Appendix C- Orders And Decisions of the United States District Court For For The District Of New Jersey January 15, 2020 through September 29, 2020

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY No. 1:16-cv-4465

Edward Scanlon IV,

Petitioner,

Vs.

Valerie Lawson, Felix Mickens, Robert Balicki, Veronica Surrency, Michael Baruzza, William M. Burke, (aka Bill Burke), Bobby Stubbs, David Fuentes, Harold Cooper, Wesley Jordon, Carol Warren, JOHN and/or JANE DOES [1]7-45 (Fictitious individuals), ABC CORPS 1-45 (Fictitious Corps), Jointly and Severally

Respondents.

Orders And Decisions Filed: January 15, 2020 through September 29, 2020

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY:
(D.C. Civil No. 1:16-cv-4465 (RMB-JS)
District Judge: Honorable Renee M. Bumb

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EDWARD SCANLON, IV Plaintiff v. VALERIA LAWSON, *et al.*, Defendants	Civ. No. 16-4465 (RMB-JS) **OPINION**

APPEARANCES:

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On behalf of Defendants Valeria Lawson, Felix Mickens and William M. Burke

BUMB, United States District Judge

Plaintiff Edward Scanlon IV brought this action under 42 U.S.C. § 1983, the New Jersey Civil Rights Act ("NJCRA") § 10:6-2; and the New Jersey Tort Claims Act ("NJTCA") § 59:1-1 *et seq.* As to Defendant William M. Burke, Plaintiff alleges he failed to monitor the Cumberland County Juvenile Detention Center for compliance with its Manual of Standards, leading to violations of Plaintiff's constitutional rights. This matter now comes before

the Court upon Defendants Felix Mickens, William M. Burke, and Valeria Lawson's Motion for Summary Judgment (collectively "the JJC Defendants") ("JJC Defs' Mot. for Summ. J.," ECF No. 119); Brief on Behalf of the Juvenile Justice Comm. Defs' Mot. for Summ. J. on Claims of Plaintiff Scanlon and Cross-Claims ("JJC Defs' Brief," ECF No. 119-2); JJC Defendants' Statement of Material Facts Not in Dispute ("JJC Defs' SOMF," ECF No. 119-3); Pl's Opposition to Summ. J. Motions ("Pl's Opp. Brief, ECF No. 130); Reply to SOMF by DAG Michael Vomacka ("Pl's Reply to SOMF," ECF No. 130-3); and Pl's Counter-statement of Material Facts (ECF No. 130-5); and JJC Def's Letter Brief in Further Support of Summ. J. ("JJC Defs' Reply Brief," ECF No. 140).

Pursuant to Federal Rule of Civil Procedure 78(b), the Court will determine the motion for summary judgment on the briefs without oral argument. Plaintiff does not oppose summary judgment in favor of Valeria Lawson and Felix Mickens on all claims and does not oppose summary judgment in favor of William M. Burke on the New Jersey tort claims. (Pl's Opp. Brief, ECF No. 130 at 9.) Plaintiff opposes summary judgment on the Section 1983 and NJCRA claims against Burke. For the reasons set forth below, the JJC Defendants' motion for summary judgment is granted.

I. BACKGROUND

Plaintiff filed this action in the New Jersey Superior Court, Law Division, Cumberland County on March 29, 2016, alleging civil

rights violations under 42 U.S.C. § 1983; the New Jersey Civil Rights Act ("NJCRA"), § 10:6-2, and tort claims under the New Jersey law, N.J.S.A. §§ 59:1-1 *et seq.* (Compl., ECF NO. 1-1 at 8-18.) The defendants to the action were Valeria Lawson ("Lawson"),[1] Felix Mickens ("Mickens"), Robert Balicki ("Balicki"), Veronica Surrency ("Surrency"), Michael Baruzza ("Baruzza"), and John and/or Jane Does 1-45 (fictitious individuals) and ABC Corps. 1-45 (fictitious corporations). (Id. at 8.) [redacted]

[redacted]

Defendants removed the action to this Court on July 22, 2016. (Notice of Removal, ECF No. 1.) On July 29, 2016, Gregory R. Bueno,

[1] Plaintiff sued "Valerie" Lawson and Lawson corrected her name to "Valeria" upon answering the complaint. (Answer, ECF No. 26 at 1.)

Deputy Attorney General of New Jersey, entered a Notice of Appearance on behalf of defendant Mickens. (Not. of Appearance, ECF No. 4.) On August 3, 2016, defendants Balicki, Surrency and Baruzza, represented by Patrick J. Madden, Esq., filed an answer to the original complaint, and a cross-claim for contribution and indemnification against defendants Lawson and Mickens. (Answer, ECF No. 6.)

On September 28, 2016, Plaintiff sought an order for release of records from the State of New Jersey, Department of Children and Families ("DCF"), and the Court granted the request, subject to *in camera review* prior to disclosure to Plaintiff. (Order, ECF No. 18.) On December 12, 2016, the Court entered a Discovery Consent Confidentiality Order. (Order, ECF No. 23.)

On December 22, 2016, Gregory R. Bueno, Deputy Attorney General, filed a Notice of Appearance and Waiver of Service on behalf of defendant Lawson, and filed an answer to the original complaint on January 9, 2017. (Notice of Appearance, ECF No. 24; Waiver of Service, ECF No. 25; Answer, ECF No. 26.) On May 9, 2017, the Court completed *in camera review* of discovery documents and sent the documents concerning the subject of the complaint to Plaintiff's counsel.[2] Plaintiff received several extensions of time

[2] The Court resent the documents to Plaintiff's counsel on May 25, 2017, after the correct address was provided. (Letter Order, ECF No. 37.)

to file a motion to amend the complaint, and filed a motion to amend the complaint on July 21, 2017, and a corrected motion on July 26, 2017. (ECF Nos. 39-44.)

The motion to amend was granted on October 20, 2017. (Order, ECF No. 56.) Plaintiff filed a redacted amended complaint on October 26, 2017 and later filed an unredacted amended complaint. (Am. Compl., ECF Nos. 58, 88.) The amended complaint added claims against William M. Burke ("Burke") Supervisor, Compliance Monitoring Unit, New Jersey Juvenile Justice System; Bobby Stubbs ("Stubbs") Senior Juvenile Detention Officer at CCJDC; David Fuentes ("Fuentes") Juvenile Detention Officer at CCJDC; Harold Cooper ("Cooper") Senior Juvenile Detention Officer at CCJDC; Wesley Jordan ("Jordan") Juvenile Detention Officer at CCJDC; and Carol Warren LPN ("Warren"), at CCJDC. (Am. Compl., ECF No. 88, ¶¶28-32.)

Burke, Lawson and Mickens, represented by Gregory R. Bueno, Deputy Attorney General, filed an answer to the amended complaint on December 26, 2017. (Answer, ECF No. 74.)[3] Jordan, represented by Justin R. White, Esq, filed an answer to the amended complaint on February 6, 2018. (Answer, ECF No. 84.) Warren and Fuentes, represented by Daniel E. Rybeck, Esq., entered an answer to the

[3] On October 10, 2018, Michael Vomacka, Deputy Attorney General, was substituted as counsel for defendants Lawson, Mickens and Burke. (Substitution of Attorney, ECF No. 101).

amended complaint with a cross-claim for contribution and/or indemnification by the remaining defendants on February 15, 2018. (Answer, ECF No. 85.) The JJC Defendants filed the present motion for summary judgment on August 15, 2019. (JJC Defs' Mot. for Summ. J.," ECF No. 119.)

II. THE AMENDED COMPLAINT

Plaintiff was born on April 1, 1996, and was a minor at all relevant times alleged in the amended complaint. (Am. Compl., ECF No. 88, ¶19.) [redacted]

[redacted]

[redacted]

Lawson, Mickens and Burke of the New Jersey JJC "were responsible for ensuring that the JJC complies with state and federal law." (Id., ¶¶21 22, 23.) Balicki, Warden of CCJDC and Baruzza, Division Head of CCJDC, are also named as defendants. (Id., ¶¶25-27.)

In Count One, Plaintiff alleges violations of substantive due process for excessive use of force, inhumane conditions, lack of health care and failure to protect from harm under 42 U.S.C. § 1983. (Id., ¶¶36-43.) Count Two of the amended complaint is for the same conduct in violation of the New Jersey Civil Rights Act, N.J.S.A. § 10:6-2. (Id., ¶¶44-47.)

For the Count Three, Plaintiff alleges negligence under New Jersey state law. (Am. Compl., ¶¶48-51, ECF No. 88.) In Count Four, Plaintiff alleges

> Defendants' actions and failure(s) to act constituted a failure to act and/or discipline, which proximately caused a violation of plaintiffs' civil rights to procedural and substantive due process with violations are made actionable by the N.J.C.R.A.
>
> Defendants knew or should have known of the violation of plaintiffs' rights, and acted and failed to act so as to permit the violation of plaintiffs' rights intentionally and/or recklessly and with deliberate indifference.
>
> Defendants owed Plaintiff a duty of care under common law and under N.J.S.A. §2A:4A-21 and N.J.A.C. §§ 13:95-8.9, 13:101-1.1
>
> Defendants Breach[ed] Those Duties by their Acts and Omissions.
>
> Defendants' breach of duty was the proximate cause of Plaintiff's physical and psychological injuries.

(Id., ¶¶53-57.)

Count Five is for punitive damages under New Jersey law. (Id., ¶¶58-61.) Counts Six and Seven are for intentional and negligent infliction of emotional distress under New Jersey law. (Id., ¶¶62-69.) Count Eight is alleged against Jordan, Stubbs and Fuentes for excessive force in violation of the Fourth and Fourteenth Amendments. (Id., ¶¶70-72.) Counts Nine and Ten are alleged against Balicki, Surrency, Cooper, Baruzza, Burke, Lawson and Mickens for

supervisory liability of their subordinates' violations of Plaintiff's constitutional rights in violation of 42 U.S.C. § 1983. (Am. Compl., ¶¶73-88, ECF No. 88.)

III. DISCUSSION

A. Summary Judgment Standard of Review

Summary Judgment is proper where the moving party "shows that there is no genuine dispute as to any material fact," and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Daubert v. NRA Group, LLC, 861 F.3d 382, 388 (3d Cir. 2017). "A dispute is "genuine" if 'a reasonable jury could return a verdict for the nonmoving party,'" Baloga v. Pittston Area Sch. Dist., 927 F.3d 742, 752 (3d Cir. 2019) (quoting Santini v. Fuentes, 795 F.3d 410, 416 (3d Cir. 2015) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). "[A] fact is 'material' where 'its existence or nonexistence might impact the outcome of the suit under the applicable substantive law.'" Id. (citing Anderson, 477 U.S. at 248).

The burden then shifts to the nonmovant to show, beyond the pleadings, "'that there *is* a genuine issue for trial." Daubert, 861 F.3d at 391 (quoting Celotex Corp. v. Catrett, 447 U.S. 317, 324 (1986) (emphasis in Daubert)). "With respect to an issue on which the non-moving party bears the burden of proof, the burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of

evidence to support the nonmoving party's case." Conoshenti v. Public Serv. Elec. & Gas, 364 F.3d 135, 145-46 (3d Cir. 2004) (quoting Celotex, 477 U.S. at 325).

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> > (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
> >
> > (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> > (1) give an opportunity to properly support or address the fact;
> >
> > (2) consider the fact undisputed for purposes of the motion;
> >
> > (3) grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or
> >
> > (4) issue any other appropriate order.

Fed. R. Civ. P. 56(e).

"At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." Scott v. Harris, 550 U.S. 372, 380 (2007) (citing Fed. Rule Civ. Proc. 56(c)). The court's role is "'not ... to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial,'" Baloga, 927 F.3d at 752 (quoting Anderson, 477 U.S. at 249)).

Plaintiff does not oppose summary judgment on the tort claims. (Pl's Brief, ECF No. 130 at 9.) Therefore, the Court need address only the § 1983 and NJCRA claims against Burke.

B. Statute of Limitations

Burke contends that Plaintiff's claims brought under 42 U.S.C. § 1983 and the New Jersey Civil Rights Act are subject to a two-year statute of limitations. (JJC Defs' Brief, ECF No. 119-2 at 15.) All of Plaintiff's claims accrued on April 1, 2014, when he reached the age of majority, eighteen. (Id.) The statute of limitations for Plaintiff's claims expired on April 1, 2016, two years after he reached the age of majority. (Id. at 17.) Burke asserts that Plaintiff's claims against him are barred by the applicable statute of limitations because they were filed after April 1, 2016. (Id. at 18.)

Plaintiff first sought to add Burke as a defendant by motion filed on July 21, 2017. (Id.) In his motion to amend, Plaintiff

noted that the amended complaint added new facts and six new defendants, including William M. Burke. (Id., citing Mot. to Amend, ECF No. 42.) Plaintiff's motion to amend was granted on October 20, 2017, and the amended complaint was filed on October 26, 2017. (Order, ECF No. 56; Am. Compl., ECF No. 58.) Thus, Plaintiff's claims against Burke were filed after the April 1, 2016 statute of limitations period. (JJC Defs' Brief," ECF No. 119-2 at 19.)

Plaintiff did not respond to Burke's statute of limitations defense. (Pl's Opp. Brief, ECF No. 130.) In reply, Burke notes that Plaintiff does not contend that his amended pleading should relate back to the original complaint, and even if so, the evidence does not support relation back. (Id. at 4-7.)

Burke states that Plaintiff did not provide him with notice of his claims until after the limitations period expired. (Id. at 6.) The amended complaint was filed October 26, 2017, and summons were only requested on November 6, 2017. (Id., citing ECF No. 58, 60.)

Further, Plaintiff's claims against Burke are grounded in the theory that he was unaware the county facility was failing to comply with portions of the Manual of Standards, or he was deliberately indifferent as to policies adopted in the Manual. (Reply Brief at 6-7, ECF No. 140.) Plaintiff's original complaint, however, does not contain this theory of liability against Burke. (Id. at 7.)

In his motion to amend, Plaintiff specifically noted that the amended complaint: "adds facts, 6 new defendants (William M. Burke (aka Bill Burke), Bobby Stubbs, David Fuentes, Harold Cooper, Wesley Jordon, Carol Warren), and 3 new causes of action; Section 1983 Excessive Force-Eighth Count, Section 1983 Supervisory Liability-Ninth Count, and Section 1983 Unlawful Policy, Custom, Practice, Inadequate Training-Tenth Count." (Am. Compl., at 8, ECF No. 88.) Burke contends that Plaintiff fails to provide any explanation for seeking to add claims against him in 2017 for conduct that occurred in 2011 and 2012. (Id.)

C. Analysis

Plaintiff's federal claims are brought under 42 U.S.C. § 1983. Section 1983 does not create substantive rights but provides a remedy for violation of federal rights. Dique v. New Jersey State Police, 603 F.3d 181, 185 (3d Cir. 2010). Such claims are characterized as personal injury claims, and state law provides the statute of limitations. Id. (citing Cito v. Bridgewater Twp. Police Dep't, 892 F.2d 23, 25 (3d Cir. 1989)). Under New Jersey law, personal injury torts are subject to a two-year statute of limitations. Id. (citing N.J.S.A. § 2A:14-2).[5] Claims under the

[5] N.J.S.A. § 2A:14-2, provides, in pertinent part:

> Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be

New Jersey Civil Rights Act are also subject to a two-year statute of limitations. Lapolla v. County of Union, 157 A.3d 458, 465 (N.J. Super. Ct. App. Div. 2017).

"[T]he accrual date of a § 1983 cause of action is a question of federal law that is not resolved by reference to state law." Wallace v. Kato, 549 U.S. 384, 388 (2007). A claim accrues "when the plaintiff knew or should have known of the injury upon which its action is based." Kach v. Hose, 589 F.3d 626, 634 (3d Cir. 2009) (quoting Sameric Corp. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998) (citation omitted)).

"The general rule is that state tolling principles also govern § 1983 claims." Id. at 639 (citing Hardin v. Straub, 490 U.S. 536, 539, (1989)); Island Insteel Sys. v. Waters, 296 F.3d 200, 210 n. 4 (3d Cir. 2002)). In New Jersey, the statute of limitations for personal injury claims is tolled until a minor reaches the age of majority, age eighteen. See N.J.S.A. § 2A:14-21; N.J.S.A. § 9:17B-1; Standard v. Vas, 652 A.2d 746, 749 (N.J. Super. Ct. App. Div. 1995) (confirming that the tolling period ends upon a claimant's eighteenth birthday).

Plaintiff was born on April 1, 1996. [redacted] Under New Jersey law, the statute of

commenced within two years next after the cause of any such action shall have accrued…

limitations was "tolled" until he turned eighteen on April 1, 2014. Therefore, any action against Burke had to be filed by April 1, 2016. The amended complaint, adding Burke as a defendant based on additional new facts, was not filed until October 26, 2017.

1. Relation back under FRCP 15(c)(1)(A)

"Rule 15(c) of the Federal Rules of Civil Procedure governs when an amended pleading 'relates back' to the date of a timely filed original pleading and is thus itself timely even though it was filed outside an applicable statute of limitations." Krupski v. Costa Crociere S. p. A., 560 U.S. 538, 541 (2010). Plaintiff did not argue that his claims against Burke relate back to his original complaint, filed on March 29, 2016. However, because Plaintiff opposes summary judgment in favor of Burke on the Section 1983 and NJCRA claims, the Court will address whether the amended complaint relates back to the original complaint for statute of limitations purposes.

An amendment can relate back to the date of the original pleading when the law that provides the applicable statute of limitations allows relation back, and the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out in the original pleading. Fed. Rule Civ. P. 15(c)(1)(A),(B).

New Jersey Court Rule 4:26-4 applies to actions in which fictitious parties are named when the defendant's true name is unknown to the plaintiff. It provides:

> if the defendant's true name is unknown to the plaintiff, process may issue against the defendant under a fictitious name, stating it to be fictitious and adding an appropriate description sufficient for identification. Plaintiff shall on motion, prior to judgment, amend the complaint to state defendant's true name, such motion to be accompanied by an affidavit stating the manner in which that information was obtained.
>
> If, however, defendant acknowledges his or her true name by written appearance or orally in open court, the complaint may be amended without notice and affidavit. No final judgment shall be entered against a person designated by a fictitious name.

N.J. Ct. R. R. 4:26-4.

In the original complaint, the only reference to a defendant employed by the New Jersey JJC is "Defendants 'John and/or Jane Doe 1-5' member[s] of Juvenile Classification Committee, Juvenile Justice Commission, P.O. Box 1097, Trenton, NJ 08625-0107." (Compl., ¶17, ECF No. 1-1.) In the amended complaint, Plaintiff identifies Burke as a supervisor of the compliance monitoring unit, New Jersey JJC. (Am. Compl., ¶23, ECF No. 88.)

"The fictitious name designation [] must have appended to it an 'appropriate description sufficient to identify' the defendant." DeRienzo, 357 F.3d at 353 (quoting Rutkowski v. Liberty Mut. Ins. Co., 209 N.J.Super. 140, 506 A.2d 1302, 1306–07 (1986)).

"The purpose of providing a sufficient description under Rule 4:26-4 is two-fold: it gives notice of the cause of action while also helping to identify the unknown defendant. Descriptions which are too vague or broad fail to achieve these goals." Miles v. CCS Corp., No. A-5947-12T3, 2015 WL 5009883, at *6 (N.J. Super. Ct. App. Div. Aug. 18, 2015). The original complaint identified "John and Jane Doe" members of the Juvenile Classification Committee of the JJC without alleging what such persons did or failed to do. In any event, Burke was not a member of the Juvenile Classification Committee. The description was too vague to give notice or to help identify Burke as a defendant for purposes of Rule 4:26-4.

New Jersey also has a general relation back rule, New Jersey Court Rule 4:9-3.

> New Jersey's general relation back rule, provides that an amendment changing the party against whom a claim is asserted relates back to the date of the original complaint if: (1) it arose out of the same transaction or occurrence set forth in the original pleading; (2) the proposed defendant received notice of the institution of the action within the limitations period such that the party will not be prejudiced in maintaining a defense; and (3) the proposed defendant knew or should have known that, but for the misidentification of the proper party, the action would have been brought against him or her. Arroyo v. Pleasant Garden Apartments, 14 F.Supp.2d 696, 701 (D.N.J.1998) (citing Viviano v. CBS, Inc., 101 N.J. 538, 503 A.2d 296, 304 (1986)).

Monaco v. City of Camden, 366 F. App'x 330, 334 (3d Cir. 2010).

[redacted] Burke did not receive notice of the action within the limitations period. The claims against Burke were not added until the statute of limitations expired, and Burke was not notified until the amended complaint was served on him on November 20, 2017. (Aff. of Service, ECF No. 80.) Moreover, the original complaint did not misidentify a party that Burke should have known was brought against him. See Otchy v. City of Elizabeth Bd. of Educ., 737 A.2d 1151, 1155 (N.J. Super. Ct. App. Div. Oct. 15, 1999) ("[a] misnomer occurs where the correct party is already before the court, but the name in the complaint is deficient in some respect.") The amended complaint does not relate back to the original complaint under New Jersey Court Rule 4:9-3.

