JEANINE ANTHONY Plaintiff vs. COUNTY OF MORRIS, MORRIS COUNTY CORRECTIONAL FACILITY, MELISSA BROCK, OFFICER RESIERA, OFFICER MASTRONINI, OFFICER SLINGER, JOHN DOES (1-10) (UNKNOWN) Defendants	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION-** **Civil Action** **Sat Below** **HON. LOUIS S SCEUSI, JSC** **SUPERIOR COURT OF NEW JERSEY LAW DIVISION; UNION COUNTY** **Docket No: MRS-L- -462-21** **Submitted: July 25, 2024**

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PRELIMINARY STATEMENT

On 7/8/2022, Jeanine Anthony (Plaintiff), an inmate at the Morris County Correctional Facility (MCCF), sought relief from the Appellate Division after the Trial Court dismissed her Complaint alleging: Count 1- Negligent, Reckless, and Wanton violation of Plaintiff's rights; Count 2-Breach of the Covenant of Good faith and Fair Dealing; Count 3-Reckless and Intentional infliction of Severe Emotional Distress; Count 4- Violation of NJ constitution, Article 1, paragraphs 1, 6, 10, 11 , 18, 22, Peper v. Princeton, 77 NJ 55 (1978), Count 5-Violations of N.J.S.A. 10:6-2(c); Count 6-State Created Danger-Class of one Violation and Count 7-Res Ipsa loquitur.

The Counts were based on plaintiff's allegations that while confined at the Morris County Correctional Facility, she was: Not Permitted to attend Church; Plaintiff requested but was denied her psychiatric medications; Plaintiff was threatened with Bodily harm; She was unfairly subjected to Disciplinary action; Plaintiff was Denied contact with her Attorney; Plaintiff was not taken to scheduled Court Appearance and that she grieved and was given retaliation.

On 10/25/2023, the Appellate Division affirmed the dismissal of Counts 2, 3,6, and 7, and remanded Count One, Count Four and Count Five to the Trial Court. The Division expressed that there was no legal analysis by defendants

related to the additional basis for dismissal of these counts. On remand the defendants were required by the Appellate Division to provide legal analysis as to whether or not the defendants are eligible for Qualified Immunity, whether or Not Plaintiff failed to Comply with the Notice Provisions of the Tort Claims Act, whether or Not Plaintiff failed to plead recognized exceptions to public entity immunity and whether or Not the Amended Complaint was Non-Compliant with the Statue of Limitations. The Court found that the Amended Complaint was timely filed and that the Notice Provision of the Tort Claim Act was given compliance.

The trial Court however incorrectly failed to find that the defendants could not provide the requisite legal analysis or any cognizable additional reasons for the dismissal of Count One, Court Four and Count Five of the plaintiff's Amended Complaint. The Court dismissed the remaining Counts despite the fact that the defendants were unable to comply with the Appellate Divisions Instructions and provided its decision in another conclusory fashion.

STATEMENT OF FACTS

On December 29, 2019, Plaintiff was incarcerated at Morris County Correctional Facility and stayed in the intake sections of the jail until January 6, 2020. 3. On January 6, 2020, Plaintiff signed up to attend church on January 8, 2020.

When Lieutenant Cucci, a corrections officer, came to pick up the female inmates for church, she stated Plaintiff was not on the list and would not be going. Plaintiff endured the same process the following week. On January 15, 2020, Plaintiff signed up for church and when Lieutenant Cucci came to pick up the female inmates for church, again she stated Plaintiff was not on the list and Plaintiff did not going. Plaintiff endured the same process the following week. On January 15, 2020, Plaintiff signed up for church and when Lieutenant Cucci came to pick up the female inmates for church, again Plaintiff was not on the list and Plaintiff did not go.

Plaintiff dropped the request slip to Reverend Scott stating that she had followed the correct procedure to be taken to church as the rest of the female inmates who requested to go to church, but Plaintiff had not been allowed to go and asked to know why. As of January 13, 2020, Plaintiff still had not received any psych meds that she had been requesting since January 7, 2020. On January 15, 2020, Reverend Scott told Plaintiff that he told Lieutenant Cucci that Plaintiff was on the list to go to church, and he did not understand why Lieitenant Cucci had told Plaintiff that she wasn't on said list. On January 25, 2020, there was a disagreement involving Danielle Walker, a fellow inmate, and Plaintiff. Officer Miller asked Plaintiff to complete a witness statement as to exactly what happened. Plaintiff was asking him a question about what he wanted her to fill out. Officer Miller's response was, "[i]f you don't lose your attitude, I swear, I'm going . . ." and he stopped himself.

Plaintiff felt threatened with bodily harm. Plaintiff said and did nothing to cause Officer Miller to threaten Plaintiff. On January 31, 2020, Plaintiff was speaking with inmate Jessica Dotty who asked Plaintiff a question and Plaintiff answered it with a neutral tone. Officer Pereira called both inmates' names and told them they had to lock in for four hours because they were being loud; b. He was lying as they were not being loud. Plaintiff walked to his desk and asked him to speak with a Shift Supervisor; d. Plaintiff also asked him for a grievance form and he denied Plaintiff both. Plaintiff walked toward her cell. He asked Plaintiff if she was refusing to go into her cell. Plaintiff picked up her things off the table and went into her cell and sat on her bunk.

Officer Pereira told Plaintiff, "[y]our door did not close, which constitutes refusal to go to your cell and you're being charged." At which time, he called in an extraction team that came up to Plaintiff's cell, removed Plaintiff from Plaintiff's cell for not going into her cell and charged Plaintiff and sent Plaintiff to disciplinary detention (all without due process). While Plaintiff was downstairs in disciplinary detention, the Officer informed Plaintiff he charged Plaintiff for insubordination and not following an order causing unsafe conditions on her cellblock. Plaintiff received information that Officer Pereira handed out witness statements and when he collected the witness statements from all the inmates, he separated them into piles and while he walked out of the room, he threw a pile into the garbage and kept one

pile Plaintiff was in intake being charged with insubordination and not obeying a direct order and she was taken into pre-disciplinary detention.

On February 1, 2020, the next morning, Plaintiff asked Officer Mastroeni if Plaintiff could call her attorney. She said, "[w]hy? It's Saturday. Your attorney is not in his office." Plaintiff said she had her attorney's cell phone number and that she can call him 24/7; 365. Officer Mastroeni said, "[d]on't get smart with me." She never allowed Plaintiff to call Plaintiff's attorney that day. On February 2, 2020, the next day, Plaintiff asked again if she could call her attorney. Plaintiff asked Officer Slinger if Plaintiff could please call Plaintiff's attorney. Officer Slinger said Plaintiff could call his office and not his cell phone. Plaintiff's Attorney's Office does not take collect calls. The Inmate Handbook Plaintiff was given when Plaintiff was processed in intake, dated 2018, states, "[a]n inmate housed in any classification unit has the right to communicate with their attorney." Said right was breached as stated above.

On February 7, 2020, inmate Amanda Ardle told Officer Desenza that she felt like murdering someone and that he, Officer Desenza, was a fucking asshole. No sanctions were given to inmate Ardle. This exemplifies the disparate treatment that Plaintiff received as compared to her inmates. On February 13, at approximately 11:45 am, inmate locked themselves in for an hour and a half to 1:00 pm and Plaintiff fell asleep when Officer Mastroeni called for meds up – meaning the Nurse was on

their unit to give out medication. Plaintiff was standing at her door and some of the other inmates alerted Officer Mastroeni that Plaintiff was at her door and Plaintiff needed to receive her meds.

Officer Mastroeni eventually came to Plaintiff's door, opened it, and said, "[w]hy didn't you get up?" Plaintiff stated that she was sleeping. Officer Mastroeni commented, "[w]ell do you think you're better than everybody else?" Plaintiff said, "[o]ne has nothing to do with the other. I was sleeping." Officer Mastroeni alleged Plaintiff was talking back to an officer. Plaintiff never got her medication until half an hour later. Plaintiff was visited by the Captain and was told the next time Plaintiff answered back to an officer, she was going to go back to disciplinary detention.

That morning, Officer Mastroeni, went to each individual cell and woke up each inmate who did not get up when the nurse came on the unit for meds. However, Office Mastroeni did not yell at these other inmates. She did not say anything to such inmates. Instead, she simply woke them up. Later on, when the shift changed and Officer Rescenza was on duty, Plaintiff asked for a grievance form and was refused. Other inmates who missed their meds – Holly Schwartz, Denise Sebastiano, Kim Halama – but did not receive reprimand and no Captain came.

Defendant Melissa Brock, a social worker, was the Supervisor assigned to the Social Services Unit where Plaintiff was placed in the County Correctional System. It was Defendant Brock's brother, a fellow inmate, who had reported to

authorities that Plaintiff had engaged in the offense for which Plaintiff was arrested – who was also placed in the same unit under the supervision of his sister, Melissa Brock. Same is an ethical violation and violation of the correctional rules to have a relative (Defendant Melissa Brock's brother) under your command and charge where the County Correctional Employee has authority. The Defendant Brock was operating in a conflict situation and doing her brother's bidding in directing the hostilities of the county agents' misdeeds against Plaintiff as alleged

On April 7, 2020, plaintiff sent to the County of Morris Notice of Claim. The Notice of claim outlined the seven complaints detailed above. It included a demand of $350,000, exclusive of attorney's fees or punitive damages, and a narrative of plaintiff's statement of facts.

PROCEDURAL HISTORY

On March 3, 2021, Plaintiff filed a complaint naming Morris County, MCCF, and four MCCF employees-Mellisa Brock, Officer Resiera, Officer Mastronini and Officer Slinger as defendants. Plaintiff named the employees both officially and individually and stated she filed a notice of claim. **(Pa001).** The complaint included seven counts with the following headings: (1) the negligent, reckless, wanton violation of plaintiff's rights; (2) a breach of the covenant of good faith and fair dealing; (3) the reckless and intentional infliction of severe emotional distress; (4) violations of several paragraphs of Article I of the New Jersey Constitution; (5)

violations of N.J.S.A. 10:6-2(c); (6) state created danger "class of one" violation; and (7) res ipsa loquitur. **(Pa006-Pa011)**

In lieu of an answer, defendants filed a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 4:6-2(a) and (e). **(Pa013).** On October 8, 2021 the court granted defendants' motion, dismissing plaintiff's claims without prejudice. **(Pa087)** On October 13, 2021, the plaintiff sought clarification reconsideration and clarification of that order, and the court sua sponte entered an order of clarification. **(Pa089)** October 27, 2021, the Court signed a case management order clarifying its prior decision. **(Pa091).** On November 23, 2021 signed another case management Order clarifying in part the reasons for doble motions and that plaintiffs complaint was dismissed without prejudice. **(Pa093).**

On February 22, 2022, plaintiff moved for leave to file an amended complaint. **(Pa095).** The trial court granted plaintiff's motion and the amended complaint was filed. **(Pa097).** Defendants again, without filing an answer, filed a motion to dismiss. **(Pa113).** On June 16, 2022, the court granted defendants' motion and dismissed all seven counts in the amended complaint with prejudice. In addition to finding the factual allegations insufficient to support the causes of action, the court held qualified immunity barred claims against defendants, the tort claims should be dismissed for failure to file a timely notice under N.J.S.A. 59:8-8, and plaintiff's claims were barred by the statute of limitations under N.J.S.A. 2A:14-2. The court

incorporated by reference its October 8, 2022 opinion, adding its prior opinion on the insufficiency of plaintiff's allegations had been "wholly unremedied by the plaintiff."

