IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

NIZAR ABDULAZIZ TRABELSI,

Petitioner–Plaintiff,

v.

JEFFREY CRAWFORD, *et al.*,

Respondents–Defendants.

NIZAR TRABELSI'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' COMBINED MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT & IN SUPPORT OF HIS MOTION FOR TIME TO CONDUCT DISCOVERY UNDER RULE 56(D)

Case No. 1:24-cv-01509-RDA-LRV

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INTRODUCTION

Defendants have badly jumped the gun. Styling their first responsive pleading to Mr. Trabelsi's complaint as a motion to dismiss and motion for summary judgment, they ask the Court to end this case based on "evidence" that they have carefully and unilaterally curated. But Defendants hardly even gesture at arguments that would support dismissal of Mr. Trabelsi's claims under Rule 12(b)(6). And their bid to stack the summary-judgment deck before Mr. Trabelsi has had the benefit of discovery that would add to the record in the case, and likely undermine Defendants' one-sided portrayal of reality, is outlandishly premature.

Respectfully, the Court should swiftly deny Defendants' motions and set this case on the normal course for civil litigation. Mr. Trabelsi filed his complaint 86 days ago. This Court's local rules contemplate a discovery order within 90 days after service of an initiating pleading. Local Civ. R. 16(B). The parties should simply get on with it.

ARGUMENT

I. The Court should deny Defendants' motion to dismiss.

A. Defendants do not argue that Plaintiff's Complaint does not plausibly allege violations of the Constitution or federal statutes, but seek dismissal based on "evidence" that is not properly before the Court at the motion to dismiss stage.

As an initial matter, while Defendants move to dismiss Plaintiff's Complaint *and* move for summary judgment as to all of Plaintiff's claims, Defendants do not make any attempt whatsoever to argue these motions on separate bases. That makes it exceedingly difficult, if not impossible, to parse the grounds upon which Defendants have actually moved to dismiss any of Plaintiff's claims. Without any separation between the grounds of Defendants' motions, or any attempt to intelligibly organize their arguments, Plaintiff is left mostly to guess at which arguments go to which motion. That, alone, is a sufficient ground upon which to deny Defendants' motion to dismiss.

Specificity about what Defendants are arguing is important. It is beyond fundamental to federal litigation that these two types of motions are distinct—not only because they are decided on different standards (as Defendants understand, *see* Defs.' Br. 10–11), but because they serve very different purposes. A motion to dismiss asks whether claims described in a complaint would, if proven, amount to violations of the law. If they would plausibly do so, the case can proceed—first to discovery, and then trial. By contrast, a motion for summary judgment asks whether, after a full opportunity for discovery, there is evidence materially in dispute such that a trial is required to resolve it.

As the Fourth Circuit has explained, dismissal under Rule 12(b)(6) is only appropriate when, "after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Shaw v. Foreman*, 59 F.4th 121, 127 (4th Cir. 2023) (quotation marks omitted). Moreover, "[w]hen an action implicates a civil rights interest," as does Mr. Trabelsi's, courts "must be especially solicitous of the wrongs alleged and must not dismiss the complaint unless it appears to a certainty that the plaintiff would not be entitled to relief under any legal theory which might plausibly be suggested by the facts alleged." *Id.* (quotation marks omitted).

As far as Plaintiff can tell, Defendants do not actually dispute that Mr. Trabelsi's well-pleaded allegations, taken as true and viewed in the light most favorable to him, state claims for relief. *Id*. Tellingly, their memorandum uses variations of the word "plausible"—the key word on a 12(b)(6) motion—three times, and all of them come in its recitation of the Rule 12(b)(6) standard. *See* Defs.' Br. 10.

