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Attorney for Defendant,  
James Davy, Commissioner of the  
New Jersey Department of Human  
Services, in his Official Capacity

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
VICINAGE OF TRENTON

_____	:	
NEW JERSEY PROTECTION AND	:	HON. STANLEY R. CHESLER, U.S.D.J
ADVOCACY, A New Jersey Non-	:	
profit corporation	:	Civil Action No. 05-1784 (SRC)
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JAMES DAVY, In his Official	:	
Capacity as Commissioner of	:	
Human Services for the State	:	
of New Jersey,	:	ANSWER
	:	
Defendant.	:	
_____	:	

Defendant, James Davy, in his Official Capacity as  
Commissioner for the State of New Jersey, Department of Human  
Services (hereinafter "Defendant"), by way of answer to the  
complaint states as follows:

**PRELIMINARY STATEMENT**

To the extent that the unnumbered paragraphs in Plaintiff's preliminary statement contain summaries of case law and New Jersey Court Rules and conclusions of law to which no response is required and are deemed denied. To the extent that the unnumbered paragraphs in Plaintiff's preliminary statement contain factual allegations they are not sufficiently specific such that Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

**THE PARTIES**

1. Defendant admits that New Jersey Protection and Advocacy Inc. (hereinafter "NJP&A") is a non-profit corporation, designated in 1994 to serve as New Jersey's and advocacy system for individuals with mental illness pursuant to 42 U.S.C. §§ 10801-10807, which statutes speak for themselves. The remaining allegations in paragraph 1 of the complaint are denied.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 2 of the complaint.

3. The allegations in paragraph 3 of the complaint constitute conclusions of law to which no response is required and are deemed denied.

4. 42 U.S.C. §10802 speaks for itself and therefore no response is required. The allegations in the first sentence of paragraph 4 constitute legal conclusions to which no response is required and are deemed denied. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 4.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the complaint.

6. Defendant admits that James Davy is the Commissioner of the New Jersey, Department of Human Services (DHS). Title II of the Americans with Disabilities Act (ADA) and specifically, 42 U.S.C. § 12131(1), speak for themselves and therefore no response to the allegations concerning them in paragraph 6 is required. The remaining allegations in paragraph 6 of the complaint are denied.

7. The Defendant admits that the Commissioner has those powers given to him as set forth in Title 30 of the New Jersey Statutes, which statutes speak for themselves and no response is required. The ADA and Section 504 of the Rehabilitation Act speak for themselves and no response is required. The allegations in the first sentence of paragraph 7 also constitute conclusions of law to which no response is required and are deemed denied. Defendant admits that he is being sued in his official capacity.

8. Defendant admits that DHS operates state psychiatric facilities as set forth in N.J.S.A. 30:1-7 and has responsibilities as set forth in Title 30 of the New Jersey Statutes. The remaining allegations contained in paragraph 8 are denied.

9. The Defendant admits that DHS is the recipient of certain federal funds pursuant to N.J.S.A. 30:1-19 and admits that it administers state mental health programs pursuant to Title 30 of the New Jersey Statutes and N.J.A.C. 10:30-1.1 et. seq. Defendant denies the remaining allegations in paragraph 9 of the complaint.

#### **JURISDICTION**

10. Defendant admits that generally a United States District Court has jurisdiction over cases arising under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3)&(4).

11. Defendant admits that generally a United States District Court may award declaratory and injunctive relief under 28 U.S.C. § 2201 et seq.

#### **FACTS**

12. The Supreme Court of New Jersey's decision in In re S.L., 94 N.J. 128 (1983) speaks for itself and therefore no response to paragraph 12 is required.

13. The Supreme Court of New Jersey's decision in In re S.L., 94 N.J. 128 (1983) speaks for itself and therefore no response to paragraph 13 is required.

14. The Supreme Court of New Jersey's decision in In re S.L., 94 N.J. 128 (1983) speaks for itself and therefore no response to paragraph 14 is required.

15. The Supreme Court of New Jersey's decision in In re S.L., 94 N.J. 128 (1983) speaks for itself and therefore no response to paragraph 15 is required.

16. The Supreme Court of New Jersey's decision in In re S.L., 94 N.J. 128 (1983) speaks for itself and therefore no response to paragraph 16 is required.

17. The Supreme Court of New Jersey's decision in In re S.L., 94 N.J. 128 (1983) speaks for itself and therefore no response to paragraph 17 is required.

