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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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THERESA VICTORY,
Plaintiff,
v.
BERKS COUNTY, BERK COUNTY COMMISSIONERS KEVIN S. BARNHARDT, CHRISTIAN Y. LEINBACH AND MARK C. SCOTT, ESQ., WARDEN JANINE L. QUIGLEY, DEPUTY WARDEN STEPHANIE SMITH, CAPTAIN CASTRO, LIEUTENANT WEBER, LIEUTENANT SPOTTS, CORRECTIONS OFFICER (C.O.) DROZACK, C.O. REICHART, C.O. ZERR, C.O. BROWN, C.O. BAUER, JOANNA BROWN, JOHN DOE CORRECTIONAL SERGEANT, Defendants.

CIVIL ACTION NO. \_\_\_\_\_

COMPLAINT -- CLASS ACTION

FILED
NOV 30 2018
KATE BARKMAN, Clerk
Dep. Clerk

JURY DEMANDED

COMPLAINT

I. STATEMENT OF THE CASE

1. This is a civil rights action brought under 42 U.S.C. § 1983, the United States Constitution, and the Pennsylvania Constitution concerning Defendants' refusal to provide Plaintiff Theresa Victory and other female prisoners with "Trusty" custody-level classification and/or Work Release status the same housing and services as similarly situated male prisoners, solely on the basis of sex, and Defendants' subsequent retaliation against Ms. Victory for complaining to staff and filing grievances about this issue. By denying otherwise eligible female prisoners access to housing and services provided to male prisoners in the Berks County Jail System's Community Reentry Center ("CRC"), Defendants discriminate on the basis of sex in

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violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and the Pennsylvania Equal Rights Amendment, Art. I, § 28 of the Pennsylvania Constitution. By retaliating against Ms. Victory for filing grievances and threatening punishment if she files additional grievances, Defendants violated the First Amendment to the U.S. Constitution.

## **II. JURISDICTION**

2. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201(a) and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

3. This court has supplemental jurisdiction over the state Equal Rights Amendment claim pursuant to 28 U.S. Code § 1367.

4. Venue is proper pursuant to 28 U.S.C. § 1391(a) as all of the claims arise in and the Defendants are located in the Eastern District of Pennsylvania.

## **III. PARTIES**

5. Plaintiff Theresa Victory resides in Pennsylvania and is incarcerated in Berks County Jail in Leesport, Pennsylvania.

6. Defendant Berks County is responsible for the operation of the Berks County Jail System, which includes the Berks County Jail and Berks County Community Reentry Center, and has offices at 633 Court Street, Reading, PA 19601.

7. Defendant Kevin S. Barnhardt is a Commissioner on the Berks County Board of Commissioners, which constitutes the chief governing body of the County and has offices at 633 Court Street, 13th Floor, Reading, PA 19601. Defendant's responsibilities include serving on the Prison Board. He is sued in his individual and official capacities.

8. Defendant Christian Y. Leinbach is a Commissioner on the Berks County Board of Commissioners, which constitutes the chief governing body of the County and has offices at 633 Court Street, 13th Floor, Reading, PA 19601. Defendant's responsibilities include serving on the Prison Board. He is sued in his individual and official capacities.

9. Defendant Mark C. Scott, Esq. is a Commissioner on the Berks County Board of Commissioners, which constitutes the chief governing body of the County and has offices at 633 Court Street, 13th Floor, Reading, PA 19601. Defendant's responsibilities include serving on the Prison Board. He is sued in his individual and official capacities.

10. Defendant Janine Quigley is and was employed as the Warden in the Berks County Jail System at all times relevant to this complaint. She is sued in her individual and official capacities.

11. Defendant Stephanie Smith is and was employed as a Deputy Warden in the Berks County Jail System at all times relevant to this complaint. She is sued in her individual and official capacities.

12. Defendant Captain Castro is and was employed as a correctional captain in the Berks County Jail System at all times relevant to this complaint. She is sued in her individual capacity.

