

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

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

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 October 8, 2020.

A. Compliance Monitoring

Plaintiffs’ Report

As the Court is aware from prior Joint Reports and telephonic court conferences, counsel for Plaintiffs continue to receive reports of widespread, systemic non-compliance with the terms of the Consent Order on Partial Settlement Agreement dated June 3, 2020 (ECF No. 35). *See* Exhibit A. Plaintiffs remain hopeful that the appointment of Deputy Wardens to monitor compliance as well as their attendance in Court conferences will improve compliance. Should reports of non-compliance remain at the same level, however, Plaintiffs would like to discuss with the Court the possibility of the appointment of a special monitor.

In prior Joint Reports submitted to the Court, Plaintiffs focused on the following areas of non-compliance with the Consent Order:

- (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.

These all remain serious concerns.¹ Counsel for Plaintiffs here add a seventh area of concern: consistent reports that the common areas and frequently touched surfaces in housing units are not being cleaned in accordance with the Consent Order.

From September 21 through October 2, 2020, Plaintiffs' counsel received reports of non-compliance with one or more of these provisions of the Consent Order from a total of 35 housing units—17 units at CFCF, 11 units at PICC, 4 units at RCF, 2 units at ASDCU, and 1 unit at Mod-3. In other words, Plaintiffs' counsel received reports of *non-compliance from approximately two-thirds of PDP housing units in a single two-week period.*

Insufficient out-of-cell time

Insufficient out-of-cell time remains a major concern, with reports coming from 27 different units from September 21 through October 2, 2020. *See* Exhibit A. Defendants have acknowledged their failure to comply with this portion of the agreement, blaming staffing shortages. It remains a routine occurrence for correctional staff to keep incarcerated people

¹ Defendants are apparently using a new form to track out of cell time, which eliminates entirely the prior entries for capturing information regarding soap, blues, linens, and laundry. Counsel for Plaintiffs had previously urged that Defendants enter into a set schedule for distribution of these supplies or services each week. To date, Defendants have declined to agree to this step. With this change in the PDP form (which was not discussed in advance with Plaintiffs' counsel), PDP effectively has no method to ensure compliance with the partial settlement agreement in these areas.

locked in their cells for one or two full days at a time and sometimes longer. *See, e.g.*, Exhibit B: Stokes Decl. ¶¶ 14, 21–24 (describing remaining locked in his cell for periods of two and five days straight); Marshall Decl. ¶¶ 10–11; Evans Decl. ¶¶ 18–20 (describing being locked in every Saturday and for a period of three days straight). On other occasions, staff let people out of their cells but for less than the required minimum of 45 minutes, in which case incarcerated people have to choose between showering, calling their loved ones, and cleaning their cells. *See, e.g.*, Lardani Decl. ¶¶ 4, 5, 13. Defendants’ most recent data production likewise confirms that housing units continue to be locked down because of staffing shortages. *See* Exhibit C.

As the Court is aware, the Defendants’ continued use of system-wide lock-downs keeps incarcerated people in prolonged isolation, putting them at risk of severe and irreversible physical, mental, and emotional harm. Plaintiffs and Defendants will continue to discuss how best to effectively address the failure to provide sufficient out-of-cell time, including reaching a further settlement agreement that establishes a clear and mandatory requirement for daily out-of-cell time. Counsel for Defendants recently informed Plaintiffs’ counsel that PDP would be increasing the size of cohorts allowed out of their cells at the same time, in an effort to address the out-of-cell time problems. However, Defendants’ expressed a reluctance to formalize any plan for increased out-of-cell time. Plaintiffs’ counsel find this troubling. According to the June 3, 2020 Consent Order, Defendants agreed to “to advise Plaintiffs and the Court of its plans for out-of-cell time (no later than June 10, 2020).” Plaintiffs’ counsel believe, given the dangerous ramifications of prolonged isolation and lack of exercise, that a formalized agreement to ensure out-of-cell time for all incarcerated people would be beneficial.²

² In the previous Joint Status Report docketed on September 24, 2020, Plaintiffs provided a report on the staffing data through July 2020. Plaintiffs’ counsels’ request for updated staffing and assault reports remains outstanding.

