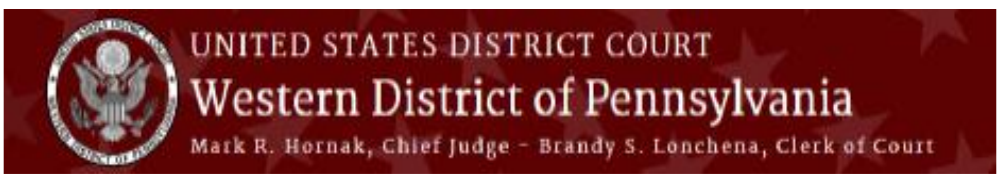


Minimizing the Unknown: How to Try a Prisoner Civil Rights Case (or Any Civil Case) in Federal Court

October 23, 2025

Agenda

I. **Welcome and Introductions**

II. **Opening Remarks**

- **A. Chief U.S. District Judge Mark R. Hornak**
- **B. U.S. District Judge Cathy Bissoon**

III. **Overview of Civil Rights Claims**

IV. **Logistics, Challenges, and Ethical Considerations when Representing *pro se* Individuals**

V. **Civility and Professionalism**

VI. **Pretrial Procedures**

VII. **The Pretrial Conference**

VIII. **Trial Preparation**

IX. **Courtroom Logistics**

X. **Jury Selection**

XI. **Conducting the Trial**

XII. **Post-Trial Matters**

XIII. **Mentors**

One 15-minute break will be taken.

Attendees must attend the entire Program in order to qualify for the 1.0 Ethics Credit.

Presenter Biographies

Magistrate Judge Patricia L. Dodge, U.S. District Court, Western District of Pa.

Magistrate Judge Patricia L. Dodge is a graduate of The Pennsylvania State University and Duquesne University School of Law, where she was a member of the Law Review.

She was a civil trial lawyer throughout her thirty-eight years in private practice. In 1992, she joined the firm of Meyer, Unkovic & Scott as a partner. She served as the firm's managing partner between 2012 and 2018 while continuing to maintain an active trial practice in the areas of complex commercial litigation, employment disputes and oil and gas matters.

Magistrate Judge Dodge is a fellow of the International Academy of Trial Lawyers and the American College of Trial Lawyers, as well as the Academy of Trial Lawyers of Allegheny County, where she served on its Board of Governors and as its President.

She was selected by Lawdragon as one of the 500 leading lawyers of America and was repeatedly recognized by Best Lawyers in America, including as Pittsburgh "Lawyer of the Year" in 2019 for Bet-the-Company Litigation. She received a Distinguished Service Award from Duquesne University School of Law as well as a "Woman of the Year" and Lifetime Achievement Award from The Legal Intelligencer. In 2017, she received the Joseph F. Weis, Jr. Distinguished Service Award from the Academy of Trial Lawyers of Allegheny County. She was also honored with the Professionalism Award by the Civil Litigation Section of the Allegheny County Bar Association.

Magistrate Judge Dodge is proud to have served for a number of years on the Board of Trustees of the Allegheny County Bar Foundation and as its President between 2017 and 2019. She is currently a board member of the National Aviary and a trustee of the Bar Foundation and has served on other non-profit boards throughout her career.

Magistrate Judge Kezia O. L. Taylor, U.S. District Court, Western District of Pa.

The Honorable Kezia O. L. Taylor was appointed as a Magistrate Judge for the United States District Court of the Western District of Pennsylvania in December 2023. She is a proud graduate of Howard University and the University of Pittsburgh School of Law. Following law school, she served as a law clerk to the Honorable Mary Jane Bowes of the Pennsylvania Superior Court. Thereafter, she joined Pepper Hamilton LLP as a junior associate and practiced commercial real estate land development and tax assessment litigation. During her time in private practice, Judge Taylor was honored to co-organize the first Pennsylvania Minority Pre-Law Conference at the David Lawrence Convention Center. She received the PUMP and Pittsburgh Magazine's 40 Under 40 award, the New Pittsburgh Courier Fab 40 awards, and the IOB Support Award from the Bartko Foundation for her dedication to the Foundation's goals of raising money to support the self-sufficiency of single minority mothers. Judge Taylor was also nominated for an ATHENA Young Professional Award, which recognizes emerging female leaders who demonstrate excellence, creativity, and initiative in their profession.

Judge Taylor returned to public service as an Assistant City Solicitor serving the City of Pittsburgh and then joined the Department of Justice's United States Attorney's Office as an Assistant United States Attorney representing the United States and federal government agencies. She has also served the Department of Justice as faculty and trial advisor for the trial advocacy program at the National Advocacy Center.

During her time on the bench, Judge Taylor served on the Western District of Pennsylvania's Task Force and Local Procedural Rules Committee. She is also a member of the Wendell G. Freeland Society – Pittsburgh's only litigation honor society comprised of judges, civil and criminal lawyers, and law students dedicated to the advancement of litigation excellence.

Chase Defelice, Esq., Pennsylvania Department of Corrections

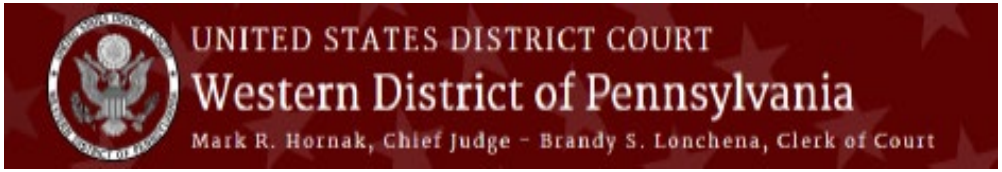
Chase Defelice is the Deputy Chief Counsel for Inmate Litigation of the Office of Chief Counsel at the Department of Corrections (DOC). In this position, he serves as the representative for the DOC at mediations and a liaison to the Office of Attorney General. He supervises attorneys who defend the DOC in litigation brought by or for inmates against the DOC and its employees. Prior to this position, Mr. Defelice served as an Assistant Counsel at the DOC in the Inmate Litigation section, where he represented DOC employees before state and federal courts and litigated Right-to-Know Law matters at the administrative and appellate level.

Mr. Defelice is admitted to practice before the Pennsylvania Supreme Court; the United States Court of Appeals for the Third Circuit; and the United States District Courts of the Eastern, Middle and Western Districts of Pennsylvania. Mr. Defelice graduated from Indiana University of Pennsylvania *summa cum laude* with a Bachelor of Arts in History and a minor in Political Science. He received his Juris Doctor from the Widener University Commonwealth Law School.

Andrew J. Horowitz, Esq., Partner, Obermayer Rebmann Maxwell & Hippel LLP

Andrew Horowitz is a litigation partner, mediator, and arbitrator in the Pittsburgh office of Obermayer Rebmann Maxwell & Hippel LLP. He has thirteen years of experience litigating employment and commercial litigation matters on behalf of both individuals and businesses and has been recognized by Best Lawyers: Ones To Watch from 2021 to 2025 and was selected for Pennsylvania's Rising Stars in 2019 – 2024.

Andrew Horowitz is a graduate of the University of Pittsburgh School of Law and is admitted to the Pennsylvania and Ohio Supreme Courts; the United States Court of Appeals for the Third Circuit; and the United States District Courts for the Western District of Pennsylvania and the Northern District of Ohio. He is an approved mediator for the U.S. District Court for the Western District of Pennsylvania and has accepted *pro bono* prisoner civil rights assignments for both trial and mediation.



Minimizing the Unknown: How to Try a Prisoner Civil Rights Case (or Any Civil Case) in Federal Court

October 23, 2025

Index of Materials

EXHIBIT A

PA DEPARTMENT OF CORRECTIONS-STATE CORRECTIONAL INSTITUTIONS

1920 Technology Parkway, Mechanicsburg, PA 17050

SCI Albion
Supt. John Sawtelle
10745 Route 18
Albion, PA 16475-0001
(814) 756-5778

SCI Benner Township
Supt.Bradley Booher
301 Institution Drive
Bellefonte, PA 16823
(814) 353-3630

SCI Cambridge Springs
Supt. Lisa Graves
451 Fullerton Avenue
Cambridge Springs, PA 16403
(814) 398-5400

SCI Camp Hill
Supt. Lindsy Kendall
P.O. Box 8837, 2500 Lisburn Road
Camp Hill, PA 17001-8837
(717) 737-4531

SCI Chester
Supt. Gina Clark
500 E. 4th Street
Chester, PA 19013-4551
(610) 490-5412

SCI Coal Township
Supt. Thomas McGinley
1 Kelley Drive
Coal Township, PA 17866-1020
(570) 644-7890

SCI Dallas
Supt. Jasen Bohinski
1000 Follies Road
Dallas, PA 18612
(570) 675-1101

SCI Fayette
Supt. Tina Walker
50 Overlook Drive
LaBelle, PA 15450-1050
(724) 364-2200

SCI Forest
Supt. Randy Irwin
P.O. Box 307
286 Woodland Drive
Marienville, PA 16239-0307
(814) 621-2110

SCI Frackville
Supt. Kathy Brittain
1111 Altamont Boulevard
Frackville, PA 17931-2699
(570) 874-4516

SCI Greene
Supt. Randy Evans
169 Progress Drive
Waynesburg, PA 15370-8090
(724) 852-2902

SCI Houtzdale
Supt. David Close
P.O. Box 1000
209 Institution Drive
Houtzdale, PA 16698-1000
(814) 378-1000

SCI Huntingdon
Supt. John Rivello
1100 Pike Street
Huntingdon, PA 16654-1112
(814) 643-2400

SCI Laurel Highlands
Supt. Melissa Hainsworth
P.O. Box 631
5706 Glades Pike
Somerset, PA 15501-0631
(814) 445-6501

SCI Mahanoy
Supt. Bernadette Mason
301 Grey Line Drive
Frackville, PA 17931
(570) 773-2158

SCI Mercer
Supt. Melinda Adams
801 Butler Pike
Mercer, PA 16137
(724) 662-1837

SCI Muncy
Supt. Wendy Nicholas
Box 180 Route 405
Muncy, PA 17756-0180
(570) 546-3171

SCI Phoenix
Supt. Joe Terra
1200 Mokychic Drive
Collegeville, PA 19426
(610) 409-7890

SCI Pine Grove
Supt. Mark Brothers
189 Fyock Road
Indiana, PA 15701-6542
(724) 465-9630

Quehanna Boot Camp
Scott Carter
4395 Quehanna Hwy
Karthaus, PA 16845-9714
(814) 263-4125

SCI Rockview
Supt. Bobbi Jo Salamon
Box A
1 Rockview Place
Bellefonte, PA 16823
(814) 355-4874

SCI Smithfield
A/Supt. Kenneth Shea
P.O. Box 999, 1120 Pike Street
Huntingdon, PA 16652
(814) 643-6520

SCI Somerset
Supt. Ken Hollibaugh
1590 Walters Mill Road
Somerset, PA 15510-0001
(814) 443-8100

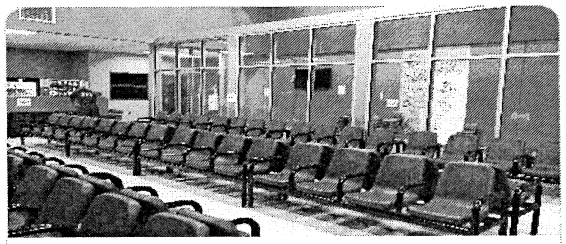
SCI Waymart
Supt. Mark Wahl
P.O. Box 256 Route 6
Waymart, PA 18472-0256
(570) 488-5811

Training Academy
Dr. Jennifer Wallitsch
1451 North Market Street
Elizabethtown, PA 17022-1299
(717) 367-9070

Scheduling Privileged Communication with an Inmate

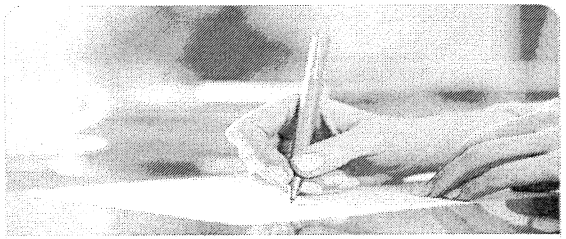
Contact an Inmate

The DOC supports family and friends maintaining contact with their incarcerated loved ones.



Visit an Inmate

Learn about visiting an incarcerated loved one.



Send Mail to an Inmate

Learn how to send letters, books, and more to an incarcerated loved one.

Communicating by Mail

Legal Mail

DOC considers legal mail (otherwise known as Privileged Correspondence) to be any mailing containing a DOC-issued Attorney or Court Control Number as well as a secondary authentication number on the outside of the envelope.

Any attorney, court or non-attorney/court entity wishing to send privileged correspondence must fill out a control number request form to receive their respective control number. Numbers will only be issued to attorneys who represent inmates or to verified court/court entities. Attorneys not representing inmates or other organizations that do not meet the criteria of a verified court/court entity can utilize Smart Communications for all correspondence.

Communicating by Mail

Under no circumstances should the Attorney Control Number, Court Control Number, Other Control Number and/or Secondary Authentication Number appear anywhere other than the outside front of the envelope.

Privileged correspondence may only contain documents that originated from the sending attorney/court. Third party original documentation is strictly prohibited in legal mail.

Failure to comply with any of the above requirements may result in the rejection of the correspondence and revocation of the associated Attorney Control Number.

Scheduling a Visit

Video Visits

All inmates are eligible to take part in our no-cost video visitation program. Each inmate is generally permitted six video visits per month, one of which may be on a weekend. The number of visits permitted may vary based on an individual's custody status. Up to six visitors may take part in a video visit.

Before your first video visit, read our guide to:

- Join as a visitor using iPhone/iPad (iOS devices)
- Join as a visitor using Android Phone/Tablet (Android devices)
- Join as a visitor using Windows/Mac/Linux devices

If you are an attorney, legislator or other professional visitor:

- Read our guide for joining as a professional visitor

Visiting Rules

The following section contains important information about visiting an incarcerated individual. Many common visitation questions can be answered below.

For information about visits with restricted housing unit inmates, religious visits, PA Prison Society visits, or attorney visits, contact the appropriate SCI. More information is also available in DOC Policy DC-ADM 812 Inmate Visiting Privileges. The Visitor Guide contains detailed instructions on how to schedule a visit.

Scheduling Privileged Communication with an Inmate

- Recommendation for Contacting Incarcerated Clients
  - Contact the Superintendent's Assistant at the respective facility to request:
    - Privileged Phone Call
    - In-Person Visit
    - Privileged Video Visit

Communicating by Phone

- Privileged Phone Call
  - If you are not on the inmate's approved call list:
    - Contact the facility directly to request an attorney-client or professional call
    - Provide at least 48 hours' notice
    - Be ready to give:
      - Your telephone number
      - Your attorney identification number

Communicating by Visit

- In-Person Visit
  - If you are on the inmate's approved visiting list, you can schedule a visit online.
  - ✅ Best Practice: Call the facility to schedule the visit—regardless of your status on the visiting list.
- Privileged Video Visit
  - If you are on the inmate's approved visiting list, you can also schedule a video visit online.
  - ✅ Best Practice: As with in-person visits, call the facility to confirm and schedule, even if already listed.

Important References

- https://www.pa.gov/agencies/cor.html
  - Inmate Locator
  - Sending Mail
  - Policies
  - Prison Contact Information

Important References

- My contact information:
  - Email: chdefelice@pa.gov
  - Phone: (717) 728-7743

Inmate Visitation System (IVS)

Joining a Call as a Professional Visitor
(iOS, Android, Windows/MAC/Linux)
Zoom Visits

December 07, 2021

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DEPARTMENT OF CORRECTIONS

Who is a Professional Visitor?

Professional visitors include, but are not limited to:

Attorneys
Legislators
Law enforcement
Children and Youth services
Victim advocates
PA Prison Society
etc.

Professional visitors are individuals not on an inmate's authorized visitors list as a personal visitor.

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DEPARTMENT OF CORRECTIONS

How to Schedule a Professional Visit

To schedule a video visit, the professional visitor shall:

- Call the SCI where the inmate is located and speak to the Superintendent's Assistant.
  - If the Superintendent's Assistant is unavailable at the time of the call, please leave a message and they will return your call.
- If it is the professional visitor's first video visit, the Superintendent's Assistant will add the professional visitor to the inmate visitation system.
  - Info needed: Name, Agency, Category, Email Address, Agency Address and Phone Number
  - Note: Professional visitor details are shared across facilities so each professional visitor will only need added once.
- The Superintendent's Assistant will coordinate a time and date for the video visit.
- The professional visitor will receive an automated email confirmation at the email address provided.
  - This email will include a link to a connection guide and the link to connect to the visit.

Email Address: It is critical that a valid email address is provided to ensure you receive the video visit connection information.

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DEPARTMENT OF CORRECTIONS

How to Cancel a Professional Visit

Professional Visit Cancellation:

- The professional visitor shall call the Superintendent's Assistant as far in advance as possible to cancel a visit.
- The Superintendent's Assistant will then cancel the visit in the inmate visitation system and the professional visitor will receive an automated cancellation email notification.

Email Address: An automated cancellation email will be sent to the email address on file.

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DEPARTMENT OF CORRECTIONS

What to do in Advance

1. Determine how you plan to connect to the video visit
   - iOS Devices (iPhone, iPad etc.,) (pages 7-12 of this guide)
   - Android Devices (Phone, tablets, Samsung, Google Pixel and others) (pages 13-17 of this guide)
   - Windows / MAC / Linux using Zoom Meeting App / Microsoft Edge / Google Chrome / Mozilla Firefox (pages 18-28 of this guide)
   - PolyCom Video Conferencing Device
     - Dial string format: [Zoom Room Connector IP Address]##[Zoom Meeting ID]#[Passcode]

2. Review this connection guide and download the Zoom Meeting app if connecting from a mobile device.

3. Ensure the device/equipment you plan to connect from has audio and video capabilities, AND that these capabilities are **enabled**.

Audio and Video: Double check to make sure audio and video capabilities are enabled

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DEPARTMENT OF CORRECTIONS

What to do at The Time of the Visit

- A professional visitor may join the video visit up to 5 minutes before the scheduled start time.
- Click the video visit URL received in the automated confirmation email.
- You will then be directed to the Zoom Video Conferencing website (https://zoom.us) where you will select **Launch Meeting** to join the visit. The Meeting ID will automatically populate but you must enter your name or email address..

Meeting ID and Password: The meeting ID and password's are different for each Visitation

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DEPARTMENT OF CORRECTIONS

Join Using iOS Devices

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DEPARTMENT OF CORRECTIONS

Joining Visitation (iOS Devices)

- Tablets and Mobile Phones using iOS (Examples)
  - iPhone
  - iPad

- What to do <u>before</u> my scheduled video visit?

Download the **<u>Zoom Cloud Meetings</u>** Mobile Application from the **<u>App Store</u>** and Install

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DEPARTMENT OF CORRECTIONS

Joining Visitation (iOS Devices)

- What do I need to do to connect my visit?

  - Join by using URL, from the automated confirmation email

  (OR)

  - Join by using Zoom Meeting app by entering Meeting ID and Password communicated through automated confirmation email.

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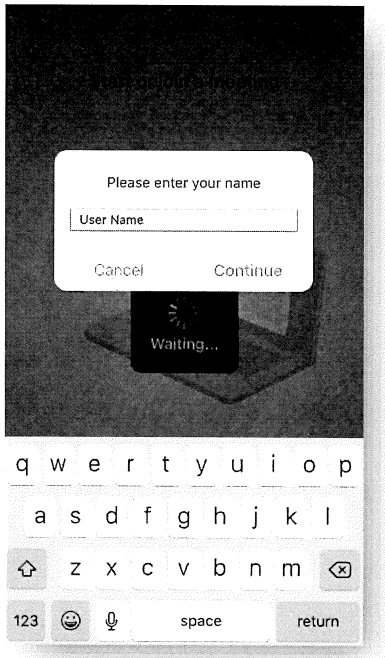
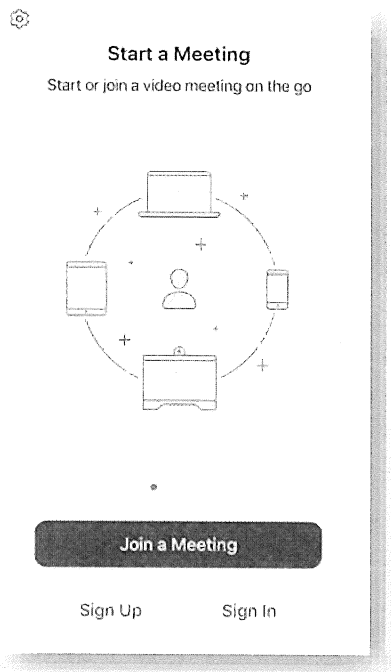
DEPARTMENT OF CORRECTIONS

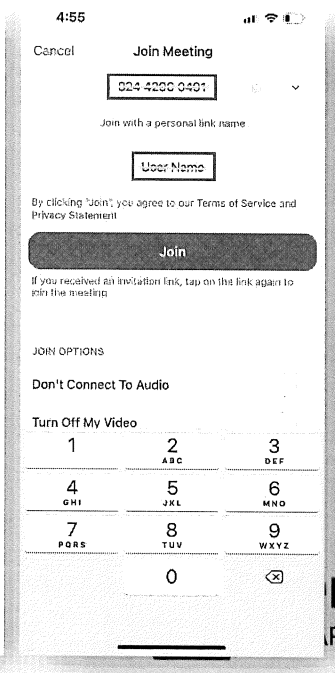
Joining Visitation (iOS Devices)

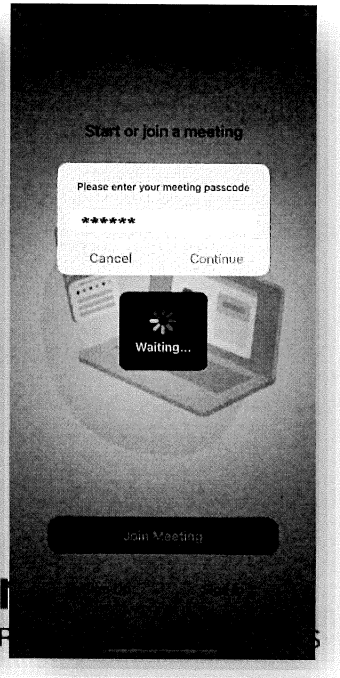
- Joining using URL
  - Zoom meeting app is launched with prepopulated Meeting ID and Password
  - Enter your name
  - Select "**Continue**"

- Joining using Zoom App
  - Open Zoom app
  - Select "**Join a Meeting**"
  - Enter meeting id, your name and select "**Join**"
  - Enter meeting passcode and select "**Continue**"



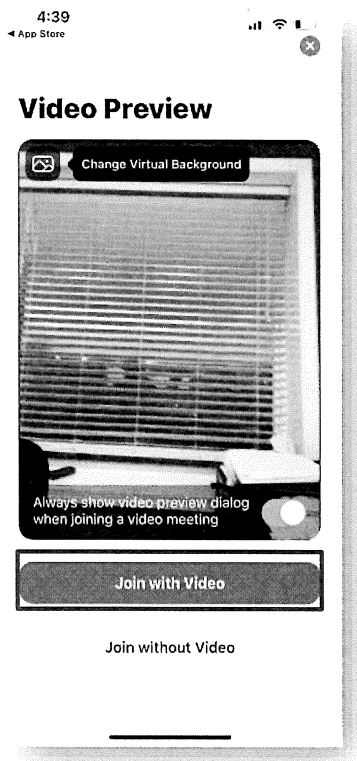


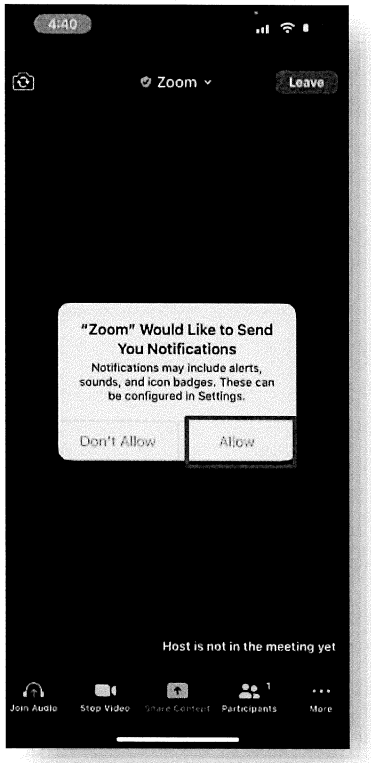


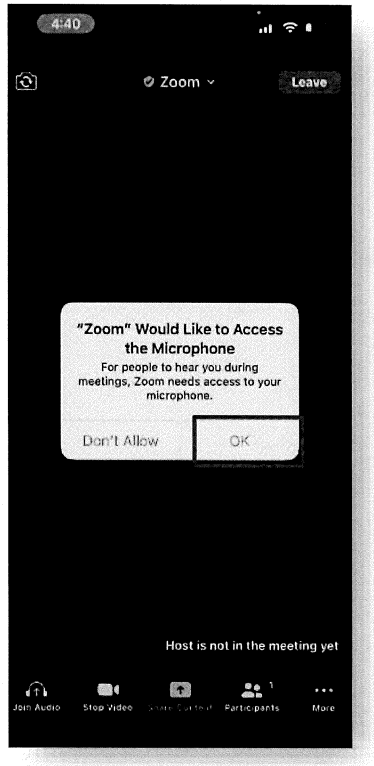


Joining Visitation (iOS Devices)

- Accept Zoom Meeting Notifications as Marked







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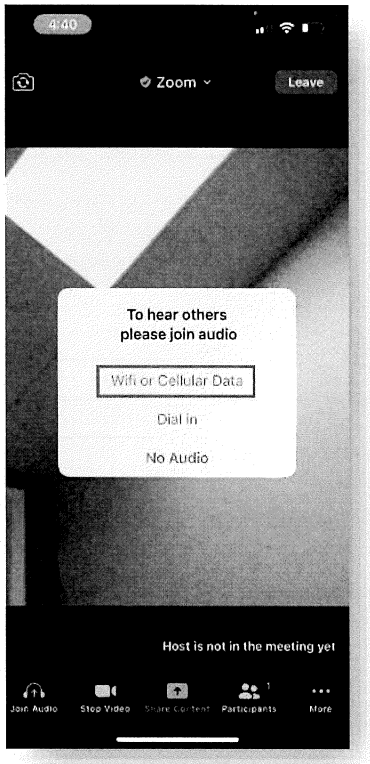
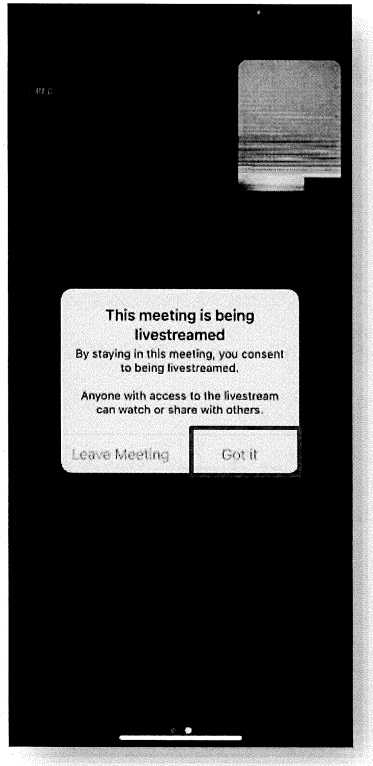
DEPARTMENT OF CORRECTIONS

Joining Visitation (iOS Devices)

- Accept Zoom Meeting Notifications as Marked





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DEPARTMENT OF CORRECTIONS

Join Using Android Devices

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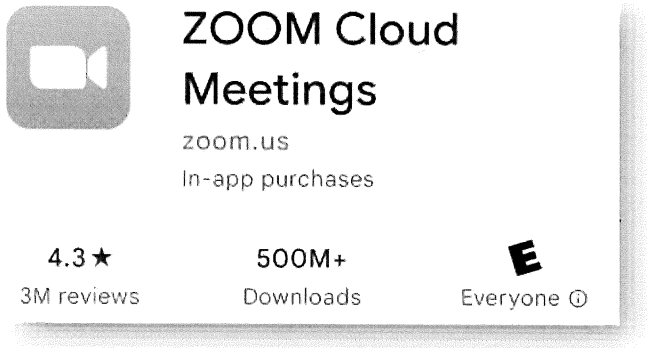
DEPARTMENT OF CORRECTIONS

Joining Visitation (Android Devices)

- Tablets and Mobile Phones using Android (Examples)
  - Phone (Samsung, Google Pixel and others)
  - Tablets

- What to do <u>before</u> my scheduled video visit?

Download the **<u>Zoom Cloud Meetings</u>** Mobile Application from **Google Play / App Store** and Install



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DEPARTMENT OF CORRECTIONS

Joining Visitation (Android Devices)

- What do I need to do to connect my visit?
  - Join by using URL, from the automated confirmation email

(OR)

  - Join by using Zoom Meeting app by entering Meeting ID and Password communicated through automated confirmation email.

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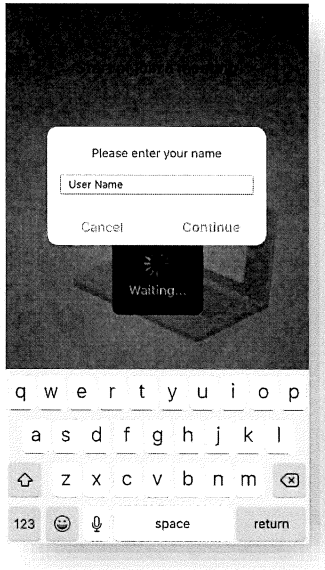
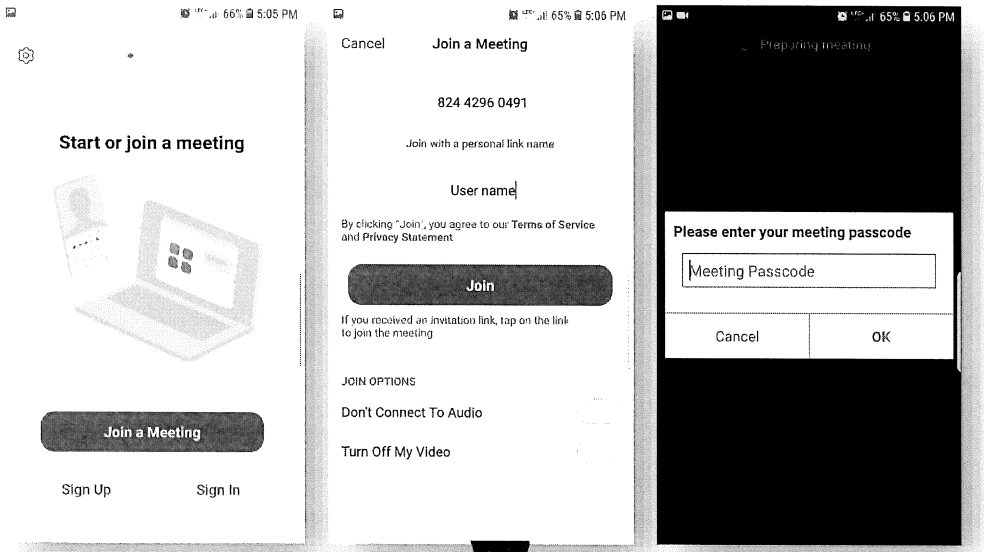
DEPARTMENT OF CORRECTIONS

Joining Visitation (Android Devices)

- Joining using URL
  - Zoom meeting app is launched with prepopulated Meeting ID and Password
  - Enter your name
  - Select "**Continue**"



- Joining using Zoom App
  - Open Zoom app
  - Select "**Join a Meeting**"
  - Enter meeting id, your name and select "**Join**"
  - Enter meeting passcode and select "**Continue**"



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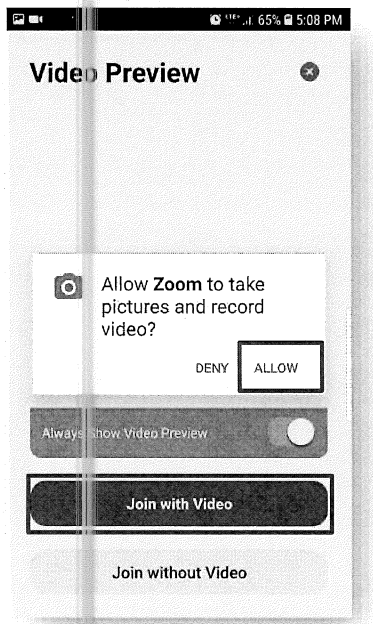
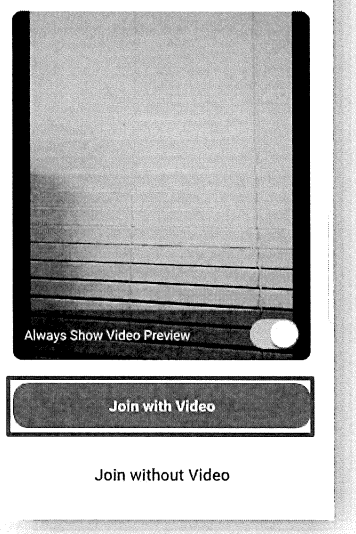
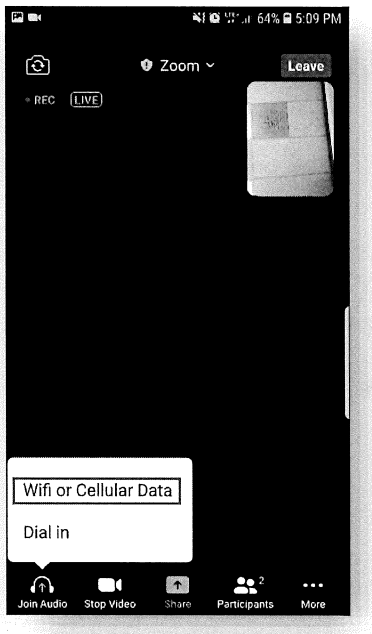
DEPARTMENT OF CORRECTIONS

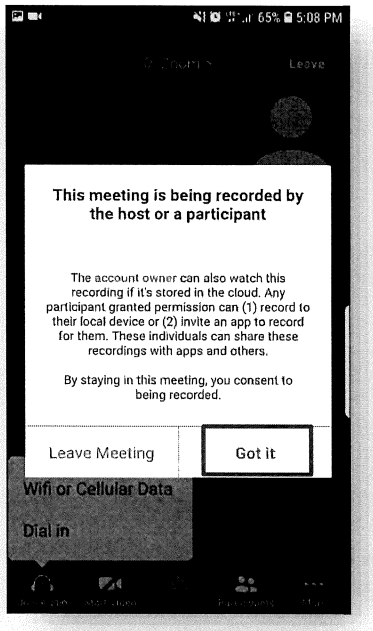
Joining Visitation (Android Devices)

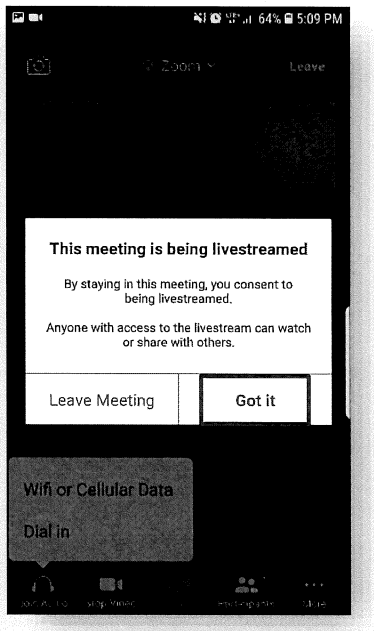
- Accept Zoom Meeting Notifications as Marked











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DEPARTMENT OF CORRECTIONS

Join Using Windows / MAC / Linux

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DEPARTMENT OF CORRECTIONS

Joining Visitation (Windows / MAC / Linux)

- Using Windows / MAC / Linux devices (two options to join)
  - Using Zoom Meeting App (download and install app)
  - Using Web Browser of the device

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Joining Visitation (Windows / MAC / Linux)

- Devices using Windows / MAC / Linux (Examples)
  - Laptop / Desktop
  - Mac Book

- What to do before my scheduled video visit?

  - Zoom Meeting Client Download and Installation for Windows
    - https://support.zoom.us/hc/en-us/articles/201362033-Getting-started-on-Windows-and-macOS

  - Zoom Meeting Client Download and Installation for macOS
    - https://support.zoom.us/hc/en-us/articles/203020795-Installing-the-Zoom-application-on-macOS

  - Zoom Meeting Client Download and Installation for Linux
    - https://support.zoom.us/hc/en-us/articles/204206269-Installing-or-updating-Zoom-on-Linux

Skip installing Zoom Meeting App, if using Web Browser to join the visitation

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Joining Visitation (Windows / MAC / Linux)

- What do I need to do to connect my visit?

  - Join by using URL, from the automated confirmation email

    (OR)

  - Join by using Zoom Meeting app by entering Meeting ID and Password communicated through automated confirmation email.

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Join Using Zoom Meeting App

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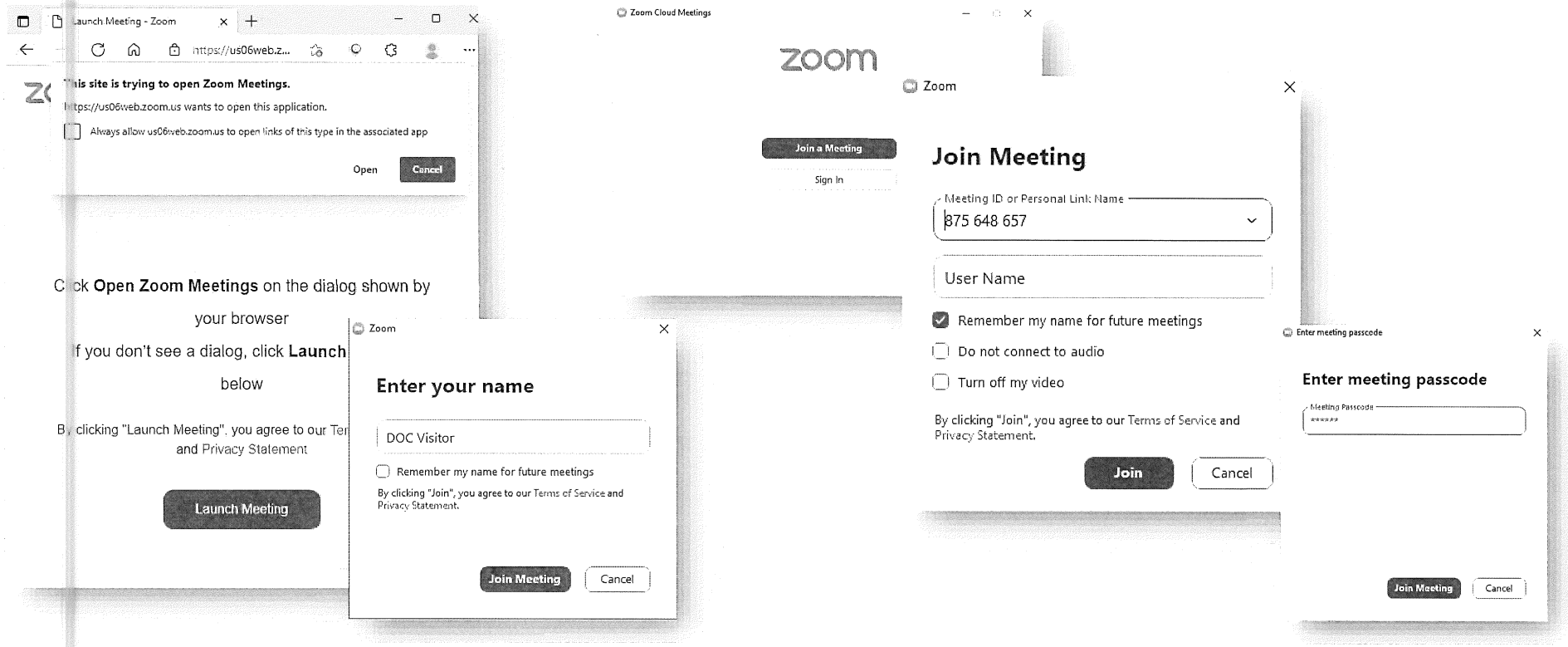
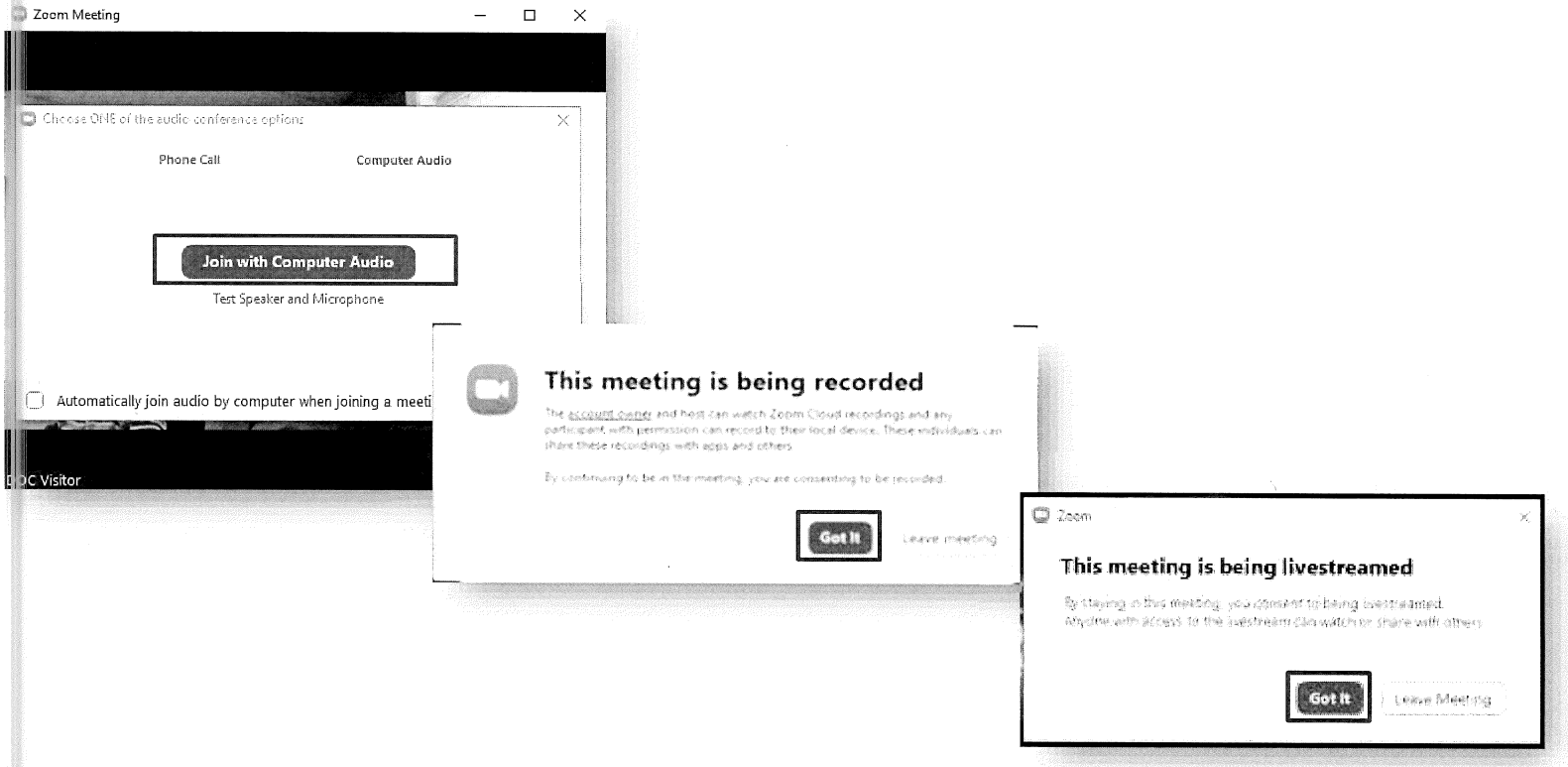
Joining Visitation (Windows / MAC / Linux)

- Joining using URL
  - Select "**Open**"
  - Zoom meeting app is launched with prepopulated Meeting ID and Password, Enter your name
  - Select "**Join Meeting**"
- Joining using Zoom App
  - Open Zoom app
  - Select "**Join a Meeting**"
  - Enter meeting id, your name and select "**Join**"
  - Enter meeting passcode and select "**Join Meeting**"



Joining Visitation (Windows / MAC / Linux)

- Accept Zoom Meeting Notifications as Marked



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Joining Visitation (Windows / MAC / Linux)

Join Using Web Browser

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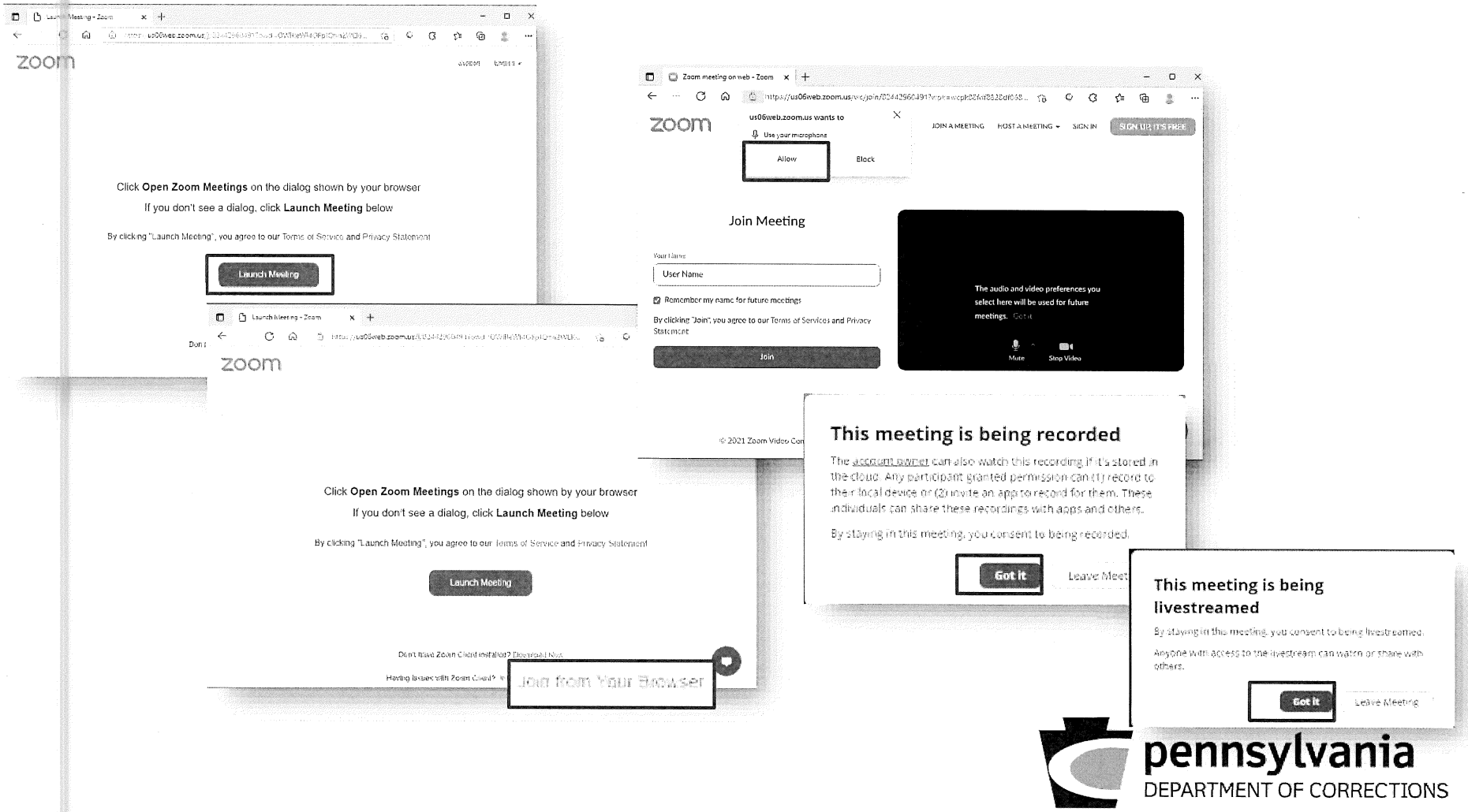
Joining Visitation – Microsoft Edge

