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JANE JONES 1, JANE JONES 2, JANE JONES 3, JANE
JONES 4, JANE JONES 5, and JANE JONES 6, on behalf
of themselves and all others similarly situated,

Plaintiffs,

-against-

DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION ("DOCCS") ACTING
COMMISSIONER ANTHONY ANNUCCI; CHIEF OF
INVESTIGATIONS FOR THE DOCCS OFFICE OF
SPECIAL INVESTIGATIONS, STEVEN MAHER;
DEPUTY CHIEF OF INVESTIGATIONS FOR THE SEX
CRIMES UNIT OF THE DOCCS OFFICE OF SPECIAL
INVESTIGATIONS, CHRISTIAN NUNEZ; DOCCS
DIRECTOR OF THE BUREAU OF LABOR
RELATIONS, JOHN SHIPLEY; DOCCS ASSOCIATE
COMMISSIONER OF THE OFFICE OF SEXUAL
ABUSE PREVENTION AND EDUCATION, JASON
EFFMAN;

Defendants.
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16 CV 1473

CLASS ACTION
COMPLAINT

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PRELIMINARY STATEMENT

Plaintiffs are women presently confined in the custody of the New York State Department of Corrections and Community Supervision (“DOCCS”). Plaintiffs bring suit for injunctive and declaratory relief against Defendants, DOCCS supervisors, with statewide policy-making authority. These Defendants have had notice of the substantial risk of sexual abuse that women prisoners face in DOCCS custody through data, statistics and reports about the risks women prisoners face nationwide and, more specifically, through prior and present litigation against the State of New York involving sexual abuse allegations and given the ongoing influx of reported instances of sexual assault, sexual abuse, and sexual harassment by correctional staff in New York State women’s prisons.

Despite knowing the substantial risk of serious harm from the persistent sexual abuse occurring under their policies and practices, Defendants have failed to take the reasonable steps necessary to reduce the substantial risk of sexual abuse faced by all women under their custody and control. Defendants have instead relied on a decades-old rule that is “zero tolerance” in name only, lacking the necessary implementation and enforcement of policies and procedures governing supervision, investigation, and discipline of staff that would actually deter and punish staff misconduct. This approach has created a prison culture that is, despite the purported “zero tolerance” position of the Department, functionally indifferent to the risk of sexual abuse for women prisoners, allowing staff sexual abuse and harassment to persist and flourish.

Defendants perpetuate the sexual abuse of women prisoners by creating a culture in which even if such abuse is reported, correction officers are so unlikely to be disciplined for misbehavior that they freely disregard policies governing such behavior. This culture allows so-called “willing” or “consensual” sexual contact to flourish, despite the fact that state law, prison policy, and common sense make clear that women in custody are unable to consent in the

coercive prison environment where officers have complete discretion and control over the treatment of prisoners under their supervision. Allowing purportedly “consensual” sexual activity between staff and prisoners to go unpunished sends the message that some level of staff sexual contact with inmates is expected and not worth addressing.

Although there are isolated instances of officers being disciplined or “walked out” of facilities due to their abuse of inmates, the culture of sexual abuse and harassment persists. Furthermore, in each case where an officer has been disciplined (and in some cases convicted), there has been physical evidence or video footage of the abuse that occurred; yet the majority of the sexual abuse of inmates by corrections staff takes place off-camera and does not result in physical evidence that can be used in an investigation of staff (if any such investigation occurs).

Plaintiffs have experienced and, along with all women prisoners, remain at risk for, sexual assault, abuse, and harassment by correctional staff, including sexual intercourse, anal intercourse, oral sexual acts, sexual touching, voyeurism, invasion of personal privacy, and demeaning sexual comments. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for injunctive and declaratory relief to redress Defendants’ violations of their rights under the Eighth Amendment of the United States Constitution.

JURISDICTION AND VENUE

1. This court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a). Plaintiffs seek declaratory relief pursuant to 28 U.S.C. § 2201. Venue is proper in this district under 28 U.S.C. § 1391(b).

PARTIES

I. PLAINTIFFS

2. Plaintiffs Jane Jones 1, Jane Jones 2, Jane Jones 3, Jane Jones 4, Jane Jones 5 and Jane Jones 6 are women prisoners currently in DOCCS custody.

II. DEFENDANTS

3. Defendant Anthony J. Annucci is the Acting Commissioner of DOCCS. He is responsible for the care, custody, and control of all inmates housed in DOCCS facilities. He is the chief executive officer of DOCCS, and is responsible, consistent with the legal mandates governing DOCCS, for the management and control of all state prisons, and for all matters relating to the placement, supervision, promotion, and discipline of the uniformed staff of the prisons where women prisoners are confined. He is responsible, along with other Defendants, for the system of complaint, investigations, and discipline of staff misconduct, including sexual harassment and abuse, and for setting the standards by which such complaints are reviewed to determine the actions, if any, to be taken against staff. He is responsible for the policies and practices that have resulted in the deprivation of Plaintiffs' rights under federal law, and he has failed to take necessary and appropriate actions to prevent such deprivations. Commissioner Annucci is sued in his official capacity, for prospective injunctive and declaratory relief, for his failure to protect women prisoners from sexual harassment and abuse and, together with the other DOCCS Defendants, for the failure to take necessary and appropriate action in response to complaints of sexual harassment and abuse of women prisoners by male correctional staff, as set forth in ¶¶ 8-52.

4. Defendant Steven Maher is Chief of Investigations for the DOCCS Office of Special Investigations ("OSI," previously known as the Office of the Inspector General or "IG"). 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. He is sued in his official capacity for prospective injunctive and declaratory relief for the failure to appropriately investigate, refer for discipline and, together with the other DOCCS Defendants, for the failure to take necessary and appropriate action in response to complaints of sexual harassment and abuse of women prisoners by male correctional staff, as set forth in ¶¶ 8-52.

5. Defendant Christian Nunez is the Deputy Chief of Investigations for the Sex Crimes Unit (“SCU”) of the 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. He is sued in his official capacity for prospective injunctive and declaratory relief for the failure to appropriately investigate, refer for discipline and, together with the other DOCCS Defendants, for the failure to take necessary and appropriate action in response to complaints of sexual harassment and abuse of women prisoners by male correctional staff, as set forth in ¶¶ 8-52.

6. Defendant John Shipley is Director of DOCCS’ BLR. He is responsible for deciding whether and on what terms to pursue disciplinary actions against Departmental staff who are alleged to have violated Departmental 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 the Department at disciplinary

hearings of staff. He is sued in his official capacity for prospective injunctive and declaratory relief for the failure to appropriately investigate and discipline staff so as to prevent the sexual harassment and abuse of women prisoners and, together with the other DOCCS Defendants, for the failure to take necessary and appropriate action in response to complaints of sexual harassment and abuse of women prisoners by male correctional staff, as set forth in ¶¶ 8-52.

7. Defendant Jason Effman is Associate Commissioner of DOCCS' Sexual Abuse Prevention & Education Office. He is responsible for gathering information on the extent of staff sexual abuse within DOCCS prisons, is notified of each allegation of sexual abuse within DOCCS' facilities, and develops and implements policies to combat sexual abuse within DOCCS' prisons, including those regarding supervision, investigation and discipline of staff. He is a member of the DOCCS Executive team dedicated to preventing and responding to incidents of sexual abuse. He is sued in his official capacity for prospective injunctive and declaratory relief for the failure to protect women prisoners from sexual harassment and abuse and, together with the other DOCCS Defendants, for the failure to take necessary and appropriate action in response to complaints of sexual harassment and abuse of women prisoners by male correctional staff, as set forth in ¶¶ 8-52.

FACTUAL ALLEGATIONS

I. PLAINTIFFS HAVE SUFFERED REPEATED SEXUAL ABUSE.

8. Defendants are responsible for the care, custody and control of women prisoners, and, through their acts and omissions, Defendants fail to prevent or even reduce the sexual harassment and abuse of women prisoners.

A. JANE JONES 1

9. JANE JONES 1 is a 24-year-old woman who is currently in DOCCS custody at Bedford Hills Correctional Facility ("Bedford Hills"). She has been incarcerated at Bedford

Hills since October 2011. Jane Jones 1 was sexually abused for nearly three years by Officer A, ending in late 2014 or early 2015.

Sexual Abuse by Officer A

- a. In the summer of 2012, Officer A approached Jane Jones 1 during her recreation time in the yard and began engaging her in long conversations about herself and her personal life, and sometimes told Ms. Jones 1 a few details about his own personal life. Although Officer A and Ms. Jones 1 sometimes talked for hours while Ms. Jones 1 was in the yard, including while other staff and supervisors were present; on information and belief no supervisors or other staff reported these warning signs of an inappropriate relationship.
- b. On more than one occasion, Officer A wrote Ms. Jones 1 a short letter and left it for Ms. Jones 1 in a shower stall in the bathroom that leads from the facility out to the 14 yard, and told her where to find it. There are no cameras in the bathroom, and passage through the bathroom is necessary to enter 14 yard. Ms. Jones 1 also wrote to Officer A, leaving letters near the officers' station where he was working.
- c. On several occasions, Officer A called and asked that Ms. Jones 1 be sent to the location where he was working.
- d. Officer A and Ms. Jones 1's first physical sexual encounter occurred in or around November 2013 in the school basement during the 7AM to 3PM shift. Officer A kissed Ms. Jones 1 and asked her to perform oral sex, which she did. Officer A was the only officer assigned to the school basement. There are no cameras in the basement of the school building, and based upon Ms. Jones 1's observations, supervisors conduct only

one or two rounds of the school building at predictable times during the 7AM to 3PM shift.

e. A couple of weeks after the encounter in the basement, Officer A and Ms. Jones 1 had sexual intercourse in a second floor classroom in the school building in the evening, where Officer A had instructed Ms. Jones 1 to meet him after the evening prisoner count (“the count”).

f. Officer A and Ms. Jones 1 thereafter had sexual intercourse again on the second floor of the school building in the evening.

g. Officer A was the only officer assigned to the second floor of the school building. There are no cameras in the second floor of the school building, and, based upon Ms. Jones 1’s observations, supervisors do not conduct rounds of the school building when there are no classes going on in the evenings. No supervisors conducted rounds during Ms. Jones 1’s and Officer A’s sexual encounters there.

h. Even when rounds are conducted, Ms. Jones 1 observed other officers call ahead to alert the officer on duty at the post that a supervisor is on his or her way.

i. Ms. Jones 1 performed oral sex on Officer A during the day in the shed where equipment for yard work is kept. When Officer A supervised the yard crew, Ms. Jones 1 would volunteer to work with the yard crew (even when she was not on the payroll), rather than attend her work assignment as a lobby porter. No cameras are located in the equipment shed or cover the yard, and supervisors typically do not conduct rounds in the yard.

j. Officer A repeatedly kissed and touched Ms. Jones 1 in the trailers that are used for the Family Reunion Program (“FRP”). When Officer A supervised these trailers, he

had Ms. Jones 1 clean them even though this was not her assigned program. When Ms. Jones 1 was called for a visit and was not in her assigned program, but was instead with Officer A in FRP, no action was taken against her for being out of place, nor on information and belief, was any action taken against Officer A. Ms. Jones 1 believes that Officer A was able to prevent her from getting an infraction for being out of place.

k. On several occasions, Officer A brought drugs (marijuana) and alcohol to Ms. Jones 1. He would bring alcohol into the facility hidden in water bottles.

l. Ms. Jones 1 contracted herpes from her sexual contact with Officer A.

m. Officer A and Ms. Jones 1 continued to kiss and touch until in or around late 2014 or early 2015.

n. Ms. Jones 1 was sentenced to Special Housing Unit (“SHU”) confinement in February 2015. Thereafter, she had no physical contact with Officer A.

o. In or around July 2015, Ms. Jones 1 reported the sexual abuse by Officer A by writing to the DOCCS Commissioner. At some point thereafter, an investigator from the OSI came to talk with her. She did not want to speak with the investigator who came to see her, and requested to speak to a female investigator. Several weeks later, a female investigator, Investigator Padilla, interviewed her and obtained details of the abuse.

p. To Ms. Jones 1’s understanding, Officer A was previously accused of sexually and physically abusing other women prisoners and of bringing them contraband.

q. Officer A remains employed by DOCCS at Bedford Hills.

B. JANE JONES 2

10. JANE JONES 2 is a 52-year-old woman who has been incarcerated in DOCCS custody for the past 18 years. She is currently confined at Bedford Hills, where she was sexually abused by Officer B for more than six months in 2014.

a. Ms. Jones 2 has a history of abuse including sexual abuse from family members at the age of 14 and 16, and physical domestic abuse as an adult.

