

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

THERESA VICTORY, *et al.* : CIVIL ACTION
 :
 v. : NO. 18-5170
 :
 BERKS COUNTY, *et al.* :

ORDER

AND NOW, this 8th day of July 2019, following discovery on class certification, after considering Plaintiffs' Motion to certify a class action under Rule 23 (ECF Doc. No. 149), Defendants' Response (ECF Doc. No. 162), Plaintiffs' Reply (ECF Doc. No. 173), and for reasons in the accompanying Memorandum, it is **ORDERED** Plaintiffs' Motion (ECF Doc. No. 149) is **GRANTED**:

1. Plaintiffs' claims consistent with today's Order on Defendants' Motion for summary judgment may proceed as a class action under Fed. R. Civ. P. 23(b)(2) on behalf of the Class defined as:

All current and future female inmates committed to the Berks County Jail System who have the Trusty custody-level classification but denied assignment to the Community Reentry Center ("CRC") and denied access to the privileges and services available to men assigned to the CRC.

2. **Class Findings.** As more fully detailed in the accompanying Memorandum, we find Federal Rule of Civil Procedure 23(a) and 23(b)(2) requirements are amply satisfied:

a. **Numerosity.** The Class is sufficiently numerous with at least forty female Trusty custody-level inmates over the last five years and no evidence of a lesser number of affected inmates moving forward;

b. **Commonality.** The Class has commonality because class members are subject to the same differing treatment due to their sex and status as a Trusty custody-level inmate in the Berks County Jail System;

c. **Typicality.** Plaintiffs' claims are typical of the Class because they arise from Defendants' different treatment of female Trusty inmates as to privileges and services in the Berks County Jail System;

d. **Adequacy of Representation.** Plaintiffs are adequate representatives of the Class because they share the same claims as the Class and have no interests antagonistic to the Class. Attorneys Matthew Feldman, Angus Love and Su Ming Yeh of the Pennsylvania Institutional Law Project are qualified, experienced, and able to adequately represent the Class as Class Counsel; and,

e. **Cohesiveness under Rule 23(b)(2).** The Class is cohesive under Rule 23(b)(2) because Defendants' different treatment of female Trusty inmates on the remaining claims can be enjoined or declared unlawful as to all the Class members cohesively and there are no significant individual interests on the Plaintiffs' remaining claims harmed by the inability to opt-out or creating manageability issues in the Class.


3. **Class Representative.** Theresa Victory and Alice Velazquez-Diaz are adequate representatives of the Class and we certify them as Class representatives.

4. **Class Counsel.** Class counsel are authorized to act on behalf of the Class with respect to actions required by, or necessary to be taken under, the Rules of Civil Procedure and this Court's Orders and Policies.

5. **Notice to the Class.** Class Counsel shall circulate a draft court-facilitated notice and protocol compliant with Fed. R. Civ. P. 23(c)(2)(A) to Defendants' counsel only no later

than **July 12, 2019**, Defendants shall provide comments to the draft and protocol to Plaintiffs' counsel by **July 16, 2019**, and Plaintiffs may then move for approval of a proposed Court-facilitated notice and distribution protocol with a memorandum not exceeding ten (10) pages identifying all areas of the parties' disagreements on the proposed Court-ordered notice in an attached black-lined version of the proposed notice on or before **July 19, 2019**. Defendants may respond with memoranda not exceeding ten (10) pages explaining their dispute with the proposed protocol or proposed black-lined notice on or before **July 23, 2019**.

6. As we certify a class for claims proceeding beyond summary judgment for the Plaintiffs, the parties' obligations in Paragraph 10 of our March 22, 2019 Order (ECF Doc. No. 106) are **adjourned**.



KEARNEY, J.