the Tech must contact an Officer who can respond to the misconduct. [DSMF ¶ 10; PRSF ¶ 10].

² Phillibert was originally hired as a Tech but was later promoted to Officer. [Phillibert Dep. at 12, 87].

Officers and Techs are trained in their respective roles in responding to inmate misconduct, and several Plaintiffs testified that they were specifically trained in responding to inmate masturbation. [DSMF ¶ 12; PRSF ¶ 12]. Officers are equipped with handcuffs, pepper spray, and a baton, and they are given tactical training to ensure they know how to use these tools and defend themselves. [DSMF ¶¶ 13, 14; PRSF ¶¶ 13, 14].

While Officers have the authority to lock down an inmate in that inmate's cell for the remainder of the Officer's shift, this could not happen if the cell door lock was not functioning. [Doc. 93-11, Inmate Discipline Policy; Boswell Dep. at 44]. Additionally, Dixon testified that she was not trained to respond to inmates manipulating locks on the cell doors and exposing themselves outside of their cells specifically for her to see them. [Dixon Dep. at 87–89].

C. Citations and the Jail Discipline Committee

When an inmate rule violation occurs, an Officer must write the inmate a disciplinary citation on carbon copy paper and ensure both the inmate and the Jail Discipline Committee (“JDC”) receive a copy of the citation. [DSMF ¶ 15; PRSF ¶ 15]. An Officer or Tech must also log in Odyssey a fuller narrative account of what occurred, and this is referred to as an “incident report.” [DSMF ¶ 16; PRSF ¶ 16]. An Officer or Tech may also contact a sworn officer to assist them with

swearing out a warrant for public indecency before a magistrate judge. [DSMF ¶ 17; PRSF ¶ 17].

For the JDC to address a rule violation, the Officer must turn in a citation and incident report within twenty-four hours after the incident. [Doc. 97, Deposition of Sheron Belfon-Charles “Belfon-Charles Dep.” at 25, 35–36]. If the JDC receives a citation without an accompanying incident report, a JDC member will call or email the Officer who submitted the citation and ask the Officer to turn in the incident report. [*Id.* at 36–37]. The JDC drop box, in which Officers submit citations for the JDC, is checked only on Mondays. [Doc. 114, Pls.’ Stmt. of Add’l Mat. Facts “PSAF” ¶ 62³; Doc. 118, Def.’s Resp. to Pls.’ Stmt. of Add’l Facts “DRPAF” ¶ 62]. Therefore, if an Officer submits a citation in the drop box on a Tuesday, it will not be collected by the JDC until at least the following Monday. [Doc. 103, Deposition of Candice Jeffries “Jeffries Dep.” at 13].

After a citation is issued, the JDC reviews the citation, the incident report, and attached evidence, and the JDC conducts an additional investigation if needed. [DSMF ¶ 18; PRSF ¶ 18]. Some lower-level violations are resolved via an informal

³ Plaintiffs failed to number the facts in Plaintiffs’ Statement of Additional Material Facts. *See* [Doc. 114 at 3–5]. Defendant has numbered them 43 through 72, and I have done the same.

resolution process involving a single JDC member reaching a resolution through discussion with the cited inmate. [Jeffries Dep. at 13]. If an informal resolution is not possible, a JDC member and/or hearing officer will meet with the cited inmate, adjudicate his guilt or innocence, and issue sanctions ranging from probation to loss of privileges to administrative segregation. [DSMF ¶ 19; PRSF ¶ 19].

When a hearing is necessary, it is supposed to occur within seven days of the submission of the citation, but it sometimes can be months before a hearing is held. [Belfon-Charles Dep. at 38]. In the time between the issuance of the citation and the hearing, the inmate typically receives no discipline; for particularly severe inmate conduct, however, a sergeant or lieutenant can impose administrative segregation immediately pending a hearing. [*Id.* at 38–40; Long Dep. at 199–203]. “It happen[s] often” that an inmate is released from custody before any discipline can be imposed. [Belfon-Charles Dep. at 51].

Colonel Patravirus Long, a Jail commander during the time in question, testified that there is no formal training for the JDC officer role; rather, their training is on-the-job training. [Long Dep. at 21, 23]. She also testified that she was not aware of any written training materials for JDC officers. [*Id.* at 23]. Two Officers who were assigned to the JDC testified to the contrary, however, stating that they

did have formal training and written training materials. [Jeffries Dep. at 8–11; Belfon-Charles Dep. at 17–18].

D. Plaintiffs’ Exposure to and Complaints Regarding Inmate Sexual Misconduct

Plaintiffs each testified that they were subjected to inmates indecently exposing themselves and masturbating frequently, and several Plaintiffs testified that this occurred daily. [Dixon Dep. at 84–87; Boswell Dep. at 134; Desir Dep. at 57, 98; Phillibert Dep. at 63–64, 75, 79, 91–92; Renfroe Dep. at 81–82; Doc. 108, Deposition of Temeka Strozier “Strozier Dep.” at 62–63, 66]. Boswell, Phillibert, Dixon, and Strozier each testified about experiences where they sought assistance from a supervisor or issued a citation for an inmate’s sexual misconduct, but received little assistance, and the inmate was not removed from the housing unit in any reasonable period of time. [Boswell Dep. at 73–74, 130; Phillibert Dep. at 78–81, 97–98, 105; Dixon Dep. at 76; Strozier Dep. at 99–101, 106–07]. Boswell and her female colleagues were told that exposure to such sexual misconduct was “part of [their] job.” [Boswell Dep. at 130].

A couple of weeks into Desir’s employment, around October 2018, an inmate pressed the intercom bell “as if he wanted to ask a question,” and when she turned to look, he was masturbating. [PSAF ¶ 44; DRPAF ¶ 44]. Renfroe described her

experiences doing rounds, when inmates would wait for her to walk past their cell, open the door, and ejaculate as she passed by. [PSAF ¶ 45; DRPAF ¶ 45].

Phillibert testified that on one occasion, she was on the floor by herself and called on the radio multiple times for assistance after several inmates began masturbating in front of her. When no one responded to her calls for assistance, she stated on the radio, “I have multiple inmates masturbating at this time. I need someone to come and help me.” [Phillibert Dep. at 96–97]. She also stated on the radio that “they were masturbating and touching themselves and ejaculating on the glass while watching [her].” [*Id.* at 98]. The captain finally called her floor, expressing concern regarding the amount of detail Phillibert shared on the radio. [*Id.* at 97–98]. The captain told Phillibert that he would call the supervisor to see what was going on. [*Id.* at 105]. Phillibert testified that the supervisor never came to the floor. [*Id.*].

Dixon testified that on November 14, 2020, she called a male sergeant to address an inmate who had ripped a hole in the middle of his pants and was masturbating. [Dixon Dep. at 76]. She explained to the male sergeant what was going on, and he never came to the floor. [*Id.*]. When Dixon called him back to tell him that the inmate was still masturbating and inquired about what she should do, the sergeant responded, “[T]hat’s kind of what he does. You’ve got to kind of deal

with that. But I'll take care of it." [*Id.*]. Dixon requested assistance from the sergeant multiple times to issue a warrant for the inmate's arrest; Dixon testified that the sergeant never followed through and that she "left it alone." [*Id.* at 79–80, 113].

