

MVM for partial judgment on the pleadings and for partial summary judgment.²

I.

The plaintiffs have amended their complaint three times during the course of this case. We have ruled on previous motions of the defendants to dismiss and for summary judgment. By Order dated July 21, 2004, we determined that the plaintiffs were employed by MVM, rather than by the USMS, and we dismissed certain claims for relief and granted summary judgment in the defendants' favor with respect to others. Leitch v. MVM, No. Civ.A. 03-4344, 2004 WL 1638132 (E.D. Pa. July 22, 2004). Six claims remain against MVM. As to the federal defendants, all that remains is a procedural due process claim under the Fifth Amendment brought by the seven terminated plaintiffs, George Leitch, William Burge, Lawrence Churm, Donald Friel, Gregory Scorzafave, Donald Smith, and Benjamin Adams.

The seven terminated plaintiffs currently allege: (1) violation of their right to procedural due process guaranteed by the Fifth Amendment; (2) violation of the Rehabilitation Act, 29 U.S.C. § 701 et seq.; (3) breach of contract and; (4) "concert of action." One terminated plaintiff, Leitch, also has a claim for: (1) violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., and the "New Jersey Handicapped Act,"³

2. MVM has filed an answer with respect to certain claims in the third amended complaint.

3. These two claims for relief are listed as one cause of action in the third amended complaint. It refers to the "New Jersey
(continued...)

and (2) violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq. The eighteen plaintiffs who are still employed by MVM⁴ only join in this action with respect to the breach of contract claim against MVM.

II.

Under the Federal Rules of Civil Procedure, on both a Rule 12(b)(6) motion to dismiss and a Rule 12(c) motion for judgment on the pleadings, we accept all well-pleaded facts in the complaint as true. In re Rockefeller Ctr. Prop., Inc. Secs. Litig., 311 F.3d 198, 215 (2002); Turbe v. Government of the Virgin Islands, 938 F.3d 427, 428 (3d Cir. 1991). In addition, we may consider matters of public record, and authentic documents upon which the complaint is based if attached to the complaint or as an exhibit to the motion. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1391 (3d Cir. 1994); Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196-97 (3d Cir. 1993) (citations omitted). A motion for judgment on the pleadings under Rule 12(c) is judged under the same standards as

3.(...continued)

Handicapped Act" without citation. We presume the plaintiffs are referring to the New Jersey Law Against Discrimination, N.J. Stat. Ann. § 10:5-1 et seq.

4. The eighteen named plaintiffs listed in the third amended complaint who have not been terminated by MVM are Donald L. Auman, Carl Benjamin, Dean D. Deitz, Robert J. Haegele, Ernest Humphreys, Jr., Al Juliano, Leonard J. Kane, Richard B. Kraczek, Victor W. Krzewinski, Lawrence R. Kuhns, Richard Lorenzo, Edward M. Martin, Harry M. Montville, Paul E. Musheno, Joseph J. Piccolo, Jr., Kenneth Schwartzkopf, Melvin A. Weeast, and Robert P. Womeldorf, Sr.

a motion to dismiss pursuant to Rule 12(b)(6). Turbe, 938 F.2d at 428.

If the parties rely on affidavits or other materials not properly considered on a Rule 12(b)(6) or 12(c) motion, the court will treat the motion as one for summary judgment under Rule 56. Under Rule 56(c) of the Federal Rules of Civil Procedure, we may grant summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Id. at 254. We review all evidence and make all reasonable inferences from the evidence in the light most favorable to the non-movant. See Wicker v. Consol. Rail Corp., 142 F.3d 690, 696 (3d Cir. 1998). The non-moving party may not rest upon mere allegations or denials but must set forth specific facts showing there is a genuine issue for trial. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990).

III.

All of the plaintiffs either work or have worked as CSO's in federal courthouses in New Jersey or Pennsylvania as a result of a contract ("Third Circuit Contract") between the USMS and their employer MVM, a private security company. All of them belong to one of several labor unions, each of which entered into

a Collective Bargaining Agreement ("CBA") with MVM which governed certain terms of the plaintiffs' employment.

According to the terms of the Third Circuit Contract, in order to be stationed at the federal courthouses, each CSO has to meet certain medical and physical requirements as tested by an annual examination in order to be certified. Between 2002 and 2004, MVM discharged the terminated plaintiffs after they purportedly failed to meet recently adopted medical and physical certification requirements of the USMS.

