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

DEFENDANTS' RESPONSE TO PLAINTIFFS' REVISED STATEMENT REGARDING NEW PROPOSED CLASS REPRESENTATIVES AND AMENDED NOTICE

Defendants file this response to Plaintiffs' revised statement regarding new proposed class representatives and amended notice, ECF No. 471, and state as follows:

DECERTIFICATION OF THE DISABILITIES CLASSES

1. Defendants agree with Plaintiffs' position that there are no members of the Disabilities Injunction Class, and there are likely fewer than 10 members of the Disabilities Damages Class. *See* ECF No. 471, ¶ 5. Additionally, no Named Plaintiff is a member of either class. Thus, the parties are jointly stipulating to the decertification of both Disabilities Classes.

2. Defendants agree with Plaintiffs that a single class representative for both the Constitutional Violation Injunction Class and the Constitutional Violation Damages Class will permit a more efficient trial than separate class representatives for each Constitutional Violation Class.

PROPOSED CONSTITUTIONAL VIOLATION CLASS REPRESENTATIVES

3. Defendants agree that, under the Court's prior orders, Plaintiff Derek Cornelison is a member of the Constitutional Violation Damages Class. Defendants maintain that, as previously argued, no Named Plaintiff, including Cornelison, satisfies the typicality and adequacy

requirements of Federal Rule of Civil Procedure 23(a)(3)–(4). *See* Defs.' Memo. in Opp. to Mot. for Class Cert. at 31–33, ECF No. 195. In granting Plaintiffs' motion for class certification, the Court held that the Named Plaintiffs, including Cornelison, satisfy those requirements. *See* Opinion and Order at 21–24, ECF No. 299. While reserving their right to appeal the Court's class certification orders, including the Court's finding of typicality and adequacy, Defendants recognize that, under the Court's prior orders, Cornelison may serve as representative of the Constitutional Violation Damages Class.

4. Plaintiffs assert that Cornelison can represent the Constitutional Violation Injunction Class because either (1) he is a member of the Class as he may "in the future be confined at Red Onion" and be subject to the Step-Down Program; or (2) the claims of the Class are "capable of repetition, yet evading review," or "inherently transitory," so non-class members may serve as class representatives. *See* ECF No. 471, ¶ 10 (citing *Jonathan R. ex rel. Dixon v. Justice*, 41 F.4th 316, 325 (4th Cir. 2022)).

5. Defendants disagree that Cornelison is a member of the Constitutional Violation Injunction Class and reserve the right to appeal any finding that he is a member of the class. However, in light of the Court's discussion of the exception to the requirement that named plaintiffs be members of classes they seek to represent, *see* ECF No. 467 at 6–7, Defendants recognize, subject to the appellate rights reserved above, that Cornelison may represent the Constitutional Violation Injunction Class under the holding of *Johnathan R.*

6. Defendants object to amendment of the pleadings to add Sidney Bowman as a Named Plaintiff and proposed class representative. Introduction of a new Named Plaintiff at this stage would be inefficient and unnecessarily impose additional costs and burden on Defendants

and the Court, as it would require the parties to engage in additional discovery regarding Mr. Bowman and further delay trial of this matter.

AMENDED NOTICE AND PROPOSED NOTICE PLAN

7. Plaintiffs have revised the proposed notice for the Constitutional Violation Damages Class.

8. Defendants do not object to the proposed Amended Notice or the proposed notice plan.

May 2, 2024

Respectfully submitted,

/s/ Maya M. Eckstein

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CERTIFICATE OF SERVICE

I hereby certify that, May 2, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all CM/ECF participants.

By: */s/ Maya M. Eckstein*

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