

Exhibit A

conditions have led to a high death rate and rampant assaults, and they severely threaten Plaintiffs' physical and mental health.

2. The named Plaintiffs, on their own behalf and on behalf of all others similarly situated, seek changes in the conditions of their confinement to both protect them from the clear and present danger of disease and death from COVID-19 and to ensure humane living conditions, as required by the United States Constitution. Plaintiffs seek injunctive relief that would require Defendants to comply with recognized public health and safety measures to prevent the spread of the virus for those confined in jails and prisons, and to ensure adequate out-of-cell time; proper medical care; access to the courts; access to counsel, legal mail, and law libraries; due process in disciplinary proceedings; and protection from violence from correctional officers and other incarcerated persons. In the alternative, and should such relief not ameliorate the ongoing constitutional violations in PDP, Plaintiffs seek an order requiring that the City reduce the population of PDP facilities to a level sufficient to allow the City to satisfy its constitutional obligations.

3. Prisons and jails have become epicenters of COVID-19 throughout the United States. The population within PDP is vulnerable to the spread of COVID-19 due to the congregate nature of jails, exacerbated by unnecessary crowding, inadequate sanitation, denial of hygiene products, and inadequate staffing and procedures for delivery of essential services.

4. To comply with basic Constitutional guarantees and to protect against COVID-19 infections, Defendants must provide adequate sanitation and hygiene practices and proper quarantine and social distancing protocols that conform to the Centers for Disease Control and Prevention ("CDC") standards. They have failed to do so.

5. At the same time, Defendants must provide adequate out-of-cell time to allow for essential services such as medical care, access to counsel, family visits, law libraries, showers, phone calls, and physical exercise, and they must facilitate full access to court hearings for pretrial detainees. Defendants must also ensure due process for persons placed in disciplinary or administrative segregation; adequate and timely provision of medications; and protection from violence by correctional officers and other incarcerated persons.

6. It is of paramount importance that Defendants ensure a sufficient staff of correctional officers, social workers, medical personnel, and other service providers proportional to the number of incarcerated persons to ensure the timely delivery of essential services and the protection of the plaintiff class (“Plaintiffs”). They have failed, and Plaintiffs continue to suffer.

II. JURISDICTION AND VENUE

7. Plaintiffs bring this class action pursuant to 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202; and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. (“ADA”).

8. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. § 1343(a) (civil rights jurisdiction) and 28 U.S.C. § 1331 (federal question jurisdiction).

9. This Court is the appropriate venue pursuant to 28 U.S.C. § 1391(b)(2) because the events and omissions giving rise to the claims occurred in the Eastern District of Pennsylvania.

III. PARTIES

10. Thomas Remick, Nadiyah Walker, Jay Diaz, Michael Alejandro, Michael Dantzler, Robert Hinton, Joseph Weiss, Joseph Skinner, Saddam Abdullah, James Bethea, Clay Pizarro, Michael Flynn, Dyquill Pledger, Nasir Lewis, and Troy Harley are all adult individuals who are or were incarcerated at a PDP facility, who are at a heightened risk for more severe symptoms and potential death from COVID-19 due to their age and/or underlying medical conditions, and who

are or have been denied essential constitutionally mandated services. They seek injunctive and declaratory relief on behalf of themselves and on behalf of those who currently are or will in the future be subjected to unconstitutional conditions of confinement within the PDP.

11. Defendant City of Philadelphia is a political subdivision organized and existing under the laws of the Commonwealth of Pennsylvania. The City of Philadelphia funds, controls, and operates the Philadelphia Department of Prisons. The City of Philadelphia currently has immediate custody over Plaintiffs, and has acted under color of state law.

12. Defendant Blanche Carney is the Commissioner of PDP. Defendant Carney currently has immediate custody over Plaintiffs. Defendant Carney is a final policymaker for the City of Philadelphia, and she is sued in her official capacity, and has acted under color of state law.

IV. FACTUAL ALLEGATIONS

13. The City of Philadelphia is still plagued by the most significant pandemic in generations.

14. The older a person is, the greater their risk of serious illness or death from COVID-19.¹ People of any age are at an elevated risk if they suffer from certain underlying medical conditions, including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, or asthma.²

¹ See Complaint Exhibit A, ECF No. 1-4, Amon Decl. ¶ 9 (observing that “those ≥ 54 years could be considered high risk for severe disease and death.”); and Exhibit B, ECF No. 1-5, Cohen Decl. ¶ 36.