IV.

We begin with the motion of the federal defendants to dismiss the third amended complaint. The only remaining claim against them is by the terminated plaintiffs for an alleged violation of their Fifth Amendment right to procedural due process. These plaintiffs appear to be seeking both damages and injunctive relief. Claims against the United States and its agencies that seek monetary damages for constitutional violations must be dismissed for lack of subject matter jurisdiction. Federal Deposit Ins. Co. v. Meyer, 510 U.S. 471, 486 (1994). To the extent the terminated plaintiffs seek monetary damages, we will grant summary judgment in favor of the federal defendants. Insofar as the terminated plaintiffs seek injunctive relief against the federal defendants, this court does have jurisdiction. 5 U.S.C. § 702.

The terminated plaintiffs' procedural due process claims for non-monetary relief against the federal defendants may proceed only if they allege that government action deprived them

of a constitutionally-protected liberty or property interest. See Bd. of Regents v. Roth, 408 U.S. 564, 569 (1972). As these plaintiffs have not pleaded the deprivation of any liberty interests, we limit our discussion to property interests. They must show that they have a "legitimate claim of entitlement" to a property interest created by independent sources such as state law. Id. at 577. The terminated plaintiffs argue that they have a protected property interest in their employment by MVM and were entitled to an opportunity to challenge the revocation of their CSO credentials and the subsequent termination of their employment.

The general rule in Pennsylvania is that an employee does not have a legitimate expectation of entitlement in his employment. See Dibonaventura v. Consol. Rail Corp., 539 A.2d 865, 867 (Pa. Super. Ct. 1988). Pennsylvania law presumes that all employment is at-will, unless the employee can "show from the circumstances surrounding the undertaking of employment that the parties did not intend the employment to be at-will." Id. However, "[g]overnment employees who are entitled to retain their positions unless dismissed for cause have a property interest protected by due process considerations." Veit v. North Wales Borough, 800 A.2d 391, 398 (Pa. Commw. Ct. 2002); see also Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538-39 (1985). Although the terminated plaintiffs are not government employees, there is authority for the proposition that private employees covered by a just cause provision are entitled to procedural due process protections when the government interferes

with their employment as alleged here. See Merritt v. Mackey, 827 F.2d 1368 (9th Cir. 1987); Stein v. Bd. of New York, 792 F.2d 13 (2d Cir. 1986); Alexander v. Hargrove, No. Civ.A. 93-5510, 1994 WL 313059, at *3 (E.D. Pa. June 28, 1994).

It is undisputed that all of the terminated plaintiffs were covered by CBA's that included language that their employment could be terminated for just cause. With the exception of plaintiff Smith, however, the CBA's covering each of the terminated plaintiffs qualify the just cause provision.⁵ We address each CBA in turn.

The CBA of Leitch, Friel, and Adams, who were working in New Jersey, provided:

After completion of the probationary period, no employee shall be dismissed or suspended without just cause unless the employee is removed from working under [MVM's] contract with the Government based upon an oral or written request by the Government, or the employee's credentials are denied or terminated by the [USMS].

New Jersey CBA Art. X (emphasis added). We previously analyzed this language in the context of Friel's and Leitch's breach of contract claims against MVM. Leitch, 2004 WL 1638132. We found that they could not "establish that they had any rights to continued employment with MVM in the face of such contractual

5. The federal defendants argue that a CBA that became effective after the termination of Smith's employment applies to him. This later CBA, unlike the one in effect at the time of Smith's employment termination, contains language qualifying the just cause provision. We find this argument to be without merit. Whether Smith had a protected property interest must be defined by the terms of the CBA in effect at the time his employment was terminated.

language. Their ability to challenge their termination for lack of just cause was obviously conditioned on their continued deputization by the USMS." Id. at *10. Here too, we find that in light of this language, these three plaintiffs could not have had any "legitimate expectation of entitlement" in their employment in the event their CSO credentials were denied by the USMS.

