No. 21-2310

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ANGELO CLARK

Appellant/Plaintiff Below

v.

ROBERT COUPE, DOC Commissioner, PERRY PHELPS, DAVID PIERCE, MAJOR JEFFREY CARROTHERS, CAPTAIN BURTON, CAPTAIN RISPOLI, CAPTAIN WILLY, DR. WILLIAM RAY LYNCH, DR. PAOLA MUNOZ, DR. DAVID YUNIS, RHONDA MONTGOMERY, SUSAN MUMFORD, STEPHANIE D. JOHNSON, CONNECTIONS COMMUNITY SUPPORT PROGRAMS INC., STEPHANIE STREETS, STEPHANIE EVANS-MITCHELL, CAROL VODVARKA, CAROL VANDRUNEN, LEZLEY SEXTON

Appellees/Defendants Below

On Appeal from the United States District Court
for the District of Delaware
(C.A. No. 17-66 RGA)
District Judge Richard G. Andrews

APPELLEES' ANSWERING BRIEF

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

Ryan T. Costa (#5325)
Kenneth L. Wan (#5667)
Deputy Attorneys General
820 North French Street, 6th Floor

Wilmington, Delaware 19801
(302) 577-8400
Attorneys for Appellees Robert Coupe and David Pierce

Dated: November 3, 2021

TABLE OF CONTENTS

TABLE OF CITATIONS

STATUTES AND OTHER AUTHORITIES

COUNTER STATEMENT OF THE ISSUES PRESENTED

1. Whether Mr. Clark's claims are barred by the statute of limitations, to the extent they challenge events occurring before January 23, 2015.

2. Whether the District Court properly granted Coupe and Pierce's Motion to Dismiss-in-part when it concluded there was no clearly established Eighth Amendment right that prohibited housing Mr. Clark, a mentally ill inmate, in maximum security housing at the James T. Vaughn Correctional Center ("Vaughn").

3. Whether Mr. Clark properly stated a claim that Coupe and Pierce violated Mr. Clark's Eighth Amendment rights when Mr. Clark, a mentally ill inmate, was housed in maximum security housing at Vaughn for approximately seven months.

4. Whether Mr. Clark is barred from making allegations that a jury previously rejected.

STATEMENT OF RELATED CASES AND PROCEEDINGS

No related cases are pending.

COUNTER STATEMENT OF THE CASE

A. Background

Mr. Clark was an inmate formerly incarcerated at the James T. Vaughn Correctional Center. Appx86. According to the Complaint, Mr. Clark was previously diagnosed with serious mental illness, including manic depression and paranoid schizophrenia for which he received treatment while incarcerated at Vaughn. *Id.* He was also prone to violent, explosive behavior. SAppx711-14.

According to Mr. Clark, he was housed in maximum security housing at Vaughn, which he describes as solitary confinement, for nearly six months in 2012. Appx60.

In March 2013, after twenty-eight years with the Delaware State Police, Appellee Robert Coupe became the commissioner of the Delaware Department of Correction. SAppx706. He served in that role until January 2017. *Id.*; Appx62.

Appellee David Pierce served as Vaughn's warden starting in the summer of 2013 through February 2017. SAppx708; Appx62]. [1]

[1]Mr. Clark's Opening Brief refers to Coupe and Pierce as the "Vaughn Wardens," but Coupe has never been a prison warden or held a position at Vaughn. Pierce worked at Vaughn but was not the warden when Mr. Clark alleges he was held in solitary confinement in 2012.

B. Mr. Clark Is Placed in Maximum Security Housing After Punching Another Inmate in the Head.

In January 2016, Mr. Clark was involved in an altercation in which he twice punched another inmate in the back of the head. SAppx711-12; SAppx696-97. Following that attack, Mr. Clark was found guilty of assault by a hearing officer. SAppx711-12. Mr. Clark was also reclassified as maximum security and transferred to Vaughn's maximum security or secured housing unit ("Maximum Security" or the "SHU"), where he was housed until August 18, 2016. Op. Br. at 3.

C. Procedural History

Mr. Clark filed his original complaint initiating this lawsuit on January 23, 2017. SAppx686. On January 12, 2018, Mr. Clark filed his First Amended Complaint, which named fourteen defendants, including Coupe and Pierce. Appx58. The defendants, including Coupe and Pierce, moved to dismiss. On March 26, 2019, the District Court issued an order dismissing Mr. Clark's Eighth Amendment claim against Coupe and Pierce, in part. Appx11. The District Court permitted Mr. Clark to proceed with his Eighth Amendment claim, however, to the extent he alleged Coupe and Pierce were deliberately indifferent to his serious medical need while he was housed in Maximum Security. Appx10.

On May 14, 2019, the District Court issued another decision, which granted a motion for reargument filed by Mr. Clark in part and permitted him to proceed with a second Eighth Amendment claim on the theory that his Eighth Amendment rights

were violated when [Coupe and Pierce allegedly] placing him in the solitary housing unit because of his mental illness." Appx16.

The parties subsequently conducted discovery for these two claims and the District Court ultimately held a four-day jury trial starting June 7, 2021. Appx20. The District Court instructed the jury, regarding the claim that Mr. Clark was placed in Maximum Security because of his mental illness, that "[i]f you find that [] Clark was placed in solitary confinement because of mental illness, his right not to be punished for a disease has been violated. SAppx717. Regarding Mr. Clark's claim that he was deprived of adequate mental health treatment, the District Court instructed the jury that Mr. Clark had to prove, *inter alia*, that his housing in the SHU from January 22, 2016 to August 18, 2016 deprived him "of medical care to such an extent that his [Eighth] Amendment rights were violated." SAppx718. The District Court also noted that Mr. Clark was under the care of medical professionals during that time, and therefore "to show that Mr. Coupe or Mr. Pierce, non-medical officials, were deliberately indifferent, Mr. Clark must show that Mr. Coupe and Mr. Pierce knew that there was reason to believe that medical staff were mistreating (or not treating) inmates with serious mental illness such as Mr. Clark." SAppx721.

