



STATE OF NEW JERSEY

In the Matter of John Marciante,
Pleasantville, Police Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-265
OAL Docket No. CSR 06869-22

ISSUED: MAY 21, 2025

The appeal of John Marciante, Police Officer, Pleasantville, Police Department, removal, effective July 22, 2022, on charges, was heard by Administrative Law Judge Elaine B. Frick (ALJ), who rendered her initial decision on April 23, 2025. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on May 21, 2025, adopted the ALJ's Findings of Facts and Conclusions but did not adopt her recommendation to modify the removal to a six-month suspension¹ with additional training. Rather. The Commission upheld the removal.

In this matter, the ALJ found that the appellant was guilty of many of the infractions alleged. Upon its *de novo* review of the ALJ's determinations in that regard, the Commission agrees with the ALJ's findings and finds nothing in the record to demonstrate that the ALJ's findings regarding the charges were arbitrary, capricious or unreasonable.

In its exceptions, the appointing authority argues that removal is the proper penalty in this matter. The Commission agrees. In this regard, similar to its assessment of the charges, the Commission's review of the penalty is *de novo*. In

¹ The Commission assumes the ALJ's indications of a "180 working day suspension" is a typographic error as the maximum suspension that can be imposed for administrative charges is a six-month suspension, which is approximately 120 working days.

addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a municipal Police Officer is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990).

In this matter, the ALJ performed an analysis of the penalty to be imposed. In that regard, the ALJ stated:

Major discipline is warranted here, despite the meager prior disciplinary history. Marciante himself acknowledges that his comments and demeanor on November 5, 2021, require major discipline. Such comments and demeanor towards an EDP who was intoxicated were egregious. Marciante had to be redirected to de-escalate the situation. Instead of cooling off at the station, Marciante then chose to go outside and position himself in the path of J.L. as he was being escorted inside. Instead of stepping to the side or retreating to the station, Marciante shoulder checked J.L. as he was walked towards where Marciante stood. This has been found to be unnecessary force, yet recognized to be minimal. His neglect of duty for failing to write clear and accurate reports or to even complete his reports, though seemingly insignificant in comparison to the determinations, still requires the imposition of discipline.

Under the totality of the collective circumstances and findings, I **CONCLUDE** that major discipline of a 180-working day suspension is the appropriate penalty for the collective violations of *N.J.A.C. 4A:2-2.3*. I further **CONCLUDE** that Marciante shall be mandated to attend training of at least forty hours covering nuts and bolts basics for law

enforcement officers

The Commission finds that removal is warranted on several grounds. First, the ALJ appeared to minimize the appellant's misconduct during the incident in question and the extent of his inappropriate actions. The appellant's actions in that incident were egregious and inimical to what the public expects from a Police Officer, who is held to a higher standing. Clearly, such actions would tend to undermine the public's trust in law enforcement. Moreover, as Police Officers are required, on a daily basis, to interact with the public, the appellant's misconduct strikes at the heart of the core duties of a law enforcement officer. While a suspension with further training **may** serve to ameliorate any future such transgressions, the Commission is not convinced, given that the appellant's actions included both instigating and escalating the incident, and tends to demonstrate an inherent bias that training may not effectively erase. Finally, while the ALJ indicates that the appellant had only prior minor discipline, the Commission notes that the appellant did not have a long record of service, as at the time of the incident, he had only served as a Police Officer with the appointing authority for approximately three years. Given the above, the Commission finds the appellant's removal from employment neither disproportionate to the offense nor shocking to the conscious.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of John Marciante.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21ST DAY OF MAY, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

**Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 06869-22

AGENCY DKT. NO. N/A

2023-265

**IN THE MATTER OF JOHN MARCIANTE,
CITY OF PLEASANTVILLE,
POLICE DEPARTMENT.**

Stuart J. Alterman, Esquire, for appellant, on the summation briefs, **Arthur J. Murray**, Esquire, having appeared at the hearing (Alterman & Associates, LLC, attorneys)

Todd J. Gelfand Esquire, for respondent, City of Pleasantville, Police Department (Barker, Gelfand, James & Sarvas, P.C., attorneys)

Record closed: March 15, 2025

Decided: April 23, 2025

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

The City of Pleasantville Police Department (the City) imposed discipline of removal of John Marciante (Marciante or appellant) from his position of employment as a police officer for the City for sustained violations of multiple charges. The charges were asserted against Marciante regarding two work incidents which occurred on July 6, 2021, (search matter) and November 5, 2021, (J.L. matter). Marciante appealed the discipline

imposed, seeking to be reinstated to his position of employment. Although admittedly having done some of the acts alleged regarding the November 5, 2021, J.L. matter, he contends that a suspension and other conditions, such as mandated training, should have been the discipline imposed, rather than termination of his employment.

Based upon the facts adduced at the hearing and some of Marciante's admissions, some of the charges shall be dismissed while the City properly demonstrated that other charges shall be sustained. The discipline of removal is not appropriate under the circumstances of these conclusions, but rather suspension and mandated training conditions imposed upon Marciante align with the philosophy of progressive discipline and shall be the discipline implemented.

PROCEDURAL HISTORY

The City removed Marciante from his position of employment with the Pleasantville Police Department, effective July 27, 2022, by Final Notice of Disciplinary Action (FNDA) issued on that date. Marciante requested an appeal. The matter was transmitted to the Office of Administrative Law (OAL) on August 10, 2022, to be heard as a contested matter. N.J.S.A. 40A:14-202(d).

Prehearing telephonic conferences were conducted with counsel. Hearing dates were initially scheduled in October 2022. The parties executed a "Consent Order as to 180-Day Rule (N.J.S.A. 40A:14-201)" which was entered on September 22, 2022. The consent order confirmed Marciante was waiving the 180-day rule for disposition of this appeal and confirmed the City returned Marciante to pay status. The consent order adjourned the first scheduled hearing dates at the request of the parties.

On October 26, 2022, the City submitted an "informal motion" request, which the parties later confirmed would be treated as a Motion to Bar Appellant's Expert. Marciante had initially filed a Motion to Dismiss two administrative charges, which asserted Marciante violated disorderly persons "2C" statutes, which motion the parties had agreed to hold in abeyance. With the filing of the City's motion, the parties agreed that Marciante's motion to dismiss was revived and would be considered with the City's Motion

to Bar Appellant's Expert. The City also submitted a motion to reconsider the parties' Consent Order which had been entered on September 22, 2022.

Oral argument on the motions was conducted on June 6, 2023. An "Order on Motions" issued on July 6, 2023. The Order granted Marciante's motion to dismiss the administrative disciplinary charges identified in the FNDA by the City as having sustained criminal charges against Marciante of N.J.S.A. 2C:12-1c, simple assault, and N.J.S.A. 2C:33-4b, harassment, due to Marciante's actions on November 5, 2021. The City's motion for reconsideration of the parties' consent order of September 22, 2022, was denied. The City's motion to bar appellant's proposed expert testimony in the area of search and seizure law was granted.

On July 14, 2023, the City sent a motion request for interim relief to the Civil Service Commission (CSC) regarding the July 6, 2023, Order on Motions. The CSC denied the request for interim relief on July 18, 2023. The City thereafter submitted an interlocutory relief request to the CSC, seeking reconsideration of the City's motion for interim relief. The CSC denied the City's request on July 20, 2023.

Another pre-hearing telephonic conference was conducted, and the hearing dates were rescheduled. The City then submitted a motion to depose appellant's expert. Marciante opposed the motion and submitted a cross-motion to suppress and/or redact portions of the City's expert's report. An Order issued on November 29, 2023, denying the City's request to depose appellant's expert. The order granted Marciante's request to suppress and/or redact portions of the City's expert's report, pertaining to the alleged violations of the criminal statutes of harassment and simple assault, as those charges were dismissed by the prior July 6, 2023, order. The hearing dates were again rescheduled.

The hearing began in person in the OAL in Atlantic City on February 22, 2024. The parties agreed to adjourn the next scheduled hearing date, due to a conflict which arose in respondent counsel's schedule. The hearing resumed on March 26, 2024, and April 4, 2024.

The testimonial portion of the proceeding concluded on April 4, 2025. The record remained open for the submission of corrected and redacted evidence and for the submission of closing summation briefs. The parties agreed upon the schedule for the submission of closing summations based upon their agreement that appellant would be asserting argument regarding the "45-day rule" and the City would assert its opposition to appellant's position. The "45-day rule" is the common reference to the statutory requirement that any "complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based." N.J.S.A 40A:4-147.

The parties requested extensions of the time to submit their closing summation briefs, which were granted. Marciante's written summation brief was submitted, and the City's was submitted thereafter as per the parties' agreed upon schedule and the extensions granted. Marciante's request to submit a reply brief was granted and a schedule was set for the City to respond. Marciante's reply summation was submitted. The City confirmed it would not submit any further response. The record was reopened for the submission of the redacted evidence documentation which was to be submitted by the City after the conclusion of the testimonial portion of the hearing. The redacted exhibit was submitted and thereafter confirmed by appellant's counsel that it could be admitted into evidence. The record closed on March 15, 2025.

PRELIMINARY FACTUAL FINDINGS AND LEGAL CONCLUSIONS
REGARDING 45 DAY RULE

The following information was derived from the testimonial and documentary evidence presented by the parties. I **FIND** as **FACTS** the following:

Marciante was employed as a police officer by the City as of 2018. He had prior law enforcement experience beginning with the City of Atlantic City police department in 2013. He thereafter worked for Camden Metro as a full-time police officer in 2016, then the Atlantic County Sheriff's Department in 2017, until his transfer to the Pleasantville Police Department (Pleasantville PD) in 2018.