Our ruling is consistent with two other cases, Hatfield v. Johnson Controls, Inc., 791 F. Supp. 1243 (E.D. Mich. 1992) and Int'l Union, Security, Police, and Fire Professionals of America, v. United States Marshal's Service, No. Civ.A. 04-2234, 2004 WL 2997886 (S.D.N.Y. Dec. 27, 2004). Hatfield recognized that parties may create an employment contract that is at-will in some circumstances and qualified by a just cause provision in other circumstances. 791 F. Supp. at 1250-51. "[C]ertain employee conduct may result in immediate discharge ... [while] all other conduct is subject to just-cause standards." Id. In Int'l Union, summary judgment on a procedural due process claim was granted in favor of the defendant USMS on substantially similar facts to the case at bar.⁶ 2004 WL 2997886 at 11.⁷ The court determined that the CBA pertaining to the CSO plaintiff did

6. As was done here, the defendant in Int'l Union denominated its motion as one to dismiss "or in the alternative, for summary judgment." Because both parties in that case submitted statements of undisputed facts, along with affidavits and exhibits in support, the court treated the motion as one for summary judgment.

7. At this time, page references are not provided within the document. We refer to the relevant pages as they appear in our printed version.

not require just cause if his 'credentials are denied or terminated by the Marshals Service.' Id. at 10. The court found that the plaintiff did not have "any entitlement to employment, but rather [his employment was conditioned] on [his] ability to satisfy the particular medical standards of the Marshal's Service." Id. Again we find this to be the situation with respect to Leitch, Friel, and Adams.⁸

Leitch, Friel and Adams make an alternative argument that they had a constitutionally protected property interest in their medical certifications by the USMS and therefore had a right to challenge their denial. We are not persuaded. They have not cited, nor has our independent research uncovered, any case holding that medical certifications are property interests recognized under Pennsylvania law. Instead, they merely point to numerous cases from other jurisdictions that assume, without deciding, that certifications of this kind are property interests protected under the Fifth Amendment. See e.g. Holmes v. Helms, 705 F.2d 343, 345 (9th Cir. 1983); Graham v. Nat'l Transp. Safety Bd., 530 F.2d 317, 320 (8th Cir. 1976). These cases did not find it necessary to analyze whether medical certifications were recognized as protected property interests under state law because they found that the government had nonetheless provided

8. Plaintiffs inaccurately argue that this case is inapposite because it "was dismissed on its facts as having demonstrated there was adequate and proper due process" provided to the plaintiff CSO. This reading of the case is incorrect. The court did not reach the question of whether procedural due process was afforded to the plaintiff because it found that he did not possess a constitutionally protected property interest in his employment.

adequate procedural protections for the denial of the medical certifications.

Furthermore, nowhere in the Third Circuit Contract is there language that these certifications may only be revoked or denied upon just cause. The parties argue about whether a reading of the Third Circuit Contract evidences a "mutually explicit understanding" between the federal defendants and the terminated plaintiffs that the medical certifications are property interests. This phraseology is found in Latessa v. New Jersey Racing Comm'n, 113 F.3d 1313, 1318 (3d Cir. 1997). Latessa states that in the case of public employment, protected property interests may be created by "'mutually explicit understandings' between a government employer and employee" that "just cause" will be a prerequisite to the deprivation of the asserted interest. Id. (citation omitted). First, we have already held that all of the plaintiffs were employed by MVM, a private entity, rather than by the federal defendants. Leitch, 2004 WL 1638132, at *5. The plaintiffs have no contract with the federal defendants. Thus, as between the plaintiff CSO's and the federal defendants, there can be no mutually explicit understanding of a property interest in the medical certifications derived from the Third Circuit Contract. Moreover, the very language of the Third Circuit Contract evidences that the terminated plaintiffs could have no "legitimate expectation of entitlement" in their medical certifications. The Third Circuit Contract provides, in relevant part:

Any employee provided by [MVM] that fails to meet the requirements of the Contract, including but not limited to, the terms, conditions, performance, medical, and physical standards outlined ... may be removed from performing services for the Government under this Contract upon written request of the Contracting Officer.

...
The [USMS] reserves the right at all times to determine the suitability of any [MVM] employee to serve as CSO.

Third Circuit Contract, § H-3(a),(b).

We therefore find that plaintiffs Leitch, Friel, and Adams did not have a constitutionally protected property interest in their employment. We also find that none of these terminated plaintiffs had a protected property interest in their medical certifications. Therefore, summary judgment will be granted in favor of the federal defendants with respect to the procedural due process claims of Leitch, Friel, and Adams.