13. Defendant Lieutenant Weber is and was employed as a correctional lieutenant in the Berks County Jail System at all times relevant to this complaint. He is sued in his individual capacity.

14. Defendant Lieutenant Spotts is and was employed as a correctional lieutenant in the Berks County Jail System at all times relevant to this complaint. He is sued in his individual capacity.

15. Defendant Corrections Officer Drozack is and was employed in the Berks County Jail System at all times relevant to this complaint. She is sued in her individual capacity.

16. Defendant Corrections Officer Reichart is and was employed by the Berks County Jail System at all times relevant to this complaint. She is sued in her individual capacity.

17. Defendant Corrections Officer Zerr is and was employed by the Berks County Jail System at all times relevant to this complaint. She is sued in her individual capacity.

18. Defendant Corrections Officer Brown is and was employed by the Berks County Jail System at all times relevant to this complaint. She is sued in her individual capacity.

19. Defendant Corrections Officer Bauer is and was employed by the Berks County Jail System at all times relevant to this complaint. She is sued in her individual capacity.

20. Defendant Joanna Brown is and was employed as the Work Release Coordinator in the Berks County Jail System at all times relevant to this complaint. She is sued in her individual capacity.

21. Defendant John Doe Correctional Sergeant is and was employed by the Berks County Jail System at all times relevant to this complaint. He is sued in his individual capacities.

#### **IV. CLASS ACTION ALLEGATIONS**

22. Plaintiff Victory brings this action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) on behalf of herself and the following class:

All current and future female inmates committed to the Berks County Jail System who have the Trusty custody-level classification and/or Work Release status but have been denied assignment to the Community Reentry Center (“CRC”) and denied access to the privileges, services, and programs available to men assigned to the CRC.

23. All class members are aggrieved persons under federal and state civil rights law as a result of Defendants' actions, policies, customs, and practices.

24. On information and belief, there are currently approximately 15 women committed to the Berks County Jail System who satisfy the criteria for class membership.

25. On information and belief, numerous other women enter the facility throughout the year who satisfy the criteria for class membership.

26. This matter is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(a)(1) in that joinder of all members of the proposed class is not only impracticable, but also impossible, because the class includes a shifting prison population whose identities are incapable of being known at the present time.

27. The proposed class meets the requirements of Fed. R. Civ. P. 23(a)(2) because there are questions of law and fact common to the class members, including, but not limited to, the following:

- (1) Whether Defendants' disparate treatment of men and women with Trusty custody-level classification and/or Work Release status is a sex-based classification;
- (2) Whether the Defendants violate the Fourteenth Amendment Equal Protection rights of the Proposed Class members by housing them in the Jail rather than in the CRC;
- (3) Whether the Defendants violate the Fourteenth Amendment Equal Protection rights of the Proposed Class members by denying them the privileges, services, and programs provided to male prisoners housed in the CRC;

- (4) Whether the Defendants have a genuine and exceedingly persuasive justification for their failure to treat the Proposed Class members and similarly situated men equally;
- (5) Whether the Defendants' failure to treat the Proposed Class members and similarly situated men equally serves important governmental objectives;
- (6) Whether the Defendants' denial of CRC housing and its concomitant privileges, services, and programs to the Proposed Class members is substantially related to the achievement of important governmental objectives;
- (7) Whether the Defendants violate the rights of the Proposed Class members under the Pennsylvania Equal Rights Amendment, Art. I, § 28 of the Pennsylvania Constitution.

28. The proposed class representative satisfies Fed. R. Civ. P. 23(a)(3) because her claims are typical of those of the proposed class in that the representative is being denied access to the same reentry housing and the benefits accompanying the reentry housing based solely on sex.

29. The proposed class representative will fairly and adequately protect the interests of the class pursuant to Fed. R. Civ. P. 23(a)(4) because she will prosecute this action vigorously in order to obtain remedies for the all members of the class, whose interests she shares.

## **V. FACTUAL ALLEGATIONS**

### **Berks County Jail System**

30. At all times relevant to this Complaint, individual Defendants were acting under color of state law, within the scope and course of their employment, and under the direct control and supervision of Berks County.