2. Relation back under FRCP 15(c)(1)(C)

Under federal law, an amendment can relate back to the date of the original pleading when

> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
>
> > (i) received such notice of the action that it will not be prejudiced in defending on the merits; and

> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

Fed. R. Civ. P. 15(c)(1)(C). At the time the original pleading was filed, Rule 4(m) provided 120 days to serve the summons and complaint. (Fed. R. Civ. P. 4, effective December 1, 2015).

"Rule 15(c)(1)(C)(ii) asks what the prospective defendant knew or should have known during the Rule 4(m) period, not what the plaintiff knew or should have known at the time of filing her original complaint." Krupski, 560 U.S. at 548. "The only question under Rule 15(c)(1)(C)(ii) … is whether [the added party] knew or should have known that, absent some mistake, the action would have been brought against him." Krupski, 560 U.S. at 549. "The reasonableness of the mistake is not itself at issue." Id.

> A prospective defendant who legitimately believed that the limitations period had passed without any attempt to sue him has a strong interest in repose. But repose would be a windfall for a prospective defendant who understood, or who should have understood, that he escaped suit during the limitations period only because the plaintiff misunderstood a crucial fact about his identity.
>
> ...
>
> When the original complaint and the plaintiff's conduct compel the conclusion that the failure to name the prospective defendant in the original complaint was the result of a fully informed decision as opposed to a

> mistake concerning the proper defendant's identity, the requirements of Rule 15(c)(1)(C)(ii) are not met.

Krupski, 560 U.S. at 550-52. Pursuant to the Third Circuit's decision in Varlack v. SWC Caribbean, Inc.,[6] "the plaintiff's lack of knowledge of a particular defendant's identity can be a mistake under Rule 15(c)(3)(B)." Singletary v. Pennsylvania Dep't of Corr., 266 F.3d 186, 201 (3d Cir. 2001). Notice to the newly named defendant may be imputed by sharing an attorney with an original defendant or by an identity of interest with an originally named defendant. Id. at 196-97.

Burke shares an attorney with Lawson and Mickens, who were timely served with the original complaint. However, because Burke was not a member of the JJC Classification Committee, the only JJC defendants identified in the original complaint by the fictitious names "John and Jane Doe," there was nothing to put Burke on notice that he would have been named a defendant but for Plaintiff's inability to discover his name. Therefore, Plaintiff is not entitled to relation back under Rule 15(c)(1)(C). For the sake of completeness, in the alternative, the Court will address the merits of Plaintiff's claims against Burke.

C. Alternatively, Burke Is Entitled to Summary Judgment on the Merits of Plaintiff's Section 1983 and NJCRA Claims

1. Supervisory Liability

[6] Varlack, 550 F.2d 171, 174 (3d Cir. 977).

[redacted] and supervisory liability for such violations. [redacted] Therefore, his claims arise under the Fourteenth Amendment. See A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 584 (3d. Cir. 2004.) A juvenile detainee has a liberty interest in his personal security and well-being. Id. at 579 (citing Youngberg v. Romeo, 457 U.S. 307, 315-19 (1982)).

In 2009, the Supreme Court held that state officials are liable only for their own unconstitutional actions, not for those of their subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). The Third Circuit considered whether Iqbal abolished § 1983 supervisory liability in its entirety and decided that it did not. Barkes v. First Corr. Med., Inc., 766 F.3d 307, 319 (3d Cir. 2014), cert. granted, judgment rev'd sub nom. Taylor v. Barkes, 135 S. Ct. 2042 (2015).

In the Third Circuit, "there are two theories of supervisory liability, one under which supervisors can be liable if they established and maintained a policy, practice or custom which

directly caused the constitutional harm, and another under which they can be liable if they participated in violating plaintiff's rights, directed others to violate them, or, as the persons in charge, had knowledge of and acquiesced in their subordinates' violations." Santiago v. Warminster Twp., 629 F.3d 121, 129 n.5 (3d Cir. 2010). A plaintiff may establish a claim based on knowledge and acquiescence if the supervisor knew about a practice that caused a constitutional violation, had authority to change the practice, but chose not to. Parkell v. Danberg, 833 F.3d 313, 331 (3d Cir. 2016).

"[T]o establish a claim against a policymaker under § 1983 a plaintiff must allege and prove that the official established or enforced policies and practices directly causing the constitutional violation." Parkell, 833 F.3d at 331 (quoting Chavarriaga v. New Jersey Dept. of Corrections, 806 F.3d 210, 223 3d Cir. 2015.) An official is not "'enforcing,' 'maintaining,' or 'acquiescing in' a policy merely because the official passively permits his subordinates to implement a policy that was set by someone else and is beyond the official's authority to change." Id.

To establish supervisory liability for violation of a plaintiff's constitutional rights based on a practice or custom, a plaintiff may rely on evidence showing the supervisor "tolerated past or ongoing misbehavior." Argueta v. U.S. Immigration & Customs

Enf't, 643 F.3d 60, 72 (3d Cir. 2011) (quoting Baker v. Monroe Township, 50 F.3d 1186, 1191 n. 3 (3d Cir. 1995) (citing Stoneking v. Bradford Area Sch. Dist., 882 F.2d 720, 724–25 (3d Cir. 1989)). Typically, a plaintiff must show "a prior incident or incidents of misconduct by a specific employee or group of employees, specific notice of such misconduct to their superiors, and then continued instances of misconduct by the same employee or employees." Id. at 74; see Wright v. City of Philadelphia, 685 F. App'x 142, 147 (3d Cir.), cert. denied sub nom. Wright v. City of Philadelphia, Pa., 138 S. Ct. 360 (2017) ("a custom stems from policymakers' acquiescence in a longstanding practice or custom which constitutes the 'standard operating procedure' of the local governmental entity") (quoting Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737 (1989)). A supervisor's conduct occurring after the alleged constitutional violation cannot be shown to have caused the violation. Logan v. Bd. of Educ. of Sch. Dist. of Pittsburgh, 742 F. App'x 628, 634 (3d Cir. 2018).

Failure to supervise and failure to train are subcategories of policy or practice liability. Barkes, 766 F.3d at 316. There is a four-part test for determining whether a supervisor is liable under the Eighth Amendment based on a policy or practice:

> the plaintiff must identify a supervisory policy or practice that the supervisor failed to employ, and then prove that: (1) the policy or procedures in effect at the time of the alleged injury created an unreasonable risk of

> a constitutional violation; (2) the defendant-official was aware that the policy created an unreasonable risk; (3) the defendant was indifferent to that risk; and (4) the constitutional injury was caused by the failure to implement the supervisory practice or procedure.

Barkes, 766 F.3d at 317 (quoting Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 2014).

Similarly, to establish liability for failure to train,

> the plaintiff must show (1) municipal policymakers know that employees will confront a particular situation; (2) the situation involves a difficult choice or a history of employees mishandling; and (3) the wrong choice by an employee will frequently cause deprivation of constitutional rights.

Logan, 742 F. App'x at 632–33 (internal quotations omitted). Culpability for a deprivation of constitutional rights is at its most tenuous where a claim turns on a failure to train. Connick v. Thompson, 563 U.S. 51, 61 (2011). When "policymakers are on actual or constructive notice that a particular omission in their training program causes [] employees to violate citizens' constitutional rights, the [policymakers] may be deemed deliberately indifferent if the policymakers choose to retain that program." Connick, 563 U.S. at 61 (quoting Bd. of County Com'rs of Bryan Cty, Okl., v. Brown, 520 U.S. 397, 407 (1997)).

"A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." Id. at 62 (quoting

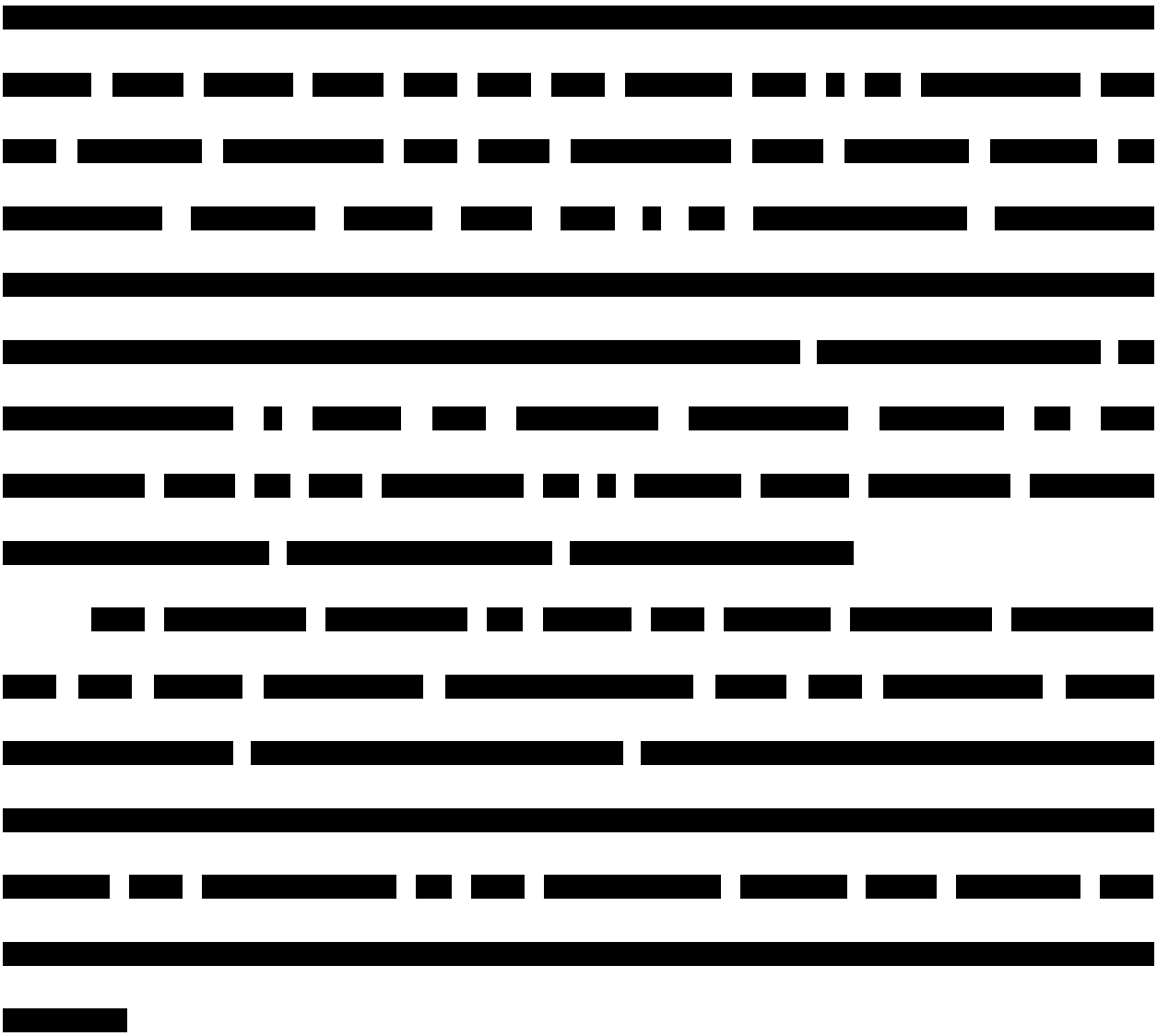
Bryan Cty., 520 U.S. at 409. To prove causation on a failure to train theory of liability, the plaintiff must also show "'the injury [could] have been avoided had the employee been trained under a program that was not deficient in the identified respect.'" Thomas v. Cumberland Cty., 749 F.3d 217, 226 (3d Cir. 2014) (quoting City of Canton, Ohio v. Harris, 489 U.S. 378, 391 (1989)).

In an extraordinary case, "a [] decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983." Connick, 563 U.S. at 61. "Single-incident" liability may arise where the constitutional violation was the "obvious" consequence of failing to provide specific training. Id. at 63-64. To establish such a claim, frequency and predictability of a constitutional violation occurring absent training might reflect deliberate indifference to a plaintiff's constitutional rights. Id. at 64 (citing Bryan Cty., 520 U.S. at 409.)

2. Undisputed Material Facts

Burke moves for summary judgment based on the following undisputed facts.[7] [redacted]

[redacted]



The JJC is responsible for ensuring that Detention Centers follow the Manual of Standards for County Juvenile Detention Centers. (SOMF ¶13; Ex. E at 4-5, ECF No. 119-9.) The JJC assigned

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Letter sent by Plaintiff did not make reference to the State or any office, department, division, bureau, board, commission or agency of the State[,]" Plaintiff replies "the Tort Claims notice did notice the Department of Risk Management, C/O Tort and Contract Unit (see first page of September 18, 2012 Letter to Department of Risk Management, attached to Vomacka Cert. as Exhibit J.") (Pl's Reply to JJC Defs' SOMF, ECF No. 130-3, ¶¶17, 59.)

two employees to make random and routine visits to detention centers to ensure that the Manual of Standards was being followed. (SOMF ¶14, ECF No. 119-3; Ex. E at 5-6, ECF No. 119-9; Ex. F at 6, ECF No. 119-10.)

Burke was a supervisor of the compliance monitoring unit for the JJC. (SOMF ¶32; Ex. I at 4-5, ECF No. 119-13.) Burke never met Plaintiff nor did he know who he was. (SOMF ¶33; Ex. H at 14:13-17, 18:11-14, ECF No. 119-12.) [redacted] Burke did not have knowledge of specific policies of juvenile facilities, and was not involved in the day-to-day operations of county juvenile detention centers. (SOMF ¶36; Ex. I at 11.)

In 2011 and 2012, Defendant Burke did not receive standard operating procedures for CCJDC. (SOMF ¶38; Ex. H at 98:10-15.)[8] In 2011 and 2012, Burke did not write, approve or reject CCJDC policies. (SOMF ¶¶38-39; Ex. H at 98:20-23.)

In opposition to summary judgment, Plaintiff offered the following evidence of Burke's liability. Burke worked for the

[8] The JJC Defs' Exhibit H, excerpts from Burke's deposition transcript, is missing page 98. Page 98 can be found in Plaintiff's Ex. HH, ECF No. 130-10 at 65.

juvenile monitoring unit of the New Jersey Department of Corrections and supervised the unit which did program evaluations of facilities. (Counter-statement of Material Facts ¶¶70, 71, 73, ECF No. 130-5; Exhibit HH at T7:1-17, T9:10-22, T21:18-21, ECF No. 130-10 at 38.) Burke's duties included performing program evaluations to ensure the detention centers were complying with the Manual of Standards and performing physical inspections. (Pl's Counter-statement of Material Facts, ¶74, ECF No. 130-5; Exhibit HH at T10:1-7, ECF No. 130-10 at 43.)

Compliance with the Manual of Standards included standards regarding the use of force. (Id., ¶75; Exhibit HH at T10:12-19.) Burke interviewed juveniles in juvenile detention facilities but he never met or interviewed Plaintiff. (Id., ¶¶76, 77; Exhibit HH at T12:14-17, T14:13-15.) If there was a violation of the Manual of Standards, Burke would submit it to the detention center, which would have to provide him an 'action plan' on how they were going to address those violations. (Id., ¶178; Exhibit HH at T19:14-21; T21:7-22:5.)

Burke conducted his annual review of the CCJDC in November or December of 2011, and noted in his report that the program was run well and there were no issues. (Id., ¶181; Exhibit HH at T27:7-20.) [redacted]

[redacted] According to Burke, there was no policy or procedure in place to determine if juveniles were being abused by the guards. (Id., ¶182; Exhibit HH at T32:21-33:11.)

3. Analysis

Plaintiff alleges three underlying constitutional violations upon which he seeks to hold supervisors liable under § 1983; [redacted]

Second, it is undisputed that Burke was not a policymaker nor did he enforce policies for the CCJDC. (JJC Defs' SOMF ¶¶38-39; Ex. H at 98:20-23.) [redacted]

[redacted] Burke was not a policymaker who could be held liable under such theories of liability.[9]

[redacted] Plaintiff, however, did not submit any evidence that Burke was involved in the investigation. In any

[9] Plaintiff also submitted evidence of improper use of administrative lockdown (Pl's Counter-Statement of Material Facts ¶¶240-281, ECF No. 130-5); however, Plaintiff did not raise any such claims in his amended complaint and it is immaterial to this action.

event, evidence of misconduct post-dating an alleged constitutional violation cannot establish the proximate cause element of supervisory liability. Logan, 742 F. App'x at 634.

Without evidence of Burke's own misconduct causing the alleged constitutional violations, Plaintiff is instead asserting supervisory liability based on a subordinate's constitutional violations. The Supreme Court has clearly stated there is no such liability under Section 1983. Iqbal, 556 U.S. at 676 (2009). Therefore, Burke is entitled to summary judgment.

IV. CONCLUSION

For the reasons discussed above, the JJC Defendants' motion for summary judgment is granted and the claims against them are dismissed with prejudice.

An appropriate order follows.

Date: January 15,2020

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EDWARD SCANLON, IV Plaintiff v. VALERIE LAWSON, *et al.*, Defendants	Civ. No. 16-4465 (RMB-JS) **OPINION**

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BUMB, United States District Judge

Plaintiff Edward Scanlon IV brought this action under 42 U.S.C. § 1983, the New Jersey Civil Rights Act ("NJCRA") § 10:6-2; and the New Jersey Tort Claims Act ("NJTCA") § 59:1-1 *et seq.*

[redacted]

[redacted] This matter now comes before the Court upon Defendants David Fuentes[1] and Carol Warren's motion for summary judgment ("Defs' Mot. for Summ. J.", ECF No. 112); Fuentes and Warren's Brief in Supp. of Mot. for Summ. J. ("Defs' Brief," ECF No. 112-2); Fuentes and Warren's Statement of Material Facts ("Defs' SOMF," ECF No. 112-1); Plaintiff's Opp. to Summ. J. Mot. ("Pl's Opp. Brief," ECF No. 130); Plaintiff's Reply to Statement of Material Facts ("Pl's Reply to SOMF," ECF No. 130-1); Plaintiff's Counter-statement of Material Facts ("Pl's SOMF," ECF No. 130-5); Reply to Pl's Opp. to Defs. Fuentes and Warren's Motion for Sum. J. ("Defs' Reply Brief," ECF No. 142); and Response to Pl's Counter-statement of Material Facts by Defs. Fuentes and Warren ("Defs' Reply to Pl's SOMF," ECF No. 142-1.)

Pursuant to Federal Rule of Civil Procedure 78(b), the Court will determine the motion for summary judgment on the briefs without oral argument. For the reasons set forth below, the Court grants David Fuentes' motion for summary judgment because it is unopposed and grants Warren's motion for summary judgment because Plaintiff's claims are barred by the statute of limitations.

[1] Plaintiff does not oppose Fuentes' motion for summary judgment. (Pl's Opp. Brief, ECF No. 130 at 9.)

I. BACKGROUND

Plaintiff filed this action in the New Jersey Superior Court, Law Division, Cumberland County on March 29, 2016, alleging civil rights violations under 42 U.S.C. § 1983; the New Jersey Civil Rights Act ("NJCRA"), § 10:6-2, and tort claims under the New Jersey law, N.J.S.A. §§ 59:1-1 *et seq.* (Compl., ECF NO. 1-1 at 8-18.) The defendants to the original complaint were Valeria Lawson ("Lawson),"[2] Felix Mickens ("Mickens"), Robert Balicki ("Balicki"), Veronica Surrency ("Surrency"), Michael Baruzza ("Barruza"), and John and/or Jane Does 1-45 (fictitious individuals) and ABC Corps. 1-45 (fictitious corporations). (Id. at 10-11.)

[redacted]

[2] Plaintiff sued "Valerie" Lawson and Lawson corrected her name to "Valeria" upon answering the complaint. (Answer, ECF No. 26 at 1.)

Defendants removed the action to this Court on July 22, 2016. (Notice of Removal, ECF No. 1.) On July 29, 2016, Gregory R. Bueno, Deputy Attorney General of New Jersey, entered a Notice of Appearance on behalf of Mickens. (Not. of Appearance, ECF No. 4.) On August 3, 2016, Balicki, Surrency and Baruzza, represented by Patrick J. Madden, Esq., filed an answer to the original complaint, and a cross-claim for contribution and indemnification against Lawson and Mickens. (Answer, ECF No. 6.)

On September 28, 2016, Plaintiff sought an order for release of records from the State of New Jersey, Department of Children and Families ("DCF"), and the Court granted the request, subject to *in camera review* prior to disclosure to Plaintiff. (Order, ECF No. 18.) On December 12, 2016, the Court entered a Discovery Consent Confidentiality Order. (Order, ECF No. 23.)

On December 22, 2016, Gregory R. Bueno, Deputy Attorney General, filed a Notice of Appearance and Waiver of Service on behalf of Lawson, and Lawson filed an answer to the original complaint on January 9, 2017. (Notice of Appearance, ECF No. 24; Waiver of Service, ECF No. 25; Answer, ECF No. 26.) On May 9, 2017, the Court completed *in camera review* of discovery documents and sent the documents to Plaintiff's counsel.[3] Plaintiff received

[3] The Court resent the documents to Plaintiff's counsel on May 25, 2017, after the correct address was provided. (Letter Order, ECF No. 37.)

several extensions of time to file a motion to amend the complaint, and filed a motion to amend the complaint on July 21, 2017, and a corrected motion on July 26, 2017. (ECF Nos. 39-44.)

