

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

<b>THOMAS REMICK, NADIYAH WALKER,</b>	:	
<b>JAY DIAZ, MICHAEL ALEJANDRO,</b>	:	<b>No. 2:20-cv-01959-BMS</b>
<b>MICHAEL DANTZLER, ROBERT</b>	:	
<b>HINTON, JOSEPH WEISS, JOSEPH</b>	:	
<b>SKINNER, SADDAM ABDULLAH, and</b>	:	
<b>JAMES BETHEA, on behalf of themselves</b>	:	
<b>and all others similarly situated,</b>	:	
	:	
<b>Plaintiffs-Petitioners,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>CITY OF PHILADELPHIA; and BLANCHE</b>	:	
<b>CARNEY, in her official capacity as</b>	:	
<b>Commissioner of Prisons,</b>	:	
	:	
<b>Defendants-Respondents.</b>	:	

**JOINT STATUS REPORT**

The Plaintiffs and Defendants City of Philadelphia and Commissioner Blanche Carney (“City”) submit this Status Report in advance of the conference scheduled for September 10, 2020.

**A. Compliance Monitoring**

***Plaintiffs’ Report***

Significant and serious differences between the Parties persist with respect to whether the current operations of the Philadelphia Department of Prisons (PDP) are in compliance with the terms of the Consent Order on Partial Settlement Agreement dated June 3, 2020.

Counsel for Plaintiffs continue to receive reports of wide-spread non-compliance with the Partial Settlement Agreement. Attached as Exhibits A and B are summaries of the reports received by Plaintiffs’ counsel in the two-week period from August 24 through September 4, 2020. As in prior Joint Reports submitted to the Court, the most serious concerns remain: (1)

insufficient out-of-cell time, (2) staff not wearing face masks, (3) failure to distribute soap on a weekly basis, (4) failure to distribute cleaning supplies needed for twice-weekly cell cleanings, (5) failure to distribute sufficient numbers of face masks to incarcerated people, and (6) insufficient access to laundry for linens and clothing. Between August 24 and September 4, 2020 alone, Plaintiffs' counsel received reports of noncompliance with these provisions of the Partial Settlement Agreement from all PDP facilities, including from twenty (20) housing units at CFCF, seven (7) housing units at PICC, and six (6) housing units at RCF. (*See* Ex. B.). As these reports demonstrate, non-compliance with the partial settlement agreement remains systemic across the spectrum of PDP facilities.

To further investigate these issues, Plaintiffs' counsel recently conducted a detailed review and analysis of the data produced by Defendants for four housing units in different PDP facilities from August 9 to August 15, 2020. Unfortunately, the PDP data record creation and record-keeping remains wholly unsatisfactory from a management or monitoring perspective: (1) many of the reports are unintelligible; (2) there appear to be no standards in place with respect to how the information is to be recorded; (3) often the information in the two PDP systems (PDP Portal and Activity Logs) is inconsistent and contradictory; (4) the signatures of many inmates are not really signatures or are highly suspect; and (5) many incarcerated persons are refusing to sign the verification sheets. Most troubling, the PDP's own reports confirm that many incarcerated individuals are not being granted out-of-cell time as required by the partial settlement agreement because of staffing shortages. Examples from Defendants' own records

have been provided to counsel for Defendants to demonstrate these systemic issues.<sup>1</sup>

Based on this recent and historic analyses, counsel for Plaintiffs believe there is ample evidence to support the appointment of an independent monitor – as the Court has raised in prior telephonic court conferences. Counsel for Plaintiffs, however, are willing to give Defendants a brief period of time to see if the newly-appointed compliance officials at each PDP facility (the Deputy Wardens) can address these long-standing issues, particularly out-of-cell time. This reprieve will also give PDP senior management the opportunity to demonstrate its commitment to comply with the partial settlement agreement and resolve the other issues that gave rise to this litigation. If these issues persist, then counsel for Plaintiffs will request that the Court appoint an independent monitor.