On October 25, 2023 the Appellate Court affirmed Counts two three six and seven. The Appellate Division expressed that in both the October 8, 2021 and June 16, 2022 statement of reasons, the trial Court listed as additional bases for dismissal: qualified immunity, the notice provisions of the Tort Claims Act ("TCA"), and the failure to plead recognized exceptions to public entity immunity. The Appellate Division noted that the June 16, 2022 decision also added that the amended complaint is untimely under N.J.S.A. 2A:14-2, with no further discussion. Per the Appellate Court these additional bases for dismissal are listed in a conclusory manner, without the legal analysis required by Rule 1:7-4.

Based on this the Appellate Court stated that it felt compelled to vacate and remand to the Law Division the dismissals of Counts One, Four, and Five based on qualified immunity, the TCA, the failure to plead recognized exceptions to public entity immunity, and the amended complaint's noncompliance with statute of limitations. Per the Appellate Court, On remand, the trial court should address which of these additional bases for dismissal, if any, would be appropriate, and determine whether the amended complaint relates back to the timely filed original complaint under Rule 4:9-3. The Appellate Court stated that the trial court shall

conduct a case management conference within thirty days and did not retain jurisdiction. On 12/14/2023, the Defendants filed a brief in response to the directives of the Appellate Court's Division. **(Pa291).** On January 16, 2024, the plaintiff filed her opposition brief. **(Pa291).** On March 4, 2023 the matter was heard before the Honorable Louis S. Sceusi. (**1T**[1]). On March 18, 2024, the Court signed an Order dismissing the remaining Counts of the plaintiff's Complaint. **(Pa267)**

LEGAL ARGUMENT

POINT ONE
COUNTS ONE FOUR AND FIVE OF THE PLAINTIFF'S COMPLAINT WERE PROPERLY PLEAD AND SHOULD NOT BE DISMISSED

A. STANDARD FOR A MOTION TO DISMISS

Under Rule 4:6-2(e), motions to dismiss should be granted in "only the rarest [of] instances." Lieberman v. Port Auth. of N.Y. & N.J., 132 N.J. 76, 79 (1993). In reviewing a complaint for dismissal under Rule 4:6-2(e), the Court's inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739 (1989).

[1] 1T-Transcripts of Motion Hearing dated March 4, 2024

All facts are to be considered most strongly in favor of the pleader. See Spring Motors Distributors, Inc., v Ford Motor Company, 191 NJ Super 22, 29-30 (App. Div. 1983). Thus, a complaint is entitled to liberal reading in determining its adequacy. Van Dam Egg Co. v. Allendale Farms, Inc., 199 NJ Super 42 (App. Div. 1985). The Court is required to "search[ ] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. If this can be done, then the complaint should survive the preliminary stage with opportunity being given to amend if necessary." Printing Mart Morristown. 116 NJ 739, Leaderman v Prudential Life Insurance, 385 NJ Super 324, 349 (App. Div), certif. den. 188 N.J. 353 (2006). The Court is required to take a hospitable and generous approach in reviewing the complaint at the preliminary stage. Id. At this preliminary stage of the litigation the Court is not concerned with the ability of a plaintiff to prove the allegation contained in the complaint. Id. For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. Id; See also Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 626, 660 (1995).

Plaintiff need not posit any legal theories at the pleading stage as long as her underlying facts have been pleaded. See Farese v. McGarry, 237 N.J Super 385, 390-392 (App. Div. 1989). For purposes of analysis, plaintiffs are entitled to every reasonable inference of fact. Id; See also Craig v. Suburban Cablevision, Inc., 140

N.J. 623, 626, 660 (1995). At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. Id. The pleader need only fairly notify the adverse party of the claims and issues such that the case can be defended, and those allegations are deemed true for purposes of motions to dismiss on the pleadings. Rieder v. State Dept. Of Transp., 221 N.J. Super. 547 (App. Div. 1987).

The only issue before the court on a Rule 4:6-2 (e) motion is simply "whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988).

The defendants in their brief, make a bald statement that the elements of the claims are not properly pled, but failed to say to which elements they refer. Contrary to defense Counsel's contention, the Appellate Division already found the remaining counts to be intelligible. The Appellate Division simply requested that the defendants provide ***additional*** reasons why the claims should be dismissed. Here, the Plaintiff pled sufficient facts to support the elements of each claim that the Appellate Division found to be cognizable. Contrary to defense counsel's contention, the Plaintiff is only required to minimally plead and show only that she is entitled to relief due to the acts or omissions of the defendants. For the purpose of determining if dismissal is necessary, the Court must therefore treat the Plaintiff's version of the facts as

uncontradicted and accord it all legitimate inferences. Banco Popular v. Ghandi, 184 N.J. 161 (2003). At this stage, the Court should pass no judgment on the truth of the facts alleged; but accept them as fact only for the purpose of reviewing the motion to dismiss. Id.

Moreover, the examination of plaintiff's allegations of facts as required under Rule 4:6-2 (e) should be one that is painstaking and undertaken with a *generous and hospitable approach.* Id. The Court is reminded that at this stage, the facts have yet to be developed and that plaintiff is entitled to every reasonable inference. Printing-Mart Morristown, 116 NJ at 746.

B. COUNT I FOR NEGLIGENT, RECKLESS & WANTON VIOLATION OF PLAINTIFF'S RIGHTS WAS PROPERLY PLEAD

42 U.S.C.A. § 1983, is a means of vindicating rights guaranteed in the United States Constitution and federal statutes. Baker v. McCollan, 443 U.S. 137, 144 n. 3 (1979).

The New Jersey Civil Rights Act provides, in relevant part:

> Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by

> threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

[N.J.S.A. 10:6-2(c) (emphasis added).]

The Due Process Clause guarantees more than fair process, " it provides heightened protection against government interference with certain fundamental rights and liberty interests." Washington v. Glucksberg, 521 U.S. 702, 719-20 (1997). Article 1 para 1 of the New Jersey Constitution is the counterpart to the due process clause of the fourteenth amendment and affords all persons the same fundamental rights as the fourteenth amendment to the United States Constitution. See King v. S. Jersey Nat'l Bank, 66 N.J. 161, 178 (1974).

Article 1 para 1, like the Fourteenth Amendment's Due Process Clause, requires that the State provide safe conditions for confinement. Youngberg v. Romeo, 457 U.S. 307, 315-16, (1982). A safe environment was not provided to the plaintiff. The conduct of Morris County and its prison employees violated clearly established statutory or constitutional rights of the plaintiff which a reasonable person would have known. The defendants recklessly and wantonly violated plaintiff's rights including recklessly and wantonly refusing to provide the plaintiff with her psychiatric medications for almost an entire week.

Defendants state that plaintiff was not damaged by being denied the ability to go to Court on her matter. Defendants fail to understand that plaintiff's constitutional right to assistance of counsel and her constitutional right to a speedy trial as guaranteed under Article 1 para 1 and 10 were *injured* and *damaged*. The plaintiff who was confined in a prison setting away from home, sustained pain and suffering and severe emotional distress by being forced to worry and fret about being deprived of attending her Court matter and being denied access to her attorney. The Appellate Division on page 16 and 17 of its opinion already expressly stated that plaintiff made a cognizable claim for deprivation of her constitutional right to access courts, resulting in specific harm related to her confinement.

The Appellate Division stated on page 9 and 10 of its opinion that it was "**satisfied that plaintiff plead the elements of a cognizable claim**" for "BREACH OF INMATE DUTY OF CARE as laid out by the plain meaning of the words and the facts and First Count of the Complaint." The Appellate Division disagreed with the defendants that plaintiff had to show who owed the duty, what duty was owed and how she was damaged at this stage [prior to discovery].

Per the Appellate Court, "giving plaintiff every reasonable inference of fact and searching the complaint thoroughly and with liberality, as we must do under Rule 4:6-2 we are satisfied plaintiff plead the elements of a cognizable claim." Plaintiff showed that the prison had duties to her that were breached as presented in

her Amended complaint and Notice of Claim. Because this was a Rule 4:6-2 (e) motion, pursuant to Printing Mart-Morristown v. Sharp Electronics Corp., the Court is required to take a hospitable and generous approach in reviewing the complaint at this preliminary stage. Id 116 N.J. 739 (1989).

C. COUNT IV - VIOLATIONS OF ARTICLE 1 OF THE NEW JERSEY CONSTITUTION FOR DEPRIVATION OF PLAINTIFF'S SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS WAS PROPERLY PLEAD

Both state and Federal laws hold that prisoners have a right to due process. Wolff v. McDonnell, 418 U.S. 539, 555-56, (1974).

In examining a procedural due process claim, courts first assess whether a liberty or property interest has been interfered with by the government, and second, whether the procedures attendant upon that deprivation are constitutionally sufficient. Doe v. Poritz, 142 N.J. at 99 (citing Valmonte v. Bane, 18 E. 3d 992, 998, (2d. Cir. 1994) (quoting Kentuck v Dept. Of Corrections v. Thompson, 490 U.S.454, 460, (1989)).

Plaintiff although an inmate, has a liberty interest and a constitutional right in proper access to the Courts. Bounds v. Smith, 430 U. S. 817 (1977). Plaintiff has a liberty interest in her constitutional right to petition the government for the redress of grievances, Johnson v. Avery, 393 U. S. 483 (1969). Plaintiff has a liberty interest in access and communications with her attorney. See, e.g., Ex parte Hull, 312 U.S.

546,549 (1941); Hudspeth v. Figgins, 584 F.2d 1345, 1347 (4th Cir. 1978). Plaintiff had an absolute right to her psychiatric medication while confined. See Saint Barnabas Medical Center v. Essex County, 111 N.J. 67, 74 (1988).

Our laws hold that County prisoners, while confined, are classified as "wards of the county" with the "right to proper medical care." Saint Barnabas Medical Center v. Essex County, 111 N.J. 67, 74 (1988). Pursuant to the Supreme Court, "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution." Turner v. Safley, 482 U.S. 78, 84, (1987). As a matter of both state and federal law, defendant Morris County had an absolute duty to ensure that plaintiff received her psychiatric medication. Saint Barnabas Medica, 111 N.J. 74. Here there are no policies in place to ensure that prisoners are being provided with proper medical care. Plaintiff was not provided with her psychiatric medications between January 7, 2019 through January 13, 2019. Plaintiff requested the medications and did not receive them.

Plaintiff was denied procedural and substantive due process because she was not allowed to go to court to attend to her matter and denied access to her attorney. Prisoners have the right of meaningful access to the courts. Bounds v. Smith, 430 U.S. 817, 828 (1977). There are no policies in place to ensure that prisoners are able to make their Court appointments. Morris County has no policies in place to ensure that inmates are able to properly voice their concerns. There are no policies in place

to ensure that prisoners have contact with their attorneys. Short of the handbook stating that plaintiff had a right to communicate with her attorney, there was no policy specifying the methodology as to how this was to be achieved.