Staff not wearing face masks

In addition to complaints regarding out-of-cell time, Plaintiffs' counsel received reports from 18 different housing units from September 21 through October 2, 2020 that staff—including correctional staff of all ranks, as well as medical staff—were not wearing masks while inside the facility, as mandated by the Consent Order.³ *See* Exhibit A; *see also* Taylor Decl. ¶¶ 19–22 (describing COs, nurses, and a van driver not wearing masks); Marshall Decl. ¶ 9 (“COs often walk around with their masks half on and half off.”); Lardani Decl. ¶ 12 (“Most staff members do not wear their masks properly and do not cover their mouths and noses.”); Evans Decl. ¶¶ 14–18 (describing widespread, consistent non-compliance with the mask requirement, including nurses and other medical staff not wearing masks and staff serving meals without masks on).

Staff not distributing soap

Although Plaintiffs' counsel previously reported improvements in the distribution of soap, Plaintiffs' counsel nonetheless received reports from 23 different housing units from September 21 through October 2, 2020 that staff were not distributing soap on a weekly basis, as mandated by the Consent Order. *See* Exhibit A; *see also* Taylor Decl. ¶¶ 25–26 (stating that bars of soap are not distributed weekly and that there is often no soap at the dayroom sinks that women use to wash their hands after going to the bathroom); Stokes Decl. ¶¶ 15–16 (reporting having received only five bars of soap from June 1 through September 28, 2020 and COs

³ Despite efforts by Defendants' counsel, Plaintiffs' counsel still have not received the requested video-tape footage that should offer some proof regarding mask wearing in the PDP housing units. While there are technical issues involved in these long-standing requests, this issue needs to be resolved through promptly scheduled discussions among appropriate representatives of the parties.

responding to requests for soap by saying there is none); Marshall Decl. ¶ 3 (reporting having received only three bars of soap from June 10 through September 21, 2020); Lardani Decl. ¶¶ 6–7 (stating that soap is not distributed weekly, that when incarcerated people ask for soap they “often have to beg for soap before [they] receive it,” and they whether they get it depends on which CO is on duty); Evans Decl. ¶¶ 6–7 (stating that soap is usually distributed only once every two weeks and that “[w]hen inmates run out of soap and ask for more, the COs say there is no more soap”).

Staff not distributing cleaning supplies

Plaintiffs’ counsel received reports from 29 different housing units from September 21 through October 2, 2020 that staff were still not distributing cleaning supplies for twice-weekly cell cleanings, as required by the Consent Order. *See* Exhibit A; *see also* Stokes Decl. ¶ 18 (“We have to beg for cleaning supplies when they are available.”); Marshall Decl. ¶ 6 (explaining how the lack of out-of-cell time prevents people from cleaning their cells); Lardani Decl. ¶ 10 (reporting not having received cleaning supplies for his cell the whole time he has been at RCF; “When I ask for supplies, I am told to wait. I am still waiting.”); Evans Decl. ¶ 8 (stating that they sometimes go weeks without any getting any cleaning supplies for their cells and that when they do get supplies, it is only once a week and the cleaning solution is so watered down as to be ineffective).

Failure to distribute requisite number of face masks

Plaintiffs’ counsel received reports from 26 different housing units from September 21 through October 2, 2020 that incarcerated individuals did not have four facemasks, as required by the Consent Order. *See* Exhibit A; *see also* Taylor Decl. ¶¶ 16–18 (stating that she only had one mask from June 18 through September 24, 2020, that new masks were not distributed during

that time, and that Defendant Commissioner Carney told women in ASD in August to “be patient” because they would eventually get four masks); Stokes Decl. ¶¶ 19–20 (reporting having had only one mask since June 2, 2020 and that damaged masks are not replaced); Marshall Decl. ¶¶ 7–8 (stating that he only has two masks and that he has asked staff for additional masks and been refused); Lardani Decl. ¶ 11 (stating that staff members only replace damaged masks if they happen to have new ones on the unit and that, otherwise, staff do not arrange for damaged masks to be replaced); Evans Decl. ¶¶ 11–13 (reporting having only two masks, one of which is in bad shape; that staff do not replace damaged masks; and that he regularly asks staff for a new mask and is refused).

