ORIGINAL

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

MATSUMOTO, J.

BULSARA, M.J.

SHAUN GOODALL,

Plaintiff,

v.

JURY TRIAL DEMANDED

No.: CV19-532

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUITY SUPERVISION, COMMISSIONER ANTHONY ANNUCCI, ASSISTANT COMMISSIONER BRYAN HILTON, SUPERINTENDENT BRANDON SMITH, DEPUTY SUPERINTENDENT MARIE HAMMOND, ASSISTANT DEPUTY 'SUPERINTENDENT LAURIE FISHER, FACILITY HEALTH SERV. DIRECTOR DOREEN SMITH, REHABILITATOR COORDINATOR L. MARDON, REHABILITATOR COORDINATOR L. O'HARA, REHABILITATOR COORDINATOR A. CLUEVER, REHABILITATOR COORDINATOR M. NORIEGA, REHABTIITATOR COORDINATOR WELYTOK,

Defendants,

COMPLAINT

Plaintiff, Shaun Goodall, appearing pro se, as and for his complaint against Defendants, alleges the following:

I. JURISDICTION AND VENUE

1. This is a civil action seeking relief and/ or damages, authorized by Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the New York State Human Rights Law (N.Y. Exec. Law § 290 et seq.) to redress violations of those Acts.

The Court has jurisdiction over the action under 28 U.S.C. §1331, 1343(4) and 2201. The Court also has supplemental jurisdiction over Plaintiff's State Law claims under 28 U.S.C. §1367.

2. The Eastern District of New York is an appropriate venue under 28 U.S.C. §§ 1391 (b)(1), (c)(2), and (d), because defendant New York State Department of Corrections and Community Supervision resides in the State of New York and its contacts with the Eastern District of New York would be sufficient to subject it to personal jurisdiction if that district were a separate State.

II. PLAINTIFF

3. Plaintiff, S-haun Goodall, is and was at all relevant times mentioned herein, an inmate of the State of New York in the custody of New York State Department of Corrections & Community Supervision. He was released from incarceration on December 26, 2018, and currently resides at 15 Koren Lane, Middle Island, New York 11953. However, this is only a physical address. Plaintiff receives mail at P.O. Box 48, Wantagh, New York. 11793.

III. DEFENDANTS

4. Defendant New York State Department of Corrections and Community Supervision is a State Agency organized and existing under the laws of the State of New York and maintains sufficient contacts with the Eastern District of New York.

4a. Defendant, Anthony Annucci, functions as the Commissioner of New York State Department of Corrections & Community Super-vision (henceforth, NYSDOCCS) and is employed at the Harriman State Campus, Building 2, 1220 Washington Avenue, Albany, New York, 12226.

5. Upon information and belief, Mr. Annucci, in his individual capacity, was and is at all relevant times herein, the Commissioner of NYSDOCCS. He is legally responsible for the overall

operations and policies of the Department and in each institution under its jurisdiction, including Greene Correctional Facility (henceforth, Greene C.F.).

6. Defendant, Bryan Hilton,functions as the Assistant Commissioner of NYSDOCCS and is employed at the Harriman State Campus, Building 2, 1220 Washington Avenue Albany, New York 12226.

7. Upon information and belief, Mr. Hilton, in his individual capacity, was and is at all times herein, the Assistant Commissioner of NYSDOCCS. He is legally responsible for the operations and policies of the Department and each institution under its jurisdiction, including Greene C.F.

8. Defendant, Brandon Smith, functions as the Superintendent of Greene C.F. and is employed at 165 Plank Road, Post Office Box 975, Coxsackie, New York 12051.

9. Upon information and belief, Mr. Smith, in his individual capacity, was and is at all relevant times herein, the Superintendent of Greene C.F.. He is legally responsible for the management of subordinates as a Supervisor, and for the decisions, conduct, and behavior of all employees under his command. He has authority to remedy any matter of impropriety. Mr. Smith is also directly responsible for rendering decisions on grievance complaints submitted by the inmate population.

10. Defendant, Marie Hammond, functions as the Deputy Superintendent of Programs at Greene C.F. and is employed at 165 Plank Road, Post Office Box 975, Coxsackie, New York 12051.

11. Upon information and belief, Ms. Hammond, in her individual capacity, was and is at all relevant times herein, the Deputy

Superintendent of Programs of Greene C.F. She is legally responsible for ensuring proper placement in programs or services for eligible and qualified inmates so that they may benefit from its rehabilitative components.