The defendants interfered with plaintiff's due process rights to access the courts by refusing to allow her to attend and to have assistance of counsel by not allowing contact. This resulted in further injury in not obtaining a speedy trial. The defendants interfered with plaintiff's due process right to grieve and petition government for redress by retaliating against her. The defendants retaliated against the plaintiff by sending her to disciplinary detention and disallowed her from access to her attorney after she grieved about perceived violations of constitutional rights and other rights. The defendants refused to give plaintiff her psychiatric medication for six (6) days, blocked her from going to church, disallowed her from attending her court matter causing severe emotional distress. Prisoners have the right of free speech. Thornburgh v. Abbott, 490 U.S. 401, 410, (1989). Plaintiff was denied of free speech while incarcerated. When plaintiff complained about the violations of her rights, she was given retaliation. Pursuant to the Supreme Court, "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution." Turner v. Safley, 482 U.S. 78, 84 (1987).

Pursuant to Article 1 para 3, no person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his

own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment. The Supreme Court has long held that prisoners have the right to exercise substantial religious freedom, Cruz v. Beto, 405 U.S. 319, (1972); See also O'Lone v. Estate of Shabazz, 482 U.S. 342, 348, (1987). Plaintiff was denied right to practice her religion because she was not allowed to go to church while confined.

Substantive due process "is reserved for the most egregious Governmental abuses against liberty or property rights, abuses that 'shock the conscience or otherwise offend judicial notions of fairness and that are] offensive to human dignity. Rivkin v. Dover Township Rent Leveling Bd., 143 N.J.352,366 (1996)"(citing Weimer v. Amen, 870 E. 2d 7400, 1405 (8th Cir. 1989). See also United Artists Theatre Circuit. Inc. v. Township of Warrington, PA, 316 F.3d 392, 399-400 (3d Cir. 2003). Only the most egregious official conduct is conscience shocking. Eichenlaub v. Twp. Of Indiana, 385 F.3d 274, 285 (3d Cir. 2004). In Rochin, Justice Frankfurter equated substantive due process violations with government abuses that "are . . close to the rack and the screw to permit constitutional differentiation. " Rivkin, 143 N.J. at 366 (citing Rochin v. California, 342 U.S. 165 (1952).

The fact that the defendants did NOT care one way or the other about the likely consequences of plaintiff missing her psychiatric medications for ***almost an entire week*** was egregious and SHOCKS THE CONSCIENCE. This an abuse that

is "close to the rack and the screw to permit constitutional differentiation." That same disrespect for plaintiff's rights and their inability to see her humanity, allowed them to block her from contacting her attorney and ignore her requests to attend her court matters on 1/8/2020, 1/29/2020, 2/1/202, 2/11/2020, 2/12/ 2020, 2/19/2020. The right to medical care, the right to access an attorney, to free speech, to access court and have assistance of counsel, to a speedy trial, and to be free from bodily harm are protected, the right to worship almighty God, the right to safety and the right to grieve are protected under New Jersey Constitution Article 1 paragraph 1, 3, 10, 11, 6, 18, 22 of the New Jersey Constitution.

Thus, Contrary to defense counsel, it is clear that the County's and the Prison's failure to have policies in place resulted in violations of the plaintiff's substantive and procedural due process rights. Thus, the County and the Prison are not protected by immunity that arose from government custom.

D. COUNT V - VIOLATION OF N.J.S.A. 10:6-2(c) UNDER COLOR OF LAW AND BY WAY OF THREAT OR COERCION WAS PROPERLY PLEAD

N.J.S.A. 10:6-2(c).

> Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights,

> privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

Here, the constitutional violations arose directly from actions by the government unit through its policies or customs. City of Canton v. Harris, 489 U.S. 378, 389 (1989) (quoting Monell, 436 U.S. at 694). Defendants were all acting under Color or State Law when they failed to supervise staff who violated the constitutions of this country and this State pertaining to plaintiff's rights to due process and equal protection. Defendants incorrectly state that the Plaintiff did not identify any damages, nor state the specific substantive due process or equal rights protections she alleged were violated.

Plaintiff sufficiently plead and showed that she was subjected to deprivation of her Civil and Constitutional rights via: "a policy of intimidating, ignoring, and simply refusing inmates from making grievances, a policy of denying inmates access to due process . . . [and] a policy of lack of accountability [causing] [p]laintiff to be incarcerated in the same institution where the sister of the man who reported her happens to work as a social worker (Defendant Melissa Brock)." See Appellate Opinion pg. 17. The policy and custom of the prison's and County's failure to properly supervise its staff caused Plaintiff to be denied to her equal rights of access to proper medical care, access to her attorney, access to the courts and the right to

grieve and petition government for redress. Plaintiff's rights were harmed and damaged and damaged, she was denied a speedy trial and she sustained severe emotional distress.

The appellate Division stated on page 17 that " [b] ecause the amended complaint asserted the constitutional claims against Morris and MCCF under a negligent supervision theory," the dismissal of counts fours and five were not warranted. Plaintiff thusly made cognizable claims under count four and five that she was not required to prove at a Rule 4:6-2 (e) juncture. The Eighth Amendment's ban on cruel and unusual punishment has been interpreted to prohibit deliberate indifference—by both medical providers and prison officials—to an inmate's serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). In Estelle, the Court expressed that deliberate indifference may be "manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." Id. at 104-05.

The defendants showed deliberate indifference by intentionally ignoring plaintiff requests for her psychiatric medications for six (6) days. Plaintiff was charged with insubordination for voicing concerns about perceived violations and placed in a disciplinary detention in a correctional facility, which also triggered her constitutional right to counsel. Plaintiff being placed in disciplinary detention ***is an***

additional cognizable injury. Plaintiff's right to access her counsel while she was on disciplinary detention was impaired and abridged.

Defendant incorrectly stated that plaintiff did not state facts that show threats or coercion. Plaintiff presented adequate facts in her Notice of Claim that was attached to satisfy threat and coercion. Plaintiff expressed that while completing a witness statement she was accused of having an attitude as she perceived, and that she was *threatened with bodily harm* by an officer if she did not "lose" the "attitude."

Plaintiff showed that the failure to supervise government employees acting under color of law, led to Substantive and Procedural due process violations, and other Constitutional and Civil rights violations against her, and that the deprivation was based on a custom of not having any policies at the County prison, which prevents dismissal of Counts One, Four and Five of her Amended Complaint.

Plaintiff showed specifically that the defendants violated New Jersey Constitution Article 1 paragraph 1, 3, 10, 11, 6, 18, and 22.

POINT TWO

PLAINTIFF'S ALLEGATIONS AGAINST THE COUNTY AND MCCF IN COUNTS FOUR AND FIVE ARE PROPERLY PLEAD BECAUSE THEY ALLEGE CONSTITUTIONAL VIOLATIONS AGAINST THE COUNTY AND MCCF DUE TO THEIR FAILURE TO HAVE POLICIES IN PLACE

The liability of a public entity under 42 USC §1983 attaches when "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." Monell v. Dep't. of Soc. Servs., 436 U.S. 658, 694 (1978). A *course of conduct* may be considered a custom when the practice of municipal officials, though not authorized by state law, is "so permanent and well-settled that it constitutes law." Monell, supra, 436 U.S. at 691; See also Bielevicz v. Dubinon, 915 F.2d 845, 850 (3d Cir. 2007); See Torres v. Kuzniasz, 936 F. Supp. 1201, 1206 (D.N.J. 1996).

A city can be sued "for constitutional deprivations visited pursuant to governmental `custom' even though such a custom has not received formal approval through the body's official decision making channels." Monell v Dept of Social Services, 436 US 658, 690-91 (1978). A "practice of state officials could well be so permanent and well settled as to constitute a `custom or usage' with the force of law." Id at 691

In Upchurch v City of Orange, the plaintiff sued the City of Orange and several defendants for Civil rights and other NJLAD violations. **(Pa).** The Appellate Court affirmed denial of summary judgment in the plaintiff's favor because the City

of Orange stated that it was *unaware* of the harassment. The Appellate Division held that the City's failure to have a policy that would protect employees from sexual harassment was a ***fatal flaw***. Id. Had a policy been in place that was being enforced by management, the City would have been aware of all acts of harassment against its employees. Consequently, the city was liable. See Id.

MCCF's and the County are liable for constitutional deprivations to its inmate Plaintiff, due to its course of conduct of failing to have policies in place to protect the rights of inmates. Failure to have a policy, is the same as having a custom and practice whereby the rights of inmates are routinely violated. Defendants have not identified ANY policy that would have protected the specific acts to which the plaintiff was subjected. Here, there was no answer to the plaintiff's complaint, nor any policy produced. The defendants' motion to dismiss was focused on criticizing plaintiff's inarticulate brief, with the pretext that plaintiff's concerns were incoherent and cannot be understood. The appellate Court had NO problems understanding plaintiff's concerns.

The Supreme Court has recognized that persons confined to penal institutions retain the right to petition the government for the redress of grievances, Johnson v. Avery, 393 U.S. 483, (1969). This is because "a prisoner does not shed his basic constitutional rights at the prison gate." See Baxter v. Palmigiano, 425 U.S. 308, 309 (1976).

42 U.S.C.A. § 1983 provides that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

Plaintiff was treated in a disparate and hostile fashion generally. Plaintiff complained and was given retaliations. The relative of a complaining witness against her, jail social worker Brock, was over both plaintiff and Brock's brother housed in the same unit. This allowed for an egregious conflict of interest in a setting where this should NEVER have occurred.

Neither the prison nor the County have policies in place to ensure that prisoners are being provided with proper medical care. There are no policies in place to ensure that prisoners are able to make their Court appointments. Morris County has no policies in place to ensure that inmates are able to properly and voice their concerns. There are no policies in place to ensure that prisoners have contact with their attorneys.

There are no policies in place to ensure that inmates are able to report threats of bodily harm. Because plaintiff was harmed due to knowing violations under color of law, qualified immunity does not attach. The New Jersey Civil Rights Act is

analogous to 42 U.S.C. § 1983. N.J.S.A. 10:6-1 to-2 and was adopted "for the broad purpose of assuring a state law cause of action for violations of state and federal constitutional rights and to fill any gaps in state statutory anti-discrimination protection." Ramos v. Flowers, 429 N.J. Super. 13, 21 (App. Div. 2012) (quoting Owens v. Feigin, 194 N.J. 607, 611 (2008)).

The Act contains two types of claims, one for any deprivation of a right, and another for when rights are "interfered with, by threats, intimidation or coercion by a person acting under color of law[.]" Id. (quoting N.J.S.A. 10:6-2(c)). Based on defendants' custom of knowingly failing to have policies in place, and failure to supervise staff, plaintiff's rights were deprived. As shown above, Plaintiff's rights were also threatened and interfered with under color of law. Plaintiff was subjected to threats, intimidation and retaliation in a malicious fashion interfering with her rights under the New Jersey Civil Rights Act and 42 USC § 1983.

Because these acts and omissions occurred under color of law, the County of Morris and Morris County Correctional Facility are liable to the plaintiff.