Instead, Defendants dispute the factual accuracy of Mr. Trabelsi's allegations by relying on 40 exhibits they have attached to their motions. *See, e.g.*, Defs.' Br. at 1 (asserting that "Plaintiff's claims fail on the record evidence of his confinement"); *id.* at 11 (asserting that "the record evidence does not support a claim that Plaintiff's conditions are 'punitive' under the Fifth Amendment"); *id.* at 17 (asserting that "Plaintiff's Free Exercise claim fails on the record evidence"); *id.* at 23 (asserting that "Plaintiff's RFRA claim fails on the record evidence" (capitalization altered)). But "contests surrounding the facts, the merits of a claim, or the applicability of defenses" are simply not properly brought in a motion under Rule 12(b)(6). *Republican Party of N. Carolina v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). Instead, "the court's task" on a motion to dismiss is "to test the legal feasibility of the complaint *without weighing the evidence that might be offered to support or contradict it*." *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 558 (4th Cir. 2013) (emphasis added). Indeed, Defendants' brief, which consists of a "maze of cross-references to exhibits and interpretations of specific provisions within them," only underscores that this case is "particularly ill-suited to adjudication at the motion to dismiss stage." *Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 510–11 (4th Cir. 2015). Despite Defendants' repeated reference to a "record," the term is inapt and misleading: it is a record created *by one side*, without opportunity for discovery by the other side—contrary to what the text, logic, and structure of the Federal Rules of Civil Procedure require.

Further, the only documents that are properly before the Court on Defendants' motion to dismiss are Plaintiff's Complaint and any documents that are "integral" to it. *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 164 (4th Cir. 2016); *Brown Goldstein Levy LLP v. Fed. Ins. Co.*, 68 F.4th 169, 174 (4th Cir. 2023). But documents are not "integral" for this purpose if they are merely "quoted or referenced." *WorkingFilms, Inc. v. Working Narratives, Inc.*, No. 7:20-CV-00139-M,

2021 WL 1196189, at *6 (E.D.N.C. Mar. 29, 2021); *see Sira v. Morton*, 380 F.3d 57, 67 (2d Cir. 2004) ("Limited quotation from or reference to documents that may constitute relevant evidence in a case is not enough to incorporate those documents, wholesale, into the complaint."). Instead, documents are "integral" (and thus relevant) to a motion to dismiss only if they "give[] rise to the *legal rights* asserted" in it. *Walker v. S.W.I.F.T. SCRL*, 517 F. Supp. 2d 801, 806 (E.D. Va. 2007) (Ellis, J.) (emphasis added). Examples of documents that have been deemed integral to a complaint include "the allegedly fraudulent document in a fraud action, the allegedly libelous magazine article in a libel action, and the documents that constitute the core of the parties' contractual relationship in a breach of contract dispute." *Fisher v. Md. Dep't of Pub. Safety & Corr. Servs.*, No. JFM–10–206, 2010 WL 2732334 at *2 (D. Md. July 8, 2010). But none of Defendants' exhibits are like those, and none of them give rise to Mr. Trabelsi's legal rights—the documents that do *that* are the United States Constitution and a federal statute. Compl. ¶¶ 121, 125, 132.

Sometimes, when defendants ask courts to rely on "matters outside the pleadings" at the motion to dismiss stage, courts will simply convert such a motion into "one for summary judgment." Fed. R. Civ. P. 12(d). When doing so, courts must still give "[a]ll parties . . . a reasonable opportunity to present all the material that is pertinent to the motion." *Id.* But converting a motion to dismiss into a motion for summary judgment "is not appropriate when," as here, "the parties have not had an opportunity to conduct reasonable discovery." *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 606 (4th Cir. 2015).

For these reasons, the Court should deny with prejudice Defendants' motion to dismiss under Federal Rule 12(b)(6).

B. Mr. Trabelsi has stated claims for relief under the Fifth Amendment, the First Amendment, and the Religious Freedom Restoration Act.

Out of an excess of caution, and to assist the Court in appreciating just how badly Defendants fail to articulate grounds for dismissal under Rule 12(b)(6), Plaintiff briefly summarizes the legal basis for his claims here. Again, Defendants have not actually argued otherwise.

First, Plaintiff has plausibly alleged that the conditions of his confinement violate his right to substantive due process under the Fifth Amendment. *See* Compl. ¶¶ 121–24. The Fifth Amendment protects detainees in Plaintiff's circumstances[1] from, at minimum, "governmental action" that "amounts to punishment"—*i.e.*, action "that is not rationally related to a legitimate nonpunitive governmental purpose or that is excessive in relation to that purpose." *Short v. Hartman*, 87 F.4th 593, 608–09 (4th Cir. 2023) (quotation marks omitted). The "test is solely an objective one." *Id.* at 609 (quotation marks omitted). While "a showing of subjective intent" can help detainees prevail on a Fifth Amendment challenge to the conditions of their confinement, "such a showing is not necessary." *Id.*

