



Kelly Grace Price ● co-creator, Close Rosie's ● 534 w 187th st #7
New York, NY 10033

● E-Mail: gorgeous212@gmail.com Web:
<http://www.CloseRosies.org>

March 3, 2022

The New York State Senate
Corrections Committee
Via email

REF: March 3, 2022 hearing on DOCCS & Sexual Violence in NYS Prisons/PREA

I am Kelly Grace Price, the founder of Close Rosie's. I wish to thank Corrections Chair, Senator Salazar, for her stewardship of this committee and specifically for scheduling this hearing today ref sexual violence in NYS prisons including:

- I. Addressing needed changes in the NYSCOPBA collective bargaining agreement.**
- II. Senate Bill S2175: Creates the office of the Correctional Ombudsman**
- III. Sexual Violence at Bedford is out of control and the prison's management has done nothing to quell the epidemic of rape in the prison.**
- IV. The scheme to transfer women, girls and the LGBTQI+ community from Rosie's to Bedford is exposing pre-trial detainees sexual abuses at Bedford**
- V. The transfer scheme is in violation of New York State Law: under NYS Correction Law, Section 93, jurisdictions within NYS are not allowed to transfer non-sentenced people, even in an emergency.**
- VI. There is a rule-change process that this very entity, the NYC Board of Correction is the steward of which has been blatantly ignored by the engineers of this illegal, sexist and unconstitutional transfer scheme: *Legislators should be***

wary of overlooking this policy boon-doggle and creating precedent for the future allowing NYS Governors and Mayors to thwart rule-changes processes and state laws, unchallenged.

- VII. **What is going on at Albion and Taconic?**
- VIII. **DOCCS Sexual Assault Data:** is insufficient and legislation should be undertaken to mandate more transparent data reporting.

I. **ADDRESSING NECESSARY CHANGES IN THE NYSCOPA COLLECTIVE BARGAINING AGREEMENT:**

Close Rosie's has been engaged directly in the effort to reign-in sexual abuses within DOCCS since 2015 when we partnered with other NYC Legal orgs to pressure, in vein, to push the former Governor to change the DOCCS Correction Union contract that gives final disciplinary decisions back to arbitrators and takes out of the OATH trail court judges.

The issue was best summarized in a 2018 sign-on letter we teamed up with the Legal Aid Society's Dori Lewis, now retired, to steward the Downstate Coalition for Crime Victims to send to then Governor Cuomo:

"The current contract, however, is grossly imbalanced in favor of shielding bad actors from accountability...in one case, prison administrators believed that an officer had sexually abused a woman prisoner in the middle of the night. Under the approach of the current contract, when the arbitrator decided not to credit the woman's testimony—even though it included the intimate detail that the officer trimmed his pubic hair--DOCCS felt obligated by the union contract to send him back to his job assignment guarding women alone, at night, in their housing areas. Thereafter he raped another woman, and was criminally prosecuted and convicted.

When erroneous arbitration decisions such as these happen, there is no recourse. In all but the most extraordinary of cases, the Department must place the officer back on duty, with its attendant potentially appalling consequences. An arbitrator's decision is final unless public policy considerations, embodied in statute or decisional law, prohibit, in an absolute sense, . . . certain relief being granted by an arbitrator." *See Matter of Bukowski, 148 A.D.3d 1386, 1388 (3d Dep't 2017).*¹

¹ See attached Appendix 1: Downstate Coalition for Crime Victims April 2018 Letter to NY Gov Cuomo ref NYSCOPBA Arbitration changes in contract.

In the end we were unsuccessful in accomplishing our goals and the current contract² does not expire until 2023. This is a bright-line issue this committee may wish to be paying attention to and working-towards changing far before the NYSCOPA contract renewal talks officially begin.

II. Senate Bill S2175: Creates the office of the Correctional Ombudsman: This bill also authorizes the attorney general to investigate the alleged commission of any criminal offense committed by an employee of the department of corrections and community supervision in connection with his or her official duties. There is a bit of a boon-doggle when it comes to actual criminal prosecutions of corrections personnel aside from the internal departmental trials that NYSCOPA contract reverts all authority back to the arbitrator who has limited options for penalizing people. NY County District attorneys are not prosecution corrections officers either. Allowing the NYS AG to investigate correctional crimes is long overdue and should be resoundingly supported and we thank Senator Salazar for your work on this bill.

III. Sexual Violence at Bedford is out of control and the prison's management has done nothing to quell the epidemic of rape in the prison at Bedford.

Rates of sexual violence at BHCF are skyrocketing. and recently another federal complaint has been filed in the SDNY by the legendary lawfirm Cravath Swaine & Moore³ vs virtually every member of the management team at BHCF. Allegations in the complaint clearly state that sexual violence is out of control and increasing despite previous litigation by the Legal Aide Society on behalf of women and girls at BHCF. I have appended the entire complaint to the end of my testimony. The allegations in the complaint involve "Jane Smith" and "Jane Doe": both women who were previously sexually abused and raped on Rikers and then moved to Bedford to serve their sentences. Their cases were widely-reported in the NYC press when they

² SECURITY SERVICES UNIT 2016-2023 AGREEMENT BETWEEN THE STATE OF NEW YORK AND NEW YORK STATE CORRECTIONAL OFFICERS AND POLICE BENEVOLENT ASSOCIATION, INC: linked March 2, 2022:

<https://goer.ny.gov/system/files/documents/2019/11/nyscopba-2016-2023-contract-final.pdf>

³ JANE SMITH, MARY DOE, Plaintiffs, -against- ANTHONY. ANNUCCI, Acting Commissioner of the New York State Department of Corrections and Community Supervision, etal: Southern District of New York: 5/21/21: 1:21-CV-01715-RA-OTW [rel.1:17-CV-07954-RA-OTW]. See Appendix II

were assaulted on Rikers. It boggles the mind that DOCCS and Bedford administrators and management didn't do a thing to protect these women. Here is an excerpt from the complaint alleging sexual violence against them at the hands of BHCF employees c 2020-2021:

"203. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that correction officers at BHCF were repeatedly accused, charged and criminally convicted of sexually abusing female inmates.

204. At the time of the events at issue, Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that correction officers at BHCF routinely carried on sexual relationships with inmates, which was also known to the inmate population.

205. Defendant Velez knew from Ms. Smith's prison file that she was at high risk of sexual harassment, exploitation and abuse given her history of being a victim of sexual exploitation, psychological conditions and small build.

206. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez nevertheless failed to implement or enforce policies to protect Ms. Smith, Ms. Doe or other inmates at BHCF from sexual abuse and harassment by correction officers and higher-level staff.

207. At the time of the events at issue, Defendant Sergeant B was known to have engaged in sexual relationships with inmates. Despite that, Defendants Kaplan, Daye and Velez failed to prevent him from interacting with inmates or from being alone with inmates without adequate camera coverage or supervision.

208. As of May 21, 2019, Defendant Officer C had been accused of forcing Ms. Smith to perform oral sex and yet, Defendants Kaplan, Daye and Velez failed to prevent Defendant Officer C from being able to have access to Ms. Smith.

209. Through their acts and omissions, Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez created a custom and implicit policy authorizing BHCF staff to deliberately ignore evidence of sexual misconduct and sexual assault on the part of correction officers against female inmates.

210. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were deliberately indifferent to the serious risk of sexual violence and harassment of female inmates at the hands of correction officers at BHCF.”

IV. The scheme to transfer women, girls and the LGBTQI+ community from Rosie’s to Bedford [‘BHCF’] is exposing pre-trial detainees to sexual abuses at Bedford:

Notably, BHCF has the highest rate of allegations of sexual victimization relative to the other DOCCS facilities.¹³ DOCCS reported in its 2021 “Annual Report on Sexual Victimization” that, of all the allegations of sexual victimization reported within DOCCS facilities, in 2016, thirty-three took place at BHCF; in 2017, twenty-two took place at BHCF; and, in 2018, thirty-five took place at BHCF.⁴

After we tried to get the Federal Court to stop the transfers by filing a pro se lawsuit in October⁵ Attorney Tahanie Aboushi filed her class action lawsuit⁶ on behalf of women illegally transferred to Bedford from Rosie’s that details harrowing sexual abuses occurring to our sisters, mothers, daughters, grandmothers, aunts, cousins, granddaughters and loved ones just within the last few months:

“12. Defendants Correction Officer D, Correction Officer F, and Correction Officers Jane Jones #1 and #2 sexually abused Plaintiff Sue Brown, Plaintiff Ann Johnson, and Plaintiff Mary Davis upon their arrivals at BHCF by ordering them to strip naked, squat, and bend over until Defendants could “see the pink” of the insides of their vaginas and anuses.⁷

13. On November 5, 2021, Defendant Correction Officer John Jones #1, who is a man, just three days after the transfer to BHCF of Plaintiff Mary Davis, who is Muslim and wears a hijab, forced her to leave the shower stall while she was

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https://doccs.ny.gov/system/files/documents/2021/06/annual-report-on-sexual-victimization-2014-2018-with-2019-aggregated-data-final_0.pdf

⁵ Price v De Blasio et al: SDNY 21CV-8540

⁶ See Appendix III:

naked and walk the corridors, where men and women were present, with just a towel wrapped around her.”

...

It is well known among the prison population at BHCF that corrections staff regularly flirt with, make lewd sexual comments to, proposition and engage in sexual activity with women inmates. Flirtation and sexual comments often occur with impunity in the presence of other inmates and supervisory staff. Inmates and prison supervisors also know that this conduct regularly leads to sexual activity between corrections staff and inmates in any of the many locations where corrections staff can be alone and off camera with inmates.

53. Moreover, inmates at BHCF know that if they file grievances against prison staff, they routinely face retaliation by prison staff.”

V. The scheme is in violation of New York State Law: under NYS Correction Law, Section 93, jurisdictions within NYS are not allowed to transfer non-sentenced people, even in an emergency.

Under NYS Correction Law, Section 93, persons who are not non-sentenced are not allowed to be transferred into NY State Prisons: even in an emergency:⁷

“Whenever a state of emergency shall be declared by the chief executive officer of a local government pursuant to [section two hundred nine-m of the general municipal law](#) , the chief executive officer of the county in which such state of emergency is declared, or where a county or counties are wholly within a city the mayor of such city, may request the governor to remove all or any number of sentenced inmates from institutions maintained by such county or city. Upon receipt of such a request, if the governor is satisfied that the public interest so requires, the governor may, in his discretion, authorize and direct the state commissioner of corrections and community supervision to remove such inmates.”

However, non-sentenced persons are not allowed to be transferred: even in a state of emergency. THIS IS A DANGEROUS PRECEDENT TO SET AND THE

⁷ <https://codes.findlaw.com/ny/correction-law/cor-sect-93.html>

LEGISLATURE, especially the correction committee, SHOULD BE SHUTTER SHOCKED AND FIGHTING TOOTH AND NAIL AGAINST IT.

VI. **There is a rule-change process that this very entity, the NYC Board of Correction is the steward of which has been blatantly ignored by the engineers of this illegal, sexist and unconstitutional transfer scheme.**

New York City Charter (“the Charter;”) imbues one body, the New York City Board of Correction (“BOC”) with the authority to make decisions governing the care and custody of people detained or imprisoned in New York City Jails:

“The board shall establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of the department; and it shall promulgate such minimum standards in rules and regulations after giving the mayor and commissioner an opportunity to review and comment on the proposed standards, amendments or additions to such standards.”

However, the BOC had no involvement nor was there any BOC rule-making process or DOC Rule change process initiated to properly effectuate this behemoth change in the care, custody and control of people currently detained or imprisoned on Rosie’s NOR how service providers, mental health practitioners, medical professionals, advocates and attorneys will transition their services. Most of these people don’t even have security clearances for Bedford!

But the recent announcement that all persons who reside on Rosie’s will be moved to BHCF has not been approved by the BOC: in fact the entire rule-making process has been thwarted. Instead, a sudden announcement by defendendents that all female and female-identifying persons on Rosie’s will be transferred into an upstate maximum security prison has been made and the proper mechanisms for changing the rules under which the care and custody of persons detained and incarcerated by NYC have been ignored. **Legislators should be wary of overlooking this policy**

boon-doggle and creating precedent for the future allowing NYS Governors and Mayors to thwart rule-change processes and state laws, unchallenged.

IX. What is going on at Albion and Taconic?

- X. DOCCS Sexual Assault Data⁸:** is insufficient and legislation should be undertaken to mandate more transparent data reporting. A local law was passed in December of 2018 by NYC Council and implemented in 2019 requiring comprehensive reporting on sexual abuse and harassment incidents by the DOC.⁹ I recommend this committee explore enacting a similar piece of statewide legislation to receive more transparency on things like investigative durations and; number of prosecutions on-passed for criminal prosecutions, in fact this **Paucity of Criminal Prosecutions** is what I believe Sen Bill is meant to cure, in part, for correctionally-situated sexual abuse at state and city level: we have no idea how many criminal prosecutions are being referred to county DAs for prosecution; how many are being DP'd; how many complaints are just dropped because of the arbitration process etc. We need this baseline data to know the range and scope of the problem.

Thank you for taking the time to read and internalize my testimony.

Kelly Grace Price

www.CloseRosies.org

closerosies@gmail.com

Ft. George, Manhattan

March 3, 2022

⁸

https://doccs.ny.gov/system/files/documents/2021/06/annual-report-on-sexual-victimization-2014-2018-with-2019-aggregated-data-final_0.pdf

⁹ NYC Local Law 21/Int 0933-2018 (b): Requiring the dept. of correction to report on sexual abuse: Enacted January 20, 2019: Linked January 15, 2020:

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3509899&GUID=6F40B965-79E9-4019-A0DE-1B1FB6F0DAC2&Options=&Search=>

APPENDIX I:

January 20, 2018

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, N.Y. 12224

Dear Governor Cuomo:

The Downstate Coalition for Crime Victims is a collective of service providers, victims' advocates, survivors, community based programs, government agencies and elected officials. The Coalition and its member organizations recognize that a person can be a victim of a crime even while incarcerated in our State's prisons and jails.

The Downstate Coalition and its member organizations listed below write to urge the Governor to stand firm to protect people incarcerated in New York State prisons. A year ago, the State won modest reforms in a tentative contract with NYSCOPBA for the first time in decades, but the union membership has repeatedly voted the proposed contract down. The reforms were:

- 1) Formation of a tripartite panel to decide employee discipline arbitrations instead of a single arbitrator.
- 2) Creation of a penalty chart for serious abuse and neglect.

The Need For Changes to the Employee Discipline System:

Too often men and women in prison are subjected to abuse by staff, including sexual

assault. To prevent this from occurring a range of systems need to be in place. These include a confidential reporting mechanism, meaningful supervision, fair and unbiased investigations, and an effective employee discipline system. The latter must be one which does not shield bad actors from punishment regardless of the proof and which imposes balanced and appropriate sanctions—up to and including termination—based on the severity of the misconduct. These steps all are recognized as essential by the National Standards to Detect, Prevent, Reduce and Punish Prison Rape, 28 C.F.R. Part 115 (2012) promulgated in response to the Prison Rape Elimination Act.

The New York State Department of Corrections and Community Supervision (“DOCCS”) has taken important steps to mitigate the risk of abuse facing persons in custody. Examples include increased professionalism in the Office of Special investigations and beginning the expensive but critical project of installing cameras throughout its facilities. But to be effective, those changes need a strong employee discipline system on the back end.

The current contract, however, is grossly imbalanced in favor of shielding bad actors from accountability. Some examples of the imbalances were reported in the New York Times.:

<https://www.nytimes.com/2016/04/12/nyregion/new-york-state-corrections-dept-takes-on-guards-union-over-brutality.html?mcubz=0& r=0>. Or, in one case, prison administrators believed that an officer had sexually abused a woman prisoner in the middle of the night. Under the approach of the current contract, when the arbitrator decided not to credit the woman’s testimony—even though it included the intimate detail that the officer trimmed his pubic hair--DOCCS felt obligated by the union contract to send him back to his job assignment guarding women alone, at night, in their housing areas. Thereafter he raped another woman, and was criminally prosecuted and convicted.

When erroneous arbitration decisions such as these happen, there is no recourse. In all but the most extraordinary of cases, the Department must place the officer back on duty, with its attendant potentially appalling consequences. An arbitrator’s decision is final unless public policy considerations, embodied in statute or decisional law, prohibit, in an absolute sense, . . . certain relief being granted by an arbitrator.” See *Matter of Bukowski*, 148 A.D.3d 1386, 1388 (3d Dep’t 2017).

The announced reforms in the tentative contract would unquestionably help to improve the arbitration process. A tri-partite panel would help to rein in an individual’s arbitrator’s bias, and hopefully eliminate the kind of result that led to the preventable rape of a woman in custody when the officer was allowed to return to duty. A chart of penalties would ensure consistent and appropriate sanctions, curbing the slaps on the wrist too often imposed, as exemplified by *Bukowski* where the arbitrator found that the officer had indeed beaten the man (who lost his testicle) and then lied repeatedly to cover it up, yet only assessed a 120 day suspension even though DOCCS sought termination. Even then, the court could not make a determination about the appropriate sanction, but could only send the

matter back for additional arbitration.

There is no question that these modest contract reforms are needed. Also given the resistance that these changes have met among the NYSCOPA membership, backing down now would serve only to worsen the situation: emboldening bad actors, eroding professionalism, and hampering DOCCS's efforts to hold staff members accountable for serious misconduct and abuse.

We therefore urge you to stand strong and insist upon these changes to the NYSCOPBA collective bargaining agreement.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JANE SMITH,

MARY DOE,

Plaintiffs,

-against-

ANTHONY J. ANNUCCI, Acting Commissioner
of the New York State Department of Corrections
and Community Supervision,

JASON EFFMAN, Associate Commissioner and
PREA Coordinator for New York State Department
of Corrections and Community Supervision,

STEVEN MAHER, Chief of Investigations, Office
of Special Investigations, New York State
Department of Corrections and Community
Supervision,

CHRISTIAN NUNEZ, Deputy Chief of the Sex
Crimes Division, Office of Special Investigations,
New York State Department of Corrections and
Community Supervision,

JOHN SHIPLEY, Director, Bureau of Labor
Relations, New York State Department of
Corrections and Community Supervision,

SABINA KAPLAN, Superintendent of Bedford
Hills Correctional Facility,

MICHAEL DAYE, Deputy Superintendent for
Security at Bedford Hills Correctional Facility,

ELAINE VELEZ, Assistant Deputy Superintendent
and PREA Compliance Manager at Bedford Hills
Correctional Facility,

CAPTAIN A, Captain at Bedford Hills Correctional
Facility,

1:21-CV-01715-RA-OTW [rel. 1:17-
CV-07954-RA-OTW]

**AMENDED COMPLAINT
[REDACTED]**

Jury Trial Demanded

CAPTAIN B, Captain at Bedford Hills Correctional Facility,

LIEUTENANT A, Lieutenant at Bedford Hills Correctional Facility,

SERGEANT A, Sergeant at Bedford Hills Correctional Facility,

SERGEANT B, Sergeant at Bedford Hills Correctional Facility,

OFFICER A, Correction Officer at Bedford Hills Correctional Facility,

OFFICER B, Correction Officer at Bedford Hills Correctional Facility,

OFFICER C, Correction Officer at Bedford Hills Correctional Facility,

OFFICER D, Correction Officer at Bedford Hills Correctional Facility,

OFFICER E, Correction Officer at Bedford Hills Correctional Facility,

UNIDENTIFIED OFFICER, Correction Officer at Bedford Hills Correctional Facility,

GRIEVANCE SUPERVISOR A, Grievance Supervisor at Bedford Hills Correctional Facility,

INVESTIGATOR A, Investigator at Bedford Hills Correctional Facility,

Defendants.

Plaintiffs Jane Smith and Mary Doe (“Plaintiffs”), by and through their undersigned attorneys, for their Complaint against Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye, Velez, Captain A, Captain B, Lieutenant A, Sergeant A, Sergeant B, Officer A, Officer B, Officer C, Officer D, Officer E, Unidentified Officer,

Grievance Supervisor A and Investigator A (“Defendants”),¹ allege, upon knowledge with respect to their acts and on information and belief as to other matters, as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this civil rights action, after having been raped, sexually exploited and sexually harassed by prison guards while imprisoned in Bedford Hills Correctional Facility (“BHCF”), a maximum security women’s prison run by the New York State Department of Corrections and Community Supervision (“DOCCS”).

2. There has been and continues to be an astonishingly high rate of sexual abuse of women in custody by prison staff,² particularly within BHCF, which has among the highest rate of allegations of sexual victimization of all New York prisons.³

3. While BHCF is an all-women’s prison, the vast majority of guards and supervisory staff are men.

4. Plaintiffs are particularly vulnerable to sexual victimization. Ms. Smith is a petite woman with an intellectual disability and mental illness, who has experienced sexual abuse and exploitation since she was thirteen years old, including repeated rapes and sexual assaults by a guard in a New York City jail on Rikers Island while awaiting trial on the charges for which she is currently serving time. Ms. Doe has likewise experienced sexual exploitation since a young age. She was forced to start

¹The names of the Defendants are based on best information and Plaintiff’s recollection. Any errors in spelling will be resolved during the course of discovery.

²Chandra Bozelko, *Sexual Violence in Women’s Prisons Reaches “Constitutional Proportions.” Will Lawmakers Step In?*, Ms. Magazine (April 23, 2020), <https://msmagazine.com/2020/04/23/sexual-violence-in-womens-prisons-reaches-constitutional-proportions-will-lawmakers-step-in/> (“Incarcerated women are 30 times more likely to be raped than free women. Even though women account for less than 10 percent of inmates, their reports account for three quarters of assaults, and almost three-quarters of staff are men.”).

³DOCCS, *Annual Report on Sexual Victimization: An Analysis of 2013-2017 Sexual Abuse and Sexual Harassment Data*, Appendix A (May 2020), https://doccs.ny.gov/system/files/documents/2020/06/annual-report-on-sexual-victimization-2013-2017_final.pdf [hereinafter DOCCS, *2013-2017 Report*].

stripping at age thirteen, and since then has experienced severe sexual abuse and trauma. At only fourteen years old, Ms. Doe was the victim of a gang rape, which resulted in a pregnancy, and Ms. Doe was forced to continue stripping during her pregnancy and after the birth of her child.