Dixon testified that she complained about the harassment to a different male sergeant during a roll call meeting, stating that "the floors are really getting bad when it comes down to us females working on the floor." [Dixon Dep. at 80]. She further explained to the sergeant, "The inmates are coming out of their cells and, you know, threatening to rape us and pull us inside their cells when we come in to check on them." [*Id.* at 80–81]. According to Dixon's testimony, she asked what she and the other Officers "need[ed] to do outside of writing citations and doing these reports[.]" [*Id.* at 81]. Dixon testified that the sergeant's response was "it's your job" and [y]ou've got to [deal] with it." [*Id.*].

Strozier testified about an occasion when she contacted command staff to request assistance with an inmate who had "exited his cell, came up to the door, pulled his penis out at the door, looking in the tower, masturbating, watching [her]." [Strozier Dep. at 106]. The captain directed her to call her supervisor; after she did so, the supervisor took a long time to come to assist her. [*Id.*]. Strozier testified that "[b]y the time they got there, this inmate had semen all over the glass. He had enough time to put it all on the glass, go to his cell, get tissue, come back, clean it

off, go to his cell, lay down to go to sleep, all before the supervisor that he told for me to call to come to assist [her] got there.” [*Id.* at 106–07]. When the supervisors came, “[t]hey didn’t even go in to say anything to him.” [*Id.* at 107].

In 2019, during a conversation with Chief Deputy Akies regarding inmate harassment, Desir complained to Chief Deputy Akies about the locks on the cell doors not working and advocated for the issue to be addressed “so that the inmates won’t keep coming out and masturbating.” [Desir Dep. at 115–17]. Renfroe complained about harassment in roll call meetings, which Sheriff Maddox and Chief Deputy Akies sometimes attended. [PSAF ¶ 53; DRPAF ¶ 53]. Dixon complained about inmates threatening to rape the female Officers and was told “it’s your job,” she would have to deal with it, and there was nothing they could do about the doors. [PSAF ¶ 54; DRPAF ¶ 54]. Boswell complained about “the constant disrespect and masturbation” to Colonel Long during a roll call meeting. [PSAF ¶ 55; DRPAF ¶ 55]. Phillibert recalls a roll call meeting in 2021 during which the Officers complained about the locks not working, and the supervisors stated that it would cost too much money to fix the locks. [PSAF ¶ 56; DRPAF ¶ 56]. On March 25, 2021, Strozier met with Colonel Long and complained about inmates constantly masturbating and the locks not working such that the inmates continuously popped out and masturbated. [Strozier Dep. at 89–90; Long Dep. at 115–16]. From August

to September 2021, members of medical staff reported frequent, escalating sexual abuse from inmates, stating that, among other things, “[they were] constantly being exposed by inmates pulling their genitals out and talked to inappropriately.” [Doc. 100 at 353; *see also id.* at 358–59, 360–61]. These reports were sent to members of the Sheriff’s Office command staff. [PSAF ¶ 57; DRPAF ¶ 57].

E. Plaintiffs’ Citation and Incident Report Submissions

Plaintiff Renfroe did not submit any citations for inmate sexual misconduct during the approximately one-year period she worked at the Sheriff’s Office. [DSMF ¶ 31; PRSF ¶ 31]. She testified, however, that she was not given a citation book at the start of her employment, and no one initially told her that she could write a citation. [Renfroe Dep. at 73–74, 76, 78]. Additionally, one indecent exposure citation written by a different Officer mentioned Renfroe as being present. [Doc. 93-31, Renfroe Sexual Misconduct Reports]. The cited inmate lost privileges as a result of the citation. [*Id.*].

Plaintiff Boswell submitted approximately forty citations during her lengthy period of employment with the Sheriff’s Office (2005 to 2021), but only one of them was for sexual misconduct. [Boswell Dep. at 110–11; Doc. 93-32, Boswell Sexual Misconduct Reports]. The sexual misconduct incident that Boswell cited and reported, occurred on May 6, 2021, and involved an inmate who reached toward her,

attempting to grab her vagina, and “asked if he could touch [her] fat pussy.” [Doc. 93-32, Boswell Sexual Misconduct Reports at 2]. On July 26, 2021, more than two months after the incident, the JDC imposed sanctions on the inmate, revoking his visitation and commissary privileges for forty-two days. [*Id.* at 3]. Boswell was also mentioned in one other citation as having been present for an instance of indecent exposure, but the result of that citation is unknown. [*Id.* at 4].

Plaintiff Strozier submitted eight sexual misconduct citations to the JDC over the seventeen-month period that she worked at the Sheriff’s Office. [DSMF ¶ 33; PRSF ¶ 33]. During these incidents, Strozier was outside of the pod observing through the pod window, but the inmates acted purposefully to get Strozier to notice them by either standing on a table, calling her name, popping out of the cell, standing on the toilet in front of a window, watching her while masturbating, or pressing a button to get Strozier’s attention. [Doc. 93-33, Strozier Sexual Misconduct Reports]. Of the eight citations that Strozier submitted, six resulted in sanctions being issued to the cited inmates. [DSMF ¶ 33; PRSF ¶ 33]. The remaining two inmates who Strozier cited for sexual misconduct were never disciplined because they were released from Jail before the citations were resolved. [Doc. 93-33, Strozier Sexual Misconduct Reports; Doc. 93-37, JDC Log Excerpts at 4].

Plaintiff Phillibert wrote ten incident reports in Odyssey for inmate sexual misconduct over the twenty-nine-month period she worked at the Sheriff's Office. [DSMF ¶ 35; PRSF ¶ 35]. During the ten incidents, the masturbating inmates acted to get Phillibert's attention by popping out of their cells, standing by a window, standing on the dayroom table, standing by the entrance door of the pod dayroom, watching her through a window while masturbating, and/or banging on the glass. *See* [Doc. 93-34, Phillibert Sexual Misconduct Reports]. On one occasion, the inmate masturbated for twenty minutes. [*Id.* at 13; Phillibert Dep. at 124]. Phillibert "resorted to going into the tower bathroom just to leave from [this inmate's] view." [Doc. 93-34, Phillibert Sexual Misconduct Reports at 14]. The inmate stopped masturbating while Phillibert was gone and resumed once she returned. [*Id.* at 14–15]. Seven of the incident reports were properly submitted⁴ to JDC as citations (whether by Phillibert directly or by another Sheriff's Office staff member). [DSMF ¶ 35; PRSF ¶ 35]. Of those, five resulted in sanctions ranging from probation to administrative segregation, one was dismissed, and one inmate was released from

⁴ Defendant does not clarify what she means by "properly submitted." I assume this means that citations accompanied the incident reports, were submitted in the JDC drop box in a timely manner, contained the required information, and that copies were provided to the inmates.

Jail before the citation was resolved. [DSMF ¶ 35; PRSF ¶ 35; Doc. 93-34; Phillibert Sexual Misconduct Reports at 14].

Plaintiff Desir wrote twelve incident reports in Odyssey for inmate sexual misconduct over the forty-six-month period she worked at the Sheriff's Office. [DSMF ¶ 36; PRSF ¶ 36]. Each involved inmates masturbating in their pod while Desir was outside of the pod observing through the pod window. [Doc. 93-35, Desir Sexual Misconduct Reports]. Desir reported that these masturbating inmates were either standing outside of their cells in the dayroom area, standing in front of the dayroom window, standing outside of their cells while looking into the tower where Desir was working, standing in the door of their cell, or showering in the dayroom. [*Id.*]. These inmates often would continue to masturbate after being told to stop. *See [id.]*. One inmate responded to Desir using an expletive and continued to masturbate. *See [id.]* at 18]. Another inmate was a "chronic masturbator," who "masturbated all the time." [Desir Dep. at 67–68]. Eleven of the incident reports were properly submitted to the JDC as citations by Officers assisting Desir. Of those, five resulted in sanctions being issued to the subject inmates. [DSMF ¶ 36; PRSF ¶ 36]. One inmate received a citation on May 10, 2022, but was not disciplined until February 28, 2023. [PSAF ¶ 65; DRPAF ¶ 65].

