

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

NATIONAL FEDERATION OF THE BLIND, *et al.*,

Plaintiffs,

v.

Case No. 3:23cv127

VIRGINIA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

**MEMORANDUM IN SUPPORT OF THE VIRGINIA DEPARTMENT OF
CORRECTIONS, CHADWICK DOTSON, BARRY MARANO, DARRELL MILLER,
KEVIN MCCOY, OFFICER SMITH, AND LAKEISHA SHAW'S
MOTION FOR SUMMARY JUDGMENT**

The Virginia Department of Corrections, Chadwick Dotson, Barry Marano, Darrell Miller, Kevin McCoy, Lakeisha Shaw and Officer D. Smith (collectively, "VDOC," "the VDOC Defendants," or "Defendants"), hereby submit the following Memorandum in Support of their Motion for Summary Judgment.

Introduction

This case has been brought by several VDOC inmates, and one former inmate, regarding various accommodations that the Plaintiffs allege that they were denied for their vision impairments while they were housed at Deerfield Correctional Center ("Deerfield") and Greensville Correctional Center ("Greensville"). This action currently proceeds on the Plaintiffs' Amended Complaint. (*See* Am. Compl., ECF No. 136.) In their Amended Complaint, the Plaintiffs bring claims under the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act ("RA"), and the Virginians with Disabilities Act ("VDA") against the Defendants in their official capacities, as well as against VDOC as a state agency. (Amend. Compl. ps. 23-27.)

However, as explained herein, VDOC and the VDOC Defendants are entitled to summary

judgment in this action. As an initial matter, although the Plaintiffs bring voluminous allegations in support of their claims in their Amended Complaint, the Plaintiffs have only exhausted their administrative remedies with respect to five of their claims. For this reason alone, the vast majority of the Plaintiff's allegations and claims are barred from review under the Prison Litigation Reform Act and the Virginia Code. Further, many of the Plaintiffs' claims are likewise barred by the one-year statute of limitations governing RA, ADA, and VDA claims. And, on the merits, the Plaintiffs' claims fare no better. Although the Plaintiffs allege vast discrimination on behalf of VDOC against themselves and blind and visually impaired inmates in VDOC custody, the evidence in this case rebuts the Plaintiffs' allegations. For example, although Mr. Courtney alleges in the Amended Complaint that he was drug tested at Greensville out of retaliation for making ADA accommodation requests, these allegations are without merit. Mr. Courtney was subjected to a random drug test and Mr. Courtney's urinalysis was submitted to the independent, state lab in an unbroken chain of custody. Likewise, Mr. Hajacos' claim that VDOC has discriminated against him in his computer class by failing to provide him with an accessible textbook is meritless. Mr. Hajacos testified that he has an accessible textbook in his deposition. In all, although the Plaintiffs allege systemic discrimination on behalf of VDOC and the VDOC Defendants against blind and visually impaired inmates, the evidence in this case supports no such finding. Accordingly, VDOC and the VDOC Defendants respectfully request that the Court grant them summary judgment in this action.

VDOC's Evidence in Support of its Motion For Summary Judgment

In support of its Motion for Summary Judgment, VDOC submits the following evidence in this matter:

- The deposition transcript of Plaintiff Shaw;
- The deposition transcript of Plaintiff Hajacos;

- The deposition transcript of Plaintiff McCann;
- The deposition transcript of Plaintiff Courtney;
- The deposition transcript of Plaintiff Stravitz;
- The deposition transcript of Plaintiff Shabazz;
- The deposition transcript of Defendant Smith and Exhibits 2, 3, and 7;
- The deposition transcript of Defendant Shaw and Exhibit 13;
- The deposition transcript of Defendant Marano;
- The deposition transcript of L. Talbott and Exhibits 2 and 10;
- The deposition transcript M. Geist;
- The deposition transcript R. Butcher;
- The 30(b)(6) deposition transcript of R. Butcher;
- The 30(b)(6) deposition transcript K. Cosby;
- The 30(b)(6) deposition transcript K. Stapleton;
- Phillips Declaration;
- Angle Affidavit;
- DeBerry Affidavit;
- L. Shaw Declaration;
- A. Turner Affidavit;
- Zormelo Declaration;
- D. Turner Affidavit;
- Shumate Declaration;
- Futrell Affidavit;
- Reed Declaration;
- Ponton Declaration;
- Welch Declaration;
- M. Stith Affidavit;
- L. Talbott Declaration;
- C. Johnson Affidavit; and,
- R. Durbin Affidavit.

VDOC respectfully requests that the Court consider these transcripts, affidavits, declarations, exhibits, and enclosures, in support of its Motion for Summary Judgment in this Matter. *See* Fed. R. Civ. P. 56(c).

Statement of Undisputed Facts

a. Facts about the Parties

1. The National Federation of the Blind of Virginia is a nonprofit membership organization made up of blind people, their families, and friends. Am. Compl. ¶ 16.
2. Plaintiff Nacarlo Anthony Courtney was housed at Greensville from November 2021 until

March 2023. Am. Compl. ¶ 9; Courtney Dep. 13:7-10. He was released from VDOC custody on March 16, 2023. Am. Compl. ¶ 9. In 2016, Courtney was diagnosed with keratoconus, a condition affecting the corneas. Am. Compl. ¶ 86; Courtney Dep. 26:6-15.

3. Plaintiff William Hajacos has been housed at Greensville for the last five years. Hajacos Dep. 6:18. Mr. Hajacos has Ushers Syndrome, which affects both his sight and hearing. Hajacos Dep. 6:25; 7:1.

4. Plaintiff Kevin Shabazz has been incarcerated at Deerfield since 2015. Am. Compl. ¶ 13. Mr. Shabazz is set to be released from VDOC custody in April 2024. Shabazz Dep. 73:23-24. Mr. Shabazz was shot in the face in 2004 and his vision has deteriorated since then. Shabazz Dep. 84:22-25; 85:1.

5. Plaintiff Patrick Shaw has been incarcerated at Deerfield since 2010. Am. Compl. ¶ 14. Mr. Shaw has experienced deteriorating vision for years and was eventually diagnosed with uveitis. Shaw Dep. 17:7.

6. Plaintiff William Stravitz has been housed at Deerfield since 2019. Am. Compl. ¶ 15. Mr. Stravitz was diagnosed with cataracts in 2021. Stravitz Dep. 114:3-11.

7. Plaintiff Michael McCann has been incarcerated within VDOC since 2016. McCann Dep. 15:13-15. He has been housed at Deerfield for the entire time he has been in VDOC custody. McCann Dep. 15:18-16:4. Mr. McCann has testified that was diagnosed with a condition called retinitis pigmentosa and that he has experienced problems with his vision since he was five years old. McCann Dep. 11:21-12:17.

8. VDOC is an agency of the Commonwealth of Virginia. Am. Compl. ¶ 20.

9. Chadwick Dotson is the current Director of VDOC. Am. Compl. ¶ 21.

10. Barry Marano is VDOC's Statewide ADA Coordinator. Am. Compl. ¶ 23

11. Lakeisha Shaw is Deerfield's ADA Coordinator. Am. Compl. ¶ 29.
12. Darrell Miller is the Warden of Deerfield. Am. Compl. ¶ 27.
13. Kevin McCoy is the Lead Warden of Greenville. *See* ECF No. 166.
14. All of the individual VDOC Defendants are sued in their Official Capacities only. Am. Compl. p. 23-26.

b. Facts about VDOC's ADA Policy

VDOC OP 803.1

15. VDOC Operating Procedure ("OP") 801.3 governs the management of inmates with disabilities and provision of reasonable accommodations to those inmates. Talbott Dep. 36:10-37:2; Talbott Ex. 2.
16. Under this policy, VDOC's statewide ADA Coordinator acts as the agency's authority on issues relating to accommodations for disabled inmates and is responsible for training and providing guidance to VDOC's facility ADA Coordinators. Marano Dep. 16:17-17:12; Talbott Ex. 2 § I(F)(2).
17. Facility ADA Coordinators are responsible for reviewing inmate requests for reasonable accommodation and approving or denying the request after consultation with relevant staff. Talbott Ex. 2 § I(F)(3). The facility ADA Coordinator can approve some requests on their own authority, and as to other requests makes a recommendation to the statewide ADA Coordinator for final approval. Talbott Dep. 31:3-33:1. Accommodations that implicate concerns regarding institutional security must also be approved by the Facility Unit Head. Talbott Dep. 33:7-34:15.
18. An inmate may request an accommodation by submitting a Reasonable Accommodation Request form to the facility ADA Coordinator. Talbott Ex. 2 § V(A). Inmates may also make requests through the grievance procedure or facility request forms, verbally, or even through third parties. Talbott Dep. 171:7-174:13. The policy provides that when a request is received by the

facility ADA Coordinator, a response should be provided within ten business days, either granting the request, denying the request, requesting further investigation, or granting the request with modification. Talbott Ex. 2 § V(B)(1).

19. The facility ADA Coordinator is responsible for maintaining a listing of all approved accommodations provided to inmates at their facilities. Talbott Ex. 2 § I(F)(3)(b)(ii); Talbott Decl. Encl. A; Shaw Decl. Encl. A. They are also required to make rounds twice per month to be available to inmates. Talbott Ex. 2 § I(F)(3)(b)(iii).

c. VDOC Accommodations for Blind Inmates

VDOC makes written materials accessible to blind prisoners.

20. Facility staff, including counselors, are available to assist blind or visually impaired inmates with reading or writing documents. Talbott Dep. 123:2-20; L. Shaw Dep. 98:7-101:6, 108:17-21. Counselors' offices are located next to the inmates' housing units and they are available to assist inmates most times of day. Talbott Dep. 135:21-136:8.

21. Page magnifiers are kept in the possession of the unit managers for each housing unit at Greenville for inmate use. Talbott Dep. 158:14-159:14. Page magnifiers are also available in the housing units at Deerfield. L. Shaw Dep. 99:7-12. In addition, inmates may possess handheld magnifiers for their personal use. L. Shaw Dep. 101:8-18.

22. Staff provide inmates with large print copies of documents upon request. Talbott Dep. 99:15-100:4; L. Shaw Dep. 51:22-52:2.

23. Additional resources for print and electronic documents available to blind and visually impaired inmates are available in the law and recreational libraries at VDOC facilities. *See infra* ¶¶ 27-65.

The inmate disciplinary procedure is accessible for blind prisoners.

24. Prison disciplinary charges are served by correctional staff to the accused inmate. Stapleton Dep. 14:22-15:3. The contents of the written charge, including the description of the offense, the inmate's rights, and any penalty offer, are read aloud to the inmate by the serving officer at the time of service. Stapleton Dep. 24:11-26:18. At this time, the inmate is also advised that he may receive assistance from a staff or inmate advisor. Stapleton Dep. 26:19-27:1. The inmate acknowledges his understanding of this information by signing the charge, and he is also given the option to refuse to sign. Stapleton Dep. 24:3-10.

25. Throughout the disciplinary process, from the time of service through appeal, the inmate may be assisted by an advisor. Stapleton Dep. 22:9-20. The inmate may submit questions about the disciplinary process to staff in writing or through their advisor. Stapleton Dep. 27:17-28:14.

26. Disciplinary hearings are conducted before a hearing officer in a manner that allows for voice recording. Stapleton Dep. 20:2-14. The hearing officer verbally notifies the inmate of their decision and any penalty assessed. *Id.*

VDOC libraries are accessible for blind prisoners.

Facts about the Deerfield Law Library

27. The Deerfield Law Library has four computers that contain Lexis Nexis accounts, which is an electronic legal database. Delbridge Dep. 66:15-19; Delbridge Dep. 71:13-15.

28. At Deerfield, the Law Librarian, Ms. Delbridge, has inmate clerks who assist her and other inmates in the Law Library. Delbridge Dep. 20:19-22; 22:8-14. The inmate clerks are there to assist other inmates with anything that an inmate visiting the law library may need. The inmate clerks look up law cases on Lexis Nexis and assist with pulling law cases that other inmates need printed. Delbridge Dep. 22:8-14. The inmate clerks are also available to help other inmates with typing on any one of the Law Library's four typewriters. Delbridge Dep. 101:12-14.

29. Visually impaired inmates can also utilize a screen magnifier over the Deerfield Law Library computers, so that they can read materials legal materials on the Deerfield Law Library computers. Delbridge Dep. 73:12-16.

30. As the Law Librarian at Deerfield, Ms. Delbridge is also available to print legal materials and to answer questions from inmates about anything concerning the Law Library, such as requests for specific legal materials, or forms to be printed or provided for them. Delbridge Dep. 23:22-25:1.

31. Ms. Delbridge provides forms and legal materials to inmates in large print upon request. Delbridge Dep. 25:16-19; 96:15-20. To date, however, Mr. Delbridge has only had two Deerfield inmates request legal materials in large font, both whom were elderly, but not blind. Delbridge Dep. 97:15; 98:17-18. Ms. Delbridge has never received a request for an audio recording of any document at Deerfield. Delbridge Dep. 86:4-5.

32. The Deerfield Law Library also houses a SARA Machine, which is a machine that reads documents aloud to blind or visually impaired inmates through a pair of headphones. Delbridge Dep. 114:9-12. If a visually impaired inmate wishes to read a case or any other legal document, that case or legal document can be printed from the Deerfield Law Library's Lexis Nexis account and the inmate can read the case or document on the SARA Scanner in the library. Delbridge Dep. 72:21-22; 73:1-2.

