

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

THOMAS REMICK, et al., on behalf of	:	
themselves and all others similarly situated,	:	No. 2:20-cv-01959-BMS
	:	
Plaintiffs,	:	
	:	
v.	:	
CITY OF PHILADELPHIA; and BLANCHE	:	
CARNEY, in her official capacity as	:	
Commissioner of Prisons,	:	
	:	
Defendants.	:	

**JOINT MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Plaintiffs filed this lawsuit on behalf of themselves and other similarly situated who are in incarcerated in the Philadelphia Department of Prisons (PDP), alleging that Defendants failed to provide humane conditions of confinement and protections against COVID-19 in the Philadelphia jail system, in violation of the United States Constitution and the Americans with Disabilities Act. Defendants City of Philadelphia and Commissioner Blanche Carney (collectively the “City”) have denied these allegations throughout the litigation.

Following two years of litigation, including the issuance of several Court orders relating to COVID-19 protocols and jail conditions (ECF Nos. 35, 55, 58, 59, 62, 70, 74, 92, 93), two motions for contempt filed by Plaintiffs (ECF Nos. 71, 113), a motion to vacate under the PLRA filed by Defendants (ECF No. 118), the Court’s certification of the class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure (ECF Nos. 152, 153), Defendants’ appeal of the Court’s class certification order, and a scheduled preliminary injunction hearing (*see* ECF No. 131), the parties entered into arm’s length settlement negotiations. Those efforts have resulted in the execution of a Settlement Agreement between the parties. The parties believe the terms of

the agreement are fair, reasonable, and adequate within the meaning of Rule 23, and warrant Court approval.

The proposed Settlement Agreement is attached at Exhibit 1. The proposed Notice to the Class, which would inform the members of the class of their right to submit objections to the settlement, the procedure for doing so, and the availability of copies of the agreement, is attached as Exhibit 2.

The parties respectfully request that the proposed Settlement Agreement be approved by the Court, after a hearing at which any objections to the Agreement may be considered. It is further requested that the proposed Notice to the Class be made within one (1) week of the date of any order of the Court granting preliminary approval of the class settlement; that objections or comments to the Settlement Agreement be mailed to Class Counsel no later than 15 days after Notice to the Class is posted; that a joint motion for final approval be submitted two (2) weeks after objections and comments are due ; and that a Fairness Hearing be scheduled two (2) weeks or later after the filing a joint motion for final approval.

Respectfully submitted,

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/s/ Sarah Bleiberg

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/s/ Danielle B. Rosenthal

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Attorneys for Defendants

DATE: April 12, 2022

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

THOMAS REMICK, et al., on behalf of	:	
themselves and all others similarly situated,	:	No. 2:20-cv-01959-BMS
	:	
Plaintiffs,	:	
	:	
v.	:	
CITY OF PHILADELPHIA; and BLANCHE	:	
CARNEY, in her official capacity as	:	
Commissioner of Prisons,	:	
	:	
Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

I. INTRODUCTION

Plaintiffs filed this lawsuit on behalf of themselves and other similarly situated who are incarcerated in the Philadelphia Department of Prisons (PDP), alleging that Defendants failed to provide humane conditions and protections against COVID-19 in the Philadelphia jail system in violation of the United States Constitution and the Americans with Disabilities Act. Defendants City of Philadelphia and Commissioner Blanche Carney (collectively the “City”) have denied these allegations throughout the litigation.

The Settlement Agreement (“Settlement Agreement” or “Agreement,” attached as Exhibit 1), if approved by the Court, will resolve all claims in this matter. The parties’ proposed Notice to the Class (“Notice,” attached as Exhibit 2) will inform the class members of the Agreement and give them an opportunity to voice any objections. The parties request that the Court find that the Agreement and Notice meet the standards for approval of a class action settlement and that the Court grant preliminary approval.

II. BACKGROUND

Plaintiffs initiated this class action on April 20, 2020, pursuant to 42 U.S.C. § 1983, the United States Constitution, and the Americans with Disabilities Act, seeking to compel Defendants City of Philadelphia and Commissioner Blanche Carney to protect individuals incarcerated in the PDP from the risks of serious harm they face from the twin dangers of COVID-19 and prolonged isolation in their cells. (*See* ECF No. 1). Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction, seeking an order requiring the City to ensure that humane conditions of confinement in PDP facilities, with a focus on COVID-19 protections and adequate out-of-cell time due to lockdown conditions. (ECF No. 18). Defendants responded in opposition to Plaintiffs' application for injunctive relief, contending that PDP was acting consistent with CDC guidance. (ECF No. 22). The parties reached a partial settlement agreement, which was approved by the Court and entered as a Consent Order on Partial Settlement Agreement on June 3, 2020. (ECF No. 35).