31. The Berks County Jail System (“Jail System”) includes two facilities, located in close proximity to each other: the Berks County Jail (“Jail”) and the Berks County Community Reentry Center (“CRC”).

32. The Jail is a secure custodial facility with prisoners of both sexes and all security levels, located at 1287 County Welfare Road, Leesport, PA 19533.

33. The CRC is a separate facility located close to the Jail at 1261 County Welfare Road, Leesport, PA 19533, that is, in Berks County’s own words, “dedicated to improving the quality of our community by delivering effective and innovative inmate services that instill pro-social behavior, healthy life choices, and personal accountability, thereby reducing recidivism and its financial burden on the county.” *Welcome to Berks County Community Reentry Center*, COUNTY OF BERKS PENNSYLVANIA, <http://www.co.berks.pa.us/Dept/Jail/CRC/Pages/default.aspx> (last visited Nov. 26, 2018).

34. The CRC “opened its doors in May of 2010 with the goal of reducing recidivism and assisting residents in re-establishing themselves as productive members of our community. Through a collaborative effort with other local government agencies, non-profit agencies, community-based agencies and faith-based organizations, [the CRC] strive[s] to provide the guidance and resources necessary to enable reintegration back into the community. These agencies deliver services both pre- and post-release and provide a continuum of care for up to three years after release. The partnership among these aforementioned agencies seeks to enhance public safety by utilizing evidence based practices which support positive choices, constructive behavior and accountability, thereby reducing criminal actions and financial burden upon the county.” *About the Community Reentry Center*, COUNTY OF BERKS PENNSYLVANIA,

<http://www.co.berks.pa.us/Dept/Jail/CRC/Pages/About-the-CRC.aspx> (last visited Nov. 26, 2018).

35. As of September 2018, the total prisoner population in the Berks County Jail System was 1,115, with 105 prisoners in the CRC. *Berks County Prison Board Minutes*, Sept. 12, 2018, available at

[http://www.co.berks.pa.us/Dept/Jail/Prison\\_Board/Prison\\_Board\\_Minutes\\_2018-9.pdf](http://www.co.berks.pa.us/Dept/Jail/Prison_Board/Prison_Board_Minutes_2018-9.pdf).

36. The CRC has capacity for 136 resident prisoners. STATEWIDE ADOPTION AND PERMANENCY NETWORK LEGAL SERVICES INITIATIVE (SWAN LSI), INCARCERATION RESOURCE MANUAL 29 (2018), available at [http://www.diakon-swan.org/media/uploads/final\\_draft\\_lsi-irm\\_second\\_edition.pdf](http://www.diakon-swan.org/media/uploads/final_draft_lsi-irm_second_edition.pdf).

37. The Jail System has a classification system that assigns prisoners to one of five custody levels: Administrative Segregation, Maximum, Medium, Minimum, and Trusty. Trusty is the least restrictive custody level. BERKS COUNTY JAIL SYSTEM INMATE HANDBOOK (Eff. Apr. 1, 2016) 31, available at

<http://www.co.berks.pa.us/Dept/Jail/Documents/INMATE%20HANDBOOK%202016%20-%20PDF%20version%2004-01-16.pdf>.

38. Classification is determined based on:

- Reports from law enforcement agencies
- Medical or psychiatric condition and history
- Jail records of conduct and adjustment
- Records of prior incarceration
- Length of time in present classification status
- Criminal charges



- Existence of detainers
- Adjudication status
- Program participation

*Id.*

39. The Jail System has four categories of housing. Three are located in the Jail: Quarantine, General Population, and Restricted Housing (administrative or disciplinary segregation). *Id.*

40. The fourth housing category is Reentry, which “includes Trusty or work release.” Reentry housing, also known as the CRC, is outside the secure perimeter of the jail and affords more freedom and less direct supervision. *Id.*

41. According to the Inmate Handbook, “[a prisoner’s] housing assignment [is] based upon the results of the classification process.” *Id.*

42. The Inmate Handbook says that “[r]eentry housing is assigned to those who meet a number of criteria” but does not state what those criteria are. *Id.* at 33.

