ISSUE	RULE/AUTHORITY	COMMENT
	In response to being so dramatically over budget, CCA negotiated a contract with Dr. Coble to be the exclusive provider of medical services at SCCC. Dr. Coble was, among other things, to "determine the existence of medical emergencies," and therefore determine when it was necessary to send a patient to the hospital or for a medical referral. This contract was executed on October 6, 1994, and effectively created a managed health-care system at SCCC. The contract automatically renewed itself on an annual basis and could be terminated by either party upon 60 days notice. Unlike CCA's previous agreements with other physicians, this contract provided a "capitation plan," which provided Dr. Coble with a financial incentive to reduce the PIPD costs for CCA. Dr. Coble received a minimum salary under the contract, but was able to earn up to an additional $100,000 annually by reducing CCA's costs. Bowman v. Corrections Corp. of America 350 F.3d 537, 542 (C.A.6 (Tenn.),2003) 350 F.3d 537 350 F.3d 537,2003 WL 22742802,62 Fed. R. Evid. Serv. 1485,2003 Fed.App. 0413P	
	The evidence suggests that this remarkable reduction in costs resulted primarily from less specialty referrals and less money spent on prescription drugs. For example, the physician at SCCC before Dr. Coble referred SCCC inmates to medical specialists 1,886 times the year prior to October 1994, while Dr. Coble referred SCCC inmates to medical specialists only 506 times the following year. Similarly, the cost of prescription drugs provided to SCCC inmates was reduced by approximately thirty-nine percent from 1994 to 1997. Bowman v. Corrections Corp. of America 350 F.3d 537, 543 (C.A.6 (Tenn.),2003) 350 F.3d 537 350 F.3d 537,2003 WL 22742802,62 Fed. R. Evid. Serv. 1485,2003 Fed.App. 0413P	
Municipal liability. Where no underlying constitutional violation.	The outcome of the inquiry depends on the nature of the constitutional violation alleged, the theory of municipal liability asserted by the plaintiff, and the defenses set forth by the individual actors. We do not suggest that municipal liability may be sustained where there has been no violation of the plaintiff's constitutional rights as a result of action by the municipality's officials or employees.... However, situations may arise where the combined actions of multiple officials or employees may give rise to a constitutional violation, supporting municipal liability, but where no one individual's actions are sufficient to establish personal liability. Bowman v. Corrections Corp. of America 350 F.3d 537, 546 (C.A.6 (Tenn.),2003) 350 F.3d 537	Distinguishes from City of Los Angeles v. Heller, 475 U.S. 796 (1986). Bowman court says no violation "by anyone" in this case. Case is distinguished in Ford v. Grand Traverse

	350 F.3d 537,2003 WL 22742802,62 Fed. R. Evid. Serv. 1485,2003 Fed.App. 0413P Citing Speer v. City of Wynne, 276 F.3d 980 (8th Cir. 2002)	County. 2006 WL 3613292 (W.D. Mich 2006)
	This court recognizes the "public function test" "for determining whether private conduct is fairly attributable to the state." *Ellison v. Garbarino,* 48 F.3d 192, 195 (6th Cir.1995). "The public function test 'requires that the private entity exercise powers which are traditionally exclusively reserved to the state.' " *Id.* (quoting *Wolotsky v. Huhn*, 960 F.2d 1331, 1335 (6th Cir.1992)). The defendants were "acting under color of state law" in that they were performing the "traditional state function" of operating a prison. *See Hicks v. Frey*, 992 F.2d 1450, 1458 (6th Cir.1993) ("It is clear that a private entity which contracts with the state to perform a traditional state function such as providing medical services to prison inmates may be sued under § 1983 as one acting 'under color of state law.' "). Street v. Corrections Corporation of America 102 F.3d 810, 814 (C.A.6 (Tenn.),1996) 102 F.3d 810 102 F.3d 810,1996 WL 720718,1996 Fed.App. 0387P	
	The Supreme Court held that "an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm." *Farmer,* 511 U.S. at ----, 114 S.Ct. at 1981; *see Price,* 65 F.3d at 347 (" *Farmer* established that a risk of danger particular to the individual was not required...."). To the extent that *Marsh* required a showing of "specific risk," it is inconsistent with *Farmer.*[FN12] To the extent that *Marsh* allowed a plaintiff to prove an Eighth Amendment violation by means of showing a "pervasive risk of harm," it is consistent with *Farmer ' s* requirement of a showing of a "substantial risk of serious harm": Street v. Corrections Corporation of America 102 F.3d 810, 815 (C.A.6 (Tenn.),1996) 102 F.3d 810 102 F.3d 810,1996 WL 720718,1996 Fed.App. 0387P	