Thereafter, over the course of two years, the Court held biweekly status conferences, and the parties submitted status reports, declarations from incarcerated people, certifications from prison staff, and information relating to COVID-19 infection and vaccination rates. Plaintiffs alleged that the conditions at PDP continued to violate their constitutional rights and that staffing shortages (affected by the lack of employees along with absenteeism) caused these conditions. Defendants have denied that the jail conditions, policies, and protocols were unconstitutional or unlawful, and have maintained that incarcerated people the PDP were adequately protected from COVID-19. The Court issued several additional interim orders on matters such as mandatory COVID-19 testing, increased out-of-cell time, return to pre-pandemic programming, among other things. (*See* ECF Nos. 35, 55, 58, 59, 62, 70, 74, 92, 93).

Plaintiffs filed two motions for contempt during the case (*see* ECF Nos. 71, 113), both of which were resolved through settlement. Defendants also filed a motion to vacate a prior Court order under the PLRA, which motion was also resolved through settlement. (*See* ECF No. 118.)

More recently, Plaintiffs filed a Third Amended Complaint (ECF No. 147), a third amended Motion for Class Certification (*see* ECF No. 125), and a Motion for Preliminary Injunction (ECF No. 128). In response, Defendants filed a Motion to Dismiss, an opposition to class certification, and an opposition to the application for injunctive relief. (ECF Nos. 148, 139, 138). On March 11, 2022, the Court certified this case to proceed as a class action. (ECF No. 152-153). Defendants appealed the Court's class certification order on March 25, 2021.

With these motions all pending, the parties entered into arms-length settlement negotiations, as a result of which the parties have executed a Settlement Agreement. Under the terms of the Agreement, the City will: (1) implement measures to enhance the hiring and retention of correctional officers; (2) provide minimum times for out-of-cell time on a schedule with presumptive increases; (3) continue to increase capacity for in-person visits by family and friends, and in conjunction with Plaintiffs and a Court-appointed Monitor, develop a plan for return to pre-pandemic programming; (4) continue to ensure adequate and timely medical and mental health treatment along with mental health programming, with benchmarks in reducing backlogs for medical appointments; (5) ensure compliance with individuals' due process rights at disciplinary hearings; (6) continue the expansion of phone and tablet access for incarcerated people; (7) continue the implementation of a lock replacement program and implement refresher training on the emergency call button system; (8) continue to follow Covid-19 related protocols to ensure individuals are available for court and for meetings with attorneys; and (9) provide

refresher training on the policy applicable to deployment of pepper spray by correctional officers.

The Settlement Agreement also provides for the appointment of a Monitor to assist the Court and the parties in implementing the Agreement and Order, and in the formulation of any future order(s) as necessary, for a period of two years. The parties will submit to the Court for its consideration and approval a protocol detailing the role and functions of the Monitor which will include issues of access to documents, reports, data, PDP personnel, and the PDP facilities, and the ability to receive information from class members, while respecting the safety, security, and privilege concerns of the PDP.

Importantly, the Agreement also (1) addresses standards for relief under the Prison Litigation Reform Act, (2) states that the Defendants, by this Agreement, do not admit any fact or legal liability, or unlawful conduct, (3) provides for counsel fees and costs, (4) includes a release of the claims by Plaintiffs made in the Third Amended Complaint, and (5) sets termination dates and a process for enforcement, if necessary.

III. LEGAL STANDARD

Under Federal Rule of Civil Procedure 23(e), the settlement of a class action requires approval of the Court. The Court first considers a motion for preliminary approval to evaluate the parties' proposed substantive agreement and to assess the plan for notifying class members. Second, the Court considers a motion for final approval, after the class members have had the opportunity to receive notice and voice any objections. *See Harlan v. Transworld Sys.*, 302 F.R.D. 319, 324 (E.D. Pa. 2014). In determining whether to grant preliminary approval of a class action settlement, the Court should evaluate whether there are any obvious deficiencies that would cast doubt on the proposed settlement's fairness, whether the settlement negotiations

occurred at arm's length, whether there was significant investigation of Plaintiffs' claims, and whether the proposed settlement provides preferential treatment to certain class members. *See Silvis v. Ambit Energy, L.P.*, No. 14-5005, 2018 U.S. Dist. LEXIS 28392, at *16 (E.D. Pa. Feb. 22, 2018).