Sexual Abuse by Officer B

b. In 2014, Ms. Jones 2 lived on the Honor Floor in 114 C&D when Officer B began to work there as the regular officer on the 11PM to 7AM shift.

c. Only one officer is posted to the Honor Floor during each shift, including the 11PM to 7AM shift. Based on Ms. Jones 2's observations, supervisors only conduct one round of the housing unit during the 11PM to 7AM shift. On many occasions, no rounds at all are conducted during a shift. Ms. Jones 2 has observed and overheard officers on duty frequently receiving notice from other officers when a supervisor on rounds is approaching.

d. In or around April 2014, within the first month that Officer B began work on the Honor Floor, he approached Ms. Jones 2 and engaged her in conversation. Specifically, he asked her why she was always by herself. Soon after, he showed her a sexually explicit tattoo on his upper arm. He then began to make sexually charged comments to her. He also asked her to show him "some ass" and to undress for him.

e. The first sexual contact occurred between Ms. Jones 2 and Officer B on or around early July 2014. Officer B summoned Ms. Jones 2 to the officers' station (the "bubble") on the Honor Floor and once she arrived, Officer B opened his pants and exposed his penis. He then ordered Ms. Jones 2 to stay at the bubble and watch him as he masturbated.

f. For the next two months, Officer B repeatedly exposed himself to Ms. Jones 2 and told her to watch him masturbate. During this time he also directed Ms. Jones 2 to touch

him and masturbate him. He then began to direct Ms. Jones 2 to perform oral sex, which she performed several times. On occasion, while at her cell or in the bubble, Officer B touched Ms. Jones 2's buttocks and vagina.

g. Between approximately October and November 2014, Officer B continued to periodically expose himself to Ms. Jones 2, to grope her, and to demand and receive oral sex.

h. The abuse took place at Ms. Jones 2's cell, in the "bubble," in a waiting area of the mental health unit (the "bullpen"), and in the front stairwell of the Honor Floor, where, on several occasions, Officer B directed her to go wait for him with a broom towards the end of his shift, between 6AM and 7AM. Although this was meant to act as a cover for her presence in the stairwell, Ms. Jones 2 reports that no cleaning is generally performed at this time of the day.

i. To Ms. Jones 2's knowledge there is no camera coverage of the stairwell area or showing the inside of the inmates' cells in the Honor Block. Also to her knowledge, there are no cameras in the Regional Medical Unit ("RMU"), including the mental health area where the bullpen is located.

j. On one occasion, two prisoners observed Ms. Jones 2 and Officer B engaged in sexual contact in the stairwell. According to Ms. Jones 2, inmates sometimes noticed Officer B on the unit at unassigned times, but Honor Floor prisoners did not report him because they feared that any officer retaliation could result in having their privileges revoked. Officer B informed Ms. Jones 2 that he possessed a key to the back stairwell and that he could and did use the key to enter the housing unit at unassigned times. Ms.

Jones 2 sometimes saw Officer B on the unit when he should not have been there, especially late at night when he was supposed to be working on other units.

k. Officer B told Ms. Jones 2 that he was engaged in sexual activity with other women prisoners and Ms. Jones 2 saw him spending time at other prisoners' cells. She recognized his posture at the doorway of other prisoner's cells as that which he assumed at her doorway when receiving oral sex.

l. At some point after mid-July 2014, Officer B attempted to have intercourse with Ms. Jones 2, but was unable to complete penetration and stopped trying when he heard a noise on the unit.

m. Ms. Jones 2 wanted to say no to Officer B but was afraid to anger him, in part because she knew that any disciplinary infraction he issued against her could result in her being removed from the Honor Floor and thus denied the privileges that accompany being on the Honor Floor.

n. Ms. Jones 2 also feared Officer B because her experience had been that when she ignored him, he would get angry and forceful. In one instance in the recreational room, Officer B forcefully pulled Ms. Jones 2 by the arm after she had ignored his demand to come to him. Another inmate witnessed the abuse and stated, "domestic violence again." Officer B threatened Ms. Jones 2 that he had the power to have her removed from the Honor Floor, just as he had "eliminated" another woman prisoner (meaning that Officer B had influenced her removal from the Honor Floor).

o. Officer B also stated to Ms. Jones 2 that "he [had] a damned good union and his lawyers were even better [than his union]," and that Ms. Jones 2's "ass belonged to him."

p. Ms. Jones 2 contracted a sexually transmitted disease as a result of her sexual encounters with Officer B. In the fall of 2014, she visited the RMU and was advised by a doctor that she should get proof of the sexual encounters (*i.e.*, sperm or evidence on camera).

q. On one evening in November 2014 at approximately 11:30 PM, Ms. Jones 2 performed oral sex on Officer B while she was at the threshold of her cell and Officer B was standing further in the hallway than usual. Officer B also digitally penetrated Ms. Jones 2's vagina during this encounter.

r. In or around early to mid-December, 2014, Ms. Jones 2 went to Commissary around 3:30 PM. Officer B came into the area and called her over to him. He was in an isolated alcove between the Commissary and maintenance, where no cameras are located, and where they could not be seen by others. Officer B requested oral sex. However, another prisoner in the commissary line called out for Ms. Jones 2 and she returned to the Commissary area before engaging in any sexual contact with Officer B. This was the last time Ms. Jones 2 interacted with Officer B.

s. In December 2014, Ms. Jones 2 saw another doctor, who asked if her physical condition was a result of sexual contact with a male. Ms. Jones 2 started crying and answered that it was. The doctor then asked if the man was a civilian or security, and Ms. Jones 2 answered that the man was a correctional officer. The doctor asked Ms. Jones 2 if she lived on the Honor Floor.

t. The day after her visit with the doctor, in or around mid-December, Ms. Jones 2 was interviewed by the OSI and told the investigators about her abuse by Officer B. A BLR hearing was held beginning on June 22, 2015 concerning Ms. Jones 2's allegations

of sexual abuse by Officer B, but that hearing was limited by the BLR to the November 2014 incident where Ms. Jones 2 performed oral sex on Officer B. To Ms. Jones 2's understanding, this was the only incident that could be corroborated by camera footage due to their position during the sexual encounter and the limited time that such footage is maintained.

u. Ms. Jones 2 was not informed about the status of the investigation or that disciplinary action was being taken until shortly before the BLR hearing.

v. In December 2014, Ms. Jones 2 was transferred from Bedford Hills to Albion Correctional Facility ("Albion"). She was not given the reason for this transfer, but believes it was to separate her from Officer B. As a result of this transfer, Ms. Jones 2 lost her placement on the Honor Floor and all associated privileges. She has not been informed about the outcome of the BLR hearing, including whether any disciplinary action has been taken against Officer B.

C. JANE JONES 3

11. JANE JONES 3 is a 28-year-old woman who has been confined in DOCCS custody at Bedford Hills since 2011. Ms. Jones 3 was sexually and physically abused and harassed by Officer C from October 2014 to November 2015.

a. Ms. Jones 3 has a history of sexual abuse prior to her incarceration.

Sexual and Physical Abuse by Officer C

b. Officer C first approached Ms. Jones 3 to engage in conversation while he was working as a temporary substitute on the 113 C&D housing unit where Ms. Jones 3 lived in October 2014. During this and subsequent conversations, he asked Ms. Jones 3 about her case and about her family.

c. The first sexual contact between Ms. Jones 3 and Officer C occurred in November 2014, when Officer C asked her to meet him in the 14 yard before the evening count. She initially declined, stating that she did not want to “freeze her balls off” like he was going to. He asked her—within the hearing of her housing unit’s regular officer, Officer V—whether she would like to “come see if [his] balls are frozen.” After Officer C left, Officer V warned Ms. Jones 3 not to mess around with Officer C because he was “crazy.” After the count, Ms. Jones 3 met Officer C in the yard. When she arrived, Officer C directed her to go into the bathroom that leads to the yard. She waited there for approximately 20 minutes. Officer C then entered and locked the doors on either side of the bathroom. He pulled Ms. Jones 3 into a bathroom stall where they kissed and engaged in sexual intercourse.

d. During November 2014, 13 yard was closed, and 14 yard was the only area available for evening recreation. Many more prisoners were present in the yard than would normally be there, and at the time of this first encounter, at least five officers were assigned to the area. However, most of the officers stayed inside because of the cold weather. Based on Ms. Jones 3’s observation, supervisors typically did not conduct rounds of the yard and no cameras cover the 14 yard or the bathroom leading to it.

e. There were several additional acts of sexual intercourse with Officer C, most of which occurred in the 14 yard or the bathroom leading to the yard. Sexual intercourse stopped around January 2015, but other sexual contact, such as kissing, continued until July 2015.

f. Officer C brought Ms. Jones 3 contraband, including a bracelet and sunglasses.

- g. On or around February 14, 2015, OSI approached Ms. Jones 3 following rumors about her being pregnant. Ms. Jones 3 did not tell the investigator about Officer C's sexual abuse at that time.
- h. Around March 2015, Officer C became physically abusive after becoming concerned that Ms. Jones 3 had spoken to OSI about him. At the same time, Officer C began to supervise the mess hall, and changed his shift to 5:30AM to 1:30PM. Ms. Jones 3 worked as a 113 lobby porter at the time. Although Officer C had become paranoid and abusive, Ms. Jones 3 met him on the landing of the walkway outside 113 lobby virtually each day after his shift ended. Ms. Jones 3 was afraid of what Officer C would do to her if she did not meet him there each day.
- i. Other women witnessed Officer C pass Ms. Jones 3 notes and saw them flirting and spending time together talking. They also overheard him say inappropriate things to Ms. Jones 3, including one instance where he told her "better hope you get your period," "[I'm] not going to lose my job over you" and, "better not be sharing my fucking business."
- j. On different occasions from March 2015 through April 2015, Officer C grabbed Ms. Jones 3 violently by the wrists and pushed her against the wall outside 113 lobby. He also choked her, leaving her with bruising around her neck. On one occasion, witnessed and reported to staff by several prisoners, Officer C hit Ms. Jones 3 while on the walkway outside the 113 lobby.
- k. On or around April 20, 2015, after the choking incident, Ms. Jones 3 was called to her work assignment, and a sergeant approached her to discuss the bruising on her neck

(which was the result of the choking incident). The sergeant brought her to see OSI Investigator Padilla, to whom she reported the physical abuse.

l. Ms. Jones 3's mother and brother called the State Police to report the physical abuse on or about April 25, 2015. On information and belief, only after the State Police became involved were other women prisoners questioned by OSI concerning the abuse. Ms. Jones 3 spoke to OSI several additional times after that, and was informed by Investigator Padilla that no action would be taken against Officer C because nothing was caught on camera, there was no DNA, and because "inmate statements were not worth that much."

m. Even after OSI and the State Police became involved, Officer C continued to verbally abuse Ms. Jones 3 and threaten her with statements including "I'll come find you" and "you can't stay away forever."

n. On July 16, 2015, Ms. Jones 3 received a visit from her family. Officer C, who was posted to the visiting area that day, placed her at a table in the center row immediately in front of the officers' station even though numerous other tables were empty, stared at her, winked at her, and blew her kisses in a harassing manner during her visit with her family, and followed her and her young son into the play area. The incident was reported by counsel to OSI and Associate Commissioner Effman. A few days later, she noticed that Officer C was not working.

o. On or about November 1, 2015, Ms. Jones 3 went to bed in the evening and Officer P was supervising her unit on the 11PM to 7AM shift. Around 5:30AM on November 2, when she went to shower, she discovered that Officer C had come onto her unit and had "popped" her door. Other inmates in her unit confronted Officer C and

insisted on finding a sergeant. Officer C yelled several times for them to get Ms. Jones 3 out of the shower. A sergeant arrived and insisted that Officer C leave her unit. This incident was caught on camera.

p. Ms. Jones 3 later found out from Deputy Superintendent Velez that Officer C was not supposed to be on her unit, since there was an order in place to keep her and Officer C separated. Ms. Jones 3 doubts the effectiveness of such an order since he was able to get to her on her unit that morning. In February 2016, counsel for Ms. Jones 3 was told that Officer C is no longer employed by DOCCS.

Retaliation and Harassment

q. Ms. Jones 3 did not observe Officer C working between July and November 2015. After Ms. Jones 3 saw Officer C again in November 2015, she suffered retaliation by other corrections officers: She has been placed in “pre-hearing confinement” (*i.e.*, confinement pending investigation of a disciplinary incident) for 72 hours several times since November 2, 2015, yet no infractions have been issued following these instances of confinement. Separately, she received an infraction for allegedly altering her pants, because Ms. Jones 3 had pants with a small, repaired rip in the seam. Those pants were confiscated, along with two other pairs from her cell. As a result, she was without prison-issued green pants (and therefore unable to leave her cell, unable to attend meals, recreation, or her work assignments) for two days. On another occasion, Officer K was at the officers’ station and could see another inmate positioned by her door. He closed the cell door so that the other inmate was locked inside with Ms. Jones 3 and reported to a female officer that two inmates were locked in together. The other officer came into Ms. Jones 3’s cell, found the other inmate, and placed both in pre-hearing confinement.

Officer K began to write an infraction, but a sergeant intervened and prevented Officer K from issuing the ticket.

r. Ms. Jones 3 was subjected to harassing comments by staff after Officer C returned in November 2015. Officer U said to her, “You keep complaining about being harassed, so maybe we’ll give you something to complain about.”

D. JANE JONES 4

12. JANE JONES 4 is a 27-year-old woman who has been in and out of jail and prison since she was 18 years old. When confined at Albion in January 2014, she was subjected to sexual abuse by Officer D. Ms. Jones 4 was released on parole in May 2014 and returned to DOCCS custody in January 2015. In the spring of 2015, she was subjected to sexual abuse including repeated acts of voyeurism, propositioning, and touching by Officer E while at Bedford Hills, and in or about November 2015, was subjected sexual abuse including kissing and fondling by Officer A while at Bedford Hills.

a. Ms. Jones 4 has a history of physical and sexual abuse including childhood molestation at the age of 9, and being raped by several men, including her boyfriend at the time, when she was 16 years old.

b. Virtually all of the crimes for which Ms. Jones 4 was convicted were committed while under the influence of drugs or alcohol.

Sexual Abuse by Officer D

c. Sexual abuse by Officer D took place at Albion in January 2014. The abuse consisted of an act of sexual intercourse in her housing unit during the 11PM to 7AM shift. Officer D was the only officer assigned to the housing area during that shift.

d. Officer D was not the usual officer assigned to her housing unit. The night of the abuse was the first time that Ms. Jones 4 met Officer D.