The motion to amend was granted on October 20, 2017. (Order, ECF No. 56.) Plaintiff filed a redacted amended complaint on October 26, 2017, and later filed an unredacted amended complaint. (Am. Compl., ECF Nos. 58, 88.) The amended complaint added claims against William M. Burke ("Burke") Supervisor, Compliance Monitoring Unit, New Jersey Juvenile Justice System ("JJC"); Bobby Stubbs ("Stubbs") Senior Juvenile Detention Officer at CCJDC; David Fuentes ("Fuentes") Juvenile Detention Officer at CCJDC; Harold Cooper ("Cooper") Senior Juvenile Detention Officer at CCJDC; Wesley Jordan ("Jordan") Juvenile Detention Officer at CCJDC; and Carol Warren LPN ("Warren") at CCJDC. (Am. Compl., ECF No. 88, ¶¶28-32.)

Burke, Lawson and Mickens, represented by Gregory R. Bueno, Deputy Attorney General, filed an answer to the amended complaint on December 26, 2017. (Answer, ECF No. 74.)[4] Jordan, represented by Justin R. White, Esq, filed an answer to the amended complaint on February 6, 2018. (Answer, ECF No. 84.) Warren and Fuentes, represented by Daniel E. Rybeck, Esq., entered an answer to the

[4] On October 10, 2018, Michael Vomacka, Deputy Attorney General, was substituted as counsel for Lawson, Mickens and Burke. (Substitution of Attorney, ECF No. 101).

amended complaint with a cross-claim for contribution and/or indemnification by the remaining defendants on February 15, 2018. (Answer, ECF No. 85.) Fuentes and Warren filed the present motion for summary judgment on August 15, 2019. (Defs' Mot. for Summ. J., ECF No. 112.)

II. THE AMENDED COMPLAINT

Plaintiff alleged the following in the amended complaint. Plaintiff was born on April 1, 1996, and was a minor at all relevant times alleged in the amended complaint. (Am. Compl., ¶19, ECF No. 88.) [redacted]

[redacted]

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5 [redacted]

[redacted]

Lawson, Mickens and Burke of the New Jersey JJC "were responsible for ensuring that the JJC complies with state and federal law." (Id., ¶¶21 22, 23.) Balicki, Warden of CCJDC, and Baruzza, Division Head of CCJDC, are also named as defendants. (Id., ¶¶25-27.)

In Count One, Plaintiff alleges violations of substantive due process for excessive use of force, inhumane conditions, lack of health care and failure to protect from harm under 42 U.S.C. § 1983. (Am. Compl., ECF No. 88, ¶¶36-43.) Count Two of the amended complaint is for the same conduct in violation of the New Jersey Civil Rights Act, N.J.S.A. § 10:6-2. (Id., ¶¶44-47.)

For the Count Three, Plaintiff alleges negligence under New Jersey state law. (Id., ¶¶48-51.) In Count Four, Plaintiff alleges

> Defendants' actions and failure(s) to act constituted a failure to act and/or discipline, which proximately caused a violation of plaintiffs' civil rights to procedural and substantive due process with violations are made actionable by the N.J.C.R.A.

(Am. Compl., ¶53, ECF No. 88.) Count Five is for punitive damages under New Jersey law. (Id., ¶¶58-61.) Counts Six and Seven are for intentional and negligent infliction of emotional distress under New Jersey law. (Id., ¶¶62-69.)

Count Eight is alleged against Jordan, Stubbs and Fuentes for excessive force in violation of the Fourth and Fourteenth Amendments. (Id., ¶¶70-72.) Counts Nine and Ten are alleged against Balicki, Surrency, Cooper, Baruzza, Burke, Lawson and Mickens for supervisory liability of their subordinates' violations of Plaintiff's constitutional rights in violation of 42 U.S.C. § 1983. (Id., ¶¶73-88.)

III. DISCUSSION

A. Summary Judgment Standard of Review

Summary Judgment is proper where the moving party "shows that there is no genuine dispute as to any material fact," and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Daubert v. NRA Group, LLC, 861 F.3d 382, 388 (3d Cir. 2017). "A dispute is "genuine" if 'a reasonable jury could

return a verdict for the nonmoving party,'" Baloga v. Pittston Area Sch. Dist., 927 F.3d 742, 752 (3d Cir. 2019) (quoting Santini v. Fuentes, 795 F.3d 410, 416 (3d Cir. 2015) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). "[A] fact is 'material' where 'its existence or nonexistence might impact the outcome of the suit under the applicable substantive law.'" Id. (citing Anderson, 477 U.S. at 248).

The burden then shifts to the nonmovant to show, beyond the pleadings, "'that there *is* a genuine issue for trial." Daubert, 861 F.3d at 391 (quoting Celotex Corp. v. Catrett, 447 U.S. 317, 324 (1986) (emphasis in Daubert)). "With respect to an issue on which the non-moving party bears the burden of proof, the burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." Conoshenti v. Public Serv. Elec. & Gas, 364 F.3d 135, 145-46 (3d Cir. 2004) (quoting Celotex, 477 U.S. at 325).

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
>
> (2) consider the fact undisputed for purposes of the motion;
>
> (3) grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or
>
> (4) issue any other appropriate order.

Fed. R. Civ. P. 56(e).

"At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." Scott v. Harris, 550 U.S. 372, 380 (2007) (citing Fed. Rule Civ. Proc. 56(c). The court's role is "'not ... to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial,'" Baloga, 927 F.3d at 752 (quoting Anderson, 477 U.S. at 249)).

Plaintiff does not oppose summary judgment on the tort claims as to Warren. (Pl's Brief, ECF No. 130 at 9.) Therefore, the Court need address only the § 1983 and NJCRA claims against Warren.

B. Undisputed Material Facts

The following material facts alleged by Warren are undisputed by Plaintiff. (Pl's Reply to SOMF, ECF No. 130-1.) Plaintiff initiated this matter in New Jersey Superior Court on March 29, 2016, for alleged events occurring while he was a juvenile detainee at the CCJDC between March 2, 2012 and March 5, 2012. (Defs' SOMF ¶1, ECF No. 112-1; Ex. 1, ECF No. 113 at 1.)

Plaintiff was born on April 1, 1996. (Defs' SOMF ¶2; Ex. 3 at 14:13-14, ECF No. 113 at 34.) Carol Warren was not named as a defendant in the original complaint. (Defs' SOMF ¶4, ECF No. 112-1.) On October 26, 2017, Plaintiff filed an amended complaint, adding Warren as a defendant.[6]

On February 15, 2018, Warren filed her answer to Plaintiff's amended complaint, which includes the affirmative defense that Plaintiff's claims are barred by the applicable statute of limitations. (Defs' SOMF ¶15; Answer, ECF No. 85.) [redacted]

[6] Warren asserts that Plaintiff filed the amended complaint on March 28, 2018. (Defs' SOMF, ¶10; ECF No. 112-1.) However, Plaintiff filed a redacted amended complaint on the Court's electronic filing system on October 26, 2017, and filed an unredacted copy of the same amended complaint on March 28, 2018. (ECF Nos. 58, 88.)

[redacted]

C. Statute of Limitations

Warren contends that Plaintiff's § 1983 claims are barred by the two-year statute of limitations. (Defs' Brief at 10, ECF No. 112-2.) Plaintiff's original complaint, which pertained only to the events of March 2012, and did not name Warren as a defendant, was filed on March 29, 2016. (Compl., ECF No. 1-1 at 8.) Plaintiff filed an amended complaint on October 26, 2017, adding Warren as a defendant [redacted] (Am. Compl., ECF Nos. 58, 88.) Plaintiff turned eighteen-years-old and reached legal adulthood on April 1, 2014, which caused his claims to accrue on April 1, 2016. (Defs' Brief at 10, ECF No. 112-2.) Plaintiff did not sue Warren until October 26, 2017. (Am. Compl., ECF Nos. 58, 88.) Therefore, Warren argues that Plaintiff's claims are barred by the statute of limitations.

[7] [redacted]

In his brief in opposition to summary judgment, Plaintiff did not respond to Warren's statute of limitations defense. (Pl's Opp. Brief, ECF No. 130.) Warren asserts that because Plaintiff did not set forth an opposition to the statute of limitations defense, Warren must be granted summary judgment. (Warren's Reply Brief, ECF No. 142 at 3.)

C. Analysis

Plaintiff's federal claims are brought under 42 U.S.C. § 1983. Section 1983 does not create substantive rights but provides a remedy for violation of federal rights. Dique v. New Jersey State Police, 603 F.3d 181, 185 (3d Cir. 2010). Such claims are characterized as personal injury claims, and state law provides the statute of limitations. Id. (citing Cito v. Bridgewater Twp. Police Dep't, 892 F.2d 23, 25 (3d Cir. 1989)). Under New Jersey law, personal injury torts are subject to a two-year statute of limitations. Id. (citing N.J.S.A. § 2A:14-2).[8] Claims under the

[8] N.J.S.A. § 2A:14-2, provides, in pertinent part:

> Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued…

New Jersey Civil Rights Act are also subject to a two-year statute of limitations. Lapolla v. County of Union, 157 A.3d 458, 465 (N.J. Super. Ct. App. Div. 2017) (citing N.J.S.A. § 2A:14-2(a)).

"[T]he accrual date of a § 1983 cause of action is a question of federal law that is not resolved by reference to state law." Wallace v. Kato, 549 U.S. 384, 388 (2007). A claim accrues "when the plaintiff knew or should have known of the injury upon which its action is based." Kach v. Hose, 589 F.3d 626, 634 (3d Cir. 2009) (quoting Sameric Corp. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998) (citation omitted)).

"The general rule is that state tolling principles also govern § 1983 claims." Id. at 639 (citing Hardin v. Straub, 490 U.S. 536, 539 (1989)); Island Insteel Sys. v. Waters, 296 F.3d 200, 210 n. 4 (3d Cir. 2002)). In New Jersey, the statute of limitations for personal injury claims is tolled until a minor reaches the age of majority, age eighteen. See N.J.S.A. § 2A:14-21; N.J.S.A. § 9:17B-1; Standard v. Vas, 652 A.2d 746, 749 (N.J. Super. Ct. App. Div. 1995) (confirming that the tolling period ends upon a claimant's eighteenth birthday).

There is no dispute that Plaintiff was born on April 1, 1996. [redacted] Under New Jersey law, the statute of limitations was "tolled" until he turned eighteen on April 1, 2014. Therefore, any § 1983 and NJCRA claims against Warren had to be filed by April 1, 2016. The amended

complaint, adding Warren as a defendant based on additional new facts, was filed on October 26, 2017.

1. Relation back under FRCP 15(c)(1)(A)

"Rule 15(c) of the Federal Rules of Civil Procedure governs when an amended pleading 'relates back' to the date of a timely filed original pleading and is thus itself timely even though it was filed outside an applicable statute of limitations." Krupski v. Costa Crociere S. p. A., 560 U.S. 538, 541 (2010). Although Plaintiff did not argue that his claims against Warren relate back to his original complaint, filed on March 29, 2016, because Plaintiff opposes summary judgment in favor of Warren on the Section 1983 and NJCRA claims, the Court will address whether the amended complaint relates back to the original complaint for statute of limitations purposes.

An amendment can relate back to the date of the original pleading when the law that provides the applicable statute of limitations allows relation back, and the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out in the original pleading. Fed. Rule Civ. P. 15(c)(1)(A), (B).

New Jersey Court Rule 4:26-4 applies to actions in which fictitious parties are named when the defendant's true name is unknown to the plaintiff. It provides:

> if the defendant's true name is unknown to the plaintiff, process may issue against the defendant under a fictitious name, stating it to be fictitious and adding an appropriate description sufficient for identification. Plaintiff shall on motion, prior to judgment, amend the complaint to state defendant's true name, such motion to be accompanied by an affidavit stating the manner in which that information was obtained.
>
> If, however, defendant acknowledges his or her true name by written appearance or orally in open court, the complaint may be amended without notice and affidavit. No final judgment shall be entered against a person designated by a fictitious name.

N.J. Ct. R. R. 4:26-4.

In the original complaint, Plaintiff does not identify Warren as a defendant [redacted]

"The fictitious name designation [] must have appended to it an 'appropriate description sufficient to identify' the defendant." DeRienzo v. Harvard Industries, Inc., 357 F.3d 348, 353 (3d Cir. 2004) (quoting Rutkowski v. Liberty Mut. Ins. Co., 506 A.2d 1302, 1306-07 (N.J. Super. Ct. App. Div. 1986)). "The purpose of providing a sufficient description under Rule 4:26-4 is two-fold: it gives notice of the cause of action while also helping to identify the unknown defendant. Descriptions which are too vague or broad fail to achieve these goals." Miles v. CCS Corp., No. A-

5947-12T3, 2015 WL 5009883, at *6 (N.J. Super. Ct. App. Div. Aug. 18, 2015).

The original complaint identified "John or Jane Does 6-15" as Correctional Officers and Shift Commander at the CCJDC. (Compl., ECF No. 1-1, ¶¶21-22.) The original complaint did not describe any actions or failure to act by a nurse at CCJDC. The allegations against John and Jane Doe defendants were too vague to give Warren notice or to help identify Warren as a defendant for purposes of Rule 4:26-4.

New Jersey also has a general relation back rule, New Jersey Court Rule 4:9-3.

> Rule 4:9-3, New Jersey's general relation back rule, provides that an amendment changing the party against whom a claim is asserted relates back to the date of the original complaint if: (1) it arose out of the same transaction or occurrence set forth in the original pleading; (2) the proposed defendant received notice of the institution of the action within the limitations period such that the party will not be prejudiced in maintaining a defense; and (3) the proposed defendant knew or should have known that, but for the misidentification of the proper party, the action would have been brought against him or her. Arroyo v. Pleasant Garden Apartments, 14 F.Supp.2d 696, 701 (D.N.J.1998) (citing Viviano v. CBS, Inc., 101 N.J. 538, 503 A.2d 296, 304 (1986)).

Monaco v. City of Camden, 366 F. App'x 330, 334 (3d Cir. 2010).

The claims against Warren were not added until the statute of limitations expired, and Warren was not notified of the claims against her until the amended complaint was served on her on

November 10, 2017. (Aff. of Service, ECF No. 78.) Warren did not receive notice of this action within the limitations period, as required for relation back under New Jersey Rule 4:9-3.

Moreover, the original complaint did not misidentify a party that Warren should have known was her. See Otchy v. City of Elizabeth Bd. of Educ., 737 A.2d 1151, 1155 (N.J. Super. Ct. App. Div. Oct. 15, 1999) ("[a] misnomer occurs where the correct party is already before the court, but the name in the complaint is deficient in some respect.") Thus, the amended complaint does not relate back to the original complaint under New Jersey Court Rule 4:9-3.

2. Relation back under FRCP 15(c)(1)(C)

Under federal law, an amendment can relate back to the date of the original pleading when

> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
>
> > (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
> >
> > (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

Fed. R. Civ. P. 15(c)(1)(C). This rule is inapplicable to Warren because Plaintiff did not add Warren as a defendant based on a mistake concerning her identity. Instead, it appears that Plaintiff learned of Warren's involvement after the statute of limitations expired, having earlier identified only John Doe Corrections Officers and Shift Commander as potential defendants. Plaintiff's claims against Warren do not relate back to the original timely-filed complaint under Fed. R. Civ. P. 15(c)(1)(C).

IV. CONCLUSION

For the reasons discussed above, Defendants David Fuentes and Carol Warren's motion for summary judgment is granted and the claims are dismissed with prejudice.

An appropriate order follows.

Date: January 16,2020

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EDWARD SCANLON, IV Plaintiff v. VALERIA LAWSON, *et al.*, Defendants	Civ. No. 16-4465 (RMB-JS) **OPINION** **(SEALED)**

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BUMB, United States District Judge

Plaintiff Edward Scanlon IV brought this action under 42 U.S.C. § 1983, the New Jersey Civil Rights Act ("NJCRA") § 10:6-2; and the New Jersey Tort Claims Act ("NJTCA") § 59:1-1 *et seq.* As to Defendant Wesley Jordan ("Jordan"), Plaintiff alleges he used excessive force on May 21, 2011 while extracting Plaintiff from his room in Cumberland County Juvenile Detention Center ("CCJDC") and that he failed to protect Plaintiff from harm by

encouraging Plaintiff to fight other juveniles on March 3 and March 4, 2012. This matter now comes before the Court upon Defendant Wesley Jordan's ("Jordan") Motion for Summary Judgment ("Jordan's Mot. for Summ. J.," ECF No. 117); Brief in Supp. of Jordan's Mot. for Summ. J., ("Jordan's Brief," ECF No. 117-1); Statement of Material Facts in Support of Jordan's Mot. for Summ. J. ("Jordan's SOMF," ECF No. 117-2); Plaintiff's Opposition to Summary Judgment Motions ("Pl's Opp. Brief," ECF No. 130); Plaintiff's Reply to Statement of Material Facts in Support of Defendant Wesley Jordan's Motion for Summary Judgment ("Pl's Reply to Jordan's SOMF," ECF No. 130-2); Plaintiff's Counter-statement of Material Facts (ECF No. 130-5); and Reply Brief in Supp. of Jordan's Mot. for Summ. J. ("Reply Brief," ECF No. 141).

Pursuant to Federal Rule of Civil Procedure 78(b), the Court will determine the motion for summary judgment on the briefs without oral argument. For the reasons set forth below, the Court grants Jordan's motion for summary judgment because Plaintiff's claims are barred by the statute of limitations.

I. PROCEDURAL BACKGROUND

Plaintiff filed this action in the New Jersey Superior Court, Law Division, Cumberland County on March 29, 2016, alleging civil rights violations under 42 U.S.C. § 1983; the New Jersey Civil Rights Act § 10:6-2; and tort claims under the New Jersey law, N.J.S.A. § 59:1-1 *et seq.* (Compl., ECF NO. 1-1 at 8-18.) The

defendants to the original complaint were Valeria Lawson ("Lawson"),[1] Felix Mickens ("Mickens"), Robert Balicki ("Balicki"), Veronica Surrency ("Surrency"), Michael Baruzza ("Baruzza"), and John and/or Jane Does 1-45 (fictitious individuals) and ABC Corps. 1-45 (fictitious corporations). (Compl., ECF No. 1-1 at 10-11.) The action arose out of incidents alleged to have occurred at the Cumberland County Juvenile Detention Center in March 2012. (Id. at 8.) Plaintiff alleged

> [O]n or about March 2, 2012 through March 5, 2012, Plaintiff was made to fight other inmates at the Cumberland County Detention Center whereby he suffered serious injuries solely for the enjoyment and entertainment of Cumberland County Detention guards, who were instead responsible to safeguard the minor.

(Id., ¶3.) Plaintiff also alleged he had numerous mental and behavioral disabilities and the defendants failed to provide him with proper medications. (Id., ¶¶14, 26.)

Defendants removed the action to this Court on July 22, 2016. (Notice of Removal, ECF No. 1.) On July 29, 2016, Gregory R. Bueno, Deputy Attorney General of New Jersey, entered a Notice of Appearance on behalf of Mickens. (Not. of Appearance, ECF No. 4.) On August 3, 2016, Balicki, Surrency and Baruzza, represented by Patrick J. Madden, Esq., filed an answer to the original complaint,

[1] Plaintiff sued "Valerie" Lawson and Lawson corrected her name to "Valeria" upon answering the complaint. (Answer, ECF No. 26 at 1.)

and a cross-claim for contribution and indemnification against Lawson and Mickens. (Answer, ECF No. 6.)

On September 28, 2016, Plaintiff sought an order for release of records from the State of New Jersey, Department of Children and Families ("DCF"), and the Court granted the request, subject to *in camera review* prior to disclosure to Plaintiff. (Order, ECF No. 18.) On December 12, 2016, the Court entered a Discovery Consent Confidentiality Order. (Order, ECF No. 23.)

On December 22, 2016, Gregory R. Bueno, Deputy Attorney General, filed a Notice of Appearance and Waiver of Service on behalf of Lawson, and Lawson filed an answer to the original complaint on January 9, 2017. (Notice of Appearance, ECF No. 24; Waiver of Service, ECF No. 25; Answer, ECF No. 26.) On May 9, 2017, the Court completed *in camera review* of discovery documents and sent the documents to Plaintiff's counsel.[2] Plaintiff received several extensions of time to file a motion to amend the complaint, and filed a motion to amend the complaint on July 21, 2017, and a corrected motion on July 26, 2017. (ECF Nos. 39-44.)

The motion to amend was granted on October 20, 2017. (Order, ECF No. 56.) Plaintiff filed a redacted amended complaint on October 26, 2017, and later filed an unredacted amended complaint.

[2] The Court resent the documents to Plaintiff's counsel on May 25, 2017, after the correct address was provided. (Letter Order, ECF No. 37.)

(Am. Compl., ECF Nos. 58, 88.) The amended complaint added claims against William M. Burke ("Burke") Supervisor, Compliance Monitoring Unit, New Jersey Juvenile Justice System ("JJC"); Bobby Stubbs ("Stubbs") Senior Juvenile Detention Officer at CCJDC; David Fuentes ("Fuentes") Juvenile Detention Officer at CCJDC; Harold Cooper ("Cooper") Senior Juvenile Detention Officer at CCJDC; Wesley Jordan ("Jordan") Juvenile Detention Officer at CCJDC; and Carol Warren LPN ("Warren"), at CCJDC. (Am. Compl., ECF No. 88, ¶¶23-32.)

