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Plaintiff, P.D. (a pseudonym) vs. Defendant, MIDDLESEX COUNTY	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY LAW DIVISION DOCKET NO. MID-L-3811-14 CIVIL ACTION **NOTICE OF MOTION FOR SUMMARY JUDGMENT**

TO: Clerk - Law Division
Middlesex County Superior Court
56 Paterson Street
New Brunswick, NJ 08903

SIRS:

PLEASE TAKE NOTICE that the undersigned will apply to the above-named Court at the Middlesex County Courthouse, New Brunswick, New Jersey, on December 16, 2016, at 9:00 a.m., or as soon thereafter as counsel may be heard, for an Order granting Defendant, Middlesex County, Summary Judgment in the within cause of action. Please be advised that we shall rely upon the attached brief of counsel.

PROOF OF MAILING

In compliance with Rule 1:6, et seq., the original of the within Notice of Motion has been filed with the Motion's Clerk of Middlesex County and copies have been served upon the following via Electronic Mail as well as the United States Postal Service, regular mail, pursuant to Rule 1:5, et seq.:

Alexander Shalom, Esq.
Rebecca Livengood, Esq.
American Civil Liberties Union of New Jersey (ACLU)
89 Market Street
PO Box 32159
Newark, NJ 07102
Attorney(s) for Plaintiff
Mr. P.D. (a pseudonym)

Mayling Blanco, Esq.
Blank Rome, LLP
405 Lexington Avenue
New York, NY 10174
Attorney(s) for Plaintiff
Mr. P.D. (a pseudonym)

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Pursuant to R. 1:6-2(e), the undersigned:

( ) waives oral argument and consents to disposition on the papers;

( ) does not request oral argument unless opposition is filed;

(xx) requests oral argument.

There is presently a trial date of January 30, 2017 set for this matter.

A proposed form of Order is annexed.

HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP
Attorneys for Defendant, Middlesex County

By: _____
SUSAN K. O'CONNOR

Dated: November 18, 2016

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SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY
LAW DIVISION
DOCKET NO. MID-L-3811-14

Plaintiff,

P.D. (a pseudonym)

vs.

Defendant,

MIDDLESEX COUNTY

STATEMENT OF FACTS AND BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT, MIDDLESEX COUNTY

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STATEMENT OF PROCEDURAL HISTORY

This Matter

1. On or about June 25, 2014, Plaintiff[1] filed an Order to Show Cause and Verified Complaint. (Exhibit 1 – Complaint).

2. Count I of Plaintiff's complaint is a claim under the New Jersey Civil Rights Act (hereinafter NJCRA), N.J.S.A. 10:6-2, specifically under Article I, Paragraph 1, of the New Jersey Constitution which provides: "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness ", and which protects rights of pretrial detainees that would amount to cruel and unusual punishment. (Exhibit 1, ¶¶ 23, 24).

3. Count II of Plaintiff's complaint is a claim under the NJCRA, specifically under Article I, Paragraph 12, of the New Jersey Constitution, which provides that "cruel and unusual punishments shall not be inflicted". (Exhibit 1, ¶29).

4. Count III of Plaintiff's complaint is a claim under the New Jersey Law Against Discrimination, (hereinafter LAD), N.J.S.A. 10:5-1, et seq., as the Middlesex County Adult Correction Center constitutes a place of public accommodation. (Exhibit 1, ¶33).

5. As to the request for preliminary injunctive relief on the Order to Show Cause, same was briefed and orally argued before the Hon. Travis L. Francis, A.J.S.C. on July 7, 2014. At oral argument, the Court noted the argument in Plaintiff's brief:

> And asserts that he will likely succeed on the merits of his claims because pretrial detainees enjoy protections under the due process clause of the U.S. Constitution...And the petitioner further asserts that he is not seeking protection from cruel and usual punishment under the Eighth Amendment, but rather protection from punishment under the due process clause of the 14th Amendment....
>
> (Exhibit 2, Transcript, at T4:16-5:1).

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[1] Plaintiff, P.D., filed this matter under a pseudonym.

6. Plaintiff's counsel agreed with the Court that "[w]hen you are a pretrial detainee having not been convicted the Eighth Amendment is not the applicable protection...So to that end we are relying on Article I, Paragraph 1 of the State Constitution rather than Article I, Paragraph 12..." (Exhibit 2, T8:14-25).

7. Further, in oral argument, Plaintiff's counsel, in response to the Court's inquiry, advised that he was not seeking a transfer to General Population for his client. (Exhibit 2, T29:8-10).

8. Plaintiff's counsel advised the Court that Plaintiff was seeking a "unique remedy for his housing." (Exhibit 2, T30:23-31:1).

9. On July 14, 2014, the Honorable Diane Pincus issued an order in the underlying Criminal Matter, Complaint number W-2013-580-1215, releasing Plaintiff on his own recognizance to receive psychiatric treatment in a locked treatment facility, which was identified as the University Behavioral Health Care Acute Psychiatric Services (UBHC APS). (Exhibit 3 – Order of Judge Pincus, dated July 14, 2014).

10. Plaintiff was to be transferred to UBHC APS to receive treatment at the earliest possible availability and to be held until such time that it was determined that Plaintiff was stabilized. (Exhibit 3).

11. The Order also required that Plaintiff be evaluated to determine the next appropriate level for on-going inpatient treatment and receive such treatments. (Exhibit 3).

12. Finally, the Order required that Plaintiff not be released into the community without appropriate supervision. (Exhibit 3).

13. Pursuant to Judge Pincus' Order, Plaintiff was released from the MCACC on July 16, 2014, and as a result Plaintiff withdrew his Order to Show Cause as to Preliminary Injunctive Relief only. (Exhibit 4 – Letter dated July 16, 2014 from Mr. Shalom to Judge Francis).

14. Trial is scheduled for January 30, 2017.

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C-Pod Matter

15. On November 5, 2015, a Class Action Complaint was brought in the United States District Court for the District of New Jersey, under the caption C-Pod Inmates of MCACC, Azariah Lazar, Luis Borrero, hector Amengual, Sean Pershing, Tyson Ratliff, Jonathan Rodriguez, Terrence Edwards, Damani Harris and Patrick O'Dwyer v. Middlesex County, Docket No. 3:15-cv-7920 ("C-Pod Case"), setting forth the same allegations which are set forth in the instant action and seeking the same injunctive relief. (Exhibit 5 – C-Pod Class Action Complaint).

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STATEMENT OF UNDISPUTED FACTS[2]

PARTIES

A. Plaintiff

1. Plaintiff has been diagnosed as suffering from bipolar disorder, intermittent explosive disorder and cognitive impairments, and has been previously hospitalized for psychiatric evaluation and treatment on several occasions. (Exhibit 1 – Complaint ¶ 8).

2. On or about October 17, 2013, Plaintiff, P.D., was incarcerated in the Middlesex County Adult Correctional Center ("MCACC"), awaiting trial on criminal charges stemming from his arrest on October 16, 2013, for Aggravated Assault. (Exhibit 1 – Verified Complaint ¶ 6).

3. On that occasion, North Brunswick Police had arrested Plaintiff for an assault on his sister-in-law during a confrontation at her home, where his father also lived. He was processed and served with a continuance of a 2010 Temporary Restraining Order (TRO). Bail was set at $15,000 for the Aggravated Assault and he was transported to the MCACC in default of bail. (Exhibit 6, North Brunswick Police records for October 16, 2013 assault, redacted).

4. The Superior Court of New Jersey, Chancery Division - Family Part, entered a TRO at the request of Plaintiff's father on February 19, 2010 with continuance Orders entered on March 3, 2010, March 12, 2010, March 26, 2010, March 30, 2010, and April 6, 2010. (Exhibit 7, Middlesex County Family Court records).

5. As a result of the Plaintiff's arrest for violation of the TRO, Plaintiff was incarcerated at the MCACC from February 21, 2010 through March 23, 2010. (Exhibit 8, episode sheet).

6. On March 23, 2010 Plaintiff appeared on the violation of Restraining Order (Docket No. FO-12-374-10G) before the Honorable Deborah J. Venezia, P.J.F.P. He was given one (1) year of probation and credit for time served on condition that he receives alcohol and

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[2] For purposes of this motion for summary judgment only, Defendant will rely upon Plaintiff's version of facts to avoid a ruling based on material issues of fact.

drug treatment/anger management counseling, obeys the Final Restraining Order and reports to probation. It was noted that he was homeless at the time. (Exhibit 9).

7. Plaintiff had been previously involved with police when he had been spoken with, and in some instances been arrested, concerning his interaction with children (May 16, 2015 and August 10, 2013), harassment (July 26, 2013 report), simple assault (June 9, 2013), obstruction (May 5, 2010), criminal mischief (August 9, 2001) and Aggravated Assault (August 6, 1999). (Exhibit 10, North Brunswick Police and New Brunswick Police records).

8. Plaintiff was previously hospitalized on several occasions, often for violent behavior. At University Behavioral Healthcare, Acute Psychiatric Services, Plaintiff had been evaluated on February 20, 2000, March 10, 2000, July 1, 2000, July 6, 2000 (which resulted in involuntary commitment to Trenton Psychiatric Hospital), March 19, 2001 (which resulted in involuntary commitment to Trenton Psychiatric Hospital), August 9, 2001 (which resulted in involuntary commitment to Trenton Psychiatric Hospital), July 7, 2005 (which resulted in involuntary commitment to Trenton Psychiatric Hospital) and May 5, 2010, and September 11, 2010 (which resulted in involuntary commitment to Princeton House). (Exhibit 11).

9. Princeton House records confirm that Plaintiff was hospitalized prior to his incarceration at the MCACC on October 16, 2013, specifically on three (3) occasions on May 12, 2013, from September 13, 2010 through October 5, 2010, and on July 8, 2010. (Exhibit 12, Princeton House records).

10. The medical records reflect that Plaintiff suffers from mood disorder, impulse control disorder as manifested by irritability, agitation, poor impulse control, poor frustration tolerance, assaultive behavior, property destruction, mood swings, and impaired insight and judgment. He was found to be non-compliant with medications which resulted in assaultive behavior, previous incarcerations, as well as homelessness. He shoved his 80-year-old father in the past week and physically prevented him from calling 911 for help and his father was fearful of Plaintiff. He was found to be kicking doors, punching walls and throwing household

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objects in the past week due to agitation, poor impulse control and medication non-compliance. He was also non-compliant, lacking insight and required a higher level of care. The diagnosis rendered at that time was medication non-compliance, aggressive behavior and bipolar disorder. He could not live in the men's shelter due to charges pressed against him due to violence. On May 7, 2010 he became violent at a Burger King and threw chairs and tables. He also threw chairs at the Catholic Charities on May 5, 2010. The charges for being violent at the Ozanam shelter in New Brunswick were charged by the New Brunswick Police. He also had engaged in past violence against his mother when she was alive. He also spent one month at the Union County Jail in 2000 for throwing a brick at a neighbor. On August 8, 2001 he became more assaultive towards his mother. (Exhibit 13, September 13, 2010 Princeton House screening document).

11. The two (2) more recent extended hospitalizations at Trenton Psych occurred from 1) November 3, 2010 through February 8, 2012 and 2) July 27, 2005 through May 15, 2006.

12. The 2010 TPH screening document noted a prior diagnosis of mild mental retardation and a history of multiple psychiatric hospitalizations including, UBHC, Princeton House, Kimball Medical Center and several times at TPH. It was noted that Plaintiff had mild mental retardation, problems with impulse control and low intellectual functioning. It further noted that he had no insight into his problems. (Exhibit 14, November 3, 2010 discharge summary).

13. During his 2010 TPH commitment, he was noted to have issues with "touching other peers" and that he "could not be redirected." Similarly, during his 2005 commitment to TPH, he continued to have problems and altercations with his peers, continued to have trouble getting up in the morning and was reported to be disrespectful to staff. During both commitments, Plaintiff was placed on intensive supervision or was transferred to different units

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in an effort to ameliorate the assaultive behavior, inability to maintain boundaries, and inappropriate touchings. (Exhibit 14, TPH records).