Plaintiffs’ counsel have asked Defendants to provide a written weekly schedule for masks, soap, and cleaning supplies distribution. Defendants’ counsel indicated they would conduct weekly distribution of masks and soap and make cleaning supplies regularly available on a weekly schedule. However, Defendants have yet to provide that schedule to Plaintiffs’ counsel.

Insufficient access to laundry

Plaintiffs’ counsel received reports from 15 different housing units from September 21 through October 2, 2020 that incarcerated people were not able to have their linens and clothing washed in accordance with the Consent Order. *See* Exhibit A; *see also* Taylor Decl. ¶¶ 27–28 (explaining that laundry is done only once a week, that there is not enough time or space in the washing machine to wash clothing and linens each week, and that the detergent often runs out, which means only women who have purchased detergent from commissary can get their laundry done); Stokes Decl. ¶ 25 (“Because I am indigent and cannot afford a laundry bag, the laundry workers will not wash my clothes.”).

Failure to clean common areas

Plaintiffs' counsel received reports from 28 different housing units from September 21 through October 2, 2020 that the common areas and frequently touched surfaces on the housing units are not being cleaned four times a day, as required by the Consent Order. *See* Exhibit A; *see also* Taylor Decl. ¶ 29 (stating that common areas, including showers, toilets, and dayroom tables, are usually only cleaned once a day, unless she and other women choose to clean them at night, in which case they are cleaned twice a day); Stokes Decl. ¶ 17 (“Unit workers clean commonly used areas at most twice a day.”); Marshall Decl. ¶ 4 (stating that the common areas on the housing unit are “barely cleaned once a day” and that the showers are cleaned “at most, twice a week”); Lardani Decl. ¶ 8 (“The unit is cleaned at most once per day during the first shift.”); Evans Decl. ¶ 4 (“The housing unit and common areas are not regularly cleaned.”)

New Issues of Concern

Plaintiffs' counsel also want to make the Court aware of two additional areas of concern that, while not explicitly covered by the Consent Order, are still pertinent. First, Plaintiffs' have received reports about a lack of mask wearing and social distancing during transports of incarcerated individuals, both within the PDP and from PDP facilities to the courthouse. These transports are particularly alarming because they involve the mixing of people from different housing units and facilities. *See, e.g.*, Taylor Decl. ¶¶ 22–24 (describing riding in PDP vans and sitting in holding cells with women from other units and facilities who were not wearing masks, including women from the intake quarantine unit); Stokes Decl. ¶¶ 6–10 (describing riding on a dirty bus to and from court with 12–16 other incarcerated people and sitting in a small holding cell with five other incarcerated people for three hours).

Second, Plaintiffs' counsel continue to be concerned about threats and retaliation from staff in response to incarcerated people's complaints to them or reports to Plaintiffs' counsel about non-compliance with the Consent Order. *See, e.g.*, Taylor Decl. ¶¶ 48–52 (describing retaliation, threats, and intimidation by high-ranking PDP staff against women in Mod-3 and stating that a lot of women in Mod-3 are afraid staff will retaliate against them if they call Plaintiffs' counsel on the hotline); Lardani Decl. ¶ 13 (describing an incident of apparent retaliation in response to the declarant's request for cleaning supplies for his cell). If nothing else, these reports are an important reminder that the reports of non-compliance with the Consent Order that Plaintiffs' counsel are receiving likely do not even come close to capturing the full extent of PDP's non-compliance.

Counsel for Defendants' requested that Plaintiffs' counsel provide them with information about specific complaints received. As a result, last week Plaintiffs provided information about the reports received from specific housing units and the names of a few reporting individuals willing to have their names shared with PDP staff. One of these individuals, who only had one mask and had been asking for weeks for a new one, received new masks as a result of this reporting process and was very grateful. Another individual, who needed soap and three additional masks, reported to Plaintiffs' counsel that he received soap but only one additional mask. He also reported that, after a staff member gave him soap, the Warden told him that if he can purchase soap from commissary, he should not be complaining about not receiving free soap.