Plaintiff's allegations give rise to the plausible inference that his conditions of confinement amount to punishment. *Id.* In particular, the Complaint alleges that Defendants initially placed

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[1] In a single sentence, Defendants question whether civil immigration detainees are entitled to the same degree of protection under the Fifth Amendment as other civil detainees. Defs.' Br. at 11. This undeveloped insinuation is baseless: as numerous courts have held, immigrant detainees are entitled to just as much constitutional protection as pre-trial detainees. *See Charles v. Orange Cnty*., 925 F.3d 73 (2d Cir. 2019); *E.D. v. Sharkey*, 928 F.3d 299, 306-07 (3d Cir. 2019) ("This Circuit has long viewed the legal rights of an immigration detainee to be analogous to those of a pretrial detainee."); *Chavero-Linares v. Smith*, 782 F.3d 1038, 1041 (8th Cir. 2015); *Belbachir v. County of McHenry*, 726 F.3d 975, 979 (7th Cir. 2013); *Porro v. Barnes*, 624 F.3d 1322, 1326 (10th Cir. 2010); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000). Additionally, as Defendants elsewhere recognize, civil detainees in Plaintiff's circumstances are entitled to at least as much constitutional protection (under the Fifth Amendment) as state pretrial detainees (under the Fourteenth Amendment). *See* Defs.' Br. at 11 (citing *Williamson v. Stirling*, 912 F.3d 154, 174 (4th Cir. 2018)).

Plaintiff in the general population on July 17, 2023, but transferred him to the restrictive housing unit three days later—not in response to Plaintiff's behavior at Farmville, but in response to alleged information subsequently obtained by Defendants regarding incidents from other facilities at which he was incarcerated. *See* Compl. ¶¶ 57–61. The Complaint details the resulting restrictions, which include his 16-month solitary confinement and limited access to communication with anyone except his lawyers, newspapers, books, television, religious texts, Jum'ah services, and visits from the Imam. *See* Compl. ¶¶ 57–61, 65, 68–75, 77–84. These restrictions and the manner in which they were imposed give rise to a plausible inference of arbitrariness, purposelessness, and excessiveness in relation to Defendants' purported interest in security. *See Covino v. Vt. Dep't of Corr.*, 933 F.2d 128, 130 (2d Cir. 1991) (observing that a nine-month administrative detention "smacks of punishment"); *see also Slade v. Hampton Roads Reg'l Jail*, 407 F.3d 243, 251 (4th Cir. 2005). Likewise, the Complaint plausibly alleges that Defendants' subsequent administrative segregation classification "reviews" fail to shed light on the decision-making process, containing identical language, *see* Compl. ¶¶ 61-62, which "leads to an inference of rote renewals." *Williamson*, 912 F.3d at 180 ("Rubber-stamping" of renewals for restrictive solitary confinement "casts substantial doubt on the propriety of the renewals" and "constitutes compelling evidence of 'arbitrary decisionmaking'" (citing *Incumaa v. Stirling*, 791 F.3d 517, 534 (4th Cir. 2015))).

Defendants attempt to articulate a "legitimate governmental objective" for all of Mr. Trabelsi's alleged conditions. Defs.' Br. 14 (identifying "the safety of FDC and broader public safety at large"). But even if that objective is valid, in their effort to show that it is "reasonably related" to Mr. Trabelsi's conditions, Defendants are able only to resort to their own chosen facts, facts that are themselves in dispute. *See* Defs.' Br. 15–17 (repeatedly citing their own declarations but never Plaintiff's complaint). Defendants simply have not made a motion to dismiss argument.