Plaintiff Dixon wrote thirteen incident reports in Odyssey for indecent exposure over the fifteen-month period that she worked for the Sheriff's Office. [DSMF ¶ 37; PRSF ¶ 37]. Most of these citations involved inmates masturbating in their pod (but outside of their cells) while Dixon was outside of the pod observing through the pod window. [Doc. 93-36, Dixon Sexual Misconduct Reports]. A few of the inmates involved in these incidents pushed the distress button to get Dixon's attention and then stuck their genitalia out of the feeding trap of the cell and began masturbating. [*Id.* at 12, 17, 19–20]. One inmate refused to stop masturbating after being directed by Dixon to do so, stating “f*** you b****[;] I’ll f*** the s*** out of you.” [*Id.* at 4, 24]. Another inmate pushed the “buzzer” while masturbating and screamed, “Come eat my d***[,] b****.” [*Id.* at 10]. Twelve of the incident reports were properly submitted to the JDC, and of those, eleven resulted in the offending inmates receiving sanctions ranging from probation to administrative segregation. [DSMF ¶ 37; PRSF ¶ 37; Doc. 93-36, Dixon Sexual Misconduct Reports].

It is undisputed that Boswell, Dixon, Renfroe, and Phillibert did not always ensure that inmate sexual misconduct they observed received a citation. [DSMF ¶ 38; PRSF ¶ 38]. However, Boswell, Dixon, and Phillibert testified that they and other correctional staff stopped writing citations because they believed that

discipline was ineffective. [Boswell Dep. at 104–05; Dixon Dep. at 73–74, 76; Phillibert Dep. at 93–94].

F. The Policies Against Harassment and Defendant’s Handling of Sexual Harassment Issues

The Sheriff’s Office has an Inmate Discipline Policy and an Inmate Handbook that prohibit inmate sexual harassment of staff; they prohibit inmates from committing indecent exposure, engaging in sexual acts, and making sexual proposals or threats. [DSMF ¶ 11; PRSF ¶ 11]. At all relevant times, the Sheriff’s Office maintained and enforced a policy that generally prohibits harassment, including sexual harassment. [DSMF ¶ 20; PRSF ¶ 20]. If a Sheriff’s Office employee has been harassed, the employee is able to file a complaint with, and/or seek assistance from, the Office of Professional Standards (“OPS”) or the Office of Human Resources (“HR”). [DSMF ¶ 21; PRSF ¶ 21]. The Sheriff’s Office also has a grievance procedure through which staff can contest the conditions of their employment. [DSMF ¶ 22; PRSF ¶ 22].

In early 2021, by order of then-Chief Deputy LoRandy Akies, the Sheriff’s Office imposed podwide privilege restrictions (such as commissary and visitor restrictions) on inmate housing units that had a higher rate of rule violations, including sexual misconduct. [DSMF ¶ 23; PRSF ¶ 23]. Notices were placed in unaffected housing units, warning inmates that their unit could suffer similar

restrictions if rule violations in those units increased. [DSMF ¶ 24; PRSF ¶ 24]. There is evidence that inmates can get around some privilege restrictions, by, for example, having another inmate obtain commissary items or request a visitor. [Dixon Dep. at 93–94; Desir Dep. at 73–74, 81–83; Strozier Dep. at 102, 118–20; Doc. 109, Deposition of Sonja Davis “Davis Dep.” at 43]. While there is some evidence that privilege restrictions are an effective disciplinary measure, other evidence indicates that administrative segregation is the only way to ensure that privileges are lost. [Boswell Dep. at 42–43; Davis Dep. at 43].

Chief Deputy Akies issued a special order (“Sp. Order 21-18”), with an effective date of September 22, 2021, reinforcing Jail policy of issuing citations for indecent exposure. [DSMF ¶ 25; PRSF ¶ 25]. The information in Sp. Order 21-18 was communicated to Jail staff during pre-shift roll call meetings. [DSMF ¶ 26; PRSF ¶ 26].

In 2022 and 2023, Defendant made some changes to the Jail environment to address the problem. In March 2022,⁵ when Colonel Long learned that inmates were using blue chairs in the pods to masturbate in front of the Officers, she directed the removal of the blue chairs from the pods. [DSMF ¶ 27; PRSF ¶ 27; Doc. 93-21,

⁵ Only two of the plaintiffs—Phillibert and Desir—were still working for Sheriff’s Office at this time.

Email Chain]. On Colonel Long’s orders, Sheriff’s Office personnel tested, and ultimately applied, window tint to Jail tower windows to reduce inmates’ ability to observe Officers working in the towers. [DSMF ¶ 28; PRSF ¶ 28]. This occurred some time after April 2022, but the tinting was eventually removed around November 2022 because it was too dark to enable staff to monitor the inmates effectively; new tinting was installed in 2023. [Doc. 93-22 at 3, 5; Long Dep. at 135–37].

On March 10, 2022, Captain Glendrick Bell sent an email stating, “[W]e are still having issues with consistency on how we handle Inmates for Public Indecency – (**THE MASTURBATERS [sic]**).” [Doc. 96 at 21] (emphasis in original). He attached Sp. Order 21-18 and listed what would happen to violators moving forward:

- The violator will be relocated to Administrative Segregation for 60 Days where they will lose privileges, (To deter others, we will loudly announce the inmates (sic) infraction and sanction to his Pod.)
- A Citation and Report will be generated and completed within 24hrs by the affected staff member,
- **Warrants will be secured** for all violators unless the inmate is already sentenced to a lengthy prison sentence. Warrants will be secured as soon as feasibly reasonable.

[*Id.*] (emphasis in original). Chief Deputy Akies testified that Captain Bell lacked authority to issue this directive and “should not have been giv[ing] any directive to”

the command staff regarding the handling of indecent exposure violations. [Akies Dep. at 22–23]. Defendant never implemented the “loud announcing,” [Belfon-Charles Dep. at 60–61], and warrants were not issued for every inmate cited for indecent exposure, [Davis Dep. at 55].

On October 15, 2022, Sergeant Sonja Davis, who was the JDC supervisor, sent the following email to members of command staff:

Good Day,

Because of the enormous amounts of citations on Violation Code 213(indecent Exposure)-Masturbation and the full capacity of the JDC Pod (8NE Pod 400), Lt. Lester stated that we could give an inmate for the first offense violator- 45 days of restriction of visitation and commissary if the act is not too egregious.(masturbating on the nurse or officer; standing in a chair in the dayroom, etc.) If the inmate continues to get citations for masturbating, we will sanction him (automatic) 60 days on 8 NE Pod 400 with the rest of the habitual violators. Hopefully, the 45-days of restriction will deter the inmate from this type of behavior.

Sincerely,

Sgt. S. Davis

[Doc. 100 at 394].

G. The Staff Shortages at the Sheriff’s Office

The Sheriff’s Office had severe staff shortages during the COVID pandemic. [DSMF ¶ 29; PRSF ¶ 29]. There also is evidence, however, that the daily inmate population at the Sheriff’s Office fell significantly during this period. [https://trends.vera.org/state/GA/county/dekalb_county]. Whereas the Sheriff’s Office had 1,654 inmates at the start of 2020, it had 404 inmates at the end of 2020.