Plaintiffs' counsel requested from Defendants' counsel written documentation regarding the full resolution of the complaints provided. Defendants' counsel has not yet provided this written response to Plaintiffs' counsel. Plaintiffs appreciate the effort Defendants have taken to remedy these individual concerns; however, given the evidence of systemic non-compliance,

Plaintiffs' counsel believe this process will not resolve the long-standing issues that remain, and reserve the right to reiterate our request to appoint a monitor to oversee compliance if these issues continue.

Defendants' Report

Defendants are and remain proud of the fact that their sustained and systemic efforts to reduce the risk of introduction and transmission of Covid-19 in the Philadelphia Department of Prisons have resulted in an impressively low infection rate in the facilities comprising the PDP. Notably, in a congregate setting housing nearly 4,200 individuals, there have been two weeks of the last four during which no incarcerated individuals tested positive for the disease. The few individuals over recent weeks who tested positive have largely been identified during the intake process. Defendants have implemented protocols and practices that have thus far proven successful, including a mandatory isolation upon intake, screening for entry of any personnel onto the premises, mandatory mask wearing by staff and incarcerated individuals, and cohorting practices. Defendants protocols and practices remain consistent with the Center for Disease Control Guidance that is applicable to congregate settings, and the efficacy of PDP's actions is demonstrated by the sustained low infection rate in this congregate setting.

Defendants address first one of the things most affected by the effective implementation of cohorting practices – out-of-cell time. Defendants have made substantial efforts to ensure that all individuals incarcerated at PDP get between two and three hours of out of cell time. And Defendants have largely succeeded in these efforts. Plaintiffs contend that the complaints they receive demonstrate widespread non-compliance with Defendants' commitment to provide at least forty-five minutes of out-of-cell time, and have provided the Court examples of signature sheets indicating that on September 13, 2020, individuals incarcerated at PICC did not get that

minimum time. They have also identified these Units as non-compliant in their first chart, adding to their visual efforts to show the alleged widespread non-compliance. But the available data does not support a conclusion of widespread non-compliance; instead, it shows substantial compliance that exceeds the agreed-upon minimums.

Defendants certainly recognize that they produced sheets indicating that out-of-cell time was not provided that one day, September 13, 2020, at PICC. But the remainder of the sheets from that collection, as summarized in the attached chart, demonstrate that individuals in those identified units received far more than the agreed-upon daily minimum of 45 minutes. *See* PICC, RCF Summary Charts, Ex. E. Defendants committed in the Partial Settlement Agreement to provide 315 minutes of out of cell time a week; as demonstrated by the charting, the individuals incarcerated in those housing units were out of cell for nearly three times that amount of time over the course of the week. The excerpted data from RCF further illuminates the extent to which Defendants have made every effort to meet or exceed the agreed-upon provisions. Demonstrating their commitment to achieving these goals, Defendants have also modified the cohorting model at CFCF, which now permits larger groups of incarcerated individuals to have out-of-cell time in cohorts that are defined by the tier on which they are housed. Defendants assessed the risks and determined that this increased cohort size should not increase the risk of introduction and transmission of Covid-19, while also permitting individuals a greater amount of time out of cell than was operationally feasible with the smaller cohort sizes.

As noted, Defendants have mandated that staff wear masks and have strongly encouraged incarcerated individuals to do so as well. Staff remain subject to discipline if they are observed failing to comply with this requirement. Defendants also note that the declarations submitted by Plaintiffs are rife with incidents of incarcerated individuals choosing not to wear masks. While

Defendants have instituted practices that require mask wearing to exit a cell or, for transportation, to leave a facility and get into a transport vehicle, Defendants have thus far chosen not to institute inmate discipline for those individuals who, after presenting with a mask at the appropriate moment, decide to subsequently remove it. Defendants continue to pursue a path of persuasion and education, strongly encouraging mask wearing among the incarcerated population and posting signs throughout the facilities to that effect.