Second, Plaintiff has plausibly alleged that the conditions of his confinement violate both the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act ("RFRA"). *See* Compl. ¶¶ 125–34. To make out a prima facie claim under either authority, a plaintiff must allege that he "holds a sincere religious belief," and that his conditions of confinement substantially burden "his ability to practice his religion." *Wilcox v. Brown*, 877 F.3d 161, 168 (4th Cir. 2017) (First Amendment); *Greenhill v. Clarke*, 944 F.3d 243, 250 (4th Cir. 2019) (RFRA).[2] Plaintiff has done so. As the Complaint alleges, Plaintiff is a practicing Muslim, and Defendants do not permit him to: (a) attend—in any way—group worship services run by an imam who regularly visits Farmville; (b) meet individually with the imam, even while restrained; or (c) read religious texts in his cell, with the exception of the Quran. Compl. ¶¶ 81–84. The Supreme Court, the Fourth Circuit, and other courts have repeatedly held that comparable restrictions on prisoners' religious exercise constitute substantial burdens for purposes of both the First Amendment and RFRA. *See, e.g.*, *Holt v. Hobbs*, 574 U.S. 352, 361 (2015) (prison policy requiring Muslim inmate to shave his beard "easily satisfied" substantial burden requirement); *Greenhill*, 944 F.3d at 253 (prohibition on attending group worship, in person or by closed-circuit television, substantially burdened religious exercise of prisoner confined to restrictive housing); *Wilcox*, 877 F.3d at 168 (prohibition on attending group worship services substantially burdened Rastafarian prisoner's religious exercise); *Jehovah v. Clarke*, 798 F.3d 169, 178 (4th Cir. 2015) (prohibition on taking wine with communion substantially burdened Christian prisoner's religious exercise);

[2] Some cases cited here, like *Greenhill*, involve not RFRA, but the Religious Land Use and Institutionalized Persons Act ("RLUIPA")—RFRA's "sister statute." *Holt*, 574 U.S. at 356. As Defendants appear to acknowledge, *see* Defs'. Br. at 24, there is no relevant difference between the two laws: RLUIPA "allows prisoners to seek religious accommodations pursuant to the same standard as set forth in RFRA." *Holt*, 574 U.S. at 358 (quotation marks omitted); *see also Davis v. Wigen*, 82 F.4th 204, 211 (3d Cir. 2023) ("To state a prima facie RFRA claim, a plaintiff must allege that the government (1) substantially burdened (2) a sincere (3) religious exercise.").

id. at 180 (refusing to provide prisoner with work opportunities that would allow him to observe the Sabbath substantially burdened his religious exercise); *Lovelace v. Lee*, 472 F.3d 174, 187 (4th Cir. 2006) (prohibiting Muslim prisoner from participating in pre-dawn meals during Ramadan substantially burdened his religious exercise); *Davis v. Wigen*, 82 F.4th 204, 212 (3d Cir. 2023) (prohibiting a Christian prisoner from marrying his fiancé substantially burdened the prisoner's religious exercise, for "[t]here can hardly be a more substantial burden on a religious practice or exercise than its outright prohibition").

At the pleading stage, nothing more is required. *See Jehovah*, 798 F.3d at 179 (to state a claim under RLUIPA, a plaintiff "need only plead facts tending to show a substantial burden on his exercise of sincerely held religious beliefs"); *Davis*, 82 F.4th at 211 (when evaluating the pleadings, courts ask only whether a RFRA claimant has plausibly alleged "that the government (1) substantially burdened (2) a sincere (3) religious exercise" (quotation marks omitted)); *Firewalker-Fields v. Lee*, 58 F.4th 104, 116 (4th Cir. 2023) (after a detained plaintiff makes the threshold substantial-burden showing under the Free Exercise Clause, defendants bear the burden "to put forward the actual interests that support" the challenged restrictions); *Johnson v. Brown*, 581 F. App'x 777, 781 (11th Cir. 2014) (faulting district court for requiring Free Exercise claimant to allege more than a substantial burden on religious exercise at the pleading stage).

To the extent that a detained plaintiff bringing a Free Exercise claim under the First Amendment must allege facts from which it may be inferred that the substantial burdens on his religious exercise are not "reasonably related to a legitimate penological interest," *see Jehovah*, 798 F.3d at 181, Plaintiff has done so. As detailed above, Plaintiff has alleged facts giving rise to the reasonable inference that his placement in restrictive housing—the purported basis for the burdens Defendants have placed on his religious exercise—was not initially justified by legitimate

disciplinary or security concerns and has not, in the time since, been subject to meaningful review. *See* Compl. ¶¶ 57–61. Even if, for the sake of argument, there existed some legitimate ground for placing Plaintiff in restrictive housing, Defendants "cannot justify restricting [Plaintiff's] free exercise rights merely because he allegedly violated a rule and was subject to discipline." *Lovelace*, 472 F.3d at 200; *see McEachin v. McGuinnis*, 357 F.3d 197, 204 (2d Cir. 2004) ("Our cases and those of other circuits suggest that the First Amendment protects inmates' free exercise rights even when the infringement results from the imposition of legitimate disciplinary measures."). And even if—again, for the sake of argument—Plaintiff's exclusion from in-person group worship services during his confinement to restrictive housing bore a reasonable relation to a legitimate governmental interest, it is entirely plausible that the same interest would not justify Defendants' refusal to provide him with alternative means of religious exercise, such as access to a livestream or closed-circuit broadcast of group worship services, the opportunity to meet with the imam individually while restrained or in his cell, and access to religious texts other than the Quran.