	A "subjective approach" must be used to determine whether the defendants had "the state of mind ... of 'deliberate indifference' to inmate health or safety." *Id.* at ----, 114 S.Ct. at 1977. [A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health and safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. *Id.* at ----, 114 S.Ct. at 1979. This is a question of fact "and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was *816 obvious." *Id.* A prison official can be liable if he "disregards	

	that risk by failing to take reasonable measures to abate it." *Id.* at ----, 114 S.Ct. at 1984. Street v. Corrections Corporation of America 102 F.3d 810, 815 -816 (C.A.6 (Tenn.),1996) 102 F.3d 810 102 F.3d 810,1996 WL 720718,1996 Fed.App. 0387P	
	Since the Supreme Court's decision in *Farmer,* the Eleventh Circuit has held that there were genuine issues of material fact as to the Eighth Amendment liability of a sheriff responsible for a jail where "inmate-on-inmate violence occurred regularly when the jail was overcrowded, as it was [when the incident in question occurred.]" *Hale v. Tallapoosa County,* 50 F.3d 1579, 1583 (11th Cir.1995). Street v. Corrections Corporation of America 102 F.3d 810, 817 (C.A.6 (Tenn.),1996) 102 F.3d 810 102 F.3d 810,1996 WL 720718,1996 Fed.App. 0387P	
	A defendant cannot be held liable under section 1983 on a respondeat superior or vicarious liability basis. *Monell v. Department of Social Serv.,* 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 ... (1978). *Monell* involved a municipal corporation, but every circuit to consider the issue has extended the holding to private corporations as well. *See Lux v. Hansen,* 886 F.2d 1064, 1067 (8th Cir.1989) (private mental health center); *Iskander v. Village of Forest Park,* 690 F.2d 126, 128 (7th Cir.1982) (department store); *Powell v. Shopco Laurel Co.,* 678 F.2d 504, 506 (4th Cir.1982) (security guard employer); *see also Jones v. Preuit & Mauldin,* 851 F.2d 1321, 1325 (11th Cir.1988) (en banc), *vacated on other grounds,* 489 U.S. 1002, 109 S.Ct. 1105, 103 L.Ed.2d 170 ... (1989) (private defendants in 42 U.S.C. § 1983 actions should have at minimum same defenses available to public defendants). Street v. Corrections Corporation of America 102 F.3d 810, 818 (C.A.6 (Tenn.),1996) 102 F.3d 810 102 F.3d 810,1996 WL 720718,1996 Fed.App. 0387P	
	Finally, we conclude that the district court improperly dismissed Johnson's state law claim. The district court described Johnson's medical malpractice claim as a supplemental state law claim and declined to exercise jurisdiction over it. *See* 28 U.S.C. § 1367(c)(3); *United Mine Workers v. Gibbs,* 383 U.S. 715, 726, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). However, there is a rebuttable presumption that a prisoner retains his former domicile after incarceration. *Stifel v. Hopkins,* 477 F.2d 1116, 1124 (6th Cir.1973); *see also Denlinger v. Brennan,* 87 F.3d 214, 216 (7th Cir.1996); *Sullivan v. Freeman,* 944 F.2d 334, 337 (7th Cir.1991). In this case, Johnson alleged that he was a prisoner of the District of Columbia in the custody of the CCA, invoked diversity jurisdiction under 28 U.S.C. § 1332(a)(1), and requested damages over the jurisdictional amount. Although Johnson insufficiently alleged domicile, he may be able to establish diversity jurisdiction under *Stifel.* Accordingly, we direct the district court to permit Johnson to amend his complaint to allege the citizenship of the	

	parties. Johnson v. Corrections Corp. of America 26 Fed.Appx. 386, 388, 2001 WL 1298982, 2 (C.A.6 (Ohio (C.A.6 (Ohio),2001) 26 Fed.Appx. 386 26 Fed.Appx. 386,2001 WL 1298982	