- Enter Visitation Join URL in the Microsoft Edge web browser



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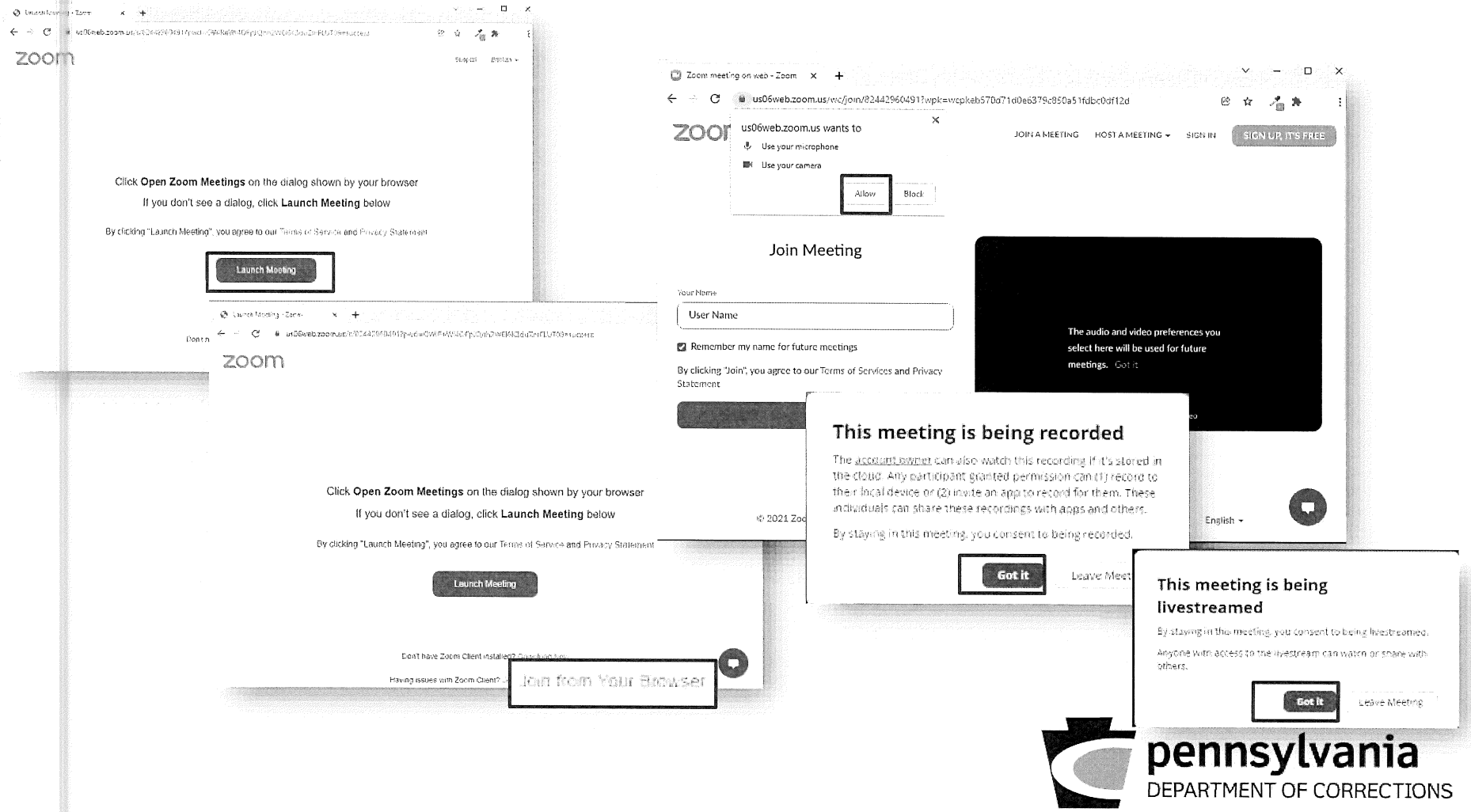
Joining Visitation – Google Chrome

- Enter Visitation Join URL in the Google Chrome web browser



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Joining Visitation – Mozilla Firefox

- Enter Visitation Join URL in the Mozilla Firefox web browser

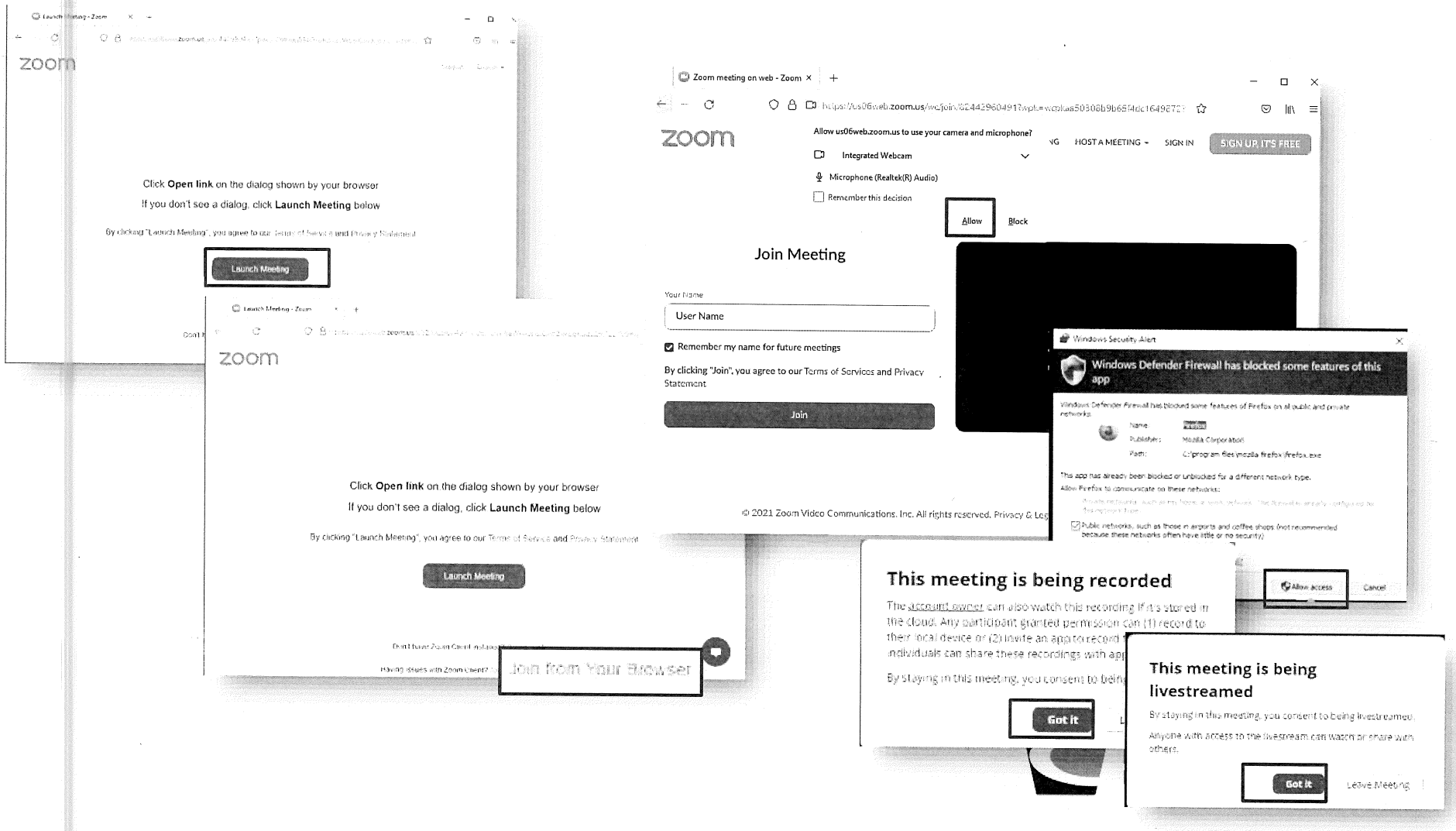

EXHIBIT B

Acronym	Definition
13A ICSA	Parole Summary Report
24/7	Parole Operations Monitoring Center Unit
300B	300B (See DC-300B)
A/R	Ankle Restraints
AA	Alcoholics Anonymous
AA	Administrative Appeal – An Appeal of a Revocation Decision
AA	Add Administrative (Move Code)
AAIC AMAC	Advanced Instructor Certification
AAP	Asbestos Abatement Program
AAPC	Asbestos Abatement Program Crew
AB	Add Bail (Move Code)
Abandoned/Unclaimed Property	Property that has been seized by parole agents, or otherwise came into the possession of parole staff, in the course of their professional duties, and has not been claimed by the rightful owner
ABE	Adult Basic Education
ABIC AMAC	ABIC AMAC Basic Instructor Certification
Absconder	A parolee who makes himself/herself unavailable for supervision
AC	Administrative Custody
ACA	American Correctional Association
Accomplice	A person who knowingly, voluntarily and with common intent with the principal offender unites in the commission of a crime
Acknowledgement	A formal declaration before an authorized official, by the person who executed the instrument, that it is his free act and deed, with the certificate of the official on such instrument demonstrating that it has been so acknowledged
ACLS	Advanced Cardiac Life Support
ACP	Address Confidentiality Program: provides an important service to victims of domestic violence, sexual assault or stalking. It is a program that operates within the Office of Victim Advocate
Acquit	To set free, release or discharge; to legally certify the innocence of one charged with a crime
ACT	Add County Transfer (Move Code)
ADA	Adams County
ADA	Americans with Disabilities Act
ADD	Attention Deficit Disorder
ADET	Add Detentioner (Move Code)
ADHD	Attention Deficit Hyperactivity Disorder
ADM	Administrative
Administrative Changes	Changes in Board Actions made by parole technicians who are authorized to change or complete actions without further Board votes
Admission	A voluntary statement made by a person charged with a technical violation, communicated to another person, wherein-he acknowledges him/her to be guilty of the violation charged, and discloses the circumstances of the act or the share in particip
ADO	ActiveX Data Objects
AE	Add Escape (Move Code)
AE	Age Equivalent
AFB	Acid-Fast Bacillus smear and culture and sensitivity test
AFED	Add Federal Commitment (Move Code)
Affidavit	A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath
AFLS	Automated File location System
AFSCME	American Federation of State and County Municipal Employees
AG	Attorney General
Agent	For the purpose of searches, a parole officer appointed by the Board of Probation and Parole
Aggregated Sentence	Two or more consecutive sentences that have been combined whereby the aggregate minimum term is the sum of all the consecutive terms minimum terms and the maximum term is the sum of all the consecutive maximum terms
AIDS	Acquired Immune Deficiency Syndrome
AIT	Add In Transit-Temporary (Move Code)
AITS	Automated Inmate Telephone System (Global System)
AJAX	Asynchronous Java Script And XML
AKA	Also Known As
ALB Albion	ALB Albion
Alias	Another name by which an offender is known; meaning otherwise, or also known as (AKA)

ALL	Allegheny County
Allegation	The assertion, claim, declaration, or statement of a party to an action, made in a pleading, setting out he/she expects to prove
AMAC	Assault Managementt Applications in Corrections
AOD	Alcohol and Other Drugs
AOD TC	Alcohol and Other Drugs – Therapeutic Community
AOPC	Administrative Office of Pennsylvania Courts
AOPV	Out of State Parole Violator
AOR	Automated Offender Record
AOTH	Add Other – Use Sparingly (Move Code)
APPA	American Probation and Parole Association
Appeal Panel	Three members of the Parole Board, appointed by the Parole Board Chairman, or Chairman's designee, to adjudicate appeals of Parole Board parole revocation decisions
APR	Agency Purchase Request
APV	Add Parole Violator (Move Code)
ARD	Accelerated Rehabilitation Disposition is the option of the court, upon the motion of the attorney for the Commonwealth, to place an offender on probation without a trial; upon the successful completion of the probation period, the charges are dismissed
ARM	Armstrong County
ARR2	The offender is currently incarcerated. The offender will not be required to pay supervision fees while incarcerated.
Arraign	To bring the accused before the court to plead to the criminal charge(s) brought against him/her in the indictment or information
AS	Actively Serving
ASH	Add State Hospital (Move Code)
ASP	Active Server Pages
At Liberty on Parole	Freedom from confinement on a particular sentence from which parole has been granted but not necessarily freedom from all confinement
ATA	Authorized Temporary Absence; Any approved temporary absences from the facility as directed by a court, medical/mental health provider or a party that requests/requires an offender to be out of a facility
ATT	Add Temporary Transfer (Move Code)
AVR	Addendum to Violation Report
AW	Add Writ/ATA> 1 Year (Move Code)
AWOL	Absent Without Leave
BAC	Blood Alcohol Content
Back time	The amount of time the Board orders a parolee to serve as a parole violator
Back time owed	The unserved portion of a prison sentence that an offender would have been compelled to serve if not paroled, expressed in years, months and days calculated by the Parole Board
Back time served	Period of time that an offender is held solely on a Board Warrant and applied as credit in the recommitment calculation
Bail	Monetary amount for, or a condition of, pretrial release from custody, set by a judge at the initial appearance and used to ensure the return of the accused at subsequent proceedings
Bail Bond	A written undertaking, executed by the accused or a surety, guaranteeing the state that the accused will appear at subsequent proceedings
Bail Time	Time spent out of custody in Bail status
BAU	Behavioral Adjustment Unit
BC	Bureau of Correction
BC	Boot Camp
BC	Birth Certificate
BCC	Bureau of Community Corrections
BCE	Bureau of Correction Education
BCTI	Building Trade Carpentry Instructor
BEA	Beaver County
BED	Bedford County
Bench Warrant	Process issued by the court itself for the attachment or arrest of a person, either in case of contempt, or where indictment has been found, or to bring in a witness who does not obey the subpoena of the court
BETA	IQ Assessment tool
BHCS	Bureau of Health Care Services
BI	Batterers Intervention
BICE	Bureau of Immigration and Customs Enforcement
BII	Bureau of Investigations and Intelligence (formerly Office of Special Investigations and Intelligence)
BIT	Bureau of Information Technology

BLA	Blair County
BMU	Behavior Management Unit
Board Action	The Board Action, also called a Board Decision, is the official document that either grants or denies parole along with the reasons for the decision that is issued by the Parole Board. The Board Action is the only PUBLIC document produced by the Parole Board.
Board Detainer	A warrant lodged by the PA Parole Board
Boot Camp Case	An offender whose minimum sentence is abrogated by law on
Boot Camp Selection Committee	The Diagnostic and Classification Center (DCC) Classification Committee, consisting of the Diagnostic Center Deputy and Director, Counselor Supervisor, Lieutenant and or Counselor
BPR	Business Process Re-engineering
BRA	Bradford County
BTS	Bureau of Treatment Services
BUC	Bucks County
BUT	Butler County
CA	Criminal Attempt
CAB	Cambria County
CAC	Commission on Accreditation for Corrections
CAC	Close Administrative Custody
CAC	Citizens Advisory Committee
CAD	Computer Aided Drafting
CAE	Cameron County
CAM	Corrections Activities Manager
CAM	Camp Hill
Capias	Latin term meaning "that you take". A writ requiring that an officer take a named defendant into custody
CAR	Cumulative Adjustment
CAR	Carbon County
CAR	Compact Action Request
CAS	Corrections Activities Specialist
Case Analysis Division	Administrative unit located at PBPP Central Office under the direction of the Office of the Board Secretary.
Case load	The number of parole and/or probation cases under the supervision of a Parole Agent or Corrections Counselor
CBS	Cambridge Springs
CBT	Computer Based Training
CBT	Cognitive Behavioral Therapy
CC	Criminal Conspiracy
CC	Concurrent
CC	Commitment Credit
CC	Corrections Counselor
CCAP	County Commissioners Association of Pennsylvania
CCC Community Corrections Center	A residential facility operated directly by the Bureau of Community Corrections to provide residential and treatment services to certain offenders
CCCM	CCC Monitor
CCF or CF	Community Contract Facility: A residential facility operated by a private or public entity contracted to provide residential housing and services to offenders
CCH	Computerized Criminal History
CCHRI	Computerized Criminal History Records information
CCJ	Contracted County Jail
CCPM	Corrections Classification Program Manager
CCTM	Corrections Classification Treatment Manager
CCU	Centralized Clearance Unit
CD	Compact Disk
CEA	Correctional Education Association
CEC	Community Education Center
CEN	Central Office – Department of Corrections
CEN	Centre County
CERT	Corrections Emergency Response Team
Certification	For any offender who is serving a sentence for a violent offense,
Certiorari	Latin term meaning "to be informed of'. A writ issued by a superior court to an inferior court, requiring the inferior court to produce a certified record of a case tried therein for the purpose of inspecting the proceeding and determining if any irregularities occurred
CETI	Corrections Electrical Trades Instructor
CEVA	Corrections Employment Vocational Assistant
CEVC	Corrections Employment Vocational Coordinator

CFC	Contract Facility Coordinator
CFSM	Corrections Food Service Manager
CFSS	Corrections Food Service Supervisor
Chairman's Certification	Parole Certification Application (To set forth procedures to verify that applicable laws are followed prior to the parole of violent offenders.)
Channel	Left Side Menu
CHCA	Corrections Health Care Administrator
CHE	Chester County
CHRI	Criminal History Record information
CHRIA	Criminal History Record Information Act – this act requires criminal justice agencies to maintain complete and accurate criminal history record information and take steps to protect the confidentiality of the records
CHS	Chester
CI	Correctional Industries
CI	Confidential Informant
CID	CLEAN Identification Number
CIM	Citical Incident Manager
CIR	Confiscated Items Receipt
Circumstantial Evidence	Evidence which inferentially proves the principle fact by establishing a condition surrounding and limiting circumstances, whose existence is a premise from which the existence of the principle fact may be concluded by necessary laws of reasoning
CIRT	Critical Incident Response Team
CISM	Critical Incident Stress Management
CIT	Crisis Intervention Team
CIVEA	Correctional Institution Vocational Education Association
CJIS	Criminal Justice Information Services
CL	Custody Level
CLA	Clarion County
CLE	Clearfield County
CLEAN	Commonwealth Law Enforcement Agency Network
Clemency Kindness, Mercy, Forgiveness, Leniency	An act by the Governor of a state to commute a death sentence to life imprisonment, or granting a pardon
CLI	Clinton County
CLR	Common Language Runtime
CNS	Cases Not Seen
CO	Corrections Officer
CO	Central Office – PBPP or DOC
COA	Coal Township
COI	Corrections Officer 1
COIGA	Central Office Inmate Grievance Coordinator
COII	Corrections Officer 2 (Sergeant)
COIII	Corrections Officer 3 (Lieutenant)
COIV	Corrections Officer 4 (Captain)
COL	Columbia County
COM	Corruption of Minors
Commit	To send a person to prison by virtue of a lawful authority for any crime or contempt, or to a mental health facility, workhouse, reformatory, or the like by authority of court or magistrate
Commitment Date	The date the offender is committed or delivered to the Department of Corrections
Commutation	The power of the Governor of a state to change a punishment to one that is less severe
CON I Supervisor Conference (PBPP)	A conference held with an offender, the supervising parole agent and his immediate supervisor/designee to determine if a violation(s) was committed and if so the appropriate action to be taken
CON II District Director Conference (PBPP)	A conference held with an offender, the supervising parole agent, the district director/deputy district director/designee and whenever possible the parole supervisor assigned to the parole unit to determine if a violation(s) was committed and if so the appropriate action to be taken
Concurrent	Sentences being served simultaneously
Conditional Release	Release from confinement in a correctional Institution subject to certain conditions
Conditions (of parole/probation)	Any terms or conditions of the offender's supervision, whether imposed by the court, the board, or the agent Including compliance with all requirements of Federal, State and local law
Confession	A voluntary statement made by a person charged with the commission of a crime or misdemeanor, wherein he/she acknowledges that he/she is guilty of the offense charged and discloses the circumstances of the act or the share he/she had in it
Consecutive	Following one after the other, in order, without gaps in time

Constructive Parole	A grant of Parole when an offender is released from one sentence but remains confined while serving another sentence rather than being released from confinement
Contempt of Court	Any act which is calculated to embarrass, hinder, or obstruct court in the administration of justice, or which is calculated to lessen its authority or dignity
Continuance	Deferral of a due process proceeding, which is made at the request of a
Contraband	For the purpose of searches, any item an offender is not permitted to possess
Contraband Per Se	Anything that the mere possession of is illegal whether or not the person possessing the item is an offender (i.e. Illegal drugs)
Control	The force an Employee uses to influence or neutralize the actions or Resistance of a subject. Generally, Employees are justified in the use of physical control methods for three reasons:
Controlling DC Max	This date will display the calculated DC Max date considering any modification in DC sanction or DC time
Controlling Maximum	It is the longest state sentence for the maximum
Controlling Minimum	It is the longest state sentence for the minimum
Controlling Sentence	The sentence (or the aggregate sentence) with the controlling minimum and maximum. It must be recognized that this can be the minimum of one sentence and the maximum of another
Convicted Parole Violator	An offender who violates parole by committing a new crime while on parole to which the offender subsequently pleads guilty or nolo contendere or is found guilty by a judge or jury in a court of record
Conviction	For purposes of parole, a verdict of guilty by a judge or jury in a court of record or plea of guilty or nolo contendere made by an offender in a court of record
CO-OP	Co-occurring Outpatient
COR	Community Orientation and Reintegration
Coram Nobis	A Latin term meaning "before us"
CORC	DOC Central Office Review Committee
Corroborating Evidence	Evidence that strengthens or sustains testimony which has been presented by a previous witness
COT	Corrections Officer Trainee
County Detainer	A warrant lodged by a county of the State of Pennsylvania
County Parole	A parole granted by a common pleas court or the Philadelphia Municipal Court on a sentence with a maximum term of less than two years
County Sentence	Sentence of imprisonment for a maximum term of less than two years where the sentencing court retains parole jurisdiction.
Court	For the purposes of searches, the Court of Common Pleas or any judge thereof, the Philadelphia Municipal Court or any judge thereof, the Pittsburgh Magistrates Court or any judge thereof or any district justice.
Court of Record	PA Courts of Common Pleas, Pa. Superior Court, Pa. Cmwlth. Court, Pa. Supreme Court, Philadelphia Municipal Court (for misdemeanor and felony offenses) NOT Court of Record=Magistrate District Justices, Philadelphia Traffic Court, , Philadelphia Municipal Court (for summary offenses), Pittsburgh Traffic Court, and Court of Common Pleas when the Judge is "sitting" as a Magistrate
COV	Corrections Officer 5 (Major)
CP	(Court of) Common Pleas
CPC	Community Parole Center
CPIN	Commonwealth Photo Imaging Network
CPR	Cardiopulmonary Resuscitation
CPV	Convicted Parole Violator – An Offender who violates parole by committing a new crime and receiving a conviction in a Court of Record
CQI	Continuous Quality Improvement
CR	Cell Restriction
CRA	Crawford County
CRE	Cresson
Credit Adjustment	Change of Credit after original computation
Crime Victims Compensation Fund	Acts 27/86/85/35/96: A law that requires the offender to pay a fee to the County of conviction prior to release on parole
Criminal Intent	The intent to commit a crime; malice, as evidenced by a criminal act; intent to deprive or defraud the true owner of his property
CRPA	Community Reentry Parole Agent
CRST	Correctional Rifle Specialist Team
CRUD	Create, Read, Update, Delete
CS	Consecutive
CSCU	Central Sentence Computation Unit (DOC)
CSD	Commonwealth Secondary Diploma
CSDP	Commonwealth Secondary Diploma Program
CSI	Confidential Source of Information

CSP	Corrections School Prinicipal
CSP	Community Service Program Class (PBPP)
CSSM	Criminal Sentiments Scale – Modified
CSS-M	Criminal Sentiments Scale – Modified
CT	Clerk Typist
CTR	Cash Transaction Receipt
CUM	Cumberland County
Custody For Return Date	The date the parole violator actually became available
CVCF	Crime Victims Compensation Fund: A special non–lapsing fund that is used by the Office of Victims services for payment to claimants and technical assistance
CWOPA	Commonwealth of Pennsylvania
CWP	Community Work Program
D	Discharge/Delete (Move Code)
DA	District Attorney
DA	Discharge Administrative (Move Code)
DA or D/A	Drug and Alcohol
DAG	Discipline and Appeals
DAG03	DAG03 Grievances
DAG04	DAG04 Incidents
DAL	Dallas
Data Download	Method of electronic recovery of information stored by the electronic control device upon each discharge
Data Warehouse	A data warehouse refers to the storage and delivery of integrated information
Date/Time Stamp	A stamp added by an application that identifies a task or activity by the date and time it was initiated and/or completed. This can appear as part of a message log, message queue in job logs
DATS	Drug and Alcohol Treatment Specialist
DATSS	Drug and Alcohol Treatment Specialist Supervisor
DAU	Dauphin County
DBOA	Detained by Other Authority
DC	Disciplinary Custody
DC	Distribution Center
DC-121 (Part 1,2,3)	Forms to be completed for Extraordinary Occurrences in the DOC
DC-138A	Cash Slip
DC-14	Counselor Inmate File
DC-141	Part 1 Misconduct Report
DC-141 Part 2A	Inmate Request for Representation and Witness
DC-141 Part 2B	Disciplinary Hearing Report
DC-141 Part 2C	Hearing Supplement Inmate version and witness statements
DC-141 Part 2D	Waiver of Disciplinary Procedures
DC-141 Part 2E	Misconduct Hearing Appeal
DC-141 Part 3	PRC Action
DC-14A	Offender Cumulative Adjustment Record
DC-15	Inmate Record Jacket: contains original commitment documents, identification, classification and institutional information.
DC-154A	Confiscated Items Receipt
DC-158	Release Worksheet
DC-16E	Sentence Status Summary
DC-26	Detainer Action Letter
DC-2A	Diagnostic-Classification Report Reception Checklist
DC-300B	Court Commitment Form. It includes costs, fines and restitution for entry into inmate accounts
DC-301	ACT 84 Transmittal Form
DC-43	Correctional Plan
DC-436	Receipt for Property
DC-46	Vote Sheet for Parole Decision Making
DC-481	Medical Release Form
DC-487	Transfer Health Information
DC-510	Suicide Risk Indicator Form
DC-551	Continuity of Care and Transfer Individual Treatment Plan
DC-804	Grievance Form
DC-97	Psychology Referral
DC-ADM 005 DOC Policy	Collection of Inmate debts
DCC	Diagnostic and Classification Center
DCP	Delinquent for Control Purposes (Sometimes DDCP-Declare Delinquent for Control Purposes)
DD	District Director (PBPP)

DD	Dual Diagnosis
DDD	Deputy District Director (PBPP)
DDL	Drop Down List
Defendant	The person defending or denying; the accused in a criminal or civil case.
Deferred Sentence	A plea of guilty is entered; however the court's imposition of sentence is delayed during the period of deferment pending the successful completion by the offender of the terms and conditions of supervision ordered by the court
DEL	Delaware County
Delinquent	The period of time which an offender absconds from supervision and the board takes administrative action to declare the offender delinquent
Delinquent For Control	An action by the Board expressing its intention to proceed with a revocation proceeding in the event the offender is convicted after the expiration of the maximum sentence for a criminal offense that occurred before the maximum sentence expired
Demurrer	The formal mode of disputing the sufficiency in law of the pleading of the other side; an allegation that even if the facts as stated in the pleading are taken to be true they do not set forth a cause of action for which relief may be granted
Deportation Order	An order issued by the Federal Immigration and Customs
Deposition	The testimony of a witness taken under oath and outside the courtroom, upon oral question or written interrogatories, for the purpose of discovery or to be used in a future court proceeding.
Detainer	A written order of the court or paroling Agency to hold a person in custody in a correctional Institution pending further legal action
Detention Hearing	A hearing to determine whether an offender should be detained pending disposition of new criminal charges
Determinate (Flat) Sentence	A sentence that only has a maximum length of time. The offender is eligible for parole at any time. The exception being a mandatory sentence, where an offender must serve the complete sentence in custody. The Board has no authority over these cases
Direct Evidence (Testimony)	Establishes the truth of a fact in issue on the basis of the personal knowledge of a witness. It is direct because the witness describes an event that he observed or experienced which is relevant to a fact in issue and which contributes materially toward establishing innocence or guilt of the offender. Credibility is important since the witness can be cross-examined by the defense. An admission made by the offender at a parole due process hearing is sufficient to substantiate a violation.
Direct Examination	The first interrogation or examination of a witness, on the merits, by the party on whose behalf he is called
Direct Violation	A violation of parole by the offender's commission of a crime while on parole of which the offender is later found guilty or pleads guilty or nolo contendere in a court of record
Discharge	To deploy a projectile, including OC spray, or electronic energy to stop a subject's unlawful and dangerous actions.
Dismissal	An order or judgment finally disposing of an action, suit, motion, etc. without consideration or hearing of the issues involved
District Office	One of the ten district field parole offices, each serving specific counties, in one of three regions.
DIT	Delete in Transit (Move Code)
DIU	Drug Interdiction Unit
DJ	District Justice
DL	Driver's License
DM	District Magistrate
DNA	Deoxyribonucleic Acid – Used for forensic identification
DNA Tracking Sheet	A Pa State Police document supplied to verify that a DNA sample has been drawn from an offender whose specified crime requires a sample to be drawn
DO	District Office (parole)
DOB	Date of Birth
DOC	Department of Corrections
DOCInfo	Department of Corrections Offender Information System which contains DOC Applications, Reports, Inmate Applications and other administrative functions for staff at the DOC, Parole Board, SOAB and OVA to perform each agencies' official duties.
Docket	A listing of offenders who are scheduled/have a date for a parole interview with all pre-requisite documentation complete
DOCNet	Before the MOU was signed with the Parole Board in 2017, this was the name of the internal computer network for only Department of Corrections employees. Post MOU, this internal computer network is shared with the Parole Board, Sexual Offenders Assessment Board and Office of Victim Advocate and is now referred to as the INTRANET.

Documentary Evidence	Evidence that is supplied by writings and documents of every kind in the widest sense of the term. Public and official records can be used as evidence in a parole due process hearing when the record is one that is kept by a Commonwealth agency, governmental unit including the Federal government, court or district magistrate. These records must either be certified or bear the signature of a magistrate or judge. Business records are admissible as evidence as long as a qualified witness is present to testify and has knowledge as to the method of preparation and maintenance of those records. The business record used must be a record of an act, condition or event that was made in the regular course of business at or near the time of the act, condition, or event. Employee business records and the discharge records from treatment programs are examples of admissible documentary evidence. Due to the reliance upon urinalysis testing laboratories in the supervision of offenders, laboratory reports are also admissible as evidence when the report is printed on official laboratory stationary, contain the signature of a known and responsible laboratory official, usually the lab director or clinical supervisor, and is certified by the Commonwealth as laboratory that is reliable and regular
DOH	Department of Health
DOJ	Department of Justice
Domestic Violence	A pattern of behavior reinforced by violence and/or the threat of violence, which can include physical, psychological, sexual, economic, and emotional abuse, perpetrated by one person against an intimate partner or family member, with the goal of establishing and maintaining power and control over the victim. Not all acts of domestic violence are necessarily violations of criminal law. However, all incidents of domestic violence should be viewed as a pattern of behavior, not an isolated criminal event. For purposes of this chapter, the Domestic Violence Protocol applies only to those offenders who commit acts of domestic violence against a current or former intimate partner, whether or not those acts rise to the level of criminal culpability
DOR	Department of Revenue
Dorm	Dormitory: an open living area housing offenders in numerous beds (more than 2)
DOT	Direct Observation Therapy
DOT	Department of Transportation
DOT	Direct Observation Therapy
DPW	Department of Public welfare
DRG	Diagnosis Related Group
Drive Stun	To touch an offender's body with an electronic control device to achieve pain compliance. This technique will not affect the motor function of an offender's nervous system
DRP	Day Reporting Program
DSCS	Deputy Superintendent for Centralized Services
DSDC	Deputy Superintendent for Diagnostic Center
DSFM	Deputy Superintendent for Facilities Management
DSIS	Deputy Superintendent for Internal Security
DSM	Diagnostic and Statistical Manual
DT	Defensive Tactics
DTT	Delete Temporary Transfer – Use with ATT only (Move Code)
DTU	Diversionary Treatment Unit
Due Process	Fundamental procedural rights of the accused to a fair trial/hearing
DUI	Driving Under the Influence
Duress	Any unlawful threat or coercion used by a person to induce another to act in a manner (s)he otherwise would not.
DUS	Driving Under Suspension
DV	Domestic Violence
DWI	Driving While Influenced
DWOP	Dismissed Without Prejudice
DWP	Dismissed With Prejudice
E/W/I	Error/Warning/Information
EAM	Education Administration Manager
EBID	Electric Body Immobilization Device (Hand held or Shield)
EBP	Evidenced Based Procedure
EDCC	Eastern Diagnostic and Classification Center
EDS	Executive Deputy Secretary
EEO	Equal Employment Opportunity
Effective date of PV return	The date established by PBPP and reported on the recommitment order (PBPP 39) indicating whether the offender started to serve his/her back time.
EFT	Electronic Fund transfer
EGC	Education Guidance Counselor
EHR	Electronic Health Record

EID	Electronic Immobilization Devices
EIF	Enterprise Instrumentation framework
EJC	Eastern Joint Committee
EKG	Electrocardiogram
ELK	Elk County
ELL	English Language Learner
EM (EME)	Electronic Monitoring (Equipment)
eMAR	Electronic Medication Administration Record
Employee	All Board staff with detention or arrest power, investigative responsibility, staff safety training responsibility and/or who are assigned Board-issued Weapons and shall include deputized supervision staff who have been deputized in accordance with 61 P.S. §331.21b of the Parole Act
EOR	Extraordinary Occurrence Report
EOS	Equal Opportunity Specialist
EPC	Emergency Preparedness Coordinator
EPICS	Effective Practices in Community Supervision
EPR	Employee Performance Review
ERI	Erie County
ERL	Escape Risk List
ERR	Electronic Reentrant Record
Error Coram Vobis	Error in the proceedings "before you"; words used in a writ of error directed by a court of review to the court which tried the cause
ES	Emotional Support (placement)
ESB	Enterprise Service Bus
Escape Time	Period of time that an offender was on escape status
Escrow	An amount of offender's money held by the Commonwealth for a specific purpose
ESS	Employee Self Service
ETA	Estimated Time of Arrival
ETI	Electronic Trades Instructor
ETL	Extract, Transform and Load; the process of taking the data from the source systems, cleaning the data based on requirements to apply business rules/transform the data and then loading the data into the warehouse
Evidence	Any species of proof legally presented at the trial or hearing of an issue by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc. for the purpose of inducing belief in the minds of the judging body to their contention
EWOC	Endangering the Welfare of Children
Ex Post Facto	Latin phrase for "after the deed is done".
Examiner	An agent of the Parole Board who is empowered to sit on parole revocation panels, conduct parole hearings in lieu of panels and conduct parole interviews on behalf of the Parole Board; also known as a "hearing examiner."
Exigent Circumstances	When applied to searches, includes, but is not limited to, suspicion that contraband or other evidence of violations of the conditions of supervision might be destroyed or suspicion that a weapon might be used. Exigent circumstances always exist with respect to a vehicle
Exonerate	To clear from accusation or blame
Expert Evidence	Testimony given in relation to some scientific technical or professional matter by experts, who are persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject. Parole agents, who routinely note if offenders under their supervision have been consuming alcohol by the odor of alcohol on their breath, can testify to this violation at a parole due process hearing as an expert witness. A parole agent or police officer, certified in specific skills, can also be called as an expert witness
EXT	External Contacts
Extra Interview Case	This identifies an offender who was previously interviewed
Extract	The process of reading data from a source database
Extradition	The return of a fugitive to a state in which the offender is accused or has been convicted of committing a criminal offense
F/A or FA	Firearm/s
FA	First Aid
FA w/o LIC	Firearm without a License
FAC	Facility Checks and Offender Counts
FAM	Facility Management
FAST	Fugitive Apprehension Search Team
FAY	Fayette County
FBI	FFederal Bureau of Investigation
FCI	Federal Correctional Institution

FCP	Facility Character Profile
FCPD	Facility Chaplaincy Program Director
FDME	Final Discharge Maximum Expiration/Expired
Federal	Federal Sentence
Federal Detainer	A warrant lodged by any branch of the Federal Government
FEEE or FEIE	The offender has extraordinary circumstances and is deemed unable to pay supervision fees by the parole supervision staff. The offender will not be required to pay supervision fees in this category.
FEEO	PA cases being supervised by other states and other states' cases from date of release (or probation effective date) to arrival date in PA. The offender will not be required to pay supervision fees in this category.
FEEP or FEIP	The household income is at or below 130% of the poverty level. Individual will be required to pay $10 a month for supervision fees
FEET	The offender is currently in halfway back program, inpatient treatment or a nursing home and will not be required to pay supervision fees in this category.
Felony	A crime of a graver, or more serious, nature than those designated as misdemeanors and punishable by death or imprisonment of at least one year.
FEMM	Front End Security Management Module
FEMM	FEMM
FERT	Fire Emergency Response Team
FETC	Firearm Education and Training Commission
FGC	Facility Grievance Coordinator
FHRA	Field Human Resource Analyst
FHRO	Field Human Resource Officer
Final Rescission Hearing	A final hearing, with a right to a hearing before a panel,
Firearms Liaison	Any Board employee appointed by the Deputy Executive Director to serve as an advisor and subject matter expert regarding Resistance and Control policy and procedure involving firearms related matters and incidents.
Flat Sentence	A sentence which has no minimum, but only a maximum term
FM	Facility Manager
FMD	Field Monitoring Device
FMLA	Family Medical Leave Act
FMM	Facility Maintenance Manger
FMMS	Facility Maintenance Management System -- A software application used by all facilities to create and track Work Orders, Projects, Preventative Maintenance and Equipment in each facility.
FMS	Facility Management System; A system to manage physical attributes of a facility to include facility, building, housing unit, sections, cells/dorms and beds
FOC	Facts of Crime
FOR	Forest
Forfeiture	The process by which seized property becomes the property of the Commonwealth to be destroyed or otherwise disposed of.
FPSA	Forensic Psychological Services Associate
FPU	Forensic Psychiatric Unit
FRA	Frackville
FRA	Franklin County
Fraud	A false representation of a matter of fact which deceives, and is intended to deceive, another so that (s)he will act upon it to his/her legal injury
FRC	Facility Research Coordinator
Front Time	The minimum sentence imposed upon an offender by the sentencing court, the amount of time an offender spends incarcerated prior to being initially released on parole
FRS	Forest
FSA	Federal Student Aid
FSI	Food Service Instructor
FTA	Failure to appear
FTC	Forensic Treatment Center
FTR	Failure to Report
FUL	Fulton County
Furlough	An authorized leave of an offender from a facility for a period not to exceed 7 consecutive days for furthering his/her rehabilitative program
FVCC	Facility Video Conference Coordinator
FY	Fiscal Year
FYI	For Your Information
FYT	Fayette
GAF	Global Assessment of Functioning

Gagnon I Hearing	A first level probable cause hearing held by a court or probation officer to determine whether there is sufficient evidence to charge an offender with a violation of probation or parole
Gagnon II Hearing	A second level fact-finding hearing held by a common pleas court to determine whether an offender has in fact violated the terms and conditions of probation or parole and if so whether the offender should be sent to prison as a violator or continued on probation or parole
GBMI	Guilty But Mentally Ill
GE	Grade Equivalent
GED	General Education Development
GED	General Equivalency Diploma
General Sentence	Youthful offenders at one time were committed to the State Correctional Institution at Camp Hill by an adult criminal court with no specific minimum sentence being imposed. Such commitments carried a sentence up to six years and were eligible for parole at any time. This type of sentence is no longer legal in Pennsylvania; however, reference to this type of sentence may be found in old case material
GLP	General Labor Pool
GO	Grievance Officer
Goldenrod	"Golden" colored file folder that contains the hearing report and parole supervision hearing materials (PBPP)
Good Cause	Reasons that justify the absence of a live witness at a revocation hearing and justifies the admission of hearsay evidence over the objections of an offender or defense counsel and deny the offender the right to confront and cross-examine the absent adverse witness; requires a balancing of the absent witness's reasons for not appearing in person, the cost and ability of the Commonwealth to bring the absent witness to the revocation hearing, and the offender's interest in confronting and cross-examining the absent witness
Good Time	As used in connection with technical parole violators that time spent on parole in compliance with the terms and conditions of parole which time is credited against an offenders maximum sentence upon recommitment as a TPV; equivalent of "time on parole in good standing" or "street time"
GoTEST	Goals/Objectives, Threat, Environment, Self/Team, and Tomorrow: Situational analysis model used with AMAC
GP	General Population
GPS	Global Positioning System
GR	Grievance report
GRA	Graterford
Grand Jury	A body of citizens whose duties consist of determining whether probable cause that a crime has been committed exists and whether an indictment (true bill) should be returned against the one accused of the a crime; body is accusatory in nature only, they do not determine guilt
GRE	Greensburg
GRE	Greene County
Green Sheet	Years ago, the Parole Board used to print Board Actions on green paper. Currently, when printed, they are on white paper. While "green sheet" is still used by the inmates/parolees and his/her families, the correct terminology is Board Action.
GRN	Greene
GRO	Grievance Review Officer
GUI	Graphical User Interface
H	High Risk for Violence or Escape Code
Habeas Corpus	A Latin phrase meaning "you have the body"; an independent proceeding instituted to determine whether a defendant, usually a prisoner, is being unlawfully deprived of his/her liberty (unlawfully imprisoned).
HAS	Housing Assignment
HE	Hearing Examiner
Hearing Examiner	A Board employee authorized to conduct interviews and/or hearings on behalf of the Commonwealth of Pennsylvania, Parole Board.
Hearsay Evidence	Defined as evidence given by a person who relates not what he knows of his own knowledge but what he has heard from others. Thus, it is evidence which derives its value, not solely from the credit to be given to the witness upon the stand, but in part from the veracity and competency of some other person for the probative force of that to which he testifies. Hearsay evidence is permitted at parole due process hearings. If contested by the defense, good cause must be presented to allow the testimony at the second level hearing
HEX	Hearing Examiner
HIP	Hearing/Interview Planner application
HIQ	Hostile Interpretation Questionnaire

HIV	Human Immunodeficiency Virus
HLD	High Level Design
HNT	Hostage Negotiation Team
Home Plan	The residence where an offender plans to live upon release from custody
Hooch	Home made alcohol
HOU	Houtzdale
HR	Human Resources
HRA	Human Resource Analyst
HRT	Hostage Rescue Team
HSD	High School Diploma
HTC	Hold Till Called
HTC	Hispanic Therapeutic Community
HTTP	Hyper Text Transfer Protocol
HUN	Huntingdon
HUN	Huntingdon County
Hung Jury	A jury so irreconcilably divided in opinion that they cannot agree upon a verdict.
HVA	Hold for Various Authorities
HVAC	Heating Ventilation and Air Conditioning
IAD	Interstate Agreement on Detainers
IAODOTP	Individualized Alcohol and Other Drug Offender Treatment Plan
IAP	Incident Action Plan
IBT	Incentive Based Transfer
IC	In Custody
ICAOS	Interstate Commission/Compact for Adult Offender Supervision
ICAR	Inmate Cumulative Adjustment Record
ICC	Interstate Corrections Compact
ICC	Infection Control Nurse
ICC	Interstate Compact Commission
ICD	International Classification of Diseases
ICE	Immigration and Customs Enforcement
ICE Detainer	A warrant lodged by the Immigration and Customs Enforcement
ICMA	Institutional Case Management Application
ICN	Infection Control Nurse
ICOTS	Interstate Compact Offender Tracking System
ICP	Integrated Correctional Plan
ICS	Incident Command System
ICS	Interstate Compact Services
ICSA	Integrated Case Summary Application
ICU	Intermediate Care Unit
ID	Identification card
IDEA-B	Federal law governing special education in school and out of correctional placement
IDSI	Involuntary Deviate Sexual Intercourse
IDVS	Indentity Verification System
IEP	Individualized Educational Plan
IGWF	Inmate General Welfare Fund
III	Interstate Identification Index or Triple I
IIS	Internet Information Server
ILL	Inter Library Loan
IM	Inmate
IND	Indiana County
Indeterminate Sentence	A sentence with a minimum and maximum sentence, the minimum generally determining parole eligibility
Indictment	A formal written accusation originating with a prosecutor and issued by a grand jury against a party charged with a crime; means by which a criminal defendant is brought to trial
Indigent Prisoner	For purposes of Public Defender Act of 1968, any person incarcerated who for the lack of sufficient funds is unable to retain private legal counsel
Indirect Violation	A violation of probation or parole by a breach of the terms and conditions of probation or parole other than the commission of a new criminal offense of which the offender is found guilty or pleads guilty or nolo contenders. Also see Technical Parole Violation
Information	A written accusation made by a public prosecutor, without the intervention of a grand jury; notifies defendant of the charges pending so that (s)he can prepare for trial.
Initial Sentence Status Report-PBPP 102	The official Parole Board document containing sentencing information on offenders serving their state sentence in a county facility.
Injunction	A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury.

