

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

**THOMAS REMICK, NADIYAH WALKER,
JAY DIAZ, MICHAEL ALEJANDRO,
MICHAEL DANTZLER, ROBERT
HINTON, JOSEPH WEISS, JOSEPH
SKINNER, SADDAM ABDULLAH, and
JAMES BETHEA, on behalf of themselves
and all others similarly situated,**

Plaintiffs-Petitioners,

v.

**CITY OF PHILADELPHIA; and BLANCHE
CARNEY, in her official capacity as
Commissioner of Prisons,**

Defendants-Respondents.

No. 2:20-cv-01959-BMS

**CONSENT ORDER ON PARTIAL
SETTLEMENT AGREEMENT**

Whereas, on April 20, 2020, Plaintiffs filed this putative class action under 42 U.S.C. § 1983 on behalf of themselves and all other proposed class members confined at the Philadelphia Department of Prisons (“PDP”), alleging violations of rights under the Eighth and Fourteenth Amendments of the United States Constitution and under the Americans with Disabilities Act; and

Whereas, on April 27, 2020, Plaintiffs filed a Motion for a Temporary Restraining Order and a Preliminary Injunction seeking immediate relief from alleged unconstitutional and otherwise illegal conditions of confinement; and

Whereas, on May 1, 2020, Defendants filed a comprehensive Response in Opposition, presenting evidence of the actions being taken to reduce the introduction and transmission of Covid-19 in the PDP and arguing no restraints should be imposed; and

Whereas the parties have engaged in good-faith negotiations; and

Whereas, the parties have reached a partial settlement agreement on the issues presently before the Court, as set forth below; and

Whereas, on careful review and consideration of the proposed partial settlement agreement, the Court finds it to be a fair, adequate, and reasonable resolution of the issues addressed in the partial settlement agreement, and finds them to be sufficient to protect the legal interests of proposed class members; and

Whereas, the terms and provisions of the partial settlement agreement reflect the current protocols at the PDP that have been adopted to reduce the introduction and transmission of COVID-19 in its facilities, the PDP's commitment to continue these practices, as well as recommendations for COVID-19 mitigation made by Plaintiffs' counsel; and

Whereas, the parties anticipate further agreements regarding COVID-19 related social distancing and cohorting based on the COVID-19 testing of all persons confined at PDP by the City of Philadelphia ("City"); and

Whereas, the following Order is based on a negotiated settlement between the parties and is not to be construed as an admission of liability of any party;

IT IS ORDERED, this ___3rd___ day of June, 2020, that the following Partial Settlement Agreement is approved and effective as of this date, and this Order will remain in full force and effect until and unless modified by agreement between the parties, or modified or terminated by the Court, upon a showing of good cause to do so by either party.

I. Substantive Provisions

A. Provisions Relating to Personal Hygiene, Personal Protective Equipment ("PPE"), Cleaning and Disinfection Protocols, and Education

1. *Continuing to ensure enhanced personal hygiene by:*

- a. Providing each person housed in the PDP with one free bar of soap and a cloth hand towel on a weekly basis. Providing additional soap on request, subject to reasonable restrictions where that person has sufficient soap supplies.
- b. Providing the opportunity to shower daily.

2. *Continuing to ensure clean and hygienic living spaces by:*

- a. Having work groups of incarcerated people clean each housing unit twice per shift on the 7 a.m.-3 p.m. and 3 p.m.-11 p.m. shifts at the PDP and having staff regularly clean staff work areas. The cleaning of the housing units will include common areas and frequently touched surfaces such as toilets, sinks,

showers, phones, television controls, books, door handles, light switches, and recreational equipment.