Burke, Lawson and Mickens, represented by Gregory R. Bueno, Deputy Attorney General, filed an answer to the amended complaint on December 26, 2017. (Answer, ECF No. 74.)[3] Jordan, represented by Justin R. White, Esq, filed an answer to the amended complaint on February 6, 2018. (Answer, ECF No. 84.) Warren and Fuentes, represented by Daniel E. Rybeck, Esq., entered an answer to the amended complaint, with a cross-claim for contribution and/or indemnification by the remaining defendants, on February 15, 2018. (Answer, ECF No. 85.) Jordan filed the present motion for summary judgment on August 15, 2019. ("Jordan's Mot. for Summ. J.," ECF No. 117.)

[3] On October 10, 2018, Michael Vomacka, Deputy Attorney General, was substituted as counsel for Lawson, Mickens and Burke. (Substitution of Attorney, ECF No. 101).

II. THE AMENDED COMPLAINT

Plaintiff alleged the following in the amended complaint. Plaintiff was born on April 1, 1996, and was a minor at all relevant times alleged in the amended complaint. (Am. Compl., ¶19, ECF No. 88.) Prior to the incidents alleged, Plaintiff was diagnosed with numerous mental and behavioral disabilities. (Id., ¶20.) He was committed to the New Jersey JJC following his adjudication of delinquency. (Am. Compl., ECF No. 88, ¶1.)[4] Throughout his commitment, Plaintiff alleges that he was subjected to excessive use of force during unlawful room extractions, and physical and psychological abuse and deprivation of medication. (Id., ¶¶2, 3.)

On May 21, 2011, Stubbs, Senior Juvenile Detention Officer at CCJDC, ordered Jordan and Fuentes, Juvenile Detention Officers, to extract Plaintiff from his room. (Id., ¶¶4, 28, 29, 31.) Plaintiff was charged with aggravated assault for injuring Jordan and Fuentes during the room extraction on May 21, 2011. (Id., ¶¶4-5.) Jordan received a notice to appear in court regarding the incident. (Id., ¶6.) Jordan asked Surrency, Division Head at CCJDC, and Cooper, a Senior Juvenile Detention Officer at CCJDC, whether there was a "No Contact Order" in place for Plaintiff, and they told him "no." (Id., ¶¶6, 26, 30.)

[4] Discovery revealed that Plaintiff was a detainee not yet adjudicated delinquent at all relevant times alleged in the complaint. (Pl's Counter Statement of Material Facts, ¶¶11-12, ECF No. 130-5; Flood Cert., Ex. M, ECF No. 130-8 at 100-101.)

On or about March 2 through March 5, 2012, Plaintiff alleges that he was forced to fight other inmates at CCJDC for Jordan's entertainment. (Am. Compl., ¶8, ECF No. 88.) On March 2, 2012, Plaintiff was examined by Nurse Warren at CCJDC, and she noticed injuries on Plaintiff's lower extremities but did not report the injuries to any supervisor. (Id., ¶¶7, 32.) Plaintiff saw Nurse Warren again on March 5, 2012, and she noticed more injuries on his body and, this time, notified a supervisor. (Id., ¶9.)

Lawson, Mickens and Burke of the New Jersey JJC "were responsible for ensuring that the JJC complies with state and federal law." (Id., ¶¶21 22, 23.) Balicki, Warden of CCJDC, and Baruzza, Division Head of CCJDC, are also named as defendants. (Id., ¶¶25-27.)

In Count One, Plaintiff alleges violations of substantive due process for excessive use of force, inhumane conditions, lack of health care and failure to protect from harm under 42 U.S.C. § 1983. (Id., ¶¶36-43.) Count Two of the amended complaint is for the same conduct in violation of the New Jersey Civil Rights Act, N.J.S.A. § 10:6-2. (Id., ¶¶44-47.)

For Count Three, Plaintiff alleges negligence under New Jersey state law. (Id., ¶¶48-51.) In Count Four, Plaintiff alleges

> Defendants' actions and failure(s) to act constituted a failure to act and/or discipline, which proximately caused a violation of plaintiffs' civil rights to procedural and substantive due process with

> violations are made actionable by the N.J.C.R.A.
>
> Defendants knew or should have known of the violation of plaintiffs' rights, and acted and failed to act so as to permit the violation of plaintiffs' rights intentionally and/or recklessly and with deliberate indifference.
>
> Defendants owed Plaintiff a duty of care under common law and under N.J.S.A. §2A:4A-21 and N.J.A.C. §§ 13:95-8.9, 13:101-1.1
>
> Defendants Breach[ed] Those Duties by their Acts and Omissions.
>
> Defendants' breach of duty was the proximate cause of Plaintiff's physical and psychological injuries.

(Am. Compl., ¶¶53-57, ECF No. 88.) Count Five is for punitive damages under New Jersey law. (Id., ¶¶58-61.) Counts Six and Seven are for intentional and negligent infliction of emotional distress under New Jersey law. (Id., ¶¶62-69.)

Count Eight is alleged against Jordan, Stubbs and Fuentes for excessive force in violation of the Fourth and Fourteenth Amendments. (Id., ¶¶70-72.) Counts Nine and Ten are alleged against Balicki, Surrency, Cooper, Baruzza, Burke, Lawson and Mickens for supervisory liability of their subordinates' violations of Plaintiff's constitutional rights in violation of 42 U.S.C. § 1983. (Id., ¶¶73-88.)

III. DISCUSSION

A. Summary Judgment Standard of Review

Summary judgment is proper where the moving party "shows that there is no genuine dispute as to any material fact," and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Daubert v. NRA Group, LLC, 861 F.3d 382, 388 (3d Cir. 2017). The burden then shifts to the nonmovant to show, beyond the pleadings, "'that there *is* a genuine issue for trial." Id. at 391 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (emphasis in Daubert)).

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). "At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." Scott v. Harris, 550 U.S. 372, 380 (2007) (citing Fed. Rule Civ. Proc. 56(c)).

> If a party fails to properly support an assertion of fact or fails to properly address

> another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
>
> (2) consider the fact undisputed for purposes of the motion;
>
> (3) grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or
>
> (4) issue any other appropriate order.

Fed. R. Civ. P. 56(e).

B. Undisputed Material Facts

The following are undisputed material facts relevant to Jordan's motion for summary judgment based on the statute of limitations:

- Plaintiff's claims against Jordan arise out of a series of alleged incidents that took place between March 2, 2012 and March 5, 2012. (Jordan's SOMF ¶2, ECF No. 117-2; Exhibit A, ¶8, ECF No. 117-5.)

- In general, Plaintiff alleges that in March 2012, Jordan allowed or even promoted Plaintiff engaging in physical fights with other juvenile detainees. Plaintiff claims personal injuries as a result. (Id., ¶5.)

- The State of New Jersey Department of Children and Families "(DCF") investigated the allegations by Plaintiff against Jordan. (Id., ¶15; Ex. F, p. 29, lines 8-11, ECF No. 117-10.)

- DCF interviewed Plaintiff on March 7, 2012. (Id., ¶18; Ex. J., pp. 4-5, ECF No. 117-14.)

- DCF issued a written "Report of Substantiated Child Abuse/Neglect to Law Enforcement Agencies" dated June 19, 2012, ("the Child Abuse Report") which confirmed that

Plaintiff was abused and/or neglected by Jordan, and provided Jordan's home address and name of employer. (Pl's SOMF, ¶¶22-23, ECF No. 117-2; Ex. K, ECF No. 117-15.)

- Plaintiff has been represented by legal counsel as to the civil claims asserted in this lawsuit since no later than September 18, 2012. Plaintiff's counsel filed a notice pursuant to New Jersey's Tort Claim Act dated September 18, 2012. The notice set forth the basis of the claims now asserted in this lawsuit. (Id., ¶29; Ex. N, ECF No. 117-18.)

- Plaintiff's date of birth is April 1, 1996. Plaintiff was 15 years old at the time of the alleged incident involving Jordan. (Id., ¶30; Ex. A, ¶19, ECF No. 117-5.)

- Plaintiff's (initial) Complaint was filed in the New Jersey Superior Court on March 29, 2016. (Id., ¶32; Ex. B, ECF No. 117-6.)

- Plaintiff's complaint named as defendants Valerie Lawson, Felix Mickens, Robert Balicki, Veronica Surrency, Michael Baruzza and various fictitious "John Doe" defendants. (Id., ¶34.)

- Plaintiff's complaint did not name Wesley Jordan as a defendant. (Id., ¶35; Ex. C, ECF No. 117-7.)

- On or about October 5, 2016, defendants Balicki, Surrency and Baruzza provided Rule 26 initial disclosures to Plaintiff (the "Disclosures"). (Id., ¶36; Ex. C.)

- The Disclosures identified to Plaintiff ten individuals likely to have discoverable information. (Id., ¶37; Ex. C.)

- The Disclosures summarized the discoverable information possessed by these ten individuals as including "*knowledge regarding…the investigation and subsequent discipline of Juvenile Detention Officer Wesley Jordan as a result of incidents involving Plaintiff on March 3, 2012 and March 4, 2012.*" (Id., ¶38; Ex. C) (emphasis added.)

- The Disclosures further identified "Juvenile Detention Officer Wesley Jordan" as among the persons with knowledge as to events involving the Plaintiff that occurred on March 3 and 4, 2012. Specifically, the Disclosures identified Jordan

by name as the one who abused Plaintiff as found by DCF. (Id., ¶39; Ex. C.)

- On July 21, 2017, Plaintiff moved before the Court to file his amended complaint. (Pl's SOMF, ¶40, ECF No. 117-2; ECF Nos. 42 and 44).

- Plaintiff's amended complaint also alleges that Plaintiff was subjected to excessive force when Jordan forcefully extracted him from his room on or about May 21, 2011. (Id., ¶¶24-25; Ex. A, ¶¶3-4.)

- Prior thereto, juvenile delinquency charges had been lodged against Plaintiff under docket FJ-05-100-12D. (Id., ¶26; Ex. L, ECF No. 117-16.)

- The charging document specifically identified "JDO Wesley Jordan" as the victim during the extraction event on May 21, 2011. (Id., ¶27.)

- Plaintiff's current counsel represented Plaintiff in regard to the delinquency charges arising out of the room extraction event of May 21, 2011. (Id., ¶28; Ex. M, ECF No. 117-17.)

- Plaintiff filed his Amended Complaint on October 26, 2017. (Id., ¶43; ECF No. 58.)

- Jordan answered the amended complaint and set forth various defenses including the defense that "[t]he Plaintiff's Amended Complaint is barred by the applicable statute of limitations." (Id., ¶46; Ex. D, p. 13, ECF No. 117-8.)

C. Statute of limitations

Jordan seeks summary judgment on the basis that all claims against him are barred by the statute of limitations. (Jordan's Brief, ECF No. 117-1 at 9.)[5] He contends that Plaintiff's state

[5] Jordan also moves for summary judgment on the basis that Plaintiff's tort claims are barred due to his failure to comply with the procedural requirements of the New Jersey Tort Claims Act. (Jordan's Brief, ECF No. 11-7 at 13.) The Court need not reach

law claims are subject to a two-year statute of limitations under N.J.S.A. § 2A:14-2, and his federal claims under 42 U.S.C. § 1983 are governed by the same two-year limitations period. (Jordan's Brief, ECF No. 117-1 at 9.) Jordan acknowledges that Plaintiff was a minor when the causes of action accrued, and pursuant to N.J.S.A. § 2A-14-21, the two-year limitations period was tolled until Plaintiff reached the age of majority, eighteen years of age. (Id.) Plaintiff reached the age of majority on April 1, 2014. (Id. at 10.) Jordan asserts Plaintiff's personal injury claims were, therefore, required to be filed by April 1, 2016. (Id.) Plaintiff, however, did not file an amended complaint against Jordan until October 26, 2017, more than one and a half years later. (Id.)

In his motion, Jordan anticipates that Plaintiff will argue that his amended complaint "relates back" to his original complaint, filed on March 29, 2016. (Id.) Jordan asserts, however, that the claims against him should not relate back under Federal Rule of Civil Procedure 15(c)(1)(A) because Plaintiff failed to exercise due diligence to substitute Wesley Jordan for a "John Doe" defendant named in the original complaint. (Id. at 10-12.) Additionally, Jordan asserts Plaintiff knew or should have known

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this issue because all of Plaintiff's claims against Jordan are barred by the statute of limitations.

Jordan's identity when he filed the original complaint. (Jordan's Brief, ECF No. 117-1 at 12.)

Jordan also contends the amended complaint should not relate back to the original complaint pursuant to Federal Rule of Civil Procedure 15(c)(1)(C) because Jordan did not have notice of the Plaintiff's lawsuit until January 2018. (Id.) Jordan left his employment with Cumberland County and moved to North Carolina almost one year prior to the day Plaintiff filed his original complaint. (Id.)

Plaintiff opposes summary judgment on statute of limitations grounds. (Pl's Opp. Brief, ECF No. 130 at 10.) Plaintiff contends that his claims against Jordan based on the May 21, 2011 room extraction and his claims against Jordan based on the March 2012 fights are unrelated and should be treated separately for statute of limitations purposes.[6] (Id. at 10-11.) In support of this assertion, Plaintiff states that when he filed the original complaint, he was unaware that the officer who filed the assault charges against him regarding the room extraction in 2011 was the

[6] As further explained below, Plaintiff could have identified Wesley Jordan as a defendant to the excessive force claim for the room extraction on May 21, 2011 before the limitations period expired because his present counsel represented Plaintiff in a juvenile proceeding related to that incident. Even if Plaintiff could not remember that Wesley Jordan was the same person involved in the March 2012 fights, Plaintiff's amended complaint does not relate back to the original complaint for the reasons discussed below.

same officer who caused the March 2012 fights. (Id. at 11.) Further, Plaintiff states that he was unaware of facts at the time of filing the original complaint that room extractions/removals were being abused at the CCJDC. (Id.)

Plaintiff argues that his claims against Jordan based on the March 2012 fights relate back to the original complaint under Federal Rule of Civil Procedure 15(c)(1)(A) because New Jersey's fictitious party rule allows relation back where Plaintiff diligently sought to identify the defendant's true name. (Pl's Opp. Brief, ECF No. 130 at 12.) Plaintiff asserts the following facts in support of his diligence in amending his complaint to identify Wesley Jordan by name. When Plaintiff's injury led to investigations by DCF and the CCJDC, Plaintiff's father asked him the names of the guards involved and Plaintiff, who has mental health issues, could not remember. (Id. at 13-14; Pl's Counter-statement of Material Facts, ECF No. 130-5, ¶¶9-27; Flood Cert., Ex. A, ECF No. 130-8 at 2-3.)

DCF informed Plaintiff's father that they could not release the names of the guards who were under investigation. (Id. at 14; Flood Cert., Ex. Q, p. 9, ECF No. 130-8 at 152.) Plaintiff's father also called CCJDC to discover the name of the guard involved in the fighting incidents, and he was told that the name could not be provided during the investigation. (Id. at 14; Flood Cert., Ex. A, ECF No. 130-8 at 2-3.) Plaintiff's father received the DCF report

in June 2012, but it did not identify the name of the guard involved. (Pl's Opp. Brief at 14; Flood Cert., Ex. A, ECF No. 130-8 at 2-3.) Plaintiff could not remember the name of the guard who arranged for him to fight other juveniles. (Id. at 15; Flood Cert., Ex. A, ECF No. 130-8 at 2-3.) Plaintiff's father contacted Plaintiff's counsel when he received the DCF report in June 2012, and thereafter sent him the report. Notably, Plaintiff's counsel does not dispute that he received the DCF report in June 2012. (Ex. A, ECF No. 130-8 at 3.)

Plaintiff asserts his counsel could not identify the individuals involved in the March 2012 fights until on or after October 5, 2016,[7] when he received the initial disclosures from Patrick Madden, Esq. (Id. at 16.) Even after the initial disclosures, Plaintiff contends his counsel did not have detailed information. (Id. at 16-17.)

On December 12, 2016, Magistrate Judge Joel Schneider entered a Discovery Consent Confidentiality Order signed by all parties. (Id. at 17.) On or after January 12, 2017, Plaintiff's counsel received discovery, bate stamped Balicki000001-Balicki000776, from Mark W. Strasle, Esq. of the firm Madden & Madden, P.A., which detailed the March 2012 fights. (Id.) At a status conference before

[7] Plaintiff's Brief contains typographical errors concerning the discovery dates, which fell in the year 2016 not 2012. (Pl's Brief, ECF No. 130 at 16-17.)

Magistrate Judge Schneider on January 23, 2017, Plaintiff's counsel informed the Court that he could now amend the complaint to add new parties but he was not sure whether there would be additional parties to add after receiving further discovery regarding the DCF report. (Pl's Opp. Brief, ECF No. 130 at 17.) Amendment of the pleadings was put on hold pending further discovery. (Id.)

Discovery regarding the DCF report was subject to *in camera* review by Magistrate Judge Schneider. (Id. at 18.) On or about May 9, 2017, *in camera review* was completed and discovery provided to plaintiff counsel's office for "Attorney Eyes Only." (Id.) At a telephone status conference on June 15, 2017, the parties discussed amending the complaint (Id.; Certification of Kevin T. Flood, ECF No. 130-7, ¶¶14-16.) On June 15, 2017, Magistrate Judge Schneider entered the following: "AMENDED SCHEDULING ORDER: Plaintiff shall file his motion to amend his pleading without prejudice to defendants' right to assert timeliness defenses by 7/17/2017." (Id., ¶20.) On July 13, 2017, Magistrate Judge Schneider extended the date for plaintiff to amend his pleading to July 21, 2017. (Id., ¶21.)

Plaintiff also submits that his allegations against Jordan should relate back to the original complaint under Federal Rule of Civil Procedure 15(c)(1)(C) because disciplinary action was taken against Jordan for his role in the March 2012 fights after

administrative proceedings in 2012. (Pl's Opp. Brief, ECF No. 130 at 20.) Plaintiff contends there is no prejudice because Jordan should have known this might result in a subsequent lawsuit against him and that he was the John Doe named in the original complaint. (Pl's Opp. Brief, ECF No. 130 at 20.)

In reply, Jordan contends the following are undisputed facts entitling him to summary judgment:

- Plaintiff's claims against him arose on March 2-5, 2012 and the State of New Jersey conducted an investigation into the incident;
- The State's written investigative materials included numerous interviews and statements that identify Jordan by name;
- The Child Abuse Report, written on June 19, 2012, specifically implicated Jordan and provided his home address and the address of his employer (the CCJDC);
- Edward Scanlon had been represented by legal counsel as to the civil claims asserted in this lawsuit since no later than September 18, 2012;
- Scanlon turned 18 years of age and reached legal adulthood on April 1, 2014;
- Scanlon's (original) complaint was filed in the New Jersey Superior Court on March 29, 2016;
- Scanlon's complaint was filed when he was of the age 19 years and 363 days;
- Scanlon's complaint did not name Wesley Jordan as a defendant;
- On or about October 5, 2016, defendants Balicki, Surrency and Baruzza provided Rule 26 initial disclosures;
- The October 5, 2016 Disclosures identified ten individuals likely to have discoverable information, including "knowledge regarding...the investigation and subsequent discipline of

Juvenile Detention Officer Wesley Jordan as a result of incidents involving Plaintiff on March 3, 2012 and March 4, 2012," as well as unequivocally identified Jordan as the perpetrator;

- On January 12, 2017, Plaintiff received the documents bate stamped Baliciki 00001-00776, which included the incident reports that further specifically named Jordan as a person involved in the alleged incidents of March 2012;

- Plaintiff did not move to amend his complaint until July 21, 2017, which was 289 days following the date of the Disclosures; and 190 days following the date that Plaintiff received discovery bate stamped Balicki 00001-00776.

(Reply Brief, ECF No. 141 at 2-4.)

In particular, Jordan argues that Plaintiff's efforts to obtain his identity ceased no later than June 22, 2012, the date Plaintiff's father received a version of the Child Abuse Report that redacted or omitted the names of the involved corrections officer. (Id. at 4.) Jordan asserts that Plaintiff and/or his agents could have:

- Formally or informally interviewed any persons employed by or incarcerated at the CCJDC in an effort to obtain his identity;

- Filed requests under the Open Public Records Act ("OPRA") in order to get reports and/or other documents that might identify the subject;

- Filed an OPRA request to obtain a roster of employees at the CCJDC;

- Retained an investigator to track down and identify the subject JDO;

- Searched the free, online public records databases that lists public employees;

- Had Plaintiff talk to his fellow detainees as to the name of the person involved;
- Filed suit in order to obtain subpoena power and the ability to take depositions;
- Filed a petition under F.R.C.P. 27 and/or N.J. Ct. Rule 4:11-1 in order to obtain and preserve documents that would be pertinent in this litigation;
- Formally written to the CCJDC administration and demanded the name of the subject JDO;
- Formally written to the CCJDC and demanded an unredacted and complete version of the Child Abuse Report.

(Reply Brief, ECF No. 141 at 4-5.)

Jordan further argues that Plaintiff should have amended the complaint upon receiving the Disclosures by Balicki, Surrency and Baruzza on or about October 5, 2016 or upon receiving the documents that were bate stamped Balicki 00001-00776, which unequivocally showed that Wesley Jordan was the "John Doe" involved in the fights.

