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KATHLEEN JONES, LAKESHA JONES,
SYLVIA FLYNN, and HELEN L. EWELL,
on behalf of themselves and all individuals
similarly situated,

Plaintiffs,

v.

GEORGE W. HAYMAN, in his official
capacity as Commissioner of the New Jersey
Department of Corrections, JAMES
BARBO in his official capacity as Acting
Deputy Commissioner of the New Jersey
Department of Corrections, LYDELL
SHERRER, in his official capacity as Acting
Assistant Commissioner for the Division of
Operations of the New Jersey Department of
Corrections, WILLIAM HAUCK, in his
official capacity as Acting Administrator of

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION – GENERAL
EQUITY
MERCER COUNTY

Docket No. _____

CIVIL ACTION
CLASS ACTION COMPLAINT

the Edna Mahan Correctional Facility, MICHELLE RICCI, in her official capacity as Administrator of the New Jersey State Prison, ALFRED N. KANDELL, in his official capacity as Assistant Administrator of the New Jersey State Prison, JAMES DRUMM, in his official capacity as Assistant Administrator of the New Jersey State Prison, HERBERT A. KALDANY, in his official capacity as Director of Psychiatry of the New Jersey Department of Corrections, and THOMAS F. DECHAN, in his official capacity as Director of Education of the New Jersey State Prison,

Defendants.

PRELIMINARY STATEMENT

1. In March 2007, the New Jersey Department of Corrections (NJDOC) transferred approximately forty women, many of them model prisoners, from New Jersey's sole women's prison, Edna Mahan Correctional Facility for Women (EMCF), to the New Jersey State Prison (NJSP). NJSP is a maximum-security men's prison holding approximately 1,800 male prisoners. The transferred women were stripped of conditions, programming, and services appropriate to their needs and are now subjected to lock-down conditions virtually identical to those in disciplinary segregation. They are subjected to conditions far more oppressive and restrictive than those of male prisoners because NJSP is, by design and operation, a men's prison in which a tiny minority of women are now confined. Under these conditions, the women's mental and physical health have rapidly deteriorated, fights have broken out, and suicide attempts have occurred.

2. This is a civil rights class action challenging the transfer and the subsequent treatment of the women prisoners as violations of their due process and equal protection rights, their right to be free from cruel and unusual punishment, and their right to privacy. In addition, the transfer to unnecessarily restrictive, inhumane, and physically and psychologically damaging conditions is contrary to the laws and policies of the State of New Jersey, and the New Jersey Department of Corrections' obligation to rehabilitate prisoners for the protection of the public. The Department's ill-considered measure is also symptomatic of its general failure to plan for the women in its custody.

3. Plaintiffs bring this action seeking injunctive, declaratory, and other equitable relief, and attorneys' fees and costs. This action is based on defendants' violations of the New Jersey Constitution, the New Jersey Civil Rights Act, the New Jersey Law Against Discrimination, and other provisions of New Jersey statutory and common law.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to N.J. Stat. § 10:6-2.

5. Venue is proper in Mercer County pursuant to N.J. Court Rule 4:3-2(a) because the causes of action arose in Mercer County.

PARTIES

I. Plaintiffs

6. Plaintiff KATHLEEN JONES, incarcerated at EMCF in October 2003, is a thirty-nine-year-old woman with four children. She is a medium-security status prisoner whose only two disciplinary charges at EMCF were brief losses of recreation time for smoking cigarettes indoors. While at EMCF, Jones was provided free telephone calls to

her children and visits from her children through EMCF's programs for mothers. Since March 2007, Jones has been confined in NJSP. She has suffered extreme difficulty in maintaining contact with her children as a result of the virtual lock-down conditions and the absence of family unity programs including social worker assisted calls. In NJSP, simply calling each of her four children would cost Jones approximately \$100, while the wages she earns in her prison job are \$2.30 per day, or at best approximately \$70 per month. Jones is attempting to bring a non-frivolous challenge her conviction and is unrepresented by counsel. Because she is denied access to the NJSP prison law library, she is unable to prepare a *pro se* challenge.

7. Plaintiff LAKESHA JONES is a thirty-four-year-old medium-security status prisoner who was transferred from EMCF to NJSP in March 2007 after being confined at EMCF since 2005. Jones suffers from panic attacks and asthma for which she uses an inhaler. Although her condition had improved at EMCF, it worsened upon her transfer to NJSP, and she has suffered attacks from both disorders. Jones has been denied timely access to her inhaler and medications, and when she suffers attacks, both she and other prisoners must cry out and bang on their cell walls for long periods of time before NJSP officials respond. Like other women confined in NJSP, Jones was informed by Defendant Kandell and NJSP correctional officers that if she requested mental health care she would be sent to a "stabilization unit" where conditions are known to be filthy, dangerous, and degrading. Jones is bringing a non-frivolous challenge to her conviction for robbery and related charges but has been prevented from conducting legal research because she is denied access to the NJSP law library. Instead, Jones was instructed to use an ineffective paging system in which she must request specific statutes and cases, but is

given no way to determine which of these she requires. Via the paging system, it took NJSP officials two days simply to provide Jones with a copy of the legal definition for the crime of robbery.

8. Plaintiff SYLVIA FLYNN is a medium-security status prisoner who was transferred from EMCF to NJSP in March 2007. She is sixty-five years old. Since being imprisoned in 2001, Flynn has maintained an exemplary disciplinary record, and has in addition participated in twenty-two certificate-granting programs offered at EMCF. After completing a 5000-hour apprenticeship in upholstery, Flynn worked as an upholsterer, taught upholstery to other women at EMCF, and also worked as a hairdresser, her life-long profession. When Flynn was transferred to NJSP, she requested permission to continue teaching upholstery and cosmetology but was told that neither is taught at NJSP. She is now employed as a “Wing Barber,” receiving \$2.50 a day to cut other women prisoners’ hair. In the past several months, Flynn’s physical and mental health have deteriorated, and she has witnessed the deterioration of the other women held at NJSP.

9. Plaintiff HELEN L. EWELL, incarcerated at EMCF since 2003, has been a medium-security status prisoner for almost two years and has had no disciplinary charges during that period. While at EMCF, Ewell worked in EMCF’s upholstery shop and sewing shop. Ewell participated in a number of therapeutic groups, including a volunteer-facilitated domestic violence program in which Ewell benefited from the instructors’ advice and the insights of other abuse survivors, succeeding in coming to terms with her years-long experience of domestic violence. Since being transferred to NJSP, Ewell has suffered from the near-constant confinement in a poorly-ventilated cell and the almost complete absence of rehabilitative programming and social stimulation.