14. Since his release from MCACC on July 16, 2014, Plaintiff has been re-admitted back to TPH, where he remains committed today. Upon Admission, the Clinical presentation provided a psychiatric diagnosis of "mild impulsive control disorder and mild cognitive impairment as well bipolar disorder by history." It noted that he had a history of extensive inpatient hospitalizations which included his last admission to Princeton House which had discharged him on October 1, 2014. It noted that Plaintiff had been brought to the hospital for threatening his Integrated Case Management Services (ICMS) worker. He was noted to have been living in his car and was identified as homeless. It noted that he was non-compliant with medications. Finally it noted a prior history of violence, which included the assault on his sister-in-law, which incident was the basis for Plaintiff's incarceration at the MCACC. It also noted that he had thrown a brick at a neighbor for which he spent a month in jail. The Initial and Comprehensive Integrated Assessment noted that Plaintiff believed his reason for commitment was that he was "homeless." He also stated that he did not believe he needed his medication. Stressors were identified as financial, homelessness, and social. It also noted that he had a history of violence towards others, and making violent intent/threats to harm others or property. It also noted a history of sex offenses or other high risk behaviors and that he was at risk for sexually aggressive behavior. Finally, a Psychiatric Reassessment was completed on October 24, 2014 by George Dubois, M.D. which noted a diagnosis of Axis I – Mood Disorder/Impulse Control Disorder; Axis II – Mild Mental Retardation; Axis III – Overweight and history of seizure and Axis IV – Moderate. (Exhibit 15, TPH admission Clinical presentation, Initial and Comprehensive Integrated Assessment, and Psychiatric Reassessment).

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B. **Middlesex County**

15. As indicated above, Plaintiff was incarcerated at MCACC from October 17, 2013 to July 16, 2014. Warden Cranston became the Warden at the MCACC in June of 2014, shortly before Plaintiff's release. (Exhibit 16, Cranston deposition, T7:2-7).

16. The budget of MCACC, including the medical contract and other vendors totals $15,000,000.00 to $17,000,000.00 a year. For any physical plant changes or other capital improvements, the authorization of the Freeholders would have to be obtained, as well as the allocation of additional monies by the Freeholders. (Exhibit 16, Cranston deposition, T132:21-134:16).

17. In 2016, the number of inmates at the MCACC totaled 894, male and female inmates, with the number in the past five (5) years varying by 100 inmates. (Exhibit 17, Grover deposition, T29:25-30:23).

18. The housing units at the MCACC are A, B, C, D, E, Female, Medical, SNU, and work release. Upper A houses medium-maximum inmates as does Lower B. Lower A is for those inmates deemed maximum custody. Upper B is for inmates charged with sexual offenses. (Exhibit 18, Pirre transcript, T37:13-38:7).

19. There are three classifications of inmates that are housed in C-Pod. Those who are on disciplinary status, administrative segregation status (Ad Seg), or in protective custody. As to protective custody, it could be voluntary protective custody (an inmate requests to be in protective custody) or involuntary protective custody (the facility has information that an inmate is vulnerable in General Population). As to Ad Seg, those inmates are placed in that classification to protect them from other inmates, or because they are gang members although they have no current violations, or the inmate's effect on the population is detrimental to the safety and security of the prison. Disciplinary detention is for those inmates who violate the rules. Under the disciplinary process, an inmate receives a hearing and if found to be guilty, are then sentenced to disciplinary detentions. (Exhibit 16, Cranston deposition, T49:8-51:21).

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20. Housing units A, B, D and E are double-bunked cells. General population units, with the specific exceptions noted above, and SNU inmates would be out on the day room floor during the day. C Pod has the same size cell as a cell in A, B, D or E units, but are single bunk cells. In C Pod, the inmate is locked in his cell 23 hours a day. The inmates assigned to N Unit are locked down the first shift (6:00 a.m. to 2:00 p.m.) and then locked out (or on the day room floor) until 9:00 p.m. (Exhibit 17, Grover deposition, T36:19-38:21).

21. In each cell in every unit, there is a bunk, desk and an all-in-one toilet, sink and water fountain. The cell has a window. (Exhibit 17, Grover deposition, T39:21-40:4 and Exhibit 19, photograph of C pod cell).

22. In a general housing unit, there are open folding tables and chairs, phones, a TV on the day room floor, and books from the library. (Exhibit 17, Grover deposition T40:14-41:11).

23. C Pod, which has 48 cells total, with 24 cells in upper C Pod and 24 cells in lower C Pod, also has a day room floor which has two security enclosures contained therein. Each inmate in C Pod is allowed out for one hour during which time they may use a secured bathroom (there are two), shower, or exercise in a security enclosure. This hour out is limited to five hours per week. (Exhibit 17, Grover deposition, T41:25-43:1).

NON-PARTIES

A. Department of Corrections

24. The Legislature has authorized the New Jersey Department of Corrections, and its Commissioner, to promulgate rules and regulations as to State correctional facilities as well as County correctional facilities. N.J.S.A. 30:1B-10; N.J.A.C. 10A:1-1.5. As such, the DOC promulgates regulations for County correctional facilities, as set forth in N.J.A.C. 10A:31-1.1 et. seq. These regulations permit the State to analyze and evaluate the performance and adequacy of services provided by County facilities to inmates. Id.

25. In accordance with their authority, each year the DOC reviews reports, records, policies, statistics, and training, as well as performs an inspection of the MCACC, to determine

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compliance with the Rules and Regulations set forth in the Administrative Code. The relevant annual evaluations and inspections occurred April 29 to May 3, 2013 and October 6 to October 10, 2014. At each of these extensive reviews, the MCACC was found to be in full compliance with the requirements of N.J.A.C. 10A:31, the "Manual of Standards for New Jersey Adult County Correctional Facilities" and, further, the State noted that the MCACC medical provider, CFG, was accredited by the National Commission on Correctional Health Care (NCCHC), a well-known and respected agency. (Exhibit 20, 2013 and 2014 DOC Inspections).

B. CFG

26. The MCACC has a contract with CFG to provide medical, mental health and dental services to the inmates at MCACC. In addition, CFG is responsible to provide social services at MCACC. (Exhibit 21, Contract).

27. During the day, there are between five to fifteen medical staff members who are employed by CFG, who work within the facility. These include LPNs, an RN, a Medical Director, a Mental Health Director, per diem mental health staff, the Director of Nursing, a dentist, a dental assistant, and the Health Services Administrator (HSA). (Exhibit 7, Grover deposition, T29:7-28:2).

28. From 2013 to 2015, psychologists worked seven (7) days a week. (Exhibit 22, Sandrock deposition, T17:10-17:22).

C. Vera

29. On March 24, 2015, the Vera Institute of Justice (Vera), in conjunction with the Bureau of Justice Assistance, selected MCACC as one (1) of only five (5) corrections departments to participate in its Safe Alternatives to Segregation (SAS) initiative aimed at reducing the use of solitary confinement and other forms of segregated prisoner housing. See https://www.vera.org/newsroom/press-releases/vera-selects-five-corrections-departments-for-initiative-aimed-at-reducing-the-use-of-solitary-confinement.

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30. Warden Cranston learned of the availability of this grant from Twitter in the Fall of 2014, received approval from the County Administration (as the county had to put up $30,000.00 in costs) and made the application. (Exhibit 16, Cranston deposition, T127:24-128:14).

31. The MCACC was the only County jail that received the Vera grant. Warden Cranston noted that there were five recipients nationwide of the Vera grant, being Riker's, three state facilities, and the County. (Exhibit 16, Cranston deposition, T132:1-9).

32. It is expected that Vera will issue their report concerning the conditions at the MCACC shortly.

JAIL PROCEDURES

33. When an individual arrives at the jail after being delivered by an arresting agency, the individual is brought into Receiving and Discharge, where, among other things, his commitment is reviewed and he is asked preliminary questions, with the answers recorded on an "initial screening" form. Once the inmate is committed to the facility, he is changed out, given a copy of the inmate handbook, and then referred to the Medical unit. (Exhibit 23, MCACF Policy, bates MC400, Inmate Intake Process 8.02.01-15).

34. Each inmate receives a copy of the Inmate Handbook at admission and the Handbook provides a guideline of what's available, the services that are provided and what the rules are. (Exhibit 16, Cranston deposition, T37:16-24). This inmate handbook specifies prohibited inmate conduct and specifies the asterisk charges. Whether an institutional charge is major or minor is determined by the Administrative Code. N.J.A.C. 10A:4-4.1(a); N.J.A.C. 10A:4-5.1(a). Chargeable offenses are considered asterisk charges and include murder, assault, fighting and tampering with locks. As to the asterisks charges, a hearing pre-detention is permitted. If an inmate's conduct amounts to a non-asterisk charge, such as the misuse of mail, that would be considered a minor infraction. (Exhibit 17, Grover deposition, T146:6-147:18). The sanction for a major violation is 15 days per offense, with a 30 day limit per

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incident. The disciplinary committee can, at their discretion, suspend a sentence. Other authorized sanctions include the loss of good time, the loss of compensation time, the forfeit of confinement, restitution, on-the-spot sanctions or on-the-spot corrections. (Exhibit 17, Grover deposition, T166:7-14; Exhibit 24, Inmate Handbook).

35. Once in the Medical unit, a full medical screening is performed by CFG medical personnel. That screening includes not only a physical, but also a mental health screening. If CFG personnel determine that the inmate has a physical or mental health issue, the inmate may be housed in the Medical unit. If the Medical personnel clear the inmate for General Population, the inmate is usually housed in N Unit, but may be placed in other housing based upon their history with the institution (have they been there before), their medical issues, or their criminal history. (Exhibit 17, Grover deposition, T59:12-60:20; Exhibit 23, policy - Health Assessment Screening 2.20.01-6).

36. If the inmate has mental health issues, the severity of the issues are noted and addressed, with some inmates requiring routine follow-up, while other inmates may require immediate placement in special housing. CFG employee Dr. Sandrock, or the weekend mental health staff, reviews the mental health intake forms completed by nursing staff every morning. In the review, Dr. Sandrock makes a determination as to the extent of the mental health issues and whether the inmate will be added to the mental health caseload. If at intake an inmate is found to have mental health needs, then Dr. Sandrock will meet with the inmate for an in-person interview in his office. The length of the interview varies with the needs of the inmate. (Exhibit 22, Sandrock deposition, T29:18--31:1).

37. If an inmate is placed in N unit, the inmate is housed there pending a full objective jail classification review, which is performed by CFG employees at Social Services. As to classification, every inmate is evaluated for classification on an individual basis. The categories of classification include: Full minimum, Minimum, Medium, Maximum, Administrative Segregation, Disciplinary detention, Protective custody,15 minute watch, 30 minute watch, High

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Vis – med, High Vis – psych, Low Vis – med, Low Vis – psych, Withdrawal protocol, their job within the facility, or whether the inmate is assigned to an outside detail. (Exhibit17, Grover deposition, T54:3-16).

38. The Classification Committee determines the classification of each inmate based upon gender, age, size, offense, prior incarceration, aggressive/passive behavior, issues such as alcohol or drugs, physical issues, mental status, confinement, and security. The inmate is advised of the classification hearing, has an opportunity to appear and participate in the hearing, and also has the opportunity to appeal the classification status assigned. (Exhibit 23, policy – Classification Manual 2.10.10-5, bates MC311; Exhibit 24, Inmate Handbook). Of course, classification would also depend upon the housing that is available. (Exhibit 17, Grover deposition, T62:7-16).

39. The Classification Committee meets Monday through Friday and housing is assigned from there. The members of the Classification Committee include the Director of Social Services, a psychologist (Dr. Sandrock), a Medical Unit representative (Dr. Demary), a social worker, a Custody Sergeant, as well as an Intelligence/Gang Sergeant or Officer. (Exhibit 17, Grover deposition, T60:11-61:4; Exhibit 18, Pirre deposition, T20:17-21:12). In short, the Committee discusses inmates and their needs and where they should be housed. (Exhibit 18, Pirre deposition, T24:17-20).

40. The Classification Committee is not the disciplinary body. The Disciplinary Committee hears cases of inmate infractions and determines whether the inmate should be placed on disciplinary detention. (Exhibit 18, Pirre deposition, T29:21-30:14).

41. If there is a disciplinary infraction, the Disciplinary Committee would provide the reports to the Classification Committee. Further, the Classification Committee gathers information from medical personnel and the psychologist. (Exhibit 18, Pirre deposition, T23:8-18).

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42. It is noted that housing is different from classification. An inmate may be classified as Administrative Segregation, but could be housed in different units, such as C pod, SNU, or Medical. (Exhibit 18, Pirre deposition, T23:24-24:5).

43. Classification status can change over the course of an inmate's incarceration, from maximum to minimum, or from Administrative Segregation to General Population. (Exhibit 18, Pirre deposition, T42:12-23).

44. Similarly, housing status can also change over the course of an inmate's incarceration, moving an inmate between different housing units. Id.

45. If there is a disability, Medical staff makes the housing recommendations. The psychologist would advise the classification committee that an inmate has to go to a particular unit based on a mental health issue and that assessment will control. At no time has the Classification Committee ever overruled a recommendation from Dr. Sandrock, the CFG psychologist, regarding the housing of an inmate with mental health issues. (Exhibit 18, Pirre deposition, T52:3-7; 66:18-24).