### ***Defendants' Report***

Defendants concur that the parties have differing accounts of the Defendants' compliance with the terms of the partial settlement agreement. Indeed, Defendants respectfully submit that the information provided by Plaintiffs does not substantiate their contentions that “non-compliance with the partial settlement agreement remains systemic across the spectrum of PDP facilities.” By way of example, Plaintiffs have summarized complaints received across two weeks from the Curran-Fromhold Correctional Facility. Generously assuming that each of the itemized CFCF complaints came from a unique person, there is a total of 126 lodged complaints over that two-week period. The present population of CFCF is 2,058 persons. Each of those individuals has an opportunity to lodge a complaint on any day of the time period – this would

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<sup>1</sup> For the Court's background and benefit and without waiving any work product protection, Plaintiffs' counsel attach as Exhibit C a small subset of our analysis for a single housing unit that reflects many of these issues.

amount to a total of at least 28,812 daily complaint opportunities over a two-week time frame, a number that assumes each person lodges a daily complaint about just one issue. But instead there are at most 126 individual complaints (and likely less, given that a reporter might identify more than one issue). Moreover, there is no indication in this reporting about the scope of a particular issue, like soap, cleaning supplies, laundry, or staff mask wearing. Plaintiffs have not provided information that the complaints are anything but individual issues with receipt of specific services, and Defendants have not seen information indicating a wholesale lapse of service provision across particular housing units. One person reporting that they did not receive soap on a particular distribution day is not the equivalent of systemic non-compliance, nor is one person reporting an issue with getting additional cleaning supplies. Similarly, the lack of detail with regard to mask compliance undermines any contention of systemic failure to abide by the terms of the partial settlement agreement. There is no indication whether the basis of the alleged complaint relates to a one-time staff failure to appropriately wear a mask, or to staff pulling down their masks to speak, routinely wearing masks around their chin, or failing to wear a mask entirely. There is also no indication whether the complaints relate to one particular staff member or whether they are instead widely observed problems. Staff and inmates are, per the terms of the partial settlement agreement, required to wear masks. Without the types of detail addressed in the preceding paragraph, Plaintiffs do not provide a basis for their contention of systemic non-compliance and they also fail to provide a means by which Defendants can identify and address the discrete complaints. Defendants respectfully submit that the compliance concerns are not supported by the data and remain addressable if Plaintiffs choose to provide more detailed information.

Defendants turn next to the report that Plaintiffs are, in some instances, reporting insufficient time out of cell. Since the last call with the Court Defendants have continued to work with the union representing the correctional staff, efforts which have involved the Mayor's Office of Labor Relations. Defendants have also directed that senior management must be present at all facilities over the weekends, a direction that has resulted in fewer staff disregarding drafting instructions (by which staff are directed to stay a certain number of hours into the next shift, to provide coverage) that they are obligated per the contract to follow. Defendants have started to see a reduction in staffing issues as a result of these measures, and expect that pursuit and implementation of these measures will continue to address the staffing deficits that were experienced over the summer months, months during which staffing issues are exacerbated by staff taking their approved vacation leave.

As to the generation of data about provision of services, Defendants respectfully submit that the present dual-accounting system is unduly cumbersome. Given Plaintiffs' express concern that incarcerated individuals must be involved in the process, Defendants suggest that the portal no longer be maintained and that, instead, the signature sheets be the mechanism by which provision of services is logged. The time required by the dual record-keeping system could be better spent on, for example, attempting to persuade inmates to sign the log forms or urging individuals to comply with proper mask-utilization. Defendants recognize that this system, which relies on handwritten entries by staff and incarcerated individuals, will be imperfect and will likely not address Plaintiffs' concerns of illegibility. But it may yet be the best option given Plaintiffs' earlier-expressed concerns, and would remain steadily supplemented by the calls and letters that Plaintiffs' counsel receive. Defendants note their continued

opposition to any implicit suggestion that they should be forcing incarcerated individuals to sign the forms.

Defendants strongly disagree with the suggestion that a monitor is warranted, particularly where Defendants' efforts have resulted in an extremely low rate of infection. As detailed above, Plaintiffs have not submitted evidence to support such a drastic measure. Furthermore, Deputy Wardens have been specifically designated in each facility to review compliance with the provision of services. In addition to their existing responsibilities, which include general touring of the facility to which they are assigned, the DWs will be reviewing the sheets generated each day so that any identified lapse in compliance can be promptly addressed.

**B. Inspection of ASDCU and MOD-3**

***Plaintiffs' Report***

Plaintiffs' counsel conducted an in-person inspection of Alternative and Special Detention Central Unit ("ASDCU) and Mod-3 on September 2, 2020. The majority of the women incarcerated in PDP had been moved to these two facilities on or about August 12, 2020. Plaintiffs outline here for the Court the areas of greatest concern.