43. Prisoners are not eligible for reentry housing if they:

- Are in an administrative segregation status
- Are in quarantine status
- Ever escaped or attempted to escape from custody in the last eight (8) years
- Have a detainer from another jurisdiction lodged against the prisoner
- Have a custody level assignment of minimum, medium, or maximum until reviewed and approved by the ICC
- Have a risk assessment level of medium high, or high

- Refuse to participate in specific treatment programs or fail to demonstrate improvement
- Have a prior work release failure in the last three years
- Have received a formal misconduct in the past sixty (60) days

*Id.* at 34.

44. The Work Release Program “provides an opportunity for [prisoners] to become employed in the community.” *Id.* at 29.

45. To be eligible for Work Release, a prisoner must meet the criteria for Trusty custody level classification and attend or be involved in all recommended programming. *Id.* at 30.

#### **Discrimination against Women in the Berks County Jail System**

46. On information and belief, male prisoners with Trusty custody-level classification and/or Work Release status are housed in the CRC, and male prisoners with higher custody levels than Trusty are housed in the Jail.

47. All women committed to the Berks County Jail System—regardless of assigned custody level—are housed in the Jail, including those with Trusty classification and those on Work Release.

48. On information and belief, men with Trusty custody level—who are housed in the CRC—have access to job fairs and other services that enable them to acquire jobs and get approved for Work Release.

49. On information and belief, women with Trusty custody level—who are housed in the Jail—do not have comparable access to job fairs or other services that would enable them to acquire jobs and get approved for Work Release.

50. On information and belief, the Jail is far more restrictive than the CRC.

51. On information and belief, the Jail offers far fewer programs than the CRC. *See* SWAN LSI RESOURCE MANUAL, *supra* ¶ 36, at 30.<sup>1</sup>

52. On information and belief, prisoners in the CRC live in “dorms,” the doors of which remain unlocked all day.

53. Jail prisoners are confined to “cells” that remain locked for most of the day.

54. On information and belief, prisoners in the CRC are allowed out of their dorms for approximately 13 hours a day.

55. Prisoners in the Jail are limited to a maximum of 6 hours out of their cells daily, during recreation hours—8:30-10:30 a.m., 2:15-4:15 p.m., and 7-9 p.m.—and sometimes they get even less time out of their cells.

56. Prisoners in the CRC have full and flexible access to laundry, showers, television, telephone, recreational facilities, and a microwave during their approximately 13 hours out of their dorms each day.

57. Prisoners in the Jail only have access to phones, a microwave, and showers during the 6 hours (and sometimes less) that they are allowed out of their cells each day for recreation.

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<sup>1</sup> The SWAN Resource Manual lists only ten Jail-based programs—(1) Stress and anger management, (2) Values clarification, (3) Choices and Consequences, (4) Parenting, (5) Sex offender treatment, (6) GED classes, (7) Healthy Lifestyles, (8) Interpersonal Communication, (9) Back on Track, (10) Batterers’ Intervention—and 22 CRC-based programs—(1) Cognitive behavioral programming, (2) Walking the Line, (3) Volunteer mentoring, (4) Treatment services, (5) Forensic services, (6) GED classes, (7) Computer lab, (8) Work release, (9) Interviewing skills, (10) Clothing bank, (11) One-on-one job related assistance and counseling, (12) Staff from collaborative agencies providing multiple workshops, (13) New Road Ministry, (14) Father’s Voice, (15) Employment programming, (16) Domestic relations cases, (17) Substance abuse and mental health recovery, (18) Housing assistance, (19) Family and community restoration, (20) Prevention Partnership of Berks County, (21) Immediate Post-Release Needs, (22) HelpLink/COMPASS.

58. On information and belief, prisoners in the CRC are able to have visitors on days when they are not working and are able to sit at a table with their visitors, without any physical barrier between them.