46. Administrative Segregation is the removal of an inmate from General Population due to imminent danger or a threat to safety and security of the institution. If the inmate is housed in C pod, while on Administrative Segregation, that inmate would be subject to 30 minute checks by corrections officers, checks concerning the security of their cell three times per day (known as window wall checks), religious personnel visits, legal visits, and services such as commissary, laundry, mail, hair, library and education materials. Further, during the five (5) hours of recreation outside their cell each week, they are permitted visits with outside persons, telephone privileges and television privileges. A nurse is in C pod three times per day dispensing medication and to speak with inmates. Further, social workers are in C pod once each week, permitting additional telephone privileges and assisting inmates with issues. Finally, inmates can go to the Medical unit based upon their submission of sick call slips, nursing and staff observations, or requests by the inmate or medical personnel. (Exhibit 23, Policy – Mental

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Health Services 2.30.01-6; Administration Segregation Status 3.11.08-1; Exhibit 24, Inmate handbook).

PLAINTIFF'S INCARCERATION

47. Plaintiff entered the MCACC on October 17, 2013. After being asked the preliminary questions at Receiving (Exhibit 25, bates MC227), Plaintiff underwent a physical and mental health assessment in the Medical department. (Exhibit 25, bates MC212 and MC213). CFG medical personnel noted that Plaintiff had a mental health issue requiring routine follow-up and approved him for General Population. (Id.). As such, he was assigned to N unit.

48. If at intake, an inmate is found to have mental health needs, Dr. Sandrock will meet with the inmate for an in-person interview in his office. The length of the interview varies with the needs of the inmate. (Exhibit 22, Sandrock deposition, T30:6-31:1). On October 18, 2013, Dr. Sandrock, the psychologist employed by CFG, evaluated the Plaintiff. (Exhibit 26, bates MC283). He learned that Plaintiff may be developmentally disabled and that a Sgt. knew him from the community. From the way the note is written, Dr. Sandrock believes that he received that information from the Social Worker being in touch with Plaintiff's family. (Exhibit 22, Sandrock deposition, T38:7-38:24).

49. Also on October 18, 2013, Social Services performed their intake. (Exhibit 26, bates MC6).

50. On October 20, 2013, Plaintiff was transferred from N unit to Lower D, a medium to maximum security unit by the Classification Committee. (Exhibit 27, Cell Assignment History sheet, bates MC503-06). Thereafter he was transferred on October 23, 2013 from Lower D to K unit, a dorm unit. (Id.).

51. While on K unit, on November 5, 2013, Plaintiff filled out a sick call slip requesting medical attention for a nose bleed. He was seen in the Medical unit on November 6, 2013. (Exhibit 28, bates MC293).

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52. On November 11, 2013, Plaintiff was transferred from K unit back to N unit, based on a report by the unit officer that Plaintiff was found wandering and talking to himself while the Unit was on lockdown, and thus, he was unsuitable for placement in a dormitory unit. (Exhibit 29, officer report; Exhibit 27, Cell Assignment History sheet and Classification card, bates MC503-06).

53. Based on the Officer's report, Plaintiff was seen by Dr. Sandrock on November 11, 2013. Dr. Sandrock found him to be hyperactive and according to reports needed frequent redirection and a level of supervision. Dr. Sandrock notes that another placement would be discussed at Classification. (Exhibit 29, bates MC281).

54. On the same day, November 11, 2013, Plaintiff requested medical attention for his nose and leg, and was seen by medical personnel on that date. (Exhibit 29, bates MC292).

55. One (1) day later, on November 12, 2013, Plaintiff was transferred out of the intake or N unit and assigned to the Special Needs Unit (SNU). (Exhibit 27). It is noted that Dr. Sandrock saw him on that date, advised him that he was being moved to SNU and provided him with encouragement to make a good adjustment. (Exhibit 30, bates MC279, MC302).

56. While in SNU, on November 18, 2013, Plaintiff requested medical attention for his knee and was seen in the Medical unit on November 20, 2013. (Exhibit 31, bates MC291).

57. Plaintiff requested medical attention on November 24, 2013 for a nose bleed and was seen on the same date. (Exhibit 32, bates MC290).

58. On the same date, Plaintiff also requested that a Social Worker contact his Public Defender, as well as provide a copy of his inmate account. (Exhibit 32, bates MC7).

59. On November 25, 2013, Plaintiff was charged with conduct that disrupts regular order and two (2) counts of refusing an Order for flipping a table in SNU, as he was agitated from other inmates. He had also refused to comply with the Officers' Orders following the incident. He was noted to be unpredictable and was placed in the Medical Unit on High Visibility

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psych watch, which consisted of 15 minute observations. (Exhibit 33, Officer reports; Exhibit 27; Exhibit 17, Grover deposition, T79:22-80:3; Exhibit 33).

60. On November 26, 2013, Plaintiff was seen by Dr. Sandrock, who noted that Plaintiff's cognitive limitations impair his ability to follow the rules. Dr. Sandrock and the Plaintiff discussed his actions of the day before, as well as the consequences for those actions. Dr. Sandrock cleared Plaintiff for Disciplinary detention but on a 30 minute watch. (Exhibit 34).

61. On November 27, 2013, the Disciplinary Committee found Plaintiff guilty of all charges and he was given fifteen (15) days disciplinary lock up for each charge, however two (2) charges were suspended. As the maximum disciplinary lock up an inmate can receive is thirty (30) days, and two (2) of the charges were suspended, Plaintiff was given a total of ten (10) days total disciplinary lock up (one-third of the sentence). (Exhibit 34, Court line). These charges are asterisk charges. As an inmate confined to disciplinary detention, he would not be permitted to watch TV, have visits, use the telephone, or order commissary. (Exhibit 17, Grover deposition, T81:6-13).

62. On November 27, 2013, Plaintiff was medically cleared for disciplinary detention by Nurse Amposah. (Exhibit 34).

63. It is noted that based on Plaintiff's medical issues, he was receiving 'over the counter' medication in October, November and December of 2013. (Exhibit 35).

64. On December 6, 2013, Dr. Sandrock had Plaintiff transferred from C pod, disciplinary detention, to SNU and removed from the 30 minute watch. (Exhibit 36, bates MC299; Exhibit 27). Plaintiff was not on any watch, nor was he on "lockup" status. (Exhibit 18, Pirre deposition, T82:4-82:22).

65. While in SNU, on December 8, 2013, Plaintiff was charged with sexually assaulting another inmate. Again, these charges are asterisk charges. (Exhibit 37).

66. On the same date, Plaintiff was taken to the Medical Unit for observation and placed on a fifteen (15) minute psych watch. (Exhibit 37, bates MC296). Plaintiff would have

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been transferred to C-Pod at the time, however there was no room in the Unit. (Exhibit 37, bates MC297).

67. On December 9, 2013, he was seen in the Medical Unit and was cleared for pre-hearing detention by Dr. Batinelli and was also medically cleared. (Exhibit 37, bates MC273; Exhibit 37, bates MC295).

68. On December 10, 2013, Plaintiff was again seen by Dr. Sandrock and was responsive to supportive counseling and denied touching another inmate's buttocks. Dr. Sandrock noted that he spoke with the Disciplinary Committee and cleared PD to be removed from Low Visibility psych watch and transferred to the Upper Level of Unit B (Upper-B), a unit which usually houses sex offenders, for pre-hearing detention. (Exhibit 38, bates MC262, MC298).

69. On December 12, 2013, the Disciplinary Committee found Plaintiff not guilty of the charges. (Exhibit 27, Classification card). As such, he was transferred to General Population. (Exhibit 17, Grover deposition, T87:4-88:4; Exhibit 18, Pirre deposition, T82:23-83:9).

70. While in General Population, on December 16 and December 23, 2013, he had asked the Social worker to contact three persons, including his father, and when contact was made, Plaintiff spoke with them. (Exhibit 25, bates MC006; Exhibit 18, Pirre deposition, T98:3-98:11).

71. On December 26, 2013, Plaintiff complained of pain to his leg and was seen in the Medical Unit where he was prescribed 'over the counter' medication. (Exhibit 39, bates MC288).

72. On December 29, 2013, Plaintiff was charged with attempting to destroy or damage government property. He was attempting to break his sink. These charges are asterisk charges (Exhibit 40, officer's reports).

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73. He was found guilty by the Disciplinary Committee and given fifteen (15) days of disciplinary detention, for which he was medically cleared. (Exhibit 40). Plaintiff was housed in disciplinary detention in C-Pod from December 29, 2013 through January 13, 2014. (Exhibit 27).

74. It is noted that on December 31, 2013, at PD's request, his commissary account was provided and his Public Defender was contacted. Further, on January 6, 2014, contact was again made between the Social worker and PD. (Exhibit 25, bates MC006; Exhibit 18, Pirre deposition, T98:12-98:21).

75. On January 13, 2014, while still on disciplinary detention status, Plaintiff was charged with conduct which disrupts the security or orderly running of the facility. These charges are asterisk charges. He was unresponsive when the officer called him to "cuff up" for window and wall checks. The officers called a Code Blue (medical emergency). (Exhibit 41, officer's reports; Exhibit 41, bates MC277, MC285). [These charges are asterisk charges]. He was medically cleared to return to C unit. (Exhibit 41, bates MC273, bates MC286). However, he remained in the Medical unit on a lo-vis watch, until cleared by Dr. Sandrock on January 15, 2014. (Exhibit 41, bates MC264).

76. On January 13, 2014, a memorandum was issued to Plaintiff advising him that the Classification Committee had reviewed his housing status and that he had been placed on Administrative Segregation as a result of his behavior. Plaintiff was advised that the Committee would review the status monthly, and that he had the right to appeal the decision to the Warden. (Exhibit 41, bates MC35). His status was reviewed monthly on February 11, 2013 and March 11, 2013 and he was so notified. (Exhibit 41, bates MC37, MC39).

77. On January 15, 2014, Dr. Sandrock met with Plaintiff and he determined that Plaintiff's Administrative Segregation status would be best served in SNU with a 30 minute psych watch. (Exhibit 41, bates MC262, MC264).

78. Captain Grover testified that classification would follow the inmate, but it would not necessarily apply to the housing. However, it was atypical that an inmate with a

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classification of Administrative Segregation would be housed in a unit other than C-pod. This accommodation was as a result of Dr. Sandrock' s intervention. (Exhibit 17, Grover deposition, T99:4-17; Exhibit 22, Sandrock deposition, T63:8-15).

79. The Disciplinary Hearing for the January 13, 2014 incident was held on January 16, 2014 and Plaintiff was found guilty and given fifteen (15) days of disciplinary detention, which sentence was "suspended." (Exhibit 42).

80. It is noted that PD went to Court on February 4, 2014. (Exhibit 25, bates MC006; Exhibit 18, Pirre deposition, T98:19-21).

81. On February 12, 2014, as part of CFG's contract with the Judiciary and not at the request of the MCACC, Dr. Sandrock performed a "risk assessment" of the Plaintiff, to assess the risk that Plaintiff would pose to others outside the facility. (Exhibit 43, bates MC467; Exhibit 17, Grover deposition, T123:13-125:11; T125:12-125:16; Exhibit 22, Sandrock deposition, T41:15-41:22; T42:16-42:25).

82. Essentially, Dr. Sandrock's risk assessment was that Plaintiff had problems of cognition and impulse control. He further noted that in an episodic fashion Plaintiff's impulsivity and poor judgment can reach dangerous levels. Dr. Sandrock found that Plaintiff is a moderate to high risk for unpredictable, dangerous or violent behavior. In short, Plaintiff has issues controlling his anger. (Exhibit 43, bates MC467; Exhibit 22, Sandrock deposition, T50:16-51:1).

83. It was Dr. Sandrock's opinion that Plaintiff did not exhibit symptoms consistent with bipolar disorder. Plaintiff had angry outbursts, but he was not bipolar. (Exhibit 22, Sandrock deposition, T124:18-125:18).

84. On February 17, 2014, while in SNU, Plaintiff was charged with tampering with a locking device. These charges are asterisk charges. (Exhibit 44, officer's reports).

85. On February 18, 2014, Plaintiff was found guilty and received a 15 day suspended sentence. (Exhibit 44, Court line).

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86. Plaintiff remained in SNU on a 30 minute watch until February 18, 2014, when he was moved to the Medical unit and placed in a Hi-vis cell. (Exhibit 45, bates MC270).

87. On the same date, Plaintiff was medically cleared for C-pod, but the Nurse noted that Plaintiff was confused, agitated and unpredictable. (Exhibit 45, bates MC265, MC271).

88. Plaintiff remained in the Medical unit in a Hi-vis cell until February 19, 2014 when Dr. Sandrock evaluated him. Plaintiff finally agreed to take psychiatric medication and to take the medication 'for now'. (Exhibit 45, bates MC268).