Institutional Parole Summary - PBPP 245A	Summary of the offender's adjustment at a County Facility prepared by the county correctional facility staff for state offenders serving their sentence in a county facility
INT	Interface to SOAB and OVA
Interested Party	An offender or an offender's counsel
Interpol	International Criminal Police Organization
Interstate Office	A division of the PBPP that has responsibility to administer the Interstate Compact for Adult Offender Supervision between the compact's 53 signatories: all states, District of Columbia, Puerto Rico and the U.S. Virgin Islands
INTRANET	An internal computer network for sharing information, collaboration tools, operational systems, and other computer services developed for employees of the Department of Corrections, Parole Board, Sexual Offenders Assessment Board and Office of Victim Advocate. Access to the content on the INTRANET is not given to any non-CWOPA individual.
Invalidly Issued Parole Decision	A decision (PB 15) issued where, for example: (1) there were insufficient votes to grant parole; (2) the offender had not served the minimum term of the sentence; or (3) the Board decided to parole at a future time, but a technician erroneously recorded the parole decision (PBPP-15) to be effective before that time, as in Lord v. PBPP, 580 A.2d 463 (Pa. Cmwlth. 1990), appeal denied, 528 Pa.619, 596 A.2d 801 (1991).
IP	Intermediate Punishment
IPC	Interpersonal Communications Skills
IPI	Individual Program of Instructions
IPIN	Inmate Personal Identification Number
IPRC	Incoming Publication Review Committee
IR	Incident report
IRB	Institutional Review Board
IRC	Inmate Records System
IRC	Initial Reception Committee
IRS	Inmate Records System
IT	Information Technology
ITP	Individual Treatment Plan
ITU	Intermediate Treatment Unit
JCJC	Juvenile Court Judges Commission
JEF	Jefferson County
JII	Juvenile Information Inquiry
JNET	Justice Network
JRA	Justice Reference Architecture
JRC	Joint Resolution Committee
JRI	Justice Reinvestment Initiative
JTAC	Justice Network Terminal Access Coordinator
Judgment	The final decision of the court, resolving the dispute and determining the rights and obligations of the parties.
JUN	Juniata County
K/I PWID	Knowledge/Intent to Possess with Intent to Deliver
LAC	Lackawanna County
LAN	Local Area Network
LAN	Lancaster County
LAW	Lawrence County
LD	Learding Disability (cagetory)
LEA	Local Education Agency
LEB	Lebanon County
LEH	Lehigh County
LEP	Limited English Proficiency
Lethal Force	Any control that could cause death or serious bodily harm
LINQ	Language Integrated Query
Litigation	A contest in a court of law for the purpose of enforcing a right or seeking a remedy.
LOP	Lack of Prosecution
LOP	Loss of Privileges
LPM	Licensed Psychologist Manager
LPN	Licensed Practical Nurse
LRE	Least Restrictive Environment
LS	Learning Support (placement)
LSI-R	Level of Service Inventory – Revised, an Instrument used for Identifying offender risk/needs and recommending supervision level of the offender
LTSU	Long Term Segregation Unit
LUZ	Luzerne County
LWTS	Lead Work Training for Sergeants
LYC	Lycoming County

M	Minimal Supervision Outside Code
MA	Medical Allowance
MADD	Mothers Against Drunk Driving
MAH	Mahanoy
Malice	An intentional doing of a wrongful act, without just cause or excuse, with an intent to inflict an injury or under circumstances in which the law will imply an evil intent.
Mandamus	A Latin term meaning "we command"; a writ, issued by a court of superior jurisdiction, commanding an inferior tribunal, board, corporation, or person to perform a ministerial duty imposed by law.
MAR	Medication Administration Record
Master Count	The Master Count Record provides an aggregated count of all offender receptions, discharges and the total offender count at the end of each shift, it includes all approved absences
MAT	Medication Assisted Treatment
Max	Maximum
MC	Municipal Court
MC or M/C	Misconduct
MCK	McKean County
MDP	Management Development Program
Megan's Law	A law that requires registration of the offender's address, employment, school, etc. with the State Police if the offender was convicted of a specified sex offense
MEP	Message Exchange Pattern
MER	Mercer
MER	Mercer County
MET	Motivational Enhancement Therapy
MGED	Mandatory GED
MGED	Mandatory General Educational Development
MGED-YS	Mandatory General Educational Development – Youthful Student
MH	Mental Health
MH/MR	Mental Health/Mental Retardation
MH/SA	Mental Health/Substance Abuse
MHSCR	Mental Health Service Review Committee
MHU	Mental Health Unit
MI	Mental Illness
MI	Motivational Interviewing
MIF	Mifflin County
MIN	Minimum
Minimum Sentence Case	This identifies an offender being considered for parole at their minimum date
MIS	Management Information System
Misdemeanor	An offense, less severe than a felony, generally punishable by fine, penalty, forfeiture, or imprisonment otherwise than in a penitentiary.
Modus Operandi	Method of operation or of doing things; a pattern of criminal behavior so distinct that it is recognizable as the work of the same, or of one, individual.
MOG	Montgomery County
MOU	Memorandum of Understanding
MOU	Montour County
MPRC	Medical Practice Review Committee
MRA	Medical Records Assistance
MRD	Medical Records Director
MRT	Medical Records Technician
MRT	Management Review Team
MS	Money Smart
MSDS	Material Safety Data Sheet
MSMQ	Microsoft Messaging Queue
MST	Management Statistics and Planning
MSWF	Microsoft Workflow Foundation
MUN	Muncy
MVC	Model View Controller
MVP	Model View Presenter
N/A	Not Applicable
NA	Narcotics Anonymous
NABCJ	National Association of Blacks in Criminal Justice
NAM	Northampton County
NAMI	National Association for the Mentally Ill
NAPE	National Association of Probation Executives
NCCER	National Center for Construction Research
NCI	New Clothing Issue

NCIC	National Crime Information Center
Negative Urine Result	A urinalysis taken for parole that shows no usage of controlled substances unless medically prescribed for the offender
Newly Discovered Information	Information a panel that voted to parole a prisoner did not know, and could not reasonably have known, when it voted to parole that prisoner. Examples of newly discovered information include, but are not limited to, information about: misconducts; convictions; detainers; new criminal charges; victim, prosecutorial, judicial, legislative or correctional input; psychological reports; and other offender behavior
NFA	No Further Action
NIC	National Institute of Corrections
NIEM	National Information Exchange Model
NIJ	National Institute of Justice
NLETS	National Law Enforcement Telecommunications System
NOA	Notice Of Arrival
NOD	Notice Of Departure
NOFTA	Notice of Failure to Arrive
Nolle Prosequi	Latin phrase meaning "to no longer prosecute"; the voluntary withdrawal by the prosecuting attorney of present proceedings on a criminal charge, also Nol Pros
Nolo Contendere	Latin phrase meaning "I will not contest it"; A plea in a criminal case which has the similar effect as pleading guilty
NoREP	Notice of Recommended Educational Placement
NRA	No Recommit Action
NUM	Northumberland County
NV	Not Verified
O	Observation Code
O/M/C	Optional/Mandatory/Conditional
OA	Office of Administration
OAG	Office of Attorney General
OB	Observation Cells
OBS	Office of Board Secretary
OC	Oleoresin Capsicum
OCD	Obsessive Compulsive Disorder
ODD	Oppositional Defiance Disorder
ODIN	Overdose Network Information
ODR	Officer's Dining Room
OFA	Offender Accounts Payables and Receivables
OFC	Offender Classification
Off Site Count	Number of offenders in the non-allocated area in CCC
Offender	Any person subject to the parole or probationary supervision of the Board.
Official Verification	Actual receipt by an offender's supervising parole agent of a direct written communication from a court in which an offender was convicted of a new criminal charge attesting that the offender was convicted
Official Version	A narrative of the offense describing in detail the facts of the crime. This information could be obtained from various sources including Affidavit of Probable Cause, Pre-Sentence Investigation, Criminal Complaint or Police/Arrest Report
OFH	Offender Health records Process
OFI	Offender ID
OFPPS	Office of Field Probation and Parole Supervision
OFW	Offender Work Tracking/Assignment/Payroll
OIG	Office of Inspector General
OJT	On the job Training
OL	Overlapping; Sentence or part of sentence that is running concurrent but has another sentence with the longest minimum and maximum release dates
OL Min/UL Max	Overlapping Min/Underlapping Max; A state sentence with a minimum that extends past the original/initial minimum and a maximum that is earlier that the original/initial maximum
OLAP	On-Line Analytical Processing; provides a multidimensional view of data so that users can quickly obtain information for analysis
OLCC	Overlapping Concurrent; A concurrent state sentence that has a minimum and maximum extending past the minimum and maximum of the original/initial computation
OLCC	County Overlapping Concurrent County Sentence; A county sentence that is longer by date than the state sentence
OMC	Operations Monitoring Center
OMHSAS	Office of Mental Health Substance Abuse Services
On Site Count	Number of Offenders in the allocated units in CCC
OOR	Operation Outward Reach
OP	Out Patient

OPAC	Offender Program Approval Consideration
OPLAC	Office of Policy Legislative Affairs and Communications
OPM	Office of Population Management
OPPS	Office of Probation and Parole Services
Order of Service of Sentence	The Parole Act specifies that a Convicted Parole Violator must serve any new sentence of confinement before his/her backtime, if the new sentence is to a prison other than the prison of original parole (all state prisons are considered to be one prison). If the new sentence is to the same prison, backtime must be served first
Order to Detain for 48 hours	The only warrant that is signed and issued by a parole agent or supervisor and must bear the seal of the Board. It is used to temporarily detain an offender for the purpose of further investigation or in extreme emergency when a parole officer is forced to make an arrest. It expires in 48 hours (PB 142)
ORI	Originator number; An agency's terminal identification number issued by the FBI
Original Sentence	The sentence resulting from the original conviction. It is from this sentence that the Board paroles the offender and that the parolee serves the remaining time on the street unless recommitted by the Board.
ORM	Object Relational Mapping
OSD	Offender Search and Drug Testing
OSDT	On-Site Drug Testing
OSP	Outside Perimeter
OSP	Outside Security Patrol
OSU	Outside Service Unit
OSUP	Order of Supervision
OT	Overtime
Other State Detainer	A warrant lodged by a state other than Pennsylvania
OTN	Offense Tracking Number
OU	Organizational Unit
OUT	Out of State
Out Count	Number of offenders outside the allocated cells/beds at an SCI
Out of State	Sentence from another state
OVA	Office of Victim Advocate
OVAMS	Office of Victim Advocate Management System
OVR	Office of Vocational Rehabilitation
OVR	Offender Violation Report
OVRT	Offender Violence Risk Typology
OVS	Office of Victim Services
PA	Physician Assistant
PACT	Pennsylvania Additive Classification Tool
PAD	Parole Decision
PAI	Personality Assessment Inventory
Panel	A two-member unit of the Parole Board comprised of either two Board Members or one Board Member and one Hearing Examiner, empowered to make parole release decisions and recommitment decisions.
PAPPC	Pennsylvania Association of Probation Parole and Corrections
PAR	Petition for Administrative Review
Pardon	Executive action that mitigates or sets aside punishment for a crime and restores the rights and privileges forfeited as a result of the crime
Parent Institution	The state correctional facility to which an offender has been classified to serve his/her sentence
Parole	Conditional release from imprisonment of an offender from a correctional facility to serve the remainder of his/her sentence in the community under supervision as long as he/she satisfactorily complies with all terms and conditions provided in the parole order
Parole #	Unique number used by the Parole Board to identify an offender under parole supervision
Parole Conditions	Refers to the conditions governing parole or probation, which detail various requirements to be followed by an offender under supervision.
Parole Decisional Instrument (PB 361)	A decisional instrument used by the Parole Board to assist in the process of parole consideration.
Parole Release Pending Report	A list of offenders, which have a paroling action from the Board, but for some specified reason(s), have yet to be released
Parole Rescission	Retracting a grant of parole for good cause other than a violation of a parole condition or a conviction of a crime committed during the period of parole.
Parole Supervision Staff	Parole agents, their Supervisors, Deputy District Directors, and District Directors.
PAT	Physical Ability Testing
PATTAN	PA Training Technical Assistance Network
PB 1	Statement of Residence

PB 10	Order to Release on Parole/Reparole
PB 102	Sentence Status Report
PB 104	PV Center Eligibility Checklist
PB 11	Conditions Governing Parole/Reparole
PB 11A	Board Imposed special Conditions
PB 130	Classification Summary
PB 131	Discharge PB 245A Certificate (Congratulatory)
PB 14	Offender Version
PB 140	Order to Release (from Permanent Warrant)
PB 141	Warrant to Commit and Detain (Permanent Warrant)
PB 142	48 Hour Detainer
PB 15	Notice of Board decision
PB 159	Request for Drug Screening Test
PB 15A	Supplement to Board Decision (Board Notes)
PB 165C/T	Recommitment Data Sheet
PB 17	Request to Serve Maximum Sentence
PB 2	Statement of Employer
PB 22	Supervision Plan/Progress and Conduct Report
PB 227	Return of Parole Violator Report
PB 234	Acceptance for State Supervision
PB 235	Conditions Governing Special Probation/Parole
PB 245A	Institutional Parole Summary
PB 257C	Arrest Report – Criminal Charges
PB 257H	Supervision History
PB 257N	Notice of Charges and Hearing
PB 257NR	Notice of Rescission Hearing
PB 257T	Arrest Report – Technical Charges
PB 259	Record of Interview
PB 269	Discharge Certificate (Non-Congratulatory)
PB 283	Consent Disclosure of Confidential Information
PB 283A	Consent Disclosure of Medical Information
PB 30	Home Plan Investigation
PB 31	Notice of Home Plan Results
PB 336	Special Conditions of Parole Form
PB 336A	Special Conditions Institutional
PB 337	Release from Conditions of Probation/Parole
PB 347	Violation Sanction Form
PB 347	CON I – CON II Arrest Worksheet Commonly known as the Violation Sanctioning Grid (VSG)
PB 348	Written Instruction, Warning or Violation form
PB 348I	Parole Board Written Instruction
PB 361	Form used for recording parole interview details by Parole Board decision makers
PB 364	Institutional Parole Office Request for Information
PB 365	Form for requesting official version from the District Office
PB 382	Summarization Document
PB 382R	Review Summarization Report
PB 382RR	Reparole Review Summarization Report
PB 39	The official Board document informing a correctional facility that a parolee has been recommitted. It defines service of backtime credit and, when appropriate, gives the newly calculated maximum sentence date.
PB 56	Confiscation and Disposal Report
PB 56A	Report of Confiscation – Recovered Gun Owner Unknown
PB 5A	Supplement to Board decision
PB 6	Warrant for Arrest of Paroled Prisoner (Permanent Warrant issued by the Interstate Parole Division)
PB 72	Combined Waiver/Request Board Hearing
PB 72C	Waiver of Revocation Hearing and Admission Form
PB 72T	Waiver of Violation Hearing & Admission Form
PB 75	Letter to the Judge, etc. (Released on parole)
PB or PPB	Pennsylvania Parole Board
PC	Personal Computer
PC	Protective Custody
PCCD	Pennsylvania Commission on Crime and Delinquency
PCH	Probable Cause Hearing
PCI	Pennsylvania Correctional Industries
PCIC	Pennsylvania Crime Information Center
PCR	Progress and Conduct Report

P-CRA	Pennsylvania Critical Risk Assessment
PCS	Pennsylvania Commission on Sentencing
PCU	Personal Care Unit
PD	Public Defender
PD	Police Department
PDC	Pre-Disciplinary Conference
PDE	Pennsylvania Department of Education
PDQ	Personal Data Questionnaire
PennDOT	Pennsylvania Department of Transportation
PEP	Proposed Educational Program
PER	Perry County
Personal Search	A warrantless search of an offender's person, including, but not limited to, the offenders clothing and any personal property which is in the possession, within the reach or under the control of the offender.
PFA	Protection From Abuse
PHC	Pre-Hearing Confinement
PHI	Philadelphia County
PIC	Possession of an Instrument of Crime
PIC	Possession of an Instrument of Crime – Generally
PIDS	Perimeter Intrusion Detection System
PII	Personally Identifiable Information
PIK	Pike County
PIO	Public Information Officer
PIT	Pittsburgh
Plaintiff	The person who brings an action: the prosecutor or complainant in a criminal case.
PO	Purchase Order
PO	Parole Officer/Probation Officer
POA	Plan of Action
POA	Psychiatric Observation Area
POC	Psychiatric Observation Cell
POR	Psychiatric Observaton Room
POT	Potter County
POW	Possession of a Weapon
PPD Test	Purified Protein Derivative Test (TB Test)
PPN	Philadelphia Photo Number. A unique seven-digit number assigned to all offenders arrested in Philadelphia.
PPP	Prescriptive Program Plan
PPV	Perimeter Patrol Vehicle
PPWA	Pennsylvania Prison Wardens Association
PR	Progress Report
PRC	Program Review Committee
PRC	Publication Review Committee
PREA	Prison Rape Elimination Act
Precedent	A rule of law established for the first time by a court for a particular case or question of law and thereafter referred to in deciding similar cases or questions of law.
Preliminary Hearing	A first-level, probable cause hearing, held no later than 14 days after an offender's detention, by the Parole Board to determine if probable cause exists to bring technical parole violation charges against an offender.
Preliminary Hearing (Court)	The hearing given to a person accused of crime, by a magistrate or judge, exercising the functions of a committing magistrate, to ascertain whether there is evidence to warrant and require the commitment and holding to bail of the person accused
Preliminary Rescission Hearing	A preliminary hearing before a hearing examiner to decide whether there is good cause for rescinding parole
Preponderance of the Evidence	That degree of evidence which, taken as a whole, shows that the fact sought to be proved is more probable than not; a standard of proof in civil cases.
Presentence Investigation	An investigation of the relevant background of a convicted offender, designed to act as a sentencing guide for the sentencing judge.
Presumptive Range	A period of recommitment, set as a minimum and maximum term of months for each condition of parole as well as most criminal offenses, that a parolee who violates his/her parole may expect to spend in confinement prior to being eligible for reparole
Prima Facie	A Latin phrase meaning "at first sight"; the evidence necessary to require defendant to proceed with his/her case.
PRN	pro re nata, meaning “as needed”
Probation	The offender serves the period of time mandated by the sentencing court in the community under the supervision of either county or state authorities rather than being imprisoned subject to the terms and conditions imposed by the sentencing court
Probe	Thin metal barbed dart discharged from an electronic control device.

Property Search	A search of real property, vehicle or personal property which is in the possession or under the control of the offender.
PRP	Parole Release Pending
PRSG	Planning Research Statistics and Grants
PRT	Program Review Team
PRT	Psychiatric Review Team
PSCOA	Pennsylvania State Corrections Officer Association
PSFS	Public Safety Face Sheet
PSI	Pre-Sentence Investigation
PSI	Pre-Sentence Information
PSP	Pennsylvania State Police
PSS	Psychological Services Specialist
PSS	Public Safety Statement
PST	Parole Staff Technician
PTSD	Post Traumatic Stress Disorder
PV	Parole Violator
PVC	Parole Violator Center
PVCCC	Parole Violator Community Corrections Center
PVCO	County Parole Violator
PVP	Parole Violator Pending
PVTC	Parole Violator Therapeutic Community
PWID	Possession with intent to Deliver
PWV	Probation Without Verdict
QA	Quality Assurance
QBC	Quehanna Boot Camp
QI	Quality Improvement
QUE	Quehanna
R	Allowed Outside the Fence Code
RA	Records Administrator
RA	Resisting Arrest
RAP Sheet	Record of Arrests and Prosecutions (criminal history)
RARC	Religious Accommodation Review Committee
RDS	Regional Deputy Secretary
Real Evidence	Evidence furnished by things. Physical objects on view or inspection, as distinguished from description thereof by witnesses. Real evidence may consist of animate or inanimate objects relevant to the violation. Due to most parole hearings being held in correctional facilities, for security reasons, photographs of some evidence such as drugs, drug paraphernalia, knives and firearms are often substituted for real evidence. When used, testimony must be available to establish a chain of custody of the articles photographed as well as the circumstances surrounding the taking of the photographs. For size comparison purposes, a ruler or other measuring devise should be included in the photograph
Real Property	For the purpose of searches, any residence or business property of the offender, including all portions of the property to which the offender has access.
REAP	Recklessly Endangering Another Person
Reasonable Doubt	The standard of proof used to determine the guilt or innocence of a person criminally charged; such a doubt that would cause prudent people to hesitate before acting in matters of importance to themselves.
Rebuttable Parole	Statute designated non-violent offender who has been certified by the DOC based on a good conduct record and nonviolent history
REC	Reception and Commitment
Reception Date	The last date the offender was received in the DOC
Recidivism	Term used to express the percentage of return to criminal activity or persons previously convicted of crimes
Recommitment	The return of a parolee to prison for a violation of the conditions of his/her parole or because of a conviction of a new crime
REE	Reentry/Release
Release Order	The official document that is used to release an offender on parole. It specifies from which sentences the offender is being paroled.
Relevancy	Relates to or bears directly upon the point or fact in issue and proves or has a tendency to prove the proposition alleged.
Remand	To send back into custody.
Re-parole	Conditional release of a recommitted parole violator from a correctional institution to serve the remainder of the unexpired sentence in the community under supervision.
Re-parole Date	The date that the violator is eligible for reparole release
RERT	Radiological Emergency Response Team

Rescission	The revocation of a grant of parole based upon an offender's conduct occurring prior to release on parole which conduct is unknown to either the Parole Board or to the sentencing court at the time parole was granted; the revocation of a grant of parole before it is executed by the offender's actual release from incarceration
Rescission Warrant	Warrant for the arrest of an offender for parole rescission
Resistance	A subject's reaction to an Employee's attempts to control the subject. The amount and type of resistance will differ, based on a variety of factors. Resistance is usually, but not always, physical.
Response to Resistance and Control	Term used when a PBPP staff member uses any type of control to overcome a subjects resistance during the performance of their job duties
Restitution	In criminal law the criminal offender is required to pay as a condition of the sentence or the victim or society money or services
RET	Retreat
Return/Detain	Synonymous actions, which indicate that an offender should either be returned to, or continued in, custody pending disposition of outstanding criminal charges
REV	Revocation and Recommitment
Review Case	This identifies an offender being considered for parole after being previously refused parole. Offenders are eligible for review upon receipt of a Board Action that refuses parole and stipulates a review date
Review Date	The month and year an offender is eligible for parole/reparole review.
Revocation Decision	A decision to recommit an offender to prison after a revocation or violation hearing.
Revocation Hearing	Second level fact finding hearing held by the Parole Board to determine whether an offender violated parole by committing while on parole a crime punishable by imprisonment of which the offender has been found guilty or had pleaded guilty or nolo contenders in a court of record
RFP	Request For Proposal
RFRI	Request for Reporting Instructions
RHU	Restricted Housing Unit
RI	Reporting Instructions
RISP	Random Inmate Selection Process
RM	Risk Management
RN	Registered Nurse
RNS	Registered Nurse Supervisor
RO	Regional Office (PBPP)
ROC	Rockview
ROR	Release on Own Recognizance
RR	Reevaluation Report
RRC	Research Review Committee
RRI	Request for Reporting Instructions
RRL	Restricted Release List
RRRI	Recidivism Risk Reduction Incentive
RS	Receiving State
RS	Records Specialist
RSAT	Residential Substance Abuse Treatment
RSP	Receiving Stolen Property
RST	Risk Screening Tool
RTAC	Reentry and Transition Accountability Checklist
RTK or RTKL	Right To Know Law
RTT	Return Temporary Transfer
RTU	Residential Treatment Unit
S/Aslt	Simple Assault
SAT	Self Administered Test System (SAIT)
SAU	Special Assessment Unit
SAVIN	Statewide Automated Victim Information and Notification
SBAR	Situation. Background. Assessment. Recommendation (a parole report)
SC	Shift Commander
SC	Solitary Confinement
SC	Status Change
SCAN	State Corrections Analysis Network
SCH	Schuykill County
SCH	Offender Scheduling
SCI	State Correctional Institution
SCTI	Supply Chain Transformation Initiative
SDTP	State Drug Treatment Program
SDU	Step Down Unit - A housing unit with a purpose solely for inmates coming from the L-5. While on this unit they are on cell restriction. They are given privileges little at a time until they are a regular General Population inmate.

SEAP	State Employee Assistance Program
SECA	State Employee Combined Appeal
SED	Severe Emotional Disturbance (category)
SEL	Security Escorted Leave
SEN	Sentence and Time Accounting
Sentence	The amount of time to be served in confinement, probation or parole
Sentence Interruption	Time Period of time that tolls without credit for time served
SEP	Separations
Setback	A period of time beyond the original parole release date that an offender's actual release from confinement on parole is delayed.
Shank	Home made weapon
Short Minimum Case	Any offender received at classification centers at the State Correctional Institution at Camp Hill or Muncy are identified as a Short Minimum Case if the minimum sentence is twelve (12) months or less from date of commitment
SID	State Identification Number
SIM	Subscriber Identity Module
SIP	State Intermediate Punishment
SIT	State Integration Testing
SL	Security Level
SLA	Service Level Agreement
SMART	Self Management and Recovery Training
SME	Subject Matter Expert
SMI	Smithfield
SMI	Seriously Mentally Ill
SMR	Somerset
SMU	Special Management Unit
SNU	Special Needs Unit
SNY	Snyder County
SO	Sex Offender
SO	Sub Office (parole)
SOA	Service Oriented Architecture
SOAB	Sexual Offenders Assessment Board
SOAP	Simple Object Access Protocol
SOAS	Serve Another Sentence
SOAU	Special Observation and Assessment Unit
SOIGA	Secretary's Office of Inmate Grievance and Appeals
SOM	Somerset County
SOP	Sex Offender Programming
SOP	Standard Operating Procedures
SORNA	Sex Offender Registration and Notification Act, which is Title 1 of the federal Adam Walsh Child Protection and Safety Act of 2006
SORT	Sex Offender Registry Tool – centralized sex offender management system used by SORNA jurisdiction
SOTPH	Sex Offender Treatment Program High Intensity
SOTPL	Sex Offender Treatment Program Low Intensity
SP 2-244	PSP DNA Sample Collection Tracking Form
SP 4-218	PSP Megan's Law Sexual Offender Registration Notification
SP 4-219	PSP Megan's Law Sexual Offender Address Work Sheet
Special Conditions	A specific and individualized condition of parole imposed upon an offender by the Parole Board, institutional or field supervision staff that is in addition to the general conditions of parole.
Special Parole	Parole granted by the sentencing court that is supervised by the Parole Board subject to the requirements and conditions of the parole act
Special Probation	An order for probation imposed by the sentencing court whereby supervision is accomplished by the Parole Board rather than the county probation department
SPMI	Seriously Persistently Mentally Ill
SPP	Special Project Management
SPS	Special Projects Section: A unit at Central Office under the direction of the Office of Probation and Parole Services.
SQL	Structured Query Language
SRS	System Requirements Specifications
SRTU	Secure Residential Treatment Unit
SS	Social Security
SS	Sending State
SSC	Social Security Card
SSN	Social Security Number
SSNU	Secure Special Needs Unit

SSP	Systematic Search Pattern
SSTU	Staff Safety Training Unit
Staff Safety Training	Training that involves the various levels of resistance and control specifically designed for the safety of all Board employees. This training includes, but is not limited to, the practical application of the levels of control, Employee staff safety skill, weapons training, defensive tactics and other defensive training.
State Sentence Detainer	Warrant for the service of a sentence that is under the
Static 99	Ten item actuarial assessment instrument to be used for assessing the risk level of adult male sex offenders
Statute of Limitations	A statute setting a maximum time period during which certain actions may be brought or rights enforced, after the running of which no legal action can be brought
STG	Security Threat Group
STI	Security Threat Individual
Street Time	The period of conditional liberty and freedom from confinement on a particular sentence that an offender enjoys during which time the offender is in compliance with the terms and conditions of probation or parole
STS	Security Transport Services
STT	Send Temporary Transfer
Subpoena	A writ commanding a person to appear at a hearing at a certain time and place to give testimony on a certain matter
Substantial Evidence	Such evidence that a reasonable mind might accept as adequate to support a conclusion; that quality of evidence necessary for a court to affirm a decision of an administrative board; more than a scintilla, but somewhat less than preponderance
SUC	System Use Cases
SUD	Substance Use Disorder
SUL	Sullivan County
Summons	In criminal law, an alternative to arrest used for petty or traffic offenses; a written order notifying the individual that (s)he has been charged with an offense, directing the person to appear in the issuing court to answer the charge
SUP	Parole Supervision
Supersedeas	The name of a writ containing a command to stay the proceeding at law, applicable only to the enforcement of a judgment from which an appeal is taken
Supervisor	For the purpose of searches, any individual acting in a supervisory or administrative capacity
SUS	Susquehanna County
SVP	Sexually Violent Predator
T	Temporarily in RHU
TASW	Therapeutic Activities Services Worker
T4AC	Thinking For a Change
T4C	Thinking for a Change
TABE	Test of Adult Basic Education
TAD	Transdermal Alcohol Detection
TASER X26	An electronic control device that uses propelled wires or direct contact to conduct energy to affect the sensory and motor function of a subject's nervous system.
TB	Tuberculosis
TBUT	Theft By Unlawful Taking
TC	Therapeutic Community
TC (PBPP)	Transitional Coordinator
TCP/IP	Transmission Control Protocol/Internet Protocol
TCU	Texas Christian University Drug Screen II
TCU	Therapeutic Community Unit
TCV	Technical and Convicted Parole Violator
TDS	Treatment Discharge Summary
Technical Parole Violations	Violations of general and/or special conditions of parole.
TFM	Transfer From Medical
THO	Temporary Hold in Order
THU	Transitional Housing Unit
Time Lost	Time for which the parolee cannot receive credit because he/she was in delinquent status or serving another sentence and, therefore, not available to serve the original sentence
TIO	Tioga County
TN	True Name
TPV	Technical Parole Violator -- An offender who violates parole by a breach of the terms and conditions of parole, other than by the commission of a new criminal offense of which the offender is subsequently found guilty or to which the offender pleads guilty or nolo contendere in a court of record
TPV	Technical Parole Violator

TR	Transfer Request
TRA	Transfers and Transportation
TRA	Training Academy
TRN	Transfer to Other Institution or CCC
TS	Treatment Services
TT	Temporary Transfer
TWOC	Temporarily Working out of Classification
UAT	User Acceptance Testing
UC	Unemployment Compensation
UCC	Uniform Crimes Code
UCC	Uniform Commercial Code (see DC-154A)
UCV	Unconvicted VIolator
UDDI	Universal Description Discovery and Integration
UI	User Interface
UIS	User Interface Specifications
UJS	(PA) Unified Judicial System
UL	Underlapping; Sentence or part of a sentence that is running concurrent with another sentence with the shorter
UL Min/OL Max	Underlapping Min/Overlapping Max; State sentence with a minimum that is earlier than the original/initial minimum computation but a maximum that extends past the original/initial maximum
ULCC	Underlapping Concurrent; Concurrent state sentence that has a minimum and maximum earlier than the minimum and maximum of the original/initial computation
ULCC County	Underlapping Concurrent County Sentence; County sentence that is earlier by date than the state sentence
UM	Unit Manager
UMSA	Unit Management System Administrator
UNA	Unassigned
Under-lapping Concurrent Sentence	A sentence that is served at the same time as the controlling sentence but has a shorter minimum and/or maximum sentence than the controlling sentence.
Undue Influence	Persuasion, pressure, or influence, short of actual force but stronger than mere advice, that so overpowers one's free will or judgment that (s)he does not act voluntarily but by the will of another.
Unexpired Term	The period of time an offender has remaining on the unserved portion of his/her original sentence
UNI	Unit Management
UNI	Union County
UPC	Universal Price Code
UR	Utilization Review
USM	United States Marshall
UT	Unit Team
UUA	Unauthorized Use of Auto
V	Outside Housing
VA	Veterans Administration
Vacated Sentence	Sentence itself is vacated but the conviction still stands
VAE	Victim Awareness Education
VC	Video Conference
VCF	Victim's Crime Fund
VCSA	Violation of Controlled Substance Act
VCSDD&CA	Violation of Controlled Substance, Drug, Device and Cosmetic Act
VEN	Venango County
Verdict	The definitive answer given by the jury to the court concerning the matters of fact committed to the jury for their deliberation and determination.
Violation Hearing	A second-level, fact-finding hearing held by the Parole Board to determine whether an offender has in fact violated the terms and conditions of parole, other than by the commission of a new criminal offense of which the offender is later found guilty or to which the offender pleads guilty or nolo contenders in a court of record, and, if so, whether the offender should be recommitted to prison or continued on parole
Violator	Offender who is recommitted by the Board based on new convictions while on parole or violation of the Board's technical conditions
Violator Case	This identifies an offender being considered for re-parole after violating parole supervision and being recommitted to prison. Offenders are eligible for a re-parole review if they have been recommitted as a Parole violator and have a Board action that stipulates a review date

Violent Cases	Crimes classified as violent when the crime of original conviction matches a list of specific crimes classified as violent by the Board. Conviction of a crime designated as violent requires a majority of the Board to agree upon parole/reparole before release is possible. All other cases are classified as non-violent
Violent Offender Indicator	A field on the client server docket system that shows whether or not current conviction is a crime of violence
Violent Offense	Any crime defined as violent and included on the Board's "Violent /Sexual Crimes chart."
VODA	Violation of Drug Act
VOP	Violation of Parole/Violation of Probation
Vote Sheet (DC-46)	The DOC recommendation showing actual vote from DOC staff recommending or not recommending parole
VP	Violence Prevention
VPB	Violence Prevention Booster
VPH	Violence Prevention – High Intensity
VPI	Violence Potential Index
VPL	Violence Prevention – Low Intensity
VPM	Violence Prevention – Moderate Intensity
VR	Visiting Room
VR	Violation Report
VSG	Violation Sanctioning Grid
VUFA	Violation Uniformed Firearms Act
VV	Virtual Visitation
Waiver	The voluntary relinquishment, in writing, of a known constitutional right or other right, claim or privilege by an offender.
WAM	Waymart
WAN	Wide Area Network
WAR	Warren County
Warrant	An order for arrest
Warrant	An order for arrest
Warrant for the Arrest of Paroled Prisoner	Often referred to as the "Interstate Warrant" a permanent warrant is used by ICS for outgoing PA parole cases it is also used by OMC 24/7 when issuing warrant to an entity outside of PA
Warrant to Commit and Detain (PBPP-141)	Often referred to as a "Permanent Warrant" must be signed by the district director or an employee of the board of higher rank and must bear the seal of the board to be valid it is numbered for control purposes and is issued by the district director after a parole agent or supervisor assigned to his district has demonstrated that probable cause exists and is in consideration of the boards arrest and detention criteria
WAS	Washington County
WCF	Windows Communication Foundation
WCSF	Web Client Software Factory
Weapon	An impact weapon (expandable baton), oleoresin capsicum (OC) aerosol spray, Taser or firearm issued by the Board for Employees to carry in the performance of the Employees' duties for self defense and protection.
WES	Westmoreland County
WF	Windows Workflow
When Available	A recommitment action that cannot be finalized because of outstanding criminal charges, pending sentencing, or the offender is confined in another jurisdiction.
WMI	Windows Management Instrumentation
WOJO	Woodcock Johnson (achievement test)
Wolfe Hearing	A DOC misconduct hearing
Workload	The number of parolees supervised by an agent plus work unit values for completed reports during a specified period.
WPV	Work Place Violence
WRAT	Wide Range Achievement Test
WRIT	Authorized Temporary Absence (DOC)
WRIT	Formal written document used to elicit a hearing by the court (PBPP)
WRP	Work Release Program
WSDL	Web Services Definition Language
WSSF	Web Service Software Factory
WYO	Wyoming County
XML	Extensible Mark-up Language
YAO	Young Adult Offender
YAOP	Young Adult Offender Program
YDC	Youth Detention Center
YOR	York County
Z	Single Cell Code

EXHIBIT C

PRACTICES AND PROCEDURES OF MAGISTRATE JUDGE PATRICIA L. DODGE
(Updated as of September 10, 2025)

I. GENERAL MATTERS

A. Communications with the Court

Counsel shall not send letters, motions or briefs to Magistrate Judge Dodge unless she specifically requests or approves this practice. Requests for the rescheduling of conferences may be made by telephone to the Court's Courtroom Deputy, but only if counsel for all parties are on the line or have expressly authorized counsel for a particular party to convey the request. Otherwise, such requests are to be made by motion.

B. Communications with Chambers

Counsel may contact Magistrate Judge Dodge's staff to discuss administrative matters only.

C. Telephone and Video Conferences

As appropriate, the Court may conduct conferences or other proceedings by telephone or by video conference. Unless otherwise ordered, settlement conferences, pretrial conferences and oral arguments typically will not be conducted remotely. Telephonic conferences will be facilitated through a Court-provided conference line, which will be supplied by means of a ECF docket entry. If a proceeding is to be conducted via video conference, Chambers will supply log-in information to counsel and unrepresented parties in advance of such proceeding.

In addition to Court-scheduled conferences, this Court will also schedule and conduct a status conference (telephonic or in person) upon request by counsel for the parties.

D. Pro Hac Vice Admissions

Pro hac vice motions are routinely granted as long as all of the requirements of Local Rule 83.2.B. are met.

E. Comments to the Media

Attorneys are expected to adhere to the Rules of Professional Conduct in all dealings, including those with the media.

II. MOTIONS PRACTICE

A. Rule 12 Motions

If a defendant determines that a Rule 12 motion is appropriate, defense counsel first must meet and confer with plaintiff's counsel before filing to determine whether any purported defects with the complaint can be cured. Any motion to dismiss must be accompanied with a certificate stating that the defendant has made good-faith efforts to confer with the plaintiff to determine whether the identified pleading deficiencies properly may be cured by amendment. Rule 12 motions that do not contain the required certification will be stricken. This requirement applies to all Rule 12 motions, including motions for judgment on the pleadings under Rule 12(c).

B. Briefs

Motions that seek substantive legal rulings, whether dispositive or non-dispositive, should be accompanied by a supporting brief. The supporting brief must be filed contemporaneously with the motion. A brief may be omitted only if (i) the motion is non-dispositive; and (ii) the motion contains sufficient argument and legal citations to permit meaningful judicial review.

1. Page Limitations

Supporting and responsive briefs regarding dispositive motions are limited to twenty-five (25) pages. Supporting and responsive briefs regarding non-dispositive motions are limited to ten (10) pages. For good cause, parties may move for leave to exceed these page limitations.

2. Citation to Unpublished Opinions

When citing to unpublished opinions, counsel must use the Westlaw citation rather than the LEXIS cite.

3. Reply Briefs

Reply briefs and sur-reply are only permitted with leave of court. Any reply or sur-reply that is filed without leave of court will be stricken. All reply and sur-reply briefs are limited to five (5) pages.

4. Font

All motions and briefs shall use a font not smaller than 12.

C. Proposed Orders

In accordance with local rules, all motions shall be accompanied by a proposed order of court. The order of court shall include language detailing the specific relief sought rather than merely stating that the motion is "granted."

D. Chambers Copies of Motion Papers

Courtesy copies of motions and briefs, including exhibits and attachments, are generally not required if they are available to the Court through ECF. However, if any brief together with exhibits/attachments exceeds one-hundred (100) pages, counsel must deliver a hard copy of the brief, exhibits, and attachments to Chambers **after** electronically filing so that the ECF header appears on the documents. All hard copies must be bound and loose pages will be returned to the submitting party for correction. Double-sided printing is preferred.

E. Scheduling

Unless a separate Order is issued, responses to non-dispositive motions shall be filed within fourteen (14) days of service, and responses to dispositive motions shall be filed within thirty (30) days of service.

F. Oral Argument

Oral argument may be scheduled for factually or legally complex matters. A party may also file a motion requesting oral argument. If the Court determines that oral argument is appropriate, an order will issue. The parties are also directed to the Statement of the Court Regarding Courtroom Opportunities for Newer Lawyers in Section V.

G. Evidentiary Hearings

The scheduling of evidentiary hearings is determined on a case-by-case basis.

H. Motions in Limine

The deadline for filing motions in limine and supporting briefs will be set in a pretrial order. Generally, the Court will rule on these motions prior to trial. Counsel shall comply with Local Rule 16.1.C.4 with respect to all motions in limine.

I. Motions for Reconsideration

Motions for reconsideration must be filed within seven days of the order at issue.

J. Motions to Seal

All motions to seal any document or proceeding must set forth the specific factual and legal basis and necessity for sealing under prevailing law. Any order sealing any matter is subject to being vacated upon the motions of any party, any interested person, or by the Court on its own motion. Absent exceptional circumstances, any proposed Order must include this language: "This Order may be vacated and sealing lifted for cause shown upon the motion of any party or other person with a recognized interest, or after due notice by the Court upon the Court's own motion." The parties are reminded that all proceedings in federal court are presumptively open to the public, including those in which "sealed" material may be discussed.

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

The Court uses a standard case management order form based on Local Rule 16.1.

2. Conferences

a. Initial Case Management Conferences

Magistrate Judge Dodge will issue an order setting the date for the initial case management conference after the filing of an answer by all defendants or after resolution of a Rule 12(b) motion. Prior to the conference, the parties shall meet and confer and then file a report pursuant to Fed. R. Civ. P. 26(f), the form of which is set forth in the Appendix to the Local Rules. Trial counsel shall attend the initial case management conference.

b. Post-Discovery Conferences

A post-discovery conference will be scheduled promptly after the close of discovery. Trial counsel must attend. Counsel shall be prepared to discuss all other pretrial deadlines.

c. Settlement Conferences

Magistrate Judge Dodge requires trial counsel and their clients, or

persons with authority, including insurance companies, to attend all settlement conferences. In the event that counsel has full authority to negotiate a settlement, the client may be permitted to participate by telephone or video conference on an as-needed basis.

d. Other Conferences

Additional case management or status conferences may take place at counsel's request or at the Court's discretion.

3. Settlement

The Court will explore the possibility of resolving the case short of continued litigation at every conference and at each stage of the litigation.

With the exception of social security appeals, petitions for habeas corpus and prisoner civil rights cases, all cases are required to participate in the Court's ADR program pursuant to Local Rule 16.2. Absent good cause shown, the ADR process shall occur within sixty (60) days of the Initial Scheduling Conference. If the parties have a good faith belief that additional time is required, however, the Court will entertain a motion to extend the deadline.

4. Extensions and Continuances

Requests for extensions of time and continuances shall be presented by written motion, contain supporting facts and indicate the position of opposing counsel. Reasonable extensions generally will be granted. Counsel are advised that untimely requests for continuances (for example, on or after a court-ordered deadline) without a showing of good cause are strongly disfavored.

5. Objections/Placing Proceedings on the Record

If counsel at any time has an objection to any procedure, ruling or other action of the Court, counsel should make an immediate objection by written motion or otherwise on the record at the earliest practicable time. If no court reporter is present and counsel has an objection(s), or otherwise desires the proceeding be on the record for any reason, counsel has the right to and should request a court reporter to be present and thereafter place the objection(s) or proceedings on the record. Counsel may request at any time that any proceeding or matter be placed on the record.

6. Consultation by Counsel/Attendance of Necessary Counsel

All parties (other than those proceeding pro se) shall be represented at any

conference by counsel who is a member of the Bar of this Court (or, who has been or will be admitted specially), has entered an appearance, and is sufficiently familiar with all legal and factual matters involved in the action to allow counsel to meaningfully and fully participate in the proceedings. At any conference, counsel shall be prepared to discuss in detail and argue any pending motions, and to discuss settlement. Counsel are expected to confer with one another prior to any conference with the Court to review any issue which may be raised at such conference and to provide their respective positions on all such matters.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Generally, one-hundred fifty (150) days are allowed for discovery although Magistrate Judge Dodge will solicit input from counsel regarding the anticipated length of discovery required. Counsel must comply with the provisions of Fed. R. Civ. P. 26 generally and must file the written report required by Rule 26(f) prior to the initial case management conference. The parties are encouraged to abide by discovery deadlines and only request extensions when they are absolutely necessary. Any request for an extension must be made in a reasonable time frame prior to the deadline. Untimely requests are strongly disfavored.

2. Expert Witnesses

Expert reports and discovery may be deferred until after dispositive motions upon agreement of the parties and the Court.

3. Discovery/Deposition Disputes

The Court's practice regarding discovery disputes is set forth in a case management order that is issued after the Rule 16 conference. Counsel are encouraged but not required to contact Chambers when a discovery dispute arises so that it may be promptly addressed without the need for a written motion or response. Counsel must meet and confer in an effort to resolve a discovery dispute prior to bringing a discovery issue to the Court's attention. All written motions must be accompanied by the certification required by Federal Rule of Civil Procedure 37(a)(1). With respect to discovery disputes that arise during a deposition, counsel may but are not required to jointly call the Court to resolve the matter at that time.

4. Stay of Discovery

The filing of a motion to dismiss or other dispositive motion generally will

not stay discovery. Participation in an ADR process will not stay discovery. A stay of discovery may be sought by motion but will be granted only if the right to relief is clear or some other compelling reason exists.

5. Limitations on Discovery

The Court follows the Federal Rules of Civil Procedure regarding this matter and does not impose additional restrictions or limitations.

C. Preliminary Injunctions

Either upon consent of the parties or referral by a District Court Judge to Magistrate Judge Dodge, a briefing schedule will be issued and a hearing date will be scheduled. Requests for and the use of expedited discovery are considered on a case-by-case basis.

D. Motions for Summary Judgment

Unless the parties are otherwise directed by the Court, motions for summary judgment and responses in opposition thereto must comply with the requirements of LCvR 56. A party's failure to adhere to these requirements may result in the motion for summary judgment being decided against the party's position. Supporting and opposing briefs shall include a statement of facts that summarizes the facts relevant to that party's position.

E. Trial Procedures

1. Compliance with Local Rule 16.1 C

The content of pretrial statements shall comply with LCvR 16.1 C.1.

2. Scheduling of Cases

For cases in which the parties have consented to jurisdiction before Magistrate Judge Dodge, a date certain will be given for trial following the resolution of any Rule 56 motions or, if none are filed, at the post-discovery status conference. Vacation schedules and conflicts with the personal/professional obligations of counsel, parties and witnesses will be accommodated whenever possible. The Court must be notified of any conflicts as soon as possible.

3. Trial Hours/Days

Generally, cases will be tried Monday through Friday, 9:00 a.m. to 4:00 p.m., with one 15-minute break in the morning and one in the afternoon. Modification of this schedule will be considered as appropriate.

Magistrate Judge Dodge will meet with counsel before and after the trial day to discuss trial/evidentiary issues.

4. Trial Briefs

Trial briefs are not required but are encouraged and should not exceed fifteen (15) pages. The filing date for the briefs will be set in a pretrial order.

5. Motions in Limine

The filing date for motions in limine will be set in the pretrial order.

6. Voir Dire

The filing date for proposed voir dire questions will be set in the pretrial order. Counsel may submit proposed voir dire as a supplement to the standard voir dire set forth in LCvR 47 for the Court's consideration. The Court will conduct the voir dire.

7. Use of Courtroom Technology

The parties are required to use trial presentation and courtroom technology. Should the parties require training or other information on the use of courtroom technology, the parties may contact the Court's Courtroom Deputy. The parties are welcome to contact Chambers to schedule a time to visit the courtroom and review the available technology.

8. Notetaking by Jurors

The Court generally allows jurors to take notes unless counsel articulates a valid objection prior to the commencement of trial.

9. Side Bars

Side bars will be permitted but only when necessary. Counsel should anticipate matters to be discussed outside of the jurors' presence and raise them either at the beginning or end of each trial day.

10. Examination of Witnesses Out of Sequence

The Court will permit examination of a witness out of sequence, either

within the party's own case or within an opposing party's case, if a scheduling conflict exists.

11. Opening Statements and Summations

There are no court-imposed time limits on opening statements and closing arguments. Defense counsel may defer opening statements.

12. Examination of Witnesses or Argument by More than One Attorney

One attorney for each party shall conduct an examination of any witness and may argue any motion or point. However, the parties are also directed to the Statement of the Court Regarding Courtroom Opportunities for Newer Lawyers below.

13. Examination of Witnesses Beyond Direct and Cross

Redirect and recross of a witness will be permitted but may not exceed the scope of the immediately preceding line of questions. The Court does not typically permit any further examination.

14. Videotaped Testimony

Magistrate Judge Dodge has no special procedures or requirements with respect to the use or admission of videotaped testimony. However, counsel should inform the court in advance of trial of the intention to use such evidence, so that the procedures to be utilized may be discussed.

15. Reading of Material into the Record

The Court has no special practice with regard to reading deposition testimony, stipulations and the like into the record. It will be considered on a case-by-case basis.

16. Exhibits

All exhibits must be listed in the Pretrial Narrative Statements. Unless otherwise ordered, Plaintiff(s) shall use numbers; defendant(s) shall use letters. The parties are expected to comply with Local Rule 16.1.C.5 by exchanging exhibits prior to the final pretrial conference, unless otherwise ordered by the Court, and should be prepared to indicate a position at the final pretrial conference with regard to the authenticity and admissibility of the opponent's exhibits. All exhibits shall be marked before trial. Exhibits may be introduced out of sequence.

Counsel shall obtain the Court's approval in advance for use of any visual aid(s) during opening statements. Otherwise, visual aids are permitted during trial and should be marked and offered into evidence as with any other exhibit.

Counsel for each party will be expected to provide two (2) tabbed exhibit binders to the Court and one (1) binder for each opposing party in advance of trial.

17. Directed Verdict Motions

Magistrate Judge Dodge does not have any special requirements beyond those set forth in the Federal Rules of Civil Procedure. Motions may be made orally or in writing.