12. Defendant, Laurie Fisher, functions as the Assistant Deputy Superintendent of Programs at Greene C.F. and is employed at 165 Plank Road, Post Office Box 975, Coxsackie, New York 12051.

13. Upon information and belief, Ms. Fisher, in her individual capacity, was and is at all relevant times herein, the Assistant Deputy Superintendent of Programs of Greene C.F. She is legally responsible for ensuring proper placement in programs or services for eligible and qualified inmates so that they may benefit from its rehabilitative components.

14. Defendant, Doreen Smith, functions as the Facility Health Services Director at Greene C.F. and is employed at 165 Plank Road, Post Office Box 975, Coxsackie, New York 12051.

15. Upon information and belief, Ms. Smith in her individual capacity, was and is at all times relevant herein, the Facility Health Services Director of Greene C.F. and is a licensed Medical Doctor/ Provider, and in her official capacity is a Medical Doctor/ Provider at Greene C.F. Her duties consist of, but are not limited to, evaluating inmate's health, assessing disibilities, and rendering decisions relating to reasonable accomodations for individuals with serious medical needs or disibilities.

16. Defendant, L. Mardon, functions as a Senior/ Supervising Offender Rehabilitator Coordinator at Greene C.F. and is employed at 165 Plank Road, Post Office Box 975, Coxsackie, New York 12051.

17. Upon information and belief, L. Mardon, in his/ her individual capacity, was and is at all relevant times herein, one of the Senior/ Supervising Offender Rehabilitator Coordinators of Greene C.F. His/ her duties consist of, but is not limited to, coordinating rehabilitative efforts to ensure eligible and qualified inmates benefit from programs or services through screening and suitability and overseeing the conduct and behavior of subordinate Offender Rehabilitator Coordinators (henceforth, O.R.C.).

18. Defendant, L. O'Hara, functions as a Senior/ Supervising O.R.C. at Greene C.F. and is employed at 165 Plank Road, Post Office Box 975, Coxsackie, New York 12051.

19. Upon information and belief, L. O'Hara, in her individual capacity, was and is at all relevant times herein, one of the Senior/ Supervising O.R.C.'s of Greene C.F. L. O'Hara's duties consist of, but is not limited to, coordinating rehabilitative efforts to ensure eligible and qualified inmates benefit from programs or services through screening and suitability and overseeing the conduct and behavior of subordinate O.R.C.'s.

20. Defendant, A. Cluever, functions as an O.R.C. at Greene C.F. and is employed at 165 Plank Road, Post Office Box 975, Coxsackie, New York 12051.

21. Upon information and belief, A. Cluever, in her individual capacity, was and is at all relevant times herein, an O.R.C. of Greene C.F.. A. Cluever's duties consist of, but is not limited to, coordinating rehabilitative efforts to ensure eligible and qualified inmates benefit from programs or services through screening and suitability.

22. Defendant, M. Noriega, functions as an O.R.C. at Greene

C.F. and is employed at 165 Plank Road, Post Office Box 975, Coxsackie, New York 12051.

23. Upon information and belief, M. Noriega, in her individual capacity, was and is at all relevant times herein, an O.R.C. of Greene C.F.. M. Noriega's duties consist of, but is not limited to, coordinating rehabilitative efforts to ensure eligible and qualified inmates benefit from programs or services through screening and suitability.

24. Defendant, Ms. Welytok, functions as an O.R.C. at Greene C.F. and is employed at 165 Plank Road, Post Office Box 975, Coxsackie, New York 12051.

25. Upon information and belief, Ms. Welytok, in her individual capacity, was and is at all relevant times herein, an O.R.C. of Greene C.F.. Ms. Welytok's duties consist of, but is not limited to, coordinating rehabilitative efforts to ensure eligible and qualified inmates benefit from programs or services through screening and suitability.

IV. PREVIOUS LAWSUITS BY PLAINTIFF

26. Plaintiff has filed no other lawsuit in State or Federal court dealing with the same or similar facts involved in this action.

V. FACTUAL ALLEGATIONS

27. Plaintiff commences this Civil Rights Action against the Defendants mentioned in paragraphs (4) to (25), whereby Plaintiff's Federal and State Rights were repeatedly violated; namely by aggravated acts of disability discrimination in relation to the Defendants' adherence to unlawful policy and custom in denying qualified inmates with disabilities the benefits of program participation/ completion without reasonable accomodations, resulting in excessive confinement while simultaneously permitting healthy inmates to benefit and be released early from incarceration after successful completion. This manner of operation demonstrates a deficient management of subordinates and supervisor liability.