C. Analysis

Plaintiff's federal claims are brought under 42 U.S.C. § 1983. Section 1983 does not create substantive rights but provides a remedy for violation of federal rights. Dique v. New Jersey State Police, 603 F.3d 181, 185 (3d Cir. 2010). Such claims are characterized as personal injury claims, and state law provides the statute of limitations. Id. (citing Cito v. Bridgewater Twp. Police Dep't, 892 F.2d 23, 25 (3d Cir. 1989)). Under New Jersey

law, personal injury torts are subject to a two-year statute of limitations. Id. (citing N.J.S.A. § 2A:14-2).[8] Claims under the New Jersey Civil Rights Act are also subject to a two-year statute of limitations. Lapolla v. County of Union, 157 A.3d 458, 465 (N.J. Super. Ct. App. Div. 2017) (citing N.J.S.A. § 2A:14-2(a)).

"[T]he accrual date of a § 1983 cause of action is a question of federal law that is not resolved by reference to state law." Wallace v. Kato, 549 U.S. 384, 388 (2007). A claim accrues "when the plaintiff knew or should have known of the injury upon which its action is based." Kach v. Hose, 589 F.3d 626, 634 (3d Cir. 2009) (quoting Sameric Corp. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998) (citation omitted)).

"The general rule is that state tolling principles also govern § 1983 claims." Id. at 639 (citing Hardin v. Straub, 490 U.S. 536, 539, (1989)); Island Insteel Sys. v. Waters, 296 F.3d 200, 210 n. 4 (3d Cir. 2002)). In New Jersey, the statute of limitations for personal injury claims is tolled until a minor reaches the age of majority, age eighteen. See N.J.S.A. § 2A:14-21; N.J.S.A. § 9:17B-1(a); Standard v. Vas, 652 A.2d 746, 749 (N.J. Super. Ct. App.

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[8] N.J.S.A. § 2A:14-2, provides, in pertinent part:

> Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued...

Div. 1995) (confirming that the tolling period ends upon a claimant's eighteenth birthday).

There is no dispute that Plaintiff was born on April 1, 1996. Thus, he was a minor at the time of the room extraction on May 21, 2011, and at the time of the alleged fights in March 2012. Under New Jersey law, the statute of limitations was tolled until he turned eighteen on April 1, 2014. Therefore, any action against Wesley Jordan had to be filed by April 1, 2016. The amended complaint, substituting Wesley Jordan for "John Doe," was not filed until October 26, 2017.

1. Relation back under FRCP 15(c)(1)(A)

"Rule 15(c) of the Federal Rules of Civil Procedure governs when an amended pleading 'relates back' to the date of a timely filed original pleading and is thus itself timely even though it was filed outside an applicable statute of limitations." Krupski v. Costa Crociere S. p. A., 560 U.S. 538, 541 (2010). Plaintiff contends his claims against Jordan should relate back to the original complaint, filed on March 29, 2016. An amendment can relate back to the date of the original pleading when the law that provides the applicable statute of limitations allows relation back, and the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out in the original pleading. Fed. Rule Civ. P. 15(c)(1)(A),(B). New Jersey Court Rule 4:26-4 applies to actions in which fictitious parties are named

when the defendant's true name is unknown to the plaintiff.[9] It provides:

> if the defendant's true name is unknown to the plaintiff, process may issue against the defendant under a fictitious name, stating it to be fictitious and adding an appropriate description sufficient for identification. Plaintiff shall on motion, prior to judgment, amend the complaint to state defendant's true name, such motion to be accompanied by an affidavit stating the manner in which that information was obtained.
>
> If, however, defendant acknowledges his or her true name by written appearance or orally in open court, the complaint may be amended without notice and affidavit. No final judgment shall be entered against a person designated by a fictitious name.

N.J. Ct. R. 4:26-4.

To take advantage of the fictitious party rule, a plaintiff must exercise due diligence to discover the defendant's true name before and after filing the complaint. DeRienzo v. Harvard Indus., Inc., 357 F.3d 348, 353 (3d Cir. 2004) (citing Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111, 299 A.2d 394, 396 (1973); Claypotch v. Heller, Inc., 360 N.J.Super. 472, 823 A.2d 844, 848-49 (2003)). The rule is unavailable if a plaintiff should have known, by exercise of due diligence, the defendant's identity prior

[9] New Jersey Rule 4:9-3, allowing relation back of amendments, is not applicable where a plaintiff filed suit against fictitious parties "presupposing a need for later amendment, rather than mistakenly identifying incorrect defendants." McGill v. John Does A-Z, 541 F. App'x 225, 227-28 (3d Cir. 2013).

to the expiration of the statute of limitations. DiRienzo, 357 F.3d at 353 (citing Mears v. Sandoz Pharms., Inc., 693 A.2d 558, 561-63 (N.J. Super. Ct. App. Div. 1997)).

The meaning of due diligence varies with the facts of each case. Id. at 354 (quoting O'Keeffe v. Snyder, 416 A.2d 862, 873 (N.J. 1980)). However, at a minimum, "plaintiffs must 'investigate all potentially responsible parties in a timely manner' in order to satisfy the diligence requirement." Id. (quoting Matynska v. Fried, 811 A.2d 456, 457 (N.J. 2002)). In addition, application of the rule must not prejudice the defendant. Id. at 353-54 (citing Farrell, 299 A.2d at 400; Mears, 693 A.2d at 563-64.))

As laid out above, the following facts are not in dispute. Plaintiff's counsel was retained sometime before September 18, 2012, when he filed a notice of Plaintiff's claims pursuant to the New Jersey Tort Claim Act; and Plaintiff's father contacted Plaintiff's counsel when he received the DCF report in June 2012, and he sent counsel the report. Jordan's SOMF, ¶29, ECF No. 117-2; Ex. N, ECF No. 117-18; Ex. A, ECF No. 130-8 at 3.) At that time, Plaintiff's counsel was certainly on notice that he would have to learn the name of the officer whose name was withheld in the Report. Inexplicably, Plaintiff's counsel did nothing to discover the unknown officer's identity for nearly four years, when he filed a complaint against "John Doe" on March 29, 2016, with only days remaining on the statute of limitations. The "John Doe" designation

was a general one; it did not identify the John Doe as the officer who abused Plaintiff on March 3 and 4, 2012.

As Jordan correctly points out, records identifying Wesley Jordan were potentially available through a request under the New Jersey Open Public Records Act, N.J.S.A. § 47:1A-5. See Monaco v. City of Camden, 366 F. App'x 330, 334 (3d Cir. 2010) (finding the plaintiff was not diligent before expiration of the statute of limitations when he failed to take any additional actions after first request to identify the defendant failed.) After counsel received the redacted report in June 2012, Plaintiff's counsel could have formally written to the CCJDC and DCF and demanded to know the identity of the unknown officer who was the subject of the investigations.

Moreover, counsel could also have formally or informally interviewed CCJDC staff, former staff or CCJDC residents in an attempt to learn the identify of the unknown officer. Given that Plaintiff's counsel represented Plaintiff in the juvenile charge for assault against Jordan at CCJDC on May 21, 2011, he could also have questioned Plaintiff whether Jordan was the unknown officer. If Plaintiff still could not remember, Plaintiff's counsel could have asked Plaintiff the names of the other juveniles involved in the March 2012 fights, and sought the identity of the officer from them.

Most importantly, if counsel had filed the complaint sooner, he could have used formal discovery methods to obtain John Doe's identity. Waiting until the statute of limitations was within two days of expiring to file the complaint without knowing the identity of the officer was very risky. Efforts to identify the defendant after filing the complaint do not make up for lack of diligence in the years prior to filing. McGill v. John Does A-Z, 541 F. App'x 225, 228 (3d Cir. 2013). To be clear, the Court is not suggesting that any of the foregoing measures would have born fruit. But that is no excuse for not trying. It is not the results but the efforts that matter here.

Moreover, upon filing the complaint, Plaintiff's counsel should have immediately taken steps to learn "John Doe's" identity. After the complaint was filed in March and removed to this Court in July 2016, Plaintiff's counsel asked to reschedule the initial status conference for September 22, 2016. (Letter, ECF No. 11.) On September 28, 2016, approximately six months after the complaint was filed, Plaintiff's counsel sought a court order for release of records by DCF regarding its investigation of Plaintiff's abuse at CCJDC. (Order, ECF Nos. 18, 19.)

Prior to receiving the DCF records, Plaintiff's counsel received initial disclosures in October 2016 that identified Jordan by name. (Ex. C, ECF No. 117-7 at 3.) Plaintiff's counsel explains "even after having receiving these initial disclosures,

I still did not have the discovery or detailed information regarding the March 2012 'fight club' incident to make my own independent evaluation as to who else was involved, and their level involvement." (Cert. of Counsel, ECF No. 130-7, ¶9.) It is hard to understand what more counsel needed: the Disclosures identified his client's abuser. By this point in time, the statute of limitations had expired six months earlier. Still, counsel did not seek leave to file an amended complaint.

On January 12, 2017, Plaintiff's counsel received discovery that further identified Jordan as the officer involved in the March 2012 fights, and the discovery also referenced relevant documents counsel had not yet received from DCF. (Cert. of Counsel, ECF No. 130-7, ¶¶11-13.) Plaintiff's counsel recalls discussing, in a status conference with Magistrate Judge Schneider on January 23, 2017, amending the complaint to add new parties (Id., ¶14.) During this conference, Plaintiff's counsel informed the Court that he would be able to amend the complaint based upon what he reviewed in discovery stamped Balicki000001-Balicki000776. However, he was not sure if he would need to amend the complaint again after getting the DCF records. (Id., ¶15.) Thus, amending the complaint was put on hold so Plaintiff's counsel would not have to go through the process of amending the complaint twice if any other parties could be added based on the DCF documents. (Id., ¶16.) This was a

poorly calculated risk by Plaintiff's counsel, given the expiration of the statute of limitations.

Plaintiff received the DCF documents in May 2017. (Order, ECF Nos. 35, 37.) There was a status conference on June 15, 2017, where the issue of the deadline for Plaintiff to file an amended complaint was addressed. (ECF No. 38.) The next day, an Amended Scheduling Order was entered, which provided "By July 17, 2017, plaintiff shall file his motion to amend his pleadings without prejudice to defendants' right to assert timeliness defenses." Plaintiff's counsel was on notice that Defendants preserved their statute of limitations defense. Even then, Plaintiff's counsel sought and received a short extension to file a motion to amend. (Order, ECF No. 40.)

The due diligence requirement of New Jersey Court Rule 4:26-4 required Plaintiff to investigate all potential responsible parties in a timely manner. DeRienzo 357 F.3d at 353. Plaintiff's counsel did not do so. See Padilla v. Township of Cherry Hill, 110 F. App'x 272, 277 (3d Cir. 2004) (waiting more than 14 months to amend complaint after defendants' names were made known to the plaintiff through initial disclosures demonstrates a lack of due diligence); cf. Worthy v. Kennedy Health System, 140 A.3d 584, 594 (N.J. Super Ct. App. Div. 2016) (finding the plaintiff exercised due diligence by moving to amend her complaint within days of learning the defendant's identity.) As set forth above, counsel

not only failed to act in a timely manner, he, in essence, failed to act at all once Plaintiff's father gave him the Child Abuse Report in June 2012. Doing nothing does not equate to due diligence. It is unfortunate, indeed. For the foregoing reasons, the Court is constrained to find that Plaintiff cannot avail himself of Rule 15(c)(1)(A) for the amendment to relate back to the original complaint.

2. Relation back under FRCP 15(c)(1)(C)

An amendment can also relate back to the date of the original pleading under Rule 15 when

> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
>
> > (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
> >
> > (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

Fed. R. Civ. P. 15(c)(1)(C). At the time the original pleading was filed, Rule 4(m) provided 120 days to serve the summons and complaint. (Fed. R. Civ. P. 4, effective December 1, 2015).

"Rule 15(c)(1)(C)(ii) asks what the prospective defendant knew or should have known during the Rule 4(m) period, not what

the plaintiff knew or should have known at the time of filing her original complaint." Krupski, 560 U.S. at 548. "The only question under Rule 15(c)(1)(C)(ii) … is whether [the added party] knew or should have known that, absent some mistake, the action would have been brought against him." Krupski, 560 U.S. at 549. "The reasonableness of the mistake is not itself at issue." Id.

> A prospective defendant who legitimately believed that the limitations period had passed without any attempt to sue him has a strong interest in repose. But repose would be a windfall for a prospective defendant who understood, or who should have understood, that he escaped suit during the limitations period only because the plaintiff misunderstood a crucial fact about his identity.
>
> ...
>
> When the original complaint and the plaintiff's conduct compel the conclusion that the failure to name the prospective defendant in the original complaint was the result of a fully informed decision as opposed to a mistake concerning the proper defendant's identity, the requirements of Rule 15(c)(1)(C)(ii) are not met.

Krupski, 560 U.S. at 550-52. Pursuant to the Third Circuit's decision in Varlack v. SWC Caribbean, Inc.,[10] "the plaintiff's lack of knowledge of a particular defendant's identity can be a mistake under Rule 15(c)(3)(B)." Singletary v. Pennsylvania Dep't of Corr., 266 F.3d 186, 201 (3d Cir. 2001).

[10] Varlack, 550 F.2d 171, 174 (3d Cir. 977).

Notice to the newly named defendant may be imputed by sharing an attorney with an original defendant or by an identity of interest with an originally named defendant. Singletary, 266 F.3d at 196-97. "[T]he relevant issue is whether [the newly named defendant] has a sufficient identity of interest with an originally named defendant to impute the notice that defendant received to [the newly named defendant]." Id. at 198. Absent other circumstances permitting an inference that notice was actually received, a non-management employee does not share a sufficient identity of interest with his employer so that notice to the employer can be imputed to the employee for Rule 15(c)(3) purposes. Singletary, 266 F.3d at 200.

Jordan did not share an attorney with any original defendant at any time. Moreover, Plaintiff has not submitted any evidence that Jordan was notified of the lawsuit before the statute of limitations expired.

At the time the original complaint was filed, Jordan was no longer employed by any of the original supervisory defendants and Jordan had moved out of New Jersey. (Jordan's SOMF ¶47; Ex. O, ECF No. 117-9.) Notice of the lawsuit to Jordan's former supervisors cannot be imputed to Jordan under Rule 15(c)(3). See Garvin v. City of Philadelphia, 354 F.3d 215, 227 (3d Cir. 2003) (individual police officers were non-managerial employees with insufficient nexus of interests to impute notice under Fed. R. Civ. P.

15(c)(3)(A)). Therefore, the amendment adding Jordan as a defendant to the complaint does not relate back to the original complaint.

IV. CONCLUSION

For the reasons discussed above, Defendant Wesley Jordan's motion for summary judgment is granted and the claims against him are dismissed with prejudice.

An appropriate order follows.

Date: February 6, 2020

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EDWARD SCANLON, IV Plaintiff v. VALERIA LAWSON, *et al.*, Defendants	Civ. No. 16-4465 (RMB-JS) **SUPPLEMENTAL OPINION**

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On behalf of Defendants Valeria Lawson, Felix Mickens and William M. Burke

BUMB, United States District Judge

Plaintiff Edward Scanlon IV brought this action under 42 U.S.C. § 1983, the New Jersey Civil Rights Act ("NJCRA") § 10:6-2; and the New Jersey Tort Claims Act ("NJTCA") § 59:1-1 *et seq.* On January 15, 2020, this Court entered an Opinion and Order granting Defendants Valeria Lawson, Felix Mickens, and William M. Burke's motion for summary judgment. (Opinion and Order, ECF Nos. 144, 145.) In the prior Opinion, the Court noted that Plaintiff

did not oppose summary judgment on Plaintiff's tort claims. (Opinion, ECF No. 144 at 11.) Plaintiff, however, conceded all claims as to Lawson and Mickens, and conceded only the tort claims as to Burke. (Pl's Brief, ECF No. 130-10 at 9.) Thus, to clarify, the Court granted summary judgment to Lawson and Mickens by Order dated January 15, 2020 (ECF No. 145), without further discussion.

Date: February 6, 2020

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EDWARD SCANLON, IV Plaintiff v. VALERIE LAWSON, *et al.*, Defendants	Civ. No. 16-4465 (RMB-JS) **OPINION** (REDACTED)

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BUMB, United States District Judge

This matter comes before the Court upon Defendants Robert Balicki, Veronica Surrency and Michael Baruzza's motion for summary judgment (Defs Balicki, Surrency and Baruzza's Mot. for Summ. J., ECF No. 115); Brief in Supp. of Summ. J. ("Defs' Brief, ECF No. 116); Statement of Material Facts in Supp. of Summ. J. ("Defs' SOMF," ECF No. 116-1); Plaintiff's Opposition to Summary

Judgment Motions ("Pl's Opp. Brief," ECF No. 130); Plaintiff's Reply to Statement of Material Facts in Support of Motion for Summary Judgment ("Pl's Reply to SOMF," ECF No. 130-2); Plaintiff's Counter-statement of Material Facts ("Pl's CSOMF," ECF No. 130-5); Reply Brief of Defs. Robert Balicki, Veronica Surrency and Michael Baruzza ("Defs' Reply Brief," ECF No. 143); and Defs. Veronica Surrency, Robert Balicki and Michael Baruzza's Response to Pl's Counter-statement of Material Facts ("Resp. to Pl's CSOMF," ECF No. 143-2.)

Pursuant to Federal Rule of Civil Procedure 78(b), the Court will determine the motion for summary judgment on the briefs without oral argument.

I. BACKGROUND

Plaintiff filed this action in the New Jersey Superior Court, Law Division, Cumberland County on March 29, 2016, alleging civil rights violations under 42 U.S.C. § 1983; the New Jersey Civil Rights Act ("NJCRA"), § 10:6-2, and tort claims under the New Jersey law, N.J.S.A. §§ 59:1-1 *et seq.* (Compl., ECF NO. 1-1 at 8-18.) The defendants to the original complaint were Valeria Lawson ("Lawson,")[1] Felix Mickens ("Mickens"), Robert Balicki ("Balicki"), Veronica Surrency ("Surrency"), Michael Baruzza

[1] Plaintiff sued "Valerie" Lawson and Lawson corrected her name to "Valeria" upon answering the complaint. (Answer, ECF No. 26 at 1.)

("Baruzza"), and John and/or Jane Does 1-45 (fictitious individuals) and ABC Corps. 1-45 (fictitious corporations). (Compl., ECF No. 1-1 at 8.) The action arose out of incidents alleged to have occurred at the Cumberland County Juvenile Detention Center ("CCJDC") in March 2012. (Id.) Plaintiff alleged [redacted] (Id., ¶3.) Plaintiff also alleged [redacted] and generally that he was subject to [redacted] (Id. at 11-10, ¶¶2, 14, 26.)

Defendants removed the action to this Court on July 22, 2016. (Notice of Removal, ECF No. 1.) On August 3, 2016, Balicki, Surrency and Baruzza, represented by Patrick J. Madden, Esq., filed an answer to the original complaint, and a cross-claim for contribution and indemnification against Lawson and Mickens. (Answer, ECF No. 6.) Plaintiff filed a motion to amend the complaint on July 26, 2017. (ECF No. 44.)

The motion to amend was granted on October 20, 2017. (Order, ECF No. 56.) Plaintiff filed a redacted amended complaint on October 26, 2017, and later filed an unredacted amended complaint. (Am. Compl., ECF Nos. 58, 88.) The amended complaint added claims

against William M. Burke ("Burke") Supervisor, Compliance Monitoring Unit, New Jersey Juvenile Justice System; Bobby Stubbs ("Stubbs") Senior Juvenile Detention Officer at CCJDC; David Fuentes ("Fuentes") Juvenile Detention Officer at CCJDC; Harold Cooper ("Cooper") Senior Juvenile Detention Officer at CCJDC; Wesley Jordan ("Jordan" or "Officer Jordan") Juvenile Detention Officer at CCJDC; and Carol Warren LPN ("Warren" or "Nurse Warren"), at CCJDC. (Am. Compl., ECF No. 88, ¶¶28-32.) Balicki, Baruzza and Surrency filed the present motion for summary judgment on August 15, 2019. (Defs' Mot. for Summ. J., ECF No. 115.)

II. THE AMENDED COMPLAINT

Plaintiff was born on April 1, 1996, and was a minor at all relevant times alleged in the amended complaint. (Am. Compl., ECF No. 88, ¶19.) [redacted] (Id., ¶20.) [redacted] (Am. Id., ¶1.)[2] [redacted]

[redacted]

00-101.)

[redacted] (Am. Compl., ¶¶2, 3, ECF No. 88.) [redacted] (Id., ¶¶4, 28, 29, 31.) [redacted] (Id., ¶¶4-5.) Jordan received a notice to appear in court regarding the incident. (Id., ¶6.) Jordan asked Surrency, Division Head at CCJDC, and Senior Juvenile Detention Officer Cooper whether there was a "No Contact Order" in place for Plaintiff, and they told him "no." (Id., ¶¶6, 26, 30.)

[redacted] (Id., ¶¶7, 32.) [redacted] (Id., ¶9.)