18. Jury Instructions and Verdict Forms

The Court requires counsel to confer and submit a single set of agreed upon jury instructions and a proposed verdict form. To the extent that the parties cannot agree on a particular instruction or form, the various versions proposed by the parties and/or any objections shall be included where appropriate in the document. The date and details for filing same will be set in a pretrial order. The Court will hold charging conference at which time counsel will receive the final charge and verdict form to be given to the jury.

19. Proposed Findings of Fact and Conclusions of Law

In any non-jury trial, Magistrate Judge Dodge requires the submission of proposed findings of fact and conclusions of law. The filing date will be established by order.

20. Offers of Proof

Generally, offers of proof should not be required since the Court sets aside time before and after a trial day to discuss trial/evidentiary matters with counsel. Should the need arise during trial, however, the Court does not impose any restrictions.

21. General Courtroom Rules

Magistrate Judge Dodge will not tolerate any demonstration of hostility, discrimination or bias of any kind. Counsel shall conduct themselves with

courtesy and civility at all times. All parties and party representatives are also expected to conduct themselves in a similarly appropriate manner.

F. Jury Deliberations

1. Written Jury Instructions

Each juror will be given a written copy of the jury instructions.

2. Exhibits in the Jury Room

All admitted exhibits will be given to the jury for use in deliberations as long as counsel agrees upon the exhibits that are provided.

3. Jury Requests to Read Back Testimony or Replay Tapes During Deliberations

Where appropriate, and after conferring with counsel, Magistrate Judge Dodge will permit the reading back of testimony to the jury.

4. Jury Questions

Jury questions must be in writing. The Court will discuss the question with counsel and arrive at a satisfactory instruction/response.

5. Availability of Counsel During Jury Deliberations

Trial counsel need not remain in the courtroom during deliberations but must be available by telephone and able to return to the courthouse within a reasonably short period of time.

6. Interviewing the Jury

Magistrate Judge Dodge will inform the jurors that they may speak to counsel but are not required to do so. Counsel shall not approach any juror until the Court has met with the jury and dismissed them.

IV. CRIMINAL CASES

Criminal cases before Magistrate Judge Dodge are limited to petty offenses, misdemeanor charges and preliminary criminal proceedings (e.g., arraignment, detention hearings and initial appearances). Counsel must be prepared and have conferred with their client prior to scheduled criminal proceedings.

V. STATEMENT REGARDING COURTROOM OPPORTUNITIES FOR NEWER LAWYERS

Courtroom opportunities for relatively new attorneys, particularly those who practice at larger firms or in more complex areas of the law, have declined precipitously in recent years.

The Court encourages the active participation of such attorneys in all court proceedings. Based on my experience, these newer lawyers are more than up to the task, and they can effectively handle not only relatively routine matters (such as discovery motions), but also, where appropriate, more complex matters (such as motions for summary judgment or the examination of witnesses at trial).

In an effort to increase advocacy opportunities for newer lawyers, with notice in advance, the Court will consider relaxing the usual requirement that only a single lawyer may present an argument and will allow a more experienced lawyer to "back up" a newer lawyer in the examination of witnesses so long as doing so will not unduly prolong the proceeding, not prejudice the opposing party, and not result in undue "double dipping." Such new lawyers who actively participate in evidentiary hearings, including examining a witness at trial, should be accompanied and supervised by a more experienced attorney.

Of course, even relatively inexperienced attorneys will be held to the same professional standards with regard to any matter as to which experience is largely irrelevant. In particular, all attorneys appearing in court are expected to be appropriately prepared, regardless of experience. For example, any attorney who is arguing a motion for summary judgment is expected to be thoroughly familiar with the factual record and the applicable law.

Further, all attorneys appearing in court should have a degree of authority commensurate with the proceeding that they are assigned to handle. By way of example only, an attorney appearing at a scheduling conference ordinarily must have the full authority to propose and agree to a discovery or trial schedule and any other matters reasonably likely to arise at the conference, to address and argue any then-pending motion, and to discuss the status of any settlement discussions.

EXHIBIT D(1)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff, v. LRG CORPORATION, LEWIS R. GAINFORT, Defendants.	)	2:20-CV-01949-CCW

FINAL PRETRIAL ORDER (CIVIL JURY TRIAL)

AND NOW, this 2nd day of June, 2022, the Court HEREBY ORDERS as follows:

Final Pretrial Orders:

1. **Jury Selection and Trial**. Jury selection and trial are set for **November 7, 2022**, at **9:00 a.m.,** in Courtroom 9B, 9th Floor, Joseph F. Weis, Jr. United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219. The Court has allotted 5 business days for the jury selection and trial of this case.

2. **Pretrial Conference(s)**. The final pretrial conference will take place on **October 28, 2022**, at **9:00 a.m.** in Courtroom 9B. All lawyers who will participate in the trial must attend the conference in person. At the conference, the Court will discuss all outstanding trial issues, and counsel should be prepared to make all arguments regarding those issues at that time. Additionally, the Court will finalize the time limitations for presentation of testimony and evidence at trial.

3. **Exchange of Witness Lists and Exhibits**.

a. On or before **September 14, 2022**, Plaintiff(s) shall file a pretrial narrative statement that complies with all requirements of Local Rule 16.1.C.1. Plaintiff(s) shall also file a final list of trial witnesses, listing separately (i) the witnesses it ***will*** call and (ii)

the witnesses it ***may*** call if needed (other than for impeachment). For each witness listed, Plaintiff(s) shall provide an offer of proof explaining the substance of the witness's testimony and a projection of how much time will be needed for direct examination. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Plaintiff's witness list and offers of proof are due on or before **September 14, 2022**.

b. On or before **September 28, 2022**, Defendant(s) shall file a pretrial narrative statement that complies with all requirements of Local Rule 16.1.C.2. Defendant(s) shall also file a final list of trial witnesses, listing separately (i) the witnesses it ***will*** call and (ii) the witnesses it ***may*** call if needed (other than for impeachment). For each witness listed, Defendant(s) shall provide an offer of proof explaining the substance of the witness's testimony and a projection of how much time will be needed for direct examination. The offers of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Defendant's witness list and offers of proof are due on or before **September 28, 2022**.

c. On or before **October 12, 2022**, counsel shall file on CM/ECF a Joint Exhibit List Chart (with columns) setting forth all plaintiff and defendant trial exhibits, by exhibit number, date, author, type of document, objection as to authenticity (if any) with response, and objection as to admissibility with response. The parties must meet and confer in a meaningful way to resolve any objections prior to submitting the Joint Exhibit List Chart. The exhibits themselves should not be filed on CM/ECF. Rather, an electronic copy of all exhibits shall be emailed to chambers at Wiegand_Chambers@pawd.uscourts.gov or hand-delivered to chambers on a CD, at the time the Exhibit List is filed.

d. Counsel will be jointly responsible for preparing and providing a Jurors' Exhibit Binder at the close of trial.

e. Voluminous data must be presented by summary exhibits pursuant to Fed. R. Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). If copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

4. **Designation of Discovery Excerpts to be Offered at Trial**. On or before **October 12, 2022**, the parties shall submit a designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment). The parties must meet and confer in a meaningful way to resolve any objections prior to submitting the joint designation. Objections to the admissibility of any portion of a designation shall be set forth in a motion *in limine*.

5. **Motions**. On or before **October 12, 2022**, the parties shall file all *Daubert* motions and motions *in limine*, including motions under Fed. R. Evid. 104(a) and motions to limit or sever issues, together with proposed orders and supporting briefs. Responses shall be filed on or before **October 19, 2022**. Briefs supporting or opposing such motions are limited to five (5) pages and must include appropriate citations to case law, rules of evidence, and rules of procedure supporting the party's position. Omnibus *motions in limine* are permissible, but parties should note that the supporting portion of the brief for each *motion in limine* may not exceed five (5) pages. Prior to filing any motion, the moving party must meet and confer with the non-moving party in a good-faith effort to resolve the dispute, and if the dispute is not resolved, file a certificate of conferral in

compliance with Local Rule 16.1.C.4. A hearing date on any *Daubert* motion may be ordered separately should such a motion be filed.

6. **Proposed Jury Instructions**. Counsel shall meet to agree on a joint set of proposed substantive jury instructions regarding Plaintiff's claims and their elements, any defenses and their elements, and any evidentiary or other matters particular or unique to this case; the parties need not submit "boilerplate" or standard civil jury instructions. After conferring, and on or before **October 12, 2022**, counsel shall file one combined set of proposed instructions, and email the instructions in Word format to Wiegand_Chambers@pawd.uscourts.gov. The combined set of instructions shall include both the agreed-upon instructions and the instructions to which the parties have not agreed. Each agreed-upon instruction shall include the following statement at the bottom of each instruction: "This proposed instruction is agreed-upon by the parties." Each instruction to which the parties have not agreed, shall state which party is advancing it, along with the legal authority relied upon by each party in support of and in opposition to each such instruction. Proposed instructions by different parties shall be grouped together (i.e., instruction should be matched with counter instructions). To the extent applicable, the Court will follow the Court of Appeals for the Third Circuit's Model Civil Jury Instructions. Any requests for deviation from applicable Third Circuit Model Instructions must be supported by legal authority, as should requests for the exclusion of any particular instruction.

The Court generally rules on party-proposed jury instructions at or before the Final Pretrial Conference.

7. **Proposed Verdict Slip**. Counsel shall meet to agree on a joint verdict slip. A joint proposed verdict slip shall be filed on or before **October 12, 2022**. If the parties, after conferring in good faith, cannot agree on a joint verdict slip, the parties shall submit their respective proposed

verdict slips on or before **October 12, 2022**. As with proposed jury instructions, the Court generally rules on the verdict slip at or before the Final Pretrial Conference.

8. **Proposed Voir Dire**. Counsel may be permitted to supplement the standard questions, provided that the proposed supplemental voir dire questions are filed with the Court on or before **October 12, 2022**.

9. **Joint Stipulations**. The parties shall file joint stipulations on or before **October 12, 2022**. All possible stipulations shall be made as to: (i) facts; (ii) issues to be decided; (iii) the authenticity and admissibility of exhibits; (iv) expert qualifications and reports; (v) deposition testimony to be read into the record; (vi) **a brief statement of the claims and defenses to be read to the jury to introduce the trial and to be read to the venire before jury selection**; and (vii) exhibits or other demonstratives to be used in opening statements. Counsel shall meet at a mutually convenient time and place to produce the joint stipulations in time for filing as ordered.

Trial Procedure

11. **Hours**. Unless otherwise ordered, court will be in trial session Monday through Friday, 9:00 a.m. to 4:30 p.m., with appropriate breaks. All counsel are expected to be in their seats and ready to commence at the appointed times.

12. **Exhibits**. Because counsel will have previously marked and exchanged all exhibits and provided a copy to the Court, it will not be necessary during the trial to show exhibits to opposing counsel before using them.

13. **Opening and Closing Statements**. Unless ordered otherwise, up to 30 minutes is permitted to each side for opening and closing statements, depending on the complexity of the case. Counsel may use exhibits, PowerPoint presentations, or other demonstratives in openings

and closings, provided that they have been provided to opposing counsel beforehand and either agreement was reached regarding the use of those materials or the Court has ruled on the matter.

14. **Side Bars**. It is important to be considerate of the jurors' time. Side bars are disfavored because they waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court at 8:30 a.m. each day (or earlier if necessary to ensure that the trial day begins on time) to raise points of evidence or any other issues that would otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a disposition of the in-court objection in the presence of the jury. If necessary, counsel and the Court may amplify their objections and rulings on the record after the jury has been excused for a break, for lunch, or for the day.

The Court will be available at 8:30 a.m. each morning to address such evidentiary and other issues. It is counsel's responsibility to notify other counsel of the need for such a conference at 8:30 a.m., and all other counsel will be expected to be present at the appointed time for argument. The Court will not delay the proceedings to respond to last minute requests for conferences to discuss matters that, in the exercise of reasonable diligence, could have been heard at the morning conference.

15. **Witness List**: Before the beginning of trial, counsel shall provide opposing counsel with a complete witness list. In addition, throughout the trial, counsel for each side shall provide opposing counsel and the Court, with the actual list of the next day's witnesses, by 5:00 p.m., in the order that the witnesses are expected to be called. Counsel shall ensure that that they have adequate witnesses to fill the allotted time each day.

16. **Note Taking**. The jury will be permitted to take notes.

17. **Jury Questions**. All written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and agree on a reply. In most cases, the jury is then summoned to the Courtroom and the oral reply is provided to them. A written reply is provided when appropriate.

18. **Jury Instructions**. A copy of the jury instructions will be provided to the jury to use during its deliberations.

19. **Jury Access to Exhibits**. Generally, the jury will be provided with all admitted exhibits to use during its deliberations.

20. **Use of Technology**. The parties are required to use trial presentation technology, courtroom technology, and trial exhibit summaries pursuant to Fed. R. Evid. 1006, to the fullest extent possible.

21. **Other Procedures**. The parties are directed to the Court's Chambers Practices and Procedures, which are available on the Court's website, for additional pretrial and trial procedures.

\s\ Christy Criswell Wiegand
CHRISTY CRISWELL WIEGAND
United States District Judge

cc (via ECF email notification):
All Counsel of Record

EXHIBIT D(2)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DANIEL J. PREZIOSI, Plaintiff, v. BRIAN MANSBERRY, *et al*., Defendants.	)	Civ. A. No. 2:20-1163

PRETRIAL ORDER

It is hereby ORDERED as follows:

1. **Jury Selection and Trial**. Jury selection and trial have been set for **January 23, 2023,** in Courtroom 9A, 9th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania.

2. **Pretrial Conference(s).** A final pretrial conference shall be held on January 17, 2023 at 9:30 a.m. by videoconference.

3. **Exchange of Witness Lists and Exhibits.**

   a. Plaintiff's Pretrial Statement shall be filed by November 7, 2022 and shall comply with the requirements of LCvR 16.1C(1). Plaintiff's Pretrial Statement shall list separately (1) the witnesses he will call and (2) the witnesses he may call if needed (other than purely for impeachment).

   b. Defendants' Pretrial Statement shall be filed by November 28, 2022 and shall comply with the requirements of LCvR 16.1C(1). Defendants' Pretrial Statement shall list separately (1) the witnesses they will call and (2) the witnesses they may call if needed (other than purely for impeachment).

c. All exhibits must be exchanged and marked in advance of trial. Counsel shall supply two complete sets, in binders, of all exhibits to the Court and one copy to the opposing party no later than December 19, 2022. Counsel must be prepared to indicate a position at the final pretrial conference regarding the authenticity and admissibility of the opponent's exhibits.

d. Counsel is reminded that voluminous data must be presented by summary exhibits pursuant to Fed. R. Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). Where copies of documents are offered, the originals shall be available for examination, unless waived by stipulation.

4. **Motions.** The parties shall file all motions in limine together with supporting briefs or memoranda of law by January 3, 2023. Responses shall be filed by January 10, 2023. No reply briefs are permitted unless ordered by the Court. All briefs supporting or opposing such motions are limited to ten (10) pages.

5. **Designation of Discovery Excerpts to be Offered at Trial**. The parties shall submit a designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment) by December 30, 2022. Objections and/or counter-designations must be submitted by January 6, 2023. Objections to counter-designations must be submitted by January 13, 2023. Designations of deposition testimony shall include the inclusive page number(s) and lines of the designated testimony. Objections shall include the page number(s) and lines of the testimony to which an objection is made, as well as a succinct statement of the basis for the objection. The designating party

shall supply a complete transcript of any deposition in which designations have been made by emailing a copy to Janine_englehart@pawd.uscourts.gov.

6. **Proposed Voir Dire**. Counsel may submit proposed voir dire as a supplement to the Court's standard voir dire by January 13, 2023.

7. **Proposed Jury Instructions and Verdict Slips.** Counsel shall meet in an effort to agree on a joint verdict slip and a joint set of substantive jury instructions regarding plaintiff(s)' claims and their elements, any defenses and their elements, and any evidentiary or other matters particular or unique to this case. The parties need not submit "boilerplate" or standard civil jury instructions. On or before January 18, 2023, counsel shall file a **joint** set of proposed jury instructions, and email to a copy of the joint instructions in Word format. The filed set of instructions shall include both the agreed upon instructions and proposed instructions to which the parties have not agreed. Each agreed upon instruction shall include the following notation at the bottom of each instruction: "This proposed instruction is agreed upon by the parties." Each instruction to which the parties have not agreed shall indicate at the bottom the name of the party proffering the instruction, along with the legal authority relied upon by each party in support of and in opposition to each such instruction. The Court will not accept separate proposed jury instructions from the parties. A charging conference will be held during the course of the trial before the jury is charged, at which time a ruling will be made on each proposed jury instruction. A copy of the Court's proposed charge will be supplied to counsel. Counsel is required to state objections to the proposed instruction at the charging conference and to supply the alternate language, together with case authority.

A **joint** proposed verdict slip shall be filed by January 18, 2023. If the parties, after meeting in an attempt to agree on a joint verdict slip, are unable to agree, the parties may submit their respective proposed verdict slips.

8. **Joint Stipulations**. The parties shall file joint stipulations by January 20, 2023. The parties are encouraged to reach agreement on as many facts as possible. All possible stipulations shall be made, as applicable, as to facts; issues to be decided; the authenticity and admissibility of exhibits; expert qualifications; deposition testimony to be read into the record; a brief and simple statement of the nature of the case, claims and defenses to be read to the jury to introduce the trial; and exhibits or other presentation aids to be used in opening statements.

9. **Side Bar Conferences.** The Court believes that counsel should be considerate of the jurors' time. Consequently, side bar conferences are highly disfavored. The Court will meet with counsel before and after each day of trial to discuss issues that would otherwise necessitate a side bar conference. If necessary, counsel may amplify their objections and the Court may amplify its rulings on the record after the jury has been excused for a break, for lunch or for the day. In addition, it is expected that counsel will anticipate evidentiary issues requiring lengthy argument and will address such matters outside of the presence of the jury.

10. **Witness List.** Immediately preceding the first day of trial and each day during trial, counsel shall provide opposing counsel with the list of the next day's witnesses by 5:00 p.m. Counsel should take the necessary steps to ensure that they have adequate witnesses to fill each trial day.

SO ORDERED this 21st day of September 2022.

/s/Patricia L. Dodge
PATRICIA L. DODGE
United States Magistrate Judge

EXHIBIT D(3)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SCOTT E. WINGARD	)	
	)	
v.	)	Case No. 2:21-cv-1738
	)	
	)	Judge J. Nicholas Ranjan
UNITED STATES,	)	
	)	
Defendant.	)	

PRETRIAL ORDER

AND NOW, this 2nd day of November, 2022, and as discussed during the parties' telephonic status conference, the Court **ORDERS** as follows:

I. Pretrial Motions.

1. The parties shall file any motions *in limine*, motions for summary judgment, and *Daubert* motions by **November 9, 2022**. Responses shall be due on **November 14, 2022**. All briefs shall not exceed 10 pages.[1]

II. Final Pretrial Order.

2. **Trial Date.** Trial is set to begin on **December 5, 2022 at 8:00 a.m.** in Courtroom 6C, 6th Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania. Counsel should block the entire week for trial. Requests to continue the trial date will be granted only in extraordinary circumstances.

[1] To the extent the parties file motions for summary judgment or partial summary judgment, the Court hereby excuses the requirement of Local Rule 56(a). Specifically, the parties need not file separate "concise statements" of material fact or responsive concise statements. Instead, the parties should include a "facts" section in their briefs setting forth a narrative of the facts that the filing party contends are undisputed and material, including any facts which for purposes of the summary judgment motions only are assumed to be true. The parties should file and cite to a particular pleading, deposition, answer to interrogatory, admission on file, or other part of the record supporting each statement of fact in the brief.

3. **Pretrial Conference.** The Court will hold an in-person Final Pretrial Conference on **November 30, 2022 at 3:30 p.m**.

4. **Joint Exhibit List**. By **November 18, 2022**, the parties shall jointly file an Exhibit List setting forth all trial exhibits by number, date, author, type of document, objection as to authenticity (if any) with response, and objection as to admissibility (if any) with response. The parties must meet and confer in a meaningful way to resolve any objections prior to submitting the joint Exhibit List.

a. As discussed at the November 2, 2022, status conference, the parties are likewise directed to confer and submit a tabbed joint exhibit binder in hard copy to the Court by **November 21, 2022**.

b. Voluminous data must be presented by summary exhibits pursuant to Fed. R. Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel).

5. **Witness Lists.**

a. The parties must file with the Court a list of trial witnesses listing separately the witnesses they will call and the witnesses they may call if needed (other than purely for impeachment or rebuttal). For each witness, the parties must provide an offer of proof explaining the substance of the witness's testimony. The offers of proof should be no more than a paragraph. These are due by **November 18, 2022.**

b. The parties are directed to confer on a schedule of witness testimony, *i.e.*, the parties should craft a schedule blocking out the dates and times for which they will call all witnesses based on any witness unavailability. The Court is inclined to take

witnesses out of order to ensure judicial economy and avoid any waste of time and resources of the Court, the parties, and witnesses. Fed. R. Evid. 611. The parties shall file a schedule of witnesses by **November 28, 2022**.

6. **Expert Materials.** As discussed at the November 2, 2022, status conference and in the interest of judicial economy, the parties have agreed to submit their expert materials, including the experts' CVs, reports, and testimonial history in advance of trial. The parties shall either include the expert reports in their exhibit binder that they provide to the Court, or e-mail Chambers (peter_kosloski@pawd.uscourts.gov) electronic versions of these expert reports by **November 18, 2022**.[2]

7. **Joint Stipulations.** The parties must file any joint stipulations by **November 18, 2022**. All possible stipulations must be made as to:

a. Facts;

b. Issues to be decided;

c. The authenticity and admissibility of exhibits;

d. Expert qualifications and reports; and

e. Deposition testimony to be read into the record.

III. Trial Procedures.

8. **Hours**. Unless otherwise ordered, court will be in trial session from Monday December 5, through Thursday, December 8, from 8:00 a.m. to 6:00 p.m. each day. The Court notes at the outset that on December 6, 2022, the trial will recess at approximately 1:30 p.m. to accommodate the schedule of Mr. Wingard's counsel, who

[2] For purposes of the procedures outlined in this paragraph and paragraph 12 of this Order, the Court will permit the government to treat the submission of materials and examination of one of its witnesses, who is the investigating police officer in this matter, in the same manner as the parties' experts.

has a hearing in a different courtroom at 1:45 p.m. that day. The trial will resume upon the return of Mr. Wingard's counsel. The Court may adjust these hours to ensure that the trial is completed within the allotted parameters.

9. **Opening Statements and Closing Arguments.** The parties shall have approximately 20 minutes for opening statements. The Court will consider whether closing arguments are necessary after both parties rest. After the close of trial, the parties will have the opportunity to submit post-trial briefing or proposed findings, pursuant to a schedule to be set after trial.

10. **Use of Exhibits.** Because counsel will have previously marked and exchanged all exhibits and provided copies to the Court, it will not be necessary during the trial to show exhibits to opposing counsel prior to using them.

11. **Examination of Witnesses.** Co-counsel for the same party are not permitted to split up the examination of a witness.

12. **Examination of Experts.** Because the Court will likely be in possession of the parties' expert reports in advance of trial, and given the number of witnesses that the parties anticipate calling, the Court is inclined to limit and narrow direct examination of experts in order to expedite proceedings. For example, extensive examination on direct of an expert's qualifications or certain underlying data may not be needed. The parties will have an opportunity for full cross-examination and any necessary re-direct and re-cross for each expert witness.

13. **Objections.** Counsel must state the basis for any objection in a summary fashion (*e.g.,* hearsay, lacks foundation, leading, etc.).

14. **Use of Technology.** The parties are encouraged to use trial presentation technology, courtroom technology, and trial exhibit summaries pursuant to Fed. R. Evid. 1006, to the fullest extent possible. This includes where counsel is using a deposition transcript or written statement to impeach a witness.

The Court will permit counsel to test out any technology in advance of trial, if they so desire.

BY THE COURT:

/s/ *J. Nicholas Ranjan*
United States District Judge

EXHIBIT D(4)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SL IMPERIAL LP, LLC, et al, Plaintiffs, v. ASHFORD/IMPERIAL ASSOCIATES GP, LLC, et al, Defendants.	)	Civil Action No. 2:23-cv-00359 Magistrate Judge Kezia O. L. Taylor

FINAL PRETRIAL ORDER (CIVIL JURY TRIAL)

AND NOW, this 16th day of May, 2025, the Court **HEREBY ORDERS** as follows:

Final Pretrial Orders:

1. **Jury Selection and Trial**. Jury selection and trial are set for **May 4, 2026**, at **9:30 a.m.**, in Courtroom 7B, 9th Floor, Joseph F. Weis, Jr. United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219. The Court has allotted 4 business days for the jury selection and trial of this case.

2. **Pretrial Conference(s)**. The final pretrial conference will take place on **April 27, 2026**, at **10:00 a.m.** in Courtroom 7B. All lawyers who will participate in the trial must attend the conference in person. The appropriate client representative(s) and/or authorized insurance representative(s) with ultimate settlement authority for each party, are also required to attend the conference in person. At the conference, the Court will discuss all outstanding trial issues, and counsel should be prepared to make all arguments regarding those issues at that time. Additionally, the Court will finalize the time limitations for presentation of testimony and evidence at trial.

3. **Exchange of Witness Lists and Exhibits**.

a. On or before **January 19, 2026,** Plaintiff shall file a pretrial narrative statement that complies with all requirements of Local Rule 16.1.C.1. Plaintiff shall also file a final list of trial witnesses, listing separately (i) the witnesses it ***will*** call and (ii) the witnesses it ***may*** call if needed (other than for impeachment). For each witness listed, Plaintiff shall provide an offer of proof explaining the substance of the witness's testimony and a projection of how much time will be needed for direct examination. Each offer of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Plaintiff's witness list and offers of proof are due on or before **January 19, 2026.**

b. On or before **February 2, 2026,** Defendant shall file a pretrial narrative statement that complies with all requirements of Local Rule 16.1.C.2. Defendant shall also file a final list of trial witnesses, listing separately (i) the witnesses it ***will*** call and (ii) the witnesses it ***may*** call if needed (other than for impeachment). For each witness listed, Defendant shall provide an offer of proof explaining the substance of the witness's testimony and a projection of how much time will be needed for direct examination. Each offer of proof shall be no more than one (1) double-spaced page with twelve (12) point font. Defendant's witness list and offers of proof are due on or before **February 2, 2026.**

c. On or before **February 16, 2026**, counsel shall file on CM/ECF a Joint Exhibit List Chart (with columns) setting forth all plaintiff and defendant trial exhibits, by exhibit number, date, author, type of document, objection as to authenticity (if any) with response, and objection as to admissibility with response. For exhibit numbers, Plaintiff shall use A, B, C, etc. and Defendant shall use 1, 2, 3, etc. The parties must meet and confer in a meaningful way to resolve any objections **prior** to submitting the Joint Exhibit

List Chart. The exhibits themselves should not be filed on CM/ECF. Rather, a paper copy of all exhibits shall be hand-delivered to chambers at the time the Exhibit List is filed.

d. Counsel will be jointly responsible for preparing and providing a Jurors' Exhibit Binder at the close of trial.

e. Voluminous data must be presented by summary exhibits pursuant to Fed. R. Evid. 1006, and voluminous exhibits shall be redacted to eliminate irrelevant material (which shall remain available for examination by opposing counsel). If copies of documents are offered, the originals shall be available for examination, *unless* waived by stipulation.

4. **Joint Designation of Discovery Excerpts to be Offered at Trial**. On or before **February 16, 2026**, the parties shall submit a joint designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment). The parties must meet and confer in a meaningful way to resolve any objections prior to submitting the joint designation. Objections to the admissibility of any portion of a designation shall be set forth in a motion *in limine*.

5. **Motions**. On or before **March 2, 2026,** the parties shall file all *Daubert* motions and motions *in limine*, including motions under Fed. R. Evid. 104(a) and motions to limit or sever issues, together with proposed orders and supporting briefs. Responses shall be filed on or before **March 16, 2026**. Briefs supporting or opposing such motions are limited to **five (5) pages** and **must** include appropriate citations to case law, rules of evidence, and rules of procedure supporting the party's position. Omnibus *motions in limine* are permissible, but parties should note that the supporting portion of the brief for each *motion in limine* may not exceed **five (5) pages**. Prior to filing any motion, the moving party must meet and confer with the non-moving party in a good-

faith effort to resolve the dispute, and if the dispute is not resolved, file a certificate of conferral in compliance with Local Rule 16.1.C.4. A hearing date on any *Daubert* motion may be ordered separately if such a motion is filed.

6. **Proposed Jury Instructions**. Counsel shall meet to agree on a joint set of proposed substantive jury instructions regarding Plaintiff's claims and their elements, any defenses and their elements, and any evidentiary or other matters *particular or unique to this case*; the parties must also submit the standard civil jury instructions. After conferring, and on or before **March 30, 2026,** counsel shall file one combined set of proposed instructions, and email the instructions in Word format to Taylor_Chambers@pawd.uscourts.gov. The combined set of instructions shall include both the agreed-upon instructions and the instructions to which the parties have not agreed. Each agreed-upon instruction shall include the following statement at the bottom of each instruction: "This proposed instruction is agreed-upon by the parties." Each instruction to which the parties have not agreed, shall state which party is advancing it, **along with** the legal authority relied upon by each party in support of and in opposition to each such instruction. Proposed instructions by different parties shall be grouped together (i.e., instruction should be matched with counter instructions). To the extent applicable, the Court will follow the Court of Appeals for the Third Circuit's Model Civil Jury Instructions. Any requests for deviation from applicable Third Circuit Model Instructions **must** be supported by legal authority, as should requests for the exclusion of any particular instruction.

a. The Court generally rules on party-proposed jury instructions at or before the Final Pretrial Conference.

7. **Proposed Verdict Slip**. Counsel shall meet to agree on a joint verdict slip. A joint proposed verdict slip shall be filed on or before **March 30, 2026**. If the parties, after conferring

in good faith, cannot agree on a joint verdict slip, the parties shall submit their respective proposed verdict slips on or before **March 30, 2026**. As with proposed jury instructions, the Court generally rules on the verdict slip at or before the Final Pretrial Conference.

8. **Proposed Voir Dire**. Counsel **may** be permitted to supplement the standard questions, provided that the proposed supplemental voir dire questions are filed with the Court on or before **March 30, 2026**.

9. **Joint Stipulations**. The parties shall file joint stipulations on or before **April 6, 2026**. All possible stipulations shall be made as to: (i) facts; (ii) issues to be decided; (iii) the authenticity and admissibility of exhibits; (iv) expert qualifications and reports; (v) deposition testimony to be read into the record; (vi) **a brief statement of the claims and defenses to be read to the jury to introduce the trial and to be read to the venire before jury selection**; and (vii) exhibits or other demonstratives to be used in opening statements. Counsel shall meet at a mutually convenient time and place to produce the joint stipulations in time for filing as ordered.

Trial Procedure

10. **Hours**. Unless otherwise ordered, court will be in trial session each day, 9:30 a.m. to 5:00 p.m., with appropriate breaks. All counsel are expected to be in their seats and ready to commence at the appointed times.

11. **Exhibits**. Because counsel will have previously marked and exchanged all exhibits and provided a copy to the Court, it will not be necessary during the trial to show exhibits to opposing counsel before using them.

12. **Opening and Closing Statements**. Unless ordered otherwise, up to 30 minutes is permitted to each side for opening and closing statements, depending on the complexity of the case. Counsel may use exhibits, PowerPoint presentations, or other demonstratives in openings

and closings, provided that they have been provided to opposing counsel beforehand and either agreement was reached regarding the use of those materials or the Court has ruled on the matter.

13. **Side Bars**. It is important to be considerate of the jurors' time. Side bars are disfavored because they waste the jury's time and unduly extend the length of the trial. Counsel will meet with the Court at 8:30 a.m. each day (or earlier if necessary to ensure that the trial day begins on time) to raise points of evidence or any other issues that would otherwise necessitate a side bar conference. Failure to raise the issue at that time will generally result in a disposition of the in-court objection in the presence of the jury. If necessary, counsel and the Court may amplify their objections and rulings on the record after the jury has been excused for a break, for lunch, or for the day.

The Court will be available at 8:30 a.m. each morning to address such evidentiary and other issues. It is counsel's responsibility to notify other counsel of the need for the conference at 8:30 a.m., and all other counsel will be expected to be present at the appointed time for argument. The Court will not delay the proceedings to respond to last minute requests for conferences to discuss matters that, in the exercise of reasonable diligence, could have been heard at the morning conference.

14. **Witness List**: Before the beginning of trial, counsel shall provide opposing counsel with a complete witness list. In addition, throughout the trial, counsel for each side shall provide opposing counsel and the Court, with the actual list of the next day's witnesses, by 5:00 p.m., in the order that the witnesses are expected to be called. Counsel shall ensure that that they have adequate witnesses to fill the allotted time each day.

15. **Note Taking**. The jury will be permitted to take notes.

16. **Jury Questions**. During deliberation, written questions submitted by the jury are supplied to counsel. Counsel and the Court will meet to discuss and agree on a reply. In most cases, the jury is then summoned to the Courtroom and the oral reply is provided to them. A written reply is provided when appropriate.

17. **Jury Instructions**. A copy of the jury instructions will be provided to the each juror to use during its deliberations.

18. **Jury Access to Exhibits**. Generally, the jury will be provided with all admitted exhibits to use during its deliberations.

19. **Use of Technology**. The parties are required to use trial presentation technology, courtroom technology, and trial exhibit summaries pursuant to Fed. R. Evid. 1006, to the fullest extent possible.

20. **Other Procedures**. The parties are directed to the Court's Chambers Practices and Procedures, which are available on the Court's website, for additional pretrial and trial procedures.

s/Kezia O. L. Taylor
Kezia O. L. Taylore
United States District Judge

cc (via ECF email notification):
All Counsel of Record

Court Example of the Required Joint Exhibit List

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

Plaintiff,

v.

Defendants.

JOINT PROPOSED EXHIBIT LIST

NOW, comes Plaintiff and Defendants their respective attorneys, and respectfully submit the following list of exhibits that each party currently intends to offer at trial with objections and responses per the Court's June 2, 2022 Final Pretrial Order. The Parties reserve their right to withdraw or amend this exhibit list through the time of trial based upon the Court's rulings and the evidence admitted at trial.[1]

Exhibit No.	Document	Parties Objections	Parties Responses
1	Samulski HUD Complaint (3/21/2019), US0000010-US0000014		
2	First Demand Notice (10/16/2018), US0000045		
3	Defendants' Answers to Plaintiff's First Set of Interrogatories		

[1] The Parties stipulate that any exhibit to which the Parties have not asserted an authenticity objection is stipulated as to that Exhibit's authenticity.

4	LRG Service and Emotional Support Animal Policy, D0058		
5	LRG Non-Discrimination Policy, D0060		
6	Samulski Lease Agreement (8/8/2018), D0075-D0080		
7	Samulski Rules and Regulations (8/8/2018), D0081		
8	Second Demand Notice (1/8/2019), US0000047		
9	LRG Rentals v. Samulski, Landlord and Tenant Complaint, D019		
10	Samulski Letter to LRG (8/18/2018), D0082		
11	LRG Letter to Samulski (9/4/2018), US0000044		
12	Samulski Letter to LRG (10/16/2018), US0000046		
13	Dr. Gutti Letter (6/27/2018), D0099		
14	Dr. Gutti Letter (undated, marked rec'd by LRG on 10/17/2018), D0101		
15	Samulski Letter to Neighbors, US0000268-US0000269		
16	Cease and Desist Letter (1/15/2019), US0000279		
17	LRG Rentals v. Samulski, Notice of Judgment/Transcript, US0000272		
18	Receipts (10/17/2018), US0002083		
19	Samulski to LRG (10/17/2018), US0000257		
20	Vaccination Certificate, D0103		
21	Muzzle		
22	Bark Collar		

23	Ghrist ESA Approval, LRG0026	Plaintiff objects to Defendants' approval as irrelevant and inadmissible hearsay. This approval is not relevant as it cannot prove or disprove the claims or defenses in *this* case. Defendants' choice to not discriminate against a different tenant has no bearing on whether they discriminated against the Samulskis. The inclusion of this approval as evidence would confuse and mislead the jury as the issue to be decided is whether Defendants violated the Fair Housing Act when they evicted the Samulskis.	Defendants' assert that pursuant to Pa.R.Evid. 401, the Defendants awareness of ESA procedures with prior tenants is admissible to show conformity with HUD regulations regarding ESA's and that terms and conditions applied to all tenants including handicapped.
24	Ghrist ESA Recommendation, LRG0027	Plaintiff objects to Defendants' tenant's ESA recommendation as irrelevant and inadmissible hearsay. This Recommendation is not relevant as it cannot prove or disprove the claims or defenses in *this* case. Defendants' choice to not discriminate against a different tenant has no bearing on whether they discriminated against the Samulskis. The inclusion of this recommendation as evidence would confuse and mislead the jury as the issue to be decided is whether Defendants violated the Fair Housing Act when they evicted the Samulskis.	Defendants' assert that pursuant to Pa.R.Evid. 401, the Defendants awareness of ESA procedures with prior tenants is admissible to show conformity with HUD regulations regarding ESA's and that terms and conditions applied to all tenants including handicapped.
25	Cruz ESA Approval, LRG0050	Plaintiff objects to Defendants' approval as irrelevant and inadmissible hearsay. This approval is not relevant as it cannot prove or disprove the claims or defenses in *this* case. Defendants' choice to not discriminate against a different tenant has no bearing on whether they discriminated against the Samulskis. The inclusion of this approval as evidence would confuse and mislead the jury as the issue to be decided is whether Defendants violated the	Defendants' assert that pursuant to Pa.R.Evid. 401, the Defendants awareness of ESA procedures with prior tenants is admissible to show conformity with HUD regulations regarding ESA's and that terms and conditions applied to all tenants including handicapped.

Court Example of the Offer of Proof Required for each witness listed in the Pretrial Narrative Statements

If called as a witness, Ms. Morris will testify that she lived in the apartment directly above the Samulskis at Holly Apartments during the events in question. Ms. Morris will testify that she was never bothered by the Sabastian's emotional support dog. Ms. Morris will testify that the dog seemed very well-behaved and rarely barked. Ms. Morris will testify that Ms. Samulski sent a friendly letter to the tenants of Holly Apartments introducing herself, explaining that her son had an emotional support animal and invited her neighbors to express any concerns directly to her. Ms. Morris will testify that Ms. Aiken asked her about the letter, and that Ms. Morris informed Ms. Aiken that the dog did not bother her. Ms. Morris will testify that Ms. Samulski told her that she purchased a device to prevent the emotional assistance animal from barking. She will testify that she was not aware of any other tenants in the building complaining about noise from the emotional assistance animal.

c. **Bindu Gutti, MD**
Liability and Damages
Behavioral Health-Latrobe Hospital
One Mellon Way
Latrobe, PA 15650
Est. 2-4 Hours

If called as a witness, Dr. Gutti will testify that she provides direct psychiatric care to Sabastian. As Sabastian's current treating medical provider, Dr. Gutti will testify regarding Sabastian's diagnosis and disabilities, symptoms of his disabilities, his need for an assistance animal, the ways in which his assistance animal ameliorates the symptoms of his disabilities, and the manner and extent to which Defendants' conduct exacerbated his disabilities or affected his physical and/or mental health. More specifically, Dr. Gutti will testify that Sabastian suffers from Asperger's Syndrome, ADHD, anxiety, and depression; that his symptoms include increased anxiety and stress, particularly when it comes to interacting with others and changes in routine or environment; that Sabastian has, at times, been prone to suicidal thoughts and ideation; and that

these diagnoses and symptoms interfere with Sabastian's ability to sleep, interact with others, and perform other activities of daily living. Dr. Gutti will testify that she provided a letter to Sabastian and his caregiver recommending an emotional support animal because she believed at the time that an assistance animal would provide a benefit to Sabastian's mental health and quality of life. Dr. Gutti will testify that Sabastian was admitted to the hospital for an inpatient psychiatric stay between on or about February 27, 2019 to on or about March 3, 2019 and, during that hospitalization, he reported various stressors including being evicted from his residence.

II. WITNESSES MAY CALL

a. **Rene Smail, CRNP**
Liability and Damages
Behavioral Health-Latrobe Hospital
One Mellon Way
Latrobe, PA 15650
Est. 1-2 Hours

If called as a witness, Nurse Rene Smail will testify that she works under the supervision of Dr. Gutti and provides direct psychiatric care to Sabastian. As Sabastian's current treating medical provider, Nurse Smail will testify regarding Sabastian's diagnosis and disabilities, symptoms of his disabilities, his need for an assistance animal, the ways in which his assistance animal ameliorates the symptoms of his disabilities, and the manner and extent to which Defendants' conduct exacerbated his disabilities or affected his physical and/or mental health. More specifically, Nurse Smail will testify that Sabastian suffers from Asperger's Syndrome, ADHD, anxiety, and depression; that his symptoms include increased anxiety and stress, particularly when it comes to interacting with others and changes in routine or environment; that Sabastian has, at times, been prone to suicidal thoughts and ideation; that these diagnoses and symptoms interfere with Sabastian's ability to sleep, interact with others, and perform other activities of daily living; and that Sabastian's assistance animal Onyx provides a significant benefit

Court Example of the Required Joint Proposed Jury Instructions

Joint Proposed Instruction No. 5 — Meaning of Emotional Support Animal

You may have heard about or seen a service animal, for instance a dog guiding a blind person in a public space, but service animals are not the only type of assistance animal protected under the Fair Housing Act. Another type of assistance animal is an emotional support animal, which the parties may refer to as an "ESA." Emotional support animals are not pets. They are therapeutic assistance animals that alleviate one or more of the symptoms or effects of a person's psychological disorder. Unlike a service animal, an emotional support animal does not need special training or certification, nor does it need to perform specific tasks to qualify as an assistance animal under the Fair Housing Act.

Source: Adapted from U.S. Dep't of Hous. & Urban Dev., FHEO Notice: FHEO-2020-01, *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act* at 8 n.27 (Jan. 28, 2020); *Revock v. Cowpet Bay W. Condo. Ass'n*, 853 F.3d 96, 100 n.2 (3d Cir. 2017) (defining emotional support animals as assisting persons with a disability-related need for emotional support, compared to service animals, which do not provide emotional support, well-being, comfort, or companionship by definition under the ADA).

This proposed Instruction is agreed upon by the parties.

Defendants' Proposed Instruction No. 7 — Fair Housing Act Guidelines for Housing Providers

In accordance with Fair Housing Act guidelines promulgated by the U.S. Department of Housing and Urban Development, two (2) matters one must consider when evaluating a request for an Emotional Support Animal are:

1. Does the person seeking to use and live with the animal have a disability – i.e., a physical or mental impairment that substantially limits one or more major life activities?

2. Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

The definition of major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Source: Adapted from U.S. Dep't of Hous. & Urban Dev., FHEO Notice: FHEO-2013-01. *Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD Funded Programs*, at page 4 of 10. (April 25, 2013). (Please note that the action arose before the enactment of FHEO Notice: FHEO-2020-01) *see also* 24 C.F.R. § 100.201 definitions (Definition of Major Life Activities).

The Plaintiff objects to Defendant's Proposed Instruction No. 7 on the grounds that it is not a jury instruction and, therefore, not proper. The Proposed Instruction does not involve a claim or a defense, it does not instruct the jury about a legal standard to apply to a claim or defense, it does not aid the jury in making a finding, nor does it assist the jury by explaining a claim or defense.

Additionally, it appears that Defendants are attempting to submit "evidence" in the form of an "instruction;" evidence that is irrelevant and unduly prejudicial. "Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed. R. Evid. 401; *see also Evans v. Cernics, Inc.*, No. 3:14-CV-125, 2017 WL 4863207 at *1 (W.D. Pa. October 26, 2017). Because evidence is relevant "if it has any tendency to prove a consequential fact, it follows that evidence is irrelevant only when it has no tendency to prove the fact." *U.S. v. Maurizio*, Criminal No. 3:14-23, 2015 WL 5228031 at *5 n.2 (W.D. Pa. September 8, 2015) (citing Blancha v. Raymark Indus., 972 F.2d 507, 514 (3d Cir. 1992)) (emphasis added). Moreover, Federal Rule of Evidence 403 holds that even if

evidence is relevant, it is inadmissible if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403; *see also Evans*, 2017 WL 4863207 at *1. "Unfair prejudice" is an "undue tendency to suggest decisions on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403 advisory committee note; *see also Maurizio*, 2015 WL 5228031 at *5 n.3. Instructing the jury on what HUD recommends that landlords consider when they are presented with a reasonable accommodation improperly suggests that LRG Rentals did, in fact, consider these suggested factors when making their decision, and there is no evidence that LRG Rentals considered the HUD guidance in this case, or that LRG Rentals was even familiar with guidance at that time. It would be improper to ask the jurors to consider guidance that LRG Rentals did not consider.

Defendants' Response:

Defendants include this instruction to provide the jury with further explanation of the obligations relative to reasonable accommodation requests for assistance animals under the FHA. The Notice's stated purpose is to, "explain[s] certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities." This instruction provides further clarity as to the requirements of the FHA regarding reasonable accommodation requests by using HUD's own layman's term explanation. This instruction goes to the elements of the reasonable accommodation claim, as well as the defense that Plaintiff cannot establish that Sabastian was entitled to a support animal. While not binding, courts interpret HUD guidance documents such as this as providing guidance. *See United States v. E. River Hous. Corp.*, 90 F. Supp. 3d 118, 133 (S.D.N.Y. 2015). In particular, Federal district courts have cited to the FHEO Notice regarding assistance animals as guidance in the interpretation and application of the FHA. *See Arnal v. Aspen View Condo. Ass'n*, 226 F. Supp. 3d 1177, 1184 (D. Colo. 2016); *United States v. Dental Dreams, LLC*, 307 F. Supp. 3d 1224, 1249 (D.N.M. 2018); *United States v. Barber*, No. C13-5539 BHS, 2014 U.S. Dist. LEXIS 142796, at *11-13 (W.D. Wash. Oct. 7, 2014).

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD EUGENE JACKSON, II,
Plaintiff
vs.
WILLIAM SCHOUPPE, et al.,
Defendants.

Civil Action No.
17-1135

- - -

Transcript of proceedings on March 13, 2020
United States District Court, Pittsburgh, PA,
before Judge Patricia Dodge.

APPEARANCES:

For the Plaintiff: Jones Passodelis, PLLC
Maria N. Pipak, Esquire
Michael R. Lettrich, Esquire
Gulf Tower, Suite 3410
707 Grant Street
Pittsburgh, Pennsylvania 15219

For the Defendant: Richard Eugene Jackson, II
(Pro Se.)

Court Reporter: Barbara Metz Leo, RMR, CRR
700 Grant Street
Suite 6260
Pittsburgh, Pennsylvania 15219

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

P R O C E E D I N G S

- - -

9:36 a.m.

THE COURT: Please be seated, everyone. Good morning.

We are here today as the court ordered in its order of February 7, 2020 for an evidentiary hearing. Before we get started, I'll note for the record that the plaintiff, Mr. Jackson, is appearing here by video conference this morning. Good morning, Mr. Jackson.

MR. JACKSON: Good morning, ma'am.

THE COURT: I'm going to ask you if at any time you can't hear either what I'm saying or what anyone else in the courtroom is saying, will you please let me know that, and we'll make the necessary adjustments. All right?

MR. JACKSON: Yes, ma'am.

THE COURT: All right. Then also appearing here this morning, could counsel for the defendant identify herself, please?

MS. PIPAK: Sure. Maria Pipak for the county defendants.

THE COURT: Good morning.

MS. PIPAK: Good morning.

THE COURT: As indicated in my February 7 order, the purpose of this proceeding is to resolve the threshold issue

of whether Mr. Jackson exhausted his administrative remedies and/or whether the grievance process was available to him.