- e. Based on Ms. Jones 4's observation and understanding, supervisory rounds were usually conducted only one time on her housing unit during the 11AM to 7AM shift and that the round had already been conducted when Officer D sexually abused her.
- f. Officer D first approached Ms. Jones 4 by the water fountain almost as soon as the shift began, saying to her "I found my victim for the night. I'll see you later."
- g. Later that same night, during one of Officer D's rounds of the housing area, he coerced a prisoner into leaving her "cube" and going to her girlfriend's cube, leaving a cube empty. He sent instructions through one of the prisoners directing Ms. Jones 4 to meet him in the now-empty cube.
- h. Initially Officer D had directed Ms. Jones 4 to the laundry room, but changed his mind when he noted the presence of cameras by that area. There are no cameras in the dorm area where the cubes are located.
- i. When Ms. Jones 4 did not initially comply with Officer D's direction, he came to her cube and said "What happened? Do I need to give you a direct order?" Ms. Jones 4 then complied with Officer D's direction.
- j. Officer D had sexual intercourse with Ms. Jones 4 in the vacated cube. He was very physically rough with Ms. Jones 4 during the intercourse.
- k. Approximately three days later, Officer D called her to his unit when most of the other prisoners were at mess hall in order for Ms. Jones 4 to retrieve her ID, which he had taken from her earlier that day. When Ms. Jones 4 indicated that she did not want to be involved with him, he warned her not to report him, telling her that no one would believe her if she complained, and that he was not going to lose his job over her.
- l. Officer D promised Ms. Jones 4 contraband, including drugs.

m. Shortly thereafter, when Ms. Jones 4 was questioned by OSI, she reported the incidents. OSI searched her belongings and found two typed unsigned letters that were written to her by Officer D. Ms. Jones 4 was placed in keeplock.¹

n. Ms. Jones 4 was released from DOCCS custody in May 2014 and she never heard anything further about the investigation during the time she was not in custody.

o. Ms. Jones 4 returned to DOCCS custody on January 20, 2015. When she inquired into the status of the investigation into Officer D, she was informed that the allegation was found unsubstantiated by OSI. When she asked why no action was taken, the Investigator placed the blame on Ms. Jones 4, saying that it was because Ms. Jones 4 had not followed up with OSI once released from custody. Ms. Jones 4 was on parole and received no requests for follow-up from OSI once she was released.

p. Officer D continues to work for DOCCS guarding women prisoners.

Sexual Abuse by Officer E

q. Following her return to DOCCS custody in January 2015, Ms. Jones 4 was the subject of sexual voyeurism, sexual harassment, and sexual comments by Officer E at Bedford Hills for several months starting in late February 2015 and lasting until approximately May 2015.

r. On or around February 25, 2015, Ms. Jones 4 received a disciplinary sentence to the SHU. While in the SHU, another prisoner told Ms. Jones 4 that she was aware that she was in the SHU on a narcotics charge and told her that Officer E would provide her with drugs if she would participate in his voyeuristic acts.

¹ “Keeplock” is a disciplinary status in which inmates are isolated in their cells and have limited interaction with others.

- s. Officer E worked the 3PM to 11PM shift in the SHU. When he walked past Ms. Hinds' cell he looked in at her and watched her in clothed yoga or unclothed sexual positions.
- t. Because of cameras and the greater presence of supervisors and staff in the SHU, Officer E did not linger by Ms. Jones 4's cell. When he talked and engaged in sexual comments, he spoke softly, even mumbling, so that others could not hear.
- u. Ms. Jones 4 knew when Officer E would be approaching because of the way he would jingle his keys.
- v. On many occasions, Officer E stopped at Ms. Jones 4's cell door pretending to be telling her to remove a towel from her cell door when it was not present or to discuss books on the book cart or when passing out mail, but would actually be staring at Ms. Jones 4 or talking to her.
- w. Frequently, Officer E quietly made sexual comments to Ms. Jones 4 when escorting her to or from recreation. These included telling her that he found her beautiful and asking to see her breasts. He also told Ms. Jones 4 that she was "hot" and that he would see her when she was released from SHU.
- x. On one occasion, Officer E passed Ms. Jones 4 a note in a book from the book cart.
- y. On one occasion when he was escorting her, he touched her backside when she was returning to her cell from recreation. He said "I'm going to get that. I can't wait 'til you are released from SHU."

z. On one occasion, Ms. Jones 4 touched Officer E's clothed penis through the slot in the door. Although Officer E's body was blocking the camera he told her to stop, referencing "the cameras, the cameras."

aa. Officer E brought Ms. Jones 4 pills while she was confined in SHU.

bb. Officer E switched job posts before Ms. Jones 4 was released from the SHU on or around May 23, 2015.

cc. In or around June 2015, Ms. Jones 4 was questioned by an OSI narcotics investigator and she reported the incidents involving Officer E.

Sexual Abuse by Officer A

dd. In or about November 2015, Ms. Jones 4 was subjected to kissing, fondling of her breasts and genitals and sexual comments by Officer A.

ee. Officer A first approached Ms. Jones 4 in her housing unit, 112A, when he told her that she "had a curl out of place" and asked her if she would like him to fix it.

ff. Shortly thereafter, another prisoner asked Ms. Jones 4 to clean the trailers used for the Family Reunion Program; Ms. Jones 4 understood this prisoner to be conveying a message from Officer A, who was known to supervise the FRP work crew. Although not assigned to the FRP, Ms. Jones 4 was not stopped from going. Officer A did not report her for being there on two separate occasions.

gg. Officer A was the only officer assigned to the FRP area while the trailers were being cleaned. Cameras face only the outside of the trailers and the officers' station, which is similar to a small house. While Ms. Jones 4 was at FRP, she did not see any supervisors in the area.

hh. On the first occasion that Ms. Jones 4 worked at the FRP, Officer A flirted with her, asked her about her life and family and plans, and pressed his body close behind her as she was measuring curtains for the officers' area. He asked her whether she would be loyal to him if he wanted to be with her, and told her that he would take his chances and see how things played out.

ii. On the second occasion that Ms. Jones 4 worked at the FRP, Officer A flirted with her again in the officers' area, discussing his tattoos and asking to see hers, which are on her breasts, arm, back and buttocks. She complied. He told her that he had tattoos on his upper arm and back and planned to get a lion tattooed on his chest. Officer A then escorted Ms. Jones 4 to the trailer area, bumping into her, touching her hair, and joking with her. When they arrived at the trailer, they were alone together for approximately half an hour. During that time, they kissed and fondled each other through clothing, including Officer A fondling Ms. Jones 4's breasts and genital area, and Ms. Jones 4 touching his genital area.

jj. Ms. Jones 4 was supposed to be in school when she was cleaning the FRP. She asked a friend to tell the teacher that she was at the FRP cleaning. On the second occasion, an officer called for Ms. Jones 4 and directed Officer A to have her return to the school area.

kk. Ms. Jones 4 was told that if she missed school again to clean the FRP, she would be disciplined.

ll. Shortly after the incident, Ms. Jones 4 was questioned by OSI and she reported the abuse by Officer A.

mm. On information and belief, Officer A continues to supervise the FRP cleaning crew.

E. JANE JONES 5

13. JANE JONES 5 is a 32-year-old woman who has been in DOCCS custody since she was 16 years old. She was initially housed at Bedford Hills from June 2001 to January 2014. She was then moved to Taconic Correctional Facility (“Taconic”) from January 2014 to June 2014. She is currently confined at Albion. While confined at Bedford Hills, Ms. Jones 5 was abused by Officer F for over six months between September 2012 and March 2013, was subject to voyeurism by Officer G in October 2013, and was sexually abused by Officer H on or about December 23, 2013. At Albion, Ms. Jones 5 was subjected to sexual comments and voyeurism by Officer D in October 2014, and to verbal harassment by DOCCS staff including Officers L and M in July 2015 for having reported her prior abuse, and by Lieutenant N in October 2015 for encouraging another inmate to report an incident of staff voyeurism. In December 2015, she was subject to sexual harassment by a civilian supervisor and faced retaliation when seeking to report the incident.

a. Ms. Jones 5 has a history of childhood sexual abuse and trauma.

Sexual Abuse by Officer F

b. In August 2012, Officer F recruited Ms. Jones 5 onto a paint crew that he was supervising. This paint crew was repainting parts of the facility in anticipation of an American Correctional Association accreditation inspection. As supervisor of the paint crew, Officer F had a great deal of control over the acts and movements of Ms. Jones 5. Further, he assigned Ms. Jones 5 to be the manager of the paint crew, which gave her certain benefits and freedoms that facilitated the sexual relationship. For example, as a manager, it was easier for Ms. Jones 5 to be separated from the rest of the paint crew

because she was not under the supervision of another prisoner and the only staff supervising her was Officer F.

c. While supervising Ms. Jones 5 in her work assignment, Officer F took advantage of this supervisory role by frequently directing her to areas removed from other staff and prisoners. Because he was in isolated areas, without appropriate supervision, without camera surveillance, and where rounds were not conducted, Officer F took advantage of these failures by engaging in sexual intercourse with Ms. Jones 5.

d. The first act of sexual intercourse occurred in September 2012. Officer F engaged in approximately ten acts of sexual intercourse with Ms. Jones 5.

e. The areas without video surveillance or other supervision where the abuse of Ms. Jones 5 occurred included a room within the “Nursery 3” area and a part of the basement. The Nursery 3 area contained bunk beds.

f. To Ms. Jones 5’s understanding, even if any part of her interactions with Officer F had been captured on video, video tapes are maintained for only 30 days. Supervisory staff did not monitor or watch Officer F except during infrequent and predictable rounds, and based on her observations he, like other Bedford Hills staff, was alerted that supervisors were coming to an area by staff calling or radioing ahead to him.

g. On at least one occasion, Officer F provided Ms. Jones 5, who has a history of substance abuse, with liquor.

h. In November 2012, the paint crew concluded the work it had begun in August 2012. It performed further work for a short time in March 2013, when Officer F again ensured that Ms. Jones 5 was a member of the crew.

- i. The improper relationship between Ms. Jones 5 and Officer F was obvious to Bedford Hills' staff, but was not stopped and at no time was Officer F removed or suspended from supervising the paint crew or otherwise disciplined or supervised more closely.
- j. On one occasion, when the paint crew was working in the reception area of the basement, Ms. Jones 5 overheard a female officer tell Officer F that he should be careful with his relationship with inmates if he did not want to get in trouble. Other prisoners working on the paint crew openly commented on the improper relationship. And, between the two periods in which Ms. Jones 5 was working for the paint crew, Officer F told her that an official had questioned him about his relationship with her. Officer F asked Ms. Jones 5 if she had also been questioned; she had not.
- k. Ms. Jones 5 reported the abuse to OSI in October 2013 in the course of an investigation into her report of voyeurism by another officer. Ms. Jones 5 described the sexual abuse she had experienced at the hands of Officer F, including where it occurred and what had transpired. She also provided the IG investigator with a love song that Officer F had given to her, hand-written by Officer F. OSI subsequently confirmed that the document was written in Officer F's handwriting.
- l. Despite Ms. Jones 5's statement and evidence and the fact that the OSI investigator seemed to believe Ms. Jones 5, the investigator informed her that no action would be taken against Officer F because there was insufficient evidence. Officer F continued to work at his regular post, where he continued to have frequent contact with women prisoners. The IG investigator asked Ms. Jones 5 if she could help to "get" Officer F. Thereafter, at the request of the investigator, Ms. Jones 5 participated in a

“sting” operation in which it was arranged for her to be returned to work under Officer F’s supervision. This operation was arranged by an officer known to Ms. Jones 5 as Captain Q and OSI Investigator Rubaine. Ms. Jones 5 was enticed into participating with the promise that an officer known to Ms. Jones 5 as Captain R would arrange to have an unrelated disciplinary ticket of Ms. Jones 5’s dismissed.

m. Ms. Jones 5 was not wired nor, to her knowledge, were her and Officer F’s interactions monitored by video camera to ensure her safety during this “sting” operation. She was simply instructed to try to entice Officer F to again give her liquor or other contraband, but told not to have intercourse with him. This “sting” effort went forward in early December 2013, but did not succeed, as Ms. Jones 5 believes he had moved on to abusing another inmate. No further “sting” attempt was made.

n. In May 2014, more than six months after first reporting her abuse, the OSI investigator first asked Ms. Jones 5 if she had any clothing she had worn during the abuse by Officer F. She provided the underwear she had worn in one instance of his abuse to OSI. Upon later analysis, semen was identified on the underwear. Also in May 2014, again more than six months after her initial report and after Ms. Jones 5 had been transferred to Taconic, the OSI investigator took Ms. Jones 5 back to Bedford Hills so that she could identify where the abuse by Officer F had taken place. Ms. Jones 5 did so, and was later told by the investigator that seminal fluid was found on a mattress in one of the rooms that she identified. To Ms. Jones 5’s understanding, it was only after the finding of seminal fluid on the mattress that Officer F was first interviewed by the IG/OSI. Ms. Jones 5’s was told that Officer F was then placed on administrative leave (*i.e.* leave with pay) by DOCCS six months after Ms. Jones 5 had first reported his abuse.

o. Ms. Jones 5 was later informed that Officer F was arrested on or about December 11, 2014 and charged with rape following the collection and identification of DNA evidence. On or about May 26, 2015, Officer F pled guilty to rape in the third degree. Based on information provided to Ms. Jones 5 by the Assistant District Attorney, Officer F's sentencing took place on October 27, 2015, and he was sentenced to six months jail time, ten years of probation, and registered sex offender status.