5. Despite knowing of the high risk of sexual abuse of women prisoners in general, and the especially significant risk to Ms. Smith in particular, DOCCS supervisors, including those at BHCF, cultivated a culture that enabled DOCCS staff to prey on Plaintiffs' vulnerabilities and deliberately disregarded a widespread practice of DOCCS personnel exchanging lenient treatment for sexual acts with inmates. In particular, DOCCS staff were able to have frequent, unmonitored and solo access to women in their control for significant periods of time, and they were not required to wear or turn on body cameras when out of sight of fixed cameras. DOCCS staff worked together to enable unlawful and exploitative sexual contact with women inmates, and they retaliated against women who reported abuse or took steps to protect themselves. DOCCS supervisors knew that there was ample opportunity for sexual misconduct between guards and inmates at BHCF, and that it in fact occurred, but failed to take appropriate action to address it. In fact, many of the incidents of sexual abuse endured by Plaintiffs involved a supervisory staff member being an observer or active participant.

6. Both Ms. Doe and Ms. Smith were sexually assaulted while in custody at BHCF. In or around February or March of 2019, Ms. Doe was targeted and assaulted by Defendant Sergeant B while she was performing her work assignment. In particular, Ms. Doe was alone cleaning the bathroom in the school building when Defendant Sergeant B barged in, blocked Ms. Doe's exit, punched her so hard in the

stomach that she lost her breath and forced her to perform oral sex. Although Ms. Doe resisted, Defendant Sergeant B made clear that he would make the rest of her time in custody difficult and would “make problems” for her when she was released if she refused. Ms. Doe felt she had no choice but to comply. After Defendant Sergeant B ejaculated, Ms. Doe left the bathroom as quickly as she could, only to realize that another officer was sitting at the desk stationed outside the bathroom, seemingly aware of the assault that Ms. Doe had just suffered. Ms. Doe was visibly upset and asked the officer if she could return to her housing unit. The officer smirked and authorized her early return. Ms. Doe did not report her assault at the time for fear of retaliation from Defendant Sergeant B and other DOCCS staff, and because she ultimately knew that it would be her word against a sergeant’s.

7. Ms. Smith likewise experienced sexual assault and harassment while in BHCF custody. The grooming for her sexual victimization began shortly after she arrived at BHCF in 2015. She is 4’11” and weighed approximately 115 pounds. Her criminal history reflected multiple arrests for prostitution and her prison intake form described her mental illness in detail, which was known to the inmate population and prison staff. She first encountered Defendant Officer C in the medical clinic where Ms. Smith received her psychiatric medication. Defendant Officer C’s regular post was in the area where inmates received medication; as a result, Ms. Smith saw him frequently. Defendant Officer C was known within the BHCF population to be physically aggressive and to have carried on an extended and open sexual relationship with at least one inmate. On several occasions, Defendant Officer C commented on Ms. Smith’s body and attractiveness, made comments about wanting to have sex with her and gave her gifts of

contraband hoping that she would reciprocate with sexual activity. Ms. Smith, however, would not reciprocate. On one occasion, Defendant Officer C followed her into the inmate women's bathroom ostensibly to investigate whether she had contraband. While alone in the bathroom, he stood in front of the door and tried to expose his penis, but Ms. Smith would not give him what he wanted and she managed to leave the bathroom.

8. By 2016, it was reflected in Ms. Smith's prison records that she had been raped by a guard while detained at Rikers Island. When Ms. Smith moved to BHCF, she was housed for periods of time in areas for inmates with drug addiction and psychiatric issues, which were the inmates most victimized by prison guards. She met Defendant Sergeant B when he was the regular supervisory sergeant on duty of one of her housing units. Like Defendant Officer C, Defendant Sergeant B flirted with Ms. Smith, made lewd sexual comments and, on multiple occasions, tried to grab her from behind and pull her toward him. After becoming friendly with Ms. Smith, on two occasions, Defendant Sergeant B asked her if she would expose her breasts to him while he masturbated in front of her. She complied on both occasions and Defendant Sergeant B gave her a \$100 bill each time. Like Defendant Officer C, Defendant Sergeant B was also known within the BHCF population to have carried on an extended and open sexual relationship with at least one other inmate.

9. This sexual harassment and grooming for more significant sexual exploitation continued for about a year until a particularly traumatic and vulnerable time for Ms. Smith in 2019, when she learned that her twin sister was in a coma, which was also known to the inmate population and prison staff. During this period of two months in 2019, Ms. Smith was raped by Defendants Officer C and Sergeant B, forced to perform

oral sex on Defendant Officer C and sexually assaulted by Defendant Officer D, who inserted her finger in Ms. Smith's vagina.

10. First, on April 9, 2019, Defendant Officer C forced Ms. Smith to give him oral sex while he was escorting her alone and while two other correction officers, Defendants Officer A and Officer B, kept watch. After forcing her to give him oral sex, Defendant Officer C falsely reported that Ms. Smith had punched him, and Defendant Captain B oversaw a disciplinary hearing that pitted Ms. Smith's word against that of Defendant Officer C and his look out man, Defendant Officer A. As a result of this disciplinary hearing, Defendant Captain B sentenced Ms. Smith to 60 days in solitary confinement, which she served in a special unit for inmates with significant mental health needs ("Therapeutic Behavioral Unit" or "TBU").

11. While in the TBU, Ms. Smith believed she was safe from Defendant Officer C and decided not to report Defendant Officer C's unlawful conduct for fear of additional retaliation, a common occurrence for filing a grievance. Ms. Smith's silence did her little good. The TBU was another location where the inmates—because they suffered from psychiatric issues—were prime targets for routine sexual harassment and victimization. It was also well known within the prison that the TBU is easy for prison staff to access. While she was in the TBU, Defendant Officer C's good friend, Defendant Lieutenant A, used his supervisory position of authority as a lieutenant to torment Ms. Smith on Defendant Officer C's behalf, including by denying her food, clean sheets and medical care.

12. On May 20, 2019, Defendant Lieutenant A allowed Defendant Officer C to enter the TBU, even though it was not an area in which he regularly worked,

and, in Defendant Lieutenant A's presence, harassed Ms. Smith by blowing her a kiss and telling her that he loved her. At that point, Ms. Smith realized that she was not safe in the TBU, and Defendant Officer C was stalking her and could continue to hurt her. Ms. Smith then reported to Defendants Velez, Captain B, Captain A, Grievance Supervisor A and Investigator A that Defendant Officer C forced her to give him oral sex and continued to harass her. Not one of them did anything to assist her, protect her or prevent Defendant Officer C from having contact with her. While Ms. Smith filed grievances (more fully discussed below) about the sexual harassment that took place on May 20, 2019 and the sexual assault on April 9, 2019, DOCCS failed to investigate her complaints or take any action to protect her from Defendant Officer C, and Defendants, on information and belief, remain in their current positions.

13. Just a couple of weeks after being sexually harassed by Defendant Officer C, Ms. Smith was the victim of another coordinated sexual attack by DOCCS guards. On June 4, 2019, Ms. Smith argued with Defendant Officer D, who had tried to handcuff her but was instructed by her superior not to do so and to back away from Ms. Smith. Later that day, after having been embarrassed by this incident with Ms. Smith, Defendant Officer D, along with Defendants Unidentified Officer and Sergeant A and another correction officer, escorted Ms. Smith in handcuffs and a waist chain to the recreation yard. While they were in the elevator, with Defendant Sergeant A standing near the front of the elevator and Defendant Officer D, Defendant Unidentified Officer and Ms. Smith standing at the back, Defendant Officer D suddenly accused her of hiding contraband. Ms. Smith believes that this accusation was in retaliation for the argument between Defendant Officer D and Ms. Smith earlier that day. Defendant Officer D then

shoved her ungloved hand into Ms. Smith's pants and dug her finger into Ms. Smith's vagina. She tried to squirm away, but Defendant Unidentified Officer pulled her back by her chain. Defendant Officer D then punched Ms. Smith twice in the face while Defendant Unidentified Officer restrained her. Defendant Sergeant A did nothing to intervene, despite his position of authority as a sergeant. Even though Ms. Smith asked for medical care immediately, several hours passed before Ms. Smith was examined, and Defendant Sergeant A never took photographs of her injuries despite having been instructed by a supervisor to do so.

14. The very next day, Ms. Smith was upset that DOCCS staff had not taken pictures of her injuries or otherwise responded to the elevator assault. She reported to medical staff what had happened in the elevator. After reporting the elevator assault, she returned to her unit, where Defendant Sergeant B was on duty. As she was recovering from the assault, she experienced chest pains and shortness of breath. Defendant Sergeant B escorted Ms. Smith to the medical clinic along with another correction officer. The medical clinic was on the floor where Defendant Officer C regularly worked and was an area commonly used for sex between prison guards and inmates because of the large number of private locations and the lack of cameras. On their way to the clinic, Defendant Sergeant B saw Defendant Officer C, who accompanied the group to the medical clinic. After arriving in the clinic, Defendant Sergeant B instructed all but Defendant Officer C to leave.

15. Once they were alone in the room with Ms. Smith, Defendants Sergeant B and Officer C each raped her (wearing condoms) while she was restrained on a clinic table. That night, Ms. Smith wrote a grievance about these rapes, and filed it

soon after, and she spent the next several days crying and requesting protective custody. During this time, Ms. Smith was treated for mental decompensation—a deterioration in her mental health—and she was anxious and restless. Ms. Smith also reported the rapes to medical and mental health staff, and to Defendants Velez, Captain A and Grievance Supervisor A. On information and belief, Defendants Velez, Captain A and Grievance Supervisor A did nothing to help her and did not report the rapes to their supervisors or otherwise ensure that a proper investigation was conducted.

16. Ms. Smith then contacted attorneys at The Legal Aid Society, who wrote two letters to Defendants Effman and Nunez setting forth in great detail Defendant Officer C’s forced oral sex on April 9, 2019 and his subsequent sexual harassment of Ms. Smith while she was in the TBU on May 20, 2019; the sexually and physically abusive “frisk” Ms. Smith endured on June 4, 2019; and the multiple rapes she suffered on June 5, 2019. Defendants Effman and Nunez never responded to The Legal Aid Society’s letters, and, on information and belief, did not investigate Ms. Smith’s claims prior to the filing of this suit, beyond conducting one interview.

17. Only on December 29, 2020, over a year and a half after Ms. Smith filed her grievance regarding the forced oral sex by Defendant Officer C, did she receive a decision that, according to DOCCS, this complaint was unsubstantiated without any further explanation. On information and belief, other than notification of this decision, there has been no communication from DOCCS or OSI regarding the status of the investigation into Ms. Smith’s multiple allegations of abuse. However, after Ms. Smith retained Cravath, Swaine & Moore LLP (“Cravath”) as counsel in this matter, she was transferred through an administrative draft to Albion Correctional Facility, which

deprived her of access to the special drug treatment program at BHCF. On information and belief, Ms. Smith was transferred to separate her from the BHCF correctional staff named in this complaint.

18. Since Ms. Smith retained Cravath, counsel from Cravath have attempted to obtain information related to her claims by, among other things, filing several FOIL requests, offering on two occasions to speak with DOCCS counsel about the evidence supporting Ms. Smith's claims and seeking information on the status of the DOCCS's investigation of her claims. Before the filing of this suit in February 2021, Cravath received no response to its several attempts to discuss Ms. Smith's allegations with DOCCS. In a final effort to speak with DOCCS counsel and investigate Ms. Smith's claims, six days prior to filing this action, Cravath sent another letter requesting a conversation with DOCCS regarding Ms. Smith's claims; however, DOCCS did not respond to that letter either.

19. Accordingly, Ms. Smith and Ms. Doe seek to vindicate their constitutional rights through this action.

PARTIES

20. Plaintiffs were, at all relevant times, female inmates under the direct control and supervision of DOCCS, its agents and officials, who were responsible for their care and safety.

21. Ms. Smith has been recently released from DOCCS custody. During the relevant time period, she was housed at BHCF. Ms. Doe is currently housed at Taconic Correctional Facility. During the relevant time period, she was housed at BHCF.

22. Defendant Anthony J. Annucci was at all relevant times the Acting Commissioner of DOCCS and responsible for enacting policies and procedures to protect the safety of individuals housed in DOCCS facilities and ensuring the enforcement of DOCCS policies and practices. Defendant Annucci is sued herein in his individual capacity.

23. Defendant Jason Effman was at all relevant times the Associate Commissioner and Prison Rape Elimination Act (“PREA”) Coordinator for DOCCS and was responsible for developing, implementing and overseeing DOCCS’s compliance with PREA standards in its facilities. Defendant Effman is sued herein in his individual capacity.

24. Defendant Steven Maher was at all relevant times the Chief of Investigations for the DOCCS’s OSI (previously known as the Office of the Inspector General). He is responsible for the investigation of complaints of criminal misconduct or violations of Departmental rules by DOCCS employees, including complaints of sexual harassment and abuse; for determining the standards by which such complaints are assessed; for reviewing all investigations of such complaints; for determining whether such complaints are substantiated; and for recommending whether or not responsive action be taken, including referrals to the Bureau of Labor Relations (“BLR”) for disciplinary action against staff and referrals of allegations of criminal misconduct to law enforcement officials. Defendant Maher is sued herein in his individual capacity.

25. Defendant Christian Nunez was at all relevant times the Deputy Chief of the Sex Crimes Unit for DOCCS’s OSI. He is responsible for the investigation of complaints of criminal or departmental misconduct by DOCCS employees, including

complaints of sexual harassment and abuse; for determining the standards by which such complaints are assessed; for reviewing all investigations of such complaints; for determining whether such complaints are substantiated; and for recommending whether or not responsive action should be taken, including referrals to the BLR for disciplinary action against staff and referrals of allegations of criminal misconduct to law enforcement officials. Defendant Nunez is sued herein in his individual capacity.

26. Defendant John Shipley was at all relevant times the Director of DOCCS's BLR. He is responsible for deciding whether and on what terms to pursue disciplinary actions against DOCCS staff who are alleged to have violated DOCCS rules and regulations, including violations consisting of the commission of sexual misconduct. He is responsible for determining the type, scope and manner concerning how evidence will be offered by DOCCS at disciplinary hearings of staff. Defendant Shipley is sued herein in his individual capacity.

27. Defendant Sabina Kaplan was at all relevant times the Superintendent of BHCF. She was at all relevant times responsible for the assignment and removal of staff; the training of staff; the supervision of staff and inmates to ensure a safe environment; the enforcement of DOCCS's rules and regulations related to inmate safety; the housing assignment of inmates within the facility; the review of decisions to place prisoners in punitive or administrative segregation; the investigation of and response to complaints of misconduct against staff, in conjunction with OSI; and the establishment of policies and practices regarding sexual contact and conduct between staff and inmates. Defendant Kaplan was also at all relevant times the supervisor of Defendants Daye, Velez, Captain A, Captain B, Lieutenant A, Sergeant A, Sergeant B,

Officer A, Officer B, Officer C, Officer D, Officer E, Unidentified Officer, Grievance Supervisor A and Investigator A. Defendant Kaplan is sued herein in her individual capacity.

28. Defendant Michael Daye was at all relevant times the Deputy Superintendent for Security at Bedford, and was responsible for the training and supervision of staff and inmates to ensure a safe environment, including the enforcement of DOCCS's rules and regulations; the investigation of and response to complaints of misconduct against staff, in conjunction with OSI; decisions concerning the assignment of staff, including whether to remove staff from contact with prisoners; decisions concerning the assignment of inmates, including whether to remove inmates from contact with certain staff; and for establishing and/or enforcing the customs and practices with regard to sexual contact and conduct between employees and inmates at BHCF. Defendant Daye is sued herein in his individual capacity.

29. Defendant Elaine Velez was at all relevant times the Assistant Deputy Superintendent at BHCF and the PREA Compliance Manager. She was responsible for overseeing and assessing PREA compliance efforts within BHCF, maintaining documentation as required under the PREA standards and coordinating with Defendant Effman regarding PREA matters within BHCF. Defendant Velez was also at all relevant times the supervisor of Defendants Captain A, Captain B, Lieutenant A, Sergeant A, Sergeant B, Officer A, Officer B, Officer C, Officer D, Officer E, Unidentified Officer, Grievance Supervisor A and Investigator A. Defendant Velez is sued herein in her individual capacity.

30. Defendants Captain A and Captain B were at all relevant times Captains at BHCF. Supervisory staff are trained in PREA policy and the procedures at BHCF that direct them to report immediately and investigate, as directed, any allegations regarding violations of PREA policy by any inmate or staff member assigned at the facility. These responsibilities include determining any imminent threat of safety to an inmate who makes an allegation. They have major institutional responsibilities such as security audits, inspections, perimeter security, investigations, grievance policy appeals, personnel actions such as appraisals and discipline, shift assignments, inmate housing, among others. Their primary responsibility is to oversee and implement DOCCS policy, BHCF Standard Operating Procedures and all applicable federal and state laws.

Defendants Captain A and Captain B were also at all relevant times the supervisors of Defendants Lieutenant A, Sergeant A, Sergeant B, Officer A, Officer B, Officer C, Officer D, Officer E, Unidentified Officer, Grievance Supervisor A and Investigator A. Defendants Captain A and Captain B are sued herein in their individual capacities.

31. Defendant Lieutenant A was at all relevant times a Lieutenant at BHCF. Supervisory staff are trained in PREA policy and the procedures at BHCF that direct them to report immediately and investigate, as directed, any allegations regarding violations of PREA policy by any inmate or staff member assigned at the facility. These responsibilities include determining any imminent threat of safety to an inmate who makes an allegation. He was responsible for monitoring the activities of sergeants and correction officers, including ensuring that correction officers were in their assigned areas; and ensuring that sergeants and correction officers follow policies and directives. Defendant Lieutenant A was also at all relevant times the supervisor of Defendants

Sergeant A, Sergeant B, Officer A, Officer B, Officer C, Officer D, Officer E, Unidentified Officer, Grievance Supervisor A and Investigator A. Defendant Lieutenant A is sued herein in his individual capacity.

32. Defendants Sergeant A and Sergeant B were at all relevant times Sergeants at BHCF. Supervisory staff are trained in PREA policy and the procedures at BHCF that direct them to report immediately and investigate, as directed, any allegations regarding violations of PREA policy by any offender or staff member assigned at the facility. These responsibilities include determining any imminent threat of safety to an inmate who makes an allegation. They were responsible for monitoring the activities of correction officers, including ensuring that correction officers were in their assigned areas; and ensuring that correction officers follow policies and directives. Defendants Sergeant A and Sergeant B were also at all relevant times the supervisors of Defendants Officer A, Officer B, Officer C, Officer D, Officer E, Unidentified Officer, Grievance Supervisor A and Investigator A. Defendants Sergeant A and Sergeant B are sued herein in their individual capacities.

33. Defendants Officer A, Officer B, Officer C, Officer D, Officer E and Unidentified Officer were at all relevant times Correction Officers at BHCF. Defendants Officer A, Officer B, Officer C, Officer D, Officer E and Unidentified Officer's duties included supervising and ensuring the safety of inmates at BHCF. Defendants Officer A, Officer B, Officer C, Officer D, Officer E and Unidentified Officer are sued herein in their individual capacities.

34. Defendant Grievance Supervisor A was at all relevant times a Grievance Supervisor at BHCF whose duties included reporting complaints of

misconduct against prison staff. Defendant Grievance Supervisor A is sued herein in his individual capacity.

35. Defendant Investigator A was at all relevant times an investigator at DOCCS's OSI. Defendant Investigator A's duties included investigating, among other things, allegations of sexual misconduct within BHCF. Defendant Investigator A is sued herein in her individual capacity.

JURISDICTION AND VENUE

36. This Court has subject-matter jurisdiction over Plaintiffs' claims under 28 U.S.C. §§ 1331 and 1343(a). This Court has jurisdiction to award nominal, compensatory and punitive damages and attorneys' fees under 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988.

37. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to Plaintiffs' claims occurred within BHCF in Bedford Hills, New York, which is in the Southern District of New York.

RELEVANT FACTS

A. History of Sexual Abuse of Women Incarcerated in New York State Prisons.

38. BHCF is a maximum-security, all-women's prison operated by DOCCS and located in Bedford Hills, New York.

39. Prisoners at BHCF, like many prisoners in this country, are at risk of sexual abuse from prison staff, the vast majority of whom are men. An even greater proportion of the supervisory staff is men. Notably, BHCF has among the highest rate of

allegations of sexual victimization relative to the other DOCCS facilities.⁴ DOCCS reported in its May 2020 “Annual Report on Sexual Victimization 2013-2017” that, of all the allegations of sexual victimization reported within DOCCS facilities, 22 took place at BHCF in 2013, 40 in 2014, 39 in 2015, 33 in 2016 and 21 in 2017.⁵ At BHCF alone, from 2009 to 2017 there were criminal charges of rape filed against nine different corrections staff members.⁶

40. It is well known among the prison population at BHCF that corrections staff regularly flirt with, make lewd sexual comments to, proposition and engage in sexual activity with women inmates. Flirtation and sexual comments often occur with impunity in the presence of other inmates and supervisory staff. Inmates and prison supervisors also know that this conduct regularly leads to sexual activity between corrections staff and inmates in any of the many locations where corrections staff can be alone and off camera with inmates.

41. Moreover, inmates at BHCF know that if they file grievances against prison staff, they routinely face retaliation by prison staff.⁷

⁴DOCCS, *2013-2017 Report*, *supra* note 3.

⁵*Id.*

⁶*See infra* ¶ 129.

⁷“Perhaps the most problematic factor in the grievance process is the retaliation experienced by incarcerated people who speak out against issues and abuses. Fifty one percent of respondents to the post-visit survey at Bedford Hills reported they had faced retaliation or discipline for filing a grievance in the past.” Correctional Ass’n of N.Y., *It Reminds Us How We Got Here: (Re)producing Abuse, Neglect, and Trauma in New York’s Prisons for Women*, 29, https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5f99be40b24f796db9b31cfa/1603911242679/CANY_WomensReport-Full_F.pdf.