[*Id.*]. Colonel Long identified staff shortages as a reason for the increase of indecent exposure incidents during and right after the pandemic, [Long Dep. at 33, 76], but Chief Deputy Akies testified that the lack of staffing should not have any impact from a disciplinary perspective “because there’s always personnel on the floor that can initiate the procedures centered around inmates violating the inmate handbook.” [Akies Dep. at 33–34]. Sheriff Maddox testified that she “[couldn’t] say that staffing shortages affect[] discipline because, again, we cannot control the inmates’ behavior -- their actions, what they will do.” [Doc. 104, Deposition of Melody M. Maddox “Maddox Dep.” at 41–42]. Nevertheless, Sheriff Maddox took numerous steps to address the staff shortage, including repeatedly increasing Officer pay, initiating a take-home vehicle incentive, and publicizing the Sheriff’s Office’s recruiting efforts. [DSMF ¶ 30; PRSF ¶ 30].

H. Resignations of Renfroe, Dixon, Strozier, Boswell, and Phillibert

On November 14, 2020, Renfroe resigned her employment at the Sheriff’s Office. [DSMF ¶ 41; PRSF ¶ 41]. Renfroe filed a charge with the Equal Employment Opportunity Commission (“EEOC”) more than six months later, on June 3, 2021. [DSMF ¶ 42; PRSF ¶ 42].

Plaintiff Dixon resigned from the Sheriff’s Office approximately three months later, in February 2021. [Dixon Dep. at 16–17].

On April 27, 2021, Strozier submitted her resignation letter to Colonel Long, stating that “[n]othing has been done to change the issues of [the inmates] being able to pop themselves out of their cells to masturbate on us as females. . . . No type of action [h]as been put in to [sic] place to try to even get control of it.” [PSAF ¶ 50; DRPAF ¶ 50; Doc. 100 at 375]. After resigning from the Sheriff’s Office, Strozier worked as a detention officer for the Henry County Sheriff’s Office (“HCSO”).⁶ [Strozier Dep. at 124, 180].

On September 17, 2021, Boswell submitted her resignation notice, citing issues in her resignation letter and exit questionnaire with a “dangerous and frightening” work environment; a “[c]onstant fear of being assaulted or killed”; “inoperable cell and POD doors”; and being “sexually disrespected daily by inmates.” [Doc. 100 at 376–79]. Approximately a year after resigning from the Sheriff’s Office, Boswell went to work at HCSO.⁷ [Boswell Dep. at 12–14].

⁶ Strozier testified that several inmates who had been written up for masturbating at the Sheriff’s Office multiple times did not engage in this behavior at HCSO “because they knew it was going to be something to take place in reference to them doing those things.” [Strozier Dep. at 123–24, 128]. Strozier additionally testified that despite having the same manpower issues as the Sheriff’s Office, the issue of inmates masturbating at HCSO “wasn’t nowhere near to the extent of how it is at [the Sheriff’s Office].” [*Id.* at 124–25, 127, 129].

⁷ At the time of Boswell’s deposition, she had been employed at HCSO for about two years but had observed an incident of intentional indecent exposure only once. [Boswell Dep. at 131]. Boswell, who worked as a sergeant at HCSO, also

In August 2022, Phillibert resigned and started working as a detention officer for HCSO shortly thereafter.⁸ [Phillibert Dep. at 9–10, 147–48].

In early November 2022, Desir’s employment was terminated due to an arrest related to an incident involving her child’s father. [Desir Dep. at 136–37].

None of the Plaintiffs filed a formal complaint of harassment with the OPS or HR. [DSMF ¶ 39; PRSF ¶ 39]. The only written complaints related to inmate sexual misconduct any Plaintiff submitted prior to their filings with the EEOC were Strozier’s resignation email and Boswell’s exit questionnaire. [DSMF ¶ 40; PRSF ¶ 40]. While none of the Plaintiffs filed formal complaints, they all testified that they complained about harassment to their superiors. [Renfroe Dep. at 92; Phillibert Dep. at 180–82, 188, 196; Dixon Dep. at 117; Desir Dep. at 115–16, 118; Boswell Dep. at 127–30, 146; Strozier Dep. at 89–94, 148, 160, 166].

described HCSO’s rapid response to an indecent exposure incident that a female officer reported to her. [*Id.*]. Boswell called on the radio, stating that an “[i]nmate had his penis out[,]” and “within two minutes, the lieutenant, two sergeants, three officers came and grabbed the inmate and took him out of the housing unit. [*Id.*].

⁸ Phillibert testified that she was at HCSO “for a whole of a year and some months” and experienced an indecent exposure incident only once. [Phillibert Dep. at 148]. She testified that after she reported the incident, “it was dealt with right away.” [*Id.*]. Like Strozier, Phillibert testified that she “worked [at HCSO] with a few inmates that was [sic] at [the Sheriff’s Office] that masturbated on [her] plenty of times,” but “[t]hey never once did it [at HCSO].” [*Id.* at 153].

I. Sheriff Maddox's Additional Testimony and Actions

Sheriff Maddox initially testified that, prior to receiving notice of this lawsuit, she “was not aware” of the issue of inmates sexually harassing female staff at the Jail. [Maddox Dep. at 9]. After being presented with Strozier’s April 27 resignation email during her deposition, Maddox acknowledged receiving it and becoming aware of the issue at that time. [*Id.* at 11–12]. Documentary evidence showed that upon receiving Strozier’s April 27 resignation email, Sheriff Maddox forwarded it to Chief Deputy Akies and another individual, asking the rhetorical question: “I’m sorry, did she apply for the [J]ail?” [Doc. 104 at 49]. Sheriff Maddox testified that what she meant by this statement was that “[t]his is a jail” and “these are things that will take place.” [Maddox Dep. at 18].

Sheriff Maddox testified that after receiving Strozier’s resignation correspondence, she met with members of her command staff but gave them no instructions on the issues raised by Strozier, except to check with Strozier’s supervisor to see if Strozier had followed policy and followed up with the supervisor. [Maddox Dep. at 13–16]. Sheriff Maddox referred Strozier’s communication to DeKalb County’s legal department for further investigation, but she neither conducted nor directed any additional inquiry into the problem Strozier had described. [*Id.* at 25–30]. When questioned during her deposition about whether,

following this lawsuit, she thought she should get more involved to ensure her commanders were doing what they were supposed to do to address the issue of the inmates sexually harassing staff, Sheriff Maddox responded: “What changes would be needed? Why do I need to change? It looks like the commanders here were doing their job. . . .” [*Id.* at 63]. Chief Deputy Akies could not recall Sheriff Maddox ever communicating with him regarding the issue of inmates sexually harassing staff. [Akies Dep. at 16].

IV. DISCUSSION

Plaintiffs contend that Defendant violated Title VII and the Equal Protection Clause by failing to take reasonable measures to address the hostile work environment created by the Jail inmates’ sexual misconduct and remarks. Defendant argues that Plaintiffs’ claims fail as a matter of law for the following reasons:

- 1) Plaintiffs have not established that they were subjected to sexual harassment that was sufficiently severe or pervasive, under the circumstances, as to alter the conditions of their employment;
- 2) Plaintiffs did not provide sufficient notice of the alleged harassment to the Sheriff’s Office prior to filing their EEOC complaints;
- 3) Plaintiffs cannot show that Defendant refused to take reasonable steps to address the inmate sexual misconduct;

- 4) Plaintiff Renfroe’s Title VII claim was not timely filed with the EEOC;
and
- 5) Plaintiffs cannot show Defendant was deliberately indifferent to inmate sexual misconduct.