Voyeurism by Officer Jorge G

p. In October 2013, Officer G sexually harassed and abused Ms. Jones 5 through repeated sexual comments and acts of voyeurism.

q. Officer G's first act of sexual abuse occurred in October 2013 when he followed Ms. Jones 5 up a stairway at Bedford Hills to her housing area while making sexual comments to her, including "I had a sex dream with you."

r. Shortly after making the initial improper comments to Ms. Jones 5, Officer G came to her housing cube after she had returned from the shower and pulled down her privacy curtain, enabling him to observe her naked.

s. No supervisory staff and no other correctional staff were present when the sexual comments or voyeurism occurred. Officer G was the only officer on Ms. Jones 5's housing unit at the time.

t. Ms. Jones 5 immediately reported Officer G's actions to DOCCS staff. Sergeant S, to whom she reported the abuse, advised her that voyeurism was not that serious, and that very little would happen to Officer G even if her claim were proven. Despite this attempt to discourage her efforts to report, Ms. Jones 5 did report the incident. Following her report, she continued to see Officer G on her unit.

u. Ms. Jones 5 was eventually interviewed by an investigator from OSI regarding the incident. She informed the investigator that her account of Officer G following her up the stairs could be verified using camera footage from the lobby area, which would show her going into the stairwell with Officer G following. There should also have been camera footage showing Officer G pulling down Ms. Jones 5's privacy curtain. When Ms. Jones 5 inquired about the status of the investigation approximately six months after the incident, the OSI investigator informed her that the complaint was not substantiated because the camera was not working. He did not specify if this meant one of the cameras or all of them. On information and belief, no disciplinary or any other action was ever taken against Officer G for this incident.

v. On information and belief, Officer G continues to guard women prisoners at Bedford Hills.

Sexual Abuse by Officer H

w. Officer H abused Ms. Jones 5 on or about December 23, 2013, after directing her to an isolated area, free from cameras or other supervision, and providing her with contraband alcohol.

x. Officer H first approached Ms. Jones 5 when she was housed on Unit 114 C/D, an "honor floor" at Bedford Hills, from approximately 2010 to 2012. At that time, Officer H was the "steady officer" assigned to this unit, and he made efforts to find out details about Ms. Jones 5's background by having conversations with her and asking her numerous questions. He learned from these conversations that she had a history of homelessness, substance abuse, sexual abuse, and depression.

y. On information and belief, there was at least one prior investigation into sexual misconduct by Officer H before his assault on Ms. Jones 5. Ms. Jones 5 was questioned by an OSI investigator as part of this investigation, long before her own assault by Officer H. Ms. Jones 5 is not aware of the outcome of that investigation, but Officer H was permitted to continue guarding women prisoners, including Ms. Jones 5, after the prior investigation of sexual misconduct.

z. On or about December 23, 2013, Officer H directed Ms. Jones 5 to the “school basement” at Bedford Hills, where she had briefly spoken to Officer H earlier in the day and accidentally left her ID card. Once Ms. Jones 5 was in the basement, Officer H locked the door behind her. He told her he wanted to “party” and gave her alcohol and directed her to drink it. He attempted to kiss her, but she resisted and pushed him away. He nonetheless directed her to go to a back room. He then followed her into the room, threw her down onto a table, bit her buttocks, and forcibly performed oral and vaginal sex upon her.

aa. Following the assault, Officer H told Ms. Jones 5 that he needed a way to get her out of the school basement without being seen. Ms. Jones 5 was in a state of shock and followed his directions to leave when he told her to do so. He distracted an officer on a floor above to ensure that there would be no one nearby when Ms. Jones 5 left the building.

bb. Officer H was the only officer assigned to the school basement at the time, and no other officers observed him directing her to the basement and locking the door with her inside. No programs were taking place in the school basement area at the time. During the time period when Ms. Jones 5 was in the school basement with Officer H, she did not

see or hear any other prisoners or officers. No supervisors conducted rounds while she was in the school basement, and there was no video surveillance of the school basement area.

cc. Following Ms. Jones 5's transfer to Taconic shortly after the assault (occasioned by her eligibility for medium-security housing, unrelated to the sexual abuse she had suffered), Ms. Jones 5 had difficulty coping with the trauma of her abuse. She cut off all of her hair in an attempt to feel some control over her life.

dd. In mid-February, about one and a half months after the abuse, Ms. Jones 5 broke down and reported the assault to her OMH psychologist and subsequently to DOCCS staff. Also in February 2014, when Investigator Rubaine, the same OSI investigator who had investigated her prior abuse by Officer F, came to Taconic to inform Ms. Jones 5 that DOCCS believed that there remained inadequate evidence to take any form of action against Officer F, he asked about the new abuse that she had reported. She provided him with details regarding her assault by Officer H. He did not request or collect any clothing or possible physical evidence from Ms. Jones 5 at that time. Instead, although she was in obvious distress from reporting the abuse by Officer H, the OSI investigator asked her if she would like to return to Bedford Hills to try to "catch" Officer F. Ms. Jones 5 refused.

ee. Only on a subsequent visit, in February 2014, did the IG investigator collect the pants that Ms. Jones 5 had worn at the time of the assault by Officer H, which had remained at the bottom of her laundry bag when she was moved from Bedford Hills to Taconic. The OSI investigator later informed Ms. Jones 5 that seminal fluid had been found on the clothing, sufficient for a DNA comparison if DNA could be obtained from Officer H.

ff. In May 2014, three months after she had reported her abuse by Officer H and six months after her report of abuse by Officer F, Ms. Jones 5 was taken from Taconic to Bedford Hills in order to show the IG investigator precisely where the abuse by both officers had occurred. Ms. Jones 5 found this experience deeply traumatic.

gg. On or about May 6, 2014, the OSI investigator informed Ms. Jones 5 that Officer H had been suspended by DOCCS. This occurred only after Ms. Jones 5 had provided physical proof of her abuse. Ms. Jones 5 had previously been told by the same OSI investigator that Officer H had been placed on paid administrative leave as of approximately March 10, 2014. In July 2014, Officer H was criminally charged with rape in the third degree for his assault on Ms. Jones 5. In October 2014, Officer H pled guilty to rape in the third degree. Ms. Jones 5 was informed that he was sentenced in January 2015 to six months jail time, ten years of probation, and registered sex offender status.

hh. As a result of her abuse, Ms. Jones 5 suffers from post-traumatic stress disorder (PTSD). On June 17, 2014, Ms. Jones 5 became overwhelmed by her trauma and attempted suicide. She was discovered in time to survive the attempt and was transported to a medical facility. She was subsequently held at the Central New York Psychiatric Center (“CNYPC”) for approximately one month for observation. On or about July 22, 2014, she was released from CNYPC and transferred to Albion, where she remains today.

Recent Retaliation and Harassment

ii. In or about the middle of October 2014, Ms. Jones 5 was subjected to repeated sexual comments and voyeurism by Officer D, the officer on her housing unit at Albion, K-2, on the 7AM to 3PM shift. Officer D commented repeatedly on Ms. Jones 5’s

physical appearance, telling her that she was “beautiful.” He called her to the officers’ station to ask her questions about herself, including her age, and conducted his rounds of the shower area when he knew her to be showering and stared at her when she left the shower area, in an attempt to observe her in a state of undress. Ms. Jones 5 advised DOCCS staff of Officer D’s sexual harassment, and she was moved to a different housing area. Officer D continues to be employed at Albion.

jj. On or about July 7, 2015, Officer L, the officer assigned to Ms. Jones 5’s Albion housing area, B-2, on the 3PM to 11PM shift, became verbally abusive to her, repeatedly calling her “the black widow” and telling her that she was a “little Amy Fisher.”² Ms. Jones 5 advised DOCCS staff of Officer L’s harassment, but no action was taken.

kk. On or about July 22, 2015, Officer M improperly read Ms. Jones 5’s legal mail, which contained the victim impact statement that she was to give at the criminal trial of Officer F. Officer M laughed and made fun of the sexual abuse experienced by Ms. Jones 5 as described in the statement. To stop the harassment, Ms. Jones 5 took the letter from Officer M. She was disciplined for this action, received 30 days in keeplock (suspended), and lost her housing and program assignments as a result. There is no camera in the law library where this incident occurred.

ll. On or about October 8, 2015, after attempting to help another prisoner report sexual harassment by Officer T, Ms. Jones 5 was called to the sally port, handcuffed, and subjected to harassment by Lieutenant N and several officers in retaliation for helping the other inmate report harassment. There are no cameras in the sally port where this

² Amy Fisher was confined at Albion in the mid-1990’s for a highly-publicized crime, following which she was referred to as the “Long Island Lolita.” She brought suit over sexual abuse at Albion. *See Fisher v. Goord*, 981 F. Supp. 140 (W.D.N.Y. 1997).

incident took place. Following the incident, Ms. Jones 5 was subject to further harassment and intimidation by other officers as a result of helping the inmate.

mm. On or about December 8, 2015, Ms. Jones 5 was subject to sexual harassment by the civilian supervisor in her industry program assignment. While staring at her nipples, he said “My, aren’t we happy today?” Ms. Jones 5 left the immediate area where the comment was made in order to find a corrections officer so that she could report the harassment. Although assigned, no officer was present in the area where the harassment took place. When Ms. Jones 5 returned to the industry area after finding an officer, she was handcuffed, taken to disciplinary segregation, and given a disciplinary infraction, receiving nine days loss of recreation. There are no cameras in the part of the industry area where the sexual harassment occurred.

F. JANE JONES 6

14. JANE JONES 6 is a 26-year-old woman who has been in DOCCS custody since December 2009. She was confined at Albion from January 2012 to April 2013. That April, she was transferred to the “TBU” (mental health disciplinary housing) at Bedford Hills. She was then transferred to Taconic in June 2013, where she remains in DOCCS custody. While confined at Albion, Ms. Jones 6 was sexually abused by Officer D in 2012 and Officer I between November 2012 and March 2013. While at Taconic, Ms. Jones 6 was sexually abused from February 2014 to January 2015 by Officer J.

a. Ms. Jones 6 has a history of severe sexual and physical abuse, beginning when she was four years old. She suffers from serious mental illness, including major depression.

Sexual Abuse by Officer D

- b. A few months after arriving at Albion in 2012, Ms. Jones 6 met Officer D in the recreation room of the area where she was housed. At the time, Ms. Jones 6 was living on C Block, in the Intermediate Care Program (“ICP”), a dorm unit designated for prisoners identified by the Office of Mental Health as needing mental health treatment. Officer D was working as a resource officer on the 3PM to 11PM shift. He acted flirtatiously towards her. Thereafter, she saw him a few times around the facility and he greeted her flirtatiously.
- c. One evening, Ms. Jones 6 and another prisoner stayed up late into the night talking with Officer D, who was working an overnight shift, although prisoners were supposed to be in bed after 11PM. They sat near the officers’ desk adjacent to the recreation room. They discussed sexually explicit matters. There are cameras in the recreation room that should have captured an officer allowing prisoners to be out of place and discussing inappropriate topics with them.
- d. At some point during the evening, Officer D began writing crude, sexually explicit notes to Ms. Jones 6. After the other prisoner went to bed at approximately 2AM, Officer D told Ms. Jones 6 to go to the bathroom and wait for him. Officer D then walked by the bathroom under the guise of performing a round of the housing area. He told Ms. Jones 6 to show him her breasts and assume a sexy pose. She did as instructed. There are no cameras in the bathroom.
- e. Ms. Jones 6 returned to her bed, but Officer D repeatedly passed by until she left her sleeping area to return to the officers’ desk. There are no cameras covering the sleeping areas of housing units.

- f. When Ms. Jones 6 returned to the officers' desk, Officer D wrote her a note saying that he wanted to show her his penis. When she responded negatively, he told her that she was "chicken." He said that he was going to the officers' breakroom and that she should follow him.
- g. Prisoners are not allowed in the officers' breakroom unless they are cleaning it. Cleaning of the breakroom only occurs during the daytime. There are no cameras in the officers' breakroom.
- h. As Ms. Jones 6 approached the breakroom, he tapped on the window to get her attention, turned the lights on and she saw that his penis was exposed and he was masturbating.
- i. Ms. Jones 6 was able to spend that entire night with Officer D, only returning to her bed at or around 5AM, without being discovered. Although there was at least one supervisory round that night, Officer D received a phone call warning him that a supervisor was approaching.
- j. A few weeks later, during which time she had not seen Officer D, Ms. Jones 6 was approached by Officer D in her housing area. Officer D informed Ms. Jones 6 that he was going to be working in the C-Block basement, suggesting that she should go there to meet him at some time at or around 5PM to 6PM.
- k. At the next time during which there was movement within the facility, Ms. Jones 6 signed out of her housing area. She signed out for an area that was not the C Block basement.

l. Officer D was working the 3PM to 11PM shift in the basement. He was the only officer working in the C Block basement at that time. There are no cameras in the C Block basement.

m. Once in the basement, Officer D directed Ms. Jones 6 to the hopper room (a room containing pipes, slop sinks, brooms and mop heads). Once in the hopper room, Ms. Jones 6 performed oral sex on Officer D and they had intercourse. Officer D used a latex Jones as a condom.

n. No rounds took place in the C Block basement while Ms. Jones 6 and Officer D were there.

o. Subsequently, Officer D was working the 3PM to 11PM shift on the ICP housing unit. At or around 8PM, Officer D instructed Ms. Jones 6 to take the garbage out to a back area. She did as directed. Officer D approached her and took her into a nearby stairwell, where there are no cameras. He kissed Ms. Jones 6 and put his hands in her pants. He told her that he wanted to have intercourse with her. They did not have intercourse, however, because he believed they did not have time.

p. Officer D exposed himself to Ms. Jones 6 on multiple occasions, usually while working an overnight shift while he was in the officers' station.

q. Officer D continues to work for DOCCS guarding women prisoners.