² ECF No. 1-4, Amon Decl. ¶ 8; ECF No. 1-5, Cohen Decl. ¶ 43.

15. People in congregate environments—places where people live, eat, and sleep in close proximity—face increased danger of coronavirus infection.³

16. Correctional settings increase the risk of contracting COVID-19 because of the concentration of people with chronic, often untreated, illnesses in a setting with minimal levels of sanitation, limited access to personal hygiene items, and limited access to medical care.⁴

17. Numerous public health experts, including Dr. Joseph Amon,⁵ Dr. Robert L. Cohen,⁶ Dr. Gregg Gonsalves,⁷ Ross MacDonald,⁸ Dr. Marc Stern,⁹ Dr. Oluwadamilola T. Oladeru and Adam Beckman,¹⁰ Dr. Anne Spaulding,¹¹ Homer Venters,¹² the faculty at Johns Hopkins schools of nursing, medicine, and public health,¹³ and Josiah Rich¹⁴ have cautioned that people booked into and held in jails are likely to face serious harm due to the COVID-19 pandemic.

³ ECF No. 1-4, Amon Decl. ¶ 29; ECF No. 1-5, Cohen Decl. ¶ 5.

⁴ ECF No. 1-4, Amon Decl. ¶¶ 28-29, 33-35, 38, 43, 45; ECF No. 1-5, Cohen Decl. ¶¶ 4-5, 36.

⁵ ECF No. 1-4, Amon Decl. ¶ 63.

⁶ ECF No. 1-5, Cohen Decl. ¶ 4-6.

⁷ Kelan Lyons, *Elderly Prison Population Vulnerable to Potential Coronavirus Outbreak*, Connecticut Mirror (March 11, 2020), <https://cutt.ly/BtRSxCF>.

⁸ Craig McCarthy and Natalie Musumeci, *Top Rikers Doctor: Coronavirus 'Storm is Coming,'* New York Post (March 19, 2020), <https://cutt.ly/ptRSnVo>.

⁹ Marc F. Stern, MD, MPH, *Washington State Jails Coronavirus Management Suggestions in 3 "Buckets,"* Washington Assoc. of Sheriffs & Police Chiefs (March 5, 2020), <https://cutt.ly/EtRSm4R>.

¹⁰ Oluwadamilola T. Oladeru, et al., *What COVID-19 Means for America's Incarcerated Population – and How to Ensure It's Not Left Behind*, (March 10, 2020), <https://cutt.ly/QtRSYNA>.

¹¹ Anne C. Spaulding, MD, MPDH, *Coronavirus COVID-19 and the Correctional Jail*, Emory Center for the Health of Incarcerated Persons (March 9, 2020).

¹² Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, Mother Jones (March 12, 2020), <https://cutt.ly/jtRSPnk>.

¹³ Letter from Faculty at Johns Hopkins School of Medicine, School of Nursing, and Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland, March 25, 2020, <https://cutt.ly/stERiXk>.

¹⁴ Amanda Holpuch, *Calls Mount to Free Low-risk US Inmates to Curb Coronavirus Impact on Prisons*, The Guardian (March 13, 2020 3:00 p.m.), <https://cutt.ly/itRSDNH>.

18. Correctional staff are also at risk of COVID-19 infection. As of December 28, 2021, only 59% of PDP correctional staff are confirmed to have received even a single dose of any of the three available COVID-19 vaccines.