10. All plaintiffs reside in the New Jersey State Prison, P.O. Box 861, Trenton, New Jersey, 08625.

II. Defendants

11. Defendant GEORGE W. HAYMAN is and at all relevant times was Commissioner or Acting Commissioner of the New Jersey Department of Corrections (NJDOC). Pursuant to N.J.S.A. § 30:1B-6, Hayman is responsible for all matters of policy enacted and enforced within NJDOC including the unlawful transfer of women from EMCF and the unlawful conditions to which women are subjected in NJSP. In addition, defendant Hayman has personal knowledge of various aspects of the unlawful conditions of confinement through written pleas from one or more women prisoners but has permitted the unlawful conditions to persist.

12. Defendant JAMES BARBO is and at all relevant times was Acting Deputy Commissioner of the New Jersey Department of Corrections. As such, he is responsible for all matters of policy enacted and enforced within NJDOC including the unlawful transfer of women from EMCF and the unlawful conditions to which women are subjected in NJSP. In addition, defendant Barbo has personal knowledge of various aspects of the unlawful conditions of confinement through his review of prisoner grievances and has personally approved such conditions through his denial of the women's requests for relief.

13. Defendant LYDELL SHERRER is and at all relevant times was Acting Assistant Commissioner for the Division of Operations of the New Jersey Department of Corrections. As such, he is responsible for the unlawful transfer of women from EMCF and the unlawful conditions to which women are subjected in NJSP.

14. Defendant WILLIAM HAUCK is and at all relevant times was Acting Administrator of the Edna Mahan Correctional Facility. He is responsible for carrying out or overseeing the unlawful transfer of women from EMCF to NJSP.

15. Defendant MICHELLE RICCI is and at all relevant times was Administrator or Associate Administrator of the New Jersey State Prison. She is responsible for carrying out or overseeing the unlawful transfer of women from EMCF to NJSP and the unlawful conditions in which women in NJSP are confined.

16. Defendant ALFRED N. KANDELL was until October 2007 the Assistant Administrator at NJSP with direct authority over the housing unit where the women prisoners are confined, and is consequently responsible for the unlawful conditions of confinement. In addition, Defendant Kandell has personal knowledge of various aspects of the unlawful conditions of confinement through his review of prisoner grievances and has personally approved such conditions through his denial of the women's requests for relief.

17. Defendant JAMES DRUMM has since October 2007 been the Assistant Administrator at NJSP with direct authority over the housing unit where the women prisoners are confined, and is consequently responsible for the unlawful conditions of confinement.

18. Defendant HERBERT A. KALDANY is and at all relevant times was Director of Psychiatry of the NJDOC and is responsible for the denial of mental health care to which the women confined in NJSP are subjected.

19. Defendant THOMAS F. DECHAN is and at all relevant times was Director of Education at NJSP, a position whose duties include responsibility for legal

services, including law library services, for all NJSP prisoners. He is responsible for the unlawful deprivation of educational and other rehabilitative services and the denial of legal access suffered by the women confined in NJSP.

20. The New Jersey Department of Corrections and each prison it administers is a public accommodation for purposes of the New Jersey Law Against Discrimination. All defendants are sued in their official capacities. At all relevant times, all defendants were acting under color of state law and within the scope of their employment. Defendants have actual knowledge of the unlawful conditions of confinement, by virtue of having received grievances and other communications directly from prisoners, through written communication from plaintiffs' counsel and a meeting with plaintiffs' counsel on November 2, 2007, and one or more written communications from community members alarmed by the transfer of women and their subsequent mistreatment in NJSP.

FACTS GIVING RISE TO THE CLAIMS FOR RELIEF

I. The Unlawful Transfer of Women Prisoners to a Men's Maximum Security Prison

21. Until March 2007, all women prisoners in the State of New Jersey were held in the Edna Mahan Correctional Facility for Women (EMCF) in Clinton, New Jersey. EMCF holds approximately 1,000 women prisoners of all security classifications (minimum, medium, and maximum) and provides many of them with an array of rehabilitative programming and services. Prior to March 2007, the only women transferred away from EMCF were those who had committed extremely serious infractions of prison rules such as threatening an officer or attacking another prisoner during a mass movement of prisoners. By law, these women were and are entitled to receive a due process hearing before a disciplinary board. The board may elect to send

women found to have committed such infractions to a disciplinary segregation unit in NJSP for a limited term after which they are returned to EMCF.

22. The New Jersey State Prison (NJSP) is described by defendant Michelle Ricci, who is its warden, and the American Correctional Association as a “supermax” prison. It is described by the New Jersey Department of Corrections as imposing “a level of custodial supervision and control beyond that of any other state correctional facility.” NJSP holds approximately 1,800 male prisoners.

23. In March 2007, approximately forty women, the majority of whom were classified as medium-security prisoners, had excellent disciplinary records, and/or held paraprofessional job assignments for months or years while at EMCF, were abruptly transferred to a maximum-security housing unit in NJSP. No notices, hearings, or other procedures preceded these transfers. The Department of Corrections subsequently admitted in response to a public records request that no policy guided its selection of women for transfer from among the many medium-security status prisoners at EMCF. Additional women have since been assigned directly to NJSP from the reception center at EMCF or retained at NJSP at the expiration of their disciplinary segregation terms.

24. The mass transfers of women occurred on two separate occasions. On each occasion, women held at EMCF were locked in their cells without explanation. A convoy of trucks arrived and guards in full riot gear carrying batons, mace, and other weapons descended on the women’s quarters and took women from their rooms. Each woman was taken to a separate room and stripped naked while guards, including male guards, observed her and filmed her with a video camera. When the strip searches were complete, the women were handcuffed and shackled, then loaded onto a bus and taken to NJSP.

25. During these chaotic and terrifying transfers, women panicked in their cells and wept hysterically. Because many of the women held at EMCF have experienced sexual and physical abuse by men prior to and in some cases during their incarceration, they were extremely frightened by the procedures employed during the transfers and the prospect of transfer to a men's prison. Nursing and psychiatric staff had to be called to attend to the panic-stricken women, and many women were medicated or received increased dosages of medication.

26. NJDOC has informed the women that their placement in NJSP is permanent, and it appears that additional transfers may be contemplated. The primary reason offered by NJDOC for the transfer of women to a high-security men's prison is that the transfers were necessitated by NJDOC's interpretation of the Settlement Agreement reached in *D.M. v. Terhune*, 67 F.Supp.2d 401 (D.N.J. 1999) (also captioned as *C.F. v. Fauver* and *C.F. v. Terhune*) an action brought on behalf of prisoners with mental illness ("special needs"). This Agreement, which requires that certain special needs prisoners be housed in single-occupancy cells, does not in fact dictate the transfer of non-special needs prisoners to unconstitutional and inappropriate conditions and its terms can be complied with in ways that do not infringe the rights of women prisoners.