On June 10, 2021, the jury rendered a verdict in Coupe and Pierce's favor on both Eighth Amendment claims. SAppx723-25. The jury found that Mr. Clark had failed to prove either that (1) he was deprived of his Eighth Amendment rights by

being placed into solitary confinement because of his mental illness or that (2) he was deprived of his Eighth Amendment rights to adequate medical care while he was in solitary confinement. *Id.*. Following the verdict, the District Court entered judgment for both Coupe and Pierce and against Mr. Clark. Appx20.

On July 9, 2021, Mr. Clark filed his appeal. Appx21.

SUMMARY OF ARGUMENT

While Mr. Clark argues generally that the "Eighth Amendment prohibits placing a seriously mentally ill inmate into lengthy periods of solitary confinement," the actual question at issue is whether Coupe and Pierce personally violated Mr. Clark's Eighth Amendment rights when he was confined to Maximum Security housing for less than seven months in 2017, after he attacked another inmate. Mr. Clark's brief references prior periods that in which he was allegedly held in solitary confinement, but those periods are irrelevant because they either (i) fall afoul of the statute of limitations and precede Coupe and Pierce assuming their alleged roles as DOC's commissioner and Vaughn's warden (2012) or (ii) represent too short a period to be considered "lengthy" under any reasonable standard (2015).

In January 2016, Mr. Clark physically attacked another inmate – twice punching him in the back of the head. To ensure the security of both Mr. Clark and the facility, Mr. Clark was disciplined for the attack and subsequently housed in Vaughn's Maximum Security housing unit for approximately seven months.

After Mr. Clark filed a lawsuit, the District Court correctly dismissed his Eighth Amendment claim, to the extent he argued that his confinement, as a mentally ill inmate in Maximum Security housing, constituted cruel and unusual punishment. The court correctly concluded that qualified immunity barred his claim because it was not based on a violation of clearly established law. Neither binding precedent

nor a robust consensus of cases of persuasive authority in the Courts of Appeals existed at the time of the alleged violations (or now).

While the District Court dismissed this claim, it allowed Mr. Clark to proceed with two other Eighth Amendment claims: (i) that Coupe and Pierce were deliberately indifferent to Mr. Clark's serious medical need while he was housed in Maximum Security and (ii) they violated his constitutional rights by placing him in solitary confinement *because* he was mentally ill. After discovery, both claims were tried before a jury. The jury ultimately rendered a verdict in Coupe and Pierce's favor on both Eighth Amendment claims. Mr. Clark cannot now seek to relitigate those issues and has otherwise failed to state a claim that the conditions of his confinement constituted an Eighth Amendment violation. Simply put, placing a mentally ill inmate in Maximum Security for seven months (or even longer), without more, is not a violation of the Eighth Amendment.

The District Court did not err and properly analyzed Mr. Clark's Eighth Amendment claim against Coupe and Pierce in light of existing law before determining that Coupe and Pierce were shielded by qualified immunity. The District Court's ruling should be affirmed. Even if one assumed that qualified immunity did not apply, however, the appeal should still be denied because Coupe and Pierce's alleged misconduct did not rise to the level of an Eighth Amendment violation.

ARGUMENT

I. MR. CLARK'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS, TO THE EXTENT THEY CHALLENGE EVENTS BEFORE JANUARY 23, 2015.

A. Standard of Review

The Court reviews a decision to dismiss a complaint, or a portion thereof, *de novo*. *Wheeler v. Wheeler*, 639 F. App'x 147, 149 (3d Cir. 2016). A Rule 12(b)(6) motion tests the legal sufficiency of a complaint and provides that a claim will be dismissed if it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Courts must consider the Complaint in its entirety, as well as other sources, such as documents incorporated into the Complaint by reference, and matters of which a court may take judicial notice. *Tellabs v. Makor Issues & Rights Ltd.*, 551 U.S. 308, 322 (2007). Such matters include "tak[ing[judicial notice of court records and dockets." *Kalomiris v. Monroe County Syndicate*, 2009 WL 73785, *2 n.8 (M.D. Pa. Jan. 8, 2009) (citations omitted); *see* Fed. R. Evid. 201(b); *Acierno v. Haggerty*, 2005 WL 3134060, *6 (D. Del. Nov. 24, 2005) (finding that a court could take judicial notice of proceedings in other courts, and the contents of court records) (citing *Southmark Prime Plus, L.P. v. Falzone*, 776 F.Supp. 888, 892 (D. Del. 1991).

In ruling on a motion to dismiss, the court must accept as true all material allegations in the complaint, drawing all reasonable inferences from those allegations in plaintiffs' favor. *See, e.g., Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

However, the Court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding the motion. *Morse v. Lower Merion School Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). "[M]ere conclusory statements" of misconduct are insufficient to make out a cause of action against a defendant. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Further, as will be discussed *infra*, the Court need not consider allegations where a jury has previously found otherwise.

B. Argument

"For purposes of the statute of limitations, § 1983 claims are characterized as personal injury actions." *Restrepo v. Phelps*, 2017 WL 6029584, at *2 (D. Del. Dec. 4, 2017) (*citing Wilson v. Garcia*, 471 U.S. 261, 275 (1983)). "In Delaware, § 1983 claims are subject to a two-year limitations period." *Id.* (internal citations omitted). A claim under § 1983 accrues "when the plaintiff knew or should have known of the injury upon which its action is based." *Id.* (internal citations omitted).

In *Restrepo*, the plaintiff filed a complaint in the District Court for the District of Delaware on July 23, 2017, alleging "condition of confinement claims" pursuant to § 1983. *Id.* at *3. Restrepo's claims were based on the conditions of his confinement as a severely mentally ill inmate in the SHU from 2010 through 2016. *Id.* Accordingly, the District Court found that any claim that accrued before July 23, 2015 was barred by the two-year statute of limitations. *Id.*

As in *Restrepo*, in the instant case, Mr. Clark has brought § 1983 claims based on the conditions of his confinement in the SHU. Because Mr. Clark did not file his initial complaint until January 23, 2017, all claims against Coupe and Pierce for events occurring before January 23, 2015 are time barred.