Defendants respectfully submit that the reports made to Plaintiffs' counsel and relayed to the Court with regard to soap are unreliable at best. First, soap is distributed on Wednesday across the PDP facilities. So much of it has been distributed that, in one housing unit at PICC, individuals chose to mash it against the shower wall to make hooks. Second, and by way of example, Plaintiffs relayed a complaint that one individual had not been provided soap. Upon interacting with management, that same complainant stated that he had indeed received soap, and also purchased it from commissary, but that he wanted another bar "just because."

Defendants similarly question the veracity of the reports regarding cleaning supplies. Those are readily available for use when individuals are out of cell, and all the housing units are additionally cleaned during general inspection cleaning.

Turning to face masks, Defendants note that in their conversations with clients it appears that Plaintiffs' counsel did not discuss the option to replace masks. Illuminating this is the interaction that happened after management brought masks to one individual who, helpfully, was willing to identify his name along with his complaint about not having four masks. His response to the question of why he did not ask for a replacement was that he did not know he could. This information is in the posting that details the terms of the Partial Settlement Agreement, but unfortunately has apparently been overlooked by some of the individuals for whom it applies.

Seeking, however, to broaden mask compliance, Defendants have opted both to do a broad distribution across the facilities, and to designate Wednesdays as the day on which individuals can exchange masks for replacements. This information will be announced on the units and will be shared with the incarcerated population through the Block Representatives.

Plaintiffs' report on laundry appears to misconstrue the method by which laundry is done in PDP facilities. Clothing and linens are not washed in the washing machines located on the housing units, but instead are exchanged on a weekly basis. The exchanged items are laundered in an industrial facility on site. Personal items, by contrast, can be laundered on the housing units, and the responsibility for that process falls to an inmate employee. To the extent there are complaints about the method by which that individual performs his or her job responsibilities, those complaints can be addressed through the grievance process.

Like laundry, common area cleaning is performed by inmate employees. To the extent there are complaints about whether and how those employees are performing their jobs, those complaints can be addressed through the grievance process.

B. Inspection of ASD-CU and MOD-3

Plaintiffs' Report

Conditions at ASD-CU and MOD-3

Plaintiffs' counsel continue to receive reports about conditions at ASDCU and MOD-3, the current women's facilities. Since the last status report, the number of incarcerated women continues to rise. As of October 5, 2020, PDP holds 248 incarcerated women. Concerns include the following:

- Units at ASDCU now reportedly house 45-50 women each, with cubicles in these units sleeping 6 women or more, and some having, at times, as many as 8. *See, e.g.*, Taylor Decl. ¶¶ 8-9.
- Mixing of cohorts in MOD-3. Plaintiffs have received reports that, due to the large number of women in Unit B, women from that unit were brought to Unit A for out-of-cell time at the same time that women in Unit A were out of their cells. Plaintiffs’ also received reports that PDP transports women from different units in the same van. *See, e.g.*, Taylor Decl. ¶¶ 22–24
- Non-confidential medical treatment. Mental health and medical services at MOD-3 and ASDCU are reportedly still being conducted at tables in the common area, where women in their cells can hear what should be confidential communications. *See, e.g.*, Taylor Decl. ¶¶ 37–39.
- A lack of exercise and outdoor recreation time. *See, e.g.*, Taylor Decl. ¶ 30 (reporting that she has only had 7 30-minute recreation periods in 7 weeks and as a result she and other women feel “achy” or experience physical discomfort from the lack of movement).

On September 24, 2020 Plaintiffs’ counsel requested that Defendants create a “contingency” plan for population increases as PDP’s population has steadily risen over the past months, especially for the women housed at MOD-3 and ASDCU. Defendants have not yet provided such a plan to Plaintiffs’ counsel.