89. Plaintiff was seen by the psychiatrist on March 19, 2014. She noted that Plaintiff was upset that he was on Hi-vis and that he had been previously diagnosed as being bipolar, but had not been on medication for a long time. Further, he had multiple hospitalizations for mood disturbances and behavior problems. She prescribed Neurontin. (Exhibit 45, bates MC266).

90. On February 19, 2014, Plaintiff was removed from Hi-vis and housed in C pod on a 30 minute psych watch. (Exhibit 45, bates MC268).

91. Gabapentin, the generic for Neurontin, is a medication prescribed for mood stabilizing, anti-anxiety and antidepressant effects, was prescribed on February 20, 2014 to be given orally twice per day. The medication was prescribed by Dr. Neal, the Medical Director, who is responsible for ordering medications, until February 23, but was then renewed until May 23, 2014. (Exhibit 46; Exhibit 22, Sandrock deposition, T119:11-120:6; T128:18-129:12).

92. The Gabapentin medication was given to Plaintiff twice a day, from February 20, 2014 until he left the facility on July 16, 2014. (Exhibit 47).

93. On April 18, 2014, the Classification Committee removed Plaintiff from Administrative Segregation status in C pod and he moved to SNU on a 30 minute psych watch after been seen by Dr. Sandrock. (Exhibit 47, bates MC251, MC254).

94. From February 19, 2014 to April 18, 2014, while on Administrative Segregation status, housed in C pod: Plaintiff went to Court on February 20, 2014 and March 28, 2014;

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spoke with his attorney (in person) on February 27, 2014 and March 7, 2014 as well as on the telephone, with calls made through Social Services, on March 25, April 1, April 14 and April 17, 2014; had three (3) civilians visit him in the unit on March 18, 2014; made telephone calls through the Social worker on February 25, and April 9, 2014; inquired about GED (education) materials on March 25, 2014; filled out forms, with the aid of the Social worker, for the Rist and Arc programs on March 6, 2014; and on April 17, 2014 the Social Worker notes indicate to ask Joyce (Pirre) about leaving Ad Seg. (Exhibit 48, bates MC009; Exhibit 48, bates MC17-25; Exhibit 58, bates MC5647 Confidential, MC5658 Confidential, MC5676 Confidential, MC5714 Confidential, MC5931 Confidential, MC5829 Confidential, MC5836 Confidential, MC6048 Confidential,MC5857 Confidential, MC5871 Confidential, and MC6000 Confidential; Exhibit 18, Pirre deposition, T99:12-99:21; T99:22-100:23; T100:24-101:10; T101:11-102:7, T102:8-102:15, T103:6-103:20).

95. While housed in SNU, on April 21, 2014, Plaintiff was involved in an altercation while in SNU and also misused his medication. (Exhibit 49, officer's reports).

96. He was found guilty of both charges, with 15 days suspended and 15 days disciplinary detention. These charges are asterisk charges. (Exhibit 49, Court line).

97. Plaintiff was removed from SNU and returned to C pod on April 21, 2014 after being seen by Dr. Sandrock, who cleared him for disciplinary detention in C pod. (Exhibit 50, bates MC249, MC253).

98. Plaintiff was also seen by Nurse Amposah and medically cleared for disciplinary detention. (Exhibit 51, bates MC259, MC260, MC74, MC75).

99. While housed in C pod on disciplinary detention, Plaintiff filed a written request for medical attention maintaining that his side hurt. He was seen on April 24, 2014 and prescribed "over the counter" medication. (Exhibit 52, bates MC256).

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100. While housed in C pod on disciplinary detention, Plaintiff contacted his attorney, through the Social worker, on April 21, April 24, and April 28, 2014. (Exhibit 52, bates MC011, Exhibit 18, Pirre deposition, T104:20-105:9).

101. On May 3, 2014, Plaintiff's status was converted from disciplinary detention to Administrative Segregation, but he was to remain housed in C pod. He was notified of this status change via letter. (Exhibit 27, Cell Assignment History sheet, bates MC503-06; Exhibit 18, Pirre deposition, T90:8-90:21; Exhibit 53, bates MC42). Again, his status was reviewed by the Classification Committee on a monthly basis. (Exhibit 53, MC42, MC48).

102. On May 6, 2014, in response to Plaintiff's written request for medical attention for a nose bleed, he was examined and treated. (Exhibit 54).

103. On May 14, 2014, in response to Plaintiff's written request for medical attention for a pain in his side, he was examined and was prescribed Tylenol, an over the counter medication. (Exhibit 55, bates MC258).

104. On May 21, 2014, at the request of the judiciary, Dr. Terranova examined Plaintiff to determine if he was competent to stand trial. Dr. Terranova found that Plaintiff had mood disturbances and Intermittent Explosive Disorder, which had stabilized through medication. (Exhibit 56).

105. On June 6, 2014, PD had an in-person review with the Classification Committee, where an inmate would appear before the Committee to explain what they are looking for and the committee would take the inmate's statement into consideration when determining housing. After the review, Plaintiff remained in Administrative Segregation. (Exhibit 57, bates MC28; Exhibit 18, Pirre deposition, T90:22-91:15; Exhibit 57, bates MC48).

106. While Plaintiff was on Administrative Segregation status and housed in C pod from May 3, 2014 to July 6, 2014, he spoke to his attorney on May 16, May 21 and June 23, 2014 via telephone with calls made through the Social worker; to Plaintiff's counsel in this matter on June 2, 2014 via telephone with the call made through the Social worker; had

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meetings with his counsel on June 2, 5, 16, 17 and 25; and went to Court on May 5, 2014. (Exhibit 52, bates MC11; Exhibit 18, Pirre deposition, T105:10-105:24, T105:25-106:6; Exhibit 58, bates MC5647 Confidential, MC5658 Confidential, MC5676 Confidential, MC5714 Confidential, MC5931 Confidential, MC5829 Confidential, MC5836 Confidential, MC6048 Confidential,MC5857 Confidential, MC5871 Confidential, and MC6000 Confidential.

107. On July 6, 2014, Plaintiff was found with a string around his neck. (Exhibit 59, officer's reports).

108. He was moved to the Medical unit, where he was placed on suicide watch until seen by Dr. Sandrock on July 7, 2014. After evaluating him and Plaintiff advising that he was not suicidal nor was the string a suicide attempt, Dr. Sandrock removed Plaintiff from suicide watch, but kept Plaintiff in the Medical unit on a Hi Vis watch. (Exhibit 59, bates MC247, MC257).

109. On July 8, 2014, Plaintiff was again seen by Dr. Sandrock, who determined that Plaintiff should remain on Hi Vis watch. (Exhibit 59, bates MC247).

110. On July 11, 2014, Dr. Sandrock authorized Plaintiff to be moved from a Hi Vis watch to a Lo Vis watch. (Exhibit 59, bates MC241).

111. Plaintiff was discharged from the MCACC on July 16, 2014, per Court Order. (Exhibit 60).

112. While at MCACC, Plaintiff had no visitors, other than his attorneys. (Exhibit 61, Plaintiff's deposition, T74:6-74:22).

113. In addition to the telephone calls made through the Social worker referenced above, PD also made telephone calls while housed in C pod, during his hour of recreation, to his father and to his attorneys. (Exhibit 61, Plaintiff's deposition, T85:17-86:23).

114. When PD was out for his hour of recreation, he was able to watch TV, use the telephone, or engage in video conferences, but he testified that he had no visitors. (Id.)

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115. PD testified that he also had contact with the Social workers while in C-Pod. He was allowed to make phone calls from the Social worker's office. He would ask the Social worker if he could make a phone call and she would say yes. She would then bring PD to her office and he could call whomever he asked to call. PD denies the Social worker ever told him he could not call a certain person. He could make the phone call in the Social worker's office if he did not want to make the call during his hour out in the security enclosure. (Exhibit 61, Plaintiff's deposition, T91:18-92:23).

116. During his hour of recreation in C pod, PD could speak to other inmates. Further, he acknowledged that when he was on a 30 minute watch, he would speak to the officers making the checks. (Exhibit 61, Plaintiff's deposition, T86:24-87:22).

117. While in C pod, as referenced above, PD was on medication, which he received and had contact with the nursing staff three times a day. If he had a problem or any complaints, he would advise the nurse. (Exhibit 61, Plaintiff's deposition, T87:23-89:13; T92:24-93:25).

118. While housed in C pod, as referenced above, PD testified that he was never refused his request to go to the Medical unit to take care of an issue. He is familiar with sick call slips and has filled them out before. He would give them to the trustee who would deliver them to Medical. He went to medical every time he filled out a slip. Once he got to the Medical unit, a doctor would look at him. (Exhibit 61, Plaintiff's deposition, T94:1-94:24).

119. PD testified that he did not file any grievances with anyone about his stay at the MCACC. PD wrote out his own sick slips and did not have anyone else write them for him. If he could not write something down, either a social worker or corrections officer was there to help him. PD had asked a Social worker or corrections officer to help him read or write something and they have helped him. (Exhibit 61, Plaintiff's deposition, T103:20-104:21).

120. PD also testified that he could also fill out a sick call slip for emotional or mental issues and he did do that. When he did, he saw Dr. Sandrock. He saw Dr. Sandrock

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"regularly." Dr. Sandrock convinced PD that he should be on medication. PD believes he also saw a psychiatrist, but did not recall. (Exhibit 61, Plaintiff's deposition, T94:25-95:24).

121. PD testified that he talked to Dr. Sandrock or the social worker about getting in contact with groups that could help him when he got out of jail such as Arc or Rist. He remembers seeing Arc and signing an authorization so that Arc could get his records. (Exhibit 61, Plaintiff's deposition, T97:8-98:10).

122. Per policy, on every shift a window/wall check would be performed, requiring officers to check the interior of the cell. (See paragraph 44 above). Plaintiff testified that he would speak with the officer during these window/wall checks. (Exhibit 61, Plaintiff's deposition, T89:14-90:8).

123. PD testified that he is able to read a little bit. A librarian would come to C-Pod three times a week. PD explained that he would get books, magazines, and puzzles from other inmates by asking the trustee who would go over to other inmates and tell them to give PD the books or puzzles. PD stated he traded books and puzzles with other inmates. He would read his books and do his puzzles in C-Pod. (Exhibit 61, Plaintiff's deposition, T90:9-91:17).

124. PD denies having visual or auditory hallucinations. (Exhibit 61, Plaintiff's deposition, T149:21-150:2).

125. PD explained in his deposition that he is a sound sleeper and does not have any problems sleeping. (Exhibit 61, Plaintiff's deposition, T103:13-19).

126. PD explained that he feels better without his medication because he can think better and is clearer. PD admits that he sometimes has a temper. (Exhibit 61, Plaintiff's deposition, T108:14-109:3).

127. PD denies ever attempting suicide. He also denies ever talking about committing suicide or being interested in committing suicide. (Exhibit 61, Plaintiff's deposition, T109:16-24).

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PRELIMINARY STATEMENT

Defendant, County of Middlesex, did not violate any protected liberty interest afforded to Plaintiff. Within the prison context, a pretrial detainee's freedom and movement is inherently restricted by the very nature of his confinement. Should this Court determine that a liberty interest did exist, prison officials are entitled to limit an inmate's freedom and movement by placing restrictions or conditions on the detainee's confinement, when those restrictions and conditions reasonably relate to legitimate governmental objectives. The safety of inmates and officers, as well as maintaining institutional order and security are legitimate and substantial governmental objectives.

In this case, the undisputed facts establish that Plaintiff was properly placed in Administrative Segregation and housed in C pod, from February 19, 2014 to April 18, 2014 and from May 3, 2014 to July 6, 2014. Plaintiff does not dispute the disciplinary charges which resulted in the disciplinary detentions, nor does Plaintiff dispute the classification status of Plaintiff being placed on Administrative Segregation. Instead, this case is about Plaintiff, while on Administrative Segregation status, being housed in C pod, instead of a more "unique remedy for his housing". Based on the actions of PD within the facility which resulted in a number of disciplinary charges, some of which were suspended, including the number of housing units that were found to be unsuitable for him, and the legitimate concern of safety in the facility, PD was assigned to C pod. Even after being removed from C pod and placed in a specialty needs unit, SNU, an additional altercation occurred, resulting in his reclassification to C pod. As such, Plaintiff's placement in C pod was not punitive in nature and, even if this Court finds it to be so, was reasonably related to legitimate institutional objectives.

Additionally, Appellees satisfied the procedural due process requirements by giving Appellant informal notice and an opportunity to respond to the restrictions imposed on him for administrative reasons. When Plaintiff requested that he be permitted to address the Classification Committee, he was provided with that opportunity.

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Plaintiff's LAD claim should likewise be dismissed as there is no evidence presented that Plaintiff was treated in a discriminatory manner in terms of housing. Plaintiff was treated better than non-handicapped similarly situated individuals, as accommodations were made and housing options, all of which proved unsuccessful.