POINT THREE

DEFENDANTS DO NOT HAVE QUALIFIED IMMUNITY UNDER THAT TORT CLAIMS ACT FOR THEIR WANTON, WILLFULL AND RECKLESS VIOLATIONS OF THE PLAINTIFF'S RIGHTS

Defendants do not have immunity for their actions pursuant to the tort claims act. Thus, plaintiff's claims are cognizable.

NJSA 59:3-14 as amended in 2016 states as follows:

> Nothing in this act shall exonerate a public employee from liability. . . or full recovery. . . if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

Whether an official is shielded from liability by qualified immunity for alleged unlawful official action turns on the "objective legal reasonableness" of the action assessed in light of the "clearly established" law at the time the action was taken. Anderson v. Creighton, 483 U.S. 635, 639 (1987); Plumhoff v. Rickard, 572 U.S. 765, 776 (2014).

Qualified immunity shields government officials from civil liability unless a plaintiff shows "(1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." Radiation Data, Inc. v. NJ Dept. of Environmental Prot., 456 N.J. Super. 550, 558 (App. Div. 2018) (quoting Ashcroft v. al Kidd, 563 U.S. 731, 735 (2011)). That is, it protects public officials "from personal liability for discretionary actions taken in the course of their public responsibilities, 'insofar as their conduct does not violate clearly established or constitutional rights of which a reasonable person would have known.'" Brown v. State, 230 N.J. 84, 97-98 (2017) (quoting Morillo v. Torres, 222 N.J. 104, 116 (2015)). Qualified immunity may only shield an officer from liability if the officer "reasonably believes that his or her conduct complies with the law." Pearson v. Callahan, 555 U.S. 223, 244 (2009).

Moreover, there is no presumption of qualified immunity; rather, the immunity is considered "an affirmative defense that the defendant must establish." Schneider v. Simonini, 163 N.J. 336, 354 (2000). A cause of action is provided under 42 U.S.C. § 1983 in state or federal courts, to redress federal constitutional and statutory violations by state officials." GMC v. City of Linden, 143 N.J. 336, 341 (1996).

The trial Judge abused his discretion in concluding that the defendants were entitled to qualified immunity. NJSA 59:3-14 does not protect public employees from liability for willful malicious acts. The trial Court Judge *asserts that the defendants were engaged in "conscious considerations within the scope of their employment"* by refusing to allow the plaintiff to call her attorney several times while she was being subjected to disciplinary actions at the prison in a disparate fashion.

The Trial Court stated that the defendant after delaying communications between plaintiff and her counsel did not violate the plaintiff's rights by telling her to call her *attorney's office phone* only as opposed to his cell phone which is the only reliable 24/7 number on which her attorney may be reached.

The United States Supreme Court has expressed that prisoners have a right, circumscribed by legitimate prison administration considerations, to fair and regular treatment during their incarceration. Turner v. Safley, 482 U.S. 78 (1987), Estelle v. Gamble (1976). See also Farmer v. Brennan, 511 US 825 (1994). In Turner the

United State Supreme Court outlined a general standard to determining whether there were deprivation of Constitutional rights within a prison system. Pursuant to the Supreme Court, in cases where a regulation by the prison impinges on the inmates constitutional rights the Court may find that the regulation is valid if it reasonable related to any legitimate penological interest. Pursuant to the Turner Court, Courts may evaluate the following factors in making this determination:

(1) First, there must be a "valid, rational connection" between the prison regulation and the legitimate governmental interest put forward to justify it. Block v. Rutherford, supra, at 586. A regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational. Moreover, the governmental objective must be a legitimate and neutral one. *Turner v. Safley,* 482 U.S at 89-80

(2) (2) A second factor relevant in determining the reasonableness of a prison restriction, as Pell shows, is whether there are alternative means of exercising the right that remain open to prison inmates. Where "other avenues" remain available for the exercise of the asserted right, see Jones v. North Carolina Prisoners' Union, supra, at 131, courts should be particularly conscious of the "measure of judicial deference owed to corrections officials . . . in gauging the validity of the regulation." Pell v. Procunier, supra, at 827. *Turner v. Safley,* 482 U.S at 90.

(3) A third consideration is the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally. In the necessarily closed environment of the correctional institution, few changes will have no ramifications on the liberty of others or on the use of the prison's limited resources for preserving institutional order. When accommodation of an asserted right will have a significant "ripple effect" on fellow inmates or on prison staff, courts should be particularly deferential to the informed

discretion of corrections officials. Cf. Jones v. North Carolina Prisoners' Union, supra, at 132-133. *Turner v. Safley,* 482 U.S at 90

(4) The fourth factor is "absence of ready alternatives is evidence of the reasonableness of a prison regulation." See Block v. Rutherford, 468 U. S., at 587. By the same token, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an "exaggerated response" to prison concerns. This is not a "least restrictive alternative" test: prison officials do not have to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint. See ibid. But if an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at de minimis cost to valid penological interest, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard. *Turner v. Safley,* 482 U.S at 90-91

Here, plaintiff pointed to her attorney's cell phone which would have accommodated her rights because it was his most reliable number and would have had a di minimis cost to any penological interests. There was no valid, rational connection" between the prison regulation and plaintiff's ability to call her attorney or to call him his on his cell phone. No legitimate governmental interest put forward to justify the initial denial then the restrictive use of calling only the attorney's office phone. The available other means was not reliable. The denial was clearly an exaggerated response to plaintiff's ability to communicate with her attorney. There would be no affect on prison resource or any ripple effect on fellow inmates and staff. Thus, the denial was unreasonable

Officer Slinger's blocking plaintiff from calling her lawyer while she was being discipled in a prison and disallowing her from calling his only reliable 24/7

number was also willful malicious act. This was also a knowing and willful violation of the plaintiff's constitutional rights. Officer Slinger certainly could not have concluded that he was complying with the law when he denied plaintiff access to her counsel. Willful misconduct" has been defined as falling somewhere between simple negligence and the intentional infliction of harm. Alston v. City of Camden, 168 N.J. 170, 185 (2001). The Supreme Court of New Jersey in Fielder v. Stonack, 141 N.J. 101, 123-127 (1995), defined "willful misconduct" as a knowing failure to follow specific orders. Here, the "willful misconduct constituted a knowing violation of a plaintiff's constitutional and civil right which does not exonerate the public employees in case pursuant to NJSA 59:3-14.

The United States Supreme Court has held that prisoners have the right to petition for redress of grievances, which includes access to the courts for purposes of presenting their complaints. Ex parte Hull, 312 U.S. 546 (1941); White v. Ragen, 324 U.S. 760 (1945). Bounds v. Smith, 430 U.S. 817 (1977). Here, plaintiff was clearly denied access to the Courts while incarcerated.

In concluding that the defendants did not violate plaintiff's rights by disallowing her from making her court appearances the trial Court stated *"there is nothing from the record suggesting that the nature of these appearances—which are wholly unspecified by Plaintiff —required Plaintiff's presence."* **(Pa).** This Judge clearly forgot about the 6th Amendment to the United States Constitution and Article

1 para 10 of the New Jersey Constitution. The plaintiff had a constitutional right to a speedy trail and wanted to make haste to defend herself from other charges in the municipal court.

The Judge then goes on to state "reasonably competent officers ***could dispute*** whether neglecting to facilitate Plaintiff's unfettered access to Court appearances violates a clearly established constitutional right." **(Pa).** Based on this analysis, the Court should not have dismissed plaintiff's complaint because whether or not a matter *could be disputed* is not the standard for dismissal under Rule 4:6-2 (e). For a Rule 4:6-2 (e) analysis plaintiff was entitled to every reasonable inference of fact. Id. (citing Independent Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956).

The Judge's statement clearly shows that a cause of action could be gleaned from the facts as presented as presented. See Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 751 (1989); Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957). Moreover, pursuant to Printing Mart, "at this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." Id. (citing Somers Constr. Co. v. Board of Educ., 198 F. Supp. 732, 734 (D.N.J. 1961).

Additionally, since the defendants in this case ***did not pose any dispute*** against plaintiff's contentions that she was barred from making her Court appearances, but

the Judge believed that the defendants could pose a dispute, this clearly shows that the Judge was considering factors outside of the pleadings which required : (1) that the matter proceed to Summary Judgment and the parties gather more proofs to resolve the dispute or (2) since the judge believed that there could be a dispute, the matter should have been allowed to proceed to trial to be dealt with by the triers of facts in accordance with Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995); See also Lederman v. Prudential Life, Ins., 385 NJ 324, 337 (App. Div), certif. den. 188 NJ 353 (2006).

Note also that the Court failed to consider that the defendants also engaged in willful misconduct by not providing the plaintiff with her psychiatric medications. The U.S. Supreme Court held that prisoners have a constitutional right to receive adequate medical care. Estelle v. Gamble (1976). Plaintiff stated in her Notice of Claim as follows "as of January 13th I still have not received my psych meds that I have been requesting since 1/7/2019"(Pa)[2]

NJSA 59:6-4 specifically allows liability against a public entity for failure to examine or diagnose an inmate for the purpose of treatment. The defendants were aware that Plaintiff had a psychiatric condition that needed treatment while incarcerated. The staff's malicious and willfully ignoring the plaintiff's requests for

[2] Note the date error which is common as the year had just changed from 2019 to 2020

her medications and not administering her psychiatric medications for 6 days disqualifies the prison staff from qualified immunity. Recklessness is the same as deliberate indifference. See Schneider v. Simonini, 163 N.J. 336, 356 (2000).

In Greason v. Kemp, the Court held that a jury would have been entitled to find that the private doctor afforded the prisoner grossly inadequate care exhibiting deliberate indifference to the prisoner's needs when a prison psychiatrist had abruptly discontinued a prisoner's psychotropic drugs on the basis of a visit of a "few minutes" and without reviewing the prisoner's medical file or doing a "mental status examination" 891 F.2d 829, 835 (11th Cir.1990).

In Waldrop v Evans the Court found that a psychiatrist's abrupt discontinuation of inmate's psychotropic medication despite evidence of inmate's history of psychiatric illnesses could constitute deliberate indifference, 871 F.2d 1030, 1034-35 (11 Cir 1989).

There was no valid, rational explanation or any legitimate governmental interest served by refusing to give the plaintiff her psych meds. The denial was clearly an exaggerated malicious act than had no affect on prison resource. Administering the psych mends would have ripple effect on fellow inmates and staff. Thus, the denial was unreasonable. More discovery is clearly warranted so that it may be determined how the deprivation of psychiatric medications affected plaintiff's behavior.

The defendants were also not entitled to qualified immunity for depriving plaintiff from attending church. The Supreme Court has long held that prisoners have the right to exercise substantial religious freedom, Cruz v. Beto, 405 U.S. 319, (1972); See also O'Lone v. Estate of Shabazz, 482 U.S. 342, 348, (1987). The Supreme Court has stated that Under the Free Exercise Clause of the First Amendment, inmates retain a right to reasonable opportunities for free exercise of religious beliefs without concern for the possibility of punishment. See Cruz v. Beto, 405 U.S. 319, 322 (1972) (per curiam). Pursuant to the highest Court, reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendment without fear of penalty. Cruz, 405 U.S. at 322, note 2.