59. When female Trusty and/or Work Release prisoners in the Jail receive visitors, they must sit in a room with other prisoners and are separated from their visitors by a glass barrier, through which they must talk without the benefit of a phone or other means of amplification.

60. On information and belief, prisoners in the CRC are entitled to take furloughs after they have been there for one month, while women with Trusty custody-level classifications and/or Work Release status are not.

61. On information and belief, CRC prisoners have unfettered access to laundry equipment to wash their work clothes, from approximately 10 a.m. till 11 p.m. seven days a week.

62. Prisoners in the Jail are dependent on jail staff to launder their work clothes and must ask them to do it on Sundays.

63. On information and belief, the CRC is never subject to lockdowns.

64. The Jail General Population prisoners are subject to frequent lockdowns, during which prisoners are locked in their cell for the entire lockdown time. Lockdowns last anywhere from a few hours to several days. *See, e.g., Berks County Prison on Lockdown until Further Notice*, READING EAGLE (Aug. 31, 2018), <https://www.readingeagle.com/news/article/berks-county-prison-on-lockdown-until-further-notice>.

65. Male and female prisoners on Work Release— including Ms. Victory—are charged \$50 per week for room and board, but male prisoners on Work Release receive all the

benefits and privileges associated with being housed in the CRC, while female prisoners on Work Release—including Ms. Victory—do not.

**Discrimination and Retaliation Against Theresa Victory**

66. On January 24, 2018, Theresa Victory entered a guilty plea in the Court of Common Pleas of Berks County pursuant to a negotiated plea agreement, the terms of which guaranteed that she would be immediately eligible for Work Release.

67. This guarantee of immediate eligibility for Work Release was a major factor in Ms. Victory's decision to accept the plea agreement and plead guilty, as it would enable her to continue to work, pay her bills, and keep her apartment.

68. As part of those negotiations, Ms. Victory understood that her participation in Work Release would be accompanied by housing separate from the main jail.

69. Ms. Victory reported to Berks County Jail on January 27, 2018.

70. On January 31, 2018, Berks County issued a document reflecting Ms. Victory's approval for Trusty custody level and specifically stated that her placement in the CRC was contingent on her participation in a drug and alcohol group.

71. Ms. Victory was put on Work Release and works as a server at Route 61 Diner. She works eight-hour shifts, five days a week, and is paid \$7.85 per hour.

72. Ms. Victory participated in and completed the drug and alcohol group, and she has complied with all requirements of the program throughout her time at the Berks County Jail.

73. Throughout her confinement, Ms. Victory has been classified as a Trusty and approved for Work Release.

74. At no point during her confinement has Ms. Victory been in any of the disqualifying categories for reentry housing (i.e., housing in the CRC). *See supra*, ¶ 43.

75. Despite this, Ms. Victory was assigned to General Population in the Jail instead of the CRC.

76. When Ms. Victory first arrived at the Jail, she was placed in an “overflow” unit of the Jail that houses 45 female prisoners in “dormitory” housing rather than in locked cells.

77. Shortly after her arrival at the Jail, Ms. Victory and, upon information and belief, other female prisoners with Trusty custody level and/or Work Release status, filed grievances in which they complained about not being housed in the CRC and requested the same services and privileges that male prisoners with Trusty custody level received.

78. Shortly after filing these grievances, Ms. Victory and other female prisoners with Trusty classification and/or Work Release status were moved from the dormitory-style overflow housing unit to F Block in General Population in the Jail, where they were housed in locked cells.

79. Defendant C.O. Bauer said she moved Ms. Victory and the other female Trusty prisoners out of the overflow housing and in to General Population in the Jail because, in her words, they were “too demanding.”

80. Upon information and belief, C.O. Bauer received authority to move Ms. Victory and the other female Trusty-classified prisoners from Defendants Warden Quigley and Deputy Warden Smith.

81. Ms. Victory has been subjected to lockdowns in the Jail—periods when she was not permitted to leave her cell for long periods of time—at least 8 times since July 2018, as well as on multiple occasions prior to that, including multiple times for 19 hours straight.