The way we are going to proceed this morning, as indicated in my order, is that the initial burden is on the defendants to show that Mr. Jackson failed to exhaust his administrative remedies, and the defendants are free to put on any evidence relating to that or any other issue, and I'm going to ask them to proceed first with that evidence.

After we are done there, the burden then shifts to Mr. Jackson to show, as he has alleged, that the grievance process is unavailable or was unavailable to him.

I want to stress that this is not a hearing on the merits of this case. It is to address this discrete issue.

Mr. Jackson, I want to remind you that you have an opportunity, once the defendants have presented evidence via testimony, to cross-examine those witnesses. That cross-examination should be limited to their testimony on their direct exam or any other issue that relates to the issue of exhaustion.

You will also, Mr. Jackson, have an opportunity to present any testimony that you wish to present on your own behalf.

I will note that I note, Mr. Jackson, your request for oral argument, and at the end of this proceeding, after all the evidence is presented, both parties will have an

opportunity to make any oral argument that you think would be helpful to the court in resolving this issue.

I'll also mention for the benefit of everyone that I do have copies here at the bench of the materials that were submitted in connection with the motion for summary judgment and the opposition to that, and certainly, you may feel free to hand up any documents that you would like to, Mr. Jackson. I do have those documents here with me, so if you are referring to a document and you can let me know what document you are referring to, I'll be able to secure a copy of it here at my bench, and if not, certainly we can secure a copy of it afterwards.

Does everyone understand the process here this morning? Mr. Jackson?

MR. JACKSON: Yes, Your Honor.

MS. PIPAK: Yes, Your Honor.

THE COURT: Then if defendant is ready to proceed, we may do so.

MS. PIPAK: Good morning, Your Honor.

THE COURT: Morning.

MS. PIPAK: We are going to call as our first witness, Captain Trkulja.

THE COURT: Captain, would you step forward to be sworn, please?

(Witness sworn.)

THE CLERK: Please take the witness stand. State your name and please spell it for the court reporter.

THE WITNESS: Thomas Trkulja, T-R-K-U-L-J-A.

THE COURT: Captain Trkulja, will you pull the microphone around so we can all hear you?

THE WITNESS: Yes, ma'am.

THE COURT: Thank you very much.

THOMAS TRKULJA, a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. PIPAK:

Q. Good morning, captain.

A. Morning.

Q. Where do you work?

A. Beaver County Jail, Aliquippa, PA.

Q. How long have you worked there?

A. 33 years.

Q. What is your current position?

A. I'm a captain.

Q. Does the Beaver County Jail have a grievance policy?

A. It does.

Q. In your position as the captain, do you handle grievances?

A. I am. I'm the grievance coordinator.

Q. What do you do as the grievance coordinator?

A. I accept grievances. I number them, log them in a book,

pass them on to the next party for answers.

Q. What is the grievance policy at the jail?

A. Grievance policy? I mean, it's pretty much open to everybody. They have -- they ask for a grievance. It's handed to them. They fill it out. It comes to me.

Again, like I said, I get it, I number it, I pass it on. It comes back to me, I make a copy, log it, pass it on to the next person.

Q. Generally, how do inmates file grievances?

A. Handwritten.

Q. And you said that they get the slips. They ask a correctional officer for the slips; is that correct?

A. Yes, they do.

Q. How do they turn in the grievances?

A. On the ranges, there's boxes they go in. In the SNUR, each area, they hand it to the officer, and the officer turns it in.

Q. What is the SNU?

A. Special needs unit. It's like a step-down unit.

Q. What kind of -- what is the SNU used for?

A. People that need separated from other people. People involved in child cases, we need to keep away from others.

Q. And what is the RHU?

A. Restricted housing unit are people who are usually in fights with more serious outcomes and more separation needed.

Q. When somebody is housed in the SNU or the RHU, are they in their cell most of the day?

A. Most of the time, they are in 23, 24 hours.

Q. And is that why they have to hand the slips to the officer rather than placing it in a box?

A. It is now. At one time, they hung on a wall. The inmates damaged them. They were taken down and placed inside the secure area.

Q. The boxes in the NSU were damaged?

A. Yes.

Q. When did that happen?

A. Off the top of my head, I couldn't tell you.

Q. More than five years ago?

A. Yes.

Q. As the grievance coordinators, how do grievances come to you?

A. Again, they are delivered to me through the midnight supervisors. I have a mailbox they go in. I go in each morning. I pick those up, take them back to my office and go through them.

Q. How do you go through them?

A. One by one. I get one, look at it, put a number on it, log the name, log the area they live in, put a brief description of what the grievance is about.

Q. Do you log it in a logbook?

A. Yes, I do.

Q. When you put a number on it, do you put a sequential number on it?

A. Yes.

Q. After you make a copy of it, what do you do with it?

A. The original grievance would go to the person who's required to answer it.

Q. How do you determine who answers it?

A. I guess just my experience. If they name somebody, it goes in that person.

Q. Is there ever a time when a grievance would go directly to the warden?

A. Yeah. If there's something in there that has to do with something that could end up in court or something, I send it directly to him.

Q. When you say "end up in court," do you mean administrative issues, constitutional issues?

A. Yeah. Yes, ma'am.

Q. After the grievance is given to the staff member, what happens to it?

A. It comes back to me. I review it for the answer, see if it was okayed, agreed to upon or not. If they decide to take it to the next step, make a copy, I log it and pass it on to the next step.

Q. Okay. So let's go through that. The appropriate staff

member gives an answer?
A. Uh-huh.
Q. So they respond to the grievance?
A. Yes.
Q. And they respond in writing?
A. Yes.
Q. On the grievance form?
A. Yes, ma'am.
Q. And then is the grievance returned to you?
A. Yes, it's returned to me.
Q. At what time is it returned to the inmates?
A. After I make the copy and pass it on again, just so we keep a record trail.
Q. How is it returned to the inmate?
A. It goes through the mail, inside the house.
Q. The jail mail system?
A. Yes.
Q. That's an internal mail system?
A. Yes, ma'am.
Q. If an inmate is unsatisfied with the response he received, what happens?
A. He denies it, and that fact goes back to the warden.
Q. So when you say "he denies it," there's a place on the grievance form?
A. Yes.

Q. And it's the same grievance form?
A. Yes, ma'am.
Q. With the same sequential number?
A. Yes, ma'am.
Q. And it is placed back into the grievance box?
A. No. It goes, like I said, to the warden. I'll take it up, directly hand it to him.
Q. How do you get the grievance back to give to the warden?
A. It comes through the same procedure. The midnight supervisor gets it, drops it off for me.
Q. And then what does the warden do with the grievance?
A. I wish I could tell you. I'm sure he answers them.
Q. Once the grievance -- once the warden issues a response, what happens to the grievance?
A. That's the final step of the grievance procedure is through him.
Q. And does that grievance go back to the inmate with the warden's response?
A. Yes, ma'am.
Q. How does it go back to the inmate?
A. Through the mail.
Q. I am going to mark this as Exhibit 1. Mr. Jackson, this is the logbook. I don't know. Can you see?
MR. JACKSON: I can't see it.
MS. PIPAK: Is there a best way to do this?

THE CLERK: I can bring a copy up towards the camera, Mr. Jackson, for your review.
MR. JACKSON: I can see some things on there.
THE COURT: Is that a document that was --
MS. PIPAK: It was not previously produced.
THE COURT: Mr. Jackson, we'll make sure that you receive a copy of this document, and certainly if there are specific things that you are interested in asking about this document, you'll have an opportunity to do that.
MR. JACKSON: Yes, ma'am.
MS. PIPAK: Can I approach the witness?
THE COURT: Yes.
MS. PIPAK: Would the court like a copy too?
BY MS. PIPAK:
Q. Captain, what is this document?
A. It's a copy of the grievance book that I logged the numbers in. Also the name, where they are housed, the date it was processed and what the grievance is about.
Q. Are these the pages from when Mr. Jackson was in the Beaver County Jail?
A. They are.
Q. And are the numbers the sequential numbers that you were talking about, the grievance numbers?
A. Yes.
Q. Are grievances retained?

A. Yes.
Q. Did Mr. Jackson file any grievances?
A. Yes, he did, several of them.
Q. And how do you know that he filed grievances?
A. Because I received them. I logged them, processed them.
Q. In preparation for this lawsuit, did you gather grievances?
A. Yes, I did.
Q. How did you do that?
A. Went back looking through the book, finding his name, the number, filing, you know, going through the file that it was in, pulling them and putting them on the side.
Q. And you provided me with the grievances that were filed?
A. I did.
Q. And they were previously entered into evidence in our motion for summary judgment at Exhibit D.
MS. PIPAK: Can I approach the witness with the exhibits?
THE COURT: Yes. You may feel free to approach the witness without asking.
MS. PIPAK: Sure.
Q. Are these the documents that you gathered for us?
A. Yes, ma'am.
Q. Did you withhold any grievances when you turned over grievances to us?

A. No, no.
Q. So these would be all of the grievances filed by Mr. Jackson?
A. Yes, ma'am.
Q. And once a grievance is logged in the logbook, can it disappear from the sequence?
A. No.
Q. And why is that?
A. It would cause a gap in the numbering system.
Q. Okay. Do you know how many grievances Mr. Jackson filed?
A. I believe I heard the number 28.
Q. Did Mr. Jackson file grievances while he was housed in general population?
A. Yes.
Q. Did Mr. Jackson file grievances while he was housed in the special needs unit?
A. Yes, ma'am.
Q. Did you review the grievances that he filed?
A. Yes, ma'am.
Q. Did he ever file a grievance regarding retaliation?
A. No, ma'am.
Q. Did he ever file a grievance regarding a misconduct that was issued to him?
A. I believe there was one by a Sergeant Campbell.
Q. Did he ever file a grievance regarding his mail?

A. I don't believe so.
Q. Did he ever file a grievance regarding the location that he was housed in?
A. Yes.
Q. Did he ever file a grievance regarding his thermal underwear from the commissary?
A. Yeah, there was one in there.
Q. Captain, if I could call your attention to grievance No. 03381.
A. Yes, ma'am.
Q. This is the grievance regarding thermal underwear; is that correct?
A. Yes, it is.
Q. And this grievance, does he allege -- does he complain that the thermal underwear was not given to him in retaliation for filing previous grievances?
A. I don't see anything about retaliation.
Q. I know it's a little hard to read. Did Mr. Jackson receive a response to this grievance?
A. Yes, I believe, from the warden.
Q. And where was Mr. Jackson housed when he filed this grievance?
A. SNU, room 206.
Q. Thank you. So this grievance from the special needs unit would have been turned in to a correctional officer and handed

to you?
A. Yes, ma'am.
Q. If I can call your attention to grievance No. 3147. It should be the next one.
A. Yes, ma'am.
Q. Is this the grievance related to -- that Mr. Jackson filed relating to the April 28, 2016 incident involving Correctional Officer Debbie Ruff?
A. Yes, it is.
Q. What does this grievance relate to?
A. She neglected to act on him, follow procedure.
Q. So it's a grievance in which Mr. Jackson is complaining about Correctional Officer Ruff's behavior, correct?
A. Yes, ma'am.
Q. In this grievance, is he seeking additional medical care?
A. No, ma'am.
Q. In this grievance, is he seeking his cell to be cleaned?
A. No, ma'am.
Q. And at any point in this grievance, does Mr. Jackson complain that Correctional Officer Ruff's interactions with him were because -- were in retaliation for filing other grievances?
A. No, ma'am.
Q. And was this grievance filed by Mr. Jackson while he was housed in the special needs unit?

A. Yes, he was, SNU 206.
Q. Sorry. There's a lot of papers. I'm trying to keep them all organized.
If I could draw your attention to the logbook and to grievance 3388.
A. Yes, ma'am.
Q. This was a grievance filed by Mr. Jackson. What was he complaining of?
A. That there was no box hub to put the grievance into, like a mailbox, and that he had to hand it to an officer.
Q. If I could draw your attention to grievance No. 3388 which should be in your packet.
A. Yes, ma'am.
Q. Is that the grievance that's in the logbook?
A. Yes, ma'am.
Q. What is Mr. Jackson complaining about in that grievance?
A. Procedure concerning how the grievance was filed and how it was submitted.
Q. Go ahead.
A. He had to go to the officer's station instead of in a box.
Q. And he was worried that grievances weren't getting to you; is that correct?
A. Yes, ma'am.
Q. Was that true?
A. No.

Q. In fact, you got this grievance from him, correct?
A. Yes, ma'am.
Q. And where was he housed when this grievance was filed?
A. SNU.
Q. How would this grievance have gotten to you?
A. Again, through the midnight supervisor putting it in my mailbox.
Q. Did Mr. Jackson receive a response to this grievance?
A. Yes, again, from the warden.
Q. If I could draw your attention to grievance No. 3404. It should be -- I think they are in order.
A. Yes, ma'am.
Q. What is this grievance about?
A. In reference to grievance No. 3381, 3382, 3383, the grievances were subtitled processed on 4-11. Returned to him. Then he's saying he didn't get an answer quick enough.
Q. So Mr. Jackson was keeping track of the grievances that were filed and numbered?
A. I guess he is. There was one point I wrote them all down for him, the ones he filed, and handed to him through his cell.
Q. So you spoke to Mr. Jackson about his grievances?
A. Yes, ma'am.
Q. Can you explain the conversation?
A. Yeah. He was subject, you know -- he asked me you are not

getting some of my grievances. I said I'm filing every one I get. I said I get them. I put a number on them. I don't hold any back. I don't do anything to them.

I told him if you have a problem when they are not getting to me, get ahold of me and I'll come get them.

Q. Did he ever get ahold of you to file grievances?
A. No, ma'am.
Q. Did you ever have any other complaints from him after you spoke with him about his grievances not being answered?
A. I don't believe so.
Q. Did Mr. Jackson ever receive responses to grievances No. 3381, 3382 and 3383?
A. 3381, yes. 3382, yes. 3383, yes.
Q. When you spoke to Mr. Jackson about his grievances not being responded to, did he ever tell you what those grievances were?
A. No.
Q. If I could draw your attention to grievance No. 3403.
A. 340 --
Q. 3.
A. 3403, yes, ma'am.
Q. What is this grievance about?
A. Reference to grievance No. 3347, about the law library.
Q. So he was complaining that his grievance about the law library was not responded to?

A. Yes, ma'am.
Q. And did Mr. Jackson receive a response to grievance No. 3403?
A. Yes, he did.
Q. And did he ever receive a response to grievance No. 3347 complaining about the law library?
A. Yes, he did.
Q. Do you know some of the other grievances Mr. Jackson filed, off the top of your head?
A. No. There were some about food, some about fruit missing off of trays.
Q. Was it typical that an inmate would file 28 grievances?
A. No. That's why I remember.
Q. When you logged the grievances --
A. Yes, ma'am.
Q. And if you got an appeal to the grievance, did you ever -- would you log that an appeal came in?
A. No. I would just make another copy and replace the one that was in the book with that one.

MS. PIPAK: I think that's all the questions I have right now.

THE COURT: Thank you very much, Ms. Pipak.

Mr. Jackson, you have an opportunity to ask questions of the captain. Would you like to proceed to do that?

MR. JACKSON: Yes, ma'am.

CROSS-EXAMINATION

BY MR. JACKSON:

Q. Captain Trkulja, in the logbook that you have, do you have a section that states when a response was sent to the plaintiff in those grievances?
A. No. I just make another copy and file it in the file book.
Q. Do you have control over the jail internal mail system as you described that you send them back in?
A. No, I do not.
Q. So you wouldn't be able to tell if he actually received the response to that grievance or not?
A. That you received it?
Q. Me. I'm used to speaking in the plaintiff. But you wouldn't be able to tell if I received the response to that grievance through the mail internal system?
A. If you answer it, you received it.
Q. So the question was do you have control over the jail's internal mail system?
A. No, I do not.
Q. And you have no receipt system for grievances other than the copies that you have?
A. That's it.
Q. Of each grievance?
A. Yes.

Q. You made a statement earlier that you told me that if I have problems with my grievances, to get ahold of you, correct?
A. Yes, yes.
Q. And you said you made a statement in that in a request form, a grievance?
A. No. That was verbal to you the day I was doing hearings down there.
Q. Was it normal that you called down in the inmates to verbally discuss any of their grievances with them?
A. No.
Q. How often do you go to the SNU?
A. How often do I go? When I'm needed there.
Q. Do they keep a logbook of when you go there?
A. Yes.
Q. Would you be able to tell me what dates that was that you spoke to me about my grievances?
A. I don't have any of that.
Q. There was a grievance I think she was speaking of 03417 about Officer Ruff.
A. Uh-huh.
Q. And the response to the warden, do you know what his response was pertaining to that grievance, if you could read it to me?
A. Officer Ruff was in the hub above and she responded

sufficiently. She called staff and notified when it appeared you --
Q. I know it's hard to read. I just wanted to see if you could understand what he said. At the bottom, what was the date that he said he received it?
A. Date received 5-2.
Q. And on the front of that grievance which is document 2032, at the top, you wrote the date that you received it. What date was that?
A. 2302?
Q. Top of the grievance, the front of that same grievance, at the top, you normally write what date that you received the grievances, correct?
A. Yeah, this is 3417.
Q. The date you wrote above that, what's the date it says you received it?
A. 5-3-16 is the date I processed it.
Q. So the warden said he received it 5-2-16. Was he able to receive it before you did?
A. It's possible.
Q. And the policy in the inmate handbook has a level system, and it states the first stage, you know, the inmate requests a grievance and so forth. That would be document 2036. It should be the inmate handbook.
This is the policy -- this is the policy for grievances at

the Beaver County Jail, correct?
A. Yes.
Q. And it says: The housing officer will make this form available and provide it when needed by you upon completion of the form, including a signature and date the form is to be placed in a request box.
Now, I wasn't able to place my grievance in a request box. I had to give it to -- while I was on SNU. I had to hand it to officers.
A. Uh-huh.
Q. Is there a way that you can track those grievances that I gave to those officers before you get them?
A. No.
Q. And on document 1743, it states, in the same inmate handbook, it states: Please remember that the rules and regulations are subject to change, and any changes will be posted and sent out in memorandum form.
While I was there at the Beaver County Jail, was there any memorandum or anything stated that there was a change to the grievance procedures for those housed in SNU?
A. Not that I know of, no.
Q. And it also states that the captain, which is you, upon receiving the form, will log the grievance and appeal that was filed by you.
So if I had to hand the grievances to officers, none of

those grievances were filed by me, correct?
A. If you signed them, you filed them.
Q. Well, filed actually means submit, which means I didn't submit. I wasn't the one that submitted any of those grievances.
A. That's what you say.
Q. And it says: After the form is logged, there will be forwarded to the responsible staff member.
On grievance 3417 if the warden got the response to this grievance before you, how would that be possible pursuant to the grievance procedures from the Beaver County Jail --
A. Midnight supervisor probably --
Q. -- if you received all the grievances?
A. Midnight supervisor probably put it in the wrong box. When he got it, he sent it back to me and then it got numbered.
Q. So there could have been issues that hindered my grievances?
A. No.
Q. Do you ever -- every single grievance any inmate submits at the Beaver County Jail, do they all get a sequential tracking number?
A. Yes, they do.
Q. And none of them are ever the same, correct?
A. No. Unless it's a multilevel grievance, it will get a

number plus a 1, dash 2, dash 3.
Q. Yes, sir. On grievance No. 03388, I submitted a grievance to the warden, and can you tell me what the warden's response to that was?
A. That's the procedure, and we are getting your grievances according to Captain Trkulja.
Q. And the date that he signed that as received was on what date?
A. 4-15.
MR. JACKSON: I submitted in my brief, Your Honor, I submitted two grievances. They both have the same tracking number, 03388, and the response to my grievance was, no, that is the process and we are not going to change it, and the grievance was me complaining about the grievance process.
However, the response that the captain just stated is totally different than the one I submitted, but they are both the same grievance.
THE COURT: All right. You can certainly ask him questions about that. We'll certainly review what you've submitted as well.
MR. JACKSON: Yes, ma'am.
BY MR. JACKSON:
Q. Would you be able to tell me why that is, captain?
A. No.
Q. That there's a different response to the same grievance?

A. No, I can't find the second grievance with the same number.
Q. Thank you.
MR. JACKSON: I have no more questions. Wait.
Q. To go back to the point that you mentioned that you got ahold of me and told me through a request form of grievance that, if I had any problems, to let you know. There's only two responses that I have from you.
One is a request slip with the date 1-4-16 and you responded on 1-6-16, and in this one, you did not state anything about if I had any issues that I could address it to you or let you know.
And the second one was a memo I got from you 4-15-16, and it also does not state anywhere that you spoke to me or told me anything about how I could go about addressing my issues with my grievances.
A. I did that in person with you. There's no reason to write it.
MR. JACKSON: That's all the questions I have for him, Your Honor.
THE COURT: Thank you, Mr. Jackson. Do we have further redirect?
MS. PIPAK: Sure.
REDIRECT EXAMINATION
BY MS. PIPAK:

Q. Captain, when inmates are in the SNU, and they are out of their cells, are they out of their cells for how long?
A. SNU, they could be locked in for 23 out of 24 or they could be out of their cells during unspecified times.
Q. So inmates are out of their cells?
A. Yes.
Q. Are they able to get grievance forms while they are out of their cells?
A. Yes, ma'am.
Q. And they are out of their cells at different times throughout the day?
A. Yes, ma'am.
Q. So there would be different officers working, correct?
A. Yes, ma'am.
Q. Did Mr. Jackson ever complain to you that officers would not give him grievance forms?
A. No, ma'am.
Q. To the extent that the grievance process in the SNU required inmates to hand the grievances to officers --
A. Yes.
Q. -- you still received grievances; is that correct?
A. That is correct.
Q. And Mr. Jackson was still able to use the grievance process while he was in the SNU?
A. Yes, he was.

Q. Turning to grievance 3417.
A. Yes, ma'am.
Q. Can you explain how it might be possible that you received the grievance on 5-3 or 5-2?
A. Like I said, the only thing I could figure, it made it to the warden first and he passed it on to me.
Q. Have you ever put a wrong date on a grievance?
A. No.
MS. PIPAK: That is all the questions I have.
THE COURT: Thank you, Ms. Pipak.
Mr. Jackson, anything further from you?
RECROSS-EXAMINATION
BY MR. JACKSON:
Q. Mr. Trkulja said when he spoke to me personally and I asked him if they had a logbook on when he comes to the SNU to speak to me, would there be any way we could get that?
A. I'm not sure.
MR. JACKSON: That's all, Your Honor.
THE COURT: Captain, can I ask you a couple of brief questions while you are still on the stand?
THE WITNESS: Yes, ma'am.
THE COURT: I want to refer back to Exhibit 1 which is a copy of your logbook.
THE WITNESS: Yes, ma'am.
THE COURT: As I understand it, the left-hand column

is just your sequential numbering of each grievance as it comes in; is that correct?

THE WITNESS: Yes, ma'am.

THE COURT: And then you have or someone has blacked out a number of the entries or at least a portion of them. Is that because those relate to individuals other than Mr. Jackson?

THE WITNESS: Yes, ma'am.

THE COURT: And then the ones that have not been blacked out, and I'm just going to look at an example on page 2 of Exhibit 1, just after Mr. Jackson's name, there is a letter A and then a number 118.

Does the A represent the location in the prison where Mr. Jackson would have been housed at any particular time?

THE WITNESS: Yes, ma'am. That would be A pod, room 118.

THE COURT: And when we see the letter S, does that reference SNU?

THE WITNESS: It does.

THE COURT: Are there other designations that apply in your logbook other than those two?

THE WITNESS: Yes. There's A pod, B pod, C pod, T pod.

THE COURT: Other than the alphabet for various pods, is the letter R used if someone is in the RHU?

THE WITNESS: Yes, ma'am.

THE COURT: Thank you. I want to make sure I understand the procedure when an inmate is lodged in the SNU. As you testified before, in the event that a particular person is confined to his cell, for example, for 23 of the 24 hours, in that instance, can you explain how the grievance is handled?

THE WITNESS: Sure. He can get on the intercom, request it, the officer will bring it down to him.

THE COURT: So he requests that the officer bring him a form to fill out?

THE WITNESS: Yes, ma'am.

THE COURT: Once the form is filled out, will you just walk us through what happens next?

THE WITNESS: He can get on the intercom again or when they come in, he can hand it to them. They take it. They take it in the station, put it in a box.

THE COURT: So the officer is instructed to put the grievance form in the box?

THE WITNESS: Yes, ma'am.

THE COURT: I think you told us before that if an inmate happens to be out of his cell who is lodged in the SNU --

THE WITNESS: Yes, ma'am.

THE COURT: -- during those periods of time, he can

access a grievance form himself?

THE WITNESS: Yes, ma'am.

THE COURT: And then if he's still out of the cell, after he completes it, he can place the grievance form in the box?

THE WITNESS: He would have to give it back to the officer to do.

THE COURT: Even if someone lodged in the SNU was out of his cell, the form itself has to be placed in the box by an officer?

THE WITNESS: Yes, ma'am.

THE COURT: And the internal mail process that you talked about before, do you remember telling us about that?

THE WITNESS: Yes, ma'am.

THE COURT: If someone is in the SNU, do they receive internal mail?

THE WITNESS: Yes, ma'am.

THE COURT: How do they receive it?

THE WITNESS: We turn it into a mail clerk. She goes around and delivers it.

THE COURT: Does she deliver it into or at the cell itself?

THE WITNESS: No. She takes it back to the hub. The officers pass it out.

THE COURT: Once the mail is received at the hub,

whatever officer is on duty would distribute mail to individuals who are housed in the SNU?

THE WITNESS: Yes, ma'am.

THE COURT: Would it be fair to say that your logbook references grievances filed by Mr. Jackson during the entire time that he was housed in the SNU?

THE WITNESS: SNU. There's one from A pod. There's one in there from C pod. So it's just different locations inside the jail.

THE COURT: And if you know, and you may not, are you able to tell me, of the 28 grievances that you testified to, the time frame that that encompasses?

THE WITNESS: It's over several months.

THE COURT: Would the dates be reflected generally in your incident log?

THE WITNESS: Yes. Right next to the name, it says processed on. There's a date there.

THE COURT: Thank you so much. I appreciate it. In the event there are no more questions, you can step down.

MS. PIPAK: No more questions.

MR. JACKSON: No, Your Honor.

(Witness excused.)

THE COURT: Thank you. You can call your next witness, if you are ready to do so.

MS. PIPAK: Sure. I'm going to be calling Warden

Schouppe.

THE COURT: Mr. Schouppe, step forward, please, to be sworn.

(Witness sworn.)

THE CLERK: Please take the witness stand. State your name and spell it for the court reporter.

THE WITNESS: William J. Schouppe, S-C-H-O-U-P-P-E.

THE COURT: Warden Schouppe, if you can make sure you speak into the microphone, that would be great. Unfortunately, the chair doesn't move but the microphone does.

WILLIAM J. SCHOUPPE, a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. PIPAK:

Q. Good morning, warden. Where do you work?

A. I'm a warden at the Beaver County Jail.

Q. How long have you worked there?

A. Since 1996.

Q. Can you explain the Beaver County Jail's grievance policy?

A. The inmate gets a form that we have for the grievances. The form is then put in the mailbox on the general population units, or if it's in the SNU or RHU, they have to give it directly to an officer.

The night shift supervisor goes around and collects all of

the inmate mail and turns it into, if they're request slips or grievances, turns it in to the person who handles that within the jail who is designated for that.

In the case of the grievances, it actually goes to the captain first and then the captain will assign numbers and start the process by which it follows through until the final answer is given.

THE COURT: Warden, just for the benefit of our court reporter, if you can slow down a little bit, I'm sure she would appreciate that.

THE WITNESS: Sorry about that.

THE COURT: That's okay. We all do it.

Q. Warden, what is your involvement in the grievance process?

A. Typically, I'm the last step in the grievance process.

Q. And so that would be when an inmate appeals, they're dissatisfied with the initial response?

A. Usually, or depending on the severity of what the issue is or if it could be an issue that could end up in litigation, sometimes the captain just passes it directly to me to answer it.

Q. So there are times that you handle the first level of the grievance?

A. Correct.

Q. At that point, your decision would be final?

A. Correct.

Q. I'll give you these grievances. Warden, if I could call your attention to grievance No. 3381. Is this the grievance filed by Mr. Jackson about thermals?

A. Yes, it appears to be.

Q. And in this grievance, does Mr. Jackson complain that the thermals were not given to him in retaliation for filing other grievances?

A. I don't see anything on there about retaliation.

Q. Did you respond to this grievance?

A. Yes, I did.

Q. What was your response?

A. We do one exchange of items and there is not a way to get them washed, so we do not give them to SNU.

Q. So you denied the grievance?

A. I did.

Q. If I could turn your attention to grievance No -- the next one. Let me grab my stack.

Warden, turning back to the initial grievance about the thermals, can you explain why you gave that response?

A. In the special needs unit, linen exchanges is one shirt for one shirt, one pair of pants for one pair of pants, one pair of socks, one pair of underwear.

So if you give someone thermals, you take the thermal off of them. We don't have a way to wash it and exchange it for another one because it's one, and they are not supposed to be

purchased on the commissary. We have a special commissary list that they are not even supposed to be purchased for that unit.

Q. Your response did not involve retaliation?

A. Correct.

Q. Turning to grievance 3417.

A. I'm sorry, ma'am?

Q. 3417.

A. Okay. I have it.

Q. What's this grievance about?

A. An incident, I believe, that happened while Mr. Jackson was in the special needs unit. It involved him asking for medical assistance and how Officer Deborah Ruff responded to that.

Q. And did you answer the grievance?

A. Yes, I did.

Q. How did you respond?

A. Officer Ruff was in the hub above and she responded appropriately. She called staff and medical when it appeared you needed some assistance. It was actually around 1400 hours, and the medical staff cleared you -- oh, said you were fine. I'm sorry.

Q. And in that grievance, Mr. Jackson was not complaining that Officer Ruff's actions were retaliatory?

A. I don't believe so, but let me just read.

Q. Sure.
A. I don't see anything in there that says that he was retaliated against or he believed he was.
Q. And Mr. Jackson is not asking for more medical care in that grievance; is that correct?
A. I don't believe so.
Q. Is Mr. Jackson asking that his cell be cleaned?
A. No, I do not see that.
Q. What was the reason that you gave the response that you gave?
A. Officer Ruff did contact extra staff. She did call medical. They did respond to the situation when she felt that it was needed to have somebody respond.

She also was following a directive internally in which we had information that Mr. Jackson and another individual had made statements that they were going to take a female staff person hostage or grab one, and so she had to wait until other people responded before she could go in to the special needs unit herself.
Q. So your response was not based on retaliation?
A. Correct.
Q. And your response was not based on medical needs?
A. Correct.
Q. And your response was not based on the conditions of the cell?

A. Frankly, I never saw the cell.
Q. As Mr. Jackson had asked Captain Trkulja, it looks like you received this grievance on May 2nd and that he logged it on May 3rd. Do you know, when you received the grievance, if it had a number assigned to it at that point or --
A. This has happened occasionally. The supervisors bring the mail up front and typically sort through it and put it in my mailbox, deputy warden's mailbox and captain's mailbox and so forth.

Once in a while, they'll have a stack of all my things together and they'll put the whole stack in my box. So I had received this actually before the captain received it, and I placed it in his box, so I actually received it the day before the captain actually got it.
Q. And then you gave it to the captain?
A. I put it in the captain's mailbox, and then he assigned it a number and then it came back to me.
Q. Does this ever result in you answering -- this process where sometimes a grievance -- all the grievances are placed in one mailbox, does this ever result in you responding to a grievance twice?
A. There have probably been a couple of occasions when I have done that, yes.
Q. So this would result in two copies of the same grievance getting on to your desk twice?

A. Correct.
Q. Have you ever had any issues with inmate mail not getting to them in the jail?
A. I have had maybe a dozen times over the years where an inmate has claimed they didn't get a response from me.
Q. And in those situations, have you always given a response?
A. Typically, it comes in a grievance, and I'll answer them that I did respond to the grievance and I will send another copy of that original grievance that they asked about back to them.
Q. Okay. Did Mr. Jackson ever -- did you ever receive a grievance in which Mr. Jackson complained that he did not receive a response from you?
A. No, but I did have a conversation with Captain Trkulja about it.
Q. What was the substance of that conversation?
A. Captain Trkulja approached me that Mr. Jackson had told him he was not getting all of his grievances. The captain made the list that he returned to him of those grievances and explained to me that he was going to tell Mr. Jackson that if he needed to file a grievance and he felt he wasn't getting them, to notify him, and he would actually go pick them up.

I told the captain I thought that was a good solution.
Q. And do you know if there were any -- ever any instances where Mr. Jackson reached out to Captain Trkulja to hand in

grievances?
A. No, I do not.
Q. Did you ever receive a complaint from Mr. Jackson that officers were not giving him grievance forms?
A. No, I did not.
Q. Did you ever receive a complaint that Mr. Jackson was not able to file grievances?
A. No, I did not.

MS. PIPAK: Those are all the questions I have right now.

THE COURT: Thank you. Mr. Jackson, you may ask questions now.

CROSS-EXAMINATION

BY MR. JACKSON:
Q. Good day, Mr. Schouppe.
A. Hello, Mr. Jackson.
Q. In the inmate handbook, it says that those housed -- those that ask for grievances will submit them in the request box, and you made a statement that those are on the regular units, correct?
A. Yes, I did.
Q. Is there a reason why inmates weren't allowed to submit grievances in the SNU and RHU?
A. When we first moved into the jail in 2000, we did have boxes in those areas, and the inmates were damaging them and

breaking the doors on them, and we didn't want them to have a metal object to possibly make a weapon, so they were removed.
Q. And in the inmate handbook, it says that any regulations or changes will be posted or set out in a memorandum form.
Did you do that when you changed that policy for those housed in the SNU?
A. I do not -- to submit grievances, I do not believe we did send out a memo on that.
Q. You had also made a statement where an error sometimes occurred where grievances were placed in your mailbox or sometimes others; is that correct?
A. Yes, I did make that statement.
Q. When a grievance is submitted, is it supposed to go to the grievance coordinator per the policy at Beaver County Jail?
A. Yes, that's correct.
Q. First?
A. Yes, it is.
Q. So by your statement, there was an issue with grievances arriving to their destinations properly?
A. Over the 20 years that we have been in this building, there are probably a dozen times that happened, that I know of.
Q. But does that mean that it can occur?
A. It could occur, yes.
Q. Do you have control of the inmate -- internal inmate mail

system?
A. I'm not sure how to answer that, because I'm really supposed to be in control of everything.
Q. I'm sorry. You are right. If the grievance coordinator gets a grievance and it has a response to it and Mr. Trkulja says that he places it in the internal mail for the inmate to get it, once he does that, do you have a way of knowing if that response from that grievance actually got to me?
A. No, I do not.
Q. And how do you decide when an inmate submits a grievance, if it could be a litigation at a later date?
A. The captain uses his discretion on that, and if he decides that it's something important enough that it should come directly to me, that's when he'll send it directly to me.
Q. When the inmates housed in the SNU or RHU areas submit their grievances to an officer, how do you keep track of that grievance?
A. I actually don't.
Q. Between -- well, how would you know if -- how would you be made aware of if I give a grievance to that officer whether it actually arrived to the grievance box or not?
A. I would not know that.
MR. JACKSON: I got no further questions, Your Honor.
THE COURT: Any redirect?
MS. PIPAK: Sure.

REDIRECT EXAMINATION
BY MS. PIPAK:
Q. Warden, you said that on a rare occasion, a grievance would end up in the wrong mailbox?
A. Correct.
Q. Would those grievances be sent back through the mail?
A. Typically, if they have no number on them, they go to the captain. Then the captain starts the grievance procedure from that.
Q. On the occasion where a grievance response was given to somebody else, another inmate, the wrong inmate, would it -- would the inmate return it through the mail system?
A. Typically, if that happens, the inmate usually goes to the other inmate on the unit and gives it to him directly or takes it to the pod officer who in turn would give it to the correct person.
Q. And if an inmate believed he was entitled to a response and did not get a response, an inmate could file another grievance?
A. Correct.
Q. Complaining that they did not get their mail?
A. Correct.
Q. Or regrieving the same issue?
A. Yes.
Q. Did Mr. Jackson -- other than the grievances that you have

in which Mr. Jackson complained of specific grievances not being responded to, did he file any other grievances indicating that his grievances regarding retaliation were not responded to?
A. Not that I'm aware of.
MS. PIPAK: That's all the questions I have.
THE COURT: Thank you. Mr. Jackson, do you have anything further to ask?
MR. JACKSON: Yes, ma'am.
RECROSS-EXAMINATION
BY MR. JACKSON:
Q. You said earlier there was a special purchasing for SNU for those inmates on commissary. Can you explain that?
A. At one time, all the items that were allowed for everybody in the jail were not available on the SNU menu for commissary, so those items were limited.
Q. And is it true that when -- if I wanted to purchase commissary items, I would use the telephone?
A. Correct.
Q. And if that item was prohibited from use, I wouldn't be able to use the telephone to purchase it?
A. It should not be on the list on the phone. You are correct.
Q. Was there any rule specifically in the handbook anywhere or any memo you posted that said that inmates in the SNU are

strictly prohibited from purchasing or possessing thermals?
A. I don't remember specifically if there was a memo posted or not.
Q. There's a grievance number 03388, and can you tell me what that grievance that I wrote was in reference to?
A. Yes. You were actually grieving the grievance procedure, I believe.
Q. And can you tell me what your response was to that grievance?
A. This is the procedure, and we are getting your grievances according to Captain Trkulja.
Q. And I had submitted a grievance in with my evidence under exhibit and it had a different response than you just read. It said no, this is the process and we are not going to change it.
Do you remember making that statement?
A. Yeah, I do.
Q. That answer?
A. Yeah.
Q. Is there a reason why there's two different responses to the same grievance?
A. Well, both of them were denied, and we weren't going to change the procedure because we were getting your grievances, so it does have a little bit of a different wording to it, but it's the same response.

Q. And is it normal procedure for there to be a separate response to all the same grievances --
A. No.
Q. -- when an inmate puts a grievance in?
A. No, but I may use different wording, but it says basically the same thing.
Q. And you said no that is a process and we are not going to change it. What did you mean by that?
A. We have an established process that was working at the time, and we were not going to change that process.
Q. And where was that process -- was that process that was designated by the inmate handbook?
A. The inmate handbook and also the policy and procedure manual for the jail.
MR. JACKSON: That's it, Your Honor. No further questions.
THE COURT: Thank you. Warden, I have a couple questions for you.
THE WITNESS: Certainly.
THE COURT: The process that has been described here this morning about how inmates lodged in the SNU can file grievances, is that the standard process that is utilized for all inmates lodged in that particular part of the jail?
THE WITNESS: In the SNU and RHU units, ma'am, it is.
THE COURT: And so it was no different for

Mr. Jackson than anybody else who was lodged there at the same period of time?
THE WITNESS: That's correct.
THE COURT: And how are inmates such as Mr. Jackson advised that that is the procedure?
THE WITNESS: Usually it's the staff that tells them. If you want to file a grievance, I'll get you the form and you have to give it to me.
THE COURT: Just to confirm, an inmate can grieve a missing grievance? In other words, if someone does not receive a response, they can grieve the lack of a response?
THE WITNESS: Certainly they can, yes.
THE COURT: Are you aware of whether Mr. Jackson did so at various times?
THE WITNESS: I believe there was -- if I remember right, going through these, I think there were two of them in which he said he had not received a response, so I then responded to that grievance and then sent a copy of the response back.
THE COURT: All right. That's all I have. Thank you very much. You can step down.
(Witness excused.)
THE COURT: Are there any further witnesses that the defendants want to present here today?
MS. PIPAK: No, Your Honor.

THE COURT: All right. Thank you. Mr. Jackson, we'll turn to you at this point. You have an opportunity to testify in this matter, if you would like to do so. Would you like to do so?
MR. JACKSON: Can you explain to me what that is?
THE COURT: Sure. Of course. So you can rely on the documents that you have already filed in response to the motion for summary judgment, but you also have the opportunity here to be placed under oath and to basically provide your side of the story, any facts that you want us to be aware of, anything else that you want to bring to the court's attention.
So it's completely optional, but you have an opportunity here this morning to be able to testify, and by testify, I simply mean we would place you under oath like we've done with the other witnesses here this morning, and you could tell me and counsel for the defendants anything that you think is appropriate or relevant to the issue that we are here for today, because your burden at this point is to show that the grievance process was not available to you.
So it's your option about whether you want to provide us with further explanation or testimony about what happened and what didn't happen, or you can rely on the information that we've already received from you, but I want to stress that it's perfectly fine if you would like to testify here today. That's why we are here.

MR. JACKSON: I would like to testify, ma'am.

THE COURT: All right. I'm going to ask you to raise your right hand so that Ms. Eckenrode can swear you in.

(Witness sworn.)

THE COURT: Mr. Jackson, just as a reminder, we are here today to talk about the grievance process and your position that it was not made available to you, and so with that, you can feel free to tell us what you want to say about that.

MR. JACKSON: The Beaver County Jail administrative procedures for an inmate to file grievances are only defined in their handbook. There's nothing else that dictated anywhere else where -- how we can file a grievance or not. There's different levels, and it explains in there, like what you are supposed to do first and what the grievance coordinator will do second.

And the problem I was having in that is a lot of the grievances that I were submitting that I wanted to have filed weren't getting to their destination or the grievance coordinator.

If it got to him, a lot of them, I didn't get a response back regardless of there being a response on the grievance itself. It just never arrived to me in the mail.

There wasn't a request box that we could actually submit our grievances in, and with respect to the defendants,

there wasn't a rule change or policy that dictated that that rule would be in effect for people on SNU or not.

They had their own procedure, and they disregarded their own procedure which should make my exhaustion -- should make my grievances exhausted, even to the extent that they even admitted that they had no control over the mail system itself, so if they got a response -- if they got a grievance and they wrote a response to it and they sent it to me, if it -- if I did get it, I submitted it as evidence in my case. If I didn't get it, I specifically said I didn't get it.

Also, by handing it to the officer instead of following their own written policy would exhaust me because there's no safeguard for my grievances. Once I give it to that officer, there's no safeguard. I lose track. I couldn't maintain control of my complaint once I gave it to them.

They got no receipt system for their mail so they can't prove what date the response was sent to me or if I did put a grievance in on something.

There's no instructions in the handbook that tells me how to proceed if my grievances aren't arriving to their destinations. There's nothing written in the grievances or in the request forms I gave to the defendants that told me what to do even though I told them I was having problems, and the only response I did get was from the warden where, no, this is the process and we ain't going to change it.

The only other option I had was to tell the warden, and he was the final person to tell. If he wasn't even doing anything about it, there's nothing I could do. Only the official on-the-books policies is what I have, is my official duty to exhaust any administrative remedies, Your Honor. That's all I have to say.

THE COURT: Thank you very much, Mr. Jackson.

Ms. Pipak may have some questions for you at this time.

MS. PIPAK: Sure.

THE COURT: And then you'll have another opportunity to speak after that.

CROSS-EXAMINATION

BY MS. PIPAK:

Q. Morning, Mr. Jackson.

A. Good morning.

Q. While you were housed on the SNU, you were given grievance forms; is that correct?

A. Yes, ma'am.

Q. When you asked for them?

A. Either that or if they didn't have any, sometimes I got it from another inmate.

Q. So you were able to write a grievance?

A. Yes.

Q. And you understood the policy, even though it wasn't in

the handbook, you understand that while you were in the SNU, you had to ask for a grievance slip, fill it out and give it to a correctional officer?

A. Per the -- I understood per the policy in the handbook, and that's all I understood.

Q. Well, you filed grievances while you were in the SNU, right?

A. Yes.

Q. How did you know how to do that?

A. Either I would read the inmate handbook and follow by what that said.

Q. Well, the inmate handbook said there was a box that you would have to put the grievances in, but you complained that there was no box in the SNU?

A. Yes, ma'am.

Q. So how did you file -- how did you know how to file grievances?

A. The other inmates that was in the pod would tell me either put it in your door or take it down and put it on the flap to give it to the officers.

Q. So you learned -- go ahead.

A. That's how they said they submitted theirs, and since that was the only way I could submit a grievance besides the handbook, that's what I did.

Q. So you were able to submit a grievance while you were on

the SNU at some point?
A. I didn't submit the grievances. The officers did.
Q. You wrote a grievance and turned it in?
A. I wrote a grievance and handed it to the officer, yes, ma'am.
Q. When you were at the Beaver County Jail, when were you housed in the SNU?
A. I'm not sure at this time. I could say sometime in 2015 or '16.
Q. When did you leave the Beaver County Jail?
A. January, February of '17.
Q. After you were in the special needs unit, did you ever go back to general population?
A. No, no, ma'am.
Q. You went straight from the special needs unit to the state facilities?
A. I went from the special needs unit to suicide watch to Department of Corrections.

MS. PIPAK: That's all the questions I have.

THE COURT: Mr. Jackson, based upon the questions that you were just asked, you have an opportunity to testify further if you would like to. If there's anything further you would like to bring to my attention or talk about, this is your time to do that.

MR. JACKSON: No, ma'am.

THE COURT: All right. I have just one or two questions for you, Mr. Jackson, if I could.

At various times throughout the testimony today, we've heard that you took an opportunity from time to time to grieve when you did not receive a response to a grievance or when it appeared to be missing; is that right?

THE WITNESS: Yes, ma'am.

THE COURT: And with respect to the specific grievances that are at issue in this case, including retaliation, lack of what you believe was appropriate medical care and unsanitary conditions, is it your testimony that you filed grievances with respect to those three issues?

THE WITNESS: Yes, ma'am.

THE COURT: And did you, not having received a response -- I take it you indicate that you did not receive a response?

THE WITNESS: No, ma'am.

THE COURT: Did you grieve the lack of receiving a response on any of those three?

THE WITNESS: Once I got the last comment from the warden where he said that was the process and they wasn't going to change it, that pretty much -- I didn't know what else to do and how further to go, because I felt that they wasn't going to do anything about my grievances, and nothing was done, so I didn't do anything further.

THE COURT: So you didn't grieve what you thought were missing grievances on those three occasions?

THE WITNESS: No, except that after I did file some of those grievances on retaliation, I ended up going back and forth between suicide watch, so I left from suicide watch, so some of those, I couldn't even follow up on because I couldn't write anything, I couldn't have anything to write with, and they transferred me from there to Department of Corrections.

THE COURT: You've heard some testimony about the number of grievances that you filed, at least according to the defendants, being 28. Do you remember hearing that?

THE WITNESS: Yes, ma'am. They said I filed no less than 28 grievances.

THE COURT: And are you able to -- and I understand if you can't, so there's no right or wrong answer to this question. Are you able to tell us how many you believe that you filed? And I understand you may not have documents in front of you to tell me that, so it's okay to tell me that too.

THE WITNESS: I tried to think about this because I thought this question would come up, and I got it at 35 to 37. I didn't know the correct number of grievances after that, because by going back and forth between suicide watch and not having access to my property and legal mail and stuff, I couldn't continue any further.

THE COURT: How were you able to come up with that number?

THE WITNESS: I would write down -- sometimes I would write down, like, little notes on -- like, if I wrote a grievance about this and if I got a response back, what the response was and if I didn't like it, and then some of them, I would write the date down when I put the grievance in, and I would wait up to, like, 14 days, and I would say still received no response.

THE COURT: Have you retained records that indicate that?

THE WITNESS: I have some of them up until like the times I went off to and from suicide watch and I didn't have paper and pen and anything like that.

THE COURT: Are those records that you've provided to the defendants?