At the time of their termination, plaintiffs Burge, Churm, and Scorzafave were working in courthouses in either Scranton or Pittsburgh, Pennsylvania and were covered under CBA's with language different from that governing Leitch, Friel, and Adams, who were working in New Jersey. The CBA's for Burge, Churm, and Scorzafave provided that MVM "shall have the right to discharge, discipline, or suspend any employee for just cause." Scranton CBA, Art. 9(A); Pittsburgh CBA, Art. 9(A). These CBA's also stated: "Any new employee not granted a security clearance that is required by the controlling governmental agency shall be discharged without recourse to grievance or arbitration procedure." Scranton CBA, Art. 9(B)(emphasis added); Pittsburgh CBA, Art. 9(B)(emphasis added).

As with the New Jersey CBA, Article 9 of these CBA's contemplate a term of employment that is partially terminable at-will and partially terminable for just cause only. Unlike the New Jersey CBA, however, the qualification of the just cause standard in these CBA's is limited to the denial of a specific type of CSO credential - security clearances. The federal defendants point to language elsewhere in the CBA that "[MVM] may require, as a condition of initial and continued employment, that applicants and employees submit to physical examinations, to determine fitness for duty under standards set and adjudicated by the U.S. Marshal's Service." Scranton CBA, Art. 23; Pittsburgh CBA, Art. 23. We agree that this language provides that a successful physical examination is a necessary condition of employment. However, this language is not found in the section of the CBA on discharges, which contains an unqualified just cause provision.

The federal defendants also reference Article 28 of the CBA's covering Burge, Churm, and Scorzafave. This is a "Government Supremacy" clause that states:

The Union acknowledges that [MVM] has entered into [the Third Circuit Contract] with the Government to provide services under specific terms and conditions, and that the Government has broad discretion to direct the activities of [MVM] within the scope of the [Third Circuit Contract]. [MVM] will discuss any changes with Union prior to their implementation. These discussions will be held to ensure the changes have no effect, or a minimal adverse effect, on the current [CBA]. If the changes would cause conflicts with the CBA, [MVM] and the Union will endeavor to renegotiate that particular section of the CBA; all with acknowledgment

by Union of the obligation of [MVM] to comply with the Government directive.

Scranton CBA, Am. Art. 28; Pittsburgh CBA, Am. Art. 28. We disagree with the federal defendants that this language "makes clear ... that directives issued by the Marshals Service may supersede the understandings of MVM and the union as set forth in the CBA." As we read this language, it simply allows the Government "broad discretion to direct the activities of [MVM] within the scope of the [Third Circuit Contract]." It does not deal with the medical or physical conditions of CSO's. At this point, it is not apparent that the federal defendants are entitled to summary judgment against Burge, Churm, and Scorzafave except to the extent that they are seeking damages. Of course, as stated above, they have no property interest in their medical certifications.

The remaining plaintiff, Smith, was working in Wilkes-Barre, Pennsylvania, under a CBA between MVM's predecessor and the federal defendants at the time his employment was terminated. MVM had taken over as his new employer and had entered into the Third Circuit Contract with the federal defendants but had not yet entered into a CBA with Smith's union. Smith's CBA contains explicit, unqualified language that employment terminations would be for "just cause only." There is insufficient evidence in the record as of yet, however, to allow us to make a determination as to whether MVM was bound by Smith's CBA. Therefore, summary judgment against Smith will be denied except to the extent that he is seeking damages. Again, he has no property interest in his medical certification.

Our conclusions with respect to all seven of the terminated plaintiffs is consistent with our orders in two factually similar cases, Wilson v. MVM, Inc., Civ.A. No. 03-4514, 2004 WL 1119926 (E.D. Pa. May 18, 2004), and McGovern v. MVM, Inc., Civ.A. No. 04-2541, 2004 WL 2554565 (E.D. Pa. Nov. 9, 2004). We allowed the plaintiffs' procedural due process claims to proceed for non-monetary relief in those cases because their CBA's contained unqualified just-cause provisions. Likewise, the four terminated CSO's who worked in Pennsylvania – Burge, Churm, Scorzafave, and Smith⁹ – all worked under CBA's with unqualified just cause provisions. In contrast, the three terminated plaintiffs who worked in New Jersey – Leitch, Friel, and Adams – were covered by a CBA that eliminated the just cause standard in situations where their CSO credentials had been denied or revoked by the USMS.

V.