In Cruz v. Beto, the United States Supreme Court established that claims of religious freedom by prison inmates should not be dismissed outright without factual findings by trial courts. In Cruz, the petitioner, an alleged Buddhist, complained that he was denied access to the prison chapel, prohibited from corresponding with his religious advisor, and placed in solitary confinement for sharing religious material with other prisoners. Id at 319. The Court held that Texas had discriminated against him by denying a reasonable opportunity to pursue his Buddhist faith, comparable to what other prisoners adhering to conventional religious precepts were offered. Id at 322.

Similarly, our Plaintiff was clearly denied her constitutional right to practice her religion because she was not provided with any opportunity to go to church while confined. Here, the Court acknowledged that the Notice of Claim was timely and that plaintiff's contention that she was disallowed from going to Church would fall within the fourth and fifth count of the Complaint. **(Pa).** However, in contradiction to Cruz, there were *no factual findings* by the trial Judge on this issue. The defendants did not show any valid, rational connection" between the prison denial of plaintiff's ability to go to church and any legitimate government interest. The defendants did not show the availability of others means. The defendants did not show that there would be any adverse affect on prison resources or any ripple effect on fellow inmates and staff if plaintiff was allowed to go to church.

Apart from its generalized boiler plate *conclusory* defense of the defendants' action, the Court did not point to any conscious consideration on the part of the defendants for preventing plaintiff from exercising her right to attend church. Here, Plaintiff's right to practice her religion is protected under the Constitution. In Davis v. Scherer, the Supreme Court held that: "Officials are shielded from liability for civil damages insofar as their conduct does not violate the clearly established statutory or constitutional rights of which a reasonable person would have known." 468 U.S. 183 (1984). Based on this there is no qualified immunity for the defendants' actions in depriving the plaintiff of her constitutional right to attend church.

The Court did not analyze plaintiff's allegation that she was threatened by officer Miller. According to case law, if the words or conduct are such as to induce a reasonable apprehension of force and the means of coercion is at hand, a person may be as effectually restrained and deprived of liberty as by prison bars. Earl v. Winne, 14 N.J. 119, 128 (1953). The Officer's words induced fear and distress in the plaintiff. Plaintiff reasonably feared for her safety because she was a powerless inmate confined in a prison setting. Plaintiff's right to safety is protected under Article 1 para 1 of the NJ Constitution. Thus, fear and distress from threatened bodily harm is a ***cognizable injury***.

Plaintiff showed that the unsupervised staff who injured her, were persons for the purposes of N.J.S.A. 10:6-2(c) which is modeled on 42 USC § 1983. In Hafer v. Melo, the Supreme Court held that state officers may be personally liable for damages under Section § 1983 suit based upon actions taken in their official capacities. 502 U.S. 21 (1991).

In Hafer v. Melo, the Auditor General was sued in her personal capacity by an aggrieved employee. 502 U.S. 21 (1991). The Third Circuit ruled in Hafer's favor. Id at 23. The Court of Appeals for the Third Circuit reversed the district court's decision. Id. at 24. The Court of Appeals held that while Hafer's power to hire and fire an aggrieved employee derived from her position as Auditor General, a suit for damages based on the exercise of this authority could be brought against Hafer in a

personal capacity because Hafer acted under color of state law. Id. The Court of Appeals opined that the plaintiff could maintain a 42 USC § 1983 suit against Hafer in her individual capacity. Id. The US Supreme Court in affirming the decision of the Court of Appeals, rejected the argument that the language of 42 USC §1983 does not authorize suits against state officers for damages arising from official acts.

The court rejected Hafer's argument that she should not be personally liable for any actions taken in her official capacity, holding that state officials, sued in their individual capacities, are 'persons' within the meaning of section 1983 and qualified immunity does not shield them from individual capacity suits. Id.

Here, the County government official who threatened plaintiff and placed her in fear of bodily harm was similarly not protected by any immunity. Plaintiff also clearly alleged cognizable claims under 42 U.S.C. § 1983, because she showed that the defendants engaged in violations of her rights that are secured by the Constitution and other laws of the United States while acting under color of law. See Bernstein v. State, 411 N.J. Super. 316, 335 (App. Div. 2010) (citing Kollar v. Lozier, 286 N.J. Super. 462, 473 (App. Div. 1996).

To ascertain whether a governmental official, such as the prison Nurse is entitled to qualified immunity, requires inquiries into whether: (1) the facts, "[t]aken in the light most favorable to the party asserting the injury[ ] ... show the actor's

conduct violated a constitutional right"; and (2) that constitutional "right was clearly established" at the time that defendant acted. Saucier v. Katz, 533 U.S. 194, 201 (2001).

The `clearly established law' requirement... obligates a court to judge an official's conduct based on the state of the law and facts that existed at the time of the alleged statutory or constitutional violation." See Schneider v. Simonini, 163 N.J. 336, 354-55 (2000), (citing Anderson v. Creighton, 483 U.S. 635, 639 (1987). Either of the two prongs may be considered first. Morillo v. Torres, 222 N.J. 104, 118 (2015). Plaintiff's constitutional rights regarding all her entitlements were firmly established at the time that the defendants acted.

Here, the law and facts as they existed at the time regarding all omissions and deprivations are in the plaintiff's favor. Plaintiff has shown that her severe emotional distress as well as the injuries to her constitutional and civil rights were proximately caused by the defendants' negligent, wanton and reckless care while acting under color of law.

POINT FOUR

WHILE THE PUBLIC ENTITY WAS NOT LIABLE FOR THE WILLFULL MALICIOUS ACTS OF ITS EMPLOYEES IT HAD NO IMMUNITY FROM LIABILITY FOR THE RECKLESS, NEGLIGENT ACTS OR ACTS OF OMISSIONS OF THE INDIVIDUAL DEFENDANTS THAT OCCURRED WITHIN THE SCOPE OF THEIR EMPLOYMENT

The County is responsible for the acts and omissions of its employees against the plaintiff in this case. Pursuant to N.J.S.A. 59:2-2:

> (a) A public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances. (b) A public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable. N.J.S.A. 59:2-2 (emphasis added).

Pursuant to N.J.S.A. 59:2-3(d).

> A public entity is not exonerated from liability for negligence arising out of acts or omissions of its employees in carrying out their ministerial, rather than discretionary, functions.

Plaintiff reiterates that pursuant to NJSA 59:3-14 (a), willful acts and malicious acts are not covered under the Tort Claims Act. Pursuant to NJSA 59:3-14 (b):

> Nothing in this act shall exonerate a public employee from the full measure of recovery applicable to a person in the private sector if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice, or willful misconduct.

The burden is upon the public entity to prove that a specific action was discretionary rather than ministerial (or mandatory) for purposes of the TCA. See

Kolitch v. Lindedahl, 100 N.J. 485, 497 (1985). As opposed to a discretionary act, "[a] ministerial act is one which public officials are required to perform upon a given state of facts in a prescribed manner, in obedience to the mandate of legal authority and without regard to their own judgment or opinion concerning the propriety or impropriety of the act to be performed." Ritter v. Castellini, 173 N.J. Super. 509, 514-15 (Law Div. 1980). A County has a mandatory duty "to provide medical care for those whom it is punishing by incarceration." Estelle v. Gamble, 429 U.S. 97, 103 (1976).

The county's responsibility for the medical treatment of its inmates ends with the inmates' sentence. St Barnabas Medica Center v. County of Essex, 111 N.J. 67. (1988). Taxpayers are responsible for a County's negligent [or reckless] conduct that causes injuries to inmates. St Barnabas Medica Center v. County of Essex, 111 N.J. 67 n3. Here, defendants' failure to provide plaintiff with her psychiatric medication for six (6) days without consideration of the consequences causing severe emotional distress is failure to provide medical care (prescribed treatment) and constitutes deliberate indifference or recklessness. The defendants recklessly failed to exercise the high degree of care required for the plaintiff over whom they maintained control. Their failure to supervise the staff and have policies showed wanton disregard for the rights of the plaintiff. The failure to supervise the staff created a dangerous condition for the plaintiff. The custom of not supervising staff

proximately caused the plaintiff's severe emotional distress and denial of her substantive and procedural due process rights. The injuries to the plaintiff were foreseeable.

In Nardello v. Township of Voorhees, 377 N.J. Super. 428 (2005), the court found that a combination of multiple acts may make up a pattern of retaliatory conduct that may cause a public employee to lose protection under the Tort Claim Act. Id. Here plaintiff was subjected to a combination of multiple acts by being placed on disciplinary detention because she dared to grieve. Plaintiff was denied of her right to call her attorney, denied of her psychiatric medication, threatened with bodily harm, blocked from going to her court matter and intentionally was not placed on the list to go to Church which constitutes a pattern of unlawful conduct.

Because the employees are liable for all these acts, the County is also liable. See N.J.S.A. 59:2-2. Maliciously refusing to allow the plaintiff to have access to her lawyer is hardly a discretionary matter. Recklessly withheld her psychiatric medications for almost a week is not a discretionary matter. Blocked plaintiff's attendance at her court matter and denying her of her right to a speedy trial is not a discretionary matter.

Placing plaintiff in disciplinary detention because she grieved about perceived violations, threatening her with bodily harm caused her to endure severe emotional distress and to fear for her physical safety have both willful malicious and negligent

components. The acts and omissions in this case are Constitutional violations as well as violations under NJSA 10:6-2 (c) and 42 USC §1983.

Based on this there was public entity liability for the reckless and negligent acts because the individual employees were all liable.

CONCLUSION

Based on all the forgoing, the trial Court's order dismissing the remaining counts of plaintiff's complaint should be vacated.

/s/ Cecile D. Portilla
CECILE D. PORTILLA, ESQUIRE

July 25, 2024

JEANINE ANTHONY, Appellant, vs. COUNTY OF MORRIS, MORRIS COUNTY CORRECTIONAL FACILITY, MELISSA BROCK, OFFICER WILDER PEREIRA, OFFICER CAMILLE MASTROENI, OFFICER SLINGER, JOHN DOES (1-10) (UNKNOWN), Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002623-23 On Appeal From: SUPERIOR COURT, LAW DIVISION MORRIS COUNTY DOCKET NO.: MRS-L-462-21 Sat Below: Hon. Louis S. Sceusi, J.S.C.

BRIEF ON BEHALF RESPONDENTS, COUNTY OF MORRIS, MORRIS COUNTY CORRECTIONAL FACILITY, MELISSA BROCK, OFFICER WILDER PEREIRA, OFFICER CAMILLE MASTROENI AND OFFICER SLINGER

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PRELIMINARY STATEMENT

This brief is submitted on behalf of the Respondents, County of Morris, Morris County Correctional Facility, Melissa Brock, Officer Wilder Pereira, Officer Camille Mastroeni and Officer Slinger (hereinafter "Respondent"), in support of Respondents' opposition to the Appeal of an Order Dismissing the Amended Complaint by Appellant, Jeanine Anthony (hereinafter "Plaintiff" or "Appellant").

As set forth below, the Appellant's appeal is baseless and completely unsupported by any facts or law, and the Trial Court's dismissal of Counts One, Four and Five on the basis of the New Jersey Tort Claims Act, Qualified Immunity, and for failing to file the amended complaint within the statute of limitations, should not be disturbed.