28. NYSDOCCS administers a SHOCK Incarceration Program (henceforth, SHOCK). This program provides selected inmates a special six month program of SHOCK incarceration, stressing highly structured routine of discipline, intensive regimentation, exercise, and work therapy, together with substance abuse treatment; education, pre-release counseling, and life skills counseling. The incentive for a successful completion of the six month long SHOCK program is an early release from incarceration to parole.

29. Even when an inmate satisfies all of the eligibility criteria for SHOCK candidacy, they must still undergo selection into the program and may be deemed unsuitable if there exists a serious medical or mental health problem. However, court-ordered SHOCK inmates whom have a serious medical or mental health problem are afforded an alternative placement so they may still benefit as if they completed the SHOCK program. This alternative

program focuses more on education and drug abuse prevention than exercise and is named, C.A.S.A.T. (Comprehensive Alcohol & Substance Abuse Treatment), which is located at Hale Creek Correctional Facility.

30. NYSDOCCS Directive #2614, entitled "Reasonable Accomodations For Inmates With Disibilities", explains clearly in its POLICY how a qualified inmate can still take advantage of a programs with a serious medical or mental health problem by stating the following: "Title II (Subtitle A) of the Americans With Disibilities Act (ADA) prohibits State and local entities from discriminating against any qualified individual with a disibility in their programs, services, and activities. Therefore, the programs and services provided to inmates by this agency, or those that may be contracted to other entities, must ensure accessibility and usability by qualified inmates in the most integrated settings. The Department is required to make "reasonable accommodations" or modifications to existing policies and procedures to allow qualified inmates with disibilities the same opportunities as non-disabled inmates, unless to do so would be an undue burden to the Department, cause a fundamental alteration to a program, or compromise the safety of the facility". Therefore, there is a direct contradiction between these two Directives and thus, the current policy and procedure is unlawful.

31. According to Directive #2614 (2)(B), reasonable accommodations for inmates with disabilities may include, "any change in the environment, policies, procedures, or the manner in which tasks are completed enables a qualified individual with a disabiiity to participate in a program or service". Thus, only a change in policy is required so that volun

teer disabled inmates can participate and benefit from SHOCK'S alternative program in the same manner that court-ordered disabled inmates currently do.

32. This change in policy to allow volunteer, non court-ordered inmates to participate in SHOCK or its alternative program does not pose any "fundamental alteration" in that this alternative program (C.A.S.A.T.) is already in procedural operation for court-ordered inmates at Hale Creek Correctional Facility. Similarly, Directive #2614, entitled "Reasonable Accomodations For Inmates With Disibilities" states at II (D) : Undue Burden: "Reasonable Accomodations or modifications which would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative hardship. This is a limited exception under the ADA and generally cannot be used for denying an accomodation or a modification requested for program accessibility."

33. July 14, 2015: Plaintiff is sentenced to an indeterminite prison term of (3) to (6) years for the crime of non-violent 3rd Degree Robbery. The sentencing judge "recommends" the SHOCK program but does not order or mandate it.

34. July 24, 2015: Plaintiff departs from county jail and enters State custody at Ulster Correctional Facility (Reception Center). The Medical Department determine Plaintiff is unsuitable for the SHOCK program and stamp the word "SHOCK" on his medical chart and scrawl an "X" through it.

35. July 27, 2015: The Medical staff at Ulster Correctional Facility note in Plaintiff's medical records, "Not a SHOCK candidate", after screening and discovering numerous disibilit-

ies. Inmates are given preliminary screenings at reception centers to determine if they meet statutory eligibility criteria for participation in the SHOCK Incarceration Program. From this moment onward, Plaintiff is advised by the Medical Department of NYSDOCCS that he will not be permitted entry into the SHOCK program and benefit from the early release that a completion affords. It is further explained to Plaintiff that even if he was granted participation into the program, his health would be at risk of an injury. (

36. July 27, 2015: The Office of Mental Health staff at Ulster Correctional Facility assign a "Mental Health Services" level of (3) to Plaintiff. This classification level automatic-ally excludes Plaintiff from the SHOCK program.

37. September 10, 2015: Plaintiff obtained a "Medical Problem List" printed from the Health Services System of NYSDOCCS. His "current classifications" of (1) for Medical and (3) for O.M.H. (Office of Mental Health) both exclude him from SHOCK. A few of Plaintiff's disabilities include, "multiple cardiac risk factors", "serious mental disorder", "epilepsy", and "heart disease".