Sexual Abuse by Officer I

r. Officer I first approached Ms. Jones 6 in a flirtatious manner in or around April 2012. At the time, Ms. Jones 6 was still at Albion, living in the ICP, which was located on C Block.

s. Officer I was a resource officer, which meant that he did not have a regular post and instead filled in for other officers throughout the facility. He worked on the ICP area frequently, usually on the 7AM to 3PM shift. Usually Officer I was an escort officer, but on a few occasions he was the Officer in Charge.

t. After the first meeting, Ms. Jones 6 saw Officer I in passing once or twice more; he nodded or winked flirtatiously when he saw her.

u. Officer I then went on leave, so Ms. Jones 6 did not see him again until in or around November 2012.

v. Upon his return, in November 2012, Officer I told Ms. Jones 6 that he had missed her during his absence and that he had thought about her the whole time. Officer I engaged Ms. Jones 6 in intimate, personal conversations during which he divulged information about his family and spoke to her about personal matters including her history of rape, sexual abuse, and mental illness.

w. Around Thanksgiving Day in 2012, Ms. Jones 6 was placed in keeplock. However, she was still allowed to attend her programs. On or around late November or early December, Ms. Jones 6 was in the basement attending one of her programs when she left the room to use the bathroom. Once in the hallway, Ms. Jones 6 saw Officer I, who was working a post in the C Block basement. When Officer I saw Ms. Jones 6 he gestured for her to approach him. Another officer, who should have been supervising Ms. Jones 6, was busy reading a book and paid no attention to Ms. Jones 6 departing the area in which she was supposed to be. When Ms. Jones 6 reached Officer I, he pushed her against a doorway, forcibly kissing her and attempting to put his hands down her pants. He told her that he had been “waiting for this for a long time.”

- x. There are no cameras in the C Block Basement.
- y. In or around late December 2012, while he was working the 7AM to 3PM shift in the dorm, Officer I asked Ms. Jones 6 to show him her breasts. She complied. Ms. Jones 6 was by her bed at the time. To Ms. Jones 6's understanding, the other prisoners were likely eating in the mess hall at the time, and Officer I was the only officer remaining in the dorm. There are no cameras in the interior of the dorm.
- z. Between November 2012 and mid-March 2013, Officer I's physical contact with Ms. Jones 6 escalated and included frequent kissing, sexual touching, and at least four occasions of her performing oral sex upon him.
- aa. Officer I was frequently able to meet with and engage in sexual contact with Ms. Jones 6 in areas where one or both of them were not assigned and therefore should not have been permitted to access. At times, Ms. Jones 6 left her housing area stating that she was going to an area, like the gym, to which she did not go. Officer I repeatedly left his post to spend time with Ms. Jones 6 in various areas of the prison, including coming to her dormitory area and visiting her while she was confined in keeplock.
- bb. At times, Ms. Jones 6 spent long periods of time around Officer I. When he was working at the shack on the upper grounds of Albion, she spent most of the day there, only returning to her post for count times. This meant that she was spending multiple periods of time at the shack even though she was not programmed for those times. On a few occasions, Ms. Jones 6 also spent the majority of the day with Officer I in "the castle" – an area containing the library where the counselors were located during the week. Ms. Jones 6 met Officer I in the castle on weekends or snow days.

cc. Officer I's conduct with Ms. Jones 6 was so glaring and obvious that DOCCS staff advised her to be careful. One officer advised Ms. Jones 6 that she and Officer I were being "too obvious." Reports of warning signs or suspicions of sexual abuse were apparently not reported to supervisory staff, or supervisory staff failed to take action in response.

dd. Officer I frequently engaged in sexual contact with Ms. Jones 6 in private, enclosed, and unmonitored areas of the prison, including the hopper room in the C-Block basement and the shack. There were no cameras covering the inside of the hopper room or the shack.

ee. Supervisory rounds of each area where Officer I engaged in sexual contact with Ms. Jones 6 were performed on a consistent and predictable schedule; for example, once supervisory rounds were completed for a shift, officers knew that there would be an unsupervised period during which no additional rounds were expected. In addition, it was common practice for officers to call ahead to alert other officers, including Officer I, that supervisors were conducting rounds and would soon arrive at their housing or program area. On many occasions, Ms. Jones 6 heard supervisory staff inform correction officers of what housing area they were heading to next, facilitating these alerts.

ff. On or about March 20, 2013, Ms. Jones 6 told the OSI about the sexual abuse by Officer I. Ms. Jones 6 did not initially complain about Officer I's conduct in part because she did not think that DOCCS officials would believe her, and because she feared that she would be subjected to retaliation by Officer I, his correctional officer colleagues, and other staff.

gg. Shortly after reporting the abuse by Officer I to OSI, Ms. Jones 6 received a disciplinary infraction for an unrelated matter that led to her placement in keeplock. Although not assigned to keeplock, Officer I visited Ms. Jones 6 there and told her not to say anything to anyone about him.

hh. While in keeplock, Ms. Jones 6 was questioned by the same staff person from the OSI who had signed the misbehavior report. This investigator interrogated Ms. Jones 6 in a threatening, hostile, and demeaning manner. The investigator told Ms. Jones 6 that she could “make the ticket disappear” if Ms. Jones 6 cooperated with the investigation.

ii. In May 2013, while still serving her disciplinary sentence, Ms. Jones 6 attempted to commit suicide.

jj. In February 2014, almost a year after she provided her statement to the OSI, Ms. Jones 6 was informed for the first time, by DOCCS’ BLR staff, that Officer I had been suspended from Albion, walked out in May 2013, and that DOCCS was pursuing disciplinary charges against him. In March 2014, Ms. Jones 6, through counsel, was informed that DOCCS reached a settlement with Officer I pursuant to which he was transferred to a male correctional facility and under which he agreed not to seek transfer to a female facility in the future. On October 10, 2014, she was told by an OSI investigator that her allegations against Officer I had been substantiated, although she was not provided with any details or told which of her allegations were substantiated.

kk. Based on information provided to Ms. Jones 6 by other prisoners, other women prisoners have been sexually abused by Officer I.

Sexual Abuse by Officer J

ll. From February 2014 to January 2015, Officer J sexually harassed and abused Ms. Jones 6 at Taconic, including through several acts of oral sex and sexual intercourse. The abuse began when Ms. Jones 6 was assigned to the Alcohol and Substance Abuse Training (“ASAT”) program, where Officer J occasionally worked as the 7AM to 3PM shift resource officer. On their first meeting, Officer J approached her flirtatiously, making a sexually suggestive comment to her when he saw her adjusting her unbuttoned pants. Officer J returned to Ms. Jones 6’s cell later that day and continued to make sexually suggestive comments to her. He then ran his hand along the top of Ms. Jones 6’s underwear.

mm. From approximately February 2014 until January 2015, Officer J engaged Ms. Jones 6 in intimate, personal conversations and inappropriate sexual touching.

nn. As of approximately March or April 2014, Ms. Jones 6 completed the ASAT program and moved to the C Gallery housing unit. Shortly after her move, Officer J was working overtime on the 3PM to 11PM shift in her housing area when, around 8PM, he directed Ms. Jones 6 to clean the officers’ bathroom. Once inside the bathroom, Officer J had sexual intercourse with Ms. Jones 6. Ms. Jones 6 asked Officer J to use contraception, but he responded that he did not have any.

oo. Around the same time, Officer J followed Ms. Jones 6 to the auditorium above the mess hall, another area without supervision or camera surveillance. Ms. Jones 6 was attending her program at the time and left the room to retrieve an easel. Officer J was supposed to be working a shift in the mess hall. Instead, Officer J had sexual intercourse with Ms. Jones 6 in the auditorium. Ms. Jones 6’s extended absence from her program

was noticed and another prisoner was sent to find her, but Ms. Jones 6 was already on her way back when she was located.

pp. After Ms. Jones 6 completed the trauma-focused mental health treatment program, she was again moved into a new housing unit. There was no steady officer in this unit, and Officer J frequently worked there. Over the next six months, there were several acts of sexual contact, including oral sex and sexual intercourse. Many of these instances occurred in the officers' office or the officers' bathroom, during or immediately after the count. The sexual abuse only ended completely when Officer J went on leave in January 2015.

qq. During the same time period as the abuse, Officer J gave Ms. Jones 6 two packs of cigarettes.

rr. Ms. Jones 6 subsequently reported the abuse to OMH in or around May 2015. OMH referred her complaint to the PREA Deputy Superintendent, who in turn notified OSI.

ss. Ms. Jones 6 described the abuse to OSI Investigator Donato, as well as to the State Police. She provided them with dates and locations where the sexual abuse occurred.

tt. In or about December 2015, Ms. Jones 6 spoke with Investigator Donato who informed her that the investigation into the sexual abuse by Officer J was ongoing.

uu. In January, 2016, Ms. Jones 6 was informed by Taconic staff that Officer J would be returning to work at Taconic Correctional Facility.

vv. Ms. Jones 6 understands that other women prisoners were sexually abused by Officer J.

ww. At least two other women at Taconic have alleged that they were abused by Officer J. The first alleged that Officer J abused her on two occasions, including through acts of attempted intercourse and digital penetration, which at times were rough and physically aggressive. The first of these acts took place in the fire safety office where Officer J attempted to force his penis into the woman's vagina. Then, in November 2014, Officer J called the woman into the officer's office and directed her to clean the staff bathroom. After referencing Ms. Jones 6, he then ordered this woman to play with herself, put his fingers in her vagina, licked them, and left. The woman reported the abuse by Officer J to OSI Investigator Padilla in September 2015. She was then released to be deported at the end of October, 2015. DOCCS has made no attempt to follow up with her concerning these allegations.

xx. Another woman was abused by Officer J repeatedly between February and December 2014 at Taconic. Officer J worked on the woman's unit. He first engaged her in personal conversations, discovering that she had a history of drug abuse and prostitution. Later, Officer J engaged her in several acts of sexual intercourse and oral sex, including one "threesome" involving her and another woman at Taconic. The sexual abuse took place primarily in the J&K gallery and the C gallery, in the officers' offices, the officers' bathrooms, the caustic closet, and in women's cells. The woman and Officer J also engaged in sexual touching in the mess hall ice room. Officer J brought her cigarettes.

Retaliation and Harassment

yy. In the fall of 2014, Officer O told Ms. Jones 6 and Officer J that she was aware of some "funny business" between them. After reporting the abuse by Officer J, Ms. Jones

6 was subject to retaliatory comments and discipline by his colleagues, including Officer O. Officer O made harassing and threatening comments to Ms. Jones 6, screaming at Ms. Jones 6 and at her counsel during counsel visits, and enforcing non-existent rules about how legal visits are to be conducted.

zz. On June 18, 2015, before a legal visit, Officer O subjected Ms. Jones 6 to an inappropriate pat frisk during which she repeatedly demanded that Ms. Jones 6 separate her legs, and then Officer O aggressively moved her open hand up Ms. Jones 6's legs, assaulting her groin area. Officer O then issued Ms. Jones 6 a disciplinary infraction for the incident. As a result, Ms. Jones 6 spent 21 days in keeplock before being released following complaints by her counsel to Defendants.

aaa. In December 2015, while Ms. Jones 6 was on her way to the law library, Officer O refused her passage, indicating that Ms. Jones 6 could not take that particular route (a route which Ms. Jones 6 had taken repeatedly in the past, including under Officer O's supervision without comment). Officer O issued Ms. Jones 6 a disciplinary infraction for being out of place and for disobeying a direct order. Based on Ms. Jones 6's observation of the placement of cameras in that area of the facility, the incident should have been captured by the facility's cameras.

bbb. On January 31, 2016, Ms. Jones 6 and other women prisoners joined a growing line for medication during mealtime. Although joining a medication line that is already forming is usual practice, Officer O singled Ms. Jones 6 out and issued her a disciplinary infraction. Based on statements told to Ms. Jones 6, Officer O also told two other prisoners in the clinic that she was going to "get [Ms. Jones 6], get [Ms. Jones 6] good."

II. DEFENDANTS KNOW THAT WOMEN PRISONERS ARE AT SUBSTANTIAL RISK OF SEXUAL MISCONDUCT BY DOCCS STAFF.

15. Defendants are aware that prisoners are at risk of sexual abuse from prison staff.

a. Awareness of the risk and incidence of sexual abuse in a prison setting has led the federal government, the District of Columbia, and all fifty states³ to enact statutes criminalizing any sexual contact between prisoners and correctional staff. *See, e.g.*, N.Y. Penal Law § 130.05(e).

b. Awareness of the risk of custodial sexual abuse has led to the enactment of the Prison Rape Elimination Act, 42 U.S.C. § 15601 *et seq.* (2003).

c. The OSI receives approximately 200 complaints of staff sexual misconduct and harassment each year.⁴

16. For a number of reasons and from a variety of sources, Defendants are aware that assigning male staff to guard female prisoners creates obvious risks of sexual abuse.

a. Defendants are aware that sexual abuse occurs in their women's facilities⁵ and that sexual abuse of women prisoners is primarily perpetrated by male corrections staff.

b. Awareness of the risk and incidence of sexual abuse in a prison setting has led to the promulgation of international standards prohibiting the assignment of male correctional staff to guard women prisoners. United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 53, adopted Aug. 30, 1955.