	This court has held that, in order to satisfy the PLRA's exhaustion requirement, "a prisoner must plead his claims with specificity and show that they have been exhausted by attaching a copy of the applicable administrative dispositions to the complaint or, in the absence of written documentation, describ[ing] with specificity the administrative proceeding and its outcome." *Knuckles El v. Toombs,* 215 F.3d 640, 642 (6th Cir.2000). The court in *Knuckles El* explained that the policy behind the heightened pleading standard is that [d]istrict courts should not have to hold time-consuming evidentiary hearings in order simply to determine whether it should reach the merits or decline under the mandatory language of § 1997e ("No action shall be brought...."). In the absence of particularized averments concerning exhaustion showing the nature of the administrative proceeding and its outcome, the action must be dismissed under § 1997e. *Id.* A dismissal under § 1997e should be without prejudice. *Id.* (holding that "the district court properly dismissed the entire complaint without prejudice"); *Brown v. Toombs,* 139 F.3d 1102, 1104 (6th Cir.1998) ("Because in the present case there is no indication that the requirements of the statute have been complied with, the case should be dismissed without prejudice, and the activity that the new statute contemplates should now occur-state adjudication of the claims."). Boyd v. Corrections Corp. of America 380 F.3d 989, 994 (C.A.6 (Tenn.),2004) 380 F.3d 989 380 F.3d 989,2004 WL 1982517,2004 Fed.App. 0299P	Appears to be a key case on exhaustion of remedies.
Supervisory liability.	Plaintiff further alleges that Stalder is personally liable as a supervisory official of Captain Roberts. With respect to supervisor's liability under § 1983,"the misconduct of the subordinate must be affirmatively linked to the action or inaction of the supervisor." *Southard v. Texas Board of Criminal Justice,* 114 F.3d 539, 550 (5th Cir.1997). In other words, a supervisory official may be held liable, if his "action or inaction, demonstrates a deliberate indifference to a plaintiff's constitutionally protected rights." *Doe v. Taylor Indep. School Dist.,* 15 F.3d 443, 453 (5th Cir.1994). Deliberate indifference is a stringent standard of fault, requiring proof that the official disregarded a known or obvious consequence of his action. *See Board of the County Comm'rs of Bryan County, Okl. v. Brown,* 520 U.S. 397, 410, 117 S.Ct. 1382, 1391 (1997). Mitchell v. CCA of Tennessee, Inc. 2007 WL 837293, 4 (W.D.La.) (W.D.La.,2007) 2007 WL 837293	This is a sexual misconduct case. A case, perhaps Iqbal, says "supervisory liability is a misnomer."

	Not Reported in F.Supp.2d,2007 WL 837293	
	Municipalities and other local government units may be held liable under § 1983. These governmental entities, however, like supervisory officials, "are not liable on a respondeat superior basis; that is, a municipality cannot be held liable simply by virtue of the fact that one of its employees violated a person's federal rights." *Monell,* 436 U.S. at 691, 98 S.Ct at 2036. For liability to attach, "the municipality itself must cause the violation through its policies." *Milam v. City of San Antonio,* 113 Fed.Appx. 622, 625 (5th Cir.2004); *see also Monell,* 436 U.S. at 694, 98 S.Ct at 2037 ("[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983"). Mitchell v. CCA of Tennessee, Inc. 2007 WL 837293, 5 (W.D.La.) (W.D.La.,2007) 2007 WL 837293 Not Reported in F.Supp.2d,2007 WL 837293	
	Likewise, a municipal corporation may not be held liable under § 1983 based on a respondeat superior theory. *See Monell,* 436 U.S. at 694, 98 S.Ct at 2037 n. 58. That is, while isolated unconstitutional actions by corporate employees will almost never trigger corporate liability, a municipal corporation may be held liable under § 1983 only if there is a showing of official sanction or imprimatur on the conduct or practice at issue. *Auster Oil & Gas, Inc. v. Stream,* 835 F.2d 597, 602 n. 3 (5th Cir.1988). Such a showing requires proof of three attribution elements. Specifically, a municipal corporation performing a governmental function is liable under § 1983 if (1) there is a policymaker who could be held responsible, through actual or constructive knowledge, for enforcing a policy or custom that caused the claimed injury; (2) the corporation has an official custom or policy which could subject it to § 1983 liability; and (3) the claimant can demonstrate that the corporate action was taken with the requisite degree of culpability, and show a direct causal link between the action and the deprivation of federal rights. *See Piotrowski v. City of Houston,* 237 F.3d 567, 578 (5th Cir.2001); *Victoria v. Larpenter,* 369 F.3d 475, 482 (5th Cir. *2004)(citing Monell,* 436 U.S. at 694, 98 S.Ct. at 2037). Mitchell v. CCA of Tennessee, Inc. 2007 WL 837293, 5 (W.D.La.) (W.D.La.,2007) 2007 WL 837293 Not Reported in F.Supp.2d,2007 WL 837293	