38. October 23, 2015: Despite being informed repeatedly by the Medical Department that he is, "Not a SHOCK candidate", Plaintiff is "offered" the SHOCK program. Aware that participation would likely result in an injury, and careful to heed the medical advice previously spoken, Plaintiff signed a "Voluntary Declination" form. There was no alternative program offered to Plaintiff to accommodate his disabilities.

39. February 19,2017:Plaintiff submits a "Request For Reasonable Accomodations" to participate in the SHOCK program since he is a qualified individual with a disibility; an individual with a disibility who, with or without reasonable mod-ifications to rules, policies, or practices, meets the essential eligibility for participation in programs or activities provided by a public entity. Plaintiff requested as an accomodation to the vigorous SHOCK program, the alternative placement that court-ordered inmates are afforded, due to his numerous serious medical problems. The Assistant Deputy Superintendent of Programs, Laurie Fisher, denied Plaintiff's application by stating: "Admission to SHOCK Alternative Program is not a Reasonable Accomodation. SHOCK admission is based on screening performed by Guidance Unit and eligibility requirements." While it is true that reasonable acc-omodations are only extended to court-ordered disabled inmates and not volunteers, it is also a fact that an inmate with a dis-ibility may request a reasonable accomodation to any program at any

time during incarceration without having to be screened by Guidance Unit, according to NYSDOCCS Directive #2614, page (2) of (5), Section IV. In fact, this is the very nature of the Reason-able Accomodation Request process.

40. March 21, 2017: Plaintiff submits an "Inmate Grievance Complaint" (GNE-9243-17) citing: "The decision to deny me admission violates my right to be free from discrimination on the basis of disibility and violates my rights under the Americans With Disibilities Act"

41. March 21, 2017: Plaintiff forwards a correspondence to O.R.C. Welytok of the Guidance Unit, asking to be reconsidered for the SHOCK program since the "Voluntary Declination" form that he originally signed offers this opportunity.

42. April 10, 2017: Plaintiff submitted a grievance to be amended to the original (GNE-9243-17) because his O.R.C. Welytok refused to respond to his request for reconsideration into the SHOCK program. The "Voluntary Declination" form offers Plaintiff this provision.

43. April 24, 2017: Plaintiff receives his grievance decision from Superintendent Smith (GNE-9243-17), entitled "Denied SHOCK", which says in part: "SHOCK is not a reasonable accomodation". This is only accurate because NYSDOCCS denies inmates with disibilities from SHOCK program participation when they are not court-ordered. NYSDOCCS policy, as explained in the Pro Se journal is being challenged by DRNY. Interestingly, the Superintendent now alleges Plaintiff is "ineligible" for SHOCK

program participation even though he meets all eligibility crit-eria except for being disabled.

44. Plaintiff is and was a qualified individual with a dasibility and eligible for participation in the SHOCK program otherwise, as defined by New York Correction Law § 865 and NYSDOCCS Directive #0086 entitled, "SHOCK Incarceration Facilit-ies".

45. May 23, 2017: Plaintiff receives an "Interdepartmental Communication" from Assistant Deputy Superintendent of Programs, Laurie Fisher, stating: "You are not eligible (for SHOCK) as follows: 1) You refused SHOCK in 2015 2) You can only be placed in the SHOCK alternative program if you are court-ordered into SHOCK (and disabled). You were not court-ordered". Plaintiff did, indeed, initially "refuse" to participate in SHOCK after he was advised by the Medical Department that he was, "Not a SHOCK candidate" and that enrollment without a reasonable accomodation would be injurious. Furthermore, the "Voluntary Declination" form that Plaintiff signed does allow him to be reconsidered after notifying his O.R.C., which he did. Secondly, it is an accurate assessment that Plaintiff was not court-ordered to SHOCK and that the SHOCK alternative program is not designed for volunteer disabled inmates. Non disabled volunteers are sent to SHOCK and court-ordered disabled inmates are granted the alternative program. Hence, the unlawful policy in denying disabled volunteers from benefiting from either program and the evident discrimination by its enforcers. (se

46. May 30, 2017: Plaintiff submitted a second grievance (GNE-9366-17); this one unrelated to the first and the one that

was amended to the first. This new grievance challenges the Superintendent's recent decision that Plaintiff was "ineligible", requests the alleged reasons, and asks to be reconsidered for the SHOCK program or its alternative.