ASD-CU and MOD-3 Air and Ventilation Systems

Following a September 2, 2020 in-person tour of ASDCU and MOD-3, Plaintiffs’ counsel raised concerns regarding the air and ventilation systems. Because COVID-19 spreads primarily through airborne respiratory droplets, adequate air ventilation and filtration is

important to reducing the possibility of a COVID-19 outbreak. With this in mind, Plaintiffs previously requested the following information:

- The number of times per hour that the HVAC system exchanges air and what percentage of the air exchange comes from outdoor air. Defendants provided information regarding the number of air changes per hour (ACH). For MOD-3, the ACH averages 6 and for ASDCU 23. Plaintiffs' note that while an ACH 6 meets the minimum standard for office buildings, this does not apply to rooms with toilets, or other aerosol-generating sources.⁴ Recognizing that toilet flushes may aerosolize the virus, the U.S. Center for Disease Control (CDC) requires a minimum ACH of 10 for toilet rooms in congregate care settings.⁵ Considering each cell in MOD-3 contains an unlidged toilet with the capacity to aerosolize and spread the COVID-19 virus, Plaintiffs ask whether the Defendants plan to increase the ACH in MOD-3.
- Defendants have not yet provided information regarding the *outdoor air exchange* at ASD-CU or MOD-3. Adequate supply of outdoor air is necessary to reduce the risk of viral spread. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)⁶ recommends 3 air changes of outside air per hour to reduce the

⁴ See Center for Disease Control, *Environmental Infection Control Guidelines, Appendix B*, <https://www.cdc.gov/infectioncontrol/guidelines/environmental/appendix/air.html> (last access October 5).

⁵ *Id.*

⁶ In its recommendations, the CDC links to the ASHRAE guidelines. See Centers for Disease Control and Prevention, *COVID-19 Employer Information for Office Buildings*, <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html> (last visited Sept. 17, 2020); and ASHRAE, *Filtration/Disinfection: Mechanical Air Filters*, <https://www.ashrae.org/technical-resources/filtration-disinfection#mechanical> (last visited Sept. 17, 2020).

concentration of airborne infectious particles.⁷ Plaintiffs' counsel repeat their request for information on the rate of outdoor air exchange at the women's facilities.

- Defendants reported that both ASDCU and MOD-3 use air filters with a minimum efficiency reporting value (MERV) rating of 8. MERV-8 filters do *not* capture airborne viruses. The CDC recommends that office buildings and other indoor spaces upgrade their air filters to MERV-13 to reduce airborne viral spread, based on guidance from ASHRAE.⁸ Plaintiffs reiterate their request that Defendants explore whether PDP can properly insert MERV-13 filters into the PDP's current HVAC units, and, if so, request that they upgrade the filters.
- Plaintiffs' requested that PDP consider installing portable high efficiency particulate air (HEPA) cleaners as portable air cleaners can supplement inadequate HVAC filters. Defense counsel has reported that they will check with the PDP about this possibility. Plaintiffs have not yet received a response to this query.

Defendants' Report

Defendants reiterate that they have taken substantial, successful steps to reduce the introduction and transmission of Covid-19 in PDP facilities, and that the actions taken have all been consistent with the CDC's *Interim Guidance on the Management of Coronavirus Disease 2019 (Covid-19) in Correctional and Detention Facilities*. The various air handling inquiries Plaintiffs raise have not been, as yet, applied to the correctional setting. Furthermore, given the

⁷ ASHRAE Epidemic Task Force Building Readiness, available at <https://www.ashrae.org/file%20library/technical%20resources/covid-19/ashrae-building-readiness.pdf>.

⁸ See ASHRAE, *supra* note 3.

demonstrated efficacy of the Defendants' efforts, this degree of intrusion into the Prisons' operation is not warranted.

Regarding the census at ASD, Defendants verbally relayed last week the contingency planning for housing women in a celled block at the Detention Center, so cohorting practices can continue to be maintained. Given Defendants' understanding of developing plans to expedite the disposition of criminal matters, Defendants do not present expect that implementation of this contingency plan will be required. As for provision of medical services to the female population, these services are provided in the medical triage area, which does assure confidentiality.