As a result of the Court's initial dismissal of the Complaint on both October 8, 2021, and June 16, 2022, and by way of the first appeal, the Appellate Division dismissed all claims except for Counts One, Four and Five. These are as follows:

1) Negligent, Reckless and Wanton Violation of Plaintiff's Rights;
2) [Dismissed]
3) [Dismissed]
4) Violation of N.J. Const. art. I, ¶¶ 1, 6, 10, 18, 22 Peper v. Princeton U. Bd. of Trustees, 389 A.2d 465 (N.J. 1978);
5) Violations of N.J.S.A. 10:6-2(C);
6) [Dismissed]; and
7) [Dismissed].

As argued below, the Appellant has not only failed to plead a viable cause of action, but the Amended Complaint was also filed after the statute of limitations passed, (to which a dismissal without prejudice does not toll the statute of limitations) and therefore does not meet the initial pleading requirement.

Notwithstanding this procedural deficiency, the Appellate Division must uphold the Trial Court's dismissal on the merits as Counts One, Four and Five do not state a cognizable claim and/or are barred by the doctrine of qualified immunity.

As set forth in the record below, Appellant was an inmate at the Morris County Correctional Facility (hereinafter "MCCF") from December 29, 2019 through February 2020, which is the time period for the acts alleged in the Amended Complaint. In the counts brought forth in the Amended Complaint, Appellant failed to state sufficient, comprehensible facts for any cause of action nor bring applicable causes of action. Rather, Appellant admittingly created and utilized "causes of action not customarily seen by Judges" without further explanation of the same, aside from the "plain meaning of the words and facts."

The Trial Court did not err in dismissing all of the Appellant's claims, with prejudice, stating that its opinions regarding the dismissal of the Appellant's Amended Complaint based on immunities under the New Jersey Tort Claims Act, qualified immunity.

PROCEDURAL HISTORY

1. On or about March 3, 2021, Plaintiff filed a Complaint and Jury Demand in the Superior Court of New Jersey, Law Division, Morris County, asserting claims evolving out of the period of her incarceration at the Morris County Correctional Facility. Pa001.
2. On September 9, 2021, Defendants filed a Motion to Dismiss the Complaint for failure to state a claim upon which relief can be granted. Pa013.
3. Defendants thereafter withdrew their motion in order to file a new Motion to Dismiss, with supporting documents.
4. On September 20, 2021, Defendants again filed a Motion to Dismiss Plaintiff's Complaint. Pa024.
5. The Court granted the Motion to Dismiss the Complaint, without prejudice, by way or order entered on October 8, 2021 and accompanying Statement of Reasons. Pa087.
6. Plaintiff thereafter sought reconsideration and clarification from the Court regarding the October 8, 2021 Order, and on October 27, 2021, the Court entered a *Sua Sponte* Order for Clarification of October 8, 2021 Order and Decision. Pa091.
7. Approximately four (4) months later, on February 22, 2022, Plaintiff moved before the Court for leave to file an Amended Complaint, which was granted on April 1, 2022. Pa095.
8. Although Plaintiff did not actually ever file the Amended Complaint separately with the Court, both parties proceeded as

if the Amended Complaint attached to Plaintiff's motion was accepted and filed.

9. Defendants filed a Motion to Dismiss the Amended Complaint on April 18, 2022, on the basis that the Amended Complaint had no additional factual clarification from the initial Complaint, which was dismissed without prejudice for failure to state a claim upon which relief could be granted. Pa150.

10. On or about June 16, 2022, the Trial Court granted Defendants' Motion to Dismiss, with prejudice, for reasons including failure to state a claim upon which relief could be granted, the Amended Complaint being filed beyond the time permissible pursuant to N.J.S.A. 2A:14-2, and that the tort claims alleged should be dismissed for failure to timely file a notice of tort claim as required under N.J.S.A. 59:8-8. Pa186.

11. On July 28, 2022, Plaintiff appealed the Court's dismissal to the Appellate Division. Pa190.

12. On October 25, 2023, The Appellate Division (after briefs were submitted and oral argument heard), reversed in part and remanded in part to the Trial Court for further clarification on its dismissal of Counts One, Four and Five. Pa205.

13. On November 13, 2023, the Court initiated a briefing schedule for the remanded claims and ordered the parties to brief the issues of qualified immunity and immunities under the New Jersey Tort Claims Act. Pa225.

14. On December 14, 2023, Respondents submitted its remand brief in support of dismissal of the Plaintiff's Complaint.

15. On January 16, 2024, Plaintiff submitted its remand brief in opposition to dismissal of the Plaintiff's Complaint. Pa231.

16. On March 18, 2024, the Court entered an Order and Statement of Reasons dismissing Plaintiff's Amended Complaint. Pa267, Pa269.

STATEMENT OF FACTS

1. On or about December 29, 2019, the Plaintiff was incarcerated at the MCCF, on a 90-day County sentence for shoplifting. (Pa001, pg2, ¶2).

2. On or about January 6, 2020, Plaintiff alleges that she signed up for church services, but was denied entry or permission to attend. (Pa001, pg2, ¶3).

3. On or about January 15, 2020, Plaintiff alleges that she signed up for church services, but was denied entry or permission to attend[1]. (Pa001, ¶5).

---

[1] For the first time ever, Appellant includes unsupported statements that detail how and why she was denied access to church visitations, which were never pled in the Complaint or the Amended Complaint. Moreover, these "new facts" were not presented to the Trial Court at any of the three proceedings for dismissal, and thus are improper. This use of such an argument violates R. 2:6-2. See *e. g.*, Cnty. of Essex v. First Union Nat. Bank, 891 A.2d 600 (N.J. 2006); New Jersey

4. Plaintiff's Amended Complaint failed to disclose any of the "new facts" that were pled in the Appellant's Statement of Facts in pages 2-3 of the Appellant's Brief. (Pa001, ¶5).

5. Between January 7, 2020, and January 13, 2020, the Plaintiff alleges that she was not provided any "psych meds" that she had been requesting. (Pa001, ¶7).

6. On January 31, Plaintiff was speaking with another inmate when Officer Pereira told the two inmates they were being loud and that they would be subject to a "lock down" for being too loud. (Pa001, pg3, ¶10).

7. On or about January 31, 2020, plaintiff alleges that she was denied the ability to file a grievance for Ofc. Pereira's lockdown. (Pa001, pg3, ¶10b-d).

8. On or about January 31, 2020, plaintiff alleges that she was excessively charged with refusing to go into her cell by Ofc. Pereira and sent to disciplinary detention. (Pa001, pg4, ¶10g-i).

Citizens Underwriting Reciprocal Exch. v. Collins, 942 A.2d 864 (N.J. Super. App. Div. 2008); A. States Group v. Skovron, 892 A.2d 683 (N.J. Super. App. Div. 2006); Triffin v. Am. Intern. Group, Inc., 859 A.2d 751 (N.J. Super. App. Div. 2004); Monek v. Borough of S. River, 808 A.2d 114 (N.J. Super. App. Div. 2002).

9. On or about February 1, 2020, plaintiff asked Ofc. Mastroeni if she could call her attorney, which plaintiff alleges that she was denied the opportunity to call her counsel. (Pa001, pg4, ¶12).

10. On February 2, 2020, plaintiff alleges that she again asked if she could call her attorney to which Ofc. Slinger informed the plaintiff that she could call his office phone and not a cell phone number. (Pa001, pg4, ¶13).

11. On February 7, 2020, inmate Amanda Ardle told MCC for corrections officers that quote she felt like murdering someone and that he, Ofc. Discenza, was a fucking asshole." (Pa001, pg5, ¶15).

12. On February 13, 2020, plaintiff states that she was sleeping when Ofc. Mastroeni called for meds medications. (Pa001, pg5, ¶16).

13. Plaintiff alleges that on February 13, 2020, she had to wait an additional 30 minutes to receive her medication. (Pa001, pg5, ¶16).

14. On February 13, 2020, plaintiff asked MCCF Ofc. Rescenza [sp] for a grievance form and was refused. (Pa001, pg5, ¶17).

15. Plaintiff alleges that defendant Melissa Brock is a social worker and supervisor assigned to the social services unit where plaintiff was housed in the MCCF.

16. Plaintiff makes no allegation that Melissa Brock ever subjected plaintiff to any disparate treatment. (See Pa001 ¶¶1-21).

17. Prior to filing the subject Complaint, Plaintiff filed a Tort Claims Notice ("TCN") on April 17, 2020[2], which is beyond the 90-day period for some of the alleged mistreatment identified in the TCN -- specifically the mistreatment that purportedly occurred between December 29, 2019 and January 15, 2020 (not being permitted to attend church or receive her psychiatric medications).

LEGAL ARGUMENT

I. DEFENDANTS HAVE IMMUNITY PURSUANT TO THE TORT CLAIMS ACT AND ALL SUCH CLAIMS ASSERTED IN COUNT I MUST BE DISMISSED AS A MATTER OF LAW.

Even if, *arguendo*, Plaintiff could establish a prima facie case was sufficiently pled for all claims asserted, all claims in Count I for negligence, barred by through tort claims immunities that Defendants are entitled to under N.J.S.A. 59:4-10.

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[2] N.J.S.A. 59:8-8 requires a filing of a Tort Claims Notice within 90-days of the alleged tort - here, **any claims that occurred on or before January 17, 2020 are barred** under the New Jersey Tort Claims Act.

Generally speaking, a "public entity" includes the State and any County, Municipality, District, Public Authority, public agency, and any other political subdivision or public body in the State. N.J.S.A. 59:1-3 A "public employee" includes an officer, employee, or servant…who is authorized to perform any act or service." Id. All Defendants are public entities and employees and are entitled to the immunities set forth in the Tort Claims Act. "The act establishes a system for public entities in which immunity from tort liability is the general rule and liability is the exception." Garrison v. Township of Middletown, 712 A.2d 1101 (N.J. 1998). Likewise, public employees are afforded immunities pursuant to N.J.S.A. 59:3-1, et seq.

Generally, immunity for a public entity is the rule and liability is the exception. Fluehr v. City of Cape May, 732 A.2d 1035 (N.J. 1999); Wilson v. Jacobs, 760 A.2d 818 (N.J. Super. App. Div. 2000); see also Brooks v. Odom, 696 A.2d 619 (N.J. 1997) (purpose of the Tort Claims Act was to reestablish the rule of immunity for public entities from liability for injuries to other). "The act establishes a system for public entities in which immunity from tort liability is the general rule and liability is the exception." Garrison, 154 N.J. at 286. A public entity is immune from claims of negligence unless expressly set forth in the Tort Claims Act. N.J.S.A. 59:1-2.

The TCA states:

> (a) A public entity **is liable** for **injury proximately caused by an act or omission of a public employee within the scope of his employment** in the same manner and to the same extent as a private individual under like circumstances.
>
> (b) A public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable.
>
> N.J.S.A. 59:2-2 (emphasis added).

While a public entity is exempt from liability for an injury resulting from the exercise of judgment or discretion vested in the entity, a public entity is **not** exonerated from liability for negligence arising out of acts or omissions of its employees in carrying out their ministerial, rather than discretionary, functions. N.J.S.A. 59:2-3(d).

Here, Plaintiff has not shown that any of the alleged acts or omissions by Defendants rise to the level of a crime, actual fraud, actual malice, or willful misconduct—any of which would destroy immunity and impose liability on the public entities and employees named in the Amended Complaint.