THE WITNESS: I told Mr. Michael, I think it was Mr. Lettrich. He asked me in a deposition or a letter if I had anything, and I told him I had some of the documents and I sent a list of what it was, but I don't know if I sent him a memo or something to the courts about it, but I didn't receive a response back whether he wanted copies of it or not.

THE COURT: So at this point, you are not aware that you've provided copies of those documents to counsel for the defendants?

THE WITNESS: No, ma'am.

THE COURT: Ms. Pipak, I recognize some additional things have come up. If you have further questions that you want to ask Mr. Jackson, you are free to do so.

MS. PIPAK: Sure.

RECROSS-EXAMINATION

BY MS. PIPAK:

Q. Mr. Jackson, do you recall being deposed in this matter?

A. Yes, ma'am.

Q. And that was by my colleague, Mr. Lettrich?

A. Yes, ma'am.

Q. Do you recall this testimony: Part of your lawsuit is about grievances. Mike was asking you part of your lawsuit was about grievances, and from looking at the records that I provided to you, it looks like you used that grievance procedure, I believe, 28 times. I assume that you understood how it worked.

And your answer was: I wouldn't know exactly how many grievances, but from what you gave me, those are all the grievances I submitted. There were some that I did submit that weren't in what you supplied to me, so I don't know what happened or what the disposition was when I was sent them, but I understood there was a grievance process.

Is that correct? Do you recall that testimony?

A. I'm not sure at this time, but if you could tell me what

page that was on.

Q. Sure, I'm on page 20.

A. Okay.

Q. Do you recall Mr. Lettrich asking you about what those other grievances would be?

A. Yes, ma'am.

Q. And you provided him a list of what you believe those grievances might be, correct?

A. At that time, since I didn't have anything in front of me, yes.

Q. And you did not tell him that you grieved about your -- about retaliation; is that correct?

A. As to here, it doesn't look like I did, no.

Q. And you did not grieve about needing more medical care?

A. I did grieve that, but because of the process, the problems I was having with the grievances, I guess it didn't get to the grievance coordinator, but I did grieve it.

Q. You didn't tell Mr. Lettrich that day that you had filed a grievance regarding your medical care, needing more medical care?

A. He didn't ask for that specifically, no, so I didn't tell him.

Q. Didn't he ask you what those other grievances would have been?

A. I'm assuming he did, but I didn't have all the paperwork

in front of me, so I wasn't able to tell him.

Q. Did you grieve about your cell needing cleaned or the conditions of your cell?

A. Yes.

Q. Did you -- I'm sorry. Withdrawn.

Did you tell Mr. Lettrich that you grieved about the conditions of your cell during your deposition?

A. I'm not sure if it relates to page 20.

Q. Your deposition was in December 2018; is that correct?

A. Yes, ma'am.

Q. So that would have been --

A. 2019.

Q. 2018?

A. Yeah, '18.

Q. So that would have been about a year and four months ago?

A. Yes, ma'am.

Q. So would your memory be better now than it is back in December 2018?

A. I don't know if it would be better, but my notes are in front of me now.

Q. You didn't bring the notes to the deposition?

A. No. At the time, they was having problems with the mail system, so they wasn't allowing us to bring a lot of our mail or any of our legal work up there, because there's an issue about drugs and stuff, so they didn't want to give -- me bring

my legal work up there and come back with something in it.

Q. Did you tell Mr. Lettrich that during the deposition?

A. He was already aware of the process with the mail and everything.

Q. How do you know that?

A. It was already -- it was addressed by the judge, the previous judge.

Q. But was he aware that you weren't allowed to take your notes to the deposition?

A. I don't know. I don't know if I told him in here or not that I didn't have the notes in front of me at the time, but I'm pretty sure I did tell him that inside the deposition.

Q. And how were you taking your notes to the deposition? How did that relate to the mail system at the jail?

A. I don't understand what you are saying.

Q. I believe your testimony is that you weren't permitted to bring your notes to the deposition because there were problems with the mail system at the jail; is that correct?

A. Right. What it is is any movement with legal mail, whether you are going into the visitation or whether you are going anywhere on the compound, they want it to be strictly -- it's a strict move policy or something about your legal work, so when you go up there, they don't want all your legal work with you. They just want the bare necessities.

So everything that I have when I take my legal work goes

in a box. Any time I get anything from the courts or anything goes in one complete box as I have here now. That wasn't able to be taken up there with me.
Q. Did you ask to take your notes with you?
A. I asked officers here, but they tell me no, so that doesn't help.
Q. And you said that you mailed Mr. Lettrich something about the additional grievances and your notes?
A. No. He asked me something about if I told him if I have any information or anything. He said, yeah, if you want to send it to me, mail it to me and so forth, something like that.
Q. Did you mail him that?
A. I think I sent him a letter telling him what grievances I had, that they didn't have, that they didn't supply me in discovery, and I think that was it.
Q. When would you have mailed that?
A. I would have to go back through my records in my box somewhere, but I'm pretty sure it was roughly a week or two after we took the deposition. Maybe a month.
Q. Did you retain a copy of that letter?
A. No, ma'am, I did not.
Q. And what would you have in your box that would show that you sent a letter to counsel?
A. Just me writing down on my notes that I sent a letter, so

forth and so on, about this or whatever it was about.
Q. That was made contemporaneously with you doing those things?
A. Roughly, yes, ma'am.
Q. You said that you had notes from your time at Beaver County Jail; is that correct?
A. Yes, ma'am. I have some.
Q. And when were those notes made?
A. During the times that I would submit -- like, once I had problems with the grievance, I was having problems with the grievances and I was -- started submitting grievances about retaliation and them not coming back, I started keeping logs on the grievances that I submitted.
Q. At this point, do you have copies of grievances that did not receive a response and that were not provided to you through discovery?
A. Yes, ma'am. There's a few -- there's one or two grievances, I believe, in the discovery that you sent me that have no response to them at all.
Q. Do you have additional grievances besides the documents that we provided to you that were not responded to?
A. No, ma'am, other than the -- some of the ones I did on retaliation and my cell and all that being dirty, I don't have any.
Q. Do you have copies of those grievances about retaliation?

A. There's no receipt thing at the Beaver County Jail, so I can't have a copy of it.
Q. Do you recall during your deposition saying that you might have copies of them?
A. Yes, I think he asked me about certain grievances that I had that they might not have had, if I had copies of them. I believe I said that to him, the ones that I did have.
Q. You sent those in the mail to Mr. Lettrich?
A. Yes, ma'am.
Q. When was that?
A. Roughly maybe a month, couple weeks or a month after the deposition was taken.
Q. And you would have sent those grievances along with your notes?
A. Some were request forms, not grievances, but there were grievances and request forms, and I sent what I was able to find at the time, because I didn't know if I had a time limit or anything to send it to him, so I got together what I could and sent it to him.
Q. What were those grievances? What were they about?
A. I'm not sure. I don't have a list of what they were right now. I don't think I have a list of what they were right now.
Q. So you did not retain copies of those grievances that you sent to Mr. Lettrich?
A. Some of the grievances I had, you can tell weren't copies.

They were like the originals, because they were in blue ink, and I kept some of those, and I gave him some of the original ones that I had, so I don't remember at this time which ones they were.
I know there was maybe like two grievances and like five request forms or something of that matter.
Q. Those two grievances, you do not recall what they were about?
A. No, ma'am, not at this time, no.
Q. You do not have the originals or copies of them right now?
A. They might be somewhere in this mess of legal work. I would have to go through it, but I could probably look through the discovery that he gave me and compare the ones that I have and be able to tell you which ones that y'all didn't give me in discovery and which ones that I had that weren't in the discovery.
Q. Were they included as exhibits in your motion for summary judgment?
A. I'm not sure. I don't believe. I think the only ones that -- the only stuff I utilized was already sent through discovery and what I sent to him was in that letter.
Q. Why wouldn't you have used those as exhibits to your motion for summary judgment?
A. I don't know. Maybe they didn't apply. I'm not sure at this time.

Q. So if they didn't apply, does that mean it did not -- those grievances did not involve retaliation?
A. I'm not sure at this time. I would have to look through them.
MS. PIPAK: I don't have any further questions. Go ahead.
A. I know there was one grievance that you supplied in discovery about Officer Ruff, and me worried about being retaliated by her, but that was it.
Q. What grievance was that?
A. That was -- give me a minute. 3664. This is the original. This is the original grievance right here, I believe.
Q. And what do you say about retaliation in this grievance?
A. I said first the staff didn't sign their response. Also I am definitely sure she made the above statement because I heard her and so did others. She made a further statement on 10-6-16 that she didn't work in the SNU side today because she didn't want to and that she would get us back.
I remain that the only way to rectify the situation is to move her away from our area before she has a chance to further do harm. By keeping her in this area she has a chance to seek retaliation.
Q. You weren't complaining that she might seek retaliation, correct?

A. She had the chance to seek retaliation, yes.
Q. But at that point, you weren't saying that she had retaliated against you; is that correct?
A. No. I made that statement because I know earlier, a couple months before, I remember putting in a grievance about her retaliating against me and the issues, and then this was months after the 4-28 incident, and I felt that she was still retaliating against me because of this, so I put that on there also.
Q. But you didn't mention the retaliation in this grievance, that previous retaliation?
A. No, ma'am, I did not.
Q. So this grievance was filed while you were in the SNU; is that correct?
A. Yes, ma'am.
Q. And this grievance was turned into a correctional officer, correct?
A. Yes, ma'am.
Q. And you received a response and it came back through the mail system; is that correct?
A. This one did, yes.
Q. And in this grievance, you appealed the grievance, correct?
A. Yes.
Q. And you gave it back to a correctional officer to do that?

A. Yes, or I put it in the door, whichever one, and they come by and pick it up.
Q. This grievance was submitted to the grievance coordinator or the captain and the warden?
A. I don't know. I don't know what they do with it afterwards. I'm just assuming they got it back because I got a response to it.
Q. So you did get a response to this?
A. Yes, ma'am.
MS. PIPAK: That's all the questions I have.
THE COURT: Thank you. Did you want to move Exhibit 1 into evidence, Ms. Pipak?
MS. PIPAK: Yes.
THE COURT: So it is admitted. At this point, I assume, Mr. Jackson, you don't have any further testimony to offer in this case, correct?
MR. JACKSON: No, ma'am.
THE COURT: So we can proceed with oral argument. I recognize we have been going about two hours. Does anyone need a brief break before we do that? I'm ready to proceed, but I certainly want to give you an opportunity if either party needs it.
MS. PIPAK: I'm fine. Thank you.
THE COURT: Mr. Jackson, are you okay?
MR. JACKSON: Yes, ma'am.

THE COURT: Then why don't we start with defendants, and anything you want to address, I'm happy to hear.
MS. PIPAK: Sure.
THE COURT: You can feel free to do that from wherever you are most comfortable, seated or standing.
MS. PIPAK: On the issues remaining in this case, there are retaliation claims based on Mr. Jackson's housing classification, retaliation based on an alleged false misconduct being pursued against him, retaliation based on his refusal to have thermal underwear in the SNU, his allegation that Warden Schouppe and Deputy Warden Steele Smith and Officer Tyson held his mail in retaliation for filing grievances and that he was delayed medical care and left in unsanitary conditions in retaliation for filing grievances.
He also claims that he experienced inadequate medical care and was subject to unsanitary conditions of confinement.
There's a universe of 28 grievances, and from that stack of grievances, we can see that Mr. Jackson did not file grievances relating to these issues.
While he now attempts to claim that he filed other grievances, counsel has asked Mr. Jackson and provided him the opportunity to provide us with those grievances or his notes or any proof of the same. We have not received any.
It's not possible that grievances were submitted to Captain Trkulja and not received and responded to based on the

sequential order of the logbook. There are no missing numbers in the logbook, and he received a response to every grievance he filed.

Mr. Jackson now claims that the grievance process was not available to him while he was in the SNU because it did not match the exact grievance policy set forth in the inmate handbook.

While it's not exactly as set forth in the inmate handbook, Mr. Jackson's own testimony, as well as the universe of grievances he filed while he was in the SNU, demonstrates that a grievance process was available to him while he was in the SNU, that he knew how to use it and that he was receiving the responses to his grievances.

Plaintiff does not complain that he was ever -- that he ever asked for a grievance slip and was not provided one. He had every opportunity to file grievances when necessary.

The universe of grievances shows that Mr. Jackson filed grievances relating to the meals, related to not receiving a newspaper at the time he wanted it, the TV not being turned on when he wanted it, the temperature in the cells, so we have tons of grievances filed by Mr. Jackson, but he asks the court to find that the very grievances in this matter are suspiciously missing, and that just doesn't make sense given the testimony we've heard today.

THE COURT: Thank you very much. I appreciate that.

Mr. Jackson, do you have some final argument that you would like to make?

MR. JACKSON: Yes, ma'am. Beaver County Jail has a policy set up for grievances on how to submit grievances. They never stated that, you know -- again, like I said earlier, they never stated whether the grievances or how you submit them were changed in the inmate handbook, and the only thing that I'm supposed to be following is what the inmate handbook states. Not what another officer tells me on the block. Not what another inmate tells me on the block.

Unfortunately for the situation, I had no choice but to hand them to an officer. Now, whether they say they don't have copies of grievances that I submitted for retaliation or for any of the other issues, it's not my fault because the policy wasn't followed. I submitted those grievances.

They even stated that some of those grievances that should have went to the grievance coordinator went to other mailboxes, so apparently my grievances could have disappeared. They could have got thrown out. Anything could have happened to them.

I'm not saying that every officer that I had to hand them to or took them did that, but something happened. There's something in there that shows that my grievances didn't arrive to their destination.

You can see that I filed no less than 28 grievances

and I didn't attempt to evade the grievance process, right, but that's irrelevant whether my efforts to submit grievances were obstructed or not or whether they never returned to me in the mail because they don't have a grievance, they don't have a logbook or policy that states, oh, this grievance was sent to this inmate on this date, and I know he got the response to this grievance, and they didn't follow up on it to say, yes, you did get a response to this grievance, and this is who gave it to you and this is why you got it.

Pretty much everything else I pled earlier today and in my response to summary judgment, Your Honor.

THE COURT: Thank you very much, Mr. Jackson. I appreciate that. Let me just note that I appreciate everyone's efforts here this morning in connection with this hearing.

I don't believe we have any other matters that we need to take up at this time, unless counsel or Mr. Jackson tell me differently.

We will review all of the testimony and the evidence that was previously submitted to us so that we can resolve this threshold issue.

So, Mr. Jackson, that concludes our hearing. I want to thank you for your attention throughout. And with that, court is adjourned. Thank you.

(At 11:36 a.m., the proceedings were adjourned.)

C E R T I F I C A T E

I, BARBARA METZ LEO, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled case.

\s\ Barbara Metz Leo 04/06/2020
BARBARA METZ LEO, RMR, CRR Date of Certification
Official Court Reporter

I N D E X

EXHIBIT F(1)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LENA DAVENPORT, an adult individual, Plaintiff, vs. BOROUGH OF HOMESTEAD, a Municipal Corporation, et al., Defendants.	)))))))))	Civil Action No. 2:13-cv-00250-SHS Judge Sidney H. Stein

DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE THE EXPERT TESTIMONY OF ROY R. BEDARD

Defendants City of Pittsburgh and Officer Thomas Gorecki respectfully submit this Motion *in limine* to exclude the expert testimony of Roy R. Bedard.

1. Plaintiff disclosed the supposed expert testimony of Roy R. Bedard. (See ECF No. 57). Additionally, Mr. Bedard has provided an Addendum to his original report dated August 9, 2018.

2. However, based on Plaintiffs expert disclosure and expert report, the opinions Mr. Bedard intends to render as an "expert" do not meet the minimum standards for expert testimony under the Federal Rule of Evidence (FRE) 702.

3. Mr. Bedard asserts that he is qualified as an expert in Police Use of Force by the Florida Department of Law Enforcement. However, his qualifications fall short of *Daubert* standards, and his opinions extend far beyond what limited expertise he may have. Additionally, the methodology and factual basis for his opinions are unsound, and does meet the minimum standards for admission of expert testimony under Rule 702 in that: it will not assist the trier of fact; it is not based on sufficient facts or data; it is not the product of reliable principles and methods; and he has not reliably applied any such principles or methods to the facts of the case.

4. Pursuant to FRE 702, and for the reasons set forth in the Brief in Support of this Motion, the Defendants move the Court to exclude any "expert" opinions of Mr. Bedard.

5. A proposed order is attached.

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LENA DAVENPORT, an adult individual, Plaintiff,	)	
	)	Civil Action No. 2:13-cv-00250-SHS
vs.	)	
	)	Judge Sidney H. Stein
BOROUGH OF HOMESTEAD, a Municipal Corporation, et al., Defendants.	)	

PROPOSED ORDER

AND NOW, this _____ day of _____ 2018, upon consideration of Defendants City of Pittsburgh and Officer Thomas Gorecki's *Daubert* Motion to exclude the expert testimony of Roy R. Bedard and Plaintiff's response thereto, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED. The expert testimony of Roy B. Bedard is hereby excluded.

_____
Sidney H. Stein
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LENA DAVENPORT, an adult individual, Plaintiff,	)	
	)	Civil Action No. 2:13-cv-00250-SHS
vs.	)	
	)	Judge Sidney H. Stein
BOROUGH OF HOMESTEAD, a Municipal Corporation, et al., Defendants.	)	

DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION *IN LIMINE* TO EXCLUDE THE EXPERT TESTIMONY OF ROY R. BEDARD

Defendants City of Pittsburgh and Officer Thomas Gorecki respectfully submit the following Brief in Support of their Motion to exclude the expert testimony of Mr. Roy R. Bedard.

I. Introduction

Plaintiff filed Mr. Bedard's expert report on June 19, 2014. ECF No. 57. Thereafter, Defendant officers appealed the District Court's decision denying them qualified immunity. On August 29, 2017, the Third Circuit entered a judgment instructing the district court to enter summary judgment on the basis of qualified immunity in favor of Officers Schweitzer, Matakovich, and Kennedy. (ECF No. 153). Following the Third Circuit's judgment and pursuant to the parties' Stipulation (ECF No. 181), Plaintiff served Defendant, City of Pittsburgh, with an "Addendum of Report" dated August 9, 2018. ECF No. 185-4.

The United States Court of Appeals for the Third Circuit has held that Federal Rule of Evidence 702 "embodies a trilogy of restrictions on expert testimony: qualification, reliability, and fit. *Schneider ex rel. Estate of Schneider v. Fried*, 320 F.3d 396, 404 (3d Cir. 2003) (citations omitted); *see also Hartle v. FirstEnergy Generation Corp.*, 7 F. Supp. 3d 510, 514 (W.D. Pa. 2014). Additionally, the Supreme Court's landmark decision in *Daubert* emphasized the role of

district courts as gatekeepers to "ensur[e] that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993).

Federal Rule of Evidence 702 governs the admission of expert testimony. It provides:

> If scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) and the expert has reliably applied the principles and methods to the facts of the case.

Fed.R.Evid. 702. *See also Daugherty v. Graves*, 2013 WL 501670 (E.D. Tenn. Feb. 8, 2013).

In *Daubert*, the Supreme Court held that Rule 702 requires that expert testimony or evidence satisfy three requirements before it is admissible: (1) the witness must possess specialized expertise (i.e., be qualified as an expert); (2) the proposed testimony or evidence must be supported by appropriate validation (i.e., the evidence must be reliable); and (3) the proffered evidence must be relevant to assist the trier of fact to understand the evidence or determine a fact in issue (also referred to as the "fit requirement"). *See also Schneider v. Fried*, 320 F.3d 396, 404 (3d Cir. 2003). Mr. Bedard's proposed "expert" testimony is inextricably linked with an unreliable basis because his testimony is undermined by the Third Circuit's holdings, it is rife with legal conclusions and does not meet the requirements as outlined above.

II. Argument

Mr. Berdard's opinions are rife with legal conclusions and should therefore be inadmissible. Under *Daubert*, the trial court must engage in a two-step inquiry. First, the Court must determine whether the proffered "expert" is qualified to express an expert opinion, and second, the proffered expert opinion must be "reliable." Under Federal Rule of Evidence 704, an expert may give an

opinion which embraces an ultimate issue to be decided by the trier of fact. However, the issue embraced must be a factual one. Nonetheless, Mr. Bedard opines that (1) Officer Schweitzer and the other Officers who fired their weapons violated a police policy and used force in an objectively unreasonable manner, (2) Officer Gorecki had "no legitimate police purpose" to fire his weapon, (3) the injuries suffered were "excessive, unreasonable, and unnecessary," and (4) the injuries were the "proximate" cause of the "failure to properly train" officers.

The foregoing are legal opinions, based on facts as Mr. Bedard has interpreted them. These opinions weigh the evidence, find the facts, and apply the law, as Mr. Bedard sees it. These opinions do not assist the jury. Mr. Bedard's has merely provided his slant on the facts and has offered advocacy-based interpretation of facts that are already in the record. Thus, the key requirement of FRE 702 mandating that the evidence provided by an expert must assist the trier of fact determine a fact in issue has been overstepped.

Additionally, Mr. Bedard's Addendum was provided four years after his initial report and the Addendum was provided a year after the Third Circuit's judgment. Yet Mr. Bedard's report still contains legal conclusions and opinions as to officers who were already granted qualified immunity – specifically on the grounds that they did not violate Plaintiff's Fourth Amendment rights, let alone violate clearly established law. Mr. Bedard's opinions as to the use of force of Schweitzer, Matakovich, and Kennedy squarely contradicts the holding of the Third Circuit in this case, which is now law of the case. Among other things, as the Third Circuit described, "[v]ideo evidence indisputably shows a heavy pedestrian presence during the course of the pursuit" and "throughout the pursuit Burris continuously swerved between inbound and outbound lanes, which ultimately led to his colliding with three other vehicles." *Davenport v. Borough of Homestead,* 870 F.3d 273, 280 (2017). Thus the Court of Appeals held that the use of force by Officers Schweitzer,

Matakovich, and Kennedy in firing their weapons was objectively reasonable and did not violate Plaintiff's Fourth Amendment rights: "Considering the serious threat of immediate harm to others, no reasonable jury could conclude that the officers fired at the vehicle for any reason other than to eliminate that threat. . . . Given the serious threat of immediate harm to East Carson Street's many pedestrians, even if the officers knew that a passenger was in the vehicle, their conduct was objectively reasonable as a matter of law." *Id*. at 280. Allowing the jury to hear testimony from Mr. Bedard that contradicts or otherwise refuses to take account of this holding would be misleading to the jury and would unfairly prejudice Defendants. Thus his opinions to the contrary should not be admitted.

In addition, his opinion as to the City of Pittsburgh's *Monell* liability expressly rests on his opinions of the collective actions including the above officers' conduct, and his opinion that collectively they – and the City as a result -- violated Plaintiff's Fourth Amendment rights. For instance, Opinion No. 11 in his Addendum states: "11. The collective actions of all officers that fired at or into the Burris vehicle suggests a lack of training endemic to the organization. Either all of the officers were trained to fire at vehicles, or none of them were." *See also* Opinion Nos. 2 and 3 ("2. The sound of gunfire which triggered the contagious gunfire led to a cascading event brought about by Officer Schweitzer's violation of policy and failure to describe the circumstances to other officers on the scene. 3. All gunfire should have been avoided."). Mr. Bedard's proffered expert testimony is inextricably premised on an understanding of the Officers' actions that is incompatible with the Third Circuit's holding, as when he opines: "It remains apparent from taking the actions of the officers collectively, that the City of Pittsburgh police department failed to properly train its officers in the Constitutional limitations for the use of Deadly force. As previously described in my initial report each officer that fired at Burris did so against strong policy, accepted training

standards and common-sense mandates." These opinions cannot be reconciled with the Third Circuit's holding that the officers' use of force was constitutional, and therefore admitting such opinion testimony or opinion testimony premised on such a flaw, should not be allowed.

Ultimately, Mr. Bedard's opinions match what some courts interpret as "advocacy-based interpretation" and should therefore be inadmissible. *See Daughtery v. Graves*, 2013 WL 501670 (E.D. Tenn. Feb. 8, 2013) (finding Mr. Bedard's opinions rife with legal conclusions and inadmissible); *Yancey v. Carson*, 2007 WL 3088232 (E.D. Tenn. Oct. 19, 2007) (finding expert report inadmissible the report is "more in the nature of an attorney's closing argument' and that the opinions were "merely based on the use of selected testimony"); *Fischer v. Ciba Specialty Chemicals Corp.*, 238 F.R.D. 273, 281 (S.D. Ala. 2006) (finding expert's report "not… an expert report at all, but rather as written advocacy by a lawyer").

III. Conclusion

Defendants City of Pittsburgh and Officer Thomas Gorecki therefore respectfully request that Plaintiff's expert testimony be ruled inadmissible as it is outside the bounds of FRE 702 and contradicts the holdings of the Third Circuit in this case.

Respectfully Submitted,

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EXHIBIT F(2)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA, ERIE DIVISION

RHONSHAWN JACKSON, Plaintiff, v. PENNSYLVANIA DEPARTMENT OF CORRECTIONS and SARGENT O'BRIEN, Defendants	Case 1:16-cv-00133-SPB Judge Susan Paradise Baxter JURY TRIAL DEMANDED

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE

Regardless of whether 42 U.S.C. § 1997e(e)'s damages limitation applies in a First Amendment retaliation case,[1] evidence of the emotional value of Jackson's lost property is relevant to his claim that Defendant O'Brien retaliated against him by destroying the same. Jackson lost various legal papers including a yet-to-be-filed lawsuit with attached prisoner affidavits that he was unable to replace and file. He also lost photographs of deceased family members with whom he was very close. As Judge Conti carefully analyzed in *Jacobs v. Pa. Department of Corrections*, No. 04-1366, 2011 U.S. Dist. LEXIS 60869, at *56 (W.D. Pa. June 7, 2011) a jury may consider the intangible value that lost property held to a particular Plaintiff even where the property's market value is *de minimis*. In *Jacobs*, the Court upheld a $25,000 award for property damages for the plaintiff's lost legal papers as not "so grossly excessive to shock the judicial conscience" and not violative of the PLRA's limitations on emotional distress damages. *Id.* Judge

[1] Numerous federal circuits have recognized that a deprivation of First Amendment rights is a cognizable injury giving rise to a claim for compensatory damages irrespective of the PLRA's damages limitations. *See, e.g., Aref v. Lynch*, 833 F.3d 242, 264 (DC Cir. 2016); *Cassidy v. Ind. Dep't of Corr.*, 199 F.3d 374, 375-77 (7th Cir. 2000); *Rowe v. Shake*, 196 F.3d 778, 781 (7th Cir. 1999). In , *King v. Zamiara*, 788 F.3d 207, 213-214 (6th Cir. 2015), *cert. denied*, 577 U.S. 1062 (2016), the court held that a jury may presume compensatory damages for violations of a prisoner's First Amendment rights irrespective of the PLRA. *See also Wilcox v. Brown*, 877 F.3d 161, 169 (4th Cir. 2017) (same).

Conti based this ruling on a long line of Pennsylvania authority recognizing the recoverability of emotional value for lost items of property. *Id. See also Rauso v. Vaughn,* CIVIL ACTION No. 96-6977, 2000 U.S. Dist. LEXIS 9035, at *17 (E.D. Pa. June 26, 2000) (quoting Robinson v. Page, 170 F.3d 747, 748 (7th Cir. 1999) ("Section 1997e(e), as its wording makes clear, is applicable only to claims for mental and emotional injury. It has no application to a claim involving another type of injury").

It is impossible to separate the emotional value of Jackson's property from the emotional distress that he experienced when O'Brien wrongfully destroyed it. It is long established that a plaintiff should not be required to "try the case in a vacuum of the Defendant's design." *In re Diet Drugs Prods. Liab. Litig*., 369 F.3d 293, 301-302 (3d Cir. 2004).

The emotional value of Jackson's lost property and the distress he experienced from losing it is also relevant to the jury's consideration of punitive damages. In assessing reprehensibility factor of *BMW of North America, Inc., v. Gore,* 517 U.S. 559 (1996), it is appropriate to "consider the effects of the tortfeasor's conduct on the victim's mentality, not just his pocketbook." *Exxon Valdez v. Exxon Mobile Corp. (In re Exxon Valdez),* 490 F.3d 1066, 1086 (9th Cir. 2007). The Ninth Circuit in *In re Exxon Valdez* went on to explain that the jury could appropriately consider the emotional distress caused by the oil spill in assessing punitive damages because a defendant's "reprehensibility goes considerably beyond the mere careless imposition of economic harm." *Id.*[2]

[2] *See also Sampson v. Lambert,* No. 8:07CV155, 2014 U.S. Dist. LEXIS 44998, at *13 (D. Neb. Mar. 31, 2014), holding that the fact that plaintiff "suffered and continues to suffer emotional distress" was one of several factors that "demonstrates the extreme reprehensibility of the defendant's conduct," supporting an award of punitive damages; *Manzo v. Sovereign Motor Cars, Ltd.*, 08-cv-1229 (JG) (SMG), 2010 U.S. Dist. LEXIS 46036, 2010 WL 1930237, at *5 (E.D.N.Y. May 11, 2010) (upholding a $200,000 punitive damages award where the defendant's harassing conduct was not violent, but also was not an isolated incident and caused the plaintiff significant emotional distress).

There is no prejudice to O'Brien from Jackson introducing the emotional distress that he suffered as a result of the wrongful destruction of his property. If necessary, this issue can be addressed in the jury instructions and on post-trial motions.

Respectfully submitted:

Dated: October 19, 2021

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EXHIBIT F(3.1)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMY BRANCH, Plaintiff, v. MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL, Defendant.	)	Civil Action No. 17-777 Judge Peter J. Phipps

DEFENDANT MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL'S MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF SHAWN LEWIS

AND NOW, comes Defendant Megan J. Brennan, United States Postmaster General by and through her attorneys, Scott W. Brady, United States Attorney for the Western District of Pennsylvania, and Kezia O. L. Taylor, Assistant United States Attorney, moves the Court to exclude the testimony of Shawn Lewis at trial.

A brief in support of this motion is filed simultaneously herewith and is incorporated herein by reference.

WHEREFORE, Defendant Megan J. Brennan, United States Postmaster General, respectfully requests that the Court exclude the testimony of Shawn Lewis at trial.

Dated: August 2, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and correct copy of the foregoing *DEFENDANT MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL'S MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF SHAWN LEWIS* was served electronically on the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMY BRANCH, Plaintiff, v. MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL, Defendant.	)	Civil Action No. 17-777 Judge Peter J. Phipps

ORDER

AND NOW, this _____ day of _____, 2019, upon consideration of the Motion in Limine to exclude the testimony of Shawn Lewis, filed by Defendant Megan J. Brennan, United States Postmaster General, upon consideration of any response thereto,

IT IS HEREBY ORDERED that Defendant's Motion is **GRANTED**, and Plaintiff is hereby precluded from introducing the testimony of Shawn Lewis at trial.

BY THE COURT:

_____
UNITED STATES DISTRICT JUDGE

cc: All parties of record

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMY BRANCH, Plaintiff, v. MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL, Defendant.	)	Civil Action No. 17-777 Judge Peter J. Phipps

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF SHAWN LEWIS

Plaintiff Amy Branch's sole surviving claim in this case is one of race discrimination arising out of her May 11, 2012 discharge from employment from the United States Postal Service ("Postal Service"). Defendant Megan J. Brennan, United States Postmaster General, United States Postal Service ("Defendant"), intends to demonstrate at trial that Ms. Branch was properly and lawfully discharged from her employment after she threatened violence against a supervisor in violation of the Postal Service's Zero Tolerance Policy against workplace violence.

In the Joint Witness and Exhibit List, Plaintiff identifies Shawn Lewis as an individual whom she intends to call to testify at trial. *See* ECF No. 86 (Joint Witness and Exhibit List). Ms. Lewis was not involved in Plaintiff's termination, and thus has no information related to Plaintiff's claim of race discrimination. Nonetheless, Plaintiff has indicated that she intends to call Ms. Lewis to testify about two subjects: (1) her allegedly witnessing an incident between Jason Best and Plaintiff; and (2) the Postal Service's alleged "treatment of African-Americans." For the reasons set forth below, Defendant respectfully moves to preclude Ms. Lewis's proposed testimony pursuant to Rules 401, 402 and 403 of the Federal Rules of Evidence.

ARGUMENT

Rule 401 of the Federal Rules of Evidence provides that evidence is "relevant" to a plaintiff's claim if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Evidence that is not relevant should be excluded under Rule 402 of the Federal Rules of Evidence. Fed. R. Evid. 402; *see* Advisory Committee Note to Rule 402 (provision that evidence which is not relevant is not admissible is "a presupposition involved in the very conception of a rational system of evidence"). Further, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403.

A. Shawn Lewis's Testimony Related to Jason Best is Inadmissible.

Based on Plaintiff's offer of proof, it is Defendant's understanding that Plaintiff intends to call Ms. Lewis to testify regarding an alleged incident between Plaintiff and Jason Best. *See* ECF No. 86 at p. 2 (stating that Ms. Lewis would testify of "her witnessing of the Jason Best incident"). For the reasons set forth below, Ms. Lewis's testimony regarding Jason Best is irrelevant and should be excluded.

1. Jason Best Is The Same Race as Plaintiff and Thus Is Not a Proper Comparator in This Race Discrimination Case.

Courts have long recognized that a plaintiff may support a claim of discrimination by showing that "the employer has treated more favorably similarly situated persons not within the protected class." *Jones v. School Dist. of Philadelphia*, 198 F.3d 403, 413 (3d Cir. 1999) (citing *Simpson v. Kay Jewelers, Div. of Sterling, Inc.*, 142 F.3d 639, 645 (3d Cir. 1998)). Any such

comparator, however, "must be a similarly situated individual who does not share the plaintiff's protected characteristic and was treated differently than the plaintiff in similar circumstances." *Boyer v. City of Philadelphia*, No. CV 13-6495, 2019 WL 920200, at *12 (E.D. Pa. Feb. 25, 2019) (emphasis added) (finding that when the alleged "comparator" in a race discrimination claim is "of the same race as plaintiff," he or she "is not an appropriate comparator."). In other words, "[a] comparator is, by definition, a similarly situated person not within the protected class that the employer has treated more favorably." *DeCarolis v. Presbyterian Med. Ctr*., No. 11-CV-1422, 2012 WL 12860872, at *10 (E.D. Pa. Aug. 20, 2012), *aff'd sub nom. DeCarolis v. Presbyterian Med. Ctr. of Univ. of Pennsylvania Health Sys*., 554 F. App'x 100 (3d Cir. 2014)) (emphasis in original).

Given that a "comparator" is, by definition, not within the same protected class as the plaintiff, courts uniformly hold that, as a matter of law, an individual of the same race as a plaintiff in a race discrimination case cannot be an appropriate "comparator." *See, e.g., Felix v. Albert Einstein Healthcare Network*, No. CIV.A. 09-3750, 2012 WL 525893, at *7 (E.D. Pa. Feb. 17, 2012) ("Considering that all five positions were filled by individuals of the same race as Mr. Felix, . . . Mr. Felix has failed to satisfy his prima facie burden on his race discrimination claim."); *accord Batts v. Fulton DeKalb Hosp. Auth.*, No. 1:07-CV-150-BBM, 2008 WL 11337680, at *1 (N.D. Ga. Nov. 12, 2008) ("In her attempt to establish that others had violated the same rules, and were treated differently, Ms. Batts offered comparators who were both of her same race, and therefore cannot serve as comparators for her race claims.") (citing *Holifield v. Reno*, 115 F.3d 1555, 1562 (11th Cir. 1997)); *Johnson v. City of Chicago Bd. of Educ*., 142 F. Supp. 3d 675, 691–92, 2015 WL 6701767, at *12 (N.D. Ill. Nov. 2, 2015) (plaintiff in race discrimination case cannot assert

that employees of the same race are "comparators," since the statute requires that comparators be employees not in the protected class) (citing *Mintz v. Caterpillar, Inc*., 788 F.3d 673 (7th Cir. 2014)); *Moore v. Kingsbrook Jewish Med. Ctr.*, No. 11-CV-3625, 2013 WL 3968748, at *10 (E.D.N.Y. July 30, 2013) ("[The] [p]laintiff's argument that his termination was a result of racial or national origin animus would be discredited because his alleged comparators . . . are of the same race and national origin as [the] [p]laintiff and neither was terminated.").

Here, in light of the undisputed fact that Jason Best is the same race as Plaintiff, *see* Exhibit B (Plaintiff's Dep. Tr. at 65:18-19), he cannot serve as a "comparator" to establish either: (1) that Plaintiff was terminated in circumstances giving rise to an inference of discrimination, or (2) that the basis for her termination was pretext. Accordingly, Ms. Lewis's testimony related to Jason Best does not, as a matter of law, support Plaintiff's claim of race discrimination. Indeed, if anything, evidence of the Postal Service's allegedly "favorable" treatment of Jason Best undermines Plaintiff's claim, as courts have held that an "employer's favorable treatment of other members of a protected class can create an inference that the employer lacks discriminatory intent." *Ansell v. Green Acres Contracting Co*., 347 F.3d 515, 524 (3d Cir. 2003) (emphasis added); *see also Pivirotto v. Innovative Sys., Inc*., 191 F.3d 344, 354 (3d Cir. 1999) ("The fact that a female plaintiff claiming gender discrimination was replaced by another woman might have some evidentiary force and it would be prudent for a plaintiff in this situation to counter (or explain) such evidence."); *Henny v. New York State*, 842 F. Supp. 2d 530, 555 n.24 (S.D.N.Y. 2012) (holding that the existence of other African–American employees who were not terminated "undermine[d] any inference that [the] [d]efendants [fired the plaintiff] based on discriminatory animus against African–Americans"); *Harmon v. Runyon*, No. 96-CV-6080, 1997 WL 786383, at

*5 (S.D.N.Y. Dec. 19, 1997) (holding that because all of the comparators identified by the plaintiff were of the same race as of the plaintiff, the "[p]laintiff [could not] claim, therefore, that employees outside the Title VII protected classes were treated differently than those within the protected classes").

In short, because Mr. Best is the same race as Plaintiff, he is not an appropriate "comparator" in this race discrimination case. Accordingly, Ms. Lewis's testimony related to Mr. Best should be excluded as irrelevant.

2. Jason Best Is Not Similarly-Situated to Plaintiff as His Alleged Conduct Was Different From Plaintiff's and He Was Evaluated by Different Decision-Makers.

Additionally, and in support of excluding Ms. Lewis's testimony on this point, Jason Best is not an appropriate comparator because he is not "similarly situated" to Plaintiff. In response to a motion in limine, a court can exclude comparator evidence where the individuals are not similarly situated and thus the testimony and evidence about them is either irrelevant or, if probative, substantially outweighed by a danger of confusing the issues or misleading the jury. *See* Fed. R. Evid. 401, 403; *see also Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379 (2008) ("[Q]uestions of relevance and prejudice are for the District Court to determine in the first instance"). Specifically, when a proffered comparator employee does not share the same position or supervisor as plaintiff, is subject to different terms and conditions of employment, or does not engage in the same conduct as plaintiff, evidence regarding the comparator's employment and disciplinary record simply is not relevant to a disparate treatment claim. As one court explained:

> Where a plaintiff claims that he was disciplined by his employer more harshly than a similarly situated employee based on some prohibited reason, a plaintiff must show that he is similarly situated with respect to performance, qualifications and conduct. Such a showing normally entails establishing that 'the two employees dealt with the same supervisor, were subject to the same standards, and had engaged in similar conduct without such differentiating or mitigating circumstances as

> would distinguish their conduct or the employer's treatment of them.' Requiring that the plaintiff establish these similarities is simply common sense, as 'different employment decisions, concerning different employees, made by different supervisors ... sufficiently account for any disparity in treatment, thereby preventing an inference of discrimination.'"

Snipes v. Illinois Department of Corrections, 291 F.3d 460, 463 (7th Cir. 2002)(citations omitted) (emphasis added); *Vukoson v. Bechtel Bettis, Inc*., 124 F. App'x 716, 718 (3d Cir. 2005) (holding that purported comparators in age discrimination claim were not similarly situated to the plaintiff where they were under the control of different supervisors and did not engage in identical conduct) (emphasis added); *Boyer*, 2019 WL 920200, at *4 ("[T]he Court concludes that none of plaintiff's proposed comparators are 'similarly situated' and that evidence of plaintiff's proposed comparators must be excluded because it is irrelevant under Federal Rule of Evidence 401."); *Bullock v. Children's Hosp. of Phila*., 71 F. Supp. 2d 482, 489-90 (E.D. Pa. 1999) ("To be deemed similarly situated, the individuals with whom a plaintiff seeks to be compared must have engaged in the same conduct without such differentiating or mitigating circumstances that would help distinguish their conduct or the employer's treatment of them for it.").

Here, the undisputed record evidence demonstrates that Jason Best and Plaintiff are not similarly situated. As the records show, Plaintiff threatened to "fuck up" a supervisor. *See* ECF No. 34-3 (Termination Memo and Note of Incident). Plaintiff's co-worker, Sandra Roberts, reported Plaintiff's threat of violence to a manager, Richard Gurneal, who terminated Plaintiff, finding that her conduct violated the Postal Service's Zero Tolerance Policy against workplace violence. *See id*. At the time of her termination, Plaintiff was a "casual employee" not covered by any collective bargaining agreement, and thus, she could be discharged at any time for any

lawful reason, or no reason at all, without recourse to any grievance and arbitration mechanism. See ECF No. 34-1 ("PS Form 50"); see also ECF No. 34-2 ("ELM Section 432 – Definitions").

The circumstances related to Jason Best are entirely different, and involved a completely different supervisor. With respect to Jason Best, the record shows that Plaintiff complained to her supervisor, Marion Keefer, that Jason Best threatened to hit her with equipment. Plaintiff's Dep. Tr. at 65:2-8; *see also* Exhibit A, EEO Investigative Affidavit of Marion L. Keefer ("Keefer Aff.") at p. 4. Ms. Keefer investigated Plaintiff's allegations, and, in doing so, determined that Mr. Best did not threaten to hit Plaintiff, but rather told Plaintiff that she needed to get out of the way during dispatch so that she would not get hit. *See* Exhibit A, at pp. 5-6. After investigating the matter, Ms. Keefer determined that Mr. Best had not threatened Plaintiff, and thus did not violate the Postal Service's Zero Tolerance Policy. *Id.* At that time, Jason Best was a full-time Postal Service employee subject to, and protected by, the terms of the CBA. Plaintiff's Dep. Tr. at 98:21-25.

Based on these facts, it is clear that Jason Best and Plaintiff are not similarly situated. First, as noted, Jason Best was, at the time of the incident, a full-time Postal Service employee with a panoply of rights under the CBA, whereas Plaintiff was a "casual employee" with no such rights. Indeed, by Plaintiff's own admissions, Jason Best is "protected" by the union, while she was a "casual" employee "with no protection." Plaintiff's Dep. Tr. at 98:24-25. As the Court of Appeals for the Third Circuit has explained, when analyzing whether two employees are similarly situated, courts must consider differences in the employees' respective tenure and union status. *In re Tribune Media Co.*, 902 F.3d 384, 403 (3d Cir. 2018) ("Younge and Schultz were not similarly situated in this context. While Younge was a seasonal, non-union employee,

Schultz was a full-time, union employee who had been with WPHL since 1972. Accordingly, their tenure and status at the station are not comparable, and the station's failure to give Younge a severance does not indicate its reasons for discharging him were pretextual."); *Blanding v. Pennsylvania State Police*, 12 F.3d 1303, 1309 (3d Cir. 1993) (finding that the plaintiff, a probationary state trooper who had served less than one year, was not similarly situated to tenured troopers who had served 15 and four years, respectively); *see also Ramanna v. Cty. of Beaver*, No. CIV A 05-1738, 2008 WL 4204713, at *8 (W.D. Pa. Sept. 11, 2008) (unpublished) (finding that lieutenants and deputies are not similarly situated, in part, because deputies were subject to a collective bargaining agreement and lieutenants were not); *Robinson v. Caterpillar Logistics Servs., Inc.*, No. 1:10-CV-0876, 2012 WL 244937, at *7 (M.D. Pa. Jan. 26, 2012) (holding that a purported comparator is not similarly situated to a plaintiff because the purported comparator is a "regular, full-time employee with rights under the Union Collective Bargaining Agreement," whereas the plaintiff was a "supplemental employee with no rights under the Agreement").

Furthermore, as discussed above, the conduct at issue in Jason Best's case is entirely different from the conduct that led to Plaintiff's termination. With regard to Jason Best, Ms. Keefer determined that he did not threaten Plaintiff but rather told her that she needed to get out of the way of heavy equipment. In contrast, Mr. Gurneal determined, based on Sandra Roberts' statement, that Plaintiff had threatened to "fuck up" a supervisor. Moreover, the relevant supervisors were not the same, as Ms. Keefer was the decision-maker in the Jason Best incident and Mr. Gurneal was the decision-maker in Plaintiff's case. Based on these differences, it is clear that Plaintiff and Jason Best are not similarly situated for purposes of her race discrimination claim.

Accordingly, Ms. Lewis's testimony related to Mr. Best is irrelevant and should be excluded under Rules 401 and 402 of the Federal Rules of Evidence.

3. Ms. Lewis's Testimony Related to Jason Best Should Be Excluded As Any Probative Value Is Substantially Outweighed by a Danger of Confusing the Issues or Misleading the Jury.

For the reasons stated above, Ms. Lewis's testimony related to Jason Best is irrelevant. However, even if the Court finds that it has some probative value, it still should be excluded pursuant to Rule 403 of the Federal Rules of Evidence. Here, any minimal probative value that evidence related to Jason Best may have is plainly outweighed by the danger of unfair prejudice to Defendant, as well as considerations of undue delay and waste. The introduction of such evidence would lead inevitably to a "mini-trial" related to the Postal Service's investigation and treatment of Jason Best. Such evidence has nothing to do with Plaintiff's termination, and thus would not only prejudice Defendant and waste the Court's valuable time and resources, it would also divert the jury's focus from the sole issue in this case – *i.e.*, whether Plaintiff has demonstrated that she was terminated on the basis of race.

For these reasons, Defendant respectfully requests that Ms. Lewis be precluded from testifying about the incident between Jason Best and Plaintiff at trial.

B. Plaintiff Has Not Demonstrated that Shawn Lewis's Proposed "Me Too" Evidence is Admissible.

In her Status Report filed on August 1, 2019, Plaintiff added, for the first time, a new subject about which Ms. Lewis may testify if called as a witness at trial. Specifically, Plaintiff testified that Ms. Lewis may "provide testimony regarding her observations of the treatment of

African-Americans at the Post Office."[1] ECF No. 92. However, as set out below, Plaintiff has not met her burden of showing that this so-called "me too" evidence is admissible.

The Supreme Court held recently that evidence offered in an ADEA discrimination case concerning purported comparators with different supervisors is neither per se admissible nor per se inadmissible, and opined: "[t]he question of whether evidence of discrimination by other supervisors is relevant in an individual ADEA case is fact based and depends on many factors, including how closely related the evidence is to the plaintiff's circumstances and theory of the case." *Mendelsohn*, 552 U.S. at 388. Significantly, on remand, the District Court determined that "me too evidence" that is not temporally proximate and falls outside the plaintiff's supervisory chain of command was properly excluded. *Mendelsohn v. Sprint/United Management Co*., 587 F. Supp. 2d 1201, 1204 (D. Kan. 2008); *accord Veliz v. City of Minneapolis*, No. 07-2376, 2008 WL 4544433, 1 (D. Minn. Oct. 9, 2008) (excluding evidence where "the retaliatory statements allegedly made at the hearing were attributable to Chief Dolan, who was not a decision-maker vis-a-vis Plaintiff, and . . . no retaliatory comments were attributed to Assistant Chief Lubinski (who was a decision-maker with respect to Plaintiff).").