We now address the motions of MVM. First, MVM moves for dismissal of, or for summary judgment on, the procedural due process claims of the terminated plaintiffs. MVM raises an issue not argued by the federal defendants that regardless of whether the terminated plaintiffs had a protected property interest in their employment, their claims must fail because they "did not grieve their terminations pursuant to the applicable collective bargaining agreement." Again, a procedural due process claim under the Fifth Amendment requires us initially to determine

9. As we have previously mentioned, although Smith's CBA contained an unqualified just-cause provision, it is yet to be determined whether MVM was bound by this provision.

whether the plaintiff was deprived of a protected interest due to some government action. See Cospito v. Heckler, 742 F.2d 72, 80 (3d Cir. 1984). Only upon a finding of a protected interest do we inquire into whether the deprivation was without due process. See id. Since we have already determined that plaintiffs Leitch, Friel, and Adams did not possess protected property interests, an inquiry into whether they failed to take advantage of internal grievance procedures and whether those procedures are procedurally adequate is unnecessary. Therefore, summary judgment will be granted in MVM's favor on the procedural due process claims of Leitch, Friel, and Adams.

As to the other four terminated plaintiffs, Burge, Churm, Scorzafave, and Smith, we will assume, without deciding, for purposes of this motion, that they each had a protected property interest in their employment. "In order to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her, unless those processes are unavailable or patently inadequate." Alvin v. Suzuki, 227 F.3d 107, 116 (3d Cir. 2000).

The Scranton and Pittsburgh CBA's make clear that Burge, Churm, and Scorzafave were entitled to internal grievance procedures. These CBA's outline detailed grievance and arbitration procedures that apply to all employment terminations. They provide without limitation that "[a]ny grievance involving discharge or other discipline may be commenced at Step One of this procedure. Written grievance shall be presented to the Contract Manager through the site supervisor or his/her designees

within ten (10) days after the occurrence of the facts giving rise to the grievance." Scranton CBA, Art. 10(C); Pittsburgh CBA, Art. 10(C). MVM has presented an undisputed declaration that Burge, Churm, and Scorzafave never grieved their terminations through MVM's internal procedures. Even assuming, without deciding, that a protected property interest is at stake, summary judgment must be granted in favor of MVM and against these three plaintiffs on their procedural due process claims because they failed to take advantage of facially adequate grievance procedures. See Alvin, 227 F.3d at 118.

MVM also submits an undisputed declaration that Smith never grieved his termination through its internal procedures. Again, assuming that MVM was bound by his CBA and that he had a protected property interest, neither party has provided the complete language of the Wilkes-Barre CBA as it relates to grievance procedures. At this time, we can make no determination of whether he failed to take advantage of grievance procedures to which he was entitled. Thus, summary judgment in MVM's favor on Smith's procedural due process claim will be denied.

MVM further asks for dismissal of, or summary judgment on, the breach of contract claims. All of the plaintiffs allege that MVM breached the applicable CBA's by requiring each CSO to pay for medical testing. MVM argues that the plaintiffs failed to file grievances according to the provisions of their respective CBA's. In their response, the plaintiffs "concede that point and hereby withdraw any claim for reimbursement of medical testing expenses." Therefore, all breach of contract

claims will be dismissed. This is the only claim for relief also brought by the non-terminated plaintiffs and thus these 18 plaintiffs will be dismissed from the case.

MVM next moves for judgment on the pleadings on the terminated plaintiffs' concert of action claim. MVM correctly states that, under Pennsylvania common law, it cannot be liable for acting in concert with the federal defendants tortiously to interfere with the employment contract between itself and the terminated plaintiffs. "[A] party cannot be liable for tortious interference with a contract to which he is a party." Michaelson v. Exxon Research and Eng'g Co., 808 F.2d 1005, 1007-08 (3d Cir. 1987) (citing Glazer v. Chandler, 200 A.2d 416, 418 (Pa. 1964)). The terminated plaintiffs assert that despite the "concert of action" terminology in their third amended complaint, it is in reality a cause of action under the ADA.