Accordingly, Mr. Clark's claims should be restricted to events occurring from January 23, 2016 through his release from the SHU on August 18, 2016 and specifically exclude any time he allegedly spent in solitary confinement in 2012.[2]

II. THE DISTRICT COURT DID NOT ERR AND PROPERLY DISMISSED APPELLANT'S CLAIM BECAUSE APPELLEES WERE ENTITLED TO QUALIFED IMMUNITY.

A. Standard of Review

The Court reviews a decision to dismiss complaint, or a portion thereof, *de novo*. *Wheeler v. Wheeler*, 639 F. App'x 147, 149 (3d Cir. Jan 20, 2016). A Rule 12(b)(6) motion tests the legal sufficiency of a complaint and provides that a claim will be dismissed if it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Courts must consider the Complaint in its entirety, as well as

[2] Even if the statute of limitations did not otherwise bar Clark's claims regarding events occurring in 2012, that portion of his claim would also fail due to his inability to show that either Coupe or Pierce were personally involved. *Ashcroft v. Iqbal*, 556 U.S. at 678 (recognizing that in a § 1983 suit the plaintiff must show "that each Government-official defendant, through the official's own individual actions, has violated the Constitution."). The Complaint relies on their respective roles as the DOC's commissioner and Vaughn's warden, but neither held the position at the time. SAppx706, 708.

other sources, such as documents incorporated into the Complaint by reference, and matters of which a court may take judicial notice. *Tellabs v. Makor Issues & Rights Ltd.*, 551 U.S. 308, 322 (2007). Such matters include "tak[ing[judicial notice of court records and dockets." *Kalomiris v. Monroe County Syndicate*, 2009 WL 73785, *2 n.8 (M.D. Pa. Jan. 8, 2009) (citations omitted); *see* Fed. R. Evid. 201(b); *Acierno v. Haggerty*, 2005 WL 3134060, *6 (D. Del. Nov. 24, 2005) (finding that a court could take judicial notice of proceedings in other courts, and the contents of court records) (citing *Southmark Prime Plus, L.P. v. Falzone*, 776 F.Supp. 888, 892 (D. Del. 1991).

In ruling on a motion to dismiss, the court must accept as true all material allegations in the complaint, drawing all reasonable inferences from those allegations in plaintiffs' favor. *See, e.g., Erickson v. Pardus*, 551 U.S. 89, 94 (2007). However, the Court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding the motion. *Morse v. Lower Merion School Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). "[M]ere conclusory statements" of misconduct are insufficient to make out a cause of action against a defendant. *Ashcroft v. Iqbal*, 556 U.S. at 678. Further, as will be discussed *infra*, the Court need not consider allegations where a jury has previously found otherwise.

B. Argument

As a general matter, government officials sued in their individual capacity under § 1983 are entitled to qualified immunity. *See Wright v. City of Philadelphia*, 409 F.3d 595, 599 (3d Cir. 2005) ("When an officer's actions give rise to a § 1983 claim, the privilege of qualified immunity, in certain circumstances, can serve as a shield from suit."); *Southerland v. Pennsylvania*, 389 F. App'x 166, 170 (3d Cir. 2010) ("The doctrine of qualified immunity serves to protect officers from civil liability."). Rooted in practical concerns accompanying litigation, qualified immunity is designed to preserve an official's ability to effectively carry out his duties, without being unduly hampered by the costs and burdens of defending each and every lawsuit. *See Thomas v. Indep. Twp.*, 463 F.3d 285, 291 (3d Cir. 2006) ("The immunity is intended to protect officials from the potential consequences of suit, including distractions from official duties, inhibition of discretionary action, and deterrence of able people from service.") *Argueta v. U.S. Immigration & Customs Enft.*, 643 F.3d 60, 73 (3d Cir. 2011) ("If a Government official is to devote time to his or her duties, and to the formulation of sound and responsible policies, it is counterproductive to require the substantial diversion that is attendant to participating in litigation and making informed decisions as to how it should proceed.").

Because qualified immunity is in place to not only immunize an officer from ultimate liability, but also to temper the burdens of litigation, the Supreme Court has stressed the importance of resolving the issue of immunity at the earliest possible stage of litigation. *See Siegert v. Gilley*, 500 U.S. 226, 232 (1991) (instructing that district courts should move expeditiously to weed out suits . . . without requiring a defendant who rightly claims qualified immunity to engage in expensive and time-consuming preparation to defend the suit on its merits."); *Hamner v. Burls*, 937 F.3d 1171, 1175 (8th Cir. 2019) (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

Qualified immunity protects government officials from liability for civil damages unless (1) the official's conduct violated a constitutional or statutory right; and (2) that violated right was "clearly established." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). If the answer to either is no, then qualified immunity requires dismissal of the action. *See George v. Rehiel*, 738 F.3d 562, 571 (3d Cir. 2013) (explaining that the district court's finding that the complaint pled a plausible claim was, for all intents and purposes, an appealable denial of qualified immunity). Moreover, since *Pearson v. Callahan*, the Supreme Court has been clear that courts are not required to tackle these steps in sequential order and that the analytical approach is instead left to the appellate courts to decide. *Williams v. Secretary,*

Pennsylvania Department of Corrections, 848 F.3d 549, 557-58 (3d Cir. 2017) (citing *Pearson v. Callahan*, 555 U.S. 223 (2009)).[3]

For the reasons set forth by the District Court and those set forth below, Mr. Clark failed to state a claim that the Appellees violated his Eighth Amendment right when he was placed in Maximum Security for seven months after physically attacking another inmate. The Appellees did not violate a constitutional or statutory right and were thus entitled to qualified immunity. Even if one could conclude that the Appellees violated a constitutional right, no such right was clearly established.

1. The District Court Correctly Concluded that Qualified Immunity Barred Appellant's Claim Because It Is Not Based on a Violation of Clearly Established Law.