18. The Supreme Court of New Jersey's decision in In re S.L., 94 N.J. 128 (1983) speaks for itself and therefore no response to paragraph 18 is required.

19. The Supreme Court of New Jersey's decision in In re S.L., 94 N.J. 128 (1983) speaks for itself and therefore no response to paragraph 19 is required.

20. The allegations in paragraph 20 of the complaint constitute conclusions of law to which no response is required and are deemed denied.

21. Defendant denies the allegations in paragraph 21 of the complaint.

22. Defendant denies the allegations in paragraph 22 of the complaint.

23. To the extent that the allegations in paragraph 23 of the complaint constitute conclusions of law to which no response is required they are deemed denied. To the extent that the allegations in paragraph 23 constitute factual allegations they are denied.

24. The allegations in paragraph 24 of the complaint are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations. Defendant admits that on any given day a certain number of patients in some of the state psychiatric hospitals are on CEPP status. Defendant admits that for an individual to be on CEPP status a court must have found that the standard set forth in N.J. Ct. R. 4:74-7(h)(2) was met.

25. The allegations in paragraph 25 of the complaint are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations. Defendant denies that all individuals on CEPP status are "routinely housed in the most restrictive part of an institution."

26. The allegations in paragraph 26 of the complaint are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations. Defendant denies that all individuals on CEPP status "remain on the most restrictive wards of the hospitals."

27. Defendant denies the allegations in paragraph 27 of the complaint.

28. Defendant denies the allegations in paragraph 28 of the complaint.

29. The allegations in paragraph 29 of the complaint are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations. Defendant admits that each individual at a psychiatric hospital has a level of supervision that has been determined pursuant to N.J.A.C. 10:36-1.1 et seq.

30. Defendant denies the allegations in paragraph 30 of the complaint.

31. The allegations in paragraph 31 of the complaint are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations. Defendant denies that all "individuals on CEPP status who are confined to institutions remain on locked wards."

32. The allegations in the first sentence of paragraph 32 of the complaint constitute conclusions of law to which no response is

required and are deemed denied. The allegations in the second and third sentences of paragraph 32 of the complaint are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the complaint.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the complaint.

35. Defendant is without knowledge or information sufficient to form a belief as to the truth or the allegations in the paragraph 35 of the complaint.

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 36 of the complaint.

37. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 37 of the complaint.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 38 of the complaint.

39. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 39 of the complaint.

40. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 40 of the complaint.

41. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 41 of the complaint.

42. The allegations in paragraph 41 of the complaint are not sufficiently specific such that a specific answer could be provided and are therefore denied.

43. The United State Supreme Court's decision in Olmstead v. L.C., 527 U.S. 581 (1999), speaks for itself, and therefore no response to the first sentence in paragraph 43 is required. The allegations in the second sentence of paragraph 43 of the complaint constitute conclusions of law to which no response is required and are deemed denied.

44. The United State Court of Appeals for the Third Circuit's decision in Frederick L. v. Dept. of Pub. Welfare, 364 F.3d 487 (2004), speaks for itself and therefore no response to paragraph 44 is required.

45. Defendant denies the allegations in paragraph 45 of the complaint.

46. The allegations in paragraph 46 of the complaint are not sufficiently specific such that a specific answer could be provided and are therefore denied.

47. The United State Court of Appeals for the Third Circuit's decision in Frederick L. v. Dept. of Pub. Welfare, 364 F.3d 487 (2004) speaks for itself and therefore no response to that clause of the sentence that constitutes paragraph 47 is required. The remaining allegations in paragraph 47 of the complaint constitute conclusions of law to which no response is required and are deemed denied.

48. N.J.S.A. 30:4-24 speaks for itself and therefore no response to paragraph 48 is required.

49. N.J.S.A. 30:4-24.2 speaks for itself and therefore no response to paragraph 49 required.

50. N.J.S.A. 30:4-24.2 (d)(1), (d)(3), (d)(4), (e)(1), (e)(2), and (h) speak for themselves and therefore no response to paragraph 50 is required.

51. The allegations in paragraph 51 of the complaint constitute conclusions of law to which no response is required and are deemed denied.

52. The New Jersey Law Against Discrimination, and specifically N.J.S.A. 10:5-3, and -4 speak for themselves and therefore no response to paragraph 52 is required.

53. The New Jersey Law Against Discrimination speaks for itself and therefore no response to paragraph 53 is required.

54. The allegations in paragraph 54 of the complaint constitute conclusions of law to which no response is required and are deemed denied.