Alternatively stated, there is no evidence to suggest that Defendants acted or failed to act negligently on account of their

required obedience to a legal mandate. Rather, all of the above conduct stems from discretionary exercises of judgment by corrections officers vested in the public entity.

In the matter at bar, the acts of the Defendants were completely discretionary. Without allegations or legal support that these actions were ministerial, the Court must dismiss the complaint.

To the contrary, the United States Supreme Court has noted that due process rights of persons serving time behind bars are different from those of free persons or persons merely charged with a crime. Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974). Our own State Supreme Court has recognized that in New Jersey, "the administrative rules and regulations that govern the fulfillment of due-process rights for the prisoners are balanced against the needs and objectives of the prison." McDonald v. Pinchak, 652 A.2d 700 (N.J. 1995) (citing Avant v. Clifford, 341 A.2d 629 (N.J. 1975)). Under the Fourteenth Amendment, constitutional rights are abridged to the extent necessary to accommodate the institutional needs and objectives of prisons. Id.

In short, the Plaintiff has not set forth any cause of action that is not barred by the Tort Claims Act, because she has not alleged how she was harmed by not being allowed to file a grievance, being denied the right to call her attorney's cell phone (noting that she was offered the chance to call his office), or that witness

statements were used against her, or that any of these actions were ministerial in nature. These are conclusory statements without any factual support whatsover.

As such, the Court must affirm the dismissal the Plaintiff's Amended Complaint as a matter of law.

II. PLAINTIFF'S ALLEGATIONS AGAINST THE COUNTY AND MCCF IN COUNTS IV AND V MUST BE DISMISSED AS THEY ARE AKIN TO A MONELL CLAIM WHICH IS IMPROPERLY PLED.

It is well settled under federal and New Jersey constitutional law that a Plaintiff lacks standing to assert constitutional claims against municipalities for the actions of their employees and that claims predicated upon *respondeat superior*, vicarious liability, or agency are not cognizable. As such, in order to assert claims against public entities for constitutional violations, a plaintiff must plead direct claims against the public entity based upon unconstitutional policies and practices.

"[T]he issue is whether the [public entity]'s practice, custom, or policy, or the action of its final policymaker, is the moving force that causes a violation of a constitutional right." Besler v. Bd. of Educ. of W. Windsor-Plainsboro Regl. Sch. Dist., 993 A.2d 805 (N.J. 2010) "The term 'official policy' usually refers to formal governmental rules or practices." Stomel v. City of Camden, 927 A.2d 129 (N.J. 2007).

In Monell v. Dept. of Soc. Services of City of New York, 436 U.S. 658 (1978) the Supreme Court, Mr. Justice Brennan, held, in part, that:

> "(1) local government units were "persons" for purposes of § 1983, the Civil Rights Act of 1871;
>
> (2) local governments could not be held liable under a theory of *respondeat superior* but rather could be held liable only when the constitutional deprivation arises from a governmental custom.
>
> ...
>
> (6) the deprivation complained of in the instant case arose out of official policy." Id.

The relevant point is (2), above: "Local governments could not be held liable under a theory of *respondeat superior*, but rather could be held liable only when the constitutional deprivation arises from a government custom." Id. Monell claims are specific to claims against a public entity as the employer, supervisor, and policymaker. In this matter, Plaintiff does not even allege that it was the MCCF's or the County's custom or policy to cause constitutional deprivations to its inmates. Plaintiff does not identify any specific policy or custom or any supervisor or actor that implements such policies as a custom and practice. The failure to set forth these specificities warrants dismissal of all claims against the MCCF and the County.

Thus, even if Plaintiff did somehow manage to hurdle the egregious failures to meet the basic pleading requirements, Plaintiff's failure to assert Monell claims against the MCCF and the County preclude any claims against the MCCF and the County.

As such, the Court must affirm the dismissal the Plaintiff's Amended Complaint as a matter of law.

III. PLAINTIFF'S CLAIMS ARE BARRED BY THE DOCTRINE OF QUALIFIED IMMUNITY.

Even if, *arguendo*, Plaintiff could establish a prima facie case was sufficiently pled for all claims asserted, all claims in Count IV and V for negligence, barred by the doctrine of Qualified Immunity.

The doctrine of qualified immunity was adopted in New Jersey as a basis for immunity from suit for the actions of government officials brought under the New Jersey Civil Rights Act, which is analogous to 42 U.S.C. § 1983. Officials may be shielded from liability for civil damages if their discretionary acts "do not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Ramos v. Flowers, 56 A.3d 869 (N.J. Super. App. Div. 2012) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)).

Whether a government official is entitled to protection under the doctrine of qualified immunity is a legal question. Rogers v. Powell, 120 F.3d 446, 454 (3d Cir. 1997). A court, using a flexible

approach, applies either or both of the two-prongs: first, whether "taken in the light most favorable to the party asserting the injury, . . . the facts alleged show the officer's conduct violated a constitutional right"; and second, "whether the right was 'clearly established' at the time of defendant's alleged misconduct." Id. at 28 (citing Saucier v. Katz, 533 U.S. 194 (2001) and Pearson v. Callahan, 555 U.S. 223 (2009)).

In determining "whether a right is clearly established, the court ought not engage in "broad, abstract reasoning, but, rather, [its decision] should be based upon 'particularized' considerations in light of information the officer possessed at the time." Bernstein v. State, 986 A.2d 22 (N.J. Super. App. Div. 2010). The contours of the right must be sufficiently clear so that a "reasonably competent officer" would have understood thalt he was violating a clearly established right. Id. If "officers of reasonable competence could disagree on this issue, immunity should be recognized." Id.

An official's entitlement to qualified immunity based on probable cause or a reasonable belief that probable cause existed is a question of law that **should be decided as early in the case as possible**. Wildoner v. Borough of Ramsey, 744 A.2d 1146 (N.J. 2000). [Emphasis added.]

To assess whether qualified immunity applies here, the Court must evaluate whether Defendants' alleged misconduct violates

clearly established statutory or constitutional rights of which a reasonable person would have known.

For purposes of brevity, Counts Four and Five of the Amended Complaint allege the following constitutional and statutory violations: 1) Failure to provide Plaintiff the opportunity to submit grievances; 2) Failure to provide Plaintiff access to her attorney; 3) Failure to take Plaintiff to scheduled Court appearances; 4) Wrongfully sending Plaintiff to disciplinary detention; and 5) Failing to provide medication.

Below, the Court clearly found that all of the alleged actions "derive from conscious considerations by Defendants acting within the scope of their employment. Thus, these alleged violations stem from Defendants' discretionary exercises of judgment. Viewing the facts and circumstances in the light most favorable to Plaintiff, it is far too speculative to conclude that any of the above allegations constitute violations of clearly established rights." Pa274.

The Trial Court below reviewed all of the evidence in a light most favorable to the Appellant, and correctly determined that the Defendant committed no violation in instructing Plaintiff to call her attorney's office, rather than a cell phone. In fact, Plaintiff makes no allegation that any of the Defendants denied her the right to contact her attorney. Lastly, the Plaintiff cites to no caselaw (published or unpublished) because this right to

call a certain phone number does not exist. Defendants gave permission to Plaintiff to make a phone call to her attorney. That is what is required under the law. As set forth at numerous times in the Court's history of this case, unless the Plaintiff can cite to well established constitutional rights, the Defendants are protected by qualified immunity. Saucier, 533 U.S. 194; Pearson, 555 U.S. 223

Amidst the stream-of-consciousness pleading, she alleges that the Defendants denied her medical treatment because she allegedly did not receive drugs and medication from the jail's physician/psychiatrist.

These general complaints are not actionable, and even if they were, do not amount to a sufficient pleading to meet the Motion to Dismiss threshold.

All prisoners have a right to adequate medical care. In Estelle v. Gamble, 429 U.S. 97, 103-104 (1976), the Supreme Court held that "deliberate indifference to a serious medical need of prisoners constitutes the 'unnecessary and wonton infliction of pain' ... proscribed by the Eighth Amendment." To the extent the Plaintiff is a pretrial detainee, the Fourteenth Amendment is implicated instead, but courts apply the Eighth Amendment's deliberate indifference legal standard when evaluating the medical-care claims of pretrial detainees. Natale v. Camden Cnty.

Correctional Facility, 318 F.3d 575, 581 (3d Cir. 2003); Moore v. Luffey, 767 Fed. Appx. 335, 340 (3d Cir. 2019)(unpublished).

However, **not all medical conditions faced by incarcerated persons give rise to constitutional claims**. Dodson v. Cook Cnty. Jail, No. 16 CV 0345, 2019 WL 764041 (N.D. Ill. Feb. 21, 2019). [Emphasis added.] Under applicable standards, a plaintiff must prove two things. First, he or she must make an objective showing that his **medical need was serious**. See, e.g., Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999). [Emphasis added.] Second, a plaintiff must make a subjective showing that officials were **deliberately indifferent** to his or her serious medical need. Id. [Emphasis added.]

This standard requires courts to focus on the totality of facts and circumstances faced by the individual alleged to have provided inadequate medical care and to gauge objectively – without regard to any subjective belief held by the individual – whether the response was reasonable. McCann v. Ogle Cnty., Illinois, 909 F.3d 881, 886 (7th Cir. 2018). For a deliberate indifference claim based upon indifference to medical care, "the alleged deprivation must be sufficiently serious, in the sense that a condition of urgency, one that may produce death, degeneration, or extreme pain exists." Hathaway v. Coughlin, 99 F.3d 550, 553 (2d Cir. 1996) (internal quotation marks omitted). This objective prong of the test is focused also on the delay in treatment rather than on the

underlying medical condition alone. See Smith v. Carpenter, 316 F.3d 178, 185 (2d Cir. 2003).

In this matter, the Plaintiff has not pled a serious medical need, and cannot satisfy this requirement. Nothing in the Plaintiff's Amended complaint indicates that the medication was necessary to preserve her life as required by Rouse, 182 F.3d at 197.

In Rouse, the plaintiff was denied insulin injections to treat his insulin-dependent diabetes mellitus, which the Court noted was a serious medical need. Here, the Plaintiff makes no such assertion.

"The law is clear that simple medical malpractice is insufficient to present a constitutional violation." Durmer v. O'Carroll, 991 F.2d 64, 67 (3d Cir. 1993). "[C]ertainly no claim is stated when a doctor disagrees with the professional judgment of another doctor. There may, for example, be several acceptable ways to treat an illness." White v. Napoleon, 897 F.2d 103, 110 (3d Cir. 1990).

In the matter at bar, the Plaintiff alleges that she was denied medication for some undisclosed psychiatric condition – while this is hardly a qualified life-threatening illness that arises to the level of "serious medical need" that our courts have contemplated, the Plaintiff fails to even set forth what would

occur if she was denied medication to treat her condition, or that she had a life-threatening condition to begin with.

In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. Rouse, 182 F.3d at 197. Here the Plaintiff has made no such assertion. In fact, the Plaintiff's complaint is devoid of any allegation stating that he would be subject to life threatening harm if he was denied her medication.

In as much as Plaintiff's brief states that only a week went by before a prison physician could properly prescribe the Plaintiff her medication, and that the Plaintiff suffered no actual harm, the Court must take judicial notice that Plaintiff wasn't actually subject to any serious medical neglect/harm.