42. Because of the risk and incidence of sexual abuse and retaliation in prison settings,⁸ the federal government, the District of Columbia and all 50 states⁹ have enacted statutes criminalizing any sexual contact between prisoners and correctional staff. *See, e.g.*, N.Y. Penal Law § 130.05(3)(e). Awareness of the risk of custodial sexual abuse led to the enactment of the Prison Rape Elimination Act, 34 U.S.C. § 30301 *et seq.* (2003).

43. Female prisoners are a particularly vulnerable population and face a heightened risk of sexual abuse by male officers.¹⁰ As many as 60 percent to 80 percent of women prisoners have been physically or sexually abused prior to their incarceration.¹¹ According to a study performed at BHCF, a substantial majority of the women incarcerated in general population at BHCF reported having experienced sexual

⁸“More than 80,000 prisoners each year are sexually victimized during incarceration, but only about 8% report victimization to correctional authorities.” Sheryl P. Kubiak et al., *Sexual Misconduct in Prison: What Factors Affect Whether Incarcerated Women Will Report Abuses Committed by Prison Staff?*, 41 *Law and Hum. Behav.* 361, 361 (2017).

⁹National Prison Rape Elimination Commission, *National Prison Rape Elimination Commission Report*, 37 (June 2009), <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

¹⁰Kubiak et al., *supra* note 8, at 362 (“[I]ncarcerated women are sexually victimized at a higher rate than incarcerated men.”).

¹¹Allison Hastings et al., *Keeping Vulnerable Populations Safe Under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails*, 12 (April 2015),

<https://www.vera.org/downloads/publications/housing-vulnerable-populations-prea-guide-april-final.pdf>

(“[W]omen in the criminal justice system report more extensive victimization

Histories—including lifetime histories of sexual and physical abuse—than women who have not been

incarcerated or men who have been incarcerated. In one study of women in . . . a maximum security

prison, more than half (59 percent) of women reported childhood sexual molestation, and 77 percent

reported lifetime physical or sexual assaults by non-intimates.”); *see also* U.S. Dep’t of Just., Bureau of

Just. Stat., *Prior Abuse Reported by Inmates and Probationers*, 1 (1999),

<http://www.bjs.gov/content/pub/pdf/parip.pdf> (57.2 percent of females report abuse before admission to state prison versus 16.1 percent of males. 39.0 percent of female state prison inmates report that they were sexually abused before admission to state prison versus 5.8 percent of males).

abuse or severe violence prior to incarceration.¹² These abuse histories make inmates especially vulnerable to coercion and manipulation.¹³

44. Sexual abuse by staff within DOCCS facilities is pervasive and widely known within prison communities, but because prisons are outside of the purview of the general population and the victims do not attract the same sympathy as women who are not convicts, this widespread problem is largely overlooked. In its 2020 Report, DOCCS reported that OSI received 277 complaints of staff-on-inmate sexual abuse and harassment in 2013, 387 such complaints in 2014, 440 such complaints in 2015, 336 such complaints in 2016, 296 such complaints in 2017 and 400 such complaints in 2018.¹⁴

45. A 2014 Bureau of Justice Statistics report on a survey of prisoners at prisons around the country found that five of the seven DOCCS prisons surveyed reported staff sexual misconduct rates above the national average.¹⁵

¹²Angela Browne et al., *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women*, 22 Int'l. J. of L. and Psych. 301, 312-316 (1999).

¹³A 2013 report from the Department of Justice's ("DOJ") Bureau of Justice Statistics states that "[i]nmates who experienced sexual victimization before coming to the facility were also more likely than inmates with no sexual victimization history to report incidents of sexual victimization involving other inmates and staff." U.S. Dep't of Just., Bureau of Just. Stat., *Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12*, 19 (May 2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

¹⁴DOCCS, *2013-2017 Report*, *supra* note 3, at 3, Appendix E; *see also* U.S. Dep't of Just., Bureau of Just. Stat., *Survey of Sexual Violence in Adult Correctional Facilities 2009-2011*, at 7-12 (Jan. 2014), <http://www.bjs.gov/content/pub/pdf/ssvacf0911st.pdf> [hereinafter U.S. Dep't of Just., *2009-2011 Survey*] (in prisons located in New York, there were 184 allegations of staff sexual misconduct and 24 allegations of staff sexual harassment in 2011; in 2010, 168 allegations of staff sexual misconduct and 65 of staff sexual harassment; and in 2009, 173 allegations of staff sexual misconduct and 38 of staff sexual harassment).

¹⁵David Reutter, *Staff-on-Prisoner Sexual Abuse Persists in New York Prisons*, Prison Legal News (Feb. 3, 2016), <http://www.prisonlegalnews.org/news/2016/feb/3/staff-prisoner-sexual-abuse-persists-new-york-prisons/>.

46. There were at least seven pregnancies of DOCCS inmates conceived with DOCCS staff between 2000 and 2013, the last year for which data has been published.¹⁶

47. There have been years in the recent past when DOCCS's OSI has received approximately 200 complaints of staff sexual misconduct involving inmates.¹⁷ In 2010, according to PREA surveys, three of the eleven prisons in the U.S. with the most staff-on-inmate sexual violence were in New York.¹⁸ In 2011, the Review Panel on Prison Rape invited three "high incidence" prisons to appear at its hearings, one of which was a DOCCS facility.¹⁹ One of the experts testifying on this panel found that all of the women's facilities in DOCCS have high rates of staff-on-inmate sexual abuse.²⁰

48. Female prisoners are disproportionately victims of staff sexual misconduct in DOCCS prisons and women known to have intellectual disabilities or psychiatric conditions are the most victimized because DOCCS staff count on these women being perceived as not credible. According to DOCCS records from 2007 to 2012, women were involved in 30% of sexual misconduct cases and 61% of sexual harassment cases, despite only accounting for 5% of all state prisoners.²¹

¹⁶Alysia Santo, *Raped Behind Bars*, Albany Times Union (Sept. 9, 2013), <http://www.timesunion.com/local/article/raped-behind-bars-4795883.php#page-1> ("Prison officials say there have been seven pregnancies since 2000 in which the father of the inmate's child was a staff member from the facility."); *see also* Reutter, *supra* note 15.

¹⁷U.S. Dep't of Just., *2009-2011 Survey*, *supra* note 14.

¹⁸Eli Hager, *Trust Nobody, and Proceed with Caution*, The Marshall Project (Feb. 20, 2015), <https://www.themarshallproject.org/2015/02/20/trust-nobody-and-proceed-with-caution>; *see also* U.S. Dep't of Just., Bureau of Just. Stat., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09*, 9 (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf>.

¹⁹G. J. Mazza, U.S. Dep't of Just., *Report on Sexual Victimization in Prisons and Jails*, ii (April 2012), https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/prea_finalreport_2012.pdf.

²⁰*Id.* at 43.

²¹Reutter, *supra* note 15.

B. Plaintiffs Were at High Risk of Sexual Assault Upon Entering BHCF.

49. In enacting PREA in 2003, Congress found that “[e]xperts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults.”²² Congress further found that “[i]nmates with mental illness are at increased risk of sexual victimization”.²³

50. To address these and other concerns, Congress established a commission, known as the National Prison Rape Elimination Commission, tasked with developing a set of recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.

51. Those standards, known as the National PREA Standards, were published in 2009 and were provided to the U.S. Department of Justice for review and passage as a final rule. That final rule became effective August 20, 2012.²⁴

52. Under the National PREA Standards, inmates are supposed to be screened during intake, during the initial classification process and at all subsequent classification reviews to assess their risk of being sexually abused.²⁵ Among the factors prison staff screening for risk of sexual victimization must consider are whether the inmate has a mental or physical disability, the physical build of an inmate, prior sexual victimization and the inmate’s own perception of vulnerability.²⁶

²²34 U.S.C. § 30301.

²³*Id.*

²⁴U.S. Dep’t of Just., *Implementing the PREA Standards, Protecting Inmates, and Safeguarding Communities*, 5, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/BJA-2008-1720.PDF>.

²⁵28 C.F.R. § 115.41.

²⁶*Id.*

53. Based on the PREA Standards and basic common sense, Ms. Smith was at a high risk for sexual assault from the moment she entered BHCF, which was known to staff who had access to records detailing her prior history or spoke about her criminal record as a prostitute. Ms. Smith is a small woman, standing only 4'11", and she has diminished cognitive abilities. She repeated both the second grade and the ninth grade because of her difficulties in school and did not ultimately graduate high school.

54. Ms. Smith also has a long and well-documented history of exploitative sexual relationships both in and out of prison. She was born inside a correctional facility to a crack-cocaine-addicted mother and was adopted along with her twin sister not long after their birth. Ms. Smith's life was upturned by her adopted parents' divorce. She ran away from home at 13 years of age and was found by an older man who bought her clothes, earned her trust and ultimately forced her into prostitution. Ms. Smith's adoptive family was unable to locate her, and the older man did not allow her to leave. She was trapped with this man for about a year, during which time she began cutting herself and drinking heavily. Ms. Smith eventually escaped from this man but became accustomed to living on the streets and surviving in the sex trade. Ms. Smith spent the next several years in and out of jail, principally on prostitution and drug-possession charges.

55. While Ms. Smith was housed at Rikers Island awaiting trial for the offense for which she is now serving time, she was repeatedly raped, sexually abused and threatened by a correction officer. Ms. Smith frequently told her therapists and mental health professionals at BHCF that she suffered nightmares and flashbacks from the rapes that occurred at Rikers Island, which was reflected in her prison "Core History" form and

her medical records. She has needed to adjust medications to address and quell the disturbing nightmares and other symptoms she experiences as a result of that sexual abuse.

56. Like many incarcerated women in DOCCS custody,²⁷ Ms. Smith also has a history of serious mental health disorders, suffering from multiple diagnoses. At age 17, Ms. Smith was admitted to a hospital and placed on antipsychotic and mood stabilizing medication. About a year later, she was admitted again to another hospital, where she stayed for about a month and was placed on new antipsychotic and mood stabilizing medication. She was admitted to two more hospitals after that.

57. While at Rikers Island awaiting trial, from 2011 to 2015, Ms. Smith was diagnosed with and treated for various mental health disorders. Her mental health and medical records from Rikers Island reveal that her intellectual functioning was consistently categorized as “low”.

58. Upon entering BHCF, Ms. Smith was likewise diagnosed with a “Serious Mental Illness”—Schizoaffective Disorder—and was identified as needing Level 1 mental health services, which meant she needed to be housed in a facility with dedicated Office of Mental Health staff who are able to provide treatment to inmate-patients with major mental disorders. She continues to receive regular mental health treatment, including therapy and medication, to this day.

²⁷“Over half of women in NY prisons are diagnosed with mental health conditions by the Office of Mental Health (OMH)”, and “[n]early one third (31%) of these women are in the highest severity categories (OMH Levels 1, 1S, 2, 2S).” Correctional Ass’n of N.Y., *Fact Sheet, Women’s Incarceration: the experience in New York’s prisons* (2019), <https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5cc08885fa0d60251a568084/1556121734338/2019+Women%27s+Incarceration+Fact+Sheet.pdf>.

59. Ms. Smith was also identified as a rape victim while at Rikers Island and her criminal record identified her prior involvement in prostitution. Her criminal history was known to inmates and prison guards. Each is a risk factor for sexual assault in prison.

60. Ms. Doe similarly has a long history of being sexually abused and exploited. Her mother was in and out of prison, so Ms. Doe first lived with other relatives and was then placed in foster care as a child. She ran away from a group home at the age of thirteen and met a man who said that he would help her achieve her dream of becoming a choreographer, but instead forced her into stripping. At the age of fourteen, she was raped at an acquaintance's home by multiple men, at gunpoint, and became pregnant. Ms. Doe was then sold to a sex trafficking ring run by a woman who took all the money Ms. Doe earned from stripping.

61. While stripping, Ms. Doe met a pimp who stalked her from club to club, until he was eventually able to force her to work for him as a stripper, and ultimately, as a prostitute. Not long after she began working as a prostitute, she got into the car of a police officer, and she was arrested for prostitution and sent to juvenile detention until she was 17.

62. When Ms. Doe was released from juvenile detention, she went to live with her son at her mother's house. While she was there, her mother's boyfriend tried to rape her. Ms. Doe told her mother what had happened, and her mother kicked her out of the house. She was back on the streets after that.

C. Defendant Sergeant B Sexually Harassed Ms. Smith Throughout Her Time at BHCF.

63. Ms. Smith first encountered Defendant Sergeant B when she was assigned to the housing unit where he regularly served as the sergeant on duty. Defendant Sergeant B was notorious among the prison population for openly flirting with and making sexual comments to inmates. He was also known for having had at least one extended sexual relationship with an inmate. To the extent any formal discipline resulted from that relationship, it did not prevent Defendant Sergeant B from continuing to engage in sexual misconduct.

64. At first, Defendant Sergeant B told Ms. Smith that she looked pretty and made comments teeming with sexual innuendo, like “You know I like Black girls” and “You know what I want”. Defendant Sergeant B would also ask Ms. Smith if she “needed anything”, and if Ms. Smith had a disagreement or dispute with other inmates, Defendant Sergeant B would have them moved or disciplined.

65. At various times, Defendant Sergeant B told Ms. Smith that if he helped her, she would need to help him. On several occasions, Defendant Sergeant B tried to grab Ms. Smith from behind and pull her to him. If she tried to walk away from Defendant Sergeant B when they were speaking and before he felt the conversation was over, he would grab her and demand, “Where are you going?”, in a manner that indicated he was upset and felt disrespected.

66. In 2018, Defendant Sergeant B twice cornered Ms. Smith and asked to see her breasts while he masturbated. In the first incident, Defendant Sergeant B pulled Ms. Smith into a room while she was in the mess hall, closed the door and told her he had missed her. He then asked to see her breasts while he masturbated. After he ejaculated, he wiped himself with his shirt and gave Ms. Smith a hundred-dollar bill. The second incident proceeded similarly, with Defendant Sergeant B again asking to see Ms. Smith's breasts while he masturbated and again giving her a hundred-dollar bill after he finished.

D. Defendant Sergeant B Forced Ms. Doe To Perform Oral Sex.

67. Not long after Defendant Sergeant B engaged in sexual misconduct with Ms. Smith, he similarly assaulted Ms. Doe. In late winter or early spring 2019, Ms. Doe was cleaning the men's bathroom in the school building as part of her assigned job. Defendant Officer E was in the hallway outside the bathroom but there was no other inmate or officer in the bathroom with her. While she was cleaning, Defendant Sergeant B entered the bathroom. Ms. Doe called out that she was in there cleaning. Rather than leave Ms. Doe to complete her work, Defendant Sergeant B instead blocked the exit and made sexually suggestive comments, such as "I've never had a Black girl before." When Ms. Doe tried to move past him to the door, Defendant Sergeant B punched her in the stomach so hard that she fell to the floor and lost her breath.

68. While Ms. Doe was on the ground, Defendant Sergeant B exposed himself and made clear that he expected Ms. Doe to perform oral sex. He threatened her during the encounter, saying that if she refused to do as he asked, he would create problems for her in prison and upon her release from BHCF. Fearing what Defendant

Sergeant B would do, Ms. Doe complied. He held her head as he was ejaculating, thereby forcing her to swallow his semen.

69. Afterwards, Ms. Doe left the bathroom and saw Defendant Officer E sitting at his desk in area outside the bathroom. She was visibly upset, and she asked Defendant Officer E if she could return to her unit. He smirked knowingly and said she could. Still afraid of what Defendant Sergeant B could do to her and knowing that it was her word against a sergeant's, she decided the safest thing to do was to stay quiet, so she did not report the incident.

E. Defendant Officer C Forced Ms. Smith To Perform Oral Sex on Him with the Help of Defendants Officer B and Officer A.

70. During the course of Ms. Smith's incarceration at BHCF, Defendant Officer C, like Defendant Sergeant B, began by "grooming" her for sexual contact. Defendant Officer C was notorious among the prison population for being physically aggressive and carrying on an extended sexual relationship with at least one inmate and flirting and sexually harassing others.

71. Shortly after Ms. Smith arrived at BHCF, Defendant Officer C began seeing her regularly in the medical clinic, where she went daily for her psychiatric prescriptions. Initially, Defendant Officer C's sexual harassment seemed like "aggressive" flirting: he told Ms. Smith she was beautiful and asked her whether she "had a man". This escalated to Defendant Officer C telling her "you're going to be mine someday" or "I'm going to get you one day". On several occasions, Defendant Officer C removed Ms. Smith from the medication line and told her to go last, which gave him the opportunity to give her candy after she had received her medication. On one occasion,

Defendant Officer C gave Ms. Smith a small bag of marijuana and, at another time, Defendant Officer C allowed her to pass tobacco and rolling papers to another inmate, in violation of the prison rules.

72. While Defendant Officer C became more and more aggressive in his effort to get Ms. Smith to engage in sexual activity, Ms. Smith continued to rebuff him. Defendant Officer C then seized on an opportunity in the medical clinic when she went into the bathroom. Once she was inside, Defendant Officer C followed her, claiming that he suspected she had contraband. After entering the bathroom, Defendant Officer C blocked the door and began to remove his penis from his pants, at which point Ms. Smith told him she was not going to have sex with him. She managed to leave the bathroom but was startled at how aggressive he had become. Defendant Officer C covered up the commotion by informing the other officers in the bullpen/medication area that he had followed Ms. Smith into the bathroom because he had believed that she had been hiding contraband.

73. On April 9, 2019, Defendant Officer C decided he was no longer willing to take “no” for an answer. That evening, Ms. Smith went to the package room to retrieve a wrist watch that had been mailed to her. Because inmates are allowed only one wrist watch, she was required to relinquish the watch that she already had. The package room attendant denied Ms. Smith’s exchange because the attendant believed the watch she was exchanging was not the watch she had had when she entered BHCF. Ms. Smith became upset and she and the package room attendant got into a verbal altercation that escalated to the point that Ms. Smith was ordered to step outside of the package room.

74. At the time of the argument, Defendant Officer C was in the rear of the package room, though that was not his assigned post. He emerged from the package room, yelled in front of other inmates that he was going to “whoop [her] ass”, commanded Ms. Smith to face the wall and then aggressively took her out of the room. Knowing Ms. Smith was in a compromised state and at risk of disciplinary action for the package room altercation, after Defendant Officer C had Ms. Smith outside of the package room, while she was walking in front of him, he told her to stop and turn around. When Ms. Smith turned around, she saw that Defendant Officer C had exposed his penis, which had a condom on it. Defendant Officer C then demanded that Ms. Smith give him oral sex.

75. Defendant Officer C threatened to “choke the shit out of [her]” if she screamed or resisted. Ms. Smith performed oral sex on Defendant Officer C until he ejaculated into the condom. She saw no one walk past during this time and Ms. Smith believes this area was not covered by facility cameras.

76. After he ejaculated, Defendant Officer C zipped his pants up and led Ms. Smith up a hill to an area where Defendant Officer B and Defendant Officer A were standing.

77. Defendants Officer C, Officer B and Officer A shook hands with each other. Defendants Officer B and Officer A told Defendant Officer C they had been “holding it down”; so it became evident to Ms. Smith that Defendants Officer B and Officer A had been on the “lookout” to ensure no one else walked by while Defendant Officer C forced Ms. Smith to perform oral sex.

78. Ms. Smith became upset that she had just been sexually assaulted and was now being forced to stand around and wait silently while her abuser joked with the two men who had helped him. In her exasperation, Ms. Smith walked away from the three Defendants. Defendant Officer C said to Ms. Smith, “Don’t fucking move. You fucking heard me”, but she kept walking. Defendant Officer C then came running after her and hit her on her face and elsewhere.

79. Ms. Smith managed to run toward a fence, where others would be able to see her. Defendant Officer C dragged her down the stairs and handcuffed her.

80. Defendant Officer C’s body camera was turned off throughout this incident.

81. After the incidents on April 9, the package room attendant filed an Inmate Misbehavior Report regarding her dispute with Ms. Smith in the package room. Defendants Officer C and Officer A also initiated disciplinary proceedings against Ms. Smith, with both men claiming that Ms. Smith had hit Defendant Officer C in the chest while she was being escorted from the package room. This allegation was false: Defendant Officer C is a large man, and Ms. Smith—not even five feet tall—had no interest in getting into a physical altercation with him.

82. Nevertheless, prison officials held disciplinary hearings on the incidents. The allegation that Ms. Smith had hit Defendant Officer C in the chest came down to a credibility assessment between the correction officers and Ms. Smith because Defendant Officer C was not wearing a body camera and there were no other cameras in the vicinity.

83. As a result of her alleged misbehavior, Ms. Smith was sentenced to serve 60 days in the Special Housing Unit (“SHU”). Because of Ms. Smith’s mental health history, she was required to serve disciplinary sentence time in the TBU.

84. While in the TBU, Ms. Smith was denied food, clean sheets and medical care for chest pains by Defendant Lieutenant A, a lieutenant, who was known to be good friends with Defendant Officer C. On May 17, 2019, BHCF medical professionals recommended that Ms. Smith be removed from her cell for medical care, but because she had been denied food and medical attention, she was too weak to even stand. Another officer then handcuffed her, as is required before transportation out of the cell, but the officer never took Ms. Smith to receive medical care. As a result, Ms. Smith remained weak, sick and handcuffed in her own cell.

F. Defendant Officer C Was Allowed to Interact with Ms. Smith and Continued to Sexually Harass Her with the Knowledge of Defendants Velez, Captain A, Captain B, Lieutenant A, Grievance Supervisor A and Investigator A.

85. Although Ms. Smith was suffering in the TBU, she at least felt safe from Defendant Officer C’s aggression and sexual demands.

86. She decided not to report the sexual assault of April 9, 2019 immediately because she feared further retaliation from other officers, as had occurred in the sham disciplinary hearing that led to her placement in the TBU. She mistakenly assumed that Defendant Officer C could not harm her while she was in the TBU.

87. On the evening of May 20, 2019, however, Defendant Lieutenant A allowed Defendant Officer C to enter the TBU, even though he did not work in that unit and seemingly had no reason to be there.

88. Defendant Officer C located Ms. Smith in her cell and told her he was not mad at her and that he loved her, but that he was not done with her. He then blew her a kiss. He appeared to be intoxicated.

