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 **JOINT STIPULATION AND [PROPOSED] ORDER**

JOINT STIPULATION OF DECERTIFICATION OF THE DISABILITIES INJUNCTION AND DISABILITIES DAMAGES CLASSES

WHEREAS, the Court certified and defined a Disabilities Injunction Class and a Disabilities Damages Class (collectively, "Disabilities Classes") pursuant to Federal Rule 23 in ECF No. 299;

WHEREAS, the Court, in ECF No. 358, amended the Class definition of, and certified the Disabilities Injunction Class as: "All persons who are currently, or will in the future, be confined at Red Onion or Wallens Ridge at the Level S or Level 6 security levels and subject to any phase of the Step-Down Program and who are or will in the future be classified at Mental Health Classification Code MH-2S or higher at the time of the Level S or Level 6 security level classification";

WHEREAS, the Court, in ECF No. 358, amended the Class definition of, and certified the Disabilities Damages Class as: "All persons who at any time from August 1, 2012, to the present that have been confined at Red Onion or Wallens Ridge at the Level S or Level 6 security levels and subject to any phase of the Step-Down Program and who are or were at the time of their Level S or Level 6 security level classification also classified at Mental Health Classification Code MH-2S or higher";

WHEREAS, the parties agree that no named Plaintiff is a member of either Disabilities Class, as defined in ECF No. 358;

WHEREAS, the parties agree that based on the data currently provided by Defendants, no person meets the definition of the Disabilities Injunction Class and that fewer than 10 persons meet the definition of the Disabilities Damages Class, as they are defined in ECF No. 358;

WHEREAS, the parties agree that both of the Disabilities Classes, as defined in ECF No. 358, should be decertified at this time;

WHEREAS, both parties preserve their rights to appeal all aspects of the Court's rulings, including on class certifications, class definitions, and class representatives;

WHEREAS, named Plaintiffs Brian Cavitt, Dmitry Khavkin, Steven Riddick, and Gary Wall, each of whom pled Americans with Disabilities Act ("ADA") and Rehabilitation Act ("RA") claims may continue to pursue those claims on an individual basis;

WHEREAS, the parties respectfully submit that hearing those ADA and RA claims jointly in a separate trial following adjudication of the class claims would best utilize judicial and party resources;

WHEREAS, the interests of justice would be served by decertification of the Disabilities Classes and adjudication of the individual ADA and RA claims in a separate trial;

NOW, THEREFORE, IT IS STIPULATED by and between the parties hereto through their respective counsel that: the Disabilities Injunction Class and Disabilities Damages Class be decertified pursuant to the terms outlined above and with permission of the Court; and trial of the individual ADA and RA claims of named Plaintiffs Brian Cavitt, Dmitry Khavkin, Steven Riddick, and Gary Wall be deferred, with permission from the Court, until a final, appealable judgment has been entered in the trial on the class claims.

* * *

Dated: May 2, 2023

Respectfully submitted,

/s/ Megan A. Crowley

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Counsel for Defendants

[PROPOSED] ORDER

PURSUANT TO THE STIPULATION OF THE PARTIES AND GOOD CAUSE APPEARING THEREFORE, IT IS ORDERED that the Disabilities Injunction Class and Disabilities Damages Class are decertified and that the trial of the individual Americans with Disabilities Act and Rehabilitation Act claims of Brian Cavitt, Dmitry Khavkin, Steven Riddick, and Gary Wall is deferred, with permission from the Court, until a final, appealable judgment has been entered in the trial on the class claims.

Dated:

BY ORDER OF THE COURT

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THE HONORABLE JAMES P. JONES
U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 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.

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