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RE: BROWN MARIANNE VS STATE OF NEW JERSEY DEPARTMENT
DOCKET: MER L -000503 18

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THE PRETRIAL JUDGE ASSIGNED IS: HON KAY WALCOTT-HENDERSON

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Marianne Brown and Judith Vazquez,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

State of New Jersey Department of
Corrections, John Does 1-50 (fictitious
names),

Defendants.

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
CIVIL LAW DIVISION

DOCKET NO.: MER-L-

Civil Action

**CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

CLASS ACTION COMPLAINT

Marianne Brown and Judith Vazquez (collectively, “Plaintiffs”), on behalf of themselves and all persons similarly situated, by way of Class Action Complaint against the New Jersey Department of Corrections (“NJDOC”), hereby allege:

I. THE PARTIES

1. Marianne Brown is an adult individual currently residing in the Edna Mahan Correctional Facility for Women in Clinton, Hunterdon County, New Jersey.

2. Judith Vazquez is an adult individual currently residing in the Edna Mahan Correctional Facility for Women in Clinton, Hunterdon County, New Jersey.

3. NJDOC, along with its Commissioner, Gary M. Lanigan, and administrative headquarters, is located in Mercer County, on Whittlesey Road, in the city of Trenton, New Jersey. NJDOC is a public entity amenable to suit under New Jersey law.

4. At all times herein, John Does 1-50 (fictitious names) were NJDOC supervisors acting within the scope of employment, or were individuals or entities acting as agents of NJDOC. NJDOC delegated to John Does 1-50 the authority to control Plaintiffs' environment. NJDOC knew or should have known of the illegal actions of John Does 1-50 and NJDOC failed to promptly and adequately remediate those actions.

II. INTRODUCTION

5. The Edna Mahan Correctional Facility for Women ("EMCFW"), formerly known as the Clinton Correctional Facility for Women, is located at 30 Route 513, in Clinton, Hunterdon County, New Jersey. Opened in 1913, EMCFW was named after one of the first female correctional superintendents in the United States.

6. Pursuant to the official NJDOC website description, EMCFW "houses state-sentenced female offenders. The prison provides a campus-like setting with housing units and various support buildings. In terms of security designation, there are two compounds – minimum and maximum/medium. There is a third housing compound for inmates with varying classifications of special mental health needs. Programming includes counseling as well as education and vocational opportunities."¹

7. EMCFW is the only women's correctional facility in New Jersey, providing custody and treatment programs for female offenders 16 years of age and older. EMCFW is a place of public accommodation subject to the New Jersey Law Against Discrimination ("LAD"). See *N.J.S.A. 10:5-12, et seq.*

8. NJDOC is a public entity that maintains: an annual budget of roughly \$1 billion; approximately 8,000 employees; 13 correctional institutions; and nearly 23,000 state-sentenced offenders housed in prisons, county jails and community halfway houses.

9. NJDOC is responsible for the day-to-day operations, supervision and management of EMCFW. In 2017, EMCFW had an operational capacity of 846 persons and an average daily population of 659. The daily expense per inmate was \$202.15, and the yearly per capita was \$73,785.00.²

10. For decades, an environment of rampant and unchecked sexual assault, and harassment of female inmates by prison employees, agents and administrators, as well as

¹ <http://njdoc.gov/pages/index.shtml>

² <http://www.nj.gov/treasury/omb/publications/18budget/pdf/FY18BudgetBook.pdf>

by other inmates, has been recognized and documented throughout state and federal corrections systems.

11. For example, a 1996 study by Human Rights Watch, entitled *Sexual Abuse of Women in U.S. State Prisons*, stated:

Our findings indicate that being a woman prisoner in U.S. state prisons can be a terrifying experience. If you are sexually abused, you cannot escape from your abuser. Grievance or investigatory procedures, where they exist, are often ineffectual, and correctional employees continue to engage in abuse because they believe they will rarely be held accountable, administratively or criminally. Few people outside the prison walls know what is going on or care if they do know. Fewer still do anything to address the problem.