C. Access to Counsel

Plaintiffs' Report

Parties have previously reported that access to counsel at CFCF remained problematic, with lengthy backlogs and delays in getting appointments for legal phone calls or videoconferences. On October 5th, prison administrators announced to various stakeholders in the criminal justice system a new pilot program for setting up remote video visits with persons incarcerated at CFCF. As this new process was just announced, it has not yet been fully implemented and it is unclear how it will work. Plaintiffs' counsel will monitor this over the next two weeks and report to the Court how and whether this new system functions and whether it eliminates the backlog for legal calls and video-conferences at CFCF.

Defendants' Report

Defendants' counsel participated in a test of the new video visit system, which provided a clear video and audio connection between counsels' cell phone and the individual calling. The process requires downloading an application onto a mobile device and registering with GTL on a separate system. The latter provides the scheduling component and the former is the mechanism

by which the parties connect. As noted in Plaintiffs' section, PDP emailed details of these systems to representatives for the Defender Association and the private bar. PDP has received minimal response thus far, so is waiting for additional attorneys register to use the new platform. PDP hopes that broader adoption in the legal community will be forthcoming. As that roll-out continues, attorneys can also still reserve times to speak with their clients via phone and Zoom calls, and can schedule in-person visits.

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. The current information for reference by the Court and counsel is set out in the Defendants' Report below.

Defendants' Report

The requested information is, for the week ending October 4, 2020:

- a. 213 inmates were tested last week and 7,989 cumulatively have been tested
- b. 0 positive and 213 negative test results last week, and, cumulatively, there have been 281 positive and 7,582 negative tests
- c. Inmates in isolation last week: 1 pending results, and 0 confirmed positive,
- d. Housing units in quarantine – units **highlighted** are no longer in quarantine
 - i. Intake/male – 14 days: B1 pods 2, 3 and 4; B2 pods 1 and 2
 - ii. Intake/female – 14 days: ASD MOD III D Unit; DC 207
 - iii. Non-intake due to possible exposure, plus length of quarantine: none
 - iv. Non-intake due to confirmed infection: **CFCF D1P3 – 2 days**
- 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.

These numbers, for the week ending September 27, 2020, were:

- a. 212 inmates were tested last week and 7,776 cumulatively have been tested
- b. 2 positive and 210 negative test results last week, and, cumulatively, there have been 281 positive and 7,379 negative tests
- c. Inmates in isolation last week: 1 pending results, and 3 confirmed positive,
- d. Housing units in quarantine – units highlighted are no longer in quarantine
 - i. Intake/male – 14 days: B1 pods 2, 3 and 4; B2 pods 1 and 2
 - ii. Intake/female – 14 days: ASD MOD III D Unit; DC 207
 - iii. Non-intake due to possible exposure, plus length of quarantine: none
 - iv. Non-intake due to confirmed infection: CFCF D1P3 – 14 days
- 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.

E. Review of PDP's Recordkeeping on Compliance Matters

Plaintiffs' Report

Counsel for Plaintiffs continue to request and evaluate reports from the PDP on a bi-monthly basis to ensure compliance with the partial settlement agreement. As the Court is well aware from prior Joint Reports, Plaintiffs' counsel has serious concerns about the quality and consistency of this reporting which is essential to demonstrate Defendants' compliance with the court-approved agreement. Most recently, Plaintiffs' counsel reviewed data for four housing units: CFCF A2P3, CFCF B1P4, PICC G2, and RCF F.

Unfortunately, in addition to the other issues already identified in this Joint Report, significant issues persist with the recording and reporting of this data, including the following: (1) inconsistent data between the computer-generated PDP Portal Reports and the hand-written Activity Logs; (2) verifications on the Activity Logs which are suspect or consist of little more than a scribbled or scrawled line⁹; (3) instances in which data is simply not recorded making verification impossible; and (4) multiple instances in which incarcerated persons are refusing to sign or verify the Activity Logs. *See* Exhibit D. These most recent reports across multiple PDP housing units make clear that systemic issues still exist that must be addressed by PDP senior management.