33. The Deerfield Law Library is open Monday through Friday, 7:00 am through 4:00 pm, and the SARA Machine is available for use any time during these hours. Further, the Deerfield Law Library opens specifically on the weekends so that blind or visually impaired inmates can use the SARA Machine. Delbridge Dep. 115:7-13; Delbridge Dep. 116:2-5.

34. However, Plaintiff Kevin Shabazz is currently the only inmate at Deerfield who uses the

SARA Scanner in the Law Library. Delbridge Dep. 116:13-21.

Facts about the Greenville Law Library

35. Greenville has three Law Libraries, each of which have three computers that contain Lexis Nexis accounts. Phillips Dep. 93:12-16; Phillips Dep. 50:19-22. The Greenville Law Libraries also store copies of VDOC's Operating Procedures in print. Kelly Dep. 69:8.

36. The computers in the Law Libraries at Greenville have both a magnification and narrator function. Phillips Dep. 94:7-9; 127:8. The narrator function will read aloud anything that an inmate wishes to hover over on the computer and the inmate can control the speed of the narration. Phillips Dep. 56:14-20. The narrator function reads aloud material from Lexis Nexis on the Greenville Law Library computers. Phillips Dep. 57:19-21; 58:1.

37. Inmates may use headphones to listen to the narration privately; the Greenville Law Libraries have headphones but most inmates prefer to bring their own. Phillips Dep. 101:8-11.

38. At Greenville, the Law Librarian, Ms. Phillips, has three inmates clerks who assist her and other inmates in each of the Law Libraries. Phillips Dep. 93:12-16. The inmate clerks are there to assist other inmates with locating information in the Law Libraries. Phillips Dep. 96:12-15.

39. As the Law Librarian at Greenville, Ms. Phillips prints legal materials for inmates upon request. Phillips Dep. 23:22-25:1; 83:1-10.

40. Ms. Phillips is available to provide forms and legal materials to inmates in large print upon request. Phillips Dep. 83:7-10.

41. An inmate may request to use screen reader software, such as JAWS, in the Greenville Law Libraries through an accommodations request. Phillips Dep. 53:5-15. If the request were granted, Greenville Information Technology Department would provide the inmate with a laptop that has the JAWS software on it. Phillips Dep. 53:5-15.

42. However, Ms. Phillips has never had a request from an inmate for the use of JAWS in the Greenville Law Libraries. Phillips Dep. 53:18. Further, Ms. Phillips does not currently have any requests from blind or visually impaired inmates for accommodation requests, such as large print or other accessible materials. Phillips Dep. 89:22; 90:1-2; 85:6-7. Ms. Phillips has not had a visually impaired inmate ask for assistance with creating any legal document in the Greenville Law Libraries. Phillips Dep. 85:16-18.

Facts about the Deerfield Recreational Library

43. Ms. Geist has been Deerfield's recreational Librarian since July 2018. Geist Dep. 19:1-10.

44. Deerfield's recreational library houses two computers, each which house an electronic catalog of the books available in the library and other limited resources such as information about Pell Grants, and the Virginia General Assembly. Geist Dep. 79:10-13, 20; 80:7-13. The Deerfield recreational library computers do not allow for typing at all. Geist Dep. 80:1-5.

45. The electronic catalog of books on Deerfield's recreational computers is "very user friendly"; it is in large print and includes pictures of the covers of the books available in the library. The catalog program used is called Alexandria. Geist Dep. 80:16-20.

46. As the librarian of the Deerfield recreational library, Ms. Geist has never received a request from a visually impaired inmate for an accessible standard print book. Geist 84:9-12.

47. However, Ms. Geist has received requests from visually impaired inmates for information about access to the recreational library and large print books. The Deerfield recreational library has an interlibrary loan program with local public libraries and has received a "couple" of requests for large print books from the public libraries, which she has accommodated. Geist. Dep. 85:15-22; 86:1-3.

48. The Deerfield library also houses a collection of approximately 400 large print books. Geist

Dep. 51:6-12; 52:11-18. Ms. Geist has never received a request for a book in Braille. Geist Dep. 52:19-22.

49. As the Deerfield recreational librarian, Ms. Geist also provides prints documents for inmates at Deerfield upon, such as college applications, manuals, or other requested information. Geist Dep. 47:4-21; 51:13-22; 52:1-6. Ms. Geist creates these documents in large print upon request. Geist Dep. 48:4; 52:7-11.

50. The Deerfield recreational library has both a SARA Machine, that rotates through the school classrooms and recreational library, and a Merlin Machine to allow visually impaired inmates to read printed materials. Geist Dep. 86:4-9; 18:1-9.

51. The Merlin Machine magnifies any printed document that is placed on the machine onto a screen without talking or speaking back. Geist Dep. 86:12-20. It also allows for print documents to be color contrasted. Geist Dep. 90:8-14. Visually impaired inmates need only to come to the recreational library and verbally request to use the Merlin Machine. Geist. Dep. 87:13-17. The Merlin Machine is a in corner of the Deerfield recreational library that is not easily viewable by others in the library, giving the user privacy over its use. Geist Dep. 90:20-22; 91:1-5.

52. The SARA Machine in the Deerfield recreational library allows an inmate to place a print document on the machine and have the machine read the document aloud. An inmate uses headphones to listen to the SARA Machine read a document. Geist Dep. 92:6-22. The library provides headphones to inmate or inmates can bring their own for use on the SARA Machine. Geist Dep 100:1-5.

53. The Deerfield recreational library has personal magnifiers and magnifiers that may be placed over the computer screens. Geist Dep. 120:1-21.

54. Audio books are also available in the Deerfield recreational library, and a CD player that

can be checked out for use of these books. Geist Dep. 121:1-5.

55. Plaintiff Shabazz regularly used the SARA Machine in the Deerfield recreational library for his academic study and personal use at Deerfield. Geist Dep. 106:6-11; 107-108. Mr. Shabazz has never asked Ms. Geist for any other assistance related to his vision aside from the use of the SARA Machine. Geist Dep. 109:1-5.

56. Plaintiff Stravitz is employed in the Deerfield recreational library as one of the inmate aids. Mr. Stravitz has been employed in the Deerfield recreational library since 2022. Geist Dep. 133:1-10; 135:18-21.

57. Ms. Geist has made accommodations for Mr. Stravitz in his role as library aide, including increasing the computer's screen size capabilities on the circulation computer that Mr. Stravitz is most comfortably using while he is in the library. Mr. Stravitz was also provided with a physical screen magnifier. Geist Dep. 136:11-22; Dep. 137:4-10.

Facts about the Greenville Recreational Libraries

58. Mr. Shumate is a Librarian at Greenville in one of the three recreational libraries. The recreational libraries at Greenville are regular libraries in the sense that they are used for inmates' recreational use, and not for specific academic or legal purposes, just as regular public libraries are. Shumate Decl. ¶¶ 1, 4.

59. As a Greenville librarian, Mr. Shumate maintains a collection of books for inmates to check out at the library. Shumate Decl. ¶ 5.

60. The Greenville libraries have features that are readily available for use by blind or visually impaired inmates. Shumate Decl. ¶ 6.

61. Each of the three libraries at Greenville maintains a collection of large print books. Shumate Decl. ¶ 7.

62. There are computers in the libraries that maintain a catalog of the books available in the

libraries. These computers are for exclusive access to the On-Line Public Access Catalog (“OPAC”). They are accessible to anyone entering the library and provide search capability to the catalog. The library computers serve no other function than to search OPAC. Shumate Decl. ¶ 8.

63. The computers have standard Microsoft Windows capabilities, including magnifying capabilities. Therefore, if an inmate would like to magnify the OPAC catalog, he may do so via the Microsoft Windows magnifier. Shumate Decl. ¶ 9.

64. Further, as a librarian, Mr. Shumate is present in the library when it is open for inmate use, and he is available to assist any inmate with reading, writing, or using the computers in the library. And Mr. Shumate is aware that audiobooks may be available to inmates upon request. Shumate Decl. ¶¶ 10-11.

65. However, Mr. Shumate has been employed as a VDOC librarian at both Sussex II State Prison and Greensville Corrections Center, for over six (6) years, and during this timeframe, he has never received a request for help from any blind or visually impaired inmate, whether via a written request or verbally. Mr. Shumate has never received a request for assistance from a blind or visually impaired inmate seeking help with the computers or accessing audiobooks. Shumate Decl. ¶ 12.

VDOC offers accessible tablet technology to inmates.

66. JPay, LLC is a third-party vendor that provides inmate tablet technology. At this time, VDOC has a contract with JPay to provide inmate tablets to VDOC inmates. Welch Decl. ¶ 3.

67. JPay tablets are media devices that VDOC inmates can possess to communicate, via email, with family and friends, listen to music, read electronic books, and play games offered on the device. Welch Decl. ¶ 4.

68. The JPay tablets are the only personal media device available for use by inmates in VDOC

facilities. This is because VDOC has contracted with JPay specifically to provide secure tablets without internet or other capabilities, but with the ability to monitor messages and review inmate usage for security purposes. Welch Decl. ¶ 5.

69. VDOC tablets are currently equipped with accessibility features for visually impaired inmates that can be individually activated on each tablet. Welch Decl. ¶ 8.

70. These accessibility features include a zoom and magnification feature, that when activated on the VDOC inmate's tablet, allows an inmate to make the screen bigger and zoom in on text or images on the tablet. Welch Decl. ¶ 9.

71. VDOC's JPay tablets are also equipped with a "talk back" feature for secure messaging. Under this feature, the text will speak back to the inmate; an inmate can run his cursor over the message and the message be read aloud to the inmate. This feature is currently available on all VDOC inmate tablets, when activated. Welch Decl. ¶ 10.

72. VDOC inmates are also able to purchase an external braille keyboard that plugs into the JPay tablet. Further, numerous kiosks throughout VDOC facilities are equipped with braille keyboards. Welch Decl. ¶ 11.

VDOC offers inmates, including the Plaintiffs, equal access to work assignments.

73. VDOC OP 841.2 provides guidelines for inmate job assignments. Welch Decl. Encl. B. The policy provides that inmate work programs "must provide for the employment of inmates with disabilities as appropriate to the institution's mission and inmate population." *Id.* § V(B)(2). A disabled inmate who can perform the job requirements with an accommodation must be considered for the position. *Id.* § V(B)(4)(a). However, an inmate may not be placed in a work assignment that jeopardizes the safety of themselves or others. *Id.* § V(B)(4)(b).

74. Inmate jobs are classified as Grade Level I (Unskilled), Grade Level II (Semi-Skilled), or Grade Level III (Skilled), depending on the necessary level of training and independence in

performing the job. Welch Decl. Encl. B. § III(C)(6). The rate of pay increases with the skill level, with Grade III jobs earning the highest pay rate. *Id.* § VI(A)(1).

75. Job openings are posted on the housing unit's bulletin board. Marano Dep. 61:8-15. A visually impaired inmate may request that these postings be provided in an alternative format. Marano Dep. 61:16-18. Inmates may find out about available jobs by speaking with their counselors or unit managers. Talbott Dep. 199:9-200:3.

76. A disabled inmate can request an accommodation for a job by submitting a reasonable accommodation request form, or by making a verbal request to their counselor or the facility ADA Coordinator. Talbott Dep. 200:4-201:2.

77. VDOC does not categorically deny any blind or visually impaired inmates Grade 3 jobs. Two of the very Plaintiffs in this case have held Grade 3 jobs. Mr. Hajacos' job in the Wood Shop was a Grade 3 Job. Reed Aff. ¶ 3. Mr. Stravitz' library aid job at Deerfield is a Grade 3 Job. Stravitz Dep. 28:8-29:1.

VDOC provides accessible educational and vocational programming to blind inmates.

78. VDOC offers an extensive catalog of educational, vocational, and re-entry programming to all inmates.¹ These types of programs range from GED courses to courses on barbering, computer systems technology, HVAC/Refrigeration, cognitive development, and more. Butcher Dep. 14:12-13. Further, VDOC offers post-high school college courses through VDOC and its partner community colleges. Butcher 30(b)(6) Dep. 15:4-9; Butcher Dep. 30(b)(6) 16:1-7.

79. If an inmate arrives into VDOC without a high school diploma or GED, VDOC arranges for the inmate to be enrolled in GED courses. Butcher 30(b)(6) Dep. 16:17-22; Butcher 30(b)(6)

¹ See VA. DEP'T OF CORR., Programs, available at <https://vadoc.virginia.gov/inmates-and-probationers/incoming-inmates/facility-programs> (last visited Mar. 1, 2024).

Dep. 17:1-5. If an inmate already has a GED, he or she may partake in VDOC's adult educational courses, but it is not mandatory. Butcher 30(b)(6) Dep. 17:1-5; 17:10-15.

80. Some career and technical courses have writing and math eligibility requirements. Butcher 30(b)(6) Dep. 18:2-7. But an inmate's disability does not affect his or her eligibility for educational or vocational, and re-entry programming. Butcher 30(b)(6) Dep. 19:19-22; 20:1.

81. Any disabled inmate enrolled in academic courses or vocational programming will be evaluated for whether the inmate should need accommodations to be successful in the course(s) or programs(s). Butcher 30(b)(6) Dep. 20:4-15. Ms. Rashida Butcher, VDOC's Education Coordinator, meets with the inmate individually to discuss with him or her what accommodations are necessary for him or her in the class or program. Butcher 30(b)(6) Dep. 20:4-15; Butcher Dep. 21:13-14.