These plausible inferences, which arise from the allegations in the Complaint when construed in the light most favorable to Plaintiff, are more than enough to clear "the low bar of the motion-to-dismiss stage." *Jehovah*, 798 F.3d at 180. And Defendants do not in fact argue otherwise, but instead rely on their own evidence to contradict Mr. Trabelsi's allegations. They have therefore failed to support their motion to dismiss Mr. Trabelsi's First Amendment and RFRA claims.

II. The Court should deny, or at least defer ruling on, Defendants' motion for summary judgment and grant Plaintiff's motion for time to conduct discovery under the Federal Rules of Civil Procedure.

Defendants' motion for summary judgment came as a surprise. After all, as the Supreme Court has made clear that summary judgment should only be granted "after adequate time for discovery." *Celetox Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Engaging in summary judgment

practice "before discovery forces the non-moving party into a fencing match without a sword or mask." *McCray v. Maryland Dep't of Transp.*, 741 F.3d 480, 483 (4th Cir. 2014). Those discovery rules are set forth in Rules 26 through 37 of the Federal Rules of Civil Procedure, and their sequencing is plainly spelled out in caselaw, local rules, and elementary principles of case management. To file a motion for summary judgment on the day a party's answer is due, as Defendants did here, is highly unusual, to say the least.

The reason parties hardly ever do what Defendants do here is because, in situations like these, non-moving parties, including plaintiffs, will almost always "lack[] material facts necessary to combat a summary judgment motion." *Id.* That is Plaintiff's situation here. As a result, Plaintiff has filed a motion and an affidavit, under Rule 56(d), averring that no discovery has been conducted and specifying why Plaintiff "cannot present facts essential to justify [his] opposition." Fed. R. Civ. P. 56(d). On those grounds and the ones explained below, Plaintiff respectfully requests that the court deny Defendants' motion for summary judgment or, in the alternative, defer consideration of the motion until Plaintiff is allowed time for appropriate discovery. *See Boyle v. Azzari*, 107 F.4th 298, 302 (4th Cir. 2024); *McCray*, 741 F.3d at 483.

The Court "must" grant a motion under Rule 56(d) "'where the nonmoving party has not had the opportunity to discover information that is essential to his opposition." *McCray*, 741 F.3d at 483 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5 (1986)); *see Boyle*, 107 F.4th at 302. Rule 56(d) motions are "broadly favored and should be liberally granted" in order to protect non-moving parties from premature summary judgment motions. *See McCray*, 741 F.3d at 484 (quoting *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt.*, 721 F.3d 264, 281 (4th Cir.2013)); *see Boyle*, 107 F.4th at 302.

Plaintiff's motion under Rule 56(d) is as straightforward as it gets and should succeed "with ease." *McCray*, 741 F.3d at 484. Plaintiff has had no opportunity at all to propound interrogatories, to request admissions, to seek documents, or to depose Defendants or other individuals who are likely to have knowledge of information relevant to Plaintiff's claims. *See* Fed. R. Civ. P. 26, 30, 33, 34, 36. Indeed, almost all "of the key evidence lies in control of the moving party." *McCray*, 741 F.3d at 484. To be sure, Defendants have attached 40 exhibits to their motion for summary judgment, a "record" that they believe definitively rejects all of Plaintiff's claims. But one side's evidence is no substitute for discovery, and Defendants' exhibits constitute a hand-picked, potentially self-serving, and incomplete "record," at best. And this is not a case in which Plaintiff "had the opportunity to discover evidence but chose not to." *Id.* Plaintiff is, in fact, eager to get on with proving his case—but could not do so until Defendants filed a responsive pleading. That Defendants have chosen to file a summary judgment motion so quickly, in a frankly brazen attempt to "force[]" him into "a fencing match without a sword or mask," *id.* at 483, is bizarre, and highly inappropriate. *See id.*; *see also Zak*, 780 F.3d at 606 (reasonable discovery is a predicate to a court's consideration of extrinsic evidence at the pleading stage).