³ National Criminal Justice Reference Service, National Prison Rape Elimination Commission Report at 37 (June 2009), <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

⁴ U.S. Dept. of Justice, Bureau of Justice Statistics, "Survey of Sexual Violence in Adult Correctional Facilities 2009–2011," Statistical Tables at 7-11 (Jan. 2014), <http://www.bjs.gov/content/pub/pdf/ssvacf0911st.pdf> (in 2011, there were 184 allegations of staff sexual misconduct and 24 allegations of staff sexual harassment; 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) ("2009-2011 BJS Sexual Violence Statistics").

⁵ *See* Ex. A, August 26, 2015 Letter from DOCCS (Kimberly Sesselman, Assistant Records Access Officer, response to counsel request under the NYS Freedom of Information Law ("FOIL") detailing that 78 investigations into staff sexual abuse were opened at the women's prisons in 2012, and 61 were opened in 2013) ("Aug. 26, 2015 FOIL Response").

c. Awareness of the risk and incidence of sexual abuse in a prison setting, including the particular risks facing women prisoners, has led several states and local correctional institutions to require the presence of female staff to guard women prisoners, and even to remove men from guarding women prisoners, at least in housing areas.⁶

d. Defendants are aware that women prisoners are a particularly vulnerable population who face a heightened risk of sexual abuse by male officers. As many as 60-80% of women prisoners have been physically or sexually abused prior to their incarceration.⁷ A larger number of incarcerated women have histories of sexual and

⁶ See, e.g., *Teamsters Local Union No. 117 v. Washington Dep't of Corrs.*, 789 F.3d 979 (9th Cir. 2015) (holding that the Washington Department of Corrections was entitled to the BFOQ defense because it was “well justified in concluding that rampant abuse should not be an accepted part of prison life and taking steps to protect the welfare of inmates under its care.”); *Tipler v. Douglas County, Nebraska*, 482 F.3d 1023 (8th Cir. 2007) (prison policy relying on Nebraska Code, § 47-111, which required supervision of female inmates in county jails by a female matron, did not violate Title VII); *Everson v. Michigan Dep't of Corrs.*, 391 F.3d 737, 748, 751 (6th Cir. 2004) (reversing trial court’s decision and finding that, given the “grave problem of sexual abuse of female inmates,” the MDOC’s plan to designate certain female-only positions on housing units did not violate the civil rights of corrections officers because sex is a “bona fide occupational qualification reasonably necessary to the normal operation of [a] particular business or enterprise”); *Reed v. County of Casey*, 184 F.3d 597 (6th Cir. 1999) (upholding a gender-based transfer of a female deputy jailer where it was reasonably required to comply with Kentucky law requiring female supervision of female inmates); *Robino v. Iranon*, 145 F.3d 1109 (9th Cir. 1998) (finding that gender was a bona fide occupational qualification (“BFOQ”) in assigning female officers to particular posts when those posts required the officers “to observe the inmates in the showers and toilet areas...or provide[] unsupervised access to the inmates.”); *Tharp v. Iowa Dep't of Corrs.*, 68 F.3d 223 (8th Cir. 1995) (finding that sex-based shift restrictions do not implicate Title VII where the “policy was adopted to meet legitimate penological concerns...and...plaintiffs ha[ve] many different shift assignments and promotions available to them.”); *Torres v. Wisconsin Dep't of Health and Soc. Servs.*, 859 F.2d 1523 (7th Cir. 1988) (en banc) (reversing District Court’s finding that defendants had not established sex as a valid BFOQ in supervising female felons under Title VII, and remanding to District Court for further consideration); see also 9 NYCRR § 7504.1(e) (“Supervision of female prisoners shall be accomplished by a matron, and a female prisoner shall not be placed in or removed from a detention area unless the matron is present. The matron shall retain the key for the detention area for females and no male person shall be permitted to enter an area where female prisoners are detained unless accompanied by the matron.”).

⁷ 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. U.S. Dept. of Justice Bureau of Justice Statistics, “Prior Abuse Reported by Inmates and Probationers” at 1 (April 1999) (“BJS Prior Abuse”), <http://www.bjs.gov/content/pub/pdf/parip.pdf>; see also Allison Hastings, Angela Browne, Kaitlin Kall, and Margaret diZerega, “Keeping Vulnerable Populations Safe Under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails” at 11-13 (March 2015), <http://www.vera.org/pubs/housing-vulnerable-populations-prea-guide> (“[W]omen in the criminal justice system report more extensive victimization 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 ... maximum security prison, more than half (59%) of women in the study reported childhood sexual molestation, and 77 percent reported lifetime physical or sexual assaults by non – intimates.”).

physical abuse than male prisoners or women who have never been incarcerated.⁸ These abuse histories make women especially vulnerable to coercion and manipulation.⁹

17. In addition to awareness based on the ample information regarding the problem of staff sexual abuse in correctional settings generally, Defendants are aware of the substantial risk to women prisoners of sexual misconduct by male staff in New York facilities given DOCCS' own *actual* experience, particularly because DOCCS knows that sexual abuse is significantly under-reported in the prison context.¹⁰

a. In 2012, 78 investigations were opened by the SCU into sexual misconduct involving DOCCS staff at the all-women's prisons, which currently include Albion, Bedford Hills, and Taconic.¹¹ In 2013, 61 such investigations were opened.¹²

b. Women prisoners, although a small segment of the total DOCCS inmate population, represent a disproportionately high percentage of victims of staff-on-inmate sexual abuse in Defendants' prisons.¹³

⁸ BJS Prior Abuse, *supra*, note 7, at 1-2 (over one-third of female state prisoners and jail prisoners reported being abused as children, compared to estimates from 12-17% of females in the general population.); Browne, A., Miller, B., & Maguin, E., Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women, *International Journal of Law and Psychiatry* 22 at 301-322 (1999) (finding higher rate of abuse history than BJS data, with 70% of incarcerated women interviewed in a New York maximum security prison reporting physical violence and nearly 60% reporting sexual abuse).

⁹ See Cindy Rich, Amy Combs-Lane, Heidi Resnick & Dean Kilpatrick, Child Sexual Abuse and Adult Sexual Revictimization, *From Child Sexual Abuse to Adult Sexual Risk: Trauma, Revictimization, and Intervention* (2004). A 2013 report from the DOJ's 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. Dept. of Justice, Bureau of Justice Statistics, "Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12 at 19 (May 2013) ("2011-2012 BJS Statistics"), www.bjs.gov/content/pub/pdf/svpjri1112.pdf; Messman-Moore, T.L. & Long, P.J., "Child Sexual Abuse and Revictimization in the Form of Adult Sexual Abuse, Adult Physical Abuse, and Adult Psychological Maltreatment," *J. Interpers. Violence* 15 (5) at 489-502 (May 2000) (women with childhood sexual abuse history were more likely to experience adult sexual violence, physical violence and psychological maltreatment as adults, and were more vulnerable to verbal coercion or pressure from individuals in authority.).

¹⁰ United States Dep't of Justice, "Regulatory Impact Assessment for PREA Final Rule" at 17-18 (May 17, 2012), http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf ("DOJ Regulatory Impact Assessment").

¹¹ Two women's prisons, Beacon and Bayview Correctional Facilities, were closed in 2013.

¹² Ex. A, Aug. 26, 2015 FOIL Response, *supra*, note 5.

¹³ 95.6% of the 53,565 prisoners in custody as of January 1, 2014 were male, and only 4.4% were female. See State of New York Dep't of Corr. and Community Supervision, "Under Custody Report: Profile of Under Custody

- c. A disproportionate number of the more than 200 complaints of sexual abuse and harassment that OSI receives each year arise from the women's prisons.¹⁴
- d. As recently as 2014 and 2015, male correctional staff from DOCCS women's prisons have been criminally charged or convicted of crimes of sexual misconduct, including, most recently, several correction officers from Bedford Hills. DOCCS received complaints of sexual misconduct about some of these officers prior to the incidents leading to their arrest, and yet failed to increase supervision over these officers.
- e. Women prisoners have been impregnated by male staff in DOCCS prisons.¹⁵
- f. The U.S. Department of Justice's Bureau of Justice Statistics periodically releases reports of anonymous surveys on sexual victimization in prisons and jails. The last time that women prisoners in New York were included in the survey, New York State prisoners self-reported the highest rates of staff sexual abuse in the nation.¹⁶
- g. Defendants have been party to a number of injunctive and damages cases brought in both state and federal courts by women prisoners who have been victims of staff sexual abuse. This includes the putative class action litigation *Amador v. Andrews*, which was brought on behalf of 17 named plaintiffs in 2003. 03 Civ. 0650 (S.D.N.Y. 2003). In the decade-plus during which that case was pending, there were several motions to amend

Population as of January 1, 2014," at 17, http://www.doccs.ny.gov/Research/Reports/2014/UnderCustody_Report_2014.pdf. However, there were 84 allegations of abuse from the women's prisons in 2012 and 68 in 2013, compared with overall complaints by all prisoners of sexual abuse by staff of 211 allegations in 2009, 233 in 2010 and 208 in 2011. See Ex. A, Aug. 26, 2015 FOIL Response, *supra*, note 5 (78 allegations of sexual misconduct in women's prisons during 2012; 61 allegations during 2013).

¹⁴ See *id.*; see 2009-2011 BJS Sexual Violence Statistics, *supra*, note 4.

¹⁵ Alysia Santo, Raped Behind Bars, Albany Times Union, Sept. 9, 2013, available at 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.")

¹⁶ Beck, Harrison, Berzofsky, Caspar, & Krebs, U.S. Dep't of Just., Bureau of Just. Stat., "Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09" at 9 (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf>.

the Complaint to add new named plaintiffs and identify policy failures to reflect the ongoing sexual abuse problem within DOCCS.

h. The New York State Court of Claims has similarly seen several cases in which a woman inmate has brought claims against the State for abuse by an officer with prior complaints of sexual abuse. *See, e.g., Patterson v. State of New York*, 44 Misc. 3d 1230(A) (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) (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”).

18. Defendants know that cases that result in criminal prosecutions or the discipline of staff do not reflect the entire universe of staff misconduct, given that Defendants only investigate incidents of sexual misconduct, harassment, and abuse that have been reported, and Defendants know that staff sexual abuse is significantly underreported.¹⁷

a. Victims of sexual abuse, generally, are unlikely to come forward with complaints of sexual misconduct due to embarrassment and humiliation and a fear that such complaints will be greeted with skepticism or disbelief.

¹⁷ See DOJ Regulatory Impact Assessment, *supra*, note 10, at 17-18 (concluding that, based upon the 2008-2009 BJS survey, between 69 percent and 82 percent of inmates who reported sexual abuse in response to the survey had never reported an incident to corrections staff).

b. These concerns are exacerbated in a correctional setting, where the persons to whom such complaints are to be made are colleagues of the perpetrator(s) of the abuse, putting the victim at risk of retaliation; where complaints of such abuse are not maintained in a confidential fashion; and where there is a well-founded belief by women prisoners that such complaints will be greeted with skepticism and will not result in any action against the perpetrator.

c. Women prisoners who were subjected to physical or sexual abuse prior to their incarceration, particularly those who complained to no avail, may face additional psychological and emotional obstacles to complaining of sexual misconduct while in prison. These women are unlikely to come forward with such complaints while in prison.¹⁸

d. Women prisoners are justified in believing that their reports will be disbelieved: of the allegations of staff sexual misconduct that are reported, DOCCS substantiates only a small percentage, a percentage that continues to fall.¹⁹

19. Defendants' failure to implement and enforce policies and practices that would actually prevent and punish all sexual abuse contributes to a lenient and permissive prison culture and increases the risk of sexual abuse of women prisoners.

a. Some of the abuse that takes place in prisons is deemed by staff to be "consensual." In other words, the inmates are not necessarily subjected to physically forcible abuse, but rather appear to enter into sexual contact voluntarily. However, any purportedly "consensual" sexual activity between correctional staff and the prisoners they

¹⁸ See generally, *id.*

¹⁹ 2009-2011 BJS Sexual Violence Statistics, *supra*, note 4, at 7-11. See also Ex. B, Dec. 2, 2015 Letter from DOCCS (Deputy Counsel Nancy Heywood) response to clarification and appeal under the NYS Freedom of Information Law (detailing that of 78 investigations opened at the four female facilities in 2012, four involving male staff were substantiated, and, in 2013, of the 61 investigations opened, two involving male staff were substantiated)

are paid to guard and control is a fallacy, regardless of the “willingness” of the prisoner. Consent in such circumstances is non-existent under the law, as nearly every state legislature in the United States has recognized.²⁰

b. Purportedly “consensual” sexual activity between inmates and officers does not resemble actual “consent” as it might exist outside of the prison context.

c. Instead, the coercive nature of the relationship between officers and prisoners is well-recognized. There is a clear power differential, with officers having complete discretion over the treatment of the prisoner under his supervision, including the ability to discipline a prisoner should she disobey an order. As previously stated, the recognition of this dynamic is reflected in the criminal laws of almost every state, criminalizing sexual acts by correction officers with prisoners and barring the assertion of “consent” as a defense.²¹

d. Frequently, staff increase the level of coercion and manipulation by providing prisoners with contraband such as money, personal care items, food, or even drugs and alcohol. Staff members frequently talk with prisoners about their personal lives and then use the information about their families or about their histories with drug and alcohol abuse for further coercion.²²

e. There is often evidence of physical force during the sexual acts themselves. These acts of aggression and violence intimidate the women victims and make them

²⁰ See Margaret Penland, A Constitutional Paradox: Prisoner “Consent” to Sexual Abuse in Prison under the Eighth Amendment, 33 *Law and Inequality* 507, 508 (2015).