The United States has the dubious distinction of incarcerating the largest known number of prisoners in the world, of which a steadily increasing number are women. Since 1980, the number of women entering U.S. prisons has risen by almost 400 percent, roughly double the incarceration rate increase of males. Fifty-two percent of these prisoners are African-American women, who constitute 14 percent of the total U.S. population. According to current estimates, at least half of all female prisoners have experienced some form of sexual abuse prior to incarceration. Many women are incarcerated in the 170 state prison facilities for women across the United States and, more often than not, they are guarded by men.

The custodial sexual misconduct documented in this report takes many forms. We found that male correctional employees have vaginally, anally, and orally raped female prisoners and sexually assaulted and abused them. We found that in the course of committing such gross misconduct, male officers have not only used actual or threatened physical force, but have also used their near total authority to provide or deny goods and privileges to female prisoners to compel them to have sex or, in other cases, to reward them for having done so. In other cases, male officers have violated their most basic professional duty and engaged in sexual contact with female prisoners absent the use or threat of force or any material exchange. In addition to engaging in sexual relations with prisoners, male officers have used mandatory pat-frisks or room searches to grope women's breasts, buttocks, and vaginal areas and to view them inappropriately while in a state of undress in the housing or bathroom areas. Male correctional officers and staff have also engaged in regular verbal degradation and harassment of female prisoners, thus contributing to a custodial environment in the state prisons for women which is often highly sexualized and excessively hostile.

No one group of prisoners appears to suffer sexual misconduct more than any other, although those in prison for the first time and young or mentally ill prisoners are particularly vulnerable to abuse. Lesbian and transgendered

prisoners have also been singled out for sexual misconduct by officers, as have prisoners who have in some way challenged an officer, either by informing on him for inappropriate conduct or for refusing to submit to demands for sexual relations.³

12. Similarly, a 1999 report by Amnesty International, entitled *Not Part of Her Sentence: Violations of the Human Rights of Women in Custody*, found the same widespread and systematic abuse and harassment of female prisoners:

Many women in prisons and jails in the USA are victims of rape and other forms of sexual abuse including, commonly, sexually offensive language; male staff touching female inmates' breasts and genitals while conducting searches and male staff watching women while they are naked. . . . Under international law, rape of an inmate by staff is considered to be torture. Other forms of sexual abuse violate the internationally recognized prohibition on cruel, inhuman or degrading treatment or punishment.⁴

13. The plight of incarcerated women was perhaps best crystalized by Kim Shayo Buchanan, in her 2007 study entitled *Impunity: Sexual Abuse in Women's Prisons*:

In the United States, sexual abuse by guards in women's prisons is so notorious and widespread that it has been described as 'an institutionalized component of punishment behind prison walls.' Women in prisons across the United States are subjected to diverse and systematic forms of sexual abuse: vaginal and anal rape; forced oral sex and forced digital penetration; *quid pro quo* coercion of sex for drugs, favors, or protection; abusive pat searches and strip searches; observation by male guards while naked or toileting; groping; verbal harassment; and sexual threats. Guards and prisoners openly joke about prisoner 'girlfriends' and guard 'boyfriends.' Women prisoners become pregnant when the only men they have had contact with are guards and prison employees; often they are sent to solitary confinement—known as 'the hole'—as punishment for having sexual contact with guards or for getting pregnant. Such open and obvious abuses would seem relatively easy for a prison administration to detect and prevent if it chose to do so.⁵

14. Thus, it was no surprise that the United States Department of Justice, through the Bureau of Justice Statistics, confirmed that, as of 2011:

³ <https://www.hrw.org/reports/1996/Us1.htm>

⁴ <https://www.amnestyusa.org/reports/usa-not-part-of-my-sentence-violations-of-the-human-rights-of-women-in-custody/>

⁵ <https://www.prearesourcecenter.org/sites/default/files/library/108-impunity-sexualabuseinwomensprisons2007.pdf>

[F]emales account for a greater proportion of victims of staff-on-inmate victimization than they do in the overall inmate population. Females account for 7% of sentenced prison inmates, but represent 33% of all victims of staff-on-inmate sexual victimization in federal and state prisons. Similarly, females represent only 13% of inmates in local jails, but 67% of all victims of staff-on-inmate victimization.