89. Although Ms. Smith remained afraid of what would happen if she reported Defendant Officer C, she realized that if Defendant Officer C could access her in the TBU, she was not safe.

90. The next day, Ms. Smith told Defendant Captain B—a captain at BHCF—that Defendant Officer C had forced her to give him oral sex, and she filed official grievances about the sexual harassment that took place on May 20, 2019, and the sexual assault on April 9, 2019. In her grievances, she desperately pleaded for help and protection, stating that Officer C wanted to force himself on her again, that he would not leave her alone and that she was not safe. She pleaded that her case be reported to Prisoner Rights. In one grievance, Ms. Smith wrote that she “jump[ed]” when she heard Defendant Officer C’s voice in the TBU, and she did “not want to see his eyes[] look at me” the way he had on “April 8 by [the] package room when he force[d] me to give oral sex”.²⁸ This grievance was reviewed by Defendant Grievance Supervisor A, and sent to Defendants Velez and Captain A.

91. In another grievance, also dated May 21, 2019, Ms. Smith wrote that Defendant Lieutenant A “got Defendant Officer C to come to [the] TBU”, and Defendant Officer C blew her a kiss and said he still loved her. The grievance states that Defendant Lieutenant A was “smiling” and that Defendant Officer C “wants to force me

²⁸While Ms. Smith wrote April 8 in her complaint, it is our understanding that the incident actually took place on April 9, 2019.

again. He came to let me know he is not done with me. . . . He will have his way again. Lieutenant A is on his side.”²⁹

92. In a third inmate grievance from May 21, 2019, Ms. Smith explained that Defendant Lieutenant A is “doing police brutality and retaliation due to good pal Officer C”.

93. In addition to filing grievances and informing Defendant Captain B, Ms. Smith reported Defendant Officer C’s behavior separately to Defendant Velez (assistant deputy superintendent and manager of BHCF’s PREA compliance), and sent a letter regarding Defendant Officer C’s conduct to Defendant Captain A.

94. Ms. Smith also told Defendant Grievance Supervisor A that she was afraid of Defendant Officer C and that he was not “done with her” yet.

95. Ms. Smith’s adoptive mother also called DOCCS twice and made complaints about the oral sex assault, sexual harassment and the rapes, stating that Ms. Smith needed to speak with someone about what had happened to her. After this, Lieutenant C spoke with Ms. Smith and took down her statement. Ms. Smith never heard anything more from Lieutenant C regarding these incidents.

96. Ms. Smith also spoke with Defendant Investigator A about Defendant Officer C’s demand for oral sex on April 9, 2019, and his statements to her on May 20, 2019. Defendant Investigator A informed Ms. Smith that she would investigate the incident and look at whatever camera footage might be available. Ms. Smith heard nothing from Defendant Investigator A regarding the status of any investigation; only

²⁹Ms. Smith wrote a name similar to Defendant Lieutenant A’s name in her grievances, but she was referring to Defendant Lieutenant A.

over a year and a half later did she receive notice that her claim was found to be unsubstantiated, with no further explanation. To Ms. Smith's knowledge, no one performed an appropriate investigation.

97. Despite having reported Defendant Officer C's conduct to DOCCS supervisors, Ms. Smith was not kept separated from Defendant Officer C. He continued to interact with her, though Ms. Smith attempted to avoid him. He even threatened her, saying that he was going to "kill [her] ass".

G. Defendant Officer D Sexually Assaulted Ms. Smith by Inserting Her Finger in Ms. Smith's Vagina in an Alleged Search for Contraband with the Help of Defendants Sergeant A and Unidentified Officer, Which Ms. Smith Reported to Her Prison Psychologist and Defendants Grievance Supervisor A and Investigator A.

98. On June 4, 2019, while in group therapy, Ms. Smith got into a disagreement with another inmate. She was upset by the correction officers' handling of the situation and asked a sergeant in the area, Sergeant S, to return her to her cell. Sergeant S directed Defendant Officer D to escort Ms. Smith. Ms. Smith protested that she did not want Defendant Officer D to touch her, which upset Defendant Officer D, who then tried to handcuff Ms. Smith. Sergeant S then instructed Defendant Officer D to back off of Ms. Smith, which was embarrassing to Defendant Officer D, and Sergeant S instructed another officer to escort her to her cell.

99. Later that day, Defendant Officer D came to Ms. Smith's cell to deliver a menu and an argument ensued. Defendant Officer D then screamed, falsely claiming that Ms. Smith had hit her through the bars and called for Defendant Sergeant A—a sergeant—to come discipline her.

100. When Defendant Sergeant A arrived, he asked Ms. Smith whether she had hit Defendant Officer D. She showed him that she could not possibly have fit her hands through the bars of her cell, and Defendant Sergeant A declined to discipline Ms. Smith. This again upset and embarrassed Defendant Officer D, who was attempting to get her in trouble.

101. Later that day, around 5:00 PM or 6:00 PM, Defendants Sergeant A and Unidentified Officer came to handcuff and chain Ms. Smith so they could escort her to the recreation yard. The handcuffs were placed around Ms. Smith's hands and the chain around her waist.

102. As they were walking into the elevator, Defendant Officer D saw them and also entered the elevator, even though she was not escorting Ms. Smith. Defendant Unidentified Officer and Ms. Smith were in the back of the elevator, with Defendant Unidentified Officer holding Ms. Smith's chain. Defendant Sergeant A was standing toward the front.

103. Once the group was gathered inside the elevator, Defendant Officer D baselessly claimed Ms. Smith was hiding contraband and, not wearing gloves, reached inside Ms. Smith's pants and underwear and inserted at least one finger into her vagina, scratching her. Ms. Smith tried to move away from Defendant Officer D, but Defendant Unidentified Officer yanked her back by the chain. Defendant Officer D then punched Ms. Smith twice on her forehead, and Defendant Unidentified Officer held her chain so that she could not move away or defend herself. On information and belief, Defendant Officer D was acting in retaliation for Ms. Smith's earlier conduct with respect

to Defendant Officer D. Defendant Sergeant A, though he was in a position of authority, did nothing to intervene.

104. After getting off the elevator, Ms. Smith was upset and demanded that Defendant Sergeant A allow her to seek medical attention. He responded by feigning ignorance and asking the other correction officers if they had seen anything, and they all claimed that they had not. When Ms. Smith showed Defendant Sergeant A the lump and marks on her face from Defendant Officer D's attack, Defendant Sergeant A asked her mockingly whether Ms. Smith had simply hit her head earlier while she was in her cell.

105. Ms. Smith then screamed for a lieutenant or captain. Defendant Sergeant A's supervisor—Lieutenant C—arrived, and Ms. Smith told her what happened. Lieutenant C directed Defendant Sergeant A to escort Ms. Smith to the medical unit, take pictures of her injuries and make sure she was treated.

106. After Ms. Smith was brought to the medical unit, medical care was delayed for many hours, during which time, the redness and swelling from her injuries were reduced in visibility. Although a nurse eventually examined Ms. Smith, Defendant Sergeant A never took pictures, as he had been directed to do.

107. Ms. Smith filed a grievance describing Defendant Officer D's assault and abusive frisk on the evening of June 4, 2019. She also reported the abusive frisk to Nurse D who examined her around 9:00 PM on June 4, 2019. Ms. Smith returned to her cell, but requested to be examined properly around 4:00 AM, at which time she was removed from her cell and placed in a restraint chair, which is where an inmate sits with her feet shackled but her hands free of handcuffs, waiting for a nurse to arrive. Ms. Smith was examined again around 4:00 AM on June 5, 2019, by another nurse (name

unknown) and the nurse prepared an injury report, noting bruises to Ms. Smith's forehead and swelling and scratches on her wrists, and advised Ms. Smith to apply ice to keep the swelling down.

108. After spending hours in the restraint chair, Ms. Smith met with her psychologist early in the morning on June 5, 2019. Her psychologist noted that Ms. Smith "reports being assaulted/ sexually assaulted by an officer in the elevator on the way to rec yesterday", and "[s]he stated that she does not feel safe".

109. After meeting with her psychologist, Ms. Smith returned to her cell in the TBU. She later reported the assault in the elevator to Defendant Grievance Supervisor A.

H. Defendants Officer C and Sergeant B Raped Ms. Smith While She was Alone in the Medical Clinic, Which She Reported to her Prison Psychologist and in an Inmate Grievance.

110. The day after the abusive frisk in the elevator, Ms. Smith experienced chest pains while in her cell. She was distraught and short of breath. As a result, Defendant Sergeant B and another correction officer escorted her to the medical clinic, a location where frequent sexual activity occurs because of the numerous private locations and the lack of cameras.

111. Once they reached the clinic area, they saw Defendant Officer C, who regularly worked on the floor of the clinic. Defendants Officer C and Sergeant B are known among the inmate population to be friends. Defendant Officer C joined Defendant Sergeant B as they escorted Ms. Smith to a medical clinic room where they met Nurse T and another nurse, both of whom were male. At some point, the third correction officer in the escort restrained Ms. Smith on the examination table. After the

nurses examined Ms. Smith, Defendant Sergeant B, taking advantage of his position of authority as a sergeant, ordered everyone to leave except for Defendant Officer C.

112. Once they were alone in the room with Ms. Smith, Defendant Officer C asked Defendant Sergeant B what they were going to do with her. Defendant Sergeant B told Defendant Officer C to “get your nut on” (which means to have sex in street slang). At that point, Defendant Officer C first put on a condom and raped Ms. Smith while she remained restrained on a clinic table and Defendant Sergeant B was outside the curtain around the table. While Defendant Officer C was raping Ms. Smith, she tried to scream, at which point, Defendant Sergeant B came inside the curtain and put both hands over her mouth so hard that he injured her. She remained silent while she was raped to avoid being hurt again. After Defendant Officer C ejaculated, Defendant Sergeant B put on a condom and raped Ms. Smith. Neither had a body camera on during the rapes.

113. After they finished, Defendants Officer C and Sergeant B dragged Ms. Smith out of the clinic and took her to the infirmary, where she was to have been on close observation due to her mental state.

114. Defendants Officer C and Sergeant B targeted Ms. Smith when she was most vulnerable. She learned in April 2019 that her twin sister had been involved in a terrible accident and was in a coma and on life support. This difficult news, coupled with consistent abuse and mistreatment by Defendants, rendered Ms. Smith more readily agitated in the period leading up to the rape. Ms. Smith’s distress made her a particularly easy target.

115. After the rape, Ms. Smith filed a grievance saying she had been raped in the clinic by Defendants Officer C and Sergeant B. The grievance states that she “need[s] help” and “no doctor [has] looked at injuries or take[n] pictures”, and she is “not safe” and is “scared for [her] life”.

116. Psychiatric and nurse progress notes over the following days document Ms. Smith’s distress. Nursing progress notes from June 6, 2019, state that Ms. Smith “reported . . . she does not feel safe and wants to sign into protective custody”. Nursing progress notes submitted daily from June 7-10, 2019 document that Ms. Smith continued to express fear for her safety and continued to request protective custody.

117. On or before June 18, 2019, Ms. Smith spoke with a nurse practitioner about the rapes, and he instructed her to write a statement to a sergeant about the incident. He told Ms. Smith he would “take care of it”.

118. In addition to speaking with the nurse practitioner, Ms. Smith reported the rapes to her regular psychologist and a medical doctor. On June 20, 2019, the doctor ordered testing for HIV, Hepatitis C and Hepatitis B and prescribed Rocephin, doxycycline and flagyl—medications that are administered to rape victims to prevent sexually transmitted infections. These medications were not administered to Ms. Smith until July 30, 2019, at which point they likely would have been of limited to no use. Ms. Smith likewise did not have her blood drawn to test for sexually transmitted infections until mid-July.

119. Ms. Smith also reported the rapes to Defendants Kaplan, Velez, Captain A and Grievance Supervisor A. Ms. Smith’s mother contacted the prison to

lodge a complaint that Ms. Smith was being mistreated, after which Lieutenant C spoke with Ms. Smith and prepared a written report of the rape.

120. On June 14, 2019, Ms. Smith had a legal call with The Legal Aid Society. The Legal Aid Society sent a letter to Defendants Effman and Nunez on June 20, 2019, detailing Ms. Smith's allegations regarding the sexual assault by Defendant Officer C (referred to in the letter as "Hill"), the abusive frisk by Defendant Officer D and the rapes by Defendants Sergeant B and Officer C. The letter asked Defendants Effman and Nunez to preserve all video and body camera footage from the dates surrounding the reported incidents and to preserve logbooks from these dates. The letter further asked Defendants Effman and Nunez to investigate the allegations of abuse, including all related misconduct, including the failure to turn on body cameras when staff are outside the location of fixed cameras. The letter requested a response explaining what steps were being taken to protect Ms. Smith from further harm.

121. Attorneys from The Legal Aid Society sent a second letter on July 5, 2019, clarifying that the correction officer referred to in the June 20 letter as "Hill" was in fact Defendant Officer C and identifying the two officers with whom Defendant Officer C spoke after the oral sex incident as Defendants Officer B and "Officer A". The letter further relayed the act of sexual harassment on May 20, 2019 by Defendant Officer C, and asked that DOCCS preserve any fixed camera footage of the incident.

122. The Legal Aid Society attorneys requested that Ms. Smith be kept separate from Defendants Officer C, Sergeant B and Officer D and not allow these individuals to be alone with Ms. Smith or escort her within the prison.

123. The letter further requested that DOCCS ensure that its staff is adhering to DOCCS's body camera policies and have their body cameras on whenever they are outside the view of the fixed cameras.

124. The Legal Aid Society further requested that the prison abide by its obligations under PREA, including by providing Ms. Smith with timely, unimpeded access to emergency medical treatment and crisis intervention services and be offered access to forensic medical examinations.

125. On information and belief, The Legal Aid Society never received any response to their June 20, 2019, or July 5, 2019, correspondence.

126. Even after Ms. Smith reported the sexual abuse and The Legal Aid Society sent its first letter, Defendants were permitted to remain in contact with Ms. Smith. As noted above, Defendant Officer C was able to threaten her. Defendant Officer D continued to work her same shift and locations, leading to further interactions with Ms. Smith. In one such interaction, Defendant Officer D told her that she was "over it" and that if Ms. Smith wanted to press charges, she should go ahead and do so and that she "fight[s] men in the men's jail". After Ms. Smith had reported the rapes, Defendant Sergeant B was assigned to escort a group of inmates, including Ms. Smith; scared about going anywhere with Defendant Sergeant B, Ms. Smith asked another sergeant in the area why Defendant Sergeant B was allowed to be there. Defendant Sergeant B had also approached her to handle some of her grievances. She told him that she did not want to speak with him.

I. Defendants Annucci, Effman, Kaplan, Daye and Velez Are Responsible for Preventing Sexual Abuse and Retaliatory Actions Against Victims at BHCF.

127. Defendant Annucci was at all relevant times responsible for enacting policies and procedures to protect the safety of inmates incarcerated in DOCCS and ensuring that the policies and practices are enforced in DOCCS facilities.

128. Under 28 C.F.R. § 115.11(b), DOCCS is required to employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement and oversee agency efforts to comply with PREA standards in all its facilities. On information and belief, Defendant Effman was at all relevant times the individual charged with these responsibilities for DOCCS.

129. Defendants Kaplan, Daye and Velez were at all relevant times responsible for the safety of the inmates at BHCF. Defendants Kaplan, Daye and Velez were at all relevant times responsible for creating and enforcing policies and practices that ensure the safety of the inmates at BHCF.

130. Defendants Kaplan and Velez failed to implement policies or procedures required under PREA to protect inmates from sexual abuse at BHCF. Despite repeated instances of officer sexual abuse of inmates, inappropriate sexual remarks by officers to inmates, widely known sexual relationships between officers and inmates and retaliatory actions upon the victims, Defendants Kaplan and Velez failed to discipline officers or otherwise enact or enforce policies to correct the pervasive custom of abuse at BHCF.

J. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez Were Aware of the Substantial Risks of Sexual Abuse to Female Prisoners in DOCCS Facilities and in BHCF in Particular.

131. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that Congress enacted PREA in 2003 to address and reduce the high rates and risk of sexual assault in prison.

132. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that New York enacted N.Y. Penal Law § 130.05(3)(e) to address high rates of sexual assault within New York prisons, and that this statute makes clear that an inmate cannot legally consent to any sexual act with DOCCS staff and criminalizes any sexual activity between DOCCS staff and inmates.

133. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that DOCCS has a “zero tolerance” policy for sexual activity with, or harassment of, inmates.

134. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware of DOCCS’s obligations under PREA to mitigate the risk of sexual assault and the exploitation of and harassment to female inmates within DOCCS facilities, including by screening inmates for risk of victimization; developing a coordinated response for treatment and investigation of alleged instances of abuse, including providing prompt medical attention and an opportunity to speak with a victim advocate and crisis intervention counselor; promptly and thoroughly investigating complaints of sexual assault and notifying victims of the results of the investigation; and training employees on inmates’ rights to be free from sexual abuse, the dynamics of sexual abuse in confinement and the common reactions of sexual abuse victims.

135. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that certain factors and characteristics render inmates more vulnerable to sexual abuse in prison, including mental health difficulties, cognitive disabilities, slight build and prior experience of sexual exploitation, rape or abuse.

136. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that sexual assault and exploitation in DOCCS facilities, and in BHCF in particular, is rampant and takes many forms. These Defendants were aware, for instance, that correction officers will sometimes “groom” vulnerable inmates by spending time with them, giving them gifts, commenting on their bodies or granting reprieves for violations of minor prison rules, in order to gain their trust and later exploit that trust to initiate sexual contact or request sexual favors in return.

137. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that sexual harassment, exploitation and assault of inmates by staff is a persistent and prevalent problem at BHCF, and that numerous instances of staff sexual misconduct at BHCF by officers have resulted in criminal charges. For instance:

- i. In 2009, David Sawyer, a sergeant at BHCF, pleaded guilty to third-degree rape of an inmate.³⁰
- ii. In 2010, Fredrick Brenyah, a correction officer at BHCF, was convicted of attempted rape of an inmate.³¹

³⁰Thane Grautel, *Bedford Hills correction officer arrested on rape charge*, LoHud (Dec. 12, 2014), <https://www.lohud.com/story/news/crime/2014/12/12/bedford-hills-co-arrested-rape-charge/20299949/>.

³¹*Id.*

- iii. In July of 2014, Richard Rodriguez, a correction officer at BHCF, was arrested and charged with third-degree rape of an inmate. He pleaded guilty in October of 2014.³²
- iv. In July of 2014, Kevin R. Fields, a correction officer at BHCF, was arrested and charged with third-degree rape.³³
- v. In December of 2014, Jose Guzman, a correction officer at BHCF, was arrested and charged with third-degree rape of an inmate.³⁴
- vi. In August of 2015, Ruben Garcia, a correction officer at BHCF, was arrested and charged with the rape of two inmates.³⁵
- vii. In December of 2015, Rasheen Smalls, a correction officer at BHCF, was arrested and charged with the rape of an inmate.³⁶
- viii. In December of 2015, Ruben Illa, a correction officer at BHCF, was charged with making a false report to conceal an improper relationship with an inmate.³⁷

³²Reutter, *supra* note 15.

³³*Id.*

³⁴Nina Schutzman, *Prison guard from Wappingers had 'sexual contact' with inmate*, Poughkeepsie Journal (Dec. 14, 2014), <https://www.poughkeepsiejournal.com/story/news/crime/2014/12/14/wappingers-correction-officer-rape/20395631/>.

³⁵Reutter, *supra* note 15.

³⁶Alfred Branch, *Former Guard Arrested for Having Sex with Inmate: State Police*, Patch (Dec. 23, 2015), <https://patch.com/new-york/bedford/former-guard-arrested-having-sex-inmate-state-police>.

³⁷Shayna Jacobs, *Ex-corrections officer turns himself in for filing fake report that covered up his sex with inmate*, Daily News (July 12, 2017), <https://www.nydailynews.com/new-york/ex-jail-officer-surrenders-report-hid-sex-inmate-article-1.3321513>.

ix. On August 15, 2017, Jeffrey Green, a correction officer at BHCF, was sentenced to nine months in prison for sexually assaulting an inmate.³⁸

138. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that DOCCS staff and officials—including several of the Defendants here—have been party to a number of injunctive and damages cases brought in both state and federal courts by female prisoners who have been victims of staff sexual abuse at BHCF. These cases include *Amador v. Andrews*, No. 1:03-cv-00650-KTD-GWG (S.D.N.Y. 2003), *Jones v. Annucci*, No. 1:16-cv-01473-RA (S.D.N.Y. 2016), *Doe v. Kaplan*, No. 7:16-cv-09870-NSR (S.D.N.Y. 2018), *Pusepa v. Annucci*, No. 1:17-cv-07954-RA-OTW (S.D.N.Y. 2019) and *Stone v. Annucci*, No. 1:20-cv-01326-RA (S.D.N.Y. 2020).

139. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that several women have brought similar claims against the State for sexual harassment, exploitation and abuse by officers in the New York State Court of Claims, including suits involving officers with prior complaints of sexual abuse. *See, e.g., Patterson v. State of New York*, 44 Misc. 3d 1230(A) (N.Y. Ct. Cl. Aug. 29, 2014) (granting the claimant’s motion for summary judgment and finding State liable when an officer sexually assaulted her following repeated complaints of sexual abuse by other prisoners); *Anna O. v. State*, No. 114085, M-80202 (N.Y. Ct. Cl. Aug. 15, 2012)

³⁸U.S. Dep’t of Just., *Former Correction Officer Sentenced to 9 Months in Prison for Violating Inmate’s Civil Rights Through Abusive Sexual Contact* (Aug. 15, 2017), <https://www.justice.gov/usao-sdny/pr/former-correction-officer-sentenced-9-months-prison-violating-inmate-s-civil-rights>.

(finding State liable when “Defendant had notice of [Officer’s] propensity to pursue unauthorized relationships with inmates and yet left him in the position to continue to pursue the same, which was the proximate cause of the later rape of Claimant by [Officer].”); *Morris v. State*, Cl. No. 100694-A, M-80583 (N.Y. Ct. Cl. Mar. 6, 2012) (finding State liable when Officer had multiple previous unsubstantiated allegations of sexual assault against him, and was permitted to continue supervising inmates, in some cases as a roundsman under “diminished supervision”).

140. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that the above cases and reported complaints represent only a fraction of incidents of sexual harassment, exploitation and abuse in prisons, given the prevalence of under-reporting in such environments.³⁹

141. On information and belief, Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware of prior complaints against one or more of the correction officers named in this Complaint, including Defendant Sergeant B.

K. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez Failed To Enact Supervisory Policies that Would Prevent Sexual Abuse by DOCCS Staff, and Defendants Annucci, Effman, Maher, Nunez, Shipley,

³⁹Kubiak et al., *supra* note 8, at 361 (“[S]tudies related to the reporting of sexual assault among college students, military services members, and prison inmates suggest rates even lower than the national average. However, incarceration may be a particularly challenging setting in which to report a sexual assault, particularly if the assault was perpetrated by a staff member.”) (internal citations omitted); U.S. Dep’t of Just., *Prison Rape Elimination Act Regulatory Impact Assessment*, 17 (May 17, 2012), <https://www.prearesourcecenter.org/sites/default/files/library/prearia.pdf> (“[O]nly a fraction of incidents of sexual abuse in a prison environment will typically come to the attention of correctional authorities or be reflected in institutional records.”); Am. C. L. Union, *Caught in the Net: The Impact of Drug Policies on Women and Families*, 47 (2005), <https://www.aclu.org/caught-net-impact-drug-policies-women-and-families> (“Incarcerated women told human rights monitors that they were reluctant to file grievances, fearing that prison officials would not believe them and that staff would retaliate.”).

Kaplan, Daye, Velez, Captain A, Captain B, Lieutenant A, Sergeant A and Sergeant B Failed To Enforce Existing Policies.

142. Despite knowing of the risk and frequency of sexual misconduct by prison staff (including supervisory staff) in BHCF, Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez recklessly disregarded those risks and failed to protect the inmates in their custody from harm.

143. Defendants Annucci, Effman, Kaplan, Daye and Velez inadequately supervised and trained correction officers and higher-level staff, thereby placing female inmates at a heightened risk of sexual assault and abuse.

144. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez failed to enact new policies or enforce existing policies intended to protect female inmates from sexual abuse by prison staff.

145. Defendants Annucci, Effman, Kaplan, Daye and Velez supervised male staff guarding female inmates no differently from the way they would supervise same-gender supervision of men and failed to provide any specific training for staff on how to manage female offenders.

146. Defendants Annucci, Effman, Kaplan, Daye and Velez permitted correction officers to access female inmates in unmonitored areas for extended periods of time, allowed correction officers to escort female inmates unaccompanied and unmonitored and enabled correction officers to coordinate among themselves to help each other avoid detection or repercussions while committing acts of sexual assault and abuse.

147. On information and belief, Defendant Kaplan allowed male correctional staff, including Defendants Officer C and Sergeant B, to choose their own assignments without regard to the number or severity of prior allegations made against them by female inmates.

148. On information and belief, Defendants Annucci, Effman, Kaplan, Daye and Velez failed to enact adequate rules and policies to monitor and discipline staff engaged in behavior that constitutes warning signs of sexual abuse, such as spending a disproportionate amount of time talking to a particular prisoner, repeatedly requesting a particular prisoner for a particular assignment, discussing their personal life with a prisoner or asking a prisoner personal questions. Staff were not disciplined or informally counseled when supervisors witnessed behavior that is indicative of warning signs of sexual abuse.

149. On information and belief, Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez failed to employ obvious measures to reduce the risk of sexual misconduct between staff and women prisoners and to prevent misconduct from occurring, escalating or continuing. These include measures such as heightened monitoring of situations where there have been warning signs of sexual misconduct or inappropriate relationships; preventing staff access to an inmate who has made allegations of sexual misconduct toward the staff while the allegation is investigated; searches of correctional staff; use of lie detectors; real-time review of video camera feeds; periodic review of camera footage; use of electronic recording devices; exit interviews of prisoners upon transfer and release; random interviews of staff and prisoners; and frequent, varied and unannounced rounds by supervisory officials.

150. Defendants Annucci, Effman, Maher, Nunez, Shipley and Daye failed to ensure that investigators applied consistent standards in determining whether to substantiate an allegation of staff sexual misconduct and refer it for administrative action or timely obtain physical evidence when such evidence was available.

151. Defendants Annucci, Effman, Maher, Nunez, Shipley and Daye failed to ensure that investigators gave weight to indicia of sexual misconduct in the absence of physical evidence, including evidence of staff persons being seen out of place; staff persons engaging in behavior suggestive of an inappropriate relationship; and staff giving contradictory statements to investigators.

152. Defendants Annucci, Effman, Maher, Nunez, Shipley and Daye failed to ensure that investigators gave adequate weight to the credibility of prisoner witnesses and failed to ensure that investigators did not give undue weight to statements of staff.

153. Defendants Annucci, Effman, Maher, Nunez, Shipley and Daye failed to ensure that investigations into allegations of sexual abuse were thoroughly and timely conducted, and thus, they often resulted in biased and unreliable refusals to substantiate women prisoners' complaints.

154. On information and belief, Defendants Annucci, Effman, Maher, Nunez, Shipley and Daye failed to ensure that their investigations gave adequate weight to similar prior complaints of sexual misconduct against the same staff member. Such patterns may include allegations that a staff member has used the same language in propositioning more than one woman prisoner or allegations that an officer has taken more than one woman prisoner to the same location to engage in sexual abuse.

155. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez created a culture, custom and practice of ignoring sexual abuse and assault by failing to investigate or discipline BHCF officers who knew of instances of sexual abuse, assault or harassment against inmates by DOCCS staff and failed to report such information.

156. On information and belief, none of the events described in paragraphs 63-66 and 70-126 resulted in appropriate investigations into or disciplinary action against staff members who knew of the misconduct and failed to report it, even though Ms. Smith reported these incidents of abuse.

157. Defendants Annucci, Effman, Kaplan, Daye and Velez have failed to take sufficient action when officers leave their assigned posts, go to areas of the prison where they have no work-related reason to enter and engage in behavior that is clearly suggestive of inappropriate harassment or relationships.

158. On May 20, 2019, Defendant Lieutenant A allowed Defendant Officer C to enter the TBU for no work-related reason. While there, Defendant Officer C made inappropriate sexual comments to and gestures at Ms. Smith. Defendant Officer C also had no reason to be in the package room on April 9, 2019 or the medical clinic on June 4, 2019, where Defendant Sergeant B permitted him, neither of which were his assigned areas. He was never reported, disciplined or reprimanded for this behavior.

159. Defendants Annucci, Effman, Kaplan, Daye and Velez failed to promulgate policies that provided for additional rounds to more closely supervise staff about whom complaints of sexual abuse had been made.

160. Staff who were the subject of credible or repeated allegations of sexual abuse were allowed to continue their usual posts and permitted to access private or unmonitored areas. They were even permitted to continue to guard or have contact with or proximity to inmates who have complained about the officer.

161. To the extent Defendants Annucci, Effman, Kaplan, Daye and Velez installed or required installation of surveillance cameras, use of those cameras for supervision or investigation was, at all relevant times, grossly inadequate to protect female inmates.

162. Surveillance cameras were not installed in many locations at BHCF. Many enclosed and isolated areas inside the prison, or isolated areas on the grounds of the prison, where sexual abuse is more likely to occur, or has been reported to have occurred, are completely outside of any video or audio surveillance. These areas included the area outside the package room and certain parts of the recreation yard.

163. For areas for which there were privacy concerns, like the medical units, clinic and infirmary, Defendants Annucci, Effman, Kaplan, Daye and Velez permitted officers to have virtually unfettered access to private, unmonitored regions within these areas and failed to set up camera surveillance.

164. Defendants Annucci, Effman, Kaplan, Daye and Velez failed to prohibit officers from being alone with women prisoners in such areas where sexual abuse of female inmates is easily accomplished. When instances of staff sexual misconduct were substantiated, they were often found to have occurred in these isolated, and largely unmonitored, areas.

165. It was widely known in BHCF among the inmates and staff that certain areas in the recreation yard, outside the package area and in medical units were not monitored and that frequent sexual activity between staff and inmates occurred there. Defendants Effman, Kaplan, Daye, Velez, Captain A, Captain B, Lieutenant A, Sergeant A and Sergeant B took no action to locate these blind spots or encourage staff to report them.

166. It is also widely known in BHCF that DOCCS staff frequently do not wear or turn on their body cameras, even when male staff are alone with female inmates and out of view of fixed cameras. Defendants Effman, Kaplan, Daye, Velez, Captain A, Captain B, Lieutenant A, Sergeant A and Sergeant B failed to ensure that policies requiring wearing active body cameras were followed consistently and that appropriate discipline was issued for non-compliance by a staff member.

167. To the extent DOCCS nominally requires staff to wear or turn on body cameras, use of those cameras for supervision or investigation was, at all relevant times, grossly inadequate to protect female inmates.

168. Defendant Sergeant B took advantage of the lack of cameras (both fixed and otherwise) within BHCF to assault Ms. Doe in the bathroom in the school building.

169. Defendant Sergeant B took advantage of the lack of cameras (both fixed and otherwise) within BHCF to direct Ms. Smith to a room where he could masturbate while having her expose her breasts.

170. Defendant Officer C took advantage of the lack of cameras (both fixed and otherwise) in the area outside the package room to force Ms. Smith to perform oral sex on him on April 9, 2019, without getting caught.

171. Defendants Officer C and Sergeant B took advantage of the lack of cameras (both fixed and otherwise) in the medical unit to rape Ms. Smith on June 5, 2019, without getting caught.

172. On information and belief, Defendants Annucci, Effman, Kaplan, Daye and Velez failed to enact and enforce adequate rules and policies that dictated the content and substance of limited supervisory rounds.

173. On information and belief, facility supervisory rounds consisted of merely stopping by the assigned line officer's desk or office, signing the logbook and nothing more.

174. On information and belief, there was no requirement that supervisory staff must see each officer on duty, check in verbally with each officer, ask the officers any particular questions, speak with the prisoners in a housing unit or program assignment, or ask them if they have problems, or that they observe the entire area, the prisoners and the staff, for any misconduct, or make any notations on what they observe.

175. On information and belief, supervision did not include observation and counseling or discipline for officers engaged in behavior evincing warning signs of sexual abuse, including engaging in personal conversations with inmates, sharing personal items with inmates or repeatedly requesting a particular inmate for special assignments in secluded locations.

176. On information and belief, Defendants Annucci, Effman, Kaplan, Daye and Velez failed to require a set number and frequency of supervisory rounds by most supervisory officers. Only rounds by Defendant Kaplan and her executive team were required at a specified frequency, and that was only once a week, with no other written policies and procedures directing the frequency and regularity of rounds. In practice, sergeants typically visit each post once or twice per shift.

177. Defendants Annucci, Effman, Kaplan, Daye and Velez failed to require unpredictable supervisory rounds. Facility supervisors routinely conducted rounds in a predictable manner, failing to vary their time, frequency and point of entry, leaving staff able to predict periods of time, such as the time around shift change or after a supervisor has passed through, when they can virtually be assured that they can engage in misconduct with female inmates without being discovered.

178. When Defendant Officer C began to escort Ms. Smith from the package room on April 9, 2019, he knew the timing of supervisors' rounds. This knowledge of a set schedule enabled him to be confident that he would not be interrupted as he sexually abused Ms. Smith, particularly because two other officers served as "lookouts" for him in the recreation yard.

179. When Defendant Sergeant B escorted Ms. Smith to the medical clinic on June 5, 2019, ostensibly to get her medical help, he knew the timing of supervisors' rounds. This knowledge of a set schedule enabled him to be confident that he and Defendant Officer C would not be interrupted as they sexually abused Ms. Smith.

FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS OFFICER C, OFFICER D, UNIDENTIFIED OFFICER AND SERGEANT B

EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

-Cruel and Unusual Punishment-

180. Plaintiffs repeat and reallege paragraphs 1-179 as though set forth in full herein.

181. In forcing Ms. Doe to perform oral sex on him in the spring of 2019, Defendant Sergeant B acted willfully and wantonly for his own sexual gratification.

182. In directing Ms. Smith to expose her breasts to him while he masturbated, Defendant Sergeant B acted willfully and wantonly for his own sexual gratification.

183. In forcing Ms. Smith to perform oral sex on him on April 9, 2019, in entering the TBU for no work-related purpose on May 20, 2019, to blow Ms. Smith a kiss and tell her he loved her, and in raping Ms. Smith in the medical clinic on June 5, 2019, Defendant Officer C acted willfully and wantonly for his own sexual gratification.

184. In raping Ms. Smith on June 5, 2019, after determining that she was in a vulnerable state following the assault she suffered just one day earlier, Defendant Sergeant B acted willfully and wantonly for his own sexual gratification.

185. In shoving an ungloved hand down Ms. Smith's pants and sticking a finger in her vagina while Defendant Unidentified Officer held Ms. Smith in place and then punching her in the face while she remained restrained in an elevator on June 4,

2019, Defendant Officer D acted willfully and wantonly for her own sexual gratification and sadistic purposes.

186. In restraining Ms. Smith and holding her steady while Defendant Officer D abusively frisked her and then punched her in the face, Defendant Unidentified Officer acted willfully and wantonly for her own sadistic purposes.

187. There was no penological justification for the conduct set forth in paragraphs 181-186 above.

188. Defendant Sergeant B's, Defendant Officer C's, Defendant Officer D's, and Unidentified Officer's conduct was unreasonable and violated Plaintiffs' clearly established constitutional right to be free from cruel and unusual punishment.

189. Defendant Sergeant B's, Defendant Officer C's, Defendant Officer D's and Unidentified Officer's conduct constituted cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution.

SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS VELEZ, CAPTAIN A, CAPTAIN B, SERGEANT A, LIEUTENANT A, OFFICER A, OFFICER B, GRIEVANCE SUPERVISOR A, INVESTIGATOR A AND UNIDENTIFIED OFFICER

**EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION
-Failure To Protect-**

190. Ms. Smith repeats and realleges paragraphs 1-179 as though set forth in full herein.

191. Correction officers and staff, including contractual staff, have a duty to report any allegation of sexual abuse or sexual harassment of an inmate, and to report any actual knowledge or reasonable belief concerning any incident of sexual

abuse, sexual harassment or the existence of an inappropriate relationship between a staff member and an inmate.

192. Correction officers and staff have a duty to take reasonable steps to protect inmates in their care and custody and to intervene when the constitutional rights of inmates are violated.

193. The above-named Defendants violated this duty when they deliberately ignored evidence that Defendants Sergeant B, Officer C and Officer D had sexually abused and harassed Ms. Smith and failed to take any meaningful steps to protect Ms. Smith from this abuse.

194. The deliberate failures of these Defendants, acting under color of state law, to protect Ms. Smith from abuse violated her right to be free from cruel and unusual punishment, as guaranteed by the Eighth and Fourteenth Amendments of the U.S. Constitution.

195. As a direct and proximate cause of these deliberate acts and omissions, Ms. Smith suffered severe physical and psychological harm.

THIRD CLAIM FOR RELIEF AGAINST DEFENDANT OFFICER E

**EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION
-Failure To Protect-**

196. Ms, Doe repeats and realleges paragraphs 1-179 as though set forth in full herein.

197. Correction officers and staff, including contractual staff, have a duty to report any allegation of sexual abuse or sexual harassment of an inmate, and to report any actual knowledge or reasonable belief concerning any incident of sexual

abuse, sexual harassment or the existence of an inappropriate relationship between a staff member and an inmate.

198. Correction officers and staff have a duty to take reasonable steps to protect inmates in their care and custody and to intervene when the constitutional rights of inmates are violated.

199. Defendant Officer E violated this duty when he failed to intervene while Defendant Sergeant B was assaulting Ms. Doe, despite knowing what was taking place. Defendant Officer E failed to take any steps to protect Ms. Doe from this abuse.

200. The deliberate failure of Defendant Officer E, acting under color of state law, to protect Ms. Doe from abuse violated her right to be free from cruel and unusual punishment, as guaranteed by the Eighth and Fourteenth Amendments of the U.S. Constitution.

201. As a direct and proximate cause of these deliberate acts and omissions, Ms. Doe suffered severe physical and psychological harm.

**FOURTH CLAIM FOR RELIEF AGAINST SUPERVISORY DEFENDANTS
ANNUCCI, EFFMAN, NUNEZ, KAPLAN, MAHER, SHIPLEY, DAYE AND
VELEZ**

**EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION**

**-Failure To Implement Policies and Practices To Avoid Violations of Constitutional
Rights and Failure To Train/Supervise Employees-**

202. Plaintiffs repeat and reallege paragraphs 1-179 as though set forth in full herein.

203. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that correction officers at BHCF were repeatedly accused, charged and criminally convicted of sexually abusing female inmates.

204. At the time of the events at issue, Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were aware that correction officers at BHCF routinely carried on sexual relationships with inmates, which was also known to the inmate population.

205. Defendant Velez knew from Ms. Smith's prison file that she was at high risk of sexual harassment, exploitation and abuse given her history of being a victim of sexual exploitation, psychological conditions and small build.

206. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez nevertheless failed to implement or enforce policies to protect Ms. Smith, Ms. Doe or other inmates at BHCF from sexual abuse and harassment by correction officers and higher-level staff.

207. At the time of the events at issue, Defendant Sergeant B was known to have engaged in sexual relationships with inmates. Despite that, Defendants Kaplan, Daye and Velez failed to prevent him from interacting with inmates or from being alone with inmates without adequate camera coverage or supervision.

208. As of May 21, 2019, Defendant Officer C had been accused of forcing Ms. Smith to perform oral sex and yet, Defendants Kaplan, Daye and Velez failed to prevent Defendant Officer C from being able to have access to Ms. Smith.

209. Through their acts and omissions, Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez created a custom and implicit policy

authorizing BHCF staff to deliberately ignore evidence of sexual misconduct and sexual assault on the part of correction officers against female inmates.

210. Defendants Annucci, Effman, Maher, Nunez, Shipley, Kaplan, Daye and Velez were deliberately indifferent to the serious risk of sexual violence and harassment of female inmates at the hands of correction officers at BHCF.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment against Defendants, jointly and severally, as follows:

- a. Awarding Plaintiffs compensatory damages in an amount to be determined at trial;
- b. Awarding Plaintiffs punitive damages in an amount to be determined at trial which is sufficient to deter Defendants from future unlawful conduct;
- c. Awarding Plaintiffs costs, disbursements and reasonable attorneys' fees; and
- d. Granting Plaintiffs such other and further relief as the Court deems just and proper.

July 9, 2021

CRAVATH, SWAINE & MOORE LLP,

by

/s/ David M. Stuart

David M. Stuart

A member of the Firm

Worldwide Plaza

825 Eighth Avenue

New York, NY 10019

(212) 474-1000

dstuart@cravath.com

*Attorney for Plaintiffs Jane Smith and Mary
Doe*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
SUE BROWN, ANN JOHNSON, and MARY
DAVIS, on behalf of themselves and all others
similarly situated,

Plaintiffs,

- against -

THE CITY OF NEW YORK,

ANTHONY J. ANNUCCI, Acting Commissioner of the
New York State Department of Corrections and
Community Supervision,

JASON EFFMAN, Associate Commissioner and PREA
Coordinator for the New York State Department of
Corrections and Community Supervision,

STEVEN MAHER, Chief of Investigations, Office of
Special Investigations, New York State Department of
Corrections and Community Supervision,

CHRISTIAN NUNEZ, Deputy Chief of the Sex Crimes
Division, Office of Special Investigations, New York
State Department of Corrections and Community
Supervision,

JOHN SHIPLEY, Director, Bureau of Labor Relations,
New York State Department of Corrections and
Community Supervision,

SABINA KAPLAN, Superintendent of Bedford Hills
Correctional Facility,

MICHAEL DAYE, Deputy Superintendent for Security at
Bedford Hills Correctional Facility,

ELAINE VELEZ, Assistant Deputy Superintendent and
PREA Compliance Manager at Bedford Hills Correctional
Facility,

No. 1:21-CV-10492

COMPLAINT

Jury Trial Demanded

CORRECTION OFFICER A, Bedford Hills Correctional Facility,

CORRECTION OFFICER B, Bedford Hills Correctional Facility,

CORRECTION OFFICER C, Bedford Hills Correctional Facility,

CORRECTION OFFICER D, Bedford Hills Correctional Facility,

CORRECTION OFFICER E, Bedford Hills Correctional Facility,

CORRECTION OFFICER F, Bedford Hills Correctional Facility,

CORRECTION OFFICERS JANE JONES #1-17,
Bedford Hills Correctional Facility (True Names Being Presently Unknown and Fictitious to Plaintiffs),

CORRECTION OFFICERS JOHN JONES #1-15,
Bedford Hills Correctional Facility (True Names Being Presently Unknown and Fictitious to Plaintiffs),

Defendants.

----- X

Plaintiffs, SUE BROWN, ANN JOHNSON, and MARY DAVIS, on behalf of themselves and all others similarly situated, by and through their attorneys, The Aboushi Law Firm, PLLC, as and for their Complaint, allege as follows:

PRELIMINARY STATEMENT

1. This is a civil rights putative class action brought by Plaintiffs, SUE BROWN, ANN JOHNSON, and MARY DAVIS, on behalf of themselves and all other similarly situated women and transgender pre-trial detainees who have been or will be transferred from the

custody of the New York City Department of Correction to the custody of the New York State Department of Corrections and Community Supervision.