[Doc. 93 at 2].

A. Legal Standard for Title VII and Equal Protection Clause Claims

To establish a sexually hostile work environment under Title VII, Plaintiffs must show (1) that they belong to a protected group; (2) that they have been subject to unwelcome sexual harassment; (3) that the harassment was based on their sex (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) a basis for holding Defendant liable. *Johnson v. Booker T. Wash. Broad. Serv.*, 234 F.3d 501, 508 (11th Cir. 2000). Plaintiffs bear the burden of showing that the elements of a Title VII hostile work environment claim have been met. *Dickerson v. Koch Foods, LLC*, No. 22-12434, 2023 WL 5348897, at *3 (11th Cir. Aug. 21, 2023) (per curiam).

Hostile work environment claims brought under the Equal Protection Clause of the Fourteenth Amendment, which is enforceable through 42 U.S.C. § 1983, are “subject to the same standards of proof and employ the same analytical framework”

as those brought under Title VII. *Bryant v. Jones*, 575 F.3d 1281, 1296 n.20 (11th Cir. 2009). However, the “standard for liability under § 1983 is even higher than that under Title VII, because . . . Plaintiff must establish that the decision was made pursuant to a custom or policy of acting contrary to an individual’s constitutional rights, or that Defendant . . . officially sanctioned the actions of [the individual] who acted in violation of those rights.” *Davis v. Fulton Cnty.*, No. 1:08-cv-3241-CAM-ECS, 2010 WL 11500519, at *16 (N.D. Ga. Mar. 2, 2010) (internal marks and citations omitted), *adopted by* 2010 WL 11508699 (N.D. Ga. Mar. 25, 2010). Custom or policy, in this context, means a practice “so widespread as to have the force of law.” *Sturdivant v. City of Atlanta*, 596 F. App’x 825, 830 (11th Cir. 2015) (per curiam) (internal citations omitted). “Further, the plaintiff must show that the municipal action was taken with deliberate indifference to its known or obvious consequences.” *Id.* (internal marks and citations omitted).

B. Analysis

1. Severity or Pervasiveness of Harassment

To avoid summary judgment on the Title VII and Equal Protection Clause claims, Plaintiffs must establish that they experienced harassment that was “sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment.” *Dickerson*, 2023 WL

5348897, at *3. The harassing conduct need not be both severe *and* pervasive; rather, evidence that the conduct was either severe *or* pervasive is sufficient to establish a violation of Title VII. *Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798, 808 (11th Cir. 2010) (citing *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 743 (1998)). In the context of a Title VII “sexually hostile work environment” claim, the Eleventh Circuit has made clear that jails are governed by the same standard as other employers. *Beckford v. Dep’t of Corrs.*, 605 F.3d 951, 957–59 (11th Cir. 2010) (holding that prison officials are not exempted from Title VII liability “when the source of harassment or discrimination of employees is inmates”).

There is both a subjective and an objective component to the determination of whether harassing conduct was sufficiently severe or pervasive to alter the terms or conditions of a plaintiff’s employment. *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1246 (11th Cir. 1999) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21–22 (1993)). Regarding the subjective component, “[t]he employee must ‘subjectively perceive’ the harassment as sufficiently severe and pervasive to alter the terms or conditions of employment.” *Id.* (quoting *Harris*, 510 U.S. at 21–22).

To determine whether conduct is objectively severe or pervasive, courts typically consider the entirety of the circumstances, including the following factors:

(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance. *Hulsey v. Pride Rests., LLC*, 367 F.3d 1238, 1247–48 (11th Cir. 2004). “[T]he objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff’s position, considering ‘all the circumstances.’” *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998) (quoting *Harris*, 510 U.S. at 23). To evaluate this objective component, the court considers the “social context in which particular behavior occurs.” *Id.* (reasoning that certain behaviors that might not be severely or pervasively abusive for a professional football player on the field would be experienced as abusive in an office context).

Defendant maintains that to establish that the conduct experienced by Plaintiffs constituted severe or pervasive harassment in a jail environment, “Plaintiffs must show that any inmate-perpetrated harassment they experienced exceeded the amount characteristic of work as jail security personnel.” [Doc. 93 at 15 (citing *Powell v. Morris*, 37 F. Supp. 2d 1011, 1018 (S.D. Ohio 1999)]. Defendant asserts that “Plaintiffs must produce ‘data on the level of sexual harassment and inappropriate sexual behavior at similar institutions’ and evidence that inmate sexual misconduct at a defendant jail is ‘unusual.’” [Doc. 117 at 2–3

(quoting *Akines v. Shelby Cnty. Gov't*, 512 F. Supp. 2d 1138, 1158 (W.D. Tenn. 2007))].

None of the authorities on which Defendant relies to support this argument is binding on this Court or persuasive. Defendant has not cited any binding precedent that requires Plaintiffs to present comparative data evidence or evidence of “unusual” inmate sexual misconduct. In *Powell*, for example, the court rejected a hostile work environment claim where an inmate “started to take off his pants and motioned as if he would masturbate,” reasoning that “a single incident of prisoner lewdness, which Plaintiff should have expected or at least contemplated as part and parcel of a prison environment, . . . hardly rises to the level of a pervasively hostile environment.” 37 F. Supp. 2d at 1018. A single incident of threatened masturbation is unlikely to rise to the level of a pervasively hostile environment in any setting, and the single incident in *Powell* is far from the evidence of widespread harassment that Plaintiffs experienced in this case. To the extent *Powell* requires a plaintiff to make a specific showing of uncharacteristic harassment for a jail setting, I decline to follow *Powell* and believe, in any event, that Plaintiffs’ testimony and other evidence regarding the inmate sexual misconduct to which they were subjected would satisfy any such required showing.

Additionally, while the *Akines* court critiqued an expert's opinions for failing to include "data on the level of sexual harassment and inappropriate sexual behavior at similar institutions," 512 F. Supp. 2d at 1158, at least one other court presented with claims and facts similar to those in this case has rejected the argument that such evidence is required for Title VII and Equal Protection Clause claims to survive summary judgment. See *Howard v. Cook Cnty. Sheriff's Off*, No. 17 C 8146, 2022 WL 1404833, at *2 (N.D. Ill. May 4, 2022). In *Howard*, the defendants moved to exclude expert testimony and argued that it could not be used to defeat summary judgment. *Id.* The expert testimony "include[d], among other things, comparisons between the detainee sexual misconduct problem at the Jail as compared to other corrections facilities and opinions regarding whether the defendants took timely and effective action to address the problem." *Id.* The court concluded that it was not necessary to address the motion to exclude in order to decide the summary judgment motions that were pending, stating that "[a]lthough this evidence is relevant with respect to the plaintiffs' claims, even without this evidence, summary judgment on the claims of [three of the plaintiffs] would be inappropriate." *Id.* As was the circumstance in *Howard*, I find that comparison data is not needed for the Court here to find that the inmate sexual misconduct to which Plaintiffs were subjected was severe and/or pervasive.