Courts within the Third Circuit, both pre- and post-*Mendelsohn*, have also generally excluded "me too" evidence that involves different decision-makers than the ones at issue in the plaintiff's case. *See, e.g., Chirdo v. Minerals Techs., Inc*., NO. 06-5523, 2009 U.S. Dist. LEXIS

[1] Plaintiff also wrote that Ms. Lewis may testify about "how the Post Office directly treated Plaintiff." ECF No. 92. Plaintiff does not provide any further details as to what "treatment" she is referring to, and how it is at all relevant to Plaintiff's claim of race discrimination related to her termination. Further, Plaintiff does not explain why, to the extent that such treatment is relevant and admissible, Plaintiff is unable herself to testify about such treatment, thereby rendering Ms. Lewis's testimony unnecessary and duplicative.

51466, 2-3 (E.D. Pa. Apr. 22, 2009) ("As neither Mr. Dizikes nor his supervisors participated in the decision to terminate Mr. Chirdo ... their statements cannot support an inference of discrimination. In cases such as this one, where the evidence to be offered is not closely related to the plaintiff's circumstances and theory of the case, that evidence does not constitute admissible evidence of discrimination.") (citations omitted); *Sgro v. Bloomberg L.P.*, No. 05-731, 2008 WL 918491, 10 (D.N.J. March 31, 2008) ("[Even] taking Oliveri's bias as true, there is no indication that Oliveri had any connections to Plaintiffs' supervisors or Plaintiffs themselves. In fact, there is nothing in the record to show that she was involved in any of the hiring decisions or transfer decisions involving Plaintiffs. Without any such showing, Oliveri's alleged discriminatory practice is simply immaterial to the Court's determination whether Defendant's proffered reasons were a pretext for discrimination."); *accord* pre-Mendelsohn holdings *Neely v. U.S. Postal Service*, No. 03-6566, 2007 WL 4389473, 7 (E.D. Pa. Dec. 12, 2007) ("Decisions made by different supervisors about different employees are not usually comparable enough to raise an inference of discrimination.") (citing *Taylor v. Procter & Gamble Dover Wipes*, 184 F.Supp.2d 402, 410 (D. Del. 2002), *aff'd* 53 F. App'x 649 (3d Cir. 2002)); *Morehouse v. Boeing Co.*, 501 F. Supp. 390, 392-93 (E.D. Pa. 1980) (testimony of five other former employees with separate discrimination cases against the same employer deemed inadmissible because different plaintiffs, different sets of facts, and potentially different decisionmakers rendered the testimony devoid of any probative value); *Schrand v. Federal Pac. Elec. Co.*, 851 F.2d 152, 156 (6th Cir. 1988) ("[T]here is no evidence from which the alleged statements of the ['me, too'] witnesses could logically or reasonably be tied to the decision to terminate [the plaintiff].").

Additionally, where allegations of discrimination are not "temporally proximate" to a

plaintiff's allegations at bar, the time difference "mitigates heavily against a reasonable jury finding them probative . . . . " *Puntillo v. Mineta*, NO. 1:05-CV-2370, 2009 U.S. Dist. LEXIS 42468, 32-33 (M.D. Pa. May 19, 2009). Furthermore, even where the alleged "me too" evidence falls within a plaintiff's supervisory chain of command, and are temporally proximate, the probative value of such evidence is minimal unless the alleged comparator is similarly situated to the plaintiff. *Barnett v. PA Consulting Grp., Inc.*, 35 F.Supp.3d 11, 22 (D.D.C. 2014). ("Among the factors relevant to the determination as to whether or not to allow the introduction of 'me too' evidence in employment discrimination cases are whether the alleged discriminatory behavior by the employer is close in time to the events at issue in this case; whether the same decision-makers were involved; whether the witness and the plaintiff were treated in a similar manner; and whether the witness and the plaintiff were otherwise similarly situated.").

Here, Plaintiff's conclusory statement that Ms. Lewis will testify regarding the Postal Service's alleged "treatment of African-Americans," falls far short of making the above showing. Plaintiff does not state that Ms. Lewis will testify about a temporally proximate, concrete instance of race discrimination involving the same supervisor who made the decision to terminate Plaintiff – *i.e.*, Richard Gurneal – and that the employee allegedly subject to such discrimination is similarly situated to Plaintiff. Accordingly, she cannot show that Ms. Lewis's testimony will any tendency to make the existence of any fact that is of consequence to the determination of this action more probable or less probable. Further, even if the alleged "me too" evidence at issue in this Motion is deemed probative of any issue in dispute, it should still be excluded because it would impose unfair prejudice, would confuse the issues, cause undue delay, and mislead the jury under Federal Rule of Evidence 403. Permitting Plaintiff to offer allegations of discrimination made by another

former employee, who is not similarly situated to her, would be unfairly prejudicial to the Postal Service. More specifically, "me too" evidence improperly suggests to the jury that if the Postal Service may have discriminated against other individuals, it must also have discriminated against Plaintiff, and/or that Defendant should be found liable and punished regardless of whether or not the Postal Service discriminated against Plaintiff. To allow this evidence would, therefore, allow Plaintiff to prevail even where she cannot show that Defendants discriminated against her.

Furthermore, this type of evidence would almost certainly cause substantial undue delay, as the trial degenerates into various case-by-case "mini-trials." *See Mendelsohn v. Sprint/United Management Co.*, 587 F.Supp.2d 1201, 1204 (D. Kan. 2008) ("Testimony that Vorhies, Kennedy, Stock, Mathus or Reynolds or other unnamed supervisors discriminated against the five witnesses would have resulted in mini-trials that would have created confusion and waste of time...."). Such evidence would also open the door to contrary evidence from hundreds or thousands of employees or former employees of the Postal Service who did not claim to be victims of race discrimination. *See id*. Accordingly, this evidence would skew the focus of the trial, resulting in confusion, undue delay, and a misleading of the jury as jurors would more than likely draw inaccurate inferences from the presentation of other allegations of discrimination.

Based on all of the reasons set forth above, the Court should preclude Ms. Lewis from raising any "me too" evidence pursuant to Fed. R. Evid. 401, 402, and 403.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that Ms. Lewis be precluded from testifying at trial.

Dated: August 2, 2019

Respectfully submitted,

SCOTT W. BRADY
United States Attorney

/s/ Kezia Taylor
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CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and correct copy of the foregoing *MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF SHAWN LEWIS* was served electronically on the following:

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Counsel for Plaintiff

Dated: August 2, 2019

s/Kezia Taylor
KEZIA O. L. TAYLOR
Assistant U.S. Attorney

EXHIBIT A

UNITED STATES POSTAL SERVICE

EEO Investigative Affidavit *(Witness)*

Page No	No Pages	Case No
1	9	1C-151-0012-12

1. Affiant's Name (Last, First, MI)	2. Employing Postal Facility		
Keefer, Marion L	**Pittsburgh P&DC**		
3. Position Title	4. Grade Level	5. Postal Address and Zip +4	6. Unit Assigned
MDO	**EAS-**	**1001 California Avenue Pittsburgh PA 15290-9997**	**Plant**

Privacy Act Notice

Privacy Act Notice. The collection of this information is authorized by the Equal Employment Opportunity act of 1972, 42 U.S.C. § 2000e-16, the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 633a, the Rehabilitation Act of 1973, as amended. This information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. As a routine use, this information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to a government agency in order to obtain information relevant to a USPS decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits, to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or other benefits, to a congressional office at your request, to an expert, consultant, or other person under contract with the USPS to fulfill an agency function, to the Federal Records Center for storage, to the Office of Management and Budget for review of private relief legislation, to an independent certified public accountant during an official audit of USPS finances, to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614, to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction, and to a labor organization as required by the National Labor Relations Act. Under the Privacy Act provision, the information requested is voluntary for the complainant, and for Postal Service employees and other witnesses.

USPS Standards of Conduct

Postal Service regulations require all postal employees to cooperate in any postal investigation. Failure to supply the requested information could result in disciplinary action. (ELM 666)

Statement (*Continue on Form 2569 if additional space is required. Form will auto-create if using Microsoft Word*)

Amy J. Branch vs. Patrick R. Donahoe
Agency No: 1C-151-0012-12
Affidavit for: Marion L. Keefer, MDO

AMENDED CLAIM: Complainant alleged discrimination based on Race (Not specified) and Retaliation (Prior EEO Activity) when:

1) On or about May 11, 2012, she was terminated from the Postal Service, and;
2) On an unspecified date, Complainant reported coworker harassment and her complaint were ignored.

IF YOU HAVE NO KNOWLEDGE OF THE COMPLAINT OR YOU WERE NOT INVOLVED IN ANY WAY WITH THE ISSUES CLAIMED BY THE COMPLAINANT, PLEASE STATE SO AND SIGN AND DATE THE FORMS. YOU WILL NOT HAVE TO ANSWER ANY FURTHER.

Q1. For the record, state your full name, position title, grade level, and place of employment. If any changes have occurred during the interim of this activity in the EEO complaint process, please identify those changes.
Response: My name is Marion Lauri Keefer, Level-24 (A) at the Pittsburgh GMF.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature: Marion L Keefer — Date Signed: 10/24/12

PS Form 2568-B, March 2001

UNITED STATES POSTAL SERVICE®

EEO Investigative Affidavit (Continuation Sheet)

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Q2. Please state your race for the record.
Response: White

Q3. Are you aware of Complainant's race? *If so, how did you become aware? Please state what race you believe Complainant to be.*
Response: Black- Face to Face meeting

Q4. What was your supervisory and/or managerial relationship with the Complainant in May 2012? *Please explain in detail.*
Response: I was the (A) Lead MDO of the Tour 1.

CLAIM 1: COMPLAINANT TERMINATED ON OR ABOUT MAY 11, 2012

AFFIDAVIT TESTIMONY (Race Allegation)

Q5. What were the facts that led to the decision to terminate Complainant on or about May 11, 2012? This decision was made by (A) MDO Richard Gurneal.

Ms. Branch was moved around to many sections on Tour 1 due to her inability to get along with others. I moved her to the flat section under the direction (A) MDO Richard Gurneal. She was terminated for threatening to "fuck up" a supervisor assigned to the flats (Rebecca Tonini) along with her job performance.

Include in your response a detailed explanation of what occurred, the specific date(s) of occurrences, and who was responsible for making the decision to issue the termination. Provide documentation to support your response including a copy of the termination notice issued to Complainant, a copy of the Pre-Disciplinary Interview (PDI) and all relevant supporting documents relied upon to terminate Complainant including a copy of any prior discipline issued to Complainant.
Response: She was terminated by MDO Richard Gurneal for behavioral issues.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature Maura Keefe — Date Signed 10/24/12

PS Form 2569, March 2001

UNITED STATES POSTAL SERVICE

EEO Investigative Affidavit (Continuation Sheet)

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Q6. What was the reason for issuing Complainant a termination on or about May 11, 2012? *Please explain in detail and provide documentation supporting your testimony. If documentation is not available, please explain.*
Response:
She was terminated for threatening to "fuck up" a supervisor assigned to the flats (Rebecca Tonini) along with her job performance.

Q7. Did you conduct a Pre-Disciplinary Interview with Complainant before issuing the termination on or about May 11, 2012? *If so, explain Complainant's response during the interview and provide a copy of the PDI.*
Response: NO

Q8. What is the specific date that you conducted a Pre-Disciplinary Interview (PDI) with Complainant?
Response: PDI was not conducted. Her employment status was that of a temporary employee and a PDI was not required.

Q9. Was there a concurring or reviewing management official in the issuance of the termination? *Provide their name, job title, race, sex, work location, phone number and email address.*
Response: *See question # 8.*

Q10. Are you aware of Complainant stating she does not like Rebecca Tonini, A/SDO (204B), watching her and if she did not stop, she was going to "fuck her up?" *If so, provide a detailed explanation of what occurred, state the specific date Complainant made that statement, etc., and provide documentation supporting your response including all statements and documents by anyone witnessing the comment.*
Response: I was told about the incident by (A) MDO Richard Gurneal.

Q11. Did Complainant's race cause or become a factor when she was terminated? *Please explain in detail and provide documentation supporting your response.*
Response: No

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature Marion L Kiefer — Date Signed 10/24/12

PS Form 2569, March 2001

UNITED STATES POSTAL SERVICE®

EEO Investigative Affidavit (Continuation Sheet)

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Q12. Were there other Casual employees who **were terminated** within the past six months?

If so, list their name, job title, name of supervisor, and work location. Also indicate their race. State the specific date or dates they were terminated, state the reason they were terminated, and state whether they engaged in EEO activity.
Response: List provide

Q13. For any employees listed in your response to **question #11** above, submit a copy of the termination notice and a copy of the individual's prior disciplinary record. Also provide their EIN or Social Security Number.
Response: List provided however there will not be any disciplinary records as casuals are not covered under the bargaining unit's contract and not subject to discipline.

Q14. Were there other Casual employees who **were not terminated** under the same circumstances as Complainant within the past six months?
No

*If so, list their name, job title, name of supervisor, and work location. Also indicate their race. State the specific date or dates they were issued discipline, state the reason they **were not** disciplined, and state whether they engaged in EEO activity. Provide either their EIN or Social Security Number.*
Response:

CLAIM 2: ON UNSPECIFIED DATES, COMPLAINANT REPORTED COWORKER HARASSMENT AND HER COMPLAINT WAS IGNORED

AFFIDAVIT TESTIMONY (Race Allegation)

Q15. Did Complainant place you on notice that she was being subjected to coworker harassment regarding any issue accepted for investigation of this complaint?
Response: Not harassment, Ms. Branch told me that FTR Mailhandler Jason Best tried to hit her with an APC while they were both working on the LCUS.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature Marina Keefe — Date Signed 10/24/12

PS Form 2569, March 2001

UNITED STATES POSTAL SERVICE®

EEO Investigative Affidavit (Continuation Sheet)

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If so, describe in detail when and what specifically Complainant told you and what was your response and/or action? Provide documentation that supports your testimony. Please explain if there is no documentation available.
Response: Ms. Branch told me that Mr. Best was trying to hit her with an APC on the LCUS machine.

Q16. What were the specific charges made by Complainant? *Explain in detail including the date of each specific allegation.*
Response: She felt that he was doing this on propose and trying to hurt her.

Q17. Did anyone witness any of the coworker harassment charges made by Complainant?
Response: No
If so, explain what they witnessed. Provide their name, job title, work location, phone number, name of supervisor, and provide the specific date(s) they witnessed the harassment charges made by Complainant.
Response: No witnesses

Q18. Did you conduct an investigation into Complainant's allegations? *If so, please provide a copy of the investigation.*
Response: Yes, I interviewed Mr. Best, he stated that he did not hit or try to hit Ms. Branch. He also stated that she nothing but a trouble maker and as been moved all over the building because of her behavior.

Q19. Did you take any action as a result of your investigation? *If so, explain what action you took, and provide a copy of the action taken.*
Response: Yes, I moved her to the flat section.

Q20. Was Complainant informed of the outcome of your investigation? *If yes, how?*
Response: Yes I discussed the outcome of the investigation.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature Maurice Keefe | Date Signed 10/24/12

PS Form 2569, March 2001

UNITED STATES POSTAL SERVICE®

EEO Investigative Affidavit (Continuation Sheet)

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Q21. If no investigation was conducted, please explain why.
Response: n/a

Q22. Did you notice any changes in Complainant's work habits after the alleged harassment occurred or claims in this /or a Hostile Work Environment? If so, what did you notice?
Response: No

Q23. Did Complainant request that the alleged coworker harassment stop? *If so, when did he/she tell you that and what action did you take?*
Response: Yes

Q24. Are you aware of Complainant or anyone acting in behalf of Complainant, bringing to the attention of any other management official concerns about coworker harassment? *If so, to whom did he/she inform of his/her concerns and when, to the best of your knowledge.*
Response: No

Q25. Are you aware of employee Jason Best threatening or harassing Complainant? *If so, explain what occurred, explain what corrective action you took, and provide a copy of any action taken and a copy of any investigation conducted as a result of being aware Mr. Best threatened or harassed Complainant. I interviewed Mr. Best and did not feel that he threatened or harassed Ms. Branch.*

Q26. Are you aware of Jason Best telling Complainant that he would "hit her ass when walking to get mail" with equipment? *If so, explain in detail what occurred and the specific date(s) of incidents.*
Response: It stated that she needed to get out of the way during dispatch. He did not threatened her in any way.

Q27. Have you received training on anti-harassment while employed by the Postal Service? *If so, when did you receive the training?* ***Please provide a copy of your training record and a copy of Complainant's training history.*** **yes**

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature Marina Keefe — Date Signed 10/24/12

PS Form 2569, March 2001

Affidavit D
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UNITED STATES POSTAL SERVICE®

EEO Investigative Affidavit (Continuation Sheet)

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Response:

Q28. Is the anti-harassment policy posted at Complainant's office?
Response: ELM: 665.24

Q29. Was Complainant's race a cause or factor when she was subjected to coworker harassment?
Response: NO

Q30. Was Complainant's prior and protected EEO activity a cause or factor when she was subjected to coworker harassment?
Response: NO

AFFIDAVIT TESTIMONY (Retaliation Allegation)

Q31. Are you aware of the Complainant's Prior and Protected EEO activity? *If so, how and when did you become aware (please include by whom and when you were notified). Provide any relevant documentation supporting your response.*
Response: No

Q32. Are you aware of Complainant voicing opposition to discrimination in an open manner or engaging in EEO activity? *If so, how and when did you become aware?*
Response: No

Q33. Were you named as a Management Official (MO) or named by Complainant as a witness in the Prior and Protected EEO activity? *If so, identify the case number(s) and identify the issue(s) involved in the complaint. What was your personal involvement in the prior EEO case(s) filed by Complainant?*
Response: NO

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature Marion L Kupfer Date Signed 10/24/12

PS Form 2569, March 2001

UNITED STATES POSTAL SERVICE®

EEO Investigative Affidavit (Continuation Sheet)

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Q34. Did Complainant's prior and/or protected EEO activity cause or become a factor when she was terminated on or about May 11, 2012? *Explain in detail and provide documentation to support your response.*
Response: Not to my knowledge

Q35. Did Complainant's prior and/or protected EEO activity cause or become a factor when on unspecified dates; she reported coworker harassment and her complaint was ignored? *Explain in detail and provide documentation to support your response.*
Response: Not to my knowledge

Q36. Was a grievance or appeal filed on the same issues that gave rise to this EEO complaint? *If so please provide the status or the final adjudication of the grievance or appeal. Please provide copies of written settlements/resolutions if any. Also, provide a copy of the grievance file.*
Response: Complainant does not have grievance rights

Q37. What rules, contract provisions, or policies do you believe are applicable in the accepted issues for investigation cited in the CLAIM above? *Attach copies of applicable rules, contract provisions, or policies.*
Response: ELM 665.13 ELM 665.16 ELM 665.24

Q38. Is there any other information you would like to add to your affidavit that would prove beneficial to the investigation of this complaint? *If so, please elaborate fully, and provide a copy of any documentation you believe is important to the investigation of this complaint.*
Response: no

Q39. Do you have any documents or records related to this complaint that have not been discussed in your response to the previous questions? If so provide a copy of those documents.
Response: no

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature: Maura L Kuhn

Date Signed: 10/24/12

PS Form 2569, March 2001

UNITED STATES POSTAL SERVICE®

EEO Investigative Affidavit (Continuation Sheet)

Page No	No. Pages	Case No
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Note: Be sure to include all documentation requested above to support your affidavit testimony.

I declare under penalty of perjury that the foregoing is true and correct.

Affiant's Signature: Maureen Kepka

Date Signed: 10/24/12

PS Form 2568 March 2001

Affidavit D
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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

- - -

AMY J. BRANCH, Plaintiff, vs. MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL, Defendant.	Civil Action No. 17-777 Judge Mark R. Hornak

- - -

Deposition of AMY J. BRANCH

Monday, October 30, 2017

- - -

The deposition of AMY J. BRANCH, the plaintiff herein, called as a witness by the defendant, pursuant to notice and the Federal Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Jacqueline M. O'Toole, a notary public in and for the Commonwealth of Pennsylvania, at the United States Attorney's Office, Suite 4000, Joseph F. Weis, Jr. U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219, commencing at 10:07 o'clock a.m., the day and date above set forth.

- - -

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ORIGINAL

the note.

Q. Okay.

A. She's the one that's supposed to have wrote a note. First, in the file he states that she says she overheard it. Then, on a another piece of paper it says that Sandra Roberts told him that, but Sandra Roberts was never questioned, and there's no affidavit for Sandra Roberts either.

Q. Did you ever talk to Sandra Roberts about the incident?

A. No. I stayed away because I was scared, because I was thinking if she said this about me, and I'm not being funny, I'm just being very honest. I was already under a microscope when I went back, and I knew I would be. So I knew to just watch, and if he stated this woman said that about me, I didn't want to say nothing to her to where she would, "Oh, she said this." Huh-uh. I'll protect myself, and not say one word to that person.

So if they try to say it -- if she did say it, because I really don't even know if she really did say it until this day. All there is, is a note, and I don't know if this woman really did report that. Until this day, I don't know if she really, really said that. And I wanted to ask her, but I said I don't know if I should even say anything, because I don't want nobody to think nothing negative when all I really want is an answer.

Q. So who do you believe discriminated against you with respect to your termination on May 11th?

A. Rich Gurneal.
Q. Okay. Anybody else?
A. Jason Best.
Q. Okay. And was Jason a manager, or a supervisor?
A. Well, Jason was just another coworker, but he -- he's the one who had threatened to hit me with the equipment. And then was yelling things to me, all -- "Go get a real job," and all type of stuff, and --
Q. And what's Mr. Gurneal's race?
A. I would say he's Caucasian, but I'm not, you know, like, I don't know his background.
Q. Yeah. I'm -- I'm not asking you his --
A. Okay.
Q. -- his heritage.
A. Okay.
Q. Is he Caucasian, or is he African American?
A. No, he's Caucasian.
Q. Okay. What about Jason?
A. Jason is a black male.
Q. Okay. Okay. Anybody else who you believe discriminated against you in connection with your firing on May 11th, 2012, because of your race?
A. No. Because he was the only manager that was in the room, and he's the one who terminated me.
Q. Okay. So prior to when Mr. Gurneal terminated you on

Q. Okay. And why would he want to retaliate against you, by firing you for prior EEO activity?

A. That's a person that, I think he would have to answer. I can't. All I would be doing is speculating, and going off of the facts of how I was treated that night, and what happened to me after I had complained.

Because after I made a complaint about a male threatening to hit me with equipment -- I'd already made a complaint before of another male threatening to hit me with equipment before that, and that was a friend of Jason Best's who was Lonray. And I told Cindy, and she yelled in my face about that. No one did nothing. You know, and he threatened to hit me with equipment, and told me next time he'll hit my a-s-s.

Q. Jason?

A. Yes. He said that he would hit my ass next time, excuse my language, but that's what he said. I told him, "No, you will not."

Ms. Shawn said, "That's a threat. Go to Postal Police right now, and don't say nothing else to him."

I went straight to Postal Police to report it, they did nothing. They didn't investigate it. I had witnesses, Ms. Shawn was right there. The names were written on the paper, and they did go and ask, because there's even a lot of inconsistencies.

First, you say you didn't know nothing about it. Then,

later on you state people off the floor came and told you about it, but you didn't have no knowledge. You had knowledge of it, especially if people came from off the floor and told you about it. And not just that, threat is zero tolerance, so if you did all what you did to me, something should've been done to Jason Best.

You take the word of a white female, and you ran with it, and I'm black. But when I'm black, and I go and report something, you do nothing about it. He was supposed to call the threat assessment team, he's -- secure her in a room, secure me in a room.

Q. And that was Ms. -- that was Ms. Shawn?

A. No, not Ms. Shawn.

Q. That was -- the -- the white female was Ms. Shawn?

A. No. Ms. Shawn is a black woman.

Q. Okay.

A. Ms. Shawn is my witness, she's one of my witnesses.

Q. Okay. Who -- the -- the -- the word of the white female; who's the white female that --

A. Sandra Roberts.

Q. And Jason Best is African American; correct?

A. Yes.

Q. Okay. All right.

A. And he's full time and he's union, you know, he's protected. Meanwhile, I'm a casual, we have no protection.

Q. Okay. So what about the -- the -- the incidents that night, gave you the idea that it was in retaliation for prior protected activity?

A. Well, it was more than just the incidents that night. It's -- it's incidents that were going on that built up to that night.

So there were more than just that incident, there was a couple incidents, and I had spoke up about those incidents. And then after a while seeing nobody was going to do anything, I decided to stay quiet, lay back, just do my work. Try and hang in there as much as I could, because I knew full time was coming. And I knew I had a chance of becoming full time, because people who came in after me and with me, they're full time now and had stayed there, and they worked with me.

So they're full time, and they have their benefits and everything. I got my job taken away from me, because of what he stated someone wrote on a routing slip. And you -- you never proved it.

Q. So -- so I guess what I'm trying to get at is, more specifically, if Mr. Gurneal retaliated against you for -- for prior EEO activity, what specifically is it about anything that happened that night, that made you think "Gurneal is retaliating against me"?

A. It's the way that he handled it.

Q. By terminating you?

EXHIBIT F(3.2)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMY BRANCH, Plaintiff, v. MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL Defendant.	Civil Action No. 17-777 Judge Peter J. Phipps

PLAINTIFF AMY BRANCH'S OMNIBUS MOTION *IN LIMINE*

Plaintiff Amy Branch ("Plaintiff"), by and through her undersigned counsel, moves *in limine* to: (i) exclude evidence of Plaintiff's pre- and post-employment terminations and work issues; (ii) exclude evidence of findings, conclusions, and/or determinations by the EEOC and Pennsylvania Unemployment Compensation Office; (iii) exclude evidence regarding Plaintiff's statements that the government is conspiring against her; (iv) exclude evidence that Plaintiff has a reputation of being unable to work well with colleagues and supervisors; (v) exclude evidence related to the Court's summary judgment ruling on the retaliation claim; (vi) exclude evidence regarding Plaintiff's criminal history; (vii) offer affidavits by Post Office employees into evidence; (viii) exclude evidence by Defendant and used against Plaintiff that Plaintiff would have garnered through discovery; (ix) exclude evidence and affidavits that Defendant garnered through contacting Plaintiff's witnesses from Plaintiff's initial disclosure and Joint Proposed Witness and Exhibit List; and (x) exclude evidence that previous attorneys have dismissed

Plaintiff as a client. Plaintiff moves *in limine* for the reasons described in the accompanying Memorandum of Law.

Accordingly, Plaintiff respectfully moves for an Order in the form provided, granting Plaintiff's Omnibus Motion *in Limine* in its entirety.

Dated: August 2, 2019

Respectfully submitted,

REED SMITH LLP

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Counsel for Plaintiff Amy Branch

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing on the following attorneys of record:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMY BRANCH, Plaintiff, v. MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL Defendant.	Civil Action No. 17-777 Judge Peter J. Phipps

PLAINTIFF AMY BRANCH'S PROPOSED ORDER TO PLAINTIFF'S OMNIBUS MOTION *IN LIMINE*

THIS MATTER having been opened to the Court by Reed Smith LLP, attorneys for Plaintiff Amy Branch ("Plaintiff"), on Plaintiff's Omnibus Motion *in Limine*, and the Court having reviewed the moving and responding papers, and the argument of the parties and for good cause shown;

IT IS on this ____ day of August, 2019, **ORDERED** that Plaintiff's Omnibus Motion *in Limine*, is hereby **GRANTED** in full.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMY BRANCH, Plaintiff, v. MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL Defendant.	Civil Action No. 17-777 Judge Peter J. Phipps

PLAINTIFF AMY BRANCH'S MEMORANDUM OF LAW IN SUPPORT OF OMNIBUS MOTION *IN LIMINE*

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Counsel for Plaintiff Amy Branch

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INTRODUCTION

Plaintiff Amy Branch ("Plaintiff") respectfully moves this Court *in limine* for an order excluding the matters set forth below from evidence, instructing Defendant Megan J. Brennan, United States Postmaster General, United States Post Office ("Defendant" or "Post Office") and Defendant's counsel to refrain from referring to them during trial, and instructing Defendant's counsel to inform each of its witnesses of the contents of the Court's Order. Plaintiff also moves this Court to find certain evidence admissible for trial pursuant to the Federal Rules of Evidence, as set forth below.

STANDARD

A. Relevance

Pursuant to Federal Rule of Evidence ("FRE") 402, all relevant evidence is admissible unless the Constitution, a federal statute, the Federal Rules of Evidence, or the Supreme Court provide otherwise. Fed. R. Evid. 402. "Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed. R. Evid. 401; *see also Evans v. Cernics, Inc.*, No. 3:14-CV-125, 2017 U.S. Dist. LEXIS 177501, at *2-3 (W.D. Pa. October 26, 2017). Because evidence is relevant "if it has any tendency to prove a consequential fact, it follows that **evidence is irrelevant only when it has no tendency to prove the fact.**" *U.S. v. Maurizio*, CRIMINAL NO. 3:14-23, 2015 U.S. Dist. LEXIS 118516, at *5-6 (W.D. Pa. September 4, 2015) (citation omitted) (bold added).

Further, Federal Rule of Evidence 403 holds that even if evidence is relevant, it is inadmissible if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed R. Evid. 403; *see also Evans*, 2017 U.S.

Dist. LEXIS 177501, at *3-4. "Unfair prejudice" is an "undue tendency to suggest decisions on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403 advisory committee note; *see also Maurizio*, 2015 U.S. Dist. LEXIS at *6.

B. Character Evidence

Federal Rule of Evidence 404 provides that "evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." Fed. R. Evid. 404(a)(1). The Rule additionally precludes evidence of a crime, wrong, or other act to prove "the character of a person in order to show action in conformity therewith." *Maurizio*, 2015 U.S. Dist. LEXIS at *7; *see also* Fed. R. Evid. 404(b)(1).

In addition, the Third Circuit has held that a party must meet the following conditions when introducing "other acts" under FRE 404(b): (1) the evidence must have a proper purpose under Rule 404(b); (2) the evidence must be relevant under Fed. R. Evid. 402; (3) the evidence's probative value must outweigh its prejudicial effect under Fed. R. Evid. 403; and (4) the district court must charge the jury to consider the evidence only for the limited purpose for which it was admitted." *Becker v. ARCO Chem. Co.*, 207 F.3d 176, 189 (3d Cir. 2000); *see also Giuliani v. Polysciences, Inc.*, 275 F. Supp. 3d 564, 574 (E.D. Pa. 2017).

This Court should grant Plaintiff's motions *in limine* pursuant to the aforementioned Federal Rules of Evidence for the reasons outlined below.

ANALYSIS

I. MOTION *IN LIMINE* NO. 1: DEFENDANT SHOULD NOT BE PERMITTED TO OFFER EVIDENCE OR ARGUMENTS REGARDING PLAINTIFF'S PRE- AND POST-EMPLOYMENT TERMINATIONS AND WORK ISSUES.

Pursuant to Federal Rules of Evidence 401, 402, 403, and 404, Plaintiff hereby moves *in limine* to preclude Defendant from presenting evidence or arguments of Plaintiff's employment

terminations and negative performance from before and after her employment position in question at the Post Office.

Subject to Rules 401, 402, and 403, Plaintiff's prior and post-work performances and/or terminations are irrelevant and too remote to this case. Other courts have granted identical motions for similar reasons. In *Wagoner v. J.P. Morgan Chase Bank, N.A.*, No. 1:11-cv-01054-TWP-DML, 2014 WL 185759 (S.D. Ind. January 15, 2014), the plaintiff asserted an employment discrimination claim on the basis of gender. *Id.* at *1-2. Plaintiff moved *in limine* requesting that the court exclude evidence of prior job performance arguing that it was irrelevant and improper character evidence. *Id.* at *2. The Court agreed and found that a plaintiff's performance in prior positions is not relevant to performance in subsequent positions. *Id.* at *3. The Court here should similarly find that Plaintiff's terminations and negative performances from before and after her employment at the Post Office are irrelevant to the present case and fail to establish the probability – or lack thereof – of whether race discrimination occurred.

Further, subject to Rule 404, this Court should preclude Defendant from introducing Plaintiff's terminations and negative performances from before and after her employment position in question at the Post Office because they are improper character evidence. This evidence would only be offered to prove that Plaintiff acted in accordance with her purported trait of previous or subsequent poor job performance. In addition, allowing its admissibility would confuse the jury as to the actual issues in this particular case and require unwarranted and unfairly prejudicial mini-trials on why such terminations or circumstances occurred. Other courts have similarly held that such character evidence is inadmissible. See *Carmichael v. Raytheon Co.*, No. CV 09-3089 GAF, 2010 U.S. Dist. LEXIS 151963, at *1 (C.D. Cal. Nov. 4, 2010); *Manthos v. Parish*, 353 Fed. Appx. 914, 919-20 (5th Cir. 2009) (where the court excluded

an employer's past job performance from evidence because it did not relate to the plaintiff's employment discrimination claim). In *Carmichael*, 2010 U.S. Dist. LEXIS 151963, plaintiff filed a disability discrimination claim against his defendant-employer following his termination. *Id.* at *1. Before trial, plaintiff moved *in limine* to exclude evidence of past absenteeism, a nervous breakdown, work suspension, improper use of a company credit card, and poor performance ratings. *Id.* at *3-4. The Court granted the motion, noting that the evidence was highly prejudicial, too remote in time, irrelevant, and would confuse the jury. *Id.* at *4-6.

Similar to *Carmichael*, the Court should preclude evidence of Plaintiff's terminations and negative performances from before and after her employment at the Post Office because they are irrelevant to Plaintiff's racial discrimination claim, too remote in time, and highly prejudicial. Any probative value that the evidence may have is far outweighed by unfair prejudice and jury confusion.

II. MOTION *IN LIMINE* NO. 2: DEFENDANT SHOULD NOT BE PERMITTED TO INTRODUCE EVIDENCE OF THE FINDINGS, CONCLUSIONS, AND/OR DETERMINATIONS OR LACK THEREOF OF THE EEOC, AND THE PENNSYLVANIA UNEMPLOYMENT COMPENSATION OFFICE.

Pursuant to Federal Rules of Evidence 401, 402, 403, and 404, Plaintiff hereby moves *in limine* to preclude Defendant from introducing Plaintiff's prior or current Equal Employment Opportunity ("EEO") complaints. Plaintiff anticipates that Defendant may attempt to elicit testimony regarding the findings, conclusions, and/or determinations made by the EEOC, and/or the Pennsylvania Unemployment Compensation Office. The underlying circumstances – *i.e.*, the harassment that Plaintiff endured at the Post Office – are admissible to prove discrimination. But the findings, conclusions, and/or determinations of the EEOC and Pennsylvania Unemployment Compensation Office are irrelevant to the current racial discrimination claim. The Third Circuit has held that current EEO complaints from which the litigation derives are generally

inadmissible. *Evans*, 2017 U.S. Dist. LEXIS 177501, at *6 ("District Courts in the Third Circuit regularly grant motions *in limine* to exclude references to EEOR and PHRC reports in discrimination cases.").

In addition, the Court should preclude the findings, conclusions, and/or determinations of the EEOC from the previous EEO Complaints that Plaintiff has filed. Courts have granted motions *in limine* under similar circumstances. *See Green v. City of Northport*, 7:11-CV-2354-SLB, 2014 U.S. Dist. LEXIS 44536 (N.D. Ala. March 31, 2014) (holding that prior EEO complaints were inadmissible because they were irrelevant to the present lawsuit); *see Hodgetts v. City of Venice*, 8:11-cv-00144-EAK-EAJ, 2011 U.S. Dist. LEXIS 61457 (M.D. Fla. June 6, 2011) (holding that prior EEO complaints are inadmissible unless they relate to the present claim at issue); *Jarvis v. Griffin*, No. 6:08-cv-138-Orl-19KRS, 2009 U.S. Dist. LEXIS 109226 (M.D. Fla. November 8, 2009) ("The introduction of evidence regarding these [prior EEO] complaints is therefore likely to confuse the jury, shifting the focus away from the elements of the retaliation claim and towards NASA's culpability for the prior discriminatory actions.").

The same holds true here. In the absence of evidence that the EEO complaints and Plaintiff's unemployment claim relate to Plaintiff's employment discrimination claim, the Court should prohibit them as evidence because their value to the present case is irrelevant and thus would unnecessarily confuse the jury.

III. MOTION *IN LIMINE* NO. 3: DEFENDANT SHOULD NOT BE PERMITTED TO OFFER EVIDENCE OR ARGUMENTS REGARDING PLAINTIFF'S STATEMENTS THAT THE GOVERNMENT IS CONSPIRING AGAINST PLAINTIFF.

Pursuant to Federal Rules of Evidence 401, 402, and 403, Plaintiff hereby moves to exclude Plaintiff's statements that the Post Office is conspiring against Plaintiff with others, including by tampering with her mail and other statements regarding the government's

interefence with this case and her livelihood. The rationale is obvious: the government's alleged conspiracies and mail tampering are irrelevant to her employment discrimination claim. As such, the probative value is nonexistent and does not establish the likelihood, or lack thereof, of racial discrimination. Even if such evidence provides probative value – which it does not – introducing it would both confuse and mislead the jury because it would then present multiple unresolved accusations against the Post Office.

IV. MOTION *IN LIMINE* NO. 4: DEFENDANT SHOULD NOT BE PERMITTED TO OFFER EVIDENCE OR ARGUMENTS REGARDING PLAINTIFF'S REPUTATION OF BEING UNABLE TO GET ALONG WITH WORK COLLEAGUES AND SUPERVISORS.

Pursuant to Federal Rules of Evidence 401, 402, 403, and 404, Plaintiff hereby moves *in limine* to preclude Defendant from presenting evidence regarding Plaintiff's alleged reputation of poor interaction with work colleagues and supervisors. Indeed, the issue in this case is whether the Post Office racially discriminated against Plaintiff by terminating her. Accordingly, whether Plaintiff worked well with her colleagues and supervisors is irrelevant to the dispute and holds no probative value.

The introduction of this evidence would only serve to infer that, on the day in question, Plaintiff acted in an unfavorable, hostile manner. This will confuse the jury over the central issue of this case – whether the Post Office discriminated by failing to investigate a threat against Plaintiff because she is African American. The conditions outlined in *Becker*, *supra* 2, and FRE 404 prohibit the admission of such evidence for these exact reasons. Consequently, the danger of unfair prejudice and jury confusion substantially outweigh the probative value that such evidence fails to offer. Therefore, Plaintiff moves the Court to preclude this evidence at trial.

V. MOTION *IN LIMINE* NO. 5: DEFENDANT SHOULD NOT BE PERMITTED TO OFFER EVIDENCE OR ARGUMENTS RELATED TO THE COURT'S SUMMARY JUDGMENT RULING ON THE RETALIATION CLAIM.

Pursuant to Federal Rules of Evidence 401, 402, and 403, Plaintiff hereby moves *in limine* to preclude Defendants from introducing evidence or arguments related to the Court's summary judgment ruling on her retaliation claim.

The jury may infer that because Plaintiff lost on summary judgment, the same result should follow at trial. This is unfairly prejudicial because the standard of proof for summary judgment differs from the standard of proof at trial. *See Jackson v. City of Pittsburgh*, Civil Action No. 07-111, 2011 U.S. Dist. LEXIS 87421, at *45-6 (W.D. Pa. August 8, 2011) ("even if the disposition of the charges was deemed relevant, the evidence was also properly excluded under Rule 403 because the probative value of such evidence was substantially outweighed by the fact that the different legal standards employed in the two scenarios would unnecessarily confuse the issues, mislead the jury and prejudice the Defendants"). Moreover, the United States District Court for the Western District of Pennsylvania held similarly in *Evans*:

> As Plaintiff correctly observes, a jury presented with evidence about this Court's ruling on summary judgment might infer that, because this Court held that a reasonable jury could find for Defendants, the jury should find for Defendants at trial. Obviously, this inference would unfairly prejudice and bias Plaintiff. Moreover, presenting evidence about summary judgment would likely confuse the issues, as the standard for summary judgment is different from the standard of proof a party must satisfy to prevail at trial.

2017 U.S. Dist. LEXIS at *3-4. For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's motion *in limine* and preclude Defendant from offering evidence or testimony regarding the dismissed retaliation claim.

VI. MOTION *IN LIMINE* NO. 6: DEFENDANT SHOULD NOT BE PERMITTED TO OFFER EVIDENCE OR ARGUMENTS REGARDING PLAINTIFF'S CRIMINAL HISTORY.

A. The Court Should Grant Motion *In Limine* No. 6 Because Evidence Of Plaintiff's Criminal History Is Irrelevant And Highly Prejudicial.

Pursuant to Federal Rules of Evidence 401, 402, 403, and 404, Plaintiff hereby moves *in limine* to exclude Defendant from introducing evidence of Plaintiff's criminal history, including a charge that occurred seventeen (17) years prior to her employment with the post office and twenty-six (26) years prior to initiation of this lawsuit. Such evidence is an "other act" or "crime" under the Federal Rules of Evidence. *See* Fed. R. Evid. 608. In her deposition, Plaintiff testified that in 1993, she was charged with disorderly conduct that the court later reduced to a fine. *See* Pl. Deposition, at 112:3-15, attached as Exhibit 1. This charge – that occurred 17 years prior to Plaintiff's employment with the Post Office – is irrelevant to Plaintiff's employment discrimination claim.

In the same deposition, Defendant's counsel misstated the charge as a conviction. *See* Exhibit 1, at 111:6-7. To be clear, the Federal Rules of Evidence prohibit admission of both criminal charges and convictions under Plaintiff's circumstance, as addressed below.

B. The Court Should Grant Motion *In Limine* No. 6 Because The Federal Rules Of Evidence State That "Other Acts" Evidence Is *Per Se* Inadmissible.

Pursuant to Federal Rule of Evidence 608, a party may not introduce extrinsic evidence of a witness's specific conduct to attack or support the witness's character for truthfulness. Fed. R. Evid. 608(b). The Court may, however, inquire into it for impeachment purposes on cross-examination. *Id.* Accordingly, Plaintiff moves to exclude admission of her criminal history because FRE 608 makes clear that specific acts or crimes are inadmissible for direct witness impeachment. The Court also should preclude inquiry into Plaintiff's criminal charge on cross-examination because disorderly conduct is not probative to her character for truthfulness.

Indeed, the charge occurred more than twenty-five years ago, which further diminishes its value. *See Johnson v. Elk Lake Sch. Dist.*, 283 F.3d 138 (3d Cir. 2002) ("Remoteness in time is a factor properly considered by the trial court in limiting cross-examination under Fed. R. Evid. 608(b)"). Accordingly, Plaintiff moves *in limine* to preclude evidence of her criminal history, including evidence of criminal charges.

i. *Even If Plaintiff's Criminal History Involves A Criminal Conviction, The Court Should Grant Motion* In Limine *No. 6 Because It Is Inadmissible Under The Federal Rules Of Evidence*.

To the extent that Plaintiff's disorderly conduct incident was a conviction, Plaintiff moves *in limine* to exclude evidence of criminal convictions incurred by Plaintiff. Particularly, FRE 609 only permits conviction evidence to attack a witness's character for truthfulness, assuming that one of two conditions are met. First, the Rule only allows conviction evidence if the crime was punishable by death or more than one year imprisonment. Fed. R. Evid. 609(a)(1). Even if so, the admission is subject to Rule 403. Fed. R. Evid. 609(a)(1)(A). Second, FRE 609 prohibits the introduction of a criminal conviction regardless of punishment type unless the court can readily evaluate that one of its elements involves a dishonest act or false statement. Fed. R. Evid. 609(a)(2).

The Rule's exceptions fail here. Defense counsel cannot establish that Plaintiff's disorderly conduct incident relates to her character for truthfulness. Further, Pennsylvania law considers disorderly conduct a summary offense or, at most, a third-degree misdemeanor. *See* 18 Pa.C.S. § 5503(b). Even if disorderly conduct were punishable by more than one year imprisonment, such evidence is irrelevant to Plaintiff's race discrimination claim and serves only to demonstrate that Plaintiff has a disorderly character that was likely present on the days at issue. As such, the probative value is substantially outweighed by the unfair prejudice that the

evidence would result. For the same reason, Plaintiff's criminal history as inadmissible character evidence under FRE 404. Lastly, disorderly conduct does not include elements for truthfulness or deceit. *See* 18 Pa.C.S. § 5503; *see also Commonwealth v. DeFrancesco*, 481 Pa. 595 (1978).

ii. *Even If Plaintiff's Criminal History Involves A Criminal Conviction, The Court Should Grant Motion* In Limine *No. 6 Because The Incident Occurred More Than 10 Years Ago.*

FRE 609 further precludes criminal convictions that are more than 10-years-old. Fed. R. Evid. 609(b). Plaintiff's 26-year-old alleged "conviction" does not meet the exceptions for admissibility. As stated above, Defendant cannot establish whether the aforementioned incident was a criminal conviction or a misstatement by defense counsel in the deposition. Even if it could, the conviction is more than ten years old.

Therefore, Plaintiff hereby moves this Court *in limine* to exclude all evidence relating to Plaintiff's criminal history and any mention thereof.

VII. MOTION *IN LIMINE* NO. 7: PLAINTIFF SHOULD BE PERMITTED TO OFFER EVIDENCE AND ARGUMENTS THROUGH AFFIDAVITS BY POST OFFICE EMPLOYEES BECAUSE THEY ARE ADMISSIBLE "PARTY ADMISSION" NONHEARSAY.

A. Hearsay and Nonhearsay

Under the Federal Rules of Evidence, hearsay is an out-of-court statement used to prove the truth of the matter asserted. Fed. R. Evid. 801(c). Hearsay evidence is inadmissible unless a federal statute, the Federal Rules of Evidence, or the Supreme Court provide otherwise. Fed. R. Evid. 802. Here, the Federal Rules of Evidence provides that opposing party admissions are *not* hearsay if: (i) the statement is offered against an opposing party; and was made by either (ii) the party in an individual or representative capacity, or (iii) the party's agent or employee on a matter within the scope of that relationship while it existed. Fed. R. Evid. 801(d)(2)(A) & (D). *See Harris v. Labor Finders Int'l, Inc.*, CIVIL ACTION 17-692-SDD-EWD, 2019 U.S. Dist.

LEXIS 15187, *11-12 (M.D. La. January 31, 2019); *Solis v. La Familia Corp.*, 2013 U.S. Dist. LEXIS 19899, at *7 (D. Kan. February 14, 2013). The policy behind this rule is that the admission "is the result of the adversary system rather than satisfaction of the conditions of the hearsay rule." Fed. R. Evid. 801(d) advisory committee notes.

B. The Post Office Employee Affidavits Are Admissible Nonhearsay

Pursuant to Federal Rule of Evidence 802(d)(2), Plaintiff hereby moves *in limine* to present affidavits from Post Office employees in the EEO file as evidence. The affidavits satisfy the conditions of FRE 802(d)(2) in three ways. First, Plaintiff offers the statements in support of Plaintiff and against the Post Office. Second, the Post Office is a defendant opposed to Plaintiff in the above-captioned matter. Third, the employees made the statements within the scope of their employment relationship while still employed at the Post Office. Other courts have found that such circumstances warrant admissibility. *See Solis*, 2013 U.S. Dist. LEXIS 19899 at *7 (finding employee affidavits to be admissible nonhearsay under FRE 802(d)(2)(A) because they were made by employees that were both "individually named defendants" and opposing parties of Plaintiff); *Harris*, 2019 U.S. Dist. LEXIS 15187 at *11-12 (finding a plaintiff-employee's affidavit to be admissible nonhearsay under FRE 802(d)(2)(D) because the defendant-supervisor's statements were made within the scope of the employment relationship and while the supervisors were still employed).

Therefore, Plaintiff respectfully requests that this Court permit the Post Office employee affidavits to be submitted into evidence.