Moreover, Plaintiff's punitive damage claims cannot remain, given decisional law and the lack of egregiousness necessary for the imposition of the same.

Finally, the Plaintiff's requests for injunctive and declaratory relief are moot, as Plaintiff is no longer incarcerated in the MCACC and has not been since July 16, 2014.

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LEGAL ARGUMENTS

POINT I

PLAINTIFF IS NO LONGER AN INMATE AT THE MIDDLESEX COUNTY ADULT CORRECTIONAL FACILITY AND THEREFORE THE INJUNCTIVE AND DECLARATORY RELIEF SOUGHT IS MOOT

Plaintiff's Complaint requests injunctive and declaratory relief prohibiting Defendants from housing Plaintiff in Lower-C or any housing unit where he is held "in solitary confinement or other forms of extreme isolation". "In determining whether to grant a preliminary injunction, a trial court must consider (1) whether an injunction is 'necessary to prevent irreparable harm'; (2) whether 'the legal right underlying the applicant's claim is unsettled'; (3) whether the applicant has made 'a preliminary showing of a reasonable probability of ultimate success on the merits'; and (4) 'the relative hardship to the parties in granting or denying injunctive relief.'" Rinaldo v. RLR Inv., LLC, 387 N.J. Super. at 395 (citing Crowe v. De Gioia, 90 N.J. 126, 132-34 (1983) (reviewing the denial of Plaintiff's injunctive relief and noting that defendant had already completed construction of the wetlands mitigation project in question rendering the application for injunctive relief moot). "In most cases, [a preliminary injunction] involves a prediction of the probable outcome of the case based solely on documentary proofs, including affidavits containing conflicting factual allegations." Id. at 397.

Plaintiff's request for preliminary injunctive relief was concluded by the withdrawal of the Order to Show Cause seeking that relief. (Procedural History, ¶13). However, Plaintiff's Complaint still maintains the request for a preliminary injunction. As to Plaintiff's request for a permanent injunction, the determination whether to grant a permanent injunction at the conclusion of the case does not involve a prediction as to the outcome of future proceedings. "Instead... the court must make a findings of fact based on the evidence presented at trial and then determine whether the applicant has established the liability of the other party, the need for the injunctive relief, and the appropriateness of such relief on balancing of equities." Id.

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(emphasis added). Here, the injunctive relief sought, both preliminary and permanent, is no longer at issue. Therefore the claims must fail.

The mootness doctrine is applicable when a claim or controversy is no longer at issue. It requires that "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." Steffel v. Thompson, 415 U.S. 452, 459 n. 10 (1974). A Court does not have the authority to render advisory opinions or decide questions that do not affect the rights of litigants in the cases before them. Preiser v. Newkirk, 422 U.S. 395, 401 (1975); Sutton v. Rasheed, 323 F.3d 236, 248 (3d Cir. 2003). New Jersey Courts have found that, where an inmate is no longer incarcerated within the institution it seeks to obtain an injunction against, the request for injunctive relief is moot and must be dismissed. See e.g. Jones v. Hayman, 418 N.J. Super. 291 (App. Div. 2011). See also Spruill v. Gillis, 372 F.3d 218 (3d Cir. 2004); Abdul-Akbar v. Watson, 4 F.3d 195, 206 (3d Cir. 1993). Similarly, the transfer or release of an inmate moots declaratory claims, as declaratory relief cases address present/future harms, not past harm. Sutton, 323 F.3d at 248. Martin v. Keitel, 205 F. Appx. 925, 928 (3d Cir. 2006)(affirming dismissal of declaratory judgment action seeking a declaration that defendant's violation of rights in the past as no longer judiciable). Thus, there is a "policy of the courts to refrain from rendering advisory opinions, from deciding moot cases, or generally from functioning in the abstract," and "to decide only concrete contested issues conclusively affecting adversary parties in interest". New Jersey Turnpike Authority v. Parsons, 3 N.J. 235, 240 (1949); Zirger v. General Accident Ins. Co., 144 N.J. 327 (1996) ("interest in preserving judicial resources dictates that we not attempt to resolve legal issues in the abstract.")

There is no question that P.D., in the instant matter, is no longer incarcerated at the Middlesex County Adult Correctional Facility, (Procedural History, ¶13), and therefore any claim for injunctive or declaratory relief is moot. The issue before the Court seeking an injunction or declaratory relief concerning the classification of Plaintiff to Administrative Segregation has

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been rendered moot due to the Plaintiff's transfer out of the MCACC and his current commitment to Trenton Psychiatric Hospital.

Moreover, the injunctive and declaratory relief sought by plaintiff in this case would be more appropriately brought in the companion class-action case filed in Federal Court, C-Pod Inmates of MCACC, Azariah Lazar, Luis Borrero, Hector Amengual, Sean Pershing, Tyson Ratliff, Jonathan Rodriguez, Terrence Edwards, Damani Harris and Patrick O'Dwyer v. Middlesex County, Docket No. 3:15-cv-7920 ("C-Pod Case"). The C-Pod Case involves plaintiffs who are still currently incarcerated in MCACC and currently being held in, or in the future may be subject to, incarceration in C-Pod. Accordingly, rather than attempting to abstractly address the issue of injunctive and declaratory relief in this matter, the issue is better left to those litigants in the C-Pod Case who are litigating a "live" controversy. Therefore, summary judgment must be granted in favor to the Defendant as to the injunctive and declaratory relief requested in the complaint.

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POINT II

PLAINTIFF'S CONSTITUTIONAL CLAIMS MUST BE DISMISSED

The New Jersey Civil Rights Act, NJCRA, creates a private right of action for any claims based on any substantive rights, privileges or immunities secured by the United States or New Jersey Constitutions or federal or state law. N.J.S.A. 10:6-2(c). Similarly, 42 U.S.C. Section 1983 creates a private right of action for claims based on "the deprivation of ...rights, privileges, or immunities secured by the Constitution and laws" of the United States. Courts have consistently construed and interpreted the NJCRA in accordance with its federal counterpart, Section 1983. See Wilson v. Somerset County Prosecutor's Office, 2016 U.S. Dist. LEXIS 36013 (D.N.J. 2016); Ingram v. Twp. of Deptford, 911 F. Supp. 2d 289, 298 (D.N.J. 2012); Trafton v. City of Woodbury, 799 F. Supp. 2d 417, 443-44 (D.N.J. 2011); Chapman v. N.J., 2009 U.S. Dist. LEXIS 75720 (D.N.J. 2009); Slinger v. N.J., 2008 U.S. Dist. LEXIS 71723 (D.N.J. 2008), rev'd on other grounds, 366 Fed. Appx. 357 (3d Cir. 2010); Jumpp v. Power, 2009 U.S. Dist. LEXIS 51269 (D.N.J. 2009)("Courts in this District have recognized that the Eighth Amendment and the parallel paragraph in the New Jersey Constitution have been interpreted to provide congruent relief in the deliberate indifference context."); Ingram v. Twp. of Deptford, 911 F. Supp. 2d 289 (D.N.J. 2012) (When interpreting the New Jersey Constitution and New Jersey statutes, this Court must follow state court decisions on these matters. New Jersey courts "have consistently looked to federal § 1983 jurisprudence for guidance" and have "repeatedly interpreted NJCRA analogously to § 1983.")

Here, Plaintiff alleges a violation of his Eighth Amendment rights (Count II) as well as a Fourteenth Amendment claim (Count I), based on the New Jersey Constitution. As to the Eighth Amendment claim, Article 1, paragraph 12 of the New Jersey Constitution has virtually the identical language to the Eighth Amendment, that "cruel and unusual punishments shall not be inflicted". Similarly, Article 1, paragraph 1 of the New Jersey Constitution, while not specifically containing the express term of due process, is analyzed the same as a Fourteenth

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Amendment claim. Greenberg v. Kimmelman, 99 N.J. 552, 568-69 (1985). As such, no Court has found that pretrial detainees enjoy greater protections under the NJCRA than under Section 1983. Instead, New Jersey Courts have utilized the expansive case law set forth by the Federal Courts in analyzing these types of claims.

1) Eighth Amendment claims (Count II)

The Eighth Amendment prohibits the imposition of cruel and unusual punishment. The United States Supreme Court in Sandin v. Conner, 515 U.S. 472, 483-484 (1995) instructs that placement in administrative confinement, in that instance for 16 months, would not create a liberty interest, as transfer to less amenable and more restrictive quarters was well within the terms of confinement ordinarily contemplated by a prison sentence and, thus, was not an atypical and significant hardship on the inmate. Accord, Griffin v. Vaughn, 112 F.3d 703, 708 (3d Cir. 1997) (15 months in administrative custody does not amount to a deprivation of a cognizable liberty interest); Young v. Beard, 227 Fed. Appx. 138 (3d Cir. 2007)(980 days of disciplinary confinement did not amount to a deprivation); Miller v. Samuels, 2016 U.S. Dist. LEXIS 65917 (D.N.J. 2016)(241 days in restrictive housing did not violate the Constitution); Smith v. Mensinger, 293 F.3d 641, 653 (3d Cir. 2002)(seven months in disciplinary segregation is insufficient to trigger a due process violation); Mejia v. N.J. Dep't of Corr., 446 N.J. Super. 369, 375 (App. Div. 2016) (In a prison disciplinary appeal, the Court reduced a finding of 3.5 years of administrative segregation to 365 days, citing the DOC rules governing State prisoners, which stated that "similarly, maximizing inmate exposure to no more than 365 days of administrative segregation per incident, rather than per infraction, will decrease the likelihood of isolation".) Thus, it is well established that a convicted prisoner's administrative classification does not give rise to a protected liberty interest under the Due Process Clause. Hewitt, 459 U.S. at 468; Lowrance v. Achtyl, 20 F.3d 529, 535 (2d Cir. 1980).

However, it is undisputed that a pretrial detainee's claims related to their condition of confinement are analyzed under the Fourteenth Amendment's Due Process Clause of

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punishment, not the Eighth Amendment standard of cruel and unusual punishment. Bell v. Wolfish, 441 U.S. 520, 535 n. 16 (1979); Hubbard v. Taylor, 399 F.3d 150, 157-58, 164 (3d Cir. 2005); Ingraham v. Wright, 430 U.S. 651, 664, 671 (1977)(The Eighth Amendment was designed to protect only those convicted of crimes.) Thus, it is also undisputed that the atypical and significant hardship standard enunciated in Sandin applies only to convicted inmates, not pretrial detainees. Stevenson v. Carroll, 495 F.3d 62, 69 n.4 (3d Cir. 2007); Fuentes v. Wagner, 206 F.3d 335, 342, n. 9 (3d Cir. 2000).

What is relevant to an analysis of pretrial confinement, however, is that the Supreme Court has confirmed that the rights enjoyed by individuals not yet convicted of a crime are at least as great as those of prisoners. See e.g., Riggins v. Nevada, 504 U.S. 127, 135 (1992) ("detainees... who have not been convicted of any crimes... retain at least those constitutional rights that we have held are enjoyed by convicted prisoners"); City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 244 (1983); Deavers v. Santiago, 243 Fed. Appx. 719, 721 (3d Cir. 2007) (The Third Circuit has held that placement of a civilly committed sexually violent predator in segregated confinement does not violate due process unless the deprivation of liberty is in some way extreme). Thus, while cases involving the Eighth Amendment may not be dispositive in a Fourteenth Amendment analysis, the cases do provide guidance as to the parameters of time that an inmate can constitutionally be housed in restricted segregation. Further, given the amount of time that Courts have found segregation to be Constitutional, as cited above, it is clear that the amount of time that PD spent in Administrative Segregation is much less egregious.

In this case, Plaintiff's counsel has previously conceded that the Eighth Amendment, and Article 1, Paragraph 12 of the State Constitution, are not applicable in this case, (Procedural history, ¶6). As such, under the principles of Judicial Estoppel[3], Defendant is entitled to summary judgment on Count II of Plaintiff's complaint.