Viewing the evidence in a light most favorable to Plaintiffs, a reasonable jury could find that Plaintiffs experienced subjectively and objectively severe or pervasive incidents of inmate sexual misconduct that changed the terms and conditions of employment, allowing Plaintiffs' hostile work environment claims to survive summary judgment. Supporting my finding that each Plaintiff was subjected to severe and/or pervasive harassment, I discuss the circumstances of each Plaintiff's experience with the inmates below. I have not considered generalized allegations of sexual misconduct, but I also have not limited my evaluation of the evidence to only reported incidents of sexual misconduct for which citations were issued. *See Godoy v. Habersham Cnty.*, 211 F. App'x 850, 854 (11th Cir. 2006) (per curiam) ("The employee must present concrete evidence in the form of specific facts, not just conclusory allegations and assertions."); *Howard*, 2022 WL 1404833, at *9–10 (considering only testimony that provided "times, dates, *or* places" of the alleged incidents but rejecting argument that the court could not consider incidents that were not reported) (emphasis added). Plaintiffs' testimony as to what they experienced is sufficient to create a genuine issue of material fact as to the issue of the severity or pervasiveness of the harassing conduct. *Howard*, 2022 WL 1404833, at *10 ("A plaintiff's own testimony can be sufficient to create a genuine factual dispute.").

Severe Harassment of Renfroe

Renfroe testified about her experiences doing rounds, when inmates would wait for her to walk past their cell, open the door, and ejaculate right as she passed by. [Renfroe Dep. at 111–13]. Renfroe testified that these inmates intentionally opened the door to expose themselves to her. [*Id.* at 112–13]. This evidence creates an issue of fact as to whether Renfroe suffered harassment that was sufficiently severe to alter the terms or conditions of her employment.

Severe Harassment of Boswell

On May 6, 2021, Boswell went to the sixth floor and opened the door, and one of the many inmates who ran to the door reached toward her in an attempt to grab her vagina and “asked if he could touch [her] fat pussy.” [Doc. 93-32, Boswell Sexual Misconduct Reports at 2; Boswell Dep. at 73]. “[E]veryday [sic] after that [she] was subjected to that same inmate mocking [her] for him attempting to touch [her] to the terms of you mad at me, Ms. Boswell. I should have touched your fat pussy anyway.” [Boswell Dep. at 73]. Boswell further testified: “Like, everyday I went to that particular floor, I was subjected to that same inmate making sexual and disrespectful comments about me writing him up for him trying to touch my vagina.” [*Id.* at 74]. This evidence is sufficient to create an issue of fact regarding whether

Boswell was subjected to sexually abusive conduct that was sufficiently severe to create a hostile work environment.

Severe and Pervasive Harassment of Strozier

Strozier, who worked for the Sheriff's Office for one year and five months, submitted eight sexual misconduct citations. [Doc. 93-33, Strozier Sexual Misconduct Reports]. These incidents occurred on January 10, 2020; December 24, 2020; March 1, 2021; March 13, 2021; March 16, 2021; April 16, 2021; April 19, 2021; and April 23, 2021. [*Id.*; Strozier Dep. at 75, 84, 95, 97–98, 113, 114, 116]. During these incidents, the inmates purposefully tried to get Strozier to notice them by standing on a table, calling her name, popping out of the cell, standing on the toilet in front of a window, watching her while masturbating, and/or pressing a button to get Strozier's attention. *See* [Doc. 93-33, Strozier Sexual Misconduct Reports]. Strozier testified about one incident involving an inmate who had "exited his cell, came up to the door, pulled his penis out at the door, looking in the tower, masturbating, watching [her]." [Strozier Dep. at 106]. This evidence is sufficient to create a genuine dispute regarding whether the harassment Strozier experienced was sufficiently severe or pervasive to create a hostile work environment.

Severe and Pervasive Harassment of Phillibert

Phillibert wrote ten incident reports in Odyssey for inmate sexual misconduct. [DSMF ¶ 35; PRSF ¶ 35]. These incidents occurred on December 10, 2020; January 15, 2021; March 7, 2021 (two different inmates); August 20, 2021 (two different inmates); November 13, 2021; November 15, 2021; February 15, 2022; and June 22, 2022. [Doc. 93-34; Phillibert Sexual Misconduct Reports]. The masturbating inmates involved in these ten incidents acted to get Phillibert’s attention by popping out of their cells, standing by a window, standing on the dayroom table, standing by the entrance door of the pods dayroom, watching her through a window while masturbating, and/or banging on the glass. *See [id.]*. On one occasion, the inmate masturbated for twenty minutes. [*Id.* at 13; Phillibert Dep. at 124]. Phillibert “resorted to going into the tower bathroom just to leave from [this inmate’s] view.” [Doc. 93-34; Phillibert Sexual Misconduct Reports at 14]. The inmate stopped masturbating while Phillibert was gone and resumed once she returned. [*Id.* at 14–15]. This evidence is sufficient to create issues of fact regarding the severity and pervasiveness of the harassment that Phillibert suffered.

Severe and Pervasive Harassment of Desir

A couple of weeks into Desir’s employment, around October 2018, an inmate pressed the intercom bell “as if he wanted to ask a question,” and when Desir turned

to look, he started masturbating. [Desir Dep. at 59–60]. Desir wrote twelve incident reports in Odyssey for inmate sexual misconduct. [DSMF ¶ 36; PRSF ¶ 36]. These twelve incidents occurred on April 11, 2020; June 2, 2021; September 28, 2021; December 2, 2021; December 22, 2021; March 30, 2022; April 13, 2022; May 10, 2022 (two different inmates); May 16, 2022; May 24, 2022; and August 30, 2022. [Doc. 93-35, Desir Sexual Misconduct Reports]. While masturbating, these inmates were standing outside of their cells in the dayroom area, standing in front of the dayroom window, standing outside of their cells while looking into the tower where Desir was working, standing in the door of their cell, or showering in the dayroom. *See [id.]*. These inmates often would not stop masturbating upon Desir’s verbal command. *See [id.]*. One inmate responded to Desir, “[I] don’t give a f***[;] this is what [I] do,” and continued to masturbate. *See [id.]* at 18]. Another inmate was a “chronic masturbator,” meaning he “masturbated all the time.” [Desir Dep. at 67–68]. This evidence creates issues of fact regarding whether Desir experienced conduct that was sufficiently severe or pervasive of the harassment to create a hostile work environment.

Severe and Pervasive Harassment of Dixon

In the one-year-and-three-month period that Dixon was employed at the Sheriff’s Office, Dixon wrote thirteen incident reports in Odyssey for indecent

exposure. [DSMF ¶ 37; PRSF ¶ 37]. These thirteen incidents occurred on December 26, 2019; November 24, 2020; April 1, 2020 (three different inmates); April 3, 2020; October 27, 2020; November 2, 2020; November 14, 2020; November 18, 2020; November 24, 2020; December 6, 2020; January 27, 2021. [Doc. 93-36, Dixon Sexual Misconduct Reports]. A few of the inmates pushed the distress button to get Dixon’s attention and then stuck their genitalia out of the feeding trap of the cell and began masturbating. [*Id.* at 12, 17, 19–20]. One inmate refused to stop masturbating after being directed by Dixon to do so, stating “fuck you bitch[;] I’ll fuck the shit out of you.” [*Id.* at 4, 24]. Another inmate pushed the “buzzer” while masturbating and screamed, “Come eat my d***[,] b****.” [*Id.* at 10]. Dixon testified that she had an experience with an inmate who ripped a hole in the middle of his pants and was masturbating. [Dixon Dep. at 76]. Even after she tried to redirect him to his cell, he continued masturbating. [*Id.* at 79]. This evidence is sufficient to defeat summary judgment as to the issue of the severity or pervasiveness of the harassment that Dixon suffered.