The Settlement Agreement meets the standards for preliminary approval, as it is fair to both sides and will improve conditions of confinement for the class members. Further, the Agreement provides for the appointment of a Monitor to ensure compliance with the Agreement and any Court orders.

Second, the settlement negotiations occurred at arm's length and after a substantial motions practice and submissions to the Court. The parties engaged in discovery through the exchange of documents, a deposition of the Medical Director at PDP, a tour and inspection of the four jails in the PDP, and plaintiffs' disclosure of a report from a retained expert. Each side was able to weigh the factual and legal risks of continuing with the litigation.

Third, the settlement agreement does not provide preferential treatment, as all class members will benefit from the changes that this lawsuit has prompted.

The attorneys' fees and costs reflect prevailing rates and the standards under the PLRA, and they do not impact the relief obtained by class members.

The Agreement is fair, reasonable, and adequate, and it should be approved.

Federal Rule of Civil Procedure 23(e) requires notice of the settlement to class members. The trial court has broad discretion in determining the timing and manner of the notice. *Harris v. Reeves*, 761 F. Supp. 382, 393 (E.D. Pa. 1991). In class actions involving prisons and other institutions, it is frequently impractical to provide individual notice to class members. *See id.* at 393. Instead, posting a notice at the institution is usually the best way to inform class members

of a pending settlement agreement. *See id.*; *see also Woods v. Marler*, No. 17-4443, 2018 U.S. Dist. LEXIS 170225, at *4-5 (E.D. Pa. September 24, 2018) (approving class action settlement where pre-trial detainees at the Federal Detention Center sought policies that would permit visitation by their minor children, noting the notice that was posted to the class that permitted class members an opportunity to object); *Pastrana v. Lane*, 08-468, 2012 U.S. Dist. LEXIS 23737, at *3, 5 n.4, 10 (E.D. Pa. February 24, 2012) (noting that the court ordered a notice to be posted in the housing units to inform halfway house residents about a class action settlement); *Inmates of Northumberland Cty. Prison v. Reish*, 08-cv-345, 2011 U.S. Dist LEXIS 46600, at *4-5 (M.D. Pa. April 29, 2011).

Here, notice to the class will be provided through the posting of a proposed Notice and the Agreement in all housing areas at PDP, at the law libraries, and on the PDP electronic communication system (e.g., tablets), , and by plaintiffs' counsel in response to requests for review of the Agreement. The Notices shall be made within one (1) week of the date of preliminary approval of the agreement. Class members may be provided with a letter from Plaintiffs' counsel explaining the Agreement, including the role of the Monitor. (*See Exhibit 1 for the Notice*).

III. CONCLUSION

For the reasons discussed above, the Court should grant preliminary approval of the class action settlement.

Respectfully submitted,

/s/ Su Ming Yeh

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/s/ Matthew A. Feldman

Matthew A. Feldman (PA 326273)

/s/ David Rudovsky

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Attorneys for Defendants

DATE: April 12, 2022

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

THOMAS REMICK, et al., <i>on behalf of themselves and all others similarly situated,</i>	:	
	:	No. 2:20-cv-01959-BMS
	:	
Plaintiffs-Petitioners,	:	
	:	Judge Berle M. Schiller
v.	:	
	:	
CITY OF PHILADELPHIA; and BLANCHE CARNEY, in her official capacity as Commissioner of Prisons,	:	
	:	
Defendants-Respondents.	:	

CERTIFICATE OF SERVICE

I, Su Ming Yeh, hereby certify that a true and correct copy of the Joint Motion for Preliminary Approval of Class Action Settlement was served upon the following via ECF on April 12, 2022.