As such, the Court must dismiss the Plaintiff's complaint, with prejudice, and as a matter of law.

IV. IN THE ALTERNATIVE, THE AMENDED COMPLAINT PROVIDED NO FURTHER INFORMATION AS TO THE CLAIMS FOR WHICH RELIEF WERE SOUGHT AND THEREFORE SHOULD REMAIN DISMISSED.

A. Standard for a motion to dismiss.

In a motion to dismiss, pursuant to R. 4:6-2(e), for failure to state a claim, the Court must "assume the truthfulness of the allegations contained in Plaintiffs' Complaints, giving Plaintiffs the benefit of all reasonable factual inferences that those

allegations support." Edwards v. Prudential Prop. and Cas. Co., 814 A.2d 1115 (N.J. Super. App. Div. 2003).

It is well established that a Complaint must fairly apprise the opposing party of the claims and issues raised. Spring Motors Distributors, Inc. v. Ford Motor Co., 465 A.2d 530 (N.J. Super. App. Div. 1983), rev'd, 489 A.2d 660 (N.J. 1985). The Complaint must allege sufficient facts to give rise to a cause of action. Glass v. Suburban Restoration Co., Inc., 722 A.2d 944 (N.J. Super. App. Div. 1998). A motion to dismiss, however, must "be granted if even a generous reading of the allegations does not reveal legal basis for recovery. The motion may not be denied based on the possibility that discovery may establish requisite claim; rather the legal requisites for Plaintiffs' claim must be apparent from the Complaint itself." See Edwards, 357 N.J. Super. 196.

> "It is just inexcusable to plead merely a conclusion and thereafter attempt to justify this action by an attempt to resort to the discovery practice permitted by our rules. Such discovery is intended, as an aid, to every litigant to avoid surprise and make a lawsuit an inquiry into truth and justice. It is not (and was not intended) to be a substitute for good pleading, a shield for the lazy pleader or a means of avoiding the requirements of pleading legally sufficient facts." Gruccio v. Baxter, 343 A.2d 145 (N.J. Super. L. Div. 1975).

Thus, a Plaintiff cannot rely on later discovery to survive a motion to dismiss. Further,

> "While a Complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, Id.; Sanjuan v. Am. Bd. of Psych. and Neurology, Inc., 40 F.3d 247, 251 (7th Cir. 1994), as amended on denial of reh'g (Jan. 11,

> 1995), as amended on denial of reh'g (Jan. 11, 1995), a Plaintiff's obligation to provide the **1965 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, see Papasan v. Allain, 478 U.S. 265, 286 (1986) (on a motion to dismiss, courts 'are not bound to accept as true a legal conclusion couched as a factual allegation'). Factual allegations must be enough to raise a right to relief above the speculative level, see § 1216 Statement of the Claim—Significance of "Claim for Relief", § 1216 Statement of the Claim—Significance of "Claim for Relief", § 1216 Statement of the Claim—Significance of "Claim for Relief", 5 Fed. Prac. & Proc. Civ. § 1216 (4th ed.) (hereinafter Wright & Miller) ('[T]he pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action')" Bell A. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

Where a Plaintiff's claims are "vague and generally unintelligible, a motion to dismiss is warranted. Jalil v. Dime Sav. Bank, No. A-1388-05T1, 2006 WL 2726834, at *1 (N.J. Super. App. Div. Sept. 26, 2006).

Here, the elements of the claims are not properly pled and are unintelligible. The allegations are based on insufficient facts and set forth mere conclusions without the proper background. It would be patently unfair to expect the Defendants to speculate as to each and every potential cause of action that Plaintiff could possibly have and then address them all in a motion to dismiss or answer. For the reasons set forth herein, all of Plaintiff's allegations fail and the Complaint must be dismissed as a matter of law.

B. Count I – Negligent, Reckless & Wanton Violation of Plaintiff's Rights

This Count states that the "Defendants negligently, recklessly and with wanton disregard for the rights and well-being of Plaintiff (over whom they had custody and control), failed to exercise high degree of case that was imposed in them causing Plaintiff having." See Pl. Amend. Compl. Pg 6, ¶3.

Not only does the aforementioned sentence fail to qualify as a coherent, intelligible statement, but it also fails to identify what rights of Plaintiff have been allegedly violated or where these rights even came from. It is, at most, a mere conclusion, and that of course is assuming that it is understandable, which it is not. *Glass, 317 N.J. Super. 574.*

Plaintiff left out a whole litany of necessary facts to raise claims that can vault the motion to dismiss standard (see above). The plaintiff did not identify who specifically owed any duty to her, what that duty was, how said duty was breached, nor does she identify a link between any alleged breach and any damages purportedly sustained. Thus, the elements of this claim, to the extent that one even exists (which it does not) are not even pleaded and must be dismissed as a matter of law in accordance with R 4:6-2(e).

C. Count IV – Violations of Article 1 of the New Jersey Constitution for Depravation of Plaintiff's Substantive and Procedural Due Process Rights

The Plaintiff's Amended Complaint provides no facts or legal argument as to how this allegation meets any legal standard. Plaintiff wholly disregards the requirement to identify of what constitutional rights were allegedly violated, and rather asserts mere conclusions without any facts that are critical for a viable claim to exist.

To bring a substantive due process claim, a plaintiff must allege "that the government has abused its power in an arbitrary manner that 'shocks the conscience.'" Mammaro v. New Jersey Div. of Child Protec. and Permanency, 814 F.3d 164, 169 (3d Cir. 2016), as amended (Mar. 21, 2016), as amended (Mar. 21, 2016), as amended (Mar. 21, 2016)(citing Cnty. of Sacramento v. Lewis, 523 U.S. 833, 846-48 (1998)). To state a substantive due process claim, "a plaintiff must prove the governmental authority acted to 'infringe a property interest encompassed by the Fourteenth Amendment.'" Acierno v. Cloutier, 40 F.3d 597, 616 (3d Cir. 1994).

Plaintiff's allegation that her substantive due proves rights have been violated are without basis, as Plaintiff failed to plead a number of necessary facts critical to assert a viable claim. For example, Plaintiff not only failed to set forth what constitutionally protected rights of hers were violated, she also failed to identify how they were violated, and by whom they were

violated. Defendants are left in the dark as to what constitutional rights of Plaintiff's were infringed, if any at all.

As set forth above, the Plaintiff now asserts times and dates when she was allegedly denied access to church services. See Appellant's SOF pgs 2-3. These "new facts" were not presented to the Trial Court at any of the three proceedings for dismissal or even at the appellate level previously, and thus are improper. This use of such an argument violates R. 2:6-2. See e. g., County of Essex, 186 N.J. at 51; New Jersey Citizens Underwriting Reciprocal Exchange, 399 N.J. Super. at 50; Atlantic States Group, 383 N.J. Super. at 431; Triffin, 372 N.J. Super. 517; Monek, 354 N.J. Super. at 456.

Notwithstanding this, the Appellate Division and Trial Courts below all agreed that the Plaintiff's Amended Complaint has utterly failed to establish a protected interest in attending church services if her name was not on the list, holding that "Allowing prisoners to leave their cells only if they appear on the appropriate list is reasonably related to the institutional needs of the prison. Plaintiff did not make out a cognizable claim for deprivation of the right to freely exercise her religion." Thus, the Court cannot sustain any claim for denial of religious services.

This leaves only the possibility that the Plaintiff was denied the ability to attend court and "lost jail time." Except, this conclusory allegation is not supported by any factual evidence in the Amended Complaint, and Plaintiff failed to supplement this at any point in time. In fact there is no evidence that that she lost jail time or was held longer in jail because of missed court appearances. Plaintiff's complaint failed to allege what appearances she missed, what additional time she had to serve, and why.

Simply saying the magic words (elements of a cause of action) do not unlock the doors of discovery, a Plaintiff must support the allegations with factual support. Glass v. Suburban Restoration Co., Inc., 722 A.2d 944 (N.J. Super. App. Div. 1998). Plaintiff could have easily stated how much extra jail time was added to her sentence for missing court. But she did not because she never actually was damaged for missing court appearances.

In the matter at hand, Plaintiff alleges that by Defendant not taking her to a court appearance, she was rendered "more vulnerable to defending her rights" and was a direct cause in Plaintiff losing jail time credit. (Pa00142) These meritless allegations do not meet the standards laid out in Bright v. Westmoreland Cnty., 443 F.3d 276, 281 (3d Cir. 2006), as no such action caused a "danger that shocks the conscience" nor is there any proof aside from a conclusory

statement that missing a court appearance rendered Plaintiff "more vulnerable" to defending her rights, or how that is a "danger."

As such, the Trial Court Decision of both the October 8, 2021, Order and the June 16, 2022 Order should remain after a review of the Plaintiff's Claims.

D. Count V - Violation of N.J.S.A. 10:6-2(c) for depravation of Civil rights by way of threat or coercion.

Plaintiff continues to make sweeping allegations that the findings of the trial court were wrong and in violation of R. 1:7-4 without any explanation as to why or how. The fifth count of Plaintiff's Amended Complaint alleged violation of N.J.S.A. 10:6-2(c) for depravation of Civil Rights by way of threat or coercion. New Jersey law, through the Civil Rights Act (N.J.S.A. 10:6-2, et. seq.), clearly sets forth the requirements for a cause of action under the Act:

> "Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief." N.J.S.A. 10:6-2(c)

The New Jersey Civil Rights Act is the State's "analogue" to 42 U.S.C. § 1983, and New Jersey courts typically interpret cases

arising under the New Jersey Civil Rights Act as they would arising under the federal equivalent. Morillo v. Torres, 117 A.3d 1206 (N.J. 2015).

The Act requires that the party seeking relief must allege a specific constitutional violation. Mattson v. Aetna Life Ins. Co., 124 F. Supp. 3d 381 (D.N.J. 2015), aff'd, 653 Fed. Appx. 145 (3d Cir. 2016)(unpublished)(unpublished) The party may bring an action if: (1) they are deprived of a right; *or* (2) their rights are interfered with by threats, intimidation, coercion or force. Felicioni v. Admin. Off. of Courts, 961 A.2d 1207 (N.J. Super. App. Div. 2008), abrogated by Perez v. Zagami, LLC, 94 A.3d 869 (N.J. 2014). Additionally, the Legislature requires that the "plaintiff show 'threats, intimidation or coercion' were employed if constitutional rights were merely interfered with or an attempt was made at interfering with them, and that no such showing is required where one has actually been deprived of the right." Id. at 400.

Although Plaintiff pled threat and coercion in the Amended Complaint, there are no facts that support those claims, such as who allegedly undertook the perceived act, what the threat was, and/or the coercion enacted, and what the harm suffered was from such actions. Plaintiff did not identify any damages, nor state the specific substantive due process or equal rights protections she alleged were violated.

As such, all baseless assertions in Count V of the Amended Complaint were properly dismissed and should remain dismissed once this Court conducts a thorough review of the Plaintiff's Amended Complaint.

CONCLUSION

For the reasons set forth above, Defendants respectfully request this Honorable Court deny the Plaintiff's Appeal of the Dismissal of the Amended Complaint and affirm the dismissal all claims against the Defendants, with prejudice as a matter of law.

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