82. Ms. Butcher has had meetings with blind and visually impaired inmates about their disabilities and what accommodations they would require to be successful in their classes or programs. Butcher 30(b)(6) Dep. 20: 1-22; 21:1-20.

83. Ms. Butcher has worked with blind and visually impaired inmates to determine what best works for each of them individually to be successful in the classroom; some of the accommodations that Ms. Butcher has found to be successful for certain individuals include hand-held magnifiers, color overlay, a video magnifier, screen reader software, books in alternate formats, a SARA scanner, large print keyboards, and large print materials. Butcher 30(b)(6) Dep. 22:13-22; 23:1-4.

84. If a student requires screen reader software, VDOC provides a computer that can given to the inmate for use in the classroom at any VDOC facility and teaches the inmate how to use the computer with the software. Butcher 30(b)(6) Dep. 23:7-19.

85. VDOC also works with the Virginia Assistive Technology System² to help teach inmates how to use accessible technology. Butcher 30(b)(6) Dep. 23:20-21.

86. Ms. Butcher always provides individuals with disabilities with accommodations for his or her academic or vocational classes or programs. An accommodation has never been denied. Butcher 30(b)(6) Dep. 23:20-21.

d. VDOC's Grievance Procedure

Facts about VDOC OP 866.1

87. Operating Procedure ("OP") 866.1, Offender Grievance Procedure governs VDOC's inmate grievance procedure. Copies of OP 866.1, dating back to January 1, 2015 through the present, are attached to Ms. DeBerry's Affidavit and Ms. Phillips' Declaration Affidavit as Enclosure A.³

88. All inmate issues are grievable except those pertaining to the policies and decisions of the Virginia Parole Board, institutional disciplinary hearings, state and federal court decisions, laws and regulations, and matters beyond the control of VDOC. DeBerry Aff; ¶ 5 Kelly Decl. ¶ 5 and Encls. A.

89. The first written step in VDOC's grievance process is the filing of an Informal/Written Complaint.⁴ DeBerry Aff; ¶ 6 Kelly Decl. ¶ 6 and Encls. A.

² See VIRGINIA ASSISTIVE TECH. SYSTEM, <https://www.vats.virginia.gov/> (last visited Mar. 1, 202).

³ VDOC OP 866.1 has been amended over the course of time and therefore every version of the OP that was in effect during the period of time relating to the Plaintiffs' allegations is attached to this Affidavit. Although minor edits to OP 866.1 were made over the course of time, the overall process for filing Informal/Written Complaints, Regular Grievances, and appeals has remained the same.

⁴ In the versions of VDOC OP 866.1 with effective dates of July 1, 2013 and July 1, 2016, the first written step of the grievance process was to file what was called an "Informal Complaint." Under the policy in effect on January 1, 2021, the title of the "Informal Complaint" was changed to "Written Complaint." Accordingly, throughout this Memorandum, the term "Informal/Written Complaint" to refers to the document that must be filed as the first written step of VDOC's

90. The next step in VDOC's grievance process is the filing of a Regular Grievance. When filing a Regular Grievance, the inmate must attach any required documentation to the Regular Grievance, including documentation demonstrating his attempt to informally resolve the issue via the Informal/Written Complaint process. Beginning with the June 1, 2022 amendment to OP 866.1, if an inmate is specifically grieving a failure to accommodate his disability, he should attach his Request for Reasonable Accommodation form to have his Regular Grievance accepted at inmate. DeBerry Aff; ¶ 7 Kelly Decl. ¶ 7 and Encls. A.

91. Those Regular Grievances that do not meet the filing requirements of OP 866.1 are returned to the inmate noting the reason for the return on the intake section of the Regular Grievance form. The inmate is instructed on how to remedy any problems with the Regular Grievance when feasible so that he/she may re-file the Regular Grievance and have it accepted at intake. DeBerry Aff; ¶ 8 Kelly Decl. ¶ 8 and Encls. A.

92. If a Regular Grievance meets the filing requirements of OP 866.1 it is accepted at intake and there are three (3) possible levels of review. For most issues, Level II is the final level of review. For issues regarding an inmate's disability accommodations and retaliation, Level II is the highest level of review. Aff; ¶ 9 Kelly Decl. ¶ 9 and Encls. A.

Facts about the Accessibility of Grievances at Deerfield and Greenville

93. At Greenville and Deerfield, Informal/Written Complaints and Regular Grievance forms are available for inmates' use in their housing pod. These forms are available in the housing pods in the Officer Control Booths. Further, inmates can request these forms from Unit Managers, Building Lieutenants, and/or Counselors when those staff make daily rounds. Inmates can also ask

grievance process. The change to the title of the form did not reflect a substantive change to this step of the grievance process.

any Officer and that Officer will let the building supervisor(s) know that a grievance form is needed. Aff; ¶ 10 Kelly Decl. ¶ 10.

94. If an inmate is unable to read or write a grievance form, he may ask any Greenville or Deerfield staff member for assistance. VDOC staff make daily rounds in inmate's housing units. If an inmate would like assistance with writing any grievance document, he may request the assistance of his Unit Manager, Counselor, or any other VDOC staff member. Aff; ¶ 11 Kelly Decl. ¶ 11.

Facts about the Deerfield and Greenville Plaintiffs' Grievance Reports

95. Attached to the Affidavit of Deerfield's Grievance Coordinator, Joyce DeBerry, are the Grievance Reports of Mr. Stravitz, Mr. Shaw, Mr. Shabazz, and Mr. McCann, from January 1, 2014 through January 1, 2024. DeBerry Aff; ¶ 12. Encls. B, C, D, and E.

96. Attached to the Affidavit of Greenville's acting Grievance Coordinator, Kelly Phillips, are the Grievance Reports of Mr. Courtney and Mr. Hajacos, dated from January 1, 2014 through January 1, 2024. Phillips Decl. ¶ 12 and Encls. B, and C.

97. A Grievance Report is a VDOC document that reflects all Informal Complaints, Regular Grievances that were accepted at intake, and appeals to Level II of Regular Grievances, that have been filed by an inmate. All Informal/Written Complaints, accepted Regular Grievances, and appeals of Regular Grievances are logged on an inmate's Grievance Report in accordance with VDOC OP 866.1. However, a Grievance Report does not reflect Regular Grievances that were rejected at intake. DeBerry Aff; ¶ 12; Kelly Decl. ¶ 12.

98. Therefore, all Informal/Written Complaints, accepted Regular Grievances, and appeals to Level II that Mr. Courtney, Mr. Hajacos, Mr. Stravitz, Mr. Shaw, Mr. Shabazz, and Mr. McCann

filed between January 1, 2014 and January 1, 2024 are reflected on each individual's Grievance Report. DeBerry Aff; ¶ 12; Kelly Decl. ¶ 12.

e. Facts about the Individual Plaintiffs

Facts about Mr. Courtney

Facts about Mr. Courtney's Failures to Exhaust all of his Claims

99. Ms. Phillips, Greenville's acting Grievance Coordinator,⁵ has reviewed Mr. Courtney's Grievance File and Grievance Report related to his claims in this action. Phillips Decl. ¶¶ 13-14.

100. According to Mr. Courtney's Grievance File and Grievance Report, Mr. Courtney filed one Informal/Written Complaint wherein Mr. Courtney alleged that he was denied dimmer light in his cell. However, Mr. Courtney did not file any accepted Regular Grievances related to this Informal/Written Complaint. Mr. Courtney therefore did not exhaust his allegations with respect to his claim that he was denied dimmer light in his cell. Phillips ¶ 17 and Encl. B

101. Mr. Courtney's Grievance File and Grievance Report demonstrates that Mr. Courtney did not file any other Informal/Written Complaints related to his specific allegations against the Defendants in this case. Phillips ¶ 13-14 and Encl. B

Facts about Mr. Courtney's Retaliation Claim

102. VDOC Operating Procedure ("OP") 841.5, Substance Use Testing and Treatment Services, sets forth the policies and procedures regarding drug testing of VDOC inmates. Smith Dep. 56:21-57:18; Smith Ex. 2. The policy provides for circumstances in which inmates at VDOC institutions are to be drug tested, including upon intake to VDOC, upon transfer to another institution, prior to discharge to the community, upon suspicion of and inmate's drug use, and at random on a monthly

⁵ Ms. Phillis is the Law Librarian at Greenville but is currently helping to assist in the Greenville Grievance Department with the processing of inmates' grievances. Phillips Decl. ¶ 1. Therefore, for purposes of this Memorandum, Ms. Phillips is referred to as Greenville's "acting Grievance Coordinator."

basis. Smith Ex. 2. The policy permits Facility Unit Heads to authorize additional testing beyond these minimum requirements. Smith Ex. 2.

103. Defendant Smith, in his role as an Intelligence Officer, conducted frequent drug tests of inmates, testing multiple inmates per day for up to five days per week. Smith Dep. 56:3-10. He would be directed to conduct drug tests through multiple processes, including on direction from the warden or his supervisor, Lieutenant Batts, or upon receiving a report from housing unit staff of suspected drug use. Smith Dep. 56:11-20.

104. On October 27, 2022, a letter was issued by counsel for Plaintiff Courtney to Harold Clarke, the former Director of VDOC, alleging that Courtney and other Plaintiffs in this case were receiving inadequate accommodations for their disabilities. Smith Dep. 109:6-22; Smith Ex. 3.

105. On November 21, 2022, counsel for Plaintiff Courtney issued a letter addressed to Defendant Talbott alleging that he had experienced difficulty obtaining solution for his contact lenses. Smith Dep. 110:9-111:8; Smith Ex. 4; Talbott Dep. 266:16-267:5; Talbott Ex. 10. Ms. Talbott testified that she spoke to medical staff about the concerns raised in the letter, and that she may have also spoken to Defendant Marano, but she denied talking to security staff about the letter. Talbott Dep. 267:6-271:6. Talbott further denied having instructed anyone to drug test Courtney or having tampered with the results of the subsequent drug test. Talbott Dep. 309:19-310:14.

106. In his deposition testimony, Officer Smith denied knowing that Courtney had complained of his accommodations or that he was contemplating litigation. Smith Dep. 107:12-109:5. He also denied being aware of the letters Courtney's attorneys had written. to Clarke and Talbott. Smith Dep. 109:16-110:8, 111:3-17

107. On December 14, 2022, Officer Smith's supervisor, Lieutenant Batts, sent an email to Smith, directing him to drug test Courtney because Courtney had not been tested since 2019. Smith

Dep. 113:12-18, 115:19-116:4, 137:19-138:13; Smith Ex. 7. Officer Smith testified that it was not unusual for him to be directed to a drug test on an inmate if the inmate had not been tested for some time. Smith Dep. 149:13-150:5.

108. On December 20, 2022, an officer in the control booth informed Courtney that he would be drug tested. Courtney Dep. 181:15-182:13. Approximately thirty to forty minutes later, Smith escorted Courtney to a staff bathroom to conduct the drug test. Courtney Dep. 182:14-183:11. Smith told Courtney that the drug test was routine, and he said nothing to Courtney about the letters written by his attorneys. Courtney Dep. 182:18-183:5.

109. Officer Smith testified that it was common to conduct inmate drug tests in staff restrooms. Smith Dep. 118:8-119:7. There are no cameras present in the staff restroom, and Smith testified that drug tests are not conducted on camera in order to ensure privacy. Smith Dep. 149:9-12.

110. Smith and Courtney entered the restroom, where Courtney urinated into a sample cup. Courtney Dep. 184:2-4. Smith then placed a tamper seal on the cup and directed Courtney to leave. Courtney Dep. 184:5-12; Smith Dep. 119:21-120:5. Officer Smith then placed the sample cup in a cooler. Smith Dep. 119:21-120:11. Smith and Courtney were the only individuals at Greenville who handled the sample cup. Smith Dep. 120:12-16; VDOC chain of custody form. The sample was then sent to the Virginia Division of Consolidated Laboratory Services (“DCLS”) for testing. Smith Dep. 120:17-19; Angle Aff. Encl. E.

111. Courtney’s urine sample was tested for marijuana, amphetamines, and buprenorphine. Smith Dep. 122:2-20; Angle Aff. Encl. E. Officer Smith testified that urine samples collected at that time were generally tested for those three substances, and other inmates tested on that same date were also tested for those substances. Smith Dep. 122:13-20, 152:9-20.

112. On December 27, 2022, tests of Courtney’s urine sample returned positive results for

marijuana and amphetamines. Angle Aff. ¶ 4 and Encl. A. The results were input by DCLS staff into VDOC's electronic case management system, and Smith was notified of the results. Smith Dep. 102:12-17, 123:19-124:15; Smith Ex. 5.

113. After receiving the positive drug test results, Smith wrote a disciplinary charge against Courtney for being under the influence of drugs. Smith Dep. 125:11-126:20. Following a hearing, Courtney was found guilty of the charge. Courtney Dep. 184:20-186:3.

114. Smith denies having ever altered or fabricated a urine sample, and specifically denies having done so to Courtney's urine sample. Smith Dep. 152:17-153:4.

115. DCLS testing and chain-of-custody records show no indication of tampering, adulteration, or contamination of the sample. Angle Aff. ¶ 10.