82. Laundry services are unreliable and erratic in the Jail, causing Ms. Victory to have to wear the same dirty clothing to work day after day.

83. On or around July 15, 2018, Ms. Victory asked Defendant C.O. Drozack to do her laundry and told her that she had no clean underwear.

84. When it was time for Ms. Victory to leave for work on July 15, 2018 and Defendant C.O. Drozack still had failed to do Ms. Victory's laundry, C.O. Drozack told Ms. Victory to go to work with no underwear on.

85. On May 31, 2018, Ms. Victory filed a grievance complaining about the failure of the Jail System to assign her to housing and services in the CRC and complaining about the disparities in treatment and privileges between her and other women with Trusty classification and/or Work Release status (all of whom are housed in the Jail) and men with Trusty classification and/or Work Release status (all of whom are housed in the CRC) ("CRC grievance").

86. On or about July 24, 2018, Ms. Victory filed an appeal of the unanswered CRC grievance.

87. On or about August 14, 2018, Ms. Victory asked her counselor about the status of her CRC grievance and appeal, and her counselor found a response to the appeal, dated July 26, 2018, in Ms. Victory's file. Ms. Victory had not previously received a copy of this response.

88. In the response, Defendant Captain Castro claimed not to have received the initial grievance, treated the appeal as a grievance, and denied the grievance.

89. In her denial of Ms. Victory's CRC grievance, Captain Castro stated: "Due to the small size of the female prisoner population, in comparison to the male population, the physical design of the jail prohibits dedicating a housing unit for trusty status females. Even our smallest housing unit would maintain nearly 90% unoccupied beds if we were to attempt to create a

female trusty unit. This would be a tremendous waste of valuable bedspace and resources. The CRC is not a co-ed building.”

90. On or about August 14, 2018, Ms. Victory filed an appeal of the denial of her CRC grievance.

91. On August 17, 2018, Defendant Deputy Warden Stephanie Smith denied Ms. Victory’s appeal of her CRC grievance, claiming that, Trusty Status, CRC, and Work Release were unrelated and that Ms. Victory was not entitled to CRC housing and benefits based on her Work Release and Trusty status.

92. On July 24, 2018, Ms. Victory submitted a furlough request.

93. On or about August 17, 2018, Defendant Deputy Warden Smith denied Ms. Victory’s request for a furlough.

94. On or about August 18, 2018, Ms. Victory filed a grievance complaining about the denial of her request for a furlough (“furlough grievance”), explaining that she felt it was unfair that men with Trusty classification and/or Work Release status were routinely granted furloughs but women with the same status were not.

95. On or about August 30, 2018, Defendant Lieutenant Weber denied Ms. Victory’s furlough grievance and wrote in his response, “You have already filed an appeal to your grievance. This exhausts the steps of the grievance process. Future communication on this topic will be considered harassment and discipline will follow.”

96. Since filing her grievances and appeals, Ms. Victory has been repeatedly subjected to interference with her Work Release employment and threats to terminate her Trusty custody level and her Work Release status.



97. On or around July 14, 2018, Defendants C.O. Drozack and C.O. Bauer refused to release Ms. Victory when she was scheduled to leave for work, causing her to arrive at work late.

98. When she explained that she was scheduled to leave for work, C.O. Drozack and C.O. Bauer responded derisively, and Defendant Lieutenant Spotts said, “You will go to work when I tell you to. If you keep it up, you will not go at all.”

99. On or around September 4, 2018, Ms. Victory was scheduled to go to work, but Defendants C.O. Zerr and C.O. Brown refused to let her leave because they said she was not listed as being scheduled to work that day.

100. When Ms. Victory explained that she could lose her job if she was absent and asked C.O. Zerr to check with Work Release Coordinator Joanna Brown, C.O. Zerr told her that if she continued to ask about it, she would send her to “the hole” (i.e., Restrictive Housing).

101. When Ms. Victory told C.O. Brown she needed to go to work and asked C.O. Brown to call Work Release Coordinator Joanna Brown, C.O. Brown replied, “If you ask me one more time, I’m going to put you in the hole today.”