Marciante was removed from his position of employment with the City's police department, effective July 27, 2022, as discipline imposed upon him based upon two separate work incidents. The first incident occurred on July 6, 2021, referred to as the search matter. The second incident occurred on November 5, 2021, referred to as the J.L. matter, referencing the initials of the individual with whom Marciante encountered and interacted with on that date.

Marciante's disciplinary matters arose starting with an internal affairs (IA) complaint issued on September 10, 2021, by Lieutenant Maldonado from Pleasantville PD, alleging that Marciante had conducted an improper search of a motor vehicle parked at a gas station on July 6, 2021. (R-6 at 1.) An individual was found inside of the vehicle and arrested and charged with drug offenses.

Captain Stacey Schlacter of the Pleasantville PD, who at the time was at the rank of Lieutenant and Commander of the Professional Responsibility Bureau for the PD, served as supervisor of the IA bureau and handled IA investigations. Captain Schlacter began an investigation into the IA complaint regarding the search matter of July 6, 2021. The criminal case was under review by the Atlantic County Prosecutors Office (ACPO). Captain Schlacter was advised by a lieutenant from the ACPO's office as of September 21, 2021, that in the event the criminal charges against the defendant in the July 6, 2021, matter would be dismissed, the IA case against Marciante could be continued with the investigation into Marciante's actions regarding the search. A letter issued from the ACPO's office on October 28, 2021, to then Pleasantville PD Chief Riggan, acknowledging receipt of the IA complaint and advising if the IA investigation revealed that probable cause existed that a criminal offense was committed, the information was to be relayed immediately to the ACPO. (P-8.) On November 5, 2021, Captain Schlacter determined that the IA investigation into Marciante's actions on July 6, 2021, would continue. (R-6 at 1.) Marciante was interviewed on December 20, 2021, by Captain Schlacter regarding the July 6, 2021, search matter. (P-5.)

Prior to that interview in December, on November 5, 2021, Chief Riggan issued a target letter to Marciante, advising Marciante that he was the target of an IA investigation

regarding improper force from an incident on November 5, 2021, and that the charges were forwarded to the ACPO for review for potential criminal charges. (P-9.) The improper use of force was related to Marciante's interaction with J.L. on November 5, 2021. J.L. was a resident of the City who had reported he had been the victim of a sexual assault. J.L. summoned the police to his residence and Marciante was one of the responding officers. Marciante admittedly made rude and derogatory remarks towards J.L. at the residence, and was otherwise discourteous in his interactions towards J.L. As the officers were leaving the residence, J.L. threw a metal cat food bowl towards the officers who then went back into the residence and took J.L. into custody. J.L. was transported to the station by another officer. While outside of the station, as J.L. was handcuffed and being escorted into the station by other officers, Marciante came out of the station. As Marciante approached J.L., there was face-to-face physical body contact between the two.

Marciante was placed on administrative leave and the IA charges were immediately forwarded to the ACPO. As of December 10, 2021, the ACPO declined to pursue criminal charges against Marciante and referred the matter back to Chief Riggins for whatever action he deemed appropriate. (P-10.) The Pleasantville PD continued its IA investigation of the J.L. matter, with Captain Schlachter interviewing Marciante about the J.L. matter on December 22, 2021. (P-5.)

On March 4, 2022, Captain Schlachter issued an investigative IA report regarding her findings about the November 5, 2021, J.L. matter. (R-3.) On March 16, 2022, Captain Schlachter issued her IA report regarding her investigative findings about the July 6, 2021, search matter. (R-6.)

On June 13, 2022, a Preliminary Notice of Disciplinary Action (PNDA) issued to Marciante, regarding both the search matter and the J.L. matter. (J-1.) Multiple charges were listed in the PNDA for both matters, with an attachment outlining the charges and specifications of the incidents giving rise to the charges. The recommended discipline to be imposed was removal.

Marciante waived participation in a departmental hearing, and an FNDA issued on

July 27, 2022, removing Marciante effective that date. (J-2.) The removal was based upon charges the City asserts Marciante violated regarding both incident dates, combined into the one FNDA. There are sustained charges listed on the standard form FNDA with a checked box which indicates that *"If checked, charges are continued on attached page."* (J-2, italics original.) There is a five-page attachment to the FNDA.

The charges which appear as typed in on the FNDA standard form are listed as follows:

NJAC 4A:2-2.3(a)(6) Conduct Unbecoming a public employee;
NJAC 4A:2-2.3(a)(7) Neglect of Duty;
NJAC 4A:2-2.3(a)(12) Other Sufficient Cause Unnecessary Use of Force;
NJAC 4A:2-2.3(a)(12) Other sufficient cause, illegal search and unnecessary use of force;
NJSA 2C:12-1 Assault;
NJSA 2C:33-4b harassment.

(J-2.)

The five-page attachment to the FNDA is entitled "Continuation of charges and specifications, 01.26.2022." (J-2.) The attachment is an outline with two sections. The first section is listed as "I. Improper Search Case 2021-13508 444 West Black Horse Pike; July 6, 2021." (J-2.) Under that heading are two sections identified as "A. Charges" and "B. Specifications." The charges listed under section A are enumerated as:

1. NJAC 4A:2-2.3(a)(6); Conduct unbecoming a public employee
2. NJAC 4A:2-2.3(a)(7); Neglect of Duty
3. NJAC 4A:2-2.3(a)(12); Other Sufficient Cause; illegal search of vehicle;
4. NJAC 4A:2-2.3(a)(12) Other sufficient cause:
 - a. PPD Rules and Regulations 3:5.7 Untruthfulness
 - b. PPD Rules and Regulations 3:1.30 civil rights violation-improper search;

(J-2, punctuation and capitalization original.)

Section B of the first portion of the FNDA attachment consists of three narrative paragraphs. The paragraphs describe the alleged events of July 6, 2021; Marciante's

alleged actions thereafter regarding his completion of reports; information Marciante stated in his IA interview and what was seen on Marciante's body worn camera (BWC) video footage. (J-2) The description under the "Specifications" section includes reference that Marciante's search of a parked motor vehicle was "in violation of the Fourth Amendment and contrary to well established search and seizure case law, e.g., State v. Hill." (J-2.)

The second portion of the FNDA attachment is titled "II. J.L. Arrest 116 Lorraine Avenue, November 5, 2021." (J-2.) Under that heading are two sections identified as "A. Charges" and "B. Specifications." (J-2.) The charges enumerated under heading II, section A are:

1. NJAC 4A:2-2.3(a)(6) Conduct unbecoming a public employee
2. NJAC 4A:2-2.3(a)(7) Neglect of Duty
3. NJAC 4A:2-2.3(a)(12) Other Sufficient Cause; unnecessary use of force
4. NJAC 4A:2-2.3(a)(12) Other sufficient cause: untruthful IA statement
5. NJAC 4A:2-2.3(a)(12) Other Sufficient Cause
 - a. PPD Rules and Regulations 3:2.11 Reports-failure to complete and submit for review initial and supplemental reports prior to end of shift for indictable offense;
 - b. PPD Rules and Regulations 3:5.7 – Untruthfulness during IA interview; as further specified in IA report
 - c. PPD Rules and Regulations 3:6.1 Conduct Toward the Public; as further specified in IA report
 - d. PPD Rules and Regulations 3:6-2 Impartial Attitude; as further specified in IA report
 - e. PPD Rules and Regulations 3:6.3 Disparaging conduct and lack of courtesy and civility; as specified by IA report
 - f. PPD Use of Force Policy 2021; as specified by IA report
 - g. PPD BWC Policy; as specified by IA report
6. NJSA 2C:12-1; assault
7. NJSA 2C:33-4b harassment

(J-2, capitalization and punctuation original.)

The specifications section B consists of five narrative paragraphs. The paragraphs describe the alleged events of November 5, 2021, and Marciante's alleged actions and interactions with J.L. at his residence and Marciante's continued alleged interactions with J.L. after J.L. was taken into custody and transported to the station. (J-2.)

The charge of N.J.S.A. 2C:12-1, alleging that Marciante committed simple assault on November 5, 2021, and the charge of N.J.S.A. 2C:33-4b, alleging that Marciante committed harassment on that date, have been dismissed by the order entered in this matter on July 6, 2023. Those charges are thus not considered herein.

Marciante appealed the disciplinary action of removal of him from his employment as a police officer. Prior to the start of the hearing in the OAL, Marciante withdrew his "not guilty" plea and entered a plea of "guilty" to five of the specifications of the FNDA regarding his actions on November 5, 2021, in the J.L. matter. (C-1.) His "guilty" plea is accepted as an admission, as he confirmed during his testimony, that he did the following:

- a. On November 5, 2021, Officer Marciante treated J.L. rudely and discourteously by staying to him or in his proximity, words to the effect of "does your asshole hurt."
- b. On November 5, 2021, Officer Marciante treated J.L. rudely and discourteously by saying to him or in his proximity, words to the effect of "why would someone admit to getting fucked by you."
- c. On November 5, 2021, Officer Marciante treated J.L. rudely and discourteously by saying to him or in his proximity, words to the effect of "don't try and take this guy's Play Station, that's fucked up."
- d. On November 5, 2021, Officer Marciante treated J.L. rudely and discourteously by staying to him or in his proximity, words to the effect of "tell that from a guy that fucks dudes, right."
- e. On November 5, 2021, Officer Marciante failed to complete and submit for review his initial report prior to the end of his shift for an indictable offense.

(C-1.)

Marciante further confirmed that his "guilty" plea to the five listed stipulations would be a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for having violated PPD Rules and Regulations 3:2.11; 3:6.1; 3:6.2; 3:6.3. (C-1.)

Counsel for Marciante also confirmed in his “guilty” plea documentation that Marciante reserved the right to assert his argument regarding the “45-day rule” in his closing written summation. The City did not object to the reservation. At the conclusion of the testimonial portion of the hearing, instead of a simultaneous submission of written summation briefs, the parties agreed upon a submission of written summation briefs to enable Marciante to assert his 45-day rule argument and allow the City to submit its opposition thereafter.

As a preliminary matter, Marciante contends the charges in the FNDA alleging violations of the Pleasantville PD code of conduct must be dismissed. Pursuant to the New Jersey Statutes, when a complaint is issued by a law enforcement agency against a law enforcement officer charging the officer with a violation of the agency’s internal rules and regulations, the complaint “shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based.” N.J.S.A. 40A:14-147. This time limit shall not apply if there is an investigation of the officer for a violation of the internal rules and regulations which is included within a concurrent investigation of the officer for a violation of criminal laws in the State of New Jersey. Ibid. “The 45-day limit shall begin on the day after the disposition of the criminal investigation[.]” N.J.S.A. 40:14-147. If the law enforcement unit fails to comply with the 45-day rule provision for the service of the complaint, the complaint shall be dismissed. Ibid.

A violation of the internal rules and regulations of a law enforcement agency is “only one of the grounds upon which a police officer may be disciplined.” McElwee v. Borough of Fieldsboro, 400 N.J. Super. 388, 394 (App. Div. 2009). The plain language of the controlling “45-day rule” statute indicates that it applies only to violations of a law enforcement unit’s internal rules and regulations. Hence, an officer can be removed due to incapacity or misconduct with no time constraints imposed if seeking removal on such grounds, which Marciante concedes in his argument that only the sustained charges for violating Pleasantville PD internal rules and regulations should be dismissed for violating the “45-day rule.”

It is recognized that in the absence of a procedural rule in the Uniform Administrative Procedure Rules, “a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible” with the purposes of the uniform rules. N.J.A.C. 1:1-1.3(a). There is no specific rule in the Uniform Administrative Procedure Rules addressing affirmative defenses. The New Jersey Court Rules mandate that if an affirmative defense is not pleaded, it is generally waived. Pressler & Verniero, Current N.J. Court Rules, comment 1.2.1 on Rule 4:5-4 (2024); Cole v. Jersey City Medical Center, 215 N.J. 265, 281 (2013). “It is well settled that an affirmative defense is waived if not pleaded or otherwise timely raised.” Brown v. Brown, 208 N.J. Super. 372, 384 (App. Div. 1986), citing Rule 4:6-7.

Marciante’s defense against the Pleasantville PD rules and regulations charges are based on the time requirements in N.J.S.A. 40A:14-147, which would be an affirmative defense. “The defense that a claim is time-barred must be raised by way of an affirmative defense, either in a pleading or by a timely motion, or it is waived.” Notte v. Merchants Mutual Insurance Co., 185 N.J. 490, 500 (January 12, 2006).

When an FNDA finding is challenged and the case is transmitted to the OAL for a contested hearing, as a practical matter there is no procedural method for submitting an answer and affirmative defenses to the FNDA. Thus, a challenge to the timeliness of charges in the FNDA most efficiently should be raised as a pre-hearing motion, or else the time-barred claim is waived. There was no preliminary motion regarding this time constraining rule. However, Marciante specified at the start of the hearing that he reserved his right to assert a challenge under the “45-day rule” and the City did not oppose such reservation. At the end of the testimonial portion of the hearing, the City agreed upon a specific schedule for the submission of closing briefs to allow Marciante to present his argument regarding the 45-day rule and then the City could file its opposition. The City agreed to that format and did not assert that Marciante should not be permitted to assert his argument because it should be considered waived. Given that the City did not object to Marciante asserting a time-barred claim in his post-hearing summation, rather than in a pre-hearing motion, the argument is considered herein.

Marciante identifies that as to the July 6, 2021, search matter, the ACPO declined

to pursue criminal charges in relation to Marciante's alleged unlawful search as of October 28, 2021. The 45-day period began to run from that date. The City filed the PNDA on June 13, 2022, which is two hundred twenty-seven days after the ACPO indicated it would not pursue criminal investigation of the alleged unlawful search. One of the sustained charges was under N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, which specifies the other sufficient cause was due to Marciante having violated two Pleasantville PD rules and regulations on July 6, 2021. Those rules were 3:5.7-untruthfulness and the charge of a violation of 3:1.30-civil rights violation due to improper search. (J-2.) Marciante contends those charges must be dismissed as to the July 6, 2021, search matter, since the PNDA was filed well beyond the 45-day limit.

As to the November 5, 2021, J.L. matter, the ACPO declined to pursue criminal charges in relation to Marciante's alleged improper force as of December 10, 2021. The 45-day period began to run from that date. The City filed the PNDA on June 13, 2022, which is one hundred eighty-five days after the improper force criminal investigation. One of the sustained charges in the FNDA regarding the J.L. matter was a violation of N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, with the other sufficient cause specified as violations of seven Pleasantville PD rules and regulations. Marciante asserts those seven sustained violations of Pleasantville PD rules and regulations must be dismissed as to the November 5, 2021, J.L. matter.

The City does not dispute that the charges were issued well after the 45-day time limit. Instead, the City contends that the rule "simply does not apply" to any of the charges because the disciplinary complain was based both on alleged violations of internal rules and regulations and on other violations, being the administrative regulation charges. The City cites an unpublished Appellate Division matter, In re Joyce, No. A-1038-07T2 (App. Div. December 4, 2008) as support for the City's contention that when a disciplinary complaint is based both on violations of internal rules and regulations and other grounds, the forty-five-day rule does not apply. Id. at 55-56. This is an unpublished decision and not precedential. Even if considered as legal support for such a proposition, the Appellate Division did not articulate the concept asserted by the City. Rather, the Appellate Division emphasized that the language of N.J.S.A. 40A:14-147 refers only to complaints generally, and not to the individual charges, meaning that if the 45-day rule applies to rules and

regulations violations to be dismissed from a complaint, other charges not based upon internal rules and regulations may proceed. Moreover, in other situations where an officer faced mixed charges under both administrative provisions and a department's internal rules and regulations, courts have approved of the dismissal of only the internal rules and regulations charges. See, e.g., In re Carter, 191 N.J. 474, 480 (2007). Thus, the City's contention is without merit that the 45-day rule does not apply here since the FNDA contains asserted violations under the administrative regulation for major discipline and the department's internal rules and regulations.

Likewise, the City's contention that the 45-day rule does not require dismissal of any of the charges against Marciante because of the "private individual exception" is without merit. The statute imposing the 45-day rule specifics that "[t]he 45-day requirement of this paragraph for the filing of a complaint against an officer shall not apply to a filing of a complaint by a private individual." N.J.S.A. 40A:14-147. The city argues that this language means the rule does not apply at all where the complaint relates to an officer's misconduct directed at a private individual. This understanding of the private individual exception is not supported by case law nor by the language of N.J.S.A. 40A:14-147. The exception only immunizes from the 45-day rule "a filing of a complaint by a private individual." Here, there has been no private citizen complaint against Marciante by the individual who was arrested and charged with drug offenses in the July 6, 2021, search matter, nor a private citizen complaint against Marciante by J.L. from the November 5, 2021, matter. Neither private citizen initiated a complaint which prompted the IA investigations. The relevant IA investigations were triggered by supervising members of the Pleasantville PD having filed complaints, not by a private citizen complaint.

It is undisputed that an "other sufficient cause" charge based upon Marciante's alleged violation of Pleasantville PD rules and regulations from the July 6, 2021, search matter and the November 5, 2021, J.L. matter, had the PNDA charges filed well beyond the 45-day rule. Absent any applicable legal authority to oppose the untimeliness of the PNDA charges, I must **CONCLUDE** that the charges under N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, with the sufficient cause specified as violations of Pleasantville PD rules and regulations, shall be dismissed pursuant to the 45-day rule of N.J.S.A. 40A:14-147.

Thus, I **CONCLUDE** the charge applicable to the July 6, 2021, search matter asserting a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, based upon violations of Pleasantville PD Rules and Regulations section 3:5.7 - untruthfulness and section 3:1.30 - civil rights violation, improper search is **DISMISSED**. I **CONCLUDE** the charge applicable to the November 5, 2021, J.L. matter asserting a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, based upon violations of Pleasantville PD Rules and Regulations section 3:2.11 reports-failure to complete and submit for review initial and supplemental reports prior to end of shift for indictable offense; section 3:5.7 – untruthfulness during IA interview; section 3:6.1-conduct toward the public; section 3:6.2-impartial attitude; section 3:6.3-disparaging conduct and lack of courtesy and civility; and Pleasantville PD Use of Force Policy 2021; and Pleasantville PD BWC policy, shall be **DISMISSED**.

FURTHER FACTUAL DISCUSSION AND FINDINGS

July 6, 2021, search matter

On July 6, 2021, Marciante testified that he was conducting a property check at the Exxon gas station located on the Black Horse Pike in Pleasantville. It was approximately 2:18 a.m. He stated that he had conducted such property checks at the location numerous times in the past because it was a known open air drug market area and that stolen vehicles were sometimes parked there. He admittedly was not responding to a call for service for an officer to investigate a suspicious vehicle parked on private property or information that something was going on within the van.

Marciante's attention was drawn to a parked van in the parking lot of the Exxon. He had never seen the van in motion and noted that the condition of the vehicle had gotten progressively worse over time. A residential air conditioning unit was visibly hanging out of the driver's side door window. The tires were flattened. He was aware that there had been an "overdose death" in that exact van in the recent past. He believed the van to be abandoned. He did not have knowledge as to whom was the named owner of the van.

In his report, Marciante indicated that there was no vehicle registration or license plate on the rear of the vehicle. (P-12.) He further wrote that he parked his patrol vehicle and then walked to the front of the van and saw that there was no front license plate. He noted there was cardboard covering all of the windows of the van, making it impossible to see inside the van. Marciante testified that he checked for the vehicle identification number (VIN) but did not see it. He testified that the cardboard box placed on top of the windshield obstructed his view of where the VIN number would have been. In his IA interview, he stated that he must have missed the number and did not see it when he looked for it.

He believed he could find the VIN on the inside of the vehicle. The driver's side door, where the air conditioner was hanging out, was locked, but the driver's side rear sliding door was unlocked. In his IA interview, Marciante was questioned as to what gave him probable cause to open the door. He asserted it was an abandoned vehicle on private property and believed there was case law permitting an officer to investigate the vehicle.

Marciante testified that he opened the rear door and was met with an individual laying down in the back of the van with a loaded syringe. He could not recall if the syringe was held by the man or whether it was lying next to the individual. In his report he noted the man was laying down and the loaded medical syringe was next to him, as well as several empty CDS bags. (P-12.) In an incident report, and a supplemental report, Marciante noted that upon conducting the property check, the male was going to inject himself with a syringe loaded with suspected heroin. (P-14; P-15.) Marciante testified that this was a controlled dangerous substance in his plain view.

Marciante's BWC video from July 6, 2021, begins with him approaching the van, pulling the side rear door open, and a male individual is seen laying in the rear compartment. (P-3.) During his IA interview, Marciante was asked why he did not activate his BWC earlier, if he was conducting a property check. He asserted that he turned it on as soon as he could and was not sure why it was delayed. In hindsight, he remarked that he wished the camera was activated when he first approached the van.

The audio on Marciante's BWC video begins about thirty seconds after the video was activated. That is when a male lying in the rear of the van is seen rolling over in the back seat and Marciante tells him to "put that syringe back" as the man holds up a needle and throws it out of the van on the ground as instructed by Marciante. The male states that it is "Exxon's car" and that he has "nowhere to stay." (P-3.) He puts his shorts on, socks on, and turns around to take items, ignoring Marciante's command to get out of the car. Marciante takes hold of the back of the man's pants and pulls him out of the car onto the ground and handcuffs him. In his report, he wrote that he feared the male would grab the medical syringe and attempt to use it as a weapon, so he removed him from the van. (P-12.)

Another officer arrives on scene and Marciante tells the officer that the male had a syringe and turned around to try and hide his dope. Marciante asks the male if there are any more syringes in the car. The male mumbles a response and states "on top." He states there is "one little bag of crack." (P-4.)

As other officers arrive on scene, one asks "was he actively shooting?" Marciante responds that the door was open, there are no tags on the van, and he was going to run the VIN number and when he opened the door, the male was about to shoot up. Marciante stated that the male was "trying to hide shit in the back and I took him out of the car." (P-3.) One of the officers responding to the scene was a sergeant. The sergeant did not stop or intervene with Marciante's search of the vehicle. Marciante testified that he took the sergeant's silence as if he consented to Marciante's actions in searching the vehicle.

Marciante admittedly did not apply for a search warrant to conduct a search of the vehicle. He did not obtain consent from the male to search, asserting in his IA interview that the suspect was already in custody and there was CDS in the vehicle. (R-6 at 8.) He further asserted that since the male had been moving around in the vehicle, Marciante believed he was trying to hide something, like fentanyl, which would be a danger to any officer searching the vehicle and he wanted to hurry up and take care of the situation before anyone else would be exposed to it. (R-6; R-7.)

Marciante is next seen in his BWC video putting gloves on and then entering the vehicle and starting to search through the back interior compartment. He steps out of the van and says, "Tell me where the stash is at or I am going to toss this whole car." (P-3.) The male, seated on the ground, mumbles that there is only one small bag. Marciante proceeds to pull a toiletry kit from the vehicle, opens it, and tosses a hypodermic needle found in the bag. He continues back into the rear portion of the van, retrieves some clothing and other items he removed from the vehicle and places them on the ground outside the van, searching through the items.

The male is walked over to other police vehicles by other officers. (P-4.) An EMT who was summoned to the scene arrived to check the male, who then refused medical treatment.

Marciante in the meantime asks another officer to "attach his VIN please." (P-3.) An officer walks to the front area of the vehicle and from his BWC view was able to obtain the VIN number through the front windshield and relay that to dispatch. (R-8.)

Marciante continued to further search through the interior of the van. (P-3.) He steps out of the van and asks another officer standing by "if you were a drug dealer where would you put your drugs in the van?" (P-3.) Marciante remarks that there are four cell phones "sitting" on the bed. (P-3.) He went back into the van's rear compartment and continued to look throughout the back area of the van. A voice coming over the police radio is heard to say that the registration information came back on the van, that it is not valid, and is unregistered. (P-3.)

Marciante's BWC demonstrates that while he was inside the rear compartment, he stretched through between the front seats into the front portion of the van. The view from his BWC shows that there is cardboard obstructing the view out of the windshield and there are pairs of sneakers on top of shoe boxes stacked on the dashboard up against the windshield. (P-3.) As Marciante searches through the front compartment of the vehicle, cardboard is seen covering the entire front windshield from inside the van, from the passenger side view. (P-3.) Marciante attempts to open the back tailgate at one point, and the back window is also covered with cardboard. (P-3.) The cardboard

covering the back window is also seen from the interior view on the BWC video. (P-3.) The cardboard covering the windows throughout the van is seen on another officer's BWC video. (P-4.)

A communication is heard on the BWC coming over the police radio with the person stating that they "found multiple items concealed inside his colon area" referring to the male individual who had been removed from the van and was taken to the station. (P-3.) Shortly thereafter, Marciante remarks that he is "going off" and is done with the search. His BWC recording is terminated. He noted in his report that his search of the vehicle "yielded negative for any CDS." (P-12.)

Marciante learned that another officer who was processing the male at the station located small baggies containing suspected heroin in the male's genital area. (P-12.) Marciante noted in his supplemental report that numerous empty bags of suspected heroin were located inside the vehicle. (P-15.)

Marciante completed two supplemental reports related to the matter on July 7, 2021. (P-12, P-13.) On August 2, 2021, he completed an incident report for the July 6, 2021, search matter. (P-14.) On September 9, 2021, he completed another supplemental report for the matter. (P-15.) Marciante issued multiple drug offense charges against the male he encountered in the van.

Captain Schlacter testified about the IA investigation she conducted for the July 6, 2021, search matter, which was initiated by an IA complaint submitted on September 10, 2021, by Lieutenant Maldonado. (R-6.) Lt. Maldonado believed that Marciante conducted an unlawful search of the motor vehicle which resulted in an arrest of the male individual who was found inside by Marciante, for CDS violations. Captain Schlacter's IA report of her investigation was completed on March 16, 2022. (R-6.)

As part of her investigation, Captain Schlacter reviewed the reports completed by Marciante regarding the July 6, 2021, encounter. She noted there were minor discrepancies between his two supplemental reports. (R-6 at 4.) She reviewed the BWC footage from Marciante's camera and other responding officers. (R-6 at 1-4.) In the

month of November 2021, she interviewed Lt. Maldonado and the responding officers.

She noted in her report that Lt. Maldonado, who was the Patrol Commander, was tasked with giving final approval of reports that are prepared for indictable arrests and must review BWC as part of the approval process. During the review, Captain Schlachter notes in her report that Maldonado "felt as if there may have been an improper search of the motor vehicle which led to an arrest." (R-6 at 4.) He believes that the reasons listed in Marciante's report for opening the door of the van to look for the VIN "was improper." (R-6 at 4.) He was concerned because Marciante entered a vehicle which was parked on private property, without having received a call for service at the location due to a suspicious vehicle or person in the area. (R-6 at 4-5.)

Captain Schlachter interviewed Marciante regarding the July 6, 2021, incident on December 20, 2021. (P-5.) She noted that he wanted "on the record" that the Exxon gas station was a high crime, high drug trafficking area in the City. (R-6.) He advised her during his IA interview that he contacted management of Exxon about the vehicle many times before this incident about the drug activity there. Captain Schlachter was critical of Marciante for not stating such information in his reports of the incident.

Captain Schlachter testified that Marciante's reason for opening the van door was to obtain the VIN number, yet another officer who responded to the scene was able to read the VIN number from the plate on the driver's side windshield, visible from the outside. He admittedly did not apply for a search warrant and did not have the vehicle towed from the scene.

Captain Schlachter's investigation resulted in her conclusions that Marciante entered onto private property and conducted an information search of a motor vehicle parked on private property at a gas station that is open twenty-four hours. There was no call for service for an officer to check into a suspicious vehicle.

Although Marciante claimed he did not see the VIN through the windshield, another responding officer obtained the VIN from that location from the exterior of the vehicle. Marciante's reports do not indicate that he checked for the VIN first through the windshield

before opening the side door. She concluded that Marciante's reports were inconsistent, having identified two different officers in his reports as being the officer who located CDS on the male when he was taken into custody at the station. He also noted the syringe being found next to the male in the van and in another report noted the male had the syringe in his hand and was about to inject himself. Captain Schlacter asserted that under case law known as State of NJ v. Hill, law enforcement officers are prevented from entering a vehicle to obtain vehicle information. (R-6 at 9.)

Captain Schlacter testified that her IA investigative report was forwarded to the Deputy Chief for review. She affirmed she does not play any role whatsoever in the selection of the charges that are listed in a PNDA, the specifications, or the selection of the penalty to be imposed. She testified that the Chief of Police makes those decisions.

November 5, 2021, J.L. matter

On November 5, 2021, Marciante was one of several responding officers to the residence of J.L., an individual who reported that he had been the victim of a sexual assault. The location of the residence was within Marciante's ward, so he was deemed the lead officer for the call.

The officers arrived at the residence at approximately 5:00 a.m. When Marciante arrived, an officer on scene stated that J.L. was an "EDP" the term used for an emotionally disturbed person, which Marciante repeated. (R-3 at 2.) J.L. opened his door and had the officers come into his residence. He began to explain the situation to the officers, that he met a male earlier in the day, and the man came back to J.L.'s residence with him. They drank wine and J.L. passed out. When he woke up, J.L. stated that he was naked and thought he had been sexually assaulted. There was a used condom on the bed. He described that the suspect fled the residence half naked.

Marciante failed to display patience or empathy as J.L. took some time to explain his story. As confirmed by other officers, J.L. was intoxicated. Marciante asked J.L. if his "butthole hurt." Marciante spoke to J.L. as J.L. was scrolling through text messages between himself and the suspect. They exchanged comments and another officer told

J.L. they were there to help him. Marciante commented that they were not there to judge J.L. "if you go that way." (R-3.) J.L. called D.D., whom J.L. accused of raping him. Marciante took the phone from J.L., walked outside, and spoke to D.D.

D.D.'s description of the encounter differed completely from J.L.'s version. Marciante testified he found D.D. to be sober and precise with his story while J.L. was intoxicated and under the influence of narcotics, as D.D. confirmed that J.L. took Xanax.

Marciante walked back into the residence and questioned J.L. further. He admittedly made further derogatory comments towards J.L. by stating "why would someone admit to being fucked by you?" A determination was made that there was no credence to the assertion of a sexual assault and the officers concluded their service.

The officers were leaving the residence and Marciante commented "don't try and take this guy's PlayStation, that's fucked up." J.L. challenged back at Marciante and stated, "why don't you eat a dick." (P-3.) Marciante turned around towards J.L. and Officer D'Arcangelo, the officer-in-charge of the call, interceded to de-escalate the tension and guided Marciante out of the residence. Marciante commented "telling that from a guy that fucks dudes." (P-3.)

Marciante admittedly made the derogatory and condescending statements to J.L. in the residence. He has entered a "guilty" plea at the start of this proceeding, specifying the statements he made and that he was rude and discourteous. (C-1.)

As the officers were exiting the home, J.L. picked up a metal cat bowl and threw it towards them, missing the officers, but hitting one of the patrol vehicles. The officers turned and immediately went back into the residence, with Officer D'Arcangelo kicking in the front door and Marciante kicking in the inner door. J.L. apparently was hit by the inner door, causing him to bleed from the mouth and was on his knees. He briefly struggled with the officers who placed him under arrest. J.L. was taken to the station in another officer's vehicle. Marciante testified that he saw J.L. "trying to mess with his handcuffs" and warned the other officers. One of the officers BWC did record Marciante commenting

that J.L. was attempting to move his handcuffs to the front while J.L. was in the car. (R-3.)

As per the BWC videos, while outside at the station, J.L. was in his handcuffs, in front of his body. Marciante was inside the station.

Marciante testified that he came out of the station because he was the "lead officer" and it was his responsibility to finish the arrest processing. He stated he went outside to see what was taking so long. Marciante's BWC was activated while he was outside of the station. The view from his BWC is looking directly at J.L. who has handcuffs in front of him and is being held on his left arm by another officer. There is an EMT asking J.L. questions. When asked if he wanted to harm himself or hurt anyone else, J.L. responded "No, just that n-gger" as he nodded his head towards Marciante. (P-7.) After being cleared by the EMT and refusing treatment, J.L. remarks to Marciante "that gun can't save you forever." (P-7.)

The officers begin to walk J.L. into the station and Marciante is standing immediately in front of J.L. Officer Washington is to the left of Marciante's BWC view, on J.L.'s right side, while Officer Evans is seen to the right in the BWC view, on J.L.'s left side, still holding J.L.'s left arm. Marciante's BWC viewpoint shifts to the left, as if Marciante is stepping to his left while J.L. approaches and there is some type of contact between Marciante and J.L. in their chest region as seen from the BWC perspective. (P-7 at 2:20.) The interaction is captured in partial views by other officers' BWCs. It is not clear from viewing any of the videos precisely what J.L. was doing just prior to the contact between the two.

Marciante testified that as J.L. was approaching him, he saw J.L. clench his fist and lower his head, which he saw as pre-assault indicators. Marciante utilized a "shoulder check" to "create distance" between J.L. and himself. (P-17.) J.L. head-butted Marciante in the face.

After the contact occurred, Officer Washington steps immediately in front of Marciante and states, "back up" and "listen" while Marciante states "he touched me" and

another officer is heard saying "John, that's another charge" apparently referring to charging J.L. with another offense. (P-7.) Officer Washington is stepping backwards with Marciante and comments "his nose is bleeding" referring to Marciante. (P-7.) Officer Washington and Marciante walk together into the station, directly to the bathroom, where Marciante uses tissue paper to wipe his bleeding nose, and Officer Washington takes a picture of him. Marciante sustained a bloody nose and swollen lip. (P-18.)

Marciante completed an incident report, a supplemental report, and a use of force report. (P-17, P-18, P-19.) He did not finish the reports by the end of his shift, planning to complete them the next day. He was suspended the next day for improper use of force. Marciante admittedly did not complete his reports.

Captain Schlachter was contacted by Lt. Maldonado on November 5, 2021, and advised that there was an improper force allegation regarding Marciante. Officers who had been at the scene reported to her office and advised her of the situation. Officer D'Arcangelo completed an internal affairs complaint form. Captain Schlachter notified the Deputy Chief and completed the ACPO IA complaint form. Marciante was advised of the IA investigation and placed on administrative leave by the Chief.

Captain Schlachter reviewed the officers' BWC video, surveillance video from the back of the police station, and all reports completed by the officers. She arranged an interview with Marciante, scheduled to occur in December with Marciante's attorney present. She conducted interviews with all of the officers involved. She detailed her investigative process and findings in her report. (R-3.)

During his interview with Captain Schlachter, Marciante described that Officer Evans was escorting J.L. into the police station and that Marciane did not believe Officer Washington was escorting him. Schlachter testified that this statement should be considered as "untruthfulness" by Marciante.

Officer D'Arcangelo was the only officer present during the events of November 5, 2021, to testify at the hearing. He was employed as an officer for the Pleasantville PD for twenty years. His last night of work before his retirement was the midnight shift for

November 5, 2021. His rank was patrolman at the time, and he was the Officer in Charge for the shift, having the most seniority of the officers working at the time.

Officer D'Arcangelo was shown his BWC video during the hearing, while he was at J.L.'s residence and from outside of the station. At the station, D'Arcangelo was positioned behind J.L. and behind Officers Washington and Evans who were on either side of J.L. Officer D'Arcangelo was not asked to elaborate or describe what occurred between J.L. and Marciante. He was asked if the portions of the BWC footage shown to him accurately reflected what he saw and heard on November 5, 2021. He confirmed that it did.

Officer D'Arcangelo did confirm during cross-examination that the tension escalated between Marciante and J.L. at the residence as the officers were walking out and J.L. insulted Marciante. Officer D'Arcangelo tried to diffuse the situation by putting his hands on Marciante and trying to get him out the door and inserted himself between the two men to keep them apart.

Glenn Garrels, owner and operator of Force Analysis, LLC, testified as an expert on behalf of Marciante. His company is a use of force, best police practices consultant company. He has retired from the New Jersey State Police. He holds a Master of Science Degree in Criminal Justice Administration. He has extensive law enforcement experience and experience and training in the area of use of force. (P-1.) He was qualified, without objection, as an expert in the field of the use of force, standard of force, and general law enforcement investigations.

Garrels authored a report outlining his opinions regarding the use of force and standard of force as alleged by the City against Marciante in the November 5, 2021, J.L. matter. (P-2.) In his report, Garrels details his experience, the legal guiding principles he considers, and human factors and ergonomics taken into consideration. He details numerous documents he reviewed as part of his review of the matter, such as the police reports, Marciante's training records and disciplinary records, and all of the BWC video and internal investigation interviews. He interviewed Marciante. He analyzed the BWC footage frame-by-frame. In his report of September 9, 2022, Garrels formulated four

opinions based upon a reasonable degree of probability and certainty in the field of use of force. He opined:

1. The physical contact between J.L. and Officer Marciante at [J.L.'s residence] was incidental contact and should not be considered force or inappropriate contact by Officer Marciante as [J.L.] advance on Officer Marciante.
2. The physical force utilized by officer Marciante at the police station was necessary and reasonable under the totality of the circumstances and which was consistent with the training of a police officer.
3. Lt. Schlachter did not conduct an objective and impartial investigation that would include the totality of the circumstances which violated the New Jersey Attorney General's Guidelines for Internal Investigations.
4. Officer D'Arcangelo did not properly supervise and intervene prior to the force being utilized in violation of the Pleasantville PD Use of Force Policy and the Attorney General's Guidelines on use of force.

(See P-2 at 31.)

Garrels testimony highlighted his opinions and reasoning pertinent to the charge of other sufficient cause, unnecessary use of force in the FNDA regarding Marciante's contact with J.L. outside of the police station. Garrels stated that J.L. exhibited pre-assault indicators, by having slipped his handcuffs to the front of his body, making verbal threats towards Marciante, and leaning his head forward as J.L. was escorted to go into the station. Garrels noted that J.L.'s behaviors at his residence, being admittedly intoxicated from alcohol and drugs, throwing the metal bowl at the officers, and resisting arrest, would also be pre-assault indicators. Marciante perceived J.L.'s head going forward as he was escorted towards him, and within a split of a second Marciante reacted with the shoulder bump. Based upon the totality of such circumstances, he thought that Marciante's shoulder bump of J.L. was minimal. Garrels found the contact to be reasonable, minimal, and consistent with police training and the reasonable standard which applied from the AG guidelines at the time of the incident.

Glenn Miller testified for the City. He was employed by the New Jersey State Police for twenty-seven years, served as Chief of Police at Stockton University for ten years, and five years as Chief of Detectives at the Ocean County Prosecutor's Office. He

has extensive experience in law enforcement, investigations, training, supervision, administration, and policy development and compliance. (R-9.) He was qualified without objection as an expert in the field of law enforcement policy, procedures, and professional standards.

He reviewed numerous materials as part of his analysis of the November 5, 2021, J.L. matter. He also reviewed the reports, the BWC footage, and IA interviews. He formulated opinions within the generally accepted best practices in the law enforcement profession as set forth within his written report. (R-10.)

Miller opined that Marciante's comments and demeanor towards J.L., a known EDP, were unprofessional and as an experienced officer, Marciante should have known how to handle EDP and intoxicated individuals. Miller believed that Marciante's comments probably led to escalating J.L.'s responsive reaction resulting in J.L. being arrested and injured in the process. Miller indicated that Marciante's actions would be conduct unbecoming an officer. He noted that Marciante acknowledged his inappropriate behavior at J.L.'s residence during his IA interview.

Miller opined that Marciante's use of force at the police station towards J.L. was not justified. Miller testified that he did not see anything exhibited by J.L. that warranted Marciante to react with a protective shoulder check. He observed no physical resistance by J.L. There were no people in need of being protected at that time, nor any property in need of being protected. Marciante's contact with J.L. was an incident of an assault as there was no justification Miller could ascertain for Marciante to have used any force against J.L. Miller acknowledged during his testimony that J.L. having slipped his handcuffs to the front of his body certainly could represent a pre-assault indicator.

Miller notes in his report that the reasonableness of the force used is to be judged from the perspective of a reasonable officer on the scene. He contends that Schlacter's IA report noted that other officers were convinced that Marciante's use of force was not justified or necessary, so it is unreasonable for Marciante to have had the shoulder check contact with J.L. Miller's final and third opinion was that Captain Schlacter did complete

a thorough and impartial internal affairs investigation pursuant to Attorney General policy and the Pleasantville PD policy.

Keith Fane testified as a character witness for Marciante. He has been employed in law enforcement positions beginning in 1982 for a local police department and then with the Atlantic County Prosecutor's Office until he retired in 2012 as a Sergeant. He returned in 2013 to law enforcement working for the Atlantic County Sheriff's Department and thereafter picked up part-time work in 2017 as an officer for the Pleasantville PD through his retirement in 2022.

Fane first met Marciante when Marciante was going through the hiring process for the sheriff's department. Marciante went through the process without any issues of untruthfulness, which Fane asserted knocked many applicants out. Fane and Marciante subsequently worked at the same time for the sheriff's department.

When Fane first went to work for Pleasantville as a part time officer, Marciante was not yet there. Fane assisted a sergeant in Pleasantville with the hiring of new officers, and Marciante came to the Pleasantville department from the Atlantic City police department. Marciante transferred into Pleasantville without issue in the hiring process.

While working as an officer for Pleasantville, Fane had many different calls and situations in which he and Marciante, and other members of the Pleasantville police department were involved. Fane's observations of Marciante interacting with the public were favorable, in that Fane had no reason to believe that Marciante was "anything but truthful" in his eyes.

Mark Porter, a retired Pleasantville PD officer, testified as a character witness for Marciante. Porter started working as a police officer for Pleasantville in 1998 and retired in 2023. He was promoted to detective during his employment and then to sergeant in 2016, which was his rank when he retired. Porter did Marciante's hiring background check. He worked with Marciante for several years. He served as Marciante's direct supervisor several occasions. His opinion of Marciante's ability to tell the truth was that he had no reason not to believe him. As a supervising sergeant, he was required to

review several of Marciante's reports and video surveillance and never saw any inconsistencies between them.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, and regulations set forth in the New Jersey Administrative Code, govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 through 11A:12-6; and N.J.A.C. 4A:2-1.1 through 4A:2-6.3. A civil service employee may be subject to discipline for committing any one of twelve enumerated violations within the administrative code. N.J.A.C. 4A:2-2.3. The discipline which may be imposed upon a civil service employee can be "major" such as a demotion, removal from their position of employment, or being a suspension or fine of five or more days. N.J.A.C. 4A:2-2.

An employee may appeal a disciplinary action. N.J.A.C. 4A:2-1.1. The appointing authority employer has the burden of proof to demonstrate by a preponderance of the evidence that the disciplinary action it imposed was appropriate. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4; N.J.A.C. 4A:2-3.7(f); and Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

Marciante's employment as a law enforcement officer subjects him to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576-77 (1990). Law enforcement employees represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). In military-like settings such as police departments, it is of paramount importance to maintain strict discipline of employees. Rivell v. Civil Service Commission, 115 N.J. Super. 64, 72 (App. Div.), cert. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

N.J.A.C. 4A:2-2.3 is the regulation which outlines the twelve general causes for when major discipline may be imposed upon a civil service employee. Those pertinent to Marciante are:

6. Conduct unbecoming a public employee;

- 7. Neglect of duty;
... [and]
- 12. Other sufficient cause.

N.J.A.C. 4:2-2.3(a).

The FNDA issued to Marciante resulting in the discipline of removal, covers both incident dates in question. The remaining charges after the dismissal of the criminal charges by prior order in this matter and the dismissal of the charges alleging violations of Pleasantville PD rules and regulations, will be addressed as to each incident date.

July 6, 2021, search matter

1. N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee

The term “unbecoming conduct” has been broadly defined and identified as conduct that adversely affects the morale or efficiency of the government unit or has the tendency to destroy the public’s respect for public employees and destroy the public’s confidence in the delivery of government services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

2. N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty

The administrative code does not define neglect of duty and what would constitute a violation of neglect of duty. The term “neglect” imports a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). Neglect of duty implies that a public employee has not performed a required official duty. It is not merely the fact that an employee has done an imprudent act. Rushin v. Board of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961).

3. N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause; illegal search of vehicle

“Other sufficient cause” is a catchall provision for conduct that is not listed as one of the eleven other general causes, as the reason for which an employee may be subject to discipline. The phrase “other sufficient cause” is an elastic term, meaning other

conduct, not delineated within the regulation, which would violate “the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dept of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), citing Asbury Park v. Dept of Civil Service, 17 N.J. 419, 429 (1955). It is conduct which adversely affects the morale or efficiency of the public agency or tends to destroy the public’s respect and confidence in public employees and the operation of public services. Hartmann, 258 N.J. Super. at 40.

The City outlines in the specifications section of the FNDA that Marciante’s actions on July 6, 2021, constituted an improper search of the van, in violation of the Fourth Amendment and contrary to well established search and seizure law, relying upon State v. Hill, 115 N.J. 169 (1989). The Fourth Amendment of the United States Constitution protects individuals from unreasonable search and seizures. Warrantless searches are considered invalid, unless the search falls within a narrow exception.

In the case of Hill, the Supreme Court of New Jersey had to determine whether “a warrantless search is constitutionally permissible when a police officer seeking evidence of ownership of an unattended automobile parked not parallel to the curb, enters the unlocked vehicle and looks into a bag left on the front seat, whereupon he discovers illegal drugs.” State v Hill, 115 N.J. 169, 171 (1989). In Hill, an officer responded to investigate an anonymous call of a suspicious vehicle. The officer located a vehicle parked on the street with the nose about six inches from the curb and the rear extended one to two feet from the curb. No one was in the vehicle. The officer transmitted the vehicle’s registration number to dispatch due to concern that the vehicle may have been stolen or that the operator met with foul play. Before receiving a response from dispatch as to the owner of the vehicle, the officer saw a pocketbook on the front passenger seat. The driver’s side door was unlocked. The officer opened the door, took the pocketbook out, and opened it to look for evidence of ownership. Instead, he found suspected narcotics. The registration look up came back identifying the driver. The officers determined that the owner had gone to Atlantic City with her boyfriend. They kept the vehicle under surveillance for approximately five hours and when the owner returned and began to drive away, the police stopped her, and she subsequently was charged with narcotics offenses.

The New Jersey Supreme Court analyzed the search in Hill under the “community caretaking” exception. Hill 115 N.J. at 174. The Court determined there was nothing indicating anything unusual about the vehicle to cause concern, but was a “garden variety parking violation” which did not justify entry into the vehicle to obtain evidence of ownership. A parking ticket could have been placed on the windshield. Id. at 177. Thus, the search did not fall within the “community caretaking” function so the contraband discovered as a result of the search should have been suppressed. Id. at 178.

The City contends that Hill is a case that “is on all fours” with Marciante’s search of the van, and that Marciante’s actions were more intrusive. The van was legally parked on private property at the Exxon station. Since there was no parking violation being committed, Marciante’s assertion that he opened the door to get the VIN number was not necessary. This ignores the description of the vehicle and the condition of the vehicle as seen in the BWC.

Marciante contends that the van appeared to be abandoned. He had seen the deterioration of its condition on the lot. The tires were flat. There was cardboard covering the windows, blocking the view into the van. A residential air conditioning unit was hanging out of the driver’s side door. That certainly raised suspicion as to the condition of the vehicle. There was no vehicle registration, commonly referred to a license plate, on the rear or front of the van. Marciante relies upon case law that provides an individual has no constitutionally protected interest in property that has been abandoned and cannot challenge the search and seizure of abandoned property. See State v. Carvajal, 202 N.J. 214, 233 (2010); State v. Johnson, 193 N.J. 28, 548 (2009).

Abandonment alone cannot be deemed enough to justify Marciante’s opening of the door of the van parked legally at the Exxon station to obtain the VIN. Consideration of the community caretaking doctrine more closely provides an exception to the warrantless search. The doctrine has been applied to various circumstances involving vehicles and warrantless entry. The doctrine is based upon the fact “that police officers provide ‘a wide range of social services’ outside of their traditional law enforcement and criminal investigatory roles.” State v. Edmonds, 211 N.J. 117, 141 (2012) citing State v. Bogan, 200 N.J. 61, 73 (2009). The doctrine was applied to the “check of a vehicle that

was parked in an area known for suicides and whose last authorized driver was listed as a missing person.” Edmonds, 211 N.J. at 141.

Such analyses under the community caretaking doctrine are fact sensitive. Here, Marciante was aware of the gas station location being an open air drug market, or otherwise a high CDS crime area. He had responded to the location numerous times in the past. He knew there had been an overdose death in the exact van. He conducted the property check due to the abandoned look of the vehicle, which had no license plates, flat tires, cardboard blocking the windows and a residential air conditioning unit. When he could not see the VIN number, Marciante opened the unlocked door to retrieve it. Given the totality of the circumstances, I **CONCLUDE** it is reasonable to determine that a reviewing court would find that the community caretaking exception applies to this warrantless search.

Upon opening the door, Marciante saw the male inside, with the syringe. Although Marciante was uncertain in his IA interview and in his testimony as to whether the syringe was first seen next to the individual or in the individual's hand, the BWC footage confirms there was a syringe, and the male threw it out of the van when confronted. Marciante observed numerous small empty baggies known to be used for drugs. This is a plain view exception, which authorizes a police officer to seize evidence or contraband that is in plain view. State v. Bruzzese, 94 N.J. 210 at 235-36 (1983). This would be the grounds to conduct the search of the vehicle as Marciante came upon the syringe in plain view. I **CONCLUDE** that Marciante's warrantless search of the van may pass constitutional muster under the community caretaking and plain view exceptions. I **CONCLUDE** that the charge of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, illegal search of vehicle, must be **DISMISSED**.

Marciante's methods in conducting his duties can be deemed sloppy and careless. He chose to conduct the Exxon property check, yet did not activate his BWC until he was about to open the door of the van. Had he activated it immediately upon exiting his vehicle to investigate the van, there would have been confirming video evidence that he checked for the VIN number and missed it. There was cardboard seen covering the windows of the van and covering the windshield, which did obstruct the view into the vehicle, but the

VIN was easily obtained by the other responding officer. When completing his reports about the incident, he named different officers as to whom conducted the body check of the man and located the suspected CDS. He also wrote in one report that the loaded syringe was seen next to the man in the van while in his other report he indicated the man was holding the loading syringe. He did not write that the area was a known high crime and drug area. Such details are critically important for proper processing of a case and critical to his credibility if need be, for him to testify in criminal court. It is an imposed duty upon a law enforcement officer to complete their duties responsibly, such as promptly activating BWC and writing accurate and precise reports. I **CONCLUDE** that Marciante's sloppy and careless performance of his duties related to the July 6, 2021, search matter constituted neglect of duty, in violation of N.J.A.C. 4A:2-2.3(a)(7).

The City has not articulated how Marciante's conduct was unbecoming a public employee on July 6, 2021, but for the allegation of illegal search of a vehicle. I **CONCLUDE** that the City has not demonstrated by a preponderance of the evidence that Marciante's actions regarding the July 6, 2021, search matter constituted a violation of N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee, and that charge shall be **DISMISSED**.

November 5, 2021, J.L. matter

There are four charges that remain against Marciante that have not been dismissed from the FNDA pertaining to the November 5, 2021, J.L. matter. There are two components to the events of that date. The first component deals with Marciante's demeanor and comments at J.L.'s residence. The second component is Marciante's use of force towards J.L. at the station.

1. N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee

Marciante has admitted the comments he made toward J.L. were rude and discourteous. They were demeaning and derogatory, using the "f" word and references to J.L.'s sexual preferences. Marciante acknowledged that his behavior was unacceptable, and worthy of major discipline. Marciante's treatment of J.L., an EDP who

was intoxicated at his residence, certainly would destroy the public's respect of law enforcement officers and destroy public confidence in the delivery of police services. I **CONCLUDE** that Marciante has violated N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee.

2. N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty

Marciante admittedly failed to complete his reports before the end of his shift on November 5, 2021. I **CONCLUDE** that Marciante has violated N.J.A.C. 4A:2-2.3(a)(7), neglect of duty.

3. N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause; unnecessary use of force

Marciante admittedly used a shoulder check movement to make contact with J.L. which he explained was necessary because he saw pre-assault indicators in J.L. as he was escorted towards the entrance of the station and J.L. tilted his head down. He perceived J.L. to be a threat. J.L. had slipped his cuffs in front of his body. Marciante was concerned for the safety of the officers around J.L. His shoulder check was a bump into J.L. to create distance between them. None of the BWC footage demonstrates a clear viewing perspective of the contact as it occurred.

Both experts in field of use of force are highly experienced and respected in their professional knowledge of law enforcement. However, their opinions are completely divergent with Garrels indicating that Marciante's contact was minimal and reasonable while Miller opined that it was completely unreasonable for the force to be used.

It is appreciated that the nuances of pre-assault indicators can play into an officer's reasonable belief of a threat to himself or others. Marciante had reason to be concerned when he saw J.L. had slipped his cuffs, which he had advised the other officers to watch for J.L. doing so. What is unreasonable is that he chose to go outside and positioned himself directly in front of J.L. who was being escorted by officers on either side and behind J.L. Instead of stepping to the side or remaining in the station, Marciante placed himself in direct confrontation with J.L. The shoulder check was minimal force as

described by Garrels. However, it was unnecessary use of force as J.L. was handcuffed, accompanied by officers, and simply being walked into the station, when Marciante made the decision to position himself directly in the path of J.L. I **CONCLUDE** that Marciante's use of force, though minimal, was unnecessary, and in violation of N.J.S.A. 4A:2-2.3(a)(12) Other Sufficient Cause.

4. N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause: untruthful IA statement

The City contends that Marciante was untruthful in his IA interview by indicating that he made physical contact with J.L. when he saw him put his head down coming towards him. The City asserts this is directly contradictory to the BWC evidence. None of the BWC footage had a clear view of the contact that occurred. Marciante testified that he did shoulder check J.L. and that J.L. headbutted him. I **CONCLUDE** that the evidence does not preponderate that Marciante was untruthful in the IA interview as to how the contact occurred.

The City further contends that Marciante was untruthful in his IA interview because he indicated he did not see Officer Washington escorting J.L. when the contact took place. Marciante did recall that Officer Evans was on one side of J.L. He did not state in the IA investigation emphatically that Officer Washington was not there. He did not think she was holding on to J.L. as he was walked into the station. I **CONCLUDE** this is not a situation where Marciante lied or was purposely untruthful during his interview about the presence of Officer Washington.

The City contends that Marciante's criminal charge prepared against J.L. was untruthful because he indicated that J.L. walked up to him and headbutted him. This cannot be deemed an untruthful statement as J.L. was walking and did headbutt Marciante. It is the method of characterization of the event by Marciante in the charge, in failing to indicate he shoulder checked J.L. first, that is troubling, but not untruthful. I **CONCLUDE** the City has not demonstrated Marciante was untruthful, and thus the charge of N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause: untruthful during IA interview, is **DISMISSED**.

PENALTY

Progressive discipline must be considering when imposing a penalty upon a civil service employee who has violated a statute, regulation, or rule regarding their employment. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523-524. The past record encompasses the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Id. Consideration should also be given as to the timing of the most recently adjudicated disciplinary history. West New York, 38 N.J. 524.

It is well established that if underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Thus, the theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of fairness. Id. Progressive discipline manifests in either a gradually increasing penalty for reoffenders or will mitigate the penalty for a current offense if, after considering the mitigating and aggravating factors of the matter, the penalty sought is deemed inappropriate. In re Herrmann, 192 N.J. 19, 31-33 (2007).

Sworn law enforcement officers are recognized as a "special" kind of public employee. Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). Their primary duty is to enforce and uphold the law, exercise tact, restraint, and good judgment, and to represent law and order to the citizenry. Id. Law enforcement employees, such as SCPOs, must present an image of personal integrity and dependability to garner the respect of the public. Id.

The only information regarding prior disciplinary history or accolades Marciante

received during his career in law enforcement came from his own testimony in direct and cross-examination. He asserted that he had annual evaluations by the Pleasantville PD, by an estimated five different sergeants, with each evaluating him to be exceptional in almost every category. He received exceptional service awards and a valor award for his actions at the Pleasantville high school shooting incident where a child was killed. Marciante presented two character witnesses who attested that they only knew him to be truthful.

Marciante testified that he was subject to prior discipline while employed by the City. None of that discipline in Pleasantville resulted in a major suspension of six or more days, nor a minor suspension of five or fewer days. He did receive written reprimands, but not in the area of use of excessive force, or having conducted a bad search, or for untruthfulness. One written reprimand was for not wearing his name tag. He was "spoken to" regarding demeanor complaints. He recalled receiving counseling about one matter and then it "came off" his record after six months.

While employed by the County Sheriff's Department, he stated he was suspended for one day, along with a group of approximately ten other officers, because they "forgot an inmate" who had been transported from the jail to the local Superior Court. The officers did not realize that the inmate was still in a court appearance before a Judge, and returned other inmates to the jail.

While employed by the Camden Metro police, Marciante recalled having gotten a write up for not wearing a hat outside.

While employed by the Atlantic City police department, Marciante recalled there was an IA investigation, which was administratively closed. The investigation pertained to a group of off-duty officers outside of a local bar who got involved in a brawl with other males. Marciante was there at the scene.

It has been determined herein that as to the July 6, 2021, search matter, Marciante violated N.J.A.C. 4A:2-2.3(a)(7), neglect of duty. As to the November 5, 2021, J.L. matter, Marciante has been found to have violated N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming

a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty for failing to complete his reports; and N.J.S.A. 4A:2-2.3(a)(12) other Sufficient Cause, unnecessary use of force. All other charges in the FNDA were dismissed by the prior order entered in the matter, or dismissed under the 45-day rule, or dismissed as unproven.

Consideration has been given that there apparently is no prior major discipline. Marciante had "write ups" or was counseled but only had a one-day suspension, with a group of other officers, when he worked for the County Sheriff's Department. It is appreciated that character witnesses were present and attested to Marciante's truthfulness. These are mitigating factors considered when imposing discipline.

Major discipline is warranted here, despite the meager prior disciplinary history. Marciante himself acknowledges that his comments and demeanor on November 5, 2021, require major discipline. Such comments and demeanor towards an EDP who was intoxicated were egregious. Marciante had to be redirected to de-escalate the situation. Instead of cooling off at the station, Marciante then chose to go outside and position himself in the path of J.L. as he was being escorted inside. Instead of stepping to the side or retreating to the station, Marciante shoulder checked J.L. as he was walked towards where Marciante stood. This has been found to be unnecessary force, yet recognized to be minimal. His neglect of duty for failing to write clear and accurate reports or to even complete his reports, though seemingly insignificant in comparison to the determinations, still requires the imposition of discipline.

Under the totality of the collective circumstances and findings, I **CONCLUDE** that major discipline of a 180-working day suspension is the appropriate penalty for the collective violations of N.J.A.C. 4A:2-2.3. I further **CONCLUDE** that Marciante shall be mandated to attend training of at least forty hours covering nuts and bolts basics for law enforcement officers, such as basic academy training and focus on search and seizure, use of force, communicating with members of the public, handling of emotionally disturbed and other individuals who may present challenges or a threat to law enforcement, report writing, and any refresher courses or annual case law updates. Such training shall also focus on appropriate demeanor, attitude, and ethics for police officers. The training shall be in person and only half of the mandated hours may be completed by

online or remote training. All training shall be at Marciante's expense. The Pleasantville PD Chief, or other police department designated administrator, shall arrange for the training which Marciante is mandated to attend. The cost incurred by the City shall be reimbursed by Marciante within thirty days of being presented with the invoice. If he fails to remit timely payment, the City shall be permitted to attach his wages, as permitted by law, at a rate that does not exceed 5% of his net pay, per pay period, until the cost is satisfied in full.

ORDER

It is **ORDERED** that Officer Marciante shall have major discipline imposed of a 180 working day suspension, and mandated training, for having violated N.J.A.C. 4A:2-2.3(a)(7), neglect of duty, on July 6, 2021, and having violated N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty for failing to complete his reports; and N.J.S.A. 4A:2-2.3(a)(12) other Sufficient Cause, unnecessary use of force on November 5, 2021. All other charges in the FNDA are dismissed.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



April 23, 2025

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

Date Mailed to Parties:

EBF/gd

APPENDIX

WITNESSES

For appellant

Keith Fane
Glenn Garrels
Mark Porter
John Marciante

For respondent

Robert D'Arcangelo
Stacey Schlachter
Glenn Miller

EXHIBITS

Joint

J-1 PNDA June 13, 2022
J-2 FNDA July 27, 2022

For appellant

C-1 Email February 16, 2024, from Attorney Murray to Attorney Gelfand, confirming withdraw of "not guilty" pleas and pleading "guilty" to certain specifications; reservation of right to argue 45-day rule
P-1 Curriculum vitae Glenn Garrels
P-2 Report of Glenn Garrels, Force Analysis LLC, September 9, 2022
P-3 BWC Marciante from July 6, 2021, matter
P-4 BWC Stocks from July 6, 2021, matter
P-5 Auditory clips
A: Lt. Schlachter with Marciante and counsel Murray re "improper search" administrative investigation form; stop to review BWC footage MP4 format

- B: Lt. Schlacter with Marciante and counsel Murray re “improper search” administrative investigation form WMA format (duplicate of P-5A)
- C: MP4 format “Marciante 2” re July 6, 2021, matter
- D: WMA format “Marciante 2” re July 6, 2021, matter (duplicate of P-5C)
- E: WMA format “Marciante interview 1” re November 5, 2021, J.L. matter
- F: WMA format December 22, 2021, Lt Schlacter with Marciante and counsel Murray-sign form; stop recording to review BWC footage
- P-6 BWC Marciante November 5, 2021, at residence J.L.
- P-7 BWC Marciante November 5, 2021, at station
- P-8 Prosecutor’s letter of October 28, 2021, to Chief Riffin, Pleasantville PD
- P-9 Target letter November 5, 2021, to Marciante from Chief Riffin
- P-10 Prosecutor’s letter of December 10, 2021, to Chief Riffin, referral back to Pleasantville PD
- P-11 Pleasantville PD policy re motor vehicle searches, number 2018-031
- P-12 Supplemental Report by Marciante, July 7, 2021, regarding July 6, 2021 matter
- P-13 Supplemental Report by Marciante, July 7, 2021, regarding July 6, 2021, matter (pre-review copy)
- P-14 Incident Report by Marciante, August 2, 2021, regarding July 6, 2021, matter
- P-15 Supplemental report by Marciante, September 9, 2021, regarding July 6, 2021, matter
- P-16 Case detail report regarding November 5, 2021, matter, report printed December 22, 2021
- P-17 Incident report by Marciante November 5, 2021, regarding November 5, 2021, matter
- P-18 Supplemental report by Marciante November 5, 2021, regarding November 5, 2021, matter
- P-19 NJOAG Use of Force policy UOF21-11-75 form completed by Marciante

For respondent

- R-1 BWC video Officer D’Arcangelo, November 5, 2021, at residence J.L.
- R-2 BWC video Officer D’Arcangelo, November 5, 2021, outside the station

- R-3 IA report by Lt. Schlachter, March 4, 2022, regarding November 5, 2021 J.L. matter
- R-4 BWC video Officer Marciante, November 5, 2021, at J.L.'s residence
- R-5 IA interview audio recording of Marciante by Schlachter on December 22, 2021, regarding November 5, 2021, J.L. matter
- R-6 IA report by Lt. Schlechter, March 16, 2022, regarding July 5, 2021, vehicle search
- R-7 IA interview audio recording of Marciante by Schlechter, on December 22, 2021, regarding July 5, 2021, search matter
- R-8 BWC Officer Evans, July 6, 2021
- R-9 Curriculum vitae of Glenn Miller
- R-10 Report of Glenn Miller, signed September 9, 2023
- R-11 Audio recording interview of John Marciante by expert Miller-marked for identification-not requested to be admitted
- R-12 Excerpts of Pleasantville Police Department Rules and Regulations