Plaintiff alleges Lawson, Mickens and Burke of the New Jersey JJC "were responsible for ensuring that the JJC complies with state and federal law." (Id., ¶¶21 22, 23.) Balicki, Warden of CCJDC,

and Baruzza, Division Head of CCJDC, are also named as defendants. (Am. Compl., ¶¶25-27, ECF No. 88.)

In Count One, Plaintiff alleges violations of substantive due process for excessive use of force, inhumane conditions, lack of health care and failure to protect from harm under 42 U.S.C. § 1983. (Id., ¶¶36-43.) Count Two of the amended complaint is for the same conduct in violation of the New Jersey Civil Rights Act, N.J.S.A. § 10:6-2. (Id., ¶¶44-47.)

In Count Three, Plaintiff alleges negligence under New Jersey state law. (Id., ¶¶48-51.) In Count Four, Plaintiff alleges

> Defendants' actions and failure(s) to act constituted a failure to act and/or discipline, which proximately caused a violation of plaintiffs' civil rights to procedural and substantive due process which violations are made actionable by the N.J.C.R.A.
>
> Defendants knew or should have known of the violation of plaintiff's rights, and acted and failed to act so as to permit the violation of plaintiff's rights intentionally and/or recklessly and with deliberate indifference.

(Id., ¶¶53, 54.) Count Five is for punitive damages under New Jersey law. (Id., ¶¶58-61.) Counts Six and Seven are for intentional and negligent infliction of emotional distress under New Jersey law. (Id., ¶¶62-69.) Count Eight is alleged against Jordan, Stubbs and Fuentes for excessive force in violation of the Fourth and Fourteenth Amendments. (Id., ¶¶70-72.) Counts Nine and Ten are alleged against Balicki, Surrency, Cooper, Baruzza, Burke,

Lawson and Mickens for supervisory liability of their subordinates' violations of Plaintiff's constitutional rights in violation of 42 U.S.C. § 1983. (Am. Compl., ¶¶73-88, ECF No. 88.)

III. DISCUSSION

A. Summary of Arguments

As an initial matter, Plaintiff does not oppose summary judgment in favor of Baruzza on all claims. (Pl's Opp. Brief, ECF No. 130 at 9.) Further, Plaintiff does not oppose summary judgment on the tort claims in favor of Balicki and Surrency. (Id.) Therefore, the Court need address only the Section 1983 and NJCRA claims against Balicki and Surrency.

The NJCRA, N.J.S.A. 10:6-2(c), was modeled on 42 U.S.C. § 1983, and courts have repeatedly construed NJCRA claims as nearly identical to § 1983, using § 1983 jurisprudence as guidance for the analogous NJCRA claims. See Trafton v. City of Woodbury, 799 F.Supp.2d 417, 443-44 (D.N.J. June 29, 2011) (collecting cases)). Because the parties have not identified any differences between the § 1983 and NJCRA claims, the Court will address the claims together, guided by § 1983 jurisprudence.

Defendants assert there is nothing in the record that shows that any of the defendants directly participated in violating Plaintiff's rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced in their subordinates' violations. (Defs' Brief, ECF No. 116 at 11.)

Therefore, Defendants can only be liable if Plaintiff can establish that they established a policy, practice or custom which directly caused the constitutional harm to plaintiff. (Id. at 10-11.) Balicki, the warden, and Surrency, a division head, did not directly supervise Jordan and were quite removed in the chain of command. (Id. at 12 citing Defs' SOMF, ¶50; Ex. V, ECF No. 116-6 at 3-4.)

As to Plaintiff's policy claims, Defendants contend Plaintiff cannot show their deliberate [redacted] (Defs' Brief, ECF No. 116 at 13.) Defendants contends that evidence does not show a pattern of such abuses nor does it show that Defendants had knowledge of any such incident occurring. (Id. at 13-14.)

Moreover, Defendants anticipated that Plaintiff would argue they should have enacted policies [redacted] (Id.) Instead, Defendants argue [redacted] (Id.) [redacted]

[redacted] (Defs' Brief, ECF No. 116 at 14.)

In opposition, Plaintiff asserts there is evidence that Balicki and Surrency were responsible for developing policies and procedures for the CCJDC. (Pl's Opp. Brief, ECF No. 130 at 51.) [redacted] (Id. at 53.) Plaintiff asserts "there is absolutely no evidence that Balicki [and] Surrency … did anything to correct the numerous issues affecting [Plaintiff.]" (Id.)

Plaintiff also contends Surrency and Balicki were deliberately indifferent [redacted] (Id. at 50.) In sum, Plaintiff argues there is a genuine factual dispute as to whether Surrency and Balicki failed to establish policies [redacted] (Id.)

B. Summary Judgment Standard of Review

Summary Judgment is proper where the moving party "shows that there is no genuine dispute as to any material fact," and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Daubert v. NRA Group, LLC, 861 F.3d 382, 388 (3d Cir. 2017). "A dispute is "genuine" if 'a reasonable jury could

return a verdict for the nonmoving party,'" Baloga v. Pittston Area Sch. Dist., 927 F.3d 742, 752 (3d Cir. 2019) (quoting Santini v. Fuentes, 795 F.3d 410, 416 (3d Cir. 2015) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). "[A] fact is 'material' where 'its existence or nonexistence might impact the outcome of the suit under the applicable substantive law,'" Id. (citing Anderson, 477 U.S. at 248).

The burden then shifts to the nonmovant to show, beyond the pleadings, "'that there *is* a genuine issue for trial." Id. at 391 (quoting Celotex Corp. v. Catrett, 447 U.S. 317, 324 (1986) (emphasis in Daubert)). "With respect to an issue on which the non-moving party bears the burden of proof, the burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." Conoshenti v. Public Serv. Elec. & Gas, 364 F.3d 135, 145–46 (3d Cir. 2004) (quoting Celotex, 477 U.S. at 323).

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

"At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." Scott v. Harris, 550 U.S. 372, 380 (2007) (citing Fed. Rule Civ. Proc. 56(c)). The court's role is "'not ... to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Baloga, 927 F.3d 742, 752 (3d Cir. 2019) (quoting Anderson, 477 U.S. at 249)).

C. [redacted]

Plaintiff brings his failure to supervise claims against Surrency and Balicki in their individual and official capacities.[3]

[3] A § 1983 claim against a municipal officer in his or her official capacity is treated like a claim against the municipality itself. Monell v. Dep't of Social Services of City of New York, 436 U.S. 658, 690 n. 55 (1978). "It is well established that in a § 1983 case a city or other local governmental entity cannot be subject to liability at all unless the harm was caused in the implementation of 'official municipal policy.'" Lozman v. City of Riviera Beach, Fla., 138 S. Ct. 1945, 1951 (2018) (quoting Monell, 436 U.S. at 691)). "Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law." Connick v. Thompson, 563 U.S. 51, 61 (2011) (citations omitted).

While it is true, that Balicki and Surrency were not final-policy makers for the Manual of Standards, the record contains evidence

Plaintiff alleged Defendants [redacted] (Pl's Opp. Brief, ECF No. 130 at 24-25.)

A juvenile detainee has a Fourteenth Amendment liberty interest in his personal security and well-being. A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 579 (3d Cir. 2004). To determine whether Defendants violated this right, the Court must decide "'what level of conduct is egregious enough to amount to a constitutional violation and ... whether there is sufficient evidence that [the Defendants'] conduct rose to that level.'" A.M. ex rel. J.M.K., 372 F.3d at 579 (quoting Nicini v. Morra, 212 F.3d 798, 809 (3d Cir. 2000) (alterations in A.M. ex rel. J.M.K.)) A substantive due process violation "may be shown by conduct that 'shocks the conscience.'" Id. (quoting County of Sacramento v. Lewis, 523 U.S. 833, 846-47 (1998)). The deliberate indifference standard is employed to determine whether, in the custodial setting of a juvenile detention center, the defendants were deliberately indifferent to the plaintiff's personal security and well-being. " A.M. ex rel. J.M.K., 372 F.3d at 579. Whether the conduct of the defendants "shocks the conscience" depends on the circumstances of any given case. Id.

1. Standard for Supervisory Liability

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that they had authority to make written policies and procedures for the CCJDC.

In 2009, the Supreme Court held that state officials are liable in their individual capacities only for their own unconstitutional actions, not for those of their subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). The Third Circuit considered whether Iqbal abolished § 1983 supervisory liability in its entirety and decided that it did not. Barkes v. First Corr. Med., Inc., 766 F.3d 307, 319 (3d Cir. 2014), cert. granted, judgment rev'd sub nom. Taylor v. Barkes, 135 S. Ct. 2042 (2015).

In the Third Circuit, "there are two theories of supervisory liability, one under which supervisors can be liable if they established and maintained a policy, practice or custom which directly caused the constitutional harm, and another under which they can be liable if they participated in violating plaintiff's rights, directed others to violate them, or, as the persons in charge, had knowledge of and acquiesced in their subordinates' violations." Santiago v. Warminster Twp., 629 F.3d 121, 129 n.5 (3d Cir. 2010). A plaintiff may establish a claim based on knowledge and acquiescence if the supervisor knew about a practice that caused a constitutional violation, had authority to change the practice, but chose not to. Parkell v. Danberg, 833 F.3d 313, 331 (3d Cir. 2016).

"[T]o establish a claim against a policymaker under § 1983 a plaintiff must allege and prove that the official established or enforced policies and practices directly causing the

constitutional violation." Parkell, 833 F.3d at 331 (quoting Chavarriaga v. New Jersey Dept. of Corrections, 806 F.3d 210, 223 3d Cir. 2015.) When the supervisory liability is based on a practice or custom, a plaintiff may rely on evidence showing the supervisor "tolerated past or ongoing misbehavior." Argueta v. U.S. Immigration & Customs Enforcement, 643 F.3d 60, 72 (3d Cir. 2011) (quoting Baker v. Monroe Township, 50 F.3d 1186, 1191 n. 3 (3d Cir. 1995) (citing Stoneking v. Bradford Area Sch. Dist., 882 F.2d 720, 724-25 (3d Cir. 1989)).

For practice or custom liability, a plaintiff must typically show "a prior incident or incidents of misconduct by a specific employee or group of employees, specific notice of such misconduct to their superiors, and then continued instances of misconduct by the same employee or employees." Id. at 74; see Wright v. City of Philadelphia, 685 F. App'x 142, 147 (3d Cir.), cert. denied sub nom. Wright v. City of Philadelphia, Pa., 138 S. Ct. 360 (2017) ("a custom stems from policymakers' acquiescence in a longstanding practice or custom which constitutes the 'standard operating procedure' of the local governmental entity") (quoting Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737 (1989)). A supervisor's conduct occurring after the alleged constitutional violation cannot be shown to have caused the violation. Logan v. Bd. of Educ. of Sch. Dist. of Pittsburgh, 742 F. App'x 628, 634 (3d Cir. 2018).

To establish liability on a claim that a supervisory defendant failed to create proper policy, the plaintiff must "(1) identify the specific supervisory practice or procedure that the supervisor has failed to employ, and show that (2) the existing custom and practice without the identified, absent custom or procedure created an unreasonable risk of the ultimate injury, (3) the supervisor was aware that this unreasonable risk existed, (4) the supervisor was indifferent to the risk, and (5) the underling's violation resulted from the supervisor's failure to employ that supervisory practice or procedure." Brown v. Muhlenberg Township, 269 F.3d 205, 216 (3d Cir. 2001).

2. Undisputed Material Facts

Based on Plaintiff's deposition testimony, Defendants seek summary judgment on Plaintiff's claim of supervisory liability for [redacted] (Defs' Brief, ECF No. 116 at 15-16.) Plaintiff testified as follows:

[redacted]

(Defs' SOMF, ¶49.)

In opposition to summary judgment, Plaintiff argues the following facts create a disputed issue of material fact regarding

his claim that he was not provided his prescribed medications. (Pl's Opp. Brief, ECF No. 130 at 26-27.) [redacted] (Pl's CSOMF, ¶28, ECF No. 130-5; Ex. NN, ECF No. 130-11 at 2.) [redacted] (Id., ¶30; Ex. NN, ECF No. 130-11 at 3 [redacted] (Id., ¶31; Ex. II at T34:10-20, ECF No. 130-10 at 79.) [redacted] (Id., ¶¶36-37; Ex. A, ECF No. 130-8 at 2.)

3. Analysis

The Court holds that Plaintiff has not established a genuine issue of disputed fact that Defendants were deliberately indifferent [redacted]

[redacted] See Ledcke v. Pennsylvania Dep't of Corr., 655 F. App'x 886, 889 (3d Cir. 2016) (per curiam) (district court properly dismissed supervisory liability claims where plaintiff failed to demonstrate any supervisory defendants were involved in alleged unconstitutional conduct or that they directly caused constitutional harm by establishing a policy, practice or custom).

[redacted] Thus, Plaintiff has not shown that Balicki and Surrency were deliberately indifferent to a substantial risk [redacted] Accordingly, Balicki and Surrency, in their official and individual capacities, are entitled to summary judgment on the § 1983 and NJCRA claims [redacted]

D. [redacted]

In his amended complaint, Plaintiff alleged [redacted]

(Pl's Opp. Brief, ECF No. 130 at 36-37.)

1. Elements of Fourteenth Amendment Excessive Force Claim

Plaintiff, as a detainee not yet adjudicated as delinquent, has a Fourteenth Amendment right to be free from excessive use of force. See Kingsley v. Hendrickson, 135 S. Ct. 2466, 2473 (2015) (stating pretrial detainee has a right under the Due Process Clause to be free from excessive force that amounts to punishment). To state a Fourteenth Amendment excessive force claim, a pretrial detainee must show "that the force purposely or knowingly used against him was objectively unreasonable." Kingsley, 135 S. Ct. at 2473-74.

Objective reasonableness is determined "from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." Id. at 2473 (citing Graham v. Connor, 490 U.S. 386, 396 (1989)). "A court must also account for the 'legitimate interests that stem from [the government's] need to manage the facility in which the individual is detained,' appropriately deferring to 'policies and

practices that in th[e] judgment' of jail officials 'are needed to preserve internal order and discipline and to maintain institutional security.'" Kingsley, 135 S. Ct. at 2473-74 (quoting Bell v. Wolfish, 441 U.S. 520, 540 (1979)). Courts should consider the following factors:

> [1] the relationship between the need for the use of force and the amount of force used; [2] the extent of the plaintiff's injury; [3] any effort made by the officer to temper or to limit the amount of force; [4] the severity of the security problem at issue; [5] the threat reasonably perceived by the officer; and [6] whether the plaintiff was actively resisting.

Robinson v. Danberg, 673 F. App'x 205, 209 (3d Cir. 2016) (quoting Kingsley, 135 S. Ct. at 2473).

2. Undisputed Material Facts

[redacted]

[redacted]

[redacted]

Defendants do not dispute the following assertions made by Plaintiff in his Counter-statement of Material Facts, at least insofar as the deposition testimony speaks for itself. (Defs' Response to Pl's CSOMF, ECF No. 143-2.) [redacted] (Pl's CSOMF ¶228, ECF No. 130-5; Ex. EE at T70:6-17, ECF No. 130-9 at 204.) [redacted] (Pl's CSOMF ¶220; Ex. EE at T:74:3-75:6, ECF No. 130-9 at 205.) [redacted] (Pl's COSMF ¶231, Ex. EE at T75:7-76:1, ECF No. 130-9 at 205.)

[redacted] (Id., ¶232; Ex. EE at T77:3-19, ECF No. 130-9 at 206.) [redacted] (Id., ¶¶233-34, Ex. EE at T80:24-81-14, ECF No. 130-9 at 206-07.)

3. Analysis

The exact basis for Plaintiff's excessive force claim is unclear. [redacted]

[redacted].[4]

Excessive force claims require courts to consider the totality of the circumstances surrounding the use of force. [redacted]

4 If the Court has misconstrued or misunderstood Plaintiff's claim, he may file a motion for reconsideration under Local Civil Rule 7.1(i).

Based on the above undisputed material facts, the Court finds that [redacted] The Court recognizes that [redacted] At the end of this Court's analysis, this Court does not find a constitutional injury. As such, Balicki and Surrency are not liable in their individual or official capacities. See Marable v. W. Pottsgrove Twp., 176 F. App'x 275, 283 (3d Cir. 2006) (municipality is not liable for officers' actions when officers did not inflict a constitutional injury).

E. Failure to investigate other incidents, including those prior to March 2, 2012

Plaintiff contends Surrency and Balicki failed to investigate whether there were incidents, prior to March 3, 2012, [redacted] (Pl's CSOMF, ¶193, ECF No. 130-5 at 31; Exhibit II at T27:4-28:2, ECF No. 130-10 at 77.) [redacted]

(Ex. EE at T127:17-24, ECF No. 130-9 at 218.) [redacted] (Pl's CSOMF, ¶¶325-46; Ex. Q, p. 001-019, ECF No. 130-8 at 143-162; Ex. P, p.001-002, ECF No. 130-8 at 117-18.) [redacted] (Defs' Reply Brief, ECF No. 143 at 10.) [redacted] (Defs' Reply Brief, ECF No. 143 at 10.) [redacted] (Ex. II at T26:12-29:5.) [redacted] (Ex. Q, ECF No. 130-8 at 150.) [redacted]

[redacted] This case is distinguishable from cases where plaintiffs demonstrated an affirmative link between prior inadequate investigations into complaints and the subsequent injuries suffered by the plaintiffs when the misconduct continued. See Merman v. City of Camden, 824 F.Supp.2d 581, 593-94 (D.N.J. 2010) (collecting cases); cf. Huaman v. Sirois, No. 13CV484 (DJS),2015 WL 5797005 at *11-13 (D. Conn. Sept. 30, 2015) (32 excessive force complaints over 12-year span without disciplinary action was inadequate to show a custom of deliberate indifference to constitutional rights); see also Brown v. New Hanover Twp. Police Dep't, 2008 WL 4306760, at *15 (E.D.

Pa. Sept. 22, 2008) ("Rather than reciting a number of complaints or offenses, a Plaintiff must show why those prior incidents deserved discipline and how the misconduct in those situations was similar to the present one.")

For these reasons, Plaintiff has not established facts sufficient for a jury to find a constitutional violation [redacted]

F. Staffing Ratios and Failure to Train

Plaintiff contends Surrency and Balicki are liable for Plaintiff's constitutional injuries based on deficiencies in staffing and training. (Pl' Opp. Brief, ECF No. 130 at 42.)

Plaintiff submits that CCJDC employees were permitted to work before receiving any type of law enforcement training. (Pl's CSOMF ¶294, ECF No. 130-5 at 48; Ex. EE at T115:8-15; 118:22, ECF No. 130-9 at 215-16.) Officers at CCJDC received on the job training; then they went to the Sea Girt training academy. (Id., ¶295, Ex. EE at T116:21-117:3, ECF No. 130-9 at 215-16.) Surrency stated in her deposition, "[t]here is no special training that anyone receives before they're allowed to supervise a group of juveniles, except from what we go through with agency training on the job." (Id. ¶297; Ex. EE at T119:3-7, ECF No. 130-9 at 216.)

According to Balicki, he could not always get training for CCJDC officers at the academy, so he had to train them at CCJDC.

(Id., ¶301; Ex. FF at T59:20-60:5, ECF No. 130-10 at 18.) The JJC did not mandate specific training, only that officers were to have 24 hours of training. (Id., ¶311;; Ex. HH at T86:2-19, ECF No. 62.) The CCJDC was also understaffed at times, likely while Plaintiff was a resident. (Id., ¶319; Ex. JJ at T61:16-63:16, ECF No. 130-10 at 106.) The staffing ratios should have been eight juveniles to one guard during the day and sixteen juveniles to one guard at night. (Pl's SCOMF, ¶318, ECF No. 130-5; Ex. JJ at T61:16-63:16, ECF No. 130-10 at 106.)

Defendants contend there is no evidence that CCJDC was insufficiently staffed or that any juvenile detention officer was rebuked for failing to supervise the residents. (Defs' Reply Brief, ECF No. 143 at 13-14.) In response to Plaintiff's claim of inadequate training, [redacted] (Id. at 14.) Defendants note that Jordan recalled reviewing the Manual of Standards, which mentions being vigilant to resident safety. (Id.) Additionally, Jordan recalled receiving training in 2010 entitled "Recognizing a Person with Mental Illness." (Id.) Jordan also testified [redacted] (Id.)

2. Analysis of staffing ratio claim

Plaintiff has garnered evidence that CCJDC was understaffed at unspecific times and might have been understaffed at times when Plaintiff was committed to the CCJDC. Unlike A.M. ex rel. J.M.K.,[5] where there was evidence linking understaffing to specific instances of inability to adequately supervise residents, the evidence submitted by Plaintiff is too tenuous to establish that Balicki and Surrency were deliberately indifferent [redacted] Thus, the Court turns to Plaintiff's allegation that his injuries were caused by Balicki and Surrency's failure to train staff.

2. Failure to Train Standard of Law

"A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." Connick v. Thompson, 563 U.S. 51, 62 (2011) (quoting Bryan Cty., 520 U.S. at 409.) To prove causation on a failure to train theory of liability, the plaintiff must also show "'the injury [could] have been avoided had the employee been trained under a program that was not deficient in the identified respect.'" Thomas v. Cumberland Cty., 749 F.3d 217, 226 (3d Cir. 2014) (quoting City of Canton, Ohio v. Harris, 489 U.S. 378, 391 (1989)).