47. May 30, 2017: After seeking clarification from his O.R.C. M. Noriega, Plaintiff receives a confusing "Interdepartmental Communication" that leaves him with even more questions than answers. Her correspondence states: "VFO (Violent Felony Override) done when you qualify for Temporary Release/ CASAT. SHOCK - most of the time is court order. Programs we have sent a copy!" Plaintiff does not have a violent felony conviction and nobody has been capable of deciphering what Ms. Noriega was re-ferring to with her comment.

48. June 5, 2017: Plaintiff submitted an amended grievance to be combined with the second on file (GNE-9366-17). This grievance disputes the reasons why O.R.C. M. Noriega alleged Plaintiff was ineligible for SHOCK.

49. UNDATED DOCUMENT: 83 N.Y. Jur. 2d Penal & Correctional Institution § 17, 18 outlines what SHOCK Incarceration consists of and indicates eligibility requirements. This material further proves that Plaintiff is and was an eligible inmate for the SHOCK program, although disqualified for disibility only.

50. July 24, 2017: Plaintiff signs a "SHOCK Incarceration Program Memo Of Agreement" form for participation into the program, although it was falsely alleged previously by numerous NYSDOCCS employees that he was ineligible for the program. NYSDOCCS Directive #2614, page (2) of (5), Section IV allows inmates to request a Reasonable Accomodation to any program or

service at any time during incarceration. Therefore, Plaintiff attached a Reasonable Accomodation Request form with the SHOCK Memo Of Agreement.

51. July 24, 2017: Plaintiff attaches a Reasonable Accomodation Request form with the SHOCK Memo of Agreement. In responding, Dr. Smith states: "Please note current medical regimen precludes SHOCK". Dr. Smith also documents "myoclonus/ seizure disorder" on the form. The Assistant Deputy Superintendent of Program, Laurie Fisher's comment at the bottom does not make any sense and Plaintiff explains why in the grievance that he files afterwards.

52. The impairment of myoclonus/ seizure disorder substant-ially limits one or more of Plaintiff's major life activities, including lifting and strenuous exercise; a record of such im-pairment is well documented. Plaintiff was/ is a qualified in-dividual who meets the essential requirements for participation
in the SHOCK program, but has been prohibited entry.

53. July 24, 2017: The SHOCK Screening Committee fill out a SHOCK Incarceration Suitability Screening Form and carefully de-ny Plaintiff the program for reasons of "UNSUITABLE-OTHER". This form is conveniently left blank in many areas that would've ass-isted in proving Plaintiff was medically/ mentally unsuitable
due to disibility. Plaintiff would grieve this denial.

54. July 31, 2017: Superintendent Smith responds to grievance GNE-9366-17 by stating: "...It was already explained to Grievant previously that Alternative SHOCK is only mandated for court ordered SHOCK inmates when they are medically unable to

participate in the SHOCK program...". Thus, non court-ordered inmates whom are eligible but have a disibility cannot participate. And, non court-ordered healthy inmates can volunteer and attend SHOCK with no restrictions. Disabled inmates, however, cannot benefit from the program without a court-order. Plaintiff appealed this decision to the Central Office Review Committee (henceforth, C.O.R.C.) for final disposition and to fully exhaust his administrative remedies.

55. August 7, 2017: A Memorandum from O.R.C. A. Rouse is sent to Plaintiff explaining the three reasons for which it app-ears Plaintiff was denied the SHOCK program. These reasons in-clude Instant Offense, Criminal History, and Psychiatric History. Plaintiff's non violent instant offense cannot preclude him and neither can his criminal history which does not contain a crime on the list of exclusion.

56. August 9, 2017: A "Program Eligibility Screening & Mon-itoring Inmate Program Overview" is printed and mentions Plain-tiff's reason for unsuitability as "OTHER".

57. August 14, 2017: Plaintiff files his third grievance (GNE-9484-17) because his O.R.C. refused to provide him with the reason(s) for which he was assumed to be ineligible for SHOCK.

58. August 23, 2017: Plaintiff submits grievance number four (GNE-9507-17) which addresses another SHOCK/ Reasonable Accomodation denial (of July 24, 2017), thereby demonstrating aggravated acts of discrimination. Plaintiff will again agree to attend SHOCK when it is "offered" in the future, only to be

treated similarly.

59. August 28, 2017: Elena Landriscina of Disibility Rights contacts a Commissioner of Corrections and two Superintendents of Greene C.F. to demand cooperation and compliance and informs Plaintiff of her investigation.