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. These deputies as well as the Commissioner should participate in

⁹ *See also* Evans Decl. ¶ 21 (“Every time we are let out of our cells, we have to sign a paper. But on many occasions, the C.O.’s forge our signatures to make it look like everybody is getting out of their cells.”).

the Court's telephonic court conferences. Should compliance with the Partial Settlement Agreement not improve, Plaintiffs will seek the appointment of a special monitor.

Defendants' Report

Defendants pause to reiterate that Plaintiffs' representations of widespread non-compliance are not supported by the work being done, the services provided, and the substantial operational efforts being made to meet or exceed the terms of the Partial Settlement Agreement. Defendants have implemented redundant mechanisms to track the provision of the services agreed upon in the Partial Settlement Agreement. The signature logs were implemented after Plaintiffs complained that the internet portal does not include an inmate validation mechanism. Plaintiffs now complain that incarcerated individuals periodically choose not to sign the validation logs. Defendants respectfully submit that more time could be spent persuading individuals to affix their signature to the logs if staff was not also duplicating this effort by completing the internet portal data entry. To that end, and going forward, Defendants propose that the internet portal, having been initially rejected by Plaintiffs, be fully retired from use and that the parties instead focus their efforts on the signature logs. Defendants should caution, however, that they remain opposed to any suggestion that class members be forced to sign logs should they choose not to. This will of course result in some logs being incomplete as incarcerated individuals assert their prerogative not to sign. However, Defendants believe that avoiding escalation is more important than the generation of pristine records.

Respectfully submitted,

/s/ David Rudovsky
David Rudovsky (PA 15168)
/s/ Jonathan H. Feinberg
Jonathan H. Feinberg (PA 88227)
/s/ Susan M. Lin

/s/ Craig M. Straw
Craig M. Straw
First Deputy City Solicitor
City of Philadelphia Department of Law
Office: (215) 683-5442

Susan Lin (PA 94184)
KAIRYS, RUDOVSKY, MESSING,
FEINBERG, & LIN, LLP
718 Arch Street, Suite 501S
Philadelphia, PA 19106
(215) 925-4400
drudovsky@krlawphila.com
jfeinberg@krlawphila.com
slin@krlawphila.com

/s/ Su Ming Yeh
Su Ming Yeh (PA 95111)
/s/ Matthew A. Feldman
Matthew A. Feldman (PA 326273)
PENNSYLVANIA INSTITUTIONAL
LAW PROJECT
718 Arch St., Suite 304S
Philadelphia, PA 19106
(215)-925-2966
smyeh@pailp.org
mfeldman@pailp.org

/s/ Nyssa Taylor
Nyssa Taylor (PA 200885)
/s/ Witold J. Walczak
Witold J. Walczak (PA 62976)
/s/ Hayden Nelson-Major
Hayden Nelson-Major (PA 320024)
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102
(215) 592-1513
ntaylor@aclupa.org
vwalczak@aclupa.org
HNelson-Major@aclupa.org
aszemanski@aclupa.org

/s/ Will W. Sachse
Will W. Sachse (PA 84097)
/s/ Benjamin R. Barnett
Benjamin R. Barnett (PA 90752)
/s/ Mary H. Kim
Mary H. Kim*
/s/ Nicolas A. Novy
Nicolas A. Novy (PA 319499)
/s/ Theeya Musitief

Cell: (215) 776-4528

/s/ Anne B. Taylor
Anne B. Taylor, Esquire
Chief Deputy City Solicitor
Civil Rights Unit, Law Department
City of Philadelphia
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1595
215-683-5381 (office)
215-683-5397 (fax)
anne.taylor@phila.gov

Attorneys for Respondents-Defendants

Theeya Musitief (PA 327295)*
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-2496
Will.Sachse@dechert.com
Ben.Barnett@dechert.com
Mary.Kim@dechert.com
Nicolas.Novy@dechert.com
Theeya.Musitief@dechert.com

*indicates counsel who will seek
admission or *pro hac vice* admission

Attorneys for Petitioners/Plaintiffs

DATE: October 7, 2020