Craig M. Straw
Anne B. Taylor
Danielle Rosenthal
City of Philadelphia Department of Law
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1595

Respectfully submitted,

/s/ Su Ming Yeh
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DATE: April 12, 2022

**IN THE UNITED STATES DISTRICT COURT
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THOMAS REMICK, et al., on behalf of themselves and all others similarly situated,	:	
	:	No. 2:20-cv-01959-BMS
	:	
Plaintiffs,	:	
	:	
v.	:	
CITY OF PHILADELPHIA; and BLANCHE CARNEY, in her official capacity as Commissioner of Prisons,	:	
	:	
	:	
Defendants.	:	

ORDER

AND NOW, this ____ day of _____, 2022, upon consideration of the Motion Seeking Preliminary Approval of the parties’ proposed Class Action Settlement, it is **HEREBY ORDERED** as follows:

1. The Settlement Agreement jointly submitted by the parties is preliminarily approved.
2. The Court preliminarily approves the stipulation of the parties that “for settlement purposes only, and without an admission by Defendants of a violation of any federal civil right, the parties agree that this Agreement meets the requirements of 18 U.S.C. §3626(a)(1).”
3. The Court also preliminarily approves the stipulations between the parties as to no admissions of liability or wrongdoing on the part of Defendants, the lack of effect of the Agreement in other legal actions, and the release and termination provisions of the Agreement.
4. The Notice submitted in conjunction with the Parties’ Joint Motion for Preliminary Approval is approved and (after the dates for the hearing and related deadlines are filled in) shall be used to notify the class and subclass.

5. On or before [*one week from the date of this Order*] _____, the “Notice to the Class” shall be posted on each housing unit, at the law libraries, and on the PDP electronic communications system (e.g., tablets), and shared by Plaintiffs’ counsel in response to requests for information from class members.
6. The Court finds that this notice plan is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed settlement and meets all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.
7. Objections to or comments regarding the Settlement Agreement will be considered by the Court at the Fairness Hearing if submitted to Counsel in writing on or before [*15 days after the deadline for posting Notice to the Class*] _____. The objections or comments shall be sent to:

Pennsylvania Institutional Law Project
Attn: Remick Lawsuit
718 Arch Street, Suite 304 South
Philadelphia, PA 19106

City of Philadelphia Law Department
Attn: Anne Taylor, Chief Deputy City Solicitor
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

8. On or before [*two weeks after the date objections and comments are due*] _____, a joint motion for final approval shall be filed by the parties.
9. The parties shall promptly exchange all copies of comments or objections to the Settlement Agreement and jointly submit them to the Court no later than five (5) days prior to the Fairness Hearing.

10. A Fairness Hearing to address any objections or comments to the proposed Settlement Agreement shall be held on _____, in Courtroom _____, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania.

BY THE COURT:

J.

**IN THE UNITED STATES DISTRICT COURT
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THOMAS REMICK, et al., on behalf of	:	
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Plaintiffs,	:	
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v.	:	
	:	
CITY OF PHILADELPHIA; and BLANCHE	:	
CARNEY, in her official capacity as	:	
Commissioner of Prisons,	:	
	:	
Defendants.	:	

SETTLEMENT AGREEMENT

I. Introduction

The parties hereby agree to the entry of an Order by this Court based on the provisions of this Settlement Agreement as a full settlement of the claims pending in this litigation.

For settlement purposes only, and without an admission by Defendants of a violation of any federal civil right, the parties agree that this Agreement meets the requirements of 18 U.S.C. §3626(a)(1).

Neither the fact of this Agreement nor any statement of claims contained herein shall be used in any other case, claim, or administrative proceedings, except that Defendant and its employees and agents may use this Agreement and any statement contained herein to assert issue preclusion or *res judicata*.

II. Substantive Provisions

1. No later than April 20, 2022, the Defendants shall implement measures, including but not limited to signing and retention bonuses, to enhance the hiring and retention of correctional officers to ensure that there are a sufficient number of correctional officers to cover all posts, according to PDP post-plans, on each shift at each facility. These measures shall continue until this goal is achieved and thereafter to maintain the proper number of correctional officers.

2. Upon the entry of this Agreement, and no later than May 15, 2022, Defendants shall ensure that each incarcerated person at the Philadelphia Department of Prisons (PDP), with the exception of those who are housed in a designated segregation unit, shall be provided the following out-of-cell times for the following periods: (a) no later than May 15, 2022, no less than four hours of out-of-cell time each day; and (b) no later than

August 1, 2022, no less than five hours of out-of-cell time each day. The parties agree that out-of-cell times under normal operations of the PDP have ranged from 8-10 hours a day and increases of out-of-cell time should continue to be made beyond the August 1, 2022 standard, with a presumptive expected increase to six hours by October 15, 2022. The parties agree that this next step shall be based on the recommendations of the Court-appointed Monitor, *infra*, para. 19, as to scope and timing. Accordingly, the Monitor shall provide recommendations to the Court, based on the Monitor's analysis of all relevant factors and proposals by the parties, on the next increase in out-of-cell time no later than October 1, 2022, and thereafter on a quarterly basis. *See also* para. 4, *infra*.