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[3] City of Atlantic City v. California Ave. Ventures LLC, 23 N.J. Tax 62, 68-69 (App. Div. 2006)

2) The Fourteenth Amendment (Count I)

The Fourteenth Amendment's Due Process Clause "protects persons against deprivations of life, liberty, or property" and a Plaintiff asserting a due process violation must first "establish that one of these interests is at stake." Wilkinson v. Austin, 545 U.S. 209, 221 (2005). In determining whether a due process violation has occurred, first the Court must determine whether the Plaintiff has a protected liberty interest and, if so, the second question to be asked is whether the process afforded to the Plaintiff comported with the Due Process Clause. Shoats v. Horn, 213 F.3d 140, 143 (3d Cir. 2000). However, the Fourteenth Amendment does not require a remedy where there has been no deprivation of a protected interest. Evans v. Fanelli, 2013 U.S. Dist. LEXIS 54513 (M.D. Pa. 2013); Morrissey v. Brewer, 408 U.S. 471, 481 (1972) (Only if protected interests are implicated, then the Court decides what procedures constitute due process of law.); Accord Board of Regents v. Roth, 408 U.S. 564, 569-572 (1972). A protected liberty interest may arise from either the Constitution, through the Fourteenth Amendment's due process clause, or from an "expectation or interest created by state laws". Id.; Hewitt v. Helms, 459 U.S. 460, 466 (1983). "The touchstone of due process is protection of the individual against arbitrary action of government". Meachum v. Fano, 427 U.S. 215, 226 (1976). Under the Due Process Clause, the issue is whether the conditions of confinement were intended as punishment or "whether it is but an incident of some other legitimate governmental purpose". Bell, 441 U.S. at 538; Hubbard, 399 F.3d at 159. "Absent a showing of an expressed intent to punish on the part of the determination facility officials", Bell, 441 U.S. at 538, ... "the issue becomes whether the conditions of confinement were reasonably related to an institution's legitimate goals and whether they appear excessive in relation to that goal". Hubbard, 399 F.3d at 158. "[A] showing by prison officials that a restrictive housing assignment is predicated on a legitimate managerial concern and therefore not arbitrary or purposeless, will typically foreclose the substantive due process inquiry." Stevenson v. Carroll, 495 F.3d 62, 69 (3d Cir. 2007).

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Further, "[r]estraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial." Bell, 441 U.S. at 539. The Bell Court recognized that the very nature of the detainee's pretrial incarceration subjects him to the possibility that restricting conditions could be imposed on him to further other substantial government objectives such as institutional safety, security, and order.

Additionally, the restriction need not be the least restrictive alternative to be reasonable. Vance v. Bradley, 440 U.S. 93 (1979); see also Thornburgh v. Abbott, 490 U.S. 401, 410-412 (1989). The Bell Court also rejected any argument that without an actual incident or history of incidents, prisons should resort to less restrictive measures, when it said "responsible prison officials must be permitted to take reasonable steps to forestall threats to security, and they must be permitted to act before the time when they can compile a dossier on the eve of a riot." Bell, 441 U.S. 551, n. 32.

Thus, the Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect decisions. Lowrance v. Achtyl, 20 F.3d 529, 537 (2d Cir. 1994). "There is no federally-protected right to a particular classification nor even to an error-free decision by the state authorities. The Constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the courts or the executive agencies of the state". Palmigiano v. Mullen, 491 F.2d 978, 980 (1st Cir. 1974). Similarly, a New Jersey trial court, in Harvard v. State, 2016 N.J. Super. Unpub. LEXIS 1559 (Law. Div. 2016), found:

> 'The principle of substantive due process, founded in ... our State Constitution, N.J. Const. art. I, § 1, protects individuals from the 'arbitrary exercise of the powers of government' and 'governmental power being used for the purposes of oppression.' Felicioni v. Admin. Office of the Courts, 404 N.J. Super. 382, 392, 961 A.2d 1207 (App. Div. 2008) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986), certif. denied, 203 N.J. 440, 3 A.3d 1228 (2010)). 'However, the constitutional guarantee 'does not protect individuals from all governmental actions that infringe liberty or injure property in violation of some law.' Ibid. (quoting Rivkin v. Dover Twp. Rent Leveling Bd., 143 N.J. 352, 366, 671 A.2d 567 (1996)).

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In short, "if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not without more, amount to 'punishment'". Bell, 441 U.S. at 539. A Plaintiff has a "heavy burden of showing that [jail] officials have exaggerated their response to the genuine security considerations that actuated these restrictions and practices. Bell, 441 U.S. at 562.

Courts have repeatedly said that jail administrators have "broad administrative and discretionary authority over the institutions they manage and that lawfully incarcerated persons retain only a narrow range of protected liberty interests." Hewitt, 459 U.S. at 467. The administration of a prison is "at best an extraordinarily difficult undertaking", Wolff v. McDonnell, 418 U.S. 539, 566 (1974), and Courts have recognized that subjecting each of these discretionary actions to judicial scrutiny is inappropriate as it is traditionally the business of prison administrators, not the Courts. Meachum v. Fano, 427 U.S. 215, 225 (1976). "Prison administrators...should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell, 441 U.S. at 547[4]; Rhodes v. Chapman, 452 U.S. 337, 349, n. 14 (1981)(In the volatile atmosphere of a jail, "a prison's internal security is peculiarly a matter normally left to the discretion of prison administrators".). The safety of the corrections officers, other inmates, and the security of the jail are the most fundamental responsibilities of a jail administrator. Id. Thus, the safe and efficient operation of a jail on a

[4] The Bell Court also repeated their previous warning of Procunier v. Martinez, 416 U.S. 396, 412 (1974) that Prison administrators are responsible for maintaining internal order and discipline, for security their institutions against unauthorized access or escape, and for rehabilitation, to the extent that human nature and inadequate resources allow, the inmates place in their custody. The Herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly with in the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism.

Bell, 441 U.S. at 549, n. 30.

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daily basis has traditionally been entrusted to the expertise of prison officials. Meachum, 427 U.S. at 225. "The institution must be permitted to use reasonable means to insure that its legitimate interests in security are safeguarded...The court might disagree with the choice of means to effectuate those interests, but it should not second-guess the expert administrators on matters on which they are better informed". Bell, 441 U.S. at 472. While "it does not insulate from review actions taken in bad faith and for no legitimate purpose, ...it requires that neither judge nor jury freely substitute their judgment for that of officials who have made a considered choice." Whitley v. Albers, 475 U.S. 312, 322 (1986).

In this case, Plaintiff is not maintaining that he should have been housed in General Population. (Procedural history, ¶7). From the time Plaintiff entered the MCACC on October 17, 2013 to the time that he was first placed on Administrative Segregation, on January 13, 2014, Plaintiff had been housed in several general population and specialty units including N unit (intake), Lower D unit, K unit, the special needs unit (SNU), Medical unit, and Upper B. (Statement of Undisputed Facts (hereinafter "SOUF"), ¶¶45, 48, 72). Three weeks after being assigned to K unit, a dormitory unit, he was transferred to SNU, as Plaintiff was found wandering and talking to himself while the Unit was on lockdown (SOUF ¶50). Two weeks later, he was removed from SNU as he had flipped a table and refused to comply with the Officer's orders following the incident, for which he received 10 days of disciplinary detention. (SOUF ¶¶57, 59). Upon his release from disciplinary detention for these major charges[5], Plaintiff was transferred back to SNU, where he remained for 2 days before being charged with sexually assaulting[6] another inmate. (SOUF ¶¶62, 63). After being housed in the Medical unit for 2 days,

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[5] Major charges are alternatively referred to as asterisk charges and are determined by the Administrative Code. N.J.A.C. 10A:4-4.1(a); N.J.A.C. 10A:4-5.1(a). Chargeable offenses are considered asterisk charges and include murder, assault, fighting and tampering with locks. The sanction for a major violation is 15 days per offense, with a 30 day limit per incident. The disciplinary committee can, at their discretion, suspend a sentence. (SOUF ¶33)

[6] An enormous concern in a jail is sexual assault, as evidenced by the passage of the Prison Rape Elimination Act (PREA) in 2003. In describing a jail setting, the Wolff Court described inmates as "persons who have little regard for the safety of others or their property or for the rules designed to provide an orderly and reasonably safe prison life. There is a great range of personalities and character

Plaintiff was transferred to Upper B, where he was housed in pre-hearing detention until he was found not guilty of the assault. He was then re-classified back to General Population. (SOUF ¶¶64, 66, 67). Three weeks later, Plaintiff destroyed property and received asterisk charges, and after being found guilty was placed in disciplinary detention for 15 days. (SOUF ¶¶70, 71). While on disciplinary detention, Plaintiff was charged with conduct which disrupts the security and orderly running of the facility. (SOUF ¶73).

Thus from the time he entered the facility, Plaintiff had been housed in 6 different units, each time for short periods of time before an incident occurred. Further, PD had been found wandering during a lockdown, had flipped a table, disobeyed orders, been accused of a sexual assault, destroyed property, and disrupted the security and order of the running of the facility. As such, he was notified that he was being placed on Administrative Segregation[7] status on January 13, 2014. (SOUF ¶74). Even after Plaintiff was placed on Administrative Segregation status, he was accommodated by being housed in SNU, not C pod. (SOUF ¶75). He remained in SNU until February 18, 2014, when he was charged with tampering with a locking device, another asterisk charge. (SOUF ¶¶82, 83). He was moved to the Medical unit where he was prescribed mood stabilizing medication and then moved to C pod. (SOUF ¶¶84, 88, 89). The facts establish that Plaintiff, even while on Administrative Segregation status, was accommodated in terms of housing, that is, until he committed another offense which impacted the security of the institution. It is clear that Plaintiff's movement to C pod on Administrative Segregation status was as a result of his actions which resulted in charges, his numerous placements within the facility that became unsuitable, and the MCACC's concern over the safety of the corrections officers, other inmates, and the security of the jail. Accordingly, Plaintiff's

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among those who have transgressed the criminal law." Wolff, 418 U.S. at 566. Similarly, in Shoats v. Horn, 213 F.3d 140, 146 (3d Cir. 2000), the Court stated "in the volatile atmosphere of a prison, an inmate easily may constitute an unacceptable threat to the safety of other prisoners and guards even if he himself has committed no misconduct; rumor, reputation, and even more imponderable factors may suffice to spark potentially disastrous incidents. The judgment of prison officials in this context, like that of those making parole decisions, turns largely on purely subjective evaluations and on predictions of future behavior".

[7] SOUF ¶¶19 and 44.

placement in C pod on Administrative Segregation status on February 19, 2014 was not punitive in nature and Plaintiff cannot establish the necessary showing of an expressed intent to punish. Even if this Court were to find that so, Plaintiff's placement in Administrative Segregation was reasonably related to the legitimate governmental objectives that all prison administrators must address.

Plaintiff was housed in C pod on Administrative Segregation status from February 19, 2014 to April 18, 2014. While there, Plaintiff went to court, spoke with his counsel, made telephone calls, met with the Social Worker, received 5 hours of recreation per week, and interacted with nurses during medical rounds, officers during the window/wall checks as well as the 30 minute checks, and go to the Medical unit. (SOUF ¶¶23, 44, 92). He could have visits, watch television, obtain commissary, receive mail, have haircuts, receive library materials, have religious visits, and receive educational materials. (Id.) Plaintiff testified that he made telephone calls, met with his attorneys, spoke with other inmates, officers and medical staff, received books, magazines and puzzles from the librarian or other inmates, and often went to Medical when he had an issue. (SOUF ¶¶110-121).

In Hubbard, the Court held that requiring pretrial detainees to sleep on mattresses on the floor in overcrowded cells for between three (3) and seven (7) months did not constitute punishment in violation of the Fourteenth Amendment. Hubbard v. Taylor, 538 F.3d 229, 234-35 (3d Cir. 2008) (Hubbard II). In Hopkins v. Bondiskey, 2013 U.S. Dist. LEXIS 36602 (D.N.J. 2013), a pretrial detainee who claimed conditions of confinement such as being chained and shackled in a cell for 12 hours despite injuries, prohibited from using the bathroom so that he defecated in his clothes, confined to a "cold" cell, and being afraid to eat the food he believed he was contaminated by guards, was not sufficient to constitute punishment in violation of the Fourteenth Amendment. In Murray v. Keen, 2014 U.S. Dist. LEXIS 31295 (M.D. Pa. 2014), the Court rejected a pretrial detainee's claim that his confinement constituted punishment, and was

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therefore violative of the Fourteenth Amendment, because he was deprived of outdoor exercise for seven (7) months.

Further, in McMillan v. Cicchi, 2014 N.J. Super. Unpub. LEXIS 1780 (App. Div. 2014), the Appellate Division favorably reviewed Judge Ciuffani's decision[8] concerning the conditions of confinement of a pretrial detainee's placement in C Pod on Administrative Segregation status at MCACC. Like PD, McMillan "did not seek to be moved to general population", but was rather focused "on changes that 'theoretically' could be made to improve [his] day to day environment". Id. at *6. Those changes included having meals and social interaction with other inmates, engaging in outdoor recreation and extending recreation time, and the ability to go to the library. Id. at *6-7. The Appellate Division upheld Judge Ciuffani's conclusion that:

> allowing plaintiff to use the library or recreation facilities, and take his meals or congregate with other detainees, even others in administrative segregation, presents the same challenges to security and order at the jail. The judge concluded that plaintiff had not shown that defendants had "'exaggerated' [their] response to the genuine security considerations that activated his restrictions," and that defendants had made reasonable efforts to both ameliorate the conditions of plaintiff's confinement and accommodate their legitimate security concerns by arranging for clergy of his faith to visit plaintiff in his cell, to have the librarian regularly provide him with books of his choosing, to make a television and telephone available when plaintiff is recreating in the security enclosure, and to permit him weekly video visits.