"To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015) (quoting *Reichie v. Howard*, 566 U.S. 658, 664 (2012)). Although, as Mr. Clark notes, there need not be a case directly on point for a right to be clearly established, "existing precedent must have placed the

[3] Mr. Clark suggests that the Third Circuit has declined to adopt the flexibility afforded by *Pearson*, but that is not so. *Id.* The language from *Porter v. Pennsylvania Department of Corrections* to which Clark cites represents nothing more than the observation that, under *Pearson*, it will *at times* be more appropriate to assess whether a constitution right was violated first. 974 F.3d 431, 437 (3d Cir. 2020)

statutory or constitutional question beyond debate." *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)); *Mullenix v. Luna*, 577 U.S. 7, 13 (2015).

The Supreme Court has repeatedly stated that courts are "not to define clearly established law at a high level of generality." *Mullenix*, 577 U.S. at 12 (quoting *al-Kidd*, 563 U.S. at 742). The fundamental question is 'whether the violative nature of *particular* conduct is clearly established." *Id.*; *Hamner v. Burls*, 937 F.3d 1171, 1179 (8th Cir. 2019) (quoting *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam). The analysis "must be undertaken in light of the specific context of the case, not as a broad general proposition. *Mullenix*, 577 U.S. at 12 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004)).

"Put simply, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Mullenix*, 577 U.S. at 12 (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). The ultimate question is whether the defendant had "fair warning" that his conduct deprives his accuser of a constitutional right. *Hope v. Pelzer*, 526 U.S. 730, 740 (2002).

The District Court correctly held "that no clearly established law supported [Mr. Clark's] position that 'housing a mentally ill inmate in solitary confinement for long periods of time violates a clearly established Eighth Amendment prohibition of cruel and unusual punishment." Appx13. That decision should be affirmed.

i. Coupe and Pierce did not violate a right that was clearly established by Supreme Court Precedent.

For qualified immunity purposes, "clearly established rights are derived either from binding Supreme Court and Third Circuit precedent or from a 'robust consensus of cases of persuasive authority in the Courts of Appeals.'" *James v. New Jersey State Police*, 957 F.3d 165, 170 (3d Cir. 2020); *Porter v. Pennsylvania Department of Corrections*, 974 F.3d 431, 449 (3d Cir. 2020) (explaining that "[w]e look to the Supreme Court, our Circuit, and our sister circuits to determine whether a right is clearly established"); *L.R. v. Sch. Dist. of Phila.*, 836 F.3d 235, 247-48 (3d Cir. 2016).

As an initial matter, Mr. Clark cannot cite to any binding Supreme Court precedent to support his position that housing a mentally ill inmate in maximum security housing for "extended periods" violates a clearly established Eighth Amendment prohibition of cruel and unusual punishment. In his Opening Brief, Mr. Clark identifies two Supreme Court decisions: *In re Medley*, 134 U.S. 160 (1890) and *Estelle v. Gamble*, 429 U.S. 97 (1976).

With regards to *Medley*, the District Court explained:

> The *In re Medley Court* addressed a Colorado law that imposed solitary confinement on all capital offenders. 134 U.S. at 162-63. The law was enacted after Mr. Medley committed his crime and the Supreme Court determined it was an unconstitutional *ex post facto* law, as applied to him. *Id.* at 171-73 . . . . The Court did not, however, conclude that solitary confinement was an unconstitutional punishment and it did not strike down the Colorado law as it applied to future capital offenders.

Appx. At 13-14. It has no bearing on the question of qualified immunity in this case.

Mr. Clark also cites to *Estelle* for the proposition that "[i]t has been black-letter law since 1976 that prison officials violate the Eighth Amendment if they are deliberately indifferent to a prisoner's existing serious medical needs." Op. Br. at 21. While this may be true, *Estelle* by no means establishes that placing Mr. Clark in Maximum Security housing for seven months after he attacked another inmate constituted cruel and unusual punishment under the Eighth Amendment.

More fundamentally, Mr. Clark's reliance on *Estelle* ignores that his Eighth Amendment claim was dismissed only in part and that he was permitted to proceed to trial with his Eighth Amendment claim that the Appellees were deliberately indifferent to his serious medical need while he was housed in Maximum Security. After a full trial, the jury rendered a verdict in both Coupe and Pierce's favor on this claim. Appx20.

Coupe and Pierce did not violate any right clearly established by Supreme Court precedent.

ii. Coupe and Pierce did not violate a right that had been clearly established by Third Circuit precedent.

In addition, Mr. Clark relies on three Third Circuit decisions in a further effort to muster support for his argument that Coupe and Pierce violated a clearly established constitutional right: *Palakovic v. Wetzel*, 854 F.3d 209 (3d Cir. 2017, *Williams v. Secretary, Pennsylvania Department of Corrections*, 848 F.3d 549 (3d

Cir. 2017), and *Porter v. Pennsylvania Department of Corrections*, 974 F.3d 431 (3d Cir. 2020). None of these decisions can be considered for purposes of demonstrating a clearly established right, however, as all three were decided after the relevant events took place. *James v. New Jersey State Police*, 957 F.3d 165, 170 (3d Cir. 2020) (explaining that this Court "will consider only precedent that clearly established rights as of the date" the events allegedly occurred). As this Court has previously observed, "a reasonable officer is not required to foresee judicial decisions that do not yet exist." *Id.*

Even if they could be considered, none of the Third Circuit opinions on which Mr. Clark relies involved a sufficiently similar factual scenario at the "high degree of specificity" required by Supreme Court precedent. *Id.* at 171 (quoting *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018)). For example, Mr. Clark cites *Porter* for the general proposition that the Eighth amendment prohibits the "excessive use of solitary confinement" or that "solitary confinement may be an Eighth Amendment violation." Op. Br. at 11, 37. In *Porter*, the Third Circuit did not, however, determine that housing a mentally ill inmate in maximum security housing for approximately seven months, after he attacked a fellow inmate, would violate that inmate's clearly established Eighth Amendment right. *Porter* addressed a scenario in which a death row inmate had been held in solitary confinement for ***over thirty years*** and, even in that circumstance, the Court found that the defendants

were entitled to qualified immunity on the inmate's Eighth Amendment claim. 974 F.3d 431.