Facts about Mr. Hajacos

Facts about Mr. Hajacos' Failure to Exhaust All but One of his Claims

116. Ms. Phillips, Greenville's Law Librarian, has reviewed Mr. Hajacos' Grievance File and Grievance Report related to his claims in this action. Phillips Decl. ¶¶ 20-21.

117. Mr. Hajacos' Grievance File and Grievance Report demonstrate that Mr. Hajacos has not filed any Informal/Written Complaints about most of his allegations in this lawsuit. Mr. Hajacos' Grievance File and Grievance Report demonstrate that Mr. Hajacos has only exhausted his allegations and claims regarding his allegations that he was fired from his Job in the Wood shop because he required to give up his accommodations in his Housing Unit. Phillips Decl. ¶ 21-22 and Encl. C.

118. However, according to Mr. Hajacos' Grievance File and Grievance Report, Mr. Hajacos did file an Informal/Written Complaint and Regular Grievance related to his allegations that he has been denied accommodations for his JPay Tablet. However, Mr. Hajacos' Grievance File and

Grievance Report detail that Mr. Hajacos did not appeal the Regular Grievance that he filed on this JPay issue to Level II. Mr. Hajacos therefore failed to exhaust his administrative remedies available to him regarding this issue. Phillips Decl. ¶ 23 and Encl. C.

119. Mr. Hajacos has filed one-hundred-and-seventy-five (175) Informal/Written Complaints, accepted Regular Grievances, and appeals of Regular Grievances while housed at various VDOC institutions, including Greenville. Phillips Decl. ¶ 25 and Encl. C.

Facts about Mr. Hajacos Wood Shop Job

120. Beginning on February 19, 2019, Mr. Hajacos was employed in the S-2 Wood Shop at Greenville, which is a Grade 3 Skilled Job. Reed Aff. ¶ 3.

121. When VDOC first began confronting the spread of COVID-19, Greenville determined it was best to house all inmates who worked in the S-2 Wood Shop in Housing Unit 5, so that the Wood Shop inmates would be housed in one unit. Therefore, should a COVID-19 outbreak occur in the Wood Shop, the outbreak would be limited to the one housing unit where all of the Wood Shop workers lived, rather than risking the spread of COVID-19 to all other, various housing units in which the Wood Shop workers lived. Reed Aff. ¶ 6.

122. COVID-19 outbreaks were a particular concern at Deerfield because Deerfield houses many elderly and medically infirm inmates. Reed Aff. ¶ 7.

123. At that time, Mr. Hajacos was housed in Housing Unit 4, which is a Housing Unit designed for deaf inmates. Reed Aff. ¶ 8.

124. Mr. Hajacos refused to move to Housing Unit 5, which meant that if he continued to work in the Wood Shop and a COVID-19 outbreak occurred in the Wood Shop, he would expose inmates who are not employed in the Wood Shop but lived in Housing Unit 4 to COVID. Reed Aff. ¶ 9.

125. Mr. Hajacos was therefore removed from his employment in the S-2 Woodshop on November 1, 2021, in order to prevent the risk of COVID-19 exposure to the inmates housed in Mr. Hajacos' Housing Unit 4. Reed Aff. ¶ 10.

126. At Greenville, Housing Unit 4 is a housing unit that houses many, but not all, hearing impaired inmates. Housing Unit 4 has a message board on the wall and a scrolling board that allows hearing impaired inmates to read announcements. VDOC staff also flip the lights in Housing Unit 4 to alert inmates of when it's time to stand for count, go to chow, or for other daily activities. Talbott Decl. ¶ 5.

127. Some additional accommodations available to hearing impaired inmates at Greenville are access to videophones, American Sign Language ("ASL") Interpreters, and TTY⁶ phones. Talbott Decl. ¶ 6.

128. Had Mr. Hajacos moved to Housing Unit 5, he could have kept all of his personal accommodations that VDOC had approved for him at that time, such as his hearing aids, DVD Player, DVDs, and vibrating alarm clock. Talbott Decl. ¶ 7 and Encl. A.

129. Additionally, had Mr. Hajacos moved to Housing Unit 5, he still would have had access to the videophones, ASL Interpreters, and TTY phones. Access to these items may be requested by any hearing-impaired inmate at Greenville, not just those housed in Housing Unit 4. In fact, access to these items is largely dependent on the availability of these items in each housing unit. For example, as Housing Unit 4 has many hearing-impaired inmates, the videophones can be fully booked at a time. Because Housing Unit 5 has fewer hearing-impaired inmates, Mr. Hajacos likely

⁶ TTY stands for "teletypewriter" and is a type of phone designed for hearing impaired individuals so that the individual sees a screen and types a text message to the recipient.

would have had greater access to the videophones in Housing Unit 5, since that housing unit does not house as many hearing-impaired inmates. Talbott Decl. ¶ 8.

Facts about Mr. Hajacos' Computer Class

130. Mr. Hajacos has been registered for the Computer Systems Course at Greenville on and off since December 2018. This computer course equips students with the skills to manage computer systems and develop applications. The coursework covers computer/device networking, electronic communications, software application development, computer hardware, and project management. The computer labs at Greenville are equipped with the latest technologies and offer hands-on learning. Zormelo Decl. ¶¶ 5-6.

131. In the Computer Systems Technology course, Mr. Hajacos has been provided with a variety of accommodations for his vision and hearing impairments, including screen reader software, headphones with manual volume adjustment, closed captioning for video, and magnifying eyeglasses. Zormelo Decl. ¶ 7.

132. Additionally, should Mr. Hajacos ever need assistance reading or writing any document, Mr. Zormelo is available to assist him. Zormelo Decl. ¶ 8.

133. The computer teacher, Mr. Zormelo, also employs an inmate aid as an assistant in his classroom. This aid is able to read, write and interpret sign language, is hearing impaired, and is available to assist Mr. Hajacos in the Computer Systems Technology class. Zomerlo Decl. ¶ 9.

134. As testified to by Mr. Hajacos, Mr. Hajacos' textbook is electronically accessible to him in his Computer Systems Technology class. He is able to read the textbook on the laptop provided to him. Hajacos Dep. 31:1-5; 31:17-25.

135. Mr. Hajacos has not filed any grievances at Greenville about his Computer Systems Textbook not being accessible to him at Greenville. Phillips Decl. ¶ 21-22 and Encl. C.

Facts about Mr. Shabazz

Facts about Mr. Shabazz's Failure to Exhaust Most of his Claims

136. Ms. DeBerry, Deerfield's Grievance Coordinator, has reviewed Mr. Shabazz's Grievance File and Grievance Report related to his claims in this action. DeBerry Aff. ¶ 20-21.

137. According to Mr. Shabazz's Grievance File and Grievance Report, Mr. Shabazz has not filed any Informal/Written Complaints about most of his allegations in this lawsuit. Mr. Shabazz's Grievance File and Grievance Report demonstrate that Mr. Shabazz has only exhausted his allegations and claims that other inmates read and/or write documents for him, and that he has been denied a Grade 3 Job at Deerfield. DeBerry Aff. ¶ 20-23 and Encl. C.

138. Mr. Shabazz exhausted his claim that other inmates read and write for him on October 21, 2019. DeBerry Aff. ¶ 21 and Encl. C.

139. Mr. Shabazz also exhausted his claim that he has been denied a Grade 3 Job Assignment at Deerfield on December 21, 2022. DeBerry Aff. DeBerry Aff. ¶ 23 and Encl. C.

140. Although Mr. Shabazz has filed Informal/Written Complaints at Deerfield about his allegations that he has not been provided with accessibility features on his JPay tablet and that VDOC has failed to provide accessibility software for use by blind and/or visually impaired inmates in the Deerfield Law Library, Mr. Shabazz did not file any accepted Regular Grievance(s) or appeals related to these Informal/Written Complaints. DeBerry Aff. ¶¶ 22, 28.

141. Mr. Shabazz has only exhausted his claim(s) that other inmates read and/or write for him at Deerfield, and that he has been denied a Grade 3 Job Assignment at Deerfield. DeBerry Aff. ¶¶ 21, 23.

142. Mr. Shabazz has filed at least one-hundred-and-fifty-five (155) Informal/Written

Complaints, Regular Grievances, and appeals while housed at various VDOC institutions, including Deerfield. DeBerry Aff. ¶ 29 and Encl. C.

Facts about Mr. Shabazz's GED Class

143. Mr. Shabazz received his General Equivalency Diploma (“GED”) at Deerfield on August 23, 2023. Turner Aff. ¶ 7.

144. During the course of his GED classes, Mr. Shabazz advanced through Ms. Johnson’s classes from ABE Level 3 (Low Intermediate Basic Education) to completion of his GED in 2023. Johnson Aff. ¶ 4.

145. In his GED classes, Mr. Shabazz was provided with the following accommodations: Read-aloud, extra time, and scribe accommodations on standardized tests; a tactile globe; an ADA laptop with JAWS screen reading software and Typeability software (Mr. Shabazz learned how to type and use basic Window-based software in class); a talking dictionary; a talking calculator; math manipulatives (3D geometric figures, teacher-made tactile graphics, etc.); preferential seating in class (near the teacher); read-aloud by the teacher for math and graphics questions; one-on-one/small group instruction; a SARA machine; and, PlaticKlips for marking pages in books. Johnson Aff. ¶ 5.

146. Following Mr. Shabazz’s completion of his GED courses, Greenville celebrated Mr. Shabazz’s accomplishment in its VDOC’s Correctional Connection Newsletter, which included several quotes from Mr. Shabazz. Turner Aff. Encl. A. The Newsletter article is as follows:

Overcoming Obstacles



Submitted by Principal Amy Turner: On Thursday August 31, 2023, Mr. Kevin Shabazz received a diploma for earning his GED and completing Computer Literacy. Being recognized at a graduation ceremony is an accomplishment on its own with all the challenges incarcerated students face in addition to the daily challenges Mr. Shabazz with a visual impairment.

When asked what the biggest challenge Mr. Shabazz faced, he indicated the graphs in science and social studies. "I cannot visually see them, so I had to pay attention and try to visualize what the reader was telling me." I asked Mr. Shabazz how earning his GED will help him in the future. He responded, "I hope the GED can help me further my education to higher learning. I'm focusing on getting a Pell Grant and

hoping to get business courses for entrepreneurship." He hopes to gain a better understanding of what it takes to run a business and the different aspects of marketing and economics.

I asked Mr. Shabazz what helped him the most with achieving his GED. He said, "My first tutor was very hands on and gave me an understanding, the concepts of what was being taught. My teacher, Ms. Johnson was a big help. Coming over and committing towards getting my GED. Volunteering to do double periods helped a whole lot." I asked Mr. Shabazz why it was so important to obtain his GED. "I feel like I owe it to myself to get my GED; it will help get me to the next step. It was a challenge not being able to see. Now a days you need some type of education- either your high school diploma or GED. I told my mom before she passed away, I would get my GED."

His teacher Ms. Johnson had the following to add, "To be able to achieve his GED while incarcerated is an accomplishment in itself, but to overcome the challenges that come with his disability is phenomenal. As his teacher, I had to learn alongside him to help him obtain his goal."

Turner Aff. Encl. A.

147. Mr. Shabazz has never filed any grievances at Deerfield related to his GED courses or his need for additional accommodations for those classes. DeBerry Aff. ¶ 19.

Facts about Mr. Shabazz's Computer Class

148. Mr. Shabazz was also enrolled in Mr. Futrell's Computer Literacy class at Deerfield. This program provides instruction on the fundamentals of keyboarding and numeric data entry; file management and navigation techniques of a Windows-based operating system; personal computer maintenance tips; and basic functions and techniques utilized in word processing and spreadsheet software. Mr. Shabazz completed this course successfully from October 12, 2022 to June 8, 2023.

Futrell Aff. ¶ 4.

149. Mr. Shabazz's laptop in Mr. Futrell's class was equipped with Job Access With Speech ("JAWS") screen reading software and Typeability software. Mr. Futrell maintains a digital copy of the main textbook used to teach the course that was formatted so that JAWS could read it clearly and explain the illustrations and projects that Mr. Shabazz used. For course materials that were not digital, Mr. Shabazz used the SARA machine. Mr. Shabazz completed the course with an average typing speed of 47wpm. Futrell Aff. ¶ 5.

150. Further, as a licensed teacher, Mr. Futrell was available to help Shabazz if he needed any assistance with reading or writing any document. Futrell Aff. ¶ 6.

151. Students in the Computer Literacy class are allowed to take "brain breaks" since they were in class almost 4 hours at a time, 4 days a week. During Mr. Shabazz's breaks he was allowed to use the SARA machine to read personal items, such as mail. Futrell Aff. ¶ 7.

152. Mr. Shabazz has never filed any grievances at Deerfield related to his computer class or his need for additional accommodations for that class. Deberry Aff. ¶ 19.

Facts about Mr. Shabazz's Access to the SARA Machine in the Deerfield Law Library

153. For approximately the last year and a half, Mr. Shabazz has been the only inmate at Deerfield who has requested to use Deerfield Law Library's SARA Machine. Delbridge Dep. 20:7-9; 116:13-21.

154. As testified to by Mr. Shabazz at his deposition, Mr. Shabazz has access to the SARA Machine in the Deerfield Law Library every day of the week, for at least an hour, and he does not have to submit a request for use of the machine. Shabazz Dep. 15-16.

Facts about Mr. Shabazz's Employment at Deerfield

155. Deerfield does not categorically prohibit Mr. Shabazz from holding jobs at Deerfield due to his vision. Mr. Shabazz is currently employed in the laundry department. Ponton Decl. ¶ 14.