3. Defendants shall ensure that persons on segregation units shall be provided: (a) no later than May 1, 2022, thirty minutes out-of-cell time on a daily basis and (b) no later than July 1, 2022, no less than one hour each day. Defendants further agree that they will continue their practice of not placing incarcerated people in segregation units due to the lack of space or staffing on other units.
4. By November 1, 2022, based on discussions between the parties and the Court-appointed Monitor, the parties and the Monitor shall submit to the Court a plan for a return to normal operations of the PDP (regarding out-of-cell time, programming, visits, and other services). During the period that precedes a return to normal operations, if the Monitor determines that the Defendants are not providing the agreed-upon out-of-cell time, Defendants must provide specific reasons for non-compliance to the Plaintiffs and the Monitor. The parties and the Monitor shall then engage in discussions to resolve the issues in dispute. If no agreement is reached, Defendants may move for the amendment or modification of these provisions, but only upon good cause shown, and the Plaintiffs may move for appropriate intervention by the Court, including possible contempt of court sanctions.
5. The Defendants shall provide adequate and timely medical and mental health treatment to all incarcerated persons. The Defendants agree to institute the programs and measures (referred to as "the Backlog Plan") set forth by Bruce Herdman, PDP Chief of Medical Operations, at his deposition of March 21, 2022, to address the existing backlog. The "Backlog Plan" is a new, three-month effort to see backlogged patients as soon as possible. The City has allocated substantial funding to allow Corizon Health services to engage additional agency staff to augment its full-time staff to further reduce backlogs. Four agencies are contracted to provide staff towards this end. Agencies will provide additional providers, including MD/DOs, NPs, LCSWs, and RNs for this effort. Based on these programs and measures, the Defendants agree to substantially eliminate the existing backlog by August 1, 2022, and thereafter to continue addressing any remaining backlog consistent with these programs and measures. Substantial elimination shall mean reduction to a backlog of no more than ten to fifteen percent of the current backlog.

6. By September 30, 2022, the PDP and Corizon shall re-establish a mental health program for persons who are in segregation status.
7. PDP will continue to provide law library access for all incarcerated individuals. The Monitor and the parties will discuss access and scheduling matters and the Monitor shall make any recommendations on these matters by August 1, 2022.
8. All future disciplinary proceedings at the PDP shall be held in accord with established due process rights, including the presence of the incarcerated person who is the subject of the proceeding. *See Wolff v. McDonnell*, 418 U.S. 539, 563–66 (1974); *Kanu v. Lindsey*, 739 F. App'x 111, 116 (3d Cir. 2018); *Stevenson v. Carroll*, 495 F.3d 62, 70–71 (3d Cir. 2007). The PDP shall: (a) expunge the disciplinary records for all persons who were not present at their disciplinary hearings for the period March 2020 to the current date; (b) release from segregation all incarcerated persons who were not present at their disciplinary hearings but who are still serving a disciplinary sentence, or who are in administrative segregation following a disciplinary sentence imposed without a hearing; (c) cancel sanctions that require payments for damage to property or other restitution, and/or return payments made by persons who were required to pay for damage to property or other harms. Provided, however, the PDP may seek to conduct due process hearings for individuals covered by this provision who are still in segregation, but only: (a) if there is a small and discrete number of such cases, and (b) upon first providing counsel for Plaintiffs the names of those persons, the disciplinary charges, and information related to the length of placement in segregation. Nothing in this section prohibits persons subject to the disciplinary process set forth above from asserting individual legal challenges to the discipline. Defendants shall provide to counsel for plaintiffs a list of individuals and disciplinary matters subject to this exception by April 15, 2022.
9. PDP has undertaken expansion efforts to increase the number of tablets available within the PDP facilities by adding eighty (80) additional tablets, according to operational capabilities and housing designs. The expansion of tablets is as follows: from four (4) to six (6) tablets on each housing unit at CFCF for a total of fifty-six (56) additional tablets; and, at RCF, expanding from six (6) to eight (8) tablets on the 2nd and 3rd floor (4 housing units) and expanding from eight (8) to twelve (12) tablets on the 1st floor of RCF (4 larger units) for a total of twenty-four (24) additional tablets at RCF. This expansion process will be completed by May 1, 2022. The parties and the Monitor will discuss any future increases in the number of tablets based on all relevant factors, including operational feasibility and physical capacity. Further, the Monitor and the parties shall discuss whether any policies and practices are necessary to address equitable and fair individual access to available tablets, and if so, the PDP shall implement agreed upon practices.
10. PDP agrees to maintain 15 minutes of free phone calls on a daily basis for the PDP population. Further, the Monitor and the parties shall discuss whether any policies and

practices are necessary to address equitable and fair individual access to phones and, if so, the PDP shall implement agreed upon practices. Upon a return to normal operations, the PDP will revert to the provision of 10 minutes of free phone calls.