60. September 13, 2017: In an inmate Grievance Resolution Committee hearing, concerning Grievance GNE-9507-17, the Committee remarkable states: "Committee agrees that DOCCS should have a medical alternative to SHOCK even if this requires changes to State statute". In order to exhaust his administrative remedies and preserve his right to file a claim, Plaintiff appeals this decision to the Superintendent and eventually the C.O.R.C. in Albany.

61. September 26, 2017: Superintendent Smith responds to Grievance GNE-9484-17 in reference to being denied the specific reasons for which Plaintiff was denied the SHOCK program. "UN-SUITABLE-OTHER" did not clarify the reason(s). It is accurate that, "...(Plaintiff) did not agree to participate in the pro-gram as presented", but rather exercised his right to submit a Reasonable Accomodation Request form, pursuant to NYSDOCCS Di-rective #2614, Section IV. "As presented" would've involved rigorous physical exertion that would've placed Plaintiff's heal-th/ safety at risk of injury. Plaintiff sought the alternative placement in the C.A.S.A.T. program that court-ordered inmates with disabilities attend, or another arrangement.

62. September 29, 2017: Plaintiff is "offered" the SHOCK program again and he signs another Memo Of Agreement but this time he made it understood that he was not medically fit by

attaching a Reasonable Accomodation Request Form and medical records.

63. September 29, 2017: Plaintiff attaches a Reasonable Accomodation Request Form to the SHOCK Incarceration Memo Of Agreement since he is a qualified individual with a disibility; an individual who with or without reasonable accomodations to rules, policies,or practices, meets the essential eligibility requirements for participation in a program or activity provided by a public entity. Dr. Smith inscribes on the form: "Please note current medical condition precludes strenuous program activities. Disibility well documented". As a result of there being no statute that allows for a disabled volunteer to enter SHOCK, the Deputy Superintendent of Programs, Marie Hammond responds: "SHOCK requires participants to engage in physical exercise and drills. Inmate does not qualify for exemption from this requirement".

64. October 13, 2017: The SHOCK Screening Committee fill out another SHOCK Incarceration Suitability Screening Form for the second time and deny Plaintiff admission again; this time for "UNSUITABLE-MEDICAL".

65. October 20, 2017: Superintendent Smith responds to Grievance GNE-9507-17, pertaining to the July 24, 2017 SHOCK/ Reasonable Accomodation denials. However, due to the numerous and frequent acts of disibility discrimination and subsequent grievances, the Superintendent begins to combine the incidences into one matter because they are of the same nature. Yet, each denial is a seperate and distinct act.

~~realizes Plaintiff cannot benefit from this as he will be released from incarceration in December of 2018, and that Plaintiff is solely concerned with being financially compensated for the three years in excess that he served in prison. Therefore, she closes Plaintiff's case. (see Ex.34)~~

66. October 23, 2017: Elena Landriscina of DRNY provides Plaintiff with a copy of NYSDOCCS's Counsel's response to her request for answers about Plaintiff's SHOCK denials. Associate Counsel states Plaintiff wasn't medically cleared. He adds: "Mr. Goodall's conditions do not constitute a disibility as defined in the Americans With Disibilities Act", but later admits Plaintiff's medical condition would excuse him from "virtually the entire program" because of the activities involved. Dr. Smith already documented "disibility well documented" but this fact aside, the ADA Amendment Act of 2008 focuses more on whether or not an entity meets obligations to disabled prisoners, rather than solely focusing on whether the impairment is a disibility. Counsel mentions that a fundamental alteration of the program would be needed to accomodate Plaintiff but fails to relate that there is already an alternative to SHOCK called C.A.S.A.T. and only a change in policy is needed for Plaintiff to engage in the program. This would also eliminate any potential financial burden on the administration. Lastly, even if the Defendants could show that

changes would fundamentally alter the program, or cause a financial burden, the law mandates prisons to still "take another action" that would "ensure that individuals with disibilities receive the benefits or services provided" by the prisons. NYSDOCCS and by extension, its employees, failed to abide by the law. These examples alone testify to the truth that only a change in policy is required to reverse the trend of discrimination.

67. October 27, 2017: After waiting for the completed Reasonable Accomodation Request form from the Deputy Superintendent of Programs and the decision from the SHOCK Screening Committee,Plaintiff files his final grievance (GNE-9608-17) about being de-nied SHOCK again.