Correctional authorities reported that the sexual contact between the inmate and staff ‘appeared to be willing’ in 59% of substantiated incidents. However, few incidents of staff sexual harassment were determined to be willing (2%). When limited to incidents of staff sexual misconduct only, nearly three-quarters (74%) were classified as ‘appeared to be willing.’ Any sexual contact between inmates and staff is illegal, regardless of whether it ‘appeared to be willing.’

Physical force, abuse of power, or pressure was involved in 13% of incidents of staff sexual misconduct. An estimated 10% of the incidents of staff sexual misconduct involved unwanted touching for sexual gratification, and 9% involved indecent exposure, invasion of privacy, or voyeurism.⁶

15. Indeed, EMCFW was subject to sexual assault claims by two inmates (claims that were initially sought to be covered up), who were brutally assaulted from 1997 through 1999, in a lawsuit that continued into 2005. In that case, despite: extensive written policies and training manuals; a consent decree applicable to all New Jersey prisons that had been in effect since 1991, under which EMCFW was required to make minimum privacy accommodations for female inmates and institute formal training and policies for guards with respect to gender sensitivity and inmate privacy in areas such as locker rooms and showers; and a New Jersey state law specifically making it illegal to have “criminal/sexual contact” with inmates. *See N.J.A.C. 4A:2-2.3(a)* (prohibiting undue familiarity with inmates); *N.J.S.A. 2C: 14-3b* and *2C: 14-2c(2)* (prohibiting guard /inmate sexual relations); an environment of sexual terror pervaded the EMCFW grounds:

Sella, the EMCFW guard that raped and sexually assaulted inmates Heggenmiller and Davis, was not the first to be fired or prosecuted for improper contact with a female inmate. EMCFW records and deposition testimony reveal as many as six ‘familiarity’ or ‘contact’ incidents between 1994 and 1998, all involving different guards, none of them Sella. At least five of these guards were fired and prosecuted for conduct ranging from sexual assault to consensual sexual contact with current and former inmates. Additionally, when viewed in the light most favorable to Appellants, deposition testimony from guards and their immediate supervisors, including Captain Ochs, shows the administrative hierarchy of

⁶ <https://www.bjs.gov/content/pub/pdf/svraca0911.pdf>

EMCFW knew of up to a total of ten ‘familiarity’ or ‘contact’ incidents over a period of time dating back to 1990.⁷

16. During this time, evidence of this climate of abuse became so marked as to engender federal protective measures, embodied in the Prison Rape Elimination Act. NJDOC has acknowledged its responsibilities under the Act:

The Prison Rape Elimination Act (PREA) was signed into Federal law in 2003 by President George W. Bush. It was created to address the problem of sexual misconduct in all confinement facilities. In 2012, the U.S. Department of Justice released national PREA standards to prevent, detect and respond to sexual abuse and sexual harassment in confinement facilities.

The NJ Department of Corrections (NJDOC) is responsible for protecting the rights of inmates placed under the Department’s custody and supervision. The Department has established a zero-tolerance policy for all forms of sexual abuse and sexual harassment and acts to prevent, detect and respond to all allegations and incidents of sexual misconduct.

All NJDOC employees, volunteers and contractors receive training on their duties and responsibilities under the Department’s zero-tolerance policy and are informed that they are required to immediately report any incident or allegation of sexual abuse and sexual harassment.

The NJDOC investigates all allegations of offender–on–offender and staff–on–offender sexual misconduct.⁸

17. NJDOC commissioned a PREA audit of EMCFW in July 2014. That audit looked at 42 different multipart standards used to detect and combat sexual assault and sexual harassment at EMCFW. Despite the hostile environment at EMCFW, the facility scored a perfect 42 out of 42 “standards met” in the PREA audit.⁹

18. However, the audit, and any other attempts by NJDOC to cover up the hostile environment at EMCFW, eventually failed. Shortly after the audit, among numerous other incidents, a longtime NJDOC employee at EMCFW pleaded guilty in October 2017 to official misconduct for having sex with an inmate, and was sentenced to prison. Thereafter, in January 2018, four veteran EMCFW corrections officers were indicted by a Hunterdon County grand jury on charges ranging from second-degree official misconduct and sexual

⁷*Heggenmiller v. Edna Mahan Corr. Inst.*, 2005 U.S. App. LEXIS 6067 **6-**9 (3d. Cir. 2005) (unreported).