11. The Monitor and the parties shall discuss the issues unique to PICC regarding emergency call systems and access to tablets and/or phones and determine whether any policies and practices are necessary to address these matters considering all relevant factors, including operational feasibility and physical capacity.
12. PDP initiated the lock replacement program for PICC and RCF, which will be completed by June 30, 2022. For the repair of call button devices in existing facilities, PDP will conduct a one-time test of all call buttons and make any necessary repairs by August 1, 2022. Any future complaints related to the operation of call buttons shall be addressed through work orders, which will be addressed and completed by Defendants in a timely manner. PDP will provide refresher training before June 1, 2022, to correctional staff on PDP practices with respect to responses to the emergency call button system.
13. As of March 7, 2022, PDP reinstated in-person visitation for all vaccinated incarcerated persons with family members. PDP is in the process of increasing capacity for in-person visits by increasing the number of visits that can be accommodated during the current hourly schedule. At a minimum, current CFCF visiting shall be increased by 8 slots, PICC increased by 4 slots, and RCF increased by 2 slots. Further, the parties and Monitor shall discuss all matters related to visitation, and the monitor shall issue recommendations on these issues. PDP reaffirms that it will acknowledge and record the vaccination status of those individuals who provide information that they were vaccinated outside of PDP.
14. PDP shall continue to follow a policy of providing attorneys with access to their clients within 45 minutes of their scheduled visit. For remote legal visits (in all formats), the PDP shall continue to ensure that the client is on the call/computer/video within 15 minutes of the scheduled start time of the appointment. For these time frames, PDP will not be responsible for delays caused by the incarcerated person or by exigent circumstances, but where a delay is caused by the incarcerated person or by exigent circumstances, PDP will inform the attorney of the delay.
15. The PDP shall continue the present policy regarding testing of persons who are scheduled for court. Those who are housed on “green blocks” are either fully vaccinated or are not considered to have been exposed to COVID. They will be rapid-tested the night before court, and they will be brought to court if they receive negative test results. Those housed on a “yellow block” may have been exposed to a COVID-positive individual, and they will be rapid-tested twice, the night before court and the morning of court. They will be transported to court if both tests are negative. Those housed on a “red block” are COVID

positive and will be isolated for ten days and not brought to court during that time frame. These protocols will be maintained subject to continued cooperation from criminal justice partners and on the advice of the Philadelphia Department of Public Health. Provided, however, that the Defendants shall not unilaterally change the protocols and they shall timely notify Plaintiffs' counsel of any change or proposed change in these protocols.

16. If there becomes a need in the future for use of quarantine housing areas at PDP, CDC guidelines shall continue to be followed for those who have been exposed to COVID-19. Under current policy, *see Interim Guidance on Management for Correctional and Detention Centers, June 9, 2021*, for persons who are vaccinated and are exposed to a person with COVID-19, but test negative, they shall not be quarantined; for those who have been exposed to COVID-19, but who have not been vaccinated, and test negative, they shall be quarantined for a period of ten days and released at that time if they test negative.
17. Defendants agree to continue conducting the weekly General Inspection ("GI") cleaning days with supplies provided by officers to clean cells and housing area, and to provide regular laundry services under current PDP policies.
18. PDP policies and training address correctional staff's use of force, use of pepper spray, de-escalation measures, and an incarcerated person's non-compliance with verbal commands. The parties agree that correctional officers should follow de-escalation measures provided in PDP policies. The Monitor shall review these issues and make recommendations based on a review of all relevant material and factors. In the interim, PDP shall advise and re-train correctional officers on the proper application of the Use of Force and Restraints Policy, 3.A.8, and with respect to de-escalation requirements in accordance with the PDP policy which in part states: "Force is only used when necessary and only to the degree required to control the inmate(s) or restore order...The use of pepper spray is justifiable when the Officer's presence and verbal command options have been exhausted and the inmate remains non-compliant or the inmate's level of resistance has escalated....Staff will not use pepper spray as a means of punishment, personal abuse, or harassment."
19. The parties agree to the appointment of a Monitor to assist the Court and the parties to implement this Agreement and Order, as well as future Order(s) of the Court, if necessary. This Agreement for a Monitor anticipates that both sides shall cooperate with the Monitor and will act in good faith in their consideration of recommendations made by the Monitor on the various substantive provisions of this Agreement. The Court shall appoint a Monitor or Monitoring team based on the advice and recommendations of the parties. The Defendants shall be responsible for the financial remuneration of the Monitor. The parties and the Monitor shall agree to policies to facilitate the monitoring process, including access to the documents, reports, data, PDP personnel, and directly to the PDP facilities. These policies shall respect the safety, security, and privilege concerns of the PDP under terms and conditions to be approved by the Court. The Monitor shall also develop a system to receive information directly from the plaintiff