68. December 20, 2017: Superintendent Smith responds to Plaintiff's final grievance (GNE-9608-17) and it is appealed to the C.O.R.C. in Albany to fully exhaust administrative remedies.

69. December 23, 2017: Plaintiff mailed a Notice Of Intention To File A Claim on the Attorney General within (90) days of the accrual of the last incident of discrimination in the event this venue is chosen.

70. July 5, 2017: The C.O.R.C. responds to the first of numerous grievances (GNE-9243-17) at the final stage of the appeal process. Naturally, all of Plaintiff's allegations are refuted.

71. The C.O.R.C. is currently in possession of the four unanswered grievances that are scheduled for a hearing, although

the maximum allotted timeframe of (30) days to render a final decision has grossly exceeded this timeframe.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

72. Plaintiff used the Inmate Grievance Program (henceforth, I.G.P.) procedure available at Greene C.F. to attempt to resolve the discrimination on (5) seperate occasions as there were (5) individual commissions against Plaintiff. Plaintiff filed his first grievance (GNE-9243-17) on March 21, 2017, and presented the facts related to the claim. On April 10, 2017, Plaintiff amended this grievance and it was consolidated. On April 24, 2017, Plaintiff was sent a response from the Superintendent, explaining his grievance was denied. On April 27, 2017, Plaintiff appealed the denial to the C.O.R.C. in Albany for final disposition and to exhaust administrative remedies. On July 5, 2018, the C.O.R.C. unanimously denied Plaintiff's first of five grievances.

73. Plaintiff again used the I.G.P. procedure available at Greene C.F. to attempt to resolve the on-going discrimination by filing his second of five grievances (GNE-9366-17) on May 30, 2017, which presented the facts related to his claim. On June 5, 2017, Plaintiff amended this grievances and it was consolidat-ed. On July 31, 2017, Plaintiff was sent a response from the Superintendent explaining his grievance was denied. On August 1, 2017, Plaintiff appealed the denial to the C.O.R.C. for final

disposition and to exhaust his administrative remedies. NYSDOCCS Directive #4040 reveals the policy which allows the C.O.R.C. (30) days to render a final decision. This grievance was received by the C.O.R.C. on August 10, 2017, but a timely decision has been delayed due to an alleged influx of grievances by inmates.

74. Plaintiff again used the I.G.P. procedure available at Greene C.F. to attempt to resolve the on-going discrimination by filing his third of five grievances (GNE-9484-17) on August 14, 2017, which presented the facts related to his claim. On September 26, 2017, Plaintiff received a response from the Superintendent, explaining his grievance was affirmed to an extent. On September 28, 2017, Plaintiff appealed this decision to the C.O.R.C. for a final decision. This grievance was received by the C.O.R.C. on November 28, 2017, but a timely decision has been delayed due to an alleged influx of grievances by inmates.

75. Plaintiff again used the I.G.P. procedure available at Greene C.F. to attempt to resolve the on-going discrimination by filing his fourth of five grievances (GNE-9507-17) on August 23, 2017, which presented the facts related to his claim. On September 13, 2017, Plaintiff received a hearing on his grievance, which was partly accepted. On September 14, 2017, Plaintiff appealed this decision to the Superintendent. On October 20, 2017, Plaintiff was sent a response from the Superintendent, explaining his grievance was denied. On October 24, 2017, Plaintiff appealed the denial to the C.O.R.C. in Albany for a final disposition and to exhaust administrative remedies. This grievance was re-

disposition and to exhaust his administrative remedies. NYSDOCCS Directive #4040 reveals the policy which allows the C.O.R.C. (30) days to render a final decision. This grievance was received by the C.O.R.C. on August 10, 2017, but a timely decision has been delayed due to an alleged influx of grievances by inmates.

74. Plaintiff again used the I.G.P. procedure available at Greene C.F. to attempt to resolve the on-going discrimination by filing his third of five grievances (GNE-9484-17) on August 14, 2017, which presented the facts related to his claim. On September 26, 2017, Plaintiff received a response from the Superintendent, explaining his grievance was affirmed to an extent. On September 28, 2017, Plaintiff appealed this decision to the C.O.R.C. for a final decision. This grievance was received by the C.O.R.C. on November 28, 2017, but a timely decision has been delayed due to an alleged influx of grievances by inmates.