156. Job placement at Deerfield is dependent on job availability. When a job opens at Deerfield, an inmate can submit an application to his Counselor, and the Counselor forwards that application to whatever department is hiring for consideration. Ponton Decl. ¶¶ 8-11.

157. Mr. Shabazz previously applied for a main laundry job “four or five years ago”, but he was not hired for this position. Shabazz Dep. 50:24-25; 51:1-2.

158. Mr. Shabazz previously applied for a buffering position in 2017 or 2018, but he was not hired for this position. Shabazz Dep. 51:11-15.

159. Mr. Shabazz previously applied for a “pod clerk” position sometime in August or September 2022. Shabazz Dep. 51:16-20. However, there is not an inmate job called “pod clerk” at Deerfield. Deerfield does have a position called “pod tutor,” but there is not a job with the title “pod clerk.” Ponton Decl. ¶ 11 and Encls. A and B.

160. Mr. Shabazz has not exhausted his claims that he has been denied the main laundry, buffering position, or “pod clerk” position(s) at Deerfield. DeBerry Aff. ¶¶ 19, 27.

Facts about Mr. Stravitz

Facts about Mr. Stravitz’s Failure to Exhaust all of his Claims

160. Ms. DeBerry, Deerfield’s Grievance Coordinator, has reviewed Mr. Stravitz’s Grievance File and Grievance Report related to his claims in this action. DeBerry Aff. ¶¶ 31-34 and Encl. D.

161. According to Mr. Stravitz’s Grievance File and Grievance Report, Mr. Stravitz has not filed any Informal/Written Complaint about any of his allegations in this lawsuit. DeBerry Aff. ¶¶ 31-34 and Encl. D.

Facts about Mr. Stravitz’s Allegations

161. Mr. Stravitz held a job as a tutor beginning in 2020, but due to the COVID pandemic did not begin working until 2021. Stravitz Dep. 29:2-17. He has testified that, while working as a tutor,

he had difficulty using a computer due to the brightness of the screen. Stravitz Dep. 191:16-192:1. His supervisor provided color filters for use on the computer screen, which he testified provided some help. Stravitz Dep. 192:2-5. His supervisor also switched the color of an electronic board in the classroom from white to black and purchased fountain pens with neon coloring, which also allowed him to see what was written on the board. Stravitz Dep. 192:11-193:1.

162. Beginning in November 2022, Mr. Stravitz has worked as a library assistant in Deerfield's recreational library. Stravitz Dep. 32:7-12. His job duties included checking books in and out, research, searching for missing or overdue books, and cleaning. Stravitz Dep. 27:21-28:4. This position is a Grade 3 Job, paying \$0.45 per hour. Stravitz Dep. 28:8-29:1

163. Mr. Stravitz testified that, in his position as a library assistant, he had difficulty seeing letters and numbers and with glare from the computer screen. Stravitz Dep. 33:18-34:13. His supervisor provided him with a magnifier for the computer screen and a translucent paper filter to reduce glare. Stravitz Dep. 86:10-22. His supervisor also provided him with a gel ink pen that wrote darker, which he could see better. Stravitz Dep. 189:10-24.

164. Mr. Stravitz did not miss any work or lose any earnings in his library assistant or tutor jobs because of problems with his vision. Stravitz Dep. 34:14-22, 35:9-14. He was not terminated from his position as library assistant. Stravitz Dep. 35:5-8.

165. Other accommodations that Mr. Stravitz has utilized for his vision at Deerfield included sunglasses, large print books, a book light, and reading glasses. Stravitz Dep. 86:4-9; Stravitz Dep. 86:23-87:10; Stravitz Dep. 86:4-9, 86:23-87:10.

166. Mr Stravitz did not file any grievances regarding accommodations for his eyesight or with his job. DeBerry Aff. ¶¶ 31-34 and Encl. D.

167. Mr. Stravitz received surgeries for his cataracts in October 2023. Stravitz Dep. 88:6-13.

Mr. Stravitz has testified that following this surgery, he can see and function independently without any impairment to his vision. Stravitz Dep. 196:1-11.

Facts about Mr. Shaw

Facts about Mr. Shaw's Failure to Exhaust all of his Claims

168. Ms. DeBerry, Deerfield's Grievance Coordinator, has reviewed Mr. Shaw's Grievance File and Grievance Report related to his claims in this action. DeBerry Aff. ¶ 13-14 and Encl. B.

169. According to Mr. Shaw's Grievance File and Grievance Report, Mr. Shaw has not filed any Informal/Written Complaints about most of his allegations in this lawsuit. DeBerry Aff. ¶ 13-14 and Encl. B.

170. Mr. Shaw's Grievance File and Grievance Report demonstrate that Mr. Shaw only filed Informal/Written Complaints about being denied accessibility features for his JPay tablet but that Mr. Shaw did not file any Regular Grievances that were accepted at intake related to this these Informal/Written Complaints. Mr. Shaw therefore did not exhaust his administrative remedies with respect to allegations. DeBerry Aff. ¶¶ 15-16 and Encl. B.

171. Mr. Shaw has filed at least sixty (60) Informal/Written Complaints, accepted Regular Grievances, and appeals while housed at various VDOC institutions, including Deerfield. DeBerry Aff. ¶ 18 and Encl. B.

Facts about Mr. Shaw's Computer Class

172. Four years ago, Mr. Shaw was placed on the waiting list for a computer class at Deerfield. Shaw Dep. 73:12-25; 74:14-20.

173. About a year and a half later, Mr. Shaw was notified that he had been enrolled in the computer class. Shaw Dep. 74:21-25; 75:3-5.

174. It was explained to Mr. Shaw that Deerfield could not allow his Caregiver to attend the class with him but that if Mr. Shaw needed assistance in the classroom or being escorted to the

bathroom, the teacher's aid in the class would assist him. Shaw Dep. 75:6-9.

175. This was unsatisfactory to Mr. Shaw, so Mr. Shaw did not take the class. Shaw Dep. 75:18-14; 76:8-10.

176. Mr. Shaw has never submitted a grievance about his computer class at Deerfield, or being denied accommodations for it. DeBerry Aff. ¶¶ 13-14 and Encl. B.

177. Mr. Shaw explained at his deposition that he never filed a grievance about his computer class at Deerfield. Shaw Dep. 87:2.

Facts about Mr. Shaw's Employment

178. Mr. Shaw was previously employed as a Tutor in the Horticulture Class at Deerfield, until April 18, 2007. Shaw Dep. 89-90.

179. However, in 2007, Mr. Shaw began having heart and vision problems, "so 2007 was the last time that [Mr. Shaw] did any institutional jobs." Shaw Dep. 89:20.

180. Jobs are available to inmates at Deerfield, but the first step towards getting a job is to apply for one by submitting an application to one's assigned Counselor. Ponton Decl. ¶¶ 8-11.

181. As testified to by Mr. Shaw, Mr. Shaw has never inquired with his Counselor about the availability of jobs for him at Deerfield. Shaw Dep. 142:13-16.

182. Mr. Shaw has never submitted a grievance about not being able to get a job, or the availability of jobs, at Deerfield. DeBerry Aff. ¶¶ 13-14 and Encl. B.

183. Mr. Shaw has also never submitted a grievance about wanting or needing occupational therapy at Deerfield in order to have a job. DeBerry Aff. ¶¶ 13-14 and Encl. B.

Facts about Mr. Shaw's Housing

184. Mr. Shaw has been living in Deerfield's Dorm Style pod since 2017. Shaw Dep. 31:22-25; 32-1-4.

185. Mr. Shaw has never submitted a grievance about wanting to live in a cell, or that he is unable to live in a dormitory style setting at Deerfield. DeBerry Aff. ¶¶ 13-14 and Encl. B.

186. Mr. Shaw explained in his deposition that he never filed a grievance about the dorm style housing because, “it wasn’t just like they singled me out, they said they were closing the building down and not going to use it for inmates no more, so I was told -- and I’m telling you this in all honesty and sincerity, that warden and that administration was so nice and respectful to me, and I had such respect for them, that I wasn’t going to be a problem because of something was happening I didn’t like.” Shaw Dep. 31:5-13.

187. At his deposition, when asked about his allegations that he has hit his head on the top bunk of his bed, Mr. Shaw explained that “it’s only happened twice to me where I actually had blood. The first time was some years ago in the veterans pod, because they had a bunk above me, and they had to put a butterfly on a cut on my head.” Shaw Dep 103:6-7. Mr. Shaw explained that he was housed in the Veterans Pod “at least four years ago.” Shaw Dep. 105:10-12.

188. Mr. Shaw further explained that “this [second] time it was just it hit my head hard enough it made my nose bleed but it didn’t cut me. So that was the 24th of November [2023].” Shaw Dep. 103:9-12.

189. Mr. Shaw has never submitted a grievance about hitting his head on the top of his bunk at Deerfield. DeBerry Aff. ¶¶ 13-14 and Encl. B.; Shaw Dep. 106:10-13.

Facts about Mr. Shaw’s Caregiver

190. Mr. Shaw is currently assigned a Caregiver at Deerfield. Shaw Dep. 107.

191. Mr. Shaw’s caregiver helps him with walking to the shower while Deerfield staff “take us to the shower so there’s not a bunch of people and a bunch of obstacles.” Shaw Dep. 107:19-22.

192. Mr. Shaw has never filed any grievances related to his Caregiver at Deerfield. DeBerry Aff. ¶¶ 13-14 and Encl. B.

Facts about Mr. McCann

Facts about Mr. McCann's Failure to Exhaust Most of his Claims

193. Ms. DeBerry, Deerfield's Grievance Coordinator, has reviewed Mr. McCann's Grievance File and Grievance Report related to his claims in this action. DeBerry Aff. ¶ 35-40 and Encl. E.

194. According to Mr. McCann's Grievance File and Grievance Report, Mr. McCann has not filed any Informal/Written Complaints about most of his allegations in this lawsuit. Mr. McCann's Grievance File and Grievance Report demonstrate that Mr. McCann has only exhausted his allegations and claims that other inmates read and/or write for him, and that Mr. McCann was denied more tape on his housing unit floor as an accommodation. DeBerry Aff. ¶¶ 35-40 and Encl. E.

195. Mr. McCann exhausted his allegations that other inmates read and/or write for him on March 8, 2018 and March 15, 2018, and March 25, 2022. DeBerry Aff. ¶ 37 and Encl. E.

196. Mr. McCann exhausted his allegations that he was denied additional floor markings for his vision on November 15, 2023. DeBerry Aff. ¶ 39 and Encl. E.

197. Mr. McCann has filed at least one-hundred-and-ninety (190) Informal/Written Complaints, accepted Regular Grievances, and appeals to Level II while housed at various VDOC institutions, including Deerfield. DeBerry Aff. Encl. E.

Facts about Mr. McCann's Allegations

198. McCann testified that he utilizes the assistance of his assigned Caregiver to assist with reading and writing. McCann Dep. 22:10-23:2. He testified that he only rarely asks staff for assistance with reading and writing because he does not trust them. McCann Dep. 23:3-23. McCann states that staff have asked him to wait before providing assistance but have not refused to assist with reading or writing at all, although he clarified that he has been told that medical staff would not assist him. McCann Tr. 23:25-24:20.

199. McCann alleges that he attempted to file a grievance using a Sharpie to write in large print, but that the grievance was rejected because he attached a separate sheet of paper. Am. Compl. 123; McCann Dep. 33:3-34:5. In his deposition testimony, McCann was unable to recall what the grievance was about, when it was filed, or whether he appealed the intake decision. McCann Tr. 33:8-34:5. He also could not recall whether he had written any other grievances himself. McCann Dep. 34:6-13.

200. VDOC's Rule 30(b)(6) designee has testified that, as a matter of VDOC policy, inmates are permitted to attach additional pages to a grievance and that the grievance should not be rejected for this reason. Cosby Dep. 27:5-11

201. Mr. McCann has had multiple inmates assigned to work as his Caregiver while he has been housed at Deerfield. McCann Dep. 24:21-30:16. His caregivers have assisted him with reading, writing, navigating around the facility, cleaning, and other tasks. McCann Dep. 26:15-23,31:6-17.

202. McCann requested that his Caregiver be moved from a bed on the other side of the pod to one adjacent to him. Am. Compl. 129-30; McCann Dep. 34:14-35:23, 37:9-24. The request was denied at that time. McCann Dep. 37:25-38:1. However, McCann's Caregiver has since then been moved to an adjacent bed after the Caregiver switched beds with another inmate. McCann Dep. 38:11-24.

203. McCann filed Informal/Written Complaints regarding his Caregiver's bed assignment, which were received on September 27, 2022, and November 9, 2022. DeBerry Aff. ¶ 38, Encl. E. Mr. McCann did not file an accepted Regular Grievance regarding this issue. DeBerry Aff. ¶ 38, Encl. E.

204. Mr. McCann further alleges instances in which he has bumped into other prisoners, sometimes leading to altercations, when his Caregiver has been unavailable to guide him through

the facility. Am. Compl. 131-32; McCann Dep. 40:2-6.

205. In his deposition, Mr. McCann could not recall how many times he had gotten into altercations with other inmates, but was able to specify as to a few incidents. McCann Dep. 40:7-

206. The first incident he testified about occurred when he bumped into another inmate around the microwave, causing hot water to spill over McCann and the other inmate. McCann Dep. 40:13-21.