²¹ See Project on Addressing Prison Rape, “Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals on Custody” (Sept 10, 2013), <https://www.wcl.american.edu/endsilence/documents/50StateSurvey-SSMLAWS2013Update.pdf>.

²² U.S. Dept. of Justice, National Institute of Corrections, “Research, Practice and Guiding Principles for Women Offenders, Gender Responsive Strategies,” at 5 (June 2003), www.nicic.gov/library/files/018017.pdf (“Women’s substance abuse has been shown to be highly correlated with physical and sexual abuse. Women in state prisons who had experienced abuse prior to their arrests reported higher levels of alcohol and drug abuse.”).

fearful of how the staff person may harm them should they reject any future advances or requests.

f. And finally, once an officer has convinced a prisoner to “go along” with sexual activity, it is increasingly difficult for the prisoner to extricate herself from the “relationship” for fear of retaliation by the officer or his colleagues.

III. DEFENDANTS FAIL TO ENACT SUPERVISORY POLICIES THAT WOULD PREVENT SEXUAL ABUSE BY MALE STAFF AND FAIL TO ENFORCE EXISTING POLICIES

20. Despite known risks and incidents of sexual misconduct by staff, Defendants, through their policies and practices (or lack thereof) have recklessly disregarded these risks, and have failed to protect the women prisoners in their custody from harm.

21. Defendants inadequately supervise corrections staff, placing women prisoners at a heightened risk of sexual abuse.

22. Defendants have failed to enact appropriate rules and policies concerning the behavior of male staff and fail to enforce existing rules and policies governing staff behavior.

23. Despite knowledge of the risk of sexual abuse in women’s prisons, Defendants assign male staff to posts on which they have ample opportunity for unmonitored contact with women prisoners.

a. Defendants have designated very few assignments within DOCCS’ women’s prisons as female-only posts,²³ and Defendants supervise male staff guarding female prisoners no differently from the way they would supervise same-gender supervision of men.

²³ See Ex. C, DOCCS Directive 2230, “Guidelines for Assignment of Male and Female Officers” at § II.A-D.

b. Male staff may be assigned, alone, to areas where no other staff are within range for visual contact. This includes assignments that cover remote or isolated areas not monitored by video surveillance and even overnight shifts in housing areas.

c. Defendants allow male correctional staff to bid for (to choose) their own assignments, without regard to the number or severity of allegations of sexual misconduct that have been made by women prisoners about them.

24. Defendants have 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 are not disciplined or informally counselled when supervisors witness behavior that is indicative of warning signs of sexual abuse.

25. Defendants have failed to enact adequate rules and policies to protect women prisoners from sexual innuendoes, degrading sexual comments, and propositioning, and to enforce those rules and policies that do exist.

26. Defendants have failed to enact appropriate rules and policies concerning the behavior of male staff posted to housing units in order to protect the privacy of women prisoners and to protect them from harassment. Defendants also fail to enforce those rules and policies that do exist. For example, DOCCS policy requires male staff to announce their presence only the first time that they enter a living area,²⁴ allowing male officers to re-enter living quarters and bathroom areas unannounced, and to watch women dress and undress. Male staff are not disciplined or reprimanded for such conduct.

²⁴ See *id.* at § II.E.

27. Defendants have failed to take sufficient action when officers leave their assigned posts, allow inmates into areas where inmates are not permitted, ask women to volunteer or work on jobs to which they have not been formally assigned, and engage in open and obvious behavior that is clearly suggestive of inappropriate relationships.

28. Defendants permit officers virtually unfettered access to private, unmonitored areas such as bathrooms, kitchen store rooms, storage closets, slop sink areas, basements, classrooms, laundry areas, and private areas of prison yards. At the same time, Defendants fail to prohibit officers from being alone with women prisoners in such areas where sexual abuse of women prisoners is easily accomplished. When instances of staff sexual misconduct have been substantiated, they are often found to have occurred in these isolated, and largely unmonitored, areas.

29. Defendants fail to require and conduct reasonable searches of correctional staff upon entry to correctional facilities that could help prevent or discourage sexual abuse or ultimately assist in the investigation of allegations of staff sexual misconduct. The failure to catch correctional staff with contraband such as drugs and alcohol, or to limit entry of condoms, cell phones, notes, and other personal items allows officers the opportunity to use these items to influence, coerce, or otherwise manipulate prisoners into performing sexual acts and limits the evidence that could be used in investigations of staff sexual misconduct.

30. Defendants fail to increase the supervision of those correctional officers known to pose a heightened risk of sexual abuse to women prisoners.

a. Defendants have failed to promulgate policies that would provide for additional rounds to more closely supervise staff about whom complaints of sexual abuse have been made.

b. Staff who are the subject of credible or repeated allegations of sexual abuse are allowed to continue their usual posts and permitted to access private, unmonitored areas. They can even be permitted to continue to guard or to have contact or proximity with the prisoner who has complained about the officer.

31. To the extent Defendants have installed or required installation of surveillance cameras, use of those cameras for supervision remains grossly inadequate to protect women prisoners.

a. Surveillance cameras have not been installed throughout the women's prisons. Many enclosed and isolated areas inside the prison, or isolated areas outside 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 include storage closets, laundry rooms, slop sink areas, sheds, outside work areas, and basements.

b. For areas for which there are privacy concerns, like bathrooms, living areas, and religious program areas, Defendants have failed to reduce the use of these areas for sexual abuse by installing video surveillance that would show entry and exit from these areas or movement within them, such as staff lingering by beds in dorm areas.

c. Upon information and belief, camera placement is not informed or increased upon receipt of multiple credible complaints of or other knowledge of abuse occurring in particular areas or by particular staff assigned to a particular area.

32. Staff are left alone and virtually unmonitored by supervisors for hours at a time, with staff supervision consisting almost entirely of supervisory "rounds."

33. Defendants fail to enact and enforce adequate rules and policies that dictate the content and substance of limited supervisory rounds.

- a. Facility supervisory rounds can consist of merely stopping by the assigned line officers' desk or office, signing the logbook and nothing more.
- b. There is 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 on 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.
- c. On information and belief, supervision does not include observation and counselling 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.

34. Defendants fail to require a set number and frequency of supervisory rounds by most supervisory officers. Only rounds by the Superintendent and her executive team are required at a specified frequency, and that is only once a week,²⁵ 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.

35. Defendants fail to require unpredictable supervisory rounds.²⁶ Facility supervisors routinely conduct 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 sexual misconduct with women prisoners without being discovered.

²⁵ Ex. D, DOCCS Directive 4001 "Facility Administrative Coverage and Supervisory Rounds", § VI.

36. In addition, Defendants fail to enforce existing policies concerning unannounced supervisory rounds. Therefore, even where line officers might be unable to predict a time frame without rounds, they nonetheless receive a warning of imminent rounds from their co-workers. In some cases, supervisory staff actually inform officers of their next destination while conducting rounds, and officers use that information to alert the officers at the supervisor's next destination that the supervisor will soon be approaching. Although nominally a new policy limiting such conduct has been promulgated, officers continue to call, radio, or use other ways to alert staff, such as tapping on their walkie-talkies in order to indicate that a supervisor is approaching. On information and belief, Defendants fail to take steps to enforce this policy, making no effort to assess whether it is being followed, and fail to discipline staff for insubordination if they observe or otherwise find that staff have ignored or violated this policy.

IV. DEFENDANTS MAINTAIN GROSSLY INADEQUATE POLICIES AND PRACTICES FOR INVESTIGATING AND TAKING ACTION IN RESPONSE TO COMPLAINTS OF SEXUAL MISCONDUCT.

37. Defendants' system for the reporting, investigation, and response to complaints of sexual misconduct is grossly inadequate to prevent and remedy ongoing sexual misconduct, because it relies almost completely upon women prisoners to come forward and report the misconduct, it fails to utilize reasonable and available investigative tools, it fails to credit allegations of sexual misconduct unless the woman has physical proof or other substantial corroboration of the misconduct, it is biased, it deters women prisoners from reporting sexual misconduct, and it fails to take appropriate action against perpetrators if and when women do come forward. The effect of this system is to allow sexual misconduct by staff to continue virtually unabated.

A. Defendants Fail to Take Affirmative Steps to Investigate Staff Sexual Misconduct Despite Knowledge That Sexual Abuse Is Under-Reported, Thus Placing Women Prisoners at an Increased Risk of Abuse.

38. Defendants know that, given the reluctance of victims of staff sexual abuse to come forward, having an investigative and discipline system that relies primarily on women prisoners to volunteer complaints is insufficient to prevent and remedy this misconduct. Nonetheless, Defendants rely on such a system and fail to utilize other means to root out sexual misconduct.

39. Women prisoners, particularly those who receive favors from officers such as contraband, are unlikely to report abuse because they understand they may be subject to punishment and are therefore chilled and deterred from reporting, thereby perpetuating staff misconduct.

a. Women understand that they may be charged with disciplinary offenses such as possession of contraband, being out of place, or inappropriate conduct with an officer. Women also understand that they may be charged with making false statements if DOCCS does not believe their complaints were made in good faith.

b. Women who make such complaints are often transferred to different prisons, while the perpetrator is permitted to continue working in the same facility. These transfers may disrupt women's contact with their children and family, and participation in program and job assignments. Because disciplinary history, placement in administrative segregation, and program and job assignments are considered by the merit board and the parole board, a woman who complains about sexual misconduct also risks lengthening her incarceration.

40. Despite the low likelihood of receiving reports from women prisoners about abuse by staff, Defendants rarely 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; 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.

41. When an area is under camera surveillance, Defendants fail to adequately use that surveillance footage to prevent or detect sexual abuse.

a. Upon information and belief, camera footage is only reviewed after there has been an allegation of sexual abuse occurring in or around an area where video cameras are installed. No real time or live-action review is conducted that might reveal misconduct or suspicious behavior. Nor is there periodic review of footage recorded earlier in time.

b. Defendants do not maintain camera footage for a sufficient amount of time considering the frequent delays in reporting. Defendant's maintenance of camera footage is especially lacking when considered in light of how heavily Defendants rely on video footage for substantiating allegations. Digital video is maintained for only a matter of days, not the time needed in a sexual abuse investigation, given the widespread knowledge of victims' reluctance to come forward.

B. Defendants' System for Investigating Complaints of Staff Sexual Misconduct Is Inadequate and Places Women Prisoners at an Increased Risk of Abuse.

42. Defendants' treatment of women prisoners' complaints of sexual misconduct by staff essentially dooms those complaints to failure. An allegation of sexual misconduct based exclusively or primarily on the statement of a woman prisoner will not be substantiated, and will

not result in any action being taken against the staff person, even if credible and even if supported by witnesses.

43. Defendants require an unreasonable burden of proof before substantiating an allegation of staff sexual misconduct and taking administrative or disciplinary action with respect to male staff.

a. Investigators do not apply any consistent standard in determining whether to substantiate an allegation of staff sexual misconduct and refer it for administrative action.²⁷ Typically, for an allegation of sexual misconduct or abuse to be substantiated, there must be either physical evidence or video surveillance..

b. Defendants' investigations to determine if an allegation of staff sexual abuse should be substantiated do not give adequate, if any, weight to indicia of sexual misconduct in the absence of physical evidence. Such indicia include staff persons being seen out of place; staff persons allowing inmates into areas where inmates are not permitted; staff persons engaging in behavior suggestive of an inappropriate relationship; and staff giving contradictory statements to investigators.

c. On information and belief, Defendants' investigations fail to give 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; allegations that an officer has taken more than one woman prisoner to the same location to engage in sexual abuse, or allegations that an officer has avoided having witnesses to the misconduct by engaging in the abuse

²⁷ Ex. E, Excerpts from Testimony of Sex Crime Unit Investigator Frank Annarino at 122 -124, July 17, 2012 (rough transcript), *McDonald v. Gilbert*, 6:10-cv-06702 (JWF), (W.D.N.Y. 2012) ("*McDonald v. Gilbert*, Annarino Transcript") (Annarino could not confirm that burden of proof *was not* beyond a reasonable doubt, and testified that burden of proof "depends on the case" as "each case is different.").

during the count, when other inmates are locked into their cells and therefore unable to observe it.

d. Defendants' investigations fail to give adequate weight to the credibility of witnesses. They do not credit the statements of prisoner witnesses, while giving undue weight to statements of staff.

44. Defendants' investigations are not thoroughly or timely conducted and often result in biased and unreliable refusals to substantiate women prisoners' complaints.

a. Upon receiving a report of sexual abuse, Defendants fail to protect women prisoners who complain of experiencing sexual misconduct by staff from retaliation or intimidation.

b. During the investigation of a complaint, an alleged perpetrator of sexual misconduct can remain in the same prison and can even continue to be posted in areas where he will be in contact with or responsible for guarding the victim of the misconduct.

c. The fear of retaliation by the officer or his colleagues can discourage women prisoners (both victims and witnesses) from cooperating with investigators when sexual abuse has been reported.

d. Defendants do not always complete investigations into claims of sexual harassment and abuse in a prompt manner, potentially subjecting both the woman who has complained and other women prisoners to continued abuse for weeks or months until an investigation is complete, and subjecting the victim to continued uncertainty.

e. Because Defendants do not maintain camera footage for a sufficient amount of time, any delays in investigation increase the already significant possibility that potentially corroborating camera footage will no longer be available.