27. Upon information and belief, defendants Hayman, Barbo, and Sherrer are responsible for matters of policy affecting prisons within the DOC, and personally acted to adopt or approve the policy of confining women prisoners in NJSP or were aware of the policy and failed to act to remedy it. Upon information and belief, defendants Hauck and Ricci, by virtue of their respective positions as Administrators of EMCF and NJSP, personally acted to effectuate the confinement of women prisoners in NJSP.

II. Inhumane and Inequitable Conditions of Confinement in New Jersey State Prison

A. Discriminatory Imposition of Restrictions and Isolation

28. While conditions at EMCF are far from perfect, all of the prisoners held there, including those classified as medium and maximum security, spend the majority of each day outside of their cells performing work or participating in educational and other rehabilitative programming. During the day, prisoners move about through open fields between their units and other buildings such as work sites, school buildings, and the cafeteria. In addition to regularly scheduled exercise and recreation time, women are provided periodic breaks outdoors throughout the day. Prison lock-downs of more than a few hours are virtually unknown at EMCF.

29. In contrast, the conditions in which the transferred women are confined in NJSP are drastically worse than those at EMCF and worse than those of male NJSP prisoners. Although the majority of the women confined in NJSP are classified as medium security and have excellent disciplinary records, all of the women are permanently confined to a single small unit of the prison and rarely if ever are permitted movement about the prison. Lock-downs because of violence or serious violations of prison rules by male prisoners at NJSP are common, exacerbating further the isolation to which the women are subjected.

30. In contrast, general population male prisoners in NJSP are provided daily movement about areas of the prison outside their own housing units, such as for meals, to attend educational or other rehabilitative programs, to conduct research in the law library, and for other purposes. The women confined in NJSP are the only general population

prisoners in the State of New Jersey who are confined to their housing units and are prohibited from moving about the prison.

31. Within their unit, the women are locked in their cells for up to twenty-two hours of each day, far longer than male general population prisoners. The window of each woman's cell is entirely covered by a semi-opaque paint blocking much of the sunlight and completely obstructing the women's view of the outdoors. Of the entire population of NJSP, it is only the women prisoners and the mentally ill male prisoners on the floor above them who are subject to these conditions. The windows of the male prisoners two floors above the women's unit are not painted over; nor are any of the windows of approximately 1,800 other male prisoners.

32. The extremely restrictive and isolated conditions of confinement imposed on the transferred women are virtually identical to those of women sent to NJSP for punishment in disciplinary segregation. The only differences are that the transferred women may leave their cells for meals and occasional indoor recreation, are not strip searched upon leaving their cells, and may buy certain products from the prison commissary which women in disciplinary segregation are barred from purchasing. While disciplinary segregation ends after a limited period of time, the general population women prisoners now confined in NJSP are to remain there indefinitely, even upon attaining minimum-security status, which for the majority amounts to many years and in some cases decades.

33. Under these isolated conditions, many women prisoners are suffering anxiety, depression, and other forms of emotional distress and their mental and physical

health is rapidly deteriorating. Fights have broken out between women, and multiple suicide attempts have occurred.

34. Plaintiff Lakesha Jones has suffered from intense feelings of isolation under the lock-down conditions. Jones suffers from depression and anxiety attacks accompanied by severe asthma. These conditions have drastically worsened in the restrictive and isolating conditions to which she is subjected in NJSP.

B. Deprivation of Psychiatric Care

35. Women prisoners at EMCF receive some measure of psychiatric care including counseling and medication. Individual counseling is provided for trauma arising from the physical and sexual abuse common in the life histories of incarcerated women. Medications for depression, anxiety, insomnia, and Post-Traumatic Stress Disorder can be obtained by prescription. Male NJSP prisoners are also provided with psychiatric care and like women EMCF prisoners can obtain prescriptions for medications to address common disorders with relative ease.

36. In contrast, women held in NJSP are denied psychiatric counseling and medication. Women who request such care and even some who simply cry are threatened with, and sometimes actually placed in, “Unit 1GG,” a “stabilization unit” ostensibly used for prisoners who present a danger to themselves or others but in reality also used to punish women who attempt to obtain psychiatric care or voice concerns about the lack of such care.

37. Conditions in Unit 1GG are filthy, dangerous, and degrading. Women confined in Unit 1GG are stripped naked and given only a heavy quilt-like drape to cover themselves. This garment is never changed or washed during the time a woman is held in

the unit. The women are locked in empty cells for most of each day with only a filthy piece of foam rubber on which to lie. No sheets or blankets are provided. There is no running water to drink, wash one's hands, brush one's teeth, or flush the toilet. The women are denied toilet paper and are left with no way to wipe bodily waste off of themselves.

38. Plaintiff Lakesha Jones began suffering depression and anxiety attacks accompanied by asthma attack when her sister died in 1996. She was hospitalized numerous times and prescribed psychiatric medication. At EMCF, Jones's condition improved because of the availability of activities throughout the day with which she kept herself occupied and her ability to walk about the grounds to relieve anxiety. Under those conditions, Jones succeeded in discontinuing her use of psychiatric medications. Since her transfer to NJSP, Jones's condition has drastically worsened because of the severe inactivity and stress to which women prisoners are subjected. When she first arrived at NJSP, Jones was informed by defendant Kandell and NJSP correctional officers that if she requested medication or other care she would be sent to Unit 1GG. Jones now suffers frequent anxiety and asthma attacks. NJSP officials respond slowly if at all to Jones's frantic calls for help.

39. When plaintiff Silvia Flynn arrived at NJSP, she cried frequently for weeks, but was forced to cry in secret in her cell because two other women had already been sent to Unit 1GG for crying and had told her about the atrocious conditions there.

40. Defendants have actual knowledge of the unlawful deprivation of psychiatric care. Upon information and belief, defendant Kaldany, by virtue of his responsibility for mental health services for prisoners in NJDOC custody, personally

acted or failed to act so as to create or maintain the illegal deprivation of mental health care to which women confined in NJSP are subjected.

C. Deprivation of Medical Care

41. Women confined in NJSP are denied adequate medical care. The deprivation takes the form of denials and delays in all aspects of care including examinations and diagnoses, routine treatment and treatment for serious medical conditions, and the filling of prescriptions and orders for refills. These denials and delays occur even when women make multiple written requests for care over long periods of time. Even in those instances when medical attention is given, women are denied information about their own medical conditions and treatment. In addition, women are denied adequate health care facilities providing a minimum of privacy.

42. At EMCF, women prisoners requiring medical attention receive private examinations in the prison hospital with no custody staff present. In contrast, women in NJSP are almost never allowed access to the prison's clinic or infirmary and are instead examined in an open area of their housing unit and in the presence of prison guards, some of whom are male. On the rare occasion when a tiny, ill-equipped examination room in the unit is used, guards are still present during examinations.