19. CDC guidelines recommend: (a) providing all incarcerated persons a six-foot radius or more of distance from any other persons, including during meals, transportation, court sessions, recreation, counts, and all other activities; (b) instituting a safety plan to prevent a COVID-19 outbreak in PDP's facilities in accordance with CDC guidelines; (c) making sanitation solutions readily and freely available for the purposes of cleaning cells, dormitories, laundry, and eating areas, including sufficient antibacterial soap, and lifting any ban on alcohol-based hygiene supplies (e.g. hand sanitizer, cleaning wipes); (d) providing adequate and appropriate COVID-19 vaccinations and testing for incarcerated persons, jail staff, and visitors; (e) waiving all medical co-pays for those experiencing COVID-19 like symptoms; (f) providing sufficient personal protective equipment, particularly masks, to all staff and incarcerated people; (g) coordinating with local law enforcement and court officials to identify legally acceptable alternatives to in-person court appearances and options to prevent overcrowding, including alternatives to incarceration; (h) planning for staff absences; and (i) modifying measures as appropriate for fully-vaccinated individuals.¹⁵

20. Defendants have failed to consistently implement the above-described recommendations for reducing the risks of contracting COVID-19 during the pandemic.

¹⁵ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last visited Sept. 13, 2021).

21. Since the start of the COVID-19 pandemic, staffing levels at the PDP have become grossly deficient. According to City Controller Rebecca Rhynhart, the PDP was short-staffed at the start of the COVID-19 pandemic and, as of mid-September 2021, was 479 people short of the 1,884 needed to fully staff the jails.¹⁶ Between April and August 2021, staffing levels dropped by 101 people. By early January 2022, the staffing deficiencies had increased even further, and the City now has approximately 582 fewer staff members than its own deployment plan calls for, a shortfall of 31%.¹⁷

22. Further exacerbating the staffing shortage is the high rate of absenteeism among PDP staff members. The average absentee rate among corrections officers is more than 25% per shift. On weekends, it is not uncommon for more than 40% of scheduled corrections officers to fail to report for their shifts. There is also a shortage of other prison staff, including social workers, nurses, and psychiatrists.

23. As a result of restrictions implemented in response to the COVID-19 pandemic and the chronic and critical staffing shortage, significant numbers of class member-Plaintiffs, the vast majority of whom are pretrial detainees, are being held in unconstitutional conditions of confinement, as described below:

¹⁶ Samantha Melamed, *Philly prison 'crisis' now includes a grand jury investigation and more court-ordered reforms*, The Philadelphia Inquirer (Sept. 20, 2021), available at <https://www.inquirer.com/news/philadelphia-prisons-grand-jury-investigation-riot-disturbance-20210920.html> (last visited Sept. 22, 2021); Maggie Kent, *Philadelphia's prison guard shortages lead to dangerous conditions for inmates, staff*, 6 ABC News (Sept. 17, 2021), available at <https://6abc.com/prison-guard-shortage-philadelphia-system-inmates-safety/11027878/> (last visited Sept. 19, 2021).

¹⁷ Samantha Melamed, *Panic attacks and 20-hour workdays: Why Philly correctional officers are quitting in droves*, The Philadelphia Inquirer (Jan. 4, 2022), available at <https://www.inquirer.com/news/philadelphia-jail-staffing-crisis-prisons-cfcf-piccc-20211230.html> (last visited Jan. 4, 2022).

a. Class member-Plaintiffs are denied adequate out-of-cell time (including time out of cell that Defendants had agreed to provide, and which has been ordered by the Court) to protect both their physical and mental health and to provide access to essential and constitutionally-mandated services. This lack of out-of-cell time results in significant numbers of class members being unable to access showers and to place phone calls to family and legal counsel. These solitary confinement and extreme isolation conditions have caused and exacerbated mental illness and mental distress for class members, and in particular persons with mental health disabilities. Class members detained in these conditions also suffer physical harm due to the lack of exercise for prolonged periods of time, and the harmful effects are exacerbated for those with chronic medical conditions that require exercise.

b. Class member-Plaintiffs have been denied timely access to necessary medical care and medications. Insufficient staffing levels result in a lack of timely responses and medical treatment for those seeking medical care by sick call requests, medications not being dispensed according to the medically prescribed schedules, and the cancellation of appointments with outside medical providers.

c. Class member-Plaintiffs suffering from medical emergencies in their cells are not provided necessary medical care and treatment and have been forced to wait for prolonged periods for assistance from medical staff, exacerbating their condition and putting them at risk of illness, injury, and death. Emergency call buttons in the cells either do not function properly or are ignored by staff. Staffing levels are not proportional to the number of incarcerated people, leaving those suffering from medical emergencies without necessary care.