Id. at *8-9.

The deprivations alleged by Plaintiff are the same as those addressed by Judge Ciuffani in McMillan. The Appellate Court was also very specific that these conditions do not amount to punishment and that deference to jail officials was owed. In short, like the Plaintiff in McMillan, PD has not met his heavy burden to prove that the restrictions of his administrative segregation were not the reasonable responses of MCACC officials to legitimate security concerns.

PD was removed from Administrative Segregation and C Pod on April 18, 2014 and he was placed in SNU. Three days later, on April 21, 2014, he was involved in an altercation and was cheeking his medication. (SOUF ¶¶91, 93). After being found guilty of these asterisk

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[8] See Exhibit 62, Judge Ciuffani's December 5, 2013 opinion.

charges, he was placed in disciplinary detention for 15 days. (SOUF ¶94). After serving his disciplinary detention, PD was classified as Administrative Segregation status and was housed in C pod. (SOUF ¶99). He remained in C pod on Administrative Segregation from May 3 to July 6, 2014, when he was moved to the Medical unit. (SOUF ¶¶104, 106). Clearly, the reclassification of PD's status to Administrative Segregation on May 3, 2014 was based upon the cumulative incidents that he had been engaged in as well as the previous failed attempts to house him in a unit other than C pod. Again, the transfer to C pod was not punitive in nature and Plaintiff cannot establish the necessary showing of an expressed intent to punish. Even if this Court were to find that it was punitive, despite the evident disruptions caused by Plaintiff, the classification and housing of PD was reasonably related to the legitimate governmental objectives that all prison administrators must address. Similarly, the conditions of confinement while in Administrative Segregation were not punitive and any restrictions were reasonably related to the legitimate objectives of safety of other inmates and the security of the institution.

Any suggestion by Plaintiff of alternatives to placing him in Administrative Segregation in C pod, such as MCACC officials could have monitored him more closely or less restricted his movements and communication opportunities with other prisoners, impermissibly conflicts with the admonition that the MCACC does not have to resort to less restrictive alternatives in how it operates the MCACC. Bell, 441 U.S. 551, n. 32; Vance v. Bradley, 440 U.S. 93 (1979); see also Thornburgh v. Abbott, 490 U.S. 401, 410-412 (1989). Further, that circular argument not only invades the province and deference afforded to MCACC administrators in maintaining internal safety and security, but, in accepting Plaintiff's argument, would substitute his own judgment of what amounts to permissible restrictions placed upon a detainee, violating the deference owed to correction officials.

Plaintiff's alleged state created liberty interest fares no better, as Plaintiff has not established that he had a liberty interest in a particular housing assignment, based on the laws and regulations applicable to his classification. Previously, a state created liberty interest was

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found to arise when state statutes or regulations used explicitly mandatory language, such as "shall", "will" or "must" without any qualifiers, in connection with requiring specific substantive predicates. Hewitt, 459 U.S. at 472. In Sandin v. Conner, 515 U.S. 472 (1995), the United States Supreme Court abrogated the Hewitt approach of parsing the language of particular state regulations, thereby rejecting a mechanical interpretation of statutory language. The unfortunate result of the mechanical analysis in Hewitt was that "by shifting the focus of the liberty interest inquiry to one based on the language of the particular regulation, and not the nature of the deprivation, the Court encouraged prisoners to comb regulations in search of mandatory language on which to base entitlements to various state-conferred privileges." Id. at 481. The Hewitt approach of Courts having to mechanically interpret statutory language to determine whether a Constitutional violation occurred led to the disapproved "involvement of federal courts in the day-to day management of prisons, often squandering judicial resources with little offsetting benefit to anyone" which ran counter to the admonition that "federal courts ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment". Id. at 482. The Sandin Court made clear that the "touchstone of the inquiry into the existence of a protected, state-created liberty interest in avoiding restrictive conditions of confinement is not the language of regulations regarding those conditions but the nature of those conditions themselves 'in relation to the ordinary incidents of prison life.'" Wilkinson, 545 U.S. at 223, citing Sandin, 515 U.S. at 484.

As set forth above, the placement of PD in and the nature of the conditions of Administrative Segregation in C pod do not constitute punishment. The "fact that such detention interferes with the detainee's understandable desire to live...with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into punishment." Bell, 441 U.S. at 537. Accordingly, there is no state created liberty interest if evaluated under the Sandin framework.

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Even if this Court chooses to use the Hewitt analysis, the MCACC Inmate Handbook neither uses repeated explicit mandatory language nor specified substantive predicates. First, the MCACC Handbook does not include the repeated use of mandatory and explicit language. The Handbook uses discretionary indirect/passive language, such as the language located on the very first page, which reads "[t]he Rules and Regulations contained in this booklet do not cover all situations that may arise but serve as a basic guide for inmate conduct and jail procedures." (Exhibit 24, Inmate handbook). Further, the MCACC Handbook lists detailed procedures for placing an inmate in detention, disciplinary or other, as a punishment for violating prison rules. Those procedures and guidelines do not apply to Administrative Segregation when it is determined that a safety and security issue exists as a result of an inmate's behavior.

Thus, the absence of explicitly mandatory and detailed procedures for placing a detainee in Administrative Segregation for non-punitive reasons infers that prison officials have wide-ranging discretion and flexibility in imposing administrative segregation upon a detainee. Accordingly, the Handbook plainly allows prison officials to exercise their discretion in determining whether a detainee constitutes a threat to the safety and security of the institution based on their evaluation of the present circumstances within the institution, regardless of whether the detainee has committed misconduct.

Further, two Courts, one federal and one state, have rejected reliance on the MCACC Inmate Handbook to support a state created liberty interest claim. Steele v. Cicchi, 2014 U.S. Dist. LEXIS 70999 (D.N.J. 2014)(no state-created liberty interests arise from the Middlesex County Adult Correction Center Handbook) and McMillan, 2014 N.J. Super. Unpub. LEXIS 1780 at n.7 (the pretrial detainee's contention that the conditions of his confinement in Administrative Segregation violated Department of Corrections' regulations in the MCACC Handbook was without sufficient merit to warrant discussion in a written opinion).

Here, PD requests that this Court interfere with the day-to-day operation of the MCACC and substitute this Court's judgment, if not his own judgment, when courts have routinely

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recognized that prison officials are better equipped to determine the implementation and extent of security measures, procedures, and policies. This Court should not discourage prison administrators from crafting unique solutions to an indeterminable number of issues that may arise within the context of running a correctional facility. Solutions to the challenges of monitoring large groups of persons, who are incarcerated involuntarily and are violent, are afforded due deference and the jail administrators are entitled to use their best judgment in light of their expertise and experience in crafting flexible and creative resolutions. The MCACC Handbook does not establish a state-created interest in remaining in General Population because the Handbook lacks procedural guidelines containing explicitly mandatory language or substantive predicates that would substantially limit Defendant's discretion. As a result, the County of Middlesex did not violate any State-created interests. In the alternative, if a State-created liberty interest was established, the restrictions on that interest were reasonably related to the legitimate governmental interests of maintaining institutional safety, security, and order.

Whether Plaintiff's liberty interests are premised on a Constitutional or a state created interest, PD has failed to establish that his classification of Administrative Segregation with housing in C pod during two separate 60 day periods was not punitive. Further, there were clearly legitimate reasons for PD's placement in Administrative Segregation. As such, the County of Middlesex is entitled to a grant of summary judgment.

Finally, as set forth above, only if protected interests are implicated, then the Court decides what procedures constitute due process of law. Morrissey v. Brewer, 408 U.S. 471, 481 (1972). Miller v. Samuels, 2016 U.S. Dist. LEXIS 65917 at *13 (D.N.J. 2016)("moreover, this Court reiterates that Plaintiff has not implicated a liberty interest; therefore, he is not entitled to due process."). The Supreme Court in Hewitt set forth the due process protections for inmates entering into Administrative Segregation as requiring only an informal non-adversary review, with notification and the opportunity to participate, as well as periodic review. Hewitt, 459 U.S. 474-475, 477. Thus, "detainees who are transferred into restrictive housing for

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administrative/safety related reasons are entitled only to an explanation of the reason for their transfer as well as an opportunity to respond." Mollett v. Leith, 2011 U.S. Dist. LEXIS 128924 (W.D. Pa. 2011), citing Stevenson v. Carroll, 4495 F.3d 62, 71 (1983) and Hewitt, 459 U.S. at 476 n. 8.

In this case, PD received notification when he was re-classified as Administrative Segregation. (SOUF ¶¶74, 99). He was advised that the Committee would review his status monthly and that he had the right to appeal the decision to the Warden. (Id. See also Exhibit 24, Inmate Handbook). While Plaintiff remained on Administrative Segregation, Plaintiff's status was reviewed monthly and he was so notified. (SOUF ¶¶74, 99). In fact, PD requested and appeared for an in person review on June 6, 2014. (SOUF ¶103). As such, since no liberty interests were implicated, no procedural due process was required. Even if process was due, PD was provided with the opportunity to address the Committee, of which he took advantage, and was further notified each time the Committee discussed whether he should remain on Administrative Segregation status. Further, Dr. Sandrock, the Mental Health member of the Committee, who had knowledge of PD from his frequent evaluations, was able to, and in fact did, advocate for the Plaintiff during these reviews by making housing recommendations, which recommendations were controlling. (SOUF ¶¶37, 43). As such, Defendant, County of Middlesex, is entitled to summary judgment on PD's procedural due process claims.

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POINT III

SUMMARY JUDGMENT SHOULD BE GRANTED ON PLAINTIFF'S CLAIMS BROUGHT UNDER THE LAW AGAINST DISCRIMINATION

N.J.S.A. 10:5-12 (f)(1) provides, that it would be unlawful discrimination, "for any owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof . . . ." Similarly, N.J.S.A. 10:5-4 provides that "[a]ll persons shall have the opportunity . . . to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation" without discrimination on the basis of disability.

Jails, such as the MCACC, are places of public accommodation. Chisolm v. McManimon, 97 F. Supp. 2d 615, 621-22 (D.N.J. 2000), rev'd and remanded on other grounds, 275 F.3d 315 (3d. Cir. 2001); Accord, Ptaszynski v. Uwaneme, 371 N.J. Super. 333 (App. Div. 2004).

Like the NJCRA and Section 1983 analysis, Courts, in interpreting the LAD in disability discrimination service claims have found that "federal law has consistently been considered for guidance." Lasky v. Moorestown Tp., 425 N.J. Super. 530 (App. Div. 2012); Borngesser v. Jersey Shore Med. Ctr., 340 N.J. Super. 369, 380 (App. Div. 2001); Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352, 363-64 (App. Div. 1994), cert. den. 142 N.J. 446; see also Chisolm v. McManimon, 275 F.3d 315, 324 n.9 (3d Cir. 2001) (confining discussion to ADA Title II "with the understanding that the principles will apply equally to the Rehabilitation Act and NJLAD claims").

With almost identical language to the LAD, Title II of the Americans with Disabilities Act provides, in relevant part, that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Thus, to prove a violation of Title II of the ADA, a Plaintiff must show:

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> (1) he [is] a "qualified individual with a disability"; (2) he was either excluded from participation in, or denied the benefits of, . . . [defendant]'s services, programs, or activities, or was otherwise discriminated against by . . . [defendant]; and (3) such exclusion, denial of benefits, or discrimination was by reason of his disability.
>
> Lasky, 425 N.J. Super. at 539.

However, "while public entities are required under the ADA to provide reasonable accommodation for persons with disabilities, they are not required to go beyond what may be reasonable. "Accommodation is not reasonable if it either imposes undue financial and administrative burdens on a public entity, or requires a fundamental alternation in the nature of the program." Chisolm, 97 F. Supp. 2d at 623.

The other exception to providing reasonable accommodation under the ADA is where an individual poses a direct threat to the health or safety of others. The term 'direct threat' means a "significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services." 42 USC § 12182(b)(3). The Department of Justice regulations further elaborate on this direct threat exception:

> a) This part does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others.
>
> b) In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

28 CFR 35.139 (nondiscrimination on the basis of disability in state and local government services).

In DRNJ v. State of New Jersey, 974 F. Supp. 2d 705 (D.N.J. 2013), a case involving the involuntary medication of patients civilly committed to a psychiatric hospital, the Court held that the hospital did not violate the ADA, as:

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> Ultimately, "adequate justification" exists for differential treatment of the relevant class because the treatment is not based on disability, but based on a finding of dangerousness. Voluntarily committed patients who exhibit dangerousness due to their mental illness are also subject to A.B. 5:04B. Further, a comparison of the forced-medication process of the relevant population with similarly-situated non-mentally ill persons does not lead to a conclusion of discrimination because the underlying issue is the same — the need for medical treatment related to dangerousness. Thus, whether the patient is a danger to self, others, or property, or some combination thereof, is inapposite to the general construction and purpose of the statute to prohibit discrimination of a class or subclass based on mental illness.