55. N.J.S.A. 30:4-24.1 and N.J. Const. art. I, ¶ 1 speak for themselves and therefore no response to paragraph 55 is required.

56. The allegations in paragraph 56 of the complaint constitute conclusions of law to which no response is required and are deemed denied.

**COUNT I**  
**DUE PROCESS**

1. Defendant hereby repeats and realleges the answers to the unnumbered paragraphs and paragraphs 1 through 56 of the complaint as if set forth fully herein.

2. As to the first clause of the sentence constituting paragraph 2 of Count I of the complaint, Defendant hereby repeats and realleges the answers to the unnumbered paragraphs and paragraphs 1 through 56, and paragraph 1 of Count I of the complaint as if set forth fully herein. As to the second clause of the sentence constituting Paragraph 2 of Count I of the complaint, the allegations therein constitute a legal conclusion and are deemed denied.

3. Defendant denies that all of Plaintiff's constituents are individuals on CEPP status. Further, the allegations in paragraph

3 of Count I of the complaint constitute conclusions of law to which no response is required and are deemed denied. Defendant admits that for an individual to be on CEPP status a court must have found that the standard set forth in N.J. Ct. R. 4:74-7(h)(2) was met. Defendant denies the remaining allegations in paragraph 3 of Count I of the complaint.

4. The allegations in paragraph 4 of Count I of the complaint constitute legal conclusions and are deemed denied.

5. Defendant denies the allegations in paragraph 5 of Count I of the complaint.

6. To the extent that the allegations in paragraph 6 of Count I of the complaint constitute conclusions of law, they are deemed denied. The remaining allegations in paragraph 6 of Count I of the complaint are denied.

7. The allegations in paragraph 7 of Count I of the complaint constitute conclusions of law to which no response is required and are deemed denied. 42 U.S.C. § 1983 speaks for itself and therefore no response is required. The remaining allegations in paragraph 7 of Count I of the complaint are denied.

**COUNT II**  
**VIOLATION OF THE AMERICANS WITH DISABILITY ACT**

1. Defendant hereby repeats and realleges the answers to the unnumbered paragraphs and paragraphs 1 through 56, and paragraphs

1 through 7 of Count I of the complaint as if set forth fully herein.

2. Defendant admits that pursuant to 42 U.S.C. §§10801 to 10807, NJP&A's constituents are individuals that have a mental illness. The allegations in the second sentence of paragraph 2 of Count II of the complaint constitute conclusions of law to which no response is required and are deemed denied.

3. The allegations in paragraph 3 of Count II of the complaint constitute conclusions of law to which no response is required and are deemed denied.

4. Defendant denies that all of Plaintiff's constituents, "reside in the State[ ] psychiatric hospitals" and that all of the patients in the State psychiatric hospitals "have been adjudicated as being ready for discharge into the community through an Order of Conditional Extension Pending Placement." Defendant admits that for an individual to be on CEPP status a court must have found that the standard set forth in N.J. Ct. R. 4:74-7(h)(2) was met. The allegations in the second sentence of paragraph 4 of Count II of the complaint are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations.

5. To the extent that the allegations in paragraph 5 of Count II of the complaint constitute factual allegation, they are not sufficiently specific such that Defendant is without knowledge

or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of Count II of the complaint. To the extent that allegations in paragraph 5 of Count II of the complaint constitute legal conclusions to which no response is required they are deemed denied.

6. To the extent that the allegations in paragraph 6 of Count II of the complaint constitute factual allegations they are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations. To the extent that the allegations in paragraph 6 of Count II of the complaint constitute legal conclusions to which no response is required they are deemed denied.

7. To the extent that the allegations in paragraph 7 of Count II of the complaint constitute factual allegations they are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations. To the extent that the allegations in paragraph 7 of Count II of the complaint constitute legal conclusions to which no response is required they are deemed denied.

8. To the extent that the allegations in paragraph 8 of Count II of the complaint constitute factual allegations they are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations. To the extent that the allegations in paragraph 8 of

Count II of the complaint constitute conclusions of law to which no response is required they are deemed denied. T

9. The remaining in paragraph 9 of Count II of the Complaint constitute legal conclusions to which no response is required and are deemed denied.

10. 42 U.S.C. §§ 12131(A) and (B) speak for themselves and no response is required. The allegations in the second sentence of paragraph 10 of Count II of the complaint constitute conclusions of law to which no response is required and are deemed denied.