d. From March 2020 to November 2021, Class member-Plaintiffs were denied in-person family visits. Since November 2021, access to in-person family visits has been limited

due to lack of staff and technological difficulties with Defendants' on-line scheduling system. Access to families through phones or tablets has also been limited due to the lack of a sufficient number of working tablets and/or phones, technological difficulties within the virtual visit application, lack of staff, lack of out-of-cell time to access the phones, and the cost of virtual visits.

e. The delivery and the sending of legal mail has been subject to long delays. Legal mail received by the PDP is not promptly delivered and sent, with delays extending more than a week and at times several weeks. Legal mail in some circumstances is not delivered.

f. Class member-Plaintiffs do not have regular access to the law library.

g. Class member-Plaintiffs housed on segregation units have not had regular access to commissary, which means they often have no access to paper, writing implements, or postage, items needed to write legal letters and/or filings.

h. Visits with attorneys, both in-person and remote, are often cancelled or greatly delayed due to lack of staff and/or COVID-19 quarantine restrictions. Entire housing units are at times denied access to their attorneys due to lack of staffing and other PDP administrative restrictions.

i. Due to lack of staffing and/or Defendants' unnecessary and unreasonable quarantine procedures and practices, numerous Class member-Plaintiffs have not been transported to remote (via video) and in-person court proceedings, risking additional months of delay in their cases and prolonging their incarceration. Defendants' actions that prevent class members from attending their court proceedings include unnecessarily keeping vaccinated individuals on quarantine units, erroneously housing people on quarantined units who have already completed a quarantine period, moving unvaccinated people onto vaccinated units, moving individuals to blocks already on quarantine status in violation of CDC guidelines, which risks restarting the

quarantine period, and failing to adhere to their own serial testing protocols for quarantine units, leading housing units to remain on quarantine longer than is necessary.

j. Plaintiffs have been subjected to discipline, including being held in punitive or administrative segregation housing, without disciplinary hearings or proceedings, sometimes for several months.

k. Plaintiffs have been subjected to an increased danger of violence and death. There have been at least 18 deaths in the PDP this year.¹⁸ The Bureau of Justice Statistics reports in 2019, the most recent year for which data is available, the national mortality rate for local jails was 167 per 100,000.¹⁹ The mortality rate for PDP facilities in the same period was 215.19 per 100,000. The mortality rate for PDP facilities for 2021 is nearly 400 per 100,000, more than double the national rate for 2019, and almost double the PDP mortality rate for 2019. Between August 2020 and April 2021, five or six incarcerated individuals in the PDP were killed.²⁰ These numbers represent a homicide rate that is significantly higher than the national average in jails. According to data from the Bureau of Justice Statistics, the local jail homicide mortality rate for 2019, the most recently available year, is 3 deaths per 100,000.²¹ The homicide rate at PDP facilities is

¹⁸ Samantha Melamed, *4 Philly prisoners died in two weeks, capping a tumultuous and deadly year*, The Philadelphia Inquirer (December 27, 2021), available at <https://www.inquirer.com/news/philadelphia-jail-deaths-lawsuit-prison-conditions-20211227.html> (last visited Jan. 3, 2021).

¹⁹ Bureau of Justice Statistics, *Mortality in Local Jails, 2000-2019*, Statistical Tables, (December 2021), available at https://bjs.ojp.gov/content/pub/pdf/mlj0019st.pdf?utm_content=juststats&utm_medium=email&utm_source=govdelivery (last visited January 3, 2022).

²⁰ Samantha Melamed, *Another assault at Philly jail leaves a man on life support and staff and prisoners warning of a crisis*, The Philadelphia Inquirer (Apr. 23, 2021), available at <https://www.inquirer.com/news/philadelphia-jail-murder-christopher-hinkle-armani-faison-20210423.html> (last visited Sept. 13, 2021).