2. On October 13, 2021, New York State Governor Kathy Hochul announced that she and New York City Mayor Bill de Blasio would transfer all women and transgender people from Rikers Island's ("Rikers") Rose M. Singer Center ("RMSC"), the only jail out of ten on Rikers for women and transgender people,¹ and incarcerate them at state prisons for sentenced people,² including at Bedford Hills Correctional Facility ("BHCF")³. Approximately 230 women and

¹ Defendants are moving only women and transgender people from RMSC to state prisons for sentenced persons. Male detainees at New York City jails, however, will remain at New York City jails until the resolution of their cases. While Governor Hochul and Mayor De Blasio, with great fanfare, led the public to believe that they planned to close RMSC, upon information and belief, Defendant the City of New York already has moved men from the men's jails to RMSC. In addition to violating their due process and equal protection rights under the Fourteenth Amendment to the United States Constitution, the transfer of women and transgender people, but not men from men's jails, to state prisons for sentenced people, also violates Plaintiffs' rights under Rule 2 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which forbids, in relevant part, discrimination based on gender. *See* <https://undocs.org/A/RES/70/175>

²In a document RMSC staff gave pre-trial detainees before they were transferred to BHCF entitled "Bedford Hills Correctional Facility Fact Sheet – What You Should Know!" Defendants boldly state, in response to the question: "Will I be co-mingled with sentenced women at Bedford Hills?" "Yes. You will be housed based on classification and other factors in housing units that mix women from RMSC and women sentenced at Bedford Hills." In addition to violating their Fourteenth Amendment right to due process, housing Plaintiffs, who are pre-trial detainees, with sentenced people also violates Rule 112 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which states, in relevant part: "Untried prisoners shall be kept separate from convicted prisoners." *See* <https://undocs.org/A/RES/70/175>

³ BHCF is a maximum-security women's prison that has among the highest rates of allegations of sexual victimization by staff of all New York prisons. *See* https://doccs.ny.gov/system/files/documents/2021/06/annual-report-on-sexual-victimization-2014-2018-with-2019-aggregated-data-final_0.pdf

transgender people were expected to be moved from RMSC⁴ to BHCF and Taconic Correctional Facility, which are about fifty-four miles from New York City.⁵

3. Defendants, by transferring women and transgender pre-trial detainees from Rikers to New York state prisons, have taken them out of the frying pan into the fire; a survey by the Bureau of Justice of prisons around the country found that five of the seven New York State prisons in the study reported staff sexual misconduct rates above the national average.⁶
4. The transfers from Rikers to BHCF began on or about October 18, 2021. Just weeks later, Defendant Correction Officer (“CO” or “Correction Officer”) A, assaulted Plaintiff Sue Brown, a recent pre-trial detainee from Rikers, at the area where she was told to go to complete intake procedures. On November 9, 2021, at approximately 10:30 a.m., Plaintiff Sue Brown was walking to classification, which is a process whereby transferees undergo a mental health screening.
5. Plaintiff Sue Brown, who weighs 100 pounds and is 5’2”, stood at a large metal door waiting for a woman CO to push a button to unlock the door and permit her to enter the next section of the facility. Plaintiff placed her hand on the door handle and made eye contact with the woman CO, as she mouthed to her to open the door.

⁴ <https://www.nbcnewyork.com/news/local/new-york-moving-women-and-trans-inmates-from-rikers-island-to-upstate-lockups/3321852/>

⁵ Moving incarcerated people far from their homes violates Rule 59 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which states: “Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.” See <https://undocs.org/A/RES/70/175>

⁶ David Reutter, *Staff-on-Prisoner Sexual Abuse Persists in New York Prisons*, Prison Legal News (Feb. 3, 2016), <http://www.prisonlegalnews.org/news/2016/feb/3/staff-prisoner-sexual-abuse-persists-new-york-prisons/>.

6. Defendant Correction Officer A, a man who approximately is 6'2" and 250 lbs., was on the other side of the door. He yelled at Plaintiff: "Hold the fuck on and stop pulling the fucking handle." Startled, Plaintiff replied that she was not talking to him, but that she was trying to get the attention of the woman CO to unlock the door for her.
7. Defendant Correction Officer A directed the woman CO to unlock the door immediately and, when she did, Plaintiff Sue Brown opened the door and stepped into the doorway. Then, Defendant Correction Officer A put his nose against her nose and yelled, "you want a fucking problem? You think you're fucking tough? Yea what's up?"
8. Defendant Correction Officer A grabbed Plaintiff by her throat and, while choking her, he lifted her off the ground and threw her onto the stairs, causing her head to slam against the floor.
9. Dazed and in pain, Plaintiff Sue Brown attempted to stand up. When she was barely on her feet, Defendant Correction Officer A punched Plaintiff in the face twice, with closed fists. Defendant Correction Officer A then yelled "What's up now? You're state property now. You think you're tough."
10. Plaintiff Sue Brown dropped to the floor in excruciating pain. Defendant Correction Officer A tried to hit Plaintiff Sue Brown again, while she was on the ground, but he was held back by two correction officers.
11. After Defendant Correction Officer A attacked *her*, BHCF staff then incarcerated Plaintiff Sue Brown in solitary confinement for about eight days. Plaintiff Sue Brown was wrongfully charged with assaulting a correction officer, disturbing the peace, and disobeying an order (for pulling on the door handle). The charges of assaulting a correction officer and disturbing the

peace later were dropped, when a video recording of the assault proved Defendant Correction Officer A's statements to be false.

12. Defendants Correction Officer D, Correction Officer F, and Correction Officers Jane Jones #1 and #2 sexually abused Plaintiff Sue Brown, Plaintiff Ann Johnson, and Plaintiff Mary Davis upon their arrivals at BHCF by ordering them to strip naked, squat, and bend over until Defendants could "see the pink" of the insides of their vaginas and anuses.⁷
13. On November 5, 2021, Defendant Correction Officer John Jones #1, who is a man, just three days after the transfer to BHCF of Plaintiff Mary Davis, who is Muslim and wears a hijab, forced her to leave the shower stall while she was naked and walk the corridors, where men and women were present, with just a towel wrapped around her.
14. In their first week at BHCF, Defendant Correction Officer E threatened Plaintiff Ann Johnson and other Rikers transferees that he would order sentenced incarcerated people to pick them up, drop them on their heads, and beat them up. Defendant Correction Officer E's threats, made in the presence of multiple BHCF staff, including Deputy Miller, captains, sergeants and other deputies, frightened the transferees.
15. Defendant Correction Officer E, moreover, told Plaintiff Mary Davis that she was not in Rikers anymore and to expect more abusive encounters. Plaintiff Mary Davis was threatened by

⁷ In addition to violating their rights to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution, Defendants' unreasonable searches of Plaintiffs also violate Rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which states, in relevant part: "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to ... inhuman or degrading treatment...." *See* <https://undocs.org/A/RES/70/175>

Defendant COs John Jones #2 and #3 multiple times, including in line while walking to and from meals and while in intake.

16. Plaintiffs assert that, by transferring them to state prison, Defendants cost them serious physical, sexual, mental, and other harm, including access to their counsel⁸ and their ability to mount a meaningful defense.⁹ Defendants' acts and omissions also have prevented Plaintiffs, who often are primary care givers, from visiting with their families.¹⁰

17. Plaintiffs Sue Brown, Ann Johnson, and Mary Davis challenge the unlawful transfer of women and transgender pre-trial detainees from RMSC because it is in violation of their Fourteenth Amendment rights to due process and equal protection, their Sixth Amendment rights to counsel and access to the courts, their Fourth Amendment rights to be free from unreasonable searches and seizures, their Eighth Amendment right to be free from cruel and unusual

⁸ People who are awaiting trial, unlike sentenced people, have a Sixth Amendment right to an *unimpeded* criminal defense. *Benjamin v. Fraser*, 264 F.3d 175, 184-188 (2d Cir. 2001); *Covino v. Vermont Dep't of Corrections*, 933 F.2d 128, 130 (2d Cir. 1991) (trial court should examine whether transfer impaired right to counsel).

⁹ Depriving incarcerated people of access to counsel also violates Rule 61(1)(3) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which states, in relevant part: "Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship...." *See* <https://undocs.org/A/RES/70/175>

¹⁰ "There is evidence that regular visits have substantial benefits, for incarcerated people and their families. A 2011 study looking at over 16,000 people released in Minnesota over a four-year period found that visits significantly lowered the risk of recidivism. Despite the documented benefits, too frequently policymakers seek to discourage visits, including in New York, where an estimated 105,000 children have incarcerated parents." <https://theappeal.org/the-need-to-support-visits-for-incarcerated-people-and-their-families/>

punishment, their Thirteenth Amendment right to be free from slavery and involuntary servitude, and their rights under the New York Constitution and New York law.

18. The transfer of Plaintiffs and similarly situated women and transgender people who are pre-trial detainees from a jail to a state prison for convicted people is to impose a punishment not issued by any court, jury, or guilty plea of the accused but, rather, imposes punishment without due process.
19. Plaintiffs seek a class-wide judgment declaring that the transfer of pre-trial detainees to state prisons for sentenced persons violates the United States and New York Constitutions.
20. Plaintiffs also seek a class-wide injunction enjoining Defendants from continuing to enforce these unconstitutional policies, directing Defendants to immediately cease all transfers of pre-trial detainees to state prisons for sentenced persons, and to release from custody or return back to RMSC all pre-trial detainees who have been transferred to state prisons.
21. Plaintiffs further seek, individually and on behalf of each putative class member, an award of compensatory and punitive damages, in an amount to be determined at trial.
22. Plaintiffs also seek, on their own behalf and on behalf of the members of the class, an award of attorneys' fees and costs, and such other relief as this Court deems just and equitable.

JURISDICTION

23. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331.
24. This action arises under the Fourteenth, Sixth, Fourth, Eighth, and Thirteenth Amendments to the United States Constitution.
25. Supplemental jurisdiction is conferred upon this Court by 28 U.S.C. § 1367 over any and all state law claims that are so related to the federal claims that they form part of the same case or controversy.

VENUE

26. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) as at least one of the Defendants has a principal place of business in this district and a substantial part of the events and/or omissions were committed in this district.

PARTIES

27. Plaintiff SUE BROWN is a woman pre-trial detainee who initially was held at Rikers, then transferred by Defendants to BHCF. She currently is being held at BHCF.

28. Plaintiff ANN JOHNSON is a woman pre-trial detainee who initially was held at Rikers, then transferred by Defendants to BHCF. She currently is being held at BHCF.

29. Plaintiff MARY DAVIS is a woman pre-trial detainee who initially was held at Rikers, then transferred by Defendants to BHCF. She currently is being held at BHCF.

30. Defendant City of New York (“the City”) is a municipal entity created and authorized under the laws of the State of New York. The City is authorized by law to maintain a department of correction, and does maintain the New York City Department of Correction (“DOC”), which acts as its agent in the area of incarceration and detention and for which it ultimately is responsible. The City assumes the risks incidental to the maintenance of a correction department and the employment of correction staff.

31. Defendant Anthony J. Annucci was at all relevant times the Acting Commissioner of the New York State Department of Corrections and Community Supervision (“DOCCS”) and responsible for enacting policies and procedures to protect the safety of individuals housed in DOCCS facilities and ensuring the enforcement of DOCCS policies and practices. Defendant

Annucci is sued herein in his individual capacity.

32. Defendant Jason Effman was at all relevant times the Associate Commissioner and Prison Rape Elimination Act (“PREA”) Coordinator for DOCCS and was responsible for developing, implementing and overseeing DOCCS’s compliance with PREA standards in its facilities. Defendant Effman is sued herein in his individual capacity.

33. Defendant Steven Maher was at all relevant times the Chief of Investigations for the DOCCS’s OSI (previously known as the Office of the Inspector General). He is responsible for the investigation of complaints of criminal misconduct or violations of Departmental rules by DOCCS employees, including complaints of sexual harassment and abuse; for determining the standards by which such complaints are assessed; for reviewing all investigations of such complaints; for determining whether such complaints are substantiated; and for recommending whether or not responsive action be taken, including referrals to the Bureau of Labor Relations (“BLR”) for disciplinary action against staff and referrals of allegations of criminal misconduct to law enforcement officials. Defendant Maher is sued herein in his individual capacity.

34. Defendant Christian Nunez was at all relevant times the Deputy Chief of the Sex Crimes Unit for DOCCS’s OSI. He is responsible for the investigation of complaints of criminal or departmental misconduct by DOCCS employees, including complaints of sexual harassment and abuse; for determining the standards by which such complaints are assessed; for reviewing all investigations of such complaints; for determining whether such complaints are substantiated; and for recommending whether or not responsive action should be taken, including referrals to the BLR for disciplinary action against staff and referrals of allegations of criminal misconduct to law enforcement officials. Defendant Nunez is sued herein in his individual capacity.

35. Defendant John Shipley was at all relevant times the Director of DOCCS's BLR. He is responsible for deciding whether and on what terms to pursue disciplinary actions against DOCCS staff who are alleged to have violated DOCCS rules and regulations, including violations consisting of the commission of sexual misconduct. He is responsible for determining the type, scope and manner concerning how evidence will be offered by DOCCS at disciplinary hearings of staff. Defendant Shipley is sued herein in his individual capacity.
36. Defendant Sabina Kaplan was at all relevant times the Superintendent of BHCF. She was at all relevant times responsible for the assignment and removal of staff; the training of staff; the supervision of staff and inmates to ensure a safe environment; the enforcement of DOCCS's rules and regulations related to inmate safety; the housing assignment of inmates within the facility; the review of decisions to place prisoners in punitive or administrative segregation; the investigation of and response to complaints of misconduct against staff, in conjunction with OSI; and the establishment of policies and practices regarding sexual contact and conduct between staff and inmates. Defendant Kaplan was at all relevant times the supervisor of Correction Officer A, Correction Officer B, Correction Officer C, Correction Officer D, Correction Officer E, Correction Officer F, Correction Officers Jane Jones #1-17, and Correction Officers John Jones #1-15. Defendant Kaplan is sued herein in her individual capacity.
37. Defendant Michael Daye was at all relevant times the Deputy Superintendent for Security at Bedford, and was responsible for the training and supervision of staff and inmates to ensure a safe environment, including the enforcement of DOCCS's rules and regulations; the investigation of and response to complaints of misconduct against staff, in conjunction with OSI; decisions concerning the assignment of staff, including whether to remove staff from

contact with prisoners; decisions concerning the assignment of inmates, including whether to remove inmates from contact with certain staff; and for establishing and/or enforcing the customs and practices with regard to sexual contact and conduct between employees and inmates at BHCF. Defendant Daye is sued herein in his individual capacity.

38. Defendant Elaine Velez was at all times the Assistant Superintendent at BHCF and the PREA Compliance Manager. She was responsible for overseeing and assessing PREA compliance efforts within BHCF, maintaining documentation as required under the PREA standards and coordinating with Defendant Effman regarding PREA matters within BHCF. Defendant Velez was at all relevant times the supervisor of Correction Officer A, Correction Officer B, Correction Officer C, Correction Officer D, Correction Officer E, Correction Officer F, Correction Officers Jane Jones #1-17, and Correction Officers John Jones #1-15. Defendant Velez is sued herein in her individual capacity.

39. Defendant Correction Officer A was and is an employee of DOCCS at all times relevant to this Complaint, and was responsible for the care, safety and supervision of Plaintiffs in their day-to-day activities while in the custody of DOCCS. Defendant Correction Officer A's, duties included supervising and ensuring the safety of inmates, including Plaintiffs, at BHCF. Defendant Correction Officer A is sued herein in his individual capacity.

40. Defendant Correction Officer B was and is an employee of DOCCS at all times relevant to this Complaint, and was responsible for the care, safety and supervision of Plaintiffs in their day-to-day activities while in the custody of DOCCS. Defendant Correction Officer B's duties included supervising and ensuring the safety of inmates, including Plaintiffs, at BHCF. Defendant Correction Officer B is sued herein in his individual capacity.

41. Defendant Correction Officer C was and is an employee of DOCCS at all times relevant to this

Complaint, and was responsible for the care, safety and supervision of Plaintiffs in their day-to-day activities while in the custody of DOCCS. Defendant Correction Officer C's duties included supervising and ensuring the safety of inmates, including Plaintiffs, at BHCF. Defendant Correction Officer C is sued herein in his individual capacity.

42. Defendant Correction Officer D was and is an employee of DOCCS at all times relevant to this Complaint, and was responsible for the care, safety and supervision of Plaintiffs in their day-to-day activities while in the custody of DOCCS. Defendant Correction Officer D's duties included supervising and ensuring the safety of inmates, including Plaintiffs, at BHCF. Defendant Correction Officer D is sued herein in her individual capacity.

43. Defendant Correction Officer E was and is an employee of DOCCS at all times relevant to this Complaint, and was responsible for the care, safety and supervision of Plaintiffs in their day-to-day activities while in the custody of DOCCS. Defendant Correction Officer E's duties included supervising and ensuring the safety of inmates, including Plaintiffs, at BHCF. Defendant Correction Officer E is sued herein in his individual capacity.

44. Defendant Correction Officer F was and is an employee of DOCCS at all times relevant to this Complaint, and was responsible for the care, safety and supervision of Plaintiffs in their day-to-day activities while in the custody of DOCCS. Defendant Correction Officer F's duties included supervising and ensuring the safety of inmates, including Plaintiffs, at BHCF. Defendant Correction Officer F is sued herein in her individual capacity.

45. Defendants Correction Officers Jane Jones #s 1-17 were and are employees of DOCCS at all times relevant to this Complaint, and were responsible for the care, safety and supervision of Plaintiffs in their day-to-day activities while in the custody of DOCCS. Defendants Correction Officers Jane Jones #s 1-17's duties included supervising and ensuring the safety of inmates,

including Plaintiffs, at BHCF. Defendants Correction Officers Jane Jones #s 1-17 each is sued herein in her individual capacity.

46. Defendants Correction Officers John Jones #s 1-15 were and are employees of DOCCS at all times relevant to this Complaint, and were responsible for the care, safety and supervision of Plaintiffs in their day-to-day activities while in the custody of DOCCS. Defendants Correction Officers John Jones #s 1-15's duties included supervising and ensuring the safety of inmates, including Plaintiffs, at BHCF. Defendants Correction Officers John Jones #s 1-15 each is sued herein in his individual capacity.

JURY DEMAND

47. Plaintiffs demand a trial by jury in this action on each and every one of their claims for which a jury trial is legally available.

STATEMENT OF FACTS

48. On October 13, 2021, about 128 people detained at RMSC signed a petition opposing their transfers to BHFC.¹¹ The petitioners asked Defendants, in relevant part: "What is really the sudden emergency? And how does making female detainees more isolated and less able to meet with counsel; court, advocates, and visitors address the emergency?" The women and transgender people held at RMSC at Rikers vehemently oppose being moved to a prison for sentenced people.

49. The people detained at RMSC were not alone in pleading Defendants to stop the transfers; more than fifty organizations from around the country, including the National Organization for

¹¹ A copy of the petition is found here: <https://www.bronxdefenders.org/more-than-70-incarcerated-women-and-transgender-new-yorkers-at-rikers-island-release-petition-protesting-transfers-to-upstate-prisons/>

Women, the Transgender Law Center, and the Center for Constitutional Rights, asked Mayor De Blasio and Gov. Hochul to stop the transfers of women and transgender people to state prisons.¹² The organizations stated, in relevant part: “Shipping women and trans people to state prison will further separate them from families and children, community support, legal defense teams, and social workers.”

The History of Sexual Abuse at BHCF

50. BHCF is a maximum-security, all-women’s prison operated by DOCCS. It is located in Bedford Hills, New York.

51. Prisoners at BHCF, like many prisoners in this country, are at risk of sexual abuse from prison staff, the vast majority of whom are men. Notably, BHCF has *the highest rate* of allegations of sexual victimization relative to the other DOCCS facilities.¹³ DOCCS reported in its 2021 “Annual Report on Sexual Victimization” that, of all the allegations of sexual victimization reported within DOCCS facilities, in 2016, thirty-three took place at BHCF; in 2017, twenty-two took place at BHCF; and, in 2018, thirty-five took place at BHCF.¹⁴

52. It is well known among the prison population at BHCF that corrections staff regularly flirt with, make lewd sexual comments to, proposition and engage in sexual activity with women inmates. Flirtation and sexual comments often occur with impunity in the presence of other inmates and supervisory staff. Inmates and prison supervisors also know that this conduct

¹² <https://www.politico.com/states/new-york/albany/story/2021/11/09/national-womens-lgbt-groups-press-de-blasio-and-hochul-to-stop-rikers-transfers-1392443>

¹³ https://doccs.ny.gov/system/files/documents/2021/06/annual-report-on-sexual-victimization-2014-2018-with-2019-aggregated-data-final_0.pdf

¹⁴ *Id.* at Appendix A, p. 12.

regularly leads to sexual activity between corrections staff and inmates in any of the many locations where corrections staff can be alone and off camera with inmates.

53. Moreover, inmates at BHCF know that if they file grievances against prison staff, they routinely face retaliation by prison staff.¹⁵

54. Awareness of the risk of custodial sexual abuse nationwide led to the enactment of the Prison Rape Elimination Act, 34 U.S.C. § 30301 *et seq.* (2003).

55. Women prisoners are a particularly vulnerable population and face a heightened risk of sexual abuse by male officers.¹⁶ As many as 60 percent to 80 percent of women prisoners have been physically or sexually abused prior to their incarceration.¹⁷ According to a study performed at BHCF, a substantial majority of the women incarcerated in general population at BHCF

¹⁵ “Perhaps the most problematic factor in the grievance process is the retaliation experienced by incarcerated people who speak out against issues and abuses. Fifty one percent of respondents to the post-visit survey at Bedford Hills reported they had faced retaliation or discipline for filing a grievance in the past.” Correctional Ass’n of N.Y., *It Reminds Us How We Got Here: (Re)producing Abuse, Neglect, and Trauma in New York’s Prisons for Women*, 29, https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5f99be40b24f796db9b31cfa/1603911242679/CANY_WomensReport-Full_F.pdf.

¹⁶ Kubiak et al., *supra* note 8, at 362 (“[I]ncarcerated women are sexually victimized at a higher rate than incarcerated men.”).