VIII. MOTION *IN LIMINE* NO. 8: PLAINTIFF MOVES *IN LIMINE* TO EXCLUDE EVIDENCE DURING TRIAL THAT DEFENDANT MAY USE AGAINST PLAINTIFF THAT PLAINTIFF WOULD HAVE GARNERED THROUGH DEPOSITION TESTIMONY. RELATIVELY, PLAINTIFF RESPECTFULLY MOVES *IN LIMINE* TO PRESERVE FOR APPEAL THE ISSUE OF WHETHER A COURT SHOULD REOPEN DISCOVERY WHEN A *PRO SE* LITIGANT RETAINS COUNSEL AFTER SUMMARY JUDGMENT.

Plaintiff moves *in limine* to exclude evidence that Defendant may use against Plaintiff that Plaintiff would have garnered through deposition testimony.

On May 8, 2019, Plaintiff retained counsel subsequent to this Court's summary judgment ruling. On May 14, 2019, Plaintiff's counsel requested limited discovery during a status conference with the Court and defense counsel. The Honorable Peter J. Phipps denied the request and issued a ruling prohibiting Plaintiff from reopening discovery. [D.E. 75]. Plaintiff's counsel understands the court's decision and only addresses it now to preserve the issue on record for appeal.

Although this circuit has not decided the issue, other courts have held that discovery is appropriate under the named circumstances. *See Childers v. Slater*, 197 F.R.D. 185 (D.D.C. September 18, 2000). In *Childers*, an African American woman represented herself *pro se* in a discrimination and retaliation lawsuit against her former employer. *Id.* at 186. After the court granted partial summary judgment, the plaintiff retained counsel who then moved to reopen limited discovery. *Id.* at 186-7. The plaintiff wished to depose six individuals, which she argued was unavailable to her during original discovery because "as a *pro se* plaintiff, she lacked both the formal legal training and the necessary financial resources to obtain adequate discovery." *Id.* at 188.

In analyzing the case, the court first determined that reopening discovery would not prejudice the defendant because, although discovery can impose extra costs, it is not "unduly burdensome." *Id.* at 189. In particular, because the plaintiff's requested depositions were within

the parameters of the original discovery order, reopening discovery would not be too burdensome as to prejudice the defendant. *Id.* The court noted that it "must evaluate the plaintiff's diligence in light of the fact that she was *pro se* and facing increasing financial difficulties throughout the period of discovery." *Id.*; *see also, e.g., id.* at 188 ("*pro se* litigants are held to less stringent standards than those who are counseled by attorneys") (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

In light of *Childers*, Plaintiff respectfully moves to preserve the issue for appeal of whether a court should reopen discovery after a *pro se* litigant acquires counsel following summary judgment. To the extent that Defendant uses evidence against Plaintiff at trial that Plaintiff would have garnered by deposition testimony or discovery, Plaintiff dutifully moves *in limine* for the Court to exclude the admissibility of that evidence.

IX. MOTION *IN LIMINE* NO. 9: PLAINTIFF MOVES *IN LIMINE* TO EXCLUDE EVIDENCE AND AFFIDAVITS DURING TRIAL THAT DEFENDANT GARNERED THROUGH CONTACTING PLAINTIFF'S WITNESSES LISTED ON PLAINTIFF'S INITIAL DISCLOSURE AND WITNESS LIST.

Plaintiff moves *in limine* to exclude affidavit/declarartion evidence that Defendant may use against Plaintiff that Defendant garnered through contacting Plaintiff's witnesses from Plaintiff's initial disclosure and witness list.

On July 30, 2019, Plaintiff's witness, George Spencer, contacted and informed Plaintiff's counsel that defense counsel had contacted and questioned him regarding his knowledge of the facts of this case. Defendant's counsel had previously indicated that Defendant intended to move *in limine* to preclude Mr. Spencer's testimony on the basis of relevancy. *See* Joint Proposed Witness and Exhibit List (D.E. 87), p. 3, n. 5. After stating this intention, Defendant's counsel contacted Mr. Spencer and requested that he sign a declaration stating that, "I am not intimately familiar with the details regarding the terms and conditions of employment for casual

employees of the Postal Service." *See* George Spencer Proposed Declaration, attached as Exhibit 2, ¶ 4. Previously, Mr. Spencer executed a declaration – which Defendant's counsel also emailed to Mr. Spencer – stating that "Casual employees are often intimidated by management and career craft employees with the lie that they don't have any rights which creates a fear factor every time they observe the termination of a casual employee for frivolous reasons." *See* EEO Spencer Affidavit, attached as Exhibit 3. This attempt to procure a newly-executed declaration would memorialize a change in Mr. Spencer's testimony – including but not limited to – his understanding of casual employees' rights to him not being intimately familiar with those rights. After questioning, to which Plaintiff's counsel was not privy, Defendant's counsel requested that Mr. Spencer sign an affidavit to apparently support their upcoming Motion *in Limine* and memorialize material changes in Mr. Spencer's previous testimony.

Defendant's counsel neither contacted Plaintiff's counsel nor forwarded a draft of the proposed declaration before contacting Plaintiff's witness. At the August 2, 2019 status conference, Judge Hornak confirmed that both parties are precluded from obtaining additional declarations or affidavits to support their case. Accordingly, due to the above, Plaintiff respectfully moves *in limine* that the Court exclude any evidence at trial in the form of affidavits and/or declarations that Defendant garnered through contacting Plaintiff's witnesses.

X. MOTION *IN LIMINE* NO. 10: PLAINTIFF MOVES *IN LIMINE* TO EXCLUDE EVIDENCE DEMONSTRATING THAT PREVIOUS ATTORNEYS HAVE DISMISSED PLAINTIFF AS A CLIENT.

Pursuant to Federal Rules of Evidence 401, 402, 403, and 404, Plaintiff hereby moves to exclude evidence that past attorneys have removed themselves as Plaintiff's representative. The reason is apparent: past legal representation is irrelevant as to whether the Post Office discriminated against Plaintiff. The probative value is substantially outweighed by the unfair prejudice that such evidence would result.

For the foregoing reasons, Plaintiff moves *in limine* to exclude evidence that prior attorneys have dismissed Plaintiff as a client.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that this Court grant her motions *in limine* and exclude or include during trial all evidence as described herein.

Dated: August 2, 2019

Respectfully submitted,

REED SMITH LLP

/s/ Andrew Lacy, Jr.
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Counsel for Plaintiff Amy Branch

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing on the following attorneys of record:

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/s/ Andrew Lacy, Jr.

Counsel for Plaintiff

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

- - -

AMY J. BRANCH, Plaintiff, vs. MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL, Defendant.	Civil Action No. 17-777 Judge Mark R. Hornak

- - -

Deposition of AMY J. BRANCH

Monday, October 30, 2017

- - -

The deposition of AMY J. BRANCH, the plaintiff herein, called as a witness by the defendant, pursuant to notice and the Federal Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Jacqueline M. O'Toole, a notary public in and for the Commonwealth of Pennsylvania, at the United States Attorney's Office, Suite 4000, Joseph F. Weis, Jr. U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219, commencing at 10:07 o'clock a.m., the day and date above set forth.

- - -

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MORSE, GANTVERG & HODGE, INC.
PITTSBURGH, PENNSYLVANIA
412-281-0189

- - -

ORIGINAL

APPEARANCES:

On behalf of the plaintiff:

(No appearance.)

On behalf of the defendant:

Jennifer Andrade, Esquire
Assistant United States Attorney
United States Attorney's Office
Joseph F. Weis, Jr. U.S. Courthouse
700 Grant Street, Suite 4000
Pittsburgh, Pennsylvania 15219

- - -

ALSO PRESENT:

AMIR BRANCH

I-N-D-E-X

AMY JO BRANCH

the plaintiff herein, called as a witness by the defendant, having been first duly sworn, as hereinafter certified, was deposed and said as follows:

EXAMINATION

BY MS. Andrade:

Q. Good morning, Ms. Branch. Can you please state and spell your name for the record.

A. My name is Amy Branch. My first name is spelled A-m-y, my last name is B-r-a-n-c-h.

Q. Okay. Is that your full name?

A. It's Amy Jo Branch. So my middle name is Jo, and it's spelled J-o.

Q. Have you always been known by that known name?

A. Yes.

Q. Any other names that you have gone by?

A. No.

Q. No. Not a married name, or anything like that?

A. No.

Q. Okay. And Branch is your maiden name?

A. Yes, it is.

Q. So I just want to go over the ground rules a little bit for a deposition. I think you have some familiarity with this, but just so we're clear for today. You understand that you're under oath?

****

Pages 6 through 170 of ECF #116-1 (the remainder of the transcript of the October 30, 2017 deposition of Amy Branch) have been deleted from these CLE Materials to conserve space.

****

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMY BRANCH, Plaintiff, v. MEGAN J. BRENNAN, UNITED STATES POSTMASTER GENERAL, Defendant.	)	Civil Action No. 17-777 Judge Peter J. Phipps

DECLARATION OF GEORGE SPENCER

George C. Spencer, Sr. hereby declares and states that:

1. My name is George C. Spencer, Sr. I worked as a Mail Handler for the United States Postal Service ("Postal Service") from July 1981 until my retirement in December 2018. During my employment, I was a member and officer in the National Alliance of Postal and Federal Employees ("NAPFE").
2. Recently, I learned that I may be called as a witness to testify in a race discrimination case filed by former Postal Service casual employee, Amy Branch.
3. I understand that Plaintiff's counsel wrote in a document filed in Court that I "may testify about [my] personal knowledge and experience regarding Amy's position as a casual employee."
4. I did not work in the Human Resources Department or the Labor Relations Department at the Postal Service. Accordingly, I am not intimately familiar with the details regarding the terms and conditions of employment for casual employees of the Postal Service.
5. The only testimony I would have about "casual employees" is that, to my knowledge

as a NAPFE member and officer, they are not covered by any collective bargaining agreement, and therefore do not have the right to a grievance and arbitration process when they are disciplined.

6. Apart from the above information, I have no additional information related to Amy Branch's claim that she was terminated from the Postal Service on the basis of race. Although I learned after the fact that Ms. Branch was terminated for threatening another employee, I have no first-hand knowledge of her termination. I did not work in same department as Ms. Branch on the date she was terminated, and therefore did not witness her conduct on May 11, 2012. Further, I was not involved in the decision to terminate Ms. Branch.

7. I declare that the foregoing is true and correct to the best of my knowledge and belief and is given under penalty of perjury.

_____

George C. Spencer, Sr.

Date: July 30, 2019

EXHIBIT 3

George C. Spencer, Sr.
1342 Traymore Avenue
Pittsburgh, PA 15221
(412) 225-0139

April 27, 2016

My name is George C. Spencer, Sr. and I am writing this statement for Ms. Amy Branch relative to an EEO complaint that she has told me I am referenced in by USPS Management Official Richard Gurneal. I was the District Five Labor Relations Director for the National Alliance of Postal and Federal Employees (NAPFE) when I met Ms. Branch who was a casual mailhandler at the Pittsburgh Processing and Distribution Center in 2010. NAPFE represents members and at times others when they believe their constitutional and statutory rights are violated. This is why I offered assistance to Ms. Branch on at least two occasions that I clearly saw NAPFE intervention could help resolve or prevent a problem.

The first incident involved a decision to terminate her for not calling in when she did not report to work one night. In addition she had reported that she had been sexually harassed by a supervisor. Settlement was reached pending verification from Ms. Branch that she had called the tour office but did not know the person's name that she talked to. She provided the documentation and was restored to her position.

I also voluntarily interceded for her in a situation for which I assume Mr. Gurneal is referencing about concerns I raised about her to him. Ms. Branch thought she was scheduled for work one night but discovered she was not on the schedule after punching her time card. Casual employees are often intimidated by management and career craft employees with the lie that they do not have any rights which creates a fear factor every time they observe the termination of a casual employee for frivolous reasons.

Thus Ms. Branch was visibly distraught and afraid about the possibility of being terminated. The regular supervisor for her section was not at work therefore, I offered to speak with Mr. Gurneal who was a Manager of Distribution Operations at the time about her error. I explained what happened to him and how upset and afraid she was. I do not recall whether he told her to remain at work or

punch out and leave but the matter was resolved. I have no idea what relevance it could possibly have in a decision to terminate her employment for an unrelated event later.

"I declare under penalty of perjury that the foregoing is true."

George C. Spencer, Sr.

EXHIBIT F(4)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SCOTT E. WINGARD, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	)	2:21-CV-1738

MEMORANDUM ORDER

Before the Court are motions *in limine* filed by Plaintiff Scott Wingard [ECF 55, ECF 56] and Defendant United States of America ("Post Office") [ECF 57, ECF 67]. The Court issues this omnibus order resolving the motions as follows.

I. PLAINTIFF'S MOTIONS

A. Plaintiff's motion *in limine* regarding Plaintiff's driving record [ECF 55].

The motion is **DENIED**. The Post Office does not intend to offer Mr. Wingard's driving history into evidence except for the limited purpose of establishing that Mr. Wingard was involved in a prior accident, from which he suffered injuries. To the extent Mr. Wingard raises any objections to that evidence, they are overruled because that limited evidence is relevant to the Post Office's defense and so is permissible.

B. Plaintiff's motion *in limine* regarding duplicative expert testimony [ECF 56].

The motion is **DENIED** without prejudice. Mr. Wingard challenges the relevance of testimony from one of the Post Office's experts—Dr. Richard Kaplan, a pain and rehabilitation specialist—under Rule 403 because it is duplicative of testimony from two other experts: Dr. William Abraham, an orthopedic surgeon, and Mark Kerestan, a physical therapist. However, the Court finds that the Rule 403

balance does not favor exclusion of this evidence, at least at this juncture. Each of the Post Office's witnesses is a different specialist with different expertise. The Post Office has demonstrated that it will rely on these experts to answer different questions related to Mr. Wingard's various medical injuries, each of which requires analysis as to their causation, permanence, severity, prognosis, and impact on Mr. Wingard's quality of life and ability to work. Therefore, the Court finds this evidence to be relevant, and doesn't find that it is so cumulative as to warrant exclusion. The Court is not inclined to exclude testimony that will assist it at trial. *Habecker v. Copperloy Corp.*, 893 F.2d 49, 52 (3d Cir. 1990) (noting the Third Circuit's "liberal policy of admitting expert testimony which will aid the trier of fact").

Accordingly, the Court will deny Mr. Wingard's motion without prejudice and will permit Dr. Kaplan to testify. Mr. Wingard may raise his motion again at trial if it turns out that Dr. Kaplan's testimony becomes excessively duplicative at that time.

II. DEFENDANT'S MOTIONS

A. Defendant's motion *in limine* to limit testimony of Dr. Gentile [ECF 57].

The motion is **GRANTED** in part and **DENIED** in part. The Post Office alleges Dr. John Gentile's expert report fails to meet the requirements of Federal Rule of Civil Procedure 26 because it does not disclose the basis for his conclusions that the automobile accident in this case was the cause of Mr. Wingard's shoulder pain. The Post Office also challenges Dr. Gentile's testimony under Federal Rules of Evidence 702 and 703 for failing to apply a reliable methodology for his conclusions as to Mr. Wingard's shoulder pain and the cost of a knee replacement, and for failing

to rule out alternative causes as to Mr. Wingard's shoulder pain. The Court addresses each objection in turn.

1. Though potentially deficient under Federal Rule of Civil Procedure 26, Dr. Gentile's expert report will not preclude his testimony.

The purpose of the rules governing expert reports is "the elimination of unfair surprise to the opposing party and the conservation of resources." *Reed v. Binder*, 165 F.R.D. 424, 429 (D.N.J. 1996) (citation omitted). An expert report must include, among other things, a "complete statement of all opinions that will be expressed at trial and the reasons and basis for the opinion." *Id.* at 428. "The test of a report is whether it was sufficiently complete, detailed and in compliance with the Rules so that surprise is eliminated, unnecessary depositions are avoided, and costs are reduced." *Peronis v. United States*, No. 16-1389, 2018 WL 4740170, at *6 (W.D. Pa. Oct. 2, 2018) (Fischer, J.) (cleaned up).

To provide a basis for his opinions as to the cause of Mr. Wingard's knee injury, Dr. Gentile's expert report states that femoral fractures of the kind Mr. Wingard sustained are "typically high energy injuries and commonly seen from higher speed motor vehicle accidents . . . and certainly is consistent with [Mr. Wingard's] report of an automobile accident as the cause." ECF 58-7, p. 1. Dr. Gentile's report does not provide a similar basis as to Mr. Wingard's shoulder injury, but states "within a reasonable degree of medical certainty" that Mr. Wingard's injuries "are directly related to the automobile accident." *Id.* at 2. Then, at his deposition, Dr. Gentile testified that (1) Mr. Wingard was referred to him by Dr. Adrian Butler, the primary physician who treated Mr. Wingard and who is one of Dr. Gentile's partners, for the purpose of treatment, and (2) Dr. Gentile based his conclusion that Mr. Wingard's shoulder injury was caused by the crash on Mr. Wingard's complaints of pain

following the crash and the medical notes of Dr. Butler. ECF 62-1, p.10, 30:3-6; p. 18, 63:15-64:22.

Dr. Gentile's testimony clarifies the basis for his conclusion that the car accident caused Mr. Wingard's shoulder pain, even if his expert report is deficient in that respect. But even assuming that Dr. Gentile's expert report fails to satisfy the requirements of Rule 26, exclusion of that testimony would still not be an appropriate sanction because any violation of the rule is harmless. In this regard, the Court considers the factors in *Nicholas v. Pennsylvania State University* to assess a party's failure to abide by the disclosure requirements of Rule 26: (1) the prejudice or surprise of the party against whom the excluded evidence would have been admitted; (2) the ability of the party to cure that prejudice; (3) the extent to which allowing the evidence would disrupt the orderly and efficient trial of the case or other cases in the court; and (4) bad faith or willfulness in failing to comply with a court order or discovery obligation. 227 F.3d 133, 148 (3d Cir. 2000).

Here, there is no surprise or prejudice to the Post Office because Dr. Gentile testified at his deposition as to the basis of his opinion on Mr. Wingard's shoulder pain. *See Reed*, 165 F.R.D. at 430 ("Nothing causes greater prejudice than to have to guess how and why an adversarial expert reached his or her conclusion."). Dr. Gentile's testimony will also not disrupt an orderly and efficient trial because Dr. Gentile will already testify as to the treatment of Mr. Wingard's knee pain. And the Court does not see any bad faith on the part of Mr. Wingard on this matter. The Court therefore will not preclude Dr. Gentile's opinions as to shoulder pain on the basis of Rule 26.

2. Dr. Gentile's opinions are not precluded under Federal Rules of Evidence 702 and 703.

The Post Office next argues Dr. Gentile's opinions must be excluded because he did not base them on a reliable methodology, did not rule out alternative causes,

and merely repeated the conclusions of Dr. Butler. None of these arguments is well taken.

First, Dr. Gentile's methodology is reliable. Rule 703 permits an expert to form an opinion based on facts or data of which he was made aware. Fed. R. Evid. 703. An expert may do so even if the underlying facts are not admissible, as long as they are of the kind that experts in the particular field would reasonably rely on. *Id.* Rule 703 specifically contemplates "experts relying on reports and opinions from nurses, technicians, and other doctors, hospital records, and X rays." *Feld v. Primus Techs. Corp.*, No. 12-1492, 2015 WL 1932078, at *2 (M.D. Pa. Apr. 28, 2015) (quoting Fed. R. Evid. 703 Advisory Committee's Notes).

Second, the failure to rule out all alternative causes is not a basis to exclude expert testimony. *Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 156 (3d Cir. 1999) ("A medical expert's causation conclusion should not be excluded because he or she has failed to rule out every possible alternative cause of a plaintiff's illness. . . . Obvious alternative causes need to be ruled out." (citation omitted)).

Third, Dr. Gentile's reliance on Dr. Butler's conclusions is more of a weight issue than an admissibility one. At his deposition, Dr. Gentile testified he has expertise in shoulder injuries, as he specializes in trauma and joint reconstruction, including for shoulders. ECF 62-1, p. 4, 5:9-7:19. He reviewed the medical opinions of Dr. Butler in reaching his conclusions about Mr. Wingard's shoulder, which is permissible under Rule 703. *Id.* at 18, 63:16-64:16. Additionally, Dr. Gentile testified that he based his conclusion on Mr. Wingard's complaints of "new pain" after the accident, such that he ruled out prior injuries as the cause of Mr. Wingard's shoulder pain in this case. *Id.* at 19, 66:2-67:10. The Post Office is free to challenge Dr. Gentile's conclusions on cross-examination. *See Hunter v. Kennedy*, No. 17-7, 2020 WL 3980414, at *3 (M.D. Pa. July 14, 2020) ("[Medical doctor expert] indicates that he reviewed the medical records and has provided his opinions 'to a reasonable degree

of medical certainty.' If at trial he does not testify as to a reasonable degree of medical certainty, Defendants may object. However, no cause exists for precluding the evidence at this point. Dr. Medrek's opinions may best be challenged through vigorous cross examination or presenting counter-evidence." (cleaned up)).

3. Dr. Gentile's conclusions as to cost of surgery are inadmissible.

The Post Office also challenges Dr. Gentile's conclusions on the cost of a knee replacement for Mr. Wingard. Dr. Gentile has offered no basis to conclude his opinion was based on a reliable methodology, as he admitted he lacked expertise as to surgery costs and reached his conclusion based solely on an internet search. ECF 62-1, p. 27, 99:24-100:13. Accordingly, that testimony is excluded.

B. Defendant's motion *in limine* to preclude testimony of Dr. Butler [ECF 67].

Finally, the Post Office asks this Court to preclude the testimony of Dr. Adrian Butler, who initially treated Mr. Wingard and who is a partner with Dr. Gentile. The Court **DENIES** the motion.

"In the Third Circuit, treating physicians' opinions on prognosis and causation are inherently expert testimony." *Rowland v. Novartis Pharms. Corp.*, 9 F. Supp. 3d 553, 566 (W.D. Pa. 2014) (Hornak, C.J.). But "[t]he plain language of Rule 26(a)(2)(A) explicitly limits the expert report requirement to individuals 'retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony.'" *Pease v. Lycoming Engines*, No. 10-843, 2012 WL 162551, at *13 (M.D. Pa. Jan. 19, 2012) (quoting Fed. R. Civ. P. 26(a)(2)(B)). The relevant inquiry for whether a party retained or employed a treating physician for expert testimony is "whether the treating physician acquired his opinion as to the cause of the plaintiff's injuries directly through his treatment of the

plaintiff." *Donaldson v. Lensbouer*, No. 15-63, 2017 WL 5634130, at *7 (W.D. Pa. Nov. 21, 2017) (Gibson, J.) (cleaned up).

Mr. Wingard disclosed Dr. Butler as a treating physician in both initial disclosures and interrogatories. ECF 73, p. 5. The Post Office obtained Dr. Butler's records pertaining to his treatment of Mr. Wingard during discovery. *Id.* Though the Post Office opted not to depose Dr. Butler, Dr. Gentile testified extensively about Dr. Butler's treatment of Mr. Wingard. ECF 62-1, p. 8, 22:8-23; p. 9, 25:10-18; p. 10, 29:1-31:25. There is no evidence from either party that Dr. Butler was retained for the specific purpose of providing his expert opinion. Thus, the expert reporting requirements do not apply to Dr. Butler.

The Post Office nonetheless contests Dr. Butler's testimony as otherwise unreliable. That's beside the point. As a treating physician, he can testify "as to personal knowledge [he] gained from [his] examinations" of Mr. Wingard, including examinations, diagnoses, course of treatment, and prognosis based on his observations in the course of Mr. Wingard's treatment. *Rowland*, 9 F. Supp. 3d at 566.[1]

****

Dated: November 21, 2022

BY THE COURT:

/s/ *J. Nicholas Ranjan*
J. Nicholas Ranjan
United States District Judge

[1] Additionally, the Court does not see any unfair prejudice to the Post Office in light of Mr. Wingard's early disclosure of Dr. Butler as one of Mr. Wingard's treating physicians, and the Post Office's choice not to depose him.

EXHIBIT G(1)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LENA DAVENPORT, an adult individual, Plaintiff,	)	
	)	Civil Action No. 2:13-cv-00250-SHS
v.	)	
	)	Judge Sidney H. Stein
BOROUGH OF HOMESTEAD, a Municipal Corporation, et al., Defendants.	)	

DEFENDANTS CITY OF PITTSBURGH AND GORECKI'S PROPOSED VOIR DIRE QUESTIONS

1. Have you, a family member or anyone in a close relationship with you, had what you consider to be a negative experience with a police officer, including a negative interaction, arrest or being issued a citation by a police officer?

YES_____ NO _____

2. If any jurors answer "yes" to the above question, it is requested that there be a follow up, one-on-one voir dire seeking the following information:

a. Who was it that experienced the negative experience?

b. What was the nature of the negative experience?

c. Would this experience affect your ability to render a fair and just verdict in this case?

YES_____ NO _____

3. If warranted by evidence, would any of you not be able to return a verdict in favor of the Defendants, due to either dislike or distrust of the police?

YES_____ NO _____

4. This case involves issues that are in the news on a fairly regular basis. Specifically, this case involves an African American person who was shot by a white police officer. Nationally, there has been considerable attention paid by the media and others to police/citizen encounters as well as protests that have resulted from such encounters. To the extent that you have followed such events in the news or otherwise, have these events in any way created in your mind a negative view of law enforcement or any other pre-conceived notions that would prevent you from being fair and impartial in deciding the case?

YES_____ NO _____

5. Have you, a family member or anyone in a close relationship with you, ever filed or made a complaint against any police officer, police department or any municipality?

YES_____ NO _____

6. If any jurors answer "yes" to the above question, it is requested that there be a follow-up, one-on-one voir dire seeking the following information:

a. Who was it that filed or made the complaint?

b. What was the nature of the complaint?

c. What was the outcome of making the complaint?

d. Would this experience affect your ability to render a fair and just verdict in this case?

YES_____ NO _____

7. Do any of you believe that the mere fact that the Plaintiff has filed a complaint against

the Defendants alleging a violation of her constitutional rights, that the Defendants must have done something wrong, and that the Plaintiff is entitled to a recovery of money damages?

YES_____ NO _____

8. The case you will hear is about a police involved shooting in which the Plaintiff alleges she suffered serious injuries to her head. At the close of this case, you will be asked to set aside any sympathy which you may feel for the Plaintiff and decide the case based solely on the evidence introduced in the courtroom. Is there anyone who does not feel that they would be able to set aside any feelings of sympathy for Ms. Davenport in deciding the case?

YES_____ NO _____

9. The Judge will supply you with the law. However, this case is different than what you may think of as a normal negligence case. In a negligence case, there can be liability for a mistake, such as someone distracted who was approaching a red traffic light did not see the red light and was involved in a motor vehicle accident; the distracted person is negligent and the party who sues them can recover. Cases involving police officers are different. The law provides some special protections for police officers in the performance of their duties. They are not liable for negligent conduct, mistakes, or for perceiving things incorrectly. If the actions of the officers were negligent, a mistake, or a result of them perceiving things incorrectly, would you be able to accept the law and find in favor of the Defendants?

YES_____ NO _____

10. The Judge will instruct you that it is the Plaintiff who must prove all elements of her

case and that it is not the duty of the Defendants to prove that they are not liable. Does anyone have difficulty accepting the fact that the Plaintiff, Ms. Davenport, has the burden of proof and that she has to affirmatively prove the facts as she alleges them to be by a preponderance of the evidence as well as the claims she has for damages?

YES_____ NO _____

11. Have any of you ever served on a jury before where there were claims brought against any police officer, police department or any employee of the City of Pittsburgh or any other municipality?

YES_____ NO _____

12. Do you or your spouse/partner or any close family members work for any lawyers, judges, anyone associated with the judicial system, law enforcement, police, prison or corrections?

YES_____ NO _____

13. If any jurors answer "yes" to the above question, it is requested that there be a follow up, one-on-one voir dire seeking the following information:

a. To whom does your spouse/partner or any close family member work for?

b. Does their employment experience affect your ability to render a fair and just verdict in this case?

YES_____ NO _____

14. This case involves matters which have received significant media coverage and have likely been the subject of social media posts, articles and/or blogs. If you utilize social media such as Facebook, Instagram, Twitter, LinkedIn, etc., are you connected with, friends and/or a follower of any of the parties to this litigation or their counsel, whom were previously introduced to you, or have you seen any social media content relating to this particular case?

YES_____ NO _____

15. If any jurors answer "yes" to the above question, it is requested that there be a follow up, one-on-one voir dire seeking the following information:

a. What social media do you use?

b. How frequently do you access your social media accounts?

c. What topics do you post about/comment on/re-post most often?

d. What social media content, if any, have you seen relating to this case?

e. What social media connection do you have, if any, to the parties or their counsel in this case?

f. Would these connections or the things you have seen online affect your ability to render a fair and just verdict in this case?

YES_____ NO _____

16. Do you, a family member or anyone in a close relationship with you, belong to any

social activism groups or other organizations whose goal is to bring about social reform and/or changes in society regarding policing issues or law enforcement?

YES_____ NO _____

17. If any jurors answer "yes" to the above question, it is requested that there be a follow up, one-on-one voir dire seeking the following information:

a. What social activism group or other organization do you belong to?

b. What is the primary goal of that group or organization?

c. Would this affect your ability to render a fair and just verdict in this case?

YES_____ NO _____

Respectfully submitted,

YVONNE S. HILTON
Acting City Solicitor

s/ Matthew S. McHale
Matthew S. McHale, Associate City Solicitor
Kezia O.L. Taylor, Assistant City Solicitor
City of Pittsburgh Law Department
313 City-County Building, 414 Grant Street
Pittsburgh, PA 15219
matthew.mchale@pittsburghpa.gov
Counsel for Defendants City of Pittsburgh and Thomas Gorecki

EXHIBIT G(2)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA, ERIE DIVISION

RHONSHAWN JACKSON, Plaintiff, v. PENNSYLVANIA DEPARTMENT OF CORRECTIONS and SARGENT O'BRIEN, Defendants	Case 1:16-cv-00133-SPB Judge Susan Paradise Baxter JURY TRIAL DEMANDED

PLAINTIFF'S PROPOSED ADDITIONAL VOIR DIRE

Plaintiff hereby submits the following proposed additional voir dire questions:

1. Do you have any bias for or against persons who are imprisoned? If so, what bias? If so, would any such bias cause you to view the facts, witness testimony, and other evidence less favorably to any party?
2. Do you believe that someone who is imprisoned is more or less credible than someone who is not imprisoned? If so, would any such belief cause you to view the facts, witness testimony, and other evidence less favorably to any party?
3. Do you have any bias for or against African Americans? If so, what bias? If so, would any such bias cause you to view the facts, witness testimony, and other evidence less favorably to any party?
4. Do you hold any beliefs or opinions that African Americans are given preferential treatment to the detriment of non-African American persons? If so, would any such belief or opinion cause you to view the facts, witness testimony, or other evidence less favorably to the Plaintiff?

5. Do you believe that someone who is an African American is more or less credible than a non-African American person? If so, would any such belief cause you to view the facts, witness testimony, and other evidence less favorably to any party?
6. Have you ever read or heard any news reports regarding the treatment of inmates at the State Correctional Institution at Albion? If your answer is "yes," is there any reason that the news report has in any way affected your view of any party?
7. Do you, any member of your family, or any close acquaintance, have any positive or negative view, for any reason, of jails, prisons, correctional officers, law enforcement officers, or of law enforcement officers in general? If your answer is "yes," who is it that holds the view? What is the basis for it?
8. Have any of you been retaliated against by someone in a position of authority for objecting to something that you believed to be wrong? If your answer is "yes," is there any reason that you would view the facts, witness testimony, and other evidence less favorably to any party?
9. Does anyone believe that there should be limitations on the amount of money that a jury should be allowed to award in a civil lawsuit? If your answer is "yes," is there any reason that you would not be able to render a verdict that is fair and compensatory to Plaintiff based on the facts, witness testimony, and other evidence?

Respectfully submitted:

Dated: October 21, 2021

/s/Andrew J. Horowitz, Esquire
Andrew J. Horowitz, Esquire
Pa. ID 311949
andrew.horowitz@obermayer.com
OBERMAYER REBMANN

MAXWELL & HIPPEL LLP
525 William Penn Place, Ste. 1710
Pittsburgh, PA 15219
412-566-1500
412-281-1530 (f)

Attorney for Plaintiff

EXHIBIT G(3.1)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SHANE MCGUIRE, Plaintiff, vs. COLBY J. NEIDIG, individually and in his official capacities as a Police Officer of the City of Pittsburgh, Defendant.	CIVIL ACTION NO. 2:14-cv-01531 The Honorable Judge Kearney **JURY TRIAL DEMANDED**

PLAINTIFF'S PROPOSED VOIR DIRE QUESTIONS

1. Any and all voir dire set forth in Local Rule 47.1.

Accepted _____ Denied _____

2. Have you or any member of your immediate family ever been employed in a law enforcement or some other security capacity?

Accepted _____ Denied _____

3. If so, do you think that on account of such employment you would be inclined to view the facts in this case more favorably to the defendant, Colby Neidig, a police officer than to the plaintiff, Shane McGuire, who is not a police officer?

Accepted _____ Denied _____

4. Do you or any member of your immediate family socialize on a regular basis with anyone employed in law enforcement or some other security capacity?

Accepted _____ Denied _____

5. If so, do you believe that on account of such social interaction you would be inclined to view the facts in this case more favorably to the defendant, Colby Neidig, a police officer than to the plaintiff, Shane McGuire, who is not a police officer?

Accepted _____ Denied _____

6. Have you or any member of your immediate family had any experience with a police officer that you believe could influence you to view the facts in this case more favorably to the defendant, Colby Neidig, a police officer than to the plaintiff, Shane McGuire, who is not a police officer?

Accepted _____ Denied _____

7. Do you have any strongly held opinions or beliefs about law enforcement or police officers that you think might cause you to view the facts in this case more

favorably to the defendant, Colby Neidig, a police officer than to the plaintiff, Shane McGuire, simply because Colby Neidig is a police officer and Shane McGuire is not?

Accepted _____ Denied _____

8. Have you or any family members or friends ever been the victims of police officers using excessive force upon them?

Accepted _____ Denied _____

9. Have you or any member of your family or your friends ever participated in mischief activities such as smashing pumpkins, toilet papering a house or ringing the door the doorbell of a home and retreating?

Accepted _____ Denied _____

10. You will hear that friends who were with Shane McGuire on the night of the incident at issue committed some acts of mischief such as smashing pumpkins and that Shane himself rang the doorbell of the Neidig residence and ran away before the encounter he had with Colby Neidig. Simply because of these events, do you believe

that you could not fairly judge all of the other facts about the encounter which will be presented to you in the course of case?

Accepted _____ Denied _____

Respectfully submitted,

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Date: January 31, 2017

By: /s/ Mark A. Eck
MARK A. ECK, ESQUIRE
PA I.D. No. 34613
AMANDA L. NESE, ESQUIRE
PA I.D. No. 318981
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon all parties on the date and in the manner listed below:

_____	First Class Mail, Postage Prepaid
_____	Certified Mail - Return Receipt Requested
_____	Hand Delivery
_____	Facsimile Transmission
_____	Overnight Delivery
___X___	Electronic Mail / CM/ECF Filing

at the following addresses:

Paul Krepps, Esquire
Marshall Dennehey Warner Colemn & Goggin
600 Grant St., Suite 2900
Pittsburgh, PA 15219
pdkrepps@mdwcg.com
(Counsel for Colby Neidig)

MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK, P.L.L.C.

Date: January 31, 2017

By: /s/ Mark A. Eck
MARK A. ECK, ESQUIRE
AMANDA L. NESE, ESQUIRE

EXHIBIT G(3.2)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SHANE MCGUIRE,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No. 14-1531
	)	
v.	)	Judge Mark A. Kearney
	)	
COLBY J. NEIDIG,	)	
	)	
Defendant.	)	
	)	**JURY TRIAL DEMANDED**

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S
PROPOSED VOIR DIRE QUESTIONS

AND NOW, comes Defendant, COLBY J. NEIDIG, by and through his counsel, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, P.C., Paul D. Krepps, Esquire, and Estelle K. McGrath, Esquire, and in response to Plaintiff's Proposed Voir Dire Questions, files the within Objections, as follows:

1. Defendant presumes that Plaintiff's Proposed Voir Dire Question No. 1 has a typographical error and instead should reference Local Rule 47.

3-9. Defendant objects to Plaintiff's Proposed Voir Dire Questions Nos. 3-9 because the questions are slated to determine whether a juror would act more favorably to Defendant, but do not inquire whether a juror would act more favorably to the Plaintiff. Instead, Defendant believes that if those questions are to be asked in voir dire, the questions must be framed to determine how those particular questions would affect a juror's ability to be a fair and impartial juror and/or prevent a juror from treating each party as equals under the law. Plaintiff's Proposed Voir Dire Questions Nos. 3-9 should be drafted to determine whether a juror could review the facts without bias or prejudice to either party.

10. Defendant objects to Plaintiff's Proposed Voir Dire Question No. 10, as Defendant disagrees with the facts suggested by the Plaintiff. A factual question such as this is inappropriate as a voir dire question. Therefore, Defendant requests that Plaintiff's Proposed Voir Dire Question No. 10 be stricken.

Respectfully submitted,

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN, P.C.

Dated: February 8, 2017

By: /s/ Paul D. Krepps

PAUL D. KREPPS, ESQUIRE
PA I.D. #73038

ESTELLE K. McGRATH, ESQUIRE
PA I.D. #87799

APRIL L. CRESSLER, ESQUIRE
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ekmcgrath@mdwcg.com
alcressler@mdwcg.com

Counsel for Defendant,
Colby J. Neidig

EXHIBIT G(4)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TIMOTHY JAY WALDRON, Plaintiff, vs. JOHN E. WETZEL, Secretary of the Department of Corrections of the Commonwealth of Pennsylvania, et al., Defendants.	)	2:20-CV-136

VOIR DIRE

A. Local Civil Rule 47 Questions

1. How old are you?
2. Where do you live? How long have you lived there?
3. What is your educational background?
4. What is your present occupation? (If retired, what was your occupation?)
5. Who is your employer? (If retired, who was your employer?)
6. Are you married?

   If so what is your spouse's occupation and who is your spouse's employer? (If your spouse is retired, what was his or her occupation and who was his or her employer?)

7. Do you have any children?

   If so, for whom do they work and what do they do?

B. Case Specific Questions Permitted by Court

8. This case is expected to last three to four days. Will the timing of the trial affect

your ability to serve as a juror? If so, why are you not able to serve?

9. Have you or any member of your immediate family ever served as a juror in a case?

10. If so, in what court and what was the nature of the case? Were you the foreperson? What was the outcome?

11. Have you or any member of your immediate family ever been a party, witness or in some other capacity in a lawsuit? If so, please describe the lawsuit and the outcome.

12. Have you, or has any member of your immediate family, ever been incarcerated in a local, state, or federal prison?

13. Have you, or has any member of your immediate family, ever been employed by or in any way connected to the Pennsylvania Department of Corrections?

14. Have you, or any member of your immediate family, ever had any contact or association with inmates held in any state correctional institution in Pennsylvania?

15. Have you, or has any member of your immediate family, ever been associated with a group or organization that advocates for the rights of prisoners?

16. . Do you have an opinion or belief concerning the Pennsylvania Department of Corrections, or the conduct of its corrections staff, that would affect your ability to be a fair and impartial juror?

17. Do you think that simply because a lawsuit has been filed, the defendants must have done something wrong, or that the plaintiff is entitled to a jury verdict in his favor?

18. Do you have any views about the subject matter of this case that would make it

difficult to serve as a juror during this trial?

19. Do you have any other beliefs or opinions that would make it difficult to serve as a juror during this trial?
20. Do you believe that there are too many lawsuits?
21. Do you believe that people who seek monetary damages for injuries are often awarded too much money by juries?
22. If so, would this belief impact your ability to award monetary damages to which the plaintiff may be entitled based on the facts as found by you and the law as instructed by the court?
23. Do you have any health, hearing, or vision impairment, or is there any other reason that would prevent you from serving as a fair and impartial juror in this case?

EXHIBIT H(1)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LENA DAVENPORT, an adult individual, Plaintiff,	)	
	)	Civil Action No. 2:13-cv-00250-SHS
v.	)	
	)	Judge Sidney H. Stein
CITY OF PITTSBURGH, a Municipal Corporation, and THOMAS GORECKI, individually and in his official capacity as a Police Officer of the City of Pittsburgh, Defendants.	)	

JOINT PROPOSED VERDICT FORM — PHASE ONE

We, the jury, unanimously, find the following:

PART A. Use of Force by Thomas Gorecki

1. Do you find by a preponderance of the evidence that Thomas Gorecki fired his weapon after the Buick LeSabre's final collision into the taxicab?

YES _____ NO _____

If you answered "No" to this question, you have completed your deliberations. Please go to the end of this verdict form, sign and date the form as indicated, and alert the bailiff that you have reached a verdict. If you answered "Yes" to this question, please go to Question 2 below.

[The matter set forth in the above paragraph is NOT AGREED upon by the parties. Plaintiff objects to Question 1 because it attempts to limit the jury's deliberation and is meant to suggest what the verdict should be. Plaintiff objects to the verdict slip generally because it improperly includes the phrase preponderance of evidence in every question.

Defendant believes that this special interrogatory is material to the issue of qualified immunity per the Third Circuit's opinion.]

2. Do you find by a preponderance of the evidence that Defendant Thomas Gorecki used excessive force against Plaintiff Lena Davenport?

YES _____ NO _____

If you answered "No" to this question, you have completed your deliberations. Please go to the end of this verdict form, sign and date the form as indicated, and alert the bailiff that you have reached a verdict. If you answered "Yes" to this question, please go to the next question.

[Plaintiff objects to Question #2 in that it improperly uses the phrase preponderance of evidence and submits the following question which comports with the model verdict form published in Appendix 1 of the Third Circuit Standard Jury Instructions. The following question should be #1 on the verdict form:

Did Defendant Gorecki's intentional use of deadly force violate Plaintiff Lena Davenport's Fourth Amendment right not to be subjected to excessive force?]

3. Do you find by a preponderance of the evidence that Thomas Gorecki's use of excessive force against Lena Davenport was a proximate cause of any injuries to Lena Davenport?

YES _____ NO _____

[Plaintiff objects to Question #3 in that it improperly uses the phrase preponderance of evidence and submits the following question which comports with the model verdict form published in Appendix 1 of the Third Circuit Standard Jury Instructions. The following question should be #2 on the verdict form:

Did the Defendant Gorecki's use of deadly force cause injury to the Plaintiff Lena Davenport?]

You have reached the end of this verdict form as to Phase One. Please sign and date the form on the following page as indicated and alert the bailiff that you have reached a verdict on Phase One.

[NOTE: The matter set forth in the above paragraph is AGREED upon by the parties.]

Unanimously agreed to by the undersigned jurors, this _____ day of January, 2019.

_____, Foreperson

_____

_____

_____

_____

_____

_____

_____

EXHIBIT H(2)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TIMOTHY JAY WALDRON,	)	
	)	
Plaintiff,	)	**No. 2:20-cv-00136**
v.	)	
	)	
JOHN E. WETZEL, Former Secretary of Corrections of the Commonwealth of Pennsylvania, and Superintendent of SCI-Mercer MELINDA ADAMS,	)	
	)	
Defendants.	)	

VERDICT SLIP

1. Do you find by a preponderance of evidence that Defendant Wetzel violated Plaintiff Timothy Waldron's constitutional right to substantive due process under the Fourteenth Amendment?

_____Yes _____No

If you answered "Yes" in Question 1, proceed to Question 2. If you answered "No," proceed to Question 4.

2. Do you find by a preponderance of the evidence that Plaintiff Timothy Waldron sustained actual injury as a result of the violation of his substantive due process rights by Defendant Wetzel?

_____Yes _____No

If you answered "Yes" to Question 2, proceed to Question 3. If you answered "No" to Question 2 above, Mr. Waldron is awarded nominal damages in the amount of $1.00 as to Defendant Wetzel. If you answered "No" to Question 2, proceed to Question 4.

3. What amount of damages will fairly compensate Plaintiff Waldron for any injuries caused by Defendant Wetzel?

$_____

Proceed to Question 4.

4. Do you find by a preponderance of evidence that Defendant Adams violated Plaintiff Timothy Waldron's constitutional right to substantive due process under the Fourteenth Amendment?

_____Yes _____No

If you answered "Yes" to Question 4, proceed to Question 5. If you answered "No" to Question 4, you have completed the questions and should sign and date this verdict slip.

5. Do you find by a preponderance of the evidence that Plaintiff Timothy Waldron sustained actual injury as a result of the violation of his substantive due process rights by Defendant Adams?

_____Yes _____No

If you answered "Yes" to Question 5, proceed to Question 6. If you answered "No" to Question 5 above, Mr. Waldron is awarded nominal damages in the amount of $1.00 as to Defendant Adams and you should sign and date this verdict slip.

6. What amount of damages will fairly compensate Plaintiff Waldron for any injuries caused by Defendant Adams?

$_____

You have completed the questions and should now sign and date this verdict slip.

DATE: _____

_____
Foreperson

EXHIBIT H(3)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SHANE MCGUIRE	:	**CIVIL ACTION**
	:	
	:	
v.	:	**NO. 14-1531**
	:	
COLBY J. NEIDIG	:	

VERDICT

We the jury of eight persons unanimously finds:

A. As to Mr. McGuire's civil rights claim.

1. Did Colby Neidig act under color of state law?

YES ✓ NO_____

If your answer to No. 1 is "YES", please proceed to Question No. 2.
If your answer is "NO", proceed to Question No. 5.

2. Did Colby Neidig use excessive force against Shane McGuire?

YES ✓ NO ____

If your response to No. 2 is "YES", please proceed to No.3.
If your answer to No. 2 is NO, please proceed to No. 5.

3. Did Colby Neidig cause Shane McGuire to experience economic loss, physical or emotional pain, suffering, inconvenience, mental anguish or loss of enjoyment of life?

YES ✓ NO _____

If you answered "YES" to Question 3, please proceed to Question 4a.
If you answered "NO" to Question 3, proceed to Question 5.

4a. What amount of damages will fairly compensate Mr. McGuire for economic loss, physical and/or emotional pain, suffering, inconvenience, mental anguish or loss of enjoyment of life?

$ 75,000.00

4b. If you found no compensatory damages in response to Question 4a, Mr. McGuire is awarded nominal damages in the amount of $1.00.

Please proceed to No. 5.

B. As to Mr. McGuire's assault and battery claims.

5. Did Colby Neidig assault Shane McGuire?

YES ☆ NO ____

Please proceed to No. 6.

6. Did Colby Neidig batter Shane McGuire?

YES ☆ **NO** ____

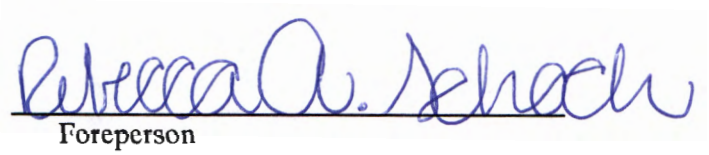
If you answered YES to No. 5 or No. 6, please proceed to No. 7.

If you answered NO to both No. 5 and No. 6, please have the foreperson sign and date the form below and notify the Madam Deputy.

7. What amount do you award Shane McGuire as compensatory damages?

$ 51,093.21

YOU HAVE COMPLETED YOUR DELIBERATIONS. PLEASE ASK THE FOREPERSON TO SIGN AND DATE BELOW AND NOTIFY THE MADAM DEPUTY OF COMPLETING YOUR DELIBERATIONS.



Foreperson

March 2, 2017