43. The lack of privacy during medical examinations, including gynecological examinations, is not merely humiliating to women prisoners but also violates their right to confidential communication with medical personnel. This endangers women's health by preventing them from freely communicating sensitive personal information necessary for accurate diagnosis and treatment and by causing delays in care.

44. Because women are almost completely barred from receiving care in NJSP's clinic or infirmary, except on rare occasions and only for specific procedures, it is more difficult for them to receive care than it is for male patients. For some medical needs, such as eye care, women must be transported in handcuffs and shackles back to EMCF where they are frequently locked in a cell for several hours before or after receiving care. In addition, NJSP officials are reluctant to transport women to EMCF to receive care. Consequently, several women who for months have made multiple requests for eye examinations and glasses have been denied any care.

45. Plaintiff Lakesha Jones has had several asthma attacks since being transferred to NJSP. The response of NJSP officials is often late, and in these instances Jones and other prisoners must bang on their cells and scream for long periods of time before medical attention is given. On one occasion, Jones suffered an asthma attack while outside her cell. She could not breathe nor speak, and signaled frantically to an officer because she needed to be given access to her inhaler, which was inside her cell. Although the officer saw Jones in distress, she refused to open the door to Jones's cell and merely waved her off. Other women attempted to help Jones by screaming, "She's having an asthma attack!" yet no help was given to Jones for several more minutes. After one such attack, Jones required a "breathing treatment" including the administration of prednisone, a steroid, for two weeks. In August, Jones began requesting a visit with an eye doctor. She has requested eye care multiple times but has been completely denied such care.

46. Plaintiff Sylvia Flynn, who is sixty-five years old, suffers from high cholesterol and a thyroid condition. If her cholesterol is not controlled through medication, she is in danger of heart attacks and stroke. Without medication for her

thyroid condition, Flynn suffers extreme fatigue and uncontrolled weight gain. Flynn's timely submitted requests for refills of medication are filled late, leaving her without medication for her serious health conditions. Although Flynn has asked NJSP staff several times what her cholesterol count is, the staff refuse to tell her. When a blood sample was taken from Flynn, it was taken at one of the tables in the common area of the women's unit where women eat and socialize, in the presence of other prisoners and guards. Plaintiff Flynn needs eye care and replacement glasses and has requested them multiple times over a period of months but has been denied care. NJSP officers told Flynn that the doctors at NJSP "don't have time" for her. In November 2007, Flynn, who has a family history of arthritis, injured her arm so seriously that she is in constant pain and has difficulty dressing herself. She has been told that her arm requires x-rays but that they will not be provided to her for at least two to three months.

47. Plaintiff Helen Ewell requires gynecological care following a hysterectomy performed while she was held at EMCF. Ewell refused to submit to a gynecological examination at NJSP because of the filthy state of the examination room and the presence of guards in the room. When Ewell's false teeth needed repair, they were taken and not replaced for a period of approximately nine weeks during which Ewell was not informed as to the status of any repair work nor how long she would be left without her false teeth.

48. Plaintiff Kathleen Jones was required to submit to a medical examination while a guard watched. She was also subjected to a gynecological examination and pap smear in the dark, dirty examination room in the women's unit, because she knew that if she refused to be examined in the room she would not receive care.

49. Male NJSP prisoners receive on-site medical care in a clinic equipped with, among other things, multiple private examination rooms containing an examination table, chairs, and a computer; a medical laboratory; a full-body x-ray; electrocardiogram devices; offices for medical care providers; a records room; and rooms for other services such as ultrasounds. Male prisoners also receive care in an infirmary which is similarly equipped and includes beds for inpatient care. Except in special circumstances, no guard is present during men's medical visits. When male prisoners receive medical care off-site, they often spend the nights before and after their off-site visit in the NJSP infirmary.

D. Denial of Legal Access

50. Women prisoners at EMCF have access to a law library equipped with materials such as New Jersey and federal statutes, court rules, and secondary reference texts. EMCF also provides necessary writing supplies such as typing paper, carbon paper, writing implements, and typewriters. Women prisoners may conduct their own research and draft and copy their own work, thus protecting its privacy.

51. Similarly, male prisoners at NJSP have direct personal access to the prison law library to research and prepare their own legal documents. The library is equipped with legal reference books including several federal reporters, case law digests, the United States Code, civil procedure reference texts, and other materials. In addition to printed materials, male prisoners may use computer terminals equipped with the Lexis-Nexis database. Men can obtain additional legal material through an interlibrary loan program between NJSP and the New Jersey State Library. Male prisoners receive necessary writing supplies. Male prisoners also receive legal research and writing assistance from the Inmate Law Association (ILA), a group of prisoner paralegals, and

may receive paralegal training from the ILA or through a separate paralegal training program operated by prison staff.

52. Women NJSP prisoners are completely barred from the NJSP prison library and are provided no law books of any kind. Women are provided scant access once per month to necessary writing supplies such as paper, envelopes and pencils. They are not provided pens are permitted only to purchase miniature pens typically used by administrative segregation prisoners. Women needing to access legal materials are instructed to use a “paging” system whereby they must request photocopies of specific statutes or cases from the NJSP law library. Yet because access to basic research materials is denied, women prisoners have no way of knowing what materials to request. Women have no access to the ILA or any other form of legal training, and are barred from the interlibrary loan program.

53. In an apparent attempt to create the appearance of legal access, NJSP officials have placed a single computer in a tiny cubby hole in a corner of the women’s housing unit designated as a “reading library.” The computer was taken away shortly after the women were confined in NJSP and only restored some time later. Since then, a legal database has been sporadically available on the computer and has remained unavailable for months, rendering the computer useless for legal research. Only two women prisoner paralegals are permitted to use the computer. The other women are neither given access to the computer nor the training necessary to operate it.

54. Various women held in NJSP are currently appealing their convictions and/or sentences or have other legal matters pending. The denial of legal access effectively prevents all women held in NJSP from accessing the courts. As a result of the

denial of access, non-frivolous legal claims of women prisoners are being frustrated. In addition, under the “paging” system, which women must use both to request statutes and cases and to request photocopies of their own legal documents, they are effectively denied any privacy as to their legal documents and research, including attorney correspondence. Women are additionally only permitted calls to their attorneys during the irregular visits to the unit of a single staff member. Even when they are permitted such calls, women prisoners are required to conduct the calls in the presence of the staff member, and are thus denied private consultation with their attorneys.