As Plaintiff's counsel makes clear in an affidavit attached to his Rule 56(d) motion, no discovery has been conducted at all, and discovery is essential to opposing Defendants' motion. Mr. Trabelsi's claims depend on the realities of his conditions of confinement, as well as Defendants' justifications for them. But Defendants' summary judgment motion presents only their version of that reality, and those justifications. And Plaintiff's verified complaint—foreshadowing Plaintiff's own testimony in this case (along with other evidence Plaintiff anticipates submitting following discovery)—contradicts Defendants' portrayal. Beyond that, Defendants' documents do not displace questions about how Defendants or their agents will testify about the accuracy of the

documents' observations and conclusions, or about whether documents in Defendants' possession that they chose *not* to produce at this time will call those observations and conclusions into dispute. Further, Plaintiff is likely to seek discovery from third parties, including fellow detainees, who can corroborate his allegations and undermine Defendants' representations in their motion.

For example, Mr. Trabelsi needs discovery to determine whether his current restrictions are the same as all other detainees in administrative segregation, except for those detailed in the Special Administrative Measures ("SAM"). Hallett Decl. ¶ 4. Or rather, why ICE concluded that, after his criminal acquittal, it needed to make his conditions in immigration custody even harsher than those he experienced in pre-trial confinement. Hallett Decl. ¶¶ 5–6. Defendants explained that they classified Mr. Trabelsi's custody based on "records of incarceration in Belgium and the United States; disciplinary history, requests, and grievances while at the Rappahannock Regional Jail and the Northern Neck Regional Jail; and documentation of the Plaintiff's threats to officers, witnesses, and even the President of the United States while in custody." Graham Dec. ¶ 24. But Defendants provided just "[o]ne relevant record of the Plaintiff's incarceration": a SAM memorandum drafted by the Department of Justice during Plaintiff's pre-trial detention. *Id*. These other documents, including evidence of the restrictions imposed on detainees in administrative segregation, are critical to evaluating Defendants' justification, as well as their internal consistency, or lack thereof.

As another example, Defendants also dispute the extent of the restrictions placed on Plaintiff's access to mail, the law library, and books and religious texts. Graham Dec. Tab I. Plaintiff requires discovery to establish that Defendants' documentation inaccurately describes the restrictions to which he is subject. Compl. ¶¶ 77–79; Hallett Decl. ¶¶ 4, 6, 9, 11. Only after Plaintiff is given a reasonable opportunity to pursue this evidence through the tools afforded by Federal Rules will the Court be able to engage in its task on summary judgment: determining whether,

while construing all evidence (including, but not limited to, Defendants' evidence) in his favor, "a reasonable jury could" decide that Plaintiff has proven his claims. *Anderson*, 477 U.S. at 242; *see Wai Man Tom v. Hosp. Ventures LLC*, 980 F.3d 1027, 1037 (4th Cir. 2020).[3]

For the avoidance of doubt, Plaintiff currently disputes the vast majority of the facts that Defendants have listed as "undisputed"; thus, should the Court deny Plaintiff's motion for time to conduct discovery under Rule 56(d), Plaintiff respectfully requests 30 days in which to file a detailed response to the merits of Defendants' motion, including a counter-statement of undisputed material facts.

CONCLUSION

Respectfully, the Court should deny Defendants' motion for summary judgment and set this case on the normal course for civil litigation. At a minimum, it should defer the motion for later consideration, after sufficient time for discovery.

[3] Moreover, even if the Court were to decide summary judgment now, Defendants' "Undisputed Statement of Facts" would have to be disregarded where it conflicts with evidence put forth by Mr. Trabelsi. *See Williams v. Griffin*, 952 F.2d 820, 823 (4th Cir. 1991) ("a *verified* complaint is the equivalent of an opposing affidavit for summary judgment purposes"). That is because resolving a dispute between facts that are in contest at the summary judgment stage would improperly displace the role of the fact-finder at trial. *See Tolan v. Cotton*, 572 U.S. 650, 656 (2014); *Jacobs v. N.C. Admin. Off. of the Courts*, 780 F.3d 562, 569 (4th Cir. 2015).

Respectfully submitted,

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