²¹ Bureau of Justice Statistics, *Mortality in Local Jails, 2000-2019*, Statistical Tables, (December 2021), available at

approximately 114.90 or 137.89 per 100,000 for the period between August 2020 and April 2021, roughly forty times the national average.

l. The risk of violence is exacerbated by the lockdown conditions, which lead to disputes and fights over phones during the limited time when people are out of their cells, and by the staff shortage, which leads to housing units being left unattended by corrections officers for hours at a time. The risk of violence and resulting serious injury or death is further exacerbated by the fact that emergency call buttons in cells either do not function properly or are ignored.

m. Locking mechanisms on cell doors are easily disabled, thereby allowing some incarcerated individuals to leave their cells and attack others. Instead of repairing the locks, PDP has installed bolt locks on the cell doors on some housing units, which can only be unlocked manually, one by one, thereby exposing Plaintiffs to an unreasonable risk of serious injury or death should a fire or other emergency occur.

n. There has been an increase in the use of unreasonable force by corrections officers against incarcerated individuals, including but not limited to the frequent use of pepper spray to enforce PDP's lockdown practices. PDP correctional officers routinely use pepper spray and other force in response to verbal provocations or minor rule violations, rather than to protect themselves or others from physical harm. Individuals merely in the vicinity of conflicts with officers or other persons are subjected to pepper spray without warning. Defendants have failed to adequately train or supervise officers in the proper use of pepper spray, causing inmates to be sprayed in sensitive areas or sprayed with prolonged sprays instead of short bursts. When pepper spray is used, Plaintiffs have been denied needed medical care to ameliorate its effects. Pepper

https://bjs.ojp.gov/content/pub/pdf/mlj0019st.pdf?utm_content=juststats&utm_medium=email&utm_source=govdelivery (last visited January 3, 2022).

spray and other force are frequently used without any regard for the victims' physical or psychiatric disabilities, which place them at greater risk of injury or death from such force. PDP staff used pepper spray on incarcerated people 554 times in 2020, a 9% increase compared to the previous year, despite a 6% decrease in the average monthly population. In 2020, pepper spray was used more at PICC than in all but two of the county jails in Pennsylvania on a per capita basis.²²

V. NAMED PLAINTIFFS' EXPERIENCES IN THE PDP

24. Michael Alejandro is 29 years old and currently incarcerated at the Philadelphia Industrial Correctional Center ("PICC") within the PDP. He is currently housed on administrative segregation where he has limited and infrequent access to showers.

25. Nadiyah Walker is 45 years old and currently incarcerated at the Alternative and Special Detention Center ("ASDCU"). PDP staff have failed to transport Ms. Walker to some of her scheduled outside medical appointments and informed her that this was due to staffing shortages. On several occasions, she has witnessed correctional officers allow women to fight one another by not intervening. Ms. Walker receives little to no time outside in the yard and has struggled to obtain basic hygiene supplies including toilet paper, cleaning solution, and feminine hygiene products.

26. Clay Pizarro is 47 years old and currently incarcerated at the Riverside Correctional Facility ("RCF") within the PDP. He is currently awaiting trial and has at times experienced periods of total lockdown. In November 2021, Mr. Pizarro was not transported to court due to

²² Pennsylvania Department of Corrections (2020). *2020 County Prisons Extraordinary Occurrences Report (EOR) Data*, 2020, available at <https://www.cor.pa.gov/Facilities/CountyPrisons/Pages/Inspection-Schedule,-Statistics-And-General-Info.aspx>; Pennsylvania Department of Corrections (2019). *2019 County Prisons Extraordinary Occurrences Report (EOR) Data*, 2019, available at <https://www.cor.pa.gov/Facilities/CountyPrisons/Pages/Inspection-Schedule,-Statistics-And-General-Info.aspx>.

being housed on a quarantine block despite him being vaccinated and having a negative COVID test result, and as a result his case was continued for months. During his incarceration, he has witnessed correctional officers assaulting incarcerated persons with pepper spray without provocation, and he has witnessed officers failing to protect incarcerated persons from assaults. He fears that he, too will be subjected to violence.

27. Michael Flynn is 64 years old and is currently incarcerated at the Philadelphia Industrial Correctional Center (“PICC”) within the PDP. Mr. Flynn was injured in his cell at RCF in September 2021 and required a cast for a broken hand. Treatment for this injury was delayed and he has yet to receive all recommended follow-up care. While at RCF, he was forced to remain in a cell with sliding bolt locks, a hazard in the event of an emergency. Mr. Flynn has experienced delays in legal mail, lack of court-mandated out-of-cell time, and exposure to violence on his block where correctional officers fail to intervene in violent incidents.