The Third Circuit, in DRNJ v. State, 796 F.3d 293 (3d Cir. 2015), in affirming the District Court, found that "a claim under Title II of the Americans with Disabilities Act claim must allege that a disabled person has been denied some benefit that a public entity has extended to nondisabled people".

In this case, Plaintiff was given an equal opportunity to benefit or participate in the services provided at MCACC. However, there is no evidence that Plaintiff was treated differently from or unequal to what was provided to a non-handicapped inmate. Indeed, Plaintiff, who was on Administrative Segregation status from January 13, 2014 until his departure from the facility on June 16, 2014 (SOUF ¶¶74, 109), was housed in C pod for only a portion of that time, which was atypical of an inmate with that housing classification. (SOUF ¶74). Further, on several occasions, PD's disciplinary infractions were suspended, unlike other inmates, so that additional restrictions would not be placed on him. As such, Plaintiff was treated much better than non-handicapped individuals in terms of housing. Further, after the myriad of infractions and attempts to house PD in units other than C pod, there was a rational basis for PD's placement in C pod. Fraise v. Terhune, 283 F.3d 506, 514 (3d Cir. 2002); Little v. Terhune, 200 F. Supp. 2d 445, 450 (D.N.J. 2002). To permit PD to remain in General Population, a position not advocated by Plaintiff, would implicate the direct threat exception. However, it is clear that when PD was housed in specialty housing, his actions engendered a threat to the security of the facility. To expect the MCACC to subject their management of the facility and its inmates to the

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mercurial moods of one (1) inmate would impermissibly impose undue financial and administrative burdens on the County. As such, Plaintiff's LAD claim must be dismissed.

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POINT IV

PLAINTIFF'S PUNITIVE DAMAGE CLAIMS MUST BE DISMISSED

A. Constitutional Claims

In City of Newport v. Facts Concerts, Inc., 453 U.S. 247 (1981), the United States Supreme Court found that punitive damages could not be awarded against a municipal defendant in a suit brought pursuant to 42 U.S.C. §1983. Specifically, the Court found that:

> [P]unitive damages imposed on a municipality are in effect a windfall to a fully compensated plaintiff, and are likely accompanied by an increase in taxes or a reduction of public services for the citizens footing the bill. Neither reason nor justice suggests that such retribution should be visited upon the shoulders of blameless or unknowing taxpayers.

Id. at 267.

This principle has been expanded to prohibit punitive damage awards brought against a municipality for claims under the American with Disabilities Act and the Rehabilitation Act, Doe v. County of Centre, Pa., 242 F. 3d 437 (3d. Cir. 2001) and RICO, Genty v. Resolution Trust Corp., 937 F.2d 899, 914 (3d Cir. 1991). This prohibition has also been extended to claims under the NJCRA:

> To this day, public entities are generally immune from punitive damages. More specifically, the State of New Jersey, its departments, divisions and agencies, including the Superior Court of New Jersey and the Vicinage, are immune from punitive damages "except under civil rights statutes such as the LAD and the Conscientious Employee Protection Act, in furtherance of such statutes' remedial goals." Thigpen v. City of East Orange, 408 N.J. Super. 331, 344, 974 A.2d 1126 (App. Div. 2009) (citing Green v. Jersey City Bd. of Educ., 177 N.J. 434, 828 A.2d 883 (2003)). Indeed, the TCA precludes an award of punitive damages against a public entity. N.J.S.A. 59:9-2(c). Similarly, public entities are immune from punitive damages under § 1983, Newport, supra, 453 U.S. at 271, 101 S. Ct. at 2762, and, therefore, under the NJCRA. Finally, the Punitive Damages Act, N.J.S.A. 2A:15-5.9 to 5.17, provides that the Act shall not "be construed as creating any claim for punitive damages which is not now available under the law of this State." N.J.S.A. 2A:15-5.15. Absent a statute specifically abrogating immunity from punitive damages, public entities remain immune from liability for punitive damages.

Harvard v. State, 2016 N.J. Super. Unpub. LEXIS 1559 at *67-68 (Law. Div. 2016).

As such, summary judgment must be granted as to any claim for punitive damages as to Plaintiff's Constitutional claims.

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B. New Jersey Law Against Discrimination

The purpose of punitive damages, as the term "punitive" implies, is to punish and deter an individual or entity for particularly repugnant conduct. See Leimgruber v. Claridge Assocs., Ltd., 73 N.J. 450, 454 (1977) ("Punitive or exemplary damages are sums awarded apart from compensatory damages and are assessed when the wrongdoer's conduct is especially egregious. They are awarded upon a theory of punishment to the offender for aggravated misconduct and to deter such conduct in the future."). Accordingly, a plaintiff seeking to impose punitive damages must demonstrate, "by clear and convincing evidence, that the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions." N.J.S.A. 2A:15-5.12.

Under the LAD, an employer may only be liable for punitive damages in the event that the conduct was based on its "upper management." Cavuoti v. New Jersey Transit Corp., 161 N.J. 107, 113 (1999), quoting Rendine v. Pantzer, 141 N.J. 292, 313 (1995). Punitive damages are not warranted for every violation of the LAD, only those "exceptional" cases where the conduct is "especially egregious." Id. The New Jersey Supreme Court has stated that punitive damages may only be awarded if two distinct conditions are satisfied: (1) actual participation by upper management or willful indifference; and (2) proof that the offending conduct is especially egregious.'" Id., quoting Rendine v. Pantzer, 141 N.J. 292 (1995). See also Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 625 (1993).

"Egregious conduct" has been defined as conduct that is "wantonly reckless or malicious," an "intentional wrongdoing in the sense of an "evil-minded act," or a "wanton and willful disregard of the rights of another." Cavuoti, 161 N.J. at 121, fn. 2, quoting Rendine, 141 N.J. at 313. The standard of a "wanton and willful disregard for the rights of another" requires "a deliberate act or omission with knowledge of a high degree of probability of harm and reckless indifference to consequences." Id.

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Plaintiff cannot establish, by clear and convincing evidence, that any conduct by the County was especially egregious in that it was so malicious, reckless, or intentional as to justify an award of punitive damages. Negligence, no matter how "gross", simply cannot support an award of punitive damages. Nappe, 87 N.J. at 50, quoting DiGiovanni, 55 N.J. at 191. See also LoRocco v. N.J. Mfrs. Ind. Ins. Co., 82 N.J. Super. 323, 327 (App. Div. 1964) cert. den. 42 N.J. 144 (1964). PD was placed in numerous housing units, including specialty units, all of which became unsuitable when incidents occurred. After accommodations were made and the options taken were not successful, the County was left with no other alternatives to manage this intractable inmate. This conduct cannot be considered egregious. Therefore, Plaintiff cannot make a showing that punitive damages are warranted against the County of Middlesex and summary judgment should be granted.

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POINT V

SUMMARY JUDGMENT IS PROPER WHERE THERE IS NO GENUINE ISSUE AS TO A MATERIAL FACT, AND, AS SUCH, THE COUNTY OF MIDDLESEX IS ENTITLED TO JUDGMENT AS A MATTER OF LAW

Rule 4:46-2 provides that a court should grant summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Brill v. Guardian Life Insurance Co., 142 N.J. 520, 528-529 (1995). By its plain language, Rule 4:46-2 dictates that a court should deny a summary judgment motion where the party opposing the motion has come forward with evidence that creates a "genuine issue as to any material fact challenged". That means a non-moving party cannot defeat a motion for summary judgment merely by pointing to an immaterial or insubstantial fact in dispute. Brill, 142 N.J. at 529.

The rationale upon which Rule 4:46-2 is premised was enunciated in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 73-74 (1954), wherein the Supreme Court declared:

> It is designed to provide a prompt, businesslike and inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial.... In conjunction with the pretrial discovery and pretrial conference procedures, the summary judgment procedure aims at the swift uncovering of the merits and either their effective disposition or their advancement toward prompt resolution by trial.

See also, N.J. Sports and Exposition Authority v. McCrane, 119 N.J. Super. 457, 470 (Law Div. 1971), aff'd., 61 N.J. 1 (1972). Although genuine issues of material fact preclude the granting of summary judgment, R. 4:46-2, those that are "of an insubstantial nature" do not. Brill v. Guardian Life Insurance Co., 142 N.J. at 529 (quoting Judson, 17 N.J. at 75).

In Brill, the New Jersey Supreme Court, adopted the summary judgment approach used by the Federal courts in Matsushita Elec. Ind. Co. Ltd. v. Zenith Radio Corp.,475 U.S. 574 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Celotex Corp. v. Catrett, 477

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U.S. 317 (1986), and indicated that the Court must analyze the evidence under the same evidentiary standard of proof that would apply at the trial on the merits when deciding whether there exists a "genuine" issue of material fact. Brill, 142 N.J. at 533-34 (see Liberty Lobby, 477 U.S. at 254-56). See also, Schwartz v. Worral Publications, Inc., 258 N.J. Super 493 (App. Div. 1992).

The Court in Brill held that, under Rule 4:46-2, when deciding summary judgment motions trial courts are required to engage in the same type of evaluation, analysis or sifting of evidential materials as required by Rule 4:37-2(b) in light of the burden of persuasion that would apply if the matter went to trial. Brill, 142 N.J. at 540.

The Supreme Court in Brill continued "under this new standard, a determination whether there exists a `genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party... If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a "genuine" issue of material fact for purposes of Rule 4:46-2. Id.

In considering all of the material evidence before it to determine if there is any genuine issue of material fact, that, is a sufficient factual disagreement to require submission to a jury, the court must within the bounds of reason, view most favorably those items presented to it by the party opposing the motion. Brill, 142 N.J. at 540. If the opposing party in a summary judgment motion offers only facts which are immaterial or of an insubstantial nature, a mere scintilla, "fanciful, frivolous, gauzy, or merely suspicious, he will not be heard to complain if the court grants summary judgment." Brill, 142 N.J. at 529 (quoting Judson, 17 N.J. at 75 [citations omitted]).

The Court in Brill indicated that the "thrust" of its decision "is to encourage trial courts not to refrain from granting summary judgment when proper circumstances present themselves."

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Brill, 142 N.J. at 541. The judge's function, when presented with a summary judgment motion, is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. Brill, 142 N.J. at 540 (quoting Liberty Lobby, 477 U.S. at 249).

Therefore, where the moving party demonstrates by competent evidential material that no genuine and material issue of fact exists, the Court is compelled as a matter of law to grant the movant's summary judgment application. It is, therefore, respectfully submitted that in consideration of all of the material evidence, the moving party herein is entitled to summary judgment as a matter of law.

"If a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, such as ensuring security and order at the institution, it does not, without more, amount to punishment." Southerland v. County of Hudson, 523 Fed. Appx. 919, 921 (3d Cir. 2013). This "determination may be properly made on a motion for summary judgment." Stevenson v. Carroll, 495 F.3d 62, 71 (3d Cir. 2007). Here, Defendant has set forth facts, based on Plaintiff's own version, which establishes that summary judgment should be granted to the County of Middlesex.

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CONCLUSION

For all of the foregoing reasons, it is respectfully requested that the Motion for Summary Judgment on behalf of Defendant, Middlesex County, be granted.

Respectfully submitted,

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By: _____
SUSAN K. O'CONNOR

Dated: November 18, 2016

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Plaintiff, P.D. (a pseudonym) vs. Defendant, MIDDLESEX COUNTY	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY LAW DIVISION DOCKET NO. MID-L-3811-14 CIVIL ACTION **ORDER**

THIS MATTER having been brought before the Court on Motion of Hoagland, Longo, Moran, Dunst & Doukas, LLP, attorneys for Defendant, Middlesex County, for an Order granting Summary Judgment to said Defendant in the within cause of action, and the Court having reviewed the moving papers and for good cause shown;

IT IS ON THIS _____ day of _____, 2016,

ORDERED that the Motion for Summary Judgment of Defendant, Middlesex County, be and is hereby granted in favor of said Defendant and that any and all claims, counterclaims, and/or crossclaims asserted against said Defendant are hereby dismissed with prejudice; and

IT IS FURTHER ORDERED that a copy of the within Order shall be served upon all counsel of record within seven (7) days of the date of service hereof.

_____
J.S.C.

Papers filed with the Court:
( ) Answering Papers
( ) Reply Papers

The within Notice of Motion was:
( ) Opposed
( ) Unopposed

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