1. The women in ASDCU are housed in three separate units with 29 to 40 people in each unit. Each unit is a dormitory setting with some of the bunks as close as 15 inches from each other. In light of the dormitory setting, in which an outbreak of COVID-19 would be difficult to control, Plaintiffs' counsel are concerned about the air circulation and HVAC system in ASDCU. The windows in the dormitories do not open and many of the vents, both in-flow and out-flow vents, appeared rusty or dirty. Photographs of some vents are attached as Exhibit D. *See* Photo Nos. 0061 & 0066.

- Peeling ceiling paint indicates that there was water damage in the building at some point in time which, if not properly remedied, could impact the air quality. *See* Photo No. 60. Plaintiffs request that Defendants (a) repair the problematic vents and (b) provide Defendants information on the HVAC system at ASDCU, including how often internal air is exchanged with fresh air, filtration information, and air quality tests. Plaintiffs are willing to work with Defendants in determining how best to conduct these tests.
2. The women in Mod-3 are housed in four separate housing units with double occupancy cells. Each of the four housing units has only one shower. One of those units housed 28 people at the time of the inspection. This shower to incarcerated person ratio is far lower than the standard adopted by the American Correctional Association which requires a minimum ratio of one shower for every twelve incarcerated people.<sup>2</sup> Moreover, women at Mod-3 report an inability to shower daily because there is only one shower in their unit and because of their lack of out-of-cell time. The partial settlement agreement requires that everyone be given the opportunity to shower daily.
  3. The vents, cell walls, and light fixtures in Mod-3 show signs of deterioration and rust. Photographic examples are included in Exhibit D. *See* Photo Nos. 0163, 0176, 0199, 0206, 0248, 0271, 0299 and 0313. As with ASDCU, Plaintiffs request that Defendants repair these vents, walls, and light fixtures, and request as well

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<sup>2</sup> American Correctional Association, Commission on Accreditation for Corrections, *Performance-Based Expected Practices for Adult Correctional Institutions* at 56 (5<sup>th</sup> Ed., August 2018) (5-2C-4139: “Inmates have access to operable showers with temperature-controlled hot and cold running water, at a minimum ratio of one shower for every 12 inmates.”).

- information on the HVAC system in Mod-3, including how often internal air is exchanged with fresh air, filtration information, and air quality tests.
4. Each housing unit in Mod-3 has a single water fountain and women can access the fountain only when they are permitted out of their cell. We have reports of very limited out-of-cell time and it was unclear during the inspection if the water from the sinks in the cell was potable. Plaintiffs request water quality testing information on the water from the in-cell sinks.
  5. With regard to the in-cell sinks, during the inspection, Plaintiffs' counsel was unable to access hot running water. The Deputy Warden, apparently using far more force on the sink buttons, finally was able to get running warm water. In the cell tested by counsel, the hot water button had to be held down with considerable force for a full minute in order to obtain warm water. We have received reports from women that they have similar difficulties as counsel did in getting running water from the sinks and that they were not getting hot water. In light of the importance of hand washing hygiene in preventing the spread of COVID-19, we request that defendants repair these sinks.
  6. Once Plaintiffs have received information from Defendants regarding these issues at ASDCU and Mod-3, including information about the HVAC system, air quality, and water quality, Plaintiffs will evaluate and discuss with Defendants whether additional steps, such as input from an environmental engineer, is warranted.

***Defendants' Report***

The above summary comingles substantive and superficial concerns. Addressing first the substantive concerns, Defendants begin with the air filtration concerns raised by Plaintiffs. Both



ASDCU and MOD 3 are equipped with air systems that draw air in from the outside, cool it, and then expel it. Phrased another way, the air inside the facilities does not circulate throughout them but instead travels through. The air systems are equipped with filters that are changed every three months, and are not yet due for a replacement having been changed within the last three months. The lack of windows that open is consistent with the design of other facilities (e.g, CFCF). Defendants have, in an abundance of caution, inquired of the Philadelphia Department of Public Health if they could, in addition to the quarterly health inspections already done, perform an air quality test. PDPH is not conducting such tests until 2021, and so Defendants are exploring other options for this.

Addressing next the water, particularly potability, water fountains have been in place and satisfactorily in use on the immediate housing units since inception. They supply drinking water and 190 degrees water for commissary items that require such temperature. The water supplied to the PDP is the same for every building/structure, which includes ASD. The Philadelphia Water Department Treatment Plant is less than a mile away on State Road, and all the water supplied to the PDP is treated according to the same high standards set by the Water Department. To the extent there are specific issues with specific water fountains, those can be addressed by maintenance staff.