The other inmate later confronted McCann in the pod bathroom and fought him, causing McCann to sustain bumps and bruises for which he did not receive medical treatment. McCann Dep. 40:13-

41:5, 42:9-15. McCann could not recall when the incident occurred and did not know the other inmate's name. McCann Dep. 40:22-41:1, 41:19-42:8. He testified that there was no investigation

of the incident by staff, and no disciplinary charges were written. McCann Dep. 42:16-23. Mr.

McCann testified that he did not file an Informal/Written Complaint or grievance regarding this incident. McCann Dep. 42:24-43:1; DeBerry Aff. ¶ 35, Encl. E.

207. Mr. McCann also alleges that he was attacked in the bathroom by another inmate in 2017 or 2018, which caused him to sustain bumps and bruises for which he did not receive medical

treatment. Am. Compl. 132; McCann Tr. 43:2-21. Mr. McCann testified that he reported the incident to his building lieutenant, but camera footage was not reviewed because he could not

identify the assailant. McCann Tr. 54:21-55:19. Mr. McCann testified that he did not file an Informal/Written Complaint or grievance regarding this incident. McCann Dep. 44:2-3, 55:20-

56:2; DeBerry Aff. ¶ 35, Encl. E.

208. Mr. McCann claims that during the COVID pandemic, his Caregiver was not allowed to the recreation area with him, which made it difficult to exercise and caused him to encounter

hazards. Am. Compl. 137; McCann Dep. 45:21-48:3. He has testified that his Caregiver now attends recreation with him. McCann Dep. 48:16-18. Mr. McCann did not file an Informal/Written

Complaint regarding this issue. DeBerry Aff. ¶ 38, Encl. E.

209. After requesting assistance with navigating pathways in his housing area, Mr. McCann was evaluated by Natalie Jordan, an Orientation and Mobility Specialist with the Virginia Department for the Blind and Visually Impaired (“DBVI”). Shaw Dep. 195:13-196:21, 200:6-10; Shaw Ex. 13. Ms. Jordan recommended, pursuant to Mr. McCann’s suggestion, that walkways in the housing unit be kept free of clutter or marked with painted or textured lines. Shaw Ex. 13; McCann Tr. 57:16-20.

210. Textured tape was first put down to mark the path from Mr. McCann’s bed area to the microwave. McCann Dep. 58:19-22. More tape was later put down, and Mr. McCann’s housing unit now has textured tape leading up and down aisles in the bed area, and to the back door, front door, telephones, kiosk, bathroom, ice machine, and the sink and microwave area. McCann Dep. 59:11-18; Shaw Dep. 201:20-202:7. The tape assist Mr. McCann with navigating by providing a textured path that McCann can follow with his cane. McCann Dep. 57:7-13; Shaw Dep. 201:13-19. Mr. McCann has alleged that the tape is sometimes pulled up or worn down. Am. Compl. ¶ 136; McCann Dep. 60:21-61:19. However, the tape is eventually replaced. McCann Dep. 61:21-62:1. Mr. McCann filed Written/Informal Complaints on this issue, which were received on August 14, 2023, and November 27, 2023, claiming that the tape had been torn up or worn down, but he did not file an accepted Regular Grievance regarding this issue. DeBerry Aff. ¶ 40, Encl. E.

211. McCann testified that other inmates and staff have stolen property and commissary items from him. Am. Compl. ¶ 133; McCann Dep. 48:19-22. Mr. McCann did not report these alleged thefts to staff, and he did not know whether any investigation occurred. McCann Dep. 51:14-19. Mr. McCann did not file an Informal/Written Complaint or grievance regarding this issue. DeBerry Aff. ¶ 35, Encl. E.

212. Mr. McCann alleges that another inmate has masturbated in the shower while he was present because the inmate believed McCann could not see him, and that this caused McCann to stop taking showers for a period of time. Am. Compl. ¶ 141; McCann Dep. 53:15-54:18. Mr. McCann did not report any such incident to staff, and he did not file an Informal/Written Complaint or accepted Regular Grievance about this issue. McCann Dep. 56:4-8; DeBerry Aff. ¶ 35, Encl. E.

213. Mr. McCann alleges that he attempted to take a horticulture class at Deerfield, but that he dropped out because the instructor did not know how to instruct him and his Caregiver was not permitted to attend classes with him. Am. Compl. ¶ 124; McCann Dep. 66:12-68:6. He did not discuss any alternative accommodations with the teacher. McCann Dep. 68:18-23. Mr. McCann did not file an informal complaint or regular grievance regarding this issue. McCann Dep. 68:11-16; DeBerry Aff. ¶ 35, Encl. E.

214. During his custody in VDOC, Mr. McCann has had jobs filling the hot water pot in his pod, washing windows, and working as a counselor's aid. McCann Dep. 68:25-69:7. He alleges that a lieutenant told him he could not perform the job filling the hot water pot because it was too dangerous, but he continued to be paid until he was given his next job washing windows. McCann Dep. 72:7-73:16. Mr. McCann did not file an Informal/Written Complaint or accepted Regular Grievance about being told not to perform the job of filling the hot water pot. McCann Dep. 73:17-19; DeBerry Aff. ¶ 35, Encl. E.

215. Mr. McCann testified that he was found ineligible for jobs cleaning bathroom, operating the floor buffer, and working in the kitchen. Am. Compl. ¶ 126; McCann Dep. 74:13-20. Mr. McCann has not filed an Informal/Written Complaint or accepted Regular Grievance about being rejected from these jobs. McCann Tr. 78:9-14; DeBerry Aff. ¶ 35, Encl. E.

216. After making verbal complaints about being unable to obtain a higher-paying job, Mr.

McCann was given the job of counselor's aide. McCann Dep. 78:15-79:6. Mr. McCann was later given the job of counselor pod assistant. McCann Dep. 80:2-11. In that role, he assists the pod counselor with passing out correspondence and housekeeping tasks, although he claims these tasks are infrequent and he often has no work to do. McCann Dep. 80:12-81:14. In both the counselor aide and counselor pod assistant jobs, McCann has been paid at the highest pay rate and for the maximum allowable hours, even if he does not have work to do. McCann Dep. 81:15-82:14. He has not filed an Informal/Written Complaint or accepted Regular Grievance regarding these jobs. McCann Dep. 82:15-23; DeBerry Aff. ¶ 35, Encl. E.

217. Previously, Mr. McCann was provided with a magnifier from DBVI, which he alleges became worn and was no longer sufficient for his vision needs. Am. Compl. ¶ 139, McCann Dep. 86:24-87:18. Mr. McCann requested a replacement but was informed he would not receive one until he had an eye exam. McCann Dep. 87:19-25. Defendant Shaw explained that a referral for medical examination was necessary in order to determine the necessary strength for a replacement magnifier. Shaw Dep. 220:19-222:4. Mr. McCann has since been approved to receive a new magnifier pending the Warden's approval. Shaw Decl. Encl. B. McCann has filed an Informal/Written Complaint regarding this issue but did not file an accepted Regular Grievance on this issue. DeBerry Aff. ¶ 41, Encl. E.

218. Mr. McCann requested a replacement marker for writing in large print after his old marker ran out of ink. Am. Compl. ¶ 139; McCann Dep. 89:15-24. He was initially told that he would have to pay for a replacement, but staff told him he would receive a free replacement after he made a complaint. McCann Tr. 90:19-23. Mr. McCann's grievance record does not demonstrate that he ever filed an Informal/Written Complaint regarding this issue. DeBerry Aff. ¶ 35, Encl. E.

219. McCann alleges that he received glasses from Deerfield medical staff that were the wrong

prescription. Am. Compl. ¶ 140; McCann Dep. 83:3-6. Mr. McCann testified that the glasses with the wrong prescription were for distance vision, and he has another pair for close vision that have the correct prescription. McCann Dep. 85:22-86:6. Mr. McCann did not file an Informal/Written Complaint or accepted Regular Grievance regarding this issue. McCann Dep. 86:19-23; DeBerry Aff. ¶ 35, Encl. E.

Legal Analysis

I. Legal Framework

a. Exhaustion under the Prison Litigation Reform Act and Virginia Code

Under both the federal Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1997e, and Virginia Code § 8.01-243.2, an inmate is required to exhaust his administrative remedies pursuant to the prison’s grievance procedure prior to filing any lawsuit. Specifically, the Prisoner Litigation Reform Act (“PLRA”) states that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). The phrase “prison conditions” encompasses “all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Porter v. Nussle*, 534 U.S. 516, 532 (2002). Exhaustion under the PLRA is mandatory, and therefore a plaintiff must exhaust his available administrative remedies before a court can hear his claim. *See Jones v. Bock*, 549 U.S. 199, 211 (2007).

Further, to exhaust his administrative remedies, an inmate must complete “the administrative review process in accordance with the applicable procedural rules, including deadlines.” *Woodford v. Ngo*, 548 U.S. 81, 88, 93 (2006); *Moore v. Bennette*, 517 F.3d 717, 725 (4th Cir. 2008). This requirement is one of “proper exhaustion of administrative remedies, which ‘means using all steps that the agency holds out, and doing so properly (so that the agency

addresses the issues on the merits).” *Woodford*, 548 U.S. at 93 (quoting *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002))

Finally, Virginia Code § 8.01-243.2 states:

No person confined in a state or local correctional facility shall bring or have brought on his behalf any personal action relating to the conditions of his confinement until all available administrative remedies are exhausted. Such action shall be brought by or on behalf of such person within one year after cause of action accrues or within six months after all administrative remedies are exhausted, whichever occurs later.

Code § 8.01-243.2.

Accordingly, exhaustion of the Plaintiffs’ federal and state claims is mandatory, and the Plaintiff’s claims which have not been exhausted cannot be reviewed on the merits by this Court.

b. Statute of Limitations Governing ADA, RA, and VDA Claims

Claims brought under either Title II of the ADA or the RA must be brought within one year of the claim accruing. *A Soc’y Without A Name v. Virginia*, 655 F.3d 342, 348 (4th Cir. 2011). Such a claim “accrues when the plaintiff ‘knows or has reason to know of the injury which is the basis of the action.’” *Id.* at 348 (quoting *Cox v. Stanton*, 529 F.2d 47, 50 (4th Cir. 1975)). However, if there is a continuing legal violation by a defendant, that can start the statute of limitations anew for each additional violation. *See id.* But, “to establish a continuing violation[,] the plaintiff must establish that the unconstitutional or illegal act was a fixed and continuing practice.” *Id.* (quoting *Nat’l Adver. Co. v. City of Raleigh*, 947 F.2d 1158, 1166 (4th Cir. 1991)) (alteration in original). That is, “if the plaintiff can show that the illegal act did not occur just once, but rather in a series of separate acts [,] and if the same alleged violation was committed at the time of each act, then the limitations period begins anew with each violation.” *Id.* (internal quotations omitted) (alteration in original). The “continuing ill effects of an original violation . . . do not constitute a

continuing violation.” *Id.* Likewise, the Plaintiffs’ VDA claims are also governed by a one-year statute of limitations. Va. Code § 51.5–46(B).

c. ADA, RA, and VDA Claims in the Fourth Circuit

The United States Court of Appeals for the Fourth Circuit has held that “[t]he ADA and [RA] generally are construed to impose the same requirements,’ and ‘[b]ecause the language of the Acts is substantially the same, [the Court] appl[ies] the same analysis to both.’” *Spencer v. Earley*, 278 F. App’x 254, 261 (4th Cir. 2008) (alterations in original) (quoting *Baird v. Rose*, 192 F.3d 462, 468 (4th Cir. 1999)). In general, a Plaintiff seeking recovery under either statute must demonstrate “that (1) he has a disability; (2) he is otherwise qualified to receive the benefits of a public service, program, or activity; and (3) he was ‘excluded from participation in or denied the benefits of such service, program, or activity, or otherwise discriminated against, on the basis of h[is] disability.’” *Id.* (alteration in original) (quoting *Constantine v. George Mason Univ.*, 411 F.3d 474, 498 (4th Cir. 2005)).

The ADA permits plaintiffs to pursue three distinct grounds for relief: (1) intentional discrimination or disparate treatment; (2) disparate impact and (3) failure to make reasonable accommodations. *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 503 n. 5 (4th Cir. 2016) (citing *A Helping Hand, LLC v. Baltimore Cty.*, 515 F.3d 356, 362 (4th Cir. 2008)). However, “[n]ot all public services, programs, or activities can be made meaningfully accessible to all citizens, or at least they cannot be made so without a prohibitive cost or unreasonable effort on the part of the public entity.” *Id.* at 507. Further, “under the Rehabilitation Act, the plaintiff must establish he was excluded solely by reason of his disability; the ADA requires only that the disability was a motivating cause of the exclusion.” *Wicomico Nursing Home v. Padilla*, 910 F.3d 739, 750 (4th Cir. 2018) (internal quotation marks and citations omitted).