- b. Cleaning phones after each use.
 - c. Providing cleaning agents and equipment for use by those housed in the PDP to clean their cells and sleeping areas, in addition to regular twice-weekly cleaning of cells. Upon request, staff will provide additional cleaning agents and equipment for cell cleaning.
 - d. Providing laundering, including masks, towels, and undergarment clothing, twice per week. Linens and uniforms are to be exchanged and laundered once per week.
3. *Continuing to ensure consistent usage of personal protective equipment (“PPE”) by:*
- a. Providing all persons housed in the PDP with cloth masks produced by the PDP, with a minimum of two masks provided per person. Further, upon increased PDP production of masks, all persons will be provided with four masks. Masks will be exchanged when they are torn or otherwise damaged, subject to restrictions on replacements in situations where multiple requests for replacements are unreasonable. To effectuate this agreement, the City will advise Plaintiffs and the Court no later than June 3, 2020, of the status of the mask production process, with projected dates for increasing mask distribution to three and then to four per person.
 - b. Requiring staff and all individuals who work at the PDP to wear masks while in any PDP facility, and requiring all persons housed in the PDP to wear masks while outside of their cells and while in dormitory areas (except when showering, eating, or for medical or other safety reasons).
 - c. Providing masks and gloves to all persons engaged in PDP cooking, cleaning, and general janitorial or maintenance work.
4. *Continuing to ensure access to necessary services by:*
- a. Working to increase daily out-of-cell time for showering, cleaning, recreation, and phone calls, with a near-term goal of allotting 45 minutes per inmate by June 10, 2020. PDP will provide Plaintiffs with information as to out-of-cell time for housing units at each facility as of May 26, 2020. Depending on the results of the COVID-19 testing, PDP will seek to increase cohort sizes, to the extent that it is medically practicable, to further increase out-of-cell time. Out-of-cell time will continue to be provided on a staggered basis to allow for adequate social distancing to reduce transmission of the airborne virus. No later than June 10, 2020, based on the results of the COVID-19 testing and

other considerations, the City will advise Plaintiffs and the Court of its plans for out-of-cell time. The parties will then further negotiate this issue and, if there is no agreement, Plaintiffs reserve the right to seek relief from the Court.

- b. Providing medically-necessary medical care for non-COVID-19-related medical and mental health needs based on protocols and directives in effect pre-COVID-19, with discretion to provide medical and mental health care services in the housing units. If medical and mental health care services are provided on the unit, the PDP and medical personal shall protect the privacy interests of patients.
- c. Providing fifteen minutes of free calls each day while visits are suspended.
- d. Providing free, unrecorded, and confidential phone calls to legal counsel. PDP further agrees to: (1) explore confidential videoconferences for legal counsel, in addition to the current video-links with the FJD video system; (2) provide information to Plaintiffs regarding the requisition process; (3) expand the time for FJD videoconferencing to weekend dates to the extent the FJD facilities are available; and (4) subject to COVID-19 test results, to reopen its law libraries by June 15, 2020 to allow for a system of scheduled calls with legal counsel. No later than June 10, 2020, based on the results of the COVID-19 testing and the PDP's consideration of videoconferencing and alternative means of access to counsel, the City will advise Plaintiffs and the Court of its plans to provide confidential access to counsel. The parties will then further negotiate the issue of access to legal counsel and, if there is no agreement, Plaintiffs reserve the right to seek relief from the Court.

5. *Continuing to ensure education, transparency, and information dissemination by:*

- a. Providing information to all persons housed or working in PDP facilities on how to protect themselves from contracting COVID-19, including instructions on how to properly wash hands, clean living areas, wearing of masks and other PPE practices, and social distancing. This information will be provided in English and Spanish, and the PDP will consider other languages as well based on population data.

II. Monitoring, Reporting, and Enforcement:

A. Monitoring

- 1. Monitoring and enforcement will include: (1) weekly reviews by the parties of reports generated by the Covid-services tracking tool and the Lock and Track system, to be implemented no later than June 9, 2020, and (2) notice to all incarcerated persons and staff who work in the PDP of the terms of the Partial Settlement Agreement, and the right of incarcerated persons to contact counsel for

Plaintiffs regarding compliance issues. Specific measures regarding contacts with counsel, including by phone and by PDP block representatives, will be discussed and implemented by the parties.

B. Enforcement

1. The terms and conditions of this Partial Settlement Agreement are intended to provide for the current control of COVID-19 at the PDP.
2. If Plaintiffs have reason to believe that there has not been substantial compliance with these terms and conditions, they will notify the City with details of the alleged non-compliance and the parties will then confer on resolution of the issue(s).
3. If the parties cannot agree on a resolution, Plaintiffs may file a motion with the Court for enforcement of the Partial Settlement Agreement, but no enforcement order may be imposed without a hearing and determination by the Court that there has been substantial non-compliance and that no exigencies justified the non-compliance by PDP.
4. If the Court issues an order of enforcement and the PDP does not comply, Plaintiffs may file a motion for sanctions, and the Court after hearing, may impose appropriate sanctions.

III. Protocols Regarding Social Distancing and Cohorting of Incarcerated Persons

- A. The parties will discuss and negotiate the issues of social distancing and cohorting of incarcerated persons upon the completion of COVID-19 testing at PDP and upon their consultation with their respective medical advisors and experts. The parties anticipate a separate settlement agreement on those issues to be submitted to the Court, but in the absence of an agreement on those issues, Plaintiffs reserve the right to seek relief from the Court.

BY THE COURT:

/s/ Berle M. Schiller