102. Ms. Victory’s fiancé and her boss both called Defendant Joanna Brown multiple times that day but got no response, and Ms. Victory ended up missing the entire day of work.

103. On or around September 12, 2018 at approximately 1:10 p.m., Ms. Victory knocked on her cell door because it was time for her to be released to go to work.

104. Defendant C.O. Reichart then told Ms. Victory, “Knock on your door one more time, and you’ll lose your job.”

105. On or around September 13, 2018, Ms. Victory was released late from her unit to go to work.

106. Defendant C.O. Reichart said to Ms. Victory, “It’s jail. We cannot help it if you are late for work.”

107. On or around September 26, 2018, Ms. Victory was released late from her unit to go to work because Defendant C.O. Drozack refused to allow her to leave at the proper time.

108. Defendant C.O. Drozack told Ms. Victory, referring to getting released to go to work, “It’s not a priority. . . . I don’t care. I will get to it when I get around to it.”

109. On or around September 26, 2018, as well as on multiple other days, Defendant C.O. Drozack interfered with Ms. Victory’s ability to get to work on time by requiring her fiancé, who drives her to work, to check in inside the Jail before C.O. Drozack would permit Ms. Victory to leave; when other C.O.’s are on duty, Ms. Victory’s fiancé is not required to do this.

110. On or around October 18, 2018, Ms. Victory was late to work because Defendants C.O. Zerr and C.O. Reichart failed to let her out of her cell on time.

111. On or around November 19, 2018, Defendant C.O. Brown searched Ms. Victory’s cell and accused her of having an extra towel, an extra bed sheet, and prohibited correspondence from another inmate.

112. The allegedly prohibited correspondence from another inmate was actually a poem that Ms. Victory’s former cellmate, who had been released from the Jail, had written and left in the cell.

113. C.O. Brown told Ms. Victory she could either accept an “informal” punishment of 10 days locked in her cell or go through the formal discipline process, which would mean time in “the hole” and the possible loss of her Work Release status; Ms. Victory chose the former option.

114. Defendant John Doe Correctional Sergeant approved Ms. Victory’s punishment of 10 days locked in her cell.

115. The intimidation and threats by correctional officers have caused Ms. Victory severe depression and anxiety about getting to work late, losing her Trusty custody level, and losing her Work Release employment.

116. Ms. Victory has suffered from frequent nightmares as a result of her anxiety.

117. Ms. Victory has experienced nausea and vomiting several mornings each week as a result of her anxiety, ever since the intimidation and threats by correctional officers began.

118. In September 2018, medical staff prescribed Ms. Victory medication for her depression and prescribed an increased dosage of medication for her anxiety.

119. On or around October 3, 2018, Ms. Victory was diagnosed with a muscle spasm in her back, a condition that was caused and/or exacerbated by her having to sleep on a hard metal bedframe, a lack of exercise, and insufficient time out of her cell.

## **VI. LEGAL CLAIMS**

### **Count I – Sex Discrimination in Violation of the Fourteenth Amendment to the US Constitution.**

**Plaintiff Victory and Class against Berks County, County Commissioner  
Defendants, Warden Quigley, and  
Deputy Warden Smith**

120. Plaintiff repeats and re-alleges all of the paragraphs of this Complaint as if fully set forth herein.

121. Defendants' policy, custom, and practice of refusing to assign female prisoners who are on Work Release and/or have Trusty custody-level classifications to the CRC and denying to them the benefits of such assignment discriminates against Plaintiff and the class she represents on the basis of sex, in violation of their right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

122. The sex-based classification used by Defendants in making housing assignments for prisoners with Trusty custody-level classification or Work Release status is not substantially related to the achievement of any important governmental objectives.

**Count II - Retaliation for Asserting First Amendment Rights  
Plaintiff Victory against Correctional Staff Defendants**

123. Plaintiff repeats and re-alleges all of the paragraphs of this Complaint as if fully set forth herein.

124. Plaintiff Victory engaged in protected First Amendment activity when she filed grievances and made informal complaints to prison staff.