55. Plaintiff Kathleen Jones is pursuing a petition for post-conviction relief. She is unrepresented, and although she has applied for court-appointed counsel, this process often takes over two years. At EMCF, Jones was permitted to use the prison law library to conduct research in support of her petition. Jones’s access to the library was limited only by the general prison schedule and the library’s capacity. Jones had access to law books and a typewriter and was able to confer with prisoner paralegals. In NJSP, Jones does not have access to the prison law library nor the single computer on the unit in which women are confined. When she requires photocopies of private legal documents, she must hand them over to prison staff to be copied.

56. Plaintiff Lakesha Jones is challenging her conviction for robbery and related charges but has been prevented from conducting legal research to support her challenge because she is denied access to the NJSP law library. Instead, Jones was instructed to use the ineffective paging system. The system is useless to Jones because without access to legal reference materials, she has no way to determine which statutes or

cases she requires. Via the paging system, it took NJSP officials two days simply to provide Jones with a copy of the legal definition for the crime of robbery.

57. Plaintiff Sylvia Flynn is currently pursuing a petition for post-conviction relief. When at EMCF, she received legal instruction from a prisoner in the ILA and assistance with her petition from a prisoner paralegal. She receives no such assistance or instruction at NJSP.

58. Upon information and belief, defendant Dechan is responsible for legal access including law library access for prisoners confined in NJSP. In addition, he personally stated in writing in response to a woman prisoner's grievance that women "are not permitted to visit the Law Library." He thereby acted personally to effectuate the legal access deprivations herein described.

E. Denial of Education and Other Rehabilitative Programming

59. EMCF provides women prisoners with classroom facilities in which various academic programs fostering social and economic independence are offered. Such programs include literacy assistance, G.E.D. and pre-G.E.D. classes, vocational instruction including office skills, cosmetology, and upholstery, and college courses, among others.

60. Likewise, male NJSP prisoners may choose from approximately one hundred educational and therapeutic programs. Academic and vocational classes are taught to male NJSP prisoners in the Donald Bourne School, which consists of dozens of specialized classrooms in the three main compounds of NJSP. The school includes among other things an academic testing area, computer classrooms, a graphic arts department, a music classroom, an electronics shop, and a barber school. Classes include

standard academic subject areas, and in addition regularly held literacy and remedial education groups, GED preparation classes, and vocational training such as paralegal training, electrical repair, plumbing, carpentry, maintenance, culinary arts, and other trades. Male prisoners rotate among classes at forty-minute intervals. Male prisoners also have access to college correspondence courses and computers to use for their coursework. In addition, male NJSP prisoners may participate in an array of peer education programs and activities such as training in writing and public speaking and a music program. Male prisoners have access to a reading library with approximately 2000 volumes.

61. Women prisoners are completely excluded from the Donald Bourne School and all of the other educational and vocational programs offered to male prisoners. With the single exception of a GED program begun in October 2007, shortly before a meeting between defendants and plaintiffs' counsel, and in which only six women are enrolled, absolutely no educational opportunities are provided to the women confined in NJSP.

62. According to the United States Department of Justice, the majority of women in prison have suffered physical or sexual abuse in the past, often by an intimate partner, and are targeted for sexual abuse while in custody. Most have young children and many were the primary caregivers for these children prior to their incarceration.

63. Various programs at EMCF are specifically tailored to the needs of women prisoners, including a program for survivors of domestic violence and a parenting skills curriculum. Other EMCF programs, some of which are federally endorsed and supported, foster ties between incarcerated mothers and their children by bringing

children to the prison for visits, and permitting mothers and children to share meals and family activities. Other routinely offered rehabilitation programs include Alcoholics Anonymous, Narcotics Anonymous, and several others.

64. Male NJSP prisoners are provided access to an array of rehabilitative programs including Alcoholics Anonymous, Narcotics Anonymous, Gamblers Anonymous, and Friends of Addiction Recovery. In addition to regular therapeutic and academic programming, male prisoners also benefit from religious services in English and Spanish representing a range of beliefs including Protestant, Catholic, Seventh Day Adventist, Jehovah's Witness, Jewish, and Muslim, as well as additional religious programming such as bible study and a vocal choir. Men are also provided peer programs such as a chess club, the NAACP, and a group for older prisoners. Women are barred from all of these programs.

65. In August 2007, in an apparent attempt to create the appearance of educational facilities for women prisoners, NJSP emptied a storage closet in the women's unit, added a few desks and chairs, and began referring to the tiny, unventilated space as the women's "educational area." The persistent leakage of a large quantity of water into the storage closet rendered it unusable for a period of weeks, and although the leak was reportedly remedied, such a meager measure plainly fails to rectify the stark inequality in learning facilities for men and women.

66. In addition to denying women any academic programs apart from a single GED class, NJSP provides women with virtually no therapeutic programming. The entirety of programming provided to women by NJSP appears to consist of briefly held, weekly anger management and "twelve-step" classes that have long since ended, and a

weekly Christian church service and bible study. Volunteers donate personal time and supplies to provide a book club in which some women may participate once per month, a parenting class begun in late October 2007 of which only approximately two sessions have occurred, and a program called “Every Person Influences a Child.” But because women are denied access to classroom facilities, and because the purported educational area is too small to hold more than a tiny number of people, the paltry programs offered are held in the open area of the unit in which women are held. The total absence of privacy from guards and non-participant prisoners forces women to discuss intensely personal matters involving children and painful life experiences publicly.

67. The discriminatory denial of educational and therapeutic programming deprives women of the opportunity for rehabilitation and eventual self-sufficiency. In addition, the forced isolation and idleness to which it subjects women endangers their emotional health. Further, because security classifications and parole determinations are made on the basis of a point system in which the education and programming a prisoner has undergone is considered, such deprivations can prevent women from achieving lower security classifications and subject them to longer terms of imprisonment.

68. At EMCF, plaintiff Sylvia Flynn benefited from numerous educational and therapeutic programs. Flynn participated in the “Women Aware” program for battered women and in addition received one-to-one counseling from a domestic violence specialist. These programs helped Flynn overcome a decades-long history of abuse beginning in her childhood and continuing through her marriage, and helped to restore Flynn’s self-esteem. Flynn also completed twenty-two certificate-granting programs offered while at EMCF. After completing a 5000-hour apprenticeship in upholstery,

Flynn worked as an upholsterer and taught upholstery classes five days per week to other women prisoners. She also worked as a hairdresser, her life-long profession, and took classes in woodworking and drapery making. Because of her skill and discipline, Flynn was permitted to participate in the New Jersey Flower Show, where she entered her crafts into a statewide competition. Flynn also participated in a number of religious, life-skills, and other vocational programs while at EMCF. Since her transfer to NJSP, Flynn has been denied access to all of these programs and to the programs offered to male prisoners. Because Flynn does not need a GED, she has access to no educational programming whatsoever. Under conditions of almost constant enforced isolation and idleness, Flynn has suffered feelings of uselessness and despair.