¹⁷ Allison Hastings et al., *Keeping Vulnerable Populations Safe Under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails*, 12 (April 2015), <https://www.vera.org/downloads/publications/housing-vulnerable-populations-prea-guide-april-final.pdf> (“[W]omen in the criminal justice system report more extensive victimization Histories—including lifetime histories of sexual and physical abuse—than women who have not been incarcerated or men who have been incarcerated. In one study of women in . . . a maximum security prison, more than half (59 percent) of women reported childhood sexual molestation, and 77 percent reported lifetime physical or sexual assaults by non-intimates.”); *see also* U.S. Dep’t of Just., Bureau of Just. Stat., *Prior Abuse Reported by Inmates and Probationers*, 1 (1999), <http://www.bjs.gov/content/pub/pdf/parip.pdf> (57.2 percent of females report abuse before admission to state prison versus 16.1 percent of males. 39.0 percent of female state prison inmates report that they were sexually abused before admission to state prison versus 5.8 percent of males).

reported having experienced sexual abuse or severe violence prior to incarceration.¹⁸ These abuse histories make inmates especially vulnerable to coercion and manipulation.¹⁹

56. In its 2021 Report, for calendar year 2019, DOCCS reported 481 complaints of staff-on-inmate sexual abuse and harassment.²⁰ For the years 2014-2018, DOCCS reported 1,838 such complaints.²¹

57. Three of the eleven prisons in the U.S. with the most staff-on-inmate sexual violence were in New York.²² In 2011, the Review Panel on Prison Rape invited three “high incidence” prisons

¹⁸ Angela Browne et al., *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women*, 22 Int’l. J. of L. and Psych. 301, 312-316 (1999).

¹⁹ A 2013 report from the Department of Justice’s (“DOJ”) Bureau of Justice Statistics states that “[i]nmates who experienced sexual victimization before coming to the facility were also more likely than inmates with no sexual victimization history to report incidents of sexual victimization involving other inmates and staff.” U.S. Dep’t of Just., Bureau of Just. Stat., *Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12*, 19 (May 2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

²⁰ https://doccs.ny.gov/system/files/documents/2021/06/annual-report-on-sexual-victimization-2014-2018-with-2019-aggregated-data-final_0.pdf, Appendix B, p. 15; see also U.S. Dep’t of Just., Bureau of Just. Stat., *Survey of Sexual Violence in Adult Correctional Facilities 2009–2011*, at 7-12 (Jan. 2014), <http://www.bjs.gov/content/pub/pdf/ssvacf0911st.pdf> [hereinafter U.S. Dep’t of Just., *2009-2011 Survey*] (in prisons located in New York, there were 184 allegations of staff sexual misconduct and 24 allegations of staff sexual harassment in 2011; in 2010, 168 allegations of staff sexual misconduct and 65 of staff sexual harassment; and in 2009, 173 allegations of staff sexual misconduct and 38 of staff sexual harassment).

²⁴https://doccs.ny.gov/system/files/documents/2021/06/annual-report-on-sexual-victimization-2014-2018-with-2019-aggregated-data-final_0.pdf, at Section One, p. 2.

²² Eli Hager, *Trust Nobody, and Proceed with Caution*, The Marshall Project (Feb. 20, 2015), <https://www.themarshallproject.org/2015/02/20/trust-nobody-and-proceed-with-caution>; see also U.S. Dep’t of Just., Bureau of Just. Stat., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008- 09*, 9 (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf>.

to appear at its hearings, one of which was a DOCCS facility.²³ One of the experts testifying on this panel found that all of the women's facilities in DOCCS have high rates of staff-on-inmate sexual abuse.²⁴

The Class Representatives

Plaintiff SUE BROWN

58. Plaintiff Sue Brown was detained at Rikers from September 17, 2021 until November 1, 2021, when Defendants transferred her to BHCF. Plaintiff Sue Brown is twenty years old, 5'2" tall, and weighs about 100 pounds.

59. On Friday, October 29, 2021, Plaintiff Sue Brown found out that she was being transferred from RMSC to BHCF on the upcoming Monday, November 1, 2021.

60. With such short notice, Plaintiff Sue Brown could not salvage her personal items and had to throw or give a majority of them away. The mailroom was closed on the weekends and, because Plaintiff's commissary account was frozen, she did not have money available to pay for the mailing. Additionally, she was not permitted to leave her items with other Rikers detainees to mail out for her.

61. Plaintiff Sue Brown was forced to throw away food in the amount of \$80, and clothing including pajamas, bras and other underwear valued at \$90.

²³ G. J. Mazza, U.S. Dep't of Just., *Report on Sexual Victimization in Prisons and Jails*, ii (April 2012), https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/prea_finalreport_2012.pdf.

²⁴ *Id.* at 43.

62. On November 1, 2021, Rikers staff took Plaintiff Sue Brown to the bullpen at RMSC to wait until the BHCF bus arrived at Rikers. A BHCF corrections officer shackled Plaintiff Sue Brown at her feet, hands, over her shoulders and around her waist. Defendants Correction Officers Jane Jones #3 and #4 tightened the cuffs, causing Plaintiff to lose sensation in her hands for the duration of the hour and a half trip to BHCF.²⁵
63. Since her arrival at BHCF, Plaintiff Sue Brown has been assaulted, sexually abused, harassed, intimidated, and threatened by BHCF correction officers.
64. Upon arriving at BHCF, Plaintiff Sue Brown was directed by Defendant Correction Officer F to remove all her clothing, get in the shower, and to use a substance all over her hair and body for lice treatment, although Plaintiff did not have lice. Plaintiff tried to question use of the product and to refuse to use it, but she was denied any information or consultation with a medical professional.
65. After applying the chemical, Defendant Correction Officer F forced Plaintiff to bend over, squat, and spread her buttocks cheeks and vagina until Defendant Correction Officer F saw “enough pink.”
66. After Defendant Correction Officer A assaulted Plaintiff Sue Brown on November 9, 2021, as described above at ¶¶ 4-11, Defendant Correction Officer John Jones #4 placed Plaintiff in handcuffs and took her to the medical clinic, where she was inexplicably forced to strip naked

²⁵ In addition to violation of their rights under the Eighth Amendment to the United States Constitution, the abusive use of instruments of restraint also violates Plaintiffs’ rights pursuant to Rule 47 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which states, in relevant part: “The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.” *See* <https://undocs.org/A/RES/70/175>

and have photos taken of her holding a paper with her name on it. Plaintiff was then taken to an outside hospital for medical care.

67. Upon her return to BHCF, Plaintiff was then taken to the special housing unit (“SHU”), for solitary confinement. Plaintiff was confined in the SHU from November 9, 2021 until her release back to general population at BHCF on November 16, 2021. During that time, Plaintiff was cut off from her family and her attorneys. She was not permitted to make any calls or make anyone aware of what had happened to her.
68. While in the SHU, on November 11, 2021, a CO opened the door and gave Plaintiff Sue Brown a ticket infraction that charged her with multiple counts, including assaulting a correction officer.
69. On November 16, 2021, a captain held a hearing on the charges. Plaintiff was shown surveillance video of the assault by Defendant Correction Officer A, which showed that he had assaulted her, but that she did *not* assault him.
70. The charges of assaulting a CO and disturbing the peace were dismissed. Nonetheless, the captain still punished Plaintiff with seven days in the SHU, as time served, for disobeying an order (pulling the door knob), loss of commissary until December 1, 2021 and forbade her to send packages or mail until December 1, 2021.
71. Plaintiff suffered soreness, pain, lacerations, bruising, and mental and emotional injuries as a result of Defendant Correction Officer A’s assault.
72. Word of Defendant Correction Officer A’s assault spread throughout BHCF; on various occasions, Defendant Correction Officer C said to Plaintiff that she now was in a different world, she now was state property, she now could be beaten, and no one would know about it.

73. Plaintiff believes that she is a target for other COs and inmates because she was punished, although Defendant Correction Officer A was the aggressor.
74. While in Rikers, Plaintiff was given Benadryl to assist her with trouble sleeping. She was able to pick up her medications anytime in the day and could take them when appropriate.
75. On November 1, 2021, the day Plaintiff Sue Brown arrived at BHCF, at 6:00 p.m., Plaintiff was directed to go to the medical window to pick up her medication, 17mgs of Benadryl in tablet form. Plaintiff was given the tablet, but did not want to take it because it would cause her to fall asleep and she did not want to sleep so early in the day. She was never informed that she was required to take her medication the moment she picked it up from the window nor was she informed that she was not permitted to take medication back to her housing unit.
76. Defendant Correction Officer C, who is 6 feet tall and approximately 215 pounds, grabbed Plaintiff Sue Brown's right arm, bent it behind her back, and lifted it up, while threatening to break it. Defendant Correction Officer C shoved Plaintiff against the wall and pressed her body into the wall as he pulled her arm back and up towards her shoulder. Plaintiff cried in excruciating pain and begged Defendant Correction Officer C to release her arm. Plaintiff feared Defendant Correction Officer C was going to pop her arm out of her shoulder socket. Defendant Correction Officer C growled at Plaintiff that she now was "state property." Defendant Correction Officer C continued to lift up Plaintiff's arm for a least another minute before finally releasing it and forcing Plaintiff to swallow the table. Plaintiff suffered soreness, pain, and numbness.
77. At BHCF, Plaintiff has been denied Benadryl because she has refused to also take Buspar, which is medication for anxiety and depression. Plaintiff was informed by medical staff at BHCF that if she refused to take Buspar, then she could not have Benadryl. Defendants have

refused to give Plaintiff Benadryl since Defendant Correction Officer C's assault on November 1, 2021, forcing Plaintiff to suffer from loss of sleep and insomnia.

78. Defendant Correction Officer C has continuously harassed and threatened Plaintiff. On November 28, 2021, Defendant Correction Officer C told Plaintiff he would "smack the shit out of her". Defendant Correction Officer C is attempting to provoke Plaintiff so that she will say something or do something that would give him an opportunity to again assault and punish her.

79. Plaintiff has been denied access to the recreational room, movement, gym, and school. Since her arrival at BHCF on November 1, 2021, Plaintiff has repeatedly asked to be placed in school. She has sent letters to School 1 and has been told they cannot find her GED certificate, although it was transferred from Rikers.

80. On Friday, November 19, 2021, while Plaintiff Sue Brown was showering, a male,²⁶ Defendant Correction Officer B, went into the bathroom and looked at her while she was naked. Defendant Correction Officer B walked through the entire bathroom to look at other women changing and showering. Plaintiff demanded that he leave. Defendant Correction Officer B took his time walking through the bathroom before leaving.

81. On multiple occasions, as recently as November 29, 2021, Defendant Correction Officer B walked into the women's bathroom to see women naked and pulled the shower curtain open to look at the women showering.

82. Plaintiff Sue Brown repeatedly has been told by other correction officers and sentenced inmates that she is "state now" while in the yard, moving to and from places, and in the mess hall.

²⁶ Male staff are not permitted inside the women's bathrooms.

83. Defendant Correction Officer C and other inmates refer to Plaintiff as "Rikers." Plaintiff and the other Rikers pre-trial detainees can be identified as such because their identification numbers (DIN) include the number 75.
84. On November 18, 2021, Plaintiff appeared in court in Brooklyn, NY. At the conclusion of her hearing that day, Plaintiff was shackled by Defendants Correction Officers Jane Jones #5 and #6. Her handcuffs were made to be extremely tight. Plaintiff cried from the pain the tight cuffs caused to her wrists and ankles and asked that they be loosened. Defendants Correction Officers Jane Jones #5 and #6 told plaintiff they would not do anything about it, and so she endured four hours of pain and bruising, until they were removed at BHCF.
85. Upon returning to BHCF on November 19, 2021, Captain Seiman said to Plaintiff that she seemed like a nice girl and he did not know why correction officers talked about her like she was an animal.
86. Plaintiff has been deprived of access to her attorney in that she is not able to meet with him to adequately prepare for court appearances. She has not been able to see her family because BHCF is too far away for them to travel and BHCF has not offered her videoconferences.
87. On December 2, 2021, Plaintiff Sue Brown was scheduled to appear in Kings County Criminal Court for a continued hearing on a dispositive motion, which, if she wins, will mean her release from incarceration. DOCCS, however, did not produce her, so her hearing was postponed, thus delaying resolution of her case. Plaintiff's attorney did not know that DOCCS had not produced his client until he arrived at the court part. Upon information and belief, DOCCS also failed to notify the court that Plaintiff would not be produced for her hearing.

Plaintiff ANN JOHNSON

88. Plaintiff Ann Johnson initially was detained at Rikers on June 30, 2021. Plaintiff has two children living at home: a twenty-one-year-old son and a ten-year-old son who has autism. Since her incarceration, Ann Johnson's older son, who is a full-time cook at a hospital, has been caring for her younger child.
89. At midnight on October 22, 2021, Plaintiff Ann Johnson found out she would be transferred to BHCF sometime that day. Plaintiff was woken up at 4:00 a.m. and told to pack what she could in a small garbage bag to take with her. Plaintiff was not given any time to call her family to let them know that she was being transferred. With such short notice, Plaintiff Ann Johnson could not salvage her personal items and had to throw or give majority of it away. The mailroom is closed on the weekends and Plaintiff's commissary account was frozen, so she could not mail out her items before being transferred, she was not permitted to leave her items with other Rikers detainees to mail out for her, nor did she have money available to pay for the mailing because her commissary account had been frozen.
90. As a result, Plaintiff Ann Johnson was forced to throw away food in the amount of \$200 and clothing and sneakers valued at about \$500.
91. Upon clearing out her cubicle, Plaintiff Ann Johnson was escorted to the bullpen without restraints. Then, the bus from BHCF arrived and Defendants Correction Officers Jane Jones #7 and #8 entered the bullpen and shackled Plaintiff. Plaintiff was shackled from her feet to her hands with a block resting between her hands. The cuffs were placed too tightly on her hands, causing them to go numb. She endured this for the duration of the transfer, which was more than an hour. Plaintiff asked Defendants Correction Officers Jane Jones #7 and #8 to loosen the shackles, to no avail.

92. Upon arriving at BHCF, Plaintiff Ann Johnson was forced by Defendant Correction Officer D and Defendants Correction Officers Jane Jones #9 and #10 to strip naked in the bathroom in front of approximately five transferees from Rikers. Defendant Correction Officer D forced Plaintiff to use a substance all over her body and hair for lice treatment, although Plaintiff did not have lice. Plaintiff tried to question use of the product and to refuse to use it, but she was denied any information or consultation with a medical professional. Upon applying this chemical, Defendant Correction Officer D ordered Plaintiff to squat and spread her buttocks cheeks.
93. Defendant Correction Officer D told Plaintiff that she had to spread her buttocks cheeks and squat low enough until the correction officer could “see pink,” indicating the inside of Plaintiff Ann Johnson’s anus and vagina.
94. Since arriving at BHCF, Plaintiff Ann Johnson has been threatened with harm by Defendants Correction Officers Jane Jones # 11, 12, and 13 and John Jones #5, 6, and 7. While at BHCF, for example, during an orientation-type gathering, with other transferees and BHCF staff, including Deputy Miller, captains, sergeants and COs, Defendant Correction Officer E told Plaintiff Ann Johnson and other Rikers transferees that “if [they] think [they] are in Rikers, [they] have another thing coming.” He also told Plaintiff Ann Johnson and other Rikers transferees that they would be picked up, dropped on their heads, and beaten up, without ever having to do it himself, because he would direct BHCF inmates serving long sentences to do it. Plaintiff Ann Johnson, along with the other Rikers transferees, felt scared, targeted, and threatened.
95. While retrieving their clothing in intake, Defendant Correction Officer E also threatened Plaintiff Ann Johnson and other transferees that they would be beaten up, placed in the SHU,

beaten again while in the SHU, then left naked, until he felt like releasing them. Plaintiff Ann Johnson, along with the other Rikers transferees, felt scared, targeted, and threatened. Plaintiff felt that something was going to happen to her while at BHCF and she along with other transferees were on guard.

96. Plaintiff and other Rikers transferees have been nicknamed “Rikers” by BHCF inmates and corrections officers, including CO P.²⁷ and CO J.²⁸, both men, signaling that they are being targeted because they have not been convicted of a crime and are in the BHCF sentenced inmates’ territory.

97. Moreover, Rikers transferees are designated as such by their DIN number, which has the number 75 therein. This designation allows anyone at BHCF to identify people coming from Rikers.

98. While at BHCF, Plaintiff Ann Johnson witnessed one male and one female correction officer beat an inmate who recently had a C-section. The inmate, who recently had a child and was suffering from post-partum depression, was taken away. Plaintiff Ann Johnson and other inmates knew the woman was suffering from mental health issues. Plaintiff was in the same housing unit as this inmate and could see the COs interact with her. Plaintiff witnessed a woman CO punched the inmate multiple times with closed fists, as if she was boxing. The inmate dropped onto the floor and was yelling in pain from her back. Plaintiff heard the inmate yell that she just had a C-section approximately four weeks prior, and for the CO to stop beating her up. Plaintiff Ann Johnson heard thuds, as the CO’s fists made contact with the inmate’s body. This went on for several minutes until other COs arrived and pulled the woman CO off

²⁷ Full surname known to Plaintiff, but here withheld because of Plaintiff’s fear of retaliation.

²⁸ Full surname known to Plaintiff, but here withheld because of Plaintiff’s fear of retaliation.

the inmate. Sgt. Cassidy restrained the inmate and told other women in the unit, including Plaintiff, that he had better not see any of them looking.

99. Plaintiff lives in constant fear that she will be attacked by correction officers and incarcerated persons. She has already been threatened by other incarcerated persons, particularly in her unit. While at BHCF, Plaintiff must walk the permitted areas alone, thus leaving her susceptible to attacks.

100. At BHCF, Plaintiff is held in a unit with fifty other women, who are both pre-trial detainees from Rikers and sentenced people at BHCF, whereas, at Rikers, as a pre-trial detainee, she was not housed with sentenced persons. Plaintiff is woken up in the middle of the night for count, cannot refuse medical evaluations, and must submit her ID before showering.

101. The large number of women in Plaintiff's housing unit means that everyone is in a great risk of getting COVID-19 because there is no opportunity to socially distance.

102. At BHCF, Plaintiff Ann Johnson has been denied access to phones to call her attorney and family.

103. At BHCF, Plaintiff Ann Johnson must go to the mess hall to eat her three meals, where she cannot socially distance.

104. At BHCF, Plaintiff Ann Johnson is given only ten minutes to shower and dress. At BHCF, no talking is allowed in the housing unit. Incarcerated persons caught speaking are punished. Punishment includes receiving an infraction ticket resulting in confiscation of ID, loss of privileges such as mailing packages, using the recreational room, and being placed in "keyblock," which is a restrictive and abusive form of solitary confinement that permits one hour outside.

105. Plaintiff Ann Johnson suffers from several serious health conditions, including a herniated disk, for which she had fusion surgery and was prescribed Gabapentin and Robaxin while at Rikers. Upon being transferred to BHCF, Plaintiff underwent a medical evaluation; the health care staff member told her she would only be given Gabapentin but not Robaxin. Plaintiff was told that this was because BHCF is a state prison and they do not have to honor all of the medications she received at Rikers. Plaintiff was also informed that, without reason, she would soon stop receiving Gabapentin.
106. Robaxin was prescribed to treat Plaintiff's muscle spasms, and because she has not received her medicine, she has suffered from painful muscle spasms in her back and legs that often prevent her from sleeping.
107. Plaintiff Ann Johnson also suffers from depression and was prescribed Buspar at 10mg at 7 a.m. and 10mg at 8 p.m. along with melatonin. Since being transferred to BHCF, Plaintiff's Buspar dosage has been increased to 15mg twice a day and the melatonin was replaced with Benadryl, a dangerous change because Benadryl is an allergy medicine, an antihistamine, with side effects such as drowsiness, somnolence, incoordination and dizziness that could last several days. Benadryl can also exacerbate depression, particularly in those suffering from anxiety. However, melatonin is a natural supplement for a hormone already produced by the body, to aid with difficulty falling asleep and works to get the body on a sleep routine.
108. Plaintiff Ann Johnson has not been able to see her children while at BHCF. Her children are not able to travel to BHCF due to the distance and BHCF requires visits to be in person. At Rikers, visitation was held virtually, and Plaintiff was able to see and speak to her children nearly every day. As a result, Plaintiff has been harmed and has suffered a breakdown in her relationship with her family.

109. At Rikers, Plaintiff Ann Johnson worked at the mess hall and was paid \$58 per week for an average of thirty-five hours per week. Plaintiff applied for this position in July of 2021 and got the job on October 18, 2021. Plaintiff used the money she earned to buy food and toiletries. She was then transferred to BHCF on October 25, 2021.
110. At BHCF, Plaintiff Ann Johnson is required to work because all state prisons require the incarcerated persons to work, regardless of whether or not they have been convicted or sentenced.²⁹ Failure to secure work would result in Plaintiff being placed in “keyblock,” or the SHU, the most restrictive solitary confinement. At BHCF, the most Plaintiff Ann Johnson could earn is \$0.16 an hour, totaling about \$10-\$15 a week.
111. Plaintiff Ann Johnson has not been able to speak or meet with her attorneys regularly because of the distance to BHCF, lack of televisits, and she is not permitted to leave messages if a person does not pick up. While at Rikers, when Plaintiff would call her attorney, if he did not answer his phone she would leave him a message letting him know she called so he could call her back. Defendants have interfered with Plaintiff Ann Johnson’s access to counsel.

Plaintiff MARY DAVIS

112. Plaintiff Mary Davis was detained at Rikers from August 2019 until November 1, 2021, when Defendants transferred her to BHCF.
113. Plaintiff Mary Davis is Muslim and dons the Hijab.

²⁹ In addition to violating their right to be free from slavery and involuntary servitude under the Thirteenth Amendment to the United States Constitution, forcing pre-trial detainees to work also violates Plaintiffs’ right pursuant to Rule 116 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which states, in relevant part: “An untried prisoner shall always be offered the opportunity to work, but shall not be required to work.” See <https://undocs.org/A/RES/70/175>

114. DOC gave Plaintiff Mary Davis forty-eight hours' notice of her transfer. During this time, Plaintiff tried to pack up all of her personal items including clothes, books, drawings from her children, soap, lotion and perishable food items from the commissary, but she was told that she was not allowed to take any of these items to BHCF.
115. In an effort to salvage her personal belongings, Plaintiff Mary Davis tried to mail them out to her family. However, the mailroom at Rikers was closed, so she could not mail her belongings home, causing her to lose approximately \$150 worth of items.
116. In addition to the mailroom being closed, Plaintiff Mary Davis's commissary account was closed in preparation for her transfer, so she did not have funds available to ensure that her property was mailed after her departure.
117. Defendants Correction Officers Jane Jones #14 and #15 shackled Plaintiff Mary Davis by the feet and hands with a block between her wrist and transported her to BHCF. Plaintiff Mary Davis was held in a bullpen until the corrections bus arrived from BHCF. Defendants Correction Officers Jane Jones #14 and 15 shackled Plaintiff and tightened the cuffs causing numbness in her hands and feet. Plaintiff asked Defendants Correction Officers Jane Jones #14 and #15 to loosen the handcuffs, but they refused. Plaintiff was forced to remain shackled in this matter for over an hour.
118. Upon arriving at BHCF, Plaintiff was ordered into the shower with two other transferees by a woman BHCF corrections officer, where Defendants Correction Officers Jane Jones #1 and #2 forced her to strip naked and coat her body with a chemical to apparently treat lice. Plaintiff did not have lice. Plaintiff was not told what the substance was nor could she refuse to put it on her body.