125. Defendants took adverse actions against Plaintiff Victory— including transferring her to different housing, verbally threatening to punish her, and interfering with her employment—sufficient to deter an ordinary prisoner from engaging in further protected speech.

126. Plaintiff Victory’s protected First Amendment speech was a motivating factor in Defendants’ decisions to threaten and take other adverse actions Plaintiff Victory.

127. These actions were undertaken intentionally, with malice, and/or with reckless disregard for Plaintiff Victory’s rights.

**Count III – Sex Discrimination in Violation of the Pennsylvania Equal Rights Amendment,  
Art. I, § 28 of the Pennsylvania Constitution  
Plaintiff Victory and Class against Berks County, County Commissioner  
Defendants, Warden Quigley, and Deputy Warden Smith**

128. Plaintiff repeats and re-alleges all of the paragraphs of this Complaint as if fully set forth herein.

129. Defendants’ policy, custom, and practice of refusing to assign female prisoners who are on Work Release and/or have Trusty custody-level classifications to the CRC and denying to them the benefits of such assignment discriminates against Plaintiff and the class she

represents on the basis of sex, in violation of their right to equal protection of the laws guaranteed by the Pennsylvania Equal Rights Amendment, Art. I, § 28 of the Pennsylvania Constitution.

#### **VII. JURY DEMAND**

Plaintiff hereby demands that this matter be tried by jury.

#### **VIII. RELIEF**

**WHEREFORE**, Plaintiff requests that this Court grant:

- A. A preliminary and permanent injunction:
  - (1) Prohibiting Defendants from assigning female prisoners on Work Release and/or with Trusty custody-level classification to any housing other than the CRC or an alternative with the exact same privileges, programs, and services as the CRC;
  - (2) Ordering Defendants to immediately move Theresa Victory and all other members of the Proposed Class currently in the Berks County Jail System to the CRC or an alternative with the exact same privileges, programs, and services as the CRC;
  - (3) Prohibiting Defendants from retaliating against Ms. Victory for complaining about sex discrimination and retaliation.
- B. A declaratory judgment under 28 U.S.C. § 2201 that the Defendants violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and the Pennsylvania Equal Rights Amendment.
- C. An award of compensatory damages to Ms. Victory.
- D. An award of punitive damages to Ms. Victory.

- E. An award of reasonable attorneys' fees and costs.
- F. Such other and further relief as may appear just and appropriate.


Respectfully submitted,

/s/ Su Ming Yeh  
Su Ming Yeh  
PA Attorney No. 95111

/s/ Angus Love  
Angus Love  
PA Attorney No. 22392

/s/ Jim Davy  
Jim Davy  
PA Attorney No. 321631

/s/ Matthew A. Feldman  
Matthew A. Feldman  
PA Attorney No. 326273



PENNSYLVANIA INSTITUTIONAL LAW PROJECT  
718 Arch St., Suite 304S  
Philadelphia, PA 19106  
Tel: 215-925-2966  
smyeh@pailp.org  
alove@pailp.org  
jdavy@pailp.org  
mfeldman@pailp.org

*Counsel for Plaintiff and Proposed Class Members*

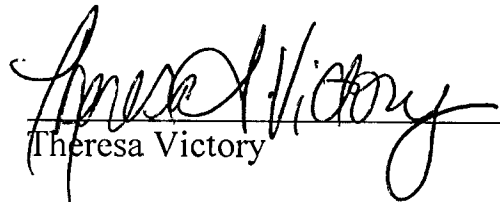
Dated: November 30, 2018

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

_____	:	
THERESA VICTORY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	CIVIL ACTION NO. ____
BERKS COUNTY, et al.	:	
	:	
Defendants.	:	
_____	:	

**CERTIFICATION**

I, the undersigned, Theresa Victory, have read Plaintiff's Complaint and found it to be true and correct to the best of my knowledge.

  
\_\_\_\_\_  
Theresa Victory