11. Title II [of the ADA], Olmstead v. L.C., 527 U.S. 581 (1999) and 28 C.F.R. § 35.130(d) speak for themselves and no response is required.

12. The allegations in paragraph 12 of Count II of the complaint constitute conclusions of law to which no response is required and are deemed denied.

13. The allegations in paragraph 13 of Count II of the complaint constitute conclusions of law to which no response is required and are deemed denied.

14. Defendant denies the allegations in paragraph 14 of Count II of the complaint.

15. To the extent that the allegations in paragraph 15 of Count II of the complaint constitute conclusions of law to which no response is required they are deemed denied. Defendant denies the remaining allegations in paragraph 15 of Count II of the complaint.

16. To the extent that the allegations in paragraph 16 of Count II of the complaint constitute conclusions of law to which no response is required they are deemed denied. Defendant denies the remaining allegations in paragraph 16 of Count II of the complaint.

**COUNT III**  
**VIOLATION OF THE REHABILITATION ACT**

1. Defendant hereby repeats and realleges the answers to the unnumbered paragraphs and paragraphs 1 through 56, paragraphs 1 through 7 of Count I, and paragraphs 1 through 16 of Count II of the complaint as if set forth fully herein.

2. Section 504 of the Rehabilitation Act, and specifically 20 U.S.C. § 794, speak for themselves and no response is required.

3. 45 C.F.R. § 84.4b(4) speaks for itself and no response is required.

4. The Defendant admits that DHS is the recipient of certain federal funds pursuant to N.J.S.A. 30:1-19.

5. The allegations in paragraph five of Count III of the complaint are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations.

6. The allegations in paragraph six of Count III of the complaint constitute conclusions of law to which no response is required and are deemed denied.

7. The allegations in paragraph seven of Count III of the complaint constitute conclusions of law to which no response is required and are deemed denied.

8. The allegations in paragraph eight of Count III of the complaint constitute conclusions of law to which no response is required and are deemed denied.

9. To the extent that the allegations in paragraph nine of Count III of the complaint constitute factual allegations they are not sufficiently specific such that Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations. To the extent that the allegations in paragraph nine of Count III of the complaint are conclusions of law to which no response is required they are deemed denied.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

The complaint fails to set forth a cause of action upon which relief can be granted.

##### **SECOND AFFIRMATIVE DEFENSE**

The Court lacks jurisdiction over the subject matter.

##### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs have not been deprived of any right, privilege or immunity secured to them by the United States Constitution or any Act of Congress.

**FOURTH AFFIRMATIVE DEFENSE**

The defendants are protected from suit by the doctrine of qualified immunity.

**FIFTH AFFIRMATIVE DEFENSE**

The State defendants herein are a public officials of the State of New Jersey and at all times were acting pursuant to the lawful authority invested in them by the State. All acts so performed were the result of the appropriate exercise of the State defendants' discretion.

**SIXTH AFFIRMATIVE DEFENSE**

State defendants acted at all times relevant hereto with good faith and without any fraud or malice.

**SEVENTH AFFIRMATIVE DEFENSE**

The State defendants herein did not know, and were not reasonably expected to know, that any actions taken by them with respect to these plaintiffs, at all times relevant hereto, were in

violation of plaintiff's' constitutional, statutory, or other rights.

**EIGHTH AFFIRMATIVE DEFENSE**

State defendants are immune from suit.

**NINTH AFFIRMATIVE DEFENSE**

State defendants are not guilty of negligence and violated no duty to plaintiffs.

**TENTH AFFIRMATIVE DEFENSE**

Damages, if any, were the result of the sole negligence or other behavior of the plaintiffs.

**ELEVENTH AFFIRMATIVE DEFENSE**

Damages, if any, sustained by the plaintiffs were the result of the actions of persons and/or entities over whom the State defendants had no control.