Finally, as this Court is aware, the Fourth Circuit recently reviewed ADA and RA claims brought by a VDOC inmate at Deerfield, specifically, in *Richardson v. Clarke*, E.D. Va. No. 3:18CV23-HEH, 2021 WL 851881, at *8 (E.D. Va. Mar. 5, 2021), *aff'd in part, vacated in part, remanded*, 52 F.4th 614, 2022 WL 16729415 (4th Cir. 2022).⁷ In *Richardson*, this Court found that Deerfield had gone to “extraordinary lengths by providing a host of accommodations to allow [the Plaintiff] to participate in the full variety of services and programs” at Deerfield. *Id.* at *8. The Fourth Circuit then affirmed the Court’s finding, explaining that reasonable under the ADA must be context specific and “[h]ere, our context is a prison. [The Court] view[s] the reasonableness of accommodations through the lens of operating a prison.” *Richardson v. Clarke*, 52 F.4th 614, 621, 2022 WL 16729415 (4th Cir. 2022).

II. The Plaintiffs have failed to exhaust all but five of their claims.

As explained in the Affidavits of Deerfield’s Grievance Coordinator, Ms. DeBerry, and Greensville’s acting Grievance Coordinator, Ms. Kelly Phillips, the Plaintiffs have failed to exhaust the vast majority of their claims. The only claims that are exhausted in this action are Mr. Mr. Shabazz’s claim that has relies on other inmates to read and/or write documents, Mr. Shabazz’s claim that he has been denied a Grade 3 Job Assignment at Deerfield, Mr. Hajacos’ claim that he was fired from the Wood Shop job at Greensville because he would not move housing units and lose his accommodations, Mr. McCann’s claim that other inmates read and/or write for him, and, Mr. McCann’s claim that additional floor markings have not been available to him in his housing unit at Deerfield. Phillips Decl. ¶¶ 22, 25; DeBerry Aff. ¶¶ 21, 23, 37, 39. These are the only claims which the Plaintiffs have exhausted in this action. Therefore, these are the only claims that are not

⁷ The Fourth Circuit affirmed the Court’s findings related to the Plaintiff’s ADA and RA claims, but remanded the case for further proceedings related to the Plaintiff’s claims regarding his use of a religious head covering in prison.

barred from review under the PLRA. Accordingly, for this reason alone, VDOC is entitled to summary judgment as to the vast majority of the Plaintiffs' claims in this case.

III. VDOC is entitled to summary judgment as to the Plaintiff's claims.

a. Mr. Courtney

1. Mr. Courtney has not exhausted his claims.

As noted *supra*, Mr. Courtney has not exhausted available administrative remedies as to any of his claims in this case.⁸ Mr. Courtney filed three Informal Complaints regarding accommodations for his blindness while he was incarcerated at Greensville. Phillips Decl. ¶¶ 16-17. He has not, however, filed a Regular Grievance relating to those Informal Complaints. *Id.* There is no other record of his filing Informal Complaints relating to the allegations brought in this action. *Id.* ¶ 14. Because Mr. Courtney failed to complete all steps of the grievance process as to any of his claims, they are barred under the PLRA and Virginia Code § 8.01-243.2.

2. Defendants did not retaliate against Mr. Courtney.

Mr. Courtney alleges that he was selected to be drug tested and that the test results were falsified as retaliation for letters his attorneys wrote to VDOC staff regarding his accommodations. Am. Compl. ¶¶ 108-19. "To establish a prima facie retaliation claim under the ADA, a plaintiff must prove (1) he engaged in protected conduct, (2) he suffered an adverse action, and (3) a causal link exists between the protected conduct and the adverse action." *Reynolds v. Am. Nat'l Red Cross*, 701 F.3d 143, 154 (4th Cir. 2012).

These elements, and the substance of Mr. Courtney's claim, are analogous to a prisoner's claim for retaliation in violation of the First Amendment under 42 U.S.C. § 1983. *See Martin v.*

⁸ Mr. Courtney has filed additional grievance submissions regarding treatment of his keratoconus, but those grievance filings are not considered here because they do not pertain to the claims asserted against the VDOC Defendants.

Duffy, 977 F.3d 294, 299 (4th Cir. 2020) (setting forth elements of a First Amendment retaliation claim in the prison context). “In the prison context, we treat such claims with skepticism because ‘every act of discipline by prison officials is by definition “retaliatory” in the sense that it responds directly to prisoner misconduct.’” *Cochran v. Morris*, 73 F.3d 1310, 1317 (4th Cir. 1996) (quoting *Adams v. Rice*, 40 F.3d 72, 74 (4th Cir. 1994)). Consequently, a plaintiff “must present more than naked allegations of reprisal.” *Adams*, 40 F.3d at 74.

Here, the undisputed record shows that Mr. Courtney cannot satisfy the third element of causation. With regard to this element, the Fourth Circuit applies a burden shifting approach. *Martin*, 977 F.3d at 300 (citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1974)). First, the plaintiff must show that his “protected conduct was a substantial or motivating factor in the defendant’s decision to take adverse action.” *Id.* In order to do so, the plaintiff must at least show that the defendant had knowledge of his protected activity and that “there was some degree of temporal proximity” between the protected speech and the adverse act. *Constantine*, 411 F.3d at 501. If the plaintiff makes this prima facie showing, then the defendant bears the burden of proving that he “would have reached the same decision . . . in the absence of the protected conduct.” *Id.* at 299 (quoting *Mt. Healthy*, 429 U.S. at 283) (omission in original).

Mr. Courtney fails to show that his protected conduct had any causal relationship to the administration of the drug test. To the extent Mr. Courtney premises his claim on his allegations that the drug test was administered in a manner inconsistent with policy, this is unsupported by the record. VDOC policy permits random drug testing of inmates housed in its facilities. Smith Ex. 2. Defendant Smith testified that he was ordered to conduct a drug test on Mr. Courtney by his supervisor because Mr. Courtney had not been drug tested since 2019, which Mr. Smith explained was a common practice at Greenville. Smith Dep. 113:12-18, 115:19-116:4, 137:19-138:13,

149:13-150:5; Smith Ex. 7. Smith tested Mr. Courtney for marijuana, amphetamines, and buprenorphine, substances which were commonly tested at that time and for which he tested other inmates on the same date. Smith Dep. 122:13-20, 152:9-20. Mr. Courtney was tested in a staff bathroom with no cameras present, which, contrary to his allegations, is a standard practice. Smith Dep. 118:8-119:7, 149:9-12.

The record further belies any other causal connection between the letters issued by Mr. Courtney's attorneys and his drug test. Defendant Talbott, who received one of the letters, has denied that she spoke about it to any security staff. Talbott Dep. 267:6-271:6. Smith also denied being aware of the letters or Mr. Courtney's complaints regarding his accommodations. Smith Dep. 109:16-110:8, 111:3-17. Mr. Courtney acknowledged in his testimony that Smith did not say anything to him about the letters at the time the drug test was conducted. Courtney Dep. 182:18-183:5. Moreover, the letter written to Harold Clarke was sent on behalf of not only Mr. Courtney, but also the other individual Plaintiffs in this case. Smith Ex. 3. Yet of all of those Plaintiffs, only Mr. Courtney alleges that he was subjected to a drug test out of retaliation for that letter.

Furthermore, Mr. Courtney's allegation that his drug test was fabricated is entirely unsupported by the record. Smith followed his routine procedure by observing Mr. Courtney provide the urine sample, placing a seal on the sample cup while Courtney was present, then placing the sample in a cooler for delivery to the lab. Courtney Dep. 184:2-12; Smith Dep. 119:21-120:11. Smith denies having tampered with the sample. Smith Dep. 152:17-153:4. There is no evidence to show any tampering or contamination of the sample, as shown by VDOC and DCLS chain-of-custody records. Angle Aff. ¶ 10, Encls. D-E. Against this record, Mr. Courtney's bald assertion that the sample must have been fabricated because he did not use drugs while in custody is not sufficient to create a genuine dispute of fact. *See Scott v. Harris*, 550 U.S. 372, 380 (2007)

(“When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.”).

In sum, the evidence of record overwhelmingly supports the Defendants’ assertion that the drug test performed on Mr. Courtney was a routine screening carried out in accordance with policy and was unrelated to his attorneys’ communications with VDOC officials. Mr. Courtney’s speculation that the drug test was causally related to those letters, based solely upon temporal proximity and a misunderstanding of VDOC drug testing procedures, fails to establish any such causal connection. *See Wagner v. Wheeler*, 13 F.3d 86, 91 (4th Cir. 1993) (finding that temporal proximity alone was “simply to slender a reed on which to rest” the plaintiff’s claim for retaliation). Accordingly, Mr. Courtney’s claim for retaliation should be dismissed.

3. Mr. Courtney’s claims for prospective relief are moot.

To the extent he still seeks prospective injunctive relief in this action, any such claims asserted by Mr. Courtney are moot. Article III of the United States Constitution permits courts to “adjudicate only disputes involving a ‘case or controversy.’” *Williams v. Ozmint*, 716 F.3d 801, 808 (4th Cir. 2013) (citing *Warren v. Sessoms & Rogers, P.A.*, 676 F.3d 365, 370 (4th Cir. 2012)). “The case-or-controversy requirement applies to all stages of a federal case.” *Id.* (citing *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477–79 (1990)). A component of this requirement is the doctrine of mootness. “A case becomes moot ‘when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome.’” *Id.* at 809. (citing *Powell v. McCormack*, 395 U.S. 486, 496 (1969)).

As he acknowledges in the Amended Complaint, Mr. Courtney was released from VDOC custody on March 16, 2023. Am. Compl. ¶ 9. “[A]s a general rule, a prisoner’s transfer or release

from a particular prison moots his claims for injunctive and declaratory relief with respect to his incarceration there.” *Rendelman v. Rouse*, 569 F.3d 182, 186 (4th Cir. 2009). Mr. Courtney’s claims in this matter relate entirely to his conditions while confined within VDOC. Because he is no longer in state custody, those conditions no longer apply to him, and as such his claims for prospective relief are moot.

b. Mr. Hajacos

1. Mr. Hajacos has exhausted only one of his claims.

As explained, the only claim that Mr. Hajacos has only exhausted his claim that he lost his job in the Wood Shop because he refused to move to another housing unit. Phillips Decl. ¶¶ 20-21 and Encl. C. Mr. Hajacos’ Grievance File and Grievance Report demonstrate that Mr. Hajacos has not filed any Informal/Written Complaints about most of his other allegations in this lawsuit. *Id.* And, as to the issues he did file an Informal/Written Complaint and/or Regular Grievance about, Mr. Hajacos did not appeal those grievances to Level II. Phillips Encl. C. Mr. Hajacos therefore failed to exhaust his administrative remedies regarding the vast majority of his claims, and they are barred from review under the PLRA and Virginia Code § 8.01-243.2.

2. Mr. Hajacos’ Wood Shop and Computer Class claims are either barred by the statute of limitations, meritless, or both.

Mr. Hajacos’ Wood Shop claim is both barred by the statute of limitations and is meritless. Mr. Hajacos was terminated from his Wood Shop job on November 1, 2021. Reed Aff. ¶ 10. Mr. Hajacos filed this lawsuit raising his Wood Shop claim on February 15, 2023. (ECF No. 1.) This is far beyond the one-year statute of limitations governing ADA, RA, and VDA claims. *A Soc’y Without A Name*, 655 F.3d at 347-48; Va. Code § 51.5-46(B). VDOC, and the VDOC Defendants, are therefore entitled to summary judgment as to Mr. Hajacos’ Wood Shop claim on this basis alone.

Nonetheless, even if Mr. Hajacos' Wood Shop claim was not barred by the statute of limitations in this action, it is meritless. Mr. Hajacos was only terminated from his Wood Shop job because he refused to move housing units in an effort to prevent the spread of COVID-19. Reed Aff. ¶ 6-9. When VDOC first began confronting the spread of COVID-19, Greenville determined it was best to house all inmates who worked in the S-2 Wood Shop in Housing Unit 5, so that the Wood Shop inmates would be housed in one unit. Therefore, should a COVID-19 outbreak occur in the Wood Shop, the outbreak would be limited to the one housing unit where all of the Wood Shop workers lived, rather than risking the spread of COVID-19 to all other, various housing units. Reed Aff. ¶ 6. Moreover, had Mr. Hajacos moved to Housing Unit 5, he could have kept all of his personal accommodations and Mr. Hajacos still would have had access to the videophones, ASL Interpreters, and TTY phones at Greenville. Talbott Decl. ¶¶ 7-9.

Mr. Hajacos' Wood Shop claim fails on the merits because he cannot demonstrate that his vision impairment was either the sole nor motivating cause of his termination from the Wood Shop. *Wicomico Nursing Home*, 910 F.3d at 750. The record conclusively establishes that Mr. Hajacos was terminated from the Wood Shop only to prevent the spread of COVID-19 exposure at Deerfield and that Mr. Hajacos would have retained nearly all of his accommodations had he moved to the other housing unit. For this reason, VDOC is entitled to summary judgment on the merits of Mr. Hajacos' Wood Shop claim.

Further, as to Mr. Hajacos' claims related to his computer class, Mr. Hajacos was provided with an accessible electronic textbook and numerous accommodations in his computer class, including access screen reader software, headphones with manual volume adjustment, closed captioning for video, and magnifying eyeglasses. Zormelo Decl. ¶ 7. Mr. Hajacos even testified at his deposition that his textbook was in an electronic accessible format for him and that he is able

to read the textbook on the laptop provided to him. Hajacos Dep. 31:1-5; 31:17-25. VDOC is therefore entitled to summary judgment as to Mr. Hajaco's ADA, RA, and VDA claims related to his computer class.

c. Mr. Shabazz

1. Mr. Shabazz has exhausted only two of his claims.

As explained, the only claims that Mr. Shabazz has exhausted in this case are his claims that other inmates read and/or write documents for him and that he has been denied a Grade 3 Job assignment. DeBerry Aff. ¶ 20-23 and Encl. C. Although Mr. Shabazz has filed Informal/Written Complaints about his allegations that he has not been provided with accessibility features on his JPay tablet and that VDOC has failed to provide accessibility software for use by blind and/or visually impaired inmates in the Deerfield Law Library, Mr. Shabazz did not file any accepted Regular Grievance(s) or appeals related to these Informal/Written Complaints. DeBerry Aff. ¶¶ 22, 28. Therefore, aside from the two exhausted claims, all of Mr. Shabazz's allegations are barred from review in this action under the PLRA and Virginia Code § 8.01-243.2.