Because we are dealing with notice pleading, we accept the terminated plaintiffs' contention that Count Six is an ADA claim. However, there is of record an undisputed affidavit that Friel, Burge, Churm, Scorzafave, and Smith did not file administrative charges with the EEOC. Only Leitch has come forth with evidence that he had filed such charges. MVM presents no affidavit with respect to Adams, who alleges that he has made such a filing. Summary judgment will be granted in MVM's favor with respect to Friel, Burge, Churm, Scorzafave, and Smith, while it will be denied with respect to Leitch and Adams.¹⁰

10. We note that Count Six is duplicative of Count Two.

Finally, MVM moves for the entry of summary judgment in its favor on the claim of the terminated plaintiffs under §§ 501 and 504 of the Rehabilitation Act. Section 501 of the Act works to prevent disability discrimination by federal departments, agencies, and instrumentalities. 29 U.S.C. § 791(b); see Freed v. Consol. Rail Corp., 201 F.3d 188, 191 (3d Cir. 2000). As MVM is not a federal department, agency, or instrumentality, it cannot be liable under this section.

Section 504 "bars both federal agencies and private entities that receive federal funding from discriminating on the basis of disability." See Freed, 201 F.3d at 191; 29 U.S.C. § 794(a)(2). The parties do not dispute that MVM "is a contractor for the United States Marshals Service." However, "[a] simple compensatory contractual relationship with the federal government does not make the contracting party a recipient of federal financial assistance." Bowers v. Nat'l Collegiate Athletic Ass'n, 118 F. Supp. 2d 494, 531 (D.N.J. 2000) (citing DeVargas v. Mason & Hanger-Silas Mason Co., 911 F.2d 1377, 1382 (10th Cir. 1990)). If MVM is given compensation in exchange for services provided, and there is "no governmental intent to give [MVM] a subsidy," then MVM is not covered by § 504. DeVargas, 911 F.2d at 1383; see also Bowers, 118 F. Supp. 2d at 531. The terminated plaintiffs do not dispute MVM's affidavit that it is providing services in exchange for its compensation and that it is not the recipient of a government subsidy. Therefore, summary judgment will be granted in MVM's favor on this claim.

(5) judgment is entered in favor of defendants the United States Marshals Service, the Department of Justice, and the United States, and against plaintiffs William Burge, Lawrence Churm, Gregory Scorzafave, and Donald Smith to the extent they seek monetary damages;

(6) the motion of the federal defendants to dismiss or, in the alternative, for summary judgment is otherwise DENIED;

(7) the motion of defendant MVM, Inc. to dismiss partially the third amended complaint or, in the alternative, for partial summary judgment is GRANTED in part and DENIED in part;

(8) the motion of defendant MVM, Inc. for partial summary judgment is GRANTED with respect to the procedural due process claims of plaintiffs George Leitch, Donald Friel, Benjamin Adams, William Burge, Lawrence Churm, and Gregory Scorzafave;

(9) judgment is entered in favor of defendant MVM, Inc. and against plaintiffs George Leitch, Donald Friel, Benjamin Adams, William Burge, Lawrence Churm, and Gregory Scorzafave on their procedural due process claims;

(10) the motion of defendant MVM, Inc. for partial summary judgment is DENIED with respect to the procedural due process claim of plaintiff Donald Smith;

(11) the motion of defendant MVM, Inc. to dismiss the breach of contract claim as to all plaintiffs is GRANTED;

(12) the motion of defendant MVM, Inc. for partial judgment on the pleadings and for partial summary judgment is GRANTED in part and DENIED in part;

(13) the motion of defendant MVM, Inc. for partial summary judgment is GRANTED with respect to the Rehabilitation Act claim as to plaintiffs George Leitch, Donald Friel, Benjamin Adams, William Burge, Lawrence Churm, Gregory Scorzafave, and Donald Smith;

(14) judgment is entered in favor of defendant MVM, Inc. and against plaintiffs George Leitch, Donald Friel, Benjamin Adams, William Burge, Lawrence Churm, Gregory Scorzafave, and Donald Smith with respect to their Rehabilitation Act claims;

(15) the motion of defendant MVM, Inc. for partial summary judgment is GRANTED with respect to the "concert of action/ADA claim" as to plaintiffs Donald Friel, William Burge, Lawrence Churm, Gregory Scorzafave, and Donald Smith;

(16) judgment is entered in favor of defendant MVM, Inc. and against plaintiffs Donald Friel, William Burge, Lawrence Churm, Gregory Scorzafave, and Donald Smith with respect to the "concert of action/ADA claim"; and

(17) the motion of defendant MVM, Inc. for partial judgment on the pleadings or for partial summary judgment is otherwise DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.