**TWELFTH AFFIRMATIVE DEFENSE**

Recovery is barred in this action, in whole or in part, by the contributory and/or comparative negligence, or other acts, of the plaintiff.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The complaint and the proceedings resulting therefrom and any recovery resulting therefrom is barred, limited and/or controlled by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and further is barred by the failure of the plaintiffs to give timely notice of a claim or to present a claim thereunder.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The Court may not exercise jurisdiction over some or all of the claims of plaintiffs, because plaintiffs have failed to exhaust administrative remedies.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The State defendants are immune from liability pursuant to, but not limited to the provisions of N.J.S.A. 59:1-1 et seq., 59:2-1 et seq., 59:3-1 et seq., 59:6-1 et seq., 59:8-1 et seq. and 59:9-1 et seq.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Any actions taken by the State defendants were in the nature of discretionary activity within the meaning of N.J.S.A. 59:3-2 and accordingly no liability may be imposed upon the State defendants.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Any recovery to which plaintiffs may be entitled against the State defendants is subject to the limitations and reductions on damages set forth in N.J.S.A. 59:9-2.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Recovery is barred by the failure of the plaintiffs to give timely notice of a contractual claim or to present a contractual claim in accordance with N.J.S.A. 59:13-5 et seq.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have suffered no injury attributable to any conduct of the State defendants.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' complaint, and certain relief plaintiffs have sought in this action, is barred by the Eleventh Amendment of the United States Constitution.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The challenged conduct of the State defendants is and was a reasonable exercise of State governmental power to achieve a legitimate public purpose.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

The State defendants are entitled to all constitutional defenses and immunities as contained in both the United States and State of New Jersey Constitutions and cases decided thereunder.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiff has suffered no damages, and any claims of damages by plaintiffs are speculative.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The Defendants are State employees acting in their official capacities, and as such cannot be sued. under 42 U.S.C. § 1983.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The complaint and the proceedings resulting therefrom and any recovery resulting therefrom are barred or limited by the doctrine of res judicata.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

The complaint and the proceedings resulting therefrom and any recovery resulting therefrom are barred or limited by the doctrine of collateral estoppel.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

This court should decline to exercise such jurisdiction as it may have over some or all of the claims of the plaintiffs upon the ground that plaintiffs have failed to pursue State remedies, both administrative and judicial, available to them and capable of resolving any and all claims raised herein.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

The court should decline to exercise such jurisdiction as it may have over some or all of the claims of the plaintiffs upon the ground of the doctrine of primary jurisdiction.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

This action is barred by the applicable statute of limitations.

**THIRTIETH AFFIRMATIVE DEFENSE**

Defendants cannot be held liable under the doctrine of respondeat superior.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint is barred or limited by the doctrine of issue and claim preclusion.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

All acts of the defendants were the result of the appropriate exercise of the State defendants' accepted professional judgment following accepted procedures.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

Defendant has a plan that provides justification as to why it need not make a placement of all persons on CEPP Status under the ADA fundamental alterations provision.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

Defendant has a comprehensive, effectively working plan for placing qualified persons in less restrictive settings.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

At Point IV, Section B of its brief in opposition to Defendant's motion to dismiss the complaint, Plaintiff struck Paragraph C of the relief requested wherein Plaintiff seeks an order requiring Defendant to pay a per diem monetary penalty for each date beyond the sixtieth day that the State continues to confine individuals deemed by a court to be suitable for return to the community.

**RELIEF REQUESTED**

WHEREFORE, the Defendant demands judgment against the plaintiff:

Dismissing the Complaint, together with attorney fees, costs of suit, such other relief as the Court may deem just and equitable; and

Dismissing Paragraph A of the Relief Requested wherein Plaintiff seeks declaratory and injunctive relief; and

Dismissing Paragraph B of the Relief Requested wherein Plaintiff seeks an order requiring Defendants promptly take such steps as are necessary to enable Plaintiff's constituents to receive services in the most integrated setting; and

Dismissing Paragraph C of the Relief Requested wherein Plaintiff seeks an order requiring the Defendant to pay a per diem monetary penalty for each date beyond the sixtieth day that the State continues to confine individuals deemed by a court to be suitable for return to the community; and

Dismissing Paragraph D of the Relief Requested wherein Plaintiff seeks prevailing party costs, disbursements and attorney fees pursuant to, inter alia 42 U.S.C. §1988; and

Dismissing Paragraph E of the Relief Requested wherein Plaintiff seeks an injunction ordering the Defendant to provide monthly reports to the Plaintiff that include information such as the number of individuals on CEPP status, their names, and other

information the Plaintiff may required pursuant to its federal mandates; and

          Dismissing Paragraph F of the Relief Requested wherein Plaintiff seeks such other relief as the Court deems appropriate.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY

By: s/ Beth Leigh Mitchell  
Beth Leigh Mitchell (BLM 0651)  
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Gerard Hughes (GH6680)  
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DATED: October 13, 2005