⁸ <http://www.state.nj.us/corrections/pages/PREA/PREA.html>

⁹ <http://www.state.nj.us/corrections/pdf/PREA/Reports/14%20Edna%20Mahan%20PREA%20AUDIT%20Final.pdf>

assault, to third-degree criminal coercion and fourth-degree criminal sexual contact. Moreover, upon information and belief, further investigations of senior NJDOC employees at EMCFW are ongoing.

19. The numerous programs, policies, manuals, training, testing and audits purportedly employed by EMCFW to combat, or at least in some small measure control, the pervasive atmosphere of brutal sexual assault and harassment at EMCFW have been, at worst, a contrived farce, and, at best, completely ineffectual.

III. EXAMPLES OF ILLEGAL ACTIVITY AT EMCFW

20. For example, in 1994, EMCFW corrections officer, Kevin Brodie, had inappropriate sexual relationships with inmates at the facility.

21. In 1995, EMCFW corrections officer, William Jimenez, had inappropriate sexual relationships with an inmate and/or former inmate of the facility.

22. In 1996, EMCFW corrections officer, Lt. Ralph Grier, paid an inmate in exchange for nude photographs, at the facility.

23. In 1997, EMCFW corrections officer, David Clappison, had an inappropriate sexual relationship with an inmate at the facility.

24. In 1998, EMCFW corrections officer, Jeffrey Barr, had an inappropriate sexual relationship with an inmate at the facility.

25. In 1998, EMCFW corrections officer, Robert Scannicchio, had an inappropriate sexual relationship with an inmate at the facility.

26. From 1998 through 2001, EMCFW corrections officers, Collinge and Connor, coerced and/or forcibly raped an inmate on multiple occasions, at the facility.

27. From 2001 through 2002, EMCFW corrections officer, Kalisch, coerced or traded sexual favors with inmates for contraband, at the facility.

28. In 2002, EMCFW corrections officer, Erick Melgar, had inappropriate sexual relations and sexually harassed and abused multiple inmates, including fondling an inmate, masturbating in front of inmates, and digitally penetrating inmates, at the facility.

29. In 2002, EMCFW corrections officer, Arrington, had inappropriate sexual relationships with multiple inmates at the facility.

30. From 2007 through 2008, EMCFW corrections officer, James Gallichio, had an inappropriate sexual relationship with an inmate and introduced contraband, including cell phones, at the facility.

31. In 2013, EMCFW corrections officer, Hollander, had an inappropriate sexual relationship with an inmate and introduced contraband, including cell phones, at the facility.

32. In 2014, EMCFW corrections officer, Holten, sexually assaulted an inmate at the facility.

33. In 2015, EMCFW corrections officers, Almeda and Dalton, had inappropriate sexual relationships with multiple inmates at the facility.

34. Through 2015, EMCFW corrections officer, Joel Mercado, had inappropriate sexual relationships with multiple inmates at the facility.

35. From 2014 through 2016, EMCFW corrections officer, Jason Mays, had inappropriate sexual relationships with multiple inmates, sexually harassed and assaulted multiple inmates with repeated inappropriate sexual innuendos, ordered inmates to undress for him, and physically groped, kissed and masturbated over inmates, at the facility.

36. From 2014 through 2016, EMCFW corrections officer, Ronald Coleman, had inappropriate sexual relationships with multiple inmates, sexually harassed and assaulted multiple inmates by grabbing the inmates, forcibly kissing the inmates, choking the inmates, and directing the inmates to have sex with other inmates while he watched, at the facility.

37. From 2014 through 2016, EMCFW corrections officer, Ahnwar Dixon, had an inappropriate sexual relationship with an inmate at the facility.

38. In 2016, EMCFW corrections officer, Brian Ambrose, had inappropriate sexual relationships with multiple inmates at the facility.