Mr. Clark likewise cites to *Williams* for the general proposition that "researchers have found even *a few days* in solitary confinement can cause cognitive disturbance." Op. Br. at 10-11, 35. While that may accurately describe certain dicta, *Williams* does not address whether the factual scenario presented here represents a constitutional violation. The *Williams* Court addressed the situation of two death row inmates held in solitary confinement on death row for six and eight years respectively, and "whether there is a constitutionally protected liberty interest that prohibits the State from continuing to house inmates in solitary confinement on death row after they have been granted resentencing hearing, without meaningful review of the continuing placement." 848 F.3d at 552, 561. As Mr. Clark himself acknowledges, the plaintiffs in *Williams* did not pursue their Eighth Amendment claim on appeal. Op. Br. at 35. And the Court ultimately held that no clearly established right existed and the defendants were thus entitled to qualified immunity on the Fourteenth Amendment due process claim that was pursued. 848 F.3d at 552-53.

Like *Porter* and *Williams*, the final case on which Mr. Clark relies, *Palakovic*, was decided after the fact and should not be considered for that reason alone. To the extent that were not the case, however, the District Court correctly found that the

Palakovic Court did not perform a qualified immunity analysis and never considered whether mentally ill inmates had a clearly established Eighth Amendment right to not be placed in maximum security housing for seven months. Appx15. *Palakovic* specifically addressed the types of Eighth Amendment claims that may arise out of prison suicides. 854 F.3d at 215.

Mr. Clark has failed to identify any binding Supreme Court or Third Circuit precedent demonstrating that Coupe and Pierce violated a clearly established right.

iii. Coupe and Pierce did not violate a right that had been clearly established by a robust consensus of persuasive authority in the Courts of Appeals.

Absent binding Supreme Court or Third Circuit precedent, a plaintiff may still potentially show a particular right has been clearly established through a "robust consensus of cases of persuasive authority in the Court[s] of Appeals." *L.R.*, 836 F.3d at 247-48; *see James v. New Jersey State Police*, 957 F.3d 165, 170 (3d Cir. 2020).

Mr. Clark cites only one case from another Court of Appeals – *Davenport v. DeRobertis*, 844 F.2d 1310 (7th Cir. 1998) – to support his argument that "robust decisional law across the nation clearly establishes that the Eighth Amendment prohibits extended solitary confinement of seriously mentally ill inmates." Op. Br. at 20, 24. But more than one case is needed to make a robust consensus of cases of persuasive authority.

Moreover, Mr. Clark only invokes *Davenport* to note "there is plenty of medical and psychological literature concerning the ill effects of solitary confinement." Op. Br. at 24. While that may be true, scholarly literation cannot establish whether a constitutional question was beyond debate in 2016. *Hamner v. Burls*, 937 F.3d 1171, 1179 (8th Cir. 2019); *see also Rhodes v. Chapman*, 452 U.S. 337, 348 n.13 (1981) (explaining that expert opinion is entitled to little weight in determining whether a punishment is cruel and unusual).

iv. District Court Cases Cannot Clearly Establish the Law for Qualified Immunity Purposes.

Without either binding precedent or a robust consensus of persuasive authority from the Courts of Appeals, Mr. Clark instead cites to a smattering of district court cases from across the country to conjure the illusion of a national consensus. *See* Op. Br. at 22-27. This sampling of non-binding district court cases cannot support a finding that a robust consensus of persuasive authority exists. *Love v. Whitman*, 2021 WL 253999, at *6 (D. W.D. Pa. Jan. 26, 2021) (citing *Ashcroft v. al-Kidd*, 563 U.S. at742, 131 S. Ct. 2074, 2084, 179 L. Ed. 2d 1149 (2011). Such an analysis is reserved for situations in which other Courts of Appeal have addressed the specific right asserted by a plaintiff. *Id.* (citing *El v. City of Pittsburgh*, 975 F.3d 327, 339 (3d Cir. 2020)); *see Stafford v. Ahlin*, 859 F. App'x 109, 111 (9th Cir. 2021) (finding that unpublished circuit opinions and district court opinions "do not establish the necessary consensus"); *Ullery v. Bradley*, 949 F.3d 1282, 1300 (10th

Cir. 2020) ("declin[ing] to consider district court opinions in evaluating the legal landscape for purposes of qualified immunity").

Moreover, and as discussed more fully below, there is no such consensus, even among the district courts. Earlier this year, for example, the District Court for the District of Delaware held that housing a mentally ill inmate in the SHU (the same housing unit Mr. Clark was housed in) for a year "is not in itself cruel and unusual." *Miller v. Metzger*, 2021 WL 199716, at *3 (D. Del. May 19, 2021).

v. It was Far from Obvious that Either Coupe or Pierce Were Violating the Eighth Amendment When Other Officials Placed Mr. Clark in Maximum Security Housing.

Unable to point to clearly established law, Plaintiff, in a last-ditch effort, argues that, despite the lack of specific authority, general statements of law apply with such obvious clarity to Coupe and Pierce's conduct that they should not be entitled to qualified immunity. Op. Br. at 51. This argument must also be rejected.

Coupe and Pierce do not deny that, when faced with uniquely egregious facts, the Supreme Court has recognized that qualified immunity may not shield government officials acting in a wholly unreasonable manner. *Taylor v. Riojas*, 141 S.Ct. 52, 53-54 (2020). For example, in *U.S. v. Lanier*, the Supreme Court recognized that qualified immunity would not shield welfare officials who sold foster children into slavery, even if there were not a prior case directly on point. 520 U.S. 259, 271 (1997). And in *Taylor*, the Supreme Court found that qualified

immunity would not shield correctional officers who knowingly housed an inmate in a feces-covered cell, and then moved him into a frigidly cold cell with a clogged drain and no bunk. 141 S.Ct. at 53. While Coupe and Pierce acknowledge this narrow line of precedent, they vigorously deny that the facts of this case in any way parallel the extreme circumstances described therein. This is not such a case. The facts, as demonstrated below, are not unique. And they are not egregious. To the contrary, Mr. Clark's confinement to Maximum Security was reasonable under the circumstances.

Accordingly, Coupe and Pierce are shielded by qualified immunity.