69. At EMCF, plaintiff Kathleen Jones participated in various programs designed to maintain mothers' bonds with their children. She was permitted at least one free telephone call per month with a social worker to each of her children. Her children were able to visit her periodically through a federally funded visiting program providing transportation and a shared family meal. Jones and her children participated in a yearly family Christmas party and in addition had access to a monthly mother-daughter Girl Scout program. At NJSP, Jones is prevented from maintaining such contact with her children by the requirement that she pay at least \$13 for all calls to her children, amounting to \$25 for a 12-minute phone call and a total of \$100 for calls to each child. In her current prison job as a "pantry worker," Jones makes \$2.30 per day, and at most approximately \$70 per month. Programs to aid children's visitation are not provided, and visiting accommodations at NJSP are uncomfortable and inappropriate for children.

70. Upon information and belief, defendant Dechan is responsible for educational services for prisoners confined in NJSP and acted personally to effectuate the deprivations of educational and other programming herein described.

F. Discrimination in the Allocation of Work Opportunities

71. At EMCF, women have access to all available work assignments, including janitorial and grounds details, kitchen work, sewing, teacher's aide assignments, upholstery shop, optical shop, and an array of paraprofessional work assignments. Women typically work approximately six hours a day in such assignments.

72. Women transferred to NJSP are denied any opportunity to apply for the vast majority of available work assignments. Such assignments include numerous positions in food service, sanitation, maintenance, skilled trades, laundry, and supplies, and as porters and ice room workers. In addition, men hold assignments as law library clerks, classroom clerks, teaching aides, and tutoring program paraprofessionals in the education department.

73. Women are allocated only a small number of assignments, such as pantry worker and "runner," exclusively within the women's housing unit. As a result, women who previously held work assignments at EMCF and/or wish to work at NJSP are unable to work, or receive inferior assignments and less pay than they received at EMCF. The majority of women held in NJSP do not have work assignments. As a consequence, women are less able than men to purchase necessary prison commissary items such as hygienic supplies, postage stamps, clothing, and copying of legal and other documents.

74. Plaintiff Sylvia Flynn earned \$6.00 per day at EMCF as a paraprofessional and teacher of upholstery, and could have received additional pay increases because she

is state certified as an upholsterer. When she was transferred to NJSP, she sought work as an upholsterer and as a cosmetologist, and was denied both. She is now employed as a “wing barber” in the women’s unit and receives \$2.50 per day.

75. At EMCF, plaintiff Kathleen Jones worked six hours per day as a paraprofessional in the prison’s Optical Department, earning \$4.00 per day and gaining a sense of purpose by refurbishing donated glasses for use in developing countries. At NJSP, Jones has access to no such work assignment and instead she performs unskilled labor as a “pantry worker,” earning \$2.30 per day

G. Denial of the Right to Exercise

76. All women prisoners at EMCF receive between two and four hours per day of outdoor exercise in a large grassy yard and blacktop area containing two basketball hoops, several benches and picnic tables, and a drinking fountain. Women prisoners exercise by playing basketball and volleyball and through walking. Organized exercise such as aerobics classes are also offered.

77. Women at EMCF are also provided indoor exercise in a gymnasium for two hours between three and five times per week. During these times, the women play basketball and volleyball, do aerobic exercises including riding stationary bicycles, and may also socialize by playing cards and board games. In addition, prisoners at EMCF receive daily indoor recreation, especially in the evening, during which they socialize with one another in a common area.

78. NJSP allows women prisoners outdoor exercise for approximately two hours every other day. Women who cannot attend exercise periods for reasons such as

work assignments, attorney visits, and the like may go for up to two weeks without outdoor exercise.

79. Outdoor exercise takes place in a yard too small for vigorous walking or jogging. The small available space is further diminished because prison guards prevent the women from using the thirty feet of the yard nearest to the men's exercise yard. Up to twenty-five women must use the yard at the same time. Exercise equipment in the women's yard consists of a rusty basketball hoop and a tattered net, a basketball, a few handballs, a chin-up bar, and a set of parallel bars. The facilities were constructed for use by male prisoners. Few if any women do chin-up or parallel bar exercises.

80. While women are attending outdoor exercise in NJSP, male prisoners in cells overlooking the female exercise yard have engaged in conduct such as exposing their genitals and masturbating at their windows. Male prisoners in a nearby yard subject the women to lewd and unwelcome comments. Some women have kept their heads bowed during exercise periods in an attempt to avoid seeing the male prisoners' harassing behavior.

81. In late October 2007, shortly before a meeting with plaintiffs' counsel, NJSP began permitting women access to the gymnasium for one hour, three times per week. Indoor recreation takes place for one hour every other day in the women's housing unit. During indoor recreation, little or no physical exercise is possible. Women are provided three pieces of mechanical exercise equipment and a single exercise video, but the small amount of equipment and the requirement that women sign up in advance to use it prevent women from getting meaningful exercise during indoor recreation.

82. In contrast, male NJSP prisoners receive outdoor exercise in a vastly larger yard with basketball courts, weightlifting equipment, and other exercise equipment. The yard is divided into four differently-equipped “quads,” through which prisoners rotate. Male prisoners are also provided regular indoor exercise and recreation. In addition, male prisoners also allowed to participate in organized intramural sports programs and tournaments in sports such as basketball, volleyball, soccer, and weight training. Participation in such programs provides men with additional opportunities for scheduled exercise. The teams are outfitted with equipment and uniforms and attend an annual sports banquet. Women prisoners are completely excluded from all of these activities.

83. By providing women prisoners with exercise facilities and opportunities far inferior to those provided to male prisoners, NJSP subjects the women to physical deterioration and increased mental stress.

84. Plaintiff Sylvia Flynn maintained her physical health while at EMCF by dancing in the large yard available to women prisoners while using a portable music player, as well as through the exertion required by her upholstery work. Since her transfer to NJSP, Flynn has little access to exercise and can no longer dance in the yard because of its small size and the need to avoid attracting the attention of male prisoners. Flynn has had to keep her head down while in the yard to avoid seeing male prisoners exposing their genitals and masturbating. Flynn has consequently suffered physical and mental deterioration.

H. Denial of the Right to Basic Hygiene and Privacy

85. Women held at EMCF are allowed to clean their cells every day, have access to clean water for this purpose, and may clean mops and toilet brushes before using them. In addition, women are permitted to launder their own clothing in washing machines and driers in each housing unit. Individual laundering of clothing is not a luxury but rather an important measure to prevent the spread of disease, particularly since the highly contagious and dangerous Methycillin Resistant Staphylococcus Aureus (MRSA) has become prevalent in New Jersey prisons. MRSA is an antibiotic-resistant “supergerm” that can cause disfiguring skin abscesses, necrotizing pneumonia, failure of vital organs, and death. Some women held in administrative segregation in NJSP have already contracted MRSA.