39. From 2016 through 2017, EMCFW corrections officer, Shaqr, repeatedly made inappropriate sexual innuendos to an inmate, groped an inmate, and digitally penetrated an inmate, at the facility.

40. The foregoing are just examples of the more egregious acts of violence and blatant sexual assault, based on the gender of the inmates, which created a longstanding hostile environment for the female inmates at EMCFW. This atmosphere of fear and intimidation was exacerbated because any complaints had to be reported to the inmates' abusers – the correction officers who supervised and controlled every facet of the inmates' lives.

41. In addition, EMCFW was rife with constant inappropriate sexual comments and innuendos directed at inmates, based on their gender, made in front of other inmates, corrections officers and administrators at the facility. Female inmates regularly overheard lewd conversations, saw offensive images and witnessed the sexual harassment of other female inmates.

42. Moreover, corrections officers failed or refused to try to stop the same type of inmate-on-inmate sexual abusive and offensive conduct, based on the gender of the inmates, thereby adding to the atmosphere of sexual assault and intimidation created by the NJDOC.

43. Similarly, there existed a universal atmosphere of *quid pro quo* involving corrections officers exchanging gifts and privileges for sexual favors, and the physical and mental coercion of, and favoritism toward, certain inmates based upon sexual favors. In this abusive, demeaning environment, it was made clear that engaging in nonconsensual sexual conduct was a prerequisite to female inmates' favorable, or even fair, treatment.

44. The many forms of abuse and hostile environment created by NJDOC throughout EMCFW was both severe and pervasive; the inmates were all targeted based upon their gender; and any reasonable woman would find such conduct to be extremely sexually offensive and intimidating.

45. NJDOC has specifically delegated the power to its corrections officers to supervise and control the day-to-day living environment of the EMCFW inmates. The longstanding history of widespread abuse shows that NJDOC tacitly ratified or approved of these abusive acts, showed willful indifference to them, and was reckless in employing such unfit employees and agents.

46. As a proximate result of NJDOC's creation and maintenance of a hostile environment, the female inmates have suffered past and future emotional distress, including anxiety, humiliation, mental pain and anguish.

IV. FACTUAL ALLEGATIONS RELATING TO PLAINTIFFS

47. Plaintiff, Marianne Brown, is a female inmate incarcerated at EMCFW, and has been an inmate there for roughly 17 years.

48. During her incarceration at the EMCFW, Brown, although she has escaped more direct victimization by corrections officers, has witnessed years of severe and pervasive abuse of others by corrections officers and other NJDOC employees.

49. Being physically present in a corrections facility with such rampant abusive conduct, which in and of itself constitutes a severe and pervasive environment, has had a harmful effect on Brown.

50. Plaintiff, Judith Vazquez, is a female inmate incarcerated at EMCFW, and has been an inmate there for roughly 22 years.

51. During her incarceration at EMCFW in the late 1990s, Vazquez sought redress in the civil court system for being assaulted by two corrections officers. Nevertheless, no disciplinary action was taken against the corrections officers who assaulted her. In the roughly 15 years since that time, although she has escaped more direct victimization by corrections officers, she has witnessed or otherwise become aware of years of severe and pervasive abuse upon others by corrections officers and other NJDOC employees.

52. Being physically present in a corrections facility with such rampant abusive conduct, which in and of itself constitutes a severe and pervasive environment, has had a harmful effect on Vazquez.

53. The conduct described above represents a dehumanizing culture of harassment, discrimination, and retaliation at EMCFW that continues to the present day. Female inmates live under the constant terror and intimidation of being forced to endure sexual discrimination, harassment and abuse at the hands of supervisors acting with complete impunity, merely in order for the inmates to survive on a daily basis in custody.

54. Plaintiffs, Marianne Brown and Judith Vazquez, represent a class of similarly situated claimants consisting of all current female inmates who are presently incarcerated at EMCFW, and all former female inmates who have been released from incarceration at EMCFW in the last 2 years (the “Class”).

55. Excluded from the Class are those current and former EMCFW inmates who have been the subject of more direct, severe, and individualized physical harassment, assault, or improper sexual relationships, rendering those individual claims inconsistent with the claims of the Class.