III. MR. CLARK'S TIME IN MAXIMUM SECURITY DOES NOT AMOUNT TO A VIOLATION OF THE EIGHTH AMENDMENT.

A. Standard of Review

The Court reviews a decision to dismiss complaint, or a portion thereof, *de novo*. *Wheeler v. Wheeler*, 639 F. App'x 147, 149 (3d Cir. Jan 20, 2016). A Rule 12(b)(6) motion tests the legal sufficiency of a complaint and provides that a claim will be dismissed if it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Courts must consider the Complaint in its entirety, as well as other sources, such as documents incorporated into the Complaint by reference, and matters of which a court may take judicial notice. *Tellabs v. Makor Issues & Rights Ltd.*, 551 U.S. 308, 322 (2007). Such matters include "tak[ing[judicial notice of court records and dockets." *Kalomiris v. Monroe County Syndicate*, 2009 WL

73785, *2 n.8 (M.D. Pa. Jan. 8, 2009) (citations omitted); *see* Fed. R. Evid. 201(b); *Acierno v. Haggerty*, 2005 WL 3134060, *6 (D. Del. Nov. 24, 2005) (finding that a court could take judicial notice of proceedings in other courts, and the contents of court records) (citing *Southmark Prime Plus, L.P. v. Falzone*, 776 F.Supp. 888, 892 (D. Del. 1991).

In ruling on a motion to dismiss, the court must accept as true all material allegations in the complaint, drawing all reasonable inferences from those allegations in plaintiffs' favor. *See, e.g., Erickson v. Pardus*, 551 U.S. 89, 94 (2007). However, the Court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding the motion. *Morse v. Lower Merion School Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). "[M]ere conclusory statements" of misconduct are insufficient to make out a cause of action against a defendant. *Ashcroft v. Iqbal*, 556 U.S. at 678. Further, as will be discussed *infra*, the Court need not consider allegations where a jury has previously found otherwise.

B. Argument

As discussed, *supra*, for Mr. Clark to overcome qualified immunity, he must demonstrate that Coupe and Pierce violated a constitutional right tand that the violated right was clearly established. Mr. Clark's First Amended Complaint fails to state a violation of his constitutional rights.

As an initial matter, Mr. Clark already went to trial on his claims that Coupe and Pierce violated his Eighth Amendment rights by (i) being deliberately indifferent to his serious medical needs when he was in the SHU, and (ii) placing Mr. Clark in the SHU because of his mental illness. The jury found for Coupe and Pierce on both claims. Against that backdrop, it appears that Mr. Clark is now seeking to advance a conditions of confinement claim.

Because a jury already found that Mr. Clark was not denied adequate mental health treatment and was not placed in Maximum Security because of this mental illness, Mr. Clark cannot rely on those allegations in bringing a conditions of confinement claim. He is barred from relitigating those issues. Indeed, Mr. Clark should not be allowed to make allegations that directly contradict the jury's verdict in his trial. The remaining allegations fail to plead a viable claim.

1. Mr. Clark is barred by the law of the case doctrine, collateral estoppel, and res judicata from alleging inadequate mental health treatment or that he was placed in Maximum Security due to his mental illness because a jury already decided, at trial, that he was not deprived of adequate medical treatment and not placed in Maximum Security because of his mental illness

"The law of the case doctrine limits relitigation of an issue once it has been decided in an earlier stage of the same litigation." *Hamilton v. Leavy*, 322 F.3d 776, 786 (3d Cir. 2003) (citation and internal quotations omitted). The doctrine is used to "promote finality, consistency, and judicial economy." *Id.* (citation omitted).

Indeed, the "law of the case doctrine directs courts to refrain from re-deciding issues that were resolved earlier in the litigation." *Ingram v. S.C.I. Camp Hill*, 448 F. App'x 275, 278 (3d Cir. 2011) (citation and internal quotations omitted).

A jury's findings are the law of the case "and must be accepted as true." *Sands v. Wagner*, 2007 WL 2990887, at *2 (M.D. Pa. Oct. 9, 2007), *aff'd*, 314 F. App'x 506 (3d Cir. 2009) (citing *Herber v. Johns-Manville Corp.*, 785 F.2d 79, 90 (3d Cir.1986)). "[W]here an issue ... was decided by the jury in an earlier trial, the [party prevailing on that issue] may not be required to relitigate the same issue." *Sands*, 2007 WL 2990887, at *1(citing *Pritchard v. Liggett & Myers Tobacco Co.*, 370 F.2d 95, 95-96 (3d Cir.1966)) (internal quotations omitted) (alteration in original). In *Sands*, the court held that a jury's finding on a particular issue of fact controlled in any subsequent re-trial. 2007 WL 2990887, at *5; *see also*, *Herber*, 785 F.2d at 90 (holding that a jury's findings "are now law of [the] case and must be accepted as true.").

In the instant case, Mr. Clark cannot rely on allegations of inadequate mental health treatment in bringing his conditions of confinement claim. A jury already found that Mr. Clark received adequate mental health treatment, and thus Mr. Clark was not denied adequate medical care in violation of the Eighth Amendment. Likewise, Mr. Clark cannot rely on allegations that he was placed in Maximum Security because of his mental illness because a jury already found to the contrary.

Mr. Clark is precluded from relitigating those issues. As a result, Mr. Clark cannot now allege, in making a conditions of confinement claim, that he received inadequate mental health treatment or that he was placed in Maximum Security due to his mental illness when a jury already found otherwise, and the Court should disregard any such allegations in evaluating whether Mr. Clark's First Amended Complaint stated an actual constitutional violation.

"The doctrine of collateral estoppel, now commonly referred to as issue preclusion, prevents parties from litigating again the same issues when a court of competent jurisdiction has already adjudicated the issue on its merits, and a final judgment has been entered as to those parties." *Witkowski v. Welch*, 173 F.3d 192, 198 (3d Cir. 1999) (citation omitted). "Issue preclusion forecloses relitigation in a later action [] of an issue of fact or law which was actually litigated and which was necessary to the original judgment." *Id.* (citation and internal quotations omitted) (alteration in original). "A party asserting collateral estoppel must prove the following elements: (1) the previous determination was necessary to the decision; (2) the identical issue was previously litigated; (3) the issue was actually decided on the merits and the decision was final and valid; and (4) the party being precluded from re-litigating the issue was adequately represented in the previous action." *Galderma Lab'ys Inc. v. Amneal Pharms., LLC*, 921 F. Supp. 2d 278, 280 (D. Del. 2012) (citing *Jean Alexander Cosmetics, Inc. v. L'Oreal USA, Inc.,* 458 F.3d 244,

249 (3d Cir. 2006); *Novartis Pharms. Corp. v. Abbott Labs.,* 375 F.3d 1328, 1333 (Fed. Cir. 2004)).