119. Upon coating her body with the chemical, Defendant Correction Officer Jane Jones #2 told Plaintiff to bend over low and spread her vagina and buttocks cheeks until the correction officer could “see pink.”
120. Plaintiff humiliatingly complied and did so in the presence of other detainees who were transferred from Rikers. Defendant Correction Officer Jane Jones #2 commanded Plaintiff to squat and spread her buttocks three more times because she “did not see enough pink.”
121. Plaintiff Mary Davis suffers from joint pain, swelling, nerve numbness, and tingling. Plaintiff was prescribed Gabapentin for these health issues at Rikers and was told she would be receiving the same medication at BHCF.
122. At BHCF, Plaintiff Mary Davis is given only ten minutes to shower and dress. On November 5, 2021, Plaintiff Mary Davis woke up at 4:00 a.m. to prepare to shower. After count, Plaintiff took her personal items and went to shower. Plaintiff showers every day at BHCF and did the same at Rikers. The showers at BHCF are stalls with curtains, with a place to hang a towel and clothing on the stall.
123. About two minutes into her shower, Plaintiff Mary Davis heard the voice of a man, Defendant Correction Officer John Jones #1, rushing everyone out of the bathroom. Male correction officers are not permitted to be at or near the entrance of the women’s bathroom. Defendant Correction Officer John Jones #1 continued to yell for everyone to get out of the bathroom. Plaintiff opened the curtain to exit, when she saw Defendant Correction Officer John Jones #1 looking into the bathroom at the showers, specifically at Plaintiff.
124. Plaintiff Mary Davis made eye-contact with Defendant Correction Officer John Jones #1, who saw her naked. Plaintiff grabbed her towel and shut the curtain. Defendant Correction

Officer John Jones #1 continued to rush everyone out of the bathroom and specifically began calling for Plaintiff to leave.

125. Plaintiff Mary Davis pleaded for more time, having only had five minutes to shower and get dressed. Plaintiff told Defendant Correction Officer John Jones #1 that, as a Muslim, her body could not be exposed, so she needed to be fully dressed before walking out of the shower. Defendant Correction Officer John Jones #1 refused to give her more time and forced Plaintiff to wrap herself in a short robe that exposed her legs.

126. Defendant Correction Officer John Jones #1 saw Plaintiff Mary Davis naked, then forced her to walk back to her housing unit with her legs exposed for all other male corrections officers to see.

127. Plaintiff Mary Davis has been tasked with cleaning the women's bathroom and has witnessed Defendants Correction Officers John Jones #8 and #9 enter the women's bathroom and look at women showering, changing, and getting dressed. As recently as November 20, 2021, Plaintiff Mary Davis was cleaning the bathroom and witnessed Defendant Correction Officer John Jones #8 enter and walk through the entire bathroom while women were naked and showering. Plaintiff and the other women demanded Defendant Correction Officer John Jones #8 leave, but he refused, stating that he could do whatever he wanted.

128. Plaintiff Mary Davis has four children, between the ages of fifteen and four years old, and has not been able to see them because they cannot drive to see her at BHCF. At Rikers, Plaintiff was able to see her children via virtual visits, an option not available at BHCF, thereby hindering the family relationship.

129. Plaintiff Mary Davis fears for her safety because she has been called “Rikers” and has received threats from Defendants Correction Officers John Jones #10, 11, and 12, Defendants Jane Jones #16 and 17, and BHCF inmates.
130. Plaintiff Mary Davis has been repeatedly warned by Defendants Correction Officers John Jones #13, 14, and 15 and Defendants Correction Officers Jane Jones #16 and 17 that she is not in Rikers anymore and to expect more abusive encounters. Plaintiff was threatened multiple times including in line while walking to and from meals and while in intake.
131. At Rikers, Mary Davis was prescribed Buspar at 15mg in the morning and 15mg in the evening to treat her anxiety and depression. Staff at BHCF force Plaintiff Mary Davis to take a full 30mg dose in the evening. This incorrect dosage has caused Plaintiff Mary Davis to suffer severe anxiety, insomnia and has exacerbated her depression. She has written to the officer of mental health multiple times, requesting that the dosage be corrected, but she has been completely ignored. Plaintiff Mary Davis is forced to continue to take the excessive dose out of fear she will be assaulted and punished for refusing medication.
132. Plaintiff Mary Davis has not been able to speak to her children as frequently as when she was Rikers because there are approximately thirty women in her housing unit and only two phones.
133. Plaintiff Mary Davis is forced to rush when she eats her meals in the mess hall because the correction officer on duty limits her to five to seven minutes. In the BHCF mess hall and in her housing unit, Plaintiff is not allowed speak with others.

CLASS ACTION ALLEGATIONS

134. Pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, Plaintiffs SUE BROWN, ANN JOHNSON, and MARY DAVIS seek to represent a certified Plaintiff class

consisting of all persons who have been or will be subjected to the Governor's policy of forcibly removing pre-trial detainees from Rikers to state prisons in violation of, *inter alia*, the Fourteenth, Sixth, Fourth, Eighth, and Thirteenth Amendments to the United States Constitution, the New York State Constitution, and New York law (the "Class" or "Class Members").

135. The members of the class are so numerous as to render joinder impracticable.
136. Upon information and belief, about 230 pre-trial detainees from Rikers will be transferred to state prisons for sentenced people.³⁰
137. The Class Members share a number of questions of law and fact in common, including, but not limited to:
 - a. Whether Defendants' policies, acts, and omissions deprive Plaintiffs, who are pre-trial detainees, of due process and equal protection under the law, as only women and transgender people are being transferred from Rikers to state prisons for sentenced people;
 - b. Whether Defendants' policies, acts, and omissions deprive Plaintiffs, who are pre-trial detainees, of their right to counsel and access to the courts;
 - c. Whether Defendants' policies, acts, and omissions constitute unlawful searches and seizures;
 - d. Whether Defendants' policies, acts, and omissions constitute cruel and unusual punishment in that the pre-trial detainees are or will be subjected to punitive measures by being incarcerated at a state prison for sentenced persons;

³⁰ <https://www.politico.com/states/new-york/albany/story/2021/11/09/national-womens-lgbt-groups-press-de-blasio-and-hochul-to-stop-rikers-transfers-1392443>

e. Whether Defendants' policies, acts, and omissions constitute cruel and unusual punishment in that the pre-trial detainees are or will be far from their counsel, family, courts and legal services;

f. Whether Defendants' policies, acts, and omissions constitute enslavement and involuntary servitude;

g. Whether Defendants' policies, acts, and omissions constitute a sentence in the complete absence of lawful process not imposed by a court, jury, or conviction.

138. The legal theories under which Plaintiffs seek declaratory and injunctive relief are the same or similar to those on which all members of the class will rely, and the harms suffered by Plaintiffs herein are typical of the harms suffered by the class members.

139. Plaintiffs SUE BROWN, ANN JOHNSON, and MARY DAVIS have strong personal interests in the outcome of this action, have no conflicts of interest with members of the Plaintiffs class, and will fairly and adequately protect the interests of the class. Plaintiffs SUE BROWN, ANN JOHNSON, and MARY DAVIS have been victims of Defendants' policies, forcing them to be transferred without due process, subjected to the same security restrictions as if they had been sentenced, and causing them to be further away from their counsel, family, court, and legal services. Absent this action, Plaintiffs and others similarly situated may experience these continued violations of their constitutional rights.

140. Plaintiffs are represented by Tahanie Aboushi of The Aboushi Law Firm, PLLC. Ms. Aboushi is an experienced civil rights litigator who has litigated a number of cases against the City of New York and has co-counseled on class actions including, *Elsayed et al v. City of New York*, 18-cv-10566 (AT)(KHP) (E.D.N.Y. 2018), recently settled in 2021.

141. Plaintiffs' counsel's firm has the resources, expertise, and experience to prosecute this action, and knows of no conflicts among members of the class or between the attorneys and members of the class.

142. The Class should be certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendants have acted on grounds generally applicable to the class, thereby making class-wide declaratory and injunctive relief appropriate.

FIRST CAUSE OF ACTION
**Violations of the Fourteenth Amendment to the United States Constitution
and Article I, § 11, of the New York Constitution**

143. Plaintiffs repeat and reallege each and every allegation made in the foregoing paragraphs as if fully set forth herein.

144. The Defendants have acted with deliberate indifference to the constitutional rights of Plaintiffs and other members of the class. As a direct and proximate result of the acts and omissions of the Defendants, the constitutional rights of Plaintiffs and other class members have been or will be violated.

145. The Fourteenth Amendment, § 1, of the United States Constitution guarantees that all citizens will receive due process and equal protection under the law.

146. Article I, Section 11 of the New York Constitution provides that “[n]o person shall be denied the equal protection of the laws,” and that “[n]o person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.” N.Y. Const. Art. I, § 9.

147. By acting under color of state law to deprive Plaintiffs and the Class of their rights under the Fourteenth Amendment, the Defendants, through their agents, employees, and representatives, are in violation of 42 U.S.C. § 1983, which prohibits the deprivation under color of state law of rights secured under the United States Constitution.
148. That Defendants forced or will force Plaintiffs and other pre-trial detainees to be subjected to state prisons and to be far from counsel, family, courts, and legal services constitutes cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution.
149. The incarceration of pre-trial detainees in prisons for sentenced people prior to resolution of their criminal cases robs Plaintiffs and similarly situated persons of the presumption of innocence, their ability to mount a meaningful defense, and their right to a trial.
150. The Defendants' unlawful conduct was willful, malicious, oppressive, and/or reckless, and was of such a nature that punitive damages should be imposed. As a direct and proximate result, Plaintiffs and the Class have suffered injuries and damages set forth above.
151. Plaintiffs and the Class have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless the Defendants are enjoined from continuing the Rikers transfer policies that have directly and proximately caused such constitutional abuses.

SECOND CAUSE OF ACTION

Violation of the Right to Counsel and Access to the Courts under the Sixth Amendment to the United States Constitution and of Article I, § 6, of the New York Constitution

152. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.
153. Article I, Section 6, of the New York Constitution provides, “[i]n any trial in any court whatever the party accused shall be allowed to appear and defend in person and with

counsel as in civil actions,” and that “[n]o person shall be deprived of life, liberty or property without due process of law.”

154. The Sixth Amendment of the U.S. Constitution ensures, among other things, that each person charged with the commission of a crime has the right to a speedy and public trial, an impartial jury and the assistance of counsel for his or her defense. U.S. Const., amend. VI. The Sixth Amendment applies to the states pursuant to the Fourteenth Amendment, which ensures that a person will not be deprived of his liberty without due process of law.

155. Defendants’ transfer of Plaintiffs interferes with their right to have *unimpeded* assistance of counsel for their defence.

156. Defendants’ transfer of Plaintiffs violates their right to counsel, in that the pre-trial detainees are incarcerated in a state prison for sentenced persons, without having had a trial by judge or a jury.

157. Defendants’ transfer of Plaintiffs to BHCF impedes Plaintiffs’ and the Class’ access to counsel in that BHCF requires in-person visits and does not allow virtual visitation.

158. Plaintiffs have been moved approximately fifty-four miles away from their previous location at Rikers, which has caused undue hardship to Plaintiffs’ access to counsel and the courts and denial of their rights to meaningful and effective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Section 1983.

THIRD CAUSE OF ACTION

Violation of the Right to be Free from Unreasonable Searches and Seizures Under the Fourth Amendment to the United States Constitution and Article I, § 12, of the New York Constitution

159. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs, as if fully set forth herein.

160. The Fourth Amendment to the United States Constitution and Article I, § 12, of the New York Constitution protect the right of persons to be free from unreasonable searches and seizures. The illegal searches and transfers described above by Plaintiffs are prohibited by the United States and New York Constitutions.

161. These constitutional abuses and violations were, and are, directly and proximately cause by policies, practices and/or customs devised, implemented, enforced, promoted, encouraged, and sanctioned by Defendants.

162. As a direct and proximate result of the acts and omissions of the Defendants, Plaintiffs have been deprived of their right to be free from unreasonable searches and seizures under the United States and New York Constitutions and laws of the State of New York.

FOURTH CAUSE OF ACTION
Violation of the Eighth Amendment to the United States Constitution

163. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

164. Defendants' actions caused Plaintiffs to be doused in an unknown chemical to prevent ice without Plaintiffs' consent constituted cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution.

165. Defendants Correction Officers D, F, and Jane Jones #1 and #2 acted willfully and wantonly for their own sadistic purposes in forcing Plaintiffs to strip naked and squat until they saw "enough pink," or the inside of their vaginas and anuses.

166. Defendant Correction Officer John Jones #1 acted willfully and wantonly for his own sadistic purposes in watching Plaintiff Mary Davis while she was naked in the women's bathroom and forcing her to walk among male correction officers while her legs were exposed.

167. Defendant Correction Officer John Jones #1 acted willfully and wantonly for his own sadistic purposes forcing Plaintiff Sue Brown to leave the shower stall while she was naked in the women's bathroom, to see her naked, then forcing her to walk the corridors wrapped only in a towel, so men and women could see her partially naked.
168. Defendants Correction Officers B and John Jones #8 and #9 acted willfully and wantonly for their own sadistic purposes in walking through the women's bathroom to watch women shower and change while they were naked.
169. Defendant Correction Officer A, without cause or justification, assaulted Plaintiff Sue Brown by choking her, grabbing her throat, throwing her into the ground, and punching her twice in the face.
170. Defendants then retaliated against Plaintiff Sue Brown, falsely charged her, and punished her several days in solitary confinement, loss of mail privilege and loss of commissary.

FIFTH CAUSE OF ACTION

Violation of the Right to be Free from Slavery and Involuntary Servitude Under the Thirteenth Amendment to the United States Constitution

171. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs, as if fully set forth herein.
172. The Thirteenth Amendment to the United States protects the right of persons to be free from slavery and involuntary servitude. By forcing pre-trial detainees to work in prison, Defendants engage in enslavement and involuntary servitude.
173. The constitutional abuses and violations described above were, and are, directly and proximately cause by policies, practices and/or customs devised, implemented, enforced, promoted, encouraged, and sanctioned by Defendants.
174. As a direct and proximate result of the acts and omissions of the Defendants, Plaintiffs

have been deprived of their right to be free from slavery and involuntary servitude under the United States Constitution.

SIXTH CAUSE OF ACTION
Assault and Battery

175. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.
176. Defendant correction officers, while acting in the scope of their employment as correction officers and as agents for the Defendants, without just cause or provocation and with great force and violence, cuffed Plaintiffs' hands and ankles causing them pain, bruising, and numbness.
177. Defendant Correction Officer A, without cause or justification, assaulted Plaintiff Sue Brown by choking her, grabbing her throat, throwing her into the ground, and punching her twice in the face.
178. Defendant Correction Officer C, without cause or justification, assaulted Plaintiff Sue Brown by twisting her arm behind her back and up beyond her shoulder causing her excruciating pain.
179. Defendants, without cause or justification, continuously threaten Plaintiffs with bodily harm and engage in emotional abuse to keep Plaintiffs in a state of fear and mental anguish.
180. Defendants' conduct and use of force against Plaintiffs placed them in fear of imminent harmful and offensive physical contacts.
181. Defendants' intentionally, willfully, and maliciously assaulted and battered Plaintiffs, in that they had the real or apparent ability to cause imminent harmful or offensive bodily contact and intentionally did an act which threatened to and did cause such contact to Plaintiffs.
182. Defendants, including employees, servants and/or agents of DOCCS and Defendant City

of New York, while acting within the scope and in furtherance of their employment committed the aforementioned conduct.

183. As a result of the aforementioned conduct, Plaintiffs suffered severe emotional distress and physical and mental injury.

184. As a result of Defendants' impermissible conduct, Plaintiffs demand judgment in a sum of money to be determined at trial and that an award of attorney's fees is appropriate pursuant to 42 U.S.C. § 1988.

SEVENTH CAUSE OF ACTION
Excessive Force Under 42 U.S.C. § 1983 and New York State Law

185. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

186. All of the aforementioned acts of the Defendants DOCCS and the City of New York, and the individual Defendants and their agents, servants and employees, were carried out under the color of state law.

187. Each Defendant, intentionally and/or recklessly used and attempted to use unreasonable, unlawful and/or excessive force on Plaintiffs, including subjecting all Plaintiffs to unnecessarily tight cuffs on their ankles and wrists, thereby depriving Plaintiffs of their right to be free from assault, battery, the use of unreasonable, unlawful, excessive, and improper force in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States, 42 U.S.C. § 1983, NYS Constitution, New York State laws, and the common laws of New York.

188. The Defendants' conduct and their use of force was far in excess of any force necessary to effect an arrest, to maintain control and/or control Plaintiffs, individually and collectively or

their persons.

189. Defendants' actions were without any legal justification, and the force used upon Plaintiffs were excessive, unwarranted, inappropriate, reckless, negligent and wholly improper.
190. Defendants' use of force against Plaintiffs were not justified as they posed no threat to the Defendants that required the use of force used against them.
191. Defendants' actions caused Plaintiffs to fear for their lives and safety, and at no point was any of the contact and attempted contact consensual or privileged.
192. Defendants' actions put Plaintiffs in harms' way in that they are referred to as "Rikers" and are identified by the number 75 in their DIN numbers.
193. Defendants' actions put Plaintiff Sue Brown's life in danger in that she was viciously assaulted by Defendant Correction Officer A and was falsely charged and punished.
194. Defendants' actions of handcuffing Plaintiffs in painfully tight restraints for hours, choking, punching, and throwing Plaintiff Sue Brown to the floor, and pulling and twisting her arm, were without any legal justification, and the force used upon Plaintiffs were excessive, unwarranted, inappropriate, reckless, negligent and wholly improper.
195. Defendants' actions of threatening Plaintiffs with physical harm and engaging in emotional abuse constitute ongoing harm and injury to their person.

EIGHTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress

196. Plaintiffs reallege and incorporate by reference the allegations set forth in the foregoing paragraphs, as if fully set forth herein.
197. Plaintiffs and/or Class Members are entitled to injunctive and declaratory relief and damages, without which they have been and will continue to be harmed.

198. The aforementioned transfer of Plaintiffs to a maximum-security prison prior to resolution of their case and moving them further away from legal services and access to their attorneys was extreme and outrageous, and exceeded all reasonable bounds of decency.
199. Defendants' actions of moving Plaintiffs fifty-four miles away from their families and the court was extreme and outrageous, and exceeded all reasonable bounds of decency.
200. Plaintiffs have been subject to abusive restrictions, threats, fear for their safety and have endured humiliation during strip searches.
201. Plaintiff Ann Johnson has been sexually abused by at least Defendant Correction Officer D during an unlawful strip search.
202. Plaintiff Mary Davis has been sexually abused by at least Defendant Correction Officers Jane Jones #1 and #2 during an unlawful strip search.
203. Plaintiff Sue Brown has been sexually abused by at least Defendant Correction Officer F during an unlawful strip search.
204. Plaintiff Mary Davis has been sexually abused by at least one male, Defendant Correction Officer John Jones #1, who saw her naked and forced her out of the shower before she could get dressed, thereby causing her legs to be exposed in the presence of himself and other men.
205. Plaintiff Sue Brown has been sexually abused by at least one male correction officer, Defendant Correction Officer B, who saw her naked while she was showering in the women's bathroom.
206. Defendant Correction Officer C, without cause or justification, assaulted Plaintiff Sue Brown by twisting her arm behind her back and up beyond her shoulder, causing her excruciating pain.
207. Defendants, without cause or justification, continuously threaten Plaintiffs with bodily

harm and engage in emotional abuse to keep Plaintiffs in a state of fear and mental anguish.

208. Defendants, including employees, servants and/or agents of DOCCS and Defendant the City, while acting within the scope and in furtherance of their employment, committed the aforementioned conduct.

209. The aforementioned conduct was unnecessary, intentional, and done for the sole purpose of causing severe emotional distress to Plaintiffs.

210. As a result of the aforementioned conduct, Plaintiffs suffered severe emotional distress and physical and mental injury.

211. As a result of Defendants' impermissible conduct, Plaintiffs demand judgment in a sum of money to be determined at trial and that an award of attorney's fees is appropriate pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiffs demand the following relief against the Defendants:

- a. Enter an order certifying this action as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure in the manner described above herein, with Plaintiffs SUE BROWN, ANN JOHNSON, and MARY DAVIS as class representatives;
- b. Issue a class-wide declaratory judgment that Defendants' policies of removing or forcing removal of women and transgender pre-trial detainees from Rikers to prisons for sentenced people violates the Fourteenth, Sixth, Fourth, Eighth, and Thirteenth Amendments of the United States Constitution, the New York State Constitution, and other rights, under New York state law;

- c. Issue a permanent injunction enjoining Defendants from transferring pre-trial detainees to prisons for sentenced people;
- d. Retain jurisdiction in this case until the unlawful conditions, practice, policies, acts and omissions complained of herein no longer exist and this Court is satisfied that they will not recur;
- e. Award Plaintiffs, and all members of the class, compensatory and punitive damages in an amount that is fair, just and reasonable, to be determined at trial;
- f. Award Plaintiffs, and all members of the class, reasonable attorneys' fees and costs; and
- g. Grant such other and further relief as this Court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

Dated: December 7, 2021
New York, New York

THE ABOUSHI LAW FIRM, PLLC



By: _____
Tahanie A. Aboushi, Esq. (TA6529)
1441 Broadway, Fifth Floor
New York, NY 10018
t: (212) 391-8500
e: tahanie@aboushi.com
Attorneys for Plaintiffs