V. CLASS ALLEGATIONS

56. Pursuant to the LAD, freedom from discrimination is a civil right. The conduct delineated herein by corrections officers and others at EMCFW constitutes discrimination based on sex in violation of the civil rights of the Class.

57. NJDOC corrections officers and other employees who harassed, assaulted, and/or abused female inmates at the EMCFW were aided in their actions by the supervisory authority over their victims granted them by NJDOC.

58. NJDOC had actual and constructive knowledge of such conduct and failed to take reasonable action to prevent the violation of the civil rights of the Class.

59. The Class asserts that the environment at the EMCFW is discriminatory based on the sex of the female inmates, and that the sexual harassment and discrimination at the facility has been so severe and pervasive that it constitutes a hostile and abusive environment in violation of the LAD.

60. The Class demands compensatory damages, punitive damages, as well as declaratory and injunctive relief requiring NJDOC to end the hostile and abusive environment at EMCFW and enact and enforce meaningful policies and procedures to prevent future discrimination.

61. Pursuant to *R. 4:32-1 et seq.*, certification of the Class is appropriate if: the Class is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the Class; the claims or defenses of the proposed class representatives are

typical of the claims or defenses of the Class; and the proposed class representative will fairly and adequately protect the interests of the Class.

NUMEROSITY

62. In 2017, EMCFW had an operational capacity of 846 and an average daily population of 659. In consideration of the inclusion of those inmates released in the last 2 years, the projected size of the Class is between 1,000 and 3,000 women.

63. The members of the Class are ascertainable through the use of objective criteria. The identity of all of the members of the Class is within the knowledge of NJDOC and can be readily ascertained by resort to NJDOC's records.

64. The Class is so numerous as to make pursuit of individual claims under the LAD impractical.

COMMONALITY

65. The Class delineated herein, including similarly situated claimants consisting of all current female inmates who are presently incarcerated at EMCFW and all former female inmates that have been released from incarceration at EMCFW in the last 2 years, and excluding those current and former EMCFW inmates who have been the subject of more direct and individual harassment, physical assault or improper sexual relationship, share common questions of law and fact.

66. Specifically, the underlying fact patterns for those female inmates who have been the direct concentrated targets of corrections officers for coercion/manipulation into inappropriate sexual relationships, campaigns of sexual harassment, or sexual assault, vary in the timing, pervasiveness, and severity of the conduct such that the rights of those women would be better served by the pursuit of individual claims.

67. Excluding those female inmates who have been direct targets, the remaining female inmates incarcerated at EMCFW have not escaped the atmosphere of rampant sexual harassment and assault and themselves are immersed in, and harmed by, an environment where the corrections officers who have complete care, custody, and control over those inmates, sexually harass and assault them, as well as other female inmates around them, with impunity.

68. Thus, the remaining claims of those female inmates so subjected to a hostile and abusive environment of sexual harassment at EMCFW in violation of the LAD, contain similar questions of law and fact appropriate for adjudication on behalf of the entire Class.

TYPICALITY

69. Plaintiffs' claims are typical of the claims of the members of the Class that Plaintiffs seek to represent. Plaintiffs and all members of the Class are current or former female EMCFW inmates, who claim that NJDOC harmed them through a common course of conduct.

70. While Plaintiffs have either escaped being the subject of individual physical assault or improper sexual relationship over the course of their time at EMCFW and/or seen such conduct continue after seeking redress for individual assault in the distant past as in the case of Judith Vazquez, Plaintiffs, like everyone else at EMCFW, were well aware of the widespread and inescapable terror and victimization. Plaintiffs were also well aware of the rampant inappropriate sexual relationships between corrections officers and inmates, as well as sexual harassment and abuse by corrections officers and inmates. So severe and pervasive were the incidents of sexual harassment at EMCFW, especially considering the vulnerable status of those women incarcerated there, that Plaintiffs, like any reasonable woman, perceived the environment to be hostile and abusive.

71. Thus, Plaintiffs' experience at EMCFW and their resulting claims under the LAD for the hostile and abusive culture and general environment are typical of the claims of all members of the Class.