"Collateral estoppel is properly applied to factual inferences drawn from a general jury verdict when such findings are necessarily implied by the prior verdict." *Bradburn Parent Tchr. Store, Inc. v. 3M*, 2005 WL 1388929, at *3 (E.D. Pa. June 9, 2005) (citation omitted). When "the jury in the previous case necessarily determined the facts sought to be precluded, collateral estoppel applies to the jury's explicit findings as well as to those implicit findings which the jury rationally must have determined in order to come to a verdict." *Bradburn Parent Tchr. Store, Inc. v. 3M (Minnesota Mining & Mfg. Co.)*, 2005 WL 736629, at *9 (E.D. Pa. Mar. 30, 2005) (citing *Chew v. Gates*, 27 F.3d 1432, 1438 (9th Cir.1994)). Indeed, collateral estoppel bars a plaintiff from relitigating an issue that has already been determined by a jury. *Aiello v. City of Wilmington*, 470 F. Supp. 414, 419 (D. Del. 1979), *aff'd sub nom. Aiello v. City of Wilmington, Del.*, 623 F.2d 845 (3d Cir. 1980).

In *Aiello*, the plaintiff, a firefighter, brought claims against the City of Wilmington and certain individuals, alleging that the defendants violated his due process rights. *Id.* at 416-417. At the time of trial, plaintiff could only seek damages against the individual defendants because no cause of action for damages existed

against a municipality.[4] *Id.* The jury found for the individual defendants.[5] *Id.* at 417. However, before the Court issued a decision on the injunctive relief aspect of the claim, the U.S. Supreme Court, in *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978) recognized a cause of action for damages against a municipality. *Id.* As a result, plaintiff moved for a new trial against the City of Wilmington for damages. *Id.*

The court denied plaintiff's motion, finding that while a new cause of action existed under *Monell*, collateral estoppel barred plaintiff from relitigating the issues that were already determined against him in the jury trial. *Id.* at 418, 423. The claims against the City of Wilmington would have been identical to those asserted against the individual defendants, and thus plaintiff could not maintain those claims because a jury had found that the individual defendants did not violate plaintiff's due process rights. *Id.* at 421-422. The jury having found that plaintiff's due process rights were not violated, collateral estoppel barred plaintiff from revisiting that issue. *Id.* at 422-423.

In the instant case, collateral estoppel precludes Mr. Clark from bringing a conditions of confinement claim because one of the elements of a conditions of confinement has already been decided by a jury. As will be discussed, *infra*, one of

[4] The City of Wilmington was named as a defendant only for injunctive relief.

[5] The jury was not asked to rule on any injunctive relief.

the necessary elements of conditions of confinement claim is "that the defendant prison official was deliberately indifferent to inmate health or safety." *Wilkins v. Haidle*, 2021 WL 4355342, at *3 (M.D. Pa. Sept. 24, 2021) (citing *Porter v. Pa. Dep't of Corr.*, 974 F.3d 431, 441 (3d Cir. 2020) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). Because a jury already determined that Coupe and Pierce did not act with any deliberate indifference towards Mr. Clark's health, Mr. Clark cannot maintain a conditions of confinement claim. To succeed, such a claim would necessitate a finding contrary to the jury's decision.

Even if collateral estoppel did not completely bar Mr. Clark's claim, collateral estoppel bars Mr. Clark from relitigating the issue of whether he received adequate mental health treatment while he was held in Maximum Security because, similar to *Aiello*, a jury already found that Mr. Clark received proper and adequate mental health treatment. Further, because a jury also found that Mr. Clark was not placed in Maximum Security because of his mental illness, Mr. Clark is also precluded from re-visiting that issue. Indeed, Coupe and Pierce have met all four elements for the applicability of collateral estoppel. The first element is met because the jury's finding that Mr. Clark was not deprived of his Eighth Amendment rights to adequate medical care was necessary and fundamental to its decision. The second element is met because the allegations of insufficient mental health treatment and placement in Maximum Security are identical to the issues the jury had decided during trial. The

third element is met because the jury's verdict was a final determination on the merits of Mr. Clark's claims and judgment was then entered. Appx20. Finally, the fourth element has been met because Mr. Clark had adequate counsel – the same counsel now representing him on appeal. Consequently, Mr. Clark is precluded from alleging that he received inadequate mental health treatment or that he was placed in Maximum Security because of his mental illness in attempting to bring a conditions of confinement claim.

2. The remaining allegations in the First Amended Complaint fail to adequately plead an Eighth Amendment violation because the facts do not amount to a violation.

"The Eighth Amendment imposes upon prison officials a duty to provide humane conditions of confinement." *Green v. Coleman*, 575 F. App'x 44, 47 (3d Cir. 2014) (citation and internal quotations omitted). "A condition of confinement violates the Eighth Amendment only if it is so reprehensible as to be deemed inhumane under contemporary standards or such that it deprives an inmate of minimal civilized measure of the necessities of life." *Robinson v. Phelps*, 946 F. Supp. 2d 354, 364 (D. Del. 2013) (citing *Hudson v. McMillian,* 503 U.S. 1, 8 (1992); *Wilson v. Seiter,* 501 U.S. 294, 298 (1991)). To prevail in a conditions of confinement claim, a plaintiff must demonstrate "(1) that they were subjected to an objectively, sufficiently serious deprivation that resulted in the denial of minimal civilized measures of life's necessities and (2) that the defendant prison

official was deliberately indifferent to inmate health or safety." *Wilkins v. Haidle*, 2021 WL 4355342, at *3 (M.D. Pa. Sept. 24, 2021) (citing *Porter v. Pa. Dep't of Corr.*, 974 F.3d 431, 441 (3d Cir. 2020) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). Regarding the first element, "the Constitution does not mandate comfortable prisons, and prisons … which house persons convicted of serious crimes, cannot be free of discomfort." *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981).