[5] 372 F.3d at 581.

In an extraordinary case, "a [] decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983." Connick, 563 U.S. at 61. "Single-incident" liability may arise where the constitutional violation was the "obvious" consequence of failing to provide specific training. Id. at 63-64. To establish such a claim, frequency and predictability of a constitutional violation occurring absent training might reflect deliberate indifference to a plaintiff's constitutional rights. Id. at 64 (citing Board of County Com'rs of Bryan County, Okl. v. Brown, 520 U.S. 397, 409 (1997)).

4. Analysis of failure to train claim

Plaintiff has not shown [redacted] The only deficiency in training that Plaintiff identified was that employees were permitted to work before attending Sea Girt Academy, and received only 24 hours of on the job training. What is more, Jordan testified that the academy taught "rather be tried by 12 than carried by 6," meaning that it is "your life over their life [sic]." The policy for dealing with aggressive juveniles at the CCJDC, according to Jordan, was "[l]et the kids beat you up and they'll figure it out later." (Ex. KK at T16:15-21, ECF No. 130-10 at 113.)

Based on Jordan's testimony, and absent evidence showing a pattern of constitutional injuries resulting from a failure to employ a specific training program, Plaintiff has not established a causal link between a specific training deficiency and Jordan's alleged misconduct. Therefore, Balicki and Surrency, in their official and individual capacities, are entitled to summary judgment on the § 1983 and NJCRA claims for failure to train.

G. [redacted]

Plaintiff seeks to hold Balicki and Surrency liable for [redacted] (Pl's Opp. Brief, ECF No. 130-5 at 52; Pl's CSOMF, ¶321; Ex. EE at T105:24-108:17, ECF No. 130-9 at 213.) [redacted] (Id., ¶324; Ex. Q, ECF No. 130-8 at 156.) [redacted] (Defs' Reply Brief, ECF No. 143 at 14.) [redacted] (Id.)

1. Undisputed Material Facts

[redacted] (Ex. QQ, ECF No. 130-11 at 18.) [redacted] (Ex. KK at T39:17-T42:13, ECF No. 130-10 at 119-20.) [redacted] (Ex. SS (video) at 25:25 to 27:07).

[redacted] (Ex. EE at T108:3-110:11.) [redacted] (Ex. FF at T58:23-T59:16.) [redacted] (Ex. M, ECF No. 130-8 at 101.)

[redacted]

[6] See 2003 formal reprimand of Wesley Jordan, Ex. U, ECF No. 130-8 at 188.

[7] See Ex. M, ECF No. 130-8 at 14.

[redacted] See Heggenmiller v. Edna Mahan Correctional Institution for Women, 128 F. App'x 240, 247 (3d Cir. 2005) (vigorously enforced no contact order was a reasonable step in protecting inmates from sexual contact by correctional officers.)

Defendants assert qualified immunity in their individual capacities. There are unknown facts concerning [redacted] Unresolved issues of material fact preclude the grant of qualified immunity to Surrency and Balicki in their individual capacities. See Barton v. Curtis, 497 F.3d 331, 335 (3d Cir. 2007) (qualified immunity is question for a jury where relevant historical facts are disputed).

Furthermore, Plaintiff also sued Surrency and Balicki in their official capacities. (Am. Compl. ¶¶25-26, ECF No. 58.)

Although the Court agrees with Defendants that they are not final policymakers with respect to the Manual of Standards, the record shows that Balicki had final authority to make written policies and procedures specific to the CCJDC. See *supra* note 3.

In fact, in his deposition, Balicki says he was charged with updating CCJDC's outdated policies when he was hired in 2008 or 2009. (Ex. FF at T17:3-24:23, ECF No. 130-8 at 8.) He delegated that responsibility to Surrency. (Id.) According to Surrency, the policy changes to the 1989 CCJDC policies and procedures were never made because it was announced that CCJDC would close in 2015. (Ex. EE at T26:21-28:3, ECF No. 130-9 at 193.) Therefore, because Plaintiff sued Balicki and Surrency in their official capacities, which, legally, is the same as suing the county, and because Balicki had final policy-making authority with respect to the CCJDC, which he delegated to Surrency, the Monell claim may proceed to trial. See Board of County Com'rs of Bryan County, Okl. v. Brown, 520 U.S. 397, 410 (1997) (single incident municipal liability may be found where a municipal actor disregarded a known or obvious consequence of his action). There is no qualified immunity for § 1983 Monell claims. Defendants are not entitled to summary judgment on the failure to protect claim [redacted]

H. [redacted]

Plaintiff submits that Surrency and Balicki are liable for [redacted] Defendants counter that Plaintiff did not raise the issue [redacted] in his amended complaint or answers to interrogatories, nor is there mention of it in his deposition transcript. (Defs' Reply Brief, ECF No. 143 at 12.) Furthermore, the Manual of Standards permitted [redacted] (Pl's Ex. BB, Manual of Standards § 13:92-7.4, ECF No. 130-9 at 81.)

1. Undisputed material facts

[redacted] (Ex. EE, T84:12-17, ECF No. 130-9 at 207.) [redacted] (Ex. W, ECF No. 130-8 at 194.) [redacted] (Ex. EE, T94:18-96:11, ECF No. 130-9 at 210.) [redacted] (Ex. FF, T32:13-33:5, ECF No. 130-10 at 11-12.)

[redacted] (Ex. HH, T50:7-22; T56:1-25, ECF No. 130-10 at 53-54.) [redacted] (Ex. BB, ECF No. 130-9 at 81 [redacted] (Ex. HH, T50:7-22; T56:1-25, ECF No. 130-10 at 53-54.) [redacted] (Ex. CC, ECF No 130-9 at 92-93.) [redacted] (Id.)

2. Analysis

Defendants are correct that Plaintiff's first allegation of [redacted] was in his opposition to Defendants' motion for summary judgment. The fact that Plaintiff generally alleged "inhume conditions of confinement" in the amended complaint does not make this claim timely. The only "conditions" that Plaintiff described in the amended complaint were [redacted]

[redacted]

Defendants were not timely notified of Plaintiff's claim [redacted] See Jones v. Treece, 774 F. App'x 65, 67 (3d Cir. 2019) ("a plaintiff generally 'may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment'") (quoting Shanahan v. City of Chicago, 82 F.3d 776, 781 (7th Cir. 1996)). The statute of limitations expired two days after Plaintiff filed the original complaint on March 29, 2016. By the time Plaintiff first raised his claim [redacted] in his opposition to summary judgment, filed on November 5, 2019, the statute of limitations had long expired, and it was too late to add new claims to the amended complaint. Therefore, Defendants are entitled to summary judgment on this claim.

I. [redacted]

[redacted] (Pl's Opp. Brief, ECF No. 130 at 30-32.)

[redacted]

[redacted] (Pl's Opp. Brief, ECF No. 130 at 27-30.) [redacted] (Id. at 35-36.)

Defendants maintain that Plaintiff did not show how these alleged failures created an unreasonable risk of the injury he sustained, [redacted] (Defs' Reply Brief, ECF No. 143 at 7-8.) Further, Defendants submit that there is nothing in the record showing [redacted] (Defs' Reply Brief, ECF No. 143 at 8.)

Defendants distinguish A.M. ex rel. J.M.K., 372 F.3d 572 (3d Cir. 2004), where a juvenile was housed in a wing with other juveniles who had previously assaulted him. (Id. at 9.) In that case, the failure to review incident reports showing continuous assaults on the plaintiff by other juveniles permitted the assaults to continue. (Id. at 11-12.) [redacted] Unlike A.M. ex rel. J.M.K., [redacted] (Defs' Reply Brief, ECF No. 143 at 11-12.)

1. Undisputed Material Facts

a. [redacted]

Plaintiff offers the expert report of Wayne A. Robbins. (Ex. MM, ECF No. 130-10 at 157-210.) Robbins opined, in relevant part:

[redacted]

(Ex. MM at ECF No. 130-10 at 161.)

[redacted]

(Ex. F, ECF No. 130-8 at 57.)

[redacted]

[redacted]

(Ex. F, ECF No. 130-8 at 61.)

[redacted]

Warden Balicki was deposed concerning the placement of juvenile offenders in appropriate housing in CCJDC. (Ex. FF at T63:20-66-17, ECF No. 130-10 at 19-20.) Balicki knew that adult jails had intake classification procedures that took into account inmate offenses and disciplinary history, which were used to classify inmates as maximum, medium or minimum custody. (Id.) There was no such policy at CCJDC, housing was left to the discretion of the division head, Surrency, or shift commanders. (Id.)

Surrency was a division head at CCJDC during the relevant time period, and her supervisor was Warden Balicki. (Ex. EE at T14:8-15:6, ECF No. 130-9 at 190.) Her responsibilities included overseeing the daily operations of the facility, for all the departments. (Id. at T24:7-26:20, ECF No. 130-9 at 192-93.) She was responsible for protecting the welfare and safety of the juveniles in CCJDC. (Id.)

Surrency had authority to create policy. (Id.) Balicki did not work onsite at CCJDC, so she did not discuss issues with him unless she felt an investigation was necessary. (Id.) Surrency and Balicki did not discuss policies much because policies and procedures were already in place. (Id.)

[redacted]

[redacted] (Ex. GG, T11:12-14:5, ECF No. 130-10 at 27-28.) Placement of the juveniles depended on their behavior within CCJDC. (Id. at T13:25-14:5.) [redacted] (Ex. KK, T:25:16-28:1, T31:4-19, ECF No. 130-10 at 97-98.) [redacted] (Id. at T34:16-38:12, ECF No. 130-10 at 99-100.)

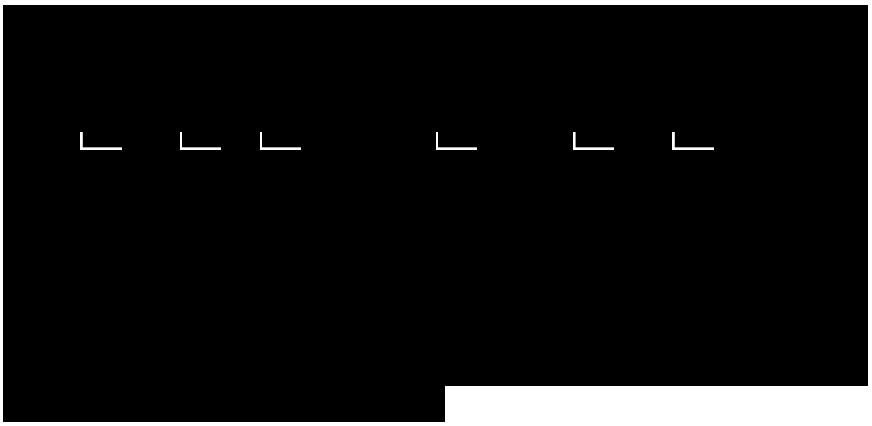
b. [redacted]

The CCJDC had an admissions process. (Ex. EE at T32:19-34:14, ECF No. 130-9 at 194-95.) The only questions juveniles were asked about mental health during admissions were whether they were depressed, suicidal or used any alcohol or drugs. (Id.) Within 24-hours of a juvenile's admission, medical staff would further assess his or her physical and mental health. (Id.) The facility had many juveniles with mental health issues. (Id.)

[redacted] (Ex. EE at T29:20-31:19, ECF No. 130-9 at 194.) [redacted] (Id. at T38:5-39:5, ECF No. 130-9 at 196.)

[redacted]

[redacted]



[redacted]

2. Analysis

Plaintiff has not explained how these alleged policy failures caused his constitutional injury. Again, it bears repeating that the sole constitutional injury that Plaintiff alleges [redacted]

[redacted]

[redacted] they were first raised in Plaintiff's opposition to summary judgment, and it is too late to amend the complaint to bring claims separate from the constitutional injuries alleged in the amended complaint.

[redacted] As set forth above, the Court has determined that Plaintiff failed to show a reasonably jury could conclude that [redacted] The Court, however, will address whether the alleged policy failures [redacted]

The Due Process right to safety of incarcerated juveniles encompasses the right to reasonable protection from the aggression of others. See Thomas S. ex rel. Brooks v. Flaherty, 699 F. Supp. 1178, 1200 (W.D.N.C. 1988), *aff'd*, 902 F.2d 250 (4th Cir.), cert. denied, 498 U.S. 951 (1990) (defining substantive due process rights of mentally disabled adults).

> Juveniles at [a] correctional facility should be screened and classified so that aggressive juveniles are identified and separated from more passive juveniles, with the level of restraint to be used for each juvenile based on some rational professional judgment as to legitimate safety and security needs; there should also be periodic review of initial placement to evaluate whether subsequent events demonstrate need for reclassification of juvenile security requirements.

Alexander S. By & Through Bowers v. Boyd, 876 F. Supp. 773 (D.S.C. 1995), as modified on denial of reh'g (Feb. 17, 1995).

Certainly, detention centers, whether adult or juvenile, should have a classification system to identify violent and non-violent persons for the purpose of protecting the safety of those more vulnerable. [redacted][8]

[8] [redacted]

[redacted] They are not liable as supervisors under § 1983 and the NJCRA, however, unless they were *deliberately indifferent* to a substantial risk [redacted] See Brown, 269 F.3d at 215-16 (municipality not liable for officer who shot pet dog where plaintiff failed to show an official policy endorsing such conduct, a custom of condoning such conduct, and where no reasonable jury could conclude the need for further training was

[redacted]

so obvious that municipality was deliberately indifferent to such a risk.)

Plaintiff also asserts Surrency and Balicki should be held liable for [redacted]

As with the lack of a classification policy, the record does not permit a reasonable jury [redacted] Plaintiff cites to A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, 372 F.3d 572 (3d Cir. 2004). In that case, the plaintiff was physically assaulted on numerous occasions by other juvenile residents in a juvenile detention center. Id. at 575-76. Although

the plaintiff was supposed to be kept away from the boys who had previously assaulted him, this directive was not always followed. Id. at 576. The incident reports involving the plaintiff in that case supported an inference that it was predictable the plaintiff would suffer recurrent harm at the hands of other residents.

In this case, [redacted] See Andrews v. Fowler, 98 F.3d 1069, 1077 (8th Cir. 1996) (municipality not liable for rape by a police officer because there was no patently obvious need to train officers not to commit rape and no evidence that failure to train caused the rape).

The standard for supervisory liability under § 1983 is high. Supervisors, without some type of personal involvement in the constitutional harm, are not liable for the misconduct of their employees. Iqbal, 556 U.S. at 676. Thus, the Court must grant summary judgment to Surrency and Balicki on Plaintiff's § 1983 and NJCRA claims in their individual and official capacities.

IV. CONCLUSION

For the reasons discussed above, the Court grants in part and denies in part Defendants Balicki, Baruzza and Surrency's motion for summary judgment.

An appropriate order follows.

Date: February 19, 2020

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge

NOT FOR PUBLICATION **ECF NOS. 158, 159**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EDWARD SCANLON, IV Plaintiff v. VALERIE LAWSON, *et al.*, Defendants	Civ. No. 16-4465 (RMB-JS) **OPINION** (REDACTED)

APPEARANCES:

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JUSTIN ROBERT WHITE
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BUMB, United States District Judge

This matter comes before the Court upon Plaintiff's motion for reconsideration (Mot. Reconsider., ECF No. 158) of this Court's opinion and order granting Defendant Wesley Jordan's motion for summary judgment based on the statute of limitations (See Opinion, ECF No. 151; Order, ECF No. 152); Defendant Jordan's response to Plaintiff's motion for reconsideration (Jordan's Resp. to Mot. Reconsider., ECF No. 161); Plaintiff's motion to seal his motion for reconsideration (Mot. to Seal, ECF No. 159); and Plaintiff's

Response to Order to Show Cause, (Pl's Response OTSC, ECF Nos. 162, 164.) Pursuant to Federal Rule of Civil Procedure 78(b), the Court will determine the motions on the briefs without oral argument.

I. BACKGROUND

Plaintiff filed this action in the New Jersey Superior Court, Law Division, Cumberland County on March 29, 2016, alleging civil rights violations under 42 U.S.C. § 1983; the New Jersey Civil Rights Act ("NJCRA"), § 10:6-2, and tort claims under the New Jersey law, N.J.S.A. §§ 59:1-1 *et seq.* (Compl., ECF NO. 1-1 at 8-18.) The action, in part, arose out of incidents alleged to have occurred at the Cumberland County Juvenile Detention Center ("CCJDC") in March 2012. (Id.) Plaintiff alleged

[redacted]

(Id., ¶3.)

Plaintiff filed an amended complaint on October 26, 2017. (Am. Compl., ECF Nos. 58, 88.) The amended complaint substituted Wesley Jordan for a fictitious John Doe defendant. The Court subsequently granted Jordan's motion for summary judgment, holding, in pertinent part, that the amended complaint did not relate back to the timely filed complaint because Plaintiff did

not exercise due diligence in discovering Jordan's identity. See DeRienzo v. Harvard Industries, Inc., 357 F.3d 348, 354-55 (3d Cir. 2004) (describing due diligence requirement of New Jersey Court Rule 4:26-4.)

II. PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE

On February 21, 2020, the Court ordered Plaintiff to show cause why the claims against Harold Cooper, Bobby Stubbs, John and Jane Does 1-45 and ABC Corporations 1-45 should not be dismissed for failure to effect timely service under Federal Rule of Civil Procedure 4(m). (Order, ECF No. 157.) Plaintiff responded by demonstrating the numerous attempts he made to locate and serve Bobby Stubbs and Harold Cooper. (Pl's Response to OTSC, ECF Nos. 162, 164.)

Plaintiff's last attempt at service on Bobby Stubbs and Harold Cooper was August 2, 2018, more than one year ago. (Id., ¶¶29-31.) Plaintiff's has not shown good cause to further extend the time to serve Harold Cooper, Bobby Stubbs or the unidentified Doe Defendants. Although the statute of limitations expired, which favors granting a motion for extension of time for service, Plaintiff's inaction for more than one year, and the fact that the case is ready for a final pretrial conference, disfavors further extension of time for service. The Court will deny an extension of time for service under Rule 4(m) and dismiss the claims against the unserved defendants without prejudice. See Veal v. United

States, 84 F. App'x 253, 256-57 (3d Cir. 2004) (noting district court has discretion to extend time for service even though good cause was not shown)).

III. MOTION TO SEAL MOTION FOR RECONSIDERATION

Plaintiff submitted the following information in support of sealing his motion for reconsideration and supporting documents pursuant to Local Civil Rule 5.3(c). (Certification of Counsel, ECF No. 159-1.) The nature of materials to be sealed include medical and juvenile records produced pursuant to a Discovery Confidential Order, which are cited and/or attached to Plaintiff's motion for reconsideration. The privacy interests that warrant sealing the documents include the protection of medical records under federal and state law, and privacy of evaluative and deliberative information developed as part of self-critical analysis. These privacy interests are lost if the records are not sealed. There have been four prior orders to seal these types of documents in this matter. Finally, counsel to defendant Wesley Jordan consents to sealing these documents. Plaintiff has met his burden to warrant sealing his motion for reconsideration and supporting documents.

IV. Plaintiff's Motion for Reconsideration

Plaintiff asserts three bases for the Court to reconsider granting summary judgment to Defendant Wesley Jordan. First, Plaintiff asserts that the Court overlooked the fact that Plaintiff

[redacted] which severely hindered Plaintiff's ability to assist his counsel in proceeding with this civil cause of action. Plaintiff submits, as new evidence in support of this claim, records from the New Jersey School for Boys (Jamesburg) for 2014 and 2015. (Ex. A, ECF No. 158-2 at 5.)

Second, Plaintiff argues it was a manifest error of law to make the finding that records identifying Wesley Jordan were potentially available through a request under the New Jersey Open Public Records Act, N.J.S.A. § 47:1A-5. Plaintiff's counsel states that the only way he could obtain records identifying Jordan [redacted] was to file suit, [redacted]

Third, Plaintiff maintains that it was a manifest error of fact to find that plaintiff's counsel delayed amending the complaint after receiving discovery identifying Wesley Jordan [redacted]. And fourth, Plaintiff contends it was a manifest error of law to apply federal case law and F.R.C.P. 15(c)(1)(C) to his New Jersey state law claims because Wesley Jordan was put on notice of the tort and civil rights causes of action under state law, as evidenced by the fax confirmation and the signed return receipt requested green cards from September 21, 2012.

Defendant Wesley Jordan opposes Plaintiff's motion for reconsideration. (Def. Jordan's Resp. to Mot. Reconsider., ECF No. 161.) First, pursuant to Local Civil Rule 7.1(i)'s 14-day time limit, Jordan argues the motion for reconsideration was filed one day late, fifteen days after the order to be reconsidered was entered on February 6, 2020, Second, Jordan contends the motion should be denied in substance because the Court did not overlook facts or law in granting Jordan's motion for summary judgment. The Court will address the merits of Plaintiff's motion for reconsideration.

B. Standard of Review

Generally, a motion for reconsideration is treated as a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e). Holsworth v. Berg, 322 F. App'x 143, 146 (3d Cir. 2009). Local Civil Rule 7.1(i) governs motions for reconsideration in the District of New Jersey. Local Civil Rule 7.1(i) permits a party to seek reconsideration by the Court of matters which the party "believes the Judge or Magistrate Judge has overlooked" when it ruled on the motion.