	Recently, in *Rosborough v. Mgmt. & Training Corp.*, 350 F.3d 459, 461 (5th Cir.2003), the Fifth Circuit extended municipal corporate liability under § 1983 to include private prison-management corporations and their employees. The court said: "We agree with the Sixth Circuit and with those district courts that have found that private prison-management corporations and their employees may be sued under § 1983 by a prisoner who has suffered a constitutional injury." *Id.* In reaching its holding, the court concluded that, "[c]learly, confinement of wrongdoers-though sometimes delegated to private	

	entities-is a fundamentally governmental function." *Id.* Like a municipal corporation, liability for a private prison-management corporation under § 1983 requires proof of the abovementioned attribution elements. *See Phillips v. Corrections Corp. of America,* No. 02-766, 2006 WL 1308142 at *3 (W.D.La. May 10, 2006); *see also Monell,* 436 U.S. at 694, 98 S.Ct at 2037. Mitchell v. CCA of Tennessee, Inc. 2007 WL 837293, 5 (W.D.La.) (W.D.La.,2007) 2007 WL 837293 Not Reported in F.Supp.2d,2007 WL 837293	
	Beginning with the second attribution element, Plaintiff must show that CCA has an official custom or policy which could subject it to liability under § 1983. *See Monell,* 436 U.S. at 694, 98 S .Ct at 2037. While official policy is contained typically in duly promulgated policy statements, ordinances or regulations, a policy may be evidenced by a custom, that is "a persistent, widespread practice of [corporate] officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents [corporate] policy." *See Webster v. City of Houston,* 735 F.3d 838, 841 (5th Cir.1984). Actions of officers or employees of a corporation do not render the corporation liable under § 1983 unless they execute official policy as above defined. *See Id.* Mitchell v. CCA of Tennessee, Inc. 2007 WL 837293, 6 (W.D.La.) (W.D.La.,2007) 2007 WL 837293 Not Reported in F.Supp.2d,2007 WL 837293	
	With regard to the third attribution element, Mitchell must demonstrate that the corporate action was taken with the requisite degree of culpability, and must show a direct causal link between the action and the deprivation of federal rights. *See Monell,* 436 U.S. at 694, 98 S.Ct at 2037. Stated differently, Plaintiff must show both corporate culpability and causation. *See Piotrowski,* 237 F.3d at 578 n. 17 *(citing Snyder v. Trepangnier,* 142 F.3d 791, 796 (5th Cir.1998)). "Culpability may be shown either through an unconstitutional official policy or through a facially innocuous policy that was implemented with deliberate indifference to a known or obvious consequence that a constitutional violation would result." *Olivas v. Corrections Corp. of Am.,* 408 F.Supp.2d 251, 255 (N.D.Tex.2006); *citing Piotrowski,* 237 F.3d at 579. To satisfy causation, a plaintiff must show that the policy in question is the "moving force" behind the violation. *See Id.* Mitchell v. CCA of Tennessee, Inc. 2007 WL 837293, 6 (W.D.La.) (W.D.La.,2007) 2007 WL 837293 Not Reported in F.Supp.2d,2007 WL 837293	
	Pri-Har next argues that a disposition at the initial stage of the grievance procedure by the Warden or his associates both rendered CCA's grievance procedures futile and exhausted his available administrative remedies. We do not review the effectiveness of available administrative remedies. *Miller v.*	Frequently a particular remedy, e.g., compensation,

	Tanner, 196 F.3d 1190, 1193 (11th Cir.1999). Furthermore, an assertion that available administrative procedures are futile does not excuse the requirement of exhaustion. *Higginbottom v. Carter,* 223 F.3d 1259, 1261 (11th Cir.2000). Pri-Har's arguments take issue with the manner in which CCA's administrative procedures are structured, challenging their adequacy and effectiveness. Although CCA's grievance procedures were available within the meaning of § 1997e(a), and Pri-Har was required to exhaust them before filing suit, there is no evidence that Pri-Har completed all the remaining steps of CCA's grievance procedure. Therefore, Pri-Har failed to exhaust his available administrative remedies. Pri-Har v. Corrections Corp. of America, Inc. 154 Fed.Appx. 886, 888, 2005 WL 3087891, 2 (C.A.11 (Ga. (C.A.11 (Ga.),2005) 154 Fed.Appx. 886 154 Fed.Appx. 886,2005 WL 3087891	is not available.