86. Women held in NJSP are only permitted to clean their cells once per week using one bucket of water, mop, and toilet brush per tier of ten to twelve cells. Women are not permitted to replace the water or clean the mops and toilet brushes between uses within a tier. As a result, all but the first woman in each tier must apply filthy water and cleaning implements to their cells. In addition, unless women flush their toilets simultaneously, the bodily waste flushed from the toilet in one cell appears in the toilet of another woman’s cell.

87. Women prisoners in NJSP are not permitted to launder their own clothing but must send their clothing to the laundry service operated by male prisoners. The male prisoners often steal or destroy the women’s clothing. In particular, the women were directed by NJSP officers not to send their undergarments to be laundered because they are likely to be stolen by male prisoners. Women are thereby deprived of clean undergarments. Many women attempt to wash their undergarments by hand in their cells,

but cannot wash them thoroughly in the tepid water of their small sink units. Once washed in this way, the undergarments do not dry in the damp environment of the cells, creating a risk of vaginal infection.

88. Women held at EMCF are supplied with sanitary napkins and toilet paper. In contrast, women transferred to NJSP are provided an inadequate supply of both items. Each woman receives about fifteen sanitary napkins per month, even though some women require more, and between four and seven rolls of toilet paper per month. Unlike men, women must use toilet paper for both urination and defecation, but this fact is ignored by NJSP officials in allocating toilet paper. In addition, because no paper napkins are distributed at meals, prisoners must use their limited supply of toilet paper at meals and to clean utensils and bowls after eating.

89. Women held in NJSP are also denied privacy during basic bodily functions. There is a window in the door of each cell. Male guards patrol the women's unit and at times a male officer is the sole officer in the unit during the night shift. Male guards frequently do not announce their presence in the unit and peer into the cells, sometimes using a flashlight, when women are undressed after showering or are using their cell toilets. Some cells are situated such that any officer in the unit's control booth can view the woman inside while she is using the cell toilet. In addition, windows in the doors of each shower expose women to the view of male and female civilian and security personnel who regularly pass by the shower.

90. Plaintiff Sylvia Flynn is unable to clean her cell using appropriate implements because of the danger of contamination from the filthy water and cleaning supplies. Instead, she must use sanitary pads or socks to clean her cell. Flynn was

instructed by a sergeant not to send her undergarments to be laundered because they would be stolen by male laundry workers. Flynn must wash her own underwear and bra every day by hand under the small faucet in her cell. She must dry the undergarments on a cardboard box, but the box has mildewed from use and the damp conditions in the cell. Flynn's other clothing has been stolen from the laundry, including a shirt, pants, and socks.

91. Plaintiff Helen Ewell is frequently left with no recourse but to use filthy water to clean her cell. The unsanitary conditions and the many hours per day that Ewell is confined in her cell expose Ewell to an unreasonable risk of illness, including MRSA. Although Ewell herself no longer requires sanitary napkins because of her hysterectomy, she was witnessed other women who, lacking an adequate supply, must substitute some of their scant supply of toilet paper for sanitary napkins.

92. Plaintiff Kathleen Jones has been denied a sufficient supply of sanitary pads or toilet paper. She must wash her underwear and bra in the sink in her cell. Her other clothing has been stolen by male laundry workers. Jones feels humiliated by the lack of privacy when using the toilet. Jones was forced to shower at least ten times over a period of a week or more in a shower room where a window permitted passing male and female personnel to view her nudity.

93. Defendants have actual knowledge of the unlawful deprivation of basic hygiene and privacy.

94. Upon information and belief, defendants Hayman, Barbo, and Sherrer are responsible for matters of policy affecting prisons within the DOC, and therefore have actual knowledge of and are personally responsible for the illegal conditions to which

women confined in NJSP are subjected. Upon information and belief, defendant Ricci, by virtue of her position as Administrator NJSP, and defendants Kandell and Drumm, by virtue of their direct authority over the unit in which women prisoners are confined, acted personally to effectuate the illegal conditions of confinement described herein.

CLASS ACTION ALLEGATIONS

95. Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated. Plaintiffs request that this case be certified as a class action pursuant to N.J. Court Rule 4:32-1.

96. The plaintiff class consists of: “all general population women prisoners who are now or in the future will be confined in New Jersey State Prison.”

97. The case is appropriate for class action certification because (1) joinder of the class members is impractical, satisfying the requirement of numerosity; (2) there are questions of law and fact common to the class; (3) the claims of the representative plaintiffs are typical of the claims of the class; (4) the named plaintiffs will fairly and adequately and fairly protect the interests of the class; and (5) defendants have acted on grounds generally applicable to the class, rendering the relief requested appropriate to the class as a whole.

STATEMENT OF CLAIMS

Illegal Confinement of Women Prisoners in NJSP

Count 1

98. By intentionally and arbitrarily treating the women prisoners chosen for confinement in NJSP disparately from all other general population prisoners in NJDOC custody, defendants are violating the women’s substantive due process right to fundamental fairness as established in the traditions and collective conscience of the

people of New Jersey, in violation of Article I, Paragraph 1 of the New Jersey Constitution, and the New Jersey Civil Rights Act (N.J.S.A. §§ 10:6-1 *et seq.*).

Count 2

99. By transferring the women prisoners to an environment in which rehabilitation is impossible and confining them there indefinitely, defendants are violating public policy and the expressed will of the legislature as embodied in N.J.S.A. §§ 30:1B-3 and 30:1B-6, N.J.A.C. § 10A:4-3.1(a)(1), and the statutory and regulatory pattern commanding defendants to provide “custody, care, discipline, training, and treatment” to all prisoners, whether men or women, under fair and impartial terms. By engaging in arbitrary and abusive action against the women prisoners, defendants have caused and continue to cause the women grievous loss in violation of rightness and fairness standards firmly established in New Jersey law and the New Jersey Civil Rights Act (N.J.S.A. §§ 10:6-1 *et seq.*).

Count 3

100. By subjecting women prisoners to near lock-down conditions similar to those in disciplinary isolation for an indefinite period of time, and by endangering the women’s eligibility for reduced security classification and parole, defendants are inflicting an atypical and significant hardship on the women prisoners.

101. By selecting women for transfer from EMCF to NJSP in an irrational, arbitrary, and capricious manner using no objective criteria, or by misapplying any criteria employed, or by applying such criteria to erroneous facts; by effectuating the transfer without providing notice, hearing, or due process of any kind; and by denying the women access to subsequent periodic classification reviews enabling them to return to

EMCF, defendants are violating the women's procedural due process rights under Article I, Paragraph 1 of the New Jersey State Constitution.