45. Investigations are not often conducted in a thorough, professional, and unbiased manner. Instead, investigators' methods are often hostile, use inappropriate language, reveal confidential information about prisoners and investigations to other prisoners, and ultimately result in deterring complete and truthful statements from those they interview or chilling prisoner participation completely.

a. The OSI, which investigates allegations of staff sexual abuse, is part of DOCCS. It is not an independent agency.

b. Most investigators are former corrections officers, and some are staffed to investigate the same facilities where they formerly worked as corrections officers (and, therefore, their former colleagues). Many investigators eventually return to work as corrections officers.

c. The standard of proof required to substantiate an allegation of staff sexual abuse is not consistent across cases.²⁸

d. Investigators may either fail to obtain, or unreasonably delay obtaining, physical evidence even when such evidence could be probative. For example, locations or materials potentially containing DNA that would be corroborative of the complaint have at times not been timely collected.

e. Information provided to OSI investigators is also not kept confidential, even when staff promise confidentiality. Prisoners interviewed as potential witnesses are frequently told the identity of the prisoner and staff person being investigated, who made the initial allegation, and what other prisoners have said to the investigator.

²⁸ See Ex. E, *id.* at 122:20-123:4.

f. Because staff do not conduct investigations into complaints of sexual misconduct in a confidential manner, the perpetrators of misconduct or their colleagues can easily learn of the investigation and inflict harassment or retaliation upon women prisoners.

46. As a result of Defendants' policies and/or practices, staff against whom credible complaints of sexual misconduct have been lodged are not moved away from contact with women prisoners; rather, they are left in a position where they can continue to engage in sexual misconduct or retaliation virtually without fear of repercussions so long as no physical evidence or video footage of the abuse can be discovered.

47. DOCCS policies and procedures unreasonably fail to prevent retaliation by other staff when women prisoners lodge credible complaints about sexual abuse. Even when separated from their abusers, women frequently experience retaliation and verbal abuse from friends and colleagues of their abuser.

C. Defendants' System for Disciplining Staff Is Inadequate and Places Women Prisoners at an Increased Risk of Abuse.

48. On information and belief, Defendants fail to seek disciplinary action against staff in the absence of physical or video evidence, even when they have received a credible complaint of staff sexual misconduct or even multiple complaints against the same officer.

a. On information and belief, even when there is substantial corroboration of a complaint of staff sexual misconduct and even when investigative staff have substantiated an allegation, Defendants do not always seek disciplinary sanctions.

b. In the absence of video corroboration or physical evidence of the misconduct, such as semen or proof of pregnancy, even credible allegations of abuse will result in *no* action being taken against the staff member.

c. Even where discipline is sought, it is limited to events that are corroborated by officer testimony, video, or other physical evidence.

d. As a result, sanctions for engaging in sexual misconduct do not effectively function as a deterrent. Instead, perpetrators simply use unmonitored areas of the prison to engage in acts of sexual abuse that do not result in physical proof.

49. On information and belief, disciplinary staff is undertrained, including those who appear before arbitrators. They have no legal training and no training in the prosecution of sexual abuse cases.

50. Discipline of staff is sought only when there is physical or video evidence to corroborate an inmate's complaint. Even in situations where there is substantial proof of misconduct, including physical proof, officers are often permitted to agree to placement at a men's prison or in the most serious cases, resign from employment and maintain their pensions.

51. Even in situations where there is substantial proof of misconduct, including physical proof, if an officer does not voluntarily leave or disciplinary action is not imposed by an outside arbitrator (or even if it is imposed, upon returning to work), then the officer is permitted to return to his bid post without any increased supervision, even when investigative staff have substantiated the allegation and even when probable cause has been found that criminal activity occurred.

D. Defendants' Failure to Review and Assess Policies and Procedures Places Women Prisoners at an Increased Risk of Abuse.

52. Defendants have structured their system for addressing allegations of staff sexual misconduct so that there is virtually no assessment of whether any of Defendants' policies or procedures may have allowed the misconduct to take place. For example, investigative staff do not consider it part of their function to determine whether policies or procedures have enabled

the sexual misconduct to take place or have allowed it to continue—for example—failing to regulate one male staff person being alone in enclosed areas with a female prisoner, allowing staff to pick certain prisoners for programs or work crews under their supervision, or allowing staff to ignore warning signs like prolonged conversations with a prisoner or obvious misconduct on the part of other officers.

CLASS ACTION ALLEGATIONS

53. Plaintiffs Jane Jones 1, Jane Jones 2, Jane Jones 3, Jane Jones 4, Jane Jones 5, and Jane Jones 6 bring this action on behalf of all present and future women prisoners in DOCCS custody at Bedford Hills, Taconic, and Albion. This action is brought pursuant to the Federal Rules of Civil Procedure, Rules 23(a), (b)(1), and (b)(2). The class meets the requirements of Rule 23 as follows:

- a. **Numerosity:** There are nearly 2,000 women prisoners at any one time confined in DOCCS women’s only prisons: Albion, Bedford Hills, and Taconic.²⁹ Each of these women is subject to a substantial risk of sexual abuse. The membership of the class continually changes, rendering joinder of all members impracticable. Each year between sixty and eighty complaints of sexual harassment and abuse are filed.³⁰ Known data about persistent underreporting of sexual abuse even in non-custodial settings indicates that many more incidents go unreported.
- b. **Commonality:** The questions of law and fact presented by the Plaintiffs are common to all members of the class, and include whether the risk of being sexually harassed or abused by a male correction officer is a “significant harm” under the Eighth

²⁹ See Rockefeller Institute of Government, “Public Safety and Criminal Justice System” at h-12 (March 31, 2012), http://www.rockinst.org/nys_statistics/2014/H/ (863 inmates at Albion, 770 at Bedford Hills, and 307 at Taconic).

³⁰ See Ex. A, Aug. 26, 2015 FOIL Response, *supra*, note 5.

Amendment; whether sixty to eighty reported incidents of abuse each year, among other indicia, within a population of roughly 2,000, constitutes a substantial risk of this constitutionally significant harm; and whether each Defendant is subjectively aware of the facts establishing this substantial risk of the significant harm of correctional-staff perpetrated sexual abuse. In addition, all members of the class share common questions of fact and law as to whether each Defendant has refused to take reasonable steps to reduce the known substantial risk of this abuse, such as modifying or establishing statewide policies with respect to: the assignment of male officers to guard women prisoners, often as the only officers assigned and particularly in housing areas and during the nighttime hours; supervision (through searches, cameras and supervisory staff) within DOCCS facilities to prevent sexual misconduct, both generally and following complaints of staff sexual abuse; training of investigators with the OSI; standards of investigatory professionalism with respect to investigation into complaints of sexual misconduct by staff; greater disciplinary action for *all* instances of sexual misconduct; and the employment and disciplinary actions taken with respect to staff about whom complaints of sexual misconduct have been lodged, including enhanced supervision and/or removing staff from situations in which there is an opportunity to have unsupervised contact with women prisoners. Defendants' failure to take reasonable actions within their authority and responsibility increase the risk faced by all women under their custody, whom they bear a duty to protect. Defendants' actions and failures to act alleged in this complaint are common to all members of the class by virtue of their contribution to the excessive risk of abuse faced by all women incarcerated within the system that Defendants supervise.

- c. **Typicality:** The substantial risk of abuse suffered by the Plaintiffs is typical of the excessive risk of abuse suffered by the class. The entire plaintiff class will benefit from the injunctive and declaratory relief sought.
- d. **Adequacy:** Plaintiffs Jane Jones 1, Jane Jones 2, Jane Jones 3, Jane Jones 4, Jane Jones 5, and Jane Jones 6 have standing to represent the class. As the Plaintiffs seek injunctive relief for the benefit of present and future inmates in DOCCS custody, they do not have any interest in this action in conflict with the class. In addition, several of the Plaintiffs have vigorously advocated the rights of the class. These Plaintiffs will fairly and adequately protect the interests of the class.
- e. Debevoise & Plimpton LLP is a national law firm experienced in class action litigation. The Legal Aid Society, Prisoners' Rights Project, is a legal services organization experienced in prisoners' civil rights litigation. Through prior litigation, the Prisoners' Rights Project has secured institutional reform in class actions within several *prisons* operated by the Department of Corrections and Community Supervision as well as within the New York City jails. *Medina v. The New York State Dep't of Corrections and Community Supervision, et al.*, 11 Civ 0176, Final Judgment and Order of Dismissal (following class certification, approving private settlement agreement for visually impaired and blind prisoners); *Nunez v. City of New York, et al.*, 11 civ. 5845 (LTS) (JCF), Order (S.D.N.Y. Oct. 21, 2015) (entering consent judgment about excessive force in City jails after fairness hearing); *Sheppard v. Phoenix*, 210 F. Supp. 2d 450 (S.D.N.Y. 2002) (finding that injunction had eliminated excessive force in New York City jails); *Benjamin v. Fraser*, 264 F.3d 175 (2d. Cir. 2001) (affirming injunctions reforming restraint and counsel visiting practices in New York City jails); *Handberry v. Thompson*,

92 F. Supp. 2d 244 (S.D.N.Y. 2000), 219 F. Supp. 2d 525 (S.D.N.Y. 2002) (requiring educational services in New York City jails), aff'd in part, rev'd in part and remanded in part, 446 F.3d 335 (2d. Cir. 2006); *Todaro v. Coughlin*, 74 Civ. 4581, Stipulation and Order: Second Modified Judgment, (S.D.N.Y. October, 1993) (medical order involving Bedford Hills, DOCCS maximum security female prison); *Milburn v. Coughlin*, 79 Civ. 5077, Stipulation for Entry of Modified Final Judgment by Consent (S.D.N.Y. Sept. 30, 1991) (medical order involving DOCCS Green Haven Correctional Facility); *Santiago v. Miles*, 774 F. Supp. 775 (W.D.N.Y. 1991) (race discrimination found in jobs, housing and discipline at DOCCS Elmira Correctional Facility).

f. Defendants have acted, or failed to act, on grounds generally applicable to the class, thereby making injunctive relief appropriate with respect to the class as a whole.

**CLAIM FOR RELIEF ON BEHALF OF NAMED PLAINTIFFS
AND ON BEHALF OF THE PLAINTIFF CLASS:
CRUEL AND UNUSUAL PUNISHMENT**

54. Defendants, through their policies, practices, acts, and omissions, exhibit deliberate indifference to the sexual harassment and abuse of Jane Jones 1, Jane Jones 2, Jane Jones 3, Jane Jones 4, Jane Jones 5, and Jane Jones 6 to the substantial risk of such abuse to the plaintiff class of women prisoners, in violation of the right of these women to be free from cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

55. Defendants, through their policies, practices, acts, and omissions, subject Jane Jones 1, Jane Jones 2, Jane Jones 3, Jane Jones 4, Jane Jones 5, Jane Jones 6, and the plaintiff class of women prisoners to the unnecessary and wanton infliction of pain and emotional and physical injury in violation of the Eighth Amendment of the United States Constitution.

56. With deliberate indifference to the substantial risk of serious harm to the plaintiff class, Defendants fail appropriately to assign and supervise staff, subjecting Jane Jones 1, Jane

Jones 2, Jane Jones 3, Jane Jones 4, Jane Jones 5, Jane Jones 6, and the plaintiff class of women prisoners to sexual abuse and harassment by staff and retaliation for reporting staff sexual misconduct in violation of the Eighth Amendment of the United States Constitution.

57. With deliberate indifference to the substantial risk of serious harm to the plaintiff class, Defendants fail appropriately to investigate and act upon complaints of sexual misconduct, subjecting Jane Jones 1, Jane Jones 2, Jane Jones 3, Jane Jones 4, Jane Jones 5, Jane Jones 6, and the plaintiff class of women prisoners to sexual abuse and harassment by staff, to retaliation for reporting staff sexual misconduct, to verbal abuse, and to violations of privacy in violation of the Eighth Amendment of the United States Constitution.

PRAYER FOR RELIEF

As a result of Defendants' policies, practices, acts, and omissions, Plaintiffs have suffered and will continue to suffer irreparable injury, including continued incarceration under the substantial risk and persistent threat of sexual assault, abuse, and harassment, pain, shame, humiliation, degradation, emotional distress, embarrassment, and psychological distress.

WHEREFORE, Plaintiffs respectfully request this court as follows:

1. Declare that the continuing policies, practices, actions, and omissions of the Defendants, as described above, violate the rights of the plaintiff class under the Eighth Amendment to the United States Constitution.

2. Enjoin Defendants and their successors, agents, servants, employees, and those in active concert or participation with them from subjecting women prisoners in the custody of DOCCS to verbal and physical sexual abuse and the threat of sexual abuse, and formulate a remedy for Defendants to employ to end the pattern of sexual misconduct in all women's prisons operated by DOCCS. Such a remedy should include measures which would address continuing deficiencies in the assignment and supervision of corrections staff; in the Department's

complaint and investigatory practices; and in taking appropriate disciplinary action against staff who have engaged in sexual misconduct.

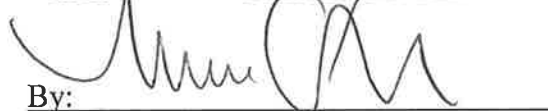
3. Retain jurisdiction in this case until the unlawful conditions, practices, policies, acts, and omissions complained of herein no longer exist and this court is satisfied that they will not recur.

4. Award Plaintiffs the costs of this action, including reasonable attorneys' fees; and

5. Grant such other and further relief as this court deems just and proper.

Dated: New York, New York
February 25, 2016

DEBEVOISE & PLIMPTON LLP



By: _____

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