Placing a mentally ill inmate in the SHU for one year, without more, is not a violation of the Eighth Amendment. *Miller*, 2021 WL 1999716, at *3. In *Miller*, plaintiff, a mentally ill inmate, claimed that prison officials violated his Eighth Amendment right against cruel and unusual punishment by placing him in the SHU – the same place Mr. Clark was held – for approximately one year. *Id.* at *1, 3. He alleged this was responsible for his "declining mental health." *Id.* The prison officials moved to dismiss that claim, among others. *Id.* at *1. The court granted the motion, finding that plaintiff's time in the SHU did not subject plaintiff to cruel and unusual punishment. *Id.* at *3. Relying on *Hutto v. Finney*, 437 U.S. 678 (1978), the court found that being in the SHU "is not in itself cruel and unusual", but rather "the length and conditions … must have been cruel and unusual." *Id.* The court initially found that one year in the SHU is a typical length of time and did not

implicate the Eighth Amendment. *Id.* Further, the court found that plaintiff failed to allege any deprivation of basic human needs. *Id.*

A similar conclusion was found in *Norris v. Davis*. 2011 WL 5553633, at *3-4 (W.D. Pa, Nov. 15, 2011). In *Norris*, plaintiff-inmate alleged he suffered from bipolar disorder, and that his placement in the Restricted Housing Unit ("RHU") exacerbated his mental illness. *Id.* at *2. As a result, he claimed that his conditions of confinement "violate[d] the Eighth Amendment prohibition against cruel and unusual punishment. *Id.* at *3. Defendants moved to dismiss the claim. *Id.* at *1. The court granted defendant's motion, finding that the plaintiff failed "to allege any facts to demonstrate that the conditions of his confinement in the RHU deprived him of any basic human need such as food, clothing, shelter, sanitation, medical care or personal safety." *Id.* at *3. The court also noted "[t]he well-established rule is that discipline reasonably maintained in state prisons is not under the supervisory direction of Federal courts." *Id.* at *4 (citing *Ford v. Board of Managers of the New Jersey State Prison*, 407 F.2d 937 (3d Cir.1969)).

In the instant case, Mr. Clark's allegations fail to adequately plead a conditions of confinement claim. Initially, Mr. Clark was only held in the SHU for approximately seven months, five months less than *Miller* and a period of time which is not atypical and generally does not implicate the Eighth Amendment. Further, like the plaintiffs in *Miller* and *Norris*, Mr. Clark's allegations are insufficient to

sustain a conditions of confinement claim because he was not denied any minimal civilized measures of life's necessities. As discussed, *supra*, a jury already found that Mr. Clark received adequate mental health treatment and was not placed in the SHU because of his mental illness and therefore Mr. Clark cannot rely on such allegations to support his claim. The remaining allegations fail to allege that Mr. Clark was deprived of any other civilized measures of life's necessities. There is no claim that Mr. Clark was deprived of food, clothing, shelter, or sanitation. Accordingly, he cannot meet the first element of a conditions of confinement claim and the Court should affirm the District Court's dismissal.

Nor can Mr. Clark satisfy the second element of a conditions of confinement claim – that Coupe and Pierce were deliberately indifferent to his health when he was housed in Maximum Security. While Mr. Clark argues that they were deliberately indifferent to his serious medical needs, (Op. Br. at 5, 21, 33, 43), a jury has already determined decisively that they were not. SAppx724. The allegations in the First Amended Complaint fail to allege any other deliberate indifference.

Accordingly, Mr. Clark's claim must fail and Coupe and Pierce are entitled to qualified immunity.

CONCLUSION

For the reasons set forth herein, Coupe and Pierce respectfully submit that the District Court's decision dismissing Mr. Clark's Eighth Amendment claim was correctly decided and should be affirmed. Alternatively, they respectfully submit that this Court should find that Coupe and Pierce did not violate Mr. Clark's Eighth Amendment rights and, accordingly, the dismissal of Mr. Clark's Eighth Amendment claim should be affirmed.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
/s/ *Ryan T. Costa*
Ryan T. Costa (#5325)
Kenneth L. Wan (#5667)
Deputy Attorneys General
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
ryan.costa@delaware.gov
kenneth.wan@delaware.gov
Attorneys for Appellees Coupe and Pierce

Dated: November 3, 2021

CERTIFICATE OF COMPLIANCE

I, Ryan T. Costa, hereby certify that I am a member of the Bar of this Honorable Court.

I further certify that the Answering Brief of Appellees complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), because this brief contains 8,055 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I certify that the Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, 14 point.

I further certify that the text of the electronically filed version of this Brief is identical to the text of the paper copies filed with the Clerk of this court.

I further certify that the electronically filed version of this Brief has been screened by McAfee Virus Scan Enterprise, Version 8.8, and no viruses were found.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Ryan T. Costa
Ryan T. Costa (#5325)
Deputy Attorney General
820 N. French Street, 6th Fl.
Wilmington, DE 19801
(302) 577-8400
Attorney for Appellees Coupe and Pierce

Dated: November 3, 2021

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the United States Court of Appeals for the Third Circuit, hereby certifies that on November 3, 2021 he caused the Appellees' Answering Brief to be electronically filed and served using CM/ECF upon to the following:

SUSAN L. BURKE
ACLU DELAWARE
100 West 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326

CHAD S.C. STOVER
BARNES & THORNBURG LLP
1000 North West Street, Suite 1500
Wilmington, Delaware 19801
(302) 300-3434

MICHAEL J. BROADBENT
COZEN O'CONNOR
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, Pennsylvania 19103
(215) 665-2000

Respectfully submitted,

/s/ Ryan T. Costa
Ryan T. Costa (#5325)
Deputy Attorney General
Delaware Dept. of Justice
820 N. French Street, 6th Fl.
Wilmington, DE 19801
(302) 577-8400
Attorney for Appellees Coupe and Pierce

DATED: November 3, 2021