Defendants next address Plaintiffs' observation that "some of the bunks were as close as fifteen inches apart." The bunk beds in each cubicle are positioned around the perimeter of that cubicle. Because of this structure, the individuals in these spaces are specifically directed to sleep head-to-toe. And given the low number of women in ADSCU, few of the top bunks are in use. When the women comply with the direction to sleep head-to-toe, all are adequately distanced from the next sleeping person.

On the issue of showers, going forward Defendants will attempt to enhance the process to report access to daily showers, i.e., using signature sheets to reflect each individuals' access to the showers and the time at which that shower was provided. As with the male population, out of cell time is structured in cohorts to facilitate social distancing. This too is captured in the paper logs.

The remainder of Plaintiffs' observations are complaints about the cosmetics of the facility, complaints that are steadily addressed through routine maintenance. For example, as Plaintiffs' counsel observed, the light fixtures, like the one depicted, are in the process of being replaced. Similarly, any issues with vents and paint in the facilities are steadily addressed through routine maintenance. While Defendants recognize that the Riverside Correctional Facility from which the women were transferred is a newer structure with less of these issues, Defendants respectfully submit they do not rise to the level of a health concern.

**C. Access to Counsel**

***Plaintiffs' Report***

Access to counsel via videoconference or legal phone calls at CFCF, the largest PDP facility, continues to be problematic. As of September 7, 2020, the earliest available date for an attorney videoconference was October 3, 2020, and the earliest available date for a legal phone call was September 29, 2020. Hearings, both remote and live, have started in the Criminal Justice Center, with jury trials starting September 8, 2020. Attorneys, especially those who are in COVID-high risk categories and therefore unable to go to CFCF in person, have had great difficulty in being able to timely interview clients and convey plea offers.

[REDACTED]

[REDACTED] Additionally, Plaintiffs request that Defendants make a

greater number of phones (and social workers) available at CFCF in order to facilitate legal phone calls.

***Defendants' Report***

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**D. Request for Data Regarding COVID-19 Cases**

***Plaintiffs' Report***

Plaintiffs' counsel previously requested that the City provide certain COVID-19 related data on a weekly basis. The City has now agreed to provide all of the data requested (though counsel for Plaintiffs are still reviewing the staffing reports provided last Friday). The current information for reference by the Court and counsel is set out in the Defendants' Report below.

***Defendants' Report***

Defendants produced the requested information to which they did not object. Those numbers are:

- a. Inmates tested last week, 182 and cumulative, 6,982
- b. Test results last week, 2 positive and 180 negative, and cumulative, 275 positive and 6,706 negative
- c. Inmates in isolation last week, pending results 1 (0 at week's end), and confirmed positive 2 (1 at week's end)
- d. Housing units in quarantine for some time

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- e. Reasons for quarantine: please see above
- f. Length of time of quarantine: please see above
- g. Not supplied.
- h. Covid patients hospitalized: 0
- i. Covid patients in treatment in PDP health units: 0
- j. Not supplied.

[REDACTED]

**E. Plaintiffs' Requests for Additional Compliance Measures**

***Plaintiffs' Report***

Plaintiffs' counsel previously requested that Defendants appoint a high level deputy in each PDP facility to be in charge of monitoring compliance with the Settlement Agreement and be held accountable by the PDP and the Court, if necessary, for non-compliance by the PDP. Defendants have now done so, and Plaintiffs are hopeful that these individuals can actively address the record-keeping and reporting issues identified in Section A above. Plaintiffs further proposed that the Commissioner participate in the Court's telephonic court conferences. As the Court is aware, Commissioner Carney did join the last court conference and has agreed to participate in future conferences. Finally, Plaintiffs requested certain staffing data produced in other historic litigation matters be provided on a weekly basis particularly for housing units that

are effectively “locked down” because of staffing shortages. Counsel for Defendants have now produced staffing information that counsel for Plaintiffs is in the process of reviewing.

***Defendants’ Report***

Defendants submit that sufficient steps have been taken to further enhance compliance with the terms of the partial settlement agreement. Discrete issues with provision of services could be far more readily addressed if Plaintiffs provided information regarding the individual who has not been provided services so that those issues could be investigated and remediated as necessary. Defendants anticipate that issues with out of cell time should continue to abate as staffing issues come under control due to the coordinated efforts of management, the Union, and the Mayor’s Office of Labor Relations, the imposition of discipline for abusing leave, the end of the summer season, and the presence of senior management on site over the weekends. As to the Commissioner’s participation on the status calls, she is available as necessary to participate.

Respectfully submitted,

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**DATE: September 10, 2020**