ADEQUACY OF REPRESENTATION

79. Plaintiffs understand the responsibilities and obligations of serving as representatives of the Class and are prepared to fairly and adequately represent the Class.

80. Plaintiffs have retained Counsel highly experienced in the handling of class actions and LAD claims generally, as well as the sexual harassment and/or assault claims on behalf of incarcerated women. Counsel have the financial resources and are committed to prosecute this action vigorously. Neither Plaintiffs nor their Counsel have interests adverse to those of the Class.

APPROPRIATENESS OF INJUNCTIVE OR DECLARATORY RELIEF

81. Certification of the Class is appropriate pursuant to *R. 4:32-1(b)(2)*, in that NJDOC has refused to enact or enforce meaningful or effective policies or procedures to prevent sexual harassment, assault, and abuse at EMCFW, which refusal is generally applicable to the Class, making final declaratory and injunctive relief with respect to the Class appropriate, as common questions of law and fact of the Class predominate over any individual variations affecting Class members.

PREDOMINANCE AND SUPERIORITY

82. Certification of the Class is appropriate pursuant to *R. 4:32-1(b)(3)* because the common questions predominate over any individual issues and include, but are not limited to: whether it should be declared and adjudicated that NJDOC violated the LAD by creating and maintaining a hostile environment at EMCFW; the proper method or methods by which to enjoin NJDOC's illegal and injurious violations of the LAD; and the proper method or methods by which to measure further relief and/or damages.

83. Certification is also appropriate under *R. 4:32-1(b)(3)* because class treatment is superior to other methods of adjudicating the controversy. NJDOC has acted on grounds generally applicable to the members of the Class, thereby making final relief appropriate

with respect to the Class as a whole. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to the individual members of the Class that would establish incompatible standards of conduct for NJDOC.

84. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more effectively protects the rights of each Class member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the Court, and the public, making class adjudication superior to other alternatives.

85. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons: given the size of the claims of individual members of the Class, as well as the resources of NJDOC, few class members, if any, could afford to seek legal redress individually for the wrongs alleged herein; this action will permit an orderly and expeditious administration of the claims of Class members, will foster economies of time, effort, and expense, and will ensure uniformity of decisions; any interest of Class members in individually controlling the prosecution of separate actions is not practical, creates the potential for inconsistent or contradictory judgments, and would create a burden on the court system; and without a class action, Plaintiffs and Class members will continue to suffer damages, and NJDOC's violations of law will proceed without remedy.

86. Notice can be accomplished by direct notice for most, if not all, members of the Class, and targeted publication notice for the remainder.

VI. CLAIMS UNDER THE LAD

87. Plaintiffs incorporate the allegations in the preceding paragraphs as if set forth herein.

88. NJDOC is subject to the LAD in that EMCFW is a place of public accommodation and by virtue of being a state governmental entity. As such, NJDOC is subject to injunctive and declaratory relief, as well as monetary damages, under the LAD.

89. During their time at EMCFW, due to conduct including the examples above of inappropriate sexual relationships, sexual harassment, and sexual assault, Plaintiffs and all those female inmates similarly situated were exposed to a systematic and severe culture of discrimination that any reasonable woman would perceive to be hostile and abusive.

90. This pattern of systematic harassment and discrimination was based upon the gender of Plaintiffs, and those female inmates similarly situated, and would not have occurred but for the sex of Plaintiffs, and those female inmates similarly situated.

91. Plaintiffs, and those female inmates similarly situated, are under the care, custody, control of, and indeed are at the mercy of, NJDOC, such that the impact of threatening, harassing, or discriminatory conduct was magnified.

92. Corrections officer employees of NJDOC were aided in their conduct by their delegated supervisory power and positions as corrections officers over the female inmates incarcerated at EMCFW.

93. Despite the incidents and conduct described above, the administration of EMCFW falsely reported or underreported incidents and allegations of sexual assault at the facility. NJDOC was independently careless, negligent, or reckless in that it knew or should have known of the culture of sexual abuse at EMCFW and failed to enact or enforce effective remedial action, appropriate policies or procedures to prevent the severe and pervasive discrimination at EMCFW.