class, their families, and advocates. The Monitor shall provide regular reports to counsel and the Court, which shall be filed of record, subject to possible redactions for confidential information. Plaintiffs' counsel shall have access to all documents and records underlying such regular reports. Any disputes about materials to be supplied under this provision shall be resolved by the Monitor and the Court. Upon the approval of this Agreement, the parties shall draft a protocol outlining the duties, functions, and responsibilities of the Monitor for the Court's consideration and approval.

20. Upon the entry of this Agreement and Final Order, the Defendants agree to withdraw their Petition for Permission to Appeal this Court's Class Certification Order, now pending in the Court of Appeals for the Third Circuit.
21. Prior to the filing of a Motion for Contempt, Plaintiffs must first notify the Monitor and the Defendants of the alleged non-compliance, and the Monitor and the parties shall then meet and confer on a process for resolving the dispute. If no agreement is reached, Plaintiffs may file a Motion to Enforce or Motion for Contempt of Court, or other appropriate motion with the Court.
22. This Agreement and Order are being entered at a time when the known COVID-19 infection rate is zero and there are no quarantine housing areas at PDP except for intake purposes. If and when the COVID-19 infection rate increases to a point that the Defendants believe that provisions of this Agreement and Order cannot be implemented without compromising the health and security of the plaintiff class and staff at PDP, the PDP may: (a) in exigent circumstances requiring immediate changes in PDP operations, implement the necessary changes and provide a statement of the facts and circumstances necessitating these actions to the Monitor and counsel for plaintiffs; or (b) in the absence of exigent circumstances requiring immediate changes in operations, seek amendments to this Order by Motion to the Court.
23. The parties shall discuss and agree on payments for Plaintiffs' attorney fees and costs. If an agreement cannot be reached, the Court will entertain a Motion for Fees and Costs.
24. The Court shall retain jurisdiction over this Agreement for a period of two years. Provided, however: (a) if Defendants establish substantial compliance for a period of time that demonstrates that oversight is no longer necessary, the Court on motion may terminate all or parts of the Agreement and dismiss this action before two years, and (b) if Plaintiffs contend that there continues to be substantial non-compliance with any specific provision of this Agreement at the two-year mark, they may move the Court for an appropriate extension of the Agreement as to the applicable provision.

Counsel for Plaintiffs:

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/s/ Sarah Bleiberg

/s/ David Rudovsky

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/s/ Anne B. Taylor
Chief Deputy City Solicitor

/s/ Danielle B. Rosenthal
Danielle B. Rosenthal
Deputy City Solicitor
Civil Rights Unit, Law Dep't
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

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

THOMAS REMICK, et al., on behalf of	:	
themselves and all others similarly situated,	:	No. 2:20-cv-01959-BMS
	:	
Plaintiffs,	:	
	:	
v.	:	
CITY OF PHILADELPHIA; and BLANCHE	:	
CARNEY, in her official capacity as	:	
Commissioner of Prisons,	:	
	:	
Defendants.	:	

NOTICE TO THE CLASS OF SETTLEMENT AGREEMENT

This Notice sets forth the basic terms of the class action settlement regarding conditions of confinement at the Philadelphia Department of Prisons (“PDP”) and advises class members of their procedural rights relating to the settlement.