2. Mr. Shabazz's exhausted claims are barred by the statute of limitations and are meritless.

Mr. Shabazz has exhausted his allegations that inmates read and/or write documents for him at Deerfield, and that has been denied a Grade 3 Work Assignment at Deerfield. DeBerry Aff. ¶¶ 21, 23. However, Mr. Shabazz exhausted his claim(s) that inmates read and/or wrote for him on October 21, 2019. DeBerry Aff. ¶ 21 and Encl. C. Mr. Shabazz's claims therefore accrued on October 21, 2019. *A Soc'y Without A Name*, 655 F.3d at 347-48; Va. Code § 51.5-46(B). But this action was filed on February 15, 2023, (ECF No. 1), far beyond the one-year statute of limitations governing ADA, RA, and VDA claims. Accordingly, Mr. Shabazz's ADA, RA, and VDA claims related to other inmates reading and/or writing for him are therefore barred by the statute of

limitations in this action.

Further, as to Mr. Shabazz's claims related to being denied a Grade 3 Work Assignment at Deerfield, this claim is meritless. Deerfield does not categorically prohibit Mr. Shabazz from holding jobs at Deerfield due to his vision. Mr. Shabazz is currently employed in the laundry department. Ponton Decl. ¶ 14. Job placement at Deerfield is dependent on job availability. When a job opens up at Deerfield, an inmate can submit an application to his Counselor, and the Counselor forwards that application to whatever department is hiring for consideration. Ponton Decl. ¶¶ 8-11. However, the last Grade 3 Jobs that Mr. Shabazz applied to were the main laundry job "four or five years ago" and a buffering position in 2017 or 2018. Shabazz Dep. 50:24-25; 51:1-2; Shabazz Dep. 51:11-15. To the extent that Mr. Shabazz seeks to recover in this action for being denied the main laundry and buffering positions, his ADA, RA, and VDA claims are barred by the one-year statute of limitations for such claims. *A Soc'y Without A Name*, 655 F.3d at 347-48; Va. Code § 51.5-46(B).

Further, although Mr. Shabazz previously applied for a "pod clerk" position sometime in August or September 2022, Shabazz Dep. 51:16-20, this is not an available inmate job at Deerfield. There is not an inmate job called "pod clerk" at Deerfield. Ponton Decl. ¶ 11 and Encls. A and B. VDOC and the VDOC defendants cannot be said to have failed to accommodate Mr. Shabazz in consideration for a job that does not even exist at Deerfield.

Because Mr. Shabazz's claims are unexhausted, barred by the statute of limitations, and/or meritless, VDOC and the VDOC Defendants are entitled to summary judgment as to all of Mr. Shabazz's claims.

d. Mr. Shaw

1. Mr. Shaw has not exhausted any of his claims in this action.

Mr. Shaw has not exhausted any of his claims in this case. DeBerry Aff. ¶ 13-6 and Encl. B. In fact, Mr. Shaw largely testified to this at his deposition. Shaw Dep. 31:5-13; Shaw Dep. 106:10-13; Shaw Dep. 87:2. Because Mr. Shaw failed to complete any of steps of the grievance process as to all of his claims, all of Mr. Shaw's claims are barred from review under the PLRA and Virginia Code § 8.01-243.2.

2. Mr. Shaw's claims are barred by the statute of limitations.

Further, all of Mr. Shaw's claims are also barred by the one-year statute of limitations governing ADA, RA, and VDA claims. Mr. Shaw testified at his deposition that he dropped out of his computer class two and a half year ago, that he has not held or applied for any institutional jobs since 2007, that he bumped his head on the top bunk when he was housed in the Veterans Pod four years ago, and that he has been living in Deerfield's Dorm Style pod since 2017. Shaw Dep. 31:22-25; 32-1-4; Shaw Dep. 74:21-25; 75:3-5; Shaw Dep. 75:6-9; Shaw Dep. 89:20; Shaw Dep. 105:10-12. None of Mr. Shaw's claims fall within the one-year statute of limitations governing ADA, RA, and VDA claims. *A Soc'y Without A Name*, 655 F.3d at 347-48; Va. Code § 51.5-46(B). Accordingly, because Mr. Shaw's claims are both unexhausted and barred by the statute of limitations, VDOC and the VDOC Defendants are entitled to summary judgment as to Mr. Shaw's claims against them.

e. **Mr. Stravitz**

1. Mr. Stravitz has not exhausted his claims.

Mr. Stravitz has not exhausted any of the claims asserted against the Defendants in this case.⁹ There is no record evidence that he filed any Informal/Written Complaint regarding accommodations for his eyesight or for his jobs. DeBerry Aff. ¶ 32. Because Stravitz did not complete the first step of the grievance process with respect to any of his claims asserted here, he did not exhaust available administrative remedies. His claims are therefore barred under the PLRA and Virginia Code § 8.01-243.2.

2. Mr. Stravitz received accommodations for his blindness.

The record further establishes that Mr. Stravitz received accommodations for the impairments caused by his cataracts. His supervisors for his job as a tutor and his job as a library assistant by providing filters and a magnifier for the computer. Stravitz Dep. 86:10-22, 192:2-5. Mr. Stravitz also used sunglasses, large print books, a book light, and reading glasses as accommodations for his eyesight. Stravitz Dep. 86:4-87:10. He did not request any other accommodations. Stravitz Dep. 97:20-23. Under these circumstances, it cannot be argued that VDOC failed to accommodate Mr. Stravitz's disability. Accordingly, Defendants are entitled to summary judgment with respect to his claims.

3. Mr. Stravitz's claims for prospective relief are moot.

Mr. Stravitz underwent surgery to remove his cataracts during the pendency of this case. Stravitz Dep. 88:6-13. In his deposition, he testified that he was no longer impeded from seeing and functioning independently. Stravitz Dep. 196:1-11. Thus, following his surgeries, Mr. Stravitz

⁹ Although Mr. Stravitz appears to have submitted some grievance filings relating to the scheduling of his cataract surgery, those allegations are not relevant to the claims asserted against the remaining VDOC Defendants.

is no longer disabled, nor does he require further accommodations to access VDOC programs and services. Because Mr. Stravitz no longer has a qualifying disability which VDOC is required to accommodate, his claims for prospective relief are moot.

d. Mr. McCann

1. Mr. McCann has failed to exhaust most of his claims.

Mr. McCann has not fully exhausted his administrative remedies as to most of the claims in this action. Defendants acknowledge that Mr. McCann fully exhausted his claims that he requires the assistance of other inmates to read and write, and that Defendant Shaw denied his request to place tape in additional avenues around the pod. DeBerry Aff. ¶ 36.

Mr. McCann has filed Informal/Written Complaints regarding some other of his claims. Specifically, he has filed complaints regarding (1) his request to have his caregiver moved beside him, (2) the removal and wearing down of textured tape in his housing unit, (3) his request for a new magnifier, and (4) his inability to access the kiosk in his housing unit. DeBerry Aff. ¶¶ 38, 40, 41, 42. There is no record, however, that he filed an accepted Regular Grievance relating to these complaints, as is necessary to fully exhaust the grievance process. *Id.*

As to Mr. McCann's remaining claims, there is no record that he has filed an Informal/Written Complaint, DeBerry Aff. ¶ 35, and by his own admission, Mr. McCann did not file grievances relating to many of the issues in this case. McCann Dep. 42:24-43:1, 44:2-3, 55:20-56:2 (regarding assaults by other inmates); *id.* at 56:4-8 (regarding another inmate masturbating in the shower); *id.* at 68:11-16 (regarding not being accommodated in his horticulture class); *id.* at 73:17-19 (regarding being unable to work in the hot water job); *id.* at 78:9-14 (regarding being found ineligible for jobs); *id.* at 82:15-23 (regarding the counselor aid and counselor pod assistant jobs); *id.* at 86:19-23 (regarding receiving the wrong prescription for his glasses). Because Mr.

McCann failed to exhaust administrative remedies with respect to most of his claims, those claims are barred from review under the PLRA and Virginia Code.

2. Mr. McCann has received accommodations for his disability.

VDOC has made available accommodations for Mr. McCann's disability. First, although he alleges that he requires the assistance of other inmates to read and write, he has also testified that he rarely avails himself of staff assistance with these tasks, even though non-medical staff have not refused to help. McCann Dep. 23:3-24:20. With respect to Mr. McCann's jobs, after being told he could not work in his previous positions, staff created a new role for him as a Grade 3 position. McCann Dep. 78:15-79:6. Although Mr. McCann complains that he is not given sufficient job duties in this role, he continues to be paid at the maximum rate and for maximum hours even while he is not working. McCann Dep. 81:15-82:14.

Mr. McCann's claims regarding his housing and the availability of his caregiver are also unavailing. Although his caregiver was, for some time, housed on a separate side of their housing pod, he has since been moved to a bed adjacent to Mr. McCann. McCann Dep. 38:11-24. Similarly, although Mr. McCann claims that his caregiver was at one point not allowed to attend recreation with him, this is no longer the case. McCann Dep. 48:16-18. VDOC staff have also applied textured tape leading down the aisles and to key locations in Mr. McCann's housing unit, which he can use to navigate with his cane. McCann Dep. 57:7-13, 59:11-18. Although Mr. McCann complains that the tape is sometimes damaged or removed, it has since been replaced. McCann Dep. 61:21-62:1.

Mr. McCann's allegations regarding assaults and thefts by other inmates fare no better. First, his claims that he has been attacked by other inmates, had items stolen from him, and witnessed another inmate masturbating in the shower, are at best tenuously connected to his blindness, and none of the named parties have been directly involved in these alleged acts.

Moreover, Mr. McCann's allegations provide scant support on summary judgment. In his deposition, he generally could not identify the offending party nor the date on which the incident occurred, and he most often did not report these incidents or file grievances. McCann Dep. 40:22-42:8, 51:14-19, 56:4-8. And, as to the one incident for which Mr. McCann was able to provide more information—the alleged assault by another inmate in 2017 or 2018—this falls outside of the one-year statute of limitations governing ADA, RA, and VDA claims. *A Soc'y Without A Name*, 655 F.3d at 347-48; Va. Code § 51.5-46(B).

Other miscellaneous accommodations requested by Mr. McCann more recently have also been provided to him at Deerfield, including a 6X magnifier and a light for his cane. L. Shaw Decl. Encls. B-C. While Mr. McCann may seek further accommodations still, “the ADA does not require prisons ‘to employ any and all means to make services available to persons with disabilities.’” *Richardson*, 52 F.4th at 621 (quoting *Miller v. Hinton*, 288 F. App'x 901, 902 (4th Cir. 2008)). Mr. McCann has received more than sufficient accommodations to participate in Deerfield's programs and services. Accordingly, his claims should be dismissed.

IV. Because VDOC is entitled to summary judgment as to the Plaintiffs' claims, the NFV-VA is not entitled to injunctive relief.

Finally, although the National Federation of the Blind of Virginia (“NFB-VA”) is also a Plaintiff in this action, that does not remove this action from the contours of the PLRA. Under the PLRA, this Court can only award injunctive relief in this case if it first finds that that VDOC has violated the rights of any of the individually named Plaintiffs. 18 U.S.C. § 3626(A)(1)(a); *see, e.g., Green Haven Prison Preparative Meeting of Religious Soc'y of Friends v. New York State Dep't of Corr. & Cmty. Supervision*, 16 F.4th 67, 78 (2d Cir. 2021) (finding that the organizational Plaintiff had standing but the PLRA requires that injunction relief be narrowly drawn), *cert. denied sub nom. Green Haven Preparative Meeting v. New York State Dep't of Corr. & Cmty. Supervision*, 142

S. Ct. 2676, (2022). However, for all of the reasons detailed herein, VDOC is entitled to summary judgment as to all of the Plaintiffs' claims in this case. Therefore, there is no injunctive relief available to the NFV-VA in this action under the PLRA. 18 U.S.C. § 3626(A)(1)(a). Accordingly, VDOC respectfully requests that the Court dismiss the NFB-VA's claims in this case.

Conclusion

Although the Plaintiffs bring voluminous allegations of discrimination in their Amended Complaint, the Plaintiffs have only exhausted their administrative remedies with respect to five of their claims. For this reason alone, the vast majority of the Plaintiff's allegations and claims are barred from review under the PLRA and the Virginia Code. Further, many of the Plaintiffs' claims are likewise barred by the one-year statute of limitations governing RA, ADA, and VDA claims. And, on the merits, the Plaintiffs' claims fair no better. Although the Plaintiffs allege vast discrimination on behalf of VDOC against blind inmates, the evidence in this case rebuts the Plaintiffs' allegations. For all of these reasons, VDOC and the VDOC Defendants respectfully request that the Court grant them summary judgment in this action.

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.

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