28. Dyquill Pledger is 29 years old and currently incarcerated at PICC within the PDP. He is currently held in disciplinary segregation at PICC, where he has been denied adequate of cell time for showers, access to the yard, or calls to family, and he does not have access to commissary. Mr. Pledger did not receive an in-person hearing for his alleged disciplinary violation, nor did he receive an opportunity to contest his charges before a guilty finding was entered against him. He is not receiving law library access, and is only given out-of-cell time on average once every three to five days. In October 2021, he was pepper-sprayed and did not receive adequate medical attention.

29. Nasir Lewis is 24 years old and currently incarcerated in a segregation unit at PICC. Mr. Lewis received a disciplinary misconduct and was found guilty without an in-person hearing or any opportunity to contest his charges prior to a finding of guilt and imposition of a sentence of

60 days in disciplinary segregation. In segregation, he has been denied adequate access to showers and calls to his family.

30. Troy Harley is 23 years old and currently incarcerated at Curran-Fromhold Correctional Facility (“CFCF”). While incarcerated, he has been threatened by guards with pepper spray without provocation. Additionally, he has attempted to call for urgent medical assistance using emergency call buttons in his cell and has experienced long delays in correctional or medical response time. Mr. Harley has experienced periods of total lockdown, where he could not shower or leave his cell. Moreover, he has had issues gaining proper and timely access to toilet paper, and phones and tablets to talk with his family and attorneys.

VI. CLASS ACTION ALLEGATIONS

31. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and a class of similarly situated individuals, and they seek to represent a class of all individuals of:

All persons who are currently or will be in the future confined in the Philadelphia Department of Prisons, and are or will be subjected to unconstitutional and otherwise illegal conditions of confinement, including extended lockdowns; lack of out-of-cell time; denial of timely and adequate medical care; lack of protection from physical assaults; denial of access to the courts, to legal counsel, and to timely legal mail; lack of due process in disciplinary proceedings; lack of access to necessary exercise; inadequate sanitation, hygiene, quarantine, and separation practices and procedures to protect against COVID-19 infections.

32. This action has been brought and may properly be maintained as a class action as it satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

33. Joinder is impracticable because (1) the class members are numerous; (2) the class includes unidentifiable future members; and (3) the class members are incarcerated, reducing their ability to institute individual lawsuits.

34. Common questions of law and fact exist as to all members of the proposed class; all have the right to receive adequate COVID-19 prevention measures, testing, and treatment; all have the right to humane and constitutional conditions of confinement; and all have the right to access the courts and legal counsel.

35. The named Plaintiffs' claims are typical of the members of the class because the named Plaintiffs and all class members are injured by the same wrongful acts, omissions, policies, and practices of Defendants as described here. The named Plaintiffs' claims arise from the same practices, policies, and conduct that gives rise to the claims of the class members, and they are based on the same legal theories.

36. The named Plaintiffs have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the class. They have no interests adverse to the interests of the proposed class. They retained *pro bono* counsel with experience and success in the prosecution of civil rights litigation. Counsel for Plaintiffs know of no conflicts among proposed class members or between counsel and proposed class members.

37. Defendants have acted on grounds generally applicable to all proposed class members, and this action seeks declaratory and injunctive relief. Plaintiffs therefore seek class certification under Rule 23(b)(2).

38. In the alternative, the requirements of Rule 23(b)(1) are satisfied, because prosecuting separate actions would create a risk of inconsistent or varying adjudications with

respect to individual class members that would establish incompatible standards of contact for the party opposing the proposed classes.

FIRST CLAIM FOR RELIEF

Unconstitutional Conditions of Confinement in Violation of the Eighth and Fourteenth Amendments to the U.S. Constitution 42 U.S.C. § 1983

39. Under the Eighth and Fourteenth Amendments, corrections officials are required to provide for the reasonable health and safety of persons, whether sentenced or in pretrial detention, and they must provide humane conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Youngberg v. Romeo*, 457 U.S. 307, 315–16, 324 (1982). Correctional officials have an affirmative obligation to protect persons in their custody from infectious disease. Correctional officials also have an obligation not to place persons in their custody in oppressive conditions, including prolonged lockdowns and solitary confinement. Correctional officials must provide adequate access to medical care, must protect incarcerated individuals from violence from others, and may not use unreasonable or excessive force against incarcerated individuals. Officials violate the rights of incarcerated individuals when they are either deliberately indifferent to conditions of confinement that are likely to cause them serious harm and that pose an unreasonable risk of serious damage to their future health, *Helling v. McKinney*, 509 U.S. 25, 33–34 (1993), or if their acts are objectively unreasonable. *Kingsley v. Hendrickson*, 576 U.S. 389, 397–98 (2015).