I. CASE BACKGROUND

On April 20, 2020, this class action lawsuit was filed against the City of Philadelphia and Commissioner Blanche Carney (“Defendants”), alleging that Defendants were failing to provide humane conditions and protections against COVID-19 in the PDP, in violation of the United States Constitution and the Americans with Disabilities Act. The allegations in the lawsuit address out-of-cell time, access to necessary services including medical and mental health care, physical safety in custody, due process in disciplinary hearings, and access to counsel and the courts. The lawsuit seeks injunctive and declaratory relief.

On March 11, 2022, the Court certified a class of plaintiffs, as follows:

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 illegal or unconstitutional conditions of confinement as a result of policies and restrictions implemented in response to the COVID-19 pandemic, and the PDP’s staffing shortage.

The following subclass was also certified:

All persons who are currently or will be in the future confined in the Philadelphia Department of Prisons who have physical and/or psychiatric impairments that substantially limit one or more of their major life activities, and who are or will be

subjected to illegal or unconstitutional conditions of confinement as a result of policies and restrictions implemented in response to the COVID-19 pandemic, and the PDP's staffing shortage.

II. THE SETTLEMENT AGREEMENT

The parties in this lawsuit have entered into a Settlement Agreement. Copies of the Settlement Agreement will be available for review on each housing unit, the law libraries, through the PDP's electronic communications systems (e.g., through tablets), and upon request to Plaintiff's counsel. Under the terms of the Agreement, the Defendants agreed to:

- implement measures to enhance the hiring and retention of correctional officers;
- provide minimum times for out-of-cell time on a schedule with presumptive increases;
- continue to increase capacity for in-person visits by family and friends, and in conjunction with Plaintiffs and a Court-appointed Monitor, develop a plan for return to pre-pandemic programming;
- continue to ensure adequate and timely medical and mental health treatment along with mental health programming, with benchmarks in reducing backlogs for medical appointments;
- ensure compliance with individuals' due process rights at disciplinary hearings;
- continue to expand phone and tablet access for incarcerated persons;
- continue implementing a lock replacement program and provide refresher training on the emergency call button system;
- continue to follow Covid-19 related protocols to ensure individuals are available for court and for meetings with counsel; and
- provide refresher training on the policy applicable to deployment of pepper spray by correctional officers.

In addition, the Settlement Agreement provides for the appointment of a Monitor or Monitoring team to assist the Court and the parties in implementing the Agreement and Order, and any possible future Order(s) as necessary, for a period of two years. The parties and the Monitor will develop policies to facilitate the monitoring, which will include the Monitor having access to documents, reports, data, PDP personnel, and the PDP facilities, and the ability to receive information directly from class members, while respecting the safety, security, and privilege concerns of the PDP. These policies would be presented to the Court for approval. The Agreement also contemplates the provision of attorneys' fees.

The proposed settlement, if approved by the Court, will settle all of the claims in the *Remick* lawsuit. Further details of the settlement terms are in the Settlement Agreement. You may request a copy of the Agreement by contacting counsel for plaintiffs at the address for the Pennsylvania Institutional Law Project, provided below in Section III.

III. SUBMISSION OF COMMENTS OR OBJECTIONS

The Settlement Agreement is under review by the Court, and it will not take effect until and unless it is approved by the Court. If you wish to submit any comments or statements in support of or objecting to the Settlement Agreement, you should do so in writing explaining why you do or do not believe that the Settlement Agreement is fair, reasonable, and adequate.

This Notice is not intended to be, and should not be construed as, an expression or any opinion by the Court with respect to the truth of the allegations in the litigation or the merits of the claims or defenses asserted. This Notice is sent to advise you of the pendency of this action and proposed settlement and of your rights with respect to this action.

All written comments or statements in support of or objecting to the pending Settlement Agreement should be mailed to the following lawyers:

Pennsylvania Institutional Law Project
Attn: Remick Lawsuit
718 Arch Street, Suite 304S
Philadelphia, PA 19106

City of Philadelphia Law Department
Attn: Anne Taylor, Chief Deputy City Solicitor
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

Please DO NOT call or write Judge Schiller directly concerning this proposed Settlement.

IV. NOTICE OF FAIRNESS HEARING

The Court will consider any objections or comments you may have regarding the Settlement Agreement, provided they are received by _____ [*DATE that is 15 days after date of preliminary approval*].

A hearing will be held on _____, at which the Court will consider the fairness of the Settlement Agreement and whether to approve it. Your objection will only be considered in writing and will not result in your presence in any hearing for testimony.

This Notice Has Been Approved for Distribution By:

The Honorable Berle Schiller
U.S. District Court
Eastern District of Pennsylvania

DATED: _____