Summary

Although Defendant argues that Plaintiffs’ experiences with the inmates do not rise to the level of being severe or pervasive in the context of a jail setting, a reasonably jury could disagree. “Even if some level of sexual misconduct is to be

expected in a jail, a jury could find, based on [Plaintiffs'] testimony [and the other evidence presented], that the level of harassment that [they] experienced exceeded what any reasonable person would expect in such a workplace.” *See Howard*, 2022 WL 1404833, at *10. The evidence presented is sufficient for Plaintiffs’ hostile work environment claims to survive summary judgment.

2. *Sufficiency of Notice of Harassment*

Before holding an employer liable for harassing conduct, a complaining employee must put the employer on notice of the harassment and give the employer an opportunity “to take immediate and appropriate corrective action.” *Watson v. Blue Circle, Inc.*, 324 F.3d 1252, 1259 (11th Cir. 2003) (citation omitted). “Actual notice is established by proof that management knew of the harassment.” *Id.* (citation omitted). “When an employer has a clear and published policy that outlines the procedures an employee must follow to report suspected harassment and the complaining employee follows those procedures, actual notice is established.” *Id.* (citations omitted).

A victim of harassment also may show that her employer had constructive knowledge of the harassment. *Watson*, 324 F.3d at 1259. To evaluate whether an employer had constructive notice, the court considers: “(1) the remoteness of the location of the harassment compared to the location of management; (2) whether the

harassment occurs intermittently over a long period of time; (3) whether the victims were employed part-time or full-time; and (4) whether there were only a few instances of harassment.” *Bell v. Liberty Nat’l Life Ins. Co.*, No. 22-11015, 2023 WL 5624535, at *4 (11th Cir. Aug. 31, 2023) (per curiam).

Defendant argues that Plaintiffs did not provide the Sheriff’s Office notice of the harassment. [Doc. 93 at 21–23]. Defendant asserts that Plaintiffs did not always ensure that citations were submitted for incidents of inmate sexual misconduct. Plaintiffs do not dispute this fact as to Boswell, Dixon, Renfroe, and Phillibert [DSMF ¶ 38; PRSF ¶ 38]. Defendant also points to undisputed evidence that none of the Plaintiffs filed a formal complaint of harassment with the OPS or HR and that the only written complaints (as opposed to citations and incidents reports) related to inmate sexual misconduct that any Plaintiff submitted prior to their filings with the EEOC were Strozier’s resignation email and Boswell’s exit questionnaire. [DSMF ¶¶ 39, 40; PRSF ¶¶ 39, 40]. Defendant acknowledges that Plaintiffs present evidence that they complained to superiors about the faulty cell locks and the masturbation incidents, but Defendant maintains that such complaints are distinguishable from complaints by Plaintiffs that they considered the inmate sexual misconduct to be severe or pervasive sexual harassment. [Doc. 117 at 7–8].

In making this argument, Defendant improperly dismisses Plaintiffs' testimony that they complained about harassment to their superiors. For example, Renfroe testified that she and other Officers complained about harassment in a group setting during roll call, and she testified that she also complained to Chief Deputy Akies.⁹ [Renfroe Dep. at 92]. Phillibert testified that she reported harassment to her supervisors, including one whose last name was Poole, and was advised to seek therapy. [Phillibert Dep. at 180–82, 188, 196]. Dixon testified that she spoke to Lieutenant Poole about the inmates masturbating, and Dixon also testified that she was a part of the group that discussed the inmate harassment with Chief Deputy Akies. [Dixon Dep. at 117]. Desir likewise testified that she reported harassment to Chief Deputy Akies during a one-on-one conversation in 2019. [Desir Dep. at 115–16]. Desir testified that she also complained about harassment to her sergeant and lieutenants. [*Id.* at 118]. Boswell testified that while she did not file a written complaint with the OPS, she complained verbally with a group of Officers to Colonel Long and to a Lieutenant Lester. [Boswell Dep. at 127–30, 146]. These complaints

⁹ Defendant acknowledges in its discussion of Plaintiffs' Equal Protection Clause claim that "Plaintiff Renfroe testified that she also complained of *harassment* to Chief Deputy Akies and suggested improving enforcement of [the Sheriff's Office's] policies and increasing the number of support staff." [Doc. 93 at 25] (emphasis added).

concerned, among other things, the masturbation they had to deal with and the threat by inmates that they were going to rape a female Officer. [*Id.* at 128–29]. Strozier testified that she reported harassment to Chief Deputy Akies and to Colonel Long. [Strozier Dep. at 89–94, 148, 160, 166]. All these complaints concerning masturbation-related harassment were necessarily sex-based. *See Beckford*, 605 F.3d at 960 (“[E]xhibitionist masturbation . . . is sex based and highly offensive conduct.”).

This evidence is sufficient to create a genuine issue of material fact regarding whether Plaintiffs put Defendant on notice of harassing conduct at the Jail based on their sex.

3. Reasonableness of Defendant’s Response

Defendant may be held liable if it “failed to take corrective action reasonable[y] calculated to address the inmate misconduct.” *Beckford*, 605 F.3d at 959 (internal marks omitted). A “reasonable” response to sexual harassment, for purposes of Title VII, is measured by an objective standard. In evaluating the reasonableness of Defendant’s corrective action, the Court considers Defendant’s “ability to stop or mitigate the misconduct.” *Id.* (internal marks omitted). “Key factors in th[e] determination are the promptness and effectiveness of any action.” *Turnbull v. Topeka State Hosp.*, 255 F.3d 1238, 1245 (10th Cir. 2001). The effectiveness

inquiry focuses on “whether the remedial and preventative action was reasonably calculated to end the harassment.” *Id.* (internal marks omitted).

Defendant argues that “there is no lawful way for a jail to eliminate all inmate masturbation and sexual comments in front of those employed to monitor their conduct.” [Doc. 117 at 1]. Defendant further maintains that it employed various methods seeking to reduce the sexual misconduct incidents and sexual comments, including policies, inmate discipline, and changes to the jail environment. [*Id.* at 1–2].

It is axiomatic that the Jail’s policies against sexual harassment are only as effective as the methods used and steps taken to enforce them. Here, given the evidence that inmates often did not face any immediate discipline following a rule violation, that JDC hearings could sometimes take months to occur, and that inmates often were released before they could be disciplined, there is a genuine dispute regarding the efficacy of the inmate disciplinary process.¹⁰ Additionally, there is a genuine issue concerning the effectiveness of the discipline frequently imposed (i.e., loss of privileges), as many deponents in the case testified that inmates can get

¹⁰ In contrast to the Sheriff’s Office’s disciplinary process, Plaintiffs present evidence that HCSO imposed discipline rapidly in response to an indecent exposure incident, with multiple officers, sergeants, and a lieutenant coming to a housing unit within two minutes to remove the offending inmate. [Boswell Dep. at 131].

around the privilege restrictions by having another inmate obtain commissary items or request a visitor. Furthermore, while Defendant eventually made changes to the Jail environment in 2022 and 2023, including removing chairs from the pods and applying tint to the tower windows, a reasonable jury could find that Defendant did not act promptly enough to make these changes, especially since only Phillibert and Desir were still working for the Sheriff's Office at the time of these changes.

In sum, although there is no real dispute that Defendant could not have eradicated all inmate sexual misconduct in the presence of the Officers and Techs, the evidence in this case presents a jury issue regarding whether Defendant failed to take corrective action reasonably calculated to mitigate the inmate sexual misconduct.¹¹ A reasonable jury could find that Defendant's failure to improve its disciplinary process amounted to a "refus[al] to adopt reasonable measures to curtail harassment by inmates."¹² *Beckford*, 605 F.3d at 959.