40. PDP's facilities, as currently operated, deny the Plaintiff class the protections of the Eighth and Fourteenth Amendments.

SECOND CLAIM FOR RELIEF

Deprivation of Right of Access to Courts and Counsel in Violation of the First, Sixth, and Fourteenth Amendments to the U.S. Constitution 42 U.S.C. § 1983

41. The First, Sixth, and Fourteenth Amendments to the U.S. Constitution provide that all incarcerated individuals must be provided with timely access to legal mail, access to their court hearings, access to a law library, access to the materials necessary to petition the court, and the ability to have privileged, timely communications with both criminal and civil counsel.

42. Defendants have violated Plaintiffs' rights under the First, Sixth, and Fourteenth Amendments by cancelling and/or greatly delaying both remote and in-person legal visits; delaying and/or failing to deliver legal mail; failing to provide access to the law library; failing to transport Plaintiffs to, or cancelling, remote and in-person court appearances; instituting unnecessary and unreasonable quarantine policies and/or practices which cause Plaintiffs to miss remote and in-person court hearings; and failing to provide Plaintiffs with materials necessary to write to the courts or their lawyers.

THIRD CLAIM FOR RELIEF

Deprivation of Due Process Rights in Violation of the Fourteenth Amendment to the U.S. Constitution

42 U.S.C. § 1983

43. Under the Fourteenth Amendment to the United States Constitution, pretrial detainees have a liberty interest in not being detained indefinitely in more restrictive conditions than the general prison population.

44. The Due Process Clause requires that pretrial detainees placed in restrictive housing for administrative reasons be provided an explanation of the reason for their transfer and an opportunity to respond.

45. The Due Process Clause requires that pretrial detainees placed in restrictive housing as punishment for disciplinary infractions be provided written notice of the charges against them; an opportunity to defend themselves against the charges at a hearing, including by presenting

witnesses and documentary evidence; and a written statement of the evidence relied on and the reasons for the disciplinary action.

46. Defendants have violated Plaintiffs' due process rights by placing and keeping them in punitive or administrative segregation without due process.

FOURTH CLAIM FOR RELIEF

Violation of the Americans with Disabilities Act

42 U.S.C. §§ 12101 et seq.

47. Title II of the ADA bars public entities, such as PDP, from excluding qualified individuals with disabilities from its services, programs, or activities, or otherwise subjecting them to discrimination, and requires public entities to make reasonable accommodations for individuals' disabilities.

48. Many members of the class are qualified individuals with disabilities under the meaning of the ADA.

49. Access to medical treatment and safe conditions of confinement are programs or services that PDP's facilities must provide to incarcerated people for purposes of the ADA.

50. Defendants discriminate against people with disabilities by denying them reasonable accommodations in accordance with CDC guidelines and necessary to protect themselves from COVID-19.

51. Defendants also discriminate against people with psychiatric disabilities by failing to provide adequate out-of-cell time and mental health treatment.

REQUEST FOR RELIEF

52. Plaintiffs respectfully request that the Court order the following:

- a. Certification of this case as a Class Action under Fed. R. Civ. P. 23(b)(2);

- b. Injunctive relief ordering Defendants to mitigate the serious risk of illness, death, and harm from COVID-19, and to provide constitutional conditions of confinement, access to counsel and courts, and due process to those in disciplinary or administrative segregation in the PDP;
- c. A declaration that Defendants' policies and practices violate the First, Sixth, Eighth, and Fourteenth Amendments, and that Defendants' policies and practices violate the Americans with Disabilities Act.
- d. An award of Plaintiffs' attorneys' fees and costs; and
- e. Any further relief this Court deems just and appropriate.

Respectfully submitted,

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