75. Plaintiff again used the I.G.P. procedure available at Greene C.F. to attempt to resolve the on-going discrimination by filing his fourth of five grievances (GNE-9507-17) on August 23, 2017, which presented the facts related to his claim. On September 13, 2017, Plaintiff received a hearing on his grievance, which was partly accepted. On September 14, 2017, Plaintiff appealed this decision to the Superintendent. On October 20, 2017, Plaintiff was sent a response from the Superintendent, explaining his grievance was denied. On October 24, 2017, Plaintiff appealed the denial to the C.O.R.C. in Albany for a final disposition and to exhaust administrative remedies. This grievance was re-

ceived by the C.O.R.C. on November 28, 2017, but a timely decision has been delayed due to an alleged influx of grievances by inmates. (see Ex.26, Ex.28, Ex.33, Ex.40)

76. Plaintiff again used the I.G.P. procedure available at Greene C.F. to attempt to resolve the on-going discrimination by submitting his fifth of five grievances (GNE-9608-17) on October 27, 2017, which presented the facts related to his claim. On December 20, 2017, Plaintiff was sent a response from the Superintendent, explaining his grievance was affirmed to an extent. On December 23, 2017, Plaintiff appealed this decision to the C.O.R.C. in Albany for final disposition and to exhaust his administrative remedies. This grievance was received by the C.O.R.C. on February 2, 2018, but a timely decision has been delayed due to an alleged influx of grievances by inmates. (see Ex.36, Ex.37, Ex.40)

VII. STATEMENT OF LEGAL CLAIMS

77. Plaintiff realleges and incorporates by reference, paragraphs (1) to (78).

78. All of the Defendants have committed, contributed to, and willfully demonstrated aggravated disibility discrimination against Plaintiff by denying him participation in a (early release from incarceration) program without reasonable accomodations, while he was a qualified individual with a disibility, thereby prohibiting Plaintiff from benefiting; and in doing so,

violated his rights the Americans With Disabilities Act, Title II, and New York State Human Rights Law, resulting in loss of liberty interests/ freedom, pain and suffering, and emotional distress.

79. The Defendants' actions interfered with and violated Plaintiff's statutorily protected Federal rights and State rights, resulting in conditions of confinement that were worse than what was normal for other prisoners. This punishment, received by Plaintiff, was an atypical and significant hardship on Plaintiff in relation to the ordinary incidences of prison life, whereby Plaintiff was deprived of the basic human need of liberty and justice.

80. Any defense that supports the notion that prisons do not have to make modifications to a service, program, or activity if doing so would "fundamentally alter the nature of the service, program, or activity." This allows prisons to balance the rights of disabled prisoners against the integrity of its service, pro-gram, or activity. Again, NYSDOCCS has shown with their pro-vision to allow disabled court-ordered SHOCK prisoners into its SHOCK alternative C.A.S.A.T. program that there is no fundamental alteration needed; just a change in policy to permit non court-ordered volunteer prisoners whom are disabled and meet eligibility requirements.

81. Any defense that supports the notion that prisons do not have to make modifications to a service, program, or activity if

doing so would "cause undue financial or administrative burden": The Department of Justice has determined that the undue burden test would be difficult for a prison to pass - that it would apply only in "the most unusual cases". "Congress intended the 'undue burden' standard in Titl II to be significantly higher than the 'readily available' standard in Title III, and that "the program assessibility requirement of Title II should enable individuals with disibilities to participate in and benefit from the service, program, or activity of public entities in all but the most unusual cases". But the most plain evidence that no financial burden would exist lays in the fact that several SHOCK alternative programs are already in procedural operation - females benefit from the C.A.S.A.T. program at Bedford Hills as due court-ordered male prisoners. A change in policy to allow volunteer disabled prisoners is the only hinderance in preventing participation.

VIII. PRAYER FOR RELIEF

82. WHEREFORE, Plaintiff respectfully prays that this Court enter judgment granting Plaintiff:

83. A declaration that the acts and omissions described herein violated Plaintiff's rights under the Americans with Disabilities Act and the New York Human Rights Law.

87. Compensatory damages in the amount of $3,000,000 against each Defendant jointly and-severally.

88. Punitive damages in the amount of $2,000,000.

89. A jury trial on all issues triable by jury.

90. Plaintiff's costs in this suit.

91. Any additional relief as this Court deems just, proper, and equitable.

Dated: January 23 ,2019
Central Islip, New York

Respectfully Submitted,
Shaun Goodall

Shaun Goodall
15 Koren Lane
Middle Island
New York 11953

no mail received here

Mailing Address of:
Shaun Goodall
Post Office Box 48
Wantagh, New York 11793