	Fed.R.Civ.P. 15(a) provides that a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend only by leave of court or written consent of the adverse party, and leave shall be freely given when justice so requires. Although Rule 15(a) requires that leave to amend "be freely given when justice so requires," whether leave should be granted is within the trial court's discretion. *See Woolsey v. Marion Labs., Inc.,* 934 F.2d 1452, 1462 (10th Cir.1991). In this regard, the Court considers undue delay, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, and undue prejudice to the opposing party or futility of amendment. *Frank v. U.S. West, Inc.,* 3 F.3d 1357, 1365 (10th Cir.1993). Hines v. Corrections Corp. of America 2005 WL 1398659, 1 (D.Kan.) (D.Kan.,2005) 2005 WL 1398659 Not Reported in F.Supp.2d,2005 WL 1398659	
	Arguing that plaintiff has not properly pled a § 1983 claim for cruel and unusual punishment in Count III, CCA has moved to dismiss. "To state a claim for relief under § 1983, a plaintiff must allege both a violation of a right secured by the Constitution or by federal law, and that the alleged deprivation was committed by a person acting under color of state law." *Rojas v. Alexander's Dep't Store, Inc.,* 924 F.2d 406, 408 (2d Cir.1990). A municipality is a person acting under color of state law for purposes of § 1983. *See Monell v. Dep't of Soc. Servs.,* 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) (holding that "Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies") (emphasis in original). A private corporation that provides services normally provided by municipalities, as CCA did, is as well. *See Corr. Servs. Corp. v. Malesko,* 534 U.S. 61, 122 S.Ct. 515, 527, 151 L.Ed.2d 456 (2001) (Stevens, J., dissenting) (noting that "[u]nder 42 U.S.C. § 1983, a state prisoner may sue a private prison for deprivation of constitutional rights") (citing *138 *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 936- 937, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982)). CCA, then, is a proper defendant. Gabriel v. Corrections Corp. of America 211 F.Supp.2d 132, 137 -	

	138 (D.D.C.,2002) 211 F.Supp.2d 132 211 F.Supp.2d 132,2002 WL 1733028	
	The Eighth Amendment protects convicted prisoners from the use of excessive force while in prison. *See Whitley v. Albers,* 475 U.S. 312, 327, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986). The core inquiry for Eighth Amendment excessive force claims is "whether force was applied in a good-faith effort to maintain and restore discipline, or maliciously and sadistically" for the very purpose of causing harm. *Hudson v. McMillian,* 503 U.S. 1, 7, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992). Force is malicious and sadistic when no disciplinary rationale or penal purpose justifies it. *See Giron v. Corrections Corp. of America,* 191 F.3d 1281, 1290 (10th Cir.1999). A wanton and unnecessary infliction of harm for no legitimate purpose always violates the Eighth Amendment. *See Whitley,* 475 U.S. at 321-22, 106 S.Ct. 1078. However, a de minimis use of physical force does not qualify as "wanton and unnecessary" unless it is the sort "repugnant to the conscience of mankind." *Hudson,* 503 U.S. at 8, 112 S.Ct. 995. Laury v. Greenfield 87 F.Supp.2d 1210, 1215 (D.Kan.,2000) 87 F.Supp.2d 1210 87 F.Supp.2d 1210,2000 WL 276503	