94. NJDOC's acts or omissions were motivated by actual malice or accompanied by a wanton and willful disregard of individuals who foreseeably might be harmed by those acts or omissions.

95. NJDOC participated in, condoned, ratified, perpetuated, aided and abetted in creating and maintaining the hostile environment at EMCFW.

96. The failure of upper management responsible for EMCFW to promptly investigate, issue appropriate discipline and remediate the hostile environment constitutes a willful violation of the LAD.

97. NJDOC was under a duty to exercise reasonable care and to supervise, train, counsel and discipline supervisors, agents and employees to prevent and promptly remedy a hostile work environment. NJDOC failed to exercise reasonable care in supervising, training and disciplining its supervisors, agents and employees despite actual and/or constructive knowledge that they had engaged in severe harassment of Plaintiffs, and those female inmates similarly situated.

98. So severe, pervasive, and longstanding was the hostile environment and culture of sexual abuse at EMCFW, which NJDOC had actual knowledge of, that NJDOC's failure to take any measures to address it constituted willful ignorance of substantial risk of harm so egregious that it is unacceptable in a civilized society.

99. As a result, Plaintiffs and all those female inmates similarly situated, suffered past and future severe emotional distress. Therefore, Plaintiffs and all those female inmates similarly situated, were forced to bring this action to declare NJDOC in violation of the LAD, to require NJDOC to take appropriate corrective action to end this widespread environment of harassment and discrimination, and for damages.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the members of the Class demand a jury trial on all claims so triable and judgment:

- a) Declaring that Plaintiffs be designated representatives of the Class and that the undersigned be designated Class Counsel;
- b) Certifying the existence of a Class pursuant to *R. 4:32-1(b)(2)* and *R. 4:32-1(b)(3)*;
- c) Declaring that NJDOC has violated, and is in violation of, the LAD by creating and maintaining a hostile environment at EMCFW;
- d) Enjoining NJDOC's illegal and injurious violation of the LAD by creating and maintaining a hostile environment at EMCFW;
- e) For compensatory damages;
- f) For punitive damages based on NJDOC's egregious conduct;
- g) For prejudgment interest at the maximum rate, pursuant to applicable law;
- h) For reasonable attorneys' fees to compensate Class Counsel in connection with this action, pursuant to applicable law;
- i) For costs and disbursements incurred by Plaintiffs, the Class and Class Counsel in connection with this action, pursuant to applicable law; and
- j) For such other and further relief, as this Court deems just and proper.

By: s/ Martin P. Schrama
MARTIN SCHRAMA, ESQUIRE

Date: 3/12/2018

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Attorneys for Plaintiffs and Proposed Class

DEMAND FOR JURY TRIAL

Jury trial is demanded on all issues raised herein.

DESIGNATION OF TRIAL COUNSEL

TAKE NOTICE that Martin P. Schrama, Esq., Stefanie Colella-Walsh, Esq., Oliver T. Barry, Esq., and Frank L. Corrado, Esq., are hereby designated as trial counsel in the above captioned litigation, pursuant to R. 4:5-1.

R. 4:5-1 CERTIFICATION

I certify the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated, except for the potentially overlapping class action captioned *Nobles v. Anderson*, MER-L-2644-17.

There are no other known necessary parties, other than any presently unknown defendants, designated herein as fictitious defendants, John Does 1-50.

CONFIDENTIAL PERSONAL IDENTIFIERS

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

By: s/ Martin P. Schrama
MARTIN P. SCHRAMA, ESQUIRE

Date: 3/12/2018

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Civil Case Information Statement

Case Details: MERCER | Civil Part Docket# L-000503-18

Case Caption: BROWN MARIANNE VS STATE OF NJ
DEPT OF CORRECTIO

Case Initiation Date: 03/12/2018

Attorney Name: MARTIN P SCHRAMA

Firm Name: STARK & STARK PC

Address: 993 LENOX DR
LAWRENCEVILLE NJ 08648

Phone:

Name of Party: PLAINTIFF : BROWN, MARIANNE

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: YES

If yes, list docket numbers: MER-L-2644-17

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Other(explain) INMATE/PRISON

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

03/12/2018
Dated

/s/ MARTIN P SCHRAMA
Signed