The movant must demonstrate either: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [issued its order]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Café v. Quinteros, 176 F.3d

669, 677 (3d Cir. 1999) (citing N. River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). "A motion for reconsideration should not provide the parties with an opportunity for a second bite at the apple." Tishcio v. Bontex, Inc., 16 F.Supp.2d 511, 532 (D.N.J. 1998) (citation omitted).

C. Analysis

1. [redacted]

Plaintiff asserts that the Court overlooked [redacted] hindered his ability to assist his counsel in proceeding with this action. The Court did not overlook [redacted]; only his true identify remained confidential. Thus, counsel could have proceeded by obtaining Jordan's name in another manner, as discussed below.

[redacted]

[redacted]

Further, there is nothing in the record to show that Plaintiff's counsel ever informed this Court, upon filing the complaint two days before the statute of limitations expired, of the difficulties he had discovering John Doe's identity and the urgency of his need for the information. It is too late now for the Court to provide assistance.

2. Availability of OPRA Request

Plaintiff contends it was a manifest error of law for the Court to make the finding that records identifying Wesley Jordan were potentially available through a request under the New Jersey Open Public Records Act, N.J.S.A. § 47:1A-5. First, the Court notes that it recognized Plaintiff's counsel might have been unsuccessful in obtaining the necessary documents, but that the due diligence requirement of New Jersey Court Rule 4:26-4 obliged him to make the effort. (Opinion, ECF No. 151 at 26.)

Second, Plaintiff cites Doe v. City of Trenton, No. A5943-17T2, 2019 WL 4927108 (N.J. Super. Ct. App. Div. Oct. 7, 2019) in support of his claim that internal affairs investigations are exempt from disclosure by OPRA request. Plaintiff fails to acknowledge that Doe also provides guidance on the common law right of access to public records, which "makes a much broader class of documents available … but on a qualified basis." Id. at *5 (quoting O'Shea v. Twp. of W. Milford, 982 A.2d 459, 468 (N.J. Super. Ct. App. Div. 2009) (quoting Daily Journal v. Police Dept. of City of Vineland, 797 A.2d 186 (N.J. Super. Ct. App. Div. 2002)).

The common law right of access to public records is subject to a balancing test based on factors specific to each case. Id. Given plaintiff's counsel's inability to obtain John Doe's identity from his client and the difficulty Plaintiff's father had in obtaining that information, Plaintiff could have presented a

good case for disclosure under the common law, even if he might have been unsuccessful. Again, due diligence does not permit doing nothing.

3. Delay Amending the Complaint

Plaintiff asserts that it was a manifest error of fact for the Court to find that plaintiff's counsel delayed amending the complaint after receiving discovery identifying Wesley [redacted]. The Court accepts Plaintiff's representation that Magistrate Judge Schneider imposed a *de facto* stay on amending the complaint based on Plaintiff's representation that he might have to amend twice because discovery remained pending. This, however, does not change the result.

To establish due diligence under New Jersey Court Rule 4:26-4, for purposes of relation back of an Amended Complaint under Federal Rule of Civil Procedure 15(c)(1)(A), a plaintiff must exercise due diligence *before and after* filing the original complaint. DeRienzo, 357 F.3 at 353 (emphasis added [redacted] contained enough factual information to bring suit using the fictitious John Doe designation. (Pl's Ex. B, ECF No. 130-8 at 5-6.) Plaintiff's counsel has not shown that he did anything [redacted], which was unsuccessful in 2012. The record does not contain evidence that

Plaintiff's counsel did anything to identify John Doe in the next four years; instead, filing suit with only two days remaining on the statute of limitations. While the Court is sympathetic to Plaintiff's plight, the record does not support a finding of due diligence.

4. Plaintiff's Tort Claims

Plaintiff also claims it was a manifest error of law for the Court to apply federal case law and F.R.C.P. 15(c)(1)(C) to his New Jersey state law claims[1] because Jordan was put on notice of Plaintiff's claims by his Tort Claim Notice of September 1, 2012. (See Ex. B, ECF No. 158-2 at 18-19.)

The Court did not apply Federal Rule of Civil Procedure 15(c)(1)(C) to determine whether Plaintiff filed a timely notice of claim under the New Jersey Tort Claims Act, N.J.S.A. § 59:8-8, but instead, to determine whether his state law claims against Jordan related back to his original complaint so as to avoid the

[1] "Rule 15(c)(1) allows state relation back law to govern state claims in federal court if state law 'affords a more forgiving principle of relation back.'" Yanez v. Columbia Coastal Transp., Inc., 68 F.Supp.2d 489, 491 n. 2 (D.N.J. 1999) (citing Bryan v. Associated Container Transp., 837 F. Supp. 633, 643 (D.N.J. 1993) (quoting Advisory Committee note to Fed. R. Civ. P. 15(c)(1)). In the opinion dated February 6, 2020, the Court determined that New Jersey state law did not provide for relation back because Plaintiff did not exercise due diligence in discovering John Doe's identity. Thus, the Court considered whether, in the alternative, Federal Rule of Civil Procedure 15(c)(1)(C) provided for relation back.

statute of limitations bar. Under Federal Rule of Civil Procedure 15(c)(1)(C), even if the Notice of Tort Claim was timely submitted to Surrency and Baruzza at CCJDC in September 2012, notice to Jordan's supervisors of his state law claim was insufficient to impute notice to Jordan of this lawsuit filed in 2016. Singletary v. Pennsylvania Dept. Corrections, 266 F.3d 186, 198 (3d Cir. 2001) (notice to employer was insufficient to impute notice to staff level employee); Garvin v. City of Philadelphia, 354 F.3d 215, 217 (3d Cir. 2003) (same).

IV. CONCLUSION

For the reasons discussed above, the Court will (1) dismiss the claims against Harold Cooper, Bobby Stubbs, John and Jane Does 1-45 and ABC Corporations 1-45 without prejudice under Federal Rule of Civil Procedure 4(m); (2) grant Plaintiff's motion to seal his motion for reconsideration and supporting documents; and (3) deny Plaintiff's motion for reconsideration.

An appropriate order follows.

Date: March 9, 2020

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EDWARD SCANLON, IV Plaintiff v. VALERIE LAWSON, *et al.*, Defendants	Civ. No. 16-4465 (RMB-JS) **OPINION** (REDACTED)

APPEARANCES:

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On behalf of Defendants Robert Balicki, Veronica Surrency and Michael Baruzza

BUMB, United States District Judge

This matter comes before the Court upon Defendants Robert Balicki and Veronica Surrency's ("Defendants") motion for reconsideration of the Court's Opinion and Order dated February 21, 2020 (Mot. for Reconsideration, Dkt. No. 168); Plaintiff's Reply to the Motion for Reconsideration Filed by Defendants Veronica Surrency and Robert Balicki ("Pl's Opp. Brief," Dkt. No.

184) and Defendants' Reply Brief (Defs' Reply Brief, Dkt. No. 186.) For the reasons discussed below, the Court will grant the motion for reconsideration and grant Defendants' summary judgment, in their individual and official capacities, on Plaintiff's last remaining claims, Fourteenth Amendment claims under 42 U.S.C. § 1983 and the New Jersey Civil Rights Act ("NJCRA") for failure to protect [redacted]

I. BACKGROUND

The Court recited the procedural background in this matter in its Opinion dated February 21, 2020, and need not repeat it for the parties here. (Opinion, Dkt. Nos. 155, 156.)[1] The Court granted summary judgment to all Defendants, with the exception of Defendants Warden Robert Balicki and CCJDC Division Head Veronica Surrency, primarily because Plaintiff had failed to file his claims against them within the statute of limitations. (Opinions, Dkt. Nos. 144, 147, 150, 151, 155.) Plaintiff did not oppose summary judgment in favor of Defendants Balicki and Surrency on his tort

[1] The Court filed both a sealed opinion (Dkt. No. 155) and a redacted Opinion (Dkt. No. 156) and will cite to the sealed Opinion hereafter.

claims. (Defs' Summ. J. Brief, Dkt No. 116 at 21-23;[2] Pl's Opp. Brief, ECF No. 130 at 9.) Therefore, the Court's Opinion was restricted to Defendants' motion for summary judgment on the only remaining claims, Plaintiff's § 1983 and NJCRA claims.

Defendants seek reconsideration of the denial of summary judgment on Plaintiff's § 1983 and NJCRA failure to protect claims under the Fourteenth Amendment. This Court quotes here from the relevant portion of the Court's Opinion:

[2] Page citations refer to the page number assigned by the Court's electronic case filing system, CM/ECF.

[redacted]

The Court held that:

> a reasonable jury could conclude, on this record, that [redacted]

(Opinion, Dkt. No. 155 at 31-34) (emphasis added.)

II. DISCUSSION

A. Defendants' Argument

Defendants Balicki and Surrency seek reconsideration alleging an erroneous finding of fact by the Court when it attributed to Defendant Balicki the testimony [redacted] (See Brief in Supp. of Mot. for Reconsideration by Surrency and Balicki ("Defs' Brief") Dkt. No. 169.) (Opinion, Dkt. No. 155 at 31.) Defendants concede, in their reply brief, that the statement was made by one of the dismissed Defendants, William M. Burke, the Supervisor of New Jersey Juvenile Commission's Compliance Monitoring Unit. (Def's Reply Brief, Dkt. No. 186 at 5.) In fact, Defendant Balicki's deposition testimony [redacted]

[redacted] (Plaintiff's Ex. FF at T66:18-22, Dkt. No. 130-10 at 20.)

Both Defendants also suggest that it was a clear error of law for the Court to rely on a factually distinguishable Third Circuit case, Heggenmiller v. Edna Mahan Correctional Institution for Women, 128 F. App'x 240 (3d Cir. 2005). In Heggenmiller, state prisoners brought a § 1983 action against prison administrators alleging that they were deliberately indifferent to the risk of sexual assaults on inmates by guards. There was a policy at the prison prohibiting sexual contact between prison guards and inmates. The Third Circuit held that the plaintiffs in Heggenmiller could not show deliberate indifference by the administrative defendants because the prison's no contact rule was vigorously enforced by the firing and/or prosecution of five of the six guards responsible for the six documented sexual assaults between 1994 and 1998. Vigorous enforcement of the no contact order established that the administrators took reasonable steps to reduce the risk of sexual assaults. Defendants maintain that the present case is not analogous to Heggenmiller [redacted]

Finally, Defendants submit that it was a clear error of law to find that they acted with deliberate indifference. [redacted] (Defendants' Statement of Material Facts at ¶¶38-39; Plaintiff's Reply to Defendants Statement of Material Facts admitting to ¶¶38-39). [redacted]

B. Plaintiff's Counter-Argument

Plaintiff Scanlon acknowledges that William M. Burke, the Supervisor of New Jersey Juvenile Commission's Compliance Monitoring Unit, not Defendant Balicki, was the person who testified [redacted]

[redacted]

(Pl's Opp. Brief, Dkt. No. 184.) (See Burke Depo., Plaintiff's Ex. HH at T58:23-T59:16, Dkt No. 130-10 at 55.) Plaintiff argues that this mistake by the Court only bolsters the Court's decision [redacted]

Plaintiff also argues that, while his case is factually distinguishable, the Court did not err in its reliance on Heggenmiller in holding that [redacted] As a final point, Plaintiff contends that Defendants' objection to the Court's finding of deliberate indifference is nothing more than an attempt to relitigate an issue solely because they disagreed with the Court's decision.[3]

[3] After reading the parties' briefs, the Court determined that it would rule on the motion without oral argument under Federal rule of Civil Procedure 78(b). (Text Order, Dkt. Nos. 185, 189.)

C. Analysis

Local Civil Rule 7.1(i) requires a party filing a motion for reconsideration to submit "a brief setting forth concisely the matter or controlling decisions which the party believes the Judge or Magistrate Judge has overlooked." Mere disagreement with the Court's decision is not a sufficient basis for a motion for reconsideration. See Rich v. State, 294 F. Supp. 3d 266, 273 (D.N.J. 2018) (collecting cases). "The purpose of a motion for reconsideration … is to correct manifest errors of law or fact or to present newly discovered evidence." Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (quoting Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985)).

1. *Factual Error*

The Court clearly mistakenly attributed to Defendant Balicki the statement [redacted] As the parties concede, the statement was made by a now-dismissed defendant, William M. Burke, who was a supervisor for the compliance monitoring unit of the New Jersey Juvenile Justice Commission. (See Burke Depo., Plaintiff's Ex. HH at T58:23-T59:16, Dkt No. 130-10 at 55.) (This Court granted summary judgment as to Defendant

Burke because Plaintiff failed to bring a timely claim against him. (Opinion, Dkt. No. 144.) This mistake informs the Court's reconsideration as follows.

2. *Deliberate Indifference*

A juvenile detainee has a Fourteenth Amendment liberty interest in his personal security and well-being. A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 579 (3d Cir. 2004). To determine whether Defendants violated this right, the Court must decide "'what level of conduct is egregious enough to amount to a constitutional violation and ... whether there is sufficient evidence that [the Defendants'] conduct rose to that level.'" Id. (quoting Nicini v. Morra, 212 F.3d 798, 809 (3d Cir. 2000) (alterations in A.M. ex rel. J.M.K.)) A substantive due process violation "may be shown by conduct that 'shocks the conscience.'" Id. (quoting County of Sacramento v. Lewis, 523 U.S. 833, 846-47 (1998)). The deliberate indifference standard is employed to determine whether, in the custodial setting of a juvenile detention center, the defendants were deliberately indifferent to the plaintiff's personal security and well-being. Id. "The question of whether conduct amounting to deliberate indifference is sufficient to "shock the conscience" requires an 'exact analysis of [the] circumstances' in a given case." Id. at (quoting Lewis, 523 U.S. at 850.) The deliberate indifference standard is appropriate where the persons responsible for the

juvenile in a juvenile detention center had time to deliberate concerning the juvenile's welfare. A.M. ex rel. J.M.K., 372 F.3d at 579.

It is significant to this Court's reconsideration that it was not the Warden, Defendant Balicki, who made the statement [redacted] Upon his hiring as warden for CCJDC in 2008 or 2009, Balicki was charged with revising all of CCJDC's old written policies. (Balicki Depo, Pl's Ex. FF at T17:3-T19:5; T22:9-12; Dkt No. 130-10 at 8-9.) The policies had to be updated every year, and Balicki delegated the responsibility to update the policies to Tammie Pierce and Veronica Surrency, and when Pierce left CCJDC, he delegated the duty to Defendant Surrency, while maintaining his authority to approve the policies. (Id. at T22:18-T24:10.) Surrency acknowledged that she had authority to create policy. (Surrency Depo., Pl's Ex. EE at T24:7-T25:13, Dkt. No. 130-9 at 192-93.)

With this in mind, it is undisputed that Burke, who made the statement, did not have authority to make specific policies for CCJDC,[4] but testified that such a policy would be left to the

[4] Burke testified that if he learned of a serious incident at a juvenile detention center, he would write a report that requested an action plan from the juvenile detention center, describing how they planned to address the issue. (Burke Depo., Pl's Ex. HH at T19:3-21.) As supervisor of the monitoring unit that evaluated juvenile detention centers, if there was a problem, Burke would

individual facility. (Burke Depo., Pl's Ex. HH at T58:23-T59:7.) The only policies or procedures that Burke put in place were in the State's Manual of Standards for all juvenile detention facilities; he could not tell the facilities what to put in their SOPs.[5] (Id. at T52:3-13; T83:16-T84:2.) Plaintiff has pointed to no evidence, and this Court can find none, [redacted]

Moreover, while it may be that Burke, in his capacity as supervisor of the compliance monitor unit for all New Jersey juvenile detention centers, [redacted] Burke's role in the Juvenile Justice Commission was to monitor CCJDC's compliance with the State's

ask the detention center to come up with a solution because his unit did not run the facilities. (Id. at T21:11-T22:2.)

[5] SOPs stands for Standard Operating Procedures. (Burke Depo., Pl's Ex. HH at T97:10-11.)

Manual of Standards, and the Manual of Standards [redacted] (Burke Depo, Pl's Ex. HH at T10:1-10; T58:23-T59:16.) The Manual of Standards contains only general standards, a facility's Standard Operating Procedures were much more detailed. (Id. at T97:20-T98:3.) [redacted] (Id. at T58:23-T59:16.)

"[T]o defeat [a] summary judgment motion," on a failure to protect claim "[plaintiffs] must present enough evidence to support the inference that the defendants 'knowingly and unreasonably disregarded an objectively intolerable risk of harm.'" Beers-Capitol v. Whetzel, 256 F.3d 120, 132 (3d Cir. 2001) (quoting Farmer v. Brennan, 511 U.S. 825, 846 (1994)). "To be liable on a deliberate indifference claim, a defendant prison official must both 'know[ ] of and disregard[ ] an excessive risk to inmate health or safety.'" Id. at 133 (quoting Farmer, 511 U.S. at 837.)) "[T]he official must actually be aware of the existence of the excessive risk; it is not sufficient that the official should have been aware." Id. (citing Farmer, 511 U.S. at 837-38.)) "[S]ubjective knowledge … can be proved by circumstantial evidence" if "the excessive risk was so obvious that the official must have known of the risk." Id. (citing Farmer, 511 U.S. at 842.)

Plaintiff relies on the fact that Burke, who has expertise in the State of New Jersey in the field of juvenile detention centers, [redacted] The Third Circuit has held that even when a policymaker fails to implement a standard or recommended policy in the juvenile detention field, such a failure constitutes negligence not deliberate indifference. See Beers-Capitol, 256 F.3d at 137-38 (failure to enact standard or recommended policies constitutes negligence not deliberate indifference).

As noted, Plaintiff had an opportunity to explore Burke's statement in discovery, but did not do so. Indeed, as the Court found, Plaintiff failed to bring timely claims against Burke, the only individual whom Plaintiff introduced as opining as to [redacted] Plaintiff has introduced no evidence that Defendants Balicki and Surrency [redacted]

In order for a jury to reasonably find deliberate indifference by Defendants Balicki and Surrency for failing to enact such a policy, [redacted]

[redacted] (See Pl's Ex. SS (video recording) at 25:25 to 27:07, Dkt. No. 130-11 at 49-50.)

[redacted]

[6] If Plaintiff can point to such evidence in the record, he should file a motion for reconsideration within 14 days of entry of this Opinion and the accompanying Order.

[redacted] The Supreme Court

[7] See supra n. 4.

has explained the type of circumstantial evidence, in the context of a prison official's alleged failure to place an inmate in protective custody to protect against assault by another inmate, that would be sufficient to show the prison official must have been aware of the risk to the plaintiff's safety:

> if [a] … plaintiff presents evidence showing that a substantial risk of inmate attacks was 'longstanding, pervasive, well-documented, or expressly noted by prison officials in the past,' and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk.

Hamilton v. Leavy, 117 F.3d 742, 747-48 (3d Cir. 1997) (quoting Farmer, 511 U.S. at 842-43. Recently, the Third Circuit held that a plaintiff made a sufficient showing that detention facility staff must have known of the risk of sexual assault to an immigration detainee, although there was no evidence of the staff's actual awareness of the risk. E.D. v. Sharkey, 928 F.3d 299, 309 (3d Cir. 2019). In that case, there was evidence that the detention facility was small; there was frequent interaction between the staff and detainees that permitted staff to observe the intimate interactions between plaintiff and the alleged perpetrator; and other inmates had complained of staff's behavior toward the plaintiff. The evidence Plaintiff has adduced falls short of this standard, [redacted]

[redacted] Clearly - it seems worthy of repeating - Jordan's alleged actions are reprehensible. Unfortunately, Plaintiff failed to bring timely claims against him.

For these reasons, the Court finds that [redacted] Thus, Plaintiff has not established a constitutional violation for failure to protect and the Court need not proceed to the qualified immunity analysis. See Beers-Capitol, 256 F.3d at 140 (3d Cir. 2001) (finding plaintiffs failed to establish failure to protect claim without evidence that directly showed the defendant either knew of the excessive risk to the plaintiffs or the defendant was aware of such overwhelming evidence of the risk that defendants had to know of such a risk.)

For the sake of completeness, however, the Court notes Plaintiff has not pointed to a case establishing a constitutional right [redacted] Nor has this Court found precedent "that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right" such that "existing precedent must have

placed the statutory or constitutional question beyond debate." Mullenix v. Luna, 136 S. Ct. 305, 308 (2015) (internal quotations and citations omitted) (warning courts not to define clearly established law at a high level of generality). Therefore, even if deliberate indifference could be established on this record, Defendants Balicki and Surrency, in their individual capacities, would be entitled to qualified immunity. See Pearson v. Callahan, 555 U.S. 223, 236 (2009) (holding courts need not first determine whether there has been a constitutional violation before granting qualified immunity on the grounds that the relevant facts do not violate clearly established law).

III. CONCLUSION

On the record before this Court, it cannot be said that Defendants Balicki and Surrency were deliberately indifferent to Plaintiff's safety. What happened to Plaintiff Scanlon, however, should never have happened, and should never happen again to anyone. This case should serve as a valuable lesson going forward as to the wisdom of enacting a no contact order under similar circumstances. Unfortunately, the individual allegedly responsible for Plaintiff Scanlon's injuries was not sued timely, and that should never happen again. An appropriate order follows.

Date: September 29, 2020

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge