

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

WILLIAM THORPE, *et al.*,

Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Civil Case No. 2:20-cv-00007-JPJ-PMS

CLASS ACTION

DECLARATION OF WILLIAM E. O'NEIL

Pursuant to 29 U.S.C. § 1746, I, William E. O'Neil, state and declare as follows:

1. I am an attorney at the law firm of Covington & Burling LLP, which has been appointed Class Counsel in this action. I am a member of the bar of the State of New York and am admitted *pro hac vice* in this matter. I make this declaration in support of Plaintiffs' Response to Defendants' Statement Regarding Proposed Class Representatives and Notice, to place before the Court documents and information necessary for the Court to rule upon the proposed class notice and Plaintiffs' plan of notice.
2. Attached as Exhibit 1 is a true and correct copy of an email chain culminating in a May 10, 2023 email from Thomas R. Waskom to William O'Neil and others.
3. Attached as Exhibit 2 is a true and correct copy of Defendants' Objections to Plaintiffs' First Set of Requests for the Production of Documents, dated November 4, 2019.
4. Attached as Exhibit 3 is a true and correct copy of the transcript of the January 9, 2023 hearing before Magistrate Judge Sargent in *Thorpe v. Virginia Department of Corrections*, Case No. 2:20-cv-00007-JPJ-PMS.

5. Attached as Exhibit 4 is a true and correct copy of an April 21, 2023 email from William O'Neil to Maya Eckstein and others.

6. Attached as Exhibit 5 is a true and correct copy of an email chain culminating in a May 4, 2023 email from William O'Neil to Thomas R. Waskom and others.

7. Attached as Exhibit 6 is a true and correct copy of an email chain culminating in a May 12, 2023 email from R. Dennis Fairbanks to William O'Neil and others.

8. On April 21, 2023, I sent an email to Defendants' counsel asking them to provide Plaintiffs with, among other things, lists of class members (i) who are "currently in VDOC custody," (ii) who are "state-responsible but who are currently incarcerated in facilities other than VDOC facilities," and (iii) who are "no longer in VDOC custody." On April 26, 2023, the parties held a telephonic meet-and-confer regarding my request. On that phone call, Defendants' counsel declined to provide the requested lists of class members.

9. After Defendants' counsel declined to provide Plaintiffs with the requested lists of class members, I endeavored to generate the aforementioned lists based on Defendants' interrogatory responses, which, in turn, referred Plaintiffs to dozens of documents produced by Defendants. On May 4, 2023, I sent Defendants' counsel lists of class members whom Plaintiffs understood to be "housed in a VDOC facility" and "no longer housed in a VDOC facility." I requested that Defendants' counsel confirm the accuracy of Plaintiffs' lists.

10. On May 12, 2023, Defendants' counsel sent me an email declining to "confirm that the lists attached to [my] earlier email," including because Defendants were purportedly "unclear" about the class definitions. On May 16, 2023, I emailed Defendants' counsel again, explaining that their refusal to assist in confirming Plaintiffs' lists of class members was unacceptable. On May 23, 2023, Defendants' counsel identified certain class members whom

they claimed were misidentified as within and without VDOC custody. Defendants reiterated their refusal, however, to “undertake an additional investigation into some subset of 790 inmates to provide confirmation that they agree with Plaintiffs’ list[s].”

11. On April 26, 2023, I asked Defendants to confirm whether any class members are housed in non-VDOC facilities pursuant to the Commonwealth’s Interstate Compact and, if so, the facilities in which such class members are housed. To date, Defendants have refused to provide any information about where such class members are housed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 25, 2023, in New York, New York.

A handwritten signature in black ink, appearing to read "W. O'Neil", written over a horizontal line.

William E. O’Neil