Count 4

102. Defendants knowingly and foreseeably subjected and continue to subject the women to conditions of confinement that violate the right to be free from cruel and unusual punishment under Article I, Paragraph 12, of the New Jersey Constitution, and the New Jersey Civil Rights Act (N.J.S.A. §§ 10:6-1 *et seq.*).

103. The policies, procedures, acts, and omissions of defendants Hayman, Barbo, Sherrer, Hauck, and Ricci in effectuating the summary transfer of women to unconstitutional conditions of confinement evidence and constitute deliberate indifference to the health, safety, and other fundamental interests of the women prisoners. The defendants' policies, procedures, acts, and omissions cause avoidable pain, mental suffering, and deterioration of the women's health and place them at unreasonable, continuing, and foreseeable risk of further injury.

104. As a proximate result of defendants' policies, procedures, acts, and omissions, plaintiffs have suffered and will continue to suffer immediate and irreparable injury, including physical, psychological, and emotional injury. Plaintiffs have no plain, adequate, or complete remedy at law to address the wrongs described herein. The injunctive relief sought by plaintiffs is necessary to prevent continued and further injury.

Discriminatory Conditions of Confinement

Count 5

105. The discriminatory conditions of confinement maintained in NJSP as between men and women general population prisoners, including disparities in the imposition of restrictions and isolation; mental health care; medical care; legal access;

educational and other rehabilitative services, which is both unlawful *per se* and because it discriminatorily subjects women to delay in reductions in security level and release on parole in comparison to similarly situated male prisoners; work opportunities; and exercise facilities and opportunities violate the women's right to equal protection under Article 1, Paragraph 1 of the New Jersey Constitution, and the New Jersey Civil Rights Act (N.J.S.A. §§ 10:6-1 *et seq.*).

106. For all relevant purposes, men and women general population prisoners held in NJSP are similarly situated with respect to their right against the arbitrary imposition of restrictive and isolating conditions of confinement; their right to constitutionally adequate psychiatric and medical care; their right of access to the courts; their receipt of educational and other rehabilitative services; the allocation of work opportunities; and their right to regular exercise. Defendants' policies, procedures, acts, and omissions create, sustain, and perpetuate conditions for women that in each of these regards is not comparable, substantially equivalent, or in parity with that of male prisoners in NJSP.

107. The disparity in the conditions of confinement imposed on men and women prisoners is not substantially related to the achievement of an important, or even legitimate, governmental objective. There is no compelling need or exceedingly persuasive justification for this disparity in conditions.

Count 6

108. The disparity in the conditions of confinement maintained in NJSP denies women prisoners the opportunity to obtain all of the accommodations, advantages, facilities, and privileges of a place of public accommodation because of their sex, thereby violating the New Jersey Law Against Discrimination (N.J.S.A. §10A:5-1 *et seq.*).

Cruel and Unusual Conditions of Confinement

Count 7

109. The denial of psychiatric care and medication, and the practice of punishing women who seek psychiatric care in dangerous and degrading conditions in “Unit 1GG,” as well as the denial of women’s ability to maintain basic cleanliness with respect to their bodies, clothing, and environment, and the denial of women’s right to privacy during basic bodily functions violate women prisoners’ right against cruel and unusual punishment under Article 1, Paragraph 12 of the New Jersey Constitution, and the New Jersey Civil Rights Act (N.J.S.A. §§ 10:6-1 *et seq.*).

110. The policies, procedures, acts, and omissions of defendants Hayman, Barbo, Sherrer, Ricci, Kandell, Drumm, and Kaldany evidence and constitute deliberate indifference to the psychiatric health of women prisoners. The defendants’ policies, procedures, acts, and omissions cause avoidable pain, mental suffering, and deterioration of plaintiffs’ health and place plaintiffs at unreasonable, continuing, and foreseeable risk of developing or exacerbating serious medical and mental health problems.

111. As a proximate result of defendants’ policies, procedures, acts, and omissions, plaintiffs have suffered and will continue to suffer immediate and irreparable injury, including physical, psychological, and emotional injury. Plaintiffs have no plain, adequate, or complete remedy at law to address the wrongs described herein. The injunctive relief sought by plaintiffs is necessary to prevent continued and further injury.

Violations of the Right to Privacy

Count 8

112. The performance of medical consultations, examinations, and procedures in the presence of other prisoners and male and female prison guards, and the routine

exposure of women to observation by male guards and civilian staff in non-emergency situations while carrying out basic bodily functions and while in states of nudity, violate women prisoners' right to privacy under Article 1, Section 1 of the New Jersey Constitution, and the New Jersey Civil Rights Act (N.J.S.A. §§ 10:6-1 *et seq.*). No legitimate correctional goals or security concerns justify these violations.

PRAYER FOR RELIEF

113. WHEREFORE, plaintiffs respectfully request that this Court grant the following relief:

- a. Certify this action as a class action pursuant to New Jersey Court Rule 4:32-1;
- b. Appoint the undersigned as class counsel pursuant to New Jersey Court Rule 4:32-1(g);
- c. Declare that the policies, procedures, acts, and omissions of the defendants, as set forth above, are unlawful and violate plaintiffs rights under the New Jersey State Constitution and state statutes and codes;
- d. Permanently enjoin defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting plaintiffs to the unconstitutional and unlawful punishment described herein, and award injunctive relief sufficient to rectify the violations;
- e. Award plaintiffs all costs, including reasonable attorneys' fees, pursuant to New Jersey Court Rules 4:42-8 and 4:42-9, N.J.S.A. §§ 10:5-27.1 and 10:6-2, and other applicable law; and
- f. Grant plaintiffs such further relief as the Court deems just and proper.

Respectfully submitted,

American Civil Liberties Union
Women's Rights Project
Co-Counsel for Plaintiffs

BY: _____
MIE LEWIS
LENORA M. LAPIDUS

American Civil Liberties Union
of New Jersey Foundation
Co-Counsel for Plaintiffs

BY: _____
EDWARD L. BAROCAS

Dated: December ____, 2007

CERTIFICATION PURSUANT TO Rule 4:5-1(b)(2)

Plaintiffs certify that to the best of plaintiffs' knowledge, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding being contemplated. Plaintiffs further certify that to the best of plaintiffs' knowledge, there is no non-party who should be joined in this action pursuant to Rule 4:28 of the New Jersey Court Rules or who is subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

Respectfully submitted,

American Civil Liberties Union
Women's Rights Project
Co-Counsel for Plaintiffs

BY: _____
MIE LEWIS
LENORA M. LAPIDUS

American Civil Liberties Union
of New Jersey Foundation
Co-Counsel for Plaintiffs

BY: _____
EDWARD L. BAROCAS

Dated: December ____, 2007