¹¹ The parties also vigorously dispute whether Defendant made a sufficient effort to replace the cell locks throughout the Jail and whether Defendant should have, and could have legally, placed inmates in administrative segregation immediately following incidents of sexual misconduct. Given the genuine factual issues I already have identified, I need not address these additional issues to determine that the reasonableness of Defendant's response presents a jury question.

¹² I reject Defendant's argument that expert testimony is required to establish that Defendant failed to take reasonable steps to address inmate misconduct.

For the reasons above, I will recommend that the Court deny summary judgment with respect to Plaintiffs' Title VII claims, except the Title VII claim of Plaintiff Renfroe, which I will discuss below. Additionally, I will further analyze below whether the Equal Protection Clause claims should survive summary judgment.

4. Timeliness of Renfroe's Title VII Claim

Defendant argues that she is entitled to summary judgment on Plaintiff Renfroe's Title VII claim because Renfroe did not file a timely charge with the EEOC. [Doc. 93 at 23]. Plaintiffs expressly concede that Renfroe cannot recover under Title VII for this reason, and they state that her claim should proceed under the Equal Protection Clause only. [Doc. 111 at 24 n.7]. Given Plaintiffs' concession, I will recommend that summary judgment be granted on Plaintiff Renfroe's Title VII claim and that this claim be dismissed.

5. Deliberate Indifference to Inmate Sexual Misconduct

Under the Equal Protection Clause, Plaintiffs "have a constitutional right to be free from unlawful sex discrimination and sexual harassment in public employment." *Cross v. State of Ala., State Dep't of Mental Health & Mental*

Defendant cites no binding authority to support the proposition that such testimony is required.

Retardation, 49 F.3d 1490, 1507 (11th Cir. 1995). To prevail on their Equal Protection Clause claims, Plaintiffs must show deliberate indifference, a “stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” *Buckler v. Israel*, 680 F. App’x 831, 835 (11th Cir. 2017) (per curiam). Plaintiffs must show the “functional equivalent of a decision by the [Sheriff’s Office] itself to violate the Constitution.” *Id.* (internal marks and citation omitted). Liability under § 1983 cannot rest on simple respondeat superior. *Connick v. Thompson*, 563 U.S. 51, 70 (2011). Nor can it rest on mere negligence. *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999).

Defendant argues that the Sheriff’s Office was not “deliberately indifferent” because it “maintained and enforced policies to appropriately respond to inmate indecent exposure” by, among other things, continually reemphasizing, both at pre-shift roll call meetings and via Sp. Order 21-18, the importance of issuing citations for indecent exposure incidents. [Doc. 93 at 24]. Defendant further highlights that it took such additional steps as seeking funding to repair locks on the cell doors and to recruit staff. [*Id.* at 24–25].

Relying on *Griffin v. City of Opa-Locka*, 261 F.3d 1295 (11th Cir. 2001), Plaintiffs argue that “[w]here high-ranking officials ‘knew of, ignored, and tolerated the harassment,’ a jury may determine ‘that sexual harassment was so persistent and

widespread as to amount to an unconstitutional policy or custom.” [Doc. 111 at 23 (quoting *Griffin*, 261 F.3d at 1308)]. The evidence on which Plaintiffs rely to demonstrate deliberate indifference consists solely of the following, as explained in Plaintiffs’ response brief opposing summary judgment:

The attitude of indifference is reflected in the testimony and writings of Sheriff Maddox herself. When asked if she considered a change in her approach upon hearing an officers’ [sic] account of the crisis, she responded: “What changes would be needed? Why do I need to change?” Maddox Dep. at 63. In response to Strozier’s urgent concerns, she wrote “I’m sorry, did she apply for the jail?” by which she meant, “This is a jail and . . . these are things that will take place.” *Id.* at 18–19. This attitude is directly contrary to clearly established law in our circuit that operators of a jail, like any other employer, must not maintain a sexually hostile working environment.

[Doc. 111 at 24].

It is undisputed that the Sheriff’s Office did not have a formal policy of allowing the sexual harassment of female Jail Officers and Techs by the inmates. To the contrary, the Inmate Discipline Policy and Inmate Handbook prohibit inmate sexual harassment of staff by prohibiting inmates from committing indecent exposure, engaging in sexual acts, and making sexual proposals or threats. [DSMF ¶ 11; PRSF ¶ 11]. “To prove § 1983 liability . . . based on custom, a plaintiff must establish a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law.” *Brown v. City of Fort Lauderdale*, 923 F.2d 1474,

1481 (11th Cir. 1991) (internal marks and citations omitted). “In other words, a longstanding and widespread practice is deemed authorized by the policymaking officials because they must have known about it but failed to stop it.” *Id.*

The evidence presented by Plaintiffs of constant and appalling sexual misconduct by the inmates over several years, which was not adequately addressed, creates a genuine dispute as to whether the misconduct “is so permanent and well settled as to constitute a custom or usage with the force of law.” *Brown*, 923 F.2d at 1481 (internal marks omitted). The fact that Defendant emphasizes evidence of “significant steps” the Sheriff’s Office took to address inmate indecent exposure undermines any argument that Defendant did not know of the widespread problem of inmates harassing female Officers and Techs at the Jail by masturbating in their presence. [Doc. 117 at 15]. Moreover, while the Sheriff’s Office tried to address the issue of the rising incidents of inmate indecent exposure, “evidence that the defendant[] adopted *some* mitigation measures is not enough to warrant summary judgment” on the Equal Protection Clause claims. *Howard*, 2022 WL 1404833, at *14 (emphasis in original). Finally, Sheriff Maddox’s reaction to Strozier’s resignation email, her failure to take or direct any corrective action after reviewing the email, and her refusal to acknowledge any need for change with respect to how she manages the issue and/or those she has delegated to address the issue smacks of

deliberate indifference supporting an Equal Protection Clause claim. For this reason, I will recommend that summary judgment be denied on Plaintiffs' Equal Protection Clause claims.

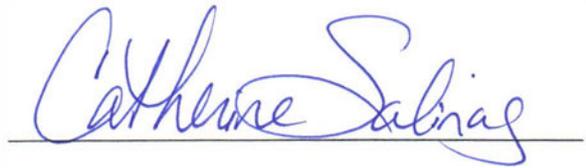
V. CONCLUSION

Based on the foregoing, I **RECOMMEND** that Defendant's Motion for Summary Judgment [Doc. 93] be **GRANTED IN PART AND DENIED IN PART**. I **RECOMMEND** that the Motion for Summary Judgment be **GRANTED** as to Renfroe's Title VII claim and that the Motion for Summary Judgment otherwise be **DENIED**. Except for the dismissal of Renfroe's Title VII claim, Plaintiffs should be able to proceed to trial on their Title VII claims in Count I of the Complaint and their Equal Protection Clause claims in Count II.

Plaintiffs' Motion for Leave to File Surreply to Defendant's Response in Support of Defendant's Motion for Summary Judgment [Doc. 120] is **GRANTED**.

As this is a Final Report and Recommendation, there is nothing further in this action pending before the undersigned. Accordingly, the Clerk is **DIRECTED** to terminate the reference of this matter to the undersigned.

SO RECOMMENDED, ORDERED, AND DIRECTED this 8th day of
July, 2025.



Catherine M. Salinas
United States Magistrate Judge